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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

CHARLES PAGAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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1 Q. Sir?

2 A. No, I don't.

3 Q. That live on -- Off of West Evans Street on Gregory
4 Court in Florence?

5 A. No, I don't.

6 Q. 9:59 you called home again?

7 A. Yes.

8 Q. Then you get a retrieval and an incoming call at 10:24
9 p. m.

10 A. Yes, sir.

11 Q. Now, where are you at at 10:24 p. m. when you get that
12 incoming call?

13 A. Getting ready to walk out the door of White Sands.

14 Q. As a matter of fact at 10:24 incoming call is from
15 Waverly Street?

16 A. Okay. Well, I'm not sure.

17 Q. We can look at the Waverly Street records?

18 A. Okay, sir. So it would be ---

19 Q. And you'll see where Waverly Street just prior to
20 calling you has received a call from New Jersey?

21 A. Okay. That's probably my mother.

22 Q. So the next call is your -- You say your mother's
23 number?

24 A. Yes, I was in the car then. I remember that exactly.
25 I was in the car.

1 Q. I don't mean to interrupt you. So you actually called
2 her in response to getting the message; didn't you?

3 A. Had to be, yes.

4 Q. You just didn't decide to pick up the phone and call
5 your mother?

6 A. No, cause I wouldn't call my mother that late.

7 Q. She called Waverly Street. Waverly Street called you
8 and you called your mother?

9 A. Go ahead.

10 Q. And then I think if you look at 10:40, Waverly Street
11 called you back?

12 A. Yes, sir.

13 Q. Now, that's when you're in the car with these girls
14 you say from Darlington?

15 A. Yes, sir.

16 Q. Now, who were they?

17 A. I just remember one. Her name was Dana.

18 Q. Dana?

19 A. Yes, I didn't -- I just had meet her because she had
20 big eyes; that's how I remember her name so good. She had
21 pretty eyes.

22 Q. Now, what time did you get to the Pub?

23 A. Had to be between -- right after I called my mother.
24 It's only -- The Pub is what a block and a half from the
25 White Sands.

1 Q. So by 10:30 would you say you're at the Pub?

2 A. Maybe 10:35, yes.

3 Q. By 10:35?

4 A. Yeah.

5 Q. How long were you at the Pub?

6 A. About a hour and a half that's it. About a hour 20
7 minutes.

8 Q. 10:35, 11:35, 12 o'clock?

9 A. About five to, ten to 12.

10 Q. Sir?

11 A. About five to 12, 10 to 12.

12 Q. And during that whole period of time, you were in the
13 presence of Mr. Jones and Mr. Burgess?

14 A. Yes, sir, besides going to the bathroom. Yes.

15 Q. Now, I believe you said you loaned your phone out
16 here?

17 A. Out where at the Pub?

18 Q. Yes, sir.

19 A. I don't remember loaning my phone out at the Pub.

20 Q. Well, I thought Mr. Jones said he called his home from
21 your phone?

22 A. And he said he couldn't get through. That I was
23 statement.

24 Q. Whether he got through are not, didn't you loan him
25 your phone, Mr. Pagan?

1 A. Yes, sir.

2 Q. You didn't dial the number for him, did you?

3 A. No.

4 Q. So did you loan your phone out to Mr. Jones at the
5 Pub?

6 A. I don't recall, but he testified to that. I don't
7 recall personally, but he testified to that.

8 Q. You recall all these other times loaning your phone
9 out?

10 A. Yes, but by then I was tired.

11 Q. But you don't recall loaning your phone out to Mr.
12 Jones?

13 A. No, sir.

14 Q. And you don't see any number on here that you don't
15 recognize after 10:24 p. m.?

16 A. No, sir.

17 Q. Where Mr. Jones may have made a phone call; is that
18 correct?

19 A. I'm positive, yes.

20 Q. 11:34, you called Waverly Street?

21 A. Home.

22 Q. 11:44, you call Waverly Street. 11:44, you call ---

23 A. Gloria cellular phone.

24 Q. 11:45, you called Waverly Street. 11:46, you called
25 Gloria cell phone. 11:49, you called a cab. 11:51, you

1 call Gloria again?

2 A. Yes.

3 Q. Is that correct?

4 A. That's correct.

5 Q. Now, what time did you according to your testimony
6 gotten back to Waverly Street?

7 A. Twelve o'clock.

8 Q. Twelve o'clock?

9 A. Yeah.

10 Q. No later than 12?

11 A. No.

12 Q. How early?

13 A. Excuse me.

14 Q. How early would you have gotten back?

15 A. What you mean how early would have gotten back? I
16 don't understand.

17 Q. Was 12 o'clock the latest?

18 A. No probably five after 12 because that's ain't far.

19 Q. And what would be the earliest that you would have
20 gotten back to Waverly Street?

21 A. Twelve o'clock. Had to be between 11:52 and 12:05.

22 Q. You didn't get back when the news was on?

23 A. I didn't watch T. V., sir.

24 Q. The T. V. was not on and the news playing when you got
25 back?

1 A. Momma was watching T. V. Her T. V. stay on all the
2 time.

3 Q. Now, Henry Cooper, you know Henry Cooper here in
4 Florence?

5 A. No, I don't.

6 Q. And Lavenia, Lavenia Helton?

7 A. No.

8 Q. Lisa Williams?

9 A. Never seen her in my life.

10 Q. Have you ever had occasion to be down on Pine Street
11 or Oakland?

12 A. I don't even go in that area.

13 Q. And what area is that, sir?

14 A. That would be East Florence Pine Street.

15 Q. Oh, so you know where it's at?

16 A. Pine Street is East Florence, yes.

17 Q. And you know it's in East Florence?

18 A. Yes, sir.

19 Q. And you would now how get Pine Street?

20 A. Yes, sir.

21 Q. But you never been in that area?

22 A. No, sir, because if you was from Florence or
23 affiliated with it -- If you live in West Florence, you
24 don't go to East Florence. If you live in East Florence,
25 you don't go to West Florence. That's how all three areas

1 are.

2 Q. On your statement on December the 18th to Mr. Boyd and
3 Mr. Godwin, you tell them your wife picked you up at the
4 White Sands?

5 A. Yes, sir.

6 Q. So you were just wrong about that?

7 A. I was mistaken, yes, sir.

8 Q. And you also told them your wife picked you up at
9 10:30?

10 A. Yes, sir, I was mistaken.

11 Q. And so you were just wrong about that?

12 A. Yes, sir.

13 Q. So within a week of when this incident happened, the
14 first time that you're talking to the police, you couldn't
15 remember where you had been picked up nor the exact right
16 time you been picked up; is that correct?

17 A. That's correct. I was around the right time, but I
18 wasn't sure where.

19 Q. Well, you're around the right time and you're hour and
20 a half off?

21 A. Could be, yes. When you drinking, yes, and you tired,
22 yes. You could be off. I don't have a watch.

23 Q. Well, then your 12 o'clock and 12:05 could be off
24 couldn't it, Mr. Pagan?

25 A. No, I know because of my phone records.

1 Q. You're only going by your phone records?

2 A. Yes, sir.

3 Q. I'm asking your memory?

4 A. I couldn't exactly know, no.

5 Q. So you're just telling your testimony through your
6 phone records?

7 A. Yes, sir.

8 Q. I see. As a matter of fact, the White Sands that you
9 say your wife picked you up at the White Sands picked you
10 up at 10:30. That would have exclude you ever even being
11 at the Pub; wouldn't it?

12 A. Yes, sir.

13 Q. Because you said you didn't get to the Pub till 10:30
14 or 10:35?

15 A. Yes, sir, that's what I told Mr. Boyd, yes.

16 Q. Now, December the 18th, were y'all planning on moving
17 to Marlboro County?

18 A. Yes, sir.

19 Q. And when were you going to make this move to Marlboro
20 County?

21 A. See that was one of the reasons I went to Jersey
22 because my mother had purchased me some land when I was at
23 Palmer Work Release and we were looking at trailers.
24 That's what we was doing from November 30th to before I
25 went to Jersey. Looking at trailers because I own the land

1 we wanted to put a trailer in Marlboro County.

2 Q. November the 30th in Myrtle Beach you were looking at
3 trailers?

4 A. After I said between November 30th and December 4th,
5 we were looking at trailers.

6 Q. When were you planning on moving to Marlboro County?

7 A. Soon as we can get a trailer.

8 Q. And by December -- By January 1st, did you have a
9 trailer in Marlboro County?

10 A. Yes, I think we filled out the paperwork.

11 Q. When you left Waverly Street, did you go stay in
12 Marlboro County for a period of time before you went to New
13 Jersey?

14 A. No, sir.

15 Q. Sir?

16 A. No, sir.

17 Q. You wasn't seen up in that area at all before you took
18 your bus trip to New Jersey?

19 A. No, sir -- Yes, we went to go look at the land and
20 figure out where we were going to put the trailer at. See
21 I never personally seen the land. So Gloria was showing
22 me. And she had some trouble in court because the people
23 next to us tried to steal some land that belonged to me and
24 she was showing me how everything was put up and how she
25 put up some boards in that, yes.

1 Q. When you left to go to New Jersey I believe you said
2 January 4th of '98?

3 A. Yes, sir.

4 Q. When were you planning on coming back?

5 A. As soon as my mother gets better because she was
6 waiting on a heart transplant.

7 Q. Well, what were your plans, Mr. Pagan?

8 A. Excuse me.

9 Q. What were your plans?

10 A. What you mean? My mother came first.

11 Q. When were you planning on coming back, Mr. Pagan?

12 A. Soon as my mother get better.

13 Q. And I believe you talk to Captain Raines -- Lieutenant
14 Raines on January 21st of '98?

15 A. I don't remember the exact date, but somewhere around
16 that time.

17 Q. Well, you already been in New Jersey for several
18 weeks?

19 A. Yes, sir.

20 Q. And matter of fact, you told them you were going to
21 turn yourself in?

22 A. Yes, sir.

23 Q. And matter of fact, you had told Chief Porter in
24 December whenever they needed you just to call?

25 A. Yes, sir.

1 Q. Cause you turn yourself in?

2 A. Yes, sir -- No, I told them whenever -- I wasn't
3 wanted or nothing then. When I told Chief Porter, I said
4 if you need me, just call me and I'll come down here. And
5 I did that.

6 Q. And, of course, if you were wanted and you called
7 them, you'd turn yourself; wouldn't you?

8 A. Yes, but I just took my chances cause my mother.

9 Q. You just took your chances?

10 A. Yes, cause my mother is important to me.

11 Q. So you didn't turn yourself in January of '98?

12 A. No, I didn't.

13 Q. February of '98?

14 A. No, I didn't.

15 Q. A matter of after, you're arrested by the U.S. Marshal
16 February 20th of '98; is that correct?

17 A. Yes, sir, down the street from my mother's house.

18 Q. And she had moved from one house to the other?

19 A. Yes, she -- But that was prior -- That was way prior
20 than for me getting out of the department of corrections.

21 Q. And so she still own both houses?

22 A. It was condominium she was renting in West Patterson.
23 She owned the house in 26th Street in 773 Patterson.

24 Q. And so she was living in a condominium?

25 A. Yes, sir.

1 Q. And you were staying in the other, weren't you?

2 A. No, I was staying with my mother.

3 Q. Sir? No, you were staying in the other one?

4 A. No, I wasn't, sir, cause all three floors were rented
5 out.

6 Q. Which was about two and a half miles from your
7 mother's between those two places?

8 A. No. No. It's --

9 Q. How far apart are they?

10 A. Patterson and West Patterson. It's a whole different
11 -- It's like from Lake City to Florence.

12 Q. So they're about 25 miles apart?

13 A. Yeah, easy. You would have to jump on the highway and
14 about 15 minutes and get off the highway go in the
15 mountains.

16 Q. January excuse me -- February of 1999, where were you
17 living?

18 A. At in Marlboro County.

19 Q. And were you living with Gloria Pagan?

20 A. Yes, sir.

21 Q. And what kind of vehicle did y'all have?

22 A. She had a car.

23 Q. What kind of vehicle was it?

24 A. She had a blue Lumina and black Corsica.

25 Q. And what kind of vehicle was it that got wrecked?

1 A. The Corsica.

2 Q. Corsica?

3 A. Yes, sir.

4 Q. And, of course -- Let me show you Court's Exhibit
5 Number 1 from 2-16-99. Where you were charged with a
6 failure to stop; is that correct?

7 A. Yes, sir.

8 Q. Now, your testimony is that you were not in that
9 vehicle in Florence on December 16th of 1999?

10 A. No, I wasn't.

11 Q. Is that right?

12 A. I'm positive, yes.

13 Q. And you didn't wreck that vehicle?

14 A. No, sir.

15 Q. You didn't run from the police?

16 A. No, sir.

17 Q. And you never seen Tamika Lambert before ---

18 A. In my life.

19 Q. May I finish my question, Mr. Pagan?

20 A. Yes, sir.

21 Q. You had never seen Tamika Lambert in your life before
22 she testified in court ---

23 A. No, sir.

24 Q. --- last week?

25 A. No, sir.

1 Q. Is that right?

2 A. No, sir.

3 Q. That's your testimony?

4 A. Positive.

5 Q. But that was your wife's vehicle that was wrecked ---

6 A. Yes, sir.

7 Q. --- Mr. Pagan?

8 A. Yes, sir. Mr. McMahon?

9 Q. Yes, sir.

10 A. Also if you can recall Ms. Lambert said ---

11 Q. Excuse me I didn't ask a question. I thought I was --
12 I apologize.

13 THE COURT: That's all right. If you having
14 something to say you really need to say, you can get it
15 through your lawyers.

16 DEFENDANT PAGAN: Okay, then I'm sorry, sir. I was
17 just, you know explaining that issue.

18 THE COURT: I understand.

19 Q. Just going back real quick to December 10th you and
20 John Mack ---

21 A. Yes, sir.

22 Q. Together at the White Sands?

23 A. Briefly.

24 Q. You don't know whether he's kin to Willie Lee Mack?

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

1 Q. And, of course, you don't know where Willie Lee Mack's
2 house is at?

3 A. No, sir.

4 Q. And you don't know that it's situated midway say
5 between White Sands and the Pub?

6 A. I never been there. I don't know.

7 Q. Is that right?

8 A. I'm positive till this day I still don't know.

9 Q. And, of course, on down beyond the Pub on Dargan
10 Street and Commander or Commander and Booker Street?

11 A. I don't know that area.

12 Q. You don't know where Richardson's Grocery at?

13 A. No, I don't.

14 Q. You never been there in your life?

15 A. Never been there in your life.

16 Q. And you don't know Jessie Jones?

17 A. No, I don't.

18 Q. You never seen him before?

19 A. No, I don't.

20 Q. You don't know the Dargan Street area at all?

21 A. No, not North side, no, sir.

22 Q. Is that right?

23 A. Yes.

24 Q. How far is it from the Pub to Waverly Street?

25 A. About six, seven minutes in the car.

1 Q. If I told you it was 1.4 miles, four tenths of a mile,
2 will you dispute that?

3 A. I wouldn't know.

4 Q. However long ---

5 A. Measurements and miles like that I wouldn't know, sir.

6 Q. But it's not very far?

7 A. No, about six, seven minutes.

8 MR. MCMAHON: Your Honor, I have no further
9 questions.

10 THE COURT: All right. Redirect.

11 MR. REDMOND: One redirect question, sir.

12 REDIRECT EXAMINATION BY MR. REDMOND:

13 Q. Charles.

14 A. Yes, sir.

15 Q. Did you kill Gloria?

16 MR. MCMAHON: No, sir, that's been asked and
17 answered.

18 A. No, sir.

19 THE COURT: No, stop, wait, stop. Technically not
20 in response.

21 MR. REDMOND: I'll withdraw at this time. I'll
22 withdraw the question. Thank you.

23 THE COURT: Anything further of this witness?

24 MR. REDMOND: Nothing further, Your Honor.

25 THE COURT: All right. You may step down,

1 Mr. Pagan.

2 DEFENDANT PAGAN: What do I do with these papers,
3 Your Honor?

4 THE COURT: Just leave them up there, Mr. Pagan.

5 DEFENDANT PAGAN: Okay.

6 (The witness left the witness stand.)

7 THE COURT: Members of the jury, I have concluded to
8 give you a short break. I need one. Let's say short
9 probably 15 minutes or so. And if -- Do we have two jury
10 rooms back there?

11 BAILIFF: Yes, sir.

12 THE COURT: And that's for the benefit of those who
13 may need to go across the hall to the other jury room while
14 we take this break. Once again, please don't talk about
15 this case in anyway. I'm trying to figure out -- I need to
16 talk to the lawyers see about how much more time we have.
17 I'm going to invite you to stay inside for lunch today
18 obviously, which depends on where we are in the trial. We
19 may be close to being finished, but you can anticipate
20 eating lunch in the next hour and a half or so somewhere
21 in that range. But I'm trying to think if I need to keep
22 you together during lunch or not. I can't answer that
23 question, yet. But let you me give you this break now and
24 let me talk to the lawyers to see where we are in this
25 trial. And we'll bring you back out in about 15 minutes or

1 so.

2 (The jury was excused to the jury room.)

3 THE COURT: Yes, I need to take a break right now.
4 So let's take a break now and come back or y'all come back
5 and talk about what we need to discuss. I need take to
6 take a break. We'll be at ease.

7 (A recess was taken.)

8 (Court has reconvened.)

9 THE COURT: All right, sir.

10 MR. REDMOND: Your Honor, just from a practical
11 standpoint we gone have motions naturally. We like to rest
12 in front of the jury. We like to go ahead take up the
13 motion basically renewing the same motions we had made
14 earlier.

15 THE COURT: You want to just do that right now?

16 MR. REDMOND: Yes, sir, that's fine.

17 THE COURT: For logistical reasons, I'll go ahead
18 and hear your motions for directed verdict and your renewal
19 or your motion mistrial, Mr. Redmond.

20 MR. REDMOND: Thank you, Your Honor. May it please
21 the Court just for the record. Of course, our intention is
22 once the jury is brought back in to rest in front of the
23 jury and that's why we're hearing the motions now. And, of
24 course, we would renew our motions first on the mistrial on
25 the grounds previously stated concerning the testimony and

1 the alleged incident concerning Ms. Tamika Lambert and also
2 move for a directed verdict on the same grounds as before.
3 The State has failed to meet it's burden.

4 THE COURT: All right. And my ruling is still the
5 same, Mr. Redmond. In regards to your motion for mistrial,
6 I think the evidence is permissible under 404(b) at least
7 in terms of the issue of identification.

8 And as to directed verdict, there is testimony from
9 the main witness -- I can't remember her name right now.
10 Who said she actually witnessed the incident in question,
11 that is the murder. So creates issue of fact obviously.
12 So your motions are respectfully denied once again for the
13 reason previously stated.

14 MR. REDMOND: Thank you.

15 MR. MEADORS: Judge, it's kind of be everybody
16 stipulations. We have not have had time to type this. I
17 would like to read it in the record and have it typed up
18 and make it a Court's Exhibit after that if that's okay
19 regarding Mr. Bostic.

20 THE COURT: Seem like I remember Mr. Cox wanted this
21 read before they actually rested; is that correct, Mr. Cox?

22 MR. COX: Yes, Your Honor.

23 THE COURT: You want to read it in the record now.
24 And I can read it to the jury, if I can read your
25 handwriting.

1 MR. MEADORS: Or either way, Your Honor. It will
2 the be same introductory language The State of South
3 Carolina who want lead through all the attorneys stipulated
4 testimony of Lavern Bostic. Who will be as follows:
5 Mr. Bostic knows Lisa Williams. And Lavenia Lisa Williams
6 Helton. Mr. Bostic new Gloria Cummings. Mr. Bostic had
7 resided at 908 East Pine Street during November and
8 December of 1997. Mr. Bostic did not recognize the picture
9 of Charles Pagan.

10 THE COURT: All right. Is that satisfactory of
11 everybody?

12 MR. MEADORS: And it was shown him on February the
13 9th 2001.

14 THE COURT: Want I just read that and then we'll say
15 the State has rested. And then I'll invite y'all to do
16 reply. And are you going to reread the dates into the
17 record of the other stipulation regarding the DNA samples;
18 is that correct?

19 MR. REDMOND: That's correct, Your Honor.

20 THE COURT: All right.

21 MR. MEADORS: Your Honor, that would be just for the
22 record that all of the items submitted to SLED -- all items
23 were submitted to SLED December 23rd, which be Christmas
24 say 1997 with the exception of Steve Blathers evidence
25 gathered from him, which would have been submitted May of

1 1999. They were all reported on the same report dates from
2 SLED March 30th of 2000.

3 MR. REDMOND: And we would agree that that was not
4 the time test because it was already testimony that
5 Blathers was confronted with the DNA results in January of
6 2000. So that March 30th I think is just the day that it
7 was actually tightened up. That's not the day of examine.

8 THE COURT: All right.

9 MR. REDMOND: We would agree for you to read it.

10 THE COURT: All right. What I'll do is I'll read
11 the stipulation regarding the witnesses testimony and
12 invite Mr. Meadors to read in the dates of a previous
13 stipulation. And then we'll consider y'all rested at that
14 point in time. And then we'll be ready to go into reply.
15 Would that be correct gentlemen?

16 MR. MEADORS: No, sir, I thought we were doing it
17 after.

18 THE COURT: So what we want to do is go ahead and
19 get the stipulations in y'all will rest. And you want to
20 do your reply after lunch; is that what you're now telling
21 me?

22 MR. MEADORS: That was my understanding, yes, sir.

23 THE COURT: Either way it doesn't matter to me. I'm
24 just asking.

25 MR. MEADORS: Yes, sir.

1 THE COURT: Okay. That will be fine. So if we're
2 all on the same page now. Then the jury comes back out,
3 they hear the stipulations. Then we stop for lunch; is
4 that correct.

5 MR. COX: Yes, sir.

6 THE COURT: All right. And the will be here in
7 about 30 minutes. So we'll give them a chance to go
8 outside a little while. Then come back and eat. Then
9 we'll get started probably about 1:30 or so somewhere in
10 that range. Is that all right with everybody.

11 MR. MEADORS: We have one other we'd like to bring
12 up now.

13 THE COURT: Yes, sir.

14 MR. MCMAHON: Judge, on some of these phone records,
15 and I have tried to -- I been trying actually actively this
16 morning to get copies of the cell phone records between
17 December the 1st and December the 10th. They're available
18 on and I think they're in evidence on the 687 Number, which
19 is Gloria Pagan's number. But they're cut off on the 319
20 number. I was trying to find -- I was trying to see if
21 there was another way perhaps if the defense has those
22 numbers if I could get those for those other dates. I'm
23 trying get those through the phone company. For some
24 reason I got everything from November of '97 up through
25 December 10th afterwards on into January 15th on up into

1 February. But I'm missing the first to the tenth on the
2 319 number.

3 MR. REDMOND: Your Honor, and all honest if my
4 recollection is correct based on what I've reviewed in the
5 file. We got these from the Police Department. And so I
6 don't know how to answer that question.

7 THE COURT: Okay. It's all right. It's only one or
8 two ways to solve it. Has an order been issued by a judge
9 to -- requesting those records?

10 MR. MCMAHON: Yes, sir, I there was an order issued
11 originally to cover -- There was an order issued originally
12 from maybe Judge Breeden for December the 10th on. That
13 was the original order. And then I was presented this by
14 the defense, which had the two phone numbers on it.

15 THE COURT: Yes, sir.

16 MR. MCMAHON: But it's got the 687 and the 319. I
17 don't have a copy of that, Your Honor. But what I was
18 referring to if I could approach the bench, Your Honor.

19 THE COURT: Yes, sir.

20 MR. MCMAHON: It says on the 319 it's complete bill
21 from 11-16-97 to 12-15. And then it stops on the 12-1.
22 And then mine pick up by court order on 12-10.

23 THE COURT: We need a period from the first through
24 the tenth.

25 MR. MCMAHON: That's what I was trying to get if I

1 could ---

2 MR. REDMOND: I don't have those, Your Honor.

3 THE COURT: My question is what can I do. Do I need
4 to issue an order now. Do we need to call the phone
5 company in a conference call and try to do it. I'll be
6 happy to write an order and fax it to them or whatever it
7 takes to try to get them. We're going to have an interval
8 of about an hour and a half when we stop.

9 MR. MCMAHON: Perhaps at the break me and Mr.
10 Meadors will prepare an order and perhaps fax it to the
11 phone company to see if they're still available. I'm not
12 certain of that. We been trying to work with phone company
13 this morning. I have through some of the officers trying
14 to get them. I'm not saying they have them and keeping
15 them from me. I didn't mean that.

16 THE COURT: I understand.

17 MR. MCMAHON: I was just trying to get them in the
18 most speedy way in case that were to have them.

19 THE COURT: What I would propose is this then.
20 We'll come back out and read the stipulations break for
21 lunch. They will have about an hour and a half. Thirty
22 minutes or so to kill and an hour to eat or so. We will
23 anticipate coming back at 1:30. Both of you will need to
24 look at these phone records. There could be some issues
25 that might be created as a result for the prosecution as

1 well as the defense. I'm repared to allow both sides
2 additional time, if you need to, to go through these phone
3 records and as a result of looking at them make whatever
4 motions you want to make or whatever we need to do.

5 So once again, I reemphasize what I said throughout
6 the of course of this trial. If it it takes time, it takes
7 time. Doesn't matter whether time is requested of the
8 State or of the defense you have it either side. Whatever
9 is necessary to have a full fair and complete trial in an
10 unhurried fashion. I'm prepared to do it.

11 MR. MCMAHON: Thank you, Your Honor. And we'll
12 prepare an order. Thank you very much.

13 THE COURT: All right, sir. Now, Mr. Meadors if I
14 can read your handwriting or I'll make an attempt.

15 MR. MEADORS: I had an A in handwriting in Marion
16 Grammar School, Your Honor. That is not reflecting in what
17 I'm showing you right now.

18 THE COURT: Well, do you know that at Marion School
19 they use to have buses spelled with two S. Is that correct
20 school, but they don't know that but it's true. Jim Cox is
21 shaking his head. You remember, Mr. Cox.

22 MR. COX: Yes, sir. And John did get A a second
23 time the second time he went through there.

24 THE COURT: All right. I'll read this. Let's see
25 the testimony of Levern Bostic would be as follows: Mr.

1 Bostic knows Lisa Williams and Lisa Williams slash Lavenia
2 ---

3 MR. MEADORS: Instead of saying aka you want me to
4 say Lavenia Lisa Williams.

5 THE COURT: Lisa Williams or Lavenia Williams
6 Hilton. Mr. Bostic new Gloria Cummings. Mr. Bostic had
7 resided at 908B Pine Street during November and December of
8 1997. Mr. Bostic did not recognize a picture of Charles
9 Pagan that was shown to him on February the 9th 2001 in the
10 presence of Florence FPD what's that.

11 MR. MEADORS: Florence Police Department.

12 THE COURT: Florence Police Department, right?

13 MR. MEADORS: Yes, sir.

14 THE COURT: In the presence of F, Florence Police
15 Department Detectives and Investigator Alman Brown.
16 Mr. Bostic has health conditions, which prevent his --
17 prevent him from coming to court.

18 MR. MEADORS: I think we're all in agreement with
19 that. I'm sorry it's not more legible.

20 THE COURT: And I'll read that and give you an
21 opportunity to add dates to these stipulation that was read
22 by you back on was that Friday or Thursday. I can't
23 remember now.

24 MR. MCMAHON: I think it was Thursday, Your Honor.

25 THE COURT: Thursday. Well, I think we all ready.

1 You may invite the jury back out.

2 (The jury returned to the courtroom.)

3 THE COURT: Welcome back once again, Mr. Foreman,
4 members of the jury, at the outset I suggested that this
5 could be a long case. And it has been. And I hope I made
6 it clear to everybody that I wasn't gone rush anyone
7 involving this matter not the jury, not the State and not
8 the defense team. Now, as a result of that I've concluded
9 at this point in trial, I'm gonna read you a stipulation
10 regarding the testimony of a potential witness in this
11 case. This witness is unavailable. He's in the hospital
12 and I'll explain that in a minute.

13 Once I do that, members of the jury, Mr. Meadors is
14 gonna add some dates to a stipulation that was read to you
15 on Thursday. And I explain to you what a stipulation is
16 agreed upon the fact by both sides. Once we do that, then
17 I think we gone break for lunch. I'm still going to give
18 you about an hour and a half. And after lunch there may be
19 still some testimony that you will receive in reply from
20 the State. This will all make sense. I'm just asking that
21 you listen to me for now for logistical reason. Give you
22 an idea about time frame.

23 So I'm going to read a stipulation in just a moment.
24 Mr. Meadors going to follow the stipulation. Then we gone
25 break for lunch. And after lunch then the State will be

1 prepared, if they elect to do so to present some short
2 reply testimony.

3 So with that in mind, members of the jury, if I
4 could have your attention. Once again, at my age here I
5 need to put on my glasses here. The stipulation, members
6 of the jury, the State of South Carolina by and through
7 it's representatives, Mr. Knox McMahon and Mr. John
8 Meadors, Assistant Solicitors for the Fifth Judicial
9 Circuit and Charles Pagan by and through attorneys his
10 attorneys Jim Cox and Kernard Redmond, hereby agree and
11 stipulating -- stipulate to the following. That the
12 testimony of Levern Bostic, a Mr. Levern Bostic would be as
13 follows: Mr. Bostic knew Lisa Williams; that is Lavenia
14 Williams Hilton. It says Hilton, but I think it's actually
15 spelled H-e-l-t-o-n; is that correct.

16 MR. MCMAHON: Yes, sir.

17 THE COURT: All right. So this witness Mr. Bostic
18 his testimony would be as follows: Mr. Bostic knows Lisa
19 Williams or Lavenia Williams Helton. Mr. Bostic new Gloria
20 Cummings. Mr. Bostic had resided at 908B Pine Street
21 during November and December of 1997. Mr. Bostic did not
22 recognize a picture of Charles Pagan that was shown to him
23 on February the 9th 2001 in the presence of Florence Police
24 Department detectives and an Investigator Alman Brown.

25 Mr. Bostic has health conditions which prevent him

1 from coming to court to actually testify to what I just
2 read to you. Now, did you all understand what I just read
3 to you; that what I just read to you would have been the
4 testimony of Mr. Levern Bostic. Would you like for me to
5 repeat that, members of the jury.

6 (All jurors' agreed they did not want the
7 stipulation reread again.)

8 THE COURT: Very well then.
9 Mr. Meadors, I'll invite you to add some dates and times to
10 the stipulation that was read by Mr. Meadors back on
11 Thursday.

12 MR. MEADORS: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Yes, sir.

15 MR. MEADORS: Your Honor, that would be referring to
16 Court's Exhibit 5, dealing with analysis from the a South
17 Carolina Law Enforcement Division on various forensic items
18 that were submitted to specifically in addition, Your
19 Honor. With agreement between all the parties,
20 Mr. McMahon, Mr. Meadors, Mr. Cox and Mr. Redmond. That
21 all forensic evidence was submitted to SLED on December
22 23rd of 1997. With the exception of Steve Blathers
23 samples, which were submitted during the month of May 1999.

24 Your Honor, the results that were read by myself and
25 contained in Court's Exhibit Number 5 were all from a

1 report that was rendered by SLED including all these
2 matters. The Blathers matters and all the rest of them on
3 March 30th of 2000. That final report from SLED came in
4 which is what the Court's Exhibit 5 was derived from.

5 THE COURT: All right. Well, agreed Mr. Redmond,
6 Mr. Cox?

7 MR. COX: The defense agrees, Your Honor.

8 THE COURT: All right, very well. The defense has
9 rested. That is they have presented probably all the
10 testimony you will hear on behalf of Mr. Pagan. I've
11 ordered lunch and it's supposed to be here by about 12:30.
12 Now, it's 12:15. And I'll leave it up to you, Mr. Foreman
13 and members of the jury, to decide what you want to do. We
14 going to break for lunch, which gives you about an hour and
15 a half. The food will be here in about 15 minutes
16 hopefully.

17 If you care to walk around outside or do something
18 like that you're invite to do so or you're invited to stay
19 right here in the jury room and wait a few minutes until
20 your lunch gets here. But, Mr. Foreman, you all can go
21 back in the jury room and decide whether or not somebody
22 wants to walk, breath fresh air or something like that.
23 You'll have about 15 minutes or so to do that before you
24 lunch arrives.

25 Once again, I need to remind you, please, don't talk

1 about the case in anyway. It's even more important this
2 stage in the trial that you not do so. And as much as all
3 the evidence is just about in. These matters I've talked
4 to you about throughout the course of the trial will be
5 more critical now. Don't talk about the case in anyway,
6 shape or form. Wait until you've heard all the evidence,
7 wait until you've heard the arguments from both parties
8 that is from the State, from the defense. And after I've
9 charged you on the law. That will be the appropriate and
10 correct time is to begin any discussions about this matter.

11 So that in mind will take our lunch break. You can
12 go back in the jury room. If somebody wants to leave and
13 go outside or something like that, just let us know. If
14 not, I'll assume that part of the group will be sitting
15 there in the none smokers and the smokers will be in the
16 other jury room. So just don't talk about the case, but
17 you may retire to the jury room, Mr. Foreman and fellow
18 members of the jury.

19 (The jury was excused to the jury room.)

20 THE COURT: Anything further at this time?

21 MR. MEADORS: Not from the State.

22 MR. COX: Not from the defense, Your Honor.

23 THE COURT: Once again, we're going to try to get
24 those records between December the 1st and December the
25 10th. I do believe regarding the phone numbers of

1 Mr. Pagan or Mr. Pagan's mother-in-law. And as a result
2 the we can get them -- as a result I will allow additional
3 time for either side to reflect upon or look at those
4 records. And entertain any motions that might follow as a
5 result of them. We will be at ease then.

6 (Court recessed for lunch break.)

7 (Court has now reconvened.)

8 (Stipulations marked as evidence as Court's Exhibits
9 Numbers 6 and 7.)

10 MR. MEADORS: May it please the Court, we have now
11 signed Court's Exhibit 6, which is the type version of
12 what, Your Honor, had read. All parties have signed
13 including the defendant Charles Pagan. And State 7 will be
14 amended excuse me -- Court 7 is the addition to Court's
15 Exhibit 5, which is also read. Also been signed by all the
16 parties and the defendant.

17 THE COURT: All right, sir. Anything further before
18 we resume gentlemen.

19 MR. MEADORS: No, sir, nothing from the State.

20 THE COURT: The defense has rested. We're ready for
21 some reply testimony from the State.

22 MR. MCMAHON: State ready, yes, sir.

23 THE COURT: You want to put anything on the record
24 now, Mr. McMahon, or you want the wait until we finish.

25 MR. MCMAHON: No, sir, I'm waiting on another

1 witness.

2 THE COURT: Okay. So we're ready to get started.

3 MR. MCMAHON: Yes, sir.

4 THE COURT: Very well. You may invite the jury back
5 in.

6 (The jury returned to the courtroom.)

7 THE COURT: Welcome back once again, members of the
8 jury, of course, things have taken a little bit longer even
9 than I anticipated. I take this opportunity first of all
10 to thank you once again for your patience. This has been a
11 long trial, but I think a matter of this magnitude and
12 importance. It's my decision to logistically either rush
13 you or take my time or our time. And I decide to take my
14 time so.

15 If in anyway you think that this trial has run been
16 run unsmoothly because of delays, you got to blame me
17 certainly and not the State or not the defendant. I would
18 invite you to blame me, members of the jury, if there's
19 anybody to blame. I have tried to keep you informed as
20 close as I possibly can. Sometimes it's just impossible to
21 predict certain things that may arise during the course of
22 a trial. I found myself in that position as trial judge
23 here.

24 So with that explanation, I don't want you to hold
25 any of these delays, no matter whether it's 15 minutes or

1 half hour. However, long against the State. Don't hold it
2 against the defendant. You must hold me responsible. And
3 I readily accept that responsibility. Now, with that in
4 mind we'll now hear some reply testimony from the State.
5 And, Mr. McMahon, you're invited to proceed, sir.

6 MR. MCMAHON: Thank you, Your Honor. The State
7 calls Adgie Kelly.

8 ADGIE KELLY, being first
9 duly sworn testifies as follows:

10 THE COURT: Mr. Kelly, I'm going to invite you to
11 sit down and state your first and last name and spell your
12 first and last name for the record.

13 MR. KELLY: My name is Adgie Kelly, which is
14 A-d-g-i-e K-e-l-l-y.

15 THE COURT: Thank, you, Mr. Kelly.
16 Mr. McMahon.

17 MR. MCMAHON: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION BY MR. MCMAHON:

21 Q. Sir, by whom are you employed?

22 A. With the City of Florence.

23 Q. And how long have you been employed with the City of
24 Florence, Mr. Kelly?

25 A. 27 and a half years.

1 Q. And what is your current position with the City?

2 A. Right now at the present I'm the equipment maintenance
3 manager.

4 Q. Where is that -- Where is your office or your shop
5 area located at?

6 A. 1440 McCurdy Road and my shop area is in the back of
7 the building.

8 Q. How long you been in that position, Mr. Kelly?

9 A. Manager, I been about a year. And supervisor I been
10 about 27 years -- 26 years.

11 Q. Now, Mr. Kelly, I want to direct your attention back
12 to 1996. You were employed with the City of Florence at
13 the same location back at that time?

14 A. Right.

15 Q. And during that period of time, would y'all have
16 certain inmates on work release assigned to the City shop
17 from Palmer Pre-release Center?

18 A. Yes, we did.

19 Q. Among those was there one Charles Pagan?

20 A. Yes, it was.

21 Q. All right. And you knew Mr. Pagan?

22 A. By working relations, yes.

23 Q. And you knew him on site?

24 A. Right.

25 Q. And he would come and work at that particular location

1 during a period of time and the latter part of 1996?

2 A. Right.

3 Q. Specifically, I want to ask you about November 25th of
4 1996. Did you learn something about a wedding or marriage
5 that took place?

6 A. Well, yes, I learned it, but it was after the fact.

7 Q. And how did you learn of that, Mr. Kelly?

8 A. Well, I went to lunch one day and when I come back
9 from lunch, they told me it's been a wedding going on. And
10 I said, no, you got to be kidding. He said, yep. And
11 truly it was a wedding.

12 Q. And do you know who had gotten married?

13 A. Mr. Pagan.

14 Q. Mr. Pagan. Do you know where he gotten married at?

15 A. Well, they told me it was in the supply room where
16 they keep all the cleaning supplies and stuff.

17 Q. The supply room at the shop area?

18 A. It's in a vicinity of the shop are, but it's another,
19 you know, location.

20 Q. Mr. Kelly, if I was to give you the date November 15th
21 of 1996, Mr. Pagan got a marriage license from the City
22 County Complex. Did you authorize Mr. Pagan to leave the
23 job site and come to the City County Complex to get a
24 marriage license?

25 A. No, I didn't.

1 Q. Did you ever provide him with a driver at lunch time
2 to bring him to the City County Complex to get a marriage
3 license?

4 A. No, I didn't.

5 Q. Did you know anything about Mr. Pagan's marriage prior
6 to his marriage?

7 A. No, I didn't.

8 Q. It was all afterwards?

9 A. It was afterwards.

10 Q. As a result of that, where you learned that,
11 Mr. Kelly, what action did you take?

12 A. I went to my superior officer, which was not Brantly
13 -- Brantney and Drew Griffin.

14 Q. Do you advise then of that?

15 A. I advised them of the wedding as soon as I found out
16 that it was a wedding.

17 MR. MCMAHON: Thank you, Mr. Kelly. I don't have
18 any further questions.

19 THE COURT: Cross examine.

20 MR. REDMOND: Yes -- Yeah, I mean, may it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION BY MR. REDMOND:

24 Q. Mr. Kelly, if I recall your testimony correctly, you
25 indicated that it was the wedding from what you heard was

1 in the supply room?

2 A. Right.

3 Q. And is that on site at the City shop?

4 A. Right.

5 Q. Okay. And to your knowledge then -- And let me ask
6 you this. Your knowledge from what I can gather comes from
7 what you heard; is that correct?

8 A. Well, my employees told me there was a wedding. I
9 wasn't there when the wedding was going on.

10 Q. My question is your knowledge comes from what you
11 heard. You don't have any personal knowledge of that?

12 A. Not really, no.

13 MR. REDMOND: Thank you. Beg the Court's
14 indulgence.

15 THE COURT: All right.

16 MR. REDMOND: I have nothing further.

17 MR. MCMAHON: Thank you. I have nothing further,
18 Your Honor.

19 THE COURT: All right. Mr. Kelly, you may step
20 down, sir.

21 (The witness left the witness stand.)

22 MR. MCMAHON: Thank you, Mr. Kelly.

23 May he, Mr. Kelly, be excused, Your Honor?

24 MR. REDMOND: Without objection.

25 THE COURT: Yes, sir.

1 MR. MCMAHON: State calls Foline Guilford.

2 FOLINE GUILFORD, being first
3 duly sworn testifies as follows:

4 DIRECT EXAMINATION BY MR. MCMAHON:

5 Q. Ma'am, would you state your name for the record and
6 spell your last name, please?

7 A. Foline Guilford and it's G-u-i-l-f-o-r-d.

8 Q. Ms. Guilford, by whom are you employed?

9 A. Florence County Probate Court.

10 Q. And how long have you been employed with probate
11 court?

12 A. 1989.

13 Q. What is your current position with the court?

14 A. Legal director clerk four.

15 Q. How long have you been in that position, Ms. Guilford?

16 A. Maybe four years.

17 Q. Now, I want to direct your attention back to November
18 15th of 1996 and show you State's Exhibit Number 70. Are
19 you familiar with that document?

20 A. Yes, sir.

21 Q. What is that document Ms. Guilford?

22 A. This is an affidavit to obtain a marriage license.

23 Q. Now, what does one have to do to get a marriage
24 license in Florence County?

25 A. You come in and apply for a license. You wait 24

1 hours before you can come back and pick up that license.

2 Q. Now, where do you have to come to apply for the
3 license?

4 A. Room 206 in probate court.

5 Q. And that's what nine floors down on the second floor
6 of this building?

7 A. Correct.

8 Q. Does both parties male and the female have to come in
9 to apply for a license?

10 A. They do come in. Occasionally, if it's inconvenient,
11 we can sent an application out, but that's very rare.

12 Q. Now, do you remember this particular -- This
13 particular license application State's 70?

14 A. I do. I do because I notarized each signature and
15 they came in at 8:55 on November the 15th 1996.

16 Q. Now, when did it first come back to your memory,
17 Ms. Guilford, that you had anything to do with that
18 particular license?

19 A. Well, they had to come back and pick up the license.

20 Q. Yes, ma'am.

21 A. But I don't know if it was very the next day. It
22 probably was. Usually, they come back within 24 hours pick
23 it up.

24 Q. Now, the day they got that license November 15th of
25 '96, you didn't know any of those parties that day; is that

1 correct?

2 A. I did not.

3 Q. Going to '97, in the first part of '98, did you have
4 an occasion to recall either one on those parties names?

5 A. I saw a picture in the paper and I recognized it. I
6 didn't know why, but then after I got to the office that
7 morning some of the girls were talking about it. And I
8 said I believe he applied for a marriage license and I
9 looked it up on the computer and it was the same person.

10 Q. And show enough you found that marriage license?

11 A. Yes, sir.

12 Q. And found where you were the clerk that waited on
13 Mr. Pagan and Gloria Pagan; is that correct?

14 A. Correct.

15 Q. Now, the time that's filled out and the date that's
16 filled out on that license, Ms. Guilford, who fills that
17 out?

18 A. I do.

19 Q. And that would be your handwriting there?

20 A. Yes.

21 Q. And then who gets the information from the parties?

22 A. I take the information and I write it in, but they
23 sign it. And then I notarize their signature.

24 Q. That was my next question. Once they sign it, then
25 you notarize their signature; is that right?

1 A. Correct.

2 Q. Do you recall -- Of course, I image you've issued a
3 lot of licenses since '89 I believe you said?

4 A. Yes, sir.

5 Q. But let me ask you particularly if an individual came
6 in and you were dressed in blue jeans that had a bright
7 strip down SCDC, do you think that be something that would
8 stick out in your memory, Ms. Guilford?

9 A. I do.

10 Q. Did you recall Mr. Pagan being dressed in that manner
11 on that particular day?

12 A. No, sir, I do not.

13 MR. MCMAHON: Thank you, Ms. Guilford. Answer any
14 questions the defense lawyers may have.

15 MR. REDMOND: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION BY MR. REDMOND:

18 Q. Ms. Guilford, I believe you testified that you
19 remembered Mr. Pagan. Could you tell us what either of the
20 parties where wearing on that day?

21 A. I do not know just casual.

22 MR. REDMOND: Okay. Nothing further, Your Honor.

23 THE COURT: All right. Anything further of this
24 witness?

25 MR. MCMAHON: No, Your Honor, nothing further. May

1 Ms. Guilford be excused.

2 MR. REDMOND: Without objection.

3 THE COURT: You may step down, Ms. Guilford. Thank
4 you so much for coming.

5 (The witness left the witness stand.)

6 THE COURT: Could I see y'all for a second.

7 MR. MCMAHON: Yes, sir.

8 (A bench conference was held in the presence of the
9 jury, but out of the hearing of the jury.)

10 THE COURT: Members of the jury, I'm gone give you a
11 short break whether you want one or not. It's necessary
12 for me to do so. Once again, I got to remind you please
13 don't talk about this case. We're very near the end of it.
14 And it becomes more important that you not do so. And I'm
15 stop going to stop thanking you for your patience if you
16 want me to. But I sincerely mean that from the bottom of
17 my heart. When I express my thanks and appreciation, I
18 speak on behalf of Mr. McMahon, Mr. Meadors, as well as
19 Mr. Cox and Mr. Redmond.

20 MR. REDMOND: Thank you, Your Honor.

21 THE COURT: So please go to the jury room just don't
22 talk about the case.

23 (The jury was excused to the jury room.)

24 THE COURT: We'll be at ease. The wait for that
25 file and a possible witness. If there's nothing else y'all

1 need to think or worry about, I'll invite y'all in we can
2 discuss the charge or something like that. Is that good
3 enough.

4 MR. MCMAHON: Yes, sir.

5 THE COURT: All right. We'll be at ease.

6 (Court recessed with a short break.)

7 (Court has now reconvened.)

8 MR. MEADORS: We have an in camera witness we like
9 to call.

10 THE COURT: One in camera?

11 MR. MEADORS: Yes, sir.

12 THE COURT: All right.

13 MR. MEADORS: Gloria Pagan.

14 THE COURT: Come around, Mrs. Pagan. I'll remind
15 you that you're still under oath for the purposes of this
16 trial. Okay. Just have a seat.

17 MR. MEADORS: May it please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION BY MR. MEADORS:

20 Q. Ms. Pagan, I had just ask you some questions just a
21 few moments ago about 319-3028 and that phone bill?

22 A. Uh-huh.

23 Q. Do you remember that?

24 A. Yes.

25 Q. And I believe you said you brought some records from

1 12-5 of '97 to 12-8 through 10 of '97; is that correct?

2 A. Yes. Whatever they needed that's what I gave them
3 for.

4 Q. Okay. Did you tell me 12-5-97 through 12-10-97.

5 A. That's what I'm thinking, yeah.

6 Q. And what you do with those records?

7 A. I gave it to the attorney.

8 Q. Gave it to who?

9 A. To the attorney.

10 Q. And did you have records prior to that from 12-1 to
11 12-5, if you remember?

12 A. I probably did, but all I gave them what they needed.

13 Q. How did you know what they needed, did they ask for
14 it?

15 A. Pardon me.

16 Q. How did you know what they needed?

17 A. They ask for it.

18 Q. And did these bills come together?

19 A. Yeah.

20 Q. Okay. So that your phone number will be 7594; is that
21 correct?

22 A. Yeah.

23 Q. And 3028 those bills both came at the same time
24 statement?

25 A. They come -- yeah.

1 Q. So the month billing cycle for 7954 would have the
2 same month billing cycle as 3028; is that correct?

3 A. Yes, that what I have.

4 Q. And did you take both those billing cycles and provide
5 them, those bills for that month?

6 A. For whatever -- I took whatever they needed that's
7 all.

8 Q. And what you told me outside, that you're saying now
9 that's 12-5-97 to 12-10-97?

10 A. Yeah.

11 Q. On 3028 Mr. Pagan's phone?

12 A. Yeah.

13 MR. MEADORS: Thank you.

14 MR. REDMOND: If it please the Court.

15 Permission to approach the witness.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION BY MR. REDMOND:

18 Q. Do you recall speaking with I believe a Michelle
19 Henderson at the cell phone company requesting her to fax
20 some information to Mr. Cox?

21 A. Yes.

22 Q. Okay. And you see this fax cover sheet where
23 Ms. Henderson faxed copies of the phone bill to Mr. Cox.
24 Would that have been based on you asking Ms. Henderson to
25 provide Mr. Cox that information?

1 A. Uh-huh.

2 THE COURT: You need to speak ma'am.

3 MRS. PAGAN: I'm sorry.

4 A. Yes.

5 MR. REDMOND: Okay. Beg the Court's indulgence.

6 Your Honor, at this time, I would like to introduce this.

7 I believe it's Court's Exhibit Number 8, if I'm not

8 mistaken.

9 (Phone bill marked as evidence as Court's Exhibit
10 Number 8.)

11 MR. REDMOND: That will be all I have.

12 MR. MEADORS: I have one final question.

13 THE COURT: All right, sir.

14 REDIRECT EXAMINATION BY MR. MEADORS:

15 Q. Mrs. Pagan, on this fax cover sheet, does it the
16 number of pages included in there 15?

17 A. Yes.

18 Q. Do you know whether or not 15 in here?

19 A. I don't know.

20 Q. If I was to tell you there was one, two, three, four,
21 five, six, seven, eight, nine, 10, 11, 12, 13. Would you
22 dispute that?

23 A. No, because you count it to me.

24 Q. And looking on page 6, is that 3028 bill right there?

25 A. Yes.

1 Q. And does that end on 12-1?

2 A. Yes.

3 Q. And I believe you said earlier when I asked you
4 outside that you know you brought the bills between 12-5
5 and 12-10; is that correct?

6 A. Yes. That's all I give him.

7 MR. MEADORS: That's all, judge.

8 THE COURT: Anything further?

9 MR. REDMOND: No, nothing further, Your Honor.

10 THE COURT: All right. Just a small clarification.
11 In response to Mr. Meadors questions about what are the
12 dates for the bills. You said you brought what they ask
13 you to bring?

14 MRS. PAGAN: Yes.

15 THE COURT: That was not today when Mr. Redmond
16 talked to you, but at a earlier date; is that correct?

17 MRS. PAGAN: Yes.

18 THE COURT: Okay. But not today.

19 MRS. PAGAN: Not today.

20 THE COURT: Okay. Thank you, ma'am.

21 MR. REDMOND: Your Honor, just to clarify the
22 record. I apologize just to clarify the record. I think
23 you had indicated to me and I don't know that it was
24 established at the time. I think the date on there -- I
25 don't remember talking with her about that. But I just

1 want correct, Your Honor, just ---

2 THE COURT: No, it's when you were in the chambers
3 and you called her and ask ---

4 MR. REDMOND: Oh, I'm sorry, Your Honor.

5 THE COURT: That's the only thing I wanted to
6 clarify.

7 MR. REDMOND: Okay. I misunderstood you.

8 THE COURT: Today earlier about 30 or 40 minutes ago
9 Mr. Redmond called you and asked could you find any more
10 records; is that correct?

11 MRS. PAGAN: Uh-huh.

12 THE COURT: Could you find any more?

13 MRS. PAGAN: No.

14 THE COURT: All right. Thank you that's all I
15 wanted to clarify

16 MR. REDMOND: Thank you. I apologize.

17 THE COURT: That's all right.

18 MR. MEADORS: Your Honor, could I ask one more I'm
19 sorry.

20 THE COURT: Sure.

21 MR. MEADORS: You said any more.

22 FURTHER EXAMINATION BY MR. MEADORS:

23 Q. Do you still have those specific records?

24 A. No.

25 Q. Do you know what you did with them?

1 A. Uh-uh. I have no idea.

2 MR. MEADORS: Thank you.

3 THE COURT: All right. Anything further?

4 MR. REDMOND: Nothing further, Your Honor.

5 THE COURT: All right. You may step down, Mrs.
6 Pagan.

7 (The witness left the witness stand.)

8 THE COURT: Yes, sir.

9 MR. MEADORS: Judge, at this time with all do
10 respect the State would move for a continuance.

11 THE COURT: All right, sir.

12 MR. MEADORS: At least 'til tomorrow, judge. I have
13 been in contact with the chief of SLEDS. Got him working
14 on this. I've called up there. Mr. McMahon called has
15 called up there. I don't know if anything there would
16 necessarily help or hurt the State. That's not -- We're
17 just trying to uncover everything, which we think is --
18 ought to be presented to the trier of facts. There is some
19 question about these particular phone bills, which would
20 like to see them and have answered and have presented. We
21 respectfully request, Your Honor, gives us a one day
22 continuance.

23 THE COURT: And this will be in regards to the State
24 attempts to locate phone bills on Mr. Pagan's cell phone
25 from December the first through December 10th. I'm I

1 correct in that?

2 MR. MEADORS: That's correct, sir.

3 THE COURT: All right. Mr. Meadors, I understand
4 why you would ask for a continue. And I appreciate the
5 position the State is in and so asking. But I need to
6 observe for the record we are in the sixth day of this
7 trial. This case goes back to 1997. And I must
8 respectfully considering all the circumstances the totality
9 of this trial. I'm must respectfully deny that request,
10 sir.

11 MR. MEADORS: Thank you.

12 THE COURT: Anything further?

13 MR. REDMOND: Your Honor, in being that I'm the
14 navelous of out of this learning group of the attorneys. I
15 don't know if this is an appropriate time for me, of
16 course, to reserve the record as it relates since the State
17 has put up reply renewing my motion. I'm not even ---

18 THE COURT: Let's go ahead and do it now because I
19 think we're going to be in a position where we bring the
20 jury back out, y'all should be prepared to argue.

21 MR. MEADORS: As soon as those two posters back
22 there typed up. We should be through.

23 THE COURT: Oh, yeah, that's right. Okay. So you
24 may renew your motion at this time. And I'll give you a
25 later time to renew them also, Mr. Redmond.

1 MR. REDMOND: Thank you, Your Honor.

2 THE COURT: So let the record reflect that
3 Mr. Redmond renewed his motion for mistrial for allowing
4 the testimony of Ms. Helton(sic) I do believe regarding the
5 failure to stop for a blue light. That's again is
6 respectfully denied pursuant to 404(b). And additionally,
7 Mr. Redmond record should reflect that you're renewing your
8 motion for a directed verdict. And once again, the reasons
9 being that we have a State's witness who has testified that
10 she actually saw Mr. Pagan commit the offense. For those
11 reasons as stated earlier, your motions are respectfully
12 denied, sir.

13 MR. REDMOND: Thank you, Your Honor.

14 THE COURT: Now, what we need is the Solicitor to
15 type that up. And when bring them out, both sides going to
16 be ready for the final arguments; is that correct?

17 MR. MCMAHON: Yes, sir.

18 MR. COX: Yes, sir.

19 THE COURT: All right. Well, gentlemen we gone take
20 a little break -- Let me do this. I'm going to tell the
21 jury some matters, I thought were gone heard. We're
22 taking care of them outside of their presence. And when
23 they come out, they will hear the final arguments. Is that
24 okay with everybody?

25 MR. MCMAHON: Yes, sir.

1 THE COURT: For final arguments gentlemen. I think
2 Mr. McMahon has a motion in limine. He indicated to me.
3 Be happy to entertain it now, sir.

4 MR. MCMAHON: Yes, sir, as far as closing arguments
5 and the defense opening, there were several what I think
6 were personal opinions by the defense attorneys. His
7 opinion as to the guilt or innocence of his client. At one
8 point he says ---

9 THE COURT: In his opening statement he says I
10 remember or recall specifically the rules prohibit any
11 attorney arguing -- expressing his own -- his or her own
12 personal opinion about an issue in the case. And the old
13 way to correct that would be I submit -- I think the proper
14 way to do so.

15 MR. MCMAHON: The other issue was, of course, any
16 implication as to punishment. That's not an issue for the
17 jury to be concerned with, life of the defendant. You
18 know, sometimes jurors end up thinking it's a death penalty
19 case or something like that. When you start talking about
20 life and stuff like that. But those were the only two
21 areas I believe both personal opinion and any inference
22 going to the issue of punishment.

23 THE COURT: Whatever punishment might result if he's
24 convicted. And, of course, I know Mr. Redmond and Mr. Cox,
25 I don't think it's going to be been an issue. But I'm

1 going to grant this motion out of an abundance of
2 precaution.

3 MR. COX: Thank you, Your Honor.

4 THE COURT: That is as to expression the personal
5 opinion and as to what punishment, if any, the defendant
6 will receive, if he's convicted.

7 MR. MCMAHON: The only other matter I think, Your
8 Honor, we would have is -- whatever appellate rights the
9 State may have. And I'm not sure what appellate rights the
10 State has in any case based on the denial of the motion for
11 continuance.

12 THE COURT: Continuance.

13 MR. MCMAHON: Which we understand at the time
14 entirely within your discretion or give the fact the State
15 just want to limit the amount of time also, not delay the
16 case for some 24 hour period of time given Mrs. Pagan's
17 testimony and the records themselves those telephone
18 records with that specific period of time from December 1
19 of '97 to December 9 of '97. For the 319 cell number,
20 which was the defendant's cell number. I think it be
21 incumbent upon the State to make a motion at this time for
22 a mistrial.

23 THE COURT: All right, sir.

24 MR. MCMAHON: Respectfully.

25 THE COURT: I understand.

1 MR. MCMAHON: I never say I certainly understand,
2 Your Honor's, authority in granting or denying the motion
3 for a continuance.

4 THE COURT: All right. Thank you, Mr. McMahon. The
5 motion for continuance denied for the reasons previously
6 stated. And likewise the motion for mistrial is denied for
7 the reasons stated in connection with the motion for a
8 continuance. And I understand the motions. I've
9 understood all the motions for both sides. You're
10 advocates and you're only protect yourselves and your
11 clients when you make these motions. And, of course,
12 there's no personal offense taken. I receive them with all
13 do respect. With all do respects likewise, I'm denying
14 them.

15 MR. MEADORS: Respectfully.

16 THE COURT: Yes, sir.

17 MR. MEADORS: Due to the -- Again, of course, we
18 understand your ruling. Would that prevent the defense
19 from arguing that between that time period. If it had been
20 records reflecting otherwise that it would be presented by
21 the State, we would so hope, Your Honor, would say it
22 would. That they can't argue that the records that we want
23 to get opinions on to infer intent that any phone call in
24 there, like we could have gotten it, if we want that or are
25 they prohibited from that argument.

1 THE COURT: Well, with your mother and your aunt's
2 help you might could have. If they're being faxed on the
3 way, a delay of another 15 or 20 minutes is not going to
4 offend me. I'll hear from Mr. Cox and Mr. Redmond.

5 MR. COX: Nothing from the defense.

6 THE COURT: All right. Well, that means that once
7 again I'll tell the jury we going to be delayed -- You just
8 tell them we gone be delayed a little while longer. Just
9 sit back. And we'll be at ease. No that's quite all
10 right. I guess the good thing about this job and the bad
11 thing about this job is I get to spend a week or six days
12 with gentlemen like yourselves. We'll be at ease.

13 (Court's in recess.)

14 (Court reconvened.)

15 THE COURT: Actually, I'll give both sides
16 additional time to consider digest these records and
17 entertain any motions that they have of the records.

18 (Court's in recess.)

19 (Court has reconvened.)

20 THE COURT: Y'all have any motions to the additional
21 records?

22 MR. MEADORS: No, sir.

23 MR. MCMAHON: The State would have to move to reopen
24 to present those as part of the testimony.

25 THE COURT: But there's no more questioning of any

1 MR. COX: Defense is not going to argue that.

2 THE COURT: All right. Mr. Cox has answered that
3 question for you. And I think that's a gracious and
4 gentleman way to resolve that issue. Otherwise both of
5 you, will be arguing back and forth about those records.
6 That aren't in evidence. So anything further. I assume
7 we're all on the same page regarding the motions just
8 heard.

9 MR. COX: The defense is. Thank you, Your Honor.

10 THE COURT: Once again gentlemen, I think y'all
11 going to dissect the arguments. Mr. Meadors going to argue
12 a part. Mr. McMahon a part. Mr. Redmond a part. Mr. Cox
13 a part; is that correct?

14 MR. REDMOND: That's correct, judge.

15 THE COURT: All right. And I assume it's going to
16 take both sides between an hour -- yes, sir.

17 MR. MEADORS: Respectfully the phone records are on
18 the way. They're being faxed right now.

19 THE COURT: The phone records -- How long will it
20 take?

21 MR. MEADORS: They say they're being faxed right
22 now, Your Honor.

23 THE COURT: All right.

24 MR. MEADORS: I'm sorry. I couldn't orchestrated
25 that.

1 witnesses that you need?

2 MR. MCMAHON: No, sir, I don't think so. We ask,
3 Your Honor, for no custodial rule. I'm assuming there's no
4 issue as far as that's concerned regarding these actually
5 records.

6 MR. COX: Rather than reopen. If it please the
7 Court, it seem to me this would be a Court Exhibit.
8 Unless, there's something in here the State wants to call
9 to our attention just phone records

10 THE COURT: I just anticipated there might be some
11 more. You might want to go over them with Mr. Pagan again
12 or somebody. But if y'all fine, I'm fine.

13 MR. MEADORS: Your Honor, we're going to offer this
14 as State's Number 71. It's the remainder of the phone
15 records that aren't in evidence. It fits right in with the
16 rest of the bill. I believe without objection.

17 MR. COX: I want the Court -- Your Honor, I ask the
18 Court to instruct the State to tell us if there's something
19 particular in those records that are of interest to them.
20 And it's just phone numbers to me. So if they know
21 something, we don't know because it be more appropriate for
22 this to be marked as a Court Exhibit based upon their
23 motion. Rather than come back in after they've rested.

24 MR. MCMAHON: Judge, it's local calls. There's
25 local calls from here when he says he's in New Jersey.

1 MR. REDMOND: Your Honor, I would object.

2 MR. MCMAHON: So ---

3 THE COURT: Wait. Wait. Wait. Let him finish
4 Mr. Redmond. I'm going to allow you to have a chance to
5 reply.

6 MR. MCMAHON: With that in mind with the fact that
7 there are none roamer calls on 5th, 6th, 7th and other
8 times. I mean, that's the whole point. I don't know where
9 the numbers go to.

10 THE COURT: All right.

11 MR. MCMAHON: But they're local calls it appears
12 none roamer calls, which either means he was in New Jersey,
13 but his phone wasn't. That subject to interpretation and
14 inference by the jury.

15 THE COURT: What I anticipated was I anticipated
16 maybe the State moving to reopen it's case to recall
17 Mr. Pagan or somebody else. Y'all don't want to do that,
18 that's fine or I give you a chance to explain them.
19 Whatever y'all need I'm gone give it.

20 MR. REDMOND: Your Honor, the reason I apologize for
21 objecting, but Mr. McMahon said that there aren't any calls
22 reflect. If, Your Honor, reads this phone record, it
23 doesn't say the place of origin. It only talks about the
24 place the call was made to. So to characterize it that way
25 is not proper first of all without proper foundation. And

1 I would submit it's false.

2 MR. MCMAHON: Judge, they gone the whole trial
3 without wanting one single custodian. Now, when it hurts
4 them, now I got to get up here and explain the whole phone
5 system. They're non-roamer calls. We have a non-roamer
6 call. And you can look through all these records and it
7 will tell you what roamer and a non-roamer call is. If
8 that's the case, then I'll like to get someone down here
9 that can explain that. I thought we were always proceeding
10 under noncustodial such as that. And if they want to argue
11 the phone was here, he didn't have it. I don't object to
12 that.

13 MR. COX: I have a different understanding.

14 THE COURT: All right.

15 MR. COX: When I'm traveling with my cellular phone,
16 and I call my telephone company and tell them that I'm
17 going to be in New Jersey a certain certain time. That
18 clears me to use my phone in New Jersey without having to
19 go through a security check. And then my phone will not
20 show roaming calls while I am in New Jersey using my phone.

21 THE COURT: All right. This -- I would suggest this
22 as a reasonable solution for both parties. I'll be happy
23 to let either one of you open this case back up. That is
24 y'all can have Mr. Pagan explain the significance of that,
25 Mr. Cox, Mr. Redmond, or the Solicitor can call him and

1 cross examine him on it. But if a fact is in evidence,
2 either side can argue whatever inference they want. If the
3 bill phone records go in, then it's subject to
4 interpretation. You understand roaming to be this way.
5 Y'all understand roaming to be that way is somewhat
6 confusing.

7 So my point is this. If there's no objection to the
8 phone calls Mr. Pagan can recognize -- Well, he's shaking
9 his head. You don't have to shake your head Mr. Pagan.
10 But seems like to me the person here to clarify all this
11 about whether he was in New Jersey or here, whether the
12 phone was there is Mr. Pagan. And y'all don't have to put
13 him back up. I would all the State to recall him. I'll
14 allow y'all to call him back to straighten out this issue.

15 Otherwise, if there either any objection to the
16 numbers simply going in, you both going to be arguing two
17 different things ships in the night almost. I just want it
18 to be as clear and succinct as possible for both of y'all.
19 I don't care.

20 MR. COX: As an officer of the Court, I would not
21 ever imply to try to tell this jury that I understand
22 telephone calls that work this way or that way without
23 someone from the telephone company saying so...

24 THE COURT: So where does that leave us at the
25 beginning of this argument again.

1 MR. COX: Respect I think goes back to marking this
2 as an Court Exhibit and press on with closing arguments.

3 THE COURT: Which could lead either side. It
4 doesn't matter to me what you're arguing. It lead one side
5 to say well I understand roaming to be this. The other
6 side I understand roaming to be that. I don't know, but
7 that's what we going to have without any further
8 clarification.

9 MR. MEADORS: I think you said mark Court's Exhibit.
10 We offer it as a State's Exhibit just cause ---

11 THE COURT: Can I mark it as a Court's Exhibit that
12 satisfies both parties?

13 MR. MEADORS: No, sir. Respectfully ---

14 MR. COX: Mark as a Court Exhibit then we would not
15 be allowed -- I respectfully submit argument to the jury.

16 MR. MEADORS: I agree with what Mr. Cox just said on
17 that. Judge, the bill up to December 1st is in. The bills
18 from December 10th is in. All we're asking is just to fill
19 in between the 1st and the 10th and everything else is gone
20 in into without objection.

21 THE COURT: Well, my only point is there's no
22 testimony in the records from anyone to say that those are
23 Mr. Pagan's. Do we have an agreement they are the phone
24 records to the number in question?

25 MR. COX: I would agree with that, Your Honor,

1 because those came from the telephone company and appear to
2 be a continuation of telephone records.

3 MR. MEADORS: Your Honor, just to argument I believe
4 there is testimony that Mr. Pagan had that phone number
5 with him. That phone was with him the whole time when he
6 got out December excuse me -- November 27th and maybe
7 before.

8 MR. COX: Yes, sir, that number -- the phone was
9 Mr. Pagan's used.

10 THE COURT: This is what I'm prepared to do.
11 Apparently without any strick verification from the phone
12 company. I think everybody can agree that these are the
13 phone records belonging to the mobile phone that Mr. Pagan
14 had. All right.

15 MR. MEADORS: Correct.

16 THE COURT: Now, if there's an objection to it
17 coming in, I'm probably going to overrule and let it in.
18 I'm giving both of y'all an opportunity to reopen your
19 cases and explain whatever you want to explain in
20 connection with those phone numbers. I can't make you do
21 that. But I'm inviting you to do so.

22 MR. REDMOND: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. REDMOND: If I can look at one of the exhibits,
25 I'm thinking we might be able to clarify that issue.

1 THE COURT: That's all right.

2 MR. REDMOND: Your Honor, Your Honor, on page 15 of
3 State's Exhibit Number -- I mean Defense Exhibit Number 5
4 excuse me. It indicates the roaming charges and the fact
5 that it was -- where it originates from and whatnot. And
6 it goes through that list as it relates to the daily
7 roaming charges from being in a particular area.

8 THE COURT: So what y'all both arguing about is in
9 the record all ready?

10 MR. REDMOND: It's all ready in evidence.

11 MR. MEADORS: So they have no objection to this
12 going into evidence. Why would they?

13 MR. REDMOND: Beg the Court's indulgence.

14 THE COURT: All right. That's all right.

15 MR. REDMOND: Beg the Court's indulgence.

16 THE COURT: Yes, sir, take your time.

17 MR. MEADORS: Judge, you know all the records are in
18 except these 10 days. I don't know why ---

19 THE COURT: Well, listen this is what happens. You
20 move them in. They object. And I make a ruling on the
21 objection. Is that where we are?

22 MR. MEADORS: Yes, sir.

23 Your Honor, we gone move in State's 71.

24 THE COURT: All right. Any objection?

25 MR. REDMOND: Beg the Court's indulgence. Your

1 Honor, I just need to look at one more.

2 THE COURT: All right. Take your time.

3 Some of these records are marked Court's Exhibit. They
4 don't go back to the jury. We all agree on that.

5 MR. COX: Yes, sir.

6 MR. REDMOND: Yes, sir.

7 THE COURT: Is that correct. Okay. We'll double
8 check them at the end. I always do, but I just want to
9 make sure everybody is on the same page. Yes, sir.

10 MR. REDMOND: Your Honor, I discussed it with
11 Mr. Cox and we are going to retain our objection at this --
12 because of the fact that there seems to be a dispute as to
13 what page 15 of the Defense 5 and page 28 of Defense 6.
14 Means, in other words, we disagree on the interpretation.
15 So we're going to have to at this time retain our
16 objection. We're not going to withdraw.

17 THE COURT: That's fine. Your objection is
18 overruled. You both can argue whatever the facts that are
19 in evidence implicates. I mean, you know, I'm not going to
20 stop you from saying -- The State may say one thing. You
21 may say another about the same fact; that's fine. That's
22 just argument. For those reasons, basically I'm denying
23 your motion.

24 MR. REDMOND: I just want to ---

25 THE COURT: I'm overruling your objection.

1 MR. REDMOND: Your Honor, I just want to make sure
2 I'm hadn't misplaced any exhibits. Make sure I put
3 everything back.

4 THE COURT: All right. Take you time.

5 MR. MEADORS: Your Honor, it's my understanding I
6 can offer this in front -- when the jury comes out.

7 THE COURT: Sir?

8 MR. MEADORS: It's my understanding I'll offer this
9 when the jury come out as a State's Exhibit in front of the
10 jury.

11 THE COURT: No, I'm ruling on it now. You offered
12 it they objected. I overruled their objection. These are
13 the phone records from December the 1st through December
14 9th that everybody was looking for?

15 MR. MEADORS: That's correct.

16 THE COURT: They want to reserve their objection. I
17 understand that. It's overruled. So they're in.

18 (Phone records marked as evidence as State's Exhibit
19 Number 71.)

20 THE COURT: It's nothing else to present to the jury
21 except for the arguments that will be entertained from both
22 parties -- entertained by from both parties. If there's
23 nothing else further to say, I'll invite jury in gentlemen.
24 We all ready then?

25 MR. REDMOND: We're ready, Your Honor.

1 MR. MCMAHON: Yes, sir.

2 THE COURT: Very well. You may invite the jury back
3 out.

4 (The jury return to the courtroom.)

5 THE COURT: I think technically says below guilty or
6 not guilty.

7 MR. COX: I think we saw it in chambers no objection
8 from the defense.

9 THE COURT: All right. Well, welcome back once
10 again, members of the jury, we now reached a point in this
11 trial when you will shortly hear the final arguments from
12 the parties involved. The state has the burden of proof,
13 members of the jury. That being the case, we'll first hear
14 Mr. Meadors on behalf of the State. Followed by Mr. Cox on
15 behalf of Mr. Pagan, the defendant. Then from Mr. McMahon
16 on behalf of the State. And then from Redmond. Is that
17 correct?

18 MR. MCMAHON: Yes, sir.

19 THE COURT: The State has the last argument. So it
20 would be actually Mr. Meadors, then Mr. Cox, then Mr.
21 Redmond, then Mr. McMahon. And the reason for that break
22 down in terms of who should go first or second. The State
23 has the burden of proof. And under our rules, they will be
24 entitled to the last argument.

25 So we'll hear from Mr. Meadors and then Mr. Cox,

1 then Mr. Redmond, then Mr. McMahon. Now, members of the
2 jury, certainly at this time I emphasize what I may have
3 said earlier. I really do at this time invite your keen
4 and close attention to the final arguments on behalf of the
5 State and on behalf of Mr. Pagan.

6 Mr. Meadors, you may proceed, sir.

7 MR. MEADORS: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. MEADORS: Mr. McMahon, Mr. Cox, Mr. Redmond.
10 Mr. Foreman, ladies and gentlemen of the jury, I want to
11 thank y'all for being here. Thank y'all for paying
12 attention. We live in the best system the best society
13 this world has ever known. One form of government in over
14 200 years.

15 One reason it is so great is because we have jurors
16 of our peers come in and decide a case. Thank y'all for
17 being here. Thank you for the attention you given this
18 case. And thank you for continued attention as we go
19 through these closing arguments.

20 I work in Kershaw County. Mr. McMahon works in
21 Columbia. We were assigned this case. It is sort of like
22 coming home to me. I grew up in Marion. Spent five years
23 in Marion. My grandfather from Florence was an attorney
24 here. And I can remember when I was little going to the
25 old courthouse and the new courthouse with my grandfather.

1 And I'm honored to be here today representing the State and
2 representing the citizens of Florence County against the
3 defendant Charles Pagan.

4 His Honor, Judge Manning has you this is closing
5 arguments. It's really not a good name for it. An
6 argument implies that you could ask us questions. I can
7 ask you questions. And we might both like to. But closing
8 argument is the time the attorneys to tell you what they
9 think the facts are and the to give you their reasonable
10 inferences.

11 I been in motel room this week watching the news at
12 night. I got to watch one night about spin rooms. It's a
13 show about spinning. What happens in Washington. When you
14 see these people come on and put a spin -- everybody wants
15 to put a spin on something there. And you'll hear
16 reporters who have heard the news conference and they come
17 out and tell you y'all -- tell us say here's what happened
18 today.

19 Well, this is a little different because y'all were
20 at the meeting. You were here at the trial. So you heard
21 it. We're now going to come up and give you our
22 inferences. Reasonable inferences from the facts that were
23 here. We're entitled to do that and ask y'all to consider
24 those. So it's not really an argument, but it's a chance
25 for you to consider something. We're only allowed to argue

1 the inferences from the facts that came from this witness
2 stand.

3 One of my favorite shows growing up was Columbo. If
4 any of y'all ever watched Columbo. You immediately see the
5 crime occur. And then we see the bumbling detective go and
6 figure it out. Well, this isn't real life. In this case,
7 we don't have a video. We have extremely good
8 investigators who put a case together afterwards. I wish
9 we did have a video of what we have as evidence -- direct
10 evidence of the crime.

11 The next best thing I submit to you. And I want to
12 go into your briefly now. And what I'm going to do to you
13 is talk to you short as I ever talked in a closing
14 argument. I know y'all been here six days. You've all
15 been attentive. I'm gone be very short. I know these
16 fine attorneys will be short as they can for the facts that
17 everybody wanted to cover. But my main goal here today my
18 job and what I'm charged to do is cover the law with y'all.
19 The law that His Honor will charge and that y'all be able
20 to consider when you go back.

21 First of all, it's different types of evidence.
22 Direct evidence. Now, y'all know what direct evidence is.
23 Direct evidence is evidence you gain with one of your
24 senses when you come in here put your hand on the Bible and
25 you testify to it. You see something. You come in and

1 testify to it. You hear something. You smell something.
2 You touch something. You come in here and say, hey this
3 what I heard. This is what I felt. This is what I
4 touched. You see a bunch of direct evidence. Monique,
5 Patrice, Mrs. Green, Steve Blathers direct evidence.
6 Direct evidence is what happened that night. Is there any
7 more direct evidence that you heard from Monique. Direct
8 evidence of that killing.

9 There's other types of evidence which His Honor's
10 going to charge you is circumstantial evidence. This right
11 here. His Honor's gone pretty much charge you this I
12 think. Circumstantial evidence proof of a chain of facts
13 and circumstances indicating the existence of the facts.

14 The law makes no distinction between the weight to
15 be given direct evidence, like I just told you and
16 circumstantial evidence. You should weigh all the evidence
17 in the case. And after weighing all the evidence, if you
18 are not convinced of the guilt of the defendant beyond a
19 reasonable doubt, you must find him guilty -- not guilty.
20 If on the other hand, you are convinced of the defendant's
21 guilt beyond a reasonable doubt, then you must find him
22 guilty.

23 But what are some examples of circumstantial
24 evidence. I've got four kids. If one of my daughter's
25 comes in as they often do, and says Perrie writting on her

1 bed. If I go back there and they go into the room and I
2 see writting on the top of the bed sheet and I see Perrie
3 with a crayon, I didn't see Perrie do it, I know Perrie
4 wrote on that bed sheet. Circumstantial evidence proof of
5 a fact. You go in you didn't see it happen, but you know
6 it's there. That's circumstantial evidence, direct
7 evidence circumstantial evidence.

8 Other evidence to that y'all seen us introduce all
9 of these documents and phone records. You gone have a
10 chance to go back there and look as these analyze them,
11 look at the phone records see what they mean to y'all.
12 Look at the pictures the lineups. Mr. McMahon's going to
13 go over a lot these in detail. So I'm not gone go to. The
14 statements from Monique go back and look at them. You got
15 the video tape of Monique go back and watch it. You got
16 all this evidence direct, circumstance documentary
17 evidence.

18 His Honor mentioned it at the first and I'm gone
19 mention briefly now the roles that we all have here.
20 Mr. McMahon and I have our roles. Mr. Cox and Mr. Redmond
21 have their roles as an advocate for Charles Pagan. His
22 Honor, of course, Judge Manning is the judge of the law.
23 He is the law. And he tells us all what law governs here.
24 And if I misquote or if anybody here misquotes the law
25 obviously what Judge Manning says is correct and you'll

1 apply that.

2 But folks you know who plays the most important role
3 here with all do respect to His Honor, it's y'all. As my
4 friend says Mr. McMahon in the opening statement, you come
5 in here with everyday experiences. Your life experiences
6 and your common sense. And you use those when you're
7 looking at evaluating all the witnesses on the stand. It
8 is like that in every courtroom in this country. The
9 beauty of our system. You come in with your common sense
10 and your life experiences. And that's what I'm gone lead
11 in to as I been doing this for 14 years. I realize more
12 and more that common sense is really what the burden is on
13 the State. We got to prove Charles Pagan guilty beyond a
14 reasonable doubt, beyond a reasonable doubt. Common sense
15 isn't it. Watching, evaluating beyond a reasonable doubt.

16 His Honor's going to charge you proof beyond a
17 reasonable doubt is proof that leaves you firmly convinced
18 of the defendant's guilt. Y'all all know that a few things
19 in this world that you can do absolutely certainty. A few
20 things. And the law and the criminal law doesn't require
21 that. Doesn't require absolute certainty. If based on
22 your consideration of the evidence you are firmly convinced
23 the defendant is guilty, that oath you took, you got to
24 find him guilty. If on the other thing -- hand and you
25 think there's a real possibility he's not guilty, then you

1 must find him not guilty.

2 Y'all hear it on the news everyday every time beyond
3 a reasonable doubt, not beyond all doubt. If that was it,
4 we'd all the go home. Wouldn't be need for a trial. You
5 can doubt anything if you want to. You can doubt anything
6 if you want to. But that's not what the law says. And
7 that's not what you took that oath that y'all agreed to do.
8 Your common sense. You know it. You know it. Justice.

9 The Florence County grand jury returned an
10 indictment convinced Charles Pagan for murder. Murder.
11 The unlawful killing of another human breathing blood
12 flowing individual with malice aforethought. I'm gone tell
13 you now and y'all know. What is murder. What is malice.
14 Malice is a meaningless, spitefully, evilness, a
15 wickedness, one person shows to another. Malice
16 aforethought.

17 Now, what's aforethought. It's a legal term of art.
18 It doesn't have to exist for any particular time. You
19 don't have to get up that morning and say I'm gone kill
20 somebody. You don't have to plan it. Aforethought can
21 come about in an instant. In an instant as you're picking
22 a board up and crushing somebody's skull. Just an instant,
23 blink of an instant. Unlawful killing of another human
24 being Gloria Cummings with malice aforethought.

25 Now, folks malice can be shown to y'all in several

1 ways the law allows. Malice can be expressed when somebody
2 says I'm gone kill you or it may be implied. Let's look at
3 this case. What do we have here. We got both. We got
4 both. Expressed malice. End of November sometime in
5 December 1997, Lavenia Helton Lisa Williams said Charles
6 Pagan told Gloria Cummings give me my stuff back, I'm gone
7 kill you. I'm gone kill you. It doesn't have to exist in
8 any particular time, for any length of time. Is that
9 experience malice. Does it get any more expressed. Does
10 that show they knew each other. Once she got to gain or
11 lose by her testimony.

12 Malice expressed. Expressed malice early morning
13 hours North Dargan Street on 12-11-97, Charles Pagan,
14 Gloria Cummings. I'm gone take it out of you, give me a
15 20. I'm gone take it out of you. I'm gone kill you.
16 Thank goodness Monique is there to tell it. We don't have
17 a video. Thank goodness Jessie was living here. We put
18 them there. It all ties together expressed malice. I'm
19 going to kill you. I'll take it out of you.

20 Is there anymore meaningless anymore meaningless,
21 wickedness. The law also allows us to -- What's another
22 example of expressed malice excuse my language, Bitch you
23 next. As Charles Pagan turns to the eyewitness, you next.
24 She's scared. You dag on right she's scared. Entitled to
25 be scared. That's a meaningness, a wickedness beating

1 somebody's head in. You're next. There's no more express
2 express example of malice. The law also allows us to infer
3 malice, implied malice infer. You're allowed to infer
4 malice from the use of a deadly weapon.

5 And from the pathologist and Mr. McMahon's going
6 into this in more detail. You heard the pathologist
7 describe the injuries. Is there anymore telling
8 description than the first witness we up Officer Chamblee
9 that said her head was about as flat as this -- about flat
10 as that book.

11 Inference of malice can arise from the use of a
12 deadly weapon. And the weapon something similar to this
13 the pathologist said. The deadly weapon you're allowed to
14 infer and the use of a weapon like that that resulted in
15 crushing the head like that. That's permissible the law
16 says for you to infer malice. Doesn't that make sense, the
17 hitting, the crushing, the meaningness.

18 Ladies and gentlemen, that's the case. That's the
19 burden. That's a malicious killing of Gloria Cummings.
20 I'm gone be very brief. I'm going to sit down. These
21 gentlemen are going to be allowed to argue. And
22 Mr. McMahon because the State has the burden of proof, our
23 rule says he will be allowed to go last. I want to thank
24 you again for the attention you given all of us. And I
25 want to thank you for living up to your oath. The word

1 verdict means the speak the truth.

2 And, ladies and gentlemen, our job is to seek
3 justice. And we submit that now is a time for justice.
4 And we should submit this time for justice for Charles
5 Pagan. Justice for Willie. Justice for Gloria. And
6 justice cries cries for a verdict of guilty of murder.
7 Thank you.

8 THE COURT: Mr. Cox.

9 MR. COX: When we started the case one of the
10 attorney's opening statement asked you are suggested that
11 you the jury keep you're eye on the ball. Don't be
12 distracted by mirrors fog or smoke. Keep your eye on the
13 ball. Looking back now with hindsight, it would be
14 reasonable to say that was good advise. Told me, the
15 juror, keep my eye on the ball.

16 You heard a lot of evidence. If you may have
17 learned something about life in Florence that you really
18 didn't want to know. Maybe you knew a little bit about it.
19 But what you have you have a factual situation where
20 Mr. Willie Lee Mack whatever reason he's a bootlegger.
21 Mr. Willie Mack for whatever reason young people hang
22 around his house and sell drugs referred to say it's a
23 crack house. And then you would think that absolutely
24 nothing good nothing good existed lived or breathed in and
25 around Mr. Willie Lee Mack's house. We didn't get to hear

1 from Mr. Mack understanding that he is deceased.

2 You know that Ms. Gloria Cummings called Muncie I
3 believed by her friends had reached that point in her life
4 where she would perform sexual acts for drugs and money,
5 drugs or and money. And that she did on December the 10th
6 1997, have sex with at least one person Steve Blathers for
7 sex for money and drugs. And that the young woman Monique
8 Cook who described Gloria Cummings as her best friend known
9 her all her life but said I do not know her real name. I
10 knew only as Muncie. Who she says witnessed a very
11 traumatic cruel death. That by the evidence that occurred
12 2:15 in the morning December the 11th, dying as a result of
13 blunt trauma force, not by accident, not by suicide to
14 homicide or murder. And with those facts Charles Pagan is
15 charged.

16 So keep your eye on the ball. I would submit that
17 what you're looking at is that time period for about 11
18 o'clock December 10th at 2:15 to 2:30 December 11th.
19 That's the time frame. Bringing that in play Charles Pagan
20 is really a fortunate man because he's on trial in this
21 country. But just a part of a finger, will get you charged
22 with your life, get you convicted. But he has a chance to
23 come and look at the witnesses and face his accusers face
24 to face.

25 And through the cross examination of the answering

1 system we have here, we get to ask questions back and
2 forth. That's something to be thankful for. And my
3 friends at the State and friends at the Florence Police
4 Department, they don't get to add facts. They don't get to
5 go out and select people they want to call as witnesses.
6 They're the ones that come to them in the of course of
7 their investigation or course of the investigation.

8 And so the Court will tell you that you should
9 consider what every witness has said. And doing so, you
10 can believe a part of what a witness says and disbelieve
11 the other part. You can believe one witness oppose to many
12 witnesses. What you're supposed to look at are the
13 believability of the witnesses. And it's not the oath that
14 makes you believe the person. It's that person that leads
15 you to believe that they'll live up to that oath.

16 From the time that name is called in this courtroom,
17 a mental process starts going through whether or not you're
18 going to believe or disbelief that person. Look at what
19 opportunity the person has to observe a seat. What do the
20 person actually do. What bias, if any, they had. That in
21 this case may be a difficult job for you because you heard
22 so much.

23 But if you back up and take common sense, it's very
24 difficult to remember everything that happens at a given
25 period of time. What we may have done on Monday three or

1 four weeks ago may not even remember. Unless there's
2 something significant that has happened. Most of us might
3 remember where we were when they learned that President
4 Kennedy had been assassinated. Where you were what you
5 were doing when young Martin Luther King was assassinated.
6 What you were doing about where you were when you learned
7 that Robert Kennedy was assassinated or when the Columbia
8 Rocket exploded killing astronauts. Positive things that
9 you remember.

10 What you were doing even though you may not remember
11 what you're doing an before or an hour after. Coming down
12 to it, Charles Pagan is fortunate because of cellular
13 telephones because of the cellular telephones he was using
14 go back and look look if he was using the phone. He says
15 he was. A time frame.

16 Charles Pagan just gotten out of prison. Has two
17 wives. Has served time on at least two occasions for
18 drugs. Violated his parole, gets out says I was married
19 while I was at Palmer when I should not have been. Said
20 supervisor knew I was going. Supervisor says I didn't know
21 he was going. Remember he said keep an eye on the ball.
22 That's got nothing to do with the case.

23 But looking at it to me important time line was as
24 follows. Now, if I say anything that's different that you
25 collectively heard, you go by what you heard, not by what I

1 have here. But we -- I think that anyone that has heard
2 this whole trial, which you have. Would say the December
3 10th, December 11th we know at six a. m. Charles Pagan was
4 home on Waverly -- Waverly Avenue. Just coming back from
5 New Jersey where they been there all night whatever, about
6 six a. m. he was home. You have the rental car record
7 which shows getting the rental car and returning the rental
8 car later that day. 2:10 we know the rental car was
9 returned.

10 Mr. Pagan and his wife Gloria said they were back
11 home about three o'clock. Sometime about six, he says that
12 he he got ride to Mr. Mack's house. The person that he had
13 meet while he was in prison. Said his wife carried him
14 there. But we know that after getting there it was a short
15 period of time from six, 6:15, 6:30 or whatever. Gloria
16 goes back pick him up and drops him off downtown. And he
17 says he was dropped off at the White Sands. But we know he
18 was dropped off downtown somewhere.

19 But then by the telephone records, we know that he
20 was using -- his cellular phone was being used 9:45, 9:50,
21 9:59. You see the phone numbers. One number his
22 mother-in-law's house where he was staying. He says about
23 10 o'clock he got a ride to the Pub to a place he had not
24 been before. He got a right to the Pub. We know that
25 during that period of time he retrieves his voice mail.

1 10:26 a telephone call to his mother's house in New Jersey.
2 Mr. Pagan says he made that call while he was in the car.
3 Check his voice mail. 11:34 calling home, calling home.
4 Coming on down 11:46, 11:49 call for a taxi. 11:55 then we
5 come back to White -- He says he got picked up at -- my
6 wife pick me up at the Pub. I was with Darren Burgess and
7 J. R. Mr. Leroy Jones. Two individuals who he had meet
8 while he was working on work release. So give or take 30
9 minutes or 40 minutes. Either way we know that those
10 things happened.

11 Mr. Pagan says and his wife says about 12:10 he was
12 home and he did not leave. He did not leave. At that
13 point in time there was an dispute. Some say that, no he
14 didn't go home. That he was not picked up. The dispute
15 saying that Darren Burgess and J. R. Leroy Jones are wrong.
16 But I think there were quite Frank and honest. They said
17 they saw Mr. Pagan use the phone one time. We know that
18 from here he was using more than one time. I think J. R.
19 Jones said he tried to use the phone and it didn't go
20 through. But we know those facts.

21 But we also know during this same time Ms. Cummings
22 -- Gloria Cummings she's at Mr. Mack's crack house on at
23 least two occasions. We know that she's there and at least
24 one occasion she's using what is described as a crack pipe.
25 We know at least on one of those occasions she was there.

1 And the time varies from 10:30 to 12 o'clock Mr. Steve
2 Blathers was there. We know Mr. Steve Blathers walked down
3 maybe earlier back down to buy some drugs. He said himself
4 didn't use the crack cocaine, but he did marijuana. We
5 walk down and bought it. He said to sell.

6 We also know that Mr. Blathers was a very busy
7 person during that period of time because he goes back to
8 the club where he leaves from, delivers the drugs. He also
9 trades part of the drugs \$10 for sex which he says he has
10 with Gloria Cummings for 20 minutes exactly describes them
11 there. But then also from about 10 on he and another
12 gentleman go to a motel with two ladies have sex, and steal
13 a T. V. and sell it. He said during all this time.

14 Then he says to about 12 to 12:30 he and Melton
15 Campbell are walking home. And they meet Mr. Jessie Jones
16 who owns a couple buildings right near the Richardson Store
17 you heard about and the Pepsi sign. And the comment was
18 made about going home early. Mr. Jessie Jones says the
19 same thing. He said I saw them coming in 12, 12:30 and I
20 commented to Steve Blathers you're going home early without
21 any girls.

22 We also know that about two o'clock something
23 happens and Mr. Jones gets up and goes outside I believe
24 with a flash light, a pistol and a telephone and tells a
25 group of young people move on or I'm gone call the law.

1 Said the young people which obviously young adults were
2 fighting with look like sticks. And there was a group of
3 them more than six maybe more than seven.

4 There's was a tall man and a woman that were
5 fighting. He says they move on down and he learns the next
6 morning that maybe they use some limbs that he'd cut to
7 fight. So we know that happened. Mr. Jones saw that and
8 observed it. We also know that Mr. Steve Blathers is home.
9 And he says he goes in -- One time he says about one or
10 another time we're not -- I'm not sure about. He goes in
11 his house and Melton Campbell says I saw him go in the
12 house one, 1:15.

13 So about one, 1:30. By Mr. Sunny Dicks' house at
14 about two o'clock he hears a noise. Hears a noise. His
15 mother gets up. We got to see her come forward and testify
16 real difficult for her because of her limited ability to
17 get come up here and testify. She said opened the door and
18 she looked out. Wouldn't let Stevie go out. She saw a
19 figure running. She couldn't describe it. Between two and
20 2:30 is what said. So we know something happened.

21 We also know that Ms. Patricia (sic) Washington who
22 lives opposite to where the body was found. As you look
23 out Bobby's door, she would have lived up the street across
24 the street. And she says about 2:15, 2:30 she heard noises
25 and she said three figures ran by her window. Her dogs

1 barking. One figure and then two figures. So we know that
2 about this time, there are three figures running. And that
3 shows us nothing. You think about it. It shows us
4 nothing. But Charles Pagan is charged with a murder.

5 Then you go back and you think about it. Steve
6 Blathers had nothing to gain or loose by his testimony.
7 Did not tell the Florence Police Department about having
8 sex with Ms. Cooks excuse me -- Ms. Cummings until the DNA
9 showed up. That's what Charles Pagan was waiting on.
10 Charles could have given them whatever samples they wanted
11 because I didn't know the lady. DNA was gone clear me.
12 Well, DNA hook Steve -- Mr. Blathers a little bit. He was
13 waiting minute I was gone by then. I didn't tell you that.

14 So you come back and you have four statements from
15 Gloria Cummings(sic). You said four and four. First, she
16 gave a statement and after giving that statement which you
17 heard we asked her questions about that statement I believe
18 is in evidence. She gave a composite drawing of the person
19 she saw. Now, this courtroom she was asked do you still
20 say today this is the face of the person you saw. She
21 said, yes. Do you say today that it looks likes Charles
22 Pagan with a few changes. Never would say what changes it
23 was.

24 But think in your mind when is the best opportunity
25 or the most accurate opportunity to give a description.

1 The first opportunity. Think about it. I submit that it
2 would be reasonable. This no way looks like Charles Pagan.
3 She's gives a second statement and that statement goes a
4 little more, a little more. She gives a third statement
5 and that statement was videoed. And you had a chance to
6 see that video. That's when she kinds of comes out with
7 what you call tolls favor. And she tells you that she was
8 scared. She was scared for her life. This man had
9 threatened her.

10 It would be reasonable to say what did you do about
11 it. And she said she saw this crime occurred. She's
12 backing up standing in the street. Until she gets to the
13 point of how did she know a rape involved. First, it was
14 rape. Then she says no it wasn't rape. She doesn't know.
15 Says she saw the man's penis, but then she says she didn't
16 know. And then finally, and she says yes she was raped.
17 How did you know. Then towards the end she says I believe
18 I was standing about here about six feet from her. She got
19 this close and she leaned down and looked at the face of
20 her friend. Before she was out in the street, observing
21 them.

22 That's the man Charles Pagan. Well, how do you
23 know. I'm afraid of him. I'm scared of him. She's scared
24 of man she did not even know his name. She's scared of a
25 man that when she says has been heard -- occurred she runs.

1 She runs from the scene pass the cab stand, pass the Pub
2 and pass the White Sands where she knew the owner to the
3 Game Room where she didn't know anybody. Something happens
4 and you want to report it. Why would you not go to the
5 house where you saw the lady come out been in the door.
6 Lady get back up, somethings happened. You know where you
7 would go first. She knew the lady come out. She knew the
8 lady had -- beat on that door.

9 If you were scared there with the dogs barking
10 scared you, wouldn't you go out to the cab stand where
11 there's people all around. They got radios and phones.
12 Wouldn't you go there or wouldn't you go to the White Sands
13 where you knew Smitty. Hey, Smitty. But she goes and she
14 didn't know why she goes to the Game Room where she doesn't
15 know anybody. And then 16, 17 hours later she says --
16 calls crime stoppers.

17 But the problem with the case is she tells them that
18 it was a light-skinned Puerto Rican. If you had to pick a
19 light-skinned Puerto Rican out of the lineup who would you
20 pick. Who would you pick. It's like one of the questions
21 you have in school. You glad you have it because the
22 answer is in the question. Think about it. This is the
23 eyewitness that drew -- had this drawn. Think about it.
24 She comes down and then she -- She builds back -- working
25 backwards.

1 Well, I saw him playing basketball over in North
2 Florence just before. Mr. Pagan doesn't play basketball.
3 I saw him playing basketball in November excuse me --
4 December of 96, January of '97, here's the records. He's
5 in prison. He's not playing basketball. I saw him earlier
6 when Gloria Cummings and I were walking back from Willie
7 Lee Mack's sometimes it's 12 o'clock. Sometimes she says
8 12:30. Sometimes she says one o'clock walking back there
9 were a group of Puerto Ricans standing on the corner by the
10 cab stand. A group of them.

11 Now, we got more than one. And trying to pen down
12 the number. She could not give us a number. It wasn't
13 exactly mutual. How many people on a basketball team.
14 That's what you said. Well, I saw him playing basketball.
15 She said she goes in the Pub comes back out Gloria is now
16 walking off with one of the Puerto Ricans.

17 She described him down to the gold tooth. What's
18 the problem with that. He had two gold tooth and it's not
19 at the bottom. It's on the top left. If you saw this gold
20 tooth and you got as close to him as she said she did when
21 she walked up. She said I'll give you the money or don't
22 go with him, easily recognize the J.

23 Told him to come on all the way down. You know how
24 the story that if you believe Monique Cooks, you believe
25 Monique Cooks, then you have to find Charles Pagan not

1 guilty. If you believe all of that. On the other hand, if
2 you take her statement and break it down as to what would
3 be called reasonable inference on what was the ability of
4 Ms. Cooks to see and observed and relay her story. If you
5 go through those steps, then you say something happened
6 where the story has been built as we go along.

7 And then in her third statement when he says, did
8 you know his name was Charles Pagan. No, no. Then what do
9 you find out towards the end of the trial. Charles Pagan
10 had just gotten out of jail before this thing ever
11 happened. The State says -- Charles says but uniform
12 police come up to Charles Pagan he's at a convenience store
13 with his children. Police officer says I want to take your
14 picture. Before this ever happens, I want to take your
15 picture. How would that make anyone feel. Want a picture
16 in front of his kids. I need your picture for the Florence
17 Police Department. Know he's got a record. Knowing he's
18 just out. What would any individual say to this.

19 So the Florence Police Department before this ever
20 occurred for some reason had your eye on Charles Pagan.
21 The man who said, hey, if you need me, you call me I'll
22 come down there. You want's samples from me I'll give
23 samples to Detective Raines from New Jersey. Hey, I gave
24 you these samples. I know I didn't know this lady. The
25 DNA sample did not clear you.

1 And the State would say you should have immediately
2 come home. That's easy to say in here in the Florence
3 courtroom, but if I was on the other end, it would be
4 reasonable for a person other the end of the phone in New
5 Jersey to say not me Charlie. I gave you the samples I
6 told you everything I knew. You been trying to get my
7 picture long before anything like this ever happened. I
8 come down and let you take pictures of me. I give you
9 samples of that would embarrass most anybody would have to
10 give those kinds of samples. And now, you tell me DNA
11 didn't clear me. What they leave the person to believe
12 that they found his DNA on Gloria Cummings. The fact of
13 the matter is nothing tied him to it, nothing at all. What
14 would you do. What would it be reasonable to do.

15 So take into evidence to think that attorney was
16 right in the opening statements. In opening statement says
17 keep your eye on the ball, don't let the smoke, the
18 mirrors, the fog confuse you. You know what I thought
19 about towards the end of this trial David Copperfield.
20 David Copperfield one of the greatest musicians ever, but
21 listen carefully what David Copperfield says. He says I'm
22 not a musician. I'm not like -- I'm not like those great
23 people that do the magic. He says that's not me. What
24 does he say. I am an illusionist. What I create is an
25 illusion. And you watch David Copperfield sometimes it's a

1 tiger that disappears or a lion that disappears or a
2 motorcycle on the stadium raising the engine will
3 disappear.

4 And you sit there and you watch just as hard as you
5 can because you know some how what you're looking at is
6 gone be gone and you watch real close. And you know he as
7 the two girls in the toga, the toga the long wrap.
8 Normally, they're two blond girls, but you watch real close
9 it's really four girls. It's only two out there I think at
10 a time. And you watch and sure enough that tiger
11 disappears. You say how did he do that, then you start to
12 think. You back up, well, the girls were there moving it.
13 There was smoke that lion was up there breathing, but you
14 know that tiger was right there at the end that lion was
15 not breathing. That lion was stone cold still, which tells
16 you what.

17 While you think you're seeing the tiger, it's
18 already gone. And now is there a mirror. And then the
19 smoke goes woof, the sound goes bang. The girls go wha
20 wha and everything is gone. And you stand up and applaud.
21 Why. Because it's entertainment. This what we have here.
22 Except it's not entertainment. It's a man's life.

23 So it's not being based upon the charge His Honor
24 gone give you. The law that Mr. Meadors has talked about
25 if you follow that step along, there's only one conclusion

1 one conclusion. And it may have been a group of Puerto
2 Ricans out on the street that night. Gloria Cummings died
3 a very violent death. There's a lot of people moving
4 through this neighborhood that needs to take a new look at
5 life and really search their souls for what they want to
6 do. Charles Pagan didn't kill anyone. Thank you.

7 MR. REDMOND: May it please the Court, Your Honor?

8 THE COURT: Mr. Redmond. Yes, sir.

9 MR. REDMOND: Ladies and gentlemen, Charles Pagan
10 didn't do it. I add he didn't do it. Again I stand before
11 you Kernard Redmond. And I'm gonna be brief because I
12 think Mr. Cox tide it up very effectively. And I know that
13 you been here and been patiently with us over six days.
14 And I'm not gonna do anything to try that patience. So I
15 assure you that I will be brief, but there are some points
16 that I would like to further bring to your attention.

17 Now, we heard the discussion about the evidence that
18 they're supposed to have against Charles direct evidence,
19 circumstantial evidence. The best evidence DNA does not
20 exist in this trial in anyway shape or form implicating
21 Charles, not one single shred. And this is interesting. I
22 like for you to think about this. You heard the
23 stipulation that His Honor read out to you concerning DNA
24 when it was tested. Why is that important. Why would you
25 be running.

1 Charles Pagan was -- The warrant was signed. The
2 warrant was signed in January of 1998. Steve Blathers
3 samples were sent in May not '98, May of 1999 a year and a
4 half later. But yet the State stands before you asking you
5 to find Mr. Pagan guilty beyond a reasonable doubt. A year
6 and a half after he's charged. DNA is setting and mind you
7 Mr. Pagan testified he plucked himself. Mr. Blathers
8 even though they say voluntarily, but voluntarily, yeah.
9 But isn't it court ordered. DNA no forensic evidence,
10 fingerprints, no DNA, no forensic evidence whatsoever ties
11 Charles to this crime.

12 Then we got the doghouse. And there's certain
13 things, ladies and gentlemen, common sense that's the thing
14 that you bring to that box common sense. Let me ask you
15 something. There's been no explanation whatsoever about
16 how the clothes in the doghouse conveniently were placed in
17 the doghouse behind Steve Blathers' house. And when I say
18 place, you will see the pictures. You will see the
19 pictures placed in the back of the doghouse in a pile.

20 How it would that have happened with four dogs
21 roaming around in that area. Four dogs roaming around
22 that's a dog's doghouse and somebody can get in there and
23 place those clothes in there. We don't know know, not even
24 Monique Cooks has said anything in regard to that issue.
25 That's very very very very very important issue in this

1 case. I'd also like for you to consider that.

2 Now, something else. Mr. Cox while he was cross
3 examining Monique on the stand and he asked her about how
4 far was she because remember there was a point she said she
5 ran and then he ran. Then she said she went back and
6 checked the body. So, of course, that's something it's
7 still pretty confusing, but he asked her well stop me when
8 I'm about the distance from the body that you were. And if
9 you recall better than I, I will acknowledge that. But for
10 my recollection somewhere in this range here she asked him
11 to stop.

12 Herbert Robertson said that he was about a foot away
13 when he discovered her. Well, what's the key difference.
14 Herbert Robertson discovered Ms. Cummings body in the
15 morning, daylight. Monique Cooks was talking somewhere
16 after two in the morning and the only lighting that anybody
17 has mentioned in that area is the street light that I think
18 Barbara Green mentioned that is on the corner away from
19 where all of this supposedly happened.

20 When I say supposedly, there's no denying that
21 someone committed a very heinous crime. And nobody
22 deserves to go through what Ms. Cummings went through and
23 that is in part while we're here today. But you sit in
24 judgment as I told you earlier of Mr. Pagan. Has the State
25 satisfied you, I say no. They have not satisfied their

1 burden of proof.

2 There was another interesting thing and you'll have
3 these statements. I say if I misstate something, you'll
4 have the statements. Specifically by talking about Monique
5 Cooks and when she testified. And I guess it didn't hit me
6 because until Mr. Herbie(sic) I believe it is testified.
7 He was the toxicologist that had told you that Ms. Cummings
8 had cocaine in her system. And then he mentioned the --
9 I'm not going to try to pronounce it. I don't remember. I
10 cannot even pronounce the word, but remember he said it was
11 commonly known to as B. E. What was that. Remember you
12 ingest cocaine and then after 30 minutes it converts into
13 B. E. in a person's system.

14 Well, read Monique's statement. She never mentions
15 anything about -- according to her anything about Monique
16 -- I mean about Gloria doing any kind of crack in that 30
17 minute window. But yet Gloria still had -- Gloria actually
18 doing cocaine. Gloria still had cocaine in her system,
19 which indicates that she had ingested cocaine within 30
20 minutes. Why is that important. Remember Steve Blathers
21 on the stand mentioned that, oh, yeah, he sold her some
22 crack.

23 These are the things I'm asking you to keep in mind,
24 ladies and gentlemen, these are things that must be
25 considered. And in talking some more about Mr. Blathers,

1 on the stand and this is during direct examination actually
2 when talking about the T. V. Mr. Cox alluded to. Remember
3 his comment, y'all said y'all weren't going to get into
4 that. Y'all said y'all weren't gone get into that. Wonder
5 why. You know why because it messes up his time. Remember
6 initially he said it was 12 o'clock.

7 He got the DNA comes back he starts feeding the same
8 line. Then, oh, well, it's DNA. Well, wait a minute let
9 me change my story here. Move it back to about ten or
10 somewhere in that range. Every time he's caught his story
11 changes. It conforms to fit and to further -- I guess
12 further attempt to try to exonerate himself. But those are
13 things that I ask you to keep in mind. Y'all said y'all
14 weren't gone get into that.

15 Ladies and gentlemen, the State brought up a witness
16 and y'all have the tape Tamika Lambert. Let me ask you
17 just a few things concerning that and ask you to consider.
18 She says talks about the amount of the bond. Well, she was
19 wrong about that. You heard the testimony. She was wrong
20 about what Mr. Pagan allegedly told her. She mentioned
21 scratches and all of that. What testimony, what evidence
22 is that Mr. Pagan fit the description of the person that
23 should have been -- that should have been in the condition
24 which she explains. He was bleeding. He was scratched.
25 Nobody said that okay, yeah, when we got him he was

1 bleeding. Look at how light skinned he is.

2 She walks into the police department a few days
3 after this I guess approximately a week to 10 days after
4 this and says, well, yeah, yada, yada, yada this is the
5 person that did it. Never gives a description. All she
6 does she's shown this lineup and say, yeah that's the
7 person claiming to be Derrick. No description of who the
8 person was. Those are things that we keep in mind. And he
9 makes them a statement according to her. But then you got
10 to look at everything in the entire light.

11 Then we get to Ms. Lavenia Helton. I call her let
12 me get my story straight. Recall when she said that on
13 cross examination. Wait wait let me get my story story
14 straight. And we heard the stipulation; that was another
15 stipulation you heard, ladies and gentlemen. Levern Bostic
16 who was the person that lived at 912-A Pine Street. And I
17 think it's 912-A. He says yeah he knew Muncie Gloria
18 Cummings. He knew Lavenia aka Lisa Williams. When I say
19 aka, also known as Lisa Williams. But yet, yet upon being
20 shown a picture of Mr. Pagan, he can't recall seeing
21 Mr. Pagan. He couldn't say that he seen Mr. Pagan. Those
22 are things to take into consideration, ladies and
23 gentlemen.

24 The State has the burden of proof in this matter.
25 And His Honor's going to instruct you on the law. And one

1 of the things I was just looking for as it relates to the
2 burden of proof you being firmly convinced. You know one
3 of the things that I am aware of T. V., you know, I heard a
4 reference made to television. Well, of course, if I'm
5 watching ER, I know I'm watching fiction. The fact that
6 you are putting that tape in and watching Monique Cooks
7 doesn't mean that it's anything less than fiction just
8 because this is a real person that you have seen in person
9 given that statement.

10 Because when you dissect and I think that is very
11 accrue pro on the part of Mr. Cox. When you dissect
12 everything in this case, you will see that there is no way,
13 no way, no way that the State carried its burden of proof
14 that Charles Pagan was the perpetrator no way.

15 Ladies and gentlemen, I thank you for your
16 attention. There have been six days in this trial and
17 there several things that I would like to tell you. That
18 quite Frankly the hour is getting late. And I've watched
19 you and you've been -- And I'm not just saying this. You
20 have been by far the most attentive jury that I ever had
21 the pleasure of trying a case before. And I mean that
22 sincerely.

23 So we don't have to rehash the whole case for you.
24 Let's keep in mind, carrying the ball fumbling the ball.
25 Keeping your eye on the ball. When you hear things about

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1 attention to the Puerto Rican male; c
 2 one talking about the Puerto Rican ma
 3 Don't be embarrassed -- I mean I'm n
 4 in your mouth. Did you see her smok
 5 uh-huh. Boyd, okay. Cooks, Monique
 6 left from there and then we went dow
 7 1:30. And the Puerto Rican guy was
 8 round face.

9 Look at page 1 and look at pa
 10 when you're back there. And see who
 11 Rican male. The same person that b
 12 male on December the 11th in the Cr
 13 on the ball. Eye on the ball. Desc
 14 the description again. Gold teeth
 15 distribution and compare it to that
 16 description. It's the same. It's
 17 And he goes on -- She goes on and s
 18 the Puerto Rican out of town accent
 19 She was going to the club to get a
 20 it being that Thursday morning, whi

21 And later on it says you tal
 22 or what happened. I just talk to n
 23 Pam Cooper. Where did they live.
 24 Cooper to the bank, to the bank. I
 25 statement. I submit to you when yo

1 she wants to direct the police to the person that committed
2 the crime. That's why she called Crime Stoppers. Once,
3 twice and then gives this statement. She doesn't want to
4 say everything. She is scared. She wants to protect
5 herself. But you'll see things seep in here that only
6 somebody in that first statement can know from being at the
7 scene.

8 They're asking her this line of questions as if
9 she's hearing a lot of people talking about that. But look
10 what she says here. Did they say anything about who done
11 it and who they saw with her or anything like that. They
12 say they saw a lady look out the window and she saw her and
13 the guy out there. But she ain't never came out the door.
14 She was scared to come out the door because she ain't had
15 no telephone. And she heard the girl scream one good time.
16 I will submit to you and she sits in here today if she
17 closes her eyes, she can hear that scream because she
18 witnessed it. She heard it then and she can hear it now.

19 She looked dead out the door and she saw it. First
20 statement, first taped statement, third statement, third
21 statements. So what is she fabricating this. Imagining
22 this. Is this the illusion, not the Copperfield illusion,
23 but the Monique illusion. So what do the officers do. You
24 know it's an interesting thing that they say well some how
25 they got paid cause he just got out of jail.

1 Well, why ain't he just lineup Number 1. Why is
2 there a one and two and he's three. Because they're
3 investigating the case. Is what they're doing. And they
4 show lineup Number 1 who is Diddy Wop. And I believe
5 you'll see on the first page and the January 14th
6 statement, the video statement she says something about
7 Diddy Wop and points him out here I think.

8 And he's not the one. She said no, I don't see
9 anybody involved in this in this crime. Number 1, Number 2
10 lineup Number 2 is Steve Blathers. Number 2 lineup 2, no,
11 I don't see the person in there. Lineup Number 3 -- Number
12 3 is Pagan. Why do they even bother with this if he's just
13 a slow moving an easy target. He's not a slow moving
14 target. He's not an easy target. You saw that from the
15 way he can dodge around answers and questions. You saw his
16 demeanor on that. Where he can change up. Why I wanted
17 two and then they go to three. Then they say, oh, well,
18 there must be something wrong with this lineup. You
19 automatically go to Mr. Pagan.

20 Well, you sure don't see in his mouth whether he got
21 any gold teeth there. You may say well that's not him.
22 That composite isn't him. Well, his brother-in-law thought
23 so. That's how the officers Lieutenant Boyd and Lieutenant
24 Godwin come to go to 810 Waverly Street from his own
25 brother-in-law, from his own brother-in-law. And you

1 remember what the -- What did Mr. Aiken say. The cop -- He
2 says I'm just a cop that can draw. He's a talented cop
3 that can draw in my opinion. I can't draw a stick figure.
4 But he says this isn't a photograph. This is a visual
5 statement.

6 This is a person who has witnessed a horrible
7 horrific crime trying to put to paper a visual statement of
8 the individual. It's not meant to be a photograph, but
9 it's good enough for Smitty. It's good enough for his
10 brother-in-law. It leads to 810 Waverly. It leads to 810
11 Waverly.

12 Now, they get to 810 Waverly Lieutenant Godwin and
13 Lieutenant Boyd. He agrees to come down. Oh, he's
14 cooperative. Yeah, I cooperative. I come down I talk. I
15 do this. I do that. I do the other. And where does he
16 happen to be that night the White sands. Wasn't at the
17 Pub. My wife picked me up at 10:30 at the White Sands.
18 What did Lieutenant Godwin say. Well, after they talked to
19 me, he came back and said well I made a mistake. She
20 picked me up at the Pub, not at the White Sands because see
21 she had already told him the Pub. So he had to come back
22 around and conform his statement to what she'd already said
23 just like he's done with the cellular phone records in this
24 case. The same way. The same way.

25 And he says it was 10:30, 10:30 at the White Sands.

1 Well, that's probably the right time that he left the White
2 Sands or maybe -- I don't know maybe that's when he walked
3 down the street to the Game Room. Now, that Game Room
4 where he marked on here Shirley McCall or McCoy. The same
5 Game Room where in the second statement Monique says she
6 saw him earlier. J and M or G and N Game Room on the 200
7 block of Dargan. Where's the White Sands is on the 300
8 block of Dargan.

9 Now, he looks like a pretty good suspect to me.
10 Brother-in-law says he looks like the composite. He's down
11 at the White Sands when Monique says she last saw him.
12 Where she last saw Gloria. They ought to continue to
13 follow up. On the next day -- And you'll have these
14 statements, too.

15 On the statement from the 19th, from 19th right here
16 some how they even take this and manipulating this case.
17 And yet on the 19th when they take the second taped
18 statement, they put in there Steve Boyd. This is Cooks.
19 It's cut off on my enlargement. It's not cut off on y'all's
20 exhibit. Steve Boyd ask me about the pictures. The first
21 picture I did not lie about. The second picture I did. I
22 was scared as shit because this guy could appear. You've
23 got where she put on there on the 17th, she didn't pick
24 anybody out. And she's talking about it here. They
25 preserve it right here on this tape. And so I told the

1 truth about the guy in the second picture of the lineup.
2 That's today page 4, went walking off with Gloria the guy
3 in the second picture of the lineup at the bottom that
4 would be the guy. It's Number 5. It's Number 5 on this
5 lineup. He's the one that talked to you and Gloria early
6 morning hours. And she signs that on the 19th, which is
7 what's dated on this statement which is what's dated on
8 this statement.

9 So where's the manipulation at. That's consistent.
10 She doesn't want to be involved. But she's got with the
11 wherewithal and the courage to be involved to at least
12 direct and guide these officers in the right direction.
13 Thank god. And here she talks about early before they
14 actually happened that was about like 11. He was in the
15 Game Room. She was cooling drinking beer. That's that
16 block right there. And this was filled out and marked. It
17 was drawn I think by Lieutenant Boyd, but agreed to and
18 marked by the defendant, by the defendant.

19 The 19th they continue on. They continue on. And
20 he gives samples. Oh, yes, sir. Yes, ma'am. He'll jump
21 right up there and give samples. Because if you look on
22 beyond in this next statement January 14th and you see the
23 position of the victim's body, there was an attempt to have
24 anal intercourse with the victim that makes -- That appeals
25 to your common sense and that's what Monique says.

1 And guess what. What they find from Steve Blathers
2 is from vaginal intercourse. It's on the vaginal swabs.
3 That's submitted and agreed to by all the parties. The
4 rectal swabs are negative. Negative, which means that
5 attempt was not successful. You shouldn't find semen. You
6 should look. You should do that complete sexual protocol,
7 which is exactly what the doctor did. But the lack of
8 evidence is evidence. Is evidence. The lack of that is
9 evidence and that's what you should find. And if you take
10 that description and that video and that transcript of what
11 Monique says January 14th. That's entirely consistent with
12 what it should be, with what it should be.

13 And then they say -- And, ladies and gentlemen, I
14 don't have any gloves right now. The bloody coat and the
15 bloody -- I believe it's a bloody towel with no semen, with
16 no semen on that towel and the crack pipe. And this is the
17 victim's coat. This is Gloria's coat. And you have the
18 picture's of the doghouse. It should be right back here
19 towards the back.

20 And I'll submit to you right now. If you use your
21 common sense, would Steve Blathers would be the last person
22 on this planet to put the victim's coat in his own
23 doghouse. Why you gone leave the victim. Why you gone
24 take a murder weapon and then take the victim's coat to
25 your home. No, sir. No, ma'am. The last person on this

1 planet.

2 And if you recall, you see people usually move
3 bodies, dump bodies and take evidence because they're
4 associated with the evidence. I seen cases where victims
5 were raped and rapist driver's license was stuck to the
6 victim's leg. And when you get them to the emergency room
7 and the doctor's are checking them, the actual driver's
8 license of the defendant was stuck to the victim's leg.
9 Well, obviously if that defendant knew that he would take
10 that with him. You take from the scene of the crime those
11 items that will associate you with the crime. It might
12 have their fingerprints. You're name something like that.

13 You leave there what you can dispose of. You don't
14 take items from a crime scene associated with the victim,
15 run across the street and put them in your own doghouse.
16 You might put them in somebody else's. You might them in
17 somebody else's. But you don't put them in your own. You
18 don't put them in your own. But follow it on through now.
19 He originally denied being at the Pub and we know he was.
20 What does Monique say follow them down to the Pub and from
21 there I followed them to Richard's store where Jessie Jones
22 lives and all that's in the statement, ladies and
23 gentlemen. I don't have to go through all that with you.
24 I don't have to go through that all that with you.

25 But Jessie Jones completely exonerates I submit to

1 you Steve Blathers because he'd know it. He said it was a
2 tall light -- Well, first off he gets Steve Blathers and
3 Melton Campbell coming home at 12:30. He's got nothing to
4 gain or lose by this. Nothing whatsoever. No record
5 whatsoever. He says they came by I made a comment to them.
6 Melton says, yeah, we went up to the Pub walked. We had
7 some beers. I use the bathroom a few times on the way
8 home. We stood on the corner of Dargan and Booker talked a
9 few minutes. I saw Steve gone on in the house. I think he
10 said up on the porch. Going in wave, see you later, cuz.
11 I walked on. I forget the time 1:15, 1:30. I believe is
12 what he says.

13 And that's entirely consistent with what Jessie said
14 about seeing a few them a few minutes earlier. Then Jessie
15 hears the noise later on. He hears the noise later on goes
16 outside to investigate and that's one reason you can
17 absolutely believe Monique Cooks because she says and he
18 says hitting each other with sticks. And he says I know
19 exactly what they're talking about pecan limbs. I saw her
20 hit him and him hit her several times with stick and I run
21 them off. I run them off. Well, the next day the officer
22 saw Steve Blathers that morning. At eight o'clock that
23 morning I believe. Whatever time they arrived at the
24 scene. They saw him shortly thereafter. He didn't have
25 any injuries, none whatsoever.

1 It was at least a week later when they saw him.
2 Depending on the strength of the blow. But there he was
3 the next morning when they searched through his house and
4 she absolutely knew it was sticks. Well, I guess
5 Lieutenant Boyd and Lieutenant Godwin and Captain Raines
6 and Chief Porter told her about it to say that. And
7 conspired with Jessie Jones also. Steve Blathers was in
8 that house. He had sex with Gloria. There's no question
9 about that.

10 These officers have done such a good job, such a
11 good job. They have shown y'all not only who committed the
12 murder, but who had sex with the victim before because
13 there's no connection. There's no binding requirement that
14 whoever had sex with her is the murderer. He's not even
15 charged with criminal sexual conduct. He's charged with
16 murder that and that alone. And they showed you that.

17 They doggedly stayed on that trail and until they
18 found out, until they found out. And is still totally
19 completely absolutely consistent with his guilt. And you
20 say wait a minute wait a minute, Solicitor. He was home.
21 He got him a beer, drink him a beer. And he went on in the
22 bedroom and Gloria was playing Nitendo. And Ms. Godfrey
23 was in there watching T. V. or whatever and he was home.

24 Well, let's look at this. And you look at these
25 phone calls he talked about. He talks about beeping John

1 Mack. And please don't let me forget about that name John
2 Mack please don't. He talks about all these phone calls
3 that his lawyer went through with him. And if you remember
4 Darren Burgess and J. R. Jones, as I recollect their
5 testimony, the first time they were talked to was sometime
6 in 1999 around March of 1999.

7 Mr. Jones didn't even remember that conversation.
8 He says the only time I remember is when they taped my
9 conversation. I think in June of 2000. But if you read
10 through the tape in March of '99, they talk with him the
11 first time. So 15 months after the event, he's gone tell
12 you the date, the time, and the location when he was where.
13 He been drinking. What time he got there. What time he
14 left. And Darren Burgess gone tell you the same thing.
15 Having he been talked to sometime after March of 1999.

16 And only two things Darren was correct about.
17 Probably the number of beers he had before he ever got to
18 the Pub, which I think was around seven. And the fact that
19 he forged forged an excuse and got fired. But you can
20 believe him. You can believe that he remembers 15 months
21 before and that's his albi.

22 Even if you believe him, even if you believe them,
23 they're out of his presence by 11:30. They both said
24 11:30. But see he's got to change all that because he's
25 boxed in here. He's boxed in because he's making calls

1 from his cell phone to his wife's cell phone after 11:30.
2 It's late as 11:51. So he's got to like a move shift,
3 shift shake shifter. He's got a shift. He's got to taylor
4 his testimony to this to get him out of a trap, to get him
5 out of the trap.

6 I don't know if they say him a week before. He was
7 in town a week before. I guess they had jazz night a week
8 before. I don't know. I don't know if they saw him a year
9 before because Mr. Jones says said he only been married a
10 couple of days. A couple of days from November 25th of
11 1996. Well, that don't make no sense doesn't it. That put
12 it a year before. Well, maybe it would make a little since
13 if it was his second wife. Maybe it wasn't Gloria. They
14 never bothered to identify the wife. I don't know. But it
15 doesn't fit. It doesn't fit. It's entirely consistent
16 with the State's theory, even if you believe it all. And
17 they say he's gone by 11:30. 1.4 miles. He's got 1.4
18 miles to drive at 11:30 on a Wednesday night in, Florence,
19 South Carolina.

20 Now, I haven't seen any of the night life around
21 here in the month -- The week I been here. But it don't
22 take long to drive 1.4 tenths miles at 11:30 on a Wednesday
23 night in Florence. If it was 11:30 by gosh he ought to be
24 home drinking his beer in the bed at 11:35.

25 So what he gone do. He gone blame it on Gloria.

1 Well, she kept playing that Nitendo wouldn't come pick me
2 up. He's always gone blame it on somebody else. He's
3 always gone blame it on somebody else. And I want to show
4 you one thing 661-6649. 661-6649. Every time you get to a
5 number he don't know, I loaned somebody my phone. Somebody
6 borrowed my phone. John Mack borrowed my phone.

7 Well, I don't know who borrowed my phone. December
8 10th -- When you look at State's Exhibit Number -- Whatever
9 the last Number is 72 something like that. 71. 661-6649,
10 well I guess I loaned the same person his phone a week
11 earlier December the 3rd. That's your eye on the ball.
12 That's shape shifted each and every time. December 3rd,
13 9:33 p. m. 661-6649.

14 And look on through their local calls. Look on
15 through the calls made on the 5th and the 7th, 319-3028 his
16 phone. I don't know if he went to New Jersey or not don't
17 care. It's not relevant. Not relevant. But that's
18 relevant. Credibility is the ball. That's what's
19 relevant. That's absolutely what's relevant. Everybody
20 corroborates Monique up to and including the pathologist.
21 Yep, something like that. The officer describe what was
22 there.

23 Now, how does she figure that out. The doctor says
24 that's what would have fractured her skull, crushed her
25 eye socket, broke her jaw, loosened her teeth, crushed her

1 skull, flattened her shorter than this Bible. Face
2 flatter than that Bible. Amazing Amazing description.
3 Face looked that flat. But she's made it up. She didn't
4 see it. You saw it on the video. You heard her say it
5 each and every time. And you will waive and turn her
6 credibility and her believability. And compare it back --
7 Compare it back against J. R. Jones.

8 The final question Solicitor Meadors asked you.
9 That statement's wrong. I guess so. I guess so. That
10 Albi is wrong. That Albi is wrong.

11 Ladies and gentlemen, I have two more -- just a
12 couple more things just bare with me please. The priest at
13 church yesterday gave us a little scolding before he
14 started his sermon. And afterwards he said, well, I don't
15 20 minutes ago before he even started preaching to us, you
16 know. He said I don't normally do that. We got a new
17 priest at home. And he said I was watching my watch. He
18 said, of course, I know I wasn't the only one in here
19 watching my watch. I apologize, but just a few more brief
20 minutes. Just a few more brief minutes. I just like to
21 say this a couple more things.

22 Number 1 Tamika Lambert is in his wife's car that
23 was chased, that was wrecked. Sometime you know where they
24 say sometimes the best lies are in the details. You get to
25 many of the details right you see. They say well it's a

1 \$150,000 bond. And he's on got -- As she said a \$100,000
2 bond. If you don't believe her, find him not guilty
3 because of that.

4 She walking down Sumter Street. She was picked up
5 -- Now, I don't know why. I don't know why he might have
6 been talking to Gloria. I don't know why. I don't know
7 why he might have been over there with Lavenia. I don't
8 know why. She ain't got nothing to gain. They didn't ask
9 her a single question. You got her transcript. You got
10 her tape. I asked him the wrong questions. I don't know
11 where I got that name Monica in my mind here recently. I
12 apologize for that.

13 What did lieutenant Drayton ask. Did he at any time
14 tell you not to call the police. Don't tell anyone about
15 what had happened. He just asked me would I in audible say
16 nothing to nobody like some other girl some other girl name
17 Monique. I don't know know.

18 Well, maybe it wasn't Charles Pagan. To my
19 knowledge, he's the only murderer that Monique gone testify
20 against. It had to be Charles Pagan. It had to be. You
21 got before Lavenia, give me my stuff. I'm gone kill you.
22 Turning that gun. Turning that gun. I don't know what
23 kind of signs those are. Turning that gun. You got during
24 Monique, I'm gone get my \$20. I'm gone get it out of you.
25 You got right here Monique. Monique.

1 First statement Monique Cooks. Who all was there.
2 Guy name John. I don't know his last name. I don't know
3 his last name. John Mack -- You know, you use prior
4 records to credibility, conspiracy to distribute crack
5 cocaine in '86. Conspiracy to distribute crack cocaine
6 '89. Maybe, he wasn't involved in threatening to kill
7 Muncie with his crack cocaine after Thanksgiving of '97,
8 after Thanksgiving of '97. Now, maybe he don't know where
9 the crack house is in Florence. Maybe, he's the one that
10 -- Maybe, he wasn't down there that night. Steve Blathers
11 says he was. Picked him out under the street light. Says
12 he sees him. Says he sees him down there.

13 When you got an eyewitness, they want forensic
14 evidence. When you got forensic evidence, I they want an
15 eyewitness. If you got to sit on a murder case, at least
16 you got one where the person comes in there -- comes in
17 here points over there and says he did it. I saw him do
18 it. I saw him do it. Why you say that. That's proof
19 beyond a reasonable doubt right there I submit, proof
20 beyond a reasonable doubt. Every witness corroborated her.
21 Why are you do it. What you getting out of it. Look at
22 her motive. January 14th of 1998 from my heart because I
23 love her. That's her motive. I do it not for me. This is
24 almost poetic. I'm doing it for her and everybody else.
25 Courage, fear.

1 They say one man one woman. One woman with courage
2 is a majority. Now, think about that. One woman with
3 courage is a majority. And if it's an majority, it's proof
4 beyond a reasonable doubt. Nothing more is necessary.
5 Nothing more overwhelming. Thank you.
6 Thank you, Your Honor.

7 THE COURT: Mr. Foreman and members of the jury, to
8 be quite honest with you, in order for me to be comfortably
9 charge the law, I personally need to take a short break. I
10 can do it one or two ways because I got to take one. I can
11 give you a short one of about five minutes back in chambers
12 or you can just sit right there and stretch, which would
13 you prefer. Sit right there and stretch. All right.
14 Nobody else try to make eye contact with the jury or
15 anything else, of course. I'll be right back. I just need
16 a personal break. We'll be at ease.

17 (A short recess was taken.)

18 (Court has reconvened.)

19 THE COURT: Now, Mr. Foreman and members of the
20 jury, the State of South Carolina charges the defendant
21 Charles Pagan with the offense of murder. This indictment
22 which I read to you last Monday when we were selecting a
23 jury. So I will not read the allegations contained
24 therein. But to this indictment, Mr. Pagan, of course, has
25 pled not guilty.

1 Now, when a defendant pleads not guilty, members of
2 the jury, that places upon the State the burden of proving
3 the defendant guilty. A person charged with committing a
4 criminal offense in South Carolina is never required to
5 prove himself innocent. I charge you that it is a vital
6 important rule of the law or rule of the law of evidence
7 that the defendant in a criminal trial, no matter how great
8 or serious maybe the offense with which he is charged, must
9 always be presumed innocent until his guilt has been proven
10 beyond a reasonable doubt.

11 And, members of the jury, this presumption of
12 innocence remains with the defendant at all times. From
13 the moment of his arraignment, throughout the trial, and
14 until the jury has upon the testimony and evidence
15 presented reached a verdict of guilty beyond a reasonable
16 doubt.

17 For the solemn duty of the jury, you, ladies and
18 gentlemen, if not clearly convinced of his guilt beyond
19 every reasonable doubt to the contrary to acquit the
20 defendant. So the burden of proof is upon the State to
21 establish by evidence to your satisfaction the guilt beyond
22 a reasonable doubt of this defendant Charles Pagan here on
23 trial for the crime of murder.

24 Now, what is a reasonable doubt, members of the
25 jury. Proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced of the defendant's guilt. There are
2 very few things in this world that we know with absolute
3 certainty. And in criminal cases, the law does not require
4 proof that overcomes every possible doubt. If based on
5 your consideration of the evidence, you are firmly
6 convinced that the defendant is guilty of the crime
7 charged, you must find him guilty. If on the other hand,
8 you think there is a possibility that he is not guilty, you
9 must give him the benefit of the doubt and find him not
10 guilty.

11 Now, Mr. Foreman and members of the jury, under the
12 constitution and laws of South Carolina, you are the
13 finders of the facts in this case. I do not have the right
14 to pass upon the facts or even to express any opinion I
15 might have as to the facts presented to you, members of the
16 jury. Nor may I intimate in anyway what I may think about
17 the guilt or innocence of the defendant Charles Pagan.

18 You're also the judges and the sole judges of the
19 credibility, the believability of the witnesses who have
20 testified in this case. And passing upon their
21 credibility, you may take into consideration many things,
22 ladies and gentlemen. Such as the appearance and the
23 manner of the witness on the stand sometimes referred to as
24 the demeanor of the witness. Was the witness straight
25 forward or hesitant. Was the witness's testimony

1 consistent or did it contain discrepancies. What was the
2 ability of the witness to know facts that he or she
3 testified to. Did the witness have a cause or a reason to
4 be biased and prejudiced in favor of the testimony he or
5 she gave. Was the testimony of the witness corroborated or
6 made stronger by other testimony and evidence or was it
7 made weaker or impeached by such other testimony and
8 evidence.

9 As jurors you have a right to believe a small
10 portion of a witness's testimony and discard the larger or
11 vice versa. You may believe all of a witness' testimony or
12 none. You may believe the testimony of a single witness
13 against that of many witnesses or the other way around.

14 Most certainly, members of the jury, you do not
15 determine the matter of credibility or believability by
16 counting up the number of witnesses who may have testified
17 on behalf of the parties. Throughout this entire process,
18 you have but one single objective. And that is to seek the
19 truth regardless of from whom or what witness the testimony
20 may have come. All these things you will consider.
21 Bearing in mind, that you should give the defendant the
22 benefit of every reasonable doubt.

23 Now, members of the jury, by same the constitution
24 and law which makes you the finders of the facts and the
25 evidence of I just discussed with you, I am as the judge

1 made the sole and only instructor in the law.

2 And, members of the jury, you must accept as correct
3 the law which I charge and apply it to the evidence as you
4 find it and reach your verdict. If I should make an error
5 in the law as I instruct it to you, members of the jury,
6 there's another time and place and another court at which
7 that error can be considered and if necessary repaired.
8 But for purposes of this case today, you must accept the
9 law as I charge it to you to be the correct law.

10 And finally, I charge you in this regard, members of
11 the jury, that you nor for that matter I should not be
12 concerned about what the law ought to be, but only rather
13 what I charge you the law to be in this particular case.

14 Now, Mr. Pagan is charged with murder. The
15 question becomes what is murder. Murder may be defined as
16 the willful and felonious killing of a human being by a
17 human being with malice aforethought. That malice being
18 either expressed or implied.

19 Now, there's certain code section. Code Section
20 16-3-10 of the South Carolina Code of Laws and it defines
21 murder as the killing of any person with malice
22 aforethought either expressed or implied. And in order to
23 convicted a person of murder, the State must not only prove
24 the killing of the victim by the defendant, it must also
25 prove that the killing was done with malice aforethought.

1 All these facts must be proved beyond a reasonable doubt.
2 In other words, there must be a combination of a intent and
3 an infliction of an injury calculated and intended to
4 produce death.

5 The next question, members of the jury, what is
6 malice. I need to define that term for you. Now, members
7 of the jury, malice indicates a form purpose in design to
8 do a wrongful act under circumstances that exclude any
9 legal right to do it. Malice is a term of art that imparts
10 wickedness and excludes a just cause a just cause or
11 excuse. It is something that springs from wickedness from
12 depravity from a depraved spirit made spirit bent on
13 mischief at that time and not then having a regard for the
14 social obligations or the obligations which rest upon
15 mankind.

16 The words express and implied do not mean two
17 different kinds of malice, members of the jury. Rather the
18 term signify the way in which malice may be proved.
19 Express malice is where a person by word of mouth express
20 hatred or ill will for another or where the State proves
21 beyond a reasonable doubt that the defendant was making
22 preparation before the event to accomplish the event. You
23 may also conclude by deductive reasoning that under certain
24 circumstances, members of the jury, malice may arise even
25 though there is no express or direct evidence of an intent

1 to kill.

2 Malice may be implied or inferred. It is proved
3 beyond a reasonable doubt that there was a willful
4 deliberate and intentional doing of unlawful act without
5 just cause or excuse. The proof of this act however is
6 merely a piece of evidence from which the inference or
7 implication of malice may arise. In other words, the
8 inference would be simply an evidentiary fact to be taken
9 take into consideration by you the jury along with other
10 evidence the case and you may give it such weight as you
11 determine it should receive.

12 Furthermore, even where there is an absence of a
13 specific fix and deliberate intent to take the life of a
14 particular person or that of any person, the law says that
15 if it is proved beyond a reasonable doubt that one
16 intentionally killed another with a deadly weapon or with a
17 dangerous instrumentality for example a gun or something an
18 implication of malice may arise. The use of a deadly
19 weapon permits you to infer malice, but it does not require
20 you to infer malice.

21 Now, members of the jury, if facts are proved beyond
22 a reasonable doubt, sufficient to raise an inference of
23 malice to your satisfaction, this inference will be simply
24 an evidentiary fact to be taken into consideration by you.
25 The jury along with other evidence in the case and you may

1 give it such weight as you find it should receive. You as
2 jurors are free to except or reject this permissive
3 inference depending on your view of the facts.

4 In other words, if such conduct results directly in
5 the death of another and if such conduct was so culpable
6 and in excusable, so aggravated and grossly reckless as to
7 show an active intentional disregard of the consequences of
8 human life, thus denoting a delinquent spirit a heart
9 devoid of social duty and fatally bent on mischief, an
10 implication of malice may arise.

11 Furthermore, it is not just carelessness, not mere
12 recklessness or passive indifference to the safety of
13 others. This conduct when it shows a deliberate and
14 intentional design to use or employ or handle a deadly
15 weapon or a dangerous instrumentality so as to endanger the
16 life of another or of others without just cause or excuse,
17 may be sufficient to raise this implication.

18 However, it is for you, the jury, to decide beyond a
19 reasonable doubt whether upon all the facts and
20 circumstances of this case, the defendant's alleged use of
21 a deadly weapon demonstrated such an intentional disregard
22 for human life that malice may be implied or inferred from
23 the use of a deadly weapon. And it's for you, the jury, to
24 decide what weight, if any, should be given to this fact.

25 Now, further, members of the jury, there must be

1 malice aforethought which means that the malice must have
2 been conceived in the mind of the defendant prior to the
3 fact producing the fatal result. However, the law does not
4 require that the malice must exist for any appreciable
5 length of time before the commission of the act.

6 Malice is a word suggesting, once again, wickedness,
7 hatred and a determination to do what one knows to be wrong
8 without just cause or excuse or legal provocation. Malice
9 may not be in the mind of the one doing the killing any
10 particular length of time before the act of killing in
11 order to render the killing murder. If it is present in
12 the mind of the one doing the killing any length of time
13 before the act, then it's presence would be sufficient to
14 render the killing murder.

15 Malice is said to be expressed where there is
16 manifested a violent deliberate intentional unlawfully you
17 take away the life of another human being. Malice is an
18 implied where one intentionally and deliberately does an
19 unlawful act, which he or she then knows to be wrong and in
20 violation of it's duty to another and where no excuse for
21 legal provocation appears and where the circumstances
22 intending a killing show an abandoned heart, a malignant
23 heart fatally bent upon mischief.

24 If the evidence should show under what circumstances
25 a shot was fired or a blow delivered which took the life of

1 another, then you, the jury, would have to determine
2 whether such under -- whether under such circumstances the
3 act was malicious.

4 Now, members of the jury, I further charge you that
5 there are two types of evidence, which are generally
6 presented during a trial. Direct evidence and
7 circumstantial evidence. Direct evidence is the testimony
8 of a person who asserts or claims to have actual knowledge
9 of a fact such as an eyewitness. Circumstantial evidence
10 is proof of a chain of facts and circumstances indicating
11 the existence of a fact.

12 The law makes absolutely no distinction between the
13 weight or value to be given to either direct or
14 circumstantial evidence. Nor is a greater degree of
15 certainty required of circumstantial evidence than of
16 direct evidence. You should weigh all the evidence in this
17 case, members of the jury. After weighing all the
18 evidence, if you are not convinced of guilt of the
19 defendant beyond a reasonable doubt, you must find the
20 defendant not guilty. If on the other hand you are
21 convinced of the defendant's guilt beyond a reasonable
22 doubt, then you must find him guilty.

23 Now, the defendant, Mr. Pagan, has pled in this case
24 what we call a plea of albi. That means that he was not at
25 the scene of the crime at the time it was committed, but

1 that he was elsewhere and had nothing to do with it. There
2 is no burden upon the defendant to prove his alibi. The
3 burden is upon the State to prove that he was actually
4 present at the scene of a crime and that he actually
5 participated in it and that he was not elsewhere. And the
6 State must prove this allegation as all other allegations
7 are required to be proven beyond a reasonable doubt.

8 Now, members of the jury, you have been told or
9 evidence has been received in this case that the defendant,
10 Mr. Pagan, was found guilty of conspiracy to distribute
11 crack cocaine I think on two different occasions. Now,
12 these convictions have been brought to your attention only
13 because you may wish to consider them when you decide, as
14 with any witness, how much you will believe of his
15 testimony in this trial. If I could -- The defendant was
16 found guilty of another crime, does not mean that he
17 committed this crime. And you must not use his guilt for
18 the crime of conspiracy to distribute crack cocaine as
19 proof of the crime charged in this case. You may find him
20 guilty of this crime only if the State has proven beyond a
21 reasonable doubt that he has committed it.

22 Now, along the same lines, members of the jury,
23 there was evidence presented in this case where the
24 defendant was charged with failure to stop for a blue
25 light. Now, I admitted this testimony for a limited

1 purpose. It relates to the issue of identification of
2 Mr. Pagan. You can't infer that he was charged with or you
3 know about a failure to stop for blue light charge, that
4 he's necessarily guilty of murder. There's no connection.
5 And that testimony was permitted or you received that
6 testimony or I let it in simply on the issue of
7 identification of Mr. Pagan, members of the jury.

8 Additionally, I need to charge you because there
9 were several witnesses that testified in this case that had
10 a prior record and the same applies to those witnesses what
11 I just told you about the credibility of Mr. Pagan having a
12 prior record. And this is what I need to say to you. It
13 is also true that a person who has a pass record is also
14 confident to testify during a trial. A pass record does
15 not affect the ability of that person to testify and is
16 allowed to be introduced and considered only on the issue
17 of credibility. Their pass record may be considered by
18 you. If you should do so, if you should so decide in
19 determining their credibility or believability.

20 Remember as I've instructed you, you are the sole
21 judges of the facts in this case and of the credibility of
22 any and all of the witnesses who have testified.

23 Now, members of the jury, there have been four to
24 five to six experts of that were admitted in this case.
25 Some were SLED agents, the doctor for example. Now, in

1 considering the opinion of an expert witness that has been
2 admitted in this case, I instruct you as follows. You
3 should consider the factual evidence first. An expert may
4 base his opinion upon the factual evidence presented at
5 trial or alternatively the expert may base the opinion upon
6 facts and data not in evidence. You may consider the
7 expert opinion if you find that testimony is based on
8 facts, which are reasonably relied upon by experts in that
9 particular field.

10 You must consider expert testimony, members of the
11 jury, in the same manner as you do any other testimony and
12 give it the weight to which you believe it is entitled when
13 considered with all the other evidence in the case. Such
14 testimony as given for the purpose of helping you
15 understand the evidence and not for the purpose of
16 controlling your judgment.

17 The value of expert testimony does not depend upon
18 the skill and knowledge professed by the expert, but upon
19 the skill and knowledge he actually possesses. It is for
20 you to judge whether he possesses such knowledge. In this
21 regards, you may consider his training, experience, ability
22 to communicate his ideas to you, the logic of his opinion,
23 the factual support for his opinion and all other factors
24 as you would judge and weigh the testimony of other
25 witnesses.

1 The value and effect of expert testimony are matters
2 solely to be estimated by you the jury. No mere opinion of
3 an expert can be accepted as in and of itself truthful or
4 reliable. Such testimony should be weighed by you and
5 convince you of your judgments by a -- Let me just repeat
6 that. The value and effect of expert testimony are matters
7 solely to be estimated by you the jury. No mere opinion of
8 an expert can be accepted as in and of itself truthful or
9 reliable. Such testimony should be weighed by you and
10 convinced you of your judgments beyond a reasonable doubt
11 of the evidence and with the same force and effect as any
12 other fact proved in this case before you can rely upon it
13 as the bases for a conviction.

14 You have heard the testimony of a witness who has
15 special knowledge, skill, experience, training or education
16 a particular field who has given his opinion as an expert
17 as to matters in which he is skilled. And in determining
18 the weight to be given such opinion, you should consider
19 the qualifications and credibility of the expert and the
20 reasons given for his opinion. You are not bound by such
21 opinion, members of the jury, given the weight, if any, to
22 which you deem it is entitled.

23 Now, Mr. Foreman and members of the jury, whatever
24 your verdict in this case it must be unanimous. In other
25 words, of course, all 12 of you must agree. And to send I

1 prepared what we commonly referred to as a verdict form. I
2 hold it in my left hand, Mr. Foreman, and reads as follows:
3 The State of South Carolina County of Florence, State of
4 South Carolina, plaintiff vs. Charles Pagan, defendant is
5 how it reads. In the Court of General Sessions, verdict
6 and it says we the jury by unanimous consent find the
7 defendant, Charles Pagan -- And I had to put one before the
8 other. It has guilty or not guilty.

9 Now, take no special note that guilty is listed
10 first and not guilty second. As you all realize your
11 common sense will tell you, you had to list one before the
12 other. Couldn't list them both simultaneously. But if
13 you're convinced beyond every reasonable doubt that
14 Mr. Charles Pagan is guilty of the offense of murder,
15 Mr. Foreman, members of the jury, you need to check guilty,
16 need to sign your name foreperson and you need to date this
17 form. Or if on other hand, you have not been convinced
18 beyond a reasonable doubt that Mr. Pagan is in fact guilty,
19 then you need to find him not guilty, Mr. Foreman, members
20 of the jury, date it and sign your name as foreperson.

21 Now, I think that concludes all the remarks I need
22 to say to you, but what I need to do, I need to send you
23 back in the jury. I need to discuss with the lawyers what
24 I just said to you. There's a possibility I may need to
25 add something. But in the meantime, you need to go back

1 into the jury room. The time to begin your deliberations,
2 your discussions about this matter will be when the bailiff
3 knocks on the door -- We'll have to gather all the exhibits
4 that have been introduced in this case. He will gather all
5 the exhibits he will knock on the door hand you the
6 exhibits along with this verdict form.

7 Mr. Foreman, that will be your signal to begin your
8 deliberations or your discussions about this case. Until
9 that happens please don't talk about it. As I just
10 suggested to you, it's a possibility I might have to talk
11 to you some more. But once again, the time to begin your
12 deliberations will be when the bailiff hands you all the
13 exhibits along with this verdict form. This might take a
14 little bit of awhile because -- little bit of time. We
15 need to go back through all the exhibits to make sure we
16 have them all in before we send them to you, Mr. Foreman
17 and members of the jury.

18 So you'll have about five minutes or so to sit down
19 and relax before you begin your deliberations. Don't
20 discuss the case in anyway, shape or form until that
21 happens. You're free to go back into the jury room now,
22 ladies and gentlemen.

23 (The jury was excused to the jury room.)

24 THE COURT: All right. Are there any exceptions or
25 additions from the State?

1 MR. MEADORS: No, sir, not from the State.

2 MR. REDMOND: None from the defense, Your Honor.

3 THE COURT: Now, I need to invite you all to as I
4 always do, please, come up ---

5 MR. MEADORS: Who were the two alternates?

6 THE COURT: I always leave them back there until ---

7 MR. MEADORS: I was just --

8 THE COURT: I got their names I'll give it to you,
9 but I always leave them back there in case something
10 strange happens between y'all looking at the exhibits,
11 until they actually get it so. There's about 70 of them.
12 So you need to take your time and look them through.

13 (Pause in proceeding.)

14 (The jury deliberated in the jury room at 6:16 p.
15 m.)

16 THE COURT: You Ms. Foxworth?

17 MS. FOXWORTH: Yes.

18 THE COURT: You sure?

19 MS. FOXWORTH: Yes, last time I checked.

20 THE COURT: And Ms. Richardson, right?

21 MS. RICHARDSON: Yes, sir.

22 THE COURT: I want to thank you all on behalf of Mr.
23 Knox McMahon, Mr. Johnny Meadors, as well as Florence
24 Police Department. Of course, Mr. Cox and Mr. Redmond on
25 behalf of Mr. Pagan for being -- I mean just wonderful

1 people and citizens come in here being so patient after six
2 days. It's been a long hall. And I looked at y'all during
3 the whole time got to know each other a little bit and I
4 never saw a moments of hesitancy and y'all willingness to
5 serve. And I never saw an impatience on the part of
6 anybody.

7 And I wish there was something I could give you to
8 make up for it, but all I can offer is my thanks and
9 appreciation on behalf of everybody involved and certainly
10 the people of Florence County. And you know all over the
11 country people have to serve as alternates and as jurors.
12 And so I can add the thanks and appreciation for a grateful
13 nation as my words cause certainly every American citizen
14 proud of the citizens that serve. And so y'all have my
15 thanks and appreciation. And I feel ever indebted to you
16 for how kind y'all been to everybody here.

17 I gracious y'all for all this with the delays and
18 the length that it's taken. So we have two deputies ready
19 to escort you to your cars. I can promise you this, y'all
20 will both hear from me again. You invited to stay if you
21 want to. You don't have to.

22 (Court has reconvened.)

23 THE COURT: I guess I need to make an observation
24 for everybody back out in the audience. I have absolutely
25 no idea what the verdict is in this case, but I'm sure

1 somebody's gone be happy, somebody's gone be sad. I would
2 tell you you need to keep your emotions in check.' And if
3 there's any need for any posttrial motions or about
4 discussing them, I'm gone give you ten days.

5 MR. REDMOND: Thank you, Your Honor.

6 MR. COX: Thank you, Your Honor.

7 THE COURT: Like I said I really have no idea. And
8 what the Court is concerned about is not what verdict that
9 a jury reached, but how they reached it. Then this jury
10 appears to have been attentive and fair to me the whole
11 time so we'll all just have to look at the results. You
12 may invite them in, sir.

13 (The jury returned to the courtroom with a verdict
14 at 7:30 p.m.)

15 CLERK OF COURT: Mr. Foreman and members of the jury
16 have you agreed upon a verdict.

17 MR. FOREMAN: Yes, we have.

18 THE COURT: All right. You may publish it.

19 CLERK OF COURT: State of South Carolina County of
20 Florence in the Court of General Sessions. Case Number
21 98-GS-21-855, State of South Carolina vs. Charles Pagan,
22 the defendant. Verdict. We the jury by unanimous consent
23 find the defendant, Charles J. Pagan guilty. Joseph
24 Bushardt, Foreman.

25 Mr. Foreman and members of the jury, if this is your

1 verdict so say so now?

2 (All jurors agreed in the affirmative.)

3 THE COURT: Anything further from the State?

4 MR. MCMAHON: Nothing further from the State, Your
5 Honor.

6 THE COURT: All right. Everybody who just had an
7 outburst, they need to remain. I need to talk to before
8 you leave. Does the defense request polling of the jury?

9 MR. REDMOND: No, Your Honor.

10 THE COURT: You sure about that?

11 MR. REDMOND: Your Honor, yes, the defense would
12 request polling.

13 THE COURT: All right.

14 CLERK OF COURT: As I call your name, I'd ask you
15 to stand. I'll ask you if this is your verdict and is it
16 still your verdict and answer.
17 Christopher Patterson. Is this your verdict?

18 MR. PATTERSON: Yes.

19 CLERK OF COURT: And is it still your verdict?

20 MR. PATTERSON: Yes.

21 CLERK OF COURT: Annie King. Is this your verdict?

22 MS. KING: Yes, ma'am.

23 CLERK OF COURT: And is it still your verdict?

24 MS. KING: Yes, ma'am.

25 CLERK OF COURT: Albert Moore. Is this your

1 verdict?

2 MR. MOORE: Yes.

3 CLERK OF COURT: Is it still your verdict?

4 MR. MOORE: Yes.

5 CLERK OF COURT: James McCutcheon. Is this your
6 verdict?

7 MR. MCCUTCHEON: Yes, ma'am.

8 CLERK OF COURT: And is it still your verdict?

9 MR. MCCUTCHEON: Yes, ma'am.

10 THE COURT: Vivian Matthews. Is this your verdict?

11 MS. MATTHEWS: Yes, ma'am.

12 CLERK OF COURT: And is it still your verdict?

13 MS. MATTHEWS: Yes, ma'am.

14 CLERK OF COURT: Mary Timmons. Is this your
15 verdict?

16 MS. TIMMONS: Yes.

17 CLERK COURT: Is it still your verdict?

18 MS. TIMMONS: Yes.

19 CLERK OF COURT: Kathey Gainey. Is this your
20 verdict?

21 MS. GAINNEY: Yes, ma'am.

22 CLERK OF COURT: Is it still your verdict?

23 MS. GAINNEY: Yes, ma'am.

24 CLERK OF COURT: Myrun Frierson. Is this your
25 verdict?

1 MR. FRIERSON: Yes, ma'am.

2 CLERK OF COURT: And is it still your verdict?

3 MR. FRIERSON: Yes, ma'am.

4 CLERK OF COURT: Dennis Cook. Is this your verdict?

5 MR. COOK: Yes, ma'am.

6 CLERK OF COURT: And is it still your verdict?

7 MR. COOK: Yes, ma'am.

8 CLERK OF COURT: Brenda Capps. Is this your
9 verdict?

10 MS. CAPPS: Yes, it is.

11 CLERK OF COURT: Is it still your verdict?

12 MS. CAPPS: Yes, it is.

13 CLERK OF COURT: Willie Rush.

14 MR. RUSH: Yes, ma'am.

15 CLERK OF COURT: Is this your verdict?

16 MR. RUSH: Yes.

17 CLERK OF COURT: Is it still your verdict?

18 MR. RUSH: Yes.

19 CLERK OF COURT: Joseph Bushardt. Is this your
20 verdict?

21 MR. BUSHARDT: Yes.

22 CLERK OF COURT: And is it still jury verdict?

23 MR. BUSHARDT: Yes.

24 THE COURT: All right. The jury has been polled.

25 Anything further?

1 MR. COX: Not from the defense. Thank you, Your
2 Honor.

3 THE COURT: Mr. Foreman and members of the jury,
4 y'all have heard me say many times how much I patient the
5 patience that you all have exhibited through the course of
6 this trial. I can now think it's now proper tell you that
7 I've enjoyed you as a juror as much as any other juror I've
8 ever had the pleasure of resolving a case with. And I been
9 from Table Rock to Little River from Pritchardville to
10 Blacksburg up in Cherokee County.

11 You all were very attentive. You listened to
12 everything. I think you bonded as a group. I guess when
13 you're together with somebody six days you get the result.
14 But it reaffirm my faith in the judicial system. People
15 drawn like in a collected crowd, the just is drawn from all
16 segments or sections of the county. And you represent or
17 you reflect the conscience of this community. The Court is
18 never so much concerned with what verdict you reach,
19 members of the jury, but how you reached it. And I'm
20 satisfied y'all reached it in a right way with do
21 deliberation and consideration of the evidence presented by
22 both sides. No one else can ask any more of you.

23 Now, you're free to talk about it now with anyone to
24 or you don't have to talk to anyone about it. You
25 certainly don't have to explain any thing about your

1 verdict and how you reached it. But I can really tell you
2 without the slightest hesitation that I've enjoyed you and
3 the alternates as a jury as much as I've ever had the
4 pleasure of serving or conducting a trial with anyone since
5 I been on the bench. Once again, I tell you that without
6 the slightest hesitation.

7 And, of course, you know all over this country from
8 the maines of the Mobile Bay from the Golden Gates of
9 California to the Jersey shores, that people, good citizens
10 just like yourselves who come out, not quite volunteers,
11 but essentially you end up volunteering your time and given
12 of your time to help the County and State conduct it's
13 business. So I like to take this opportunity to wish you
14 all calm nights and sun shinny days. And if we should
15 ever meet again somewhere along the way, I hope to do so as
16 friends.

17 And with that in mind, I wish you well God speed.
18 You're free to go. You can leave your juror buttons now if
19 you still have them. Very well. And everybody else remain
20 seated while the jury is excused. We have deputies
21 prepared to walk you out to the car -- Your automobiles to
22 make sure you get home safe. Thank you very much, Mr.
23 Foreman and ladies and gentlemen.

24 (The jury was excused.)

25 THE COURT: First of all, as I indicated earlier,

1 you never know whether there's going to be a need, but I
2 generally like to allow either side or both sides to 10
3 days and I will do so in this case. Any reason I'm,
4 Mr. Cox and Mr. Redmond, why Mr. Pagan should not be
5 sentenced now?

6 MR. COX: No, Your Honor.

7 THE COURT: Well, you may bring him around.
8 And, Mr. McMahon, I don't know whether the State wants to
9 present anything in terms of this sentencing hearing from
10 the victims. I'll be happy to hear anything the State
11 wants to present.

12 MR. MCMAHON: Just one moment, Your Honor.

13 THE COURT: All right.

14 MR. MCMAHON: May it please the Court. Your Honor,
15 this is Gloria's father and brother. I believe her brother
16 would like to address the Court. I'm not sure about the
17 father. I would like to say since I been involved in the
18 case myself and Mr. Meadors being from out of county
19 circuit as, His Honor, knows. Mr. Ishmel has been very
20 dedicated to the memory of his daughter. Has been very
21 supportive of the Florence Police Department and our
22 efforts to prosecute this case. And as I say and just
23 always vigilant in the memory of his daughter. And as I
24 said I think her brother would like to make a statement to
25 the Court.

1 THE COURT: All right, sir.

2 MR. MEADORS: Joe Nathan Cummings.

3 THE COURT: Joe Nathan Cummings?

4 MR. CUMMINGS: Yes, sir.

5 THE COURT: Yes, sir, Mr. Cummings, I'll be happy to
6 hear from you, sir.

7 MR. CUMMINGS: I just wanted to request that just to
8 make a statement.

9 THE COURT: Beg your pardon.

10 MR. CUMMINGS: I just wanted to make a statement to
11 the person that was convicted.

12 THE COURT: To the person who?

13 MR. CUMMINGS: To the person convicted.

14 THE COURT: No. No. You need to make your
15 statements, you need to address all your -- whatever you
16 need to say you need to say it to me and not to Mr. Pagan.

17 MR. CUMMINGS: My little sister, I mean, we grew up
18 we didn't have much. So that kind of made us have a little
19 bond just by being very close because we didn't have much.
20 Over the time, you know, we kind of grew far apart. You
21 know, she went her way. Myself and my older brother went
22 our way. And it was getting back to the point where we
23 actually becoming a family when this tragedy happened. I
24 just want to know why.

25 THE COURT: Thank you, sir.

1 Anything you like to tell me, sir?

2 MR. ISHMEL: No, sir.

3 THE COURT: Very well. Anything further from the
4 State?

5 MR. MCMAHON: Just one other thing, Your Honor.

6 Your Honor, this is a photograph of the victim in the
7 light. Obviously, it's not something we would present
8 during the course of the trial itself. I do not have any
9 facial photographs showing the extent of the beating and
10 the maliciousness involved. His Honor, has heard all of
11 that testimony, but I think by way of comparison what she
12 look like in life to the terrible beating that she endured
13 in this particular case. And we certainly think this case
14 that obviously I know that the sentence is up to your
15 discretion, but the max would be appropriate in this
16 particular case. Thank you, Your Honor.

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

18 Mr. Cox. Mr. Pagan.

19 DEFENDANT PAGAN: I been convicted of a crime that
20 I'm honestly innocent. I never seen Gloria in my life. I
21 reach out because I got a sister, too. And I know how you
22 must feel. I'm the wrong man and that's for real. I --
23 You know I wouldn't want that to happen to her. I did
24 everything for the police to try to cooperate and
25 everything. I'm the wrong man. That's -- I'm sorry, you

1 know, that it happened to her. But I wasn't the one. I
2 never seen her in my life. And that's the God heaven
3 truth. That's all I have to say, Your Honor.

4 THE COURT: Beg your pardon, Mr. Pagan.

5 DEFENDANT PAGAN: That's all I have to say, Your
6 Honor.

7 THE COURT: All right, sir. Well, thank you
8 Mr. Pagan.

9 Mr. Redmond, anything you like to say.

10 MR. REDMOND: I refer to Mr. Cox.

11 MR. COX: Please the Court. We been her we've had a
12 chance to see the evidence to work with the State. And the
13 jury has reached the decision. And we realize the task,
14 His Honor, has. And we know that you will apply the same
15 energy to making that decision as you did the curtiuous you
16 extended to both sides during this trial. And we thank you
17 for that.

18 THE COURT: All right. Thank you, Mr. Cox.

19 I never say anything. I don't have a habit of saying
20 anything except for I wish once again wish the family of
21 Gloria Cummings the very best. And, Mr. Pagan, I wish you
22 and your family the very best. I was not the finder of
23 fact. Heaven knows what decision I would have made if I
24 had been on the jury. But I think I'm bound by their
25 decision. And since they believe -- And I think under the

1 evidence and I can see how they can easily conclude that
2 you were guilty.

3 I there's only one sentence I can impose. You do
4 have the right, of course, within 10 days of today's date
5 to appeal the jury's verdict. And additionally, I need to
6 inform you that if you felt that the police in some way
7 mislead or you have some complaints against them or anybody
8 else involved in the case. If you think I made some
9 errors, and I be quite honest with you it goes to whether
10 or not you feel your lawyers may have done something wrong.

11 You need to file a postconviction-relief
12 application. And you may be familiar with or not I'm not
13 sure. But you need to file a PCR application within one
14 year. And it might be a little longer than one year, but I
15 will explain to you I think it's one year from today's
16 date. Mr. Pagan. You understand that, sir?

17 DEFENDANT PAGAN: Yes, sir.

18 THE COURT: So I wish y'all very best including you
19 Mr. Pagan and your family. On indictment 98-855, State vs.
20 Charles Pagan it's an indictment for murder. The sentence
21 of the Court is that you Charles Pagan be committed to the
22 South Carolina Department of Corrections for a period of
23 life. Good luck to you, Mr. Pagan.

24 MR. MEADORS: Thank you, Your Honor.

25 THE COURT: The 10 days that I mentioned still

1 remains for Mr. Cox and Mr. Redmond to file any motions.

2 MR. COX: We would have 10 days from, Your Honor's,
3 ruling on posttrial motions file -- 10 days for the
4 posttrial motion.

5 THE COURT: I think that is correct. But what we
6 need to do my suggestion would be file a notice of intent
7 just in case.

8 MR. COX: Thank you, Your Honor.

9 END OF REQUESTED TRANSCRIPT
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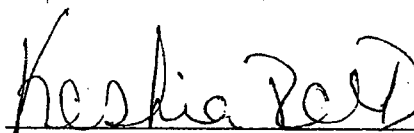
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF FLORENCE

5
6 I, Keshia Reed, Court Reporter and Notary Public
7 in and for the State of South Carolina At Large, do hereby
8 certify that the above-entitled cause was heard as
9 hereinafter set out; that I was authorized to and did
10 transcribe the said proceedings; and that the foregoing and
11 annexed pages, numbered 1 through 1156, inclusive,
12 constitute a true and accurate transcription of my
13 stenographic report of the said cause taken during the said
14 hearing.

15 In witness whereof, I have hereunto affixed my
16 signature this 9th day of March, 2002.

17 
18

19 Keshia Reed, Court Reporter

20 My Commission Expires: 6-5-2010
21
22
23
24
25

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STATE OF SOUTH CAROLINA)

County of Florence)

IN THE COURT OF COMMON PLEAS

Charles Pagan-272720)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 Wisacky Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Florence County - Court
of General Sessions, Florence, S.C. 29501
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 98-65-21-855 (Murder) CERTIFIED: A TRUE COPY

Cornie Reel Spearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 12, 2001 (Life)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty After A Plea Of Not Guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court Of Appeals
- ii. S.C. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Conviction Affirmed
- iii. _____
- (c) the date of each such result:
- i. Heard December 9, 2003 - Filed January 12, 2004
- ii. Heard April 5, 2006 - Filed June 19, 2006
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 3724
- ii. Opinion No. 26172
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Of Trial Counsel
- (b) Unconstitutional Lineup & In Court Identification
- (c) Subject Matter Jurisdiction - Prosecutorial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed To Adequately Prepare - Stipulated D.N.A. - Did Not Call Professional witnesses.
- (b) Entered his case - only Puerto Rican in Lineup - Could Not Identify In Lineups Before Trial.
- (c) No Time and Place of Death on Indictment.
12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition For Writ of Certiorari
- ii. Appeal Court
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Supreme Court - Col., S.C.
- ii. " " "
- iii. _____

iv.

(c) the disposition thereof:

i.

Affirmed As Modified

ii.

Affirmed As Modified

iii.

iv.

(d) the date of each such disposition:

i.

Heard April 5, 2006 - Filed June 19, 2006

ii.

Heard December 9, 2003 - Filed January 12, 2004

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

Opinion No. 26172

ii.

Opinion No. 3724

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

N/A

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) All Grounds In (10) Are First Time Challenged
- (b) _____
- (c) _____
17. 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?
yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Kernard Redmond - Salerby & Cox Law Firm, James Cox Jr
Florence, S.C. 29501 (Trial)
- ii. Joseph L. Savitz III, Deputy Chief Attorney of S.C.
Office of Appellate Defense - Columbia, S.C. (Appeal)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial Counsel - Kernard E. Redmond & James Cox Jr.
- ii. Appellate Counsel - Joseph L. Savitz III
- iii. _____

19. State clearly the relief you seek in filing this application:

Sentence and Conviction Vacated and Remanded For
A New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Charles Pagan-272720, 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.

Charles Pagan-272720

SWORN to and subscribed before me this 12
 day of Jan, 2009.

Debra Sikes (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2007-CP-21-74
	)	
Charles Pagan, SCDC No. 272720,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 16, 2007, 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 Florence County. The Applicant was indicted at the July 1998 term of the Court of General Sessions for Florence County for murder (1998-GS-21-855). He was represented by Kernard Redmond, and James Cox, Jr., Esquires. On February 12, 2001, the Applicant proceeded to trial, pursuant to which he was found guilty as indicted. The Applicant was sentenced by the Honorable L. Casey Manning, to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (S.C. Ct. App. 2004). After filing a Petition for Writ of Certiorari to the South Carolina Supreme Court, the conviction and sentence were affirmed as modified. State v. Pagan, 369 S.C. 201, 631 S.E. 262 (S.C. Sup. Ct. 2006).

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records. Any of the above not so attached will be forwarded upon receipt.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Subject Matter Jurisdiction;
3. Prosecutorial Misconduct; and
4. Unconstitutional line-up and in court identification.

III.

The Respondent interprets Applicant's allegations listed as #1, #3, and #4 to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in his application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, supra.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, supra. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-

19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

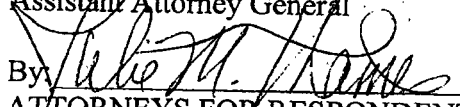
Respectively,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 15, 2007

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2007-CP-21-74
	)	
	)	
Charles Pagan	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolin	)	)
<u>RESPONDENT)</u>		January 26, 2010
		Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

CHARLES T. BROOKS, III, ESQ.
Attorney for the Applicant

JULIE M. THAMES, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

I N D E XW I N E S SD I R E C TC R O S SR E D I R E C TR E C R O S S

Charles Pagan

Mr. Brooks 10

Mrs. Thames 39

Kernard Redmond

Mr. Brooks 50 71

Mrs. Thames 62 72

Jim Cox

Mrs. Thames 75

Mr. Brooks 80

Certificate of Reporter 88

1 THE COURT: Yes, ma'am.

2 MRS. THAMES: Thank you, Your Honor. This is
3 Charles Pagan vs. The State, docketed 2007-CP-21-074.
4 Mr. Pagan was indicted for murder and he did have a jury
5 trial, that was back in February of 2001. He was found
6 guilty and he was sentence to life imprisonment and that
7 was in front pf Judge Manning. He was represented at the
8 time by Mr. Jim Cox and Mr. Kernard Redmond. And
9 Mr. Brooks is here on his behalf today. And I think we
10 might have some preliminary matters to put on the record.
11 I'll turn it over to Mr. Brooks.

12 THE COURT: All right. Mr. Brooks, I'll be
13 happy to hear from you, sir.

14 MR. BROOKS: May it please the Court, Judge, I
15 recently got this case. I was trying to find out exactly
16 when I got it. I gotten it sometime last week because
17 that's what I had January 14th today is the 26. I had
18 just gotten the case from Kendall Hiller who was
19 appointed. It is my understanding that Mr. Pagan has been
20 through several P.C.R. counsels Mr. Schurlknight, which
21 the Court relieved him. Mr. Kirven had the case and he
22 was relieved. And then Mr. Hiller had gotten it.
23 Mr. Hiller probably got it the beginning of this month and
24 then had actually gone to see Mr. Pagan told him that he
25 was not very proficient in handling P.C.R. matters at

1 least one this complicated and he had sent the file to me.
2 And then I contacted Mrs. Thames by e-mail like I
3 sometimes normally correspond with her and told her I was
4 picking this up, just recently got the file.

5 I have had an opportunity to meet with
6 Mr. Pagan. I did explain to him that I really hadn't had
7 a chance to really dig into his case. I started looking
8 into some preliminary things, figured out the facts and
9 things of that nature. And I did tell him that during
10 some discussion with Mrs. Thames as well as, Your Honor,
11 that I may be able to get a continuance which means that
12 the case will be dealt with in July. But I've talked with
13 Mr. Pagan, he basically understands, you know, that I am
14 not nearly as prepared as I would like to have been or
15 normally would be on this P.C.R. matter especially one of
16 that nature with a, I believe, a four-day trial.
17 Transcript's pretty thick.

18 He indicates that he still desires to go forward
19 and does not want me to make any type of motion for a
20 continuance. Despite my having explain that to him, which
21 I did want to put on the record for everyone's benefit
22 especially for Mr. Pagan's. So I did want to make, Your
23 Honor, aware of that. And Mr. Pagan says he's ready to go
24 forward.

25 THE COURT: All right. Mr. Pagan is that

1 correct, sir, that you wish to go forward?

2 MR. PAGAN: Yes, sir, Your Honor.

3 THE COURT: Let me -- and I'll certainly give
4 you any benefits that you are entitled to, but let me just
5 ask you, I mean, I haven't looked at all the documents in
6 this folder, but the trial -- just the trial transcript
7 itself is 1,156 pages, not to include all the other
8 matters that are in this file. Do you understand that --
9 and Mr. Brooks has not had an opportunity to go through
10 all these matters. My concern in this and I don't mean I
11 don't have a concern for the State. I have a concern for
12 the State, but I have a concern for you as well. And my
13 concern for you is that you get a fair and a full hearing.
14 And so if your lawyer needed time to sift through and go
15 through all this information so that he could effectively
16 represent your position, I would be happy to give you that
17 time. And I know that Mr. Brooks has shared that with
18 you. And you've indicated that you wish to go forward.
19 You understand that the -- maybe, I shouldn't call it the
20 best case scenario, but you have filed this P.C.R.
21 application. Do you understand that if I agree with you
22 and that I feel you are correct, you are entitled to this
23 relief, all that does is put you back to where you were
24 before this case was tried?

25 MR. PAGAN: Yes, sir.

1 THE COURT: So it doesn't mean that you'll be
2 released. You'll be back in a position to have the case
3 retried. I don't know if you had a bond back then, but
4 basically you go through all of that again to determine if
5 you were entitled to a bond. If so, what amount that
6 would be. And then, of course, the trial itself you go
7 back to that stage. So that it doesn't mean that if I
8 agree with you today, that you are going to be release.
9 It just simply means that you're going to be placed back
10 into the posture you were in before this case was tried
11 back in 2001. You understand that; is that correct?

12 MR. PAGAN: Yes, sir, Your Honor.

13 THE COURT: Well, if you don't mind me asking
14 and I hate to say what's the hurry because I appreciate
15 that every day is precious to you so the longer it goes
16 back, then it delays things for you. But you understand
17 that with post-conviction relief that you only get one
18 shot and I just want you to have your best shot.

19 MR. PAGAN: Your Honor, with all due respect,
20 right, I been passed around from lawyer to lawyer like I'm
21 dominos, right. And even though Mr. Brooks, you know, I
22 see his intentions are good finally is a lawyer, right.
23 Your Honor, I sit for 12 years for something I ain't even
24 do. You know, the Court can say this and that, but I'm
25 suffering, my kids are suffering. This is my life. So

1 every time it's pushed back, I'm 42 years old, Your Honor.
2 Come on, how long does it continue and the State appeal
3 more time being wasted. Your Honor, I want to go forward.

4 THE COURT: Well, and don't get me wrong. I'm
5 not going to say I understand exactly where you are at
6 cause I'm not in your shoes, but I can appreciate what
7 you're telling me. But it's for that reason that I at
8 least want you to understand that I would give you the
9 opportunity to have -- now, Mr. Brooks he's an outstanding
10 lawyer. He does probably more post-conviction relief
11 hearings -- I know he does more post-conviction relief
12 hearings than any lawyer I know. I'm not going to say he
13 does more than anyone in the state, but he does more than
14 anyone I know. He's very talented and very adept at this
15 area of law. And so because he is an outstanding
16 attorney, I just want you to get the full benefit of his
17 skills.

18 Now, the fact that you're case has been pass
19 from lawyer to lawyer to lawyer, I'm not familiar with all
20 of that. And for whatever reason that has occurred, that
21 is unfortunate, but because you get this one bite at the
22 apple, and I appreciate your concern for your family,
23 that's why I want to make sure -- you know that old saying
24 about let's not throw the baby out with the bath water,
25 you know. Let's make sure that you keep your focus on

1 what's important to Charles Pagan. And that is if it
2 means -- I'm assuming and I haven't gone into detail on
3 this, but I think Mrs. Thames in announcing the case
4 indicated that you got a life sentence on the conviction.
5 And you're 42?

6 MR. PAGAN: Yes, sir.

7 THE COURT: So you're still a young man, but, of
8 course, a life sentence is just that. It's a life
9 sentence. So your opportunity to be released and get back
10 to your family, I want you to understand that I'm not
11 saying I have no idea how I'll rule on this because I
12 haven't heard it yet, but is it worth risking that for a
13 few months. I understand what you're saying, you been at
14 it for 12 years now. And if nothing happens, you'll be
15 there the rest of your life and so you want this
16 opportunity to have your case heard and possibly get
17 released at some point. And is it not worth a couple of
18 months to give your lawyer the best shot at doing that.

19 MR. PAGAN: Your Honor, the burden falls on me.
20 It's what I get on the stand and I bring to court. If so
21 happens, which I wouldn't believe it, that you ruled
22 against me, Your Honor, I still do have other avenues.
23 The Innocent Project been wanting my case, but they can't
24 because of these appeals. I even tried to write the
25 president, Your Honor, of the United States, right.

1 There's other avenues I have been trying to take because
2 there was a lot going on in this case. I decided to take
3 a lot of frivolous matters away, you know, forget the
4 conspiracy, let's just get to the direct, you know,
5 issues. And I want to go forward, Your Honor.

6 THE COURT: All right. And I'll allow you to do
7 so, but I just wanted it to be understanding and clear
8 that Mr. Brooks has not had this case ---

9 MR. PAGAN: Yeah, I understand.

10 THE COURT: But -- but I don't know a week. It
11 apparently just from the sheer volume of the transcript is
12 apparently a fairly complex -- at least was a complex
13 litigation on the front end. It may be that your issues
14 in P.C.R. aren't so complex, I don't know. But the bottom
15 line is he certainly would benefit greatly for more time
16 to prepare, but he's also -- he's a good lawyer and he's
17 willing to do what you want him to do. What I need you to
18 understand is that you have time if you want it to give
19 him that opportunity for more time for him to prepare your
20 case and I would give that to you if you wanted it. You
21 do know that?

22 MR. PAGAN: Yes, and I thank you, Your Honor.

23 THE COURT: Okay.

24 MR. PAGAN: But I just want to proceed cause
25 excuse the Court, I don't trust no lawyers no more, I'm

1 just saying. I just want to proceed.

2 THE COURT: All right, sir. All right. Well,
3 we will then proceed.

4 Mr. Brooks, are you ready proceed, sir?

5 MR. BROOKS: We ready to go, Judge.

6 THE COURT: All right.

7 MR. BROOKS: I would call Mr. Pagan to the
8 stand.

9 THE COURT: All right, Mr. Pagan, if you would
10 come around to be sworn and then take the stand, sir.

11 THE CLERK: Please place your left hand on the
12 Bible and raise your right hand as much as possible. Do
13 you swear or affirm the testimony you give in this case
14 will be the truth, the whole truth, and nothing but the
15 truth so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Please be seated and state your name
18 for the record.

19 THE WITNESS: My name is Charles Pagan.

20 MR. BROOKS: May it please the Court.

21 THE COURT: Yes, sir, Mr. Brooks.

22 WHEREUPON,

23 Charles Pagan,
24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BROOKS:

2 Q Mr. Pagan, just by way of some little background
3 preliminary matters, you were represented by whom in this
4 case.

5 A Kernard Redmond and Mr. Cox.

6 Q Okay. And they were hired by you; is that correct?

7 A Yes, sir.

8 Q And you went to trial back in 2001; is that correct?

9 A Yes, sir.

10 Q Okay. And you brought this application for
11 post-conviction relief alleging ineffective assistance of
12 counsel; is that correct?

13 A Yes, sir.

14 Q Okay. Now, can you highlight what your issues are
15 and then we'll come back in detail and discuss each one?

16 A I have first argument unconstitutional line up. I
17 have inconsistent statement argument. I have abuse of
18 court prosecutor misconduct. I have abuse of discretion
19 by the trial judge, and I have an indictment issue to
20 bring up.

21 Q Okay. Now, the unconstitutional line up, can you
22 tell us about that?

23 A Yes, there were three line ups. Each line up
24 consisted of six pictures. The State only had -- I had
25 alibi. The State only had one witness, they had no

1 forensics. They had nothing. The one eye witness
2 everything relied on this unconstitutional line up because
3 this is what they're saying the whole case originated
4 from. All right, they was looking for a Hispanic male.
5 They have three line ups with six pictures in each array.
6 I'm the only Hispanic in all 18 pictures. Under Neil vs.
7 Biggers, we all know that that's a suggestive line up.
8 Also right ---

9 MRS. THAMES: Your Honor, if I could interject
10 an objection, this is a direct appeal issue.

11 THE COURT: I was about to ask ---

12 MRS. THAMES: Several of the issues that were
13 raised in the application, I meant to address that
14 earlier. Several of the issues that were raised appear to
15 be direct appeal issues and not P.C.R. issues.

16 THE WITNESS: However, Mrs. Thames, if my
17 attorney didn't object to them, they are P.C.R. issues.

18 THE COURT: All right. Well, here's -- go
19 ahead.

20 MRS. THAMES: If they're couched in that
21 language, then we can address it there. The way they been
22 raised in the paperwork and the way he just began his
23 testimony, it does not sound like that he was raising them
24 as ineffective assistance. I can wait until we get there.

25 MR. BROOKS: And, Judge, I would just ask to

1 give my client some latitude, so we can go ahead and touch
2 on that in relationship to ineffective assistance of
3 counsel.

4 THE COURT: I'll give some latitude, but what we
5 don't need to do at this hearing is to deal with issues
6 that the Court of Appeals and the Supreme Court dealt with
7 those legal issues that they dealt with. We need to deal
8 with the post-conviction issues and -- but I certainly
9 give you some latitude in fleshing that out.

10 BY MR. BROOKS:

11 Q Mr. Pagan, are you saying that your lawyers did not
12 raise these issues at trial?

13 A Yes, they didn't -- I was going to get to that. We
14 have plenty more to this argument. They didn't raise --
15 nare (sic) time did they raise it even though under my
16 consent I had wanted them to. They didn't raise an
17 objection that it was prejudicial, that it violated my
18 constitutional rights.

19 Q There was no motions made?

20 A No motion made, nothing. And it prejudice me because
21 right there it would show that had this witness not have
22 had this, showing that I'm the only Hispanic when you
23 looking for Hispanic, I wouldn't even been prosecuted.
24 The jury would have seen it in a different way?

25 Q Now, this particular witness is that Miss Cookes?

1 A Yes, Monique Cookes.

2 Q Okay. Now, that brings us probably to the second
3 argument. It was some inconsistent statements given by
4 her; is that correct?

5 A Yes.

6 Q And what were those statements? One occasion?

7 A Yeah, on one occasion under December 15th of 1997 she
8 said that she heard of a crime. She didn't witness no
9 crime. She was just with the victim prior and heard her
10 crying. And the second statement which was the 17th of
11 December, she said there was a bunch of Puerto Ricans,
12 Hispanic's around and that they was standing in front of a
13 barber shop. They called the victim over, she kept going
14 went into the club. When she came back out the club, the
15 victim and Hispanic male was walking off. Third statement
16 which was done January 14th, she said she lied the first
17 two times.

18 Q January 14th 2001?

19 A No, January 14th 1998. She said she lied the first
20 two times. She was scared, that she seen the man in the
21 line-up picture that did the murder. And she didn't pick
22 them out the first two times due to she was scared and
23 that it was the Hispanic, but that was after I was -- my
24 defense counsel didn't object to neither. After in the
25 third statement, it clearly show where the investigators

1 pointed me out before she even assisted it was me. And if
2 you look at the timing of the statements right, which I
3 have. It would be here excuse me for one second -- look
4 at the timing she did the statement the third statement
5 on -- she did the statement at excuse me for a second,
6 Your Honor. Statement was started 12:43 p.m. and ended at
7 12:57 p.m., but the time of the photograph line-up sheet,
8 which she stated it was me was 12:55 p.m. of
9 December 19th. And if you look at exhibit 3B on page
10 three, you clearly see that investigators were the one who
11 pointed me out first.

12 Q Okay. And is it your contention that your lawyer did
13 not raise these?

14 A They didn't raise the issues at all. And they
15 prejudice me because the jury would have seen it a
16 different way. They would have seen that, you know, she
17 was directed in that way, so this witness could have
18 gotten impeached. See, my attorney should have ask for
19 motion to impeach her. Because in the statements, right,
20 and I have my argument. But in the statements, the first
21 statement she have went into the record. Anything after
22 the first statement witness should have been impeached
23 especially when she admitted to giving that statement,
24 right, that was clearly a Sixth Amendment violation,
25 right. One second, I'm going to get this case law, I

1 think it's State vs. Marvin Bottoms. If a witness admits
2 unequivocally that a prior inconsistent statement has been
3 made by him or her, he has there impeached himself and
4 further evidence thereof is unnecessary and inadmissible.

5 Q Do you feel that your lawyers did not impeach
6 Miss Cookes because of these inconsistent statements?

7 A Yes.

8 Q All right. And what was the third issue that you
9 had?

10 A The abuse of court prosecutor misconduct.

11 Q Well, let me ask you before we get into that, I got
12 one question I want to ask you. And you stated there were
13 no forensics that tied you to this crime; is that correct?

14 A None.

15 Q And as a matter of fact, had there been some
16 investigation done as far as maybe hiring a forensic
17 person on your behalf?

18 A Yes.

19 Q Can you tell us about that?

20 A I had hired a forensic expert Mr. Donald Gurnt. And
21 Mr. Redmond and Mr. Cox never called him to testify at
22 trial. I had paid him out of my pocket and, right,
23 Mr. Gurnt had much much evidence proving that there was no
24 way that I could have committed this crime. He also had
25 information and knowledge that she wasn't -- the victim

1 wasn't even beat with a wooden board as the State alleged.
2 When Mr. Cox and Mr. Redmond had me sign the stipulation,
3 it was really under false pretenses.

4 Q What did you sign? What do you recall signing?

5 A Stipulation of D.N.A.

6 Q All right. Now, the D.N.A., there was no D.N.A. tied
7 to this crime; is that correct?

8 A None.

9 Q Matter of fact D.N.A. had pointed to somebody else;
10 is that correct?

11 A Yes.

12 Q And that person was never prosecuted for this crime;
13 is that correct?

14 A No.

15 Q All right. Now, go ahead and tell us what you're
16 about to tell us?

17 A Okay. See, I didn't have knowledge of this during
18 the trial, right, but exact words I ask Mr. Redmond, I
19 said why would you stipulate the D.N.A., he said, Oh,
20 Mr. Pagan, we're going to bring it up. It's just that
21 your D.N.A. was done in Tennessee. And we don't have
22 nobody to testify, you know, on it later on. But later
23 on, I came to find out that my D.N.A. was done at SLED, at
24 SLED in Columbia. There was some D.N.A. done in
25 Tennessee, but it was the fingernail scrapings of the

1 victim what was up under her nails. Now, stipulate ---

2 Q Was anybody from Tennessee brought to testify?

3 A No, nobody.

4 Q Go ahead.

5 A Okay. Now, stipulating the D.N.A. not only violated
6 my equal protection law, it violated my due process simply
7 because, which I had found this out later on also Mr. Cox
8 and Mr. Redmond had information from the trace department.
9 They was saying that the State was alleging that
10 Mr. Blathers had sex with this victim earlier that day and
11 that's why his D.N.A. was on the body. Come to find out,
12 that there was no traces of semen, not one scintilla of
13 semen or any such nature in the victim's panties. So
14 there was no way -- the man who fail the D.N.A. Stephen
15 Blathers, he even goes to testify that they didn't have a
16 towel or nothing. And she just threw on her clothes and
17 he threw on his and they left. They went their separate
18 ways.

19 Q Now, Mr. Blathers he testified at your trial, didn't
20 he?

21 A Yes, for the State.

22 Q He was saying -- what was he actually saying?

23 A That he seen me running from the scene of the crime.

24 Q And back to the victim, he's saying he had sex with
25 her earlier that day?

1 A Earlier that day.

2 Q Now, you made a point about semen on her, but not
3 semen in her...

4 A Her panties, she had not one scintilla.

5 Q Why is that so important, Mr. Pagan?

6 A Because everyone in this courtroom and everyone in
7 the world knows that if you have sex with a female or vice
8 versa, there's going to be at least one trace, there's
9 going to be some kind of trace in your panties especially
10 if you have sex a couple hours earlier as he alleged.

11 Q If there was semen on her; isn't that correct?

12 A Yeah, there was semen found on her and in her
13 clothes -- on the back of her clothes, which would prove
14 that he not only murdered her, but he raped her
15 afterwards.

16 Q All right. Go on to your next point?

17 A Okay. He even testified that after they finish, that
18 he shook himself off. However, if you look at the
19 exhibits on evidence processing done by the forensic
20 technician, Lisa Kiser, 2-6-98, you'll clearly see where
21 there was no blood or semen detected, that was item 10.13
22 or if you look on the trace department processing
23 inventory sheet, you'll see again that no semen was
24 detected in panties. Now, victim was found with panties
25 pulled down below her knees, clearly everyone knows that

1 there's no way to have sex with a woman and not leave one
2 scintilla of evidence. Even on page 306, Edward Proctor,
3 the pathologist, even stated that even though there was no
4 external trauma, there are times you never see trauma with
5 consensual or nonconsensual sex. Having my lawyer
6 stipulate to D.N.A. and not allowing SLED experts to
7 testify to their findings not only prejudice me, but fail
8 outside the wide range of professional competent
9 assistance like in Harris vs. Reed. In U.S. vs. Lowery,
10 it states when evidence is relevant and necessary to
11 defendant's defense court should not exclude the evidence.
12 I had hired this forensic expert, Donald Gurnt, who had
13 clear evidence, even had evidence about the murder weapon,
14 which would have showed my lawyer could have objected even
15 to the warrant because ---

16 Q That's something that you're saying the lawyer could
17 have clearly shown to the jury; is that correct?

18 A Yes.

19 Q It was different than what the State had said how it
20 went down?

21 A Yes. You know, please keep in mind that not one
22 shred of wood fragment was found on the victim's head,
23 face or body. You know, forensic expert could have
24 testified to a lot.

25 Q And let me ask you something else, Mr. Pagan,

1 Miss Cookes had indicated that in one of her final
2 statements to the police something of the nature of
3 fighting with sticks; is that correct?

4 A Yeah.

5 Q And that would imply that the sticks being wood; is
6 that correct?

7 A Wood.

8 Q So would this shown another inconsistency between
9 what happened and what she says happened?

10 A What she said happen.

11 Q Okay. Go ahead.

12 A You know, under U.S. vs. Vandike, where personal
13 forensic expert, Mr. Gurnt, could have testified where
14 prosecution was permitted to elaborate on this issue.
15 See, the prosecution kept elaborating -- after my lawyer
16 stipulated to D.N.A., the prosecution kept elaborating
17 about that I tried to rape this victim, trying to
18 corroborate Monique Cookes' statement. Now, there was no
19 objection to that, not one where it made it look like, you
20 know, I had sex with this victim. I not only murdered the
21 victim, I raped this victim, right. Even though I was
22 never ---

23 Q Let me ask you this, there was no evidence ---

24 A None.

25 Q --- about you having sexual contact with her; is that

1 correct?

2 A Not one.

3 Q Okay. Go ahead.

4 A However, the State kept elaborating on this, that was
5 their whole -- even Monique Cookes testified that I tried
6 to rape the victim, that she stood there and watched me
7 and I tried -- so when my lawyer stipulated this D.N.A.,
8 it prejudiced me completely because had he not stipulated
9 and had he let someone from SLED testify to their
10 findings, it would changed the whole theory. It would
11 showed that Stephen Blathers was the perpetrator and I
12 shouldn't even been in trial.

13 Q It would shown that you could not have --

14 A At all.

15 Q --- done the things that the State said you did?

16 A Yes.

17 Q All right. Go ahead.

18 A You know, Monique Cookes was the State's key witness
19 in this case, so when they failed to call the medical
20 personnel that would have challenged, you know, their
21 allegations like in Thomas vs. State. You know, Lisa
22 Kiser, the forensic technician, could have shown findings
23 and prove my innocence or Donald Gurnt, my hired forensic
24 expert, could have shown that there was no possible way I
25 was the perpetrator. On page 1116 lines one through 12 in

1 closing arguments and all of 1177 the trial transcript,
2 prosecution continually expresses, the D.N.A. stating that
3 it couldn't have been Stephen Blathers because he had
4 consensual sex with the victim prior. See, the forensic
5 expert and the SLED technician could have prove that there
6 was no way it could have been consensual or that it
7 happened at the time they say it happened, that it
8 happened during the time of the murder, which would have
9 shown, you know ---

10 Q Shown that it wasn't you?

11 A Yeah, so when defense counsel fail to object to this,
12 it violated my Sixth Amendment right, my constitutional
13 right. There was no way, you know, around that and that's
14 what -- so him failing to call Mr. Donald Gurnt for
15 whatever reason I don't know, right, prejudice me
16 completely and it showed they was clearly ineffective.

17 Q Now, you also talk about an issue about abuse of
18 court. Can you tell us about that?

19 A Yes. There was in this argument my defense counsel
20 fail to object improper unjust and highly prejudicial
21 remarks by the prosecution constituting a meritorious
22 Sixth Amendment claim of ineffective assistance of trial
23 counsel. In opening arguments on all of page 24 lines one
24 through eight on page 25, the prosecution puts me fatally
25 assaulting victim and then goes to giving inflammatory

1 description stating Charles Pagan then goes running off
2 into the night. His state -- you see the condition of the
3 victim you hear it so much it would sicken you. The
4 prosecution even vouches for the only so called eye
5 witness Monique Cookes. Under U.S. vs. Seranda (sic),
6 couldn't have done that. On page 180 lines one through
7 23, prosecution stops direct examination of lead
8 investigator and has investigator point out the victim's
9 family members to the jury, further inflaming the minds of
10 the jury and eliciting sympathy for the victim. Defense
11 counsel made no objection to these highly damaging and
12 prejudicial remarks by the prosecution, see State vs. Mann
13 or State vs. Guthery. The deliberate act of inflaming the
14 minds of the jury and eliciting sympathy prove prejudicial
15 to my defense and failure by my defense counsel to object
16 to these prejudicial acts clearly meets the threshold
17 requirement of ineffective assistance of counsel
18 Strickland vs. Washington.

19 On page 115 lines 19 through 25 during closing
20 arguments, prosecution states that there was an attempt to
21 have anal sex with the victim and tries to collaborate
22 Monique Cookes third statement that was given on
23 January 14th of '98. Then on page 1116, 1117, you clearly
24 see what prosecution goes on to explain why State witness
25 evidence of fowl play was on victim's body and goes on to

1 define what a forensic technician would have testified to
2 and attempt to protect this witness jury from seeing his
3 guilt.

4 Q Let me ask you, Mr. Pagan, was there any evidence
5 about any attempts by anal sex?

6 A No, and there was no objection to that, no, nothing.

7 Q Okay.

8 A On page 1077 lines 21 through 24, prosecution states
9 to the jury, you're picking up a board and crushing
10 somebody's skull. I submit that the record of the
11 proceeding was establish that a murder weapon was never
12 identified at any time during the course of my trial. On
13 page one, 1079, seven through 13, the jury once again
14 reminded of the board as the murder weapon. This was all
15 done without objection by my defense counsel. On page
16 1110 lines 22 through 24, the prosecution is once again
17 vouching for a witness stating you can take Joyce Cooper
18 to the bank, seeing U.S. vs. Young.

19 On page 1113, the prosecutor makes a remark about
20 Smitty, my brother-in-law, who supposedly told
21 investigators addressing a composite sketch that it
22 allegedly look like me. Here prosecution led the jury to
23 false information tantamount to fabricating and supporting
24 evidence as there was no Albert Smith a/k/a, Smitty, who
25 testified in the record of my trial proceeding as to what

1 he supposedly told investigators. My lawyer suppose to
2 object to that because here's a man that ain't even
3 testified and the prosecution is, you know, saying him
4 being my brother-in-law would make it look like it's a
5 true statement. U.S. vs. Morosely where it clearly states
6 that test for determining whether prosecutors conduct
7 resulted in denial of due process involves impropriety of
8 comments and prejudicial effect on defendant's substantial
9 rights.

10 On page 1124 lines 18 through 20, prosecution states,
11 Well, maybe, it wasn't Charles Pagan. To my knowledge,
12 he's the only murderer that Monique Cookes is going to
13 testify against. At that point in time, was I convicted
14 of murder or have I ever been convicted of any violent
15 crime, no. So my counsel was suppose to object to that.
16 I was deprived of my Six Constitutional Amendment, which
17 is suppose to guarantee me effective assistance of
18 counsel. At the minimal, my trial counsel was obligated
19 by the reasonable standard to at least object to these
20 multiple prejudicial and proper remarks for preservation
21 of record for appellate review. The record is
22 transparently clear in showing an unprofessional,
23 unreasonable and ineffective assistance of my trial
24 counsel, see Davis vs. State, also see Matire vs.
25 Wainwright. With counsel's failure to object to improper

1 comments that violated the defendant's Fifth Amendment
2 right was found to constitute substantial performance in
3 violation of defendant's Sixth Amendment rights. It is
4 ever for government to vouch for its own witness.
5 Impermissible vouching occurs when prosecution action such
6 that jury could reasonably believe the prosecutor is
7 indicating personal belief and credibility of witness
8 which they was doing. They were vouching trying to make
9 her statements look like they were true, see U.S. vs.
10 Lewis, Fourth Circuit case 1993. Here the solicitor
11 clearly vouch for its witness and defense counsel's
12 failure to object to this impermissible voucher was
13 clearly ineffective assistance of counsel, that was
14 extremely prejudicial since the State case rested
15 exclusively on the credibility of its witness, see
16 Matthews vs. State.

17 I was constitutionally denied the right to effective
18 assistance of trial counsel failure to object to the
19 prosecution knowing use of perjured testimony to obtain a
20 conviction, here they say my brother-in-law said this and
21 that. I was never guaranteed my constitutional right to
22 confront this witness. My lawyer never objected to even
23 that statement being made. That false testimony could
24 have affected the outcome of this trial, see U.S. vs.
25 Badden or Miller vs. Pate or State vs. Coleman.

1 Accordingly as this was a case with no murder weapon,
2 evidence of D.N.A. linking someone else as the
3 perpetrator, no fingerprints, the State case against me
4 only consisted entirely on credibility of this one so
5 called witness who gave three different stories on what
6 they allegedly saw. So when counsel didn't object to
7 this, to all this prosecutor misconduct, it made her look
8 credible. That's the only theory that the jury was
9 hearing that Monique Cookes -- what Monique Cookes was
10 saying.

11 Q Was what she was saying?

12 A Yeah, so I had defense. It's like whatever the
13 prosecution said that's what was done at trial which
14 denied me my constitutional right. Therefore, the State
15 to present a wooden board into evidence which was never
16 proven to be the murder weapon or the actual weapon that
17 was used was very prejudicial. State brought, I think,
18 it's exhibit I don't -- State Exhibit 46. State presents
19 a wooden board and said it was a weapon similar to this.
20 Even the pathologist said it was a weapon similar to that,
21 but that wasn't the actual murder weapon. When counsel
22 had knowledge that it wasn't even a wooden board that was
23 use as the murder weapon, which could have turn the whole
24 trial all the way around, so it prejudice me wholly. The
25 Fourth Amendment could not tolerate state criminal

1 conviction secured by the knowing use of false evidence,
2 see Mooney vs. Hollahan. Even the pathologist testified
3 on trial transcript page 293 lines 21 through 25, that the
4 State Exhibit 46 was a weapon similar. For the State to
5 introduce such a weapon was prejudicial, and defense
6 counsel failure to object to such introduction fail way
7 under effective assistance of counsel, which is a Sixth
8 Amendment guarantee and fail way up under Strickland vs.
9 Washington rule. Counsel even fail to question his
10 forensic expert, see page 309 the pathologist. There was
11 never no cross-examination where the pathologist testified
12 when he had testified could have been consensual or
13 nonconsensual sex, should have cross-examined him. Should
14 have -- when they had knowledge that it wasn't a wooden
15 board and brought the theory to the pathologist,
16 Mr. Edward Proctor, couldn't it have been the Suburban,
17 the tire to the rim of the Suburban which had a lining
18 like he was outlining that a board would have that cross.
19 You know, it change the whole theory of the case. When
20 the Suburban truck all of a sudden disappeared, nobody
21 knows what happened to it. You know, counsel ain't object
22 to none of that. All of the prosecutors misconduct, my
23 trial counsel was very ineffective for failing to object
24 to the lack of remorse argument as in Phosite vs. State.
25 You know, this prosecutor misconduct was very large in my

1 case, right. And it was never not one objection to this.
2 You know, the prosecution even went on to beat in the
3 courtroom with a stick and it wasn't even an objection to
4 that.

5 Q Any other issues?

6 A Yes, yes, yes. I would also like to elaborate on the
7 first two that you had move me off them issues, right.
8 There was many things that I would want Your Honor to see
9 when he evaluate ---

10 Q Well, go back to it.

11 A Well, I need to go back cause like you say I only get
12 one shot at the apple, Your Honor.

13 THE COURT: Well, we're going to keep it within
14 the realm of P.C.R. issues.

15 THE WITNESS: Yes, sir.

16 BY MR. BROOKS:

17 Q It has to be pertinent to what your lawyer did or
18 didn't do.

19 A Yes. I just -- I had wanted to point like when the
20 lawyer did not, you know, object to like her first
21 statement when she told the investigator that it was a
22 Puerto Rican with a round face. You know, he could have
23 showed or tried to even impeach her. You know, not one
24 time was even December 17th after lead investigator ride
25 from Columbia with Monique Cookes after she gave a

1 composite sketch. If you see exhibit 1-F, you'll see it
2 doesn't even look nothing like me. He was given a line up
3 with me in it that he had no part of putting together. He
4 didn't even know where this line up came from, see page
5 144 and 145.

6 THE COURT: You talking about your lawyer?

7 THE WITNESS: No, the investigator.

8 A And there wasn't an objection to that. However, on
9 the 18th of December when lead investigator says he heard
10 my name for the first time, you know, he stated that my
11 brother-in-law, Albert Smith, who owns an establishment,
12 was shown this composite sketch Exhibit 1-G. It said
13 looks like me if see page 148, 149, you know, counsel
14 should have objected to this because Albert Smith never
15 testified, period. I don't even know to this point if his
16 name was on the witness list.

17 Q But you're pretty sure he did not testify?

18 A At all certain of that, right. The line up also
19 tainted the in court identification because, yes, if
20 Monique says in court, yeah, that was him. She already
21 knows that she lied these few times, was never picked.
22 Okay, I'm going to say that's him because that looks like
23 that picture they told me to point out, you know. The
24 suggestive spread met all the requirements for a motion to
25 suppress the identification evidence, which would have

1 bolstered defense claim of innocence as in State vs.
2 Moore. From page 498 to 502 in the transcript of trial,
3 this so call eye witness states she even been drinking and
4 smoking marijuana and the investigators were the one who
5 told her it was a Puerto Rican. So it ain't like she
6 picked it out herself. Counsel was suppose to impeach the
7 witness right then and there because she admitted that it
8 wasn't her. She even admitted that she just signed the
9 state exhibit, that she didn't put the number or the
10 picture that she picked me. She said she just signed it.
11 I think that's on.

12 MRS. THAMES: What page is that on?

13 THE WITNESS: I'll tell you right now. I'll
14 point that out for you. I don't have the exact page
15 written down here. I might have it in my amendment and
16 adamen (sic).

17 MRS. THAMES: We can move on I can address it in
18 cross-examine.

19 A For the State to decide whether identification
20 testimony is officially reliable evidence can I see -- oh,
21 upon which to conclude that the defendant is the person
22 committed the offense charged, of course, should evaluate
23 the testimony of the witness in light of the factors of
24 considering credibility and that's in Neal vs. Bigger and
25 U.S. vs. Wade. If necessary or appropriate for purposes

1 of clarity, the judge may comment on any evidence relevant
2 to any of the following factors the witness opportunity to
3 view the person, the witness degree of attention of the
4 perpetrator, the accuracy of the description witness gave
5 prior to identifying, the degree of certainty express by
6 the witness in making identification, and the length of
7 time between the witness observation and the offense and
8 first identification in the inconsistent statements which
9 we all know. In State vs. Whitney, which state under
10 certain circumstances a witness may be impeached by proof
11 of prior conduct, that's when I went on that case when I
12 was researching that in State vs. Green, where when a
13 witness statement relate to material facts and testimony
14 extrinsic evidence, maybe used to prove the prior
15 inconsistency to the allegation of the witness, that's
16 when I feel like my attorney should have impeached her. I
17 made a motion to impeach or brought out certain things
18 about that to impeach. All right, the next issue I'm
19 going to bring up ---

20 Q Did they ever try to exclude her from testifying?

21 A No, never. They just basically let the prosecution
22 do what they wanted to do which was very hurtful. I had
23 more trust in them than that. The abuse of discretion by
24 the trial court, I contend that my Sixth and Fourteenth
25 Constitutional Rights were violated when the trial judge

1 abused his discretion of court when on two different
2 occasions he entered the jury room during trial. On trial
3 transcript page 323 and 324, in the jury room, a juror
4 asked the judge can they take notes. The judge says -- he
5 responded by stating he feels this is not that kind of
6 trial where he feels taking notes are needed. Here's a
7 person facing a life sentence for something he didn't
8 commit, he's claiming his innocence and this is not this
9 kind of trial. Okay. This was a case that carried a
10 penalty of life. As an officer and being the highest
11 officer of authority, he is entitled to safeguard the
12 scales of justice to secure my constitutional rights.
13 Then a juror asked the judge about his personal life
14 asking was he the same judge who played college
15 basketball. This is a time where a man's life is in
16 jeopardy is at stake. This is improper and unethical
17 behavior between the judge and jury should not have been
18 allowed under judicial cannon of ethics. No conversation
19 is suppose to occur between judge and jury off the record
20 in the jury room outside of trial for any defendant where
21 the defendant or his attorneys are not present. How do we
22 know that really existed?

23 On page 695 of trial transcript through page 697, the
24 judge issues a statement after he was once more improperly
25 in the jury room and he puts on record that he was

1 supposedly discuss between them. However, when ask the
2 jury if that's what was discussed, they gave no response.
3 But on page 697 line 24, this unfair and unprinciple
4 fashion only worked against me and work for the
5 prosecution.

6 If you see on page 923, eight to 18, the trial judge
7 even goes as far as telling a joke on what he did during
8 the weekend. Here I am an innocent man on trial for a
9 charge which cost me my constitutional right of liberty
10 for the remainder of my life, and the trial judge and jury
11 light heartedly abandon their oath for an insincere format
12 of joking and personal conversation.

13 In the South Carolina rules of criminal procedure,
14 Rule 14(c) protection of rights it is stated in all cases,
15 the trial judge shall ensure that defendant's right under
16 state and federal constitutions to a fair trial by jury
17 are preserved. The jury returned a verdict of guilty in
18 order to remain in the good graces of the judge and not
19 because I was proven guilty beyond a reasonable doubt. As
20 did circus and fiasco which transpiring during my trial,
21 not once did my attorneys raise no objections or even ask
22 for a mistrial to preserve these rights for an appeal.
23 Trial judge also abuse his discretion of court when
24 allowed the prosecution to introduce into trial an Exhibit
25 No. 46, which went again up under no objection.

1 The piece of wood when it was never a murder weapon
2 introduced as a murder weapon. See page 292 lines 21
3 through 25, and page 293 the whole page, even though
4 defense counsel never afforded an objection as was
5 required, the Court has a burden to ensure that a fair and
6 impartial trial is provided. Yes, counsel should had
7 never allowed this wood to be introduced knowing he had
8 evidence proving that no piece of wood was a murder weapon
9 and could have refuted prosecution's theory. Counsel
10 prejudice me by allowing this. However, the trial judge
11 also had a duty not to allow this.

12 My next argument the insufficient indictment. Here
13 trial counsel when faced with the opportunity to challenge
14 the defects and insufficiencies with my indictment fail to
15 perform as an advocate and violated my Fifth, Sixth and
16 Fourteenth Amendment to the United States Constitution.
17 First and foremost, there was never a weapon found or
18 medically proven to be the cause of victim's death. Even
19 the forensic expert on page 293 lines 24 and 25 stated
20 that it was something similar to a wooden board, also read
21 trial transcript page 294 line 11 through 20. In the face
22 of this indictment, is what the jury sees. They're under
23 the knowledge that, okay, a wooden board kill this victim.
24 Not once did defense attorney even object to this, object
25 to the introduction of this even to preserve it on trial.

1 Without an indictment, there is no trial. You know, so it
2 would change the outcome of this completely. One of the
3 burdens of any trial counsel is to be absolutely positive
4 that each step of his defendant's walk into court is
5 protected. The scrutiny of the warrant in the indictment
6 is the first step that must be taken before the defendant
7 right -- trial rights begin. South Carolina Code
8 Subsection 17-19-90, states that every objection to any
9 indictment for any defect apparent on the face thereof
10 shall be taken by damar (sic) or on motion to squash
11 (sic) such indictment before the jury shall even be sworn
12 and not afterwards.

13 Also, the elements for a murder indictment must
14 clearly set forth place as an essential element to murder.
15 South Carolina Code 17-19-30 specifically mandates the
16 place to specify where a victim died, here they just got
17 Florence County. Where in Florence County, it suppose to
18 specify. You know, which she was found across the street
19 from Stephen Blathers' home. You know, person who D.N.A.
20 all over the body. You know, clothes was found in his
21 backyard. All this, you know, the time and place should
22 have been on such indictment, it wasn't. As in U.S. vs.
23 Carr or State vs. Blatant, in the Winds vs. State, the
24 opinion number 25958 by the Supreme Court justice filed on
25 March 28th 2005, looked to claim that the Winds murder

1 indictment lacked the place, the location, the exact
2 location where the assault occurred and or the place
3 where the victim met his demise.

4 In my indictment 98-GS-21-855, which was faulty due
5 to the false murder weapon and place to where said murder
6 occurred clearly violated my South Carolina and U.S.
7 Constitutional Rights for even being presented. And my
8 counsel tremendously failed to safeguard these rights.
9 Had counsel challenge said indictment, they would have
10 never even been a trial.

11 Also, counsel failed tremendously because he had
12 knowledge that no wooden board was even a murder weapon,
13 so to allow this to happen or to be shown on the face of
14 an indictment was truly faulty. Even autopsy reports
15 clearly show the victim never even had not one piece of
16 wood or not one shred of wood on them, so how can you beat
17 somebody with a wooden board and not have not one piece of
18 wooden board on them. And that's how my counsel failed
19 all the objections between the prosecutor misconduct or
20 inconsistency of statements letting statements being
21 introduce, unconstitutional line up, which shows I'm the
22 only Hispanic, allowing the judge to make jokes and even
23 not let the jury take notes, you know, when they should
24 have especially this as Judge Russo said looks like it's a
25 confusing case and back and forth, should have been given

1 an opportunity to take notes. With all that, you know, I
2 had no kind of safeguards. It's like I went in there not
3 even an American citizen. You know, I had no U.S.
4 Constitutional Rights protected. I had no South Carolina
5 Constitutional Rights protected. It basically was do what
6 you want with Charles Pagan, you know.

7 MRS. THAMES: Your Honor, I object at this
8 point. I don't think these are ineffective assistance
9 claims he's raising.

10 THE COURT: Sustained.

11 A That's how I was clearly...

12 Q Any other issues about Mr. Cox or Mr. Redmond?

13 A No, not right now.

14 MR. BROOKS: Answer any questions of the
15 attorney general.

16 MRS. THAMES: May it please the Court.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MRS. THAMES:

20 Q Just a few questions, Mr. Pagan. Your attorneys did
21 cross-examine Miss Cookes, didn't they?

22 A Yes.

23 Q For some 75 pages or so?

24 A Yes.

25 Q And it was brought to the jury's attention that she

1 made three separate statement; isn't that correct?

2 A Yes.

3 Q And it was brought to the jury's attention that the
4 first time she said she didn't identify the person; is
5 that correct?

6 A Yes. However, as a defense attorney, he was suppose
7 to impeach said witness even bringing the three statements
8 allowing them to go in. When the first statement a
9 witness makes, is suppose to be the most accurate, you
10 know. And allowing her ---

11 Q What statement that she makes is suppose to be the
12 most accurate?

13 A The first statement she gave, that's suppose to be
14 the one she has knowledge of truly what happened.

15 Q But that statement was before a jury, wasn't it?

16 A Yes.

17 Q And didn't your attorneys ask her why didn't you tell
18 the first time?

19 A Yes, and she said she lied.

20 Q Okay. She say why she lied?

21 A She claim she was scared.

22 Q And did you say that she was told to say that there
23 was something about an Hispanic individual in a line up?

24 A Yes.

25 Q And you don't recall that she testified that she told

1 them that?

2 A That she testified that she told them what?

3 Q She told the officers that it was a Hispanic or
4 Puerto Rican or something?

5 A No, because if you look at the third statement which
6 I have here, I'm gone try to pull out real quick before
7 you even find it. She was picked out. She even said --
8 no -- I think Mr. Redmond was the one who asked her, You
9 didn't know anything about Hispanics? She said the
10 officers told her or something. I don't know the exact
11 words to that.

12 Q Okay. So if the transcript reflects that she was ask
13 you gave them the information that he was Puerto Rican and
14 she said, yes, you would dispute that?

15 A Yes.

16 Q For your information on 468, Miss Cookes was asked
17 ---

18 THE COURT: Give me a chance. All right, 468
19 what line?

20 MRS. THAMES: 648, Your Honor, line 11.

21 THE COURT: All right.

22 BY MRS. THAMES:

23 Q You have your transcript up there, Mr. Pagan?

24 A No, I don't ma'am.

25 THE COURT: Does anyone have a copy for Mr.

1 Pagan?

2 BY MRS. THAMES:

3 Q Do you dispute that the transcript reflects she was
4 asked you gave information including that he was Puerto
5 Rican and 6 foot 1, dark brown, gold tooth. And she said,
6 yes, sir. Meaning she gave that information to officers
7 as to oppose to the officers telling her pick out the
8 Puerto Rican person.

9 A Naw (sic), the police officers told her -- see when
10 Monique Cookes testified on the stand, she gave four or
11 five different statements on the stand, right. She gave
12 four or five different accounts. She was being coached
13 tremendously.

14 Q She was being coached while she was on the stand?

15 A Yes, tremendously.

16 Q Oh, okay. But all those statements that were
17 inconsistent, the jury heard those, right?

18 A Yeah.

19 Q Okay.

20 A However, Mrs. Thames, like I was trying to quote
21 before you was saying that it's not a P.C.R. issue, which
22 I'm almost positive it is about the inconsistent
23 statements. It's the degree -- it's the first statement
24 that a person gives that suppose to be accurate. Here
25 when she's going to jail with something that she gives the

1 third statement, that all of sudden its me, see I don't
2 have a transcript.

3 Q So are you trying to say that once you gave one
4 statement, she couldn't give any more statements? Is what
5 you're trying to say?

6 A Yeah, but when you admit to lying to say, okay, I
7 lied this time or admit to saying that, oh, I don't
8 remember that part or I didn't say that part.

9 Q What is your understanding of what impeaching a
10 witness means?

11 A When a witness lies on the stand or you have evidence
12 showing that contrary to what a witness is saying, you
13 present it to the jury.

14 Q And didn't that happen when they presented all those
15 statements?

16 A No, they didn't try to impeach the witness. They
17 ain't even make a motion to impeach the witness. There's
18 no way ---

19 THE COURT: Let me just clarify, there is no
20 motion to impeach a witness. A lawyer through
21 cross-examination can impeach a witness' testimony. And
22 what that means is to discredit that witness. And I'll
23 give an example. I've not read this transcript, but if a
24 witness gives a statement and then they later give a
25 statement that is not consistent or is different from that

1 first statement, then a lawyer by presenting the two
2 inconsistent statements and saying something along these
3 lines, Isn't it true that on this date you said this?
4 Yes. But then later on, you gave a different statement;
5 isn't that true? Yes. That's impeaching a witness. That
6 is exposing to a jury, the fact that a witness has either
7 change their story or has confuse their story or has told
8 different stories, that's impeaching a witness.

9 A Okay, Your Honor, question if I may. When she gives
10 all right and you point out the facts or the said attorney
11 point out facts and she says, okay, this story this and
12 the prosecution cross-examined again on recross or
13 whatever and she says, No, it was this way, this way, this
14 way. What is that? Don't you make a motion to show the
15 jury where she been given all these different statements?

16 THE COURT: It's not a motion. My understanding
17 from what I have heard here today is that those three
18 statements were put before the jury. And if they're
19 different, I haven't seen the statements. But if they're
20 different, then the jury is aware that she's given
21 different statements. And don't get me wrong now, I'm not
22 making any comments about how effective the impeachment
23 was or wasn't because like I said, I haven't read the
24 transcript at this pont. I just want to clarify that
25 there is no motion to be made to impeach a witness. You

1 just do it, if a lawyer does it through cross-examination
2 and there's countless ways of doing it, there's not one
3 way to impeach a witness. There's countless ways of doing
4 it. And I'm not making any comments or judgments on how
5 it was done here because I haven't had an opportunity to
6 read this yet.

7 THE WITNESS: Your Honor, do you have the
8 amendment and adamen (sic) up there with you?

9 THE COURT: I've got a lot of paperwork. I
10 haven't had a chance -- right now, I'm looking at the
11 trial transcript. I got an amend and addendum.

12 THE WITNESS: Yes. With exhibits? It was
13 suppose to be a total of 113 pages.

14 THE COURT: Now, what I have is I haven't
15 counted them. I don't think it's 113 pages. I've got a
16 lot of paperwork up here, so I don't know what all I've
17 got because I haven't, obviously, had an opportunity to go
18 through all of that. I do have some exhibits here.

19 MRS. THAMES: I believe everything should be in
20 that packet. If it's not, I'll be happy to supplement.

21 THE COURT: Sure, it probably is, like I said,
22 I've got a ton of stuff up here.

23 MRS. THAMES: May I continue?

24 THE COURT: Yes, go ahead.

25 BY MRS. THAMES:

1 Q Mr. Pagan, you testified that trial counsel in not
2 cross-examining, Dr. Proctor ---

3 A Edward Proctor.

4 Q --- didn't bring out that the doctor would have
5 testified that the sex she had with Stephen Blathers was
6 not consensual is that what you testified?

7 A Yes.

8 Q Didn't he ---

9 A No, he said ---

10 Q Can I ask my question? Didn't he testify that he saw
11 no evidence of traumatic injury?

12 A Yes.

13 Q And didn't he also testify that a lot of times cases
14 you cannot tell whether it was consensual or not?

15 A Yes, whether it was consensual or nonconsensual.

16 However, Mrs. Thames, him being a forensic pathologist, he
17 could have showed that what had a question been asked such
18 as is there anyway that a person can have consensual sex
19 with a person and not leave semen, when even the person
20 admits that they didn't have gloves or anything. You
21 know, no questions were asked, so, yes.

22 Q Did anybody ever testify that Stephen Blathers
23 ejaculated inside ---

24 A Yes.

25 Q The victim ---

1 A He did.

2 Q Okay.

3 A Stephen Blathers did. He even went back to saying he
4 was dating the victim since 1980's. And she was 20 years
5 old in 1997, so that means he was raping her in the '80's.

6 Q And you don't think that having Mr. Blathers D.N.A.
7 on the victim's body helped your case?

8 A Had it been brought out.

9 Q The jury didn't hear that?

10 A They just heard the stipulation. Had they heard what
11 the medical or SLED people had done, Lisa Kiser from SLED,
12 which she would have reported to all her findings and
13 could have been cross-examined on the percentage or the
14 rates of how it got there or could it not have been like
15 they was saying Stephen Blathers had sex with her earlier
16 that day. If she would have been asked forensic
17 pathologist, is could that have been true. And she could
18 have testified like it was no way because even you as a
19 woman ---

20 Q How can she testify that he didn't have sex with her?

21 A Consensual sex.

22 Q You testified he did.

23 A Consensual sex.

24 Q How can a forensic pathologist who's just examining
25 the evidence ---

1 A Clothing. How the victim was found, she was found
2 with her panties pulled all the way down to her ankles or
3 to her knees. She could have showed that her findings
4 where they found the semen at. They found the semen if
5 looked at the thing in the back of her pants on by the
6 belt part, none in the panties. Yeah, she could have
7 testified to the findings.

8 Q Okay. And did you also testify that your trial
9 counsel should have exclude Miss Cookes from testifying at
10 all?

11 A Yes, without Miss Cookes there wouldn't even been a
12 trial.

13 Q She was an eye witness, wasn't she or ---

14 A An alleged eye witness.

15 Q Is there is a conviction so... According to her
16 testimony, she was an eye witness; correct?

17 A Yes.

18 Q Okay. And this Mr. Gurnt that you hired ---

19 A Donald Gurnt.

20 Q Is he here today?

21 A No.

22 Q Okay.

23 A That was the reason I been putting all these motions
24 and motions to get the witness lists that I been filing
25 from attorney to attorney to receive, that I even have a

1 copy here. I even sent you a copy twice.

2 MRS. THAMES: Beg the Court's indulgence for
3 just a moment, Your Honor.

4 THE COURT: Yes, ma'am.

5 (WHEREUPON, a pause in the proceedings.)

6 MRS. THAMES: That's all I have for Mr. Pagan,
7 Your Honor.

8 THE COURT: All right.

9 MR. BROOKS: No other questions.

10 THE COURT: Thank you, Mr. Pagan, you may return
11 to your seat, sir. Thank you.

12 (WHEREUPON, the witness leaves the witness
13 stand.)

14 THE COURT: Anything further at this time, Mr.
15 Brooks?

16 MR. BROOKS: Beg the Court's indulgence.

17 (WHEREUPON, a pause in the proceedings.)

18 MR. BROOKS: We would call Kernard Redmond to
19 the stand.

20 THE COURT: Mr. Redmond, if you would come
21 around and be sworn please, sir.

22 THE CLERK: Please place your hand on the Bible
23 and raise your right hand. Do you swear or affirm the
24 testimony you give in this case will be the truth, the
25 whole truth, and nothing but the truth so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated and state your name
3 for the record.

4 THE WITNESS: Kernard Edward Redmond.

5 WHEREUPON,

6 Kernard Redmond,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. REDMOND:

10 Q Back during this time, you were defending; is that
11 correct?

12 A That's correct, yes.

13 Q And your office, who you were with, were hired by
14 Mr. Pagan?

15 A That's correct.

16 Q And you tried this case; is that correct?

17 A Yes, I did.

18 Q Did you guys hire Don Gurnt?

19 A We hired -- actually, we hired Marion Brown Detective
20 Agency. Now, I know Marion Brown has worked with Don
21 Gurnt in the past and I know Don. As a matter of fact in
22 other cases, I've worked with Don both as a private, and
23 actually as a prosecutor, I've gone up against him as
24 recently as last year. And the reason I wanted to address
25 that is some of the things that Mr. Pagan was saying that

1 Mr. Gurnt can do. Actually, he would not be qualified to
2 do because I am familiar with Mr. Gurnt. And like I said,
3 he testified in a pretty big case for the defense a year
4 ago. As a matter of fact, almost exactly a year ago over
5 in Dillon. So I'm very familiar with Mr. Gurnt in what he
6 can and can't do.

7 Q Now, can you surmise the State's case against
8 Mr. Pagan?

9 A Yes, actually based on Monique Cookes, who as he
10 indicated gave three different statements which, of
11 course, were dealt with on cross-examination. They pretty
12 much using her statement went after Mr. Pagan, an allege
13 that Mr. Pagan was the perpetrator based on the lineup as
14 he indicated but based on her testimony. But then there
15 was another thing and he didn't mention this. And I'll
16 just be honest with you, that was the turning point in
17 trial in my opinion.

18 Q Which was?

19 A And that was I think Miss Tameka Lambert, if I
20 remember right. That was a situation where -- let me just
21 go back. You had ask me about the State's theory.
22 Obviously, the theory based on Monique Cookes and I forget
23 his name but ---

24 Q Mr. Blathers?

25 A Blathers, base on that. When Charles first came to

1 me when I got involved in the case, Charles was living in
2 Marlboro County. I told Charles to stay out of Florence
3 County. I told him. Jim told him. The detective, our
4 private investigators told him. Well, subsequently and I
5 can't remember when Charles ends up getting a failure to
6 stop for a blue light. Well, what came out of that was --
7 and we didn't know about it until afterwards and it will
8 be in the transcript. All this will be in the transcript,
9 Your Honor. But what came out of that was this Tameka
10 Lambert. And I remember when we were doing jury selection
11 and they call the witness list and we asked who is this
12 Tameka Lambert. So after they go through everything else
13 and they get to Miss ---

14 THE COURT: Excuse me, the failure to stop, he
15 picked up that charge in Florence County?

16 THE WITNESS: This is in Florence County. This
17 is while he was out on bond after he had been charged with
18 murder, so this is a subsequent failure to stop.

19 THE COURT: Y'all advised don't go into Florence
20 County, but he picked up a failure to stop here in
21 Florence County?

22 THE WITNESS: In Florence County.

23 THE COURT: All right, go ahead. I just want to
24 make sure that correct, the time and space right.

25 A Well, the net effect of that was another witness

1 developed, that was, I think, her name was Tameka Lambert.
2 And what she testified to was in essence corroborating
3 what Monique had said. Because I think Monique's
4 testimony was that Charles had made a comment basically
5 threatening her. Well, this Lambert lady says that when
6 Charles get out -- cause they didn't apprehend him at the
7 scene, but she claim she was there. She gave the police a
8 statement. She claims that Charles told her in essence
9 the same thing I will do you -- something to the effect
10 I'll do you like Miss Cookes something to that effect.
11 Monique Cookes name was called. That was a body shot to
12 us because we didn't have anything on it. And, of course,
13 under the rules and we objected to it very strongly, but
14 under the rules, once she testified, that's when they
15 provided us with that statement. We did not know anything
16 about that and because he had not been upfront with us
17 about having been in Florence County, we had no clue that
18 that was going to come back and literally drop kick us
19 regarding our defense. So -- and again, I think in
20 looking at the transcript when you look at how the trial
21 sort of progressed, that was the turning point in the
22 trial and I have no doubt about that. That was the
23 turning point in the trial because in essence in a lot of
24 ways it corroborated Monique, which is the last thing we
25 wanted to do.

1 Q So basically Monique was the star witness of the
2 State?

3 A Absolutely.

4 Q Who had given three ---

5 A Inconsistent statements, that's correct. That's
6 correct.

7 Q And there was D.N.A. of Blathers?

8 A Blathers, that's correct.

9 Q On the victim?

10 A Exactly.

11 Q No question that was brought up in trial?

12 A It was brought up in trial. The stipulation was done
13 because at that point -- and he had mention this, Blathers
14 had actually given an inconsistent statement. Then the
15 D.N.A. came. What he didn't mention was I was the one
16 that push for the D.N.A. when talked about the D.N.A. that
17 we had submitted. I had push for the D.N.A. to be done on
18 Mr. Blathers because initially the D.N.A. had not been
19 done regarding Mr. Blathers. And so in talking with the
20 State, I raise that as an issue. Well, they ended up
21 having the D.N.A. test done. Low and behold, it turns out
22 to be Mr. Blathers. That is something, obviously, we
23 thought would work in our favor and the stipulation was
24 done to make it clear that in fact Stephen Blathers is the
25 person who's D.N.A. had been found. And oh, by the way,

1 Stephen Blathers had lied when he gave his statement. He
2 had given some inconsistent testimony that that D.N.A.
3 test actually brought out and showed he was lying. So
4 from a strategic standpoint, I don't see where we had done
5 anything wrong in that regard. In my opinion, it helped
6 us.

7 Q Now, let's go back to this stay out of Florence
8 County. He was out on bond?

9 A He was out on bond on the murder charge and we begged
10 Charles, his wife even. When they use to come to the
11 office -- I don't know whether they still married,
12 obviously, but Gloria use to come down to the office
13 frequently, stay out of Florence County. The only time he
14 would come to Florence County was with her to see me or
15 the investigators, that was it as far as we knew. Did not
16 know any different. As matter of fact, when he got the
17 failure to stop, we didn't have anything on it.

18 Q Let me ask you this, let me ask you this, explain to
19 me about why not come to Florence County?

20 A Because we were concerned with him being out on bond
21 for murder, we were concern that something would happen.
22 I mean, there were a lot of things and a lot of people
23 talking around there in East Florence concerning the whole
24 incident and whatnot. And from his standpoint, the best
25 thing for him was stay out of Florence County because, you

1 know, we manage to get him a bond obviously. And if my
2 memory is correct, I can't remember if he was on house
3 arrest or not, but our main concern was stay out of
4 Florence County. You'll got the house in Marlboro County,
5 you need to stay in Marlboro County but that kind of went
6 up in smoke. And it ended up affecting us in this trial
7 cause it gave the State a witness that in essence had the
8 effect and was used to corroborate Monique.

9 Q Did you check out or have this witness checked out?

10 A We didn't know. See that's the thing, I'm getting at
11 because when we say we had nothing -- and during the
12 course of the trial and I think Mr. Cox may have led the
13 objection on this. When she testified, we objected
14 because we didn't have anything on the failure to stop and
15 in looking at the rules and the judge ruled there was a
16 big discussion about this and whether or not her testimony
17 should be admitted, that has been upheld on appeal
18 apparently, but we preserve that issue obviously. But we
19 didn't have anything. When I say nothing, I mean nothing.
20 So when I asked Charles, Charles denied basically that it
21 was him because they did not get him at the scene. He was
22 served with the warrant subsequently. So the way it was
23 put to us was, Oh, well, that's just them trying to pile
24 on me. Well, then we find out during the trial that -- I
25 remember going back into that conference room and Charles

1 got to remember this because that's probably the maddest
2 that I've ever been with a client. Because when I went
3 back there, I threw the file down and I think Jim was with
4 me. I threw the file down. And I'm not going to repeat
5 what I said, but at that point, he finally admitted that
6 it was in fact him that was in that car with Miss Lambert.
7 And that's when I got mad because the whole time we had
8 never been told that. And like I said, it came out of
9 left field. And even in the newspaper which had been
10 covering it, it was obvious that that was a body blow and
11 turning point in this case. So like that scene, I
12 remember vividly and it did catch us off guard. We
13 objected, but as you know under the rules, again, the
14 State does not have to -- of course, now I'm a prosecutor,
15 the State does not have to give a witness' statement to
16 you until after that witness testifies and that's exactly
17 what they did. And so I obviously, it was upheld and so
18 like I said that was a body shot, that was a body shot to
19 us.

20 Q Was that -- you had testified earlier about pushing
21 to have Mr. Blathers D.N.A. taken?

22 A Uh-huh.

23 Q And tested?

24 A Exactly.

25 Q Was that as a part of suggestion from Don Gurnt?

1 A Actually, if -- and I can't remember who was involved
2 in that particular discussion, but I was the one that
3 actually went to -- I think, Bob Wells, was handling at
4 that time if I remember right. Because it ended up going
5 to Barney Giese, Barney Giese's office with John Meadors
6 and Knox McMahon. I cannot remember exactly, so I don't
7 want to say one way or the other because I can't remember
8 exactly, but I do know that when I went and I took that
9 issue, I was actually somewhat surprised that they
10 followed up on it. And it ended up working in our favor.
11 I mean, that was one of the few times where the D.N.A.
12 test in pushing it that in our opinion is like, woe, this
13 was a gift. This is exactly what we needed and then boom.
14 But as far as sitting here telling you for sure who was
15 involved in that discussion, I'm not gone lie to you I
16 honestly don't remember I can't?

17 Q So you can't -- it might have been Don Gurnt pushing
18 that or push you to do that, you just can't say?

19 A I can't say for sure and I don't want to lie. I
20 can't say for sure.

21 Q Can you explain the getting Mr. Pagan to agree to
22 stipulate?

23 A Well, I mean, we discussed it amongst ourselves
24 because, of course, Mr. Cox was there, Mr. Pagan was there
25 and that's something we discussed when it came up about

1 the fact their doing a stipulation. Because there was --
2 I think if I remember right there was some lengthy
3 discussion on how to word the stipulation, to make sure it
4 was worded in such a way that it was clear, that it was
5 Stephen Blathers D.N.A. that was on the victim. And that
6 Charles' D.N.A. was absent from the victim. But as far as
7 the exact discussion of the transaction that took place, I
8 can't remember that, but I do remember it was discussed
9 with everybody. And he was there and he was involved in
10 all of those discussions and I think Al might have been
11 there too because the investigator Marion Brown son, Al
12 Brown, was in court during the whole trial actually, so
13 usually it would be the four of us that were back there
14 talking like I said. He was there when I actually had my
15 tirade with Charles.

16 THE COURT: Let me clarify, the stipulation
17 we're talking about is ---

18 THE WITNESS: The D.N.A.

19 THE COURT: You stipulated that the D.N.A. found
20 on the victim's person was that of Blathers?

21 THE WITNESS: Exactly, yes, sir.

22 THE COURT: And it in fact was?

23 THE WITNESS: And it was.

24 THE COURT: Okay.

25 BY MR. BROOKS:

1 Q You guys did not bring in a person from SLED to talk
2 about where in relationship this D.N.A. was found in the
3 victim, did you not?

4 A No, that was -- and actually that was one of the
5 reasons for the stipulation because we wanted to make sure
6 the stipulation was worded in such a way that from a
7 strategic standpoint it covered what we needed to have
8 covered. And then again putting it in the totality of
9 everything with Stephen Blathers actually having the
10 opportunity to testify and being able to expose the fact
11 that he had lied. Then when you put that with the
12 positive D.N.A. to him, obviously, from a strategetic
13 standpoint we felt that we had accomplished what we wanted
14 to accomplish.

15 Q Was end discussion about no semen found on her
16 clothing or in her panties?

17 A I can't remember. I would have to look, I honestly
18 can't remember. I can't remember.

19 Q Could the SLED agent technician, couldn't she have
20 testified to that?

21 A And again without having seen the stipulation and I
22 would have to defer with whatever's in the record, to
23 defer to whatever's in the record. I can't remember,
24 that's been so long ago and I don't remember. Again, from
25 a strategic standpoint with from what I can recall from a

1 strategic standpoint, obviously, the fact that again the
2 D.N.A. found on -- and the explanation as to when the sex
3 with Mr. Blathers occurred, keep in mind, all that came
4 out after the revelation of the D.N.A. because that wasn't
5 his story to begin with. It changed after the revelation
6 of the D.N.A. and that was something that we attacked, so
7 it's not like we walked in there and just, you know,
8 handed this case away by any stretch of the imagination
9 regardless of what Mr. Pagan thinks. It was a lot of hard
10 work that went into this case. I mean, even going into
11 crack houses. I mean, we were in crack houses looking for
12 Monique Cookes before the trial. So, you know, it was --
13 I mean, we did all we could to try to, obviously, help
14 Mr. Pagan out and, you know, it didn't go the way we had
15 hoped obviously and obviously on his behalf.

16 Q Did Miss Lambert have a record?

17 A I can't remember. I don't remember, I don't remember
18 that.

19 Q Obviously, that would have been something that the
20 State would have give you once they put her on the stand?

21 A Once, they put her, buy I can't remember.

22 MR. BROOKS: Beg the Court's indulgence. No
23 other questions.

24 MRS. THAMES: May it please the Court.

25 THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MRS. THAMES:

Q Mr. Redmond, you just mentioned doing a lot of work and going into crack houses. What kind of investigation did you do?

A Well, we went out and talk to -- I know Mr. Cox did as well. But Al and I went out talk with a bunch of people who had been named or mentioned in this whole incident went into East Florence, but I remember Monique specifically because we went in there and Al had on his badge and we went into the crack house. I forget where it was, I don't remember if it was on Sumter Street or which street it was, went in there, he had on his badge they start yelling out SLED. Well, when they did that, they scattered. They scared the heck out of me because we were unarmed. And I told him from that point forward, do not walk in a crack house with his badge showing like that cause if somebody had a gun, we would have been toast. So my point to that -- I remember that because now I can look back at it and laugh. But it just shows that, yes, we did follow up and try to do what we could to help Mr. Pagan.

Q And did you go to the places that there were several ---

A Retracing the steps as well.

Q Did you find anybody there that was -- that would

1 have helped your case at all?

2 A And again, I'm going by recollection the people --
3 and I'll just be blunt unfortunately. A lot of them
4 didn't -- Charles had not too long gotten back and I can
5 tell that for whatever reason maybe it was because he was
6 from up North was an outsider or whatever. Most of them
7 were not favorable for us and him. And that's another
8 reason like I said when we said stay out of Florence
9 because we weren't sure what the environment would be
10 should he try to come back into Florence as well. So
11 that's why we begged him to stay in Marlboro County.

12 Q I know we talked about this D.N.A. a lot. Didn't you
13 see the D.N.A. coming back to Stephen Blathers as being
14 good for your case?

15 A That would be equivalent of a Christmas gift in our
16 opinion.

17 Q And you attempted to do as much with that information
18 as you could?

19 A Main thing -- and again from our standpoint
20 strategically, we could get and place Stephen Blathers
21 having lied about, you know, about things. And then to
22 have his D.N.A. on the victim, that in our opinion was as
23 good as we could get. And that's why -- you know,
24 getting back to Miss Lambert, I think, that situation hurt
25 us because in essence she stood in an off-handed way of

1 corroborating money.

2 Q Getting back to the Stephen Blathers and the fact
3 that he initially did not make any admission about having
4 had sex with her, that was all in front of the jury,
5 right?

6 A The jury was made aware of that. I mean, like I said
7 that's something we pounced on.

8 Q And what you were trying to do in that instance I
9 assume was to impeach him?

10 A Absolutely. And to try to point him out as being
11 the person. I mean, he already lied, pointed him out to
12 that jury and say, hey, y'all need to take a look at his
13 because again the standard being reasonable doubt. I
14 think, we did what we could to try to obtain an acquittal
15 for Mr. Pagan.

16 Q With regard to the line ups, Mr. Pagan you heard his
17 testimony today; is that correct?

18 A Yes.

19 Q He said he was making allegations that you didn't
20 object to the unconstitutional line ups. Did you see the
21 line ups being unconstitutional?

22 A From what I can recall and again without having to
23 see them, but from what I can recall, and obviously with
24 my experience at the time and even now, it was one of
25 those situations where in looking at it, we did not feel

1 that there was an issue. But again, I hadn't seen them in
2 ten years probably or almost ten years, but I'm going by
3 my recollection.

4 Q But do you recall whether or not you cross-examined
5 the -- not only -- I know Mr. Cox cross-examined Miss
6 Cookes, but did you cross-examine the officer about how
7 they were -- how the line ups were?

8 A Absolutely.

9 Q Okay. Did you see or remember any issues with the
10 closing -- either the opening or closing argument?

11 A I don't remember. The only thing I really remember
12 about the closing argument is Judge Manning let everybody
13 give a closing argument because there were four lawyers
14 involved, two prosecutors. Jim and I for the defense.
15 And if I'm not mistaken, I think I might have given the
16 last argument. I can't remember, but I think I might have
17 gone after Jim.

18 Q Do you recall whether there was any personal vouching
19 by either of the solicitors?

20 A I don't recall. I don't recall.

21 Q If there had been, do you think you would have
22 objected?

23 A Yes. Now, and with that said depending, obviously,
24 on what it is because, you know, I have a policy and a lot
25 of trial lawyers follow it. Unless, it's something

1 egregious, juries don't necessarily like you interrupting
2 another closing argument. It's one thing during the
3 course of the trial to object and raise objections, but
4 during the course of closing argument, like I said without
5 having seen the transcript nothing that I can recall
6 struck me as needing to take that step of objecting.

7 Q Isn't there also a danger of drawing the jury's
8 attention to that?

9 A Exactly. Sometimes when you do that, then you draw
10 their attention further to something, so some things are
11 better left unsaid as they say.

12 Q And moving on Mr. Pagan's was -- he's alleging that
13 you should have objected to the wood that came in. Was
14 your theory of the case that she wasn't hit with the wood
15 or was there a different theory?

16 A Theory was he didn't do it. I mean, that was the
17 thing, that's where we squarely placed our case is the
18 fact that it was not Charles Pagan that did it.

19 Q Was there any question about the manner of the
20 victim's death?

21 A No, and the pictures were among the most graphic I've
22 ever seen. And it was clear that she had been, you know,
23 there was some sever blows to the head.

24 Q And there was testimony wasn't there, there not only
25 were there sticks -- first part, there was testimony there

1 some fight with sticks, but then wasn't there also
2 testimony about wood boards with a triangular pattern?

3 A Yes, I do recall that somewhat, that particular line
4 of testimony.

5 Q Do you remember anything about the possibility that
6 this wheel or the tire of this vehicle was a murder
7 weapon?

8 A I can't remember. I do know that it was discounted,
9 but to sit here and tell you exactly why. Like I said, I
10 don't remember, but I do remember that was something. I
11 can't remember if it had something to do with blood
12 spatter issue. I can't which obviously could come into
13 play based on where the body was, where the blood was and,
14 of course, whether there was spatter on the tire versus,
15 you know, another thing that had occurred, that I can't
16 sit here for sure and tell you I remember that.

17 Q Okay. Dr. Proctor, the pathologist, who did the
18 autopsy, and I think the record will reflect that you did
19 not cross-examine him?

20 A That's correct.

21 Q And do you have a reason that you didn't
22 cross-examine him?

23 A Well, again, our argument was that it was not
24 Mr. Pagan, that was the perpetrator, that's where we hung
25 our hat as far as this case is concern. And plus, you

1 know, it's one of those situations you have to be careful
2 with cross-examining experts sometimes. And it's not
3 unusual to make a determination not to cross-examine
4 because he didn't really hurt us in the sense he didn't
5 mention Charles Pagan. He could not -- he could not point
6 this to Mr. Charles Pagan as having been the person, which
7 was again that was the defense in the case.

8 Q And his testimony is basically about the severity of
9 the injuries?

10 A Exactly.

11 Q You didn't want to highlight those?

12 A Have a jury hear it again from an expert sometime on
13 cross-examination may give an expert or anybody a chance
14 to restate their testimony.

15 MRS. THAMES: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 BY MRS. THAMES:

18 Q Mr. Pagan one of his allegations is that you didn't
19 object to testimony that -- I think it was Miss Cookes'
20 testimony that Mr. Pagan attempted to rape the victim.
21 Didn't she testify that that's what she saw?

22 A Yes. And again, I can't remember without seeing the
23 transcript, I can't remember some aspects of it, but
24 basically she testified to what she claim she saw. But
25 again, she gave so many inconsistent statements. And, of

1 course, we highlighted the fact that she did give these
2 inconsistent statements.

3 Q And the pathologist did testify that he had -- there
4 was no evidence that any sex she might have had that day
5 was consensual or nonconsensual?

6 A Exactly. He had explain that pretty clearly as to
7 why he couldn't make a determination on that.

8 Q I'm jumping around just a little bit here. Do you
9 see any reason to object to the victim's being identified
10 in court?

11 A No.

12 Q Aren't victim's typically in court in a trial or plea
13 situation?

14 A Yes, they usually are. I've done it a hundred times
15 myself?

16 Q Do you remember Mr. Pagan was talking about one of
17 the investigators, I think, I'm not sure who it was. One
18 of the investigators he took the composite to some of the
19 places and said that Mr. Pagan's brother-in-law said that
20 might be my brother-in-law. Do you remember that witness
21 and whether or not you spoke to him.

22 A I remember Smitty, but I can't recall that -- again,
23 this one of those situations I'd have to yield to the
24 transcript. I don't remember Smitty, but I don't
25 remember.

1 MRS. THAMES: Just another minute, Your Honor.

2 THE COURT: All right.

3 BY MRS. THAMES:

4 Q Okay. Mr. Redmond, did you see any problems with the
5 indictment?

6 A No, not that I can recall.

7 Q Did Mr. Pagan -- do you think he was on notice of
8 what charge he was facing?

9 A Absolutely.

10 Q Okay. Did you see any issues with Judge Manning
11 speaking to the jury? Do you remember him putting those
12 on the record?

13 A I'll just say it like this, I don't remember having
14 any issues because the way it was handled in our opinion
15 obviously was satisfactory can't say specifically, but in
16 fact, in the past if I disagreed with a judge doing
17 certain things, I have brought that to the Court's
18 attention for the record that I do think that's improper,
19 but I don't recall seeing anything that really raise that
20 kind of concern.

21 Q This wasn't as we said earlier four, five, maybe even
22 a six-day trial; is that correct?

23 A It seemed like from my recollection in that range at
24 least.

25 Q So it might have been important at least for the jury

1 to be -- feel comfortable.

2 A Absolutely, and it's not unusual to try to make the
3 jurors feel comfortable because they are inconveniencing
4 themselves obviously to serve.

5 MRS. THAMES: I believe's that's all I have,
6 Your Honor.

7 THE COURT: Mr. Brooks.

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Mr. Redmond, you testified earlier about going into
11 some crack houses. Did you happen to find a gentleman by
12 the name of Maurice Gregg?

13 A I remember the name, but I can't -- I can't remember
14 -- I can't say yah or nah. I can't say one way or another
15 on that because our main focus was trying to find Monique.
16 And I can't remember if it was in the trial, but I
17 remember when I found her she had the statement in her
18 hand and we actually discussed that.. It was at the crack
19 house when we saw her at the crack house.

20 Q But you don't recall meeting Mr. Gregg?

21 A I remember that name.

22 Q Isn't he somebody that told you that he saw what went
23 down that night with the victim? Met him at a crack
24 house?

25 A I remember that name. I can't -- gosh, I remember

1 that name. I can't say that it's not correct. I can't
2 say that, I just don't remember, but I can't say that
3 you're wrong. But I do remember that name, I remember
4 that name, but I can't specifically place him.

5 MR. BROOKS: No other questions.

6 MRS. THAMES: Just a brief follow up.

7 RECROSS-EXAMINATION

8 BY MRS. THAMES:

9 Q If you had spoken to this person and he had something
10 helpful to offer ---

11 A We would have called him absolutely. Yeah, without a
12 doubt, we would have called him.

13 THE COURT: Let me ask you a question that was
14 raised by Mr. Pagan. It may have been covered, I've been
15 trying to take in everything being said. You hired Donald
16 Gurnt as an investigator; correct?

17 THE WITNESS: And that's the thing ---

18 THE COURT: Or you hired.

19 THE WITNESS: We hired Marion Brown and
20 sometimes they'll bring Don in. I can't say because in
21 all honesty, I've worked with Don on several cases both
22 with and against and I can't specifically remember. And a
23 lot of times Don would come in and I have to say this a
24 lot of times he would act as an adviser. We never put him
25 up because he really can't address the specific nuances as

1 an expert.

2 THE COURT: Well, that's my question. Mr. Pagan
3 seems to feel that there was an error in not calling Don
4 Gurnt as a witness. What relevance is that to Mr. Pagan's
5 case?

6 THE WITNESS: In that regard, Your Honor, and I
7 kind of touched on it, but based on what Don would have
8 been in a position to testify to when it came to the
9 forensics as it relates to things like that, he would not
10 have been qualified as an expert. A lot of times he's
11 brought in as an adviser because there were a few times
12 that he worked with Marion because we worked with Marion
13 Brown's office a lot. We would never call him to testify,
14 but sometimes he would just kind of look at it and give us
15 advice. I can't sit here and say that he was or wasn't
16 involved. It would not surprise me if he was involve.

17 THE COURT: I'm familiar with Mr. Gurnt as well,
18 but he's a lay witness; is that correct?

19 THE WITNESS: Yes, because ---

20 THE COURT: There's no area of expertise in
21 forensics that he would qualify to testify in court as an
22 expert witness that I'm ware of.

23 THE WITNESS: Not that I'm aware of as well,
24 Your Honor. Because for instance when he testified last
25 year, it was basically he testified based on protocol at

1 the crime scene as it relates to what the officers did at
2 the crime scene, that was in the dog mauling case in
3 Dillon where a little boy was killed, but he did not
4 testify to any forensic level other than this is what have
5 ---

6 THE COURT: Procedure.

7 THE WITNESS: --- crime scene procedure exactly.

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

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 THE COURT: We're going to take a short recess
13 to use the restroom and stretch our legs and whatever, so
14 take about ten minutes.

15 (WHEREUPON, a break was taken.)

16 THE COURT: All right. Mr. Brooks.

17 MR. BROOKS: That is the applicant's case.

18 THE COURT: Mrs. Thames.

19 MRS. THAMES: Your Honor, the State will call
20 Jim Cox.

21 THE COURT: Mr. Cox, if you please come around
22 to be sworn, sir.

23 THE CLERK: Please place your left hand on the
24 Bible and raise your right hand. Do you swear or affirm
25 the testimony you give in this case will be the truth, the

1 whole truth, and nothing but the truth so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your name
4 for the record.

5 THE WITNESS: James Chaplin Cox, Jr.

6 MRS. THAMES: Please the Court.

7 THE COURT: Yes, ma'am.

8 WHEREUPON,

9 Jim Cox,

10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MRS. THAMES:

13 Q Okay. Mr. Cox, you represented Mr. Pagan?

14 A I did along with Kernard Redmond. It was actually a
15 -- we had an office in Florence at that time, actually a
16 Florence office case. And I became involved after the
17 major investigations had all been, but I did, yes.

18 Q So would it be fair to say that Kernard was lead
19 counsel?

20 A He was.

21 Q Okay. How long had you been practicing law Mr. Cox?

22 A Somebody said soon after Moses came down with the big
23 15, which I change to ten, that's not true. Since,
24 November of 1971.

25 Q How much of that practice has been in criminal law?

1 A A fair amount. I was asked the other day how many
2 murder trials had I handled and I say, well, I can't say
3 trials, but over a hundred murder cases, quit a few.

4 Q And you've heard the allegations that have been made
5 here today?

6 A I have, yes.

7 Q And you have some recollection of this trial?

8 A I do, probably not as strong as Kernard's. But I
9 remember the trial vividly. I remember our trial strategy
10 and what we tried to show.

11 Q And would you agree with Mr. Redmond that identity
12 was primary theory of defense?

13 A It was. And as I said, the investigation by Marion
14 and Al Brown had all been done. And what I did, I took it
15 and my part of the case was the time line. It was a case
16 where Mr. Pagan said it was not me, I could not have done
17 it. I was not there. And he had just return from a visit
18 of family up North. He had the cell phone records, took
19 the cell phone records and made a time line, a complete
20 time line of where he said he was when he made each and
21 who he called. And then once that time line was made,
22 went back and then I walked the route that he said he went
23 from the time his wife drop him off, I believe, like ten
24 o'clock in the evening. He's going to go do some bar
25 hopping, White Sands. And I actually walked it with the

1 time that he said, again taking how long it take from
2 point A to point B. I talk to the people who were there.
3 I did in the daytime, also went back and did it at night.
4 The nighttime because sometimes that makes a difference
5 and have a different perspective.

6 Q Did you come up with any conclusions based on that?

7 A Well, I thought we had a strong defense.

8 Q Okay.

9 A I thought that we could show that if the information
10 we given was correct, that we had a real good defense.
11 And then we could throw into it, we got the statements.
12 For some reason, the people that did the D.N.A. couldn't
13 be here as I recall. We got the stipulation, the D.N.A.
14 that was not Blathers. We had the young lady that was
15 killed. It was witness supposedly by her best friend who
16 did not even know her real name, that best friend gave
17 three inconsistent statements down to I was standing six
18 feet away, down to I saw his penis go in, right down the
19 line. The line ups, I thought the line ups worked in our
20 favor because the person that she draw the sketch, I
21 didn't think look like Charles. I didn't, so again, I
22 thought we had a real good chance to win that case hands
23 down.

24 Q You were actually the attorney who cross-examined
25 that witness Monique Cookes; is that true?

1 A That's correct.

2 Q And did you bring all that out to the jury?

3 A I thought I did real well.

4 Q So they heard about all the inconsistent statements
5 and that she changed her position?

6 A In fact, three statements line by line and then a
7 discussion about what she said on the witness stand which
8 I called is the fourth statement.

9 Q Okay. And did you also cross-examine Stephen
10 Blathers, do you recall that?

11 A Yes.

12 Q And did you essentially do the same thing with him,
13 did you try to point out the inconsistencies?

14 A Yes, what we had here was, I think, I told the jury
15 what you learn is more than you wanted to know about the
16 dark side of Florence. Blathers -- everybody involved, I
17 think, was in either drug dealing, drug buying or drug
18 using. And Blathers had given the deceased drugs for sex
19 and that's what ladies were out doing sex for drugs.
20 Blathers D.N.A. there. A murder weapon which they said
21 was a stick, which they couldn't produce. So I was not of
22 the concern to say it was a stick like this. Hey, if you
23 know what it looks like, where is it. Even walking, I
24 think, the trail from Blathers' house from the crime scene
25 trailed off. We even walked that by the dog pin and

1 everything.

2 Q And you said you believe you did everything you could
3 and thought you had a pretty good case?

4 A Yes. And in my mind based on my experience, what
5 lost the case for the defense was the traffic stop and
6 Miss Lambert and questions I think somebody asked, did
7 anybody bring out whether Miss Lambert had a reputation,
8 had a record. And I think once they surprised us with
9 that, we objected. They also had a tape of her statement
10 given and all. We even reserve the right to go back after
11 we heard that to bring her back to cross-examine her. The
12 reason we didn't was, she was a prostitute. You could say
13 the same thing about the deceased. Drugs were being used
14 for sex. Miss Lambert's picked up late at night, walking
15 along the street, gets in the car with somebody she does
16 not know, going to supposedly a cousin's house where she
17 does not know. You know, it was obvious to me and I
18 thought be obvious to anyone else that looked at it that
19 was the motivation there drugs and prostitution, that come
20 back to the motivation for whatever happened to the
21 deceased and so to me that chill the whole case. To me as
22 a lawyer, it took some of the thunder of what I thought
23 was, hey, Mr. Pagan was the only person telling the truth.
24 And we can prove every point, every step of his statement
25 from the time he said he arrived back in South Carolina,

1 where he went, who he talk to down to the guy, I think, at
2 Sands saying he ran some people off -- young guys out in
3 the street fighting with sticks. A sticks a stick, it's a
4 board kill somebody right down the line, but what it came
5 down to is that in the final analysis the truth was not
6 told about a traffic stop.

7 MRS. THAMES: Thank you. That's all I have for
8 Mr. Cox.

9 THE COURT: Mr. Brooks.

10 CROSS-EXAMINATION

11 BY MR. BROOKS:

12 Q Mr. Cox, there was no investigation done about
13 Miss Lambert; is that correct?

14 A Not by Kernard or I because we did not know she
15 existed until she came forward to testify.

16 Q That was something you didn't know until the actual
17 trial?

18 A That's right. I had never heard her. Did not know
19 her. And she in her statement gave the name -- now, this
20 my best recollection, the person that Charles said he was
21 concerned about police connecting him with was name
22 Monica, but her name was Monique and that she did not come
23 up with Monique until she was on the stand when the
24 officers said and the prosecution said do you mean
25 Monique.

1 Q Were you guys also representing Mr. Pagan on that
2 traffic stop, failure stop for a blue light?

3 A I don't know, I was not. You know, he had said that
4 as I recall, he said that he was not driving the car that
5 could not be him, but the young lady Miss Lambert said
6 that after that and after it was all over, police -- she's
7 told the police she feared for her life wanted to get out
8 the car, only got out after the car wrecked, that she was
9 walking back down the street and she says the same person
10 who was driving the car calls her over said, hey, come
11 here and that's when she positively identified our client.

12

13 MR. BROOKS: No other questions, Judge.

14 MRS. THAMES: Nothing further.

15 THE COURT: Thank you, Mr. Cox. I appreciate
16 it, sir.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 THE COURT: Nothing further from the State, is
20 that correct?

21 MRS. THAMES: Nothing further I thought I said
22 that. I'm sorry.

23 MR. BROOKS: Your Honor, my client before we get
24 into closing, my client indicates that he had retained the
25 lawyers' services in regards to failure to stop for blue

1 light. He has a retaining contract that was signed. Of
2 course, he didn't know that that would be an issue in
3 response to Mr. Cox testimony in regards to my question.
4 Obviously, our theory is that the lawyers should have
5 known about it as a part of their representation on the
6 failure to stop for a blue light. We're asking for at
7 least some leave to allow Mr. Pagan to provide that
8 contract or a copy of that contract.

9 THE COURT: Let me ask you this and maybe I'm
10 missing something or maybe I'm wrong I don't know. I
11 don't believe the issue is whether or not they knew about
12 the failure to stop charge. The issue is whether they
13 know about to Tameka Lambert. You can represent somebody
14 for failure to stop, but have no idea that there's any
15 other people that were involved in that. And you
16 understand what I'm saying?

17 MR. BROOKS: I understand, Judge.

18 THE COURT: And maybe again, maybe I'm wrong.
19 The -- from what Mr. Redmond indicated in his testimony,
20 the surprise that they got was not that he been in
21 Florence and received a ticket for failure to stop. The
22 surprise was that the State had a witness name Tameka
23 Lambert that was somehow involved in that. Now, I mean if
24 you're asking for -- to leave the record open for you to
25 submit the employment contract on the failure to stop

1 charge, I don't mind doing that. I don't know what
2 relevance that has. There was no testimony from the
3 applicant nor from the attorneys about Miss Lambert until
4 they had the testimony that they found out about
5 Miss Lambert at trial.

6 MR. BROOKS: I understand. We would obviously
7 request that, Judge.

8 THE COURT: I would certainly grant that cause I
9 have to take this under advisement anyway cause I got a
10 lot of reading to do. But I certainly leave the record
11 open for you to be able to submit that.

12 MRS. THAMES: Your Honor, if I could, the State
13 would stipulate Mr. Redmond he may not have testified
14 exactly that he represented him, but I think that he did
15 say they knew about the charge, they just didn't know
16 about Miss Lambert and that's what he testified to. They
17 didn't know until trial about Miss Lambert. I think
18 you're exactly right.

19 THE COURT: The understanding I got from the
20 testimony was that the surprise -- well, they were angry
21 about picking up the charge, but the surprise wasn't that
22 he was charged with failure to stop. The surprise was
23 that a witness came out of that.

24 MRS. THAMES: Yes.

25 THE COURT: That they were unaware of.

1 MRS. THAMES: When the stop happened, they
2 didn't even have him. There was a failure to stop, but
3 they didn't know who it was.

4 THE COURT: Well, for purposes of Mr. Pagan's
5 concern, I think Mr. Redmond is consenting or agreeing
6 that they were aware of the stop. So I certainly would
7 have receive any documentation you like to submit as far
8 as their representation of Mr. Pagan. I'll receive that,
9 but I don't know what relevance it is.

10 MRS. THAMES: And if I can, Your Honor, in the
11 record when Mr. Cox and Mr. Redmond were arguing against
12 her being allowed to testify, Judge Manning showed the
13 docket and it show that Mr. Redmond had that case. And
14 Mr. Cox says in the record Mr. Redmond tells me he had
15 information about the failure to stop, did not know the
16 lady's name, had not received any Rule 5 and Mr. Cox says
17 I personally didn't know about it. So it's in this
18 transcript today, but if he wants to submit ---

19 THE COURT: What page is that on?

20 MRS. THAMES: Sir?

21 THE COURT: What page is that on?

22 MRS. THAMES: That is on 688 and 689.

23 THE COURT: All right.

24 MRS. THAMES: So that's in this record. And
25 also exactly what Mr. Redmond said is that they knew about

1 it, but they didn't have the Rule 5. They didn't know
2 about the witness or the victim.

3 THE COURT: All right. This issue seems to be
4 covered quite extensively beginning on page 689 going on
5 through page 694. So again, anything you want to submit
6 to supplement that I'll be happy to receive, but I'm
7 satisfied that they were aware of Mr. Pagan's failure to
8 stop charge. They had actually filed a Rule 5 request to
9 the Solicitor's office for information regarding that
10 according to the transcript. They had not received any of
11 that information from the Solicitor's office.

12 MR. BROOKS: It might enhance our argument for
13 prosecutorial misconduct in regards not disclosing that
14 information as part of their representation.

15 THE COURT: That came at a later time. I don't
16 know. All I'm saying is that in the trial, Judge Manning
17 allowed the testimony of Miss Lambert, but left the record
18 open for the defense to produce any other defense
19 positions regarding that testimony and he specifically
20 stated that he understands that's difficult to unring a
21 bell. But that if the defense was able to produce
22 anything further regarding her testimony, then he would do
23 a curative instruction of some sort. But my point being
24 is that the record's clear, cause they made it clear in
25 the record they knew about the failure to stop. They had

1 that information and knew that. They just didn't know
2 that this lady would turn up as a witness in this trial or
3 that Mr. Pagan allegedly had threatened her, which I'm not
4 sure. I don't know that that would have been in Rule 5
5 material anyway cause he wasn't charged with threatening
6 anybody, he was charged with failure to stop for a blue
7 light. And again, that's all in the record, but it's
8 covered to the record.

9 MR. BROOKS: Judge, just in closing, obviously
10 my client stated his positions in regards to his
11 post-conviction relief application. We would basically
12 reiterate those things my client's testified to and put
13 forth before the Court. And we respectfully ask the Court
14 to grant his post-conviction relief application based on
15 all the grounds that we put forth that the Court.

16 THE COURT: And as Mr. Pagan was going through
17 those one by one, I was making a list and writing those
18 down, so I think I have all those.

19 Mrs. Thames, on behalf of the State anything?

20 MRS. THAMES: Very briefly, Your Honor. The
21 State would just submit that he has not met his burden of
22 proof today and that the testimony that we received from
23 Mr. Cox and Mr. Redmond, clearly all these allegations of
24 ineffective of assistance they were extremely prepared.
25 They made objections. They challenged the witness, the

1 eye witness. They challenged Stephen Blathers, that the
2 fact that he had D.N.A. on there from someone else
3 certainly is helpful to the defendant and not a harmful
4 thing. And just ask, Your Honor, to deny the application.

5 THE COURT: All right. I've got a lot I have to
6 go through. There's a lot of material up here. The
7 transcript is over 1100 pages, so I'm going to take this
8 matter under advisement to give myself an opportunity to
9 go through Mr. Pagan's concerns, the allegations, compare
10 that to the record as well as any testimony that came from
11 the State's witnesses comparing that to the record to --
12 before I could make a decision. So I'm going to take this
13 under advisement give myself an opportunity to do that.
14 But again, I'll leave the record open, Mr. Brooks, if you
15 do wish to submit anything regarding that issue. Please
16 if you do that, just make sure you get a copy to
17 Mrs. Thames. Thank you.

18 MR. BROOKS: Thank you.

19 MRS. THAMES: Thank you, Your Honor.

20 END OF REQUESTED TRANSCRIPT
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 88, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Florence
County, South Carolina, on the 26th day of January, 2010.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 24th
day of August 2010.


Keshia Reed, Court Reporter

CERTIFIED A TRUE COPY

STATE OF SOUTH CAROLINA *Crime Ref. - State* IN THE COURT OF COMMON PLEAS
 COUNTY OF FLORENCE CLERK OF COURT C.P. 2009-CP-21-74
 FLORENCE COUNTY, S.C.

Charles Pagan, SCDC No. 272720,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

Charles T. Brooks, III, Esquire, appearing for the Applicant.

Julie M. Thames, Assistant Attorney General, appearing for the Respondent.

This is a post-conviction relief (PCR) matter. The Applicant filed an application for PCR on January 16, 2007. The Respondent made its Return on August 15, 2007. The Applicant alleges he is being held in custody unlawfully due to ineffective assistance of trial counsel, lack of subject matter jurisdiction, and prosecutorial misconduct. An evidentiary hearing was convened at the Florence County Courthouse on January 26, 2010. The Applicant was present at the hearing.

I. PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Florence County. The Applicant was indicted at the July 1998 term of the Court of General Sessions for Florence County for murder (1998-GS-21-855). He was represented by Kernard Redmond, and James Cox, Jr., Esquires. On February 12, 2001, the Applicant proceeded to trial, pursuant to which he was found guilty as indicted. The Applicant was sentenced by the Honorable L. Casey Manning, to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (S.C. Ct. App. 2004). After filing a Petition for Writ of Certiorari to the South Carolina Supreme Court, the conviction and sentence were affirmed as modified. State v. Pagan, 369 S.C. 201, 631 S.E. 262 (S.C. Sup. Ct. 2006).

II. APPLICABLE LAW

1. Ineffective Assistance of Counsel

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 689). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

2. Subject Matter Jurisdiction

Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature

is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

III. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the start of the hearing, PCR counsel informed the Court that he had taken over representation of the Applicant only a couple of weeks prior to the hearing and had only had the file a short time. He indicated that he was fully prepared to go forward and that his client wished to proceed. This Court offered the Applicant a continuance to allow PCR counsel to familiarize himself with the Applicant’s file. The Applicant declined and stated that he wished to proceed. This Court then questioned the Applicant who confirmed that he wished to proceed in spite of the fact that his attorney had not fully reviewed his file. He stated that he had been waiting a long time for his hearing and that he understood that his counsel had only had possession of the file for about a week. He also stated that he understood that he is only entitled to one PCR action and that he

cannot relitigate PCR issues in a subsequent application. The Applicant insisted that he wanted to proceed with a hearing.

The Applicant testified in his own behalf at the PCR evidentiary hearing. He testified that trial counsel did not challenge the unconstitutional photographic line-up. He testified that he was the only Hispanic in the line-up, which made it unconstitutional.

The Applicant testified that trial counsel did not raise any issues with regard to the statements made by the only eyewitness (Monique Cooks). She gave three statements, each one giving more details. Applicant testified that trial counsel should have seen that Cooks was lying and that she was told what to say by law enforcement.

The Applicant testified he hired Donald Girndt to investigate his case and that Girndt had evidence that Applicant could not have committed the murder. He testified that trial counsel were ineffective in failing to subpoena Girndt for trial. Applicant testified that Girndt believed the wheel of a truck was the murder weapon and not a board. The victim's blood and brain matter were on the wheel.

The Applicant testified that trial counsel were ineffective in stipulating to the DNA offered in the trial. Applicant testified trial counsel had him sign the stipulation under false pretenses and that trial counsel told him the DNA testing was done in Tennessee. He also testified that he understood the DNA showed a different individual had sexual intercourse with the victim the night of the murder. Applicant testified that trial counsel had evidence from the trace department indicating that Steven Blathers had sex with the victim and that is why Blathers' DNA was found on victim. Applicant testified that at trial Blathers testified that he saw Applicant running from the scene but that it was really Blathers that murdered the victim and raped her afterwards.

Applicant testified that he wanted trial counsel to insist that the DNA witnesses who were not available for trial testify. He testified that they could have testified at trial that Applicant did not have sex with the victim. This was based on his belief that it is impossible for a man to have sex with a woman and leave no DNA. Applicant testified that the witnesses could have testified that Blathers raped the victim even though the forensic pathologist testified that he could make no determination about whether the sexual intercourse the victim had was consensual or not.

Applicant testified that trial counsel should have objected to Cooks' testimony that Applicant attempted to rape the victim.

Applicant testified that trial counsel did not object to the solicitor's opening statement when the solicitor vouched for Cooks. He testified that the solicitor made inflammatory and highly prejudicial statements in order to inflame the minds of the jury. He testified that he also believed trial counsel should have objected to the solicitor informing the jury that members of the victim's family were in the courtroom.

Applicant testified that trial counsel should have objected to the introduction of a wooden board that was offered to demonstrate the type of instrument that could have killed the victim. He testified that the murder weapon was never identified and that the board was not relevant. He further testified that trial counsel should have objected to the solicitor's closing argument when he talked about crushing somebody's skull with a board when the murder weapon was not identified. The Applicant testified that the solicitor vouched for the credibility of Cooks during the closing argument and that trial counsel should have objected.

Applicant testified that trial counsel should have cross-examined the pathologist who performed the autopsy.

Applicant testified that the investigator did not know where the line-up came from and that trial counsel should have objected to it. He testified that the investigator said Albert Smith told him (the investigator) that the composite drawing looked like Albert Smith's brother-in-law (who was the Applicant) but that Albert Smith never testified. Applicant testified trial counsel should have objected.

Applicant testified that the in-court identification was tainted by the unconstitutional line-up shown to Cooks. He testified that Cooks was told who to pick out in the line-up.

Applicant testified that trial counsel should have made a motion to exclude Cooks' testimony. He further testified that she should not have been allowed to make more than one statement and that the second and third statements should have been excluded. Applicant testified that when a person makes a statement, the first one is the truth and no further statements should be made.

Applicant testified that the trial judge committed error by entering the jury room and that trial counsel should have objected. He testified that it was a very serious matter and his liberty was at stake and the judge should not have engaged in light conversation with the jury.

Applicant testified that the trial court lacked subject matter jurisdiction due to defects in the indictment. Specifically, he testified that the indictment did not adequately set out where the offense occurred. He acknowledged that the indictment said Florence County, but argued that was not sufficient.

Applicant also testified that trial counsel were not prepared for trial. He testified that trial counsel failed to interview witnesses that could have helped at trial. Applicant testified that these witnesses could have testified that other witnesses were not truthful.

Trial counsel both testified at the PCR hearing. Kernard Redmond, Esquire, testified that he was hired to represent the Applicant and that he then associated James Cox, Jr., Esquire, to assist on the case. He testified that they hired Marion Brown to investigate. Redmond testified that he knew Don Girndt and had worked with him previously but he did not recall hiring him to work on Applicant's case. He further testified that even if he had, Girndt could not testify to the things the Applicant said he could.

Redmond testified that Cooks gave three statements and that they tried to attack her credibility. Her statements changed from basically not knowing anything to admitting that she witnessed Applicant kill the victim. On cross-examination, she testified that she was scared of Applicant because he threatened to kill her too.

Redmond testified that he remembered getting angry at Applicant and yelling at him because he had told Applicant since he first took the case to stay out of Florence and then learned that he had not heeded that advice. He testified that he told Applicant to stay out of Florence County because there was a lot of talk about the case. Redmond testified Applicant was arrested on a failure to stop for a blue light and that led to very damaging evidence against him. Applicant picked a girl (Tamika Lambert) up and when blue lights were activated behind him, he took off, eventually crashing the car and running away. Applicant saw Lambert later the same night and told her he ran because he was out on bond for murder. Redmond testified that Lambert testified that the Applicant threatened

her and warned her not to say anything. Redmond testified that Lambert was a surprise witness at trial; that he objected to her testimony and that she was very damaging to the Applicant's case. He testified that he thought that the trial had been going pretty well for the Applicant and that they were winning, but that Lambert's testimony was devastating.

Redmond testified that he objected to the last minute nature of Lambert's testimony and the judge looked at it but allowed her to testify. He testified that he knew the State was not required to give Lambert's statement to the defense until after she testified.

Redmond testified that he was the one who pushed for the DNA testing and that Blathers had given inconsistent statements. The DNA came back as Blathers' and it was not until later when Blathers was in jail that he finally admitted that he had had sex with the victim the night she was murdered. Redmond testified that he did not see a problem with stipulating to the DNA evidence because he thought being able to prove that someone else was with the victim and had sex with her would help Applicant's case.

Redmond also testified that he and co-counsel had a lengthy discussion with Applicant about the stipulation and that they discussed the wording of the stipulation to be sure it was worded properly. He testified that the bottom line with regard to the DNA was that it helped the defense.

Redmond testified that he did not object to the board because the theory of the defense was not the manner of death but who the perpetrator was. There was no question the murder was a brutal one, but Redmond testified that they tried to demonstrate that the eyewitness was not credible and that Applicant was not there at the time the murder was committed. He testified they attacked the credibility of Blathers and Cooks; he thought

they did a good job and thought the jury might acquit Applicant. He further testified that he did not cross-examine the pathologist because the pathologist only had information about the injuries sustained by the victim and he did not want to draw more attention to the graphic nature of those injuries. Redmond testified, again, that the manner of death was not challenged and as the pathologist could not assist the jury with determining *who* inflicted the injuries, he did not feel the need to cross-examine him.

Redmond testified that he did not recall any objectionable comments made during the solicitor's opening statement or closing argument. He testified that he does not typically like to object at those times because he does not want to risk angering or alienating the jury. Redmond testified that he did not recall any personal vouching for the witnesses but that he would have objected had he heard anything improper.

Redmond testified that he saw no problems with the indictment and that there was no question Applicant was on notice of and understood the charge he was facing.

Redmond testified that he worked hard on the case, that he and Mr. Cox went to all the places Applicant said he went that night; they went to all the clubs and tried to find people who could testify to Applicant's whereabouts that night but they were largely unsuccessful. He testified they went to the clubs, to crack houses, to homes of potential witnesses. Redmond testified that he believed he and Mr. Cox did all they could to prepare for Applicant's trial.

James Cox also testified at the PCR hearing. He testified that Redmond was lead counsel on the case but that he assisted. He testified that he and Redmond did a lot of work on the case investigating and preparing for trial. Cox testified that they attempted to recreate the time line of Applicant's activities on the night of the murder and that they

retraced his footsteps. He testified that they could not find anyone who would offer any information helpful to Applicant's case. Cox testified that he cross-examined Cooks and attempted to discredit her testimony and her statements by pointing out the inconsistencies in the three statements. He also testified that he attempted to demonstrate to the jury that the photo line-ups were not credible.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the Applicant's PCR application, the Respondent's Return to the application, the Anders brief on appeal, the opinion of the South Carolina Court of Appeals, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds the allegation that trial counsel's representation fell below reasonable professional norms is without merit. This Court finds trial counsels' testimony to be more credible than that of the Applicant. Trial counsel were prepared for trial; they made appropriate objections, vigorously cross-examined witnesses, and presented a defense.

This Court finds no ineffective assistance of counsel with regard to the photographic line-ups. Cox testified, and the transcript reveals, that he and Redmond attempted to demonstrate to the jury that the line-ups were not credible, but there was no

basis to exclude them entirely. This Court finds trial counsel attacked the credibility of the line-ups vigorously during cross-examination. The Applicant has not met his burden of proving that the line-ups would have been suppressed had trial counsel made this specific objection, nor had he proven that Cooks was told who to pick out in the line-ups.

This Court finds no merit to Applicant's allegation that trial counsel was ineffective in failing to suppress Monique Cooks' statements based on their inconsistency. Applicant seemed to be arguing that once Cooks made the first statement, she could not make any further statements that were inconsistent with the first statement and that the first statement had to be the truthful statement. This Court finds no merit to this allegation. Trial counsel attempted to, and did, impeach Cooks with her inconsistent statements. She did indeed make three statements and did not identify Applicant as the perpetrator in the first statement; however, she testified that she was scared for her life after witnessing the murder and was afraid to identify Applicant. Trial counsel cross-examined Cooks extensively about the statements and the inconsistencies therein. This Court finds no legal basis for Applicant's assertion that Cooks could only make one statement and that that statement had to be truthful because it was the first one. This Court finds no ineffective assistance of counsel with regard to Cooks' statements.

This Court finds no merit to the allegation that trial counsel were ineffective in stipulating to the DNA at trial. This Court has difficulty understanding Applicant's argument that trial counsel should not have stipulated when the DNA demonstrated that another man had sexual intercourse with the victim the night she was murdered. The DNA proved that Steven Blathers had sex with the victim. Trial counsel testified that they had a lengthy discussion with the Applicant about this trial strategy and that the

Applicant was involved in the discussion as to the wording of the stipulation. Trial counsel testified, and this Court agrees, that this evidence was beneficial to the Applicant. Trial counsel understandably wanted the jury to hear this evidence in order to demonstrate that perhaps Blathers was the perpetrator. This Court finds credible trial counsels' testimony that stipulating to the DNA was trial strategy; furthermore, this Court finds it was a valid trial strategy. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995) (Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance).

This Court further finds no merit to the Applicant's allegation that experts could have testified that the Applicant did not sexually assault the victim. He seems to be arguing that it would not be possible for a man to have sex with a woman and not leave any DNA evidence, and therefore, the lack of his DNA on the victim proves he did not sexually assault her or murder her. This allegation is patently without merit. The Applicant further testified that the pathologist who performed the autopsy could have testified that the victim engaged in consensual sex only and that she was not sexually assaulted. Again, this Court finds no merit to this allegation. The pathologist actually testified that he could not determine whether the victim's sexual encounter was consensual or not merely based on a lack of physical trauma to her genital area.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to cross-examine the pathologist. Redmond testified that he did not want to focus on the brutality of the attack or the severity of the injuries; rather, the focus of the defense was that they had the wrong guy. Cross-examination would not have aided in this goal. This is valid trial strategy. Roseboro v. State, *supra*.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to object to Cooks' testimony that Applicant attempted to rape the victim. Cooks was an eyewitness, thus, she could testify to what she observed. As noted above, trial counsel cross-examined her extensively.

This Court finds not merit to the allegation that trial counsel should have objected to the solicitor noting that members of the victim's family were in the courtroom. The Applicant has not alleged what basis trial counsel could have had for such an objection and this Court knows of none.

This Court finds no merit to Applicant's allegation that trial counsel were ineffective in failing to call Donald Girndt. This Court finds Applicant's testimony that Girndt was hired by the defense team, and that he would have testified that the wheel of the truck was the murder weapon not credible. Redmond testified that while he knew Girndt and had used him as an investigator previously, he did not recall that Girndt was hired to investigate this case. Further, trial counsel testified that he did not believe Girndt made the conclusions about the murder weapon as alleged by Applicant as that would not have been within Girndt's expertise. Girndt was not present at the PCR hearing, thus any allegations regarding trial counsels' failure to subpoena him for trial have not been proven. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998)(An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial).

This Court finds no merit to Applicant's subject matter jurisdiction allegation. This Court finds the Applicant was clearly on notice as to the charge he was facing. This

Court further finds no defects in the indictment and that it adequately notified Applicant of what he was charged with. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document).

This Court finds no merit to the Applicant's allegation of prosecutorial misconduct. The Applicant offered no proof that the prosecutor acted in bad faith in prosecuting Applicant. The allegations of improper argument by the solicitor are likewise without merit as the comments complained of were argument, were not improper, and did not improperly bolster the State's case. Further, this Court finds no merit to the Applicant's allegation that the solicitor improperly vouched for Cooks in his opening statement. This Court finds no personal assurances were given by the solicitor, it was opening statement, and trial counsel were not ineffective for failing to object.

This Court finds no merit to the allegation that trial counsel were ineffective in failing to object to the introduction of the board. The board was not the murder weapon and Applicant alleges trial counsel should have objected on this ground. This Court finds very credible Redmond's testimony that the defense did not dispute the manner of death, but that the defense was focused on the identity of the perpetrator. The board was used as a demonstrative aid by the prosecution and there was evidence to suggest the victim was beaten to death with a similar type of board. Trial counsels' focus was on impeaching the witnesses who placed Applicant at or near the scene to demonstrate that while the victim was indeed brutally murdered, it was not by the Applicant. This Court finds this to be valid trial strategy and denies this allegation. Roseboro v. State, supra.

This Court finds Applicant's allegation that trial counsel should have objected to the trial judge having casual conversation with the jury and entering the jury room is without merit. The transcript reveals that the trial judge was determining scheduling issues and that the fact that he was nice is not prejudicial to the Applicant.

This Court further finds no merit to Applicant's allegation that trial counsel were unprepared for trial. To the contrary, this Court finds trial counsel were extremely prepared for trial and that they demonstrated reasonable professional skill at trial. Trial counsel both testified that they investigated the case thoroughly, that they traced the Applicant's movements the night of the murder, they visited all of the places Applicant went to, and they interviewed several people at those locations. Trial counsel could not find witnesses to testify favorably to the Applicant. Trial counsel extensively cross-examined Cooks about the inconsistencies in her various statements and were very effective in bringing out the inconsistencies to the jury. Trial counsel also attempted to impeach Blathers and again demonstrate to the jury inconsistencies in his testimony. They made appropriate objections and presented several witnesses on Applicant's behalf to establish that he could not have committed the murder.

This Court finds no merit to the Applicant's allegation that trial counsel was ineffective in failing to subpoena several witnesses for trial, specifically Francine Bostic, Maurice Gregg, Albert Smith, and Randolph Hines. These witnesses were not at the PCR hearing and no testimony from them was offered, thus, no prejudice has been established.

See Bannister v. State, supra.

Lastly, this Court finds no merit to the Applicant's allegation that trial counsel should have made a motion to impeach Blathers. This Court knows of no such vehicle

for impeachment and finds that trial counsel impeached Blathers on cross-examination through testimony. Moreover, this Court finds no merit to Applicant's allegation that trial counsel should have excluded Cooks from testifying. As above, this Court knows of no method for excluding the testimony of the eyewitness to the crime. Further, as noted above, trial counsel vigorously cross-examined Cooks about the inconsistencies in her various statements and brought these to the attention of the jury.

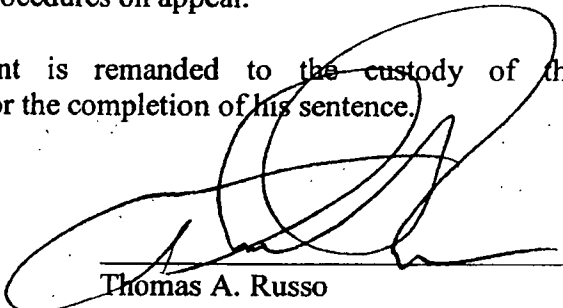
V. CONCLUSION

This Court concludes that the Applicant failed to carry his burden of proof to show that trial counsels' representation fell below reasonable professional norms or that he was prejudiced by the alleged deficient representation. The Applicant's former trial counsel rendered reasonably effective assistance under prevailing professional norms and demonstrated a normal degree of skill, knowledge, and professional judgment that is expected of an attorney in a criminal case. Strickland v. Washington, *supra*; Cherry v. State, *supra*. Additionally, the Applicant did not carry his burden to show a reasonable probability that the result at trial would have been different had trial counsel done what the Applicant alleges they should or should not have done. Cherry v. State, *supra*.

As to any and all allegations, which were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. These allegations are not supported by any law and were not addressed at the hearing. Accordingly, this Court finds that the Applicant waived the allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**;
2. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 243¹ for appropriate procedures on appeal.
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED.


Thomas A. Russo
Presiding Judge
Twelfth Judicial Circuit

Florence, South Carolina
3-5, 2010.

2010 MAR -5 PM 3:51
CLERK OF COURT
FLORENCE COUNTY, SC

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Charles Pagan, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Florence County
L. Casey Manning, Circuit Court Judge

Opinion No. 26172
Heard April 5, 2006 – Filed June 19, 2006

AFFIRMED AS MODIFIED

Deputy Chief Attorney Joseph L. Savitz, III, of
South Carolina Office of Appellate Defense, of
Columbia, for Petitioner.

Attorney General Henry Dargan McMaster,
Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney General
Donald J. Zelenka, Assistant Attorney General
S. Creighton Waters; and Acting Solicitor W.
Barney Giese, all of Columbia, for
Respondent.

JUSTICE BURNETT: Charles Pagan (Petitioner) was convicted of the murder of Gloria Cummings (the victim), and was sentenced to life imprisonment. We granted Petitioner's petition for writ of certiorari to review the Court of Appeals' decision. State v. Pagan, 357

S.C. 132, 591 S.E.2d 646 (Ct. App. 2004). We affirm as modified.

FACTUAL AND PROCEDURAL BACKGROUND

The victim's body was discovered in a vacant lot in Florence County about 8 a.m. on December 11, 1997. A police officer testified the victim's head had been severely beaten and her pants were down around her ankles. Dr. Edward Proctor, a forensic pathologist, performed an autopsy on the victim's body and opined the cause of death was massive blunt force injury to the head.

An investigation revealed semen found on the victim's pants and body belonged to Stephen Blathers, who lived near the vacant lot where the victim's body was discovered. When confronted with the results of the investigation, Blathers admitted having sex with the victim on the night of the murder. He further testified he heard screaming outside his house about 2 a.m. that night and he saw a shadow run across the yard. Blathers thought the shadow was the same man he had previously seen with the victim on the night of the murder, and he later identified Petitioner as that man.

Jessie Jones, who also lived near the vacant lot, testified that about 2 a.m. on December 11, he heard people hitting a sign outside his house, and he told the people to leave. He then observed a man and a woman hitting each other with sticks, and thought they were arguing over money. Jones did not think the man arguing with the woman was Blathers because Blathers is five feet tall and the man he saw was six feet tall.

On December 11 and 13, 1997, Monique Ellerbee Cooks called Crime Stoppers and reported she went to a club with the victim on the night of the murder. Cooks reported the victim left the club with a man, gave a detailed description of the man, and said she did not see them again. Cooks subsequently met with a forensic artist who drew a composite sketch of the man she saw with the victim. Cooks was also shown a photographic lineup with Petitioner in it; however, she did not identify anyone.

At trial, Cooks testified she was with the victim on the night of the murder. Cooks went to White Sands, a bar, while the victim stayed outside to talk to a man. When Cooks left the bar, she decided to follow the victim and the man because they were leaving together.

Cooks testified she thought the victim and the man were arguing over money and drugs. At some point during the walk, the victim and the man began hitting each other with sticks. Cooks testified the victim and the man moved toward a vacant lot when Jones yelled for the people to stop hitting a sign. The man continued hitting the victim and began dragging her. Cooks testified she offered to pay the man, but he did not want her money. The man then told the victim if she did not pay him, he would beat the money out of her. When the victim ran away, the man pursued her, caught her, then began to pull off her clothes, and beat her on the head with a board.

Cooks identified Petitioner in court as the man she saw beat the victim to death. Cooks testified she did not originally report that she had witnessed the murder and she did not initially identify Petitioner in the photographic lineup because she was scared.

Petitioner's defense was alibi and he argued the evidence did not point to him as the murderer. He testified his wife dropped him off at White Sands on the evening of December 10, 1997. He left White Sands between 10 and 10:30 p.m. and went to the Pub, where he talked to Leroy Jones and Darren Burgess. After about an hour, he called his

LAW AND ANALYSIS

A. Evidence of Flight

Petitioner argues the Court of Appeals erred in affirming the admission of Lambert's testimony because the testimony did not relate to flight from the charged crime.^[2] We agree.

Flight from prosecution is admissible as guilt. State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. State v. Beckham, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury. *Id.* (citation omitted).

Flight evidence is relevant when there is a nexus between the flight and the offense charged. See State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (citing United States v. Beahm, 664 F.2d 414, 419-20 (4th Cir. 1981) (evidence of flight inadmissible where a defendant flees "after 'commencement of an investigation' unrelated to the crime charged, or of which the defendant was unaware"); United States v. Foutz, 540 F.2d 733, 740 (4th Cir. 1976) (evidence of flight should be excluded where defendant flees while being investigated for another crime), *cert. denied* Nov. 2, 2005).

The Court of Appeals found Lambert's testimony was admissible as evidence of flight. The Court of Appeals discerned the testimony was admissible to prove Petitioner was attempting to violate his bond provisions for the pending murder charge and he could identify the State's key witness. Pagan, 357 S.C. at 141, 591 S.E.2d at 651.

The flight evidence is not relevant in this case because there is no nexus between the flight and the current offense of murder. The evidence does not create an inference that Petitioner's alleged failure to stop for a blue light was motivated by his belief that the police officer was seeking him for his pending murder charge. Robinson, 360 S.C. at 195, 600 S.E.2d at 104 ("Evidence of flight should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial."). Lambert's testimony was not admissible as evidence of flight or guilty knowledge.

B. Corroboration Evidence

Petitioner argues the Court of Appeals erred in affirming the admission of Lambert's testimony based on corroboration evidence because the testimony did not corroborate Cooks' testimony. He argues even if the testimony was corroborative, it should have been excluded because the probative value did not substantially outweigh the unfair prejudice to him. We agree.

All relevant evidence is admissible. Rule 402, SCORE; State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action

more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

“Corroborative testimony is testimony which tends to strengthen, confirm, or make more certain the testimony of another witness. Evidence is admissible to corroborate the testimony of a previous witness, and whether it in fact corroborates the witness’ testimony is a question for the jury.” State v. Stroman, 281 S.C. 508, 510, 316 S.E.2d 395, 397 (1984) (internal citations omitted).

The Court of Appeals found Lambert’s testimony admissible as corroboration evidence of Cooks’ testimony. The Court of Appeals asserted Lambert corroborated that Cooks was an eyewitness to the crime; Cooks was scared Petitioner would harm her; and Petitioner knew Cooks’ identity prior to trial. Pagan, 357 S.C. at 142, 591 S.E.2d at 651-52.

Lambert’s testimony was irrelevant to any issue presented at trial. Her testimony did not establish that Cooks was an eyewitness to the crime or that Petitioner had threatened Cooks. The testimony simply revealed that Petitioner knew he had been charged with the victim’s murder and he knew the name of a witness. The Court of Appeals erred in affirming the admission of Lambert’s testimony as corroboration evidence.

C. Identity under Rule 404(b), SCRE

Petitioner argues the Court of Appeals erred in affirming the admission of Lambert’s testimony based on Rule 404(b), SCRE, because the testimony did not identify Petitioner as the victim’s murderer. We agree.

Evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant’s guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing. State v. Beck, 342 S.C. 129, 135-36, 536 S.E.2d 679, 682-83 (2000). Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001).

The trial court and the Court of Appeals found Lambert’s testimony admissible under Rule 404(b), SCRE, as evidence of identity. The Court of Appeals asserted the “testimony was logically relevant as evidence of [Petitioner’s] identity because it connected the murder with [Petitioner’s] flight from the police one year later.” Pagan, 357 S.C. at 144, 591 S.E.2d at 652.

The trial court erred in admitting the bad act evidence because the bad act did not logically relate to the murder. Petitioner’s alleged statement to Lambert was that he fled because a female, named Monique or Monica, had accused him of murdering someone and he was out on bond for that murder charge. The failure to stop and the following explanation in no way identifies Petitioner as the person who murdered the victim. This evidence merely

illustrates that Petitioner, who had already been charged with the victim's murder and released on bond for that charge, knew he had been accused of murder and knew the name of a witness in the case. Compare Braxton, 343 S.C. at 634, 541 S.E.2d at 836 (testimony that witness knew appellant possessed a nine millimeter pistol was relevant because it tended to identify appellant as the possessor of the murder weapon, a nine millimeter pistol); State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) (prior murder was admissible to establish appellant's identity in the prosecution of the current murder where the same weapon was used in both murders).

D. Harmless Error

Petitioner argues the Court of Appeals erred in finding any error in the admission of Lambert's testimony was harmless error. We disagree.

Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Thus, an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Although the trial judge erroneously admitted testimony that Petitioner failed to stop for a blue light in 1999, the error did not contribute to the guilty verdict. The 1999 failure to stop was not similar to the current murder charge and the danger of prejudice was not enhanced. Compare State v. Brooks, 341 S.C. 57, 62-63, 533 S.E.2d 325, 328 (2000) (when the prior bad acts are similar to the one for which the appellant is being tried, the danger of prejudice is enhanced); State v. Gore, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) (same). Also, the erroneous admission of bad act evidence had minimal impact when numerous other bad acts, including prior convictions for failure to stop and conspiracy to traffic crack cocaine, were properly admitted. See State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991) (finding harmless error when trial judge erred in admitting prior bad act evidence where the testimony was minimal). Furthermore, the trial judge instructed the jury that they could not find Petitioner guilty of murder because Petitioner was charged with failure to stop.

Moreover, other competent evidence established Petitioner's guilt beyond a reasonable doubt. Helton testified to a prior altercation between Petitioner and the victim in which Petitioner told the victim she would die. Blathers testified he saw Petitioner with the victim on the night of the murder and he later saw Petitioner running away from someone screaming. Cooks gave an eyewitness account of the murder by testifying she witnessed Petitioner beat the victim to death with a board.

CONCLUSION

The Court of Appeals erred in affirming the trial court's admission of Lambert's testimony as evidence of flight, corroboration, and identity. We conclude the error is harmless and affirm Petitioner's conviction.

AFFIRMED AS MODIFIED.

TOAL, C.J., and WALLER, J., concur. MOORE, J., dissenting in a separate opinion in which PLEICONES, J., concurs.

JUSTICE MOORE: I respectfully dissent. I agree with the majority's conclusion that the trial judge erred in allowing Lambert's testimony; however, in my opinion, this error cannot be harmless. Identity was a critical issue in this case. Petitioner's failure to stop for a blue light in 1999 was irrelevant to his identity as the murderer. The fact that the trial judge specifically instructed the jury it could consider this evidence for identification purposes made the erroneous admission of this evidence even more prejudicial. I would reverse and remand for a new trial.

PLEICONES, J., concurs.

[1] During Lambert's testimony, there appeared to be some confusion over whether the name was Monica or Monique.

[2] Petitioner relies on McFadden v. State, 342 S.C. 637, 539 S.E.2d 391 (2000). McFadden is not applicable to the current case because it involves the rule that, in a trial *in absentia*, the jury cannot consider the defendant's absence at trial as evidence of defendant's guilt.

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1273

T. CARLOS W. RAINES FPD

Boyd

Chamblee

PROS: RNW

D/O: 12-11-97

ARREST WARRANT NO. F 601427

ACTION OF GRAND JURY

TRUE BILL

Martha E. Fikes
FOREMAN OF GRAND JURY

VERDICT

FOREMAN OF PETIT JURY

DATE:

DOCKET NO. 98-0321-000

WELLS AG

THE STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

COURT OF GENERAL SESSIONS

JULY TERM 1998

THE STATE

vs.

CHARLES PAGAN

INDICTMENT FOR
MURDER

Carl Redmond

CERTIFIED: A TRUE COPY
Carrie Hope Shapiro
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on July 23, 1998,
the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE - MURDERThat CHARLES PAGANdid in FLORENCE County on or about December 11, 1997,feloniously, wilfully and with malice aforethought, kill one Gloria Jean
Cummingsby means of beating her about the head and face with a wooden board

and that the said victim died as a proximate result thereof.

19002-11-13-1998
CERTIFIED TRUE COPY
2000-11-13-1998
FOR
Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

Dudley, Saleem, Jr.

SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 1275
INDICTMENT/CASE#:COUNTY OF Florence
STATE VS.Charles Pagan

AKA:

Race: H Sex: M Age: 10DOB: 11/29/17 SS#: Address: DL# SID#: 48 -GS- 21 - 855A/W#: F-601427Date of Offense: 12/11/17S.C. Code §: 16-03-10CDR Code #: 0 / 1 / 1 / 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murderin violation of § 16-03-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mark M. Mabe
SolicitorCharles Pagan
DefendantJames C. Smith
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ \$14-1-206 (Assessments 100%) \$ \$14-1-211(A)(1) (Surcharge) \$ \$14-1-211(A)(2) (Surcharge) \$ 100.00\$56-5-2995 (DUI Assessment) \$ 3% to County (if paid in installments) \$ 3.00TOTAL \$ 103.00Myrae L. Green
Clerk of Court/ Deputy ClerkCourt Reporter: K. Reed

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP days/hours Public EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund.Other: PRESIDING JUDGE Judge Code: Sentence Date: 2-12-01CERTIFIED: A TRUE COPY
Christy L. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.