

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

RECEIVED

AUG 29 2014

S.C. Supreme Court

ALBERT SANTANIO KELLY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001864

APPENDIX

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KAREN RATIGAN
Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ALBERT S. KELLY,) 2004-GS-23-5966
7 Defendant.) 2004-GS-23-2024
8) OCTOBER 10, 2005
9) Greenville, South Carolina

10 (VOLUME I)

11 B E F O R E:

12 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
13

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

15 L. MARK MOYER, ASSISTANT SOLICITOR
16 Attorney for the State

17 C. TIMOTHY SULLIVAN, ESQUIRE
18 Attorney for the Defendant

19 Michael R. Watts
20 Circuit Court Reporter
21
22
23
24
25

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1 (Proceedings, October 10, 2005)

2 THE COURT: Let's bring our panel up.

3 (Photograph marked as State's Exhibit No. 1 for
4 identification)

5 (Photograph marked as State's Exhibit No. 2 for
6 identification)

7 (Photograph marked as State's Exhibit No. 3 for
8 identification)

9 (Photograph marked as State's Exhibit No. 4 for
10 identification)

11 (Photograph marked as State's Exhibit No. 5 for
12 identification)

13 (Photograph marked as State's Exhibit No. 6 for
14 identification)

15 (Photograph marked as State's Exhibit No. 7 for
16 identification)

17 (Photograph marked as State's Exhibit No. 8 for
18 identification)

19 (Photograph marked as State's Exhibit No. 9 for
20 identification)

21 (Photograph marked as State's Exhibit No. 10 for
22 identification)

23 (Photograph marked as State's Exhibit No. 11 for
24 identification)

25 (Photograph marked as State's Exhibit No. 12 for

1 identification)

2 (Photograph marked as State's Exhibit No. 13 for
3 identification)

4 (Photograph marked as State's Exhibit No. 14 for
5 identification)

6 (X-ray marked as State's Exhibit No. 15 for
7 identification)

8 (Photograph marked as State's Exhibit No. 16 for
9 identification)

10 (Photograph marked as State's Exhibit No. 17 for
11 identification)

12 (Gun marked as State's Exhibit No. 18 for
13 identification)

14 (Stipulation marked as State's Exhibit No. 19 for
15 identification)

16 (Enlarged Photograph marked as State's Exhibit No.
17 20 for identification)

18 (Videotape marked as State's Exhibit No. 21 for
19 identification)

20 (Bullet marked as State's Exhibit No. 22 for
21 identification)

22 (Bullet Casing marked as State's Exhibit No. 23
23 for identification)

24 (Hat marked as State's Exhibit No. 24 for
25 identification)

1 (Gun marked as State's Exhibit No. 25 for
2 identification)

3 (Advisement of Rights Form marked as State's
4 Exhibit No. 26 for identification)

5 (Written Statement marked as State's Exhibit No.
6 27 for identification)

7 (Birth Registration marked as State's Exhibit No.
8 28 for identification)

9 (Social Security Card marked as State's Exhibit
10 No. 29 for identification)

11 (Blockbuster Card marked as State's Exhibit No. 30
12 for identification)

13 (Gun Clip marked as State's Exhibit No. 31 for
14 identification)

15 (Jury Venire Panel in the courtroom)

16 THE COURT: Thank you again, ladies and gentlemen,
17 for your patience with us. We are now ready to begin the
18 trial of the case. You have been chosen as a panel to be
19 qualified as to whether or not that you can serve on this
20 particular jury trial.

21 This is a case that's captioned the State of South
22 Carolina versus Albert Kelly.

23 This is a case in the court of General Sessions,
24 in which the State has charged Mr. Kelly with certain
25 offenses, and he's entered a plea of not guilty. And by

1 pleading not guilty, the burden of proof is then on the
2 State of South Carolina to prove his guilt beyond a
3 reasonable doubt. Every citizen in our society that's
4 charged with a crime is presumed innocent. And that
5 innocence stays with him until it's overcome by the burden
6 of proof beyond a reasonable doubt on the part of the State.

7 What we are now seeking are some judges of facts;
8 for you -- I'll be the judge of the law; some of you to be
9 the judges of the facts of the case who determine whether or
10 not the State is able to meet its burden of proof.

11 I have before me certain indictments that have
12 brought charges against Mr. Kelly. These are the papers by
13 which these cases come to this court for our determination.
14 They are not proof of anything at all, but merely the
15 charging papers which bring us to this stage today.

16 The first indictment that I have in my hand has
17 two counts to it. And the indictment charges that Albert
18 Kelly, in Greenville County, on or about the 27th of
19 February, 2004, while armed with a deadly weapon, or while
20 engaging either by action or words he was armed while using
21 representations of a deadly weapon, presented during the
22 commission of a robbery and took by means of force or
23 intimidation goods or monies of a person, being Ignacio
24 Delgado, and this being in violation of the statutory law of
25 South Carolina making it an offense to commit an armed

1 robbery.

2 The second count of that same indictment indicates
3 that on the same day, February the 27th, 2004, that Mr.
4 Kelly had in his possession or displayed a firearm during
5 the commission of a violent crime, that being armed robbery.

6 The second indictment that has one count states
7 that on or about the 27th of February, 2004, that Albert
8 Kelly unlawfully and with malice aforethought killed Ignacio
9 Delgado by means of shooting him and that Mr. Delgado died
10 as a proximate result thereof.

11 What the State of South Carolina and what the
12 defense in this case seek are fair and impartial jurors to
13 hear this case, to decide the case on the facts that you
14 hear in this courtroom and the law that I will ultimately
15 give you relating to the case.

16 I need to ask you certain questions to determine
17 your eligibility to serve as jurors in this case, even
18 though you have been qualified to be jurors for the week.

19 First of all, is there any member of the jury
20 panel who is aware of anything about this case, have any
21 knowledge being an eyewitness, or information from a radio,
22 television, or newspaper article? Do you have any firsthand
23 information about the facts of these cases I have stated to
24 you? If so, would you please stand.

25 Yes, ma'am.

1 JUROR NO. 134: I don't have firsthand
2 information, but I was the property manager of the trailer
3 park where this happened.

4 THE COURT: So you were the manager of the trailer
5 park?

6 JUROR NO. 134: Yes.

7 THE COURT: Where this event allegedly took place?

8 JUROR NO. 134: Yes.

9 THE COURT: Do you have information relating to it
10 based upon your being the property manager?

11 JUROR NO. 134: No, I was off that day. I was off
12 that weekend, so I don't know firsthand anything.

13 THE COURT: All right. You don't have any
14 firsthand information, but you have heard about the
15 incident, is that correct?

16 JUROR NO. 134: Yes, sir.

17 THE COURT: Based upon that information that you
18 have, would that interfere with your ability to be a fair
19 juror, do you believe, in this case?

20 JUROR NO. 134: No, sir.

21 THE COURT: Do you have any information about the
22 particular facts of what transpired or anything? Did you do
23 an investigation or have any paperwork relating to it in
24 your --

25 JUROR NO. 134: No, sir.

1 THE COURT: -- in your work?

2 JUROR NO. 134: No, sir.

3 THE COURT: Do you believe that you could still be
4 a fair juror to the State and to the defense in this case?

5 JUROR NO. 134: Yes, sir.

6 THE COURT: All right. Thank you, ma'am.

7 MR. SULLIVAN: Could we get her name?

8 THE COURT: Yes, ma'am, your name, please?

9 JUROR NO. 134: Trina Rice.

10 THE COURT: Thank you, Ms. Rice.

11 MR. SULLIVAN: Wright or Rice?

12 THE COURT: Rice.

13 JUROR NO. 134: Rice, R-I-C-E.

14 MR. SULLIVAN: Okay.

15 THE COURT: Is there any member of the jury panel
16 who knows the defendant in this case, Mr. Albert Kelly?

17 Mr. Kelly, if you would please stand up and face
18 the jury.

19 Thank you. You may be seated, sir.

20 Is any member of the jury panel who knows Mr.
21 Kelly in this matter? If so, would you please stand.

22 Thank you. There is no response.

23 Ladies and gentlemen, I'm going to call out the
24 names of several witnesses who may be called upon to testify
25 in this case. As I call the names, please make a mental

1 note of each name and at the end I'll need to ask you
2 certain questions about that.

3 Detective Dale Arterburn of the Greer Police
4 Department.

5 If the person is in the courtroom, I will ask that
6 the potential witness please stand. Thank you, sir.

7 Sergeant Mark Justice of the Greer Police
8 Department.

9 Lieutenant Matt Hamby. Same agency.

10 Captain Steve Denton, Spartanburg County sheriff's
11 office, formerly of the Greer Police Department.

12 Keith Ballew.

13 Dan Hendricks.

14 Officer Tarbutton.

15 All those were with the Greer Police Department.

16 Brian Johnson, Greenville County EMS.

17 Cornelio Lopez.

18 Emilio Delgado, Jr..

19 Emilio Delgado, Sr..

20 Moises Delgado.

21 Mildred Charlene Edwards.

22 Shaundrecus Edwards.

23 Marcus Parks.

24 Toni Glenn.

25 Ron Rice.

1 Donna Wentz.
2 Lavonne Westbrooks.
3 Dr. Eric Christensen.
4 Vello Paavel.
5 Forrest Miller.
6 Mike Hunter.
7 Ephrain Peneros.
8 Joyce Gordon.
9 Leon Irby.
10 Sean Collins.
11 Ila Simmons.
12 Ronald Lamont Smith.

13 Is there any member of the jury panel who is
14 related by blood or marriage to any of these potential
15 witnesses whose names I have called? If so, would you
16 please stand.

17 Thank you. There is no response.

18 Is there any member of the jury panel who has a
19 close business, social or personal relationship with any of
20 these potential witnesses? If so, would you please stand.

21 Yes, Ms. Rice.

22 JUROR NO. 134: Again, I was the property manager
23 at that site and I know Cornelio Lopez. Not personally, but
24 he was a tenant there.

25 THE COURT: All right. Did you have any

1 interaction with him?

2 JUROR NO. 134: No, sir, no more than rent.

3 THE COURT: All right.

4 JUROR NO. 134: The fact that you knew that he was
5 a tenant there and -- you are the property manager, is that
6 correct?

7 JUROR NO. 134: Uh-huh.

8 THE COURT: Would that interfere in any way with
9 your ability to be a fair juror in this case?

10 JUROR NO. 134: No, sir.

11 THE COURT: You could decide the facts just on
12 what you hear in this courtroom and nothing else?

13 JUROR NO. 134: Yes, sir.

14 THE COURT: Thank you, ma'am.

15 All right. At this time I'll ask the attorneys if
16 they would, please, to stand and introduce yourselves to the
17 jury.

18 My name is Mark Moyer. I'm an assistant solicitor
19 here in Greenville County. I'll be representing the State.

20 This is Martha Lynch. She's an investigator with
21 our office. She will be assisting me.

22 And you have already been introduced to Detective
23 Arterburn.

24 MR. SULLIVAN: I'm Tim Sullivan. I practice law
25 here in Greenville and I represent Mr. Kelly in this matter.

1 THE COURT: Thank you.

2 Is there any member of the jury panel related by
3 blood or marriage to either of these attorneys or their
4 staff? If so, would you please stand.

5 Thank you. There is no response.

6 Is there any member of the jury panel who has a
7 close business, social or personal relationship with either
8 of these attorneys? If so, would you please stand.

9 Thank you. There is no response.

10 Is there any member of the jury panel who has
11 expressed or formed an opinion as to the guilt or innocence
12 of Mr. Kelly in this matter? If so, would you please stand.

13 Thank you. There is no response.

14 Is there any member of the jury panel aware of any
15 bias or prejudice that you have that would interfere with
16 your ability to be a fair and impartial juror in this case?
17 If so, would you please stand.

18 Thank you. There is no response.

19 Is there any member of the jury panel who is
20 related to a member of law enforcement? If so, would you
21 please stand. If you have a member of your family who is in
22 law enforcement. All right. Thank you.

23 If you would, please give me your name, please,
24 sir.

25 JUROR NO. 154: Matthew Stokes.

1 THE COURT: And what relative is in law
2 enforcement?

3 JUROR NO. 154: Bryna Seay.

4 THE COURT: Bryna Seay.

5 JUROR NO. 154: David Seay. Bryna is my sister.

6 THE COURT: Your sister in law enforcement?

7 JUROR NO. 154: Yes, sir, she works here.

8 THE COURT: At the Greenville County sheriff's
9 office?

10 JUROR NO. 154: Yes, sir.

11 THE COURT: All right, sir.

12 Your name, please, sir.

13 JUROR NO. 145: Martin Schwiers.

14 THE COURT: Mr. Schwiers, what relative do you
15 have that works --

16 JUROR NO. 145: James Armstrong.

17 THE COURT: How is he related to you?

18 JUROR NO. 145: Cousin. First cousin.

19 THE COURT: And he works where?

20 JUROR NO. 145: Greenville County.

21 THE COURT: All right. And you, sir.

22 JUROR NO. 161: Ricky Thompkins. My cousin works
23 for Troup County in Georgia. David Daniels.

24 THE COURT: And you, sir?

25 JUROR NO. 100: I'm Eric Lockaby. A second

1 cousin, Tony Lee works for Greenville County.

2 THE COURT: Second cousin?

3 JUROR NO. 100: Yes.

4 THE COURT: All right.

5 Yes, ma'am.

6 If you would, remain standing, please, all of you.

7 JUROR NO. 4: I'm related to Donald Banister.

8 He's with the highway patrol.

9 THE COURT: All right. And what's your name,
10 please, ma'am?

11 JUROR NO. 4: Joyce Bannister.

12 THE COURT: All right. Let me ask all of you that
13 have stood, you have a relative who works in law
14 enforcement. If you are picked as a juror you are going to
15 take an oath that you are going to decide this case on
16 nothing except what you hear in this courtroom, the law that
17 I give you, the facts that come from the witness stand, any
18 exhibits, and nothing else.

19 Is there any one of you standing that would have a
20 hesitancy about serving as a juror? Do you believe that you
21 could still be fair to the State and the defendant and give
22 both a fair and impartial trial?

23 If you believe that because of that relationship
24 that you have with relatives that that would put you in an
25 untenable position and you couldn't be fair and impartial,

1 would you please be seated.

2 Let the record reflect that everyone is still
3 standing.

4 Thank you very much. You may be seated at this
5 time.

6 Is there any member of the jury panel who has been
7 a victim of a crime of violence? If so, would you please
8 stand.

9 Yes, sir. Mr. Stokes.

10 JUROR NO. 154: I was beat up a long time ago.

11 THE COURT: How long ago was that?

12 JUROR NO. 154: About eight or ten years ago, I
13 guess.

14 THE COURT: All right, sir. Would that fact
15 interfere with your ability to be a fair juror in this case?

16 JUROR NO. 154: No, it wouldn't.

17 THE COURT: You could still be fair to both sides?

18 JUROR NO. 154: Yes.

19 THE COURT: Thank you, sir, Mr. Stokes.

20 Ladies and gentlemen, what I have expressed to you
21 is Mr. Kelly is entitled to a fair trial. The State is
22 entitled to a fair trial, and all each desire are fair and
23 impartial jurors who would decide this case on the law and
24 the evidence and nothing else.

25 Is there any member of the panel aware of any

1 reason whatsoever that you believe that you could not be a
2 fair juror in this case, if selected, and could not give
3 both the State and Mr. Kelly a fair trial? If so, would you
4 please stand.

5 Thank you very much. No response.

6 Any other questions from the State?

7 MR. MOYER: None from the State.

8 THE COURT: From the defense?

9 MR. SULLIVAN: None from the defense, Your Honor.

10 THE COURT: Let's select a jury.

11 (Whereupon, the Jury Panel was impaneled)

12 THE COURT: Any legal matters we need to discuss,
13 as far as selection of the jury?

14 MR. MOYER: None from the State.

15 MR. SULLIVAN: None from the defense, Your Honor.

16 THE COURT: All right. Ladies and gentlemen who
17 were not selected for the trial of this case, I guess I best
18 send you back down to the assembly room. I don't know
19 what's happening in the other trial, whether or not it's got
20 a jury panel selected yet or not, but I'll ask you to go
21 back. I presume that soon maybe you will be dismissed for
22 the rest of the day. And after that you will need to call
23 in to determine when your services will be further needed
24 during the week.

25 You are dismissed at this time. I'll just ask you.

1 to go back to your assembly room and they will have you some
2 instructions there of what to do.

3 (Whereupon, the Jury Venire Panel left the
4 courtroom)

5 THE COURT: Could I see the attorneys just a
6 minute?

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 THE COURT: Ladies and gentlemen, I have consulted
10 with the attorneys and I believe that now might be the best
11 time for us to take a lunch.

12 Just so that you will know, normally we will
13 probably start at 9:00 or 9:30 in the morning and take a
14 morning break. Obviously we will take breaks as we need to
15 and I'll give you further instructions about that later.
16 And then hopefully we will be able to take a lunch break
17 around one o'clock, and hope we finished up 5:00, 5:30 in
18 the afternoon. Again, a lot of that will vary with whether
19 a witness is testifying or not.

20 You don't know anything about the case yet and
21 obviously it would be improper for you to talk about the
22 case. You have heard me go over the indictments with you
23 and you have seen the jury selection. You heard some
24 witnesses, but you hadn't heard any testimony. So while you
25 are out to lunch, whether you are with fellow jurors getting

26
(1 to know them, or whether you are with friends or family or
2 business associates, it would be improper for you to talk
3 about the case in any manner. Folks are curious, obviously
4 wanting to know how your jury service is going and what's
5 been happening. Obviously you can tell them that you have
6 been selected on a trial of a case, but other than that you
7 should not talk about the case. There will be time at the
8 end of the trial for you to share your experiences as a
9 juror, but don't talk about anything about the case at this
10 time.

(11 If someone were to persist in wanting to talk to
12 you about the case or ask you any questions or make comments
13 and you have explained to them that you are a juror and you
14 can't talk about the case, and if they persist, please
15 excuse yourself as rapidly as you can and get the name of
16 that individual, let us know, and we will take care of that
17 matter for you.

18 I'm going to ask that you be back -- we have some
19 matters that we need to take up, preliminary matters, and
20 it's going to take us a little while to do that. I'm going
21 to ask that you be back in your jury room -- I'm going to
22 ask you to be back about quarter of two.

23 What I want you to do at that time is select a
24 foreperson to serve as your spokesman. A foreperson doesn't
25 have any more votes than anyone else. That will be the

1 individual who will, when you come into the courtroom, will
2 sit in the front seat closest to the witness stand here.

3 The foreperson is the one who will be given any
4 exhibits that are admitted into evidence, to be the conduit,
5 the liaison with you, the jurors, and the court. You may be
6 in your jury room and have a special need, someone needs to
7 make a call about a family member, or whatever, and that
8 will be the one who will communicate with the court through
9 the bailiff, the foreperson. It will be the one, that
10 ultimately when you start your deliberations, will be the
11 facilitator of your discussions, to get the talks going and
12 so forth, and ultimately be the one who will bring back the
13 verdict for us to have read here in open court.

14 The foreperson will be selected among all of you.
15 The only ones not eligible to be the foreperson would be the
16 last two jurors selected, who are the alternates. Those two
17 jurors will always sit in those seats that you are there.
18 They are here in case an emergency were to happen in the
19 live's of one of the first twelve selected, but any of the
20 other twelve would be eligible to serve as the foreperson.
21 So if you would make that selection when you come back. Let
22 the bailiff know the name of the person. If you will just
23 write a slip for that person and give it to the bailiff. He
24 will give it to us, and hopefully we will be ready to start
25 soon thereafter with the trial of the case.

1 As I mentioned to you not to talk about the case
2 with others. That would go with each other. When you get
3 back to the jury room, some of you may arrive before others.
4 It would be improper for you to start talking about the case
5 or speculating about the case. At no time are you as jurors
6 to talk about the case, one with another, until all the
7 evidence is in and I have charged you on the law. That will
8 be the time for you to begin your discussion and your
9 deliberations.

10 Have a good lunch and we will look for you back
11 here at about a quarter of two and we will be ready to start
12 the trial of the case soon thereafter. You are excused at
13 this time. I'll ask the bailiff to take you and show you
14 where your jury room will be.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right, Mr. Mayor, I understand
18 that we have some legal matters we need to take up?

19 MR. MOYER: We do, Your Honor.

20 The State will be introducing -- State would
21 introduce two separate statements.

22 As I told the court in an informal discussion
23 earlier, one of those statements was an oral statement given
24 to an officer in Georgia. That officer is going to be here
25 tomorrow, so we would request that we do the hearing

1 regarding that statement the first thing tomorrow morning.

2 The other statement was a written statement and
3 that was by a local officer -- taken by a local officer, and
4 we are prepared now to go forward and take testimony for
5 purposes of a Jackson v. Denno hearing.

6 THE COURT: Will your out-of-state witnesses be
7 coming in overnight or first thing in the morning?

8 MR. MOYER: They are leaving they said at five
9 o'clock in the morning and they would be here first thing.
10 They were here last trial at 8:30.

11 THE COURT: All right. I understand I have got
12 another little matter. I was trying to get that
13 coordinated. That's why I wanted to know that.

14 You can call your first witness.

15 MR. MOYER: The State would call Steve Denton to
16 the stand.

17 OFFICER STEVE DENTON, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q. All right. You are a captain with the Spartanburg
21 Police Department, is that correct?

22 A. Spartanburg County sheriff's office.

23 Q. And how long have you been in law enforcement?

24 A. 20 years.

25 Q. And what other agencies have you worked for?

1 A. Just Greer, from October 13th of 2003, until January
2 the 3rd of 2004.

3 Q. Okay. So back --

4 A. Correction, 2005.

5 Q. So back on February 26th through May the 10th of 2004,
6 you were working for the Greer Police Department?

7 A. That's correct.

8 Q. On May 10th of 2004, did you have occasion to meet with
9 this defendant, Albert Kelly?

10 A. I did.

11 Q. And where was it that you met with him?

12 A. It was at a police department, sheriff's office
13 detective division in Georgia, in Atlanta.

14 Q. Okay. And as far as -- roughly what time was it that
15 you met with him?

16 A. Sometime I believe in the mid-morning or afternoon of
17 that particular day.

18 Q. And you marked the times on the Waiver of Rights Form?

19 A. That's correct.

20 Q. Okay. And so that would indicate the time that you
21 spoke to him?

22 A. That's correct.

23 Q. All right. Now, you said that you met with him in
24 Atlanta. Were you in a police department, a police station
25 there?

1 A. We was actually at the sheriff's office detective unit
2 in that county.

3 Q. Okay. Now, when you arrived, where was it that you met
4 with him?

5 A. When I arrived, myself and another detective, we met a
6 couple of detectives there that brought the defendant over
7 to the office. It was the detective's division. They had
8 several interview rooms. That's the first time that I ever
9 met him.

10 Q. The first time that you had ever met him?

11 A. That's correct.

12 Q. And the other detective was Detective Dale Arterburn --

13 A. That's correct.

14 Q. -- who went with you.

15 He was with you the entire time?

16 A. Yes, sir.

17 Q. So what was the room like that you and Detective
18 Arterburn met and interviewed Albert Kelly in?

19 A. It was an interview room that was connected to the
20 detective division. There was several of them. Size-wise
21 it was probably 12 X 12, or could have been slightly thinner
22 than that, 10 X 12. It had a door, one door. It had a
23 table and several chairs.

24 Q. So it wasn't a jail cell setting then?

25 A. No.

1 Q. It was just like a regular interview room?

2 A. That's correct.

3 Q. And you were aware that he was actually in custody at
4 the time there in Atlanta?

5 A. Absolutely.

6 Q. Now, when you met with him, was he in handcuffs?

7 A. At the time that he came in, I believe that he was in
8 handcuffs.

9 Q. Now, during this time that you spoke to him, was Albert
10 Kelly, the defendant, ever denied any access to conveniences
11 like bathroom breaks, or a drink of water, or anything like
12 that, if you would?

13 A. No.

14 Q. During the time that you met with him, did he ever
15 complain of any injuries or physical discomfort?

16 A. No.

17 Q. Did he complain to you or appear to you to be
18 excessively sleepy, or tired, or anything like that?

19 A. No, sir.

20 Q. Did he ever ask to stop talking to you or to put off
21 talking to you for a later time when he was more rested, or
22 anything like that?

23 A. No.

24 Q. Or for any other reason?

25 A. No, sir.

1 Q. Did you advise him of his Constitutional Rights
2 pursuant to Miranda?

3 A. We did.

4 Q. Did you do so using a form with the rights listed?

5 A. We did.

6 Q. I'm going to hand you what's been marked as State's
7 Exhibit No. 26. Are you able to recognize what I just
8 handed you?

9 A. I do.

10 Q. And is that the form that you used to advise the
11 defendant Albert Kelly of his rights?

12 A. It is.

13 Q. And how were you able to recognize that?

14 A. It's a form that Greer Police Department adopted that
15 they use for the advisement of Miranda Rights. It's got
16 Greer Police Department at the top Advisement of Rights
17 Form. It's got Your Miranda Rights. It has the rights,
18 listed waiver the rights. My signature and initials are in
19 the places that I would have put them, along with the case
20 number and the time of the interview.

21 Q. Okay. Is there a signature of the defendant on that
22 form as well?

23 A. There is.

24 Q. And did the witness, Detective Arterburn, sign it as
25 well?

1 A. He did.

2 Q. And you witnessed both defendant and Detective
3 Arterburn sign the form?

4 A. I did.

5 Q. What is the date?

6 A. 5-10-04.

7 Q. And you mentioned the time is listed on that as well?

8 A. It is, 1447, which would be 2:47 in the afternoon.

9 Q. Okay.

10 MR. MOYER: Your Honor, at this time for purposes
11 of this hearing I would seek to introduce State's Exhibit
12 No. 26.

13 THE COURT: Any objection?

14 MR. SULLIVAN: No objections, Your Honor.

15 THE COURT: Without objection.

16 BY MR. MOYER:

17 Q. Would you please then -- so you went over that form
18 then with the defendant?

19 A. I did.

20 Q. And that form lists all the rights that you advised him
21 of?

22 A. It does.

23 Q. Okay. And would you please publish to the court what
24 rights they were that you advised the defendant of?

25 A. Sure. As I stated earlier, this is a form that Greer

1 Police Department adopted as Miranda Rights waiver forms.
2 It says "Greer Police Department Advisement of Rights Form."
3 It has Your Miranda Rights underlined.

4 "Before we ask you any questions, you must understand
5 your rights." I initialed before the sentence. Mr. Kelly
6 initialed after the sentence.

7 "You have the right to remain silent." I initialed
8 before the sentence. Mr. Kelly initialed after the
9 sentence.

10 "Anything that you say can be used against you in
11 court." I initial before the sentence. Mr. Kelly initialed
12 after the sentence.

13 "You have the right to talk to a lawyer for advice
14 before we ask you any questions and to have him with you
15 during questioning." I initialed before the sentence. Mr.
16 Kelly initialed after the sentence.

17 "If you have no money to pay a lawyer's fee, the court
18 will appoint one to represent you without costs, if you
19 wish." I initialed before the sentence. Mr. Kelly
20 initialed after the sentence.

21 "If you decide to answer questions now without a lawyer
22 present, you will still have the right to stop answering at
23 any time. You also have the right to stop answering at any
24 time until you talk to a lawyer." I initialed before the
25 sentence and Mr. Kelly initialed afterwards.

1 Waiver of Rights is underlined. "I have read the
2 statement of my rights and understand what my rights are.
3 I'm willing to make a statement and answer the questions. I
4 do not want a lawyer at this time. I understand and know
5 what I am doing. No promises or threats have been made to
6 me and no pressure or coercion of any kind has been used
7 against me." I initialed before the paragraph and Mr. Kelly
8 initialed afterwards.

9 Also the word coercion was circled. It was initialed
10 by Dale Arterburn. It simply states that coercion -- he had
11 to know what coercion meant in case there was any problem
12 with understanding what coercion means.

13 Mr. Kelly signed it. It's dated 5-10-04. I witnessed
14 it. Mr. Arterburn -- Detective Arterburn witnessed it.
15 Case number is GR-04004209. The time of the interview. The
16 date was 5-10-04, at 1447.

17 Q. So by initialing each of those lines, was he indicating
18 to you that he understood what it was and acknowledging that
19 you had read it to him?

20 A. Yes.

21 Q. All right. Did he appear to have any trouble to you to
22 understanding those rights?

23 A. No, sir.

24 Q. And while speaking to him, did you determine whether or
25 not he could read and write?

1 A. I did. At the top of the Miranda form -- we put -- a
2 lot of times we put how far a person went to school. They
3 understand and can read and write the English language, or
4 whatever language we are speaking in, and if the person is
5 under the influence of any kind. As noted, he has an 11th
6 grade education. He can read and write and that he was
7 sober.

8 Q. Okay. Now, he put down that he had been through the
9 11th grade, is that right?

10 A. That's correct.

11 Q. Now, while you are talking to him, does answers to your
12 questions or anything about his speech, did they appear to
13 be rational and responsive?

14 A. Very much so.

15 Q. Okay. So was there anything about his appearance or
16 the content of his conversations or the mannerisms that led
17 you to suspect that he was not of sound mind or in a
18 position to speak to you?

19 A. No.

20 Q. Was there anything about his appearance or demeanor
21 that led you to suspect that he was intoxicated?

22 A. No.

23 Q. All right. Now, were there any threats or coercion
24 made by either you or Detective Arterburn in order to get
25 him to sign that form and give a statement?

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1 A. No, sir. Again, that's why that word coercion is
2 circled.

3 Q. Was there any intimidation whatsoever?

4 A. No.

5 Q. Were there any promises made or any hopes of reward
6 held out to him in order to try to entice him to speak to
7 you about what happened?

8 A. No.

9 Q. In your opinion, did he understand those rights?

10 A. Yes.

11 Q. Did the defendant do anything to indicate that he
12 understood the rights, as far as making any signatures on
13 the form?

14 A. Yes. He signed the forms. He initials -- he initialed
15 in one, two, three, four, five, six places, and also signed
16 it.

17 Q. Okay. So his waiver of rights then was done freely and
18 voluntarily?

19 A. Yes.

20 Q. Did he ever change his mind at any time after signing
21 that form and asked to stop questioning or -- because he
22 wanted an attorney present, or for any other reason?

23 A. No, sir.

24 Q. Now, so did he indicate to you that he wished to give a
25 statement?

1 A. Yes.

2 Q. Did he show any reluctance about --

3 A. No, sir.

4 Q. -- doing it.

5 And did you take a statement from him then?

6 A. We did.

7 Q. Did you have it put into writing?

8 A. We did.

9 Q. Now, who wrote his statement?

10 A. I believe he did.

11 Q. Now, when you take a statement from a suspect in a
12 case, do you always have the person write it out, or do you
13 sometimes write it out, or how do you handle that?

14 A. There are many ways to do it. Probably two of the most
15 common ways to do it is for the officer or the person taking
16 the statement to write in it their words, read it back to
17 the defendant or the witness, have them make any changes
18 they might want to make. Also initial those changes and
19 sign the statement as true and it's voluntarily.

20 The other way would be for the defendant or the witness
21 to write the statement on their own. That way if there is
22 any changes they want to make, they can make on their own.
23 I read it back to them and allow them to sign that if that's
24 the truth and it's voluntarily.

25 Q. And so do you always give them the option of whether

1 they want you to do it or whether they want to write it
2 themselves?

3 A. Sure.

4 Q. Do most people want you to do it, or do most people
5 want to write it themselves?

6 A. I don't know how to characterize the percentages, but
7 most people want you to write it, and then, of course, have
8 it read back to them. However, there are people that want
9 to write their own statement.

10 Q. And this defendant, Albert Kelly, wanted to write his
11 own, you said?

12 A. He did.

13 Q. You allowed him to do that?

14 A. Yes.

15 Q. Let me ask you to take a look at State's Exhibit No.
16 27. Can you just look over that and do you recognize it?

17 A. I do.

18 Q. What is that?

19 A. This is a two-page statement that was taken on Greer
20 Police Department voluntary statement forms. It's the
21 statement that Mr. Kelly gave that day. It has his name at
22 the top. It's signed by Mr. Kelly, witnessed by me and also
23 Detective Arterburn. And then I have a brief sentence at
24 the bottom when the statement was completed. It simply says
25 "completed statement at 3:25 p.m. on 5-10-04. Statement

1 written by Albert Kelly. This is a true statement without
2 coercion of any kind," and he signed that.

3 Q. And so that is then the statement that he took?

4 A. It is.

5 Q. And you recognize it by his signature?

6 A. Yes, sir. I recognize it by that and other things in
7 it.

8 Q. Okay.

9 A. By his signature also.

10 MR. MOYER: Your Honor, at this time I would move
11 to have State's Exhibit No. 27 moved into evidence for
12 purposes of this hearing.

13 MR. SULLIVAN: No objection.

14 THE COURT: Okay. For purposes of the hearing
15 it's admitted.

16 MR. MOYER: Now, do you wish that to be published
17 to the court, the statement itself?

18 THE COURT: I'll look at it later. I don't need
19 it now. We will let Mr. Sullivan do his cross-examination.

20 Do you have any further questions? Excuse me.

21 MR. MOYER: I'm sorry.

22 THE COURT: I just asked if you have any other
23 questions?

24 MR. MOYER: No other questions for this witness.
25 Please answer any questions that the defense may have.

42

1 A. Sure.

2 CROSS EXAMINATION BY MR. SULLIVAN:

3 Q. Mr. Denton, how was Albert dressed when you first saw
4 him? Was he still in civilian clothes, or did they put him
5 in --

6 A. I believe that he was in clothing provided by the
7 detention facility, I believe.

8 Q. Like a jumpsuit?

9 A. Again, it would have been clothing they provided.

10 Q. In the interview, did you make an audio tape of the
11 interview and the confession?

12 A. We did not.

13 Q. Is there a video of the confession?

14 A. No, sir.

15 Q. Just your recollection and these two pieces of paper?

16 A. Yes, sir.

17 Q. What time did y'all the time -- I'm not good at police
18 numbers. 1447, is that 2:47? That's on the waiver sheet.

19 A. It is. 1447, that would be 2:47.

20 Q. I'm not good at military time.

21 So how long -- so that's the first time that -- y'all
22 spent some time with him prior to 2:47?

23 A. It would have been just minutes.

24 Q. So he came in the room -- the officers delivered him to
25 you and Officer Arterburn, went in the room, and then he sat

1 down and then y'all started the interview, or just read his
2 rights pretty much right away?

3 A. Well, we -- we spoke with him briefly. Read him his
4 Miranda. Spoke with him and then the statement was taken.
5 It began at 1447 is when the actual Miranda Rights were
6 read.

7 Q. And then the statement ended at 3:25. I think at the
8 bottom of the actual statement was --

9 A. That's correct.

10 Q. So it was about 40 minutes?

11 A. 38.

12 Q. So in that period of time, how much of that time would
13 have been taken writing this out?

14 A. However long it took him to write it out. I don't
15 know. It could have taken 15 -- for him to write it out, it
16 could have taken 10 to 15 minutes.

17 Q. So there was time for y'all to talk with him. Did
18 y'all, for example, say anything like "it will help you to
19 come clean. We could talk to the solicitor," or anything
20 like that?

21 A. No, sir.

22 Q. Nothing about "being honest is the best policy," just
23 "tell us" type of thing?

24 A. Honesty is the best policy, and I would think telling
25 the truth on a matter like this and hearing your side of it

1 would be real important.

2 Q. But you made no things, like "we will talk to the
3 solicitor for you"?

4 A. No, sir.

5 Q. Or "if you can help us out"?

6 A. No, sir.

7 Q. "Tell us what happened," anything like that?

8 A. No, sir.

9 Q. So it's pretty much you walked in, saw the man, read
10 him his rights and he gave you this statement?

11 A. That's correct.

12 Q. Did he tell you anytime during that time that he had
13 been up pretty much all night?

14 A. If he did, I'm not aware of it and he didn't appear to
15 be tired. Otherwise, we never would have got to this point.
16 He appeared to be very sound.

17 Q. He had been drinking pretty much the night before and I
18 think the arrest was around three o'clock in the morning, so
19 he was pretty much up?

20 A. No, sir. Again, he could have drank the night before,
21 if he had of, but when we talked to him at 2:47 in the
22 afternoon, he was very much sober, and it's noted.
23 Otherwise, we would have never got to this point.

24 Q. So your -- he didn't seem tired or nervous? How about
25 nervous?

1 A. Nervous? That's pretty opinionated. He seemed like a
2 person that had been arrested and had been charged with
3 murder. That's what he seemed like.

4 You are asking me a question about opinion. I
5 don't really --

6 Q. Well, not anybody charged with murder would act same
7 way, I would assume. I'm just curious.

8 A. Well, again, he acted like a person who had been
9 charged with murder and arrested. That's how he acted.

10 I don't know how to characterize his -- I wouldn't
11 characterize it as being nervous.

12 Q. So he was not nervous, not --

13 A. No.

14 Q. And so during the statement did you or Officer
15 Arterburn ever suggest to him anything? Did he ever ask you
16 questions about anything, or you just told him to write out
17 what happened?

18 A. Yes, sir, I think what he did was give his side of the
19 story, and that's what he did.

20 Q. So --

21 A. As far as suggesting a certain way to write it or
22 anything, is that what you are asking?

23 Q. Uh-huh.

24 A. No, sir.

25 Q. So supply any facts, or anything like that?

1 A. No, sir.

2 Q. On the way down, you came from Greer to Atlanta that
3 day. Did you and officer -- did y'all discuss the case at
4 all, go back over the facts and that type thing at all?

5 A. On the drive from Greer to Atlanta?

6 Q. Yes.

7 A. I'm sure we did.

8 Q. So you were pretty much familiar with the basic facts
9 of the case when you went to interview Albert?

10 A. I was familiar with the basic -- of the facts of the
11 case and the basis, as you put it, back in when the crime
12 occurred.

13 Q. On February 27th?

14 A. Sure.

15 Q. And this was May 10th?

16 A. Sure. That wouldn't have changed, since I still would
17 have been familiar with it.

18 MR. SULLIVAN: I have nothing further of this
19 witness, Your Honor.

20 THE COURT: Any redirect?

21 MR. MOYER: No, Your Honor.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 THE WITNESS: You are welcome.

25 Any other witnesses, Mr. Moyer?

1 MR. MOYER: No, not at this time, Your Honor.

2 THE COURT: All right, Mr. Sullivan, anything that
3 you wish to present?

4 MR. SULLIVAN: I would like to present witness
5 testimony, Your Honor -- I mean the defendant.

6 THE COURT: All right.

7 ALBERT KELLY, having been first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION BY MR. SULLIVAN:

10 Q. State your full name for the record, Albert.

11 A. Albert Sentenio Kelly.

12 Q. And you are the defendant in this case?

13 A. Yes, sir.

14 Q. And do you understand the purpose of a Jackson v. Denno
15 hearing, to see if this is a voluntary statement?

16 A. Yes, sir.

17 Q. Do you remember Officer Denton --

18 A. Yes, sir.

19 Q. -- testified and Officer Arterburn. Do you remember
20 these guys?

21 A. Yes, sir.

22 Q. What time that morning were you arrested, do you
23 recall?

24 A. It was like -- I think it was around three something.
25 Right around three something.

1 Q. This was would have been in Atlanta?

2 A. Yeah, in Atlanta, yes, sir.

3 Q. And you were taken to the lockup?

4 A. The DeKalb County detention center.

5 Q. And how were you treated there?

6 A. I was treated -- I was put in the drunk tank. I was in
7 the drunk tank when they came and questioned me that next --
8 earlier that day.

9 Q. Why were you put in the drunk tank?

10 A. Because I was intoxicated -- when they arrested me, I
11 was under the influence of alcohol, and I had been taking
12 some sleeping medications, because I hadn't gotten no sleep.
13 I hadn't been getting my sleep.

14 Q. From the time that you were locked up until you meet
15 with these officers had you had any sleep?

16 A. No, I still hadn't been to sleep. I laid down, but I
17 hadn't been to sleep.

18 Q. Now, during the time -- what happened when these
19 officers, how did they -- did they talk to you at all about
20 this case before you gave a statement, or they just told you
21 to write a statement?

22 A. They came in -- when I came in the room, they was
23 already in the room. They asked me did I want any coffee or
24 cigarette. I said no.

25 He asked me what happened. I said "I don't know."

1 That's what I told him, I said "I don't know. I didn't have
2 nothing to do with it." He said -- he just got mad. The
3 one that was just up here, he just got mad and said "well,
4 you are going to tell us what we want to know and you are
5 going to tell us this, or we are going to leave you down
6 here in Georgia and you ain't going to be able to see your
7 family again." I didn't know at the time that they had to
8 extradite me, regardless, but I didn't know that. So I'm
9 like, you know, I said -- family has been threatened. And I
10 was told to write some things or my family would be harmed,
11 you know.

12 Q. These officers didn't say that. This is an outside
13 source earlier?

14 A. This was what I'm telling the officer.

15 Q. Okay. But the officers didn't threaten you with stuff
16 like that.

17 A. The officer threatened to leave me. He said "we will
18 leave you in Georgia."

19 Q. They didn't threaten your family?

20 A. No, no, no, the officers didn't threaten my family or
21 nothing.

22 Q. Okay.

23 A. And basically he told me -- I was scared. I didn't
24 know what was going on. He gave me the statement and he
25 told me what to write. He told me everything what to write

1 and I wrote what he told me to write. I told him I wanted
2 my lawyer present but they didn't never give me no lawyer.

3 Q. You knew there had been a murder in Greer?

4 A. Yeah, I had knew there had been a murder in Greer, but
5 I was just finding out that I was actually charged with it.
6 I thought I was wanted for questioning, because they said
7 something about a guy got shot in the back of the head, you
8 know, but I didn't know that I was charged with it at the
9 time.

10 Q. You thought that you were wanted as a witness in the
11 case?

12 A. I thought I was just wanted for questioning, you know,
13 to see what I knew about it or whatever.

14 Q. And it was several months later, but you knew the two
15 people that were also charged in the case. You knew Marcus
16 Parks and Shaun -- a short name Shaun Edwards, is that
17 right?

18 A. Yeah, I know them. I knew Marcus and Shaun.

19 Q. But it's your testimony that you didn't know the facts
20 of the case and you were prompted by the officers that --
21 you were prompted by the officer -- you didn't real know the
22 facts that you wrote down here? You were kind of supplied
23 the --

24 A. I didn't know the facts. Everything I wrote down,
25 basically that's what the officer told me to write.

1 Q. But there is no question that you did initial the
2 waiver form?

3 A. Yes, sir, I initialed and signed it.

4 Q. And you wrote this out in your own hand and did sign
5 it?

6 A. Yes, sir.

7 Q. But your testimony is that basically you were afraid of
8 being left in Georgia?

9 A. Yes, sir.

10 Q. And so you wrote down what they told you?

11 A. I just wrote what they told me to write.

12 MR. SULLIVAN: Nothing further, Your Honor.

13 Answer any questions Mr. Moyer may have.

14 THE WITNESS: Yes, sir.

15 CROSS EXAMINATION BY MR. MOYER:

16 Q. Okay. A few questions for you.

17 Now, what were you scared about being left in Georgia
18 about?

19 A. The way they were -- I don't know -- really know
20 nothing about the jail in Georgia, so I was -- they were
21 saying it like they were just going to leave me down there
22 and I don't know nobody. You know, I don't know no people
23 in that jail and that.

24 Q. But you were charged with a South Carolina -- this
25 murder was in South Carolina. You hadn't done anything in

1 Georgia, had you?

2 A. No, sir.

3 Q. So what are you scared about staying in Georgia about?

4 A. They were saying we are going to leave you in Georgia,
5 basically, I guess, until -- I already knew at the time they
6 were talking to me that they basically had me charged as
7 somebody that had something to do with the crime. So I
8 guess they were saying they were going to leave me down
9 there until the trial started, I guess. That's what I was
10 thinking.

11 Q. But why is that so much worse than being around here
12 for the trial?

13 A. I know people around here. I know people. I'm around
14 my family. I can get my visits and all that.

15 Q. Okay. Well, I'm not going to go into this ad nauseam,
16 but you had been living in Georgia for about three months,
17 right, prior to getting arrested?

18 A. Yeah, I had been living in Georgia.

19 Q. And you have a sister down there?

20 A. Yes.

21 Q. A stepfather, stepmother, and you had been living with
22 those people, and had you a friend that you were living
23 with, and you had a job, and you hadn't even called your mom
24 in about three months, right?

25 A. No, sir, I hadn't called her.

1 Q. So everything I just said, the answer was yes, right?

2 A. Yes, I had friends and people that I was living with
3 down there and I hadn't called my mother.

4 Q. So it's your testimony then that all of the sudden you
5 got started to stay in Georgia.

6 Let me ask you -- so it's your testimony also that
7 these officers -- you didn't know these officers, did you,
8 either one of them?

9 A. Yeah, I know I think it's Arterburn.

10 Q. This gentleman right here?

11 A. Yeah.

12 Q. You had met him before?

13 A. Yeah, from Greer.

14 Q. But he had never arrested you or anything?

15 A. No, sir.

16 Q. And you didn't have any trouble with him?

17 A. No, sir.

18 Q. And did the other detective, you had never even seen
19 him before, had you?

20 A. I seen him. They come through our neighborhood. We be
21 standing out. They jumped out on us before. Be just
22 standing out there, they jumped out on us, searched the ID
23 and all that.

24 Q. He didn't arrest you or anything?

25 A. No, he didn't arrest me, but they come through our

54

1 neighborhood routinely. And, you know, we be standing out
2 there. He jumped out. They know me by my name Albert
3 Kelly. All of them know me. They just know me and they
4 just jump out and search us.

5 Q. You are saying that Detective Denton has --

6 A. Yes, all of them, the whole Greer Police Department.

7 Q. How about Detective Denton? Are you saying he's jumped
8 out and searched -- the guy that was just on the stand.

9 A. No, I didn't say Detective Denton. I know Detective
10 Denton from seeing him around.

11 Q. All right. So he's never jumped out and searched you
12 and whatever?

13 A. Not that I can remember. He might have did, but I
14 can't remember if he did or not.

15 Q. Okay. So it's your testimony then that these -- that
16 you -- you signed the form saying that you waived your
17 rights, right?

18 A. I told him I wanted my lawyer present.

19 Q. My question is you signed the form saying that you
20 waived your rights, isn't that right?

21 A. I guess. I put my initials -- wrote my initials where
22 he told me to put my initials.

23 Q. All right. If you look down the right side of this
24 form, those are your initials all the way down, A.K., right?

25 A. Everywhere where he tole me to put it at.

1 Q. That's your initials?

2 A. Yeah.

3 Q. And that's your signature right there where it says
4 signature?

5 A. Yeah.

6 Q. Albert Kelly. So signed that form. And they read each
7 one of those lines to you?

8 A. He just told me to go down, read it. He didn't read
9 nothing to me. He told me to read it and initial it after I
10 read it.

11 Q. Okay. And they circled that word coercion and
12 explained to you what coercion meant?

13 A. I don't recall that.

14 Q. And this is your signature on the statement, too, isn't
15 it? You wrote down at the bottom that you signed your name
16 Albert Kelly?

17 A. That's my signature.

18 Q. And it's right below a line that says "this is a true
19 statement without coercion of any kind." Doesn't it say
20 that? Do you see right above your signature?

21 A. Yeah, I see it.

22 Q. Completed at 3:25 p.m..

23 So you signed all of that, and yet you are saying that
24 these officers made -- told you what to write and made you
25 write a statement?

1 A. They basically talked me through to what to write.
2 They basically told me what to write.

3 Q. And so when these guys are threatening you and telling
4 you what to do, violating your rights, you never -- you
5 never got any of those other officers who were there, any of
6 those other Georgia officers?

7 A. We was all the way at the back. When they left, I was
8 in the holding cell for a whole hour asking to use the
9 bathroom and an officer didn't come back there. They
10 couldn't hear us, I don't guess.

11 I asked would they record what we was doing. I asked
12 them would they have a recorder for them to record the
13 conversations that was going on between me and the two
14 officers, but they ain't got no tape of it, which there
15 should be.

16 Q. My question is you never asked for one of those Atlanta
17 officers so you could tell them what these Greer officers
18 were doing to you, did you?

19 A. At the time I didn't know -- basically I didn't think
20 they was -- I knew they was telling me to write something
21 that I didn't do, but I didn't see them -- they weren't
22 threatening me, telling me they was going to do harm to me
23 or nothing.

24 Q. Do you understand the ramifications of what you wrote,
25 don't you?

1 A. What do you mean?

2 Q. You wrote that you killed a person.

3 A. No, I didn't.

4 Q. You wrote that you --

5 A. But I -- I didn't kill nobody.

6 Q. I'm not asking you that right now. I asking you this.

7 You wrote in your statement that you killed --

8 A. I wrote what the officer told me.

9 Q. Let me ask the question before you answer it.

10 You wrote in this statement that you killed another
11 person, isn't that true?

12 A. I wrote what the officers told me to write.

13 Q. That --

14 A. That's what I wrote.

15 Q. That included that you killed another person, doesn't
16 it?

17 A. I wrote what the officer told me to write.

18 Q. And does that include that you killed another person?
19 It's a yes or no question.

20 A. Whatever is on the statement is what the officer told
21 me to write.

22 Q. All right. Now, you also mentioned that you weren't
23 feeling so good.

24 You got arrested the night before, about three
25 o'clock -- about 3:30 in the morning?

1 A. I think. I don't really remember the times real good,
2 but I know it was -- the morning I got arrested, I know it
3 was early in the morning time, like three or four, and I
4 know they came and talked to me that same day.

5 Q. Right. It was like twelve hours later, though, wasn't
6 it?

7 A. I don't remember the time.

8 Q. Does that sound right?

9 A. I don't remember the time.

10 Q. Well, if you got arrested --

11 A. It seems like a couple hours later after I got
12 arrested.

13 Q. All right. If you got arrested about three o'clock in
14 the morning by the Atlanta officers and you were not spoken
15 to by these officers until about 2:30 the next day, that's
16 about eleven, twelve hours, isn't it?

17 A. I -- I guess.

18 Q. Okay.

19 A. I don't remember the times. I just remember it was
20 early in the morning, around three or four, and I don't
21 really remember what time they came.

22 Q. Well, what the form says -- the form says it was 2:45
23 in the afternoon.

24 A. It didn't seem that long. It might have been, but it
25 didn't seem that long. I was still intoxicated and sleepy

1 and all that.

2 Q. Twelve hours later?

3 A. Yeah.

4 Q. Now, when you were arrested at three o'clock in the
5 morning, you were behind the wheel of a car, weren't you?

6 A. No, I wasn't behind the wheel of a car.

7 When we pulled up in the store, my friend Junior was
8 driving. I got out of the car, went to go to the pay phone.
9 And when I came back to the pay phone, Junior was on the
10 passenger side, because the officer had passed by. And he
11 didn't have no license or nothing, and I had a permit, but
12 he didn't have no license or nothing. So he was like "man,
13 you go ahead and drive, man, because the police -- you know,
14 so I got under the wheel and I was going to drive, even
15 though it was wrong, but I was going to do it.

16 Q. You were going to -- you were going to risk getting a
17 DUI when you knew there was an officer who was pulling up?

18 A. Even though -- I'm a man. I can admit when I'm wrong.
19 Even though it was wrong, I was going to do it.

20 Q. You were going to drive away with an officer coming up
21 behind you and risk a DUI?

22 A. The officer had went all the way up the street and
23 disappeared. I was getting in the car. I had got off the
24 phone and was getting back in the car.

25 Q. When the officer --

1 A. When I went to pull off, the officer shot down across
2 the four-lane, five-lane road and blocked us in and we
3 couldn't move.

4 Q. But you were behind the wheel --

5 A. Then another officer pulled in behind us. We couldn't
6 move.

7 Q. You were behind that wheel because you were about to
8 drive away?

9 A. Yeah, I was about to drive.

10 Q. So you weren't --

11 A. I wasn't going nowhere but right down the street I had
12 gotten. I knew where I supposed to be going. I was lost at
13 first. I had gotten the information to my stepmom's house
14 and I was just going right down the street.

15 Q. So you are saying that you were so drunk and you were
16 so high on these sleeping pills, that you were still under
17 the effect twelve hours later, but yet you were about to
18 drive away?

19 A. I was about to, but --

20 Q. 3:30 in the morning?

21 A. I was about to, but I didn't.

22 Q. You were about to, though, weren't you?

23 A. But, I didn't.

24 Q. You didn't because that officer stopped you.

25 A. The officers blocked me.

1 Q. That's the only reason you didn't, right?

2 A. The officer blocked us in.

3 Q. That's the only reason you didn't drive away.

4 THE COURT: You let him finish his question and
5 then make a statement, okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: And you let him finish his statement
8 and you ask a question, okay?

9 BY MR. MOYER:

10 Q. That's the only reason that you didn't drive away,
11 isn't it, because the officer came up to you and stopped
12 you?

13 A. When the officer went up the street and disappeared --
14 if the officer -- I was going to drive away, but the officer
15 blocked us in. And if the officer wouldn't have never came
16 back down messing with us for no reason, he -- Junior would
17 have drove away anyway, because I would have got back on the
18 passenger's side.

19 MR. MOYER: One moment.

20 (Off the record)

21 (Back on the record)

22 MR. MOYER: All right. I have nothing further.

23 THE COURT: Any redirect?

24 MR. SULLIVAN: No redirect.

25 THE COURT: All right. Thank you, sir. You may

1 step down.

2 THE WITNESS: Thank you.

3 THE COURT: Anything else, Mr. Sullivan, do you
4 wish to present?

5 MR. SULLIVAN: Nothing further, Your Honor.

6 THE COURT: I find that the officer did comply
7 with the requirements of Miranda, and that by the
8 preponderance of the evidence there is a determination by
9 this court of the voluntariness of the statement. Of
10 course, the jury will make the ultimate determination on
11 that matter, and I'll allow it to be introduced to the jury
12 to weigh the competency of that statement. So I'll allow
13 the statement and the waiver form into evidence.

14 Anything else we need to talk about?

15 MR. MOYER: I don't think so, judge.

16 MR. SULLIVAN: Nothing from the defense at this
17 time?

18 THE COURT: All right. We will be ready to start
19 back at two o'clock. We'll be at ease until then.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: All right. I understand that Mr.
23 Culbertson has been selected as the foreperson of the jury,
24 for your information.

25 How long do you anticipate the Jackson-Denno

1 Hearing taking in the morning?

2 MR. MOYER: I think it should take about the same
3 time as this one. About 30 minutes.

4 THE COURT: Okay.

5 MR. SULLIVAN: I think the last time it didn't
6 take that long. Maybe even a little shorter.

7 THE COURT: Okay. We can start at nine o'clock
8 with that, do you think?

9 MR. MOYER: Sure.

10 THE COURT: All right. Are you ready for the jury
11 to come in?

12 MR. SULLIVAN: Defense is ready, Your Honor.

13 MR. MOYER: Yes.

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

15 (The following takes place in the presence of the
16 jury panel)

17 THE CLERK: All right. If you would swear the
18 jury.

19 THE CLERK: Please stand and raise your right hand
20 for the oath in this trial. After the oath your response
21 should be I will.

22 (Whereupon, the Jury Panel was sworn)

23 THE CLERK: Thank you. Please be seated.

24 THE COURT: Thank you very much, ladies and
25 gentlemen.

1 Let me make a few preliminary remarks to you.
2 This is in no way to be interpreted as the charge on the
3 law. I'll do that at the end of the case, but first of all
4 let me give you some introductions. You have had an
5 opportunity I'm sure to meet the bailiffs, Mr. Jenkinson and
6 Mr. Lynch, who will be assisting you during the course of
7 the trial.

8 Ms. Brown, Sharon Brown, here is the clerk and she
9 will be -- you will be seeing her move around some with
10 exhibits and administering the oath of the witnesses that
11 may be called upon to testify.

12 Seated beside me is Daniel Hughes. He's a recent
13 law school graduate who is my law clerk. Occasionally he
14 will be assisting me with -- you might see him going in and
15 out of the courtroom to check on a legal matter for me or
16 some other matter that I need to have attention to. He will
17 be there. So that you would know who that person was, he's
18 my law clerk.

19 Seated in front of me is Michael Watts. He's the
20 court reporter. He's going to be taking down everything
21 that's said during the course of the trial to protect
22 record. He will get the testimony, he will get the charge
23 that I give, and he will have a record of everything that's
24 said during the course of the trial.

25 As I stated to you earlier, this is a criminal

1 trial. A trial in this court is called the Court of
2 General Sessions in South Carolina, and I'm honored to be
3 working with you in this matter because you and I are going
4 to each be judges. We are going to -- you are going to
5 decide the facts of the case and I'll be the judge of the
6 law. And as I stated to you, the fact that we have a case
7 at all through these indictments is certainly not evidence.
8 It's a charge that's been brought against the defendant, and
9 he's presumed innocent until the State meets its burden of
10 proof beyond a reasonable doubt to you to prove his guilt.

11 I just told you that you are going to be a judge.
12 You are judges, and you might have some apprehension about
13 that. You may be saying to yourself well, my goodness, I
14 came to jury duty, I answered my summons, I did what a good
15 citizen ought to do, and all of the sudden Judge Welmaker is
16 telling me that I'm going to be a judge. And you may say
17 well, goodness, I didn't even take law ed course in middle
18 school or high school and I certainly hadn't been to law
19 school to know anything about the law, but let me be the
20 first to put any apprehension that you may have aside and
21 urge you to do that, because you are well qualified to be
22 judges in this case because you are bringing into this
23 courtroom every-day experiences and good common sense that
24 you have been blessed with, and you are going to use that to
25 be the fact finders, to be the judges of the fact. You are

1 going to judge credibility of witnesses. And that's using
2 that every-day common experiences that you have. Every day
3 of our lives in the work force and family matters you are
4 judging credibility, and that's what you will be doing here
5 during the course of this trial.

6 You have taken an oath and you have committed to
7 these parties to be fair and impartial and listen to both
8 sides and decide the case on the facts that you hear, that
9 you determine to be the facts, and the law that I will give
10 you during the course of the trial. The law that I give
11 you, you must accept that law. You have taken your oath and
12 you will apply the law just as I give it to you at the end
13 of the case.

14 Part of my job is to rule upon evidentiary
15 matters, to preside during the course of the trial. As I
16 stated to you, we will take periodic breaks. If there is
17 ever a time that we might be going a little longer than your
18 comfort level is, then please let the bailiff know or raise
19 your hand or let us know and we will take breaks as you need
20 them, because your job is to be a good listener. To decide
21 the facts, you have to listen to the evidence. And your
22 comfort level certainly is directly related to your ability
23 to listen to facts and judge credibility. So if at any time
24 you need a break, you certainly let us know and we will
25 certainly try to break every hour or hour and 15 minutes,

1 and, again, conscious of the fact that we need, as best we
2 can, to have a good point at which to take our breaks.

3 Part of my job will be to rule on evidence, to
4 answer objections that may be made by either of the
5 attorneys. Oftentimes in the course of a trial there will
6 be objections made. We have Rules of Evidence that must be
7 followed. If the attorney makes an objection, it's not that
8 they are trying to hide something. It's just that they are
9 wanting to make sure the rules are being followed from
10 either side. Part of my job is to rule upon those
11 objections. Sometimes it can be done easily; one side or
12 the other says I object, Your Honor, and for whatever reason
13 I say sustained or overruled.

14 Sometimes there may be an objection that will
15 necessitate the attorneys to come up here and we have a
16 conference here at the bench to work something out.

17 It's not unusual that sometimes there is a matter
18 of law which is my prerogative as the judge - yours is that
19 of facts - a matter of law that we have to take up outside
20 of your presence over an evidentiary matter or some other
21 matter. And I hope that you understand that when those
22 things happen, sometimes in ruling upon a legal matter that
23 comes up, there might be factual issues that have to be
24 presented, evidence that hasn't even been offered yet that I
25 would have to hear to decide whether or not how to rule

1 properly on the law. And when those occasions occur, it may
2 be necessary for you to be removed from the courtroom, go to
3 your jury room for us to resolve that legal matter. Again,
4 it's not that matters are being deliberately hidden from
5 you, but we have different roles. You the fact finder, the
6 judge of the facts; I, the judge of the law. And when you
7 ultimately exercise that role as fact finder to the fullest
8 in your deliberation room, I, as the judge of the law,
9 certainly won't be back there with you giving you my input
10 into what you ought to do as fact finders, because that's
11 solely your role, just as mine is to be the judge of the
12 law.

13 Trials happen in several stages. You may have the
14 experience of sitting as a juror before. You may not have.
15 Your experience as knowing about court is through a Grisham
16 novel, or a TV show or a movie. Let me assure you that it's
17 far different than in a real court than it is on television
18 or movies, or even in a book. More than likely there are
19 not going to be times of high drama and events happening.
20 It's a deliberative process. It's presenting the evidence,
21 and that's why it's so important that you listen carefully
22 as the evidence comes in.

23 Sometimes it happens, especially after a lunch
24 break as we have had, the room gets a little warm, that some
25 of you may have a little difficulty keeping your attention

1 and keeping focused on the case. I will certainly be alert
2 for that. That's part of my job, to make sure everyone is
3 listening and paying attention. I know that you, as jurors,
4 will be observant of what's happening next door to you as
5 you are sitting in the chairs and things get a little while
6 or things get a little too much nodding going on, you will
7 do a little nudge to your fellow juror to make sure, because
8 that's what the parties are asking, that you pay attention
9 and listen to the testimony that's presented.

10 In a few moments the attorneys will make their
11 opening statements to you. These are not evidence, but they
12 are important, and I urge you to listen to the attorneys as
13 they make their opening statements. They will give you an
14 overview of what you need to be observing as the case
15 develops; a road map, if you will, as to what you should
16 look for during the course of a trial.

17 After the opening statements there will be
18 testimony presented, evidence offered into the case.

19 After all the evidence is in, the attorneys again
20 will have an opportunity to make closing statements to you,
21 to give you a recap of the case.

22 Then I will charge you and instruct you on the
23 law, what the law of South Carolina is in a case of this
24 nature.

25 And the final stage, of course, will be then when

1 you, as jurors, have an opportunity to deliberate and decide
2 the facts, based upon what's been presented to you here.

3 It makes me proud that you have accepted this
4 responsibility to serve as jurors and I certainly look
5 forward to you, and I appreciate your willingness to commit
6 to these parties that you will be fair and impartial and
7 decide the case just on the facts and the law.

8 At this time I must ask the attorneys if there is
9 any objection to the preliminary remarks that I have made.

10 Any from the State?

11 MR. MOYER: No, Your Honor.

12 THE COURT: From the defense?

13 MR. SULLIVAN: None from the defense, Your Honor.

14 THE COURT: All right. You may make your opening,
15 Mr. Moyer.

16 MR. MOYER: Thank you, Your Honor. May it please
17 the court.

18 Mr. Foreman, ladies and gentlemen of the jury,
19 good afternoon.

20 This case stems from just a few moments from the
21 day of February the 27th, 2004, about one o'clock in the
22 morning. You actually may remember that day, that night,
23 for different reason, of course, because really it was the
24 last serious, if you want to call it that, snow, significant
25 snow that we have had here in the Upstate of South Carolina.

1 Around one o'clock in the morning of February
2 27th, 2004, a 43 year old man by the name of Ignacio Delgado
3 was standing in front of a trailer of a friend of his. You
4 are going to hear that Mr. Delgado was doing something that
5 he very frequently did in the evenings after work. He was
6 just driving around a very small trailer park where he lived
7 listening to music in his car, drinking a beer or two,
8 visiting friends and relatives, whom you will hear he had
9 quite a lot of in that very small community.

10 You are going to hear, ladies and gentlemen, that
11 as he was standing there at the front of that trailer,
12 knocking on the trailer for his friend, that two men
13 approached him from behind.

14 The evidence will show that the two men were this
15 defendant, Albert Kelly, and then another man by the name of
16 Marcus Parks. It was a robbery.

17 Mr. Delgado spoke Spanish, so he may not have
18 understood the words that were used. However, the guns that
19 were pointed at him made it clear enough what was going on.

20 The evidence is going to show that this defendant
21 then approached Mr. Delgado with the gun and had him put his
22 hands up. You will hear that as he was being frisked, as
23 Mr. Delgado was being frisked for his wallet, for his money,
24 that he was not cooperating well enough and that the
25 defendant at that time threw him to the ground and got on

1 top of him continuing to frisk him. You will hear from the
2 evidence that he still was not cooperating enough and that
3 at that time the defendant shot him in the face, leaving him
4 there on the ground, in the snow, about one o'clock in the
5 morning, to die.

6 Now, your job, as you have been told numerous
7 times now, is to be judges of the facts. I thought I was
8 going to be the first one telling you that, but you have
9 heard it quite a bit already. It is your job to decree,
10 essentially, what happened on the early morning hours of
11 February the 27th, 2004. It's your responsibility to say if
12 the State has proven the defendant's guilt beyond a
13 reasonable doubt. Are you firmly convinced, is another way
14 of putting it. And the way that you do that, of course, is
15 by listening to the evidence that is going to be presented
16 to you.

17 Now, there are two different kinds of evidence in
18 trials. The first kind is there is the testimony from
19 people. That would be people getting on this witness stand
20 and essentially telling you what they know, what they saw,
21 what they heard, that has either directly or indirectly, in
22 conjunction with other testimony that you hear, has
23 relevance to the guilt or innocence of the defendant.
24 That's one kind of evidence.

25 The second kind of evidence is physical evidence.

1 That would be photographs. That would be documents. It
2 would be other tangible items that are introduced into
3 evidence that you would then be able to take back to the
4 jury room and look at them.

5 Now, the primary source of evidence in most
6 criminal trials is the testimony of people from the witness
7 stand. And you will soon learn that that will be the
8 primary source of testimony in this case as well. There
9 will be some physical evidence. There will be a few
10 photographs introduced.

11 Both of the firearms that were used, both of the
12 men who were robbing Mr. Delgado had firearms, and both of
13 those weapons were recovered, including the murder weapon.
14 They will be introduced. There will be a shell casing from
15 the scene. There will be a projectile taken from the body
16 of Mr. Delgado, but the majority of the evidence that you
17 are going to hear is going to come to you, as it does in
18 most trials, from people telling you what they know about
19 what happened.

20 And let me take just a moment to tell you a little
21 bit about what to expect from that. The testimony from the
22 witnesses essentially is going to fall into two categories.
23 Some of are going to be -- some of the testimony is going to
24 be for the purpose of helping you understand what happened
25 in general terms; where did this happen, the time, the

1 place, the circumstance, who was the victim, how did he die.
2 It's going to be information that does not necessarily point
3 to a particular person as being the one who did this, but,
4 nonetheless, gives you important information about the
5 circumstances of this crime.

6 And then there are going to be witnesses who are
7 going to either directly or indirectly point the finger,
8 metaphorically, at this defendant, at this defendant as
9 being the one who committed the crime.

10 You are going to hear from several people from the
11 crime scene itself. You are going to hear from several
12 relatives and friends of the victim who were there. There
13 is going to be a bit of a language barrier. An interpreter
14 will have to be used for a couple of the witnesses, which
15 will slow things down just a little bit and add a little bit
16 of an extra challenge, but that is one category of testimony
17 that you are going to hear from.

18 You are going to hear also from some officers and
19 some medical personnel who came out on the scene, who
20 secured the crime scene, who took some photographs, who were
21 able to capture two of the three men who were involved in
22 this crime there that night.

23 You are going to hear from the medical examiner
24 who is going to tell you how this victim died.

25 Ladies and gentlemen, you are going to hear from

1 the two co-defendants who were involved in this crime along
2 with this defendant - Marcus Parks and Shaundrecus Edwards -
3 and they are going to testify to you about their own
4 involvement, as well as that of this defendant Albert Kelly.
5 And they are going to stand before you, ladies and
6 gentlemen. They are probably going to come walking right
7 out of that door, because they are going to stand before you
8 having already been convicted, having already pled guilty to
9 their role in this particular crime.

10 You are going hear from a couple corroborating
11 witnesses.

12 You are going to hear from an officer in Atlanta,
13 Georgia who arrested this defendant in Atlanta, Georgia.

14 And then you are going to hear from some police
15 officers who are going to recount to you the defendant's own
16 admission to this crime.

17 Now, once you determine what the facts are, ladies
18 and gentlemen, it's then your responsibility to apply the
19 law. You are going to hear a good bit about this at the end
20 of the case. I'm just going to take one minute to give you
21 a brief overview of a couple areas of the law that are
22 relevant.

23 The defendant is charged with three crimes. Two
24 indictments. One of the indictment is for armed robbery and
25 possession of a firearm during the commission of a violent

1 crime. The armed robbery indictment is probably the one
2 that took the longest to read to you, but it's actually
3 probably the most straightforward of the charges.

4 Armed robbery is a type of theft. It's type of
5 stealing, and it is stealing from the person or presence of
6 another person using force or intimidation. So if it is
7 taken right from the person's presence, like a clerk at a
8 convenience store, or actually from your actual person, and
9 force or intimidation is used, it is a robbery.

10 Now, if the person who does this robbery is armed
11 with a deadly weapon, then it becomes armed robbery. Okay.

12 The second charge again is very straightforward.
13 Possession of a firearm during a violent crime, or the
14 attempt to commit a violent crime.

15 It is again against the law in South Carolina to
16 have a firearm while committing a violent crime. It is a
17 long list of violent crimes. Some burglaries, some -- even
18 some drug cases. An armed robbery like this one would be
19 such a violent crime.

20 Then the third indictment or the third charge
21 before you is that of murder. Murder -- the definition of
22 murder is the killing of another with malice aforethought,
23 either express or implied. Killing of another with malice
24 aforethought, either express or implied.

25 The key then to murder, the charge of murder, is

1 malice. Malice is ill will. It has a connotation of ill
2 will, hatred toward another person. It's a legal term that
3 imports wickedness and excludes a just cause or an excuse.

4 Now, you may be wondering how in the world are you
5 able to tell if somebody who kills another person has
6 malice? I mean, malice is a State of mind, isn't it? You
7 may be wondering well, how can I look into that person's
8 mind and sense what the motion that person had while he or
9 she killed somebody? Well, the law helps us in that regard,
10 because malice can either be express or implied. In some
11 rare situations a person either says something, or leaves a
12 note, or leaves evidence of planning to such an extent that
13 it is very obvious what he felt about that victim. That is
14 express malice. But the law does not require you to have to
15 say the malice is that obvious, because inferred malice is
16 another type of malice? You can infer malice under
17 several -- from the circumstances, specifically
18 circumstances like was the person who -- was the person who
19 killed the other person armed with a deadly weapon. If a
20 deadly weapon is used, you can infer malice.

21 Another very significant aspect of a homicide and
22 whether malice or not -- whether malice was or was not used
23 is the way the killing took place. If the crime takes place
24 during the commission of some felony that is inherently
25 dangerous, then you can imply malice. In other words, if

1 it's some type of crime where you would expect -- it would
2 be reasonably understandable that someone could get either
3 seriously hurt or killed during the commission of that
4 crime, like an armed robbery, then right then and there you
5 can infer malice from that. In such a situation there would
6 be no -- there is no such thing as accident.

7 Take this for an example. Let's say an individual
8 decides he's going to commit an armed robbery against
9 another individual; has no intention of hurting him. He
10 wants to just scare him with the gun, but has a loaded gun
11 and points that loaded gun at the victim and that gun just
12 accidentally goes off. That would not be a defense. The
13 malice is inferred by the fact that it was done during the
14 commission of this violent crime.

15 The same things goes for self-defense. If --
16 let's say a victim understandably tries to defend himself
17 from somebody who is trying to rob him, and let's say even
18 that person even gets the upper hand of the robber, that
19 robber would not be justified in killing the person he was
20 intending to rob. Self-defense would not be an issue. So
21 the fact that the way it takes place is very significant.

22 And that goes to everybody who is involved in the
23 crime as well. There is something called accomplice
24 liability. If two or more people are engaged in some crime,
25 working together to commit a crime, each one is responsible

1 for what the others did. In other words, let's say two
2 people decide they are going to do a burglary; one is going
3 to stand outside and be the lookout man, the other one is
4 going to go inside the house and commit the burglary. Both
5 are responsible for the burglary. The man outside would
6 even be responsible if the man inside assaulted somebody.
7 Okay. The hand of one is the hand of all, is the term that
8 we use. And that's going to be important in this case,
9 because one of the men who is going to walk out from behind
10 that door, Marcus Parks, who the testimony is going to show
11 was not the killer, has been convicted -- has pled guilty to
12 murder under this very theory.

13 And even, theoretically, if you ladies and
14 gentlemen throughout this trial determine that maybe the
15 roles were reversed, maybe Marcus Parks was the one who shot
16 him, and it was not this defendant, but this defendant was
17 there participating in it, he again would be equally liable
18 or would be equally responsible for the murder.

19 All right. Let me just close by saying this. I
20 think this trial is going to move along pretty quickly. I
21 fully expect that we will finish the evidence tomorrow, that
22 we will finish the testimony to you.

23 Let me finish by just giving you a very brief
24 overview of what the testimony is going to be. The
25 testimony that you are going to hear, ladies and gentlemen,

1 is that this crime began the day before, February the 26th
2 of 2004, when three men got together and started spending
3 time together. This was at a place called Drummond Village.
4 It is right across the road from the trailer park where Mr.
5 Delgado was killed. And you are going to hear that these
6 three men - Marcus Parks, Shaundrecus Edwards and this
7 defendant - was spending time together. All three lived
8 there in that apartment complex. And you are going to hear
9 that they spent a good bit of time in the home of one man by
10 the name of Shaundrecus Edwards, whose mother was away most
11 of that day, is probably the reason why they were staying a
12 good bit at his house. And you are going to hear how they
13 started talking about doing a robbery and started planning
14 to do a robbery and how they got guns - a .22, a .380
15 pistol. There was even a rifle found in that house. At the
16 last minute Shaundrecus Edwards does not go. He stays at
17 the house. He gets sick, probably from drinking too much.
18 However, he gives his pistol to Marcus Parks, a .22-caliber
19 pistol, thereby making himself guilty of accessory before
20 the fact, and then accessory after, for helping out after
21 the murder takes place.

22 Marcus Parks takes that pistol, and he, along with
23 this defendant who had a .380-caliber pistol, head out into
24 the night, somewhere close to midnight, February 27th, 2004.
25 And you are going to hear how they ended up in that trailer

1 park across the road.

2 And you are going to hear, ladies and gentlemen,
3 how they saw Ignacio Delgado standing in the yard near that
4 trailer and that they saw him as an easy target. And you
5 are going to hear that they approached him and that this
6 defendant walked up to him, and in the process of robbing
7 him, shoots him in the face. The bullet goes through his
8 cheek, severs his carotid artery and lodges in his spine,
9 killing him very quickly.

10 And you are going to hear that those two men then
11 ran, that they ran back the short distance to the apartment
12 complex and that they end up back in the residence of
13 Shaundrecus Edwards, the man where this whole plot began.

14 And you are going to hear that Marcus Parks gives
15 that .22 pistol back to Shaundrecus Edwards, who puts it up
16 in his room.

17 And you are going to hear, ladies and gentlemen,
18 that this defendant takes his .380-caliber pistol, not
19 wanting to take it back to his own residence, wraps it in a
20 hat and hides it under the couch, without Shaundrecus
21 Edwards knowing it was there and without ever telling him
22 what they had just done.

23 You are going to hear that then those two men
24 leave. Marcus Parks and this defendant leave to go back to
25 this residence.

1 You are going to hear that a short while later
2 that the police show up, and that the police have been able
3 to follow footprints into that apartment complex, and they
4 are checking residents where they see footprints going in,
5 and they come to this defendant's house, and that a search
6 of the house reveals both pistols - the .22-caliber pistol
7 that Marcus Parks used -- that Marcus Parks had during the
8 robbery, and the .380-caliber pistol that this defendant had
9 and used as the murder weapon. You will hear how they
10 collected it.

11 You will hear while the police were there, Marcus
12 Parks and this defendant, who were in the their own
13 residences, become worried. The police are at that
14 residence. Marcus Parks goes over to the residence, knowing
15 that Shaundrecus Edwards doesn't know where that pistol is,
16 hopefully to try to tip him off so that the police won't
17 find that pistol. He's unable to do so.

18 You will hear that this defendant leaves, that he
19 runs several miles through the snow somewhere around 3:30 or
20 four o'clock to a girlfriend's house, where he spends the
21 majority of that day, February the 27th, 2004. You will
22 then hear that he flees to Atlanta, Atlanta, Georgia, where
23 he lives for close to three months. And you will hear that
24 finally on May the 10th of 2004 he is caught. He is
25 apprehended by some police officers who were stopping him on

1 a completely unrelated issue, having no knowledge at all
2 that he was involved in the murder. And you will hear that
3 he's caught then with fake ID's, with another .380-pistol
4 pistol in his possession. And you will hear then that Greer
5 police officers interviewed him the very same day that he's
6 apprehended, and you will hear the admissions that the
7 defendant made about committing this crime.

8 That is the essential evidence that you are going
9 to hear. Ladies and gentlemen, at the end of this case I'm
10 going to have a chance to argue to you all that evidence
11 built up to. At this time all I ask you to do is just
12 listen very closely to the evidence that you hear, keep an
13 open mind, and then at the end of this case just do justice.
14 Thank you.

15 THE COURT: Mr. Sullivan.

16 MR. SULLIVAN: May it please the court. Mr.
17 Moyer, Ms. Lynch.

18 As I said earlier, I'm Tim Sullivan. I'm
19 representing Albert Kelly in this matter.

20 It's going to seem complicated, but it's really
21 not. There are going to be like 31 pieces evidence,
22 probably around 28 witnesses. That sounds like
23 overwhelming, but we are going to filter it.

24 There are only going to be about three things that
25 is going to matter in this case. There is going to be a

1 last confession by Albert Kelly. This was given to some
2 experienced policemen who do their job very good. They did
3 a great job in this case. You are going to have that before
4 you, and we will get into that later on.

5 Then you are going to have -- and like Mark said,
6 it snowed that night. They had a track from the crime scene
7 around to [REDACTED] They stopped and interviewed a man
8 named Mr. Leon Irby, who said yes, Shaun and another fellow
9 come by. They had gone home, which was across the farther
10 tracks, and this is where they found Shaun Edwards, and then
11 Marcus comes up. But that's how they found them so quickly.
12 They followed the tracks from the snow from the crime scene
13 to K-30 and then across to [REDACTED]

14 Also in this case, it's like CSI. We have got
15 some very good forensic evidence. We have got people
16 trained, lab technicians who do their job very well. The
17 police were very efficient in collecting evidence. They
18 took care of it. They got it to the crime labs, and you are
19 going to hear, and we can agree on this, that there were two
20 people there to rob the man. There was one shot fired. One
21 shot. And you are going to hear from the witness stand,
22 from these lab technicians, only one person had gunshot
23 residue on their hands - Shaun Edwards. The only person.

24 So when you balance all this stuff out and listen
25 to the track stuff, listen to the forensic evidence, I think

1 you are going to find out that Mr. Kelly was with these
2 people earlier and left and that they went on this venture
3 on their own. Thank you.

4 THE COURT: Mr. Moyer, you may call your first
5 witness.

6 MR. MOYER: The State would call Cornelio Lopez.
7 The State would call first Mr. Pineros, who is the
8 interpreter, Your Honor.

9 THE CLERK: Do you solemnly swear to interpret the
10 testimony of the witness, the questions and statements by
11 the attorneys, and instructions by the judge fully,
12 completely, truthfully and accurately, so help you God?

13 THE INTERPRETER: I do.

14 THE CLERK: Thank you.

15 THE COURT: Swear the witness.

16 CORNELIO LOPEZ, having been first duly sworn,
17 testified as follows:

18 THE COURT: Mr. Foreman, ladies and gentlemen, you
19 are about to hear testimony of a witness who will be
20 testifying in Spanish, I presume, and the witness will be
21 testifying through an interpreter.

22 Some of you may have some knowledge about the
23 Spanish language. And if you do, you must put that aside.
24 You can't rely upon your own knowledge of that language.
25 Even if you disagree with the interpreter's translation, you

1 must accept that translation of the witness' testimony as
2 given by the interpreter.

3 Okay, Mr. Moyer, you may proceed.

4 DIRECT EXAMINATION BY MR. MOYER:

5 Q. Okay, Mr. Lopez, would you please state your name?

6 A. Cornelio Lopez.

7 Q. When were you born?

8 A. July 7th, 1968.

9 Q. Where are you working?

10 A. SKA.

11 Q. SKA. That's a business in the Greer area?

12 A. In Duncan.

13 Q. Okay. Now, where do you? Where do you live now?

14 A. In Greer.

15 Q. What address?

16 A. [REDACTED] [REDACTED]

17 Q. Is that Southgate Trailer Park?

18 A. Yes.

19 Q. And that's [REDACTED]? [REDACTED]?

20 A. Yeah.

21 Q. Let me show you, sir, State's Exhibit No. 20. Do you
22 recognize that photograph?

23 A. Yes.

24 Q. Okay. And does it show Southgate Trailer Park on it?

25 A. Yes.

1 Q. Okay. And is that an accurate picture of where you
2 live?

3 A. Yes.

4 Q. Did you live at [REDACTED], trailer number [REDACTED],
5 on February the 27th of 2004?

6 A. Yes.

7 MR. MOYER: Your Honor, at this time I would move
8 that State's Exhibit No. 20 be entered into evidence.

9 MR. SULLIVAN: No objection.

10 THE COURT: Without objection, Exhibit No. 20 is
11 into evidence.

12 BY MR. MOYER:

13 Q. Okay. I think they are getting an easel, but while
14 they are doing so, Mr. Lopez, would you please step down and
15 point out on this large map where you lived, where trailer
16 [REDACTED] (sic) is.

17 (Witness off the witness stand)

18 THE INTERPRETER: Lot [REDACTED]?

19 BY MR. MOYER:

20 Q. Lot [REDACTED], yes.

21 A. Right there.

22 Q. Okay. And so you are pointing on the bottom the second
23 from the -- the second from the left?

24 A. Yes.

25 Q. Okay. Thank you. Please have a seat again.

1 (Witness back on the witness stand)

2 BY MR. MOYER:

3 Q. All right. Did you know Ignacio Delgado?

4 A. Yes.

5 Q. Did he live near you in Southgate Trailer Park?

6 A. Yes.

7 Q. And how long did you live in Southgate Trailer Park?

8 A. A little bit over three years.

9 Q. And did Ignacio Delgado live near you the whole time?

10 A. Yes.

11 Q. All right. Were you at home on the night that he died?

12 A. Yes.

13 Q. What were you doing?

14 A. I was sleeping.

15 Q. What woke you up?

16 A. The sound of a shot.

17 Q. How many shots did you hear?

18 A. One.

19 Q. What did you do when you heard the shot?

20 A. I went to the window and look out.

21 Q. Okay. What did you see when you looked out the window?

22 A. Two black men.

23 Q. What were these men doing?

24 A. I saw them when they were running.

25 Q. What were they running away from?

1 A.. They were running from the body of Ignacio.

2 Q. So you saw a body on the ground then?

3 A. Yes.

4 Q. Were they close to the body when you first saw these
5 two men?

6 A. Yes.

7 Q. How close would you say they were?

8 A. Around three feet from the body.

9 Q. Okay. And you said they were running?

10 A. Yes.

11 Q. As you were looking at the window, which way were they
12 running, to the right or to the left?

13 A. To the right.

14 Q. If you could step down, please.

15 (Witness off the witness stand)

16 BY MR. MOYER:

17 Q. Were you looking at -- were you looking out the window
18 at the end of your trailer right here?

19 A. Yes.

20 Q. You were looking out the end of the trailer, right?

21 A. Yes.

22 Q. And you saw the men running in this direction, to the
23 right?

24 A. Yes.

25 Q. Thank you.

1 (Witness back on the witness stand)

2 BY MR. MOYER:

3 Q. Okay. Now, did you see any vehicles outside?

4 A. There was a white car.

5 Q. Do you recognize whose car it was?

6 A. Yes.

7 Q. Whose car was it?

8 A. Ignacio's.

9 Q. Ignacio Delgado?

10 A. Ignacio Delgado's car.

11 Q. What was the weather like when you looked out the
12 window?

13 A. There was a lot of snow.

14 Q. And then you went outside, right?

15 A. Yes.

16 Q. It was cold outside?

17 A. Yes.

18 Q. Now, after you looked out the window and you saw these
19 men running away, what did you then do?

20 A. I went and told my wife and my brother-in-law and also
21 dialed 9-1-1.

22 Q. Okay. Your wife and your brother-in-law were in the
23 same trailer with you?

24 A. Yes.

25 Q. Did you call 9-1-1 right away?

1 A. Yes.

2 Q. That was before you went outside?

3 A. Yes.

4 Q. Were you able to communicate with the person who
5 answered on 9-1-1?

6 A. Yes.

7 Q. Did that person speak Spanish, or how did you
8 communicate with them?

9 A. I speak a little bit English and the person understood
10 what I was saying.

11 Q. And what did you tell the person on 9-1-1?

12 A. That two black men have shot Ignacio.

13 Q. Now, after you called 9-1-1 did you go outside?

14 A. Yes.

15 Q. Who went with you?

16 A. My wife.

17 Q. Did you two walk past the person who was on the ground?

18 A. Yes.

19 Q. Could you see the persons's face?

20 THE INTERPRETER: I'm sorry?

21 BY MR. MOYER:

22 Q. Could you see the person's face and who it was?

23 A. Yes.

24 Q. And who was it?

25 A. Ignacio Delgado.

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1 Q. Did he move, or did he speak, or --

2 A. No, he didn't.

3 Q. What about the car? Was the car running?

4 A. Yes.

5 Q. How about the radio? Do you remember if the radio was
6 on?

7 A. The radio was on.

8 Q. Where did you go?

9 A. I went to Emilio Delgado's house, the brother of this
10 guy, to tell him that two black men had shot him.

11 Q. Now, Emilio Delgado, he lived pretty close to you?

12 A. Yes.

13 Q. He's in the same trailer park, right?

14 A. Yes.

15 Q. So it just took a minute or two to get to his place?

16 A. Around three minutes.

17 Q. Okay. And did you speak to Ignacio's brother Emilio?

18 A. Yes.

19 Q. You told him what happened?

20 A. Yes.

21 Q. Where did you then go?

22 A. I went back to my home.

23 Q. Did you go right back to your home after you told
24 Emilio, or did you stay at Emilio's house for awhile?

25 A. I went directly to my house.

1 Q. Now, did any police officers arrive there at your
2 house?

3 A. Before I arrived the police was already there.

4 Q. Okay. Did you talk to the police officers and tell
5 them what you saw out the window?

6 A. Yes.

7 Q. And did you tell -- you told the police officers which
8 way the two men ran?

9 A. Yes.

10 Q. I'm going to hand you two pictures, State's Exhibits
11 No. 1 and 2. I want you to look at them. Do you recognize
12 them?

13 A. Yes.

14 Q. Does that show your trailer?

15 A. Yes.

16 Q. Other than the police tape and the blue tarp, is that
17 the way your trailer looked the night that you found
18 Ignacio?

19 A. Yes.

20 MR. MOYER: Your Honor, at this time I move
21 State's Exhibits No. 1 and 2 into evidence.

22 MR. SULLIVAN: Without objection, Your Honor.
23 I want to look back at them.

24 Without objection, Your Honor.

25 THE COURT: Without objection, Exhibits 1 and 2

1 are into evidence.

2 BY MR. MOYER:

3 Q. I have to ask you to step down again because our
4 overhead equipment isn't working right now.

5 (Witness off the witness stand)

6 BY MR. MOYER:

7 Q. I would like you to point out on this picture where
8 your -- point out your trailer on that picture.

9 A. That one.

10 Q. Would you point to the window that you looked out?

11 A. That one.

12 Q. And is that window, is that where your bedroom is?

13 A. Yes.

14 Q. Okay. Is your bed right next to that window?

15 A. Yes.

16 Q. Now, this car right here, whose car is that?

17 A. Ignacio Delgado's car.

18 Q. Is that where it was when you looked out the window?

19 A. Yes.

20 Q. All right. Here is State's Exhibit No. 1. Again, does
21 that show your trailer?

22 A. Yes.

23 Q. And do you see a figure underneath this blue tarp?

24 A. Yes.

25 Q. Is that the body of Ignacio Delgado?

1 A. Yes.

2 Q. Is that the area where Ignacio Delgado was when you
3 looked out the window?

4 A. Yes.

5 Q. And the direction that you saw the two men run would be
6 this way?

7 A. Yes.

8 Q. Thank you. Please have a seat.

9 (Witness back on the witness stand)

10 BY MR. MOYER:

11 Q. Please answer any questions that the defense has.

12 CROSS EXAMINATION BY MR. SULLIVAN:

13 Q. Did you go out before or after you made the 9-1-1 call?

14 A. After.

15 Q. Thank you.

16 MR. SULLIVAN: No further questions.

17 THE COURT: Anything on redirect?

18 MR. MOYER: No, Your Honor.

19 THE COURT: All right. Thank you. You may step
20 down.

21 MR. MOYER: The State would call Emilio Delgado,
22 Sr..

23 EMILIO DELGADO, SR., having been first duly sworn,
24 testified as follows:

25 THE CLERK: Please be seated.

1 DIRECT EXAMINATION BY MR. MOYER:

2 Q. What is your full name?

3 A. Emilio Delgado, Sr..

4 Q. How old are you?

5 A. 43 years old.

6 Q. Do you live in Southgate Trailer Park?

7 A. Yes.

8 Q. Where do you work?

9 A. I work in a company that makes concrete.

10 Q. Okay. What trailer number did you live in on February
11 the 27th of 2004?

12 A. [REDACTED].

13 Q. And that's real close to where Cornelio Lopez lives?

14 A. Yes.

15 Q. Okay. You knew Ignacio Delgado?

16 A. Yes, he was my brother.

17 Q. How old was your brother when he died?

18 A. 43 years old.

19 Q. How long had he lived in America?

20 THE INTERPRETER: I'm sorry, the question is --
21 he's asking him or his brother.

22 BY MR. MOYER:

23 Q. Your brother.

24 A. Since 1979.

25 Q. And he lived in Florida for awhile first?

- 1 A. Yes, we lived there together in Florida.
- 2 Q. You lived there with your brother?
- 3 A. Yes.
- 4 Q. Now, when did he move to Greer?
- 5 A. In 1997, we moved here to Greenville.
- 6 Q. You both moved here?
- 7 A. Yes.
- 8 Q. What brought y'all to Greer from Florida?
- 9 A. We were -- we used to work in the fields and we wanted
10 something more stable, a better place.
- 11 Q. Where was Ignacio Delgado, your brother, working?
- 12 A. He was working at Span America.
- 13 Q. That's a manufacturing plant for mattresses?
- 14 A. Yes.
- 15 Q. How long did he work there?
- 16 A. Six years.
- 17 Q. And he lived very near you?
- 18 A. Yes, in the same parking lot.
- 19 Q. Same trailer park?
- 20 A. Trailer park, I'm sorry.
- 21 Q. Now, he was not married, right?
- 22 A. No.
- 23 Q. He didn't have any children?
- 24 A. No.
- 25 Q. Was he close to your family, to your wife and children?

1 A. Yes.

2 Q. And he spent time with you and your family at holidays
3 and meals and things?

4 A. Yes.

5 Q. Did you see your brother on the day he died?

6 A. Yes.

7 Q. Where did you see him?

8 A. In the afternoon he went to my house.

9 Q. Now, he had just been away on a trip, isn't that right?

10 A. He went to Mexico to see my mom and my dad.

11 Q. And he was gone about two weeks?

12 A. Yes, two weeks.

13 Q. Now, when you saw him on the day he died, he had just
14 gotten back from his trip?

15 A. Yes.

16 Q. And he had been paid for several different paychecks?

17 A. Yes, he was -- he has three checks with him.

18 Q. Did he get paid every week or every two weeks?

19 A. Every week.

20 Q. How much would his paycheck be?

21 A. They pay him \$10 an hour, and he will make -- he will
22 just work 40 or more hours.

23 Q. Okay. And he was going to cash the three checks that
24 he got?

25 A. When he went to my house, he showed me the three

1 checks.

2 Q. And he was going to cash them, though, right?

3 A. He said that he was going to exchange them or get cash
4 to send money to his parents.

5 Q. Now, were you woken up on the night that your brother
6 was killed?

7 A. Yes.

8 Q. That was by Cornelio Lopez?

9 A. Yes, Cornelio, his wife.

10 Q. Did you go over to Cornelio Lopez' trailer?

11 THE INTERPRETER: Say that again.

12 Q. Did you go over to the trailer of Cornelio Lopez?

13 A. Yes..

14 Q. Did you see a person on the ground?

15 A. Yes.

16 Q. And could you recognize who it was?

17 A. Yes.

18 Q. Who was it?

19 A. My brother.

20 Q. Ignacio Delgado?

21 A. Yes.

22 MR. MOYER: Thank you. Please answer any
23 questions that the defense has.

24 MR. SULLIVAN: Just a couple.

25

1 CROSS EXAMINATION BY MR. SULLIVAN:

2 Q. Mr. Delgado, what time earlier that day had you seen
3 Ignacio?

4 A. In the afternoon.

5 Q. Do you know whether or not he had sent the money the
6 next time that you saw him? From the time that you saw him
7 to the time that you saw him dead, had he sent the money, or
8 do you know?

9 Let me rephrase that for you. Okay.

10 You saw him earlier in the afternoon. Then the next
11 time that you saw him was early in the morning when he had
12 been shot?

13 THE INTERPRETER: He said how?

14 I guess just ask the question again.

15 MR. SULLIVAN: Well, he saw him early in the
16 afternoon?

17 THE INTERPRETER: Yes.

18 MR. SULLIVAN: When was the next time that he saw
19 him?

20 A. That when they told me that he got shot.

21 BY MR. SULLIVAN:

22 Q. So that was about one o'clock on the 27th?

23 A. Yes.

24 Q. So he could have sent some money to his parents during
25 that time?

1 A. No, he didn't send any money.

2 Q. Did he find all the checks? Did he find the three --
3 he had had three checks. You follow me?

4 THE INTERPRETER: Yes.

5 BY MR. SULLIVAN:

6 Q. He saw him in the afternoon and had three checks. Did
7 he ever see those checks again?

8 A. No, I didn't see them again. He said that he went to
9 exchange them.

10 Q. And send money home?

11 A. But he -- I think that he wasn't able to send any money
12 because it was late afternoon.

13 MR. SULLIVAN: Nothing further, Your Honor.

14 Thank you.

15 THE COURT: Any redirect?

16 MR. MOYER: No redirect.

17 THE COURT: Thank you. You may step down, sir.

18 MR. MOYER: The State would call Moises Delgado.

19 MOISES DELGADO, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. MOYER:

22 Q. Please state your full name.

23 A. Moises Delgado.

24 Q. How old are you?

25 A. 20.

1 Q. Where do you work?

2 A. Milliken Company.

3 Q. Did you live in Southgate Trailer Park on February the
4 27th, 2004?

5 A. Yes.

6 Q. You are related to the gentleman who was just on the
7 stand?

8 A. He's my dad.

9 Q. He's your father?

10 A. Yes.

11 Q. So Ignacio was your uncle?

12 A. Yeah.

13 Q. And where did you live back on February 27th, 2004?

14 A. At [REDACTED], lot three.

15 Q. Who did you live with?

16 A. With my uncle.

17 Q. Ignacio Delgado?

18 A. Yeah.

19 Q. And you have taken a look at this large map before,
20 haven't you?

21 A. Yes.

22 Q. Are you able to pick out on that map --

23 (Witness off the witness stand)

24 BY MR. MOYER:

25 Q. -- where it was where you and your uncle lived?

1 A. Right here.

2 Q. Okay. So it's basically the third trailer on the left
3 as you come in the main entrance?

4 A. Yes.

5 Q. Okay. Thank you. Please have a seat.

6 (Witness back on the witness stand)

7 BY MR. MOYER:

8 Q. Now, were you at home on the night that he was killed?

9 A. Yeah.

10 Q. All right. What hours did he generally work?

11 A. Like -- like from seven -- usually he got home late.
12 He got there -- he would leave like at seven and he didn't
13 get back until like six o'clock in the afternoon.

14 Q. Did he get off early that day?

15 A. Yeah, he got off early because of the weather.

16 Q. Okay. Do you know if he was going to have the next
17 day -- was he supposed to be off the next day because of
18 whether too?

19 A. They were supposed to call him and tell him that they
20 were going to go to work or not.

21 Q. But was the snow piling up pretty high?

22 A. Yeah, that's --

23 Q. Now, on weekends and days he didn't have to work the
24 next day, was it common for him to drive around the trailer
25 park?

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1 A. Yeah. Like because I got a lot of cousins, a lot of
2 family that live there, so he would -- he would go visit
3 everybody like, but he wouldn't leave the trailer park,
4 though.

5 Q. He would just stay in the trailer park?

6 A. He would stay in there. He wouldn't leave.

7 Q. So even the people he wasn't related to, was he pretty
8 much friendly with most of the people in there?

9 A. Yeah.

10 Q. Was he well liked?

11 A. Yeah.

12 Q. He's a popular guy?

13 A. Yeah.

14 Q. Now -- so it wouldn't be unusual for him to stay out
15 pretty late at night going around visiting people?

16 A. Yeah.

17 Q. That would not be unusual?

18 A. No, it wouldn't.

19 Q. Did you see your uncle, Ignacio Delgado, on the
20 night -- or on the day that he died?

21 A. Yeah.

22 Q. And around when was it that you saw him?

23 A. The last time that I saw him?

24 Q. Yes.

25 A. It was like six o'clock.

1 Q. And where -- and he was at your place?

2 A. Yeah.

3 Q. And did he leave?

4 A. Yeah, he left.

5 Q. Did you stay there or did you go with him?

6 A. I stayed right there.

7 Q. Did he leave in his car?

8 A. Yeah.

9 Q. You have taken a look at this picture. That's his car
10 right there?

11 A. Yeah, that's his car.

12 Q. Okay. Did you see him anymore that night?

13 A. No, I talked to him, but I didn't see him.

14 Q. Okay. And based on your conversations with him, could
15 you tell whether or not he was still around Southgate
16 Trailer Park?

17 A. No.

18 Q. You couldn't tell?

19 A. No, I knew where he was at.

20 Q. Okay. Where was he?

21 A. He was at my cousin's house with her husband.

22 Q. Is that in the trailer park there?

23 A. No, it's not in the trailer park, but right there where
24 the trailer is at that I just showed you, there is a couple
25 trees behind it and there is -- it's across the street. It

1 was like behind those trees.

2 Q. Okay. Now, did you go to bed then?

3 A. Yeah.

4 Q. When did you wake up?

5 A. Like about -- like one, 1:30.

6 Q. Somewhere around one, 1:30?

7 A. Yeah.

8 Q. You didn't look at the clock?

9 A. No.

10 Q. Who woke you up?

11 A. Well, my brother was knocking on the door.

12 Q. Okay. And did he tell you what was going on?

13 A. Yeah, he told me that -- that they had shot my uncle.

14 Q. And did you go over to Cornelio Lopez's trailer?

15 A. Yeah, it was like -- yeah, after I got some clothes on

16 and it was really cold outside and then I went over there.

17 Like it took me just ten minutes.

18 Q. Ten minutes to get dressed and head over there?

19 A. Yeah.

20 Q. And when you got over there, were there a lot people

21 showing up?

22 A. There was -- it was just -- basically it was just my

23 dad and my aunt and Cornelio and his family.

24 Q. And his family, and your brother Emilio?

25 A. Yeah, my brother.

1 Q. And you stayed there until the police arrived?

2 A. Yes.

3 Q. And talked to the police when they got there?

4 A. Yeah.

5 Q. Okay. All right. Please answer any questions the
6 defense has.

7 MR. SULLIVAN: No questions, Your Honor.

8 THE COURT: Okay. Thank you, sir. You may step
9 down.

10 THE COURT: The State would call Keith Ballew.

11 KEITH BALLEW, having been first duly sworn,
12 testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Keith Ballew.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q. How old are you, sir?

17 A. I'm 27.

18 Q. All right. Now, where do you work?

19 A. I own my own business now.

20 Q. What kind of business?

21 A. Construction business.

22 Q. What's the name of it?

23 A. Residential Resources.

24 Q. Now, back in February of 2004, you used to be in law
25 enforcement?

1 A. I did.

2 Q. And that was with the Greer Police Department?

3 A. I was.

4 Q. How long were you in law enforcement?

5 A. I was with Greer for four years.

6 Q. What was your position in February of 2004?

7 A. I was a field training officer and canine handler.

8 Q. Now, what were you doing on the night of February the
9 27th of 2004?

10 A. On that particular night I was out riding. It was real
11 icy, snowy out. Just making sure no one had ran into
12 ditches and that sort of stuff. Just routine patrol.

13 Q. Were you assigned to a particular area or beat?

14 A. That particular night I was. I was normally the roving
15 officer, but that night I was.

16 Q. And that included that area near Southgate Trailer Park
17 where you worked?

18 A. That's correct.

19 Q. Now, did you receive a call then during the early
20 morning hours related to this case?

21 A. Yes, there was a call that went out as a lynching in
22 progress.

23 Q. Okay. And were you close by when that call came out?

24 A. Yes, I was close.

25 Q. Did you respond to that location?

1 A. Yes, I did.

2 Q. So they gave you an address where to go?

3 A. Yes.

4 Q. Where did they tell you to go?

5 A. 107 Johnson Avenue, which is Southgate Trailer Park, as
6 we all know.

7 Q. Did you know a particular -- what trailer to go to when
8 you got there?

9 A. I do not recall them giving us the number of the
10 trailer.

11 Q. Now, did it take you long to get there?

12 A. No, I actually got there in like a minute. I was -- I
13 was close.

14 Q. Around what time was it that you arrived there on that
15 scene?

16 A. Like one -- 1:12 a.m..

17 Q. 1:12 a.m.?

18 A. Yes.

19 Q. And that location is in Greenville County?

20 A. That's correct.

21 Q. All right. You mentioned the -- so the weather was
22 pretty bad that night?

23 A. Yes, it was.

24 Q. Were you the first officer there at the scene at
25 Southgate Trailer Park?

1 A. Yes, I was.

2 Q. All right. Would you just show the jury where it was
3 that you drove in and where you ended up, using that map,
4 State's Exhibit No. 20?

5 (Witness off the witness stand)

6 A. I had came in down Donaldson.

7 THE COURT: Officer -- or Mr. Ballew, if you
8 would, be sure and keep your voice projected so the court
9 reporter can hear you have to say. You are talking away
10 from him.

11 THE WITNESS: Sorry, Your Honor.

12 THE COURT: I want to make sure the jury hears you
13 also, but if you would, just project your voice enough.

14 A. Okay. I had came down Donaldson Avenue; came into
15 Southgate; came up to this trailer here. Lot 51 is where I
16 ended up.

17 BY MR. MOYER:

18 Q. So it would be the second one then from the end?

19 A. Yes.

20 Q. Does that road dead end right there?

21 A. Yeah, it's like a little cul-de-sac, if you will, right
22 here.

23 Q. So you couldn't keep driving that way if you wanted to?

24 A. No.

25 Q. You would have to turn around and go back?

1 A. Yes.

2 Q. Okay. Now, did you -- you can have a seat again.

3 (Witness back on the witness stand)

4 BY MR. MOYER:

5 Q. Did you notice anything as you were driving up that
6 road?

7 A. Actually as I turned up that area, I seen just park
8 lights on a vehicle that were on.

9 Q. What did you do when you saw those park lights?

10 A. I went on up to that vehicle, which turned out to be --
11 it was in front of the address where I needed to be.

12 Q. Was the vehicle running?

13 A. Yes, it was.

14 Q. And do you remember anything about music or not?

15 A. Yes, the music was blaring. It was very loud.

16 Q. Okay. And so when you drove up there, did you
17 immediately get out of your car, or did you keep looking
18 from inside your car?

19 A. Well, as I pulled up, I shined the spotlight, for
20 safety, something that I always done. I called out where I
21 was. I then got out of the car.

22 Q. Called out on your radio where you were?

23 A. Yeah, let everybody know where I was, that I was out.

24 Q. And you got out of the car?

25 A. Uh-huh.

1 Q. . And before I get into what you saw, just make sure --
2 take a look at State's Exhibit No. 1. Do you see -- does
3 that show the vehicle that you saw?

4 A. That's it.

5 Q. And that was the location it was in when you saw it?

6 A. Yes.

7 Q. Okay. So you got out of your patrol car. And what did
8 you see and what did you do?

9 A. As I got out -- I was parked in front of that vehicle.
10 And as I got out, to my right or in front of that trailer I
11 observed someone laying on the ground.

12 Q. Did you approach the person?

13 A. Yes.

14 Q. And were you able to see his face?

15 A. Yes.

16 Q. Did you even recognize him?

17 A. Actually I did.

18 Q. You just recognized him from your beat?

19 A. Yes, I worked in that area a good bit. And he --
20 Ignasio, again, like in the afternoons and stuff, or later
21 at night, he was always out visiting people, and I had spoke
22 with him on more than one occasion.

23 Q. Okay. And, once again, you have taken a look at these
24 pictures before, haven't you?

25 A. Yes.

1 Q. And the location that we can see of the body right in
2 front the trailer, is that where Mr. Delgado was when you
3 saw him?

4 A. Yes, he was.

5 Q. Now, you approached him. Did you notice any signs of
6 life, any movement, any speaking at all?

7 A. No, sir, I did not.

8 Q. Did you bend over close to him to determine whether or
9 not what his condition was?

10 A. Yes, I got down on my knee, kind of crouched over, if
11 you will, and put my ear to his nose to listen for any
12 breathing and to watch his chest to see if it would rise,
13 and there was no breathing. His chest wasn't moving.

14 Q. Could you see any signs of trauma?

15 A. Yes, I looked to his right cheek at what appeared to be
16 a gunshot wound to his right cheek.

17 Q. Did you notice anything around that wound, that hole
18 that you saw?

19 A. There was some blood, yes.

20 Q. Did you move the body at all?

21 A. No.

22 Q. You didn't touch it?

23 A. No.

24 Q. And that's part of y'all's training? Did you recognize
25 this as a potential crime scene?

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1 A. Absolutely.

2 Q. Now, while you were looking there, did people start to
3 show up?

4 A. Yes, sir.

5 Q. And some of the people who just testified here?

6 A. Actually, yes.

7 Q. And as these people started coming up there to you, did
8 you make sure that they didn't disturb the scene, didn't
9 disturb the body?

10 A. Yes. Probably a minute or so after I arrived other
11 officers also came up, and I asked those officers to kind of
12 keep people away from the body and crowding around it. I
13 didn't want to contaminate the crime scene.

14 Q. All right. And did you make sure that there would be
15 others on the way, supervisors, investigators, EMS?

16 A. Yes, as soon as I seen the body I had called the
17 sergeant.

18 Q. And what were you doing while you were waiting for them
19 to arrive?

20 A. While I'm awaiting for them to arrive, again, I was
21 asking the other officers to keep people from crowding
22 around the body or contaminating it, kind of keeping the
23 people from grouping up.

24 Q. Did EMS providers arrive?

25 A. Yes, the Greer fire department arrived first.

1 Q. And were you present when they did?

2 A. Yes, I was.

3 Q. And did you observe -- did they approach the body --

4 A. Yes, they --

5 Q. -- of Mr. Delgado.

6 Did you observe them as they were with Mr. Delgado?

7 A. Yes.

8 Q. Did they move the body?

9 A. No.

10 Q. And you spoke to some of the bystanders who were there
11 on the scene, the best you could?

12 A. The best I could.

13 Q. You spoke to Cornelio Lopez, who testified here first?

14 A. Yes.

15 Q. When the investigators and supervisors and so forth
16 showed up, they took over the scene?

17 A. Yes, they did.

18 Q. And you told them what you had learned so far, based on
19 what you had seen and what people had told you?

20 A. Right.

21 Q. All right. Please answer any questions that the
22 defense may have.

23 MR. SULLIVAN: Thank you. No questions of this
24 witness, Your Honor.

25 THE COURT: Thank you, sir, you may step.

1 THE WITNESS: Thank you, Your Honor.

2 MR. MOYER: State would call Brian Johnson.

3 Your Honor, I would ask this witness, Mr. Ballew,
4 be excused.

5 THE COURT: Any objection to this witness being
6 excused?

7 MR. SULLIVAN: No objections, Your Honor.

8 THE COURT: Thank you, sir. You may be excused.

9 BRIAN JOHNSON, having been first duly sworn,
10 testified as follows:

11 THE CLERK: Thank you. Please be seated.

12 State your name for the record.

13 THE WITNESS: Brian William Johnson.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q. How old are you, sir?

16 A. 26.

17 Q. Where do you work?

18 A. Greenville County EMS.

19 Q. Okay. And that's just for another day or so?

20 A. Yup.

21 Q. Then where are you going to be transferring?

22 A. Charleston County.

23 Q. Also working EMS?

24 A. Yes.

25 Q. How long have you worked for Greenville County EMS?

1 A. About three and a half years.

2 Q. Prior to that what was your experience in emergency
3 care?

4 A. I was a firefighter EMT and moved onto firefighter
5 paramedic in Columbus, Ohio.

6 Q. What does your job entail as an EMS provider?

7 A. Just I'm paramedic on a truck and I'm a field training
8 officer. Respond to all 9-1-1 calls anywhere in Greenville
9 County.

10 Q. Now, did you receive a call on February the 27th of
11 2004?

12 A. I did.

13 Q. And what was that address?

14 A. It was [REDACTED]

15 Q. Okay. And do you remember the weather being very bad
16 that night?

17 A. Yup.

18 Q. What time did you get the call?

19 A. I believe it was around one. I'm going to say around
20 1:15.

21 Q. Would you have put that in your report?

22 A. It would be on dispatch time in the report.

23 Q. Okay. If you had a chance to look at your report,
24 would that refresh your memory?

25 A. Yeah.

1 Q. Is that your report that I just handed you?

2 A. It is. We got the call at 1:10, and arrived on the
3 scene -- we were cleared to enter the scene at 1:22.

4 Q. Okay. 1:10 a.m.?

5 A. Yes.

6 Q. Now, when you arrived there, were there police officers
7 there?

8 A. Yes.

9 Q. And did the officers direct you to the victim?

10 A. Yes.

11 Q. And where did you find the victim?

12 A. He was in front -- I believe he was in front of Lot 51.
13 Was directly in front of the trailer by the front window,
14 laying supine on his back in the snow.

15 Q. So by supine, are you talking about --

16 A. Supine means on the back.

17 Q. I'm going to show you State's Exhibit No. 3. Can you
18 recognize that picture?

19 A. Yup.

20 Q. And is that an accurate representation of the way the
21 victim was lying in front of that trailer on February the
22 27th, 2004?

23 A. It is.

24 Q. Was the tarp there?

25 A. Not -- not when I got there. After we had pronounced

1 the -- pronounced the patient dead, they covered him after
2 that.

3 MR. MOYER: Okay. I move State's Exhibit No. 3
4 into evidence.

5 MR. SULLIVAN: No objection, Your Honor.

6 THE COURT: Without objection, Exhibit 3 is into
7 evidence.

8 BY MR. MOYER:

9 Q. All right. So when you approached the victim, what
10 indications or signs of trauma or injury did you see?

11 A. Obvious pooling of blood around his head. And actually
12 I got closer and got a light on him, you could see he had an
13 apparent gunshot wound to the lower right cheek of his face.

14 Q. Was he moving at all?

15 A. No.

16 Q. Was he conscious?

17 A. No.

18 Q. Was he responsive?

19 A. No.

20 Q. Did you check for vital signs?

21 A. Yes. Opened the patient's airway, checked for any
22 signs spontaneous respiration and applied a heart monitor.

23 Q. Slow down a little bit and describe what those words
24 were that you --

25 A. Got down and used my hands to open his jaw to see if he

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1 had signs of spontaneous respiration on his own. He did
2 not. Then I applied -- he had no pulse noted. I applied a
3 heart monitor to see if he had any kind of -- any kind of
4 cardiac activity and he did not.

5 Q. So there was no activity at all?

6 A. No.

7 Q. No respiration?

8 A. No respiration.

9 Q. No electrical activity?

10 A. No. No pulse.

11 Q. No blood pressure at all?

12 A. No.

13 Q. So for those reasons what did you -- what actions did
14 you take with regard to Mr. Delgado at that point?

15 A. At that point that's considered an injury incapable of
16 sustaining life and we pronounced Mr. Delgado dead.

17 Q. Now, you had to touch the body a little bit to apply
18 the --

19 A. I had to apply leads, so I had walked around -- walked
20 around the body and I had to touch the patient's face to try
21 to open the airway.

22 Q. Okay. And by leads, you are talking about to determine
23 whether there's electrical activity?

24 A. Uh-huh.

25 Q. And you placed three --

1 A. Placed four. One each shoulder and down by the belt
2 line is where they go.

3 Q. So you have to pull his shirt up a little bit to get to
4 that?

5 A. Yes.

6 Q. Other than that, did you move the body, roll the body,
7 or anything?

8 A. Did not.

9 MR. MOYER: All right. Please answer any
10 questions the defense has.

11 MR. SULLIVAN: No questions of this witness, Your
12 Honor.

13 THE COURT: Thank you, sir. You may step down.

14 MR. MOYER: Can we approach?

15 THE COURT: Yes, sir.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 THE COURT: Mr. Foreman, ladies and gentlemen, I
19 think this would be a good time for our afternoon break.
20 I'm going to send you back to your jury room. We will take
21 about a 15 minute break and give you time to refresh
22 yourselves.

23 Again, don't discuss the case as you go back and
24 forth and in the jury room. That would be inappropriate.

25 We will take about a 15 minute break. See you

1 back then.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: Okay. We will be at ease for 15
5 minutes.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right. Are you ready to proceed?

9 MR. MOYER: Yes, sir.

10 MR. SULLIVAN: Defense is ready, Your Honor.

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

12 (The following takes place in the presence of the
13 jury panel)

14 THE COURT: All right. Mr. Moyer, you may call
15 your next witness.

16 MR. MOYER: The State would call Marcus Parks.

17 MARCUS PARKS, having been first duly sworn,
18 testified as follows:

19 THE CLERK: State your name for the record.

20 THE WITNESS: Marcus Parks.

21 DIRECT EXAMINATION BY MR. MOYER:

22 Q. Mr. Parks, I need to make sure that you lean into that
23 microphone and speak up so everybody can hear you.

24 How old are you?

25 A. 23.

1 Q. You were born November the 16th of 1981?

2 A. Yes, sir.

3 Q. You grew up in Greer?

4 A. Yes, sir.

5 Q. And you went to Byrnes High School, is that right?

6 A. Yes, sir.

7 Q. I want to take you back to February the 26th and 27th
8 of 2004. Did you spend time with Shaundrecus Edwards and
9 Albert Kelly on that day?

10 A. Yes.

11 Q. Did you go to Shaundrecus Edwards apartment that day?

12 A. Yes.

13 Q. And he was in [REDACTED]

14 A. Yes, sir.

15 Q. You had been staying there in those apartments as well,
16 right?

17 A. Yes, sir.

18 Q. What apartment had you been staying in?

19 A. [REDACTED].

20 Q. That's right next to the building where Shaundrecus was
21 staying?

22 A. Yes, sir.

23 Q. You were staying there with your girlfriend?

24 A. Yes, sir.

25 Q. All right. Now, around what time was it that you went

1 over to Shaundrecus Edwards apartment?

2 A. Between twelve and one in the evening.

3 Q. In the afternoon?

4 A. (Shaking head yes)

5 Q. Is that a yes?

6 A. Yes.

7 Q. During the middle of the day?

8 A. Yes, sir.

9 Q. Did Albert Kelly come over there too?

10 A. Yes, sir.

11 Q. And did he come around the same time, or was it later,
12 or earlier?

13 A. Later.

14 Q. Was it a lot later?

15 A. No, sir.

16 Q. Was it still daylight out?

17 A. Yes, sir.

18 Q. And y'all spent a good bit of that afternoon together?

19 A. Yes, sir.

20 Q. And were y'all together the whole time or would y'all
21 come and go some?

22 A. Come and go.

23 Q. All of y'all?

24 A. Yes, sir.

25 Q. Now, y'all spent some time at Shaundrecus Edwards

1 apartment?

2 A. Yes, sir.

3 Q. All right. Did anyone else come over there? Did any
4 girls come by any time during the day or that night?

5 A. Yes, sir.

6 Q. Who was that?

7 A. Toni.

8 Q. Toni Glenn?

9 A. Yes, sir.

10 Q. And she hung out with y'all some?

11 A. Yes, sir.

12 Q. At one time did you go over to another neighbor's house
13 and get some alcohol?

14 A. Yes, sir.

15 Q. And do you remember that guy's name?

16 A. Yes, sir.

17 Q. What was his name?

18 A. Leon.

19 Q. Is that Leon Irby?

20 A. Yes, sir.

21 Q. And who went over there?

22 A. Me and Shaun.

23 Q. You and Shaundrecus Edwards?

24 A. Yes, sir.

25 Q. So Albert Kelly didn't go over with you at that time?

1 A. No.

2 Q. So Leon Irby, did he live in those apartments as well?

3 A. Yes, sir.

4 Q. Is that pretty close by?

5 A. Yes, sir.

6 Q. And was that earlier in the evening before you all went
7 out to commit the robbery?

8 A. Yes, sir.

9 Q. And how long did you stay there?

10 A. About five minutes.

11 Q. Now, where did you go after you were at Leon Irby's
12 house?

13 A. Back to Shaun's house.

14 Q. Did you see Albert Kelly over there as well?

15 A. No, sir.

16 Q. Did he ever come back over to Shaun's house?

17 A. Yes.

18 Q. Was that after you and Shaun got back over there?

19 A. Yes, sir.

20 Q. Now, is that when y'all started talking about the
21 robbery, or had you been talking about it during the day?

22 A. We had been talking about it during the day.

23 Q. Okay. Had it been a topic of conversation that came up
24 a lot during that day?

25 A. Yes, sir.

1 Q. And all three of y'all were talking about doing it?

2 A. Yes, sir..

3 Q. What kind of robbery were y'all planning to do? What
4 were you planning to get or do?

5 A. A car and some money.

6 Q. A car and some money?

7 A. Yes.

8 Q. You were going to rob somebody for a car and then go
9 out and rob someone else?

10 A. Yes, sir.

11 Q. All right. Did y'all have someone in mind that you
12 were going to rob, or were you just going to go out and see
13 what you could find?

14 A. Basically we just going out.

15 Q. All right. Did you have a gun?

16 A. Yes, sir.

17 Q. Who did you get the gun from?

18 A. Shaundrecus.

19 Q. What kind of gun was it.

20 A. .22.

21 MR. MOYER: At this time I would move to have
22 State's Exhibit No. 25 moved into evidence, subject to Rule
23 104, relevance being further established later.

24 MR. SULLIVAN: Without objection.

25 THE COURT: All right, without objection.

1 MR. MOYER: Your Honor, it is --

2 THE COURT: It's a weapon?

3 MR. MOYER: It is a weapon and it has been secured
4 by courtroom security.

5 THE COURT: Mr. Foreman, ladies and gentlemen, let
6 me inform you that any weapons that are introduced into
7 evidence in any trial have been disabled and checked by an
8 expert in weapons. And this one, I have been assured by the
9 officer, has been disabled in all manners and cannot go off,
10 and it has been no ammunition in it either.

11 MR. MOYER: That's correct.

12 THE COURT: Thank you, sir.

13 BY MR. MOYER:

14 Q. Do you recognize State's Exhibit No. 25?

15 A. Yes, sir.

16 Q. Is that the pistol that was given to you?

17 A. Yes, sir.

18 Q. Okay.

19 MR. MOYER: I would include with that, Your Honor,
20 State's Exhibit No. 31, which is the clip.

21 MR. SULLIVAN: No objection.

22 THE COURT: Without objection.

23 BY MR. MOYER:

24 Q. Do you recognize State's Exhibit No. 31?

25 A. Yes.

(1 Q. Is that the clip that goes in that pistol?
2 A. Yes.
3 Q. Was the clip in that pistol when you got it?
4 A. Yes, sir.
5 Q. It was loaded?
6 A. Yes, sir.
7 Q. All right. Now, do you remember seeing a rifle there
8 in the apartment as well?
9 A. Yes, sir.
10 Q. Whose rifle was that?
11 A. Shaun's.
12 Q. Was there any talk going on about the rifle?
13 A. Yes, sir.
14 Q. What were they talking about?
15 A. Going to sell it.
16 Q. Who was talking about selling it?
17 A. Albert Kelly.
18 Q. Albert Kelly and Shaun?
19 A. Yes, sir.
20 Q. And they talked about where they were going to sell it
21 or what they were going to do with it?
22 A. They say -- Albert Kelly said he was going to take it
23 to Georgia and sell it.
24 Q. All right. Now, were there any other firearms in the
(25 house, any other pistols?

1 A. Yes, sir.

2 Q. And who else had a pistol?

3 A. Albert Kelly.

4 Q. Okay. What kind of pistol was that?

5 A. .380 Highpoint.

6 Q. Would you recognize that if you saw it?

7 A. Yes, sir.

8 MR. MOYER: At this time, we would move State's
9 Exhibit No. 18 moved into evidence.

10 MR. SULLIVAN: No objection, Your Honor.

11 THE COURT: Without objection, Exhibit 18.

12 BY MR. MOYER:

13 Q. Let me show you State's Exhibit No. 18. Do you
14 recognize that?

15 A. Yes, sir.

16 Q. And do you recognize that as the pistol that Albert
17 Kelly had?

18 A. Yes, sir.

19 Q. Did he have it when he first came over there that day?

20 A. Yes, sir.

21 Q. I'm sorry?

22 A. Yes, sir.

23 Q. So you saw it before you two actually went out there
24 with the pistol?

25 A. Yes, sir.

1 Q. Did he have it out inside the apartment at any time?

2 A. Yes, sir.

3 Q. Had you ever seen that pistol before that day?

4 A. No, sir.

5 Q. Now -- all right. So you and Albert Kelly then
6 leave --

7 A. Yes.

8 Q. -- Shaun's apartment?

9 A. Yes, sir.

10 Q. Did Shaun go with you?

11 A. No, sir.

12 Q. Was this pretty late?

13 A. Yes, sir.

14 Q. Do you have any idea what time it was?

15 A. Around 12:30.

16 Q. And when y'all left the apartment, you said Shaun did
17 not go with you?

18 A. No, sir.

19 Q. Why did he not go with you?

20 A. He said he was sick.

21 Q. All right. Well, where did you and Albert Kelly go?

22 A. We went down to the trailer park.

23 Q. Let me ask you if you can step down and take a look at
24 this map.

25 (Witness off the witness stand)

1 BY MR. MOYER:

2 Q. Now, is this the apartments, Drummond Court, where
3 y'all started out?

4 A. Yes, sir.

5 Q. Speak up.

6 A. Yes, sir.

7 Q. And is that apartment C where Shaundrecus Edwards
8 lived?

9 A. Yes.

10 Q. And apartment B was up here where you lived?

11 A. Yes, sir.

12 Q. And is the trailer park where y'all went, is that shown
13 on this picture?

14 A. Yes, sir.

15 Q. Down here?

16 A. Yes, sir.

17 Q. And do you remember how you two walked to get down
18 there?

19 A. Yes, sir.

20 Q. Can you -- are you able to show it?

21 A. Walked straight down Donaldson Avenue.

22 Q. Walked down this avenue here, Donaldson?

23 A. Yes, sir.

24 Q. And you came into the --

25 A. Yes, sir.

1 Q. All right. Please have a seat again.

2 (Witness back on the witness stand)

3 BY MR. MOYER:

4 Q. When you got down to the trailer park, did y'all see
5 somebody to rob?

6 A. Yes, sir.

7 Q. Tell me what he was doing.

8 A. He was standing outside his trailer.

9 Q. What was he doing outside the trailer?

10 A. He was knocking on the side of the trailer trying to
11 get someone's attention.

12 Q. Did he have anything on him, or on his hand, or
13 anything with him?

14 A. Yes, sir, a beer.

15 Q. All right. And do you remember a vehicle there?

16 A. Yes, sir.

17 Q. Do you remember whether it was running or not?

18 A. Yes, sir.

19 Q. Do you remember if the radio was on?

20 A. Yes, sir.

21 Q. So it was running and the radio was on?

22 A. Yes, sir.

23 Q. All right. Did y'all approach this man?

24 A. Yes, sir.

25 Q. Did anybody say anything to this man who was standing

1 out in front of the trailer?

2 A. Yes, sir.

3 Q. Who said something?

4 A. Albert Kelly.

5 Q. What did he say?

6 A. He said "hey, amigo, what's up?"

7 Q. So the man was Spanish then, you could tell?

8 A. Yes.

9 Q. Did you know him?

10 A. No, sir.

11 Q. Did Albert Kelly then say anything else to the man?

12 A. Yes, sir.

13 Q. What did he say?

14 A. Told him to put his hands up.

15 Q. Did he have his gun out?

16 A. Yes.

17 Q. Was he pointing it at him?

18 A. Yes.

19 Q. You had gun out too?

20 A. Yes, sir.

21 Q. What did the man do when Albert Kelly told him?

22 A. He reached for -- he had put his hands up and then he
23 reached like he was reaching for a gun.

24 Q. What did Albert Kelly do when he did that?

25 A. Told him to keep his hands up. Then he threw him to

1 the ground.

2 Q. Okay. Was he on his stomach or was he on his back?

3 A. He was on his stomach.

4 Q. What did Albert Kelly do when he threw the man to the
5 ground?

6 A. He started patting him down.

7 Q. And you were standing pretty close to him, weren't you?

8 A. Yes, sir.

9 Q. What happened when the man was on the ground?

10 A. The guy reached for like he was reaching for a weapon
11 again and that's when Albert Kelly shot him.

12 Q. Could you tell where he shot him?

13 A. No, sir.

14 Q. Was Albert Kelly on top of him during that time?

15 A. Yes, sir.

16 Q. Was he saying anything to him?

17 A. No, sir.

18 Q. Does Albert Kelly have a nickname?

19 A. Yes, sir.

20 Q. What is that?

21 A. A.K..

22 Q. His initials.

23 Now, after he shot him, could you tell where the man
24 had been hit?

25 A. No, sir.

- 1 Q. Could you tell that whether he had been hit or not?
- 2 A. Yes, sir.
- 3 Q. How could you tell?
- 4 A. He was bleeding.
- 5 Q. Where did you see blood?
- 6 A. I just -- I can't remember.
- 7 Q. Did he move after he was shot?
- 8 A. Yes, sir.
- 9 Q. How did he move?
- 10 A. He turned over on his back.
- 11 Q. So when you left him, was he lying on his back?
- 12 A. Yes, sir.
- 13 Q. All right. What did A.K. do after he shot him?
- 14 A. He ran. We both ran.
- 15 Q. You both ran?
- 16 A. Yes, sir.
- 17 Q. Where did you go?
- 18 A. Went back to -- went to his house first, and then we
- 19 ran to Shaun's house.
- 20 Q. So you went back to Drummond Village?
- 21 A. Yes.
- 22 Q. Did you run back around the main road like you came in,
- 23 or did you take a shortcut?
- 24 A. Took a shortcut.
- 25 Q. Ran up through this way?

1 A. Yes, sir.

2 Q. Did you go in Albert Kelly's house?

3 A. No, sir.

4 Q. You just stopped there?

5 A. Yes, sir.

6 Q. You just sort of ran by it and just stopped for a
7 minute?

8 A. Yes, sir.

9 Q. Did y'all talk about what you were doing there?

10 A. No, sir.

11 Q. Were you expecting to go inside?

12 A. Yes, sir.

13 Q. Do you know why y'all didn't go inside?

14 A. No, sir.

15 Q. Do you know if Albert Kelly's mom was at home at that
16 time?

17 A. I think she was.

18 Q. Okay. So where did you go? You then went back to
19 Shaun's house?

20 A. Yes, sir.

21 Q. Was Shaun there when you got there?

22 A. Yes, sir.

23 Q. Did y'all tell Shaun what had just happened?

24 A. No, sir.

25 Q. Did you talk about whether you should tell Shaun or

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1 not?

2 A. Yes, sir.

3 Q. What did A.K. say about -- Albert Kelly say about

4 whether you should tell Shaun?

5 A. He said not to tell Shaun.

6 Q. Did he say why not to tell Shaun?

7 A. Because Shaun would tell and he didn't want to have to

8 kill Shaun.

9 Q. Did y'all talk about telling anybody else, tell anybody

10 at all?

11 A. No, sir.

12 Q. All right. So you remember Shaun was at home. Do you

13 remember his mom being there too?

14 A. Yes, sir.

15 Q. Did his mom want y'all to be there?

16 A. No, sir.

17 Q. And did she eventually tell y'all to leave?

18 A. Yes, sir.

19 Q. That was a couple hours later?

20 A. Yes, sir.

21 Q. A good while later.

22 So y'all stayed there for awhile. What did you do with

23 that .22 pistol?

24 A. I gave it back to Shaun.

25 Q. Do you see what Shaun did with it?

1 A. No, sir.

2 Q. Did he keep it out there?

3 Well, where were y'all sitting in the house?

4 A. I was sitting in the chair.

5 Q. Well, I'm talking about what room in the house? In the

6 living room?

7 A. Living room.

8 Q. Did he keep that .22 pistol there in the living room,

9 or did he take it to another room?

10 A. I think he took it to his room.

11 Q. Okay. And you say that y'all didn't tell Shaun what

12 happened?

13 A. No, sir.

14 Q. Did you ever tell him?

15 A. No, sir.

16 Q. At some point after y'all got arrested, did you ever

17 tell him?

18 A. Yes, sir.

19 Q. That was back -- was that at the Greer Police

20 Department?

21 A. No, sir.

22 Q. It was when you got into the Greenville County jail?

23 A. Yes, sir.

24 Q. And that was -- was that the first chance that you had

25 to be alone with him and tell him what happened?

1 A. Yes, sir.

2 Q. All right. Do you know if A.K. stole anything or not?

3 A. No, sir.

4 Q. So you didn't -- you didn't see the wallet with money?

5 A. No, sir.

6 Q. And you didn't get any of the wallet with the money?

7 A. No, sir.

8 Q. All right. Now, when y'all were inside Shaun's house,

9 what did he do with his pistol?

10 A. He wiped it down, took the bullets out of it.

11 Q. What do you mean by wiped it down?

12 A. He wiped it down with a bandana. He took the bullets

13 out of the gun, put it in a bandana -- stocking cap and

14 placed it under the shelf, under the couch.

15 Q. Placed it under a couch?

16 A. Yes.

17 Q. Was Shaundrecus in the room when he did that?

18 A. No, sir.

19 Q. Now, do you know why he was wiping the gun down?

20 A. I'm not sure. I guess -- I'm not sure.

21 Q. Okay. Was he wearing gloves during this incident?

22 A. Yes, sir.

23 Q. Did he do anything with the bullets when he took them

24 out?

25 A. Yes, sir.

1 Q. What did he do with the bullets?

2 A. Placed the bullets at when he was back in the room, in
3 the cartridge.

4 Q. In the box.

5 All right. So the gun was unloaded then? The clip was
6 unloaded when he put it in the hat?

7 A. Yes, sir.

8 Q. Now, what kind of coat was Albert Kelly wearing during
9 this robbery and this murder?

10 A. Atlanta coat.

11 Q. I'm sorry?

12 A. Atlanta Braves coat.

13 Q. Atlanta Braves coat.

14 Was it his or was it somebody else that let him use it?

15 A. It was Shaun's.

16 Q. What kind of coat did he have on that night when he
17 came over, do you remember?

18 A. A leather coat with an fur collar.

19 Q. Do you remember the weather being snowing and real wet?

20 A. Yes, sir.

21 Q. What kind of coat were you wearing?

22 A. Tommy Hilfiger coat and a blue sweatshirt coat.

23 Q. Now, y'all stayed there for a little while and you said
24 Shaun's mother wanted y'all to leave?

25 A. Yes, sir.

1 Q. And y'all left?

2 A. Yes, sir.

3 Q. Just you and Albert Kelly?

4 A. Yes, sir.

5 Q. And where did you go?

6 A. I went home. I don't know where he went.

7 Q. Okay. Did you see what direction he headed in?

8 A. No, sir.

9 Q. So you went home. Did you ever go back to Shaun's
10 house?

11 A. Yes, sir.

12 Q. And was it a while later?

13 A. Yes, sir.

14 Q. Yes, sir?

15 A. Yes, sir.

16 Q. Okay. And when you were going over there, did you see
17 police there?

18 A. Yes, sir.

19 Q. But you went in -- you saw police in his house?

20 A. Yes, sir.

21 Q. Was the door open?

22 A. Yes, sir.

23 Q. And so you went into the house anyway?

24 A. Yes, sir.

25 Q. And why did you go in there?

1 A. Because I seen the police at Shaun's house, I didn't
2 really -- I didn't want him to get in trouble for nothing he
3 ain't did.

4 Q. And did you know whether or not Shaun was aware of
5 where that .380 pistol was?

6 A. No, sir.

7 Q. And so you wanted to make sure that -- were you going
8 to try to tip him off where it was, if you get a chance?

9 A. Yes, sir.

10 Q. Did you have a chance to tip him off?

11 A. No, sir.

12 Q. When you got over there, did you ever have a chance to
13 be alone with him?

14 A. No, sir.

15 Q. The police were there the whole time?

16 A. Yes, sir.

17 Q. And did you ever have a chance to tell him why you were
18 there together or what happened?

19 A. No, sir.

20 Q. And then they -- you were there for awhile and they
21 took you back to the police station?

22 A. Yes, sir.

23 Q. And they never left you and Shaun alone?

24 A. No, sir.

25 Q. And you went back to the police station and you had a

1 conversation with Greer police officers?

2 A. Yes, sir.

3 Q. And then y'all were separate when they did that?

4 A. Yes, sir.

5 Q. All right. Now, when you talked to the police, did you
6 tell them about Albert Kelly and Shaundrecus Edwards and how
7 they were involved?

8 A. Yes, sir.

9 Q. And this was the same morning that you were arrested
10 there at Shaun's house and taken back to the law enforcement
11 center?

12 A. Yes, sir.

13 Q. To the Greer Police Department?

14 A. Yes, sir.

15 Q. And did you tell them who went with you for that
16 robbery when it took place?

17 A. Yes, sir.

18 Q. And who did you tell them went with you?

19 A. Albert Kelly.

20 Q. And you told them that y'all went out there for the
21 purpose of committing a robbery?

22 A. Yes, sir.

23 Q. Did you tell them who shot the victim?

24 A. Yes, sir.

25 Q. Who did you tell them?

1 A. Albert Kelly.

2 Q. Did you tell them what Shaun was doing before and after
3 the robbery?

4 A. Yes, sir.

5 Q. Did you tell them what Shaun was doing while you and
6 A.K. left to do the robbery?

7 A. Yes, sir.

8 Q. Did you ever tell them --

9 Let me ask you this. If Shaun had been the one who had
10 done this, had gone with you, would you have told the police
11 that?

12 A. Yes, sir.

13 Q. In fact, you did tell the police that Shaun had given
14 you the .22 pistol?

15 A. Yes, sir.

16 Q. And you told them that Shaun was talking about doing a
17 robbery too?

18 A. Yes, sir.

19 Q. Now, you are serving a sentence right now, right?

20 A. Yes, sir.

21 Q. And what is your sentence?

22 A. 35 years.

23 Q. And that's 35 years with no parole?

24 A. Yes, sir.

25 Q. And that is for what -- you know what charges it's for?

1 A. Yes, sir.

2 Q. What charges?

3 A. I got 30 years on murder and five years for possession
4 of a weapon.

5 Q. Okay. And you have also been -- you have also pled
6 guilty to the armed robbery charge? You still have to be
7 sentenced on the armed robbery charge?

8 A. Yes, sir.

9 Q. Okay. All right. Please answer any questions that the
10 defendant may have.

11 CROSS EXAMINATION BY MR. SULLIVAN:

12 Q. Mr. Parks, you say that you are doing on the murder
13 charge you got 30 years?

14 A. Yes, sir.

15 Q. Did your lawyer tell you that you could have gotten
16 life without parole?

17 A. Yes, sir.

18 Q. So you got low end of that charge, is that correct?

19 A. Yes, sir.

20 Q. During that day -- it was a snowy day all day, right,
21 bad weather?

22 A. Yes, sir.

23 Q. To your knowledge, was the only gun fired that day the
24 .380 that night?

25 A. Yes, sir.

1 Q. Now, prior to you and what you say is Albert leaving,
2 how long were y'all in the apartment there?

3 A. Basically on and off all day.

4 Q. All right. Prior to y'all leaving the apartment, did
5 Shaun, did he disappear for any length of time during that
6 period of time?

7 A. No, sir.

8 Q. So you were with Shaun pretty much all day until you
9 and Albert, according to you, left to do this robbery?

10 A. Yes, sir.

11 Q. Do you know -- were you with him when he went to
12 somebody's house to get a hamburger?

13 A. No, sir.

14 Q. So you were with him all day and you never saw him go
15 somewhere and get a hamburger?

16 A. He never did go get no hamburger.

17 Q. How long were you guys gone? From the time -- let's
18 say believing your story, you and Albert left, how long were
19 you gone before you ran back to Shaun's?

20 A. 15 minutes.

21 Q. 15 minutes?

22 A. Yes.

23 Q. And your prior -- you have given a statement and prior
24 sworn testimony. You did not say which way you went back to
25 Shaun's in that testimony. Do you recall that?

1 A. Yes, sir.

2 Q. You just said that y'all left and ran back, correct?

3 A. Yes, sir.

4 Q. To your knowledge, do you know if the police followed
5 some tracks from the murder scene to Leon Irby's house? Do
6 you know that?

7 A. No, sir.

8 Q. And so you Albert, according to you, had on an Atlanta
9 Braves jacket?

10 A. Yes.

11 Q. Red and blue?

12 A. Yes, sir.

13 Q. That belonged to Shaun?

14 A. Yes, sir.

15 Q. And when he got back, he left that. He took it off and
16 left it at Shaun's?

17 A. Yes, sir.

18 Q. So it was there when the police got there?

19 A. Yes, sir.

20 Q. Okay. And, to your knowledge, this thing happened so
21 fast that nothing was taken from the victim, Mr. Delgado --

22 A. No, sir.

23 Q. -- as far as you know?

24 A. No, sir. As far as I know, no, sir.

25 Q. You did not take a wallet and put it in the drain and

1 took a broom and stuff it down the drain with a broomstick?

2 A. No, sir.

3 Q. You did not do that?

4 MR. SULLIVAN: One second, Your Honor.

5 (Off the record)

6 (Back on the record)

7 BY MR. SULLIVAN:

8 Q. This Toni Glenn that came over, how long did she stay?

9 A. About 30 minutes.

10 Q. And you never saw her again the rest of the day?

11 A. No, sir.

12 Q. So from about noon on you were with Shaun pretty much

13 until you left to do the robbery, and then you were gone not
14 more than 15 minutes?

15 A. Yes, sir.

16 Q. And the only gun fired that night was that .380?

17 A. Yes, sir.

18 MR. SULLIVAN: I have nothing further, Your Honor.

19 MR. MOYER: Nothing further.

20 THE COURT: Redirect?

21 MR. MOYER: No, sir.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 MR. MOYER: Call Shaundrecus Edwards.

25 SHAUNDRECUS EDWARDS, having been first duly sworn,

1 testified as follows:

2 THE CLERK: State your name for record.

3 THE WITNESS: Shaundrecus Edwards.

4 DIRECT EXAMINATION BY MR. MOYER:

5 Q. How old are you?

6 A. 27.

7 Q. Where did you live on February the 27th, 2004, the day
8 you got arrested?

9 A. [REDACTED]

10 Q. [REDACTED]?

11 A. [REDACTED]

12 Q. If you would, speak into that microphone a little bit.
13 What apartment do you live in?

14 A. [REDACTED]

15 Q. That's Drummond Village?

16 A. Drummond Village.

17 Q. How long did you live there?

18 A. Off and on about seven, eight years.

19 Q. Who did you live there with?

20 A. My mom.

21 Q. All right. Now, you are in Kirkland Correctional
22 Institution right now, right?

23 A. Yes, sir.

24 Q. And you were sentenced for accessory after the fact of
25 a felony A, B, C, or murder, is that right?

1 A. Yes, sir.

2 Q. And you were sentenced to 15 years?

3 A. 15 years.

4 Q. And you have also pled guilty and still have to be
5 sentenced on the charge of accessory before the fact to
6 armed robbery, right?

7 A. Yes, sir.

8 Q. All right. And you know that you are facing 10 to 30
9 years on that, is that right?

10 A. Yes, sir.

11 Q. Now, do you know Marcus Parks?

12 A. Yes, sir.

13 Q. He stayed next door to you in Drummond Village with his
14 girlfriend?

15 A. Yes, sir.

16 Q. And that was in apartment [REDACTED]?

17 A. Yes, sir.

18 Q. Did you also know Albert Kelly?

19 A. Yes.

20 Q. Back in February, back when this incident occurred,
21 what name did you know him by?

22 A. Just A.K..

23 Q. You didn't know his real name?

24 A. No, sir.

25 Q. And so you had just known him for a month or so?

1 A. So to speak.

2 Q. Now, let me ask you about the day that you were
3 arrested, February 27th, 2004. Did you see Marcus Parks and
4 Albert Kelly on that day?

5 A. Yes, sir.

6 Q. Did you spend time with him a good part of that day?

7 A. Yes, sir.

8 Q. And y'all just hung out together, talking, drinking
9 doing some stuff like that?

10 A. Yes, sir.

11 Q. All right. Now, is it true that on occasion one or two
12 of y'all would sometimes wander off and come back? Did that
13 sort of thing happen somewhat throughout the day?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes, sir.

17 Q. And y'all got together about the middle of the day on
18 February 26th?

19 A. I would say around -- somewhere around in the evening.
20 I don't know what time it was.

21 Q. In the afternoon?

22 A. In the afternoon, yeah.

23 Q. All right. Do you remember what the weather was like
24 that day?

25 A. It was real cold before it started snowing.

1 Q. And then it started snowing that evening?

2 A. Yes, sir.

3 Q. All right. Did you let anyone borrow a jacket of
4 yours?

5 A. I let Albert Kelly borrow a jacket of mine.

6 Q. What kind of jacket?

7 A. It was an Atlanta Braves jacket.

8 Q. Why did you let him use that jacket?

9 A. Because he had a jacket that I was supposed to buy from
10 him. It was like a tan with like sheep wool lining on the
11 inside I was supposed to buy from him. We walked to the
12 store. I didn't want him to mess up the jacket before I
13 bought the jacket. I let him use my jacket.

14 Q. Why were you afraid it would mess up the jacket?

15 A. It was just like tan, and it was like a patent leather.

16 Q. Like suede?

17 A. Like suede, something like that.

18 Q. And it was snowing and raining or whatnot?

19 A. Snowing and raining. Sleeting, really at the time.

20 Q. And y'all were concerned that it would mess up the
21 jacket?

22 A. Yes, sir.

23 Q. All right. Now, you went over to a neighbor's house at
24 one point, right, Leon Irby?

25 A. Uh-huh.

1 Q. Who went there with you?

2 A. Me and Marcus Parks.

3 Q. Did Albert Kelly go with you?

4 A. No, sir.

5 Q. Where did he go?

6 A. He went to a trailer court.

7 Q. He went walking over to the -- are you talking about
8 the trailer -- can you see that map right there?

9 A. A little.

10 Q. Okay. If this is Drummond Village up here, was he
11 walking down towards the trailer park in the bottom
12 right-hand corner?

13 A. Uh-huh, yes, sir.

14 Q. All right. Then you and Shaun went in Leon Irby's
15 house?

16 A. Uh-huh.

17 Q. And y'all got something to drink there, some liquor and
18 so forth?

19 A. Yes, sir.

20 Q. Y'all took it back to your place?

21 A. Uh-huh.

22 Q. All right. Well, did you see -- do you remember around
23 what time that was? I know it's been a long time, but was
24 it before this incident, this robbery and murder took place?

25 A. It was before that.

- 1 Q. Before they left to go do that?
- 2 A. Uh-huh.
- 3 Q. Now, how long did y'all stay there?
- 4 A. About a good 15, maybe 20 minutes.
- 5 Q. At Leon Irby's house?
- 6 A. Uh-huh.
- 7 Q. Then you guys went back -- you went to your house?
- 8 A. Right.
- 9 Q. Did you see Albert Kelly?
- 10 A. We was trying to avoid him, but, yeah, we ran into him.
- 11 Q. Did he come back there to your house?
- 12 A. Yes, sir.
- 13 Q. Now, sometime that evening did a neighbor came by and
- 14 visit you?
- 15 A. Yeah, my big sister Toni.
- 16 Q. You call her sister. Is she really a sister?
- 17 A. Yeah, we are like family.
- 18 Q. But, I mean, she's not a blood sister?
- 19 A. No, not blood sister.
- 20 Q. Where did she live?
- 21 A. [REDACTED].
- 22 Q. Okay. And she hung out with y'all there for awhile?
- 23 A. Yes, sir.
- 24 Q. Now, you also spent a good bit of time on the telephone
- 25 that night, is that right?

1 A. Yes.

2 Q. And you were talking to girls?

3 A. Uh-huh.

4 Q. Who is Trina Whirley?

5 A. My ex-girlfriend.

6 Q. Were you talking to her that night?

7 A. Yes, sir.

8 Q. You made several calls back and forth with her?

9 A. Yes, sir.

10 Q. Do you remember her phone number?

11 A. Not directly offhand.

12 Q. Does the number 350-3424 ring a bell?

13 A. That's it.

14 Q. Is that her phone number?

15 A. I think so, if I remember. I hadn't talked to her in
16 over -- about almost two years.

17 Q. Okay. Now, what was your phone number at the time?

18 A. 801-3440.

19 Q. 3440.

20 All right. Now, do you recognize the number 422-0367?

21 A. Yes, sir.

22 Q. And whose phone number was that?

23 A. Tamika Thompson.

24 Q. And was she a girl that you were seeing at the time
25 too?

- 1 A. Yes, sir.
- 2 Q. Were you speaking to her that night too?
- 3 A. Yes, sir.
- 4 Q. And y'all were calling each other back and forth?
- 5 A. All night.
- 6 Q. Now, y'all had been talking about doing a robbery that
- 7 day?
- 8 A. Yes, sir.
- 9 Q. You and A.K. and Marcus, is that right?
- 10 A. Yes, sir.
- 11 Q. Did you go with them?
- 12 A. No, sir.
- 13 Q. Why not?
- 14 A. Drunk.
- 15 Q. You got -- you drank too much?
- 16 A. Uh-huh.
- 17 Q. Did you get sick?
- 18 A. Yes, sir.
- 19 Q. All right. Did you own a firearm?
- 20 A. I had a .22 and an SKS rifle.
- 21 Q. Did you have that rifle out that night?
- 22 A. Yes, sir.
- 23 Q. Were you showing it around?
- 24 A. Uh-huh.
- 25 Q. Were you trying to load it and trying to put a clip in

158

1 it?

2 A. I had bought a clip earlier for the gun. I was trying
3 to work the clip into the gun, but it wouldn't fit.

4 Q. And you were showing it to Marcus and A.K.?

5 A. Yes, sir.

6 Q. And you were trying to fit it in, but you couldn't make
7 it fit in?

8 A. Yes, sir.

9 Q. All right. And you said that you also -- you own a .22
10 pistol?

11 A. Uh-huh.

12 Q. Let me show you what's marked State's Exhibit No. 15.
13 I'm sorry, 25. Is that the pistol that you owned?

14 A. Yes, sir.

15 Q. And it had a clip?

16 A. Uh-huh.

17 Q. It was loaded?

18 A. Eight or ten bullets.

19 Q. I'm sorry?

20 A. It was eight or ten bullets in it.

21 Q. And who did you give that pistol to?

22 A. Marcus Parks.

23 Q. Did anyone else have a firearm?

24 A. Albert Kelly.

25 Q. What kind of firearm did he have?

1 A. .380 Highpoint.

2 Q. What did that look like?

3 A. Black and gray.

4 Q. State's Exhibit No. 18 you have seen. Do you recognize
5 that?

6 A. Yes, sir.

7 Q. Is that the pistol that Albert Kelly had?

8 A. Yes, sir.

9 Q. All right. Did Albert Kelly and Marcus Parks leave
10 your apartment?

11 A. Yes, sir.

12 Q. Do you remember what time they left, around what time?

13 A. I would say around 10:30 or 11:00. Might have been
14 later.

15 Q. Might have been later?

16 A. Uh-huh.

17 Q. So it's been a while?

18 A. It was awhile.

19 Q. And you have a hard to remember exactly what time?

20 A. Uh-huh.

21 Q. When they left, did they have guns?

22 A. Uh-huh.

23 Q. Guns loaded?

24 A. Uh-huh.

25 Q. And you knew what they were heading off to do with

1 them?

2 A. Uh-huh.

3 Q. Now, while you were gone -- while they were gone after
4 they left, did you stay in your house the whole time, or did
5 you leave at all?

6 A. I went to my neighbor's house.

7 Q. Who is your neighbor?

8 A. Toni Glenn.

9 Q. And how far away did she live from you?

10 A. A couple steps.

11 Q. Okay. Just in the same building?

12 A. Same building, couple steps.

13 Q. All right. A couple doors down?

14 A. Uh-huh.

15 Q. And this is the same young lady who was over at your
16 place earlier that day?

17 A. Yes, sir.

18 Q. Did you -- did you tell her where --

19 Well, let me ask you this first. When she came over
20 the first time, was A.K. and Marcus there?

21 A. Yes, sir.

22 Q. When you went back over there, was it just you, or did
23 anyone go with you?

24 A. I went over back where?

25 Q. When you went over to Toni Glenn's apartment.

1 A. When I went over there it was just me.

2 Q. And Albert Kelly and Marcus had left with the guns?

3 A. Yeah, they were gone.

4 Q. They were gone.

5 So you went over there. Did they ask -- did you tell

6 Toni Glenn where A.K. and --

7 A. (Shaking head no)

8 Q. You don't remember?

9 A. No, sir.

10 Q. Now, did your mother --

11 Now, while you were over there -- what did you do while
12 you were over there at Toni Glenn's place?

13 A. Eat. Her mom fixed me a plate.

14 Q. Her mom did?

15 A. Yes.

16 Q. What did she fix you?

17 A. Hamburger and french fries.

18 Q. So she fixed it and you ate it over there?

19 A. Yes.

20 Q. And then you went back home?

21 A. Uh-huh.

22 Q. Now, did your mom come home?

23 A. It was around about twelve.

24 Q. Now, your mom had been -- she had been away a good part
25 of that day?

1 A. Uh-huh.

2 Q. You got -- yes?

3 A. Down to my grandmomma's house.

4 Q. Okay. So she got home and you were coming back from
5 Toni Glenn's when she got home?

6 A. I was the only way she could get in.

7 Q. I'm sorry?

8 A. I was the only person that had a key to the house at
9 the time.

10 Q. You had to let her in?

11 A. Yes.

12 Q. Did you let her in?

13 A. Yes, sir.

14 Q. And you had to come -- you had to step over from Toni
15 Glenn's to do that?

16 A. Yes, sir.

17 Q. When she got there, did you stay there then at your
18 place?

19 A. Yes, sir.

20 Q. Now, did Marcus Parks and Albert Kelly come back to
21 your house, your apartment?

22 A. Probably about -- about -- I'm going to say one. About
23 one o'clock, 1:15, somewhere's around there.

24 Q. And did you let them back in the house?

25 A. Yes, sir.

1 Q. Did they tell you what they had been doing?

2 A. No, sir.

3 Q. Did you get your pistol back?

4 A. Yes, sir.

5 Q. And you got it back from whom?

6 A. Marcus.

7 Q. What did you do with it?

8 A. Took the clip out of it. Put the clip back in it and
9 took it in my room. Put it up under the bed.

10 Q. Did you see Albert Kelly with his pistol?

11 A. Yes, sir.

12 Q. What was he doing with it?

13 A. He was -- I thought he was playing with it, but he was
14 wiping it off.

15 Q. And did you ever see what he did with it?

16 A. No, I don't see what he did with it.

17 Q. Did you leave the room?

18 A. I went -- my momma called me down the hallway for some
19 soda and cigarette. When I brought her the soda and
20 cigarette, she told me it was time for them to leave. She
21 wanted them to leave because she had a funny feeling about
22 A.K., so I came back up the hallway. And when I came back
23 up the hallway, I told them that it was time for them to
24 leave. So momma came up the hallway behind me and told them
25 the same thing, so they left.

1 Q. Okay. When you came back from being with your mom, did
2 you see the pistol?

3 A. What pistol?

4 Q. A.K.'s pistol.

5 A. Uh-uh.

6 Q. Did you -- what did you assume he had done with it?

7 A. I thought he kept it with him.

8 Q. I'm sorry?

9 A. I thought he kept it with him.

10 Q. Okay. You got your jacket back from A.K.?

11 A. Yes, sir.

12 Q. And he took his brown coat?

13 A. Yes, sir.

14 Q. The one that was wool?

15 A. Yes.

16 Q. He left with that?

17 A. Yes, sir.

18 Q. All right. After A.K. and Marcus left, did the police
19 show up?

20 A. About two or three minutes after.

21 Q. All right. Now, where was your rifle when the police
22 showed up?

23 A. It was on my bed.

24 Q. Okay.

25 A. It was up under the -- well, I was trying to hide it

1 from my momma.

2 Q. And were you -- were you actually attending to the
3 rifle when they showed up?

4 A. Yeah.

5 Q. What were you doing?

6 A. Still trying to see how to get the clip in it.

7 Q. Okay. Are you right-handed or left-handed?

8 A. Right-handed.

9 Q. Now, when the police were there, did Marcus Parks come
10 back to your apartment?

11 A. Yes, sir.

12 Q. Did you think that was strange?

13 A. Yeah. Very strange.

14 Q. Was he ever alone with you after the police showed up
15 there?

16 A. Wasn't really alone until we was in the police station.

17 Q. The police were with you at all times?

18 A. Uh-huh.

19 Q. And so did he ever have a chance to tell you what
20 happened?

21 A. No, sir. Not until after we was charged.

22 Q. Not until after y'all were charged?

23 A. Yes.

24 Q. While he was sitting in your apartment when the police
25 were there, did you notice anything, any looks about him, or

1 was he doing anything?

2 A. Yeah, he was scared. He wasn't acting like himself.

3 He was sweating bullets.

4 Q. And when the police were there, was he doing any --

5 A. This was before the police came, when they were sitting
6 in my house, he was acting strange.

7 Q. Okay. Now I'm talking about when he came back when the
8 police were. There was he --

9 A. Yeah, he was trying to make gestures with his head and
10 his eyes and tell me that the gun was up under my couch, but
11 I didn't know what he was talking about, because I was
12 getting mad because he wouldn't say what was wrong with him.

13 Q. So did he give you any idea what he was doing or what
14 he meant with these movements?

15 A. No.

16 Q. And you went back to the Greer police station with the
17 officers, right?

18 A. Uh-huh.

19 Q. And did you tell them about Marcus and Albert being
20 there?

21 A. Uh-huh.

22 Q. And about the guns?

23 A. (Shaking head yes)

24 Q. Did you tell them about -- talk about the robbery?

25 A. Uh-huh.

- 1 Q. And you told them about the guns and what you knew was
- 2 going on?
- 3 A. Yes.
- 4 Q. All right. Please answer any questions the defense may
- 5 have.
- 6 CROSS EXAMINATION BY MR. SULLIVAN:
- 7 Q. Let's back up. Don't you cut hair?
- 8 A. Uh-huh.
- 9 Q. That's how you kind of make extra money?
- 10 A. Yes.
- 11 Q. And you in the past had cut hair?
- 12 A. Yes, sir.
- 13 Q. As far as A.K., you knew him?
- 14 A. Yes.
- 15 Q. You weren't afraid of him, were you?
- 16 A. (Shaking head no)
- 17 Q. He would usually come to your apartment and cut his
- 18 hair and y'all hung out together all day?
- 19 A. I only cut it one time.
- 20 Q. What?
- 21 A. I only cut his hair one time.
- 22 Q. Now, when you went to Leon Irby's, you say that you
- 23 stayed there 15 to 20 minutes?
- 24 A. Uh-huh.
- 25 Q. Now, you have given prior sworn testimony about this

1 matter. You never mentioned going to Toni's house and
2 having her mother fix you food?

3 A. Because nobody asked me about it.

4 Q. How long did that take?

5 A. Did what take?

6 Q. Well, how long did it take? When you went to Toni's
7 house, what did you do there?

8 A. Sat down, watched TV, tripped and talked with Ms. Freda
9 and Toni.

10 Q. I can't hear you. Speak up.

11 A. I sat down, watched TV, and talked to Toni and Ms.
12 Freda while they was cooking food. As a matter of fact, I
13 ate two plates. I ate one there and I ate one -- I took one
14 home with me.

15 Q. Did they know that you were drunk?

16 A. Uh-huh.

17 Q. So how long did all this take?

18 A. I really can't put no time frame on it. I don't know.
19 I don't know.

20 Q. Was the food already being cooked, or did they start
21 cooking after you got there so they could cook extra for you
22 to eat?

23 A. Actually she had told me that they was going to cook
24 earlier, because my momma -- normally when my momma ain't at
25 home, Ms. Freda or Toni cooked for me.

2 A. Basically sometimes I just show up on my own for
3 dinner.

4 Q. So you hadn't had -- you had seen Toni earlier that day
5 but you hadn't told her that you were coming for dinner, did
6 you?

8 Q. So if they had to cook you some stuff when you showed
9 up, right?

11 Q. Did they have to add extra for you?

13 Q. But you had two hamburgers?

15 Q. Were they cooking two extra hamburgers?

16 A. They cook a lot of food every time they cook. They
17 cook every Sunday.

18 Q. Now, A.K. borrowed your jacket and put it back at your
19 house, correct?

20 A. When -- when we came back from the store he kept the
21 jacket on.

23 | A. I'm Shaun.

24 Q. I'm when -- I'm sorry, when he and Marcus came back
25 from where they had been, he left the jacket there and took

1 his with him?

2 A. Yes, sir.

3 Q. Now, you claim that the .22 was yours, correct?

4 A. Uh-huh.

5 Q. And you had given that to Marcus?

6 A. Uh-huh.

7 Q. And you had a rifle?

8 A. Uh-huh.

9 Q. And then you claim the .380 was --

10 A. Albert's.

11 Q. Albert's.

12 Let me ask you this. Do you remember anything about
13 this receipt? Can you identify that?

14 A. What's that supposed to mean?

15 Q. Well, it says ammo, .380 ammo?

16 A. Uh-huh.

17 Q. Do you remember telling the police that this receipt
18 for the .380 ammo was in your apartment?

19 A. Uh-huh.

20 Q. You do?

21 A. Uh-huh, because I was -- I was going to buy a .380?

22 Q. So you had --

23 A. I bought those bullets two days before this situation
24 even happened.

25 Q. You got on here -- so you recognize this. It says

1 Wal-Mart receipt, 2-25-04, and it's ammo. So you bought the
2 ammo two days for the .380?

3 A. Uh-huh, because I was getting ready to buy one, the
4 same thing I told the police officer. The same exact thing
5 I told the police officer.

6 Q. You told the police officer that you were buying it
7 because you were going to buy a .380?

8 A. Because I was getting ready to buy one.

9 Q. Or did you tell them that you bought the .380 for A.K.?

10 A. I ain't bought nothing from A.K..

11 Q. For A.K.?

12 A. For or from him.

13 Q. When they came back, according to you fellows, you
14 never handled that .380 then?

15 A. Never touched it.

16 Q. Never did touch it, never did handle it?

17 A. Never did touch it. That's the rule of the street,
18 man, you don't never touch nobody else's gun.

19 Q. And they found it under your sofa, though, correct?

20 A. They found it under my sofa because he placed it there.

21 Q. They found it -- that's where they found the gun, under
22 your sofa?

23 A. Yes, sir. I mean, why would I hide two guns in my room
24 and one in the living room? That doesn't make sense.

25 MR. SULLIVAN: Nothing further, Your Honor.

1 THE COURT: Any redirect?

2 MR. MOYER: No, sir, Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 MR. MOYER: The State calls Toni Glenn.

5 TONI GLENN, having been first duly sworn,
6 testified as follows:

7 THE CLERK: State your name for the record.

8 THE WITNESS: Toni Glenn.

9 DIRECT EXAMINATION BY MR. MOYER:

10 Q. How old are you, ma'am?

11 A. 31.

12 Q. Where did your mother live in February of 2004?

13 A. [REDACTED] apartment [REDACTED].

14 Q. And that's just a couple doors down from where
15 Shaundrecus lived?

16 A. Yes, sir.

17 Q. You weren't living with her, but did you used to go
18 visit here a lot?

19 A. Yes, sir.

20 Q. Now, let me take you to the night of February the 26th
21 into the 27th of 2004. Do you remember if you spent the
22 night with your mother on February 26th?

23 A. Yes, sir.

24 Q. Had you worked that day?

25 A. Yes, sir.

1 Q. About what time did you get over there to her place?

2 A. About 6:30.

3 Q. 6:30 in the evening?

4 A. Yes, sir.

5 Q. All right. And when you got over there, did you see
6 anybody?

7 A. I seen Shaun and Marcus Parks standing on the porch
8 smoking black and mild.

9 Q. Did you speak to them? Did you say hello?

10 A. Yes, sir.

11 Q. Did you spend any more time with them? Did you go over
12 to their place later that evening?

13 A. Yes, sir, after I put my stuff at my mom's house, I
14 went back over there probably around like 8:30, eight --
15 between 8:00 and 8:30.

16 Q. Okay. And Marcus and Shaun were there?

17 A. Yes, sir.

18 Q. Did anybody else come over there?

19 A. Well, about maybe 15 or 20 minutes after I was there

20 A.K. came.

21 Q. Okay. And had you ever met this person before?

22 A. No, sir.

23 Q. Ever seen him since?

24 A. No, sir.

25 Q. Do you recognize him now?

1 A. Yes, sir.

2 Q. Is he the defendant seated over there?

3 A. Yes, sir.

4 Q. And so was he introduced to you while you were there?

5 A. Yes, sir.

6 Q. What name was he introduced as?

7 A. A.K..

8 Q. Did he ever tell you his real name before?

9 A. No, sir.

10 Q. Do you remember Shaun being on the telephone some of
11 the time?

12 A. Yes, sir.

13 Q. Do you remember seeing a weapon of any kind?

14 A. Yes, sir.

15 Q. What did you see?

16 A. I'm guessing that it was a rifle.

17 Q. Okay. You don't know much about guns?

18 A. Uh-huh.

19 Q. It was real big?

20 A. Yes, sir.

21 Q. Where was it when you saw it?

22 A. Shaun had brought it into the living room and showed it
23 to Marcus and A.K..

24 Q. All right. And he was just kind of had it out and
25 messing around with it for a little while?

- 1 A. Yes, sir.
- 2 Q. And did he leave it out there in the room, or did he
- 3 ever take it back?
- 4 A. He took it back.
- 5 Q. Now, was Shaundrecus's mother there at this time?
- 6 A. Not at the time that I was there.
- 7 Q. All right. Now, after A.K. arrived, you stayed there
- 8 for a little bit longer?
- 9 A. I probably stayed there for like 20 more minutes and I
- 10 left.
- 11 Q. All right. And did you talk to them? Did you have
- 12 drinks?
- 13 A. I drunk a beer while I was there.
- 14 Q. Was everybody drinking a little bit?
- 15 A. Yes, sir.
- 16 Q. What were they -- what was being drunk?
- 17 A. Beer and liquor.
- 18 Q. All right. Now, when you left there, where did you go?
- 19 A. Back to my mom's house.
- 20 Q. What were you doing back over there that night?
- 21 A. Braiding my mom's hair.
- 22 Q. Was that a pretty -- what you were doing to her hair,
- 23 is this something that takes a while?
- 24 A. Yes.
- 25 Q. How long would it take?

1 A. Anywhere from eight to twelve hours.

2 Q. So you planned to stay up late that night?

3 A. Just until we got tired.

4 Q. All right. Did you stay up pretty late?

5 A. I was up until like probably one o'clock.

6 Q. All right. Did you see any of those guys anymore that
7 night?

8 A. Yes, sir.

9 Q. Who did you see?

10 A. Shaun.

11 Q. Okay. And where did you see him?

12 A. He came over to my mother's house.

13 Q. And was it a good while later? Do you have any idea
14 about what time it was when he came over?

15 A. Around eleven.

16 Q. And could it have been later?

17 A. It was in between eleven and twelve.

18 Q. Okay.

19 A. In between there.

20 Q. Now, what did -- what did Shaundrecus do while he was
21 over there?

22 A. He sat and talked to me and my mom and then she fixed
23 him a hamburger.

24 Q. Now, your mom actually is in the hospital right now,
25 isn't that right?

1 A. Yes, sir.

2 Q. She had a stroke the other day?

3 A. Monday.

4 Q. Now, did Shaun -- Shaun ate the hamburger there?

5 A. Yes, sir.

6 Q. And then how long do you think that he was over there
7 with y'all?

8 A. 45 minutes to an hour.

9 Q. Is it hard for you to remember? I know it's been a
10 while.

11 A. Yes.

12 Q. So when you are saying these time frames, are you just
13 kind of making your best estimate, best guess?

14 A. Yes, sir.

15 Q. It could have been a little less, little more?

16 A. No, he was there long enough to sit and talk and eat.

17 Q. Now, during that time did you ask him where Marcus and

18 A.K. were?

19 A. Yes, I asked him where was his friends and he said that
20 they were gone somewhere and they would be back in about an
21 hour.

22 Q. Did he seem concerned about anything while he was over
23 there?

24 A. He was talking to me about his telephone conversation
25 with Trina, him and her fussing.

1 Q. That was his old girlfriend?

2 A. Yes, sir.

3 Q. All right. Did you see him -- and then when he left,
4 did you see him again that night?

5 A. No, sir.

6 Q. In fact, have you seen him since?

7 A. No, sir.

8 Q. Until he was just up here a minute ago?

9 A. Yes, sir.

10 Q. Okay. Please answer any questions that the defense
11 would have.

12 CROSS EXAMINATION BY MR. SULLIVAN:

13 Q. Ms. Glenn, I believe that Shaun lived in [REDACTED]

14 A. Yes, sir.

15 Q. And your mom lived in [REDACTED]?

16 A. Yes, sir.

17 Q. They lived real close together?

18 A. Yes, sir.

19 Q. The same building?

20 A. Yes, sir.

21 Q. And you claim he came over there between eleven and
22 twelve?

23 A. Yes, sir.

24 Q. And stayed approximately 45 minutes?

25 A. Yes, sir.

1 Q. So if he came at eleven, he was gone home before
2 midnight; and if he came at midnight, he was gone home about
3 one?

4 A. Yes, sir.

5 Q. Somewhere in that area.

6 Did you know that night that a murder occurred in that
7 area --

8 A. No, sir.

9 Q. -- that Shaun and Marcus -- did you find out later?

10 A. I found out. Like it was about 6:30 or 7:00 when
11 his -- when Shaun's mom came and knocked on my door and
12 asked me did I know anything about it and I told her no.

13 Q. This would have been the morning of the murder?

14 A. I mean after it happened.

15 Q. 6:30 on the 27th?

16 A. Yes, sir.

17 Q. The day it was snowing and everything?

18 A. Yes, sir.

19 Q. Now, did you learn that Shaun and Marcus had been
20 charged with this crime?

21 A. I knew that they had been taken to jail, but I didn't
22 know that they had been charged until I seen it on TV.

23 Q. So you knew within -- that was within a couple of days?

24 A. Yes, sir.

25 Q. And you have never given prior testimony or a statement

1 in this case?

2 A. Not until I talked with Mark.

3 Q. Now, how long ago was that?

4 A. I just talked with him last week, and then I talked to
5 another detective about two weeks before that.

6 Q. So from the morning of February 27th, '04, until about
7 two weeks ago --

8 A. Uh-huh.

9 Q. -- you never mentioned where Shaun was during that
10 night?

11 A. I never talked to -- nobody never questioned me about
12 it.

13 Q. You didn't volunteer, think it was important to give --
14 tell them whether he was involved or not?

15 A. No.

16 MR. SULLIVAN: Nothing further, Your Honor.

17 MR. MOYER: Just a couple of questions.

18 REDIRECT EXAMINATION BY MR. MOYER:

19 Q. So it was this detective right here, he came and spoke
20 to you?

21 A. Yes, sir.

22 Q. And before he came and spoke to you, did you have any
23 idea that your seeing him and cooking him a hamburger had
24 any significance at all in that case?

25 A. No, sir.

1 Q. You had no idea?

2 A. No, sir.

3 MR. MOYER: Nothing further.

4 THE COURT: All right. Thank you, ma'am. You may
5 step down.

6 MR. MOYER: The State would call Ronald Rice to
7 the stand.

8 RONALD RICE, having been first duly sworn,
9 testified as follows:

10 THE CLERK: State your name for the record.

11 THE WITNESS: Ronald Lee Rice.

12 DIRECT EXAMINATION BY MR. MOYER:

13 Q. How old are you, sir?

14 A. 38.

15 Q. And where do you work?

16 A. I work for Spinx Oil Company as a manager of a
17 convenience store.

18 Q. How long have you worked for -- and you worked at Hot
19 Spot before that?

20 A. Yes, sir.

21 Q. How long have you worked for convenience stores?

22 A. Since 1992.

23 Q. Where were you living in February, 2004?

24 A. North Street in Duncan, 580.

25 Q. And what was your phone number at that time?

- 1 A. 439-3425.
- 2 Q. Did you have a roommate?
- 3 A. Yes, I did.
- 4 Q. Who was your roommate?
- 5 A. Donna Wentz.
- 6 Q. Did Ms. Wentz have a boyfriend around that time?
- 7 A. She had had a boyfriend around that time.
- 8 Q. Who was it?
- 9 A. A.K..
- 10 Q. All right. Do you know his real name?
- 11 A. Albert.
- 12 Q. Albert Kelly?
- 13 A. Yes, sir.
- 14 Q. This defendant who is seated over there in the
- 15 courtroom?
- 16 A. Yes, sir.
- 17 Q. So you had met him some?
- 18 A. A few times, yes, sir.
- 19 Q. Had he been over to your apartment some?
- 20 A. A few in the past.
- 21 Q. How about Shaun Edwards or Marcus Parks?
- 22 A. I don't know them.
- 23 Q. Had you ever heard their names before?
- 24 A. No, sir.
- 25 Q. Ever meet them or know them or speak to them?

1 A. No, sir.

2 Q. Let me take you to February the 27th of 2004. Did you
3 see the defendant Albert Kelly that day?

4 A. Yes, I did.

5 Q. And when was it that you saw him?

6 A. Very early in the morning, around somewhere in the
7 neighborhood of six or so, a.m..

8 Q. And where was it that you saw him?

9 A. On my front porch knocking on my door.

10 Q. Were you expecting to see him that day at that early
11 hour?

12 A. No, sir.

13 Q. In fact, was he allowed to come over to your house
14 during that time?

15 A. No, sir.

16 Q. You had made that clear to him and Ms. Wentz, your
17 roommate?

18 A. Yes, sir.

19 Q. And do you remember if he had a coat on?

20 A. Yes, he did..

21 Q. What did the coat look like?

22 A. He was wearing that brown and tan suede jacket with the
23 collar.

24 Q. Did it have -- do you remember anything about a wool
25 or --

1 A. Yeah, the sheep collar, the white wool collars and
2 cuffs on them.

3 Q. Now, do you remember what the weather was like when you
4 opened your door at six o'clock in the morning and saw him
5 standing there?

6 A. It was bad.

7 Q. In what way was it bad?

8 A. It was wet, snowy, and there was sleet and snow coming
9 down.

10 Q. Was there a good bit of snow on the ground?

11 A. Yes, sir.

12 Q. Did you see a car out front?

13 A. No, sir.

14 Q. Did you see any other cars or taxis up and down the
15 street?

16 A. No, sir.

17 Q. Were there many cars out on the roads?

18 A. Very few.

19 Q. And what, if anything, did you notice about his
20 appearance?

21 A. Very wet.

22 Q. Where was he wet?

23 A. Probably from the knees down, and he had -- you know,
24 his shoulder and stuff.

25 Q. Okay. Did he look -- did he look cold? Did he look

1 uncomfortable?

2 A. Very cold.

3 Q. All right. Now, did you allow him to come in?

4 A. Yes, sir, I did.

5 Q. Were there many -- did you end up driving to work?

6 A. Yes, sir, I did.

7 Q. And were the roads bad?

8 A. Very bad.

9 Q. Were there many cars on the road as you drove to work?

10 A. I seen very few of them, sir.

11 Q. All right. Now, when you let Albert Kelly in, was your
12 roommate Donna Wentz there?

13 A. Yes, sir.

14 Q. Did you leave shortly after Albert Kelly came inside
15 your house?

16 A. Yes, sir.

17 Q. You went -- that's when you went to work?

18 A. Yes, sir.

19 Q. When did you come home?

20 A. Probably in the neighborhood of six o'clock in the
21 evening, somewhere in that area, give or take a few minutes.

22 Q. Was he still there?

23 A. Yes, he was.

24 Q. Were you happy about that?

25 A. No, sir.

1 Q. Had you said anything to Ms. Wentz before you left
2 about him staying or leaving?

3 A. Yes, sir, I had expected him to be gone a whole lot
4 earlier than he was.

5 Q. All right. And, in fact, you had a phone conversation
6 with Ms. Wentz at one point that day?

7 A. Yes.

8 Q. And did you tell her the same thing then too?

9 A. Yes, sir, he was supposed to have been gone before I
10 got home.

11 Q. Now, did you say anything to anyone? When you got back
12 home and saw that he was still there, did you say anything
13 to anybody?

14 A. Yeah, Donna was in the kitchen. I walked in there and
15 told her that -- asked her why he was there and told her he
16 needed to be getting on down the road.

17 Q. All right. Did they stay or did they leave?

18 A. They left.

19 Q. And how did they leave?

20 A. She left in my 1995 Pontiac Bonneville.

21 Q. You had a couple of vehicles at the time, correct?

22 A. Yes, sir, I had a '92 or '93 Chevy Lumina.

23 Q. And do you remember around what time it was that they
24 left?

25 A. Probably within 10, 15 minutes of my getting home.

1 Q. Which was?

2 A. Between 6:00 and 6:30.

3 Q. Okay. In the evening?

4 A. In the evening, p.m..

5 Q. Did you expect her to be gone long?

6 A. I didn't expect her to be gone long, no, sir.

7 Q. Did you know where he lived?

8 A. Yes, sir.

9 Q. Did you know he lived in Drummond Village in Greer?

10 A. Yes, sir.

11 Q. About how far away is that from you?

12 A. I probably would say five to seven miles, maybe eight.

13 Q. All right. Well, did Ms. Wentz return? When did Ms.
14 Wentz return?

15 A. It was very late, sir. Very late in the night. I had
16 went to bed and she hadn't returned yet. She had come to my
17 bedroom door somewhere in the neighborhood of one o'clock
18 and told me I had a phone call.

19 Q. Okay. So when you went to bed -- what time did you go
20 to bed?

21 A. In the neighborhood of probably around ten or eleven.

22 Q. Okay. She wasn't home then yet?

23 A. No, sir.

24 Q. Were you able to call her while she was gone?

25 A. No, sir.

1 Q. She didn't have any kind of phone or anything?

2 A. No, sir.

3 Q. All right. Please answer any questions that the
4 defense has.

5 MR. SULLIVAN: Just a few.

6 CROSS EXAMINATION BY MR. SULLIVAN:

7 Q. You let Donna use your car?

8 A. Yes, sir.

9 Q. What time did they leave your place?

10 A. Between 6:00 and 6:30 --

11 Q. And then --

12 A. -- p.m..

13 Q. -- she knocked on your door like one o'clock?

14 A. Somewhere around there. Woke me up, told me I had a
15 phone call. My bedroom door.

16 Q. Okay.

17 MR. SULLIVAN: Nothing further.

18 THE COURT: Any redirect?

19 MR. MOYER: No.

20 THE COURT: All right. Thank you, sir. You may
21 step down.

22 MR. MOYER: The State would call Dr. Eric
23 Christensen.

24 DR. ERIC CHRISTENSEN, having been first duly
25 sworn, testified as follows:

1 THE CLERK: State your name for the record.

2 THE WITNESS: Eric Dean Christensen.

3 DIRECT EXAMINATION BY MR. MOYER:

4 Q. Where are you employed?

5 A. I'm employed by Pathology Associates of Greenville, a
6 private pathology group here in town.

7 Q. And you also work as a medical examiner for Greenville
8 County?

9 A. That's correct.

10 Q. How many medical examiners do we have here in
11 Greenville?

12 A. There are two of us.

13 Q. How long have you held these two positions that you
14 have just described?

15 A. I have been here since June of 2002.

16 Q. And what is your profession?

17 A. I'm a forensic pathologist.

18 Q. And have you -- prior to 2002, when you came here to
19 Greenville, did you work in -- tell us about your prior work
20 experience in forensic pathology.

21 A. Prior to coming here I worked for two years in the
22 office of the chief medical examiner in Richmond, Virginia.

23 And prior to that I spent ten years in the army, during
24 six of which I worked part time as forensic pathologist
25 also.

1 Q. Okay. Did you work anywhere else in the field of
2 medicine?

3 A. Yes, prior to -- prior to my training in pathology I
4 worked as a flight surgeon for the Army for four years. Did
5 a year of internship training in pediatrics prior to that.

6 Q. Okay. Now, what about your educational background?

7 A. I attended college at Brigham Young University in Utah.
8 Subsequently attended medical school at the University
9 of Virginia, in Charlottesville.

10 Then did my residency training in -- did my internship
11 in pediatrics at Walter Reed Army Medical Center in
12 Washington, D.C., and then did pathology training in Tacoma,
13 Washington at the Army Medical Center there.

14 And after spending some time as a general pathologist,
15 I spent a year doing forensic pathology training at the
16 office of the chief medical examiner in Richmond.

17 Q. Okay. And are you certified by any boards?

18 A. Yes, I'm certified in anatomic and clinical pathology,
19 as well as forensic pathology by the American Board of
20 Pathology.

21 Q. What is forensic pathology and what does a forensic
22 pathologist do?

23 A. Okay. Forensic pathology is a subspecialty of
24 pathology. Pathology is basically a specialty of medicine,
25 just like internal medicine or surgery. And what a

1 pathologist does is essentially examine body fluids,
2 tissues, and whole bodies by means of an autopsy to
3 determine what diseases are present. And in the case of an
4 autopsy, to determine cause of death.

5 A forensic pathologist is a subspecialty of pathology,
6 where we received additional training in applying the
7 discipline of pathology to the investigation of a sudden,
8 unexpected and unnatural deaths to determine both the cause
9 of death, as well as the manner the death, which is an
10 ascertainment of the circumstances under which the death
11 occurred.

12 We receive training in the forensic sciences,
13 fingerprint analysis, gunshot and firearms examination,
14 questioned documents, and all the other forensic sciences as
15 they apply to the work that we do, so that the evidence that
16 we collect will then -- we know what's going to happen with
17 it and we process it appropriately.

18 Q. How many forensic autopsies do you think that you have
19 done?

20 A. Probably over the course of my career close to 900
21 forensic autopsies.

22 Q. And you have testified in court before?

23 A. Yes, I have.

24 Q. And have been qualified as the expert in forensic
25 pathology?

1 A. I have.

2 Q. How many times, roughly, have you?

3 A. Probably around 30.

4 Q. And that was in both Virginia and here in Greenville?

5 A. That's correct.

6 MR. MOYER: Your Honor, at this I would offer Dr.
7 Christensen as an expert in forensic pathology.

8 THE COURT: Any objection or any voir dire?

9 MR. SULLIVAN: No objection.

10 THE COURT: Without objection.

11 Ladies and gentlemen, normally when a person
12 testifies they can't give opinion testimony. They must
13 testify to what they saw, or heard, or sensed, or smelled,
14 or something of that nature. However, there is an exception
15 when someone is qualified because of special training or
16 experience and they are permitted to give their opinion in
17 certain areas in which they are qualified to give those
18 opinions as an expert. And this doesn't mean that you must
19 accept the opinion. You would treat that evidence from an
20 expert as you would any other evidence and give it the
21 weight that you see fit.

22 All right, sir, you may continue.

23 BY MR. MOYER:

24 Q. All right. Now, did you do a forensic autopsy on
25 Ignacio Delgado?

1 A. Yes, I did.

2 Q. When was that autopsy perform?

3 A. On the 27th of February, at nine in the morning.

4 Q. What year?

5 A. 2004, I'm sorry.

6 Q. And where was the autopsy conducted?

7 A. At the morgue at the Greenville Memorial Hospital.

8 Q. Now, when you did the autopsy of Mr. Delgado, did you
9 determine his physical dimensions?

10 A. Yes.

11 Q. And would you tell us those?

12 A. Yes. The measurements as we took them, he weighed 228
13 pounds, was 68 1/2 inches in length, or 5'8" and a half, and
14 looked in physical built roughly compatible with his stated
15 age of 43 years.

16 Q. How was he dressed?

17 A. He was wearing -- at the time we received him dressed
18 appropriately for cold weather. He had a black and white
19 plaid jacket that he was wearing over a T-shirt; had blue
20 jeans and underwear on; and was wearing red plastic sandals,
21 which is perhaps a little inappropriate for the cold
22 weather.

23 Q. And what about -- did he have anything on his head
24 or --

25 A. Let me see. I don't believe he did at the time we

1 started the autopsy.

2 Q. Now, as to his personal effects, did he have any wallet
3 or any money on him?

4 A. Personal effects that he had with him, he had a
5 necklace that he was wearing, had a watch, Chapstick, a
6 cassette tape. Had a bunch of change, a 139 cents worth,
7 and he also had a purple bandana with him.

8 Q. No wallet, no dollar bills?

9 A. No.

10 Q. Bills at all?

11 A. No.

12 Q. Was there a weapon of any kind on him?

13 A. No.

14 Q. All right. Was there any evidence of injury or trauma?

15 A. Yes.

16 Q. And what type of injury?

17 A. He had a single gunshot wound to the right side of the
18 face.

19 Q. And where on his face?

20 A. Essentially right here, on the right cheek.

21 Q. Now, did you examine this wound internally and follow
22 the path of the bullet?

23 A. Yes, we did.

24 Q. And would you describe to the jury the path of that
25 bullet?

1 A. Sure. The bullet, after it entered the skin, went
2 through the mandible or the jaw bone just below the line
3 where the teeth insert. It then, you know, fractured that
4 and continued on through. Went through the soft tissues of
5 the neck, disrupted the right common carotid artery, which
6 is the main vessel coming off the arch of the aorta. That
7 feeds the right side of the brain. It disrupted that and
8 continued on, went through the spinal cord and lodged in
9 the -- lodged in the spine.

10 Q. The fact the bullet went in on his cheek and ended up
11 in his spine, is that indicative at all to you of what
12 direction a bullet was shot from?

13 A. Yeah, in the direction it came, it entered here, came
14 across and ended up on the -- sort of the far side of his
15 spinal column, and went through the spinal cord and ended up
16 on that side.

17 The direction of travel of the bullet just through his
18 body was coming from the right to left and a little bit from
19 front to back.

20 Q. Okay.

21 A. And a little bit downward I believe it went also.

22 Q. Now, did you -- you took an x-ray of that?

23 A. Yes.

24 Q. Let me show you State's Exhibit No. 15. Can you
25 recognize that?

1 A. Yes, this is an x-ray of the head, which we took at the
2 time of autopsy.

3 MR. MOYER: I would move that State's Exhibit 15
4 moved into evidence.

5 MR. SULLIVAN: No objection.

6 THE COURT: Without objection, 15 is in evidence.

7 BY MR. MOYER:

8 Q. Can you just step down and show -- does this x-ray show
9 where the projectile was located?

10 A. Yes.

11 Q. Would you just step down and point out to the jury
12 where that showed up on the x-ray?

13 (Witness off the witness stand)

14 A. Right here. This is density. Right here is the
15 bullet. This here.

16 THE COURT: Doctor, I would ask that you be sure
17 to project your voice for the court reporter to pick up your
18 testimony as well.

19 THE WITNESS: Okay.

20 A. This density right here is the bullet.

21 This is the necklace that he was wearing. That's the
22 bullet.

23 (Witness back on the witness stand)

24 BY MR. MOYER:

25 Q. Did you collect that bullet?

1 A. Yes, I did.

2 Q. And you gave it to law enforcement?

3 A. Yes.

4 Q. All right. Did you look at Mr. Delgado's clothing
5 around the area where you saw the bullet wound?

6 A. Yes, we did.

7 Q. Did you find anything that happened to any
8 clothing that happened to be in any type of conjunction with
9 that bullet wound?

10 A. Yes, the -- the jacket that he was wearing, the outer
11 jacket, the black and white checkered jacket, had a series
12 of bullet wounds in it, bullet holes that came from sort of
13 the right side, traveled in and out this way, and then went
14 through a corner of the collar as well before entering the
15 cheek.

16 Q. Is it consistent with one single projectile that went
17 through his clothing several times?

18 A. Yes, it is.

19 Q. So is it consistent with jacket being kind of hunched
20 up like this?

21 A. It certainly would be, yes.

22 Q. And traveling through the jacket.

23 Where was the entrance hole on the jacket?

24 A. Entrance hole in the jacket was on the top of the
25 shoulder, and there was a dense ring of soot around it at

1 that point.

2 Q. Okay. And so that's what indicates to you it was the
3 entrance?

4 A. Yes. And it also indicates the range, that it was
5 relatively close.

6 Q. And it was a little bit towards the back of the jacket?

7 A. Yes.

8 Q. Let me show you -- you took a picture of that?

9 A. I did.

10 Q. Let me show you State's Exhibit No. 17.

11 A. Yes, that represents the entrance.

12 Q. That's an accurate representation of that jacket as you
13 saw it with the bullet holes?

14 A. Yes.

15 MR. MOYER: At this time I move to have State's
16 Exhibit 17 moved into evidence.

17 MR. SULLIVAN: No objection.

18 THE COURT: Without objection.

19 BY MR. MOYER:

20 Q. And, once again, unfortunately we don't have the use of
21 our projection machine today, but would you be able to just
22 step down and show the jury those holes in that jacket that
23 you talked about?

24 A. Yes.

25 (Witness off the witness stand)

1 A. This is the entrance. You can see the dense ring of
2 soot around the clothing there. There is then an exit
3 there, and then there is a subsequent wound through the
4 collar, which doesn't show in this photograph, which are all
5 certainly consistent with the wound that the bullet
6 traveling through in that direction.

7 This is the entrance here and the soot.

8 (Witness back on the witness stand)

9 BY MR. MOYER:

10 Q. Was there a hole to the T-shirt? You mentioned there
11 was a shirt underneath the jacket?

12 A. Yes, there was. There was a shirt underneath. There
13 were no holes in it.

14 Q. There were no holes in the T-shirt?

15 A. No.

16 Q. Were there -- was there any injuries to his shoulder?

17 A. No, there was not.

18 Q. So is that consistent then with that jacket then having
19 been up away from his shoulder when the bullet --

20 A. It's at least consistent with the clothing being
21 sufficiently high off his shoulder, that it injured -- that
22 it caused injury only to the jacket, not the underlying
23 T-shirt and not the underlying shoulder.

24 Q. Now, were you able to form a considered medical opinion
25 within a reasonable degree of medical certainty as to the

1 cause of death of Ignacio Delgado?

2 A. Yes.

3 Q. And what was the cause of death that you determined?

4 A. Cause of death was the gunshot wound to the face.

5 Q. What would be the effect of a bullet striking a spinal
6 column the way this one did?

7 A. Injury to the spinal cord at the level at which he
8 sustained it would essentially result in immediate paralysis
9 of all four extremities. It's sufficiently low that it
10 might not necessarily immediately incapacitate breathing,
11 but would certainly immobilize the patient immediately.

12 Q. What would be the effect of the bullet severing the
13 carotid artery like this?

14 A. The carotid artery is one -- like I said, is one of the
15 major arteries coming off the arch of the aorta. It's one
16 of two major arteries that supply the brain. 25 percent of
17 all the blood leaving the heart goes to the brain. So in
18 any given heartbeat mostly 10 to 12 percent of the blood
19 leaving the heart would be going out of that artery. And
20 with it disrupted, it would be, you know, leaving the wound
21 and bleeding out onto the ground.

22 Q. Would death come quickly to somebody in that situation?

23 A. Yes, relatively quickly.

24 Q. Were there any other signs of trauma or injury to the
25 victim?

1 A. No, there were not.

2 Q. Please answer any questions that the defense would
3 have.

4 CROSS EXAMINATION BY MR. SULLIVAN:

5 Q. Would he have been laying on his back or his stomach?
6 Could you tell from the --

7 A. There is no way to tell that just from looking at his
8 injuries, no.

9 Q. It could have been -- he could have been either way,
10 just depending on the way the gun was held, I guess?

11 A. Yes. I mean, you can postulate any number of ways that
12 he might have been positioned relative to the gun. I can
13 really only testify to what direction it went through his
14 body, but it's possible he could have been laying down. He
15 could have been standing up. Could have been in any number
16 of positions.

17 MR. SULLIVAN: That's all I have, Your Honor.

18 THE COURT: All right, sir.

19 MR. MOYER: One quick.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION BY MR. MOYER:

22 Q. But there is no doubt that the entrance wound came from
23 the back?

24 A. Yes, it's on the back part of the jacket, yes.

25 Q. Thank you.

1 THE COURT: Thank you, sir. You may step down.

2 MR. MOYER: Judge, can we approach?

3 THE COURT: Are we at a good stopping place as far
4 as -- do you have any other witnesses that you need to get
5 up today?

6 MR. MOYER: Not that I have to.

7 THE COURT: I think this would be a good stopping
8 place for us today, ladies and gentlemen. You have been
9 pretty busy today. I appreciate your attention to this
10 matter.

11 We are going to break for the evening. And as I
12 mentioned to you earlier, you are going to have some curious
13 loved ones who want to know all about what your activities
14 have been today. But, again, let them know, and I'll let
15 you know that you are not to talk about this case anyone,
16 because you have committed -- you are going to decide this
17 not from others ideas, but from what you and your fellow
18 jurors decide the case to be from the witnesses, the
19 testimony and the evidence. It would be improper for you to
20 discuss this case with anyone - family, nonfamily, fellow
21 jurors. As I have said, there will be opportunities for you
22 to give your experiences of your work as a juror when this
23 case and your other work for the week is over.

24 Also I say this to you not by way of temptation,
25 but oftentimes jurors think that they need to do private

1 investigations and check on something in a dictionary or
2 otherwise. That would be improper as well to do any kind of
3 independent study of this matter or anything related to the
4 case. You have committed that you are going to decide it
5 just on what you hear in this courtroom and nothing else.

6 So with that instruction I'm going to dismiss you
7 for the evening. We have some other matters that we have to
8 take up in the morning. I have some other matters I have to
9 take care of, so we won't be able to start the case until
10 about probably 9:45. I'll have some other matters that must
11 begin earlier, so I'll ask you to be back in your jury room
12 at 9:45 tomorrow and we will be ready to proceed at that
13 time. Have a good evening.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: If we could start at nine o'clock in
17 the morning with the Jackson-Denno hearings. I have one
18 other brief matter, a five minute chambers matter, and we
19 will take care of that as soon as we finish and hopefully be
20 ready to have the jury start back at 9:45.

21 We will be at ease until nine o'clock in the
22 morning.

23 (Whereupon, proceedings were adjourned to October
24 11, 2005, at 9:00 o'clock a.m.)

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ALBERT S. KELLY,) 2004-GS-23-5966
7 Defendant.) S004-GS-23-2024
) OCTOBER 11, 2005
) Greenville, South Carolina

8
9 (VOLUME II)

10
11 B E F O R E:

12 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
13

14
15 A P P E A R A N C E S:

16 L. MARK MOYER, ASSISTANT SOLICITOR
Attorney for the State

17 C. TIMOTHY SULLIVAN, ESQUIRE
18 Attorney for the Defendant

19
20 Michael R. Watts
Circuit Court Reporter
21
22
23
24
25

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1 (Proceedings, October 11, 2005)

2 THE COURT: Are we ready to proceed?

3 MR. MOYER: Yes, we are.

4 MR. SULLIVAN: Defendant is ready.

5 THE COURT: All right, sir. I understand this is
6 a Jackson-Denno Hearing.

7 MR. MOYER: Yes, it is, Your Honor, the other part
8 of it that we spoke about yesterday. And for purposes of
9 that, Your Honor, the State would call Mike Hunter.

10 MICHAEL HUNTER, having been first duly sworn,
11 testified as follows:

12 THE CLERK: Please state your name for the record.

13 THE WITNESS: Michael Brooks Hunter.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q. How old are you, sir?

16 A. 35.

17 Q. And where did you work in May of 2004?

18 A. DeKalb County Police Department.

19 Q. That's DeKalb County, Georgia?

20 A. Yes.

21 Q. Is that near Atlanta?

22 A. Correct.

23 Q. Is that a very urban part of the State?

24 A. Very metropolitan area.

25 Q. Now, how long were you in law enforcement?

1 A. I spent the past three years at DeKalb County Police
2 Department. Prior to that I was with the City of Kennesaw
3 Police Department for five years.

4 Q. Okay. All right. So you left DeKalb Police Department
5 in January of this year, right?

6 A. Yes.

7 Q. What was your position back in May of 2004?

8 A. Patrol officer.

9 Q. Let me take you to the night of May the 10th, the early
10 morning hours. Were you working at that time?

11 A. Yes, I was.

12 Q. What area were you working in?

13 A. I was working in the area known as Buford Highway.
14 190's territory, very high crime area. High crime meaning
15 robberies, shooting, stabbings. Just a whole host of
16 violent crimes.

17 Q. Now, on that particular night during the early morning
18 hours did you come in contact with the defendant in this
19 case Albert Kelly?

20 A. Yes, I did.

21 Q. Around what time was it that you did so?

22 A. Approximately 3:36 in the morning.

23 Q. What was the actual location where you came across him?

24 A. The actual location was 3259 Buford Highway. It was in
25 the parking lot of a Shell gas station.

1 Q. Is that a major road in that area?

2 A. Buford Highway is a major road. It's a seven lane
3 highway or road right in front of the location there.

4 Q. What is. What sort -- is it a business district or a
5 residential?

6 A. The area in which I observed Mr. Kelly is predominantly
7 nightclubs, strip clubs, things of that sort. It's a very
8 well known drug area. In fact, that particular area is
9 designated by the Federal Government as highway interdiction
10 drug trafficking area.

11 Q. In addition to the U.S. Government you talked about,
12 had your department considered or designated it a high crime
13 area as well?

14 A. Yes, they did.

15 Q. In fact, you have more officers in that area than in
16 other areas of your district?

17 A. Yes, without giving the specific numbers, probably
18 three times the amount of officers as in a normal standard
19 territory.

20 Q. Okay. Now, you said that you saw the defendant at a
21 Shell gas station?

22 A. Right.

23 Q. What was he doing at that location that caught your
24 attention?

25 A. During the hours of the night when I observed Mr.

1 Kelly -- we have a huge problem. It's predominantly
2 Hispanic area of that particular area of Buford Highway. At
3 about 3:30 in the morning the nightclubs close down. At
4 usually 3:30 to four o'clock is usually when we have our
5 highest level of pedestrian robberies, where people will
6 come and take advantage of Hispanics that are in the area
7 and rob them, assault them, or whatever, and take their
8 money.

9 Q. Okay. And so what was it about him in particular that
10 made you look at him or take notice of him?

11 A. Well, the first thing that really caught my attention
12 was that Mr. Kelly was parked near a pay phone. Not that
13 there is anything illegal with that, but in this day in time
14 most people carry cell phones, which was one indicator.

15 The second indicator was that in that area a lot of
16 people who were involved in drug transactions use the pay
17 phones so that their phone numbers can't be traced, or
18 various things like that.

19 Q. And so -- so that's what caught your attention. And
20 did you begin to look at him?

21 A. I did. I began just to look at Mr. Kelly as I was
22 driving by, made eye contact with him. As he made eye
23 contact with me, he just continued to stare at me, as I was
24 staring at him, which once again was kind of unusual,
25 because most people in the area in which I work down there

1 really don't give the police a second look. They are very
2 disrespectful to the police and it's more of, you know, what
3 are you looking at kind of thing. Mr. Kelly just continued
4 to stare as I approached him.

5 Q. And so he was outside of his vehicle?

6 A. He was getting outside of his vehicle, yes.

7 Q. And was he moving in any particular direction?

8 A. He was walking toward the pay phone, which was located
9 at the corner of the parking lot there.

10 Q. Was he parked pretty close to the pay phone?

11 A. Probably 15, 20 feet away, just a guesstimate.

12 Q. So were you driving slowly by him then?

13 A. Yes, driving slowly.

14 Q. And you continued to watch him?

15 A. I continued to watch him, and even as I passed Mr.
16 Kelly, I still continued to watch him in my rear-view and
17 side-view mirrors.

18 Q. And what did you notice about him while you were
19 looking in your mirrors?

20 A. He was still looking at me, still watching my car.
21 Maybe not essentially myself, but he was still watching my
22 car, which was, once again, very unusual for somebody to
23 maintain that eye contact with that much of a distance.

24 Q. So what did you do when you noticed that suspicious
25 activity?

1 A. I drove just a short distance down the road, turned
2 right around and came back. As Mr. Kelly observed me turn
3 around and approach back, he then walked away from the pay
4 phone back toward his vehicle.

5 Q. All right. Now, so you did a U-turn. Did you drive
6 into that parking lot?

7 A. I did pull in the parking lot, yes.

8 Q. And what did you do when you pulled in the parking lot?

9 A. As I pulled into the parking lot -- Mr. Kelly's car was
10 parked somewhat at an angle. So as I pulled in the parking
11 lot, I used my headlights to my tactical advantage in order
12 to give me a little more reaction time, should something
13 happen there. So essentially I impeded him.

14 As I stated in my report, I believe I used the word
15 blocked, which was maybe not an appropriate word, but I
16 impeded his ability, just to try to run out of the parking
17 lot.

18 Q. Now, was the car completed blocked in? Could it
19 have --

20 A. Due to the layout of the parking lot, it would be
21 physically impossible for one car to block in another car.

22 Q. Okay. Now, when you drove up to him, how close did you
23 drive to his car?

24 A. From the front of my car to the driver's door of his
25 car, maybe ten, twelve feet.

1 Q. Okay. And was this man that you had seen that was
2 acting suspiciously, was he still outside the car, or was he
3 in the car by the time you pulled up?

4 A. By the time I pulled up, he was in the car.

5 Q. Was he driving away or was he --

6 A. He was not driving -- he was not driving away yet. He
7 was inside of the vehicle and the vehicle was running.

8 Q. Did you approach the driver's side of the car.

9 A. I did. I approached the driver's side. And just as a
10 general interview technique, I approached Mr. Kelly, asked
11 him some of the standard questions - what was he doing out,
12 did he live in the area, things of that nature.

13 Q. Okay. That was my next question. So the person in
14 that driver's seat and the person that you had seen walk to
15 this pay phone is this defendant Albert Kelly?

16 A. Yes.

17 Q. Now, when you walked up to him and began talking to
18 him, how was he acting?

19 A. He was very nervous. It was in May. I don't remember
20 the particular type of shirt that he was wearing, but -- and
21 the shirt, I could see the pulsating of his chest through
22 his shirt.

23 Q. So he had light clothing on? It was warm out?

24 A. Yes.

25 Q. All right. And you could tell by his facial

1 expressions and so forth?

2 A. I could tell by his facial expressions, just the way
3 that he was answering the questions, the sweat beads on his
4 face. And like I said, the biggest thing was the pulsating
5 of his chest.

6 Q. You said you asked him what was he doing there. What
7 did he tell you?

8 A. Mr. Kelly responded by saying that he was lost and that
9 he was going to use the pay phone to call his mother to find
10 out exactly where he was at.

11 Q. Now, did that answer make any sense to you, in light of
12 other comments that he made to you?

13 A. No, because just prior to that he had told me that he
14 lived less than a half a mile away.

15 Q. Did he use that pay phone?

16 A. He never did use the pay phone, no.

17 Q. How long a period of time did you actually lose eye
18 contact with him when you did your U-turn?

19 A. From the time that I last observed him in the mirror
20 until the time that I got completely turned around and
21 looked back at him again, maybe ten seconds.

22 Q. Did you ask his name?

23 A. I did.

24 Q. What name did he give you?

25 A. Mr. Kelly gave me Joseph Bernard Austell, with a birth

1 date of April 27th, 1982.

2 Q. Okay. Now, was there anyone else in the car?

3 A. There was one additional passenger in the front
4 passenger's seat of the vehicle.

5 Q. Did you have a backup officer arrive?

6 A. I did. Officer Miller arrived just a short time after
7 I arrived on the scene and he was observing the vehicle from
8 the passenger's side, to watch the passenger and overt any
9 movements that he may make.

10 Q. Now, did you -- after observing everything that you did
11 observe about him, did you ask him to step out of the car?

12 A. I did. I asked Mr. Kelly to step out of the car, at
13 which time I patted him down for officer's safety, for
14 weapons, things of that nature, and asked Mr. Kelly for
15 consent to search the car, at which time he responded yes.

16 Q. So did you look through the car?

17 A. I did look through the car.

18 Q. And while you were looking through the car, was officer
19 Miller keeping an eye on the defendant and the passenger?

20 A. Yes. Once the two subjects were patted down for
21 weapons, they were taken back to the rear of Officer
22 Miller's car, where he was just standing there to observe
23 them, while I conducted the consent search.

24 Q. Did you find anything in the car?

25 A. I did. While conducting a consent search I located a

1 Lorcin L-380, serial number 510057, loaded with a full
2 magazine and a round in the chamber under the passenger's
3 seat, well within reach of the passenger's wing span.

4 Q. When you found it did you hold it up for Officer Miller
5 to see?

6 A. I did.

7 Q. Was it also in view at that time of the defendant and
8 the passenger of the car?

9 A. Yes, it was.

10 Q. Did the defendant say anything about the gun?

11 A. Yes, when I held the weapon up, Mr. Kelly made a
12 spontaneous statement, he said "the gun belongs to me. It's
13 mine."

14 Q. What did you then do with the defendant and the
15 passenger?

16 A. As soon as the weapon was found and the spontaneous
17 statement was made by Mr. Kelly, the two subjects were then
18 detained and placed in handcuffs and separated for further
19 investigation, one in my car and one in Officer Miller's
20 car.

21 Q. Did you continue searching the car?

22 A. We did continue searching the car.

23 Q. Did you find anything in the trunk?

24 A. In the trunk we found a Georgia license plate, as well
25 as the South Carolina plate which was originally on the back

1 of the vehicle.

2 Q. Okay. The South Carolina plate was still on the
3 vehicle?

4 A. The South Carolina plate was still on the vehicle.

5 Q. And you found a Georgia plate in the trunk?

6 A. Correct.

7 Q. Did you run a check of that tag that was in the trunk?

8 A. Yes, initially when I had run the tag of the South
9 Carolina tag, which was 460 S-Sierra, B-Bravo, V-Victor,
10 there was a no return that the vehicle was stolen or
11 anything to that nature.

12 However, when I ran a check on the Georgia plate, it
13 returned to a vehicle that was stolen out of Atlanta PD on
14 5-5-2004, which was five days prior in a carjacking out of
15 Atlanta.

16 Q. Now, you said that he had given you a name and a date
17 of birth. Did you run that name and date of birth through
18 your records for --

19 A. Yes, NCIC and GCIC the name Joseph Bernard Austell,
20 which was originally given to me with the birthday of April
21 27, 1982, returned, but with nothing on file, which is very
22 unusual. Once again, it usually means that somebody has not
23 given the correct name or birthday or something along that.
24 The only thing that came back was no record on file.

25 Q. Now, did you later determine that he had any

1 identification on his person that matched that name he had
2 given you?

3 A. Yes, I had -- after the process of trying to figure out
4 the car information and the personal information that he had
5 given me, I went back to my patrol car where Mr. Kelly was
6 and I asked Mr. Kelly if he had any -- if he had any photo
7 identification or any kind of identification that could
8 verify who he was. Mr. Kelly made a spontaneous statement
9 once again. He said "I'm going to be honest. My name is
10 Albert Sentenio Kelly," giving a birth date of 5-16-1981,"
11 "and I'm wanted out of Greer, South Carolina for murder
12 because I shot a guy in the back of the head and I have been
13 running ever since."

14 Q. Now, did you write that statement down?

15 A. Yes, I did.

16 Q. And then you later transferred that to your report?

17 A. Yes. What I normally don't when I'm on a patrol,
18 whether that be conducting a consent search or any type of
19 information, I carry a little maybe an eight by six
20 clipboard that I make notes on.

21 In this case, as I was going through the car, you know,
22 the serial number, where the item was located at, things
23 like that. I had that clipboard in my hand when I was
24 speaking with Mr. Kelly to get that information. So as Mr.
25 Kelly gave me the statement, I was writing as I was

1 listening to what he was saying.

2 Q. Okay. Then you put that in your report the same day?

3 A. Yes.

4 Q. Did he say anything about the car at any point too?

5 A. Yes, just a matter of moments later he also said to me,
6 and I quote, "I think the car is stolen too. I bought it
7 for \$200 from a guy and then stole a license plate in South
8 Carolina from a similar car and put it on it."

9 Q. So prior to him making these statements to you, the
10 only thing that you had asked him was for his
11 identification?

12 A. Correct.

13 Q. Had you asked him anything about these particular
14 crimes that you talked about?

15 A. No, I did not. I did not have any knowledge of any
16 particular crimes that had been committed.

17 Q. So did you even know this defendant Albert Kelly?

18 A. No.

19 Q. Were you aware of his name?

20 A. No.

21 Q. Were you aware that he was wanted in another state,
22 including South Carolina, for any types of crimes?

23 A. No.

24 Q. And so did you even know about the South Carolina
25 murder?

1 A. I had no clue about the South Carolina murder.

2 Q. So you weren't asking him about it or anything about
3 any particular crime when he made these statements to you?

4 A. Mr. Kelly was never asked any detailed questions at
5 all, other than just general information - name, date of
6 birth, etcetera.

7 MR. MOYER: All right. I have no further
8 questions of this witness.

9 MR. SULLIVAN: Just a few, Officer Hunter.

10 CROSS EXAMINATION BY MR. SULLIVAN:

11 Q. Something like our cars in South Carolina, is your
12 cars, is it equipped with in-car video, audio when you
13 activate a stop that you get video and audio of what's going
14 on?

15 A. No, sir, my patrol car at the time was not.

16 Q. And of this statement that Mr. Kelly made, do you have
17 a signed statement signed by him?

18 A. No, I did not get a signed confession or anything like
19 that.

20 Q. And then this was furnished to me by the solicitor. I
21 would ask if you can identify this. This is your report.

22 A. Yes.

23 Q. Could you read this, just this highlighted part right
24 here up at the top, for me?

25 A. "As I drove back toward the suspicious person in his

1 vehicle, I observed a second black male sitting in the
2 passenger's side of the vehicle. When the driver saw me the
3 second time he put the car in drive and attempted to drive
4 from the parking lot before I positioned my patrol car to
5 block them in."

6 Q. Okay. So in this statement you said that you had a
7 suspicious person?

8 A. Correct.

9 Q. And then he put his car in drive and you positioned
10 your car to block them in?

11 A. Correct.

12 Q. So you had them impeded and they were under suspicion,
13 correct?

14 A. Yes.

15 Q. Then with a consent to search you found the gun?

16 A. Correct.

17 Q. And Mr. Kelly said that's mine. At that point you
18 detained him and you cuffed him?

19 A. Correct.

20 Q. I assume that you were going to arrest him for the gun?

21 A. Yes, he would have been under arrest for the weapon,
22 yes.

23 Q. So when you cuffed him and detained him, did you read
24 him his Miranda Rights?

25 A. Mr. Kelly was not being asked anything about any

1 particular crime.

2 Q. You came back to the car after finishing the search and
3 you started asking him questions?

4 A. Yes.

5 Q. You talked about an extra ID or this type thing,
6 correct? So you were questioning him?

7 A. I was questioning him, yes, but nothing -- not about
8 any particular crime.

9 Q. Did you -- he was under arrest and you were questioning
10 him. Did you read him his Miranda Rights?

11 A. I did not read him his Miranda Rights. He was not
12 entitled to his Miranda Rights at the time.

13 Q. Now, this is 3:30 in the morning. You claim that he
14 said that "I'm wanted in South Carolina because I shot a guy
15 in the back of the head." You claim that's the statement he
16 made?

17 A. Yes.

18 Q. And you did not have him sign any kind of paper
19 acknowledging that?

20 A. No.

21 Q. Could he have said "I'm wanted in South Carolina
22 because they say I shot a guy"?

23 A. No. What I put in my report was a direct quote from
24 Mr. Kelly.

25 Q. How long after the statement did you make your report?

1 A. Approximately two hours.

2 Q. You stayed on the scene, I assume, while other patrol
3 came out and the car was towed, that type thing?

4 A. Yes.

5 Q. So later on at the station you are recollecting what
6 happened at 3:30 in the morning?

7 A. That's why I keep the note pad.

8 Q. And it's your testimony that he did not say that "I'm
9 wanted in South Carolina for murder because they say I shot
10 a guy in the back of the head"?

11 A. No.

12 Q. And you never gave him his Miranda Rights. You say he
13 was suspicious, he was blocked in, he was cuffed, detained,
14 you started questioning him, but you never read him his
15 rights?

16 A. As I stated, Mr. Kelly was never being questioned about
17 any particular crime.

18 Q. That was leading to the gun.

19 A. Mr. Kelly was never asked about the gun. Mr. Kelly
20 made a spontaneous statement on his own.

21 MR. SULLIVAN: No further questions, Your Honor.

22 MR. MOYER: Just one brief followup.

23 REDIRECT EXAMINATION BY MR. MOYER:

24 Q. You mentioned he was in impeded. Was he impeded in
25 such a way that if he had so chosen he would have been

1 unable, incapable, of driving out of that parking lot?

2 A. Well, due to the layout of the parking lot, like I said
3 earlier, it would be physically impossible for one car of
4 any type to block in another car. Mr. Kelly could have
5 drove around me. He could have backed up. He could have
6 chose several directions to go around my patrol car --

7 Q. Okay.

8 A. -- if he would, in fact, decided to do that.

9 Q. So is it impeded very obvious -- very -- would have
10 made it more difficult for him to get out?

11 A. Sure.

12 Q. Okay.

13 MR. MOYER: That's all.

14 RECROSS EXAMINATION BY MR. SULLIVAN:

15 Q. Just -- I'm just using the words as they mean, "my
16 patrol car blocked them in." I'm just using what your words
17 say.

18 A. I understand that.

19 Q. Okay. If he would have tried to drive away, would you
20 have pursued him?

21 A. If Mr. Kelly would have tried to drive away, I would
22 have pulled in behind him and ran his tag, just like I would
23 for any other person. If there were no crimes that were --
24 whether it be traffic offenses, or anything else, or no
25 wants returned from the tag, then Mr. Kelly would have been

1 free to go on his way.

2 MR. SULLIVAN: Nothing further, Your Honor.

3 THE COURT: All right. Thank you, sir. You may
4 step down.

5 Do you have any other witnesses to present?

6 MR. MOYER: I do not, Your Honor.

7 THE COURT: Anything from the defense?

8 MR. SULLIVAN: Nothing from the defense, Your
9 Honor.

10 THE COURT: Okay. Do either of you wish to be
11 heard on this?

12 MR. SULLIVAN: Judge, the only thing I would
13 mention is that the officer was, number one, suspicious of
14 my client. In his own plain English he said he blocked him
15 in, so he stopped him. They were detained. He got him out
16 of the car. Basically placed him under arrest. Cuffed him,
17 detained him, put him in the police car. They were not free
18 to go. Then he came back and started questioning him.
19 Never at any time gave him any Miranda Rights.

20 I think then by using the word by blocking them
21 in, they were then not free to go. And then cuffing them, I
22 think by then he was under arrest. And then he came back to
23 question him without reading him his rights. I think the
24 statement should be inadmissible.

25 MR. MOYER: Your Honor?

1 THE COURT: Yes, sir.

2 MR. MOYER: Your Honor, my response to that is
3 two-fold. This is admissible for two reasons, two separate
4 reasons.

5 First of all, the officer's testimony is that the
6 defendant was not completely blocked in. He could have
7 left. And the officer certainly is not required --

8 Well, first of all, an officer is allowed to
9 approach any citizen and begin talking to them, like any
10 other citizen has a right too. An officer is certainly not
11 required to park in such a way that makes it less safe for
12 the officer. We heard his reasons for parking the way that
13 he did, so his headlights would be able to illuminate the
14 subject that he considered to be acting suspiciously in this
15 very high crime area. Officers certainly are not required
16 to make it as easy as possible for the people to leave, but
17 they could have left if they so chose. So the officer
18 approached them, as he could have any other ordinary
19 citizen, began asking him questions, as he could any other
20 ordinary citizen. The defendant's answers became more and
21 more suspicious. He asked the defendant to get out of the
22 car, as he's a right to on any situation like that. The
23 defendant did so voluntarily. They gave a consent to
24 search. The pistol was found. When the pistol was found,
25 the officer had every right to place both of the individuals

1 under arrest for this possession of a firearm. At that time
2 they were handcuffed. Not previously. At that time the
3 officer, continuing his investigation, walked over, again
4 just asking ordinary questions of the defendant - what is
5 your name? Things didn't seem to be adding up. All he did
6 was asked his again, which again officers have certainly a
7 right to do. At that point -- not upon questioning of any
8 crime, at that point the defendant made this spontaneous
9 statement, spontaneous confession. That would be one basis
10 for the admissibility of this statement.

11 The other basis would be even if it were
12 understood or believed that the officer had detained the
13 defendant when he pulled into the parking lot, I would argue
14 that it should still be admissible. Under the Wardlaw case,
15 the United States Supreme Court case, where officers have a
16 right to approach and briefly detain people who are acting
17 suspiciously in a high crime area. This defendant was
18 acting exceedingly suspiciously. We know it's a very high
19 crime area. The officer said as he drove by, he was walking
20 to this pay phone, which raised the red flag. He was -- he
21 was looked, staring at him, continuing to stare at him in
22 such a way that it got the officer's attention. The officer
23 drove up, turned around. And when the officer had only
24 failed to have eye contact for less than ten seconds, the
25 defendant was walking back to the car without having used

1 the pay phone. Again suspicious activity. Flight in a high
2 crime area is reason -- a legitimate reason for an officer
3 to stop somebody. So the officer drove in then and then --
4 so if the court would happen to believe that the defendant
5 was indeed detained, the officer would have had a right to
6 do so. And then with the continuing suspicious activity,
7 the continuing nervousness, the false names, the false
8 identification would certainly lead and heighten the
9 officer's ability to continue that investigation, which
10 finally led to the collection of that handgun, the arrest
11 and the defendant's spontaneous statement.

12 THE COURT: Thank you, Mr. Moyer.

13 Obviously no Miranda Warnings were given, but as I
14 understand the law, there has to be a custodial
15 interrogation. And clearly there, as I understand the law
16 that's been given, interrogation does not include general
17 on-the-scene questioning. And officer testified that he
18 only asked identity questions. Nothing about the crime
19 itself, either of the crimes.

20 I believe that the -- by the preponderance of the
21 evidence the statement would be allowed. Of course, the
22 jury will have ultimate determination as to the validity of
23 the statement in the charge that I give them. I'll allow
24 the statement in.

25 MR. SULLIVAN: Judge, may I? I would like to

1 object to your ruling and I would like for the objection to
2 carry throughout, rather than have to object again in front
3 of the jury and break up the flow of the trial. So I'll
4 object to your ruling and would hope that it would carry
5 forward through the rest of the trial.

6 THE COURT: We will note that for the record. And
7 when it's admitted, I'll say over objection.

8 MR. SULLIVAN: Thank you, Your Honor.

9 THE COURT: All right, sir.

10 All right. We will stand at ease for just a few
11 minutes for the jury to get reassembled. I have got a civil
12 matter to take care of too.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened)

15 THE COURT: Okay, ready to proceed?

16 MR. MOYER: Yes, sir.

17 MR. SULLIVAN: Defense is ready, Your Honor.

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

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Good morning, ladies and gentlemen.
22 We are now ready to proceed with the trial.

23 Mr. Moyer, you may call your next witness.

24 MR. MOYER: The State calls Mike Hunter.

25 MICHAEL HUNTER, having been first duly sworn,

1 testified as follows:

2 THE CLERK: State your name for the record.

3 THE WITNESS: Michael Brooks Hunter.

4 DIRECT EXAMINATION BY MR. MOYER:

5 Q. Sir, how old are you?

6 A. 35.

7 Q. Where do you work right now?

8 A. I'm self employed right now.

9 Q. And you were just actually down in New Orleans?

10 A. Yes.

11 Q. And working down there?

12 A. Yes, sir, as an independent contractor for a local
13 security company there.

14 Q. All right. And you live in Atlanta, Georgia?

15 A. Yes, I do.

16 Q. Did you have to drive up here bright and early this
17 morning?

18 A. Bright and early. Left at five o'clock.

19 Q. Now, where did you work in May of 2004?

20 A. I worked the DeKalb County Police Department in
21 metropolitan -- in Atlanta.

22 Q. Now, for those who don't know, is that -- that area is
23 a very urban area?

24 A. Very urban metropolitan area, yes, sir.

25 Q. How long were you in law enforcement?

1 A. I spent about the last eight years in law enforcement.

2 Q. How much of that was with DeKalb County?

3 A. Three years with DeKalb County Police Department, and
4 the City of Kennesaw Police Department five years prior.

5 Q. What was your position in May of 2004?

6 A. Patrol officer in the area of Buford Highway.

7 Q. What are your duties as a parole officer?

8 A. Well, the particular area that I work is a high crime
9 area. We were looking for suspicious persons involved in a
10 host of crimes, whether they be armed robbery, shootings,
11 stabbings, domestic violence, trafficking drugs, things of
12 that.

13 Q. So you pretty much answer about any call that comes
14 out?

15 A. Yes.

16 Q. You pretty much first responders on call then?

17 A. Yes.

18 Q. Let me take you to the early morning hours of May the
19 10th, 2004. Were you working on that night?

20 A. Yes, I was.

21 Q. And what area were you working?

22 A. The lower end of Buford Highway, which is 190's
23 territory.

24 Q. Now, on that night did you come in contact with the
25 defendant in this case, Albert Kelly?

1 A. Yes, I did.

2 Q. About what time was it that you came in contact with
3 him?

4 A. Mr. Kelly, approximately 03:30 -- 0336 hours is when I
5 came in contact with him.

6 Q. And so military time, that would be 3:36 in the
7 morning?

8 A. 3:36 in the morning, yes.

9 Q. All right. What -- you said it was on Buford Highway
10 where you came in contact with him?

11 A. Yes.

12 Q. All right. Tell us a little bit about Buford Highway.
13 Is that a main road through that area?

14 A. It is a main road through the area. It's a seven-lane
15 highway there. Not a highway as in the interstate, but just
16 as a highway as in pedestrian roadway. Like I said, seven
17 lanes. Most of the businesses located in that area are
18 strip clubs, nightclubs, various things like that.

19 Q. Now, is that area -- is that particular area considered
20 a high crime area?

21 A. Yes, it's considered a very high crime area. It's also
22 designated by the Federal Government as what we call HIDTA,
23 which stands for Highway Interdiction Drug Trafficking Area.

24 Q. And in addition, does your department, DeKalb County,
25 consider that a dangerous or a high crime area too?

1 A. Yes.

2 Q. In fact, did you have more officers patrolling that
3 area than in other areas in the district?

4 A. Yes. Without giving a specific number, probably three
5 times the amount of officers as a standard territory.

6 Q. All right. Now, where on this particular highway did
7 you come in contact with the defendant?

8 A. I came in contact with Mr. Kelly at 3259 Buford
9 Highway, which was in the parking lot of a Shell gas
10 station.

11 Q. And you were driving down Buford Highway when you saw
12 him?

13 A. Yes, I was on patrol. Due to that hour of the night,
14 most of the nightclubs along that strip area there closed at
15 about 3:30 in the morning, so we have a huge problem with
16 pedestrian armed robberies. It's predominantly Hispanic
17 area, so we have a lot of -- a lot of people will come down
18 to take advantage of the Hispanics as they are traveling
19 home from the nightclubs, staggering down the street,
20 whatever the case might be.

21 Q. So you have -- you have more officers then out on the
22 road keeping an out eye out for things?

23 A. Yes.

24 Q. So you said the defendant caught your attention then?

25 A. Yes, Mr. Kelly caught my attention originally as I was

1 patrolling in the area, as we normally do. His car was
2 parked near a pay phone, which was located in the corner of
3 the parking lot. Initially it caught my attention as
4 somebody was going to use the pay phone. Today's time most
5 of the people have cell phones, which was one indicator.

6 The second indicator was a lot of the people in that
7 area that are conducting drug transactions typically use the
8 pay phones instead of using their own personal phones.

9 Q. Okay. Now, so was this defendant walking towards that
10 pay phone?

11 A. As I first observed Mr. Kelly, he was exiting his
12 vehicle and walking toward the pay phone.

13 Q. And so you started looking at him?

14 A. Started watching him.

15 Another thing that caught my attention was typically in
16 that area people have not much tolerance for the police, so
17 they typically give the attitude of whatever, you know, like
18 that. Mr. Kelly continued to stare at me, which was rather
19 unusual, because, like I said, most people in that area
20 don't do that. So Mr. Kelly continued to make eye contact
21 with me as I continued to look at him as well.

22 Q. So were you slowing down as you were driving by?

23 A. Yes, I was just driving at a very slow pace just to try
24 to get any other kind of indicators or see anything else
25 that would get my attention.

1 Q. Now, when you drove past him, did you continue to keep
2 an eye on him?

3 A. As I drove Mr. Kelly I watched in my rearview mirror
4 and my side mirror and he continued to watch me as I was
5 driving away. Maybe not necessarily me personally, but at
6 least watching my vehicle, from what I could tell through
7 the mirror.

8 Q. And, again, you found that to be -- that caught your
9 attention as being odd?

10 A. Again that seemed a little more suspicious.

11 Q. All right. So what did you do when you --

12 A. I turned around in the middle of Buford Highway and
13 proceeded back to where Mr. Kelly was located in the parking
14 lot.

15 Q. So there wasn't a lot of traffic on the road?

16 A. No, not much traffic at all.

17 Q. And there is not a median there? You were able to --

18 A. No median. Just seven lanes wide.

19 Q. You could just do a U-turn on the road?

20 A. Turned right around.

21 Q. Now, during that U-turn, that period of time that you
22 actually -- I assume that you lost eye contact with him for
23 a period of time?

24 A. Maybe ten or twelve seconds. No more.

25 Q. And when you made that U-turn and started heading back

1 to the gas station, you picked up eye contact with him
2 again?

3 A. Mr. Kelly was walking back toward his vehicle. And as
4 I was -- from the time that I turned around and made contact
5 with him, Mr. Kelly was walking back toward his vehicle. He
6 got inside of his vehicle, at which time I pulled up with my
7 headlights shining on his car to illuminate.

8 Q. So you pulled into the parking lot then?

9 A. Yes.

10 Q. And what was your reason for the positioning of your
11 vehicle the way the headlights were pointing?

12 A. Well, the positioning would be for tactical advantage,
13 just due to the amount of crime and the unsure of what
14 somebody may do. It's not uncommon for people who are
15 involved in drugs or various crimes to carry weapons. So
16 you want to give yourself the best opportunity that you can
17 be using your lights to slow his reaction time and give you
18 more of an advantage, should he jump out of a car with a
19 weapon or something.

20 Q. Did you have the car completely blocked in when you
21 pulled in there?

22 A. No, due to the layout of the parking lot, I believe I
23 used the term blocked in my report, which probably should
24 have used a different word. Impede would be a better word.
25 Due to the layout of the parking lot, it would be physically

1 impossible for one car to block another car into the parking
2 lot there.

3 Q. So if someone really wanted to, could that car have
4 maneuvered around you or --

5 A. Absolutely. If Mr. Kelly felt necessary, he could have
6 either backed up and gone around my car, or he could have
7 simply, you know, drove around the front of my vehicle as
8 well.

9 Q. All right. So you drove into this Shell gas station
10 parking lot. Did you get out of your patrol car?

11 A. I did. I exited my patrol car. I went up to make
12 contact with Mr. Kelly. I just asked him the standard
13 questions as I would anybody else.

14 Q. Let me stop you right there and ask you to back up just
15 a second. So was that car running?

16 A. The car was running, yes.

17 Q. And you mentioned a name now. Now would be a good time
18 to tell you. When you approached the car, you observed who
19 was in the driver's seat of that car?

20 A. Correct.

21 Q. And do you see that person here in the courtroom?

22 A. Yes, sitting right there.

23 Q. It's Albert Kelly, the defendant in the case?

24 A. Yes.

25 Q. Okay. So you began asking him some questions?

1 A. Just your standard questions. You know, what are you
2 doing out this hour of night; do you live around the area;
3 do you have a driver's license; insurance; you know, your
4 birth date. Just general information.

5 Q. And how was -- was there anything about the way he was
6 acting that caught your attention?

7 A. Mr. Kelly was very nervous. To the fact -- I don't
8 remember specifically what type of shirt that he was
9 wearing, but he was nervous as such that his chest was
10 pulsating and I could see his shirt jumping.

11 Q. Now, this was May 10th of 2004?

12 A. May 10th. It was warm outside.

13 Q. Okay. Generally warm that time of year in Atlanta?

14 A. Yes.

15 Q. All right. So you asked him -- did you ask him what he
16 was doing out there?

17 A. I did ask Mr. Kelly what he was doing there. He
18 replied to me that he needed to stop and use the pay phone
19 because he needed to call his mother to find out directions
20 back to his house.

21 Q. And did that answer to your question raise your
22 suspicion level even further?

23 A. Once again, my level was increased again, because just
24 prior to that Mr. Kelly had told me that he lived less than
25 a half mile away from that location.

1 Q. Okay. And had he used the pay phone?

2 A. Mr. Kelly never used the pay phone.

3 Q. All right. Did you ask his name?

4 A. I did, I asked for his name, at which time he gave me
5 Joseph Bennett Austell, with a birth date of April 27th,
6 1982.

7 Q. And you said there was somebody else in the car as
8 well?

9 A. There was an additional passenger in the front
10 passenger's seat, yes.

11 Q. Did you have a backup officer come out?

12 A. Yes, shortly after I had arrived on the scene, Officer
13 Miller arrived in his patrol car, pulling in from the
14 opposite direction of me over toward my car. And Officer
15 Miller exited his vehicle to watch the passenger's side of
16 Mr. Kelly's car.

17 Q. All right. Well, did you ask the defendant and the
18 passenger to get out, to step out of the car?

19 A. Yes, I did ask both subjects to step out of the car, at
20 which at that time Officer Miller did a pat-down, cursory
21 pat-down, to check for any type of weapons or anything on
22 the passenger. I did that as well on Mr. Kelly. I also
23 asked for consent to search to search his vehicle.

24 Q. Did he give you consent to search the vehicle?

25 A. Yes, he did.

1 Q. All right. And did you so?

2 A. Yes. After the two subjects were patted down, Officer
3 Miller took them to the rear of his patrol car where he
4 could observe them. I conducted the consent search and
5 started on the passenger side, at which time I located a
6 Lorcin .380, serial number 510057. It was loaded with a
7 full magazine and a round in the chamber.

8 Q. So what caliber pistol was that?

9 A. .380.

10 Q. And the brand was Lorcin?

11 A. Lorcin.

12 Q. Okay. Now, when you found it, did you hold it up for
13 Officer Miller to see?

14 A. Yes, after I found the weapon, I pulled it up for
15 Officer Miller to see. And as I stated in my report, the
16 driver, who was Mr. Kelly, made a spontaneous statement "the
17 gun belongs to me. It's mine."

18 Q. Okay. So at that point did you take the two men into
19 custody?

20 A. At that time both of the subjects were placed into
21 custody. They were handcuffed and they were placed in
22 separate cars for further investigation.

23 Q. All right. Did you -- you continued searching the car?

24 A. I continued to search the car.

25 Q. And did you find anything in the trunk?

1 A. Inside the trunk I found a Georgia license plate. The
2 car, as it was parked in a traditional place, would have a
3 license plate on the back. It was South Carolina license
4 plate, but inside the trunk, once the trunk was opened up,
5 there was just a Georgia license plate just laying in the
6 trunk of the vehicle.

7 Q. Okay. Now, after you had found these particular items,
8 found this pistol and this license plate in the trunk of the
9 car, did you walk up to the defendant and did you ask him
10 for any identification?

11 A. Well, through the course of the investigation the
12 Georgia license plate, as well as the South Carolina plate,
13 and the information that Mr. Kelly had originally given me
14 was run through the National Crime Information Center.
15 That's how we normally clerk is if you get pulled over,
16 somebody runs your driver's license. The police officer
17 checks your identification. Those were all conducted.
18 There was nothing that returned on file as far as the name
19 and date of birth that Mr. Kelly gave. Nothing returned on
20 file as far as the South Carolina as the car being stolen.
21 However, when I ran the Georgia tag, it returned that the
22 vehicle was stolen out of Atlanta police department during a
23 carjacking on 5-5-2004, which was just five days prior to
24 that.

25 Q. All right? And then so you -- did you ask the

1 defendant then for his -- for any identification documents
2 that he may have on his person?

3 A. Yes. Due to the fact that the information that I had
4 nothing really matched up and some of it we didn't get a
5 return on at all. So as I normally would, I went back to my
6 patrol car where Mr. Kelly was located and I asked him if he
7 could provide me with some type of identification, whether
8 it be a card, a Social Security card, or anything to that
9 effect. When I asked the driver for his information, he
10 made a spontaneous statement, and I quote, "I'm going to be
11 honest. My name is Albert Sentenio Kelly." And he gave me
12 a date of birth 05-16-1981, "and I'm wanted out of Greer,
13 South Carolina for murder, because I shot a guy in the back
14 of the head and I have been running ever since."

15 Q. Now, when he said that to you, did you question him any
16 further about that particular incident?

17 A. No, I normally carry like a 6 X 8 little clipboard with
18 me when I'm doing a consent search or whether it's maybe a
19 domestic violence call or something that I'm on. I carry
20 that and I make notes as I'm talking with people,
21 information, such as their name, their date of birth, any
22 particular thing that they may say to me, or the location of
23 an item that I may find.

24 I had the clipboard in my hand as I was asking Mr.
25 Kelly for the general information to verify that the

1 information that he originally gave me -- a lot of times
2 people will give you conflicting information. So I was
3 already prepared to write, or just to verify that. So as
4 Mr. Kelly made his statement, I just continued to write his
5 statement down in quotes so I that I could use that later
6 for my report.

7 Q. So you wrote it down as he was telling it to you?

8 A. Yes.

9 Q. And then did you later take that information from note
10 pad and put that in your report?

11 A. Yes, just as I always do, I take all the information
12 that I have accumulated on my note pad and basically I use
13 that information to write a full narrative in my report.

14 Q. And is that how you do all of your cases?

15 A. Yes.

16 Q. Okay. Because obviously you can't be typing up an
17 official report while you are out on the scene?

18 A. Correct.

19 Q. Okay. So you take your notes and then -- how much
20 later did you make your report?

21 A. Approximately two hours after everything had transpired
22 and Mr. Kelly and the other defendant were transported.

23 Q. And did you -- in fact, did you put -- did you write
24 that quote in your report?

25 A. I did write that quote in my report.

1 Q. Did you put quotation marks around that quote?

2 A. I did.

3 Q. Did that indicate to you those were the words that he
4 used?

5 A. Those were the words that Mr. Kelly gave me at the
6 scene, yes, sir.

7 Q. Now, is there any doubt that that is what he said to
8 you?

9 A. No, because that's not -- that's not a common statement
10 for people to make. So as my senses were already heightened
11 due to some of the other things and the activity that I was
12 getting the feedback on, that was something that really
13 stood out. Those words kind of stick in your head, because
14 not every day somebody tells you that they are wanted for
15 murder.

16 Q. And so you paid attention to what he said?

17 A. Yes, very close.

18 Q. And is it possible he said some variation of that, like
19 "I'm accused of shooting somebody in South Carolina"?

20 A. No.

21 Q. Or "I know something about a man being shot in South
22 Carolina"?

23 A. No.

24 Q. He said "I shot a man in South Carolina"?

25 A. He said "I shot a man."

1 Q. Now, at that point as a patrol officer is it your -- is
2 it part of your duties to continue an interrogation of a
3 suspect after you make -- find information like that?

4 A. No, it's not.

5 Q. That would be turned over to like a later investigator?

6 A. Yes, in our case it's the major felony unit.

7 Q. Okay.

8 A. Which once this statement was given by Mr. Kelly, all
9 further investigation ceased. My supervisor was on the
10 scene at the time and our major felony unit was contacted.

11 Q. Okay. Now, the fact that this was a South Carolina
12 case, did that have anything to do with the fact that you
13 made any further inquiry into that matter?

14 A. Absolutely not.

15 Q. Now, if this had been a Georgia case, even if it had
16 been a Georgia case, would you have continued on in
17 interrogation of the defendant after he said that?

18 A. No, I would have stopped as well, per our protocol.

19 Q. So per protocol it's not your job to take official
20 written statements or anything like that?

21 A. No.

22 Q. And so you didn't interrogate him anymore, no Miranda
23 Warnings, or anything like that?

24 A. No. Mr. Kelly was never read the Miranda Warnings
25 because he was never asked specifically about any type of

1 crime.

2 Q. Okay. You weren't going to do an interrogation of him,
3 were you?

4 A. No. Mr. Kelly was just asked standard questions, which
5 any person who is pulled over for a speeding ticket would be
6 asked.

7 Q. Okay. So just like in those situations, you don't give
8 Miranda Warnings?

9 A. Correct.

10 Q. Now, so the only thing -- prior to him making this
11 statement to you, the only thing that you would ask him was
12 just information about his person, identification and so
13 forth?

14 A. Correct.

15 Q. You did not ask him anything about the crimes?

16 A. No, I have no idea of the crime.

17 Q. Did you even know about this South Carolina murder
18 case?

19 A. No, I had no information.

20 Q. And hadn't heard about it?

21 A. No.

22 Q. Did you know the defendant, Albert Kelly?

23 A. I never seen him before in my life.

24 Q. Did you know that he was wanted or a suspect in a
25 particular -- any case in South Carolina, or anywhere else?

1 A. No, I didn't know anything, because the information
2 that Mr. Kelly had originally given me did not return
3 anything on file.

4 Q. Okay.

5 A. So there was no way for me to know whether he was
6 wanted or not wanted, because the information he gave me was
7 incorrect.

8 Q. All right. You then took the defendant without -- you
9 took him back to your police station?

10 A. Yes, he was taken back to our headquarters where he was
11 turned over to our major felony.

12 Q. Now, did you take anything into possession belonging to
13 the defendant?

14 A. I did. Through the course of the investigation when I
15 asked Mr. Kelly for some identification, he provided three
16 documents to me with the original name Joseph Bernard
17 Austell.

18 Q. Okay. And where were they when you collected those
19 from him?

20 A. They were on Mr. Kelly's person. He had it in like a
21 little ID type wallet that he had in his pocket.

22 Q. Okay. I'm going to show you State's Exhibits No. 28,
23 29 and 30. Would you take a look at them and can you
24 identify them?

25 A. Yes, this is a Blockbuster card with the name Joseph

1 Austell.

2 This is a --

3 Q. And that was Exhibit No. 28, the one that you just
4 read?

5 A. Exhibit No. 30.

6 Q. 30.

7 A. Exhibit No. 29 is a Social Security card with the name
8 Joseph Bernard Austell, number

9 And Exhibit No. 28 is a Florida birth registration card
10 with the same name as well, Joseph Bernard Austell, date of
11 birth of

12 Q. And that was the name and date of birth that he had
13 given to you when you first approached him?

14 A. Correct.

15 MR. MOYER: Your Honor, at this time I would move
16 to have State's Exhibits 28, 29, 30 moved into evidence.

17 MR. SULLIVAN: No objection.

18 THE COURT: Without objection Exhibits 28, 29 and
19 30 are into evidence.

20 BY MR. MOYER:

21 Q. Just real briefly for the benefit of the jury, I would
22 like you to just get out of the light there, and if you
23 would, just show the jury this Exhibit No. 28. This is one
24 of the exhibits that you took from the defendant?

25 A. Yes. This is the birth registration card. As you can

1 see, it shows the original name that Mr. Kelly had given me.

2 Q. And it has a date of birth?

3 A. Correct.

4 Q. Okay. State's Exhibit No. 29?

5 A. This is a Social Security card as well with the same
6 name displayed.

7 Q. And State's Exhibit No. 30?

8 A. This is the Blockbuster card. On the back side, once
9 again, it shows the name Joseph Austell.

10 Q. All right. Please answer any questions that the
11 defense may have.

12 MR. SULLIVAN: Just a few, Officer Hunter.

13 CROSS EXAMINATION BY MR. SULLIVAN:

14 Q. In Georgia at that time -- this happened, what, about
15 3:30 in the morning?

16 A. Yes, sir, 3:36 in the morning.

17 Q. May 10th of '04?

18 A. Yes, sir.

19 Q. Were you -- was your car equipped with audio, video,
20 like some of the cars in South Carolina when you pull up it
21 activates and we can hear conversations with the people
22 and --

23 A. No, sir, our cars were not equipped with audio or
24 video.

25 MR. SULLIVAN: Judge, this line of questioning,

1 especially as to the statement made by Mr. Kelly is subject
2 to my prior objection.

3 THE COURT: Yes, sir, subject to objection.

4 BY MR. SULLIVAN:

5 Q. If you would just read that, Mr. Hunter, that
6 highlighted part up there.

7 A. "As I drove back toward the suspicious person and his
8 vehicle I observed a second black male sitting in the
9 passenger's side of the vehicle. When the driver saw me the
10 second time, he put the car in drive and attempted to drive
11 from the parking lot before I positioned my patrol car to
12 block him in."

13 Q. Thank you. Were you in a marked vehicle? Somebody
14 would know it's a police car?

15 A. Yes.

16 Q. So wasn't unmarked, so if anybody -- if you drove up,
17 they would know that you were in a police car?

18 A. Yes.

19 Q. So we have you driving up. You are already suspicious,
20 correct?

21 A. Yes.

22 Q. And then you are in a marked car and you blocked them
23 in. That's the word that you used. You said maybe you
24 shouldn't have, but you pulled up in front to try and block
25 them in?

1 A. To impede them, yes.

2 Q. That was your intent.

3 And then after you got them out of the car, you had
4 another person came up parked near their car also?

5 A. On the opposite side of their car, on my side.

6 Q. Then you found the weapon?

7 A. Correct.

8 Q. And you claim Mr. Kelly said it was his weapon?

9 A. Yes, Mr. Kelly made the spontaneous statement that it
10 was his.

11 Q. At that point he was handcuffed, detained and placed in
12 a car, is that correct?

13 A. Yes.

14 Q. Would you say at that point you had arrested him?

15 A. Mr. Kelly would have been under arrest for the weapon,
16 yes.

17 Q. Then you went back -- then you went back to the car at
18 a later time because some of the stuff wasn't jiving.

19 A. Right.

20 Q. At any time when he was arrested did you give him his
21 Miranda Rights?

22 A. Mr. Kelly was never given his Miranda Rights because
23 Mr. Kelly was never questioned about any particular crime.

24 The law does not require that you are read your Miranda

25 Rights unless you are being interrogated for a particular

1 crime.

2 Q. You intended to question him about the gun when you
3 went back to the car, is that correct?

4 A. No, I did not. The reason I went back to the car was
5 to verify the information that Mr. Kelly had originally
6 given me, which did not return on file.

7 Q. So you were suspicious, he was blocked in, he was
8 arrested, but he never was given his rights, is that
9 correct?

10 A. Mr. Kelly was never given his rights, because there was
11 no need to give him his rights.

12 Q. And you have never got a signed statement from Mr.
13 Kelly of his purported confession?

14 A. No, I did not. That's left up to our major felony
15 unit.

16 Q. But when you transported him back to your major felony
17 unit, I assume that you are telling them this man has
18 confessed to murder, you turned him over to them?

19 A. The detectives were informed of the statement that Mr.
20 Kelly had made and he was taken there for further
21 interviewing.

22 Q. Do you know of your own knowledge, is there any
23 statement from the Georgia police department of a statement
24 given by Mr. Kelly?

25 A. Not to my knowledge, because it's not a Georgia case.

1 It was a South Carolina case. That's why the investigators
2 from South Carolina were contacted.

3 Q. So y'all are not trying to preserve this statement in
4 case -- what if this was a California case, they didn't get
5 back, you wouldn't try to go ahead and question the man and
6 try and preserve the statement for further use to aid your
7 fellow officers?

8 A. Not on scene where I was at, no.

9 Q. How about your felony unit?

10 A. I can't speak for the major felony unit.

11 Q. Now, you are out there at 3:30 in the morning with this
12 person. Is it possible -- I know -- I understand what you
13 said to Mr. Moyer that he said "my name is Albert Sentonia
14 Kelly. I'm wanted in South Carolina for murder because they
15 say I shot a man in the head"?

16 A. No, sir.

17 Q. You didn't hear the words "they say"?

18 A. No, sir.

19 Q. No way that you missed that?

20 A. No, I wrote it down in my note pads in quotes.

21 MR. SULLIVAN: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. MOYER: Just a couple of questions.

24 REDIRECT EXAMINATION BY MR. MOYER:

25 Q. Because this was a South Carolina case, and because

1 Greer officers could be up there so quickly, your department
2 wouldn't try to get involved in a case they had nothing --
3 no information about?

4 A. Absolutely not.

5 Q. They would wait until the detective would get there?

6 A. They would wait for the investigators to come and
7 handle their case appropriately, based on their protocol.

8 Q. And there is no doubt in your mind he said "because I
9 shot a man in the back of the head"?

10 A. No, sir, I wrote that in quotes on my note pad before
11 transcribing that onto my narrative.

12 Q. And you understand the significance of that statement
13 as opposed to "they said"?

14 A. Yes, I understand that quite clearly. And as I stated
15 earlier, that's not a very common statement that somebody
16 gives, so your awareness and your senses would also be a
17 little more apt to listen to what was being said, as well as
18 writing it down.

19 MR. MOYER: Nothing further.

20 RECROSS EXAMINATION BY MR. SULLIVAN:

21 Q. Did you have him repeat it and say "what did you say"?

22 A. No, I did not.

23 Q. I mean, that's kind of shocking and you said "what did
24 you say"?

25 A. No, I did not ask him.

1 Q. Okay.

2 MR. SULLIVAN: Thank you.

3 A. He made a spontaneous statement, so as he was speaking,
4 I wrote it down.

5 MR. SULLIVAN: Thank you.

6 THE COURT: All right. Thank you, sir. You may
7 step down.

8 THE WITNESS: Yes, sir.

9 MR. MOYER: State would call Mark Justice to the
10 stand.

11 OFFICER MARK JUSTICE, having been first duly
12 sworn, testified as follows:

13 THE CLERK: State your name for the record.

14 THE WITNESS: Mark Timothy Justice.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q. All right, sir, how long have you been in law
17 enforcement?

18 A. 16 years.

19 Q. Has is all been with the Greer Police Department?

20 A. No.

21 Q. Where else have you worked?

22 A. The Department of Corrections and the Greenville County
23 detention center.

24 Q. How long have you been with the Greer Police
25 Department?

1 A. 13 years.

2 Q. What is your position there?

3 A. Detective/sergeant.

4 Q. Let's back up in time a little bit back to February --
5 the night of February 27th, 2004. Did you respond to this
6 scene out at [REDACTED]?

7 A. I did.

8 Q. Did it take you a little while to get there?

9 A. Yes, the roads were icy and there was snow everywhere
10 and I was in a rear-wheel drive car.

11 Q. So the weather was pretty bad that night?

12 A. Very bad.

13 Q. Difficult to drive?

14 A. Yes.

15 Q. All right. Now, did you, in fact, stop to pick
16 something up on your way there?

17 A. Given the weather conditions, we talk on Nextel back
18 and forth to determine that the weather could have a bearing
19 on the crime scene itself, so I stopped at the fire
20 department to pick up an awning that they have there to try
21 to help cover that area and preserve the scene so we could
22 work the crime.

23 Q. So that blue tarp that's in some of these pictures, you
24 brought that and set that up?

25 A. Yes, sir.

1 Q. And put that up over the victim?

2 A. Yes.

3 Q. All right. Now, when you arrived there, there were
4 other officers already present?

5 A. Yes, sir.

6 Q. All right. And then you spoke to the other officers
7 about what was known at that point?

8 A. I -- I pulled up I believe just after Detective
9 Arterburn did. And pulling in, I believe, directly after me
10 was our commander, our division commander, Lieutenant Hamby.
11 Lieutenant Hamby got out of the car and we spoke with the
12 sergeant that was on the scene, the other officers present,
13 and just basically got us up to speed about what they had at
14 that time.

15 Q. Okay. And you learned how many suspects had been seen
16 running from the scene?

17 A. Yes, sir.

18 Q. And you learned what direction they had fled?

19 A. Yes. Lieutenant Hamby got out. We got the information
20 that we needed about what was going on there, and he
21 basically indicated what he wanted each officer to do at
22 that point, basically is command and control the issue.

23 I was advised to check the direction of travel that was
24 indicated by witnesses at the scene and was indicated by
25 tracks in the snow, and I was -- I was advised to go ahead

1 and try to see if I could gather some information from that
2 piece of evidence.

3 Q. And so you were told the direction that the two men had
4 gone. Did you see any footprints heading away in that
5 direction?

6 A. Yes, sir.

7 Q. In the snow?

8 A. Yes.

9 Q. How many sets of footprints did you see?

10 A. Two.

11 Q. All right. And you followed those footprints?

12 A. Yes, sir.

13 Q. And they took you to Drummond Village?

14 A. Yes.

15 Q. Now, on that map that's to your left, the top portion
16 of that map, is that Drummond Village where we see the
17 buildings?

18 A. Yes, the middle section where you see the dark shingled
19 roofs, yes.

20 Q. Right here?

21 A. Those are all Drummond Village, which is 801 Main.

22 Q. Okay. Now, if you would, just step down and show us
23 the direction --

24 First of all, where is the location that you showed up
25 to?

1 (Witness off the witness stand)

2 A. When you enter -- when you enter the trailer park, you
3 come around and it's going to be in this area here.

4 BY MR. MOYER:

5 Q. Okay. And obviously --

6 A. We were parked back in here.

7 Q. Okay. Obviously this map wasn't -- this photograph
8 wasn't taken that day because there is no snow, but that's
9 an accurate representation of the way it looked?

10 A. Yes.

11 Q. And so which direction did you head away from that
12 trailer?

13 A. From here we went back around here. You can see a
14 clearing area. This is an old abandoned building. I
15 believe it used to be a bar, and then the track went back
16 around through here.

17 Q. Okay.

18 A. Back to the back of this apartment here.

19 Q. And where is the apartment that you ended up going in?

20 A. Right here. This very -- the one on the very corner
21 here. It's going to be [REDACTED] The tracks led directly to the
22 back door of that apartment there.

23 Q. Okay. As you were going through Drummond Village, you
24 saw footprints leading into residences there.

25 (Witness back on the witness stand)

1 A. Yes.

2 BY MR. MOYER:

3 Q. And you stopped at some -- you stopped at Leon Irby's?

4 A. The track path led past Mr. Irby's apartment, which was

5 I believe the [REDACTED] And you see what appeared to be

6 one set of footprints going up and one set coming back down.

7 It looked like a Y off of it, and then the track went

8 directly on back to the apartment there at the C building.

9 Q. Okay. And so you actually went there and you spoke to
10 him briefly?

11 A. Yes.

12 Q. And then you ended up at apartment [REDACTED] that you told us
13 about?

14 A. Yes.

15 Q. And do you remember about roughly what time it is that
16 you were -- that you ended up back there?

17 A. I believe I arrived on the scene somewhere around two
18 o'clock. I was notified I believe like 1:20, or something
19 like that in the morning, and then took about maybe 35 or 40
20 minutes to drive in. And I had to stop by the fire
21 department to pick up the awning, so it would have been
22 somewhere around two. And then I think the -- you know,
23 following the path and stopping and speaking with Mr. Irby
24 just very briefly, it might have been somewhere around 2:30,
25 or just in that general time.

1 Q. Or even later?

2 A. Possibly later, yes.

3 Q. All right. Now, when you got to the apartment [REDACTED] did
4 anyone come to the door?

5 A. Yes.

6 Q. And who was that?

7 A. Shaundrecus Edwards.

8 Q. And was there anyone else there?

9 A. His mother.

10 Q. Did you enter the house?

11 A. Yes, when he -- when he came to the door, he appeared
12 to me to be somewhat nervous. Given that we had two track
13 paths that led to his apartment, it was my belief that there
14 could be two people inside the apartment, or someone inside
15 the apartment that was armed with a weapon. And for
16 officer's safety I asked for permission to do just a cursory
17 search for anyone that might be armed, since I could only
18 see one subject present.

19 Q. Okay. And when you came in -- when you came in in the
20 house, what did Shaundrecus Edwards do?

21 A. He made what appeared to me to be a very furtive effort
22 to move away from me in a very quick manner down the
23 hallway, almost like walking in the military you call a
24 range walk. Just short of a jog. Very quickly walking down
25 the hallway back to the -- to a bedroom at the end of the

1 hallway.

2 Q. All right. And so this obviously caught your
3 attention?

4 A. Yes.

5 Q. And did you follow him?

6 A. Yes, I did.

7 Q. You followed him back to the bedroom?

8 A. Yes.

9 Q. And what happened back in the bedroom?

10 A. He appeared to almost stub his toe at the entry to the
11 room itself. And once he got inside, he reached for
12 something that was either on a bed stand or the top of the
13 bed and quickly moved to what appeared to try to hide
14 something or secrete something under the bed.

15 Q. Okay. And did you look under the bed?

16 A. Yes, I did.

17 Q. What did you see under the bed?

18 A. A pistol.

19 Q. Was that pistol later photographed?

20 A. Yes, it was.

21 Q. You didn't collect it at that time?

22 A. No, sir, I did not.

23 Q. Take a look at State's Exhibit No. 4. Is that a
24 photograph of the pistol as you saw it underneath the bed?

25 A. Yes.

1 Q. Is that the way that it appeared that night?

2 A. Yes.

3 MR. SULLIVAN: No objection, Your Honor.

4 MR. MOYER: State moves Exhibit No. 4 into
5 evidence.

6 THE COURT: Without objection, Exhibit 4 is into
7 evidence.

8 BY MR. MOYER:

9 Q. If you would, I'm going to ask you to kind of explain
10 to the jury what we seeing there on that projection.

11 A. This bed is very high off the ground.

12 Q. Actually before you do, let me give you a laser
13 pointer. That button right there.

14 A. Okay. This bed is very high off the ground. As you
15 can see, it's like two-by-fours. It was probably about 18
16 inches off the ground. Much higher than you would normally
17 see a bed. It was very easy to see under it. And this
18 right here was a pistol that I could see. It was in plain
19 view.

20 The fact that he made that motion underneath the bed
21 and the fact that the bed was so high off the ground, I
22 didn't know if possibly be somebody underneath the bed. And
23 for my safety I was looking just to make sure there was
24 nobody hiding under the bed or something such as that, but I
25 immediately saw the gun and I stopped everything at that

1 point and just -- we controlled the scene from there.

2 Q. So that's the gun right there?

3 A. Yes.

4 Q. Thank you. Now, taking a look at State's Exhibit No.
5 25, is that the pistol that you saw under the bed?

6 A. Yes, sir.

7 Q. Okay. And that was a .22 caliber?

8 A. Yes.

9 Q. Now, you stated at that point you stopped things. It
10 was your purpose to get a search warrant?

11 A. My purpose for being there at that point was officers
12 safety to make sure there was nobody there that could do
13 harm.

14 Q. I'm sorry, I'm talking about after you found the
15 pistol.

16 A. And once I saw the weapon, then I realized that there
17 was a great possibility that that could represent evidence
18 in a crime. And just a condition to look for officer's
19 safety or for a protective sweep would now longer apply for
20 me to continue the search beyond that point, so I stopped
21 all motion in the apartment and started calling other
22 officers present to freeze up the scene until we could
23 obtain a search warrant to complete a thorough comprehensive
24 search of the residence.

25 Q. Okay. So you left to go get a search warrant then?

1 A. Yes, I did.

2 Q. Other officers stayed there?

3 A. Lieutenant Hamby arrived. Detective Denton arrived.
4 Several other patrol officers. I believe some Greenville
5 County officers. Greer city officers arrived to control the
6 motion in the house. Detective Denton and myself drove to
7 my office, which is about a mile, mile and a half away, to
8 secure the search warrant.

9 Q. And you made sure -- so you were making sure then that
10 there were officers there so while you were gone to get the
11 search warrant, nothing could be disposed of?

12 A. That's correct.

13 Q. And so you came back and participated in the search of
14 the house?

15 A. Yes.

16 Q. And that pistol was collected as evidence?

17 A. It was.

18 Q. And do you remember somebody showing up at the
19 residence while y'all were doing the search warrant?

20 A. Shortly after we began the search Marcus Parks arrived.

21 Q. Okay. Now, when he arrived, did y'all ever allow
22 Marcus Parks and Shaundrecus Edwards to be alone together?

23 A. Absolutely not.

24 Q. Did you make sure there were officers around them at
25 all times?

1 A. That was done consciously.

2 Q. Okay. To make sure they couldn't communicate --

3 A. That's correct.

4 Q. -- with one another.

5 And then they were taken back to the Greer Police
6 Department?

7 A. Yes, sir.

8 Q. Were they kept separate the whole time?

9 A. Yes.

10 Q. And were always officers with them?

11 A. Yes. Our purpose is to make sure they don't trade
12 stories and maybe come up with something. It would just
13 taint their information that we could possibly gain from
14 them at a later time.

15 Q. And when you -- and so you know about them being
16 questioned back there at the law enforcement center?

17 A. Yes, sir.

18 Q. And they were kept separate when they were questioned?

19 A. Yes, sir.

20 Q. All right. Please answer any questions that the
21 defense would have.

22 MR. SULLIVAN: Just a couple, Officer Justice.

23 I don't know if I can handle this exhibit.

24 CROSS EXAMINATION BY MR. SULLIVAN:

25 Q. Officer, you said that you responded and came in this

1 way, I think that's a dead-end, so you came around here?

2 A. Yes.

3 Q. And then you followed the tracks this way behind this
4 old abandoned building?

5 A. Yes, sir.

6 Q. And then they went up here to the [REDACTED]

7 A. The path actually led past the [REDACTED] yes.

8 Q. This is -- do you recognize this, or that?

9 A. Yes.

10 Q. Could you read the highlighted part just from where the
11 pencilled part where you followed? Could you just read that
12 loud to the jury?

13 A. "Officer Mellby and I followed a pair of footprints
14 that were visible in newly fallen snow. The tracks led to
15 the [REDACTED] where I spoke with Leon Irby, the resident of
16 No. 30. Mr. Irby stated that two subjects described as
17 black males came by his apartment and asked for a drink of
18 alcohol. He gave them both brandy and Coke. Mr. Irby
19 advised they talked for awhile, and they the two" -- that's
20 the two black males, "left walking towards the C building.
21 We followed the footprints to the rear of apartment [REDACTED]
22 where -- "to the rear door of [REDACTED] where the tracks ended.
23 We went around to the front door and knocked. A black male
24 identified as Shaundrecus Edwards answered the door and
25 responded to my questions."

1 Q. That's fine. So you went from the crime scene to K
2 building and spoke with Leon Irby. Did you take the
3 statement from Leon? I'm just curious. Do you recognize
4 that?

5 A. Yes.

6 Q. Okay. So this was a statement that he gave y'all that
7 night --

8 A. Yes.

9 Q. -- as a result of your conversation with him?

10 A. Yes.

11 Q. And then after it seemed like Mr. Edwards tried to hide
12 a gun and you found the .22, which has been identified,
13 under the bed, in his bedroom?

14 A. Yes, the .22.

15 Q. The snow is kind of the key to solve this thing real
16 quick, wasn't it?

17 A. Yes, the tracks that led to the back of [REDACTED] is what
18 basically set the thing in motion as to identifying the
19 people that we later got statement from where Mr. Irby
20 indicated that two people had been there. In our statements
21 that were acquired after that point indicated that those --
22 that they had -- two people had arrived at K apartment, his
23 apartment, but that actually had occurred earlier in the
24 evening, and that the people that had walked back had
25 actually walked past the [REDACTED] and didn't actually stop

1 there at that time.

2 Q. You went from -- you went from the crime scene to the ■
3 ■ and talked to Mr. Irby and then went to ■

4 A. That's correct.

5 MR. SULLIVAN: Nothing further, Your Honor.

6 MR. MOYER: Nothing else.

7 THE COURT: Thank you, officer. You may step
8 down.

9 MR. MOYER: The State would call Mildred Edwards.

10 MILDRED CHARLENE EDWARDS, having been first duly
11 sworn, testified as follows:

12 THE CLERK: State your name for the record.

13 THE WITNESS: Mildred Charlene Edwards.

14 DIRECT EXAMINATION BY MR. MOYER:

15 Q. All right, ma'am, how old are you?

16 A. 43.

17 Q. And you are the mother of Shaundrecus Edwards?

18 A. Yes, sir.

19 Q. You live at apartment ■ in Drummond Village?

20 A. Yes, sir.

21 Q. All right? Did you live there February 27th, 2004, the
22 night that your son was arrested?

23 A. Yes, sir.

24 Q. And who did you live there with?

25 A. Just me and Shaundrecus.

1 Q. And do you know who Marcus Parks was?

2 A. I had just met him about -- probably about two or three
3 weeks earlier.

4 Q. He was staying next door in the B building?

5 A. Yes.

6 Q. Now, this defendant, Albert Kelly, did he live near you
7 too?

8 A. Yes, I assume. I just met him too.

9 Q. Did you know where he lived?

10 A. In J building, I think.

11 Q. Do you know where that is on that map?

12 A. Yes.

13 Q. Would you point it out on that map?

14 (Witness off the witness stand)

15 A. Right here.

16 MR. MOYER: Okay. Just have a seat.

17 (Witness back on the witness stand)

18 BY MR. MOYER:

19 Q. All right. Now, do you remember on February the 26th
20 of 2004?

21 A. (Shaking head yes)

22 Q. And did you -- that was the day of the snowstorm?

23 A. Yes.

24 Q. Did you stay at home that day or did you go out
25 anywhere?

1 A. I was out.

2 Q. And do you remember around what time that you left?

3 A. It had to be about -- well, me and my friend had got
4 income tax that day, so we had went out and got -- we was
5 spending money that day.

6 Q. Doing some shopping?

7 A. Uh-huh. I came back in, back and forth, but that
8 evening I had left and went to my momma's house.

9 Q. Okay. And you went over to your mom's house then. And
10 where does she live?

11 A. She live at North Street, Welford, South Carolina.

12 Q. Do you remember about what time that you went over to
13 your mom's house?

14 A. I think it was about five o'clock.

15 Q. And do you remember about what time that you came home?

16 A. Between eleven and twelve.

17 Q. Okay.

18 A. Because I asked her to bring me home.

19 Q. And was -- do you remember the weather being bad?

20 A. Yes, it was snowing.

21 Q. And how did you get home? Your mother?

22 A. My mother brought me home.

23 Q. So how far did you -- did your mother have to drive
24 kind of slowly?

25 A. Yes.

1 Q. Because of the weather?

2 A. That's why it took longer, uh-huh.

3 Q. Now, when you got home, did you see your son

4 Shaundrecus?

5 A. He was next door at my neighbor's at Freda Glenn's. He

6 had the key, so I had to knock on her door to get him to

7 come around and let me in.

8 Q. And he let you in?

9 A. Uh-huh.

10 Q. And y'all went in your house then?

11 A. Yes.

12 Q. All right. Was there anyone else there in the house

13 when you --

14 A. No.

15 Q. -- and Shaundrecus went in?

16 A. No.

17 Q. Now, do you know Leon Irby?

18 A. Yes.

19 Q. Do you remember what his phone number was?

20 A. Yes.

21 Q. And do you remember having a telephone conversation

22 with him --

23 A. Yes.

24 Q. -- when you got in?

25 A. Yes.

1 Q. It was a pretty long conversation?

2 A. Yes.

3 Q. And what was his phone number then?

4 A. 848-1086.

5 Q. What was yours?

6 A. 801-3440.

7 Q. Whose name was your telephone account in?

8 A. Leon Pickett.

9 Q. He's a friend of yours?

10 A. Yes.

11 Q. Now, when you had that telephone conversation with Leon
12 Irby, was Shaun there at home with you?

13 A. Yes, he was in the living room.

14 Q. Did you and Leon talk about Shaun at all?

15 A. No, we was just talking in general. We was just
16 talking different -- just talking.

17 Q. Do you remember any conversation about whether or not
18 Shaun had been over to Leon's house earlier that day?

19 A. Yes, he told me Shaun had came over there and got
20 something to drink and that he had got sick.

21 Q. Okay.

22 MR. SULLIVAN: Judge, I object to hearsay as to
23 what Mr. Irby said to her.

24 THE COURT: Sustained.

25 BY MR. MOYER:

1 Q. All right. Later on that night did you see Marcus
2 Parks or Albert Kelly?

3 A. Yeah, they came to my house about -- I think it was
4 like 1:30.

5 Q. And how were they acting?

6 A. They was quiet, not like they usually act. Quiet and
7 not talking, just -- if they were talking, they were
8 whispering.

9 Q. And it was both of them -- it was Marcus Parks --

10 A. And --

11 Q. -- Albert Kelly --

12 A. Uh-huh.

13 Q. -- came in your house?

14 A. Uh-huh.

15 Q. Did you want them there that late at night?

16 A. No.

17 Q. Did you end up telling them to leave?

18 A. Yeah, evidently I had fell asleep, and about three
19 o'clock I heard them talking and I got up and I told them to
20 get out.

21 Q. And they left?

22 A. Uh-huh.

23 Q. Now, you do you remember the police coming on later
24 that night?

25 A. About 15 minutes later the police knocked on the door.

- 1 Q. And do you remember them --
- 2 A. I thought it was them back again.
- 3 Q. Do you remember them looking through your house?
- 4 A. Yes.
- 5 Q. Okay. So you were there while they searched the house?
- 6 A. Yes.
- 7 Q. Do you remember Marcus Parks coming back?
- 8 A. Yes.
- 9 Q. Now, during that time while the police were searching
- 10 your house did you receive any phone calls?
- 11 A. From Albert.
- 12 Q. Albert Kelly called?
- 13 A. Uh-huh.
- 14 Q. Did you answer the phone?
- 15 A. Yes.
- 16 Q. Did he ask for anybody?
- 17 A. He asked for Shaun.
- 18 Q. Did you allow Shaun to talk to him?
- 19 A. No.
- 20 Q. Now, when the police left did they take anyone with
- 21 them?
- 22 A. They took Shaun and Marcus.
- 23 Q. And you stayed at home there?
- 24 A. Yes, sir.
- 25 Q. Do you remember the police coming back later on that

1 day?

2 A. They came back like twelve o'clock the next day.

3 Q. Okay. And did you see what -- why they came back?

4 A. They came back to get a gun from under my living room
5 couch inside of a hat.

6 Q. So that was about twelve o'clock?

7 A. Uh-huh.

8 Q. About noon then?

9 A. Yes.

10 Q. Middle of the day?

11 A. I remember, uh-huh.

12 Q. Now, from the time they took Marcus and Shaun away to
13 the police station up until the time the police came back in
14 the middle of day --

15 A. Uh-huh.

16 Q. -- and got that pistol, were you at home that whole
17 time?

18 A. I was at home sleeping.

19 Q. You stayed in the house, though?

20 A. Yes, sir, I never left.

21 Q. And did you see where they found that pistol?

22 A. Yes, sir.

23 Q. Where did they find it?

24 A. Under my living room couch.

25 Q. Now, your couch, is it kind of a couch if you walked by

1 it, you would be able to see under it?

2 A. No.

3 Q. It's pretty low then?

4 A. Yes, sir.

5 Q. I'm going to show you State's Exhibit No. 9. Is that a
6 picture of the couch?

7 A. Yes, sir.

8 Q. That's the way it looked back on February 27th?

9 A. Yes, it is still the same.

10 MR. SULLIVAN: No objections, Your Honor.

11 THE COURT: All right.

12 MR. MOYER: State moves State's Exhibit No. 9 into
13 evidence.

14 THE COURT: Without objection, it's admitted as
15 No. 9.

16 BY MR. MOYER:

17 Q. Just for the jury's benefit then, is that the couch
18 that pistol was found underneath?

19 A. Yes, sir.

20 Q. So if you are walking by that, you wouldn't be able to
21 see underneath?

22 A. No.

23 Q. See something under it?

24 A. No, sir.

25 Q. Thanks.

1 All right. Please answer any questions that the
2 defense has.

3 MR. SULLIVAN: Just a few, Ms. Edwards.

4 CROSS EXAMINATION BY MR. SULLIVAN:

5 Q. What time -- you say that you had been out and about.
6 Y'all had gotten your refund check. What time did you get
7 home?

8 A. It was between eleven and twelve o'clock, because --

9 Q. Around that time?

10 A. That's when it started snowing harder.

11 Q. And you say at that point that Shaun was not there?

12 A. He was next door.

13 Q. He wasn't there waiting on you?

14 A. No.

15 Q. So you went to the next door apartment?

16 A. And he was there.

17 Q. And I think Toni Glenn lives there?

18 A. Yes.

19 Q. Do you know those people?

20 A. Yes. We have been friends for a long time.

21 Q. Did you stay there and visit for awhile?

22 A. No.

23 Q. You and Shaun --

24 A. He just came and let me in.

25 Q. And then where did he go?

1 A. He came in the house too.

2 Q. So you two went on back in the house about between
3 eleven and twelve?

4 A. Right.

5 Q. And then what did you do between -- you say that later
6 on A.K., or Albert, and Marcus came. And what time did they
7 leave there?

8 A. It was -- I was on the phone. I think I was still
9 talking to Leon and they knocked on the door. It was like
10 1:15 -- between 1:15 and 1:30.

11 Q. When they came in, did you -- where -- in relation to
12 your house, where was everybody?

13 A. In my living room.

14 Q. Everybody was in your living room?

15 A. Uh-huh.

16 Q. Did you watch them talking?

17 A. No.

18 Q. You said they were quiet.

19 Where did you go?

20 A. I went back to my room.

21 Q. So you left the three of them in --

22 A. Uh-huh.

23 Q. -- your living room?

24 A. Uh-huh. I was wondering why they come there that time
25 of night.

1 Q. So you went on to bed?

2 A. Uh-huh, I was -- well, I was laying in my room.

3 Q. And then you say that you got up at three o'clock?

4 A. Uh-huh.

5 Q. And Albert and Marcus were still there?

6 A. Uh-huh, and I told them it was time to go.

7 Q. They were all still talking?

8 A. They was in there.

9 Q. How well do you know Toni Glenn?

10 A. I know -- I been knowing her since she was a child.

11 Q. And then I think you have been present during the
12 trial. She testified yesterday, correct?

13 A. Yes.

14 Q. And she had never given sworn testimony before, had
15 she?

16 A. No, not that I know of.

17 Q. Do you know how she became involved? Did Officer
18 Dale --

19 A. No, I don't know.

20 Q. Did you call Officer Dale Arterburn and talk to her?

21 A. No, I didn't call anybody.

22 Q. Did you ever discuss the case with Toni Glenn?

23 A. Well, we talked about it, as far as me going over there
24 and telling them about did you know anything about the
25 case -- about somebody getting killed down here last night.

1 Other than that, I don't see her.

2 Q. Did she know that -- did you tell her that Shaun had
3 been arrested?

4 A. Yes.

5 Q. Did she mention Shaun had been over there having
6 hamburgers and things?

7 A. Yes.

8 Q. You were interviewed by Officer Dale Arterburn or some
9 of the police officers, weren't you?

10 A. No.

11 Q. No?

12 A. I never gave a statement.

13 Q. You weren't interviewed by any of the police officers?

14 A. No.

15 Q. Now, I'm not trying to embarrass you, Ms. Edwards, but
16 we are allowed to do this. Isn't it true that you had a
17 little problem with the law in the past, in your past?

18 A. Yes, I did.

19 Q. You had a couple of drug convictions?

20 A. Yes, I did.

21 Q. Did a little bit of time?

22 A. Yes, I did.

23 Q. And I think you had a fraudulent check?

24 A. Yes, I did.

25 Q. And you don't want -- you didn't want Shaun to get in

1 any more trouble?

2 A. No, I did not, and he didn't.

3 MR. SULLIVAN: I have nothing further, Your Honor.

4 THE COURT: Any redirect?

5 MR. MOYER: No, sir, Your Honor.

6 THE COURT: Thank you, ma'am. You may step down.

7 MR. MOYER: The State would call Dan Hendricks to
8 the stand.

9 OFFICER DAN HENDRICKS, having been first duly
10 sworn, testified as follows:

11 THE CLERK: State your full name for the record.

12 THE WITNESS: Dan R. Hendricks.

13 DIRECT EXAMINATION BY MR. MOYER:

14 Q. How old are you?

15 A. I'm 59.

16 Q. Where do you work?

17 A. Greer Police Department, City of Greer.

18 Q. How long have you worked for the Greer Police
19 Department?

20 A. All toll, since '91. 15 years -- 14 years.

21 Q. You have been in law enforcement prior to that?

22 A. Yes, sir.

23 Q. And total law enforcement?

24 A. 32 years.

25 Q. And that's with Anderson and Greenville as well?

1 A. Yes, sir.

2 Q. Let me take you to back to February 27th of 2004. Did
3 you respond to this scene at Southgate Trailer Park?

4 A. Yes, sir, I did.

5 Q. Around what time was it that you responded?

6 A. Roughly about eight o'clock in the morning, 8:00 to
7 8:30 a.m..

8 Q. What was your reason for going there?

9 A. I was assigned security of the crime scene. After the
10 officers had left, investigators had left and were doing
11 their followup investigation, but the crime scene still
12 belonged to the Greer Police Department.

13 Q. So it was light out at this point?

14 A. Yes, it was. It was daylight.

15 Q. Was there crime scene tape up?

16 A. Yes, there was.

17 Q. Now, when you got there, was there another officer
18 positioned there guarding?

19 A. Yes, there was, and I relieved that officer.

20 Q. Now, as the day started to wear on, did it start to
21 warm up?

22 A. Yes, it did. Approximately around eleven o'clock or so
23 that the sun broke through the clouds and the temperature
24 started to rise and the snow started to melt off.

25 Q. Okay. So did you start looking over that area where

1 you knew the crime scene to have been?

2 A. Yes, sir, I did. I had been advised earlier that
3 morning by Detective Arterburn that the shell casing had
4 never been located from the projectile. So as the sun
5 started to melt the snow from the crime scene, I did go to
6 the area of the crime scene and I did at that time, after
7 the sun melted down the snow, find a brass casing for a
8 round of ammunition.

9 Q. Did you collect it?

10 A. No, sir, I did not. I left it exactly as I found it
11 and protected it until Detective Arterburn could arrive to
12 retrieve it.

13 Q. So you -- you ended up showing Detective Arterburn
14 where it was?

15 A. Yes, sir, I did.

16 Q. And did you see him retrieve it?

17 A. Sir?

18 Q. Did you see Detective Arterburn pick that --

19 A. Yes, sir, I did.

20 Q. -- shell casing up?

21 A. Yes, sir, he did, after he photographed it --

22 Q. Okay.

23 A. -- and documented the position where it was lying.

24 Q. Let me show you State's Exhibit No. 12. Do you
25 recognize that?

1 A. Yes, sir, I do.

2 Q. And what is that?

3 A. That is a shrub bush approximately eight to ten feet
4 from the corner of the trailer where the victim lived, and
5 it would be ruler laying there next to a crushed Bud Lite
6 beer can, and the projectile is next to the crushed beer
7 can.

8 Q. State's Exhibit No. 13, is that a closer photograph of
9 that?

10 A. Yes, sir, it is. That's the exact same photograph,
11 only much better close-up shot showing the brass casing and
12 the ruler and the beer can.

13 Q. Are they accurate representations of the way those
14 particular items looked on February the 27th, 2004?

15 A. Exactly, yes, sir.

16 MR. SULLIVAN: No objection, Your Honor.. I have
17 seen the.

18 MR. MOYER: State's Exhibit No. 12 and 13, we
19 would move into evidence.

20 THE COURT: Without objection they are admitted
21 into evidence, 12 and 13.

22 BY MR. MOYER:

23 Q. All right, officer, this should display on the screen
24 behind you. What I would like you -- do you have the laser
25 pointer in front of you? You should.

1 A. This would be the shell casing, which was lying next to
2 the beer can at the time that I found it. And this way
3 would be the shrub bush beyond that at the corner of the
4 trailer, about eight feet out from the trailer.

5 Q. And then this is -- that was State's Exhibit 13.

6 State's Exhibit 12 is the farther shot?

7 A. Yes, sir, this is the overall view of the corner of the
8 trailer, the shrub plant, and then the beer can and the
9 shell casing. Upon my arrival all this was covered and
10 compacted with snow.

11 Q. Okay. So it was just as the snow began to melt that it
12 became visible?

13 A. Yes, sir.

14 Q. Now, is that by that shrub that you described, right
15 beneath that, is the ground a different coloration there
16 than --

17 A. Yes, sir, this is like mulch right here and then here
18 would be reddish stain in the snow, which our presumption
19 was that it was blood from the victim.

20 Q. And you are aware that's where the body ended up being?

21 A. Yes, sir, that's what I was advised. The body had been
22 removed when I arrived, so I did not actually see it in
23 place, but that was my understanding.

24 Q. Okay. Thank you. Please answer any questions that the
25 defense has.

1 MR. SULLIVAN: No questions, Your Honor.

2 THE COURT: Thank you, Officer Hendricks. You may
3 step down.

4 May we approach, Your Honor?

5 THE COURT: Yes, sir.

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion)

8 THE COURT: Ladies and gentlemen, I believe this
9 would be a good time for us to take a break, so I'm going to
10 ask you to go back to your jury room and we will take a 15
11 minute break and be ready to start back at that time.

12 Again, let me remind you don't discuss the case at
13 this time. Have a good break.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: All right. We will be at ease for a
17 15 minute break.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 (Phone Records marked as State's Exhibit No. 32
21 for identification)

22 MR. MOYER: Everybody ready to proceed?

23 MR. MOYER: Yes, sir.

24 MR. SULLIVAN: Yes, sir.

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

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All right, solicitor, you may call
4 your next witness.

5 MR. MOYER: The State would call Lavonne
6 Westbrooks.

7 LAVONNE WESTBROOKS, having been first duly sworn,
8 testified as follows:

9 THE CLERK: State your full name for the record.

10 THE WITNESS: Lavonne Westbrooks.

11 DIRECT EXAMINATION BY MR. MOYER:

12 Q. All right, Ms. Westbrooks, where are you employed?

13 A. Bell South Telecommunications.

14 Q. What is your possession with Bell South?

15 A. I'm a compliance assistant.

16 Q. What does that mean? What do you do?

17 A. It means that I answer subpoenas and testify in court.

18 Q. Okay. And for the purpose of introducing phone records
19 mainly?

20 A. Yes.

21 Q. So it is then part -- it's a normal part of your job to
22 have access to records of regularly conducted business
23 activity?

24 A. Yes.

25 Q. And bring those records to court?

1 A. Yes.

2 Q. Okay. Now, were you asked to bring some records with
3 you today?

4 A. Yes.

5 Q. Let me show you State's Exhibit No. 32.

6 Are those the phone records that you -- or are those
7 the items that you were subpoenaed to bring with you today?

8 A. Yes, they are.

9 Q. And what type of records are they?

10 A. It's a subscriber information sheet along with several
11 pages of call records.

12 Q. And so are those records kept in the course of
13 regularly conducted business activity from Bell South?

14 A. Yes.

15 Q. And it's a regular practice at Bell South to record and
16 to keep those records?

17 A. Yes.

18 Q. And, of course, as I asked, you have access to that
19 information as a regular part of your job?

20 A. Yes.

21 MR. MOYER: At this time the State moves to have
22 State's Exhibit No. 32 moved into evidence.

23 MR. SULLIVAN: No objection.

24 THE COURT: Without objection Exhibit 32 is into
25 evidence.

1 BY MR. MOYER:

2 Q. Okay. They are phone records for what phone number?

3 Start with that, what phone number?

4 A. 864-801-3440.

5 Q. And what is the address of that phone number is for?

6 A. [REDACTED] Greer, South Carolina, apartment

7 6.

8 Q. Whose name is that account in?

9 A. Leon Pickett.

10 Q. Leon Pickett.

11 Okay. What dates are those phone records for?

12 A. This information is as of February, 2004.

13 Q. And what particular days in February of 2004?

14 A. It starts on February 26th and ends on March 1st, 2004.

15 Q. Okay. And what type of information is recorded on
16 those records?

17 A. Well, the first sheet is a subscriber sheet. It lists
18 the name and address and type of account it is and the
19 telephone number.

20 Q. And I think maybe that we will do it by putting this
21 information on the screen behind you.

22 A. Uh-huh.

23 Q. Then you can explain the different --

24 A. Okay.

25 Q. The different categories that are -- that are on these

1 records.

2 Okay. This is for February the 26th then?

3 A. Yes.

4 Q. So let's start with the first column. The first column
5 is the number?

6 A. Right, the calls are numbered, just for the purposes of
7 preparing the report.

8 Q. Okay. Can you move that microphone a little bit closer
9 to you now that you are away?

10 A. Sure. The calls are numbered for the purposes of
11 preparing the report.

12 Q. And next -- what is the next column? What information
13 is recorded?

14 A. That indicates the date the call was made.

15 Q. Okay.

16 A. The third column indicates the time of day the call was
17 made.

18 Q. And is that time in military time?

19 A. Yes, it is.

20 Q. So, for example, the next page here we start to see 13
21 and 14?

22 A. That's right, that would be 1351 would be 1:51 in the
23 afternoon.

24 Q. Okay. So a 00 would be what time?

25 A. That would be -- well, the first column, number one,

1 happened at two seconds past midnight.

2 Q. Okay. Now, what is the third --

3 A. Let me correct that. Two minutes past midnight, I'm
4 sorry.

5 Q. I'm sorry?

6 A. Two minutes past midnight.

7 Q. Two minutes past midnight. I'm sorry.

8 The next column, it says calling number on top. What
9 does that column signify?

10 A. That indicates the telephone number of the number that
11 was making the telephone call.

12 Q. Okay. And what is the next?

13 A. Called number indicates the telephone number that
14 received the telephone call.

15 Q. And once again, these records are for 801-3440? The
16 record that you brought, these are for that phone number?

17 A. Move it down some. Move the page down some. The
18 telephone number is at the top of the page that I pulled the
19 records for. That's 864-801-3440.

20 Q. And so that number then is going to show up in one of
21 those two columns --

22 A. Correct.

23 Q. -- every time.

24 Either as the number that made the phone call or the
25 number receiving the phone call?

1 A. Yes.

2 Q. So let's take for an example this very first line. Was
3 this resident's apartment [REDACTED] making the phone call or
4 receiving the phone call?

5 A. They received a telephone call at that time.

6 Q. Okay. Because it says called number.

7 And the next column?

8 A. The target number is in the calling number column, so
9 they were making a telephone call.

10 Q. Now, the next column, it says duration of the top.
11 What does that indicate?

12 A. The number of minutes that the call took.

13 Q. Now, obviously all phone calls don't necessarily end at
14 exactly on the minute, so they are all whole numbers. How
15 is that worked out?

16 A. The system that we used to produce this record rounds
17 the number to the nearest whole number. So, for instance, a
18 call that has duration of five minute could be anywhere from
19 four minutes and 30 seconds up to five minutes and 29
20 seconds.

21 Q. Okay. So that would be for duration.

22 Now, what about the column that says answered on top?

23 A. Answered? If it says yes, that means that the call
24 connected. That could mean that a person picked up the
25 phone, or it could mean that an answering machine picked up

1 the phone.

2 Q. And call type -- we see several different codes down
3 here. That just has to do with whether it was a cell phone,
4 or a land line, or information like that?

5 A. That's correct. The computer codes each call so that
6 it is easier for us to prepare our telephone bills.

7 Q. Nothing further. Please answer any questions that the
8 defense would have.

9 CROSS EXAMINATION BY MR. SULLIVAN:

10 Q. This one on the exhibit, let's say call number 177,
11 what's the date? Just read the information across there for
12 me.

13 A. Call number 177 occurred on February 27th, 2004, at ten
14 minutes past midnight. The call that -- the number that
15 made the call was 864-801-3440. The number that received
16 the call was 864-244-9903.

17 Q. Call number 191, if you would read that one to me?

18 A. Call number 191 occurred on February 27th, 2004, at
19 3:29 in the morning. The telephone number making the call
20 was 864-848-1086, and the number that received the call is
21 864-801-3440.

22 Q. The duration was two minutes?

23 A. Call number 191, the duration indicates two minutes.

24 Q. This would have been from the --

25 A. That was an incoming call.

1 Q. From 1086 --

2 A. From 848-1086 to the target number of 801-3440.

3 Q. This would have been at three in the morning?

4 A. Yes, sir.

5 Q. And then this one, 184?

6 A. 184 occurred on 2-27-2004, at 1:05 in the morning. The
7 target number 864-801-3440 made a call to 864-848-1086. The
8 duration was 27 minutes.

9 Q. Thank you. I guess it's obvious, kind of a stupid
10 question, but that just shows you somebody used that phone
11 with that number to call a number or receive a call,
12 correct?

13 A. That's correct.

14 Q. Have no idea who made the call or got the call?

15 A. I do not.

16 MR. SULLIVAN: Nothing further, Your Honor.

17 MR. MOYER: Nothing further.

18 THE COURT: All right. Thank you, ma'am. You may
19 step down.

20 The State calls Agent Paavel.

21 SLED AGENT VELLO PAAVEL, having been first duly
22 sworn, testified as follows:

23 THE CLERK: State your name for the record.

24 THE WITNESS: My name is Vello Paavel, spelled

25 V-E-L-L-O P-A-A-V-E-L.

1 DIRECT EXAMINATION BY MR. MOYER:

2 Q. And you are employed by the South Carolina Law
3 Enforcement Division?

4 A. Correct.

5 Q. Which is also known as SLED?

6 A. Yes, sir.

7 Q. How long have you been with SLED?

8 A. 18 and a half years.

9 Q. And that's all been in the firearms department?

10 A. Yes, I have been in the firearms department all that
11 time.

12 Q. And what is your position with SLED?

13 A. I am a firearms and tool mark examiner in the firearms
14 department.

15 Q. Okay. And tell the jury a little bit about what that
16 means, what your duties entail.

17 A. Yes, sir. Primarily what I do is examine bullets,
18 cartridge cases and firearms and try to determine whether or
19 not those bullets and cartridge cases were fired by
20 particular guns.

21 I also will examine firearms to determine whether or
22 not they are functioning properly.

23 Also I do serial number restoration on firearms.

24 In the absence of a firearm -- let's say, for instance,
25 I have just a bullet or cartridge case, I can examine those

1 and try to give the investigator an idea of what type of
2 firearm may have fired those bullets or cartridge cases.

3 Q. Okay. And you received training for this position?

4 A. Yes, sir, I participated in a training program that was
5 administered by SLED, in which I had to study and work under
6 the supervision of court-qualified firearm examiners. After
7 I completed that training program, I was able to work cases
8 on my own and testify in court.

9 Prior to working at SLED and prior to my law
10 enforcement career I was actually in the firearms business,
11 where I bought, sold, and repaired firearms as a living for
12 several years.

13 Q. And do you know how many firearms that you have
14 examined over the years?

15 A. I would have to say in the thousands of actual firearms
16 that I have examined for case work.

17 Q. And what about for -- with tool mark -- for the tool
18 mark identification aspect of firearms?

19 A. Actually firearms identification is a specialized form
20 of tool mark identification. What a firearms examiner does
21 is examine the microscopic scratches or marks or tool marks,
22 as they are called, that are placed on a bullet or a
23 cartridge case as a result of being fired from the firearm.

24 In general, tool mark identification, what I do, is
25 examine tool marks on objects, say that are used in a

1 burglary, looking at a crowbar versus a door, or some sort
2 of pry bar versus a window, or a screwdriver, or bolt
3 cutters that are used to cut a particular object.

4 Q. Okay.

5 MR. MOYER: Your Honor, at this time I would move
6 to have Agent Paavel as an expert in firearm and tool marks
7 identification.

8 THE COURT: Any objection?

9 MR. SULLIVAN: No objection. No voir dire.

10 THE COURT: Without objection.

11 BY MR. MOYER:

12 Q. All right. Would you tell the jury how it's possible
13 to make a positive identification from projectiles and/or
14 shell casings with a firearm?

15 A. Yes, sir. The manufacturing processes that are used to
16 manufacture firearms will leave markings or defects on
17 various parts of the firearm, whether it's the inside of the
18 barrel or the other parts of the firearms, such as the
19 firing pin or extractor or breech face, or other areas in
20 the firearm that will come in contact with the bullet and/or
21 cartridge case.

22 Also any sort of wear or tear from shooting or abuse
23 will also leave little small microscopic markings on the
24 firearm itself. When a bullet passes through the gun
25 barrel, the bullet is actually engraved or scratched by the

1 gun barrel and I can examine those microscopic markings.

2 In the cases where shell casings are used or cartridge
3 cases are found, I can look at markings that are left by the
4 firing pin, breech face, extractor, ejector, and sometimes
5 the inside of the barrel or chamber and determine whether or
6 not a bullet or cartridge case was fired by that particular
7 gun.

8 And the reason I do that, or can do that, is because
9 firearms examiners throughout the history of this discipline
10 have tried to find two or more firearms that would mark a
11 bullet or cartridge case exactly the same, and we haven't.
12 We haven't found any sort of tool that will make exactly the
13 same markings on an object, again because of the
14 manufacturing processes and wear and tear. So as a result
15 of that, the markings that are on a bullet or cartridge case
16 are unique to a particular gun barrel. And assuming that
17 the bullet is not damaged too badly and assuming that the
18 firearm marks the bullet or the cartridge case consistently,
19 usually the examiner can determine whether or not that
20 particular gun fired that particular bullet or cartridge
21 case.

22 Q. Okay. And were you submitted evidence in this
23 particular case?

24 A. Yes, sir, I was.

25 Q. Let me start off by handing you something that's

1 already been introduced into evidence, State's Exhibit No.
2 18. There is a clip inside there too.

3 If you could, take a look at that. It's already been
4 secured and checked. That's not able to fire, but is that
5 the firearm that you were submitted in this case?

6 A. Yes, sir, this is the firearm that I examined in
7 reference to this case. I recognize it by its make, its
8 model, its serial number and also the markings that I placed
9 on it when I examined it.

10 Normally what I do when I examine a firearm, I will put
11 a number on the firearm, in particular the laboratory case
12 number. There would also be an item number and my initials.
13 It's on the barrel. I placed it right inside here and it's
14 in the bottom of the slide. This is the firearm that I
15 examined.

16 Q. So it's the SLED lab -- the number that your SLED lab
17 gives the case?

18 A. Yes, sir. If I may explain on that. Whenever evidence
19 is submitted to SLED for examination, during the evidence
20 intake procedure a unique case number is assigned for that
21 particular incident. So that when evidence comes in, it can
22 be tracked and traced.

23 Also each particular piece of evidence will have an
24 item number. And that's what this particular object has is
25 a laboratory number and an item number and then my initials.

1 Q. Okay. All right. Well, let me ask you a few questions
2 about that pistol. You may have said this and I may have
3 missed it, but what caliber and what kind of weapon is it?

4 A. This particular pistol is made by company called
5 Highpoint Firearms. It is a model CF .380, and caliber is a
6 .380 automatic, or .380 ACP, as it's commonly called.

7 This is a semiautomatic pistol. What that means is
8 that it uses an object called a magazine to hold cartridges.

9 Let me see if I can get this out of the bag without
10 dusting everything up.

11 Yes, sir, this is the magazine that I also examined.
12 It has the case number, my initials and item number on it.

13 A magazine is sometimes called a clip. It is simply a
14 container that holds cartridges. Once the magazine is
15 loaded, it's placed in the firearm. And if we take this tie
16 out of here, if this wasn't in the way, this magazine will
17 lock into place. Then I could let this slide move forward
18 and it would push a cartridge into the gun barrel and then
19 the pistol would be ready to fire.

20 Then whenever I fired this pistol, a bullet or the
21 projectile will come out the end of the barrel and travel
22 towards a target. And then the pressure that's formed by
23 the burning gunpowder that's inside the cartridge will
24 actually cause this slide to move backwards. Once this
25 slide stops, under spring tension -- there is a large spring

1 in here that tensions this slide. It starts to go back
2 forward. But before it does that, the fired cartridge case
3 is actually ejected or thrown out of this hole or ejection
4 port. And the slide again goes forward. It pushes a new
5 cartridge into the barrel from the magazine and then it's
6 ready to fire again. Then what you have to do is pull the
7 trigger again, it will fire.

8 So every time that you pull the trigger on this
9 firearm, a bullet comes out the end of the barrel. The
10 slide moves back, the cartridge case is thrown out, the
11 slide goes forward, it chambers a new cartridge and the
12 firearm is ready to fire again. And it can fire literally
13 as fast as you can pull the trigger and release it. It is
14 not a machine gun, so you can't just simply hold the trigger
15 and fire. You have to pull the trigger and let it go for
16 each shot.

17 Q. Okay. And was that pistol actually fired in your
18 laboratory?

19 A. Yes, sir, I actually test fired this pistol during my
20 examination into a bullet recovery tank, which is a large
21 vertical tank of water, which allows me to capture fired
22 bullets and also capture cartridge cases for comparison.

23 Q. Okay. So the pistol was operable?

24 A. Yes, sir, the pistol was working properly. The safety
25 was working properly. The trigger pull weights was normal

1 for this type of pistol.

2 Q. And by trigger pull weights, you mean how hard it is to
3 pull back the trigger and make it shoot?

4 A. Yes, sir, what we do in the examination, or what I did,
5 was actually determine how much pressure was required or how
6 many pounds of weight is required to pull this trigger to
7 make the pistol fire. In this particular case I believe it
8 took anywhere from six to six and a half pounds.

9 Let me refer to my notes to be certain.

10 Yes, sir, approximately six to six and a half pounds of
11 pressure on the trigger to make it fire.

12 Q. Okay. Now, in addition to test firing the weapon you
13 also -- did you test that firearm against a projectile and
14 shell casing?

15 A. Yes, sir. What I did was actually used the test
16 specimens that I recovered from firing this pistol, the test
17 bullets and test cartridge cases, and did microscopic
18 comparison of those with evidence specimens that were also
19 submitted.

20 Q. Let me hand you State's Exhibit No. 22 and 23. If you
21 would, can you just take a look at them?

22 A. Yes, sir.

23 Q. And can you tell us if they are the projectile and
24 shell casing that you used in your examination?

25 A. Yes, sir, I recognize these items.

1 State's Exhibit No. 22 is a fired bullet or projectile
2 that I examined, and State's No. 23 is a fired .380 auto
3 caliber cartridge case that I examined. I recognize them by
4 the SLED laboratory number and item numbers and initials
5 that I actually placed on the items during my examination.

6 MR. MOYER: Your Honor, at this time I would move
7 to have State's Exhibits 22 and 23 moved into evidence,
8 along with State's Exhibit No. 19, which is a stipulation as
9 to the chain of custody on all three of these items, which
10 includes the firearm. I would move to have all those items
11 moved into evidence.

12 THE COURT: Any objection.

13 MR. SULLIVAN: No objection, Your Honor.

14 THE COURT: Without objection Exhibit 19, 22 and
15 23 are into evidence.

16 MR. MOYER: Just for the record, Your Honor, the
17 stipulation covers the firearm, shell casing and the
18 projectile, as far as the complete chain of custody for all
19 those items up until the time Agent Paavel examined them.

20 BY MR. MOYER:

21 Q. All right. Please tell the jury what it was that you
22 did with those -- with that projectile and that shell casing
23 and the conclusions of your examination?

24 A. Yes, sir. Briefly what I do is, again, microscopic
25 comparison of the evidence with tests. And what I do is use

1 a comparison microscope. And that is a microscope that
2 allows me to take two objects and put it on the stages of
3 microscope and look at those objects at the same time. I
4 can move the object to the left, right, up, down, sideways,
5 change the magnification and I can rotate them under axis.
6 What it allows me to do is line up literally one bullet on
7 one side, line up another bullet on the other side, and roll
8 them around and look at the microscopic markings that are on
9 the bullet.

10 I can also align the cartridge case versus a cartridge
11 case and look for the markings that were on the cartridge
12 case as a result of a firing.

13 Now, prior to looking at evidence versus tests, I
14 looked at my test specimens versus each other, which means I
15 will compare the fired test bullets with each other and the
16 fired cartridge cases with each other. And the reason I do
17 that is to make sure that the evidence is -- correction.
18 The tests are being marked consistently by the pistol. Then
19 what I will do is take an evidence specimen, whether it's a
20 bullet or a cartridge case, and I will compare it to a like
21 test specimen. And I start looking for, first of all, class
22 characteristics, meaning are they fired -- could they have
23 been fired by the same barrel, meaning do they have the same
24 number of land and groove impressions.

25 Briefly, the inside of a gun barrel is rifled by the

1 manufacturer that leaves a series of lands and grooves
2 inside the pistol barrel. When the bullet goes through that
3 barrel, these lands and grooves will scratch or mark the
4 outside of the bullet and leave markings on the outside of
5 the bullet. These lands and grooves either twist to the
6 left or twist to the right.

7 So, first of all, what I look at is, one, is the bullet
8 a caliber that can come out of the gun barrel; does it have
9 the same number of lands and grooves; is the direction of
10 twists the same; are the dimensions of the lands and grooves
11 approximately the same; are they approximately the same
12 width. If so, I keep looking for individual markings that
13 are left by the gun barrel itself that I can use for
14 identification.

15 If I find significant amount of agreement in these
16 individual markings I can make the conclusion as to whether
17 or not that bullet was fired by that particular gun barrel.

18 In this particular case I did microscopic comparison
19 and I did conclude that this particular bullet, which is
20 State's Exhibit No. 22, was fired by this particular pistol,
21 which is State's Exhibit No. 18.

22 Again, I did microscopic comparison of the fired
23 cartridge case to the tests after I compared the tests to
24 each other. In this particular instance the breech face
25 markings were very, very prominent on this particular test

1 specimen and on the evidence specimen. And by an
2 examination of those markings, I concluded that this
3 particular cartridge case, which is State's No. 23, was
4 fired by this particular Highpoint pistol.

5 Q. Okay. Thank you.

6 A. Yes, sir.

7 MR. MOYER: I have no further questions for this
8 witness.

9 THE COURT: Any cross-examination?

10 MR. SULLIVAN: No questions, Your Honor.

11 THE COURT: Thank you. You may step down, sir.

12 THE WITNESS: Thank you sir.

13 MR. MOYER: The State would call Lieutenant Matt
14 Hamby to the stand.

15 OFFICER MATTHEW HAMBY, having been first duly
16 sworn, testified as follows:

17 THE CLERK: State your full name for the record.

18 THE WITNESS: Matthew Hamby.

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q. Where are you employed, sir?

21 A. Greer Police Department.

22 Q. How long have you worked in the Greer Police
23 Department?

24 A. Twelve years.

25 Q. Is that how long that you have been in law enforcement?

1 A. Yes.

2 Q. And your position with Greer is?

3 A. Lieutenant over the criminal investigations.

4 Q. So did you have involvement with this case that we have
5 been talking about today, the homicide of Ignacio Delgado?

6 A. Yes.

7 Q. Now, you heard talk about the search that was conducted
8 as Drummond Village, apartment [REDACTED]

9 A. Yes.

10 Q. Were you present and did you participate in that?

11 A. Yes.

12 Q. And were you actually there prior to the search warrant
13 showing up at the house?

14 A. Yes, I was.

15 Q. And when you showed up there, was Sergeant Justice
16 still there?

17 A. Yes, he was.

18 Q. Okay. And were you present when he left to go get the
19 search warrant?

20 A. Yes.

21 Q. And you stayed there the whole time until he came back
22 with the search warrant?

23 A. Yes, I did.

24 Q. Do you remember roughly the time frame for that?

25 A. Approximately 2:30 to four a.m., approximate time

1 frame.

2 Q. Now, while you were waiting there while the search
3 warrant was being obtained, did you make sure that nothing
4 in the house was being disturbed?

5 A. Yes, I did.

6 Q. And was anything disturbed in the process while they
7 were gone to get the search warrant?

8 A. No.

9 Q. And you were present when they came back then and found
10 the firearm or collected the firearm under the bed?

11 A. Yes.

12 Q. Now, did you then return to that same apartment, [REDACTED]
13 the Edwards apartment, later in the day for a second search?

14 A. Yes, I did.

15 Q. And around what time was that?

16 A. That was approximately 1:30 in the afternoon on
17 November -- excuse me, on February 27th.

18 Q. And you returned with whom?

19 A. Captain Steve Denton.

20 Q. And was there anything in particular that you were
21 looking for when you returned that time?

22 A. Yes, we were looking for a .380 caliber handgun that
23 was described to us by Marcus Parks that was located under a
24 sofa inside the living room area of apartment [REDACTED] at
25 Drummond Village.

1 Q. And that was in response to having -- Marcus Parks
2 having been interrogated and giving a statement?

3 A. That's correct.

4 Q. And so did you have a particular place in mind that you
5 were going to look when you got back there?

6 A. Yes, we did.

7 Q. And that was?

8 A. That was under the sofa.

9 Q. Okay.

10 A. And it was described to us by Marcus Parks.

11 Q. And State's Exhibit No. 9 shows a sofa. Does that look
12 like the sofa that you were going to look under?

13 A. Yes.

14 Q. And is that the sofa that you looked under?

15 A. It is.

16 Q. And did you find anything under that sofa?

17 A. Yes.

18 Q. And what did you find?

19 A. I found a -- I had to lift the sofa up, because it sits
20 very low to the ground, and I found a black or a very dark
21 colored -- I call it a toboggan, like a cotton or wool hat
22 that's somebody would wear in cold weather. And after I
23 looked inside there, I noticed the firearm inside the
24 toboggan, the same one we were looking for.

25 Q. Okay. I'm going to show you State's Exhibit No. 7 and

1 10. Do you recognize what's shown in those pictures?

2 A. Yes.

3 Q. And describe to the jury what it is.

4 A. In No. 10 this is the photograph of the toboggan as I
5 first saw it. We lifted the sofa up. That's what I saw.

6 No. 7 is the contents of the toboggan. We pulled the
7 contents out of the toboggan so you can actually see what
8 was inside there and photographed that.

9 Q. Okay. And the contents was this firearm?

10 A. The firearm and a magazine and the box of ammunition.

11 Q. Was it loaded?

12 A. No, it was unloaded.

13 MR. MOYER: Your Honor, at this time I would move
14 to have State's Exhibit No. 7 and 10 moved into evidence.

15 MR. SULLIVAN: No objection, Your Honor.

16 THE COURT: Without objection Exhibits 7 and 10
17 are in evidence.

18 BY MR. MOYER:

19 Q. If you would, describe to the jury what is shown behind
20 you there on the screen.

21 A. That's the photograph of where we lifted the sofa up
22 and that's what I saw. That's the black toboggan underneath
23 the sofa.

24 Q. Okay. And, in fact, that reddish item that we see in
25 the upper left-hand corner?

1 A. Yes, that's the -- that's the bottom of the sofa. We
2 lifted it up. That's why it's at an angle.

3 Q. So someone had lifted it up while you the picture was
4 being taken?

5 A. Yes.

6 Q. And State's Exhibit 7?

7 A. That's the contents inside the toboggan that we pulled
8 out to photograph what was inside it.

9 Q. And is that the firearm that has already been in
10 evidence that was just testified about by Agent Paavel from
11 SLED?

12 A. Yes.

13 Q. This firearm right here?

14 A. Yes.

15 Q. You collected that hat that you described too, is that
16 correct?

17 A. I did.

18 Q. Let me show you State's Exhibit No. 24. Take a look at
19 that. What's that?

20 A. This is the black toboggan that we found underneath the
21 sofa. And that's what contained the firearm and the
22 magazine and the ammunition.

23 Q. Okay.

24 MR. MOYER: Your Honor, at this time I would move
25 to have State's Exhibit No. 24 moved into evidence.

1 THE COURT: Any objection?

2 MR. SULLIVAN: No objections, Your Honor.

3 THE COURT: Without objection, Exhibit 24 is into
4 evidence.

5 BY MR. MOYER:

6 Q. Let me ask you a couple of questions.

7 Was the media alerted the day -- or that day, February
8 the 27th, about this murder?

9 A. They were.

10 Q. Were the names of the two persons that you had
11 arrested, was that released?

12 A. Yes.

13 Q. How would the name of this defendant that you were
14 looking for him, was that released to the press as well?

15 A. It was, yes.

16 Q. Was it released prior to the six o'clock news on
17 February 27th, 2005?

18 A. Yes.

19 Q. All right. Did y'all advertise this at any point,
20 either that day or the next few months, outside the Upstate
21 of South Carolina?

22 A. Not outside, no. We have a standard set of media
23 outlets that we contact when we do a news release. It's the
24 same ones every time, and it basically includes the local
25 newspapers and the local TV stations that cover the

1 Greenville-Spartanburg area.

2 Q. All right. Let me take you to May the 10th of 2005.

3 So being the person who is the head of criminal
4 investigations, are you the one who was notified about the
5 arrest of this defendant on that date?

6 A. Yes.

7 Q. And was it when you showed up for work that day?

8 A. It was probably actually -- I think I received a phone
9 call before I actually went to work on that morning. It's
10 pretty early that morning.

11 Q. Okay. So the morning of May 10th. Did you send
12 officers to Atlanta?

13 A. Yes.

14 Q. And who did you send?

15 A. Detective Dale Arterburn, and who is now a captain,
16 Steve Denton.

17 Q. Okay. Are you familiar with the residence of Ron Rice,
18 the man who testified earlier?

19 A. I'm familiar with the location of it, yes.

20 Q. The location where it is?

21 A. Yes.

22 Q. And you are familiar with Drummond Village?

23 A. Yes.

24 Q. Can you tell us approximately the distance between
25 those two locations?

1 A. It's approximately five miles, maybe five and a tenth
2 of a mile.

3 Q. Right around five to five and a tenth of a mile?

4 A. Yes.

5 MR. MOYER: All right. Please answer any
6 questions that the defense may.

7 MR. SULLIVAN: Just a couple, Officer Hamby.

8 CROSS EXAMINATION BY MR. SULLIVAN:

9 Q. This all happened on the 27th, basically early in the
10 morning, and y'all were still processing it?

11 A. That's correct.

12 Q. And y'all have admitted, as we can tell, a great many
13 items for forensic testing, correct?

14 A. Yes.

15 Q. Items through SLED, through the Greenville County crime
16 unit?

17 A. Yes.

18 Q. Now, what charges -- what charge -- when did you make
19 the charges against these individuals? You said that you
20 released the news that night before six. What was Marcus
21 Parks charged with?

22 A. Murder, and I believe it was the possession of a deadly
23 weapon charge as well.

24 Q. And Mr. Kelly was charged with murder at that time?

25 A. We obtained an arrest warrant. But since he left town,

1 and we are not able to locate him, which we tried very hard
2 to do. We were not able to actually formally charge him
3 until we were able to arrest him in May.

4 Q. Your intent was to charge him with the murder? He had
5 a warrant for murder?

6 A. That's correct.

7 Q. And then Shaundrecus Edwards, what was his charge?

8 A. I believe it was accessory before the fact.

9 Q. All these charges, and they are the ones that have
10 carried on through this case, were made prior to you
11 receiving any tests results?

12 A. I personally didn't receive the results. I would
13 hesitate to tell you exactly when they were received back.
14 Some that came staggered at different times.

15 Q. What I'm saying is they were all charged on the 26th,
16 the day of the -- I mean the 27th?

17 A. The 27th.

18 Q. The day of the crime?

19 A. Yes.

20 Q. You didn't get these tests results back until later,
21 correct?

22 A. That's correct.

23 Q. Okay.

24 MR. SULLIVAN: Nothing further. Thank you,
25 Officer Hamby.

1 MR. MOYER: Nothing further.

2 THE COURT: Thank you, Officer Hamby. You can
3 step down.

4 MR. MOYER: The State would call Captain Steve
5 Denton.

6 OFFICER STEVE DENTON, having been first duly
7 sworn, testified as follows:

8 THE CLERK: State your name for the record.

9 THE WITNESS: My name is Steven L. Denton.

10 DIRECT EXAMINATION BY MR. MOYER:

11 Q. All right. Now, you work right now for Spartanburg
12 County sheriff's office, right?

13 A. I do.

14 Q. How long have you worked -- well, what is your position
15 with the Spartanburg County sheriff's office?

16 A. I'm a captain of their CID. It's special operations.

17 Q. Okay. So you are in a supervisory role now, but you
18 still work active cases?

19 A. Absolutely.

20 Q. Now, how long have you been in law enforcement?

21 A. 20 years.

22 Q. And where all have you worked?

23 A. I worked for the sheriff's office in Spartanburg for
24 approximately 18 and a half years. I worked for the City of
25 Greer between October 13th, 2003 and January 4th, 2005.

1 Q. Okay. And then after that you went back to --

2 A. I went back to the sheriff's office and finished this
3 January 4th of this year.

4 Q. So how long you have been an investigator?

5 A. The entire time.

6 Q. What kind of crimes, what kind of cases do you work?

7 A. My entire career in CID at the sheriff's office and
8 with the Greer were to work violent crime - homicides, those
9 kind of things. That could encompass all kinds of death
10 investigation, equivocal death, suicide, homicide, which is
11 categories of homicides, accidental deaths, natural deaths.
12 If it's death related, I worked it.

13 Q. You covered it.

14 Now, do you know how many murders that you have
15 investigated over the years?

16 A. It would be over two hundred, but to give you an exact
17 amount, I cannot.

18 Q. Okay.

19 A. As far as death investigation, pertains to just
20 homicide, which again encompasses several different types of
21 homicide, it would be well over 200.

22 Q. Now, let me take you to February the 27th of 2004. You
23 were working for Greer Police Department at that time?

24 A. That's correct.

25 Q. Now, you also went over there to the Edwards residence

1 while they were doing the searches and so forth?

2 A. I did.

3 Q. And you actually are the person who collected this .22
4 caliber pistol that's already in evidence?

5 A. That's correct.

6 Q. You collected that from underneath the bed?

7 A. I did.

8 Q. And took that into evidence?

9 A. That's correct.

10 Q. Okay. Were you involved then in the interview of the
11 men, the two men - Shaundrecus Edwards and Marcus Parks -
12 when they were taken back to the Greer police station after
13 those searches --

14 A. Yes, sir.

15 Q. -- there at the residence.

16 So this is somewhere in still the early mourning hours?

17 A. It was. It was probably between the hours of four and
18 five.

19 Q. Okay. And. Once again, when you met -- did you meet
20 with both of them over there?

21 A. I did.

22 Q. And were they -- they were separate?

23 A. Yes, they were.

24 Q. They were kept separate.

25 A. Yes, sir.

1 Q. And there were officers with them at all times?

2 A. Yes.

3 Q. When you spoke to them they weren't together, were
4 they?

5 A. No, sir.

6 Q. Now, you were present then for the interview in which
7 Marcus Parks told you about this firearm?

8 A. That's correct.

9 Q. Would you have known where that firearm was if he
10 hadn't spoken to y'all?

11 A. No, sir, I would not.

12 Q. So it was after that that you went back then to the
13 Edwards residence?

14 A. Myself and Lieutenant Hamby went back to the residence
15 simply to recover that weapon.

16 Q. And so it was Marcus Parks then who was able to tell
17 you where it was?

18 A. That's correct.

19 Q. And what about Shaundrecus Edwards?

20 A. No.

21 Q. He didn't have any information about where that .380
22 pistol was?

23 A. No, sir, not -- not that he offered to us or anyone
24 else involved in the investigation.

25 Q. All right. Now, at a later date did you have the

1 chance, or did you actually meet with this defendant Albert
2 Kelly?

3 A. I did.

4 Q. And that was on what date?

5 A. May the 10th, 2004.

6 Q. Now, during that time frame, from February 27th, when
7 you did this initial flurry of activity, searches, and
8 interviews and so forth --

9 A. Right.

10 Q. -- until May the 10th, were you working that case
11 during that time frame?

12 A. Let me explain. I did not.

13 When I went to work for Greer Police Department, I went
14 there for two reasons, one of which was to work their
15 violent crimes. The other one was to work a particular
16 crime that had happened in 2003.

17 Q. And so you went back to work on that crime?

18 A. Absolutely.

19 Q. And so this detective, Dale Arterburn, he was the one
20 who was assigned the case then?

21 A. That's correct.

22 Q. And so during that whole time frame then you weren't
23 working on it or doing anything on the case?

24 A. I worked on it the 27th -- let's go back to the 26th
25 and 27th, and I worked on it again on May the 10th.

1 Q. All right. And so you met with the defendant on May
2 the 10th of 2004. Where did you meet him?

3 A. At the I believe it's the DeKalb County Sheriff's
4 Office, CID office, which would be like our investigatory
5 office at the sheriff's office or police department, in an
6 interview room there within that office.

7 Q. So it was -- it was a police station there?

8 A. Essentially, yes.

9 Q. For common language?

10 A. Yes.

11 Q. And Detective Arterburn was with you?

12 A. That's correct.

13 Q. So it was just you two who went there to interview him?

14 A. That's correct. Lieutenant Hamby requested that he and
15 I go there for that purpose.

16 Q. And y'all got there. Do you remember about what time
17 it was that you interviewed him?

18 A. It was somewhere around two o'clock, 2:30 in the
19 afternoon.

20 Q. Okay. And then actually on some of the documents that
21 you have, you actually put a time down?

22 A. There is.

23 Q. So that would be able to tell you at least when you did
24 that particular activity?

25 A. That's correct.

1 Q. And so you must have gone down there then without a
2 whole lot of notice from Detective Hamby? You just got the
3 word and --

4 A. I was in Greenville at the time when he called and I
5 met Detective Arterburn and we left and drove to the Atlanta
6 area.

7 Q. Now, you mentioned that you met with the defendant in
8 an interview room?

9 A. That's correct.

10 Q. Could you just describe the room a little bit for us?

11 A. Most interviews rooms in police departments are small
12 in nature, anywhere from 10 X 10, 10 X 12, 12 X 12. This
13 was probably a 10 X 12, white walls, door, lights, pretty
14 much way to describe it.

15 Q. So, I mean, it wasn't -- it looked like just a regular
16 interview room where -- would it be just for people who were
17 being -- who are in jail or suspects?

18 A. We use them for a lot of different reasons, but mainly
19 to interview people. The people that we interview a lot of
20 time just aren't -- they aren't defendants. A lots of times
21 they are witnesses, victims of a crime, and the folks out
22 there or down there use it for the same purposes.

23 Q. Okay. And so you were aware that he was in custody
24 there in Georgia?

25 A. That's correct.

1 Q. And during the time that you spoke to him, to the
2 defendant, was he denied access to any conveniences that he
3 may have needed, like bathroom breaks, or water, or anything
4 like that?

5 A. No, sir.

6 Q. At any time did he complain of any injuries or physical
7 discomfort while you were talking to him?

8 A. No, sir.

9 Q. Did he complain of being tired, or excessive
10 sleepiness, or anything like that?

11 A. No, sir.

12 Q. Did he ever ask to stop talking to you for a later time
13 when he -- you know.

14 A. No, sir, he did not.

15 Q. For any reason whatsoever?

16 A. No, sir.

17 Q. Did you advise him of his Constitutional Rights
18 pursuant to Miranda?

19 A. I did.

20 Q. And did you do so using a form?

21 A. Yes, sir.

22 Q. Now, does the Greer Police Department have a uniform
23 form that they use in all situations like that?

24 A. They do, as well as other police departments. That's
25 the form that Greer adopted several years back. I'm

1 familiar with it.

2 Q. Okay.

3 A. It was before I went to work there, and that's still
4 the same form they use today.

5 Q. And is that the form that you used on this defendant
6 Albert Kelly?

7 A. It is.

8 Q. Let me hand you State's Exhibit No. 26. Take a look at
9 it and see if you recognize it.

10 A. This is the form. It simply says "Greer Police
11 Department Advisement of Rights Form," and then so forth.

12 Q. Okay. Now, are there any markings on it that help you
13 to identify or recognize it?

14 A. There are. Again, at the top of the page it's "Greer
15 Police Department Advisement of Rights Form. It has your
16 Miranda Rights," and it's underlined.

17 Before each sentence I initial it with my initials,
18 which are S.L.D. And at the end of each sentence Mr. Kelly
19 initialed with his initials A.K., and that's before and
20 after each sentence.

21 Also there is signatures. My signature is on here.
22 Detective Arterburn, along with Mr. Kelly.

23 Q. So that is the form that you used for Albert Kelly?

24 A. Absolutely.

25 MR. MOYER: Your Honor, at this time I move to

1 have State's Exhibit No. 26 moved into evidence.

2 MR. SULLIVAN: Without objection.

3 THE COURT: Without objection.

4 BY MR. MOYER:

5 Q. All right. You mentioned initials both before and
6 after each one of those rights. What is the purpose of
7 placing those initials on there?

8 A. The reason I do it is because before I read a sentence,
9 I will initial it. It do two things. It let's me know that
10 I have read each sentence and I didn't leave anything out.

11 The initials after it, which would be the person you
12 are reading them to, or for, that's to let me know that they
13 understood it, they read it along with me and they
14 initialed, and allowed me to know that.

15 Q. So by having him initial it afterwards, you are
16 indicating that you read it to him and he understands it?

17 A. Yes.

18 Q. Now, what about -- is there a signature on that form as
19 well?

20 A. There is. At the bottom of the page after the Waiver
21 of Rights, Mr. Kelly's signature appears there with the
22 date, along with mine and Detective Arterburn's.

23 Q. Let me ask you now, if you would, just publish to the
24 jury what those rights were that you advised the defendant
25 of.

1 A. Again, "Greer Police Department Advisement of Rights
2 Form. Your Miranda Rights.

3 "Before we ask you any questions, you must understand
4 your rights." My initials are before. Mr. Kelly's are
5 after.

6 "You have the right to remain silent." My initials are
7 before and Mr. Kelly's are after.

8 "Anything that you say can be used against you in
9 court." My initials are before and Mr. Kelly's are after.

10 "You have the right to talk to a lawyer for advice
11 before we ask you any questions and to have him with you
12 during questioning." My initials are before and Mr. Kelly's
13 are after.

14 "If you have no money to pay a lawyer's fee, the court
15 will appoint one to represent you without cost, if you
16 wish." My initials are before and Mr. Kelly's are after.

17 "If you decide to answer questions now without a lawyer
18 present, you will still have the right to stop answering at
19 any time. You also have the right to stop answering at any
20 time until you talk to a lawyer." My initials are before
21 and Mr. Kelly's are after.

22 "Waiver of Rights. I have read the statement of my
23 rights and understand what my rights are. I'm willing to
24 make a statement and answer questions. I do not want a
25 lawyer at this time. I understand and know what I am doing.

1 No promises of threats have been made to me and no pressure
2 or coercion of any kind has been used against me." My
3 initials are before and Mr. Kelly's are after.

4 The word coercion, it's circled. It's initialed by
5 Detective Arterburn. I had him do that so that we could
6 explain what coercion means. A lot of people -- that's a
7 word that's not used very often. I like them to understand
8 what that means. I give them a definition of coercion and
9 he understood that, and he initialed it, and it did it also.

10 Q. Okay. And so they are the rights that you went over
11 with the defendant?

12 A. Yes. Then his signature follows that, with the date
13 along with mine and Detective Arterburn, and a case number,
14 which is GR-04004209.

15 Again the time of interview is May 10th, '04, at 1447,
16 which would be 2:47 in the afternoon.

17 Q. Did you make sure that he understood those rights?

18 A. Yes.

19 Q. And did he appear to have any trouble understanding
20 those rights?

21 A. No, sir, he did not.

22 Q. Did you make -- did you try to determine how far he
23 went in school and whether he could read and write?

24 A. We did. We determined that he went through the 11th
25 grade. He could read and write the English language and

1 that he was sober. That's written at the top in the right
2 hand -- well, actually it would be the left-hand portion of
3 this.

4 Q. You wrote the words "sober"?

5 A. Yes.

6 Q. And that was your opinion, that he was sober?

7 A. Yes.

8 Q. Did his answers to your questions appear to be rational
9 and responsive?

10 A. They did.

11 Q. Was there anything about his appearance or the content
12 of his conversations or mannerisms that led you to suspect
13 that he may not be of a sound mind at the time that you were
14 talking to him?

15 A. No, sir.

16 Q. Anything about his appearance or demeanor that led you
17 to think that he may not be sober --

18 A. No, sir.

19 Q. -- that he was intoxicated?

20 A. No, sir.

21 Q. He didn't complain of being intoxicated?

22 A. No, sir.

23 Q. Were there any threats or was there any coercion made
24 in order to get him to sign that form and give a statement?

25 A. No, sir.

1 Q. Was there any intimidation, either by you or Detective
2 Arterburn?

3 A. No, sir.

4 Q. Were there any promises or any hope of reward held out
5 to him?

6 A. No, sir.

7 Q. And so you never told him you would do this or that for
8 him if you would just -- if he would just do what you wanted
9 him to do and write what you wanted him to say?

10 A. Absolutely not.

11 Q. Okay. In your opinion did he understand those rights?

12 A. He did.

13 Q. Did he do anything to indicate -- and by signing that
14 form, did you ask him to do so by -- and thereby indicate
15 that he understood those rights?

16 A. Yes, sir.

17 Q. And so, in your opinion, was his waiver of rights done
18 freely and voluntarily?

19 A. Yes, they were.

20 Q. Did he ever change his mind at any other time that you
21 were speaking to him and asked to stop questioning him
22 because he wanted an attorney, or for any other reason?

23 A. No, sir.

24 Q. All right. Now, after having signed that form and
25 waived his rights, did he indicate to you whether he wanted

1 to give a statement?

2 A. He did.

3 Q. Did he show any reluctance about it?

4 A. No, sir.

5 Q. What was his demeanor towards you?

6 A. He seemed very cooperative.

7 Q. Any hostility at all?

8 A. No, sir.

9 Q. Let me show you what's marked as State's Exhibit No.
10 27. Do you recognize that?

11 A. I do.

12 Q. And what is State's Exhibit No. 27?

13 A. There are two pages. This is the Greer Police
14 Department, another form that they use. It's a voluntary
15 statement form. It indicates that it's a statement of
16 Albert Kelly. Again, it's two pages long. It's signed by
17 myself, Detective Arterburn, Mr. Kelly. It's dated and
18 timed.

19 Q. Again, what is the time that that statement begins?

20 A. It began at 1449, which would be 2:49 p.m.

21 Q. So about two minutes after he signed this at 1447?

22 A. That's correct.

23 Q. When did it finish?

24 A. On the 10th, again May the 10th, at 3:25 p.m.

25 Q. Okay. Now, whose handwriting is that? Who wrote that

1 statement out?

2 A. It's the handwriting and it was written by Albert
3 Kelly.

4 Q. Okay. Now, over your years as an investigator you have
5 undoubtedly taken many statements from suspects and
6 witnesses in cases?

7 A. Yes, sir.

8 Q. And is it your habit to allow the person the option of
9 whether he writes it himself or whether you write it for
10 him?

11 A. Absolutely. Either we can write it for them in their
12 own words. Many people choose to write their own statements
13 themselves. And in this case he chose to write the
14 statement himself.

15 Q. And, in fact, you took Marcus Parks statement, right?

16 A. I did.

17 Q. And did he write his or did he want you to write his
18 for him?

19 A. I wrote his. That's what he chose.

20 Q. And you just wrote it as he told you what happened?

21 A. It's a lot slower that way, but it still can be done.

22 Q. Would you have written his for him if he had wanted you
23 to?

24 A. If that's what he would have requested, I would have
25 been glad to.

1 Q. But he wanted to write it himself?

2 A. Yes, sir.

3 Q. Did you tell him or give him any words of advice or
4 instruction before he began writing?

5 A. Absolutely not.

6 Q. And you just told him to, what, just tell his side of
7 the story or his version of what happened?

8 A. That's correct. We had two sides of stories already
9 and certainly we would have liked to have had his side.

10 Q. In other words, two sides, you are talking about two
11 other people who had given you a story?

12 A. That's correct.

13 Q. Who told you what happened?

14 A. That's correct.

15 Q. That were consistent with each other?

16 A. That's correct.

17 MR. MOYER: Your Honor, at this time I would move
18 to have State's Exhibit No. 27 moved into evidence.

19 THE COURT: Subject to objection it would be
20 admitted.

21 MR. SULLIVAN: Thank you.

22 BY MR. MOYER:

23 Q. All right. Captain Denton, if you would, that's been
24 entered into evidence. I would like you to publish that to
25 the jury. Read it to the jury?

1 A. It's a two page voluntary statement form, Greer Police
2 Department. The date is 5-10-04. Page number one.

3 "Albert Kelly. DeKalb County Police Department,
4 DeKalb, Georgia, 5-10-04, at 1449.

5 "Me and Shaun and Marcus was drinking liquor almost all
6 that day. I walked to the trailer park with Marcus. After
7 I finished drinking a fifth of gin and juice liquor and a
8 half pint of Crown Royal, I drank another two cups of liquor
9 from Leon's house. Then we saw this man. Marcus said he
10 looked like he got money, so we went to rob him. He was
11 fighting us and I felt like my life was in danger once he
12 acted like he had a gun in the back of his shirt, so I
13 grabbed him and we fell to the ground and the gun went off.
14 And I thought that he was just knocked out, but later on
15 found out that he really hurt badly. Dead. I thought I had
16 shot him in the shoulder and he was just knocked unconscious
17 laying in the snow. Me and Marcus ran to my house from my
18 front porch to Shaun's house. I told Shaun to let us in.
19 We sat there a second. I asked Shaun to hold the gun for
20 me. He did hold it, but he told me to wrap it in a black
21 and white Nike hat and put it under the sofa. I unloaded
22 the gun and then put it under the sofa. Then I left and
23 went home and got it to bed, but I told my mom I was going
24 on the porch to smoke. After I called Shaun's mom and she
25 told me the police was searching their apartment, so I ran

1 to Donna's house and told her what happened and she took me
2 away to Georgia. After me and Marcus did what we did, we
3 had about \$700, I think, but I only got like 300 bucks and I
4 gave most of it away on a black Dickie outfit to keep me
5 warm and a motel room. Marcus dropped the man's billfolder
6 in a water drain and I shoved it down with a broom."
7 Completed statement at 3:25 p.m., on 5-10-04. Statement
8 written by Albert Kelly." Is a true statement. No coercion
9 of any kind." Signed Albert Kelly. My name, signature, May
10 10th, '04, witnessed by Detective Dale Arterburn of the
11 Greer PD.

12 Q. Now, did you take this statement from him using the
13 same procedures as you do in all cases?

14 A. Yes.

15 Q. And you probably have taken, is it safe to say,
16 hundreds of suspect statements over the years?

17 A. It would be safe to say thousands.

18 Q. And there wasn't anything unusual or different that you
19 did in this particular case?

20 A. No, sir.

21 Q. Did you know Albert Kelly before he got involved in
22 this case?

23 A. I did not.

24 Q. You never met him or heard of him?

25 A. I did not.

1 Q. So he wasn't being watched, or a target, or a suspect
2 of yours in any way?

3 A. I hadn't been working in Greer that long to begin with,
4 and my -- part of my job duties were spent away from the
5 Greer area most of the time. The first time I ever met
6 Albert Kelly was on May the 10th of 2004.

7 Q. Now, when you went to Atlanta, that was like three
8 months -- close to three months after the incident date?

9 A. That's correct.

10 Q. And that -- had you been reviewing -- we have already
11 talked about this. You hadn't been reviewing or looking
12 over the file or anything during that period of time?

13 A. I was very -- I'm very familiar with the case. I was
14 on the 27th, as any investigator who is involved in it would
15 have been. After the 27th my involvement was very limited.
16 Really none until May the 10th.

17 Q. Now, when you went down there May the 10th to Atlanta
18 did you know or even remember what brand of toboggan this
19 hat was?

20 A. No, sir.

21 Q. Did you have any idea that that would have any
22 significance in the case?

23 A. I absolutely did not remember the make or brand of that
24 toboggan. As far as the significance of it, it is somewhat
25 significant.

1 Q. I mean, at the time you went down there you didn't
2 realize that the brand had any significance?

3 A. Afterwards, of course, it is, but before, no.

4 Q. All right. Please answer any questions that the
5 defense has.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION BY MR. SULLIVAN:

8 Q. When you were reading the statement, Officer Denton, I
9 thought I misheard something on shoving the wallet or the
10 billfold down the drain. What exactly does that say?

11 A. What, the --

12 Q. Right at the end about Marcus.

13 A. "Marcus dropped the man's billfolder in a water drain
14 and shoved it on down with a broom."

15 Q. I thought you said "I shoved it," but Marcus, according
16 to that, shoved it?

17 A. Yeah, I read it off this.

18 Q. No problem.

19 And you rode down to Atlanta with Officer Arterburn?

20 A. I did.

21 Q. And did y'all discuss the case at that time on the way
22 down?

23 A. I'm sure we did.

24 Q. And you got there -- and I'm not good at military time,
25 but the Miranda waiver that says 1447, which is 2:47?

1 A. 2:47 p.m.

2 Q. Would that be when you started the interview or when he
3 signed the waiver?

4 A. That would be when he was read his rights and signed
5 them.

6 Q. Okay. And then he started the statement two minutes
7 later?

8 A. That's correct.

9 Q. And then finished at 3:25. Was that 38 minutes later?

10 A. 38 minutes.

11 Q. So, how much time did you talk with him prior to
12 commencing these procedures?

13 A. Very little.

14 Q. Walked in, sat down, and identified yourself and said
15 "you are charged with murder, give us a statement"?

16 A. If I had to give a time on it, probably maybe ten to
17 twelve minutes.

18 Q. Did you discuss things like "we have already talked to
19 your buddies. They have given us a statement. We know
20 what's going on"?

21 A. No, sir.

22 Q. Did you tell him that "if you come clean, we will see
23 what we can do for you," be easier on him?

24 A. No, sir.

25 Q. Is there any video or audio of this procedure?

1 A. No, sir.

2 Q. It was strictly you and Officer Arterburn and yourself
3 and Albert in the room?

4 A. Their facilities in Georgia are not set up for audio
5 and video, so it would be Detective Arterburn and myself and
6 the statement of Mr. Kelly.

7 Q. So he had very limited conversations with Mr. Kelly
8 prior to this, almost like here we are, you are charged with
9 murder, tell about it?

10 A. Yes, sir, the detectives there in DeKalb knew we were
11 coming. They had arranged for him to be there. We arrived
12 fairly quick, as I recall, and spent very little time with
13 him before prior to being read his Miranda and him giving
14 that statement.

15 Q. Did you have any contact with the detectives in Atlanta
16 or in DeKalb?

17 A. I did not. So the answer would be no, I did not.

18 Q. You didn't talk to them about anything they had done
19 prior to you getting there?

20 A. No, sir, I had not, other than directions to the -- let
21 me take that back. We did discuss directions on how to get
22 to their department, because it's a little bit confusing off
23 the interstate, but short of that, that was my conversation
24 with them.

25 Q. Would it have been of interest to you to know that an

1 officer had heard him give a spontaneous confession? Would
2 that be of interest to you?

3 A. It would have been, had I been assigned this case and
4 working it actively. Unfortunately I didn't work this case
5 actively, other than that day and on the 10th. I knew many
6 days after we took the statement that that had happened,
7 when I looked at the report.

8 Q. But when you were there, Officer Dale Arterburn was
9 with you?

10 A. Yes, he was.

11 Q. And he was actively working the case?

12 A. This was assigned to Dale Arterburn, that's correct.

13 Q. But neither one of you guys were told about this
14 alleged spontaneous confession?

15 A. If Dale was told about it, he never told me about it.

16 Q. Okay.

17 MR. SULLIVAN: I have nothing further, Your Honor.

18 MR. MOYER: Nothing further of this witness.

19 THE COURT: All right. Thank you, sir. You may
20 step down, Officer Denton.

21 MR. MOYER: The State would call Detective
22 Arterburn to the stand.

23 OFFICER DALE ARTERBURN, having been first duly
24 sworn, testified as follows:

25 THE CLERK: State your name for the record.

1 THE WITNESS: Dale Allen Arterburn.

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q. And where are you employed?

4 A. City of Greer Police Department.

5 Q. How long have you been with the Greer Police
6 Department?

7 A. Nine and a half years.

8 Q. What is your position with the Greer Police Department
9 right now?

10 A. I'm assigned as a criminal investigator.

11 Q. How long have you been a criminal investigator?

12 A. Going on four years.

13 Q. And you handle what types of cases?

14 A. We are actually assigned as a general investigator,
15 which would include anything that came to our desk -
16 homicide, robbery, rape, paper crimes, forgery,
17 counterfeiting, auto theft. We are trained in all aspects
18 of that.

19 Q. Property crimes, burglaries? It's pretty much
20 anything?

21 A. Yes.

22 Q. Now, you worked particular case?

23 A. I did.

24 Q. In fact, this ended up being assigned to you?

25 A. Yes, it did.

1 Q. Let me take you did back to February 27th, 2004. You
2 arrived there at this scene, at the trailer park, where this
3 incident took place?

4 A. Yes, I was notified and dispatched to that location.

5 Q. Now, did you stay there at the trailer where Mr.
6 Delgado was found while the other officers were off doing
7 their activity?

8 A. Yes, I did.

9 Q. And during the time that you were there, did you make
10 sure the body was not tampered with at any time?

11 A. That's correct. The crime scene was roped off. As you
12 could see it in the picture, there is some crime scene tape
13 there. In securing the area I think it was even opened up
14 even larger after a time period and people backed off even
15 further at the crime scene, but I had remained there so that
16 nothing was taken or removed from the crime scene.

17 Q. And you made sure that the various people who
18 approached Mr. Delgado either take pictures, the EMS people,
19 so forth, you made sure they didn't -- that no one disturbed
20 the body?

21 A. That's correct, to make sure that everybody that was
22 there, a name was taken and they were added to the crime
23 scene log or as a witness, and they were, you know, either
24 placed in the different car, secured separately, or, you
25 know, we may have transported them off to the police

1 department to take statements at that point.

2 Q. Okay. Now, did the victim have a weapon of any kind
3 that was found there at the scene?

4 A. No, sir.

5 Q. And you went to the hospital? You we went to the
6 autopsy?

7 A. Yes, I did.

8 Q. And was a weapon recovered from him there?

9 A. No, sir.

10 Q. A weapon of no kind whatsoever?

11 A. No weapon at all.

12 Q. There wasn't any wallet -- was there a wallet, or
13 money, or anything found there at the scene?

14 A. No, weapon -- I'm sorry, no wallet or money. The only
15 thing that was seen at the scene would have been his person
16 and his clothing that he was wearing --

17 Q. Okay.

18 A. -- that we could visibly see underneath that canopy.

19 Q. All right. Now, I asked you about the autopsy. You
20 went to the autopsy?

21 A. I attended the autopsy, I believe catching the tail end
22 of it. I left from our crime scene and they were -- I
23 believe they had another autopsy scheduled prior to that.
24 They went ahead and did ours, and I caught the tail end of
25 that and was able to meet with the pathologist and the

1 coroner's investigator that was present at the morgue.

2 Q. Okay. Now, do you remember around what time that you
3 actually got out there to the scene initially? Not the
4 autopsy, but the scene. Were you one of the first people
5 there?

6 A. I was. I live -- I live in the city of Greer in our
7 jurisdiction, but I would say from the scene I would
8 probably be, I don't know, eight miles from that scene,
9 diagonally. And being that the weather was so bad, it took
10 me awhile to get there. I remember that.

11 Q. Okay.

12 A. Probably 15, 25 minutes, in that scheme, but it would
13 usually take me about five minutes to get to that location
14 on a normal day.

15 Q. So was the call -- if the call was going out about 1:15
16 in the morning, or so, you would have been there at 1:30,
17 1:40?

18 A. Probably 1:30, 1:35, 1:40.

19 Q. Now, you mentioned going to the autopsy. Did you
20 collect the projectile, the bullet?

21 A. I didn't actually collect, but it was collected by the
22 examiner.

23 Q. I'm sorry, I didn't mean did you take it out of the
24 body, but was it given to you there?

25 A. Yes, it was.

1 Q. And this is the bullet then that was taken from Mr.
2 Delgado?

3 A. Yes, it is.

4 Q. And you made sure it was packaged and sent down to SLED
5 for Agent Vello Paavel to examine?

6 A. Yes, I did.

7 Q. Now, when you left the crime scene then to go over to
8 the autopsy, was it light out, or was it still -- was still
9 dark? Do you remember?

10 A. Let me rephrase that. I believe when I left the crime
11 scene I had actually gone to -- the first time I had left
12 the crime scene with another officer to secure it, I had
13 gone to the police department to meet with Sergeant Justice
14 to conduct some interviews with two that we already had in
15 custody.

16 Q. Okay.

17 A. I made several trips back to that crime scene with new
18 information as it was coming on different areas and
19 different people that were being located out there that
20 needed to be talked to and they were being transported back
21 up.

22 Q. And the reason for going over there to the police
23 station with Sergeant Justice was you know the two
24 suspension had been over there?

25 A. That's correct, we knew that there were two in custody

1 and we had made sure that they were, you know, separated,
2 secured at our facility from each other, and that they were
3 going to be later spoken to as the day failed.

4 Q. And, in fact, you spoke to Shaundrecus Edwards there?

5 A. Yes, I did.

6 Q. Now, when you left the crime scene, did you make sure
7 they were officers there securing the crime scene?

8 A. There were several officers there at the crime scene.
9 We had made sure at least one was posted on each side of the
10 crime scene barriers before we actually -- before we left
11 that scene to do anything else. There was always somebody
12 to be posted, or more than one to be posted at that scene.

13 Q. Okay. And then after you finished at the autopsy, did
14 you go back out to the crime scene?

15 A. Yes, I did.

16 Q. Was it still being preserved and secured by officers?

17 A. There was still an officer present at the crime scene.
18 And this was, of course, later in the day as the sun was
19 coming out warming things up and things beginning to dry up
20 a little bit, and I didn't turn back to the scene. I was
21 notified to return back to the scene by Officer Hendricks.

22 Q. And so Officer Hendricks was out there when you got out
23 there?

24 A. That's correct, he was.

25 Q. And did you collect that shell casing that's been

1 talked about?

2 A. I did. I arrived out there and spoke with Officer
3 Hendricks, who advised me that he -- while walking around
4 the scene over there, he had seen a brass shell casing
5 visible near the beer can that you see in the photograph.
6 There is more than one photograph that was showed.

7 Q. Okay.

8 A. I took my camera, went out with a scale and took
9 several pictures to show where that shell casing was sitting
10 at as it is in the pictures.

11 Q. Okay. Let me show you one more exhibit, State's
12 Exhibit No. 14. Do you recognize that?

13 A. I do.

14 Q. Okay. Is that the shell casing that you collected out
15 there?

16 A. That is the one.

17 Q. Okay. And then -- once again, just like the bullet,
18 you preserved it, packaged it to send to the South Carolina
19 Law Enforcement Division for the testing there?

20 A. Yes.

21 MR. MOYER: We would move have to State's Exhibit
22 14 moved into evidence.

23 MR. SULLIVAN: Without objection, judge.

24 THE COURT: No objection, Exhibit 14.

25 BY MR. MOYER:

1 Q. Let me just briefly go through a couple photographs
2 with you for the benefit of the jury.

3 Do you remember where the laser pointer is on that in
4 front of you?

5 This is State's Exhibit 14 that was just put into
6 evidence. Okay. Would you point out that projectile that
7 you were talking about?

8 A. (Witness pointing)

9 Q. What is that to the right?

10 A. At the right is a beer can. It appears to be a Bud
11 Lite beer can. It's crushed. It was laying here near a
12 bush.

13 Q. Now, this is backing up a little bit. Can you point
14 out where that shell casing is?

15 A. It would be between the scale that I'm now on that I
16 laid -- that's the only thing that I brought to that crime
17 scene with me and I added that just for the picture. The
18 beer can is here to the right. And right here directly in
19 the center is the shell casing.

20 Q. Okay. Now, where was Mr. Delgado? Where was his body?

21 A. Mr. Delgado was sprawling in this area right here. I'm
22 assuming he may have been on top of -- you know, on top of
23 that beer can. To be exact, I couldn't really tell you
24 without going back and looking at the picture exactly where
25 we see, but he was in this area right here.

1 Q. Okay. And so that area where we see the discoloration
2 right in front of that bush, is that near where his head
3 was?

4 A. Yes, sir, or in this general area. You know, it's -- I
5 couldn't tell you exactly without looking at it.

6 Q. Okay. And can you point out on this photograph --
7 first of all, is that the front of the trailer on the far
8 right?

9 A. Yes, sir.

10 Q. Okay. And are you able to recognize the body of Mr.
11 Delgado?

12 A. Yes, sir, he's sprawling underneath this canopy.

13 Q. That's his legs on the right? And can you see a little
14 bit of his head to the far left?

15 A. Right.

16 Q. Again, you can see his pants there in that photograph?

17 A. Yes, right here.

18 Q. And you can barely make it out in that photograph?

19 A. Yes, he's underneath that area.

20 Q. All right. Now, let me ask you a few questions about
21 Shaundrecus Edwards. You met with him that morning. Do you
22 remember about what time it was?

23 A. Shortly after six a.m..

24 Q. And you met with him at the law enforcement center?

25 A. I met with him at the Greer Police Department.

1 Q. Called law enforcement, but it was the Greer Police
2 Department?

3 A. We had a conference room at that time was established
4 in that area, table and chairs.

5 Q. And it was just you and him, or there was some
6 officers?

7 A. Yes, sir, there was myself and Sergeant Justice, who
8 was my direct immediate supervisor, and Shaundrecus Edwards.
9 We met three in that office there.

10 Q. Now, when you spoke to him, was his version about
11 remaining at his residence while this incident took place
12 consistent with what he testified to?

13 A. Shaun Edwards had gave us his story of what had
14 happened that night, the best he could tell, who was hanging
15 out with and who was at his house. They all had been
16 drinking, and just one of those kind of nights, but that's
17 basically what he had told us. His story -- his side of
18 what he could remember from being intoxicated that night and
19 who he was with.

20 Q. And did he give you names?

21 A. He did.

22 Q. And what are the names that he gave you?

23 A. He told us he was out with -- or at his residence
24 during the evening was Marcus Parks, A.K., and he didn't
25 know his real name. All he knew him by was A.K., and an

1 individual by the name of Toni.

2 Q. Did he talk about -- he talked about his involvement,
3 as far as talking about and planning a robbery?

4 A. Not initially. That was actually later -- later
5 brought up by Shaun, that he had initially plotted, along
6 with these other two individuals, excluding this Toni
7 individual. This was just a person that was there, but they
8 plotted with Marcus Parks and A.K. to commit a robbery, some
9 type of hit. They were going to do a hit and make some
10 money.

11 Q. Now, you secured the arrest warrants --

12 A. Yes, I did.

13 Q. -- for these three individuals.

14 You began searching for Albert Kelly?

15 A. We did. That was later -- later in the day, after we
16 had already -- after interviews had already been conducted
17 with Marcus Parks and Shaundrecus Edwards, and eventually
18 the real name was brought up of who A.K. was, whatever, we
19 identified him and started to put a locate on who he was and
20 where he may possibly be, and warrants were obtained at that
21 time.

22 Q. And were you able to find him that day?

23 A. No, we were not.

24 Q. And you found out who his girlfriend was?

25 A. Yes, we did.

1 Q. And her name is Donna Wentz?

2 A. That's correct.

3 Q. And you knew who she lived with?

4 A. We found out where she was working. Where she was
5 supposed to be at work that day, she wasn't, and we found
6 out where she resided in Duncan.

7 Q. And you went to that residence?

8 A. We did.

9 Q. And you met with that man who has testified, Ronald
10 Rice?

11 A. Met a Ronald Rice, yes, sir.

12 Q. And you weren't able to locate A.K., this defendant
13 there?

14 A. No. He had told us they had left and they were gone.
15 They didn't know where they were going. Took one of his car
16 and left for the day.

17 Q. And you weren't able to locate him at his residence
18 where -- at Drummond Village?

19 A. No. No, sir.

20 Q. Okay. Now, prior to this incident he wasn't any kind
21 of target of your office, or under any kind of
22 investigation, or anything like that, was he?

23 A. Are you referring to Albert Kelly?

24 Q. Albert Kelly, yes.

25 A. I wouldn't know. I really didn't think we was. I may

1 have spoke to him once being on patrol, but I don't -- he
2 was no target by any means, no, prior to this stuff.

3 Q. Okay. Did you notify surrounding law enforcement
4 agencies to be on the lookout for him?

5 A. I believe we may have put out a teletype. I can't be
6 for sure. I didn't actually handle that, but a teletype may
7 have been posted, once he was identified, that we were
8 looking for him. There was warrants active, that he was an
9 active wanted person by our agency, yes.

10 Q. Now, you got word then he was in custody on May the
11 10th?

12 A. I did.

13 Q. And you and Captain Denton went to Atlanta?

14 A. Yes, sir, we were -- we were -- I was actually on my
15 way to the office that morning when Lieutenant Hamby had
16 told me that they had picked up Albert Kelly on our warrant
17 and that we were going to need to make a ride down there.
18 And I went ahead and got with Captain Denton or Detective
19 Denton at the time and we drove down there together.

20 Q. Did you take your file with you?

21 A. I don't believe I did. I believe the only thing I
22 really took was some statement forms and Miranda forms.

23 Q. All right. Now, the whole time that this interview
24 took place with Albert Kelly were you present?

25 A. Yes.

1 Q. And so you witnessed his waiver of his Miranda Rights?

2 A. I was there, yes.

3 Q. And did you witness his actual statement?

4 A. Yes, sir.

5 Q. Did you see who wrote it down?

6 A. Albert Kelly.

7 Q. And, in your opinion, did Albert Kelly understand the
8 rights form when it was read to him?

9 A. I believe he did. He was sober as I could observe him,
10 and I have dealt with many people that were under the
11 influence of alcohol or drugs and he was neither. He was
12 very soberly minded, understood the rights as they were read
13 to him and didn't have any questions other than -- he just
14 told me -- I think he wanted to come clean. He was just one
15 of those type of, look, you got me kind of looks when we got
16 there.

17 Q. And, you know, was he cooperative with y'all?

18 A. Yeah, he was very cooperative. Didn't give us any type
19 of confrontation at all. He was very -- I think he had
20 already understood that two of his friends were already --
21 had been charged or in custody and, you know, he had been on
22 the run, I believe, is what he was telling us. It was time
23 to come in.

24 Q. So he was aware of Shaun and Marcus being apprehended?

25 A. He was, yes.

1 Q. Did y'all tell him what to say?

2 A. No, sir.

3 Q. Did you tell him what to write in this statement?

4 A. No, sir.

5 Q. Was there any coercion? Was there any intimidation
6 whatsoever?

7 A. None whatsoever.

8 Q. Did y'all promise him anything if he wrote out
9 something, wrote out a statement?

10 A. Absolutely not.

11 Q. All right. Now, you were familiar with Marcus Parks
12 statement by that time, weren't you, the statement that had
13 been given by Marcus Parks?

14 A. I was -- I was not present for that statement, but
15 there was a statement taken. I believe it was in the
16 presence of Steve Denton, Lieutenant Hamby. Maybe Sergeant
17 Justice. I'm not sure. I wasn't present when that
18 statement was taken.

19 Q. Were you aware that in his statement that he had given
20 no information about knowing whether any money was actually
21 stolen at the time the murder took place?

22 A. I did after I had read the statement, that's correct.

23 Q. So you were aware that Marcus Parks never said anything
24 about money, or wallets, or anything being stolen?

25 A. After reading the statement, that was my understanding,

1 yes.

2 Q. Nothing about shoving a billfolder down a drain pipe or
3 anything like that?

4 A. No, not at all.

5 Q. So you had no information about that when you went down
6 there?

7 A. None.

8 Q. Were you aware of or -- were you even aware of the fact
9 of the brand of toboggan that the gun, the murder weapon,
10 was found in?

11 A. The brand, no.

12 Q: When you went down there, you had no idea?

13 A. No, sir. I didn't put that -- I didn't put that
14 particular piece of evidence -- or evidence into our
15 property and evidence locker. All I knew, there was a
16 toboggan found and a gun found and a box of ammo and
17 magazine were found under a couch. That's all I knew. And
18 it was logged in by my lieutenant, I believe.

19 Q. And you were just told about that?

20 A. That's correct.

21 Q. You never saw it?

22 A. No, sir.

23 Q. All right. Please answer any questions that the
24 defendant may have.

25

1 CROSS EXAMINATION BY MR. SULLIVAN:

2 Q. Officer Arterburn, do you know what time in your
3 investigation on this you and Officer Justice went to the
4 apartment [REDACTED] the Edwards apartment?

5 A. I'm sorry?

6 Q. What time that Officer Justice arrived? When he
7 followed the tracks, what time he got to the Edwards
8 apartment?

9 A. I don't know exactly what time he had gone from the
10 crime scene to locating these tracks and following from the
11 scene. It was shortly after he had been there and we had
12 already been advised by already on the supervisors that were
13 there that could advise us. It was probably 30 minutes at
14 best.

15 Q. What time -- approximately what time would that have
16 been then?

17 A. I would say he probably arrived at about 1:45, 1:50.
18 So it would have been 30 minutes prior -- I'm sorry, 30
19 minutes after that. 2:15, 2:20, maybe.

20 Q. And except for the pictures, the photographs, the gun,
21 the hats, the clothing, everything seized in this case came
22 from the Edwards apartment, did it not?

23 A. Excluding --

24 Q. The pictures, the photographs, of course, y'all took
25 those, but the evidence, like the guns, and like -- not the

1 bullets, but the things. Did you see -- I'll put it this
2 way. Did you seize any evidence from Marcus Parks
3 apartment?

4 A. I don't believe we went to Marcus Parks apartment, no.

5 Q. Was there any evidence seized from Albert Kelly's
6 apartment?

7 A. We didn't know who we were looking for at that time to
8 go to his apartment.

9 Q. Now, Shaun Edwards never gave a formal statement for
10 the -- somebody took notes when he was talking?

11 A. That's correct.

12 Q. Did you take those notes?

13 A. No, those notes were actually in Sergeant Justice's
14 handwriting.

15 Q. Okay.

16 A. I was present for that interview.

17 Q. You were present when this was going on?

18 A. Yes, sir.

19 Q. Do you recall him at any time saying that he had bought
20 .38-caliber bullets because he was going to buy a .38?

21 A. That he was going to buy a .38?

22 Q. Uh-huh.

23 A. Are you referring to Shaun?

24 Q. Uh-huh.

25 A. I don't recall that, no.

1 Q. Do you recall that he told you and Justice about a
2 receipt of .38 bullets that he had purchased at Wal-Mart?
3 Do you recall that, which were found in his closet?

4 A. Are you referring to this receipt?

5 Q. It says ammo.

6 A. I believe it's for .380 ammo. Is that what you are
7 asking me?

8 Q. Yes.

9 A. Yes, I remember .380 ammo being purchased by Shaun
10 Edwards, Shaundrecus Edwards at Wal-Mart, that's correct,
11 but not a .38.

12 Q. I meant .38.

13 A. That's fine.

14 Q. So do you recall that he said that he was planning to
15 purchase a .380 and that's why he bought these bullets? Do
16 you recall that? If you don't, that's fine.

17 A. That he was planning to buy one? I don't remember him
18 ever making that statement.

19 Q. And it was a .380 that was actually used in the
20 shooting, correct?

21 A. The weapon that was used in the crime, yes, it was a
22 .380 caliber.

23 Q. And he had purchased two days before .380 ammo,
24 correct?

25 A. I -- I don't know if that's the date on that receipt.

1 I didn't look at the date.

2 Q. This was furnished to me by the solicitor's office. I
3 think down here on the bottom on the register receipt, if
4 you could --

5 A. Yeah, that's correct. Those were purchased at -- that
6 is a Wal-Mart receipt. I did --

7 Q. On February 25th of '04?

8 A. There was a purchase for that, correct.

9 Q. Purchase of ammo for a .380 on two days before the
10 crime?

11 A. Correct.

12 Q. And you were present when Officer Denton testified that
13 you fellows walked in, pretty much saw Albert Kelly, said we
14 are here from Greer. Very little conversation, he said,
15 confession, just went through his rights, 40 minutes or so?

16 A. Very little conversation. We walked in, identified who
17 we were. I believe he knew who we were. He had already
18 spoken or may have spoken to a detective in the felony unit
19 over there, which is who I had spoken to and told us that
20 Albert Kelly was there, gave us descriptions on how to get
21 there. And within the time frame that we were there with
22 him, I would say we probably spoke to him for maybe ten --
23 ten minutes at the best, as far as who we were. And he was
24 asking more questions than we were really even addressing to
25 him, and, it was, "you know, I know you already got my boys,

1 you know, up there in Greer," and that was it. I mean, it
2 was a general conversation. Nothing directed.

3 Q. Did you ever talk to an Officer Hunter with the DeKalb
4 County police or Georgia police? Do you recall talking to
5 him?

6 A. The first time that I spoke to Michael Hunter would
7 have been probably just weeks prior to this trial being
8 prepared.

9 Q. So --

10 A. I have never spoken to Michael Hunter prior to that.
11 That was just to try to identify who he was and if I could
12 get a copy of the police report.

13 Q. And you had no idea while you were down there that
14 there had been a spontaneous confession to Officer Hunter?

15 A. I didn't know until I received a copy of their police
16 report to prepare this to be sent to the solicitor's office,
17 no.

18 MR. SULLIVAN: I have nothing further, Your Honor.

19 MR. MOYER: Nothing further.

20 THE COURT: Thank you, officer. You may step
21 down.

22 All right, ladies and gentlemen, I think now would
23 be a good time for us to take a lunch break, so I'm going to
24 excuse you for lunch. If you could be back at two o'clock.
25 We will be ready to start. That will give you just over an

1 hour.

2 Again, you haven't heard everything that is
3 involved in the case, certainly not the law, and there may
4 be more evidence, but don't discuss the case. You are not
5 to do that until all the case is completed.

6 Have a good lunch and we will see you back at
7 about two o'clock.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: Okay. We will be back at two. You
11 have more testimony or --

12 MR. MOYER: Judge, I'm probably going to rest --

13 THE COURT: Okay.

14 MR. MOYER: -- as soon as we get back.

15 THE COURT: Okay. If we can be back a little
16 earlier, we can settle the record and give Mr. Kelly his
17 rights as well about testifying.

18 Okay. We will see y'all about two o'clock.

19 (Stipulation marked as Defendant's Exhibit No. 1
20 for identification)

21 (Stipulation marked as Defendant's Exhibit No. 2
22 for identification)

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened)

25 THE COURT: Okay. Are we ready to proceed?

1 MR. MOYER: Yes, Your Honor.

2 The State will rest.

3 THE COURT: Okay. If we could, I'll let you rest
4 on the record when the jury comes back, if you prefer, or
5 either I can tell them that, but I'll let you say you rest.

6 At this time we will let you -- he will rest in
7 front of the jury, but we can go ahead and take care of any
8 motions. I certainly need to talk to the defendant in the
9 case a little bit.

10 MR. SULLIVAN: Yes, sir.

11 Judge, at this time I would move for a directed
12 verdict as to all charges. We have very skimpy, much less
13 rise to the level necessary of a murder case. No physical
14 evidence yet. A questionable confession and testimony from
15 two co-defendants. There is nothing in the record except
16 for a questionable confession about a robbery. Even the
17 defendant Marcus Parks, who said he was there said nothing
18 was taken. He saw nothing. The gun went off and they ran.
19 So based on those, I would move for a directed verdict as to
20 the murder, armed robbery and use of a weapon in the
21 commission of a violent crime.

22 THE COURT: All right. Thank you, Mr. Sullivan.

23 Of course, at this stage the standard by which I
24 must view it is whether there is any evidence, any
25 substantial circumstantial evidence, or any direct evidence.

1 There is sufficient evidence to let the jury
2 decide the factual issue involved in the case and I'll deny
3 your motion --

4 MR. SULLIVAN: Thank you.

5 THE COURT: -- as to each of charges.

6 MR. SULLIVAN: Judge, at this time out of the
7 presence of the jury I have conferred with my client, Mr.
8 Kelly, and you may wish to inquire as to his right to
9 testify or not testify and let him --

10 THE COURT: All right. Mr. Kelly, if you would
11 please stand and raise your right hand.

12 ALBERT KELLY, having been first duly sworn,
13 testified as follows:

14 THE COURT: We have reached the stage in the trial
15 where you have certain rights, and I need to explain those
16 rights to you. I'm sure that you have had an opportunity to
17 talk to your counsel about these, but I need to be satisfied
18 in my own mind that you understand these rights. And if you
19 have any question as I go along, please let me know and I'll
20 be glad to try to clarify anything that I state to you at
21 that time. Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: You have the right to claim the
24 protections given to you by the Fifth Amendment to our
25 Constitution in the United States. And that Amendment says,

1 in part, that no person shall be compelled in any criminal
2 case to be a witness against himself or herself.

3 This simply means that you can't be required to
4 testify in this case. You have the right to testify in your
5 own behalf, but nobody can make you testify. It's a
6 personal right that you enjoy and nobody can waive this
7 right of testifying except you.

8 If you were to decide to testify, you would be
9 subject to the same Rules of Evidence that govern other
10 witnesses and you would be examined and cross-examined under
11 any relevant issue that's involved in this case.

12 In addition, if you had any convictions involving
13 dishonesty, or false statement, or crimes punishable by
14 imprisonment for more than a year and the court determines
15 that the probative value of admitting that evidence would
16 outweigh any prejudicial effect to you, then the solicitor
17 would be able to attack your credibility and introduce your
18 criminal record.

19 If you decide to testify, the decision on your
20 part must be freely made, voluntarily and intelligently with
21 the knowledge of the protections that you are afforded under
22 the Fifth Amendment of our Constitution and the consequences
23 of your decision to testify.

24 If you decide not to testify, I will instruct the
25 jurors that they cannot give the fact that you did not

1 testify any consideration whatsoever in their deliberations,
2 and there would be no prejudice to you at all because you
3 did not testify.

4 It's left entirely up to you whether you wish to
5 testify or not. You obviously have talked with your
6 attorney. You can talk with family or friends, or others,
7 but ultimately the final decision is yours, and yours alone,
8 to decide whether or not you wish to testify.

9 Mr. Kelly, do you understand the matters that I
10 have discussed with you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions of me?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you wish to talk anymore with your
15 attorney?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. Have you decided whether or not
18 that you wish to testify?

19 THE DEFENDANT: Yes, sir, I wish to testify.

20 THE COURT: All right, sir. Thank you very much.
21 You can be seated.

22 THE DEFENDANT: Thank you.

23 THE COURT: Are you ready to proceed?

24 MR. SULLIVAN: As best we can, Your Honor. I'm
25 missing a witness, but I can take some out of order.

1 THE COURT: All right. Well, are you ready to
2 proceed?

3 MR. MOYER: The only thing I would say, Your
4 Honor, at some point we will have to go over the defendant's
5 record and you have to make decision whether or not to admit
6 it.

7 THE COURT: This would be a good time to do that.

8 MR. MOYER: And, Your Honor, we would argue his
9 impeachable convictions are 1999, felony entering an
10 automobile in Georgia.

11 2001, two counts of aggravated assault and
12 battery, assault and battery of a high and aggravated
13 nature, and failure to stop for a blue light.

14 2003, escape.

15 THE COURT: The ABHAN was 2002, 2001?

16 MR. MOYER: 2001, two counts.

17 THE COURT: Okay.

18 THE COURT: Any dispute as to those, from the
19 defense?

20 MR. SULLIVAN: Well, as I understand it, he's
21 probably going to bring out as an auto breaking, basically,
22 two assault and batteries and escape?

23 MR. MOYER: Failure to stop to stop for a blue
24 light.

25 MR. SULLIVAN: Failure to stop.

1 THE COURT: All right. Failure to stop, you
2 weren't --

3 MR. MOYER: Failure to stop for a blue light was
4 the other one.

5 THE COURT: Okay. And were you going to
6 cross-examine him on all those?

7 MR. MOYER: Yes, sir. It's my intention too,
8 yeah.

9 THE COURT: And what was the date of the failure
10 to stop?

11 MR. MOYER: 2001 as well.

12 THE COURT: Any objection to those, or any dispute
13 as to those from the defense?

14 MR. SULLIVAN: No dispute, Your Honor. The
15 defendant acknowledges that he was convicted of those
16 charges.

17 THE COURT: All right. Well, are we ready for the
18 jury now?

19 MR. MOYER: Yes.

20 THE COURT: All right. Bring the jury in.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: All right. Solicitor, you may call
24 your next witness.

25 MR. MOYER: Your Honor, at this time the State

1 rests.

2 THE COURT: All right. Defense?

3 MR. SULLIVAN: The defense is ready to proceed,
4 Your Honor.

5 THE COURT: All right.

6 MR. SULLIVAN: We call Leon Irby.

7 THE COURT: Mr. Irby, if you would come around and
8 be sworn.

9 LEON IRBY, having been first duly sworn, testified
10 as follows:

11 THE CLERK: State your name for the record.

12 THE WITNESS: Leon Irby.

13 DIRECT EXAMINATION BY MR. SULLIVAN:

14 Q. Mr. Irby, how old are you?

15 A. 54.

16 Q. And where do you reside?

17 A. [REDACTED] Greer, Drummond Village.

18 Q. What building do you live in?

19 A. The [REDACTED]

20 Q. The [REDACTED]

21 You have been present during the testimony. Do you
22 recall, as best you can, the morning of February 27th, 2004?

23 A. Yeah.

24 Q. Okay. Do you recall Officer Justice coming to your
25 house?

1 A. Yeah, very good, because it scared me to death.

2 Q. Tell us about it. What were you doing? About what
3 time of the morning was it, as you remember, the best you
4 can remember?

5 A. I don't know. It seemed like I was asleep, because I
6 was wondering what they wanted. I know I don't have a
7 criminal record or anything. And then they proceeded to
8 tell me that there had been an incident down in the trailer
9 park. And I say "well, I have been here at the house. I
10 didn't have anything to do with it." And they said that
11 they had traced the footprints from the trailer park to my
12 house and asked me who had been at my house. And I told
13 them about Shaun and Marcus coming to my house. And they
14 asked me did I have anything to drink, and I gave them -- I
15 drink brandy and Coke. I gave them a drink of brandy and
16 Coke.

17 Q. You mean Marcus and Shaun?

18 A. Yeah.

19 Q. Not Officer Justice?

20 A. Yeah.

21 And after I gave them a drink, they left and went back
22 toward Shaun's mother's house.

23 Q. What unit was that?

24 A. Where she lives?

25 Q. Uh-huh.

1 A. In 6.

2 Q. So Officer Justice said he traced -- why he came to
3 your apartment because he traced --

4 A. I live in 30 and she lives in 6.

5 Q. Officer Justice said he came to your house because he
6 traced the footprints from the crime scene to your
7 apartment?

8 A. Yes.

9 Q. And then asked you who had been there?

10 A. Yeah.

11 Q. You told him Shaun and Marcus?

12 A. Yeah.

13 Q. And then left and gone across?

14 A. Yeah, because it was snow on the ground and they had
15 traced the footprints in the snow.

16 Q. Leon, if you would come down.

17 (Witness off the witness stand)

18 BY MR. SULLIVAN:

19 Q. Talk up so the court reporter can hear you.

20 Point out your unit, if you can.

21 A. It's the first --

22 Q. This would be the trailers back here.

23 A. Okay. Right here.

24 Q. Okay. So they claimed they came from here to here to
25 your place and then over to --

1 A. Yeah.

2 Q. Okay.

3 A. Because I live on the front row. And then there is
4 another row of apartments right here behind me.

5 Q. Thank you, Leon.

6 (Witness back on the witness stand)

7 BY MR. SULLIVAN:

8 Q. Do you recall about what time Shaun and Marcus came by
9 your apartment? Do you recall the time?

10 A. I would say -- I'm not sure. Ten or eleven, because it
11 was before the police got there, and the police got there it
12 seemed like about one o'clock. So somewhere between eleven,
13 twelve o'clock, I guess. I'm not sure.

14 Q. When they had their drinks, what did -- what did you
15 give them their drinks in?

16 A. In a cup.

17 Q. Did they take the cups with them?

18 A. Yeah.

19 Q. Each of them have a cup, or did they take an extra cup?

20 A. They had one.

21 Q. In other words, did Marcus have his cup and Shaun had
22 his cup?

23 A. Yeah. I used those clear plastics cups.

24 Q. Okay. Thank you.

25 A. And then that's when I called Shaun's mother and I said

1 the police were here at my house.

2 Q. Wait a minute. You confused me. You called -- you
3 called --

4 A. Shaun's mother.

5 Q. After the police had come?

6 A. Yeah.

7 Q. What time in the morning was that?

8 A. I don't remember the exact time.

9 Q. Do you remember her calling you during the evening?

10 A. Yeah.

11 Q. And that she would have called you before the cops
12 came?

13 A. Yeah, and told me that they had said that they had --
14 that there had been some kind of thing. And I said "well,
15 you know, I don't know anything about it." I said "Shaun
16 and Marcus, I guess, came by the house and they asked me did
17 I have anything to drink, and I fixed them a drink and they
18 left."

19 Q. This is what you told the police?

20 A. Yeah.

21 Q. But had Ms. Edwards called you earlier that evening?

22 A. I am not sure whether she called me first or I called
23 her first.

24 Q. Okay.

25 MR. SULLIVAN: Answer any questions that Mr. Moyer

1 may have for you.

2 CROSS EXAMINATION BY MR. MOYER:

3 Q. Hey, Mr. Irby. I just had a few questions for you.

4 Isn't it -- would it be fair to say that you have a
5 real hard time remembering the exact times that they came
6 by?

7 A. Yes, I have convulsive seizures and my memory is not
8 what it should be.

9 Q. Well, thank you for being honest with us about that.
10 So that kind of hurts with your memory, as far as trying to
11 remember times and sequences and things like that?

12 A. Yeah, because of the seizures. I have convulsive
13 seizures.

14 Q. Okay. But there is no doubt they came by and were
15 there -- how long did it take, 10, 15, 20 minutes?

16 A. Yeah.

17 Q. And then at some point some police officers came by and
18 talked about seeing footprints to your door?

19 A. It was definitely after they had come by for the
20 drinks.

21 Q. Okay. And that was definitely afterwards.

22 But after the police spoke to you and you told them
23 about Shaun and his friend had come by?

24 A. Yeah.

25 Q. And then after -- as soon as the police left, didn't

1 you call Ms. Edwards and tell her that the police had just
2 been there?

3 A. I did.

4 Q. Did you call her pretty much right after the police
5 left?

6 A. Yes.

7 Q. Okay. What was your phone number?

8 A. 848-1086.

9 Q. I would ask you to just step down one second.

10 Was that a pretty short conversation that you had with
11 his mother?

12 (Witness off the witness stand)

13 A. We talked briefly then and then we talked a little
14 while later and --

15 BY MR. MOYER:

16 Q. Well, let's just --

17 A. We didn't really go into detail about, you know, the
18 things, and I believe it was a half hour or more.

19 Q. Well, let's just talk --

20 A. The second time.

21 Q. Let's just talk about the phone call that you had with
22 her when you called her right after the police left.

23 And your phone number was what?

24 A. 848-1086.

25 Q. I want you to look at line number -- line number 191,

1 right here on this board. Do you see line 191?

2 A. Uh-huh.

3 Q. And that's your phone number right there, 848-1086?

4 A. Yes.

5 Q. Okay. And what number -- what time does that say?

6 A. 3:29.

7 Q. 3:29 in the morning?

8 A. Yeah.

9 Q. And so does that sound like the time -- that would be
10 the time then that you called over to Mrs. Edwards and said
11 the police were just there?

12 A. Yeah.

13 Q. Okay. Now, let's look back up here a little bit.
14 Let's look back up here to about 1:05, line number 184. Is
15 your phone number 848-1086?

16 A. Yeah.

17 Q. Okay. And do you see here line 184 that she called you
18 about 1:05?

19 A. Yeah, we talk every day.

20 Q. She is 'a good friend of yours, isn't she?

21 A. Yeah.

22 Q. And y'all had about a 27 minute phone conversation?

23 A. Uh-huh.

24 Q. And you got -- you can have a seat.

25 (Witness back on the witness stand)

1 BY MR. MOYER:

2 Q. And during that time you told her that Shaun had been
3 by your house earlier that day and had -- you had given them
4 some drinks?

5 A. Yeah.

6 Q. And you chatted with her a good while about just things
7 in general?

8 A. Yeah.

9 Q. Okay.

10 A. Because she sings a lot and I usher a lot at church,
11 and so it's probably, you know, one or the other.

12 Q. Sure. She's a good friend of yours?

13 A. Very good friend.

14 Q. So it's natural for y'all to talk?

15 A. Yeah.

16 Q. Even late at night?

17 A. Yeah.

18 Q. And when they -- when Shaun and his friend Marcus, when
19 they left your apartment, they took the drinks with them?

20 A. Yeah.

21 Q. And walked back to the house, to Shaun's house?

22 A. You can go right through the [REDACTED] to her house.

23 Q. Okay. And that's where they headed?

24 A. Yeah.

25 Q. Okay. Thank you.

1 MR. SULLIVAN: One followup.

2 REDIRECT EXAMINATION BY MR. SULLIVAN:

3 Q. During that day did Albert Kelly come by your house and
4 have any liquor?

5 A. Uh-uh.

6 Q. You have to answer verbally.

7 A. No. No, he didn't.

8 MR. SULLIVAN: Nothing further, Your Honor.

9 THE COURT: All right, sir, you may step down.

10 MR. SULLIVAN: Defense would call Ms. Joyce
11 Gordon.

12 JOYCE GORDON, having been first duly sworn,
13 testified as follows:

14 THE CLERK: State your full name for the record.

15 THE WITNESS: Joyce Ann Gordon.

16 DIRECT EXAMINATION BY MR. SULLIVAN:

17 Q. Ms. Gordon, you have been present during these
18 proceedings, have you not?

19 A. Yes, sir.

20 Q. And you are the -- you are Albert Kelly's mother, is
21 that correct?

22 A. Yes, sir.

23 Q. You are familiar that he is facing charges of murder
24 and armed robbery over an event that happened on the evening
25 of February 27th, around midnight forward?

1 A. Yes, sir.

2 Q. Okay. And we have talked about this before. Of
3 course, we are not going to talk about it the first time
4 right now.

5 As best as you can remember, during that day, this
6 would have been from February 26th into February 27th, '04,
7 what do you recall about spending any time with your son?

8 A. Okay. The February 26th, '04, we got up, we had
9 breakfast, me and Albert, and we talked, and then he left
10 the house at twelve. Then he came back at three and we
11 talked and he went to his room, watched TV and played video
12 games and did some things in his room and stuff. And then I
13 laid down around about seven. And then he left the house at
14 ten. And then when he left the house at ten, he came back
15 at eleven that night. And when he came back, I got up out
16 of the bed and turned the TV on and we watched the news and
17 we watched Channel 21, the Comedy Channel, or Seinfeld, and
18 watched Channel 16, gospel and preaching. And then we
19 talked and then he went to bed at 12:30. And then I stayed
20 up and I permed my hair and then I went to bed at two
21 o'clock. And then when I looked in his room, he was still
22 in there. And I got up at 6:00 or 6:30 that morning, he had
23 already left the house. And after he left the house, I
24 didn't really think anything about it because sometimes he
25 leaves the house. You know, he don't tell me he's gone. He

1 just leaves.

2 And then about I guess that evening my mother-in-law
3 called me. She asked me had I watched the news and I told
4 her no, ma'am. And she said they had Albert on the TV, said
5 they was looking for him for questioning for accessory
6 before and after the fact of a murder. So I called the
7 police station and I asked them. I asked them was they
8 looking for Albert Kelly and they told me yeah. And then so
9 I told them if I find out his whereabouts, I will tell him
10 he need to go to the police station because they was looking
11 for him.

12 And then about three or four days later the officer
13 called my house. One of the law enforcements called my
14 house was asking me was Albert at home and I told them no.
15 And then I asked them did they want to come down and take a
16 look around and they told me "no, ma'am. No, Ms. Gordon."
17 And I told them if he wanted to, they could. They said "we
18 don't have no problem with you. We ain't never had no
19 problems with you."

20 And so then about a month later I was over to my dad's
21 house. The SWAT team come in and they asked my dad did he
22 know where Albert's whereabouts and my dad told them no.
23 And I told them that I was Joyce Gordon, Albert Kelly's
24 mother. And then they asked me did he have any family
25 members out of town, and I told him he had a sister that

1 lives in Atlanta, Georgia. And they asked me for the
2 address and the phone number, so I gave it to them.

3 And then after that I -- when they locked Albert up at
4 the Greenville detention center, I talked to his lawyer, Tim
5 Sullivan, about what I knew. That's basically all I know.

6 Q. Did he have family in Atlanta? You said he had --

7 A. Yes, he had a sister that lived in Atlanta and a
8 stepmother.

9 Q. Did he spend some time in Atlanta?

10 A. Yes, sir.

11 Q. And in the past before this he spent time in Atlanta?

12 A. Yes, sir.

13 Q. Sometime in Greenville?

14 A. Yes, sir, he had been living -- he had come home to
15 live with me. He had been living back and forth with
16 friends and relatives and with his girlfriend, and then he
17 came home to live with me five months prior to that and he
18 had two jobs he had been working. And then he had quit the
19 jobs because he had planned on taking another job either in
20 Greenville or get a job in Atlanta.

21 Q. So he was planning to go to Atlanta?

22 A. Yes, sir. That's what he had told me, you know, when
23 we had talked.

24 Q. Ma'am, I'm not trying to embarrass you, but, Ms.
25 Gordon, do you take any sort of medication?

1 A. Yes, I take Ambilifer (phonetic), like Ritalin for
2 hyperactive.

3 Q. Okay. You take the medication. Does that affect the
4 way that you remember things?

5 A. No, sir.

6 Q. Does it affect the way that you are thinking today?

7 A. Uh-uh.

8 Q. You are clear headed?

9 A. Yes, sir.

10 Q. Okay. So it's your testimony that from about 11:30 on
11 you were with Albert?

12 A. Yes, sir.

13 Q. He was at your house?

14 A. Yes, sir.

15 Q. Okay. Did he -- he left sometime before you got up the
16 next morning?

17 A. Yes, sir.

18 Q. And do you know if he had planned to go to Atlanta
19 anyway?

20 A. Well, he had been talking to me. When we had talked
21 that night, he had told me that he might leave to go to
22 Atlanta out of town, you know. And then I said "well, you
23 know, whatever you want to do." And then he said that he
24 needed to talk to his girlfriend, you know, about it and
25 stuff. So, you know, it was -- he really hadn't decided

1 whether he was going to stay in Greenville or go to Atlanta
2 and take the job in Atlanta.

3 Q. When he was living at times in Atlanta, did he go a
4 period of time where he would not call you?

5 A. Sometime. I mean, you know, because he was grown. He
6 had his own life and stuff like that. Sometime he would
7 leave, you know, and I wouldn't hear from him for weeks, or
8 two or three, you know, because sometimes he would leave and
9 he would stay in Atlanta. And sometimes he would go other
10 places and stay with other family members or friends or
11 girlfriends, who, you know.

12 Q. So it wasn't unusual for you not to hear from him for
13 periods of time when he was out of town?

14 A. Well, it was -- it was unusual for me not to hear from
15 him within a month's time.

16 Q. Okay. Thank you. Answer any questions that Mr. Moyer
17 may have.

18 DIRECT EXAMINATION BY MR. MOYER

19 Q. Thank you, Ms. Gordon. I need to ask you a few
20 questions.

21 A. Uh-huh.

22 Q. Now, you told us you went to bed about seven o'clock
23 that night?

24 A. Yes, sir, I laid down.

25 Q. You laid down. Did you go to sleep?

1 A. Well, I lay down to take a nap.

2 Q. Okay.

3 A. I mean, you know, sometime I -- I don't fall right off
4 to sleep. I mean, I just lay there sometime.

5 Q. Well, hadn't you fallen asleep -- your testimony that
6 Albert had to wake you up?

7 A. Uh-uh, I didn't say that Albert had to wake me up.

8 Q. Okay. So you were still awake?

9 A. Yeah, I was still awake. I had been in the bed just
10 laying there.

11 Q. Okay. And then you saying that you got up when he got
12 home?

13 A. Yes.

14 Q. And you mentioned all these television programs that
15 you watched?

16 A. Yes, sir.

17 Q. How do you -- how are you able to --

18 A. I watch Channel 7 News, which come on at eleven and go
19 off at 11:30.

20 Q. Okay.

21 A. Then I watched Seinfeld, which came on at 11:30 and
22 went off at twelve. Then I watched the gospel and the
23 preaching.

24 Q. And you are saying that Albert Kelly was sitting with
25 you during this whole time?

1 A. Yeah, he was sitting there. We was talking.

2 Q. And how are you able to remember what you were watching
3 on TV so long ago?

4 A. I can remember. I got a good memory.

5 Q. Do you remember what you watched on TV the next day?

6 A. Uh-huh.

7 Q. What did you watch that night?

8 A. I watched the news, because my mother-in-law, she
9 called me and told me about what had happened and stuff.
10 Then I watched the news. And I watched Cops. I like to
11 watch Cops on Saturday, Saturday nights and watch most
12 mornings.

13 Q. And so you are able to tell us that you are able to
14 watched on TV every night, as we go --

15 A. Not -- I can't say every night, but I know what I
16 usually watch.

17 Q. Okay. So you know what you usually watch.

18 All right. Now, you are saying that Albert went off --
19 you didn't see Albert after about 12:30?

20 A. Uh-uh, I said at eleven o'clock. He left the house at
21 ten and he came back at eleven o'clock.

22 Q. Came back at eleven?

23 A. Uh-huh.

24 Q. And then after that you didn't see him again. You are
25 saying --

1 A. He went in his bedroom at 12:30.

2 Q. And you are saying that you saw him go in his bedroom?

3 A. Yes, his bedroom is right beside mine, because we was
4 living in the apartment at that time.

5 Q. So you are -- so it's your testimony he couldn't have
6 got out of the house without you knowing about it?

7 A. No, sir.

8 Q. Now, are you a light sleeper?

9 A. I'm a light sleeper. Yeah, I am.

10 Q. So you didn't wake up then at any time -- you went to
11 bed about two o'clock in the morning?

12 A. Yes, sir.

13 Q. And you didn't wake up at any time after that until you
14 got up at six o'clock the next morning?

15 A. No, uh-uh.

16 Q. And you are saying at that time he was gone?

17 A. Yeah, he was gone.

18 Q. Now, isn't it true that -- he didn't take any luggage
19 with him, did he?

20 A. No, because he usually leave his clothes at home and
21 sometime wherever he was staying he had clothes.

22 Q. And he didn't pack any bags full of clothes and
23 toiletry items and food and things like that?

24 A. No.

25 Q. Didn't take anything with him?

1 A. Not that I know of.

2 Q. And he left and he didn't wake you up and say good-bye
3 to you?

4 A. No. He do that sometimes.

5 Q. And he never called you that day, did he?

6 A. Uh-uh.

7 Q. And he didn't call you the next day, did he?

8 A. No.

9 Q. And, in fact, you didn't hear from him until he got
10 arrested and was brought to the law enforcement center here
11 in Greenville?

12 A. Yes, sir.

13 Q. So almost two and a half, three months went by?

14 A. Yes, sir.

15 Q. And no letters, right?

16 A. No, I didn't get no letters.

17 Q. No postcard?

18 A. Uh-uh.

19 Q. No phone calls?

20 A. Uh-uh.

21 Q. In fact, you had no idea where he was, did you?

22 A. Yeah, I know -- I -- actually I didn't know where he
23 was, but I knew what we had talked about.

24 Q. Okay.

25 A. I mean, so --

1 Q. He never told you where he was, though, did he?

2 A. No, sir.

3 Q. In fact, you never told the police that you now where
4 he was?

5 A. That's right.

6 Q. All you told the police was that you knew he had a
7 sister in Atlanta?

8 A. Yes, sir.

9 Q. You never told the police that he was talking about
10 going there, or that you thought that he was even there?

11 A. No, I didn't tell them that, because they didn't ask me
12 that. And I think I should talk to his lawyer, since they
13 already was saying that he had murdered somebody and they
14 hadn't never come to my house and questioned me or never
15 come to my house and searched.

16 Q. But you didn't know where he was, did you?

17 A. Not really.

18 Q. Not really?

19 A. Uh-uh.

20 Q. So you are telling us tonight that he was talking a
21 little bit about maybe leaving?

22 A. Yes, sir.

23 Q. Now, you found out -- when your mom called you, you
24 found out that Albert Kelly --

25 A. My mother-in-law called.

1 Q. I'm sorry, your mother-in-law?

2 A. Uh-huh.

3 Q. When she called you and said she saw the news --

4 A. Yeah.

5 Q. -- that's when you found about the murder?

6 A. Yes, sir, on -- at six o'clock.

7 Q. Okay. So you don't watch the six o'clock news?

8 A. Yeah, I watch the six o'clock news, but I wasn't
9 watching TV that day. I don't always be watching TV. I be
10 listening to music and doing other things.

11 Q. Didn't you just tell us, though, that you watched the
12 news the next day?

13 A. Yeah, at ten o'clock.

14 Q. Okay.

15 A. On Channel 21.

16 Q. And they didn't run the story again about Albert?

17 A. Yeah.

18 Q. They did?

19 A. Uh-huh.

20 Q. That's when you found out about Albert Kelly, about
21 your son being charged with murder?

22 A. Uh-huh.

23 Q. And it's true that you never -- you never went to the
24 police and told them that you knew where he was and that he
25 couldn't have committed the murder? Isn't that true?

1 A. No, sir, I never did. I talked to his lawyer, Mr.
2 Sullivan.

3 Q. And so those months went by that you never told the
4 police that you knew where he was and that he couldn't have
5 committed the murder?

6 A. Well, when they came over to my dad's house, they never
7 did ask me anything and they never came to my house or
8 questioned them.

9 Q. But you never told them?

10 A. No, sir.

11 Q. And they called you on the phone a time or two?

12 A. They called me on the phone one time.

13 Q. And you didn't tell them then either, did you?

14 A. No, sir. I just told them that he wasn't there, that
15 did they want to come down and take a look around.

16 Q. And you never called the police and told them?

17 A. No, sir.

18 Q. And then when Albert Kelly got arrested on May the 10th
19 of 2004, you never told them this had the wrong guy?

20 A. No, sir, I didn't.

21 Q. And it was just when you wrote a letter to his lawyer?

22 A. I talked to his lawyer.

23 Q. You didn't write a letter?

24 A. Yeah, I wrote a statement.

25 Q. Okay. And when did you write that letter?

1 A. I wrote it when he got locked up at the Greenville
2 detention center.

3 Q. How long after that?

4 A. I guess it was a week.

5 Q. About a week afterwards?

6 A. Uh-huh.

7 Q. Did you go visit Albert Kelly when he got picked up?

8 A. Yes, sir.

9 Q. You went and saw him right away?

10 A. No, sir.

11 Q. When did you see him?

12 A. I guess I saw him about -- I guess about three weeks
13 after that.

14 Q. Okay. Now, let me ask you. You were asked a little
15 bit about your medications. I know this is a personal
16 matter and I hate to --

17 A. That's fine.

18 Q. I have to ask you a couple other questions.

19 Now, didn't you tell -- haven't you given sworn
20 testimony that you have taken several -- you have taken
21 several medications?

22 A. No, uh-uh.

23 Q. Didn't you say -- I'm sorry.

24 A. I told you I take Ambilify (phonetic) for
25 hyperactivity. It's like Ritalin. And I told you I take

1 Zoloft for nerves. And I told you I take Risperdal to help
2 me to sleep, if I can't sleep very good.

3 Q. And didn't you take that -- you took that sleeping
4 medicine.

5 A. No, I didn't. I didn't tell you that on the last time
6 I testified.

7 Q. Are you sure of that?

8 A. I told you I took the Ambilify.

9 Q. Was it Avolofy (phonetic)?

10 A. What? Uh-uh.

11 Q. It wasn't Avolofy (phonetic) that you take?

12 A. Uh-uh, I take Ambilify.

13 Q. And what is that for?

14 A. It's for like hyperactive. It's keep you from being
15 hyper.

16 Q. Okay. And did you take -- were you taking the
17 medication back then in February of 2004?

18 A. Uh-huh, I told you Ambilify.

19 Q. All three?

20 A. No, I don't take all three of them. I only take --
21 like if I'm nervous, then I take the nerve pill. If I'm
22 not, I don't feel nervous, nothing like that, then I don't
23 take it. I don't take the sleeping medicine every night.
24 Just only if I feel like I'm going to stay up a day or
25 something like that and can't get any sleep.

1 Q. Okay. Did you take that -- so you did not take the
2 sleeping medication on the night that Albert Kelly left your
3 house?

4 A. No, sir.

5 Q. You did take the Am --

6 A. Ambilify.

7 Q. The Ambilify?

8 A. Uh-huh.

9 Q. What about the other one, did you take that?

10 A. No, sir, I didn't take the nerve medicine, the Zoloft.

11 Q. And you prescribed that you are supposed to take that
12 every day?

13 A. No.

14 Q. Don't you know that you have to take that every day for
15 it to work?

16 A. No, my doctor said I don't have to take it every day.

17 Q. He did?

18 A. Uh-huh.

19 Q. And that doesn't affect your mood in a negative way --

20 A. No, sir.

21 Q. -- if you don't take it?

22 A. No.

23 Q. It doesn't affect your --

24 A. Not mine.

25 Q. Okay.

1 MR. MOYER: Nothing further.

2 THE COURT: Any redirect?

3 MR. SULLIVAN: No redirect, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down.

5 MR. SULLIVAN: We call Albert Kelly.

6 THE COURT: Just a minute before that.

7 Ladies and gentlemen, I want to ask you to go to
8 your jury room just for a moment. There is a matter that I
9 need to take up with the attorneys. I'll ask you to come
10 back in just a few minutes. We will have you out there
11 about ten minutes. We will have you back. Thank you very
12 much. Don't discuss the case.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: I just wanted to put on the record
16 before we started the trial back, the settlement of the
17 record was made, as far as the prior offenses. I tried to
18 balance the prejudicial effect of admitting these against
19 the probative value that the State would have. I have
20 considered the -- certainly the impeachment value of the
21 prior offenses; the time that those convictions were, in
22 light of the subsequent history of the defendant since the
23 time of those convictions and the time of this trial; I have
24 considered the similarity of the crimes charged in this case
25 with those prior charges; obviously consider the importance

1 of the defendant's testimony and how central credibility
2 would be to the issue in this case; the age and
3 circumstances surrounding the offenses that have been
4 committed prior; the length of the record and the likelihood
5 of Mr. Kelly not testifying; all the facts surrounding the
6 convictions, and I have come to the determination in light
7 of Rule 609 that allows the impeachment of these offenses,
8 as well as Rule 403 that allows me to balance the
9 prejudicial effect with the probative value. I have
10 determined, based upon all those factors and the law as I
11 understand it, that it would be proper impeachment for the
12 State to use him testifying in this case. I just wanted to
13 let you know the determination that I have made as far as
14 these offers of impeachment to be I presumed pursued by the
15 State in this case, specific reasons for the ruling that I
16 have made.

17 All right. At this time we will ask the jury to
18 come back and we will proceed with the trial.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. Thank you very much,
22 ladies and gentlemen.

23 You can proceed and call your next witness, Mr.
24 Sullivan.

25 MR. SULLIVAN: Defense would call Mr. Albert

1 Kelly.

2 THE COURT: All right, sir.

3 Mr. Kelly, if you would come around and be sworn.

4 ALBERT SENTENIO KELLY, having been first duly
5 sworn, testified as follows:

6 THE CLERK: State your full name for the record.

7 THE WITNESS: Albert Sentenio Kelly.

8 DIRECT EXAMINATION BY MR. SULLIVAN:

9 Q. How old are you, Albert?

10 A. 24.

11 Q. You are aware of the charges you are facing here?

12 A. Yes, sir.

13 Q. You have been in the courtroom in all these
14 proceedings?

15 A. Yes, sir.

16 Q. You are familiar with the time frame that we are
17 talking about, the date of February 26th and the morning of
18 February the 27th of 2004?

19 A. Yes, sir.

20 Q. You had these accusations against you that you pled not
21 guilty, but you have been in trouble in the past, have you
22 not?

23 A. Yes, sir.

24 Q. I believe in Georgia you had an auto breaking.

25 A. Yes.

1 Q. You had a fight. You got two assaults, and you had a
2 failure to stop for a blue light?

3 A. Yes, sir. I pled guilty to all that. I did all of
4 that.

5 Q. And you had an escape?

6 A. Yes, sir.

7 Q. What did you do on those cases?

8 A. Sir?

9 MR. MOYER: I object, Your Honor. Convictions
10 is -- the fact he was convicted is the only thing that's
11 relevant.

12 THE COURT: I sustain the objection.

13 BY MR. SULLIVAN:

14 Q. Do you remember a trial on -- this is your first trial
15 for a criminal offense?

16 A. This is my first jury trial on a charge, yes, sir.

17 Q. All right. Where were you living during this period of
18 time? We are talking about February 26th, February 27th.

19 A. I had been living with my mother a little while, but I
20 was -- my stationary place was in Georgia.

21 Q. How long had you been in Greenville with your mom?

22 A. About -- at that time, a couple weeks.

23 Q. Where were y'all staying? Where were you living?

24 A. At 36, Drummond Village. [REDACTED], Drummond
25 Village.

1 Q. You are familiar with this area that we have been
2 looking at --

3 A. Yes, sir.

4 Q. -- taking picture of, the trailer park, and that area?
5 You are familiar with all that?

6 A. Yes, sir.

7 Q. On February 26th, that would be the day leading up to
8 this, you heard Marcus and Shaun testify about y'all being
9 together. Just starting from that morning, February 26th,
10 give us your day, as you best can remember. It's been a
11 good while ago.

12 A. Okay. On February 26th, I woke up that day. I don't
13 know around what time. I know it was that day. My
14 intention was to get a haircut, because I was supposed to go
15 to Georgia the next day for this job interview, and I had a
16 job interview in Greenville side up also, but I went to the
17 barbershop. I left the house earlier that day and went to
18 the barbershop. When I got to the barbershop, the
19 barbershop was closed, so I came back home.

20 Q. What was the weather like that day?

21 A. It was cold, kind of snowy. I don't think it was
22 snowing at that time, but it was snow on the ground, and I
23 came back home. I stayed at home for a little while, played
24 my game in my room, talked on the phone. I think I called
25 my girlfriend I was going with at the time, Donna. I talked

1 to her for a while. I think she was at work, I think.

2 Anyway, I went outside a couple of times and smoked a
3 cigarette because my momma don't allow me to smoke
4 cigarettes in the house because she's a Christian lady.

5 So, anyway, about -- I went out of the house a couple
6 of times, but about ten o'clock that night I left and went
7 to Shaun's house, because Shaun cut hair in the
8 neighborhood. I said since I can't find no barbershop open,
9 I'm going to let Shaun cut my hair, so I went out there.
10 When I got out to Shaun's house, Marcus and Shaun was in the
11 living room at his momma's house.

12 Q. This was in Drummond Village?

13 A. C-6.

14 Q. [REDACTED]

15 A. So I sat there. Shaun was talking on the phone when I
16 first got in, so he was arguing with some guy about sleeping
17 around with his girlfriend. He was saying something about
18 about he was going to do harm to the guy because he was
19 sleeping with his girlfriend or something. I don't know
20 nothing about that event, but I just know he was arguing
21 with two people on the phone; evidently a girl and a guy.
22 So this was with ten o'clock. He talked about 20 -- 15, 20
23 minutes on the phone. And he got off the phone, he was like
24 "what's up?" I was like "man, I need a haircut. Like I got
25 a couple of job interviews signed up. I need a haircut."

1 So he was like "I will see what I can do."

2 So we sat down for about five -- a couple minutes and
3 then he went in his room to the back room to the right of
4 the apartment, in the back. He came back. He had three
5 guns. He had a rifle, an SKS. He told me it was an SKS.
6 He had a black .22, which he laid on the table. And he had
7 a chrome and black .380, Highpoint. The same two guns y'all
8 had here in the courtroom, he laid it on the table.

9 Marcus picked up the .22 and put it in his waistband of
10 his pants. Shaun started toying with the rifle trying to
11 get the slip to stay in the rifle. He just started, you
12 know, trying to get -- I guess trying to get the clip to
13 stay in it. So we did that for awhile. Then after awhile
14 he put the rifle down. I'm not sure if he put it back in
15 his room or left it in the living room. I'm not sure where
16 he put it at because I can't remember, but I know he picked
17 the .380 up. He popped the clip out of it. He put it back
18 in there. He cocked it. Put a bullet in the chamber. I
19 think he put the safety on and he put it down in his pants.
20 He asked Marcus, he was like "are you ready?" And Marcus
21 was like "yeah." He was like "A.K., I'm going to have to
22 cut your hair later on." He was like "just get with me
23 later on." He was like "me and Marcus are about to go get a
24 car. We have got some business we got to handle." So I was
25 like "already, then cool."

1 So I got up to leave. They got up behind me. So Shaun
2 was putting his coat on. Marcus already was dressed, you
3 know, for the cold weather. They came out the door behind
4 me. All three of us walked down. If you had the poster, I
5 could show you which way we was parking. I think it's
6 Donaldson Avenue. We walked down Donaldson Avenue. That's
7 going towards my mother's apartment, but it's also going
8 towards the trailer park, but you get to my mother's
9 apartment before you get to the trailer park.

10 When we got to my mother's house, apartment, I went
11 down to sidewalk and was going on in the house. This was
12 about eleven o'clock. Shaun and Marcus kept walking towards
13 the trailer park. They went on down by the trailer park.
14 Both of them was armed.

15 So I went in the house. My momma woke up. I think she
16 got up on her own. I don't remember if I have woke her up
17 or not, but I think she got up on her own. Anyway, it was
18 about eleven or something. I talked to her for a while,
19 told her what I seen. I told her I seen Shaun and Marcus
20 with guns and stuff. She told me not to worry about it. As
21 long as I ain't did nothing, it ain't none of my business.
22 So me and her sat around chilling, watching TV. She got on
23 me about not -- because I hadn't been going to church with
24 her lately, so I watched Channel 16 with her, the Christian
25 channel. Me and her always get together and watch the

1 Christian channel. We watched that. I went in my room
2 played my game for awhile, came back out and we talked.
3 Then about 12:30, like she said, I went and laid down. I
4 went in my room and laid down.

5 I think it was about a 3:30 or four o'clock. I'm not
6 sure, but I think it was 3:30 or four o'clock the same --
7 that morning, on the 27th, that I got up and I left. I
8 brushed my teeth, washed my face, took a wash-up, changed my
9 clothes and I went to my home boy's house. He stayed about
10 a good five or ten minute walk from where my mother stayed.
11 He was the one I was supposed to have been going to Georgia
12 with. He was supposed to have taken me to Georgia. Me and
13 him was supposed to have been going. So when I got to his
14 girl's house, well, he stated, she was like she hadn't seen
15 him. So I was like -- I sat around and chilled with her for
16 awhile, looked at a little TV. And then she was like she
17 worked third shift. She was like she was getting up to go
18 to work, I guess, so I called the cab from her house and got
19 them to take me to Duncan, to Ron Rice house where Donna was
20 living. I used to stay there too at one point in time, but
21 me and Ronnie had got into it, you know, had a little
22 confrontation and we wasn't talking at the time. So I went
23 to Donna's house and Ron was -- I guess he was getting up to
24 go to work. He was up drinking coffee. He left. He said a
25 couple words to me. We spoke. Then he left and me and

1 Donna talked for awhile and then we -- she fixed me
2 something to eat. I ate. Then we laid down and went to
3 sleep. We woke up that afternoon. It was about -- probably
4 about six that afternoon, I think, and Ron -- I know Ron was
5 just coming home, just getting off from work. He called
6 Donna in the living room and they talked. And Donna came
7 back in the -- he called Donna in the kitchen. They talked.
8 And then Donna came back in the living room where I was. I
9 was watching a DVD in the living room. She was like "are
10 you ready to go?" Ron was like "you got to go so." I was
11 like "check this out." I was like -- I was supposed to be
12 going to Georgia. I already had talked to her about it too.
13 I was like I was supposed to be going to Georgia, but I
14 can't get in touch with my boy. I was like "so check this
15 out. Let me shoot you a couple dollars, \$60 to \$100 to take
16 me down there real quick." She was like cool. And we went
17 to Georgia.

18 And when I got down there, I think it was a couple
19 days -- the next day, it was -- I think it was still on
20 the -- no, it was the next day. It was the 28th, I think,
21 or might have been the 27th. I went to my job -- little job
22 thing. This was this family. It's a cell phone business
23 called Nokia, but it ain't Nokia, like the cell phone place.
24 It's a different thing. It's a family owned thing, the cell
25 phone place. And I was just doing different kind of work

1 for them, keeping the grass cut, sweeping up and stuff. You
2 know, helping them out around the store. They was paying me
3 cash money for doing that. And that's what I was doing. I
4 was staying, living with my stepmother, and that's what I
5 was doing.

6 Q. You went down -- you say you went to Georgia on the
7 evening of the 27th?

8 A. Yes, sir.

9 Q. And then you stayed there. You were arrested on May --
10 early morning hours, about 3:30, you had a confrontation
11 with this officer from Georgia. You heard him testify?

12 A. Yes, sir.

13 Q. Okay. Will you just tell us about that?

14 A. Okay. Me and my friend, a friend guy I got from
15 Georgia named Junior. Me and him was in the car. He was
16 driving. We was -- I think it's Buford Highway. We was
17 going up Buford Highway. My stepmother had just moved out
18 there off Buford Highway in some apartments, right? Well,
19 she had just moved. I was at work when they was moving that
20 day, but he had helped her move. So we was going to my
21 stepmother's house. And we was on Buford Highway and we got
22 lost. You know what I'm saying? I know we was in the area
23 where the apartment was. It was in that area somewhere, but
24 we just couldn't find them, because there is so many
25 buildings and apartments on that road, on Buford Highway.

1 It's a big place in Georgia. So I stopped there. I think
2 it was a Texaco. I can't remember the gas station. I
3 stopped. I know it was right across the street from another
4 gas station. I stopped and went to -- and he stopped and
5 pulled up at the pay phone. So we pulled about a couple
6 steps from the pay phone. So I got out of the passenger
7 side and I went to walk to the pay phone and the police car
8 passed by me. He just kept staring at me. He was looking
9 at me like I had just slapped somebody in front of him. He
10 was just looking at me. He kept staring at me. I ain't
11 going to lie, I was looking at him too. And he went on up
12 the street and he disappeared he turned off on one of the
13 side roads and disappeared. He turned off on one of the
14 side roads and disappeared and I didn't see him. I got on
15 the phone, made my call. When I got off the phone and
16 turned around, he was coming back down the road, down the
17 highway and he came across seven lanes and came over. And
18 as I -- Junior was in the passenger side now. I guess he
19 got scared because he didn't have no license. I had, you
20 know, a permit to drive, but he didn't have no license, so I
21 guess he got scared, because he didn't want to, you know,
22 get caught driving or whatever, so he got on the passenger's
23 side. So I went on and jumped on the driver's side. He was
24 pointing, telling me to get in the driver's side, so I
25 jumped in the driver's side. When I got in the driver's

1 side, I was about to pull off but he just whipped in and
2 blocked us in. We couldn't move. He just whipped in and
3 blocked us in. And by the time he got out of the car and
4 asked us questions, he said "what y'all doing in this area?"
5 This type of car -- he was saying something about this type
6 of car we was in, that -- the car that it fit a description
7 of another car that had been involved in some robberies.
8 That's was he was telling me. So I was like "I don't know
9 nothing about that." He was like "you know what kind of
10 area that you are in?" I was like "I really don't know
11 nothing about this area. My stepmother just moved out here.
12 She lived within a half mile to a mile away from me. I just
13 can't find, you know, the building, the apartment building."

14 So another police whipped in behind us and then he
15 just -- he asked could he search the car. I told him no,
16 but he still made us get out of the car and he searched the
17 car anyway. Then he found the gun I think on the
18 passenger's side, .380 that Junior had. Junior was on
19 probation. So I just didn't want him to get in no trouble,
20 man, because that's my boy, so I just told him it was my
21 gun. I was like "it was my gun." I told the officer that,
22 you know, to take up for my boy. And so that's what
23 happened.

24 Q. What about -- okay, now originally when he came up, you
25 gave him another name?

1 A. I gave him Joseph Bernard Austell, something like that.
2 It was and ID -- it was -- I had an ID too. It was an ID
3 with -- I guess it was the guy, Joseph Bernard. That's who
4 I got the car from, I think. He gave it to me. It was
5 like -- because I thought the car was proper. I didn't know
6 the car had been took out of no carjacking or nothing. I
7 paid the guy -- I paid him \$200 for the car, or something
8 like that. That's what I said, I think \$200.

9 Anyway, I didn't know the car had been took out of no
10 carjacking or nothing. He told me "like, man, I'm giving
11 you this car. I'm going to sign the title and stuff over to
12 you next week. If you get pulled over, just give them this
13 information." That's what he told me, so that's what I did.
14 You know, I feel like -- that's what I did. It was wrong,
15 but that's what I did.

16 Q. You were in the courtroom when the officer from Georgia
17 testified about you making a spontaneous statement. At any
18 time prior to -- after that, when the gun came up, you were
19 put in cuffs?

20 A. Yes, sir. I think we was already in cuffs. I can't
21 remember clearly, but I think we was already in cuffs.

22 Q. And then he came back and started. Did he ever give
23 you your Miranda Warnings?

24 A. No, sir, he didn't give me nothing. They didn't even
25 give us no charge. They didn't even charge us with that.

1 Q. Now, according to his testimony, he said that you just
2 blurted out "my name is Albert Sentenio Kelly," such and
3 such, "and I'm wanted in South Carolina because I shot a man
4 in the head." Do you recall did you say anything like that?

5 A. This is what I said. When he came back to the car I
6 think the second or third time, he was like "something ain't
7 right with this name. It ain't coming back with nothing on
8 the record." He was like "you look like the type of guy
9 that done got in some trouble." He was like "I know this
10 ain't -- something. I was like "check this out. I'm going
11 to be honest with you. My name is Albert Sentenio Kelly."
12 I was like "I'm wanted in Greer, South Carolina for murder,
13 because they said I shot a guy in the back of the head."
14 That's what I said.

15 Q. Did you tell them that they say that you a --

16 A. "They say." That's what I said. He must have
17 misunderstood me, but that's what I said.

18 Q. Did any other officer come over to hear that?

19 A. No, sir, it was just me and him standing up.

20 Q. He didn't call the other officer up and say such and
21 such?

22 A. No, sir.

23 Q. After you got back to the police station, did he take
24 you in front of any detectives?

25 A. I didn't never talk to no detectives in Georgia, none

1 of them. I didn't ever talk to a Georgia officer, period.

2 Q. Okay. Then after you were arrested then you met with
3 two Greer officers that came to talk to you?

4 A. Yes, sir.

5 Q. Steve Denton and Arterburn. They came. Do you recall
6 that?

7 A. Yes, sir.

8 Q. Do you recall -- how long did y'all spend together from
9 the time -- were you in the room when they got there, or did
10 they bring you into the room?

11 A. When I got there they was already in the room.

12 Q. How much time did you spend with them prior to start
13 going over these Miranda Warnings?

14 A. Man, it wasn't nothing, but it was like -- they didn't
15 ever go -- they went over this with me after they had talked
16 to me for like probably a couple of minutes, like five
17 minutes, something like that. Then they went over this with
18 me.

19 Q. Okay. And is that your initials on the --

20 A. Yes, sir.

21 Q. -- on the thing?

22 A. Yes, sir.

23 Q. And did you understand what these things were saying?

24 A. Yes, sir.

25 Q. Did you ever ask for an attorney during this period of

1 time?

2 A. Yes, sir, I asked for an attorney to be present, and
3 they told me, they was like "we will get to that." And I
4 also told them about the threats that had been made to my
5 family. The reason why -- you know, do you remember what I
6 talked to you about the threats that had been made by that?

7 Q. Then after you signed the Miranda, then did you write
8 this statement out?

9 A. Yes, sir, that's my handwriting.

10 Q. And then Miranda -- let's just identify it. Miranda
11 Warnings was State's Exhibit No. 26. You did sign that
12 then, Albert, is that correct?

13 A. Yes, sir.

14 Q. Then you wrote out what would be State Exhibit 27.
15 That is your handwriting?

16 A. Yes, sir.

17 Q. So you wrote out essentially a confession?

18 A. Yes, sir.

19 Q. Is that what really happened?

20 A. No, sir. This is what the police -- the Officer Denton
21 basically nursed me through to write. This is basically
22 what he -- everything that he told me to write. I told him
23 threats had been made about my grandfather and my mother.
24 Somebody had called my friend's phone in Georgia and said
25 "look here, you tell A.K. -- I guess it was a friend of

1 Shaun and Marcus. "Look here, you tell A.K. if he don't
2 fess up and get my boys out of that mess they are in, they
3 are going to bury -- "they are going to be burying his
4 grandpa and his momma. They are going to find them dead."
5 They were saying stuff like that, so I was scared.

6 I didn't ever call my momma and tell her about it, you
7 know, because I didn't want them to get involved in it, but
8 I was scared, you know, for my mom and my grandpa, because I
9 love my mom and my grandpa. I was scared for them, you
10 know, so I was basically at the time doing what I felt was
11 right. But everything I wrote down is what the officer told
12 me to write. He sat there and he told me write that it was
13 snowing. Write that you had been drinking, and I hadn't --
14 in the last trial on the stand Shaun sat up here and said I
15 hadn't drunk no liquor. I hadn't been drinking.

16 MR. MOYER: I object.

17 THE COURT: Sustained.

18 MR. SULLIVAN: Don't go into what happened before.

19 THE COURT: Just -- I'll strike that from the
20 record.

21 BY MR. SULLIVAN:

22 Q. What you are saying basically is that you were coached?

23 A. Through what to write.

24 Q. Through here, and then you signed it?

25 A. Yes, sir, then I signed it.

1 Q. So it's your testimony that you had been with Shaun and
2 Marcus earlier in the night; y'all left together; and you
3 went to your mom's house; and they disappeared; and you
4 don't know what happened after that?

5 A. They went walking towards the trailer park. It was
6 about eleven o'clock. They went walking towards the trailer
7 park. They were saying they were going to get a car.
8 That's what they said.

9 Q. That's the last time that you saw them?

10 A. That's the last time I saw them, until we was up here
11 in the county jail, until I got locked up.

12 Q. Answer any questions that Mr. Moyer may have.

13 A. Yes, sir.

14 CROSS EXAMINATION BY MR. MOYER:

15 Q. All right, Mr. Kelly, you have already been asked about
16 this, but let me make sure it's clear, because I don't think
17 it came out exactly right, but you have been convicted of
18 felony entering into an auto, right?

19 A. Yes, sir.

20 Q. And two counts of assault and battery of a high and
21 aggravated nature?

22 A. Yes, sir.

23 Q. And failure to stop for a blue light?

24 A. Yes, sir.

25 Q. And escape?

1 A. Yes, sir.

2 Q. All right.

3 A. I did all of that.

4 Q. Now, let me talk to you a little bit about what you
5 have been talking about happened on February the 26th of
6 2004. You say that you got up that day. You don't remember
7 what time it was.

8 A. I know it was around -- it wasn't in the afternoon. I
9 know it was around like probably eleven or twelve, you know,
10 in the morning, still in the morning sometime.

11 Q. And you wanted to get -- you wanted to get your hair
12 shaped up because you had this job interview coming up?

13 A. Yeah, right, I wanted to get my hair cut. I had a
14 little afro. I wanted to get it shaped down and get me a
15 fade.

16 Q. Because you had a job interview coming up the next day?

17 A. Yes, sir.

18 Q. Isn't that what you testified to? You had a job
19 interview for Nokia, isn't that right?

20 A. Nokia.

21 Q. Nokia?

22 A. Yes, sir.

23 Q. And you had a job interview lined up --

24 A. Uh-huh.

25 Q. -- in Atlanta for the next day?

1 A. Yeah. And I also had a job lined up in -- up here in
2 Greenville. It was on a chicken farm.

3 Q. All right.

4 A. I was supposed to be getting a job driving forklifts.
5 I know about how.

6 Q. So it's your testimony that you were supposed to get
7 down to Atlanta that day because you had this job interview?

8 A. Yeah, I was supposed to get down there because I had a
9 job interview.

10 Q. Okay.

11 A. I don't remember if it was for the 27th or the 28th,
12 but I know it was for one of them days. I don't remember
13 exactly which day I went to the job interview, but I know it
14 was one of them days.

15 Q. It wouldn't have been on a Saturday for a job
16 interview?

17 A. Well, it was one of them days.

18 Q. On a Saturday?

19 A. This is a cell phone place. This ain't no Nokia, like
20 the cell phone place Nokia, that make the Nokia cell phones.
21 This is a different place, but they sell beepers, cell
22 phones, design T-shirts, and kinds of stuff like that, you
23 know, so they be open on the weekends. They be open seven
24 days.

25 Q. Well, how did you hear about this place? How did you

1 set up this job interview?

2 A. I went by there one day when I was in Georgia.

3 Q. Now, you had been in South Carolina for a couple of
4 months.

5 A. Yeah, but I was going to Georgia too. I can -- Georgia
6 ain't but nothing but two hours away.

7 Q. So you were just driving back and forth?

8 A. Shoot through there, you know, holler at my friends and
9 shoot back home the same day.

10 Q. So when did you --

11 A. No problem.

12 Q. When did you schedule this job interview?

13 A. I don't remember. I know when it was scheduled for,
14 but I don't remember when I actually, you know, went to the
15 place and talked to the people.

16 Q. Okay.

17 A. I don't remember. I know it was 2004.

18 Q. And it's a kind of business that they sell cell phones?

19 A. They sell cell phones, beepers. They sell T-shirts
20 with designs on them and stuff. They even got a part in the
21 back -- it's these black people own it. They got a part in
22 the back of the store that do gold teeth and stuff. They do
23 gold brills and stuff.

24 Q. So you called Shaun -- when you couldn't get your hair
25 cut you called Shaun about ten o'clock at night?

1 A. Ten o'clock at night?

2 Q. To go to see him about getting your hair cut.

3 A. I called him sometime -- it might have been around -- I
4 don't remember calling Shaun. I don't remember calling
5 Shaun.

6 Q. Do you remember testifying that you called him about
7 ten o'clock at night?

8 A. I said I called Shaun?

9 Q. Your given sworn testimony?

10 A. I might have did now, but I just don't remember saying
11 that.

12 Q. Wasn't that kind of late to call somebody about a
13 haircut?

14 A. About a haircut? Man, we young people, man. We be up.

15 Q. And so you knew he would be up? He's a pretty good
16 friend of yours, right?

17 A. He ain't no pretty good friend. He cut my hair a
18 couple of times. That's about it.

19 Q. Okay. Well, I mean, you felt comfortable going by and
20 calling him about ten o'clock at night for a haircut?

21 A. I don't exactly remember if I called him at ten
22 o'clock. I mean, I might have said it, but I don't remember
23 saying it. I don't remember calling him at ten o'clock.

24 Q. All right. And so your testimony is you went over
25 there about ten o'clock at night and then Shaun started

1 getting out these guns?

2 A. I said he was talking on the phone when I went over
3 there. Then a couple minutes later -- about 10, 15 minutes
4 probably, maybe 20 minutes, he hung the phone up. He sat
5 down and we talked for a little bit. Then he went back
6 there in the room to the right to the back of the apartment,
7 which I guess is his room, and came back. He had a rifle
8 and two handguns.

9 Q. So that's a yes, he started pulling out guns?

10 A. Yeah.

11 Q. And it was a rifle and two handguns.

12 Now, you were able to identify all these as an SKS, a
13 .380 and a .22?

14 A. Yeah, he told me. He was like this is a -- this is a
15 chopper. He said this is a chopper. And Marcus was like,
16 "man, that's an SKS. Man, I'm telling you that's an SKS."

17 Q. Isn't it true that you and Shaun started about selling
18 that rifle down in Atlanta?

19 A. Me and Shaun started talking?

20 Q. Yes.

21 A. No, sir.

22 Q. And you were going to be able to help him sell that and
23 y'all were going to split the money? Isn't that true?

24 A. I ain't never talked to him about selling no guns.

25 Q. And so you were able to recognize the pistol and the

1 .380?

2 A. Yes.

3 Q. The .22 and the .380?

4 A. Yes.

5 Q. So you know guns pretty well?

6 A. No, I don't know guns. I know if I see a gun, you
7 know, on an event like that something I have been involved
8 in and I see them with these guns, if I see them again, I'm
9 going to remember what they looked like.

10 Q. And you were able to tell what caliber it is?

11 A. From being in court from the last trial from hearing
12 you say what kind of guns they was.

13 Q. You testified -- you testified in sworn testimony
14 before that you knew what kind of guns they were. It was a
15 .22 and a .380.

16 A. Yeah, from hearing you say.

17 Q. You testified --

18 A. Before I got on the witness stand I heard you say it
19 was a .22 and a .380.

20 Q. All right. And your testimony is --

21 A. Am I right?

22 Q. And your testimony is that you were able to recognize
23 that as the weapons that were in Shaun's house?

24 A. Yeah, those are the guns that was in Shaun's house.

25 Q. And isn't it true that you can recognize this .380

1 pistol because that's the pistol that you took when you went
2 over to the trailer park to do the robbery on Ignacio
3 Delgado. That's the reason --

4 A. No, sir.

5 Q. That's the reason you can recognize that pistol, isn't
6 that true?

7 A. No, sir. I ain't never did no harm to a person a day
8 in my life except those two assaults I got on my record, and
9 that was at football game when I was about 18 years old.

10 Q. You are not allowed to -- just answer the question,
11 okay?

12 Now, your testimony is that you left with Shaun and
13 Marcus and you started walking back to your house?

14 A. At about close to eleven o'clock.

15 Q. And you have given sworn testimony that you woke your
16 mother up when you got in the house?

17 A. Yeah, I might have did wake her up. I might have did,
18 but I don't remember if I woke up her or not.

19 Q. Well, why would you wake your mother up at eleven
20 o'clock at night?

21 A. My mother be up on her own. She get up. I mean, doing
22 like she said, she probably -- you know, she do her hair and
23 all kind of stuff.

24 Q. The question is why would --

25 A. My mom get up and watch TV like that in the middle of

1 the night. She get up and watch TV. Can't sleep, get up
2 and watch TV.

3 Q. My question to you is why would you wake your mother up
4 when you knew she went to bed?

5 A. Did I say I woke my mother up?

6 Q. Yes, you did.

7 A. I don't remember saying it.

8 Q. So your testimony is now you did not wake your mother
9 up?

10 A. I might have woke up her up. I don't remember saying I
11 woke her up. I'm not saying I woke her up or I did wake her
12 up. I'm saying I didn't remember. Is that all right to
13 forget something? I ain't wrong for forgetting something,
14 is I?

15 Q. All right. Take a look here. Page seven, line number
16 11. Just read over that.

17 A. "I woke my mother up at that time."

18 Q. All right.

19 A. Yeah. Like I said, it's on the paper, evidently I said
20 it. All I said is -- I didn't say I didn't wake her up. I
21 just said I must -- I forgot if I woke her up or not.
22 That's all I said it I did it.

23 Q. My question is why would you wake your mother up at
24 eleven o'clock at night?

25 A. Is that a crime to wake my mother up?

1 Q. Sir, I'm just asking you. I'm asking you the question,
2 okay?

3 A. Okay. I just woke my mother up. I wanted to talk to
4 her.

5 Q. At eleven o'clock at night.

6 And then it's your testimony then you left about 4:30
7 in the morning, right?

8 A. Yeah, around 4:30, 5:00 I left. I went to my -- I went
9 to my friend's house.

10 Q. Did you make any phone calls before you left?

11 A. I don't remember if I made a phone call. I might have.
12 I think I received a phone call, I think now. I think I
13 received -- I remember talking on the phone before I left.
14 I don't know if I made the call or somebody called me.

15 Q. Okay.

16 A. But I do remember talking on the phone before I left.

17 Q. If the record shows that you called Shaundrecus' house
18 about 4:30 in the morning, does that sound right?

19 A. Yeah, I remember talking to his mom and she said the
20 police was over there.

21 Q. Okay.

22 A. But she didn't say nothing else. That's all she said.

23 Q. So you called Shaundrecus' house at 4:30 in the
24 morning?

25 A. No, I don't remember if I called over there or they

1 called to my house, but I know I talked to them on the
2 phone. I talked to his mom on the phone. I think she --
3 she might have called me. But then again, I might have
4 called over there asking them about a haircut, because he
5 told me -- he stayed woke. They don't go to sleep.

6 Q. Your phone number was 801-4085, right?

7 A. Yeah, that's my number.

8 Q. And you see how that's in the column for calling
9 number?

10 A. So what does that mean? That means I called the
11 number?

12 Q. Did you call her?

13 A. Is that what that means? If that's what the paper say,
14 then I must have called her.

15 Q. So you called?

16 A. And that's what the paper is saying.

17 Q. You weren't calling for Shaundrecus' mom, though, were
18 you?

19 A. I probably was calling to ask about my haircut.

20 Q. At 4:30 in the morning?

21 A. Somebody calling at 4:30. Shaun Young, he cut hair.
22 That's all he do.

23 Q. Cuts hair at 4:30?

24 A. Cuts hair 24/7. That's what he do, cut hair.

25 Q. Okay. So you decided that you are going to get your

1 hair cut at 4:30 in the morning?

2 A. I don't cut hair. That's what he do.

3 Q. And then you are going to start -- and then you are
4 heading out --

5 A. The barbershop stay open 24/7, and I wanted to get a
6 haircut and they stay open 24/7. If I want to get a haircut
7 at 5:30 in the morning, that's what I'm going to do, I'm
8 going to get a haircut, right or wrong.

9 Q. The truth of the matter is you called over there
10 because you knew the police were there and you needed to tip
11 him off as to where you hid the gun, isn't that true?

12 A. Whatever you think, man.

13 Q. Isn't that why you wanted to talk to him?

14 A. I done told you the truth. I done been there. I'm a
15 man. I can admit when I'm wrong.

16 Q. All right. Now, you said then at 4:30 in the morning
17 you decided that you are going to head to Atlanta?

18 A. At 4:30 in the morning?

19 Q. Yes.

20 A. I was going to my home boy's house who I was supposed
21 to be going to Atlanta with.

22 Q. And you had already --

23 A. Yeah, we was planning to go to Atlanta.

24 Q. You had planned this? Y'all had planned to go to
25 Georgia?

1 A. Who is y'all, me and my friend?

2 Q. Yeah.

3 A. Yeah, we was both -- I mean, we had been talking about
4 this like on the 25th, 24th, something like that.

5 Q. For a couple -- and he was a real good friend of yours,
6 right? What's his name?

7 A. Rodriguez.

8 Q. And where does Rodriguez live?

9 A. That's his nickname. I don't know his real name.
10 Rodriguez is his nickname.

11 Q. And where did Rodriguez live?

12 A. He lived in a -- as a matter of fact, he stayed down by
13 where my mom live at now, Sunnydale.

14 Q. How far away is that from Drummond Village?

15 A. That's about -- about a good ten minute walk.

16 Q. Okay.

17 A. Five -- about ten minutes. A good ten minute walk, if
18 you are walking fast.

19 Q. And so your testimony is you got there. And even
20 though you had planned this trip to Georgia for a couple of
21 days, he wasn't there?

22 A. Yeah, he wasn't there. His girlfriend said she hadn't
23 seen him. You know, this was early in the morning, so it
24 was on the 27th, so I assume she hadn't seen the little
25 period of time that had passed by that day she hadn't seen

1 him.

2 Q. And you didn't try to call him or you didn't wait there
3 for him?

4 A. Oh, I asked -- I sat there with his girl for a light
5 while. Watched TV. I sat there for a little while. Then
6 after awhile I called a cab and went to Donna's house, Ron
7 Rice house in Duncan.

8 Q. You called Yellow Cab and then they came and picked you
9 up and took you over there?

10 A. Took me to Ron Rice's house.

11 Q. And where is -- and this is from where now?

12 A. What do you mean from where?

13 Q. Where was it that you got picked up in the cab?

14 A. In Sunnydale.

15 Q. And how many miles is that from --

16 A. At the time my mom wasn't staying there. She was still
17 living in Drummond Village.

18 Q. Okay. But that's where your friend was that you said
19 that you got this cab.

20 A. Yeah, that's where he was living at, Rodriguez. That's
21 where he was living at.

22 Q. How long a cab ride was it from there to Ronald Rice's
23 house?

24 A. It was -- it was moving slow, because it was snowing
25 and then it's a big old hill.

1 Q. Uh-huh.

2 A. A big old tall hill that you got to go up to get to
3 Duncan from Greer, if you are going the way we were going,
4 and he kept sliding off the road. One time we had to get
5 out the car and help him. He had -- the car had went over
6 in the ditch. We had to -- I had to get out and kind of
7 help him try to push it and get it -- get it back right, so
8 it took us a little bit. It took us awhile to get to
9 Donna's house.

10 Q. Isn't it --

11 A. So if I would have been walking, like you tried to say
12 I was running down there, if that would have been true, that
13 would have taken about eight or nine hours.

14 Q. Isn't it true that you left Drummond Village and you
15 walked and ran straight to Donna's house? Isn't that true?

16 A. If that would have happened, I wouldn't have got there
17 until about twelve o'clock that morning.

18 Q. Five miles?

19 A. I wouldn't have got there until about twelve o'clock
20 that morning. Running up that big old hill, it would have
21 took a long time. More -- longer than that. Longer than
22 six o'clock when I got there.

23 Q. It's about five miles away, though, isn't it?

24 A. I don't know. It's probably longer than that.
25 Probably more than that.

1 Q. And the true of the matter is you didn't -- you didn't
2 go over there to this friend's house and call a cab. You
3 just went straight over to Ronald Rice's house?

4 A. Yeah, I went to my friend's house. Do you want me to
5 get them up here to testify? It won't be no problem to call
6 them, you know. It won't be no problem.

7 Q. That's your -- that's your job.

8 A. I mean, it wouldn't be no problem if you want me to do.

9 Q. I ask you the questions, okay, sir?

10 A. Okay. I ain't asking you no questions. I'm just
11 answering.

12 Q. Now, so this was then about -- so six o'clock in the
13 morning you get over to Donna Wentz's house, right?

14 A. Yeah, it was around probably about 5:30, 6:00,
15 something like that.

16 Q. And you had not been working for about four weeks,
17 right?

18 A. I had not -- I know I had -- I had quit my jobs because
19 I was planning on going to Georgia and getting that other
20 job.

21 Q. Okay.

22 A. I was going down there to help my -- my stepmom was
23 struggling. I was going to help them out a little bit.

24 Q. And you went over there -- you left that day -- you
25 left your house and your mother?

1 A. Which day?

2 Q. On February the 27th, 2004. When you left that day,
3 you did not call your -- you did not wake your mother up and
4 tell her that you were leaving, did you?

5 A. No, uh-uh. I'm grown. I could leave. I leave at free
6 will, if I wanted.

7 Q. You didn't even say good-bye, did you?

8 A. No, sir.

9 Q. You didn't tell her where you were going?

10 A. Well, she had already talked -- she already knew about
11 the job I was getting in Georgia. I had talked to her about
12 it, so I assume she would know, but that ain't the first
13 time I left away from home and been gone for a certain
14 amount of time and ain't talked to my mom.

15 Q. And you didn't take a single bag with you, did you,
16 when you left?

17 A. Because I had clothes where I was going already.

18 Q. Okay. You didn't -- you didn't even pick up your
19 toothbrush, did you?

20 A. I already had clothes where I was going.

21 Q. And you --

22 A. Just like that at Donna's house. When I went to
23 Donna's house, I got a toothbrush and clothes down there.

24 Q. You didn't pick up any toiletries?

25 A. What do you mean toiletries?

1 Q. A toiletry bag with deodorant, soap and --

2 A. Because I already got that stuff where I'm going.

3 Q. And not an extra pair of shoes?

4 A. I'm not going to a place I'm new to. I'm going to a
5 place that I had already been living at.

6 Q. Not an extra pair of -- not an extra shirt?

7 A. I already got stuff there.

8 Q. No extra pants?

9 A. What I went with is what I had on.

10 Q. You left with what you had on. You never said -- you
11 never told a friend that you were leaving?

12 A. I'm grown. What do I got to tell -- do I got to
13 justify if you want to go somewhere?

14 Q. I'm just asking you yes or no questions.

15 A. No, I didn't tell nobody I was leaving.

16 Q. You just --

17 A. The only person that knew I was leaving was Donna. I
18 had talked to her and told her. As a matter of fact,
19 prior -- before this even -- before that day I had talked to
20 her. Like the 24th or the 25th I had told her like I'm
21 planning on going to Georgia about this little job, because
22 me and her was already having, you know, troubles with our
23 relationship anyway, so, you know, that wouldn't have been
24 no problem.

25 Q. And you knew you weren't supposed to go to Donna's

1 house, didn't you?

2 A. Didn't no police or nobody tell me I needed to stay
3 away.

4 Q. Ronald Rice told you.

5 A. Police was called on an accident that happened. Me and
6 Ron Rice got into an argument. They told me to stay away
7 from him for awhile.

8 Q. And Ron Rice told you not to be there, didn't he?

9 A. No.

10 Q. He told you not to come to his house?

11 A. He told me -- the police told me I needed to stay away
12 for awhile and let things cool down. I wasn't put on
13 trespass. And if I was put on trespass, then I wasn't
14 supposed to be there.

15 Q. Despite that, you still went to her house because you
16 knew that you could try to get Donna to -- you could hide
17 out at Donna's house that day. Isn't that why you went over
18 there?

19 A. Man, everybody in Greer know me and Donna was going
20 together. If I'm supposed to be at -- if I'm supposed to
21 know the police are looking for me for something, the last
22 place in the world I would have went was Donna's house.
23 Everybody in Greer know me and Donna were going together.
24 The police even had me called. Me and Donna had got into an
25 argument and the police were called on me and Donna in a

1 Wal-Mart parking lot. They knew about I was staying at
2 Duncan.

3 Q. That was a couple weeks before, wasn't it?

4 A. It still happened. The Greer police were called.

5 Q. Was it a couple weeks before?

6 A. A couple -- I don't remember when it was. It might
7 have been a month or two. I don't remember, but I know it
8 happened. Me and her got into an argument.

9 Q. So you spent the day there with her?

10 A. Yeah, I spent most all that day there.

11 Q. Okay.

12 A. We left that afternoon and I was like "check it out,
13 sis. I can't get in touch with my boy. I'm going to throw
14 you a couple dollars, 40, \$60, to shoot me to Georgia.

15 Q. And why was it so urgent --

16 A. I had been saving my money up. I had my own money from
17 working. I had been saving my money up, saving all my
18 checks. My momma didn't make me pay no bills then. I just
19 look out for her on the side, throw her something.

20 Q. The money that you had was from Ignacio Delgado, isn't
21 it?

22 A. If that's what you say.

23 Q. Is that true?

24 A. I had my own money. I worked. I'm honest. When I'm
25 on the streets I work.

1 Q. You already -- you hadn't been working for about four
2 weeks.

3 A. Yeah, because I was going to get another job. But
4 think about it. All them months I had been working, all
5 them checks I was saving, that money was still in my pocket.

6 Q. Okay.

7 A. Add it up. I don't got nothing to do with it. I got
8 all the clothes I want.

9 Q. Okay. Now, the truth of the matter is when you got to
10 Donna's, you had Donna take you to Greenville to the bus
11 station, didn't you?

12 A. We went and jumped on 85 and went straight to Georgia.

13 Q. The truth of the matter is you didn't want Donna to
14 know where you were going. Isn't that true?

15 A. I didn't want her to know where I was going? We jumped
16 on 85 and went straight to Georgia. I'm the one sitting
17 there giving her the directions where to go. She took me
18 straight to -- got on 85, went straight to Georgia. My home
19 boy was staying standing in the condominium right down the
20 street from the Greyhound bus station, and Magic City, this
21 club. He was staying in a condominium right over Kroger's
22 grocery story. That's where she took me to, right in his
23 driveway. And when we go there, I said "thank you." Gave
24 her a kiss and she turned around then, looked back and she
25 kept going.

1 Q. Isn't it true, sir, that Donna -- you didn't have Donna
2 take you to Atlanta because you knew that she would find out
3 where you were and you knew that the police would find out
4 from her where you were, so you just had her take you to
5 Greenville?

6 A. I didn't understand that question.

7 Q. Isn't it true that you just had her take you to
8 Greenville so Donna would not know where you would end up
9 going?

10 A. She took me to Atlanta.

11 Q. Didn't you call her the next day and tell her that you
12 were on a bus?

13 A. Told her I was on a bus?

14 Q. On the way to New York?

15 A. No, I didn't never tell her that.

16 Q. Didn't you send her some letters in which you refused
17 to tell her where you were?

18 A. Send her some letters? When I wrote -- get her up up
19 here on the witness stand and let her tell you.

20 Q. Sir, I'm asking you questions.

21 A. I want to hear it from her.

22 Q. Yes or no question.

23 A. It's a lie.

24 Q. Yes or no question.

25 Didn't you send her letters in which you refused to

1 tell her where you were?

2 A. I don't recall sending her no letters. When was I
3 supposed to send her some letters on the street?

4 Q. I'm asking you if you did.

5 A. No, sir, I don't remember sending her no letters while
6 I was on the street.

7 Q. Now, it's your testimony then that you spent the next
8 few months working down there at Nokia?

9 A. Yeah, I was working.

10 Q. And you don't have any job stubs -- any pay stubs or
11 anything for that?

12 A. Well, they paid -- they was paying us with cash. Well,
13 I was getting paid with cash money. That's how I was
14 getting paid for.

15 Q. Does that mean that you were being paid under the
16 table?

17 A. I was getting paid with cash money. However you want
18 to call it, that's how I was getting paid, cash money.

19 Q. No taxes or anything like that?

20 A. I don't know how they was doing it. I just know I was
21 getting paid with cash money.

22 Q. Okay. And do you now know -- do you now know where
23 this place was that you used to work?

24 A. I can't recall the street. I remember it, but I
25 forgot. I can't recall the street it's on, but I know it's

1 in DeKalb.

2 Q. How often did you work there?

3 A. How often?

4 Q. Yeah. Did you work every day?

5 A. No, not every day. I worked it every now and then.

6 Every now and then. They was paying me pretty good. I

7 worked it all the weekends from Friday, Saturday, and

8 Sunday. I worked it the weekends regardless.

9 Q. So for three months you were going there at least three
10 or four days a week?

11 A. Yeah.

12 Q. And you can't tell us where this business was?

13 A. I have been locked up a long time. I done forgot. I
14 have been locked up almost two years. I forgot.

15 Q. You can't even tell us what road it was on?

16 A. I don't remember. I remember I had it wrote down
17 because at the last trial I had wrote it down. I had got it
18 from my friend and wrote it down, but I lost the paper that
19 I had wrote it on while I was up there in the jail.

20 Q. All right. Let me ask you --

21 A. So I don't got that no more.

22 Q. Let me ask you some questions now about this day that
23 you got pulled over and stopped by this officer --

24 A. Uh-huh.

25 Q. -- in Georgia.

1 Now, you said it was about 3:30 in the morning and you
2 couldn't -- the reason that you had pulled over into this
3 parking lot, this convenience store, is because you had to
4 try to find out where your stepmother was living?

5 A. She had just moved. You see, that day I was at work,
6 right, so she had moved that day. My friend Junior, who I
7 was in the car with, he had helped her move, and I thought
8 he knew the directions, you know, but we got lost. We knew
9 we was in the right area. We was within a mile, a half mile
10 from where we was supposed to be at. That's what he said,
11 but we couldn't find her apartment complex.

12 Q. And you --

13 A. It's about a -- man, it's about a thousand apartment
14 complexes along that one strip, up and down both sides of the
15 road, all the way down.

16 Q. You had been living with your stepmother, right?

17 A. Yeah, I'm staying with her. She was staying in Atlanta
18 in the other location.

19 Q. And then all of the sudden one day she moved and she
20 didn't tell you where she was going?

21 A. Yeah, she told me she was moving. I was supposed to
22 help her move, but I had to go to work that day.

23 Q. And she moved just in one day, that quickly?

24 A. Yeah, she moved. She stayed in an apartment. Ain't
25 that much stuff to move. A couple couches and stuff.

1 Q. What about all your stuff?

2 A. All I got is clothes. That's all I got is clothes.

3 Q. And what happened to all your clothes?

4 A. You know what happened to them. She moved them with
5 her. That's my mom. My momma done moved. When I've been
6 on the street and I ain't helped her move, my real momma,
7 and ain't helped her move. She done moved before. My
8 grandpa and grandma, they moved. When they move, my stuff
9 going with them, because they ain't going to leave my stuff
10 there is.

11 Q. So that happened during the day, during that day. What
12 you were doing that day?

13 A. I was working.

14 Q. Okay. You work on -- you work on Sundays?

15 A. They worked -- that place be open every day, Monday
16 through Sunday. Like I said, it's a family owned place.
17 That's what I told you earlier, they be open every day.

18 Q. Okay. And so this was -- this was a Sunday night when
19 you got stopped. What had you been doing that day, that
20 night?

21 A. I had just been chilling basically. Had been chilling.
22 When I got off from work, it was -- I think it was about --
23 I don't remember exactly what time. It was at night,

24 though, I know when I got off. I went over to my friend
25 Junior's who I was in the car with. His brother was staying

1 at Bankhead Courts, so I went over there and chilled for
2 awhile, we sat around and chilled. I don't drink like that,
3 so -- you know, might drink a beer, but that's it. I don't
4 drink. I get sick. So I sat over there. Might have drunk
5 a beer, smoked a cigarette, sat around, you know, watched
6 some cable. Then we left. Left.

7 Q. So you had a beer that day? That's it?

8 A. Had took some pills. I had been taking some pills that
9 day, some sleeping pills to help me sleep, because I hadn't
10 been sleeping good.

11 Q. Why would you take sleeping pills during the day?

12 A. Because I hadn't been sleeping. I wanted to go to
13 sleep when I got off from work.

14 Q. Why were you out driving around?

15 A. Who was driving around? I said my friend Junior was
16 driving around.

17 Q. Well, you were with him, weren't you?

18 A. Yeah, I was with him, but I never said I was driving
19 the car.

20 Q. What were y'all doing at 3:30 in the morning? You
21 wanted to sleep in the car?

22 A. We was on my way to my mother's house, coming from his
23 brother's house. Slick, that's his brother's name.

24 Q. So you wanted to sleep over at Slick's house? Is that
25 why you were taking sleeping pills at his house?

1 A. I wanted to go to sleep. I hadn't been to sleep. I
2 had been up.

3 Q. You weren't going to wait until you got home?

4 A. I mean, sooner you take them, the sooner you sleep, as
5 I see it.

6 Q. You said now you had one beer. So the truth is you
7 weren't --

8 A. I was sleeping in the car.

9 Q. The truth is you weren't intoxicated that night, were
10 you?

11 A. Yeah, I had been drinking. Earlier that day, when I
12 first got off from work, I had drunk a little bit, but later
13 that night that -- this is in the morning time when we are
14 talking about.

15 Q. Uh-huh.

16 A. That morning I had drunk like one beer, but I was still
17 basically feeling that beer I had drunk that night that
18 night.

19 Q. You weren't intoxicated that night, were you?

20 A. Whatever you think, man.

21 Q. I'm asking you.

22 A. I told you I was still kind of feeling a little -- the
23 little beer.

24 Q. What time did you drink all this beer?

25 A. I don't remember what time. I know I drunk one beer at

1 Slick's house, a 40 ounce beer. I know I drunk that, and
2 that's all it takes for me to get me drunk. A 40 ounce
3 beer, I be drunk all day.

4 Q. Okay. So you were drunk now?

5 A. I said I had drunk that day when I got off from work,
6 but this is the 10th -- it was the 10th when I got arrested?
7 This was the 10th. On the 10th.

8 Q. Early morning hours, the Monday.

9 A. I was still feeling it, but I hadn't drunk nothing but
10 like a beer that day. You got to remember, this was early
11 in the morning. This is a whole other day.

12 Q. Okay. And during all this time you hadn't called your
13 mother?

14 A. No, I hadn't called my mother. You are talking about
15 my mother Joyce.

16 Q. Ms. Gordon.

17 A. No, I hadn't called my mother.

18 Q. You didn't call her, even though -- you know, May the
19 9th, that day, you know that was Mother's Day. You didn't
20 call her that day?

21 A. No, sir.

22 Q. You didn't call her that night?

23 A. Look here. My momma know I love her. She know I love
24 her with all my heart. If Mother's Day passed, man --
25 sometimes my birthday pass and I don't even -- it just pass

1 by and I don't even realize it.

2 Q. So two and a half -- about three months go by and you
3 never called and told your mother where you were?

4 A. No, sir.

5 Q. And you never sent her a letter?

6 A. No, sir.

7 Q. Never sent her a post card?

8 A. All I got to do -- my sister was down there. I mean, I
9 talked to my sister, tell my sister "tell momma I love her
10 when you talk to her."

11 Q. Your mother didn't know where you were, right, because
12 you didn't want her to know in case the police would find
13 out through her? Isn't that right?

14 A. I mean, my momma didn't know where I was because I
15 didn't tell her where I was.

16 Q. Isn't it true --

17 A. But I'm pretty sure she had an idea that I was in
18 Georgia, because me and her had talked about the job I was
19 going to get in Georgia.

20 Q. All right. Now, so you got pulled over -- and you were
21 in this parking lot and the police came up and you said at
22 that time that you decided that you were going to get into
23 the driver's seat?

24 A. Junior got in the passenger's side. He had jumped over
25 to the -- when the police came back down the road and shot

1 over across the road, Junior had already jumped in the
2 passenger's seat. He was pointing, telling me to get in the
3 driver's seat, so I was like okay, now -- I done took these
4 sleeping pills and I done drunk this beer. I know I don't
5 supposed to be driving. I am in the wrong. I'm a man. I
6 can admit when I'm wrong. I was in the wrong. Going to
7 drive away, but I was in the wrong.

8 Q. Why were you going to drive away knowing --

9 A. I didn't drive away. The crime wasn't committed. It
10 would have been a crime, DUI, driving under the influence,
11 but that crime wasn't committed because I didn't put the car
12 in drive and drive away.

13 Q. Sir, the question is why were you going to do it? Why
14 were you going to risk getting a DUI?

15 A. Because the police might have not noticed that I had
16 been drinking, and I was just going to show them my little
17 permit and, you know, get on about my business.

18 Q. Where is this permit?

19 A. It's -- I don't know where it's at now.

20 Q. So you are saying --

21 A. I have been locked up. I don't know where. I was --
22 it was my wallet. I had about \$70 in there with it. I
23 don't know where it's at. The police got it DeKalb County,
24 Georgia. I ain't seen it ever since.

25 Q. So you were going to risk getting pulled over for a

1 DUI. You also knew that the police were after you for
2 murder at the time too.

3 A. I had just found out that I was a suspect saying I
4 was -- they were saying they wanted me for questioning.

5 Q. For questioning?

6 A. That's why I was on my way to turn myself in. I was
7 going to do that.

8 Q. At 3:30 in the morning?

9 A. I wasn't on my way on at that time to turn myself in,
10 but later on in that period I was going to turn myself in.

11 Q. In what period?

12 A. Later on that week. Probably the next week I was going
13 to turn myself in.

14 Q. And it's your testimony --

15 A. In Georgia.

16 Q. It was your testimony that you knew about this for a
17 couple of -- for a couple of weeks?

18 A. I told you I knew about it for a couple of weeks?

19 Q. Didn't you say that, that you found about it --

20 A. I told you a friend of mine had heard about it on the
21 news or something and had told me about it. That's what I
22 told you.

23 Q. Sometime in April? I'm sorry. Yeah, sometime in April
24 you testified.

25 A. I don't know if I said that.

1 Q. So you knew for a couple of weeks that the police were
2 after you. You were still willing to get behind the wheel
3 of that car? Isn't that what you are saying? Why?

4 A. I didn't know the police -- I knew I was wanted for
5 questioning about a charge.

6 Q. And you also knew that this vehicle that you were about
7 to get into, you had just paid \$200 for, right?

8 A. I had just -- well, really me and Junior went in half
9 and gave it to the guy.

10 Q. And it's a 2000 Buick Century?

11 A. Bernard Austell.

12 Q. It's a 2000 Buick Century?

13 A. He wanted to sell it. He said he was strung out on
14 drugs. It was "man, I'm strung out, man. I need something
15 to help me, man."

16 Q. \$200?

17 A. \$200. I done bought a car for \$500, a brand new
18 Toyota.

19 Q. For \$500?

20 A. A brand new Toyota. A Pontiac too that I bought for
21 \$350.

22 Q. Doesn't that make you just a little bit suspicious?

23 A. Well, for buying a car at a cheap price?

24 Q. Buying a car for \$200.

25 A. Buying a car for a cheap price? I mean, one of my

1 friends done bought a Cutlas Supreme for \$75.

2 Q. So don't find that suspicious at all, huh?

3 A. For buying a car for a cheap price?

4 Q. Uh-huh.

5 A. I mean, it wasn't -- it wasn't my car anyway. I
6 basically just gave him an extra \$100 to help him get it,
7 so, I mean, it wasn't nothing to me.

8 Q. Well, what about when the guy who sells you the car
9 said "if you get stopped, don't give your real name. Give a
10 fake name"?

11 A. No, they told us until we get the -- he told Slick
12 until you get the insurance -- I mean not Slick. Junior.
13 He told Junior until you get the insurance transferred over
14 in his name and get all his paperwork right, he said "use my
15 identification. Use my stuff." The guy Bernard, that's who
16 we got the guy from, this was his identification and all
17 that. He said "use my stuff." That's what he said.

18 Q. That's what Bernard said?

19 A. Yeah. Bernard Austell, something like that.

20 Q. Joseph Bernard Austell?

21 A. Yeah, Joseph Bernard Austell.

22 Q. Now --

23 A. He said he was from Florida.

24 Q. All right. And then the police searched your car and
25 they found a .380 pistol, right?

1 A. I think he got it off from under the passenger's seat,
2 I think.

3 Q. Where you testified that you were sitting?

4 A. Yeah, I was sitting on the passenger's side at first,
5 but Junior switched over, so -- it was Junior's gun, so I'm
6 pretty sure when he switched over out the driver's seat he
7 got the gun and put it under the passenger's seat where he
8 was sitting at.

9 Q. So it was a .380 pistol, just like the one that was
10 used to shoot Ignacio Delgado, right?

11 A. That's what y'all -- y'all say he got shoot with a
12 .380, I guess.

13 Q. Do you like .380 handguns?

14 A. I don't like guns, period. I don't even like violence.

15 Q. Well, you told the officer --

16 A. I just broke a fight up the other day in the jail and
17 got hit and I said "brother, peace be unto you." I don't
18 believe in violence.

19 Q. Very good.

20 A. I had two little assaults for fighting at a football
21 game. That's the only trouble that I have been in my life
22 violent-wise.

23 Q. You told the officer that that .380 pistol was yours.

24 A. Yeah, I told him, to keep Junior out of trouble.

25 Q. What kind of trouble was he going to get into?

1 A. He was on probation.

2 Q. For what?

3 A. I don't know for what. He was on probation, though.

4 Q. You were about to get messed up in a murder charge.

5 You were afraid that he was going to get messed up on
6 probation, whereas you are admitting to a pistol that's not
7 yours is going to get you in trouble?

8 A. I did that. I told the officer the pistol was mine.

9 Q. Because it was --

10 A. I didn't want to get my boy messed up, but they didn't
11 charge me with no charges in Georgia. Why wasn't I charged
12 with a pistol? Why wasn't I charged with a stolen car? I
13 wasn't charged with no charges in Georgia.

14 Q. Sir, once again, I'm asking the questions, okay?

15 A. I'm trying to tell you.

16 Q. Okay. You answer the questions.

17 Now, then you started telling the officer this fake
18 name?

19 A. Fake -- yeah, I showed him Austell, Bernard Austell.

20 Q. You showed him all these ID's?

21 A. Joseph Bernard Austell.

22 Q. And then after giving your real name --

23 A. I think he got them ID's out of the dashboard of the
24 car, I think.

25 Q. Uh-huh. Now --

1 A. I think. You say he got them off me. I think he got
2 them out of the dashboard of the car.

3 Q. So they didn't come out of your pocket?

4 A. I don't think so. I think they came out of the
5 dashboard. I think that's what I said at the last trial.

6 Q. All right. Now, your testimony is that after you
7 got -- after you got caught giving the fake name, that what
8 you said to the officer --

9 A. After I got caught giving a fake name?

10 Q. After the officer came up to you and said these names
11 around matching up, what's going on, that you said --

12 A. I told the officer, like, "sir, I'm going to be honest
13 with you. My name is Albert Sentenio Kelly." I'm like "I'm
14 wanted because they said I got something to do with a murder
15 about -- "they said I shot a guy in the back of the head in
16 Greer."

17 Q. Let's look at some former testimony about what you
18 said.

19 A. "They said I shot a guy in the back of the head." I
20 didn't say nothing about "I shot a guy in the back of the
21 head."

22 Q. Isn't it true --

23 A. The guy wasn't even shot in the head, was he? I
24 thought y'all said he was shot in the face.

25 Q. Sir, isn't it true that you have given sworn testimony

1 that what you told the officer is that "I told him --

2 A. Can I read it, please --

3 Q. I'll let you.

4 A. -- so I can see what you are talking about.

5 Q. "I told him I was wanted in South Carolina because I
6 was being accused of knowing something about a man got
7 shot."

8 A. Yeah, about a man got shot. And when we had the little
9 hearing before we --

10 Q. I'm just asking you about --

11 A. I said because they --

12 MR. MOYER: Your Honor, I would request that the
13 witness be --

14 THE COURT: Yes, sir. You will need to answer the
15 question. I'll allow you to explain it, but you need to
16 answer the question that he asks.

17 THE WITNESS: Yes, sir.

18 THE COURT: He's not going to interrupt you while
19 you answer you, but you need to answer the question that he
20 says.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 BY MR. MOYER:

24 Q. In this sworn testimony when you were asked by your
25 lawyer what you said is you said -- that what you told the

1 officer is "I was wanted in South Carolina because I was
2 being accused of knowing something about a man got shot."

3 A. Got shot in the back of the head.

4 Q. And that is a whole lot different than "I told them I
5 was wanted in South Carolina because I was being accused of
6 knowing something." That is a whole lot different than "I
7 am wanted in Greer, South Carolina because I shot a man in
8 the back of the head." It's a whole lot different, isn't
9 it?

10 A. Who said that? That's what the officer said?

11 Q. I'm just asking you that's a whole lot different, isn't
12 it?

13 A. I know what I said. I said "they said I'm wanted in
14 Greer, South Carolina, by something about a murder because
15 they say I shot a guy in the back of the head." I'm pretty
16 sure my lawyer can agree that I said that.

17 Q. Okay. Now it's your testimony that you were then taken
18 back to this --

19 A. DeKalb County detention center.

20 Q. DeKalb County detention center. And these officers
21 came in there and they told you what to write?

22 A. Huh?

23 Q. They these officers --

24 A. They came down -- I think it was later that day, wasn't
25 it?

1 Q. Later that day, about noon.

2 A. They came and they was talking to me. They came in and
3 they said something -- they was already in there when I went
4 in. They said something. I started telling them about the
5 threats that had been made to my family. They was like
6 "well, Shaun and Marcus is already locked up and we already
7 know what happened," this and this, this and that. So I was
8 like man -- they was like "we are going to leave you in
9 Georgia if you don't -- yeah, that's what they said, "we are
10 going to leave you in Georgia. You ain't going to see your
11 family. We are going to leave you locked up down here."
12 And I don't really know nothing about just, you know -- when
13 I get -- every time I done got locked up in the past, I get
14 out, so I don't really know. I don't know nothing about
15 being locked up for a long time.

16 Q. What are you so worried about staying in Georgia about?

17 A. I don't -- I didn't know nobody in that county jail or
18 nothing. I wanted to see my family and stuff. I ain't know
19 nobody in that county jail.

20 Q. You hadn't even called your family for three months.

21 A. But I was locked up at the time and I wanted my family
22 around, so I could get help and to get my lawyers and stuff
23 situated --

24 Q. So it's your testimony --

25 A. -- so I could get right.

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1 Q. So it's your testimony that you lied and admitted to a
2 murder because you didn't want to stay --

3 A. Everything that I wrote on the statement Officer Denton
4 told me to write.

5 Q. And so you are saying --

6 A. He nursed me through what to write.

7 Q. So you are saying it's a lie then?

8 A. Yeah, everything on there is a lie.

9 Q. And you --

10 A. Didn't Shaun say in the last trial I had drunk nothing.
11 On that it said I had been drinking gin and juice and all
12 kind of stuff. I don't even drink gin and juice.

13 Q. And so it's your testimony that every word in here is a
14 lie because these officers told you what to write?

15 A. Everything that's on there the officer told me to
16 write.

17 Q. And --

18 A. Officer Denton.

19 Q. And you did that for two reasons. One, because these
20 officers said they are going to leave you in Georgia?

21 A. Two, because my family had been threatened.

22 Q. And two, because your family had been threatened.
23 Let's talk about that for just a minute.

24 You talked -- you said you got a message from a
25 neighbor. Who was this -- who was this neighbor of yours

1 who told you about your family being threatened?

2 A. The neighbor that was staying there that had just moved
3 in -- well, my mom had stayed in the new neighborhood, but
4 it was a friend of mine. She had moved next to them, next
5 door to them.

6 Q. And who is this friend?

7 A. I don't -- I don't want to reveal his name, because he
8 is in trouble with the law right now, so I don't want to
9 reveal his name.

10 Q. Where is he from?

11 A. He is from Georgia.

12 Q. Okay. Is the reason that you are not going to say his
13 name is because that person doesn't exists? Is that why you
14 are not saying his name?

15 A. No, I'm not saying his name because right now I don't
16 want to say what he is running from the cops for about.

17 Q. I'm not going to ask you what his --

18 A. I got a letter from him while I was in jail. He was
19 like, oh, man, pray for me, you know, I'm in some trouble.

20 Q. So you are not going to say his name. And he's from
21 Georgia.

22 A. You should already know his name. I told you the last
23 time. That was before I got the letter, so you should

24 already know his name.

25 Q. Why don't you tell us now, if you already said it one

- 1 time?
- 2 A. You already know his name.
- 3 Q. You are just not going to tell me?
- 4 A. You already know the name.
- 5 Q. Okay. And so this person is from Georgia then?
- 6 A. He's from Georgia.
- 7 Q. And where in Georgia is he from?
- 8 A. He's from Decatur, over there by Buford Highway.
- 9 Q. How long have you known him?
- 10 A. I know him for -- he had just recently, you know, been
- 11 my friend when I went back to Georgia this time.
- 12 Q. So you just met him?
- 13 A. No, we had -- I had known him for a couple of months.
- 14 About three months.
- 15 Q. Ever since you moved down there you met him?
- 16 A. Since I went back to Georgia.
- 17 Q. Okay. So when you went down to Georgia, you met this
- 18 guy. He lived next to you. He's your friend, although you
- 19 don't want to tell us his name?
- 20 A. He had -- he had came up to the shop where I was
- 21 working at and got his gold teeth done. And me and him
- 22 talked a little bit about some things. And, you know, me
- 23 and him just -- I gave him -- we switched phone numbers
- 24 and --
- 25 Q. So --

1 A. -- that was it.

2 Q. -- is that your reason for why he's not here to talk
3 about this phone call that he got?

4 A. Why he's not here?

5 Q. Yeah.

6 A. If I tell you his name and give you his address that's
7 on the envelope -- as a matter of fact, I might have the
8 envelope right there in my -- the letter he wrote right
9 there in my envelope. I think I got it.

10 Q. So you can't remember his name?

11 A. I think I got it. I could bring it and you can call
12 him and get him up here on the witness stand.

13 Q. No, sir, sir --

14 A. I'm pretty sure he will do that for a friend. He will
15 turn himself in from the law and come up here and tell you
16 what you want to know.

17 Q. And it's your testimony that all of the sudden out of
18 the blue he came up to you and told you that he had received
19 a phone call from some people?

20 A. He told me, he was like "man, I got a phone call." It
21 was like "who have you been giving my number too?"

22 "I ain't been giving your number to nobody, man."

23 He was like "evidently you have," and I had been giving
24 my number, because I had -- like I said, I did call Donna,
25 you know what I'm saying, but I don't remember giving his

1 phone number out. He was like "man, somebody got my phone
2 call talking about some dude A.K.. You are the only dude I
3 know named A.K.." Talking about "you better fess up. You
4 better come clean or somebody is going to bury your grandpa
5 and your momma," something like that.

6 Q. And so the word that got to you is that you had to do a
7 false confession or your grandpa and your momma were going
8 to be buried?

9 A. Basically what they were saying was if I didn't get
10 Shaun and Marcus out of trouble they were in, that my
11 grandpa and momma was going to be buried.

12 Q. You talked about how you felt forced to give this fake
13 confession because they told you that you had to do it.

14 A. Everything I wrote on the statement is what Officer
15 Denton, I think that's his name, told me to write.

16 Q. And you didn't get Shaun and Marcus out of it, in your
17 statement?

18 A. I wrote what they told me to write.

19 Q. You kept them in the middle of it.

20 A. I wrote what they told me to write.

21 Q. And the truth of it is -- the truth of it is you are
22 saying this guy -- these supposed people called your
23 neighbor. They didn't call you.

24 A. How could they call me? They probably didn't have my
25 number, I guess.

1 Q. But they had your friend's number, who lives in
2 Georgia, who has never been to South Carolina.

3 A. People got ways of doing things.

4 Q. And when you got this information, your response was
5 not to go to the police and tell them. You never went to
6 the police, did you?

7 A. No, no, might have been some hit men calling my
8 friend's phone. They might want to kill me too. You never
9 know.

10 Q. Did you go to the police and tell them about this --
11 about these people who were trying to bury your grandma and
12 your momma?

13 A. When I got -- when I have -- was that the 10th? On May
14 the 10th I told Officer Denton and the other officer about
15 that, and they was trying to put me in the middle of an old
16 bank robbery while were doing that, talking about I know
17 something about a bank robbery in Greer.

18 Q. When you got locked up is when you said something. You
19 never went -- you never told your mother, did you?

20 A. I didn't want to get my mother and them involved in the
21 middle of that. They told me once when I was in police
22 custody when -- I'm assuming that's what they meant I better
23 get Shaun, I better fess up or get Shaun, no matter what
24 they -- I don't know the exact words he said, but it was
25 similar to that.

1 Q. So you are saying you didn't want to get your mom
2 involved, but she's already involved. According to you,
3 there's somebody who is going to bury her and you didn't
4 warn her?

5 A. I didn't call her.

6 Q. And you didn't call your grandfather?

7 A. No, sir.

8 Q. And you didn't come back here to South Carolina to
9 protect them?

10 A. No, sir.

11 Q. You didn't come back here to take care of any business?

12 A. It's something I learned a long time ago what's going
13 to happen is going to happen. You can't stop stuff from
14 happening.

15 Q. Well, then why are you giving fake confessions?

16 A. I wrote what the officer told me to write.

17 Q. Why?

18 A. I just wrote what he told me to write.

19 Q. Well, I thought whatever --

20 A. If I -- if I wrote that -- if I wrote that when I went
21 to Georgia, if I wrote that on my own, and I wrote that
22 statement on my own, tell me why would I deny it now, if
23 it's supposed to be true?

24 Q. Sir, the truth of the matter is you went to Atlanta,
25 Georgia because you were running from the police. Isn't

1 that true?

2 A. No, sir.

3 Q. And that you never told anyone where you were because
4 you didn't want them to find out where you were. Isn't that
5 true?

6 A. No, sir.

7 Q. And that you didn't -- you didn't call your mom because
8 you were afraid that the police would put a trace on her
9 phone and find out where you were. Isn't that true?

10 A. No, sir, I'm not.

11 MR. MOYER: No further questions.

12 THE COURT: Any redirect?

13 MR. SULLIVAN: No redirect, Your Honor.

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

16 THE WITNESS: Thank you.

17 MR. SULLIVAN: At this time the defense would call
18 Ms. Ila M. Simmons.

19 SLED AGENT ILA SIMMONS, having been first duly
20 sworn, testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: Ila Simmons.

23 MR. SULLIVAN: May it please the court, Your
24 Honor, the solicitor and I have entered into a stipulation.
25 It would be Defendant's Exhibit No. 2, that the --

1 concerning the chain of custody that the red and blue
2 Atlanta Braves jacket that she tested was properly collected
3 by the Greer Police Department and presented to her for the
4 testing.

5 THE COURT: Defense Exhibit 2, that's without
6 objection, Mr. Moyer?

7 MR. MOYER: That's true. Yes, sir.

8 THE COURT: All right.

9 DIRECT EXAMINATION BY MR. SULLIVAN:

10 Q. Ms. Simmons, where are you employed?

11 A. At the South Carolina Law Enforcement Division, also
12 known as SLED.

13 Q. And you are here by -- I subpoenaed you here?

14 A. Yes.

15 Q. What is your duty -- what are your duties with -- I
16 guess SLED, would be what we commonly known as SLED?

17 A. Yes, sir. I work in the forensics laboratory, in the
18 area of trace evidence.

19 Q. What kind of background do you have in this -- what
20 kind of training do you have for this?

21 A. I have a Bachelors of Science in Chemistry.

22 I also underwent the in-house training program at SLED
23 for trace evidence training and it took about three years to
24 complete. During that time I had to learn about the
25 collection of trace evidence. I also had to learn about the

1 instrumentation used to analyze trace evidence. I had to
2 take oral and written competency examinations and pass them
3 all.

4 Q. And did you have to do tests under supervision of other
5 people?

6 A. Yes, I did.

7 Q. How long have you been -- have you testified before in
8 criminal cases?

9 A. Yes, sir.

10 Q. As a matter of fact today you were downstairs earlier?

11 A. Yes, sir.

12 Q. In Anderson after that?

13 A. Yes, sir.

14 Q. And here today?

15 A. Yes, sir.

16 Q. About how many cases have you testified in, roughly?

17 A. Between 40 and 50.

18 Q. Okay.

19 MR. SULLIVAN: Your Honor, I would move to qualify
20 her as an expert for collection and analyzing trace
21 evidence.

22 THE COURT: Any objection or voir dire?

23 MR. MOYER: No objection. No voir dire.

24 THE COURT: Without objection, she'll be qualified
25 as an expert.

1 BY MR. SULLIVAN:

2 Q. Okay, Ms. Simmons, I asked you in your subpoena to
3 bring a specific test. Could you identify that test?

4 A. This is my -- the report that I did.

5 Q. Is that dated June 24th of '04?

6 A. Yes, sir, it is.

7 Q. And this would be Greer case number GR-04-004209?

8 A. Correct.

9 Q. And this was in the case of Albert Kelly, Marcus Parks,
10 and Ignacio Delgado as the victim?

11 A. Yes.

12 Q. I believe item 5 and item 5.01 was a red and blue
13 Atlanta Braves jacket?

14 A. Yes, sir.

15 Q. And gunshot residue samples collected from red jacket.
16 Could you tell us the results of that test?

17 A. I received an inconclusive result on the right sleeve.

18 Q. Now, what is gunshot residue? What is -- what would
19 that be?

20 A. When a gun is fired, it's a combination of materials
21 that are expelled from the cartridge when it's fired. You
22 have a primer, you have gunpowder, and you have a projectile
23 that compose the cartridge.

24 When the hammer falls on a primer, it makes a little
25 spark, because it has shock-sensitive chemicals present.

1 This starts the gunpowder burning. The gunpowder builds up
2 pressure and the projectile or bullet is expelled from the
3 gun. And the chemicals that are used in this process were
4 what is expelled as gunshot residue.

5 Q. Does it come out of the ejection side and the end of
6 the gun?

7 A. Yes, it can come out of the muzzle, the ejector port,
8 or a cylinder gap on a revolver.

9 Q. I don't like to handle these things, but this was the
10 weapon -- if this were the weapon that was fired, this would
11 be where the cartridges would be expelled?

12 A. Yes.

13 Q. And then, of course, the bullet would go out here?

14 A. Right.

15 Q. So if somebody has fired this gun, this -- what kind of
16 range would this stuff cover?

17 A. Depending upon the caliber, it could go out as far as
18 five feet.

19 Q. In a five feet radius?

20 A. Yes, sir.

21 Q. Okay. But if somebody had it, whatever it would be
22 could be on their hands, this type thing?

23 A. Yes, it could get on anything within that range of the
24 weapon.

25 Q. And so you -- if somebody had on a jacket and fired

470

1 this gun, would you expect to find residue on the jacket?

2 A. Gunshot residue could have gotten on the jacket, yes.

3 Could have gotten on the lower sleeves.

4 Q. And you tested the red and white Atlanta Braves jacket?

5 A. It's red and blue jacket.

6 Q. Red and blue, and it was inconclusive?

7 A. Yes.

8 Q. Answer any questions Mr. Moyer may have.

9 CROSS EXAMINATION BY MR. MOYER:

10 Q. I just have a few. Good morning. I'm sorry, good
11 afternoon.

12 So gunshot residue then essentially is sort of like a
13 cloud that will settle on anything?

14 A. Yes.

15 Q. That is in that range, you said up to five feet?

16 A. Could be up to five feet.

17 Q. So if someone shot a gun right here, you would get
18 residue on here, on here, on my coat?

19 A. Yes.

20 Q. It could be all over the place?

21 A. Yes.

22 Q. And isn't it true that gunshot residue has a, for lack
23 of a better word, a shelf life when it comes to animate
24 objects, living people?

25 A. True, it does.

1 Q. In fact, isn't there like a cutoff? If the incident
2 occurred more than six hours after they swabbed, then you
3 won't even do the test, right?

4 A. That's correct.

5 Q. Because it would just be unreliable by that point?

6 A. Correct.

7 Q. And maybe I missed this in earlier testimony, but the
8 way it's tested is when an officer -- it wouldn't be you,
9 but some other officer would do swabbings on the material
10 that's going to be tested, right?

11 A. Correct.

12 Q. Then they send those swabbings to you and tell you
13 where that swabbing was taken from?

14 A. Correct.

15 Q. So they could swab a jacket, or a coat, or --

16 A. I actually collected those from this particular jacket.

17 Q. Okay. So you did this one yourself. They sent the
18 whole jacket?

19 A. The whole jacket came to me, yes.

20 Q. And the reason you didn't have a problem with that six
21 hour time frame on the jacket is because it is not an
22 animate objection. It's inanimate, right?

23 A. Correct.

24 Q. So that gunshot residue will just last forever?

25 A. It can stay on there for inanimate object at any period

1 of time, unless it was washed or, you know, handled roughly,
2 or something could start falling off.

3 Q. So hours, days, even weeks, or even --

4 A. Months.

5 Q. Shoot, even years, right?

6 A. Yeah, as long as it wasn't washed or disturbed in some
7 way.

8 Q. And that would be the same thing -- it would be true
9 for even a dead person, right?

10 A. Yes, that's correct.

11 Q. And so you wouldn't worry about that time frame. For
12 example, if someone had been shot and killed, you wouldn't
13 worry about that time frame?

14 A. No, we wouldn't.

15 Q. Because it would not be a living person. Okay.

16 Now, your testing of the blue -- of the Atlanta Braves
17 jacket was inconclusive?

18 A. Correct.

19 Q. So you weren't able to say either way -- you couldn't
20 give it a positive test?

21 A. Correct.

22 Q. You don't know.

23 Now, the other jacket, this Tommy Hilfiger jacket, you
24 had -- you found gunshot residue?

25 A. Brown lead on both sleeves.

1 Q. On both sleeves.

2 A. Yes, sir.

3 Q. Can you tell us where on the sleeves? Did you make
4 that notation?

5 A. No, when I collect the samples, I collect from the cuff
6 region here and cuff region here and up to the elbow area on
7 each sleeve.

8 Q. Okay. So would it be fair to say that if this gunshot
9 residue along the cuff, that's probably on the hand as well?

10 A. That is a possibility, yes.

11 Q. Is it also true that if someone is holding -- shooting
12 a gun, that you would expect to find gunshot residue on the
13 back of the hand?

14 A. Yes.

15 Q. You would not expect to find it on it palm, would you?

16 A. You can find it on the palm, because it also comes
17 out -- a small amount comes out around the trigger as well.

18 Q. Okay.

19 A. So some can get on the palm, but it would be much more
20 on the back of the hand than on the palm of the hand.

21 Q. You would expect it there?

22 A. Yes.

23 Q. You would expect there more so than on the palm?

24 A. Yes.

25 Q. And gunshot residue can be deposited on either a person

1 or a thing in other ways than the gunshot having occurred
2 around it, right?

3 A. Yes, that's possible.

4 Q. We talked about transfer?

5 A. Uh-huh.

6 Q. Is it fair to use an analogy of gunshot residue as sort
7 of like table salt?

8 A. Yes.

9 Q. Would that be a fair analogy?

10 A. Yes.

11 Q. So that if somebody -- if the gunshot residue were on a
12 table and somebody sat down at put their elbows on the
13 table --

14 A. Uh-huh.

15 Q. Let's talk about the salt. If someone puts their
16 elbows on the table, they could pick up the salt on their
17 sleeve or on the hands?

18 A. Right.

19 Q. And so it transfers that way?

20 A. Yes, gunshot residue does the same thing.

21 Q. And it can transfer from person to person or from
22 inanimate object to person?

23 A. Yes.

24 Q. Or from person to inanimate object?

25 A. Uh-huh.

1 Q. Or from person to inanimate object back to another
2 person?

3 A. Correct.

4 Q. Okay.

5 MR. MOYER: I have nothing further.

6 THE COURT: Any redirect?

7 MR. SULLIVAN: No redirect, Your Honor.

8 I would ask that --

9 THE COURT: Thank you. You can step down.

10 MR. SULLIVAN: If there is no problem, she be
11 excused.

12 THE COURT: Any objection to this witness being
13 excused?

14 MR. MOYER: No objection.

15 THE COURT: Thank you, Ms. Simmons.

16 SEAN COLLINS, having been first duly sworn,
17 testified as follows:

18 THE CLERK: State your name for the record.

19 THE WITNESS: Sean Franklin Collins.

20 MR. SULLIVAN: Judge, as with the last witness, we
21 have a stipulation and agreed to by Mr. Moyer and myself
22 that the gunshot residue kit tested by Mr. Collins, the
23 Greenville County lab, were properly collected by the Greer
24 Police Department in the course of their duties in this case
25 and delivered to him for testing. It's marked Defendant's

1 Exhibit No. 1.

2 I would move at this time to move it into
3 evidence.

4 THE COURT: Without objection?

5 MR. MOYER: Without objection, yes, sir,
6 stipulation.

7 THE COURT: Defendant's Exhibit No. 1.

8 MR. SULLIVAN: It would be 1 and 2 as admitted.

9 DIRECT EXAMINATION BY MR. SULLIVAN:

10 Q. Again, please state your full name again.

11 A. Sean Franklin Collins.

12 Q. Mr. Collins, where are you employed?

13 A. I'm employed by the Greenville County crime laboratory.

14 Q. How long have you been employed in that capacity?

15 A. Just over 14 years now.

16 Q. What kind of educational background do you have?

17 A. I have a Bachelor of Science Degree in chemistry from
18 Clemson University.

19 Q. Okay. And in your capacity with the Greenville County
20 lab -- have you worked at other labs besides Greenville
21 County lab?

22 A. No, sir, that was my first position.

23 Q. So you have been there 14 years?

24 A. Yes, sir.

25 Q. Okay. What kind of training have you had in relation

1 to crime evidence, specific gunshot residue and stuff like
2 that?

3 A. The first twelve years in the laboratory I was focused
4 on drug analysis.

5 In the beginning of 2003, I began my work in gunshot
6 residue analysis. At that time I received training from the
7 instrument manufacturer, a three day on-site course.

8 After that I received training from the head of the
9 trace evidence section of SLED laboratory in Columbia.
10 Approximately eight four-hour sessions.

11 And after that my first 50 cases were reviewed by the
12 state laboratory.

13 Q. So you had your cases reviewed by higher up, so to
14 speak?

15 A. Yes, sir, a trained expert.

16 Q. And you are now certified to conduct gunshot residue
17 tests on behalf of the --

18 A. There is no formal certification process, but they
19 agreed with my findings.

20 Q. Okay. And that was over 50 findings they agreed with?

21 A. Yes, sir.

22 Q. Okay. Have you testified before in trials about
23 gunshot residue?

24 A. I have testified one time for gunshot residue.

25 Q. Okay.

1 MR. SULLIVAN: Judge, at this time I would move
2 that he be admitted or certified as an expert, qualified as
3 an expert.

4 MR. MOYER. No objection.

5 THE COURT: Without objection. Qualified as an
6 expert.

7 BY MR. SULLIVAN:

8 Q. Did I subpoena you, Mr. Collins, and ask you to bring
9 lab report No. 5 and lab report No. 7?

10 A. Yes, sir.

11 Q. And I believe that lab report No. 7 you received from
12 Officer Arterburn of the Greer Police Department and it is a
13 gunshot residue kit from for Marcus Parks. Could you tell
14 us, did you run tests on that kit?

15 A. Yes, sir, I did. I did not find any gunshot residue on
16 that kit.

17 Q. So on the kit for Marcus Parks you found no gunshot
18 residue?

19 A. Yes, sir, that's correct.

20 Q. And you were submitted also, I believe it's report No.
21 5, again by Officer Arterburn, and it was for a gunshot
22 residue kit from Shaun Edwards. Could you tell us, did you
23 run that test?

24 A. Yes, sir, I did. On that kit I found gunshot residue
25 on the left back and the right palm.

1 Q. So you found on the left back and right palm?

2 A. Yes, sir.

3 Q. You found gunshot residue on Shaun Edwards?

4 A. Yes.

5 MR. SULLIVAN: Answer any questions that Mr. Moyer
6 may have.

7 MR. MOYER: Just a couple of questions.

8 CROSS EXAMINATION BY MR. MOYER:

9 Q. And so Marcus Parks then, you analyzed some swabbings,
10 right, that were collected?

11 A. They are called stubs.

12 Q. Stubs, I'm sorry.

13 A. Yes.

14 Q. And basically what they do is they take these stubs and
15 they dot them on the person's hands, is that right?

16 A. Yes, sir, one for each back and one for each palm.

17 Q. So they will use, you know, just one on the back so we
18 know where that came from?

19 A. Yes.

20 Q. And they dab it all over the hand?

21 A. Yes, sir.

22 Q. Then one on the palm. They dab it all over there?

23 A. Yes, sir.

24 Q. And so for Marcus Parks then you would have had four?

25 A. Four samples, yes, sir.

1 Q. And all were negative?

2 A. Yes, that's correct.

3 Q. Now, isn't it true that over time the reliability of
4 gunshot residue on human skin deteriorates? If that's not
5 the right language to use, it becomes less and less -- there
6 is a cutoff time, isn't there?

7 A. Yes, sir, after six hours we won't examine a kit -- we
8 will not examine a kit that has been collected more than six
9 hours after an incident occurred.

10 Q. Now, these kits were collected when?

11 A. The kit for Shaun Edwards was collected approximately
12 four and a half hours after the incident time.

13 The kit for Marcus --

14 Q. Do you have a time? Do you have an actual time?

15 A. Yes, sir.

16 Q. Thank you.

17 A. The information provided to me was that the incident
18 time took place at one a.m., and then at 5:48 the kit was
19 collected --

20 Q. Okay.

21 A. -- for Shaun Edwards.

22 For Marcus Parks, the kit was collected 5:53, with the
23 incident time of one a.m..

24 Q. Okay. And so if you had -- and you require them to put
25 both those times on there because of that six hour window,

1 right?

2 A. Yes, sir.

3 Q. And so if it had been just about another hour and ten
4 minutes you would have refused to test?

5 A. We would not examine them.

6 Q. So it's getting pretty close, wasn't it?

7 A. About two -- three-quarters of the way.

8 Q. So Marcus Parks then came back completely negative.

9 Shaun Edwards came back negative on his right -- on the
10 back of his right hand, isn't that right?

11 A. The right back results were inconclusive.

12 Q. And then the palm was positive, his right palm?

13 A. Right palm was positive.

14 Q. And the back of his left hand?

15 A. Left back was positive, yes, sir.

16 Q. And it's true that although you had that six hour
17 cutoff for human skin, animate objects, or if it was
18 something that was inanimate, you would not have that time
19 frame?

20 A. No, sir.

21 Q. Because gunshot residue will just -- will not
22 dissipate. It will not -- it will reliably be present?

23 A. That's correct, gunshot residue itself is stable. It's
24 the contact with humans, whether it might be brushed off
25 through every-day activities - sweating, shaking hands,

1 picking up objects, it can come off, but the particle itself
2 does not break down.

3 Q. So gunshot residue, for example, that would happen to
4 land on a table, or a jacket, or the gun itself, when the
5 gun is fired, that gunshot residue is going to remain there
6 until something takes it away?

7 A. Yes, sir, if it's not exposed to something, it will
8 stay there.

9 Q. Okay. Thank you.

10 THE COURT: Any redirect?

11 MR. SULLIVAN: Nothing on redirect, Your Honor.

12 THE COURT: Thank you.

13 Mr. Collins, you may be excused.

14 MR. SULLIVAN: Judge, may we approach?

15 THE COURT: Let me give the jury a short break, if
16 we could. I think this would be a good time to send you to
17 your room. Again, don't discuss the case at this time. We
18 will call you back in just a few minutes. Take a short
19 break.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: Okay, Mr. Sullivan, do you have any
23 other testimony?

24 MR. SULLIVAN: Judge, I would, except I don't know
25 the progress we are making in finding Mr. Ronald Lamont

1 Smith. This is the witness --

2 THE COURT: As I understand it he was served with
3 a subpoena?

4 MR. SULLIVAN: Yes, sir.

5 THE COURT: What was the date of that?

6 MR. SULLIVAN: I have got it -- for the record,
7 here is the subpoena. It's dated 9-28-05, signed by Mr.
8 Wickenseimer's office.

9 It was served on 9-29-05 at the Greenville County
10 detention center in person by Michael Scott Porter, case
11 manager for Indigent Defense of Greenville County. And it's
12 executed on 9-29-05 by Michael Scott Porter, Greenville
13 County Courthouse, which would be his office downstairs.

14 I would ask the court if it would like me to have
15 this marked for any reason as a court exhibit.

16 THE COURT: We will mark it as a Court Exhibit.
17 It would be Court Exhibit No. 1.

18 (Subpoena marked as Court's Exhibit No. 1 for
19 identification)

20 THE COURT: I understand that the officers have
21 been looking for this individual, is what I have been told,
22 throughout the day, and talked with a sister and address
23 that said he wasn't living there, didn't know anything about
24 him, but they have been pursuing him.

25 Is that your last witness?

1 MR. SULLIVAN: That would be my last witness, Your
2 Honor.

3 THE COURT: Okay.

4 MR. SULLIVAN: And I can give you some background,
5 because after the prior trial, allegedly Mr. Smith was in
6 the holding cell with Mr. Parks and Mr. Edwards during the
7 trial. They were waiting to testify in the trial. Mr.
8 Smith went and pled guilty in front of Judge Hill. I
9 believe Chris Scalzo represented him. He says that he
10 overheard Marcus Parks and Shaun Edwards talking about the
11 case, in a joking and laughing almost, that they actually
12 did the robbery and Shaun was the shooter. They hoped to
13 nail A.K. and get him in trouble. We have gotten this
14 information because he told Mr. Kelly. Mr. Kelly wrote me a
15 letter. I have looked on the jail screen and found out he
16 was in jail. I got his picture off and went down to see Mr.
17 Kelly and said that was the right guy.

18 I called his attorney, Dorothy Manigault, to see
19 if I could interview him and she gave me permission. I
20 interviewed him, and that was the gist of the testimony that
21 he said that he would proffer, that he had nothing to gain
22 or lose, he just didn't think it was right.

23 After the interview I called Mr. Moyer.

24 Well, before I left I said, look -- he had a
25 \$5,000 surety bond. He was in on a shoplifting and he was

1 on probation from his plea from the time of the trial. He
2 pled guilty and received probation from Judge Hill. He was
3 back in on shoplifting on that 5,000 surety. I said "if you
4 get out, how can I get in touch with you? I'm going to have
5 you subpoenaed tomorrow by Mr. Porter. He comes down every
6 day, and you need to come to court." He gave me his address
7 on the sheet that I showed the court earlier. I think 220,
8 whatever, and he gave me a phone number. I received word
9 later -- I passed all this information on to Mr. Moyer. I
10 don't do ambush by trial. I said "this is what I got.
11 There's a guy who is in jail. Dorothy is the lawyer. If
12 you want to talk to him, this is what I have. And if he
13 gets out, here is the information that I have."

14 I learned while I was on vacation last week that
15 Ms. Gordon had called and said he had gotten out. So when I
16 got back Sunday I called and spoke to a young girl in the
17 afternoon. I spoke to his sister to find out. This was not
18 his residence, that he dropped by there occasionally. He
19 basically was kind of a street person, but they were trying
20 to get word to him. I talked to the girl that morning,
21 Sunday about eleven, and I talked to the sister about 3:30,
22 Ms. Pringle. After trial yesterday's break I called again
23 yesterday evening and talked to a gentleman. Again said
24 they were trying to get word to Ronald, but they didn't --
25 he wasn't reliable. This morning I informed the court of

1 that and the officers, they all have been searching for him
2 all day.

3 THE COURT: All right, sir.

4 MR. SULLIVAN: The only thing I can do, I can
5 proffer his testimony. That's what he would to testify to.
6 And I think Mr. Moyer -- that's what he told Mr. Moyer and I
7 see he's got some other witnesses, but I would like to move
8 to continue until -- that would be my case. Mr. Moyer may
9 have some reply. Give me overnight to try and find the guy.
10 Of course, it's in your discretion, but his testimony would
11 greatly aid -- with the gunshot residue test and them saying
12 they did it and Edwards being shooter and him being the only
13 one with gunshot residue on his hands, that would greatly
14 aid our case, I think, Your Honor.

15 THE COURT: Mr. Moyer?

16 MR. MOYER: Your Honor, my response to that is if
17 that is what he's going to testify to, then it would be my
18 position that we should move forward with the trial, because
19 that would not be admissible. What he -- what we have just
20 heard that he would say is hearsay and there has been no
21 foundation laid for any type of exception to the hearsay
22 rule or any other rules under which it could possibly come
23 in. So that testimony, I would argue, would not be
24 admissible.

25 THE COURT: Do you have any reply testimony?

1 MR. MOYER: I do.

2 THE COURT: All right. How many witnesses?

3 MR. MOYER: Well, it depends. If they rest right
4 now, I would put up two witnesses. If something happens
5 that he goes forward with this other witness, then I would
6 probably have another witness or two.

7 MR. SULLIVAN: Judge, I would take the position
8 that he's offered with the exception to the hearsay rules,
9 because it's an admission against interests, among other
10 things, that it would be admissible.

11 If you ruled that he even couldn't testify to
12 that, then there is no use looking for him any further.

13 If you believe that his testimony would be
14 admissible under exception, admission against interests, and
15 this type of thing, then we would need to consider it that
16 way, but I think your ruling on the admissibility would
17 solve that. If you were not going to allow it, then it
18 would be no use in continuing to search for him.

19 MR. MOYER: Admission against interest would be
20 Rule 802, and that wouldn't apply in this situation. I'm
21 sorry, Rule 804, because it has to be unavailability of a
22 witness. Just because a witness doesn't show up doesn't
23 mean he's unavailable. It has to be death, physical or
24 mental illness or infirmity.

25 MR. SULLIVAN: Admission against interests?

1 THE COURT: Well, I'm going to give him overnight
2 to try to find this witness. We can cross the bridge and
3 you can raise whatever evidentiary matters that you might
4 feel are necessary if he finds him. If he doesn't find him,
5 then you said that overnight would --

6 MR. SULLIVAN: If he's not found by then -- I hate
7 even asking to continue it past. I hope the jury would get
8 it this afternoon and but be done with it, but I feel; like
9 because of the testimony, if it is admissible, I think it
10 would be -- it could weigh heavily with the jury.

11 THE COURT: All right. So I'm going to allow you
12 overnight to get him up.

13 What I would like to do is go on and get the reply
14 testimony in this afternoon, with leave for the State to
15 offer another reply witness, if necessary, if the missing
16 witness testifies.

17 Do you have your witnesses available?

18 MR. MOYER: I do, Your Honor. We are ready to go.

19 THE COURT: So when the jury comes back, then you
20 can announce that you rest, subject to the reopening as we
21 discussed, or whatever. And then I'll give Mr. Moyer a
22 chance to put in his reply, and then we will break for the
23 day.

24 If y'all have any charges also that you have for
25 us, we will be glad to look those over during the evening.

1 MR. SULLIVAN: I have nothing special, Your Honor.
2 I think Mark had one from the last trial that --

3 THE COURT: You don't have any particular issues?

4 MR. MOYER: I think the only -- the only charge
5 that I suspect is a charge that I think would be applicable
6 in this case is not in many murders. It's language that a
7 homicide had taken place during the commission of a felony,
8 that malice can be inferred from that.

9 THE COURT: Were there any -- any self-defense,
10 alibi, or any of those kind of things? Y'all weren't
11 looking for any?

12 MR. SULLIVAN: Ms. Kelly, this is all or nothing.
13 No self-defense. If we believe -- if the jury believes his
14 story, then he's not guilty. If they believe the other
15 side, then he's guilty. It's just one shot at murder or
16 not -- either guilty or not guilty.

17 THE COURT: Felony during the commission of murder
18 and commission of a felony is what you are talking about?

19 MR. MOYER: Yes, sir.

20 MR. SULLIVAN: Implied malice there.

21 THE COURT: Okay. Let's bring the jury back.

22 Do y'all need to take a -- hang on just a second.

23 MR. SULLIVAN: Step down the hall?

24 THE COURT: Bathroom break or anything like that?

25 MR. MOYER: Very quick, Your Honor.

1 THE COURT: We will take a five minute break and
2 then we will call them back.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Okay. Ready to proceed?

6 MR. MOYER: Yes, sir.

7 MR. SULLIVAN: Defense is ready, Your Honor.

8 THE COURT: Okay. Let's bring the jury in.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: Okay, Mr. Sullivan.

12 MR. SULLIVAN: May it please the court, judge, the
13 defense rests at this time, subject to reopening per our
14 discussion.

15 THE COURT: All right.

16 Okay. Anything in reply?

17 MR. MOYER: Just a couple witnesses, Your Honor.

18 The State would first call George Jennings.

19 GEORGE JENNINGS, having been first duly sworn,
20 testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: George Jennings.

23 DIRECT EXAMINATION BY MR. MOYER:

24 Q. Okay, Mr. Jennings, where are you employed?

25 A. I'm the manager for Yellow Cab of Greenville.

1 Q. Does that also service Greer?

2 A. It does.

3 Q. And is that the only Yellow Cab service in Greer?

4 A. That's correct.

5 Q. And are you -- you say that you are the manager. Are
6 you manager over Greenville and Greer?

7 A. Yes, sir.

8 Q. Okay. Now, were you performing that function back in
9 February of 2004?

10 A. In February of 2004, I was not. I was a taxi driver at
11 that time.

12 Q. Okay. Now, let me ask you a little bit about how --
13 about your procedure for when it is snowing. Do y'all run
14 your cabs?

15 A. No, sir, it's not a liability -- or it's a great
16 liability for our customers and our drivers, so we cease
17 operations, except for time-critical pickups and deliveries.

18 Q. And what do you mean by time-critical pickups and
19 deliveries?

20 A. We have accounts with the hospitals and certain other
21 clients. The hospitals, in particular, where we pick up
22 specimens that need to go from one lab to another, or blood
23 that needs to go from one location to another.

24 Q. But how about a private call? Would you pick up?

25 A. No.

1 Q. So if there is an inch or two of snow on the ground,
2 y'all would not make any runs?

3 A. No, when it becomes hazardous, we cease operations
4 immediately.

5 Q. And in the middle of the night, say three to four
6 o'clock in the morning, do you have any Yellow Cabs who were
7 already situated over in Greer?

8 A. No.

9 Q. So if somebody in the normal day wanted to get a Yellow
10 Cab in Greer at three in the morning, where would the cab be
11 coming from?

12 A. On a normal day we have one location, which is at the
13 corner of 290 and Highway 101. It's a Hot Spot convenience
14 store, and we usually will have one or two taxis parked in
15 that location.

16 Q. So how long would it take to get over there?

17 A. Coming from Greenville, we try to dispatch the closest
18 taxi to Greer. Normally it would take anywhere from 15 to
19 20 minutes on a normal day.

20 Q. On a normal day. But, again, the snow there, you
21 wouldn't run at all?

22 A. No.

23 Q. In fact, have you gone back and looked at the records
24 for February the 27th of 2004?

25 A. I went back last week when I was asked to and I

1 couldn't find any calls that we dispatched on for that
2 particular day.

3 Q. So you didn't have any calls for an Albert Kelly?

4 A. Well, we would not take calls or names. We only take
5 calls on location.

6 Q. But you didn't have any calls that day?

7 A. No.

8 Q. And that was from about midnight until about six?

9 A. Yeah.

10 Q. Or even later?

11 A. Even later. We didn't have any calls on that day at
12 all.

13 Q. You checked until noon, was it?

14 A. Well, I have checked from midnight until around five in
15 the morning.

16 Q. And there were no calls?

17 A. No.

18 Q. Thank you.

19 THE COURT: Any cross-examination.

20 CROSS EXAMINATION BY MR. SULLIVAN:

21 Q. Mr. Jennings, how many cabs are operating in Greenville
22 County, different companies?

23 A. For my company?

24 Q. No, no, how many different companies?

25 A. Let's see, there is Yellow Cab of Greenville.

1 Greenville Metro. And in 2004, there was a company called
2 Metro Taxi.

3 Q. They were serving the Greenville Greer area?

4 A. Yes.

5 Q. There is more than one cab company that would be in the
6 position to service that Greer area at that time?

7 A. Yes.

8 MR. SULLIVAN: Nothing further, Your Honor.

9 REDIRECT EXAMINATION BY MR. MOYER:

10 Q. But y'all are the only Yellow Cab service, right?

11 A. That's correct.

12 MR. MOYER: Okay. Thank you.

13 THE COURT: Thank you, sir. You may step down.

14 MR. MOYER: The State calls Donna Wentz.

15 DONNA WENTZ, having been first duly sworn,
16 testified as follows:

17 THE CLERK: State your name for the record.

18 THE WITNESS: Donna Lynn Wentz.

19 DIRECT EXAMINATION BY MR. MOYER:

20 Q. How old are you?

21 A. 29.

22 Q. Okay. And where do you live?

23 A. Right now?

24 Q. Yeah.

25 A. [REDACTED] in Greer.

1 Q. All right. Now, you have a criminal record because of
2 this incident, is that right?

3 A. Yes, sir.

4 Q. That's for misprision of a felony?

5 A. Yes, sir.

6 Q. And you did over a year in jail, right --

7 A. Yes.

8 Q. -- for that. And you pled guilty. You are now out?

9 A. Yes, sir.

10 Q. So you know this defendant Albert Kelly?

11 A. Yes, sir.

12 Q. Did you actually date him for a time?

13 A. For about a month and a half.

14 Q. Let me ask you to pull that microphone just a little
15 closer so everybody can hear you.

16 For about a month and a half?

17 A. Yes, sir.

18 Q. And when did you break up or when did y'all stop
19 dating?

20 A. A little bit right after Valentine's, 2004.

21 Q. Now, after y'all broke up, did you still continue to
22 see him some, talk to him?

23 A. He would show up at my job and call my house and call
24 my job. Pop up at the house sometimes late at night.

25 Q. Okay. And where were you living back then?

1 A. In Duncan with Ron Rice.

2 Q. Ron Rice, the man who testified yesterday?

3 A. Yes, sir.

4 Q. And that was at [REDACTED] in Duncan?

5 A. Yes.

6 Q. Had you ever visited the defendant's residence at all?

7 A. Yes, sir.

8 Q. So on the night that this happened, February the 26th
9 and 27th of 2004, were you dating Albert Kelly?

10 A. No, sir.

11 Q. All right. Did you, nonetheless, see him on February
12 27th, 2004?

13 A. I seen him six o'clock. When he came to the house at
14 six o'clock in the morning.

15 Q. Were you expecting him to come over?

16 A. No, because he wasn't allowed at the house.

17 Q. However had you heard from him the night before?

18 A. Yeah, he called me about 1:30 in the morning.

19 Q. Okay. And so it was about 1:30 in the morning. Were
20 you in bed?

21 A. Yes, sir.

22 Q. Were you asleep? Did he wake you up?

23 A. Yes, sir.

24 Q. What time did you get home? Had you worked the day
25 before?

1 A. Yes, sir.

2 Q. What time did you get home?

3 A. Probably around 10:30. I had to take it real slow
4 because of the weather.

5 Q. Okay. And so he called you. Do you remember what
6 y'all talked about?

7 A. Just basically checking up on me, checking to see if I
8 was home.

9 Q. Did he say during that conversation where he was when
10 he called you?

11 A. He was at Shaun's.

12 Q. Is that what he said?

13 A. Yes, sir.

14 Q. What was your phone number at the time?

15 A. 439-3425.

16 Q. All right. Now, did you know -- have you ever met
17 Shaun Edwards and Marcus Parks?

18 A. I never met Marcus. I have only met Shaun twice.

19 Q. And how did you meet him? Through the defendant?

20 A. Yes, sir.

21 Q. Was he a friend of yours?

22 A. No.

23 Q. Did you ever -- where did you see him? Over at Shaun's
24 house?

25 A. I went to Shaun's house once with A.K. and stayed

1 probably about 15 minutes. And the second time I met him at
2 my store. He came in and asked me could he borrow 50 cents
3 and I gave it to him and that was it.

4 Q. Those are the only two times that you have ever spoken
5 to him?

6 A. Yes, sir.

7 Q. And you have never spoken to Marcus Parks at all?

8 A. Never.

9 Q. Did you know who he was?

10 A. No, sir.

11 Q. Now, when you saw Albert Kelly this morning -- at six
12 o'clock that morning of February the 27th, 2004, what was
13 his appearance like?

14 A. He had on the suede jacket with fur in it, and he had
15 on blue jeans that were wet from the knees down.

16 Q. Tell me about this jacket. It was suede, you said?

17 A. Yeah, like suede on the outside and fur on the inside.

18 Q. Okay. Now, how did he look when he was standing in
19 front of your door? Did he look cold at all?

20 A. Yeah, he just looked cold and tired.

21 Q. What was his appearance like? What was his hair like?

22 A. I can't even remember.

23 Q. Okay.

24 A. He always kept it cut low, though.

25 Q. And so did y'all allow him in?

1 A. I went over -- well, Ron opened and Ron let him in the
2 house.

3 Q. Did y'all see any cars or taxis outside?

4 A. No, sir.

5 Q. You looked up and down the street?

6 A. The street we live on is at a slant, so not very many
7 cars even came. You know, it was real icy and stuff, so not
8 many cars was coming down the road or nothing like that.
9 Even Ron didn't even park in front of the house. He parked
10 up the road at the garage.

11 Q. When you say slant, it was kind of a hill?

12 A. Yes, sir.

13 Q. But you didn't see any cars on the road?

14 A. No, sir.

15 Q. All right. Now, you know, was Albert Kelly supposed to
16 be over there?

17 A. No, sir, he was not supposed to be over there.

18 Q. That was because of Ron?

19 A. Yes, sir.

20 Q. Do you know -- and did you expect him to be coming over
21 at six o'clock in the morning?

22 A. No, sir.

23 Q. Now, how long did he stay there?

24 A. Until about 6:30 that evening.

25 Q. Did he talk about while he was with you that day

1 needing to go anywhere?

2 A. No, sir.

3 Q. Did he talk about having any kind of job interview or
4 anything that he had to go to?

5 A. No, sir.

6 Q. Did he talk about leaving town or leaving the state?

7 A. No, sir.

8 Q. Did he ever mention to you about going to Atlanta?

9 A. No, sir. The only thing I knew about him and Atlanta,
10 he had a sister that lived in Atlanta.

11 Q. Did he have any luggage with him?

12 A. No, sir.

13 Q. Did he have any bags?

14 A. No, sir. Just him. That's it.

15 Q. Did he look like he was ready to go on a long trip?

16 A. No, sir.

17 Q. While he was with you, did he ask you to take care of
18 any money for him?

19 A. When he came to the house, he said something to me and
20 Ron about a man acquiring some money. He asked me could I
21 keep the money for him and I told him no.

22 Q. Did you ever see it, though?

23 A. No.

24 Q. So he just mentioned it?

25 A. Yes, sir.