

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY

Court of General Sessions

J. Cordell Maddox, Circuit Court Judge

Case No. 07-GS-40-1342, 07-GS-40-1343

07-GS-40-1344

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S.C. Supreme Court

THE STATE..... Respondent,

v.

Frances Moore, #334844, ...Appellant.

APPENDIX

Volume 2

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v.

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**RECORD ON APPEAL
Volume II**

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SC COURT OF APPEALS**

RUSTY GARRETT - DIRECT BY MR. BRADLEY

1 her driveway in front of me, is where I come up with the 7.1.

2 Q. Okay. Is there anything else that you looked into
3 during your investigation of this matter?

4 A. Had started looking into there was information, we
5 were getting calls from Liberty Life Insurance Company
6 questioning us on who suspects were in the death of Paul
7 Stephens.

8 Q. Okay. And what did you discover in that?

9 A. I discovered that the beneficiary to Paul -- Paul
10 Stephens had a life insurance policy, from what I understand
11 from them that I was told, a 100,00-dollar life insurance
12 policy, and the beneficiary was his mother-in-law, Frances
13 Moore.

14 Q. One more point, Detective. Going back to when you
15 first started investigating in this matter in '99, did you
16 happen to look into the vehicles that were on the scene, the
17 crime scene itself, vehicles that had came and went from the
18 crime scene?

19 A. I was not initially there at the crime scene, but
20 the following day at our meeting every vehicle was brought up
21 and assigned to someone to either locate or to determine who
22 they were, and shortly thereafter every vehicle accounted for,
23 even the white Dodge, and I believe it was -- I don't believe
24 it was associated with Mr. Powers and Mr. West. I believe one
25 of them had testified earlier that that's where that vehicle

RUSTY GARRETT - CROSS BY MR. PRUITT

1 had come from.

2 Q. And do you recall what Mr. Powers' testimony was,
3 what role he played in this?

4 A. I believe he was one of the initial people that seen
5 it. There were 2 that were there basically at the same time.
6 One come up and seen somebody running away from the car, and
7 that was him because he was calling 911 or trying to get some
8 help down there.

9 MR. BRADLEY: Okay. Nothing further at this time,
10 Your Honor.

11 CROSS-EXAMINATION

12 BY MR. PRUITT:

13 Q. Officer Garrett, I want you to do a little math for
14 me, if you would. The last call from the pay phone, according
15 to the records we just had, was at 14:57 and it lasted between
16 a minute and a half, and 2 minutes and 29 seconds. So just
17 for argument sake we'll call it 2 minutes.

18 A. Thank you for rounding.

19 Q. So if that call took --

20 (A problem with the microphone occurred.)

21 THE COURT: All right. Go ahead.

22 Q. I forget where we got to. If the last call was at
23 14:57 and lasted 2 minutes that would be 14:59, wouldn't it?

24 A. Yes.

25 Q. All right. And if the recipient of that call was

1 Paul Stephens at Debra Stephens' residence, like she told you,
2 and it took 11 minutes and 20 seconds, we'll just call that 11
3 minutes, to get to the crime scene, would that be 3:10?

4 A. Yes.

5 Q. Okay. And that wouldn't count for any time to back
6 up and get in position at the crime scene or anything like
7 that, would it?

8 A. That's correct.

9 Q. All right. And, if I recall, and you correct me if
10 I'm wrong, the vehicle at the crime scene was backed into the
11 little cut?

12 A. That's correct.

13 Q. So coming from Frances Moore's house that vehicle
14 would have had to of somehow or another backed in there,
15 either by going further past the cut and backing up on the
16 wrong way, or turning around in some fashion, wouldn't they?

17 A. Correct.

18 Q. Okay. Now, just a little bit more math while we're
19 on math and you're very good at it, and I don't know how long
20 you've been here today because it's been all I can do to keep
21 up with who is talking here.

22 If Josh Anderson said that the people left Anderson
23 Meats that he saw, whoever they were, at 3:10 and they were
24 driving back to Frances Moore, the victim's house, and that
25 was the last call they received, how long would it take them

RUSTY GARRETT - CROSS BY MR. GAMBLE

1 to get back to the victim's house?

2 A. If they left at 3:10?

3 Q. Yeah.

4 A. Then that would be somewhere around 3:20, 3:21.

5 MR. PRUITT: That's all I have.

6 CROSS-EXAMINATION

7 BY MR. GAMBLE:

8 Q. I might have misunderstood you but who did you say
9 had the white Dodge truck?

10 A. That would be Aaron Powers, Billy West.

11 Q. Were in a white Dodge truck?

12 A. Uh-huh.

13 Q. Which one had on the cut-off t-shirt?

14 A. I'm not sure.

15 Q. Which one was driving?

16 A. I'm not sure.

17 Q. Did you investigate it?

18 A. No. I was just making sure all the vehicles were
19 accounted for.

20 Q. I know but you didn't take a picture of Aaron Powers
21 and Bill West's pick-up truck, did you?

22 A. No, sir.

23 Q. Did you run it through N. C. I. C.?

24 A. No, sir.

25 Q. Did you do anything on that pick-up truck?

1 A. No, sir.

2 Q. Now, Pete Rogers is the one who saw the white person
3 running with the 60 feet tall, under 200 pounds. Did you look
4 at Aaron Powers?

5 A. I don't recall Aaron Powers.

6 Q. You didn't talk with him?

7 A. No.

8 Q. Did you talk with Pete Rogers?

9 A. No.

10 Q. Well, he was at that time a dispatch for Pickens
11 County Sheriff's Office. So you didn't verify the information
12 that you were given with Pete Rogers, did you?

13 A. I was never given any information from Pete Rogers.

14 Q. But you didn't do anything with regard to that white
15 pick-up truck, did you, the Dodge truck?

16 A. As what I just did, we made sure it was accounted
17 for then as of now by Aaron Powers and Billy West.

18 MR. GAMBLE: All right.

19 THE COURT: Any redirect?

20 MR. BRADLEY: Just one, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BRADLEY:

23 Q. When you say you didn't talk to Pete Rogers and
24 Aaron Powers, there were other detectives on this case who
25 talked to those individuals; is that correct?

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 A. That's correct, multiple detectives. That's what we
2 did the following day.

3 Q. So you didn't respond to the actual crime scene
4 itself, did you?

5 A. No, I did not.

6 Q. Was that Detective Major who was there talking to
7 them?

8 A. I believe so, yes.

9 MR. BRADLEY: Nothing further, Your Honor.

10 THE COURT: All right. You can step down. Thank
11 you.

12 MR. BRADLEY: The State calls Josie Wright.

13 JOSEPHINE WRIGHT, after having been duly sworn,
14 testified as follows:

15 THE CLERK OF COURT: If you'll go up and have a seat
16 in the witness chair, please.

17 (The witness was seated in the witness stand.)

18 THE CLERK OF COURT: If you'll state your full name
19 and spell your last name for the record, please, ma'am.

20 THE WITNESS: My full name is Josephine Wright,
21 W-r-i-g-h-t.

22 DIRECT EXAMINATION

23 BY MR. BRADLEY:

24 Q. Good afternoon, Ms. Wright.

25 A. Good afternoon.

1 Q. What is your occupation?

2 A. I'm a senior customer service representative.

3 Q. Who is your employer?

4 A. R. B. C. Insurance.

5 Q. How long have you been employed by R. B. C.

6 Insurance?

7 A. Thirty years.

8 Q. Have they always gone by the name R. B. C.

9 Insurance?

10 A. Prior to 2003, due to a corporate buyout, it was

11 Liberty Life Insurance.

12 Q. What about back in '97 through 1999, what was the

13 name then?

14 A. Liberty Life Insurance.

15 Q. What was the nature of your employer's business?

16 A. Life insurance.

17 Q. Okay. And what are your duties at R. B. C.

18 Insurance?

19 A. I review claims for payment.

20 Q. What do you mean claims for payment? What type of

21 claims?

22 A. I review death claim -- life claims, really. When

23 an applicant applies for insurance with our company and the

24 insurance is approved they are given a policy. And once --

25 upon the insured's death and then they have that policy and it

1 becomes the benefits of the beneficiary. And then we look at
2 those claims, at the time a claim is filed by the beneficiary,
3 and we look at the claims based on the policy contract and the
4 facts of the claim.

5 Q. Okay. And these records for the policies and the
6 claims, are they kept in the normal ordinary course of
7 business?

8 A. Yes.

9 Q. Okay. When is the information regarding the
10 policies and the claims, when is it obtained?

11 A. The information regarding the policy and the claims
12 are obtained at the time of deaths, when someone calls our
13 office and notifies us of a death.

14 Q. What about a policy? When a policy is issued how is
15 that information obtained?

16 A. When a policy is issued that information is obtained
17 and kept in a database there in our system, as far as the
18 application.

19 Q. So somebody has to fill out an application to get a
20 policy?

21 A. Somebody fills out an application and all the
22 information, based on the data, their history, and just the
23 age, the birth date, you know, all that, that's kept, and then
24 it's put in admin system.

25 Q. And these records that you keep, do they accurately

1 reflect the information that was given on the documents?

2 A. Yes.

3 Q. And in regards to this case, was your employer
4 subpoenaed for records recently?

5 A. Yes.

6 Q. And is that why you're here to testify today?

7 A. Correct.

8 Q. And what procedure was followed in responding to
9 that subpoena?

10 A. The procedure that was followed, the subpoena came
11 to our legal department and they produced all of the claim
12 records from that file and submitted it to where the subpoena
13 came from.

14 Q. How about the policy documents, application?

15 A. Policy documents, application and the claim records,
16 yes, sir.

17 Q. And what, if anything, do you have with you here
18 today? What documents do you have with you here today?

19 A. Okay. The documents that I have here, or what I
20 brought from the subpoena?

21 Q. Yes, ma'am. Let me show you State's Exhibit Number
22 41, 42, 43.

23 A. Okay.

24 Q. Take a look at those and see if you recognize those.

25 A. Yes, sir. I recognize all 3 documents.

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 Q. How so? How do you recognize them?

2 A. Because this is the application for insurance,
3 because that was part of the claim file, and this is the
4 settlement agreement. All these documents was part of the
5 claim file that was given, and this is the policy.

6 Q. Okay. Have these documents been altered or edited
7 in any way?

8 A. No.

9 Q. And they accurately reflect the information obtained
10 within them?

11 A. Yes, sir.

12 MR. BRADLEY: Your Honor, at this time the State
13 moves to have these exhibits admitted.

14 THE COURT: Any objection?

15 MR. PRUITT: No objection.

16 THE COURT: Without objection?

17 MR. GAMBLE: Yes.

18 THE COURT: Without objection.

19 (Whereupon, State's Exhibit Numbers 41, 42 and 43,
20 Documents, were admitted into evidence.)

21 MR. BRADLEY: Permission to publish?

22 THE COURT: Yes, sir.

23 BY MR. BRADLEY:

24 Q. Ms. Wright, if you'll step down to the TV here.

25 A. Okay.

1 Q. First, we're going to look at State's Exhibit Number
2 41. If you'll tell us what this document represents. Back it
3 out a little bit. All right.

4 A. Okay. This is the application for insurance that
5 was completed by the insured.

6 Q. And who is the insured?

7 A. The insured's name is Robert P. Stephens.

8 Q. And does this document show who the beneficiary is?

9 A. Yes. Beneficiary number 11, full name of primary
10 beneficiary, Frances B. Moore; relationship, mother-in-law.

11 Q. And what about the owner of the policy? Does this
12 document show anything about who the owner of the policy was?

13 A. Under section 16 there's a request to -- a special
14 request to please make Frances Moore owner of the policy here
15 (indicated). And there is her signature along with the Social
16 Security number.

17 Q. So she would have signed that, had knowledge that
18 she was going to be the owner of this policy?

19 A. Correct.

20 Q. Then page 2 of that is just some more paperwork
21 where the applicant filled it out?

22 A. Yes. Page 2, the top part of it gives a little
23 history about the insured. And at the bottom, this is where
24 the insured dated and signed the application (indicated).

25 Q. So when was this policy issued?

1 A. This policy was dated October 9th, 1997.

2 Q. Okay. I'm going to refer you to State's Exhibit
3 Number 42 now, and this is a several page document, and we
4 won't get into every single page, but if you'll just tell us
5 what this document is by looking at the first page.

6 A. Okay. This is a copy of the policy contract that
7 was issued to Mr. Stephens. It has the insured's name, the
8 total face amount, the date of issue and the policy number.

9 Q. And from your knowledge, how much was the policy
10 amount for?

11 A. The basic policy amount was 50,000, and it also had
12 a 50,000, 15-year term writer.

13 Q. Okay. So that total would have been what?

14 A. Would have been 100,000.

15 Q. Would have been 100,000?

16 A. Correct.

17 Q. And so Ms. Moore was the beneficiary of a hundred
18 thousand dollar policy on the victim, Paul Stephens?

19 A. Correct.

20 Q. Was she ever paid on that policy --

21 A. Yes, she was.

22 Q. -- after his death?

23 A. Yes.

24 Q. And what does this document, State's Exhibit Number
25 43, represent?

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 A. Okay. This document is a settlement agreement and
2 release between Frances Moore and Liberty Life Insurance
3 Company.

4 Q. And what does this document say that's happening
5 here?

6 A. Okay. This is where Liberty Life Insurance Company
7 denies that it acted wrongfully toward the releaser and it
8 releases, really, our company intending to be legally bound --
9 well, let me read it out loud. Does not -- releaser does
10 hereby quick release and discharge Liberty Life Insurance
11 officers and successors from -- I lost my place -- in
12 interests, subsidiaries, parent corporations and assigns
13 herein collectively referred to as a release from any and all
14 claims that were or that could have been asserted in a civil
15 action filed as of the date of this agreement, and from any
16 and all claims arising from the civil suit.

17 Q. So what does she receive in exchange for this
18 release?

19 A. She received a death benefit check of 100 -- I think
20 the check was 119,000.

21 Q. I believe it says the total right there on the top
22 of paragraph 1?

23 A. Yes.

24 Q. That's the sum that she received?

25 A. Yes. So she received a total \$119,638.18. And of

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 that 100,000, 19,638 was statutory interest that is required
2 by the -- you know, that's one of those state laws, from the
3 date of death we paid interest, since that. The date of death
4 occurred in '99 and the claim was paid in 2001.

5 Q. And do you recall when she received the payment on
6 this policy?

7 A. If you go to the next -- it was -- okay, that's the
8 date. This agreement was signed on October the 5th, but
9 September 23rd, 2001.

10 Q. 2001?

11 A. Uh-huh.

12 Q. Okay. And why is this in the form of a settlement
13 agreement? Why does she get paid in that fashion?

14 You can take your seat. I'm sorry.

15 (The witness returned to the witness stand.)

16 A. Okay. Based on the claim documents that was filed
17 we had contacted -- since the death was ruled homicide we had
18 contacted the Anderson County Police Department for additional
19 information concerning getting -- you know, getting a report,
20 and at that time we were advised that Ms. Moore was a suspect
21 in the case.

22 Q. Okay.

23 A. And for -- and, you know, we kept in contact with
24 them regarding the criminal -- I mean, you know, regarding the
25 investigation and we were never furnished, you know, any

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 additional information and all to substantiate that. So based
2 on her attorneys and our attorneys an agreement was reached.

3 Q. So you all were withholding payment. Did she
4 threaten any action against you all for withholding payment?

5 A. There was -- in 2001, there was an insurance
6 department complaint. I mean, she filed a letter with the
7 insurance department, South Carolina Department of Insurance,
8 and saying that we were withholding payment. And shortly
9 sometime after that we received a letter from a lawyer stating
10 that, you know, she was threatening to sue us.

11 Q. You all were withholding it because she was a
12 suspect?

13 A. According to the information that we were being
14 furnished, yes, sir.

15 MR. BRADLEY: Nothing further at this time.

16 THE COURT: All right. Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. PRUITT:

19 Q. Now, Ms. Wright, it's a general principle of
20 insurance law that before a policy such as this can be issued
21 the insured must sign and approve it; is that right?

22 A. Correct.

23 Q. And if Mr. Paul Stephens wasn't willing to have his
24 mother-in-law buy and own this policy he wouldn't have signed
25 the application, would he?

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 A. That's correct.

2 Q. And there's nothing unusual about one person being
3 the insured and somebody else being the owner, is it?

4 A. No, sir.

5 Q. As a matter of fact, that happens a whole lot of
6 times.

7 A. Yeah, it does.

8 Q. Now, the premium on this policy was \$62.58 a month,
9 wasn't it?

10 A. I think, yes, sir.

11 Q. Would you like to look at it?

12 A. Yes, sir.

13 Q. I'll give it to you.

14 A. Okay. \$62.58 monthly. Yes.

15 Q. Now, I don't know whether you know this or not but
16 in looking up the records of this policy here did you also
17 find that Frances Moore had many other policies with Liberty
18 Life at the same time?

19 A. I can't answer that because I was -- this is what I
20 was given to, you know, come down today so.

21 Q. All right. Well, do you know whether or not the
22 agent that produced this policy was what I used to call a
23 route man?

24 A. Yes. They used to go around and -- let's see. Look
25 like this came from branch office that time. It may have been

1 the Clemson branch office used to have agents to go around and
2 collect premiums and deliver policies and services.

3 Q. And so back at this time that was one of Liberty
4 Life's biggest businesses, wasn't it?

5 A. Correct.

6 Q. And at that time the route man -- is that what they
7 called him?

8 A. Well, they called him --

9 Q. Debit man?

10 A. Debit agents.

11 Q. Yeah. Okay.

12 A. Back then.

13 Q. Yeah. That's not much done anymore, is it?

14 A. No, sir.

15 Q. But back then in 1997 when this was taken out the
16 debit man would come by the house once a month, or once a
17 week, or whatever time period the policy was and collect on
18 all the policies?

19 A. Correct.

20 Q. And it wouldn't be at all unusual for the debit man
21 to have 3 or 4 different people insured collecting at the same
22 house, would it?

23 A. At times, yes, sir.

24 Q. In fact, that was part of their job, to add
25 additional policies for anybody that they could add, right?

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 A. Correct.

2 Q. And ultimately, Liberty Life ended its investigation
3 concerning the facts of this policy and paid the policy
4 according to its terms, didn't they?

5 A. Correct.

6 MR. PRUITT: Thank you, Ms. Wright. That's all I
7 have.

8 MR. GAMBLE: I don't have anything, Your Honor.

9 THE COURT: Anything on redirect?

10 MR. BRADLEY: No, Your Honor.

11 THE COURT: All right. Thank you, ma'am. You can
12 step down. Appreciate it.

13 THE COURT: All right. Thank you.

14 Let's take 5 minutes, ladies and gentlemen. We're
15 not going to go much -- how many more witnesses do you have?

16 MR. BRADLEY: Two.

17 THE COURT: All right. We're going to do 2 more
18 then we're out of here. So take 5, 10 minutes, come back in
19 and we'll go another half hour and we'll quit. Don't discuss
20 the case yet.

21 (WHEREUPON, the jury enters the courtroom at 5:25
22 p.m., and a brief recess was taken.)

23 THE COURT: All right. You can bring them in.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 5:35 p.m.)

JANE MILLER - DIRECT BY MR. BRADLEY

1 THE COURT: All right. Ladies and gentlemen, thank
2 you. We've got 2 more witnesses. I promise there's a little
3 method to my madness. I know we're going a little late. Just
4 so you'll know that you are not the only ones being punished,
5 my 76-year-old mother is waiting for me in Greenville for
6 dinner, and I've just gotten 4 calls from her in about 8
7 minutes. So I suspect I'll be punished worse than you will.

8 Okay. Call your next witness.

9 MR. BRADLEY: Thank you, Your Honor. May it please
10 the Court. The State calls Jane Miller.

11 THE CLERK OF COURT: Come forward to be sworn.

12 JANE KIMBERLY MILLER, after having been duly
13 sworn, testified as follows:

14 THE CLERK OF COURT: Please go around and have a
15 seat in the witness chair.

16 (The witness was seated in the witness stand.)

17 THE CLERK OF COURT: And if you'll state your full
18 name and spell your last name for the record.

19 THE WITNESS: Jane Kimberly Miller, M-i-l-l-e-r.

20 DIRECT EXAMINATION

21 BY MR. BRADLEY:

22 Q. Good afternoon, Ms. Miller. What is your
23 occupation?

24 A. Human resources and safety compliance administrator
25 for Techtronic Industries North America.

JANE MILLER - DIRECT BY MR. BRADLEY

1 Q. And where are you located?

2 A. Pickens, South Carolina.

3 Q. And what is the exact name of your employer?

4 A. Right now it's currently One World Technologies,
5 Incorporated. Before that it was O. W. T. Industries, and
6 before that Ryobi Motor Produces, Incorporated.

7 Q. And what would signify the name changes?

8 A. Corporate buyouts.

9 Q. What about in 1999; what was the name?

10 A. It was Ryobi Motor Products, Incorporated.

11 Q. What about Piedmont Die Cast; would that be part of
12 it?

13 A. That was an actual division of the company.

14 Q. At that time, in 1999?

15 A. Yes.

16 Q. And what is the nature of the business of Ryobi
17 O. W. T. One World Technologies?

18 A. They manufacture power tools, lawn and garden
19 products.

20 Q. Okay. And was that a similar business back in 1999?

21 A. I think in '99 they did a lot of the power tools,
22 handheld tools.

23 Q. And what are your duties at your job?

24 A. I maintain personnel records, attendance records. I
25 do Workers' Comp.

JANE MILLER - DIRECT BY MR. BRADLEY

1 Q. Okay. And part of those duties include overlooking
2 the records for employees?

3 A. Yes, sir.

4 Q. And responding to subpoenas?

5 A. Yes, sir.

6 Q. Okay. And the information on the records that you
7 have received of employee records, when is that information
8 obtained?

9 A. From the time they are hired throughout their tenure
10 with the company.

11 Q. How about when they come to work, they clock in and
12 clock out; is that when that information is obtained?

13 A. They clock in on a Kronos system when they come in
14 and out.

15 Q. How is it stored?

16 A. It's a computer based program that keeps all the
17 records.

18 Q. And is that kept in the ordinary course of business?

19 A. Yes, it is.

20 Q. What about their job status, job title, is that type
21 of form -- is that a form that's kept in the ordinary course
22 of business?

23 A. That is, too.

24 Q. And the information on all the forms that you keep,
25 is it accurately represented?

1 A. Yes, sir.

2 Q. And what happens to the forms after they are
3 completed?

4 A. They are put in the employees' personnel files.

5 Q. In regards to this case, were you and your employer
6 served with a subpoena for the work records of Garvin Duvall?

7 A. Yes, sir.

8 Q. And what procedure was followed in responding to
9 that subpoena?

10 A. We pulled his personnel files from -- we have a
11 locked cage that we keep those in. We're required by federal
12 law to keep them for so long. Those records were pulled and
13 copies were made to submit to the solicitor's office.

14 Q. Okay. I'm going to show you what we have marked as
15 State's Exhibit 44, 45, 46, 47. If you'll take a look at
16 those and see if you recognize them.

17 A. Yes, sir, I do.

18 Q. How do you recognize them?

19 A. This one particular here -- well, let me start with
20 this one. This is the Kronos records where an employee
21 actually clocks in and out theirselves.

22 Q. And when you refer to what exhibit number you're
23 talking to when you mention --

24 A. It's exhibit number 45.

25 Q. Thank you very much.

JANE MILLER - DIRECT BY MR. BRADLEY

1 A. Once the Kronos keeps the records the records are
2 transferred on a weekly basis over into a mainframe, which
3 then any records where the employee may have called in or any
4 backup data goes into the mainframe, and that's exhibit 44.
5 That's what this one is.

6 Q. Okay.

7 A. Exhibit 46 is the employee's record history with the
8 company, their job titles that they held over the years.
9 Exhibit number 47 is a status form that we use that covers all
10 of their name, their address, the job they held at the time at
11 their rate of pay, any status changes that change with their
12 job.

13 Q. And do these forms, do they accurately reflect the
14 information obtained on them?

15 A. Yes, sir.

16 Q. Have they been changed or altered in any way?

17 A. No, sir.

18 MR. BRADLEY: Your Honor, at this time the State
19 moves to have these exhibits admitted into evidence.

20 THE COURT: Any objection?

21 MR. GRAHAM: No objection.

22 MR. PRUITT: No objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit Numbers 44 through 47,
25 Documents, were admitted into evidence.)

JANE MILLER - DIRECT BY MR. BRADLEY

1 MR. BRADLEY: Permission to publish?

2 THE COURT: Yes, sir.

3 BY MR. BRADLEY:

4 Q. Ms. Miller, if you'll step down to the TV, please.

5 A. (The witness complied).

6 Q. We are going to start with exhibit 44. If you'll
7 tell us what this form says.

8 A. That's the -- once it goes into Kronos and it's
9 changed over to the mainframe that's an actual attendance
10 record that's put out for any early leaves, absences on the
11 employee.

12 Q. And what employee does this refer to?

13 A. Galvin Duvall.

14 Q. Galvin Duvall or Garvin?

15 A. Garvin Duvall. I'm sorry.

16 Q. And specifically, does this have June 30th, 1999 on
17 it?

18 A. Yes, it does.

19 Q. And what does it say? Was he absent that day?

20 A. Yes. He called in with his wife being ill.

21 Q. That was the excuse given by him?

22 A. Yes, sir.

23 Q. And that was recorded in the system?

24 A. (Nodded).

25 Q. We'll move on to State's Exhibit Number 45. I'll

1 try to zoom this in as best I can. Down here at the bottom?

2 A. That's the Kronos record for week 6-28 through 7-4.

3 Q. And on June 30th again it shows he was out?

4 A. He was absent.

5 Q. What about July 1st?

6 A. He was there.

7 Q. So that shows what time he clocked in and clocked
8 out?

9 A. Yes, sir.

10 Q. Next exhibit is 46. This is a 2-page document.

11 I'll try to zoom back out so you can see it better. What does
12 this tell us?

13 A. This is the employee history file. It tells what
14 jobs he held there in the company.

15 Q. Okay. So what's the last date on that document, on
16 this first page?

17 A. September the 12th of '97 is when he -- on that one.

18 Q. Okay. So on page 2 it continues; is that correct?

19 A. Yes, sir.

20 Q. And what's the last date on this page?

21 A. August the 16th of '99.

22 Q. And what does that represent?

23 A. That's what job title he held on that date.

24 Q. And what job title was it?

25 A. Melt shop operator.

1 Q. And what was entitled in that title job?

2 A. They ran the furnace and done the -- maintained it
3 and kept it going.

4 Q. Okay. And finally, document State's Exhibit Number
5 47, what is it?

6 A. That's the status form of an employee when we do any
7 changes or anything.

8 Q. And, again, direct your attention to the middle.
9 That shows his title?

10 A. He was the melt shop operator.

11 Q. You can return to your seat.

12 A. (The witness complied).

13 Q. So you stated as his duty as melt shop operator he
14 had acces to the furnaces at Ryobi?

15 A. Yes, sir.

16 Q. And, to your knowledge, are those furnaces at Ryobi,
17 are they hot enough to melt steel, particularly a firearm?

18 A. Yes, sir.

19 Q. One more. I'm going to refer you back to this
20 monthly, weekly description of his working hours. If you'll
21 step back down and take one more look at this. I apologize.

22 A. (The witness complied).

23 Q. I'll refer you to June 29th. Did he work that day,
24 the day before June 30th?

25 A. It looks like he clocked in but he doesn't have an

1 out punch.

2 MR. BRADLEY: Nothing further, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GAMBLE:

5 Q. It was your answer that the furnace is not hot
6 enough to melt steel?

7 A. It is hot enough to melt steel.

8 Q. What temperature is it running?

9 A. The ones we had were from 1600 to 1700 degrees.

10 Q. When the call comes in and the wife is ill, is that
11 dated?

12 A. Yes, sir.

13 Q. What date? I don't mean 6-30-99. I mean, is there
14 a time when he called in?

15 A. Yes, sir.

16 Q. What time was it?

17 A. I don't know. I was not with the company at that
18 time.

19 Q. We don't have a record of that?

20 A. I don't.

21 Q. I mean, you don't have a record of that time that he
22 called to say my wife is sick?

23 A. No, sir.

24 Q. So whoever logged it in didn't put the time on it
25 and just said wife ill?

1 A. There may be records somewhere in the attendance,
2 weekly attendance thing that they do every week.

3 Q. Okay. Well, we had a fire expert here last --
4 yesterday or the day before. We had so many I don't know, but
5 he said in order to melt steel specifically with regard to a
6 gun it would take in excess of 4,000 degrees Fahrenheit?

7 A. Well, I know with this process they did mix metal in
8 with these to do the aluminum with it. So there was metal
9 mixed in with that and it was a constant temperature that was
10 melted.

11 Q. But that's not your department, is it?

12 A. No, sir.

13 MR. GAMBLE: Thank you.

14 MR. PRUITT: I don't have any questions of this
15 witness.

16 THE COURT: Any redirect?

17 MR. BRADLEY: Nothing further, Your Honor.

18 THE COURT: Thank you, ma'am. You can step down.

19 MR. BRADLEY: Can she be excused, Your Honor?

20 THE COURT: Without objection?

21 MR. PRUITT: No objection.

22 MR. GAMBLE: No objection.

23 THE COURT: No objection.

24 MR. BRADLEY: The State calls Dr. Brett Woodard.

25 DR. BRETT WOODARD, after having been duly

1 sworn, testified as follows:

2 THE CLERK OF COURT: Have a seat in the witness
3 chair.

4 MR. GAMBLE: Your Honor, before he starts. I am
5 more than familiar with Dr. Woodard and would stipulate to his
6 expert capacity as a forensic pathologist.

7 MR. PRUITT: I would too, Your Honor.

8 THE COURT: All right. So there's a stipulation
9 that Dr. Woodard is an expert in the field of forensic
10 pathology.

11 MR. BRADLEY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. BRADLEY:

15 Q. Good afternoon, Dr. Woodard. Tell us what your
16 occupation is.

17 A. I'm a medical doctor, a pathologist by specialty
18 training.

19 Q. What exactly is a pathologist?

20 A. A pathologist is a specialty physician that studies
21 illness, disease and injury in the human body and the effects
22 that they have on the human body.

23 Q. Okay. And is there a difference between being a
24 pathologist and a forensic pathologist?

25 A. A forensic pathologist is a subspecialty in

1 pathology that specifically deals with injury, its combination
2 with disease or substance, the effects it may have on the
3 human body to incapacitate or produce death.

4 Q. Okay. You've been declared an expert in this field;
5 is that correct?

6 A. Yes, I have.

7 Q. Were you working in that capacity on July 1st, 1999?

8 A. Yes, I was.

9 Q. And did you perform an autopsy on the victim in this
10 case, Robert Paul Stephens?

11 A. Yes, I did.

12 Q. And what procedure is generally followed in an
13 autopsy?

14 A. The body is examined as it comes to the autopsy room
15 in whatever clothing it was clothed in to look for any type of
16 injuries, tears, defects in the clothing. Then the outside
17 surface of the body is examined to look for any defects or
18 injuries. The clothing is removed. The surfaces under the
19 clothing are examined and then the body is opened to examine
20 inside the body to evaluate any defects that were seen on the
21 outside or in the clothing, how they may have been carried
22 through to the inside of the body.

23 Q. Particular to this victim that you conducted the
24 autopsy on what are some of the general characteristics of the
25 victim?

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 A. He was extremely tall. He was 80 and a half inches
2 tall. That would be 5 -- excuse me, 6 foot 8 and a half
3 inches tall, about 280 pounds. He had a beard and a mustache.

4 Q. As far as the autopsy that you performed on
5 Mr. Stephens what are the general findings that you made
6 during your autopsy?

7 A. He had some bruises on his body that were the type
8 of bruises that are produced by a hand gripping the body, and
9 then he had some irregular scrapes on the surface of the body
10 that were consistent with an irregular surface such as the
11 ground or other objects either striking the body or the body
12 striking them.

13 He also had two gunshot wounds. One was in the back
14 of his head about where the hairline would be, on the back of
15 someone's head, and the other was on his right flank about a
16 little behind where the seam would be on a man's shirt in the
17 muscle area below the ribcage in the back.

18 Q. If I were to give you a diagram of the anatomical
19 male would you be able to show the jury a little bit better
20 exactly where these wounds were inflicted on Mr. Stephens?

21 A. Certainly.

22 MR. BRADLEY: Is that okay with you all?

23 MR. GAMBLE: I've seen it.

24 BY MR. BRADLEY:

25 Q. If you'll please step down, Dr. Woodard.

1 A. (The witness complied).

2 Q. If you'll make notation.

3 A. The gunshot wound to the back was of the right side
4 of the back of the head just into the hairline at the back of
5 the skull. The wound on his right flank was slightly on the
6 backside. This represents the ribs. It was a little below
7 the ribs on the backside of the body here (indicated).

8 Q. And with these wounds, could you point out the
9 directionality of the wounds?

10 A. Well, the wound in the back of the head went forward
11 toward the midline. It didn't cross the midline inside the
12 skull but it went forward slightly to the victim's left and
13 impacted the front of the skull almost on the midline, just a
14 hair to the right of the midline before the bullet reflected
15 back into the left side of the brain (indicated).

16 The bullet that went into the flank on the right
17 side crossed the body, just missed the kidney, hit the liver.
18 Your liver sits right in here (indicated). It crossed the
19 midline going through the whole where the esophagus enters the
20 stomach, hit the right side of the heart and then the bullet
21 ended up just to the left of the centerline but at the front
22 between the third and fourth rib. If you feel on your
23 breastplate there's a little bump there, and right below that
24 bump but off to the left.

25 Q. The trajectory of the head wound that you just

1 described, what is that consistent with?

2 A. That was consistent with the gun being behind the
3 individual as he was shot. It went forward and slightly in an
4 upward direction before it struck the inside of the skull and
5 ricocheted or bounced back into the left side of the head.
6 The wound on the flank went from the victim's back to victim's
7 front in a rather steep upward direction pretty much along
8 this angle sort of reflected by that line that's drawn on this
9 anatomic (indicated).

10 Q. And what is that most consistent with, the
11 trajectory of the flank wound?

12 A. Well, it would be consistent with either somebody
13 sitting or lying on the ground shooting upward, and a standing
14 person or person laying on the ground and a standing person
15 shooting down.

16 Q. Okay. When you recovered the two bullets from
17 Mr. Stephens' body what did you do with them?

18 A. I placed them into evidence tubes, identified them.
19 The bullet from the flank wound that ended up under the front
20 portion of the chest between the ribs, I identified it as
21 bullet one, and the bullet that we recovered from his brain as
22 bullet two. Placed them into separate tubes and then were
23 given to the Anderson County Sheriff's Deputies to transport
24 to SLED for examination.

25 Q. Did you note in your examinations what kind of

1 caliber of bullet it was?

2 A. These were medium to large caliber bullets. They
3 were copper clad lead bullets, meaning they had a copper
4 jacket around the lead projectile.

5 Q. Okay. In your expert opinion what was the cause of
6 Robert Paul Stephens' death?

7 A. The gunshot wound to his head.

8 Q. What about the gunshot wound to his back; would it
9 have been a fatal shot had it been fired alone?

10 A. Yes. It had the potential to be fatal.

11 Q. Okay. And how so?

12 A. It tore a large hole in the heart. It tore a large
13 hole in the liver. The injury to the liver would be
14 non repairable even if it had happened in the hospital
15 emergency room.

16 Q. Okay. In your expert opinion, can you tell us which
17 one of those shots came first on this victim?

18 A. The gunshot wound to the head came before the
19 gunshot wound to the flank. When the bullet entered the brain
20 it produced a great deal of bleeding, which meant that there
21 was still substantial or well-maintained blood pressure.

22 After the bullet went through the heart there would
23 be no maintained blood pressure. There would be literally one
24 squeeze of the left side of the heart. There would be no
25 resupplying it from the right side of the heart. So in order

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 to get that bleeding there had to be substantial blood
2 pressure, therefore the heart was intact.

3 Q. So there was blood trauma in the head. You're
4 saying that meant that the shot to the flank that pierced the
5 heart would have had to have been second; is that correct?

6 A. There was bleeding trauma, significant bleeding
7 trauma in the brain. So that shot had to occur when that
8 heart was intact.

9 Q. Okay. And, again, I believe -- just to clarify, as
10 you were pointing out on the diagram, you said that the shot
11 to the head was most consistent with the shooter standing
12 behind the victim shooting at an upward angle; is that
13 correct?

14 A. At a slight upward angle.

15 Q. And what is that most consistent with?

16 A. Someone shorter than the deceased standing somewhere
17 behind him and discharging the weapon.

18 Q. Okay. And what about the shot to the flank?

19 A. Again, if somebody was laying on the ground they
20 could be shooting up, but if somebody was standing above him
21 closer to his feet and just shot from a standing position it
22 would produce that angle.

23 Q. Okay. And in your further examinations of the body
24 did you find any stippling or gunshot residue on the back from
25 the entrance wounds?

1 A. No. There was no stippling or gunshot residue.
2 There was a shirt that covered his body. He had a t-shirt on,
3 which was sent to SLED for evaluation for range of fire. And
4 the clothing can block the other materials that come out of a
5 gun other than the bullet itself that leave signatures on the
6 skin that tell us the proximity of the gun to the individual.
7 But at the back of his head (indicated), at the hairline, that
8 would at most be partially blocked by his hair and we saw no
9 powder or stippling. So a usual handgun would be somewhere
10 between a foot and 18 inches away from the individual at the
11 time it was discharged.

12 Q. A foot and 18 inches?

13 A. Between 12 and 18 inches.

14 MR. BRADLEY: Okay. Nothing further at this time,
15 Your Honor.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. PRUITT:

19 Q. Dr. Woodard, the bruises on the body that you were
20 talking about, were those consistent with, I believe you said
21 hand gripping?

22 A. Yes, sir, grippage injuries. Part of them showed
23 the round finger imprint and part of them were more blocky,
24 like the hand and the fingers gripping and pulling against the
25 skin (indicated).

1 Q. Okay. And so that would be some indication of a
2 struggle or a fight?

3 A. No. They were most consistent with somebody
4 grabbing and perhaps to relocate his position after he was
5 dead or totally incapacitated.

6 Q. Moving him across the ground?

7 A. That would be correct.

8 Q. In terms of time, you indicated you thought that the
9 second shot was the one in the flank. What space of time
10 would there have been between the first shot and the second
11 shot?

12 A. Before he suffered total death from the brain injury
13 that he had he was brain dead from the first shot but his
14 heart and lungs would have continued to have worked. He could
15 have lasted in that condition for multiple minutes, half an
16 hour at the outside. That shot had to occur in that window of
17 time.

18 MR. PRUITT: That's all I have.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. GAMBLE:

22 Q. The second shot, I believe you said, was to the
23 body, the flank shot?

24 A. That's correct.

25 Q. And you sent that shirt to SLED for analysis with

1 regard to stippling or G. S. R.?

2 A. They would look chemically at the shirt. We looked
3 at it visually and didn't see powder but there was blood
4 staining and so it's much better done by a chemical means.

5 Q. Right. And there was no stippling or tattooing on
6 the back shot of the head?

7 A. That's correct.

8 Q. You say a foot to 18 inches. In some cases I've
9 heard as much as 3 feet.

10 A. With a usual handgun it's somewhere between a foot
11 and 18 inches that the stippling and the powder both will no
12 longer be seen. With long barrelled weapons it can be out to
13 3 feet. Obviously, each handgun would have to be tested.
14 Very short barrelled handguns would be closer to a foot.
15 Longer barrelled handguns would be closer to 18 inches.

16 Q. You familiar with a 38 or a 380?

17 A. Yes.

18 Q. They short or long barrel?

19 A. Well, a 38 comes anywhere from a snub nose to an
20 8-inch barrel.

21 Q. Yes, sir. And an 8-inch barrel is a long barrel?

22 A. Right.

23 Q. And it comes everything from revolver to automatic?

24 A. That's right. Semiautomatic handgun, 380 is popular
25 today.

1 Q. So we can't really say what the stippling tattooing
2 or G. S. R. would be from an unknown gun?

3 A. You can make generalities but you can't say
4 specifically without the gun.

5 Q. Right. Would there be if there were somebody
6 standing over this body, right next to it and firing into it?
7 Would that be close enough for tattooing and stippling?

8 A. No. That would -- using your example there with
9 your hand you would be 2, 3 feet away from the person when you
10 shot over them that way.

11 Q. But that's an assumption?

12 A. Well, I'm just -- the example you just showed.

13 MR. GAMBLE: Okay. Thanks, Dr. Woodard.

14 THE COURT: Any redirect?

15 MR. BRADLEY: No, Your Honor.

16 THE COURT: All right. Thank you, Dr. Woodard. You
17 can step down.

18 MR. BRADLEY: Can he be excused?

19 MR. GAMBLE: No objection.

20 MR. PRUITT: No objection.

21 THE COURT: Without objection. He's excused.

22 MR. BRADLEY: Your Honor, at this time the State
23 rests.

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to break for today. And, again, thank you very much for

1 your patience. I'm told that my 9 o'clock is going to take
2 about 20 minutes. If you'll be in the jury room by 9:30. If
3 we're a little bit late it's because I'm late getting here,
4 and I apologize for that, but I can't do anything about the
5 meeting. We'll get started soon thereafter and keep moving.

6 Don't talk about the case. Don't read, listen to or
7 watch anything that might be publicity. Have a good night.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 6:05 p.m.)

10 THE COURT: All right. Tomorrow morning at 9:30
11 I'll let you make any motions, so if you want to think about
12 it tonight and get it together.

13 MR. GAMBLE: I won't be entitled to make a motion.

14 THE COURT: Well, any motions you all might want to
15 make. And I guess you can tell me what your plans are
16 tomorrow, regarding witnesses.

17 MR. GAMBLE: I have one, two, three, four potential
18 witnesses, not counting the defendant, and we haven't decided
19 on that yet. But I've talked with him briefly about it, with
20 regard to his Fifth Amendment Rights.

21 THE COURT: Okay. Yeah, and I'll question them
22 tomorrow, depending on whether or not they want to testify.
23 We'll go through all that. All right. Thanks.

24 MR. FRUITT: We'd have three or four, not including
25 the defendant.

1 THE COURT: Okay. If you know tomorrow morning
2 first thing whether or not they are going to testify I can go
3 through that colloquy and we can get it out of the way.

4 MR. GAMBLE: I'm going to knock off the archbishop
5 for Columbus, Ohio.

6 THE COURT: Thank you, as much as I was looking
7 forward to it.

8 All right. Thanks. See you all tomorrow morning.

9 (WHEREUPON, the trial of this case was recessed for
10 the day.)

11 FRIDAY, MAY 15, 2009

12 THE COURT: Before we bring them in, are there any
13 motions we need to take up?

14 MR. PRUITT: Your Honor, on behalf of Frances Moore
15 we'd move for a directed verdict. Considering all the
16 evidence in the light most favorable to the State I don't
17 believe that they've made a sufficient case to send this on to
18 the jury, especially on the conspiracy part, and don't believe
19 they have either on the murder or the possession of a firearm.

20 THE COURT: Yes, ma'am.

21 MS. HOGAN: Your Honor, if it please the Court. If
22 there's any direct or circumstantial evidence reasonably
23 tending to prove the guilt of the accused it should go to the
24 jury. We believe we've furnished plenty of evidence in this
25 case, plenty of good circumstantial evidence, Your Honor.

1 As far as the conspiracy goes, we believe we made
2 some independent evidence of the conspiracy. We've got -- we
3 know that she has a reason to conspire. We know that she and
4 Garvin were friends. We know that there was a positive I. D.
5 of her at the phone. We've got evidence in that Garvin said
6 he was calling from the pay phone.

7 So we've got them together at the pay phone. We've
8 got -- they are the ones at the pay phone in that white RAV4.
9 We've got them leaving the scene of the crime. We have
10 testimony that she wanted him dead the day of the murder from
11 an officer with the Anderson Police Department.

12 We believe that with all that taken into
13 consideration that there is enough to go forward to the jury,
14 Your Honor. We're concerned with the existence or
15 nonexistence not the weight of evidence in the case but we
16 believe that there's enough to go to the jury, Your Honor.

17 THE COURT: I understand the motion. I'm going to
18 deny the motion for directed verdict based upon the evidence
19 presented so far.

20 Mr. Gamble, any motions on your part?

21 MR. GAMBLE: I wouldn't be entitled to it, Your
22 Honor. I introduced evidence in the State's case.

23 THE COURT: All right.

24 MR. GAMBLE: You want to go into the fifth with him
25 at this time or not?

1 THE COURT: Let's wait.

2 MR. GAMBLE: Do it later?

3 THE COURT: Let's do it later.

4 MR. GAMBLE: All right.

5 THE COURT: Sorry.

6 MR. GAMBLE: I'm ready to go then.

7 THE COURT: Okay. Bring them in.

8 You're going first, right?

9 MR. GAMBLE: I'm going first.

10 THE COURT: Any objection to that?

11 MS. HOGAN: No, sir.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 10:40 a.m.)

14 THE COURT: I know you're getting tired of me
15 apologizing so I just won't do it, but I'm sorry you had to
16 sit there.

17 All right. Ladies and gentlemen, you've heard the
18 State's case. You're now going to hear from the defense.

19 Yes, sir.

20 MR. GAMBLE: I call Kim Hendrix.

21 THE CLERK OF COURT: Ms. Hendrix, if you'd come
22 forward to be sworn, please, ma'am.

23 KIMBERLY DAWN HENDRIX, after having been duly
24 sworn, testified as follows:

25 THE CLERK OF COURT: If you'll go around and have a

KIMBERLY HENDRIX - DIRECT BY MR. GAMBLE

1 seat in the witness chair, please.

2 (The witness was seated in the witness stand.)

3 THE CLERK OF COURT: If you'll state your full name
4 and spell your last name for the record, please.

5 THE WITNESS: Kimberly Dawn Hendrix, H-e-n-d-r-i-x.

6 DIRECT EXAMINATION

7 BY MR. GAMBLE:

8 Q. Kim, I know this is probably your first time in
9 court, is it?

10 A. (Nodded).

11 Q. So it's a spooky place to be on your first visit.
12 I'm getting almost used to it, and I'll just ask you questions
13 and you answer them truthfully.

14 Do you know Mr. Duvall?

15 A. Yes.

16 Q. How do you know him?

17 A. I used -- well, I met him probably about 14 years
18 ago. Him and his wife -- well, deceased wife, Brenda, they
19 took up with my son. That's their poppa. That's my kid's
20 poppa, and that was nanny.

21 Q. And your son's name is?

22 A. .

23 Q. . . . And I had a birthday party in 1999.
24 How old was then?

25 A. That was his fourth birthday.

1 Q. And were you in attendance at the fourth birthday of
2 :?

3 A. Yes, sir.

4 Q. And where was that held?

5 A. Haygood Park in Easley.

6 Q. In Easley at Haygood Park?

7 A. Uh-huh.

8 Q. And what time did you arrive at Haygood Park?

9 A. I'm not sure what time we started it.

10 Q. I know it's ten years ago.

11 A. Yeah.

12 Q. Was the magician--was there a magician at this
13 party?

14 A. Yes, sir.

15 Q. And what was that magician's name?

16 A. Well, John Stansell. He went by J. W.

17 Q. J. W. Stansell?

18 A. Uh-huh.

19 Q. And did he put on a show or was he just there to
20 visit with you?

21 A. He did a magic show.

22 Q. And after the magic show what, if anything, did you
23 all do?

24 A. We had hot dogs and we ate, and he opened presents,
25 and they played on the park -- or played in the park.

- 1 Q. And were you there the whole time?
- 2 A. Yes, sir.
- 3 Q. Were you there until the party broke up?
- 4 A. Yes, sir.
- 5 Q. Did you help load up the party?
- 6 A. Yes, sir.
- 7 Q. And did you see Mr. J. W. Stansell during this time?
- 8 A. Yeah, he was there.
- 9 Q. He was there?
- 10 A. Uh-huh.
- 11 Q. Was Garvin Duvall there, too?
- 12 A. Yes, sir.
- 13 Q. At any time during this party did Mr. Duvall and
- 14 Mr. Stansell leave?
- 15 A. No.
- 16 Q. They did not?
- 17 A. No, they did not.
- 18 Q. You saw them throughout the entire party?
- 19 A. Yes, sir.
- 20 Q. Did you furnish -- you had hot dogs. Now, I'm going
- 21 to assume you had cold drinks?
- 22 A. Uh-huh.
- 23 Q. Coca-Cola, Sprite, something like that?
- 24 A. Yes.
- 25 Q. And what brought your attention to the fact that

1 Mr. Stansell, Reverend Dr. Stansell and Mr. Duvall were there
2 that whole time? Why do you remember that?

3 A. Well, I just know how much Brandon meant to Brenda
4 and Garvin, and he wouldn't have left anyway. I mean, because
5 we were all involved in giving the party.

6 Q. Yeah.

7 A. And he was Garvin's world.

8 Q. And they were the apple of each other's eyes?

9 A. Uh-huh.

10 Q. All right, ma'am. Now, is that about all you know
11 about this situation, was on the 27th day of June Garvin,
12 Mr. Duvall did not leave?

13 A. No.

14 Q. And go anywhere during that party?

15 A. No.

16 MR. GAMBLE: Thank you, ma'am. The State will now
17 ask you questions, I assume.

18 MR. BRADLEY: Thank you. May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BRADLEY:

22 Q. Ms. Hendrix, you said you've known Mr. Duvall for 14
23 years; is that correct?

24 A. Yes.

25 Q. And during that 14 years you all have gotten to know

1 each other pretty well?

2 A. Yes.

3 Q. And your son, you said, they were the apple of each
4 other's eyes, they were very close?

5 A. Yes.

6 Q. So if anything were to happen to Mr. Duvall you and
7 your son would be affected tremendously; is that correct?

8 A. Yes.

9 Q. So since he means so much to you and your son you'd
10 probably be willing to do about anything to help him out; is
11 that right?

12 A. I wouldn't lie.

13 Q. Going to the birthday party on June 27th, 1999, that
14 was for your son, ; is that correct?

15 A. Yes.

16 Q. And you said Mr. Stansell was there at the party; is
17 that right?

18 A. Yes.

19 Q. How many people were at the party, total?

20 A. Probably a rough estimate I'd say about 20, 25,
21 maybe.

22 Q. Would you say that's a lot of people?

23 A. Uh-huh.

24 Q. Okay. And you being the mother of the son whose
25 birthday it was, son whose birthday it was, throwing the party

1 I'm sure you were pretty busy during this time; is that right?

2 A. We all were.

3 Q. Getting the drinks out, getting the food out,
4 arranging the presents, making sure your son was having a good
5 time?

6 A. We had lots of hands.

7 Q. You were focussed on though. It was his
8 birthday, right?

9 A. Yes.

10 Q. Did you keep your eyes on Garvin Duvall and John
11 Stansell the whole entire time or more so on ?

12 A. No.

13 Q. No what?

14 A. I mean, I didn't see him -- or watch over him the
15 whole time.

16 Q. Okay. So there was times when you didn't see him
17 and he could have slipped off?

18 A. No.

19 Q. But you didn't have your eye on him the whole time,
20 so you don't know, right?

21 A. No. I didn't have my eye on him the whole time but
22 we were all right there under a shed.

23 Q. And you said that was Garvin's world and he
24 wouldn't leave?

25 A. Uh-huh.

1 Q. But that's just a statement of your opinion of he
2 wouldn't leave; is that right? It's just an opinion. It's
3 not a fact.

4 A. I guess.

5 Q. Okay. But you would agree there was a lot of people
6 there, your son was having a good time, you were focussed on
7 your son having a good time so you did not focus on Stansell
8 and Garvin the entire time; is that right?

9 A. Not the entire time but they didn't leave. Garvin
10 did not leave.

11 Q. But if you didn't have your eye on him the whole
12 time how can you be so sure?

13 A. Because you're all right there together. There's no
14 time that he could have slipped away or been gone for any
15 period of time. The car -- his truck was parked right near
16 us. He couldn't have left. We would have seen him leave.

17 MR. BRADLEY: Nothing further, Your Honor.

18 THE COURT: Redirect?

19 MR. GAMBLE: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. GAMBLE:

22 Q. How many adults were at the party? I know it was
23 your son's fourth birthday but --

24 A. Mainly all the grandparents, and I'd say maybe 15,
25 if that. I mean, it has been 10 years.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. Yeah, I know it's been 10 years. All right. Thank
2 you, ma'am.

3 MR. PRUITT: No questions.

4 THE COURT: Thank you, ma'am. You can step down.

5 MR. GAMBLE: I call Sam Hendrix.

6 SAMUEL LEE HENDRIX, after having been duly
7 sworn, testified as follows:

8 THE CLERK OF COURT: If you'll go up and have a seat
9 in the witness chair, please, sir.

10 (The witness was seated in the witness stand.)

11 THE CLERK OF COURT: If you'll state your full name
12 and spell your last name for the record, please.

13 THE WITNESS: Samuel Lee Hendrix, H-e-n-d-r-i-x.

14 DIRECT EXAMINATION

15 BY MR. GAMBLE:

16 Q. Sam, are you related to Kim?

17 A. Not related, no. Not related. I'm married to her.

18 Q. Well, that's kind of like it.

19 A. It that related?

20 Q. Yeah. I'm going to use that on my wife.

21 [LAUGHTER]

22 Well, let's get serious now. Where were you June
23 the 27th, 1999?

24 A. Haygood Park, Easley.

25 Q. What were you doing at Haygood Park in Easley on

1 June the 27th, 1999?

2 A. Attending my son's birthday party.

3 Q. How old was your son?

4 A. Four years old.

5 Q. What's his name?

6 A.

7 Q. And I believe it's been testified to that several
8 people were invited, among those was Garvin Duvall?

9 A. Yes, sir.

10 Q. Why was Garvin Duvall invited?

11 A. He was helping us with the party.

12 Q. What do you mean helping with the party?

13 A. Well, we arranged everything. We all got together
14 and took them money to go buy hot dogs and drinks and whatnot.
15 He also set up the magician show.

16 Q. Okay. That's where I was going to just then. I
17 believe the right Reverend Dr. Stansell put on the magician
18 show?

19 A. Yes, sir.

20 Q. And was that at the beginning of the party, the
21 middle or the end of the party?

22 A. I think around about middle.

23 Q. About the middle?

24 A. I would say. It's hard to really remember exactly
25 when.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. Back then was he as big as he is now?

2 A. A little bit smaller.

3 Q. He was a little bit smaller? About 50 pounds or so?

4 A. About 50 pounds or so, yes.

5 Q. And what was Garvin doing during the party?

6 A. He was just talking amongst us. I mean, he was
7 helping with drinks and just mingling.

8 Q. Okay. And was he there during the entire time of
9 this party?

10 A. Yes, sir.

11 Q. How do you know?

12 A. I seen him there. I would have heard his trunk
13 crank up if he would have left.

14 Q. I beg your pardon?

15 A. I would have heard his truck crank.

16 Q. You would have heard his truck crank?

17 A. Yes, sir. He has a pretty loud truck.

18 Q. Loud muffler?

19 A. Yes, sir.

20 Q. Is that the black truck?

21 A. Yes, sir.

22 Q. V-8?

23 A. Yes, sir, strong V-8.

24 Q. Strong V-8?

25 A. Strong V-8.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

- 1 Q. So you would have heard it crank?
- 2 A. Yes, sir.
- 3 Q. Where was it parked, near the --
- 4 A. It was near the shed where we was at.
- 5 Q. And it didn't crank up?
- 6 A. No, sir, not until we left.
- 7 Q. And when did you leave?
- 8 A. After the party was over. I don't really remember
- 9 time.
- 10 Q. Would have been in June. Would it have been near
- 11 sundown?
- 12 A. Yes, sir, evening.
- 13 Q. Evening?
- 14 A. Evening.
- 15 Q. Who helped you load up the stuff when you started
- 16 leaving the party?
- 17 A. Me, Kim, Garvin, our son.
- 18 Q. I'm sure . was a big help?
- 19 A. He was a little bit of a help. Just whoever else
- 20 pitched in a hand. I really don't recall. I remember we did
- 21 pile a lot of stuff in the back of Garvin's truck like the
- 22 coolers, the excess drinks, the decorations.
- 23 Q. And to your knowledge, about how many adults were
- 24 there? Give an estimate.
- 25 A. About 10 to 12 adults.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. Grandparents from both sides there?

2 A. No. My parents was not there, no.

3 Q. Garvin Duvall was there?

4 A. Yes, sir.

5 Q. Was his wife there, Brenda?

6 A. Yes, sir.

7 Q. Did Mr. Stansell bring his wife? I'm talking about

8 J. W.

9 A. I think his son was there. I don't recall his wife.

10 Q. Okay. Have you ever seen this book that's been

11 introduced as State's Exhibit something, 33?

12 A. No, I haven't.

13 Q. This might refresh your memory. Flip through these

14 pages. That has to do -- what does that have to do with? If

15 you open it up you can see.

16 A. 's birthday party.

17 Q. Okay.

18 A. Okay. That's Jan there, isn't it?

19 Q. Sir?

20 A. Jan was there, wasn't she?

21 Q. January?

22 A. His wife. J. W.'s wife.

23 Q. Yeah.

24 [PAUSE]

25 I believe that's all of the photographs. Does that

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 help you refresh your memory as to how many people were in
2 attendance, adults were in attendance at the party?

3 A. Yes, sir.

4 Q. About how many were there?

5 A. About 8.

6 Q. Eight?

7 A. About 8 adults.

8 Q. And so during that time did you ever miss Garvin
9 Duvall being at the party?

10 A. No, sir.

11 Q. Did you ever miss J. W. Stansell, the Reverend
12 Dr. J. W. Stansell being gone from the party?

13 A. No, sir.

14 Q. To your knowledge were Garvin Duvall and J. W.
15 Stansell both at the party during the entire duration of the
16 party?

17 A. Yes, sir, they was.

18 Q. And as you said, if he'd of cranked that truck you'd
19 of known it, wouldn't you?

20 A. Yes, sir.

21 MR. GAMBLE: Answer any questions the State wants to
22 ask you.

23 CROSS-EXAMINATION

24 BY MR. BRADLEY:

25 Q. Mr. Hendrix?

1 A. Yes, sir.

2 Q. How well did you know Garvin?

3 A. Pretty good, became friends.

4 Q. How long have you know him?

5 A. About 14 years.

6 Q. Same amount of time?

7 A. Yes, sir.

8 Q. You pretty close to him?

9 A. We're pretty close.

10 Q. Your son is real close to him; is that right?

11 A. Yes, sir.

12 Q. And what does he call him?

13 A. Poppa.

14 Q. Again, so if anything were to happen to Garvin your
15 son would be pretty affected by it?

16 A. He would be hurt, yes.

17 Q. So you told us that you were there the entire time,
18 and you say that Garvin was there the entire time, and you say
19 Stansell was there the entire time but then basically every
20 other word in your testimony was I don't recall or I don't
21 remember. I mean, this was 10 years ago and you obviously say
22 you don't recall and don't remember a lot of things. How can
23 you be so sure about these few little things?

24 A. Well, I would have heard Garvin's truck crank up and
25 leave, and the road above the park was right there at us, to

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 leave the park. I mean, I would have seen his truck leave and
2 I would have heard it leave.

3 Q. But you don't -- again, there's several things that
4 Mr. Gamble asked you that you said you didn't remember; is
5 that right?

6 A. That's right. I mean, it's been 10 years ago and my
7 memory is not good.

8 Q. Right. And did you ever tell anybody this
9 information you had? Have you ever come forward and told
10 anybody this? Is this the first time you've told somebody?

11 A. Yes. The first time I spoke of it, yes.

12 Q. And, again, this was your son's birthday party you
13 were at, right?

14 A. Yes, sir.

15 Q. And you were pretty focussed on him having a good
16 time, right?

17 A. I was focussed on everybody, as far as keeping track
18 of all the kids, make sure nobody was running off, make sure
19 nobody was leaving the party, make sure everybody was having a
20 good time. So, yes, I was mingling with everybody.

21 Q. How many kids were there?

22 A. About 15 kids.

23 Q. That's a lot of kids, right?

24 A. It was.

25 Q. And how were the age ranges, what were they?

1 A. I'm not really certain. My child was 4. They was
2 all about the same age, maybe a little bit older.

3 Q. That's a lot of 4 year olds, wild rambunctious 4
4 year olds.

5 A. Yes, sir.

6 Q. Probably playing and having a good time and cutting
7 up?

8 A. Yes, sir.

9 Q. On the playground swinging, monkey bars, whatever
10 was there?

11 A. Yes, sir.

12 Q. So you were focused on keeping them in order and
13 making sure these kids didn't go anywhere; is that right?

14 A. Yes, sir.

15 Q. So you couldn't of had your eye on Garvin Duvall or
16 John Stansell the whole time; is that right?

17 A. Right.

18 MR. BRADLEY: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. GAMBLE: No, sir, I don't have any redirect.

21 THE COURT: Anything?

22 MR. PRUITT: No, sir. No questions.

23 THE COURT: You can step down.

24 MR. GAMBLE: Ralph Stansell.

25 BILLY RALPH STANSELL, SR., after having been

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 duly sworn, testified as follows:

2 THE CLERK OF COURT: If you'll go around to the
3 witness stand and have a seat, sir.

4 (The witness was seated in the witness stand.)

5 THE CLERK OF COURT: If you'll state your full and
6 spell your last name for the record, please.

7 THE WITNESS: My name is Billy Ralph Stansell,
8 S-t-a-n-s-e-l-l, Sr.

9 DIRECT EXAMINATION

10 BY MR. GAMBLE:

11 Q. Where do you live, Mr. Stansell?

12 A. I live Street, Easley.

13 Q. Easley?

14 A. Yes, sir.

15 Q. And were you living there in June of 1999?

16 A. That's correct.

17 Q. Recall your attention to June the 30th, 1999. Did
18 you receive a phone call on that day from either -- let me put
19 it in another way. What's your daughter's -- was your
20 daughter's name?

21 A. My daughter was Brenda Duvall. That is my
22 stepdaughter, Peggy's daughter, my wife's daughter.

23 Q. Right. And she was married to whom?

24 A. Garvin Duvall.

25 Q. All right. Did you receive a phone call on the

1 afternoon, late afternoon of the 30th of June 1999?

2 A. That's when we was sitting on the front porch, yes,
3 sir.

4 Q. Who called you?

5 A. Didn't call me, but my wife was taking a message. I
6 was just -- you know, we had it on speaker phone and I was on
7 the other end of it on the front porch rocking, and they had
8 told about what happened.

9 Q. To?

10 A. Peggy, my wife, my deceased wife.

11 Q. Right. Now, Brenda, Peggy's daughter, is deceased,
12 isn't she?

13 A. Yes.

14 Q. Died in '06?

15 A. Sir?

16 Q. Died in 2006?

17 A. I think so, yes, sir.

18 Q. Your wife died about 2 months ago, I believe?

19 A. Yes, sir.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. So did you learn from that phone call that someone
23 had been killed?

24 A. Yes, sir.

25 Q. And was that someone a Mr. Stephens, Paul Stephens?

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 A. Yes, sir. They had said Paul had been murdered.

2 That's all I recall from what was said.

3 Q. Before that phone call did you have an occasion to
4 see Brenda and Garvin Duvall?

5 A. Yes. I do a lot of mission work overseas and I
6 take --

7 Q. What kind of mission work?

8 A. A lot of mission work.

9 Q. What kind of mission?

10 A. Pardon?

11 Q. What mission?

12 A. Volunteer mission, building chapels in foreign
13 countries. And I always come home early and spend a little
14 time with my family. It was about 2 o'clock when I came in
15 and we was on the front porch, all of us, my wife, Peggy,
16 Brenda and Garvin Duvall. And they left about somewhere
17 around 4:30, and they are the ones that called back and told
18 us what happened. They was on the front porch supposedly when
19 this happened.

20 Q. Let me clear one more thing. I know your last name
21 is Stansell. Are you any relation to J. W., the Reverend
22 J. W. Stansell, Junior?

23 A. Definitely not. Thank the Lord.

24 Q. Thank you, sir. And what church is it that you go
25 on these mission trips with?

1 A. Different churches, but Brushy Creek Baptist is one
2 we usually do, my church.

3 Q. Is that the one that just burned?

4 A. No, sir, that was in Greer. Taylors, rather.

5 Q. All right. And where were you going on this mission
6 trip?

7 A. To Brazil.

8 Q. Brazil?

9 A. Yes, sir.

10 Q. What part, do you know?

11 A. I'm not sure. We always land in San Paulo and we go
12 to different places. My 54th trip, so I don't remember all of
13 them.

14 Q. Fifty-four mission trips?

15 A. Yes, sir, to Brazil only.

16 Q. And what's your occupation?

17 A. I'm a builder, building 40 years. I'm semi-retired
18 now.

19 Q. All right, sir. Now, is there any doubt whatsoever
20 in your mind that you, your wife, Brenda Duvall and Garvin
21 Duvall were sitting on your front porch on June 30th, 1999?

22 A. I swear before God they was there, and I wouldn't
23 lie for nobody because all liars will not enter into Heaven,
24 and I'm going to Heaven, and it ain't going to be long either,
25 as old as I am.

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 Q. You ain't old as I am. All right, sir. And you
2 knew it was that date because Brenda called back and talked to
3 your wife?

4 A. That is true, sir.

5 MR. GAMBLE: All right. Thank you. Answer any
6 questions the State has.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. HOGAN:

10 Q. Mr. Stansell?

11 A. Yes, ma'am.

12 Q. Where were you working back in 1999?

13 A. The exact place, I'm not sure. I do little jobs all
14 over Dacusville and Easley, and I'm not sure of the exact spot
15 I was at that day, but I always spend some time, like I say,
16 before I go on a mission trip in the afternoon with my family,
17 and we usually rock on the front porch. That's what old
18 people do.

19 Q. Okay. And you can't remember exactly where you were
20 working in 1999 but you can remember exactly what you were
21 doing on June 30th 1999?

22 A. That is true because I know where I was at, on the
23 front porch, yeah.

24 Q. But you can't remember where you were working that
25 day?

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 A. No, because I work all over the place.

2 Q. Okay. So isn't it true that you worked that day --

3 A. Yes. That is true. I work every day almost.

4 Q. You worked that day. And did you work until 4:30
5 that day?

6 A. No. I worked until about 2 o'clock. I came home
7 about 2 o'clock because I spend time with my family before I
8 go on a mission trip, the last couple of days before I go. So
9 we was sitting on the front porch.

10 Q. Okay. Isn't it true that your wife, Peggy, and
11 daughter, Brenda, said that you got home later that day?

12 A. I don't know what they said. I got home later that
13 day --

14 Q. About 4:30?

15 A. It was around 2 o'clock when I got home.

16 Q. Okay. But they said that you got home later that
17 day.

18 A. I don't know what they said.

19 Q. Okay.

20 A. They are not here to answer that. I wish they was
21 and then I wouldn't be here.

22 Q. Okay. Have you spoken to anybody about this before
23 today?

24 A. No. No.

25 Q. You never spoke to law enforcement to tell them

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 this?

2 A. No. They come by and left a card. They wouldn't
3 even talk to me, so I don't know.

4 Q. But you didn't feel like you needed to go to them --

5 A. No, uh-uh.

6 Q. -- with this important thing, that you had this
7 alibi for Mr. Duvall? You didn't feel like it was --

8 A. I didn't have no alibi. I didn't need one because I
9 wasn't a witness. My wife was a witness at that time.

10 Q. Right.

11 A. She's deceased now and I'm trying to fill in her
12 shoes.

13 Q. Right. Right. But three alibis are better than
14 two. So you didn't feel like you needed to go to the
15 detectives and tell them --

16 A. No, because I don't like courtrooms. Most of the
17 time I'm standing in front of the Judge. If you check my past
18 you'll find that out. Since 1981 I'm standing before the main
19 judge, and that's Christ, my savior, and my words is my bond.
20 But back then I was sorry as J. W. was, probably, but I don't
21 look back to that. I look to the future.

22 Q. Okay.

23 A. But you can check my record from 1981.

24 Q. Okay. I don't need to do that.

25 A. And my word is my bond.

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 Q. Okay. So when Mr. Duvall got arrested in 2006 you
2 didn't feel like you needed to go speak to investigators then
3 either?

4 A. No. I was waiting for them to come see me but sorry
5 to say they didn't. They left a card in the door. That's
6 about all they did.

7 Q. Okay. And when they left the card in the door did
8 you call the number that they had provided you?

9 A. No.

10 Q. So after they tried to contact you, you didn't try
11 to get back in contact with them?

12 A. No.

13 Q. Okay. To tell that you had this alibi witness
14 for --

15 A. No, I wasn't stepping up forward because if they
16 wanted to see me they knew where I lived.

17 Q. I'm curious about the record you're referring to
18 from 1981. What are you referring to?

19 A. 1981 I made it right with the Lord, my savior.

20 Q. Uh-huh.

21 A. He come into my heart, and I live for him. And
22 anybody knows me now knows that he's my savior.

23 Q. And you did that in 1981? That's what you're
24 referring to?

25 A. 1981. April the 5th, as a matter of fact, because

BILLY RALPH STANSELL - REDIRECT BY MR. GAMBLE

1 it cost me a lung for God to get my attention.

2 MS. HOGAN: Okay. Nothing further, Your Honor.

3 THE COURT: Anything?

4 REDIRECT-EXAMINATION

5 BY MR. GAMBLE:

6 Q. Mr. Stansell, she was asking you about your job in
7 1999. You are self employed?

8 A. Yes, sir.

9 Q. And you do work for many people?

10 A. Many people, yes, sir.

11 Q. So 10 years ago you don't know who these people
12 were, do you?

13 A. I doubt if I could -- I could bring them up
14 somewhere but it would be among 10 or 15 people because I do a
15 lot of smaller jobs for people.

16 Q. Yes, sir, patios, that kind of thing?

17 A. Yes, sir.

18 Q. Decks?

19 A. Yes, sir.

20 MR. GAMBLE: All right. Thank you.

21 MR. PRUITT: No questions.

22 THE COURT: All right, sir. You can step down.

23 Thank you.

24 MR. GAMBLE: The Duvall defense rests, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, I need

1 to send you out of the courtroom for about 10 minutes. Please
2 don't discuss the case, and I'll bring you back in in a few
3 minutes.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 11:11 a.m.)

6 MR. GAMBLE: Your Honor, I discussed with --

7 THE COURT: Come on up, Mr. Duvall.

8 MR. GAMBLE: I have discussed with my client,
9 Mr. Duvall, his rights under the 5th Amendment to testify or
10 not to testify. I've advised him that by saying he's not
11 guilty has put the burden of proof on to the State and that we
12 have presented the witnesses that were alibi witnesses, as
13 well as you might say supporting witnesses with regard to
14 Stansell's claim that he went off with him, and it's his
15 decision along with my advice not to take the stand and to
16 leave it as not guilty as you've saw it.

17 THE COURT: Mr. Duvall, if you would, I need to
18 swear you in.

19 GARVIN DUVALL, after having been duly sworn,
20 testified as follows:

21 THE COURT: Now, at this point in the trial you have
22 a right to testify; do you understand that?

23 DEFENDANT DUVALL: Yes, sir.

24 THE COURT: You understand the 5th Amendment
25 provided that you can't be compelled to testify against

1 yourself?

2 DEFENDANT DUVALL: Yes, sir.

3 THE COURT: Your lawyer is telling me that you all
4 talked about it. Do you have any questions for your lawyer
5 now?

6 DEFENDANT DUVALL: No, sir.

7 THE COURT: Do you understand that you have to make
8 this decision yourself, freely and voluntarily?

9 DEFENDANT DUVALL: Yes, sir.

10 THE COURT: All right. Do you understand that if
11 you did testify you'd be subject to cross-examination? If you
12 don't testify I'll instruct the jury that they can't hold that
13 against you; do you understand that?

14 DEFENDANT DUVALL: Yes, sir.

15 THE COURT: Do you have any questions for me at this
16 time?

17 DEFENDANT DUVALL: No, sir.

18 THE COURT: Anything else?

19 MR. GAMBLE: No, sir.

20 THE COURT: Okay. Thank you, sir.

21 You can bring them back in.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 11:18 p.m.)

24 THE COURT: Ladies and gentlemen, you've heard the
25 testimony that you're going to hear in the defense of

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Mr. Duvall. Now we'll move to Ms. Moore.

2 Yes, sir.

3 MR. PRUITT: I call Nathan Moore to the stand.

4 THE CLERK OF COURT: Mr. Moore, if you would come
5 around and be sworn, please.

6 NATHAN EDDIE MOORE, after having been duly
7 sworn, testified as follows:

8 THE CLERK OF COURT: Go right up there and have a
9 seat in the witness chair.

10 (The witness was seated in the witness stand.)

11 THE CLERK OF COURT: If you'll state your full name
12 and spell your last name for the record.

13 THE WITNESS: Nathan Eddie Moore, M-o-o-r-e.

14 DIRECT EXAMINATION

15 BY MR. PRUITT:

16 Q. All right. Mr. Moore, now, you got a soft voice so
17 you're going to have to speak up so these ladies and gentlemen
18 on the jury can hear you.

19 A. All right.

20 Q. They probably can hear me. I've been accused of
21 having a loud voice, but you're going to have to speak up.

22 A. Okay.

23 Q. Now, tell the ladies and gentlemen of the jury how
24 you are related to Frances Moore.

25 A. Frances Moore is my wife.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. And how long have you all been married?

2 A. We've been married 40 years.

3 Q. All right, sir. How long have you -- where do you
4 presently live?

5 A. We live at That's the old
6 . . . coming from Easley into Liberty.

7 Q. All right, sir. And how long have you lived at that
8 location?

9 A. Over 20 years.

10 Q. Yes, sir. Now, at that location does Debra Stephens
11 -- how are you related to Debra Stephens?

12 A. Debra Stephens is my stepdaughter.

13 Q. All right. And where does she live, at this time?

14 A. She lives right next door.

15 Q. All right. Does she live in a mobile home that's
16 next door?

17 A. That's right.

18 Q. All right. Now, where was she living back in June
19 of 1999?

20 A. June of 1999 she was at the trailer. She was living
21 at the trailer.

22 Q. Right next door?

23 A. Yeah, right next door.

24 Q. Now, do you recall the day of June 30, 1999?

25 A. Yes, I do.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. How is it that you're able to recall that day?

2 A. It was a special day. I got off work. I went to --
3 had to go to work, you know, and that was the day Paul
4 Stephens died.

5 Q. Okay. Now your voice is getting low.

6 A. I'm sorry.

7 Q. You're going to have to speak up.

8 Now, Mr. Moore, if you would, tell me where you were
9 working on June 30th, 1999.

10 A. I was working at Blair Mills.

11 Q. All right. And what shift were you on?

12 A. I was on the second shift.

13 Q. And what were the hours of the second shift at Blair
14 Mills?

15 A. Was from 3 o'clock until 11 o'clock.

16 Q. All right. Now, taking you back to that day, what's
17 the first thing that you remember happening on that day after
18 you got up, or whatever?

19 A. Well, after I got up and got dressed for work, and I
20 just -- I had to leave. I had a timeline. I knew how long it
21 took me to drive it and all that. So my wife was fixing my
22 lunch and everything and I was ready, you know. She knew
23 exactly what time I had to leave to get there.

24 Q. All right. Now, is your wife, Frances Moore, the
25 one that's seated at the center table here?

NATHAN MOORE - DIRECT BY MR. PRUITT

1 A. Certainly is.

2 Q. So was that day like any other day that you were
3 going to work?

4 A. Yes. Yes, it was, like any day.

5 Q. So tell me what you remember about where Frances
6 was, starting whenever you first remember her that day.

7 A. Well, I work the second shift, so I got a habit of
8 sleeping late, late. Later than average.

9 Q. All right. What time did you get up, as best you
10 recall?

11 A. About 11 o'clock.

12 Q. All right. And what happened next that day?

13 A. Well, I ate. I always get up hungry. I ate. And I
14 had to be to work at 3:00 so I took my shower and started
15 getting ready for work, and she started fixing my lunch.

16 Q. All right. Where had Frances and Debra been that
17 day?

18 A. I don't recall. I don't recall.

19 Q. Okay. When did you leave to go to work?

20 A. I left about 25 minutes after 2:00, or 30 minutes
21 after. Something like that.

22 Q. And was Frances Moore there with you at that time?

23 A. Yes, she was.

24 Q. And preceding the time that you left to go to work
25 what had Frances been doing?

NATHAN MOORE - DIRECT BY MR. PRUITT

1 A. She had just been cleaning up the house and
2 straightening up, being a good housewife.

3 Q. All right. Now, was that the last time that you saw
4 her before you went to work?

5 A. Yeah.

6 Q. At 2:30?

7 A. Yes. Yes.

8 Q. What happened next that day? What's your next
9 remembrance of that day?

10 A. Well, I was at work. I was a mechanic. And I was
11 sitting in the shop with the shift supervisor. We were
12 talking. The phone rang and my wife was upset. She was
13 crying. She told me to -- she said you better come home,
14 Nathan, something terrible is wrong -- has went wrong, and not
15 to drive fast, you know, because it wouldn't do any good to
16 drive fast, but just to come home. Said I need you here at
17 home with me.

18 Q. And about what time was that?

19 A. That was about 5:30ish, 6 o'clock. Something like
20 that.

21 Q. And as a result of that phone call what did you do?

22 A. Well, just so happened I was sitting in the shop
23 with my supervisor, and she is a lady supervisor. She
24 overheard me telling my wife that I wouldn't drive fast, you
25 know. I'd drive safe, you know, and I'd come home. And I

1 told him -- or her, and she said, I overheard your part of it
2 and something bad is wrong, or happened at home so you go
3 punch out and you go on home, and you drive careful and take
4 it easy and don't get hurt yourself.

5 Q. All right. So as a result of this phone call you
6 left and returned to your home?

7 A. Yes.

8 Q. And when you got home who was there?

9 A. My wife, and my daughter, and my grandson.

10 Q. Is your grandson . . . ?

11 A. Yes. . . is my grandson.

12 Q. Is he the child of Paul Stephens and Debra Stephens?

13 A. Yes, he is.

14 Q. All right. And when you arrived home approximately
15 what time was it?

16 A. It was about 5:30, 6 o'clock.

17 Q. And what did you learn when you arrived home?

18 A. After I got my wife and daughter settled down from
19 crying they had told me that Paul had been shot.

20 Q. All right, sir. Now, what size man was Paul
21 Stephens?

22 A. He was a very large man. He was very tall. He was
23 big all over. He was, I think 6-8, barefooted, and weighed
24 250 pounds or more.

25 Q. All right, sir. Now, are you familiar with your

NATHAN MOORE - DIRECT BY MR. PRUITT

1 wife's -- Frances' size?

2 A. Am I familiar with? Yes.

3 Q. About how tall is she?

4 A. She's about 5-5, 5-4. Something like that.

5 Q. And is she the same size today, more or less, as she
6 was back in 1999?

7 A. No, she's gained just a little weight since then.
8 Just a little (indicated).

9 Q. I don't believe I would have said that.

10 [LAUGHTER]

11 All right. Well, as long as you've gotten into
12 that, how old are you?

13 A. How old am I?

14 Q. Yes, sir.

15 A. Sixty-six.

16 Q. And how old is your wife?

17 A. Uh-oh. Now you got me into a bind. No. She's 60
18 -- I believe she's going to be 62.

19 Q. She'll be 62 on her birthday?

20 A. Yeah, her birthday in May.

21 Q. All right, sir. Now, during the time that -- do you
22 remember where Paul Stephens -- do you remember the general
23 time frame when Paul Stephens and Debra Stephens were living
24 next door to your house there in the trailer?

25 A. Yes.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. All right. Now, did you have any opportunity to see
2 Paul Stephens and your wife, Frances Moore, interact with each
3 other?

4 A. Yes.

5 Q. All right. What could you tell about their
6 relationship to each other?

7 A. Well, when all three of them got together doing
8 something or some kind of project or whatever the case might
9 be it had to be done Paul's way. I mean, he was a demanding
10 person. You know, he was demanding.

11 Q. All right. Did you ever notice any fear of Paul
12 toward Frances?

13 A. No. No.

14 Q. Now, do you remember at some point in time when Paul
15 and Debra separated?

16 A. Yes.

17 Q. All right. Do you remember a time after they
18 separated when they got back together?

19 A. Yes, I remember that.

20 Q. All right. Were they back together in June of 1999?

21 A. Yeah. Yes.

22 MR. PRUITT: Okay. Answer any questions the State
23 may have.

24 CROSS-EXAMINATION

25 BY MR. BRADLEY:

NATHAN MOORE - CROSS BY MR. BRADLEY

1 Q. Mr. Moore, you say you've been married to Frances
2 for 40 years; is that right?

3 A. Forty years.

4 Q. That's a long time, isn't it?

5 A. Yeah. Never been separated for anything.

6 Q. How would you describe your marriage?

7 A. About the best it could be.

8 Q. The best it could be. You all been friends and
9 partners for a long time, haven't you?

10 A. Yes.

11 Q. You'd hate to see for her to go away; is that right?

12 A. Beg your pardon?

13 Q. You would hate to see her go away; is that right?

14 A. Oh, definitely.

15 Q. So you'd be willing to do about anything to keep her
16 from going away; is that right?

17 A. Yeah, just about.

18 Q. You would do anything?

19 A. Except lie.

20 Q. Did you ever talk to law enforcement about this
21 information you've told us today back in 1999?

22 A. No. Actually, I've been left out of the picture
23 completely. I've only been talked with by a Pickens County
24 officer up there and he was just asking me -- they had
25 searched our house and tore it all to pieces, slung stuff

1 everywhere trying to found a weapon, some kind of weapon. I
2 believe officers said it was a 308 or whatever. And that one
3 officer just talked to me and talked to . . . , because
4 was like, I say was 5, just 5 years old, you know.

5 Q. So this information that you've told us today you
6 never came forward and told anybody. You said you've been
7 left out of the loop, left out of the picture but, I mean, if
8 you have this vital information why wouldn't you come out and
9 share it back then?

10 A. Sir, I misunderstood.

11 Q. If you had this vital information why wouldn't you
12 come out and share it back then? You said you were left out
13 of the loop but it looks like you could have gone to them; is
14 that right?

15 A. If I had anything. I didn't have any information.

16 Q. So you don't know exactly what your wife did on June
17 30th, 1999 after you went to work?

18 A. Yes, I know exactly what she did. Yes, I know
19 exactly what she did.

20 Q. How do you know? You just said you don't have any
21 information. How do you know what she did if you don't have
22 any information? You were at work. You weren't with her; is
23 that right?

24 A. Yeah, I was at work and I wasn't with her.

25 Q. So you don't know what she did after you left for

1 work; is that right?

2 A. I've been married to her 40 years. I trust her.

3 Q. But you weren't with her, were you?

4 A. No, I wasn't with her. I was at work.

5 Q. And what time did you leave for work? I believe you
6 said it was --

7 A. 5:30ish.

8 Q. No, when you left for work. You said it was about
9 2:25, somewhere in there.

10 A. Oh, when I left for work. I'm sorry. I
11 misunderstood you. Yes.

12 Q. You left for work about 2:25. And she was there at
13 your house fixing you lunch; is that right?

14 A. What's that?

15 Q. She was fixing you lunch around that time before you
16 left for work?

17 A. I'm sorry. I still haven't understood you. I'm a
18 little bit hard of hearing.

19 Q. I'll get a little bit closer. I apologize. You
20 said you left for work about 2:25 that day; is that right?

21 A. Right.

22 Q. And she was there at the house?

23 A. Yes.

24 Q. When you left for work?

25 A. Yes.

1 Q. But then after 2:25 you really don't know where she
2 was, do you?

3 A. No. She usually if she's going to be going
4 somewhere or something -- she did tell me she was going to get
5 groceries, and which nothing unusual about a housewife going
6 to get groceries for the house. I said okay.

7 Q. I'm curious about something you said in your direct
8 testimony. When you were asked how you remembered June 30th,
9 1999 was it your testimony that it was a special day because
10 Paul Stephens died?

11 A. No, it was a bad day because Paul Stephens died.

12 Q. But you said it was a special day for some reason.

13 A. Well, it wasn't a special day. It was an unusual
14 day. He was my brother-in-law, you know, and him dying.

15 Q. He was your brother-in-law or your son-in-law?

16 A. I mean my son-in-law.

17 Q. I believe it was also your testimony that you don't
18 remember where your wife was the morning of June 30th, 1999
19 either, do you? You don't know where she was before you got
20 up for work, do you?

21 A. She was usually in there cleaning up the house.

22 Q. But I believe you testified you didn't remember
23 where she was that morning; is that correct?

24 A. Well, I mean, I didn't know which room she was in
25 and all that type thing but she was at home.

NATHAN MOORE - CROSS BY MR. BRADLEY

1 Q. She was at home that morning?

2 A. Yes.

3 Q. Is it not true that she went to the Anderson City
4 Police Department that morning with your daughter, your
5 stepdaughter?

6 A. Well, that's after I got up, yeah. Yes.

7 Q. But you just said she was at home.

8 A. Well, while I was asleep she was at home but I was
9 just getting up and they had to go to the police department.

10 Q. It's been 10 years ago, hadn't it?

11 A. Huh?

12 Q. It's been 10 years ago all this happened; is that
13 right?

14 A. Yeah.

15 Q. It's a long time, huh?

16 A. A very long time.

17 Q. Having a tough time remembering things, huh?

18 A. Yeah. When you start wanting to go down to the
19 minute, yeah.

20 Q. How close were you and Paul?

21 A. How close? We were friends. He was my son-in-law.

22 MR. BRADLEY: Nothing further, Your Honor.

23 THE COURT: Anything?

24 MR. PRUITT: (Shook head).

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

1 step down.

2 MR. PRUITT: We call Shirley Wrenn to the stand.

3 SHIRLEY WRENN, after having been duly sworn,
4 testified as follows:

5 THE CLERK OF COURT: Go up and have a seat in the
6 witness chair, please.

7 MR. BRADLEY: Your Honor, I'll have to object to
8 this witness being called at this time. We were never
9 furnished with her name as a witness. At the beginning of the
10 trial he made no mention of her being a witness either.

11 THE COURT: All right. Ladies and gentlemen, I need
12 to send you out for just a few minutes. This will not be a
13 long wait.

14 (WHEREUPON, the jury leaves the courtroom at
15 approximately 11:43 a.m.)

16 THE COURT: Yes, sir?

17 MR. BRADLEY: Again, I would just object to this
18 witness being called at this time. We have no idea who she
19 is. She was never furnished to us as a possible witness or
20 did he make mention of it at the beginning of the trial that
21 she could possibly be a witness. Mr. Pruitt, I believe, only
22 mentioned Debra Stephens, Nathan Moore and at the
23 time, , and we have no idea who this is, Your
24 Honor.

25 THE COURT: Yes, sir?

1 MR. PRUITT: Your Honor, under the discovery rules,
2 which I believe he's talking about, I would only be required
3 to furnish names and witnesses of alibi witnesses, if I were
4 intending to call those.

5 Ms. Wrenn and the next witness, Kacie Whitfield, are
6 relatives of Frances Moore and are going to be presented to
7 tell about their relationship with the family and their
8 ability to observe the demeanor of Frances and Paul. This
9 would be in contrast to the testimony that was presented by
10 three of the State's witnesses over our objection that Paul
11 had said that if he ever got killed Frances should be
12 investigated.

13 They were not present on the day of the event and
14 will not be testifying as to alibi. So I hadn't really
15 planned on calling them when this trial started but you can't
16 figure everything in advance.

17 THE COURT: Okay.

18 MR. BRADLEY: Your Honor, since she was not
19 mentioned at the beginning of the trial to the jury panel they
20 were not polled about their knowledge of her. There may as
21 well be somebody on this jury that knows her in some form or
22 fashion. We would at least like to know that, and also have
23 her information so we could possibly obtain prior record of
24 criminal histories, if there is any.

25 THE COURT: All right. Well, I think they are

1 entitled to the information to see if there's a prior record.
2 Why don't you -- I don't want to do it in open court. Just
3 write it down and let you do what you got to do.

4 MR. PRUITT: And while he's checking, let's have him
5 check the next one, too.

6 THE COURT: What I think I'll do is bring the jury
7 back in and just ask them the names. Go through that to make
8 sure there's not a problem. What are the names of the
9 witnesses that we'll have?

10 MR. PRUITT: The witness that's on the stand is
11 Shirley Wrenn, W-r-e-n-n, and Kacie Whitfield. And that's
12 Kacie over there on the front row.

13 THE COURT: All right, ma'am. Step down for just a
14 minute and I'll bring you back up in just a second. So
15 Shirley Wrenn and Kacie Whitfield?

16 MR. PRUITT: Yes, sir. Your Honor, if I would have
17 known Your Honor was going to let in that testimony I would
18 have said something about it.

19 THE COURT: That's all right. I mean, you know,
20 this stuff comes up. Like you said, you can't anticipate
21 everything.

22 Yeah, bring them back in.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 11:48 a.m.)

25 THE COURT: Ladies and gentlemen, we've got an issue

SHIRLEY WRENN - DIRECT BY MR. PRUITT

1 that's come up that's not unusual but I need to poll you on
2 this. There are two witnesses that may testify that were not
3 on the original witness list. There's a Shirley Wrenn and a
4 Kacie Whitfield. Do any of you have any close business or
5 personal relationship or are you related by blood or marriage
6 to Shirley Wrenn or Kacie Whitfield?

7 (There was no response.)

8 THE COURT: And I'm asking all the jury and no
9 one --

10 Do any of you know them whatsoever?

11 (There was no response.)

12 THE COURT: Okay. Thank you.

13 Your objection is noted. You can call them.

14 Come on back up. I'm sorry about that, Ms. Wrenn.

15 DIRECT EXAMINATION

16 BY MR. PRUITT:

17 Q. Ms. Wrenn, tell me where you live.

18 A. , Greenville, South
19 Carolina. Now I do.

20 Q. And I notice that you are shaking a little bit; why
21 is that?

22 A. I had a stroke, and I have torticollis, a disease in
23 my neck which makes my head shake.

24 Q. I thought maybe it was because you were nervous of
25 me asking you questions.

SHIRLEY WRENN - DIRECT BY MR. PRUITT

1 A. No.

2 Q. How are you related to Frances Moore?

3 A. She's my sister.

4 Q. All right. And is she your younger sister, or older
5 sister, or what?

6 A. Middle.

7 Q. Middle sister. Okay. Now, I want to take you back
8 to June of 1999. Where were you living at that time?

9 A. In Georgia.

10 Q. All right. And previous to June of 1999 did you
11 have occasion to visit in the home of your sister, Frances
12 Moore?

13 A. Yeah. I would come home about every two weeks and
14 I'd go up to Frances' and I'd spend the night. And I just get
15 homesick and I'd come home.

16 Q. Over what time period did you -- how long did you
17 stay on an average visit?

18 A. Sometimes two days, sometimes three.

19 Q. All right. And would you usually stay at Frances'
20 house?

21 A. Yeah, because we would go down and visit my two
22 children, she would go with me.

23 Q. All right. Now, starting approximately when and
24 ending in June of '99, when did this type of visits start more
25 or less? How long had you been doing that?

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 A. Oh, my God. Paul was big. I mean big. I could
2 have probably walked under his arm.

3 Q. All right. And how tall are you?

4 A. I'm probably about 5-5 and a half. I got on heels
5 that makes me look a little higher.

6 Q. Did you ever hear a cross word between Paul Stephens
7 and Frances Moore?

8 A. No, sir. No.

9 MR. PRUITT: Answer any questions the State might
10 have.

11 CROSS-EXAMINATION

12 BY MS. HOGAN:

13 Q. Ms. Wrenn, so you are Ms. Moore's sister?

14 A. Uh-huh.

15 Q. Are you the baby sister or the older?

16 A. I'm in the middle.

17 Q. Oh, you're in the middle. Is she the older or the
18 younger?

19 A. She's the baby.

20 Q. Oh, she's the baby. Okay. Okay. And you would
21 visit her about every couple of weeks?

22 A. Yeah.

23 Q. For a couple days at a time?

24 A. Sometimes I'd stay two nights, sometimes I might
25 stay three --

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 Q. Okay.

2 A. -- because.

3 Q. And it was to visit your family?

4 A. Yeah. We would go down. She would go with me to
5 visit my kids.

6 Q. So the reason you were coming was to visit and be
7 with your family?

8 A. Yeah.

9 Q. Not necessarily their house, okay. So when you
10 weren't here then you weren't with them?

11 A. No. Uh-uh.

12 Q. Right. Okay. So when you were around everybody
13 was --

14 A. They was fine.

15 Q. Just fine as you could see that --

16 A. Paul was always -- he was always nice to me, and
17 when he come in the house and I'd come in he always hugged my
18 neck, told me he loved me. And he always called Frances
19 momma, and they was just -- they always joked and carried on
20 with something all the time. I mean, it was just somebody
21 laughing all the time.

22 Q. But there were a lot of times you weren't there?

23 A. That's true. Yeah.

24 Q. So you don't know what was going on when you weren't
25 there?

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 A. That's true.

2 Q. Okay. And you're not real good with dates so you
3 don't remember exactly when this was?

4 A. No, I'm sorry, I can't because --

5 Q. This could have been years before that?

6 A. -- I had a stroke and I just can't.

7 Q. Okay.

8 A. I can't remember a lot of dates.

9 Q. Okay. So the relationship that you're talking about
10 could have been well before Paul's death?

11 A. Yeah. I went to her house before Paul's death.

12 Q. Right.

13 A. Yeah.

14 Q. Okay.

15 A. Then after that happened I went too, to be with
16 them.

17 MS. HOGAN: Nothing further from the State, Your
18 Honor. Thank you.

19 THE COURT: Anything on redirect?

20 MR. PRUITT: No more questions, Your Honor.

21 THE COURT: You can step down.

22 MR. PRUITT: I call Kacie Whitfield.

23 KACIE CHRISTINA WHITFIELD, after having been
24 duly sworn, testified as follows:

25 THE CLERK OF COURT: If you'll have a seat right

KACIE WHITFIELD - DIRECT BY MR. PRUITT

1 there in the witness chair.

2 (The witness was seated in the witness stand.)

3 THE CLERK OF COURT: If you'll please state your
4 full name and spell your last name for the record.

5 THE WITNESS: Kacie Christina Whitfield,
6 W-h-i-t-f-i-e-l-d.

7 DIRECT EXAMINATION

8 BY MR. PRUITT:

9 Q. Ms. Whitfield, where do you live?

10 A. At , Greenville.

11 Q. And how are you related to Frances Moore?

12 A. She's my great aunt.

13 Q. Now, I want to take you back to June of 1999. Do
14 you recall when Paul Stephens was killed?

15 A. I do.

16 Q. All right. Starting at that point and going
17 backwards in time, tell the ladies and gentlemen of the jury
18 when and at what frequency you visited in Frances Moore's
19 home.

20 A. Well, when Skylar was born in April of '94 I would
21 stay with Debra and Paul for -- in the trailer on the
22 weekends, and then after I got out of school I stayed at their
23 home the whole summer, of that summer after he was born. That
24 was in '94.

25 Q. All right. And what were you doing?

KACIE WHITFIELD - DIRECT BY MR. PRUITT

1 A. Just helping them with the baby. Just being --
2 wanted to be around the baby.

3 Q. All right. And how close is Debra's and Paul's or
4 was Debra and Paul's mobile home to Frances' house?

5 A. Right beside each other.

6 Q. All right. Now, after that year that Skylar was
7 born did you continue with your visits in Frances' home and/or
8 Debra Stephens' home?

9 A. Uh-huh.

10 Q. And about what type of frequency?

11 A. Not as often. Of course, I become a teenager and
12 did other things. Maybe a couple times a month.

13 Q. All right. And when you would visit there a couple
14 times a month did you have the opportunity to observe Frances
15 Moore and Paul Stephens interacting?

16 A. Uh-huh.

17 Q. All right. What did you observe about their
18 relationship with each other?

19 A. It was a normal relationship. They got along great.
20 I mean, nothing out of the ordinary.

21 Q. Okay. Do you ever recall observing any fear or
22 hostility between them?

23 A. No.

24 Q. What size man was Paul Stephens?

25 A. Very big man.

KACIE WHITFIELD - CROSS BY MS. HOGAN

1 MR. PRUITT: All right. That's all the questions I
2 have of this witness.

3 CROSS-EXAMINATION

4 BY MS. HOGAN:

5 Q. Ms. Whitfield, so you stayed with Paul and Debra a
6 lot during the summer of 1994?

7 A. Uh-huh.

8 Q. But then towards 1999 you saw them less and less --

9 A. Uh-huh.

10 Q. -- the older you got?

11 So you saw them maybe a couple months -- I mean,
12 maybe a couple times a month?

13 A. Right.

14 Q. Okay. So you weren't with them all the time?

15 A. No, not all the time.

16 Q. From what you could see everything seemed fine?

17 A. Uh-huh.

18 Q. But you weren't around at other times so other
19 things could have been going on that you don't know about?

20 A. Yeah.

21 MS. HOGAN: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. PRUITT: No redirect.

24 THE COURT: All right. You can step down. Thank
25 you.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 MR. PRUITT: We call Debra Stephens to the stand.

2 DEBRA STEPHENS, after having been duly sworn,
3 testified as follows:

4 THE CLERK OF COURT: Go right there and have a seat
5 in the witness chair, please.

6 (The witness was seated on the witness stand.)

7 THE CLERK OF COURT: If you'll state your full name
8 and spell your last name for the record, please, ma'am.

9 THE WITNESS: Debra Cheryl Stephens,
10 S-t-e-p-h-e-n-s.

11 DIRECT EXAMINATION

12 BY MR. PRUITT:

13 Q. All right, Debra. You have a slight voice too so
14 you're going to have to speak up.

15 A. Okay.

16 Q. Where do you live?

17 A. At 2619 Greenville Highway, Liberty.

18 Q. All right. And how close is that to Frances Moore's
19 house?

20 A. Right next door. It's basically in the same fenced
21 yard.

22 Q. Okay. And how are you related to Frances Moore?

23 A. That's my mother.

24 Q. All right. Now, tell me how long have you lived in
25 that mobile home next to Frances' house?

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 A. Approximately 17 years. Something like that.

2 Q. Now, when did you and Paul Stephens get married?

3 A. We got married in '93 -- '93.

4 Q. All right. And when you got married in '93 did you
5 move into that mobile home next to your mother?

6 A. Actually, it was one that I had before me and him
7 married that was located in Easley off of Popeville Road in
8 Easley, and me and him moved it to that piece of property
9 beside the house.

10 Q. So you moved the mobile home over there next to your
11 mother?

12 A. Yes.

13 Q. Now, tell me, were you present at the birthday party
14 that Garvin Duvall and the Hendrix' gave for Brandon?

15 A. Yes, I was.

16 Q. And were you present to watch the show presented by
17 the archbishop, Mr. Stansell?

18 A. Yes, I was.

19 Q. Now, tell me, have you had a chance to look at this
20 or look at copies of the pictures that are in what's been
21 marked as State's Exhibit Number 33?

22 A. I don't believe so.

23 Q. Well, take a look. Did you look at some pictures
24 with me yesterday?

25 A. Oh, yes, I did.

1 Q. Look through those pictures and see if you can find
2 for me the ones that you're in.

3 A. Okay.

4 It's about like 13.

5 Q. About 13 of them?

6 A. Uh-huh.

7 Q. Okay. Well, how about pull out a couple of them --
8 first of all, before you do that, let me ask you a few other
9 questions and maybe you won't have to move but once. Was your
10 son, Skylar, at this same birthday party?

11 A. Yes.

12 Q. Now, when you were there did you stay at the
13 birthday party the whole time?

14 A. Yes.

15 Q. All right. Toward the end of the party where were
16 you and who were you talking to?

17 A. As they said earlier, the picnic tables were kind of
18 under a shed. So right behind the shed is where people parked
19 their cars, and there's a wall, like I guess it's a rock or
20 brick wall that runs down, then they have a play area over
21 here (indicated). And me and Kim, which is Brandon's
22 mother --

23 Q. That's Kim Hendrix we heard from earlier today?

24 A. Yes, sir. And me and her were out so we could watch
25 the kids on the playground. They wasn't actually still under

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 the shed eating or anything. They had already finished
2 eating. So we were out there so we could watch them on the
3 playground.

4 Q. All right. Were you also there as people started to
5 leave?

6 A. Yes. Yes, we were.

7 Q. Okay. Now, pick out a picture that shows the wall
8 where people were parking that you can show to the ladies and
9 gentlemen of the jury.

10 A. Okay.

11 There's one with the playground (indicated).

12 Q. Just pull the pictures out you want me to show them
13 then I'll let you explain it.

14 MR. GAMBLE: They won't come out.

15 Q. All right. If you would, step over here where you
16 can look at the monitor.

17 A. (The witness complied).

18 Q. And tell me or tell the ladies and gentlemen of the
19 jury what that picture shows. And you can use the pointer
20 here if you like.

21 A. Okay.

22 Q. Now speak up.

23 A. Okay. This here, this here is the shed (indicated).
24 This is where the picnic tables were (indicated). This, of
25 course, by the rock wall. I was call rock, maybe brick wall

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1 that I was talking about and it runs all the way around the
2 park pretty much, say halfway, and some of the cars park on
3 towards this end, and the play area is around this way
4 (indicated).

5 Q. All right. This next picture here, does it -- what
6 does it show?

7 A. It shows also where the wall, it just keeps running
8 out.

9 Q. And this picture right here, what does it show?

10 A. This -- okay. This one here is the -- okay, you
11 talking about the top one? This is at the end of the shed.

12 Q. Right.

13 A. Which will be down on the far end like this way
14 (indicated) because this shed kind of ran this way (indicate).
15 And that's where the magic act, and they also had like a
16 little fire pit there, which we didn't use that.

17 Q. And how about this one?

18 A. Okay. This one is the fire pit and the magic thing
19 was on this side over here (indicated). And running this way,
20 this is the playground over here (indicated) and the wall
21 continues to go on around this way (indicated).

22 Q. All right. I see a car parked there.

23 A. Uh-huh.

24 Q. Where is it parked in relation to the wall?

25 A. Just the wall runs like right in front of it.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. All right. Go ahead and have a seat back at the
2 witness stand.

3 A. (The witness complied).

4 Q. Now, Debra, while you were there at the party and
5 after the magic show did you ever see Garvin Duvall and the
6 archbishop, Stansell, leave together?

7 A. No.

8 Q. Now, I know you couldn't have watched everybody at
9 the whole time but how can you say that you -- that they never
10 left anywhere together?

11 A. Well, for one, his truck was one of the first
12 vehicles parked.

13 Q. Whose truck?

14 A. Mr. Duvall's. And it had loud mufflers on it. It
15 was a loud truck, and it was parked close, one of the first
16 few cars that were parked there. So it would have had to --
17 to get out of the park area would have had to come past where
18 we were talking.

19 Q. Okay.

20 A. And even if we were under the shed it was parked
21 like right behind the shed area.

22 Q. All right. Now, tell me, if you can, how big a man
23 Paul Stephens was.

24 A. Paul was a big guy. He was about 6-8, weighed about
25 285, 290, something like that.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Was he afraid of Frances Moore?

2 A. No, I didn't know too many people Paul was afraid
3 of.

4 Q. Now, I want to take you back to June 30th, 1999. Do
5 you remember that day?

6 A. Yes, I do.

7 Q. Where was Paul Stephens living on that day?

8 A. At my house.

9 Q. At your house?

10 A. Yes.

11 Q. Had you all attempted some type of reconciliation?

12 A. Yes, we had.

13 Q. Approximately how long had he been living back with
14 you?

15 A. Not very long, maybe a few days at this time. We
16 tried to reconcile a couple of times, a couple of different
17 times.

18 Q. Now, tell me what happened on that day starting with
19 the time that you got up.

20 A. Okay. I got up, I got dressed. Like I said -- or
21 it was said earlier, that me and my mother were going to
22 Anderson City Police Department. We left around 9:30, got
23 there 10:00, a little after maybe. We stayed there doing
24 numerous things and talking to different people, Mr. Hawkins,
25 of course, and different people. We left there --

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Okay. Let's wait a minute. We're going too fast.
2 Did you talk to this Greg Hawkins that was on the stand
3 yesterday?

4 A. Yes. I talked to Greg Hawkins yesterday. I mean, I
5 didn't talk to him yesterday. I talked to him on the day
6 here.

7 Q. And what were you all talking about?

8 A. We were taking about some checks that had been
9 forged and concerning the checkbook that had been stolen, and
10 some signatures that had been forged.

11 Q. All right. And how long were you and your mother
12 down there at the Anderson City Police Department?

13 A. A while, maybe three, four hours.

14 Q. All right. Now, approximately what time did you and
15 your mother leave the Anderson City Police Department?

16 A. I'm not exactly sure on the time we left. I would
17 assume between 1:30 and a quarter to 2:00 because of the time
18 we got home.

19 Q. All right. Now, what happened when you got back to
20 your home and Frances' home?

21 A. Well, first off, all the way home she was talking
22 about rushing in so she could fix my dad's dinner for work.
23 And we got home and I guess she went in and fixed his lunch,
24 and I went to the trailer.

25 Q. So did you get home before Nathan Moore left to go

1 to work?

2 A. Oh, yeah.

3 Q. Now, but anyway, you separated from your mother at
4 that time and went over to your house?

5 A. Yes.

6 Q. All right. Who was there at your house at that
7 time?

8 A. Paul and had just --

9 Q. All right. And do you know what Paul and had
10 been doing earlier that day?

11 A. They had went to the Waffle House to eat.

12 Q. All right. And what happened? What happened next?

13 A. Paul had -- I'm not sure if he had used the phone or
14 had maybe phoned a beeper, or he'd called someone on phone. I
15 was in the back of the trailer, the back bathroom but I could
16 hear him on the phone or making some kind of calls.

17 The phone rang back, he answered it, which he
18 normally did when it rang. I guess that happened a couple
19 times. And he comes into the bathroom where I'm at cleaning
20 the bathroom at the time, and is right behind him, and
21 he says he's got to run somewhere, he'll be back shortly.

22 Q. And how is it that you remember this?

23 A. Well, for one, was crying because he wanted
24 to go, and if it was someplace that wasn't supposed to
25 go Paul would usually tell him that he's got to go to work and

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1 that he couldn't go. And so I told to come on, that me
2 and him would go outside and play in the yard.

3 Q. Okay. And approximately how long after receiving
4 these phone calls or several phone calls, how long was it
5 before Paul left?

6 A. Oh, just a couple minutes.

7 Q. Okay. And what did you and do?

8 A. We went directly outside.

9 Q. All right. What were you doing out there?

10 A. Oh, we just played out in the yard. We played on
11 the swing. He had one of those -- the big jungle gym type
12 swings out behind my mom's house.

13 Q. So the jungle gym is out behind Frances' house and
14 not behind yours?

15 A. Yes.

16 Q. All right. Now, did you see your mother, Frances,
17 at or about this time?

18 A. I'm not sure if she was already gone. I'm not
19 really sure if she was already gone. I knew she was going to
20 the grocery store but I'm not sure if she had already gone. I
21 knew she was kind of concerned about wanting to go with
22 her and she didn't want to tell him no. So I'm not sure if
23 she was gone or not. I'm assuming she was because I don't
24 remember him crying to go.

25 Q. All right. Now, when is the next time that you saw

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 your mother, Frances Moore?

2 A. About somewhere after -- I'm going to say maybe 20
3 after 3:00, 15 after 3:00, 3:30. Something like that.

4 Q. All right. And how is it that you remember that?

5 A. Well, to be honest, when she pulled up she had
6 groceries in the car and I helped her get the groceries in,
7 and we happened to look on the receipt and I saw the receipt
8 time. And so, I mean, I actually know that she was earlier
9 than what I remember her getting home but.

10 Q. Well, did you help her bring the groceries into the
11 house?

12 A. Yes, sir.

13 Q. All right. And were there -- when you and your
14 mother were at the City of Anderson talking to Greg Hawkins
15 were there any groceries in the car?

16 A. No. No, sir.

17 Q. Did you all stop anywhere between the City of
18 Anderson at the Anderson Police Department and you all's
19 residences when you left the city police department?

20 A. No, sir.

21 Q. And when your mother got back to her house, which is
22 right next to your house, there were groceries in the car?

23 A. Yes.

24 Q. Now, tell me what happened -- what happened next
25 that day?

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1 A. We just went on normal. Me and continued to
2 play. We were kind of in and out of the house, in and out of
3 her house, at that time. And then just very shortly after the
4 -- I believe it was the coroner and a deputy pulled up in my
5 driveway.

6 Q. All right. And is that when you learned about
7 Paul's death?

8 A. Yes, it is.

9 Q. Well, how did that affect you?

10 A. Very bad. Real shocked.

11 Q. How did it affect Frances?

12 A. Very bad as well. Very shocked.

13 Q. Okay. Now, approximately when did someone call
14 Nathan to alert him to these events?

15 A. Yes. I believe my mother did. I believe --

16 Q. As a result did he show up home later?

17 A. Yes.

18 Q. Now, do you recall any police coming to talk to you
19 or your mother about the circumstances surrounding Paul's
20 death?

21 A. On that day after they had came out and give us the
22 news they were leaving, and where her house is and my trailer
23 is she's got like an atrium and you can see straight down the
24 sidewalk, which is to my driveway, and it dawned on me that I
25 had not been in the trailer since he had left and that he had

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 been on the phone and answered the phone. So I told them
2 about that and asked them --

3 Q. Told who that?

4 A. The officer that had came out to tell us that he had
5 been killed, and they asked -- they asked if I minded if they
6 went in, and I said, of course not. You know, maybe we could
7 check the caller I. D. and see if we could find out where the
8 calls come from or who he tried to call.

9 Q. And did they take you up on that?

10 A. Yes, they did.

11 Q. Now, I'd like to show you this document here, and
12 tell me if you can identify it.

13 A. Yes, I can.

14 Q. All right. What is that?

15 A. This was the grocery receipt that my mom brought
16 back from the grocery store.

17 Q. And how is it that it came into your possession?

18 A. After they had came and told us of Paul's death
19 naturally we were all still kind of shocked. And so the next
20 day when they came out they were asking everybody's
21 whereabouts and everything, and it dawned on me about her
22 having a grocery store receipt. And we looked for it to see
23 what time was on it for them, and we -- actually, I found it
24 in her purse.

25 Q. All right. And so you found it the day afterwards

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 in her purse. And would you look at the items on it and tell
2 me if you can identify any of those items as being the ones
3 that you saw in the back of her car.

4 A. Yes, I can.

5 Q. What were some of the items?

6 A. The main ones were -- would be the case of peas and
7 the case of butter beans because we hated lifting the cases.
8 The others were cheese balls, 's favorite, and apple
9 pies for my dad's lunch, and I guess just other cleaning
10 stuff.

11 Q. Now, what is the date on that receipt?

12 A. 6-30 of '99.

13 Q. And what is the time on it?

14 A. 3:04 p.m.

15 MR. PRUITT: Your Honor, we'd move to introduce this
16 receipt into evidence.

17 THE COURT: Any objection?

18 MR. BRADLEY: No objection.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, Defendant Moore's Exhibit Number 1, a
21 Receipt, was marked and admitted into evidence.)

22 MR. PRUITT: Your Honor, I'd like to show this to
23 the jury.

24 THE COURT: All right.

25 BY MR. PRUITT:

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Debra, would you step down here and identify where
2 the date is on this receipt.

3 (The witness stepped down from the witness stand.)

4 A. The date is at the top, right up under the items
5 list.

6 Q. All right. And what date does it show?

7 A. 6-30 of '99.

8 Q. And how about the time? Can you point out for the
9 jury where the time is indicated.

10 A. Yes. It's the 3:04 p.m. on right-hand side, bottom.

11 Q. All right. Have a seat back in the stand.

12 A. (The witness complied).

13 Q. Now, Debra, are you familiar with your mother's age?

14 A. Yes.

15 Q. How old is she?

16 A. She was born in '47. So that would make her 62.

17 Well, let's see.

18 Q. All right. And how about her physical dimensions.

19 Are you familiar with that?

20 A. She's about 5-1 and a half, maybe 5-2. About the
21 same height as me.

22 Q. And I don't want to get you in trouble but how much
23 would you say that she weighs?

24 A. Maybe 180.

25 Q. Okay. Now, is her size today the same, or more or

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 less the same as it was back in June of '99?

2 A. Yes.

3 Q. Now, are you familiar with your mother's propensity
4 to buy insurance?

5 A. Oh, yeah.

6 Q. Would you tell us about that.

7 A. Yeah. I always seemed to think she over-insures.
8 She -- I'm not real sure what you called it yesterday, the
9 people that come around every week.

10 Q. Debit men?

11 A. There you go. They came around and ever since I was
12 just a small kid I remember them coming around and collecting
13 and her taking out more policies. I don't know if a lot of
14 them were just added on policies she already had. I do know
15 she has quite a number of policies.

16 Q. All right. Did she have any policies on you?

17 A. Oh, yeah.

18 Q. Did you know that she had -- did she have policies
19 on Skylar?

20 A. Yes.

21 Q. Did she have policies on Paul?

22 A. Yes.

23 Q. You'll have to say yes or no.

24 A. Yes. Yes.

25 Q. Now, the State presented into evidence yesterday an

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 application signed by Paul Stephens allowing for a policy to
2 be taken out on his name. This is State's Exhibit Number 41.
3 I'll show that to you.

4 Do you recognize Paul Stephens' signature at the
5 bottom?

6 A. Yes, I do. I was there, as a matter of fact.

7 Q. You were there when that was taken out?

8 A. Yes.

9 Q. Now, was Paul Stephens afraid of Frances Moore at
10 this time?

11 A. No.

12 Q. Do you ever recall your former 6-foot-8 husband
13 being afraid of Frances?

14 A. No, never.

15 Q. I'd like for you to take a look at a series of
16 insurance policy sheets and declaration pages and tell me if
17 you can recognize these. Just look at them in general to
18 start with.

19 [PAUSE]

20 A. Yes, I can.

21 Q. What are all those documents there?

22 A. Different insurance policies. Some of them cancer
23 policies.

24 Q. All right. Are all these policies from the same
25 debit man that came by?

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 A. I believe so. I believe they were all with the same
2 company.

3 Q. And --

4 A. They had changed debit man. We had the same debit
5 guy for like 20 something years and then he passed away, and
6 then they changed him.

7 Q. Sent you a new guy?

8 A. Yeah, a couple of new guys.

9 MR. PRUITT: All right. And, Your Honor, we'd offer
10 into evidence as a group a number of insurance policies kept
11 and maintained on various people.

12 THE COURT: Any objection?

13 MR. BRADLEY: No objection.

14 THE COURT: Without objection.

15 (WHEREUPON, Defendant Moore's Exhibit Number 2,
16 Insurance Policies, were marked and admitted into evidence.)
17 BY MR. PRUITT:

18 Q. All right, Debra. Tell me, have you ever been in
19 any trouble with the law?

20 A. Yes, I have.

21 Q. What kind of trouble have you been in?

22 A. The fraud, for one. The fraud that --

23 Q. The fraudulent checks we heard about yesterday?

24 A. Yes.

25 Q. Now, prior to marrying Paul Stephens did you have

1 any trouble with the law?

2 A. No, I had not.

3 Q. I know that you and Paul at some point in time
4 separated. When did you all separate the last time before his
5 death more or less?

6 A. We had separated several months before that. He had
7 went to stay with his sister, and I believe he had got kicked
8 out from staying with his sister. Then he went to stay with
9 his cousin, Elaine, and Kenny, and for what reasons, there was
10 something going on there, and he couldn't stay there anymore.
11 So he came back and I couldn't put my son's daddy on the
12 street so.

13 Q. Speak up now.

14 A. And I let him come back.

15 Q. Well, at any point in time did you ever file for a
16 divorce?

17 A. Yes.

18 Q. All right. Did you all ever actually get divorced?

19 A. Yes.

20 Q. At the time of his death were you all divorced at
21 this time?

22 A. Yes, we were.

23 Q. And despite the fact that you were technically
24 divorced you let him move back in?

25 A. Yes. We had been divorced actually almost a year.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. At the time of your divorce what did he do in regard
2 to ?

3 A. Paul at one time had -- I gave him the car, the
4 vehicle, and that's when he had moved out. And I'm not real
5 sure if he was living with his girlfriend at this time or who
6 he was living with, and he kept -- he didn't want to pay any
7 child support. I didn't have any problem with that, that he
8 didn't want to pay any child support. This was during the
9 divorce.

10 So right before we divorced him and Kenny Erwin,
11 which was his cousin's husband, Paul had called me and told me
12 that he would relinquish all his rights to Skylar for \$2,000
13 and the white Dodge Colt.

14 Q. And did he relinquish his rights to ?

15 A. Yes, he did. We had some papers drawn up at a
16 lawyers office and went to the -- I think then it was the
17 American Federal, which would be Suntrust now, bank, and he
18 initialled each page. And he had actually had a ring on that
19 said dad, and he took it off and threw it across the bank at
20 that time.

21 Q. All right. Nonetheless, you still let him see
22 and take out?

23 A. For a few months I didn't let him have any contact
24 with him, and then I seen that it was hurting . . . And
25 had asked about seeing his dad and I did agree to let

1 him see his dad, yes.

2 MR. PRUITT: Answer any questions the State might
3 have.

4 CROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q. Ms. Stephens, you just answered a question
7 Mr. Pruitt asked you if you had some trouble with the law.
8 You said yeah, it was the forgery we talked about yesterday,
9 but it's true you were convicted of shoplifting in 1997; is
10 that right?

11 A. In 1997? I didn't remember that.

12 Q. It's true you were convicted for another count of
13 shoplifting in 1997; is that correct?

14 A. Yeah, me and Paul were together then. Yes.

15 Q. Is it true you were convicted of another count of
16 shoplifting in 1997; is that correct?

17 A. Yes. He asked me if I had been in any trouble
18 before me and Paul were married, and I said no.

19 Q. Right. But you just said when he asked you about
20 being in trouble with the law you just mentioned the forgery.

21 A. No, I said numerous.

22 Q. Well, we're getting there. It's true you were
23 convicted of breaking into motor vehicles in 1998; is that
24 correct?

25 A. With Paul, yes.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. Receiving stolen goods in '98?

2 A. Yes, sir.

3 Q. About 7 counts of receiving stolen goods; is that
4 correct?

5 A. I'm not sure.

6 Q. How about petty larceny in 1997?

7 A. That was -- we had both pled guilty.

8 Q. Just yes or no.

9 A. Yes.

10 Q. Shoplifting in 1997, yes or no?

11 A. Oh, yes.

12 Q. Breaking in motor vehicle, petty larceny, receiving
13 stolen goods in '99?

14 A. Like I said, me and Paul --

15 Q. Just yes or no, ma'am.

16 A. Yes.

17 Q. Forgery, 1, 2, 3 counts in '99?

18 A. Yes.

19 Q. Possession of meth in 2007?

20 A. Yes.

21 Q. That's quite a history, isn't it, Ms. Stephens?

22 A. Yes, it is. One I'm not proud of.

23 Q. That's a lot of crimes involving dishonesty, isn't
24 it?

25 A. Yes, it is.

1 Q. Ms. Stephens, how close are you with your mother?

2 A. We're very close.

3 Q. How close?

4 A. We're very close.

5 Q. Very close. And you'd probably do anything in the
6 world for her, wouldn't you?

7 A. If you're asking if I'd lie for her, no.

8 Q. Just asking, you'd do anything to help her out,
9 wouldn't you?

10 A. Other than lie under oath, no.

11 Q. You wouldn't want to see anything happen to her, her
12 go away. You wouldn't want to see that, would you?

13 A. I wouldn't want to see anybody go away.

14 Q. But you would do what you could to help her out from
15 going away, right?

16 A. Except for lying under oath.

17 Q. All right. It's true that you and Paul had your
18 differences, had your problems throughout your all's marriage;
19 is that right?

20 A. Yes.

21 Q. And you all separated, got back together, separated,
22 finally divorced, I believe it was in '98; is that right?

23 A. Something like that, '97, '98.

24 Q. And this little story that you just told us about
25 Paul relinquishing his rights, when did that occur again?

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 A. His father came to the lawyer's office to see. He
2 didn't believe when I had told him of that. He didn't believe
3 that. So he met us at Mr. Cantrell's office in Easley.

4 Q. I'm just asking you when you said Paul did this.
5 When did that occur?

6 A. We were divorced. Probably just a couple months
7 before our divorce was final, which would have been maybe
8 March, April, something like that because we were divorced, I
9 think, in June.

10 Q. And your mother knew all this stuff was going on
11 between you and Paul?

12 A. Yeah. I mean, she was -- what I had told her.

13 Q. I'm sure she wasn't too happy about any of that
14 stuff, was she?

15 A. Oh, I mean, there wasn't a whole lot she could do
16 about it, it was my life, I mean.

17 Q. But you are her daughter, her grandson was involved.
18 I'm sure she wouldn't have been too happy about all this stuff
19 you're saying Paul did and the problems you all had.

20 A. Oh, no, she fussed at me a lot.

21 Q. But you're trying to paint a picture of you all
22 being a big happy, loving family but you all had all these
23 problems.

24 A. What do you mean?

25 Q. Is that right? You all had problems, a lot of them.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

- 1 A. Me and Paul?
- 2 Q. Yes.
- 3 A. Yes, according to the law we did.
- 4 Q. Let's go to that morning of June 30th, 1999. You
- 5 said you got to the Anderson Police Department with your
- 6 mother about 10:00 a.m.; is that right?
- 7 A. Somewhere around in there, yes, sir.
- 8 Q. You talked to Lieutenant Hawkins?
- 9 A. Yes.
- 10 Q. And that's when you confessed to some forgeries; is
- 11 that right?
- 12 A. Yes.
- 13 Q. And you had said Paul got you involved in those?
- 14 A. Yes. There were some other people involved, too.
- 15 Q. Your mother became upset because of that fact?
- 16 A. That I had done those, yes.
- 17 Q. And that Paul had gotten you involved?
- 18 A. Not so much that as it was just that I had done
- 19 those.
- 20 Q. Did you hear her say she was going to kill that son
- 21 of a bitch?
- 22 A. No, I did not. I heard her say she had raised me
- 23 better than that.
- 24 Q. You said you all talked for how long?
- 25 A. Let's see. We got there a little after 10:00, and

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 it was close to 1:30.

2 Q. 1:30 when you all left?

3 A. Uh-huh.

4 Q. I believe Lieutenant Hawkins testified that you
5 signed your statement at 12:07 p.m.; is that right? Does that
6 sound about right?

7 A. I'm not sure about that.

8 Q. If you signed your statement 12:07 p.m. why did you
9 all stay for another hour and 30 minutes?

10 A. Like I said, I'm not sure of that, I signed it at
11 that time. I mean, I'm sure we wouldn't have stayed any
12 longer than we had to.

13 Q. But you are saying today that you all left there
14 about 1:30, 1:45 and somewhere in between there?

15 A. To the best of my collections.

16 Q. How long of a drive is it from Anderson City Police
17 Department back to you all's house?

18 A. Thirty, 40 minutes, depending on traffic.

19 Q. It's a pretty good drive, isn't it?

20 A. Depending on traffic.

21 Q. I want to show you what's been admitted into
22 evidence, State's Exhibit Number 35 and 36. You said that
23 when you all got home from the police department Paul and
24 Skylar weren't there, right?

25 A. No, they were there.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. They were there?

2 A. Uh-huh.

3 Q. Did you tell Detective Garrett back in '99 they got
4 there after you got home?

5 A. I'm not positive about that. That's an awful long
6 time ago.

7 Q. But you're trying to make us think you're so sure
8 today but it's an awful long time ago; is that right?

9 A. Well, I mean, either way it was like 10 minutes.

10 Q. So you are not sure if he was there when you got
11 there, or got there after you got home?

12 A. It was so close that I couldn't remember the
13 difference.

14 Q. Showing you again State's Exhibit Number 35. These
15 are the phone records for your number.

16 A. Okay.

17 Q. If you'll take a look. If you'll step
18 down here and look at the TV.

19 A. (The witness complied).

20 Q. Ms. Stephens, I don't know if you were here
21 yesterday when the phone records custodian testified, but he
22 testified these were in military time. Would you agree with
23 that?

24 A. I believe I heard him say that, yes.

25 Q. And this is representing June 30th, the calls made

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 to or from your number on June 30th. Do you agree with that?

2 A. Okay. Where is the to and --

3 THE COURT: Ma'am, you've got to really speak up.

4 She's got to take everything down.

5 A. Okay.

6 Q. Up here at the top, this column that I'm pointing at
7 right here.

8 A. Okay.

9 Q. That's the calling number, and this is the called
10 number.

11 A. Okay. So it's calling out from my number there?

12 Q. This is the one dialing, this is the one that
13 received the call --

14 A. Okay.

15 Q. -- on the second column.

16 Going back down here, military time 13:36 would be
17 1:36; isn't that right?

18 A. Yes.

19 Q. Is that your number, ??

20 A. Yes.

21 Q. is your mother's number, isn't it?

22 A. Yes.

23 Q. So you were calling your mother at 1:36?

24 A. That doesn't necessarily mean I was calling her.

25 Paul could have called her, called up there to the house.

1 Q. But you just said it was so close a while ago

2 that --

3 A. I don't know that they didn't leave again.

4 Q. Well, somebody -- is it true that when you met with

5 Detective Garrett back in '99 you told him that the 1:36 call

6 to 4908 had to be you?

7 A. I don't recall that.

8 Q. You can have a seat.

9 A. (The witness complied).

10 Q. So after you say you got home from the Anderson

11 Police Department your mom fixed your stepdad some lunch. He

12 got off to work, then right around there is when you went and

13 saw Paul and again; is that right?

14 A. No. That's when me and went outside to play.

15 Q. But you were seeing Paul during that time frame

16 right? Correct?

17 A. Ask the question again. I didn't understand.

18 Q. After he left for work you testified that Paul and

19 were at the trailer. You got to the trailer a little

20 bit after he left for work; is that right?

21 A. After my dad had left for work?

22 Q. Your stepdad.

23 A. (There was no response).

24 Q. What I'm asking is when was it that you saw Paul in

25 the trailer prior to him leaving, before you found out that he

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 had been murdered?

2 A. Between probably 2:30 and something to 3:00, I

3 guess.

4 Q. And you said he received -- you heard the phone ring
5 a few times, thereafter?

6 A. During the time he was there, yes.

7 Q. Your phone records show that you had 3 phone calls
8 coming in, 2:52, 2:53 and 2:57. You agree with that?

9 A. I have no clue. I mean, I know that. I've seen
10 them on paper but.

11 Q. Is that what State's Exhibit Number 35 says right
12 there?

13 A. Yes, sir.

14 Q. Your phone was being called from at 2:52,
15 2:53 and 2:57?

16 A. Yes.

17 Q. And you said Paul received around 3 phone calls
18 around that time and then shortly thereafter he came to tell
19 you he had to leave, and left within a couple minutes; is that
20 right?

21 A. Uh-huh.

22 Q. Okay. So he was out the door right after this last
23 phone call, is what you are telling us?

24 A. I don't know if it was the last one but it was one
25 of them.

1 Q. Okay. And you said at this point you think your mom
2 had already left for the grocery store; is that right?

3 A. Like I said, I'm really not sure.

4 Q. You don't know where she was?

5 A. I mean, well, she had to be at the grocery store,
6 she came back with the groceries.

7 Q. You weren't with her, were you?

8 A. No, I was not.

9 Q. So you didn't go into the grocery store, did you?

10 A. No, I didn't not.

11 Q. You didn't see her buy those items on that receipt,
12 did you?

13 A. No, I did not.

14 Q. Let's talk about that receipt. Where is it? Do you
15 have it?

16 Defense Exhibit Number 1, let's look at that again.

17 Anywhere on that exhibit say that's Frances Moore's receipt?

18 A. No.

19 Q. No identifying information saying that Frances Moore
20 was the one that bought those items on that date at that
21 store, at that time. Nothing says that, does it?

22 A. I've never seen too many receipts say a name, no.

23 Q. You've never seen a receipt that has your personal
24 information on it after you've paid for items at a store?

25 A. If you use a credit card or something I guess it

1 would.

2 Q. Exactly. If you use a credit card your information
3 would be on there. What was used on that day? Cash, wasn't
4 it?

5 A. Yes.

6 Q. So that receipt really doesn't tell us who did
7 anything, right?

8 A. No, but they knew exactly what our family liked.

9 Q. Liquid soap, Spray'n Wash, bowl fresh, sweet pees,
10 butter beans, cheese balls, apple pies. There's not a lot of
11 stuff, right? There's not a lot of stuff, is it?

12 A. Nope.

13 Q. But yet it was so much so, in your opinion, that you
14 had to go out and help your mom bring it back in from her car?

15 A. Yeah. I mean, when she pulled in and she said she'd
16 been to the grocery store I just walked over and grabbed a
17 couple bags, or a bag.

18 Q. And you said that when you found out Paul had been
19 murdered you went and grabbed this receipt out of your mom's
20 purse and kept it; is that right?

21 A. No. I didn't go, do it exactly right after that, no.

22 Q. So you're saying you've had this receipt all the way
23 since 1999; is that right?

24 A. Yes.

25 Q. And you never thought it was important to give it to

1 law enforcement?

2 A. Yeah. They had opportunities to have that receipt.

3 Q. But you never gave it to them?

4 A. Yes, I believe I did.

5 Q. So you are saying if it had been given to law
6 enforcement it would have been part of the investigation?

7 A. It should have been.

8 Q. But you've been holding onto this receipt for 10
9 years that has no identifying information for your mom?

10 A. There have been copies of that receipt made and
11 given to the police department.

12 Q. But you've held on to it for 10 years just in case,
13 right?

14 A. No, not --

15 Q. Why would you keep a cash receipt for just some
16 apple pies, cheese balls and liquid soap for 10 years?

17 A. Well, because the very next day we were being
18 investigated for a murder.

19 Q. I believe on there it says the time was 3:04 p.m.;
20 is that right?

21 A. Yes, it was.

22 Q. What kind of car does your mom drive?

23 A. She drives a Toyota.

24 Q. What color is it?

25 A. White.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. The make?

2 A. Toyota.

3 Q. Model, I mean.

4 A. RAV.

5 Q. RAV4?

6 A. RAV4, uh-huh.

7 Q. I'm showing you State's Exhibit 27, 26, 25 and 24.

8 Is that your mom's car?

9 A. Yes, it is.

10 Q. That's her white Toyota RAV4?

11 A. Yes, it is.

12 Q. I'm showing you State's Exhibit Number 1.

13 A. I know this one is. I know the tag on the front.

14 Q. Is that your mom's picture, in that photo lineup?

15 A. Which?

16 Q. Number 5.

17 A. Yes.

18 Q. That is your mom's picture?

19 A. Yes.

20 Q. All right. She was identified in her car at the pay

21 phone at Anderson Meats and Groceries right at 3 o'clock on

22 June 30th, 1999; is that right?

23 A. Yes, I believe so, somewhere around 3:00.

24 Q. If she was identified as being over there at

25 3 o'clock how in the world could she get to Save-a-Lot in

1 Easley and have checked out by 3:04 p.m.?

2 A. How could she get from where again?

3 Q. Anderson Meat and Groceries, where she was
4 identified as being at the pay phone, how could she get from
5 there to Sav-a-Lot in Easley, shopped, have gone through the
6 check-out line and paid by 3:04?

7 A. I have no clue, unless it was not her at Anderson
8 Meat.

9 Q. But you weren't with her at the grocery store, you
10 didn't see her go in, you didn't see her actually buy these
11 items, right?

12 A. I just know she had the groceries when she came
13 back.

14 Q. And that receipt doesn't really tell us that your
15 mom was the one that bought the groceries either, does it?

16 A. No.

17 Q. I believe you were asked several times how big your
18 husband was; is that right?

19 A. Yes.

20 Q. How big was he again?

21 A. Was 6-8, I believe about 290, 300 pounds. Something
22 like that.

23 Q. How big is your mom?

24 A. She's about 5-1, 5-2. She weighs maybe 180 pounds.

25 Q. So Paul was a lot bigger than her. That's what

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 we're saying here, right?

2 A. Yes.

3 Q. Would you agree that it wouldn't matter how big you
4 were if you were shot from behind?

5 A. Say that one more time.

6 Q. It wouldn't matter how big of a man you were if you
7 were shot from behind, would it? Would you agree with that
8 assessment?

9 A. Well, not necessarily. I guess it would just depend
10 on where you were shot or.

11 Q. Exactly. From behind, you didn't see it coming.

12 A. Yeah. Well I mean, if it was --

13 Q. It wouldn't matter how big he was, would it?

14 A. I would think it would have to be --

15 Q. Just yes or no. It wouldn't matter, would it, how
16 big he was if he didn't see the shot coming?

17 A. No.

18 Q. Your mom had a hundred thousand dollar life
19 insurance policy on Paul Stephens; is that right?

20 A. A hundred or it was 50.

21 Q. A hundred thousand?

22 A. Fifty to a hundred thousand. I'm not real sure.

23 Q. She received a check for close to \$120,000 after he
24 died; is that right?

25 A. Yes, I believe so.

DEBRA STEPHENS - REDIRECT BY MR. PRUITT

1 Q. She collected quite a bit of money from him being
2 killed; is that right?

3 A. Yes, sir.

4 Q. \$120,000, that's a lot of money, isn't it?

5 A. Yes.

6 Q. Can you tell me what you all did shortly after Paul
7 was killed on June 30th, 1999. Didn't you all got to Myrtle
8 Beach for a big family trip; is that right?

9 A. No, it wasn't for a big family trip. It was to get
10 away from the media, and I had not actually told Skylar yet
11 that his dad was dead. I was trying to figure out the best
12 way to do that, and we went away for a couple days to do that.
13 It was no family vacation by no means.

14 Q. How long were you all gone?

15 A. Three, 4 days. Something like that.

16 MR. BRADLEY: Nothing further, Your Honor.

17 THE COURT: Anything on redirect?

18 REDIRECT EXAMINATION

19 BY MR. PRUITT:

20 Q. Debra, the food represented by the receipt, are any
21 of those items multiple items?

22 A. Yes. The pies were. It was a case of peas, which
23 have 12 of those.

24 Q. Twelve what?

25 A. Cans.

DEBRA STEPHENS - REDIRECT BY MR. PRUITT

1 Q. Twelve cans?

2 A. Uh-huh. And then it was 12 cans of butter beans,
3 looks like 2 cans of cheese balls?

4 Q. So it's a lot of groceries?

5 A. Yeah. There were like 4 pies. Things that we eat
6 like every week.

7 MR. PRUITT: That's all.

8 THE COURT: All right. Thank you, ma'am. You can
9 step down.

10 MR. GAMBLE: I have no questions.

11 THE COURT: All right.

12 MR. PRUITT: Your Honor, may we approach?

13 THE COURT: Yeah, come over here.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: Ladies and gentlemen, I'm going to send
16 you to lunch but we'll only go only for an hour and 10 minutes
17 today. As I said, there may be a little method to my madness.

18 If you will not discuss the case. If anybody
19 approaches you on the street or talks to you, please let me
20 know. I'll see you at 2:15. Thank you.

21 (WHEREUPON, the jury leaves the courtroom at
22 approximately 1:06 p.m.)

23 THE COURT: You all do what you got to do at lunch.
24 We'll start back right after 2:00.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: All right. You had a chance to talk
2 with your client?

3 MR. PRUITT: Yes, sir.

4 THE COURT: Made a decision?

5 MR. PRUITT: She's not going to testify.

6 THE COURT: She's not going to testify.

7 All right. Ma'am, if you would come up.

8 FRANCES MOORE, after having been duly sworn,
9 testified as follows:

10 THE COURT: You understand -- you can put your hand
11 down. We've reached that point in the trial where you have to
12 determine whether or not you're going to testify; do you
13 understand that?

14 DEFENDANT MOORE: Yes, sir.

15 THE COURT: Have you talked to your lawyer about
16 that decision?

17 DEFENDANT MOORE: (Shook head).

18 THE COURT: Do you need to talk to him about it?

19 DEFENDANT MOORE: No.

20 THE COURT: Do you understand that you can't be
21 compelled to testify? The Fifth Amendment says that you
22 cannot be compelled to testify in court, especially if you
23 testify against yourself; do you understand that?

24 DEFENDANT MOORE: Uh-huh.

25 THE COURT: If you do testify the State can

1 cross-examine you on past criminal history involving
2 dishonesty or any crime that carries with it a penalty of one
3 year or more. If you don't testify the jury will be
4 instructed that the fact that you didn't testify can't be held
5 against you; do you understand that?

6 DEFENDANT MOORE: Yes, sir.

7 THE COURT: Do you need to talk to your lawyer at
8 all about this decision?

9 DEFENDANT MOORE: No, sir.

10 THE COURT: And what have you decided to do?

11 DEFENDANT MOORE: Not testify.

12 THE COURT: All right. And is that your decision
13 freely and voluntarily made?

14 DEFENDANT MOORE: Yes, sir.

15 THE COURT: All right. Mr. Pruitt, anything you
16 need to ask her?

17 MR. PRUITT: Did we have a conference right after
18 court adjourned where we talked about whether or not you
19 wanted to testify, out there in that conference room?

20 THE COURT: You can answer him.

21 DEFENDANT MOORE: Huh?

22 MR. PRUITT: Did we have a conference out there --

23 DEFENDANT MOORE: Oh, yeah.

24 MR. PRUITT: And did we discuss whether or not you
25 were going to testify?

1 DEFENDANT MOORE: Yeah.

2 MR. PRUITT: And did I tell you that I thought that
3 it was up to you but I recommended you not?

4 DEFENDANT MOORE: Yeah.

5 THE COURT: Are you in accord with that?

6 DEFENDANT MOORE: Uh-huh, yes.

7 THE COURT: Even though your lawyer has suggested or
8 recommended that you not testify the decision has to be yours;
9 do you understand that?

10 DEFENDANT MOORE: Yes, sir.

11 THE COURT: And so you're telling me that you do not
12 wish to testify today?

13 DEFENDANT MOORE: Yes, sir.

14 THE COURT: All right. Thank you.

15 All right. Are there any more witnesses? You have
16 one more?

17 MR. PRUITT: The defense rests.

18 THE COURT: All right. Are you going to have
19 anything in rebuttal?

20 MS. HOGAN: Yes, sir. We've got two rebuttal
21 witnesses, Your Honor.

22 THE COURT: Any motions? Anything we need to take
23 up before we bring them back in?

24 MS. HOGAN: No, sir, Your Honor.

25 THE COURT: All right. You can bring them back in.

1 Did you all look at the charge?

2 MS. HOGAN: Yes, sir.

3 MR. PRUITT: I don't see a problem with it.

4 THE COURT: We'll go over it. I just wanted to make
5 sure you had it.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 2:30 p.m.)

8 THE COURT: All right. Ladies and gentlemen, I hope
9 you had a good lunch. You've heard all the testimony that
10 you're going to hear in defense of Ms. Moore. The State now
11 has rebuttal testimony that they'll put before you. That
12 means that we're quickly reaching the end of the testimony,
13 and at some point this afternoon I'm going to give you the
14 charge and we'll get this matter moving.

15 But please pay attention. I appreciate your
16 patience so far. I'm assuming nobody bothered you at lunch
17 today. So thanks again.

18 All right. Call your next witness.

19 MS. HOGAN: Your Honor, if it pleases the Court.
20 The State calls Janet Stansell.

21 JANET ELAINE STANSELL, after having been duly
22 sworn, testified as follows:

23 THE CLERK OF COURT: Go around, have a seat in the
24 witness chair, please.

25 (The witness was seated in the witness stand.)

JANET STANSELL - DIRECT BY MS. HOGAN

1 THE CLERK OF COURT: If you'll state your full name
2 and spell your last name for the record.

3 THE WITNESS: Janet Elaine Stansell,
4 S-t-a-n-s-e-l-l.

5 DIRECT EXAMINATION

6 BY MS. HOGAN:

7 Q. Ms. Stansell, who are you married to?

8 A. J. W. Stansell.

9 Q. Who testified a couple of days ago?

10 A. Yes, ma'am.

11 Q. I'm going to draw your attention to the birthday
12 party, 's birthday party that we've talked a lot about
13 this week that happened on June 27th, 1999. Were you present
14 at that birthday party?

15 A. I was.

16 Q. And you were present, and also Garvin and your
17 husband were there as well?

18 A. Yes, ma'am.

19 Q. Did you ever see Garvin leave that birthday party
20 that day?

21 A. I seen him and J. W. leave together.

22 Q. Okay. And how did you know that they left together?
23 How do you remember that?

24 A. Because J. W. came up to me, told me that they were
25 going for a ride.

JANET STANSELL - CROSS BY MR. GAMBLE

1 Q. Do you know how long they were gone?

2 A. No, ma'am.

3 Q. Do you remember them coming back?

4 A. Yes, ma'am.

5 Q. And what do you remember about them coming back?

6 A. I remember seeing the truck drive up, and I remember
7 seeing them sitting in the truck.

8 MS. HOGAN: Nothing further from the State, Your
9 Honor.

10 THE COURT: Mr. Gamble?

11 CROSS-EXAMINATION

12 BY MR. GAMBLE:

13 Q. What time did they leave?

14 A. I have no idea, sir.

15 Q. What time did they come back?

16 A. I have no idea, sir.

17 Q. What kind of car did they leave in?

18 A. A black truck.

19 Q. How much noise did it make?

20 A. I don't know, just a little bit of noise. I don't
21 know. Trucks make noise.

22 Q. Everybody there said it was a loud muffler and made
23 a roaring noise. Did you hear that?

24 A. Yes, sir. I hear a lot of trucks make noise.

25 Q. I'm talking about the black truck.

1 A. Yes. I heard the black truck making a racket.

2 Q. And how long was it gone?

3 A. I have no idea, sir.

4 Q. Was it toward the end of the party, toward the
5 middle of the party or toward the beginning of the party?

6 A. I would say it was close to the end of the party.

7 Q. Close to the end when all the stuff was being
8 served?

9 A. Yes, sir, I would say so.

10 Q. When the hot dogs were being served?

11 A. I don't remember that, sir.

12 Q. Who was there?

13 A. A lot of the people were there. I remember Garvin's
14 wife being there. I remember 's parents being there,
15 and I remember seeing Debra Stephens there.

16 Q. Yeah. They all said that they didn't leave. You
17 saw somebody leave that they didn't see leave?

18 A. I saw Garvin and J. W. leave.

19 MR. GAMBLE: Okay. All right.

20 THE COURT: Is that all?

21 MR. GAMBLE: That's all.

22 THE COURT: Mr. Pruitt?

23 CROSS-EXAMINATION

24 BY MR. PRUITT:

25 Q. Janet, are you a member of the Celtic Anabaptist

JANET STANSELL - CROSS BY MR. PRUITT

1 Church?

2 A. I don't remember. I guess I am. I have been.

3 Q. Okay. Are you a member of the Universal Life

4 Church?

5 A. I have been.

6 Q. Are you a member of the Reformed Catholic Church?

7 A. I have been.

8 Q. Are you an ordained minister, also?

9 A. No, sir.

10 Q. What do you do for a living?

11 A. I work at a convenience store.

12 Q. And what does Mr. Stansell do for a living, other
13 than preach?

14 A. That's it. It's full time.

15 Q. Does he still do magic tricks?

16 A. No, sir.

17 Q. Who have you talked to today about your testimony
18 prior to getting on the stand?

19 A. Nobody, but he just told me that -- my husband told
20 me that he received a phone call that I needed to be down here
21 as soon as possible, because I was at work when the phone call
22 came in.

23 Q. And did he tell you that the State had requested
24 your presence?

25 A. Yes, sir.

1 Q. And did you talk to any of the lawyers representing
2 the State prior to your testimony today?

3 A. I talked to Ms. Lauren.

4 Q. Today?

5 A. Yes, sir.

6 Q. And did she go over your testimony with you?

7 A. Yes, sir.

8 Q. You hadn't previously given any type of statement in
9 this case, have you?

10 A. No, sir, I have not.

11 MR. PRUITT: That's all I have.

12 THE COURT: Anything on redirect?

13 REDIRECT EXAMINATION

14 BY MS. HOGAN:

15 Q. Ms. Stansell, were you aware earlier this week that
16 you could have potentially been a rebuttal witness?

17 A. Yes, ma'am.

18 MS. HOGAN: Thank you. Nothing further.

19 THE COURT: You can step down. Thank you, ma'am.

20 Is she under subpoena?

21 MS. HOGAN: No, sir.

22 MR. BRADLEY: Your Honor, the State calls Detective
23 Garrett back to the stand.

24 THE COURT: Detective Garrett, you're still under
25 oath.

RUSTY GARRETT - DIRECT BY MR. BRADLEY

1 BY MR. BRADLEY:

2 Q. Did she ever tell you about the story about
3 Sav-a-Lot?

4 MR. GAMBLE: Objection, Your Honor.

5 THE COURT: Well, he can ask the question. I mean,
6 I'm not sure he can answer it but he can ask the question if
7 she told him the story. Whether or not he can tell us the
8 story is doubtful but go ahead.

9 BY MR. BRADLEY:

10 Q. Did she ever tell you the story about Sav-a-Lot?

11 A. She mentioned that there was a grocery store.

12 Q. Did you ever ask for any receipt that they might
13 have?

14 A. Yes, I did.

15 Q. And were you ever given any receipt?

16 A. No. On several different occasions I spoke with
17 Debra and asked for that receipt and she never produced it.

18 Q. Detective Garrett, I'm showing you Defendant's
19 Exhibit Number 1. Have you ever seen that?

20 A. I have not.

21 Q. Was any other detective that was involved with this
22 case given that receipt?

23 A. No.

24 Q. Did you ever go to the Sav-a-Lot store in Easley?

25 A. Yes, I did.

RUSTY GARRETT - CROSS BY MR. PRUITT

1 Q. And what did you do when you went there?

2 A. I asked for videotapes for the day of June the 30th,
3 1999.

4 Q. Did they have videotapes?

5 A. They did not have videotapes of that day.

6 Q. Did you do anything else when you went there?

7 A. I spoke with the manager and several of the cashiers
8 to try to obtain information. It was very generic interviews
9 trying to gather information. Could not gather any
10 information from them, by that time. It had been two to three
11 weeks and they just didn't have any information to give.

12 Q. So people that you spoke to, no one there remembered
13 or anything about seeing Frances Moore at the Sav-a-Lot on
14 June 30th, 1999?

15 MR. PRUITT: Objection. That's leading and it's
16 asking for hearsay.

17 THE COURT: Yeah. Sustained.

18 MR. BRADLEY: Nothing further, Your Honor.

19 THE COURT: Who's first?

20 CROSS-EXAMINATION

21 BY MR. PRUITT:

22 Q. You didn't hesitate to use the subpoena power of the
23 State and the search warrant power of the State to search
24 Debra's house, did you?

25 A. I don't ever recall searching Debra Stephens' house.

RUSTY GARRETT - CROSS BY MR. PRUITT

1 Q. Well, you didn't execute any search warrant to get
2 any receipt, did you?

3 A. No.

4 MR. PRUITT: That's all I have.

5 THE COURT: Any questions?

6 (There was no response.)

7 MR. BRADLEY: May he be excused, Your Honor?

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

9 Without objection, he's excused.

10 MR. BRADLEY: We have nothing further, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, the
12 State has rested. I'm going to send you out for a few
13 minutes. I need to talk to the attorneys about scheduling.
14 Basically you've heard all the testimony you're going to hear.
15 We're going to figure out how much time we have this
16 afternoon. My intention is to move forward this afternoon.

17 I only have really two options. That is to continue
18 this afternoon and into the evening, or bring you back
19 tomorrow or Sunday. I realize none of them are convenient for
20 you. They are really not convenient for anybody, but absent
21 some real problem I think we're just going to keep going. And
22 if that does cause a problem with you, as I said earlier on
23 Tuesday, don't get mad at the lawyers, get mad at me.

24 All right. If you would, go back. Don't begin your
25 deliberations. If anybody needs to go outside now would be a

1 real good time to do it.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 2:45 p.m.)

4 THE COURT: All right. Have you had a chance to go
5 through the charge?

6 MR. BRADLEY: Yes, Your Honor.

7 THE COURT: It was pretty straightforward.

8 MR. BRADLEY: We have no objection to it.

9 MR. PRUITT: I don't find anything in there
10 objectionable.

11 MR. GAMBLE: My scribe went through it.

12 THE COURT: You have a scribe?

13 MR. PERKINS: No objection, Your Honor.

14 THE COURT: All right. Any motions, anything we
15 need to take up before we bring them in and charge them?

16 MR. GAMBLE: How about closing arguments?

17 THE COURT: Well, we're going to do that but I
18 mean --

19 MR. GAMBLE: No, I don't have anything.

20 THE COURT: What I'm asking you is are you all ready
21 to do your closing arguments?

22 MR. BRADLEY: Yes, Your Honor.

23 THE COURT: Take about 10, 15 minutes. I'm going to
24 let them --

25 MR. GAMBLE: Smoke.

1 THE COURT: -- smoke and do whatever they got to do
2 because they'll be sitting. How long do you think your
3 closings will be, just generally?

4 MR. GAMBLE: Me?

5 THE COURT: I know yours will be short.

6 [LAUGHTER]

7 MR. PRUITT: I would say in the neighborhood of 30
8 minutes.

9 MR. BRADLEY: Similar amount of time. And I would
10 say, Your Honor, that I don't intend on getting up twice to do
11 the law then the facts. I just plan on doing them all at once
12 at the end.

13 THE COURT: All right. Take a break. We'll bring
14 you back in and get it moving.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: Okay. Everybody ready for closing? So
17 that we don't have a disagreement, does everybody agree on how
18 we're going to close, because it might get a little confusing?
19 How do you intend to do it, what order?

20 MR. GAMBLE: Calhoun is going to go first. I'm
21 going to do second, and the State can open on the law or
22 close, if they want to.

23 MR. BRADLEY: I've already decided to do it all at
24 once at the end, Your Honor.

25 THE COURT: At the end. So Calhoun, Robert,

1 Matthew.

2 MR. GAMBLE: Is that okay with you, Calhoun?

3 MR. PRUITT: Fine with me.

4 THE COURT: All right. You can bring them in.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 3:08 p.m.)

7 THE COURT: All right. Ladies and gentlemen, you've
8 heard all the testimony that you're going to hear in this
9 case. It's now time for the parties' attorneys to give you
10 their closing arguments. As I told you at the beginning of
11 the trial, closing arguments are not evidence and shouldn't be
12 considered as such but they are an opportunity for the lawyers
13 to argue their case and try to convince you to their way of
14 thinking.

15 After the closing arguments have been given,
16 depending on the distance or the amount of time that they take
17 up, we may have to take one more short break because my charge
18 is rather long, and the only time in my past that I've ever
19 read verbatim from a 35-page book was when I was trying to get
20 my children to go to sleep, and I can't have you go to sleep.
21 So I may let you stretch before I charge you. Then after the
22 jury charge you'll get this case to begin your deliberations.

23 And again, I just want to say for the 50th time,
24 thank you for your patience. And I've been watching you.
25 Thank you for listening so well.

1 All right. Yes, sir.

2 MR. PRUITT: May it please the Court.

3 Ladies and gentlemen of the jury, it's a privilege
4 for me to be here to represent Frances Moore, and I appreciate
5 very much your kind attention to the facts in this case
6 because this is an important day for Frances Moore, and we
7 take it very seriously.

8 Now, sometimes I get emotional in trials and I
9 object, and that's just something lawyers have to do. I hope
10 that if I've done something that you thought was objectionable
11 or not nice that you won't blame it on Frances. Blame it on
12 me. But that's just the way I am.

13 To get to the facts of this case though, which is
14 why we're here, I want to start off with some things and
15 remind you of some things that I believe are uncontroverted,
16 things that the State has put up and things that have been
17 corroborated by the defense in this case, and I've taken the
18 liberty of writing some of these down so we can talk about it.
19 And I want to start off -- and this is what I'm going to call
20 a timeline, because there's been a lot been said in this case
21 about times and people.

22 Now, before I go any further you are the ones that
23 are the judges of the facts, and you heard the people testify
24 from that chair. And I'm not going to misquote anybody's
25 testimony but it's what you heard and not what I said. So

1 this is the way that I've been writing it down as we've been
2 going along, but you'll be the one to remember the things that
3 you heard have transpired.

4 So let's start off that day in June of 1999. Now,
5 you know, that's a long time for everybody to remember
6 anything, and I suspect that nobody in this case would
7 remember anything except for it was the day of the tragic
8 death of Paul Stephens, but they've -- all the witnesses have
9 done their best to tell you what they recall.

10 Now, let's start off with the State's witness. You
11 remember the State's witness. That's the Officer Greg Hawkins
12 who testified one day this week. He said that he had Debra
13 and Frances down at city hall to talk to them about the
14 checkbook that had been stolen by Paul, and Debra was accused
15 of signing the name to it.

16 Now, we don't necessarily -- we don't condone that
17 type of conduct but this isn't what Frances and Debra said.
18 This is what the Anderson City Police said.

19 Now, he said that 12:07 was when Debra signed some
20 type of confession. And I asked and he pulled it out and
21 looked at it and it said 12:07, okay. And he said yeah, they
22 stayed around for a little while longer. We were kind of
23 talking about how he was going to -- he was going to come try
24 to come talk to Paul and maybe arrange for Debra to turn
25 herself in on this stuff. And so he opined that they probably

1 left about 12:30, about 15 or 20 minutes or so after the 12:07
2 confession.

3 Now, Debra said she thought they left closer to
4 1:30. So I'm not asking you to take my version or the other
5 version but it's undisputed that somewhere between 12:30 and
6 1:30 that Frances Moore was at the police department in
7 Downtown Anderson, just a few blocks from here.

8 And it's undisputed that thereafter they drive to
9 Liberty, and even the officers that I asked agreed with me
10 that from here to just outside of Liberty at the home of
11 Frances and Debra takes about 30 or 40 minutes. Most of us
12 know that route anyway.

13 It's undisputed and not been contested that Nathan
14 Moore, Frances' husband, left for work at or about 2:30. He
15 said maybe 2:25, 2:30. It was an ordinary day for him. He
16 was going to work to work on his second shift at Blair Mills,
17 and Frances had fixed his lunch.

18 Now, the next set of phone calls -- now, this is
19 what the State has put in. They've put in this set of phone
20 calls that were calls made to Debra's residence. That's not
21 things that I put into evidence. That's stuff that they put
22 into evidence, 3 phone calls.

23 We had the man up here from the phone company and,
24 you know, he said that each phone call they rounded to the
25 nearest minute, etcetera. And so the last phone call started

1 at 2:57, and we don't know exactly when it ended but it would
2 have ended at or about 3 o'clock. I didn't put a time down
3 for that because nobody can say that that's exactly when it
4 happened but we know it was at that time. So as a result of
5 some phone calls Paul Stephens leaves the house where he was
6 with Debra and Sky.

7 Now, the next thing that I think is pretty well
8 uncontradicted is that we got Josh Addis clocks in to his work
9 at Anderson Meats. And after he clocks in he comes out to
10 help Josh Anderson load, some kind of order into Mr. Anderson,
11 Senior's or his daddy's truck some order that they'd sold, and
12 they are noticing these individuals at the phone booth.

13 Now, we spent a good bit of time with him and both
14 of them indicated that they watched or they saw these people
15 out here for 10 minutes.

16 Now, it gets more interesting than that. You might
17 recall the testimony of Mr. -- of the fireman. What was his
18 name? That was Pelham. Yeah, Pelham Medlock. And I asked
19 him, well, says, you know, when the fire trucks got there they
20 extinguished the car pretty fast. How long was the time of
21 that fire? How long in terms of time would it take from the
22 time it started to get hot enough to leave the damage that he
23 spent so much time showing us about, all of these and busting
24 out glass or glass folding in? It was a pretty hot fire.

25 And it was his opinion as an expert, and His Honor

1 qualified him as expert in fires, and now what he said -- it's
2 your memory not mine. So I trust your memory. He said that
3 that fire was at least 10 to 15 minutes old, and maybe up to
4 45 minutes.

5 Now, so, you know, that's not a definite time that I
6 can put down here. So 10 to 15 minutes if you back up from
7 the time that the fire department arrives at 3:31, you back up
8 15 minutes, that's 3:16. If you take the median time between
9 10 minutes or 15 minutes, and 45 minutes it would be about
10 3:16. Of course, we also have the call to the fire department
11 by whoever called it in at 3:27. They have their records.
12 They are in charge of writing that stuff down. They write
13 down when they got the call, they write down when they arrive.

14 Now, the reason why these times are in order and the
15 reason why they are important is there's no way that this
16 crime could have occurred in the fashion and in the theory of
17 the State. There's no way for any individuals to leave
18 Anderson Meats and get down a mile and a half or 2 miles away,
19 2 or 3 minutes away to this scene, commit these crimes, set a
20 car on fire and get gone before the fire department arrives.
21 That's their theory.

22 You know, their star witness, the reverend
23 archbishop, Mr. Stansell, said in his testimony that he was
24 told that the deceased received a call and left where he was
25 to go to the scene. Won't fly. Can't do it. It's not enough

1 time. Liberty Highway out there is a busy road. Baugh Road
2 out there is a busy road. It can't have happened like they
3 have presented it.

4 It's physically not possible for any people that
5 allegedly were at any Anderson Meats telephone booth to leave
6 there and commit this crime in the time between the time that
7 they left and the time that the fire department arrived. The
8 time of the fire itself makes that not possible.

9 Now, there's some other points that I want to make
10 that have different ideas relative to this. And I'm going to
11 go over some of these with you now, and like I've told you
12 before it's my -- you know, I've been taking notes up here too
13 and you all haven't had the luxury of notes, but you all are
14 the judges and if you remember it different from what I say
15 it's what you remember that counts.

16 Now, let's talk about some of those people that have
17 testified, and you can relax because I'm not going to go and
18 recite to you everybody's testimony but I am going to hit some
19 highpoints to see if you remember it the way I remember it,
20 and we'll start off with Josh Anderson.

21 You know, he was canvassed by the police, as well as
22 Josh Addis, and they found out from him that he'd seen some
23 people there at the phone booth, and then a couple weeks later
24 they show up with these photo I. D.'s. And when you get the
25 photo I. D.'s back in the jury room and look at them I don't

1 think that they treated Frances very well in those photo
2 I. D.'s. You'll see that there's only two women in there that
3 had short black hair and the rest of them had long black hair,
4 and they really don't look at all alike.

5 Now, he says that he didn't do that, that he sent it
6 off to SLED. Well, we don't know what criteria he gave to
7 SLED. We don't know -- he said they didn't have any way to
8 put in height, weight and stuff, but I don't think it is a
9 very good layout.

10 And Josh Anderson, he's not in any way
11 unintelligent. He knew what they'd come back for. He knew
12 what they were coming and bringing these photos for. I don't
13 think that the I. D. that he made is fair. I don't think it's
14 fair when you look at the lineup sheet.

15 And I'd like to point out to you that even though
16 his friend or co-worker, Josh Addis, was there -- and as a
17 matter of fact, Josh was afraid that these people were after
18 him because he cut in front of them in his hurry to get to
19 work. He couldn't make any I. D.'s. But he was there at the
20 same place, the same time as the rest of them. And, of
21 course, at this point in time they don't know, they don't
22 attach any significance to two people using the telephone.

23 You know, it's real interesting to me that there's a
24 specialty tag on the pictures of Frances' car that says
25 something like baby, grandbaby and me, or something. You'll

1 see it in the pictures. None of them noticed anything like
2 that, any specialty tag. So I don't think that the photo
3 I. D., the alleged photo I. D. is fair.

4 Now, you know, Aaron Powers, he was the one that
5 called in on his mobile phone, I guess, to talk about the
6 fire, and although he said it was 3:16 in his testimony I
7 think we can probably all agree that the records kept at the
8 firehouse would be more accurate because he wasn't taking
9 notes either. But as you recall, when he got there, and he
10 arrived just a minute or two before the fire department, or
11 maybe they got there about the same time, he said that fire,
12 that car was too hot to touch. So it was fully engulfed at
13 this time.

14 Now, Pete Rogers saw an individual running away from
15 the scene and I believe getting into some type of red or red
16 and white pick up. I don't know why they haven't pursued
17 that. I don't know why they've gone to a lot of trouble to
18 get a lot of evidence. But they got the telephone calls
19 coming into Debra and Paul's house but why didn't they get the
20 calls that emanated from Anderson Meats? I don't know why
21 they didn't do that. There's lots of unanswered, undone
22 things in this case.

23 And, of course, that all goes back to the cardinal
24 principle of law that every one of us is presumed innocent
25 until that presumption of innocence is stripped away beyond a

1 reasonable doubt by the State taking that mantle of innocence
2 away. So it's up to them to gather evidence. It's never up
3 to an accused to prove themselves innocent.

4 There's lots of stuff they could have done. They
5 didn't take any scraping of fingernails to see if there's any
6 material in there indicative of a struggle or any type of a
7 fight. Now, Paul Stephens by all accounts was a big man, 6
8 foot 8 and 275, 300 pounds. I think it would be difficult for
9 anybody to manhandle him.

10 Now, let's see. Greg Hawkins was the police officer
11 who heard Frances Moore, after her daughter had said that Paul
12 had made her do this, get mad and cuss him out.

13 Let's see. I've got this diabolical plan hatched
14 out to where I'm going to commit this heinous murder and I've,
15 you know, got it all planned to where we can do this, and do
16 that and an hour before I'm going to say that in front of the
17 Anderson City Police Department? Well, that falls under too
18 good to be true for the State.

19 Nobody would do that if they had this planned,
20 hatched, this heinous plan hatched in their mind. They'd
21 probably be at home working on it, not meeting the city
22 police. So that's not believable that this plan was in place
23 by anyone in this trial at that time.

24 Now, Garland Major, I asked him. I said, well, you
25 went through a lot of trouble to get the tag -- to go up to

1 Ms. Moore's house and get her tag number but you never looked
2 to see how many Toyota RAV4s, white in color are in South
3 Carolina. This is not an unpopular car. They don't bother to
4 do that. It doesn't suit them.

5 See, they get hung up on something, they get excited
6 they got this thing all solved then they just stop and they
7 don't go forward with any of their other leads.

8 Of course, now we're 10 years later and miraculously
9 after Brenda Duvall dies and after the archbishop preaches her
10 funeral then, only then after keeping it to himself after 7
11 years does he come forward with this story. Now, I can't
12 explain -- I can't explain his testimony.

13 The Judge will tell you that you are the judges of
14 the facts and the credibility of witnesses and that you have
15 the right to believe all of what a witness says or none of
16 what a witness says, or anywhere in between.

17 I wouldn't believe and I don't think it's reasonable
18 for anybody to believe anything that the reverend archbishop,
19 Stansell, said. He just as well of admitted to you that he
20 told the truth when it suited him and didn't bother with it
21 when it didn't. He comes before you and says, oh, no, now
22 that I'm here testifying I don't believe in any of those evil
23 things that the Ku Klux Klan believes in. It's just a social
24 club for me or whatever.

25 Okay. So he joins an organization that he doesn't

1 believe in but when he has to testify he didn't want to make
2 it sound like that he's got evil in his heart because he's now
3 a preacher and so he didn't tell the truth then. He didn't
4 tell the truth when he was preaching Brenda's funeral.

5 Okay. Well, you know, if I was harboring this evil
6 secret in my heart I'd of believed I would have passed that
7 job to someone else, rather than get up and make a mockery to
8 the people that are there. He didn't tell the truth then. It
9 didn't suit him. Didn't tell the truth when he signed the
10 petition for Garvin to get into the Masons.

11 I think that his story is fantastic and
12 unbelievable. I don't think it makes sense. I can't tell you
13 -- the only thing I can tell you is that somehow or another in
14 his twisted mind he's gotten obsessed like some of these
15 people that stalk celebrities, cold case and being the one to
16 solve the crime. So you're the one that has to place a value
17 upon the testimony, if any, of someone who's admitted that he
18 tells the truth when it suits him.

19 Now, His Honor will tell you a lot about the law.
20 And he'll certainly tell you it's no burden or obligation of
21 Frances Moore to prove herself innocent. And when you think
22 about it, it's hard to prove a negative, you know, unless you
23 -- well, it might be easier today. You know, everybody has
24 got G. P. S. cell phones. Maybe you could track somebody and
25 see where they went. I don't know. But that didn't exist ten

1 years ago. If it did exist then nobody knew it existed.

2 But in any event, it would be very hard for any of
3 us to go back and prove, if we needed to, just exactly what
4 happened 10 years ago. So the ability to prove things that
5 happened 10 years ago are certainly impaired by the passing of
6 time. So when the archbishop decided to wait 7 years before
7 releasing this evil from his heart it put Frances Moore at a
8 disadvantage because she didn't have any ability to go back
9 and gather up anything, find just the -- like Rusty Garrett
10 testified, he couldn't find the cashier at the Sav-a-Lot. She
11 couldn't either. It's been too long. Who would remember that
12 unless somebody jumped on it right away and got that
13 information.

14 So the facts in this case do not fit the theory
15 that's been presented by the State. The physical evidence,
16 the things that are uncontroverted don't allow that to work.

17 So I'm telling you that the Judge will instruct you
18 that all the defendants in this State are presumed to be
19 innocent and that burden -- that presumption of evidence stays
20 with them until the State proves them guilty beyond a
21 reasonable doubt, and that's to each and every element of the
22 crime. Not only beyond a reasonable doubt but to the
23 satisfaction of each and every one of them. Not 10 to 2, not
24 5 to 7, all 12 must agree that they have proven a defendant
25 guilty beyond a reasonable doubt before you would be entitled

1 to bring back a guilty verdict.

2 Now, His Honor will charge you that -- of course,
3 there's been the defenses of what we call alibi here. Alibi
4 just simply means that I wasn't there. I was somewhere else.
5 I couldn't have done this because I was somewhere else and the
6 time is not right, or something like that. So that's what an
7 alibi generally means.

8 Now, it's not up to the defendant to prove the alibi
9 conversely. It's up to the State to disprove it. It's up to
10 them to satisfy you beyond a reasonable doubt that that's not
11 true because there is no burden whatsoever upon the defendant
12 in a case like this.

13 There will be an issue, of course, of some
14 identification. It's up to the State to prove that any
15 identification that was made was beyond a reasonable doubt.
16 Now, that will be up to you to also consider because that's an
17 element in this case.

18 Now, when you retire after you've heard the other
19 arguments and you've heard His Honor give you the charge I
20 think that you'll come to the conclusion that they haven't
21 proven their case beyond a reasonable doubt.

22 There will be things in your heart that cause you to
23 attach a doubt to some of the things that the State has tried
24 to prove, and pursuant to your oath if you find that doubt
25 living in your heart you're under a duty to come back with a

1 verdict of not guilty for Frances Moore, and I would ask that
2 you do that. Thank you.

3 THE COURT: Yes, sir.

4 MR. GAMBLE: Please the Court, Judge.

5 Friend and allies one time asked me. He said, You
6 practice what you're going to say. I said, No, if I did I'd
7 forget it if I tried to write it down. So if I forget
8 something it's because I'm getting to that place where -- age,
9 where you do forget things. I hope I don't.

10 A reliable witness is one that you can rely upon
11 what they tell you. A reliable witness was Aaron Powers, a
12 man driving down the road not expecting to see anything and
13 sees a fire burning, stops, sees that the car is on fire, and
14 I think he called in the fire department.

15 The next man that I know that's reliable was Pete
16 Rogers. That's probably the most reliable man in this whole
17 trial. He's going down near Walker-McElmoyle Fire Department
18 and gets the call on his in-car radio, he's a volunteer
19 fireman, turns his car around heads back. Gets back up to the
20 place where the fire is and what does he see? He sees a man,
21 sleeveless undershirt running, running away from the fire,
22 running out from the scene, jumping in the passenger side of a
23 white Dodge pick-up truck and off they go.

24 We don't know who it is, don't know anything about
25 them. But I think Pete Rogers was honest in what he saw and

1 told you what he saw. A man about 6 feet tall, weighed less
2 than 200 pounds leaving the scene, rapidly.

3 We learned also that Ken Blakely, who was with
4 C. I. D., went out and he found a 380 shell. A 380 is an
5 automatic weapon, generally speaking. And in order for the
6 shell to be on the ground it would have to come from an
7 automatic weapon.

8 Now, those of you who aren't familiar with an
9 automatic weapon it expels the shell out to the side whereas a
10 revolver keeps the shell inside the revolver part. You would
11 only have a shell falling onto the ground by an automatic
12 weapon. Okay. We know that this man was shot with a 38
13 because the doctor dug it out of him.

14 The next reliable witness or two, the Joshes. They
15 are not really reliable because one was in a hurry to get to
16 work and once he got to work they were loading a Jeep. One
17 says a person he saw had on glasses, one said the person he
18 saw did not have on glasses.

19 One said it was a two to three day growth of beard
20 on the man, the other said that he just didn't notice, and
21 that the man had on long pants, and somebody said there was
22 some kind of shorts involved. I don't know. They didn't
23 identify anybody that I'm concerned with in this trial, so I
24 didn't look to them.

25 A reliable witness, in my opinion, is Ralph

1 Stansell, a hardworking construction man that knows he was
2 sitting on his front porch on the 30th day of July -- June,
3 rather, talking with his wife, his daughter and his son-in-law
4 from 2:00, or thereabout, until 4:00 or 4:30.

5 What caused your attention to this, Mr. Stansell?

6 By the way, no relation to the archbishop. He made that
7 perfectly clear. I remember it because I was going to Brazil
8 on a missionary trip to build a chapel and I got together, got
9 off early and I got with my family to sit and be with them for
10 a while before I left to go to Brazil. That's reasonable.
11 That's believable. That's reliable.

12 Now, let's go to the party where this started on the
13 27th day of June 1999. On that day that Ku Klux Klanning,
14 some kind of Catholic, Anabaptist Evangelist, and whatever
15 else it takes to get recognition of some kind, says he left
16 this party and went with Garvin Duvall and Garvin told him of
17 the plans to go off this guy for 2,000 bucks.

18 In the first place, it doesn't make sense. If I'm
19 going to pay somebody \$2,000 to off somebody I ain't going
20 with them. I don't want to be around them. I'm going to be
21 somewhere else, and I'm going to make sure that there's other
22 people there that know me so they can say yeah, he was there.
23 He wasn't over there at the killing grounds. He was over here
24 at the airport watching the air show. We saw him there.

25 Anyway, Debra Stephens, Kim Hendrix, Sam Hendrix are

1 reliable witnesses that had no ax to grind, no meat to throw
2 out, nothing to do but they said this man never -- Garvin
3 Duvall never left that party, never went off with the
4 archbishop, never did anything with him, and they knew because
5 he had a loud muffler on his car and he was parked right there
6 next to the wall at the Haygood Center.

7 Now, what does the archbishop get out of it?
8 Personal aggrandizement. I watch Cold Case. I broke the
9 case. I broke a cold case. I'm the archbishop. I'm the
10 grand dragon of the Ku Klux Klan. I'm the bishop of a Celtic
11 Anabaptist Church. I am the great. I am boosting myself. I
12 am the head of the Lighthouse Ministry. I can go to the
13 penitentiary and tell them I put men here. I, I, I, I'm good.
14 I'm great. I'm the greatest. I'm the top. I want notoriety.
15 I want to be published. That's the only reason, pure greed.
16 I want it.

17 I couldn't of asked for a better answer from Ralph
18 Stansell if I'd of paid him, if I'd of got him to say it. How
19 do you recall? Well, in 1981, April 5th, as a matter of fact,
20 I gave my soul to the Lord. And that's the only bad thing
21 that they could say, I guess. I don't think it's bad. He
22 said he wouldn't lie for anybody, and I believe him. I
23 believe him when he said Garvin Duvall was at his house from
24 2:00 until 6:00.

25 Hendrix, yeah. They were at the party and they

1 didn't see him leave. The only person that you can rely on in
2 order to bring a conviction back is that bale of cotton that
3 was sitting there telling you he was the archbishop, the grand
4 dragon, the bishop, the head preacher, the evangelist or the
5 Baptist, and I don't know what he is. I have no idea. But
6 you have to believe what he says in order to convict in this
7 case, and I really don't believe that he is reliable. I just
8 can't believe it.

9 Thank you for your attention. And I can assure you
10 I'd rather be anywhere else than here on a Friday afternoon.
11 So I appreciate your being here, too. Thank you.

12 MR. BRADLEY: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. BRADLEY: Ladies and gentlemen of the jury, I
15 appreciate your service this week. I know it's been a long
16 week. And I know as everybody else has said, you'd rather be
17 anywhere else but here right now. But we thank you for your
18 service, and your patience, and your attentiveness while all
19 the evidence have been presented.

20 Now, it's my job, the State, to go back through all
21 that evidence, through the law to make sure you understand
22 that the State has carried its burden.

23 Now, at the beginning of this trial my partner, she
24 told you that it's the State's burden to prove to you, all of
25 you beyond a reasonable doubt that the defendants committed

1 the crimes charged. She told you it was a burden that we
2 welcomed, and I'm telling you and I'm submitting to you that
3 it's a burden that we carry.

4 I want to talk to you a little bit more about what
5 beyond a reasonable doubt means. Beyond a reasonable doubt
6 does not mean beyond all doubt. There are very few things in
7 life that we know with absolute certainty and the law does not
8 require the State to provide proof that overcomes every
9 possible doubt.

10 A reasonable doubt is the kind of doubt that would
11 cause a reasonable person to hesitate to act. Please don't
12 confuse a hesitation to act with carefully considering the
13 evidence. The State asks that you do carefully consider the
14 evidence when you go back to the jury room.

15 Beyond a reasonable doubt means that you as a jury
16 are firmly convinced of the defendants' guilt based upon all
17 the evidence presented to you, firmly convinced of their guilt
18 of the crimes charged. Now, what are those crimes charged
19 again? We have murder, conspiracy to commit murder,
20 possession of a firearm during the commission of a violent
21 crime, for both of them.

22 The elements of those crimes, again, for murder was
23 a killing of a person with malice aforethought. Malice
24 aforethought. Malice has been defined as the wrongful intent
25 to injure another and indicates a wicked or depraved spirit

1 intent on doing wrong. Malice can be either express or
2 implied. It can be implied by the use of a deadly weapon.

3 Although malice must be aforethought there's no
4 requirement that it must exist for any appreciable amount of
5 time before the commission of the act. It may be conceived at
6 the very moment the assault occurs.

7 The elements of possession of a firearm during the
8 commission of a violent crime, just like my partner told you,
9 is just like it sounds, the use of a firearm during the
10 commission of a violent crime, like murder is.

11 Then we have conspiracy to commit murder. The
12 elements of that again are a combination between two or more
13 persons for the purpose of accomplishing a criminal, unlawful
14 objective. In this case, murder.

15 Now, I submit to you the State has proven to you
16 beyond a reasonable doubt the defendant's guilt in this case
17 for the crimes charged with the overwhelming amount of
18 evidence we have presented to you that you have heard and seen
19 throughout this trial.

20 As my partner told you, again, at the beginning of
21 this trial, there's two types of evidence. There's direct and
22 there's circumstantial evidence. Direct, the law describes
23 direct evidence as testimony from a witness who actually saw,
24 heard, touched, tasted something. Furthermore, direct
25 evidence can be in the form of fingerprints, D. N. A.,

1 videotape.

2 Then there's circumstantial evidence.

3 Circumstantial evidence is described as indirect evidence, or
4 it can be a proof of a chain of facts indicating the existence
5 of a fact. The law makes no distinction between the two and
6 one is not better than the other. You can convict on
7 circumstantial evidence alone.

8 And there's an illustration that I like to use to
9 further explain the difference between the two. For direct
10 evidence, if there was windows in this courtroom and it was
11 raining outside you could see that it was raining. That would
12 be direct evidence of the rain. But since, like we are in
13 this courtroom right now, there's no windows. You couldn't
14 see outside. But if you saw someone walk in with an umbrella
15 that was wet, with a rain jacket on that was wet you could
16 deduce from those facts that you had seen that it was raining
17 outside. That's circumstantial evidence. It's a proof, it's
18 a chain of facts proving the existence of a fact.

19 Now, as you have seen and the State doesn't hide
20 behind the fact that there's not a lot of direct evidence in
21 this case. We know there's no fingerprints, we know there's
22 no D. N. A. That's why we didn't put it up for you. But
23 there is a lot of circumstantial evidence in this case.

24 As evidence showed, the plan all along was to
25 destroy any physical evidence that may be left at the scene.

1 So don't let these two defendants get away with murder because
2 they carried out a plan to cover their tracks and get rid of
3 any forensic evidence.

4 As I said, there's plenty of evidence in this case
5 that all comes together by connecting the dots to form the big
6 picture, like putting a puzzle together. The evidence is
7 clear and overwhelming. It's a chain of facts. And I would
8 like to go through that chain of facts in the order in which
9 they happened in timeline fashion.

10 Now, as Mr. Pruitt did, I've prepared a timeline for
11 you. As you might expect, mine is a little bit different than
12 his, and I'd like to put that up at this time.

13 Months and weeks leading up to the death of Paul
14 Stephens he expressed to his family and friends his fear of
15 the defendant, Frances Moore. He told them. He told Kenny
16 Erwin, Elaine Erwin and Rita Woods, three different people on
17 different occasions, multiple times that he was afraid of her.
18 That if I'm ever found shot in the head, my car burned have
19 her investigated. That was his fear.

20 On June 27th, 1999 at a child's birthday party in
21 which John Stansell was performing a magic show he was there
22 with Garvin Duvall. They go for a ride in the truck, and
23 Duvall reveals to Stansell that the victim planned to rat out
24 the defendant. Duvall says Moore wants the victim dead.
25 She's willing to pay \$2,000 for someone to kill him.

1 When Stansell asked him, well, he's your friend, why
2 would you do something like that; Duvall said, business is
3 business. Duvall shows -- he tells him about his plan on how
4 he's going to do it. He tells him he's going to lure him out
5 to meet him, shoot the victim and then burn the victim's car
6 to destroy any evidence. He even shows John Stansell a gun he
7 had been provided. Mr. Stansell said in his opinion it was a
8 380 automatic. He knew what they looked like. He used to own
9 one.

10 The next thing we have is June 30th, the day of the
11 murder. Beginning that morning at 10:00 a.m., between 10:00
12 a.m. and 12:15 p.m., Frances Moore and Debra Stephens were at
13 the Anderson City Police Department. Lieutenant Hawkins had
14 questioned Debra Stephens for over 2 hours and she finally
15 confessed to some unrelated forgery charges.

16 She told her mother, she told Lieutenant Hawkins
17 that Paul had gotten her involved in it. And at this stage
18 Lieutenant Hawkins said that Frances Moore became visibly
19 upset and said in his presence I'm going to kill that son of a
20 bitch, referring to the victim. This threat given just hours
21 before the victim, Paul Stephens, was found shot to death.

22 The next thing we have, some time between 2:45 and
23 2:50 that day Josh Addis pulls up to the stop sign on Ruhamah
24 Road. Across from him sitting in front of the crime scene
25 where Paul Stephens' body would later be found shot to death

1 and his car burned is a white RAV4 sitting on the opposite
2 side of the road facing him, just sitting there.

3 He says he sees the car start up, come to the stop
4 sign, he says straight across from him. He pulls out in front
5 of them, travels up to Anderson Meats and Grocery where he
6 works. The white RAV4 follows him up there.

7 He says that there was a white female driving, there
8 was a white male passenger. And then he says when he parks at
9 Anderson Meats and Grocery he gets out and goes into work to
10 clock in. And what does he see? He sees the white male jump
11 out of the car and go straight to the pay phone to start using
12 it.

13 Next you have Josh Anderson. First let's talk about
14 the phone calls. As soon as Josh Addis pulls into the parking
15 lot at Anderson Meats and Grocery he said it had taken him
16 about 2 minutes to make the drive -- it had been between 2:45,
17 2:50 when he saw the white RAV4 on Baugh Road.

18 So taking the 10 minutes to make the drive would
19 have been about 2:52 that would have put him getting into the
20 parking lot, and the white male in the white RAV4 jumped out
21 and began using the pay phone at the exact same time. That's
22 the first time we have a phone call being made from the
23 Anderson Meats pay phone to Debra Stephens' number where the
24 victim also lived. That's what the first recorded call was.

25 Then the next recorded call, 2:53, made by the same

1 white male, white female that was in the white Toyota RAV4 to
2 the number listed to Debra Stephens. At 2:54 Josh Addis
3 clocks into work. He testified that after he clocked into
4 work he walked outside with Josh Anderson, also an employee of
5 Anderson Meats and Grocery.

6 And they gave approximations of their times between
7 5 minutes, 10 minutes because they told you it had been 10
8 years since this happened. And I believe the defense is
9 trying to stretch it out to always use the furthest length
10 maximum such time ranges, but it doesn't always have to be the
11 maximum length of time ranges.

12 As they said, just a few minutes after he clocks in
13 they come back outside and what do they see? Both of them
14 still see the white female and white male using the pay phone
15 at Anderson Meats in the white RAV4.

16 At 2:57 another call was made. This time, as the
17 phone records show, the call was a little bit longer, almost 2
18 minutes 29. Anywhere between 2 minutes 29 seconds and 1
19 minute 30 seconds. And I submit to you that's when they
20 talked to Paul Stephens. They finally got him on the phone
21 and told him to meet them on Baugh Road.

22 The next thing we have is Josh Anderson says that
23 yeah, he came back out with Josh Addis, and what did he see?
24 He saw the white male -- the same white female, white male in
25 the Toyota RAV4 using the pay phone. And Anderson later

1 identifies that white female as Frances Moore. He was
2 confident about his selection. He told you the reasons why he
3 picked her out, same jaw line, mole on her face, hair as
4 driving a white RAV4.

5 And then when he was shown the photo lineup of the
6 males he didn't positively identify anybody, but he pointed to
7 number 3 and said that kind of looks like him, number 3 stands
8 out to me. Garvin Duvall was portrayed in picture number 3.

9 Now, Josh Addis did not positively identify the
10 white male or the white female. The State does not deny that,
11 but what did he tell you? He didn't look at either one of
12 them in the face. So he wouldn't be able to.

13 He was shy back then, introverted. I can't remember
14 all the exact words he used but that's what he said. He
15 wasn't really paying attention to their faces. He just knew
16 that they had followed him up very closely from the Baugh Road
17 location to Anderson Meats. He got out and went inside but
18 knew that they were there. It was a white male and white
19 female in a white RAV4.

20 Josh Anderson said he did. He looked at their
21 faces. More importantly he looked -- he paid close attention
22 to the white female and he confidently said it's Frances Moore
23 when he selected her out of the photographic lineup.

24 Shortly after 3:00 p.m. Josh Anderson says he sees
25 Frances Moore, who he had picked out as being the white

1 female, and the white male get back into the white RAV4 and
2 drive back towards Anderson, leaving Anderson Meats and
3 Groceries back towards Anderson, which is in the same
4 direction as the Baugh Road crime scene.

5 As testimony occurred, it would take 2 minutes to
6 get from there to the crime scene. So somewhere in the
7 vicinity after 3 o'clock Frances Moore and Garvin Duvall left
8 Anderson Meats and Grocery heading back to Baugh Road crime
9 scene to wait on Paul Stephens.

10 The next is just an approximation that I've placed
11 up here. Between 3:10 and 3:27 Paul Stephens is murdered, his
12 car is set on fire.

13 Based upon the testimony and phone records, you had
14 Detective Garrett to testify that when he drove the route from
15 the victim's home to the crime scene it took him 7.1 miles, 11
16 minutes, 27 seconds, and that was going the posted speed
17 limit. Had he driven a little bit faster he said no doubt in
18 his mind he could have made it in less than 10 minutes.

19 The phone records say the last call was 2:57. It
20 lasted about 2 and a half minutes. That would place Paul
21 Stephens leaving his house a little after 3 o'clock. Making
22 the trip to the crime scene on Baugh Road it would have been
23 right around 3:10 p.m., or a little before or a little after.
24 So somewhere in that time frame he's shot in the back of the
25 head and in his back, and his car is set on fire.

1 The testimony of Pelham Medlock, the arson
2 investigator, said the damage done to the car when it was
3 found by the firemen and after it had been put out, that time
4 frame of the amount of damage done would have had to have
5 occurred between just minutes or 45 minutes on the long end.

6 There's 17 minutes from the time Paul could have
7 arrived -- would have arrived at the crime scene and between
8 when the 911 call was placed and it was first discovered by
9 Aaron Powers and Billy West. Now, it's not on here, but
10 getting into this time frame right here between 3 o'clock,
11 2:30, 3 o'clock (indicated).

12 Now, I want to remind you that it's the State's
13 burden to prove to you beyond a reasonable doubt, again, of
14 the defendant's guilt. It's a burden that we welcome but
15 whenever the defense puts up witnesses you as a jury should
16 weigh their credibility as you would weigh the State's
17 witnesses, and I want you to think about the witnesses they
18 did put up.

19 They put up close family and close friends. I want
20 you to think about the biases and motives they would have to
21 testify. I asked all of them that I cross-examined, you're
22 pretty close to them, aren't you; you wouldn't want to see
23 anything bad happen to them. They all said yes. They have a
24 bias and motive to be here today. I want you to think about
25 that when you're considering their credibility and their

1 truthfulness when they're testifying to you.

2 Now, going back to this time frame. The Moore
3 defense would have you believe she was at the Sav-a-Lot
4 grocery store in Easley, South Carolina because of a
5 10-year-old cash receipt that has no identifying features on
6 it, none. It was a cash receipt that just had a few items on
7 it and nothing that directly links it to Frances Moore.

8 They tried to tell you this through Debra Stephens,
9 who admits she wasn't at the grocery store, she wasn't with
10 Frances Moore. And she admitted that it had no identifying
11 features on it tying it directly to her mother and that she
12 doesn't know for sure her mother was at the store. She told
13 you that. She admitted she didn't know for sure, even though
14 that's what she was trying to testify to about the receipt.

15 When considering that think about the eyewitness who
16 did know for sure and confidently picked her out of a photo
17 lineup as being the one using the pay phone at 2:52, 2:53 and
18 2:57. Josh Anderson sees a white female in a white RAV4 who
19 he says confidently was Frances Moore, driving the exact same
20 type of vehicle that's registered to Frances Moore 's name.
21 It's not one big coincidence.

22 And the Duvall defense would have you believe that
23 Duvall was sitting on his father-in-law's porch at some time
24 between 2:30 and 3:00 p.m. that day, Mr. Billy Ralph Stansell,
25 who never told anybody that until today.

1 When we asked him why didn't you tell law
2 enforcement this if you knew your son-in-law was sitting with
3 you at this time even after he had been questioned for murder?
4 Why didn't you come forward and tell anybody this? Well, he
5 said he didn't feel like he needed to.

6 He said that law enforcement brought a card and
7 placed it at his door. He could have easily called if this
8 was information that he had, but he didn't tell anybody this
9 until today. And, again, consider bias and motives for coming
10 in and testifying.

11 All right. At 3:27 Powers and West discover a
12 burning vehicle on Baugh road and they call 911. Aaron Powers
13 said as soon as the firemen started showing up they left.

14 Pete Rogers testified he was the first one on the
15 scene around 3:30 p.m. before the tankers got there, and he
16 sees people on the scene leaving. He said he sees someone
17 running away from the scene, and that was Aaron Powers. Aaron
18 Powers had just testified that he was there and left when the
19 firemen started showing up.

20 At 3:31 the first fire engine arrives on the Baugh
21 Road location of the burning vehicle, and 3:33 the second
22 engine shows up.

23 Around 3:40 another volunteer fireman, Bobby
24 Mullikin, said he discovered the body of Paul Stephens laying
25 just a few feet behind this burning vehicle after they were

1 starting to search around the car. He had been shot in the
2 back of the head, shot in the back. He didn't touch the body.
3 He backed away and secured the crime scene.

4 Forensics showed up. Deputy Miller arrived first on
5 the scene to secure the scene. Investigators and forensic
6 investigators showed up to collect evidence at the scene.

7 The very next day Dr. Woodard conducts his autopsy.
8 He confirmed that Paul Stephens died as a result of 2 gunshot
9 wounds with either of them having been fatal if fired alone.

10 He testified that according to his analysis and
11 report that the first shot would have had to have been the
12 shot to the back of the head because of the blood trauma found
13 there. He said that if the shot to the back flank area had
14 been the first shot there would have been no blood pressure in
15 the heart to cause that blood trauma in the head. So in his
16 opinion, his expert opinion, the first shot would have had to
17 have been the one at the back of the head.

18 He also said that the victim was a very tall man, 6
19 foot 8, and the trajectory of the bullet would of had to have
20 been someone shorter than him pointing the gun upward. And
21 that the second -- the trajectory of the second bullet was
22 most consistent with someone standing over him as he was
23 already on the ground on his stomach and close to his feet
24 firing the second shot.

25 This forensic analysis given by Dr. Woodard

1 corroborates and matches the way John Stansell told you Garvin
2 Duvall said he killed Paul Stephens. Was Duvall bragging
3 about his kill or had his conscious got the better of him
4 because he had killed on of his best friends?

5 Whatever the reason, he confessed to John Stansell
6 that he carried out -- planned, carried out the execution of
7 Paul Stephens on June 30th, 1999. And this occurred -- he
8 confessed this to John Stansell just weeks after it occurred
9 in July 1999.

10 And what did he tell him? Let's go over that
11 confession. He says he went to Anderson Meats and Grocery
12 that day. He says he called Paul Stephens to lure him out to
13 Baugh Road. He said when Paul got there to Baugh Road Paul
14 got out of his car, started walking down the trail, and that's
15 when he pulled out the gun and shot him in the back of the
16 head. Then he claims he set the car on fire to destroy any
17 evidence. Then he claimed that he took the murder weapon to
18 his place of employment and burned it in the furnace. This
19 was the confession of Duvall, the killer.

20 I submit to you that even though this was a
21 confession of Duvall all the other evidence in this case
22 corroborates, proves to you beyond a reasonable doubt that
23 Frances Moore was with Duvall that day, June 30th, 1999.

24 And, again, I know I'm going to repeat myself, and I
25 apologize, but it's important to repeat myself because all

1 these things that are inner connected, they connect like
2 connecting the dots.

3 Again, the other evidence that corroborates Frances
4 Moore was with Garvin Duvall was the testimony of Josh Addis.
5 He sees a white RAV4 pull out from the very scene that Paul
6 Stephens would be found shot and killed and his car set on
7 fire. He says he sees him about 2:50. Paul Stephens' car is
8 found at 3:27, just minutes before he's found dead. The white
9 RAV4, the same type of vehicle Frances Moore drives is seen
10 leaving the crime scene.

11 He comes up to Anderson Meats. He says he sees them
12 get out, the white male, white female get out using the pay
13 phone. Garvin Duvall confesses to John Stansell he went to
14 Anderson Meats and called Paul Stephens from the Anderson
15 Meats pay phone to lure him out. We have a white male and
16 white female at the pay phone.

17 The call records confirm at 2:52, 2:53, 2:57 calls
18 were made to the residence where Paul Stephens lived and they
19 were answered, 2:57 being the longest.

20 Josh Anderson, his testimony also corroborates this.
21 He proves that Frances Moore was with Duvall the day that --
22 and carried out these actions. That's how Duvall confessed
23 them to Stansell.

24 Josh Anderson says he sees a white female and a
25 white male in a white RAV4. Again, the same exact vehicle

1 registered to Frances Moore, using the pay phone, the pay
2 phone Garvin Duvall confessed to Stansell he used to call Paul
3 Stephens to lure him out and kill him.

4 And Josh Anderson confidently picked Frances Moore
5 out of that lineup. Said yes, that's the one. Confident she
6 was the one I saw using the pay phone and driving the Toyota
7 white RAV4.

8 Josh Anderson further testified that they left. The
9 white male and white female in the white RAV4 left the scene
10 and came back down towards Anderson, towards the crime scene
11 area. That matches how Duvall confessed it to Stansell.

12 They called him to lure him out, so they went back
13 to wait for him. Again, the time frame would have been they
14 talked to him about 3 o'clock, he left his house, made it
15 there by 3:10, between 3:10 and 3:15, and then they shot and
16 killed him.

17 I submit to you, all of that evidence proves to you
18 that Frances Moore was with Garvin Duvall on the day he says
19 he confessed -- I'm sorry, the day that he confessed to
20 killing Paul Stephens to John Stansell.

21 And under the law that the Judge will instruct you
22 further in a little while, South Carolina law states that the
23 hand of one is the hand of all. That principle states that
24 one who joins with another to accomplish an illegal purpose is
25 liable criminally for everything done by his confederate

1 incidental to the execution of the common design and purpose.
2 The common design and purpose in this case being the murder of
3 Paul Stephens.

4 The law further states that if two or more people
5 are acting together or substantially acting together,
6 assisting each other in the commission of the offense the law
7 says under those circumstances that the act of one is the act
8 of all, the hand of one is the hand of all.

9 Frances Moore had made good on her declaration
10 earlier that day. Just hours before Paul Stephens was found
11 shot and killed she's overheard saying I'm going to kill that
12 son of a bitch. That's exactly what she made sure happen.

13 This plan for murder had not begun just that day
14 though. It had occurred, the events that started the motion,
15 several days before then. As you heard John Stansell testify,
16 on June 27th Garvin Duvall already had a plan, had a plan of
17 how he was going to lure him out, shoot him, and burn his car.
18 That's exactly what ended up happening.

19 He said that Frances wanted him dead. She was going
20 to pay for someone to do it and he planned on doing it.
21 Business was business. Garvin even pulled out the gun to show
22 Stansell again. He said, in his opinion, it was a 380
23 automatic.

24 Ken Whitler, SLED agent, said yes, the bullets I
25 pulled out of -- the bullets I tested that came out of Paul

1 Stephens' body were consistent with 380 auto ammunition.

2 Why had it gotten to this point, that murder was the
3 plan for Garvin Duvall and Frances Moore? According to
4 Duvall's confession to Stansell, Paul Stephens was Anderson
5 County's biggest rat.

6 You heard Detective Major say yes, Paul Stephens was
7 giving information to Pickens County. That was happening.
8 Business was business for Garvin. He was going to rat him
9 out, business was business. It didn't matter if it was a
10 close friend to him.

11 Frances had just witnessed her daughter confess to a
12 crime and became visibly upset and threatened to kill Paul in
13 front of a police officer. Furthermore, Moore was the
14 beneficiary of a hundred thousand dollar life insurance
15 policy. She stood to collect quite a bit of money should Paul
16 Stephens be killed.

17 And Duvall, as he told Stansell, he was planning on
18 getting paid. Duvall said he gained \$2,000 to carry out the
19 murder of Paul Stephens.

20 Now, the defenses would have you think John Stansell
21 is not a very good witness. They questioned him extensively
22 about his religious associations, the association with the Ku
23 Klux Klan, other choices, bad choices that he's made, and he
24 admitted to all of them. He didn't try to deny any of them.
25 In fact, he came out and admitted to them, most of them on

1 direct. He went ahead and told you. He was ashamed of his
2 past. He went through a rough time in his life, and he
3 admitted to that.

4 And the defense wants you to think that he's lying.
5 But why would he lie? He has no reason to lie. He never said
6 he and Garvin got into an argument, a falling out when he came
7 forward in 2006. In fact, he told you to this day he still
8 has no ill will in his heart towards Duvall. He still loves
9 him like a brother. He's known him since 1993. They were
10 close friends, and he has no reason to lie.

11 And what did he tell you about why he finally came
12 forward? He said he had been carrying this burden for 7
13 years. It was affecting his health, he couldn't sleep. He
14 was feeling guilty. He just couldn't carry it anymore, and he
15 finally knew someone had to know the truth.

16 And he said he had been carrying it for 7 years
17 because he was afraid of Garvin Duvall, of the retaliation on
18 him, on his family. Someone just confessed to him that they
19 had killed one of his best friends. He knew that if he was
20 going to rat him out just like Duvall said Paul Stephens was
21 the same plan could be held for him.

22 He was afraid of the retaliation, and that's why he
23 didn't come forward. But finally he had to. He knew he had
24 carried the burden too long and he felt guilty and someone had
25 to know the truth about the murder of Paul Stephens.

1 And he doesn't deny that he stayed close to Duvall
2 after he came forward, after Duvall gave him the confession in
3 1999. He doesn't deny that he submitted his name for the
4 Masons. So why did he tell you he did that? To stay in his
5 good graces. Again, he was scared of the man, scared of
6 retaliation.

7 Now, I want you to think about it. The things that
8 he testified Duvall said to him are corroborated by other
9 evidence in this case. It's not just what he's telling you.
10 There's other evidence that corroborates exactly what he told
11 you, and I'm about to show you that, such as the fact from
12 Duvall's confession to Stansell.

13 Stansell says this happened -- first conversation
14 occurred at the birthday party on June 27th, 1999. Tells him
15 he wants -- Moore wants the victim dead, wants him to kill
16 him, and he plans on killing him. The photographs of the
17 birthday party place them together on that date.

18 The next thing, Duvall shows the gun to Stansell
19 that he plans to use on the victim. Stansell says it looks
20 like a 380 auto or 9 millimeter. Agent Whitler confirmed the
21 bullets that killed the victim are consistent with 380 ammo.

22 The next thing, Duvall says he used the phone at
23 Anderson Meats to call the victim at Debra's house and tell
24 the victim to meet him at Baugh Road. The phone records show
25 that and confirm that. Three calls were made from Anderson

1 Meats pay phone to Debra Stephens' number on the same day.

2 Also confirming that, Josh Addis seen the white RAV4
3 pulling away from the Baugh Road location following him to
4 Anderson Meats. The white female driver and the white male
5 passenger get out to use the pay phone. Josh Anderson's
6 testimony also corroborates that. There's more, being the
7 white female using the pay phone and driving the white RAV4.

8 He also sees Moore and the white male leave in the
9 white RAV4 and drive back towards the Baugh Road location.
10 The records show Frances Moore owns a white Toyota RAV4.

11 Next, Stansell says that Duvall confessed to him
12 that when Paul arrived he got out of his car and begin walking
13 down a trail behind the car. When you get back to the jury
14 room I want you to look at the pictures of the trail behind
15 the car. The crime scene photos match this trail. The
16 description of how Stansell told it is how Duvall confessed to
17 him.

18 The next -- and not only that, Dr. Woodard's autopsy
19 says that the victim, yes, was shot first in the back of the
20 head, just like Duvall said he did. He shot him in the back
21 of the head. That was the first shot. That's what he told
22 John Stansell. That's what the autopsy confirms.

23 Duvall states that he set victim's car on fire to
24 destroy any evidence. Medlock, Pelham Medlock, the arson
25 investigator, confirmed that incendiary fire caused by an

1 accelerant was set in the passenger compartment of the
2 vehicle. It wasn't a malfunction of the car. It was a human
3 intervention fire set by an accelerant.

4 Duvall states he disposed the murder weapon at the
5 furnace at work at Ryobi. Jane Miller came up here and
6 testified. She confirmed Duvall did work there. His job was
7 melt shop operator. It was his duty to feed the furnace.
8 Confirmed that the furnace was hot enough to melt the gun.

9 Court records also show Duvall did not work on June
10 30th, 1999 when Paul Stephens was murdered but did return to
11 work on July 1st, 1999, in which he had an opportunity to put
12 the gun in the furnace.

13 Again, all of these details corroborated by all of
14 this other evidence should firmly convince you that John
15 Stansell is not lying about what Garvin Duvall confessed to
16 him. It was the confession of a killer, straight out of
17 Duvall's mouth.

18 This murder was carefully thought out and planned by
19 Frances Moore and Garvin Duvall. The evidence is clear and
20 overwhelming proving that to you. Don't allow yourself to be
21 distracted from the basic facts, and those facts prove each
22 and every one of these elements.

23 All the elements of the crime were met, the elements
24 for murder, the elements for conspiracy to commit murder, the
25 elements for possession of a firearm during the commission of

1 a violent crime. All those elements are met. All this
2 evidence proves that to you. They are both guilty.

3 And, again, I know I repeated myself a lot through
4 this. All this evidence connects. You can't mention one
5 without mentioning the other. It all corroborates. It all
6 comes together. It's like connecting the dots for the big
7 picture, and that big picture is that the State has proven to
8 you beyond a reasonable doubt that these two defendants,
9 Frances Moore and Garvin Duvall, are guilty of the murder of
10 Paul Stephens, for conspiring to commit the murder of Paul
11 Stephens, and for possession of firearm during the commission
12 of a violent crime, which was the murder of Paul Stephens.
13 Thank you very much.

14 THE COURT: All right. Ladies and gentlemen, I'm
15 going to send you out for the last time. I will just tell you
16 that the charge is going to take a little while. So if you
17 need to smoke now is the time. Once you begin deliberating
18 it's going to be very difficult to let you out to smoke. So
19 any of you that have to smoke now is the time.

20 As soon as you get back we'll bring you back in.
21 I'll charge you, and then we'll send you back to begin your
22 deliberations.

23 (WHEREUPON, the jury leaves the courtroom at
24 approximately 4:30 p.m.)

25 THE COURT: Okay. Everybody take a break. Be right

1 back.

2 (WHEREUPON, a brief recess was taken.)

3 THE COURT: Okay. Everybody ready?

4 MR. GAMBLE: Ready.

5 THE COURT: Mr. Pruitt, you ready? Mr. Pruitt, you
6 ready?

7 MR. PRUITT: Yes, sir. I'm sorry.

8 THE COURT: You ready?

9 MR. BRADLEY: Yes, Your Honor.

10 THE COURT: All right. You can bring them in.

11 (WHEREUPON, the jury enters the courtroom at
12 approximately 4:55 p.m.)

13 THE COURT: Thank you, Mr. Graham.

14 All right. Ladies and gentlemen, you very patiently
15 listened all week to testimony, to the opening arguments and
16 the closing arguments. It's now my obligation to charge you
17 with the law as it applies to this case.

18 As I said, I have to literally read this to you
19 verbatim. I apologize for that. If at any point during the
20 course of this jury charge you need a break for any reason
21 raise your hand. It should take 20 to 25 minutes for me to
22 read this. I'll do my best not to read too fast.

23 You will not have the charge with you in the jury
24 room but as I'll explain to you at the end of the charge if
25 you need me to re-charge or expound on anything, Mr. Foreman,

1 you'll send out a note to that affect once you begin your
2 deliberations.

3 First, let me repeat to you something that I've
4 already done twice. Frances Moore and Garvin V. Duvall have
5 been indicted. The fact that they have been indicted in this
6 case should not be considered by you at all. You'll actually
7 have the indictments in the jury room with you. Please
8 understand, as I told you earlier, that indictments literally
9 are just the mechanism by which these cases start. They are
10 pieces of paper. They contain the charges.

11 And, in fact, Mr. Foreman, I'll explain to you at
12 the end of this charge you'll actually write the verdict on
13 the indictment.

14 But please don't discuss the fact that the
15 indictment has been issued. They have pled not guilty, and
16 I'll explain a little bit more about that later, but there's
17 no presumption or inference of guilt in this case. You should
18 not believe that because there has been an indictment that
19 these parties are anything other than not guilty until you
20 decide that they are not guilty.

21 Now, ladies and gentlemen, I charge you that the
22 indictments in this case allege several different offenses
23 against the defendants. The charges are an indictment for
24 murder, an indictment for criminal conspiracy, an indictment
25 for possession of a firearm during the commission of a violent

1 crime.

2 Each indictment charges a separate and distinct
3 offense. You must decide each indictment separately on the
4 evidence and the law applicable to it uninfluenced by your
5 decision on any other indictment. The defendant may be
6 convicted or acquitted on any or all of the offenses charges.
7 You'll be asked to write a separate verdict or guilty form, or
8 not guilty on each indictment. And as I said, I'll explain
9 that to you in a little bit.

10 I charge you that there are two defendants in this
11 case, each of whom is charged with murder, criminal conspiracy
12 and possession of a firearm during the commission of a violent
13 crime. The case of each defendant and the evidence and the
14 law concerning that defendant should be considered separately
15 and individually. Your verdict does not have to be the same
16 for both defendants.

17 The fact that you may find one defendant guilty or
18 not guilty should not control your verdict as to the other
19 defendant. Where more than one person is charged with a crime
20 if the evidence warrants it you may convict one and acquit the
21 other, or you may acquit both, or you may convict both. It
22 will depend upon your view of the testimony and the evidence.

23 You must take each defendant and consider the
24 evidence as to that defendant and my instructions to you on
25 the law and then reach a verdict. You will then write a

1 separate verdict of guilty or not guilty for each individual
2 defendant.

3 Now, ladies and gentlemen, as I told you at the
4 beginning of the trial, you and I have very different roles
5 during the course of this trial. You have to determine what
6 the facts are. You do that by listening to the witnesses who
7 testify, by reviewing the evidence.

8 Anything that was admitted into evidence will be
9 with you in the deliberation room. And you have to determine,
10 based upon the credibility or believability of witnesses, what
11 the facts are and then you have to apply this law as I'm
12 giving it to you to those facts.

13 If for any reason you think that during the course
14 of the trial I have an opinion about the truth or falsity of a
15 fact disregard it. As I said earlier, my opinion about facts
16 should mean nothing to you.

17 You have to determine what the facts are, I have to
18 determine what the law is. You take the law as I give it to
19 you. You determine the facts as you find them to be and then
20 you reach a verdict. So please disregard anything I've done
21 to make you feel otherwise.

22 Now, ladies and gentlemen, I charge you the
23 defendants have pled not guilty to each indictment, and that
24 plea puts the burden on the State to prove the defendant
25 guilty. A person charged with a criminal offense in South

1 Carolina is never required to prove themselves innocent.

2 I charge you it's an important rule of law that the
3 defendant in a criminal matter, no matter what the seriousness
4 of the charge may be, will always be presumed to be innocent
5 of the crime for which the indictment was issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt based
11 on evidence satisfying you of that guilt beyond a reasonable
12 doubt.

13 As I've said, the presumption of innocence is like a
14 robe of righteousness that was placed upon these defendants
15 prior to the trial. That robe of righteousness has continued
16 over their shoulders during the trial.

17 When you go back to your room to begin your
18 deliberations they will still have that robe of righteousness
19 on them. It will only be removed by you if you determine that
20 the State has met its burden of proof.

21 I charge you that the presumption of innocence is
22 not a mere legal theory. It's not just a legal phrase. It's
23 a substantial right to which we are all entitled to under the
24 constitution, and you must be satisfied from the evidence of
25 the defendant's guilt beyond a reasonable doubt. A reasonable

1 doubt is the kind of doubt that would cause a reasonable
2 person to hesitate to act. The State has the burden of
3 proving the defendant guilty beyond a reasonable doubt.

4 Some of you may have served as jurors in civil cases
5 where you were told that it was only necessary to prove that a
6 fact is more likely true than not true, such as by a greater
7 weight or preponderance of the evidence. In criminal cases
8 the State's proof must be more powerful than that. It must be
9 beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the defendant's guilt. As was said
12 during one of the closings, there's very few things in this
13 world we know with absolute certainty, and in criminal cases
14 the law does not require proof that overcomes every doubt or
15 every possible doubt.

16 If based on your consideration of the evidence you
17 are firmly convinced that the defendant is guilty of the crime
18 charged you must find the defendant guilty. If on the other
19 hand you think there's a real possibility that the defendant
20 is not guilty you must give the defendant the benefit of the
21 doubt and find him or her not guilty.

22 Now, ladies and gentlemen, as is also said during
23 the closing arguments there are two types of evidence which
24 are generally presented during a trial. There's direct
25 evidence and there's circumstantial evidence.

1 Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact, such as an
3 eyewitness. It's evidence that which immediately establishes
4 the main fact to be proved.

5 Circumstantial evidence is proof of a chain of facts
6 and circumstances indicating the existence of a fact. It is
7 evidence which immediately establishes collateral facts from
8 which the main fact may be inferred. Circumstantial evidence
9 is based on inference and not on personal knowledge or
10 observation.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or circumstantial
13 evidence, nor is a greater degree of certainty required of
14 circumstantial evidence than of direct evidence.

15 You should weigh all of the evidence in this case
16 and after weighing all of the evidence if you're not convinced
17 of the guilt of the defendants beyond a reasonable doubt then
18 you must find the defendants not guilty.

19 Now, necessarily as a part of your job you have to
20 determine the credibility of witnesses. As I told you
21 earlier, credibility under the law simply means believability.
22 You have to determine based upon your observations of the
23 witnesses, based upon any potential bias that that witness may
24 have or prejudice that witness may have whether or not the
25 witness is telling the truth.

1 You can observe the demeanor of the witness, look at
2 how they seem to know the information that they testify to. I
3 can't tell you whether or not you -- or how you determine
4 believability but each of you individually and as a group will
5 have to determine whether or not a witness was credible.

6 You may take part of a witness' testimony and
7 believe it and disregard the remainder of it. You can believe
8 all that one witness tells you and disregard all the other
9 witnesses. That's something that you'll have to decide
10 together once you begin your deliberation.

11 Now, ladies and gentlemen, I charge you that the
12 rules of evidence in South Carolina ordinarily do not permit
13 witnesses to testify to opinions or conclusions. An exception
14 to this rule exists for witnesses that we call in the law
15 expert witnesses, and an expert witness was someone who I
16 determined was an expert based upon their background and told
17 you at the time -- or the lawyers made a motion for that
18 person to be admitted as an expert, and I admitted them.

19 A witness who by education and experience has become
20 expert in some art, science, profession or calling may state
21 an opinion as to relevant and material matter in which the
22 witness claims to be an expert, and he may also state the
23 reasons for that opinion. You should consider an expert
24 opinion received in evidence in this case, and like all the
25 other evidence, give it the weight you think that it deserves.

1 If you decide that the opinion of an expert witness
2 is not based on sufficient education and experience or if you
3 conclude that the reasons given in support of the opinion are
4 not sound or that the opinion is outweighed by other evidence
5 you may disregard an expert's opinion entirely.

6 An expert's testimony is to be given no greater
7 weight than that of other witnesses simply because the witness
8 is an expert. Further, you are not required to accept an
9 expert's opinion even though it's uncontradicted.

10 Ladies and gentlemen, I charge you that in South
11 Carolina if a crime is committed by two or more people who
12 are acting together in committing a crime the act of one is
13 the act of all.

14 A person who joins with another to commit an
15 unlawful act is criminally responsible for everything done by
16 the other person which happens as a probable and natural
17 consequence of the acts done in carrying out the common plan
18 and purpose. For example, two people can be guilty of killing
19 another person when only one of the two had a gun, there was
20 only one bullet and only one of the two fired the shot that
21 caused the death.

22 If two or more people are together, acting together,
23 assisting each other in committing the offense the act of one
24 is the act of all; or as sometimes said, the hand of one is
25 the hand of all.

1 Prior knowledge that a crime is going to be
2 committed without more is not sufficient to make a person
3 guilty of this crime. Mere knowledge that another person is
4 going to commit a crime, even if the defendant is present when
5 the crime is committed, is not sufficient to convict the
6 defendant as a principal guilt -- or as a principal.

7 Guilt as a principal is shown by actual or
8 constructive presence at the scene as a result of prior
9 arrangement; therefore, a finding of a prior arranged plan or
10 common scheme is necessary for a finding of guilt as a
11 principal. The State must prove beyond a reasonable doubt by
12 competent evidence the theory of the hand of one is the hand
13 of all.

14 A principal in a crime is one who either actually
15 commits the crime or was present aiding, abetting or assisting
16 in committing the crime. When a person does an act in the
17 presence of and with the assistance of another the act is done
18 by both. Where two or more acting with a common plan or
19 intent are present at the commission of a crime it does not
20 matter who actually commits the crime. All are guilty. The
21 hand of one is the hand of all.

22 Present at the commission of a crime means to be
23 sufficiently near to, to aid and abet and assist in the
24 commission of the crime; however, mere presence at the scene
25 of a crime is not sufficient to convict one as a principal on

1 the theory of aiding and abetting.

2 Intent is also a necessary element. For there must
3 have been a common design or intent to commit the crime and
4 the crime must have been committed pursuant thereto with the
5 person aiding and abetting by some overt act.

6 Intent means intending the result which actually
7 occurs. Not accidentally or involuntarily. Intent may be
8 shown by acts and conduct of the defendant and other
9 circumstances from which you may naturally and reasonably
10 infer intent. The State must prove these elements beyond a
11 reasonable doubt.

12 Now, ladies and gentlemen, I charge you the
13 defendants in this case are charged with murder. The State
14 must prove beyond a reasonable doubt that the defendants
15 killed another person with malice aforethought.

16 Malice is hatred, ill will or hostility toward
17 another person. It's the intentional doing of a wrongful act
18 without just cause or excuse, and with an intent to inflict
19 an injury or under circumstances that the law will infer an
20 evil intent.

21 Malice aforethought does not require that malice
22 exists for any particular time before the act is committed but
23 malice must exist in the mind of the defendant just before and
24 at the time of the acts commission; therefore, there must be a
25 combination of the previous evil intent and the act.

1 Malice aforethought may be expressed or inferred.
2 These terms express and infer do not mean different kinds of
3 malice but merely the manner in which malice may be shown to
4 exist. That is either by direct evidence or by inference from
5 the facts and circumstances which were proved.

6 Express malice is shown when a person speaks words
7 which express hatred or ill will for another and when the
8 person prepared beforehand to do the act which was later
9 accomplished. For example, lying in wait for a person or any
10 other acts of preparation going to show that the deed was
11 within the defendant's mind would be express malice.

12 Malice may be inferred from conduct showing a total
13 disregard for human life. Inferred malice may also arise when
14 the deed is done with a deadly weapon.

15 A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily harm.
17 Whether an instrument has been used as a deadly weapon depends
18 on the facts and circumstances in each case. A gun may be a
19 deadly weapon even if it's not operating.

20 Ladies and gentlemen, I further charge you that the
21 defendants are charged with conspiracy. The State must prove
22 beyond a reasonable doubt that the defendant combined with one
23 or more persons for the purpose of committing an unlawful act
24 or for committing a lawful act by unlawful means. There must
25 be a mutual understanding, agreement or common intention and

1 plan.

2 Mere passive knowledge of or consent to the criminal
3 conduct of another is not enough to make a person a
4 conspirator. There must be a guilty knowledge and a
5 participation. Similarly, the mere fact that the defendant
6 may have associated with another person or met with another
7 person and discussed common aims and interests does not
8 necessarily establish proof of the existence of a conspiracy,
9 or that the defendant was involved in the conspiracy.

10 On the other hand, I charge you that it's not
11 necessary that the agreement be a formal one, that it be in
12 writing, that the persons hold a meeting or expressly state
13 the terms of the common plan, or that the agreement be stated
14 in words between them.

15 The agreement of a criminal conspiracy may come into
16 being through an implied mutual understanding. The willful,
17 intentional and knowing adoption by two or more persons of a
18 common plan is sufficient.

19 An overt act needs to be shown to establish a
20 conspiracy. A conspiracy may be shown by circumstantial
21 evidence in the conduct of the parties.

22 In order to convict the defendant of the conspiracy
23 the State must prove beyond a reasonable doubt not only that
24 the defendant knew of the unlawful conduct but that the
25 defendant agreed to combine with the other person or persons

1 for the purpose of accomplishing the unlawful conduct.

2 I charge you further that the defendants are each
3 charged with possession of a weapon during the commission of
4 or attempt to commit a violent crime. The State must prove
5 beyond a reasonable doubt that the defendants were in
6 possession of a firearm or visibly displayed what appeared to
7 be a firearm during the commission of a violent crime.

8 A firearm means any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will -- is designated to
10 or may be readily converted to expel a projectile.

11 In order to find the defendant guilty of possession
12 of a weapon during the commission of a violent crime you must
13 first find the defendant guilty of either committing a violent
14 crime or attempting to commit a violent crime. I charge you
15 that in this State murder is a violent crime.

16 Now, ladies and gentlemen, I charge you and I
17 instruct you and emphasize that the fact that the defendant
18 did not testify is not a factor to be considered by you in any
19 way in your deliberations and in your consideration of the
20 question of guilt or the innocence of the defendant. It must
21 not be considered by you in any manner whatsoever.

22 A defendant has the constitutional right to remain
23 silent, and the assertion of this right must not be considered
24 by you in your deliberations. I repeat. Under your oath you
25 are to draw no conclusions whatsoever from the fact that the

1 defendants in this case did not testify. The fact that these
2 defendants did not testify should not even be discussed in the
3 jury room.

4 The burden of proof, as I've stated to you, is on
5 the State. The defendant is not required to prove his or her
6 innocence. The burden of proof remains on the State to prove
7 guilt beyond a reasonable doubt.

8 Now, ladies and gentlemen, I charge you that an
9 issue in this case is the identification of the defendants as
10 the people who committed the crime charged. The State has the
11 burden of proving identity beyond a reasonable doubt. You
12 must be satisfied beyond a reasonable doubt of the accuracy of
13 the identification of the defendant before you may convict the
14 defendant.

15 Identification testimony is an expression of belief
16 or impression by a witness. You must determine the accuracy
17 of the identification of the defendant. You must consider the
18 believability of each identification witness in the same way
19 as any other witness.

20 You may consider whether the witness had an adequate
21 opportunity to observe the offender at the time of the
22 offense. This will be affected by things like how long or how
23 short a time was available, how far or close the defendant was
24 and the witness was, the lighting conditions, and whether the
25 witness had the chance to see or know the person in the past.

1 Once again, I instruct you that the burden of proof
2 on the State extends to every element of the crime charged,
3 and this specifically includes the burden of proving beyond a
4 reasonable doubt the identity of the defendant as the person
5 who committed the crime. If after examining the testimony you
6 have a reasonable doubt as to the accuracy of the
7 identification you may find the defendant not guilty.

8 I charge you in South Carolina mere presence at the
9 scene is not sufficient to prove someone guilty of a crime. A
10 defendant's presence where a crime is being committed or mere
11 association with a person who commits a crime does not make a
12 defendant an accomplice or an aider or abetter of the person
13 committing the crime. The burden is on the State to prove
14 every element of the crime charged.

15 If you find after reviewing all the evidence that
16 the State has proved that the defendant was only present at
17 the scene of the crime and that they have not proved beyond a
18 reasonable doubt any other participation in the crime then you
19 must find the defendant not guilty. The law is that proof at
20 the scene of being at the scene is not sufficient to find
21 someone guilty.

22 Ladies and gentlemen, I charge you that in order to
23 establish criminal liability criminal intent is required. For
24 example, mental state required to be proven by the State for a
25 particular crime might be purpose, intent, knowledge,

1 recklessness, or criminal negligence. Criminal intent must be
2 proven by the State beyond a reasonable doubt.

3 Criminal intent is always a matter that must be
4 determined by the jury from the circumstances surrounding the
5 situation. There's no way to prove intent to a mathematical
6 certainty. There's no way for medical science to dissect a
7 person's brain to determine what that person had in mind. So
8 the law says that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make a
10 determination of whether or not the element requiring intent
11 was present.

12 It's not necessary to establish criminal intent by
13 direct and positive evidence but intent may be established by
14 inference in the same way as any other fact by taking into
15 consideration the acts of the parties and all the facts and
16 circumstances of the case.

17 Criminal intent is a mental state, a conscious
18 wrongdoing. It is up to you to determine what the defendant
19 intended to do based on the circumstances shown to have
20 existed.

21 Ladies and gentlemen, the defendant has raised the
22 defense of alibi. The law in South Carolina is that in order
23 to establish an alibi it must be shown that the defendant was
24 at another specified place at the time the crime was committed
25 and that it was therefore impossible for the defendant to have

1 been at the scene of the crime. Mere denial of the presence
2 at the scene of a crime does not constitute an alibi.

3 There is no burden on the defendant to prove an
4 alibi. The burden is on the State to prove beyond a
5 reasonable doubt that the defendant was actually present at
6 the scene of the crime, actually participated in it and was
7 not somewhere else. In other words, the State has the burden
8 of disproving the defendant's alibi defense.

9 Now, ladies and gentlemen, when you begin your
10 deliberations you're going to have the indictments. You'll
11 have all the evidence. You won't, as I said, have this
12 charge.

13 If you have a question during the course of your
14 deliberations, Mr. Foreman, write that question on a sheet of
15 paper, sign it and date it and also put the time. Knock on
16 the door and they'll bring it to me.

17 There are some questions that I can answer. There
18 are some questions that I cannot answer. What I'll do is I'll
19 bring you back in here and I'll look at you and say I can't
20 answer that question, or I'll answer the question.

21 Your verdict must be unanimous. That is you must
22 all agree. And as I said earlier, I want to make myself very
23 clear, each of these indictments and each of these defendants
24 needs to be addressed separately. And if there's a question
25 -- I think it will be clear to you once you get back there and

1 actually see the indictments.

2 Mr. Foreman, on the back of each indictment under
3 the word true bill there's a world that says verdict. Once
4 you've reached a verdict on that indictment write the verdict
5 in there, guilty or not guilty. Sign your name to it and put
6 the date. Once you've reached a verdict on each and every one
7 of these you will have finished your deliberations.

8 And I want to note that on two of the indictments,
9 the indictment for murder and possession of a firearm during
10 the commission of a violent crime, are two separate charges on
11 one indictment. So you'll have to draw a line, and again, I
12 think that will be clear. If it's not, express what your
13 question is and I'll come out and do my best to help you.

14 I know it's late and I know you've been here all
15 week. We've had an option, quite frankly, earlier of stopping
16 the trial and coming back tomorrow, and I made the decision
17 that I'll speak to you when you finish your deliberations to
18 continue tonight rather than to come back tomorrow or Sunday.

19 We'll do something about supper in a few minutes,
20 but I'm going to let you go back now.

21 Each lawyer has the opportunity to ask me to charge
22 something different. If I read something incorrectly they
23 have the opportunity to ask me to re-charge something, or if
24 something wasn't clear. So I am going to give them a moment
25 to do that.

1 If I decide not to re-charge the law, in a few
2 minutes you'll have these indictments and all the evidence
3 delivered back to you, and at that point you can finally begin
4 your deliberations. If on the other hand there's something
5 that needs to be altered or changed or clarified I'll bring
6 you back in and do it.

7 So go back, wait for the indictments or wait for the
8 opportunity to come back and listen to me some more.

9 Mr. Graham, if you'd keep the alternates out in the
10 hall I'd appreciate it.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 5:21 p.m.)

13 THE COURT: All right. Any alterations by the
14 State?

15 MR. BRADLEY: No, Your Honor.

16 MR. PRUITT: None, sir.

17 MR. GAMBLE: None.

18 THE COURT: That's a first.

19 All right. You better look at the evidence and make
20 sure you all agree on what goes back to them.

21 I'll say this, I know it's been a difficult case for
22 everybody and I thought everybody did a good job despite
23 disagreement with rulings, and you did a good job.

24 MR. PRUITT: Your Honor, we've already looked at the
25 evidence.

1 THE COURT: Everybody, right? Here's the
2 indictments. You can take them back.

3 (WHEREUPON, the jurors were instructed to begin
4 their deliberations at approximately 5:23 p.m., and court was
5 in recess while awaiting a verdict from the jury.)

6 (The following occurred at approximately 7:00 p.m.)

7 THE COURT: All right. We got two questions. The
8 first question is -- and this is exactly the way they wrote
9 it; is one hand, all hands apply to the possession of firearms
10 during a violent crime. And then underneath that it says
11 criminal conspiracy explain.

12 I think what they are asking me is does hand of one
13 hand of all apply to the possession of firearm during a
14 violent crime. I think the answer to that is yes, but I think
15 the answer is no on criminal conspiracy.

16 And then the other question is; for dinner could we
17 please have pizza; two cheese pizzas, three hamburger pizzas,
18 and seven pepperoni pizzas.

19 All right. Does anybody disagree on the answer to
20 that; hand of one, hand of all does apply to possession of a
21 firearm but does not apply to criminal conspiracy?

22 MR. BRADLEY: No objection.

23 THE COURT: In as much as criminal conspiracy. And
24 I'll probably read that first paragraph, that you have to
25 prove beyond a reasonable doubt that the defendants combined

1 with one or more persons for the purposes of committing a
2 lawful act.

3 Any objection to me doing that?

4 MR. GAMBLE: No. Fine with me.

5 MR. PRUITT: No objection.

6 THE COURT: You can bring them in.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 7:03 p.m.)

9 THE COURT: Mr. Foreman, what I'm going to do is
10 read these questions, then I may re-word them and ask you if
11 this is what you meant.

12 The first question; is one hand, all hands apply to
13 the possession of a firearm during a violent crime.

14 I think what you are asking me; does the theory of
15 one hand, all hands apply to the possession of firearm during
16 a violent crime. Is that the question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: The answer to that is yes.

19 Then underneath you've got criminal conspiracy,
20 explain.

21 I'm assuming the question is does the hand of one,
22 hand of all apply to criminal conspiracy. Is that the
23 question?

24 THE FOREMAN: Yes, sir.

25 THE COURT: The answer to that is no. I want to

1 remind you just in a short, short thing, and I'll be happy if
2 you need at some point in the future to re-charge the entire
3 criminal conspiracy. But basically I charge you that the
4 State must prove in a conspiracy case beyond a reasonable
5 doubt that the defendant combined with one or more persons for
6 the purpose of committing a lawful act or -- excuse me, an
7 unlawful act, or committing a lawful act by unlawful means.

8 That's the short definition of conspiracy. But by
9 its very definition I think you probably picked up on the
10 issue, and that is the hand of one, hand of all doesn't apply
11 to criminal conspiracy.

12 Now, the second part of your question; for dinner
13 could we please have pizza.

14 And we had a little discussion here because it says
15 cheese two, hamburger three, pepperoni seven. I'm assuming
16 you don't want twelve pizzas.

17 THE FOREMAN: No.

18 THE COURT: Here's the problem with pizza. The
19 problem with pizza is that we don't have any pizza service
20 that will allow us to charge it, which is what the clerk's
21 office has to do for various reasons.

22 We do have Chick-fil-A, we do have Georgia's.

23 Who else do we have, Cathy? Is that it?

24 THE CLERK OF COURT: Possibly Grace's Sandwich Shop.

25 THE COURT: Grace's Sandwich Shop.

1 MR. GAMBLE: They are closed, I think, at night.

2 THE COURT: They are closed. You've been up here
3 all week. If you want pizza I'll figure a way to get you
4 pizza. I'll buy you pizza. But assuming what you want there
5 is pizza, a cheese pizza enough for two people, hamburger
6 enough for three, and pepperoni enough for seven. You don't
7 want twelve pizzas?

8 THE FOREMAN: No, sir.

9 THE COURT: I got you. So you want more pepperoni
10 than hamburger, and more hamburger than cheese?

11 THE FOREMAN: I mean, they may settle for one of the
12 others, too. I'm not sure.

13 THE COURT: Chick-fil-A is fine? If Chick-fil-A is
14 what you want that's quite frankly the easiest for us to do,
15 but again, you've been here all week. I'm going to do what
16 you want.

17 THE FOREMAN: Chick-fil-A is fine.

18 THE COURT: Okay. You sure?

19 THE FOREMAN: Yes, sir.

20 THE COURT: Okay. We'll send somebody back in just
21 a minute to take your order, then we'll send somebody to get
22 it. Quite frankly, Chick-fil-A is quicker, too. Sometimes
23 with the pizza we've had trouble in the past.

24 All right. If you need me to charge anything else
25 or explain anything else this is exactly the way to do it, and

1 I'll be happy to read the entire charge to you or I'll read a
2 portion of it. Whatever you need me to do.

3 Go back and start deliberating and we'll have
4 somebody take an order.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 7:07 p.m.)

7 THE COURT: I would have bought them pizza but I
8 think they'd rather have Chick-fil-A.

9 Okay. I'll let you know.

10 We'll make this an exhibit.

11 (WHEREUPON, Court's Exhibit Number 2, a Note From
12 the Jury, was marked and made a part of the record.)

13 (WHEREUPON, court was in recess while awaiting a
14 verdict from the jury.)

15 (The following occurred at approximately 8:25 p.m.)

16 THE COURT: The question is; can we have J. W.
17 Stansell's testimony. Obviously, they can't have it. I can
18 bring them in and ask them if they want to hear the testimony
19 again. It's about two hours.

20 You know, I've got two options. I can tell them
21 that they can hear it if that's what they want, or I can ask
22 them if there's a portion of it that they want to hear. Now,
23 you know, that creates a little bit of a problem.

24 You object to that, right, or do you?

25 MR. PRUITT: Depends on which portion.

1 THE COURT: Well, yeah, depending on which portion.
2 You know, I can -- I mean, it may be when they find out they
3 can't have it that they don't want to hear it. They may be
4 looking for something in particular. But if they want to hear
5 the whole thing I'll give them that option. And I'll ask them
6 if they can narrow it down then I'll make a decision, because
7 I may be making a decision before I need to.

8 Bring them in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 8:28 p.m.)

11 THE COURT: All right. Mr. Foreman, the question is
12 can we have J. W. Stansell's testimony; is that correct?

13 THE FOREMAN: Yes, sir.

14 THE COURT: All right. We don't have it in written
15 form. You can listen to the testimony again, or if you
16 believe that you can narrow it down to some portion that you
17 want to hear I can make a decision on that.

18 I'm not telling you that I can let you hear only a
19 portion, but we do not have written testimony. It would be by
20 tape, and quite frankly, I have to make a decision about
21 whether I can let you hear only a portion.

22 So what I need you to do is go back and then decide
23 whether or not you wish to hear any or all of his testimony
24 again, but it is not in written form, if that was your
25 question. So go back and if you need me to do something else

1 like play the whole thing I'll be happy to do it. Just let me
2 know. You did this exactly right though.

3 Have you gotten your food yet?

4 THE FOREMAN: Do you know how long the whole thing
5 is?

6 THE COURT: Oh, you mean the tape? About two and
7 half hours.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 8:30 p.m.)

10 THE COURT: The State vs. Carlson says that I can
11 let them listen to a portion of it. It's in my discretion.
12 So you can put that blue book up.

13 [LAUGHTER]

14 (WHEREUPON, Court's Exhibit Number 3, a Note From
15 the Jury, was marked and made a part of the record.)

16 (WHEREUPON, a brief recess was taken.)

17 THE COURT: Okay. The question is they want to hear
18 the State portion of J. W. Stansell, which would be the
19 direct, and then they want to hear the full testimony of
20 Randolph Stansell, Sr.

21 So the State portion would be, what, about a half
22 hour long, 20 minutes, the direct? Then Ralph Stansell, Sr.,
23 is not that long. Okay.

24 MR. GAMBLE: I recognize it's discretionary but for
25 the record I would object to just playing one portion of the

1 testimony.

2 MR. PRUITT: I would object also, the same grounds.

3 THE COURT: Okay. Overruled. We'll do it. You can
4 bring them in.

5 (WHEREUPON, Court's Exhibit Number 4, a Note From
6 the Jury, was marked and made a part of the record.)

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 8:49 p.m.)

9 THE COURT: All right. Ladies and gentlemen, my
10 understanding is you want to hear the State portion of J. W.
11 Stansell, which would be the direct examination; is that
12 correct?

13 THE FOREMAN: Yes, sir.

14 THE COURT: And then the full testimony of Ralph
15 Stansell, Sr.; is that correct?

16 THE FOREMAN: Yes, sir.

17 THE COURT: All right. We've got the direct of
18 J. W. Stansell cued up.

19 (WHEREUPON, the requested testimony was played for
20 the jury.)

21 THE COURT: All right. That was the direct of J. W.
22 Stansell. Then you've got Ralph Stansell, Sr. The full
23 testimony of Ralph Stansell, Sr.; is that correct?

24 THE FOREMAN: Yes, sir.

25 THE COURT: All right.

1 (WHEREUPON, the requested testimony was played for
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, the
4 food is back there. What I'm going to do is we'll have the
5 food delivered to you. Keep deliberating while you eat. At
6 some point after you eat I know the smokers might be climbing
7 the wall. I'll let you go smoke but, you know, we've got to
8 make it kind of quick. We'll have to have somebody,
9 obviously, walk with you.

10 Eat, continue to deliberate, then we'll take a break
11 for you to smoke.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 9:36 p.m.)

14 THE COURT: Okay. Keep waiting.

15 (WHEREUPON, court was in recess while awaiting a
16 verdict from the jury.)

17 (The following occurred at approximately 10:30 p.m.)

18 THE COURT: They've got a verdict. Let me just say
19 before they bring the jury in that no matter what the verdict
20 is, obviously, there's a lot of emotion involved in this case.
21 I just need to tell you as straight as I can tell you, I'm not
22 going to stand for any outburst or noise at all.

23 If there's any noise or outburst or comments or
24 anything like that that's going to be contempt of court and
25 it's not good. It's late. I know everybody is tired.

1 Everybody just keep yourselves together.

2 Okay. You can bring them in.

3 (WHEREUPON, the jury enters the courtroom at
4 approximately 10:32 p.m.)

5 THE COURT: All right. Mr. Foreman, I understand
6 you have a verdict?

7 THE FOREMAN: Yes, sir.

8 THE COURT: If you would hand it to Mr. Graham.

9 All right. You can publish them.

10 THE CLERK OF COURT: Case 2007-GS-04-1343, the State
11 vs. Frances J. Moore, indictment for criminal conspiracy, the
12 verdict is guilty; 2007-GS-04-1342, the State vs. Frances J.
13 Moore, count 1, indictment for murder, the verdict is guilty;
14 as to count 2, possession of a firearm during the commission
15 of a violent crime, the verdict is guilty.

16 2007-GS-04-1218, the State vs. Garvin V. Duvall, as
17 to count 1, indictment for murder, the verdict is guilty; as
18 to count 2, possession of a firearm during the commission of a
19 violent crime, the verdict is guilty; 2007-GS-04-1219, the
20 State vs. Garvin V. Duvall, indictment for criminal
21 conspiracy, the verdict of the jury is guilty.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 these are your verdicts would you please indicate by raising
24 your right hands.

25 (The jury indicated by raising their hands.)

1 THE CLERK OF COURT: All hands raised, the verdicts
2 of the jury, Your Honor.

3 THE COURT: All right. Ladies and gentlemen,
4 publically I want to thank you for your service. I have to
5 send you back to the jury room one last time. If a few
6 minutes I'll be back to talk to you privately. But if you
7 would go back one more time.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 10:35 p.m.)

10 THE COURT: Do you want me to retain jurisdiction
11 and give you some time to do posttrial motions, or are you
12 ready now? It's up to you. I mean, if you want time to think
13 about it and let it distill I don't have a problem with that,
14 since it's so late, but I'll do whatever you want to do.
15 That's for your benefit not mine.

16 MR. PRUITT: Your Honor, we'd appreciate a little
17 time.

18 THE COURT: Any objection to that?

19 MR. GAMBLE: No objection.

20 THE COURT: All right. I'll give you 10 days and
21 then we'll just have to reconvene at some point, but I'll
22 retain jurisdiction.

23 Any objection to that from the State?

24 MR. BRADLEY: No objection.

25 THE COURT: Normally what I will do, I'm going to go

1 back there and talk to them like I do, let them ask me any
2 questions since they are officially relieved. I'll also give
3 them the opportunity to come back and see the sentencing.

4 Okay. Do you got the sentencing sheets and all
5 that?

6 MR. BRADLEY: Yes, Your Honor.

7 MS. HOGAN: Yes, sir.

8 THE COURT: Is there an objection to giving them
9 time? You had a funny look on your face.

10 MS. HOGAN: No, sir.

11 MR. BRADLEY: We just wanted to make sure that you
12 were going to sentence tonight.

13 THE COURT: Oh, yeah. Yeah, I have to.

14 All right. Get all that stuff ready and I'll go
15 back and talk to them and I'll be back.

16 (WHEREUPON, a brief recess was taken.)

17 THE COURT: Just for the record, 10 days to file
18 posttrial motions and I'll retain jurisdiction of the case
19 pending those motions.

20 All right. Yes, sir?

21 MR. BRADLEY: Which one would you like to do first,
22 Your Honor?

23 THE COURT: It doesn't matter. Why don't we do
24 Mr. Duvall first.

25 MR. BRADLEY: Mr. Duvall.

1 THE COURT: Come on up, Mr. Duvall.

2 All right. Now, the murder carries a sentence of 30
3 years to life; is that correct?

4 MR. BRADLEY: That's correct, Your Honor.

5 THE COURT: And the conspiracy would be 15 years to
6 life?

7 MR. BRADLEY: It would be the 5 years, the
8 conspiracy charge, Your Honor.

9 THE COURT: Five?

10 MR. BRADLEY: Yes, sir.

11 THE COURT: And the weapons charge, what's it carry?

12 MR. BRADLEY: Five years.

13 THE COURT: And 5 on the conspiracy. You all sure
14 about that?

15 MS. HOGAN: Yes, sir. It's just regular criminal
16 conspiracy.

17 THE COURT: All right.

18 MR. BRADLEY: Thank you, Your Honor. May it please
19 the Court. The State would ask for a sentence commensurate
20 with the jury's decision, the defendant's prior record, and
21 with Your Honor's knowledge that Mr. Duvall executed one of
22 his best friends over \$2,000 and because he had been giving
23 information to law enforcement. That's what the evidence
24 showed, Your Honor, and the State would ask for a sentence
25 commensurate with that. I'd like to read his prior record.

1 THE COURT: All right.

2 MR. BRADLEY: In 1985, failure to -- some driving
3 offenses; 2003, receiving stolen goods; a fraudulent check in
4 2006.

5 The victim's family would like to speak at the
6 appropriate time, Your Honor.

7 THE COURT: All right. Let's hear from them now
8 then I'll hear from Mr. Gamble.

9 If you would, give us your name for the record.

10 VICTIM'S FAMILY MEMBER: My name is Robert Stephens.

11 THE COURT: Yes, sir.

12 VICTIM'S FAMILY MEMBER: Your Honor, from the family
13 of Robert Paul Stephens who lost his life June the 30th of
14 1999, I am Robert Stephens, the father of Paul. Here with me
15 is his sister, Tammy Payne, along with the other family
16 members. I would like to let the Court know that in my
17 opinion Paul's life started to end the day he met this family.

18 On June 30th of 1999 a major loss was endured when
19 Paul lost his life. A father and mother lost his son. His
20 mother, Janice, lost her battle with cancer and was not able
21 to live to see this day. Janice struggled to live for this
22 day. My sister lost a brother.

23 Most of all, the grandmother of Paul's son,
24 took it on her own to take the father of her grandson away
25 from forever, and I am sure did not tell the truth to

1 the young man as to what happened to his dad. I can only hope
2 that in time . . . will come to grips with what this family
3 has taken from him.

4 Your Honor, I am not going to continue to tell you
5 all the people's name that suffered a great loss when Paul was
6 murdered. Frances Moore and Garvin Duvall has enjoyed freedom
7 for 10 years since they committed this crime. It is time for
8 them to pay for taking the life of Paul Stephens and taking
9 him away from his family.

10 I ask you to sentence them to the max allowed by
11 law. It's such a shame that in the State of South Carolina
12 the same treatment as Paul received cannot be administered by
13 the Court of this State to both Frances Moore and Garvin
14 Duvall; I mean in death.

15 Your Honor, thanks for your time, and the family of
16 Paul hopes you will see that justice is done. Thank you, Your
17 Honor.

18 THE COURT: All right. Thank you.

19 Anything, ma'am?

20 (There was no response.)

21 THE COURT: All right. Thank you.

22 Yes, sir.

23 MR. GAMBLE: I don't have anything? Your Honor.

24 THE COURT: Nothing?

25 All right. Mr. Duvall, anything you want to tell

1 me?

2 DEFENDANT DUVALL: Sir, I did not do this.

3 THE COURT: All right. How old are you?

4 DEFENDANT DUVALL: I'm 50.

5 THE COURT: Fifty. All right. Mr. Duvall, the jury
6 has found you guilty. It's up to me to sentence you. The
7 sentence for murder is 30 years. That's to run consecutive
8 with the sentence for possession of a weapon, which would be 5
9 years, and also to run consecutive with the sentence for
10 conspiracy, which would be an additional 5. So that would be
11 for a total of 40. All right. You understand? You need to
12 talk to your lawyer about your rights to appeal, okay?

13 MR. GAMBLE: I already have, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. BRADLEY: Frances Moore.

16 THE COURT: All right. Yes, sir?

17 MR. BRADLEY: Thank you, Your Honor. May it please
18 the Court. Again, the State would ask for a sentence
19 commensurate with the jury's decision and the defendant's
20 prior record. She has a petty larceny from 1981; a possession
21 of controlled substance in 1999; and shoplifting in 2000.

22 And, again, the State feels that Ms. Moore is
23 equally responsible for this murder. As the evidence that
24 Your Honor got to see before it was excluded she pulled the
25 second -- she pulled the trigger on the second shot. She

1 stood over him as he was already down on the ground.

2 THE COURT: Yes, sir. Mr. Pruitt, anything you want
3 to tell me?

4 MR. PRUITT: No, sir, Your Honor.

5 THE COURT: All right. Ms. Moore, anything you want
6 to say?

7 DEFENDANT MOORE: No, sir.

8 THE COURT: How old are you, Ms. Moore?

9 DEFENDANT MOORE: I'll be 62 on the 27th.

10 THE COURT: All right. The jury has found you
11 guilty of 3 charges and it's up to me to sentence you. On the
12 charge of murder the sentence is 30 years. That's to run
13 consecutive with the weapons charge, which is 5 years, and
14 also 5 years on the conspiracy charge. The reason it's not a
15 maximum is based upon your age, otherwise it would probably be
16 life, to be honest with you.

17 Okay. Thank you.

18 MR. BRADLEY: Is that consecutive or just --

19 THE COURT: Consecutive.

20 MR. BRADLEY: Okay. So that would be a total of 40?

21 THE COURT: Total of 40.

22 (WHEREUPON, the trial of this case was concluded.)

23 Tuesday, June 16, 2009

24 THE COURT: Okay. Who wants to go first?

25 MR. PRUITT: Your Honor, if it please the Court. On

1 behalf of Frances Moore I'm making a motion for a new trial
2 upon all of the counts of the indictment or indictments upon
3 the following grounds: That His Honor erred in admitting the
4 confession of a co-defendant; that His Honor erred in the
5 admission of the confession of a co-defendant even with
6 curative or limiting instructions; that His Honor erred in the
7 admission of out-of-court statement made by the victims and
8 third parties concerning both his fear of the defendant,
9 Frances Moore, and the reason for said fear; in allowing the
10 cross-examination of J. W. Stansell by co-defendant, Garvin
11 Duvall's counsel, which had the effect of putting into
12 evidence those parts of Duvall's confession which the Court
13 had ruled inadmissible as to Frances Moore.

14 Your Honor, we've talked about some of these things
15 before in this trial. And at the appropriate time I believe
16 motions were made relative to these matters.

17 Starting with the confrontation rights, the right to
18 confront witnesses in the United States and South Carolina
19 Constitution, the United States Supreme Court in *Brunton vs.*
20 *United States*, 391 U. S. 123, 1968 was the start of a long
21 line of cases that the United States Supreme Court held that a
22 co-defendant's confession that implicated the defendant at a
23 joint trial constituted prejudicial error even though the
24 Court gave clear concise and understandable instruction that
25 the confession could only be used against the defendant and

1 must be disregarded with respect to the other defendant.

2 Some of the things that -- and, of course, we have
3 the South Carolina case of State V. Anders, which we believe
4 is very, very clear on this point.

5 Now, some of the things that later cases have
6 determined that a court should consider in determining whether
7 the right to confront witnesses clauses have been violated
8 and, of course, also the rules against hearsay and whether or
9 not such a statement is admissible as hearsay, some of the
10 things that a court ought to consider would be the difficulty
11 for the jury in separating the evidence and considering only
12 the evidence competent against each defendant in determining
13 his or her separate guilt or innocence.

14 The fact that the -- in this case, neither defendant
15 took the stand. Well, of course, you never know what a
16 particular defendant is going to do. I dare say that I didn't
17 know what my defendant was going to do until the time when it
18 came to make that decision, and I'm certain that Mr. Gamble
19 didn't have that decision etched in concrete before it became
20 time for him to make it, all of which gets back to the point
21 that we'd like to make concerning the right to confront
22 witnesses. Of course, if the co-defendant had taken the stand
23 then whatever statement that he was alleged to have made to
24 the Reverend J. W. Stansell could have been explored by
25 cross-examination in great detail.

1 So we have two points to that particular admission
2 of evidence. Number one, should it have been denied all
3 together given the fact that the State was pursuing a joint
4 trial; and number two, what is the effect of not having the
5 co-defendant testify in as far as it limits the other
6 co-defendant in being able to confront the accuser, who by his
7 words presented by hearsay they are unable to do so.

8 So, Your Honor, the Court, of course, did not have
9 the benefit of the full State's case when its made it
10 preliminary rulings, nor the benefit of whether either
11 co-defendant would testify at the time that the objections
12 were made at the presentation of that evidence.

13 Further, and it's a complication of the trial, is
14 that the fact that co-counsel through his cross-examination
15 of the Reverend J. W. Stansell was able to emphasize and bring
16 out points of that testimony that might otherwise not been
17 admissible of which the defendant, Frances Moore, had no
18 control.

19 Your Honor, I would, in addition to that, I would
20 point out that only a very small portion of the alleged
21 confession made to J. W. Stansell could arguably have been
22 made in furtherance of the conspiracy, and Your Honor
23 separated those two as you might recall at trial.

24 Well, given the fact that except for that brief
25 little statement there, which occurred prior to the crime, the

1 rest of the evidence in the case was by all admission
2 circumstantial. Not that circumstantial is not fine evidence
3 in an appropriate case but it has the effect of magnifying the
4 gravity of the admission of a co-defendant and enhancing that
5 particular evidence. In fact, of course, they would work
6 together.

7 So with the exclusion of the testimony of J. W.
8 Stansell from the case against Frances Moore we feel that they
9 would have been limited to basically the circumstantial
10 evidence and in Ms. Moore's case the probative value of it
11 greatly outweighed the jury's ability to be able to separate
12 what was admissible against her versus what was admissible
13 against Garvin, despite Your Honor's best efforts at telling
14 the jury that they could only consider certain facets against
15 the defendant who had made the statement.

16 So, Your Honor, in this particular case it has a
17 rather unique set of circumstances in that there is no other
18 direct evidence. We think that the admission of that
19 testimony was very prejudicial and deprived Ms. Moore of her
20 right to confront witnesses, which is the basis, of course,
21 for the hearsay rule and the protections given by the South
22 Carolina and United States Constitution.

23 Further, Your Honor, and we explored this
24 previously, we believe that the Court's allowing evidence of
25 the victim saying that he was afraid of Frances Moore has a

1 likewise effect. Your Honor admitted both the statement that
2 he was afraid, which would be an exception to the hearsay rule
3 as being a present sense impression of the victim.

4 The reason that he was afraid is what we objected to
5 because, again, we have no way to confront that witness'
6 testimony and we think that that's clearly inadmissible under
7 State V. Garcia and State V. Holmes, which we've previously
8 cited. So based upon the reasons cited herein we ask that the
9 Court grant Frances Moore a new trial in the case.

10 THE COURT: All right. And I would assume you're
11 also incorporating a motion that my curative instructions were
12 insufficient?

13 MR. PRUITT: Yes, sir.

14 THE COURT: Yeah. I assumed that was part of it.
15 Yes, sir?

16 MR. BRADLEY: May it please the Court, Your Honor.
17 The State's reply is that no errors of law were made during
18 the course of the trial. Your Honor gave limiting
19 instructions on the evidence that was admitted as to Ms. Moore
20 versus Mr. Duvall. The evidence in the record supports Your
21 Honor's rulings.

22 The statement given by J. W. Stansell during
23 testimony that Duvall confessed to him prior to the murder,
24 Your Honor allowed that to come in under the furtherance of
25 the conspiracy and the statement thereafter was excluded.

1 At the time Mr. Gamble cross-examined J. W. Stansell
2 in regards to that statement after the murder, Mr. Pruitt made
3 no objection to that evidence at the time. I believe the
4 State was the only party that made an objection to that coming
5 in to follow Your Honor's ruling. Mr. Pruitt made no
6 objection at the time for that cross-examination to be
7 allowed.

8 Furthermore, in regards to the admission of the
9 hearsay statements made by the victim of his fear of the
10 defendant, Moore, Your Honor, the State argued at the time
11 under State vs. Garcia that the statement was his fear and not
12 was the basis of his fear.

13 And I believe Your Honor gave us another case where
14 they allowed them to expound upon it a little further. And
15 under State vs. Garcia the Court allowed that fear to come in
16 of the defendant. And, again, the State renewed its position
17 that the fact that he was afraid that he was going to be found
18 shot in the head, his car set on fire was his fear and not why
19 he was afraid of the defendant.

20 Again, Your Honor, there's competent evidence -- the
21 State would argue there's competent evidence to sustain a
22 conviction. I believe the law states that the basis of an
23 argument where there's no evidence to support a conviction,
24 but here there's -- the State would say that there's plenty of
25 evidence to support the conviction that was given over the

1 course of the trial, and when there is sufficient evidence,
2 competent evidence Your Honor is not supposed to reach into
3 the jury room and substitute his judgment for the judgment of
4 the jury. And, Your Honor, the State would ask you
5 respectfully follow your rulings that you made throughout the
6 course of trial. Thank you.

7 THE COURT: Okay. Well, in regard to this motion,
8 I'm not as concerned about the Garcia issue, and I understand
9 that somebody may tell me I was wrong. I didn't take the
10 issue of the right of confrontation lightly, and it worried me
11 then. It worries me now. And I think it potentially is a
12 real issue.

13 I'm going to deny your motions but I think you're
14 protected on every issue. But I'm going to deny your motion.

15 Yes, sir?

16 MR. GAMBLE: Please the Court, Your Honor. As Your
17 Honor well knows you have the right within your discretion to
18 grant a new trial if you so choose. And to give background on
19 that that what we're looking at is circumstantial evidence
20 that must be substantial throughout, and this circumstantial
21 evidence we had in this case was not substantial.

22 There is no evidence whatever that my client,
23 Mr. Duvall, was anywhere near when this incident arose on the
24 day of June the 30th. There was testimony that he was not
25 anywhere near and that has not been refuted by any competent

1 testimony. As a matter of fact, the alibi witness, Mr. Ralph
2 Stansell, said he was at his house all that afternoon at the
3 time the incident should have happened, and that was around
4 3 o'clock, as near as we can figure.

5 However, the only cross-examination on that point
6 was you mean you waited 10 years to come forward with this?
7 Well, that's not fair because J. W. Stansell waited 7 years
8 for his testimony to come forward and probably 10 and 3 more
9 after that.

10 So the circumstantial evidence was not substantial,
11 and it has to be by the statute, and it has to exclude any
12 other reasonable hypothesis. The other reasonable hypothesis
13 is that my client was at the home of Ralph Stansell at the
14 time this happened.

15 There was also testimony that 2 people that were at
16 the birthday party which was on the 30th of June -- 27th of
17 June, said that my client did not ever leave that party. They
18 knew that because of the loud mufflers and fact they saw him
19 there. So there was no circumstantial evidence that was
20 substantial to substantiate the statement of J. W. Stansell.
21 It's just not there.

22 The suspicion is not enough to send this on forward.
23 He was never identified anywhere near the scene, never put
24 there. No evidence of any kind was ever deduced or induced to
25 bring him into that area. There was testimony, I believe, of

1 one witness of a fat neck guy, but that's not identification.

2 So I would move for a new trial on those bases.

3 THE COURT: All right.

4 MS. HOGAN: Your Honor, if it pleases the Court. We
5 do believe that there was substantial evidence in this case.

6 Although it might be circumstantial there was a lot of
7 evidence that we put up in this case.

8 As to the alibi witness for that day, it's up to the
9 jury to determine the credibility of the witnesses.
10 Obviously, the jury didn't believe what he was saying.

11 We put up other evidence this led them to believe
12 that Mr. Duvall was at the crime scene that day and that he
13 was guilty of murder, Your Honor. Also, the same thing with
14 the birthday party. They put up witnesses that the two never
15 left, Mr. Duvall and Mr. Stansell never left the birthday
16 party, but we put up a witness that says that they did leave
17 the birthday party.

18 We believe that there is plenty of competent
19 evidence to sustain the jury's verdict in this case. And
20 that's it. Thank you.

21 THE COURT: Okay. All right. Well, again, I mean,
22 it's not something I take lightly, and I've looked through
23 this prior to the hearing. I'm going to deny your motion but
24 I think you're protected on all issues. I assume -- I know
25 you all have requested a transcript; is that right?

1 MR. PRUITT: Not yet, Your Honor. We will.

2 THE COURT: You haven't. Okay.

3 MR. GAMBLE: Your Honor, out of an abundance of
4 caution I already filed notice of intent. What I'll do now in
5 light of this hearing is re-file that notice of intent and
6 request, of course, the transcript, and that will be done this
7 week, notice of intent to appeal. And I will pull off the
8 notice that I have now and include this in that motion.

9 THE COURT: Okay. And have you filed or are you
10 waiting for today to file your notice?

11 MR. PRUITT: I'm waiting for today.

12 THE COURT: Okay. Well, and just housekeeping wise
13 I know that she's got a lot of cases she's typing so I'd say
14 the earlier you request it the better.

15 All right. Thank you all.

16 (WHEREUPON, the hearing was concluded.)

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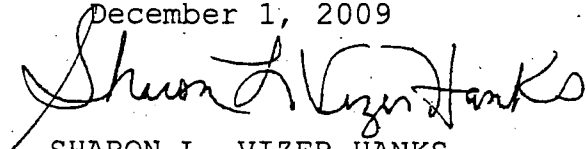
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1 CERTIFICATE

2
3 I, Sharon L. Vizer-Hanks, Official Court Reporter
4 for the 10th Judicial Circuit of the State of South Carolina,
5 do hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had and
7 the evidence introduced in the trial of the captioned case in
8 Circuit Court on the 14th and 15th day of May 2009, and the
9 16th day of June 2009.

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

12
13 December 1, 2009

14 
15 SHARON L. VIZER-HANKS

16 CIRCUIT COURT REPORTER
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STATE OF SOUTH CAROLINA
In The Court of Appeals

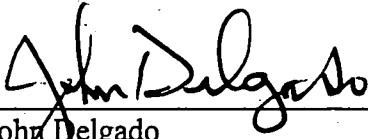
APPEAL FROM ANDERSON COUNTY
Court of General Sessions
J. Cordell Maddox, Circuit Court Judge

Case No. 07-GS-40-1342, 07-GS-40-1343, 07-GS-40-1344

State of South Carolina Respondent,
v.
Frances Moore, #334844 Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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Columbia, South Carolina
January 9th, 2011.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

J. Cordell Maddox, Circuit Court Judge

Case No. 07-GS-40-1342, 07-GS-40-1343, 07-GS-40-1344

The State Respondent,

v.

Frances Moore, #334844, ... Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court Err in Failing to Disallow the State from Eliciting Testimony of a Witness That Implicated Appellant Through Non-confronted Testimony?
- II. Did the Trial Court Err in Failing to Grant a Mistrial Where the Non-confronted Testimony Was Exacerbated by Counsel for the Co-Defendant in His Cross of the Same Witness?

STATEMENT OF THE CASE

The Appellant Frances Moore (herein after the "Appellant") was indicted by the Anderson County Grand Jury on the charges of Murder and Possession of a Firearm during the Commission of a Violent Crime on Indictment 2007-GS-04-1342 and Criminal Conspiracy on Indictment 2007-GS-04-1343 for the 1999 murder of Paul Stephens. Garvin Duvall (herein after the "Co-Defendant") was also charged with the same offenses: Murder and Possession of a Firearm during the Commission of a Violent Crime on Indictment 2007- GS-04-1218 and Criminal Conspiracy on Indictment 2007-GS-04-1219.

A jury trial for both defendants was held May 12-15, 2009 in the General Sessions Court of Anderson County. The Honorable J. Cordell Maddox presided. A verdict of guilty was returned by the jury convicting both Appellant and the Co-Defendant of all charges on May 15, 2009. The Appellant was sentenced to the South Carolina Department of Corrections for concurrent terms of thirty years on Murder, five years on Possession of a Firearm during the Commission of a Violent Crime and five years on Criminal Conspiracy. Co-Defendant was sentenced to thirty years on the Murder, five years consecutive for the Possession of a Firearm during the Commission of a Violent Crime, and five additional years consecutive for Criminal Conspiracy. Post-trial motions

were heard and denied by the court on June 16, 2009. The Appellant served and filed a timely Notice of Appeal on July 6, 2009. A Motion to Substitute Counsel was filed by Attorney John Delgado on July 13, 2009, and this was granted by the court on July 22, 2009.

This Appeal follows.

FACTS

The body of Paul Stephens was found in rural Anderson County on June 30, 1999. Mr. Stephens was the ex-son in law of the Appellant, Frances Moore.

None of the parties moved to sever the trial of the defendants. At the trial of the case, Appellant's counsel moved *in liminie* to prevent the State from using a written statement of J.W. Stansell whose testimony had been elicited by law enforcement. (R. p. 391, line 21) and which had resulted in the arrests of the Appellant and the Co-Defendant seven years after the incident. A written statement of Mr. Stansell included a confession to Stephen's murder by the Co-Defendant and also implicated the Appellant. The State did not use this written statement at trial but instead called Stansell to the stand to testify. Appellant's counsel renewed his *in liminie* motion as to the hearsay inherent in Stansell's testimony and argued that the testimony of Stansell, even if it now was admissible under Rule 801(d)(2)(E), SCRE (defining an admission by a party opponent as "not hearsay") and introduced to show her involvement as a conspirator, denied Appellant the right to confront the co-defendant under the Sixth Amendment. Co-Defendant's counsel, pursuant to own his trial strategy, vigorously cross-examined Stansell through questions that implicated Appellant's involvement even more prejudicially than that generated by the

State on direct of Stansell. The co-defendant, Garvin Duvall, did not testify in his own behalf. (R. p. 565, line 17-p. 566, line 19).

ARGUMENT

I. The Appellant's Right to Confrontation of Witnesses Against Was Violated Where the State Introduced Testimony of J.W. Stansell Who Recounted an Incriminatory Statement Made by the Appellant's Co-Defendant. This Statement Incriminated Appellant, and Because Co-Defendant Did Not Testify, Appellant's Right to Confrontation Was Violated.

With respect to Appellant's right to confrontation, the tunnel vision and tone deafness of the Solicitors in this case was evinced over and again. (See R. p. 30, line 20; p. 36, line 14; p. 38, line 2; p. 47, line 23). A joint trial of the two defendants would, of necessity, require a mistrial if the case proceeded in the manner intended by the State. This was noted by Appellant's defense counsel through a pre-trial motion *in limine* when he believed reference to Stansell's written statement would contain inadmissible hearsay. (R. p. 30, line 20). The court voiced its own trepidation innumerable times regarding the viability of a joint trial where the statement of one defendant was to be introduced against the other defendant.

THE COURT: All right. Let's say I grant your motion and prevent the statement from being used against your client; how are we going to try this if I do that? *How is it going to be tried against them in a single trial?* (R. p. 40, lines 19-22). (emphasis added)

MR. PRUITT: Well, they are the ones that have brought this case together.
THE COURT: I understand that. That's what I'm asking. *How do you try it if you do that?* (emphasis added) (R. p. 41, lines 2-5).

THE COURT: Let's say that I grant the motion though in its entirety; how would you try it? I mean, how do you do it?... *How do you*

try these two together, if that's the ruling? (R. p. 41, lines 14-20) (emphasis added).

THE COURT: *I'm not so sure these people should be tried together* but that's not my decision. (R. p. 44, lines 13-14) (emphasis added).

THE COURT: *I mean, this is the problem doing them together*. You know, a jury instruction telling them to disregard the testimony as to one defendant I have a lot of concern with. (R. p. 299, lines 7-10) (emphasis added).

THE COURT: Let me tell you the problem I've got. *Eventually in a case like this where you're trying two defendants it's almost impossible*. At some point one defendant's rights to confrontation is going to run head-on into one defendant's right to have rules of evidence adhered to in regard to hearsay, and it is a Chinese puzzle. There's no way to make a decision that is a hundred percent right. (R. p. 441, lines 4-10) (emphasis added).

THE COURT: *I don't mind complex. It's impossible that I don't like. And this is why I can't figure out why they are both here today*. (R. p. 442, lines 18-20) (emphasis added).

THE COURT: All right. Well, I mean, I'm in sort of the impossible position of weighing different defendants' rights, which is really where I shouldn't have to be here, but I'm going to allow him to question him on it. *I'm having to weigh the right of confrontation against the rules of evidence in regard to hearsay*. (R. p. 443, lines 13-18) (emphasis added).

Notwithstanding the innumerable judicial cautions ("*...and I can only hint so much*") (R. p. 440, lines 24-25) (emphasis added) in this ten year old cold case, the Assistant Solicitors having had this case assigned them only six weeks before (R. p. 108,

lines 17-18), plowed irrevocably ahead. And in so doing, prejudiced the Appellant's rights irreparably.

A. The Right to Confrontation in a Criminal Case Is Firmly Established in Both the Federal and State Constitutions.

The Sixth Amendment's Confrontation Clause requires that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." U.S. Const. amend. VI. This right applies to state prosecutions not only through the Fourteenth Amendment, but it is also enshrined in article I, § 14 of the Constitution of South Carolina. *Accord State v. Green*, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1977).

In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court reconfigured the contours of the Confrontation Clause of the Sixth Amendment. No longer was confrontation a matter of imprecise dissection of whether firmly-rooted exceptions to the hearsay rule existed: "[w]e do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.' . . . Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation." *Id.* at 61. Post-*Crawford*, the focus is whether the out of court statement was intended to be testimonial and, if so, whether the Defendant had a prior opportunity to cross-examine the declarant. "Where testimonial evidence is at issue...the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." *Id.* at 68 *Accord, State v. Weaver*, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004) (finding no *Crawford*

violation where nothing reiterated from the Defendant himself and cross-examination allowed of witnesses from whom hearsay was elicited).

1. Duvall's Incriminatory Statement to Stansell Was, by its Nature, "Testimonial."

There can be no question but that the testimony of Stansell which concerned the Co-Defendant's involvement and which inculpated Appellant (R. p. 391, line 21; 386, line 7) is a testimonial statement for the purposes of the Sixth Amendment. Stansell gave this statement to the Anderson County Sheriff's Department. "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not." *Crawford*, 541 U.S. at 51. This Court following the *Crawford* dictate, has proscribed that "testimonial" statements are those made under circumstances that would objectively lead to a reasonable conclusion that the statement would be available for use at a later trial. *State v. Ladner*, 373 S.C. 103, 112, 644 S.E.2d 684, 688-89 (2007) (noting that two and a half year old victim's statement to her caretakers was not a formalized statement to officers and therefore was not testimonial).

It is of no consequence whether the Stansell testimony addresses the existence of a conspiracy or a statement made in furtherance of that conspiracy pursuant to Rule 801(d)(2)(E), SCRE (defining as not hearsay "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy"). Notwithstanding the trial court's admission that it was a "pretty close call," (R. p. 388, line 11), whether the Stansell testimony was in furtherance of any conspiracy between the Co-Defendant and the Appellant, the lack of confrontation of the Co-Defendant continues to be unconstitutional.

"The Framers would be astounded to learn that *ex parte* testimony could be admitted against a criminal defendant because it was elicited by 'neutral' government officers."

Crawford, 541 U.S. at 66.

2. As Co-Defendant Never Testified, His Incriminatory Statement Implicating the Appellant Through Stansell's Testimony Could Not Be Cross Examined.

Whatever else may be said of the reliability, credibility or truthfulness of Stansell¹, at least this much can be stated: without Stansell's testimony as to what Duvall allegedly confessed to him, the state's case against Appellant was vitiated and virtually disappears.

The Solicitors naively opined that they could and would control the direct testimony of Stansell to Co-Defendant's involvement **alone** "So I'll be able to ask questions and keep him away from saying anything about what Garvin [Co-Defendant]-- But we would steer him away from saying whatever Garvin [Co-Defendant] said to Francis [Appellant]"(R. p. 42, lines 15-22); "We are going to be questioning Mr. Stansell as he's up on the stand, and he is going to say that Garvin Duvall said that I called Paul [Stephens (the deceased victim)], called to meet him on Baugh Road. I shot him in the back of the head. And we are leaving out the three or four lines that apply to Frances [Appellant]. We are not going to go into that with him. So there's not going to be any -- ...So there's going to be no type of innuendo as to Ms. Moore [Appellant] after the murder has occurred." (R. p. 46, lines 13-23).

¹ Stansell was introduced in testimony, among other things, as the former Grand Dragon (R. p. 426, line 16).

Inevitably, however, Stansell ensnared the Appellant through testimony that she could not cross-examine when Stansell testified on direct examination by the Solicitor.

“Q. And what, if anything happened at this birthday party?

A. ...And he proceeded to tell me that Paul [the victim]- he called Paul Anderson County’s biggest rat and said that Paul and he and some other people had been involved in some different criminal activity and that Paul was about to get arrested and was going to turn on them, and *that Frances Moore [Appellant] was one of the ones that involved, and that she along with some other people wanted Paul dead. And Garvin [Co-Defendant] went on to tell me that she was going to pay him \$2000 to kill Paul.*” (R. p. 396, line 18; 397, line 13) (emphasis added).”

It is exactly this scenario that the court has deemed unconstitutional in other non-confrontational fact settings. “The constitutional right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures [sic] that convictions will not result from testimony of individuals who cannot be challenged at trial.” *State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987); see also *State v. Mitchell*, 378 S. C. 305, 662, S.E.2d 493 (Ct. App. 2008) (Certiorari dismissed as improvidently granted Op. No. 26772 (S.C. Sup. Ct. filed Feb. 16, 2010) (Shearouse Adv. Sh. No. 7 at 54)) (noting that a testifying witness was removed from the courtroom during direct examination and therefore was not cross-examined).

3. The Specifics Elicited from Stansell via the Co-Defendant Provided Details of the Appellant’s Alleged Involvement in the Crime That Were Not Otherwise Provable.

Without being able to confront Co-Defendant’s reliability, credibility or motivation, Stansell was able to testify that Co-Defendant was to be paid \$2000 by the Appellant to kill the victim, (R. p. 397, line 3; 445, lines 4-6); that Co-Defendant showed

Stansell the gun that had been provided for him to use, (R. p. 397, line 20); Co-Defendant discussed how he would get rid of the weapon, (R. p. 398, line 12-25); and, most importantly, that the Appellant had fired the second shot into the prone victim: "Well, he [Co-Defendant] just told me that *after he [victim] fell down that Frances [Appellant] shot him in the back.*" (R. p. 445, line 24-25) (emphasis added.) In reversing a similar factual situation, this Court noted that "[a]lthough much circumstantial evidence was presented, the statement attributed to Simmons was the only direct evidence of Anders' participation." *State v. Anders*, 331 S.C. 474, 476, 503 S.E.2d 443, 444, n. 1 (1998). Additionally this court noted, as opposed to the facts *sub judice*, that the *Anders* co-defendant (Simmons) was available and did testify. *Id.* at 477, 503 S.E.2d at 444.

4. The Stansell testimony was neither cumulative nor harmless and no limiting instruction could cure the taint.

There can be no argument by the State that the testimony of Stansell was cumulative to any other evidence- in truth, there was no other evidence with which the testimony could be cumulative. There was no other evidence before Stansell came forward with his own self-styled "cold case" allegations in October 2006 (R. p. 392, line 3). It was this seven year delayed testimony that formed the basis of the arrest, indictment and subsequent trial of the defendants. *See State v. Haselden*, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003)(holding harmless the introduction of improper cumulative evidence where no objection to its admission); see also *State v. Kirby*, 325 S.C. 390, 396-97, 481 S.E.2d 150, 153 (1996) (holding harmless the introduction of hearsay evidence where cumulative and no objection). Conversely, this Court has found that where trial counsel opened the door to the admission of otherwise inadmissible testimony, there is no

viability to a claim of harmless error especially where the inadmissible testimony is cumulative to other trial evidence. *State v. Page*, 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008). Anticipating the State's argument that notwithstanding the Appellant's right to confrontation of the Co-Defendant, the other testimony presented in trial renders this constitutional error harmless. The problem with a possible harmless error argument is its chronology. All other testimonial evidence presented against Appellant at trial was available to the State in the intermittent seven years between the incident on June 30, 1999, and the revelations by Stansell in 2006. The lynchpin to the prosecution was Stansell and it is reasonable to believe that no arrest, indictment or trial would have occurred without him or his testimony. As a result the uncontested and non-confronted testimony of the Co-Defendant, through Stansell, takes on much greater weight.

Likewise, no limiting or cautionary instruction is sufficient where the error is of such constitutional dimension. This Court's decision in *Page* stands for the proposition that where a fundamental constitutional issue such as confrontation is at stake "limiting instructions are not an adequate substitute." 378 S.C. at 481, 663 S.E.2d at 359; *Accord*, *Bruton v. United States*, 391 U.S. 123 (1968) (holding that even where a cautionary instruction is given, a defendant's Confrontation Clause right is violated where the introduction of a confession in a joint trial violates the non-confessing defendant's Sixth Amendment right to cross examine witnesses).

B. The State Used Co-Defendant's Non-confronted Testimony in its Closing Argument to the Jury in Urging Conviction of the Appellant.

Any claim by the State that the confrontation denial was harmless as relates to the Appellant is eviscerated on viewing how the Solicitor used this same evidence in its

closing argument to the jury. Rather than leave the obvious constitutional defect alone, the State chose to emphasize it. Over and again the Solicitor recounted Stansell's testimony in its effort to convict the Appellant both as to the conspiracy to kill Stephens and her actual involvement as a principal:

- "They go for a ride in the truck, and Duvall reveals to Stansell that the victim planned to rat out the defendant. *Duvall says that Moore wants the victim dead.* She's willing to pay \$2,000 for someone to kill him." (R. p. 667, lines 22-25) (emphasis added);
- "I submit to you that even though this was a confession of Duvall all the other evidence in this case corroborates, proves to you beyond a reasonable doubt that Frances Moore was with Duvall that day, June 30th, 1999." (R. p. 677, lines 20-23);
- "*He said that Frances wanted him dead.* She was going to pay for someone to do it and he planned on doing it." (R. p. 680, lines 19-20) (emphasis added).
- "Why had it gotten to this point, that murder was the plan for Garvin Duvall and Frances Moore? According to Duvall's confession to Stansell, Paul Stephens was Anderson County's biggest rat." (R. p. 681, lines 2-5).
- "And Duvall, as he told Stansell, he was planning on getting paid. Duvall said he gained \$2,000 to carry out the murder of Paul Stephens." (R. p. 681, lines 17-19).
- "Stansell says this happened—first conversation occurred at the birthday party on June 27, 1999. Tells him he wants - *Moore wants the victim dead*, wants him to kill him and he plans on killing him." (R. p. 683, lines 13-16) (emphasis added).
- And that the second—the trajectory of the second bullet was most consistent with someone standing over him as he was already on the ground on his stomach and close to his feet firing the second shot." (R. p. 676, lines 20-24).
- "This murder was carefully thought out and planned by Frances Moore and Garvin Duvall." (R. p. 685, lines 18-19).

The State cannot argue in good faith that these remarks were infrequent or insubstantial in nature, isolated in the greater context of its closing argument or did not

contribute beyond a reasonable doubt to the verdict obtained. See, e.g. *State v. Rice*, 375 S.C. 302, 652 S.E.2d 409 (2007)(citations omitted).

C. The South Carolina Rules of Evidence Do Not Trump the Confrontation Clause of the Constitution.

The United States Supreme Court's decision in *Crawford* makes clear that with respect to testimonial statements the rules relating to evidentiary hearsay and other adequate indicia of reliability which had been previously used were now to be viewed in the light of pure confrontation; the Framers intended that only in the crucible of confrontation and cross-examination could the Sixth Amendment exist and flourish. The Court held in *Crawford* that its previous opinion in *Ohio v. Roberts*, 448 U.S. (1980), had strayed from the original intent of the constitution. Only by returning to the clause's original intent could the unpredictable reliability inherent in *Roberts* be cured. "The *Roberts* test allows a jury to hear evidence, untested by the adversary process, based on a mere judicial determination of reliability. It thus replaces the constitutionally prescribed method of assessing reliability with a wholly foreign one." *Crawford*, 541 U.S. at 62. The *Crawford* court declared that no longer could the vague unpredictability of a supposed "firmly rooted hearsay exception" or of a manipulable "particularized guarantees of trustworthiness" be allowed to counter the original intent of the Sixth Amendment. "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Id.* at 68-69.

II. The Violation of Appellant's Sixth Amendment Right to Confront Witnesses Was Exacerbated by the Cross-examination of Stansell by Co-Defendant's Counsel. This Cross-examination Prejudicially and Irreparably Magnified

the Extent of Appellant's Involvement Which Appellant's Involvement Was Not Provable. The Mistrial Motion Should Have Been Granted.

Co-Defendant's counsel, Robert Gamble, pursuant to his own strategy for his client cross-examined Stansell in such a way as to make even more prejudicial the inherently unconstitutional non-confrontation afforded the Appellant already presented through the Solicitor's direct examination. This, however, did not come as a surprise to the court, the Solicitor, or either defense counsel as early in the case Co-Defendant's Counsel noted that he would cross Stansell on every particular of his testimony. Indeed, Co-Defendant's counsel stated at trial "Your Honor, in answer to your wondering there. My defense would be to go into that statement word for word, line for line, everything in it and prove each and every word is a lie, and I will put that statement in or try to in order to get it to a jury to see what kind of man they are dealing with." (R. p.42, line 24; p. 43, line 4).

While reference to Stansell's written statement (R. p. 41, lines 21-22) may have been able to have been saved by a *Bruton* redaction² that strategy was eventually abandoned by the Solicitor. (R. p. 46, lines 11-14). The Solicitor instead decided to have Stansell testify in person. When the State changed its tactic and Stansell testified as to Co-Defendant's statement to him, Co-Defendant's counsel was fully within his rights to cross-examine Stansell as he chose.

At this point the Solicitors were balancing their case precariously; pitting Appellant's confrontation clause rights against Co-Defendant's right not to take the stand

² See *Bruton v. United States*, 391 U.S. 123 (1968).

and his right to confront Stansell. The solicitors even had to object to evidence elicited by Co-Defendant's attorney that proved the State's case against the Appellant.

"Q. Did he tell you that Frances Moore was with him?

MS. HOGAN: Your Honor, we object at this time...

THE COURT: All right, yes, ma'am, what's the objection.

MS. HOGAN: Your Honor, if it pleases the Court. I believe Mr. Gamble is going to get into the redacted version as to Ms. Moore. Mr. Stansell knew that he was not supposed to get into that with me and we believe that - -

THE COURT: *Thus our problem.*

MS. HOGAN: Yes sir.

THE COURT: *With trying to do that. (R. p. 440, lines 1-18) (emphasis added)."*

A. No Curative Instructive Instruction Could Cure the Impossible Legal Situation Confronting the Jury.

Claiming that it was trying to prevent a mistrial, the Solicitor continued to object to the Co-Defendant's attorney's cross of Stansell and asked the court to cure the State's self-created problem by explaining it to the jury with a curative instruction. (R. p. 442, lines 5-10). The court itself acknowledged the obvious:

"THE COURT: And what would the curing instruction be, that Mr. Gamble is getting ready to cross-examine the witness on testimony that I've ruled inadmissible in the State's case, please disregard it in that vain (sic) but you may take- be cognisant (sic) of it in cross-examination." (R. p. 443, lines 11-15)."

Reflecting a moment the court then noted,

"THE COURT: "Yeah: you know, I've tried to think of a curative instruction. Quite frankly, *any curative instruction is going to be more confusing and call attention to it* so I'm not going to give a curative instruction. *I think it would completely confuse them if I did.*" (R. p. 444, lines 5-9) (emphasis added)."

Appellant's trial counsel also objected and asked for a mistrial. R. p. 440, lines 21-22; p. 443, lines 5-9; p. 444, lines 3-4 and p. 472, lines 17-22. The Court, however, denied the mistrial noting "...and I don't like it, but I got what I got" (R. p. 472, lines 23 - p. 473, line 2).

B. This Court Has the Opportunity to Caution and Re-educate the Bar and Bench on the Pitfalls of a Joint Trial Post-crawford.

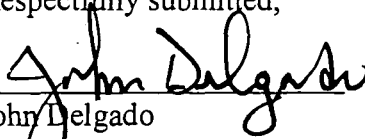
Not surprisingly our Supreme Court has had to previously inoculate against the same factual situation: co-defendants on trial together with interlocking statements, confessions or redacted statements made by one defendant implicating the other either, directly or indirectly. "Finally, we admonish trial judges to be cautious allowing joint trials. While joint trials are permissible, trial judges must carefully consider problems which may arise from a joint trial, such as redacted statements, and must assure protection of a defendant's constitutional right to confront witnesses against him." See *State v. Singleton*, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991) (Citing *State v. Bellamy*, 293 S.C. 103, 359 S.E.2d 63 (1987)).

This Court should use this case to again remind the bench and the bar of the perils of joint trials. This case presents one of the classic problems of such a proceeding: the conflict between a defendant's right to confrontation and a co-defendant's Fifth Amendment right to refuse to be a witness against himself.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that this Court reverse the verdict and remand the case for a new trial.

Respectfully submitted,



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January 19th, 2011

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Anderson County
J. Cordell Maddox, Circuit Court Judge**

Case No. 07-GS-04-1342, 07-GS-04-1343, 07-GS-04-1344

STATE OF SOUTH CAROLINA,

Respondent,

v.

FRANCES MOORE,

Appellant

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err in failing to disallow the State from eliciting testimony of a witness that implicated Appellant through non-confronted testimony?

2.

Did the trial court err in failing to grant a mistrial where the non-confronted testimony was exacerbated by counsel for the co-defendant in his cross of the same witness?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Frances Moore was indicted by the Anderson County Court of General Sessions for murder and possession of a firearm (2007-GS-04-1341), and criminal conspiracy (2007-GS-04-1343). The charges arose from the 1999 murder of Paul Stephens.¹

On May 12, 2009, the matter was called to trial before the Honorable J. Cordell Maddox, presiding judge. The prosecution was handled by Assistant Solicitor Lauren S. Hogan and T. Matthew Bradley. Frances Moore was present and represented by J. Calhoun Pruitt of the Anderson County Bar. Garvin Duvall was jointly tried and represented by Robert Gamble and Matthew Perkins of the Anderson County Public Defenders Office.

On May 15, 2009, the jury returned guilty verdicts on all charges. Moore was sentence to consecutive terms of thirty (30) years for murder, five (5) years consecutive for possession of a firearm during the commission of a violent crime and five (5) years for criminal conspiracy. R. 723, Tr. p. 716, ll. 10-16. This was for an aggregate forty (40) year sentence. R. 723, Tr. p. 716, l. 21.

The Appellant made a post-trial motion for new trial on June 16, 2009. R. 723-730, Tr. 716-723.

A notice of appeal was served on July 6, 2009.

The State's Version of the Facts

On June 30, 1999, Paul Stephens was shot twice with the same gun - once in the back of the head and once in the back - resulting in his death. The circumstances revealed that had left his car

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A co-defendant, Garvin Duvall was indicted for murder, possession of a firearm during the commission of a violent crime and criminal conspiracy on Indictments 2007-GS-04-1218; 1219. His case is currently on appeal.

and shot outside of it on a trail of Baugh Road. His car was sent on fire in the passenger area.

The circumstances ultimately lead to Garvin Duvall and the Appellant, Frances Moore, the victim's ex- mother in law.

On June 27, 1999, Duvall, while at a party speaks with an acquaintance J.W. Stansell and tells him that he was going to kill his friend Paul Stephens because he was going to get arrested and would be a rat. (Evidence was presented that he had been an informant with police previously). Duvall described his plan which involved luring Stephens to an area and shooting him and setting his car on fire and spreading drugs around to make it look like a drug deal gone bad. He also unsuccessfully solicited the help of Stansell who turned him down. As an enticement, Duvall advised Stansell that Moore was willing to pay \$2000 for the murder.

Stephens had been living in fear of Frances Moore. He had been frequently sharing with friends, including a recent girlfriend that if he was shot in the head and his car set on fire, that his mother in law should be investigated.

On the day of the death, Stephen's wife Debra was interviewed by Anderson police for a series of fraudulent checks. After admitting the crimes and blaming Stephens for making her do them, Frances Moore had an outburst and stated in front of the officer the she would kill that son of a bitch. Within three and ½ hours, he was dead.

Interestingly, Moore had a \$100,000 life insurance policy on her ex-son in law. A policy that she would eventually collect on with interest.

At between 2:45 and 2:50, the Appellant is seen driving a car from a spot on Baugh Road (where the victim is found within an hour) driving a few miles to a parking lot at Anderson Meats and Grocery with another male. She is seen making calls from the phone. The male with her is not

positively identified, although a picture of him jumped out to Josh Anderson from the store who had been watching them for about 10 minutes. At around 3 PM, they are seen leaving in the Toyota RAV 4. It is subsequently learned that three call were made from the telephone to Moore's daughter in law home where Stephens was living at that time.

Between 3:10 and 3:27, Paul Stephens is murdered and his car set on fire. If Stephens answered the last phone call, it would have taken him 17 minutes to get to the scene of his death. At around 3:27, a fire is seen by a passerby Aaron Powers who calls 911. The first worker comes to the scene at 3:30. At 3:40, the victim's body is discovered.

Days later, Duvall tells Stansell about the fact he did the murder and details about the crime. He described shooting him outside of the car and setting fire. He additionally described that Moore was there and participated in the shooting (which was brought out in the cross-examination by the co-defendant's counsel).

In 2006, Stansell reports to the police the discussions he had with Duvall before and after the murder.

ARGUMENT

- I. **The trial judge did not abuse his discretion in admitting evidence of a conversation by Garvin Duvall prior to the murder that he was intending to kill Paul Stephens, that Frances Moore was to pay him, that he planned to dispose of the weapon and requested Stansell to do the killing. As evidence in furtherance of the conspiracy, its admission did not violate the right to confrontation.**

In his initial argument, the Appellant contends his 6th Amendment right to confrontation was violated in the admission of testimony from J.W. Stansell concerning a conversation he had with co-defendant Garvin Duvall on June 27, 1999, three days before the murder of Paul Stephens. In admitting the portion of the testimony which admitted a plan to kill Stephens with an inducement for pay from Appellant Frances Moore, the means to kill by showing the weapon and a specific request from Duvall to Stansell to join the conspiracy and kill Stephens, the trial court found it was admissible under S.C. Rules of Evidence, Rule 801(d)(2) as a non-hearsay statement by a co-conspirator in furtherance of a conspiracy. Since it was properly introduced under this exception as non-hearsay, it was not a violation of the Confrontation Clause as recognized in Crawford v. Washington, 541 U.S. 36 (2004) and its progeny. The trial court did not abuse its discretion in the admission of the evidence.

A. The Actual Testimony Admitted Under Initial Challenge.

During the testimony of J.W. Stansell, an acquaintance of the co-defendant Garvin Duvall, he described a conversation he had with Duvall. The conversation took place prior to the murder on June 27, 1999 when they were together at a party for the child of a friend where Stansell also did some magic tricks for a family friend. According to Stansell, during the party, Duvall came up to him and asked him to go for a ride and to talk. R. 396, Tr. 389. Stansell agreed and they left in his

truck and went to a convenience store and bought some sodas. Garvin told him that he was in trouble and needed to talk to him about something. At that point the following occurred:

And he proceeded to tell me that Paul - - he called Paul Anderson County's biggest rat, and said that Paul and he and some other people had been involved in some different criminal activity and that Paul was about to get arrested and was going to turn on them, **and that Frances Moore was one of the ones that was involved, and that she along with some other people wanted Paul dead. And Garvin went on to tell me that she was going to pay him \$2,000 to kill Paul.**

Q. Okay. What, if anything else, did he say?

A. He had a - - back behind his seat because we - - after we - - you know, we left the convenience store and rode back. And we came back to the park but we didn't pull down, you know, were up at the shed. We just kind of parked up near the top. **And he showed me a bag that had a gun in it that had been provided for him to do this murder,** and he wanted me to take it out and look at it. And I told him I could see it real good where I was at and th at, you know, I didn't want to touch it, and he kind of - -

Q. Could you tell what kind of gun it was?

A. You know, I'm no gun expert but I know that it looked like an automatic to me, kind of like either a 9 millimeter or a 380, but, you know, I didn't take it out and look real close up at it.

Q. Okay. And how were you able to know that it was maybe a 380 or a 9 millimeter?

A. Well, I had seen a lot of 9 millimeters on police shows, and I owned a 380 at the time. So to me they looked, you know, similar.

Q. And what, if anything, was Garvin saying to you about this gun?

A. Well, he said that, you know, **it had been provided for him to do the murder and that after the murder that he was**

going to dispose of it at the place where he worked at, which I knew that he worked in the die casting section at Ryobi. I'm not sure if they still called it Piedmont Die Casting or not but it was a die casting company associated with Ryobi where he worked, and he was the man who attended to the furnace, or that's what he had told, you know, before.

And years before I worked at Imperil Die Cast many years before so I was very familiar with, you know, what that job entailed, and I knew that whoever fed the furnace could put anything they wanted to in the furnace. And he said he was going to put it in the furnace and get rid of it.

Q. He was going to put the gun in the furnace?

A. Yes, ma'am.

Q. After it was used?

A. After the murder.

Q. What, if anything, did he say after that, after you were talking about the gun?

A. Well, you know, I sit there kind of dumbfounded, and then it went from bad to worse because he looked at me and just out of the clear and said *do you want to do it. And I said no, you know. And, you know, I told him, I said look, I'm not a murderer.*

And so then, you know, he just told me, **he said, it's got to be done.** And I looked at him and I said, I thought you and Paul were best friends. And he said, we are but business is business.

And I said, but his son is at that party. And I said, you are the godfather of that child. I said, how will you ever be able to look at that kid, you know, and do that.

And it went on for a little while, and then he just - - he starts in, oh, you know, I'm just messing with you. And, you know, Paul does need to be shut up but I was just messing with you,

just joking. I'm not going to do it.

Q. Now, I'm going to back up a little bit. Did he say anything else about - - or what, if anything else, **did he say about how the killing would take place?**

A. Well, he told me that he had prepared a place. At that time he did not tell me where. But he said that there was - - right near the road there's a little wooded area and he said if, you know, whoever was going to do it, and he was implying if I did it, I could stand there behind the bushes and he would get Paul out there, and when Paul drove up I could just step out, in his words, pop him. And then he said that he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene.

Q. Now, then you said that Garvin asked you if you wanted to do it?

A. Yes, ma'am.

Q. Why do you think he asked you that?

A. Well, to be perfectly honest, you know, I can't tell you exactly why.

R. 397-400, Tr. p. 390, l. 6 - p. 393, l. 14. Stansell testified that they returned to the party and he took his family and left. R. 400-01, Tr. 393-94. He stated after the party on Sunday, he learned Wednesday afternoon that Paul had been murdered. R. 403-04, Tr. 396-97.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. State v.

Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct.App.2001); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct.App.2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct.App.2003).

All relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct.App.2002); see also Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); In the Matter of the Care and Treatment of Corley, 353 S.C. 451, 577 S.E.2d 451 (2003) (evidence is relevant if it tends to establish or make more or less probable the matter in controversy).

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000) (although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593. The appellate court's review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear

abuse of discretion).

HOW THE CONFRONTATION CLAUSE ISSUE WAS RAISED AT TRIAL

At the outset of the trial, counsel for Moore made a pre-trial motion in limine to suppress the out of court statement made by Duvall to J.W. Stansell. R. 30, Tr.p. 23. The oral objection went initially to a different subsequent statement also given by Duvall to Stansell after the crime had been committed (which is addressed in argument II). R. 31, Tr.p. 24. He asserted that the second admission by Duvall was hearsay and since it took place after the murder it could not be "in furtherance of the conspiracy under State v. Anders, 3321 S.C. 474, 503 S.E.2d 443 (1998). R. 31-32, Tr. 24-25.

In response the state asserted that there were two statements that were given to J.W. Stansell. The first statement was given on June 27, 1999 and is the statement set out above. The second statement - not relevant in this issue - concerned admissions and description of the actual crime and Frances Moore's involvement in the shootings. R. 32-33, Tr.p. 25-26.

After reviewing Anders and State v. Holmes, 342 S.C. 313, 536 S.E.2d 671 (2000), the state again urged its admission. The defense asserted that there were confrontation issues present. R. 39, Tr.p. 32, ll. 10-19. He asserted that it was not admissible as a statement in furtherance of the conspiracy because there was no independent evidence of a conspiracy. R. 39, Tr.p. 32.

The state asserted sufficient evidence did exist corroborating Moore's involvement including her driving away from the crime scene, making telephone calls near the scene, identified at the telephone booth when a call from that booth was made to the victim's home, and her threat to kill him Paul Stephens on the same day at the murder at the Anderson Police Department. R. 40, Tr.p. 33.

After discussion, the State urged that the statement could be redacted and a cautionary instruction could be given. R. 41-42, Tr.p. 34-35.

While Moore's motion was being discussed, Duvall's counsel noted that his defense would be to go into the statement in full. R. 42, Tr.p. 35.

Judge Maddox then ruled the first part of the statement would be admitted as made before the murder in furtherance of the conspiracy. R. 43, Tr.p. 36, ll. 12-20.

After the trial proceeded, prior to the testimony of J.W. Stansell, counsel for Moore again moved to suppress the testimony of Stansell because the state had not proved the independent evidence of a conspiracy against Moore. R. 343, Tr.p. 336. The state again urged the fact that she was picked out of a photographic lineup at Anderson Meats two miles from the crime scene, that Stephens was killed around 3:15, that her car was seen leaving the crime scene 20 minutes before, that Duvall had admitted involvement in the crime and planning to kill and did kill and that Duvall photo popped out as the other person at the booth although not positively identified. R. 344-46, Tr.p. 337-339.

After Garland Major testified about the photographic identifications, counsel for Moore renewed his motion to suppress. R. 387, Tr.p. 380.

Relying upon State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981), the trial court concluded that a prima facie case of conspiracy was shown. R. 388, Tr.p. 381.

ANALYSIS

In the first portion of the Brief, Appellant Moore appears to challenge the admission of the first statement of Duvall to Stansell as a violation of the right to confrontation. The Confrontation Clause gives an accused the right "to be confronted with the witnesses against him." U.S. Const.

amend. VI. However, because the Confrontation Clause is concerned with testimonial statements only, once it is determined that a statement is nontestimonial, only the rules of evidence may bar its admission. Statements made in furtherance of a conspiracy are inherently non-testimonial. *Crawford v. Washington*, 541 U.S. 36, 56, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

In *Crawford v. Washington*, the Supreme Court held that the Confrontation Clause prohibits the admission of evidence of out-of-court “testimonial” statements against a criminal defendant, unless the declarant is unavailable to testify and the defendant had a prior opportunity to cross-examine the declarant. 541 U.S. 36, 53-54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).² It is now clear that the Confrontation Clause does not apply to non-testimonial statements by an out-of-court declarant. See *Davis v. Washington*, 547 U.S. 813, 821-22, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006);

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Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), is useful to the analysis. The facts in *Bruton* are similar-though not identical-to the facts of this case. In *Bruton*, one of the defendants, Evans, confessed during an interrogation that he and an accomplice had committed armed robbery. *Id.* at 124, 88 S.Ct. 1620. The government believed Evans's accomplice was a man named Bruton. *Id.* Evans and Bruton were tried together, and the district court accepted testimony describing Evans's confession. *Id.* Evans did not testify at trial. *Id.* The district court cautioned the jury that Evans's admission was inadmissible hearsay as applied to Bruton, and should not be considered in determining Bruton's guilt or innocence. *Id.* at 125, 88 S.Ct. 1620. Bruton challenged his conviction, arguing the admission of Evans's confession violated his Sixth Amendment right to confront Evans at trial and challenge the statements Evans made in his confession. *Id.* at 126, 88 S.Ct. 1620.

The Supreme Court reversed Bruton's conviction, holding that the admission at a joint trial of a nontestifying defendant's statement inculcating a co-defendant violates the co-defendant's Confrontation Clause rights, notwithstanding a curative instruction. *Id.* at 135-36, 88 S.Ct. 1620.

Subsequent to *Bruton*, the Supreme Court held that admission of a non-testifying co-conspirator's statement against a defendant does not offend the Confrontation Clause as long as the statement satisfies the co-conspirator exclusion of Federal Rule of Evidence 801(d)(2)(E). *Bourjaily v. United States*, 483 U.S. 171, 182-83, 107 S.Ct. 2775, 97 L.Ed.2d 144 (1987).

Whorton v. Bockting, 549 U.S. 406, 412, 127 S.Ct. 1173, 167 L.Ed.2d 1 (2007) (“[T]he Confrontation Clause has no application to [non-testimonial out-of-court statements]”).

The Supreme Court has not defined the term testimonial, but stated in *Crawford*:

Various formulations of this core class of “testimonial” statements exist: “ex parte in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially,”; “extrajudicial statements ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions,” *White v. Illinois*, 502 U.S. 346, 365, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992) (Thomas, J., joined by Scalia, J., concurring in part and concurring in judgment); “statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” These formulations all share a common nucleus and then define the Clause’s coverage at various levels of abstraction around it.

Crawford, 541 U.S. at 51-52, 124 S.Ct. 1354 (internal citations omitted).

The Statements Were Not Testimonial

Under any formulation of the rule, Duvall’s initial incriminating statements made to Stansell were not testimonial. Indeed, it is clear enough that DuVall had no idea that the incriminating statements he made to Stansell would ultimately be used against him at trial. In this sense, we cannot say that DuVall, in making the statements, “would reasonably expect [the statements] to be used prosecutorially.” *Id.* Nor can we say that an objective witness, in these circumstances, would “reasonably ... believe that the statement would be available for use at a later trial.” *Id.* The critical distinction between *Bruton* and this case is the circumstances under which the out-of-court statement was made. Whereas in *Bruton* the incriminating statement was the product of a formal interrogation and therefore testimonial, the incriminating statements made by Duvall here were made unsuccessfully in furtherance of the conspiracy, and not in anticipation by him of future use of the

statements at trial. Under our present understanding of the confrontation right, governed by *Crawford*, the introduction of Duvall's out of court statements did not violate Moore's confrontation right. Indeed, the Supreme Court has indicated that statements in furtherance of a conspiracy are non-testimonial for purposes of the Confrontation Clause, and are therefore not covered by its protections. *Crawford*, 541 U.S. at 56, 124 S.Ct. 1354 (noting that most hearsay exceptions "covered statements that by their nature were not testimonial-for example, business records or statements in furtherance of a conspiracy"); *id.* at 68, 124 S.Ct. 1354 (concluding that, unlike testimonial evidence, "nontestimonial hearsay ... [may be] exempted ... from Confrontation Clause scrutiny altogether."); accord *United States v. Logan*, 419 F.3d 172, 178 (2d Cir.2005) ("In general, statements of co-conspirators in furtherance of a conspiracy are non-testimonial."). See also *United States v. Johnson*, 581 F.3d 320, 325 (6th Cir.2009) ("[O]ur precedent makes clear that the intent of ... the declarant [] determines whether the statements on the tape-recording are testimonial.").

For example, most statements in furtherance of a conspiracy are nontestimonial under *Crawford* and do not implicate the Confrontation Clause. See *Crawford*, 541 U.S. at 56; see, e.g., *U.S. v. King*, 541 F.3d 1143, 1145-46 (5th Cir. 2008) (Confrontation Clause not violated by admission of coconspirator's statement because statement made during course of and in furtherance of conspiracy); *U.S. v. Mooneyham*, 473 F.3d 280, 286-87 (6th Cir. 2007) (same); *U.S. v. Rollins*, 544 F.3d 820, 834-35 (7th Cir. 2008) (same). However, the admission of a coconspirator statement may violate the Confrontation Clause when the statement tends to shift blame away from the declarant to the defendant. See *Lilly v. Va.*, 527 U.S. 116, 134 (1999) (plurality opinion) (Confrontation Clause violated by admission of confession of nontestifying accomplice because confession shifted blame to defendant and was not against declarant's penal interest). But see, e.g.,

U.S. v. Jordan, 509 F.3d 191, 202-03 (4th Cir. 2007) (Confrontation Clause not violated by admission of coconspirator's statement to friend because statement against declarant's penal interest).

Because non-testimonial out-of-court statements do not implicate the Confrontation Clause, this court does not need to determine whether the statements of the co-conspirator comport with *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980), or *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968). See *United States v. Arnold*, 486 F.3d 177, 192-93 (6th Cir.2007) (en banc) (noting that *Roberts* does not apply to non-testimonial out-of-court statements) and *Johnson*, 581 F.3d at 326 ("Because it is premised on the Confrontation Clause, the *Bruton* rule, like the Confrontation Clause itself, does not apply to nontestimonial statements.").³ But see, e.g., *U.S. v. Jimenez*, 513 F.3d 62, 77 (3d Cir. 2008) (admissibility of nontestimonial statements is evaluated under *Ohio v. Roberts* after *Crawford*); *U.S. v. Mooneyham*, 473 F.3d 280, 286 (6th Cir. 2007) (same); *U.S. v. Thomas*, 453 F.3d 838, 844 (7th Cir. 2006) (same); *Winzer v. Hall*, 494 F.3d 1192, 1197 (9th Cir. 2007) (same).

The Appellant contends that the statements were testimonial because Stansell subsequently gave a statement to law enforcement concerning the earlier statement that Duvall had given him. *Initial Brief of Appellant*, p. 6. The Appellant misreads the *Crawford* test because the testimony introduced does not concern the 2006 statement made to law enforcement, but the 1999 statement

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It is noted that courts have even held that the out-of-court statement of a co-defendant made unknowingly to a government agent is not "testimonial" within the meaning of *Crawford*. See *United States v. Udeozor*, 515 F.3d 260, 269-70 (4th Cir.2008); *United States v. Watson*, 525 F.3d 583, 589 (7th Cir.2008); *United States v. Underwood*, 446 F.3d 1340, 1347-1348 (11th Cir.2006); *United States v. Hendricks*, 395 F.3d 173, 182-184 (3d Cir.2005); *United States v. Saget*, 377 F.3d 223, 229-230 (2d Cir.2004).

that Duvall gave to Stansell. The subsequent reporting is not relevant to the inquiry as to whether the initial statement was testimonial under *Crawford*. To accept the Appellant's approach would underline this threshold test - unless of course - it is related to the fact of the report to law enforcement. Stated another way, if Investigator Graham testified about the statement he received during the investigation from Stansell, the testimonial issue would be different. However, this is not what happened - it was Stansell testifying what Duvall told him.

Because the trial court admitted these pre-murder statements under Rule 801(c), (d)(2)(E), as they were offered not to prove the truth of the matters asserted but to show the statements were made in furtherance of the conspiracy, there was no violation of the Confrontation Clause. See *United States v. Ayala*, 601 F.3d 256, 272 (4th Cir.2010); *United States v. Sullivan*, 466 F.3d 248, 258 (4th Cir.2006).

Although not raised in the Appellant's brief, which appears to concede the adequacy of the independent evidence of a conspiracy and the admission of evidence under the non-hearsay in furtherance of conspiracy rule, Respondent submits that the admission was proper under *State v. Anders* and the more recent case of *State v. Sims*, 387 S.C. 557, 694 S.E.2d 9 (2010).

Rather, Duvall's June 1999 statement to Stansell is, by definition, *not* hearsay, as it is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." Rule 801(d)(2)(E), SCRE. There are basically two prongs to qualify the statement under Rule 801(d)(2)(E). This statement soundly meets both requirements.

First, the record must first show the existence of a conspiracy independent of the statement offered. *State v. Gilchrist*, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000). As stated in the

argument independent evidence existed. First, Frances Moore got angry declared the morning of the murder that "I'm going to kill that Son of a Bitch" after her daughter confessed to fraudulent checks and implicated her ex-husband - the victim - as making her do the crime. R. 321, Tr.p. 314, ll. 8-16. Moore was identified by Josh Anderson as being at Anderson Meats at a telephone near the scene of the murder near the time of the murders. R. 268-272, Tr.p. 261-265. A photograph of Duvall "popped out" or "jumped out" to him during the procedure, but he could not positively identify him as the other person at the telephone. R. 276-77, Tr.p. 269-270. Anderson only saw the lady on the telephone. 281, Tr.p. 274. The Anderson Meats telephone was used at that time to call the home three times where the victim lived during the same 2:54- 3 PM period (14:52, 14, 53, 14:57) Moore with a male was at the location. R. 350, Tr.p. 343. Also R., 486-87, Tr.p. 479-480. Importantly, a white Toyota RAV4 was seen by Josh Addis prior to 2:45-2:50 on Baugh Road where the crime happened. R. 234-36, Tr.p. 227-229. The RAV 4 followed him to Anderson Meats with a female driver and male passenger who got out by the telephone booth before 2:54. R. 237-241, Tr.p. 230-234. The woman and man were seen arguing and upset. R. 244-45, Tr.p. 237-238. Between 3:10 and 3:27, under the state theory at trial, Paul Stephens is murdered by 2 gunshots and his car is burned off Baugh Road. Josh Anderson sees Moore in Toyota around 3 PM with white male. Seventeen minutes after the victim could arrive at Baugh Road, 911 is called concerning the car fire at around 3:16. R. 128-132, 143, Tr. 121-125, 136. Car fire was determined to be between 10 minutes and could have been burning 45 minutes. R. 189-193, Tr.p. 182-186.

In addition, the victim had expressed that he was fearful of Frances Moore and stated on many occasions near the time of the killing to three people "if I was ever found shot and his car caught fire to have his mother in law investigated." R. 302, Tr.p. 295, ll. 10-25. (Kenny Erwin)

Also, R. 307, Tr. 300 (Nellie Erwin); R. 313, Tr. p. 306, ll. 9-14 (Rita Woods).⁴ Also, Frances Moore had a motive to kill (and a potential fund to pay to have it done) in addition to being upset that Stephens had gotten her daughter to commit a crime - she had a \$100,000 life insurance policy on the victim through Liberty Life Insurance that she could and eventually did recover as a result of the death, *with interest*. R. 505-511, Tr.p. 498-504.

Second, the record must show the statement was made "in furtherance of" or otherwise advanced the conspiracy. *Gilchrist, supra., Sims*. During the June 27 conversation, after describing the intent to kill Stephens, the manner that he would kill him by luring him and then shooting him, in return for \$2000, Duvall specifically solicited to have Stansell commit the crime with him:

Well, you know, I sit there kind of dumbfounded, and then it went from bad to worse because he looked at me and just out of the clear and said *do you want to do it. And I said no, you know. And, you know, I told him, I said look, I'm not a murderer.*

And so then, you know, he just told me, **he said, it's got to be done**

R. 399, Tr.p. 392, ll. 5-9.

Well, he told me that he had prepared a place. At that time he did not tell me where. But he said that there was - - right near the road there's a little wooded area and he said if, you know, **whoever was going to do it, and he was implying if I did it**, I could stand there behind the bushes and he would get Paul out there, and when Paul drove up I could just step out, in his words, pop him. And then he said that he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene.

Tr.p. 392, l. 24- p. 393, l. 8. Also, Tr.p. 393, l. 9-12.

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It also aids this assessment that evidence existed that Duvall had indicated that he was going to kill Stephens (in the same manner that Stephens had expressed to others that he feared his mother would kill him).

This testimony reveals the statements were “in furtherance of the conspiracy.” The Court in *Sims* held that the “in furtherance of” prong, our law provides that “a statement by a co-conspirator must advance the conspiracy to be admissible under Rule 801(d)(2)(E).” citing *State v. Gilchrist*, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000). “While mere conversation or narrative declarations are not admissible under this rule, statements made to induce enlistment, further participation, prompt further action, allay fears, or keep coconspirators abreast of an ongoing conspiracy’s activities are admissible.” *Id.* at 372, 536 S.E.2d at 869 (quoting *United States v. Arias-Villanueva*, 998 F.2d 1491, 1502 (9th Cir.1993)).

The statement by Duvall was to specifically induce enlistment and participation by Stansell in the murder of Stephens. It differs from *Anders* and *Sims* in that respect. In *State v. Anders*, a witness testified that she overheard a coconspirator of Anders say that Anders “was going to pay him big for blowing up the building.” 331 S.C. 474, 476, 503 S.E.2d 443, 444 (1998). The Court held that “even if made **during** the conspiracy, the statement in no way **advanced** the conspiracy.” *Id.* at 476-77, 503 S.E.2d at 444 (emphasis in original). In *Anders*, the Court found it mirrored that in other jurisdictions. See *United States v. Pallais*, 921 F.2d 684, 688 (7th Cir.1990) (“Mere chitchat, casual admissions of culpability, and other noise and static in the information stream are not admissible.”); *United States v. Posner*, 764 F.2d 1535, 1538 (11th Cir.1985) (stating a letter that “spilled the beans” regarding a tax scheme “could hardly be considered to have advanced any object of the conspiracy”). Caselaw subsequent to *Anders* remains in accord. See *United States v. Pratt*, 239 F.3d 640, 643 (4th Cir.2001) (“Idle conversation that touches on, but does not further, the purposes of the conspiracy does not constitute a statement in furtherance of a conspiracy under Rule 801(d)(2)(E).”).

The difference between such statements and the statement at issue here is evident in the holdings of *State v. Anders*, 331 S.C. 474, 503 S.E.2d 443 (1998) and *State v. Anderson*, 357 S.C. 514, 593 S.E.2d 820 (Ct.App. 2004). In *Anders*, this Court found that a simple admission of guilt, not made in connection with any a conspiracy - - either to commit the crime or to hide the evidence, as is the case here - - is not admissible under the co-conspirator's statement exception as it is not specifically tied to the completion or furtherance of the conspiracy. The facts in that case showed that one co-conspirator admitted his participation in a conspiracy to destroy a building and his acts in completion of the goal. The Court held the statement was not made in furtherance of the conspiracy and was not admissible as a co-conspirator's statement under the rule. *Anders*, 331 S.C. at 476-77, 503 S.E.2d at 444. In *Anderson*, however, the witness testified that a co-conspirator told him "they had a lick or something like that." 357 S.C. at 517, 593 S.E.2d at 821. That statement actually induced the witness to join the conspiracy to rob the victim, thus was admissible under the rule. *Id.* Contrary to Petitioner's assertion, pursuant to Rule 801(d)(2)(E), SCRE, the statement, by definition, is not hearsay.

Inducement statements satisfy the rule. See *State v. Anderson*, *supra*; *Gilchrist*, 342 S.C. at 372 n.2, 536 S.E.2d at 869 n.2, quoting *United States v. Arias-Villanueva*, 998 F.2d 1491, 1502 (9th Cir. 1993). See also *United States v. Roberts*, 14 F.3d 502, 515 (10th Cir. 1993)(statements made to induce participation or advise of goals admissible as statement made in furtherance of the conspiracy); *United States v. Yarbrough*, 852 F.2d 1522, 1535 (9th Cir. 1988)(statements to induce further participation admissible as in furtherance of conspiracy). *United States v. Watchmaker*, 761 F.2d 1459, 1472 (11th Cir. 1985)("Statements made to a non-conspirator in order to induce him to become part of a conspiracy come within the exception as furthering the purposes of the

conspiracy”); *United States v. Goodman*, 605 F.2d 870, 878 (5th Cir. 1979)(finding statement admissible under 801(d)(2)(E), Fed. R. Evid. where “[t]he obvious purpose of explaining the methaqualone operation to Ms. Carrier was to induce her to join it, which she later did”). The record supports this second requirement, as well.

Therefore, the initial statement on June 27, 2010, by definition, was not hearsay and was properly admitted. Moreover, in this case, there are two layers to the statement. The first is the statement made by Duvall is admissible as non-hearsay as co-conspirator’s statement for the reasons listed above. The trial court did not err in its admission.

The Closing Argument Use of the Evidence

In his brief, Appellant seeks to show that any error in the admission of the evidence could not be harmless because the co-conspirator evidence was used in the prosecution argument. Initial Brief of Appellant, p. 10-12. As stated above, the evidence of Duvall’s statement to Stansell at the party was admissible against Moore as evidence of a co-conspirator’s statements in furtherance of a conspiracy. Assuming the admission of the evidence was proper, the jury’s consideration of the evidence and prosecutor’s comments about it were equally proper. A review of the particular parsed comments set out on page 11 of the *Initial Brief of Appellant* reveal that they are directed toward the June 27, 1999 conversation between Duvall and Stansell seeking Stansell to join the planned conspiracy to murder Stephens. R. 667, 677, 680, 681, 682, 683, 684, 685, Tr. 660, ll. 22-25, p. 670, ll. 20-23, p. 673, ll. 19-20, p. 674, ll. 2-5, p. 675, ll. 17-19, p. 676, ll. 13-16, p. 677, ll. 20-24,⁵ p. 678,

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This particular comment in the Brief was a summary of the testimony of the pathologist concerning the location and timing of the second shot. R. 530-31, Tr.p. 523-524.

ll. 18-19.

CONCLUSION

The admission of the evidence of the June 27, 1999 solicitation of J.W. Stansell to join the conspiracy to kill Paul Stephens was admission under state evidentiary law as a statement of a coconspirator of a party during the course of and in furtherance of the conspiracy. It was not a testimonial statement and therefore did not fall violative of the Confrontation Clause. The Appellant's protestations otherwise are without merit.

- II. Where a limiting instruction had been given that evidence from a statement that codefendant Duvall made to witness Stansell *after the crime* could only be used against Duvall and not Moore, where the codefendant used the “redacted” portion of the statement that addressed Appellant Moore to impeach Stansell, not to implicate Moore and the State objected to the evidence, a new trial is not warranted where the State did not use the impeachment evidence to implicate Moore and the jury charge removed its consideration as to Moore.

The second issue concerns evidence presented concerning a second statement made by Duvall to Stansell after the crime during cross-examination by the co-defendant concerning references made, but previously redacted by the State in its case under *Bruton v. U.S.* The admission of this previously redacted evidence was objected to by the State. R. 440, Tr.p. 433. A limiting instruction had already been given by the trial judge expressly stating that “conversations after the date of the alleged crime, that evidence was admitted in the State’s case against Mr. Duvall only. So that would pertain to the statements made after the date of the alleged crime **against Duvall only, not against Moore.**” R. 414, Tr.p. 407, ll. 8-15. Although the trial judge allowed counsel for Duvall to confront witness Stansell with redacted portions of the statement for impeachment purposes, a new trial is not required where the State did not use the redacted portions of the second Stansell statement to convict Frances Moore. This exception for a new trial must be denied.

STANDARD OF REVIEW

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. *State v. Council*, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999); *State v. White*, 371 S.C. 439, 443-44, 639 S.E.2d 160, 162 (Ct.App.2006). A mistrial should be declared only when absolutely necessary. *Council*, 335 S.C. at 13, 515 S.E.2d at 514. In order to receive a

mistrial, a defendant must show error and resulting prejudice. *Id.* It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial. *White*, 371 S.C. at 444, 639 S.E.2d at 162. See, *State v. Culbreath*, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (S.C.App.,2008) (state witness's references to defendant's prior drug dealings did not require a mistrial).

Why A New Trial Is Not Warranted

The introduction of the unredacted portions of the statement in the objected cross-examination were not used to prove the truth of the matters asserted by counsel for Duvall. To the contrary they were being used to impeach Stansell by Duvall - not prove that both Duvall and Stansen were involved. The Confrontation Clause does not address this issue. *Crawford*, and the Supreme Court cases applying *Crawford*, have involved out-of-court testimonial statements *admitted* at trial.⁶ *Crawford* reiterated that the Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." 541 U.S. at 59-60 n. 9, 124 S.Ct. 1354, citing *Tennessee v. Street*, 471 U.S. 409, 414, 105 S.Ct. 2078, 85 L.Ed.2d 425 (1985). Nearly every circuit has accordingly held that testimonial statements *offered* for purposes other than their truth do not implicate the Confrontation Clause. See the cases cited in *Commonwealth v. Pelletier*, 71 Mass.App.Ct. 67, 879 N.E.2d 125, 129 n. 5 (2008). Moore cites no authority for the proposition that use of an out-of-court non-testimonial statement merely as the good faith factual basis for relevant cross examination of a witness at trial implicates the Confrontation

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See *Giles v. California*, __U.S.__, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008); *Davis v. Washington*, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).

Clause. And authority to the contrary is found in *United States v. Miller*, 974 F.2d 953, 960 (8th Cir.1992), where the Eighth Circuit held that use of a co-defendant's unredacted confession as the factual basis for cross-examining a defense witness at trial did not violate the Confrontation Clause as construed in *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

The Challenged Evidence

After a series of discussions on the record, the decision was made to admit the evidence but redact any reference to Frances Moore. In the proffered statement, it was indicated that the statement was not made in furtherance of the conspiracy, but rather was an admission of guilt by Duvall. In the admission, Duvall had implicated Moore in the act of murder. The state stated it would advise the witness to steer clear of what Duvall said about Moore. R. 42, Tr.p. 35, ll. 13-23. See also, R. 45, 47, Tr.p. 38, ll. 4-18, p. 40, ll. 11-16.⁷

In the state's direct examination before the jury, J.W. Stansell testified about a second conversation that he had with Duvall shortly after the murder when he ran into him at the hospital. Stansell stated that he asked Duvall if he had killed Stephens which he affirmed. R. 404, Tr.p. 397, ll. 14-19. He went on to respond that on the day of the murder he had called Debra's house and spoken with Paul and lured him out to Baugh Road. He stated that Duvall told him when Paul got there that he got out of the car and walked around a little trail and that Duvall shot him in the back of the head and then he caught the car on fire. R. 405, Tr.p. 398, ll. 1-25. Stansell stated that this was similarly to the plan he had told him on the 27th that he would catch Paul, set the car on fire and

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The trial judge was weary of the potential that the codefendant (and declarant's) counsel would seek to use the full statement in its examination of the witness. R. 45, 47, Tr.p. 38, ll. 13-18., p. 40, ll. 17-23.

spread drugs around.

When Stansell asked him why he didn't set Paul and the car on fire as planned, Duvall stated he wanted to, but Paul got out of the car. He confirmed that he took the gun and disposed of it at Ryobi, his place of business where he worked the furnace as they had discussed in June. R. 406, Tr.p. 399, ll. 3-10.

After the testimony on direct, counsel for Moore asked for limiting instructions. The Court instructed as follows:

you've heard some testimony from Mr. Stansell, and also you're going to hear more, but regarding his testimony this morning regarding conversations after the date of the alleged crime, that evidence was admitted in the State's case against Mr. Duvall only. So that would pertain to the statements made after the date of the alleged crime **against Duvall only, not against Moore.**

R. 414, Tr.p. 407, ll. 8-15.

The Cross-Examination Of Stansell

Following up on his prediction, counsel Gamble, on behalf of co-defendant Duvall, made specific inquiry on the post-crime statement of his client to Stansell and asked: "did he tell you that Frances Moore was with him?" At the point, the State objected to the question. R. 440, Tr.p. 433, l. 15.

Specifically, the State that it appeared that counsel Gamble was about to go into the portion of the statement that was redacted and the witness had been advised not to go into those matters prior to his testimony. R. 440, Tr.p. 433, ll. 12-15. The state asserted that this was not like State v. Holmes and the State had not implicated Moore in the statement introduced in its case. The State asserted that the defense had abandoned this issue when it failed to move to sever at the beginning of the trial.

R. 441, Tr.p. 434. The State urged that it had not done anything to create a mistrial in this setting and opined that a curative instruction would apply.

The State contended that this case was tried as a joint trial as an efficient way to do justice and the defendant specifically did not move to sever the trials. She complained that the defense was now introducing something to create a mistrial.

Judge Maddox overruled the State's objection to the questions. He concluded that he would allow defense counsel on behalf of Duvall to question Stansell about the admission weighing the right to confrontation with the rules of evidence. He stated that he would take the motion for mistrial under advisement. R. 443-44, Tr.p. 436-437. The defense for Moore clarified that she was moving for a mistrial. R. 444, Tr.p. 437, ll. 3-4. The trial judge then initially denied a curative instruction request. R. 444, Tr.p. 437, ll. 5-9.

At that time the cross-examination continued. Particularly, he stated:

Q. According to you , Garvin said he pulled a gun out and shot Paul in the back of the head. Is that what he said?

A. Yes sir.

Q. And that Frances shot Paul in the back after he was down?

A. Yes, sir.

Q. And that was at close range?

A. All he - - - I wasn't there . He told me he shot Paul in the back of the head.

Q. Standing right behind him?

A. Yes sir from what he said.

Q. Right.

A. And then that after he was down that Frances shot him in the back.

Q. Standing right over him?

A. Well, he just told me that after he fell down that Frances shot him in the back.

R. 445, Tr.p. 438, ll. 9-25.

After the completion of the testimony by Stansell, counsel for Moore made another motion for mistrial based upon the testimony of Stansell about Duvall. R. 472, Tr.p. 465, ll. 17-22. Moore contended that this was against the ruling that the Court made at the beginning of the trial with the confession issue.⁸ In denying the mistrial motion, Judge Maddox stated that he would deny the motion based upon what came out - the two lines. R. 472, Tr.p. 465, ll. 17-22.

Post-Trial Argument

After the jury verdict, post-trial motions were heard June 16, 2009. During the motion hearing counsel for Moore asserted that there was a violation of the confrontation rights under *Bruton v. U.S.*, supra. where a non-testifying co-defendant's statement cannot be used against a defendant. He stated that since the co-defendant did not take the stand, he was deprived of his right to cross-examination about the statement he made to Stansell where it could have been explored in great detail. He stated that first, it should have been denied altogether given the fact the state was

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The defense for Moore did not object to these specific questions contemporaneously. R. 445, Tr. 438.

pursuing a joint trial. Second, the fact his co-defendant did not testify limited his ability to confront the accuser by the hearsay. Finally, he contended that the trial was complicated by the fact that the co-defendant's counsel in cross-examination was able to emphasize and bring out points on testimony that was otherwise inadmissible and over which Moore had no control.

Counsel for Moore contended that although the judge gave limiting instructions concerning the evidence, the testimony was very prejudicial and deprived her of her right to confront witnesses as supported by the hearsay rule and the state and federal constitution. R. 727, Tr.p. 720, ll. 16-22.

The State asserted the motion for new trial should be denied. The State asserted that the court gave a limiting instruction as to the evidence admitted through Mr. Stansell. First the initial portion was admissible as in furtherance of the conspiracy and the statement after that was excluded. The State pointed out that when Mr. Gamble was cross-examining Stansell concerning the statement made after the murder, it was the State that objected, Mr. Pruitt made no objection to the evidence. R. 729, Tr.p. 722, ll. 1-7.

The trial court orally denied the motion. R. 730, Tr.p. 723, ll. 13-14.

ANALYSIS

The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses. *Richardson v. Marsh*, 481 U.S. 200, 206, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987).

In *Bruton*, the Supreme Court held that, in a joint trial, admission of a non-testifying codefendant's statement that expressly inculcates the defendant violates the defendant's rights under

the Confrontation Clause, as the use of only a limiting instruction is insufficient to remove any prejudice to the defendant. 391 U.S. at 136-37, 88 S.Ct. 1620. In *Richardson*, the Supreme Court remarked that the rule announced in *Bruton* is a "narrow" one that applies only when the statement implicates the defendant "on its face"; the rule does not apply where the statement becomes incriminating only when linked to other evidence introduced at trial, such as the defendant's own testimony. *Richardson*, 481 U.S. at 207-08, 107 S.Ct. 1702. The Supreme Court also noted *Bruton* can be complied with by the use of redaction:

Even more significantly, evidence requiring linkage differs from evidence incriminating on its face in the practical effects which application of the *Bruton* exception would produce. If limited to facially incriminating confessions, *Bruton* can be complied with by redaction—a possibility suggested in that opinion itself. *Id.*, at 134, n. 10, 88 S.Ct., at 1626, n. 10. If extended to confessions incriminating by connection, not only is that not possible, but it is not even possible to predict the admissibility of a confession in advance of trial.

Id. at 208-09, 107 S.Ct. 1702. See also, *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998) (a statement that "substituted blanks and the word 'delete' for the petitioner's proper name[] falls within the class of statements to which *Bruton*'s protections apply.").

Violations of the Confrontation Clause are subject to a harmless error analysis. *State v. Murphy*, 270 S.C. 642, 644, 244 S.E.2d 36, 36-37 (1978) (observing where a wealth of evidence exists against the appellant, it eliminates any error in the admission of a codefendant's statement). "A [C]onfrontation [C]ause error is harmless if the evidence is overwhelming and the violation so insignificant by comparison that we are persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." *State v. Vincent*, 131 Wash.App. 147, 120 P.3d 120, 124 (2005). "Considerations include the importance of the witness's testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the

witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case." *Id. See, State v. Holder*, 382 S.C. 278, 283-285, 676 S.E.2d 690, 693 - 694 (S.C.,2009).

Here, there are certain salient points that remove this from *Bruton*'s protections. First, the state did not introduce the information about Moore from the post-crime admissions that Duvall made to Stansell. The State instructed the witness to not testify about any information concerning Moore. Second, the State objected to the unredacted testimony related to Moore in an attempt to insure that there was no *Bruton* issue. Third, the existing limiting instruction precluded the jury's consideration of the post-crime comments against Moore.⁹ Underlying the State's frustration in their attempt to keep this trial clean of potential *Bruton* error, was the fact that no motion to sever the trials was made prior to or during the trial. R. 442-44, Tr.p. 435-437.

The Appellant seeks to have the Court use this case as a vehicle to again discuss the problems with joint trials, citing *State v. Singleton*, 303 S.C. 313, 400 S.E.2d 487 (1991). He implies that the impact of *Crawford v. Washington* makes joint trials more suspect. The perils of the joint trial could have been resolved in the setting if the trial judge had sustained the objection. In hindsight, the trial court could have alternately addressed the potential *Bruton* problem with a redaction including "another person" replacement rather than allowing the counsel to supplant the statement with its original information concerning Moore. He could have sought an understanding of the specific

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The Appellant points out that Judge Maddox did not issue a second cautionary instruction after cross-examination. While the judge may have been perplexed as to how to re-address the issue in light of counsel Gamble's stated intent and brief questioning, it did not removed the fact that the jury was already guided by the instructions given.

purpose of cross-examination by counsel gamble and then addressed the particular situation with a limiting instruction. However, the fact that hindsight can be used does not suggest that Moore is entitled to a new trial.

Although invited error was not specifically argued below, it is plain that the remedy for the potential *Bruton* error was not sought by Moore at the time of the trial when it was evident that the redaction would be made and counsel Gamble was lying in wait to go line by line when Stansell testified. Moore's failure to seek severance at the outset should act as a waiver of the right to a new trial based upon this issue.¹⁰ See Tr.p. 33-40. See *State v. Culbreath*, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008) (defense counsel opened the door to bad act evidence by questioning concerning drug dealing where state did not introduce the evidence and thereby invited error doctrine applied).

Assuming error, as noted in argument one, the *Bruton* error can be harmless. In addition to the limiting instruction, the evidence against Moore was overwhelming. There was express malice and intent presented to the officers on the day of the murder - "kill the son of a bitch." The was motive - getting her daughter involved in crimes and having a \$100,000 policy. There was

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Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right. *State v. Dennis*, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction. *Id.* The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime. *Id.* A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt. *Id.* (Emphasis supplied). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. *State v. Holland*, 261 S.C. 488, 494, 201 S.E.2d 118, 121(1973). See, *Hughes v. State*, 346 S.C. 554, 558-559, 552 S.E.2d 315, 317 (S.C.,2001).

opportunity shown by her presence near the crime scene around the time of the crime. Finally, there was the feared relationship the victim had with Moore - a relationship that caused Stephens to predict his death and the manner it would happen.

CONCLUSION

For all the foregoing reasons, the judgement of convictions must be affirmed.

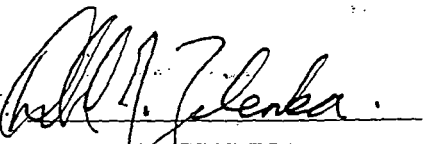
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ATTORNEYS FOR RESPONDENT

January 21, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
J. Cordell Maddox, Circuit Court Judge

Case No. 07-GS-04-1342, 07-GS-04-1343, 07-GS-04-1344

STATE OF SOUTH CAROLINA,

Respondent,

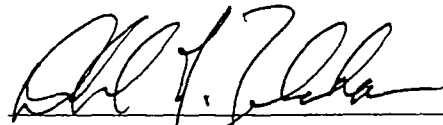
v.

FRANCES MOORE,

Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

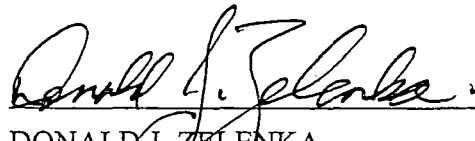


DONALD J. ZELENKA
Assistant Deputy Attorney General

January 21, 2011

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the United States mail, postage prepaid, to John Delgado, Esquire, Bluestein, Nichols, Thompson & Delgado, LLC, P. O. Box 7965, Columbia, SC 29202 this 21st day of January, 2011.


DONALD J. ZELENKA
Assistant Deputy Attorney General

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

J. Cordell Maddox, Circuit Court Judge

Case No. 07-GS-40-1342, 07-GS-40-1343, 07-GS-40-1344

The State Respondent,

v.

Frances Moore, #334844, ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Appellant adheres to the arguments in its Brief. However, Appellant desires to reply to the arguments Respondent made in its Brief, as those arguments are without support and misleading.

I. BECAUSE APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONTATION WAS DENIED, THE COURT'S DECISION TO ADMIT STANSELL'S TESTIMONY WHICH INCLUDED INCULPATORY STATEMENTS BY DUVALL, A NON-TESTIFYING THIRD PARTY, THAT INCRIMINATED APPELLANT IN THEIR JOINT TRIAL, WAS REVERSIBLE ERROR.

Although the court properly identified the controlling judicial precedent and South Carolina Rule of Evidence, it misapplied them. The court found J.W. Stansell's ("Stansell") testimony which included inculpatory statements by Garvin Duvall ("Duvall"), a non-testifying third-party, incriminating Frances Moore (the "Appellant") in their joint trial, admissible as a non-hearsay statement by a co-conspirator in furtherance of a conspiracy. See Rule 801(d)(2)(E), SCRE. Consequently, the court denied Appellant his Sixth Amendment right to confront his accuser under the Confrontation Clause when it misapplied Rule 801(d)(2)(E), SCRE, by admitting that portion of Stansell's testimony. U.S. Const. Amend. VI; See *Crawford v. Washington*, 541 U.S. 36 (2004); See also *Bruton v. United States*, 391 U.S. 123 (1968). Neither law nor logic supports that result.

Furthermore, the court's reluctant decision to deny Appellant's repeated objections for a mistrial was not harmless because its decision unduly prejudiced and irreparably harmed Appellant. Thus, the court abused its discretion and its decision to

deny Appellant's objections for a mistrial was reversible error.

A. The State Relies on a Misapplication of Rule 801(d)(2)(E) in Support of Admission of Stansell's Testimony; This Testimony Was Not in Furtherance of a Conspiracy

An examination of the facts of this case proves that neither requirement of the co-conspirator exception to the hearsay rule was satisfied. Even if this Court finds that a "conspiracy existed" and Duvall's alleged statement was "made during the conspiracy," then as long as Duvall's alleged "statement in no way advanced the conspiracy," the "in furtherance of" prong has not been satisfied. *Sims*, 387 S.C. at 566, 694 S.E.2d at 14 (quoting *State v. Anders*, 331 S.C. 474, 476-77, 503 S.E.2d 443, 444 (1998)).

As to the first prong of the co-conspirator exception to the hearsay rule, Respondent failed to prove the existence of a conspiracy because barring the disputed portion of Stansell's testimony that contained the alleged statements made by Duvall, there was no independent evidence of a conspiracy. This Court, in reversing a similar factual situation dealing with Rule 801(d)(2)(E), noted that "[a]lthough much circumstantial evidence was presented, the statement attributed to [the non-testifying third party] was the only direct evidence of [the defendant's] participation." *Anders*, 331 S.C. at 476, 503 S.E.2d at 444, n.1. The only evidence present in this case implicating Appellant in the murder of Paul Stephens ("Stephens") is circumstantial and thus fails to establish the existence of a conspiracy.

As to the second prong of the co-conspirator exception to the hearsay rule, Respondent also failed to prove that the alleged statements Duvall made to Stansell "advanced the conspiracy" or was "intended to further induce participation" in the alleged

conspiracy. See *Sims*, 387 S.C. at 566, 694 S.E.2d at 14 (noting that to prove that a statement was made “in furtherance of” the conspiracy, “a statement by a co-conspirator must advance the conspiracy to be admissible under Rule 801(d)(2)(E).”) (quoting *State v. Gilchrist*, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000) (internal citation omitted)); See also *United States v. Pratt*, 239 F.3d 640, 643 (4th Cir. 2001) (noting that “[i]dle conversation that touches on, but does not further, the purposes of the conspiracy does not constitute a statement in furtherance of a conspiracy under Rule 801(d)(2)(E).”). More specifically, “[w]hile mere conversation or narrative declarations are not admissible under this rule, statements made to induce enlistment, further participation, prompt further action, allay fears, or keep coconspirators abreast of an ongoing conspiracy’s activities are admissible.” *Gilchrist*, 342 S.C. at 372, 536 S.E.2d at 869 (quoting *United States v. Arias-Villanueva*, 998 F.2d 1491, 1502 (9th Cir. 1993)).

Here, the alleged statements Duvall made to Stansell were not calculated to induce Stansell’s participation in a combined and joint effort with Appellant to murder Stephens. The alleged statements are best described as Duvall’s “spilling the beans” to Stansell. *United States v. Posner*, 764 F.2d 1535, 1538 (11th Cir. 1985) (noting that an admission to a crime “could hardly be considered to have advanced any object of the conspiracy.”). The portion of Stansell’s testimony that could be construed as “advancing the conspiracy” is purely subjective on Stansell’s part as he testified that “there was - - right near the road there’s a little wooded area and he said if, you know, whoever was going to do it, and he was *implying* if I did it.” (R. p. 400) (emphasis added).

However, because Duvall is a non-testifying third party, his “side-of-the-story”

will never be known, resulting in irreparable harm to Appellant. *See Bruton*, 391 U.S. at 135-136 (holding that the admission at a joint trial of a non-testifying defendant's statement inculcating a co-defendant violates the co-defendant's Confrontation Clause rights, notwithstanding a curative instruction); *See also State v. Martin*, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987) (noting that "[t]he constitutional right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures [sic] that convictions will not result from testimony of individuals who cannot be challenged at trial."). This leaves Stansell's subjective interpretation of Duvall's alleged statements as the only piece of evidence applicable to the "in furtherance of" prong. Consequently, there is insufficient evidence to prove that Duvall's alleged statements "advanced the conspiracy" or was "intended to further induce participation" in the alleged conspiracy.

B. Under the Unique Circumstances of this Case, Duvall's Statements Were Testimonial.

Respondent contends that, despite the fact that Stansell had previously made a formal statement to law enforcement about his alleged conversations with Duvall, and otherwise being in the "core class" of testimonial situations, Duvall's statement is not testimonial. *Crawford*, 541 U.S. at 51-52. Respondent's rationale for this contention is that Stansell's statement to law enforcement concerned a prior conversation with Duvall, which by itself, is not testimonial, and should thus negate the latter statement from being testimonial. This is a misinterpretation of *Crawford* and its progeny because in this rare situation, it renders the threshold for testimonial statements absolutely meaningless. *Id.*

at 66 (noting that “[t]he Framers would be astounded to learn that *ex parte* testimony could be admitted against a criminal defendant because it was elicited by ‘neutral’ government officers”). Consequently, Stansell’s statement to law enforcement about his alleged conversations with Duvall was testimonial.

Furthermore, based on Stansell’s testimony, Duvall’s alleged statements are inculpatory because they clearly and directly implicate Appellant in the murder of Stephens. *See Crockett*, 813 F.2d at 1315. In admitting Duvall’s alleged statements, the court created a confrontation problem because those statements were admitted for the sole “limited purpose” of showing Appellant’s guilt. *Bruton*, 391 U.S. at 126-129; *Richardson*, 481 U.S. at 208, 211. Under the principles set out in *Bruton* and *Crawford*, the Sixth Amendment prohibits this exact situation. *See Martin*, 292 S.C. at 439, 357 S.E.2d at 22 (noting that “[t]he constitutional right to confront and cross-examine witnesses is essential to a fair trial in that it promotes reliability in criminal trials and insures [sic] that convictions will not result from testimony of individuals who cannot be challenged at trial.”). Consequently, this Court has warned circuit court judges of the perils of joint trials to prevent conflicts such as this: a defendant’s Sixth Amendment right to confront his accuser, and a co-defendant’s Fifth Amendment right to refuse to be a witness against himself. *State v. Singleton*, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991) (provides in pertinent part: “we admonish trial judges to be cautious in allowing joint trials. While joint trials are permissible, trial judges carefully consider problems which may arise from a joint trial...and must assure protection of a defendant’s constitutional right to confront witnesses against him.”) (quoting *State v. Bellamy*, 293

S.C. 103, 359 S.E.2d 63 (1987)).

C. The State Contends that a Curative Instruction Cured Any Mistrial Motion But the Court Itself Questioned this Alternative and Declined to Give One; The Appellant's Motions for a Mistrial Should Have Been Granted.

In order to receive a mistrial, a defendant must show error and resulting prejudice. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). A defendant who alleges he was improperly tried because of a joint trial must show prejudice before his conviction will be reversed. *State v. Dennis*, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). This Court has also held that a proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. *Hughes v. State*, 346 S.C. 554, 558-559, 552 S.E.2d 315, 317 (2001). Consequently, it is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial. *State v. White*, 371 S.C. 439, 444, 639 S.E.2d 160, 162 (Ct. App. 2006). The State conveniently, or sufficiently, does not address this issue.

This record clearly shows that the court was cognizant of the improper nature of trying the two defendants jointly:

The Court: "How is it going to be tried against them in a single trial?"
(R. p. 40, lines 19-22);

The Court: "I'm not so sure these people should be tried together..."
(R. p. 44, lines 13-14);

The Court: "I don't mind complex. *It's the impossible that I don't like.* And this is why *I can't figure out why they are both here today?*"
(R. p. 442, lines 18-20) (emphasis added).

The Circuit Court was also aware of the conflict that would arise by having a joint trial in

this case:

The Court: I'm having to weigh the right to confrontation against the rules of evidence in regard to hearsay. (R. p. 443, lines 13-18).

State v. Singleton, 303 S.C. at 315, 400 S.E.2d at 488. This is in addition to the conflict between Appellant's Sixth Amendment right to confront his accuser and Duvall's Fifth Amendment right to refuse to be a witness against himself. *Id.* Consequently, the Circuit Court should have "assure[d] protection of [Appellant]'s constitutional right to confront witnesses against him" by granting one of Appellant's repeated objections for a mistrial. *Id.* (R. p. 440, lines 21-22; p. 443, lines 5-9; p. 444, lines 3-4; p. 472, lines 17-22).

As for the cross-examination of Stansell by Duvall's trial counsel, the Circuit Court erroneously addressed whether a curative instruction could ever be appropriate in this case:

The Court: Quite frankly, any curative instruction is going to be more confusing and call attention to it so I'm not going to give a curative instruction. (R. p. 444, line 5-9).

Although Respondent argued that Appellant should not be afforded a new trial, Respondent admits in its Brief that,

In hindsight, the trial court *could have alternately addressed the potential Bruton problem with a redaction* including 'other person' replacement rather than allowing the counsel to supplant the statement with its original information concerning [Appellant]. He could have sought an understanding of the specific purpose of the cross examination [of Stansell] by [co-defendant's counsel] and then *addressed the particular situation with a limiting instruction.*

(Brief of Respondent p. 32) (emphasis added). To further strengthen the argument for an

additional limiting redaction, the Circuit Court noted its displeasure when it denied Appellant's objection for a mistrial:

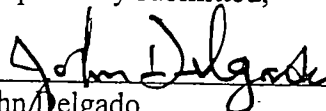
The Court: *I don't like it, but I got what I got.* (R. p. 472, lines 23; p. 473, line 2)(emphasis added).

The court denied Appellant's objections for a mistrial, despite the court's improper application of Rule 801(d)(2)(E) and the controlling precedent set by *Bruton* and *Crawford* by denying Appellant his Sixth Amendment right to confront his accuser under the Confrontation Clause. The decision of the court to deny Appellant's repeated objections for a mistrial was not harmless because its decision unduly prejudiced and irreparably harmed Appellant. Thus, the court abused its discretion and its decision to deny Appellant's objections for a mistrial was reversible error.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the Circuit Court and remand the case for a new trial.

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