

20658

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

APPELLATE CASE NO. 2012-211588

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2011-GS-23-7258A;
	)	2008-GS-23-8409
	)	
STATE OF SOUTH CAROLIAN	)	COPY
	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFF)	)	
vs.	)	
	)	VOLUME I
CLARENCE JENKINS	)	
DEFENDANT)	)	

April 9-13, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge; and a jury.

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APRIL HERRON
Official Court Reporter

1 proposed expert without having their training records and
2 neither can the Court. The State should produce them, in
3 fact, has produced them for, at least, one proposed
4 expert, Rick Floyd, so we don't see any reason why they
5 shouldn't produce it for all the other proposed experts.

6 MR. WILKINS: The answer is we don't have them.
7 They'll testify to their qualifications. We'll certify
8 them as an expert. Your Honor will make that
9 determination. They can, certainly, cross-examine them.
10 The SLED folks bring CV's on the day which they testify.
11 We can, certainly, email them and ask them for CV's in
12 advance. They're going to describe their training and
13 background --

14 THE COURT: Y'all will get ample opportunity to
15 determine their qualifications. Okay.

16 All right. Fingerprint analysis of the victim.

17 MS. WILLIAMS: Good morning, Your Honor, Karen
18 Williams for the Defendant. As set forth in the motion,
19 the State has provided latent print analysis reports. The
20 reports contain conclusory statements that identify that
21 fingerprint examination was done and that it was verified
22 by Captain Kellet. Beyond that generally a one-page
23 report, we have been provided nothing further to access
24 what type examination was done to the data -- or to the
25 fingerprints in this case. The motion is directly related

1 to one of the fingerprints involving the victim, but there
2 are approximately 15 such reports that simply state the
3 conclusory finding that a match was made. We have, as
4 Your Honor is aware, requested the entire file from the
5 State. They have indicated that has been provided.
6 Because the latent witnesses will be experts, we can only
7 be left to anticipate they will either testify that they
8 simply used a computerized program to identify the matches
9 and --

10 THE COURT: CODIS. Is that what you're talking
11 about?

12 MR. WILKINS: AFIS.

13 THE COURT: AFIS. What's CODIS?

14 MS. STROM: DNA.

15 THE COURT: Oh, DNA, yeah.

16 MS. WILLIAMS: And we can't cross-examine AFIS,
17 or a computer program. With no notes, essentially, it
18 would appear that the witnesses are going to have to
19 recall from four years ago when they performed these
20 tests.

21 MR. WILKINS: Your Honor, we've talked to our
22 latent experts, they don't do a lengthy report stating,
23 specifically, what ridge matches what ridge. They do it
24 and they say this latent matches these knowns. They will
25 have the opportunity to cross-examine them. Of course,

1 these witnesses have been available for four years now to
2 talk if they wanted to.

3 THE COURT: You think they would have talked to
4 them?

5 MR. WILKINS: Absolutely.

6 THE COURT: Okay.

7 MR. WILKINS: But, you know, I triple checked.
8 There's no reports other than the conclusory statements
9 that were given to Defense counsel that these knowns match
10 these prints.

11 THE COURT: Okay.

12 MR. WILKINS: The science behind it, they will
13 talk about that on the stand. I'm not a scientist, so I
14 don't understand it 100 percent, but that's what the
15 witnesses are for.

16 THE COURT: What else is it that you want?

17 MS. WILLIAMS: Well, essentially, Your Honor,
18 this report is inadequate to cross-examine the witnesses.
19 We would ask they that bring any copies of the prints that
20 they consulted in making their verification or however
21 that submit it.

22 MR. WILKINS: We have fingerprint cards that
23 have been in latent up until this morning. We've got them
24 somewhere here that will be here ready for 2:30 to go to
25 trial. We're introducing those as evidence. We'll,

1 certainly, provide them to them. If they want to get
2 their own expert while we're trying the case or something,
3 I'm not sure, but they're ready and available, all the
4 latents are.

5 THE COURT: Okay. So they'll have the stuff
6 here. Sounds like you're getting what you want.

7 MR. MAULDIN: One moment on that, Your Honor, if
8 you will.

9 THE COURT: Well, just one attorney to argue
10 each motion.

11 MR. MAULDIN: Well, I think that you're asking
12 some questions from the bench that Mr. McDougal might want
13 to respond to because he's the one --

14 THE COURT: Well, I didn't ask any questions.

15 MR. MAULDIN: Oh.

16 THE COURT: I just ask if she didn't get what
17 she wanted to. She seemed happy.

18 You're not happy?

19 MS. WILLIAMS: May I confer with co-counsel?

20 THE COURT: Okay.

21 MR. MCDUGAL: Your Honor, if I may be heard, I
22 think it will save us time at trial and keep from
23 shuffling the jury in and out. As the Court knows, when a
24 fingerprint expert does a comparison, they count points of
25 comparison. They have to reach 12 to 14 to be able to

1 declare a match. Now, either four years ago these people
2 did that and they made notes of that and identified them
3 as fingerprint experts do all the time, which points they
4 compared and they identified and they put that in their
5 file that exist. Or they just put it in the computer and
6 the computer popped up and said it was a mach, which is
7 not expert testimony. That's just running it through the
8 computer. It was of those two. The alternative is
9 they'll say, we did a comparison and we kept no notes and
10 we remember here today. Now, we can cross-examine them on
11 that, but that's a little farfetched, Your Honor.

12 Just to elaborate on what Ms. Williams is
13 saying. There's got to more to it, and what we've got is
14 not sufficient enough to support those witnesses
15 testimony.

16 THE COURT: Do you incorporate what your
17 co-counsel is --

18 MS. WILLIAMS: Yes, Your Honor.

19 MR. WILKINS: We have to doublecheck to see if
20 there's any notes that the expert witness -- there's two
21 expert witnesses for fingerprints. I have no idea.

22 THE COURT: Okay. Well, they'll look at it over
23 lunch and see what they come up with. Sounds like a good
24 fodderer for cross-examination, I guess.

25 MS. WILLIAMS: Thank you, Your Honor.

1 THE COURT: All right. Does that mean
2 Ms. Williams is going to cross-examine Jackie Kellet?

3 MS. WILLIAMS: No, sir.

4 THE COURT: Okay.

5 MR. MAULDIN: And, Your Honor, the point is
6 being made that if it's simply a computer report, we don't
7 have anybody to cross-examine. And we believe and we move
8 that that testimony not be offered as expert testimony.
9 If the witness is just going to come in here and tell us
10 what some ASEX computer told them four years ago, that's
11 inadmissible.

12 THE COURT: ASEX?

13 MR. WILKINS: AFIS.

14 THE COURT: AFIS.

15 MR. MAULDIN: Whoever this computer is, we
16 object to it. It's either got to be an expert
17 presentation or they can't, one or the other.

18 THE COURT: What is -- what's the relevance of
19 this testimony anyway?

20 MR. MAULDIN: What is the relevance of a
21 fingerprint match?

22 THE COURT: Yeah.

23 MR. MAULDIN: Well, I think the relevance will
24 become real apparent to you, Your Honor, as you go through
25 the testimony.

1 THE COURT: Well, tell me. You're going to
2 contest who the victim is? Is that what it is?

3 MR. MCDOUGAL: If I may, Your Honor?

4 THE COURT: Yes, sir.

5 MR. MCDOUGAL: The remains are found. They roll
6 the prints. The prints identify the victim. And then
7 taking that DNA, they do all the DNA matches. Without
8 that print, there's no DNA. That's the relevance.

9 THE COURT: So they got DNA analysis -- are you
10 saying they couldn't do the DNA -- fruit of the poisonous
11 tree?

12 MR. MCDOUGAL: You don't have to get there, Your
13 Honor. If you roll the prints, if the print evidence is
14 inadmissible, if these remain belong to this victim and
15 then you take DNA samples and you run your alleles and you
16 get what you get. If that print evidence is
17 inadmissible -- and it becomes inadmissible if you can't
18 cross-examine someone. If the truth is, we put the card
19 in the machine and it popped out. That's not expert
20 testimony. I don't know what that is, but it's not expert
21 testimony. You can't cross-examine it.

22 THE COURT: I don't know what our Supreme Court
23 would say about that.

24 MR. MCDOUGAL: Well, we may get to find out.
25 But to elaborate on the question to Mr. Mauldin, what is

1 the significance, all of that forensic evidence flows from
2 that print.

3 THE COURT: So it's your position that if the
4 fingerprint is inadmissible, then the DNA analysis is
5 inadmissible?

6 MR. MCDOUGAL: We would argue that, yes, sir.

7 THE COURT: You don't think there was an
8 independent basis for them to run a DNA?

9 MR. MCDOUGAL: Well, they wouldn't know whose
10 DNA it was. They have the remains. They take the DNA
11 sample from the remains.

12 THE COURT: Well, didn't they have a statement
13 from the co-defendant?

14 MR. MCDOUGAL: Not at the time, Your Honor.
15 They didn't get a statement from the co-defendant until
16 years later.

17 THE COURT: I thought they didn't find the
18 remains until they -- oh, you're talking about -- y'all
19 know the facts. I don't know the facts.

20 MR. MCDOUGAL: The remains from which the DNA
21 was extrapolated was found on April 7th, that was the
22 remains that were found at the local locations.

23 THE COURT: Okay. Well --

24 MR. WILKINS: Your Honor, the fingerprint
25 expert, Jackie Kellet, does her own fingerprint

1 comparisons. She runs it through AFIS when she gets the
2 fingerprints, but she compares them herself. They can
3 cross-examine her on that.

4 THE COURT: Okay. It will be here. All right.
5 Anything else before we have break for lunch?

6 UNIDENTIFIED MAN: Your Honor, there is one last
7 motion, to exclude reference to Ms. Carmen Jenkins
8 psychological condition. At her sentencing, there was
9 reference to Stockholm syndrome, battered wife syndrome --

10 THE COURT: I didn't hear the battered woman's
11 syndrome. Stockholm syndrome is not recognized by the
12 Diagnostic and Statistical Manual or by the International
13 Statistical Classification of Diseases. It's not a
14 recognized -- scientifically recognized condition that I'm
15 aware of.

16 UNIDENTIFIED MAN: Well, that's right, Your
17 Honor, and the only reason it would be offered would be to
18 bolster the testimony of --

19 THE COURT: Well, I don't see Mr. Price on the
20 list, so I don't think they're going there.

21 UNIDENTIFIED MAN: Well, we haven't received
22 notice --

23 THE COURT: I published it. I published it, the
24 witness list.

25 UNIDENTIFIED MAN: Right, Dr. Price is not on

SCOTT ODOM-DIRECT BY MR. WILKINS

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1 A I was a uniform patrol police officer working the
2 community patrol.

3 Q All right. Explain sort of what your daily duties
4 were for Greenville City Police Department?

5 A Yes, sir. My daily duties were, basically, respond
6 to 911 calls for service from dispatch as well as
7 other proactive type of force with law enforcement.

8 Q When did you leave the Greenville City Police
9 Department?

10 A I left the police department when I received my
11 commission in October of 2009.

12 Q Now, I'm going to take you back to April 7th, 2008,
13 almost four years ago?

14 A Okay.

15 Q Did you have an occasion to respond to Andover
16 Apartments on Cleveland Street?

17 A Yes, sir, I did.

18 Q Can you tell this jury about how you came to go
19 there?

20 A Yes, sir. 7:58 that morning, I believe it was a
21 Monday morning, I received a 911 call from dispatch
22 advising that the complainant, Ms. Bostic, had
23 received a threatening letter as well as a plastic
24 bag outside of her apartment. We all are assigned
25 beats and sectors, so it was my beat. I was the

1 MR. WILKINS: Your Honor, the State moves
2 Exhibits 5 through 9 into evidence.

3 MR. MCDUGAL: Could we please see them, Your
4 Honor.

5 THE COURT: Yeah, show them to them.

6 MR. WILKINS: Your Honor, we have previously
7 shown these photos to the witness before so they can have
8 a look to try to speed things up.

9 THE COURT: Okay.

10 MR. WILKINS: If they want to see them every
11 single time, that's fine, too.

12 MR. MCDUGAL: No objection.

13 (WHEREUPON, State's Exhibit Nos. 5-9 were
14 admitted into evidence.)

15 BY MR. WILKINS:

16 Q Now, let me go back, Mr. Odom. You met a Sue Bostic
17 and that's who you talked to?

18 A Yes, sir.

19 Q And what did she tell you was there?

20 A She let me know that at some point in time that
21 morning that she had gone out to take her kids to the
22 bus stop, which was located at the top of the
23 apartment complex, and when she came back, she
24 located the letter on her windshield. When she came
25 back from her car to her apartment building, she

SCOTT ODOM-DIRECT BY MR. WILKINS

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1 noticed the black trash bag located to the left of
2 her door.

3 Q What did you -- when you saw that black trash bag,
4 what did you do?

5 A Yes, sir. Once -- I was speaking with her, Ms.
6 Bostic, and once Officer Allen arrived on the scene,
7 I took the black trash bag -- I left her with Officer
8 Allen, went down to my vehicle and placed the trash
9 bag on the bag of the vehicle with the intention of
10 searching its contents.

11 Q All right. So State's Exhibit 5 here, already been
12 admitted into evidence, what is that?

13 A That's my patrol vehicle, vehicle No. 755 for
14 Greenville City. As you can see toward the end of
15 the trunk at the taillight, that's the black trash
16 bag that was located outside the complainant's
17 apartment.

18 Q State's Exhibit 6, already admitted into evidence?

19 A Again, that's just a closer picture of the trash bag.

20 Q And State's Exhibit 7?

21 A And this particular picture that was taken by
22 forensics shows the knot -- the large knot that was
23 tied in the top of the trash bag. Basically, the
24 closest thing to you away from the back window is the
25 knot.

1 Q So after you looked in the bag and saw a severed hand
2 and severed foot and the toes, what did you do?

3 A Yes, sir. Well, initially, I had only seen the foot.
4 At that point in time, I contacted Officer Allen, who
5 was up on the balcony with the complainant. I asked
6 her if she could come down with me as well so she
7 could observe what I saw. Once she came down, we
8 took the back and moved it off the trunk and towards
9 the far side of the patrol car, basically, on the
10 passenger side, that way the complainant couldn't see
11 what was actually in the bag. We asked her to stay
12 up there.

13 Once we got the bag on the pavement by the tire,
14 I opened the bag again and showed Officer Allen the
15 human foot that I had located. I saw something else
16 in the outer bag. As I stated, there were two bags,
17 one inside of the other. The foot was located on the
18 inside bag. And as I probed further, I saw a human
19 hand, what looked like an adult African-American hand
20 in the outer bag. As well as the hand, all of the
21 toes that had been severed from the foot, what I
22 believed were the same foot, were located in that
23 outer bag as well.

24 Q Did you call anybody after you found this?

25 A Yes, sir. As soon as I located the human remains, I

SUS BOSTIC-DIRECT BY MR. WILKINS

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- 1 A Yes. Let me look for my glasses.
- 2 Q That's where you were living in 2008?
- 3 A Yes.
- 4 Q Do you recognize that yellow car that's in the circle
- 5 right here?
- 6 A Oh, yeah, that's my old car.
- 7 Q Was that your car back then?
- 8 A Yeah.
- 9 Q Who was living with you at that time?
- 10 A Marquise Burnside and I had Grace other three kids
- 11 temporarily.
- 12 Q Okay. Now, who is Marquise Burnside?
- 13 A Grace oldest son.
- 14 Q That's Grace Davis?
- 15 A Yes. But he was living with me because they took him
- 16 out the house because her husband put bruises on him.
- 17 Q So how many children did you have living there with
- 18 you at that time?
- 19 A I had Grace other kids, too, temporary until she
- 20 found a place of her own.
- 21 Q Now, what relationship are you to Grace Davis?
- 22 A My niece.
- 23 Q Now, how -- explain a little more. How did you end
- 24 up with her children?
- 25 A She left her husband and went to find shelter, but we

1 remember that one time because I just didn't feel
2 comfortable when he was around, you know. I just
3 didn't feel comfortable.

4 Q Now, did you ever receive a letter that was addressed
5 to Grace Davis?

6 A Yes, it came in my mail about they wanted \$10,000 or
7 something like that. And I was telling Betty Jean
8 about it, my sister. And I said, Who in the world
9 going to write something like this here talking about
10 they want \$10,000? Betty Jean said, That sound like
11 something -- I said, People don't do that. I hear
12 that on the TV, but I don't hear nobody do that for
13 real.

14 (WHEREUPON, State's Exhibit No. 107 was marked
15 for identification only.)

16 BY MR. WILKINS:

17 Q Ms. Bostic, I'm going to show you State's Exhibit No.
18 107 for identification. I'm going to ask you to take
19 a look at it and see if you recognize it?

20 A Yes. Somebody writing wanting \$10,000, yes.

21 Q Now, can you see a postmark on that?

22 A Can't hardly see it now, it's done faded away. Let
23 me see. I can't hardly see that.

24 Q Now, Ms. Bostic, is this the letter that you received
25 in the mail?

SUS BOSTIC-DIRECT BY MR. WILKINS

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1 BY MR. WILKINS:

2 Q Do you recognize that?

3 A Oh, that's my old car, uh-huh.

4 MR. WILKINS: The State moves Exhibit 10.

5 MS. ROSS: No objection.

6 THE COURT: All right, no objection.

7 (WHEREUPON, State's Exhibit No. 10 was admitted
8 into evidence.)

9 BY MR. WILKINS:

10 Q So this is the car that you got in?

11 A Yes, sir.

12 Q Where did you notice the note on the car?

13 A It was on the front right there where the windshield
14 wiper --

15 Q On the driver's side?

16 A Kind of in the middle like, I believe. I just
17 reached and got it. I reached and got it.

18 Q So you took Sara up to the bus stop. What did you
19 do, you came back to the house?

20 A No, I was waiting on the bus. When the bus come, she
21 got on there and I went on back to the house with the
22 note. And I was going to ask Meko about it. But
23 what surprised me, when I left, wasn't nothing on my
24 porch. But when I came back, it was a black bag on
25 my porch. I said, Oh, my God, what is this? So

1 wouldn't mess with it, you know, because I look at
2 news all the time and they say different things.
3 Anyway, I went in the house. Meko -- I said -- it
4 was Marquise, but I call him Meko. I said, There's a
5 bag on the porch and it wasn't on that porch when I
6 left. He was fixing to run out and I said, No, you
7 not going to touch it. You just go ahead and get
8 ready for school and just leave it alone. So when he
9 went to school, I just called Betty Jean, my sister.
10 I said, Betty, you know what, there's a bag on my
11 porch. I said, But it wasn't on there when I left.
12 I said, You think somebody trying to be smart? I
13 said, You know he had a letter in the mailbox one
14 time, you know, just like that. And I said, There
15 was a note on my car, too. She said, Another note?
16 She said, Don't mess with that bag, call the police.
17 Q What did you do?
18 A Call the police.
19 Q Now, I'm again to show you State's Exhibit 6. Do you
20 recognize that bag?
21 A It was black bag with a orange-looking drawstring
22 like.
23 Q All right. I'm going to show you State's Exhibit 9.
24 Is that the letter that you received? Can you see
25 that, Ms. Bostic?

SUS BOSTIC-DIRECT BY MR. WILKINS

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1 feet in it. And I said, Oh, you talking about
2 chicken feet? I thought it was just something
3 joking. And I said, Oh, somebody trying to be smart
4 like that. And he said, No, ma'am. I said, You sure
5 it's a human feet. And he said, Yes, ma'am. Then
6 when he did that, I said, Oh, my God, I better
7 call -- I better check and see if Grace all right
8 because she at my sister house. So everybody start
9 -- because my niece and them find out -- Betty Jean
10 and them was on the outside and they wouldn't let
11 them on the inside. They done put a ribbon, yellow
12 ribbon around. And I said, I got to check and see
13 where Grace at --

14 Q Let me stop you right there. Did you turn all that
15 over to the police?

16 A Yeah, I give it to the police.

17 Q All right. Look at this --

18 A I gave that to the police, yes, sir. And they said
19 they was going to give me a copy, but they didn't.

20 Q So on April 7th, you find a black bag and a note that
21 you gave to the police?

22 A Uh-huh.

23 Q Did you receive a phone call? Ms. Bostic, don't talk
24 about anything that Meko said, just tell me what you
25 did.

1 A Well, Meko brought the phone to me and said --

2 Q Don't say what Marquise said, just tell the jury what
3 did you do when he handed you the phone?

4 A When I got the phone, the people said somebody on
5 phone -- now, there's somebody else said on the
6 phone, said some woman was crying and going on saying
7 --

8 THE COURT: You can't testify to what the woman
9 said.

10 THE WITNESS: See, I can't say -- okay.

11 BY MR. WILKINS:

12 Q So do you know where the phone call came from?

13 A No, sir. All I know we traced that call and it was a
14 pay phone, that's all I know.

15 Q How do you know it was a pay phone?

16 A Meko -- I can't say Meko did it either?

17 Q Do you have caller ID?

18 A Yes, sir, that's what I'm trying to say.

19 Q Did you look at the caller ID?

20 A It was no name, no thing. You can hear -- they tell
21 you it's a pay phone. It was a pay phone.

22 MR. WILKINS: Please answer any questions that
23 the Defense counsel may have.

24 CROSS-EXAMINATION

25 BY MS. ROSS:

SUE BOSTIC-CROSS BY MS. ROSS

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1 that in the statement?

2 A Well, they was asking about Meko. Grace told me
3 always -- she told me she didn't know who Meko's
4 daddy --

5 Q So you were talking about Willie Davis in that
6 statement, Meko's daddy, right?

7 A No, Willie is not Meko's daddy?

8 Q Oh, I'm sorry.

9 A Grace do not know who -- she say she didn't know who
10 Meko daddy was, put it like that.

11 Q But you did mention Willie Davis in that statement,
12 didn't you?

13 A The girl on the phone said -- call Willie Davis name,
14 but he said -- the Judge said I cannot say what
15 somebody else say. But she said it was Willie Davis
16 and that's how we thought it was really -- it wasn't
17 his name, it was Willie Davis name. And he said I
18 cannot say that because that was on the phone.

19 Q Well, other places in that statement, there's
20 reference -- well, let me go back to your testimony
21 before. When you talked about Meko having bruises
22 from Willie Davis --

23 A Oh, that was -- that was telling them how come I had
24 Meko.

25 Q So you had custody of him because there had been

1 children back, then she got her own place.

2 Q Okay. So she was staying with you and your sister
3 and a couple of other family members during this
4 period?

5 A Well, I was right there for her.

6 Q And just to clarify, when she left Willie Davis, she
7 was staying with Janese, who is Clarence's sister,
8 right?

9 A Yeah, she called her because they went to some
10 classes concerning how to raise your kids or take
11 care of your kids.

12 Q Parenting classes?

13 A Uh-huh, uh-huh. And that's how she end up --

14 Q So Janese let her come stay with her?

15 A Uh-huh.

16 Q And then later on, she went and stayed with Clarence
17 and Carmen Jenkins?

18 A Yeah. I really didn't -- well, I don't approve, but
19 the young folks do what they want to do.

20 Q Okay. So Grace and Clarence did come over and see
21 Grace's children? Clarence brought Grace over to
22 see --

23 A He brought her over there, him and his wife, yeah.
24 But she just didn't come in. She stayed on the
25 outside.

SUE BOSTIC-CROSS BY MS. ROSS

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1 Allen.

2 THE CLERK: Ms. Allen, if you'll come forward to
3 be sworn in, please. Place your left hand on the Bible,
4 raise your right hand.

5 AMBER ALLEN, after being duly sworn, testified
6 as follows:

7 THE CLERK: Thank you. You may be seated.
8 State your name for the record.

9 THE WITNESS: Amber Allen.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WILKINS:

13 Q Ms. Allen, who are you employed with now?

14 A Hubbell Lighting.

15 Q And what do you do for Hubbell Lighting?

16 A I'm a cost accountant.

17 Q Previously, have you ever worked for the Greenville
18 City Police Department?

19 A Yes, sir, I did.

20 Q How about long did you work for them?

21 A Four years and one week.

22 Q All right. When was that?

23 A From August 7th, 2006 to August 14th, 2010.

24 Q All right. During that time, what were your
25 principle duties?

1 A I was a patrol officer. I answered calls for service
2 and assisted other officers in the performance of
3 their duties as well.

4 Q Did you wear a uniform?

5 A Yes.

6 Q Now, I'm going to direct your attention back to
7 April 7th, 2008. Did you have decision to Andover
8 Apartments that day?

9 A I did, sir.

10 Q All right. Can you tell us about how you went there
11 and what happened once you got there?

12 A I went there originally -- another officer was called
13 to be the primary officer on the scene and I went
14 there to back him up. As I was familiar with the
15 location, having went there the week prior for a
16 suspicious letter call. So when the address came, I
17 immediately recognized the address and went there
18 immediately to assist him.

19 Q When you got there, what other officer was there?

20 A Officer Scott Odom.

21 Q What was the situation?

22 A There was a suspicious package found at the location
23 and a suspicious letter found on a vehicle at the
24 location.

25 Q Did you handle either one of those?

AMBER ALLEN-DIRECT BY MR. WILKINS

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- 1 A I handled the letter that was found.
- 2 Q What did you do with the letter?
- 3 A I just read it, kept it in the -- when it was handed
4 to me, it was still in a plastic bag. And I kept it
5 in the plastic bag it was in and just read it as it
6 was.
- 7 Q Now, I'm going to show you State's Exhibit 8. Can
8 you see that from there?
- 9 A I can see it now.
- 10 Q Okay. Let me try State's Exhibit 9, it's already
11 been admitted into evidence. Is this the letter that
12 you handled on April 7th?
- 13 A It appears so, yes, sir.
- 14 Q Okay. Now, after you handled the letter, did you
15 notice the garbage bag there?
- 16 A The garbage bag was, actually, moved right before I
17 handled the letter, but I did notice the garbage bag
18 there.
- 19 Q Did you look inside the bag?
- 20 A I did.
- 21 Q What was inside the bag?
- 22 A Inside the bag, I saw what appeared to be a human
23 foot first. Then there was another bag where there
24 was a human hand.
- 25 Q Did you call anybody after that to come to the scene?

1 A Yes, I called my supervisor to let him know what we
2 had found there at the scene.

3 Q Now, you said you had some familiarity with that
4 address. When about did you go to that address prior
5 to April 7th?

6 A We went there the week -- I went there the week
7 before. It was a suspicious letter found at that
8 same location. We were on night shift. And the
9 letter detailed some debt owed to someone and someone
10 was in trouble. And they had lost the protection of
11 an organization. And that if they didn't comply with
12 the letter, than bad things would happen to them.

13 Q Now, was that around April 2nd of 2008?

14 A Yes, sir.

15 Q Who did you speak with at that Andover Apartment
16 regarding that letter?

17 A I spoke primarily with Sue Pearl Bostic. She was the
18 resident there. She also had three young children
19 there. I spoke with the oldest one, his name was
20 Meko. And their guardian ad litem was there as well.

21 Q Okay. So once you got the call about the suspicious
22 letter, what did you do with it?

23 A I read it, asked Ms. Bostic as much information as
24 she could give me pertaining to the names that were
25 in the letter. There was a Grace and Willie

AMBER ALLEN-DIRECT BY MR. WILKINS

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1 mentioned in the letter. I asked her if she knew
2 Grace, if she knew Willie. There was an email
3 address, it was like John Evans. And I asked her if
4 she knew anyone that went by the name of John Evans.
5 Anything that she could give me pertaining to the
6 letter, the organization, the people involved.

7 Q Now, I'm going to show you State's Exhibit No. 107.
8 Is that the letter you retrieved on April 2nd right
9 there?

10 A Similar to it.

11 Q Is that the letter you referred to regarding Willie
12 and Grace and those type of things?

13 A Yes, sir.

14 Q Now, on April 7th, what did you do -- after you
15 assisted Officer Odom there, what did you do next?
16 Did anything happen next?

17 A As far as our supervisors coming and us talking to
18 them about what we had found. We called detectives
19 to the scene and forensics came to the scene. And I
20 stood by and just made notes as far as what we were
21 learning at that moment. I did remember that the
22 children at that time -- since we found the human
23 remain, I remember, you know, the children could be a
24 danger, so I called our supervisor to okay for
25 officers to get the children and put them in a

1 central location where they would be safe.

2 Q Now, back on April 2nd, did you learn of any other
3 letters that were similar to the ones you retrieved
4 from Sue Pearl Bostic?

5 A Yes, I learned that her sister had also received one.
6 She stayed on Rose Avenue when she received it, but
7 she had since moved to an area in the county that I
8 was familiar with. And I went to that house to
9 retrieve the second letter.

10 Q Now, who is Sue Pearl Bostic's sister?

11 A Judon Burnside.

12 Q And that's whose house you went to?

13 A Correct.

14 Q When you went to her house, what did you do?

15 A I retrieved the letter from her. Asked her if she
16 had touched it, opened it or anything. And just got
17 the letter from her. Then I went and talked to our
18 forensics team.

19 Q So after you retrieved it, what did you do with it?

20 A I talked to forensics because of the seriousness that
21 I felt the tone of the letter had. I wanted to make
22 sure that we could preserve as much of the letter as
23 we could for our detectives in their investigation.
24 So I asked them if they were to process it, what
25 would happen to the letter, would we be able to look

AMBER ALLEN-DIRECT BY MR. WILKINS

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1 at it. And they said the techniques they use would
2 damage the letter to the point where it was not able
3 to be read and they advised me to make a copy of the
4 letter.

5 Q Did you make a copy of it?

6 A I did.

7 Q And do you remember the address you went to to go
8 retrieve the letter?

9 A I do not remember the address, but I know -- I pass
10 by the street all the time.

11 Q Who residence was it?

12 A Judon Burnside.

13 Q I'm going to show you what's marked as State's
14 Exhibit 108?

15 (WHEREUPON, State's Exhibit No. 108 was marked
16 for identification only.)

17 BY MR. WILKINS:

18 Q Do you recognize this?

19 A I do.

20 Q What is it?

21 A That's the letter, very similar, exact similar to the
22 one that was found at the Cleveland Street Andover
23 Park Apartments.

24 Q And what about the letter that you received from
25 Judon Burnside?

1 A That's the same letter.

2 Q Are your initials on here?

3 A By initials are not.

4 Q What's the postmark date?

5 A March 31st, 2008.

6 MR. WILKINS: Your Honor, the State moves
7 Exhibit 108 into evidence.

8 MR. MCDOUGAL: No objection.

9 THE COURT: Okay.

10 (WHEREUPON, State's Exhibit No. 108 was admitted
11 into evidence.)

12 BY MR. WILKINS:

13 Q Now, once you made a copy of the letter you got from
14 the Burnside residence, what did you do with it?

15 A I submitted that in our property and evidence.

16 Q Okay.

17 MR. WILKINS: Please answer any questions
18 Defense counsel may have.

19 CROSS-EXAMINATION

20 BY MR. MCDOUGAL:

21 Q Good afternoon, Ms. Allen. My name is Mark McDougal,
22 and I'm here representing the Defendant in this case,
23 Clarence Jenkins. You are no longer an officer at
24 the Greenville Police Department; is that correct?

25 A That's correct.

AMBER ALLEN-CROSS BY MR. MCDOUGAL

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1 Q Now, the Solicitor asked you a series of questions
2 about two letters that you identified and are now
3 both in evidence; do you remember that?

4 A Yes, sir.

5 Q Okay. And you retrieved both of those letters, I
6 think you testified, on April 2nd; is that right?

7 A Yes, sir.

8 Q Okay. Are you able to see that, Ms. Allen?

9 A I can see it fairly well.

10 THE COURT: If you need to stand down, ma'am,
11 you may.

12 THE WITNESS: Yes, sir.

13 BY MR. MCDOUGAL:

14 Q Now, Ms. Allen, this is Exhibit 108 in evidence. And
15 as you read it, you see down at the bottom the
16 reference of an email that's evans.john60@yahoo.com?

17 A Yes, sir.

18 Q And you saw that the day that you retrieved the
19 letter from Judon Burnside; is that correct?

20 A Yes, sir.

21 Q Now, that same day you were given the name Grace
22 Davis; isn't that right?

23 A That's correct.

24 Q And you made a call to Ms. Davis; is that correct?

25 A It is.

1 Q And during the course of that call, Ms. Davis
2 disclosed her relationship with the Jenkins, didn't
3 she?

4 A Yes, sir.

5 Q And she told you that she had lived with the Jenkins?

6 A Yes, sir.

7 Q And she told you she didn't think they were violent?

8 A I don't recall those words, but I do recall we had a
9 phone conversation.

10 MR. MCDUGAL: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. MCDUGAL:

13 Q Did you prepare a report of that phone call?

14 A Yes, sir.

15 Q Okay. I'm going to show you a document that we will
16 just offer for purposes of refreshing your
17 recollection?

18 A Thank you, sir.

19 Q Is that document your report of your activities on
20 April 2nd, 2008?

21 A It is, sir.

22 Q And do you see the reference there to the Jenkins not
23 exhibiting violent behavior?

24 A Yes, she stated in the phone call that she had not
25 witnessed any violent behavior.

1 Q Does that refresh your recollection with regard to
2 what Ms. Davis told you?

3 A It does, sir.

4 Q Now, on April 2nd, you were aware, obviously, that
5 the letters that had been delivered included a unique
6 email address; is that right?

7 A That's correct.

8 Q And as a law officer, you understand that there are
9 methods available through a court order to obtain the
10 identification of who was opened the email address?

11 A That's correct.

12 Q You were aware of that?

13 A That's correct.

14 Q And have done that before?

15 A I have not requested that information, no, sir.

16 Q But you've participated in investigations in which
17 that was part of the evidence that was collected?

18 A Yes, sir.

19 Q Okay. On April 2nd, you knew about the Jenkins, you
20 knew about their relationship with Grace Davis, but
21 you didn't go see the Jenkins, did you?

22 A No, sir.

23 Q Not on April 2nd?

24 A No, sir.

25 Q Nor April 3rd.

1 A No, sir.

2 Q April 4th?

3 A No, sir.

4 Q Or April 5th?

5 A No, sir.

6 Q And you understand that the crime charged here is a
7 murder that the government alleges took place on
8 April 6th, do you agree with that?

9 A Yes, sir.

10 Q So between April 2nd and April 6th, you knew about
11 the Jenkins, you knew about their relationship and
12 you knew about that email address and you did nothing
13 to contact the Jenkins; that's correct?

14 A That's correct.

15 MR. MCDUGAL: Have a moment, Your Honor?

16 THE COURT: Yes.

17 MR. MCDUGAL: No further questions. Thank you.

18 THE COURT: Any redirect?

19 MR. WILKINS: No, Your Honor.

20 THE COURT: Thank you, ma'am. You may step
21 down.

22 Can we excuse her from subpoena?

23 MR. MCDUGAL: No objection excusing the
24 witness, Your Honor.

25 THE COURT: Okay. You're released from the

JUDON BURNSIDE-DIRECT BY MR. WILKINS

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1 (WHEREUPON, State's Exhibit Nos. 11 & 12 were
2 admitted into evidence.)

3 BY MR. WILKINS:

4 Q So down here, it says [REDACTED] Rose Avenue, is that where
5 you used to live back in 2008?

6 A Yes.

7 Q Now, do you know Carmen and Clarence Jenkins?

8 A No, not like that, but my daughter, she brought them
9 to my house.

10 Q So your daughter, Grace Davis?

11 A Yes.

12 Q Brought them to your house?

13 A Yes.

14 Q That's this house here?

15 A Yes.

16 Q Do you remember about when that was?

17 A Not really.

18 Q You don't remember exactly when that was?

19 A No.

20 Q Okay. And do you remember why they came over?

21 A My daughter came to see me.

22 Q And can you tell us about how that visit was?

23 A Okay. They came in. They sat on the couch; all
24 three of them was holding hands. And I told her I
25 don't play that in my house.

1 Q Okay. And what did you mean by that?

2 A Holding hands, sitting close to each other.

3 Q Let me ask you, did you ever receive a letter in the
4 mail that concerned you?

5 A Yes.

6 Q Do you remember about when that was? Was it while
7 you were living at Rose Avenue or was it after you
8 left Rose Avenue?

9 A No, it was while I was living at Rose Avenue.

10 Q And do you remember what that letter was?

11 A I don't really remember, but it had something like
12 \$10,000 on there.

13 Q All right. I'm going to show you State's Exhibit 108
14 that's already been admitted into evidence. Can you
15 see that clearly, Ms. Burnside?

16 A Yeah, I can see it, but I can't read it.

17 Q Is that the letter you received in the mail?

18 A Yes.

19 Q When you got that letter in the mail, did you do
20 anything?

21 A Yes, I read a little bit of it. Then I called my
22 sister.

23 Q Which sister was that?

24 A Betty Jean.

25 Q Okay. And after you spoke with Betty Jean, what did

- 1 you do?
- 2 A She took the letter home with her.
- 3 Q She took the letter home with her?
- 4 A Yes.
- 5 Q Did you --
- 6 A She read it, then she took it home with her.
- 7 Q Did you ever see that letter again?
- 8 A No.
- 9 Q While you were at your house around April of 2008,
- 10 did you ever receive an unusual phone call?
- 11 A Yeah, it was about Sunday morning at 12:45, the phone
- 12 rung. I answered the phone and some girl said that I
- 13 know who writing the letter. Then she said, I got to
- 14 go, I believe he done followed me.
- 15 Q I'm sorry, say that again.
- 16 A She said she have to got, she believe he done
- 17 followed her, then she hung up.
- 18 Q He had done followed her?
- 19 A Uh-huh.
- 20 Q Did she say who he was?
- 21 A No.
- 22 Q Did she say anything else while she was on the phone
- 23 with you?
- 24 A No.
- 25 Q Did you tell anybody about that phone call?

1 Q Okay. And in the middle of the night, I guess, after
2 midnight?

3 A Yes.

4 Q Tell me about the call?

5 A Well, I had woke up out the middle my sleep to an
6 interrupted call. So I had caller ID on my phone, so
7 I noticed it was from a pay phone. So I answered the
8 phone and I was about half sleep. So it was a woman
9 on the phone saying that somebody about to get
10 killed. Saying that Willie Davis was involved. So I
11 jumped up out the bed and I ran to my aunt's room and
12 was telling her, like, somebody talking on the phone
13 about somebody about to get killed. So she answered
14 the phone, but they hung up from the time she could
15 get to the phone and say who is this.

16 Q Do you know if that person was a male or a female?

17 A It was a female.

18 Q Do you know who the person was on the line?

19 A No, sir.

20 Q Did that person ever call you back?

21 A No, sir.

22 MR. WILKINS: Answer any questions the Defense
23 counsel may have.

24 CROSS-EXAMINATION

25 BY MS. ROSS:

DALE DIRTON-DIRECT BY MR. WILKINS

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1 and raise your right.

2 MIKE PETERSEN, after being duly sworn, testified
3 as follows:

4 THE CLERK: Thank you, you may be seated. State
5 your name for the record.

6 THE WITNESS: Michael Petersen.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. WILKINS:

10 Q Lieutenant Petersen, with whom are you employed?

11 A I'm employed with the Greenville County Department of
12 Public Safety, the forensic division.

13 Q In what capacity? What do you do for them?

14 A I am, actually, the lieutenant in charge of the crime
15 scene unit.

16 Q How long have you been in law enforcement?

17 A I have been with Greenville County since 1989 --
18 since 1999, excuse me. 1999, I went to the forensic
19 division I have been with the forensic division every
20 since.

21 Q Since 1999?

22 A Yes.

23 Q Now, in layman's terms with the forensic division,
24 what do you do?

25 A Well, basically, what the crime scene unit does is we

1 assist area law enforcement agencies with their
2 forensic services that are related to crime scenes.
3 So we would do is we assist in identifying items of
4 physical evidence. And that evidence could be
5 something you could actually hold in your hand. It
6 may be latent prints, it could be DNA. You know,
7 possible DNA. So we help to identify that evidence.
8 Then we will document that evidence, we document the
9 crime scene. And once we do that, we try to collect
10 that evidence so that we are doing it in such a
11 manner that we preserve the integrity of that
12 evidence so that we can either further process it
13 once we get it back to our lab or that we can put it
14 into property and evidence until it can go into any
15 judicial proceeding.

16 Q Do you process latent prints, for example?

17 A Oh, absolutely. We do a great deal of latent print
18 processing. By far, that's one of the major things
19 that we do.

20 Q Now, do you have any specialized training schools or
21 experience that you've had through the course of your
22 law enforcement career?

23 A Yes, I have been to a variety of different schools,
24 from crime scene investigation and reconstruction. I
25 have been to latent print processing schools. I have

MIKE PETERSEN-DIRECT BY MR. WILKINS

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1 been to basic and advanced blood pattern analysis
2 schools. I have been to shooting reconstruction
3 school. A variety of forensic related and
4 management-type classes due to my position.

5 Q About how many crime scenes do you think you've been
6 responsible for processing during the course of your
7 career? And just give us a good faith estimate.

8 A Personally, I've probably handled 2000, 2500. I,
9 actually, oversee the entire division, which we are
10 doing about 6500, 7000 calls a year. So multiply
11 that times the numbers of years from 1999.

12 Q Have you ever been qualified in state court, federal
13 courts as an expert in crime scene investigation and
14 collection and preservation of evidence?

15 A I have been qualified in federal court in 2007 for
16 evidence processing and, also, within state court
17 within the 13th Circuit in 2009, again, for evidence
18 processing. 2010, for evidence processing and bullet
19 projectory this year.

20 Q You were qualified as an expert?

21 A Yes, sir.

22 MR. WILKINS: Your Honor, at this time, I move
23 Lieutenant Petersen to be qualified as an expert in crime
24 scene processing and investigation and collection and
25 preservation of evidence.

1 MR. MCDUGAL: No objection, Your Honor, with
2 the specification that, as the solicitor stated, he is an
3 expert in crime scene processing and evidence collection
4 and not --

5 THE COURT: That's fine. So qualified.

6 BY MR. WILKINS:

7 Q Now, I'm going to draw your attention back to April
8 7th, 2008, did you ever have the occasion to go to
9 Cleveland Street apartments, Andover Apartments?

10 A Yes, I did.

11 Q Tell us how you got there and what happened?

12 A I, actually, had another officer working in the field
13 that day. The call came in through Greenville City
14 Police dispatch. Due to the nature of the call, that
15 officer called me because that officer was not as
16 experienced. I responded with her to Cleveland
17 Street.

18 Q And explain the scene, describe the scene?

19 A When I got there, I met with Detective Collis
20 Flavell. And he kind of gave me an overview of what
21 had happened and transpired. I then met with Officer
22 Odom with the Greenville Police Department and was
23 informed that he had collected a garbage bag that
24 appeared to have human body parts in it as well as a
25 note that he had retrieved, I believe, via another

MIKE PETERSEN-DIRECT BY MR. WILKINS

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1 witness that had been on a car.

2 Q So you responded to Cleveland Street Apartments. So
3 when you arrived, where did you see the black bag?

4 A The black garbage bag was sitting on the back of a
5 Greenville City patrol car and Officer Odom was
6 standing beside that.

7 Q I'm going to show you what's marked as State's
8 Exhibit 2. Is that the crime scene that you
9 responded to on that day?

10 A Yes, it is.

11 Q Can you see that okay?

12 A Yes.

13 Q What's in that photo?

14 A That picture is building 17, depicting the apartment
15 504, which was the apartment of the person here. I
16 believe it was a Ms. Bostic. And then a 1984 Ford
17 Thunderbird that was parked almost in front of the
18 building there. And then up against the building was
19 the Greenville patrol cars.

20 Q I'm going to show you what's marked as State's
21 Exhibit 5. Do you recognize that photo?

22 A Yes. That's one of our photographs showing the black
23 bags on the trunk, as well as a note in a baggy that
24 is sitting next to the rear window. I believe
25 there's a pair of gloves sitting on top of it to keep

1 it from blowing.

2 Q Do you know whose gloves they were?

3 A I believe they belonged to the officer, Officer Odom.

4 Q I'm going to show you what's State's Exhibit 7 there.

5 What is that?

6 A Again, that's the same trash bags. Actually, there
7 were two trash bags. We kind of referred to them as
8 the black trash bag with the blue draw straps. I
9 noticed that there was two bags sitting on top of the
10 car, one inside the other. They had not been tied
11 using the draw straps. They were just tied -- the
12 bags themselves were tied in a knot.

13 Q Now, I'm going to show you State's Exhibit 15.

14 (WHEREUPON, State's Exhibit No. 15 was marked
15 for identification only.)

16 BY MR. WILKINS:

17 Q Do you recognize that photo?

18 A Yes. That is my photo.

19 Q What is that a photo of?

20 A This is a photo of the black trash bags with the blue
21 draw straps. And I have annotated on the photograph
22 the contents of those bags.

23 Q Is that a true and accurate representation of that
24 photo?

25 A Yes, it is.

MIKE PETERSEN-DIRECT BY MR. WILKINS

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1 MR. WILKINS: Your Honor, State moves Exhibit 15
2 into evidence.

3 MR. MCDUGAL: No objection, Your Honor.

4 (WHEREUPON, State's Exhibit No. 15 was admitted
5 into evidence.)

6 BY MR. WILKINS:

7 Q So is this the bag that you collected from the crime
8 scene that day?

9 A Yes, it is.

10 Q What's in the bag?

11 A The bag had already been opened. And it was
12 recognized that there appeared to be body parts
13 inside. When we were actually able to inventory it,
14 we counted that there was a severed right hand and
15 six severed toes in the inner bag. Again, that bag
16 was inside another bag. And there was a foot with no
17 toes on it in the outer bag.

18 Q I'm going to show you what's marked State Exhibit
19 109.

20 (WHEREUPON, State's Exhibit No. 109 was marked
21 for identification only.)

22 BY MR. WILKINS:

23 Q Do you recognize that exhibit?

24 A Yes, this is my writing, labeled as my evidence, two
25 black trash bags with blue draw straps.

1 Q Were these the same bags that were collected right
2 there in the photo?

3 A Yes, they are.

4 MR. WILKINS: Your Honor, the State moves
5 Exhibit 1089 into evidence.

6 MR. MCDUGAL: No objection. Again, with the
7 reservation being forensic test.

8 (WHEREUPON, State's Exhibit No. 109 was admitted
9 into evidence.)

10 BY MR. WILKINS:

11 Q So what did you do with the bags?

12 A Upon collecting the bags, we secured them in our
13 vehicle, got all of our crime scene documentation
14 done and we were beginning to be in route to the
15 Greenville County morgue, where we would, actually,
16 remove those items from the bags and do the complete
17 inventory.

18 Q So you took the bags to the morgue?

19 A Yes, took the bags to the morgue. Once we got to the
20 morgue, the contents, the served body parts that were
21 listed here, were actually removed from the trash
22 bags and those body parts were put into a body bag
23 and we stored them in the cooler in the morgue.

24 Q Did you do anything? Did you roll prints on the
25 hands?

MIKE PETERSEN-DIRECT BY MR. WILKINS

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1 A Yes, we did. We, actually, did roll fingerprint
2 impression on the severed hands. Also, did the foot.

3 Q Did you collect anything else from the crime scene,
4 do you recall?

5 A Yes. Collected a note that -- of course, when we
6 discovered it, it was on the back of the patrol car,
7 but we had been informed that it was from the 1984
8 Thunderbird that was sitting in the parking lot.

9 Q I'm going to show you what's State's Exhibit 9, see
10 if you recognize it?

11 A That's a photo we took, yes, that's the that note.

12 Q Is that the note you collected?

13 A Yes.

14 Q From the crime seen?

15 A Yes, it is.

16 Q What did you do with this note?

17 A The note, we, actually, brought back to our office.
18 And we have a latent processing lab within our
19 office. The baggy was actually processed for latent
20 prints with a process called cyanoacrylate, which is
21 simply Super Glue that vaporizes and sticks to any
22 type of fingerprint. With the note itself, we,
23 actually, used a chemical process called ninhydrin.
24 Ninhydrin, actually, reacts with amino acids that are
25 in your sweaty deposits. And we did capture a latent

1 print from that note.

2 Q Okay. So you were able to capture a print with the
3 note?

4 A That's correct, yes.

5 Q Let me you show you State's Exhibit 104, which had
6 already been admitted into evidence, is that the
7 exact note that you processed right there?

8 A Yes, it is.

9 Q How do you know that's the note?

10 A This my writing on the back.

11 Q Now, I'm going to show you what's State Exhibit
12 105 --

13 (WHEREUPON, State's Exhibit No. 105 was marked
14 for identification only.)

15 BY MR. WILKINS:

16 Q This is State's Exhibit No. 105 marked for
17 identification. Do you recognize that?

18 A Yes, I do.

19 Q Can you tell the jury what that is?

20 A This is a latent fingerprint card. And anytime we
21 capture a fingerprint or we develop a fingerprint, we
22 will actually complete a card with all the
23 information that's necessary to be sent to our latent
24 print division for further analysis and comparison.

25 Q And where did you get that latent print from?

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1 A There was collected from the front side of the note,
2 collected at Andover Apartments, which was my item
3 MP1.

4 Q Do you know where the fingerprint was located on the
5 note?

6 A I believe it was on the front side. It was,
7 actually, on the front side of the note.

8 Q And what exactly did you do with the latent
9 fingerprint once you obtained it?

10 A The latent print would be placed in an envelope
11 that's specifically for our latent prints. And it
12 would be put into a secured repository that we have
13 within our office. And our latent division personnel
14 comes by each day and picks up that latent print and
15 takes it to their office where it's logged in.

16 MR. WILKINS: Your Honor, State moves Exhibit
17 105 into evidence.

18 MR. MCDUGAL: Could we have a look at that
19 before it's submitted?

20 THE COURT: Okay.

21 MR. MCDUGAL: May we approach, Your Honor?

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury but out of the hearing of
24 the jury.)

25 THE COURT: All right. Just mark ID at this

1 time.

2 MR. WILKINS: Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4 BY MR. WILKINS:

5 Q Now, while you were at the Andover Apartments
6 collecting the garbage bags and hand, foot and toes
7 and this letter, did you get a call to go anywhere
8 else while you were there?

9 A Yes, we did. Actually, we were informed in person
10 while we were on scene at Andover Apartments that we
11 had a similar situation at [REDACTED] Rose Avenue.

12 Q So what did you do?

13 A We secured all of our equipment as well as the
14 evidence we had collected into the vehicles. And we
15 were in route to Rose Avenue.

16 Q I'm going to show you -- first, I'm going to show you
17 what's marked as State's Exhibit 11. And ask you if
18 that's the crime scene that you went to.

19 A Yes, it is.

20 Q That's [REDACTED] Rose Avenue?

21 A That's correct.

22 Q Describe the crime scene for us.

23 A This was a house about midways down Rose Avenue on
24 the left. On the front porch, we observed what
25 appeared to be two trash bags very similar to what we

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1 had just dealt with at Andover Apartments. And,
2 also, upon documenting the scene, we noticed that
3 that mailbox was ajar just slightly and appeared to
4 be a note in a baggy laying within that mailbox.

5 Q All right. I'm going to show you a number of photos.

6 (WHEREUPON, State's Exhibit Nos. 16-19 were
7 marked for identification only.)

8 BY MR. WILKINS:

9 Q I'm going to show you what's been identified as
10 State's Exhibits 16, 17, 18, 19 and 13. I'm going to
11 ask you to take a quick look and ask you if those are
12 a true and accurate representation of the crime scene
13 you were called to?

14 A Yes, it is.

15 Q Okay.

16 THE COURT: Wait a minute, 13 is already in, but
17 are the others introduced?

18 MR. WILKINS: I have not, Your Honor. I
19 apologize. State moves Exhibits 16, 17, 18, and 19.

20 MR. MCDOUGAL: Without objection.

21 (WHEREUPON, State's Exhibit Nos. 16-19 were
22 admitted into evidence.)

23 BY MR. WILKINS:

24 Q Lieutenant Petersen, tell the jury what you're seeing
25 here?

1 A This is the opened mailbox directly in front of the
2 Rose Avenue address. We have since opened it and
3 have observed a plastic baggy with some type of
4 typewritten note inside.

5 Q And what is that?

6 A This would have been the same mailbox directly in
7 front of Rose Avenue. This is the way we found it
8 upon our arrival, when it was just slightly ajar.

9 Q What did you retrieve from the mailbox?

10 A Once we were able to open it and retrieve the items
11 out, it was a ziplock-type baggy and inside it was a
12 note very similar to the one we had seen at Andover
13 Apartments. And it was on just a torn piece of
14 computer-type paper.

15 Q Did you look at the note?

16 A Yes, we did.

17 Q Okay. I'm going to show you what's State's Exhibit
18 18. Can you tell the jury what that is?

19 A That was a note inside the baggy, which was identical
20 to the one we had just retrieved from the Cleveland
21 Avenue address.

22 Q And when you got that note, what did you do?

23 A Again, we collected that note and, ultimately,
24 responded back to our office where we went to our
25 latent processing lab. And it was processed in the

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1 same fashion using the cyanoacrylate on the baggy
2 itself, and then using the ninhydrin on the note. We
3 did not get any type of comparable print from either
4 one of those items.

5 Q Where -- I'm going to show you what's marked as
6 State's Exhibit 110.

7 (WHEREUPON, State's Exhibit No. 110 was marked
8 for identification only.)

9 BY MR. WILKINS:

10 Q This is the envelope that it came in, do you
11 recognize that?

12 A Yes. This is my handwriting. And the note that was
13 collected from the scene.

14 MR. WILKINS: Your Honor, the State moves
15 State's Exhibit 110 into evidence.

16 MR. MCDOUGAL: No objection.

17 (WHEREUPON, State's Exhibit No. 110 was admitted
18 into evidence.)

19 BY MR. WILKINS:

20 Q So you said -- when you got note, what did you do
21 with it? Did you take it back to the lab?

22 A Yes, we took it back to the lab and we processed it
23 in the same fashion that we did the note retrieved
24 from the Cleveland Street address.

25 Q Now, I want to focus on State's Exhibit 13. What was

1 that?

2 A This is a photograph of the front of the house, front
3 porch at [REDACTED] Rose Avenue. And I have annotated the
4 photograph to depict where it is and what I labeled
5 this items as.

6 Q I'm going to show you State's Exhibit 19 as well.

7 A This is just a closer shot. It's the same type of
8 black trash bag with blue draw straps. As we were
9 there, this had not been touched or opened by
10 anybody. We wanted to confirm what was inside of it.
11 What we did was I took small scalpel, cut the bag and
12 revealed that it, too, appeared to contain the body
13 parts. We took photographs of, it then we secured it
14 so that we could take it also to the Greenville
15 County morgue.

16 Q Now, once you took this bag and the bag from Andover
17 Apartments back to the morgue, again, what did you do
18 with them?

19 A Again, the bags themselves -- or the contents were
20 taken out, photographed, inventoried, placed in a
21 body bag, placed in a cooler at the morgue. The
22 black bags were then brought back to our office. Due
23 to the condition of the bags, they had to be dried
24 before we could do anything else to them. We have a
25 secure drying room within our office. The items were

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1 placed in our drying room. I'm not sure what the
2 time frame was, but just as soon as they were dry, we
3 pulled those bags out and attempted to retrieve
4 latent fingerprints evidence from it as we did on the
5 baggies.

6 Q Now, I'm going to show you what's marked as State's
7 Exhibit 40 for ID purposes only.

8 (WHEREUPON, State's Exhibit No. 40 was marked
9 for identification only.)

10 BY MR. WILKINS:

11 Q Can you tell us what that is?

12 A This is 10 point fingerprint card, actually, two of
13 them with my writing. I have my name on it. And
14 they are fingerprint impressions from the right hand
15 and from the left side of the body parts that we
16 found in the bags.

17 Q So those are the prints of the hands that came out if
18 the bags at Cleveland Street Andover Apartments and
19 at Rose Avenue?

20 A That's correct, yes.

21 Q Now, you took the trash bags back to the lab for
22 processing?

23 A Yes.

24 Q Specifically, bags labeled State's Exhibit 109?

25 A Right.

1 Q You took back?

2 A Right.

3 Q Did you process them from any prints?

4 A Yes, we did. We processed all the bags and received
5 or obtained no latent print evidence whatsoever.

6 MR. WILKINS: Please answer any questions the
7 Defense counsel may have.

8 CROSS-EXAMINATION

9 BY MR. MCDOUGAL:

10 Q Good afternoon, I'm Mark McDougal and I'm here
11 representing the Defendant, Clarence Jenkins. Just a
12 couple of questions. You described the procedure,
13 the processes you used to try to identify latent
14 prints on the various plastic bags; is that right?

15 A Right.

16 Q If I understand your testimony correctly, you used
17 the cyanoacrylate fuming method; is that correct?

18 A Yes, on one part of it, yes.

19 Q Which part did you use?

20 A On the plastic bags.

21 Q On part of the plastic bags?

22 A Yes.

23 Q And that cyanoacrylate method identified no prints at
24 all; is that correct?

25 A It did not give us any type of comparable print.

1 What the process does is, actually, will adhere
2 itself to any type of deposits that -- sweaty
3 deposits, oily deposits. Sometimes, it may give you
4 the ridge detail. Other times, it may be completely
5 obscured because of continual activity of touching
6 and you got smudge marks, so to speak. But we did
7 not obtain any type of comparable print.

8 Q And that was the only method you used?

9 A Yes, on thing bags.

10 Q You would agree with me that plastic is a nonporous
11 surface?

12 A That's correct.

13 Q And there are various recommended methods for
14 obtaining latent prints from nonporous surfaces; is
15 that correct?

16 A There is.

17 Q One of those is use of the florescent laser. Did you
18 use that method?

19 A We did not.

20 Q Another is laser or using alternative light source;
21 did you use that?

22 A We did not use an alternative light source.

23 Q Another approved method is the vacuum method
24 deposition method; did you use that?

25 A No, did not.

1 MR. MCDOUGAL: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. PERKINS: Quick question, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. WILKINS:

6 Q What method did you use to process the prints?

7 A We used cyanoacrylate, which is, basically, super
8 glue that, actually, would adhere itself to the
9 sweaty deposits. In some of the processes that were
10 referred to, the fingerprints can also be developed
11 by use of cyanoacrylate before you use some of the
12 other processes.

13 Q Any reason why y'all didn't use the other processes?

14 A Well, it has to do a lot with the condition of the
15 bags. The bags, again, were used -- they were wet.
16 They were holding some items, which we normally
17 wouldn't have to process over. The condition of
18 those bags, when we put the first application of the
19 cyanoacrylate on it, which has always been a very
20 successful process for us, we did not see anything
21 that would yield us any type of comparable print.
22 What we do is -- even though we may not use an
23 alternative light source, which is a different wave
24 length of light, we would use white light and try to
25 highlight any type of developed print, which was not

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1 there.

2 MR. WILKINS: Thank you, no further questions.

3 MR. MCDUGAL: No more, Your Honor.

4 THE COURT: Okay. Thank you, sir. You may
5 stand down.

6 MR. WILKINS: Your Honor, we intend to call
7 Lieutenant Petersen again later in the trial. He was also
8 involved in the processing of --

9 THE COURT: All right. I'm not cutting you
10 lose. All right.

11 All right, Madam Forelady, ladies and gentlemen
12 of the jury, it's 5:30, I think this is probably a good
13 time to break for the evening. I guess you can see there
14 are television cameras in the courtroom. There's going to
15 be a great temptation on your part to go home and look at
16 the TV. Don't do it. People in your household will look
17 at the TV. I'll tell you this, you all are not -- we
18 don't allow jurors to be photographed. So don't concern
19 yourselves with that. But other folks in your household
20 may look at it and say oh, come look at yourself, it's not
21 going to hurt anything. Don't do it. Tell them to record
22 it or I'm sure, you know, somehow you can get ahold of it
23 if you really need to see it at some point. Our whole
24 system of justice is based on integrity. And we need your
25 integrity. Don't let something outside this courtroom

1 MR. WILKINS: Those are all the motions I have,
2 Your Honor.

3 THE COURT: Okay.

4 MR. MAULDIN: Your Honor, we understand that the
5 first witness will be regarding the fingerprint analysis
6 that --

7 THE COURT: Jackie Kellet, Lieutenant Kellet?

8 MR. WILKINS: Yes, sir, Your Honor.

9 MR. MAULDIN: We were going to suggest that
10 before bringing the jury in and then taking them back out
11 while we determine the admissibility that that be done by
12 voir dire before the jury is brought in?

13 THE COURT: They want to -- you want to examine
14 her qualifications?

15 MR. MAULDIN: The admissibility of her testimony
16 is going to be clearly contested. What I'm saying is if
17 we bring the jury in, the witness is brought in, he asked
18 her tow questions, we object and ask to be heard out of
19 the presence so we can voir dire the witness is just
20 practically --

21 THE COURT: Yeah. I mean, you just want to voir
22 dire her qualifications or go through what -- you want to
23 see what her examination of the fingerprints consisted of?

24 MR. MCDUGAL: Yes, Your Honor, we will be
25 renewing our objection about what she, actually, did.

1 THE COURT: Okay. Well, that's because you all
2 don't know at this point. If I'm not mistaken, you don't
3 have any written notes?

4 MR. MCDOUGAL: We have no notes, no discovery at
5 all other than the report.

6 MR. WILKINS: We would say the report is the
7 results.

8 THE COURT: That's fine.

9 Bring Lieutenant Kellet in.

10 THE CLERK: Place your left hand on the Bible
11 raise your right.

12 JACKIE KELLET, after being duly sworn, testified
13 as follows:

14 THE CLERK: Thank you, you may be seated.
15 State your name for the record.

16 THE WITNESS: Jackie S. Kellet.

17 DIRECT EXAMINATION

18 BY MR. WILKINS:

19 Q Captain Kellet, who do you work with?

20 A The Department of Public Safety forensic division.

21 Q How long have you been there?

22 A I have been with forensics for 30 years.

23 Q And what is your position?

24 A I am Captain of the forensic division. My
25 responsibilities include managing the drug

1 laboratory, the firearms lab, the latent print
2 section, the crime scene section, the DNA lab and the
3 property and evidence section.

4 Q Have you had any special training, briefly, schools?

5 A Yes. I'm, also -- part of my duties, I'm the senior
6 latent print examiner for the forensic division. So
7 every fingerprint match or identification that comes
8 through my office, I approve all of those prior to
9 them being published. To start my training, I've had
10 40 hours of basic fingerprint training through the
11 FBI. I've had an 80-hour advanced fingerprint
12 training course, again, through to FBI. I've had 120
13 hours of administrative advanced training at
14 Quantico, Virginia, at the FBI Academy. And I've had
15 a two-week card pack school in Tuscon. In addition
16 to that, I've had annual seminars that I've attended.
17 And in Greenville County, we also participate in
18 proficiency testing of all of our examiners. And
19 that means that we do a yearly test to make sure that
20 we're keeping up with our training and that we know
21 what we're doing in our specific discipline.

22 Q You ever been qualified as an expert in the state and
23 federal courts before?

24 A Yes, I have been in all three. Probably 100 plus
25 times.

1 Q And how many fingerprints do you think you've
2 compared in your 30-year career, give or take?

3 A Hundreds of thousands.

4 Q Okay. Now, are you familiar with the case against
5 Clarence Jenkins?

6 A Yes, I am.

7 Q Give us an overview of how you would compare
8 fingerprints and what kind of report you would write
9 and what you would do.

10 A When we receive either latent print or unidentified
11 known prints in the case of a Jane Doe or a John Doe,
12 the first thing that we're going to do is look at
13 those prints that we have, whether they're rolled
14 prints or latent prints, and we're going to do an
15 analysis and determine what those prints are, the
16 type that they are. If we can tell the pattern type
17 from that print, whether it's a loop, whirl or arch.
18 If I see that my unidentified print, I have the same
19 type of pattern in the known print, then I'm going to
20 start with that. I'm going to compare a loop to a
21 loop, a whirl to a whirl. I then target specific
22 points of identification in my unknown print. It may
23 be a ridge ending and bifurcations and deltas. Then
24 I'm going to look for those specific points in the
25 corresponding area of the known rolled print. So if

1 I have a series of five minutia points in one place,
2 I'm going to make sure that in that same finger that
3 I think it may be that those points are going to be
4 identical and in the very same locations. I continue
5 in this manner through the whole, either partial
6 latent that I have or the unknown rolled print until
7 I make a determination that this known print is the
8 same as the unknown print. I would then issue a
9 fingerprint match report, either identifying if it
10 were a latent print, who that print was made by, or
11 if it's an unknown person, who those prints are
12 identified as belonging to.

13 Q And doing that, what do you use to do the comparison,
14 any specific tools that you use?

15 A In this instance, since we had an unknown deceased
16 individual, we used the AFIS system, which is
17 Automated Fingerprint Identification System. This is
18 a computerized database maintained by the South
19 Carolina Law Enforcement Division. And it's just a
20 tool that we use that allows us the ability to search
21 unknown prints or latent prints against a known
22 database.

23 So we enter this print in the AFIS. The AFIS
24 sends back a list of respondents for you. You can
25 tell it send me the top 10, top 15. But in this

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1 case, we ask for the top 25 people. Once that comes
2 back, it doesn't -- it doesn't mean that it's a
3 match. You still have to have the fingerprint
4 examiner look at it and make sure that it is the
5 print that you want, it is a match.

6 And once I do that, then I print out the known
7 card of the person that AFIS says that the unknown
8 belongs to and use a fingerprint glass to visually
9 examine point by point and make sure that this print
10 is the same print. In this case, we had all 10
11 fingers from these two hands, so it was a lot simpler
12 to do that.

13 Q So when you're making this comparison with your
14 magnifying glass out there, are you taking notes as
15 to which points are being matched up or are you just
16 doing your analysis?

17 A No, it's a mental observation that I use. We don't
18 write anything down. I don't know, I've never had
19 any of my training has indicated that you do that,
20 that I've ever had. It's just a mental observation
21 that look out. Because it's going to be the same
22 whether I do it two years ago or last month or today.
23 Those points are still there in those prints. So I
24 do that for all 10 fingers, and then was able to
25 positively identify who that person was.

1 Q So once you identify, you do the visual comparison of
2 the known and the unknowns, you make a mental note
3 that these match?

4 A Correct.

5 Q And then what do you do, do you write a report
6 stating that?

7 A Then we issue a report indicating who we received the
8 unknown points from, the date, things like that, the
9 location, case number. We make a mark in the report
10 who the unknown print is identified as belonging to.
11 That report is verified by another examiner to be
12 sure all the information is correct on the report.
13 And then the report is published in the records
14 division or the appropriate agency to have a copy of
15 it.

16 Q Now, how long might it take you to do a comparison of
17 10 fingers? How long would you spend comparing a
18 known and unknown together?

19 A When you have all 10 finger and they're rolled, it's
20 a very quick process. AFIS can return a serve in
21 five to ten minutes and it may take me another five
22 or ten just to look at it and confirm that it is that
23 person. It's very quick because you have a complete
24 set of known prints there.

25 Q I'm going to show you what State's Exhibit 40 for

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1 purposes of this proffer. And do you recognize that?

2 A Yes, I do. These are the unknown rolled prints that
3 were taken by Lieutenant Petersen at the morgue. And
4 my initials are in the upper right corner of each
5 card. One card has the right hand and the other card
6 has the left hand.

7 Q Now, do you know where these fingerprints came from?

8 A Lieutenant Petersen brought them to my office to be
9 searched on AFIS so that we could attempt to identify
10 the victim.

11 Q And I'll show you what's State Exhibit 41 for
12 purposes of this hearing. Do you recognize that?

13 A Yes, this is the known fingerprint card, the master
14 fingerprint card, Mekole Michelle Harris. My
15 initials are in the upper right corner again. And
16 these prints were taken in a controlled environment
17 by one of our identification specialist at the law
18 enforcement center. And these prints are also
19 maintained in a computerized database.

20 Q Do you ever see those fingerprint cards?

21 A I see them everyday.

22 Q Okay. All right. So let's go back to just a couple
23 of statements. When you got the unknowns from
24 Lieutenant Petersen of the rolled prints there, what
25 did you do?

1 A We had a young lady in your office at that time named
2 Allison Troop, she was working for the forensic
3 division. And part of her responsibilities were
4 entering the prints in AFIS for search. So I handed
5 the prints to Allie. She then entered them in the
6 AFIS while I sat there and watched her. And we
7 waited five minutes and the lists of respondents came
8 back. I then ran the SID number that was given by
9 the AFIS system and discovered the identity was
10 Mekole Harris. I then pulled the master fingerprint
11 card from our files for comparison purposes.

12 Q So AFIS was just used in your investigation to
13 whittle down a known comparable to your unknown.

14 A Yes. AFIS can't match them for you. It doesn't do
15 match found like they do on TV. It narrows down a
16 list of respondents because SLED has probably close
17 to 2,000,000 10 print cards in their file and that
18 would be impossible search for a human to do by hand.
19 So once you enter your information, you tell the AFIS
20 send me back the list of candidates that best meet
21 the criteria that I entered for search. And that's
22 all that it does. You still have to have the
23 examiner look at the prints and either confirm that
24 it's a match or it's not a match.

25 Q So after you pulled what you believed could be a

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1 possible match, you then go through your formal
2 comparison exercise?

3 A That's correct.

4 Q That's when you use that magnifying glass right
5 there?

6 A That is correct.

7 Q That's when you make the determination of whether
8 they match or not?

9 A That's correct.

10 MR. WILKINS: Please answer any questions the
11 Defense may have.

12 CROSS-EXAMINATION

13 BY MR. MCDOUGAL:

14 Q Good morning, Captain Kellet. My name is Mark
15 McDougal and I'm representing Clarence Jenkins, the
16 Defendant here. You talked about your training with
17 various agencies, including the FBI. I'd like to go
18 into that a little bit, not the training itself, but,
19 rather, what you learned there. When you're doing a
20 comparison of two fingerprints, you compare points of
21 comparison, you identify unique places, ridges,
22 swirls and so forth that look the same; is that about
23 right?

24 A That's correct.

25 Q And you add up the number -- you know, one point of

1 comparison is not enough, is it?

2 A Correct.

3 Q Fifty is plenty?

4 A More than enough, yes.

5 Q What number do you look for?

6 A There is no set standard in the United States for the
7 minimum number of points that are required. But in
8 Greenville County, we do not -- and a lot of it is
9 based on the uniqueness of that pattern and prints,
10 but we require, at least, 12 points before we can
11 make an identification.

12 Q Okay.

13 A That was easily met in this circumstances.

14 Q And you're right, there's no standard in the United
15 States. The British Government uses 16.

16 A Correct.

17 Q But it's somewhere in the teens, between 10 and 20,
18 would you agree is about the right number for you as
19 a professional and as an expert to reach a conclusion
20 that two fingerprints are identical?

21 A I don't know if I would call one with 10, it would
22 just depend. Twelve is a safe number for me.

23 Q And I take it from your testimony that you very
24 quickly did that with the set of prints that had been
25 rolled from the remains versus the stuff that AFIS

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1 had kicked out to you from SLED?

2 A That is correct.

3 Q Now, you can't always do that. Sometimes you will
4 have a latent that will be a partial?

5 A Correct.

6 Q Sometimes part of it will be obscured. Sometimes
7 it's a very close call, you agree with me, as to
8 whether you have enough points of comparison?

9 A Correct.

10 Q You might have 10, and then you're looking for number
11 11 and 12 to see if you can get there or not. Don't
12 you take notes when you do that?

13 A No.

14 Q So you know 1 through 9 when you get to 10?

15 A No.

16 Q How do you keep track of it?

17 A Because I can go back and reexamine that print at any
18 time. I am not going to issue a report if I'm not
19 100 percent certain that it's a match. Then we have
20 technical reviews, peer reviews, another examiner is
21 going to verify what I saw. And they're going to
22 confirm that it is a match. I know from my own
23 experience I am not going to issue a report unless
24 it's, at least, 12 points of identification.

25 Q Please understand, I'm not questioning the quality of

1 what you do, I want to know how you do it. Because
2 if you're trying to get to 14 or 16 or 12 points of
3 comparison, when you're at number 11, don't you need
4 to know what the first 10 were? Don't you have a
5 piece of paper where you chart, where you mark them
6 on?

7 A I've never been trained do that. That has never been
8 in any training that I've had and it's not necessary.
9 I know those points are there. And I can show them
10 to you at any time.

11 Q And you make no record of that?

12 A Other than issuing a report that this print was
13 identified as being made by this individual or this
14 print is identified as belonging to this individual.

15 Q And even when you're processing 40 or 50 sets of
16 latent prints in a particular case, you just remember
17 where those points of comparison are?

18 A If it's a match, I'm going to know that I made the
19 identification and I'm going to issue a report. We
20 don't sit there -- that would be very time consuming
21 work that's not necessary when you're effecting an
22 identification. And it just -- it's always been our
23 procedure, once a match is made, it's verified and
24 then a report is issued.

25 Q I understand that. So when you go back, now four

1 years ago, to a case and you pull out the set of
2 latents we have here, and you pull out a set of
3 standards, baselines, and you compare them, you start
4 all over again?

5 A That is correct.

6 Q And you may have 12 different points of comparison
7 than the ones you had four years ago?

8 A No. My procedure, normally, is look at the delta
9 area first of a print. That's where usually a lot of
10 good points are. And then count from the delta to
11 the core. So the point that I looked at four years
12 ago in that number three finger, I'm going to key in
13 and zero in on those same points because they're
14 still going to be there. They haven't gone anywhere,
15 they haven't changed. And I'm going to key in on
16 those points, those same exact points to make my
17 identification.

18 Q Now, you would agree with me that a really good
19 examiner with two clean sets of prints of a baseline
20 latent could find hundreds of points of comparison,
21 couldn't he or she?

22 A Yes, she could.

23 Q But you're telling me that sitting here today,
24 comparing the latents from four years ago and the
25 baseline, you would be able to find the exact same 12

1 points of comparison you found four years ago without
2 any notes?

3 A That is correct.

4 MR. MCDOUGAL: Can I have moment, Your Honor?

5 THE COURT: Yeah.

6 MR. MCDOUGAL: Your Honor, we have no further
7 questions. Unless the Solicitor does, we ask the witness
8 be excused and we renew our objection.

9 THE COURT: You got any redirect?

10 MR. WILKINS: No, sir, Your Honor.

11 THE COURT: Okay. You can stand down, Captain,
12 and we'll call you back in just a second. All right.

13 Okay. Same ruling. Well, maybe I haven't
14 ruled.

15 MR. MCDOUGAL: Would like to hear the objection,
16 Your Honor?

17 THE COURT: Yeah, go ahead and tell me your
18 objection again.

19 MR. MCDOUGAL: For the record, Your Honor, the
20 objection is under rules of evidence 703, the basis of
21 opinion and testimony by experts. And that rule provides
22 the facts or data in a particular case upon which an
23 expert bases his opinion or inferences. I've
24 cross-examined a fair number of fingerprint experts in
25 lots of courts. I've never heard this before. Now, I

1 understand that I've done in this State and I've always
2 had witnesses with notes and points of comparison. This
3 Captain doesn't have that. We believe she should and we
4 believe that her testimony, based on rule 703, should be
5 excluded for that reason. Thank you, Your Honor.

6 THE COURT: Okay. Well, you know, you all can
7 certainly impeach her credibility. But I don't -- I can't
8 think of any reason why I would exclude the testimony.
9 You might not think it's as reliable as some other people,
10 some other witnesses. And you might have a hard time
11 digesting that she doesn't write down where the points
12 are, but, perhaps, she's got a photographic memory, I
13 don't know. But I think that's an issue you can argue to
14 the jury.

15 MR. MAULDIN: One moment, Your Honor.

16 MR. MCDOUGAL: Nothing further on this witness,
17 Your Honor.

18 THE COURT: Okay. Y'all ready to go?

19 MR. WILKINS: Yes, Your Honor.

20 THE COURT: Okay.

21 (WHEREUPON, the jury came into open court at
22 approximately 10:20 a.m.)

23 THE COURT: All right. Ladies and gentlemen,
24 welcome back. I hope you had a pleasant evening last
25 night. We appreciate your patience. I admit my failure

1 as a logistical expert. We had some things we had to take
2 care of this morning. It's my fault for not recognizing
3 that before. I asked you to be here at 9:30. I'll try to
4 be better coordinating that. But thank you for your
5 patience.

6 You know, we had the discussion last night about
7 not talking about the case and not being exposed to it.
8 Did anyone, either directly or indirectly, get exposure
9 from some outside source with respect to this case?

10 (There was no response.)

11 THE COURT: You didn't, great. No media -- you
12 didn't read the paper, didn't watch TV, didn't talk to
13 anybody?

14 (There was no response.)

15 THE COURT: It's okay if you tell me that it
16 happened. Okay. Thank you, very much.

17 All right. We're ready to resume.

18 Mr. Wilkins.

19 MR. WILKINS: Your Honor, the State calls
20 Captain Jackie Kellet.

21 THE COURT: Okay.

22 THE CLERK: Captain Kellet, if you'll come
23 forward to be sworn. Place your left hand on the Bible,
24 raise your right hand.

25 JACKIE KELLET, after being duly sworn, testified

1 as follows:

2 THE CLERK: Thank you. You may be seated.

3 Please state your name for the record.

4 THE WITNESS: Jackie S. Kellet.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. WILKINS:

8 Q Captain Kellet, with whom are you employed?

9 A The Department of Public Safety forensic division.

10 Q How long have you been with them?

11 A I've been with forensics for 30 years now.

12 Q How long have you been in law enforcement?

13 A I've been a certified police officer for 34 years.

14 Q And tell the jury panel sort of what your duties are
15 at the forensic division.

16 A I am captain of the forensic division and my
17 responsibilities include managing and overseeing the
18 drug laboratory, the firearms lab, the DNA lab, the
19 crime scene section, the latent print section and
20 property and evidence section. Also, I am the senior
21 latent print examiner for the latent prints section.

22 Q And throughout your 34 years of law enforcement
23 experience, have you had any special training --

24 MR. MCDOUGAL: Your Honor, the Defense, in the
25 interest of time, will stipulate to this witness'

1 expertise.

2 THE COURT: Okay.

3 MR. WILKINS: Your Honor, we move Captain Kellet
4 as an expert in fingerprint analysis.

5 THE COURT: Okay.

6 MR. MCDUGAL: Without objection.

7 THE COURT: All right.

8 BY MR. WILKINS:

9 Q Just give a brief summary of your schooling.

10 A I've had various training through the FBI and at the
11 FBI Academy in advanced fingerprint identification,
12 40 hours in one course, 80 in the other, 120 in the
13 next and two weeks. In addition to that, I've
14 attended various seminars and training classes each
15 year since I've been a latent print examiner.

16 Q Have you ever been qualified as an expert in state or
17 federal court on fingerprint identification?

18 A I have been qualified in all three, local, state and
19 Federal court as an expert witness, probably 100 plus
20 times during my career.

21 Q Now, as a fingerprint identification, what do you do?
22 Tell the jury panel what you do as a fingerprint
23 analyst?

24 A Part of the responsibilities at the latent print
25 section is when we receive unknown latent

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1 fingerprints that were recovered at crime scenes,
2 it's out job to try to identify who those prints were
3 made by. In the same light, if we get unidentified
4 prints from an individual that we don't know who that
5 person is, it's a deceased Jane Doe or John Doe, it's
6 our responsibility, also, to try to effect that
7 identification and find out who this person is so
8 that lawsuit can be notified.

9 Q Now, are you familiar with this case the State vs.
10 Clarence Jenkins?

11 A Yes, I am.

12 Q Were you involved in the investigation?

13 A Yes, I was.

14 Q And I'm going to show you what's marked as State's
15 Exhibit 40, and ask if you recognize that?

16 A Yes, I do. These are the unknown prints that were
17 obtained by Lieutenant Mike Petersen. He is over our
18 crime scene section. And these were the prints that
19 he obtained from an individual whose hands had been
20 recovered. And we did not know who she was. So
21 Lieutenant Petersen went to the morgue, rolled all 10
22 fingers, put them on a fingerprint cards. This top
23 card is from her right hand. Those are my initials
24 in the top right corner. The second card is from the
25 left hand of the victim. And my initials are also in

1 the upper right corner. These prints were brought to
2 my office and it was my job to then try to determine
3 who these prints belonged to, who this person was.

4 Q Once you received those from Lieutenant Petersen,
5 what did you initially do with them?

6 A I looked at the fingerprint card, determined which
7 finger appeared to be the best to use for a computer
8 search. We had a young lady working in our office at
9 that time that was working in the latent print
10 section. I handed the prints to her. She then
11 entered the information on the AFIS system. And AFIS
12 is Automated Fingerprint Identification System. What
13 this system let's us do is search unidentified latent
14 prints from crime scenes, or, in this case,
15 unidentified deceased prints against a known database
16 that's maintained by SLED in Columbia. So the
17 information was entered by this employee for the
18 number three finger, which is your right middle
19 finger, then a search was conducted through the AFIS
20 system.

21 Q And once that search was conducted through AFIS, what
22 did you do?

23 A When the results come back -- what you do with AFIS,
24 it's not like TV. It doesn't come back and say match
25 found, match found. But it will narrow down your

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1 list of respondents. SLED's database is probably
2 close to 2 million, 1.5 or 2 million fingerprint
3 cards. Most people still have all 10 fingers, and
4 that's a lot of information that you're having to
5 look for. So once you enter your fingerprint -- and
6 in this case, we knew we were searching a number
7 three finger. The race appeared to be of a black
8 individual. You can narrow down your search.

9 We enter this information, AFIS sends back a
10 list of respondents. It doesn't match it for us, but
11 it says out of this entire database, these are the
12 top 25 people that we think this print could have
13 been made by. You still have to have the fingerprint
14 examiner look at it and confirm or deny that it is or
15 is not a match.

16 Once the results come back -- it doesn't send
17 back a name, it sends back a SID number, State ID
18 number. And that number is assigned to you by SLED
19 if you've ever been fingerprinted. We run that SID
20 number. We then locate information, the person's
21 name, if they have a record in Greenville County. In
22 this case, there was an existing record in our
23 system. I then pulled up the match for fingerprint
24 card from this individual and conducted a comparison
25 to make sure that the prints on these unknowns were

1 the same as the prints on that 10 print card, and
2 they were.

3 Q All right. Captain Kellet, I'm going to show you
4 State's Exhibit 41.

5 (WHEREUPON, State's Exhibit No. 41 was marked
6 for identification only.)

7 BY MR. WILKINS:

8 Q I ask you if you recognize that?

9 A Yes. These are the known rolled prints identified as
10 belonging to Mekole Michelle Harris. And this card
11 is contained in our database here in Greenville
12 County. And these are my initials in the top
13 right-hand corner. This is the card I, actually,
14 used when conducting the comparison between the
15 unknown rolled prints and the known prints. This is
16 how I was able to tell these prints belonged to this
17 person.

18 Q Do you keep that card in the ordinary course of
19 business?

20 A Yes, we have hundreds of thousands of these cards on
21 file.

22 Q You're the supervisor of all those fingerprint cards?

23 A Yes.

24 MR. WILKINS: Your Honor, the State would move
25 Exhibit 41 into evidence.

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1 MR. MCDOUGAL: Can we have a look at them, Your
2 Honor?

3 THE COURT: Yeah.

4 MR. MCDOUGAL: No objection, Your Honor.

5 (WHEREUPON, State's Exhibit No. 41 was admitted
6 into evidence.)

7 BY MR. WILKINS:

8 Q So Captain Kellet, once you got a potential known and
9 you've got the unknown print that you received from
10 Lieutenant Petersen from the severed hand, what did
11 you do?

12 A I then used a basic fingerprint glass, which is a
13 magnifying glass. And in this case, we searched the
14 number three finger. So I began looking at points of
15 identification that were unique in that pattern type
16 against the unknown on the known. I start looking
17 for individual points of comparison, ridge endings,
18 bifurcations. I searched around the delta area. I
19 made sure that all the points that I see in the
20 unidentified, the unknown print, were exactly the
21 same as the points on the known fingerprint card.
22 Once I done that and I confirmed that these prints
23 were, indeed, made by Mekole Harris, that these
24 prints belonged to her, then I made an
25 identification. I looked at all 10 fingers that were

1 given to me by Lieutenant Petersen against all 10
2 fingers on the rolled card, the known rolled card.

3 Q So once you make the determination, do you make a
4 report or anything?

5 A Yes. Once I have made this match and effected an
6 identification, the print match a verified by another
7 latent print examiner in our office. We always use
8 peer review. Have a second individual examiner look
9 at it. Confirm the results, and then a written
10 report is issued indicating the personal information,
11 the case number, who we received the prints from and
12 if we were able to identify them. And if so, who the
13 prints belonged to. And that report is the published
14 so that the investigating officers can get a copy of
15 it.

16 Q So the prints -- the unknown prints at the time that
17 you compared with State's Exhibit 41, the knowns of
18 Mekole Harris, were found to be to match to her?

19 A That's correct. These prints were made by Mekole.

20 MR. WILKINS: Your Honor, the State moves
21 Exhibit 40 into evidence.

22 MR. MCDUGAL: No objection, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, State's Exhibit No. 40 was admitted
25 into evidence.)

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1 MR. WILKINS: Please answer any questions the
2 Defense counsel may have.

3 CROSS-EXAMINATION

4 BY MR. MCDOUGAL:

5 Q Morning, Captain Kellet. I just have a couple
6 questions for you. My name is Mark McDougal. I
7 represent the Defendant, Clarence Jenkins. You
8 described the AFIS computer system. And if I
9 understood you correctly, that's a system where you
10 would submit one set of prints, typically, latents or
11 something that have been submitted for investigation,
12 and a computer search would be done and a number, I
13 think you said 25 possible matches, not matches, but
14 prints that the computer said had some comparison
15 would be produced?

16 A That is correct.

17 Q And you testified at some length about the
18 examination you did of the prints leading you to the
19 conclusion that these prints belonged to Mekole
20 Harris?

21 A Yes.

22 Q How many other of the 25 did you do comparisons on
23 before you reached your conclusion?

24 A None.

25 Q You just went right to that one?

1 A Because it was a match.

2 Q But AFIS gives you 25 possibles; is that right?

3 A Right.

4 Q And you only did a comparison, a line by line, ridge
5 by ridge comparison on Mekole Harris?

6 A That is correct.

7 Q When you're doing the examination you described using
8 a magnifying glass, that is a step-by-step process in
9 which you seek to find points of comparison? By
10 that, I mean characteristics on one print that in
11 your view are identical to the other; is that
12 correct?

13 A Yes.

14 Q And you would typically look for 12 or so points of
15 comparison before you reached that conclusion?

16 A Yes.

17 Q In any given day, how many prints would you do a
18 comparison on in a typical work day?

19 A Well, my function right now is mainly as -- to do
20 peer view and to approve the report, so I don't do
21 near the volume that I used to. But during a typical
22 day, a latent print examiner, depending upon your
23 call volume and the number of cases that yield
24 cognitive results on latent prints, you could do 500
25 to 1000 comparisons a day, easy.

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1 Q And you keep no notes of those comparisons at all; is
2 that correct?

3 A That's correct.

4 Q So when you come years later to testify, you just
5 remember what you saw?

6 A Yes, I do.

7 Q Okay.

8 MR. MCDOUGAL: Your Honor, the witness has a
9 file in her hand. If I could ask her if we could examine
10 that before she's dismissed.

11 THE COURT: Sure.

12 MR. MCDOUGAL: One moment, Your Honor.

13 THE COURT: Yes.

14 MR. MCDOUGAL: Can we approach the bench,
15 please?

16 THE COURT: Okay.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but out of the hearing of
19 the jury.)

20 THE COURT: All right. Ladies and gentlemen, an
21 issue has come up that I have to discuss outside your
22 presence. So please retire to your jury room. Don't talk
23 about the case.

24 (WHEREUPON, the jury left open court at
25 approximately 10:37 p.m.)

1 THE COURT: All right.

2 Yes, sir, Mr. McDougal.

3 MR. MCDOUGAL: Your Honor, could I ask the
4 witness be excused in the event we have to recall her on
5 this issue? I'm sorry, if the witness could step out of
6 the courtroom.

7 THE COURT: Okay.

8 Do you mind? Thank you, Captain Kellet.

9 MR. MCDOUGAL: Judge, this witness, Captain
10 Kellet, came in here to testify with a file in her hand
11 and with the Court's permission, we looked at the file.
12 And as related to the Court at the sidebar, there are two,
13 and I think, at least, three documents that we have never
14 seen in discovery. These include apparently an AFIS
15 report or a screen shot, an automated fingerprint
16 identification worksheet and what looks to be a latent
17 handprint -- I'm sorry, half a handprint.

18 Throughout this case, Your Honor, we have asked
19 over and over again, do we the file, do we have the file.
20 We've been told again and again we do have the file.
21 Well, apparently, we didn't have the whole file, Your
22 Honor. And we made some -- we've entered a couple very
23 significant objections to this witness' testimony. And we
24 believe the fact we were not given these documents is a
25 serious breach.

1 THE COURT: Well, what's in them? I need to
2 know more about potential prejudice.

3 MR. MCDUGAL: Well, Judge, I mean, the reason
4 that we have discovery is so we have time to look at them
5 and see where else they lead.

6 THE COURT: I understand that. If you see
7 potential prejudice, because that would be -- I mean, I am
8 disturbed that the State has not produced these documents
9 after all the lengthy hearings and discussions. But what
10 remedy is out there would depend on the content of those
11 documents.

12 MR. MCDUGAL: Well, Your Honor, as I look at
13 them here, having not seen them before, it appears that
14 they are a series of points of comparison on the screen
15 shot. There are, at least, two impressions that one looks
16 to be the identified, one looks to be the latent. You
17 know, had we had this in hand and had an opportunity to
18 look at it, and, perhaps, raise some questions for
19 cross-examination to support our objection. We didn't
20 have them. The witness came here with them in her file.

21 THE COURT: What can you tell me about it, Mr.
22 Wilkins?

23 MR. WILKINS: Mr. Mauldin filed motions
24 regarding the fingerprint analysis, point by point
25 analysis. I called Captain Kellet and conferred with her

1 regarding what she had in her file. And I told Mr.
2 Mauldin there may be some AFIS stuff in there, that's all
3 I know. He said he didn't want it. So we had this
4 conversation. And it's been available in latents for four
5 years now. And all it is is -- what she just described is
6 how she ran the fingerprints through AFIS and they got a
7 list of 20 people to check. So it's not going to be
8 introduced. And we never knew anything about it until he
9 filed a motion making an issue with it. And I talked to
10 Mr. Mauldin about it. I said you can have anything you
11 want. I'm trying to track down everything we've got.

12 MR. MAULDIN: When I talked to Mr. Wilkins, I
13 had one page that they had provided us. I think it's a
14 SLED --

15 THE COURT: Let's just take a 10-minute break,
16 y'all review the documents and when we come back, y'all
17 tell me what the prejudice is.

18 (WHEREUPON, a short break was taken.)

19 MR. MCDOUGAL: Your Honor, I'll try to be as
20 brief as I can.

21 THE COURT: Okay.

22 MR. MCDOUGAL: What we, apparently, were
23 provided -- everything I'm going to say is modified with
24 the word apparently because we haven't had time to look at
25 it beyond the last few minutes, is what appears to be an

1 electronic report from AFIS. It list on the lower
2 right-hand side, apparently, the top 16 matches. Each is
3 assigned a score. Number one, the one that the examiner
4 was testifying about, has a score of 5595. Number 2 had a
5 score of 5415. For purposes of comparison, number 10 is
6 3435.

7 My point, Your Honor, is that number two is
8 pretty close to number one. Had we had this and had we
9 been able to work with an expert in identifying the actual
10 proximity of number one and number two and even number
11 three, we could have, I think, much more effectively
12 cross-examined this witness.

13 And here's why it's so important in the context
14 of the case, Your Honor. As we laid out in our previous
15 motion, this fingerprint evidence is the heart of the
16 forensic case. They're only able to identify these
17 remains as a result of these fingerprints. If they
18 couldn't do this, they wouldn't have DNA, they wouldn't
19 serology, they wouldn't have anything. Our job is to
20 challenge that evidence. And you can't challenge that
21 evidence if we don't have information like this, which
22 we've asked for repeatedly.

23 I think Mr. Mauldin wants to add something to
24 that.

25 THE COURT: Okay.

1 MR. MAULDIN: Your Honor, I think one of the
2 concerns that I have is what you expressed to us as our
3 challenge at this moment regarding this particular piece
4 of evidence. And here's why I am concerned about that.
5 You've challenged us to establish the individual prejudice
6 of this individual piece of evidence that has now been
7 discovered. And I believe that Mr. McDougal has laid out
8 a pattern that shows how we are now specifically
9 prejudiced by this specific piece of evidence that was not
10 in our hands before.

11 Now, what that does is that means that we have
12 to be prepared to establish prejudice for not knowing
13 something that we don't know we don't have. And I know
14 there are a lot of negatives in that sentence. But the
15 problem is we can only -- we have to rely upon what we're
16 provided in an open file case. We respond to what we're
17 provided. We prepare based upon what we're provided. If
18 we -- and I'm not claiming any bad faith here. This is
19 not a bad faith question on the part of either side. The
20 question is our capability of responding to something that
21 we don't have and being prepared to establish prejudice
22 for it. If we don't know what it is, we can't be prepared
23 to establish legitimate prejudice for it on the spot,
24 which is what we're expected to do here. And I think Mr.
25 McDougal is doing very well regard to the presentation.

1 But there's got to be a remedy. And after four
2 years, we have had countless hearings in this case
3 regarding the production of this, that or the other.
4 We've been operating on the assumption that we did have an
5 open file. And I suspect that Mr. Wilkins can stand and
6 say he gave me what he had in this file. We were
7 concerned because there was only one page showing this
8 print matches Mekole Harris, date of birth, and that was
9 it. There was no underlying data, no examination records,
10 process used, method used. We then filed our motion last
11 week about the fingerprint evidence. Because it just --
12 how can that possibly be? It's very unconventional, but
13 it's unheard of. And that has led to what we've been
14 going through this morning.

15 The concern I've got now is is there something
16 else that law enforcement agencies may have had in a file,
17 in a drawer that neither Mr. Wilkins nor I know about. I
18 mean, we have encouraged the State to advise their
19 agencies working this case to give them their files so
20 they can disclose them to us so we can be prepared. That
21 is the point. Now, we have to say, I wonder if there's
22 something else that we don't know about that if we do
23 discover it just by stumbling upon it during the
24 cross-examination, that we're going to be able to show
25 prejudice for on the spot. And that's no way to run a

1 railroad.

2 So I'm suggesting, Your Honor, at this point
3 that this evidence either be stricken, either strike the
4 evidence -- we're objecting to it. Either strike -- and I
5 know Defense is no objection, no objection. But we don't
6 know what we're objecting to until we get her file in our
7 hand because we thought we had it. So what I'm saying is
8 we object to all of her testimony. We object to
9 everything. We renew our previous objections to it. And
10 we say that there's two remedies: Strike the testimony or
11 grant us a mistrial. Those are the two remedies that, at
12 least, came to my mind during the 10-minute break we just
13 took. Otherwise, what would deter, what would deter law
14 enforcement to simply not give his file to Walt, so that
15 when Walt stands in front of you and says -- or Mr.
16 Wilkins. When Mr. Wilkins stands before you and says I've
17 given them everything I've got. He's telling the truth.
18 But if the law enforcement don't give it to him, he
19 doesn't now about it until the eve of trial. And we can't
20 prepare cases that way. There's no deterrence to law
21 enforcement about doing that. And we have to be on guard
22 during the entire trial looking for things we did not
23 know, which is impossible. Recommends. Order it out of
24 evidence or based on our objection, we make a motion to
25 strike the testimony or grant us a mistrial.

1 MR. WILKINS: Your Honor, just briefly. Just so
2 you know, there was a report generated about the
3 fingerprints being run through AFIS that was given to the
4 Defense. They've known that for four years, that the
5 fingerprints were run through AFIS, which narrowed down
6 the potential candidates that Jackie Kellet then compared
7 them to and came to her conclusion, which is the
8 most important thing to us, obviously, the actual,
9 comparison. So they've known there was an AFIS run. They
10 have the report on that. They've had that report.

11 Secondly, Mr. Mauldin has been down to P & E
12 with Rita Graham from my office on two separate occasions.
13 And we're offered -- go to latents, we offer that to you.
14 Thirdly, this didn't come about until they filed their
15 motion, and we went on a witch hunt after anything we
16 could find. And I think we came up -- they were arguing
17 about the report of comparison. And that was the crux of
18 their motion. So we didn't focus on anything regarding
19 AFIS because we were introducing anything regarding AFIS
20 and it wasn't evidence of anything. It was an
21 investigative tool used to get them to a potential
22 comparison. So it wasn't something that we even imagined
23 would be anything that they would want. Given the fact,
24 they knew it was run through AFIS.

25 So, you know, that's how -- we see zero

1 prejudice to them. It's a computer shot of fingerprint
2 card that they already have or had access to of the prints
3 that they had. And the only thing on there that they
4 didn't have access to was a list of 20 people that the
5 computer program had a report on. If they wanted the
6 report on those folks, they could have asked for it.

7 THE COURT: Well, here's my concern. I've heard
8 in these discovery conferences that you have given them
9 everything. Well, that is not the case. I don't --
10 Mr. McDougal has certainly found the -- a touch point,
11 which has potential for prejudice. I -- but the -- and,
12 you know, I'm not exactly sure what to do. I don't know
13 that the Solicitor's office policy is with respect to
14 obtaining the files from lawsuit. But even though the
15 prosecution may have not find a document to be relevant,
16 you have a different mind set than the Defense. So it is
17 important to produce all of the documents. But I don't
18 find that the -- and I agree, you've got a hard --

19 Mr. Mauldin, you make a point that you have to
20 come up with prejudice on the spot without having an
21 opportunity to mull it over and examine it. But Captain
22 Kellet's testimony was she took the first, I presume, the
23 highest score. That hasn't been asked, but I'm going to
24 presume she did it because she said she only examined one,
25 and found the match. So she found the match. And even

1 though there is this failure to disclose, I don't find
2 that this failure to disclose rises to the level which
3 would necessitate striking the testimony or the more
4 onerous remedy of a mistrial. But I would caution the
5 Solicitor's office that beginning now, that they make sure
6 that every single document in your position or in law
7 enforcement's possession has been produced. Because if
8 this is a pattern, then some form of deterrence has to
9 come into play. But at this point, I decline to grant
10 either one of your proposed remedies, Mr. Mauldin.

11 MR. WILKINS: Your Honor, that's so noted. And
12 just so you know, on two separate occasions, we sent
13 letters to every law enforcement witness, please, give us
14 everything that you have in your file. And I will
15 certainly review our policies with my office to make sure
16 that this does not become a pattern. It's important to me
17 as an officer of the court and as a longstanding
18 prosecutor as well.

19 THE COURT: We want to ensure that in these
20 prosecutions that justice is done for all parties. And I
21 don't think that it's -- in my assessment from the
22 prosecution side, you don't view these as important. And
23 they aren't important to you, but to the Defense, you
24 don't have their mind set and you don't see it from their
25 angle, and so it is important to them. And they may

1 have -- if they had these documents, hired an expert, you
2 know, I don't know what an expert would say, but they may
3 have -- I don't know how they would -- you know, they may
4 have disputed Captain Kellet's -- of course, I don't know
5 if they have an expert coming or not. But they may have
6 disputed her findings. But based on everything presented,
7 I decline to grant the remedies suggested.

8 Now, do you want to put her back on --

9 Yes, sir?

10 MR. MAULDIN: One moment, Your Honor. Your
11 Honor, one other alternative with the previous request
12 being denied, we're going to ask that the Court consider a
13 delay. What we have to do is we're going to immediately,
14 of course, attempt to have someone examine these records.
15 We're going to find an expert and have them examine the
16 records. We don't have an expert on our witness list on
17 fingerprints because we don't have but one page. I mean,
18 that was what the previous motion was about. But be that
19 as it may, we're asking for a delay in the trial until we
20 can have an opportunity to have an expert examine these
21 records and determine whether or not it's appropriate that
22 he testify to the invalid dependency on that particular
23 report.

24 THE COURT: Well, I'm going to decline that
25 request as well. Certainly, you can have those examined

1 and you can pursue that without delaying the trial.
2 Whether or not, you know, you have time to present
3 something in the trial is one thing. Whether or not it
4 comes up at a later date. But Captain Kellet has
5 testified she only examined one, the top one, it was a
6 match. There's been no question about that in her
7 testimony. And the significance of having someone else
8 talk about maybe it's a better practice to examine the top
9 two or top three as an attempt to attack the credibility
10 of this witness or the Greenville County forensic division
11 might be of some benefit, but I don't think it undermines
12 the reliability of the testimony that's been presented or
13 the findings of Captain Kellet.

14 MR. MAULDIN: All right. Then the last matter,
15 Your Honor, we would like an opportunity to have this file
16 duplicated. We want the duplication put into the record.

17 THE COURT: As a Court's Exhibit, we'll do that.

18 MR. MAULDIN: And we would ask that two copies
19 be made, Your Honor, one that we can now attempt to try to
20 find somebody to do something about on quick notice.

21 THE COURT: All right. We'll make the copies.
22 We'll make them. But do you all need Captain Kellet back
23 on the witness stand?

24 MR. MCDUGAL: I have no further questions for
25 her, Your Honor.

1 MR. WILKINS: I do have one brief redirect.

2 THE COURT: Okay. Well, let's -- what are they?
3 Are they things that can be run through this little copier
4 right here?

5 MR. MCDOUGAL: Yes.

6 THE COURT: Okay. Well --

7 MR. MCDOUGAL: They handed it up?

8 THE COURT: What do you want copied?

9 MR. MCDOUGAL: There's three pages we need
10 copied.

11 MR. MAULDIN: Two sets, please.

12 MR. MCDOUGAL: Your Honor, might I hand up
13 Captain Kellet's file as a Court's Exhibit?

14 THE COURT: Well, I'm not going to take the
15 file. All I want are the things you want in as a Court's
16 Exhibit. I'm not going to keep her file. So if you want
17 the whole thing copied as a Court's Exhibit, we'll copy
18 it.

19 MR. MCDOUGAL: Your Honor, I'm handing up three
20 pages right now to the Clerk right now, which we ask to be
21 included as a Court's Exhibit.

22 THE COURT: Well, let's tack with a stapler.

23 (WHEREUPON, Court's Exhibit No. 3 was marked for
24 identification and received into evidence.)

25 THE COURT: All right. Let's bring her back.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:20 p.m.)

3 THE COURT: All right. Mr. McDougal, any other
4 questions?

5 MR. MCDUGAL: No, sir, Your Honor. We would
6 ask that the witness not be excused subject to recall for
7 reasons --

8 THE COURT: That will be fine.

9 All right, Mr. Wilkins.

10 MR. WILKINS: Your Honor, brief redirect.

11 REDIRECT EXAMINATION

12 BY MR. WILKINS:

13 Q Captain Kellet, the Defense asked you about how you
14 remember all the points and you haven't made a
15 report. Do you examine those before you come and
16 testify?

17 A Yes. I have examined them several times when we've
18 had pre-trial conferences as well on this case.

19 MR. WILKINS: Thank you, no further questions.

20 THE COURT: Okay.

21 MR. MCDUGAL: Nothing else, Your Honor.

22 THE COURT: All right. Thank you very much,
23 Captain.

24 MR. CAMPBELL: State calls Vivian Young, Your
25 Honor.

1 THE CLERK: Ms. Young, if you would come forward
2 to be sworn in, please. Place your left hand on the
3 Bible, raise your right.

4 VIVIAN YOUNG, after being duly sworn, testified
5 as follows:

6 THE CLERK: Thank you, please be seated. Please
7 state your name for the record.

8 THE WITNESS: Vivian Young.

9 THE CLERK: Thank you.

10 (WHEREUPON, State's Exhibit Nos. 22, 24 & 25
11 were marked for identification only.)

12 DIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q Good morning, Ms. Young. Ms. Young, you work or go
15 to school?

16 A I go to school.

17 Q Okay. And are you married or single?

18 A Single.

19 Q Okay. Do you have any children?

20 A Yes, I have three.

21 Q Speak up just a little bit.

22 A Yes, I have three.

23 Q Okay. Thank you. Back in 2008, where did your
24 boyfriend work?

25 A At Labor Finders of Greenville.

VIVIAN YOUNG-DIRECT BY MR. CAMPBELL

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- 1 Q And were there times you would drive them to and from
2 work?
- 3 A All the time.
- 4 Q Okay. Now, do you know Mekole Harris?
- 5 A Yes, I know of her. When I stayed in Simpsonville, I
6 seen here a couple of times.
- 7 Q And did you ever see her at Labor Finders when you
8 were driving your boyfriend to work?
- 9 A Yes.
- 10 Q Okay. Do you know Clarence Jenkins, the Defendant?
- 11 A I don't know him, but I've seen him up there.
- 12 Q Okay. So you're saying you don't know him
13 personally, but you know who he is?
- 14 A Uh-huh.
- 15 Q Have you ever seen him before?
- 16 A Yeah. I mean, he stuck out in the area.
- 17 Q What area you talking about?
- 18 A Labor Finders. Compared to some of the other people
19 that worked up there, he stuck up like a sore thumb.
- 20 Q When you driving your boyfriend to work?
- 21 A Uh-huh.
- 22 Q Let's talk about the first time you saw Clarence in
23 regards to this case. Where was he?
- 24 A At Labor Finders.
- 25 Q Who was with him?

1 A The first time I saw him, he was by himself.

2 Q Okay. And what about around April, beginning of
3 April 2008, did you see Clarence at Labor Finders
4 then?

5 A Yeah.

6 Q Was anyone with him that time?

7 A The second time I seen him, he was with -- outside
8 with her up against the brick building.

9 Q Who's her?

10 A Mekole Harris.

11 Q I'm showing you what's been previously marked and
12 shown to the Defense as State's Exhibit 22, do you
13 know what that is?

14 A Labor Finders.

15 Q That's a picture?

16 A Yeah.

17 Q I'm showing you what's been previously mark and shown
18 to the Defense as State's Exhibit 24. When you say
19 you saw Clarence sitting on the wall, is that the
20 wall you're talking about?

21 A Yeah.

22 Q I'm showing you what has previously been marked and
23 shown to the Defense as State's 25. What is that?

24 A That's the inside of Labor Finders.

25 Q Okay.

VIVIAN YOUNG-DIRECT BY MR. CAMPBELL

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1 MR. CAMPBELL: Your Honor, State moves 24, 25
2 and 22 into evidence.

3 MS. ROSS: No objection.

4 THE COURT: All right. No objection.

5 (WHEREUPON, State's Exhibit Nos. 22, 24 & 25
6 were admitted into evidence.)

7 MR. CAMPBELL: Permission to publish to the
8 jury?

9 THE COURT: Yeah.

10 BY MR. CAMPBELL:

11 Q Okay, I just want to start with the first page. Can
12 you see that okay, Ms. Young?

13 A Yes, sir.

14 Q Now, this is State's 22. You said that's Labor
15 Finders?

16 A Yes.

17 Q Where would you park when you would take your
18 boyfriend to work?

19 A Sometimes right there where the white van was or in
20 the opposite direction where the trees are.

21 Q The first time you saw Clarence, you mentioned he was
22 sitting on a wall, where was he?

23 A Right there where the van.

24 Q On that wall back there?

25 A Yeah.

1 Q This is State's 24. Is that the wall you're
2 describing?

3 A Yes, sir.

4 Q So this is right behind where that van was parked in
5 the first picture?

6 A Yeah.

7 Q Okay. Now, you said Mekole Harris was sitting in
8 Clarence's lap on April 1st, 2008?

9 A Yeah.

10 Q Now, on April 3rd, 2008, did you see Clarence again?

11 A Yeah.

12 Q Okay. About what time of day was that?

13 A Around 3:00 or 4:00. Like when they get off and get
14 their checks.

15 Q You were going to pick him up at that time?

16 MS. ROSS: Your Honor, I object to leading at
17 this point.

18 THE COURT: Yeah, don't lead.

19 MR. CAMPBELL: Okay. All right.

20 BY MR. CAMPBELL:

21 Q Did you see anyone with Clarence?

22 A Excuse me?

23 Q Did you see anyone with Clarence that day?

24 A He was in the bathroom that day with her.

25 Q Okay. So there was another time you say Clarence

VIVIAN YOUNG-DIRECT BY MR. CAMPBELL

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1 with who?

2 A Yeah. I don't know what other woman he was up there
3 with.

4 Q Okay. Did you see Clarence again with Mekole Harris?

5 A Uh-huh. That was the day, the last time I seen her
6 in the bathroom. And he was like sticking his head
7 out the door.

8 Q You're talking about the bathroom. I'm going to show
9 you State's 25. Can you describe this scene for the
10 jury, please?

11 A That's the soda machine where I seen her standing at
12 before I came in there that day. And the bathroom is
13 where the wooden door is, and he had his head
14 sticking out waiting on her.

15 Q Who's he?

16 A Clarence.

17 Q Okay. Clarence had his head sticking out. What
18 happened next?

19 A And she asked a couple of people for a light and she
20 asked me for a light. And I gave it to her. And she
21 went back in the bathroom with him.

22 Q With Clarence?

23 A Yeah.

24 Q And that was the last time you saw Mekole Harris?

25 A Uh-huh.

1 Q Did you still go back to Labor Finders to pick up
2 your boyfriend after that?

3 A Uh-huh.

4 Q Did you ever see Mekole Harris at Labor Finders
5 again?

6 A Huh-uh.

7 Q Okay.

8 MR. CAMPBELL: Please answer any questions that
9 the Defense has for you.

10 CROSS-EXAMINATION

11 BY MS. ROSS:

12 Q Now, you said you go and pick up your boyfriend.
13 Would you get out of the car and go and hang out at
14 Labor Finders, is that what you're saying?

15 A That day, I got out the car. And that's -- you know,
16 because of -- she was like the only woman, actually,
17 hanging out in the area. And being the way I was
18 about my boyfriend, yeah, I went in there to make
19 sure she wasn't trying to talk to him or whatever.

20 Q So you were watching her to make sure she wasn't
21 talking to your boyfriend?

22 A Yeah, that was the only woman like -- yeah, of
23 course.

24 Q Isn't it true that you didn't know Clarence Jenkins'
25 name or anything and you referred to him as nerdy?

VIVIAN YOUNG-CROSS BY MS. ROSS

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- 1 A Yeah, he stood out. I mean, compared to everybody up
2 there, not being judgmental, yeah, he stood out. He
3 didn't look like he belonged there.
- 4 Q What do you mean by that. He didn't look like he was
5 a worker or didn't look tough or?
- 6 A As far as tough, no. Most of the guys that were up
7 there looked like they were hard workers. He looked
8 like he needed to be, basically, sitting somewhere in
9 college.
- 10 Q He had on glasses, right?
- 11 A Yeah. Not just because of his glasses, I wear them,
12 too.
- 13 Q And he didn't look like he does today, he was
14 chubbier, right?
- 15 A He was chubby.
- 16 Q He had round glasses, right?
- 17 A Uh-huh.
- 18 Q Now, the only way you that -- you said you knew
19 Mekole Harris from high school?
- 20 A Yeah, I knew her from growing up. I stayed in
21 Simpsonville and she -- yeah.
- 22 Q And you didn't want her hanging around your
23 boyfriend?
- 24 A It's not that I didn't want her to. I don't own
25 Labor Finders.

1 sworn in, please. Please place your left hand on the
2 Bible and raise your right.

3 GRACE DAVIS, after being duly sworn, testified
4 as follows:

5 THE CLERK: Thank you, you may be seated. State
6 your name for the record.

7 THE WITNESS: Grace Davis.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. CAMPBELL:

11 Q Good morning, Ms. Davis, how are you?

12 A Good morning.

13 Q Where do you live?

14 A [REDACTED] Clark Street.

15 Q Who lives there with you?

16 A Me, my son, my daughter, my two sons.

17 Q Okay. Do you work?

18 A No.

19 Q Do you go to school?

20 A I was, I'm going to have to start back going.

21 Q So you're a full time mom now?

22 A Yes.

23 Q Are you married?

24 A No, divorced.

25 Q Divorced. Who were you married to?

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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- 1 A Willie Frazier Davis.
- 2 Q Okay. Where did he work?
- 3 A I'm not sure at this time because he had different
- 4 jobs.
- 5 Q Okay. And I want to take your attention back to
- 6 August of 2007. When did you leave Willie?
- 7 A I left him two days before my birthday, that was
- 8 August 4thm, after I came back from a victim's class.
- 9 Q And who were you living with then?
- 10 A After I had left there, I had called Clarence's
- 11 sister and she had came and picked me up from the
- 12 house.
- 13 Q How did you meet Clarence's sister?
- 14 A Through the victim's class. She was going to the
- 15 victim's class with me.
- 16 Q Then where did you live?
- 17 A I went back over there to Janese Gibbs house for a
- 18 couple weeks. Then after that, she got me into the
- 19 victim's program over there on Augusta Road where
- 20 there's a house for victims and their kids.
- 21 Q Okay. So did you ever meet Clarence Jenkins?
- 22 A I did not meet him until that Sunday prior after that
- 23 while I was staying with her.
- 24 Q How did y'all get to know one another?
- 25 A Well, somehow, they say he was coming over to the

1 house. But at the time, I did not know he was
2 married and he had a wife. That was not brought up
3 to my attention.

4 Q Okay. And so did you meet Clarence that day?

5 A I met him that Sunday night.

6 Q How much time did you spend with him?

7 A I had talked to him for like 12:00, 1:00, 2:00 that
8 morning.

9 Q Okay. Did you see him again?

10 A Yeah, I had seen him again.

11 Q What kind of relationship did you and Clarence have?

12 A First, we had talked, first of all. And like I said,
13 I was trying to get to know him, not just thinking.
14 Later on, on my birthday, we had went back to his
15 house to the trailer.

16 Q Okay. Did anything transpire at the trailer?

17 A Yes.

18 Q Okay. Was this a new point in your relationship?

19 A We had messed around.

20 Q Okay. When you say messed around, what does that
21 mean, I'm sorry?

22 A We had got intimate together.

23 Q Okay. And then what happened? When was the next
24 time you saw Clarence?

25 A Shoot, that Sunday after that, when I turn around and

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 went -- well, that Sunday, when we was over there, we
2 had went back to his -- Carmen's house. And that's
3 that Sunday that I got locked out the shelter.

4 Q Okay. When you got locked out of the shelter, what
5 happened?

6 A When we was over Carmen's stepmother house, her
7 foster mother house, they gave me the number to get
8 back in contact them just case I didn't get in the
9 shelter.

10 Q Did you call that number?

11 A Yeah, I had called. By the time I got back to the
12 shelter, the gates was locked and I could not get
13 back in.

14 Q Who's number was it?

15 A It was Carmen's number.

16 Q Did Carmen known about your previous activities with
17 Clarence?

18 A I told her that Sunday when I went over there after
19 we had came back from Wal-Mart that night. Because I
20 noticed a tension when I turned around and got out
21 the car with Clarence and I happened to glance around
22 and I looked. And I was like, What's going on? I
23 got to talk to somebody. And the first thing hit my
24 head was this must be his wife. But didn't nobody
25 tell me. And that Sunday when we went back to her

1 mother's house, that's when I turned around and I
2 told her that I was not his cousin, that I had been
3 intimate with him.

4 Q Okay. Did Carmen -- had Carmen been led to believe
5 that you were his cousin?

6 A She said she did not believe it because it did not
7 sound right.

8 Q Okay. And so what did you do after you called the
9 number?

10 A I had to walk to the Citgo to use the pay phone
11 because I was locked out, me and my three kids.

12 Q Did anyone respond to your phone call?

13 A Carmen and Clarence came and picked me up from the
14 Citgo down the street. That when we had went back to
15 Lulu Lane.

16 Q And did you go with them back to Lulu Lane?

17 A Yes.

18 Q Okay. How long did you stay at Lulu Lane?

19 A Month a couple months.

20 Q So did you consider you had moved in there?

21 A Yes.

22 Q Okay. And after a couple of months, did you ever
23 move from Lulu Lane?

24 A After that, I did move because we had move to Tindal
25 Avenue, over there by Cherry Dale.

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 Q How did you get the money to move to Tindal avenue?

2 A I don't even know because at that time, Clarence and
3 Carmen try to get me to get it from my daddy. And I
4 went to see Eric and when I went to see Eric, it was
5 Clarence, he got out the car with me. And that's
6 when I told Eric because I did not feel right at the
7 time asking him for money.

8 Q Now, you mentioned Tindal Avenue. The place you
9 moved to, is it Tindal Avenue or Tindal Road?

10 A The trailer park.

11 Q Were you moved to, is it --

12 A It's over there by Cherry Dale.

13 Q Is the street name Avenue or Road?

14 A Road.

15 MS. ROSS: I object to leading.

16 THE COURT: That's all right. Go ahead and ask
17 that.

18 BY MR. CAMPBELL:

19 Q So Tindal Road?

20 A Yes.

21 Q Just wanted to clarify that. So you said you went to
22 talk -- to get some money from your dad. Slow down
23 and go step by step. Where did you go to talk to
24 your father?

25 A First, I went to Greenville car wash.

- 1 Q Why did you go there?
- 2 A To talk to Eric.
- 3 Q Who is Eric?
- 4 A Eric was my father's bossman at the Greenville car
5 wash.
- 6 Q And why did you go so see Eric?
- 7 A Because at that time, Clarence and Carmen said they
8 needed money to move off of Lulu Lane over there by
9 White Horse Road.
- 10 Q So why would you go to see Eric as opposed to your
11 father?
- 12 A Because he's the one that take care of my daddy's
13 money.
- 14 Q Okay. And when you went to see Eric, did Clarence go
15 with you?
- 16 A Yes.
- 17 Q Did Carmen go with you?
- 18 A Yes.
- 19 Q Okay. And did you -- what did you ask Eric?
- 20 A I had asked Eric for like 500 or \$600.
- 21 Q Okay. Did Eric accept or deny your request?
- 22 A He denied it, told me to go talk to my father.
- 23 Q Okay. So did you go see your father?
- 24 A Yes, I did.
- 25 Q Where did you father live at the time?

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 A Hardell Drive.

2 Q Did you ask him -- what did you ask your father?

3 A I had turned and I asked my father, I said, Daddy,
4 could you give me some money? And he was like, For
5 what? I said because we getting ready to move.

6 Q How did he respond?

7 A He was like, You tell me what it's for. And I just
8 didn't go on and he said something ain't right.

9 Q Okay. Did your father give you any money?

10 A No.

11 Q Okay. Did you ever move?

12 A Yes, we ended up moving.

13 Q Where did you move to?

14 A Tindal Avenue over there by Cherry Dale.

15 Q Okay. All right.

16 MR. CAMPBELL: Beg the Court's indulgence, Your
17 Honor.

18 (WHEREUPON, State's Exhibit Nos. 27-29 were
19 marked for identification only.)

20 BY MR. CAMPBELL:

21 Q So you moved to Tindal Road, who moved with you?

22 A It was me, Carmen, Clarence and my kids.

23 Q Okay. I'm going to show you what's been previously
24 marked and shown to the Defense as State's No. 27, 28
25 and 29. This is No. 27, do you recognize that?

1 A Yes.

2 Q Okay. And what is that?

3 A That's the parking area of where the trailer was
4 where we had stayed.

5 Q What was the address?

6 A I'm not sure about the address, but I know it was on
7 Tindal.

8 Q Okay. I'm going to show you what's State's 28. Do
9 you recognize that?

10 A Yes.

11 Q What is it?

12 A On Tindal Avenue, that's the trailer park that we
13 stayed in.

14 Q Okay. Is this a photograph?

15 A Yes, of the trailer.

16 Q Okay. And I also want to show you State's 29. What
17 is that?

18 A The trailer and the blue van, that's where we stayed
19 at the time.

20 MR. CAMPBELL: Your Honor, the State moves 27,
21 28, 29 into evidence.

22 MS. ROSS: No objection.

23 MR. CAMPBELL: Permission to publish?

24 THE COURT: All right.

25

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 (WHEREUPON, State's Exhibit Nos. 27-29 were
2 admitted into evidence.)

3 BY MR. CAMPBELL:

4 Q Okay. Let's start with 27. All right. Please tell
5 the jury again what this is.

6 A This is the trailer park where we were staying on
7 Tindal Avenue.

8 Q Okay. And this is State's 28. Please tell the jury
9 what this is.

10 A The trailer with the blue van where we was staying at
11 at the time.

12 Q Whose van is that?

13 A Clarence and Carmen's van.

14 Q Okay. Please tell me what this is?

15 A The trailer park and van that was parked where was
16 staying at the time on Tindal Road.

17 Q Okay.

18 (WHEREUPON, State's Exhibit No. 102 was marked
19 for identification only.)

20 BY MR. CAMPBELL:

21 Q Okay, Ms. Davis, I'm showing you what's been marked
22 as State's Exhibit 102. Do you know what that is?

23 A Yes.

24 Q What is it?

25 A It's the trailer we lived in.

1 Q Okay. And so that was the trailer that y'all lived
2 in?

3 A Right.

4 MR. CAMPBELL: Your Honor, the State moves 102
5 into evidence that we intend to publish to the jury.

6 MS. ROSS: No objection.

7 MR. CAMPBELL: And for demonstrative purposes,
8 we have a larger image.

9 (WHEREUPON, State's Exhibit No. 102 was admitted
10 into evidence.)

11 BY MR. CAMPBELL:

12 Q All right. Ms. Davis, do you know how to use a laser
13 pointer?

14 A No, sir.

15 Q You think you can figure it out?

16 A Yes, sir.

17 Q Okay. Okay. If you would, please, on this diagram,
18 tell the jury what rooms are indicated and where
19 everyone stayed on Tindal Road.

20 A This bedroom right here this is where me, Clarence
21 and Carmen stayed. This was the main bathroom, the
22 bedroom. The kitchen, the living room, the middle
23 bedroom where my son's room was and this right here
24 was the front bathroom that was connected to my
25 daughter's bedroom.

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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- 1 Q Is there anything else indicated?
- 2 A This is front porch right here and that was the van
- 3 right there.
- 4 Q All right. Did y'all have a phone at that residence?
- 5 A Yes.
- 6 Q Did you have an answering machine?
- 7 A Yes.
- 8 Q Was there a recording on the answering machine?
- 9 A Yes, at the time, it was.
- 10 Q Okay.
- 11 A Because we had an answering machine.
- 12 Q All right.
- 13 (WHEREUPON, State's Exhibit No. 123 was marked
- 14 for identification only.)
- 15 BY MR. CAMPBELL:
- 16 Q Okay. I'm showing you what's been previously marked
- 17 as State's 123, do you recognize that?
- 18 A Yes.
- 19 Q What is it?
- 20 A The tape of the answering machine.
- 21 Q Okay. Whose voice is on that tape?
- 22 A Clarence Jenkins.
- 23 Q This was the answering machine from the phone at
- 24 Tindal Road?
- 25 A Right.

1 Q Okay. Now, let's back up to -- going through a lot
2 of evidence here. Let's back up. What kind of
3 relationship did you have with Clarence?

4 A We had just started to know each other real good.
5 Then as we start to know each other real good, we
6 started talking. And it was to the point where we
7 worked like at the job, whatever, so when he get off,
8 we sit up and we'll talk, but he also bring something
9 to drink home to calm his nerves. When we would get
10 together, he would talk. And it had bonded just as
11 far as talking, not just be intimate.

12 Q So your testimony is you had an intimate relationship
13 with Clarence?

14 A Right.

15 Q What kind of relationship did you have with Carmen?

16 A Probably at the time, we had -- well, I just talk to
17 her at the time. But she was not that type just so
18 open up like that. And after that time, after
19 Clarence had went to prison at that time, that when
20 she started opening up and talking to me. That's
21 when I asked her, I said, how come you ain't never
22 just opened up. She was like because I couldn't talk
23 to you like that in front of Clarence because he be
24 trying to listen to everything.

25 Q Okay. So what do you mean by that, she couldn't--

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 MS. ROSS: Again, I object to hearsay as well
2 and leading.

3 THE COURT: Well, don't ask her to speculate.
4 BY MR. CAMPBELL:

5 Q What did you observe in Carmen's behavior around
6 Clarence?

7 A Carmen's was like, she was nervous and all at the
8 same time, she was relaxed.

9 Q Okay. Who gave instructions around the house? Who
10 ran the house?

11 A Well, Clarence ran the house. But like when he be at
12 work, Carmen usually run the house.

13 Q Okay. So if Clarence told you or Carmen to do
14 something, did you follow his instruction?

15 A I did at the time.

16 Q Did Carmen follow Clarence's instructions?

17 A Half of the time.

18 Q She followed his instructions when he was at home?

19 MS. ROSS: I object to leading, Judge.

20 THE COURT: Don't lead.

21 BY MR. CAMPBELL:

22 Q Okay. So while you were welcome, you developed a
23 intimate relationship with Clarence and Carmen?

24 A Right.

25 Q Did this continue when you moved to Tindal Road?

1 A Yes, at the time, it did.

2 Q When did Clarence go to prison?

3 A He went to prison August of '07.

4 Q How long was he gone?

5 A Until the end of November '08.

6 Q Okay. How did yours and Carmen's relationship change
7 during that time?

8 A At that time, I had began to know Carmen and I had
9 began to talk to her because I had to teach her how
10 to open up because she was real quiet. And all at
11 the same time, when you bond together, we turned
12 around and we had an intimate relationship together
13 while Clarence was in prison.

14 Q Did either you or Carmen work during that time?

15 A Carmen, she had got a job at Sports Authority on
16 Laurens Road.

17 Q Now, I need you to clarify when you said how long
18 Clarence was gone.

19 A The date was August 2007.

20 Q Okay. Do you know the time when he came back?

21 A It was November of '08. But I don't know no other
22 date that he came back.

23 Q When Clarence got out of jail?

24 A When he got out of jail. I know he wasn't there in
25 November. That was around Thanksgiving time. So it

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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1 had to be around the end of November of '08. I'm not
2 sure.

3 Q How many months was he gone?

4 A I'd say three at the most.

5 Q Okay. Now, when Clarence came back, did your
6 relationship with Carmen change?

7 A No, it was still the same.

8 Q Okay. Did Clarence -- did Clarence become involved
9 in the relationship?

10 A Yes.

11 Q Okay. How did the three of yours relationship change
12 once Clarence returned?

13 A When Clarence had returned, he ask Carmen, he was
14 like, are you involved with Grace? Have you fell in
15 love with her? He was like let me see, see if you
16 really got feelings for her. The next day, me and
17 Carmen had got intimate that night and that's when he
18 noticed -- he told Carmen that yes, you done fell in
19 love with her, so do you want me out of the picture
20 and she said yes.

21 Q What did Clarence do next?

22 A He didn't do anything.

23 Q Okay.

24 (WHEREUPON, State's Exhibit No. 111 was marked
25 for identification only.)

1 BY MR. CAMPBELL:

2 Q Okay. I'm going to show you what has been marked and
3 shown to the Defense as State's 111. Do you
4 recognize that?

5 A Yes.

6 Q What is it?

7 A That was about intimate covenant.

8 Q Okay. What does that mean?

9 A Between me, Clarence and Carmen.

10 Q Okay. Who signatures are these?

11 A Clarence, mine and Carmen.

12 Q What name did you use to sign this document?

13 A Grace Davis Jenkins.

14 Q Did you ever have the last name Jenkins?

15 A No.

16 Q Why did you sign your name Grace Davis Jenkins.

17 A Because he would not let me sign it Davis.

18 Q Did you have an ID during this time?

19 A Yes.

20 Q Did you have any other identifying information at
21 this time?

22 A Yes.

23 Q Did your children have birth certificates at this
24 time?

25 A Yes.

GRACE DAVIS-DIRECT BY MR. CAMPBELL

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- 1 Q Where did you keep those documents?
- 2 A They were kept in Clarence wallet.
- 3 Q Why did Clarence keep this information?
- 4 A Because he said he did not want me losing important
- 5 stuff. Birth certificate, social security card and
- 6 my picture ID was too important for me to lose. And
- 7 he said he want to keep them on him at all times.
- 8 Q Now, while you were at Tindal Road, did DSS become
- 9 involved with your children?
- 10 A Yes.
- 11 Q When was that?
- 12 A It was the day I had to go to court and I was late
- 13 showing up for court that day.
- 14 Q Okay. Do you remember about what time of the year it
- 15 was?
- 16 A It was 2007, about 2007, close to 2008, one of those.
- 17 Q Okay. As a result of DSS involvement, what happened
- 18 to your kids?
- 19 A When I went to court, I arrived late. They came out
- 20 and they had took my kids out of the car and took
- 21 them into protective custody.
- 22 Q Where did you kids go?
- 23 A At that time, they were staying with my Aunt Sue
- 24 Pearl.
- 25 Q As a result of DSS getting involved with your

1 children, what did you intend to do at that time?

2 A At that time, I intended to find a plan to get out
3 from staying with them so I can get my kids back
4 because my kids are more important than anything.

5 Q What was your mental state at that time when you were
6 planning to get out?

7 A My mental state at that time, after I lost my kids,
8 my heart dropped. And the only thing I could do was
9 think about how I was going to escape or how I was
10 going to get out. Because this was not my plan to
11 stay here. So at that time, I planned -- I made a
12 plan. I sat down in the living room and I watched
13 TV.

14 Q Why didn't you leave that day?

15 A Because I didn't want to leave that day. I had to
16 plan it out that Sunday.

17 Q Why did you need a plan?

18 A Because the time, if I would have left, it would have
19 been at night when I left. It wouldn't have been in
20 the daytime.

21 Q Why would you not leave during the daytime?

22 A At that time, I had to think of a strategy and a
23 plan. I just couldn't walk out because, at that
24 time, he had my birth certificate, social security
25 card and picture ID and my food stamp card. And I

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- 1 would have to get that information from him in order
2 to leave.
- 3 Q So when was it that you left the Jenkins house?
- 4 A March 16th, on Easter Sunday, 2008.
- 5 Q Did you tell Clarence or Carmen you were leaving?
- 6 A I told Carmen that night, on March 15th.
- 7 Q Did you tell Clarence?
- 8 A No, Carmen told Clarence.
- 9 Q How did Carmen react to you moving?
- 10 A She got a little upset. She said she could smack me
11 right now.
- 12 Q How did Clarence react to you moving?
- 13 A He got a little bit upset, also.
- 14 Q So you left on Easter Sunday. How did you leave?
- 15 A On foot, I walked.
- 16 Q And were you able to get your information?
- 17 A Yes, I had to wait to get the information for him to
18 bring it out the bedroom because I slept on the couch
19 that night.
- 20 Q How did he react when you asked for your information?
- 21 A He said I'd have to wait on it. When he ready to
22 give it to me, he'll give it to me.
- 23 Q So he did not give it to you immediately?
- 24 A Right.
- 25 Q Were you able to get your information?

1 A Yes, I was able to get it.

2 Q Okay. As you were leaving, what happened?

3 A As I was leaving, I walked off the porch, getting
4 ready to leave Tindal Avenue. And that's when
5 Clarence had called me back. And as I went back and
6 I had opened up the door, that's when I had looked, I
7 was getting ready to walk in and he was standing
8 beside the door on the left-hand side with the
9 machete in his hand--

10 MS. ROSS: Objection. I object to relevance,
11 Your Honor.

12 THE COURT: Well, overruled. I'm going to allow
13 it.

14 Go ahead.

15 BY MR. CAMPBELL:

16 Q So when you walked back and looked inside the door?

17 A Looked inside the door, and I had to step in. I see
18 him standing over the left hand side with a machete
19 in his hands sticking out. That's when I looked down
20 and I seen it. And he was laughing.

21 Q He laughed?

22 A Laughing.

23 Q Did you say anything to Clarence?

24 A No, I just look at him.

25 Q Did he say anything to you?

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1 A Yes. I looked and he just laughed. And he was like,
2 I can't kill you. I'm just going to let you go ahead
3 and go because I can't kill you.

4 Q Okay. Now, you said you left on foot. Did you leave
5 at that time?

6 A Yes, I left right after that. I walked back out.
7 After I got my information, I walked on foot.

8 Q How did you feel as you were leaving?

9 A It was like a relief, but all at the same time, I
10 really wasn't relieved because of my kids.

11 Q Okay. Now, where did you go when you left?

12 A After I left, I went to my momma's house on Rose
13 Avenue.

14 Q Okay. And did you have any more contact with
15 Clarence and Carmen Jenkins?

16 A At that time, I did not call them. They contacted me
17 and Carmen asked me was I coming back. And I told
18 her no.

19 Q Okay. How did you -- how did you talk to Carmen?

20 A On the phone because my mom and my sister was in the
21 bedroom at that time when I had got the phone call.

22 Q Who called you?

23 A Carmen had called me.

24 Q Okay. What did she want?

25 A She asked me was I coming back and I told her no, I

1 have no reason to come back.

2 Q Okay. Have you seen video from the Greenville County
3 Library in this case?

4 A No.

5 Q I need you to answer the question?

6 A No.

7 Q Okay. Do you recall looking at video on the
8 computer, surveillance video at the Greenville County
9 Library?

10 A Yes.

11 (WHEREUPON, State's Exhibit Nos. 30-32 were
12 marked for identification only.)

13 BY MR. CAMPBELL:

14 Q Okay. I'm showing you what's previously been marked
15 as State's 30, 31, and 32. What is this?

16 A Carmen and Clarence.

17 Q Okay. Is that the same as the video you watched from
18 the library?

19 A I believe so, yes.

20 Q I'm showing you State's 31?

21 A That's Clarence.

22 Q Is that the same as the video you watched from the
23 library?

24 A Yes, coming out of the library, yes.

25 Q State's 32?

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1 A That's Carmen and Clarence coming out together.

2 Q Is that the same as the video you watched from the
3 library?

4 A Yes, sir.

5 MR. CAMPBELL: Your Honor, the State moves 30,
6 31 and 32 into evidence.

7 MS. ROSS: Your Honor, I think --

8 MR. CAMPBELL: I withdraw that, Your Honor. I
9 withdraw that. We'll leave these marked for
10 identification only at this time.

11 That's all the questions I have for you. Please
12 answer any questions the Defense may have.

13 BY MR. CAMPBELL:

14 Q Oh, I'm sorry, one more question I do have. When you
15 were leaving Tindal Road on foot, did anyone come
16 after you?

17 A Yes, Carmen.

18 Q What did Carmen want?

19 A She wanted the ring.

20 Q Where did you get the ring?

21 A Clarence had got it from Color Time, the rental
22 center place.

23 Q Okay. Was it only one ring?

24 A He had bought Carmen a wedding band and got me an
25 engagement.

1 Q Okay. Did Clarence have a ring?

2 A No.

3 Q Okay. When did you get those rings?

4 A I'm not sure the day that we got them.

5 Q Was that before or after these vows were written that
6 we just looked at, State's 111?

7 A That was afterward.

8 Q Okay.

9 MR. CAMPBELL: For the record, Your Honor, the
10 State moves 111 into evidence.

11 MS. ROSS: No objection.

12 THE COURT: All right, without objection.

13 (WHEREUPON, State's Exhibit No. 111 was admitted
14 into evidence.)

15 MR. CAMPBELL: That's all the questions I have.
16 Please answer any the Defense has for you.

17 CROSS-EXAMINATION

18 BY MS. ROSS:

19 Q Ms. Davis, my name is Susannah Ross, I represent
20 Clarence Jenkins. Now, when you were in the class
21 and it was a -- what kind of class was it, victim's
22 class?

23 A Yes.

24 Q You bonded with Janese Gibbs; didn't you?

25 A We both -- all of us was victims.

GRACE DAVIS-CROSS BY MS. ROSS

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1 Q Right. She's Clarence Jenkins' sister, right?

2 A Yes.

3 Q She asked you -- gave you a place to live and allowed
4 you to come stay with her, correct?

5 A Yes.

6 Q And then she found you a space in Shepherd's Gate
7 where you could stay in a safe place with your family
8 at Shepherd's Gate?

9 A Yes.

10 Q And that was her who found that for you?

11 A Yes.

12 Q And she told you any time that you needed anything,
13 she would help you? Y'all had talked about things
14 before, hadn't you?

15 A Yes.

16 Q And she offered her help to you before?

17 A Yes, at that time.

18 Q All right. Now, just going back to a couple of
19 things. Did you have a computer at the trailer? Did
20 you ever get a computer at the trailer when you were
21 there?

22 A Yeah, there was a computer at the trailer.

23 Q Right. And Carmen had rented that computer, hadn't
24 she?

25 A I believe so, yes.

1 Q And the rental agreement was in her name?

2 A Yes.

3 Q And the trailer was rented in her name as well,
4 wasn't it?

5 A Yes.

6 Q And the van that you see right here was in her name
7 as well, so all these things were in the name of
8 Carmen Jenkins, not Clarence Jenkins, right?

9 A I didn't know at that time.

10 Q These are the trailers -- which trailer were y'all
11 in, this first one or the second one?

12 A The light blue trailer where the van is parked at.

13 Q The second one down there. And people were staying
14 in all the trailers right next door? Right there,
15 there's a person there and there's a car at this
16 trailer. And about 10 feet over is your trailer and
17 then another trailer, correct?

18 THE COURT: Which exhibit are you referring to
19 just for the record.

20 MS. ROSS: I apologize, this is State's Exhibit
21 29.

22 THE COURT: Thank you, very much.

23 BY MS. ROSS:

24 Q So that was the Tindal Street address where you moved
25 in when you, Carmen and Clarence were the three

1 together, along with your children?

2 A Yes.

3 Q Okay. Now, sometime in April, your family members
4 got some threatening letters; do you recall that?

5 A Yes.

6 Q End of March, April. And do you recall that an Amber
7 Allen, a police officer, called you about those
8 threatening letters and spoke to you on the phone?

9 A I don't remember.

10 Q Do you have any recollection of your family being
11 concerned about these letters that they received in
12 the mail?

13 A Yes.

14 Q Now, they received back on April -- I think
15 March 30th, April 1st, and then an investigation was
16 done by police on April 2nd. Do you recall that?

17 A Yes.

18 Q Now, on April 2nd, you spoke to lawsuit to a female
19 officer named Amber Allen, didn't you?

20 A I believe so.

21 Q Do you recall talking to her?

22 A Yes, I believe so. I'm not sure.

23 Q Do you recall stating that you hadn't witnessed the
24 Jenkins exhibit any kind of violent behavior when you
25 spoke to Ms. Allen on April 2nd?

1 A No.

2 Q Well, would it surprise you if her police report
3 reflected that as what you said to her?

4 MR. CAMPBELL: Objection.

5 THE COURT: What?

6 MR. CAMPBELL: Your Honor, she's never seen that
7 document. She can't cross-examine her with a police
8 report.

9 THE COURT: I'm going to sustain that.

10 MS. ROSS: All right.

11 BY MS. ROSS:

12 Q So is it your testimony that you didn't say that?

13 A I didn't. Because I left March 16th of 2008 from the
14 Jenkins' home.

15 Q So on April 2nd of 2008, you received a phone call
16 from a police officer regarding these threatening
17 letters that had been give to you family members?

18 A I didn't know anything about the threatening letters
19 at the time until they came and picked me up.

20 Q So it's your testimony that you had no idea anything
21 about the threatening letters that your family
22 received?

23 A No, not at that time.

24 Q And it's your testimony that when you talked to law
25 enforcement that you did not say that the Jenkins had

1 not exhibited any kind of threatening behavior?

2 A At that time, it was threatening because there was
3 knives and everything else in the trailer park.

4 Q Well, you're saying that, but when you talked to the
5 police officers, when you first talked to them on the
6 phone, you said that you had never seen the Jenkins
7 exhibit any kind of violent behavior, didn't you?

8 A I didn't talk to them on the phone because the only
9 thing I remember is they came and picked me up from
10 my cousin's house. That's the only time I knew about
11 the letters.

12 Q So it's your testimony you never got a call from law
13 enforcement and you never talked to Officer Amber
14 Allen on the phone on April 2nd?

15 A No, no, I didn't. Because I do not remember at that
16 time.

17 Q All right. Now, going back to the relationship,
18 isn't it true that when Clarence came back from being
19 away for three months, he stated what was the plan
20 and Carmen said, she was willing and free to say that
21 she wanted him out of the picture?

22 MR. CAMPBELL: Objection, Your Honor. This is
23 hearsay.

24 MS. ROSS: She testified before that when
25 Clarence came back Carmen said.

1 THE COURT: Yeah, I'm going to -- go ahead.

2 BY MS. ROSS:

3 Q Isn't that correct?

4 A Yeah, she turned around and she said that she had
5 fell in love with me, she no longer wanted Clarence
6 in the picture between me and her both.

7 MS. ROSS: All right. I've got no further
8 questions.

9 THE COURT: All right. Anything else?

10 MR. CAMPBELL: No thank you, Your Honor.

11 THE COURT: All right. You can step down.

12 Thank you.

13 MR. CAMPBELL: We'd like for her to be excused.

14 THE COURT: Any objection?

15 MS. ROSS: No objection.

16 THE COURT: All right. You're released.

17 MR. CAMPBELL: Your Honor, the State calls Eric
18 Harris to the stand.

19 THE CLERK: Mr. Harris, if you'd come forward to
20 be sworn in, please. Please place your left hand on the
21 Bible, raise your right.

22 ERIC HARRIS, after being duly sworn, testified
23 as follows:

24 THE CLERK: Thank you, you may be seated.
25 Please state your name for the record.

GRACE DAVIS-CROSS BY MS. ROSS

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1 THE WITNESS: Eric Eugene Harris.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. CAMPBELL:

5 Q Mr. Harris, where do you work?

6 A Greenville car wash.

7 Q Okay. Where did you work in April 2008?

8 A At Greenville car wash.

9 Q All right. Do you know Grace Davis?

10 A Yes, I did.

11 Q Who was Grace's father?

12 A Marvin Poole.

13 Q Where does he work? Where did he work?

14 A At the time, he worked at Greenville car wash.

15 Q Okay. And did you ever have occasion to receive an
16 unusual letter from Marvin Poole?

17 A Yes, I did.

18 Q Okay.

19 (WHEREUPON, State's Exhibit No. 112 was marked
20 for identification only.)

21 BY MR. CAMPBELL:

22 Q Do you recall when that was?

23 A I really don't know.

24 Q Okay.

25 A It's been a while.

- 1 Q Do you recall about the time of year, month?
- 2 A About two years ago, I guess. Been that long.
- 3 Q Okay. Okay.
- 4 A I don't know.
- 5 Q I'm showing you what's been previously marked and
- 6 shown to the Defense State's Exhibit 112, do you
- 7 recognize that?
- 8 A Yes.
- 9 Q Is that the letter that you received from Marvin
- 10 Poole?
- 11 A Yes.
- 12 Q How did you get that letter?
- 13 A He gave it to me personally.
- 14 Q Okay. What did you do with it?
- 15 A I took it down to the police station.
- 16 Q Okay. Prior to receiving that letter, did Grace ever
- 17 come to the car wash?
- 18 A Yes.
- 19 Q And did she talk to you?
- 20 A Yes.
- 21 Q How long before you got that letter did she come
- 22 around the wash?
- 23 A About a month later.
- 24 Q Okay. Which came first?
- 25 A Grace came first, then the letter came next.

- 1 Q Okay. Who was with -- was anyone with Grace?
- 2 A Yes, it was -- I don't remember their name, but a guy
- 3 and a girl with her.
- 4 Q Do you see the guy who came there in this courtroom
- 5 today?
- 6 A Yes.
- 7 Q Could you point him out?
- 8 A Right over there.
- 9 Q Could you describe what he's wearing?
- 10 A I don't remember -- now?
- 11 Q Today, yes.
- 12 A Blue shirt.
- 13 Q And when Grace came to the car wash, what did she
- 14 want?
- 15 A She wanted some money to get a bigger place for them
- 16 to stay in.
- 17 Q What did you tell her?
- 18 A I told her no.
- 19 Q Okay. Did you know Clarence Jenkins at the time.
- 20 A No, hadn't seen him before.
- 21 Q Did you know the girl he was with at the time?
- 22 A No.
- 23 Q Who did you talk to?
- 24 A I talked to Grace at first.
- 25 Q Did you talk to anyone else?

1 A He mentioned something about the money, and I said
2 no.

3 Q Who is he?

4 A Clarence.

5 Q Okay. And --

6 MR. CAMPBELL: Thank you. Oh, excuse me.

7 Beg the Court's indulgence, Your Honor.

8 All right. Your Honor, State moves 112 into
9 evidence.

10 THE COURT: Any objection? I don't know how --
11 there's no foundation. I don't know what it's about.
12 Let's get some foundation.

13 BY MR. CAMPBELL:

14 Q All right. I'll ask you again, Mr. Harris, is that
15 the letter that you received from Martin Poole?

16 A Yes.

17 Q Okay. And did Marvin tell you where he got that
18 letter from?

19 A Yes.

20 Q Okay. And on the envelope here, who is the envelope
21 addressed to?

22 A Marvin Poole.

23 Q Okay. Is there a postmark on the envelope?

24 A Yes.

25 Q This is the letter that Marvin brought you at the car

ERIC HARRIS-DIRECT BY MR. CAMPBELL

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1 wash?

2 A Yes.

3 Q Okay. Who is the letter addressed to?

4 A Marvin Poole.

5 Q Then who is the letter written to?

6 A Grace Denise Davis.

7 Q Okay.

8 MR. CAMPBELL: Based on that foundation, Your
9 Honor, the States moves it into evidence.

10 MS. ROSS: Judge, I question the foundation of
11 that without Marvin Poole.

12 THE COURT: Well, I don't know what the
13 relevance is.

14 MR. CAMPBELL: Okay.

15 BY MR. CAMPBELL:

16 Q All right. What did this letter ask for, Mr. Harris?

17 A 10,000 dollars.

18 Q Okay. Does it make any demands?

19 MS. ROSS: Judge, I object to publishing the
20 letter until it's in evidence.

21 THE COURT: Well, did you read the letter?

22 THE WITNESS: Yes, I did.

23 THE COURT: Well, why did you take it to the
24 police?

25 THE WITNESS: Because when I seen -- at first,

1 when he told me about it, I didn't pay it no attention. I
2 thought somebody was just doing something. But when I
3 seen it on TV that somebody was killed and had something
4 to do with them, too, I figured it needed to take it down
5 there.

6 MS. ROSS: Judge, I move to strike these
7 comments about --

8 THE COURT: No, I asked him why and I think he
9 can --

10 MR. CAMPBELL: Judge, we can mark it for
11 identification at this time, get it in later.

12 THE COURT: All right.

13 MR. CAMPBELL: That's all the questions I have.
14 Answer any the Defense may have.

15 MS. ROSS: I've got no questions.

16 THE COURT: All right. Thank you, Mr. Harris.
17 You may step down. Thank you, sir.

18 MR. CAMPBELL: We ask he be excused from the
19 subpoena.

20 THE COURT: Any objection?

21 MS. ROSS: No objection.

22 THE COURT: Okay.

23 MR. CAMPBELL: Your Honor, the State calls Trey
24 Skardon to the stand.

25 TREY SKARDON, after being duly sworn, testified

DAVID GARRISON-DIRECT BY MR. WILKINS

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1 Q Take a look at this exhibit and let me know if you
2 recognize it. And tell the jury where you got it.

3 A I do recognize it. This is the envelope that was
4 given to me by the U.S. Postal inspector. And this
5 is the contents of that envelope. It's a letter from
6 SunTrust Bank.

7 Q After you received that letter from the postal
8 service, what did you do?

9 A Well, I opened the envelope and I saw that it was a
10 letter from SunTrust Bank. It was, basically, a
11 denial letter where SunTrust Bank was denying Mekole
12 Harris a credit card and they explained the reasons
13 why they were denying it. So I contacted Loretta
14 Norris with SunTrust Bank to find out how I could
15 obtain information for when the credit card was
16 applied for. She explained the process to me. So I
17 went and obtained a subpoena from Greenville
18 Municipal Court to send to SunTrust Bank to obtain
19 those records from SunTrust.

20 (WHEREUPON, State's Exhibit No. 122 was marked
21 for identification only.)

22 BY MR. WILKINS:

23 Q I'm showing you State's Exhibit 122, marked for
24 identification. Do you recognize these documents?

25 A I do.

1 Q Is that the documents you received from SunTrust
2 pursuant to your subpoena?

3 A It is. This is what I received from SunTrust Bank
4 that I placed into property and evidence and marked
5 stamped original.

6 Q Tell us what it contains.

7 A The first page is, basically, like a checklist to me
8 explaining what they sent me. And then the following
9 pages are what I would describe as screen shots, like
10 they were taking a picture from the computer of the
11 credit card application, who applied for the credit
12 card, some information concerning that person, the
13 date that the credit card was applied for and other
14 information. Some of it, I didn't really understand.
15 There were the bunch of codes, bank codes, on there
16 that didn't mean anything to me.

17 Q Now, did you notice a phone number on those records?

18 A I did.

19 Q What did you do with that phone number?

20 A I noticed that one of the screen shots, it was the
21 first, showed that the credit card had been applied
22 for in the name of Mekole M. Harris, [REDACTED] Road,
23 Apartment 16. And it had a telephone number, home
24 telephone number of (864)404-1829. So I tried to
25 fine out who that phone number belonged to, what cell

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1 phone carrier it was with, different things like and
2 I was kind of running into a dead in with Trac Phone.
3 They weren't being very helpful. So one day, I just
4 decided to call the number and see who answered.

5 Q When you called it, what did you get?

6 A I heard a recording that told me it was the number of
7 Clarence, Carmen and Grace Jenkins. And it went on
8 to say they were unable to answer the phone, so and
9 so forth, have a blessed day.

10 Q I want to show you State's Exhibit 123. It's already
11 been marked for identification purposes. I ask you
12 if you recognize this?

13 A I do recognize it.

14 Q Is that a recording from the phone that you called?

15 A Yes. After -- when I called the number, it went
16 straight to voice mail. It didn't ring at all. It
17 went straight to voice mail. I heard that voice mail
18 message or recording, greeting. Then, of course, I
19 hung the phone up. From there, I went and got a
20 cassette tape and a tape player, hooked it to this
21 device we have that hooks to a phone to record phone
22 conversations. I called the number back and recorded
23 the message that played again once I called the
24 number a second time.

25 Q Is that recording on that tape right there?

1 MR. WILKINS: Your Honor, State moves Exhibit
2 122 into evidence.

3 MR. MCDOUGAL: Your Honor, if I may have a
4 moment?

5 THE COURT: Yeah, take a look at them, sure.

6 MR. MCDOUGAL: This is the entire exhibit, Your
7 Honor?

8 THE COURT: I presume.

9 MR. WILKINS: That's it.

10 MR. MCDOUGAL: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit No. 122 was admitted
13 into evidence.)

14 BY MR. WILKINS:

15 Q Ms. Norris, I want to show you State's Exhibit 121.
16 The is the first SunTrust document that you took a
17 look at. Can you tell me who it's addressed to?

18 A Mekole M. Harris.

19 Q And what address?

20 A [REDACTED] Road, #16, Greenville, South Carolina.

21 Q And the body of the letter that you can see here,
22 what, basically, is this letter doing?

23 A It is telling them that -- to this person, Mekole
24 Harris, that we received a recent application for a
25 SunTrust credit card to open an account, but it's a

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1 denial letter. It means they are not able to open an
2 account due to credit obligations, past and present,
3 that are delinquent.

4 Q Can you tell us the date on which this letter was
5 issued?

6 A 4/9 of 2008.

7 Q Now, I'm going to show you what's State's Exhibit
8 122. Were these documents that you previously looked
9 at as State's Exhibit 122, were they produced
10 pursuant to the subpoena sent to you by Detective
11 Garrison?

12 A The subpoena, yes. It was sent to subpoena services
13 and, yes, those are pursuant to that.

14 Q I'm going to show you page one of this. Briefly tell
15 the jury, what are these -- there's four pieces of
16 paper here. What are these four pieces of paper?

17 A This is the application detail, page one. When
18 somebody tries to submit a request or application for
19 a credit cards over the internet, this is how it is
20 translated, if you will, by the internet into our
21 system. So it prefills into different areas, like
22 name, first name, last name, initial, your address,
23 telephone number, social security number, date of
24 birth, things like that.

25 Q Who is the applicant?

1 A Mekole M. Harris.

2 Q And what is the address put on this application?

3 A [REDACTED] Road, Apartment 16, Greenville, South
4 Carolina.

5 Q Is there a phone number they give down there as well?

6 A Yes, sir.

7 Q What is the date in which this application was
8 received by SunTrust? Can you see the date down
9 there at the bottom?

10 A No, sir, I'm sorry.

11 THE COURT: You may stand down if you need to.

12 A Thank you. I can't see the first number. 4/4 of
13 2008.

14 Q Let me show you the second page of that document.
15 What is this?

16 A This is part of the application detail form, also,
17 It just is expounding on -- if you were to have
18 filled it out in person or handwritten, this would be
19 kind of the second part of the application form. It
20 shows their employer, if they have one, how long
21 they've worked there, annual income, things like
22 that.

23 Q Whoever filled this application out, what does it say
24 their employer was?

25 A Labor Finders.

- 1 Q And annual income.
- 2 A It looks like 86,000 from here, sir. Is that
- 3 correct?
- 4 Q I'm going to show you the third page. What is this?
- 5 A This is, again, a part of intake process. It shows
- 6 that the vendor for us when we do applications online
- 7 and, at that time, our credit card was not
- 8 necessarily housed within SunTrust. It was housed
- 9 through InfaStar. It shows that that's an InfaStar
- 10 internet application. The origin, again, is the
- 11 internet. The client is SunTrust Bank.
- 12 Q And what does it shows as the status?
- 13 A It shows as declined, sir.
- 14 Q And finally, the forth page.
- 15 A This, again, is part of what you would handwrite out
- 16 and put with an application that you handwrote out
- 17 showing the whole profile as it were for how they
- 18 store it. It's called a mail page. And it's showing
- 19 that it's Mekole M. Harris, [REDACTED] Road,
- 20 Apartment 16 in Greenville, South Carolina.
- 21 Q Now, you don't know who filled out this application
- 22 on line, do you?
- 23 A No, sir, I do not.
- 24 Q You just know that it was submitted to SunTrust?
- 25 A Correct.

1 CARMEN JENKINS, after being duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. You may be seated.
4 Please state your name for the record.

5 THE WITNESS: Carmen Major Jenkins.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. WILKINS:

9 Q Ms. Jenkins, make sure you speak up and clearly into
10 the microphone so the jury can hear you, okay?

11 A Yes, sir.

12 Q Ms. Jenkins, where do you currently reside?

13 A In Greenville County detention center.

14 Q Now, let's go back. Where did you grow up?

15 A In Greenville County.

16 Q Where did you go to school?

17 A I went to Carolina High School and Spartanburg
18 Methodist College.

19 Q You graduated from Carolina High School?

20 A Yes, sir.

21 Q About when did you graduate high school?

22 A In 2005, May 2005.

23 Q And did you grow up -- where did you grow up?

24 A We lived in the Grove section area from when I was in
25 middle school until after I met my husband.

1 Q And who y'all did you live with growing up?

2 A My mother and my brother.

3 Q And did you play any sports in high school?

4 A I played church basketball and I was in the marching
5 band in school.

6 Q And after you graduated high school, you said you
7 went on to college?

8 A Yes, sir.

9 Q What college was that?

10 A Spartanburg Methodist College.

11 Q What were you study at Spartanburg Methodist College?

12 A Business administration.

13 Q And while you were in college, did you ever have
14 occasion to leave college?

15 A Yes, my mother became ill so I went home to work and
16 take of my family.

17 Q About what year did you leave college and come on
18 home?

19 A 2006, October of 2006.

20 Q And you came home, what were you doing at home while
21 --

22 A Excuse me, October of 2005.

23 Q October 2005?

24 A Yes, sir.

25 Q When you came home, what were you doing?

1 A I was looking for a job and I acquired employment at
2 Pasden Smith Group architect firm.

3 Q And how was your mother's health at that time?

4 A She had heart problem and knee replacement surgery.
5 She was just now going back to work. So she was
6 still pretty ill, struggling to walk around.

7 Q Were you the sole caregiver for her at that time?

8 A Yes.

9 Q You say you got a job at Pasden Smith; is that
10 correct?

11 A Yes, sir.

12 Q What did you do there?

13 A I was the courier, made copies and took architect
14 documents to firm, other architect firms and
15 agencies, construction agencies.

16 Q How long did you work there?

17 A About three months.

18 Q So what did you do after that?

19 A I worked the bowling alley, Star Lane Bowling Alley
20 at Greenville Technical College.

21 Q What were your duties there?

22 A I was a lane server. I distributed food and took
23 orders, took care of the bowlers.

24 Q And did you stay there long?

25 A Until I became pregnant.

1 Q Well, let's go back. Did you have an occasion to get
2 married?

3 A I got married in December of 2006.

4 Q All right. Who did you marry?

5 A Clarence Jenkins, Jr.

6 Q Is he in the courtroom today?

7 A Yes.

8 Q Where is he sitting?

9 A Right near the Defense table.

10 MR. WILKINS: Let the record reflect she has
11 pointed out the Defendant.

12 BY MR. WILKINS:

13 Q Tell me about how you and Clarence got together?

14 A While I was staying in Grove Station Apartments with
15 my mother, he moved upstairs in the apartment right
16 above from us. And helping him and his family, we
17 end up talking for a lot of occasions and began a
18 relationship together. And I ended up pregnant and
19 we got married a few months later.

20 Q When did you get pregnant?

21 A In June of 2006.

22 Q And when did y'all get married?

23 A In December 2006.

24 Q When was your -- did you have your first child?

25 A Yes, sir.

1 Q A girl?

2 A Yes, sir.

3 Q When was she born?

4 A March 25th, 2006.

5 Q And after y'all got married, where did y'all live?

6 A We lived in Grove Station until September, then we
7 moved to Duncan near BMW plant. And we moved again
8 with my mother, moved again to the Welcome area.
9 Then we moved -- we stayed there for a few months.
10 And our relationship started to change.

11 Q All right. Before we get into all of that, how was
12 your relationship initially? What kind marriage did
13 you and Clarence have? Did -- just briefly in
14 generalization?

15 A I mean, at first, we had a good marriage, very open
16 and he was very loving. And then he started to
17 change and become very controlling of how I could
18 talk to my mother or go anywhere. I wasn't allowed
19 to go anywhere or talk to my mother on the phone by
20 myself. I had to be on speaker phone with my mom or
21 anybody else. Or I always had to have like a
22 chaperone, him or his mother, to even visit my own
23 mother.

24 Q You're a grown woman, correct?

25 A Yes.

1 Q You couldn't go see your mom?

2 A I was not allowed to, no.

3 Q Why not?

4 A He would become angry with me and threaten me often.

5 And I was scared. So I did what he asked me to do.

6 Q So during that time, did you have a lot of
7 relationships outside Clarence?

8 A No. I've had like two previous boyfriends.

9 Q But during your marriage, did you spend a lot of time
10 with your mom?

11 A Not after the first about five months.

12 Q And when you talked with her, what would he do?

13 A He would have always be standing there and I'd have
14 to be on speaker phone with her. And he would get
15 mad if I said anything that would contradict anything
16 that he would want me to say.

17 Q What about visits to your mom or family members?

18 A I really didn't visit with any of my other family
19 members, just my mother. And I would have to be with
20 him or his mother or his sister, on like one occasion
21 with his sister.

22 Q Now, you said you reside in the law enforcement
23 center, correct?

24 A Yes, sir.

25 Q Why do you reside in the law enforcement center?

- 1 A I'm also here for the same charges he is here for.
- 2 Q Have you plead guilty to any charges?
- 3 A Yes, sir.
- 4 Q What did you plead guilty to?
- 5 A Murder.
- 6 Q Of who?
- 7 A Mekole Harris.
- 8 Q Now, before you pled guilty, did you talk with law
9 enforcement?
- 10 A Yes.
- 11 Q About this incident?
- 12 A Yes.
- 13 Q All right. Did you sign an agreement with the
14 prosecutor's office?
- 15 A Yes.
- 16 Q Do you remember that agreement?
- 17 A Yes.
- 18 Q What were the terms of that agreement, do you
19 remember?
- 20 A That I tell the truth.
- 21 Q And did that agreement agree not to use those words
22 against you that you were telling the prosecution?
- 23 A Yes.
- 24 Q And so you came to law enforcement and you told law
25 enforcement what you believed happened in the death

1 of Mekole Harris?

2 A Yes.

3 Q Later -- you just said you pled guilty to the murder
4 of Mekole Harris; is that correct?

5 A Yes, sir.

6 Q All right. And did you receive a sentence?

7 A Yes, sir.

8 Q How much time did you receive after your guilty plea?

9 A Fifty years.

10 Q Now, are you here voluntarily?

11 A Yes.

12 Q All right. Now, are you hoping that you're going to
13 get a reduction in your sentence?

14 A Yes, sir.

15 Q All right. How are you going to get a reduction in
16 your sentence?

17 A By telling the truth here.

18 Q And if you tell the truth, is the prosecutor's office
19 going to do anything for you?

20 A Ask for a sentence reduction.

21 Q And who's going to decide how much time that you're
22 sentence is going to be reduced from?

23 A A judge.

24 Q Do you have any idea what that's going to be?

25 A No.

1 Q Now, let go back to your marriage with the Defendant.
2 Was there an occasion where y'all separated for a
3 little while?

4 A Yes.

5 Q About when was that?

6 A August of 2007 -- well, July of 2007.

7 Q Why did y'all separate?

8 A He was unhappy with the way I was keeping our house.

9 Q And where did he go?

10 A He stayed at our home and I have went to my mother's.

11 Q Did y'all reunite?

12 A Yes.

13 Q And you say he was unhappy with the way you were
14 keeping your home, how were your supposed to keep
15 your home?

16 A Washing dishes, clean cloths, keeping the house clean
17 as in just regular standards, I assume. But he was
18 very picky about everything.

19 Q So did he ask you to leave or did you decide to get
20 up and leave?

21 A No, he asked me to leave.

22 Q So at that time, where were your living?

23 A I was living with my mother.

24 Q Did y'all have the occasion to reunite?

25 A Yes.

1 Q How did -- tell the jury about y'all reunited.

2 A We talked on a daily basis while I was staying with
3 my mother. Eventually, he told me that he had found
4 another woman and he wanted all three of us to live
5 together. And if I agreed upon her living with us,
6 then I could also come home.

7 Q Did he ever give you criteria for you to be able to
8 come home?

9 A I had to be able to keep the house clean and be able
10 to be with both of him and her.

11 Q Who was her?

12 A Grace Davis.

13 Q Well, tell this jury about how y'all all three got
14 together?

15 A I believe that he met Grace Davis at his sister's
16 house where his mother resides, visiting his mother.
17 She began, I guess, to pursue a relationship with
18 him, and he, in turn, pursued one with her. And at
19 the same time talking with me on a daily basis. I'm
20 not sure what all happened between the two of them in
21 private moments, but, eventually, he came to me and
22 asked me if we could all be together. And he wanted
23 us to be together. So we all moved back into our
24 home. It was the three of us and her three children
25 and our one child at the time, and I was pregnant,

1 also.

2 Q All right. About what time of year?

3 A It was August, the middle of August, first or second
4 week of August of 2007.

5 Q Where did y'all all move into?

6 A In our trailer in the Welcome area.

7 Q Were y'all living together long?

8 A Not the three of us. For about a week -- not even a
9 week after we all moved in together, he had to go
10 away from a while.

11 Q And you can tell this jury, was he arrested?

12 A Yes.

13 Q Tell the juror how that happened.

14 A We were taking my brother to work and he was driving.

15 Q He who?

16 A Clarence was driving. And speeding down 385 and we
17 were pulled over by, I guess, the City. And he was
18 arrested for driving under suspension, bench warrant,
19 speeding, another driving under suspension. I was
20 arrested also for some bad checks. And my brother
21 was arrested for a bench warrant for general
22 sessions.

23 Q Was Grace Davis with you at the time?

24 A Yes, she was with us. She had to drive my mother's
25 car back to her house.

1 Q How long did you stay in the downtown LEC?

2 A I didn't stay, I just signed warrants and they
3 released me.

4 Q So when you left the law enforcement center, where
5 did you go?

6 A I called my mother and Grace and they both came and
7 picked me up. And we went to my mother's house, but
8 me, Grace and her three children went back to our
9 trailer in Welcome area.

10 Q That was in August of 2007?

11 A Yes, sir.

12 Q How long was Clarence away?

13 A Until December 1st.

14 Q Now, during August and December 1st, tell the jury
15 about your relationship with Grace and how y'all ran
16 a household and what your life was back then?

17 A First, we, myself and Grace, were just friends.
18 Later on, we started to have a romantic relationship
19 together. At first, we wrote Clarence and he was
20 slightly upset about us being together, but he
21 accepted it and, actually, I think he liked it. But
22 I worked on a daily basis at Sports Authority and
23 Grace stayed at home with our children or she went
24 and stayed with my mother because my mother had
25 another surgery on her knee, so she would have to go

1 to therapy every couple of days. And Grace would
2 take her therapy.

3 Q So would you say y'all were living a pretty
4 traditional domestic lifestyle at that point?

5 A Yes, sir.

6 Q Now, what happened when Clarence came home?

7 A The day he came home, we were actually with my mother
8 at the doctor. He called the cell phone. We picked
9 him up from the bus station and took my mother home.
10 And we had dinner, just played with the children.
11 The next day was actually our first year anniversary.
12 And he had wrote out some -- Clarence had wrote out
13 some vows while he was in prison. And we, the three
14 of us, myself, him and Grace, all recited these vows
15 and -- like the three of us getting married to each
16 other.

17 Q Let me go back, while Clarence was in prison, did he
18 communicate with you and Grace?

19 A Through letters.

20 Q What did he tell y'all while he was in prison?

21 A That we needed to stay on our toes, keep our house
22 together. There was always going to be somebody
23 watching us. He would always know what we were doing
24 and we needed to be careful about what we did, who we
25 talked to and where we went.

1 Q Did he tell you he was keeping tabs on you?

2 A Yes.

3 Q All right. I'm sorry. So Clarence comes home and
4 y'all do -- y'all engage in a three-way relationship?

5 A Yes.

6 Q And you just talked about some vows. Tell us about
7 the vows.

8 A I don't remember them word for word, but it was
9 saying that we committed to each other physically and
10 mentally and spiritually and that we would always be
11 together.

12 Q All right. Ms. Jenkins, I'm going to show you what's
13 marked as State's Exhibit 111. I want you to take
14 your time. I want you to take a look at these and
15 tell me what those are.

16 A These are the vows that he brought home and we all
17 signed them here vowing to be together with each
18 other, be faithful to death do us part, to honor the
19 Lord Jesus Christ and our God in everything we do and
20 in everything we way.

21 Q Now, did each one of you sign one of those?

22 A Yes, sir.

23 Q Was there a vow for each one of you?

24 A Yes.

25 Q Who wrote these vows?

1 A This is Clarence handwriting.

2 Q Are you able to recognize his handwriting?

3 A Yes. It's also -- well, the name place is my
4 handwriting and, also, Grace's handwriting.

5 MR. MAULDIN: I couldn't hear. Speak into the
6 microphone, please, ma'am.

7 THE WITNESS: There is one page for each of us
8 and on each paper, there is a different person's
9 handwriting on a blank line filling in the other person's
10 name. But the passages are wrote by him.

11 BY MR. WILKINS:

12 Q Are they very similar?

13 A Yes.

14 Q Now, tell the juror about the ceremony that y'all
15 went through.

16 A We were somewhere in our bedroom. Ever assume we
17 were in your bedroom. And I think we drank Welch's
18 grape juice. I was pregnant at the time. And after
19 we probably had sexual relations.

20 Q Did y'all give each other a ring or anything like
21 that?

22 A Not at that time.

23 Q Later on, did you?

24 A Yes.

25 Q So y'all committed personal vows to each other

1 through what you just described there. What's going
2 on with the relationship now? How did things go?

3 A For the first month or so, he's very controlling to
4 both of us. Very verbally abusive. We're not
5 allowed to go anywhere. I was still working at
6 Sports Authority when he came home and he pretty much
7 made me quite on the first day of the new year. He
8 hid the keys and I wasn't allowed to go anywhere that
9 day. He called in and told Sports Authority that I
10 was sick and in the hospital and I wouldn't be coming
11 in. And I didn't have any choice but to go along
12 with what he said. I was fired from Sports Authority
13 for lying about not being in the hospital. They
14 checked. We weren't allowed to go anywhere after
15 that without him or without his consent. We had to
16 be together, myself and Grace had to be together at
17 all times. He would always threaten us with
18 different objects. Just we weren't allowed to go
19 anywhere. Only place we could go is to like pick him
20 up. We had to work from home. We had actually
21 bought a computer and myself and Grace were supposed
22 to work from home on the internet to gain money.

23 Q Where was Clarence working during this time?

24 A He was collecting unemployment, but he was also
25 working under the table at this place in Anderson

1 County.

2 Q Would y'all take him to work or how did he get to
3 work?

4 A We would take him to work together.

5 Q All right. How was the relationship between you and
6 Grace during this time?

7 A When he was gone, me and her were fine.

8 Q Were your in love with her?

9 A Yes. We -- I think we were in love with him. I
10 think that's why both of us stayed for so long. But
11 it was mostly fear that kept up at the house with
12 him. And I didn't want to leave her there with him.
13 For a while, she didn't want to leave me there with
14 him alone, scared of what was going to happen to the
15 other person.

16 Q So y'all are living in this manner. Does Grace
17 decide it's time for her to go?

18 A Her children were taken away from her by Family
19 Court. And to get her children back, she had to
20 leave and find her own residence.

21 Q Did she tell you that she was going to leave?

22 A Yes.

23 Q What did she tell you, do you remember?

24 A It was the middle of March. It was right after I had
25 our second daughter.

1 Q So you had your second daughter?

2 A Yes, sir.

3 Q That's Clarence's child?

4 A Yes, sir.

5 Q Tell me about the delivery and going to the hospital?

6 A The night I went into labor, I was up a lot using the
7 restroom. They were both sleeping.

8 Q Just talk about -- so y'all went to the hospital?

9 A Yes.

10 Q How was the hospital visit?

11 A I wasn't allowed to speak with my mother. My mother
12 don't even know that I went into the hospital at all.
13 I was there with both of them, Grace and Clarence.
14 The whole time -- one of them was with me the whole
15 time I was the there.

16 Q Was anybody else allowed to visit you?

17 A His mother and his sister came to visit me.

18 Q What about your side of the family?

19 A Nobody knew I was there that I know of.

20 Q So after your second daughter is born, what do y'all
21 do?

22 A The -- all of us go back home. She still -- Grace
23 still has her three children that are with her and
24 we have our two daughters. We move. We are living
25 in the Tindal trailer park at this time.

1 Q Let me stop you right there. When did y'all move
2 from the Welcome area to the Tindal trailer?

3 A The end of February.

4 Q How did you get the money to move to the Tindal Road
5 trailer park?

6 A It was our income tax returns.

7 Q And during while Grace was there, did you ever visit
8 any of her family?

9 A We visited her mother during this time and her dad at
10 one point to help with the down payment for the
11 trailer. He refused to give the payment because of
12 Clarence mostly. He didn't agree with us being all
13 together.

14 Q Whose else in Grace's family did you visit? Tell the
15 jury a little bit about those visits that y'all did?

16 A We visited a few times with Grace's aunt who her
17 oldest stayed with at the time. Grace's oldest son
18 stayed.

19 Q Do you remember his name?

20 A Marquise. And he liked Clarence a lot. They would
21 talk a lot about video games and things. So they
22 became friends very quickly. Grace's aunt didn't
23 like the point of us all being together. Her mother
24 didn't like that. None of her family liked it.

25 Q How many times did you go to Sue Pearl Bostic's

1 house?

2 A While the three of us were all together, I think we
3 went twice.

4 Q Do you remember where Sue Pearl Bostic was living
5 during that time?

6 A Andover Apartments.

7 Q All right. What about Grace's momma, Judon Burnside,
8 do you remember how many times y'all went over there?

9 A I think we went over there twice, also. She stayed
10 off Church Street on Rose Street, I think.

11 Q And every time that Grace visited her family, were
12 you and Clarence with her?

13 A Yes.

14 Q And were they nice visits or not?

15 A They were not stressful, but not comfortable visits.
16 Nobody agreed with all of us being together. So it
17 was stressful trying to visit somebody that didn't
18 want you to be there.

19 Q All right. So you move out of Welcome and you go to
20 where?

21 A We move to the Tindal trailer park. And --

22 Q And then -- I'm sorry, you also said you visited
23 Grace's dad?

24 A Yes, visited his job at Greenville car wash. And she
25 asked him for money for the down payment for the

1 trailer and he refused to give it to her. We also --
2 she also talked with her dad's bossman, I think his
3 name was Eric. And he helped --

4 MR. MAULDIN: Your Honor, as to some witnesses
5 that's not testified, we'll object to hearsay.

6 MR. WILKINS: Eric Harris has testified.

7 THE COURT: Well, he's already testified.

8 MR. MAULDIN: Okay. All right.

9 BY MR. WILKINS:

10 Q Go ahead.

11 A He helps her -- he helps Grace's dad with his
12 finances. And so he didn't agree to giving the money
13 either.

14 Q Did you ever go to Grace's daddy's house?

15 A Myself and Grace by ourselves went once to ask shim
16 again for the money without Eric being present.

17 Q Do you remember what his name was?

18 A Not right off, no, sir.

19 Q All right. So you get your income tax return and you
20 move to Tindal Road?

21 A Yes.

22 Q Do you remember about when that was?

23 A The last -- the third weekend in February, maybe.

24 Q You had your second child?

25 A March 3rd.

1 Q And y'all three are living at Tindal Road?

2 A Yes.

3 Q All right. You mentioned something about Grace
4 losing her kids?

5 A Yes, she lost her children the last week of February.
6 She stayed with us until she had talked with her son,
7 I think. On one occasion, I did take Clarence to
8 work by myself, so she had stayed at the house and I
9 believe she called her son while she was there. That
10 was pretty much the day before she left our house.

11 Q Now, let me stop you right there. While y'all were
12 at Tindal Road now -- can you see this diagram?

13 A No, sir.

14 (WHEREUPON, State's Exhibit No. 103 was marked
15 for identification only.)

16 BY MR. WILKINS:

17 Q You can't do -- come down here, I'll get you to look
18 the diagram in this State Exhibit 103 and see if you
19 recognize this.

20 A This is the layout of the park of our trailer at
21 Tindal Road.

22 THE COURT: Ma'am, please keep your voice up.
23 We have to take everything down, okay.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, thank you.

1 BY MR. WILKINS:

2 Q Now, explain where everybody was living with you and
3 Grace and Clarence?

4 A Myself and -- myself, Grace and Clarence, we all
5 stayed back in this back room in our bedroom. Her
6 two boys, her twin boys, they stayed in this middle
7 bedroom. And the baby also stayed in the room with
8 us. But our first child and her daughter, Sara,
9 stayed in the larger bedroom.

10 Q You can sit back down. I'm going to show you what's
11 State's Exhibit 28, already been admitted into
12 evidence. Do you recognize that photo?

13 A That's a photo of our trailer.

14 Q What the address?

15 A [REDACTED] Road.

16 Q So let's go back to Grace tells you that she's going
17 to leave?

18 A Yes, she's upset about her children. She wants her
19 children back, like any other mother would. And
20 she's scared to leave, but she knows she has to for
21 her kids. She says to me that she loves me and
22 she'll be back after she gets her kids. And she
23 talks with him. I'm not sure what they talked about.

24 Q Do you remember what day this was?

25 A Around the 15th.

1 Q Of?

2 A March, March 15th. Around that day, I'm not sure
3 exactly. She picked up her pocketbook and walks out
4 the door. And later on, we realized that she still
5 has one of the rings that he gave her and Clarence
6 send me to go get the ring. And I drive -- she gets
7 pretty far, so I drive up and catch her, get the
8 ring. She hugs me and tells me she loves me and that
9 she'll be back. She don't want to leave me, but she
10 has to go get her kids. I tell her I understand and
11 that I love her, also, and I want her to come back.

12 Q Were you upset that she was living?

13 A I understood why she was left, but yes, I was, but I
14 understood.

15 Q So after Grace leaves, what is it like at home?

16 A For about two or three days, he's pretty happy,
17 saying she was holding us back and that we could do
18 better without her anyway, our relationship could be
19 stronger without her. After that, then he changed
20 his mind and was acting scared and angry that she
21 left. And saying that she knew too much about the
22 organization that he was in. And she needed to come
23 back to our relationship because she was a partner in
24 our relationship, she knew too much. So he was angry
25 about that and said the organization would kill all

1 of us if she didn't come back.

2 Q Did you know anything about this organization?

3 A I never heard of it until that day.

4 Q So y'all were having these conversations about he's
5 upset and the organization, what did y'all do?

6 A He decided that he was going to write letters to
7 Grace and her family to make her come back to our
8 house.

9 Q Now, where did y'all decide to do this?

10 A What do you mean?

11 Q Where did y'all decide to begin writing letters to
12 make her come back to the relationship?

13 A We were at our house at that time. He started to
14 write out a letter and I helped him with the spelling
15 of words that he didn't know. Eventually, we typed
16 out the letter, took it to the library, Greenville
17 County library downtown, printed off the letters.

18 Q All right. Hold on right there now. What day was
19 this?

20 A Like March, maybe around the 20th, I'm not sure.

21 Q And who wrote out the letter?

22 A He handwrote out these letters, then I typed them up.

23 Q Did you ever write out any letters as well?

24 A I don't think so at that time. I'm not sure.

25 Q At a later time, did you write out some letters?

1 A Yes.

2 Q Did y'all go through multiple drafts?

3 A Yes.

4 Q And who came up with the idea of what the content of
5 the letter was?

6 A It was his idea.

7 Q And so you decided to go put it on you -- you decided
8 to type it out?

9 A Yes.

10 Q Okay. So where were you going to go to type it out?

11 A I believe I typed it at our house. We printed it off
12 at the library.

13 Q And how did y'all decide who y'all were going to send
14 it to?

15 A About a week or two after Grace left, Clarence went
16 to take video games to her son, Marquise, at Grace's
17 aunt's house.

18 Q Where was that at?

19 A Andover Apartments. And while he was giving him the
20 video games, I'm not sure if there was an occasion
21 that Marquise had left him alone with the phone, but
22 he had wrote down a bunch of names and telephone
23 numbers from the caller ID off the phone. So he used
24 those to lock up addresses in the phone book to mail
25 these off to different people.

1 Q So do you remember about what day y'all decided to go
2 type these letters out?

3 A I'm not sure exactly what day it was.

4 Q Do you remember what month?

5 A March.

6 Q Okay. All right. I'm going to show you what's
7 already been admitted into evidence, State's Exhibit
8 113. Have you reviewed these videos from the
9 library?

10 A With you.

11 Q Okay. Can you see that?

12 A Yes, sir.

13 (WHEREUPON, State's Exhibit No. 113 was played.)

14 BY MR. WILKINS:

15 Q Who is that walking in the library right there?

16 A That's myself.

17 Q Who is that right there behind you?

18 A That's Clarence.

19 Q And what was the purpose of going to the library?

20 A This visit, most likely is to type out the letter.

21 Q And, in fact, did y'all go to the library and type
22 out a letter?

23 A Yes, sir.

24 Q Had y'all gone to the library previous to that to
25 open up a Yahoo account?

1 A I think we opened it up the same day that we typed up
2 the letter, I'm not sure. I can't remember every --
3 we go to the library a lot to print off things.

4 Q Did y'all go to the library to open up a Yahoo
5 account?

6 A Yes.

7 Q Do you remember what the ID was?

8 A Johnevans and something, I'm not sure exactly.

9 Q All right. Now, I'm showing you the same library
10 footage here, which is State's Exhibit 113.

11 (WHEREUPON, State's Exhibit No. 113 was
12 continued to be played.)

13 BY MR. WILKINS:

14 Q Who's that there?

15 A That's myself.

16 Q What are you doing?

17 A Speaking with the receptionist. I'm not sure what --
18 I can't remember what about.

19 Q And do you remember how long it took you to go print
20 out the letter?

21 A I'm not sure how long we were there. Maybe -- not
22 even an hour maybe, I'm not sure.

23 Q All right. Do you see the time stamp up there on the
24 right-hand corner?

25 A Yes.

1 Q Would you agree with that time stamp?

2 A Yes.

3 Q And that says March 31st, 2008?

4 A Yes.

5 Q Military time 1749, which would be 5:49?

6 A Yes.

7 Q Now, do you remember if y'all checked out a computer
8 or -- do you remember if you used a library card to
9 check out a computer?

10 A A few days, we did, but I don't think we did to type
11 out the letters. I think we used one of the fast
12 access.

13 Q What's the fast access computers?

14 A When you use those, you don't have to use your
15 library card number to go into the computer, you
16 actually use it.

17 Q Are we looking at the fast access?

18 A I believe so. I think there's one more, but I'm not
19 sure.

20 Q So those you don't have to check out?

21 A No. You don't have to use your library card number
22 to use it.

23 Q What is the time limit you're given on those?

24 A Fifteen minutes.

25 Q All right. Do you recognize that person?

1 A That's Clarence.

2 Q Do you know what Clarence was doing there?

3 A I'm not sure, no.

4 Q I'm going to show you what's State's Exhibit 119 and
5 120, which have already been admitted into evidence.
6 And it's a printout from the library. I want you to
7 take a look at State's Exhibit 119. And it's already
8 been testified to that these user ID's are yours and
9 Clarence's. Would it surprise you that y'all checked
10 out a computer for 50 minutes on this day?

11 A It wouldn't surprise me, no.

12 Q Now, finally, we're going to show you the last part
13 of the video on March 31st.

14 (WHEREUPON, State's Exhibit No. 113 continued to
15 be played.)

16 BY MR. WILKINS:

17 Q Who is that?

18 A That's myself and Clarence.

19 Q Do you remember what he said to you there?

20 A No.

21 Q So are y'all leaving the library?

22 A Yes, sir.

23 Q What did he have in his hands when he left the
24 library?

25 A Most likely a copy of the letter that was sent to

1 Grace's family.

2 Q How many did y'all print at the library?

3 A I'm not sure.

4 Q All right. Well, I'm going to show you what's
5 State's Exhibit 108 on the overhead here. I want you
6 to take a look at that. Is that the letter you
7 typed?

8 A Yes, sir.

9 Q Is that the email address that you had set up?

10 A Yes.

11 Q And it refers to Willie is not worried about his debt
12 anymore. Who did you mean Willie to be?

13 A Willie is Grace's husband.

14 Q Now, did you type it or Clarence type it?

15 A I believe I typed this letter.

16 Q But you stated early he had written out a rough
17 draft?

18 A Yes, sir.

19 Q When y'all left the library, where did you go?

20 A I think we went to Bi-Lo and bought envelopes, I
21 believe, and stamps.

22 Q Did you make any copies of the letter at Bi-Lo?

23 A I believe that's when we made more copies of the
24 letter. We may have printed off one or two copies at
25 the library and printed off multiple copies at Bi-Lo

1 because it's cheaper there.

2 Q What did you do with the letters?

3 A We went home and addressed the envelopes from the
4 addresses that he had locked up from the phone book
5 off the caller ID at Grace's mother house and mailed
6 off the letters -- mailed the letter in post office
7 box that is in front of the Greenville News.

8 Q Is that downtown?

9 A Yes, sir.

10 Q How many letters did you send out?

11 A Maybe around seven, I'm not sure.

12 Q So how did you -- tell the jury how you decided which
13 addresses to send them to?

14 A He just got multiple names off the caller ID and
15 anybody he felt that really actually was part of
16 their family, he sent a letter to.

17 Q Who was the intended recipient of the letter?

18 A Grace.

19 Q Now, show you the envelope. I don't know if you can
20 see that. The postmark on there is March 31st?

21 A Yes.

22 Q Is that when y'all sent the letters?

23 A Yes, sir.

24 MR. MAULDIN: What Exhibit was that, please,
25 sir?

1 MR. WILKINS: Exhibit 108.

2 BY MR. WILKINS:

3 Q So you mail the letters, what do you do next?

4 A Go back home. I believe around the same time, we
5 were looking for Grace at the Family Court office at
6 Family Courthouse. And he sent me to look for her.
7 I fell asleep in the parking lot, so I didn't see
8 her. And I went back to him and told him I didn't
9 see her there and I don't know if she went to court
10 or not.

11 Q Where was Clarence during the time that you were
12 waiting in the Family Court parking lot for Grace?

13 A He was hiding in the park at Falls Park.

14 Q So after that, what did y'all do?

15 A We went to the job -- myself and Clarence went to the
16 job that we had. We were selling vacuums at the
17 time.

18 Q So how long were y'all selling vacuums?

19 A Manner two and a half weeks, maybe three.

20 Q What happened next?

21 A A few days after the letters were sent, he checked
22 the email a couple of times.

23 Q Where would he check the email from?

24 A I think he checked it maybe twice at the library, and
25 he checked it once at our house.

1 Q And why was he checking the email?

2 A To see if anybody had responded to the letter.

3 Q Okay. Does Clarence know how to check email?

4 A Yeah, I taught him how to.

5 Q So you're checking email. What happens next?

6 A Of course, nobody responds to the emails. And he's
7 very abusive towards me at this time and threatening
8 me on almost a daily basis. And then we start
9 working -- after working at this vacuum service, we
10 found out that sometimes when you're driving around
11 neighborhoods with the manager in the van that the
12 police get called sometimes. And he was scared of
13 being arrested for another DUS, and so we stopped
14 working there. And pretty much the next week, we
15 worked for Labor Finders. It's a day labor place.
16 You go every morning and they give you a job.
17 Sometimes you can report to the job for multiple days
18 in a row.

19 Q Where that located?

20 A Labor Finders in on Rutherford Road, I believe. And
21 we were working through them at this Ingles that's in
22 Easley, cleaning up the Ingles nighttime.

23 Q During this time, who is taking care of your kids?

24 A They stayed with his mother at his sister's house.

25 Q Is that where you typically took your kids when you

1 left them?

2 A Yes. They stayed there pretty much for about three
3 weeks almost daily.

4 Q When you say they stayed there for three weeks, what
5 three weeks are you referring to?

6 A Pretty much from a few days after Grace left until we
7 were arrested for this.

8 Q You were kids were at his mom's house?

9 A Yes. We would get them every couple of days, but,
10 mostly, they stayed there with her.

11 Q Continue.

12 A The last day that we worked at the Easley Ingles, we
13 got off work at about 3:00 in the morning. So he
14 decided he wanted to go back to work again that
15 Friday during the day.

16 Q Who would take him to Labor Finders?

17 A I would take him most of time. I didn't start
18 working until that week with Labor Finders. So I
19 would usually either sit out in the parking lot or I
20 would drive him to the places or I'd just drop him
21 off and go home. On that Friday, he wanted to go
22 back, so I dropped him off and I went home.

23 Q Do you remember what date that was?

24 A Maybe the 4th or the 5th of April.

25 Q This is what year?

1 A 2008. A couple hours later, I'm in the bed and he
2 calls me -- I'm in the bed watching TV and he calls
3 and he's like I'm about to bring somebody home and I
4 need you to clean out our middle bedroom. So --
5 actually, he -- excuse me, he drops me off and he
6 takes the van back to Labor Finders. And he comes
7 home, I'm still cleaning out the bedroom. And he
8 brings Mekole Harris into our house.

9 Q Had you every met Mekole Harris?

10 A No.

11 Q Did you know who she was?

12 A No. Then they sat on the couch while I finished
13 cleaning out the bedroom.

14 Q Did she walk in voluntarily?

15 A Yeah, she just walked in. Later on --

16 Q Do you know where he first met her?

17 A Later on, he told me that he had asked one of the men
18 that worked with us at the Ingles if he could find a
19 prostitute. And I assumed that that guy pointed him
20 in her direction. I believe that's what happened.
21 And she just came into the house voluntarily, sat on
22 the couch, waited for me to finish cleaning out the
23 bedroom. After I finished cleaning out the bedroom,
24 Clarence told me to just sit in the other bedroom.

25 Q Which bedroom are you referring to?

1 A The middle bedroom is where I cleaned out and I was
2 sitting in the front bedroom with just a lot of stuff
3 in there now from that bedroom. So I'm just sitting
4 in there waiting for him to come back to tell me what
5 to do next. He takes Mekole Harris into that bedroom
6 and closed the door.

7 Q The middle bedroom?

8 A Yes, the middle bedroom. And they were in there for
9 maybe two, maybe three minutes. He comes back to the
10 door and tells me to come in there. I go into the
11 room, she's in handcuffs naked sitting in the floor.

12 Q Y'all owned a pair of handcuffs?

13 A Yes. He had handcuffs when I met him. And he
14 tells -- he proceeds to tell her that she's under
15 arrest for prostitution and possession of crack. And
16 that the only way she would get out of these charges
17 is for her to help us with the case because we're
18 both police officers. And she tells us that she just
19 got out of jail and she don't want any kind of
20 trouble. She just wanted to leave. And that she
21 would do anything she could not to go back to jail.

22 Q What happens next?

23 A He takes the handcuffs off of her and lets her get
24 dressed. She agrees to help us. And he writes out a
25 script for her to read over the phone to Grace's

1 family members.

2 Q Now, did you and Clarence have a conversation about
3 what the next step was?

4 A No. He tells me what to do at the time and I just
5 did what he asked me to do.

6 Q All right. Go ahead.

7 A He handcuffs her again, brings her into the living
8 room and writes the script out to her and gives it to
9 her to memorize. And she -- we're at the house for a
10 long time with her going over the script. About
11 midnight that night --

12 Q Is this -- what day of the week is this?

13 A This is Friday night. About midnight to Saturday
14 morning. He takes the handcuffs off of her and tells
15 her we're going to go make some phone calls.

16 (WHEREUPON, State's Exhibit No. 166 was marked
17 for identification only.)

18 BY MR. WILKINS:

19 Q Stop right there. I'm going to show you what's been
20 marked as State's Exhibit 166 for identification. I
21 ask you to take a look at that and ask you if you
22 recognize that.

23 A This is the note that Clarence wrote for Mekole to
24 say to Grace's family.

25 Q Is that a true and accurate copy of the note?

1 A I believe so.

2 Q Whose handwriting is that?

3 A That's Clarence's handwriting.

4 MR. WILKINS: Your Honor, State moves Exhibit
5 166 into evidence.

6 MR. MAULDIN: No objection.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, State's Exhibit No. 166 was admitted
9 into evidence.)

10 BY MR. WILKINS:

11 Q I'm showing you State's Exhibit 166. Is that the
12 letter?

13 A Yes, sir.

14 Q It says, Hi, my name is Mekole. I'm Willie's
15 girlfriend. I'm sorry to be calling this late, but I
16 had to. Willie owes some people a lot of money that
17 he wants to trade Grace, her boyfriend, Marquise, and
18 some other girl Grace was with. Is that the script
19 that y'all worked on with Mekole Harris?

20 A Yes. I think there's another one that goes on about
21 something, but I'm not sure.

22 MR. MAULDIN: Your Honor, we object to her
23 making reference to something that has not been -- I don't
24 know what she's talking about.

25 THE COURT: Well, she's just testifying.

1 MR. MAULDIN: Well, I mean, is it an exhibit or
2 something that's in evidence? I mean, I don't know.

3 BY MR. WILKINS:

4 Q Did y'all write any other drafts or letters similar
5 to that?

6 A I think there was probably two more drafts of that
7 letter.

8 Q Okay. Were they basically the same thing as what was
9 in here?

10 A Yes.

11 Q Did you write them or did Clarence write them?

12 A I believe Clarence wrote all of them.

13 Q Now, we talked about Clarence writing vows. Does
14 Clarence know how to write?

15 A Yes.

16 Q Does he know how to read?

17 A Yes.

18 Q So it's early Saturday morning or late Friday night,
19 what happens?

20 A She calls Grace's mother house, Judon.

21 Q Where did y'all go to make that phone call?

22 A There's a gas station right in the Cherry Dale area
23 that has a pay phone out. The gas station was closed
24 at the time.

25 Q How did y'all -- what car did you take?

1 A We own a van.

2 Q And how did y'all get to the van from the house?

3 A We walked from the house to the van. It's right in
4 front of our house.

5 Q Did Mekole Harris go voluntarily?

6 A Yes. Clarence dialed the numbers for her to Grace's
7 mother's house and Grace's aunt's house. I believe
8 Mekole talked to Grace's mother. And at Grace's aunt
9 house, I believe Marquise picked up the phone and
10 tried to take the phone to his aunt. But I'm not
11 sure if any of the script was actually heard by
12 anybody at that time.

13 Q Did y'all make any other phone calls?

14 A No, not from the pay phone.

15 Q Just made one phone call?

16 A Two. One to Grace's mother's house and one to
17 Grace's aunt's house.

18 Q At this point, did Mekole -- what is your impression
19 of Mekole? Is she confined? Is she there
20 voluntarily, willfully? Or what's the situation?

21 A I believe then she's trying to stay out of jail, so
22 she's cooperating with the police that she believes
23 that we are.

24 Q So at that point, your impression is that she
25 believes --

1 MR. MAULDIN: Your Honor, if he's asking her --

2 THE COURT: Hang on, hang on. Y'all come up for
3 a second.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury but out of the hearing of
6 the jury.)

7 THE COURT: All right. Madam Forelady, ladies
8 and gentlemen of the jury, we've got a issue to discuss
9 out of your presence. It's also probably a good time for
10 a morning break. We'll get back with you very shortly.
11 Please do not discuss the case. Thank you, very much.

12 (WHEREUPON, the jury left open court at
13 approximately 10:45 a.m.)

14 THE COURT: All right. We'll take just a short
15 break.

16 Ms. Jenkins, you may stand down. Do not discuss
17 your testimony with anybody, okay.

18 All right. We'll just take just a few minutes
19 and we'll discuss your objection.

20 (WHEREUPON, a short break was taken.)

21 MR. MAULDIN: Your Honor, just prior to the
22 break, the witness was essentially asked how she felt or
23 what she thought was the state of mind of a third party.
24 Now, unless that state of mind by that third party had
25 been expressed in some way --

1 THE COURT: Okay. I don't remember the specific
2 question, but she can't speculate as to somebody else's
3 state of mind.

4 MR. MAULDIN: She was asked what she thought
5 Mekole Harris thought about the circumstances and that
6 needs to be stricken.

7 THE COURT: Well, we don't have stricken in our
8 book of rules, so.

9 MR. WILKINS: She never answered, Your Honor.

10 THE COURT: All right. All right.

11 Are y'all ready?

12 MR. WILKINS: We're ready, Your Honor.

13 (WHEREUPON, the jury came into open court at
14 approximately 11:05 a.m.)

15 THE COURT: Okay, Mr. Wilkins.

16 BY MR. WILKINS:

17 Q Ms. Jenkins, let me take you back to April 3rd real
18 quick. We discussed this email address that we
19 showed you in the letter y'all had obtained?

20 A Yes.

21 Q And you said that -- who checked the email address to
22 see if anybody had responded?

23 A He had checked it, Clarence checked it. I'm going to
24 show you what's State's Exhibit 114, which has
25 already been admitted into evidence. This is the

1 video of the library.

2 (WHEREUPON, State's Exhibit No. 114 was played.)

3 BY MR. WILKINS:

4 Q Who is that walking in there?

5 A That's Clarence.

6 Q Who is that there?

7 A That's him leaving.

8 Q Now, did Clarence ever go to the library by himself?

9 A Yes.

10 Q And would you agree or disagree if the video said
11 that was April 3rd, 2008?

12 A Yes.

13 Q Would you agree?

14 A Yes. Either I was at home or maybe out in van,
15 outside in the van.

16 Q All right. Let's go forward. We left off at the pay
17 phone?

18 A Yes. After she made these phone and hung up, she got
19 back in the ban and we went back to our trailer.
20 When we got back to the trailer, he handcuffed her to
21 one of our dinning room chairs. And she sat in the
22 living area and watched television and ate ice cream
23 and just watched movies for all day on Saturday.

24 Q So you get back early Saturday morning in the middle
25 night, what do you and Clarence do?

1 A He handcuffs her to the chair. She sits in the
2 living room and we go back into our bedroom.

3 Q Okay.

4 A The next day, we sit around mostly. I go to Checkers
5 to buy some food. Later on that afternoon, Saturday
6 afternoon, his sister comes to our house.

7 Q Who's Clarence's sister?

8 A Her name is Janese Gibbs.

9 Q Okay. Do you remember about what time on that
10 Saturday she comes over?

11 A Maybe early afternoon, so 12:00 and 3:00.

12 Q Is Mekole there?

13 A Yes.

14 Q What do you do -- where does Mekole Harris go when
15 she comes over?

16 A She goes into the front bedroom, the big bedroom on
17 the end. And Clarence closes the door. She sits in
18 there handcuffed to the chair while his sister visits
19 for maybe five or ten minutes and then she leaves.

20 Q Does he tell Mekole anything?

21 A He tells her it's our sergeant coming to check on us
22 and that she needed to be secured.

23 Q So about how long does Janese stay?

24 A Maybe five, ten minutes.

25 Q Then what happens?

1 A He tells her she can come out. She comes out and
2 sits on the couch and watches movies for most of the
3 day.

4 Q During that Saturday, do you ever leave?

5 A I go to get food from Checkers in Cherry Dale. I'm
6 not sure what time.

7 Q Was that nighttime or during the day?

8 A It was daylight. I think it was in the evening.

9 Q So you go to Checkers. What do you do next?

10 A Get hamburgers, come back, eat, and we just sit
11 around the house that day.

12 Q Now, are y'all talking to Mekole?

13 A I stayed back in the bedroom. He talks to her -- I
14 assume he talks to her while I leave, but other than
15 that, he stays back in the bedroom with me.

16 Q Is she able to leave the house or the trailer?

17 A She can if she wants to. She's right there at the
18 front door.

19 Q But is she handcuffed?

20 A She is handcuffed to the living room chair.

21 Q So if she was going to leave, what would she have to
22 do?

23 A She would have to carry the chair with her.

24 Q So what happens next?

25 A He crushes up some Tylenol PM and some other sleeping

1 medicine and mixes it in some ice cream. It's pretty
2 late. It's probably about 9:00 or 10:00 at night at
3 this point. And he gives it to her. She eats a
4 little bit of it, but she doesn't really eat all of
5 it. I'm not sure why she didn't eat, but she doesn't
6 eat most of it. And I stayed back in the bedroom
7 most of the time, so I'm not sure what all was said
8 or happened.

9 Q At this time, where are your kids?

10 A There are still with his mother at his sister's
11 house.

12 Q Do you remember where they were living at that time?

13 A They were staying near elementary school, I'm not
14 sure what the name of the street is. Cornelius,
15 maybe.

16 Q What happens next?

17 A I sleep as best -- I really hadn't been sleeping
18 during this time very much--

19 MR. MAULDIN: I'm going to ask you to get a
20 little closer to the microphone, please.

21 THE WITNESS: I'm not sleeping very much during
22 this time. So as best as possible, I try to fall asleep.
23 He's sleeping next to me. She's still on the couch.
24 Mekole Harris is still on the couch. And Sunday morning
25 comes and he wakes me up and he tells me that -- he asked

1 me if I'm going to do what he wants me to do and I told
2 him yes.

3 BY MR. WILKINS:

4 Q What does that mean?

5 A During a lot of this time, he's very threatening to
6 me. He actually, held a knife to me one evening
7 because I didn't say exactly what he asked me to over
8 the phone. I was talking to the vacuum cleaner
9 service that we worked for and I didn't tell exactly
10 what he said to do, so he became very upset. And he
11 took my into the shower, into the front bedroom
12 shower and put me in the shower and held a knife to
13 my throat and told me if I couldn't do what he wanted
14 me to do, then there was no use for me living
15 anymore. That I was no good to anybody else if I
16 couldn't do exactly what he told me to do when he
17 told me to do it. And to give him three reasons why
18 I should stay alive during this. And I can't even
19 remember what I said, but I told him I'd do whatever
20 he wanted me to do whenever he wanted me to it
21 without question.

22 Q So Sunday morning, you're up?

23 A He ask me I do what he say and I said yes. He's like
24 I want you to go in there and I want you to kill the
25 lady in there. And I ask him why. He was like why

1 you questioning me. So I just get quiet. And so he
2 like I don't care how you kill her. You can stab her
3 or you can choke her or whatever you want to do. And
4 I don't know what to say. So he tells me that well,
5 it'll be easiest if you just try to strangle her.
6 And you can use some of the cable cord that we have
7 in the house. So he leaves out of the bedroom and he
8 ties her down to the chair that she's handcuffed to.
9 He has the handcuffs behind her back, ties the
10 handcuffs to the bottom railing of the chair.

11 Q Where is she sitting?

12 A She's in the living room with her back facing the
13 hallway and the front bedroom. And just sitting in
14 the chair in the middle of the living room in front
15 of the couch. He ties strings around her ankles to
16 the chair and he cuts off -- there's a box of cable
17 wire that had been left at our house before, so we
18 had this box of cable wire. He goes and cuts cable
19 wire off and leaves in the back bedroom -- it was the
20 front bedroom. He tells me to go into the front
21 bedroom and wait for him to tell me to come out.

22 So I go into the bedroom, she's handcuffed to
23 the chair and he's talking to her. I'm not sure what
24 he's saying to her. But he tells me to come out the
25 room. And I come up behind her with the cable wire

1 and try to strangle her. And she's fighting,
2 struggling hard. And I can't hold onto her anymore.
3 And so he takes the cable cord from me and ties it
4 down to the back of the chair. Then he puts the
5 trash bag over her head and she eventually stops
6 breathing. After that, he cuts the cable cord out
7 from around her neck and he tells me to help her take
8 her into the bathroom, into the front bathroom. And
9 we sit her in the bathroom.

10 Q Let me stop you right there. Do you remember what
11 kind of plastic bag he used to put over her head?

12 A It was just a regular grocery bag.

13 Q What was Mekole Harris doing?

14 A She was struggling and fighting. She just wanted to
15 be let go.

16 Q Who untied the cable?

17 A He used a knife to cut the cable cord from the chair.

18 Q What do y'all do?

19 A Then we took her into the bathroom, laid her in the
20 shower. After that, we left and went to the Dollar
21 Tree and he bought a knife from the Dollar Tree.

22 Q Now, where is Mekole Harris's body at this time?

23 A In the front bedroom in the shower that's in that
24 bathroom. The living room is here and we took her
25 into this bedroom to this bathroom and sat her in the

1 shower.

2 Q Was Mekole Harris dead at that time?

3 A Yes, sir.

4 MR. MAULDIN: Get a little closer to the mic,
5 please, ma'am.

6 THE COURT: Mr. Mauldin, address me, not the
7 witness.

8 THE WITNESS: After we put her in the shower, we
9 leave the house and go to the Dollar Tree. And he buys a
10 knife in the Dollar Tree. Then we go to the Family Dollar
11 and he buys spray paint, a can of spray paint and some
12 trash bags. And I'm not sure if we bought anything else
13 there or not. Then I believe we go to the library and
14 type out another short letter.

15 BY MR. WILKINS:

16 Q All right. About what time of day is it that you go
17 to the library, do you remember?

18 A Think it's the afternoon, early afternoon, I'm not
19 sure.

20 Q All right. I'm going to show you what's State's
21 Exhibit 115. Do you remember what day this was?

22 A Sunday.

23 Q Who's that walking in the library there?

24 A It's myself and Clarence.

25 Q Had y'all just killed Mekole Harris?

- 1 A I believe so.
- 2 Q All right. Take a look at that and tell me what you
3 see.
- 4 A That's Clarence right there.
- 5 Q How do you know that's Clarence?
- 6 A He likes to wear those gloves a lot. He keeps a
7 couple pair of those gloves in our van.
- 8 Q Why is he wearing gloves?
- 9 A I'm not sure.
- 10 Q Do you see the time stamp up there in the right-hand
11 corner?
- 12 A It 3:00.
- 13 Q On what day?
- 14 A The 6th, April 6th.
- 15 Q Do you recognize Clarence's shirt?
- 16 A Yes.
- 17 Q How do you recognize it?
- 18 A It's one of the shirts that I received going on a
19 spiritual life retreat when I was younger.
- 20 Q What are y'all doing here at the library?
- 21 A I believe this is where we typed out the notes that
22 was left with the pieces of the body.
- 23 Q Okay. Do you know what Clarence is doing there?
- 24 A Yes.
- 25 Q What's he doing?

1 A I assume he's typing the letter out, I'm not sure.

2 Q Did he type it or did you type it?

3 A I'm not sure because he's on camera typing. But I'm
4 not sure, I can't remember if I did or not.

5 Q Who is that?

6 A That's myself and Clarence leaving.

7 Q I'm going to show you what's State Exhibit 30, 31 and
8 32, which have already been admitted into evidence.
9 Do you recognize those?

10 A Yes.

11 Q Have you seen those before?

12 A Yes.

13 Q What are they?

14 A Myself and him, myself and him entering the library
15 and him by himself entering the library.

16 Q Are these just stills off the video we just watched?

17 A Yes.

18 Q So you leave the library, where do you go?

19 A Go back to our house. When we get back to the house,
20 he tells me to come into the bathroom and he lays out
21 trash bags into the floor. He cuts open trash bags
22 and lays them in the floor. He cuts up a suitcase
23 that he's had since I met him. He's had the
24 suitcase. And he broke it in half. It's a very old
25 suitcase. And lined that with trash bags, also. He

1 puts that suitcase underneath Mekole Harris's legs
2 and feet and she's laid back into the shower, sitting
3 down in the shower. He gets a machete, the knife --
4 a machete he had bought a long time ago, a knife that
5 he had bought from the Dollar Tree, some gardening
6 snips and maybe another knife, I can't remember
7 clearly. And he bends down and tries to cut at
8 Mekole Harris ankle with the knife from the Dollar
9 Tree. And it doesn't cut well. To he tries the
10 machete next to cut off her ankles and starts
11 spraying blood around the bathroom, so he stops.
12 Then he gets the garden snips and he snips off her
13 ankle. Then he gives them to me and tells me I need
14 to do the other. And I can't do it. It's hard. So
15 he puts his hands around mine and helps me to cut off
16 her ankles. He cuts off both her wrists. Before he
17 cuts the ankles off, he cuts her toes off and puts
18 those into the suitcase. And he puts all these
19 pieces into the suitcase. And later, he cuts open a
20 milk jug, puts the toes and hands into the milk jug,
21 puts those in the freezer. And he puts her feet into
22 trash bags and puts them in the freezer with the milk
23 jug. Then we wrap the body up in trash bags and put
24 her in this baby carrier that we have for our
25 youngest baby.

1 Q Ms. Jenkins, how long did it take you to severe the
2 toes and hands and feet?

3 A I'm not sure. Maybe an hour, two hours. I'm not
4 sure.

5 Q And where were you during this entire time?

6 A Mostly, I was just standing there in the bathroom
7 with him, just during that one incident him helping
8 me to cut off one of the ankles. After wrapping her
9 up in the trash bags, we put her into the baby
10 carrier with her coat and purse and some of the other
11 things that she had with her with all the trash bags
12 from the floor in the bathroom. And we put them all
13 in baby carrier.

14 Q Baby carrier, what do you mean?

15 A Like a play pen.

16 Q Can you tell us about how big the play pen was?

17 A Just like three by five, I don't know, just a regular
18 little bouncing play things that you buy. We take it
19 and put it in our van and --

20 Q How do y'all get it to the van?

21 A We both carry one side, pick it up and tote it.

22 Q It is heavy?

23 A Yes. We backed the van up to the porch.

24 Q Let's start over. Could you have carried that thing
25 by yourself?

1 A No. We back it up -- we back the van to the porch
2 and we take it, put it on -- into your van. And he
3 drives around -- we drive around for a little while.
4 And we come up on Paris Mountain and there's a little
5 gate on the side of Paris Mountain near the golf
6 course. And there's a little open area. And we
7 place the body there in the baby carrier, put
8 gasoline on it, starter fluid and he tells me to
9 strike a match and jump in the van. So I light it,
10 jump in the van and we leave and go back to our
11 house. It's dark then.

12 Q What day is this?

13 A This is Sunday night. After that, we go back to our
14 house and he takes the body pieces out of the freezer
15 and puts her fingerprints on the letters that get
16 dropped off with her. And he puts one hand, one foot
17 and a set of toes in a bag and puts another hand, set
18 of toes and a foot in another bag.

19 Q Now, you say he put her fingerprint on the letter.
20 How did he do that?

21 A He just had the letter and he just had her hand and
22 he just went over the letter with her fingers.

23 Q I'm going to show you State's Exhibit 8, it's already
24 been admitted. Do you recognize that?

25 A Yes.

1 Q Is that the letter that Clarence typed out at the
2 library?

3 A Yes.

4 Q Is that the letter that he rolled Mekole Harris'
5 fingerprint on?

6 A Yes.

7 Q What happens next?

8 A Got these bags ready. And we waited a few hours
9 until after midnight. And it was probably maybe
10 1:00, 2:00 in the morning. I'm not sure what time
11 exactly. It was very late. And we drove to Grace's
12 aunt's house in Andover. Went to Andover Apartments
13 and he dropped me off right at the entrance of the
14 apartments on Cleveland Street. And I walked down
15 with one of the bags and one of the letters. I put
16 one of the letters onto her car, Grace's aunt's car.
17 And threw the bag up onto her porch in front of her
18 door.

19 Q All right. I'm going to show you what's been
20 admitted into evidence as State's Exhibit 159. Have
21 you seen this video before?

22 A Yes. That's myself walking down Andover Apartments
23 and the sidewalk in the background.

24 Q Who is that right there?

25 A That's myself.

- 1 Q What do you have in your hands?
- 2 A The bag with body parts and the letter in my hand.
- 3 Q What are you doing there?
- 4 A Putting the letter onto Grace's aunt's car.
- 5 Q And where do you go from there?
- 6 A Close to her apartment to throw up the pieces onto
- 7 the porch.
- 8 Q So do you walk up the stairs to her second floor?
- 9 A No.
- 10 Q How do you get the bag up there?
- 11 A I through it up there from right in front of the
- 12 bushes right in front of the downstairs apartment.
- 13 Q Were you successful in your throw?
- 14 A Yes, sir.
- 15 Q Who's that right there?
- 16 A That's me leaving. That's myself.
- 17 Q Are you on the top of the screen?
- 18 A Yes.
- 19 Q Okay. Now, during this time, where's Clarence?
- 20 A Driving up and down Cleveland Street in our van
- 21 waiting for me to come back.
- 22 Q And when you were exiting that video right there,
- 23 where was Clarence?
- 24 A He was waiting at the church that's on the corner
- 25 right there in that parking lot in the van.

1 Q Once you got in that car, what did you do next?

2 A We drove around to Church Street -- well, off Church
3 Street, Rose Avenue, Rose Street that's off Church
4 Street to Grace's mother's house. And he dropped me
5 off there at the corner at the next street up. And I
6 walked down the street, down to the next street and
7 down to her house. Dropped off the letter in the
8 mailbox and I walked the bag to the porch, sat it on
9 porch and walked back down the street.

10 Q I'm going to show you what's marked as State's
11 Exhibit 12, which has already been entered into
12 evidence. Do you recognize that house?

13 A Yes, sir. It's Grace's mother's house that she lived
14 in when we went to visit her.

15 Q Is that where --

16 A That's where I dropped off the --

17 Q What about that mailbox there?

18 A That's the mailbox that I put the letter in.

19 Q So when you left Rose Avenue now, what did you do?

20 A We went to Labor Finders again and -- for him to find
21 another job there. And I sat and waited with him
22 there. He worked at this pool service place that
23 day. And after he worked there, we got his check and
24 we went home. We just sat at home pretty much the
25 rest of the day. The next day was -- well, that was

1 Monday, that was Monday during the day he worked at
2 the pool place.

3 Q Did y'all do anything to the bathroom where Mekole's
4 body had been?

5 MR. MAULDIN: Your Honor, I object to leading
6 the witness.

7 THE COURT: Don't lead.

8 THE WITNESS: We cleaned up the bathroom on
9 Monday when we got back -- really, on Sunday after --
10 before we went to drop off those pieces, he dug out the
11 blood spots with a knife and a spoon out of wall, try to
12 out of the ceiling in the bathroom.

13 Q What do you mean by that?

14 A The blood spatter from when he tried to use the
15 machete was everywhere, so he tried to get it out of
16 the wall. He cleaned it first, and I guess he didn't
17 think it was good enough. I helped him clean up, but
18 he dug out the -- just out of the sheetrock out of
19 the room, dug the blood spots out.

20 Q What did y'all clean the bathroom with?

21 A Bleach, ammonia, just other household cleaners that
22 we had there at the house. That was on Sunday. Then
23 on Tuesday, his sister came by our house. I'm not
24 sure how she got any information, but that the police
25 were coming to talk to us. And she was scared. Then

1 she left. And maybe 40, 50 minutes later, another
2 van that looked similar to her van pulled into our
3 yard. I opened the door and it was Detective Flavell
4 and another officer with him. And they said that
5 they needed to speak to us about a matter and they
6 needed us to come down to LEC. I told him that I
7 didn't have anybody to keep our children, so I would
8 come down later, and that Clarence wasn't at home at
9 the time.

10 Q Was Clarence at home?

11 A Yes, he was hiding in a closet, back in a water
12 heater closet.

13 Q So what did you?

14 A After they left, he told me to clean up the rest of
15 the stuff that was in the house. We had a lot of
16 trash bags laying around. I took most of the trash
17 bags out to the dumpster. And after that, then I
18 went to take our daughters to Clarence sister's
19 house. Clarence sister's offered to take me down to
20 LEC, down to the law enforcement center to talk to
21 the detective. When I got down there, they asked me
22 a lot of questions about where Clarence was and what
23 I had been doing during the daytime. And did I know
24 Mekole Harris and was I scared of Clarence, and did
25 anybody deserve to be treated like that because they

1 were homeless.

2 Q How long did you stay down at the LEC?

3 A I'm not sure. Maybe an hour or two, I'm not sure.

4 Q When you left, where did you go?

5 A Went back to Janese's house, his sister, and got the
6 girls and then went back to our trailer. I told him
7 pretty much everything that was said. Told Clarence
8 pretty everything that was said at LEC. And I told
9 the officers that I would contact an attorney and I
10 would come back and speak with them with an attorney.
11 I never called anybody. And Wednesday went by, we
12 just stayed at our house Wednesday. And Thursday,
13 he, Clarence, wanted to leave. So we had started to
14 pack our clothes and the girls together to leave.
15 And Clarence started watching television and got
16 caught in television. And that's when Detective
17 Flavell and the other officers came to our house and
18 arrested us.

19 Q All right. In between that time, did you do any
20 further cleaning of the bathroom?

21 A Right after Detective Flavell, while I was taking out
22 these the trash bags and things, Clarence went back
23 into the bathroom and cleaned the bathroom all over
24 again, cleaned out the shower. He used the spray
25 paint that he bought on Sunday and spray painted one

1 of the walls, the wall right next to the shower and
2 part of the shower itself. Then before he painted,
3 he had set a few fires into the into the shower with
4 a lot of lighter fluid that we had. And it was very
5 smoky in the shower.

6 Q All right. I'm going to show you what's State's
7 Exhibit No. 37, marked for identification.

8 (WHEREUPON, State's Exhibit No. 37 was marked
9 for identification only.)

10 BY MR. WILKINS:

11 Q Do you recognize that photograph?

12 A Yeah, that's a picture of the bathroom and that's the
13 paint, obviously, from him cleaning the shower.

14 Q Is that a true accurate representation of your
15 bathroom at that time?

16 A Yes.

17 MR. WILKINS: Your Honor, State moves Exhibit 37
18 in.

19 THE COURT: Any objection?

20 MR. MAULDIN: No objection.

21 THE COURT: Okay.

22 (WHEREUPON, State's Exhibit No. 37 was admitted
23 into evidence.)

24 BY MR. WILKINS:

25 Q Now, down at the lower part of that photo, tell the

1 jury what's going on there?

2 A That is -- the red is the spray paint that he

3 painted.

4 Q What was the purpose of the spray paint?

5 A To cover the wall. I'm not sure -- there was really

6 no blood there at that place, you know, because the

7 shower door was there during the whole time, but he

8 decided to paint there and a little bit into the

9 shower. He had actually painted the whole bottom of

10 the shower, and I think cleaned it again after he

11 painted it.

12 Q Down at the lower left-hand part of the picture, what

13 do you see?

14 A Like the paint and stuff is coming up off the wall.

15 Q Why is the paint coming up off the wall?

16 A I assume he peeled the paint off to -- because he had

17 actually painted that whole wall. And I think he was

18 peeling the pain back off. So it's the paint coming

19 off from him spray painting the wall.

20 Q And the shower you see there, you talked about some

21 fires. Is that the shower you're referring to?

22 A Yes, sir.

23 Q Tell us about those.

24 A He had set the first fire not too along after the

25 detective left from our house. And he put it out,

1 set another fire. He set maybe about three fires in
2 the shower.

3 Q Do you know why he did that?

4 A I assume just to destroy evidence which was in the
5 sure from dismembering her body.

6 Q So when Detectives Flavell and them showed up, what
7 happened?

8 A He -- which day? Which day are you referring to?

9 Q I'm sorry?

10 A Which day are you referring to?

11 Q The last time, the most recent time they showed up?

12 A Thursday, they came and we had our girls and they
13 were on our bed in the master bedroom. Clarence, he
14 got into the closet that's in that bedroom and the
15 water heater is in there. And it had been leaking
16 when we first moved in, so the flooring had rotted
17 out of the bottom. And as he was trying to fix it
18 one day, he had fell through. And he was hiding in
19 there when the police came to arrest him for a bench
20 warrant. And I lied and told them that he wasn't in
21 the house. And they told me if they found him in the
22 house that they would arrest me for obstruction of
23 justice. And, of course, they found him in the house
24 and we both were arrested after that.

25 Q Now, after that, Ms. Jenkins, did you ever send

1 information about the location of the body of Mekole
2 Harris?

3 A Yes, I told my lawyer and an investigator that worked
4 for me.

5 Q Did you instruct them to do anything with that
6 information?

7 A Told them to let the police know about it.

8 Q Okay. So what information did you give that you
9 instructed them to give to law enforcement?

10 A The location of where the body was left.

11 Q And what location was that?

12 A The Paris Mountain -- I didn't have the address, but
13 I just knew the area. And it was on Paris Mountain
14 behind a gate off the main road, off the main road at
15 the bottom of the mountain.

16 Q Why did you give that information?

17 A I felt that it was right for her family to know.

18 Q Did you receive any benefit from giving that
19 information?

20 A At the time, we were both -- had the death penalty
21 seeking against both of use. And for that, they
22 dropped the death penalty. Your office dropped the
23 death penalty.

24 MR. WILKINS: One moment, Your Honor.

25

1 BY MR. WILKINS:

2 Q Ms. Jenkins, one final question. Did you and
3 Clarence Jenkins kidnap and murder Mekole Harris?

4 A Yes.

5 MR. WILKINS: One moment.

6 BY MR. WILKINS:

7 Q One final final question. Do y'all own a grill?

8 A Yes, sir.

9 Q And was that grill ever used during this time?

10 A To burn the clothing that was worn during the murder
11 and dismemberment of her body.

12 Q Who used that grill?

13 A Both of us did, myself and Clarence.

14 Q Do you remember when that was?

15 A On Monday night, I think it was Monday night.

16 Q And so explain how you used the grill?

17 A Clarence put our clothes and shoes into the grill and
18 used lighter fluid to start the fire into the grill.

19 At one point, I was outside with the grill.

20 Q Where was the grill located?

21 A On the porch, on the front porch.

22 Q Was this at nighttime?

23 A Yes. It was late at night. Actually, one of the
24 neighbors saw the smoke and stopped asked if anything
25 was wrong.

1 MR. WILKINS: Please answer my questions that
2 the Defense counsel may have.

3 THE COURT: Let me talk to the lawyers for a
4 second up here.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury but out of the hearing of
7 the jury.)

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, I anticipate -- I don't know how long
10 examination will continue, but given the hour, I think
11 it's probably a good time to break for lunch. I'm going
12 to try and shorten it a little bit. I ask you to be back
13 at 1:15.

14 Now, I believe all of us know that human nature,
15 I'm sure you all want to talk about this. I cannot
16 emphasize and stress how vitally important it is that you
17 all not discuss this with anyone. Any part of it at all.
18 And you just remember why. Those -- whoever you would
19 talk to would not be making the sacrifices you're making.
20 And those people didn't come up here and perform their
21 civic duty. They didn't come up here and they have not
22 heard or seen the events in this courtroom. And for them
23 to have any input into this case at all would be a total
24 violation of all kinds of things. So don't do it. I
25 don't know if you have to go eat by yourself or something.

1 I don't mean to be unkind, but do not discuss this case.
2 Please be back and we'll be ready to go at 1:15. Thank
3 you very much. And let me just say, if somebody
4 approaches you about this, you just tell them no and if
5 they persist, you find out who that is because I will take
6 care of that. Okay. Thank you very much.

7 (WHEREUPON, the jury left open court at
8 approximately 11:55 p.m.)

9 THE COURT: All right, Ms. Jenkins, you may
10 stand down, but you are not to discuss your testimony with
11 anybody. Okay.

12 All right. Anything before we break?

13 MR. WILKINS: Nothing from the State, Your
14 Honor.

15 MR. MAULDIN: No, Your Honor.

16 THE COURT: All right, 1:15.

17 (WHEREUPON, a lunch break was taken.)

18 MR. MAULDIN: Judge.

19 THE COURT: Yes, sir.

20 MR. MAULDIN: I want to bring one thing to your
21 attention that Mr. Wilkins and I have agreed to. I
22 mentioned here that we had lifted some stills.

23 THE COURT: Right.

24 MR. MAULDIN: They're only for demonstrative
25 purposes. They'll go on the Elmo so that she can see them

1 and that prevents us from searching the type.

2 THE COURT: Okay. All right.

3 (WHEREUPON, the jury came into open court at
4 approximately 1:25 p.m.)

5 THE COURT: Okay. I trust everyone had a
6 pleasant lunch. We are ready to recommence.

7 Cross-examination, Mr. Mauldin.

8 MR. MAULDIN: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MAULDIN:

12 Q Ms. Jenkins, my name is John Mauldin and I represent
13 your husband, Clarence.

14 A Yes, sir.

15 Q You loved Grace Davis?

16 A Yes.

17 Q And you were very upset when Grace Davis decided that
18 it was in her best interest to leave you?

19 A I was upset, yes.

20 Q You were heartbroken?

21 A Not heartbroken, no.

22 Q Not heartbroken?

23 A No, sir.

24 Q You were devastated?

25 A No, I was just upset that she was leaving. I was by

1 myself.

2 Q But looking back on it, at the time she left and that
3 first week or so afterwards, you would do everything
4 or anything you would to get Grace to come back,
5 wouldn't you?

6 A No.

7 Q No?

8 A I knew why she left. She said she was coming back
9 and I believed her.

10 Q All right. And your answer is no you would not do
11 anything and everything to get her back; is that your
12 answer?

13 A No, I would feel not do anything and everything, no.

14 Q All right. You wrote those crazy letters that we've
15 seen put up here? You wrote those letters, didn't
16 you?

17 A With advice from him. He dictated what for me to
18 write.

19 Q He dictated the letters and you wrote them; is that
20 your testimony?

21 A He wrote a few letters himself.

22 Q And you mailed those letters, right?

23 A I mailed the ones he told me to mail.

24 Q And those letters were mailed to members of Grace
25 Davis's family?

- 1 A Yes.
- 2 Q Those letters were an attempt to get Grace Davis to
3 come back to Tindal Road; weren't they?
- 4 A They were not my idea, yes, sir.
- 5 Q You didn't really think that somebody was going to
6 give you \$10,000, did you?
- 7 A I didn't think about these letters at all.
- 8 Q Okay. So your testimony to this jury, under oath is
9 that you did not think about these letters at all?
10 Is that what you just said?
- 11 A These letters were not my idea.
- 12 Q All right. You went to the library to check the
13 email?
- 14 A Yes, sir.
- 15 Q And the purpose of going to the library to check the
16 email was to see if anybody had responded to those
17 letters?
- 18 A Yes, sir.
- 19 Q And those letters had been sent to Grace Davis's
20 family, right?
- 21 A Yes.
- 22 Q And nobody was going to give you \$10,000. They were
23 an effort to get Grace Davis to come back to your
24 house; weren't they? Wasn't that the bottom line
25 here?

1 A That was his idea, yes, sir.

2 Q That was his idea?

3 A Yes.

4 Q Now, on Friday, April the 4th of 2008, when Clarence
5 came back from Labor Finders, he brought Mekole
6 Harris with him?

7 A Yes, sir.

8 Q And it's your testimony that you know her?

9 A Yes, sir.

10 Q But you knew that she was a street person? You knew
11 she was a person of the street?

12 A Didn't know until after.

13 Q All right. You quickly learned that she was a person
14 of the street?

15 A Not quickly, no. There was never a discussion about
16 her until after everything had happened.

17 Q Did you discover in those two days, Saturday and
18 Sunday, Friday night and Saturday night into Sunday,
19 did you discover that Mekole Harris was a drug
20 addict.

21 A I knew that she had some drugs with her.

22 Q And she took those drugs at your house, didn't she?

23 A When she first got there.

24 Q She used the drugs that she had with her in your
25 house?

- 1 A I don't -- I did not visibly see her use them.
- 2 Q All right. So it's your testimony that you don't
- 3 know whether she used the drugs at your house or not?
- 4 A I just know she had them.
- 5 Q You know that she had them?
- 6 A Yes.
- 7 Q You didn't use drugs?
- 8 A Never have.
- 9 Q And Grace Davis didn't use drugs?
- 10 A Not that I've ever seen.
- 11 Q But this new woman that had come to your house with
- 12 your husband was using drugs and you knew it?
- 13 A I did not know she was using drugs. I knew she had
- 14 drugs with her.
- 15 Q Did you know that she was homeless?
- 16 A No.
- 17 Q Did you know anything about her? And I want you to
- 18 listen to this question. Did you have any knowledge
- 19 of any medical condition that would have been
- 20 contagious or infectious with Mekole Harris, did you
- 21 know that?
- 22 A I didn't know that until after I read motion of
- 23 discovery over a year later.
- 24 Q So you deny, Ms. Jenkins, that you knew she was a
- 25 prostitute, that you knew she was a drug addict, that

1 you knew she was infected; you deny all of that?

2 A I did not know any of that. I knew that he told her
3 that she was under arrest for prostitution that day.
4 I knew that he had drugs sitting on the counter when
5 she was in the floor.

6 Q All right.

7 A I did not find about her medical condition until
8 months later through the motion of discovery that I
9 received.

10 Q So you would deny that you discovered that on Sunday
11 morning?

12 A I did not know any of that.

13 Q All right. April the 5th, that Saturday morning,
14 early morning hours, at least two phone calls were
15 made to Grace Davis's family, right?

16 A Yes, sir.

17 Q Were you present when those phone calls were made?

18 A Yes, sir.

19 Q And you testified on direct that Mekole Harris made
20 those phone calls?

21 A Yes, sir.

22 Q But you did not make phone calls?

23 A I did not come near the telephone period.

24 Q All right. So you all loaded up in the van and you
25 drove to a pay phone?

- 1 A Yes, sir.
- 2 Q Did all three of you get out and go into the pay
3 phone?
- 4 A I stood next to the van.
- 5 Q It was right next to the van?
- 6 A Yes, sir. I stood next to the van and they walked to
7 the telephone.
- 8 Q And let me guess, let me guess, you're going to
9 testify that you sat in the and didn't do anything?
- 10 A I stood next to the van.
- 11 Q But you didn't have anything to do with that either?
- 12 A I stood next to the van while the phone calls were
13 being made.
- 14 Q All right. You testified this morning that when
15 Mekole Harris was brought to your residence on Tindal
16 Road, the residence, by the way, that was in your
17 name, you signed the lease on this residence, right?
- 18 A Yes, sir.
- 19 Q That when Mekole Harris was brought there, within
20 just a matter of moments, she had been placed in a
21 room and taken all of her clothes off and handcuffed
22 and so forth, right?
- 23 A Yes, sir.
- 24 Q So that was Saturday?
- 25 A Friday.

1 Q That was Friday night is that would have been, right?

2 A Friday.

3 Q About what time do you remember leaving the trailer
4 in the van to go to Checkers to get your food, what
5 time would that be on Saturday?

6 A It was after his sister left, so probably between
7 2:00 and 5:00, somewhere between those hours.

8 Q Between 2:00 in the afternoon and 5:00 in the
9 afternoon?

10 A I believe so.

11 Q You walked out of your trailer and you got in the van
12 and you cranked it up? The van that's, by the way,
13 registered in your name?

14 A Yes, it is.

15 Q And you cranked the van up and you drove out of
16 Tindal trailer park?

17 A Yes, sir.

18 Q What Checkers did you go to?

19 A The one in Cherry Dale area.

20 Q How long would you have to drive from the Tindal Road
21 trailer park to get to this restaurant?

22 A Not even five minutes.

23 Q Is it up there at the Cherry Dale complex?

24 A Yes, sir.

25 Q So there's people everywhere. Saturday afternoon,

1 Checkers restaurant, Cherry Dale shopping center,
2 people everywhere that time of day, right?

3 A Yes.

4 Q Did you go through the drive-through window or did
5 you go in?

6 A I went through the drive-through. There's only
7 drive-through at Checkers.

8 Q So you go in through the drive-through and you tell
9 the person what you want to eat, they give you the
10 food and you go back to this place where you have
11 testified this woman was naked in the floor
12 handcuffed?

13 A She wasn't naked at that time, but she had been.

14 Q She had been? And you say you saw that?

15 A Yes.

16 Q Carmen, when Mekole Harris died, Clarence was
17 actually not even in that trailer, was he?

18 A He was there.

19 Q All right. Now, you told the prosecutor that you
20 went to Carolina High School?

21 A Yes, sir.

22 Q And then you went Spartanburg Methodist College?

23 A Yes, sir.

24 Q And you went to Spartanburg Methodist College and
25 majored in business administration?

1 A Yes, sir.

2 Q You went there on a scholarship?

3 A Yes, sir.

4 Q But you had to drop out because your momma was sick?

5 A Yes, sir.

6 Q And that was actually before -- was that before you
7 ever met Clarence?

8 A That was before.

9 Q All right. So you've got a high school education,
10 you qualified to go the college. Were you doing good
11 in college?

12 A I never really -- I only took one test while I was
13 there. I left right at spring break -- right at fall
14 break. The day we were supposed to take midterms, I
15 left that day.

16 Q You're a smart woman?

17 A (The witness nods.)

18 Q You're a smart woman. Now, you married Clarence, but
19 Clarence didn't spell too good, right? Isn't that
20 what you told the prosecutor a minute ago?

21 A Yes.

22 Q Had to help him with his spelling whenever he was
23 supposed to do something?

24 A Yes.

25 Q Because he doesn't have a lot of education?

- 1 A No.
- 2 Q You had to teach him how to get on the email thing.
- 3 He didn't even know how to look up the email, right?
- 4 A I believe he acted like he didn't know how to use it.
- 5 Q But didn't you testify to the prosecutor that you
- 6 taught him how to go on email?
- 7 A I did show him how to use it.
- 8 Q Okay. That's what I asked you. Didn't you say you
- 9 taught him how to use the email?
- 10 A I showed him how to use it, yes.
- 11 Q Okay. And he followed your instructions on the
- 12 email, right?
- 13 A I believe so.
- 14 Q Did you know that Clarence had a fourth grade
- 15 education when you married him, Carmen?
- 16 A He told me he went to Greenville High School.
- 17 Q So he told you that he went to Greenville High
- 18 School?
- 19 A Yes.
- 20 Q But he didn't know how to spell?
- 21 A Yes.
- 22 Q All right. And you married in 2006, December, and
- 23 your child was born in March?
- 24 A Yes, sir.
- 25 Q And that would have been March the --

1 A 25th?

2 Q March the 25th of 2007, little Carmen was born,
3 daughter?

4 A Yes, sir.

5 Q Named after you?

6 A Carmen Marie, all one name Carmen Marie.

7 Q But she was, essentially, your namesake?

8 A If you say so, yes.

9 Q Your name's Carmen, isn't it?

10 A Her name is Carmen Marie, that's her full first name,
11 Carmen Marie.

12 Q And during the early time of your marriage, you had
13 pretty unrestricted use of your mom's car when you
14 needed it?

15 A At the time we met, I had my own car and my mother
16 had her own car. And when he wanted to drive, he
17 could drive it. But I used my car mostly. Then my
18 car started to tear up and my mother let us use her
19 car when she came became disabled and unable to drive
20 after our first daughter was born.

21 Q All right. So the answer then would have been yes,
22 you had use of your mom's car?

23 A Yes.

24 Q Okay. And some -- and your marriage got kind of
25 rocky after a while, right? Y'all were having a

1 little trouble?

2 A Yes.

3 Q And it was not unusual for you to go over to your
4 mom's house, who lives in Greenville County, or
5 Clarence to go his momma's, she lives in Greenville
6 County? That wasn't an unusual situation, was it?

7 A That was only one point in time that we didn't
8 actually live together, that we didn't live together
9 on a daily basis.

10 Q All right.

11 A That was when he asked me to leave and when he went
12 to prison. Other than that, we stayed together on a
13 daily basis.

14 Q One of those times was in the summer of 2007, right?

15 A Yes, sir.

16 Q All right. You and your baby, baby Carmen -- did you
17 call her Carmen or Carmen Marie?

18 A I call her Carmen Marie. My family calls her Carmen.

19

20 Q All right. Well, I'm going to call her little
21 Carmen.

22 A Okay.

23 Q You and little Carmen stayed over at your mom's house
24 in the summer of 2007?

25 A Yes.

1 Q And in August -- would it have been early Augusta or
2 mid-August when you met Grace?

3 A I met Grace, I believe the day after her birthday, so
4 it would be August 5th, I believe.

5 Q August 5th?

6 A I believe so.

7 Q All right. You met her on her birthday. And how
8 many days after that was it before she was actually
9 living with y'all over on Tindal?

10 A We stayed together before that and then moved to
11 Tindal the next February.

12 Q Oh, that's Lulu?

13 A Yes, sir.

14 Q All right. That's right, you're living on Lulu Lane?

15 A In the Welcome area, yes, sir.

16 Q And that's where she first went with y'all?

17 A Yes, sir.

18 Q So you met her on August 5th. When did she get to
19 move with y'all on Lulu Lane?

20 A That night, the same night I met her.

21 Q The night you met her is when y'all all moved in
22 together?

23 A The night I actually met her and knew her name was
24 the night she moved into our house.

25 Q All right.

- 1 A I seen her one other time before at Wal-Mart, but I
2 never met her.
- 3 Q Thirteen days after Grace moved in with y'all, you
4 and Grace and Clarence and was it your little
5 brother?
- 6 A It wasn't even 13 days. It was like three.
- 7 Q How about August the 18th, August the 18th was the
8 traffic stop?
- 9 A Okay.
- 10 Q So that's 13?
- 11 A Okay.
- 12 Q Okay. August 18th, there was a traffic stop out on
13 385. Clarence was driving and he didn't have a
14 driver's license. In fact, he had prior charges of
15 driving without a license, driving without a license,
16 going to jail, going to jail. Couldn't stay out of
17 jail for driving under suspension, could he?
- 18 A He only went one time when we were together.
- 19 Q All right. So they pull Clarence over and they
20 arrest Clarence?
- 21 A Yes.
- 22 Q They arrest you for bad check you've written?
- 23 A (The witness nods.)
- 24 Q They arrested -- it is your brother?
- 25 A It's my brother.

1 Q All right. They arrested him for failure to come to
2 court on some kind of charges, right?

3 A Yes.

4 Q And were y'all in your momma's car?

5 A Yes, sir.

6 Q And that car that belonged to your mom was then
7 turned over to Grace?

8 A It had to be, she was the only one left.

9 Q Because everybody else was under arrest?

10 A (The witness nods.)

11 Q That same day Grace and your momma came and picked
12 you up at the jail, right?

13 A Yes, sir.

14 Q Because they turned you loose?

15 A Yes, sir.

16 Q But they didn't turn Clarence loose?

17 A (The witness shook her head.)

18 Q He got 90 days in prison, right?

19 A Yes. He got sentenced to more than that, but he did
20 90 days, yes.

21 Q So he goes down the road for 90 days and you and
22 Grace go back to Lulu Lane?

23 A Yes.

24 Q And when you went back to Lulu Lane, you and Grace
25 got to talking and knowing each other a little better

1 and became intimate?

2 A Yes, sir.

3 Q Did you not?

4 A Yes, sir.

5 Q And you were very happy?

6 A Yes.

7 Q It was the best of times for Carmen Jenkins, wasn't
8 it?

9 A If you say so.

10 Q All right.

11 A It wasn't the best of times.

12 Q It was the best of times, wasn't it?

13 A No, not really. We struggled a lot.

14 Q You had a job at Sports Authority. Grace was staying
15 home with her children and your baby. Everything was
16 kind of nice for you, wasn't it?

17 A I mean, if you consider almost getting your power cut
18 off and the water cut off. If you consider that
19 nice.

20 Q I understand the day-to-day stuff. I'm just saying
21 you were happy with Grace, weren't you?

22 A Yes, sir.

23 Q Okay. And during the 90 days that Clarence was done
24 the road, you actually fell in love with Grace?

25 A Yes.

1 Q And you and Grace talked about your love for each
2 other?

3 A And for Clarence.

4 Q And for Clarence?

5 A (The witness nods.)

6 Q In fact, you got word to him about the relationship
7 you had with Grace?

8 A We constantly wrote letters.

9 Q You wrote letters and you told Clarence you had
10 fallen in love with Grace?

11 A Yes.

12 Q And that's why when he came home, December the 1st,
13 he wrote out these vows, that's why? He knew how you
14 felt about Grace, didn't he?

15 A Yes.

16 Q You didn't hide it?

17 A (The witness shook her head.)

18 Q Move to Tindal, that's the location of the trailer
19 involved in this case. You moved to Tindal in
20 February of '08?

21 A Yes, sir.

22 Q You got moved over there and, unfortunately, there
23 was a Family Court case involving Grace's children?

24 A Yes.

25 Q And the Family Court judge said got to have your own

1 place, right?

2 A I assume so. I didn't stay in the courtroom.

3 Q Well, that's what Grace told you?

4 A Yes.

5 Q Okay. And Grace got to talking to you about needing
6 to leave?

7 A Yes.

8 Q And that wasn't something that made you happy?

9 A I would leave to get me children back, also.

10 Q I understand that. And that's a respectable thing.
11 But you loved this woman and you didn't want her to
12 leave?

13 A No, I didn't.

14 Q Okay. She finally -- well, in fact, she stayed over
15 there at Tindal for two, three -- three or four weeks
16 after the Family Court ordered her to find a place.
17 She still stayed with all for three or four weeks?

18 A Yes.

19 Q Finally, left on March 15th. And when she left out,
20 you ran over behind her, followed her down the
21 street, ran over behind her wanting to get the ring
22 back. And you told her you wanted her to stay. You
23 wanted her to come back, didn't you?

24 A Yes, I said I wanted her to stay.

25 Q All right. You were heartbroken?

1 A I was upset, not heartbroken.

2 Q You were upset?

3 A Yes.

4 Q You called her -- after that, you called her on the
5 telephone and asked her to come back, didn't you?

6 A No, I never spoke -- I've never spoken with Grace
7 since the day she left.

8 Q All right. Then let me do it this way. If Grace had
9 said that you had called her, is she just in error?
10 You don't make any phone calls to her?

11 A We didn't know she was.

12 Q Okay. Now, after that -- and your youngest child had
13 been born on the 5th?

14 A Third.

15 Q The 3rd?

16 A Yes, sir.

17 Q Melissa Jenkins.

18 A Yes, sir.

19 Q Date of birth March 5th of '08?

20 A I was not in a good state of mind when we were
21 arrested and that's what I told the police, that's
22 what I believed the date was. But her birth
23 certificate does say the 3rd.

24 Q All right. Well, those two children from about
25 mid-March until about the first week of April were

1 spending most of their time over a Janese's house,
2 weren't they?

3 A Yes, sir.

4 Q She was taking care of your children for you?

5 A Yes, sir.

6 Q She was taking care of your children, Clarence's
7 sister was taking care of your children while y'all
8 were writing these letters?

9 A Yes, sir.

10 Q She was taking care of your children while y'all were
11 mailing these letters trying to get Grace Davis to
12 come back; wasn't she?

13 A Yes.

14 Q The van out in front of Tindal, that blue van was
15 register in your name?

16 A Yes.

17 Q The Tindal lease on that trailer is in your name?

18 A Yes.

19 Q The computer service subscription that y'all used
20 there at Tindal is in your name?

21 A I don't believe so. I believe that's in Grace's
22 name. I think the cable service was in Grace's name.

23 Q So if something was taken out of the trash can that
24 had your name on it about that computer service, that
25 just wouldn't be right?

- 1 A I mean, there was a lot of things in both of our
2 names. There was things in my name and Grace's name.
- 3 Q Okay. So a lot of stuff in your name, a lot of stuff
4 in Grace's name. Grace is gone?
- 5 A Yes, sir.
- 6 Q Carmen, State's Exhibit 159 is the surveillance tape
7 for Andover Apartments parking lot. I'm going to
8 show you as a demonstrative aid some still photos
9 that we have lifted off of that type. Instead of
10 putting that tape in and mashing these buttons, I
11 just got me some copies, okay?
- 12 A Yes, sir.
- 13 Q Okay. The automobile there that that person is
14 walking towards belongs to who?
- 15 A I belongs to Grace's aunt.
- 16 Q Pardon me?
- 17 A Grace's aunt.
- 18 Q All right. Grace's aunt. This is Grace's aunt's
19 car. Because Grace's aunt lives at Andover
20 Apartments.
- 21 A Yes, sir.
- 22 Q Do you remember the number?
- 23 A No, sir.
- 24 Q You knew the number well enough to throw that bag up
25 there; didn't you?

1 A I knew the location of it. I didn't know the number
2 of the apartment.

3 Q All right. Can you see this thing?

4 A Yes, sir.

5 Q Who's that person there carrying that bag?

6 A That is me.

7 Q That's you. You have gone to Grace's aunt's car?

8 A Yes, sir.

9 Q You knew that car?

10 A I had been there before.

11 Q You know the apartment?

12 A Yes, sir.

13 Q And you're putting the note under the windshield
14 wiper?

15 A Yes.

16 Q The note that you wrote?

17 A That Clarence wrote.

18 Q You say Clarence wrote the note?

19 A Yes, sir.

20 Q Did he have any trouble with the spelling?

21 A No, sir.

22 Q And the last picture that I'll show you is this one.
23 This one shows that same car, that same figure
24 walking across the parking lot and that same bag in
25 her hand; doesn't it?

- 1 A Yes, sir.
- 2 Q That's you?
- 3 A Yes, sir.
- 4 Q And that's right before you threw that bag over on
- 5 that porch?
- 6 A Yes, sir.
- 7 Q See a blue van in that picture?
- 8 A He's on the street.
- 9 Q He's up on the street somewhere? He's out of sight?
- 10 He's out of camera view, right?
- 11 A Yes, sir.
- 12 Q You're right in the spotlight, but Clarence is just
- 13 right over here somewhere?
- 14 A Yes, sir.
- 15 Q Later on that morning, April 7th, Monday, April the
- 16 7th, you testified to the prosecutor here that
- 17 Clarence had to go to work?
- 18 A He wanted to go, yes.
- 19 Q I mean, he had a job. He had a job with Randall Pool
- 20 Services. Randall Pool Services is located in
- 21 Easley, South Carolina?
- 22 A Yes.
- 23 Q So what you did is you drove Clarence to work?
- 24 A I went with him that whole day. I sat out in the
- 25 parking lot in front of the pool service.

1 Q So you drove to Easley?

2 A Yes, sir.

3 Q And do you remember whether Clarence worked nine
4 hours that day? Do you remember it being a long
5 time?

6 A I sat out there for a very long time.

7 Q It was a full day?

8 A Yes, sir.

9 Q And your testimony is that you sat in the blue van in
10 your name and waited the whole day while Clarence was
11 working?

12 A Yes, sir.

13 Q And the car had gas in it, didn't it?

14 A Yes.

15 Q It had air in the tires?

16 A Yes, sir.

17 Q It had a battery that would crank it, didn't it?

18 A Yes, sir.

19 Q You sat in that parking lot for nine hours while your
20 husband was off working?

21 A Yes.

22 Q How many hours after you threw that bag on that porch
23 were you sitting in that parking lot over there at
24 that pool place? How long was it?

25 A How many hours after?

1 Q If that happened in the early morning hours, what
2 time did you take him to the pool service place?

3 A We left Labor Finders at probably 8:00, 8:30 maybe.

4 Q In the morning?

5 A Yes, sir.

6 Q So it was soon after. Now, on the afternoon of the
7 8th, that was the next day, you were over in Easley
8 nine hours and come back home. The next day, a
9 little after 4:00, there was a knock at your door. A
10 you open the door and the police are there?

11 A Yes, sir.

12 Q They ask you about Clarence and you said Clarence is
13 not here? That's what you told the police?

14 A Yes.

15 Q But the testimony to the prosecutor, you said
16 Clarence really was there, but he was hiding?

17 A (The witness nods.)

18 Q Right?

19 A Yes, sir.

20 Q Okay. Then after telling the police he wasn't there,
21 you told the police that you had your children that
22 you had to take over to their aunt's house?

23 A Yes.

24 Q You didn't have the children, Carmen?

25 A Yes, I did.

1 Q You had one child in little baby carrier?

2 A No, I had both children.

3 Q You're saying both of those children were with you?

4 A I took both of those children to her house.

5 Q And when the police -- you told the police you'd have
6 to come down to the law enforcement center in about
7 an hour?

8 A Yes.

9 Q That you needed to take the children somewhere?

10 A (The witness nods.)

11 Q And that Clarence was not home?

12 A No.

13 Q You then, according to your testimony, cleaned up
14 everything, went to the dumpster three times. I'm
15 going to show you a couple of photos to make sure the
16 jury has got perspective on this location. You don't
17 need to turn then down that much. Maybe you do. No,
18 I think it's going to be good. Okay. All right.
19 Now, hang on a minute here, Carmen. This is the road
20 that your trailer is on?

21 A Yes, sir.

22 Q And this trailer right here, the fourth trailer up is
23 the trailer you lived in?

24 A I believe so.

25 Q Now, when you say you went to the dumpster three,

1 this is the dumpster down here on the end, right?

2 A Yes.

3 Q Right here?

4 A Yes.

5 Q This photo -- the trailer that there on the right
6 side of that photo -- and I'm sorry, I didn't
7 indicate the exhibit, I'm sorry. This one's No. 29.
8 That trailer that's on the far right-hand side?

9 A Yes.

10 Q That's your trailer?

11 A Yes, sir.

12 Q That's the trailer that was in your name?

13 A Yes, sir.

14 Q And that blue van that's backed in there is your van?

15 A Yes, sir.

16 Q And if you look way down at the end down there, you
17 can barely see that dumpster down there. You see it?

18 A Yes, sir.

19 Q Is that the dumpster you walked to three times after
20 the police left?

21 A Yes, sir.

22 Q State's Exhibit 34, that's from the other angle, is
23 that dumpster we're talking about?

24 A Yes, sir.

25 Q All right. While that's going on, you didn't know

1 that the police were watching your every move?

2 A I did not know that.

3 Q You did not know that. You moved the grill off the
4 porch back in. You went out and you did that plug
5 thing on your car that kept your battery, right?

6 A Yes, sir.

7 Q Went back in, came back out with one baby carrier?

8 A I had both girls with me.

9 Q Well, I'm just -- this is what I've heard. You come
10 out and you put the baby carrier in the van and you
11 drive away. Not one single sign of Clarence. He's
12 nowhere. You went and dropped children off, got with
13 Janese. Y'all ended down at the law enforcement
14 center about 6:20 that afternoon?

15 A Yes.

16 Q And an officer, Mr. Flavell here, Officer Flavell,
17 you met him?

18 A Yes, sir.

19 Q And he asked you -- because you told them you be down
20 about 5:00. He asked you where you been. And you
21 said I had to take Clarence to work, right?

22 A Yes.

23 Q Well, you told them when he was on your porch that
24 Clarence wasn't there. So, I mean, apparently, you
25 just got no idea of where the truth is in all of

1 that. Clarence was not at that trailer, Carmen?

2 A He was there.

3 Q That trailer was under surveillance. They followed
4 you. They went back down there and got in that
5 dumpster. Nobody ever saw the first sign of
6 Clarence?

7 A He told me while I was gone that he had climbed under
8 the trailer.

9 Q Okay. So you're now saying that Clarence told you he
10 was hiding under the trailer for hours?

11 A Yes, sir.

12 Q Officer Flavell, he confronts you about these lies
13 you're telling because they're following you. They
14 know you not taking anybody anywhere. He asked you
15 if you if knew Mekole Harris, you told him no. He
16 showed a picture of her. You said you didn't know
17 her. This was the same Mekole Harris that you pled
18 guilty to killing the day before. He asked you if
19 you knew anything about this investigation, don't
20 know nothing about it. You're lying to him; weren't
21 you?

22 A I was then, yes.

23 Q Huh?

24 A I was then, yes.

25 Q You're lying then. They asked you about Grace Davis

1 and you said you had a love affair with her, you
2 missed her and you wanted her back. You told the
3 police that, didn't you?

4 A Yes.

5 Q You wanted Grace back. They asked you if you were
6 afraid of Clarence and you said no?

7 A I actually just shook my head.

8 Q You what?

9 A I shook my head.

10 Q Which way did you shake?

11 A To indicate no.

12 Q No. They asked you. You're at the police station.
13 You're sitting in the police department. You're
14 being questioned by a police officer and he ask you
15 if you're afraid of Clarence, no. He asked you if
16 Clarence was making you do something you didn't want
17 to do and you said no.

18 Carmen, got just few more questions for you.
19 You were arrested on April the 10th, two days after
20 the interview with Officer Flavell. And when they
21 took you into custody, as you had the right to do,
22 you said you wanted to have lawyer and remain silent
23 or whatever, right?

24 A Nobody ever spoke with me that day.

25 Q Oh, that's right, that's right, that was on 8th.

1 That was that first day when you told them you wanted
2 a lawyer. Right?

3 A Yes.

4 Q So when they arrested you, they didn't ask you any
5 questions?

6 A No.

7 Q Okay. You maintained your silence and you began your
8 four-year hitch at the Greenville County jail?

9 A Yes.

10 Q And Mr. Wilkins asked you about the recovery of the
11 remains of Mekole Harris's body up there off State
12 Park Road?

13 A Yes, sir.

14 Q And you said to him, I got to feeling bad about the
15 family of Mekole Harris and I wanted to do what was
16 right; isn't that what you said?

17 A I said I felt they needed to know.

18 Q Well, let me fill in some blanks for you. You sat in
19 that jail for 17 months before one word was said
20 about the remains of Mekole. During those 17 months,
21 you watched the State's case against you develop
22 before your very eyes. You attended a preliminary
23 hearing and you heard the testimony?

24 A Never had a preliminary hearing.

25 Q You never had a preliminary hearing?

1 A No, sir.

2 Q You met with your lawyer and without going,
3 obviously, into those discussion, don't want to do
4 that, but you had discussions with him about the case
5 against you; didn't you?

6 A Yes, sir.

7 Q And you made a deal, you made a deal. I'll show you
8 where I burned that body if you'll pull that death
9 penalty notice. You had been served with a death
10 penalty notice in December of 2008; hadn't you?

11 A Yes.

12 Q And September of '09, you made a deal with the
13 prosecutor. I'll show you the rest of Mekole
14 Harris's body if you'll take that death penalty
15 notice away. I want a reward for it; isn't that
16 right?

17 A In those words, I assume so, yes.

18 Q You got that reward. And then you started working on
19 your second deal. I'll give the police a statement
20 if they won't use that statement against me, right?
21 You remember that? Solicitor Wilkins asked you about
22 that agreement y'all signed, right?

23 A Yes.

24 Q You signed an agreement on March the 9th, 2011. Let
25 me get my months straight. That's 35 months after

1 your arrest and 18 months after you had taken them to
2 the body?

3 A (The witness nods.)

4 Q So you signed this agreement?

5 A (The witness nods.)

6 Q I'll give you this, you give me that, right?

7 A Yes.

8 Q And you got rewarded for it. You got your deal. And
9 the third deal you made, Ms. Jenkins, was in this
10 courtroom in front of this Court two weeks ago.
11 March the 27th of '12, you stood in this court and
12 you plea guilty to murder?

13 A (The witness nods.)

14 Q You got 50 years in the penitentiary. The Judge
15 asked you when you pled guilty, he asked you, did
16 anybody promise you anything or force you to plead
17 guilty? No, Your Honor. Nobody promised me nothing.
18 But Mr. Wilkins, on direct, asked you if you knew
19 that the prosecutor in this case is going to file a
20 request that your sentence be reduced after
21 Clarence's trial. And you said that you had no idea
22 what your sentence might end up being, right?

23 A Yes, sir.

24 Q And you don't?

25 A No.

1 Q You don't have any idea how good a deal you're
2 making, do you?

3 A No, sir.

4 Q You wanted Grace back, Carmen, didn't you?

5 A Yes.

6 Q You told Grace Davis that you wanted Clarence out of
7 picture; didn't you?

8 A No.

9 Q Okay. Now, let me just preference it. Grace Davis
10 has testified, so we've heard her. Do you deny then
11 that you told Grace Davis, this lover, that you
12 wanted Clarence out of the picture? Do you deny
13 making that statement?

14 A I remember telling her that I wanted us to be
15 together, me and her to be together, but I didn't
16 stay we would dispose of him.

17 Q So what you said was, Grace I want me and you to be
18 together?

19 A (The witness nods.)

20 Q Just two people?

21 A (The witness nods.)

22 Q Not three people?

23 A He was very threatening to us.

24 Q Right. And you would do anything to get Grace back;
25 wouldn't you?

1 A No.

2 MR. MAULDIN: Nothing further, Your Honor.

3 THE COURT: All right.

4 Redirect.

5 MR. WILKINS: Brief redirect, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WILKINS:

8 Q Mr. Mauldin just talked to you about a proffer
9 agreement where your words were protected. What were
10 the conditions of that proffer agreement?

11 A That I tell the truth here.

12 Q Mr. Mauldin talked about a motion that the prosecutor
13 promised to file to reduce your sentence. What are
14 the conditions for us to file that motion?

15 A For me to tell the truth here.

16 MR. WILKINS: No further questions, Your Honor.

17 MR. MAULDIN: I got one, please.

18 THE COURT: All right.

19 MR. MAULDIN: May it please the Court.

20 RECROSS-EXAMINATION

21 BY MR. MAULDIN:

22 Q What were the conditions, the conditions, Carmen, are
23 the better you do, the better you get; isn't that
24 true?

25 A No.

1 Q Substantial assistance to the government; isn't that
2 what it is?

3 A I believe that what the law book reads, I'm not sure.

4 Q And depending upon how well you testify is how good
5 you're going to do; isn't that right?

6 A I don't believe so.

7 Q You don't believe so?

8 A I believe that I need to tell the truth here.

9 Q Ms. Jenkins, you're a smart woman.

10 MR. MAULDIN: Nothing further.

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

12 MR. WILKINS: One quick question.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. WILKINS:

15 Q Who determines your reduction?

16 A The Judge.

17 THE COURT: All right. Thank you. You can
18 stand down. Thank you, very much.

19 All right. Ladies and gentlemen of the jury,
20 let's just take a short recess. And please don't discuss
21 the case. We'll be right back with you. Thank you.

22 (WHEREUPON, the jury left open court at
23 approximately 2:18 p.m.)

24 THE COURT: All right. Anything before we take
25 a short break?

1 most of the items that we found were within the
2 highlighted yellow area. As you come into the area,
3 you can see Altamont Road behind the trees. Just
4 where it starts to clear in the field area is an
5 access road and a metal gate. It runs back towards
6 that wood line. And about 200, 220 feet down that
7 wood line was kind of our main area of interest. The
8 diagram that was actually prepared for this shows
9 that concrete building and how we drew our baseline
10 measurements from the corner of that building.

11 All of the numbers in there represent items of
12 evidence that we collected. It goes from an area
13 right up in the lower left, starting with one, it
14 kind of spreads out from that point. It kind of
15 works in that direction, flowing in a
16 northeastern-type manner.

17 Human bones that were found are located in red.
18 And what we did is we went through and placed those
19 marker in areas that were of interest to us,
20 especially the skeletal remains. We marked those and
21 a doctor, an anthropologist from Clemson University,
22 came up and assisted us. And we visited each one of
23 these and she confirmed they were human bones as we
24 went through each one.

25 From that point, this area highlighted in blue,

1 that tended to be the primary focus area. In this
2 area right here, we discovered what appeared to be
3 some items that were charred. There were some
4 discoloration to the ground. There seemed to be a
5 lot of artifacts that were strong in this area. That
6 was kind of our concentrated area and where we began
7 our collection.

8 Some of the things that we found were pieces of
9 fabric. We found pieces of wood. We found metal
10 tubing. We found hinges with metal tubing. We found
11 charred items. We found remnants, pieces of black
12 trash bags with blue draw straps, which appeared to
13 be shredded. And as we understood that at some point
14 in time in the past someone had come through and
15 bush-hogged the area and pretty much obliterated a
16 lot of that stuff. But there's a piece of fabric
17 that was found in that location, a close-up of that.
18 We have a plaid, blue-colored fabric. This was a
19 charred piece, looks like a wood veneer, or some type
20 of wooden item. But again, it was charred. And that
21 was in that same blue-shaded area that we found.

22 This is the remnants of what appeared to be the
23 black trash bags with the blue draw straps. Again,
24 another shot of that. Close-up of the blue draw
25 strap. This was one of those -- item No. 2, which

1 was several different items. But it was the metal
2 tubing that was found and some fabric found. There
3 was, also, some hinges that were found there. Again,
4 another shot of the metal tubes. Again, this was
5 another area of metal tubes and really displayed
6 hinges. And what it appeared to be was some type of
7 child's crib or portable bassinet that we were
8 finding. That's a close-up shot of the hinge.

9 This was a photograph of that same item once we
10 got it back to the office. And you can see how it
11 resembles a collapsable frame. We found a lot of
12 very small artifacts, from buttons from what appeared
13 to be a pair of jeans, other little metal objects
14 and, also, what appeared to be a tag. I think we
15 have a close-up shot of that tag. And, although it's
16 very difficult to read, the tag does say Samsonite.
17 And I think that's all I've got.

18 Q Lieutenant, you can return to the witness stand.
19 Now, Lieutenant Petersen, y'all collect some human
20 bones out there, correct?

21 A Yes, we did.

22 Q Can you tell us how many?

23 A We had 16 different items that were consisting of
24 human bone. The actual count of human bones and
25 fragments, I think we had up to about 55, 60 pieces

1 of bone.

2 Q And once y'all collected those bones, do you know
3 where they were sent?

4 A Actually, once we collected them with the
5 anthropologist there as well as another of our
6 pathologist, Dr. Fulcher, we laid them out on a table
7 so they could inventory those bones. Once we
8 collected those and they were inventoried, they were
9 actually placed in the custody of Dr. Fulcher, who
10 took them to the Greenville County morgue.

11 MR. WILKINS: Your Honor, at this point, I would
12 like to read in a stipulation between the State and the
13 Defense.

14 THE COURT: Okay.

15 MR. WILKINS: This is State's Exhibit 160, which
16 has been agreed do by stipulation.

17 (WHEREUPON, State's Exhibit No. 160 was marked
18 for identification and received into evidence.)

19 THE COURT: All right.

20 MR. WILKINS: Lieutenant Petersen, if you'd
21 answer any questions the Defense counsel may have.

22 MR. MCDUGAL: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. MCDUGAL: I apologize to the Court.

25 THE COURT: That's all right.

1 Q Now, if you have a sufficient number to points, if I
2 understand you correctly, you're saying that's kind
3 of up to you. The 12 is not a magic number. Is
4 that, essentially, what you said?

5 A There is no magic number.

6 Q And you didn't have a standard that you applied? You
7 did not look for 12 on all these prints?

8 A No, sir, I did not.

9 Q And you would agree with me that one or two points of
10 comparison are not enough?

11 A Generally, that are not enough, that's correct.

12 Q And 50 is way plenty? You have 50 points of
13 comparison --

14 A Fifty points of comparison in agreement would be more
15 than sufficient.

16 Q Okay. Sifting here today, you've testified to by my
17 count about 14 comparisons. Now, I may be off one or
18 two, but a goodly number. When you were doing your
19 work, did you make any notes?

20 A No, sir, I did not write any notes.

21 Q When you were comparing the prints, did you keep
22 track of how many points of comparison you have?

23 A Yes. As I'm comparing, it's a mental process of
24 counting and looking and identifying points of
25 comparison, yes, sir.

1 Q And, again, if the answer is yes, please just give me
2 that answer.

3 A I'm sorry. Yes, sir.

4 Q So if I understand you correctly, you made no notes
5 at all, you just remember as you look at the points
6 of comparison?

7 A Yes, sir, as I looked at each one.

8 Q Did you count on your fingers?

9 A No, sir.

10 Q Did you keep a tally sheet?

11 A No, sir.

12 Q Did you mark comparable prints enlargements, where
13 you found points of comparison?

14 A No, sir, not that I recall.

15 Q So you just sat there and you kind of looked at one
16 print, looked at another, went through whatever
17 mental process you thought appropriate and said it's
18 a match. Is that about right?

19 A Yes, sir.

20 Q Let me ask you about some specific testimony,
21 Ms. Sherbert. I'm going to hand you what you have
22 testified about, State's Exhibit 106, which has been
23 identified as the note found at the Andover Street
24 apartment. Do you remember your testimony about that
25 note?

1 from person to person.

2 Q Now, were you given the occasion to do some DNA
3 analysis versus Clarence Jenkins?

4 A Yes, I did.

5 BY MR. WILKINS:

6 Q I'm going to show you what's State's Exhibit 156, and
7 ask you to take a look at that.

8 A This is our item, SLED item No. 32. You can see
9 where I printed out a label from our computer system
10 noting the case number and the item number and those
11 are my initials. This is a -- was reported to me a
12 swab from a hand. It was identified to me as being
13 the hand of Mekole Harris, an identification was made
14 through fingerprints.

15 Q All right. And I'm going to show you what's State
16 Exhibit 157.

17 A This is SLED item No. 33, again, same as before, it's
18 been labeled with our case number and the item number
19 and my initials. And this was identified to me as a
20 sample from the foot.

21 Q Do you know whose foot?

22 A Well, since the hand was identified as that of Mekole
23 Harris through fingerprint identification, I used the
24 swab from the hand as a known standard and compared
25 the swab from the foot to the hand. And the DNA

1 profile developed from item 33 did match item No. 32,
2 which items 33 did match items number 32 which was
3 the swab from the hand. And the probability of
4 randomly selecting an unrelated individual who could
5 have that, who could have contributed that same
6 profile is 1 in 720 quadrillion. So the foot matched
7 the swab from the hand.

8 Q Tell the jury how you went about making that
9 analysis. What do you do?

10 A Well, I took a sample from the swab. And, basically,
11 you just put it in a small tube, add some chemicals,
12 incubate it for a little bit and there -- we have a
13 -- we call it a robot. It's a machine that does of
14 the extraction and washes for us. And I get a nice
15 clean pure sample of DNA. The next step is finding
16 how much I have. So that, again, is done by a
17 machine after the setup. That takes a few hours to
18 do, couple hours to do. Then after that, I take a
19 very specific amount of the DNA and add certain
20 ingredients to it. And what I want to do at this
21 point is prepare to replicate that DNA. So I had the
22 basic things that are needed to do that and put it in
23 another machine. A few hours later, I take it out
24 and put it on the final step, the genetic analyzer,
25 where when it's done, I have a profile that doesn't

1 MR. MCDUGAL: Approach for a moment, Your Honor
2 year.

3 THE COURT: Yes.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury but out of the hearing of
6 the jury.)

7 MR. WILKINS: Your Honor, are those moved in?

8 THE COURT: Yes, they are. Subject to my
9 ruling.

10 (WHEREUPON, State's Exhibit Nos. 156 & 157 were
11 admitted into evidence.)

12 BY MR. WILKINS:

13 Q All right. Now, I'm going to show you what's State's
14 Exhibit 153, ask you to identify that and tell the
15 jury how you know what that is?

16 A State's Exhibit 153 is SLED item No. 1. And I know,
17 once again, because there's a case label affixed with
18 the item number and my initials. This was presented
19 to me as a swab from a wall near ceiling in bathroom.

20 Q Okay. And did you make any analysis regarding that
21 piece of evidence?

22 A I did. I took this piece of evidence and did the
23 same process I spoke of earlier. I generated a
24 profile from this item and compared it to the known
25 sample from the hand we spoke about earlier. And

1 again, it was a full profile and was a match with a
2 probability of 1 in 720 quadrillion.

3 Q Going to whom?

4 A It matched Mekole Harris.

5 Q I'm going to show you State's Exhibit 154.

6 A State's Exhibit 154 is our SLED item No. 2. Again,
7 identified the same as the previous item. And, also,
8 I generated a full profile when I did analysis on
9 this item. Again, it had the same statistic matching
10 Mekole Harris with a probability, again, of randomly
11 selecting someone else who could match that as 1 in
12 720 quadrillion.

13 Q Would you tell the jury where that item came from?

14 A It was presented to me as being a swab from a wall
15 right of the medicine cabinet in the bathroom.

16 MR. WILKINS: Your Honor, the State moves
17 Exhibits 153 and 154 into evidence.

18 MR. MCDUGAL: We have an objection, Your Honor.

19 THE COURT: Same ruling. They're in.

20 (WHEREUPON, State's Exhibit Nos. 153 and 154
21 were previously admitted into evidence.)

22 BY MR. WILKINS:

23 Q Now, I'm going to show you State's Exhibit 132 and
24 ask you to identify that?

25 A This was presented as swab from latex gloves. It was

1 SLED Item No. 24. It's my understanding they were
2 from the floor of a van. And this was, again, our
3 item No. number 4. And it, also, after analysis on
4 it, I obtained a full DNA profile, once again, with a
5 probability of one in 720 quadrillion. It also
6 matched Mekole Harris.

7 MR. WILKINS: Your Honor, the State moves
8 Exhibit 132 into evidence.

9 THE COURT: Same ruling.

10 MR. MCDUGAL: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 (WHEREUPON, State's Exhibit No. 132 was
13 previously admitted into evidence.)

14 BY MR. WILKINS:

15 Q Now, I'm going to show you State's Exhibit 158.

16 A This is a swab collected from the trap from the
17 shower. It's SLED item 28.1.1, this was collected by
18 Verona Gibson. And she processed the trap from the
19 shower as previously testified to and she forwarded
20 the swab to me. And I did do analysis on this item.
21 Now, the profile from items -- this item was not a
22 full profile, it was partial, but it did match Mekole
23 Harris. The probability of randomly selected an
24 unrelated individual who could have contributed the
25 partial DNA profile that I had was approximately 1 in

1 870 billion. It is less than the other statistic
2 because I don't have as much information.

3 MR. WILKINS: Your Honor, State moves Exhibit
4 158 into evidence.

5 THE COURT: Same ruling.

6 MR. MCDOUGAL: Same objection.

7 THE COURT: Yes, sir.

8 (WHEREUPON, State's Exhibit No. 158 was admitted
9 into evidence.)

10 BY MR. WILKINS:

11 Q Ms. Taylor, what we have is we have -- according to
12 your results, we have Mekole Harris' blood on the
13 ceiling, on the wall near the medicine cabinet, on a
14 latex glove and the P-trap from the shower drain?

15 A That's correct.

16 MR. WILKINS: Please answer any questions
17 Defense counsel may have.

18 CROSS-EXAMINATION

19 BY MR. MCDOUGAL:

20 Q Good morning, Ms. Taylor. My name is Mark McDougal
21 and I'm one of the lawyers here representing the
22 Defendant, Clarence Jenkins. Let me just ask you a
23 few questions about DNA and you tell me if you agree
24 with it or no. We human beings are messy creatures
25 with respect to DNA in that we tend to leave

1 that because it didn't really come out as impeachment.

2 MR. MAULDIN: The -- well, let me take it one
3 step at a time. There is no prior offenses with regard to
4 Mr. Jenkins that would be relevant for impeachment, even
5 if he takes the witness stand, that I know of. So you can
6 take that off the table.

7 MR. WILKINS: That's correct.

8 MR. MAULDIN: I was thinking about the other
9 witnesses, I think that, perhaps, references during
10 testimony to offenses and so forth have been made and we
11 can argue whether or not that goes to their credibility,
12 but I don't think the jury instruction is necessary, Your
13 Honor.

14 MR. WILKINS: I agree.

15 THE COURT: Okay. Do you want hand of one?

16 MR. WILKINS: State does, Your Honor.

17 MR. MAULDIN: We object to that, Your Honor.

18 THE COURT: Well, I think there's some evidence
19 there that would require it.

20 MS. ROSS: These are very rough. I'm just going
21 to hand these up for a Court Exhibit.

22 THE COURT: All right.

23 MS. ROSS: There's one, No. 8, one is not
24 responsible for a murder committed by a co-conspirator
25 unless that offense was a natural cause and consequence of

1 the agreed upon act. If you charge the hand of one, then
2 I think that would be relevant as is mere presence charge.

3 THE COURT: Well, let me see. I believe -- let
4 me just look at this real quick.

5 MS. ROSS: We forcefully request No. 10, the
6 State v. Edwards, the circumstantial evidence charge.

7 THE COURT: Yeah, I had that. I don't know what
8 I did that. I had direct and circumstantial.

9 (WHEREUPON, Court's Exhibit No. 4 was marked for
10 identification and received into evidence.)

11 MS. ROSS: We would just argue that Edwards is
12 more appropriate case law than Grippon for that jury
13 instruction.

14 MR. MAULDIN: And, Your Honor, in regard -- and
15 right now, I can't remember the name of the recent case
16 that dealt with the analysis of circumstantial evidence in
17 the South Carolina Supreme Court. I apologize for not
18 having it. But it renews the ongoing debate, if you will,
19 about the appropriateness of the Edwards charge versus the
20 Grippon charge.

21 THE COURT: All right. Well, the reason I
22 haven't mentioned it because I haven't gotten through.

23 MR. WILKINS: You want to give us 30 minutes
24 to --

25 THE COURT: Oh, yeah, we'll talk about this when

1 we come back. I'm just kind of throwing it out on the
2 table. I don't know when it's going to become appropriate
3 to make the final decision.

4 Of course, presumption of innocence, reasonable
5 doubt. I did have direct and circumstantial evidence and
6 then, of course, murder and kidnapping.

7 MR. WILKINS: Reasonable doubt firmly convinced
8 or what's your reasonable doubt?

9 THE COURT: It's reasonable -- cause of doubt --
10 kind of doubt that would cause a reasonable person to
11 hesitate.

12 MR. WILKINS: That's fine.

13 THE COURT: All right.

14 MS. ROSS: Just request No. 5, that's the second
15 part of my request, that's from another case. The second
16 sentence in request No. 5, I should have omitted, that
17 doesn't need to be in there. It's not relevant to this
18 case.

19 THE COURT: Well, the only one that really jumps
20 is your circumstantial evidence requests.

21 Okay. All right. See y'all back here an hour
22 and 15 minutes. Maybe if y'all come back you'll have
23 enough time to -- 1:30.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: All right. Has Mr. Jenkins made a

1 MS. STROM: Your Honor, you know I couldn't stay
2 quiet the whole time. It's not my nature.

3 THE COURT: I've been impressed.

4 MS. STROM: But I do take issue with the
5 Defense's request to charge.

6 THE COURT: The circumstantial evidence?

7 MS. STROM: Yes, sir, specifically --

8 THE COURT: State vs. Cherry clears that up.

9 MS. STROM: Yes, sir, thank you. And, Your
10 Honor, as to their request No. 1, 2, 3, 4, I mean, that's
11 covered in your general charge. I don't think it has to
12 be reiterated again.

13 THE COURT: Yeah. All that is in my charge.

14 MS. STROM: My understanding was --

15 THE COURT: Five is.

16 MS. STROM: -- it was withdrawn I thought
17 because of the self defense, but you don't go into
18 innocent until proven guilty. I think No. 6, the burden
19 of proof, you always cover that, that would be in your
20 general charge. 8, I do not believe 8 applies in this
21 case. Your Honor, what this case is about is aiding,
22 abetting and assisting, hand of one. It's not a
23 co-conspirator. And that charge is conspiracy, so I would
24 submit that is not a proper charge in this case.

25 THE COURT: Okay.

1 MS. STROM: Number 9, mere presence, I think
2 that is --

3 THE COURT: It's in my hand of one, hand of all.

4 MS. STROM: Then, of course, the circumstantial
5 evidence, Cherry case. You use Grippon.

6 MR. MAULDIN: Your Honor, one thing --

7 THE COURT: You're in here. I wasn't sure where
8 you were, Mr. Mauldin.

9 MR. MAULDIN: I'm not real sure either, Judge.
10 You say on Defendant's failure to testify, that language
11 is not -- you don't actually say fail to testify, do you?

12 THE COURT: Let see. Don't see failure in
13 there. That's just my title for it.

14 MR. MAULDIN: Thank you, Judge.

15 THE COURT: Anything else?

16 Y'all want to rest or are you going to present
17 any evidence?

18 MR. MAULDIN: We're going to propose that when
19 the jury comes in that you address us and I'll just advise
20 that we rest. We haven't put any exhibits into evidence,
21 therefore, we assume we have closing.

22 MR. WILKINS: That's correct.

23 THE COURT: That's correct. I noticed how
24 careful you were about that.

25 Do y'all want to look at the proposed verdict

1 And we ask that you return verdicts of not guilty. Thank
2 you.

3 JURY CHARGE

4 THE COURT: All right. Ladies and gentlemen,
5 let's stand up and stretch for just a second.

6 Ladies and gentlemen of the jury, during the
7 trial, you have certain duties to perform. And as the
8 trial judge, it is my responsibility to preside over the
9 trial of the case and rule on the admissibility of the
10 evidence that's offered during the trial. It is also my
11 duty to charge you the law applicable to the case and it
12 is your duty as jurors to accept and apply the law as I
13 now state it to you. As I told you in my opening
14 comments, if you think you have any idea as to what the
15 law is or what the law should be and it disagrees with
16 what I now tell you the law is, you have sworn an oath to
17 set aside your own ideas and apply the law precisely as I
18 state it to you.

19 I would also remind you that in every case tried
20 in this court before a jury, the jury is the sole and
21 exclusive judge of the facts. And a trial judge cannot
22 comment on or make any statement about the facts in a
23 case. So please do not think by anything I may have said
24 or done throughout the course of the trial that I have an
25 opinion about the facts. You are the sole judges of the

1 facts. I, again, instruct you that the fact that this
2 Defendant was arrested, charged and indicted in the case
3 is not evidence of guilty. Nor does it create any
4 presumption or inference of guilt. These documents are
5 simply the formal written instruments which contain the
6 charges made against the Defendant. And they serve as the
7 formal documents by which the case is processed and
8 brought into this court for resolution.

9 Now, there are two indictments in this case and
10 they charge two separate offenses against Clarence
11 Jenkins. And the first one is for murder. And the second
12 indictment is for kidnapping. Each indictment charges a
13 separate and distinct offense. And you, the jury, must
14 decide each indictment separately on the evidence and on
15 the law applicable to it, uninfluenced by your decision as
16 to any other indictment. And this Defendant may be
17 convicted or he may be acquitted on any or all of the
18 offenses charged. And you will be asked to write a
19 separate verdict of guilty or not guilty for each
20 indictment. In other words, each indictment must stand on
21 its own merit.

22 Now, necessarily, you must determine the
23 credibility or believability of the witnesses who have
24 testified in the case. And it becomes your duty as jurors
25 to evaluate the evidence and determine which evidence

1 convinces you that it is true. And in determining the
2 believability of the witnesses, you may believe one
3 witness over several or several over one. You may believe
4 a part of the testimony of a witness and reject the
5 remaining part. You may believe the testimony of a
6 witness in its entirety or reject that testimony in its
7 entirety. And you may consider whether the witness has an
8 interest in the result of the trial, whether the witness
9 is prejudice towards either the State or the Defendant,
10 the opportunity for the witness to have seen the matters
11 and things about which the witness has testified, and the
12 way the witness acts on the witness stand or what we call
13 a witness' demeanor.

14 Now, the rules of evidence ordinarily do not
15 permit witnesses to testify to opinions or conclusions.
16 An exception to this rule exists for witnesses we call
17 expert witnesses. And a witness, who by education and
18 experience has become expert in some art, science or
19 profession may give an opinion as to the subject that the
20 witness has been qualified as is expert in and may also
21 give the reasons for that opinion. And you should
22 consider any expert opinion given by a witness and, like
23 all of the other evidence, give it the weight that you
24 think it deserves.

25 Now, I instruct you and I emphasize that the

1 fact that the Defendant did not testify is not a factor to
2 be considered by you in any way in your deliberations on
3 the question of the guilt or innocence of the Defendant.
4 It must not be considered by you in any manner whatsoever.
5 Every citizen has the constitutional right to remain
6 silent. And the assertion of this right must not be
7 considered by you in your deliberations. I repeat, under
8 your oath, you are to draw no conclusion whatsoever from
9 the fact that the Defendant in this case did not testify.
10 The fact that this Defendant did not testify should not
11 even be discussed in your jury room. The burden of proof
12 always remain on the State and a defendant is never
13 required to prove their innocence.

14 Now, Clarence Jenkins has pled not guilty to
15 these indictments. And that plea puts the burden on the
16 State to provide the Defendant guilty. A person charged
17 with committing a criminal offense in South Carolina is
18 never required to prove themselves innocent. And I charge
19 you that it is a cardinal and an important rule of the law
20 that a defendant in a criminal trial will always be
21 presumed to be innocent of the crime for which an
22 indictment has issued unless and until guilt has been
23 proven by evidence satisfying you of guilt beyond a
24 reasonable doubt.

25 Now, reasonable doubt is the kind of doubt which

1 would cause a reasonable person to hesitate to act. And
2 reasonable doubt may arise from the evidence which is in
3 the case or from the lack or absence of evidence in the
4 case. And you, the jury, must determine whether or not
5 reasonable doubt exists as to the guilt of this Defendant.
6 The State has the burden of proving each and every element
7 of a crime beyond a reasonable doubt. And any reasonable
8 doubt that you may have in your deliberations should be
9 resolved in favor of the Defendant.

10 Now, there are two types of evidence which are
11 generally presented during a trial. And they are known as
12 direct evidence and circumstantial evidence. Direct
13 evidence is the testimony of a person who claims to have
14 actual knowledge of a fact, such as an eye witness. It is
15 evidence which immediately establishes the main fact
16 sought to be proven. Circumstantial evidence is proof of
17 a chain of facts and circumstances indicating the
18 existence of the main fact. It is evidence which
19 immediately establishes collateral facts from which the
20 main fact may be inferred. Circumstantial evidence is
21 based on inference and not on personal knowledge or
22 observation. The law makes absolutely no distinction
23 between the weight or value to be given to either direct
24 or circumstantial evidence. Nor is a greater degree of
25 certainty required of circumstantial evidence than of

1 direct evidence. You should weigh all of the evidence in
2 the case. After weighing all of the evidence, if you are
3 not convinced of the guilt of the Defendant beyond a
4 reasonable doubt, then you should find the Defendant not
5 guilty.

6 Now, if a crime is committed by two or more
7 people who are acting together in committing a crime, the
8 act of one is the act of all. A person who joins with
9 another to accomplish an illegal purpose is criminally
10 responsible for everything done by the other person which
11 occurs as a natural consequence of the acts done in
12 carrying out the common plan and purpose. For example,
13 two people can be guilty of killing another person when
14 only one of the two had a gun, there was only one bullet
15 and only one of the two fired the shot that caused the
16 death. If two or more people are acting together,
17 assisting each other in committing the offense, the act of
18 one is the act of all, or as it sometimes said, the hand
19 of one is the hand of all.

20 Now, prior knowledge that a crime is going to be
21 committed without more is not sufficient to make a person
22 guilty of that crime. Mere knowledge that another person
23 is going to commit a crime, even if the defendant is
24 present when the crime is committed is not sufficient to
25 convict the Defendant as a principle. Guilt as a

1 principle is shown by actual or constructive presence at
2 the scene as a result of the prior arrangement.
3 Therefore, a finding of a prior arranged plan or common
4 scheme is necessary for a finding of guilt as a principle.
5 And the State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the
7 hand of all.

8 A principle in a crime is one who either
9 actually commits the crime or who is present aiding,
10 abetting or assisting in committing the crime. When a
11 person does an act in the presence of and with the
12 assistance of another, the act is done by both. Where two
13 or more acting with a common plan or intent are present at
14 the commission of a crime, it does not matter who actually
15 commits the crime, all are guilty. The hand of one is the
16 hand of all.

17 Present at the commission of a crime means to be
18 sufficiently near to aid and abet and assist in the
19 commission of a crime. However, mere presence at the
20 scene of a crime is not sufficient to convict one as a
21 principle on the theory of aiding and abetting.

22 Intent is also a necessary element. For there
23 must have been a common design or intent to commit the
24 crime and the crime must have been committed pursuant
25 thereto with the person aiding and abetting by some overt

1 act. Intent means intending the result which actually
2 occurs, not accidentally or involuntarily. Intent may be
3 shown by acts and conduct of the Defendant and other
4 circumstances from which you, the jury may naturally and
5 reasonably infer intent. And the State must prove these
6 elements beyond a reasonable doubt.

7 The Defendant is charged with murder. And the
8 State must prove beyond a reasonable doubt that the
9 Defendant killed another person with malice aforethought.
10 Malice is hatred, ill will or hostility towards another
11 person. It is the intentional doing of a wrongful act
12 without just cause or excuse and with an intent to inflict
13 an injury or under circumstances that the law will infer
14 an evil intent.

15 Malice aforethought does not require that malice
16 exists for any particular length of time before the act is
17 committed. But malice must exist in the mind of the
18 Defendant just before and at the time the act is
19 committed. Therefore, there must be a combination of the
20 previous evil intent and the act. Malice aforethought may
21 be expressed or inferred. And these terms expressed and
22 inferred do not mean different kinds of malice, but merely
23 the manner in which malice may be shown to exist. That is
24 either by direct evidence or by inference from the facts
25 and circumstances which have been proven. Expressed

1 malice is shown when a person speaks words which express
2 hatred or ill will for another or when the person prepared
3 beforehand to do the act which was later accomplished.

4 Malice may be inferred from conduct showing a total
5 disregard for human life. If facts are proved beyond a
6 reasonable doubt sufficient to raise an inference of
7 malice to your satisfaction, this inference would simply
8 be an evidentiary fact to be considered by you along with
9 the other evidence in the case and you may give it the
10 weight that you decide it should receive.

11 The Defendant is also charged with kidnapping.
12 And the State must prove beyond a reasonable doubt that
13 this Defendant knowingly and unlawfully seized, confined
14 inveigled, decoyed, kidnapped, abducted or carried away
15 another person without authority of law. To do a thing
16 unlawfully is to do it willfully against the law.
17 Knowingly means with knowledge, consciously, not
18 accidentally. Seized means to take hold of suddenly or
19 forcefully. Confine means to limit, restrict or enclose
20 within bounds, imprison or shut or keep in. Inveigle
21 means to lure, entice or lead astray by false
22 representations, promises or other deceitful means. Decoy
23 means to lure by or as if by decoy. A decoy is something
24 to entice a person into a trap. Kidnap is to remove a
25 person against their will by unlawful force or by fraud.

1 Abduct means to carry off secretly or by force for an
2 illegal purpose. Carry away means to remove.

3 The State does not have to prove that the
4 Defendant did all of these things, instead if you find
5 beyond a reasonable doubt that the Defendant did any of
6 these things, you made find the Defendant guilty of
7 kidnapping. And something done without authority of law
8 is something which the law does not sanction, permit,
9 allow, condone or provide justification for. And the
10 kidnapping does not have to be for any personal or
11 monetary gain or any illegal purpose, but may be for any
12 reason whatsoever.

13 Now, ladies and gentlemen, and Madam Forelady,
14 there are two indictments. And as I have told you, each
15 indictment must stand or fall on its on merit and must
16 be -- your decision must be based on the law as I have
17 given it to you. But on each indictment, there are two
18 possible verdicts which you may render. And there's no
19 importance in the order in which I state them, one has got
20 to be said first and one second. And the two possible
21 verdicts as to murder are guilty and not guilty, and as to
22 the kidnapping, they are guilty or not guilty.

23 Now, ladies and gentleman, I want to tell you
24 that all 12 of you must agree on your verdict. Your
25 verdict must be unanimous. And your verdict cannot be

1 based on sympathy, passion, prejudice, emotion or any
2 other consideration that is not in evidence in this case.
3 You have no friends to reward, you have no enemies to
4 punish.

5 Now, Madam Forelady, I'm going to excuse you all
6 back to your jury room now to begin the fifth part of the
7 trial, which are your deliberations. I will ask you not
8 to begin your deliberations just yet. I need to go over
9 my charge on the law with the attorneys to make sure that
10 I did not misstate something or omit something. When the
11 evidence comes back to you with this verdict form, which I
12 will ask you -- I think it's self-explanatory. You
13 indicate what your verdicts are and please sign it. When
14 this comes back, you all may begin your deliberations. So
15 at this time, ladies and gentlemen, I will excuse you back
16 to your jury room with the exception of Ms. Henson. I
17 have to ask you to remain.

18 (WHEREUPON, the jury left open court at
19 approximately 4:20 p.m.)

20 THE COURT: Ms. Henson, this is always the most
21 difficult part of a trial for me because I have made you
22 sit up here all week. You are just as qualified as each
23 of those 12 persons who left. You've paid just as good
24 attention, but I can't let you go back there. The law
25 only allows 12. I want to thank for your service. You're

1 welcome to stay or leave, whatever you'd like to do. I
2 hope it's been a good experience for you. And I thank you
3 very much.

4 MS. WILLIAMS: Your Honor?

5 THE COURT: Yes.

6 MR. WILSON: May we approach?

7 THE COURT: Yeah.

8 (WHEREUPON, a bench conference was held.)

9 THE COURT: Ms. Henson, we were talking about
10 maybe keeping you around just for the heck of it. No,
11 we're not going to do that. The law says that you're not
12 allowed to go back and deliberate, so you're free to go or
13 stay, whatever you'd like. I'll also tell you you're free
14 to talk about the case with anybody you want to, but
15 you're also free not to talk about it. So if someone
16 approaches you and bothers you -- if you do not want to
17 talk about it and they persist, just please let us know,
18 the clerk's office know who that person is and I'll fix
19 that because I will not have a juror intimidated or
20 harassed. Okay. Thank you very much for your service,
21 ma'am. You're free for the week. Thank you very much.

22 (WHEREUPON, the alternate juror was excused.)

23 THE COURT: All right. Any exception or
24 objection to the charge other than the requests by the
25 defense previously denied?

1 MR. WILKINS: None from the State.

2 MR. MAULDIN: Your Honor, the circumstantial
3 evidence, obviously, we didn't object, but we do take
4 exception to that. We take exception to the hand of one
5 and, particularly, where it was connected the aiding and
6 abetting charge. So we do take exception to the hand of
7 one, the hand of all and the following aiding and abetting
8 instruction. And then the third one, Your Honor, was
9 something -- and it's been an eternity since I've tried a
10 kidnapping case, but here what happened was you were
11 defining the different types, if you will, of kidnapping.

12 THE COURT: No, I was defining the terms.

13 MR. MAULDIN: Yeah, the different terms. And
14 what you said was the State does not have to prove all of
15 these things. If you find the Defendant did any of these
16 things, you may find him guilty. Well --

17 THE COURT: I said instead, if you find beyond a
18 reasonable doubt that the Defendant did any of these
19 things, you may find the Defendant guilty.

20 MR. MAULDIN: And that part of the kidnapping
21 jury instruction, we believe, is error. So I want to make
22 sure the record -- it's only as to the kidnapping and only
23 as to the portion of the charge that talks about how
24 they -- after you define the terms and you said the State
25 does not have to prove all of these things. If you find

1 the Defendant did any of these things beyond a reasonable
2 doubt, you can find him guilty. Well, I take exception to
3 that language, Your Honor.

4 THE COURT: Okay. I have a sneaky suspicion
5 that this charge will be approved by the Supreme Court.

6 MR. MAULDIN: With all due respect, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. Be at ease.

9 (WHEREUPON, an off-the-record discussion was
10 held and State's Exhibit Nos. 14, 20, 21, 23,
11 26, 36, 39, 133, 155 and 164 were withdrawn and
12 not made a part of the record.)

13 (WHEREUPON, the jury began deliberations at
14 approximately 4:45 p.m.)

15 (WHEREUPON, the Court was in recess awaiting a
16 verdict.)

17 THE COURT: Okay. I asked the bailiffs to
18 inquire of the jury if they wanted to order dinner, that
19 it would take an hour. And the response was it would be a
20 long time before they reach a decision. So I think what
21 I'm going to do is bring them out and -- or I just need to
22 inquire if they want to come back tomorrow. Go home now
23 and come back tomorrow. So I'm asking your thoughts on
24 that.

25 MR. MAULDIN: Well, Judge, I mean, just to save

1 the county money. I mean, instead of us ordering them
2 food, let's let them go eat their own food. But that's
3 completely up to you.

4 THE COURT: Well, does the State have any
5 position?

6 MR. WILKINS: I would prefer you to inquire and
7 you just make a judgment call on that.

8 THE COURT: All right. Let's bring them out and
9 see if we can get a feel if there's a light.

10 (WHEREUPON, the jury came into open court at
11 approximately 6:15 p.m.)

12 THE COURT: All right. Ladies and gentlemen of
13 the jury, I was going to bring you out before I got your
14 question. And I understand that you all need -- it will
15 be a long deliberation is what I understand. And what
16 would like to offer to you all and get your input. You
17 don't have to tell me now. I'd like to you to get a
18 chance to go back and talk about. We can order, and happy
19 to do it, and we'll stay just as late tonight as you want
20 to stay. Or if you'd rather, I can let y'all go home now
21 and come back in the morning. And so it's a little -- you
22 know, it's nerve racking for me because you're down to 12.
23 And all 12 of you have to be back and you can't talk about
24 it with anybody outside of the jury room. So we're happy
25 to go get a meal for you and we'll stay just as late as

1 you want to or you all -- if you all decide it will be
2 better to come back tomorrow, just whatever -- I would
3 like for you all to talk about that before I do anything
4 else. Okay.

5 But the questions are number one, define the
6 elements of murder, number two, explanation and
7 clarification of two people being charged with the same
8 crimes and what do you have to prove with respect to each
9 defendant when more than one was involved.

10 So at this time, if you all will retire, talk
11 about what you'd like to do. Then just signal to them and
12 let us know. Thank you, very much.

13 (WHEREUPON, the jury left open court at
14 approximately 6:18 p.m.)

15 (WHEREUPON, Court's Exhibit No. 7 was marked for
16 identification and received into evidence.)

17 THE COURT: All right. We'll just be at ease
18 until we get some response.

19 (WHEREUPON, a short break was taken.)

20 THE COURT: We've got some lawyers on this jury.
21 They want to stay. So with respect to their -- go ahead
22 and let them get their orders done and then let me know
23 and we'll figure out what we're doing to do. I guess,
24 I'll guess I'll just recharge them on hand of one and
25 murder subject to your objection.

1 MR. MAULDIN: The objection we've got is as to
2 the hand of one and half of all connected aiding and
3 abetting instruction. We objected to it the first time
4 before you charged them. We renewed our objection after
5 the charge and we, certainly, would renew it now to a
6 recharge on that element.

7 THE COURT: I don't remember the one before.

8 MR. MAULDIN: Well, the one when we had the
9 charge objection, we said we objected to the hand of one,
10 hand of all instruction.

11 THE COURT: Well, now that I've read it, you've
12 gotten more specific.

13 MR. MAULDIN: Yes, sir.

14 THE COURT: Okay. The other thing we can do is
15 make a copy and send it back to them.

16 MR. WILKINS: Your Honor, the State request that
17 we send an entire copy of the charge back with the jury.

18 THE COURT: Well, they haven't asked for that.
19 I'm not going to do that at this time.

20 MR. MAULDIN: You're considering sending
21 something back?

22 THE COURT: If they ask for it, I'll send it to
23 them.

24 MR. MAULDIN: Well --

25 THE COURT: If I do send something back, I'll

1 send the whole charge.

2 MR. MAULDIN: Yeah. And we object, certainly,
3 to any portion. But on the other hand, we object to the
4 whole charge being sent back as well. We don't want them
5 to be given that choice, that option.

6 THE COURT: Okay.

7 Just got another note from the jury. All it
8 says is copy of jury charges.

9 Yes, sir.

10 MR. MAULDIN: You want me to respond to that?

11 THE COURT: I know what it's going to be.

12 MR. MAULDIN: We object to any portion or all of
13 the jury instructions being provided to the juror.

14 THE COURT: On what basis?

15 MR. MAULDIN: The jury, what they've done, Your
16 Honor, is that they have submitted a prior request for
17 certain things to be instructed to them. If you now send
18 back your entire jury instructions, they're going to go to
19 the portion of the jury instruction that they're asking
20 the question about. That means that they could end up
21 disregarding something else in the instructions that they
22 haven't asked about. So I believe that it is a dangerous
23 practice when a jury ask for a specific portion of the
24 instructions to then give them all the instructions.
25 That's not a good practice in my --

1 THE COURT: I think it's a better practice.

2 MR. MAULDIN: Well, they had a question and now
3 they have modified -- or, I guess, they modified the
4 question asking for everything.

5 THE COURT: Asking for a copy of the jury charge
6 so they can look at it and go through it.

7 MR. MAULDIN: All right. One moment. By
8 sending -- if you reinstruct them on what they asked
9 questions about and we've made our objections to those
10 portions, if you, as an alternative, simply give them the
11 instructions, then what that creates the danger of is one
12 of the jurors essentially becoming almost a jury room
13 judge or jury room lawyer regarding your instructions.

14 THE COURT: Well, they want to send 12 copies
15 back.

16 MR. MAULDIN: They all heard it. They've all
17 heard the same thing. And to provide them with a written
18 instruction creates a potential imbalance as to the role
19 of those jurors. So I'm going to object to it.

20 THE COURT: Okay. We'll send 12 copies back.
21 It's going to take me a few minutes to get a clean copy.

22 (WHEREUPON, Court's Exhibit Nos. 8 & 9 were
23 marked for identification and received into
24 evidence.)

25 THE COURT: We've got 13 of them. One of them

1 is a Court's Exhibit.

2 THE COURT: All right, Mr. Lynch, over Defense
3 objection.

4 You want to look at them.

5 MR. MAULDIN: No. You're just going to have him
6 take them in there. And we do have an objection to it,
7 Your Honor.

8 THE COURT: All right. We'll be at ease.

9 MR. MAULDIN: So you're just going to give us a
10 call? Give us a call?

11 THE WITNESS: Yeah, I'll get you.

12 (WHEREUPON, Court was in recess awaiting a
13 verdict.)

14 THE COURT: We have a note. April 12th, 2012 at
15 20:47. Your Honor, we have deliberated and are unable to
16 reach a unanimous verdict. Please advise. Thank you,
17 Donna Bailey. P.S., we have reached a unanimous decision
18 on one charge. Donna Bailey.

19 So it's only been three hours and 10 minutes.
20 Anybody want dynamite? It's only good one time.

21 MR. MAULDIN: One moment. Your Honor, the
22 Defense does have a suggestion. I don't know if you want
23 to hear from the State or.

24 THE COURT: Well, they're sitting over there
25 silent, so I'll hear from you.

1 MR. MAULDIN: We suggest, Your Honor -- what I
2 understand now is they are deadlocked on one of the
3 indictments and they have a verdict on the other
4 indictment?

5 THE COURT: That's what the note says, yes, sir.

6 MR. MAULDIN: Then my suggestion is you declare
7 a mistrial on the deadlocked indictment and take the
8 verdict on the other indictment. And just see where we
9 are. I mean, it may very well be, quite frankly, that
10 that would resolve the problem. The overall problem could
11 be resolved by that course. But, of course, there's
12 some -- I don't know which way this is going.

13 MR. WILKINS: Neither do we.

14 THE COURT: That's why jury deliberations are
15 private.

16 Let me talk to you two.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: We had a bench conference and
19 discussion with the attorneys. This has been a four-day
20 trial. It's late. I'm going to send them home tonight.
21 We're going to put the verdict form in a sealed envelope
22 so that no one can look at it. No one. And keep it with
23 the evidence. Bring them back tomorrow and let them
24 deliberate some more. No Allen charge or anything
25 tonight.

1 MR. WILKINS: Are you going to Allen charge them
2 tomorrow or are you going --

3 THE COURT: We'll wait and see how they do.
4 We'll bring them back and let them commence deliberating
5 and see where they are tomorrow morning.

6 MR. WILKINS: After conferring with Ms. Strom,
7 the problem we have with that is, they stated they were
8 deadlocked. And if you send them back in the morning,
9 they have to come out a second time saying they're
10 deadlocked in order to get the Allen charge. So bring
11 them back in the morning, give them the Allen charge and
12 send them back.

13 MR. MAULDIN: Well --

14 MR. WILKINS: As if we took a break and we
15 resumed right at this moment.

16 THE COURT: Hang on one minute.

17 MR. MAULDIN: I want to make sure I know what
18 I'm agreeing --

19 THE COURT: Well, it's not an agreement. We
20 just bring them back in the morning and put them -- I'm
21 not going to Allen charge them right off the bat. Just
22 ask them to come back and recommence their deliberations
23 in the morning. After a good night's sleep, it's amazing
24 how people will feel. If they tell us again tomorrow they
25 can't reach a verdict, then we'll Allen charge and see

1 what happens. Okay.

2 MR. WILKINS: Your --

3 THE COURT: You're saying if they say twice
4 they're deadlocked, it's over?

5 MR. WILKINS: Yes, sir.

6 MS. STROM: I'll have to research in the
7 morning.

8 THE COURT: Okay, before they begin their
9 deliberations.

10 MR. WILKINS: Yes, sir.

11 MS. STROM: Yes, sir.

12 THE COURT: You know what she's saying, right?
13 If they say twice they're deadlocked, it's over, mistrial.
14 So, basically, what -- and I believe that's right. I'm
15 just not sure if it's after -- well, how the Allen charge
16 fits in all that, we'll do that research, too. But bring
17 them back, before they start deliberating, if it's
18 appropriate, we'll give them that Allen charge so they
19 understand what's going on, and let them commence.

20 MR. MAULDIN: And --

21 THE COURT: And if they hang up again, it's
22 definitely over.

23 MR. MAULDIN: At this point, Your Honor, I
24 certainly would oppose that process. My recommendation is
25 that we allow them to come back -- and I don't even think

1 it's necessary that we come back into the courtroom. In
2 other words --

3 THE COURT: You're not understanding. The jury
4 comes out and says once they're deadlocked. And then,
5 normally, you give them an Allen charge. They come back a
6 second time deadlocked, it's a mistrial. So the research
7 that we have to do is find out they said their deadlocked,
8 we're not giving them the Allen charge. If they commence
9 tomorrow and come back and say they're deadlocked, we need
10 to know if that is a mistrial or if they can get an Allen
11 charge at that point. That's pretty easy research to do,
12 I think. But I can't remember.

13 MR. MAULDIN: So what they're going to do is
14 we're going to gather them at 9 o'clock and then we're
15 going to make a determination and bring them in and tell
16 him --

17 THE COURT: I tell them to be here at 9:15.
18 Y'all be up here about 9:00. We'll make a determination
19 at that time if an Allen charge is appropriate or we can
20 let them go without an Allen charge. We'll have to figure
21 it out.

22 We'll have a good night's sleep, too.

23 MR. MAULDIN: You're going to bring them in?

24 THE COURT: Yeah.

25

1 (WHEREUPON, the jury came into open court at
2 approximately 9:10 p.m.)

3 THE COURT: Ladies and gentlemen, thank you,
4 very much. I have your note. It's been a long trial,
5 four days. Y'all have been deliberating a little bit over
6 three hours. It's late. And I know what you've said in
7 your note, that you have a verdict on one charge and where
8 you are on the other. But at this hour, I -- well, here's
9 what we're going to do. I'm going to dismiss you for the
10 night. I'm going to ask you to be back tomorrow at 9:15
11 in the jury room. Do not begin your deliberations at that
12 point, okay. And I will -- we will give you -- I'll
13 either -- at some point, I'll give you further
14 instructions.

15 One thing, Madam Forelady, I do need you to do
16 is to take the verdict form that you have because I don't
17 want anyone to know what the verdict is. I'm going to
18 give you this envelope and I'll just write verdict form.
19 It's got one of these -- you pull it off and seal it.
20 We'll keep it locked up with the evidence. No one will
21 know where you are. And then tomorrow, we'll give it back
22 to you with the evidence.

23 And let me just tell y'all, it's hard work. And
24 we all, everyone, all the citizens in the State appreciate
25 what you're doing even though they don't know you're doing.

1 it for them. But it's hard work. It's a huge
2 responsibility and a great honor and great privilege to do
3 what you're doing. I so admire you for this. What we
4 want you to do is go home, get a good night's sleep. You
5 cannot talk about this or do research or anything. Don't
6 let -- we've come this far, let's don't let anything
7 affect it.

8 I ask you to be back at 9:15. Don't start
9 deliberating. And then we'll take it from there in the
10 morning. But a good night's sleep will probably help
11 everybody. Okay. So thank you very much. And I believe
12 the deputies will escort you out over to the parking
13 garage. But before you go, if you will, put the verdict
14 form in that envelope and seal it and -- let me just write
15 on there State vs. Jenkins just so we know.

16 All right. Thank you all very much. We'll see
17 you in the morning. Have a good night's sleep.

18 (WHEREUPON, the jury left open court at
19 approximately 9:13 p.m.)

20 (WHEREUPON, Court's Exhibit No. 10 was marked
21 for identification and received into evidence.)

22 THE COURT: Could there be anything else to talk
23 about?

24 Yes, Mr. Mauldin.

25 MR. MAULDIN: I want to make sure now -- because

1 I think we're doing the right thing with sealing that
2 verdict, whatever it is.

3 THE COURT: Yeah.

4 MR. MAULDIN: But when they come back and begin,
5 we've got to instruct the foreman that that verdict is to
6 be unsealed and it's back on the table. In other words --
7 otherwise -- in other words --

8 THE COURT: Mr. Mauldin, I am going to tell that
9 jury how -- they have got their instructions. And I'm not
10 going to tell them -- give them any direction about --
11 unless I have to give them an Allen charge. I'm not going
12 to tell them they can reconsider that. That would be so
13 inappropriate I can't even --

14 MR. MAULDIN: And it's not that it's being
15 reconsidered, what I don't want this action by you to do,
16 which I think is correct to put it in an envelope and hold
17 it, they should not interpret that as meaning that's now
18 it with regard to whatever it was because it isn't.

19 THE COURT: Well, okay.

20 MR. MAULDIN: Thank you, Judge.

21 THE COURT: All right. Have a good night. See
22 you back about 9:00.

23 Did you find anything?

24 MS. STROM: I think we got a little something,
25 Judge.

1 April 13, 2012

2 THE COURT: All right. Couple things.

3 Ms. Strom, I want to thank you for halting the
4 process last night. Everybody was tired, it was late.
5 And 14-7-1330 is the appropriate code section which deals
6 with a deadlocked jury. Number of cases. One of the --
7 I'm always look forward -- I would always rely on a
8 decision penned by now Justice Kittridge, but penned by
9 Judge Kittridge who was on the Court of Appeals. State V.
10 Robinson, 600 S.E.2nd 100, footnote 7, discusses mistrial
11 with a deadlocked jury. Statute reads in pertinent part:
12 If the jury returns a second time without having an agreed
13 upon verdict, it shall not be sent out again without its
14 own consent unless it shall ask from the Court some
15 further explanation of law. At the second indication of
16 deadlock, court's typically inquire as to whether more
17 deliberations would be beneficial to the jury. And the
18 issue of consent is determined from the jury's response.
19 When a jury is twice deadlocked, the trial judge shall
20 diplomatically discuss with the jury whether further
21 deliberations could be beneficial. The jury's consent to
22 resume or discontinue deliberations if determined either
23 expressly or impliedly by its response to the trial
24 judge's comments.

25 I think that clears that up. I will give them

1 an Allen charge this morning so that they understand the
2 import of their deliberations.

3 Any comment from anybody?

4 MR. WILKINS: State agrees with that, Your
5 Honor.

6 MR. MAULDIN: And we object to a Allen charge,
7 Your Honor, just for the record.

8 THE COURT: Well, whether I give them an Allen
9 charge or not, two times deadlocked pretty much ends the
10 case.

11 MR. MAULDIN: Yes, sir.

12 THE COURT: So I'm going to let them know the
13 consequences of their inability to decide. I'm not going
14 to coerce them in any way, but they need to be informed.

15 Another thing that concerns me is that I
16 understand on the radio today, it was reported that the
17 jury had found a verdicts on kidnapping and were
18 deadlocked on the murder. Now, I will report to you that
19 that verdict form is sealed and it was under the Court
20 lock and key all night. So I don't know where that
21 comment came from. But if somebody in this courtroom has
22 violated this order, the gag order, there will be
23 consequences. So just keep that will in mind.

24 All right. Are they all here?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Okay.

2 It wasn't on the radio, it was on TV.

3 (WHEREUPON, the jury came into open court at
4 approximately 9:22 a.m.)

5 THE COURT: Okay. Ladies and gentlemen, welcome
6 back. I hope y'all had a pleasant evening. I hope y'all
7 got a good night's sleep. Yeah, me, too. It's amazing.
8 I remember I played -- used to be a YMCA basketball league
9 and I'd go play. And they had 10:00 games and you think
10 oh, you'd be worn out. You'd go home and be too excited
11 to go to sleep, too much on your mind. But in any event,
12 a night's rest is always helpful. You see a fresh brisk
13 day like today is always a great thing.

14 I want to tell you, ladies and gentlemen, you've
15 stated that you have been unable to reach a verdict in the
16 case on this one charge. I don't know what it is. And as
17 I instructed you earlier, the verdict of the jury must be
18 unanimous. And when a matter is in dispute, it isn't
19 always easy for even two people to agree. So when 12
20 people must agree, it becomes even more difficult. And in
21 most cases, absolute certainty cannot be reached or
22 expected. However, you, the jury, have a duty to make
23 every reasonable effort to reach a unanimous verdict. In
24 doing this, you should consult with one another, express
25 your own views, and listen to the opinions of your fellow

1 jurors, tell each other how you feel and why you feel that
2 way, discuss your difference with open minds. And
3 although the verdict of the jury must be unanimous, every
4 one of you has the right to your own opinion. The verdict
5 you agree to must be your own verdict, the result of your
6 own convictions, and you should not give up your firmly
7 held beliefs merely to be in agreement with your fellow
8 jurors. The majority should consider the minority's
9 position and the minority should consider the majority's
10 position. And you should carefully consider and respect
11 the opinion's of each other and reevaluate your position
12 for reasonableness, correctness and impartiality. You
13 must lay aside all outside matters and reexamine the
14 questions before you based on the law and the evidence in
15 this case.

16 If you do not agree with a verdict in this
17 case -- if you all can't agree on a unanimous verdict in
18 this case, I must declare the mistrial. In that case,
19 should that happen, it does not mean that anybody wins.
20 It just means that at some future time, I will try this
21 case with some other jury sitting where you now sit. The
22 same participants will come and the same lawyers will ask,
23 basically, the same questions and get, basically, the same
24 answers and we will go through the whole process again.

25 Now, I will tell you that you were selected in

1 the same manner and from the same source as any future
2 jury will be. And there is no reason for me to suppose
3 that the case will ever be submitted to 12 more
4 intelligent, impartial and conscientious and competent
5 jurors than you. Or that more or clearer evidence will be
6 produced on side or the other. I, therefore, will ask you
7 to return to your deliberations with the hope that you can
8 arrive at a verdict within a reasonable time.

9 All right. Thank you. We will deliver the
10 evidence to you and y'all begin your deliberations again.

11 Madam Forelady, no one has seen the verdict
12 form. So you may unseal it and proceed.

13 All right. Thank you.

14 (WHEREUPON, the jury left open court at
15 approximately 9:27 a.m.)

16 THE COURT: All right.

17 MR. MAULDIN: Your Honor, just renew the
18 objection for the record.

19 THE COURT: Same ruling.

20 MR. WILKINS: No objection from the State, Your
21 Honor.

22 (WHEREUPON, the Court was in recess awaiting a
23 verdict.)

24 (WHEREUPON, the jury resumed deliberations at
25 9:28 a.m.)

1 THE COURT: This has been a long case, hard
2 fought, a lot of emotion and I want no outburst when this
3 verdict is announced. Failure to abide by that could
4 result in sanctions.

5 Okay. Let's get them.

6 (WHEREUPON, the jury came into open court at
7 approximately 10:45 a.m.)

8 THE COURT: All right. Madam Forelady, I
9 understand you've reached a verdict?

10 MADAM FORELADY: We have.

11 THE COURT: Would you please hand it to the
12 bailiff?

13 All right. Madam Clerk, would you please
14 publish the verdict?

15 VERDICT

16 THE CLERK: Yes, sir, Your Honor. Your Honor,
17 this is case number 2008-GS-323-8409 and 2011-GS-23-7258A.
18 As to indictment 2008-GS-23-8409, Clarence William
19 Jenkins, the charge of murder, we, the jury, find the
20 Defendant guilty. As to indictment 2011-GS-23-7258A, the
21 charge of kidnapping, we, the jury, find the Defendant
22 guilty. I certify this decision was the unanimous
23 decision of the jury, Donna Bailey, Foreperson.

24 If this is your verdict, please raise your right
25 hand.

1 THE COURT: There's nothing you want to tell me?
2 It's got to be your choice. This is between you and me.
3 You don't have to if you don't want to, but I'm telling
4 you this is your only chance.

5 THE DEFENDANT: Your Honor, in respects to the
6 Court and everything, I know I haven't understood
7 everything about the law and everything that's been going
8 on, but like I've told Susannah and Mauldin, my defense
9 team, and I've even tried to tell everyone, I did not -- I
10 did not kill anybody, Your Honor. And I put that on
11 everything. I am a firm believer in God and Jesus. I did
12 not kill or kidnap anybody. I would not do that. And my
13 mother raised me not to do that. And I know it is a
14 senseless and harmful crime that has been committed. I'm
15 not saying that I'm completely innocent. I know that I
16 took a part in the crime. But in the killing, I did not
17 take a part in no killing. I was not there when Mekole
18 was killed. God knows that I was not there when Mekole
19 was killed. I was not cruel to anybody, period, Your
20 Honor. And I was hoping and praying and trusting in my
21 defense team to prove that, but, obviously, they was
22 unable to. But I promise you and Mekole's family and
23 everybody that I did not take no part in her killing or
24 her kidnapping. I did know Mekole.

25 THE COURT: What was your part?

1 THE DEFENDANT: I did help get rid of Mekole.
2 And I told my defense team that. I was honest with them
3 and I even told them that I would tell the Solicitor my
4 part. My part was I helped clean up the mess and I helped
5 get rid of Mekole. But I did not kill Mekole in no way,
6 shape or fashion. I never killed anybody in my life and I
7 will never kill anybody in my life.

8 THE COURT: So where were you when she was
9 killed?

10 THE DEFENDANT: I was with my kids, my
11 daughters.

12 THE COURT: Where?

13 THE DEFENDANT: At my mother's house. And the
14 Defense knows that. I was back and forth from my mother's
15 house to Carmen's house. Even see in the pictures and
16 Carmen stated in her testimony that I left her one time
17 because of how she used to keep the place.

18 The reason why I left Carmen before is because
19 I've never been in a dirty place. My mother raised me not
20 to be in a dirty place. And I have OCD. I don't like
21 bacteria. I don't like germs. And you can even talk to
22 the people in the jail that I'm in now, Lieutenant Groves,
23 Lieutenant Smith, all these lieutenants and sergeants know
24 because they allow me to clean while I'm over there.
25 These people know me that I've been incarcerated for the

1 past four years. I'm not telling these people that. They
2 know me. They sit and they watch me. They know how I am.
3 Everybody who knows me on the streets knows how I am. I'm
4 not going to sit up here and make up something that's not
5 true.

6 THE COURT: How old are you?

7 THE DEFENDANT: I'm 28, sir.

8 THE COURT: Twenty-eight. So when you came
9 back, what was the -- what was in the -- what did you find
10 when you came back to Tindal Road?

11 THE DEFENDANT: When I came to Tindal Road, I
12 found Mekole there. Mekole was in the back room and
13 Carmen told me everything that went on.

14 THE COURT: Which was what?

15 THE DEFENDANT: Which was Mekole came looking
16 for me because I knew Mekole from Labor Finders. Me and
17 Mekole used to smoke together. And me and Mekole used to
18 have dinner together outside of Labor Finders and so
19 forth. I even brought Mekole to the trailer before.
20 Mekole came looking for me there a few times. She told --
21 Carmen told me that Mekole came there looking for me and
22 she was upset because me and Carmen had got into an
23 argument about how I forced Grace to leave on March the
24 16th. Because I had also left on March 16th and went over
25 to my mother's house because Carmen cussed me out about

1 forcing Grace to leave. So ever since March 16th, I was
2 over at my mother's house, going back and forth to my
3 mother's house to Carmen's house.

4 THE COURT: So when you came back, what did you
5 find?

6 THE DEFENDANT: I found Mekole in the bathroom
7 already dead. And I was scared, I didn't know what to do.
8 Because I've never seen a body before. And I helped her
9 cover everything up. I mean, I didn't know what else to
10 do. I mean, I had -- I had drugs at the place. I mean, I
11 didn't know what else to do. I mean, there's no excuse
12 for me helping her. I'm not trying to make an excuse.
13 It's just that I didn't know what else to do. I mean --

14 THE COURT: What about -- this just flies in the
15 face of physical evidence, Mr. Jenkins. The DVD's of you
16 and Carmen Jenkins going to the library --

17 THE DEFENDANT: No, Your Honor, I --

18 THE COURT: -- all of the notes that were
19 written.

20 THE DEFENDANT: I'm not saying that I didn't --
21 I did not say that I didn't go to the library, Your Honor.
22 I didn't say any of that stuff. What I'm telling you,
23 Your Honor, is that I did not kill Mekole and I did not
24 kidnap her.

25

SENTENCING

1 THE COURT: I'm going to sentence you to life in
2 prison. Good luck. All right.

3 (WHEREUPON, the proceedings were concluded.)
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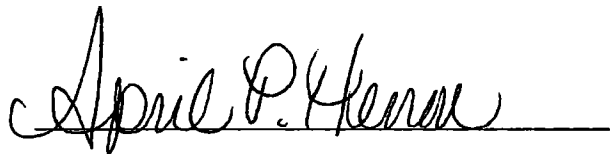
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9-13th days of April, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 3, 2012



APRIL P. HERRON, Court Reporter

WITNESSES

C. T. Miller

C. T. Miller

Greenville County Sheriffs Office

4/11/2008

ARREST WARRANT NUMBER

1475288

ACTION OF GRAND JURY

TRUE BILL

James L. Mayes

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Donna Davis April 13, 2012

Foreperson of Petit Jury

Date

DOCKET NO. 2008-GS-23-8409

BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2008

THE STATE

vs.

CLARENCE WILLIAMS JENKINS

Indictment for

0116

MURDER

VIOLATION § 16-03-0010

ENTERED
ACCT. 10

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on

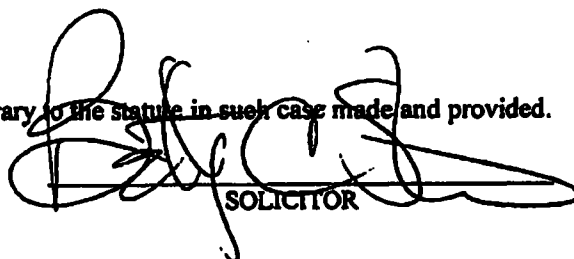
NOV 18 2008

the Grand Jurors of Greenville

County present upon their oath:

That CLARENCE WILLIAMS JENKINS did in Greenville County, on or about the ^{6th day} 10th day of April, 2008, unlawfully and with malice aforethought kill MEKOLE HARRIS. This is in violation of §16-03-0010 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

[Signature]
Greenville County Sheriffs Office

DOA: 4/11/2008 B/M DOB:

SSN

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

[Signature]
Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-
BCS

007258A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2011

THE STATE

vs.

CLARENCE WILLIAMS JENKINS

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

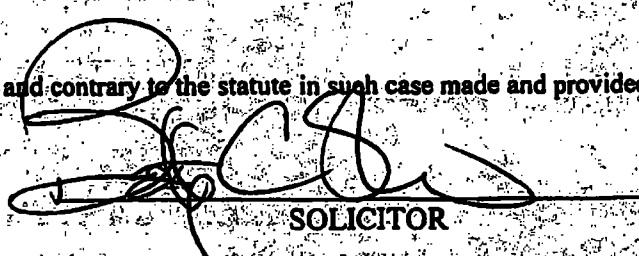
At a Court of General Sessions, convened on
County present upon their oath:

SEP 13 2011

the Grand Jurors of Greenville

That CLARENCE WILLIAMS JENKINS did in Greenville County, between April 4, 2008 and April 6, 2008,
unlawfully seize, abduct, confine, inveigle, decoy or carry away MEKOLE HARRIS, without the authority of
law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

320
STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Clarence Williams Jenkins

AKA:

Race: BLACK Sex: M Age: 28

DOB:

Address:

City, State, Zip: Greenville, SC 29611

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS2308409

A/W#: 1475288

Date of Offense: 4/7/2008

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Strom, Betty

015305
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Henson

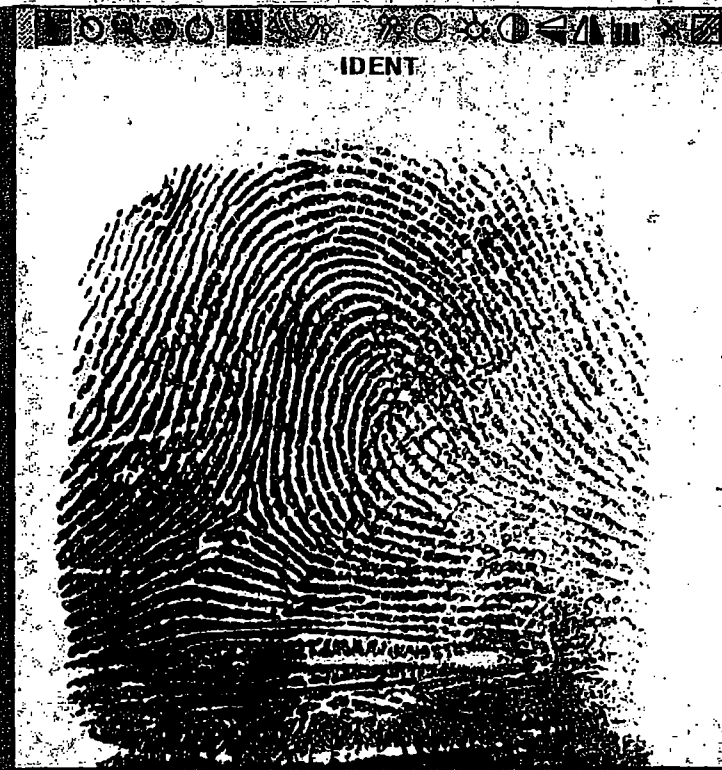
SCCA/217. (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 4-13-12

Latent vs. Tenprint Verification | **Latent vs. Latent Verification** | **Latent vs. Palm Verification** | **Tenprint vs. Latent Verification** | **Palm vs. Latent Verification**



IDENT

Page 10 of 10

231600121001



Id : 23160012168
Rank : 5
Score : 3745

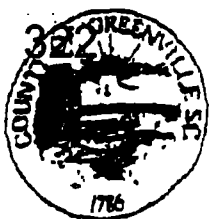
... ..

Display Match Report

Chart this Case

1	231600147576	5595	3
2	990000266878	5415	3
3	23P000501339	5035	3
4	231600154391	3825	3
5	231600121686	3745	3
6	231600121001	3660	3
7	231600170435	3575	3
8	SC00664213	3550	3
9	10D100527316	3535	4
10	032024354910	3435	5
11	500100021289	3425	3
12	500200052463	3385	3
13	9800000137402	3310	3
14	9800000116906	3295	3
15	10X004109028	3285	3
16	2312001041150	3285	3

Save and Ne



County of Greenville

Criminal Justice Support Department

AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM WORK SHEET



Case Number 3 * 0 * 08 * 027864

Date of Entry 4/7/08

AFIS Operator Troup

County GPD

Offense found body parts

Date 4/7/08

INQUIRY							RESULTS		
Item No.	Latent #	Pattern	R	S	Finger #	No. of Min.	CODE	SID	Finger #
1	00	ATURW	B	/	3	-	A	SC00819506	3
		ATURW							
		ATURW							
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		ATURW							
		ATURW							
		ATURW							

PERSONS IDENTIFIED

SID	Name	DOB	Race / Sex
<u>PACK 115678</u>	<u>HARRIS, Mekole Michelle</u>		<u>B/F</u>

LABORATORY AFIS RESPONSE (INDICATED IN CODE BOX ABOVE)

- A. Latent has been searched against SCAFIS data base with positive results.
- B. Latent has been searched against the SCAFIS data base with negative results. Image of the latent has been stored in the unsolved latent file for continuous search against all new cards entering the system.
- C. Latent has been searched against the SCAFIS Data Base with negative results. Latent does not meet criteria for storage in the unsolved latent file but may be requested to be re-searched at any time.
- D. Latent submitted is not of sufficient quality for entry and search in the SCAFIS system.
- E. Additional comments _____

DISPOSITION OF EVIDENCE

- () Latent(s) photographed
- () Latent(s) held in case jacket.
- () Latent(s) will be returned separately.

fb

HARRY'S MEKOLE MICHELLE
4/7/08

DOB
PK# 11

B/H

PETERSEN / 912
RT HAND



32354

COURT'S	
EXHIBIT NO.	4
IDENTIFICATION EVIDENCE	
DKT. #	818
DATE	9-12-15

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSION)

COUNTY OF GREENVILLE)

THE STATE,)

**DEFENDANT'S REQUEST
FOR JURY INSTRUCTIONS**

V.)

CLARENCE JENKINS,
DEFENDANT)

INDICTMENTS # 11-GS-23-7258A
AND 08-GS-23-8409

Request No. 1:

In order to convict the defendant of murder, the government must prove the following beyond a reasonable doubt:

First, that the defendant intended to kill the victim;

Second, that the killing was unlawful;

Third, that the defendant acted with "malice"

If you have a reasonable doubt as to whether any one of these things has been proven, then you must resolve that doubt in the defendant's favor by finding him not guilty of murder.

S.C. Code § 16-3-10; State v. Johnson, 291 S.C. 127, 352 S.E.2d 480, 481 (1987); W. McAninch & G. Fahey, The Criminal Law of South Carolina 187-91 (2d ed. 1989).

Request No. 2:

Murder is an intentional killing. In order to convict the defendant of murder, you must find that he intended to murder someone.

Request No. 3:

In order to find the defendant guilty of murder, you must find that the State has proven each of the elements of this crime beyond a reasonable doubt.

See, e.g., Mullaney v. Wilbur, 421 U.S. 684 (1975).

Request No. 4:

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

State v. Johnson, Op. No. 24096 (S.C. Sup Ct. filed June 13, 1994) (Davis Adv. Sh. No. 14 at 29); State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991), cert. denied, 112 S.Ct. 1282 (1992); T. Ervin, What Does "Beyond a Reasonable Doubt" Really Mean, S.C. Lawyer 32 (July/Aug. 1994).

Request No. 5:

A defendant is presumed to be innocent until proven guilty beyond a reasonable doubt. If you have any reasonable doubt as to whether the state has shown that defendant did not act properly in self-defense, then you must find defendant not guilty.

See State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987), overruled on other ground, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (abolition of in favorem vitae); Cage v. Louisiana, 498 U.S. 39 (1990); In re Winship, 397 U.S. 358 (1990).

Request No. 6:

The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence, and the defendant has the right under the United States and South Carolina Constitutions not to take the witness stand and testify. The exercise by the defendant of the right not to testify or present evidence should not weigh in the slightest against the defendant and should play no role in your discussions and deliberations. No inference of any kind may be drawn from the failure of the Defendant to testify or to present any other form of evidence. In particular, no presumption or inference of guilt may be drawn from the failure of the defendant to testify or offer evidence.

State v. White, 243 S.C. 238, 243-245, 133 S.E.2d 320 (1963).

Request No. 7:

You will remember that was not called by the state as a witness to answer questions in this trial. If you believe that the testimony of that witness would have been important, and if you also believe that the state could have brought her to court to testify in this trial, then you may consider the State's failure to do so when you decide whether the state has proved, beyond a reasonable doubt, that the defendant committed the crime of murder. You may infer that the reason the state did not call that witness is that her testimony would have hurt the state's case.

See, e.g., Arnold v. Yarborough, 281 S.C. 570, 316 S.E.2d 416 (Ct. App. 1984) (civil case); cf., e.g., Gathers v. South Carolina Electric and Gas Co., _____ S.C. _____, 427 S.E.2d 687 (Ct. App. 1993); State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991) (lost or destroyed evidence); but see State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) (instruction not necessarily required).

Request No. 8:

One is not responsible for a murder committed by a co-conspirator unless that offense was the natural or probable consequence of the agreed upon act.

State v. Peterson, 287 S.C. 244, 335 S.E.2d 180 (1986); W. McAninch & G. Faurey, The Criminal Law of South Carolina 187-91 (2d ed. 1989).

Request No. 9:

Mere presence at the scene of the crime is not sufficient to establish guilt as an accomplice.

Request No. 10:

When the state relies on circumstantial evidence, you may not convict a defendant unless every circumstance relied on by the state is proven beyond a reasonable doubt, and all of the circumstances so proven are consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that the circumstances create a probability, even if it is a strong one. If, assuming the circumstances are true, there is a reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

C. HERRY

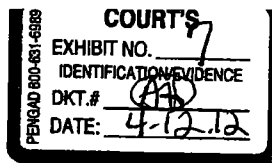
State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

Respectfully submitted,

Susannah Ross
Ross and Enderlin, PA
330 E. Coffee St.
Greenville, SC 29601
(864)242-0029

Greenville, South Carolina

This ____ day of _____, 2012.



Copy of group
charges -

April 12, 2012

Donna Bailey

April

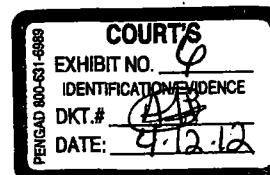
(1) Define elements of
"murder"

(2) Explanation +
clarification of 2
people being charged
w/ same crime,

etc.

What do you have
to prove with respect
to each defendant
when more than one?

Donna Bailey
April 12, 2012



20:47

April 12, 2012

Your Honor,

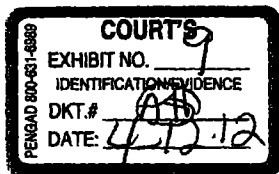
We have deliberated and
are unable to reach a
unanimous verdict.
Please advise.

Thank you
Donna Bailey

PS

We have reached a
unanimous decision on one
charge.

Donna Bailey RN



STATE OF SOUTH CAROLINA	) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	) THIRTEENTH JUDICIAL CIRCUIT
THE STATE	)
VS.	) NOTICE OF INTENT TO SEEK
	) THE DEATH PENALTY
CLARENCE WILLIAM JENKINS	) Indictment 2008-GS-23-8409
DEFENDANT	) 1475288

TO: CLARENCE WILLIAM JENKINS, DEFENDANT

PLEASE TAKE NOTICE, that at the trial of the above mentioned case to be held at a subsequent time and date, at least thirty (30) days from the service of this Notice, of which you will be timely notified, the imposition of the sentence of death upon You, the Defendant, CLARENCE WILLIAM JENKINS, will be sought by the State. The statutory aggravating circumstance upon which the State relies is the murder was committed while in the commission of dismemberment of a person. S.C. Code of Laws 16-3-20 (C)(a)(1)(i).


 Robert M. Ariail, Solicitor
 Thirteenth Judicial Circuit

Greenville, SC
 6/22/08

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

THE STATE)
)

VS.)

CLARENCE JENKINS)
 DEFENDANT)

STATE'S WITHDRAWAL OF
 NOTICE OF INTENT TO SEEK
 THE DEATH PENALTY

2008-GS23-8409

I 475288

FILED CLERK OF COURT
 PAULEY
 (SPECIAL FILING)

2012 MAR 27 AM 11:13

Comes now the State of South Carolina, by and through its attorney, W. Walter Wilkins, Solicitor for the 13th Judicial Circuit and hereby withdraws the notice of intent to seek the death penalty as to defendant, Clarence Jenkins.

So withdrawn this 21st day of March, 2012



Solicitor W. Walter Wilkins

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 30th, 2013


Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

Appellate Case No. 2012-211588

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in State v. Edwards violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

II. The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

III. The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials that where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

STATEMENT OF THE CASE

On November 18, 2008, a Greenville County Grand Jury indicted Appellant for murder and kidnapping. Indictments. The matter proceeded to trial before the Honorable Edward W. Miller and a jury on April 9-13, 2012. Walt Wilkins, Betty Strom, and George Campbell represented the state. John Mauldin, Susannah Ross, Mark McDougal, Conner Mullin, Katherine Creely, and Katherine Williams represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 309, lines 16-23. Judge Miller sentenced Appellant to life in prison on the murder charge. R. 314, lines 1-2; sentence sheet.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF THE FACTS

On April 7, 2008, the police officers responded to two calls about threatening letters and suspicious packages at two separate locations. Upon arrival at the scenes, the police discovered two trash bags, each containing a severed human foot and severed human hand, and letters. R. 42, line 7 – R. 46, line 23; R. 47, lines 3-15; R. 50, line 5 – R. 53, lines 13; R. 54, lines 7-15. Approximately one week before, one of the responding officers had responded to one of the locations for a suspicious letter. R. 26, lines 3-14. That letter referred to people named "Grace" and "Willie." R. 26, line 23 – R. 27, line 13. The homeowner at one of the locations informed the police that "Grace" in the letter may refer to Grace Davis. R. 31, lines 21-23

Davis testified that she met Appellant and his wife, Carmen Jenkins, in August of 2007. She began an intimate relationship with Appellant and the three moved in together. Shortly thereafter, Appellant went to jail for driving under suspension. While he was in jail, Davis and Carmen began an intimate relationship and fell in love. When Appellant was released from jail, the three entered an intimate covenant, which required the reciting and signing of a covenant and the exchange of rings. R. 111, line 5 – R. 115, line 10; R. 120, lines 20-25; R. 122, lines 2-24; R. 123, line 22 – R. 124, line 24; R. 125, line 5 – R. 126, line 13. When Appellant returned from jail, Carmen confided in Davis that she was in love with her and did not want Appellant involved in their relationship. R. 139, line 17 – R. 140, line 6.

At some point, Davis' kids were removed from the home due to the living arrangements. In order to get her kids back, Davis moved out on March 16, 2008. Davis testified that Carmen was very upset about her living. R. 127, line 8 – R. 130, line 1.

Carmen testified pursuant to a plea agreement. Carmen pled guilty to murder and received a fifty-year sentence. Pursuant to her agreement, if she testified on behalf of the prosecution against Appellant, then the prosecutor would seek a sentence reduction on her behalf. R. 160.

Carmen testified similarly to Davis regarding how the three became involved in a romantic relationship and of her love for Davis. R. 163, line 2 – R. 170, line 15. She also explained the circumstances under which Davis left the relationship. R. 170, lines 18-25; R. 176, line 16 – R. 177, line 14. Carmen claimed Appellant decided to write letters to entice Davis to return to the relationship. She admitted that she had to assist Appellant with the letters because he could not spell and did not use a computer well. She testified they mailed approximately seven letters. R. 177, line 15 – R. 185, line 23.

According to Carmen, in early April 2008, Appellant called her to say he was bringing someone home. He arrived with Mekole Harris. R. 188, line 21 – R. 189, line 8. Carmen testified that she next saw Harris in a bedroom with Appellant and Harris was naked and in handcuffs. Appellant purportedly claimed he and Carmen were police officers and were going to arrest Harris for prostitution and possession of crack unless she cooperated with them. Harris agreed to do anything to keep from going to jail again. R. 190, lines 10 - 21.

Appellant wrote out a script for Harris to read over the phone. Appellant dialed the numbers for Davis' mother and aunt and forced Harris to say the script into the phone. R. 190, line 23 – R. 194, line 17. Although Harris was handcuffed while at the Jenkins' home, Carmen testified she could have left as long as she carried the chair with her because Carmen and Appellant did not stay in the same room with her. R. 199, lines 16-23.

On the following Sunday morning, Appellant allegedly told Carmen to kill Harris. Carmen testified that she attempted to do so with a cord around Harris' neck, but was unable to do so. Appellant then took the cord and killed Harris. R. 201, line 22 – R. 203, line 17. Appellant and Carmen dismembered Harris' body. The two kept her feet and hands in the freezer and wrapped the remaining body parts in trash bags and placed her in a child's play pen. They placed the body in a wooded area, poured gasoline and starter fluid on the body. Carmen set the body afire. R. 206, line 19 – R. 209, line 11.¹ Upon their arrive at home, they removed the body pieces from the freezer and placed one hand, one foot, and one set of toes in each of two bags. R. 209, lines 13-18. They drove to Davis' aunt's house where Carmen left a letter on the aunt's car and the bag of body parts on the porch. Next, they drove to Davis' mother's house where Carmen left the letter in the mailbox and the bag of body parts on the porch. R. 210, line 8 – R. 212, line 18.

Police rolled fingerprint impressions from the severed hands. R. 46, line 24 – R. 47, line 2; R. 55, lines 11-20. A latent fingerprint examiner input the rolled impressions into the computer system, which indicated multiple possible matches. The examiner reviewed the initial returned possible match and concluded the two were indeed a match. The computer system then provided the examiner with the identity of the owner of the fingerprint – Mekole Harris. R. 79, line 14 – R. 82, line 17.

¹ Almost two years after her arrest, Carmen informed the police of the location of Harris' remains in exchange for the prosecutor rescinding the notice of intent to seek death. R. 218, line 25 – R. 219, line 23.

ARGUMENT

I. The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in *State v. Edwards* violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

Relevant facts

At the conclusion of the case, Appellant requested multiple jury instructions. R. 272, lines 20-21; Court's #4. Among the instructions requested was a charge regarding circumstantial evidence. Specifically, Appellant requested:

When the state relies on circumstantial evidence, you may not convict a defendant unless every circumstance relied on by the state is proven beyond a reasonable doubt, and all of the circumstances so proven are consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that the circumstances create a probability, even if it is a strong one. If, assuming the circumstances are true, there is a reasonable hypothesis which does not include the guilt of the accused the proof has failed.

Appellant cited *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989) to support his request for the specific circumstantial evidence charge. Court's #4 (Request #10); R. 273, lines 5-6; R. 273, lines 11-20. The prosecutor objected to Appellant's request. R. 275, lines 4-7. The judge ruled: "*State vs. Cherry*² clears that up." R. 275, line 8.

Concerning direct and circumstantial evidence, the judge charged the jury as follows:

Now, there are two types of evidence which are generally presented during a trial. And they are known as direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual

² 361 S.C. 588, 606 S.E.2d 475 (2004).

knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact sought to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of the main fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

R. 281, line 10 – R. 282, line 5. At the conclusion of the jury instructions, Appellant renewed his exception to the instruction concerning circumstantial evidence. R. 289, lines 2-4.

The jury began deliberations at 4:45 p.m. on April 12, 2012. R. 290, lines 13-14. By 6:15 p.m., the jury sent a note with two questions. R. 291, lines 10-11; R. 292, lines 5-9. At 8:47 p.m., the jury sent a note expressing its inability to arrive at unanimous verdicts: “we have deliberated and are unable to reach a unanimous verdict. ... P.S. we have reached a unanimous decision on one charge.” R. 296, lines 14-18; Court’s Exhibit #9. The judge decided to send the jurors home for the evening. R. 300, lines 17-21. The jurors left at 9:13 p.m. R. 302, lines 18-19.

The jurors returned to court at 9:22 a.m. on April 13, 2012. R. 306, lines 3-4. At that time, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 306, line 5 – R. 308, line 8. The jury resumed deliberations at 9:28 a.m. R. 308, lines 24-25. Just over an hour later, at 10:45 a.m., the jury returned guilty verdicts. R. 309, lines 6-10.

Discussion

Our Supreme Court approved the circumstantial evidence charge requested by Appellant in 1955 in State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955). In 1989, the Court explained the instruction found in Littlejohn was the appropriate instruction for juries when the state relied upon circumstantial evidence to prove its case. State v. Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989). Subsequently, the Court held a jury instruction omitting the “reasonable hypothesis” phrase, as a whole, adequately conveyed the level of proof required to find a defendant guilty. State v. Grippon, 327 S.C. 79, 82-83, 489 S.E.2d 462, 463 (1997). The Court’s holding was based upon the trial court repeatedly charging the jury that the state had the burden to prove the defendant guilty beyond a reasonable doubt and properly defining reasonable doubt. Id. at 83, 489 S.E.2d at 463-464. Although the Court decided the dispositive issue in the case, the Grippon Court went on to recommend another jury instruction. Specifically, the Court recommended:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Id. at 83-84, 489 S.E.2d at 464.

Chief Justice Finney and then-Justice Toal concurred in the result, but wrote separately to explain trial judge should not abandon South Carolina’s traditional jury charge found in Edwards. The concurrence explained the majority posited no “reasoned rejection

of the longstanding rule.” Looking to other jurisdictions, the concurrence explained that the Edwards language emphasized the need for careful reasoning, provided “sharpened clarity” to the meaning of reasonable doubt, and explained necessary information for jurors to accurately analyze circumstantial evidence. The concurrence concluded:

This Court should retain the Edwards charge because juries need more detailed information about the relation of circumstantial evidence to determination of guilt than the majority’s suggested instruction provides. The question is not whether circumstantial evidence carries the same probative weight as direct evidence; of course it does. Rather, the question is the proper means for evaluating circumstantial and how trial courts may best help juries understand their responsibilities.

Grippon, 327 S.C. at 84-88, 489 S.E.2d at 464-467 (J. Toal concurring).

In 2004, the Court revisited the circumstantial evidence charge. The Court held the language recommended in “Grippon is the sole remaining charge to be utilized by the courts of this state in instructing juries in cases relying, in whole or in part, on circumstantial evidence.” State v. Cherry, 361 S.C. 588, 597, 606 S.E.2d 475, 480 (2004). In their dissent, Chief Justice Toal and Acting Justice Lloyd, explained that although circumstantial and direct evidence are equally valid and convincing, circumstantial evidence, by definition, establishes collateral facts from which main facts may be inferred. Thus, a juror’s evaluation of circumstantial evidence requires the juror to connect collateral facts in order to reach a conclusion, which is not a process required when evaluating direct evidence. Id. at 603, 606 S.E.2d at 483 (C.J. Toal, dissenting). Rather than creating confusion or changing the standard for examining circumstantial evidence, the traditional charge “clarifies the jury’s responsibility to evaluate circumstantial evidence carefully and gives jurors more detailed information about the relation of circumstantial evidence to the determination of guilt.” Id. In fact, the lack of instruction for jurors concerning how to evaluate

circumstantial evidence may result in jurors "reach[ing] illogical conclusions based on emotion or intuition instead of a rational, deliberative process." Id. at 604, 606 S.E.2d at 483.

The Court, in evaluating a directed verdict motion, recognized the utility of the traditional charge when examining and analyzing circumstantial evidence. State v. Hernandez, 382 S.C. 620, 626 n. 2, 677 S.E.2d 603, 606 n. 2 (2009). After quoting the traditional circumstantial evidence charge and noting the abandonment of the charge, the Court explained "it nonetheless illustrates the lack of evidence against [Hernandez, Guerrero, and Avila-Arjona]." Id.

Two years later in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the South Carolina Supreme Court provided a more detailed explanation of how the traditional charge guides the evaluation and analysis of circumstantial evidence in relation to the role of a juror in finding the facts and determining guilt or innocence. The Court acknowledged its abandonment of the traditional circumstantial evidence charge, but noted "the definition illustrates the lack of evidence against [Odems]." Id. at 590, 720 S.E.2d at 52. The Court provided further insight on this issue in footnote four:

However, the evaluation of circumstantial evidence requires the connection of collateral facts in order to reach a conclusion, and this process is not required when evaluating direct evidence. Thus, the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. The definition does not, however, change the standard evaluating evidence: every circumstance must be proved beyond a reasonable doubt.

Id. at 591 n.4, 720 S.E.2d at 53 n.4 (internal citations omitted).

Without question, a proper evaluation of circumstantial evidence requires connection of collateral facts to reach a conclusion, which is not required for evaluating direct evidence. According to our Supreme Court, the traditional circumstantial evidence language informs jurors regarding how to analyze circumstantial evidence - inferring main facts by making connections among collateral facts. The trial judge's refusal to charge the jury pursuant to the traditional circumstantial evidence charge announced in Edwards, supra, violated Appellant's right to require the prosecution to prove his guilt beyond a reasonable doubt.

II. The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

Relevant facts

During a pretrial motion hearing regarding the testimony of an expert witness concerning latent fingerprint examination, Appellant explained to the court that he had received only conclusory statements contained within reports from the prosecution. The reports essentially stated that "fingerprint examination was done and that it was verified by Captain Kellet." R. 2, lines 18-22. The one-page reports provided no information to allow Appellant to understand the type of examination done. R. 2, lines 22-25. The prosecution explained "our latent experts, they don't do a lengthy report stating, specifically, what ridge matches what ridge." Instead, the report only indicates whether the unknown print matches a known print. R. 3, lines 21-24. The prosecutor further explained he "triple checked. There's no reports other than the conclusory statements that were given to defense counsel that these knowns match these prints." R. 4, lines 7-10. When Appellant requested copies of the prints that were consulted in making the verification, the prosecutor explained the fingerprint cards would be available that day. He further stated "If they want to get their own expert while we're trying the case or something, I'm not sure, but they're read and available, all the latents are." R. 4, line 17 – R. 4, line 4. The prosecutor assured the court he would check "to see if there's any notes" relating to the fingerprint analysis. R. 6, lines 19-21.

In light of Appellant's objections to the expert's testimony, the court conducted an in camera hearing. Jackie Kellet, employed by the Greenville Department of Public Safety forensic division, testified she entered the unknown print from the severed hand into the Automated Fingerprint Identification System (AFIS). The computer system provided her with a list of potential matches. Kellet printed the card of the person AFIS said the unknown belonged to and used a magnifying glass to visually examining the points to verify the result. R. 61, lines 19-20; R. 65, line 15-12; R. 68, lines 1-11. Kellet testified she made no notes while making the comparison. R. 65, lines 13-25; R. 71, lines 10-13. Other than issuing a report, Kellet made no record of her work. R. 72, lines 1-24.

Kellet then testified before the jury. On direct examination, her testimony tracked her in camera testimony. R. 77, line 8 –R. 84, line 25. On cross-examination, Kellet testified that on a typical day, a latent print examiner may “do 500 to 1000 comparisons a day, easy.” R. 86, lines 17-25. She reiterated she made no notes of her comparisons. R. 87, lines 1-3. Appellant then realized Kellet had a file in her hand and asked to examine its contents, which the judge permitted. R. 87, lines 8-11. Upon review of the file, Appellant realized at least three documents had not been produced in discovery – “an AFIS report or a screen shot, an automated fingerprint identification worksheet and what looks to be a latent handprint.” R. 88, lines 9-17.

The trial judge explained he was “disturbed that the state ha[d] not produced these documents after all the lengthy hearings and discussions.” R. 89, lines 6-11. Appellant reviewed the materials quickly and explained it appeared to be “a series of points of comparison on the screen shot ... [with] at least, two impressions that one looks to be identified, one looks to be the latent.” Appellant informed the judge that having the

materials would have provided him an opportunity to "raise some questions for cross-examination to support our objection." R. 89, lines 12-20. The prosecutor claimed that after Appellant "filed motions regarding the fingerprint analysis, point by point analysis [he] called Captain Kellet and conferred with her regarding what she had in her file." Thereafter, he told Appellant "there may be some AFIS stuff in there, that's all I know." He further claimed Appellant "didn't want it." R. 89, line 23 – R. 90, line 11. The judge ordered a ten-minute break. R. 90, lines 15-17.

After the break, Appellant explained that the AFIS report provided at least sixteen respondents, or possible matches, with associated scores. Kellet's testimony indicated she found a match with the first respondent. According to the undisclosed document, the first respondent had a score of 5595 and the second respondent had a score of 5415. Therefore, the second respondent was very close in score to the first. Appellant explained "[h]ad we had this and had we been able to work with an expert in identifying the actual proximity of number one and number two and even number three, we could have, I think much more effectively cross-examined this witness." R. 90, line 22 – R. 91, line 22. Appellant further expressed the difficulty of trying to show prejudice based upon the prosecution's failure to produce the document within a short amount of time, especially when the document relates to scientific expert testimony. Appellant moved to strike the testimony of Kellet or grant a mistrial. R. 92, line 1 – R. 94, line 25.

In response, the prosecutor countered

we didn't focus on anything regarding AFIS because we were [not] introducing anything regarding AFIS and it wasn't evidence of anything. It was an investigative tool used to get them a potential comparison. So it wasn't something that we even imagined would be anything that they would want. Given the fact, they knew it was run through AFIS.

R. 95, lines 18-24. He further argued Appellant was not prejudiced by the failure to disclose. Specifically he said "the only thing on there that they didn't have access to was a list of 20 people that the computer program had a report on. If they wanted the report on those folks, they could have asked for it." R. 96, lines 1-6.

The trial judge expressed his concern that the prosecutor previously claimed in prior discovery conference that he had "given them everything" and "that [was] not the case." The judge further expressed that Appellant had found "a touch point, which has potential for prejudice." He admonished the prosecutor "even though the prosecution may have not [found] a document to be relevant, you have a different mindset than the defense. So it is important to produce all of the documents." R. 96, lines 7-18.³ The judge also demonstrated concern for Appellant's predicament in being asked to articulate prejudice as a result of the prosecutor's failure to disclose "on the spot." R. 96, lines 19-21. Nevertheless, the judge found the failure to disclose did not rise to the level of requiring striking of the testimony or the granting of a mistrial. R. 97, lines 1-10. The undisclosed documents were made a court's exhibit. R. 99, line 14 – R. 100, line 24; Court's Exhibit #3.

Discussion

Rule 5(a)(1)(c) of the South Carolina Rules of Criminal Procedure provides

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

³ The judge later explained that the prosecutor does not have the "mindset" of the defense and may not view the same documents with the same level of importance as the defense as a result. He further stated that if Appellant had the documents, they may have been able to hire an expert to dispute Kellet's finding. R. 97, line 19 – R. 98, line 7.

The Court of Appeals remarked that “[t]he requirements of Rule 5 ... are judicially created discovery mechanisms for use in criminal proceedings.” State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998). When a trial judge determines the prosecution violated Rule 5, the judge may fashion the proper remedy. The Rule itself explains that if a party failed to comply with the rule, the court “may prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.” Rule 5(d)(2), SCRCrimP. The Kennerly Court explained the definition of “material” as used in Rule 5 is the same as the definition used in the context of violations and obligations pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Kennerly, 331 S.C. 453, 503 S.E.2d at 220. Thus, evidence is material for purposes of Rule 5 “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” United States v. Bagley, 473 U.S. 667, 682 (1985).

As explained by the Court of Appeals, the goal of Rule 5 is to ensure a criminal defendant’s right to a fair trial. Further, the role of a prosecutor is to be a minister of justice, not the representative of an ordinary party. As the representative of the sovereign, the prosecutor’s interest in a criminal prosecution is not to win, but to see that justice is done. Kennerly, 331 S.C. 454, 503 S.E.2d at 220.

The prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor’s private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.

Riddle v. Ozmint, 369 S.C. 39, 46, 631 S.E.2d 70, 74 (2006). Similarly, the Rules of Professional Conduct impose certain duties upon prosecutors. Specifically, the Rules

require a prosecutor "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilty of the accused or mitigates the offense." Rule 3.8(e), SCACR. The special duties imposed upon prosecutors are due to the prosecutor's "responsibility of a minister of justice and not simply that of an advocate." Thus, the prosecutor has "specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Rule 3.8, cmt. 1, SCACR.

"The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (citing Brady, supra). "[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted in the defendant's acquittal." Kyles v. Whitley, 514 U.S. 419, 434 (1995). It is enough that it undermines confidence in the verdict. Id. at 435.

Brady requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession. United States Supreme Court decisions have elaborated the Brady obligations to include (1) the duty to disclose impeachment evidence, (2) favorable evidence in the absence of a request by the accused, and (3) evidence in the possession of persons or organizations. See Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); Kyles, supra. Material must be disclosed "when prejudice to the accused ensures . . . [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

The trial judge erred in failing to strike Kellet's testimony or grant a mistrial based upon the prosecution's withholding of material evidence. As explained by trial counsel and admitted by the prosecution, the prosecutor failed to disclose at least three documents contained within the fingerprint examiner's file. Those three documents included one showing the possible matches returned via AFIS. This evidence was necessary to impeach Kellet concerning her failure to examine more than one respondent print, the quality of the prints produced, and the likelihood that other respondent prints possessed the same unique identifying characteristics as the latent print. Additionally, given an opportunity, Appellant may have obtained an expert to challenge Kellet's finding altogether based upon the AFIS results.

III. The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials that where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

Relevant facts

Appellant incorporates by reference the relevant facts discussed in Issue II, supra. After the judge denied Appellant's request to strike Kellet's testimony or in the alternative grant a mistrial, Appellant requested the court delay the trial to permit Appellant to engage the services of an expert to examine the undisclosed records. R. 98, lines 10-23. The judge denied the request stating, "you can have those examined and you can pursue that without delaying the trial." He acknowledged that Kellet testified she only examined the first respondent, and Appellant may be able to present an expert to "attack the credibility" of Kellet by testifying "it's a better practice to examine the top two or three," and that such "might be of some benefit." R. 98, line 25 – R. 99, line 13.

Discussion

Appellant incorporates by reference the law and analysis presented in Issue II, supra. At a minimum, the court should have granted Appellant a long recess or short continuance in order to acquire the assistance of an expert qualified to evaluate the withheld information. The court's failure to do so violated Appellant's right to a fair trial and due process of law.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentence and remand the matter for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

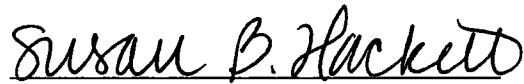
ATTORNEY FOR APPELLANT

This 21st day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 21, 2013

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above the printed name and title.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of October, 2013.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2013.

[Signature]

(L.S.)

Notary Public for South Carolina

My Commission Expires October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLARENCE WILLIAMS JENKINS,

APPELLANT

APPELLATE CASE NO. 2012-211588

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Appellant's initial brief raised three meritorious issues on appeal requiring reversal of Appellant's convictions and sentence. In his reply, Appellant addresses only the first issue raised in his initial brief and first issue addressed in Respondent's initial brief. However, Appellant's reply to one issue only should not be construed as waiver or abandonment of the other two issues. Rather, Respondent's brief requires a response only to the first issue.

The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in *State v. Edwards* violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

In his initial brief, Appellant argued the trial judge erred in refusing to charge the jury pursuant to the traditional circumstantial evidence definition as requested. On August 14, 2013, the South Carolina Supreme Court addressed the circumstantial evidence charge as given in criminal cases in South Carolina. In *State v. Logan*, Op. No. 27296 (S.C. Sup. Ct. filed Aug. 14, 2013), the Court "revisited [its] past discussions regarding the circumstantial evidence charge, and articulate[d] for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the state's burden and the jury's responsibility." As the Court explained, the purpose of a clear jury instruction concerning analyzing circumstantial evidence is paramount. Id. Although direct and circumstantial evidence may carry the same weight, "a jury cannot accurately analyze these two types of evidence using identical approaches." Id.

Specifically, circumstantial evidence, unlike direct evidence, “requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded.” Id. Thus, “[a]nalysis of circumstantial evidence is plainly a more intellectual process.” Id. In light of the differing analysis required when examining direct versus circumstantial evidence, the Court provided a proper jury instruction for trial courts to use. Important for Appellant’s case, the instruction directs jurors that “to the extent the state relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.” The instruction also provided that “[i]f these circumstances merely portray the defendant’s behavior as suspicious, the proof has failed.” Id.

Although the Court held that a trial judge may instruct the jury as to circumstantial evidence as provided in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) and State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2005), the Court held that a trial judge may not rely exclusively on that charge over a defendant’s objection. Id.

Respondent argued Appellant should not benefit from the Court’s Logan decision because the case was decided while Appellant’s case was pending on appeal and because the Logan charge “is most applicable in cases where circumstantial evidence is center stage.” IBOR at 16. As an initial matter, Appellant benefits from the Logan ruling as his case was pending on direct review and the issue was preserved for review. See State v. Belcher, 385 S.C. 597, 612-613, 685 S.E.2d 802, 810 (2009)(citing Griffith v. Kentucky, 479 U.S. 314, 328 (1987)(“hold[ing] that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases ... pending on direct review or not yet final), Harris v. State, 543 S.E.2d 716, 717-718 (2001)(reversing a murder conviction and overruling

precedent that had approved inference of intent to kill from use of a deadly weapon and applying the new rule “to all cases in the ‘pipeline’ – i.e., cases which are pending in direct review or not yet final”)).

Second, clear, cogent, and concise instructions directing the jury on how to analyze the circumstantial evidence before it was necessary in Appellant’s case. Respondent argued that because Appellant’s co-defendant testified concerning Appellant’s direct involvement, the charge informing a jury of how to evaluate properly circumstantial evidence was not required. To the contrary, the testimony of Appellant’s co-defendant provided a greater impetus for the judge to instruct the jury concerning evaluating circumstantial evidence. Quite obviously, the state’s evidence pointed to the co-defendant’s guilt in the murder and kidnaping of Harris. It was the co-defendant who had prepared letters to the family of their ex-girlfriend and delivered the portions of Harris’ body to family members of their ex-girlfriend in an effort to intimidate her. In fact, much of the state’s the evidence pointed to the co-defendant’s guilt to the exclusion of Appellant. Further, the co-defendant testified against Appellant pursuant to a plea agreement in which she received a fifty-year sentence, rather than the death penalty, with the promise that the prosecutor would seek a reduction in her sentence if she continued to cooperate.

Despite the co-defendant’s testimony, the jury struggled with its verdict. On the first day of deliberations, the jury was out for over four hours. During that time, the jury expressed its inability to reach a unanimous decision. R. 290, lines 13-14; R. 291, lines 10-11; R. 292, lines 5-9; R. 296, lines 14-18; Court’s Exhibit #9; R. 302, lines 18-19. The following day, the judge instructed the jurors pursuant to Allen v. United States, 164 U.S. 492 (1896). R. 306, line 5 – R. 308, line 8. The jury resumed deliberations at 9:28 a.m. R.

308, lines 24-25. Just over an hour later, at 10:45 a.m., the jury returned guilty verdicts. R.
309, lines 6-10.

Not only does Appellant benefit from Logan, supra, as a matter of law, but the jury instruction concerning how a jury must evaluate circumstantial evidence was necessary in Appellant's trial due to the nature of the evidence presented by the prosecution. The evidence chiefly related to the guilt of Appellant's co-defendant. It was the co-defendant's testimony alone that connected Appellant to the murder and kidnapping.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentence and remand the matter for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

This 21st day of October, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

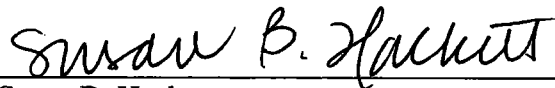
CLARENCE WILLIAMS JENKINS,

APPELLANT

APPELLATE CASE NO. 2012-211588

CERTIFICATE OF SERVICE

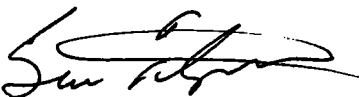
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of August, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

The State,

Respondent,

v.

Clarence Williams Jenkins,

Appellant.

Appellate Case No. 2012-211588

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I.

The trial judge did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing and directed it should not be used. The trial judge properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error. 10

II.

The trial judge did not abuse his discretion in denying Appellant's motion for a mistrial, or in the alternative, striking the State's fingerprint expert's testimony for failure to provide paper copies of three sheets of paper in the expert's file that were not material to guilt, innocence or impeachment. The trial judge likewise did not abuse his discretion in denying Appellant's motion for a continuance to further examine those three sheets or request expert review where the identification at issue was the identification of the victim, and the materials at issue reflected AFIS possibilities that the fingerprint expert did not utilize after having personally matched the first possibility on the variable listing.
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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

The trial court's refusal to charge the jury pursuant to the traditional circumstantial evidence definition and explanation as provided in State v. Edwards violated Appellant's state and federal constitutional rights requiring the prosecution prove his guilt beyond a reasonable doubt because the charge given confused the jury regarding how to evaluate circumstantial evidence.

II.

The trial court erred in failing to strike the testimony of a prosecution witness, or in the alternative grant a mistrial, where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

III.

The trial court erred in failing to grant a lengthy recess to permit Appellant to engage the services of an expert to review materials where the prosecution failed to disclose material evidence in a timely manner in violation of Appellant's state and federal constitutional right to due process and a fair trial.

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge erred by denying Applicant's request to charge the *Edwards* "reasonable hypothesis" language in the circumstantial evidence charge where the Supreme Court of South Carolina has found the *Edwards* language is confusing to a jury and directed that it should not be used.

II.

Whether the trial judge abused his discretion in denying Appellant's motion for mistrial, or in the alternative, striking the State's fingerprint expert's testimony, or declining to allow additional time for study of the three sheets of paper in the expert's file that were not copied and provided to the defense, when the information was not material to guilt, innocence or impeachment but reflected, in addition to the victim's prints and information which was already known, possibilities from a computer database (AFIS) the State's fingerprint expert was provided but did not utilize in identifying the victim. [Appellant's Issues II and III].

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant, Clarence Jenkins, in November 2008 for the murder of Mekole Harris. (R. p. 317). On December 23, 2008, the State filed a Notice of Intent to Seek the Death Penalty. (R. p. 329). In September 2011, the Greenville County grand jury also indicted Petitioner for the kidnapping of Ms. Harris, the murder victim. (R. p. 319). On March 27, 2012, the State filed a withdrawal of the notice of intent to seek the death penalty. (R. p. 330).

A jury trial was held April 9-13, 2012, before the Honorable Edward W. Miller. Solicitor Walt Wilkins, with Assistant Solicitors Betty Strom and George Campbell, represented the State. Public Defender John Mauldin and Susannah Ross, Esq., along with volunteers from the Washington D.C. law firm of Akin Gump, Mark McDougal, Esq., Conner Mullin, Esq., Katherine Creely, Esq., and Karen¹ Williams, Esq., represented Appellant. The jury convicted Appellant as charged. (R. p. 309, lines 16-22). The judge sentenced Appellant to life imprisonment for the murder. (R. p. 314, line 1). The judge, pursuant to state law, did not sentence Appellant on the kidnapping conviction in light of the sentence for murder. See S.C. Code § 16-3-910 (must be imprisoned for a period not to exceed thirty years *unless sentenced for murder as provided in Section 16-3-20*) (emphasis added). See also *State v. Vazsquez*, 364 S.C. 293, 302, 613 S.E.2d 359, 363 (2005), *abrogated on other grounds by State v. Evans*, 371 S.C. 27, 637 S.E.2d 313

¹ The cover sheet on the transcript reflects a typographical and/or scrivener's error listing Ms. Williams as "Katherine." Ms. Williams stated her first name was "Karen". (R. p. 2, lines 17-18).

(2006) ("Generally, when a defendant is convicted for murder any sentence for the kidnapping of the victim would be vacated.").²

This appeal follows.

² The conviction, though, still stands. *See State v. Perry*, 278 S.C. 490, 495-496, 299 S.E.2d 324, 327 (1983) ("we vacate the life imprisonment sentence for kidnapping because of the statutory provision. The statute does not mandate a vacation of the kidnapping conviction. It merely provides that either the life imprisonment sentence or the death penalty sentence required in a murder conviction shall be sufficient punishment.").

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of the murder Mekole Harris. The evidence at trial established that Appellant, with wife Carmen Jenkins, together killed Ms. Harris. Appellant and Carmen Jenkins then severed Ms. Harris' hands, feet, and fingers, and delivered those body parts to the homes of Sue Bostic and Judon Burnside as part of a scheme to gain the return of Grace Davis who had joined the Jenkins' intimate relationship. The following evidence places the events and scheme in some context.

On April 7, 2008, officers responded to a report of the receipt of a threatening letter and a garbage bag with unknown contents. Upon opening the bag, officers discovered a hand, foot, and severed toes. (R. p. 11, lines 12-24; p. 14, lines 13-23).

Sue Bostic had discovered the letter on her car windshield, and the bag next to her apartment door. She called the police. (R. p. 12, line 20 – p. 13, line 2; p. 17, line 12 – p. 18, line 18). Ms. Bostic had received another letter the week before. That letter was addressed to Grace Davis, indicated a demand for \$10,000, that someone was “in trouble,” that someone “had lost the protection of an organization” and that “if they didn't comply with the letter, ... bad things would happen to them.” (R. p. 16, lines 6-13; p. 26, lines 6-12). Ms. Bostic's sister, Judon Burnside, had also received a strange letter demanding money, (R. p. 36, lines 9-24), and a bag was deposited at her home, as well. The bag at Ms. Burnside's home similarly contained body parts. (R. p. 50, line 23 – p. 54, line 15).

Further, both Ms. Bostic and Ms. Burnside received strange telephone calls to their homes prior to receipt of the body parts. Ms. Burnside testified that “some girl said that I know who writing the letter. Then she said, I got to go, I believe he done followed

me.” (R. p. 37, lines 9-24). The girl also referenced “Willie Davis.” (R. p. 21, lines 13-18). Ms. Bostic testified she understood “some woman was crying and going on” during the call to her home. (R. p. 19, line 23 – p. 20, line 21). Marquise “Meko” Burnside was in Ms. Bostic’s home when the call came in. He testified the woman was “saying that somebody about to get killed. Saying that Willie Davis was involved.” (R. p. 38, lines 5-10).

The common thread in these events is Grace Davis. Ms. Davis is Ms. Burnside’s daughter, Ms. Bostic’s niece, and Marquise’s mother. (R. p. 15, lines 12-22; p. 35, lines 10-11). Ms. Davis had been married to Willie Davis. (R. p. 110, line 25 – p. 111, line 1). Ms. Davis’ family was aware that Ms. Davis had been involved with Appellant and his wife, Carmen Jenkins. The family did not approve. (R. p. 22, lines 16-25; p. 35, lines 7-25; p. 172, lines 9-24).

Ms. Davis explained the relationship at trial. She testified that she became involved with Appellant in August 2007 after she had left her husband. (R. p. 111, line 5 – p. 112, line 22). Ms. Davis eventually met Carmen, and the three began an intimate relationship, exchanged vows and signed an “intimate covenant” to formalize their relationship. (R. p. 126, lines 7-13). They lived together with the Jenkins’ children and the Davis children. (R. p. 120, lines 1-25; p. 163, line 15 – p. 164, line 8).

In late February 2008, DSS removed Ms. Davis’ children, placing them in Ms. Bostic’s home. (R. p. 127, lines 17-24; p. 175, lines 3-10). On March 15, 2008, in an attempt to get her children back, Ms. Davis left the home. (R. p. 128, line 2 – p. 129, line 15). Ms. Davis testified that as she left, Appellant appeared with a machete in hand, but ultimately stated he could not kill her. (R. p. 130, line 3 – p. 131, line 3). Carmen

Jenkins was also upset about her leaving, but Ms. Jenkins testified she understood the need to regain custody of the children. (R. p. 129, lines 9-11; p. 176, line 18 – p. 177, line 14).

Ms. Davis further testified that, during the time she was with the Jenkins, she and the Jenkins sought money from her father, Marvin Poole, and her father's money manager, Eric Harris. (R. p. 115, line 2 – p. 117, line 10; p. 141, lines 11-14). In April 2008, Mr. Poole also received a threatening letter addressed to Ms. Davis and containing a demand for \$10,000. (R. p. 141, line 15 – p. 146, line 5).

Appellant's wife, Carmen Jenkins, pled guilty to Ms. Harris' murder prior to Appellant's trial. (R. p. 160, lines 2-7). As part of her agreement, and in hopes of reducing her fifty (50) year sentence, she testified at his trial. (R. p. 160, line 13 – p. 161, line 25). Ms. Jenkins testified that Appellant was upset with Ms. Davis leaving, and began a plan to force her back. The plan included letters to Ms. Davis's family. (R. p. 177, line 16 – p. 179, line 6). Ms. Jenkins further testified that Appellant brought Ms. Harris to the home on April 4th or 5th. Appellant took Ms. Harris into a room separate from Ms. Jenkins. When he called Ms. Jenkins' to come into the room, Ms. Jenkins entered the room and found Ms. Harris naked and handcuffed. Appellant advised Ms. Harris "that she's under arrest for prostitution and possession of crack." (R. p. 188, line 24 – p. 190, line 18). Ms. Harris agreed to help them in order to avoid possible incarceration. (R. p. 190, lines 18-24). Ms. Jenkins testified that Appellant wrote a "script for her to read over the phone to Grace's family members." (R. p. 190, line 24 – p. 191, line 1). One of the "scripts" recovered from the home read, "Hi, my name is Mekole. I'm Willie's girlfriend," and goes on to discuss money. (R. p. 191, line 23 – p.

192, line 20). Ms. Jenkins testified that Appellant later ordered her to kill Ms. Harris. She testified that she attempted to choke Ms. Harris, but lacked sufficient strength. Appellant helped and eventually placed a bag over Ms. Harris' head. (R. p. 201, line 23 – p. 203, line 6). The Jenkins then took Ms. Harris' body into a bathroom at the home. Appellant used a variety of tools, including a machete, to begin to sever the hands, feet, and toes, storing them in containers. (R. p. 203, line 19 – p. 204, line 1; p. 206, line 19 – p. 208, line 9). Those severed parts Ms. Jenkins delivered to Ms. Bostic's home and Ms. Burnside's home, with letters, at Appellant's direction. (R. p. 209, line 13 – p. 212, line 18). The torso and remaining body parts were disposed of separately in remote area. Ms. Jenkins testified that she and Appellant packaged the remains, drove to the remote area in their van, and Ms. Jenkins set fire to the remains. (R. p. 208, line 8 – p. 209, line 10).

Investigators took fingerprints and DNA samples from the severed hands in an attempt to identify the victim. (See R. p. 47, lines 1-2; p. 79, line 16 – p. 80, line 3). The prints were matched to known prints of Mekole Michelle Harris. (R. p. 82, line 9 – p. 84, line 19). DNA samples from the hands, then identified as Ms. Harris' hands, were matched to samples from the feet, samples from the bathroom in Appellant's home, and samples from a glove in Appellant's van. (R. p. 266, line 8 – p. 267, line 7; p. 268, line 16 – p. 271, line 15). The investigation also revealed that an online credit application from April 4, 2008 in Mekole Harris' name was declined on April 9, 2008. All correspondence for the event, though addressed to Ms. Harris, reflected the Jenkins' home address, phone number, and e-mail. (R. p. 147, line 3 – p. 149, line 24; p. 150, line 15 – p. 153, line 25). The employment was listed as "Labor Finders." (R. p. 152, lines 23-25).

Vivian Young provided transportation for her boyfriend to his job at Labor Finders. She testified she saw Appellant with Ms. Harris, whom she knew previously from school and from being around Simpsonville, in April 2008 at Labor Finders. On April 1, 2008, Ms. Harris was sitting on Appellant's lap outside Labor Finders. On April 3, 2008, Ms. Young saw Appellant with Ms. Harris in a bathroom at Labor Finders. Ms. Young testified that she never saw Ms. Harris again. (R. p. 102, line 23 – p. 109, line 21).

Ms. Jenkins, in exchange for dropping the notice of intent to seek the death penalty against her, eventually guided the officers to the remote area where she set fire to the remains at Appellant's direction. (R. p. 209, lines 6-10; p. 219, lines 7-23). Officers recovered a number of burned artifacts and human bones. (R. p. 260, line 17 – p. 263, line 3).

At sentencing, Appellant denied killing Ms. Harris, and stated he was simply guilty of helping his wife, Carmen Jenkins, clean up and dispose of the body. (R. p. 310, line 5 – p. 313, line 24).

As stated above, the trial judge, having heard all the evidence, sentenced Appellant to life in prison. (R. p. 314, lines 1-2).

ARGUMENT

I.

The trial judge did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing and directed it should not be used. The trial judge properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error.

Relevant Facts:

Applicant submitted the following request to charge:

Request No. 10:

When the state relies on circumstantial evidence, you may not convict a defendant unless every circumstance relied on by the state is proven beyond a reasonable doubt, and all of the circumstances so proven are consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that the circumstances create a probability, even if it is a strong one. If, assuming the circumstances are true, there is a reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

(R. p. 326).

Defense counsel "forcefully request[ed]" the charge, and argued "the recent case that dealt with the analysis of circumstantial evidence in the South Carolina Supreme Court ... renews the ongoing debate, if you will, about the appropriateness of the Edward charge versus the Grippon charge." (R. p. 273, lines 5-20).

The State objected to the request. (R. p. 275, lines 4-7). The trial judge declined to charge the language stating, "State v. Cherry clears that up." (R. p. 275, line 8). The trial judge instructed the jury as follows:

Now, there are two types of evidence which are generally presented during a trial. And they are known as direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness. It is evidence which immediately establishes the main fact sought to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of the main fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

(R. p. 281, line 10 – p. 282, line 5).³

After the judge's charge to the jury, defense counsel "took exception" to the requested language not being included. (R. p. 288, line 23– p. 289, line 4).

On appeal, Appellant argues in light of recent decisions in the Supreme Court of South Carolina referencing the *Edwards* language, particularly *State v. Hernandez*, 382 S.C. 620, 626 n. 2, 677 S.E.2d 603, 606 n.2 (2009) and *State v. Odems*, 395 S.C. 582, 720

³ See *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997). The language almost precisely follows the approved instruction in *Grippon*:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

327 S.C. at 83-84, 489 S.E.2d at 464.

S.E.2d 48 (2011), the *Grippon* charge is no longer sufficient. (FBOA, p. 13).⁴ He argues the failure to give the charge “violated [his] right to require the prosecution to prove his guilt beyond a reasonable doubt.” (FBOA, p. 13).

Discussion:

As an initial matter, the allegation that the charge given offended a constitutional right is not preserved for review. Defense counsel requested the charge based on state law and argued the particular language requested was sanctioned by a change in state law. Counsel did not argue that the charge given was constitutionally infirm. Having failed to make the constitutional argument to the trial judge, the issue is procedurally barred from review. *See State v. McWee*, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (“this issue is not preserved for review because at trial, appellant never cited any constitutional basis for his request”). *See also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 - 694 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Even so, as a matter of state law, there is no error. Appellant is not entitled to any relief.

“[T]he trial court is required to charge only the current and correct law of South Carolina.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011), *quoting Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). In *State v. Cherry*, 361 S.C. 588, 601-602, 606 S.E.2d 475, 482 (2004), the Supreme Court of South Carolina held “that the recommended language in *Grippon* is the sole and exclusive

⁴ A similar challenge to the charge is pending (as of the initial briefing in this case) in this Court in *State v. Leonard Goodwin*, Appellate Case No. 2011-193507 and *State v. Fred Madden*, Appellate Case No. 2011-199606.

charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction.” The Supreme Court of South Carolina has recently again approved that charge in *State v. Logan*, Opinion No. 27296 (S.C. Sup. Ct. filed August 14, 2013) (Shearouse Adv.Sh. No. 36 at 27). Moreover, the Court addressed the very argument Appellant raises here, *i.e.* that their recent cases referencing the *Edwards* charge signaled disapproval of the *Grippon* charge. The Court rejected that argument.

The Court found its recent cases referencing the *Edwards* language did not address the jury instructions given. Rather, those cases – including the *Hernandez* and *Odems* cases upon which Appellant relies – made reference to the *Edwards* language in context of the judge considering a directed verdict motion. In short, none of the recent Supreme Court cases citing the *Edwards* language addressed the *Grippon* jury charge at all. *Logan*, (Shearouse Adv. Sh. No. 36 at 34-35). Thus, it is now settled that neither of the cases cited by Appellant announced a retreat from the *Grippon* charge.

Simply, both *Hernandez* and *Odems* were cases regarding the presence or absence of sufficient evidence to send the case to the jury, not the sufficiency or clarity of a charge to the jury. *See Logan*, (Shearouse Adv. Sh. No. 36 at 34 and n. 7). *See also State v. Hernandez*, 382 S.C. at 625 n.2, 677 S.E.2d at 605-606 n.2 (“Although in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) the Court abandoned this charge and held that it may confuse the jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless *illustrates the lack of evidence* against Petitioners.”) (emphasis added); *Odems*, 395 S.C. at 590, 720 S.E.2d at 52 (“Despite the Court’s abandonment of the use of this particular definition as a jury charge in *State v. Cherry*, the definition *illustrates*

the lack of evidence against Petitioner.”) (emphasis added). The evaluation of evidence for a directed verdict motion is not the same as the jury’s evaluation of evidence in determining whether the State had met its burden of proof beyond a reasonable doubt. The “**trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**” *State v. Cherry*, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis in original). See also *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 453 (1984) (“The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court.”). Critically, there is no mention in either *Hernandez* or *Odems* of the sufficiency of the *Grippon* charge. Thus, like the challenge in *Logan*, the instant challenge fails for the same reasons.

Further, at the time of trial, the relevant precedent dictated that only the *Grippon* charge be used. *Cherry*, *supra*. That charge does not include the “reasonable hypothesis language” requested here. (See R. p. 326 [Request to Charge No. 10]). The “reasonable hypothesis language” charge from *Edwards* was specifically rejected in *Cherry* and the Supreme Court of South Carolina directed that the charge no longer be used. *Id.* Indeed, the Court in *Cherry*, consistent with *Holland v. United States*, 348 U.S. 121 (1954), found the “reasonable hypothesis” instruction merely served to confuse juries.⁵ *Cherry*, 361 S.C. at 601-602, 606 S.E.2d at 482.

⁵ In *Holland v. United States*, the United States Supreme Court, when considering a complaint that the trial judge failed to charge when “the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt,” acknowledged that some jurisdictions allowed the charge, but concluded that “the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect.” 348 U.S. at 139-140. Given that the Supreme Court disapproves of the

The Court in *Logan* reaffirmed both the correctness of the *Grippon* charge and its earlier disapproval of the "reasonable hypothesis" language in rejecting the suggestion that *Cherry* had been implicitly overruled. *Logan*, (Shearouse Adv. Sh.No. 36 at 35) ("the trial court did not err in providing a circumstantial evidence charge consistent with *Grippon*."). The language remains disfavored. *Logan*, (Shearouse Adv.Sh. No. 36 at 39) ("requiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant's guilt comes perilously close to shifting the burden of proof from the State to the defendant.").

However, Respondent notes that the Supreme Court of South Carolina has now provided (while this case was pending on appeal) that an alternate charge may be given:

There are two types of evidence which are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

language, Appellant's constitutional argument, if it could be heard, would find no support in federal authority. However, the argument is procedurally barred.

Logan, (Shearouse Adv. Sh. No. 36 at 41).⁶

But again, it is an alternate charge. The charge is not designated the sole charge available nor even mandatory, though a trial judge should use the above charge when requested by the defendant. (Shearouse Adv. Sh. No. 36 at 40 and 41) (“we modify *Grippon* and *Cherry* to allow the additional language”). In sum, though the Court in *Logan* allowed for an alternate charge, the Court did not find the *Grippon* charge incorrect.

Moreover, the *Logan* charge is specifically tailored to a case relying upon circumstantial evidence. (Shearouse Adv. Sh. No. 36 at 41) (“to the extent the State relies on circumstantial evidence, all of the evidence must be consistent with each other, and when taken together, point conclusively to the guilty of the accused.”) (emphasis added). Clearly the *Logan* charge is most applicable in cases where circumstantial evidence is center stage. *Id.* This is not such a case. To the contrary, the co-defendant, Appellant’s wife Carmen Jenkins, testified in detail to Appellant’s direct involvement. The impact of the circumstantial evidence is not as keen in such a case. See, for example, *State v. Salisbury*, 343 S.C. 520, 525, 541 S.E.2d 247, 249 (2001). (“the direct evidence in this case is sufficient to establish the elements of the crime and the identity of the perpetrator such that the trial court did not abuse its discretion in refusing a circumstantial evidence

⁶ In concurring in the result, Justice Kittredge, with Justice Pleicones, would adhere strictly to the *Grippon* charge, finding:

All of the federal courts and the vast majority of state courts have adopted *Holland*. The reasoning and rationale for following *Holland* was persuasively set forth by this Court in *Cherry*, and I see no basis for rejecting *Holland* and overruling *Grippon* and *Cherry*.

Logan, (Shearouse Adv. Sh. No. 36 at 43).

charge"). Moreover, the jury was thoroughly and adequately charged on reasonable doubt:

... reasonable doubt is the kind of doubt which would cause a reasonable person to hesitate to act. And reasonable doubt may arise from the evidence which is in the case or from the lack or absence of evidence in the case. And you, the jury, must determine whether or not reasonable doubt exists as to the guilty of this Defendant. The State has the burden of proving each and every element of a crime beyond a reasonable doubt. And any reasonable doubt that you may have in your deliberations should be resolved in favor of the Defendant.

(R. p. 280, line 25 – p. 281, line 9).⁷

Further, reasonable doubt was specifically tied to the weighing all the evidence – circumstantial and direct – in language immediately following the circumstantial evidence charge:

... You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, then you should find the Defendant not guilty.

(R. p. 282, lines 2-5).

Thus, the jury was given the correct and proper law. Similarly, the Court found in *Logan* that the judge "clearly instructed the jury regarding the reasonable doubt burden of proof," [t]hus, any conceivable error was harmless beyond a reasonable doubt. *Logan*, at n. 8. Based on the *Grippon* charge and the reasonable doubt instructions given in Appellant's trial, Respondent submits it is the same here. If there could be any finding of error, such error could only be harmless.

⁷ Appellant does not contest the correctness of the reasonable doubt charge. Even so, Respondent notes the definition used is well recognized as correct. See *State v. Needs*, 333 S.C. 134, 155 n. 12, 508 S.E.2d 857, 868 b, 12 (1998). See also *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (describing the same definition as "a correct statement of South Carolina law.").

However, the trial judge did not err. The trial judge gave the jury a current and correct charge on circumstantial evidence as approved by our Supreme Court. He did not err in declining to give the disfavored "reasonable hypothesis" language as found in *Edwards*. This Court should affirm the ruling of the lower court.

II.

The trial judge did not abuse his discretion in denying Appellant's motion for a mistrial, or in the alternative, striking the State's fingerprint expert's testimony for failure to provide paper copies of three sheets of paper in the expert's file that were not material to guilt, innocence or impeachment. The trial judge likewise did not abuse his discretion in denying Appellant's motion for a continuance to further examine those three sheets or request expert review where the identification at issue was the identification of the victim, and the materials at issue reflected AFIS possibilities that the fingerprint expert did not utilize after having personally matched the first possibility on the variable listing.

[Appellant's Issues II and II].

Relevant Facts:

Investigating officers used fingerprints from the severed hands to aid in the identification of the victim. (See R. p. 47, lines 1-2; p. 79, line 16 – p. 80, line 3). The prints were matched to known prints of Mekole Michelle Harris. (R. p. 82, line 9 – p. 84, line 19). DNA samples from the hands, then identified as Ms. Harris' hands, were matched to samples from the feet, samples from the bathroom in Appellant's home, and samples from a glove in Appellant's van. (R. p. 266, line 8 – p. 267, line 7; p. 268, line 16 – p. 271, line 15). Further, Carmen Jenkins testified the individual she and Appellant killed and subsequently dismembered in their bathroom was Mekole Harris. (R. p. 189, lines 7 – p. 192, line 20; p. 201, line 22 – p. 204, line 3; p. 206, line 19 – p. 208, line 13; p. 226, line 4 – p. 229, line 23). Appellant's challenge on appeal goes to the initial identification of the victim by the fingerprint impressions from her severed hands.

During pre-trial, defense counsel asserted they had received only a one page fingerprint report. Counsel complained they did not know if the expert(s) "simply used a computerized program to identify matches," but, if so, "we can't cross-examine AFIS, or a computer program." (R. p. 2, line 17 – p. 3, line 17).

The Solicitor noted their fingerprint experts "don't do a lengthy report stating, specifically what ridge matches what ridge," rather, they only report a match. (R. p. 3, lines 21-24). The Solicitor also noted that the experts would, of course, be available for cross-examination. (R. p. 3, lines 24-25). He further noted that "these witnesses have been available for four years" for the defense to contact, but, at any rate, he had "tripled checked" and found "[t]here's no reports other than the conclusory statements that were given to defense counsel that these knowns match these prints." (R. p. 4, lines 1-10).

Defense counsel again argued the one page report was "inadequate to cross-examine the witnesses," and requested the witnesses "bring any copies of the prints that they consulted in making their verification...." (R. p. 4, lines 17-21).

The Solicitor additionally stated the "fingerprint cards that have been in latent up until this morning," would be introduced in the trial and provided to the defense "[i]f they want to get their own expert while we are trying this case...." (R. p. 4, line 22 – p. 5, line 4). The trial judge, at that point, deemed the issue settled, with defense counsel receiving what was requested. (R. p. 5, lines 5-18). However, defense counsel pressed further and clarified that they were seeking notes of the comparison to ensure a computer generated program was not used as a program could not be cross-examined. (R. p. 5, line 21 – p. 7, line 17). The defense further argued the fingerprint match led to the identity of the victim, the identification accepted for purposes of the DNA matches, all of which should be suppressed if the print identification is suppressed. (R. p. 8, line 1 – p. 9, line 22).

The Solicitor responded that the fingerprint expert did an examination and declared a match. The Solicitor added that the defense could cross-examine the expert, Jackie Kellet. (R. p. 9, line 24 – p. 10, line 3).

On the second day of trial, just prior to the State's fingerprint expert being called to testify, the defense requested the trial judge "determine the admissibility" *in camera* before the jury returned to the courtroom. Upon the judge's request for clarification, defense counsel asserted Appellant did not wish to review the witness's qualifications, but to determine her trial testimony. Defense counsel stated: "We have no notes, no discovery at all other than the report." (R. p. 60, line 4 – p. 61, line 5). The solicitor noted that "the report is the result[]." (R. p. 61, lines 6-7). The judge allowed *in camera* examination.

Jackie S. Kellet, Captain of the Forensic Division, Greenville County Department of Public Safety, testified that she "used the AFIS, which is Automated Fingerprint Identification System ... a computerized database maintained by" SLED, as a "tool ... to search unknown prints or latent prints against a known database." (R. p. 64, lines 15-22). The captain explained the database simply "sends back a list," as many as is requested, in this case twenty-five, and a fingerprint examiner must determine if there is a match. (R. p. 64, line 15 – p. 65, line 5). Captain Kellet testified, at that point, "it's a mental observation that I use. We don't write anything down ... its going to be the same whether I do it two years ago or last month or today. Those points are still there in those prints." (R. p. 65, lines 17-22). Having prints from all ten fingers to compare, Captain Kellet testified that she identified the prints as belong to Mekole Michelle Harris. (R. p. 65, line 23 – p. 67, line 19). She testified that AFIS did not match the prints, but merely

provided her a pool of samples to draw from – only an examiner can declare a match. (R. p. 68, lines 14-24).

The defense objected to the testimony pursuant to Rule 703, South Carolina Rules of Evidence. (R. p. 74, lines 19-20). Defense counsel argued that the rule allows for the disclosure of the “facts or data in a particular case upon which an expert bases his opinion or inferences,” and, since there were no notes to disclose, the witness should not be allowed to testify. (R. p. 74, line 21 – p. 75, line 5). The trial judge declined to exclude the testimony recognizing the defense’s ability to cross-examine and impeach the witness, and argue those points to the jury. (R. p. 75, lines 6-14).

The State offered Captain Kellet as an expert in fingerprint analysis. The defense had no objection to her qualification. (R. p. 78, lines 3-7). She testified the prints from the severed hands matched the known prints of Mekole Michelle Harris. (R. p. 82, lines 9-17). On cross-examination, defense counsel asked how many of the twenty-five AFIS possible matches that she reviewed, to which the captain responded just one, as that one matched. (R. p. 85, line 22 – p. 86, line 1). She confirmed to defense counsel that she did not keep notes of her comparisons. (R. p. 87, lines 1-3). Defense counsel noted that the witness had a file with her and asked if the defense could examine the file before the witness was excused. (R. p. 87, lines 8-10). The trial judge sent the jury out. (R. p. 87, lines 20-25). At defense counsel’s request, the trial judge also sent the witness out, subject to recall. (R. p. 88, lines 3-8).

Defense counsel argued there had been a “serious breach” in discovery, as the file contained three sheets that were not disclosed. When asked about potential prejudice, defense counsel responded “had we had this in hand and had an opportunity to look at it,

and, perhaps, raise some questions for cross-examination to support our objection" but they did not have such opportunity. (R. p. 89, lines 12-20). The Solicitor advised the Court:

Mr. Mauldin filed motions regarding the fingerprint analysis, point by point analysis. I called Captain Kellet and conferred with her regarding what she had in her file. And I told Mr. Mauldin there may be some AFIS stuff in there, that's all I know. He said he didn't want it. So we had this conversation. And it's been available in latents for four years now. And all it is is - - what she just described is how she ran the fingerprints through AFIS and they got a list of 20 people to check. So it's not going to be introduced. And we never knew anything about it until he filed a motion making an issue with it. And I talked to Mr. Mauldin about it. I said you can have anything you want. I'm trying to track down everything we've got.

(R. p. 89, line 23 - p. 90, line 11).

Mr. Mauldin acknowledged speaking with the solicitor, and having the "one page that they had provided us." (R. p. 90, lines 12-14). The trial judge immediately thereafter took a "10-minute break," to allow for review of the documents and argument on prejudice. (R. p. 90, lines 15-17).

When the proceedings resumed, Defense counsel complained that had they had the AFIS results they may have been better prepared for cross-examination, and further stated:

And here's why it's so important in the context of the case, Your Honor. As we laid out in our previous motion, this fingerprint evidence is the heart of the forensic case. They're only able to identify these remains as a result of these fingerprints. If they couldn't do this, they wouldn't have DNA, they wouldn't have serology, they wouldn't have anything. Our job is to challenge that evidence. And you can't challenge that evidence if we don't have information like this, which we've asked for repeatedly.

(R. p. 91, lines 7-22).

Counsel also complained that since they did not know what was not disclosed beforehand, "we can't be prepared to establish legitimate prejudice for it on the spot...." (R. p. 92, lines 22-23). Counsel ultimately moved to either strike the testimony or for the trial judge to grant a mistrial. (R. p. 94, lines 23-25).

The Solicitor asserted that the defense was aware of the process for "four years," specifically, they knew "there was an AFIS run. They have the report on that." (R. p. 95, lines 1-10). The only thing they did not have was the list of people for potential comparison, which they could have asked for. (R. p. 96, lines 3-6).

The trial judge noted that in multiple discovery conferences prior to trial in this matter, he was informed the State had given the defense "everything," and expressed that "it is important to produce all of the documents." (R. p. 96, lines 7-17).⁸ He also noted that defense counsel had a point about arguing "prejudice on the spot without having an opportunity to mull it over and examine it." (R. p. 96, lines 19-21). The judge then considered the fact the expert testified that she did not use the remaining AFIS suggestions; rather, "she only examined one, and found the match." (R. p. 96, lines 21 - 25). The judge denied the requested relief:

⁸ The trial judge also "cautioned the Solicitor's office that beginning now, that they make sure that every single document in your position [sic] or in law enforcement's possession has been produced. Because if this is a pattern, then some form of deterrence has to come into play." (R. p. 97, lines 4-9). The Solicitor duly noted the caution. Further, the Solicitor advised the trial judge of his pre-trial attempts to gather all necessary materials, and his intent to avoid any impropriety by revisiting the issue with his staff: "just so you know, on two separate occasions, we sent letters to every law enforcement witness, please, give us everything that you have in your file. And I will certainly review our policies with my office to make sure that this does not become a pattern. It's important to me as an officer of the court and as a longstanding prosecutor as well." (R. p. 97, lines 11-18). Respondent notes there was no allegation of a pattern. Respondent further notes that defense counsel, in making the motion, stated he was "not claiming any bad faith here. This is not a bad faith question on the part of either side." (R. p. 92, lines 18-19).

... even though there is this failure to disclose, I don't find that this failure to disclose rises to the level which would necessitate striking the testimony or the more onerous remedy of a mistrial.

(R. p. 96, line 25 – p. 97, line 4).

After the ruling, defense counsel requested, as alternate relief, “a delay in trial until we can have an opportunity to have an expert examine these records and determine whether or not it's appropriate that he testify to the invalid dependency on that particular report.” (R. p. 98, lines 19-23). The Court likewise declined to delay finding “you can pursue that without delaying the trial.” (R. p. 98, line 24 – p. 99, line 1). The trial judge again noted the witness “testified she only examined one, the top one, it was a match. There's been no question about that in her testimony.” (R. p. 99, lines 4-6). The judge further reasoned “the significance of having someone else talk about maybe it's a better practice to examine the top two or top three as an attempt to attack the credibility of this witness or the Greenville County forensic division might be of some benefit, but I don't think it undermines the reliability of the testimony that's been presented or the findings of Captain Kellet.” (R. p. 99, lines 7-13).

The documents at issue are three pages from Captain Kellet's file, which were copied and marked as Court's Exhibit 3 – a one page computer screen shot of the AFIS results, a worksheet showing one item with the name and general information for Mekole Michelle Harris, and copy of a print with similar information handwritten on the copy. (R. p. 99, lines 12-24; p. 321 [Court Exhibit 3]).

On appeal, Appellant submits the trial judge erred in not striking the testimony or granting the mistrial. (FBOA, p. 20). He argues the evidence was material as to impeach of Captain Kellet on a “failure to examine more than one respondent print, the quality of

the prints produced, and the likelihood that other respondent prints possessed the same unique identifying characteristics as the latent print.” (FBOA, p. 20). Appellant also asserts that the failure to timely disclose the documents failed to provide an opportunity for counsel to retain and/or consult with a fingerprint expert “to challenge Kellet’s finding altogether based upon the AFIS results.” (FBOA, p. 20).

Discussion:

The trial judge found that the Solicitor’s office failed to disclose the three pages from Captain Kellet’s file. However, the trial judge found those documents were not material. Therefore, no violation of substance occurred. The trial judge’s ruling should be affirmed as it is supported by the facts of record and relevant precedent.

Rule 5(a)(D), SCRCrimP, provides, in relevant part, that upon request, “the prosecution shall permit the defendant to inspect and copy ... scientific tests ... or copies thereof ... which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.” The definition of “material” in Rule 5 has been found to be the same as in the *Brady*⁹ line of cases. *State v. Moses*, 390 S.C. 502, 516, 702 S.E.2d 395, 402 (Ct.App. 2010). “Evidence is material ‘only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *State v. Frazier*, 394 S.C. 213, 223-224, 715 S.E.2d 650, 655 (Ct.App. 2011) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). The inquiry is not whether a different result would have obtained, but whether there is “a probability sufficient to undermine confidence in the outcome” of the proceedings. *Id.* Reversal may only be granted on a Rule 5 violation upon a showing of

⁹ *Brady v. Maryland*, 373 U.S. 83 (1963).

prejudice. *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999) (citing *State v. Trotter*, 317 S.C. 411, 453 S.E.2d 905 (Ct. App. 1995), *aff'd in result* 322 S.C. 537, 473 S.E.2d 452 (1996)). Where the trial record supports the trial judge's decision, the reviewing appellate court should affirm. See *State v. Davis*, 309 S.C. 56, 63, 419 S.E.2d 820, 825 (Ct.App. 1992) ("Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion.").

The critical facts are these: 1) the defense knew before trial that the fingerprint expert utilized AFIS to generate a pool of possible matches and, specifically, that the expert had "some AFIS stuff" in addition to the disclosed report, (R. p. 89, line 23 – p. 90, line 11); 2) the defense, before trial, declined production and/or copies of the "AFIS stuff," 3) AFIS does not match any print to any person for identification but is merely an investigative tool to select possible matches for comparison; 4) the AFIS possibilities at issue here, other than the first suggestion which was matched by actual comparison, were not evaluated or relied upon; and 5) the identification at issue is for the victim, whose identity was established by other evidence. In short, based on the record in this particular case, there was no basis for finding the documents at issue material or that the failure to disclose was prejudicial.¹⁰

¹⁰ There is, in fact, questionable basis for finding a failure to disclose as the defense was aware before trial of the use of the AFIS database and an offer was made for the inspection of those documents; however, the trial judge found a failure but no prejudice. Therefore, this matter may be affirmed on the lack of prejudice alone. See *State v. Hughes*, 336 S.C. 585, 593, 521 S.E.2d 500, 504 (1999) (reviewing Rule 5 issue, "We need not determine here whether the report in question is exempt since we agree with the trial judge's ruling that appellant has shown no prejudice from the failure to disclose."). Further, though a *Brady* issue was not specifically raised below, because the materiality test is the same, any such issue would be without merit. *Id.*, n.4.

Clearly the defense was aware there was an AFIS run. Such information formed the basis for their pre-trial motions, and there is evidence in the record that the Solicitor specifically advised defense counsel of the AFIS materials. (R. p. 89, line 23 – p. 90, line 11). Even so, the AFIS materials were inconsequential in this setting.

The trial judge correctly found that the match opinion at issue was based on personal comparison. Captain Kellet did not rely on a match generated by a computer system. (R. p. 81, lines 9-15; p. 83, line 8 – p. 84, line 19). Moreover, Captain Kellet specifically testified that AFIS does not match prints. (R. p. 64, line 23 – p. 65, line 5; p. 68, lines 14-15). Given these facts, there could only be limited (if any) impeachment value from the AFIS document and print.

At the heart of the disclosure prejudice analysis is “whether the appellant’s right to a fair trial has been impaired.” *State v. Proctor*, 358 S.C. 417, 423, 595 S.E.2d 476 (2004) (quoting *State v. Taylor*, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998)). See also *United States v. Agurs*, 427 U.S. 97, 108 (1976) (“the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant’s right to a fair trial”). The trial judge correctly noted the minimal value – perhaps impeachment concerning records, but not a challenge to the method or match of identification. Given the minimal value, if any, the failure to obtain paper copies could not have impaired the defense. See *Proctor*, 358 S.C. at 423-424, 595 S.E.2d at 479-480 (finding nondisclosure of DNA lab proficiency tests results was not material where information goes to proficiency only, and, even if probability estimate was reduced, the number would still be decidedly inclusive of defendant’s profile). See also *Gilday v. Callahan*, 59 F.3d 257, 272 (1st Cir. 1995) (finding “no remediable *Brady*

violation” where “the evidence here taken cumulatively sheds no new light on the crime or petitioner’s involvement in it.”); *United States v. Glaze*, 643 F.2d 549, 552 (8th Cir. 1981) (failure to disclose unrecorded inconclusive field test for drugs did not offend appellant’s rights or prejudice his defense where formal testing results reported and disclosed).

Further, it should not be lost that the prints at issue are *the victim’s prints*. There was no contest to the victim’s identity. Further still, there was evidence in the record independent of the prints establishing the victim’s identity – not the least of which was Carmen Jenkins’ testimony specifically identifying the victim. (See generally R. p. 189, lines 7-15). Further, the DNA testing corroborated Carmen Jenkins’ description of the dismemberment and disposal of the body by linking the body parts and the blood in the home. Further still, Vivian Young, who knew Ms. Harris from the Simpsonville area, testified she saw Ms. Harris with Appellant at Labor Finders on April 1, 2008 and April 3, 2008, before the dismembered body parts were delivered on April 7, 2008. (R. p. 103, lines 4-16; p. 104, lines 2-14; p. 106, line 7 – p. 109, line 21; p. 11, lines 12-24). Even with the total discounting of the fingerprints match, identity of the victim was well established. *Compare State v. Feldman*, 604 A.2d 242 (N.J.Super.L. 1992) (AFIS relevant as basis for identification and discoverable where AFIS operator determines if candidate’s fingerprints match, and may be evidence related to *misidentification of defendant*).¹¹

¹¹ In *State v. Feldman*, not only did the state court focus on the right to present evidence of third party guilt under their state law in considering the necessity of disclosure, the court also noted that the process at issue involved an “AFIS operator” who did a visual inspection of the prints before selecting the possible matches. 604 A.2d at

At any rate, the record well supports that the defense was aware that the fingerprint evidence would be introduced and had ample time to obtain their own expert, whether to challenge the match to victim's prints or the lack of notes.¹² See generally *Fullwood v. Lee*, 290 F.3d 663, 686 (4th Cir. 2002) ("information that is not merely available to the defendant but is actually known by the defendant would fall outside of the *Brady* rule."). Moreover, the defense specifically knew, before trial, that the AFIS database was used in the initial process. This alone shows the lack of materiality for purposes of this inquiry. *Id.* See also *State v. Garris*, 394 S.C. 336, 347, 714 S.E.2d 888, 894 (Ct.App. 2011) (finding "the omission of Santiago's photos was not material because nothing indicates Garris was unaware of the extent of Santiago's injuries."). But critically, and as decided by the trial judge, the AFIS documents and prints that were not copied and provided to the defense simply did not go to any impeachment or defense. See *Boyd v. State*, 910 So.2d 167, 179 -180 (Fla. 2005) ("A list of potential matches, with no actual matches, was not material to Boyd's defense."); *Marshall v. Hedgepeth*, 2012 WL 1292493, *13 (E.D. Cal. 2012) (finding that AFIS is "a computerized system" and matches are made by expert comparison of prints to prints, not a computer generated match. Further, the court found: "No federal court, let alone the Supreme Court, has ever held that, in the context of the confrontation clause, it was necessary to introduce

244. This process would appear to be different than the purely computer generated list of possibilities which is the case here.

¹² Again, the defense never contested Captain Kellet's qualification as an expert, and, in fact, had no objection to her being qualified as an expert at trial. (R. p. 77, line 24 – p. 78, line 7). Further, Appellant admitted at sentencing that he knew the victim was Mekole Harris. (R. p. 312, lines 15-20). He challenged who had killed Ms. Harris, not the fact Ms. Harris was the victim. (R. p. 313, lines 6-24). Thus, identity should not have been an issue. Respondent submits the value of a competing expert is not readily discernible on this record.

testimony concerning the method of using AFIS.”). Merely showing three pieces of paper were available does not establish materiality, or, for that matter, a violation of the duty to disclose. *See United States v. Agurs*, 427 U.S. at 106-108 (“there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor” and “the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant’s right to a fair trial”); *Moore v. Illinois*, 408 U.S. 786, 795 (1972) (declining to find a *Brady* violation on information concerning an early lead where eyewitnesses were later found and provided identification: “We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case.”). Additionally, the lack of materiality and prejudice correctly guided the trial judge’s decision regarding relief.

Rule (5)(d)(2), SCRCrimP provides for a variety of appropriate remedies concerning a failure to comply with the discovery dictates:

... the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. ...

The trial court also has discretion to declare a mistrial. *State v. Garriss*, 394 S.C. at 345, 714 S.E.2d at 893. It is well established, however, that the court should fully exhaust other methods before declaring a mistrial. *Id. See also State v. Frazier*, 394 S.C. 213, 223, 715 S.E.2d 650, 655 (Ct.App. 2011) (“mistrial should not be granted unless absolutely necessary”). A defendant seeking such radical relief “must show error and resulting prejudice to receive a mistrial.” *Id. (citing State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999)).

Here, the trial judge, in light of the limited impeach value (if any) of the information, fashioned an appropriate measure of relief in allowing the defense to receive paper copies of the three pages and taking a brief break to allow counsel an opportunity to review and consider what, if any, prejudice may be argued. *See State v. Newell*, 303 S.C. 471, 476, 401 S.E.2d 420, 423- 424 (Ct.App. 1991) ("the trial judge did not abuse his discretion in not suppressing the statement for failure to respond" where "[t]he sanction the trial judge chose ... recessing the trial and affording Newell's counsel an opportunity to interview the officer to whom Newell allegedly made the incriminating oral statements, was an appropriate sanction under the circumstances.") (citing *State v. Patterson*, 290 S.C. 523, 351 S.E.2d 853 (1986), *cert. dismissed, sub nom. Patterson v. South Carolina*, 482 U.S. 902, 107 S.Ct. 2490, 96 L.Ed.2d 382 (1987)). The three pages, (available for this Court's review at R. pp. 321-323), did not require longer to adequately consider. In short, the defense's argument was constrained by the limited value of the documents, not the limited time for review. Further, Appellant's argument that time was necessary to obtain an expert is contradicted by other actions of the defense. As noted above, the defense knew that the prints had been identified, and no expert was presented to challenge the identification. (See R. p. 98, lines 10-23). It seems illogical that an expert would not be warranted for attacking the actual match, but would be necessary to establish that other prints came close, or that the report was insufficient.¹³

¹³ Of course, whether the report was sufficient could have been challenged by a defense expert (assuming such an expert would disagree with the sufficiency of the report) without the AFIS listing, worksheet with the victim's general information, or the copy of the print card. Respondent notes, however, that the second fingerprint expert who testified at trial also testified she similarly did not take notes. (See R. p. 264, line 16 – p. 265, line 19). At any rate, the fact the assertion of the possibility of impeachment *based on the sufficiency of the disclosed report* was the focus of the defense request for

Even so, as demonstrated above, defense counsel not only had the capability to cross-examine Captain Kellet on the use of AFIS, defense counsel *did* cross-examine Captain Kellet on the use of AFIS, and specifically, on the failure to compare the other prints for possible matches. (R. p. 85, line 5 – p. 87, line 7). There is no basis for finding prejudice and ordering a mistrial. *See State v. Frazier*, 394 S.C. at 223, 715 S.E.2d at 655 (“no prejudice to be remedied by a mistrial because both the State and Frazier elicited the favorable testimony from” the witness). Further, and again as shown above, there is no prejudice because the fingerprints at issue go to the identification process for the victim and Appellant did not challenge the identity of the victim. In fact, defense counsel liberally questioned Carmen Jenkins on her interaction not just with “a victim,” but specifically with Ms. Harris. (See R. p. 227, line 17 – p. 229, line 23; p. 231, lines 16-18). Simply, in context of this record, Appellant has failed to show prejudice sufficient to warrant a mistrial. *See State v. Wilkins*, 310 S.C. 81, 425 S.E.2d 68 (Ct.App. 1993) (“omission must be evaluated in context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial.”) (*quoting United States v. Agurs*, 427 U.S. at 112-113).

In sum, the information at issue could not have been surprising in that the defense was admittedly aware of the use of the computer database well before trial. While these three pages going to the initial leads in the investigation were not copied and supplied to the defense before trial, the listing of possibilities generated in an effort to begin the

additional time after receipt of the AFIS listing supports that further delay was unnecessary as *the existence of the report was known well before trial*. (See R. p. 98, lines 19-23, defense argument after disclosure and review: “we’re asking for a delay in the trial until we can have an opportunity to have an expert examine these records and determine whether or not its appropriate that he testify to the invalid dependency on that particular report.”).

process of identifying the victim by fingerprints simply does not go to any impeachment or defense. Thus, the trial judge did not abuse his discretion in denying the request mistrial, or alternatively, striking the fingerprint expert's testimony, based on the failure to disclose, or in denying the request for further delay to examine the three pages of limited scope and marginal value. This Court should affirm the ruling of the lower court.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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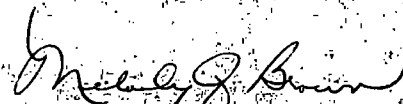
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October 15, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

The State,

Respondent,

v.

Clarence Williams Jenkins,

Appellant.

Appellate Case No. 2012-211588

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, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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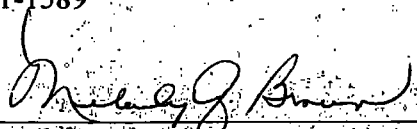
Appellate Case No. 2012-211588

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

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This 15th day of October, 2013.


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