

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Clifton B. Newman, Circuit Court Judge

Trial Court Case No 1994-GS-36-616

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

Respondent

vs

GARY LANE PREWITT

Appellant

APPELLANT'S RECORD ON APPEAL-PART ONE

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sentenced to life in prison on the Burglary First Degree charge with concurrent sentences of twenty (20) years on the Assault & Battery with Intent to Kill, five (5) years on the Possession of a Weapon during the Commission of a Violent Crime, and thirty (30) days on the Grand Larceny. The Defendant is presently confined in the South Carolina Department of Corrections and did not appeal his conviction or sentence.

On May 15, 1995, the Defendant filed an application for Post-Conviction Relief (1995-CP-36-135). On March 19, 1996, an evidentiary hearing was held before the Honorable Edward B. Cottingham. By Order dated July 8, 1996, Judge Cottingham denied and dismissed the application. The South Carolina Office of Appellate Defense filed a Notice of Appeal on Prewitt's behalf and submitted a Petition for Writ for Certiorari. On September 10, 1997, the South Carolina Supreme Court denied the Petition. Prewitt filed a successive PCR application on January 30, 2002 (2002-CP-36-040) based in part on after-discovered evidence. On October 9, 2003, an evidentiary hearing was held before the Honorable Wyatt T. Saunders, Jr. By Order dated November 17, 2003, Judge Saunders denied and dismissed Prewitt's successive application.

On October 27, 2012, the Defendant filed a Motion for a New Trial Based on After-Discovered Evidence pursuant to Rule 29(b), SCRCrimP. In the Motion, Defendant offered as grounds the following items as new/after-discovered evidence: 1) a sworn statement by Kimmie Shipen Heaton recanting her previous testimony identifying Defendant, 2) written statements of Bryan O'Shields attesting that Wayne Eubanks, the husband of O'Shields' first cousin, confessed to O'Shields that he and Mike Bostic committed the crime for which the Defendant was incarcerated; and 3) written statements of Randy Tinsley, the owner of the burglarized home,

identifying Mike Bostic as the person depicted in the SLED composite sketch which had been used in the original investigation of this matter.

On March 12, 2013 a hearing took place at the Greenwood County Courthouse pursuant to Defendant's Motion. The Defendant presented testimony from Kimmie Shipes Heaton, Bryan O'Shields, Randy Tinsley, Detective Danny Gilliam, Christy McGuirt, A.H. Walker, Jr., Sandy Wicker, Investigator Nichole Edwards, and Investigator Pete Skidmore. The State did not call any witnesses.

STANDARD OF REVIEW

Rule 29(b), SCR CrimP mandates that a Motion for a new trial based on after-discovered evidence "be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence." In addition to the Rule 29(b) requirement, the South Carolina Supreme Court has held that in order for a Defendant to receive a new trial based on after-discovered evidence, the evidence must meet five specific requirements as in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999): 1) the after-discovered evidence would probably change the result if a new trial was granted; 2) the evidence has been discovered since the trial; 3) the evidence could not have been found prior to trial with the exercise of due diligence; 4) the evidence is material; and 5) the evidence is not merely cumulative nor impeaching.

EVIDENCE AT TRIAL

At the Applicant's original trial, the prosecution presented the following evidence:

On July 22, 1994, a shooting occurred on a remote rural back road in Newberry County, which resulted in Joe Dixon being shot three times. Dixon testified at the trial that he was sitting on Christy McGuirt's front porch, waiting for a ride to Charleston to visit his brother, when he

saw two men in a green car drive pass the house and drive into the driveway of a neighbor's house. Dixon testified that he knew that the neighbor was not home. He further testified that he went to the neighbor's house to inform the men that the neighbor, Randy Tinsley, was not home. Dixon recounted that he went in the back door of Tinsley's house as one man was walking out of the house and saw the other man inside, and asked them what they were doing. At that moment, the man inside the house drew a weapon and fired the gun striking Dixon in the chest. The armed individual then walked up to Dixon and fired two more shots. Dixon was able to identify the shooter as Prewitt in a photo-lineup. On cross-examination, Dixon testified that the shooter wore a hat, but the little bit of hair Dixon saw was brown.

Christy McGuirt testified at the trial and was able to corroborate Dixon's account of that day. She testified that she was in the house while Dixon was on her front porch waiting for his ride to Charleston. She testified further that a green car with two white males passed by and Dixon went over to the Tinsley house. She then heard shots and went over to Tinsley's house to discover Dixon laying on the floor with gunshot wounds.

Another neighbor, A.H. Walker, testified that about thirty to forty five minutes prior to the shooting, he saw a green car with two white males driving slowly pass his house.

Kimmie Shipes Heaton (then Kimmie Shipes) testified she lived about half of a mile from Tinsley's house and that she was home when she heard someone in her back yard. She went to the back door and was surprised to find a man standing there. She testified that Prewitt asked her if "Eddie" lived there and she told him no because no one by the name of Eddie lived with Heaton. Further she testified that Prewitt walked around the house and got into a green or blue car with another individual. Heaton testified that the individual looked to have light hair, perhaps reddish, because of the way the sun was shining on him. She testified that the individual

was taller than her, maybe 5'2" or 5'3" or taller. She was able to help the police create a composite sketch of the man at her back door. After the burglary at the Tinsley's took place, Heaton identified Prewitt in a photo lineup as the man who was at her back door.

Prewitt testified on his own behalf and called his mother and father as alibi witnesses. Prewitt denied being on the scene.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and considered the arguments presented at the hearing. Further, this court observed the witnesses presented at the hearing. The State moved to deny the Motion for a new trial as being successive to the argument that was denied at his second PCR hearing and for failing to meet the test promulgated first in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999).

At the hearing, Prewitt presented a sketch generated by SLED with the cooperation of Heaton during the initial investigation of the burglary and shooting. This sketch was not introduced at original trial of this case. Also, Prewitt presented a booking photo of a man named Mike Bostic. Prewitt called Bryan O'Shields, a current inmate in the South Carolina Department of Corrections and his former cellmate to testify. O'Shields testified that he met Prewitt in the Department of Corrections and spoke with him about his case because he recognized his name from a conversation he had with his cousin's husband, Wayne Eubanks, in 2002. O'Shields explained that during a conversation at a family cookout, Eubanks told O'Shields that Bostic and Eubanks committed a robbery where a man was shot and that Prewitt was doing time for the crime that he did not commit. O'Shields further testified that he knew of Bostic and that, in his opinion, the SLED sketch looked like Bostic.

Heaton also testified at the hearing. She is currently confined in the Department of Corrections. At the hearing, she testified that she was mentally unstable when she first identified the man at her back door as Prewitt. She further testified that if she had to testify today she could not say that the man at her back door was indeed Prewitt.

Randy Tinsley, who was the owner of the home where the burglary was committed, testified that, in his opinion, the SLED sketch looked like Bostic. Sandy Wicker, who was not involved in any way in the trial of Prewitt, testified that the SLED sketch looked like Mike Bostic in her opinion.

The test for after-discovered evidence was set out in *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999). In that case, the Court held the following:

A party requesting a new trial based on after-discovered evidence must show that the evidence: 1) the after-discovered evidence would probably change the result if a new trial was granted; 2) the evidence has been discovered since the trial; 3) the evidence could not have been found prior to trial with the exercise of due diligence; 4) the evidence is material; and 5) the evidence is not merely cumulative nor impeaching.

Prewitt argues that the following evidence is after-discovered: 1) a sworn statement by Kimmie Shipes Heaton recanting her previous testimony identifying Defendant; 2) written statements of Bryan O'Shields attesting that Wayne Eubanks, the husband of O'Shields' first cousin, confessed to O'Shields that he and Mike Bostic committed the crime for which the Defendant was incarcerated; and 3) written statements of Randy Tinsley, the owner of the burglarized home, identifying Mike Bostic as the person depicted in the SLED composite sketch which had been used in the original investigation of this matter.

In this instance, Heaton testified that she will recant her previous testimony at a new trial and will not be able to identify Prewitt as the person at her back door. This potential recantation is not after-discovered evidence and she can be impeached with her previous testimony. I find that her testimony at the original trial is more credible than her testimony at the hearing on Prewitt's Motion for a New Trial and that this potential recantation would not likely change the outcome if a new trial were held.

Secondly, O'Shields' testimony that his cousin-in-law confessed to committing the crime along with Bostic is not after-discovered evidence and would not likely be admissible if a new trial were held. O'Shields' credibility would be in question as he is a former cellmate of Prewitt. O'Shields' testimony that he was told that two individuals committed crimes that Prewitt was convicted of by a jury of his peers without any further corroboration is not likely to change the outcome of a trial even if it was after-discovered evidence.

Lastly, although several individuals testified that they believe the person in the SLED sketch to be Bostic, Prewitt is not dissimilar from the individual depicted in the sketch. The sketch, however, is only a tool of limited purpose used by law enforcement for investigation where the identity of a suspect or suspects is unknown. Dixon and Heaton identified Prewitt from a photo lineup, more reliable than making an identification from a sketch, as Prewitt's witnesses have done at the hearing. Moreover, it would be cumulative to call several witnesses simply to testify that they believe the person in a SLED sketch is another individual without offering any further testimony and the jury is more than capable to decide that fact on its own if this type of testimony was deemed admissible.

I find that the evidence presented at the hearing on the Motion for a New Trial is not after-discovered evidence, is not competent evidence, and would not be admissible at trial and

even it is was admissible, it would not change the result if a new trial was held. It also is not material to the issue of innocence or guilt. Evidence offered by a defendant of the commission of the crime by another person is limited to facts inconsistent with the defendant's guilt. *State v. Mansfield*, 343 SC 66, 538 SE2d 257 (Ct. App. 2000). In *Mansfield*, the defendant sought to introduce evidence that an individual by the name of Perry, who generally match the suspect's description, lived nearby and was home that day. The trial court refused to admit such evidence. The Court of Appeals affirmed, finding that at best, the evidence only cast a mere "bare suspicion" on Perry, but did not show Perry's guilt and was not inconsistent with the defendant's guilt.

Accordingly, this Court finds that Prewitt has not met his burden of proving his claim. Additionally, Prewitt presented similar evidence during the evidentiary hearing for his second Post-Conviction Relief Application. Prewitt brought three inmates of the South Carolina Department of Corrections to testify that Mike Bostic committed the crimes Prewitt was convicted of and that Bostic was the person in the SLED sketch.

This Court further finds that the evidence does not qualify as after-discovered evidence pursuant to *Spann* and *Mansfield*, that this Motion for New Trial is successive to Prewitt's second PCR Application, and this Court finds that even considering the merits of the after-discovered evidence presented, it is not credible and would not affect the outcome of the trial, nor is it material to the issue of guilt or innocence.

IT IS THEREFORE ORDERED that the Motion for a New Trial based on After-
Discovered Evidence is hereby denied.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

July 9, 2013

Columbia, South Carolina

August 12, 2013

Gary Lane Prewitt, # 217575
Lieber, E-A-40
P.O. Box 205
Ridgeville, SC. 29472-0205

Honorable Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC. 29211

RE: CASE NO. 1994-GS-36-616

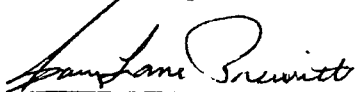
NOTICE OF APPEAL GARY LANE PREWITT APPELLANT VS. STATE OF
SOUTH CAROLINA RESPONDENT

Dear Honorable Clerk of Court:

Enclosed please find for filing Appellants' Notice of Appeal in the above referenced case. Likewise, enclosed are the following:

1. Proof of Service of Notice of Appeal on Respondents
2. Copy of Order, which is to be challenged on Appeal.

Sincerely,



Gary Lane Prewitt
cc: file.

DATE: 8-12-2013.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM NEWBERRY COUNTY
COURT OF GENERAL SESSIONS

CLIFTON NEWMAN CIRCUIT COURT JUDGE

CASE NO. 1994-GS-36-616

Gary Lane Prewitt, # 217575

Appellant.

vs.

State of South Carolina

Respondent.

NOTICE OF APPEAL

Gary Lane Prewitt, # 217575 Appeals the Rule 29 (B) SCRCrim.Pro. order of dismissal of the Honorable Clifton Newman, dated July 9, 2013. Appellant received written notice of entry of this order on August 7, 2013.



Gary Lane Prewitt, # 217575
Lieber, E-A-40
P.O. Box 205
Ridgeville, SC. 29472-0205

DATE: 8-12-2013

cc: file.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM NEWBERRY COUNTY
COURT OF GENERAL SESSIONS

CLIFTON NEWMAN CIRCUIT COURT JUDGE

CASE NO. 1994-GS-36-616

Gary Lane Prewitt, # 217575

Appellant.

vs.

State of South Carolina

Respondent.

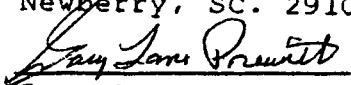
CERTIFICATE OF SERVICE

I Gary Lane Prewitt do hereby certify that I have served Respondents with a true copy of the Notice of Appeal in the above captioned case and that such has been mailed to the following addresses on August 12, 2013, with the proper postage attached.

1. Office of the Attorney General
P.O. Box 11549
Columbia, SC. 29211

2. South Carolina Supreme Court
P.O. Bxox 11330
Columbia, SC. 29211

3. Clerk of Court, Newberry County
P.O. Box 278
Newberry, SC. 29108


Gary Lane Prewitt
cc: file.

DATE: 8-12-2013.

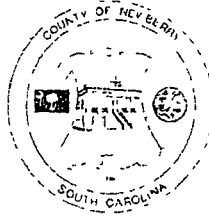
Subscribed and sworn to before me this _____ day of August 2013.

Notary Public for South Carolina

My Commission Expires: _____

Office of Clerk of Court

County of Newberry



Jackie S. Bowers
Clerk of Court

Newberry, S C 29108

P.O. DRAWER 10
(803) 321-2110
Fax (803) 321-2111

July 16, 2013

Stuart M. Axelrod, Esquire
604 Sixteenth Avenue North
Myrtle Beach, S.C. 29577

Re State of South Carolina vs. Gary Lane Prewitt
Case No 1994GS36-616

Dear Mr Axelrod

I have enclosed a certified copy of an order which Judge Newman requested that we sent to all parties. If you would furnish me with the address for Mr. Prewitt, I will send him a copy also. If you have any questions, please contact me.

Sincerely,

Beth P. Folk
Chief Deputy Clerk of Court

AXELROD & ASSOCIATES, P.A.

Attorneys and Counselors at Law

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W. Chris Castro*
Carlton E. Elliott
J. William Parker, III
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Charleston, SC 29403

Phone: (843) 805-7200

Fax: (843) 577-3911

October 27, 2012

The Honorable Jackie S. Bowers
Newberry County Clerk of Court
P.O. Drawer 10
Newberry, South Carolina 29108-0010

Re: State of South Carolina v. Gary Lane Prewitt
Case No: 1994-GS-36-616

Dear Ms. Bowers:

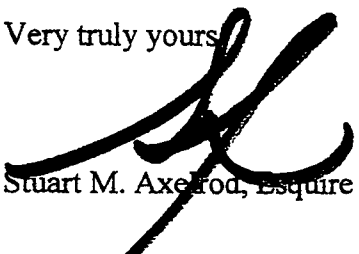
I have enclosed for filing the original and one copy of the following documents:

- * Defendant's Motion for a New Trial Based on After-Discovered Evidence with attached Exhibits and Affidavits;
- * Defendant's Motion for a New Trial For a Lack of Subject Matter Jurisdiction with attached Exhibits;
- * Certificate of Service

Kindly file the original and return a clocked copy to our office in the enclosed, stamped and self-addressed envelope.

If you have any questions please do not hesitate to contact my office. With kind regards, I am

Very truly yours,


Stuart M. Axelrod, Esquire

SMA/jc
Enc.

cc: The Honorable Frank R. Addy, Jr. (w/enc)
Jerry Peace, Solicitor 8th Judicial Circuit (w/enc)

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

GARY LANE PREWITT,

Defendant.

Case No.: 1994-GS-36-616

**MOTION FOR A NEW TRIAL BASED
ON AFTER-DISCOVERED EVIDENCE**

TO: THE HONORABLE FRANK R. ADDY, JR.; and
JERRY W. PEACE, SOLICITOR OF THE EIGHTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Gary Lane Prewitt, through his undersigned attorney, Stuart M. Axelrod, hereby moves pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, for a new trial based on after-discovered evidence.

The after-discovered evidence in this case involves: 1) signed statements from Bryan O'Shields, an acquaintance of two men he claimed confessed to the crime for which the Defendant is incarcerated; 2) a statement from Kimmie Shipes Heaton, one of the State's key eyewitnesses who placed the Defendant in close proximity to the property upon which the incident occurred; 3) an affidavit from Harold C. Morgan, M.D., an examining psychiatrist of Kimmie Shipes Heaton who attested to her mental illness and incompetence at the time her testimony was given; and 4) a signed statement from Kenneth Randall Tinsley, the owner of the property in which the incident took place, and Sandy Wicker, his girlfriend, identifying the assailant from a SLED-drawn sketch as one of the same men Bryan O'Shields claimed was involved in the incident; and 5) a signed statement from Kenneth Randall Tinsley, stating that the

date of his signature was the first time he had ever been shown the SLED-sketched composite drawing.

Procedural History

On August 10, 1994, the Defendant was arrested and charged with burglary, grand larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. R. 8, ll. 4-25; R. 9, ll. 1-12. The Defendant's trial took place January 19, 1995 in front of the Honorable E.C. Burnett. R. 1. On January 20, 1995, the jury returned with a verdict of guilty on all four counts. R. 181, ll. 15-18. The Defendant received a sentence of 30 days for the charge of larceny. R. 187, ll. 24-25; R. 188, ll. 1-4. The Defendant received a sentence of 20 years for the charge of assault and battery with intent to kill. R. 188, ll. 5-8. For the charge of possession of a firearm during the commission of a violent crime, the Defendant received a sentence of 5 years. R. 188, ll. 9-11. For the charge of burglary, the Defendant received a life sentence. R. 188, ll. 12-15.

State's Theory of the Case

The State's theory of the case was that the Defendant and an accomplice were in the process of burglarizing the home of Randall Tinsley when Joe Dixon, the victim, approached them and asked them what they were doing. R. 20-24; R. 53-54. The State argued that the Defendant then shot Dixon multiple times and fled with his accomplice in an old green Chevrolet. R. 39, ll. 13-14; R. 41, ll. 2-6; R. 42, ll. 2-19; R. 54-56.

Relevant Facts

A short time after 10 a.m. on July 22, 1994, Christy McGuirt returned to her home on Highway 63 in the Kinards section of Newberry County to find Joe Dixon sitting on her front porch. R. 38, ll. 21-25; R. 39, ll. 1-8. Ms. McGuirt lived across the road from Randy and

Rhonda Sue Tinsley. R. 38, ll. 1-3. After arriving back at her home, Ms. McGuirt noticed a light green Chevrolet drive by. R. 39, ll. 13-14. About ten minutes later, Dixon told Ms. McGuirt that the car that had driven by was at Randy and Rhonda Sue Tinsley's house. R. 39, ll. 14-18.

Dixon then crossed Highway 63 to inform the occupants of the vehicle that the Tinsley's were not home. R. 39, ll. 19-25; R. 40, ll. 1-3. As Dixon approached the back door of the Tinsley home, he saw a man run out the back door towards the green car and another man inside the home. R. 53, ll. 1-9, 16-25; R. 54, 1-3. Dixon asked the man running towards the car what he was doing. R. 53, ll. 17-18. Dixon then entered the home and asked the other man the same question, at which point Dixon was shot. R. 54, ll. 6-8, 10-14. Dixon was shot three times, once in the shoulder, once between the shoulder and neck and once behind the neck. R. 55, ll. 21-25; R. 56, ll. 23-25.

At 10:55 a.m., A.H. Walker, Jr., a neighbor who arrived at the scene, called 911 requesting both EMS and law enforcement. R. 72, ll. 11-13; R. 73, ll. 9-12; R. 74, ll. 6-14. The ambulance arrived fifteen minutes later, at 11:10 a.m. R. 75, ll. 5-7. Joe Dixon was then transported to the emergency room at Newberry Hospital and was later transported to Richland Memorial Hospital in Columbia. R. 105, ll. 23-25; R. 107, l. 1; R. 94, ll. 14-15

At trial Randy Tinsley, the owner of the property on which the shooting occurred, testified that he had no personal knowledge of the incident, as he was not present at his residence when the burglary and shooting occurred. R. 35, ll. 23-25; R. 36, ll. 1-3. Mr. Tinsley further stated that he had never seen the Defendant at or near his home. R. 37, ll. 6-8.

Christy McGuirt testified that after she heard shots emanate from the Tinsley home, she saw a faded green old model Chevrolet pull around from the back of the house to the front of the house heading towards Newberry. R. 45, ll. 23-25; R. 46, ll. 1-19. Ms. McGuirt testified that

there were two white boys in the Chevrolet, but that she could not identify who they were. R. 46, ll. 24-25; R. 47, ll. 1-5, 13-16.

At trial Joe Dixon, the victim in this case, testified that he was shot three times by the Defendant. R. 58, ll. 18-25; R. 59, ll. 1-11. According to Dixon, on the day of the shooting the Defendant was wearing blue jeans, rubber gloves, a blue shirt, and a gray hat with a picture on it. R. 64, ll. 6-25; R. 65, ll. Dixon stated on cross-examination that he had never seen the Defendant prior to or since the day in which the shooting occurred, but later stated that he had picked the Defendant out of photo lineup while in recovery at Richland Memorial Hospital. R. 63, ll. 1-25; R. 68, ll. 22-25; R. 69, ll. 1-21. However, prior to Dixon's testimony it was revealed that he was, in fact, mentally retarded. R. 12, ll. 12-13. Dixon testified to having only a first grade education. R. 62, ll. 5-10. Solicitor Betty Strom remarked that Dixon had a "mental deficiency." R. 12, l. 14.

Next to testify was Kimmie Shipes, a neighbor of the Tinsley's who lived on Highway 63 about half a mile from their home. R. 80, ll. 1-6. Around 10 a.m. on July 22, 1994, Shipes was awake in her bed when she heard someone on the back deck and patio of her home. R. 80, l. 25; R. 81, ll. 1-10; R. 84, ll. 17-19. Shipes testified that when she arrived at the back door, she saw a man standing at her back door. R. 81, ll. 16-17. Shipes described the man at her back door as taller than she, with red hair and wearing a Washington hat with an emblem on it. R. 87, ll. 1-25; R. 88, ll. 1-8. Shipes testified that after confronting the individual at her back door, the man asked her if Eddie was there. R. 81, ll. 21-24. Shipes then testified that after she replied in the negative, the Defendant and another individual got into a faded green or blue vehicle and left her home. R. 81, ll. 22-24; R. 82, ll. 1-12. Shipes testified that she reported the incident to law enforcement and assisted them in drawing a composite sketch of the individual. R. 89, ll. 2-7.

Detective Danny Gilliam, chief investigator for the Newberry County Sheriff's Department, corroborated the existence of this sketch when he testified that a SLED artist came from Columbia, met with Kimmie Shipes and created the composite drawing with her. R. 98, l. 25, R. 99, ll. 1-6. He then testified that after the Defendant became a suspect, he prepared a photographic lineup to show to Joe Dixon. R. 93, ll. 13-24; R. 94, ll. 11-13. Detective Gilliam showed Dixon the lineup at Richland Memorial Hospital in the presence of SLED Agent William Jolly, Christy McGuirt and Connie Dixon. R. 95, ll. 3-12. Detective Gilliam testified that after Dixon looked at the photographic lineup for a few minutes, Dixon identified the man who shot him as the Defendant. R. 96, ll. 8-14. However, Detective Gilliam did not show Dixon the sketch prepared by SLED based on the description given by Kimmie Shipes. R. 91-102.

Detective Gilliam also testified that the same photographic lineup was shown to Kimmie Shipes at the Newberry County Complex. R. 96, ll. 21-25; R. 97, ll. 1-4. Detective Gilliam stated that after Shipes had looked at the photographic lineup for five or six minutes, she stated that the Defendant was the man who came to her back door. R. 97, ll. 7-24. However, Detective Gilliam admitted that no live lineups were used, even though Newberry County has a two-way mirror, and even though live lineups had been done in previous cases. R. 101, ll. 12-25; R. 102, ll. 1-4. In addition to the lack of a physical lineup, Detective Gilliam testified that no stolen items from the Tinsley home had ever been recovered. R. 98, ll. 1-3. When asked of the whereabouts of the green Chevrolet identified by witnesses as the getaway car, Detective Gilliam testified that the car had not been located. R. 98, ll. 4-6.

On cross-examination, Detective Gilliam testified that the second suspect had never been arrested. R. 98, ll. 12-18. He testified that the fingerprints found on the guns in Randy Tinsley's

home were not a match to the Defendant's. R. 98, ll. 19-24. When asked whether or not the Defendant had confessed to the crime, Detective Gilliam testified that he had not. R. 100, ll. 1-6.

The Defendant, Gary Lane Prewitt, testified that on the morning of July 22, 1994, he was at his home on Indian Creek Road with his wife and two children. R. 111, ll. 3-9; R. 113, ll. 1-4. The Defendant testified that on that morning, his mother and father came to visit his children around 10:30 or 10:45 a.m., prior to them having to go into town to pick up a check in Clinton. R. 111, ll. 10-17. The Defendant's parents, Sandra Prewitt and Gary Lawrence Prewitt, corroborated the Defendant's claim that he had been at home during the time in which the burglary and shooting occurred. R. 128-129; R. 135-136.

After-Discovered Evidence

The first piece of after-discovered evidence is a signed letter written by Bryan O'Shields to Pete Skidmore, a private investigator working pro-bono on Defendant's case, regarding both the Defendant's innocence and the guilt of two third-parties. O'Shields, who has no connection to the Defendant other than having been incarcerated in Evans Correctional Institution at the same time, wrote that in January 2002 he had a conversation with one Wayne Eubanks, the husband of his first cousin Teresa. During that conversation, Wayne Eubanks told O'Shields that he and a man named Mike Bostic robbed a home near Whitmire, South Carolina and shot a man three times. Eubanks bragged to O'Shields that he and Bostic had gotten away with a crime. Eubanks further bragged to O'Shields that another man named Gary Lane Prewitt was doing life for a crime he and Bostic committed. At the time, O'Shields thought nothing of the conversation. However, while O'Shields was incarcerated at Evans Correctional Institution several years later, he heard the Defendant's name during mail call and instantly recognized it from his previous conversations with Eubanks. After determining that the Defendant was the

same man mentioned previously by Eubanks, O'Shields decided to come forward with the information he'd been given and provided a statement to this effect via the letter addressed to Pete Skidmore attached hereto as Exhibit A.

Thereafter, on October 31, 2011, Investigator Nichole Edwards, an employee of Skidmore & Associates, met with O'Shields at which time he reiterated his conversation with Eubanks, acknowledged authoring the letter to Pete Skidmore attached as Exhibit A, and swore to the truthfulness of the statements contained in said letter. This second statement is attached hereto as Exhibit B.

The third piece of after-discovered evidence (Exhibit C) is a statement by O'Shields dated October 31, 2011, made the same day as Exhibit B, also in the presence of Investigator Edwards. In Exhibit C, O'Shields states that Mike Bostic drove a late 1960's or early 1970's green Chevrolet with primer spots, the same type of car identified at trial by Joe Dixon, Christy McGuirt, Kimmie Shipes and A.H. Walker, Jr. Investigator Edwards, after witnessing O'Shields signed the statement, signed and dated the statement herself.

In March 2011 Investigator Skidmore met with Kimmie Shipes Heaton at which time she provided him with a signed letter recanting her previous in-court identification of the Defendant as the man she saw at her back door on the morning of the incident in quest. This is marked as Exhibit D. In her letter, Heaton states that she felt a lot of pressure to identify the Defendant as the man who committed the crimes for which he is incarcerated. Heaton also states in her letter that at the time of the Defendant's trial, she was not taking her medication and was mentally unstable. She claims that at the time of the identification, she would have tried her best to please an individual if said individual suggested or insinuated that she choose a certain person. Heaton then writes that she is in a much better place today to say whether or not the man she saw on her

back porch the morning of July 22, 1994 was the Defendant. She then states that she would not now be able to testify that the man at her back door was in fact the Defendant. Heaton asserts that around the time in which the Defendant was tried and convicted she was having hallucinations and was not mentally stable. Ending the statement, Heaton reiterates her earlier points by stating that she cannot conclude that she would testify to the same facts as she did at the original trial of the Defendant.

Following Exhibit D is a letter from Harold C. Morgan, M.D., dated May 5, 1998 and hereafter marked as Exhibit E, detailing the mental instability of Kimmie Shipes Heaton during the period in which the Defendant's trial took place. After Dr. Morgan performed a psychiatric examination of Heaton, psychologically tested her and reviewed her prior medical records, he diagnosed Heaton as having a serious mental illness. Dr. Morgan detailed Heaton's mental illnesses from 1991 to 1997, stating she suffered from severe depression with suicidal ideas. He also stated that she heard voices and suffered from hallucinations. Throughout this six-year period, Heaton was admitted to both Marshall Pickens Psychiatric Hospital and William S. Hall Psychiatric Institute, but discontinued follow-up treatment in 1993. Thus, at the time of her identification of the Defendant, Heaton was suffering from mental diseases and/or disorders without any medicine or treatment. Dr. Morgan, after examining Heaton on December 12, 1997, stated that "her contact with reality is fragile."

The next piece of after-discovered evidence, hereafter marked as Exhibit F, are signed statements by Kenneth Randall Tinsley and Sandy Wicker, identifying the man in a SLED-sketched composite drawing, taken from the description given by Kimmie Shipes, as Mike Bostic, the same man Bryan O'Shields claimed committed the crimes with Wayne Eubanks. Tinsley was first shown this sketch in July 2011, and was never shown the sketch during the

investigation prior to the Defendant's trial. Tinsley states that "[t]he individual in this sketch appears to be Mike Bostic." Similarly, Sandy Wicker was also first shown this sketch in July 2011. She states that "I can have confidence in identifying the individual in this sketch as Mike Bostic." The statements of both Tinsley and Wicker were signed in the presence of Investigator Nichole Edwards, who also signed the documents as a witness.

The final piece of after-discovered evidence is a statement from Kenneth Randall Tinsley, signed on July 1, 2011 and hereafter marked as Exhibit G, affirming that this is the first time he has ever seen this composite drawing.

Although all of the above described statements, etc. were procured at various times in 2011, Skidmore & Associates, P.A. did not inform the Defendant of the existence of this evidence nor provide him with copies of same until May 23, 2012. Therefore, the Defendant did not have actual discovery of any of the above listed items of evidence until May 23, 2012 at which time investigator Pete Skidmore met with Defendant, informed Defendant of the work performed, and provided him with the above information. Affidavits to this affect are attached hereto as Exhibit H.

Argument

Pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, "[a] motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the [D]efendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence." Additionally, to prevail on a new trial motion, the Defendant must show the after-discovered evidence: "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is

material; and (5) is not merely cumulative or impeaching.” *State v. Spann*, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999).

Would Probably Change the Result of the Defendant’s Trial

In this case, the after-discovered evidence involves statements of third-party guilt by Bryan O’Shields, corroborating identifications by Kenneth Randall Tinsley and Sandy Wicker and a statement by Kimmie Shipes Heaton recanting her previous testimony in the Defendant’s 1995 trial. This after-discovered evidence would likely change the result of the Defendant’s trial for two reasons.

First, the statements made by Bryan O’Shields pointing to Wayne Eubanks and Mike Bostic as the perpetrators of the crime for which the Defendant has been convicted, combined with the identification of Mike Bostic by Kenneth Randall Tinsley, the owner of the property on which the incident occurred, and his girlfriend Sandy Wicker, allow the Defendant to effectively raise the defense of third-party guilt.

In South Carolina, evidence of third-party guilt is governed by the Court’s holding in *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941). In *Gregory*, the Court held that “evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence.” *Id.* at 104-05. The Court then stated that “before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.” *Id.*

In the present case, third-party guilt is first demonstrated by Exhibit A, the signed letter by Bryan O’Shields stating unequivocally that Wayne Eubanks confessed that he and Mike Bostic committed the crime for which the Defendant is incarcerated. O’Shields had no previous

connection to the Defendant other than a chance hearing of his name during mail call. His statement was given freely and voluntarily. He has never been promised anything by the Defendant or anyone else for writing his statement. In fact, his statement could lead to the incarceration of the husband of his cousin Teresa Eubanks.

Beyond the general trustworthiness of the written statement of O'Shields, his statements are corroborated by the identifications found in Exhibit F. The identifications stem from a composite drawing, created by a SLED artist with the assistance of Kimmie Shiples, in the period after the Tinsley home was robbed and Joe Dixon was shot. R. 89, ll. 5-13; R. 98, l. 25; R. 99, ll. 1-6. Kenneth Randall Tinsley, the owner of the property on which the incident occurred, and his girlfriend Sandy Wicker, have identified the man in the SLED drawing as Mike Bostic, the same man whom O'Shields claimed committed the crime along with Wayne Eubanks. This demonstrates a proof of connection between the statement of O'Shields and the identifications of Tinsley and Wicker. No known connection exists between O'Shields, Tinsley and Wicker, yet each individual's evidence points to the guilt of Mike Bostic.

Furthermore, the testimony at the Defendant's trial clearly established that two men were involved in the burglary of Tinsley's home and the shooting of Joe Dixon. R. 41, ll. 2-6; R. 53, ll. 19-20; R. 77, ll. 18-21; R. 82, ll. 2-7. The statement of Bryan O'Shields in Exhibit A, identifying both Eubanks and Bostic as the perpetrators of the crime, combined with the identifications by Tinsley and Wicker, clearly comport with the State's evidence in the Defendant's original trial. In the investigation leading up to the Defendant's trial, no second suspect was ever found or identified. R. 99, ll. 23-25; R. 100, l. 1. The Defendant alone was tried and convicted for this offense, and has yet to confess, let alone name an accomplice. R. 100, ll. 8-10. This after-discovered evidence clearly raises an inference that Eubanks and Bostic

were the two men spoken of in the testimony given by State's witnesses, not the Defendant himself, making it more consistent with the bulk of the State's testimony than that which sentenced the Defendant to life in prison.

Exhibit A is not the only statement from O'Shields that is corroborated by other evidence and raises both an inference of the Defendant's innocence and a presumption of the guilt of a third-party or third-parties. Exhibit C, a written statement signed by O'Shields indicates that Mike Bostic drove a late 1960's or early 1970's green Chevrolet with primer spots. This is consistent with the vehicle described by multiple witnesses in the Defendant's original trial. Christy McGuirt testified that immediately prior to the shooting, a light green, faded out, old Chevrolet drove by her home. R. 39, ll. 13-14; R. 45, ll. 23-25; R. 46, ll. 1-5. A.H. Walker, Jr. testified that about 30 to 45 minutes prior to being called by McGuirt to the Tinsley residence, he observed an older 1970's pale green Chevrolet driving slowly down the road in the direction of the Tinsley home. R. 75, ll. 11-20. Kimmie Shipes testified that the two men she observed on the back porch of her home prior to the incident at the Tinsley house drove away in a raggedy and faded out green or blue car. R. 82, ll. 10-12. Again, a connection exists in the model, type, color and condition of the car Bryan O'Shields stated Mike Bostic was known to drive, and the car identified as the getaway vehicle seen by multiple State's witnesses.

Because there are multiple pieces of connected evidence that raise an inference of both the Defendant's innocence and the guilt of Eubanks and Bostic, preventing the Defendant from admitting this evidence would violate his right to present a complete defense. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). In discussing the fundamental importance of a jury being aware of exculpatory evidence, the Court in *Crane* stated that "exclusion of this type of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case

encounter and 'survive the crucible of meaningful adversarial testing'." *Id.* at 690-91, citing *United States v. Cronin*, 466 U.S. 648, 656 (1984). Without being able to present evidence that a third-party confessed to the crime and implicated another third-party, without being able to present evidence that the owner of the incident property and his girlfriend identified one of those implicated men in a composite drawing from the Defendant's original trial, and without being able to present evidence that one of those implicated men drove a car matching the description of every State's witness's testimony, the Defendant will not just be prevented from presenting a complete defense; he will be prevented from presenting a defense at all.

In addition to the issue of third-party guilt as it relates to an inference of the Defendant's innocence, the State's case against the Defendant is much weaker due also to the recanting of Kimmie Shipes Heaton's testimony. At the Defendant's trial, Kimmie Shipes identified the Defendant as one of two men who were rummaging around the back patio of her home, approximately one-half mile from the Tinsley residence, immediately prior to the burglary of the Tinsley home and the shooting of Joe Dixon. R. 80, ll. 7-8; R. 81, ll. 7-20. At the time, it seemed as if the testimony of Shipes was the only witness identification made by someone without a mental deficiency or disorder, given Joe Dixon's mental retardation. R. 12, ll. 12-14. Thus, the identification of the Defendant by Shipes constituted substantial circumstantial evidence, as it placed the Defendant in the area of the crime and in the getaway vehicle.

However, now that Kimmie Shipes Heaton has recanted her 1995 testimony, the only evidence the State has against the Defendant is the identification of the Defendant by Joe Dixon, a man the State itself conceded had a mental deficiency and was mentally retarded. R. 12, ll. 12-14. Not even including the evidence of third-party guilt mentioned above, the State's case without the testimony of Shipes is much weaker than it was previously, making it much more

probable that the Defendant would be acquitted were he tried today. There was no physical evidence putting the Defendant in the Tinsley home. R. 98, ll. 22-24. The State could not match fingerprints taken from the Defendant to those found in the Tinsley home. R. 98, ll. 19-24. None of the contents removed from the Tinsley home were ever found in the Defendant's possession. R. 98, ll. 1-3. The green Chevrolet identified by multiple State's witnesses has never been located. R. 98, ll. 4-6. State's witness Randy Tinsley could not identify the culprits, as he was not present at the scene. R. 35, ll. 23-25; R. 36, ll. 1-3. State's witness Christy McGuirt could not identify the culprits, as she was too far away from the Tinsley home. R. 46, ll. 20-25; R. 47, ll. 1-16. State's witness A.H. Walker, Jr. could not identify the culprits, as he only saw the vehicle on the road from his home. R. 75, l. 25; R. 76, ll. 1-4. Now Kimmie Shipes cannot identify the Defendant as the man on her porch the morning of the incident. The only link the State has is the word of the victim, a man with less than a first-grade education who is mentally deficient. R. 12, ll. 12-14; R. 62, ll. 5-10. Furthermore, Dixon was never shown the composite drawing done by SLED with assistance of Kimmie Shipes, nor was Mike Bostic's photo included in the lineup in which he identified the Defendant. Not only is it more probable that the Defendant would be acquitted, it is highly unlikely that any jury would convict him based upon the evidence that would be presented were a new trial granted.

Discovered Since the Defendant's Trial

The letter from Bryan O'Shields to Pete Skidmore divulging the confession of Wayne Eubank, Exhibit A, was not written until sometime in 2011. Exhibits B and C were procured on October 31, 2011 by investigators from Skidmore & Associates on behalf of the Defendant. However, Skidmore & Associates did not turn this over to the Defendant or his counsel Stuart M. Axelrod nor other inform the Defendant of the existence of this evidence until May 23, 2012.

Exhibit D, the statement from Kimmie Shipes recanting her testimony, was taken by investigators from Skidmore & Associates in March 2011. Exhibit E, the letter from Harold C. Morgan, M.D., was written on May 5, 1998. It was discovered in 2011 by investigators from Skidmore & Associates upon investigating Kimmie Shipes Heaton and her desire to recant her previous testimony. Exhibit F, the statements of Kenneth Randall Tinsley and Sandy Wicker identifying Mike Bostic from SLED's composite drawing of the suspect identified by Kimmie Shipes, were discovered by investigators from Skidmore & Associates in August 2011. However, Skidmore & Associates did not turn this over to the Defendant or his counsel Stuart M. Axelrod nor other inform the Defendant of the existence of this evidence until May 23, 2012 .

Could Not in the Exercise of Due Diligence Have Been Discovered Prior to Trial

None of the after-discovered evidence could have been found prior to the Defendant's trial in January 1995, even with the exercise of due diligence.

As for the statements of O'Shields in Exhibits A, B and C, O'Shields was given this information in 2002. He did not come forward with it until 2011. Therefore, at the time of the Defendant's trial, O'Shields would not have had the requisite knowledge concerning the incident that he does today.

The statement of Kimmie Shipes Heaton recanting her testimony, found in Exhibit D, was not made until 2011. Up until trial, Kimmie Shipes Heaton was steadfast in identifying the Defendant as the man found on her back porch immediately prior to the robbery of the Tinsley home and the shooting of Joe Dixon. R. 80, ll. 7-8; R. 81, ll. 7-20. Only until after Kimmie Shipes Heaton was convicted of murdering her husband did the public become aware of her fragile mental state. This is evidenced by Exhibit E, the 1998 letter from Harold C. Morgan, M.D., divulging the mental impairments of Kimmie Shipes Heaton. Even were her mental state

known, it affects her credibility but in no way affects her right to testify to events witnessed, provided she be deemed competent, which she was. A recantation necessitates prior statements or testimony. Without them, a recantation cannot occur. In the present case, the testimony of Kimmie Shipes Heaton took place at trial. Thus, due diligence would not have found a recantation of testimony before the witness ever testified at trial.

The statements of Kenneth Randall Tinsley and Sandy Wicker found in Exhibit F, along with the statement of Kenneth Randall Tinsley found in Exhibit G, were not discovered until 2011, due to the fact that Tinsley had never been shown the SLED composite drawing from the Defendant's original trial. As previously stated, there were no leads regarding any suspects other than the Defendant. He had already been identified by two people as the perpetrator. The Defendant's-then counsel likely had no idea that there could be two other men in the area who committed the crime. Without viable evidence demonstrating third-party guilt, showing the composite drawing to Laurens and Newberry County residents would have been detrimental to the Defendant's chances at acquittal. Furthermore, the fact that Tinsley was never shown the composite drawing is evidence that the police investigation was both negligent and ineffective. Had the composite drawing been shown by law enforcement to various residents during the investigation, it is likely the drawing could have been identified as Mike Bostic. Instead, the investigation focused solely on the Defendant, ignoring the idea that other individuals could have committed the crime.

Material to the Defendant's Case

The after-discovered evidence in the present case consists of multiple pieces of evidence demonstrating the existence of third-party guilt, as well as the recantation of testimony by one of the State's key witnesses. Evidence of third-party guilt is material because it is proof that one or

more individuals, other than the Defendant, committed the crime for which the Defendant is incarcerated. This is inherently relevant to the State being able to reach its high evidentiary burden of "beyond a reasonable doubt." Because there are now multiple pieces of evidence suggesting that Wayne Eubanks and Mike Bostic are the culprits, and not the Defendant, Exhibits A, B, C, F and G are material to the Defendant's case.

The recantation of the testimony of Kimmie Shipes Heaton is also material, because it is her identification that places the Defendant in the area immediately prior to the crime. While Joe Dixon identified the Defendant as the shooter, he was noted to have a mental deficiency. R. 12, l. 14; R. 62, ll. 5-10. It was also admitted by the State that he was mentally retarded. R. 12, ll. 12-13; R. 62, ll. 5-10. At the time, the testimony of Kimmie Shipes Heaton was the only evidence besides the Dixon identification that placed the Defendant anywhere near Newberry County. Now that Kimmie Shipes Heaton has recanted her testimony, the only evidence the State has is an identification by a man who the State itself asserts is mentally deficient. R. 12, ll. 12-14.

Not Merely Cumulative or Impeaching Evidence

In determining whether or not evidence is cumulative, one must consider whether or not it "supplements that which has already been testified." *Johnston v. Belk-McKnight Co of Newberry*, 188 S.C. 149, 158, 198 S.E. 395, 399 (1938). The after-discovered evidence in the present case is not cumulative, because none of it was known at the Defendant's original trial. The statements of O'Shields incriminating Wayne Eubanks and Mike Bostic, the recantation of Kimmie Shipes Heaton's prior testimony and the identification of Mike Bostic by Kenneth Randall Tinsley and Sandy Wicker are all new pieces of evidence. Hence, they cannot supplement any testimony. As for impeaching evidence, none of the Defendant's Exhibits

presented to the Court attack "the character, the motives, the integrity, or veracity of those who gave the testimony." *Id.* The statements of O'Shields are substantive evidence by a new witness. The recanting statement of Kimmie Shipes Heaton does not attack her credibility, but instead is new by her and, therefore, was unavailable to the Defendant at his original trial. The identifications by Kenneth Randall Tinsley and Sandy Wicker are also new evidence not presented at the Defendant's first trial. The identifications do not serve to impeach any prior witness, but rather to present new substantive evidence of third-party guilt.

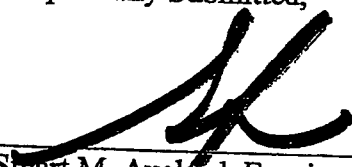
Therefore, the Defendant respectfully requests that this Court grant this Motion pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure.

Conclusion

WHEREFORE, counsel for the Defendant, Gary Lane Prewitt, respectfully requests that this Court grant the Motion for a New Trial based on this after-discovered evidence.

Dated this 27th day of October, 2012.

Respectfully Submitted,



Stuart M. Axelrod, Esquire, Bar #:14678
Axelrod & Associates, P.A.
604 16th Avenue North
Myrtle Beach, SC 29577
Phone: (843) 916-9300
Fax: (843) 916-9311
Counsel for Gary Lane Prewitt

EXHIBIT A

Around January 2002 I
Bryan O'Shields had a Conversation
With "Wayne Eubanks" which is married
to my first ~~cousin~~ Cousin Teresa Barbara
Now Teresa Eubanks. We were talking
about me being in trouble with the law
in the past and the crimes that I
was involved in; and around this time
Mr. Eubanks got to telling me about
something that his self and a friend
of his did, Mike Bostic up in Whitmire
S.C. that they had Robbed and shot a
man 3 times once in the chest and
twice in the face area! Wayne told me
that they Wayne Eubanks and Mike Bostic
had got away with the crime and
that another man was jailed and
convicted of this crime, ~~and~~ he was
bragging to me about how him and
his friend beat the law and got
away with the robbery and shooting
and another man was sentenced to
life in prison for this crime. This
man's name was Gary Lane Pruitt
Now at the time I did not think

Nothing of this because it was No concern of mine. Now I am back Incarcerated at Evans Correctional Institution and one day at Mail call I heard the Name Gary Pruitt called out for Mail and the Name stuck in my head for About 2 days and finally I had to ask him if he was the same Gary Pruitt from around the Area where I'm from which is Laurens County and Mr. Pruitt told me "yes" that he was he said he was from Joanna which is Around and in Laurens County so we got to talking and Mr. Pruitt told me that he had a life Sentence for something he ~~had~~ did Not do. Well like I said it was No concern of mine so I let it go. A Couple weeks went by and I got to thinking to my self; that its wrong for a man to be Imprisoned for something he did Not do" ~~Especially~~ Especially If he has a family so I got to talking to Mr. Pruitt again and ask him about his family and he told me yes he had a family a wife And 2 Kids, Now

me

7

Being in prison is No life for No one
being ~~taken~~ taken away from your family
is No life Either I No I am going through
it Everyday Every minute. So A few more
days go by And this Information Im
holding is eating Away my Sanity, because
I know this man that I've met by
God's Will, that I believe that God's Will
truly put me at the same place with
Mr. Pruitt because I know the persons
that committed this crime, that he has
falsely been accused of) and taken away
from his parents, wife, kids and other
loved ones. I go to Mr. Pruitt one
day and tell him that I know something
he should hear. I tell him about the
conversation that I've had with
Wayne Eubanks: about how he told me
that him and Mike Bostic robbed and
shot this man in Whitmire in 1994
and got away with it! And Mr. Pruitt
told me then that was the same crime
that he was given a life sentence for.
I told Mr. Pruitt that I did not
want nothing from him that. rights. right
meo

And Wrong is Wrong and I would do Anything in my power to help him that's my reason for writing this Stateme and I Bryan O'Shields will duly Swear to tell the truth the whole truth and Nothing but the truth in a Court of law. Wayne Eubanks Admitted his guilt of this Crime to me And Im willing to tell it to the Court or Whom ever it may Concern to prove Mr. Pruitt's Inocce and return him to his kids and fam. No Matter if it does hurt my famil because the Innocent should Not be punished and the guilty Walk free to brag About it.

I Bryan O'Shields Swears this is the truth and Im Writing it of my own free Will

May justice prevail

Bryan O'Shields

EXHIBIT B

On October 31, 2011 I, Bryan O'Shields met with Investigator Nichole Edwards regarding the letter I wrote and mailed to Skidmore and Associates. The letter was regarding Gary Lane Prewitt and a conversation I had with Wayne Furbanis in which he admitted to having been involved with Mike Bostic in an incident in Whitmore, SC which resulted in the shooting of a man. The crime described is that of an incident which resulted in the incarceration of Gary Lane Prewitt. I hereby swear that the statements in my attached letter are truthful, as well as the statements I have made to the Investigator, Nichole Edwards, today, October 31, 2011.

Nichole Edwards

10/31/11

Bryan O'Shields

10/31/11

EXHIBIT C

on October 31, 2011, I met with Investigator Nichole Edwards. Upon discussing Mike Bostic, I stated that I can remember Mike Bostic driving a late 60's - early or mid 70's model green Chevrolet with primer spots. I remember that Mike Bostic used to park the vehicle behind his grandparents house. I can also remember telling Gary Lane Prewitt that I knew Mike Bostic drove a vehicle matching the description of the vehicle leaving the scene of the incident which resulted in the incarceration of Gary Lane Prewitt.

Byron Whitt

10/31/11

Nichole Edwards

10/31/11

EXHIBIT D

March 17, 2011

KH During the trial period of Gary Lane Previtt,
KH I felt a lot of pressure from myself and
KH the community in which I grew up in to
KH do the right thing and help law enforcement.
KH During that period I was not taking my
KH medication and was mentally unstable. If
KH someone had suggested or insinuated who
KH I was supposed to identify, I would have
KH tried to do my best to please that
KH individual. Whether that be my father,
KH law enforcement, or anyone else at
KH the time. Today, I am on my medication
KH and have been since I have been in
KH the Department of Corrections. I feel
KH that I am in a much better place
KH today to say whether that was or was
KH not Mr. Previtt. I would not be able
KH to say today that that was Mr. Previtt
KH at my back door with another unidentified
KH male. The vehicle that drove away from my
KH house that day was a dull color with rust
KH spots. During that point in time, I was
KH having hallucinations and was not mentally
KH stable. Attached to this statement is a
KH copy of Dr. Harold C. Morgan, M.D. evaluation
KH of me. At this time. I cannot provide

that I would testify to the same facts
as I did at the trial of Cary Lane Pruitt
These statements were given freely and voluntarily.

3-17-11

Date

Kimberly S. Heaton

Kimberly Shipes Heaton

3/17/11

Date

Pete G. Scidmore

Pete G. Scidmore

3-17-11

Date

Nichole E. Edwards

Nichole E. Edwards

EXHIBIT E

167.

HAROLD C. MORGAN, M.D.
CONSULTANT IN GENERAL AND FORENSIC PSYCHIATRY

1116 BLANDING STREET, SUITE 2-A
COLUMBIA, SOUTH CAROLINA 29201

May 5, 1998

FAX 864-833-4587

TEL EPICOR
(803) 256-0504
FAX (803) 771-7876

Claude H. Howe, III, Esq.
509 North Broad Street
Clinton, South Carolina 29325

Re: Kimmie Lee Heaton

Dear Mr. Howe:

Based upon psychiatric examination and psychological testing here and review of prior medical records it is my conclusion that your client has a serious mental illness.

The medical records show that she was first seen at the local mental health center on May 30, 1991. On June 8, 1991 she was admitted to the Marshall Pickens Psychiatric Hospital with severe depression with suicidal ideas as well as hearing voices. She was treated with appropriate medication, Prozac and Trilafon. After three weeks as an inpatient she was discharged for follow-up in the local mental health center but she did not respond well to outpatient treatment. On September 20, 1991 she was again admitted to the Marshall Pickens Hospital with worse depression, more hallucinations and more suicidal thoughts. On September 28, 1991 she was transferred to the William S. Hall Psychiatric Institute where she remained until November 15, 1991. Her diagnosis there was Major Depression with psychotic features. After release from the Hall Institute she was followed at the mental health center until she dropped out of treatment in 1993.

Examination here on December 12, 1997 revealed depression as the most obvious clinical feature. However, psychological testing with the Personality Assessment Inventory and the Minnesota Multiphasic Personality Inventory (MMPI) revealed more peculiarities in her thinking, impairment in judgement and magical thinking or delusional ideas. In short, her contact with reality is fragile.

It should be noted that this young woman's early life was chaotic. She was the product of rape but was subsequently adopted when her mother married Mr. Shipes. That marriage was unstable; the patient recalls lots of fights between her parents and when she was a teenager her mother abandoned the family. The record shows that her mother also has a long history of psychiatric illness.

A TRUE COPY OF ORIGINAL *for*

Barbara T. Wasson

BARBARA T. WASSON
Lancaster County CCOP & GS

Page -2- Kimmie Lee Heaton 5-5-98

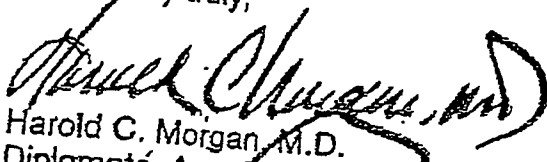
In summary, this defendant has a chronic mental illness, which requires treatment with antidepressants and antipsychotic medication. At the time of the incident she was not being treated. As a consequence her thinking, judgement and behavior were significantly impaired.

Ms. Heaton is intelligent and insightful. Whatever the outcome of her legal charges she needs continued treatment with medication and counseling. If this can be provided in a stable, consistent environment she can become a productive citizen.

I hope that this information will be helpful; if you have questions please contact me.

Thank you for asking me to see your client and please accept my best personal wishes.

Yours very truly,



Harold C. Morgan, M.D.
 Diplomate, American Board of Psychiatry and Neurology
 Diplomate, American Board of Forensic Psychiatry
 Clinical Professor of Psychiatry
 University of South Carolina School of Medicine

HCM/jg

PSYCHIATRIC CONSULTANTS, P.A.

1116 BLANDING STREET, SUITE 2-A
 COLUMBIA, SOUTH CAROLINA 29201

EXHIBIT F

I Kenneth R. Tinsley was first shown this sketch in July of 2011. At no point during the investigation of the robbery or shooting of Joe Dixon was I showed this sketch. The individual in this sketch appears to be "Mike Bostic"

Kenneth R. Tinsley

unlabeled

8/18/11

Regarding the victim, 'Joe Dixon', I have known him since before the incident, as he is my ex-father-in-law's cousin/relative. I believe that the extent of his education is in the area of 8th grade. Before the incident it was difficult to understand his speech, as he stuttered a lot.

Kenneth R. Tinsley

unlabeled

8/18/11

I. Sandy Wicker was shown the sketch of this individual for the first time in July of 2011. As a former resident of Whitmore, SC I can have confidence in identifying the individual in this sketch as "Mike Bostic"

Sandy Wicker

8/18/11

unlabeled Ed



Applicant
5
3-19-96 mb

EXHIBIT G

7-1-11

THIS IS THE FIRST TIME
I HAVE EVER SEEN THIS
DRAWING.

Handwritten signature
Randy Tine

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

GARY LANE PREWITT,

Defendant.

Case No.: 1994-GS-36-616

AFFIDAVIT OF GARY LANE PREWITT

GARY LANE PREWITT, being duly sworn, deposes and states that:

1. My first contact with private investigator Pete Skidmore occurred in January 2011.
2. Pete Skidmore visited me again in October 2011 to inform me of his continuing investigation.
3. On May 23, 2012, I met with my counsel Stuart M. Axelrod for the first time.
4. Also present at the May 23, 2012 meeting was Pete Skidmore.
5. During the May 23, 2012 meeting, I was shown the evidence gathered by Pete Skidmore during his investigation.
6. May 23, 2012 was the first time I had seen any of the new evidence referenced or mentioned in the attached Motion for a New Trial Based on After-Discovered Evidence.



Gary Lane Prewitt

Sworn to before me this 24th day of October 2012

Notary Public for

Commission Expires

Sylvia Jones
South Carolina
1/24/2018

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF GENERAL SESSIONS
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

GARY LANE PREWITT,

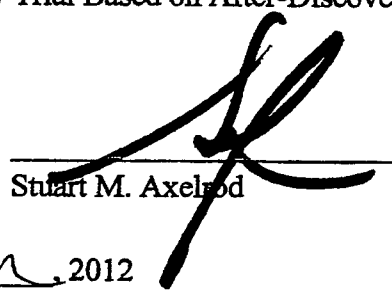
Defendant.

Case No.: 1994-GS-36-616

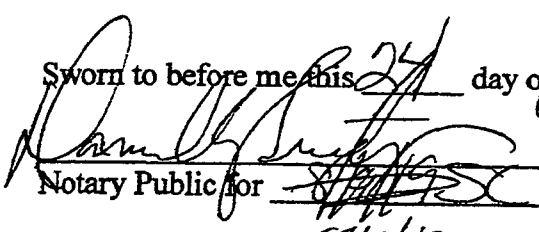
AFFIDAVIT OF STUART M. AXELROD

STUART M. AXELROD, being duly sworn, deposes and states that:

1. My first contact with Gary Lane Prewitt occurred on May 23, 2012.
2. On May 23, 2012, I met with Gary Lane Prewitt for the first time.
3. Also present at the May 23, 2012 meeting was Pete Skidmore.
4. During the May 23, 2012 meeting, I was shown the evidence gathered by Pete Skidmore during his investigation.
5. May 23, 2012 was the first time I had seen any of the new evidence referenced or mentioned in the attached Motion for a New Trial Based on After-Discovered Evidence.


Stuart M. Axelrod

Sworn to before me this 24 day of October, 2012


Notary Public for 8/14/15

Commission Expires 8/14/15

State of South Carolina) In the Court of General Sessions
County of Newberry) Eighth Judicial Circuit
1994-GS-36-0616

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Gary Lane Prewitt,)
Defendant.)
_____)

March 12, 2013
Greenwood, South Carolina

B e f o r e:

The Honorable Clifton B. Newman, Judge

A p p e a r a n c e s:

C. Dale Scott, Esquire
Attorney for the Plaintiff

Stuart Mark Axelrod, Esquire
Jarrett S. Calder, Esquire
Attorneys for the Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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TRANSCRIPT OF RECORD

(Whereupon, the proceedings were commenced at 12:38 p.m.)

THE COURT: Yes, sir, Mr. Axelrod.

MR. AXELROD: Yes, sir, Your Honor. Thank you, sir, Your Honor. May it please the Court, sir: Your Honor, I'd like to take up a little bit of housekeeping before we proceed. Originally, we had a motion for a new trial based on after-discovered evidence and a motion for new trial based on lack of subject-matter jurisdiction. My associate, Mr. Calder, worked very hard on that argument for about -- I'll say eight weeks, Your Honor. We have -- the clerk of Newberry is here.

We worked very closely with Motte Talley, the director of court administration and, as of yesterday at approximately two o'clock in the afternoon, provided us with the necessary documents from the Supreme Court. Because what the Court had did was it -- for that month -- or those six months, they took out all the terms of court and they relinquished the court and then the chief justice issued special terms of court for those six months. Mr. Talley congratulated us on our vigor and we released him from his subpoena because subject-matter jurisdiction was there.

So we're -- we are here for one -- one hearing today. It's a motion for new trial based on after-discovered

1 evidence. So -- and -- and I'm ready to proceed, Your
2 Honor, if you are.

3 THE COURT: All right. And appearing on behalf of the
4 -- the state is?

5 MR. SCOTT: Your Honor, I'm Dale Scott. I'm with the
6 Eight Circuit, primarily out of Newberry and Laurens
7 County. I'm the new deputy solicitor here.

8 THE COURT: All right. Thank you. All right. Mr.
9 Axelrod, you may proceed.

10 MR. AXELROD: Thank you, Your Honor. Your Honor, I
11 would like to give the Court a brief rendition of the
12 facts. I -- I think it's pertinent to the Court to -- to
13 hear what happened almost 19 years ago, sir.

14 On July the 22nd, 1994, Joe Dixon is living -- he's
15 across the street from a house. He sees a old Chevrolet in
16 the early '70s, bluish-green, with spots on it. He sees it
17 go around Mr. Tinsley's house. He knows that Mr. Tinsley
18 is not at the house.

19 So Mr. Dixon, who, was established in the trial was
20 mentally retarded -- Mr. Dixon goes across the street to
21 say, "Hey, Mr. Tinsley's not home." He comes up on one
22 person. And one person's getting into the car. And Mr. --
23 Mr. Dixon says, "Hey, what's going on?" And the man
24 doesn't talk to him, I believe, according to Mr. Dixon.

25 Then he goes into the house. And in the house there

1 was fishing rods that belonged to Mr. Tinsley. There were
2 fishing rods; there were guns, all in the kitchen that Mr.
3 Tinsley testified were not in the kitchen prior to that
4 time. And there was another man in the house.

5 And that -- and Joe Dixon said to that man, "Hey, what
6 are you doing?" And that man shot him three times. At
7 least three times he got shot.

8 Ms. McGuirt across the street hears the shots. She's
9 here today. She's going to tell the Court today she saw a
10 greenish-bluish car, late-model, 1970's Chevrolet come and
11 leave that area. She'll tell the Court that there was two
12 people in the car.

13 At that point Ms. McGuirt was nervous, so she called
14 Mr. Walker, A.H. Walker, Jr., the man with the good-looking
15 white hair. And he came down the street. He lived up the
16 street, and he came down the street.

17 And I think he'll testify that he saw the same car in
18 the area: a 1970-or-so Chevrolet, late-model, bluish-
19 green, older, dilapidated car. The -- these people see the
20 man flee in the Chevrolet towards Newberry.

21 August the 10th, less than a month later, Mr.
22 Prewitt's arrested and charged with burglary, assault and
23 battery with intent to kill, grand larceny, and possession
24 of a weapon during the commission of a violent crime.

25 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

1 MR. AXELROD: Five months later, January the 19th,
2 1995, in front of the judge, E.C. Burnett -- it was the
3 last trial, I believe, that E.C. Burnett did, because he
4 went onto the Supreme Court seven weeks later. He did a
5 trial, and it was exactly 181 days since the shooting, this
6 Gary Lane Prewitt convicted -- six months from shooting to
7 conviction.

8 January the 20th, he was convicted. He was sentenced
9 to 30 days in jail for the grand larceny; five years in
10 jail for the crime of possession of -- with a weapon during
11 the commission of a crime -- a violent crime; twenty years
12 for assault and battery with intent to kill; and life
13 imprisonment for the crime of burglary. The sentences will
14 run concurrently.

15 Now, what's interesting -- a fact that's interesting
16 interest this case -- and we're going to have -- we're
17 going to have Kimmie Shipes Heaton testify today. But on
18 April -- in 1997 -- now, Ms. -- Ms. -- Ms. Heaton was a
19 witness in the original trial. She assisted the police in
20 doing a composite photo that will be entered into evidence
21 today. She does a composite photo of who that person is
22 that she saw that day.

23 Prior to the shooting -- she lives up the road a piece
24 about a mile. Prior to that shooting, about a half hour
25 before that shooting, she had a man knocking at her back

1 door. She testified in the first trial that that man
2 asked, "Is Eddie here?" And she says, "No. You have the
3 wrong place."

4 And Ms. Heaton -- it gave her the willies. So she
5 called the police. And the police sent a man from SLED
6 from Columbia to take a composite photo of that man.

7 Three -- two years after the conviction, Ms. Heaton's
8 husband is murdered. There's a big article in the Newberry
9 paper. Ms. Heaton came forward. And she said that Gary
10 Lane Prewitt must have been the one that caused the murder
11 of her husband; that since she had testified against him at
12 the trial, he -- she testified him against the trial, that
13 he put a hit on her from prison. That was the story. And
14 it stood for a little while.

15 The long and short of that story is that Ms. Heaton
16 eventually confessed to, I believe, conspiracy to murder or
17 attempted murder -- murder, and she's serving a 50-year
18 sentence today for the murder of her husband. I believe
19 her first cousin or his first cousin committed the murder
20 while they were delivering newspapers. She will testify
21 today, Your Honor.

22 The picture that -- the composite photo that Ms.
23 Heaton ---

24 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

25 MR. AXELROD: Your Honor, I'd like to hand it up as

1 Court Exhibit 1. I don't have a foundation, but I -- I --
2 I'd like to make it 1. If I need to establish a
3 foundation, I will later if the Court wants. But -- but I
4 think it would -- it -- it would assist the Court at this
5 point.

6 THE COURT: Okay.

7 MR. AXELROD: (To Mr. Calder) Keep track of my
8 exhibits.

9 (Whereupon, Court's Exhibit 1 was marked for
10 identification.)

11 MR. AXELROD: Your Honor, the -- I would ask the Court
12 to take notice that it says "Applicant 5; March 19th,
13 1996." It -- this was used, I believe, probably in a -- in
14 a PCR application.

15 So, Your Honor, this picture actually becomes pivotal
16 down the line later. In the spring of 2005, Gary Lane
17 Prewitt meets a man by the name of Bryan O'Shields. Now,
18 Mr. O'Shields will be here to testify today as well.

19 Gary Lane Prewitt meets Mr. O'Shields. Mr. O'Shields
20 tells Gary Lane Prewitt, "Hey, my first husband's husband
21 -- my first cousin's husband, Wayne Eubanks, confessed to
22 me -- he confessed to me and said that he and a man by the
23 name of Mike Bostic committed that heinous crime in
24 Whitmire for which Gary Lane Prewitt received a life
25 sentence."

1 Now, Your Honor, I'd like to -- at this point, I'm --
2 I'm going to continue. But I would like to hand up a
3 picture of Mike Bostic that I will lay foundation in
4 testimony today, sir, if the Court would allow me.

5 THE COURT: Yes, sir.

6 (Whereupon, Court's Exhibit 2 was marked for
7 identification.)

8 MR. AXELROD: Thank you.

9 In the spring of 2005, Gary Lane Prewitt is told by
10 Wayne Eubanks -- is -- is told by O'Shields that Eubanks
11 confessed to him that he and Bostic did the crime. For all
12 these years, Gary Lane Prewitt has maintained his
13 innocence.

14 O'Shields writes a letter to Gary Lane Prewitt
15 sometime in '05. But he's moved and Gary Lane Prewitt is
16 unable to corroborate the letter for its veracity. There's
17 no date on the letter. And he's unable to reach him.

18 The -- South Carolina -- and I'll try to bring it in
19 -- South Carolina has an inmate-correspondence privilege
20 that no inmates can ever correspond with each other. About
21 the only time you can, if somebody's in hospice or
22 something like that and you're helping them in hospice.
23 But -- so Gary Lane Prewitt -- he got something -- I guess
24 we'd call it a "kite" or "flyer." Sometimes through the
25 jail, little -- little messages can get through.

1 But the actual letter basically said from -- O'Shields
2 saying: "I've done a lot of bad things in my life, but
3 maybe I can do something right here." Eubanks confessed
4 that he and Bostic did the crime.

5 So Gary Lane Prewitt's been in jail for a dozen years.
6 And what he's done basically is he's written letters to
7 investigators. He's written letters to lawyers. He's
8 written letters to people, saying: "Hey, I'm in jail, and
9 I didn't do this crime." All he has -- all he has right
10 now is a letter from O'Shields with no way to corroborate
11 that letter for its veracity or truthfulness.

12 So he writes to Mr. Skidmore, who will testify today.
13 He writes him a letter and asks Mr. Skidmore to come see
14 him; tells him he has no money; he needs help; he's been in
15 jail for 14 or 15 years at that time -- he's been in jail;
16 come help me.

17 Mr. Skidmore, for whatever reason, I believe is the
18 first investigator that went to see -- that I know of, that
19 went to see Gary Lane Prewitt. He went to see him.

20 And he sat down. He listened to Mr. Prewitt's story
21 -- excuse me -- January of 2011. Now, March 17th, 2011,
22 Mr. Skidmore meets with Kimmie Snipes Heaton -- Shipes --
23 Kimmie Shipes Heaton.

24 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

25 MR. AXELROD: And basically, Kimmie Shipes Heaton

1 tells him -- writes a letter and tells him that the car in
2 question was a dull Chevrolet, same as Walker and McGuirt
3 said. But she said that she could not conclude that Gary
4 Lane Prewitt was the one that did it that she identified.

5 It turns out -- and -- and we'll bring in, too, a
6 letter of Dr. Morgan that -- no fault of her own -- Ms.
7 Heaton has some mental difficulties. And she dropped out
8 of treatment in '90 -- '93. And her doctor said that her
9 contact with reality was fragile. And, in fact, Mr.
10 Skidmore spoke with her recently. And Ms. Heaton is going
11 to tell the Court that she made a mistake in that
12 identification today, I believe, Your Honor.

13 Now, during the -- during the trial -- or -- or -- or
14 the investigation, Detective Gilliam was the lead
15 investigator. And there were some fingerprints founds on
16 the guns that were moved. The fingerprints were tested and
17 never came back to Gary Lane Prewitt.

18 The witnesses, Walker and McGuirt, tell the cops there
19 was two people in the car. Only person ever arrested was
20 Gary Lane Prewitt -- arrested, found guilty, convicted, and
21 sentenced to life after his parents and he testified. The
22 parents -- mom's right there -- testified at the trial:

23 "We were with Gary Lane Prewitt. We were with him that --
24 that morning, ten o'clock to eleven o'clock in the morning.
25 We -- we were at his house. We had some cake in the oven."

1 Has an alibi witness and gets convicted, basically on
2 the identification of a retarded man, Joe Dixon, and
3 reality -- Ms. Heaton, how I -- how I read the transcript.
4 So August the 18th, 2011, Mr. Skidmore meets with Randy
5 Tinsley, the owner of the burglarized home at the time, and
6 Sandy Wicker.

7 They show Mr. Tinsley the photograph. The composite
8 photograph they show to Mr. Tinsley. And Mr. Tinsley says
9 -- Mr. Tinsley says, "That looks like Mike Bostic. That
10 photo looks like Mike Bostic."

11 So the Court's understanding at the time of the crime,
12 I do not believe that Mr. Tinsley even knew Mike Bostic.
13 So in 2011 when Skidmore and Associates shows him the
14 photo, he says, "Hey, that's Mike Bostic," the same man
15 that O'Shields says Eubanks confessed the crime to. So we
16 have someone in prison making a confession, saying, "I did
17 it with Bostic." And we have someone that's not in prison
18 saying, "That looks like Mike Bostic."

19 And then we show it to Sandy Wicker.

20 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

21 MR. AXELROD: Ms. Wicker has no -- no connection to
22 the original case. We show Ms. Wicker the composite photo.
23 And she says -- guess what? To Skidmore and Associates she
24 says, "That's Mike Bostic. That's Mike Bostic."

25 So now we have two people in 2011 saying, "Hey, that

1 looks like Mike Bostic." It's August 18th, 2011.

2 October the 31st -- and this is the date that I think
3 is important for this Court today, Your Honor: October
4 31st, 2011. Skidmore and Associates go and meet O'Shields.
5 He writes a letter and he says, on October 31st: "I, Bryan
6 O'Shields, met with Investigator Nichole Edwards" -- who
7 will testify -- "regarding the letter I wrote and mailed to
8 Skidmore and Associates. The letter was regarding Gary
9 Lane Prewitt and a conversation I had with Wayne Eubanks in
10 which he admitted to having been involved with Mike Bostic
11 in an incident in Whitmire which resulted in the shooting
12 of a man. The crime described is that of an incident which
13 resulted in the incarceration of Gary Lane Prewitt. I
14 hereby swear that the statements in my attached letter are
15 truthful as well as the statements I have made to the
16 investigator, Nichole Edwards."

17 In his original letter -- in his original letter he
18 said: "Mr. Eubanks got to telling me about something that
19 hisself and a friend of his did, Mike Bostic, up in
20 Whitmire; that the had robbed and shot a man three times:
21 once in the chest and twice in the face area. Wayne told
22 me that Wayne Eubanks and Mike Bostic had got away with the
23 crime that another man was jailed and convicted of this
24 crime. He was bragging to me about how he and his friend
25 beat the law and got away with the robbery and shooting and

1 another man was sentenced to life in prison for the crime.
2 That man's name was Gary Lane Prewitt."

3 The reason I say this date is important, Your Honor,
4 because based on ---

5 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

6 MR. AXELROD: There's a one-year rule for after --
7 newly discovered evidence, Your Honor. It's 29(b) -- Rule
8 29(b). It is my position today to this Court that -- I've
9 given a side note first, Your Honor, if I may. It's
10 interesting.

11 I know that Gary Lane Prewitt had the letter eight --
12 eight/nine years ago without a date on it, without even
13 knowing if it was real, true, or anything. If the state
14 wanted to argue, "Well, hey, he should've come forward at
15 that point with that letter; that he didn't know whether it
16 was true, this or that," and then showed that and had a
17 hearing and say -- the Court say he had a court --
18 hypothetically -- I'm -- I'm speaking in a hypothetical
19 now.

20 Hypothetically, he has a hearing in front of a circuit
21 judge somewhere. And the circuit judge says, "Mr. Prewitt,
22 I appreciate the letter. But there's no attestation of
23 veracity attached to the letter; therefore, I say no; you
24 can't have a new trial." At that point Mr. Prewitt would
25 never be able to use that letter again at another hearing,

1 because he's had that evidence and he presented that
2 evidence.

3 It's interesting. It's just an interesting point.
4 And I -- and I think it's almost unconstitutional that the
5 -- our Supreme Court -- and I'm not here for that today,
6 Your Honor. But I think it's unconstitutional, in fact, on
7 the United States Constitutional level that I think that
8 people should be bring -- be able to bring evidence
9 whenever they find it.

10 But -- but the point is, Your Honor, on October the
11 31st, he met Mr. Skidmore. They -- they -- they met
12 O'Shields. O'Shields signed it; said it's true. And, Your
13 Honor, we filed that motion for a new trial five days shy
14 of the next year.

15 I have a little more to go in on the time line. But I
16 want the Court to realize that I think October 31st -- and
17 I had never even met Mr. Prewitt yet. I never met -- and
18 in that meeting with O'Shields, he told the investigators
19 that Mike Bostic drove an old, green-blue Chevrolet with
20 primer spots, the same car that multiple witnesses
21 identified. And he said -- he said that Eubanks and Bostic
22 did it, the two people in the car.

23 He's been arrested, convicted; never found nobody
24 else. They found who they wanted. And from the arrest to
25 the conviction, six months, he's got a life sentence.

1 On May the 23rd, Judge -- on May the 23rd,
2 Investigator Skidmore -- he asked me before that. But on
3 May the 23rd, Mr. Skidmore asked me to come meet Gary Lane
4 Prewitt for the first time, less than a year ago. And I
5 met him. And I sat there and -- I sat there and I -- and I
6 thought to myself, We don't convict people that are wrongly
7 -- you know, that aren't guilty. We don't convict innocent
8 people.

9 And I sat -- and I went to that meeting, Your Honor.
10 And, my hand to God, I went to that meeting thinking that
11 this man was just going to blow up -- some hot up -- some
12 hot air up my butt. And I sat there for an hour, Judge. I
13 walked away with a burden on my shoulder.

14 I have a burden. I agreed to take the case pro bono.
15 And we've put thousands of hours -- countless amount of
16 money we've put, because -- doesn't matter what I believe.
17 But the evidence and the facts that I saw and I'm going to
18 present today and what I've gathered from Skidmore and
19 Associates told me that we have in jail a man that should
20 not be there.

21 We filed our motion on October the 27th, 2012, four
22 days shy of that year. And I think that -- I think he's
23 fine. Those motions, Your Honor, were the cause for this
24 hearing.

25 We tried to schedule a hearing in front of Judge Addy

1 ---

2 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

3 MR. AXELROD: --- and Judge Griffith. Judge Addy
4 recused himself because he had some type of an involvement
5 in the public defender's office or -- or something with the
6 solicitor at that time, which we're going back twenty
7 years. Judge Griffith was going to hear it originally.
8 And we found out that, I think, his wife was a solicitor
9 ---

10 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

11 MR. AXELROD: --- his wife, I think, was a solicitor
12 at the time. And actually, Judge Griffith represented Gary
13 Lane Prewitt for about a one- or two-week period. And what
14 happened after that was they -- they separated the ways and
15 Ray Wicker -- Ray Wicker became his lawyer.

16 I -- I subpoenaed Ray Wicker today. But they say he
17 has -- he's feeble and got -- got heart ---

18 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

19 MR. AXELROD: They say -- well, my -- my associate's
20 saying one step back, and I wasn't -- wasn't going to bring
21 him here to testify today.

22 Your Honor, that is the rendition of the facts. And I
23 -- I believe that, if the Court allows me, I'll do it as
24 quickly as I can. But Gary Lane Prewitt has been waiting
25 for almost 19 years. And, Your Honor, I -- I -- you know,

1 I say to the Court -- I say to the Court that, you know,
2 only in our country -- even -- and I told the investigator
3 today -- I said, "You did what you had -- what you thought
4 was right at the time." I'm not -- I'm not -- I'm not
5 pointing fingers.

6 But when witnesses come back a dozen years later and
7 recant their story and new evidence is found, possibly,
8 saying somebody else did it, in our country, even Mr.
9 Prewitt -- Mr. Gary Lane Prewitt, 19 years in prison almost
10 at this point, can have a hearing today. And I just think
11 that's wonderful for all of us.

12 And, Your Honor, I'm prepared to move forward if you
13 would like.

14 THE COURT: All right. Thank you, Mr. Axelrod. Mr.
15 Scott?

16 MR. SCOTT: Thank you, Your Honor. May it please the
17 Court?

18 THE COURT: Yes, sir.

19 MR. SCOTT: Just -- just briefly, a little history on
20 this case -- and I -- I've been reviewing transcripts.
21 Looks like we received this motion October 27th. New
22 solicitor took office in January. I met with Mr. Axelrod
23 shortly thereafter; began kind of researching this case a
24 little bit.

25 This isn't the first time we've been down this road

1 with this particular defense. Your Honor, he -- Mr.
2 Prewitt was indicted during November 1994 term in Newberry
3 County: first-degree burglary, grand larceny, assault and
4 battery with intent to kill, possession of a weapon during
5 the commission of a violent crime. As Mr. Axelrod stated,
6 he was represented by Ray Wicker; convicted January 19th of
7 '95 on all counts. As Mr. Axelrod said, then Judge Burnett
8 -- future Supreme Court Justice Burnett -- sentenced him to
9 twenty years on the ABWIK; life on the burg-first.

10 He didn't appeal his conviction, Your Honor. And that
11 issue was taken up at his first PCR. He filed his first
12 PCR on October 5th, 1995; and an evidentiary hearing, March
13 of '96 before Judge Cottingham. And Cottingham denied his
14 application. That was appealed, and the Supreme Court
15 denied petition.

16 Prewitt has also had a federal habeas writ that was
17 denied. Filed his second application for PCR on January
18 30th, 2002, Your Honor. That was heard on October 9th,
19 2003, by Judge Wyatt Saunders.

20 The grounds at that time, Your Honor, interestingly
21 enough, were that Mr. Prewitt had after-discovered
22 evidence. At this hearing Mr. Prewitt called three SCDC
23 inmates. I believe he's only going to call two today.

24 At the time Johannes Hill, Matt Hill, and Richard Hill
25 were called to testify. Similarly, these inmates said they

1 had spoken with Gary Lane Prewitt about his case, and he
2 had shown them this composite sketch that was referenced.
3 Each of these men testified at that hearing the composite
4 sketch looked a lot like Mike Bostic.

5 Your Honor, Mike Bostic at no point during the
6 investigation of the trial was ever named a suspect. First
7 time we hear about Mike Bostic is at this second PCR
8 hearing. Best I can tell is Mr. Prewitt got his hands on
9 this composite that was never introduced at trial. The
10 composite was used to generate leads.

11 Ms. Heaton gave a description to a SLED artist of the
12 person she saw behind her home. There was other
13 information gained from tipsters that Mr. Prewitt was
14 involved. A six-pack photo lineup was produced. It was
15 introduced at trial. From that lineup Ms. Heaton, as well
16 as the victim, Joe Dixon, immediately picked Mr. Prewitt as
17 the perpetrator.

18 Your Honor, I suspect what you're going to hear today
19 is a number of things that would be inadmissible at a new
20 trial. Your Honor will hear hearsay, which is essentially
21 what Mr. O'Shields is ---

22 THE COURT: Excuse me just a moment. You said there
23 was a six-pack lineup, and who was picked?

24 MR. SCOTT: Mr. Prewitt, Your Honor.

25 THE COURT: Okay.

1 MR. SCOTT: He was the number-one slot. Joe Dixon,
2 the victim, picked him. And Ms. Heaton picked him as well
3 from the lineup. That was introduced at trial. The
4 composite was never introduced.

5 Your Honor, you're going to hear hearsay today.
6 That's -- that's what this evidence is going to be about.
7 This O'Shields fella will testify. However, he's
8 testifying to something this Wayne Eubanks said. I -- I --
9 my understanding is they're not going call Wayne Eubanks
10 today.

11 Essentially, from what I understand, O'Shields is
12 going to testify to something Wayne Eubanks told him back
13 in 2000 -- or early 2000s. So that would be inadmissible.
14 You're going to hear inadmissible, third-party-guilt
15 issues, such as this photo lineup that people think looks a
16 lot like this Mike Bostic.

17 Your Honor, you're going to hear a partial
18 recantation, I believe, by Ms. Heaton. Again, she wasn't
19 the only one to put the finger on Mr. Prewitt, identify
20 him.

21 Your Honor, it's -- for the same reasons that it was
22 dismissed at the PCR, Your Honor, based on the third-party-
23 guilt issue, as well as the five prongs required for a new
24 trial -- and, Your Honor, I've brought this *Hayden v.*
25 *State*. This is a case that states the five prongs. I

1 think originally that was from the *State v. Caskey* case.
2 And I've got that citation at 273 S.C. 325.

3 Those prongs are a -- and -- and -- and it's been
4 cited by a number of cases since. (1) A party requesting
5 a new trial based on after-discovered evidence must show
6 that it is such that would probably change the result if a
7 new trial was held; has been discovered since the trial;
8 could not, in the exercise of due diligence, have been
9 discovered before the trial; is material to the issue of
10 guilt or innocence; and is not merely cumulative or
11 impeaching.

12 Your Honor, it's the state's position that -- that it
13 fails a number of these prongs, including material to the
14 issue of guilt and innocence and that it is merely
15 impeaching.

16 Your Honor, the sketch is not dissimilar to the
17 appearance of Mr. Prewitt. It -- for that matter, it -- it
18 does favor Mr. Bostic as well. But to have a new hearing
19 based on a number of people looking at a sketch rendered by
20 an artist that was unattached to the case, these sketches
21 are generated by somebody else's observations and thoughts.
22 And that to be the sole basis of a new trial fails those
23 prongs, Your Honor.

24 Ms. Heaton's partial recantation does not meet the
25 five-prong test. Your Honor, for those reasons, that is

1 why the -- the state is very much opposed to a new trial,
2 obviously.

3 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

4 MR. SCOTT: Your Honor, I've got a number of cases on,
5 as I've said, the five-prong test. I've got a case here on
6 third-party guilt, Your Honor, that I've -- pretty much
7 right on point, from what I could read. I pulled this up
8 yesterday: *State v. Mansfield*. It's found at 343 S.C. 66.

9 And as far as the -- Ms. Heaton's purported
10 recantation, I've got here this case, *State v. Mayfield*,
11 235 S.C. 11: Testimony -- recanted testimony ordinarily is
12 unreliable and should be subjected to the closest scrutiny
13 when offered as grounds for a new trial. Again, I'll just
14 note that what she is purported to testify to today was not
15 the only testimony proving guilt at trial.

16 That's all, Your Honor.

17 THE COURT: All right. Your first witness, Mr.
18 Axelrod.

19 MR. AXELROD: Thank you, Your Honor. At this time we
20 call Detective Danny Gilliam.

21 (Whereupon, the witness came forward.)

22 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

23 DANNY GILLIAM, having been first duly sworn,
24 testified as follows:

25 MR. AXELROD: Your Honor -- it's Court's 3?

1 THE COURT REPORTER: Yes.

2 MR. AXELROD: Your Honor, what -- I'd like to -- what
3 I've done is I've taken out of the trial transcript the
4 testimony and cross of the detective. And I'd just like to
5 mark it as a Court's exhibit and hand it up. I'm just
6 trying to help the Court with -- unless the Court wants to
7 just work out of the -- the whole transcript I gave. I'd
8 like -- like to mark it. And if -- if the Court uses it as
9 -- as Court's 3.

10 THE COURT: Proceed whichever ---

11 MR. AXELROD: It -- it ---

12 THE COURT: --- way you ---

13 MR. AXELROD: --- it's part ---

14 THE COURT: --- prefer.

15 MR. AXELROD: --- of what I gave your clerk, Your
16 Honor, the -- the full transcript. But I'm just taking his
17 testimony out. I just stapled it together from the -- the
18 start to the finish.

19 THE COURT: All right.

20 (Whereupon, Court's Exhibit 3 was marked for
21 identification.)

22 DIRECT EXAMINATION

23 BY MR. AXELROD:

24 Q Good afternoon, Detective.

25 A Good afternoon.

1 Q How did you -- isn't it true that a confidential
2 informant contacted you and said that Gary Lane Prewitt was
3 the perpetrator of this crime?

4 MR. SCOTT: Objection to hearsay, Your Honor.

5 Q How did you find out that Gary Lane Prewitt ---

6 MR. AXELROD: Your Honor, first of all, I -- it's not
7 hearsay. That's not a hearsay question. I'm asking him:
8 Isn't it true that a confidential informant contacted him
9 and said that Gary Lane Prewitt was the perpetrator of the
10 crime. I think that's a legitimate question. Under 611 I
11 would treat him as an adverse witness. He's a -- he's --
12 he's on the state's side. So I think that's specific that
13 I would say under 611 he's adverse and hostile. I should
14 be able to lead him.

15 THE COURT: Well, see, now, you've asked the question.
16 There's an objection. You've asked a separate question.
17 Then you're arguing the appropriateness of the first
18 question. How long will we be here today if we take this
19 approach to this matter?

20 MR. AXELROD: Well, I think my first question was --
21 was legitimate.

22 THE COURT: All right. Well, where there is a
23 question asked and there is an objection, there is no
24 argument unless the Court requests an argument.

25 MR. AXELROD: Yes, sir.

1 THE COURT: The objection is overruled.

2 Q How did you find out that Gary -- isn't it true a C.I.
3 told that you that Gary Lane Prewitt was the person
4 involved?

5 A How I found out about Gary Lane, we were questioning
6 people. We did a extensive door-to-door type -- trying to
7 talk to people. We ran across some people that told us we
8 need to talk to two young men over in the Joanna section.

9 And we went and talked to those young men. We felt
10 that they might have some information. And during that
11 time they did bring up his name, that we might want to talk
12 to him.

13 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

14 Q So it's your evidence today that there was no C.I. or
15 there was a C.I.?

16 A I -- I'd have to look at the transcript. I didn't --
17 I'd have to look at that. It's ---

18 Q You don't ---

19 A --- almost ---

20 Q --- you don't ---

21 A --- 19 years ago.

22 Q You don't remember?

23 A I don't remember.

24 Q Okay. Okay. Okay. I'm all right with that.

25 That composite photo that Ms. Heaton gave with the

1 SLED agent, did you happen to get that before the trial?

2 Did you have that in your investigation?

3 A Yes, sir.

4 Q Okay.

5 A We did.

6 Q Did you show that picture to Joe Dixon?

7 A No, sir, we did not.

8 Q Did you show that picture to anybody?

9 A We showed it to a lot of people.

10 Q No -- did -- did they -- nobody could identify it,
11 could they?

12 A Yes, sir. They -- several people identified it. And
13 ---

14 Q Who'd they identify it as?

15 A They identified -- they said it looks like it could be
16 Gary Lane Prewitt, but it also -- that they said that Gary
17 Lane wore that type of hat ---

18 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

19 A --- everywhere.

20 Q I'm going to hand you up your -- I'm going to hand you
21 up your -- I'm going to hand you up your transcript and let
22 you look at this.

23 A Okay.

24 Q You never testified to that, did you?

25 A I don't think I was ever asked that. I don't know.

1 Q All right. Well, I'm going to ask you: Who said it
2 looked like Gary Lane Prewitt?

3 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

4 (Off the record briefly.)

5 A I see that -- I do see this now.

6 THE COURT: All right. Just a moment, sir.

7 (Off the record briefly.)

8 THE COURT: All right. You may proceed.

9 A I do see this in the ---

10 Q What page -- what page are you on? We can -- we can
11 work together, then.

12 A All right. It starts on 98, the last -- "Now, did you
13 make a composite drawing?"

14 "Yes, sir, we did."

15 Q I -- I hate to interrupt. Just tell me what line
16 you're on. I'll be with you, not ---

17 A Okay. On page 98, the last part starts at 25,
18 question asked. On -- then, on 99: "Yes, sir, we did on
19 the composite drawing." You got it?

20 Q Yeah. Right. "Did you make ---

21 A Okay.

22 Q --- a composite drawing?" And you say: "Yes, sir, we
23 did."

24 A Yes, sir. We had one made from the SLED agent.

25 Q I got you.

1 A Okay. All right.

2 Q My question is: Who'd you show it to? You said you
3 showed it to people.

4 A Yeah. I showed it to -- we had it around -- I think
5 it was actually -- you know, we posted it a few places.
6 And we went up to that section, and we talked to several
7 people. We actually interviewed several people.

8 Two young gentlemen that was in the Joanna section, we
9 interviewed them. And one of those told me that it could
10 possibly be him, and he remembered the hat.

11 Q And that person was a confidential informant?

12 A I didn't consider him a confidential informant.

13 Q Then, why did you testify on page -- on line 19, same
14 page, that: "We established our lead concerning Mr.
15 Prewitt through a confidential informant"? That is your
16 sworn testimony.

17 A That's what I said. But at -- at -- I -- at the time
18 we were interviewing that same person ---

19 Q Well, I'm -- well, I'm ---

20 A --- as a ---

21 Q --- asking ---

22 A --- possible suspect.

23 Q I'm sorry. But was that a -- was that a confidential
24 informant? You just told me -- you just testified it was
25 not, and you testified in this trial it was. So I'm trying

1 to determine what -- which was the truthful statement.

2 A The truthful statement was that this guy was a
3 suspect. We talked to him. I didn't -- I -- he was
4 confidential informant. I didn't look at it that way.

5 Q But you've testified ---

6 A I did ---

7 Q --- at trial ---

8 A Yes, sir, I did.

9 Q So that was a lie, in theory?

10 A I ---

11 Q Well ---

12 A No, sir.

13 Q But he -- but he's not a confidential informant. But
14 you've testified -- you bolstered his -- you bolstered his
15 testimony in the original trial by saying he was a
16 confidential informant. Somebody -- and tell the Court --
17 please tell the Court what makes somebody a confidential
18 informant.

19 A They would be someone that you could actually trust
20 and that he would be telling you the truth. And at that
21 time this gentleman was a suspect.

22 Q So a confidential informant is someone that you can
23 trust, is reliable, and you have used in the past that gave
24 truthful and forthright information. That's a confidential
25 informant?

1 A I never used him in the past.

2 Q So he was not a confidential informant?

3 A I say I testified to it. We used him as a
4 confidential informant.

5 Q I'll move on.

6 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

7 Q You -- you showed the composite photo to Ms. Heaton.
8 The solicitor testified that she had then -- the solicitor
9 didn't testify. I'm sorry. The solicitor, in his opening,
10 said she had -- she immediately identified him. Did you
11 remember hearing him say that?

12 A She's the one that developed the -- the -- that. You
13 -- you got two different things.

14 Q I'm sorry.

15 A She ---

16 Q I -- I apologize. No.

17 A Yeah.

18 Q My fault.

19 A We ---

20 Q Let me withdraw ---

21 A --- but you ---

22 Q --- that question. My fault. My fault.

23 A Okay.

24 Q When you showed her the six-pack -- my fault. I'm not
25 trying to confuse you.

1 A Oh.

2 Q My mistake. When you showed her the six-pack, the
3 solicitor said in his opening statement she immediately
4 picked out Mr. Gary Lane Prewitt. That's what he said.
5 That's not true, was it?

6 A Yes, sir. She immediately picked him out.

7 Q Okay. I want to direct your attention to page 97.
8 And I'm going to read to you.

9 Question: "And did she look at the lineup?"

10 Your response: "Yes, sir, she did."

11 Question: "And did she identify anybody?"

12 Answer: "Yes, sir, she did."

13 Question: "What did she do?"

14 Answer -- your answer -- read the answer to the Court,
15 line 17.

16 A "She studied for -- I say probably five -- five or six
17 minutes. She pointed at No. 1 and said, 'That's the man
18 that came to my back door.'"

19 Q So you just testified that she -- she -- she
20 identified him immediately. That wasn't true, was it?

21 A I think that is immediately, five ---

22 Q Five or ---

23 A --- or six ---

24 Q --- six minutes ---

25 A Oh ---

1 Q --- is immediately?

2 A --- absolutely. Yes, sir. There's six people you
3 have to look at. You have to look at all six of them. And
4 she studied all six of them, and then she picked out No. 1.

5 Q Did you ever suggest to her -- let me ask you a
6 question: Did she ever say to you -- and you're under oath
7 today. Did she ever say to you -- if you can remember
8 this; if you can't remember, say it. Did she ever say to
9 you, "Maybe it's this one, No. 4," or "Maybe it's this one,
10 No. 5"? Did she ever ---

11 A No, sir.

12 Q She never ---

13 A She pointed ---

14 Q --- wavered?

15 A --- at No. 1. No, sir, she did not.

16 Q You never suggested to her No. 1?

17 A Absolutely not.

18 MR. SCOTT: Your Honor ---

19 THE COURT: Yes, sir.

20 MR. SCOTT: I'm sorry. I'm having difficulty
21 following, but I -- I feel like we're outside of the scope
22 ---

23 THE WITNESS: Absolutely.

24 MR. SCOTT: --- maybe, of the purpose of this hearing
25 today. He -- he's essentially retrying Mr. Gilliam on his

1 lineup procedure, which was covered at the case-in-chief.

2 THE COURT: Mr. Axelrod?

3 MR. AXELROD: Your Honor, it's to -- it's to show that
4 -- I'm going to show the Court through his testimony --
5 because after his testimony, I'm going to go a different
6 way. But I'm showing through his testimony that ultimately
7 at the end of today, the only information that could
8 possibly convict my client is the testimony of a man that
9 was retarded, the man that got shot. Because we're going
10 to do away with all his testimony.

11 I need to set his testimony up, because I'm going to
12 impeach it today. I'm going to impeach his testimony. And
13 I'm going -- I'm almost done. But I'm going to impeach his
14 testimony with another witness. I have to -- I have to do
15 it in this order. I'll move quickly, Your Honor.

16 THE COURT: All right. Yes, sir.

17 Q Let me ask you this: You took fingerprints, correct?
18 You -- you had -- you found fingerprints, I think, on the
19 guns that were in the kitchen that didn't belong there,
20 according to Mr. Tinsley. So you dusted and found
21 fingerprints, correct?

22 A The SLED -- the SLED team did. Yes, sir.

23 Q And -- and -- and when I say "you," I -- I don't mean
24 you, sir. I -- I -- I mean SLED. I -- I -- I apologize

25 ---

1 A But you did ---

2 Q --- okay?

3 A --- say "me."

4 Q I -- I know. I just consider you the police. Okay.

5 So SLED dusted for fingerprints. You sent them away.

6 Did they come back Gary Lane Prewitt?

7 A No, sir.

8 Q Did you find any physical evidence ever at that site
9 -- physical evidence that said that Gary Lane Prewitt was
10 the one that did it?

11 A No, sir.

12 Q In fact, eyewitnesses told you there was two people
13 involved, and you only found one person, correct?

14 A Yes, sir.

15 Q And, in fact, you never found the car that allegedly
16 was seen by McGuirt and -- and -- and Walker, that -- that
17 car that -- that greenish, 1970, Chevrolet-model car beat
18 -- beat up. You never found that car?

19 A No, sir, we ---

20 Q He ---

21 A --- did not.

22 Q --- he didn't own that car, did he?

23 A I don't know.

24 Q But you ---

25 A We never ---

1 Q --- you -- you ---

2 A --- found ---

3 Q --- saw what he drove and he didn't happen to drive
4 that car, did he?

5 A We did not find that car.

6 Q Ever?

7 A Ever.

8 Q To this day?

9 A (No audible response.)

10 Q Things were stolen from Mr. Tinsley's house. And --
11 and -- and I'm not asking you to remember. But I think
12 some money or coins -- or -- or there were some valuables
13 stolen?

14 A Yes, sir.

15 Q When you did the search warrant at Mr. Gary Lane
16 Prewitt's house, you never found a single thing taken from
17 the robbery, did you?

18 A No, sir.

19 Q In fact, were any of the items ever recovered, that
20 you know of?

21 A Not as I -- not -- not as I know of. I did not search
22 the house. I wasn't there to ---

23 Q After ---

24 A --- search.

25 Q -- Gary Lane Prewitt was convicted, isn't it true you

1 closed your investigation?

2 A Yes, sir, we did.

3 Q Okay.

4 MR. AXELROD: Your Honor, Court's indulgence one
5 moment, sir.

6 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

7 Q Since 1995 have you ever taken it upon yourself to
8 rerun those fingerprints in the database that is now
9 computer-controlled?

10 A I haven't. No, sir.

11 MR. AXELROD: Your Honor, that's the questions I have
12 for the detective.

13 THE COURT: Anything from the state?

14 MR. SCOTT: Briefly.

15 CROSS-EXAMINATION

16 BY MR. SCOTT:

17 Q Mr. Gilliam -- Deputy Gilliam, what -- Maj. Gilliam --
18 I'm sorry. These sketches -- what are these sketches used
19 for typically by law enforcement?

20 A A -- a composite sketch is what a person's -- when
21 they look at it, apparently, they'll look at and they'll
22 tell you in their mind what this person looked like, and
23 you try to compare it to a -- a suspect, some way or
24 another.

25 Q Is it safe to say, when you're looking for a suspect,

1 you would use sketches generated by witnesses to -- to
2 generate leads?

3 A Yes, sir.

4 Q To help maybe locate somebody you'd like to talk with
5 about the incident; is that safe to say?

6 A Yes, sir.

7 Q And you -- you testified Ms. Shipes at the time -- Ms.
8 Heaton today -- was the one who gave the description that
9 led to the sketch; is that correct?

10 A Yes, sir.

11 Q But, now, you didn't arrest Mr. Prewitt based on that
12 sketch; is that safe to say?

13 A No, sir, I did not.

14 Q There was a -- a photo lineup ---

15 A Yes, sir.

16 Q --- generated?

17 And that did contain an actual photograph of Mr.
18 Prewitt; is that correct?

19 A It did.

20 Q Okay. And you've already testified Ms. Heaton picked
21 Mr. Prewitt out of that lineup?

22 A Yes, sir.

23 Q And Mr. Dixon did as well, correct?

24 A Yes, sir.

25 Q All right. Did you say that there were fingerprints

1 found or the -- there were just none that ---

2 A There were fingerprints found, but we didn't match it.

3 Q There were no matches?

4 A No, sir.

5 Q And there were two individuals?

6 A That's from the report of the vehicle having two
7 people in it.

8 Q And the witness, Joe Dixon, actually testified that --
9 that who he identified was Mr. Prewitt was wearing gloves,
10 correct?

11 A I -- Ms. Shipes -- Kimmie said that the gentleman that
12 was at back door had gloves on.

13 Q Well, she said he had his hands in his pocket; is that
14 correct?

15 A She said she -- he put them in his pocket.

16 Q Let me -- let me -- so she never got to see his hands,
17 according to the testimony.

18 MR. SCOTT: Beg the Court's indulgence.

19 Q All right. This page 58. This Betty Strom, who --
20 who was the solicitor in the eighth circuit at the time.

21 A I don't -- I don't have that one.

22 Q Well, do you recall -- at the time of the trial, she
23 asked: "He ran out the door, okay, Mr. Dixon?" This is
24 her direct examination of Mr. Dixon. "The man that shot
25 you, did you see his hands?"

1 Answer: "Well, he had gloves on."

2 Do you recall Mr. Dixon testifying that Mr. Prewitt
3 was wearing gloves at ---

4 A I ---

5 Q --- the time?

6 A --- I don't -- I don't recall that.

7 Q Well, this probably falls under the category of a dumb
8 question. But would you expect to find fingerprints if you
9 knew a perpetrator was wearing gloves?

10 A No, sir, we would not.

11 Q All right. Now, Mr. -- Mr. Axelrod was asking you
12 about a C.I.

13 A Yes, sir.

14 Q You were looking for two white males ---

15 A Yes, sir.

16 Q --- based on the eyewitness -- the two eyewitnesses
17 who came to you during your investigation; is that correct?

18 A Yes, sir.

19 Q And immediately, who'd you think of when you heard of
20 two white boys who were breaking into a house?

21 A We had information about two young guys that -- from
22 Laurens County that's told us that there was a -- two guys
23 that had been known from -- to breaking in places. So we
24 talked to them.

25 Q Did you question them?

1 A Yes, sir.

2 Q And did -- did their stories check out?

3 A Yes, sir, they did.

4 Q Did -- were they ruled out as suspects?

5 A Yes, sir, they were.

6 Q Did they give you information that led to Mr. Prewitt?

7 A Yes, sir, they did.

8 Q Do you recall what that information was?

9 A They said that they knew him and that would be what he
10 would be doing.

11 Q Well, the -- had he attempted to involve them in this
12 particular crime?

13 A They said that they did approach him. They came -- he
14 came to them and asked them did they want to do something,
15 but they didn't go in any detail.

16 Q All right. So was it after receiving that information
17 that you pulled his photo and put him in a lineup?

18 A Yes, sir.

19 Q And was the information that the other unidentified
20 white male was driving the greenish car -- was that what
21 the ---

22 A I remember the greenish car, the faded car.

23 Q Okay. I'll -- I'll go through this really quick. But
24 there was two suspect, correct? That's ---

25 A Yes, sir.

1 Q --- what the eyewitnesses said.

2 A They were.

3 Q Was the other male the one driving the car, according
4 to Joe Dixon?

5 A I -- I don't remember.

6 Q Well, if the other man was out in the car -- okay.

7 MR. SCOTT: Nothing further, Your Honor.

8 THE COURT: Mr. Axelrod?

9 MR. AXELROD: Thank you, Your Honor. Three questions.

10 REDIRECT EXAMINATION

11 BY MR. AXELROD:

12 Q The other person that identified my client, Joe Dixon,
13 he's mentally retarded, isn't he?

14 A Yes, sir.

15 Q Thank you. And on the fingerprints that you took --
16 SLED took ---

17 A Yes, sir.

18 Q --- they didn't come back as Mr. Tinsley's
19 fingerprints, did they?

20 A I don't remember.

21 Q And they -- they never came back as -- they were
22 unidentified when they came back -- they weren't Gary Lane
23 Prewitt's, because that's what you tested against, though?

24 A I think we tested Gary on his and I don't -- you would
25 have to ask Mr. Tinsley on -- if they tested him. That's

1 what they usually do.

2 Q Okay.

3 A But that was SLED.

4 Q I got you. And SLED usually tests the person that you
5 think did the crime?

6 A When they get the fingerprints, they would run them.

7 Yes ---

8 Q Okay.

9 A --- sir.

10 Q And they didn't come back as Gary's?

11 A No, sir.

12 Q Okay. Now, I going to jog your memory. Isn't --
13 isn't it true that the person that gave you the tip about
14 my client was named David Michael Sommer? Wasn't he --
15 wasn't that the person?

16 A No, sir, it was not.

17 Q You don't remember that?

18 A No, sir, I don't.

19 Q Because he's a relative of the Hannah brothers. When
20 you were looking for the Hannah brothers, Ernest and Robert
21 -- do you remember, you were looking at them first as
22 suspects, right?

23 A Yes, sir.

24 Q And then you had a C.I. tip that it was my client.

25 And you're telling -- you're testifying today it was -- it

1 was not David Michael Sommers -- David Michael Sommer, S-o-
2 m-m-e-r?

3 A I don't -- I don't remember that.

4 Q Okay. Would that be in your original file, the C.I.?

5 A I wouldn't think so.

6 Q Okay.

7 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

8 MR. AXELROD: That's it, Your Honor.

9 THE COURT: Anything further?

10 MR. SCOTT: Nothing from the state, Your Honor.

11 THE COURT: All right. Thank you, sir.

12 THE BAILIFF: Watch your step there.

13 THE WITNESS: Yeah.

14 (Whereupon, the witness exited the witness stand.)

15 THE COURT: All right. Next witness.

16 MR. AXELROD: Your Honor, we would call Bryan
17 O'Shields.

18 (Off the record briefly.)

19 (Whereupon, the witness came forward.)

20 MR. AXELROD: See if you can follow that man right
21 around with the green jacket.

22 DEPUTY CLERK OF COURT: I got to swear him in first,
23 Mr. Axelrod.

24 BRYAN O'SHIELDS, having been first duly sworn,
25 testified as follows:

1 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. AXELROD:

5 Q Mr. O'Shields, can -- for the Court's purposes --
6 well, have I ever met you before?

7 A No, sir.

8 Q Okay. And for the Court's purposes, can you tell the
9 Court your full name and spell your last name for the --
10 for the court reporter.

11 A My name's Bryan Eugene O'Shields. Last name's spelled
12 O, apostrophe, S-h-i-e-l-d-s.

13 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

14 Q Where do you live right now?

15 A I'm at Ridgeland Correctional Institution.

16 Q And is that a prison in South Carolina?

17 A Yes, sir.

18 Q Okay. And how long have you been -- when was the last
19 time you weren't in prison? Let's go that way.

20 A I've been incarcerated for ten years and one day as of
21 yesterday.

22 Q Your anniversary ---

23 A Uh-huh.

24 Q --- in a bad way? I'm sorry.

25 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

1 Q So is it fair to say that in 2002, you had a
2 conversation with a Wayne Eubanks?

3 A Yes, sir.

4 Q And since that conversation with Wayne Eubanks, you
5 never got out of jail, have you?

6 A No, sir.

7 Q Okay. All right. The conversation with Wayne
8 Eubanks, did he tell you that he got away with a crime?

9 A Yes, sir.

10 Q Did he tell ---

11 MR. SCOTT: Your Honor ---

12 Q --- you that someone else ---

13 THE COURT: Just a ---

14 Q --- committed ---

15 THE COURT: --- just a moment. Just a moment. Yes,
16 sir.

17 MR. SCOTT: The only objection would be a standing
18 objection to that hearsay. For purpose of this hearing,
19 that -- that may be something Your Honor wishes to
20 consider. But I do feel the need to stand up, based on my
21 -- that objection.

22 THE COURT: All right. Well, the objection is
23 sustained as to leading the witness.

24 MR. AXELROD: Yes, sir, Your Honor. Your Honor, if --
25 I was just trying to set a little foundation; then I was

1 going to go.

2 THE COURT: Yes, sir. Well ---

3 MR. AXELROD: Okay.

4 THE COURT: --- don't lead ---

5 MR. AXELROD: I'll -- I'll ---

6 THE COURT: --- the witness.

7 MR. AXELROD: --- I'll go that way. But did ---

8 MR. SCOTT: I'm sorry, Your Honor. But for
9 clarification -- but the hearsay has been overruled?

10 THE COURT: Yes, sir.

11 Q I'm going to hand up ---

12 MR. AXELROD: This is No. 4 now. Is it No. 4? Your
13 Honor, I'd like to mark the first letter that Mr. O'Shields
14 sent to -- I believe he sent to Mr. Prewitt as Court
15 Exhibit No. 4.

16 THE COURT: All right.

17 (Whereupon, Court's Exhibit 4 was marked for
18 identification.)

19 MR. AXELROD: Your Honor, would you like a copy of
20 that as well?

21 THE COURT: Well, if you want me to know what's in it,
22 I need to see it.

23 MR. AXELROD: Yes, sir, Your Honor. Let -- let me --
24 let me get the Court a copy too.

25 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

1 Q Mr. O'Shields, I'm going to let you read that for a
2 minute. It's been -- it's been over ten years since you
3 wrote that.

4 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

5 THE COURT: We're going to have -- we're going to take
6 a break in this case and tend to some other matters. So
7 you can step down. We're going to take a break in this
8 case and deal with some of these other matters that we had
9 scheduled.

10 (Whereupon, the proceedings were adjourned at 1:47
11 p.m. and resumed at 2:24 p.m.)

12 THE COURT: Yes, sir. Need that witness back.

13 (Whereupon, the witness reentered the witness stand.)

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION BY MR. AXELROD CONTINUES.

16 Q Mr. O'Shields, before we took a break, I handed you up
17 a letter that I believe was written by you and is marked as
18 Exhibit -- Court Exhibit No. 4. Can you tell the Court
19 when you think you wrote that letter, if you know?

20 A It was ---

21 Q And I don't want to interrupt you. But the acoustics
22 are -- I'm having trouble actually hearing you. So maybe
23 if you can get up closer -- I don't know if that microphone
24 works. Maybe tap -- does it work? Yep. Yep. Yep. Get
25 closer.

1 A I think it was somewhere around mid-2005.

2 Q Okay. And can you tell the Court what facilitated you
3 to write that letter?

4 A When I first got the evidence, I was listening to mail
5 call one day, looking for some mail. And I heard someone's
6 name called. It was Gary Prewitt. And I had knew of him
7 from around my hometown. So I went and introduced myself
8 to him. I had went and introduced myself to Mr. Prewitt.
9 And we got to talking. And -- and we knew a lot of the
10 same people.

11 And one thing led to another. We ended up becoming
12 cell mates. We got to talking about, you know, things on
13 the street. And -- and we was talking about our crimes,
14 what we was in prison for, whatnot.

15 And then it just dawned on me. I was, like, "You
16 know, I heard a story about this before I ever got
17 convicted of my crime." And I ended up telling him about a
18 conversation I had with my cousin's husband.

19 Q And when you say your "cousin's husband," who is your
20 cousin's husband?

21 A His name is Wayne Eubanks.

22 Q Okay.

23 A I had a conversation with him back in 2002 -- sometime
24 in 2002. I -- I can't remember the exact time. But he had
25 told me about how him and a friend of his named Mike Bostic

1 had committed a crime up in Whitmire and how they had shot
2 a man and -- and -- and they had got away with it and
3 another guy was doing the time for it.

4 So I didn't know at this time that it was Mr. Prewitt.
5 And one thing led to another, and he got to telling me
6 about the reason why he was in prison. And I was, like,
7 It's crazy. I just heard this story on the street.

8 And I -- you know, I don't really know the details or
9 nothing like that. But I know that -- what I heard. And
10 the conversation was -- was -- is what I said. Mr. Eubanks
11 and -- he said a friend of his, Mike Bostic, had committed
12 this crime where they shot this guy in Whitmire.

13 I -- I don't know, you know, what went down at the
14 crime or anything like that. But when Mr. Prewitt told me
15 that that's what he was in prison for, for that crime --
16 for a crime that was similar to that, I was, like, You
17 know, this can't be a coincidence.

18 And this is my cousin's husband. So, you know, it was
19 kind of strange to me. But I thought about it and I
20 thought about it. And I was, like, You know, the right
21 thing for me to do would be to -- to -- to let him know
22 about this conversation that I had. So I ended up writing
23 him a statement and whatnot.

24 But then we ended up getting separated probably maybe
25 three months later. I ended up going to Tyger River, and

1 he was still at Evans. So that was the last contact that I
2 had had with him. So this is ---

3 Q And ---

4 A --- the first time I've seen him since then, was
5 yesterday, so . . .

6 Q Okay. Let me ask you a question: Do you know Mike
7 Bostic?

8 A I just knew of him from around the way. He wasn't
9 somebody that I hung out with or -- or -- or even
10 associated with. I just knew who he was because I was -- I
11 was pretty much young and in the streets then and just, you
12 know, I hung around with those type of people, you know,
13 basically.

14 Q Okay. Have you ever met Mike Bostic?

15 A Yes, sir. I've been at places where he's been. I
16 haven't -- well, let me rephrase that. I haven't walked up
17 to him and spoken to him or anything of that matter. But
18 I've been in the same places he's been at, same houses or
19 whatnot.

20 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

21 Q If I was to show you a picture of somebody, would you
22 -- if you knew them, would you maybe be able to identify
23 them?

24 A If I know the -- if I know the person.

25 (Whereupon, Mr. Axelrod and Mr. Scott conferred.)

1 Q Have you ever seen this man before?

2 A That's Michael Bostic.

3 Q All right.

4 MR. AXELROD: I'd like to admit this as -- is it No.
5 5, Mr. Calder?

6 MR. CALDER: It's Court's 2.

7 MR. AXELROD: Is it -- is it in as Court's 2? Okay.
8 Your Honor, what I'd like to do is I would like Mr.
9 O'Shields, if -- maybe -- I don't know if they can maybe
10 not -- if he can just sign his name to this, that -- and
11 who it is that -- that he identifies in -- on this piece of
12 paper. Would that be all right, Your Honor? And I'm going
13 to -- I'm going to enter it as an additional exhibit.

14 THE COURT: All right.

15 Q Can you just put who you think that is up here? I
16 think this is -- can -- can you write -- would it help you
17 if I put that down there?

18 A Uh-huh.

19 Q Okay. And put your name.

20 A (Complied.)

21 Q And put today's date. It's March the 12th, 2013.

22 A (Complied.)

23 Q Okay.

24 MR. AXELROD: Mr. Calder, is this No. 5?

25 MR. CALDER: Okay.

1 MR. AXELROD: Admitted as Court's 5.

2 (Whereupon, Court's Exhibit 5 was marked for
3 identification.)

4 Q Mr. O'Shields, I'm going to show you another
5 photograph. This is -- I'm showing you what's been
6 previously marked as ---

7 MR. AXELROD: Mr. Calder, State's 1?

8 MR. CALDER: y e

9 Q --- Court's Exhibit 1. Put your glasses on.

10 A (Complied.)

11 Q This is a composite photo done by a police artist.
12 Does this look like anybody you might know?

13 A That's Mike Bostic in the early '90s.

14 Q I would like you to again write your name. Write:
15 "This is Mike Bostic," and -- and then, your name and date
16 it.

17 A (Complied.)

18 MR. AXELROD: And, Your Honor, I'm asking that this be
19 -- the identification that Mr. O'Shields of Mike Bostic be
20 admitted as Court's 6.

21 THE COURT: All right.

22 (Whereupon, Court's Exhibit 6 was marked for
23 identification.)

24 Q Now, Mr. O'Shields, at some point -- I'm going to --
25 I'm going to hand you a -- a letter that I believe you

1 wrote. I'm going to let you look at it. I think you need
2 to keep your glasses on -- keep using them. I'll let you
3 look at that for a minute. See that investigator ---

4 MR. AXELROD: All right. This is what I just handed
5 to Mr. O'Shields. You get that one.

6 Q Now, did you happen to have an opportunity to meet
7 with an investigator from Skidmore and Associates?

8 A Yes, sir.

9 Q And do you remember when that was?

10 A It was in 2011.

11 Q And would it be fair to say it was Halloween, October
12 the 31st, 2011?

13 A Sounds about right.

14 Q Okay. And in that -- in that letter -- you wrote a
15 letter to the investigator?

16 A Yes, sir.

17 Q And what'd you basically tell the investigator?

18 A I basically said the same thing that I told Mr.
19 Prewitt in 2005.

20 Q Did you tell her that what you had written in the
21 original letter was true?

22 A Yes, sir.

23 Q And you signed that letter October 31st, 2011?

24 A That sounds right.

25 Q And ---

1 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

2 MR. AXELROD: Madam Court Reporter, did I admit that
3 in? Maybe I didn't admit it.

4 THE COURT REPORTER: I have two sketches ---

5 MR. AXELROD: No.

6 THE COURT REPORTER: --- two ---

7 MR. AXELROD: No.

8 THE COURT REPORTER: --- photographs.

9 MR. AXELROD: No. That's -- let me give you another
10 copy of this and we'll admit it.

11 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

12 (Whereupon, Court's Exhibit 7 was marked for
13 identification.)

14 Q And this is marked as Court's Exhibit No. 7 right now.
15 Is this the letter we were just referencing?

16 A Yes, sir.

17 Q Okay.

18 MR. AXELROD: Your Honor, at this time I'd like to
19 move it in as Court's Exhibit No. 7.

20 THE COURT: All right.

21 MR. SCOTT: No objection, Your Honor.

22 THE COURT: So admitted.

23 MR. AXELROD: Would you like this, Your Honor, or I
24 can leave them with the -- okay.

25 Q Now, on that day, if you remember, I believe you wrote

1 another letter that day to the -- to the investigator.
2 I'll let you read that.

3 Did you -- on that same day did you tell the
4 investigator about a car you believe that Mike Bostic
5 drove?

6 A Yes, sir.

7 Q And did you describe it for the investigator?

8 A Yes, sir.

9 Q Tell the Court the description you gave to the
10 investigator.

11 A It was between a '60 -- late-'60s/early-'70s model
12 Chevrolet, green with primer spots.

13 Q Now, did you know that Mike -- did you know at that
14 time the vehicle that Mike Bostic drove at all, if any?

15 A Yes, sir. I had seen him around in that vehicle.

16 Q And have you ever seen him driving a car such as that
17 car?

18 A Yes, sir.

19 MR. AXELROD: (To the court reporter) I'd like to
20 admit -- like to get a number on this, please.

21 (Whereupon, Court's Exhibit 8 was marked for
22 identification.)

23 MR. AXELROD: Your Honor, at this time I would move as
24 Court's Exhibit No. 8.

25 MR. SCOTT: Without objection, Your Honor.

1 THE COURT: Okay.

2 Q Now, are inmates -- you never had any more
3 correspondence with Gary Lane Prewitt after that meeting
4 you had with him?

5 A No, sir. We are not allowed to write inmate-to-inmate
6 correspondence.

7 Q I'm going to let you look at this -- look at -- look
8 at both pages. Refresh yourself with that, and then I'll
9 ask you about that.

10 Can you tell the Court what that is?

11 A It's the inmate-correspondence privileges.

12 Q And what does it say, basically, on -- on the second
13 page? Does it allow inmates to correspond with each other?

14 A No. You're not allowed to correspond with one another
15 unless you're immediately family. You can write to your
16 warden and request permission to write each other back and
17 forth.

18 Q And is this a fair rendition of -- of these -- of --
19 of what this rule is? Have you seen this -- these papers
20 like this before?

21 A Yes, sir.

22 Q Okay.

23 (Whereupon, Court's Exhibit 9 was marked for
24 identification.)

25 MR. AXELROD: Your Honor, I'd like to move this as

1 Court's No. 9.

2 THE COURT: Any objection?

3 MR. SCOTT: I -- I'm sorry, Your Honor. What -- what
4 was that?

5 MR. AXELROD: I'll show it to you him, Your Honor.

6 MR. SCOTT: Oh, it's guidelines from SCDC?

7 (Whereupon, Mr. Axelrod and Mr. Scott conferred.)

8 MR. SCOTT: No objection, Your Honor.

9 MR. AXELROD: Move as Court's 9, Your Honor, into
10 evidence.

11 THE COURT: All right. It's admitted.

12 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

13 Q Now, if -- if you can remember, do you know what color
14 -- do you know how tall Mike Bostic was, if you'd know?

15 A I couldn't tell you. I'm fairly short, so I would say
16 he's taller than me.

17 Q And how tall are you?

18 A I'm five-six and a half.

19 Q Okay. And do you remember what color hair he had back
20 then?

21 A If I recall correctly, it was a reddish color.

22 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

23 Q Let me ask you a question: You knew of Mike Bostic
24 before?

25 A Yes, sir.

1 Q His reputation?

2 A Yes, sir.

3 Q What's his reputation around town for?

4 MR. SCOTT: Objection, Your Honor.

5 THE COURT: Objection is sustained.

6 MR. AXELROD: Your Honor, I have no further questions.

7 THE COURT: Mr. Scott?

8 CROSS-EXAMINATION

9 BY MR. SCOTT:

10 Q Mr. O'Shields, where you from?

11 A I'm from Laurens County.

12 Q Did you go to school there?

13 A No, sir.

14 Q You -- did you complete school?

15 A No, sir. I got a GED.

16 Q Okay. How far did you get?

17 A I went to the tenth grade.

18 Q All right. And tell me: How -- how did you know Mike
19 Bostic?

20 A I just knew around some of the same people. You know,
21 he -- he come up into Laurens. I stay in Clinton, which is
22 not too far from them. Just around town, around the same
23 kind of people.

24 Q How long do you think you've known him?

25 A I mean, I didn't know him on an everyday basis, so ---

1 Q Well, if -- when do you think you first met him?

2 A I couldn't even remember. It was in the '90s -- early
3 '90s.

4 Q Now, you knew Prewitt from your hometown too?

5 A No, sir. I haven't never really met him face to face.
6 I just knew who he was. I had knew people that did know
7 him. I had a cousin that lived on the same street that he
8 lived on -- or same street that his parents lived on.

9 Q Now, if -- we're talking about Gary Prewitt now.

10 A Yes, sir.

11 Q Did you not just testify that -- okay. You -- you
12 knew a lot of the same people from the hometown. That --
13 is that was you're testifying to?

14 A Yes, sir.

15 Q And then when y'all got to SCDC, y'all met in prison?

16 A Yes, sir.

17 Q And became friends?

18 A Yes, sir.

19 Q Became cell mates?

20 A Yes, sir.

21 Q And he talked about his case a lot with you, correct?

22 A Well, I'd talk about it with him.

23 Q Yeah. You discussed your case with him, right?

24 A I discussed my case with him. And then his case came
25 up. And then in the midst of his case, when I found out

1 what it was about, I told him about a conversation that I
2 had about that crime.

3 Q And it's safe to say that when you're cell mates in
4 prison, you have a lot of time to talk.

5 A If you choose to.

6 Q Do you choose to?

7 A We had conversations.

8 Q Well, you live in -- how big was your cell?

9 A I think it's somewhere around about 110 square feet.

10 Q And the two of y'all in there together?

11 A Actually, it was three of us.

12 Q And y'all had your discovery with you?

13 A I'm not sure I understand what you said.

14 Q Oh, materials basically that led to each of your
15 convictions.

16 A No. I haven't never had nothing of mine because I was
17 guilty.

18 Q Oh.

19 A I pled guilty to my offense.

20 Q Okay. So y'all would talk about the facts of each one
21 of y'all's cases with each other?

22 A We have.

23 Q All right. And now, the -- this Eubanks guy, where is
24 he now?

25 A If I'm not mistaken, I think he's incarcerated.

1 Q Did you tell him to be here today?

2 A No, sir. I haven't seen him since the early '90s.

3 Q Okay. And you -- your testimony earlier was you had a
4 conversation with him back in 2002?

5 A Yes, sir. I had seen him at -- at -- at my -- I think
6 was her mother's house. It may have been my grandmother's
7 house. It was at a cookout. We was having a cookout, and
8 everybody was there. It was in 2002.

9 Q And this is when Eubanks said that he was the one who
10 had shot Joe Dixon?

11 A No. You misunderstood what I said.

12 Q Oh, I'm sorry.

13 A I said that during the course of our conversation, he
14 had brought up a crime that him and another guy named Mike
15 Bostic had committed in Whitmire. He never said that he
16 shot anyone. He said that there was a shooting in the --
17 in the crime. I don't know who shot -- who shot who. But
18 ---

19 Q I -- I ---

20 A --- during the course of our conversation, that's what
21 it was about.

22 Q I apologize. This was at a cookout, though?

23 A Yes, sir.

24 Q And he volunteered this information to you?

25 A Yeah. We was -- I was committing crimes at that same

1 time, so, you know, I was pretty much in the streets.

2 Q All right. Matter of fact, you had an ABHAN, an
3 arson, and a kidnapping conviction in '95?

4 A Yes, sir.

5 Q You were convicted of petit larceny in 2001?

6 A Yes, sir.

7 Q A DUS and a resisting arrest in 2003?

8 A Yes, sir.

9 Q As well as a grand larceny in 2003?

10 A Yes, sir.

11 Q Armed robbery in 2003?

12 A Yes, sir.

13 Q Attempted grand larceny, assaulting a police officer
14 while resisting arrest, that same year?

15 A I don't recall being charged with assaulting a police
16 officer.

17 Q You just recall the resisting arrest?

18 A I -- I had ran. He pulled up when I was pumping gas
19 in my car, said he had a warrant for me, and I ran.

20 MR. AXELROD: Your -- Your Honor, I'm not opposed to
21 the solicitor going through his record. But I think, like,
22 the resisting arrest, if it's -- I -- if it's a one-year
23 offense, it wouldn't be admissible even at this hearing,
24 but the other things clearly were: the moral turpitude and
25 any crime considering more than one year.

1 THE COURT: All right. What else do you have?

2 MR. SCOTT: I'm sorry, Your Honor?

3 THE COURT: What else do you have?

4 MR. SCOTT: There is a North Carolina charge:
5 altering and removing an NMV serial number.

6 A You got the wrong man.

7 Q Okay. Do those reflect your charges, other than the
8 -- you dispute the North Carolina charge?

9 A Yes, sir.

10 Q Now, I'm trying to understand. You spoke with Eubanks
11 in 2002 at a family cookout?

12 A Yes, sir.

13 Q And then, when did you become cell mates with Prewitt?

14 A That was in 2005 -- mid-2005.

15 Q And when did you write this letter that you introduced
16 a minute ago?

17 A That same time.

18 Q Why didn't you give it to Prewitt at the time?

19 A I did. I was his cell mate. I left it with him. I
20 ended up getting transferred to Tyger River.

21 Q I -- I -- I'm confused. You gave that letter to him
22 in 2005?

23 A Yes, sir.

24 Q When did you give it to the Skidmore guy?

25 A I'm not sure when they received it.

1 Q All right. I -- I'll move on. But your testimony was
2 you thought that was the right thing to do?

3 A Yes, sir. And I ---

4 Q And ---

5 A --- still do.

6 Q Okay. And I thought it was interesting that when you
7 looked at that sketch -- the SLED sketch, you stated,
8 "That's Mike Bostic in the early '90s."

9 A Yes, sir. That's what I remembered he looked like
10 then.

11 Q Okay. Did you see Mr. Prewitt in the early '90s?

12 A Sir?

13 Q Did you ever see Mr. Prewitt in the early '90s?

14 A No, sir.

15 Q Even though you were from his hometown?

16 A Actually, we're not from the same town. He's from
17 Joanna; I'm from Clinton.

18 Q Didn't you testify on direct you knew him from
19 hometown?

20 A No, sir. I said that I had knew of him from being
21 around town from where I'm from.

22 Q And then, you knew of Bostic as well?

23 A Yes, sir.

24 Q Okay.

25 MR. SCOTT: Nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. AXELROD:

Q Your -- your testimony today, basically you're going against one of your extended family members?

A Yes, sir.

Q And the solicitor, I think, tried to insinuate that because you were in a cell with Gary Lane Prewitt, you would do what he wanted you to do -- kind of what he ---

A I'm not ---

Q --- inferred.

A --- sure he was insinuating. I'm just answering questions.

Q Did you tell the truth today?

A Yes, sir.

MR. AXELROD: Nothing further.

MR. SCOTT: Nothing from the state, Your Honor.

THE COURT: All right. Thank you, sir.

THE BAILIFF: Watch your step.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. Your next witness.

MR. AXELROD: We would call Christy McGuirt, Your Honor.

(Whereupon, the witness came forward.)

CHRISTY MCGUIRT, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AXELROD:

Q Good afternoon, ma'am.

A Good.

Q For the record, can you tell the court reporter your name and spell your last name for the record.

A Christy Ann McGuirt, M-c, capital G-u-i-r-t.

Q Okay. And Mr. Tinsley's house was the house that was robbed where Mr. Dixon got shot; is ---

A Right.

Q --- that correct?

Tell the Court where you live in proximity to Mr. Tinsley's house where Mr. Dixon got shot.

A At the time, directly across the road.

Q Okay. And the man that got shot is Joe Dixon?

A Right.

Q Did you know that man?

A I did.

Q At the time you knew the man?

A Right.

Q I've submitted to the Court that I believe, based on my information, that -- that he was -- I don't know how the -- politically correct to say, but mentally retarded, slow?

A Yeah. He stutters and is kind of crippled. But his mind is fairly well.

1 Q And I believe in the first trial you testified he went
2 as far as the first grade.

3 A I don't remember.

4 Q Prior -- do you remember the day of that -- of that
5 incident?

6 A The date? No.

7 Q No. The day. Around -- do you remember the ---

8 A Oh.

9 Q --- the -- the facts ---

10 A Yeah.

11 Q --- of -- of it?

12 I believe you testified in the first trial that you
13 saw a car going by slowly. Do you remember?

14 A No, sir.

15 Q In the testimony it -- it said you saw an old, green
16 Chevrolet drive past.

17 A No, sir.

18 Q Okay. If I gave you your -- if I gave you your -- let
19 me hand up what you gave -- what you did on the direct and
20 the cross ---

21 A Okay.

22 Q --- if I may. It might refresh you, because it's been
23 a long, long time, like ---

24 A Okay.

25 Q --- been about 19 years. Ma'am, I'm going to give you

1 this one, because I -- I have some markings on this one.
2 I'm just going to give you that one. That's a clean copy.

3 Ms. McGuirt, to -- to -- to facilitate the time here
4 ---

5 A Okay.

6 Q --- can I just direct you to go to page 39?

7 A Okay.

8 Q And on line 13 they asked you what you saw. Can you
9 read to the Court the description of the car you saw go by?
10 Line 13, line 14.

11 A (As read): "The -- this light-green, real faded-out
12 car, old Chevrolet went by. Anyway, I didn't pay attention
13 -- any attention. I went back to the kitchen. And then
14 Joe came in about ten minutes later. And he said he told
15 -- he told me -- he said, 'Christy, there's a car went to
16 Randy and Rhonda Sue's house about ten minutes ago and
17 hasn't come back out.'"

18 Q Thank you. I'll hold you right there.

19 A Okay.

20 Q Now, did you have the opportunity after the shots were
21 fired to see that car again?

22 A I don't remember seeing it go down the road. But I
23 might have. But when I saw the car, I heard the shots and
24 I went -- got my grandchildren in the house. Went and got
25 my phone; I went back out. And that's when I remember

1 seeing the car.

2 Q Okay.

3 A It came around the house to the front doorsteps. And
4 the one that was in the house come down the steps, jumped
5 in the car, and then they came around. And that's when I
6 really remember seeing the car.

7 Q And you -- you saw -- and you saw two white boys in
8 the car?

9 A Uh-huh. As far as I could tell, they were white.

10 Q Okay. And it was a light-green car, correct?

11 A I think so.

12 Q I'll ---

13 A Yes.

14 Q --- direct you to page 42, line 2.

15 A What page?

16 Q Page 42, ma'am, line 2. You testified that the light-
17 green car was coming out around the end of the house from
18 where the carport is.

19 A Uh-huh.

20 Q And I'll -- I'll direct you again to page 45. Tell me
21 when you're on page 45, ma'am.

22 A Okay.

23 Q You -- on line 23 they asked you: "You said the car
24 was faded green car?"

25 And you answered: "Yes, sir."

1 And then they asked you: "Did you also say it was a
2 Chevrolet?"

3 And you answered on the next page: "I'm pretty sure
4 it was a Chevrolet." Correct?

5 A But I wasn't positive.

6 Q And they asked you: "Are you familiar with
7 Chevrolets?"

8 And you said: "Yes, sir."

9 And then they asked you: "Do you have any idea what
10 model it was?"

11 And you answered -- tell the Court what your answer
12 was that day.

13 A "It was a old make."

14 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

15 MR. AXELROD: Your Honor, they're the questions I have
16 for Ms. McGuirt.

17 MR. SCOTT: Nothing from the state, Your Honor.

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

19 (Whereupon, the witness exited the witness stand.)

20 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

21 THE COURT: All right. You may call your next
22 witness.

23 MR. AXELROD: Excuse me, Your Honor?

24 THE COURT: Your next witness.

25 MR. AXELROD: Yes, Your Honor. At this time, Your

1 Honor, I would call A. -- A.H. Walker, Jr.

2 A.H. WALKER, JR., having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. AXELROD:

6 Q Mr. Walker, Jr., can you tell the Court your name and
7 then spell your last name for the court reporter?

8 A A.H. Walker, Jr., W-a-l-k-e-r.

9 Q And, Mr. Walker, you -- did you -- can you tell the
10 Court: Did you testify in the original trial?

11 A Yes.

12 Q Okay. And do you live near Mr. Tinsley's house?

13 A It's about a mile/mile and a half.

14 Q And when the shooting occurred, did Ms. McGuirt call
15 you?

16 A Yes.

17 Q And when she called you, what did you do?

18 A I immediately went down because she said she couldn't
19 find her husband or her father at that time and she needed
20 assistance.

21 Q And in the original trial, they asked you: "Had you
22 seen a green car that day?" Do you remember that?

23 A Yes.

24 Q And what was your answer, if you remember?

25 A It was a slow-moving car. I was in my yard, working.

1 I wasn't very close to the car, but it was a green -- I
2 assumed it was a Chevrolet.

3 Q And ---

4 A And -- and the two occupants were looking toward my
5 house, but I couldn't identify them.

6 Q And in your original testimony, you did say: "I
7 observed a pale-green Chevrolet."

8 A Yes.

9 Q And -- and you -- on -- and on a cross, you once again
10 were asked: "But you could tell it was a light-green
11 Chevrolet?" And you answered: "Yes."

12 A Yes.

13 Q Do you still stand by that testimony today?

14 A Yes.

15 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

16 MR. AXELROD: Your Honor, no further questions for
17 this witness.

18 MR. SCOTT: Nothing from the state, Your Honor.

19 THE COURT: Okay. Thank you, sir.

20 (Whereupon, the witness exited the witness stand.)

21 MR. AXELROD: Your Honor, just so the Court -- well, I
22 -- the -- they're released from my subpoenas, Ms. McGuirt
23 and Mr. Walker. They're welcome to stay, but I -- maybe we
24 can just tell them if they want to leave, they could leave,
25 unless the state wants them for some reason.

1 MR. SCOTT: No objection, Your Honor.

2 MR. AXELROD: You can stay or you can leave. It's
3 your choice, the two of you.

4 Your Honor, at this time I would call Ms. Kimmie
5 Shipes -- Shipes Heaton.

6 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

7 (Whereupon, the witness came forward.)

8 KIMMIE SHIPES HEATON, having been first duly
9 sworn, testified as follows:

10 THE BAILIFF: Watch your step. It's kind of sharp.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. AXELROD:

14 Q Ms. Heaton, can you tell the Court your full name and
15 spell your last name so the court reporter can get that.

16 A Kimmie Shipes Heaton, H-e-a-t-o-n.

17 Q Now, I'm going to take you back to July 22nd, 1994.
18 Do you remember that day?

19 A Yes.

20 Q And if you could -- I don't know how your chair is.
21 But can you get closer to the microphone, or can we pull
22 the microphone closer to you? Let see if I can get just
23 either one. Okay.

24 A Okay.

25 Q Because the acoustics are real bad.

1 On July the 22nd, 1994, did you have the opportunity
2 to see two men at your house?

3 A Yes.

4 Q Were they men you knew?

5 A No.

6 Q Can you tell the Court what happened that morning?

7 A I was asleep.

8 Q You got -- you got to closer to that ---

9 A I was ---

10 Q --- microphone.

11 A --- asleep. And I heard a car pull up in the front
12 yard. And I didn't hear anybody come to the front door.
13 But I could hear someone tapping around the sliding-glass
14 doors. And when I pulled the curtain back, there was a
15 gentleman standing there. And I startled him, and he
16 startled me.

17 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

18 Q Now, did the man ask you anything?

19 A I don't recall exactly. It was a very difficult time.

20 Q In the original trial, you had testified that -- that
21 you had asked -- he had asked if -- if -- if Eddie was
22 there. Does that jog your memory?

23 A No.

24 Q Okay. I'll move on.

25 Now, it bothered you -- would it be fair to say it

1 bothered you that this man was at your house?

2 A Yes.

3 Q Did it bother you enough to call the police?

4 A No.

5 Q Did you call the police?

6 A No. My father did. I -- when my dad got home, I told
7 him about it. And that's when he said we need to call the
8 police.

9 Q And when you called the police, did you make a -- a --
10 a -- a police report?

11 A Yes.

12 Q And based on that police report, did they send down a
13 -- a -- a -- a artist or someone that draws pictures from
14 Columbia?

15 A Yes.

16 Q From SLED, if you remember?

17 A I don't know where they came from.

18 Q Now, I'm going to show you ---

19 MR. AXELROD: (To the court reporter) Can I have the
20 original one? Do I have the exhibit?

21 THE COURT REPORTER: Mr. Axelrod, the only exhibit
22 that I have is ---

23 MR. AXELROD: Okay.

24 THE COURT REPORTER: --- this letter.

25 MR. AXELROD: Well, I'm ---

1 THE COURT REPORTER: I'm not ---

2 MR. AXELROD: --- just ---

3 THE COURT REPORTER: --- sure of ---

4 MR. AXELROD: No. I'm ---

5 THE COURT REPORTER: --- where ---

6 MR. AXELROD: --- just ---

7 THE COURT REPORTER: --- the other ones are.

8 MR. AXELROD: --- looking for the composite photo ---

9 THE COURT REPORTER: But I know that Exhibits ---

10 MR. AXELROD: --- sketch ---

11 THE COURT REPORTER: --- 1 and ---

12 MR. AXELROD: --- Court's 1.

13 THE COURT REPORTER: --- 6 are sketches.

14 MR. AXELROD: Okay.

15 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

16 Q I'm going to show you what's been marked as Court's
17 Exhibit 1.

18 A Okay.

19 Q Is this the composite photo you gave?

20 A Yes.

21 Q Is this the person you saw?

22 A Yes.

23 Q Now, at some point you met Detective Gilliam during
24 the pendency and the investigation of this case. Do you
25 remember that?

1 A Yes.

2 Q It was actually that gentleman right there.

3 A Okay.

4 Q He might look younger then, but it was ten years ago.

5 Did he ever give you pictures to look at for people
6 that might've been suspects?

7 A Yeah.

8 Q And when you were looking at them, how many people did
9 you identify in those group of pictures of -- of who
10 might've been that person?

11 A I don't recall an exact number.

12 Q Was it more than one?

13 A I believe so.

14 Q And when you identified the one person, the first one,
15 did the police officer kind of say, "Maybe you need to look
16 at it again; maybe it's a different person"? Did he
17 suggest that you look at a different photo than the one you
18 picked the first time?

19 A They just wanted me to be absolutely sure.

20 Q Did you have a conversation with my investigator this
21 past week?

22 A Over the phone. Yes.

23 Q And did you tell him that you looked at one photo; and
24 after that photo you looked at, he said, "You need to look
25 at a different one"? Did you ---

1 A Yes.

2 Q --- tell the investigator that?

3 A Yes. They said, "Are you sure? You need to be sure.
4 Are you sure it's not another picture? Are you sure it's
5 this picture?"

6 Q And then you looked at another picture and he said
7 that again, didn't he?

8 A Right.

9 Q So as he whittled away the pictures, you finally
10 picked Picture No. -- Picture No. 1, Gary Lane Prewitt?

11 A I don't recall what number it was.

12 Q But then -- okay. That's fine, though.

13 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

14 Q Now ---

15 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

16 Q I'm going to give you --- I'm going to give you a
17 letter that I believe you wrote on March the 17th, 2011.
18 I'm going to let you read that for a minute to refresh
19 yourself.

20 A Okay.

21 Q Okay. Now -- now, at some point you testified at the
22 trial that the person you described at your back door had
23 read hair?

24 A Yes.

25 Q Did Mr. Gary Lane Prewitt have red hair, what's left

1 of it?

2 A No.

3 Q And in that letter that -- that you -- that you did,
4 it -- you -- you -- you wrote in this letter that at this
5 time, you would not be able to testify to the same set of
6 facts as you did at the original trial.

7 A Correct.

8 Q And I know you have some medical issues. And you're
9 on medication now?

10 A Correct.

11 Q And at the time of your testimony, you were not on
12 medication, were you?

13 A Correct.

14 (Whereupon, Mr. Axelrod conferred with the court
15 reporter.)

16 (Whereupon, Court's Exhibit 10 was marked for
17 identification.)

18 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

19 Q At the time of the incident back in '94, you were
20 supposed to be on medication, though, weren't you?

21 A Yes. In 1991 through '93, I was institutionalized at
22 a mental health facility for hallucinations and hearing
23 voices. And I dropped out of treatment in 1993 and refused
24 medication. And that's the problems I was having.

25 Q And at some point did you feel pressure from the

1 police and your family to ---

2 A I felt pressure from everyone, because someone in the
3 community that I grew up in had been harmed. And they
4 wanted someone to answer for that. And I wanted to please
5 everyone. Because I had so many problems and I was such a
6 troubled individual, I wanted to make everybody happy.

7 Q I understand. And, in fact -- in fact, I have a
8 letter from your doctor, Dr. Morgan. And he says, in short
9 ---

10 MR. SCOTT: Objection to hearsay, Your Honor.

11 THE COURT: What ---

12 Q Was doctor ---

13 THE COURT: What -- what do you have?

14 MR. AXELROD: I have ---

15 THE COURT: I didn't hear what you said you have.

16 MR. AXELROD: I have a letter from Dr. Morgan, her
17 psychiatrist, I believe her -- her treating doctor. In --
18 in the letter he states that her contact with reality was
19 frail at the time she was not on medication.

20 THE COURT: All right. And you object to the letter
21 being admitted or what?

22 MR. SCOTT: Your Honor, the -- the letter itself, the
23 underlying statements that Mr. Axelrod is reading, this is
24 a letter from a doctor who presumably could've been
25 subpoenaed to be here today to testify to this; foundation.

1 Those are my two objection, Your Honor.

2 THE COURT: All right. How about that?

3 MR. AXELROD: Your -- Your Honor, if the solicitor
4 wanted to have a full-blown trial today, I would more than
5 welcome to have it today for the neutral -- for -- that we
6 try the whole case. I realize this is a hearing. I
7 understand the Court has some -- you know, some parameters
8 to try to keep me -- and I'm -- I'm going as fast as I
9 could.

10 If I was to have -- if -- if the solicitor -- if the
11 solicitor wants me to bring everybody for it, I'll bring
12 everybody. But I think, for the purposes of this hearing,
13 to establish enough information to pass the *Spann* factors,
14 the -- the five factors of *Spann*, I think I'm okay to do
15 that. I think this is admissible.

16 This, I believe -- and I'm not sure. I believe this
17 was used in the PCR.

18 MR. CALDER: Also, we'd cite that this is business-
19 records exception, in my opinion, as Dr. Morgan wrote this
20 letter on behalf of giving treatment to Kimmie Heaton. And
21 presumably, letters such as these are written in the
22 ordinary course of his business as a psychiatrist.

23 THE COURT: I'll admit the document over objection.
24 And, of course, this has already been submitted to the
25 Court in advance of the trial anyway by way of e-mail.

1 MR. AXELROD: Yes, it was. The package was sent to
2 the solicitor and -- and to the Court. And I would move it
3 as Court's 11, Your Honor.

4 THE COURT: All right. It's admitted.

5 (Whereupon, Court's Exhibit 11 was marked for
6 identification.)

7 Q Ma'am, a couple years after -- this might be a sad
8 subject and a sore subject, but I got to go into it. A
9 couple years after Gary Lane Prewitt was convicted, would
10 it be fair to say that your husband had been killed?

11 A Yes.

12 Q And, in fact, you had spoke, I think, with the
13 newspapers at least and said that Mr. Prewitt must've
14 ordered the hit from prison?

15 A No. A family member had said that because they were
16 grasping at straws.

17 Q Okay.

18 A They were looking for a reason, for someone to blame.
19 And they chose him at the time, which is unfortunate.
20 Apologize for that, from my family.

21 Q Okay. And, in fact, that's why you're in jail now?

22 A Correct.

23 Q And you're serving a 50-year sentence?

24 A Correct.

25 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

1 MR. AXELROD: That'd be it, Your Honor.

2 THE COURT: Mr. Scott?

3 CROSS-EXAMINATION

4 BY MR. SCOTT:

5 Q Ms. -- or Ms. Heaton ---

6 A Uh-huh.

7 Q --- you testified in the initial trial of Mr. Prewitt?

8 A Yes.

9 Q So you were determined to be competent witness who was
10 able to testify at trial?

11 A Yes.

12 Q And did you tell anybody you were suffering from these
13 mental issues?

14 A No. But I would think, as a prosecutor or the state
15 or whomever, if they were going to have a witness pinpoint
16 someone in the middle of a courtroom when their life
17 depends on it, they would want to know the credibility of
18 that witness's mental stability. And it's well known in
19 the community that there were issues going on in my family
20 with my mother leaving, all kinds of things that were
21 happening. So if they would've taken a moment just to
22 investigate or just to ask even my father, they would've
23 known.

24 Q That you would've been incompetent to testify?

25 A Correct.

1 Q Now, you went to police about this man who was at your
2 back door?

3 A I was barely 16 years old. My father took me to the
4 police.

5 Q Now, this was '94, so you would've been 18, correct?

6 A In '94?

7 Q Yes, ma'am.

8 A No. I didn't turn 19 until about '95. I think -- I
9 was born in '77.

10 MR. AXELROD: Beg the Court's indulgence. I
11 apologize.

12 THE COURT: (To the witness) What -- what's your date
13 of birth?

14 THE WITNESS: 1/20/77.

15 THE COURT: 1/27 ---

16 THE WITNESS: --- 7 -- 77.

17 THE COURT: 77?

18 THE WITNESS: Yes, sir.

19 MR. SCOTT: I'll -- I'll move on, Your Honor.

20 Q But you're testifying today that you were 16 at the
21 time of this?

22 A Correct.

23 Q And you were born in 1977?

24 A Yeah.

25 Q And the trial occurred in '95?

1 A I -- I'm assuming. I don't know. But it happened ---

2 MR. AXELROD: Your ---

3 A --- in '90 ---

4 MR. AXELROD: --- Your Honor, to help the state, I
5 believe her birthday is January the 20th; the trial
6 occurred the next day. (To the witness) Is your birthday
7 the 20th or the 19th?

8 THE WITNESS: Twentieth.

9 MR. AXELROD: Twentieth. The -- the trial occurred
10 the next day. And on the trial transcript, they asked her
11 old she was. She gave the newer age because her birthday
12 was 24 hours away.

13 THE WITNESS: Correct.

14 Q Okay. Now, you -- you gave the sketch that we talked
15 about earlier.

16 A Yes, sir.

17 Q And you mentioned that person you saw at your back
18 door had his hands in his pockets?

19 A He put his hands in his pockets. Yes.

20 Q Okay. And you saw another male in the green car?

21 A I saw the top of a head running off of our back deck
22 around to the side of our house.

23 Q Okay. And do you recall testifying that the person
24 you saw at your back door was five-two or five-three?

25 A No.

1 Q Did the defense give you a copy of your transcript up
2 there?

3 A No.

4 Q Would it surprise you if I told you, you had testified
5 that he was maybe five-two or five-three?

6 A No, it wouldn't surprise me. I was a very mentally
7 ill young lady. He could've been ---

8 Q I ---

9 A --- eight ---

10 Q --- I know ---

11 A --- feet ---

12 Q --- you want ---

13 A --- tall.

14 Q --- to keep ---

15 MR. AXELROD: Your Honor, I would ask that he asked
16 the question, that she be allowed to fully finish her
17 answer.

18 MR. SCOTT: It's not responsive.

19 THE WITNESS: I'm sorry. I don't know the difference
20 between nonresponsive and responsive questions.

21 MR. AXELROD: Your Honor, I -- I would have to just
22 put my little cents here, that he asked a question: "Would
23 it surprise you that you said he was five-two or five-
24 three?" And at that point the witness stated that she
25 wasn't feeling well. She -- and -- and I think -- I think

1 that can go to the reason for the question that the
2 solicitor asked. So I think her answer is responsive.

3 THE COURT: (To the witness) Are you through
4 answering the question?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Next question.

7 MR. SCOTT: All right.

8 Q You said his hair looked very light because of the way
9 the sun was shining on him from that side. Do you remember
10 that?

11 A No.

12 Q You -- you recall the sun shining on the person you
13 saw ---

14 A I do ---

15 Q --- at the back ---

16 A --- recall the sun shining.

17 Q And you said it made him appear pale and made his hair
18 appear to look red?

19 A Yes.

20 Q The letter that you -- I think you have a copy of it
21 up there.

22 A No, sir.

23 Q No? I'm sorry.

24 THE COURT: The medical record?

25 MR. SCOTT: I'm sorry, Your Honor?

1 THE COURT: Which -- which letter you looking for?

2 MR. SCOTT: Oh. I thought they introduced the letter
3 she had written.

4 MR. CALDER: It's up there.

5 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

6 MR. SCOTT: Your Honor, it's the -- Court's Exhibit
7 No. 10.

8 THE COURT: I haven't seen ---

9 THE WITNESS: Thank you.

10 THE COURT: --- Court's Exhibit No. 10. Is it
11 introduced or just ---

12 MR. AXELROD: I'm sorry.

13 MR. SCOTT: Did you introduce this?

14 MR. AXELROD: The -- it's the -- if it says a court
15 exhibit on it, it's been introduced.

16 THE COURT: Any objection to it? I don't -- I don't
17 recall any reference ever being made to a letter that she
18 wrote.

19 MR. SCOTT: I don't, Your Honor. I -- I -- to be
20 honest, I don't object to this.

21 THE COURT: All right.

22 MR. SCOTT: And I'll -- I'll give it to Your Honor.

23 THE COURT: All right. Thank you. Yes, sir.

24 MR. AXELROD: I believe I entered a -- her letter as
25 Court's 11.

1 THE COURT: I don't recall any reference ---

2 MR. AXELROD: Oh.

3 THE COURT: --- to ---

4 MR. AXELROD: Ten. Court ---

5 THE COURT: --- to a letter by her during any ---

6 MR. AXELROD: Court ---

7 THE COURT: --- testimony.

8 MR. AXELROD: Court's 10. We ---

9 THE COURT: All right.

10 MR. AXELROD: --- entered ---

11 THE COURT: It -- it's in evidence. He's cross-
12 examining her concerning it. You may proceed.

13 Q Do you recall writing this letter?

14 A Yes, sir.

15 Q I believe it's March of 2011. How'd you come to write
16 that letter?

17 A Mr. Skidmore, the investigator, came to see me at the
18 prison and asked me if I remembered the situation. And I
19 told him that I did; I had some sketchy memories about it.
20 I'm not totally clear on my memories.

21 Q Why do you think you wrote that letter so many years
22 later?

23 A Because I was a sick person back then. And being on
24 the correct medication now and doing what I'm supposed to,
25 I realize that I made a lot of assumptions based on

1 different things.

2 Q And the investigator -- is he the man looking at me,
3 wearing the glasses?

4 A Yes, sir. Mr. Skidmore.

5 Q And he paid you a visit to the prison?

6 A Yes, sir.

7 Q You get a lot of visitors?

8 A Yes, sir.

9 Q And you're serving 50 years?

10 A Yes, sir.

11 Q Did they ask you to write that letter for him?

12 A He asked me would I make a statement, and I told him
13 that I would. He left it totally up to me.

14 Q Now, you mentioned a newspaper article or -- or Mr.
15 Axelrod mentioned a newspaper article. At this time I -- I
16 see you're 18 or 17, going ---

17 A Uh-huh.

18 Q --- on 18 ---

19 A Uh-huh.

20 Q --- you're working at Ingles in ---

21 A Uh-huh.

22 Q --- Laurens County ---

23 A Right.

24 Q --- correct?

25 A Correct.

1 Q And at some point Mr. Prewitt's mother and sister came
2 to visit you, correct?

3 A Yes.

4 Q And perhaps they're in this courtroom somewhere out
5 here. And you reported to police that they were harassing
6 you, correct?

7 A Correct.

8 Q Okay. So you were frightened during this trial of Mr.
9 Prewitt?

10 A Yeah. I was mentally unstable. I was frightened of
11 the air I breathe, much less people.

12 Q Okay. And you still have any fears of him at all?

13 A No, sir.

14 Q You've come to grips with it; you no longer have any
15 fear at all of Mr. Prewitt?

16 A No, sir.

17 Q Thank you.

18 MR. SCOTT: Nothing further, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. AXELROD:

21 Q Ma'am, you testified in the first trial that it was
22 Gary Lane Prewitt that you saw.

23 A Yes, I did.

24 Q If this was a new trial today and I asked you a
25 question, "Was Gary Lane Prewitt the man you saw?" what

1 would your answer be?

2 A I would have to say no.

3 MR. AXELROD: Nothing further.

4 THE COURT: Anything else?

5 MR. SCOTT: Briefly, Your Honor.

6 THE COURT: Yes, sir.

7 RE CROSS-EXAMINATION

8 BY MR. SCOTT:

9 Q But this trial, which was conducted a year after the
10 incident -- matter of fact, you picked him out in the
11 courtroom, correct?

12 A Correct.

13 Q And you also picked him prior to that in a photo
14 lineup, correct?

15 A Correct.

16 Q Thank you.

17 MR. AXELROD: One question, Your Honor.

18 THE COURT: No, sir. You only get two shots at asking
19 questions. (To the witness) You may step down, ma'am.

20 THE WITNESS: Thank you.

21 THE BAILIFF: Watch your step. They're real short.

22 (Whereupon, the witness exited the witness stand.)

23 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

24 MR. AXELROD: Your Honor, I -- I would release the
25 witness from my subpoena.

1 THE COURT: All right. Every witness is released once
2 they step down, unless they've been subpoenaed by the other
3 side.

4 MR. AXELROD: Your Honor, at this time I would call
5 Randy Tinsley.

6 (Off the record from 3:26 p.m. until 3:32 p.m.)

7 (Whereupon, the witness came forward.)

8 THE COURT: You can swear the witness.

9 RANDY TINSLEY, having been first duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. AXELROD:

13 Q Mr. Tinsley, for the Court, can you -- can you tell
14 the Court your name -- full name and then spell your last
15 name?

16 A Randy Tinsley, T-i-n-s-l-e-y.

17 Q On July 22nd, 1994, was it your house that got
18 burglarized?

19 A Yes, sir.

20 Q Was it your house that -- where Joe Dixon got shot at?

21 A Yes, sir.

22 Q And they founds guns and stuff in the kitchen and, I
23 think, some fishing rods. Is that where you had left them,
24 or had they moved by the people that might have been in
25 your house?

1 A They had been moved by whoever was in the house ---

2 Q And were ---

3 A --- to that ---

4 Q --- there some other items that have actually been
5 stolen from your home: some money or coins or ---

6 A Yes, sir.

7 Q Okay. Okay. Now, I'd like to show you what's been
8 marked as Court's Exhibit 1, the composite.

9 MR. AXELROD: I have it, Judge.

10 Q It's been marked as Court's Exhibit 1. Before the
11 trial or any investigation, did they ever show you that --
12 anybody ever show you that picture?

13 A No, sir.

14 Q And, in fact, did you -- I'm going to let you read
15 this. This is a letter you wrote August the 18th, 2011.
16 I'm going to let you refresh your memory. Okay.

17 MR. AXELROD: And I'd like to mark this.

18 (Whereupon, Court's Exhibit 12 was marked for
19 identification.)

20 Q And it would be fair to say, Court's Exhibit No. 12,
21 that you had never been shown a composite photo?

22 A Yes, sir. True.

23 Q And could one characterize Joe Dixon as retarded?

24 A Like Christy said, he's got a good mind. He just
25 stuttered real bad. And if you didn't know him, you would

1 think, you know, he was retarded.

2 Q But he did go through the first grade?

3 A I -- I have no clue. He was a lot older than I am.

4 Q I want to show you -- it's something that you wrote on
5 July the 1st, 2011. I believe this was also given to
6 Skidmore's investigators.

7 A Yep. That's my handwriting.

8 Q Now, just to -- a little housekeeping: Court's
9 Exhibit 12, Skidmore investigators signed it with you on
10 August the 18th?

11 A Yeah. She came to my home.

12 Q Okay. Now, on July the 1st, 2011, you told the
13 investigator that the first time -- July the 1st was the
14 first time you saw the composite photo.

15 A Yeah. That was the first time I had ever seen it.

16 Q If you know, to the best of your ability, who is this
17 person in the composite photo that you were never shown
18 until July the 1st, 2011?

19 A Back in the early '90s when my home was broke into, I
20 did not know that guy.

21 Q Do you know that guy now?

22 A I know him now.

23 Q Who is it now?

24 A It looks like Mike Bostic.

25 Q Write your name on this piece of paper that you

1 identify him as Mike Bostic. I'll get a pen for you.

2 A All right. What you want wrote on it?

3 Q That you identify that as Mike Bostic. Put today's
4 date: March the 12th, 2013.

5 A (Complied.)

6 Q March the 12th, 2013.

7 A (Complied.)

8 MR. AXELROD: I'd like to mark this as exhibit ---
9 (Whereupon, Court's Exhibit 13 was marked for
10 identification.)

11 MR. AXELROD: --- marked as Exhibit -- Court's Exhibit
12 13. I'd like to enter it into evidence.

13 THE COURT: Says the state?

14 MR. SCOTT: What document is that? I have not been
15 shown ---

16 MR. AXELROD: I'll show it to you.

17 MR. SCOTT: No -- no objection, Your Honor.

18 MR. AXELROD: And the ---

19 THE COURT: Without ---

20 MR. AXELROD: --- second page.

21 THE COURT: --- objection, it's in.

22 Q At the time of the robbery and at the time of the
23 trial, did you know Mike Bostic?

24 A No, sir.

25 Q But you know him now?

1 A Yes, sir.

2 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

3 MR. AXELROD: No further.

4 MR. SCOTT: Briefly.

5 CROSS-EXAMINATION

6 BY MR. SCOTT:

7 Q Mr. Tinsley, it -- it was your house that was broken
8 into in '94?

9 A Yes, sir.

10 Q And you were not home at the time?

11 A No, sir. I was working.

12 Q You did not see who broke into your house?

13 A No, sir.

14 Q You did not see the two white men that was testified
15 to at the trial in -- in your house?

16 A No, sir.

17 Q You did not see the man shoot Joe Dixon?

18 A No, sir.

19 Q And that sketch, the first time you saw that was 2011?

20 A Yes, sir.

21 Q And that's when the -- Skidmore came to your home and
22 showed it to you?

23 A Yes, sir.

24 Q And what did he say about Mike Bostic?

25 A He just asked me -- it wasn't him. It was the lady

1 sitting there.

2 Q What did she say about Mike ---

3 A She asked ---

4 Q --- Bostic?

5 A --- me did I know who that sketch looked like. And I
6 told her yeah; it looked like Mike Bostic to me.

7 Q Now, when did you meet Mike Bostic?

8 A I didn't meet him until probably around '98 --
9 '97/'98.

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

11 THE COURT: Sure.

12 Q And I just want to see what -- did -- what you wrote
13 on the back here. Oh, where was the exhibit? This is
14 Court's No. 13. You wrote: "Looks like Mike Bostic to
15 me."

16 A Yep.

17 Q Okay. But again, you -- you did not see the two
18 individuals who broke into your home, correct?

19 A Correct.

20 Q Thank you.

21 MR. SCOTT: Nothing further.

22 MR. AXELROD: One -- I have a question, Your Honor.

23 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

24 MR. SCOTT: Objection to anything beyond cross, Your
25 Honor.

1 MR. AXELROD: Court's 2, Your Honor, the photo.

2 REDIRECT EXAMINATION

3 BY MR. AXELROD:

4 Q Does that look like Mike Bostic, Court's Exhibit 2?

5 A Yeah. That looks like him there.

6 Q If we were in a trial today and -- and I showed you
7 the composite photo and I would show you this picture of
8 what you say to be Mike Bostic, are they one and the same?

9 A Yes, sir.

10 Q Kind of scary, huh?

11 A (No audible response.)

12 Q Need an answer for the record.

13 A Yes, sir.

14 Q Thank you.

15 MR. AXELROD: That's all, Your Honor.

16 MR. SCOTT: Nothing from the state, Your Honor.

17 THE COURT: All right.

18 THE BAILIFF: Watch your step.

19 (Whereupon, the witness exited the witness stand.)

20 THE BAILIFF: Thank you.

21 MR. AXELROD: Release Mr. Tinsley.

22 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

23 MR. AXELROD: Call Sandy Wicker.

24 (Whereupon, the witness came forward.)

25 SANDY WICKER, having been first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. AXELROD:

4 Q Ms. Wicker, if you may, tell the Court your name and
5 spell your last name so the court reporter gets it
6 correctly.

7 A Okay. Sandy Gillam Wicker, W-i-c-k-e-r.

8 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

9 Q Ms. Wicker, I'm going to hand up something that was, I
10 think, a letter you wrote August of -- August 18th, 2011.
11 I'm going to let you look at that. Tell me if -- if that's
12 your letter.

13 A Yes.

14 Q And -- and in this letter -- I'm going to read it.
15 Tell me this is true. You wrote this: "I, Sandy Wicker,
16 was shown the sketch of this individual." Was this the
17 sketch?

18 A Yes.

19 Q Court Exhibit 1, the -- the composite photo of a man
20 wearing a Redskins hat?

21 A Yes.

22 Q And you wrote: "I, Sandy Wicker, was shown that
23 sketch of that individual for the very first time in July
24 of 2011."

25 A Yes.

1 Q Is that true?

2 And then, you wrote: "As a former resident of
3 Whitmire, South Carolina, I can have confidence in
4 identifying the individual in this sketch as Mike Bostic."

5 A Yes.

6 Q Mike Bostic ---

7 A Yes, sir.

8 Q --- Court's Exhibit 1?

9 Court's Exhibit 2?

10 A Yes, sir.

11 MR. AXELROD: I'd like to have this marked.

12 (Whereupon, Court's Exhibit 14 was marked for
13 identification.)

14 MR. AXELROD: Marked as Court's Exhibit 14; I would
15 move into evidence.

16 MR. SCOTT: Again, I ---

17 MR. AXELROD: I'll let you look ---

18 MR. SCOTT: --- I ---

19 MR. AXELROD: --- at it.

20 MR. SCOTT: --- haven't seen -- is it the letter -- no
21 objection, Your Honor.

22 THE COURT: It's admitted.

23 Q Ma'am, if we had a trial today and we're in a
24 courtroom having a trial and I showed you these photos,
25 under oath would you say that these were Mike Bostic?

1 A Yes, sir.

2 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

3 Q Thank you. Answer any questions that the state might
4 have, ma'am.

5 MR. SCOTT: Just briefly.

6 CROSS-EXAMINATION

7 BY MR. SCOTT:

8 Q You were in no way involved with this case, the
9 original trial in 1995, were you?

10 A No, sir.

11 Q In fact, you were never called to testify?

12 A No, sir.

13 Q You never witnessed anyone at the home of Randy
14 Tinsley, did you?

15 A No, sir.

16 Q Just for my curiosity, how did you become involved
17 with this case?

18 A I was shown that photograph back in July.

19 Q Okay. Thank you.

20 MR. SCOTT: Nothing further, Your Honor.

21 THE COURT: Ma'am, who is Mike Bostic?

22 THE WITNESS: Just a guy -- a younger guy I went to
23 school with ---

24 THE COURT: In ---

25 THE WITNESS: --- up in Whitmire.

1 THE COURT: In Whitmire?

2 THE WITNESS: Uh-huh.

3 THE COURT: And where is Mike Bostic?

4 THE WITNESS: I think he resides in Lexington now.

5 THE COURT: Okay. Any further questions?

6 MR. AXELROD: Your Honor, I'll -- I'll ask her one
7 more question.

8 THE WITNESS: Okay.

9 REDIRECT EXAMINATION

10 BY MR. AXELROD:

11 Q When you say he resides in Lexington, he's not in
12 jail, is he?

13 A No, sir.

14 Q Thank you.

15 THE COURT: Anything further, Mr. ---

16 MR. SCOTT: Nothing from the ---

17 THE COURT: All right.

18 MR. SCOTT: --- state, Your Honor.

19 (Whereupon, the witness exited the witness stand.)

20 THE COURT: Next witness.

21 MR. AXELROD: Your Honor, at this time I would call
22 Nichole Edwards.

23 (Whereupon, the witness came forward.)

24 NICHOLE EDWARDS, having been first duly sworn,
25 testified as follows:

DIRECT EXAMINATION

BY MR. AXELROD:

Q Ms. Edwards, can you tell the Court your full name and spell your last name for the court reporter.

A Nichole Edwards, E-d-w-a-r-d-s.

MR. AXELROD: Judge, do I have some exhibits lower than No. 10 that were written? Because this one here -- that's one. I might have more. I'm not sure. Can I see those two? Yes. Thank you.

Q Ma'am, when you worked for Skidmore and Associates, what was your job? What -- what was your profession?

A Private investigator.

Q And how did you come to be a private investigator?

A I started as administrative assistant and assisted him in different cases.

Q And approximately what year was that, if you remember?

A I began in 2009, I believe.

Q And you worked for Mr. Skidmore?

A Yes.

Q And you know how long he's been an investigator, possibly?

A Several years, about 20 years.

Q Okay. Can you tell the Court: Did you go to school for it or -- or did Mr. Skidmore teach you? I mean, how did you learn to become a private investigator?

1 A Initially, I would assist him just in presentations on
2 different various cases he was working, as far as criminal.
3 I started going with him actually just to take notes on
4 certain things and then began to do it by myself.

5 Q Okay. And I'm going to show you what's been marked as
6 Court -- let me ask you this: If you were to -- let's say
7 you were to take something to somebody, let's just say even
8 a photograph. If you took a photograph to somebody, would
9 you say, "Does this look like this -- does it look like so-
10 and-so?" Or would you say -- let me do -- let me withdraw
11 that question.

12 I'm going to ask you a scenario. I'd just like you --
13 I'll give you two -- two hypotheticals and just tell me how
14 you would do it. If -- if you were to take a picture to
15 someone as an example -- say, you were to take a -- a
16 composite photo to somebody and you showed it to them.
17 Would you say, (A), "Who does this look like?" or (B),
18 "Doesn't that look like Joe Smith?" as an example. What
19 would you do?

20 A It would be "Who does this look like?"

21 Q And -- and is that because of your investigative
22 training from Mr. Pete Skidmore and Associates?

23 A Yes.

24 Q What did he teach you in that kind of -- in that kind
25 of arena?

1 A Not to lead anyone to any assumption.

2 Q Okay. So on October 31st, Halloween, you went to see
3 Mr. Eubanks. I'm going to let you look at that. Tell me
4 if that's your signature and Mr. Eubanks'.

5 A It is.

6 Q And did he basically -- what did he tell you that the
7 letter he had written before was truthful?

8 A It's O'Shields.

9 Q O'Shields.

10 A Uh-huh. Yes.

11 Q And on Halloween, October 31st, 2011, did you meet
12 with Mr. O'Shields again? It might've been the same day.
13 Was it the same day?

14 A It was the same day.

15 Q And did he talk about a car that Mike Bostic had, a
16 late-model Chevrolet, old car, maybe green in color, like
17 blue-green?

18 A Yes, he did.

19 Q And did you tell him what color car it was, or did you
20 ask him what color car it was?

21 A I asked him.

22 Q And that was his answer?

23 A Yes.

24 Q I'm going to show you -- I'm going to show you what's
25 been marked as Court's 10. It's -- it's a letter from Ms.

1 Kimmie Shipes-Heaton. Can you just read that? Just read
2 the letter, and then I'm going to ask you a question on the
3 letter.

4 A (As read): "During the trial period of Gary Lane
5 Prewitt" ---

6 Q No, no ---

7 A --- "I" ---

8 Q --- no. Just -- no. Just read it to yourself. I'm
9 ---

10 A Oh.

11 Q --- I'm sorry. I'm sorry. Read it to yourself to
12 refresh your memory, and then I'll ask you a question. F
13 And, I guess, did you have a conversation with her
14 before this letter was written?

15 A We did. We both met with her.

16 Q And did you ask her to memorialize this conversation
17 that you had into a letter?

18 A Yes.

19 Q And is this the product of that memorialization of the
20 conversation ---

21 A Yes, it is.

22 Q --- that occurred on March the 17th, 2011?

23 A Yes, it is.

24 Q Almost a year ago.

25 A (Nodded head up and down.)

1 Q And did she tell you -- what did she tell you? Did
2 she tell you -- did she tell you that she could not
3 identify Mr. Prewitt today?

4 A She did. She said that she would not be able to
5 identify him as she did before.

6 Q Because she -- did she tell you why?

7 A She did. Just that at that point in her life, she was
8 going through a type of turmoil, almost.

9 Q And now?

10 A Now she feels that she's in a more clear space and she
11 would not be able to identify the same way.

12 Q And then, I'm going to show you what's been marked at
13 Court's 12. I'd like you look at it. And after you look
14 at it, tell me if -- if you were the person that
15 facilitated this letter being writed -- written?

16 A I was.

17 Q Okay. And was it written on August the 18th, 2011?

18 A Yes.

19 Q And it's -- Mr. Tinsley wrote that he was never shown
20 the composite photo at the time of the robbery.

21 A That is correct.

22 Q Now, I'm going to ask you a question, just because
23 you're an investigator -- you're a trained investigator.

24 Do you think that a composite photo that -- that was --
25 whether he could identify it or not, do you think a

1 composite photo should've been shown to the victim in this
2 crime of the house that was burglarized and stuff stolen at
3 -- you think he should've been shown that composite photo?

4 A I would assume that would definitely be protocol.

5 Q Would that be good investigation?

6 A I would assume so. Yes.

7 Q So would it be fair to say this was poor
8 investigation?

9 A Yes.

10 Q Okay. I'm going to show you what's been marked as
11 Court's No. 14. I'll let you read that. Well, let me --
12 let me pull back. I'm sorry. Let me go the 13. We'll go
13 in order -- Court's 13. Were you -- did you have a chance
14 to meet with Mr. Tinsley?

15 A Yes.

16 Q And was that August the 13th, 2011?

17 A Yes.

18 Q And did you happen to show him the composite photo?

19 A I did.

20 Q And what -- did he tell you that was the first time he
21 saw that composite photo?

22 A It was July 1st that he -- was the first time.

23 Q And did he tell you who it looked like?

24 A He did.

25 Q And who'd he tell you it looked like?

1 A Mike Bostic.

2 Q You're a trained investigator?

3 A Yes.

4 Q You've heard Mike Bostic's name come from several
5 different places, haven't you?

6 A I have.

7 Q As a trained investigator, you think there's a
8 possibility that maybe Mike Bostic could've been the
9 perpetrator of this crime?

10 A I believe there is.

11 Q Who is now walking the streets of Lexington, South
12 Carolina, a free man?

13 A Right.

14 Q I'm going to hand up what's been -- 14. It's Court's
15 14. Is that a letter that you facilitated with Sandy
16 Wicker on August -- on August the 13th, 2011?

17 A Yes, it is.

18 Q And in -- in that does she tell you that -- did you
19 show her the composite photo?

20 A I did.

21 Q And did you tell her that, "This composite photo is
22 Mr. Smith. Do you recognize him?" Did you tell her that
23 -- did you tell her that?

24 A I did not.

25 Q What did you tell her? Tell the Court exactly what

1 you told her.

2 A I asked her if she recognized the individual, if she'd
3 ever seen him before.

4 Q And her answer?

5 A She said that she had.

6 Q And that person?

7 A Was Mike Bostic.

8 Q Thank you.

9 MR. AXELROD: That's it. Nothing further.

10 THE COURT: Mr. Scott?

11 CROSS-EXAMINATION

12 BY MR. SCOTT:

13 Q Did you go to the criminal justice academy?

14 A I did not.

15 Q Are you licensed by SLED?

16 A Yes.

17 Q And your training is sort of as an apprentice to Mr.
18 Skidmore?

19 A Yes, sir.

20 Q And do you work often with Mr. Axelrod?

21 A I'm sorry?

22 Q Do you work often with Mr. Axelrod?

23 A Yes.

24 Q And -- and he hires you to investigate ---

25 A Yes.

1 Q --- certain clients he's representing?

2 What law enforcement experience do you have?

3 A I do not.

4 Q But do you feel comfortable categorizing the Newberry
5 sheriff's investigation as poor?

6 A I do.

7 Q And were you involved in the initial investigation 20
8 years ago?

9 A No, I was not.

10 Q And you were paid by Mr. Axelrod to come on some two
11 years ago to begin investigating?

12 A Yes.

13 Q And just for my edification, how did you -- I -- I
14 still don't understand. How did you come to speak with Mr.
15 -- Ms. Wicker, Sandy Wicker? What does she have to do with
16 this case?

17 A She was actually with Mr. Tinsley when they were shown
18 the photograph. They were shown the photograph at the same
19 time.

20 Q Okay. But she had no other relation to the -- the
21 case we're here on a hearing for today, did she?

22 A No.

23 Q Thank you.

24 MR. SCOTT: Nothing further.

25 MR. AXELROD: Let me ask you something.

1 THE COURT: Let me -- before you do, was it
2 orchestrated by you all for her to be with Mr. Tinsley or
3 did she -- Mr. Tinsley bring her -- Ms. Wicker?

4 THE WITNESS: I went to meet with both of them after
5 the statement was made by the two of them ---

6 THE COURT: What ---

7 THE WITNESS: --- that they identified it.

8 THE COURT: And how did you first make contact with
9 Ms. Wicker?

10 THE WITNESS: She was at the residence of Mr. Tinley
11 [sic] or shared residence when I arrived.

12 THE COURT: So it was -- was it happenstance that she
13 was there at the time or -- or was -- were -- were you
14 expecting her to be there when you went there?

15 THE WITNESS: I was aware that they had both
16 identified the subject in the photo as Mike Bostic.

17 THE COURT: And how was that -- how did you become
18 aware of that?

19 THE WITNESS: I was told by Mr. Prewitt's mother.

20 THE COURT: Okay. All right. Go ahead, Mr. ---

21 MR. AXELROD: Thank you, Judge.

22 REDIRECT EXAMINATION

23 BY MR. AXELROD:

24 Q Have I ever met you before today?

25 A Once.

1 Q When?

2 A Probably about 2 1/2 years ago.

3 Q I never hired you for this case, did I?

4 A Not this in particular.

5 Q And -- and I didn't pay you?

6 A No.

7 Q You got paid by Mr. Skidmore?

8 A Right.

9 Q And, in fact, when you interviewed these people, I
10 don't even think I was on the case yet, was I?

11 A No.

12 Q So when you said you do a lot of work for me, are you
13 referring to Skidmore and Associates?

14 A Yes.

15 Q Not just -- just you?

16 A Right.

17 MR. AXELROD: That's all, Judge. Thank you.

18 THE COURT: Anything further?

19 MR. SCOTT: Your Honor, just briefly.

20 RECROSS-EXAMINATION

21 BY MR. SCOTT:

22 Q So these folks have been told about Mike Bostic before
23 you go to them?

24 A They had not been told about Mike Bostic. They have
25 been shown the photograph in which they identify Mike ---

1 Q A yearbook ---

2 A --- Bostic.

3 Q --- photo?

4 A No. It was the composite sketch that was drawn.

5 Q And the defendant's mother was showing it to them?

6 A It was -- yes.

7 Q Okay. Thank you.

8 THE BAILIFF: Watch your step. They're real short.

9 Thank you.

10 (Whereupon, the witness exited the witness stand.)

11 THE COURT: Next witness.

12 MR. AXELROD: Your Honor, at this time we would call
13 Peter Skidmore, Sr., please.

14 THE COURT: Mr. Skidmore?

15 PETER SKIDMORE, having been first duly sworn,
16 testified as follows:

17 (Off the record briefly.)

18 DIRECT EXAMINATION

19 BY MR. AXELROD:

20 Q Mr. Skidmore, can you please tell the Court your full
21 name and spell your last name for the court reporter.

22 A Peter Gordon Skidmore, S-k-i-d-m-o-r-e.

23 Q Thank you, sir.

24 MR. AXELROD: Court's indulgence one second, Your
25 Honor.

1 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

2 Q Mr. Skidmore, how old are you?

3 A Fifty-one.

4 Q And what do you do for a living?

5 A I'm a licensed private investigator through SLED and
6 through North Carolina.

7 Q And tell the Court -- let's do a little curriculum
8 vitae. When did you first start being an investigator?

9 A Twenty years ago.

10 Q Okay. And who'd you work for?

11 A Myself.

12 Q You've been self-employed for 20 years?

13 A Yes, sir.

14 Q And can you tell the Court -- let's -- let's give the
15 Court a little bit of a -- a flavor of -- tell the Court
16 what type of cases that you're hired for.

17 A Usually, violent crime; murder investigations for the
18 defense; death penalty work; PCR work; newly-discovered-
19 evidence work.

20 Q Let me ask you this question: Have you been on death
21 penalties?

22 A Yes.

23 Q How many death penalties?

24 A In excess of probably 30.

25 Q Murder trials?

1 A A hundred-plus.

2 Q Were you on Sterling Spann's trial?

3 A Yes. Not his trial; newly discovered evidence.

4 Q You were -- you were on Sterling Spann's for newly
5 discovered evidence?

6 A Yes.

7 Q And then, ultimately, he got a new trial?

8 A Yes.

9 Q And it would be fair to say that the case you worked
10 on for newly discovered evidence on Sterling Spann's case,
11 that became the seminal case for newly discovered evidence?

12 A I would assume so.

13 Q Have you heard the expression "the Spann factors"?

14 A To be honest, not until today.

15 Q Okay. You're not a lawyer?

16 A No, sir.

17 Q Okay.

18 A Don't pretend to be either.

19 Q Okay. Tell the Court -- let's start here. Has Mr.
20 Prewitt paid you anything?

21 A No, sir.

22 Q Are you doing this case pro bono?

23 A Yes.

24 Q You've heard testimony that Ms. Nichole Edwards got
25 paid. If she got paid, was that out of your pocket?

1 A Yes, sir.

2 Q Tell the Court -- and this is important -- how you met
3 Gary Lane Prewitt.

4 A Because of my involvement in the Spann case, as well
5 as Bobby Lee Holmes case and other high-profile cases
6 throughout the state of South Carolina, it's not unusual
7 that I will get correspondence from inmates that are
8 incarcerated for long periods of time, asking me to come
9 and meet with them and help on their case. And so if I
10 recall correctly, I believe I got a letter from Mr.
11 Prewitt, asking that I do that -- and actually, more than
12 one letter before I actually came and, I think, met with
13 Mr. Prewitt.

14 Q How many letters, if -- if any, do -- how many he sent
15 you, if you remember?

16 A I'd say more than two.

17 Q Okay. Do you remember when that first letter came to
18 you?

19 A No, sir, I don't.

20 Q Do you remember when you first went to see Mr.
21 Prewitt?

22 A I do not recall the first time that I went to see him.
23 It was probably a year and a half ago, maybe longer -- not
24 much longer than that.

25 Q Was it in 2011 or 2012, if you remember?

1 A First time I saw him was probably 2011.

2 Q And you had a conversation with him?

3 A (No audible response.)

4 Q Did you have a conversation with him?

5 A Yes, sir.

6 Q How long did you meet him?

7 A Ooh, that day, probably a couple hours.

8 Q And where'd you meet him at?

9 A Lieber Correctional Institution.

10 Q And did he tell you about his case that day?

11 A Yes, he did.

12 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

13 Q Would it be fair to say that you went to see him on
14 October 2011?

15 A It's possible.

16 Q Let me back up. Let me ask you this: Did you ask --
17 did you ask Ms. Edwards to go see some of these people that
18 Gary Lane Prewitt asked you to see?

19 A Yes, sir.

20 Q Would it be fair to say you sent Ms. Edwards to go see
21 Mr. O'Shields?

22 A Yes, sir.

23 Q And would it be fair to say that you -- you sent her
24 to see Ms. Heaton?

25 A Yes, sir.

1 Q Mr. Tinsley?

2 A Yes, sir.

3 Q Ms. Wicker?

4 A Yes, sir.

5 Q And maybe I missed one or two. Now, when did you
6 first contact -- when did you first contact me, if you
7 remember?

8 A I don't remember the first time that I contacted you
9 specifically about this case. But I was pulling on your
10 coattails pretty hard several times along the way when we
11 were working on other cases about helping with this case?

12 Q But -- but I -- I showed no interest or involvement at
13 that point?

14 A No.

15 Q Didn't want to be involved?

16 A That's correct.

17 Q Now, at some point I believe that -- I -- I might -- I
18 think I'm right on this date. I think around May the 23rd,
19 2012, you happened to have a meeting with Mr. Gary Lane
20 Prewitt and myself.

21 A Remember that quite well.

22 Q Is that the first time that I met Mr. Gary Lane
23 Prewitt?

24 A Yes, sir.

25 Q And was that the first time that Mr. Gary Lane Prewitt

1 saw the fruits of your labor and the fruits of your
2 investigation?

3 A Yes.

4 Q What'd you tell Mr. Gary Lane Prewitt on May the 23rd,
5 2012?

6 A That I had convinced you to come down to Lieber and
7 meet with Mr. Prewitt and, hopefully, from this meeting,
8 that you would represent Mr. Prewitt. And I had gone over
9 the evidence that we had collected and gathered over the
10 period of time to show you and had convinced you that this
11 was a worthy cause and good case to take on.

12 Q On May the 23rd, 2012, was that the first time that
13 you showed Mr. Prewitt those signed letters from all those
14 people that you sent Ms. Nicole Edwards to go see?

15 A Yes, sir.

16 Q So that was the first day, May the 23rd, 2012, that he
17 saw the newly discovered evidence?

18 A Yes, sir.

19 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

20 MR. AXELROD: Your Honor, that would be it.

21 MR. SCOTT: Nothing from the state ---

22 THE COURT: Mr. Scott?

23 MR. SCOTT: --- Your Honor.

24 THE COURT: All right.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Yes, sir.

2 THE BAILIFF: Watch your step. They're real short.

3 (Whereupon, the witness exited the witness stand.)

4 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

5 THE COURT: Mr. Axelrod?

6 MR. AXELROD: Your Honor, that is it for the witness
7 portion of this hearing. I -- I would ask the Court if we
8 could maybe take a few-minute recess.

9 THE COURT: All right. We'll trade places with Ms.
10 Singletary and Mr. Johnson.

11 (Whereupon, the proceedings were adjourned at 4:10
12 p.m. and resumed at 4:23 p.m.)

13 THE COURT: Mr. Axelrod?

14 MR. AXELROD: Your Honor, that would be the -- my --
15 that would be my presentation.

16 THE COURT: All right. By the state?

17 MR. SCOTT: Your Honor, I -- I don't think I'm going
18 to call anybody.

19 THE COURT: All right. Any ---

20 MR. SCOTT: Nothing from the state.

21 THE COURT: Any closing statements?

22 MR. AXELROD: Thank you, Your Honor. Your Honor, May
23 it please the Court again?

24 THE COURT: Yes, sir.

25 MR. AXELROD: Your Honor, I have a little -- I have a

1 little demonstrative, because I thought it'd be better than
2 -- well, to be honest, I don't know how to a PowerPoint
3 show, Judge, just to be honest with you. But I just
4 thought I would put a little demonstrative up there.

5 And, Your Honor, what I put up there is -- it's called
6 "the Spann factors." And I'm going to cite the case of
7 *State v. Spann* -- that's spelled S-p-a-n-n -- 334 S.C. 618.
8 Concurrent cite is 513 SE2d 98. It was cited in 1999.
9 It's a Supreme Court case.

10 And for the Court's history, just a little bit, is
11 that Sterling Spann was convicted at trial. And on -- on
12 appeal they brought forth new evidence. And it was denied
13 and went all the way -- went to the Supreme Court.

14 The Supreme Court said: Yes. You can have new trials
15 with new evidence. But to -- but to prevail in a motion
16 for new trial based upon after-discovered evidence, the
17 proponent -- being Gary Lane Prewitt in this situation --
18 must show that the evidence: (1) is such that it would
19 probably change the result if a new trial were granted; (2)
20 has been discovered since the trial; (3) could not, in the
21 exercise of due diligence, have been discovered prior to
22 the trial; (4) is material; and (5) is not merely
23 cumulative or impeaching. Your Honor, I'm going to address
24 each *Spann* factor individually and then close.

25 Your Honor, Bryan O'Shields gave -- wrote a letter to

1 Gary Lane -- Gary Lane Prewitt and then saw Investigator
2 Nichole Edwards and attested to the authenticity, the
3 veracity, of those documents. The first letter was written
4 by O'Shields in 2005 that states that Wayne Eubanks
5 confessed that he and a man by the name of Mike Bostic
6 committed the crime for which Gary Lane Prewitt is
7 incarcerated for, serving a life sentence.

8 Second letter was the attestation by O'Shields that
9 the contents of the 2005 letter were truthful. It was
10 written and signed in front of Investigator Nichole Edwards
11 on October the 31st, 2011.

12 That same day he did an attestation by -- and gave to
13 Ms. Edwards that Mike Bostic drove a 1960s or 1970 green
14 Chevrolet with primer spots. O'Shields attested to these
15 facts in front of Investigator Nichole Edwards on October
16 31st. O'Shields identified today the composite photo was
17 Mike Bostic.

18 Today Randy Tinsley and Sandy Wicker told this Court
19 that they met with the solicitor on August 18th, 2011. And
20 they saw the composite photo. And it was their belief and
21 their opinion and their -- their testimony today that that
22 was Mike Bostic.

23 MR. SCOTT: Your Honor, I'm sorry? Who met with the
24 solicitor?

25 MR. AXELROD: Your Honor, I said Randy Tinsley and

1 Sandy Wicker met with the investigator. Did I say
2 solicitor? I'm sorry. I'm getting tired. Met with the
3 investigator. Never met with the solicitor.

4 Christy McGuirt and A.H. Walker testified today that
5 it was the green-colored car. Their statement said that
6 there was two people involved. I'm still on the first
7 prong.

8 Kimmie Shipes-Heaton wrote a letter. And she said due
9 to her mental instability, she identified the wrong person.
10 She said on the witness stand today that if she was to
11 testify today, she would say that Gary Lane Prewitt was not
12 the person that she had seen. On cross-examination, the
13 solicitor said, "Well, you said it."

14 And she said, "But I wasn't in my right mind. I'm in
15 my right mind today. I'm on my medication." The letter
16 that the -- Dr. Morgan that said that her -- her touch with
17 reality was fragile at that time.

18 She testified on the stand today new evidence that
19 Gary Lane Prewitt was not the first person she identified.
20 She identified somebody else. And the police didn't want
21 to hear that.

22 So they pushed her to the next picture. And she
23 identified another picture. And then she identified
24 another picture and said Gary Lane Prewitt.

25 And this is when she was frail. And she told the

1 Court today that she was under pressure from her family and
2 the community and she wanted to help.

3 Your Honor, first prong, if we had a new trial today,
4 the only evidence they have is a man that went to the first
5 grade, his identification. And I submit to this Court
6 today that if Ms. Heaton has said that she was pushed to
7 pick a certain picture, I would say to this Court today
8 that probably Mr. Dixon was as well. There is no physical
9 evidence at all that Gary Lane Prewitt committed this
10 crime.

11 Ms. Heaton has withdrawn her -- her testimony. Her --
12 she's saying she didn't do it. There's nothing. They have
13 nothing: no fingerprints. There are still fingerprints
14 probably on file they took off those guns. At that time
15 Mike Bostic was not a suspect.

16 This is new evidence -- absolutely new evidence that
17 came forth and be -- was given to Gary Lane Prewitt fully
18 on May the 23rd, 2012. He had the letter.

19 But if he had had that letter, Your Honor, and I came
20 to the Court that year and said, "Here, I got this letter;
21 we need a new trial," I would think that a court of
22 competent jurisdiction would say no; it's not enough.

23 Has been discovered since the trial: I'm not going to
24 belabor it, Your Honor. There's many, many things that
25 have been discovered since the trial.

1 Since the trial I believe that Mr. Eubanks confessing
2 to Bryan O'Shields that he and Mike Bostic had committed
3 the crime in Whitmire that Gary Lane Prewitt was charged
4 with and sentenced on. Bryan O'Shields testified today
5 that he knew Mike Bostic to drive a old, green Chevrolet
6 with primer spots. He did not sign that until October the
7 31st, 2011, 16 years after the trial.

8 The recantation -- the signed recantation of Kimmie
9 Shipes Heaton was written and signed on March the 17th,
10 2011, 16 years after the defendant's original trial. The
11 evaluation of Dr. Morgan, that piece of paper, was drafted
12 in 1998. But it was not discovered until March of 2011,
13 when the investigators obtained the signed recantation from
14 Kimmie Shipes Heaton.

15 The in-court identification by Randy Tinsley and Sandy
16 Wicker today that Mike Bostic was the man in the SLED
17 composite photo was not made until August 2011. I
18 understand that the state brought out that the pictures
19 were shown to the two people by Gary Lane Prewitt's mother.
20 But, Your Honor, I say to the Court: What's a mother to
21 do? She knows her son's incarcerated for something he
22 didn't do.

23 But still, even though she showed the photo to them,
24 they testified they had not seen it before. Seeing it
25 then, they testified that that is Mike Bostic, no matter

1 how they first saw it. Their sworn, truthful testimony,
2 that was Mike Bostic.

3 It was discovered since this trial and, Your Honor,
4 could not, in the exercise of due diligence have been
5 discovered prior to the trial. And, Your Honor, I'll say
6 to you -- I'll say to you: I've done many trials, many
7 murders -- many, many murders. I've been on death penalty
8 cases. And they take years, Your Honor. They take years.

9 And he went from arrest to conviction -- he went from
10 the incident -- he got arrested in August -- September,
11 October, November, December -- five months from the time he
12 got arrested, he got a life sentence. Five months. Five
13 months.

14 Your Honor, he sits here in -- sits here in handcuffs
15 today. He can't even assist me here. He's got nowhere --
16 he had -- he's lucky that he had the postage to write
17 letters.

18 This is a man that -- that has fought. And -- and
19 they will tell you -- the state would tell you: He's
20 never, ever admitted to ever have doing this. He -- he's
21 maintained his innocence all the way through. He has
22 maintained his innocence.

23 Your Honor, the only way it was discovered was Mr.
24 Skidmore. Mr. Skidmore went to see him. Mr. Skidmore
25 talked to him. Mr. Skidmore started an investigation.

1 When Mr. Skidmore mentioned it to me, I said, "Well,
2 you better do a lot more before I get involved and before I
3 come and spend my time and my money to come to a
4 courtroom," where I didn't know where I was going to go.
5 And -- and it ended up being Greenwood. He would have to
6 show me things.

7 And he brought me, on May the 23rd, 2012. And he laid
8 out in the cafeteria of Lieber -- of Lieber -- Gary Lane
9 Prewitt came hobbling up, all chained up, and had a bunch
10 of paper.

11 And Skidmore said, "This is Mr. Axelrod. I'd like you
12 to tell him your story." He told me the story.

13 He could not have found this. All he had was that one
14 letter, sent to him in 2005, of a conversation that
15 occurred in 2002 where Bryan O'Shields said that Wayne
16 Eubanks, relative of his first cousin, confessed to the
17 crime that he and Mike Bostic had done in Whitmire.

18 Now, I say to the Court the most interesting thing of
19 all of this is he was in jail that whole time. So over
20 here -- over here Mr. O'Shields is saying that Wayne
21 Eubanks said, "Mike Bostic and I did it." And all these
22 people over there that they don't know say that that
23 composite photo looks like Mike Bostic.

24 That is amazing. It is why I'm here. It is why I'm
25 here. Because there is no connection. There's no road

1 between these people. And what does that tell me? It
2 tells me it's believable.

3 Everything we did today, Your Honor, is material. It
4 is material. She recanted her statement on the stand. She
5 said she apologized to Gary Lane Prewitt. She said, "I am
6 sorry for what I said." And she is.

7 And she said to the Court today, "I would not have
8 that same testimony that I had 19 years ago." That is
9 material with a capital M.

10 And, Your Honor, the fifth factor is it's not merely
11 cumulative or impeaching. Kimmie Shipes Heaton is not
12 cumulative or impeaching. Mr. Tinsley is not cumulative or
13 impeaching. Ms. Wicker is not cumulative or impeaching.

14 Your Honor, I understand that the case went through a
15 PCR. But I want the Court to understand that at the PCR,
16 Mike Bostic's name never appeared; wasn't known -- wasn't
17 known. And if it had been known, maybe we wouldn't be here
18 today.

19 Your Honor, the evidence to be material, *United State*
20 *v. Bagley* says that: The implicit requirement of
21 materiality is a concern that the suppressed evidence might
22 have affected the outcome of the trial. If Ms. Heaton --
23 Kimmie Shipes Heaton get on that stand and says that it's
24 not him, they have nothing. They have no fingerprints.

25 They have nothing but Mr. Dixon. And I submit to the

1 Court that Mr. Dixon's testimony was tainted. They have
2 nothing.

3 Kimmie Shipes Heaton recantation would not only deny
4 the -- the state an identification witness, but her
5 testimony also calls into question the police investigation
6 itself: whether they did a thorough job or whether there
7 was severe misconduct or a possible vendetta against the
8 defendant.

9 Your Honor, the evidence is not merely cumulative or
10 peaching [sic]. O'Shields' statements are all new pieces
11 of evidence. I cite *Johnson v. Belk-McKnight of Newberry*,
12 188 S.C. 149. They were not introduced at the original
13 trial. They do not supplement anything that has already
14 been testified to.

15 The -- the recantation of Kimmie Shipes Heaton and her
16 doctor's note are substantive pieces of evidence. The
17 recantation does not supplement Heaton's prior testimony.
18 It instead expressly contradicts it. Furthermore, a
19 doctor's note does not supplement original testimony, but
20 rather explains the reason ---

21 THE COURT: You need ---

22 MR. AXELROD: --- for her recantation.

23 THE COURT: You're moving too fast perhaps for the
24 court reporter.

25 MR. AXELROD: (To the court reporter) Was I going too

1 fast for you?

2 THE COURT REPORTER: Sir?

3 THE COURT: It's all a jumble.

4 MR. AXELROD: Was I going too fast for you?

5 THE COURT REPORTER: No, sir.

6 THE COURT: Go ahead.

7 MR. AXELROD: Okay. I'll slow down.

8 Your Honor, the attestation of Randy Tinsley and Sandy
9 Wicker does not supplement any testimony. It's not
10 cumulative; it's not impeaching. It rather explains why
11 this evidence was not in existence at the defendant's
12 original trial.

13 Your Honor, these are the *Spann* factors. Would it
14 change the outcome if a new trial was granted? I believe
15 so, Your Honor. I believe so.

16 Has the information I presented been discovered since
17 the trial? It has, Your Honor. It has.

18 And that no way, in the exercise of due diligence,
19 could Gary Lane Prewitt had discovered the information that
20 we brought to this Court today prior to his trial. It is
21 all material. It's not cumulative; it's not impeaching.

22 And, Your Honor, I would ask the Court, in the
23 interests of justice, to weigh what we've brought here
24 today and give Gary Lane Prewitt another day in court.
25 Thank you, sir.

1 THE COURT: Thank you. Mr. Scott?

2 MR. SCOTT: Thank you, Your Honor. Let me start off
3 by saying this mentioning of this Bostic fella, this --
4 this is nothing new. As I stated in the opening, that was
5 the basis of his second PCR. It was: "This sketch looks
6 like Mike Bostic."

7 How did he get this Mike Bostic fella in his head?
8 Somebody at the jail saw his sketch; said it looks like a
9 guy I knew from Whitmire, Mike Bostic. He has his mom get
10 the yearbook from Whitmire High.

11 Ever since this day it's Mike Bostic. The PCR hearing
12 was three SCDC inmates saying, "Yeah. It looks like Mike
13 Bostic."

14 I cannot think of a way this would -- any of this
15 would be admissible should he have a new trial. The
16 Mansfield case I referenced, I -- I think it's right on
17 point, Your Honor.

18 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

19 MR. SCOTT: In that case the defense attempted
20 something similar and -- do you have that cite, Your Honor?
21 It is 343 S.C. 66.

22 They attempted to argue third-party guilt, as Mr.
23 Prewitt has done before and he attempts to do again today.
24 And they attempt to enter a picture of this third party,
25 who has been unconnected to the incident, the -- law

1 enforcement's investigating. It was ruled inadmissible.
2 It would be inadmissible at his trial, this evidence they
3 are leaning on so heavily.

4 Mr. O'Shields' testimony, likewise, would be
5 inadmissible. He talks about a conversation he had back in
6 2002, Your Honor; became cell mates with Mr. Prewitt;
7 became friends, by his own account. They shared details of
8 their cases with each other.

9 Then in 2005 he writes this letter. It doesn't appear
10 -- or doesn't come to Mr. Skidmore's attention until within
11 the last couple years.

12 I -- I just -- I think it's interesting that he got up
13 there and says, when shown the sketch, "That's Mike Bostic
14 from the early '90s." This is all very self-serving
15 hearsay evidence. And, Your Honor, I -- and I'm -- I'm
16 just going to kind of touch on some of these witnesses.

17 Christy McGuirt, she testified exactly how she
18 testified at the trial. She was not an identity witness.
19 She saw two white males; could not identify them; testified
20 they were in a faded green car.

21 Interestingly enough, when pressed on the competency
22 of Mr. Dixon, the victim in the case, she stated, "His mind
23 is very good." That's also what Judge Burnett found at the
24 trial.

25 Mr. Walker testified to the slow-moving, green Chevy

1 as he did at the case-in-chief, the initial trial.

2 Kimmie Heaton, who is now serving 50 years for murder,
3 has attempted today to partially recant her testimony.
4 And, Your Honor, as I've stated earlier, this is out of
5 *State v. Mayfield*, 235 S.C. 11. I'm also citing *State v.*
6 *Porter*, 269 S.C. 618, dealing with recantations. (As
7 read): Recanted testimony ordinarily is unreliable and
8 should be subjected to the closest scrutiny when offered as
9 grounds for a new trial.

10 Here she is, a woman serving 50 years; is paid an
11 unexpected visit by these private eyes. And she gives this
12 statement. At no time during the initial trial was her
13 competency an issue.

14 Furthermore, it was not the only testimony that proved
15 Mr. Prewitt was guilty at the initial trial. Joe Dixon
16 also ID'ed him.

17 Now, that sketch, Your Honor, as I stated, it is not
18 dissimilar to Mr. Prewitt as he sits here today; not
19 dissimilar to how he appeared then. But the sketch is just
20 that. It -- it was a sketch.

21 It was a tool used by law enforcement to generate
22 leads. It was not even presented at trial. His actual
23 picture was presented at trial.

24 There were two in-court identifications of Mr. Prewitt
25 at trial. Sketches like these are made from comments and

1 remarks by potential witnesses who observe an individual.

2 If we were to retry this and defense argument stood
3 and it was admitted, essentially, the trial would be
4 calling witnesses to look at a sketch, saying, "That --
5 this looks like Prewitt," and him calling witnesses,
6 saying, "It looks like Mike Bostic," again, who was never
7 mentioned in the first trial as a suspect. He -- he was
8 never a name that came up during the initial case.

9 Now we have Ms. Wicker -- completely unattached to the
10 first case, not a witness in any regard -- and Mr. Tinsley,
11 who did not observe any of the people. They were not
12 eyewitnesses in the first case. They're looking at a photo
13 of a man they met years after the incident, and they're
14 saying it looks like Mike Bostic.

15 It's interesting, again, that these PI's talked with
16 these folks after the defendant's mother showed them this
17 yearbook picture of Mike Bostic.

18 Your Honor, what -- what Mr. Axelrod calls "the Spann
19 factors" were -- I believe they were factors out of a case
20 called "Caskey." And that was a '79 case. That -- they
21 were adopted by the *Spann* court, of course, as -- as he
22 states here. But I believe *State v. Caskey* from 273 S.C.
23 325 used those factors back in 1979, these same factors
24 that Judge Saunders would've considered in denying that PCR
25 based on the same grounds.

1 Your Honor, evidence presented here, as I said, would
2 not be admissible. So it would not change the result if a
3 new trial was held. Furthermore, it's not -- I don't
4 believe it's material to his innocence or guilt.

5 So, Your Honor, essentially, that's all. I -- it --
6 it fails the *Mansfield* test and it -- it fails this -- what
7 he calls "the Spann factors," or the *Caskey* factors.
8 Respectfully, Your Honor, we -- we would ask that this
9 motion be denied.

10 THE COURT: Final word?

11 MR. AXELROD: Yes, sir, Your Honor. I do have a final
12 word -- not long, because I wrote it on a Post-It.

13 Judge, this was a hearing. For the solicitor to tell
14 you that this evidence would not be admissible at a trial
15 is wrong -- absolutely wrong, because we would bring the
16 people that we need to bring to have that.

17 We have a burden to overcome today: *Spann* factors.
18 Your Honor, third-party guilt in this case would be
19 absolutely admissible, if done properly. Thank you.

20 THE COURT: Mr. Scott, do you have the PCR transcript?

21 MR. SCOTT: I do.

22 THE COURT: All right. I would like to have the PCR
23 transcript made a part of the record in the case. And I'm
24 going to take the -- the matter under advisement and have
25 both sides submit to me proposed orders within 30 days. Is

1 that sufficient?

2 MR. SCOTT: It is, Your Honor.

3 THE COURT: Okay.

4 MR. AXELROD: Thirty be fine, Your Honor. Your Honor,
5 I'm -- I'm asking Mr. Calder. I don't know if I have a
6 transcript of the -- I gave the Court my copy of ---

7 MR. CALDER: We've got a PCR transcript.

8 MR. AXELROD: Do we?

9 MR. CALDER: Yes.

10 MR. AXELROD: Your Honor, I think we might have a PCR
11 transcript with us that I will hand up ---

12 THE COURT: All right.

13 MR. AXELROD: --- if we could check first. Is that
14 the only one you have?

15 MR. CALDER: It's the original. But I got the one --
16 I can make a copy.

17 MR. AXELROD: Your Honor, could we make a copy of the
18 PCR transcript right here and we'll make it a part of the
19 record today? It's the only -- it's the -- it -- it's the
20 -- we believe it's Mr. Prewitt's copy that we have. We
21 don't have any other copies.

22 THE COURT: Well ---

23 MR. AXELROD: You ---

24 THE COURT: --- I said make it a -- a part of the
25 record.

1 MR. AXELROD: Oh, can ---

2 THE COURT: But I ---

3 MR. AXELROD: --- we just ---

4 THE COURT: --- I -- I want one submitted to the Court
5 for our review.

6 MR. AXELROD: Okay.

7 THE COURT: Of course, the court reporter will need a
8 copy as well.

9 MR. AXELROD: Could we submit it along with our
10 proposed order at 30-day mark?

11 THE COURT: Well, it would need to -- the transcript
12 would need to be submitted prior to 30 days. It needs to
13 be submitted immediately.

14 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

15 THE COURT: You don't have to submit it today, but ---

16 MR. AXELROD: How about if we submit it within ten
17 days, Your Honor?

18 THE COURT: What do you have to do: take in a copy?

19 MR. AXELROD: Take a copy -- because I'm supposed ---

20 THE COURT: You can ---

21 MR. AXELROD: --- to have a trial some -- is that ---

22 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

23 MR. AXELROD: We got to put it -- it's -- it's taken
24 apart in pieces. We have to place -- maybe the state has a
25 copy.

1 MR. SCOTT: I can get you one, Your Honor. We can --
2 we probably have it e-mailed. Rutledge, is that ---

3 MR. JOHNSON: Yeah. Your Honor, I probably have one
4 in -- in our archive. It may take me a couple days to
5 order it.

6 THE COURT: All right. Well, the state will submit
7 the PCR transcript.

8 MR. SCOTT: Your Honor, again, there were two. The
9 first one was based on ineffective counsel. The second one
10 was the one that dealt with newly discovered evidence. I
11 assume the second one is the one that you were referencing.

12 THE COURT: I'll take both.

13 MR. SCOTT: All right.

14 (Whereupon, Mr. Axelrod and Mr. Calder conferred.)

15 (Whereupon, Mr. Scott and Mr. Johnson conferred.)

16 THE COURT: Anything that has been submitted as part
17 of the record, copies need to be provided to the Court.
18 The court reporter has to keep exhibits. I have to review
19 the record. So whatever you give to the court reporter
20 will be of no benefit to me.

21 MR. AXELROD: Your Honor, may I have a chance to --
22 can I use the copy machine just to make -- because what the
23 Court's asking for is for a copy of the ---

24 THE COURT: Yeah. Well, we -- we're going to proceed
25 with other hearings. If you can do it quietly, you're

1 welcome to.

2 DEPUTY CLERK OF COURT: You can ---

3 THE COURT: Or ---

4 DEPUTY CLERK OF COURT: --- clerk's office ---

5 THE COURT: --- if you ---

6 MR. AXELROD: Is there ---

7 DEPUTY CLERK OF COURT: --- the clerk ---

8 MR. AXELROD: Could -- could I go down to the clerk's
9 office with the exhibits? Your -- Your Honor, I'd like to
10 make sure we have all the exhibits. Let me see if I can
11 get them in order.

12 (Whereupon, the proceedings were concluded at 4:55 p.m.)

13 --- END OF TRANSCRIPT OF RECORD ---

14

15

16

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 12th day of March, 2013.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
February 7, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

Wyatt T. Saunders, Jr., Circuit Court Judge

GARY LANE PREWITT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 -VS-)
)
 GARY LANE PREWITT,)
)
 DEFENDANT.)
 -----)

94-GS-36-616

JANUARY 19, 1995
NEWBERRY, SOUTH CAROLINA

B E F O R E:

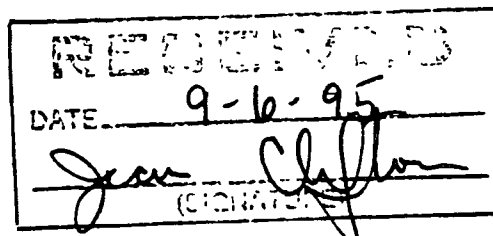
HONORABLE E.C. BURNETT, JUDGE

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

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NEWBERRY COUNTY

RAY WICKER, ESQUIRE
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1 MS. STROM: THE STATE IS READY TO PROCEED IN PICKING
2 A JURY IN 94-GS-36-616, THE STATE OF SOUTH CAROLINA
3 VERSUS GARY LANE PREWITT.

4 THE COURT: THE DEFENSE IS READY, MR. WICKER?

5 MR. WICKER: THE DEFENSE IS READY, YOUR HONOR,
6 CONDITIONED ON THE FACT WITH THE JURORS THAT ARE CALLED
7 WILL THEY COME FORWARD THAT I CAN SEE THEM.

8 THE COURT: OH, YES, SIR. MS. BOWERS, WHERE DO YOU
9 HAVE THE JURORS STAND? THEY'LL STAND RIGHT THERE.

10 MR. WICKER: VERY FINE. THANK YOU, YOUR HONOR.

11 THE COURT: AND YOU ARE PROCEEDING ON ALL COUNTS?

12 MS. STROM: YES, SIR, YOUR HONOR.

13 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE ARE
14 ABOUT TO BEGIN THE CRIMINAL TRIAL OF THE STATE AGAINST
15 GARY LANE PREWITT --- SPELLED P-R-E-W-I-T-T --- GARY LANE
16 PREWITT.

17 MR. PREWITT IS CHARGED UNDER AN INDICTMENT WITH THE
18 CRIMES OF BURGLARY, GRAND LARCENY, ASSAULT AND BATTERY
19 WITH INTENT TO KILL AND POSSESSION OF A FIREARM IN THE
20 COMMISSION OF A VIOLENT CRIME.

21 THE DEFENDANT IS PRESENT WITH HIS ATTORNEY MR. RAY
22 WICKER. HE HAS ENTERED A PLEA OF NOT GUILTY ON THE
23 CHARGES IN THE INDICTMENT.

24 UNDER OUR CONSTITUTION, WHEN A DEFENDANT ENTERS A
25 PLEA OF NOT GUILTY THE STATE THEN IS REQUIRED TO PROVE

VOIR DIRE
BY THE COURT

6

1 THAT HE IS GUILTY IF THEY CAN PROVE THAT GUILT. THE
2 DEFENDANT IS UNDER NO OBLIGATION TO PROVE HIS OWN
3 INNOCENCE, AND THE STATE IS REQUIRED BY OUR LAW TO PROVE
4 HIM GUILTY BEYOND ANY REASONABLE DOUBT. I'LL DEFINE THAT
5 AND EXPLAIN THAT TO YOU AT THE APPROPRIATE TIME IN THE
6 COURSE OF THE TRIAL.

7 THE DEFENDANT'S PLEA OF NOT GUILTY PUTS IN EFFECT
8 CERTAIN PROTECTIONS PROVIDED TO EVERY CRIMINAL DEFENDANT
9 UNDER OUR CONSTITUTION, UNDER THE FEDERAL CONSTITUTION,
10 AND I WILL TELL YOU THAT YOU MUST PRESUME THAT THE
11 DEFENDANT IS INNOCENT. YOU MUST CONTINUE TO CONSIDER HIM
12 INNOCENT UNTIL AND UNLESS THE STATE SATISFIES YOU BEYOND
13 ANY REASONABLE DOUBT THAT HE IS GUILTY. THIS SAFEGUARD
14 I'LL DISCUSS AGAIN WITH YOU A LITTLE LATER IN THE TRIAL.

15 SEVERAL QUESTIONS I NEED TO ASK YOU TO QUALIFY YOU
16 AS JURORS IN THIS PARTICULAR CASE, AND AGAIN, AS I
17 MENTIONED ON MONDAY, THE QUESTIONS I WILL ASK ARE NOT
18 INTENDED TO CAUSE ANY DISCOMFORT OR EMBARRASSMENT TO YOU
19 BUT ARE INTENDED TO CAUSE YOU TO EXAMINE YOURSELF TO
20 DETERMINE IF YOU HAVE ANY REASON AT ALL WHY YOU COULD NOT
21 GIVE A FAIR TRIAL TO BOTH THE STATE OF SOUTH CAROLINA AND
22 TO THIS DEFENDANT IN THIS CASE.

23 SO, AS I ASK YOU THE QUESTIONS, JUST THINK VERY HARD
24 ABOUT YOURSELF AND MAKE THAT DETERMINATION, AND IF YOU
25 HAVE ANY DIFFICULTY AT ALL, ANY PROBLEM AT ALL IN YOUR

VOIR DIRE
BY THE COURT

7

1 ABILITY TO BE FAIR TO BOTH THE STATE AND THE DEFENDANT,
2 PLEASE MAKE US AWARE OF THAT.

3 MR. PREWITT, WOULD YOU STAND, PLEASE, SIR? FACE THE
4 JURY. IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD
5 OR BY MARRIAGE TO THIS DEFENDANT GARY LANE PREWITT? ARE
6 ANY OF YOU ACQUAINTED WITH HIM? DO YOU KNOW HIM AT ALL?

7 (NO RESPONSE.)

8 THE COURT: THANK YOU. BE SEATED. THIS CASE COMES
9 INTO COURT BY WAY OF THIS DOCUMENT RIGHT HERE, LADIES AND
10 GENTLEMEN. IT IS CALLED AN INDICTMENT. IT IS NO MORE
11 THAN AN ACCUSATION, A CLAIM BY THE STATE AGAINST THE
12 DEFENDANT THAT HE COMMITTED THE CRIMES CHARGED IN THE
13 INDICTMENT.

14 IF YOU ARE SEATED AS A MEMBER OF THIS PANEL, PLEASE
15 REMEMBER AND KEEP IN MIND THAT THE FACT THAT HE'S BEEN
16 INDICTED IS NOT EVIDENCE THAT HE'S GUILTY, AND THE
17 CONTENTS OF THE INDICTMENT ARE NOT EVIDENCE AGAINST HIM.
18 THIS DOCUMENT IS MERELY AN ACCUSATION BY THE STATE THAT
19 HE DID COMMIT THESE CRIMES. HE HAS, AS I'VE TOLD YOU,
20 ENTERED A PLEA OF NOT GUILTY TO THE INDICTMENT AND TO
21 EACH CHARGE IN THE INDICTMENT. THE INDICTMENT SERVES
22 MERELY TO GIVE HIM NOTICE OF THE CRIMES CHARGES AGAINST
23 HIM AND SERVE TO THIS COURT JURISDICTION OF BOTH THE
24 CRIMES AND THE DEFENDANT. SERVES NO OTHER PURPOSE.

25 AND LET ME REFERENCE FROM THE INDICTMENT BEFORE I

VOIR DIRE
BY THE COURT

8

1 ASK YOU ANY OTHER QUESTIONS SO YOU'LL BE MORE FAMILIAR
2 WITH WHAT IS CHARGED AGAINST HIM, WHAT IT IS CLAIMED THAT
3 HE DID.

4 THERE ARE FOUR COUNTS, FOUR SEPARATE CHARGES IN THE
5 INDICTMENT. COUNT ONE CHARGES THAT MR. PREWITT DID IN
6 NEWBERRY COUNTY, SOUTH CAROLINA, ON OR ABOUT JULY 22ND OF
7 1994, WILLFULLY AND UNLAWFULLY ENTER A DWELLING WITHOUT
8 CONSENT AND WITH THE INTENT TO COMMIT A CRIME WITHIN THE
9 DWELLING, AND EITHER WHEN GAINING ENTRY OR WHILE INSIDE
10 THE DWELLING OR WHEN LEAVING THE DWELLING, HE WAS ARMED
11 WITH A DEADLY WEAPON OR CAUSED PHYSICAL INJURY TO A
12 PERSON WHO WAS NOT A PARTICIPANT WITH HIM IN THE CRIME OR
13 THAT HE USED OR THREATENED TO USE A DANGEROUS INSTRUMENT
14 OR THAT HE DID DISPLAY WHAT WAS OR APPEARED TO BE A
15 DEADLY WEAPON. THE DWELLING IN THE CASE IS OWNED BY A
16 MR. RANDY TINSLEY. SO, COUNT ONE OF THE INDICTMENT
17 CHARGES THE CRIME OF BURGLARY AGAINST THE DEFENDANT.
18 COUNT TWO CHARGES THAT MR. PREWITT DID ON THIS
19 OCCASION, JULY 22, 1994, FELONIOUSLY TAKE AND CARRY AWAY
20 THE PERSONAL GOODS OF RANDY TINSLEY OF MONIES IN THE
21 AMOUNT OF A THOUSAND DOLLARS, ALONG WITH ASSORTED GUNS
22 AND OTHER GOODS WITH THE INTENT OF PERMANENTLY DEPRIVING
23 THE OWNER OF THAT PROPERTY. THAT COUNT OF THE INDICTMENT
24 CHARGES THE CRIME OF GRAND LARCENY.
25 COUNT THREE OF THE INDICTMENT CHARGES THAT MR.

VOIR DIRE
BY THE COURT

9

1 PREWITT DID IN NEWBERRY COUNTY ON THIS OCCASION, JULY 22,
2 1994, COMMIT THE CRIME OF ASSAULT AND BATTERY WITH INTENT
3 TO KILL UPON ONE JOSEPH DIXON IN THAT HE DID FELONIOUSLY,
4 WILLFULLY AND WITH MALICE AFORETHOUGHT MAKE AN ASSAULT
5 WITH A DEADLY WEAPON, A FIREARM ON GARY LANE PREWITT, AND
6 WITH THE FIREARM THAT HE DID SHOOT AND WOUND MR. JOSEPH
7 DIXON WITH THE INTENT TO KILL HIM. THAT COUNT CHARGES
8 THE CRIME OF ASSAULT AND BATTERY WITH THE INTENT TO KILL.

9 AND THE FINAL COUNT OF THE INDICTMENT CHARGES THAT
10 MR. PREWITT DID ON THIS OCCASION POSSESS A FIREARM OR
11 VISIBLY DISPLAYED WHAT APPEARED TO BE A FIREARM DURING
12 THE COMMISSION OF A VIOLENT CRIME. THOSE ARE THE FOUR
13 COUNTS CHARGED AGAINST HIM.

14 BASED UPON WHAT I HAVE TOLD YOU, ARE ANY OF YOU
15 AWARE OF ANY BIAS OR ANY PREJUDICE YOU MIGHT HAVE?

16 (NO RESPONSE.)

17 THE COURT: BASED UPON WHAT I HAVE TOLD YOU, HAVE
18 ANY OF YOU EXPRESSED OR FORMED ANY OPINION OF THIS CASE?

19 (NO RESPONSE.)

20 THE COURT: HAVE ANY OF YOU READ OR HEARD ANYTHING
21 ABOUT THIS CASE?

22 (NO RESPONSE.)

23

24 THE COURT: ARE ANY OF YOU RELATED BY BLOOD OR BY
25 MARRIAGE, OR ARE YOU ACQUAINTED IN ANY WAY WITH MR.

VOIR DIRE
BY THE COURT

10

1 JOSEPH DIXON OR MR. RANDY TINSLEY?

2 (NO RESPONSE.)

3 THE COURT: THERE ARE A NUMBER OF POTENTIAL
4 WITNESSES IN THE CASE. I'M GOING TO READ THE LIST TO
5 YOU. WHAT I WANT TO KNOW IS WHETHER YOU'RE RELATED TO
6 ANY OF THEM BY BLOOD OR BY MARRIAGE OR WHETHER YOU KNOW
7 THEM IN ANY WAY.

8 MS. STROM: YOUR HONOR, EXCUSE ME. BEFORE YOU
9 PROCEED, THE WITNESSES ARE HERE IN THE COURTROOM AND ARE
10 AVAILABLE TO STAND AND FACE THE JURY IF YOU WOULD LIKE
11 FOR THEM TO.

12 THE COURT: AND AS I CALL YOUR NAME, IF YOU WOULD
13 PLEASE STAND AND FACE THE JURY SO THEY CAN SEE WHO YOU
14 ARE.

15 JOE DIXON, RANDY TINSLEY, CHRISTY MCGUIRT, A.H.
16 WALKER, JR. --- OVER HERE. BEN BLANTON WITH THE NEWBERRY
17 COUNTY EMS.

18 MS. STROM: HE IS NOT IN THE COURTROOM, YOUR HONOR.

19 THE COURT: ALL RIGHT. HE'S WITH THE EMS HERE.
20 DANNY GILLIAM, NEWBERRY COUNTY SHERIFF'S DEPARTMENT,
21 WILLIAM JOLLY WITH THE SOUTH CAROLINA LAW ENFORCEMENT
22 DIVISION.

23 MS. STROM: HE'S NOT IN THE COURTROOM.

24 THE COURT: STEVE DERRICK WITH THE SOUTH CAROLINA
25 LAW ENFORCEMENT DIVISION.

1 MS. STROM: HE'S NOT IN THE COURTROOM.

2 THE COURT: AND IS IT KENNY OR KIMMIE?

3 MS. SHIPES: KIMMIE.

4 THE COURT: KIMMIE SHIPS --- CORRECT?

5 MS. STROM: SHIPES, YOUR HONOR.

6 THE COURT: SHIPES, I'M SORRY --- KIMMIE SHIPES.

7 THE STATE IN THIS CASE IS REPRESENTED BY ASSISTANT
8 SOLICITOR BETTY STROM AND BETH GRIFFITH. THE DEFENDANT
9 IN THE CASE IS REPRESENTED BY MR. RAY WICKER.

10 HAS ANY MEMBER OF THE JURY BEEN INVOLVED IN ANY KIND
11 OF LEGAL MATTER WHERE YOU WERE EITHER REPRESENTED BY OR
12 OPPOSED BY ANY OF THESE ATTORNEYS?

13 (NO RESPONSE.)

14 THE COURT: DO YOU ANY OF YOU LADIES AND GENTLEMEN
15 KNOW OF ANY REASON WHATSOEVER WHY YOU COULD NOT GIVE A
16 FAIR TRIAL TO BOTH THE STATE OF SOUTH CAROLINA AND TO
17 THIS DEFENDANT IN THIS CASE?

18 (NO RESPONSE.)

19 THE COURT: ANY OTHER QUESTIONS BY THE STATE?

20 MS. STROM: NONE FROM THE STATE, YOUR HONOR.

21 THE COURT: BY DEFENSE?

22 MR. WICKER: NONE FROM THE DEFENSE, YOUR HONOR.

23 THE COURT: ALL RIGHT. SO, YOUR STRIKES ARE TEN FOR
24 DEFENSE, FIVE FOR THE STATE. GIVE US A JURY, PLEASE.

25

JURY SELECTION

12

1 (A JURY OF 12 AND ONE ALTERNATE WAS SEATED AT THIS
2 TIME.)

3 THE COURT: I'VE GOT A FEW THINGS I NEED TO DO, AND
4 YOU'RE ENTITLED TO A SHORT RECESS. I'M GOING TO ASK YOU
5 TO STEP ON IN YOUR ROOM. ARE THERE REFRESHMENTS IN
6 THERE?

7 CLERK OF COURT: YES, SIR.

8 THE COURT: OKAY. GO ON BACK THERE, AND AS QUICK AS
9 I CAN, I'LL HAVE YOU BACK IN THE COURTROOM, AND WE'LL GO
10 FORWARD.

11 (JURY TO JURY ROOM.)

12 MS. STROM: THE VICTIM AND THE PROSECUTING WITNESS
13 IN THIS CASE IS SLIGHTLY TO MILDLY MENTALLY RETARDED. HE
14 HAS A MENTAL DEFICIENCY. HE ALSO HAS A SPEECH
15 IMPEDIMENT. I'VE DISCUSSED THIS WITH MR. WICKER THIS
16 MORNING, AND MY CONVERSATIONS WITH MR. DIXON, YOU CAN
17 UNDERSTAND HIM. IT MAY BE A LITTLE DIFFICULT TO
18 UNDERSTAND HIM. WHAT I INTEND TO DO IS ASK HIM VERY
19 SIMPLE QUESTIONS. IF IT NEEDS TO, BECAUSE OF HIS MENTAL
20 STATE, I DO BELIEVE I WOULD BE ENTITLED TO LEAD THIS
21 WITNESS UNDER THE CASE LAW IN SOUTH CAROLINA REGARDING
22 THE LEADING OF CHILD WITNESSES AND SUCH LIKE THAT. I DO
23 NOT THINK THAT WILL BE NECESSARY, YOUR HONOR, BECAUSE HE
24 IS ABLE TO COMMUNICATE. I JUST WANTED EVERYONE TO BE
25 AWARE THAT IF THAT BECAME A PROBLEM AND I NEED TO DO THAT

MOTION
BY THE STATE

13

1 THAT I WOULD BE PROCEEDING WITH THAT OPTION TO LEAD THE
2 WITNESS, AND AS I EXPLAINED TO MR. WICKER, I WOULD LEAD
3 IN SUCH A WAY THAT IT WOULD NOT SUGGEST THE ANSWER.

4 MR. WICKER: YOUR HONOR, I'M NOT GOING TO HAVE ANY
5 OBJECTIONS AT THIS TIME, AND I DOUBT VERY MUCH IF I WOULD
6 EVER HAVE ANY OBJECTION, BECAUSE EVERYBODY KNOWS THAT
7 PERSONALLY I DO NOT OBJECT VERY OFTEN, BECAUSE I JUST
8 THINK THE JURY DOESN'T LIKE TO HEAR OBJECTIONS, AND I
9 KNOW THAT MS. STROM IS GOING TO BE FAIR IN THIS CASE, AND
10 I DO NOT OBJECT.

11 THE COURT: AND A LAWYER THAT DOESN'T LEAD AIN'T
12 MUCH OF A LAWYER.

13 MR. WICKER: I WOULDN'T GO THAT FAR, YOUR HONOR?

14 MS. STROM: I DO THINK, POSSIBLY, TO MAKE SURE WE
15 HAVE A CLEAN RECORD, BECAUSE OF THE QUESTION OF MR.
16 DIXON'S MENTAL CAPABILITIES, TO CLEAN THE RECORD, MAKE
17 SURE WE HAVE EVERYTHING ON RECORD, GET HIM QUALIFIED TO
18 TESTIFY --- THAT HE IS QUALIFIED. HE KNOWS THE
19 DIFFERENCE BETWEEN RIGHT AND WRONG, A TRUTH AND A LIE.

20 THE COURT: WE'LL DO THAT PRIOR TO THE SWEARING OF
21 THE JURY. ANY OBJECTION TO THAT PROCESS, MR. WICKER?

22 MR. WICKER: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. LET'S TAKE TEN MINUTES.
24 THEN WE'LL BEGIN THE TRIAL PROCESS.

25 MS. STROM: THANK YOU, YOUR HONOR.

QUESTIONING OF MR. DIXON

14

1 (A BREAK WAS TAKEN AT THIS TIME.)

2 EXAMINATION OF MR. DIXON

3 BY MS. STROM

4 Q. HOW ARE YOU DOING, MR. DIXON?

5 A. FINE.

6 Q. YOU DOING ALL RIGHT?

7 A. YEAH.

8 Q. WE DIDN'T SWEAR YOU IN. YOU DIDN'T PUT YOUR HAND ON
9 THE BIBLE.

10 A. I KNOW.

11 Q. TELL THIS COURT WHAT YOU'RE SUPPOSE TO DO WHEN YOU
12 COME INTO COURT?

13 A. TELL THE TRUTH.

14 Q. TELL THE TRUTH?

15 A. YEAH.

16 Q. DO YOU KNOW THE DIFFERENCE BETWEEN TELLING THE TRUTH
17 AND TELLING A LIE?

18 A. YEAH.

19 Q. WHICH ONE IS GOOD?

20 A. WHEN YOU TELL THE TRUTH AND DON'T LIE.

21 Q. WHEN YOU TELL THE TRUTH AND DON'T LIE. IF I TELL
22 YOU THAT MY SHIRT IS RED, AM I TELLING THE TRUTH OR AM I
23 TELLING A LIE?

24 A. YOU TELLING A LIE.

25 Q. TELLING A LIE, OKAY. MR. DIXON, YOU SEE HOW I'M

1 REPEATING WHAT YOU'RE SAYING?

2 A. YEAH.

3 Q. IF AT ANY TIME I SAY SOMETHING THAT YOU DID NOT SAY,
4 WHAT ARE YOU SUPPOSE TO DO?

5 A. TELL YOU YOU'RE TELLING IT WRONG.

6 Q. TELLING IT WRONG, OKAY. MR. DIXON, DO YOU KNOW WHO
7 THIS MAN IS UP HERE?

8 A. THE JUDGE.

9 Q. THE JUDGE, OKAY. WHAT DOES THE JUDGE WANT YOU TO DO
10 WHEN YOU COME TO COURT?

11 A. TELL THE TRUTH.

12 Q. WHAT HAPPENS IF YOU TELL A LIE?

13 A. HE FINES YOU.

14 Q. HE'LL FINE YOU?

15 A. YEAH.

16 Q. MR. DIXON, WHEN WE BRING THE JURY OUT, AND THE CLERK
17 IS GOING TO ASK YOU TO PUT YOUR HAND ON THE BIBLE, WHAT
18 ARE YOU GOING TO BE DOING?

19 A. HOLDING MY HAND OVER THE BIBLE AND HOLD MY HAND UP.

20 Q. AND WHAT IS SHE GOING TO ASK YOU TO DO?

21 A. WELL ---

22 Q. DO YOU KNOW?

23 A. YEAH.

24 Q. WHAT'S SHE GOING TO ASK YOU TO DO?

25 A. SHE WANTS ME MAKE SURE I DON'T LIE AND ALL THAT.

1 Q. DON'T LIE. IS SHE GOING TO TELL YOU TO TELL THE
2 TRUTH?

3 A. UH HUH.

4 Q. THE WHOLE TRUTH?

5 A. YEAH.

6 Q. AND WHAT ELSE?

7 A. AND DON'T LIE.

8 Q. AND DON'T LIE. WHAT ARE YOU GOING TO DO IN HERE
9 REGARDING THIS CASE?

10 A. TELL THE TRUTH.

11 Q. TELL THE TRUTH.

12 THE COURT: MR. WICKER, ANY QUESTIONS?

13 MR. WICKER: YOUR HONOR, I DON'T HAVE ANY QUESTIONS.

14 THE COURT: DO YOU HAVE ANY OBJECTION TO THIS
15 PROCESS OF QUALIFICATION?

16 MR. WICKER: NO, I DON'T, YOUR HONOR.

17 THE COURT: THANK YOU KINDLY. STEP DOWN, MR. DIXON.
18 BRING THAT JURY IN.

19 (JURY IN COURTROOM.)

20 THE COURT: ANYTHING FURTHER BEFORE WE SWEAR THE
21 JURY?

22 MS. STROM: NOTHING FROM THE STATE, YOUR HONOR

23 MR. WICKER: NOTHING FROM DEFENSE, YOUR HONOR.

24 THE COURT: WOULD YOU SWEAR THEM, PLEASE MA'AM.

25 (JURY SWORN AT THIS TIME.)

1 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
2 LET ME MAKE A FEW COMMENTS TO YOU, AND THEN WE WILL GET
3 RIGHT INTO THE TRIAL OF THE CASE. IT IS, AS YOU KNOW,
4 THE CASE OF THE STATE AGAINST GARY LANE PREWITT. YOU
5 KNOW THERE ARE FOUR SEPARATE COUNTS IN THE INDICTMENT
6 THAT I'VE ALREADY READ TO YOU. I WON'T READ THEM TO YOU
7 AGAIN. YOU KNOW THAT MR. PREWITT HAS ENTERED A PLEA OF
8 NOT GUILTY ON EACH CHARGE IN THE INDICTMENT, AND UNDER
9 OUR CONSTITUTION, AS I TOLD YOU BEFORE, WHEN A DEFENDANT
10 PLEADS NOT GUILTY, THE BURDEN IS THEN PLACED UPON THE
11 STATE OF SOUTH CAROLINA THROUGH THE SOLICITOR'S OFFICE TO
12 PROVE THAT HE IS GUILTY OF ANY OR ALL OF THESE CRIMES IF
13 THEY CAN PROVE THAT GUILT.

14 IT IS NEVER INCUMBENT UPON A DEFENDANT TO PROVE HIS
15 OR HER OWN INNOCENCE. EVERY DEFENDANT IS PRESUMED TO BE
16 INNOCENT, AND AS I'VE TOLD YOU, YOU AND I MUST LOOK UPON
17 THE DEFENDANT AS INNOCENT. WE MUST CONSIDER HIM INNOCENT
18 AND CONTINUE TO DO SO UNTIL AND UNLESS YOU ARE SATISFIED
19 THAT THE STATE HAS PROVED THAT HE IS GUILTY.

20 THOSE ARE VERY IMPORTANT SAFEGUARDS THAT EVERY
21 DEFENDANT HAS AND IS ENTITLED TO RECEIVE AT YOUR HANDS AS
22 WE GO INTO THIS PROCESS.

23 NOW, FOLKS, AS I TOLD YOU ON MONDAY, YOUR
24 RESPONSIBILITY AND MINE IS TO BE ULTIMATELY FAIR TO BOTH
25 THE STATE AND THE DEFENDANT. WE HAVE NO ONE TO WHOM TO

1 SHOW FAVOR, NO ONE TO WHOM TO SHOW ANY DISFAVOR, BUT WE
2 MUST EXERCISE EVERY POWER YOU POSSESS TO BE FAIR TO BOTH
3 SIDES IN THIS CASE, AND THAT'S THE GREATEST BURDEN YOU
4 BEAR, TO BE FAIR AS YOU HEAR THIS CASE, THE TESTIMONY,
5 THE EVIDENCE AND AS YOU DECIDE THIS CASE.

6 NOW, FOLKS, WHEN THE TESTIMONY BEGINS, YOU HAVE THE
7 RESPONSIBILITY, AS I'VE ALREADY TOLD YOU, OF LISTENING TO
8 THE WITNESSES, OF COURSE, DECIDING WHICH OF THE WITNESSES
9 YOU BELIEVE, WHAT PORTIONS OF THE WITNESSES' TESTIMONY
10 YOU MIGHT ACCEPT, IF ANY, AND WHAT VALUE THAT TESTIMONY
11 MIGHT HAVE. YOU ARE THE TRUTH SEEKING BODY.

12 UNDER THE LAW, I HAVE NO AUTHORITY TO TELL YOU WHO
13 I THINK YOU OUGHT TO BELIEVE, BUT THAT RESTS ENTIRELY
14 WITHIN THE HEARTS AND THE MINDS OF YOU LADIES AND
15 GENTLEMEN TO DECIDE BELIEVABILITY AND TO FIND THE TRUTH
16 IN ALL OF THE TESTIMONY AND THE EVIDENCE PRESENTED IN
17 THIS CASE.

18 AS THE JUDGE OF THE LAW, I'LL HAVE THE
19 RESPONSIBILITY OF DISCUSSING WITH YOU IN SOME DETAIL THE
20 LAW THAT MAY BE INVOLVED IN THIS PARTICULAR CASE. YOU
21 HAVE THE RESPONSIBILITY OF TAKING THE LAW AS I GIVE IT TO
22 YOU, APPLYING THAT LAW TO THE TRUTH THAT YOU DETERMINE
23 AND RETURNING A VERDICT MAKING A FINAL DECISION IN THIS
24 CASE WHICH RESTS COMPLETELY UPON THE TRUTH AND THE LAW
25 AND UPON NO OTHER BASIS. CERTAINLY WOULD BE IMPROPER FOR

1 YOU TO BRING BACK A VERDICT BASED UPON BIAS OR PREJUDICE
2 OR FAVOR OR DISFAVOR. SET ALL THAT ASIDE. PUT ALL YOUR
3 PREJUDICES, AND WE ALL HAVE THEM ONE WAY OR ANOTHER ---
4 PUT THEM ALL ASIDE AND LET YOUR VERDICT RESTS UPON JUST
5 THOSE TWO PILLARS OF THE TRUTH THAT YOU DECIDE AND THE
6 LAW THAT I GIVE YOU. YOUR VERDICT WILL BE A PROPER
7 VERDICT WHEN THAT IS DONE.

8 THE STATE IN THIS CASE IS REPRESENTED BY MS. STROM
9 AND MRS. GRIFFITH. THE DEFENDANT IS REPRESENTED BY MR.
10 WICKER. I'M GOING TO RECOGNIZE THEM FOR THEIR OPENING
11 COMMENTS IN JUST A MOMENT, AND I JUST GIVE YOU THIS ONE
12 CAUTION. LAWYERS ARE ENTITLED TO TALK TO YOU AT THE
13 BEGINNING OF THE TRIAL IF THEY WISH AND AGAIN AT THE END
14 OF THE TRIAL IF THEY WISH. THEIR COMMENTS ARE NOT
15 EVIDENCE IN THE CASE. THEIR COMMENTS CANNOT SERVE AS ANY
16 BASIS FOR YOUR VERDICT IN THE CASE. FOR YOU KNOW YOUR
17 VERDICT RESTS UPON THE TESTIMONY AND THE EVIDENCE AND THE
18 LAW AND NOT UPON THEIR COMMENTS. BUT THEIR COMMENTS ARE
19 VERY IMPORTANT.

20 HERE IN THE BEGINNING, THEY WILL HAVE AN OPPORTUNITY
21 TO TELL YOU WHAT THIS CASE IS ALL ABOUT. AT THE
22 CONCLUSION OF THE TRIAL, THEIR COMMENTS CAN BE EXTREMELY
23 IMPORTANT AS THEY ASSIST YOU AS YOU FOCUS UPON THE
24 QUESTIONS WHICH ONLY YOU CAN ANSWER. SO, EVEN THOUGH THE
25 COMMENTS ARE NOT EVIDENCE, THEY ARE EXTREMELY IMPORTANT.

1 LISTEN CLOSELY TO THEM.

2 MS. WILSON, AS FORELADY, YOU'LL HAVE THE
3 RESPONSIBILITY OF PRESIDING IN THE JURY ROOM AND
4 REPRESENTING THE PANEL HERE IN THE COURTROOM IN THE EVENT
5 OF THAT NEED. SO, WITH THAT, FOLKS, WE WILL PROCEED.

6 MS. STROM?

7 MS. STROM: MAY IT PLEASE THE COURT, YOUR HONOR?

8 OPENING STATEMENT

9 BY MS. STROM

10 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, AS
11 HIS HONOR HAS TOLD YOU, MY NAME IS BETTY STROM, AND I'M
12 THE DEPUTY PROSECUTOR, DEPUTY SOLICITOR, HERE IN NEWBERRY
13 COUNTY. MY JOB IS TO PROSECUTE CRIMINAL CASES THAT COME
14 AND OCCUR IN NEWBERRY COUNTY --- HERE TO BRING THE FACTS
15 TO YOU AND PRESENT THE CASE.

16 AS DEPUTY SOLICITOR, I HAVE THE JOB OF PROSECUTING
17 CRIMINAL CASES. THE STATE REPRESENTS THE VICTIMS IN THIS
18 CASE, AND WE REPRESENT THE PEOPLE OF NEWBERRY COUNTY.

19 MR. WICKER, WHO WILL BE UP TO TALK TO YOU IN A FEW
20 MINUTES, REPRESENTS THE DEFENDANT IN THIS CASE, GARY LANE
21 PREWITT.

22 THE STATE HAS CHARGED GARY LANE PREWITT WITH FOUR
23 CHARGES. ONE IS BURGLARY IN THE FIRST DEGREE. TO PROVE
24 TO YOU TO FIND THE DEFENDANT GUILTY OF BURGLARY IN THE
25 FIRST DEGREE, THESE ARE THE ELEMENTS THAT THE STATE MUST

OPENING STATEMENT
BY MS. STROM

21

1 PROVE, AND HIS HONOR, AT THE END OF THE CASE, WILL TELL
2 YOU WHAT THE LAW IS. IT'S DIFFERENT FROM WHAT ANYONE
3 ELSE SAYS. YOU MUST TAKE THE LAW AS HIS HONOR CHARGES IT
4 TO YOU, NOT AS YOU THINK IT SHOULD BE, NOT AS YOU WANT IT
5 TO BE OR HOW YOU WISH IT WOULD BE IN AN IDEAL SITUATION.
6 YOU MUST TAKE THE LAW AS HIS HONOR CHARGES IT.

7 HE WILL CHARGE YOU ON THE LAW OF BURGLARY IN THE
8 FIRST DEGREE. THE STATE ALLEGES AND THE STATE INTENDS TO
9 PROVE TO YOU THAT THE DEFENDANT, GARY LANE PREWITT,
10 ENTERED THE HOME OF MR. RANDY TINSLEY. MR. TINSLEY IS
11 SEATED THERE BEHIND COUNSEL TABLE. GARY LANE PREWITT
12 ENTERED HIS HOME WITHOUT HIS CONSENT AND WITH THE INTENT
13 TO COMMIT A CRIME THEREIN. IN OTHER WORDS, HE WENT INTO
14 THE MAN'S HOME WITH THE INTENT TO STEAL.

15 YOU MUST FURTHER FIND AN AGGRAVATING CIRCUMSTANCE.
16 AN AGGRAVATING CIRCUMSTANCE CAN BE ONE --- I BELIEVE IT'S
17 FOUR. AGAIN, TAKE IT AS HIS HONOR TELLS YOU. THAT THE
18 PERSON THAT ENTERED THE HOME WAS ARMED WITH A DEADLY
19 WEAPON. HE WENT INTO THE HOUSE WITH A DEADLY WEAPON OR
20 WHILE HE WAS IN THERE HE OBTAINED A DEADLY WEAPON OR
21 IMMEDIATELY IN FLIGHT FROM THAT HOME HE OBTAINED A DEADLY
22 WEAPON. THAT MAKES IT BURGLARY IN THE FIRST DEGREE.

23 THE SECOND ELEMENT, ANOTHER AGGRAVATING
24 CIRCUMSTANCE, IS THAT WHILE IN THE HOME, WITHOUT THE
25 PERSON'S CONSENT, THE DEFENDANT, GARY PREWITT, COMMITTED

OPENING STATEMENT
BY MS. STROM

22

1 AN ACT OF VIOLENCE AGAINST SOMEONE ELSE. HE INJURED
2 SOMEONE ELSE WHO WAS NOT INVOLVED IN THE CRIME WHILE HE
3 WAS THERE.

4 IF THE DEFENDANT THREATENED TO USE A DEADLY WEAPON,
5 THAT IS AN AGGRAVATING CIRCUMSTANCE. IF HE DISPLAYS,
6 SHOWS, PULLS A DEADLY WEAPON, THAT CAN MAKE IT BURGLARY
7 IN THE FIRST DEGREE --- ENTERING WITHOUT CONSENT WITH THE
8 INTENT TO COMMIT A CRIME THEREIN AND WAS ARMED WITH A
9 DEADLY WEAPON OR CAUSED INJURY WHILE IN THE HOME. THE
10 STATE INTENDS TO PROVE THAT TO YOU. THE STATE INTENDS TO
11 PROVE TO YOU THROUGH THE WITNESSES THAT MR. DIXON, JOE
12 DIXON, WENT TO A NEIGHBOR'S HOME BECAUSE HE HAD A
13 SUSPICION ABOUT THE VEHICLE THAT WAS IN THE YARD. HE
14 GOES OVER THERE AND FINDS TWO MEN IN THE HOUSE. ONE OF
15 THE MEN RUNS OUT THE FRONT DOOR. THE SECOND MAN, GARY
16 LANE PREWITT, SHOOTS JOE DIXON THREE TIMES. THE STATE
17 INTENDS TO PROVE THAT TO YOU.

18 THE SECOND CHARGE, LARCENY. WHAT IS LARCENY?
19 STEALING. IT'S JUST A LEGAL WORD FOR SAYING STEALING.
20 THE STATE INTENDS TO PROVE TO YOU THAT GARY LANE PREWITT,
21 WHILE HE WAS IN MR. TINSLEY'S HOME WITHOUT HIS
22 PERMISSION, STOLE FROM HIM. THAT HE STOLE MONEY FROM
23 HIM. THEN HE TRIED TO STEAL HIS GUNS.

24 THIRD CHARGE, ASSAULT AND BATTERY WITH INTENT TO
25 KILL. BASICALLY, ASSAULT AND BATTERY WITH INTENT TO KILL

OPENING STATEMENT
BY MS. STROM

23

1 IS AN UNLAWFUL INJURY TO ANOTHER PERSON WITH MALICE
2 AFORETHOUGHT. HIS HONOR AT THE END OF THE CASE WILL GIVE
3 TO YOU THE DEFINITION FOR MALICE. THE STATE INTENDS TO
4 PROVE THAT GARY LANE PREWITT COMMITTED AN ASSAULT AND
5 BATTERY WITH INTENT TO KILL WHEN HE SHOT JOE DIXON.

6 THE FOURTH CHARGE IS THE USE OF A FIREARM DURING THE
7 COMMISSION OF A VIOLENT CRIME. I'LL DISCUSS THAT MORE
8 WITH YOU AT THE END OF THE CASE AS FAR AS HOW EVERYTHING
9 IS TIED TOGETHER.

10 AGAIN, YOUR JOB TODAY IS TO LISTEN TO THE WITNESSES
11 THAT TESTIFY AND DETERMINE WHAT THE TRUTH IS, AND AS HIS
12 HONOR TOLD YOU, YOU HAVE NO FRIENDS TO REWARD. YOU HAVE
13 NO ENEMIES TO PUNISH HERE. YOU ARE THE NON-BIASED FACT
14 FINDERS.

15 WHAT YOU BRING TO THIS COURTROOM --- YOUR MOST
16 VALUABLE ASSET THAT YOU BRING TO THIS COURTROOM IS YOUR
17 GOOD COMMON SENSE. LOOK AT SOMETHING. LOOK AT SOMEBODY.
18 LISTEN TO WHAT THEY'RE TELLING YOU, AND DETERMINE IF
19 THEY'RE TELLING THE TRUTH.

20 LADIES AND GENTLEMEN, I APPRECIATE YOU BEING HERE.
21 I APPRECIATE THE ATTENTION THAT I KNOW EACH OF YOU WILL
22 GIVE TO THIS CASE. AND AS HIS HONOR SAID, AFTER MR.
23 WICKER COMES UP AND MAKES HIS OPENING ARGUMENT, WE WILL
24 BE PRESENTING THE TESTIMONY IN THIS CASE. AT THE END OF
25 THE CASE, WE WILL HAVE CLOSING ARGUMENTS. AT THAT TIME,

OPENING STATEMENT
BY MR. WICKER

24

1 LADIES AND GENTLEMEN, PRIOR TO YOUR DELIBERATIONS, I WILL
2 BE ASKING YOU TO RETURN A VERDICT IN THIS CASE. I WILL
3 BE ASKING YOU TO RETURN A VERDICT OF GUILTY ON ALL
4 CHARGES. THANK YOU.

5 THE COURT: MR. WICKER? MAY IT PLEASE THE COURT?

6 OPENING STATEMENT

7 BY MR. WICKER

8 MADAM FORELADY AND LADIES AND GENTLEMEN OF THE JURY,
9 MY NAME IS RAY WICKER, AND I PRACTICE LAW HERE IN
10 NEWBERRY IN THE FIRM OF WICKER & SENN, AND WE'RE ACROSS
11 THE STREET FROM THE OLD, OLD HOSPITAL BUILDING IN THE
12 BAKER BUILDING. I'M IN THE SPACE THAT USED TO BE A
13 FLOWER SHOP, NEXT DOOR TO THE DENTIST DR. BAKER.

14 WE'VE BEEN OVER THERE ABOUT A LITTLE OVER THREE
15 YEARS NOW INCORPORATED AS WICKER & SENN. LISA SENN IS MY
16 LAW PARTNER. SHE'S MARRIED INTO THE SENN TRUCKING FIRM
17 FAMILY.

18 BEFORE THAT, I WAS IN NEWBERRY FOR A YEAR AND A HALF
19 AS GRIFFITH AND WICKER. WHEN MY FRIEND GENE GRIFFITH
20 DIED, I CAME TO NEWBERRY AND TOOK OVER HIS BUILDING FOR
21 A PERIOD OF ABOUT A YEAR AND A HALF, AND WE WERE THEN
22 GRIFFITH AND WICKER.

23 ABOUT SEVEN YEARS BEFORE THAT, I PRACTICED LAW IN
24 THE LITTLE PEACH GROWING COMMUNITY OF JOHNSTON, SOUTH
25 CAROLINA, WHERE I WAS A SOLE PRACTITIONER FOR SEVEN

OPENING STATEMENT
BY MR. WICKER

25

1 YEARS, AND I WAS THE COUNTY ATTORNEY FOR SIX OF THOSE
2 YEARS FOR EDGEFIELD COUNTY.

3 PRIOR TO THAT, I SPENT MANY YEARS IN THE ARMY. I
4 RETIRED AS A REGULAR ARMY FULL COLONEL IN THE JUDGE
5 ADVOCATE GENERAL'S CORP, AND SO, I WAS AN ARMY LAWYER FOR
6 THE LAST 22 YEARS THAT I SERVED. I SERVED ALL OVER THE
7 WORLD. IN FACT, I SERVED IN ETHIOPIA FOR A YEAR, VIETNAM
8 FOR TWO AND A HALF YEARS, KOREA FOR A YEAR, AUSTRIA FOR
9 A YEAR AND GERMANY FOR SIX YEARS, AND THEN I SERVED
10 AROUND THE PENTAGON IN FORT LEE, MARYLAND AND ARLINGTON,
11 VIRGINIA, AT WHICH TIME I WAS A STAFF JUDGE ADVOCATE FOR
12 ALL ARMY INTELLIGENCE WORLDWIDE FOR FIVE YEARS.

13 I WANT YOU TO KNOW THAT I GREW UP IN NEWBERRY. I
14 WAS BORN ON NANCE STREET. I GREW UP ON DRAYTON STREET
15 DOWN BELOW THE OLD FARMER'S OIL MILL. I FINISHED
16 NEWBERRY HIGH SCHOOL AND NEWBERRY COLLEGE ON CLINE STREET
17 --- THERE ON THE CORNER OF CLINE AND MAIN STREET ACROSS
18 FROM THE OLD LUMBER COMPANY. IT USED TO BE THE MURRAY
19 LUMBER COMPANY, AND THEN I LEFT TOWN, AND I WAS GONE FOR
20 A LONG TIME --- 32 YEARS TO BE EXACT. I DID GO TO
21 COLLEGE AT THE UNIVERSITY OF SOUTH CAROLINA ON THE G.I.
22 BILL, AND I STARTED THERE WHEN I WAS 26, AND GRADUATED
23 FROM LAW SCHOOL THERE WHEN I WAS 29. I WAS ADMITTED TO
24 THE BAR SOME 35 YEARS AGO.

25 I HAVE BEEN BACK LIVING IN NEWBERRY COUNTY FOR OVER

OPENING STATEMENT
BY MR. WICKER

26

1 ELEVEN YEARS NOW. I HAVE LIVED ON MY GREAT GRANDFATHER'S
2 PLACE ALL OF THIS TIME. HE WAS LAMAR DOMINICK. HE WAS
3 THE MAGISTRATE IN CHAPPELLE'S FOR MANY YEARS. MY BROTHER
4 IS IN THE OLD HOME PLACE WHICH HE RESTORED, AND I BUILT
5 THE NEW HOUSE NEAR THERE. IT'S A BACK ROAD --- ISLAND
6 FORD ROAD BETWEEN CHAPPELLE'S AND SILVERSTREET. THAT'S
7 WHERE I GO HOME TO EVERY NIGHT AND GO TO BED AND TO BE
8 HAPPY THAT I'M BACK IN NEWBERRY COUNTY. I'M ALSO HAPPY
9 TO BE BACK IN MY HOME TOWN, NEWBERRY, AND WE'RE HAPPY
10 THAT WE CAN GET A JURY HERE TODAY ALL OF WHOM LIVE IN
11 NEWBERRY COUNTY, ALL OF WHOM ARE WIDE AWAKE, AND ALL OF
12 WHOM ARE GOING TO LISTEN TO EVERYTHING THE STATE SAYS AND
13 ALL OF WHOM WILL KEEP AN OPEN MIND AND LISTEN TO
14 EVERYTHING THE DEFENSE SAYS.

15 NOW, THE STATE DOES HAVE THE BURDEN OF PROOF TO
16 PROVE THE CASE BEYOND A REASONABLE DOUBT. THE DEFENSE
17 DOES NOT HAVE TO TAKE THE STAND AT ALL. HE WILL TAKE THE
18 STAND, AND HE WILL DEFEND HIMSELF, AND YOU WILL HEAR FROM
19 HIS MOUTH UNDER OATH, OF COURSE, THAT HE IS INNOCENT.
20 SO, YOU CAN KEEP ALL OF THAT IN MIND WHILE YOU ARE
21 LISTENING TO THE STATE'S EVIDENCE.

22 NEEDLESS TO SAY, MY CLIENT, WHO I CALL LANEY
23 PREWITT, AND MYSELF AND HIS MOTHER AND FATHER, WHO ARE IN
24 THE COURTROOM, ALL DEPEND ON THIS JURY TO RENDER A
25 VERDICT THAT IS JUST. AND YOU WILL HAVE TO HAVE A

OPENING STATEMENT
BY MR. WICKER

27

1 CONSENSUS OF OPINION. THAT MEANS ALL 12 OF YOU WHO GO
2 BACK HERE TO DISCUSS THE CASE SHOULD TAKE PART IN THE
3 DISCUSSION, SHOULD SAY WHAT YOU THINK, SHOULD LISTEN AT
4 THE OTHER ELEVEN AND SHOULD COME UP WITH A FINDING ON
5 EACH ONE OF THESE FOUR CHARGES, AND OF COURSE, THE
6 FINDING WILL EITHER BE NOT GUILTY, WHAT WE WILL BE ASKING
7 FOR, OF COURSE, OR IF YOU GO GUILTY ON ALL OF THE CHARGES
8 OR ANY ONE OF THE CHARGES, THEN YOU HAVE TO SAY IN YOUR
9 HEART AND IN YOUR MIND THAT THE STATE OF SOUTH CAROLINA
10 HAS PROVEN THE CASE TO YOUR SATISFACTION BEYOND A
11 REASONABLE DOUBT, AND YOU'RE JOINING IN WITH THE OTHER 11
12 IN A CONSENSUS THEN TO SAY MY CLIENT IS GUILTY.

13 OF COURSE, WE BELIEVE THAT YOU WILL TRY TO BE FAIR.
14 SO, WE WOULD LIKE FOR YOU TO KEEP AN OPEN MIND UNTIL
15 LANEY GETS THE CHANCE TO TAKE THE STAND AND TELL YOU WHAT
16 HE HAS TO SAY. THANK YOU VERY MUCH.

17 THE COURT: CALL YOUR FIRST WITNESS.

18 MS. STROM: THE STATE CALLS RANDY TINSLEY.

19 WHEREUPON:

20 RANDY TINSLEY, BEING FIRST DULY
21 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. STROM

24 Q. MR. TINSLEY, I'M GOING TO NEED FOR YOU TO SPEAK UP
25 SO ALL THESE JURORS CAN HEAR YOU, ALL RIGHT?

RANDY TINSLEY
DIRECT TESTIMONY BY MS. STROM

28

- 1 A. ALL RIGHT.
- 2 Q. MR. TINSLEY, HOW OLD ARE YOU?
- 3 A. THIRTY.
- 4 Q. AND HOW LONG HAVE YOU LIVED IN NEWBERRY COUNTY?
- 5 A. ABOUT NINE YEARS.
- 6 Q. WHERE ARE YOU FROM?
- 7 A. ORIGINALLY FROM WHITMIRE.
- 8 Q. FROM WHITMIRE. WHERE DO YOU LIVE IN NEWBERRY
- 9 COUNTY?
- 10 A. HIGHWAY 63, KINARDS.
- 11 Q. YOU SAID THAT WAS HIGHWAY 63 IN KINARDS?
- 12 A. YES, MA'AM.
- 13 Q. WHERE DO YOU WORK?
- 14 A. I'M EMPLOYED AT CONE MILLS RIGHT NOW.
- 15 Q. AND WHAT DO YOU DO THERE?
- 16 A. TENON FRAME OPERATOR.
- 17 Q. WHAT TYPE OF FRAME OPERATOR?
- 18 A. TENON FRAME.
- 19 Q. MR. TINSLEY, DO YOU KNOW THE DEFENDANT GARY LANE
- 20 PREWITT?
- 21 A. YES, MA'AM.
- 22 Q. TELL THIS JURY HOW YOU KNOW HIM?
- 23 A. I LIVED IN JOANNA FOR ABOUT, BASICALLY, ALL MY LIFE,
- 24 AND HE'S FROM JOANNA, AND I WORKED AT ETHICA INDUSTRIES
- 25 FOR NINE AND A HALF YEARS, AND SOMEWHERE AROUND FOUR OR

1 FIVE YEARS AGO HE COME TO WORK THERE --- SAME SHIFT.

2 Q. DID Y'ALL SOCIALIZE TOGETHER, OR DID Y'ALL JUST WORK
3 TOGETHER?

4 A. REALLY, NEITHER ONE.

5 Q. HE WAS JUST ON THE SAME SHIFT?

6 A. YEAH, IN A DIFFERENT DEPARTMENT.

7 Q. ALL RIGHT, IN A DIFFERENT DEPARTMENT. I'M SORRY.
8 MR. TINSLEY, DO YOU RECALL JULY 22, 1994, THE DAY YOUR
9 HOUSE WAS BROKEN INTO?

10 A. YES, MA'AM.

11 Q. DID I HAVE THE CORRECT DATE? IS THAT THE CORRECT
12 DATE?

13 A. THE 22ND?

14 Q. YES, SIR. COULD YOU PLEASE TELL THIS JURY --- LET
15 ME ASK YOU THIS. DID GARY LANE PREWITT HAVE PERMISSION
16 TO BE IN YOUR HOUSE THAT DAY?

17 A. NO, MA'AM.

18 Q. WHO HAS A KEY TO YOUR HOME?

19 A. ME AND MY WIFE.

20 Q. I BELIEVE THIS WAS ON A FRIDAY. DID YOU WORK ON
21 THAT DAY?

22 A. YES, MA'AM.

23 Q. DOES YOUR WIFE WORK?

24 A. YES, MA'AM.

25 Q. WHERE DOES YOUR WIFE WORK?

- 1 A. E. L. MANSURE.
- 2 Q. DO YOU RECALL IF SHE WORKED ON THAT DAY?
- 3 A. YES, MA'AM.
- 4 Q. WHAT TIME DO Y'ALL GO TO WORK?
- 5 A. WE BOTH WORK FROM SEVEN IN THE MORNING UNTIL THREE
- 6 IN THE AFTERNOON.
- 7 Q. DO Y'ALL HAVE ANY CHILDREN?
- 8 A. TWO.
- 9 Q. WHO KEEPS YOUR CHILDREN?
- 10 A. ONE'S IN SCHOOL --- LITTLE BOY'S IN SCHOOL, AND
- 11 LITTLE GIRL'S IN NURSERY.
- 12 Q. ON THIS PARTICULAR DAY, ON THE 22ND, WOULD YOU TELL
- 13 THIS JURY WHAT YOU DID THAT MORNING PRIOR TO GOING TO
- 14 WORK?
- 15 A. GOT UP AND WENT TO WORK THAT MORNING. THAT WAS IT.
- 16 Q. DID YOU TAKE YOUR CHILDREN ANYWHERE?
- 17 A. TOOK MY LITTLE BOY TO SCHOOL AND TOOK OUR LITTLE
- 18 GIRL TO THE NURSERY.
- 19 Q. AND DID YOU HAVE OCCASION TO COME HOME --- DID YOU
- 20 COME HOME EARLY THAT DAY, OR WHEN DID YOU GET HOME?
- 21 A. THE PLANT MANAGER AT THE PLANT I WORKED AT NOTIFIED
- 22 ME THAT SOMEONE HAD BROKE IN THE HOUSE, AND JOE HAD BEEN
- 23 SHOOT, AND WE --- THAT MUST HAVE BEEN AROUND TEN, AND WE
- 24 ARRIVED AT THE HOUSE AROUND FIFTEEN OR TWENTY AFTER TEN.
- 25 Q. MR. TINSLEY, DO YOU KEEP ANY GUNS IN YOUR HOUSE?

1 A. YES, MA'AM.

2 Q. WHAT KIND OF GUNS DO YOU KEEP IN YOUR HOUSE?

3 A. RIFLES AND SHOT GUNS.

4 Q. DO YOU HAVE ANY HANDGUNS?

5 A. NO, MA'AM.

6 Q. ON THE 22ND, DID YOU HAVE ANY HANDGUNS?

7 A. NO, MA'AM.

8 Q. WHERE DO YOU KEEP THOSE GUNS?

9 A. IN A GUN CABINET.

10 Q. DO YOU RECALL IF YOUR GUN CABINET WERE LOCKED THAT
11 DAY?

12 A. NO, IT WASN'T LOCKED.

13 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

14 BY MS. STROM

15 Q. MR. TINSLEY, I HAND YOU A GROUP OF NINE PHOTOGRAPHS.
16 I WOULD LIKE FOR YOU TO LOOK THROUGH THOSE AND SEE IF YOU
17 CAN IDENTIFY THEM. CAN YOU IDENTIFY THEM?

18 A. YES, MA'AM.

19 Q. WHAT ARE THEY PICTURES OF?

20 A. PICTURES OF MY GUNS LAYING IN THE KITCHEN FLOOR, MY
21 GUN CABINET EMPTY, MY BEDROOM A MESS, RODS AND REELS,
22 FISHING TACKLE THAT I OWN IN THE KITCHEN PROPPED UP
23 AGAINST THE REFRIGERATOR AND MY HOME.

24 MS. STROM: YOUR HONOR, AT THIS TIME, THE STATE
25 WOULD INTRODUCE THESE NINE PHOTOGRAPHS AS STATE'S

1 EXHIBITS ONE THROUGH NINE.

2 THE COURT: ANY OBJECTION?

3 MR. WICKER: WITHOUT OBJECTION, YOUR HONOR.

4 THE COURT: THANK YOU, SIR.

5 MS. STROM: I'M SORRY, YOUR HONOR. THERE WERE TEN.
6 I THOUGHT THERE WAS NINE. I MISCOUNTED.

7 THE COURT: ANY OBJECTION?

8 MR. WICKER: NONE, YOUR HONOR.

9 (STATE'S EXHIBITS ONE THROUGH TEN MARKED FOR
10 IDENTIFICATION AND MADE A PART OF THE RECORD.)

11 BY MS. STROM

12 Q. MR. TINSLEY, IF YOU WOULD, STEP DOWN AND SHOW THESE
13 PHOTOGRAPHS TO THE JURY. I SHOW YOU WHAT'S BEEN MARKED
14 AS STATE'S EXHIBIT NUMBER FIVE. WOULD YOU PLEASE TELL
15 THIS JURY WHAT THAT DEPICTS?

16 A. THAT'S THE FRONT OF MY HOME --- FRONT DOOR.

17 Q. I SHOW YOU STATE'S EXHIBIT NUMBER NINE. WHAT IS
18 THAT?

19 A. THIS IS MY WHOLE HOME.

20 Q. I SHOW YOU STATE'S EXHIBIT NUMBER TEN. WHAT DOES
21 THAT DEPICT?

22 A. BACKSIDE OF MY HOUSE.

23 Q. THE BACKSIDE OF YOUR HOUSE. I SHOW YOU WHAT'S BEEN
24 MARKED AS STATE'S EXHIBIT NUMBER ONE. WHAT DOES THAT
25 DEPICT?

1 A. MY GUN CABINET.

2 Q. DID YOU LEAVE YOUR GUN CABINET IN THAT CONDITION
3 WHEN YOU LEFT TO GO TO WORK ON THE 22ND?

4 A. NO.

5 Q. HOW DID YOU LEAVE IT?

6 THE COURT: YOU WILL HAVE TO SPEAK LOUDLY ENOUGH
7 THAT I CAN HEAR YOU TOO, PLEASE, SIR.

8 WITNESS: NO, SIR, I LEFT THE DOOR SHUT AND THERE
9 WERE SIX GUNS IN IT.

10 BY MS. STROM

11 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
12 NUMBER TWO. WHAT IS THAT?

13 A. GUN LAYING UNDER MY KITCHEN TABLE.

14 Q. DID YOU LEAVE THAT GUN UNDER YOUR KITCHEN TABLE WHEN
15 YOU LEFT ON THE 22ND?

16 A. NO, MA'AM. IT WAS IN THE GUN CABINET.

17 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
18 NUMBER THREE. WHAT DOES THAT DEPICT?

19 A. TWO MORE GUNS LAYING IN THE FLOOR, A ROD AND REEL
20 AND TACKLE BOX AND SOME GUNS PROPPED UP AGAINST THE
21 KITCHEN CABINETS.

22 Q. DID YOU LEAVE THESE GUNS AND RODS AND REELS IN THE
23 KITCHEN PRIOR TO YOUR LEAVING ON THE 22ND?

24 A. NO, MA'AM.

25 Q. WHERE WERE THEY?

1 A. THE ROD AND REEL AND TACKLE BOX WERE IN THE CLOSET.
2 THE GUNS WAS IN THE GUN CABINET.

3 Q. I SHOW YOU WHAT'S STATE'S EXHIBIT NUMBER FOUR, AND
4 I BELIEVE THAT'S JUST A CLOSE UP SHOT. IS THAT CORRECT?

5 A. YES, GUN IN THE FLOOR.

6 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
7 NUMBER EIGHT. WHAT DOES THAT DEPICT?

8 A. IT'S THE BACK DOOR OF MY HOME WHERE THE BURGLARS
9 ENTERED AND BLOOD IN THE FLOOR WHERE JOE WAS SHOT.

10 Q. THIS IS THE BACK DOOR OF YOUR HOME?

11 A. YES, MA'AM.

12 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
13 NUMBER SEVEN. WHAT DOES THAT DEPICT --- AND ALSO STATE'S
14 EXHIBIT NUMBER SIX. I BELIEVE THAT'S BASICALLY THE SAME
15 SHOT.

16 A. THE DRAWERS OUT OF THE DRESSERS BEEN PULLED OUT IN
17 THE BEDROOM AND CLOTHES THROWN ALL OVER THE FLOOR.

18 Q. DID YOU LEAVE YOUR BEDROOM IN THIS CONDITION PRIOR
19 TO YOUR LEAVING ON THE 22ND?

20 A. NO, MA'AM.

21 Q. THANK YOU, MR. TINSLEY. YOU MAY RETAKE THE STAND.

22 MS. STROM: YOUR HONOR, IF THERE'S NO OBJECTION, I'M
23 GOING TO LEAVE THESE FOR THE JURY IF THEY CARE TO LOOK AT
24 THEM.

25 THE COURT: THEY ARE IN EVIDENCE.

1 BY MS. STROM

2 Q. MR. TINSLEY, DID YOU HAVE OCCASION, WHEN YOU FOUND
3 OUT THAT YOUR HOME HAD BEEN BURGLARIZED, TO DO AN
4 ASSESSMENT AS TO WHAT WAS TAKEN, IF ANYTHING? WAS
5 ANYTHING TAKEN FROM YOUR HOME?

6 A. YEAH.

7 Q. WOULD YOU PLEASE TELL THIS JURY WHAT WAS TAKEN FROM
8 YOUR HOME?

9 A. I HAD A FEW OLD COINS, SOME BI-CENTENNIAL QUARTERS,
10 A RING, THERE WAS A SWITCHBLADE POCKET KNIFE, ZIPPO
11 LIGHTER. I THINK THAT WAS ABOUT ALL THAT WAS REALLY
12 TAKEN.

13 Q. THESE OLD COINS, HAVE YOU HAD OCCASION TO HAVE THEM
14 VALUED?

15 A. I NEVER HAD THEM VALUED.

16 Q. DO YOU KNOW FROM YOUR OWN PERSONAL EXPERIENCE HOW
17 MUCH THEY ARE VALUED AND AT WHAT THEY'RE VALUED?

18 A. YEAH, BASICALLY.

19 Q. WOULD YOU PLEASE TELL THIS JURY WHAT THAT IS?

20 A. ALL OF THEM WERE AROUND 250 --- \$300 I WOULD SAY.

21 Q. WOULD THAT BE TOTAL?

22 A. YEAH.

23 Q. MR. TINSLEY, OF YOUR OWN PERSONAL KNOWLEDGE OF WHAT
24 YOU SAW, DO YOU KNOW WHO BROKE INTO YOUR HOME? DID YOU
25 SEE THE PERSON WHO BROKE INTO YOUR HOME?

1 A. NO, MA'AM.

2 Q. SO, YOU WEREN'T THERE WHEN IT OCCURRED?

3 A. NO, MA'AM.

4 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

5 BY MS. STROM

6 Q. MR. TINSLEY, YOUR HOME OUT IN KINARDS, THAT IS, OF
7 COURSE, IN NEWBERRY COUNTY, CORRECT?

8 A. YES, MA'AM.

9 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT MR.
10 WICKER MAY HAVE.

11 CROSS EXAMINATION

12 BY MR. WICKER

13 Q. MR. TINSLEY, YOU MENTIONED YOUR SON WAS IN SCHOOL
14 THAT DAY; IS THAT CORRECT?

15 A. HE WAS --- I'LL REPHRASE THAT. HE WAS ACROSS THE
16 STREET AT HIS GRANDPARENT'S HOUSE.

17 Q. OKAY. SO, SCHOOL WAS NOT IN SESSION ON THE 22ND OF
18 JULY; IS THAT CORRECT?

19 A. THAT'S CORRECT.

20 Q. SO, INSTEAD OF BEING IN SCHOOL, HE WAS ACROSS THE
21 STREET?

22 A. YEAH.

23 Q. OKAY. HAVE YOU RECOVERED ANY OF THESE OLD COINS OR
24 THE KNIFE OR THE MONEY THAT WAS TAKEN?

25 A. NO, SIR.

1 Q. WHEN THE LAW ENFORCEMENT PEOPLE CAME TO YOUR HOME,
2 DID THEY TAKE THE GUNS WITH THEM?

3 A. YEAH, SLED DID.

4 Q. HAVE YOU RECEIVED THEM BACK YET?

5 A. YEAH, I'VE GOT THEM BACK.

6 Q. HAVE YOU EVER SEEN LANEY PREWITT IN OR NEAR YOUR
7 HOME?

8 A. NO.

9 Q. AND WHEN YOU WORKED NEAR LANEY, YOU SAID YOU DIDN'T
10 KNOW HIM WELL?

11 A. HE WORKED IN ONE DEPARTMENT. I WORKED IN ANOTHER.
12 THERE WAS REALLY NO ASSOCIATION DONE THERE.

13 Q. THANK YOU VERY MUCH, MR. TINSLEY.

14 THE COURT: STEP DOWN, SIR. NEXT WITNESS, PLEASE?

15 MS. STROM: THE STATE CALLS CHRISTY MCGUIRT.

16 WHEREUPON:

17 CHRISTY MCGUIRT, BEING FIRST
18 DULY SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. STROM

21 Q. MS. MCGUIRT, WHERE DO YOU LIVE?

22 A. WELL, I HAVE A --- I'VE BEEN LIVING TEN YEARS ACROSS
23 THE ROAD ON HIGHWAY 63, NEWBERRY COUNTY.

24 Q. WHEN YOU SAY ACROSS THE ROAD, ACROSS THE ROAD FROM -

25 --

- 1 A. ACROSS FROM RANDY'S HOUSE. IT'S ON HIGHWAY 63.
- 2 Q. AND RANDY BEING RANDY TINSLEY?
- 3 A. RANDY TINSLEY.
- 4 Q. YOU HAVE BEEN LIVING THERE HOW LONG?
- 5 A. THE LAST TEN OR ELEVEN YEARS. I OWN A HOUSE --- WE
- 6 OWN A HOUSE UP IN LAURENS COUNTY IS WHY I WAS SAYING
- 7 THAT. HAVE TWO HOUSES.
- 8 Q. OKAY. ON JULY 22, 1994, WHERE WERE YOU LIVING?
- 9 A. AT THE WHITE HOUSE ACROSS FROM RANDY --- HIGHWAY 63.
- 10 Q. DO YOU RECALL WHAT OCCURRED ON THAT DAY --- WHAT
- 11 HAPPENED ON THAT DAY?
- 12 A. YES, MA'AM.
- 13 Q. WOULD YOU PLEASE TELL THIS JURY WHAT HAPPENED?
- 14 A. TO START WITH --- WHEN WE SAW THE CAR?
- 15 Q. WHAT CAR DID YOU SEE?
- 16 A. OKAY. I HAD BEEN UP TO THE BRICK HOUSE. I FIX HAIR
- 17 UP THERE.
- 18 Q. WHEN YOU SAY UP TO THE BRICK HOUSE ---
- 19 A. UP TO MY HOUSE IN LAURENS COUNTY.
- 20 Q. OKAY.
- 21 A. ABOUT THREE MILES UP THE ROAD. ANYWAY, I CAME HOME.
- 22 Q. WHAT TIME DID YOU COME HOME?
- 23 A. I WOULD SAY AROUND TEN --- A LITTLE AFTER.
- 24 Q. ALL RIGHT.
- 25 A. AND JOE WAS SITTING --- JOE DIXON WAS SITTING ON THE

1 FRONT PORCH WAITING FOR A RIDE TO GO TO CHARLESTON.

2 Q. DO YOU KNOW JOE DIXON?

3 A. YES, MA'AM.

4 Q. ARE YOU RELATED TO JOE DIXON?

5 A. COUSIN BY MARRIAGE.

6 Q. COUSIN BY MARRIAGE. HE WAS SITTING ON YOUR FRONT
7 PORCH?

8 A. UH HUH.

9 Q. WHEN YOU SAW HIM, WHAT DID Y'ALL DO?

10 A. WELL, I WENT OUT THERE TO SEE IF HE WAS READY, AND
11 I TOOK HIM SOME MONEY, AND I HAD JUST WENT BACK IN THE
12 HOUSE. I COULD SEE THE ROAD FROM WHERE I WAS AT, AND
13 THIS LIGHT GREEN REAL FADED OUT CAR --- OLD CHEVROLET
14 WENT BY. ANYWAY, I DIDN'T PAY IT ANY ATTENTION. I WENT
15 ON BACK TO THE KITCHEN, AND THEN JOE CAME IN ABOUT TEN
16 MINUTES LATER AND HE SAID --- HE TOLD ME, SAID, "CHRISTY,
17 THERE'S A CAR WENT TO RANDY'S AND RHONDA SUE'S HOUSE
18 ABOUT TEN MINUTES AGO, AND IT HASN'T COME BACK OUT."
19 USUALLY WHEN IT DOES THAT, HE'LL GO CHECK AND TELL THEM
20 THEY'RE NOT HOME AND WHEN THEY'LL BE BACK.

21 SO, I TOLD HIM IF HE WANTED TO GO CHECK TO GO CHECK,
22 AND I WENT TO THE SIDE PORCH WHERE I CAN SEE HIM GOING
23 ACROSS THE ROAD, AND MY TWO LITTLE GRAND BOYS WERE WITH
24 ME, AND THEY WANTED TO GO WITH HIM, BUT WE MADE THEM STAY
25 IN THE YARD. WE WERE STANDING --- I GOT THEM BACK TO THE

1 PORCH, AND WE WERE STANDING ON THE PORCH AND WATCHED JOE
2 CROSS THE ROAD. HE WENT DOWN MY YARD, ACROSS THE ROAD
3 AND UP IN THEIR YARD, AND THEN JOE DISAPPEARED.

4 Q. WHEN YOU SAY HE DISAPPEARED --- LET ME ASK YOU THIS,
5 MRS. McGUIRT.

6 A. OKAY.

7 Q. DOES THE FRONT OF YOUR HOUSE FACE THE FRONT OF THE
8 TINSLEY'S HOME?

9 A. IT DOES, BUT WE WERE TO THE SIDE. THE PORCH GOES
10 FROM --- ACROSS THE FRONT PORCH AND DOWN THE SIDE, AND ME
11 AND THE TWO LITTLE BOYS WAS STANDING ON THE SIDE PORCH,
12 WHICH WE COULD STILL SEE STRAIGHT ACROSS, BUT WHEN HE
13 DISAPPEARED --- WHAT I'M SAYING IS HE WENT AROUND INTO
14 RHONDA SUE'S AND RANDY'S HOUSE TO WHERE THE CARPORT IS.
15 THAT'S WHERE I COULD NO LONGER SEE HIM. OKAY. AND WE
16 WERE JUST STANDING THERE WATCHING FOR JOE TO COME BACK
17 AND SEE THE CAR LEAVE.

18 Q. WHERE WAS THE CAR?

19 A. I COULD NOT SEE THE CAR. THE CAR WAS BEHIND THE
20 HOUSE.

21 Q. OKAY.

22 A. AND THEN I HEARD SHOTS. I HEARD ANOTHER SHOT. I
23 HEARD ANOTHER SHOT, AND I TOLD THE BOYS --- I SAID, "OH,
24 MY GOD, THEY SHOT JOE."

25 Q. MRS. McGUIRT, WERE YOU ABLE TO SEE WHO WAS IN THE

1 CAR?

2 A. WHEN THE CAR WENT BY, I SAW IT WAS TWO WHITE BOYS.
3 THAT'S ALL I COULD TELL YOU. I KNEW THERE WERE TWO WHITE
4 BOYS. ONE OF THEM WAS LOOKING TOWARD OUR HOUSE, NOT THE
5 DRIVER. THE OTHER ONE WAS, BUT I COULDN'T TELL WHAT HE
6 LOOKED LIKE. ALL I COULD TELL IS HE WAS WHITE. ANYWAY,
7 SO, THEN I GOT THE BOYS. I SAID, WE GOT TO GET BACK IN
8 THE HOUSE, BECAUSE IF THEY SEE US STANDING HERE THEY'D
9 SHOOT US TOO. AND THEN ONE OF THE LITTLE GRAND BOYS WAS
10 HOLLERING GET THE RIFLE, BUT THAT'S THE ONLY GUN WE GOT.
11 HOLLERING FOR ME TO GET THE RIFLE.

12 Q. HOW OLD ARE THESE BOYS, OR HOW OLD WERE THEY AT THE
13 TIME?

14 A. SIX AND SEVEN.

15 Q. WHEN YOU HEARD THE SHOT AND YOU GOT THE BOYS BACK
16 INSIDE, WHAT DID YOU DO?

17 A. I RAN TO THE PHONE.

18 Q. WHO DID YOU CALL?

19 A. WELL, I TRIED TO CALL MY MAMA AND DADDY THAT LIVES
20 UP THE ROAD. I COULDN'T GET AN ANSWER. THEN I CALLED
21 BUSTER WALKER, BECAUSE I KNEW HE WAS THE ONLY ONE REALLY
22 AROUND THAT I THOUGHT WOULD BE HOME THAT I COULD GET
23 THERE IN A HURRY.

24 Q. DOES BUSTER WALKER LIVE NEAR YOU?

25 A. YEAH, I THINK ABOUT HALF A MILE UP THE ROAD. AND

1 SO, THEN I HEARD A HORN BLOWING, AND I RAN TO THE FRONT
2 DOOR AND LOOKED OUT, AND THE LIGHT GREEN CAR WAS COMING
3 OUT AROUND THE END OF THE HOUSE FROM WHERE THE CARPORT IS
4 AROUND, AND IT COME ACROSS RANDY'S AND RHONDA SUE'S FRONT
5 YARD, PULLED UP TO THE FRONT DOOR, BLOWING THE HORN ALL
6 THE WAY COMING AROUND THERE, AND THEN I RAN BACK TO THE
7 PHONE, AND I CALLED MY DAUGHTER IN CLINTON. THESE PHONE
8 CALLS MAY BE --- WHICH ONE I CALLED FIRST MAY NOT BE
9 EXACTLY IN ORDER, BUT I KNOW I CALLED ALL THREE OF THEM
10 RIGHT ABOUT THE SAME TIME RUNNING BACK TRYING TO LOOK TO
11 SEE WHAT I COULD SEE, TOO.

12 THEN WHEN I CALLED HER AND I TOLD HER THAT I HAD
13 HEARD THE THREE SHOTS. THAT I THOUGHT JOE HAD BEEN SHOT
14 --- TO GET THE POLICE FOR ME, AND THEN I WENT BACK OUT
15 THE FRONT DOOR. THE CAR WAS GONE. I COULD SEE THE ROAD.
16 THERE WAS ONE CAR WENT UP THE ROAD, BUT IT WAS NOT THE
17 CAR THAT WAS AT RANDY'S. THAT CAR WENT DOWN THE ROAD.

18 Q. WHEN YOU SAY DOWN THE ROAD, TOWARDS ---

19 A. COMING TOWARDS NEWBERRY TOWARDS JALAPA.

20 Q. AND DID YOU HAVE OCCASION TO GO OVER --- WHEN YOU NO
21 LONGER SAW THE CAR IN THE YARD, THE GREEN CAR IN THE
22 YARD, DID YOU GO OVER TO MR. TINSLEY'S HOME?

23 A. I WENT OUT TO THE ROAD, WAITED ON BUSTER. BY THE
24 TIME I GOT TO THE ROAD, BUSTER WALKER WAS THERE, AND HE
25 DROVE ON, AND I RAN ACROSS THE ROAD, AND WE RAN IN THE

1 HOUSE AND WENT IN THE BACK DOOR. I OPENED THE DOOR
2 FIRST. I SAW JOE LAYING THERE --- BLOOD EVERYWHERE.

3 Q. WHEN YOU SAY YOU OPENED THE DOOR ---

4 A. OPENED THE BACK DOOR.

5 Q. IS THIS A REGULAR DOOR, A STORM DOOR, SCREEN DOOR --
6 - WHAT KIND OF DOOR?

7 A. IT WAS A SCREEN DOOR. THE WOODEN DOOR WAS OPEN, AND
8 JOE WAS --- HIS SHOULDER MIGHT HAVE BEEN AGAINST IT. HIS
9 HEAD WAS UP. HE WAS RIGHT THERE WHERE THE DOOR WAS. HIS
10 HEAD WAS AGAINST THE WALL, BUT THE DOOR WAS STILL OPEN
11 AGAINST WHERE HE WAS AT.

12 Q. THE SCREEN DOOR THAT YOU OPENED, WAS IT LOCKED?

13 A. NO, MA'AM.

14 Q. MRS. McGUIRT, IF YOU COULD STEP DOWN. I WOULD LIKE
15 FOR YOU TO LOOK AT SOME PHOTOGRAPHS FOR ME. LET ME SHOW
16 YOU WHAT'S MARKED AS STATE'S EXHIBIT NUMBER ONE THAT'S
17 BEEN IDENTIFIED AS THE TINSLEY HOME. WOULD YOU PLEASE
18 SHOW THIS PART OF THE JURY AND THEN SHOW THE OTHER PART
19 OF THE JURY WHERE YOU SAW THE CAR WHEN IT WAS BLOWING THE
20 HORN?

21 A. OKAY. IT WAS COMING AROUND THIS END FROM IN FRONT
22 OF THESE TWO TREES AND CAME UP TO THE FRONT DOOR.

23 Q. AGAIN, SHOW THE JURY WHERE YOU SAW THE VEHICLE ---
24 THE LIGHT GREEN VEHICLE.

25 A. FROM BETWEEN THE HOUSE THIS WAY IN BETWEEN THESE TWO

1 TREES. IT CAME STRAIGHT UP TO THE FRONT DOOR AND STOPPED
2 --- BLOWING THE HORN.

3 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
4 NUMBER TEN WHICH HAS BEEN REFERRED TO AS THE BACK OF THE
5 TINSLEY HOME.

6 A. THIS IS THE DOOR.

7 Q. THAT'S THE BACK DOOR THAT YOU WENT IN?

8 A. UH HUH.

9 Q. THIS IS THE BACK DOOR YOU WENT INTO?

10 A. YES.

11 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
12 NUMBER EIGHT.

13 A. THAT'S JUST INSIDE THE DOOR, OR YOU CAN SEE INSIDE
14 THE DOOR.

15 Q. WHICH DOOR WOULD THAT BE?

16 A. THE BACK DOOR.

17 Q. YOU MAY RETAKE THE STAND. DID YOU SEE ANYONE IN THE
18 HOUSE OTHER THAN JOE DIXON?

19 A. NO, MA'AM.

20 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

21 BY MS. STROM

22 Q. MRS. MCGUIRT, WHEN THE CAR LET THE FRONT AREA OF THE
23 TINSLEY HOME, DID YOU SEE WHERE IT WENT?

24 A. I DID NOT SEE WHERE IT WENT.

25 Q. MRS. MCGUIRT, WERE YOU --- I WITHDRAW THAT. PLEASE

1 ANSWER ANY QUESTIONS MR. WICKER MAY HAVE.

2 CROSS EXAMINATION

3 BY MR. WICKER

4 Q. MS. McGUIRT, DID YOU SAY ON THIS FRIDAY, 22, JULY,
5 1994, THAT THIS CAR DROVE IN THE YARD AROUND 10 O'CLOCK
6 IN THE MORNING? IS THAT WHAT YOU SAID?

7 A. NO. I SAID I CAME BACK FROM UP THE ROAD AT 10
8 O'CLOCK. IT WAS SOMEWHERE AROUND A QUARTER UNTIL ELEVEN.

9 Q. SO, IT WOULD HAVE BEEN, MAYBE, 10:45?

10 A. SOMEWHERE ALONG THERE.

11 Q. OKAY. AND YOU SAW THE CAR GO IN. IS THAT RIGHT?

12 A. I DIDN'T SEE IT GO IN THE DRIVEWAY. I SAW IT COME
13 PAST MY HOUSE. WELL, LOOKING AT MY FRONT DOOR, IT'S JUST
14 ABOUT LIKE SIDE BY SIDE. I CANNOT SEE THEIR DRIVEWAY
15 FROM LOOKING OUT MY FRONT DOOR.

16 Q. YOU WERE ABOUT 15 YARDS AWAY?

17 A. MORE THAN 15.

18 Q. AND IF YOU COULD GIVE US A GOOD ESTIMATE OF HOW FAR
19 AWAY YOU WERE?

20 A. A HUNDRED --- HUNDRED AND FIFTY FEET.

21 Q. A HUNDRED AND A HUNDRED AND FIFTY YARDS?

22 A. UH HUH.

23 Q. YOU SAID THE CAR WAS A FADED GREEN CAR?

24 A. YES, SIR.

25 Q. AND DID YOU ALSO SAY IT WAS A CHEVROLET?

- 1 A. I'M PRETTY SURE IT WAS A CHEVROLET.
- 2 Q. AND YOU'RE FAMILIAR WITH CHEVROLETS?
- 3 A. YES, SIR.
- 4 Q. DO YOU HAVE ANY IDEA WHAT MODEL IT WAS?
- 5 A. IT WAS AN OLD MAKE.
- 6 Q. AND YOU SAY YOU SAW THE CAR LEAVE ALSO?
- 7 A. I SAW THE CAR LEAVE. THE CAR I SAW LEAVE WAS THE
- 8 SAME ONE I SAW GO.
- 9 Q. AND IT WENT TOWARD NEWBERRY?
- 10 A. YES. I DIDN'T SEE IT GO TOWARD NEWBERRY, BUT I WAS
- 11 LOOKING OUT MY FRONT DOOR, WHILE I WAS ON THE PHONE, TO
- 12 SEE WHICH WAY IT WENT, AND IT DIDN'T GO UP THE ROAD. SO,
- 13 IT --- THE ONLY OPTION.
- 14 Q. WELL, YOU SAID YOU SAW IT LEAVE, DID YOU NOT?
- 15 A. I SAW IT LEAVING THE BACK OF THE HOUSE AND COME
- 16 AROUND TO THE FRONT OF THE HOUSE. I DID NOT SEE IT LEAVE
- 17 THE HOUSE.
- 18 Q. OKAY. AND YOU KNOW IT WENT TOWARD NEWBERRY THOUGH?
- 19 A. I KNOW IT DIDN'T GO UP THE ROAD TOWARD CLINTON.
- 20 Q. AND YOU DIDN'T SEE ANYBODY IN THE CAR WHEN IT WAS
- 21 LEAVING, THEN, DID YOU?
- 22 A. THE DRIVER, BUT I COULDN'T SEE HIM OR TELL WHAT HE
- 23 LOOKED LIKE.
- 24 Q. AND WHEN IT WENT IN YOU COULD SEE --- YOU SAID TWO
- 25 WHITE BOYS IN THE CAR. IS THAT RIGHT?

1 A. UH HUH.

2 Q. OKAY. COULD YOU TELL HOW TALL THEY WERE?

3 A. NO, SIR.

4 Q. COULD YOU TELL WHAT COLOR OF HAIR THEY HAD?

5 A. NO, SIR.

6 Q. AND WHO DID YOU SAY WAS BLOWING A HORN?

7 A. THE DRIVER THAT CAME OUT OF THE BACK OF THE HOUSE.

8 Q. WAS BLOWING THE HORN OF THAT CAR WHEN IT WAS
9 LEAVING?

10 A. WHEN IT CAME FROM THE BACK GOING TO THE FRONT.

11 Q. AND BLEW THE HORN A LOT?

12 A. THE WHOLE WAY.

13 Q. SO, YOU DON'T BELIEVE AT THIS TIME YOU COULD
14 IDENTIFY POSITIVELY EITHER ONE OF THESE TWO WHITE BOYS;
15 IS THAT RIGHT?

16 A. I COULD NOT IDENTIFY THE BOYS.

17 Q. WELL, THANK YOU VERY MUCH.

18 MS. STROM: BRIEFLY, YOUR HONOR, ON REDIRECT.

19 THE COURT: YES, MA'AM. STAY UP HERE, PLEASE,
20 MA'AM.

21 REDIRECT EXAMINATION

22 BY MS. STROM

23 Q. MRS. McGUIRT, WHEN YOU REFERRED TO TWO WHITE BOYS,
24 ARE YOU ABLE TO TELL THIS COURT THE AGE OF THE PEOPLE YOU
25 SAW IN THE CAR?

1 A. NO, SIR --- NO, MA'AM.

2 Q. DO YOU KNOW IF THEY WERE BOYS OR MEN?

3 A. IT LOOKED LIKE BOYS.

4 Q. THANK YOU.

5 THE COURT: NEXT WITNESS.

6 MS. STROM: YOUR HONOR, MAY WE APPROACH?

7 THE COURT: WILL YOUR NEXT WITNESS BE LENGTHY?

8 MS. STROM: THAT'S WHAT I WAS GOING TO TELL YOU.

9 IT'S GOING TO BE A LENGTHY WITNESS.

10 THE COURT: OKAY. LET'S DO THAT. MADAM FORELADY
11 AND LADIES AND GENTLEMEN, IN VIEW OF THE HOUR, I'M GOING
12 TO RECESS FOR LUNCH. DURING THE TIME THAT YOU ARE AWAY
13 FROM US, I DO REQUIRE, AS I ALWAYS DO, THAT YOU NOT TALK
14 ABOUT THE CASE AMONG YOURSELVES. DON'T TALK TO ANYBODY
15 ELSE ABOUT THE CASE, AND DON'T LET ANYBODY TALK TO YOU OR
16 EVEN TRY TO TALK TO YOU. IT WOULD JUST BE WRONG FOR THAT
17 TO HAPPEN. BE BACK IN THE JURY ROOM AT TWO O'CLOCK.
18 WE'LL BEGIN THE TRIAL AGAIN AT TWO O'CLOCK. I'LL SEE YOU
19 AT TWO.

20 (JURY LEAVES FOR LUNCH.)

21 THE COURT: ANYTHING ELSE?

22 MS. STROM: NOTHING FROM THE STATE.

23 MR. WICKER: NOTHING FROM DEFENSE, YOUR HONOR.

24 THE COURT: TWO O'CLOCK.

25 (COURT RECONVENES)

1 MS. STROM: I WAS TELLING THE COURT REPORTER THAT
2 THE NEXT PERSON WE ARE GOING TO BE CALLING IS JOE DIXON.
3 I DIDN'T KNOW IF SHE NEEDED TO DO ANYTHING DIFFERENTLY
4 BECAUSE OF HIS SPEECH --- IF SHE NEEDED TO CHANGE
5 POSITIONS OR ANYTHING LIKE THAT TO BETTER UNDERSTAND HIM.
6 THANK YOU, YOUR HONOR.

7 (JURY RETURNS TO THE COURTROOM.)

8 THE COURT: THE JURY IS PRESENT. CALL YOUR NEXT
9 WITNESS.

10 MS. STROM: THE STATE CALLS JOE DIXON.

11 WHEREUPON:

12 JOE DIXON, BEING FIRST DULY
13 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. STROM

16 Q. MR. DIXON, I'M GOING TO HAVE YOU TALK TO ME OVER
17 HERE SO ALL THESE JURORS CAN HEAR YOU. ALL RIGHT?

18 A. RIGHT.

19 Q. MR. DIXON, WHERE DO YOU LIVE?

20 A. I LIVE IN WALHALLA.

21 Q. WALHALLA?

22 A. YEAH.

23 Q. WHERE IS THAT NEAR?

24 A. GREENVILLE.

25 Q. GREENVILLE, OKAY. DO YOU SOMETIMES GO TO

1 CHARLESTON?

2 A. SOMETIMES.

3 Q. SOMETIMES. WHO LIVES DOWN IN CHARLESTON?

4 A. MY LITTLE BROTHER.

5 Q. YOUR BROTHER?

6 A. MY LITTLE BROTHER.

7 Q. YOUR LITTLE BROTHER, OKAY. MR. DIXON, WE'VE TALKED
8 BEFORE ABOUT THE DIFFERENCE BETWEEN THE TRUTH AND A LIE.
9 YOU KNOW THE DIFFERENCE?

10 A. I SURE DO.

11 Q. OKAY. WHAT ARE YOU SUPPOSE TO DO HERE IN COURT?

12 A. TELL THE TRUTH.

13 Q. MR. DIXON, I HAVE ON A RED SHIRT. AM I TELLING THE
14 TRUTH, OR AM I TELLING A LIE?

15 A. YOU'RE TELLING A LIE.

16 Q. TELLING A LIE. WHEN I TELL YOU I HAVE BROWN HAIR,
17 AM I TELLING THE TRUTH OR A LIE?

18 A. WELL --- WELL ---

19 THE COURT: I AGREE WITH YOU, MR. DIXON?

20 MS. STROM: IT HAS A LITTLE GRAY IN IT, BUT I CAN
21 TAKE CARE OF THAT. LET ME DO ANOTHER ONE.

22 BY MS. STROM

23 Q. IF I SAY DANNY GILLIAM IS A GIRL, AM I TELLING THE
24 TRUTH, OR AM I TELLING A LIE?

25 A. YOU'RE TELLING A LIE.

1 Q. MR. DIXON, DO YOU REMEMBER WHEN YOU GOT SHOT?

2 A. SURE DO.

3 Q. DO YOU REMEMBER WHAT DAY IT WAS ON?

4 A. JULY 21ST.

5 Q. OKAY. MR. DIXON, COULD IT HAVE BEEN THE 22ND?

6 A. YEAH.

7 Q. DO YOU REMEMBER ON WHAT DAY IT WAS? WAS IT A
8 MONDAY, TUESDAY, WEDNESDAY, THURSDAY --- WHAT DAY?

9 A. FRIDAY.

10 Q. IT WAS A FRIDAY. I SAID EVERY ONE BUT THAT ONE.
11 WHERE WERE YOU --- LET ME ASK YOU THIS. WERE YOU AT MS.
12 MCGUIRT'S HOUSE?

13 A. I SURE WAS.

14 Q. YOU WERE. WHERE WERE YOU?

15 A. I WAS SITTING ON THE FRONT PORCH.

16 Q. SITTING ON THE FRONT PORCH.

17 A. AND I SAW THE GREEN CAR.

18 Q. SAW A GREEN CAR. WHERE WAS THE GREEN CAR?

19 A. WELL, IT COME DOWN THE ROAD AND TURNED INTO MY
20 COUSIN'S DAUGHTER'S HOUSE.

21 Q. YOU SAW THE GREEN CAR COMING DOWN THE ROAD?

22 A. COME DOWN THE ROAD.

23 Q. WHERE DID IT TURN IN TO?

24 A. INTO MY COUSIN'S DAUGHTER'S HOUSE.

25 Q. WHAT'S YOUR COUSIN'S NAME?

- 1 A. CHRISTY.
- 2 Q. CHRISTY?
- 3 A. YEAH.
- 4 Q. DO YOU KNOW RANDY TINSLEY?
- 5 A. YEAH.
- 6 Q. OKAY. DID YOU EVER SEE THAT GREEN CAR IN HIS YARD?
- 7 A. YEAH, THAT DAY I GOT SHOT.
- 8 Q. THE DAY YOU GOT SHOT?
- 9 A. YEAH.
- 10 Q. WHOSE HOUSE WERE YOU AT WHEN YOU GOT SHOT?
- 11 A. AT RANDY'S.
- 12 Q. AT RANDY'S. WHY DID YOU GO TO RANDY'S HOUSE?
- 13 A. I SAW A CAR THAT WASN'T SUPPOSE TO BE THERE.
- 14 Q. YOU SAW A CAR THERE THAT WASN'T SUPPOSED TO BE
- 15 THERE?
- 16 A. YEAH.
- 17 Q. OKAY. DO YOU KNOW IF THIS WAS IN THE MORNING OR IN
- 18 THE AFTERNOON?
- 19 A. IN THE MORNING.
- 20 Q. DO YOU KNOW ABOUT WHAT TIME?
- 21 A. BETWEEN TEN AND ELEVEN.
- 22 Q. BETWEEN TEN AND ELEVEN. OKAY. WHEN YOU WENT OVER
- 23 TO MR. TINSLEY'S HOUSE, TO RANDY'S HOUSE, WHAT DOOR DID
- 24 YOU GO INTO?
- 25 A. THE SAME DOOR I BEEN GOING TO EVERY TIME --- THE

1 BACK DOOR.

2 Q. BACK DOOR. AND THAT'S THE DOOR YOU GO TO EVERY
3 TIME?

4 A. EVERY TIME.

5 Q. OKAY. MR. DIXON, I SHOW YOU STATE'S EXHIBIT NUMBER
6 EIGHT.

7 A. THAT'S THE DOOR.

8 Q. THAT'S THE DOOR YOU WENT INTO?

9 A. YEAH.

10 Q. WHEN YOU WENT IN THAT DOOR, WHAT DID YOU SEE? YOU
11 NEED SOMETHING TO DRINK. OKAY.

12 A. THANK YOU.

13 Q. YOU'RE WELCOME. IF YOU NEED ANY MORE, JUST LET US
14 KNOW. WHEN YOU WENT INTO MR. TINSLEY'S HOUSE, WHAT DID
15 YOU SEE?

16 A. WELL, I SAW --- WELL, I SAW THIS MAN RIGHT AT THE
17 BACK DOOR AND GOT IN THE GREEN CAR. I ASKED HIM, "WHAT
18 YOU DOING?"

19 Q. HOW MANY MEN DID YOU SEE?

20 A. TWO.

21 Q. TWO. WHEN YOU SAW THE TWO MEN ---

22 A. WELL, I SAW ONE GUY RUN OUT THE BACK DOOR, AND WHEN
23 HE RAN OUT THE BACK, I WENT IN THE HOUSE, AND THEN I SAW
24 THE OTHER GUY.

25 Q. ONE GUY RUNS OUT THE DOOR?

- 1 A. AND ONE GUY STAYS IN.
- 2 Q. AND ONE GUY STAYS IN THE HOUSE?
- 3 A. YEAH.
- 4 Q. OKAY. THE GUY THAT STAYS IN THE HOUSE, WHAT DID HE
- 5 SAY TO YOU?
- 6 A. I ASKED HIM --- I SAID, "WHAT YOU DOING IN THERE?"
- 7 Q. WHAT ARE YOU DOING IN THERE?
- 8 A. YEAH.
- 9 Q. WHAT DOES HE SAY?
- 10 A. HE DIDN'T SAY NOTHING, AND THEN HE STARTED SHOOTING.
- 11 Q. HE DIDN'T SAY ANYTHING. HE JUST STARTED SHOOTING?
- 12 A. YEAH.
- 13 Q. WHO DID HE SHOOT?
- 14 A. ME.
- 15 Q. ALL RIGHT. HE SHOT YOU. WHERE WERE YOU STANDING
- 16 WHEN YOU GOT SHOT?
- 17 A. RIGHT IN THE KITCHEN RIGHT THERE AT THE DOOR.
- 18 Q. AT THE DOOR. MR. DIXON, I SHOW YOU WHAT'S BEEN
- 19 MARKED AS STATE'S EXHIBIT NUMBER ELEVEN AT THIS TIME FOR
- 20 IDENTIFICATION. IS THAT MR. TINSLEY'S HOUSE?
- 21 A. YEAH. I COME IN, AND I WENT DOWN IN BETWEEN THOSE
- 22 TWO CHAIRS --- THAT CHAIR AND THE TABLE.
- 23 Q. OKAY. LET'S STEP DOWN HERE AND SHOW THIS JURY IF
- 24 YOU DON'T MIND.
- 25 MS. STROM: YOUR HONOR, AT THIS TIME, WE WOULD MOVE

1 STATE'S EXHIBIT NUMBER ELEVEN FOR IDENTIFICATION INTO
2 EVIDENCE.

3 THE COURT: ANY OBJECTION?

4 MR. WICKER: NO OBJECTIONS, YOUR HONOR.

5 (STATE'S EXHIBIT NUMBER ELEVEN MARKED FOR
6 IDENTIFICATION AND MADE A PART OF THE RECORD.)

7 BY MS. STROM

8 Q. SHOW THIS JURY --- WE'RE GOING TO SHOW THIS PART,
9 AND THEN WE'LL SHOW THE OTHER ONE. WHERE WERE YOU WHEN
10 YOU GOT SHOT?

11 A. WHEN I GOT SHOT, I WAS STANDING RIGHT HERE.

12 Q. WHEN YOU GOT SHOT, YOU WERE STANDING RIGHT THERE?

13 A. YEAH.

14 Q. THIS IS THE DOOR THAT GOES OUTSIDE?

15 A. YEAH.

16 Q. SHOW THIS JURY WHERE YOU WERE STANDING WHEN YOU GOT
17 SHOT.

18 A. I WAS STANDING RIGHT HERE, AND I WENT DOWN RIGHT
19 HERE.

20 Q. WENT DOWN RIGHT THERE. MR. DIXON, YOU CAN GO BACK
21 TO THE STAND. THANK YOU. HOW MANY TIMES WERE YOU SHOT?

22 A. THREE TIMES.

23 Q. THREE TIMES. WHERE WERE YOU SHOT FIRST?

24 A. FIRST I WAS SHOT RIGHT HERE IN THE CHEST.

25 Q. RIGHT HERE IN THE CHEST?

- 1 A. YEAH, FIRST TIME.
- 2 Q. ALL RIGHT. WHEN YOU GOT SHOT IN THE CHEST, WHAT
- 3 HAPPENED TO YOU?
- 4 A. I WENT DOWN.
- 5 Q. HOW DID YOU GO DOWN?
- 6 A. ON MY BACK.
- 7 Q. FELL DOWN ON YOUR BACK?
- 8 A. YEAH.
- 9 Q. OKAY. WHEN YOU FELL DOWN ON YOUR BACK, WHAT
- 10 HAPPENED?
- 11 A. AND MY HEAD HIT THE WALL.
- 12 Q. YOUR HEAD HIT THE WALL?
- 13 A. YEAH.
- 14 Q. ALL RIGHT. WHAT HAPPENED AFTER YOUR HEAD HIT THE
- 15 WALL?
- 16 A. THEN HE WALKED UP --- HE TURNED AROUND AND WALKED UP
- 17 TO ME.
- 18 Q. HE TURNED AROUND AND WALKED UP TO YOU?
- 19 A. AND PUT TWO MORE BULLETS IN ME.
- 20 Q. PUT TWO MORE BULLETS IN YOU?
- 21 A. YEAH.
- 22 Q. WHERE DID THOSE OTHER TWO BULLETS GO?
- 23 A. ONE WENT RIGHT HERE, ONE RIGHT HERE, AND I GOT TWO
- 24 RIGHT THERE. I GOT ONE ON MY SHOULDER, BETWEEN MY
- 25 SHOULDER AND MY NECK AND ONE BEHIND MY NECK.

1 Q. SO, YOU STILL HAVE THE TWO BULLETS IN YOU?

2 A. SURE DO.

3 Q. YOU GOT SHOT TWICE IN THE FACE --- TWO TIMES IN THE
4 FACE?

5 A. GOT ONE RIGHT HERE, AND ONE RIGHT HERE --- ONE ON
6 THIS SHOULDER AND NECK.

7 Q. OKAY. ONE ON THE NECK.

8 A. AND THEN ONE KIND OF ON MY LEFT SHOULDER.

9 Q. ON YOUR LEFT SHOULDER. WHEN YOU WERE SHOT, WERE YOU
10 SHOT IN THE FACE?

11 A. YEAH, YEAH.

12 Q. LET ME ASK YOU THIS, MR. DIXON. WAS IT A LONG GUN
13 THAT WAS USED, OR WAS IT A SHORT GUN?

14 A. A SHORT GUN.

15 Q. WHAT ARE SHORT GUNS CALLED?

16 A. PISTOLS.

17 Q. PISTOLS. DID YOU SEE THE PISTOL?

18 A. NO. YEAH --- SHOOT A 12-GAUGE SHOTGUN.

19 Q. YOU SAW A 12-GAUGE SHOTGUN?

20 A. I ---

21 Q. YOU HAVE ONE?

22 A. I GOT ONE.

23 Q. OH, I'M SORRY. YOU HAVE A 12-GAUGE SHOTGUN. DID
24 YOU HAVE YOUR SHOTGUN WITH YOU THAT DAY?

25 A. NO.

1 Q. OKAY. THE PISTOL THAT SHOT YOU --- LET ME ASK YOU
2 THIS. THE MAN WHO SHOT YOU, DID HE EVER SAY ANYTHING TO
3 YOU?

4 A. NO.

5 Q. WHEN HE SHOT YOU, YOU FELL DOWN AND HE SHOT YOU TWO
6 MORE TIMES, WHAT DID HE DO?

7 A. HE SHOT TWO TIMES, AND THEN HE RUN OUT THE DOOR ---
8 THE FRONT DOOR.

9 Q. HE RAN OUT THE FRONT DOOR. OKAY. MR. DIXON, THE
10 MAN THAT SHOT YOU, DID YOU SEE HIS HANDS?

11 A. WELL, HE HAD GLOVES ON.

12 Q. HE HAD GLOVES ON?

13 A. YEAH.

14 Q. AFTER YOU WERE SHOT, WHO CAME OVER THERE TO YOU?

15 A. A FRIEND OF MINE I KNOW, HE CAME FIRST.

16 Q. DID YOU EVER SEE BUSTER WALKER COME OVER THERE?

17 A. SURE DID.

18 Q. SURE DID. OKAY. MR. DIXON, HOW MANY PEOPLE SHOT
19 YOU THAT DAY?

20 A. ONE.

21 Q. ONE. DO YOU SEE THE MAN IN THE COURTROOM?

22 A. I SURE DO.

23 Q. CAN YOU TELL THIS JURY WHERE HE IS?

24 A. YEAH. RIGHT BACK OVER THERE.

25 Q. BACK OVER THERE. STAND UP AND POINT HIM OUT TO US.

1 ARE YOU POINTING TO THIS MAN RIGHT HERE?

2 A. I SURE IS.

3 Q. MR. PREWITT?

4 A. YEAH.

5 Q. YOU CAN HAVE A SEAT. MR. DIXON, ARE YOU SURE THAT'S
6 THE MAN WHO SHOT YOU?

7 A. I KNOW IT, BECAUSE I DON'T FORGET NOTHING.

8 Q. WHAT?

9 A. I DON'T FORGET NOTHING.

10 Q. YOU DON'T FORGET ANYTHING?

11 A. NO.

12 Q. YOU DON'T FORGET NOTHING, OKAY. MR. DIXON, AFTER
13 YOU WERE SHOT, DID YOU GO TO THE HOSPITAL?

14 A. I SURE DID.

15 Q. HOW LONG WERE YOU IN THE HOSPITAL?

16 A. WELL, I WAS IN ONE OVERNIGHT.

17 Q. ONE OVERNIGHT. THAT WAS THE ONE HERE IN NEWBERRY?

18 A. YEAH.

19 Q. OKAY. THEN WHERE DID YOU GO?

20 A. THEN I WENT TO COLUMBIA.

21 Q. COLUMBIA?

22 A. YEAH.

23 Q. HOW DID YOU GET TO COLUMBIA?

24 A. ON A HELICOPTER.

25 Q. ON A HELICOPTER. AND HOW LONG WERE YOU IN THE

- 1 HOSPITAL DOWN IN COLUMBIA?
- 2 A. THREE WEEKS.
- 3 Q. THREE WEEKS. DID THEY HAVE TO DO SURGERY ON YOU?
- 4 A. YEAH, ON MY JAW.
- 5 Q. ON YOUR JAW?
- 6 A. YEAH.
- 7 Q. WHAT WAS WRONG WITH YOUR JAW?
- 8 A. IT BROKE.
- 9 Q. IT BROKE?
- 10 A. YEAH.
- 11 Q. WHAT BROKE IT?
- 12 A. THE BULLET.
- 13 Q. THE BULLET, OKAY. DID YOU HAVE ANY OTHER SURGERY?
- 14 A. YEAH.
- 15 Q. WHERE?
- 16 A. THEY TOOK SOME BULLET OUT OF ME.
- 17 Q. TOOK SOME BULLETS OUT OF YOU. THAT'S THE ONE THAT
- 18 WENT IN YOUR CHEST?
- 19 A. YEAH.
- 20 Q. OKAY.
- 21 A. AND WHERE MY JAW WAS.
- 22 Q. WHERE?
- 23 A. IN THAT JAW RIGHT THERE.
- 24 Q. OKAY. RIGHT AT YOUR JAW?
- 25 A. YEAH.

1 Q. THEY HAD TO FIX YOUR JAW?

2 A. YEAH.

3 Q. OKAY. MR. DIXON, THE MAN THAT FIRST RAN OUT THE
4 DOOR, THIS OTHER FELLOW, DID HE EVER SHOOT YOU?

5 A. NO.

6 Q. DID HE HAVE A GUN WITH HIM?

7 A. NO.

8 Q. DID YOU SEE ANY OTHER GUNS THERE AT THE HOUSE?

9 A. YEAH --- NO, NO. THE ONLY ONE I SAW WAS RANDY'S GUN
10 ON THE KITCHEN FLOOR.

11 Q. ON THE KITCHEN FLOOR, OKAY. I SHOW YOU STATE'S
12 EXHIBIT NUMBER THREE AND STATE'S EXHIBIT NUMBER TWO. DO
13 YOU KNOW WHERE THAT IS?

14 A. YEAH.

15 Q. WHICH GUN DO YOU REMEMBER SEEING?

16 A. THAT ONE RIGHT THERE.

17 Q. AND YOU'RE POINTING TO STATE'S EXHIBIT NUMBER THREE.
18 ALL RIGHT.

19 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

20 BY MS. STROM

21 Q. MR. DIXON, I THINK THAT'S ALL THE QUESTIONS I HAVE.
22 PLEASE ANSWER ANY QUESTIONS MR. WICKER MAY HAVE.

23 CROSS EXAMINATION

24 BY MR. WICKER

25 Q. MR. DIXON, MY NAME IS RAY WICKER, AND I'M DEFENDING

JOE DIXON
CROSS EXAMINATION BY MR. WICKER

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1 LANEY PREWITT. DO THEY CALL YOU JOE?
2 A. YEAH.
3 Q. DO YOU MIND IF I CALL YOU JOE?
4 A. I DON'T CARE.
5 Q. OKAY. HOW FAR DID YOU GO IN SCHOOL?
6 A. WELL, I DIDN'T GO FAR.
7 Q. HOW FAR?
8 A. I DIDN'T GO BUT TO THE FIRST GRADE.
9 Q. YOU WENT TO THE FIRST GRADE?
10 A. YEAH.
11 Q. OKAY. AND HOW OLD ARE YOU NOW?
12 A. FORTY-NINE.
13 Q. FORTY-NINE. OKAY. ON THE FRIDAY IN QUESTION
14 BETWEEN TEN AND ELEVEN IN THE MORNING, I BELIEVE YOU
15 IDENTIFIED PROSECUTION EXHIBIT THREE. I'M GOING TO SHOW
16 YOU PROSECUTION EXHIBIT THREE. DO YOU REMEMBER SEEING
17 THOSE GUNS ON THE FLOOR THERE?
18 A. YEAH.
19 Q. DO YOU REMEMBER SEEING THE GUNS STANDING BY THE
20 REFRIGERATOR?
21 A. YEAH.
22 Q. AND THAT'S THE WAY YOU REMEMBER IT?
23 A. YEAH.
24 Q. OKAY. NOW, THE MAN WHO RAN AWAY, YOU WERE COMING IN
25 THE DOOR, AND HE WAS GOING OUT THE DOOR; IS THAT RIGHT?

1 A. I WAS --- AT THE CAR, AND HE COME RUNNING OUT THE
2 DOOR BY THE TIME I DID.

3 Q. HAVE YOU EVER SEEN HIM SINCE THEN?

4 A. NO.

5 Q. DID YOU EVER SEE HIM BEFORE THEN?

6 A. NO.

7 Q. DID YOU EVER SEE MY CLIENT BEFORE THAT TIME?

8 A. NO.

9 Q. OKAY. AND WHEN DID YOU FIRST SEE MY CLIENT AFTER
10 THAT TIME?

11 A. THE DAY I GOT SHOT.

12 Q. THE DAY YOU GOT SHOT YOU SAW HIM?

13 A. YEAH.

14 Q. WAS THAT THE FIRST TIME YOU SAW HIM?

15 A. THAT'S THE FIRST TIME.

16 Q. DO YOU REMEMBER THE NEXT TIME YOU SAW HIM?

17 A. I DIDN'T SEE HIM BUT JUST THAT ONE TIME.

18 Q. YOU JUST SAW HIM THAT ONE TIME; IS THAT RIGHT?

19 A. YEAH.

20 Q. OKAY. AND AFTER THAT, YOU NEVER SAW HIM AGAIN UNTIL
21 TODAY; IS THAT CORRECT?

22 A. YEAH.

23 Q. SO, YOU SAW HIM WHEN HE SHOT YOU, AND THEN THE NEXT
24 TIME YOU SAW HIM WAS TODAY?

25 A. YEAH.

- 1 Q. AND SO, EVEN THOUGH THIS HAPPENED IN JULY, AND WE'RE
2 NOW INTO NEXT YEAR IN JANUARY, ARE YOU STILL SURE ---
3 A. YEAH.
4 Q. --- THIS IS THE MAN?
5 A. I SURE IS.
6 Q. WELL, HOW WAS HE DRESSED THAT DAY?
7 A. HE HAD ON A PAIR OF BLUE JEANS.
8 Q. OKAY. AND YOU SAY YOU REMEMBER HE HAD ON GLOVES?
9 A. YEAH.
10 Q. WHAT KIND OF GLOVES DID HE HAVE ON?
11 A. JUST KIND OF THE --- KIND OF LIKE RUBBER GLOVES.
12 Q. HE HAD ON BLUE JEANS?
13 A. BLUE JEANS.
14 Q. WHAT KIND OF SHIRT DID HE HAVE ON?
15 A. WELL, HE HAD A KIND OF --- KIND OF A BLUE SHIRT ---
16 A HAT. HE HAD A KIND OF GRAY HAT ON HIS HEAD.
17 Q. HE HAD A HAT ON?
18 A. YEAH.
19 Q. AND IT WAS A GRAY?
20 A. YEAH.
21 Q. SO, YOU DIDN'T SEE HIS HAIR THEN?
22 A. WELL, I SAW A LITTLE BIT. IT WAS KIND OF BROWN.
23 Q. KIND OF BROWN. BUT YOU REMEMBER HE HAD A HAT ON?
24 A. YEAH.
25 Q. WHAT KIND OF HAT DID HE HAVE ON?

1 A. HE HAD A HAT. IT HAD A PICTURE --- HAD A PICTURE --
2 - HAD SOME KIND OF PICTURE ON IT.

3 Q. A PICTURE ON IT?

4 A. YEAH.

5 Q. AND EVEN THOUGH TODAY HE DOESN'T HAVE A HAT ON,
6 YOU'RE STILL SURE THAT'S HIM?

7 A. YEAH.

8 Q. THE MAN THAT SHOT YOU WAS HE TALLER THAN YOU?

9 A. NO.

10 Q. WAS HE ABOUT YOUR HEIGHT?

11 A. WELL, HE COULD BE A LITTLE BIT TALLER THAN I AM.

12 Q. AND YOU SAY HE NEVER SAID ANYTHING TO YOU?

13 A. NO.

14 Q. AND WHAT DID YOU SAY TO HIM?

15 A. I SAID --- I SAID, "WHAT ARE YOU DOING?"

16 Q. THE MAN WHO WAS RUNNING AWAY, DID YOU SAY ANYTHING
17 TO HIM?

18 A. I SAID --- I SAID, "WHAT ARE YOU DOING? WHAT ARE
19 YOU DOING IN THE HOUSE?"

20 Q. OKAY. AND DID HE SAY ANYTHING TO YOU --- THE ONE
21 WHO RAN AWAY?

22 A. NO, NO, NO. THE ONLY THING --- HE RUN AND GOT IN
23 THE CAR AND CRANKED IT UP.

24 Q. AND HOW TALL IS THAT MAN?

25 A. ABOUT FIVE FOOT TALL --- FIVE SOMETHING FOOT.

1 Q. DO YOU REMEMBER IF HE HAD A HAT ON?

2 A. YEAH. HE HAD A --- HE HAD A GREEN HAT ON HIM.

3 Q. HE HAD A GREEN HAT ON?

4 A. YEAH.

5 Q. OKAY. AND HE WAS TALLER THAN YOU?

6 A. A LITTLE BIT.

7 Q. AND YOU SAID YOU SAW A GREEN CAR. WHAT KIND OF CAR
8 WAS THAT?

9 A. A CHEVROLET.

10 Q. AND YOU KNOW WHAT A CHEVROLET IS?

11 A. YEAH.

12 Q. DO YOU KNOW WHAT MODEL THIS CHEVROLET WAS?

13 A. NO. I --- I DIDN'T SEE WHAT THE MODEL WAS.

14 Q. AT SOME POINT YOU WERE SHOWN THE PHOTOGRAPHS BY THE
15 LAW ENFORCEMENT PEOPLE, WERE YOU NOT?

16 A. YEAH.

17 Q. AND WHERE WERE YOU LOOKING AT THESE PHOTOGRAPHS?
18 WHERE WERE YOU WHEN THEY SHOWED THEM TO YOU?

19 A. IN THE HOSPITAL.

20 Q. IN THE HOSPITAL?

21 A. YEAH.

22 Q. IN COLUMBIA?

23 A. YEAH.

24 Q. DO YOU REMEMBER HOW MANY PHOTOGRAPHS THEY SHOWED
25 YOU?

1 A. A COUPLE OF THEM.

2 Q. A COUPLE? WAS IT TWO OR THREE OR FOUR?

3 A. TWO.

4 Q. THEY SHOWED YOU TWO PHOTOGRAPHS?

5 A. UH HUH.

6 Q. OKAY. AND WHAT DID THEY ASK YOU TO DO WITH THESE

7 TWO PHOTOGRAPHS?

8 A. WELL, HE ASKED --- WELL, HE ASKED ME WHAT COLOR OF

9 CAR IT WAS AND WHAT KIND IT WAS.

10 Q. WELL, DID YOU IDENTIFY ONE OF THESE PHOTOGRAPHS AS

11 BEING MY CLIENT?

12 A. I DIDN'T --- I TOLD HIM IT WAS A CHEVROLET --- A

13 DARK GREEN CHEVROLET.

14 Q. BUT WHEN THEY SHOWED YOU THESE PHOTOGRAPHS YOU SAY

15 THERE WERE TWO PHOTOGRAPHS OF TWO PEOPLE, RIGHT?

16 A. YEAH.

17 Q. TWO PEOPLE?

18 A. YEAH --- YEAH.

19 Q. DO YOU KNOW WHO WAS IN THOSE PHOTOGRAPHS?

20 A. NO.

21 Q. YOU DIDN'T KNOW WHO WAS IN THEM?

22 A. NO.

23 Q. WELL, WHEN DID YOU FIRST SAY THAT THIS WAS THE MAN

24 THAT SHOT YOU?

25 A. I KNOW THE GUY BECAUSE I SAW --- I DON'T FORGET

1 NOTHING. WHEN I SEE SOMETHING THE FIRST TIME, I DON'T
2 FORGET IT.

3 Q. LET ME SEE IF I CAN GET THIS. YOU SAY YOU REMEMBER
4 THE MAN WHO SHOT YOU?

5 A. I SURE DO.

6 Q. OKAY. AND YOU SAY YOU'VE NEVER SEEN HIM AGAIN UNTIL
7 TODAY; IS THAT RIGHT?

8 A. YEAH.

9 Q. AND YOU SAY YOU'RE SURE THIS IS HIM?

10 A. YEAH.

11 Q. AND YOU SAY AT THE TIME HE SHOT YOU HE HAD A HAT ON?

12 A. YEAH.

13 Q. AND YOU SAY THE OTHER GUY HAD A GREEN HAT ON?

14 A. YEAH.

15 Q. AND YOU SAY HE HAD GLOVES ON?

16 A. YEAH.

17 Q. BUT YOU NEVER SAW GARY PREWITT FROM THAT DAY UNTIL
18 TODAY; IS THAT CORRECT?

19 A. NO.

20 Q. YOU NEVER SAY HIM AGAIN?

21 A. NO.

22 Q. YOU NEVER PICKED HIS PICTURE OUT OF A LINE UP? YOU
23 NEVER PICKED HIS PICTURE OUT OF A GROUP OF PICTURES, DID
24 YOU?

25 A. YEAH, I PICKED OUT ONE.

1 Q. YOU PICKED HIS PICTURE OUT ONCE?

2 A. YEAH.

3 Q. AND HOW MANY PICTURES WERE YOU LOOKING AT WHEN YOU
4 PICKED IT OUT?

5 A. ABOUT A WHOLE BUNDLE OF THEM.

6 Q. A WHOLE BUNDLE OF PICTURES?

7 A. YEAH.

8 Q. WOULD THERE HAVE BEEN MAYBE TEN?

9 A. ABOUT TEN.

10 Q. ABOUT TEN?

11 A. YEAH.

12 Q. AND THE PICTURE YOU PICKED OUT DID NOT HAVE A HAT --
13 - THE PERSON DIDN'T HAVE A HAT ON DID HE?

14 A. NO. TOLD YOU THAT.

15 Q. AND IT WAS JUST HIS PHOTOGRAPH OF FROM HERE UP?

16 A. YEAH, YEAH.

17 Q. AND THE OTHER PICTURES THERE, DID ANY OF THEM LOOK
18 ALMOST LIKE LANEY?

19 A. YEAH.

20 Q. THEY DID?

21 A. YEAH.

22 Q. BUT YOU STILL REMEMBER THOSE GUNS JUST LIKE THAT ONE
23 BEFORE YOU GOT SHOT?

24 A. YEAH.

25 Q. DO YOU REMEMBER HOW MANY TIMES YOU HAVE SPOKEN TO

1 THE LAW ENFORCEMENT PEOPLE ABOUT THIS CASE?

2 A. ABOUT HALF A DOZEN TIMES.

3 Q. ABOUT A HALF A DOZEN TIMES, YOU SAY?

4 A. UH HUH.

5 Q. AND THE FIRST TIME WAS IN THE HOSPITAL, RIGHT?

6 A. YEAH.

7 Q. IS THAT WHEN YOU WERE SHOWN THE PICTURES?

8 A. YEAH.

9 Q. IN THE HOSPITAL?

10 A. YEAH.

11 Q. OKAY. AND YOU SAY YOU PICKED ONE OUT AND SAID THAT
12 WAS HIM?

13 A. YEAH.

14 Q. BUT UP UNTIL TODAY, YOU NEVER SAW HIM BEFORE TODAY
15 AT ALL?

16 A. NO.

17 MS. STROM: YOUR HONOR, THAT'S BEEN ASKED AND
18 ANSWERED SEVERAL TIMES.

19 THE COURT: SUSTAINED.

20 BY MR. WICKER

21 Q. GOING TO THE CAR THAT DROVE AWAY, DID YOU SEE THE
22 LICENSE PLATE AT ALL?

23 A. ONE NUMBER.

24 Q. WHAT NUMBER DID YOU SEE?

25 A. SEVEN --- SEVEN.

JOE DIXON
REDIRECT BY MS. STROM

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1 Q. SEVEN, OKAY. JOE, WE HAVE NO FURTHER QUESTIONS.

2 THE COURT: ANY REDIRECT?

3 MS. STROM: VERY BRIEFLY, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MS. STROM

6 Q. MR. DIXON, ARE YOU NERVOUS?

7 A. LITTLE BIT.

8 Q. THAT'S OKAY. DO YOU NEED ANY MORE WATER? I THINK
9 I MIGHT BE CONFUSED. SO, I NEED YOU TO HELP ME OUT?

10 A. UH HUH.

11 Q. WHEN YOU WERE IN THE HOSPITAL, DANNY GILLIAM SHOWED
12 YOU SOME PICTURES?

13 A. SURE DID.

14 Q. DID HE SHOW YOU PICTURES OF A CAR?

15 A. WELL, HE SHOWED ME PICTURES OF A CAR.

16 Q. HE SHOWED YOU PICTURES OF A CAR?

17 A. YEAH.

18 Q. HOW MANY PICTURES WERE THERE OF THE CAR?

19 A. ABOUT TWO.

20 Q. ABOUT TWO. DID HE ALSO SHOW YOU SOME PICTURES OF
21 SOME PEOPLE?

22 A. YEAH.

23 Q. IS IT THOSE THE ONES THAT YOU SAY ARE ABOUT TEN?

24 A. YEAH.

25 Q. OKAY.

1 MS. STROM: I HAVE NO FURTHER QUESTIONS.

2 MR. WICKER: WE HAVE NOTHING FURTHER, YOUR HONOR.

3 THE COURT: THANK YOU. STEP DOWN, PLEASE.

4 MS. STROM: THE STATE CALLS A.H. WALKER.

5 THEREUPON:

6 A.H. WALKER, JR., BEING FIRST
7 DULY SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. STROM

10 Q. MR. WALKER, WHERE DO YOU LIVE?

11 A. I LIVE ON HIGHWAY 63, INDIAN CREEK ROAD, AND I'M
12 ABOUT BETWEEN A HALF AND A MILE FROM WHERE THIS TOOK
13 PLACE.

14 Q. FROM RANDY TINSLEY'S HOUSE?

15 A. RIGHT.

16 Q. HOW LONG HAVE YOU LIVED IN NEWBERRY COUNTY?

17 A. ABOUT 50 YEARS.

18 Q. I WON'T ASK YOU HOW OLD YOU ARE, MR. WALKER. DO YOU
19 RECALL THE DAY THAT JOE DIXON WAS SHOT?

20 A. YES, I DO. I DON'T THINK I'LL EVER FORGET THAT DAY.
21 IT WAS ON A FRIDAY MORNING. IT WAS AROUND --- WELL, I
22 DON'T KNOW EXACTLY WHAT TIME. IT WAS SOMEWHERE AROUND
23 10:30, I WOULD GUESS, THAT MY TELEPHONE RANG IN THE SHOP,
24 AND CHRISTY MCGUIRT WAS VERY DISTRESSFUL AND DISTURBED,
25 AND I KNEW SOMETHING TERRIBLE HAD HAPPENED BY THE TONE OF

1 HER VOICE. SHE WAS --- SHE WAS --- HER VOICE WAS
2 CRACKING, AND SHE COULD HARDLY TALK, BUT SHE TOLD ME THAT
3 I NEEDED TO COME DOWN TO HER HOUSE JUST AS QUICK AS I
4 COULD GET THERE. SHE TOLD ME ABOUT SENDING LITTLE JOE
5 OVER TO RANDY'S HOUSE BECAUSE A STRANGE CAR HAD DRIVEN IN
6 THERE AND THAT SHE SENT JOE OVER TO TELL THE PEOPLE THAT
7 NO ONE WAS AT HOME, AND SAID SHORTLY AFTER THAT SHE HEARD
8 THREE SHOTS.

9 Q. DID YOU COME DOWN TO HER HOUSE?

10 A. I TOLD HER I'D BE RIGHT THERE, AND I JUMPED --- AND
11 I WAS THERE WITHIN A MINUTE, I GUESS, BECAUSE I KNEW
12 SOMETHING TERRIBLE WAS WRONG BY THE WAY SHE WAS TALKING.

13 Q. I BELIEVE YOU SAID YOU LIVED BETWEEN A HALF MILE AND
14 A MILE?

15 A. RIGHT.

16 Q. ALL RIGHT. WHEN YOU GOT THERE, WHAT DID YOU DO?

17 A. CHRISTY MET ME IN THE ROAD BETWEEN THE TWO HOUSES --
18 - BETWEEN HER HOUSE AND RANDY'S, AND I DROVE ON IN THE
19 DRIVEWAY, AND SHE CUT ACROSS THE LAWN, AND WE MET AT THE
20 BACK DOOR AND WENT IN THE BACK DOOR TOGETHER. I THINK
21 SHE ACTUALLY OPENED THE DOOR, AND WHEN SHE SAW JOE SHE
22 KIND OF WENT ALL TO PIECES, WHICH IS NATURAL, AND I
23 CHECKED JOE. HE WAS STILL ALIVE, AND I KNEW HE HAD TO
24 HAVE IMMEDIATE ATTENTION, BECAUSE HE WAS IN TERRIBLE ---
25 HE WAS IN CRITICAL CONDITION. HE WAS A BLOODY MESS.

1 THERE WAS BLOOD ALL IN THE FLOOR. THERE WERE FIVE OR SIX
2 GUNS IN VARIOUS PLACES STACKED AGAINST THE REFRIGERATOR
3 AND IN THE FLOOR, AND I STARTED SEARCHING FOR A
4 TELEPHONE. I LOOKED FOR A TELEPHONE EVERYWHERE, AND I
5 COULDN'T FIND ONE. SO, I TOLD CHRISTY WE WOULD HAVE TO
6 RUN BACK OVER TO HER HOUSE TO USE THE PHONE. AND THAT'S
7 WHEN I CALLED THE COUNTY EMERGENCY, AND I GOT THE
8 DISPATCHER, AND I DESCRIBED TO THEM WHAT HAD HAPPENED ---
9 THAT WE NEEDED EMS AND THE LAW ENFORCEMENT AS QUICKLY AS
10 THEY COULD GET THERE.

11 Q. DID SOMEONE ELSE COME TO THE HOUSE AND ASSIST YOU
12 WITH MR. DIXON?

13 A. YES, MA'AM. AFTER I MADE THE PHONE CALL, I CHECKED
14 MY WATCH, AND IT WAS 10:55.

15 Q. AFTER YOU MADE THE PHONE CALL?

16 A. AFTER I MADE THE PHONE CALL AND I CAME OUT THE FRONT
17 DOOR OF CHRISTY'S HOUSE --- AND TODD FRAZIER DROVE UP IN
18 HIS PICKUP TRUCK, AND I SIGNALLED FOR HIM TO COME ON OVER
19 TO RANDY'S HOUSE, BECAUSE HE KNOWS JOE.

20 Q. OKAY.

21 A. AND THE POSITION OF THE HOUSE I WAS AFRAID THAT THE
22 AMBULANCE MIGHT GO BY BECAUSE OF THE FOLIAGE AND THE
23 CURVE IN THE ROAD. SO, I WENT ON IN WITH HIM, AND HE
24 STARTED ADMINISTERING TO JOE --- STARTED CUTTING HIS
25 SHIRT AND ASKING HIM QUESTIONS, AND JOE WAS UNABLE TO

1 TALK TO ME. I JUST GOT A LITTLE MUMBLE OUT OF HIM, BUT
2 I KNEW HE WAS ALIVE, BUT HE WAS BEGINNING TO TALK TO TODD
3 SOME, AND I WENT BACK OUT TO THE ROAD SO I COULD STOP THE
4 AMBULANCE SO HE WOULD TURN IN THERE.

5 Q. AND DID EVENTUALLY THE AMBULANCE COME?

6 A. HE WAS THERE IN 15 MINUTES. I TIMED THAT, TOO. HE
7 WAS THERE TEN AFTER ELEVEN.

8 Q. AND THEY PROCEEDED TO TAKE OVER FROM THERE?

9 A. THEY TOOK OVER FROM THERE, AND THEN DANNY WAS THERE
10 RIGHT BACK OF THAT AND ALSO JERRY.

11 Q. MR. WALKER, THERE HAS BEEN SOME TESTIMONY ABOUT A
12 GREEN CAR. DID YOU HAVE OCCASION ANY TIME THAT DAY TO
13 SEE A GREEN CAR?

14 A. YES. AFTER I HEARD ABOUT A GREEN CAR WAS SEEN, I
15 RECALLED ABOUT 30 OR 45 MINUTES PRIOR TO GETTING THIS
16 TELEPHONE CALL MY DOGS STARTED BARKING. I ALWAYS GO AND
17 LOOK WHEN THE DOGS ARE BARKING. I THINK SOMEBODY'S
18 COMING UP IN THE YARD, AND I OBSERVED A PALE GREEN
19 CHEVROLET. IT WAS AN OLD MODEL, I WOULD SAY IN THE '70s,
20 GOING UP THE ROAD KIND OF SLOW. THAT'S WHY MY DOGS
21 BARKED AT HIM. IT WAS GOING SLOW AND HAD TWO PEOPLE IN
22 THE FRONT. I COULDN'T TELL WHAT WAS IN THE BACK, WHETHER
23 IT WAS ANOTHER PERSON OR OBJECT, BUT IT WAS GOING SLOW,
24 AND THEY WERE LOOKING ABOUT LIKE THEY WERE LOOKING ---

25 Q. WERE YOU ABLE TO --- WERE YOU ABLE TO SEE CLEARLY

1 THEIR FACES?

2 A. I COULDN'T SEE THEIR FACES. IT WAS TOO FAR AND I
3 COULDN'T IDENTIFY. I KNOW THEY WERE WHITE PEOPLE ---
4 WHITE MEN.

5 Q. TWO WHITE MEN. AND YOU, OF COURSE, DON'T KNOW WHERE
6 THAT CAR WENT?

7 A. NO. SINCE IT CONTINUED ON UP THE ROAD, I WENT BACK
8 IN MY SHOP AND CONTINUED TO WORK UNTIL I GOT THIS PHONE
9 CALL.

10 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
11 NUMBER ELEVEN, AND IF YOU WOULD, STEP DOWN HERE AND SHOW
12 THIS JURY WHERE YOU FOUND JOE DIXON. SHOW THIS HALF AND
13 THEN THAT HALF.

14 A. OKAY.

15 Q. YOU ARE GOING TO NEED TO SPEAK UP SO THE COURT
16 REPORTER CAN HEAR YOU.

17 A. THIS WAS THE BACK DOOR COMING INTO THE ROOM. THIS
18 IS THE KITCHEN, AND I FOUND JOE IN THIS POSITION. RIGHT
19 WHERE YOU SEE THIS BLOOD, HIS HEAD WAS AGAINST THE WALL,
20 AND HE WAS ON HIS BACK, AND ONE OF THE GUNS WAS UNDER
21 HIM.

22 Q. WAS UNDER HIM?

23 A. UNDER HIM. HE WAS PARTIALLY ON THE GUN, AND I
24 THOUGHT AT FIRST HE HAD BEEN SHOT WITH A SHOTGUN FROM THE
25 AMOUNT OF BLOOD THAT WAS PRESENT.

1 Q. COME DOWN AND SHOW THIS HALF OF THE JURY WHERE YOU
2 FOUND MR. DIXON.

3 A. AS I TOLD THEM, THIS WAS THE BACK DOOR COMING IN,
4 AND JOE WAS RIGHT THERE IN THE POOL OF BLOOD ON HIS BACK
5 AND HIS HEAD SLIGHTLY UP AGAINST THE WALL, AND THERE WAS
6 A GUN UNDER HIM.

7 Q. THANK YOU.

8 A. AND THERE WERE ABOUT FIVE OR SIX OTHER GUNS STACKED
9 AROUND WHERE IT LOOKED LIKED THEY GOT THEM READY TO TAKE
10 OUTSIDE.

11 Q. THANK YOU, MR. WALKER. PLEASE RETAKE THE STAND.

12 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

13 BY MS. STROM

14 Q. THANK YOU, MR. WALKER. PLEASE ANSWER ANY QUESTIONS
15 MR. WICKER MAY HAVE.

16 CROSS EXAMINATION

17 BY MR. WICKER

18 Q. MR. WALKER, THIS LIGHT GREEN CAR THAT YOU SAW DRIVE
19 BY YOUR PLACE SOMEWHERE AROUND TEN O'CLOCK THAT MORNING,
20 YOU SAID YOU SAW TWO PEOPLE IN IT?

21 A. RIGHT.

22 Q. AND DO YOU KNOW WHETHER OR NOT EITHER ONE OF THEM
23 WERE WEARING A HAT?

24 A. NO. I COULDN'T TELL THAT. I WASN'T THAT CLOSE TO
25 IT.

1 Q. IF ONE OF THEM HAD ON A GREEN HAT, DO YOU THINK YOU
2 COULD HAVE SEEN IT?

3 A. NO, I COULDN'T HAVE TOLD. WELL, I WASN'T EVEN
4 LOOKING FOR ANYTHING LIKE THAT, SINCE I DIDN'T PAY ALL
5 THAT MUCH ATTENTION TO IT OTHER THAN THE DOGS BARKING.
6 I SAW IT WAS A GREEN CAR. I DIDN'T PAY A LOT OF
7 ATTENTION TO WHAT THEY WOULD BE ---

8 Q. BUT THEN AFTER ---

9 MS. STROM: YOUR HONOR, IF HE MAY FINISH ANSWERING
10 HIS QUESTION.

11 THE COURT: LET HIM ANSWER. YOU MAY FINISH YOUR
12 ANSWER, MR. WALKER.

13 MR. WICKER: MY APOLOGIES. I DIDN'T MEAN TO
14 INTERRUPT HIM.

15 A. I WASN'T CLOSE ENOUGH TO TELL WHAT ANY OF THEM WERE
16 WEARING. I COULD JUST TELL THERE WERE TWO PEOPLE --- TWO
17 MEN IN THE FRONT SEATS, AND SOMETHING WAS IN THE BACK
18 SEAT, AND THEY WERE LOOKING TOWARD MY HOUSE, BUT I
19 COULDN'T TELL WHAT THEY WERE WEARING.

20 Q. OKAY, BUT YOU COULD TELL IT WAS A LIGHT GREEN
21 CHEVROLET?

22 A. YES.

23 Q. AND THE MODEL WOULD HAVE BEEN IN THE '70s?

24 A. I DON'T KNOW --- YES, IN THE '70s. SO MANY OF THOSE
25 MODELS WERE JUST ALIKE.

1 Q. DO YOU REMEMBER SEEING THAT CAR AGAIN SINCE THEN?

2 A. I HAVEN'T --- I COULDN'T SAY FOR SURE THAT I'VE SEEN
3 THAT CAR.

4 Q. AND YOU DON'T REMEMBER SEEING IT BEFORE THEN EITHER,
5 DO YOU?

6 A. NO.

7 Q. AND YOU'VE NEVER IDENTIFIED WHO WAS IN THE CAR?

8 A. NO.

9 Q. AND WHILE YOU WERE AT THE SCENE AND JOE HAD BEEN
10 SHOT, OF COURSE, YOU DIDN'T SEE ANY OF THE PERPETRATORS
11 OF THE CRIME?

12 A. NO. THEY HAD FLED.

13 Q. WELL, THANK YOU, BUSTER.

14 THE COURT: ANY REDIRECT?

15 MS. STROM: NOTHING ON REDIRECT.

16 THE COURT: THANK YOU, MR. WALKER.

17 MS. STROM: THE STATE CALLS KIMMIE SHIPES.

18 THEREUPON:

19 KIMMIE SHIPES, BEING FIRST DULY
20 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. STROM

23 Q. MS. SHIPES, I'M GOING TO HAVE TO ASK YOU TO SAY YES
24 OR NO, NOT NOD YOUR HEAD. AS YOU CAN SEE, THE COURT
25 REPORTER IS TAKING EVERYTHING DOWN FOR YOU --- FOR US.

KIMMIE SHIPES
DIRECT EXAMINATION BY MS. STROM

80

- 1 MS. SHIPES, HOW OLD ARE YOU?
- 2 A. EIGHTEEN.
- 3 Q. ARE YOU MARRIED?
- 4 A. NO.
- 5 Q. WHERE DO YOU LIVE?
- 6 A. HIGHWAY 63.
- 7 Q. HOW FAR DO YOU LIVE FROM RANDY TINSLEY'S HOUSE?
- 8 A. ABOUT A HALF A MILE.
- 9 Q. WHERE DO YOU WORK?
- 10 A. INGLES.
- 11 Q. HOW LONG HAVE YOU WORKED AT INGLES?
- 12 A. SINCE ABOUT SEPTEMBER.
- 13 Q. OF '94?
- 14 A. NINETY-FOUR.
- 15 Q. MS. SHIPES, DO YOU KNOW MR. JOE DIXON?
- 16 A. NO.
- 17 Q. DO YOU RECALL THE DAY JOE DIXON WAS SHOT, THE DAY
- 18 THAT WE'RE TALKING ABOUT HERE IN COURT?
- 19 A. YEAH.
- 20 Q. DO YOU RECALL WHAT DAY OF THE WEEK THAT WAS?
- 21 A. YEAH.
- 22 Q. WHAT DAY WAS IT?
- 23 A. ON A FRIDAY.
- 24 Q. WHAT WERE YOU DOING THAT FRIDAY?
- 25 A. I WAS IN MY BED, BUT I WAS AWAKE, BECAUSE IT WAS

1 KIND OF EARLY, AND I HAD TO WORK THAT AFTERNOON WITH MY
2 GRANDMOTHER, BECAUSE I HELP HER CLEAN THE CHURCH UP
3 SOMETIMES.

4 Q. WHAT CHURCH IS THAT?

5 A. FAIRVIEW BAPTIST.

6 Q. WHAT TIME DO Y'ALL GO IN TO CLEAN THE CHURCH?

7 A. USUALLY RIGHT AFTER LUNCHTIME -- ABOUT 12:30, BUT I
8 WAS AWAKE, AND I WAS JUST LAYING THERE, AND AROUND IN THE
9 BACK OF OUR HOUSE IT HAS A DECK AND PATIO DOORS, AND I
10 HEARD SOMEBODY LIKE THEY WERE PIDDLING AROUND BACK THERE,
11 AND I THOUGHT, WELL, MAYBE IT WAS MY LITTLE COUSIN
12 WANTING IN. SO, I WENT ---

13 Q. HOW OLD IS YOUR LITTLE COUSIN?

14 A. HE'S ELEVEN.

15 Q. OKAY.

16 A. SO, I WENT TO THE BACK DOOR, AND I SAW MR. PREWITT
17 STANDING AT MY BACK DOOR, AND WHEN I PULLED THE CURTAIN
18 BACK AND CRACKED THE DOOR, HE JUMPED BACK LIKE HE WAS
19 SCARED, AND HE SHOVED HIS HANDS IN HIS POCKET, AND I
20 SAID, "CAN I HELP YOU?"

21 Q. DID HE SAY ANYTHING?

22 A. HE SAID, DOES EDDIE SO IN SO OR SOMEBODY LIVE HERE,
23 AND I SAID, "I'M SORRY. YOU HAVE THE WRONG HOUSE." AND
24 HE RAN OFF MY PORCH ALL WAY BACK AROUND AND GOT IN HIS
25 CAR, AND THEY DIDN'T SPEED AWAY OR ANYTHING. THEY JUST

1 DROVE DOWN THE DRIVEWAY.

2 Q. WHEN YOU SAY THEY, DID YOU SEE ANYBODY ELSE WITH
3 HIM?

4 A. THERE WAS SOMEBODY ELSE IN THE CAR, AND I DIDN'T
5 KNOW IF IT WAS A GIRL OR A BOY, BUT THEY LOOKED KIND OF
6 TALL FROM THE WAY THEY WAS SITTING, BUT I DIDN'T SEE THEM
7 OR THEIR FACE OR ANYTHING.

8 Q. DID YOU SEE THE CAR?

9 A. YEAH.

10 Q. WHAT COLOR WAS THE CAR?

11 A. IT WAS JUST RAGGEDY AND FADED OUT. I COULDN'T TELL
12 IF IT WAS GREEN OR BLUE, AND IT HAD SOME SPOTS ON IT.

13 Q. YOU SAID YOU SAW MR. PREWITT AT YOUR BACK PATIO
14 DOORS. DO YOU KNOW MR. PREWITT?

15 A. NO, I DO NOT.

16 Q. ARE YOU SURE THIS IS THE MAN YOU SAW AT YOUR BACK
17 DOOR?

18 A. POSITIVE.

19 Q. IS THERE ANYTHING DIFFERENT ABOUT HIM TODAY THAN
20 WHEN YOU SAW HIM ON THAT DAY?

21 A. LIKE HE HAD --- FROM THE WAY IT LOOKED --- FROM THE
22 WAY THE SUN WAS SHINING, LIKE HE HAD SOME FACIAL HAIR OR
23 SOMETHING.

24 Q. OKAY. MS. SHIPES, HOW WAS YOUR DRIVEWAY IN FRONT OF
25 --- IN YOUR HOME --- AT YOUR HOME?

1 A. WE LIVE IN A DOUBLE WIDE TRAILER, AND IT'S LIKE
2 THIS, AND WE HAVE A CIRCLE DRIVEWAY THAT GOES DIRECTLY IN
3 FRONT OF US, AND THERE'S THE ROAD --- THE HIGHWAY LIKE.

4 Q. SO, YOUR FRONT DOOR FACES THE HIGHWAY --- HIGHWAY
5 63?

6 A. YES, MA'AM.

7 Q. AND DOES THE CIRCULAR DRIVEWAY --- BY IT BEING
8 CIRCULAR, IT GOES FROM ONE END OF 63 OVER TO THE OTHER?

9 A. YEAH.

10 Q. OKAY. DOES THAT PASS BY YOUR FRONT DOOR?

11 A. YES, IT DOES.

12 Q. HOW MANY DOORS DO YOU HAVE TO YOUR TRAILER?

13 A. THREE.

14 Q. WHERE ARE THEY LOCATED?

15 A. HAVE THE FRONT DOOR IN THE VERY FRONT OF THE HOUSE.
16 ON THE SIDE, WE HAVE LIKE THE SIDE DOOR. IN THE VERY
17 BACK, WE HAVE THE PATIO DOORS.

18 Q. WHAT DO YOU HAVE TO DO TO GET TO THE PATIO DOORS?

19 A. YOU HAVE TO --- IF YOU WERE TO PARK IN THE FRONT
20 WHERE THEIR CAR WAS, YOU WOULD HAVE TO EITHER WALK AROUND
21 THIS SIDE OF THE HOUSE AND GO UP THE STEPS OR WALK AROUND
22 THE OTHER SIDE OF THE HOUSE AND GO ALL THE WAY AROUND AND
23 COME BACK UP THE STEPS.

24 Q. UP THE STEPS TO WHAT?

25 A. GET ON THE PATIO STEPS.

1 Q. OKAY. MS. SHIPES, THAT MORNING WHEN YOU HEARD
2 SOMEONE FIDDLING, I BELIEVE IT WAS YOUR WORD --- MEDDLING
3 --- FIDDLING AT YOUR PATIO DOOR, DID YOU AT ANY TIME EVER
4 HEAR SOMEONE KNOCKING ON YOUR FIRST DOOR?

5 A. NO, MA'AM.

6 Q. DID YOU EVER HEAR ANYONE KNOCKING ON YOUR SIDE DOOR?

7 A. NO, MA'AM.

8 Q. DID YOU HEAR ANYONE KNOCKING ON YOUR PATIO DOORS?

9 A. NO, IT WASN'T A KNOCK.

10 Q. WASN'T A KNOCK?

11 A. NO.

12 Q. HOW WOULD YOU DESCRIBE THE SOUND?

13 A. IT WAS LIKE --- LIKE A THUMPING NOISE JUST, I GUESS,
14 TRYING TO SEE IF IT WAS HOLLOW OR WHAT WAS BEHIND IT, OR
15 IT WAS JUST LIKE --- YOU CAN TAP YOUR FINGERNAILS ON THE
16 GLASS. YOU KNOW WHAT I'M TALKING ABOUT? LIKE THAT.

17 Q. DO YOU RECALL WHAT TIME THIS WAS?

18 A. IT WAS --- IT WAS RIGHT AT TEN O'CLOCK --- NOT MUCH
19 AFTER.

20 Q. MS. SHIPES, THE FACT THAT MR. PREWITT DOESN'T HAVE
21 ANY FACIAL HAIR TODAY, ARE YOU SURE THAT'S THE MAN THAT
22 WAS AT YOUR DOOR?

23 A. I SURE AM.

24 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. I HAVE
25 NO FURTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR.

KIMMIE SHIPES
CROSS EXAMINATION BY MR. WICKER

85

1 WICKER MAY HAVE.

2 CROSS EXAMINATION

3 BY MR. WICKER

4 Q. MS. SHIPES, IS YOUR FIRST NAME KENNY?

5 A. KIMMIE.

6 Q. KIMMIE?

7 A. YEAH.

8 Q. COULD YOU SPELL THAT?

9 A. K-I-M-M-I-E.

10 Q. THANK YOU. HOW FAR DID YOU GO IN SCHOOL, MS.
11 SHIPES?

12 A. I'M A SENIOR NOW.

13 Q. AND WHAT SCHOOL DO YOU GO TO?

14 A. CLINTON HIGH SCHOOL.

15 Q. AND HOW LONG DID YOU SAY YOU HAVE WORKED AT INGLES
16 STORE?

17 A. SINCE SEPTEMBER OF '94.

18 Q. OKAY. ON THIS PARTICULAR FRIDAY, WHICH WOULD HAVE
19 BEEN THE 22ND OF JULY, I BELIEVE ---

20 A. UH HUH.

21 Q. --- WHAT KIND OF NOISE DID YOU HEAR ON YOUR BACK
22 PATIO?

23 A. IT SOUNDED LIKE SOMEBODY FIDGETING AROUND, JUST
24 PIDDLING AROUND ON MY PATIO OR MESSING AT THE BACK DOOR,
25 LIKE TAPPING THEIR FINGERS ON THE GLASS.

KIMMIE SHIPES
CROSS EXAMINATION BY MR. WICKER

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- 1 Q. DID YOU KNOW LANEY PREWITT BEFORE THEN?
- 2 A. NO, I DID NOT.
- 3 Q. HAVE YOU SEEN HIM SINCE THEN?
- 4 A. YES, I HAVE.
- 5 Q. WHERE AT?
- 6 A. I COULD ALMOST --- IN THE PICTURES THAT MR. GILLIAM
- 7 SHOWED ME, IT LOOKED EXACTLY LIKE HIM IN THE PICTURES
- 8 THEY SHOWED ME. I MEAN, WE LOOKED THROUGH TONS OF
- 9 PICTURES, AND ALL OF THEM WERE ALL DIFFERENT, AND THE
- 10 ONES THAT HE SHOWED --- THE ONE THAT I PICKED OUT, I
- 11 COULD ALMOST ASSURE YOU THAT THAT WAS HIM IN THAT
- 12 PICTURE.
- 13 Q. OKAY. DID YOU SEE LANEY PREWITT, THOUGH, SINCE
- 14 THEN?
- 15 A. IN PERSON, NO.
- 16 Q. UNTIL TODAY?
- 17 A. UNTIL TODAY.
- 18 Q. SO, YOU'RE SAYING YOU SAW HIM THAT DAY BUT DID NOT
- 19 SEE HIM AGAIN UNTIL TODAY?
- 20 A. RIGHT.
- 21 Q. YOU SAID HE HAD FACIAL HAIR ON THEN YOU THINK?
- 22 A. UH HUH.
- 23 Q. DID YOU SEE THE OTHER PERSON THAT WAS WITH HIM?
- 24 A. NO, I DID NOT.
- 25 Q. WAS THERE ANOTHER PERSON THERE?

1 A. UH HUH.

2 Q. DID EITHER ONE OF THEM HAVE ON A GREEN HAT?

3 A. I DON'T KNOW, BUT I KNOW HE HAD ON A HAT, AND IT HAD
4 --- I THINK IT WAS SOME KIND OF WASHINGTON HAT --- HAD
5 ONE OF THEM --- IT WAS A DARK COLOR, AND IT HAD A RED
6 CIRCLE ON THE MIDDLE OF IT LIKE AN EMBLEM.

7 Q. SO, LANEY HAD ON A HAT?

8 A. YEAH.

9 Q. AND HE HAD FACIAL HAIR?

10 A. UH HUH.

11 Q. DID YOU SAY, OR HAVE YOU EVER TOLD ANYONE, THAT HIS
12 HAIR WAS REDDISH BLONDE?

13 A. I SAID IT LOOKED VERY LIGHT BECAUSE OF THE WAY THE
14 SUN WAS SHINING ON HIM FROM THAT SIDE. IT JUST MADE HIM
15 LOOK REALLY PALE AND LIKE RED LIKE.

16 Q. BUT YOU HAVE SAID THAT HIS HAIR LOOKED RED TO YOU,
17 DIDN'T YOU?

18 A. YEAH.

19 Q. OKAY. AND YOU DON'T THINK IT LOOKS RED TODAY, DO
20 YOU?

21 A. NO. I THINK IT LOOKS BROWN TODAY.

22 Q. YOU ALSO SAID THAT THE PERSON YOU SAW WAS TALL, DID
23 YOU NOT?

24 A. YEAH.

25 Q. HOW TALL DO YOU THINK HE WAS?

KIMMIE SHIPES
CROSS EXAMINATION BY MR. WICKER

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1 A. TALLER THAN ME. HE WAS ABOUT --- I GUESS MAYBE 5'2"
2 --- 5'3", IF NOT TALLER.

3 MR. WICKER: LANEY, STAND UP.

4 BY MR. WICKER

5 Q. DO YOU THINK THE PERSON YOU SAW WAS TALLER THAN HE
6 IS?

7 A. NO.

8 Q. OKAY.

9 MR. WICKER: HAVE A SEAT.

10 BY MR. WICKER

11 Q. WHILE YOU WERE WORKING AT INGLES, DID YOU EVER SPEAK
12 TO LANEY'S MOTHER?

13 A. YES, I DID.

14 Q. AND DO YOU REMEMBER WHAT YOU TOLD HER?

15 A. I REMEMBER HER, AND I THINK IT WAS HER DAUGHTER ---
16 I CAN'T BE POSITIVE. THEY ASKED ME WAS I SURE THAT THAT
17 WAS HIM. THEY SHOWED ME A PICTURE OF A MAN IN A CAR, AND
18 I COULD SEE THE SIDE OF THE MAN'S FACE, AND THEY WERE
19 ASKING ME WAS I SURE THAT IT WASN'T THIS MAN INSTEAD OF
20 THEIR SON, AND I TOLD THEM THAT TO ME IT DID NOT LOOK
21 LIKE THE MAN, BUT THAT WAS ABOUT IT, AND THEY ASKED ME IF
22 I WOULD BE WILLING TO TALK TO THEIR LAWYERS, AND I TOLD
23 THEM I DIDN'T REALLY WANT TO HAVE THAT MUCH TO DO --- I
24 DIDN'T WANT TO HAVE ANYTHING TO DO WITH IT, AND THEY SAID
25 THAT THEIR LAWYERS COULD SUBPOENA ME INTO COURT OR

1 WHATEVER IF THEY NEEDED ME.

2 Q. IN FACT, YOU REPORTED THAT INCIDENT TO THE LAW
3 ENFORCEMENT PEOPLE, DID YOU NOT?

4 A. YES, I DID.

5 Q. DID YOU HELP THEM DRAW A COMPOSITE DRAWING OF THE
6 PERSON YOU SAW?

7 A. UH HUH, I SURE DID.

8 Q. AND WHEN THEY WERE DRAWING THAT COMPOSITE DRAWING,
9 DID YOU TELL THEM THAT HE LOOKED TALL TO YOU?

10 A. I TOLD THEM THAT HE LOOKED ABOUT 5'2" OR 5'3".

11 Q. AND YOU TOLD THEM THAT HIS HAIR WAS REDDISH BLONDE?

12 A. I SAID THAT IT LOOKED REDDISH BLONDE FROM THE WAY HE
13 WAS STANDING IN THE SUNLIGHT.

14 Q. BUT WHEN YOU SAW HIM DO YOU REMEMBER WHETHER HE HAD
15 GLOVES ON OR NOT?

16 A. NO, I DO NOT, BECAUSE WHEN I CAME TO THE DOOR AND HE
17 STEPPED BACK, HE SHOVED HIS HANDS IN HIS POCKETS.

18 Q. DID HE SAY ANYTHING TO YOU?

19 A. YES. HE SAID, DOES EDDIE SOMEBODY LIVE HERE, AND I
20 SAID, "NO, HE DOES NOT. YOU MUST HAVE THE WRONG HOUSE."

21 Q. DID YOU SAY THAT THIS CAR LOOKED BLUE TO YOU?

22 A. NO. I SAID I COULDN'T TELL WHETHER IT LOOKED GREEN
23 OR BLUE. IT WAS FADED, AND IT WAS RAGGEDY, AND IT HAD
24 SOME RUST SPOTS ON IT.

25 Q. BUT WHEN THE LAW ENFORCEMENT PEOPLE FIRST TALKED

1 WITH YOU YOU TOLD THEM IT WAS BLUE, DIDN'T YOU?

2 A. IT WAS LIKE A GREENISH-BLUE, I GUESS YOU COULD SAY.

3 Q. THANK YOU.

4 THE COURT: ANY REDIRECT?

5 MS. STROM: NO REDIRECT, YOUR HONOR, BUT I WOULD ASK
6 THAT THIS WITNESS BE EXCUSED.

7 THE COURT: ANY OBJECTION? YOU CAN SUBPOENA HER IF
8 YOU NEED HER.

9 MR. WICKER: I THINK THE OTHER SIDE MIGHT WANT TO
10 RECALL HER AFTER I PUT MY CASE ON, YOUR HONOR. THAT'S MY
11 ONLY CONCERN.

12 THE COURT: WELL, THAT'S THEIR PROBLEM.

13 MR. WICKER: I HAVE NO OBJECTION.

14 THE COURT: THANK YOU, MA'AM.

15 MR. WICKER: I JUST DON'T WANT IT TO BE THAT I LET
16 HER GET AWAY.

17 THE COURT: OKAY. THANK YOU, MA'AM. YOU MAY BE
18 EXCUSED.

19 MS. STROM: YOUR HONOR, THE STATE CALLS INVESTIGATOR
20 DANNY GILLIAM.

21 THEREUPON:

22 DANNY GILLIAM, BEING FIRST DULY
23 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MS. STROM

1 Q. MR. GILLIAM, WHERE ARE YOU EMPLOYED?

2 A. NEWBERRY COUNTY SHERIFF'S DEPARTMENT.

3 Q. HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S
4 DEPARTMENT?

5 A. ABOUT FIVE YEARS.

6 Q. AND WERE YOU THE CHIEF INVESTIGATING OFFICER ON THIS
7 CASE THAT WE'RE DISCUSSING HERE TODAY?

8 A. YES, I WAS.

9 Q. AS THE CHIEF INVESTIGATING OFFICER, DID YOU GO TO
10 THE SCENE?

11 A. YES, I DID.

12 Q. WOULD YOU PLEASE DESCRIBE TO THIS JURY WHAT YOU
13 FOUND AT THE SCENE?

14 A. WHEN I ARRIVED AT THE SCENE, I WENT UP TO THE HOUSE,
15 REALIZED THAT THE FORENSICS FROM SLED WAS ON THE WAY. I
16 DID NOT ENTER THE HOUSE AT THAT TIME, BECAUSE EMS WAS
17 WORKING. THEY HAD JUST GOT THERE AND WAS WORKING ON JOE.

18 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
19 NUMBER TWELVE AND STATE'S EXHIBIT NUMBER THIRTEEN FOR
20 IDENTIFICATION AND ASK IF YOU CAN IDENTIFY THAT.

21 A. YES, I CAN. THAT'S THE BACK DOOR WHERE SOMEONE HAD
22 ATTEMPTED OR HAD PRIED IT OPEN.

23 Q. YOUR HONOR, AT THIS TIME, THE STATE WOULD INTRODUCE
24 NUMBERS, I BELIEVE IT'S TWELVE AND THIRTEEN.

25 MR. WICKER: AND NO OBJECTIONS, YOUR HONOR.

1 (STATES EXHIBITS TWELVE AND THIRTEEN MARKED FOR
2 IDENTIFICATION AND MADE A PART OF THE RECORD.)

3 BY MS. STROM

4 Q. WOULD YOU PLEASE STEP DOWN AND SHOW THIS JURY. I'M
5 SHOWING YOU STATE'S EXHIBIT NUMBER THIRTEEN. WILL YOU
6 SHOW THE JURY ABOUT WHAT YOU WERE SPEAKING?

7 A. YOU CAN SEE THE LOCK HERE ---

8 Q. YOU NEED TO SPEAK UP.

9 A. THIS INDENTURE RIGHT HERE, YOU CAN SEE A SHARP
10 OBJECT WAS USED TO PRY THE DOOR OPEN OR TO GET IT OPEN BY
11 PRYING ON IT AT THAT POINT. CAN YOU SEE WHERE THEY PUT
12 A LOT OF PRESSURE? THE INDENTURE CAME ALL THE WAY UP IN
13 THERE.

14 Q. NOW SHOW THIS PORTION OF THE JURY.

15 A. YOU CAN SEE WHERE SOMETHING HAD PRIED INTO HERE.
16 THIS INDENTURE RIGHT HERE IS --- A GOOD BIT OF PRESSURE
17 WAS PUT ON THE INSTRUMENT THAT WAS USED TO PRY THE DOOR
18 OPEN.

19 Q. AGAIN, THAT'S STATE'S EXHIBIT NUMBER THIRTEEN. I
20 SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT NUMBER
21 TWELVE, AND CAN YOU DO THE SAME THING FOR THIS HALF OF
22 THE JURY AND THE OTHER HALF?

23 A. THIS IS THE DOOR PART RIGHT HERE. YOU CAN SEE THE
24 DAMAGE --- HOW IT POPPED OUT. YOU CAN SEE WHERE THE
25 PAINT HAS BEEN KNOCKED OFF. THAT'S WHERE THE INSTRUMENT

1 WENT IN TO POP THE DOOR.

2 Q. YOU SHOW THIS HALF OF THE JURY.

3 A. BY THE DOOR ---

4 Q. YOU ARE GOING TO HAVE TO SPEAK UP.

5 A. HOW THE DOOR WAS POPPED AND SWOLE(SIC) A LITTLE BIT.
6 YOU CAN SEE THE PAINT OFF. THIS IS WHERE THE INSTRUMENT
7 WAS PUT IN TO PRY THE DOOR.

8 Q. THANK YOU. YOU MAY RETAKE THE STAND. MR. GILLIAM,
9 IN YOUR INVESTIGATION, DID STATE'S EXHIBIT NUMBERS TWELVE
10 AND THIRTEEN APPEAR TO BE A FRESH, FOR LACK OF A BETTER
11 TERM --- FRESH WOUND TO THAT DOOR AREA?

12 A. YES, IT WAS.

13 Q. FRESH INDENTATION. MR. GILLIAM, IN YOUR
14 INVESTIGATION, DID YOU DEVELOP GARY LANE PREWITT THAT'S
15 SITTING HERE AS A SUSPECT?

16 A. YES, I DID.

17 Q. AND AS A RESULT OF THAT, DID YOU PREPARE A
18 PHOTOGRAPHIC LINEUP?

19 A. WE DIDN'T HAVE ANY PHOTOS OF HIM. WE CONTACTED OUR
20 SISTER COUNTY.

21 Q. DID YOU OBTAIN ONE?

22 A. YES, WE DID.

23 Q. YOU OBTAINED ONE?

24 A. YES, WE DID.

25 Q. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT

1 NUMBER FOURTEEN AND ASK IF YOU CAN IDENTIFY THAT.

2 A. THIS IS THE LINE UP THAT WE HAD PREPARED.

3 MS. STROM: YOUR HONOR, AT THIS TIME, WE WOULD MOVE
4 STATE'S EXHIBIT NUMBER FOURTEEN INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MR. WICKER: WE HAVE NO OBJECTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 (STATE'S EXHIBIT NUMBER FOURTEEN MARKED FOR
9 IDENTIFICATION AND MADE A PART OF THE RECORD.)

10 BY MS. STROM

11 Q. MR. GILLIAM, DID YOU HAVE AN OCCASION TO SHOW THAT
12 LINE UP TO MR. DIXON --- JOE DIXON?

13 A. YES, I DID.

14 Q. WHERE WAS HE WHEN YOU SHOWED HIM THIS LINE UP?

15 A. AT RICHLAND MEMORIAL HOSPITAL.

16 Q. AND DID YOU TALK WITH HIM PRIOR TO YOU SHOWING HIM
17 THE LINE UP?

18 A. YES, I DID.

19 Q. AND BASED UPON YOUR TALKING TO HIM, WERE YOU ABLE TO
20 DETERMINE IF HE WAS OF CLEAR THOUGHT?

21 A. YES, HE WAS. HE WAS --- I WAS VERY AMAZED THAT HE
22 WAS AS STRONG AS HE WAS AFTER THE ORDEAL HE HAD GONE
23 THROUGH.

24 Q. DID HE HAVE ANY TROUBLE COMMUNICATING WITH YOU WHEN
25 YOU WERE TALKING WITH HIM OTHER THAN HIS NATURAL SPEECH

1 IMPEDIMENT?

2 A. NO, MA'AM.

3 Q. WHAT DID --- LET ME ASK YOU THIS, MR. GILLIAM. WHO
4 WAS THERE WITH YOU WHEN YOU SHOWED THIS LINE UP TO MR.
5 DIXON?

6 A. AGENT WILLIAM JOLLY WITH SLED.

7 Q. WAS ANYONE ELSE IN THE ROOM?

8 A. CHRISTY MCGUIRT AND A LADY.

9 Q. WERE YOU POINTING OUT SOMEONE?

10 A. THIS LADY RIGHT HERE ON THE END.

11 Q. HER NAME IS CONNIE DIXON?

12 A. RIGHT.

13 Q. THE WOMAN SITTING HERE AT THE FAR END. WHEN YOU HAD
14 THIS PHOTOGRAPHIC LINE UP WITH YOU AND YOU SHOWED IT TO
15 MR. DIXON, WHAT DID YOU TELL HIM?

16 A. I ASKED HIM TO LOOK AT THE --- I EXPLAINED TO HIM
17 WHAT A PHOTOGRAPH LINE UP WAS, THAT IT WAS PICTURES OF
18 SEVERAL PEOPLE. I WANTED HIM TO LOOK AT IT, TAKE AS MUCH
19 TIME AS HE NEEDED AND SEE IF HE RECOGNIZED ANYBODY ON
20 THERE ON THE LINE UP.

21 Q. DID YOU AT ANY TIME SUGGEST TO HIM WHICH PICTURE TO
22 PICK OUT?

23 A. NO, MA'AM.

24 Q. DID YOU TELL HIM THAT THE SUSPECT WAS IN THE
25 PHOTOGRAPHS --- WAS IN THE LINE UP?

- 1 A. NO, MA'AM.
- 2 Q. DID HE LOOK AT THE LINE UP?
- 3 A. YES, HE DID.
- 4 Q. HOW LONG DID HE LOOK AT THE LINE UP?
- 5 A. FOR A FEW MINUTES.
- 6 Q. AND DID HE PICK OUT ANYONE IN THE LINE UP?
- 7 A. YES, MA'AM, HE DID.
- 8 Q. WHAT, IF ANYTHING, DID HE TELL YOU REGARDING THAT
- 9 LINE UP?
- 10 A. HE WAS SITTING IN A CHAIR, AND I EXPLAINED
- 11 EVERYTHING TO HIM. HE TOOK THE LINE UP, AND HE WAS
- 12 LOOKING AT IT LIKE THIS. HE STUDIED IT FOR A FEW
- 13 MINUTES, AND THEN HE POINTED TO NUMBER ONE, AND HE SAID,
- 14 "THIS IS THE MAN THAT SHOT ME."
- 15 Q. HE SAID, THIS IS THE MAN THAT SHOT ME?
- 16 A. YES, MA'AM.
- 17 Q. DID YOU ASK HIM IF HE HAD ANY DOUBTS ABOUT THAT?
- 18 A. YES, I DID.
- 19 Q. AND WHAT WAS HIS RESPONSE?
- 20 A. HE SAID, "THIS IS THE MAN THAT SHOT ME."
- 21 Q. MR. GILLIAM, DID YOU HAVE OCCASION TO SHOW THAT LINE
- 22 UP TO ANYONE ELSE?
- 23 A. YES, MA'AM.
- 24 Q. TO WHOM DID YOU SHOW IT?
- 25 A. KIMMIE SHIPES.

1 Q. OKAY. AND WHERE DID YOU SHOW HER THIS LINE UP?

2 A. AT THE NEWBERRY COUNTY COMPLEX.

3 Q. SHE CAME DOWN TO THE COMPLEX?

4 A. YES, SHE DID.

5 Q. AND IF YOU WOULD, TELL THIS JURY WHAT YOU DID WITH
6 MS. SHIPES WHEN YOU SHOWED HER THE LINE UP?

7 A. I MET MS. SHIPES AT THE COMPLEX. WE WENT INTO THE
8 SQUAD ROOM, AND I EXPLAINED TO HER WHAT A LINE UP IS AND
9 THERE'S GOING TO BE SOME PICTURES. I WANT HER TO TAKE AS
10 MUCH TIME AS POSSIBLE AND SEE IF SHE RECOGNIZED ANYONE IN
11 THE PICTURES.

12 Q. AND DID SHE LOOK AT THE LINE UP?

13 A. YES, SHE DID.

14 Q. AND DID SHE IDENTIFY ANYONE?

15 A. YES, SHE DID.

16 Q. WHAT DID SHE DO?

17 A. SHE STUDIED IT FOR A --- I SAY PROBABLY ABOUT FIVE -
18 -- FIVE OR SIX MINUTES. SHE POINTED AT NUMBER ONE AND
19 SAID, "THAT'S THE MAN THAT CAME TO MY BACK DOOR."

20 Q. DID SHE HAVE ANY DOUBTS ABOUT THAT? DID SHE
21 INDICATE TO YOU SHE HAD ANY DOUBTS ABOUT IT?

22 A. I ASKED HER DID SHE HAVE ANY DOUBTS ABOUT THIS LINE
23 UP. SHE SAID, "NO, I DO NOT. THAT IS THE MAN THAT CAME
24 TO MY DOOR."

25 Q. AS FAR AS YOUR INVESTIGATION, DETECTIVE GILLIAM,

1 WERE YOU ABLE TO RECOVER ANY ITEMS THAT HAD BEEN STOLEN
2 FROM MR. TINSLEY'S HOME?

3 A. NO, WE WERE NOT.

4 Q. WERE YOU ABLE TO LOCATE THE GREEN CAR THAT HAS BEEN
5 REFERRED TO TODAY?

6 A. NO, MA'AM.

7 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. I HAVE
8 NOTHING FURTHER. PLEASE ANSWER ANY QUESTIONS THAT MR.
9 WICKER MAY HAVE.

10 CROSS EXAMINATION

11 BY MR. WICKER

12 Q. DANNY, HAVE YOU EVER ARRESTED THE SECOND SUSPECT IN
13 THIS CASE?

14 A. NO, SIR, WE HAVE NOT.

15 Q. DO YOU HAVE ANY LEADS ON HIM AT ALL?

16 A. NO, SIR. WE DON'T HAVE ANY LEADS ON HIM WHATSOEVER.

17 Q. AND YOU DON'T KNOW ANYTHING ABOUT WHERE THE CAR IS?

18 A. NO, SIR, I DO NOT.

19 Q. NOW, AS FAR AS THESE GUNS THAT WERE IN THE HOUSE,
20 DID SLED EXAMINE THEM FOR FINGERPRINTS?

21 A. YES, SIR, THEY DID.

22 Q. AT THIS POINT IN YOUR INVESTIGATION, YOU HAVE NO
23 FINGERPRINTS ON MY CLIENT AT ALL; IS THAT CORRECT?

24 A. NO, SIR.

25 Q. NOW, DID YOU MAKE A COMPOSITE DRAWING?

1 A. YES, SIR, WE DID.

2 Q. AND MS. SHIPES WAS THE ONE THAT TOLD THEM HOW TO DO
3 THAT?

4 A. WE HAD AN ARTIST COME UP FROM SLED IN COLUMBIA. HE
5 CAME TO THE COMPLEX, MET WITH MS. KIMMIE SHIPES, AND SHE,
6 THROUGH HIS HELP --- SHE CREATED THE COMPOSITE.

7 Q. AND YOU WERE THERE AT THE TIME?

8 A. NO, SIR, I WAS NOT. I WAS IN THE OFFICE BUT NOT IN
9 THERE WITH THEM.

10 Q. THAT WAS BEFORE MS. SHIPES IDENTIFIED THE
11 PHOTOGRAPHS IN THAT LINE UP?

12 A. YES, SIR.

13 Q. WHEN YOU CAME UP WITH MY CLIENT AS A SUSPECT, WAS IT
14 MORE OR LESS YOU JUST STARTED LOOKING FOR EVERYBODY THAT
15 MAY HAVE BEEN IN THAT AREA AT THE TIME? I DON'T
16 UNDERSTAND WHAT LEADS LED YOU TO HIM.

17 A. WE HAD SEVERAL LEADS WE HAD TO FOLLOW UP. THESE
18 LEADS CARRIED US TO ALL PARTS OF SOUTH CAROLINA. WHEN --
19 - WE ESTABLISHED OUR LEAD CONCERNING MR. PREWITT THROUGH
20 A CONFIDENTIAL INFORMANT.

21 Q. OKAY. FROM THAT INFORMANT, THEN YOU PROCEEDED TO
22 SAY THAT GARY --- LANEY WAS A SUSPECT?

23 A. WE CONSIDERED HIM AT THAT TIME AS ONE OF THE
24 SUSPECTS.

25 Q. BUT YOU NEVER PUT A NAME ON THE SECOND GUY YET?

1 A. NO, SIR, WE HAVE NOT.

2 Q. WE'VE NEVER HAD A REAL LIVE LINE UP WITH GARY IN IT,
3 HAVE WE?

4 A. NO, SIR, WE HAVE NOT.

5 Q. SO, NONE OF THESE PEOPLE HAVE PICKED HIM OUT IN A
6 LINE UP AS FAR AS HAVING BODIES STANDING THERE?

7 A. NO, SIR.

8 Q. AND I TRUST MY CLIENT HAS NOT MADE ANY SORT OF
9 CONFESSION, HAS HE?

10 A. NO, SIR, HE HAS NOT.

11 Q. WE HAVE NO FURTHER QUESTIONS. THANK YOU.

12 THE COURT: REDIRECT?

13 MS. STROM: YES, YOUR HONOR.

14 REDIRECT EXAMINATION

15 BY MS. STROM

16 Q. MR. GILLIAM, DO YOU AT THE LAW ENFORCEMENT ---
17 NEWBERRY COUNTY SHERIFF'S DEPARTMENT, DO Y'ALL HAVE THE
18 CAPABILITY OF HAVING A PHYSICAL --- WHAT'S CALLED A
19 PHYSICAL LINE UP?

20 A. NO, WE DO NOT.

21 Q. I HAVE NO FURTHER QUESTIONS.

22 MR. WICKER: I HAVE ONE, YOUR HONOR.

23 THE COURT: YES, SIR.

24 RECROSS EXAMINATION

25 BY MR. WICKER

1 Q. HAVEN'T YOU CONDUCTED LINE UPS OVER THERE BEFORE?

2 A. YES, SIR, WE HAVE.

3 Q. THE PETE COCHRAN (PHONETICALLY) CASE YOU DID, DIDN'T
4 YOU?

5 MS. STROM: OBJECTION, YOUR HONOR. THAT OTHER CASE
6 DOESN'T HAVE ANYTHING TO DO WITH THIS ONE.

7 THE COURT: WELL, THE FACT THAT HE DID --- YOU MAY
8 GO INTO THAT, BUT WE'RE NOT GOING TO TRY ANOTHER CASE
9 NOW.

10 MR. WICKER: ALL RIGHT.

11 BY MR. WICKER

12 Q. I BELIEVE YOU SAID THAT YOU DON'T HAVE ANY WAY TO
13 HAVE A LINE UP OUT AT THE COMPLEX?

14 A. NOT AN EFFECTIVE LINE UP.

15 Q. BUT YOU HAVE A TWO-WAY MIRROR THERE, DON'T YOU?

16 A. IT DON'T HAVE ANYTHING TO DO WITH THE MIRROR. IT'S
17 THE FEASIBILITY OF GETTING SIX PEOPLE THAT ARE SO
18 FAMILIAR OR LOOK CLOSE TO LOOKING ALIKE. YOU CAN'T JUST
19 PICK ANYBODY OUT TO PUT IN A LINE UP. EACH PERSON HAS TO
20 HAVE THE CHARACTERISTICS OF THE NEXT PERSON, AND DOING A
21 PHYSICAL LINE UP USING BODIES, THAT'S ALMOST IMPOSSIBLE
22 TO FIND SIX PEOPLE THAT LOOK ENOUGH ALIKE TO DO A
23 PHYSICAL LINE UP.

24 Q. BUT YOU AGREE WITH ME THAT WE HAVE HAD LINE UPS OUT
25 THERE?

BEN BLANTON
DIRECT EXAMINATION BY MS. STROM

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1 A. YES, SIR.

2 Q. BUT NOT IN THIS CASE?

3 A. NOT IN THIS CASE.

4 Q. OKAY.

5 THE COURT: THANK YOU, MR. GILLIAM. STEP DOWN.
6 NEXT WITNESS.

7 MS. STROM: YOUR HONOR, MAY WE APPROACH?

8 THE COURT: YES, MA'AM.

9 MS. STROM: THE STATE CALLS BEN BLANTON.

10 THEREUPON:

11 BEN BLANTON, BEING FIRST DULY
12 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. STROM

15 Q. MR. BLANTON, WHERE DO YOU LIVE?

16 A. WHERE DO I LIVE?

17 Q. YES, SIR.

18 A. NEWBERRY COUNTY.

19 Q. HOW LONG HAVE YOU LIVED IN NEWBERRY COUNTY?

20 A. A LITTLE OVER 32 YEARS.

21 Q. AND YOU ARE EMPLOYED, OBVIOUSLY, WITH THE EMS?

22 A. YES, NEWBERRY COUNTY EMS.

23 Q. AND THAT STANDS FOR?

24 A. EMERGENCY MEDICAL SERVICES.

25 Q. AND WHAT IS YOUR POSITION WITH EMS?

1 A. A SHIFT SUPERVISOR AND ---

2 Q. PLEASE TELL THIS JURY, IF YOU WOULD, YOUR TRAINING
3 THAT YOU HAVE RECEIVED.

4 A. OKAY. I'M A CERTIFIED --- SOUTH CAROLINA STATE
5 CERTIFIED PARAMEDIC, ALSO ACLS CERTIFIED.

6 Q. A-C-L-S?

7 A. THAT'S ADVANCED CARDIAC LIFE SUPPORT. AS FAR AS
8 TRAINING, I'M AS HIGH AS YOU CAN GO AS FAR AS EMS. IT'S
9 THE HIGHEST LEVEL TRAINING AS FAR AS EMS GOES --- A
10 PARAMEDIC.

11 Q. TO OBTAIN YOUR CERTIFICATION OF A PARAMEDIC, WHAT
12 DID YOU HAVE TO DO?

13 A. OKAY. I WAS A BASIC EMT. WELL, TO BE ABLE TO
14 BECOME A PARAMEDIC, YOU HAVE TO BE A BASIC EMT, AND YOU
15 HAVE TO WORK WITH A SERVICE FOR AT LEAST SIX MONTHS, AND
16 THEN YOU CAN GO TO PARAMEDIC SCHOOL, WHICH TAKES
17 APPROXIMATELY SIX MONTHS OF INTENSIVE TRAINING, CLINICAL
18 AND DIDACTIC TRAINING.

19 Q. WHAT IS MEANT BY DIDACTIC?

20 A. THAT'S LIKE CLASSROOM --- CLASSROOM. YOU HAVE
21 CLASSROOM BOOK TRAINING, AND THEN YOU HAVE IN THE FIELD
22 TRAINING. YOU HAVE HOSPITAL TRAINING.

23 Q. IN THIS TRAINING, ARE YOU TAUGHT TO ASSESS A WOUND
24 OR ASSESS A SITUATION? WHAT IS THE PURPOSE OF THAT?

25 A. THEY STRESS A PATIENT ASSESSMENT. BECAUSE WHEN YOU

1 FIND A PATIENT, YOU HAVE TO CHECK THEM OUT AND DETERMINE
2 THE EXTENT OF THE INJURIES AND THE APPROPRIATE TREATMENT.

3 Q. AND I BELIEVE YOU SAID THAT THE PARAMEDIC SCHOOL
4 TAKES APPROXIMATELY SIX MONTHS?

5 A. WELL, IT VARIES FROM CLASS TO CLASS. SOME CLASSES
6 TAKE A SHORTER TIME AND SOME TAKE THE LONGER. SOME
7 CLASSES TAKE UP TO NINE MONTHS. IT DEPENDS ON HOW MANY
8 HOURS YOU GO AT THE TIME. SOME OF THEM ARE MORE
9 CONCENTRATED. YOU --- LIKE THE CLASS I TOOK, I WENT FIVE
10 HOURS A DAY --- I MEAN, FIVE DAYS A WEEK, EIGHT HOURS A
11 DAY IN THE CLASSROOM, AND A LOT OF CLASSES THEY ONLY MEET
12 TWO TO THREE TIMES A WEEK AND TWO TO THREE HOURS A
13 MEETING. SO, IT TAKES LONGER FOR THOSE CLASSES THAN IT
14 DID THE CLASS I TOOK.

15 Q. AS FAR AS YOUR CERTIFICATION, DO YOU HAVE TO BE
16 RECERTIFIED OR DO YOU GET CONTINUING TRAINING?

17 A. WE ARE REQUIRED TO BE RECERTIFIED EVERY THREE YEARS.
18 PRESENTLY, WE HAVE AN IN-SERVICE PROGRAM IN EFFECT OUT
19 HERE AT NEWBERRY, AND WE HAVE CLASSES EVERY TWO WEEKS.
20 WE HAVE A CLASS EVERY TWO WEEKS THAT WE ATTEND, AND THE -
21 -- WE ARE PRESENTLY RECERTIFYING UNDER THAT PROGRAM. OUR
22 MEDICAL CONTROL PHYSICIAN HAS TO EVALUATE OUR PERFORMANCE
23 AND DECIDE WHETHER HE WANTS TO SIGN US OFF OR IF WE HAVE
24 TO GO BACK TO THE STATE AND BE RECERTIFIED.

25 Q. ARE YOU A CERTIFIED PARAMEDIC AT THIS TIME?

1 A. YES, I AM.

2 Q. ON JULY 22, 1994, WERE YOU A CERTIFIED PARAMEDIC?

3 A. YES, I WAS.

4 MS. STROM: YOUR HONOR, AT THIS TIME, WE WOULD OFFER
5 MR. BLANTON AS AN EXPERT OF EMERGENCY MEDICAL SERVICES
6 WHICH INCLUDES THE DETERMINATION OF WOUNDS AS BEING LIFE
7 THREATENING.

8 MR. WICKER: I CONCUR WITH THE STATE ON THAT, YOUR
9 HONOR.

10 THE COURT: THANK YOU, MR. WICKER. PROCEED.

11 BY MS. STROM

12 Q. MR. BLANTON, DID YOU HAVE OCCASION TO COME IN
13 CONTACT WITH JOE DIXON?

14 A. YES, I DID.

15 Q. DO YOU KNOW JOE DIXON?

16 A. NO, I DON'T.

17 Q. HOW WAS IT YOU CAME IN CONTACT WITH HIM?

18 A. WE GOT A CALL THAT SAID THAT WE HAD A GUNSHOT VICTIM
19 UP ON INDIAN CREEK ROAD, AND UPON ARRIVAL, I FOUND MR.
20 DIXON LYING ON HIS BACK IN THE FLOOR. HE WAS CONSCIOUS,
21 ALERT AND ORIENTED, BUT HIS INITIAL VITAL SIGNS SHOWED
22 HIM TO BE HYPERTENSIVE AND A LITTLE SHOCKY. WE INITIATED
23 ADVANCED LIFE SUPPORT ON HIM, STARTED IVs AND IMMOBILIZED
24 HIM AND PREPARED HIM FOR TRANSPORT TO NEWBERRY HOSPITAL.

25 Q. WERE YOU ABLE TO DETERMINE WHAT HIS INJURIES WERE?

1 A. INITIALLY, WE FOUND TWO GUNSHOT WOUNDS.

2 Q. WHEN YOU SAY INITIALLY, WAS THAT THERE AT THE SCENE?

3 A. THAT WAS AT THE SCENE.

4 Q. OKAY. WHERE WERE THE GUNSHOT WOUNDS?

5 A. ONE GUNSHOT WOUND WAS UNDER THE RIGHT EYE, AND THE
6 SECOND GUNSHOT WOUND THAT I FOUND WAS ABOUT TWO INCHES
7 BELOW THE TIP OF THE STERNUM.

8 Q. ALL RIGHT.

9 A. AND THE THIRD GUNSHOT WOUND WAS FOUND IN THE E-R,
10 AND IT WAS BELOW THE ONE BELOW THE RIGHT EYE, AND THE
11 BLOOD FROM THE UPPER WOUND WAS MASKING THE LOWER WOUND.

12 Q. IT WAS COVERING IT UP?

13 A. YEAH. THIS WOUND HERE WE SAW --- I SAW AN ENTRANCE
14 WOUND HERE. HE HAD AN EXIT WOUND TOWARDS THE BACK OF HIS
15 HEAD, AND THIS BULLET HERE WHERE IT WENT IN YOU COULD
16 FEEL WHERE IT HAD STOPPED UNDER THE SKIN RIGHT HERE UNDER
17 THE RIGHT FLANK.

18 Q. IT DID NOT EXIT?

19 A. IT DID NOT EXIT.

20 Q. AND IN ASSESSING MR. DIXON'S CONDITION, DO YOU HAVE
21 AN OPINION AS TO WHETHER THOSE WOUNDS HE RECEIVED WERE
22 LIFE THREATENING?

23 A. THEY WERE DEFINITELY LIFE THREATENING. IF WE HAD
24 NOT INITIATED THE IVs AND ALL AT THE SCENE, I FEEL HE
25 WOULD NOT HAVE SURVIVED, AND IF THE SURGEON HAD NOT BEEN

1 WAITING ON HIM WHEN WE GOT TO THE E-R, I DON'T FEEL HE
2 WOULD HAVE SURVIVED.

3 Q. THANK YOU, MR. BLANTON. PLEASE ANSWER ANY QUESTIONS
4 MR. WICKER MAY HAVE.

5 MR. WICKER: WE HAVE NO QUESTIONS.

6 THE COURT: THANK YOU, SIR.

7 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

8 MR. WICKER: WE WOULD BE GLAD TO EXCUSE THIS WITNESS
9 IF THE STATE WOULD LIKE TO.

10 MS. STROM: HE CAN BE EXCUSED, YOUR HONOR.

11 THE COURT: CERTAINLY.

12 MS. STROM: I JUST WANT TO CHECK ONE THING.

13 THE STATE RESTS, YOUR HONOR.

14 (STATE RESTS.)

15 THE COURT: OKAY, FOLKS. Y'ALL STEP IN YOUR ROOM
16 JUST A MINUTE. WE'LL TAKE A SHORT RECESS.

17 (JURY LEAVES COURTROOM.)

18 THE COURT: ANY MOTIONS?

19 MR. WICKER: NONE, YOUR HONOR.

20 THE COURT: VERY WELL, SIR. YOU UNDERSTAND, OF
21 COURSE, THAT YOU HAVE A RIGHT TO MAKE DIRECTED VERDICT
22 MOTIONS AT THIS STAGE?

23 MR. WICKER: I UNDERSTAND THAT, BUT I THINK IT WOULD
24 BE A USELESS EXERCISE AT THIS TIME.

25 THE COURT: ALL RIGHT, SIR. LET ME ASK MS. STROM.

1 I DIDN'T MAKE A NOTE OF IT WHEN THEY TESTIFIED, BUT THE
2 VALUE ON THE PROPERTY. MR. TINSLEY, I ASSUME, TALKED
3 ABOUT THAT.

4 MS. STROM: IT WAS LESS THAN \$1000, YOUR HONOR. I
5 BELIEVE IT WAS \$250 --- BETWEEN 250 AND 300.

6 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE TEN
7 MINUTES.

8 (A SHORT BREAK WAS TAKEN AT THIS TIME.)

9 MS. STROM: YOUR HONOR, BEFORE THEY BRING THEM OUT -
10 --

11 THE COURT: WAIT A MINUTE. JUST ASK THEM TO HOLD
12 JUST ONE SECOND, PLEASE. MA'AM, WOULD YOU HOLD JUST ONE
13 SECOND? I GOT ONE MORE LITTLE THING I GOT TO DO.

14 MS. STROM: YOUR HONOR, THIS MAY BE CAUTIONARY ON MY
15 PART. I JUST WANTED TO NOTE AS FAR AS THE RECORD --- DO
16 WE NEED TO PUT ANYTHING ON THE RECORD THAT HE KNOWS HE
17 DOES NOT HAVE --- HE HAS THE RIGHT NOT TO TESTIFY AND
18 THAT CANNOT BE HELD AGAINST HIM.

19 THE COURT: YOUNG MAN, YOU WANT TO STAND UP, PLEASE?
20 AND I DON'T KNOW WHAT YOU'RE GOING TO DO. IT'S ENTIRELY
21 UP TO YOU AND YOUR LAWYER, BUT YOU DO UNDERSTAND THAT YOU
22 DO HAVE A RIGHT TO TESTIFY IN THIS TRIAL?

23 MR. PREWITT: YES, SIR.

24 THE COURT: YOU UNDERSTAND YOU HAVE A RIGHT NOT TO
25 TESTIFY?

1 MR. PREWITT: YES, SIR.

2 THE COURT: AND YOU UNDERSTAND IF YOU DON'T TESTIFY,
3 IF YOUR LAWYER WANTS ME TO, I'LL TELL THE JURY THAT THEY
4 CAN'T HOLD THAT AGAINST YOU?

5 MR. PREWITT: I UNDERSTAND THAT. I DON'T HAVE
6 ANYTHING TO HIDE.

7 THE COURT: ALL RIGHT, SIR. WILL YOU TESTIFY OR NOT
8 TESTIFY?

9 MR. PREWITT: I WILL TESTIFY.

10 THE COURT: ALL RIGHT.

11 MS. STROM: THANK YOU, YOUR HONOR.

12 THE COURT: BRING THEM IN.

13 (JURY RETURNS TO THE COURTROOM.)

14 MR. WICKER: YOUR HONOR, THE FIRST WITNESS THAT THE
15 DEFENSE CALLS IS THE DEFENDANT IN THIS CASE, LANEY
16 PREWITT.

17 THEREUPON:

18 GARY L. PREWITT, BEING FIRST
19 DULY SWORN TO TELL THE WHOLE, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. WICKER

22 Q. AND YOU AND I HAVE KNOWN EACH OTHER FOR SOME TIME;
23 IS THAT CORRECT?

24 A. YES, SIR.

25 Q. WHERE HAVE YOU LIVED FOR THE LAST FEW MONTHS?

1 A. NEWBERRY COUNTY DETENTION CENTER.

2 MS. STROM: OBJECTION, YOUR HONOR.

3 THE COURT: WHERE HAS HE LIVED?

4 MR. WICKER: THAT'S WHAT I ASKED.

5 MS. STROM: YOUR HONOR, MAY WE APPROACH.

6 THE COURT: YES, MA'AM.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
9 OF THE JURY.)

10 THE COURT: GO AHEAD, PLEASE.

11 BY MR. WICKER

12 Q. LANEY, WHERE HAVE YOU LIVED FOR THE LAST FEW MONTHS?

13 A. SINCE AUGUST 19TH, I LIVED AT NEWBERRY COUNTY
14 DETENTION CENTER.

15 Q. LET ME CALL YOUR ATTENTION TO THE 22ND DAY OF JULY,
16 1994, WHICH WOULD HAVE BEEN ON A FRIDAY.

17 A. YES, SIR.

18 Q. WOULD YOU LOOK AT THE JURY OVER HERE AND TELL THEM
19 WHAT YOU REMEMBER ABOUT THAT DAY?

20 A. WELL, IT WAS ABOUT TWO WEEKS --- LITTLE OVER TWO
21 WEEKS, YOU KNOW, AFTER THIS --- JULY 22ND, I WAS
22 ARRESTED, AND YOU KNOW, THE WAY I CAN FIGURE IS, YOU
23 KNOW, ME AND MY WIFE AND MY MOM AND DAD ALWAYS COMES OVER
24 THERE ON FRIDAYS AND SATURDAYS, YOU KNOW. I WAS
25 UNEMPLOYED, AND MY MOM ALWAYS TOLD ME, YOU KNOW --- I WAS

1 JOB HUNTING. SHE SAID TUESDAYS, WEDNESDAYS AND THURSDAYS
2 ARE THE BEST TIME TO JOB HUNT, YOU KNOW.

3 SO, SHE COME OVER THERE FRIDAY --- THAT FRIDAY
4 MORNING ABOUT 10:30 AND WOKE ME UP, AND ME AND MY WIFE --
5 - MY WIFE WAS AWAKE. I WAS STILL IN THE BED, BUT I GOT
6 UP, AND MY MOM AND DAD WAS, YOU KNOW, COME OVER THERE,
7 AND THEY JUST, YOU KNOW, SAT AROUND AND TALKED WITH THE
8 KIDS, AND THEN MY MOM HAD TO GO GET HER CHECK, YOU KNOW,
9 AND THEN THEY LEFT, AND I WENT BACK TO BED.

10 Q. AND ABOUT WHAT TIME WOULD YOU THINK THAT THEY WOULD
11 HAVE BEEN IN YOUR HOME?

12 A. AT 10:30, SHE HAS TO BE TO PICK HER CHECK UP. SO,
13 IT WAS ABOUT 10 O'CLOCK --- QUARTER AFTER OR SOMETHING
14 LIKE THAT. SHE GOES TO CLINTON. I LIVE, YOU KNOW, IN
15 CLINTON, AND THEY LIVE IN JOANNA, YOU KNOW, AND THEY JUST
16 STOPPED BY THERE, AND MY WIFE GIVE HER SOME FUDGE OR
17 CHOCOLATE CAKE OR SOMETHING, YOU KNOW, THAT MORNING.

18 Q. NOW, HOW DID YOU GO BACK AND RECONSTRUCT WHAT YOU
19 DID THAT DAY?

20 A. BECAUSE THE FRIDAY BEFORE --- AFTER THAT, YOU KNOW,
21 I FIGURED IT UP, I HAD TO GO TAKE A DRUG TEST FOR WAL-
22 MART DISTRIBUTION CENTER, YOU KNOW.

23 Q. ALL RIGHT.

24 A. AND WE WENT --- MY WIFE --- MY MAMA AND WIFE TOOK
25 ME, YOU KNOW, AND I TOOK A DRUG TEST AT WAL-MART

1 DISTRIBUTION CENTER, AND THEN I --- WE STOPPED AT SOME
2 YARD SALES, YOU KNOW, BECAUSE I LIKE GOING TO THEM YARD
3 SALES. MAMA --- YOU KNOW, WE STOPPED BY THERE.

4 Q. AND YOU KNEW THAT WAS THE WEEK AFTER THE TIME THAT
5 THEY SAID YOU --- YOU ARE ACCUSED?

6 A. YEAH, THE WEEK AFTER THAT.

7 Q. AND YOU WERE ACTUALLY ARRESTED ON THE 10TH OF
8 AUGUST?

9 A. YEAH, ON THE 10TH, AND THEN ANOTHER THING THAT I CAN
10 REMEMBER ABOUT THE 22ND IS THE 21ST I PAWNED MY VCR,
11 BECAUSE MY WIFE'S TAXES AND TAGS WAS DUE ON THE CAR, AND
12 WE WENT AND, YOU KNOW, PAWNED MY VCR, BECAUSE I WAS OUT
13 OF WORK AND SHE WAS OUT OF WORK. YOU KNOW, I GOT LAID
14 OFF OF MY JOB. I WAS WORKING FOR A TEMPORARY SERVICE,
15 AND I GOT LAID OFF ON THE 16TH, YOU KNOW. NO, IT WAS THE
16 12TH, AND I PICKED MY LAST CHECK UP ON THE 16TH.

17 Q. OKAY. AND ON THIS PARTICULAR FRIDAY, WHAT DO YOU
18 REMEMBER? JUST TELL US WHAT YOU REMEMBER THAT HAPPENED
19 THAT MORNING AND THAT DAY.

20 A. WELL, THE NIGHT BEFORE ME AND MY BROTHER-IN-LAW WAS
21 OUT IN THE BACKYARD --- WELL, HE'S MY SISTER'S BOYFRIEND.
22 THEY SO CLOSE, YOU KNOW, YOU MIGHT AS WELL CALL THEM
23 MARRIED, BUT WE WAS OUT IN THE YARD WRESTLING AROUND, YOU
24 KNOW, JUST HORSE PLAYING, AND I HURT MY RIBS, AND THE
25 NEXT DAY, YOU KNOW, I JUST LAID IN THE BED, AND MOM AND

1 DAD COME UP BY THERE, YOU KNOW, AND SEEN MY KIDS. I GOT
2 A LITTLE BOY AND LITTLE GIRL. THEY JUST COME UP BY THERE
3 AND SEEN MY KIDS, AND THEN THAT EVENING IT STARTED
4 RAINING. IT RAINED --- STARTED ABOUT 12 O'CLOCK, I
5 GUESS, AND IT STARTED RAINING, AND I JUST, YOU KNOW ---
6 WE SAT AROUND THE HOUSE, AND I GOT A SEGA GENESIS. ME
7 AND MY WIFE WE SAT AROUND AND PLAYED IT, YOU KNOW, AND
8 SHE WROTE OUT A LIST WHERE TO GO MONDAY, YOU KNOW. THIS
9 IS FRIDAY. SHE WROTE OUT A LIST WHERE WE COULD GO, YOU
10 KNOW, JOB HUNTING MONDAY, AND IT WAS TUESDAY, BECAUSE
11 MONDAY AND FRIDAY WE NEVER JOB HUNT, YOU KNOW. IT'S
12 TUESDAY, WEDNESDAY AND THURSDAY, YOU KNOW.

13 Q. OKAY. NOW, BEFORE TODAY, HAD YOU EVER SEEN JOE
14 DIXON OR NOT?

15 A. NEVER.

16 Q. AND YOU'RE SAYING TO THIS JURY RIGHT OVER HERE THAT
17 YOU NEVER SAW JOE DIXON UNTIL TODAY?

18 A. NEVER. I THOUGHT THAT MAN RIGHT THERE THAT'S IN THE
19 JURY --- I THOUGHT HE WAS JOSEPH DIXON WHEN HE WAS
20 SITTING RIGHT THERE, YOU KNOW, THE WAY HE WAS LOOKING,
21 AND I THOUGHT, YOU KNOW, HIS EYE WAS BRUISED, YOU KNOW,
22 THE WAY HE WAS SITTING IN THE JURY, AND YOU KNOW, I WAS
23 THINKING WHEN I WAS SITTING OVER THERE. I WAS THINKING
24 HE WAS JOSEPH DIXON, YOU KNOW, BECAUSE I DIDN'T KNOW THE
25 JURY WAS ON THIS SIDE.

1 Q. ALL RIGHT. HAD YOU EVER SEEN THIS YOUNG LADY --- I
2 BELIEVE HER NAME WAS KIMMIE SHIPES, BEFORE TODAY?

3 A. NEVER.

4 Q. PRIOR TO TODAY, YOU'VE NEVER SEEN KIMMIE SHIPES?

5 A. NEVER, NOT ONE TIME.

6 Q. YOU ARE SAYING THAT UNDER OATH WITHOUT HESITATION?

7 A. I HAVE NEVER SEEN HER.

8 Q. UNTIL TODAY?

9 A. TODAY.

10 Q. FIRST TIME?

11 A. FIRST TIME EVER.

12 Q. OF COURSE, YOU KNEW DANNY GILLIAM BEFORE?

13 A. HE'S THE ONLY ONE I KNOW.

14 Q. YOU KNEW JERRY WRIGHT?

15 A. AND JERRY WRIGHT AND THEM SITTING AT THAT TABLE, AND
16 I KNOW RANDY AND HIS WIFE, YOU KNOW. I KNOW OF THEM. I
17 DON'T KNOW THEM PERSONALLY, YOU KNOW. I KNOW RANDY'S
18 BROTHER PRETTY GOOD --- TONY. I KNOW HIM. MY MOM AND
19 DAD, AND OTHER THAN THAT, THAT'S THE ONLY ONES I KNOW IN
20 THIS COURTROOM, YOU KNOW. I NEVER SEEN, YOU KNOW, JOSEPH
21 DIXON OR SHIPES, NEVER, UNTIL TODAY, YOU KNOW.

22 Q. AND SO, YOU'RE DENYING HAVING ANYTHING TO DO WITH
23 THIS CRIME?

24 A. I HAD NOTHING TO DO WITH IT. I TRIED TO GET DANNY
25 GILLIAM, YOU KNOW --- MY MAMA AND THEM WAS DOING SOME

1 INVESTIGATING, AND THEN THEY SAID, WELL, IF SHE
2 INVESTIGATES, YOU KNOW, WE'LL GET HER FOR TAMPERING WITH
3 WITNESSES AND STUFF, AND IT SCARED HER, YOU KNOW. YOU
4 KNOW, WE TRIED TO TAKE THEM EVIDENCE, BUT THEY DON'T WANT
5 TO HEAR IT. THEY SAID THEY HAVE THEIR MAN, ME, AND I
6 DIDN'T DO IT. I SWEAR TO GOD I DIDN'T DO IT. HAD
7 NOTHING TO DO WITH IT, YOU KNOW.

8 Q. AND YOU'VE DENIED THIS FROM DAY ONE?

9 A. FROM DAY ONE. I TOLD THEM --- THEY COME ARRESTING
10 ME FOR ASSAULT AND BATTERY WITH INTENT TO KILL, AND I
11 TOLD THEM --- THEY TOOK ME FROM MY MAMA'S. I WAS AT MY
12 MOM'S WHEN THEY ARRESTED ME. TOOK ME OUT TO MY HOUSE.
13 THEY SAID, "WELL, CAN WE SEARCH YOUR HOUSE?" I SAID,
14 "SURE." YOU KNOW, THEY SAID, "WELL, WITHOUT A SEARCH
15 WARRANT?" I SAID, "GO AHEAD." THEY WENT IN THERE AND
16 SEARCHED IT, AND I TOLD MY MOM, I SAID, "MOM", I SAID,
17 "I'LL BE HOME." AND MY WIFE --- I SAID, I'LL BE OUT IN
18 A COUPLE OF HOURS, YOU KNOW, I'VE GOT TO EXPLAIN WHERE
19 I'M AT --- WHERE I WAS AT. AND I GOT DOWN HERE AT
20 NEWBERRY, AND THEY SET MY BOND AT A HALF A MILLION
21 DOLLARS, AND I'VE BEEN HERE FOR SIX MONTHS. MY WIFE AND
22 --- YOU KNOW ---

23 Q. LET ME INTERRUPT YOU. ON THIS 10TH DAY OF AUGUST,
24 1994, WHEN YOU WERE ARRESTED, DO YOU REMEMBER WHO
25 ARRESTED YOU?

1 A. ROBBIE YON AND A NEWBERRY SHERIFF'S DEPUTY. HE GOT
2 MARRIED THE SATURDAY AFTER --- THE SATURDAY AFTER I WAS
3 ARRESTED THAT WEDNESDAY, BECAUSE I HEARD THEM TALKING
4 ABOUT IT, YOU KNOW, AND THAT'S THE ONLY THING I CAN
5 REMEMBER FROM HIM, YOU KNOW.

6 Q. OKAY. AND YOU WERE AT YOUR MOTHER'S HOUSE WHEN YOU
7 WERE ARRESTED?

8 A. I WAS FIXING TO GET IN THE SWIMMING POOL.

9 Q. OKAY.

10 A. JUST GOT DONE JOB HUNTING. SHE HAD BROUGHT ME HOME,
11 AND MY WIFE HAD FOUND A JOB, AND MY MAMA TOOK ME AROUND
12 TO LOWE'S AND SOME LADDER MAKING PLACE AND THE
13 UNEMPLOYMENT OFFICE, AND THEN WE WENT BACK TO HER HOUSE,
14 AND MY WIFE GOT OFF AT FOUR O'CLOCK. I WAS FIXING TO GET
15 IN SOME SWIMMING TRUNKS, AND THE POLICE PULLED UP.

16 Q. AND THIS IS ALL IN LAURENS COUNTY?

17 A. YES, SIR.

18 Q. OKAY. NOW, AFTER YOU WERE ARRESTED THEY TOOK YOU TO
19 YOUR HOUSE; IS THAT RIGHT?

20 A. YES, SIR, AND SERVED A WARRANT ON ME.

21 Q. OKAY. NOW, HOW FAR AWAY IS YOUR MOTHER'S HOUSE FROM
22 YOUR HOUSE?

23 A. WELL, YOU CAN GO THIS A WAY THROUGH THE COUNTRY AND
24 MAKE IT THERE. IT'S ABOUT THREE MILES, BUT YOU CAN GO
25 BACK AROUND THIS WAY, AND IT'S SIX MILES, AND THEY TOOK

1 THE LONG WAY AROUND, YOU KNOW.

2 Q. OKAY. AND WHEN YOU GOT TO YOUR HOUSE, WHO WAS
3 THERE?

4 A. OH, MAN. THERE WAS MORE POLICE LIKE I WAS A BIG
5 MURDERER OR SOMETHING, YOU KNOW. THERE WAS SLED AND
6 DOGS, AND MY WHOLE --- THE FRONT OF MY HOUSE WAS FULL OF
7 POLICE --- MY DRIVEWAY, THE SIDE AND THE FRONT YARD.
8 THEY WAS ALL GATHERED THERE LIKE A FAMILY REUNION, AND WE
9 PULLED UP THERE, YOU KNOW. I LIKED TO FELL OUT THEN. I
10 SAID, LORD, LOOK AT ALL THE POLICE.

11 Q. AND THEY ASKED YOU WHAT?

12 A. IF THEY COULD SEARCH MY HOUSE.

13 Q. DID THEY TELL YOU WHETHER OR NOT THEY HAD A SEARCH
14 WARRANT ALREADY?

15 A. NO. THEY JUST SAID, CAN WE SEARCH YOUR HOUSE? I
16 SAID, SURE. THEY SAID, WELL, --- NO, NO, NO, NO, NO.
17 THEY SAID --- THEY PULLED UP INTO THE YARD LIKE THIS.
18 JERRY --- SANDY TEMPLETON WALKED TO THE BACK OF THE
19 POLICE CAR. THEY OPENED IT UP. THERE WAS A DETECTIVE IN
20 THE BACK. HE SAID, WE'RE CHARGING --- I SAID, "WHAT'S MY
21 CHARGES?" HE SAID, "ASSAULT AND BATTERY WITH INTENT TO
22 KILL ON JOSEPH DIXON." HE READ THE WARRANT OUT. THEY
23 SAID, "DO YOU GIVE US PERMISSION TO SEARCH YOUR HOUSE?"
24 I SAID, "SURE." BY THAT TIME, MY MOM AND WIFE HAD PULLED
25 UP, AND MY WIFE GIVE THEM THE KEYS TO THE HOUSE, YOU

1 KNOW, AND THEY WENT IN THERE, AND THEY WENT IN THE ATTIC
2 AND SEARCHED UNDER THE HOUSE AND THE SHEDS ---
3 EVERYTHING. DIDN'T FIND NOTHING, YOU KNOW.

4 Q. IN OTHER WORDS, YOU WERE THERE WHEN THEY SEARCHED?

5 A. MOST OF THE TIME.

6 Q. AND AS FAR AS YOU KNOW, THEY TOOK NOTHING AWAY WITH
7 THERE?

8 A. THEY TOOK NOTHING. MY WIFE AND MOTHER SAID THAT.
9 THEY WAS NOTHING. THEY COULDN'T GET NOTHING FROM MY
10 HOUSE, BECAUSE I DIDN'T DO IT, YOU KNOW. THAT'S THE
11 REASON I TOLD THEM --- GO AHEAD AND SEARCH IT, YOU KNOW.

12 Q. SO, THEN YOU CAME TO NEWBERRY?

13 A. YES, SIR.

14 Q. AND WHILE YOU HAVE BEEN IN NEWBERRY, HAVE YOU BEEN
15 QUESTIONED BY ANYBODY?

16 A. WELL, I WAS QUESTIONED THE FIRST DAY, THE 11TH. I
17 WAS QUESTIONED THAT THURSDAY --- THAT FRIDAY. THEY COME
18 GOT MY SHOES OUT OF MY CELL, AND I'VE BEEN BACK THERE
19 UNTIL DANNY GILLIAM AND LEE FOSTER COME BACK THERE THE
20 OTHER WEEK, AND DANNY GILLIAM TRIED TO SLAM MY HAND IN
21 THE SLAT(PHONETICALLY). BECAUSE I TRIED TO TELL HIM, YOU
22 KNOW, GO CHECK WITH THESE PEOPLE, YOU KNOW. THEY GOT A
23 GREEN --- BLUISH GREEN CAR, YOU KNOW. GOT --- ONE OF THE
24 BOYS LOOKS JUST LIKE ME, IS WHAT SOMEBODY TOLD ME, YOU
25 KNOW. I'M JUST GOING BY HEARSAY, BECAUSE I WAS IN THE

1 JAIL, YOU KNOW. THESE PEOPLE SAY, WELL, MAN, SO AND SO
2 AND HIS BROTHER ---

3 MS. STROM: OBJECTION, YOUR HONOR. OBJECTION.

4 THE COURT: YOU CAN'T SAY WHAT SOMEBODY ELSE SAYS.

5 A. OKAY. WELL, I'M JUST, YOU KNOW ---

6 THE COURT: YEAH, I UNDERSTAND. LISTEN TO YOUR
7 LAWYER, PLEASE.

8 BY MR. WICKER

9 Q. OKAY. BUT AS A MATTER OF FACT, YOU HAVE
10 CONSISTENTLY DENIED HAVING ANYTHING TO DO WITH THIS?

11 A. FROM MINUTE ONE.

12 Q. AND YOUR POSITION TODAY UNDER OATH IS THAT YOU HAD
13 NOTHING TO DO WITH THIS?

14 A. HAD NOTHING TO DO WITH IT --- NOT ONE THING.

15 Q. AND THAT'S WHY YOU'RE HERE; IS THAT CORRECT?

16 A. YES, SIR.

17 Q. DO YOU KNOW IF THEY FINGER PRINTED YOU WHEN YOU WERE
18 ARRESTED?

19 A. YES, SIR --- HAND PRINTS, SIDE OF MY HANDS, TIPS OF
20 MY FINGERS. IF THERE'S A PLACE ON MY HAND TO GET A
21 PRINT, THEY TOOK IT.

22 Q. AND DO YOU KNOW IF THEY PHOTOGRAPHED YOU?

23 A. YES, SIR. COLOR PHOTOGRAPH THIS TIME.

24 Q. THE PHOTOGRAPH IN THIS LINE UP HERE --- I DON'T KNOW
25 IF YOU'VE SEEN THIS. I DON'T THINK YOU HAVE. LET ME

1 JUST SHOW IT TO YOU. HAVE YOU SEEN THOSE PHOTOGRAPHS
2 BEFORE? I WANT IT TO SHOW THAT I'M HANDING YOU
3 PROSECUTION EXHIBIT FOURTEEN. HAVE YOU SEEN THOSE
4 BEFORE?

5 A. I JUST SEEN THEM WHEN WE WAS SITTING RIGHT THERE AT
6 THE TABLE AND THEY SHOWED THEM TO YOU. I LOOKED THROUGH
7 THEM.

8 Q. OH, YOU DID SEE THEM THEN?

9 A. YES, SIR.

10 Q. JUST GLANCED AT THEM?

11 A. YES, SIR.

12 Q. OKAY. BUT THEY TOOK PICTURES OF YOU AFTER THIS; IS
13 THAT CORRECT?

14 A. YES, SIR.

15 Q. OKAY. DO YOU KNOW ANY OF THE OTHER PEOPLE ON THERE?

16 A. I KNOW THAT MAN.

17 Q. WHO IS HE?

18 A. MACK GAFFNEY.

19 Q. WHERE DID YOU KNOW HIM?

20 A. I USED TO WORK WITH HIM IN JOANNA MILLS.

21 Q. DO YOU KNOW WHERE THIS HOUSE IS THAT WE'RE TALKING
22 ABOUT?

23 A. I KNOW ABOUT WHERE IT'S AT. I HAVEN'T --- YOU KNOW
24 --- THAT'S JUST FROM MY MAMA TELLING ME, YOU KNOW, WHERE
25 IT'S AT. I WAS THINKING --- SEE, WHERE I LIVE AT --- I

1 LIVE IN --- IT'S DOUBLE-A TRAIL ROAD IS WHERE I LIVE AT,
2 AND IT'S AN A-SHAPE, YOU KNOW. THERE'S A ROAD RUNS THIS
3 WAY, AND IT'S LIKE TWO AS PUT TOGETHER --- TWO CAPITAL
4 AS, AND THEN THERE'S ANOTHER OLD ROAD THAT RUNS BETWEEN
5 MY ROAD AND THE TRASH DUMP, AND THAT'S INDIAN CREEK ROAD,
6 OKAY. FROM THEN --- YOU KNOW, I HEARD ON THE NEWS THE
7 NIGHT THAT IT HAPPENED AT THE ELEVEN O'CLOCK NEWS THAT A
8 MAN HAD BEEN SHOT ON INDIAN CREEK ROAD, YOU KNOW. I WAS
9 THINKING IT WAS THAT ROAD THAT RUN FROM MY ROAD TO THE
10 TRASH DUMP. WELL, AFTER I GOT LOCKED UP, THIS ROAD IS
11 SEVEN OR EIGHT MILES FROM WHERE I LIVE AT.

12 Q. IT'S ANOTHER INDIAN CREEK ROAD?

13 A. YEAH, ANOTHER INDIAN CREEK ROAD.

14 Q. OKAY. WHAT I WANT YOU TO DO IS LISTEN TO THE
15 QUESTIONS AND ANSWER EVERY ONE OF THEM THAT YOU ARE
16 ASKED.

17 A. YES, SIR.

18 CROSS EXAMINATION

19 BY MS. STROM

20 Q. MR. PREWITT ---

21 A. YES, MA'AM.

22 Q. --- I BELIEVE YOU STATED THAT YOU RECOGNIZED
23 SOMEBODY ELSE IN THIS LINE UP?

24 A. YES, MA'AM.

25 Q. DO YOU RECOGNIZE THAT MAN RIGHT THERE?

1 A. YES, MA'AM.

2 Q. WHO IS THAT?

3 A. GARY LANE PREWITT.

4 Q. NUMBER ONE IS GARY LANE PREWITT? MR. PREWITT, HOW
5 LONG HAVE YOU BEEN OUT OF WORK? HOW LONG HAD YOU BEEN
6 OUT OF WORK WHEN THIS HAPPENED?

7 A. SINCE 16TH OF JULY --- OR THE 15TH, BECAUSE THE 16TH
8 IS WHEN I PICKED UP MY LAST CHECK.

9 Q. I THOUGHT YOU SAID IT WAS THE 12TH WAS THE LAST DAY
10 YOU WORKED, AND PICKED UP YOUR CHECK ON THE 16TH?

11 A. WELL, OKAY, YOU KNOW, WHENEVER IT WAS. I KNOW IT
12 WAS JUST THEM COUPLE OF DAYS, YOU KNOW, RIGHT THERE.

13 Q. HOW MUCH DID YOU GET FOR YOUR VCR?

14 A. FIFTY DOLLARS.

15 Q. WHAT ELSE DID YOU PAWN?

16 A. WELL, THAT MONDAY AND TUESDAY I PAWNED ANOTHER
17 SHOTGUN OF MINE AND ONE --- MY 16-GAUGE AND THEN MY .22
18 ON THAT TUESDAY.

19 Q. WHAT DID YOU DO WITH THE PISTOL?

20 A. I DON'T OWN A PISTOL --- NEVER HAVE OWNED A PISTOL.

21 Q. HOW MUCH WERE THE TAXES ON YOUR CAR?

22 A. I DON'T KNOW. MY WIFE PAID THAT. IT WAS HER CAR.
23 SHE PAID IT, YOU KNOW. WE WENT TO McDONALD'S AND EAT
24 THAT DAY THAT WE PAWNED IT --- THE VCR, AND SHE WENT AND
25 PAID THE TAXES ON THE CAR.

1 Q. MR. PREWITT, YOU STATED THAT YOUR MAMA AND DADDY
2 CAME BY TO SEE THE KIDS. ISN'T IT TRUE THAT AFTER THEY
3 LEFT IS WHEN YOU WENT DOWN TO RANDY TINSLEY'S HOUSE?

4 A. NO, BECAUSE I WENT RIGHT BACK TO BED.

5 Q. YOU WENT RIGHT BACK TO BED?

6 A. RIGHT BACK TO BED, AND BECAUSE MY WIFE'S GOT A
7 FRIEND THAT COME UP BY THERE AT 2:30 THAT DAY, AND IT WAS
8 RAINING, AND SHE GOT OUT OF THE CAR, AND HER HUSBAND WAS
9 JUST SETTING IN THE CAR, AND I GOT UP, AND I TOLD MY
10 WIFE, I SAID, LOOK A THERE. I SAID, HERBIE'S ABOUT SORRY
11 AS HELL --- EXCUSE MY LANGUAGE --- FOR LETTING HIS WIFE
12 COME OUT IN THE RAIN AND HE WOULDN'T GET OUT OF THE CAR.

13 Q. AND THAT WAS AT 2:30?

14 A. ABOUT 2:30, AND I WAS STILL IN THE BED THEN. I GOT
15 UP AND EAT A HAMBURGER THAT MY WIFE COOKED AND WAS RIGHT
16 BACK IN THE BED, BECAUSE I WATCHED GERALDO AND ALL THAT,
17 YOU KNOW, ON TV, BECAUSE WE'VE GOT A TV IN THE BEDROOM?

18 Q. WHAT WAS ON GERALDO?

19 A. THE KU KLUX KLAN, AND JERRY SPRINGER RIGHT AFTER
20 THAT, HE HAD KU KLUX KLAN ON IT, TOO.

21 Q. DID YOU WATCH IT THE NEXT DAY?

22 A. NO, BECAUSE IT WAS SATURDAY.

23 Q. WHAT DID YOU WATCH SATURDAY?

24 A. NOTHING, BECAUSE MY DAD COME UP BY THERE THAT
25 SATURDAY BECAUSE MY MOM WENT TO WORK, AND HIM AND ONE OF

1 HIS FRIENDS COME UP BY THERE --- JOHN, AND HE MESSES WITH
2 QUAILS, YOU KNOW, AND HE GIVE ME A RABBIT PEN, AND I HAD
3 SOME STEEL BARS THAT I GOT FROM THE JOHN DEERE STORE THAT
4 THEY PACK RIDING MOWERS IN, AND I LOADED THEM UP ON HIS
5 TRUCK. ME AND MY WIFE JUST, YOU KNOW, SAT AROUND THE
6 HOUSE. IF YOU BROKE, YOU CAN'T GO NOWHERE.

7 Q. MR. PREWITT ---

8 A. YEAH.

9 Q. LET'S GO BACK OVER THIS. IS IT TRUE --- LET ME
10 START HERE. YOU SAID YOU THOUGHT THIS JUROR UP HERE WAS
11 JOE DIXON?

12 A. YEAH.

13 Q. YOU THOUGHT HE LOOKED LIKE JOE DIXON?

14 A. NO. I JUST SAID, YOU KNOW, I FIGURED THAT'S WHO IT
15 WAS, BECAUSE HE WAS SETTING RIGHT THERE BY HIMSELF, YOU
16 KNOW, RIGHT HERE IN THE FRONT. NO, I HADN'T NEVER SEEN
17 JOE DIXON BEFORE IN MY LIFE, AND I WAS JUST TRYING, YOU
18 KNOW, TO SEE, YOU KNOW, WHO HE WAS.

19 Q. WHAT WERE YOU DOING UP AT KIMMIE SHIPES' HOUSE?

20 A. I AIN'T NEVER BEEN TO KIMMIE SHIPES' HOUSE. AIN'T
21 NEVER SEEN HER BEFORE IN MY LIFE UNTIL TODAY, AND HOW SHE
22 SAID THAT I WAS THE ONE THAT COME TO HER DOOR --- NAH.

23 Q. YOU SAID YOU KNOW WHERE --- YOU KNOW MR. TINSLEY,
24 AND I BELIEVE YOU SAID YOU KNEW HIS WIFE OR KNEW OF HIS
25 WIFE?

1 A. I KNOW HIM OF HIS --- OF HIM AND HIS WIFE, AND I
2 KNOW HIS BROTHER.

3 Q. WHERE DO THEY LIVE?

4 A. I HAVE NO IDEA. ON INDIAN CREEK ROAD.

5 Q. INDIAN CREEK ROAD?

6 A. YEAH. AND I DIDN'T KNOW THAT UNTIL I GOT LOCKED UP.
7 AFTER THEY DONE ACCUSED ME OF ---

8 Q. HOW WELL DID YOU KNOW MR. TINSLEY?

9 A. MAYBE SAY HEY AND, YOU KNOW, PASSING THROUGH, YOU
10 KNOW. I KNOW HIS BROTHER PRETTY GOOD, YOU KNOW.

11 Q. I BELIEVE YOU SAID HIS BROTHER'S NAME WAS TONY?

12 A. TONY.

13 MS. STROM: COURT'S INDULGENCE, YOUR HONOR.

14 BY MS. STROM

15 Q. MR. TINSLEY(SIC), I BELIEVE YOU STATED THAT YOUR
16 MAMA AND DADDY LEFT BECAUSE SHE HAD TO PICK UP A CHECK AT
17 10:30; IS THAT RIGHT --- PICK UP A CHECK AT 10:30?

18 A. YES, MA'AM.

19 Q. AT CLINTON?

20 A. YES, MA'AM. WELL, BETWEEN 10:30 AND 11:30, AND MY
21 NAME IS MR. PREWITT. YOU SAID MR. TINSLEY.

22 Q. OH, I'M SORRY. I'M SORRY. I APOLOGIZE.

23 MS. STROM: COURT'S INDULGENCE.

24 BY MS. STROM

25 Q. MR. TINSLEY --- EXCUSE ME, I WON'T DO IT AGAIN. MR.

1 PREWITT ---

2 A. YES, MA'AM.

3 Q. AFTER YOU WERE ARRESTED, YOU TALKED TO JERRY WRIGHT,
4 DID YOU NOT?

5 A. YES, MA'AM.

6 Q. WHAT YOU JUST TESTIFIED TO TODAY IS NOT WHAT YOU
7 TOLD HIM, IS IT?

8 A. WELL, LET ME SAY THIS. YOU LET SOME ---

9 Q. JUST ANSWER MY QUESTION.

10 A. NO.

11 Q. IS WHAT YOU TOLD TODAY ---- WAS THAT THE SAME THING
12 YOU TOLD JERRY WRIGHT ON THE DAY THAT HE QUESTIONED YOU?

13 A. NO, MA'AM.

14 Q. ALL RIGHT. THANK YOU.

15 MS. STROM: YOUR HONOR, I HAVE NO FURTHER QUESTIONS
16 OF THIS WITNESS.

17 THE COURT: ANY REDIRECT?

18 MR. WICKER: YOUR HONOR, WE HAVE NO REDIRECT. YOU
19 COME RIGHT ON DOWN. OUR NEXT WITNESS WILL BE THE
20 DEFENDANT'S MOTHER SANDRA PREWITT. SANDRA, WOULD YOU
21 PLEASE TAKE THE STAND?

22 THEREUPON:

23 SANDRA PREWITT, BEING FIRST DULY
24 SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. WICKER

2 Q. SANDRA, WHERE DO YOU WORK?

3 A. I WORK AT CLINTON MILLS ON THE WEEKEND SHIFT.

4 Q. AND HOW LONG HAVE YOU WORKED THERE?

5 A. SINCE GREENWOOD MILLS CLOSED DOWN IN JOANNA, ABOUT
6 FIVE YEARS.

7 Q. AND IS YOUR SON LANEY PREWITT?

8 A. YES, SIR.

9 Q. AND HE IS NAMED FOR YOUR HUSBAND?

10 A. YES, SIR.

11 Q. HE'S A JUNIOR?

12 A. NO, HE'S NOT A JUNIOR. THEY'VE GOT DIFFERENT MIDDLE
13 NAMES.

14 Q. YOUR HUSBAND IS GARY PREWITT?

15 A. WELL, HIS NAME IS GARY LAWRENCE, AND THEN LANEY ---
16 WE CALL HIM LANEY. HIS NAME IS GARY LANE.

17 Q. OKAY. AND YOU'VE SAT IN THE COURTROOM THROUGHOUT
18 THIS CASE, HAVE YOU NOT?

19 A. YES, SIR.

20 Q. AND YOU HEARD YOUR SON TESTIFIED THAT YOU VISITED
21 HIM ON THE 22ND OF JULY, 1994; IS THAT CORRECT?

22 A. YES, SIR.

23 Q. DO YOU REMEMBER WHAT YOU DID ON THE 22ND OF JULY OF
24 1994?

25 A. YEAH, BECAUSE MY SISTER CAME IN FROM FLORIDA. SO,

1 I REMEMBER IT REAL WELL.

2 Q. OKAY. COULD YOU TELL THE JURY, NOW, BECAUSE THEY'RE
3 VERY INTERESTED IN THIS --- WHAT DO YOU REMEMBER ABOUT
4 THAT DAY?

5 A. OKAY. I REMEMBER THAT WE GOT UP THAT MORNING.
6 WELL, I GOT UP. GARY WAS ALREADY UP, BECAUSE HE HAD JUST
7 CAME HOME FROM WORK, AND WHEN HE GOT HOME FROM WORK, AND
8 I GUESS THIS HAPPENED THE SAME THAT DAY AS IT DOES EVERY
9 OTHER DAY --- HE ALWAYS CAME HOME AND CLEANED THE
10 SWIMMING POOL, YOU KNOW --- EMPTY THE SKIMMER OUT AND,
11 YOU KNOW, PUT CHEMICALS IN AND EVERYTHING IN THE SWIMMING
12 POOL, AND THEN I GOT DRESSED, AND WE WENT TO GET MY
13 CHECK, AND IT WAS ABOUT TEN MINUTES AFTER TEN I WOULD
14 THINK. NOW, I CAN'T GIVE YOU AN EXACT TIME, BUT I KNOW
15 IT WAS BEFORE 10:30, BECAUSE IT WAS EARLY, AND ON THE WAY
16 TO CLINTON IS THE ROAD THAT TURNS OFF THAT GOES TO
17 LANEY'S HOUSE, AND I TOLD GARY, I SAID, "LET'S RUN BY AND
18 CHECK ON THE BABIES." WHICH, IF I DON'T SEE THEM IN A
19 DAY OR TWO, I'M OVER THERE TO CHECK ON THEM, YOU KNOW.
20 SO, I SAID, "LET'S RUN BY AND CHECK ON THE BABIES." WE
21 WENT OVER THERE. WENT TO THE DOOR. LANEY CAME TO THE
22 DOOR IN HIS UNDERWEAR. HIS WIFE GAVE ME SOME GERMAN
23 CHOCOLATE CAKE. I REMEMBER THAT, BECAUSE I PUT IT IN THE
24 OVEN AFTER WE HAD DONE WENT AND PICKED UP MY CHECK AND
25 EVERYTHING AND CAME BACK TO THE HOUSE. I HAD PUT IT ON

1 TOP OF MY STOVE, AND I PUT IT IN THE OVEN, BECAUSE MY
2 SISTER AND ALL OF THEM CAME IN FOR HAMBURGERS THAT NIGHT,
3 AND I DIDN'T HAVE ENOUGH CAKE FOR EVERYBODY. SO, I JUST
4 STUCK THAT IN THE OVEN, AND ON MONDAY MORNING MY GIRLS
5 WAS TEASING ME ABOUT HORDING ALL THE SWEETS. SO, I KNOW
6 IT WAS THAT FRIDAY.

7 Q. OKAY. CAN YOU TELL THE JURY TO THE BEST OF YOUR
8 KNOWLEDGE WHEN YOU ARRIVED AT LANEY'S HOUSE AND WHEN YOU
9 LEFT ON THAT PARTICULAR FRIDAY?

10 A. WHAT TIME?

11 Q. ABOUT WHAT TIME?

12 A. IT HAD TO HAVE BEEN BEFORE ELEVEN O'CLOCK. BECAUSE
13 LIKE I SAID, I HAVE TO GET MY CHECK BY 11:45. SO, I
14 WOULD SAY --- AND IT WAS EARLY. SO, I KNOW IT WAS TOO
15 EARLY FOR ME TO GET MY CHECK, AND I COULD HAVE GOT IT AT
16 10:30. SO, I WOULD SAY RIGHT AT 10 O'CLOCK.

17 Q. OKAY. DID YOU NOTICE ANYTHING UNUSUAL WHILE YOU
18 WERE THERE?

19 A. NO. WE JUST SAT AROUND AND TALKED FOR A FEW
20 MINUTES. WHITNEY WAS STILL IN BED --- THEIR LITTLE GIRL.
21 SHE'S FOUR. SHE WAS STILL IN BED. COLBY --- HE'S ALWAYS
22 UP EARLY. USUALLY WHEN I GO OVER THERE ON FRIDAY
23 MORNINGS, WHITNEY CRIES TO GO WITH NANNY. SO, I TAKE
24 WHITNEY WITH ME TO THE GROCERY STORE, BUT WHITNEY WAS
25 STILL IN BED THAT MORNING, AND I KNEW THAT MY SISTER WAS

1 COMING IN FROM FLORIDA, AND I KNEW I WAS GOING TO SPEND
2 THE DAY WITH HER. SO, I JUST LEFT WHITNEY IN THE BED AND
3 LEFT COLBY AT HOME, AND GARY AND I WENT AND BOUGHT
4 GROCERIES AND CAME BACK TO MY MOTHER'S.

5 Q. SANDRA, I NOW WANT YOU TO SKIP OVER TO THE 10TH DAY
6 OF AUGUST, 1994, WHEN YOUR SON WAS ARRESTED. WERE YOU AT
7 YOUR HOME THEN?

8 A. YES, SIR, WE WERE.

9 Q. AND WHERE WERE YOU AT?

10 A. IN THE SWIMMING POOL.

11 Q. AND IS THIS SWIMMING POOL IN YOUR BACKYARD?

12 A. IN OUR BACKYARD. IT SURE IS.

13 Q. AND COULD YOU JUST TELL THE JURY WHAT YOU REMEMBER
14 ABOUT YOUR SON BEING ARRESTED?

15 A. OKAY. WE WERE ALL OUT IN THE SWIMMING POOL. WELL,
16 NOT ALL OF US. IT WAS --- WELL, WE JUST BOUGHT THE
17 SWIMMING POOL. WE HADN'T HAD IT LONG, AND IT'S AN ABOVE
18 GROUND POOL, AND WE HAD BUILT A FENCE AROUND IT AND PUT
19 NO TRESPASSING SIGNS AND EVERYTHING WHERE WE WOULD BE
20 LEGAL, AND GARY AND LANEY HAD TWO LAWN CHAIRS SITTING ON
21 THE OUTSIDE OF THE FENCE, AND SHELLEY --- LANEY'S WIFE,
22 AND WHITNEY AND COLBY AND ME AND THESE TWO KIDS ---
23 JOHNNY AND KIM NABORS' TWO KIDS WERE ALL OVER --- WERE
24 BOTH OVER THERE, AND WE WERE ALL IN THE POOL, AND SHELLEY
25 KEPT TELLING LANEY, COME ON GET IN THE POOL. COME ON GET

1 IN THE POOL, AND ANGEL CAME IN FROM WORK, AND WHEN ANGEL
2 CAME IN FROM WORK, SHE CAME TO THE BACK DOOR, AND SHE
3 SAID, "I'M GOING TO GET IN WITH Y'ALL."

4 SO, HER AND MELISSA WENT THROUGH TO GET THEIR
5 BATHING SUITS ON. GARY AND LANEY WERE STILL SITTING
6 THERE IN THE CHAIRS, AND WE WERE ALL IN THE SWIMMING
7 POOL, AND THEN ANGEL CAME TO THE BACK DOOR, AND I DIDN'T
8 HEAR IT WHEN SHE SAID IT, BUT WHEN I TURNED AROUND AND
9 LOOKED THERE WAS A POLICE STANDING RIGHT THERE NEXT TO
10 THE SWIMMING POOL, AND I SAID, "WHAT'S GOING ON?" YOU
11 KNOW, AND I GOT MY BATHING SUIT ON, AND YOU KNOW, I DON'T
12 WEAR IT OUT IN PUBLIC OR NOTHING.

13 I'M ASKING THIS GUY, WHAT'S GOING ON. WHAT YOU
14 DOING IN MY BACK YARD. AND THEN I SEEN LANEY GO OUT THE
15 FRONT DOOR, AND THE NEXT THING I KNEW SOMEBODY SAID,
16 THEY'RE ARRESTING HIM, AND I GOT OUT OF THE SWIMMING
17 POOL, AND SHELLEY AND I PUT ON OUR CLOTHES, AND THEY TOOK
18 HIM, AND WE FOLLOWED THEM OVER THERE, AND I SAID, WELL,
19 I'M NOT GOING TO GO ON THE --- SHELLEY SAID, "PULL IN THE
20 DRIVEWAY." WELL, THERE WAS JUST LAW EVERYWHERE. I SAID,
21 "NO, I'M NOT GOING TO GO ON THE PROPERTY. YOU KNOW, THEY
22 MIGHT SAY I'M TRYING TO INTERFERE WITH SOMETHING." SO,
23 ME AND SHELLEY AND THE KIDS SAT IN THE CAR.

24 Q. NOW, WHO IS SHELLEY?

25 A. IT'S LANEY'S WIFE.

1 Q. OKAY. AND Y'ALL STAYED IN THE CAR?

2 A. WE STAYED IN THE CAR. IT WAS REAL HOT THAT DAY, AND
3 THE KIDS --- WE DIDN'T EVEN PUT CLOTHES ON THEM. ALL WE
4 DID WAS JUST GRAB TOWELS AND PUT AROUND THEM, AND I THINK
5 I PUT ON A T-SHIRT AND A PAIR OF SHORTS AND ---

6 Q. DID SHELLEY GIVE THEM THE KEYS TO GET IN HER HOUSE?

7 A. THEY ASKED FOR THE KEYS BEFORE THEY EVER LEFT OUR
8 HOUSE. AS A MATTER OF FACT, THEY WENT OUT AND GOT IN THE
9 CAR, AND THEN ONE OF THEM CAME BACK TO THE STEPS AND SAID
10 THEY NEEDED SHELLEY'S HOUSE KEY, AND WHEN THE LAW LEFT
11 SHELLEY'S HOUSE THAT DAY, WE HAD TO CALL A LOCKSMITH THE
12 NEXT MORNING TO GET A NEW LOCK --- NEW KEYS MADE FOR
13 SHELLEY'S CAR, AND HAD TO CHANGE THE DOOR KNOB ON HER
14 FRONT DOOR, BECAUSE THE KEYS DISAPPEARED WHEN THE LAW
15 DID.

16 Q. AND YOU'VE NEVER GOTTEN THE KEYS BACK?

17 A. NO, SIR.

18 Q. NOW, DID YOU HEAR YOUR SON SAY ANYTHING WHEN HE WAS
19 ARRESTED?

20 A. WHAT DID I DO. WHAT DID I DO, AND THEN WHEN THEY
21 SAID IT WAS NEWBERRY COUNTY. HE TURNED AROUND. HE SAID,
22 "I AIN'T BEEN TO NEWBERRY." YOU KNOW, WHICH WE FIGURED
23 AFTER, YOU KNOW, THEY BROUGHT HIM AND QUESTIONED HIM OR
24 WHATEVER, YOU KNOW, THEY'D BRING HIM BACK HOME. WE
25 DIDN'T DO ANYTHING FOR THE FIRST WEEK. DIDN'T TALK TO

1 ANYBODY OR ANYTHING.

2 Q. ALL RIGHT. NOW, YOU LOVE YOUR SON, DON'T YOU?

3 A. YES, SIR, I DO.

4 Q. AND YOU BELIEVE YOUR SON WHEN HE TELLS YOU
5 SOMETHING?

6 A. MOST OF THE TIME.

7 Q. AND WHAT YOU'VE TOLD THE JURY TODAY YOU CAN REMEMBER
8 CLEARLY?

9 A. YES, SIR, I SURE CAN.

10 Q. AND YOU REMEMBERED THE 22ND OF JULY CLEARLY?

11 A. YES, SIR.

12 Q. AND YOU REMEMBER THE 10TH OF AUGUST CLEARLY?

13 A. YES, SIR.

14 Q. OKAY. ANSWER ANY QUESTIONS THE OTHER SIDE MAY OR --
15 - MAY HAVE.

16 A. OKAY.

17 MS. STROM: NO QUESTIONS FOR THIS WITNESS, YOUR
18 HONOR.

19 THE COURT: THANK YOU, MA'AM.

20 MR. WICKER: OKAY. YOU MAY STEP DOWN. WE CALL OUR
21 LAST WITNESS, YOUR HONOR. WE'RE GOING TO CALL HIS
22 FATHER, WHICH IS MR. PREWITT. I BELIEVE THEY CALL HIM
23 GARY --- LAWRENCE PREWITT --- GARY PREWITT.

24 THEREUPON:

25

GARY LAWRENCE PREWITT, BEING

1 FIRST DULY SWORN TO TELL THE WHOLE TRUTH, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. WICKER

5 Q. GARY, WHERE DO YOU WORK?

6 A. I WORK AT WHITTEN CENTER.

7 Q. AT WHITMAN CENTER?

8 A. WHITTEN CENTER, YES, SIR.

9 Q. HOW LONG HAVE YOU BEEN THERE?

10 A. SINCE THE MILL CLOSED DOWN. I'VE BEEN THERE FIVE
11 YEARS.

12 Q. OKAY. AND HOW OLD ARE YOU NOW?

13 A. I'M 46.

14 Q. AND HOW MANY CHILDREN DO YOU HAVE?

15 A. I HAVE FOUR.

16 Q. OKAY. AND CALLING YOUR ATTENTION TO THIS PARTICULAR
17 FRIDAY THAT WE'VE BEEN TALKING ABOUT, THE 22ND DAY OF
18 JULY, 1994, DO YOU REMEMBER WHAT HAPPENED THAT DAY?

19 A. YES, SIR, I DO.

20 Q. AND YOU HEARD ALL THE TESTIMONY THAT'S BEEN BROUGHT
21 IN THIS COURTROOM TODAY?

22 A. YES, SIR.

23 Q. OKAY. WOULD YOU LOOK AT THE JURY, BECAUSE THEY ARE
24 THE ONES THAT WE ARE HERE TO TALK TO, AND TELL THEM WHAT
25 YOU CAN REMEMBER ABOUT THE 22ND OF JULY, THAT FRIDAY,

1 1994?

2 A. I GOT OFF WORK AT ABOUT A QUARTER AFTER SEVEN. I
3 GOT HOME ABOUT 25 AFTER, AND I WENT IN THE HOUSE AND KIND
4 OF STRETCHED OUT AND TURNED THE TELEVISION ON, SMOKED ME
5 A CIGARETTE UNTIL ABOUT EIGHT O'CLOCK. I WENT IN AND
6 WOKE MY WIFE UP AND TOLD HER TO GO AHEAD AND GET READY SO
7 WE CAN GO GET HER CHECK, AND IN THE MEANTIME, I GO CLEAN
8 THE POOL AND PUT THE CHEMICALS IN IT.

9 WELL, SHE GOT UP AND GOT READY, AND WHEN SHE COME
10 OUT THE DOOR, SHE TOLD ME ABOUT A LITTLE SCUFFLE MY SON
11 AND MY DAUGHTER'S BOYFRIEND HAD, AND I SAID, "WELL, DID
12 EITHER ONE OF THEM GET HURT?" AND SHE SAID, SHE DON'T
13 BELIEVE SO, BECAUSE MY DAUGHTER'S BOYFRIEND IS A WHOLE
14 LOT BIGGER THAN LANEY. SO, THE BOY --- HE DID NO MORE
15 THAN JUST HOLD HIM IN A BEAR HUG. HE DIDN'T HIT HIM AT
16 ALL.

17 SO, WE GOT IN THE CAR AND HEADED OVER THAT WAY, AND
18 WHEN WE --- SHE SAID, "WELL, LET'S TURN AND GO DOWN AND
19 CHECK ON THE KIDS." I SAID, "ALL RIGHT."

20 Q. THESE ARE YOUR GRANDCHILDREN?

21 A. RIGHT, MY GRANDCHILDREN. SO, WHEN WE CROSSED THE
22 TRACK AND STARTED DOWN TOWARD LANEY'S HOUSE, SHE ASKED ME
23 IF I WAS GOING TO SAY ANYTHING TO LANEY ABOUT THE FIGHT,
24 AND I SAID, "NO, NOT UNLESS HE DOES."

25 SO, WE WENT ON OVER THERE, AND I COULD TELL THAT,

1 YOU KNOW, THINGS WASN'T KIND OF RIGHT WITH HIM, BECAUSE
2 HE DIDN'T MOVE LIKE HE USUALLY DOES. WHEN WE KNOCKED ON
3 THE DOOR, HE COME TO THE DOOR IN HIS UNDERWEAR. THE
4 LITTLE GRAND BOY, HE WAS UP. SHELLEY AND WHITNEY WAS
5 STILL IN THE BED, BUT WHILE WE WERE THERE, SHELLEY DID
6 GET UP, BUT THE GRAND DAUGHTER, SHE STAYED IN THE BED.
7 I WAS KIND OF HOPING SHE WOULD GET UP SO SHE COULD GO
8 WITH US TO THE GROCERY STORE, BUT SHE NEVER DID, AND WE
9 STAYED OVER THERE FOR A WHILE, AND THEN SHE GIVE SANDY
10 SOME CAKE TO TAKE HOME WITH US. I THINK IT WAS A GERMAN
11 CHOCOLATE CAKE. I'M NOT FOR SURE, BUT I BELIEVE IT WAS
12 A GERMAN CHOCOLATE CAKE.

13 I GUESS WE WERE OVER THERE --- I GUESS WE GOT OVER
14 THERE ABOUT TEN OR A LITTLE AFTER, SOMETHING ALONG IN
15 THERE, AND WE LEFT THERE ABOUT 10:30, MAYBE 25 UNTIL 11
16 TO GO PICK HER CHECK UP.

17 Q. AT THE TIME THAT YOU FOLKS LEFT THAT MORNING, DID
18 ANYTHING APPEAR UNUSUAL?

19 A. NO, SIR.

20 Q. AND WERE YOU PRESENT WHEN YOUR SON WAS ARRESTED ON
21 THE 10TH OF AUGUST, 1994?

22 A. YES, SIR.

23 Q. AND COULD YOU TELL THE JURY WHAT YOU REMEMBER ABOUT
24 THAT?

25 A. LIKE MY WIFE SAID, EVERYBODY WAS IN THE SWIMMING

1 POOL BUT ME AND LANEY, AND MY OLDEST DAUGHTER WENT IN THE
2 HOUSE, AND SHE COME BACK OUT THE BACK DOOR, AND SHE SAID,
3 "DADDY, THE LAW IS OUTSIDE." AND SO, LANEY AND I GOT UP
4 AND WENT IN THE BACK DOOR THROUGH THE KITCHEN INTO THE
5 LIVING ROOM, AND THERE WAS A KNOCK AT THE DOOR, AND I
6 OPENED THE DOOR, AND IT WAS A LAURENS COUNTY DEPUTY,
7 ROBBIE YON, STANDING THERE. AND HE SAID, "GARY, IS LANEY
8 HERE?" AND I SAID, "YES, SIR." SO, I TURNED AROUND, AND
9 I SAID, "LANEY, THEY WANT TO TALK TO YOU."

10 SO, LANEY STEPPED OUT THE DOOR, AND ROBBIE YON TOLD
11 HIM, SAID, "LANEY, WE NEED TO TALK TO YOU." SO, THEY
12 TOOK HIM ON OUT AND OUT INTO THE DRIVEWAY, AND WHEN I
13 TURNED AROUND AND LOOKED OUT THE FRONT ROOM --- THE FRONT
14 LIVING ROOM, THEY WAS PUTTING THE HANDCUFFS ON HIM, AND
15 I WENT ON OUT THE DOOR, AND I ASKED THEM WHAT HE HAD
16 DONE, AND THEY SAID, "WELL, WE CAN'T INFORM YOU OF THAT
17 UNTIL WE GET HIM OVER TO HIS HOUSE." AND I SAID, "CAN
18 YOU TELL ME WHERE IT HAPPENED AT?" AND THEY SAID,
19 "NEWBERRY COUNTY." AND LANEY AND I LOOKED AT EACH OTHER,
20 AND I TOLD LANEY, I SAID, "I DON'T BELIEVE YOU'VE BEEN TO
21 NEWBERRY HAVE YOU?" AND HE SAID, "NO, I HAVEN'T." AND
22 I SAID, "WELL, DON'T WORRY ABOUT IT. JUST GO PEACEFULLY
23 WITH THEM."

24 Q. AND WHAT DID YOU DO AFTER THAT DAY?

25 A. WELL, I STAYED THERE AT THE HOUSE WHILE MY WIFE AND

1 MY DAUGHTER-IN-LAW AND THE KIDS WENT OVER TO THE HOUSE TO
2 SEE WHAT WAS GOING ON. I DIDN'T GO OVER THERE.

3 Q. OKAY. AND OF COURSE, YOU LOVE ALL YOUR CHILDREN?

4 A. YES, SIR, VERY MUCH.

5 Q. AND AS FAR AS LANEY IS CONCERNED, WOULD YOU BELIEVE
6 LANEY IF HE TOLD YOU SOMETHING?

7 A. IN A CASE LIKE THIS, YES, SIR, I WOULD.

8 Q. I DON'T BELIEVE WE HAVE ANY FURTHER QUESTIONS. IF
9 THE OTHER SIDE HAS ANY, YOU ANSWER THEM.

10 A. YES, SIR.

11 MS. STROM: THE COURT'S INDULGENCE. THANK YOU.

12 THE COURT: STEP DOWN, SIR. THANK YOU.

13 MR. WICKER: AT THIS TIME, YOUR HONOR, WE REST.

14 (DEFENSE RESTS.)

15 THE COURT: WILL THERE BE ANY REPLY?

16 MS. STROM: JUST ONE MOMENT, YOUR HONOR. YOUR
17 HONOR, MAY I TAKE TWO MINUTES? THANK YOU.

18 (JURY LEAVES THE COURTROOM.)

19 THE COURT: MR. WICKER?

20 MR. WICKER: I WOULD LIKE TO MAKE A MOTION AT THIS
21 TIME, YOUR HONOR, FOR A DIRECTED VERDICT IN FAVOR OF MY
22 CLIENT BASED ON THE FACT THAT AFTER ALL THE EVIDENCE HAS
23 COME IN AND ALL THE PEOPLE HAVE BEEN CROSS EXAMINED,
24 INCLUDING THE WITNESSES I PUT ON, I THINK IT'S CLEAR THAT
25 WE HAVE A PROBLEM HERE, CERTAINLY, WHEN WE'RE TALKING

1 ABOUT BEYOND A REASONABLE DOUBT THAT MY CLIENT WAS EVER
2 IDENTIFIED HERE, BECAUSE I THINK ---

3 THE COURT: THE EVIDENCE PRESENTED MAKES THAT A
4 FACTUAL ISSUE. I'LL LET THE JURY --- THEY MUST RESOLVE
5 IT.

6 MR. WICKER: THAT'S THE ONLY MOTION I HAVE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. NOW, ON THE CHARGES, I'LL
9 TELL YOU WHAT I'VE FACTORED IN. GOT FOUR CRIMES, NO
10 LESSER INCLUDED. I'VE GOT THEIR INSTRUCTION ON
11 IDENTIFICATION. I'VE GOT ALIBI. AND I DON'T KNOW THAT
12 WE NEED IT, BUT I PUT IN THE HAND OF ONE CHARGE, SINCE
13 THERE WERE TWO DEFENDANTS THERE. I INSERTED THAT. DOES
14 THAT BOTHER EITHER ONE OF YOU?

15 MR. WICKER: IT DOESN'T BOTHER ME, YOUR HONOR.

16 THE COURT: THE ONLY REASON I DID IT IS BECAUSE
17 THERE WAS ANOTHER FELLOW RUNNING FROM THE PLACE AND TO
18 LET THE JURY KNOW THAT THE FACT THAT ANOTHER FELLOW MIGHT
19 HAVE BEEN THERE WOULD NOT INSULATE THIS FELLOW FROM THE
20 FACT OF CONSPIRACY TO COMMIT BURGLARY, LARCENY. THERE'S
21 NO QUESTION ABOUT THE SHOOTING, BUT ON THOSE TWO, I
22 THOUGHT HAND OF ONE MIGHT BE A PROBLEM, MAY NOT BE. I
23 MAY BE CREATING MORE PROBLEMS THAN I'M SOLVING. BUT WHAT
24 DO YOU SAY, MS. STROM?

25 MS. STROM: YOUR HONOR, THE STATE'S POSITION IS THE

1 ---

2 THE COURT: I'LL TAKE IT OUT IF YOU DON'T WANT IT.
3 I'LL TAKE IT OUT.

4 MS. STROM: I DON'T THINK IT'S NECESSARY, YOUR
5 HONOR.

6 THE COURT: ANY OBJECTIONS, MR. WICKER?

7 MR. WICKER: NO.

8 THE COURT: I'LL TAKE IT OUT.

9 MR. WICKER: NONE AT ALL.

10 THE COURT: SUITS ME. ANY OTHER REQUESTS TO CHARGE?

11 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

12 MS. STROM: YOUR HONOR, DO YOU CHARGE ON REASONABLE
13 DOUBT?

14 THE COURT: I DEFINE IT AS HESITATE TO ACT.
15 ANYTHING ELSE?

16 MS. STROM: NOTHING FROM THE STATE.

17 THE COURT: HOW LONG DO YOU ANTICIPATE YOUR
18 ARGUMENTS, BECAUSE WE'VE GOT TO GO ALL THE WAY TONIGHT?

19 MS. STROM: I'M THINKING 30 --- 35 MINUTES AT THE
20 MOST.

21 THE COURT: I'M THINKING THAT'S TOO LONG.

22 MS. STROM: FOR BOTH OPENING ON THE LAW AND THE
23 CLOSING ---

24 THE COURT: YES, MA'AM. I'M THINKING THAT'S TOO
25 LONG. ARE YOU GOING TO OPEN?

CLOSING STATEMENT
BY MS. STROM

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1 MS. STROM: OPEN ON THE LAW AND RESERVE MY RIGHT TO
2 CLOSE.

3 THE COURT: ARE YOU GOING TO OPEN?

4 MS. STROM: YES, SIR.

5 MR. WICKER: I WOULD THINK 20 MINUTES FOR ME.

6 THE COURT: OKAY. I THINK ABOUT 20 MINUTES IS MORE
7 THAN ADEQUATE.

8 MS. STROM: YES, SIR.

9 MR. WICKER: TWENTY MINUTES FOR ME, YOUR HONOR.

10 THE COURT: OKAY. BRING THEM IN.

11 (JURY RETURNS TO THE COURTROOM.)

12 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
13 THE TESTIMONY IN THE CASE HAS CONCLUDED. THE ATTORNEYS
14 WILL NOW MAKE THEIR FINAL COMMENTS TO YOU, AFTER WHICH
15 I'LL TALK TO YOU ABOUT THE LAW THAT APPLIES IN THE CASE.

16 I DO REMIND YOU THAT THEIR COMMENTS ARE NOT EVIDENCE
17 BUT ARE VERY IMPORTANT, AND I DO URGE YOU TO LISTEN VERY
18 CLOSELY TO THEM.

19 MS. STROM?

20 MS. STROM: THANK YOU, YOUR HONOR.

21 CLOSING STATEMENT

22 BY MS. STROM

23 LADIES AND GENTLEMEN, WE ALL APPRECIATE YOUR TIME
24 THAT YOU'VE GIVEN TO THIS CASE AND THE ATTENTION THAT
25 YOU'VE GIVEN TO THIS CASE.

CLOSING STATEMENT
BY MS. STROM

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1 MY JOB HERE AT THIS POINT IS TO CLOSE ON THE LAW.
2 IN OTHER WORDS, TO BRIEFLY EXPLAIN TO YOU WHAT THE LAW
3 IS. AND AS I TOLD YOU EARLIER, HIS HONOR WILL GIVE YOU
4 THE FINAL CHARGE WHEN HE SPEAKS TO YOU ABOUT WHAT THE LAW
5 IS.

6 HE WILL CHARGE YOU THE STATE HAS THE BURDEN OF
7 PROOF. THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND
8 A REASONABLE DOUBT.

9 THE STATE BRINGS IN TO THIS CASE, INTO THIS
10 COURTROOM TODAY, EVIDENCE WE FEEL IS SUFFICIENT TO MEET
11 THAT BURDEN --- BEYOND A REASONABLE DOUBT. HIS HONOR
12 WILL CHARGE YOU THAT IS THE KIND OF DOUBT THAT WOULD
13 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

14 USE YOUR GOOD COMMON SENSE IN THIS CASE. ANY BIG
15 DECISION --- ANY BIG DECISION YOU MAY HESITATE AT FIRST,
16 BUT AFTER CONSIDERING ALL OF THE EVIDENCE, AFTER
17 DISCUSSING IT AMONG YOURSELVES, AFTER TALKING BACK AND
18 FORTH ABOUT WHO'S TELLING THE TRUTH, WHO'S NOT TELLING
19 THE TRUTH, IT'S ONLY THEN AFTER YOU'VE CONSIDERED
20 EVERYTHING DO YOU HAVE A REASONABLE DOUBT.

21 BURGLARY, JUST BRIEFLY, ENTERING A PERSON'S HOUSE
22 WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN
23 ARMED WITH A DEADLY WEAPON OR INFLECTING INJURY. 2

24 I SAID I'M UP HERE BRIEFLY TO OPEN ON THE LAW. I WILL
25 HAVE AN OPPORTUNITY TO COME BACK TO YOU AND ARGUE AS TO

CLOSING STATEMENT
BY MS. STROM

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1 THE FACTS OF THIS CASE IN AN ATTEMPT TO PERSUADE YOU AND
2 TO ASSIST YOU IN DETERMINING HOW THE FACTS ARE IN THIS
3 CASE. YOU ARE ULTIMATELY THE FINDERS OF THE FACTS IN
4 THIS CASE.

5 HIS HONOR WILL ALSO CHARGE YOU THAT THERE ARE
6 CERTAIN FACTORS YOU CAN CONSIDER WHEN JUDGING A PERSON'S
7 CREDIBILITY, AND THAT IS --- ARE THEY BIAS? DO THEY HAVE
8 ANY REASON TO LIE? DO THEY HAVE ANYTHING TO GAIN OR LOSE
9 BY COMING IN THIS COURTROOM? WOULD WHAT THEY HAVE TO
10 GAIN OR LOSE --- WOULD THAT AFFECT THEIR TESTIMONY? YOU
11 CAN LOOK AT ALL THIS AS WELL AS THEIR DEMEANOR. DO THEY
12 APPEAR TO BE TRUSTWORTHY TO YOU? DO THEIR STORIES
13 CONTRADICT, OR WERE THEY SUPPORTED BY OTHER EVIDENCE?
14 THOSE ARE THINGS THAT YOU CAN CONSIDER WHEN DETERMINING
15 WHETHER SOMEONE IS TELLING THE TRUTH.

16 AGAIN, YOU WILL HAVE FOUR CHARGES. HIS HONOR WILL
17 GIVE YOU THE LAW ON THE FOUR CHARGES. YOU WOULD FIND THE
18 FACTS, AND APPLY THE LAW AS HIS HONOR GIVES IT TO YOU,
19 AND AFTER DOING THAT, BEYOND A REASONABLE DOUBT.

20 AGAIN, I'LL BE BACK UP HERE TO SPEAK TO YOU ABOUT
21 THE FACTS OF THE CASE, AND HIS HONOR WILL CHARGE YOU ON
22 THE LAW. THANK YOU.

23 THE COURT: MR. WICKER?

24 MR. WICKER: MAY IT PLEASE THE COURT?

25 CLOSING STATEMENT

1 6BY MR. WICKER

2 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY,
3 THANK YOU, THANK YOU. THANK YOU FOR PAYING ATTENTION TO
4 US AND LISTENING TO US AND LISTENING TO THE STATE AND
5 THINKING ABOUT IT AND GIVING US YOUR TIME AND YOUR
6 EFFORT, BECAUSE THIS IS WHAT THE UNITED STATES OF AMERICA
7 IS ALL ABOUT, AND I HAVE SEEN TRIALS IN MANY, MANY
8 FOREIGN COUNTRIES, BECAUSE IT'S SORT OF A HOBBY OF MINE
9 TO VISIT FOREIGN COURTS, AND I CAN ASSURE YOU THAT
10 THERE'S NEVER BEEN A COUNTRY THAT TRIES PEOPLE THE WAY WE
11 DO HERE IN AMERICA, AND I'M VERY FOND OF THE JURIES WE
12 HAVE HERE IN NEWBERRY COUNTY, AND WE'RE GOING TO LEAVE IT
13 IN YOUR HANDS, BECAUSE THIS IS THE GREATEST DECISION MADE
14 HERE TODAY.

15 ONE TIME, ONE OF MY CLIENTS WAS SENTENCED TO DEATH
16 IN EDGEFIELD COUNTY, AND I WENT HOME AND SLEPT VERY WELL,
17 AND I WAS ASKED HOW COULD YOU SLEEP? YOUR CLIENT WAS
18 SENTENCED TO DEATH TODAY. I SAID, MY JOB WAS EASY. I
19 DID EVERYTHING I COULD FOR HIM, AND THE JURY SENTENCED
20 HIM TO DEATH. I DID EVERYTHING I COULD FOR HIM.

21 SO, THE DEFENSE COUNSEL HAS AN EASY JOB COMPARED TO
22 THE JURY. I HAVE NEVER SAT ON A JURY. I'VE SERVED AS A
23 MILITARY JUDGE. I'VE BEEN A PROSECUTOR MOST OF MY LIFE,
24 AND I'VE BEEN A DEFENSE COUNSEL, OF COURSE, FOR THE PAST
25 11 YEARS. SO, THE TIME HAS COME FOR 12 PEOPLE FROM

CLOSING STATEMENT
BY MR. WICKER

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1 NEWBERRY COUNTY TO DECIDE ON THIS CASE.

2 VERY BRIEFLY, AND I MEAN VERY BRIEFLY, I WANT TO
3 JUST MENTION TO YOU THAT THE STATE BROUGHT TO YOU RANDY
4 TINSLEY. WE HAVE NOTHING TO DISAGREE --- NOT ONE THING
5 DO WE DISAGREE WITH RANDY TINSLEY. HIS HOUSE WAS BROKEN
6 INTO, AND HIS THINGS WERE STOLEN AND THE PLACE WAS MESSED
7 UP. WE AGREE WITH EVERYTHING HE SAID. SO, THERE'S NO
8 CONFLICT WITH RANDY TINSLEY.

9 NEXT COMES CHRISTY McGUIRT. WE HAVE NO CONFLICT AT
10 ALL WITH CHRISTY McGUIRT. WE AGREE WITH EVERYTHING SHE
11 SAID.

12 THEN WE HAVE JOE DIXON. WE ARE GLAD THAT JOE DIXON
13 IS ALIVE TODAY. BECAUSE BELIEVE ME, WHEN YOU GET SHOT
14 THE WAY HE WAS SHOT, YOU VERY OFTEN DIE, AND IT WAS A
15 MATTER OF PROVIDENCE THAT HE'S ALIVE TODAY, BECAUSE WHEN
16 YOU GET SHOT THREE TIMES, THE FACT THAT YOU'RE STILL
17 ALIVE TO TELL SOMEBODY ABOUT IT IS AMAZING. THANK GOD
18 JOE DIXON IS ALIVE TODAY.

19 THE ONLY DIFFERENCE WE HAVE WITH JOE DIXON IS THE
20 FACT THAT WE BELIEVE --- MY CLIENT BELIEVES AND TOLD YOU
21 HE BELIEVES THAT JOE DIXON MADE A MISTAKE --- MADE A
22 MISTAKE ON IDENTITY HERE. JOE DIXON SAID, I NEVER SAW
23 PREWITT BEFORE THAT DAY. JOE DIXON TOLD YOU UNDER OATH.
24 I NEVER SAW PREWITT AGAIN UNTIL HE CAME IN HERE TODAY.
25 A GOOD LONG WHILE. HE ALSO SAID THAT HE WAS WEARING A

CLOSING STATEMENT
BY MR. WICKER

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1 HAT, AND THE ONE THAT --- THE SUSPECT THAT LEFT WAS
2 WEARING A GREEN HAT. HE ALSO SAID HE WAS WEARING GLOVES.
3 HE ALSO SAID HE COULD DESCRIBE HOW THE ROOM LOOKED AND
4 ALL THAT SORT OF STUFF AND THAT MY CLIENT WAS THE PERSON
5 WHO SHOT HIM. VERY DAMAGING EVIDENCE. BUT IF YOU THINK
6 ABOUT THIS, IF HE HAD NEVER SEEN PREWITT BEFORE THEN, AND
7 HE HAD NEVER SEEN PREWITT SINCE THEN UNTIL TODAY, AND
8 THERE'S NEVER BEEN A REAL LIVE BODY LINE UP IN THE CASE
9 WHERE YOU LINE THE PEOPLE UP AND YOU COME IN AND PICK
10 SOMEBODY OUT. THEY NEVER DID THAT IN THIS CASE.

11 SO, OUR TOTAL POSITION OF JOE DIXON, AS MUCH AS WE
12 LIKE HIM AND AS HAPPY AS WE ARE THAT HE'S ALIVE, IS HE
13 MADE A MISTAKE IN THIS CASE. HE'S ACCUSING THE WRONG
14 PERSON HERE. IT WAS NOT LANEY PREWITT THAT SHOT HIM. IT
15 WAS SOMEBODY ELSE. WE DON'T KNOW WHO.

16 MR. WALKER CAME IN --- BUSTER WALKER. WE CERTAINLY
17 HAVE NOTHING TO DISAGREE THERE. HE CAME ON THE SCENE,
18 AND HE PROCEEDED TO GET HELP, AND HE SEEMED TO BE THE ONE
19 THAT KNEW WHAT TO DO AND KNEW THE SERIOUSNESS OF THE
20 SITUATION, AND PERHAPS, SAVED JOE'S LIFE.

21 THEN WE HAVE KIMMIE SHIPES COMING IN. KIMMIE SHIPES
22 SAID THAT SHE DID NOT KNOW PREWITT BEFORE THIS, AND SHE
23 HASN'T SEEN PREWITT SINCE SHE SAW HIM OUTSIDE HER BACK
24 DOOR THAT DAY. SHE HASN'T SEEN HIM AT ALL EXCEPT OUTSIDE
25 HER BACK DOOR AND IN THE COURTROOM TODAY --- TWO TIMES.

1 SHE SAID THAT SHE DID TELL THEM THAT SHE THOUGHT HE HAD
2 REDDISH BLONDE HAIR BUT THAT IT JUST MAY HAVE LOOKED THAT
3 WAY. SHE TOLD US WHAT SHE THOUGHT HE WAS WEARING, BUT
4 SHE SAID SHE THOUGHT HE WAS TALL, AND SHE'S SHORT, BUT
5 SHE SAID SHE THOUGHT HE WAS TALL. SHE HELPED WITH A
6 COMPOSITE DRAWING. SHE SAID THAT SHE HAD SPOKEN TO
7 LANEY'S MOTHER. SHE SAID THAT SHE HAD REPORTED THAT TO
8 THE POLICE. SHE SAID SHE DIDN'T KNOW WHETHER HE HAD ON
9 GLOVES, BUT HE DID HAVE ON A HAT, AND HE WAS KIND OF
10 TALL.

11 THEN DANNY GILLIAM CAME UP. DANNY, OF COURSE,
12 TURNED IN THE PICTURES TO THE BACK DOOR WHERE IT HAD BEEN
13 OPENED. HE TOLD YOU ABOUT THE PHOTOGRAPH LINEUP, AND HE
14 SAID HE TOOK THESE SHOTS OUT TO THE COMPLEX, I THINK, TO
15 SHOW HER THE LINEUP. MAYBE YOU REMEMBER WHAT I'M TALKING
16 ABOUT. IT'S THE PHOTOGRAPH LINEUP. HE SAID THEY NEVER
17 WERE ABLE TO FIND THE CAR. THEY WERE NEVER ABLE TO FIND
18 THE SECOND SUSPECT.

19 AND THEN THEY BROUGHT BEN BLANTON IN. HE WAS THE
20 EMT. WE CERTAINLY AGREE WITH EVERYTHING HE SAID, AND WE
21 THINK THAT HE PROBABLY SAVED JOE'S LIFE. I THINK IT'S A
22 WONDERFUL THING TO HAVE HIM HERE IN TOWN.

23 WHEN YOU DEFEND PEOPLE, YOU BRING IN ALL YOU CAN
24 FIND AND ALL YOU HAVE, AND YOU PUT THEM ON THE STAND, AND
25 THEY TELL THEIR SIDE OF THE STORY UNDER OATH.

CLOSING STATEMENT
BY MR. WICKER

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1 SO, WE BROUGHT ALL WE HAD. WE BROUGHT LANEY IN, AND
2 LANEY LOOKED YOU IN THE EYE AND SAID HE DIDN'T DO IT.
3 LANEY TOLD YOU THAT HE HAD NEVER SEEN JOE UNTIL TODAY IN
4 COURT. HE TOLD YOU HE HAD NEVER SEEN MS. SHIPES UNTIL
5 TODAY IN COURT. HE SAYS HE HAS NEVER SEEN ANY OF THESE
6 PEOPLE EXCEPT FOR DANNY GILLIAM, JERRY WRIGHT AND HIS
7 MOTHER AND FATHER, OF COURSE, AND HE DID NOT KNOW WHO JOE
8 WAS UNTIL TODAY, AND HE WAS SITTING OVER THERE TRYING TO
9 FIGURE OUT WHO JOE WAS. IN LOOKING AT EVERYBODY HE SAW,
10 HE THOUGHT MAYBE IT MIGHT HAVE BEEN SOMEONE WHO'S ON THE
11 JURY TODAY, BECAUSE HE DIDN'T KNOW WHAT HE LOOKED LIKE.
12 HE DIDN'T KNOW WHAT MS. SHIPES LOOKED LIKE EITHER, BUT HE
13 SAYS HE DID KNOW THIS ON THAT DAY, AND HE RECONSTRUCTED
14 IT, BECAUSE THE ALLEGED INCIDENT OCCURRED ON 22, JULY,
15 AND HE WAS ARRESTED ON 10, AUGUST, AND PUT IN JAIL, AND
16 HE THOUGHT BACK --- WHAT HAPPENED TO ME, AND HE COULD
17 REMEMBER WHAT HE DID THE WEEKEND BEFORE THAT BECAUSE HE
18 WENT TO WAL-MART TO GET A DRUG TEST TO SEE IF HE COULD
19 GET A JOB, AND HE KNEW THE WEEKEND BEFORE THAT WAS THE
20 WEEKEND ALL THIS WAS SUPPOSED TO HAPPEN.

21 HE TOLD YOU THAT HE GAVE PERMISSION FOR THEM TO
22 SEARCH HIS HOUSE, AND THEY SEARCHED HIS HOUSE AND NOTHING
23 WAS FOUND. HE SAID THEY SEARCHED UNDER THE HOUSE AND IN
24 THE ATTIC, THE WHOLE HOUSE AND THE YARD, AND NOTHING WAS
25 FOUND.

1 SANDRA PREWITT, OF COURSE, LOVES HER SON --- LOVES
2 ALL HER CHILDREN, SO DOES GARY PREWITT. THEY CAME IN AND
3 SAID, WELL, WE KNOW ON THAT MORNING, SOMEWHERE AROUND
4 10:30 OR SO, WE WERE AT THEIR HOUSE ON THE WAY TO PICK
5 HER CHECK UP WHERE SHE WORKED, AND SHE KNOWS THAT HER SON
6 WAS THERE, HIS WIFE WAS THERE, THE TWO CHILDREN WERE
7 THERE, HER GRANDCHILDREN, AND THEY GAVE HER A PIECE OF
8 CAKE, AND WHEN THEY LEFT, THEY DIDN'T NOTICE ANYTHING
9 UNUSUAL. THAT WAS SANDRA PREWITT. THAT WAS GARY PREWITT
10 --- HIS MOTHER AND HIS FATHER.

11 IT'S NOT THAT EASY SOMETIMES TO REMEMBER WHAT YOU DO
12 EVERY DAY. I AM PROBABLY ONE OF THE VERY FEW PEOPLE CAN
13 YOU TELL YOU WHAT I DID 30 YEARS AGO, BECAUSE I'VE
14 WRITTEN A DIARY EVERY DAY SINCE I WAS A VERY YOUNG
15 TEENAGER. JUDGE BLEASE TALKED ME INTO WRITING A DIARY
16 EVERY DAY, AND I HAVE USED IT MANY TIMES TO TESTIFY ALL
17 OVER THE WORLD, AND I'VE HAD JUDGES SAY, HOW CAN YOU SAY
18 WHAT YOU DID THREE YEARS AGO ON THAT DATE, AND I HAND UP
19 THE DIARY AND SAY, I HAVE EVERY DAY OF MY LIFE WRITTEN
20 DOWN, AND I CAN TELL YOU WHAT I DID, BECAUSE I CAN
21 REFRESH MY MEMORY.

22 MY CLIENT DOESN'T KEEP A DIARY, BUT HE REFRESHED HIS
23 MEMORY BY GOING THREE WEEKS BACK AND REMEMBERING WHAT HE
24 DID ON THAT DAY, AND HIS MOTHER AND FATHER REFRESHED
25 THEIR MEMORY BY GOING BACK, AND SO, THAT WAS ALL THEY

CLOSING STATEMENT
BY MR. WICKER

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1 HAD. SO, WHEN YOU ARE ACCUSED AND WHEN YOU ARE ARRESTED
2 AND WHEN YOU'RE TAKEN IN, AND THAT'S ALL YOU HAVE, YOU
3 GET ON THE STAND AND SAY, THAT'S ALL I HAVE.

4 IF I WERE ON THE JURY, AND I'VE NEVER SERVED ON A
5 JURY, I WOULD BE INTERESTED IN THIS CASE BY THE NUMBER OF
6 THINGS THAT ARE NOT HERE. IF YOU'LL JUST LET ME TELL YOU
7 IN JUST A VERY FEW MINUTES.

8 WE HAVE NO FINGER PRINTS IN THIS CASE AT ALL. HE
9 TESTIFIED HE WAS FINGER PRINTED, PALM PRINTED, YOU NAME
10 IT. NO FINGER PRINTS AT ALL IN THIS CASE. THERE'S NO
11 HANDGUN IN THIS CASE THAT WAS USED TO SHOOT JOE. THERE
12 IS NO GREEN CAR IN THIS CASE THAT WE CAN FIND. THERE IS
13 NO SECOND SUSPECT IN THIS CASE THAT'S BEEN ARRESTED. WE
14 DON'T KNOW WHO THE MYSTERIOUS GUY WAS WEARING THE GREEN
15 CAP. AND WHEN ONE OF OUR WITNESSES SAID SHE SAW THE CAR
16 GO BY WITH TWO WHITE BOYS IN IT, SHE DIDN'T MENTION THAT
17 THEY HAD ON A GREEN CAP. SHE COULD TELL THEY WERE WHITE
18 BOYS, BUT THEN THE GREEN CAP COMES UP.

19 WE HAVE --- WE DO NOT HAVE A SECOND SUSPECT. I
20 THINK IT'S ALSO INTERESTING --- WE NEVER HAVE AN
21 ADMISSION IN THIS CASE. FROM DAY ONE, LANEY HAS SAID, I
22 DON'T KNOW THE PEOPLE. I HAVE NEVER BEEN IN THAT HOUSE.
23 I DON'T EVEN KNOW WHERE THAT HOUSE IS. I DIDN'T EVEN
24 KNOW THAT ROAD WENT DOWN THAT FAR, BUT I WASN'T THERE,
25 AND HE HAS CONSISTENTLY TO THIS DAY SAID, I AM INNOCENT.

CLOSING STATEMENT
BY MR. WICKER

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1 THERE WAS NO REAL LINE UP. AND THEY SAID HE HAD A
2 HAT ON THAT DAY. THEY SAID HE HAD HAIR ON HIS FACE THAT
3 DAY. YET, TODAY, THEY SAY, I'VE NEVER SEEN HIM BUT THAT
4 ONE TIME. THAT'S MS. SHIPES, AND THAT'S JOE. I'VE SEEN
5 HIM ONE TIME IN MY LIFE. MS. SHIPES SAID HE WAS OUTSIDE
6 HER BACK DOOR, AND I SAW HIM, AND JOE SAYS, HE SHOT ME,
7 AND I SAW HIM. NEITHER ONE OF THEM SAID THAT THEY KNEW
8 HIM BEFORE THAT, AND NEITHER ONE OF THEM HAD SEEN HIM,
9 THEY SAY, FROM THEN UNTIL TODAY IN COURT. VERY
10 INTERESTING THAT THEY ARE SO SURE THAT THAT'S THE RIGHT
11 MAN, EVEN THOUGH AT THE TIME THEY'RE SAYING THE GUY HAD
12 ON A HAT --- HAD FACIAL HAIR.

13 SO, THE FACT THAT THEY SHOWED THEM SOME PICTURES AND
14 SAID, LOOK AT THESE AND SEE IF YOU CAN PICK THEM OUT, AND
15 I BELIEVE THEY SAID JOE LOOKED AT THEM A FEW MINUTES ---
16 THAT THEY SAID MS. SHIPES LOOKED AT THEM ABOUT FIVE
17 MINUTES, AND THEN SHE PICKS OUT NUMBER ONE AND SAID,
18 THERE HE IS UP THERE.

19 A LOT HINGES ON IDENTITY. I DON'T THINK VERY MANY
20 PEOPLE LOOK LIKE ME, BUT THE MOST AMAZING THING IS YOU
21 CAN GO TO GERMANY, AND THERE'S A LOT OF PEOPLE LOOK LIKE
22 ME DOWN IN BAVARIA, BECAUSE I LOOK VERY GERMAN. I DIDN'T
23 KNOW HOW GERMAN I LOOKED UNTIL I WENT OVER THERE AND THEY
24 STARTED TALKING GERMAN TO ME WHEN I WALKED DOWN INTO
25 MUNICH.

CLOSING STATEMENT
BY MR. WICKER

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1 I DON'T SEE THAT MANY PEOPLE THAT LOOK LIKE ME
2 AROUND HERE, BUT I THINK THERE MIGHT BE A LOT MORE PEOPLE
3 THAT LOOK LIKE GARY PREWITT AROUND HERE. HE IS NOT THE
4 TYPE OF PERSON THAT STANDS OUT IN THE CROWD. SOME PEOPLE
5 STAND OUT IN A CROWD AND SOME PEOPLE DON'T. I THINK I
6 STAND OUT IN A CROWD BASED ON THE NUMBERS OF PEOPLE THAT
7 TELL ME THEY HAVE SEEN ME SOMEWHERE THAT I'VE BEEN, AND
8 I DON'T REMEMBER SEEING THEM, BUT ALL PEOPLE DON'T STAND
9 OUT IN A CROWD. MAYBE GARY PREWITT DIDN'T, BUT IF YOU
10 WILL JUST THINK AND DISCUSS AMONG YOURSELVES WHAT IF ---
11 WHAT IF SOMEONE GOT ACCUSED LIKE THIS AND THEY CAME IN
12 AND TOLD YOU ALL THEY HAD, TOLD YOU VERY FRANKLY THEY'VE
13 BEEN IN JAIL? THEY COULDN'T GET OUT AND INVESTIGATE THE
14 CASE THEMSELVES --- TOLD YOU VERY FRANKLY THAT, IT JUST
15 WASN'T ME.

16 WHAT YOU HAVE HERE IS THAT POSSIBILITY OF A MISTAKEN
17 IDENTITY WHERE FOR SOME REASON TWO PEOPLE SAID I NEVER
18 SAW HIM BEFORE THAT DAY. I NEVER SAW HIM AGAIN UNTIL
19 TODAY, BUT THERE HE IS OVER THERE. THAT'S WHAT WE HAVE
20 HERE. IT'S A QUESTION OF WHETHER YOU BELIEVE THAT PROVES
21 THIS CASE BEYOND A REASONABLE DOUBT OR NOT.

22 AND I WOULDN'T BE SURPRISED IF EVERY ONE OF YOU
23 DON'T HAVE A SLIGHT DIFFERENT OPINION OF WHAT THE
24 EVIDENCE SHOWS YOU, BUT I CERTAINLY JUST WANT ALL OF YOU
25 TO THINK ABOUT IT AND DECIDE IN YOUR HEART WHETHER YOU

CLOSING STATEMENT
BY MS. STROM

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1 THINK THE STATE'S PROVED THIS CASE BEYOND A REASONABLE
2 DOUBT. AND THE POSITION OF MY CLIENT IS THAT THEY DIDN'T
3 PROVE IT BEYOND A REASONABLE DOUBT, BECAUSE HE DIDN'T DO
4 IT. THAT'S HIS POSITION. THAT'S WHAT HE TOLD YOU, AND
5 THAT'S WHAT HE HOPES THAT YOU'LL BELIEVE. THANK YOU.

6 THE COURT: MS. STROM?

7 MS. STROM: MAY IT PLEASE THE COURT, YOUR HONOR.

8 CLOSING STATEMENT

9 BY MS. STROM

10 LADIES AND GENTLEMEN, GARY LANE PREWITT MAY NOT
11 STAND OUT IN A CROWD. YOU MIGHT NOT RECOGNIZE HIS FACE
12 IF YOU SEE HIM IN A CROWD. YOU PASS HIS FACE IN THE
13 MALL, AND YOU MIGHT NOT RECOGNIZE HIM, BUT BY GOD, LADIES
14 AND GENTLEMEN OF THE JURY, THAT'S NOT WHAT HAPPENED.

15 WHAT HAPPENED IS, HE WENT INTO A MAN'S HOME WHERE HE
16 HAD NO BUSINESS. JOE DIXON, A NEIGHBOR, GOES OVER THERE
17 TO CHECK IT OUT. HE SEES HIM. THE MAN SHOTS HIM ONCE IN
18 THE STOMACH. HE FALLS DOWN. HE GETS SHOT TWICE IN THE
19 FACE. YOU DON'T THINK JOE DIXON IS GOING TO BE PAYING
20 ATTENTION TO WHAT THAT MAN LOOKS LIKE? HE'S NOT SEEING
21 HIM IN A CROWD. HE'S NOT SEEING HIM AT THE MALL. HE'S
22 SEEING HIM POINT THIS GUN AT HIS FACE AND SHOOTING HIM.
23 IS HIS ATTENTION MORE KEEN? IS HE A LITTLE BIT MORE
24 CONCERNED ABOUT WHAT THIS MAN MIGHT LOOK LIKE --- TRYING
25 TO TELL THE POLICE WHO SHOT ME? DOES THAT NOT MAKE MORE

1 SENSE, LADIES AND GENTLEMEN?

2 YOU MIGHT SAY, WELL, IS THAT ALL THE STATE HAS IS
3 THE WORD OF JOE DIXON. LADIES AND GENTLEMEN, I SUBMIT TO
4 YOU, FIRST OF ALL, THAT'S ENOUGH. YOU SAW MR. DIXON
5 TESTIFYING. YES, HE HAS A SPEECH IMPEDIMENT. DOES THAT
6 MAKE YOU THINK HE'S UNTRUTHFUL? GOT UP THERE AND TOLD
7 YOU WHAT HE SAW. HE SAW A MAN. HE SAW A GREEN CAR
8 COMING UP TO TINSLEY'S HOUSE --- RANDY TINSLEY'S HOUSE.
9 SAW TWO WHITE MALES. HE GOES OVER THERE. WHO ELSE
10 CORROBORATES --- SUPPORTS THAT? MS. MCGUIRT --- CHRISTY
11 MCGUIRT. SHE SEES A GREEN CAR PULL UP INTO THE YARD TO
12 THE BACK OF THE HOUSE OF RANDY TINSLEY'S, AND JOE GOES
13 OVER THERE TO CHECK IT OUT.

14 BUSTER WALKER, ABOUT 10 O'CLOCK, SEES A GREEN CAR.
15 AT THE TIME, HE DOESN'T THINK ANYTHING ABOUT IT. JUST
16 SEES A GREEN CAR GOING BY, BUT THEN AFTER THIS INCIDENT
17 HAPPENED AND HE HEARS THAT THERE WAS A GREEN CAR INVOLVED
18 HE REMEMBERS. HE REMEMBERS --- I REMEMBER SEEING A GREEN
19 CAR DRIVING SLOWLY DOWN MY ROAD. WHERE DO I LIVE? HE
20 LIVES UP THE ROAD. I THINK HE SAID BETWEEN HALF A MILE
21 AND A MILE FROM RANDY TINSLEY'S HOUSE. SEES THEM DRIVING
22 SLOWLY DOWN THE ROAD.

23 WHO ELSE SUPPORTS IT? KIMMIE SHIPES. KIMMIE SHIPES
24 IS NOT RELATED TO ANY OF THESE PARTIES, DOESN'T KNOW
25 THEM. SHE JUST LIVES UP THE ROAD FROM THEM. SHE SAID,

CLOSING STATEMENT
BY MS. STROM

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1 I WAS IN MY BED, ABOUT 10 O'CLOCK, LYING THERE. I WAS
2 AWAKE. I HEARD SOMEBODY FIDDLING AT MY BACK DOOR.
3 FIDDLING --- MEDDLING AT MY BACK PATIO DOOR. THE MAN
4 DIDN'T GO TO THE FRONT DOOR TO ASK IF EDDIE WERE HOME,
5 WHICH IS THE DOOR HE PULLED UP IN FRONT OF WHEN THEY
6 PULLED UP IN THE CAR. HE DOESN'T GO TO THE SIDE DOOR.
7 HE GOES ALL THE WAY AROUND TO THE BACK OF THE TRAILER UP
8 ON THE PATIO AND STARTS FIDDLING IN HER BACK DOOR, AND
9 HERE IS A WOMAN ALONE AT HOME. SHE GOES TO THE DOOR,
10 BECAUSE SHE HEARS SOMETHING STRANGE GOING ON AT THE BACK
11 DOOR. SHE THINKS IT MIGHT BE JUST HER NEPHEW. WHEN SHE
12 GETS THERE, WHAT DOES SHE FIND? SHE FINDS GARY --- LANEY
13 PREWITT AT HER BACK DOOR. ARE YOU SURE IT'S MR. PREWITT?
14 YES, I'M SURE. I WAS LOOKING AT HIM. SHE SAID HE HAD
15 SOME FACIAL HAIR ON HIM. HE HAD A CAP ON HIM. WHO ELSE
16 SAID HE HAD A CAP ON? JOE DIXON SAID HE HAD A CAP ON.

17 WHAT DOES HE DO AT KIMMIE SHIPES HOUSE AT THE BACK
18 PATIO DOOR? HE SAYS, IS EDDIE HOME. THE FIRST THING HE
19 DOES IS HE JUMPS BACK AND STICKS HIS HANDS IN HIS
20 POCKETS. WHY IS HE STICKING HIS HANDS IN HIS POCKETS?
21 HE'S JUST ASKING IF SOMEBODY'S HOME. WHY ARE YOU SO
22 NERVOUS? SHE SAID, YOU'VE GOT THE WRONG HOUSE. AND WHAT
23 DOES HE DO? JUST LOOK AT WHAT HE DOESN'T DO. HE DOESN'T
24 SAY, I'M SORRY, MA'AM, AND WALKS BACK AROUND. SHE SAYS
25 HE RUNS AROUND HER HOUSE AND JUMPS IN THE CAR AND THEY

CLOSING STATEMENT
BY MS. STROM

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1 LEAVE. AND WHAT COLOR CAR? SHE SAID SHE WASN'T SURE IF
2 IT WERE GREENISH OR BLUE. I THINK HER TERM WAS GREENISH
3 BLUE, BUT IT HAD SPOTS ON IT. IT WAS RAGGED. TWO MEN IN
4 THAT CAR. THEY LEFT HEADED UP THE ROAD.

5 LADIES AND GENTLEMEN, DOESN'T THAT SUPPORT WHAT JOE
6 DIXON TOLD YOU? WHAT BUSTER WALKER TOLD YOU? DOESN'T
7 THAT SUPPORT THAT? THIS THING ABOUT NO FINGER PRINTS ---
8 NO FINGER PRINTS. WHAT DO YOU HAVE ON THAT? WELL, FIRST
9 OF ALL, YOU HAVE KIMMIE SHIPES SAYING HE STUCK HIS HANDS
10 DOWN IN HIS POCKET. WHAT'S HE TRYING TO HIDE? IS HE
11 WEARING GLOVES? DOES HE NOT WANT THAT WOMAN TO SEE HIM
12 AT HER BACK DOOR WITH GLOVES ON, AND THAT'S WHY HE STICKS
13 THEM IN HIS POCKET?

14 AND WHO ELSE SAYS HE HAS GLOVES ON? JOE DIXON SAYS
15 HE HAS GLOVES ON? AND HOW DOES HE KNOW IT? BECAUSE THE
16 MAN IS HOLDING THE GUN SHOOTING HIM. HE'S LOOKING AT
17 THAT GUN. HE'S LOOKING AT THAT HAND. HE'S LOOKING AT
18 THE FACE OF THAT MAN AND HE SEES IT.

19 GARY PREWITT ADMITS TO YOU HE'S OUT OF WORK. THAT'S
20 NOTHING TO BE ASHAMED OF. NOTHING IN THIS WORLD TO BE
21 ASHAMED OF. BUT WHAT IS SHAMEFUL IS WHEN YOU VICTIMIZE
22 SOMEONE ELSE BECAUSE YOU'RE DOWN ON YOUR LUCK. THAT IS
23 SHAMEFUL.

24 HE AND HIS WIFE WERE OUT OF WORK STATING HE HAD
25 BILLS DUE. HE WAS SO DESTITUTE FOR MONEY THAT HE PAWNED

1 HIS OWN VCR AND HIS OWN SHOTGUN.

2 LADIES AND GENTLEMEN, I ASK YOU WHAT WERE THESE GUNS
3 DOING THERE? WHERE WERE THEY GOING? I SUBMIT TO YOU IF
4 THEY HAD GOTTEN OUT OF THAT HOUSE THEY WOULD HAVE BEEN
5 GOING TO THE PAWN SHOP, TOO.

6 LADIES AND GENTLEMEN, THERE IS NO QUESTION THIS
7 HOUSE WAS BROKEN INTO. WE ADMITTED THAT. YOU HAVE THE
8 PHOTOGRAPH SHOWING THE PRYING OPEN OF THE DOOR. WHO DID
9 IT? NO QUESTION JOE DIXON WAS SHOT THREE TIMES, TWICE
10 AFTER HE HAD FALLEN TO THE FLOOR. QUESTION IS WHO DID
11 IT.

12 WHO DID IT --- I SUBMIT TO YOU GARY LANE PREWITT.
13 THAT'S BASED UPON THE TESTIMONY THAT I WENT OVER WITH YOU
14 EARLIER. HAVE HIM IN THE AREA AROUND 10 O'CLOCK. HAVE
15 BUSTER WALKER COMMENT --- ONE COMMENT ON BUSTER WALKER'S
16 TESTIMONY. HE WAS THE ONLY PERSON WHO LOOKED AT HIS
17 WATCH. RECALL THE TESTIMONY. THE TIME, I SUBMIT TO YOU,
18 WOULD BE MORE ACCURATE FROM THE PERSON WHO LOOKED AT HIS
19 WATCH AFTER HE HAD RUN ACROSS THE STREET, SAW JOE DIXON,
20 RUNS BACK OVER TO FIND A PHONE BECAUSE HE COULDN'T FIND
21 A PHONE IN RANDY TINSLEY'S HOUSE. I BELIEVE HE SAID IT
22 WAS FIVE MINUTES UNTIL ELEVEN.

23 WHAT HAPPENED BETWEEN TEN O'CLOCK AND FIVE MINUTES
24 UNTIL ELEVEN? WHAT HAPPENED WAS GARY LANE PREWITT LEFT
25 KIMMIE SHIPES' HOME. HE LEFT HER BACK DOOR. AND IS IT

CLOSING STATEMENT
BY MS. STROM

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1 A COINCIDENT, LADIES AND GENTLEMEN, THAT HE IS AT KIMMIE
2 SHIPES' BACK DOOR, AND THE DOOR THAT HE GOES INTO HERE IS
3 THE BACK DOOR? HE GOES INTO THE BACK DOOR. HE'S
4 STEALING THOSE GUNS. HE'S GOTTEN THE COINS. HE'S GOTTEN
5 THE RING, AND HE'S HEADED OUT. HE'S GOT IT PACKED UP IN
6 THE KITCHEN READY TO LEAVE, AND LO AND BEHOLD, A GOOD
7 CITIZEN, A GOOD NEIGHBOR, GOES OVER THERE AND SURPRISES
8 HIM. AND WHAT DOES HE GET FOR IT? HE GETS SHOT.

9 HIS HONOR WILL TELL YOU THAT ASSAULT AND BATTERY
10 WITH INTENT TO KILL --- SOMEONE INJURES --- A VIOLENT
11 INJURY UPON ANOTHER PERSON WITH MALICE AFORETHOUGHT.
12 WHAT IS MALICE? MALICE IS EVILNESS. IT'S A HEART
13 DEPRAVED OF ANY SOCIAL DUTY OVER ONE ANOTHER --- OVER
14 SOCIETY. TO HAVE NO REGARD FOR THE RIGHTS OF OTHERS.

15 AND I SUBMIT TO YOU HE WAS DOWN ON HIS LUCK. HE WAS
16 OUT OF A JOB AND HAD BILLS COMING UP, AND HE HAD KIDS TO
17 FEED. BUT HE DISREGARDED THE RIGHTS OF OTHERS BY GOING
18 IN THAT MAN'S HOME AND ATTEMPTING TO TAKE THAT MAN'S
19 LIFE.

20 THAT'S NOT MALICE? THAT'S NOT MALICIOUS WHEN YOU
21 SHOOT A MAN AND HE FALLS DOWN, AND YOU WALK OVER TO HIM
22 AND YOU PUT THE GUN IN HIS FACE AND YOU PULL THE TRIGGER
23 TWO MORE TIMES? THAT'S NOT MALICE?

24 LADIES AND GENTLEMEN, JOE DIXON, YOU SAW HIM UP
25 THERE. SEEMS TO BE A FINE FELLOW. LET ME ASK YOU

CLOSING STATEMENT
BY MS. STROM

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1 SOMETHING? HAS HE EVER HURT ANYBODY? YOU THINK HE WOULD
2 HAVE HURT ANYBODY? HOW MUCH MORE MALICIOUS CAN YOU GET
3 WHEN YOU SHOOT SOMEONE, TRY TO KILL SOMEONE WHO IS
4 SHOWING NO HARM TO YOU?

5 MR. PREWITT STATED ON THE WITNESS STAND THAT THE
6 POLICE CAME DOWN THERE TO HIM --- DOWN TO HIS HOUSE LIKE
7 HE WAS A MURDERER. I SAY, THANK GOD, AND IT IS ONLY BY
8 THE GRACE OF GOD AND THE WORK OF THE MEDICAL PERSONNEL
9 THAT HE DID NOT DIE.

10 SO, I'M PROUD OF THIS LAW ENFORCEMENT FOR GOING
11 AFTER HIM LIKE HE'S A MURDERER, BECAUSE THAT'S HOW CLOSE
12 IT CAME.

13 LADIES AND GENTLEMEN, AS TO WHOSE TESTIMONY YOU
14 WOULD BELIEVE, THAT'S UP TO YOU. I WANT TO REMIND YOU OF
15 THREE THINGS. THE DEFENDANT'S MOTHER SAID SHE BELIEVED
16 HIM MOST OF THE TIME. THE DEFENDANT'S FATHER SAID HE
17 WOULD BELIEVE HIM IN A CASE LIKE THIS, BUT RECALL ---
18 THIS MAY SEEM A SLIGHT THING. HE HESITATED, AND I MADE
19 A NOTE. HE HESITATED FOR QUITE SOME TIME BEFORE HE
20 ANSWERED THAT QUESTION.

21 WHAT DID GARY LANE PREWITT SAY? IT WAS THE LAST
22 QUESTION I ASKED HIM. IS WHAT YOU'RE TELLING US HERE
23 TODAY, IS THAT WHAT YOU TOLD JERRY WRIGHT THE DAY YOU
24 WERE ARRESTED --- THE DAY YOU WERE QUESTIONED? AND HE
25 SAID, NO.

JURY CHARGE
BY THE COURT

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1 NOW, LADIES AND GENTLEMEN, I SUBMIT THERE'S ONLY ONE
2 WAY TO LOOK AT SOMEBODY WHO TELLS ONE THING ONE DAY AND
3 ANOTHER THING ANOTHER DAY. THEY'RE NOT TRUTHFUL, AND HE
4 KNEW ON THE DAY HE WAS ARRESTED HE WAS BEING ARRESTED FOR
5 ASSAULT AND BATTERY WITH INTENT TO KILL. IT WAS A
6 SERIOUS SITUATION TO BE IN. SERIOUS SITUATION HERE
7 TODAY. I SUBMIT TO YOU HE HAS NOT BEEN TRUTHFUL.

8 ONE FINAL THING AND I'M GOING TO SIT DOWN. THIS
9 LINE UP. I WANT YOU TO LOOK AT THIS LINE UP WHEN YOU
10 HAVE IT BACK THERE. I WANT YOU TO LOOK AT HOW SIMILAR
11 THESE PEOPLE LOOK. HOW SIMILAR DO THEY LOOK? WHAT DO
12 BOTH WITNESSES WHO WERE SHOWN THIS LINE UP TELL YOU?
13 NUMBER ONE. AND WHO DOES MR. PREWITT TELL US NUMBER ONE
14 IS? MR. PREWITT. THIS MAY HAVE BEEN THE ONLY TIME HE'S
15 SEEN THIS PERSON SINCE THE DAY HE WAS SHOT. HOW MANY
16 TIMES DO YOU HAVE TO SEE A MAN WHO IS GOING TO KILL YOU?

17 JURY CHARGE

18 BY THE COURT

19 MADAM FORELADY AND LADIES AND GENTLEMEN, IT COMES
20 NOW MY RESPONSIBILITY TO TALK TO YOU ABOUT THE LAW THAT
21 APPLIES IN THE CASE. AND THERE ARE A NUMBER OF POINTS
22 THAT I MUST MAKE. THERE ARE FOUR CHARGES I HAVE TO TALK
23 TO YOU ABOUT. SEVERAL OF THE POINTS. BEAR WITH ME. I
24 HAVE VARIOUS NOTES THAT I MAKE REFERENCE TO TO ENSURE
25 THAT I GIVE YOU THE COMPLETE LAW AND I GIVE IT TO YOU AS

JURY CHARGE
BY THE COURT

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1 CORRECTLY AS I'M ABLE TO.

2 BY THE INDICTMENT IN THIS CASE, WHICH YOU OF COURSE
3 HAVE WHEN YOU RETIRE TO DELIBERATE, THIS DEFENDANT GARY
4 LANE PREWITT IS CHARGED WITH THE CRIMES OF BURGLARY IN
5 THE FIRST DEGREE, LARCENY, ASSAULT AND BATTERY WITH
6 INTENT TO KILL AND POSSESSION OF A FIREARM DURING THE
7 COMMISSION OF A VIOLENT CRIME.

8 I REMIND YOU THAT THE INDICTMENT IS NOT EVIDENCE.
9 IT IS USED TO INITIATE CRIMINAL PROCEEDINGS. I REMIND
10 YOU THAT THE FACT THAT HE HAS BEEN INDICTED IS NOT
11 EVIDENCE TO HIS GUILT. THE CONTENTS OF THE INDICTMENT
12 ARE NOT EVIDENCE AGAINST HIM. IT IS AN ACCUSATION.
13 PLEASE REMEMBER THAT.

14 TO THE CHARGE IN THE INDICTMENT, THE DEFENDANT HAS
15 ENTERED A PLEA OF NOT GUILTY. IN OUR CONSTITUTION, UNDER
16 OUR LAW, WHEN ANY DEFENDANT ENTERS A PLEA OF NOT GUILTY
17 THE STATE THEN MUST ASSUME THE BURDEN OF PROVING HIS
18 GUILT. NO DEFENDANT IN ANY CRIMINAL PROSECUTION IS EVER
19 REQUIRED TO PROVE HIS OR HER OWN INNOCENCE. EVERY
20 DEFENDANT UNDER OUR CONSTITUTION IS PRESUMED TO BE
21 INNOCENT. AS I'VE TOLD YOU, AND I REMIND YOU, YOU AND I
22 MUST LOOK UPON THE DEFENDANT AS INNOCENT. WE MUST
23 CONSIDER HIM INNOCENT AND CONTINUE TO DO SO UNTIL AND
24 UNLESS YOU'RE SATISFIED THAT THE STATE HAS PROVED BEYOND
25 ANY REASONABLE DOUBT THAT HE IS GUILTY.

1 IT, OF COURSE, IS NOT REQUIRED THAT THE STATE PROVE
2 GUILT BEYOND ALL POSSIBLE DOUBT. THE TEST IS ONE OF
3 REASONABLE DOUBT, AND A REASONABLE DOUBT DOUBT IS THE
4 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
5 HESITATE TO ACT. IF YOU HAVE A REASONABLE DOUBT OF THE
6 GUILT OF THIS DEFENDANT, IT IS YOUR DUTY TO RESOLVE THAT
7 DOUBT IN HIS FAVOR AND ACQUIT HIM. HOWEVER, IF YOU HAVE
8 NO REASONABLE DOUBT OF HIS GUILT, YOU MAY FIND HIM
9 GUILTY, BUT NO DEFENDANT SHOULD EVER BE CONVICTED ON MERE
10 SUSPICION, MERE CONJECTURE.

11 NOW, FOLKS, I TOLD YOU SINCE MONDAY THAT IN THESE
12 CASES YOU ARE THE SOLE JUDGES OF THE FACTS. AS SUCH, YOU
13 MUST OF NECESSITY PASS UPON THE BELIEVABILITY OF THE
14 WITNESSES WHO HAVE COME HERE TO TESTIFY. IN DECIDING
15 BELIEVABILITY, YOU MAY TAKE INTO CONSIDERATION THE
16 INTEREST ONE MIGHT HAVE IN THE OUTCOME OF THIS
17 PROCEEDING. YOU MAY CONSIDER THE BIAS OF THE WITNESS,
18 THE PREJUDICE OF THE WITNESS. YOU MAY CONSIDER THE
19 DEMEANOR, THE MANNER OF THE WITNESS WHILE HERE TESTIFYING
20 BEFORE YOU.

21 I REMIND YOU AND URGE YOU TO USE YOUR COMMON SENSE,
22 USE YOUR INTELLIGENCE, USE YOUR LIFE EXPERIENCE AS YOU
23 DECIDE BELIEVABILITY AND AS YOU FIND THE TRUTH.

24 IN ADDITION, LADIES AND GENTLEMEN, OUR LAW ALLOWS TO
25 YOU, AS JUDGES OF THE FACTS, CERTAIN VERY BROAD

JURY CHARGE
BY THE COURT

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1 DISCRETIONS TO ASSIST YOU IN DECIDING BELIEVABILITY AND
2 IN FINDING THE TRUTH. UNDER SOUTH CAROLINA LAW, YOU
3 FOLKS HAVE THE RIGHT TO BELIEVE ONE WITNESS, AND YOU CAN
4 DISBELIEVE ANOTHER. YOU MAY BELIEVE A PART OF WHAT A
5 WITNESS TELLS YOU, AND YOU CAN DISBELIEVE THE REST. YOU
6 MAY BELIEVE ONE WITNESS AS OPPOSED TO MANY WITNESSES, OR
7 YOU MAY BELIEVE MANY WITNESSES AS OPPOSED TO ONE WITNESS.
8 THE ONLY LIMITATION OUR LAW PLACES ON YOUR EXERCISE OF
9 THOSE DISCRETIONS IS THAT OUR LAW REQUIRES THAT YOU
10 EXERCISE GOOD SOUND JUDGMENT IN DECIDING BELIEVABILITY
11 AND IN FINDING THE TRUTH.

12 AS JUDGES OF THE FACTS, YOU ARE, OF COURSE, ENTITLED
13 TO CONSIDER ANYTHING IN THIS CASE WHICH IN YOUR GOOD
14 JUDGMENT TENDS TO SHOW WHETHER A WITNESS IS WORTHY OF
15 BELIEF. YOU MUST DETERMINE THE BELIEVABILITY OF THE
16 WITNESSES, AND YOU MUST FIND THE TRUTH IN ALL OF THE
17 TESTIMONY AND THE EVIDENCE YOU HAVE SEEN AND HEARD, AND
18 TO THAT TRUTH, YOU MUST APPLY THE LAW THAT I WILL DISCUSS
19 WITH YOU.

20 ONE OF THE FIRST QUESTIONS YOU MUST DECIDE IN THIS
21 CASE, LADIES AND GENTLEMEN, IS THE IDENTIFICATION OF THIS
22 DEFENDANT AS THE ONE WHO COMMITTED OR PARTICIPATED IN
23 COMMITTING THE CRIME BEFORE YOU. THE STATE, AGAIN, HAS
24 THE BURDEN OF PROVING IDENTITY BEYOND A REASONABLE DOUBT.
25 YOU MUST DETERMINE WHETHER THE STATE HAS ESTABLISHED THE

JURY CHARGE
BY THE COURT

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1 IDENTITY OF THE DEFENDANT BEYOND A REASONABLE DOUBT. IF
2 YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE
3 DEFENDANT WAS THE PERSON WHO COMMITTED OR PARTICIPATED IN
4 COMMITTING THESE CRIMES, YOU MUST FIND THE DEFENDANT NOT
5 GUILTY. YOU MUST CONSIDER THE BELIEVABILITY OF THE
6 IDENTIFICATION WITNESSES IN THE SAME WAY AS ANY OTHER
7 WITNESS. YOU SHOULD CONSIDER WHETHER THE IDENTIFICATION
8 WITNESS IS TRUTHFUL, WHETHER THE WITNESS HAD THE
9 CAPACITY, THE OPPORTUNITY, TO MAKE A RELIABLE OBSERVATION
10 ON THE MATTER COVERED BY HIS OR HER TESTIMONY, AND IF
11 AFTER CONSIDERING THE TESTIMONY YOU HAVE A REASONABLE
12 DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION, YOU MUST
13 FIND THE DEFENDANT NOT GUILTY.

14 THE CHARGES IN THE CASE, LADIES AND GENTLEMEN, AS
15 I'VE TOLD YOU, ARE FOUR --- BURGLARY IN THE FIRST DEGREE,
16 LARCENY, ASSAULT AND BATTERY WITH INTENT TO KILL AND
17 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
18 VIOLENT CRIME.

19 I'M GOING TO TALK TO YOU ABOUT EACH ONE OF THOSE
20 BEGINNING WITH THE BURGLARY CHARGE AND GIVE YOU THE
21 ELEMENTS AND TELL YOU WHAT THE STATE MUST PROVE, AND THEN
22 IT WILL BE YOUR DETERMINATION WHETHER THE EVIDENCE YOU
23 HAVE HEARD SATISFIES THE ELEMENTS OF THESE CRIMES.

24 LET ME FIRST READ TO YOU THE STATUTE LAW ON THE
25 CRIME OF BURGLARY IN THE FIRST DEGREE, AND SINCE THERE

JURY CHARGE
BY THE COURT

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1 ARE SEVERAL PARTS OF IT, I'M GOING TO DISCUSS THE
2 ELEMENTS WITH YOU A LITTLE MORE INDIVIDUALLY, BUT THE
3 STATUTE READS, "A PERSON IS GUILTY OF BURGLARY IN THE
4 FIRST DEGREE IF THE PERSON ENTERS A DWELLING WITHOUT
5 CONSENT AND WITH INTENT TO COMMIT A CRIME THEREIN, AND
6 EITHER WHEN IN EFFECTING ENTRY OR WHILE IN THE DWELLING
7 OR IN IMMEDIATE FLIGHT THEREFROM, HE OR ANOTHER
8 PARTICIPANT IN THE CRIME IS ARMED WITH A DEADLY WEAPON OR
9 CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A
10 PARTICIPANT IN THE CRIME OR USES OR THREATENS THE USE OF
11 A DANGEROUS INSTRUMENT OR DISPLAYS WHAT IS OR APPEARS TO
12 BE A PISTOL, REVOLVER OR OTHER FIREARM."

13 TO CONVICT, THE STATE MUST PROVE BEYOND A REASONABLE
14 DOUBT THE FOLLOWING ELEMENTS: THE STATE MUST FIRST PROVE
15 THAT THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT. A
16 DWELLING, OF COURSE, IS A BUILDING THAT IS USED ---
17 NORMALLY USED FOR SLEEPING, LIVING OR LODGING BY A
18 PERSON. THE SECOND THING THEY MUST PROVE IS THAT THE
19 DEFENDANT DID INTEND TO COMMIT A CRIME WITHIN THE
20 DWELLING, AND THEN THE STATE MUST PROVE AT LEAST ONE OF
21 THE FOLLOWING FOUR ELEMENTS: THEY MUST PROVE THAT WHILE
22 EFFECTING ENTRY INTO THE DWELLING OR WHILE IN THE
23 DWELLING OR WHILE FLEEING FROM THE DWELLING THAT THE
24 DEFENDANT WAS ARMED WITH A DEADLY WEAPON, OR THAT THE
25 DEFENDANT USED OR THREATENED TO USE A DANGEROUS

JURY CHARGE
BY THE COURT

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1 INSTRUMENT, SUCH AS A PISTOL, OR THAT THE DEFENDANT
2 CAUSES PHYSICAL INJURY TO A PERSON WHO IS NOT A
3 PARTICIPANT IN THE CRIME, OR THAT THE DEFENDANT DISPLAYS
4 WHAT IS OR APPEARS TO BE A PISTOL, REVOLVER OR OTHER
5 FIREARM. ONE OF THOSE FOUR THINGS MUST ACCOMPANY THE
6 FIRST TWO.

7 THE CHARGE OF LARCENY. LARCENY IS IN LAW DEFINED AS
8 THE TAKING AND CARRYING AWAY OF THE PERSONAL PROPERTY OF
9 ANOTHER WITH THE INTENT, WITH THE PURPOSE, OF PERMANENTLY
10 DEPRIVING THE OWNER OF THE PROPERTY. IT IS, SIMPLY,
11 STEALING. TO CONVICT, THE STATE MUST PROVE BEYOND A
12 REASONABLE DOUBT FOUR ELEMENTS. FIRST OF ALL, THAT THE
13 DEFENDANT DID TAKE AND CARRY AWAY THE PERSONAL PROPERTY
14 OF ANOTHER. AND IN THIS REGARD, I WILL TELL THAT ANY
15 REMOVAL OF THE PROPERTY OF ANOTHER, NO MATTER HOW SLIGHT
16 THAT REMOVAL MIGHT BE, IS SUFFICIENT TO ESTABLISH A
17 TAKING OF THE PROPERTY.

18 SECONDLY, THAT THE DEFENDANT DID NOT AT THE TIME
19 HAVE THE CONSENT OF THE OWNER TO TAKE THE PROPERTY.
20 THIRD, THAT HE TOOK THE PROPERTY WITH THE INTENT, THE
21 PURPOSE, OF PERMANENTLY DEPRIVING THE OWNER OF THE
22 PROPERTY. IT, OF COURSE, DOES NOT MATTER THAT THE
23 PROPERTY MAY HAVE BEEN RETURNED TO THE RIGHTFUL OWNER AT
24 SOME OTHER TIME. AND FOURTH, THEY MUST ESTABLISH THE
25 VALUE OF THE PROPERTY.

JURY CHARGE
BY THE COURT

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1 THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO
2 KILL. AN ASSAULT AND BATTERY WITH INTENT TO KILL IS SUCH
3 AN ASSAULT AND BATTERY THAT IF THE PERSON ASSAULTED HAD
4 DIED THE PERSON MAKING THE ASSAULT WOULD BE GUILTY OF
5 MURDER. TO CONVICT, THE STATE MUST PROVE BEYOND A
6 REASONABLE DOUBT THE FOLLOWING ESSENTIAL ELEMENTS. I'M
7 GOING TO LIST THEM FOR YOU, AND THEN I'M GOING TO DEFINE
8 THEM FOR YOU.

9 THEY MUST PROVE THAT THE DEFENDANT DID COMMIT AN
10 ASSAULT AND BATTERY. THEY MUST PROVE THAT HE DID ACT
11 WITH MALICE, AND THEY MUST PROVE THAT IT WAS HIS INTENT
12 TO KILL THE PERSON ASSAULTED.

13 SO, THE FIRST ELEMENT OF ASSAULT AND BATTERY, THE
14 STATE MUST PROVE THAT THE DEFENDANT DID COMMIT AN ASSAULT
15 AND BATTERY UPON THE VICTIM. AN ASSAULT, LADIES AND
16 GENTLEMEN, IS MERELY AN ATTEMPT WITH FORCE OR VIOLENCE TO
17 DO BODILY HARM TO THE PERSON OF ANOTHER WHERE THERE IS
18 THE ABILITY TO COMPLETE THE ATTEMPT, SUCH AS WHEN I MIGHT
19 STRIKE AT YOU BUT NOT TOUCH YOU. A BATTERY IS THE ACTUAL
20 AND UNLAWFUL TOUCHING OF ANOTHER, HOWEVER SLIGHT THAT
21 TOUCHING MAY BE.

22 SECONDLY, THE STATE MUST PROVE THAT THE DEFENDANT
23 ACTED WITH MALICE AFORETHOUGHT IN COMMITTING THE ASSAULT
24 AND BATTERY. MALICE IS THE INTENTIONAL DOING OF A
25 WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN

1 INTENT TO INFLICT INJURY. MALICE AFORETHOUGHT IS THE
2 DELIBERATE AND WELL FORMED PURPOSE TO DO THE UNLAWFUL
3 ACT. AFORETHOUGHT MEANS SIMPLY THAT THE INTENTION TO DO
4 THE UNLAWFUL ACT WAS CONCEIVED OR PLANNED SOMETIME BEFORE
5 THE ACTUAL COMMISSION OF THE UNLAWFUL ACT. THE MALICE,
6 OF COURSE, NEED NOT EXIST FOR ANY PARTICULAR LENGTH OF
7 TIME PRIOR TO THE ACT.

8 MALICE, LADIES AND GENTLEMEN, MAY BE EXPRESS OR IT
9 MAY BE INFERRED FROM THE CIRCUMSTANCES. MALICE IS SAID
10 TO BE EXPRESS WHEN THERE IS MANIFESTED A VIOLENT
11 DELIBERATE INTENTION TO DO AN UNLAWFUL ACT. MALICE MAY
12 BE INFERRED WHERE ONE INTENTIONALLY AND DELIBERATING DOES
13 AN UNLAWFUL ACT WHICH HE OR SHE KNOWS TO BE WRONG AND IN
14 VIOLATION OF HIS DUTY TO ANOTHER. MALICE MAY BE INFERRED
15 WHERE NO EXCUSE OR LEGAL PROVOCATION FOR THE ACT APPEARED
16 AND WHEN CIRCUMSTANCES ATTENDING THE ACT SHOW AN
17 ABANDONED HEART OR A MALIGNANT HEART FATALLY BENT UPON
18 MISCHIEF.

19 THE COURT: YOUNG MAN, YOU BETTER STAY IN HERE WITH
20 ME. DON'T GO OUTSIDE YET.

21 THE LAW SAYS, LADIES AND GENTLEMEN, THAT IF ONE
22 INTENTIONALLY COMMITS THE UNLAWFUL ACT WITH A DEADLY
23 WEAPON THAT THE INFERENCE OF MALICE MAY ARISE. AND A
24 PISTOL, OF COURSE, IS A DEADLY WEAPON. SO, MALICE MAY BE
25 INFERRED FROM THE USE OF A DEADLY WEAPON. YOU ARE

JURY CHARGE
BY THE COURT

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1 PERMITTED TO INFER MALICE FROM THE CONDUCT OF A DEFENDANT
2 IN THE USE OR HANDLING OF A DEADLY WEAPON IF SUCH CONDUCT
3 RESULTS DIRECTLY IN THE ACTS COMMITTED AND IF SUCH
4 CONDUCT WAS SO INEXCUSABLE, SO AGGRAVATED AND GROSSLY
5 RECKLESS, AS TO SHOW AN ACTUAL INTENTIONAL DISREGARD OF
6 THE CONSEQUENCES TO HUMAN LIFE. A CONDUCT SUFFICIENT TO
7 SHOW A DELIBERATE INTENTIONAL DESIGN TO USE OR HANDLE A
8 DEADLY WEAPON AS TO ENDANGER THE LIFE OF ANOTHER WITHOUT
9 JUST CAUSE OR EXCUSE IS SUFFICIENT TO RAISE AN INFERENCE
10 OF MALICE.

11 IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT
12 SUFFICIENT TO RAISE THIS INFERENCE OF MALICE FROM THE USE
13 OF A DEADLY WEAPON TO YOUR SATISFACTION, THIS INFERENCE
14 WOULD BE, SIMPLY, AN EVIDENTIARY FACT TO BE TAKEN INTO
15 CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN
16 THIS CASE BEARING ON THE QUESTION OF MALICE, AND YOU MAY
17 GIVE THIS INFERENCE SUCH WEIGHT AS YOU DETERMINE IT
18 SHOULD RECEIVE. AND FINALLY, THE STATE MUST PROVE THAT
19 IT WAS THE DEFENDANT'S INTENT, IT WAS HIS PURPOSE TO KILL
20 THE VICTIM.

21 AND THE FINAL CHARGE --- POSSESSION OF A FIREARM IN
22 THE COMMISSION OF A VIOLENT CRIME. SOUTH CAROLINA LAW
23 PROVIDES THAT IT IS UNLAWFUL FOR ANY PERSON TO POSSESS A
24 FIREARM OR VISIBLY DISPLAY WHAT APPEARS TO BE A FIREARM
25 DURING THE COMMISSION OF A VIOLENT CRIME, AND THE PERSON

JURY CHARGE
BY THE COURT

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1 IS CONVICTED OF COMMITTING OR ATTEMPTING TO COMMIT A
2 VIOLENT CRIME.

3 TO CONVICT, THE STATE MUST PROVE BEYOND A REASONABLE
4 DOUBT THE FOLLOWING ELEMENTS: THEY MUST PROVE THAT THE
5 DEFENDANT DID ON JULY 22, 1994, POSSESS A FIREARM OR
6 VISIBLY DISPLAY WHAT APPEARED TO BE A FIREARM. THEN THEY
7 MUST PROVE THAT THE POSSESSION OR DISPLAY OCCURRED AT
8 SOME TIME DURING THE COMMISSION OF A VIOLENT CRIME. AND
9 UNDER OUR LAW, ASSAULT AND BATTERY WITH INTENT TO KILL
10 AND BURGLARY IN THE FIRST DEGREE ARE BOTH CLASSIFIED AS
11 VIOLENT CRIMES.

12 AND FINALLY, TO CONVICT FOR THIS CRIME, THE
13 DEFENDANT MUST ACTUALLY BE CONVICTED OF COMMITTING THE
14 VIOLENT CRIME I'VE DISCUSSED WITH YOU, AND THAT'S THE LAW
15 AS APPLIES TO THE ELEMENTS AND THE CRIMES INVOLVED IN THE
16 CASE.

17 NOW, IN THIS CASE, EVIDENCE HAS BEEN INTRODUCED THAT
18 THE DEFENDANT WAS NOT PRESENT AT THE TIME AND THE PLACE
19 OF THE COMMISSION OF THIS CRIME AND KNEW NOTHING OF THE
20 CRIME FOR WHICH HE IS HERE ON TRIAL. UNDER SOUTH
21 CAROLINA LAW, WHEN ONE WHO WAS NOT AT THE PLACE WHERE A
22 CRIME WAS COMMITTED AT THE TIME OF ITS COMMISSION IS
23 LATER CHARGED WITH HAVING BEEN PRESENT AND HAVING
24 COMMITTED OR TAKEN PART IN COMMITTING A CRIME, HIS
25 ABSENCE FROM THE SCENE OF THE CRIME IS A COMPLETE

JURY CHARGE
BY THE COURT

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1 DEFENSE. IT IS THE DEFENSE WE CALL ALIBI. THE STATE
2 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
3 WAS AT THE PLACE OF THE COMMISSION OF THE ALLEGED CRIME
4 AT THE TIME CLAIMED IN THE INDICTMENT, AND IF YOU HAVE A
5 REASONABLE DOUBT ARISING FROM THE TESTIMONY OR LACK OF
6 TESTIMONY THAT THE DEFENDANT WAS AT THE PLACE OF THE
7 COMMISSION OF THE ALLEGED CRIME AT THE TIME CLAIMED IN
8 THE INDICTMENT, THEN YOU MUST RESOLVE THAT DOUBT IN HIS
9 FAVOR AND ACQUIT HIM.

10 AND THAT'S THE ENTIRETY OF THE LAW, LADIES AND
11 GENTLEMEN, THAT I DISCERN APPLIES IN THE CASE. AS YOU GO
12 TO YOUR DELIBERATIONS, I WOULD REMIND YOU THAT YOU HAVE
13 NO PERSONS TO WHOM TO SHOW FAVOR, NONE TO WHOM TO SHOW
14 DISFAVOR, AND AGAIN, I IMPRESS UPON YOU THE
15 RESPONSIBILITY OF BEING ULTIMATELY FAIR IN THE DECISIONS
16 YOU ARE CALLED UPON TO MAKE.

17 AND THE VERDICT YOU'LL RETURN IN THIS CASE ON EACH
18 COUNT MUST BE UNANIMOUS. YOU ALL 12 MUST BE IN AGREEMENT
19 TO THE VERDICT.

20 ON THE INDICTMENT, MADAM FORELADY, HERE IN THE
21 BOTTOM LEFT HAND CORNER, IS A SPACE ENTITLED VERDICT, AND
22 IN THAT SPACE, I HAVE ENTERED COUNT ONE AND A LINE, COUNT
23 TWO AND A LINE. COUNT ONE, OF COURSE, WAS THE BURGLARY
24 CHARGE. COUNT TWO IS THE LARCENY CHARGE. BENEATH THAT
25 I HAVE WRITTEN PROPERTY VALUE. THERE ENTER WHAT THE

JURY CHARGE
BY THE COURT

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1 EVIDENCE SATISFIES YOU WAS THE PROPERTY VALUE.

2 COUNT THREE WAS THE ASSAULT AND BATTERY WITH INTENT
3 TO KILL, AND COUNT FOUR WAS THE POSSESSION OF A FIREARM
4 IN THE COMMISSION OF A VIOLENT CRIME. AND THERE YOU WILL
5 ENTER THE VERDICT ON EACH COUNT, AND YOUR VERDICT ON EACH
6 ONE WILL BE EITHER GUILTY OR NOT GUILTY. MUST BE
7 UNANIMOUS. WHICHEVER IT IS, ENTER IT ON THE SPACE
8 CORRESPONDING TO THAT COUNT. WHEN YOU'VE COMPLETED THAT
9 FORM, SIGN YOUR NAME IN THE SPACE PROVIDED AS FORELADY.
10 THAT WILL COMPLETE YOUR RESPONSIBILITY.

11 SO, WITH THAT, FOLKS, I'LL SEND YOU TO YOUR ROOM.
12 WE'LL ASK YOU NOT TO BEGIN YOUR DELIBERATIONS UNTIL I
13 SEND IN THE INDICTMENT AND THE EXHIBITS. THERE ARE A
14 COUPLE OF MATTERS I HAVE TO TAKE UP WITH THE LAWYERS.
15 I'LL SHORTLY SEND THIS IN TO YOU. YOU CAN RETIRE. WAIT
16 A MINUTE. ONE THING.

17 MR. TAYLOR, AS THE ALTERNATE JUROR, IT WOULD HAVE
18 BEEN YOUR RESPONSIBLY TO TAKE THE PLACE OF A JUROR NOT
19 ABLE TO COMPLETE WHAT WE ASKED OF THEM. THEY LOOK LIKE
20 THEY ARE GOING TO BE ALL RIGHT. SO, AS THEY GO BACK, YOU
21 STAY HERE WITH ME. THANK YOU. YEAH, I'LL SEND ALL THAT
22 IN IN JUST A MOMENT, MADAM FORELADY.

23 (JURY GOES TO JURY ROOM.)

24 THE COURT: MR. TAYLOR, I CAN GIVE YOU AN OPTION.
25 YOU MAY EITHER BE EXCUSED WITH MY THANKS FOR YOUR TIME

1 AND YOUR ATTENTION IN THE CASE, OR YOU CAN STAY AND WAIT
2 AND SEE WHAT THE JURY DOES. I'LL LEAVE IT UP TO YOU.
3 THANK YOU KINDLY.

4 ANY EXCEPTIONS OR ADDITIONS BY THE STATE?

5 MS. STROM: NONE FROM THE STATE, YOUR HONOR.

6 THE COURT: BY DEFENSE?

7 MR. WICKER: NONE BY DEFENSE, YOUR HONOR.

8 THE COURT: DO YOU HAVE ANY EXHIBITS? GET THE
9 EXHIBITS. HERE'S THE INDICTMENT.

10 MS. STROM: YOUR HONOR, PRIOR TO SENDING THE
11 INDICTMENT BACK, GENERALLY IN THIS COUNTY, AND I'LL DO
12 WHATEVER HIS HONOR WISHES ME TO, WE ALWAYS MAKE A COPY
13 AND TAKE OFF THE GUILTY PLEA STAMP. I WOULD BE GLAD TO
14 DO THAT.

15 THE COURT: THAT WOULD BE SATISFACTORY. AND YOU CAN
16 LOOK AT THE WRITING, MR. WICKER, I PUT ON THERE AND THE
17 VERDICT FORM. IT IS JUST EXACTLY WHAT I TOLD THE JURY.

18 MR. WICKER: WE AGREE WITH IT, YOUR HONOR.

19 THE COURT: MAKE YOUR COPY, GIVE IT TO THE CLERK,
20 AND WE'LL PUT THEM TO WORK.

21 (JURY BEGINS DELIBERATING AT 5:25 P.M.)

22 (JURY RETURNS AT 7:00 P.M.)

23 THE COURT: LADIES AND GENTLEMEN, I KNOW YOU HAVE
24 NOT REACHED A VERDICT AT THIS TIME, BUT IN VIEW OF THE
25 HOUR, I THOUGHT I WOULD INQUIRE, MADAM FORELADY, IF YOU

1 THOUGHT YOU MIGHT SOON HAVE A VERDICT?

2 FORELADY: YOUR HONOR, WE'RE CLOSER THAN WE WERE A
3 HALF HOUR AGO, BUT WE ARE STILL --- WE FEEL LIKE ---

4 THE COURT: I DON'T WANT TO PROBE INTO WHERE YOU
5 ARE.

6 FORELADY: WE FEEL THAT THERE NEEDS TO BE MORE
7 DISCUSSION.

8 THE COURT: OKAY. WOULD YOU PREFER TO DO IT
9 TONIGHT, OR WOULD YOU RATHER ADJOURN FOR THE EVENING AND
10 COME BACK IN THE MORNING AND RESUME AGAIN?

11 FORELADY: I THINK IT WOULD HELP IF WE THOUGHT ABOUT
12 IT OVERNIGHT.

13 THE COURT: ALL RIGHT. I THINK THAT'S PROBABLY A
14 WISE THING TO DO. I WILL REQUIRE AND VERY MUCH IMPRESS
15 UPON YOU THAT YOU NOT DISCUSS THE CASE WHEN YOU'RE AWAY
16 FROM US, AND PLEASE DON'T LET ANYBODY TALK TO ANY OF YOU
17 ABOUT THE CASE. IT WOULD BE SO WRONG FOR THAT TO HAPPEN.

18 I'M GOING TO ASK YOU TO BE BACK IN YOUR ROOM AT NINE
19 O'CLOCK IN THE MORNING. I HAVE A LITTLE ADDITIONAL
20 INSTRUCTION THAT I CAN GIVE YOU THEN THAT MAY BE OF HELP
21 TO YOU IN YOUR DELIBERATION, AND THEN WHEN I'M DONE WITH
22 THAT, I'LL PUT YOU BACK TO WORK WHILE I GO ON WITH THE
23 OTHER WORK THAT I HAVE TO DO. SO, THE MATTERS YOU HAVE -
24 -- YOU HADN'T WRITTEN ANYTHING DOWN?

25 FORELADY: NO, SIR.

1 THE COURT: OKAY. WELL, I'M GOING TO LET THE CLERK
2 TAKE THAT AND KEEP THAT FOR YOU UNTIL IN THE MORNING, THE
3 EXHIBITS AND THE INDICTMENT, AND THEN Y'ALL BE BACK IN
4 YOUR ROOM AT NINE O'CLOCK IN THE MORNING. I'LL SEE YOU
5 THEN. WE'LL TALK FURTHER.

6 (JURY LEAVES FOR THE DAY.)

7 THE COURT: ANY OBJECTION BY THE STATE?

8 MS. STROM: NONE FROM THE STATE, YOUR HONOR.

9 THE COURT: BY DEFENSE?

10 MR. WICKER: NONE BY DEFENSE, YOUR HONOR.

11 THE COURT: ALL RIGHT, FOLKS. WELL, I'LL SEE YOU IN
12 THE MORNING --- NINE O'CLOCK.

13 MS. STROM: THANK YOU, YOUR HONOR.

14 (COURT ADJOURNS FOR THE DAY.)

15 (COURT RECONVENES AT 9:00 A.M.)

16 THE COURT: LADIES AND GENTLEMEN, I TRUST YOU RESTED
17 WELL AND ARE PREPARED TO RESUME THE WORK AT HAND. BEFORE
18 I MAKE SOME COMMENTS TO YOU, LET ME ASK IF DURING THE
19 EVENING RECESS ANYBODY HAS TALKED TO YOU OR TRIED TO TALK
20 TO YOU ABOUT THE CASE. HAS ANYTHING AT ALL HAPPENED
21 WHICH AFFECTS YOUR ABILITY TO BE FAIR IN THE CASE?

22 (NO RESPONSE.)

23 THE COURT: GOOD. WELL, BEFORE I SEND YOU BACK OUT,
24 LET ME MAKE THESE COMMENTS TO YOU, AND LET ME PREFACE
25 THAT BY SAYING THAT YOU ARE THE JUDGES OF THE

FURTHER JURY CHARGE
BY THE COURT

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1 BELIEVABILITY OF WITNESSES. YOU ARE THE SEEKERS OF THE
2 TRUTH IN THIS CASE. I HAVE THE RESPONSIBILITY OF
3 DECLARING TO YOU THE LAW. I HAVE NO AUTHORITY TO TELL
4 YOU WHO I THINK YOU OUGHT TO BELIEVE. THAT RESTS
5 ENTIRELY WITHIN THE GOOD, SOUND JUDGMENT OF YOU LADIES
6 AND GENTLEMEN. SO, YOU MUST MAKE THAT DETERMINATION OF
7 WHAT IS THE TRUTH AND APPLY TO THAT THE LAW THAT I HAVE
8 GIVEN YOU.

9 NOW, LADIES AND GENTLEMEN, THE COMMENTS I WANT TO
10 MAKE TO YOU MIGHT NOT EVEN APPLY TO YOU, BUT THEY'RE
11 COMMENTS THAT I HAVE USED IN OTHER TRIALS AS I SEEK TO
12 PROVIDE SOME GUIDANCE TO YOU AS YOU TAKE UPON YOURSELVES
13 THE RESPONSIBILITY THAT YOU HAVE IN THIS CASE.

14 IT OFTENTIMES IS VERY DIFFICULT FOR TWO PEOPLE TO BE
15 IN AGREEMENT ON ANY PARTICULAR THING AND, OF COURSE,
16 CORRESPONDINGLY MORE DIFFICULT WHEN 12 OF YOU ARE BROUGHT
17 TOGETHER AND REQUIRED TO BE IN AGREEMENT ON A VERDICT,
18 AND OF COURSE, AS I'VE TOLD YOU, THE VERDICT YOU RETURN
19 IN THIS CASE MUST BE A UNANIMOUS VERDICT. YOU ALL 12
20 MUST BE IN AGREEMENT TO THAT VERDICT.

21 AT THE SAME TIME, I WOULD, OF COURSE, TELL YOU THAT
22 NO JUROR IS REQUIRED TO GIVE UP THEIR OPINION BASED ON
23 SOUND REASONING MERELY FOR THE PURPOSE OF BEING IN
24 AGREEMENT.

25 I'VE OFTEN TOLD JURIES, AND I DON'T KNOW THAT THIS

FURTHER JURY CHARGE
BY THE COURT

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1 APPLIES TO YOU, BUT I WANT TO TELL YOU ANYWAY. I'VE
2 OFTEN TOLD JURIES THAT THE JUROR WHO WOULD RENDER LESS
3 SERVICE TO NEWBERRY COUNTY AND TO THE STATE OF SOUTH
4 CAROLINA IS THE JUROR WHO MIGHT SAY, I KNOW WHAT I WANT
5 TO DO IN THIS CASE, AND WHEN AND IF YOU OTHER JURORS
6 AGREE WITH ME, THEN WE'LL WRITE A VERDICT, BUT WE WILL
7 NOT WRITE A VERDICT UNTIL YOU AGREE WITH ME. AND AS I
8 SAY, I DON'T EVEN KNOW THAT THAT APPLIES TO YOUR JURY,
9 BUT I SAY THAT TO ENGENDER IN YOU THOUGHT PROCESSES TO
10 FOCUS YOU UPON THE MOST IMPORTANT RESPONSIBILITY THAT YOU
11 HAVE AND URGE YOU TO SEEK A VERDICT IN THIS CASE.

12 IF YOU ARE NOT ABLE TO REACH A VERDICT, A MISTRIAL
13 WOULD BE DECLARED, AND WHAT THAT MEANS IS THIS --- WHAT
14 IT DOESN'T MEAN IS THIS. IT DOESN'T MEAN THAT THE CASE
15 ENDS. DOESN'T MEAN THAT IT GOES AWAY. IT MEANS, SIMPLY,
16 THAT AT PROBABLY THE NEXT TERM OF COURT THE CASE WOULD
17 AGAIN BE CALLED. IT MEANS THAT THESE SAME LAWYERS WOULD
18 COME HERE. THESE SAME WITNESSES WOULD COME HERE, AND OF
19 COURSE, THIS SAME DEFENDANT WOULD COME HERE. THEY WOULD
20 SIT BEFORE SOME JUDGE, POSSIBLY ME, BUT A CIRCUIT COURT
21 JUDGE OF SOUTH CAROLINA, AND A JURY WOULD BE SELECTED IN
22 THAT CASE, PRETTY MUCH THE SAME WAY YOU WERE. THESE
23 LAWYERS WILL MAKE COMMENTS TO THAT JURY PRETTY MUCH AS
24 YOU'VE HEARD THEM MAKE. THAT JUDGE WILL TALK TO THAT
25 JURY PRETTY MUCH AS I'VE TALKED TO YOU. SAME WITNESSES

FURTHER JURY CHARGE
BY THE COURT

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1 WILL BE CALLED. THEY'LL TESTIFY PRETTY MUCH LIKE YOU'VE
2 HEARD THEM TESTIFY. THE JUDGE IN THAT CASE WILL TELL
3 THAT JURY THE LAW PRETTY MUCH AS I'VE TOLD YOU THE LAW,
4 AND THAT JURY WILL GO TO THE ROOM WHERE YOU WILL SHORTLY
5 GO, AND THEY'LL DELIBERATE THIS CASE.

6 NOW, LET ME HASTEN TO SAY THAT I DON'T THINK ANY
7 OTHER JURY IS ANY MORE COMPETENT AND ABLE TO RESOLVE THIS
8 CASE THAN ARE THE 12 OF YOU. AND THOUGH MISTRIALS
9 HAPPEN, THEY ARE --- THEY ARE NOT SMILED UPON BECAUSE OF
10 THE DUPLICATION OF EFFORT, THE DUPLICATION OF EXPENSE,
11 AND AS I TELL YOU THAT, I DO IMPRESS UPON YOU THAT NO
12 JUROR IS REQUIRED TO GIVE UP AN OPINION BASED ON SOUND
13 REASONING MERELY FOR THE PURPOSE OF REACHING A VERDICT,
14 BUT IT IS OBVIOUSLY IMPORTANT THAT LITIGATION BE ENDED IF
15 IT CAN BE ENDED WITHOUT ANY OF YOU DOING VIOLENCE TO YOUR
16 OWN CONSCIENCE.

17 SO, WHAT I DO URGE, LADIES AND GENTLEMEN, IS THAT
18 YOU TELL OTHER JURORS HOW YOU FEEL ABOUT THE TESTIMONY,
19 THE EVIDENCE IN THE CASE AND WHY YOU FEEL AS YOU DO, AND
20 I THINK IT'S THE RESPONSIBILITY OF THE OTHER JURORS TO DO
21 THE SAME WITH YOU AS YOU 12 LADIES AND GENTLEMEN REASON
22 TOGETHER TO SEEK AND FIND THE TRUTH IN THE TESTIMONY, THE
23 EVIDENCE IN THIS CASE, AND WHEN YOU HAVE MADE THAT
24 DETERMINATION YOU WOULD APPLY TO IT THE LAW THAT I'VE
25 ALREADY TOLD YOU, AND THEN THE CASE WOULD RESOLVE, AND IT

FURTHER JURY CHARGE
BY THE COURT

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1 WOULD BE A DECISION THAT RESTS UPON THOSE TWO PRINCIPLES
2 I TOLD YOU IN THE BEGINNING OF THE TRUTH AND THE LAW AND
3 UPON NO OTHER FOUNDATION. DO NOT PERMIT BIAS OR
4 PREJUDICE OR FAVOR OR DISFAVOR TO ENTER INTO YOUR
5 DELIBERATIONS, BUT DISPASSIONATELY FIND THE TRUTH AND
6 APPLY THE LAW THAT I'VE GIVEN YOU SO YOUR VERDICT WILL BE
7 A RIGHT VERDICT.

8 NOW, BEFORE I SEND YOU BACK, LADIES AND GENTLEMEN,
9 I'LL ASK, MADAM FORELADY, IF THERE ARE ANY POINTS OF LAW
10 THAT I DISCUSSED WITH YOU ON YESTERDAY THAT YOU FEEL
11 MIGHT BE OF BENEFIT TO THE JURY, AND I WILL SAY THAT IF
12 NOTHING COMES TO MIND RIGHT NOW THAT AS YOU GO INTO YOUR
13 JURY ROOM IF YOU CONSIDER THAT THERE ARE POINTS OF LAW
14 THAT I'VE GIVEN YOU THAT MAY BE OF HELP TO YOU, IF YOU'LL
15 SEND IN A NOTE, I'LL BRING IT BACK UP AND BRING YOU IN
16 AND RECHARGE YOU ON WHATEVER POINTS YOU MIGHT NEED. IS
17 THERE ANYTHING ELSE THAT I CAN DO FOR YOU AT THIS TIME
18 BEFORE I SEND YOU TO YOUR ROOM?

19 (NO RESPONSE.)

20 THE COURT: GO TO YOUR ROOM. RESUME DELIBERATIONS.
21 THANK YOU.

22 (JURY LEAVES THE COURTROOM TO BEGIN DELIBERATIONS AT
23 9:30 A.M.)

24 THE COURT: ANY OBJECTIONS TO MY COMMENTS?

25 MS. STROM: NO OBJECTIONS, YOUR HONOR.

1 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

2 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

3 MS. STROM: YOUR HONOR, IF THE EVIDENCE COULD BE ---
4 I DON'T KNOW IF THEY'VE RECEIVED THE EVIDENCE THIS
5 MORNING.

6 THE COURT: THEY ALREADY HAVE IT.

7 (NOTE FROM THE JURY AT 10:20 A.M.)

8 THE COURT: MADAM FORELADY, I GOT YOUR NOTE, AND I
9 HAVE THE LAWYERS IN TO WATCH ME TO BE SURE I DON'T DO
10 ANYTHING IMPROPER, BUT REGARDING THE PROPERTY VALUE, YOU
11 DON'T HAVE TO MAKE ANY DETERMINATION OF PROPERTY VALUE.
12 THEY HAVE AGREED THE PROPERTY VALUE IS LESS THAN A
13 THOUSAND DOLLARS. SO, YOU DON'T HAVE TO MAKE ANY
14 DETERMINATION ON THAT. OKAY.

15 (JURY RETURNS TO JURY ROOM.)

16 THE COURT: ANY OBJECTIONS TO MY COMMENTS OR THE
17 MANNER IN WHICH I RENDERED THEM TO THE JURY?

18 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

19 MS. STROM: NONE FROM THE STATE, YOUR HONOR.

20 THE COURT: ALL RIGHT. THE JURY ADVISES ME THEY
21 HAVE A VERDICT. BRING THE DEFENDANT IN, PLEASE. I WILL
22 ASK THAT THE NOTE BE MARKED AND PLACED WITH THE RECORD.

23 (COURT'S EXHIBIT NUMBER ONE MARKED AND MADE A PART
24 OF THE RECORD.)

25 THE COURT: I WILL ASK THE DEPUTIES TO PLACE IN

VERDICT
BY THE JURY

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1 CUSTODY ANYBODY WHO WOULD MAKE ANY KIND OF OUTBURST.
2 THANK YOU.

3 STATE'S READY?

4 MS. STROM: STATE'S READY, YOUR HONOR.

5 THE COURT: DEFENSE?

6 MR. WICKER: DEFENSE IS READY.

7 THE COURT: ALL RIGHT. BRING THEM IN, PLEASE.

8 (JURY RETURNS TO COURTROOM AT 10:25 WITH A VERDICT.)

9 THE COURT: MADAM FORELADY, HAVE YOU REACHED A
10 VERDICT?

11 FORELADY: YES, YOUR HONOR.

12 THE COURT: WOULD YOU PASS IT UP, PLEASE MA'AM?
13 MADAM CLERK, WOULD YOU PUBLISH THE VERDICT, PLEASE?

14 VERDICT

15 CLERK OF COURT: 94-GS-36-616, THE STATE VERSUS GARY
16 LANE PREWITT. THE VERDICT OF THE JURY IS ON COUNT ONE,
17 GUILTY; COUNT TWO, GUILTY; COUNT THREE, GUILTY; COUNT
18 FOUR, GUILTY. SIGNED, "PEGGY WILSON, FORELADY."

19 MADAM FORELADY, LADIES AND GENTLEMEN, IS THIS YOUR
20 VERDICT? IF SO, PLEASE INDICATE BY RAISING YOUR RIGHT
21 HAND.

22 (ALL HANDS WERE RAISED.)

23 THE COURT: IF ANY MEMBER OF THE JURY DISAGREE WITH
24 THE VERDICT, RAISE YOUR HAND?

25 (NO HANDS WERE RAISED.)

1 THE COURT: DOES EITHER SIDE WISH TO POLL THE JURY?

2 MS. STROM: THE STATE DOES NOT REQUEST POLLING?

3 MR. WICKER: YOUR HONOR, THE DEFENSE DOES NOT, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT. ANY MOTIONS, MR. WICKER?

6 MR. WICKER: I WOULD LIKE TO MAKE A MOTION FOR A
7 FINDING OF NOT GUILTY IN SPITE OF THE VERDICT, BECAUSE I
8 DON'T THINK THE EVIDENCE SHOWS BEYOND A REASONABLE DOUBT
9 THAT MY CLIENT WAS GUILTY OF EVEN BEING THERE.

10 THE COURT: THE EVIDENCE PRESENTED A FACTUAL ISSUE
11 TO BE RESOLVED BY THE JURY. THEY HAVING RESOLVED THAT
12 FACTUAL ISSUE AGAINST YOUR CLIENT, I HAVE NO AUTHORITY TO
13 SET IT ASIDE. THE EVIDENCE PRESENTED ON IDENTIFICATION
14 WAS VERY CREDIBLE. THE JURY'S VERDICT IS WELL SUPPORTED
15 BY THE EVIDENCE I HAVE HEARD DIVESTING ME OF ANY
16 AUTHORITY TO SET IT ASIDE.

17 ANY OTHER MOTIONS?

18 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

19 THE COURT: ANY REASON WHY SENTENCING SHOULD NOT NOW
20 BE IMPOSED?

21 MS. STROM: NONE FROM THE STATE, YOUR HONOR.

22 MR. WICKER: NOTHING FROM THE DEFENSE, YOUR HONOR.

23 THE COURT: MR. WICKER, I WILL, OF COURSE, TELL YOU
24 THAT YOUR CLIENT IS ENTITLED TO HAVE A PRESENTENCE
25 INVESTIGATION MADE OF HIM. I THINK IT WOULD REQUIRE IT

1 IN A JURY VERDICT ALSO. DOES IT NOT?

2 MS. STROM: THEY ARE REQUIRED IN A JURY VERDICT,
3 YOUR HONOR. MY UNDERSTANDING OF THE STATUTE IS BECAUSE
4 OF THE POTENTIAL PUNISHMENT IT FALLS OUTSIDE OF THEIR
5 RANGE. HE WOULD ONLY BE ENTITLED TO ONE IF YOU ORDER
6 ONE.

7 MR. WICKER: I AGREE WITH THE STATE ON THAT, YOUR
8 HONOR. I WOULD LIKE TO, OF COURSE, CALL HIS PARENTS AND
9 HIS SISTER UP WHEN YOU SENTENCE HIM.

10 THE COURT: OH, I'LL BE GLAD TO HEAR ANYTHING THAT
11 YOU HAVE IN OFFERING MITIGATION.

12 MR. WICKER: ARE YOU READY FOR THAT?

13 THE COURT: YES, SIR.

14 MS. STROM: YOUR HONOR, DO WE NEED TO FILL OUT THE
15 SENTENCING SHEET FOR YOU?

16 THE COURT: GO AHEAD AND DO THAT. I'LL HAVE THE
17 VERDICT ATTACHED TO THE ORIGINAL DOCUMENT, OR WOULD YOU
18 PREFER THAT THE ORIGINAL INDICTMENT BE NOTED WITH THE
19 VERDICTS?

20 MR. WICKER: I WOULD JUST SOON THAT YOUR VERDICT
21 WILL BE ATTACHED, YOUR HONOR.

22 THE COURT: THAT WILL BE FINE.

23 MR. WICKER: ACTUALLY, I BELIEVE YOUR SENTENCE IS
24 WHAT I SHOULD HAVE SAID RATHER THAN VERDICT.

25 THE COURT: WELL, THE VERDICT IS ON THE COPY OF THE

1 INDICTMENT WE MADE FOR THE JURY.

2 MR. WICKER: RIGHT.

3 THE COURT: AND IF YOU HAVE NO OBJECTION, I WILL
4 ORDER THAT THE VERDICT BE ATTACHED TO THE ORIGINAL
5 INDICTMENT.

6 MR. WICKER: I WOULD RATHER THAT IT'S ATTACHED TO
7 THE ORIGINAL.

8 THE COURT: I'LL DO THAT.

9 MS. STROM: YOUR HONOR, MAY BE APPROACH?

10 THE COURT: YES, MA'AM.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD.)

13 MS. STROM: YOUR HONOR, I HAVE HIS PRIOR CRIMINAL
14 RECORD.

15 THE COURT: ALL RIGHT.

16 MS. STROM: IN 1987, HE HAD A CONVICTION FOR SIMPLE
17 POSSESSION OF MARIJUANA. IN 1988, HE'S HAD A CONVICTION
18 FOR DRIVING UNDER THE INFLUENCE. IN 1989, YOUR HONOR, HE
19 HAD A CONVICTION FOR OPEN CONTAINER AND DRIVING UNDER THE
20 INFLUENCE, POSSESSION OF BEER BY A PERSON UNDER THE AGE
21 OF 21 AND GIVING FALSE INFORMATION. IN 1991, HE HAS A
22 CONVICTION FOR POSSESSION OF MARIJUANA SECOND OFFENSE.
23 AND ALSO ON THAT SAME DATE OF 1991, HE HAS A CONVICTION
24 FOR OPEN CONTAINER. YOUR HONOR, IN 1992, HE HAS A
25 CONVICTION FOR DRIVING UNDER THE INFLUENCE MORE THAN A

1 FIRST. IN 1992, HE HAS A CONVICTION FOR PUBLIC DRUNK.
2 THAT'S HIS PRIOR CRIMINAL RECORD, YOUR HONOR.

3 THE COURT: MR. WICKER?

4 MR. WICKER: YOUR HONOR, GARY PREWITT, WHO STANDS
5 BEFORE YOU CONVICTED, IS 25 YEARS OLD. HE'S MARRIED. HE
6 HAS A SON WHO IS THREE YEARS OLD AND A DAUGHTER WHO'S
7 FOUR YEARS OLD. HIS WIFE IS SHELLEY LONG PREWITT. SHE'S
8 23. SHE'S NOT HERE TODAY, AND I KNOW HER. SHE'S BEEN IN
9 MY OFFICE. THEY'VE BEEN MARRIED FOR FIVE YEARS.

10 THIS MAN HAS A BROTHER AND TWO SISTERS. ONE OF THE
11 BROTHERS IS HERE. ONE OF THE SISTERS IS HERE, AND OF
12 COURSE, HE HAS A MOTHER AND A FATHER WHO LOVES HIM VERY
13 MUCH. HIS PARENTS SACRIFICED TO HIRE ME. THEY HAD
14 ALREADY HIRED ANOTHER ATTORNEY BEFORE THAT, AND SO, THEY,
15 IN FACT, PAID TWO LAWYERS ON THIS CASE.

16 HE HAS BEEN INCARCERATED SINCE HE WAS ARRESTED.
17 HE'S BEEN IN SOLIDARY CONFINEMENT ON OCCASION, AND HE'S
18 TALKED TO ME ANY NUMBER OF TIMES AT THE JAIL, AND I HAVE
19 TALKED TO THE PEOPLE OUT AT THE COMPLEX, AND BASICALLY,
20 HE HASN'T CAUSED THEM ANY CONCERN. HE'S NOT CONSIDERED
21 TO BE A PERSON THAT WOULD CAUSE ANY VIOLENCE.

22 I THINK IT IS CERTAINLY OUT OF --- FROM WHAT I HAVE
23 SEEN AND HEARD ABOUT HIS MAN AND HIS PRIOR RECORD AND ALL
24 SUCH THINGS, I THINK THAT THIS OFFENSE WAS VERY OUT OF
25 TOUCH WITH HIS PERSONALITY, BECAUSE I DON'T THINK HE'S

1 THAT TYPE OF A PERSON.

2 HE'S 25 YEARS OLD. HE LOVES HIS CHILDREN. HE LOVES
3 HIS PARENTS. HE WOULD LIKE TO MAKE SOMETHING OUT OF
4 HIMSELF. HE TOLD ME WHEN I LEFT HIM LAST NIGHT THAT HE
5 WAS GOING TO PRAY ALL NIGHT. HIS PARENTS WERE GOING TO
6 PRAY ALL NIGHT. HE TOLD ME THIS MORNING HE HAD BEEN
7 PRAYING ALL NIGHT. HIS MOTHER SAID THAT SHE AND HER
8 HUSBAND HAD BEEN PRAYING ALL NIGHT.

9 BASICALLY, I JUST WANT YOU TO KNOW THAT I THINK
10 THERE IS HOPE FOR THIS GUY AFTER HE IS REHABILITATED, AND
11 I HAVE CONFIDENCE IN HIM IN TURNING OVER A NEW LEAF AND
12 MAKING SOMETHING OUT OF HIMSELF, BECAUSE THIS IS PROBABLY
13 THE SHOCK IN HIS LIFE THAT HAS MADE HIM STOP AND THINK,
14 AND I THINK THE FACT HE'S BEEN IN JAIL --- HE'S BEEN
15 THINKING. HE'S BEEN TALKING TO ME. I'VE BEEN TRYING TO
16 ENCOURAGE HIM TO TURN OVER A NEW LEAF AND TO MAKE
17 SOMETHING OUT OF HIMSELF FOR HIS CHILDREN IF FOR NOBODY
18 ELSE. HE'S PROMISED ME HE'LL DO THAT. I BELIEVE HE
19 MEANS TO DO THAT, AND I DO REPRESENT HIS FAMILY, WHO I
20 KNOW VERY WELL AS WELL, AS GARY. THAT'S ALL WE HAVE,
21 YOUR HONOR.

22 THE COURT: MR. PREWITT, IS THERE ANYTHING YOU WOULD
23 LIKE TO TELL ME BEFORE I IMPOSE SENTENCING?

24 MR. PREWITT: I DIDN'T DO IT. I SWEAR ON MY LIFE I
25 DID NOT DO IT. I DIDN'T DO IT.

1 THE COURT: WELL, LET ME JUST SAY FOR THE RECORD
2 THAT I'VE BEEN HERE AS HAS THE JURY. I'VE HEARD THE SAME
3 TESTIMONY THEY HAVE. THEY DIDN'T AGREE WITH YOU, NOR DO
4 I. YOUR PROTESTATIONS AT THIS POINT IN TIME ARE SIMILAR
5 TO MANY SUCH PROTESTS I HAVE SEEN AFTER A RENDERING OF A
6 PROPER VERDICT OF GUILTY.

7 I WILL TELL YOU, SIR, THAT YOU DO HAVE A RIGHT TO
8 APPEAL THIS DECISION TO THE SOUTH CAROLINA SUPREME COURT.
9 I DO NOT SUGGEST THAT YOU HAVE ANY BASIS FOR AN APPEAL,
10 MERELY THAT YOU HAVE THAT RIGHT.

11 DO YOU UNDERSTAND THAT RIGHT?

12 MR. PREWITT: DON'T HAVE A BASIS. WHAT'S THAT MEAN?

13 THE COURT: THAT MEANS I DON'T THINK THERE'S ANY
14 MERIT AT ALL TO IT. YOU'RE ENTITLED TO APPEAL. DO YOU
15 UNDERSTAND?

16 MR. PREWITT: YES, SIR.

17 THE COURT: IF YOU WISH TO APPEAL, IF YOU TELL YOUR
18 LAWYER, HE WILL SEE TO THE FILING OF A NOTICE OF APPEAL.
19 DO YOU UNDERSTAND?

20 MR. PREWITT: YES, SIR.

21 THE COURT: ANYTHING ELSE YOU WOULD LIKE TO TELL ME?

22 MR. PREWITT: PLEASE BE LENIENT.

23 SENTENCE

24 THE COURT: ON THE INDICTMENT 94-616, BEGINNING WITH
25 THE LARCENY CHARGE, IT HAVING BEEN STIPULATED THAT THE

SENTENCE
BY THE COURT

188

1 VALUE OF THE PROPERTY WAS LESS THAN A THOUSAND DOLLARS.
2 THE EVIDENCE SUPPORTS THAT. THE LAW MANDATES THAT I
3 SENTENCE YOU AS REQUIRED IN THE MAGISTRATE'S COURT, AND
4 I ORDER THAT YOU BE CONFINED FOR 30 DAYS.

5 THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO
6 KILL --- THE SENTENCE OF THE COURT IS THAT YOU BE
7 CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
8 FOR 20 YEARS.

9 SAME INDICTMENT, POSSESSION OF A FIREARM IN THE
10 COMMISSION OF THIS CRIME, THE SENTENCE IS CONFINEMENT FOR
11 FIVE YEARS.

12 BURGLARY IN THE FIRST DEGREE, ONE OF THE MOST
13 HEINOUS CRIMES ON OUR BOOKS, THE SENTENCE OF THE COURT IS
14 THAT YOU BE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF
15 CORRECTIONS FOR THE TERM OF YOUR LIFE.

16 THANK YOU AND GOOD LUCK TO YOU.

17 MS. STROM: THANK YOU, YOUR HONOR.

18 *****END OF TRANSCRIPT*****

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

County of Newberry

In the Court of Common Pleas

2002CP36-040

GARY LANE PREWITT * 217575
Full name and prison number (if any) of Applicant,

vs

State of South Carolina
Name of Respondent

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention M^c Cormick Correctional Institution Rt. 2 Box 100
M^c Cormick S.C. 29899
2. Name and location of Court which imposed sentence Court of General Sessions
Newberry County, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 94-ES-36-616 (mult. count indictment) Burglary 1st, larceny,
 - (b) Assault And battery with intent to Kill, use of weapon during
 - (c) commission of violent crime
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JANUARY 20th 1995. Burglary 1st - Life, larceny - 30 days, Assault and battery
 - (b) with intent to Kill - 20 yrs, Use of weapon during commission of violent
 - (c) crime - 5 yrs All sentences to run concurrent with life sentence.

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7 If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. Post Conviction Relief: Court of Common Pleas.
- ii. South Carolina Supreme Court
- iii. District Court For South Carolina

(b) the result in each such Court to which you appealed:

- i. Dismissed
- ii. Dismissed
- iii. Dismissed

(c) the date of each such result.

- i. July 8th 1996
- ii. Sept 8th 1997
- iii. Sept 30th 1999

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
- ii. N/A
- iii. N/A

8 If you answered "no" to (6), state your reasons for not so appealing

- (a) _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Attached
 (b) _____
 (c) _____

10 State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attached
 (b) _____
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application.

(a) the specific nature thereof.

- i. Post Conviction Relief
- ii. South Carolina Supreme Court
- iii. District Court of South Carolina
- iv. _____

(b) the name and location of the Court in which each was filed.

- i. Newberry County Court of Common Pleas
- ii. South Carolina Supreme Court
- iii. District Court of South Carolina
- iv. _____

(c) the disposition thereof

- i. Dismissed
- ii. Dismissed
- iii. Dismissed
- iv. _____

(d) the date of each such disposition

- i. July 8th 1996
- ii. Sept 8th 1997
- iii. Sept 30th 1999
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

- i. N/A
- ii. N/A
- iii. N/A
- iv. _____

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (1) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Evidence of material facts previously unknown and could

(b) Not have been ascertained by the exercise of reason.

(c) Able diligence.

16. Were you represented by an attorney at any time during the course of.

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list.

(a) the name and address of each attorney who represented you

i. Ray Wicker esq 1309 Hunt St Newberry SC 29108

ii. Robert C Lake III esq 1325 Main Street Newberry SC 29108

iii. Lisa Gregory esq Off. of SC Appellate Defense 1122 Lady St Suite 940 Columbia SC 29201

(b) the proceedings at which each such attorney represented you

i. Trial And Sentencing

ii. Post Conviction Relief

iii. Appeal of P.C.R. denial

18. State clearly the relief you seek in filing this application

VACATE Conviction, Remand For New Trial, based on Newly discovered evidence

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

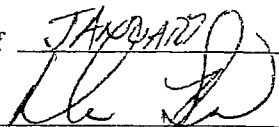
County of NEW BERRY

VERIFICATION

I, GARY LANE PREWITT #217575, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true



SWORN to and subscribed before me this 28TH

day of JANUARY, 2002.

 (L.S.)
 Notary Public

My Commission Expires. MAY 5, 2008

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

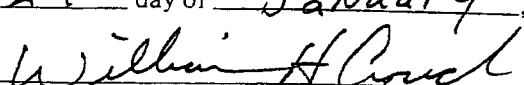
I, GARY LANE PREWITT #217575, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor



Applicant

SWORN or affirmed to and subscribed before me this

29 day of JANUARY, 2002

 Notary Public

My Commission Expires MAY 23rd, 2011

9. (A) UNDER RULE 17-27-45-C I AM BEING HEID IN CUSTODY UNLAWFULLY, BASED ON EVIDENCE OF MATERIAL FACTS PREVIOUSLY UNKNOWN THAT COULD NOT HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENTS

10 (A) THIS P.C.R ACTION IS BROUGHT BASED ON NEWLY DISCOVERED EVIDENCE

AFTER THE APPOINTMENT OF COUNSEL, I WILL BE FILING ALL AMENDMENTS AND AFFIDAVITS THROUGH H.M.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF NEWBERRY)

2002-CP-36-040

Gary Prewitt, 217575,)
)
 Applicant,)
)
 v) RETURN
)
 State of South Carolina,)
)
 Respondent)
 _____)

The Respondent, making its Return to the application for Post-Conviction Relief filed January 30, 2002 would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the November 1994 term of the Newberry County grand jury for first degree burglary, grand larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime (94-GS-36-616). He was represented by Ray Wicker, Esquire. On January 19, 1995, the Applicant underwent trial by jury pursuant to which he was found guilty of first degree burglary, petit larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. He was sentenced by the Honorable E C Burnett, III, to confinement for a period of life for first degree burglary, thirty days for petit larceny, twenty (20) years for assault and battery with intent to kill and five (5) years for possession of a weapon during the commission of a violent crime. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on October 5, 1995 (95-CP-36-135). On March 19, 1996, an evidentiary hearing was held before the Honorable Edward B. Cottingham at which the Applicant was present and was represented by Robert Lake, III. By Order dated July 8, 1996, Judge Cottingham denied and dismissed the Applicant's application. A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On September 10, 1997, the South Carolina Supreme Court denied the Petition.

Thereafter, on September 8, 1998, the applicant filed a petition for a federal writ of habeas corpus. On May 10, 1999, the Honorable Robert S. Carr issued his report and recommendation indicating that the Applicant's petition be denied and dismissed. On September 30, 1999, the honorable Joseph F. Anderson, Jr. adopted Judge Carr's recommendation and dismissed the Applicant's petition. The Applicant appealed the order of the District Court to the Fourth Circuit Court of Appeals. The Court of Appeals dismissed his appeal by order dated March 16, 2000.

Attached herewith and incorporated herein by reference are the records of the appendix from the Applicant's prior PCR appeal, the supplemental appendix from the Applicant's prior PCR appeal, the petition for certiorari, the return to petition for certiorari, the Supreme Court's order denying certiorari, Judge Carr's report and recommendation, Judge Anderson's order adopting Judge Carr's report and the order of the Fourth Circuit Court of Appeals dismissing the Applicant's appeal of Judge Anderson's order.

II

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1 I am being held unlawfully based on evidence of material facts previously unknown that could not have been ascertained by the exercise of reasonable diligence
- 2 This P C R action is brought based on newly discovered evidence

III

First, the State submits that the current Application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S C Code Ann § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v State, 305 S C 448, 409 S E 2d 392 (1991), Foxworth v State, 275 S C 615, 274 S E 2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR, therefore, he has failed to meet the burden imposed upon him. Land v State, 274 S C 243, 262 S E 2d 735 (1980), Aice v State, *supra*, Arnold v State/Plath v State, *supra*. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

IV

Second, the State submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act S C Code Ann § 17-27-10 to -160 (1976 & Supp 1997) The Act reads as follows

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later

S C Code Ann § 17-27-45(a) (Supp 1998)

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996 Peloquin v State, 321 S C 468, 469 S E 2d 606 (1996) The Applicant was convicted of the offenses he challenges in this Application on January 19, 1995 This Application was filed on January 30, 2002, well after the one year statutory filing period had expired

A motion for summary judgement may properly be used to raise the defense of statute of limitations McDonnell v Consolidated School District of Aiken, 315 S C 487, 445 S E 2d 638 (1994) In addition, S C Code Ann § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law " Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute

V

Thus, the State requests that the Court summarily dismissed this Application for PCR both as successive and as barred by the statute of limitations

VI

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied

VII

WHEREFORE, having made its Return, the State requests that the Applicant's current application for PCR be summarily denied and dismissed

Respectfully submitted,

HENRY D McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

DONALD J ZELENKA
Chief, Capital and Collateral Litigation

ALLEN BULLARD
Assistant Deputy Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
(803) 734-3737

March 25, 2003

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2002-CP-36-0040

GARY PREWITT,

Applicant,

v.

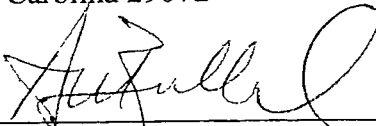
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Bradford Cranshaw, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 26th day of March 2003, to the below address:

Bradford W. Cranshaw, Esquire
McWHITER, BELLINGER & ASSOCIATES, P. A.
119 East Main Street
Lexington, South Carolina 29072


ALLEN BULARD
ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF NEWBERRY</u>	)	02-CP-36-00040

GARY LANE PREWITT	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

October 9th, 2003
LAURENS, South Carolina

B E F O R E:

HON. WYATT T. SAUNDERS, JR., JUDGE.

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

BRADFORD W. CRANSHAW, ESQ.
Attorney for the Applicant

DAVID A. SPENCER, ESQ.
Attorney for the Respondent

CAROL M. THUEME
Official Court Reporter

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MACK HILL

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RICHARD HILL

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1 (WHEREUPON, Applicant Exhibits Nos. 1-10 were
2 marked for identification only.)

3 THE COURT: The record is open.

4 This is Gary Prewitt, 217575, as Applicant
5 versus State of South Carolina as Respondent in Civil
6 Action 2002-CP-36-040.

7 Bradford W. Cranshaw, Esquire, representing the
8 Applicant with David A. Spencer, Esquire, of the Attorney
9 General's office representing the Respondent, State of
10 South Carolina.

11 Mr. Cranshaw.

12 MR. CRANSHAW: Good afternoon, your Honor.

13 MR. SPENCER: I apologize, your Honor. Actually
14 we've got a motion on this that I wanted to raise first.

15 THE COURT: Very well. Mr. Spencer.

16 MR. SPENCER: Actually we're here today on a
17 successive application, and that's the nature of the
18 State's motion. I can give you some procedural background
19 on this case.

20 The applicant was indicted during the
21 November 1994 term of court in Newberry County for first
22 degree burglary, grand larceny, and assault and battery
23 with intent to kill, and possession of a weapon during the
24 commission of a violent crime.

25 And he was represented by Mr. Ray Wicker, who is

1 actually here today. He was convicted on January 19th,
2 1995, and found guilty as charged. And Judge Burnette,
3 now Justice Burnette, sentenced him to 20 years for
4 assault and battery with intent to kill, and life
5 imprisonment for first degree burglary, five years for the
6 possession charge.

7 The applicant did not appeal his conviction
8 which was an issue taken up at the first PCR. He filed
9 his first PCR on October 5th of 1995, and had an
10 evidentiary hearing in March of 1996 before Judge
11 Cottingham. Judge Cottingham denied the application.
12 That application was appealed, and the South Carolina
13 Supreme Court denied the applicant's petition.

14 He's also had a federal habeas writ that was
15 denied, but we're here today on the second application
16 which was filed January 30th of 2002, and we're moving to
17 dismiss that case.

18 As I understand it, the crux of the applicant's
19 position is going to be that it should not be dismissed
20 ASAP because of an issue of after-discovered evidence, and
21 I'm going to let him explain that, but I am going to have
22 a reply to that.

23 THE COURT: Very well. Your position is well
24 taken at this juncture.

25 Mr. Cranshaw.

1 MR. CRANSHAW: May it please the Court, your
2 Honor.

3 Shall I make a proffer of my evidence or did
4 your Honor want to rule?

5 THE COURT: Well, it would seem necessary that
6 you inform the Court as to what after-discovered evidence
7 may be in existence and some explanation concerning it.

8 MR. CRANSHAW: Yes, indeed.

9 It's a peculiar case. And I know your Honor is
10 not used to sitting in post-conviction relief matters
11 where the crime occurred and the conviction was meted out
12 or the sentence meted out back in 1995.

13 We have learned a lot of history in the case.
14 But today here and now what has changed is there has been
15 newly-discovered evidence, and what I would like to do is
16 amend the petition, we're in civil proceedings, and add --
17 I've already given copies of these documents -- these are
18 eight affidavits, and the statute calls for any petition
19 filed regarding amended or regarding after-discovered
20 evidence, that they be accompanied with a petition of the
21 alleged facts, and the alleged facts are contained herein.
22 And I don't believe there will be any objection to this.

23 THE COURT: May I have them, please?

24 MR. CRANSHAW: Yes, your Honor.

25 And that's Applicant's 1 through 8 that I'm

1 handing up to the Court.

2 MR. SPENCER: I have no objection to them for
3 the purpose of this stage, which is basically the proffer
4 and our motion and essentially his pleadings.

5 MR. CRANSHAW: Many of those recently received
6 by me, your Honor; in fact, some of those this very day in
7 speaking with my client. I've already provided copies of
8 those to the Attorney General.

9 Briefly, I would state this. What has happened
10 is, there was a sketch drawn. This is a burglary. A
11 terrible crime was committed, and the gentleman -- this
12 crime occurred on July the 22nd, 1994. There was a
13 burglary and a shooting for which my client was brought in
14 to the police station.

15 Now, there was a confidential informant along
16 the way. No jury's ever heard from this confidential
17 informant that brought my client to a photo lineup. This
18 was nearly a month after the crime was committed.

19 The photo lineup, your Honor, was preceded by
20 the police; they did a sketch from an eye witness, a woman
21 did a sketch of the man at the scene.

22 Now, the reason I've got after-discovered
23 evidence is my man, Gary Prewitt, has maintained his
24 innocence from day one. I imagine Gary has always had
25 that sketch in his pocket, because that sketch is what put

1 him in jail, because Gary contends that he's not the man
2 who committed this crime. And on February the 25th,
3 2001, he happened to show that sketch to an inmate, and an
4 inmate gave him a name and said, I know that man, I live
5 near that man, I recognize his face from the sketch.

6 He's shown it to other inmates who live in the
7 same area and were convicted of crimes in the same area,
8 and they know this fellow, possibly from their running
9 around, but that's the after-discovered evidence.

10 The petition for post-conviction relief was
11 filed within one year of learning a name. I have also
12 evidence that I intend to present, we have got a
13 photograph of the individual. I've actually located the
14 individual, Mr. Mike Bostic, who we allege is the subject
15 of this after-discovered evidence. I've subpoenaed him to
16 be in court today. I've learned today, your Honor, that
17 he is incarcerated in Newberry County.

18 Now, I'm present and ready to go forward with
19 the other witnesses who can identify this sketch which was
20 made at the time of this incident.

21 And let me hand up, 17-27-45(c) calls for
22 after-discovered evidence because it is a peculiar case,
23 and this post-conviction relief was envisioned by the
24 statutes -- I will hand this up to your Honor -- was
25 envisioned by the legislature, and it states specifically

1 that within -- and that's Code Section C. If you come
2 across after-discovered evidence, you've got to make the
3 petition within a year, not within a year of your
4 conviction, but within a year of the discovery of the
5 evidence.

6 This has been reviewed. In fact, earlier this
7 year, our Supreme Court in the case of Coates V State made
8 determinations regarding this and did state that any
9 petition sought on after-discovered evidence has to be
10 brought within a year after the discovery of the evidence,
11 no matter how far after the crime.

12 It's not a year after the conviction. It's a
13 peculiar aspect. I've already forwarded copies of these
14 to the Attorney General, and I will hand up, your Honor,
15 Coates V State.

16 And it's for these reasons that we're asking you
17 to consider this matter and hear from our witnesses.

18 THE COURT: Mr. Spencer.

19 MR. SPENCER: Your Honor, in reply to that, the
20 test for after-discovered evidence, there is a five-point
21 test as articulated in Hayden versus State amongst
22 numerous other cases, but the two points, and the reason
23 this evidence fails even as proffered, fails to meet that
24 test is, one, it has to be something that would probably
25 change the results of the trial if a new trial was held;

1 and also it has to be material to the issue of guilt or
2 innocence.

3 And, your Honor, the reason that this claim
4 fails vis-a-vis that test and even survive at the summary
5 judgment level is because we're dealing a third party
6 guilt issue. Just to merely say that there's somebody out
7 there that looks like the suspect or looks like the
8 drawing would not even be admissible at trial, and I have
9 authority in support of that. And, your Honor, I've given
10 a copy of this case to Mr. Cranshaw. It's State versus
11 Mansfield.

12 THE COURT: Thank you.

13 MR. SPENCER: And in that case, the defendant,
14 Mr. Mansfield, was picked out, was basically identified in
15 a show-up lineup by a neighbor of the victim, and the
16 defense in that case wanted to present evidence that there
17 was another individual who looked like the defendant.

18 The idea of trying to show mistaken identity,
19 that was not allowed at trial; that became an appeal
20 issue, and the Supreme Court basically affirmed the
21 conviction and found that that evidence was not
22 admissible. Just because somebody looks like the
23 defendant, lives in the general vicinity does not make it
24 admissible evidence of third party guilt. And I believe
25 that that case is directly on point with the proffer in

1 this case.

2 The fact that an individual may look, resemble
3 to some degree a sketch does not make anything admissible
4 as far as trying to cast blame his way. And, your Honor,
5 on that basis I would submit it does not meet the
6 after-discovered evidence test; therefore, it's not a
7 sufficient reason for the applicant to have a successful
8 application.

9 THE COURT: Thank you, Mr. Spencer.

10 Anything in reply, Mr. Cranshaw?

11 MR. CRANSHAW: Briefly, your Honor.

12 I think that if a jury, and on this first point,
13 could this possibly change the result of the jury, just
14 look at the evidence. Here we've got an allegation of
15 four individuals that I brought and are waiting to testify
16 before your Honor that would state that the man in the
17 drawing who was alleged to have been the criminal is
18 someone known by them and known by them for many years. I
19 think that that could certainly change the result of the
20 jury.

21 Is it material? The identity is always
22 material.

23 As to third party guilt, some of these witnesses
24 have gone beyond stating that it's merely the visage of
25 the man that they know, that it actually -- they stated

1 that this man drove a car, a primered old beat up Chevy.
 2 They knew him during the time that this crime occurred,
 3 and it's alleged by some of the witnesses that an old
 4 Chevrolet, gray to green in color, was seen close to the
 5 scene. So I think that evidence brings the nexus -- I
 6 think it pulls that in, your Honor, and I think that that
 7 is evidence. It's beyond mere identity, but it actually
 8 speaks of evidence taken that would have been considered
 9 by the jury beyond just the identity, and I think that
 10 does get us beyond the third party guilt questions, and I
 11 believe it's right for your consideration.

12 THE COURT: The Court will conditionally grant
 13 the motion to dismiss of the State, but permit proffer,
 14 Mr. Cranshaw, with your testimony supporting
 15 after-discovered evidence so that the record will be
 16 clear.

17
 18 MR. CRANSHAW: Thank you, your Honor.

19 THE COURT: Call your first witness.

20 MR. CRANSHAW: Your Honor, the State calls Gary
 21 Prewitt to the stand.

22 GARY PREWITT, after being duly sworn, testified
 23 as follows:

24 THE COURT: You may be seated.

25 This witness is with you, Mr. Cranshaw.

1 MR. CRANSHAW: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. CRANSHAW:

4 Q If you would, when you answer my questions, speak to
5 the Court.

6 A Yes, sir.

7 Q I will take you back to 1994. And were you married?

8 A Yes, sir.

9 Q And who was your wife?

10 A Shelley Prewitt.

11 Q Do you have any children?

12 A Two, a little boy and a little girl.

13 Q Tell me your children's names.

14 A Whitney and Charles.

15 Q All right. You still married?

16 A No, sir.

17 Q When were you convicted of a crime?

18 A January the 20th of 1995.

19 Q Okay. And I'm going to show you -- when did your
20 wife leave you, Gary?

21 A Sir?

22 Q When did your wife leave you?

23 A 1997.

24 Q This is marked Applicant's 9 for identification. If
25 you recognize that document.

1 A Yes, sir.

2 Q And?

3 A It's a composite drawing that Mr. Bob Blake received
4 when he filed a Rule 45 motion with the Newberry County
5 Sheriff's Department.

6 Q And that composite drawing, have you shown that to
7 individuals since you learned of its existence?

8 A Anybody that would sit down and listen to me. I
9 mean, I had -- there is no evidence in my case at all.
10 Eye witness identification is what convicted me.

11 Q Yes, sir.

12 A Okay. Your Honor, whenever I went to trial, there
13 was something mentioned about a composite drawing. I
14 never seen a composite drawing before my trial or during
15 my trial, but there was a couple of questions asked about
16 a composite drawing.

17 So whenever I filed post-conviction relief, I
18 claimed ineffective assistance of counsel because my
19 lawyer didn't enter this composite drawing.

20 I knew the composite drawing didn't look like me
21 because I didn't commit the crime. So my PCR lawyer filed
22 the Rule 45. She even had the sheriff's file subpoenaed.

23 Q Gary, let me ask you this. That was considered by
24 the judge on post-conviction relief. At that time had
25 anybody told you who that was a drawing of, who that was a

1 picture of?

2 A No, sir.

3 Q Okay. But you've shown -- since that post-conviction
4 relief, have you shown that photograph to anybody else?

5 A Bunches and bunches of people, any inmate that will
6 listen to me in the Department of Corrections.

7 Q Has anybody told you who that's a drawing of?

8 A One day a fellow come by my cell and asked for a
9 rolling paper to roll a cigarette. He said, I'm from
10 Whitmire. I said, Well, you know, I was arrested by
11 Newberry, I'm from Joanna. I said, Let me show you
12 something, and I pulled my file out that has all my
13 paperwork in it that shows that I'm innocent, you know, no
14 evidence at all. I showed him this picture. I said, Does
15 that look like me? He said, No, that ain't you, that's
16 Mike Bostic. I said, Mike Bostic? He said, Yeah, that
17 drives an old gray primer Chevrolet Impala. I said, Are
18 you sure?

19 MR. SPENCER: Your Honor, I'd just object to the
20 hearsay.

21 THE COURT: Sustained.

22 BY MR. CRANSHAW:

23 Q And the gentleman is here. Let me ask you, you
24 showed that photograph to Mike Tomaskill on February 25th,
25 2001?

1 A Yes, sir, about 6:30. Between 6 and 7. It was
2 counting time and he came by my cell.

3 Q All right. And have you shown that photograph --
4 forgive me. Have you shown that sketch -- that sketch was
5 actually entered in your first PCR?

6 A PCR.

7 Q Correct, without the identification.

8 Have you shown that sketch to Larry Davenport?

9 A Right. About a month later. They have controlled
10 movement in the system. And it's hard to get, you know,
11 talk to other people in other units. And Larry was out
12 doing cigarettes, picking up cigarette butts, and I told
13 him, I said, Man, meet me out in front of my building, my
14 dorm's going to the gym. So he met me. It's about 11
15 o'clock in morning; we was at lunch. He came through in
16 front of my dorm and I brought my folder out that shows
17 they have no evidence on me. And I pulled this picture
18 out, because that's the first thing I do, your Honor, is
19 show people this, because it don't look like me. And I
20 said, Does this look like me? And he said, Man, that's
21 Mike Bostic, homeboy.

22 Q Stop for a second. We can't say what he said. He
23 will testify.

24 A I'm sorry.

25 Q Have you shown this photograph to a gentleman,

1 Yohance Hill also in the Department of Corrections?

2 A Yes, sir.

3 Q And after you learned of the identity, did you make a
4 telephone call to your mother and your sister about it?

5 A After the first fellow told me about the composite
6 drawing, who the man in the composite drawing was, I wrote
7 it down, you know, to try to get information on him.
8 Well, when I showed this to Larry Davenport, he told me
9 the same thing, I called my mother. I said, Will you go
10 to Whitmire High School and see if Mike Bostic went to
11 school there? And a couple of weeks later she came, you
12 know, that I called and she said, I done went there and
13 got this high school picture of him, two of them.

14 Q I will show you what's been marked as Applicant's No.
15 10 for identification. And have you seen that?

16 A You showed me this book today. As far as the book,
17 no, sir, I have not, other than today.

18 Q Turn to page 184 of that book and tell me if you
19 recognize any photograph on that page. And I've provided
20 a copy of this to the Attorney General.

21 A There is no 184 in here.

22 Q Let me make sure.

23 I flat got it wrong. Page 87. Tell me if you
24 recognize that.

25 A Yes, sir.

1 Q Okay. Tell me what you see on that page.

2 A Right there is a picture of a Mike Bostic, and there
3 is a Ms. Blizzard. And when I got the copies from my
4 mother, that's the copy she got from the high school, this
5 section right here, this book, your Honor.

6 Q And that yearbook is from where?

7 A Whitmire High School.

8 Q What year is it?

9 A 1984.

10 Q And the gentleman on page, I will get it right this
11 time, 87 is a Mike Bostic, correct?

12 A Yes, sir.

13 Q Gary, regarding this matter that we have discussed?

14 A Yes, sir.

15 Q Which is this identification?

16 A Yes, sir.

17 Q Is there anything else that you would like to tell
18 the Court?

19 A Yes, sir.

20 Your Honor, if it would please the Court, I was
21 convicted solely on eye witness identification. I was
22 picked out of a photographic lineup, okay?

23 When this composite drawing was given, okay, the
24 description of the man by this witness was 6-foot tall
25 with red hair, okay?

1 At my trial she was questioned about the red
2 hair, okay? She said, Yes, it must have been the way the
3 sun was shining on him from that said, okay?

4 Your Honor, if you wouldn't mind, that's not
5 red, that's black, you know.

6 And Mr. Mike Bostic, last night I was in the
7 Newberry County jail, and I ask anybody, and if you're
8 from Newberry, your Honor, I would ask you, your Honor,
9 you know that fellow, okay?

10 THE COURT: Please don't speak to the Court now.
11 You speak to the court reporter and all the persons here
12 together.

13 THE WITNESS: Okay.

14 THE COURT: You are testifying.

15 THE WITNESS: Okay. And last night I showed
16 this when I got to the Newberry County Detention Center.

17 BY MR. CRANSHAW:

18 Q Let me ask you this. You've shown this photograph to
19 numerous people?

20 A Numerous.

21 Q And what kind of car were you driving back in '94?

22 A A white 1981 Chevrolet Cavalier.

23 Q What kind of work were you doing?

24 A Unemployed. I just got laid off. I was working for
25 a temporary service and they laid me off.

1 MR. CRANSHAW: I don't have any further
2 questions. Answer any questions that the prosecutor may
3 have.

4 THE COURT: This on proffer, Mr. Spencer.

5 MR. SPENCER: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. SPENCER:

8 Q Just to give some background, Mr. Prewitt, at trial
9 it was alleged that there were two individuals that
10 participated in the burglary; is that right?

11 A Yes, sir.

12 Q And you were picked out of two different photo -- two
13 different people picked you out of a photo lineup; is that
14 right?

15 A Yes, sir.

16 Q And one was the woman you mentioned?

17 A That gave that composite drawing.

18 Q Right. And the other individual was the victim of
19 the shooting?

20 A And he's a mental-retarded fellow, yes, sir. He was
21 shot twice in the face and once in the chest with a 357
22 Magnum or a 38. He was still in the hospital at the time
23 he picked me out of that photo lineup.

24 MR. SPENCER: Your Honor, I think the record
25 will reflect that.

1 Beg the Court's indulgence.

2 THE COURT: Take your time, Counsel.

3 BY MR. SPENCER:

4 Q Now, I just wanted to ask, the first conversation,
5 the first person that gave you the name of Mike Bostic
6 was, who was that again?

7 A Mack Hill.

8 Q Mack Hill?

9 A Yes, sir.

10 Q When did you show that to Mr. Hill?

11 A On February 25th.

12 Q Which year?

13 A 2001.

14 Q 2001?

15 A Yes, sir.

16 Q Okay. And you may have told me this, but why did you
17 think Mr. Bostic's photo could be found in the Whitmire
18 yearbook?

19 A Because Mr. Hill and Mr. Davenport told me that he
20 lived in Whitmire.

21 Q All right.

22 A And I just had my mother go check, you know, because
23 I was curious, you know. I know I didn't commit the crime
24 and this man drives the same kind of car and looks like
25 the composite drawing.

1 Q When did you first meet Mack Hill?

2 A That day.

3 Q That day?

4 A Yes.

5 Q You had just been going around the yard showing
6 pictures of -- showing the composite drawing?

7 A Composite drawing, yes.

8 We're on controlled movement. If you come by my
9 cell, see, I have a TV. If you come by my cell and you're
10 going to sit there and talk and bum cigarettes from me,
11 I'm going to discuss the case with you. My roommate right
12 now is mad at me because that's all I do is work on my
13 case because I'm an innocent man.

14 Q That's how you met Mr. Davenport?

15 A No, I know Mr. Davenport when he was at McCormick
16 Correctional Institution before. I was telling him I was
17 innocent, and, you know, everybody, yeah, yeah, I know,
18 and then I showed him my paperwork.

19 Q How long ago did you meet Mr. Davenport?

20 A 1995 when I was on the yard at McCormick.

21 See, he left and went to the street and he
22 caught another charge and came back. And he -- when he
23 came back this last time, I had done got the composite
24 drawing and all my transcripts and all that.

25 Q And Yohance Hill, how long have you known him?

1 A Since November. I was moved to the Cherokee unit in
2 November of 2002. I was moved to Evans Correctional
3 Institution in September and we went to the Cherokee unit,
4 and I get the Laurens Advertiser, and Mr. Hill seen me get
5 the Laurens Advertiser and I showed it, and he asked me if
6 he could read it and I said sure, and I showed him the
7 composite drawing.

8 MR. SPENCER: Beg the Court's indulgence.

9 THE COURT: Take your time.

10 BY MR. SPENCER:

11 Q Okay. How old were you at the time of the incident?

12 A Twenty-five.

13 Q Twenty-five?

14 A Yes, sir.

15 Q That was in 1994?

16 A 1994.

17 Q Okay. So you're 34 now?

18 A Yes, sir.

19 Q All right. About how tall are you?

20 A Five-foot six is what my police record says.

21 Q Five-foot six?

22 A Yes, sir.

23 MR. SPENCER: If your Honor would permit, if
24 Mr. Prewitt could stand up.

25 MR. CRANSHAW: If he could come around.

1 MR. SPENCER: That's a good idea.

2 THE COURT: Take your time.

3 MR. SPENCER: You say you're five-foot six?

4 THE WITNESS: Yes, that's what my police record
5 says. I say five-seven, but my police record says
6 five-six.

7 MR. SPENCER: Thank you. You can take your
8 seat.

9 Your Honor, I have no further questions. I
10 would -- Court's indulgence. I want to look at this
11 yearbook.

12 THE COURT: Yes, sir.

13 MR. SPENCER: That was page 84?

14 MR. CRANSHAW: Eighty-seven.

15 THE COURT: Eighty-seven.

16 THE WITNESS: Second line.

17 MR. SPENCER: I see it. Thank you.

18 Your Honor, I don't think this has been -- I
19 don't think the yearbook has been moved into evidence yet.
20 I would like to move it into evidence.

21 THE COURT: All right. To whom does it belong?

22 MR. CRANSHAW: It belongs to the library. I
23 subpoenaed it from the library.

24 THE COURT: Let me see it, please. And we'll
25 see if we can get a copy of that page.

1 MR. CRANSHAW: Thank you, sir. The librarian
2 would be upset with me otherwise.

3 MR. SPENCER: I have no objection to a copy
4 being substituted.

5 MR. CRANSHAW: And 8 also.

6 MR. SPENCER: And the composite.

7 MR. CRANSHAW: I move 9 and 10 into the record.
8 In fact, just for the record, State's or Applicant's 1
9 through 10 I'd move into the record, your Honor.

10 THE COURT: What are they? These are the ones
11 that have been handed up?

12 MR. CRANSHAW: Yes, your Honor.

13 THE COURT: Any other pictures of the person
14 whose name is Mike Bostic on any page other than 87?

15 MR. CRANSHAW: Not in that album. There are
16 other photographs. There is another photograph that I
17 have that was retrieved by the mother from another photo
18 album that I was unable to retain.

19 MR. SPENCER: I have no objection to that
20 photocopy of the picture being put into the record.

21 THE COURT: Let the Court view it.

22 MR. CRANSHAW: This is also, your Honor, I will
23 have it marked, if I may.

24 THE COURT: Let the Court look at it.

25 You have no objection, Mr. Spencer?

1 MR. SPENCER: Right. And I think the composite
2 got moved into evidence anyway and that's already part of
3 the record from the prior PCR, so I have no objection to
4 that either.

5 MR. CRANSHAW: This would be 11.

6 (WHEREUPON, Applicant Exhibit No. 11 was marked
7 for identification only.)

8 MR. CRANSHAW: Shall I resume, your Honor?

9 THE COURT: Yes.

10 REDIRECT EXAMINATION

11 BY MR. CRANSHAW:

12 Q Mr. Attorney General had brought up one of your eye
13 witnesses, Ms. Kimmy Shykes. And are you aware that Ms.
14 Kimmy Shykes was convicted of the crime of murder in 1997
15 and she's serving 50 years in prison right now?

16 MR. SPENCER: Your Honor, I object. That is
17 irrelevant.

18 MR. CRANSHAW: He brought it up, and she was an
19 identification witness at the time.

20 MR. SPENCER: I brought up that she was an
21 identification witness. I didn't bring up any prior or I
22 should say subsequent bad acts. I don't think that is
23 relevant.

24 THE COURT: That is sustained so far as what she
25 was convicted of, what she did, but so far as how she

1 identified and what she knew --

2 MR. CRANSHAW: Yes.

3 THE COURT: -- about this applicant, well, that
4 is fair play. He did bring it up.

5 MR. CRANSHAW: Your Honor, actually for that
6 limited purpose, let me state, were you contacted about
7 that alleged murder in any way?

8 THE WITNESS: No, sir. It was in the newspaper
9 that I had wrote her harassing letters. She said that I
10 had wrote her harassing letters from prison.

11 MR. SPENCER: Objection, your Honor, hearsay.

12 THE COURT: Sustained.

13 MR. CRANSHAW: Give me a moment if I may, your
14 Honor.

15 THE COURT: Take your time, Counsel.

16 BY MR. CRANSHAW:

17 Q Is the allegation that Kimmy Shykes made that puts
18 you at the scene of the crime for which we're here today,
19 is that the only allegation that she's ever made against
20 you?

21 A No, sir.

22 Q Did she in fact allege that you --

23 MR. SPENCER: Your Honor, I object on the
24 grounds of hearsay.

25 MR. CRANSHAW: I haven't asked the question.

1 THE COURT: Complete the question. Do not
2 answer the question.

3 BY MR. CRANSHAW:

4 Q Has she not also identified you as being involved in
5 a crime from 1997?

6 THE COURT: Mr. Spencer.

7 MR. SPENCER: Same objection, hearsay.

8 THE COURT: Sustained.

9 MR. CRANSHAW: Just a moment, your Honor.

10 THE COURT: Take your time.

11 MR. CRANSHAW: If I may, your Honor.

12 THE COURT: Yes, sir.

13 MR. CRANSHAW: This is a page from joint
14 appendix number 17. This is from the prior record of
15 post-conviction relief.

16 To my understanding, this is a newspaper article
17 dated March 17th, 2000 from the Greenville News, and I
18 would ask that this be entered into the record as 12.

19 THE COURT: Let me look at it.

20 MR. SPENCER: Your Honor?

21 THE COURT: Yes, sir.

22 MR. SPENCER: Thank you, your Honor.

23 Technically it's already part of the record. I
24 think my objection is that the purpose for which I believe
25 it's being used for, what this particular individual did

1 after the trial just isn't relevant to Mr. Prewitt's
2 trial. And again it's a newspaper article. You know,
3 that is hearsay also. So I have two objections, hearsay
4 and relevancy.

5 MR. CRANSHAW: Your Honor, we're dealing with
6 mistaken identity. This woman has identified him and this
7 is argumentative. This is for the sake of argument.

8 This is not an evidentiary matter that I'm
9 posing. She's identified him as the perpetrator of
10 another crime that she in fact admitted, and I think that
11 goes directly to identity. There are two eye witnesses to
12 this crime for which my client was convicted.

13 THE COURT: Now, how is this relevant? It
14 definitely is hearsay. But what again do you say makes it
15 relevant?

16 MR. CRANSHAW: The issue here is, your Honor, is
17 taking a proffer to determine whether I'm dealing with a
18 matter of third party guilt and whether I get over the
19 hurdle of third party guilt. And what this evidence
20 demonstrates, your Honor, is mistaken identity or false
21 identity.

22 THE COURT: How does it demonstrate that?

23 MR. CRANSHAW: The allegation that -- well, I
24 would state -- I mean, right directly this is a witness
25 who put my client at the scene of the crime which is the

1 subject of this post-conviction relief. Three years after
2 he's in jail she says he committed another crime. I think
3 it has everything to do with identity, and a crime for
4 which she was convicted. It goes to her motive.

5 MR. SPENCER: I'm sorry, your Honor, I was under
6 the impression that that was part of the PCR record on the
7 first PCR. Do you have what page in the appendix that
8 was?

9 MR. CRANSHAW: It says the joint appendix, page
10 17. I literally pulled that out, your Honor, as I handed
11 it up to the Court.

12 Is it stamped? If I may, your Honor.

13 I have a great deal of documentation. If it's
14 not from the joint appendix, then I will remove it.

15 THE COURT: I still don't see how this is
16 relevant. Will you point it out to me?

17 MR. CRANSHAW: I'm sorry, your Honor.

18 THE COURT: You've got some language highlighted
19 there. How is that or any other part of it relevant to
20 this inquiry?

21 MR. CRANSHAW: Your Honor, I don't want to try
22 your patience.

23 THE COURT: No, sir, you're not.

24 MR. CRANSHAW: I believe that it's relevant to
25 this inquiry because if this witness, this eye witness at

1 the scene of the crime for which my client was convicted
2 later stated he had committed another crime which she
3 actually had committed herself, I think it goes to her
4 motivations. And I think it has to do with whether I get
5 over the hurdle of demonstrating evidence of third party
6 guilt.

7 I don't see it in the joint appendix, your
8 Honor.

9 THE COURT: Where did it say in that newspaper
10 article --

11 MR. CRANSHAW: She told authorities that three
12 men attacked them, and I'm reading from the article, and
13 speculated it had somebody to do with a Newberry trial she
14 had testified in. She later confessed to killing her
15 husband.

16 THE COURT: What does that have to do with this
17 applicant? Maybe I'm missing the point.

18 MR. CRANSHAW: She said that the three men were
19 doing it at his behest.

20 THE WITNESS: Your Honor, she said I wrote her
21 harassing letters from prison.

22 THE COURT: Now, Mr. Prewitt, don't volunteer
23 anything. Unless your attorney asks you a question,
24 please don't say anything because that is not proper.

25 THE WITNESS: Sorry.

1 THE COURT: You can mark it for identification.
2 The Court will not consider it. It will be marked for
3 I.D.

4 MR. CRANSHAW: Thank you, your Honor.

5 Let me state just for the record, I've looked in
6 the record of post-conviction relief, and I believe I'm
7 mistaken, I don't see it in the record, so I'm not
8 entering it, but I would ask -- I mean, I think we were
9 both mistaken, Mr. Attorney General.

10 MR. SPENCER: I understand. I'm not sure what
11 action the joint appendix was. I don't have a joint
12 appendix.

13 THE COURT: We don't find it in these records
14 that were handed up.

15 MR. CRANSHAW: Then if it could just be marked
16 for the record. Thank you, your Honor. Thank you for
17 patience. It's for identification.

18 (WHEREUPON, Applicant Exhibit No. 12 was marked
19 for identification only.)

20 MR. CRANSHAW: I don't have any further
21 questions, your Honor.

22 THE COURT: Anything else from this witness?

23 MR. CRANSHAW: No further questions, your Honor.
24 Thank you.

25 MR. SPENCER: I have no further questions, your

1 Honor.

2 THE COURT: Come down and have a seat with your
3 attorney.

4 Call your next witness, Mr. Cranshaw.

5 MR. CRANSHAW: The State calls Yohance Hill,
6 your Honor.

7 YOHANCE HILL, after being duly sworn, testified
8 as follows:

9 THE COURT: Thank you. Be seated, please.
10 You may examine, Counsel.

11 MR. CRANSHAW: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MR. CRANSHAW:

14 Q Mr. Hill, how do you know this man seated next to me?

15 THE COURT: Get his name, full name.

16 MR. CRANSHAW: Thank you.

17 BY MR. CRANSHAW:

18 Q If you would please for the record state your name,
19 sir.

20 A My name is Yohance Hill.

21 Q And where is it that you're living now?

22 A I'm now being housed at Evans Correctional
23 Institution.

24 Q How is it that you know my client, Mr. Gary Prewitt?

25 A One day I happened to attend mail call and I saw

1 Mr. Prewitt get a Laurens Advertiser and I asked him was
2 he from Laurens and that's when I got accompanied with
3 Mr. Prewitt.

4 Q So how long have you known Gary?

5 A Going on a year and a half now.

6 Q I'm going to show you what's been marked as
7 Applicant's No. 9. And do you recognize that document?

8 A Yes, sir.

9 Q And that document is a sketch of what person?

10 A Mike Bostic.

11 Q And when did you first see that document?

12 A December of 2002.

13 Q And how long have you known a gentleman named Mike
14 Bostic?

15 A Since 1993.

16 Q You have known Mike Bostic nearly ten years when you
17 saw this photograph?

18 A Yes, sir.

19 Q Tell me about the time you saw the photograph, if you
20 would. How did it happen?

21 A Well, I had seen Mr. Prewitt in November, and I
22 happened to go back to the dorm. They moved me out Santee
23 and they moved me back to Cherokee dorm with Mr. Prewitt,
24 and we happened to be talking and he showed me a picture.
25 That's when I told him that I know the dude right there.

1 Q You are familiar with what it is alleged that this
2 man did, am I correct?

3 A Yes, sir.

4 Q If he walked into the back of this court, would you
5 be pleased if he saw you standing here testifying?

6 A No, sir, I wouldn't being pleased.

7 Q And how do you know him?

8 A 1993. We had some -- I used to come through the
9 neighborhood and I know him there.

10 Q What crime are you serving a sentence for now?

11 A Distribution of marijuana and assault and battery
12 with intent to kill and attempted escape.

13 Q And you had dealings with him back in '93, back
14 before you were incarcerated?

15 A Yes, sir.

16 Q Did you have any dealings with my client back before
17 you were incarcerated?

18 A No, sir.

19 MR. CRANSHAW: No further questions, your Honor.
20 Thank you.

21 THE COURT: Mr. Spencer.

22 CROSS-EXAMINATION

23 BY MR. SPENCER:

24 Q Mr. Hill, you said you were currently incarcerated
25 for distribution of what was that, marijuana?

1 A Marijuana, sir.

2 Q Assault and battery with intent to kill?

3 A Yes, sir.

4 Q Attempted escape?

5 A Yes, sir.

6 Q Okay. Can you tell me, do you have any other prior
7 convictions?

8 A Yes, sir.

9 Q Could you please tell me them?

10 A I have two pending charges for assault and battery
11 with intent to kill.

12 Q Assault and battery with intent to kill. Any other
13 charges?

14 A No, sir.

15 MR. SPENCER: Thank you. I have no further
16 questions.

17 THE COURT: Redirect?

18 MR. CRANSHAW: Nothing further, your Honor.

19 THE COURT: Thank you, sir. Come down. Watch
20 your step.

21 MR. CRANSHAW: Your Honor, I ask this prisoner
22 be excused as he has a long trip in front of him.

23 THE COURT: You may be excused, sir.

24 MR. CRANSHAW: I would ask to have Mack Hill
25 sworn, your Honor, as my next witness.

1 THE COURT: Mack Hill.

2 MACK HILL, after being duly sworn, testified as
3 follows:

4 THE COURT: Thank you. Watch your step and be
5 seated.

6 You may examine, Mr. Cranshaw.

7 MR. CRANSHAW: Thank you, your Honor.

8 DIRECT EXAMINATION

9 BY MR. CRANSHAW:

10 Q If you would, please state your name for the record.

11 A Mack Antonio Hill.

12 Q And Mack, you and I have spoken earlier today,
13 correct? You happy to be here, Mack?

14 A Not in this suit. I'd be happy to be here if I had a
15 suit.

16 Q And I'm going to show you right directly what has
17 been entered into evidence as Applicant's No. 9. Do you
18 recognize that photograph?

19 A Yes.

20 Q Who is that a picture of?

21 A The guy that lives in Whitmire.

22 Q What's the guy you know from Whitmire's name, Mack?

23 A Mike.

24 Q Mike. What is his last name?

25 A Bostic or Bostic, something like that.

1 Q How have you known Mike Bostic?

2 A Live forever. I'm from down Whitmire way, and he
3 from the area.

4 Q On February 25, 2001, were you shown that photograph
5 by Gary Prewitt, that drawing by Gary Prewitt?

6 A See, I pass him there on his bed, something like
7 that, and I asked him about it.

8 Q On that day?

9 A Uh-huh.

10 Q And that is a yes?

11 A Yes.

12 Q You asked him about it why?

13 A Because it looked familiar.

14 Q The sketch looked familiar?

15 A It looked like a picture.

16 Q And how long have you known this gentleman, Mike
17 Bostic?

18 A Probably like ten, might be 15 years.

19 Q What color hair has he got?

20 A Reddish orange.

21 Q How tall is Mike Bostic?

22 A About six-one, six-two. Six foot, six-one, something
23 like that.

24 Q What kind of car did he drive back -- you say you
25 have known him for 15 years. Ten years ago, '94, what

1 kind of car was he driving?

2 A Impala.

3 Q Chevrolet?

4 A Yes.

5 Q Was it pretty sparkling new or was it old?

6 A No. It was primed up, it was primer.

7 Q Gray?

8 A Uh-huh. You know what color prime is? Like you
9 prime it down like you going to paint it?

10 Q How do you remember what kind of car he was driving?

11 A Because he tried to sell me the car.

12 Q He tried to sell you that car?

13 A And one of my friends, too.

14 Q Did he try to sell you that car sometime during the
15 summer of 1994?

16 A Let me see. I believe about '95, '96, around that
17 time.

18 Q Okay.

19 A Because my cousin was staying with me, and he reached
20 out to the both of us because we had a house together, and
21 it would be around that time, and that would be around '95
22 or '96.

23 Q Okay. How long have you known Gary?

24 A I just met Gary down at McCormick, man.

25 Q How long ago was that?

1 A About two and a half years ago.

2 Q So there was a time period during which you and Gary
3 were both at McCormick. You were doing time for what?

4 A Violation of probation.

5 Q So you were convicted for a violation of probation.

6 What sentence were you originally sentenced to
7 probation for?

8 A Common law robbery.

9 Q So a strong armed robbery charge, that's what you
10 were doing time for. And you knew, you stayed and spent
11 time at McCormick. How long would you say that you knew
12 Gary?

13 A Eight months.

14 Q All right. Why are you here testifying for him?
15 What can he give you?

16 A Nothing.

17 Q And do you owe him anything? You owe him any favors?

18 A Probably owe him a cigarette.

19 Q What's that?

20 A Probably owe him a cigarette.

21 Q Probably owe him some cigarettes.

22 Has he ever promised to testify for you?

23 A He can't do nothing to help me. I mean, he can't do
24 nothing to help me.

25 Q Where are you right now? Where are you living right

1 now?

2 A My mother.

3 Q What's that orange jump suit on your back for?

4 A Oh, I violated paying restitution. I got to pay the
5 restitution off.

6 MR. CRANSHAW: Mack, thank you for coming in and
7 talking to us today.

8 THE COURT: Mr. Spencer.

9 MR. SPENCER: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. SPENCER:

12 Q So you had your probation revoked and you're serving
13 out a sentence for common law robbery?

14 A Sir?

15 Q You're serving out a sentence for common law robbery?

16 A For probation.

17 Q But the original conviction was for common law
18 robbery?

19 A Uh-huh.

20 Q Okay. What other convictions do you have?

21 A No other conviction.

22 Q That's your only conviction?

23 A Uh-huh.

24 Q And you said you've known Mr. Prewitt for two and a
25 half years now?

1 A I met him two and a half years ago down in McCormick.
2 Might be two years. Might be two years.

3 Q Okay. You mentioned that Mr. Bostic tried to sell
4 you a gray car back in '95 or '96?

5 A I would say '96.

6 Q Is that the first time you'd seen that car?

7 A No. I seen him besides that time.

8 Q Okay.

9 A Whitmire is a small area. Ain't got but one red
10 light.

11 Q And you said his hair was reddish orange?

12 A Yeah.

13 Q So it's a bright red?

14 A No, not bright.

15 Q I mean orange, you described it as orangish?

16 A It's reddish orange. I mean, he always has facial
17 hair. I don't know.

18 MR. SPENCER: Beg the Court's indulgence.

19 THE COURT: Take your time, Mr. Spencer.

20 BY MR. SPENCER:

21 Q You said that car was gray?

22 A It was primed up. You know, primed like you paint it
23 another color.

24 Q Can you explain what that is?

25 A Prime?

1 Q Yeah. Is it like chrome?

2 A No. Prime is something used to strip paint.

3 Q Okay. I understand.

4 A If you're going to change the color on it.

5 Q So it's kind of faded?

6 A No, the prime's still on it.

7 Q Okay. And it was gray?

8 A Yeah, that's the color of primer.

9 Q I see. I Understand you now. Thank you.

10 A It was burgundy, the interior was burgundy.

11 MR. SPENCER: Thank you. I have no further
12 questions.

13 THE COURT: Anything further, Mr. Cranshaw?

14 MR. CRANSHAW: Nothing further, your Honor.
15 Thank you.

16 THE COURT: Thank you, sir.

17 Come down, Mr. Hill. Watch your step.

18 MR. CRANSHAW: I would ask this witness be
19 excused, your Honor.

20 THE COURT: Mr. Hill, you may be excused, sir.
21 Who's your next witness?

22 MR. CRANSHAW: Your Honor, I would call Richard
23 Hill, please.

24 THE COURT: While that witness is being shown
25 in, Mr. Cranshaw, are all the witnesses going to testify

1 to essentially the same factors?

2 MR. CRANSHAW: Yes, your Honor. I can be brief
3 if you think it duplicative.

4 THE COURT: Well, if you just say who they are
5 after this man or woman testifies, then if you can say
6 that each one of the ones who you name would corroborate
7 that which has already been testified to, if that's the
8 case.

9 MR. CRANSHAW: Yes, your Honor. Thank you, sir.
10 In fact, we can move this along after this witness because
11 the other witnesses that I had were chain witnesses for
12 the photograph, so we'll be brief.

13 THE COURT: While we're waiting, we have
14 several, a selection of copies of the photograph of the
15 book. Mr. Fisher had tried to make some lighter and some
16 darker. You can pick the one that you think is the best.
17 They all appear to be good, but he wanted to give you an
18 opportunity to choose the one that you both agreed was
19 most representative of that page.

20 MR. SPENCER: I think Mr. Cranshaw picked out
21 one that is probably clearest.

22 THE COURT: See if he agrees.

23 MR. CRANSHAW: Yes, sir.

24 THE COURT: That page will be handed to the
25 court reporter. Let's see if we can remove her sticker

1 from this book. I don't know if you can do that, madam
2 court reporter, but if it's possible if you could remove
3 it because this book goes back to the library somewhere,
4 and we wouldn't want it to be thought to be involved in
5 any litigation.

6 MR. CRANSHAW: Thank you, sir.

7 THE COURT: That page will take the place.

8 The record will show that Mr. Cranshaw has taken
9 the court reporter's sticker off of the actual annual from
10 the school, and because it had been there only a short
11 time, he was able to reapply it to a photostatic copy of
12 the page in question, being page number 87, and the court
13 reporter has no objection.

14 Madam Court Reporter, I know that you're not
15 used to speaking on the record, but do you have any
16 objection to that being substituted for the book itself?

17 THE COURT REPORTER: No.

18 THE COURT: Thank you. Continue.

19 RICHARD HILL, after being duly sworn, testified
20 as follows:

21 THE COURT: Watch your step. Have a seat.

22 You may examine, Mr. Cranshaw.

23 MR. CRANSHAW: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. CRANSHAW:

1 Q If you would, please state your name for the record,
2 please, sir.

3 A Richard Dennis Hill.

4 Q Are you any relation to Mr. Mack Hill?

5 A No, I'm not.

6 Q Any relation to Mr. Yohance Hill?

7 A No, I'm not.

8 Q How do you know Gary Prewitt, sir?

9 A I met him at Evans.

10 Q Did you know him prior to your incarceration at the
11 same institution?

12 A No, sir.

13 Q How long did you spend with Gary?

14 A I was with him about eight months.

15 Q What kind of sentence are you doing now?

16 A Fifteen suspended to ten.

17 Q What's it for?

18 A Second degree burglary.

19 Q Do you recognize what is marked as Applicant's No. 9?

20 This is an exhibit.

21 A Yes, sir, it's a composite drawing of Mike Bostic.

22 Q And any question in your mind of who that drawing
23 most resembles?

24 A No, sir.

25 Q How long have you known the gentleman you mentioned,

1 Mike Bostic?

2 A Since about 1999.

3 Q How is it you know him?

4 A He came to Newberry County jail when I was trustee
5 there.

6 Q And do you know what he was in the jail for?

7 A No, sir, not right offhand.

8 Q But you were trustee?

9 A Yes, sir.

10 Q How tall is he?

11 A About 6-foot tall.

12 Q And do you know this gentleman seated on the first
13 row, the gray-haired gentleman wearing the tweed jacket,
14 Mr. Ray Wicker?

15 A No, sir, I don't.

16 Q So you could not have told him even if you had that
17 photograph back in 1994 who that was a picture of?

18 A No, sir.

19 Q You ever seen this gentleman before?

20 A No, sir.

21 Q You didn't know my client back in 1994, did you?

22 A No, sir.

23 Q And you identified this photograph on October 8th,
24 2002?

25 A Yes.

1 Q As Mr. Mike Bostic?

2 A Yes.

3 MR. CRANSHAW: Thank you very much. Please
4 answer any questions that the Attorney General asks.

5 THE COURT: Mr. Spencer.

6 MR. SPENCER: Thank you, your Honor.

7 Before I start my cross, I meant to do this
8 earlier, and I apologize to Mr. Wicker.

9 I don't need Mr. Wicker as a witness. Unless
10 Mr. Cranshaw has any objections, I would like to let him
11 go. It seems he's not going to be related to this matter
12 at all.

13 THE COURT: It would appear that way. The Court
14 did not know what your strategy to go forward was under
15 these circumstances. So the Court's having made a
16 tentative ruling or preliminary rule as it were to
17 allowing the proffer, is there any objection to Mr. Wicker
18 being excused?

19 MR. CRANSHAW: None, your Honor.

20 THE COURT: Thank you very much, Mr. Wicker, for
21 you patience. You may be excused or you may stay with us
22 and listen to the balance of the testimony.

23 MR. WICKER: I may stay a little while. And I
24 will be back tomorrow for Eric Washington.

25 THE COURT: Thank you. Continue, please.

1 MR. SPENCER: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. SPENCER:

4 Q Mr. Hill, is your SCDC number 253378?

5 A Yes, sir.

6 Q And you had actually had a PCR scheduled for today,
7 didn't you?

8 A Yes, sir.

9 Q Okay. And I have the benefit of having your SCDC
10 records.

11 You're currently serving a sentence for second
12 degree burglary?

13 A Yes, sir.

14 Q You also have convictions for grand larceny?

15 A Yes, sir.

16 Q And that would be in Newberry?

17 A Yes.

18 Q Richland, Calhoun and Lexington counties?

19 A Yes, sir.

20 Q Do you have any other prior convictions?

21 A No, sir.

22 MR. SPENCER: I have no further questions.

23 THE COURT: Anything further?

24 MR. CRANSHAW: Nothing further, your Honor.

25 THE COURT: Thank you, sir. Come down.

1 MR. CRANSHAW: Your Honor, if I may, the other
2 witness that I would intend to call regarding this
3 identification would be Mr. Larry Davenport. If I may
4 consult with my client for a moment.

5 THE COURT: Take your time.

6 (Counsel conferring with client.)

7 MR. CRANSHAW: I've discussed this with my
8 client. He's indicated to me in the affirmative that
9 Mr. Davenport would add to these proceedings that the
10 identification he made is in accord with those that you've
11 heard that was made on March 25, 2001.

12 And at this time I have no further witnesses at
13 this time, your Honor.

14 THE COURT: All right. Summation, Mr. Cranshaw.

15 MR. CRANSHAW: Thank you, your Honor.

16 I think what has been highlighted, albeit a bit
17 inartfully by me at times, is there is a claim of new
18 evidence in a very old case, and my client is certainly
19 quite emotionally tied to this matter. But for the
20 purposes of the Court and your Honor's consideration,
21 legally speaking, I believe what we have is, as has been
22 demonstrated, there is evidence that now exists that did
23 not exist at the time of the trial that another individual
24 committed -- forgive me, not even that another individual
25 committed the offense, but that another individual is

1 identified by evidence that was taken at the time of the
2 original crime. The existence of that evidence I believe
3 is important, and I believe that the existence of that
4 evidence is what your Honor should consider, not the
5 weight of that evidence, for certainly the weight of that
6 evidence may be a question for a jury to consider.

7 I think I had bogged it down a little earlier in
8 considering the credibility of the two identification
9 witnesses at the time of the original trial. That's
10 already been passed on.

11 We are on the record concerned about the
12 credibility of those witnesses, the motives of those
13 witnesses. And I'm not speaking to the victim, sir. I
14 take nothing away from that gentleman, but regarding the
15 motives of the other prime witness in the case.

16 I believe we have demonstrated there is now
17 evidence that did not exist at the time, could not have
18 been adduced at the time. These men did not know my
19 client at the time of the trial. These men could not have
20 picked up the phone and called Mr. Wicker as one of them
21 stated. So it's new evidence. It's different.

22 The first post-conviction relief hearing there
23 was an issue of, Well, I never even saw this sketch
24 before. That, to be honest, that is old history. The
25 difference between the first post-conviction relief

1 hearing and this one is that somebody out there has told
2 me who is in that sketch. And whether I believe them or
3 not, maybe a jury sitting 12 in a box ought to hear it,
4 and that's why we have come to your Honor.

5 Respectfully, I believe that under the
6 provisions our legislature has provided, that have been
7 provided by our legislature, I believe that a new trial
8 should be granted to my client.

9 Thank you, sir.

10 THE COURT: Thank you, Mr. Cranshaw.

11 Anything additional, Mr. Spencer?

12 MR. SPENCER: Your Honor, I would stand by the
13 original motion. I think that was what Mr. Cranshaw was
14 talking about when he was talking about the way --
15 certainly in a summary judgment motion, you have to put it
16 in the light most favorable to the non-moving party, the
17 applicant in this case. However, we submit that this case
18 doesn't even meet that threshold, again relying on
19 Mansfield.

20 As I understand it, your Honor, unless your
21 Honor is going to change the ruling, I'm not going to make
22 any arguments as to the credibility if you were going to
23 consider this beyond summary judgment stage. I reserve
24 those arguments. But I would submit that summary judgment
25 is appropriate. This application should be dismissed as

1 excessive as the allegations don't meet the
2 after-discovered evidence test.

3 THE COURT: Thank you, Mr. Spencer.

4 Anything in response, Mr. Cranshaw?

5 MR. CRANSHAW: Nothing, your Honor. Thank you.

6 THE COURT: The Court finds that the composite
7 drawing is not dissimilar to the appearance of the
8 applicant at this time. Most important, it is a composite
9 drawing, it is not a photograph. No witness can say what
10 particular person appears in the composite drawing as it
11 is a composite and made up from the comments and remarks
12 of a potential witness in the case who saw the individual
13 who is represented by the composite drawing.

14 There is no corroboration of Mike Bostic's
15 presence or non-involvement or involvement. However
16 remote or however suggestive it may be, none at all
17 exists.

18 The evidence in the trial indicates that a green
19 car was involved, but the applicant herein is asserting
20 that Mr. Bostic, whom he says is the person identified in
21 the composite drawing, was driving a gray car or a car
22 with primer, although both of the vehicles may have had
23 some age.

24 There is no evidence of after-discovered
25 evidence that goes to show or support that the applicant

1 is not the perpetrator of the crime that occurred on
2 July 22nd, 1994.

3 The Court draws the attention of the reader of
4 the record to the record of the trial.

5 Now, the Court is not saying that the motion to
6 reopen the trial for after-discovered evidence is not
7 timely based upon these affidavits and testimony of these
8 witnesses, but the Court is saying that there are strict
9 limitations on the admissibility of third party guilt and
10 the commission of a crime by another is, and proof
11 thereof, is limited to the facts which are inconsistent
12 with the defendant's guilt. The evidence must raise a
13 reasonable inference as to the accused's innocence. We
14 have nothing here with which we can deal at all other than
15 some allegations that a composite drawing appears to be
16 someone other than the defendant. The Court has
17 specifically found, and the record will reflect, that
18 although the Court cannot say that the composite drawing
19 is of the defendant, it is not dissimilar to his
20 appearance.

21 The Court further brings to the attention of the
22 reader of the record of these proceedings to page 21 of
23 Magistrate Carr's report to the district court following
24 the habeas corpus petition of Mr. Prewitt, said report of
25 the Magistrate dated the 10th of May, 1999, and on page 21

1 thereof, it notes that trial counsel vigorously
2 cross-examined the witness Shykes about the
3 inconsistencies in her identification of Prewitt and
4 cross-examined the police officer on whether Shykes had
5 made the composite before she viewed the photo lineup.
6 There is no expressed finding by the preceding
7 post-conviction relief application judge that the
8 composite does not resemble Prewitt, but at best, such
9 evidence would be impeaching and merely cumulative to
10 trial counsel's cross-examination of Shykes.

11 So to the extent that it may throw light upon
12 the fact that the composite drawing has already been
13 discussed, Magistrate Carr in his report to the district
14 court did discuss it, and that report was affirmed in its
15 completeness by Judge Joseph F. Anderson, Jr, in his order
16 of the 30th of September, 1999.

17 It is important to note that the record itself
18 of the trial starting on page 55, the direct examination
19 of Mr. Joe Dixon, the victim, says that he was shot.
20 There is some questions before that as to whether he knows
21 Mr. Prewitt and knows right from wrong and the truth and
22 those sorts of things.

23 The Court draws the attention of the reader to
24 page 50 where he's asked certain questions about his
25 knowledge of the difference between the truth and untruth,

1 and he goes on to say that on page 51 at line 17 that he
 2 saw a green car. He didn't say a gray car, he said a
 3 green car. And then he says that there were people coming
 4 into the house that came around the back of the house and
 5 he asked on line six, page 54, What are you doing in
 6 there? And at line ten on the same page, the person
 7 didn't answer. And on line 15, page 54, the question was,
 8 All right, he shot you. Where were you standing when he
 9 shot you? The answer was, Right in the kitchen, right
 10 there at the door.

11 He explained at the bottom of page 55, top of
 12 page 56 that he was shot three times, once in the chest,
 13 twice in the face, once in the neck and face, between his
 14 shoulder and neck and behind his neck; that he was asked
 15 on page three, line three, page 57, You got shot twice in
 16 the face, two times in the face? And he answers, Got one
 17 right here, one right here, one on this shoulder and that.

18 On page 58 at line 21 he says, line 18, the
 19 prosecutor, solicitor says, Okay, Mr. Dixon, how many
 20 people shot you that day? Question 21, line 21, he said,
 21 One. Did you see the man in the courtroom? Do you see
 22 the man in the courtroom? He answered, answer, I sure do.
 23 Question, Can you tell this jury where he is? Answer,
 24 Yeah, right back over there. Line 25, Back over there?
 25 Stand up and point him out to us. Page 59, line one, Are

1 you pointing to this man right here? Line two, I sure is.
2 Question number three, line three, question, Mr. Prewitt?
3 Answer, Yeah.

4 Now, he further goes on line seven and says, I
5 know it because I don't forget nothing. And at line nine
6 he says, I don't forget nothing. That was on the
7 19th of January, 1995, when the alleged or the shooting
8 occurred on the 22nd of July, 1994. Now we are having
9 after-discovered evidence that is allegedly discovered
10 during late 2002 or 2003.

11 The Court finds it rather significant that this
12 evidence is coming at this time. As aforesaid, the
13 preliminary finding and the ruling of the Court is
14 affirmed and made into the order of the Court. The
15 application is dismissed for the reasons stated.

16 UNIDENTIFIED WOMAN: Can I address the Court?

17 THE COURT: You may not. The Court does not
18 mean to be rude to you, madame, but anything you say may
19 open the record for additional things and raise problems.

20 Mr. Cranshaw, if you would explain to her,
21 please, that the Court does not mean to be rude or brusque.

22 Thank you. The record is closed.

23 (The proceedings were concluded for the day.)
24
25

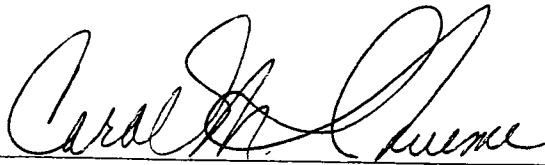
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 8th 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 Common Pleas for Laurens County, South Carolina, on the 9th day of October, 2003.

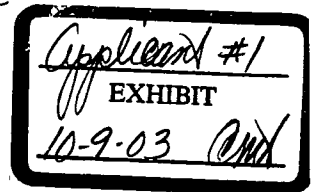
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 10, 2004



CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007



1. I GARY LANE PREWITT AFTER BEING DULY DEPOSED SAYTH AND CERTIFY UNDER THE PENALTY OF PERJURY AS FOLLOWS
2. THAT I NEVER SEEN THE COMPOSITE DRAWING GIVEN BY KIMMIE SHIPES UNTIL AFTER MY TRIAL
3. THAT THE FIRST TIME I SEEN THE COMPOSITE DRAWING WAS WHEN MY P.C.R ATTORNEY ROBERT C. LAKE III. CAME TO SEE ME ON FEBRUARY 29, 1996 AT THE MCCORMICK CORRECTIONAL INSTITUTION AFTER HE FILED A RULE 45 C ON THE NEWBERRY COUNTY SHERIFFS OFFICE.
4. THAT ONE OF THE ISSUES I CLAIMED ON MY P.C.R WAS THAT MY TRIAL ATTORNEY WAS INEFFECTIVE FOR FAILING TO ENTER THE COMPOSITE DRAWING AT MY TRIAL
5. THAT WHEN MY P.C.R ATTORNEY ASKED MY TRIAL ATTORNEY ABOUT THE COMPOSITE DRAWING MY TRIAL ATTORNEY TESTIFIED THAT HE DID NOT REMEMBER SEEING THE COMPOSITE DRAWING IN THE PROSECUTIONS FILE AT ALL
6. THAT I NEVER RECEIVED A COPY OF THE COMPOSITE DRAWING UNTIL LISA T GREGORY WITH THE SOUTH CAROLINA OFFICE OF THE APPELLATE DEFENSE SENT ME A COPY OF THE WRIT OF CERTIORARI AND APPENDIX THAT SHE FILED WITH THE SOUTH CAROLINA SUPREME COURT ON JANUARY 31 1997
- 7 THAT ON FEBRUARY 25 2001 ABOUT 6.30 PM MACK A HILL CAME TO MY CELL TO GET A ROLLING PAPER TO ROLL A CIGARETTE

THAT WHILE MACK A HILL WAS IN MY CELL MACK A HILL TOLD ME THAT HE
HAD JUST GOT TO MCCORMICK CORRECTIONAL INSTITUTION AND THAT HE LIVED
IN WHITMIRE SOUTH CAROLINA. WHICH IS IN NEWBERRY COUNTY

THAT I TOLD MACK A HILL THAT I LIVED IN JOANNA SOUTH CAROLINA
WHICH IS IN LAURENS COUNTY. AND THAT I WAS ARRESTED BY NEWBERRY
COUNTY SHERIFFS OFFICE

THAT I SHOWED MACK A. HILL THE COMPOSITE DRAWING AND AS SOON AS
MACK A HILL SEEN THE COMPOSITE DRAWING MACK A HILL SAID THAT IS NOT
MIKE BOSTIC AND I SAID MIKE BOSTIC AND MACK A HILL SAID
THAT MIKE BOSTIC HE DRIVES A OLD (4) FOUR DOOR GRAY PRIMORED CHEVROLET
CAPALA

THAT I ASKED MACK A HILL IF HE IS SURE AND MACK A HILL SAID THAT
MIKE BOSTIC TRIED TO SALE HIM THE OLD (4) FOUR DOOR GRAY PRIMORED CHEVROLET
CAPALA FOR 1,200⁰⁰ TWELVE HUNDRED DOLLARS

THAT I ASK MACK A HILL IF HE WAS SURE THE COMPOSITE DRAWING IS
MIKE BOSTIC. MACK A HILL TOLD ME THAT HE IS POSITIVE THE COMPOSITE
DRAWING IS MIKE BOSTIC. MACK A. HILL THEN POINTED TO THE BOTTOM LIP
OF THE COMPOSITE DRAWING AND SAID THAT MIKE BOSTIC DOES NOT HAVE ANY TOP
TEETH, THAT IS THE REASON THE BOTTOM LIP STICKS OUT.

THAT I ASKED MACK A HILL HOW WELL DOES HE KNOW MIKE BOSTIC AND
MACK A HILL SAID THAT HE USE TO GO FISHING WITH MIKE BOSTIC

14. THAT I ASKED MACK A HILL WHAT IS THE GENERAL APPEARANCE OF MIKE BOSTIC AND MACK A. HILL SAID THAT MIKE BOSTIC IS (6) SIX FEET TALL AND MIKE BOSTIC HAS RED HAIR AND A GOATEE JUST LIKE THE COMPOSITE DRAWING

15. THAT I ASKED MACK A. HILL IF HE KNOWS WHERE THE OLD (4) ¹FOUR DOOR GRAY PRIMORED CHEVROLET IMPALA IS AND MACK A HILL SAID THAT THE CAR WOULD NOT BE HARD TO FIND BECAUSE MIKE BOSTIC HAS A DRIVING UNDER SUSPENSION IN THE CAR ABOUT 8 MONTHS AGO. (AROUND JUNE OF 2000)

6 THAT ON MARCH 25 2001 I WAS EATING LUNCH IN THE CAFETERIA WITH LARRY DAVENPORT I TOLD CARRY DAVENPORT THAT MY DORM WAS GOING TO THE GYM AT 11 AM AND FOR HIM TO MEET ME OUT FRONT OF MY DORM.

7 THAT WHEN I WENT TO MY DORM I GOT THE BROWN ENVELOPE THAT I KEEP THE PAPER WORK THAT PROVES MY INNOCENTS IN THE INSITUATION CALLED MY UNIT FOR THE GYM

8 THAT WHEN I GOT OUT SIDE OF MY DORM LARRY DAVENPORT WAS WAITING FOR ME. I PULLED THE COMPOSITE DRAWING OUT AND AS SOON AS LARRY DAVENPORT SEEN THE COMPOSITE DRAWING HE SAID THAT IS MIKE BOSTIC FROM WHITMIRE I ASKED LARRY DAVENPORT IF HE IS SURE. LARRY DAVENPORT SAID THAT THE COMPOSITE DRAWING LOOKS JUST LIKE A POLAROID PICTURE OF MIKE BOSTIC

9 THAT I ASKED LARRY DAVENPORT WHAT MIKE BOSTIC LOOKS LIKE LARRY DAVENPORT SAID MIKE BOSTIC IS (6) SIX FEET TALL HE HAS RED HAIR, A GOATEE, NO TOP FRONT TEETH AND ALWAYS WHERES A BALL CAP.

THAT I THEN ASKED LARRY DAVENPORT IF MIKE BOSTIC DRIVES A OLD CHEVROLET
LARRY DAVENPORT SAID HE DID NOT KNOW

THAT I ASKED LARRY DAVENPORT IF HE WOULD SIGN A AFFIDAVIT AND LARRY DAVENPORT
SAID HE WOULD SIGN A AFFIDAVIT BECAUSE THAT IS MIKE BOSTIC IN THE COMPOSITE
DRAWING.

THAT I WENT BACK TO MY DORM AND ASKED MACK A. HILL IF HE WOULD SIGN A
AFFIDAVIT AND MACK A. HILL SAID THAT HE WOULD SIGN A AFFIDAVIT. STATING WHAT
HE TOLD ME ON FEBRUARY 25 2001.

THAT A FEW DAYS AFTER GETTING THESE AFFIDAVITS FROM MACK A HILL AND
LARRY DAVENPORT I CALLED MY MOTHER SANDRA K PREWITT AND ASKED HER IF SHE
COULD GO TO WHITMIRE HIGH SCHOOL AND LOOK AT OLD HIGH SCHOOL YEAR BOOKS AND SEE
IF SHE COULD FIND ANY PHOTOGRAPHS OF MIKE BOSTIC.

THAT A FEW WEEKS LATER MY MOTHER TOLD ME THAT HER AND MY SISTER MELESSA P WHITCOMB
WENT TO WHITMIRE AND HAD STOPPED BY THE WHITMIRE PUBLIC LIBRARY AND LOOKED
AT OLD WHITMIRE HIGH SCHOOL YEAR BOOKS AND HAD FOUND (2) TWO PHOTOGRAPHS OF A
MIKE BOSTIC (1) ONE WAS IN A 1983 YEAR BOOK AND (1) ONE WAS IN A 1984 YEAR BOOK SHE
SAID SHE HAD COPIES MADE AND MAILED THEM TO ME

THAT I RECEIVED A COPY OF THESE PHOTOGRAPHS OF MIKE BOSTIC FROM THE HIGH SCHOOL
YEAR BOOK SOME TIME IN MAY OF 2001

THAT I WAS IN THE CAFETERIA AT THE EVANS CORRECTIONAL INSTITUTION EATING
SUPPER ON OCTOBER 8 2002 I WAS SITTING AT THE TABLE WITH JACOB TAYLOR
(U)

AND RICHARD HILL. JACOB TAYLOR AND I WERE TALKING ABOUT LEGAL WORK I WAS TELLING JACOB TAYLOR THAT I WAS ARRESTED BY NEWBERRY COUNTY SHERIFFS DEPARTMENT

27. THAT RICHARD HILL TOLD ME THAT HE WAS A STATE TRUSTY AT THE NEWBERRY COUNTY SHERIFFS DEPARTMENT

28. THAT I ASKED RICHARD HILL IF HE KNOWS A MIKE BOSTIC AND RICHARD HILL SAID THAT HE DOES KNOW A MIKE BOSTIC I ASK RICHARD HILL WHAT MIKE BOSTIC LOOKS LIKE

29. THAT RICHARD HILL TOLD ME THAT MIKE BOSTIC HAS RED HAIR AND IS A LITTLE OVER (6) SIX FEET TALL AND HAS A GOATEE

30. THAT I LEFT THE CAFETERIA AND WENT BACK TO THE DORM AND GOT A COPY OF THE COMPOSITE DRAWING AND CARRIED IT TO RICHARD HILLS CELL I SHOWED RICHARD HILL THE COMPOSITE DRAWING AND RICHARD HILL LOOKED AT THE COMPOSITE DRAWING AND SAID THAT IS MIKE BOSTIC

1. THAT RICHARD HILL TOLD ME THAT MIKE BOSTIC HAD BEEN AT THE NEWBERRY COUNTY DETENTION CENTER WHILE HE WAS A TRUSTY.

2. THAT THE INSTITUTION CALLED COUNT TIME AND I HAD TO GO BACK TO MY CELL

3 THAT THE NEXT DAY OCTOBER 9 2002 I WENT BACK TO RICHARD HILLS CELL AND ASKED HIM IF HE WAS SURE THE COMPOSITE DRAWING IS MIKE BOSTIC AND RICHARD HILL SAID THAT HE IS ABSOLUTELY POSITIVE THE COMPOSITE DRAWING

IS MIKE BOSTIC

THAT I ASKED RICHARD HILL IF HE WOULD SIGN A AFFIDAVIT AND RICHARD HILL SAID HE WOULD
ON A AFFIDAVIT

THAT I MET YOHANCE HILL AFTER MAIL CALL IN NOVEMBER OF 2002 AND I ASKED YOHANCE HILL IF
KNOWED MACK HILL AND YOHANCE HILL TOLD ME THAT MACK HILL IS HIS COUSIN AND THAT HE USE
STAY WITH MACK HILL IN WHITMIRE

THAT I ASKED YOHANCE HILL IF HE KNOWED A MIKE BOSTIC AND YOHANCE HILL ASKED ME IF I WAS
-KING ABOUT THE RED HEADED WHITE BOY THAT DRIVES THE OLD CHEVROLET IMPALA AND I SAID YES

THAT YOHANCE HILL TOLD ME THAT MIKE BOSTIC USE TO COME TO MACK HILLS HOUSE ALL THE TIME

THAT I WENT AND GOT A COPY OF THE COMPOSITE DRAWING AND SHOW D IT YOHANCE HILL AS SOON
I SHOWED YOHANCE HILL THE COMPOSITE DRAWING YOHANCE HILL TOLD ME THE COMPOSITE DRAWING IS
-KE BOSTIC

THAT I ASKED YOHANCE HILL IF HE IS SURE THE COMPOSITE DRAWING IS MIKE BOSTIC AND YOHANCE HILL
LD ME THAT HE IS POSITIVE

THAT I ASKED YOHANCE HILL WHAT THIS OLD CHEVROLET IMPALA LOOKS LIKE AND YOHANCE HILL TOLD
THAT THE OLD CHEVROLET IMPALA THAT MIKE BOSTIC DRIVES IS A 1969-1970 4 FOUR DOOR CHEVROLET
MPALA THAT IS GRAY PRIMOR IN COLOR

THAT I ASKED YOHANCE HILL IF HE WOULD SIGN A AFFIDAVIT AND YOHANCE HILL SIGNED A AFFIDAVIT

42 THAT ON APRIL 17 2003 OFFICER M B STRIBBLE A NEWBERRY COUNTY SHERIFFS DEPUTY AND OFFICER T BOWERS A NEWBERRY COUNTY DETENTION CENTER OFFICER CARRIED ME AND (5) FIVE MORE MEN FROM THE NEWBERRY COUNTY DETENTION CENTER TO THE LAURENS COUNTY COURT HOUSE FOR POST CONVICTION RELIEF HEARINGS

1

13 THAT WHILE AT THE LAURENS COUNTY COURT HOUSE I ASK OFFICER M.B STRIBBLE IF HE KNEW BOSTIC AND M.B STRIBBLE SAID THAT HE KNOWS BOSTIC FROM WHITMIRE

14. THAT I SHOWED M.B STRIBBLE THE COMPOSITE DRAWING AND AS SOON AS OFFICER M.B. STRIBBLE SEEN THE COMPOSITE DRAWING OFFICER M.B STRIBBLE SAID THAT IS MIKE BOSTIC I THEN ASKED OFFICER M B STRIBBLE WHAT COLOR MIKE BOSTIC HAIR IS AND M B. STRIBBLE TOLD ME THAT MIKE BOSTIC HAS RED HAIR I THEN ASKED OFFICER M.B STRIBBLE HOW TALL IS MIKE BOSTIC AND OFFICER M.B. STRIBBLE TOLD ME THAT MIKE BOSTIC IS AROUND SIX FEET TALL

15. THAT I ASKED OFFICER T. BOWERS IF HE KNOWS BOSTIC AND OFFICER T. BOWERS TOLD ME THAT HE KNOWS BOSTIC

16. THAT I SHOWED OFFICER T. BOWERS THE COMPOSITE DRAWING AND OFFICER T BOWERS SAID THAT IS MIKE BOSTIC I ASKED OFFICER T. BOWERS IF HE IS SURE AND OFFICER T. BOWERS SAID THAT HE WAS SURE BECAUSE MIKE BOSTIC HAS BEEN AT THE DETENTION CENTER

17 THAT I ASKED OFFICER T BOWER WHAT MIKE BOSTIC LOOKS LIKE AND OFFICER T BOWERS SAID THAT MIKE BOSTIC HAS A GOATEE, RED HAIR AND IS AROUND SIX FEET TALL

18. THAT I STATE THIS NEWLY DISCOVERED EVIDENCE WAS NOT KNOWN TO ME UNTIL FEBRUARY 25 2001

WHEN I SHOWED MACK A HILL THE COMPOSITE DRAWING AND MACK A HILL TOLD ME
HAT THE MAN IN THE COMPOSITE DRAWING IS MIKE BOSTIL

THAT I STATE THIS NEWLY DISCOVERED EVIDENCE WAS DISCOVERED WITH DUE DILIGENCE

THAT I DEPOSE UNDER THE PENALTY OF PERJURY THAT THE FACTS HERE-IN CONTAINED A
RE AND CORRECT EXCEPT AS TO THOSE STATEMENTS BASED UPON INFORMATION AS TO THOSE
STATEMENTS I BELIEVE THEM TO BE TRUE AND CORRECT

SWORN TO BEFORE ME

James W. Brendt

Gary Lane Prewitt

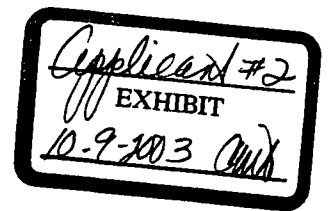
GARY LANE PREWITT

THIS 1st DAY OF Oct 2003

COMMISSION EXPIRES 08-06-2009

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

AFFIDAVIT 266



1. I GARY LANE PREWITT AFTER BEING DULY DEPOSED SAYTH AND CERTIFY UNDER THE PENALTY OF PERJURY AS FOLLOWS.
2. THAT ON APRIL 18 1997 I WAS READING THE GREENVILLE NEWS NEWS PAPER AND I SEEN A ARTICLE WHERE KIMMIE SHIPES HEATON AND HER HUSBAND DAVID G HEATON HAD BEEN SHOT ON A FRONTAGE ROAD IN CLINTON SOUTH CAROLINA WHILE THEY WERE DELIVERING NEWS PAPERS ON APRIL 17 1997 IN THIS ARTICLE DATED APRIL 18 1997 IT STATES THAT KIMMIE SHIPES HEATON TOLD FAMILY AND FREENDS THAT I HAD WROTE HER HARASSING LETTERS WEEKS BEFORE THE SHOOTING.
3. THAT IN A ARTICLE DATED APRIL 19 1997 IN THE GREENVILLE NEWS NEWS PAPER IT STATES THAT AUTHORITIES WERE UNABLE TO LOCATE HARASSING LETTERS AND HAD ALL BUT RULED OUT THE POSSIBILITY THAT THE SHOOTING WAS LINKED TO TESTIMONY KIMMIE SHIPES HEATON HAD GIVEN IN MY TRIAL
4. THAT IN A ARTICLE DATED APRIL 25 1997 IN THE GREENVILLE NEWS NEWS PAPER IT STATES THAT KIMMIE SHIPES HEATON WENT TO THE LAURENS COUNTY SHERIFFS OFFICE ON THE MORNING OF APRIL 24 1997 TO HELP AUTHORITIES WITH SKETCHS OF THREE MEN SHE SAID SHOOT HER AND HER HUSBAND BY NIGHT FALL IT WAS KIMMIE SHIPES HEATON WHO STOOD CHARGED WITH KILLING HER HUSBAND AND SHOOTING HER SELF IN THE SHOULDER
5. THAT IN A ARTICLE DATED JULY 15 1997 IN THE GREENVILLE NEWS NEWS PAPER IT STATES THAT KIMMIE SHIPES HEATON WAS INDICTED FOR THE SLAYING OF HER HUSBAND. IT ALSO STATES THAT KIMMIE SHIPES HEATONS STORY BEGAN TO UNRAVEL WHEN INVESTIGATORS WERE INABLE TO LOCATE THREATENING LETTERS SHE SAID THAT SHE HAD RECEIVED WEEKS BEFORE THE SHOOTING.

THAT IN A ARTICLE DATED MARCH 21 1998 IN THE GREENVILLE NEWS NEWS PAPER IT STATES
 AT KIMMIE SHIPES HEATON HAD PLEADED GUILTY IN FRONT ON THE
 HONORABLE JUDGE J. ERNEST KINARD JR. TO MURDERING HER HUSBAND ALSO IN THIS ARTICLE
 IT STATES THAT KIMMIE SHIPES HEATON HAS A HISTORY OF MENTAL ILLNESS AND THE
 HONORABLE JUDGE J. ERNEST KINARD JR DELAYED SENTENCEING UNTIL KIMMIE SHIPE HEATONS
 TORNEY COULD HAVE A PSYCHIATRIST REVIEW ALL THE RECORDS. ALSO IN THIS ARTICLE IT
 STATES THAT KIMMIE SHIPES HEATONS STORY BEGAN TO UNRAVEL WHEN INVESTIGATOR
 WERE UNABLE TO LOCATE THREATENING LETTERS SHE SAID SHE HAD RECEIVED WEEKS
 FORE THE SHOOTING

THAT IN A ARTICLE DATED MAY 7 1998 IN THE GREENVILLE NEWS NEWS PAPER IT STATES
 AT KIMMIE SHIPES HEATON WAS SENTENCED TO (SO) FIFTY YEARS IN PRISON ALSO IN THIS
 ARTICLE IT STATE THAT KIMMIE SHIPES HEATONS STORY BEGAN TO UNRAVEL WHEN
 INVESTIGATORS WERE UNABLE TO LOCATE THREATENING LETTERS SHE SAID THAT SHE HAD
 CEIVED WEEKS BEFORE THE SHOOTING.

THAT IN A ARTICLE DATED MARCH 17 2000 IN THE GREENVILLE NEWS NEWS PAPER IT STATES
 AT KIMMIE SHIPES HEATON FILED FOR POST CONVICTION RELIEF ASKING THE
 HONORABLE JUDGE JOSEPH COLE FOR A NEW TRIAL. IN THIS ARTICLE IT STATES THAT
 KIMMIE SHIPES HEATON TOLD AUTHORITIES THAT THREE MEN ATTACKED HER AND HER HUSBAND
 AND SPECULATED IT HAD SOMETHING TO DO WITH A NEWBERRY TRIAL THAT SHE HAD TESTIFIED
 . ALSO IN THIS ARTICLE HOWARD L. STEINBERG WITH THE STATES ATTORNEY GENERALS
 OFFICE SAID THAT KIMMIE SHIPES HEATON HAS BEEN IN AND OUT OF MENTAL INSTITUTIONS.
 IN THIS ARTICLE THE HONCRABLE JUDGE JOSEPH COLE HAD NOT MADE A RULEING ON
 KIMMIE SHIPES HEATONS POST CONVICTION RELIEF,

9. ON FEBRUARY 10 OR 11 2001 I WAS COMING FROM THE CAFETERIA I SEEN A GUY THAT LOOKED VERY FAMILIAR I ASK THIS GUY WHAT HIS NAME IS AND HE TOLD ME THAT HIS NAME IS TONY CATHCART. I SAID WILLIAM ANTHONY CATHCART AND HE SAID YES I SAID YOU WAS INVOLVED IN THAT CRIME WITH KIMMIE SHIPES HEATON AND HE SAID YES I THEN TOLD HIM THAT I WAS THE ONE SHE SAID WROTE HER THREATENING LETTERS AND THAT SHE LIED ON ME ABOUT ME BEING AT HER BACK DOOR. IN MY CASE, I TOLD WILLIAM ANTHONY CATHCART THAT I DID EVEN KNOW WHERE KIMMIE SHIPES HOUSE OR THE HOUSE THAT WAS BROKE IN TO WAS. WE STARTED TALKING AND WILLIAM ANTHONY CATHCART TOLD ME KIMMIE SHIPES HEATONS SOUTH CAROLINA DEPARTMENT OF CORRECTIONS NUMBER 249607 HE ALSO TOLD ME THAT KIMMIE SHIPES HEATONS BIRTH DATE IS DECEMBER 20-23 1977

10. THAT I ASKED WILLIAM ANTHONY CATHCART IF HIM AND KIMMIE SHIPES HEATON HAD RECEIVED A RULING ON THEIR POST CONVICTION RELIEFS. WILLIAM ANTHONY CATHCART TOLD ME THAT THEIR P.C.R WAS DENIED AND THAT THEY BOTH HAD TO APPEAL TO THE SUPREME COURT OF SOUTH CAROLINA AND THEY ARE WAITING ON A RULING.

11 THAT A COUPLE WEEKS LATER WILLIAM ANTHONY CATHCART DRAWEED ME A MAP OF THE ROAD WHERE THE CRIME THAT I AM IN PRISON FOR HAPPENED THIS MAP SHOWED ME WHERE THE CRIME SCENE IS AND SHOWS WHERE THE TRAILER THAT KIMMIE SHIPES LIVED IN WHEN CRIME HAPPENED.

12. THAT I STATE THIS AFTER DISCOVERED EVIDENCE WAS NOT KNOWN TO ME UNTIL AFTER MY TRIAL

3 THAT I STATE THIS AFTER DISCOVERED EVIDENCE COULD NOT BY THE EXERCISE

- DUE DILIGENCE BEEN DISCOVERED BEFORE TRIAL

THAT I STATE THIS AFTER DISCOVERED EVIDENCE WAS DISCOVERED WITH DUE DILIGENCE

THAT I DEPOSE UNDER THE PENALTY OF PERJURY THAT THE FACTS HERE-IN CONTAINED
 E TRUE AND CORRECT EXCEPT AS TO THOSE STATEMENTS BASED UPON INFORMATION
 TO THOSE STATEMENTS I BELIEVE THEM TO BE TRUE AND CORRECT.

WORN TO BEFORE ME

Ace W. Bunde

Gary Lane Prewitt

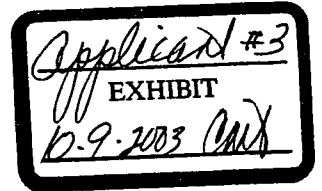
GARY LANE PREWITT

IS 1st DAY OF Oct 2003

COMMISSION EXPIRES 08-06-2009

STATE OF SOUTH CAROLINA
COUNTY OF McCORMICK

270
AFFIDAVIT



1. I Mack Hill after being duly deposed, sayth and certify under the penalty of perjury as follows.

2. I Mack Hill am presently, confined at the McCormick Correctional Institution on probation violation.

3. On Feb 25, 2001, between the hours of 6 p.m and 7 p.m. I went to inmate Gary Lane Prewitts' cell and asked him for a rolling paper so I could roll a cigarette.

4. While there we were in caswal conversation while watching Arrest and Trial on FOX channel and I told him that I was from the Tiger River, Whitmire area and he told me that he was arrested in Newberry County and that he was from Joanna, S.C.

5. While we were talking he pulled out a picture that had been hand drawn and ask me, " Does this look like me?" my answer was no that does not look like you at all it look like Mike, just like Mike Bostic, and " he said Mike Bostic" and I said yes, Mike Bostic he drives an old gray prumored, chevy impala and he asked " was I sure " and I said yes because he tried to sell it to me for \$ 1200.00 dollors.

6. He told me then that " the picture was a composite drawing of the description of the man that committed the crime that he was charged with" and was " doing a life sentence for a crime he didn't committ".

7. He asked me then about Mike Bostic and " how well did I know him"? I told him that I used to go fishing with him and that he was red headed bald on top with no front teeth and keeps a red mustache and goatee styld beard.

8. He told me that the frist description of the suspect was 6 feet tall, red headed with a mustache and goatee and I told him that Mike Bostic is around 6 foot to 6 foot one inch tall.

9. He asked me then " would I sign an affidavit?" and I told him sure because the picture he showed me looked exoctly like the Mike Bostic that I know.

10. I Mack Hill give this affidavit freely, truthfully and honestly and to the best of my ability that all the facts in this

6. 271
affidavit are true and that I am competent and willing to testify. As to all the facts, here in contained. Further more I have been promised nothing nor rewarded any thing for the information provided, and I make the following facts know upon good-faith.

11 In the event my testimony maybe needed I will voluntarily appear.

12. I depose under the penalty of perjury, that the facts herein contained are true and correct except as to those statements based upon information and belief. As to those statements I beleave them to be true and correct.

(MACK A. HILL)
Mack Hill

SWORN TO BEFORE ME

Walter D. Ruggles
THIS 31st DAY OF March, 2001

NOTARY PUBLIC FOR S.C.

MY COMMISSION EXPIRES: OCT. 13, 2003

STATE OF SOUTH CAROLINA
COUNTY OF McCORMICK

272
AFFIDAVIT



1. I Larry Davenport, after being duly deposed, sayth and certify under the perjury as follows.

2. On March 25, 2001, I met inmate Gary Lane Prewitt in the mess hall at 10:30 a.m. while eating lunch.

3. We were talking about our families and stuff at home, we are both from the same town, Joanna, S.C.

4. He told me that his dorm was going to the gym at 11 a.m. and asked me to meet him out in front of his dorm while I was out on the yard doing litter control work.

5. When he came out he had a brown envelope and he pulled a picture out of it and asked me does this look like me?

6. As soon as I saw the picture I said that's Mike Bostic that looks just like they had taken a polaroid picture of him.

7. Then he asked me if he drove a old chevey and I told him I didn't know.

8. He then told me that this was a composite picture of the description of the person that committed the crime that he was convicted of in 1994.

9. He asked me what was the general appearance of Mike Bostic and I told him 6 foot, red headed, bold on top, always wears a billed ball cap and has a goatee styled beard.

10. I am Larry Daenport and I honestly and truly believe that this is the actual facts of the conversation that I had with Gary Lane Prewitt on March 25, 2001 in front of dorm F-1 at the McCormick Correctional Institution and that I am competent and willing to testify, as to all the facts, here-in contained, furthermore I have been promised nothing nor rewarded anything for the information provided, and I make the following facts know upon good faith.

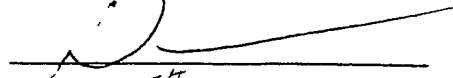
11. In the event my testimony maybe needed I will voluntarily appear.

12. I depose under the penalty of perjury, that the facts here-in contained are true and correct except as to those statements based upon information and belief. As to those

statements I beleave them to be true and correct. 273


Larry Davenport

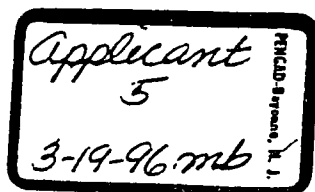
SWORN TO BEFORE ME


THIS 10TH DAY OF APRIL, 2001

NOTARY PUBLIC FOR RE

MY COMMISSION EXPIRES: MAY 5 2008

I Larry Davenport state this is the picture Gary - lane
Prewitt showed me.



SWORN TO BEFORE ME

OK

THIS 10th DAY OF April, 2001

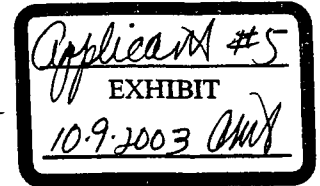
NOTARY PUBLIC FOR *JD*

MY COMMISSION EXPIRES May 1, 2008

Larry Davenport
Larry Davenport

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

AFFIDAVIT



- 1 I RICHARD D HILL AFTER BEING DULY DEPOSED
SAYTH AND CERTIFY UNDER THE PENALTY OF
PERJURY AS FOLLOWS
- 2 THAT ON OCTOBER 8 2002 MY ROOMMATE
JACOB TAYLOR AND GARY LANE PREWITT WERE
TALKING ABOUT LEGAL WORK WHILE WE WERE IN
THE CAFETERIA AT THE EVANS CORRECTIONAL
INSTITUTION WE WERE SITTING AT THE SAME TABLE
WHILE WE WERE EATING SUPPER
3. I OVER HEARD GARY LANE PREWITT TALKING TO
MY ROOMMATE JACOB TAYLOR ABOUT NEWBERRY
COUNTY SOUTH CAROLINA
- 4 I TOLD GARY LANE PREWITT THAT I WAS A
STATE TRUSTY AT THE NEWBERRY COUNTY SHERIFFS
DEPARTMENT.
5. GARY LANE PREWITT ASKED ME IF I KNEW A
MIKE BOSTIC
6. I TOLD GARY LANE PREWITT YES I DO KNOW MIKE
BOSTIC

7. GARY LANE PREWITT ASKED ME WHAT MIKE BOSTIC LOOKS LIKE. I TOLD GARY LANE PREWITT THAT MIKE BOSTIC IS RED HEADED AND A LITTLE OVER (6) SIX FEET TALL AND HAS A GOATEE
- 8 WE LEFT THE CAFETERIA AND WENT BACK TO OUR DORM WHEN WE GOT BACK TO THE DORM GARY LANE PREWITT SHOWED ME A HAND DRAWED PITCHER (POLICE SKETCH)
9. AS SOON AS I SEEN THE PITCHER I TOLD GARY LANE PREWITT THAT IS MIKE BOSTIC
- 10 I THEN TOLD GARY LANE PREWITT THAT MIKE BOSTIC HAD BEEN IN THE NEWBERRY COUNTY JAIL WHILE I WAS A STATE TRUSTY AT THE NEWBERRY COUNTY JAIL
11. THE INSTITUTION CALLED COUNT AND GARY LANE PREWITT WENT BACK TO HIS SIDE OF THE DORM
- 12 THE NEXT DAY OCTOBER 9 2002 GARY LANE PREWITT CAME TO MY CELL AND ASKED ME IF I AM SURE THE PERSON IN THE COMPOSITE DRAWING IS MIKE BOSTIC. I TOLD GARY LANE PREWITT THAT I AM ABSOLUTELY POSITIVE
13. GARY LANE PREWITT ASKED ME IF I WOULD SIGN A

- 14 AFFIDAVIT I TOLD GARY LANE PREWITT THAT I WOULD
SIGN A AFFIDAVIT BECAUSE THE COMPOSITE DRAWING
GARY LANE PREWITT SHOWED ME LOOKS JUST LIKE THE
BOSTIC AND NOT GARY LANE PREWITT
- 15 I RICHARD D HELL GIVE THIS AFFIDAVIT FREELY
TRUTHFULLY AND HONESTLY AND TO THE BEST OF MY
ABILITY
- 16 THAT ALL THE FACTS IN THIS AFFIDAVIT ARE TRUE AND
THAT I AM COMPETENT AND WILLING TO TESTIFY AS
TO ALL THE FACTS HEREIN CONTAINED
- 17 FURTHER MORE I HAVE BEEN PROMISED NOTHING NOR REWARDED
ANYTHING FOR THE INFORMATION PROVIDED
- 18 I MAKE THE FOLLOWING FACTS KNOW UPON GOOD FAITH
- 19 IN THE EVENT MY TESTIMONY MAY BE NEEDED I WILL
VOLUNTARILY APPEAR
- 20 I DEPOSE UNDER THE PENALTY OF PERJURY, THAT THE FACTS
HEREIN CONTAINED ARE TRUE AND CORRECT EXCEPT AS
TO THOSE STATEMENTS BASED UPON INFORMATION AND

BELIEF AS TO THOSE STATEMENTS I BELEAVE THEM
TO BE TRUE AND CORRECT.

Richard D Hill
RICHARD D HILL

SWORN TO BEFORE ME

Mark W. [Signature]

THIS 10th DAY OF OCTOBER 2002

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 08-06-2009

I RICHARD D HILL STATE THIS IS THE PITCHER GARY LANE
PREWITT SHOWED ME.



SWORN TO BEFORE ME

IS _____ DAY OF _____

02

COMMISSION EXPIRES

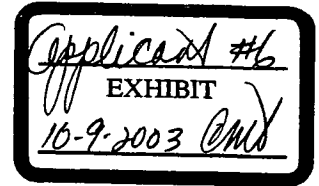
Richard D Hill

RICHARD D HILL



STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

L: 280
AFFIDAVIT.



1. I YOHANCE HILL AFTER BEING DULY DEPOSED SAYTH AND CERTIFY UNDER THE PENALTY OF PERJURY AS FOLLOWS
2. THAT AROUND NOVEMBER OF 2002 I WAS AT MAIL CALL AND I SEEN A LAURENS ADVERTISER NEWSPAPER WHEN THE OFFICER WAS PASSING OUT MAIL
3. THAT WHEN THE OFFICER GAVE THE LAURENS ADVERTISER NEWS PAPER TO GARY PREWITT I TOLD GARY PREWITT THAT I WAS FROM LAURENS AND I ASKED GARY PREWITT IF I COULD READ THE LAURENS ADVERTISER WHEN HE FINISHED WITH IT AND GARY PREWITT TOLD ME THAT I COULD.
4. THAT WHILE GARY PREWITT AND I WAS TALKING GARY PREWITT LOOKED AT MY SOUTH CAROLINA DEPARTMENT OF CORRECTIONS IDENTIFICATION CARD AND SEEN THAT MY NAME IS YOHANCE HILL
5. THAT GARY PREWITT ASKED ME IF I KNOWED MACK HILL AND I TOLD GARY PREWITT THAT MACK HILL IS MY COUSIN AND THAT I USE TO STAY WITH MACK HILL IN WHITMIRE SOUTH CAROLINA
6. THAT GARY PREWITT ASKED ME IF I KNOWED MIKE BOSTIC AND I TOLD GARY PREWITT YOU ARE TALKING ABOUT THE RED HEADED WHITE BOY THAT DRIVES THE OLD 4 DOOR CHEVROLET IMPALA THAT LIVES IN WHITMIRE
7. THAT I TOLD GARY PREWITT THAT MIKE BOSTIC USE TO COME OVER TO MACK HILLS HOUSE ALL THE TIME
8. THAT GARY PREWITT WENT AND GOT A PICTURE THAT WASHAND DRAWEN AS SOON AS I SEEN THE

ICTURE I TOLD GARY PREWITT THAT IS A PICTURE OF MIKE BOSTIC AND GARY PREWITT
 S ME IF I WAS SURE AND I TOLD GARY PREWITT THAT I AM POSITIVE THE PICTURE IS MIKE BOSTIC
 CAUSE WHEN I STAYED WITH MACK HILL OR WHEN I WOULD GO TO SEE MACK HILL MIKE BOSTIC
 ULD BE AT MACK HILLS HOUSE OR MIKE BOSTIC WOULD COME BY MACK HILLS HOUSE

THAT GARY PREWITT ASK ME WHAT THIS OLD CHEVROLET IMPALA LOOKS LIKE I TOLD GARY PREWITT
 AT THE OLD CHEVROLET THAT MIKE BOSTIC DRIVES IS ABOUT A 1969 OR 1970(4) DOOR IMPALA
 IT IS GRAY PRIMORED IN COLOR

IN THE EVENT MY TESTIMONY MAYBE NEEDED I WILL VOLUNTARILY APPEAR.

I DEPOSE UNDER THE PENALTY OF PERJURY, THAT THE FACTS HERE - IN CONTAINED ARE TRUE AND
 RRECT EXCEPT AS TO THOSE STATEMENTS BASED UPON INFORMATION AND BELIEF, AS TO THOSE
 ATEMENTS I BELEAVE THEM TO BE TRUE AND CORRECT.

WORN TO BEFORE ME

James W. Brund

John H. Hill
 JOHN H. HILL

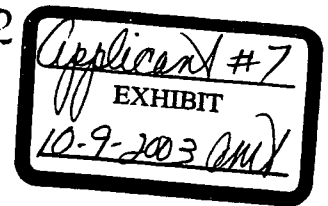
5 2ND DAY OF Oct 2003

COMMISSION EXPIRES 08-06-2009

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

282
AFFIDAVIT



1. I SANDRA K PREWITT AFTER BEING DULY DEPOSED SAYTH AND CERTIFY UNDER THE PENALTY OF PERJURY AS FOLLOWS.

2. THAT ABOUT MAY OF 2001 MY SON GARY LANE PREWITT CALLED ME ON THE TELEPHONE AND ASKED ME IF I WOULD GO TO WHITMIRE HIGH SCHOOL (NEWBERRY COUNTY) AND SEE IF A MAN BY THE NAME OF MIKE BOSTIC ATTENDED SCHOOL THERE.

3. WITH IN A FEW DAYS OF RECEIVING THIS TELEPHONE CALL, MY DAUGHTER MELISSA P. WHITCUMB AND MYSELF WENT TO THE WHITMIRE PUBLIC LIBRARY AND LOOKED AT OLD WHITMIRE HIGH SCHOOL YEAR BOOKS

4. WHEN I LOOKED IN THE 1984 AND 1983 WHITMIRE HIGH SCHOOL YEAR BOOKS, I FOUND A HIGH SCHOOL PHOTOGRAPH OF A MAN NAMED MIKE BOSTIC

5. I GOT COPIES OF THESE PHOTOGRAPHS AND MAILED THEM TO MY SON GARY LANE PREWITT AT THE MCCORMICK CORRECTIONAL INSTITUTION

6. I DEPOSE UNDER THE PENALTY OF PERJURY THAT THE FACTS HERE IN CONTAINED ARE TRUE AND CORRECT.

SWORN TO BEFORE ME

9.25.2003

Sandra K. Prewitt

SANDRA K PREWITT

THIS _____ DAY OF _____ 2003

NOTARY PUBLIC FOR

MY COMMISSION EXPIRES

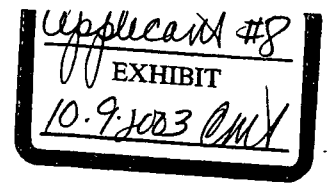
MAY 14. 2004

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

283

AFFIDAVIT



I MELISSA P WHITCOMB AFTER BEING DULY DEPOSED SAYTH AND CERTIFY UNDER THE PENALTY OF PERJURY AS FOLLOWS

THAT AROUND MAY OF 2001 MY MOTHER SANDRA K. PREWITT TOLD ME THAT SHE HAD RECEIVED A TELEPHONE CALL
OM MY BROTHER GARY LANE PREWITT

THAT MY BROTHER HAD ASKED MY MOTHER IF SHE WOULD GO TO THE WHITMIRE HIGH SCHOOL (NEWBERRY COUNTY)
TO SEE IF A MAN BY THE NAME OF MIKE BOSTIC HAD ATTENDED HIGH SCHOOL THERE

THAT MY MOTHER AND MYSELF WENT TO THE WHITMIRE PUBLIC LIBRARY AND LOOKED AT OLD WHITMIRE HIGH
SCHOOL YEAR BOOKS AROUND MAY OF 2001

THAT MY MOTHER FOUND (2) TWO PHOTOGRAPHS OF A MIKE BOSTIC, ONE IN A 1983 AND ONE IN A 1984 WHITMIRE
HIGH SCHOOL YEAR BOOK

THAT MY MOTHER HAD COPIES MADE OF THE 1983 AND 1984 PHOTOGRAPHS FROM THE WHITMIRE HIGH
SCHOOL YEAR BOOKS AND MAILED THEM TO MY BROTHER GARY LANE PREWITT AT THE McCORMICK CORRECTIONAL
INSTITUTION.

DEPOSE UNDER THE PENALTY OF PERJURY THAT THE FACTS HEREIN CONTAINED ARE TRUE AND CORRECT.

WORN TO BEFORE ME

9-25-2003

THIS _____ DAY OF _____ 2003

NOTARY PUBLIC FOR Notary Public

COMMISSION EXPIRES 11-1-18 2004

Melissa P Whitcomb

MELISSA P. WHITCOMB



Applicant
5
3-19-96 mb
MICHAEL S. BROWN, N. J.

Applicant #9
EXHIBIT
10-9-2003 CMB

Applicant #10
EXHIBIT
10-9-2003 *am*

TESTIMONY

285



Chris Gilliam, President



Shannon Clark,
Representative



Kevin McCall, Vice-
President



Kim Brown, Secretary/
Treasurer



Fran Ashworth



Annamaria Blizzard



Mike Bostic



Donnette Brock



Renee Brown



Melinda Bullard



Mary Lee Chick



Marla Crase



Charles Edwards



Corey Epps



Elbert Epps



Stacy Greenway



Dee Dee Harrison

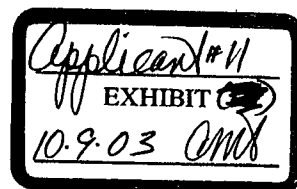


Wendy Harrison



Loretta Holmes

1983



286

Mike
Rosta



Two convicted ^{3/17/00} murderers seek to overturn trials

Man killed by wife while delivering newspapers in Laurens County

By Vanita Washington

LAURENS BUREAU
vwashing@greenvillenews.com

LAURENS — Kimmie S. Heaton and William A. Cathcart asked Judge Joseph Cole for new trials Thursday in hopes of getting less time in prison for the murder of Heaton's husband in 1997.

Heaton pleaded guilty in March 1998 to murder and possession of a firearm during the commission of a violent crime and received 50 years. Cathcart, Heaton's cousin, pleaded guilty to murder, conspiracy to commit murder and possession of a firearm during the commission of a crime and received 30 years.

The convictions stem from the April 1997 murder of David Heaton, just days before his 26th birthday.

The Heatons were delivering *The Greenville News* in the early morning hours when Heaton shot her husband twice in the head, turned the gun and shot her-

self in the shoulder, shattering the bone and piercing a lung.

She told authorities that three men attacked them and speculated it had something to do with a Newberry trial she had testified in. She later confessed to killing her husband.

Both Heaton and Cathcart want new trials and appealed separately to Cole. Cathcart alleged he had ineffective legal assistance.

"He told me I'd be better off pleading guilty to murder," said Cathcart, who said he always maintained his innocence.

He said when he moved in with the Heatons she asked him if he knew anyone who would kill for money. He told her he didn't, but he thought she was joking, he said. Later, she asked him to get a gun because they needed it for protection while deliver-

See MURDER on page 4B

MURDER

FROM PAGE 1B

ing newspapers.

"I got a .22 and kept it with my clothes. She knew I had it," he said. "When I got off work at about 3:30 (a.m.), the gun wasn't there and they had left already. The gun was there when I left for work so I got on my motorcycle and went to find them. I saw them, and she handed me the gun."

He said his lawyer told him the judge had said he would serve only 85 percent of his time, but that the lawyer did not say he would have trouble changing his plea. He said he believed his lawyer and the judge so he pleaded guilty.

Howard L. Steinberg with the state attorney general's office, though, said the judge had asked Cathcart if he was happy with his attorney and he had said yes. Steinberg said the plea was entered before the judge said Cathcart would have to serve only 85 percent of his time.

Heaton said she also was told she'd have to serve only 85 percent of her 50 years. She said her attorney failed to "make the judge see her as a person, not just a murderer."

"My lawyer didn't get the records from the mental hospitals that would have shown I had a lot of problems," she said. "I would have pleaded guilty regardless because I did it."

(Steinberg said Heaton had been in and out of mental institutions and that the transcripts from proceedings showed her mentioned this and pr from a doctor who

"Her own testimony was her claim for (po) because she wouldn't have pr wasn't for erroneous. And she said she'd pr gardless," Steinberg said.

During the appeals, of David Heaton were presented. Heaton, his mother, cried. Heaton spoke.

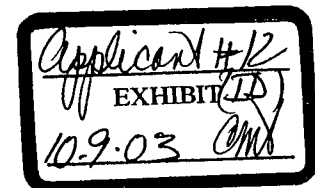
"I know I'm sorry isn't good enough, I'm not in school anymore," Heaton said. "He didn't deserve that, and I know it."

Heaton told police she killed her husband because she wanted a divorce and he wouldn't give it to her.

Cole did not make a decision on either request.

■ Vanita Washington covers issues in Laurens County. She can be reached at 697-4453.

JOINT APPENDIX
#17



STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

2002-CP-36-040

Gary Prewitt, 217575,

Applicant,

v

State of South Carolina,

Respondent

ORDER OF DISMISSAL

JACQUELYNNE
CLERK OF COURT

2003 NOV 19 A 10:00

FILED
NEWBERRY COUNTY

This matter is before this Court by way of an application for post-conviction relief (PCR) filed January 30, 2002. The State made its return and motion to dismiss on March 25, 2003. An evidentiary hearing was held at the Laurens County Courthouse on October 9, 2003. Applicant was present and represented by Bradford W. Cranshaw, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General

Applicant testified on his own behalf. Also testifying Yohanse Hill, Mack Hill, and Richard Hill. This Court had before it the appendix from Applicant's appeal of his first PCR hearing (containing the transcript of Applicant's trial), the Applicant's records from the South Carolina Department of Corrections, the application for PCR, and the State's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Newberry County. The Applicant was indicted at the November 1994 term of the Newberry County grand jury for first degree burglary, grand larceny, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime (94-GS-36-616). He was represented by Ray Wicker, Esquire. On January 19, 1995, the Applicant underwent trial by jury pursuant to which he was found guilty of

P, 97
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first degree burglary, petit larceny, assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. He was sentenced by the Honorable E.C. Burnett, III, to confinement for a period of life for first degree burglary, thirty days for petit larceny, twenty years for assault and battery with intent to kill and five years for possession of a weapon during the commission of a violent crime. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for PCR on October 5, 1995 (95-CP-36-135). On March 19, 1996, an evidentiary hearing was held before the Honorable Edward B. Cottingham at which the Applicant was present and was represented by Robert Lake, III. By Order dated July 8, 1996, Judge Cottingham denied and dismissed the Applicant's application. A timely Notice of Appeal was filed on the Applicant's behalf and a Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense. On September 10, 1997, the South Carolina Supreme Court denied the Petition.

EVIDENCE AT TRIAL

At trial, the prosecution presented evidence as follows:

The shooting occurred off a remote rural back road. Joe Dixon testified that he was sitting on his front porch, waiting to be taken for a visit to his brother in Charleston, when he saw a green car pass his house and drive into the driveway of a neighbor's house, who Dixon knew not to be home. Dixon went over to the house to let the two men he saw in the car know that the neighbor, Randy Tinsley, was not home. He went in the back door of Tinsley's house and saw the two men inside. He asked what they were doing. One of them drew a weapon and shot three times. Dixon was shot in the chest and the armed individual walked up to Dixon and fired two more shots. Dixon identified the shooter as Prewitt. Tr. pp. 51-59. On cross-examination, Dixon testified that the shooter wore a hat, but the little bit of hair Dixon saw was brown. (Applicant's hair is brown)

Christy McGuirt testified that she was in the house, while Dixon was on her front porch, waiting for his ride to Charleston. A green car with two white males passed by and Dixon went over to the Tinsley house. She then heard shots and went over to Tinsley's house to discover Dixon laying on the floor with gun wounds. Tr. pp. 37-43. Another neighbor, A.H. Walker, testified that about thirty to forty-five minutes prior to the shooting, he saw a green car with two white males driving slowly past his house. Tr. pp. 75-76.

Kimmie Shipes testified that she lived about half a mile from Tinsley's house. She was home and heard someone in the back yard. She went to the back yard and was surprised to find a man standing at her door. She identified this individual as Prewitt. She had picked him out of a photo lineup. Prewitt asked her if "Eddie" lived there. No one named Eddie lived with Shipes. Prewitt walked around the house and got in a green or blue car with another individual. Shipes testified that the individual looked to have light hair, perhaps reddish, because of the way the sun was shining on him. She testified that the individual was taller than her, maybe 5'2" or 5'3", or taller. Tr. pp. 87-88.

Prewitt testified on his own behalf and presented his mother and father as alibi witnesses. Prewitt denied being at the scene.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and considered the arguments presented at the PCR hearing. Further, this Court observed the witnesses presented at the hearing, passed upon their credibility, and weighed their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976).

The State moved to dismiss this application as successive and as being untimely filed. Applicant argued that the case should not be dismissed as successive because of newly discovered evidence.

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Successive Application

At the hearing, the State moved to dismiss Applicant's instant application as being successive. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v State, 305 S.C. 448, 409 S.E.2d 392 (1991), Foxworth v. State, 275 S C. 615, 274 S.E.2d 415 (1981)

Applicant bears the burden of establishing sufficient reason why he could not have raised his current allegations in his previous application for PCR. Land v. State, 274 S.C 243, 262 S E.2d 735 (1980); Aice v State, supra; Arnold v. State/Plath v State, supra.

Statute of limitations

The State also moved to dismiss the current application for PCR for failure to be timely filed under the post-conviction relief act S.C. Code Ann § 17-27-10 to -160 (1976 & Supp 2002). The Act reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S C. Code Ann § 17-27-45(a) (Supp. 2002).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996 Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on January 19, 1995. This Application was filed on January 30, 2002, well after the one year statutory filing period had expired. However, it appears from Applicant's testimony that he has filed this application within a year of the time he discovered his claim.

After-discovered evidence

In response, Applicant alleged that his application should not be dismissed as successive or under the statute of limitations because of newly discovered evidence. This Court allowed Applicant to present his evidence on this claim.

Applicant claims that he recently learned of an individual, Mike Bostic, that looks like a composite drawing of the suspect that was drawn prior to applicant's arrest. According to Bostic, he was showing the drawing to other inmates from Newberry County in hopes of identifying the real perpetrator. Yohanse Hill testified that when shown the sketch, he recognized the individual depicted as Mike Bostic. Mack Hill likewise was shown the composite. He testified that it looked like Mike Bostic, who was about six feet tall with reddish-orange hair. He testified that at the time of the burglary, Bostic owned a grey car. Richard Hill gave similar testimony.

A high school yearbook picture of Bostic was introduced at the hearing. Applicant proffered that a fourth individual would have given similar testimony to his other witnesses.

The test for after-discovered evidence was set out in Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983), where this Court held as follows:

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been

discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

This Court finds that the evidence fails because the evidence presented would not be admissible at trial – so it would not change the result if a new trial was held. It also is not material to the issue of guilt or innocence. Applicant is seeking a new trial on the basis of evidence of third party guilt. Evidence offered by a defendant of the commission of the crime by another person is limited to facts inconsistent with defendant's guilt. State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000). In Mansfield, the defendant sought to introduce evidence that an individual by the name of Perry, who generally matched the suspect's description, lived nearby and was home that day. The trial court refused to admit such evidence. The Court of Appeals affirmed, finding that at best, the evidence only cast a mere "bare suspicion" on Perry, but did not show Perry's guilt and was not inconsistent with the defendant's guilt.

In the instant case, Bostic, as he appears in the yearbook, is not dissimilar from the individual depicted in the sketch – neither is Applicant for that matter. However, the sketch is a tool of limited purpose, designed to help law enforcement in the investigation of a crime where the identity of suspects was unknown. Dixon and Shipes identified Applicant from a photographic lineup, more reliable than making an identification from a sketch, as Applicant's witnesses have done at the PCR hearing. This Court also notes that while Mack Hill claimed that Bostic drove a grey car, the trial testimony was that the perpetrator's car was green. No evidence was presented suggesting Bostic's actual involvement in the crime or remotely corroborating such an assertion. This Court further notes that Applicant's witnesses were all inmates and questions their credibility. This Court accordingly finds that Applicant has not met his burden of proving his claim. This evidence is not competent evidence that could be admitted at trial, and even if it were, the evidence would not affect the outcome of a new trial and is not relevant to the issue of guilt or innocence.

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499

Accordingly, this Court finds that the application is successive as the evidence does not qualify as after-discovered evidence pursuant to Hayden and Mansfield, and further, this Court finds that even considering the merits of the after-discovered evidence presented, it is not credible and would not affect the outcome of the trial, nor is it material to the issue of guilt or innocence.

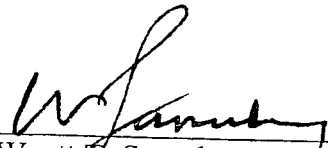
CONCLUSION

This Court finds that Applicant has not provided sufficient reason why this application should not be dismissed as successive. Additionally, considering the new evidence on its merits, this Court finds that they are insufficient to warrant a new trial.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED that the Application for PCR is hereby dismissed with prejudice.

AND IT IS SO ORDERED this 17th day of November, 2003.


 Wyatt T. Saunders, Jr.
 Presiding Judge
 Eighth Judicial Circuit

at Greenwood, South Carolina.