

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Fairfield County

Clifton Newman, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

DARRYL COOK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 000950

APPENDIX

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9 MR. BARFIELD: Your Honor, again, for
10 purposes of the exhibit, I propose just to mark the
11 bag with its contents as a single exhibit.

13 THE COURT: State's next.

17 One oh five --

19 MR. BARFIELD: -- is a receipt; one
20 oh six is a receipt; one oh seven is a receipt; one
21 oh eight is a receipt; one oh nine is the movie
22 stub. Let call one oh ten Reeboks.

23 COURT REPORTER: One oh nine was the
24 stub.

25 MR. BARFIELD: One oh nine was the

Monica Simpson - Direct

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1 movie stub.

2 COURT REPORTER: Okay.

3 MR. BARFIELD: I've got one ten in my
4 hand, and that's Reeboks.

5 COURT REPORTER: What was one oh
6 eight?

7 MR. BARFIELD: One oh eight is a
8 receipt.

9 COURT REPORTER: Okay.

10 MR. BARFIELD: One eleven is what
11 we're going to call "B" for boots.

12 COURT REPORTER: Okay.

13 MR. BARFIELD: One twelve is what
14 we're going to call Timberlands. And one thirteen
15 is a bag of clothing items.

16 THE COURT: What are those numbers
17 again?

18 MR. BARFIELD: Your Honor, the
19 numbers that we have just introduced are State's One
20 Oh Five through --

21 COURT REPORTER: Thirteen.

22 MR. BARFIELD: -- thirteen.

23 THE COURT: Into evidence without
24 objection.

25 (Plaintiff's Exhibits

Monica Simpson - Direct

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1 Number One Hundred and Five through One Hundred and
2 Eight, Receipts, were entered in evidence.)

3 (Plaintiff's Exhibit Number
4 One Hundred and Nine, Movie Stub, was entered in
5 evidence.)

6 (Plaintiff's Exhibit Number
7 One Hundred and Ten, Reeboks Shoe Box, was entered
8 in evidence.)

9 (Plaintiff's Exhibit Number
10 One Hundred and Eleven, Boots, was entered in
11 evidence.)

12 (Plaintiff's Exhibit Number
13 One Hundred and Twelve, Timberland Boots, was
14 entered in evidence.)

15 (Plaintiff's Exhibit Number
16 One Hundred and Thirteen, Clothing in Bag, was
17 entered in evidence.)

18 MR. BARFIELD: Give me just a second,
19 please, sir.

20 THE COURT: Yes, sir.

21 Q Had you ever been shopping with Darryl
22 Cook before November 23, 2001?

23 A No.

24 Q Okay. When Darryl called you at I think
25 you said 7:52 p.m., anything unusual about his tone

Monica Simpson - Direct

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1 of voice or his -- was there anything about it that
2 you read into it?

3 MR. SWERLING: Objection, Your Honor,
4 just pure speculation.

5 MR. BARFIELD: Okay, let me rephrase
6 the question.

7 THE COURT: I don't think she's
8 qualified to answer that.

9 MR. BARFIELD: Let me rephrase the
10 question.

11 Q Did Darryl express to you one way or the
12 other whether he was in a hurry when he called you
13 at 7:52?

14 A No, he didn't express that he was in a
15 hurry.

16 Q Okay. Thank you, ma'am. Answer anything
17 Mr. Swerling has.

18 THE COURT: Thank you, Mr. Solicitor.
19 Mr. Swerling?

20 MR. SWERLING: Thank you.

21 CROSS-EXAMINATION

22 BY MR. SWERLING:

23 Q Good morning, Monica. How are you?

24 A Fine.

25 Q Let me just take a moment to -- okay. You

Monica Simpson - Cross

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1 and Darryl had been dating for a few months,
2 correct?

3 A Yes.

4 Q A couple of months at that time, is that
5 right?

6 A Yes.

7 Q Okay. And you were working at the Belk
8 Distribution Center at that time, or you had worked
9 at the Belk Distribution Center?

10 A I was still working.

11 Q Still working. And are you -- can you say
12 for certain whether or not he was still employed
13 there in November or not, or you don't know, don't
14 remember?

15 A He wasn't working there.

16 Q He wasn't working there at that time?

17 A No.

18 Q Okay. But he had been working there --

19 A Yes, he had been.

20 Q -- is that correct? Now, you had been out
21 before with Darryl on several occasions, correct?

22 A Yes.

23 Q And Darryl, when y'all were friends and
24 dating, Darryl had hair on his face, right? He had
25 a mustache and some hair down the side, correct?

1 A He always -- it was a little, but he kept
2 it like comb-cut like now.

3 Q Right. But he had a thin mustache, did he
4 not?

5 A Yes.

6 Q And he had a thin hair coming down his
7 cheeks --

8 A Yes.

9 Q -- correct?

10 A Yes.

11 Q So there was hair on his face, is my
12 question?

13 A A little, yes.

14 Q Okay. Now, Darryl on the afternoon of
15 November 23rd, he called you at about 1:30. He told
16 you he was in Columbia, didn't he? Remember him
17 going for a job interview and getting some glasses?
18 Didn't he tell you he was in Columbia --

19 A I don't recall.

20 Q -- or was going to Columbia? You don't
21 recall that?

22 A No.

23 Q But he did call you about 1:30, I believe
24 is what your testimony was?

25 A I had called him at 1:30.

Monica Simpson - Cross

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1 Q You had called him at 1:30?

2 A Yes.

3 Q So you spoke at 1:30?

4 A Yes.

5 Q Now, later on that evening he called you
6 around 8:00 -- seven, eight minutes to 8:00 -- and
7 said could you pick him up. Now, you lived where at
8 that time?

9 A Great Falls.

10 Q And you got down to Ridgeway about what
11 time?

12 A I can't recall the time.

13 Q Did it take you about a half hour -- 20
14 minutes or a half hour?

15 A In between that time frame.

16 Q All right. But he was at his house when
17 you picked him up?

18 A Yes.

19 Q Okay. And when you picked him up, his
20 brother also got in the car, and you dropped -- you
21 went to the Shell station and dropped him off,
22 correct?

23 A Yes.

24 Q Okay. Now, the Solicitor asked you about
25 when he went to pay for gas he had some money on

Monica Simpson - Cross

500

1 him.

2 A Yes.

3 Q Okay. You saw some money, but you have no
4 idea how much it was, whether it was \$100 or \$200,
5 do you?

6 A No, I don't.

7 Q Okay. And it could have been \$100, or
8 \$200, or \$300 at the most, correct?

9 A Yes, it could have been.

10 Q And it was not unusual for Darryl to have
11 cash on him, was it?

12 A No, it wasn't.

13 Q Okay. And it was not unusual when you
14 went out with Darryl for him to pay for things, was
15 it?

16 A No, it wasn't.

17 Q As a matter of fact, when you went out, he
18 did pay for things --

19 A Yes.

20 Q -- and he didn't expect you to pay,
21 correct?

22 A No, he didn't.

23 Q Now, November 23rd was the day after
24 Thanksgiving, wasn't it?

25 A Yes.

Monica Simpson - Cross

501

1 Q Okay. And I think the jury is all
2 familiar with the fact that that's sales day, right?

3 A Yes.

4 Q And it's the biggest sales day of the
5 year, as a matter of fact?

6 A Yes.

7 Q And that was one of the reasons why you
8 went shopping, isn't it?

9 A Yes.

10 Q Okay. Because everything was on sale the
11 day after Thanksgiving?

12 A Yes.

13 Q Okay. And you bought an outfit?

14 A One.

15 Q One outfit, okay. And the outfit that you
16 bought, Darryl agreed that he'd pay for it?

17 A Yes.

18 Q Okay. Obviously, that's not here. You
19 kept the outfit, correct?

20 A Yes.

21 Q Okay. And then you went to the other --
22 now, that was at a separate store than the other
23 things that were purchased?

24 A Yes.

25 Q And that was at Goody's?

Monica Simpson - Cross

502

1 A Yes.

2 Q Okay. And then everything else was
3 purchased at Columbia Mall?

4 A Yes.

5 Q So all these things that Darryl purchased
6 -- the shoes, the sneakers, the Timberlands, the
7 skully
8 -- these are skully caps, is that what you call
9 them?

10 A Yes.

11 Q There were like three there and a head
12 band. That was all purchased on the evening of
13 November 23, 2001, correct?

14 A Yes.

15 Q After you got to the mall, 8:30, 9:30,
16 whatever it was, correct?

17 A Yes.

18 Q Okay. And do you know -- what did y'all
19 spend, a couple of hundred dollars?

20 A I guess. That's what he spent.

21 Q About \$200 on you and him, correct?

22 A Yes.

23 Q Okay. Everything was on sale?

24 A I'm assuming. I don't know

25 Q As far as you remember?

Monica Simpson - Cross

503

1 A Yes.

2 Q Okay. Now, you went to the movies, and I
3 think you agreed it wasn't -- it just wasn't a good
4 movie.

5 A No, it wasn't.

6 Q So there was nothing unusual about
7 leaving. You wanted to leave as well?

8 A Yes.

9 Q Okay. And they wanted to go to this Club
10 Amps, correct?

11 A Yes.

12 Q He wanted to go to this Club Amps. The
13 reason you didn't want to go is because you were
14 tired?

15 A Yes.

16 Q You had been up in Concord that day --

17 A Yes.

18 Q -- correct? Isn't that true?

19 A Yes.

20 Q Okay. And so when he said he wanted to
21 go, you agreed you'd just drop him off, and then you
22 went home?

23 A Yes.

24 Q Is that correct?

25 A Yes.

Monica Simpson - Cross

504

1 Q Okay. That's all I have. Thank you.

2 A Okay.

3 MR. BARFIELD: Just one redirect.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. BARFIELD:

7 Q Mr. Swerling was asking you --

8 MR. BARFIELD: Beg the Court's
9 indulgence one moment.

10 Q Mr. Swerling asked you if Darryl had -- if
11 you had seen him with money before and if he had
12 bought you stuff before. Prior to November 23,
13 2001, had you seen him with that much cash?

14 A I would -- I have seen him with a lot of
15 cash at one time before.

16 Q Any time close to November 23, 2001?

17 A Probably like a month prior.

18 Q All right. And as far as you know, he was
19 not working at the Belk Distribution Center in
20 November of 2001, when this incident occurred?

21 A No, I don't think so.

22 Q Thank you. That's all.

23 MR. SWERLING: Nothing further, Your
24 Honor.

25 THE COURT: Thank you.

Monica Simpson - Redirect

505

1 You may step down.

2 MS. SIMPSON: Thank you.

3 MR. BARFIELD: I call Robert
4 McDuffie.

5 And may this witness be excused,
6 Your Honor?

7 THE COURT: You may leave, if you
8 wish.

9 MR. BARFIELD: Ms. Simpson, if you
10 need to go by the office to get a paper to take back
11 to work, we'll do that for you. Thanks.

12 CLERK OF COURT: I have a note that
13 one of the jurors needs to give her husband his car
14 keys.

15 (The witness was sworn.)

16 CLERK OF COURT: Please have a seat.

17 THE COURT: Is he here?

18 CLERK OF COURT: On the jury.

19 THE COURT: I said is he here.

20 CLERK OF COURT: Her husband is
21 outside waiting on her keys.

22 THE COURT: Okay, just a second.

23 MR. BARFIELD: Yes, sir.

24 THE COURT: Cynthia Ruff, do you have
25 your husband's car keys? Thank you, ma'am. We'll

Monica Simpson - Redirect

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1 deliver them to him.

2 CLERK OF COURT: State your name for
3 the record.

4 THE COURT: Solicitor, you may call
5 your next witness.

6 MR. BARFIELD: I call Robert
7 McDuffie.

8 THE COURT: Mr. McDuffie is already
9 here. Has he been sworn?

10 MR. BARFIELD: He's on. I think he's
11 sworn.

12 Is that right, Madam Clerk?

13 CLERK OF COURT: Yes, sir.

14 THE COURT: All right.

15 ROBERT T. McDUFFIE, having
16 first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BARFIELD:

19 Q Tell us your full name again.

20 A Robert McDuffie.

21 Q And do you have a nickname that people
22 call you?

23 A Yes, Pee Wee.

24 Q Most of your close friends call you Pee
25 Wee?

Robert T. McDuffie - Direct

507

- 1 A Yes.
- 2 Q How old are you, Mr. McDuffie?
- 3 A I'm 29 now.
- 4 Q I'm sorry?
- 5 A Twenty-nine.
- 6 Q Where do you live?
- 7 A I live in Ridgeway.
- 8 Q How long have you lived in Ridgeway?
- 9 A Fifteen years.
- 10 Q Were you living in Ridgeway on November
- 11 23, 2001?
- 12 A Yes.
- 13 Q Do you know Darryl Cook?
- 14 A Yes.
- 15 Q Did you know Darryl Cook on and before
- 16 November 23 --
- 17 A Yes.
- 18 Q -- of 2001?
- 19 A Yes.
- 20 Q And do you see Darryl Cook in the
- 21 courtroom today?
- 22 A Yes.
- 23 Q Where's Darryl?
- 24 A He's over there.
- 25 Q What's he got on? What's he look like?

Robert T. McDufie - Direct

508

- 1 A Blue shirt.
- 2 Q Glasses, bald head -- is that Darryl?
- 3 A Glasses, bald head -- yes, that's him.
- 4 Q All right. Do you remember what you were
- 5 doing during the daytime on Friday, November 23,
- 6 2001?
- 7 A Yes, I was over at my girlfriend's house.
- 8 Q What was your -- is she still your
- 9 girlfriend?
- 10 A No, not any more.
- 11 Q All right. What --
- 12 A Baby mama, I'm going to put it that way --
- 13 baby mama.
- 14 Q You have a child with her?
- 15 A Yes.
- 16 Q What is the young lady's name?
- 17 A Shana Brown.
- 18 Q And what town or community does she live
- 19 in?
- 20 A Ridgeway.
- 21 Q Did you have any plans for that night?
- 22 A No, I usually do the same thing I do every
- 23 -- you know, every night we did, just go out to the
- 24 club.
- 25 Q And the club you're referring to is called

Robert T. McDufie - Direct

509

1 what?

2 A Amps.

3 Q Called what, I'm sorry.

4 A Amps.

5 Q And where is Amps?

6 A It was located by I-77.

7 Q All right.

8 A One street off from Killian.

9 Q I'm referring to November 23, 2001. It's
10 not there any more, is that you're telling me?

11 A No, it's there. It was. That's where it
12 was.

13 Q Out near 77?

14 A Yes, Killian -- get off on Killian exit,
15 and it's right there.

16 Q And what direction is it between -- with
17 respect to Ridgeway and Columbia, where was Amps?

18 A It's in between.

19 Q Okay. At any point that evening, did you
20 communicate with Darryl Cook, talk to him somehow?

21 A Yes.

22 Q How did you talk to him?

23 A I called his cell phone.

24 Q All right, hold on just a minute. I'm
25 going to show you State's Exhibit Number Twenty.

Robert T. McDufie - Direct

510

1 I'm just going to hold it up for you for a minute,
2 and I have my thumb under a line which is a bunch of
3 numbers that run all the way across the page. First
4 of all, read out that number that my thumb is under
5 right now.

6 A Three three seven forty sixty-four (337-
7 4064).

8 Q Do you recognize that phone number?

9 A Yes.

10 Q Whose phone number is that?

11 A That's Shana Brown's number.

12 Q Is that her home number?

13 A That's her parents' phone number.

14 Q Is that the house that you were at when
15 you talked to Darryl?

16 A Yes.

17 Q Now I'm showing you again a number over my
18 thumb. Do you recognize that number?

19 A The number over there, next to it?

20 Q Above my thumb, I'm sorry.

21 A No, I don't recognize that number.

22 Q All right. And did you place a call to
23 Darryl Cook at some point from Shana Brown's phone
24 number?

25 A Yes.

Robert T. McDufie - Direct

511

1 Q Do you know what time it was approximately
2 the first time you talked to him by phone?

3 A I can't remember, but I know I called him.

4 Q Well, was it evening time? Was it morning
5 time?

6 A It was evening.

7 Q And did you and Darryl have any
8 conversation during that call?

9 A The only conversation we had was, was he
10 going to Amps that night. That's where we used to
11 get up every weekend to go out.

12 Q Did you leave Shana Brown's house yourself
13 and go somewhere else?

14 A Yes, I went to my cousin Peaches' house.

15 Q All right. Is Peaches -- I'm sorry.

16 A Peaches Ford at Dogwood Apartments.

17 Q And what is Peaches' real first name?

18 A Takesha Ford.

19 Q All right. I'm again showing you State's
20 Exhibit Number Twenty, and I have my thumb under a
21 telephone number. Do you recognize that number?

22 A Honestly, no, I don't recognize that
23 number.

24 Q Do you know what Peaches' number was?

25 A She had a 327 number.

Robert T. McDufie - Direct

512

- 1 Q Do you know if that's it or not?
- 2 A That ain't no 327 number right there.
- 3 Q No, right there above my thumb is what --
- 4 A Yes, yes.
- 5 Q And read that number out.
- 6 A Eighty-nine twenty-six (8926).
- 7 Q Three three seven eight nine two six (337-
- 8 8926)?
- 9 A Yes.
- 10 Q Was that Peaches' number?
- 11 A Yes.
- 12 Q And did you at some point make phone calls
- 13 on Peaches' telephone?
- 14 A Yes.
- 15 Q And whose number were you calling on --
- 16 from Peaches' phone?
- 17 A Well, I called Darryl, and he was at the
- 18 club. It was --
- 19 Q All right, hold on. We're going step by
- 20 step.
- 21 A Okay.
- 22 Q What number of Darryl's did you call --
- 23 not the number itself, but a cell phone, a house
- 24 phone?
- 25 A Cell phone.

Robert T. McDufie - Direct

513

1 Q Did he answer?

2 A Yes.

3 Q Did you talk to him?

4 A Yes.

5 Q Did he tell you where he was?

6 A Yes.

7 Q Did he tell you what he was doing?

8 A He just told me he was at the club, and he
9 told me my other female friend was there, Michelle
10 Jacks.

11 Q All right, we'll come back to that in a
12 minute.

13 A All right.

14 Q About what time was it when you called
15 Darryl this time?

16 A I'd say it had to be around about eleven.

17 Q Late at night?

18 A Yes.

19 Q Were there several calls from you or
20 somebody using the phone that you were using back
21 and forth to Darryl's cell phone?

22 A Yes, my -- she's my wife now, but, you
23 know, it was her, Michelle Jacks. She was calling
24 me back and forth.

25 Q All right, hold on. When you first called

Robert T. McDufie - Direct

514

1 Darryl from Peaches' number and Darryl was at the
2 club, was Michelle anywhere around Darryl?

3 A Yes.

4 Q Did you talk to Michelle during that first
5 conversation?

6 A Yes, he took the phone to Michelle.

7 Q Okay, that's fine.

8 A All right.

9 Q Were there several calls between you and
10 Michelle on Peaches' phone and Darryl's cell phone?

11 A Yes.

12 Q All right. What happened after you were
13 at Takesha's house having these phone calls?

14 A She was mad, because at the time, you
15 know, she was mad that I was over at my baby mama's
16 house, you know, and supposed to be seeing her. So
17 we was arguing about, you know, where I was.

18 And then I asked her to come get me,
19 come pick me up. The plan was to come pick me up to
20 go to her house after we leave the club together.

21 Q All right.

22 A And so she came and picked me up, and we
23 went to the club.

24 Q She's driving her car?

25 A Yes.

Robert T. McDufie - Direct

515

- 1 Q And tell me her name again.
- 2 A Michelle Jacks.
- 3 Q What time did you and Michelle get to the
- 4 club?
- 5 A This had to be about twelve.
- 6 Q Was the club -- how crowded was the club?
- 7 A Oh, it was popping in there. It was
- 8 popping.
- 9 Q Busy?
- 10 A Yes.
- 11 Q Was Darryl there?
- 12 A Yes.
- 13 Q Do you know Anthony Green?
- 14 A Yes, I know Anthony Green.
- 15 Q Was Anthony there?
- 16 A Yes, he was there, too.
- 17 Q Did you, and Darryl, and Anthony at some
- 18 point get together?
- 19 A Yes, we -- you know, the whole time in the
- 20 club, we was mingling with everybody, you know what
- 21 I'm saying. But then they said they was going to
- 22 the strip club, and, you know, I was like, "I like
- 23 the strip club." And so I told them they could
- 24 count me in.
- 25 Q All right, stop right there. The strip

Robert T. McDufie - Direct

516

1 club, what town is the strip club in?

2 A In Columbia, on Two Notch.

3 Q Do you know the name of the strip club?

4 A Sensations.

5 Q Was there a plan made for how to get to
6 the strip club?

7 A Yes, we all was going to ride with Green,
8 and that's what we did.

9 Q What kind of car did Green have -- Anthony
10 Green?

11 A He had a drop-top Mustang.

12 Q Did the three of y'all get into Green's
13 car?

14 A Yes.

15 Q Did you go to the strip club?

16 A Yes.

17 Q About what time did you leave Amps to go
18 to the strip club?

19 A I'd say it had to had to have been about
20 two -- two, close to three.

21 Q In the morning?

22 A Yes.

23 Q How long did you stay at the strip club?

24 A We stayed at the strip club till at least
25 about sunup, about six in the morning, then we left.

Robert T. McDufie - Direct

517

1 Q When you left the strip club, where did
2 you go?

3 A Well, we went and got a room.

4 Q A room where?

5 A At the Ramada Limited in Ridgeway.

6 Q All right, stop right there for just a
7 minute. Do you know how many rooms you got?

8 A Well, I know Ant Green got a room, and
9 Darryl bought a room.

10 Q All right. When you say "Ant Green," is
11 that his nickname?

12 A Well, Anthony Green, yes, we call him
13 Green.

14 Q All right.

15 A Anthony Green bought a room, and Darryl
16 bought a room.

17 Q I'm showing you two pieces of paper and
18 just ask you if you can tell me what those are.

19 A Yes, that's when we signed in to get a
20 room.

21 Q All right. Is -- let me get them marked,
22 and then we'll talk about them.

23 MR. BARFIELD: Your Honor, I'm going
24 to offer these two pieces of paper, which is a motel
25 receipt, as the next two State's exhibits.

Robert T. McDuffie - Direct

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1 MR. SWERLING: I have no objection to
2 those. But I'd like to take up a legal matter at
3 the sidebar.

4 MR. BARFIELD: Let me go ahead and
5 get these exhibits done --

6 MR. SWERLING: Okay.

7 MR. BARFIELD: -- so that I won't
8 forget to come back and handle that.

9 Ms. Rema, I'm taking one
10 fourteen, motel receipt --

11 COURT REPORTER: Right.

12 MR. BARFIELD: -- and one fifteen,
13 motel receipt.

14 COURT REPORTER: Correct.

15 MR. BARFIELD: Your Honor, at this
16 time I'd offer these two exhibits, motel receipts
17 identified by Mr. McDuffie.

18 THE COURT: State's Number One
19 Fourteen and One Fifteen into evidence without
20 objection.

21 (Plaintiff's Exhibits
22 Number One Hundred and Fourteen and One Hundred and
23 Fifteen, Motel Receipts, were entered in evidence.)

24 MR. BARFIELD: And let me just ask
25 him one more question or two about these before we

Robert T. McDufie - Direct

519

1 go on.

2 EXAMINATION CONTINUED

3 BY MR. BARFIELD:

4 Q What was the name of the motel?

5 A Ramada Limited.

6 Q And I'm showing you State's Exhibits
7 Number -- well, one fourteen first. What room
8 number was 114, State's Exhibit Number One Fourteen?
9 What room number was it?

10 A You're asking me who was in the room?

11 Q No. What number of the room at Ramada
12 Limited was rented by somebody on this receipt, for
13 this receipt?

14 A Oh, Anthony Green.

15 Q What number -- room number?

16 A Room 212.

17 Q And is this the Anthony Green room?

18 A Yes.

19 Q And I'm showing you 115. What room number
20 for 115?

21 A Darryl Cook.

22 Q The number of the room, though.

23 A Oh, 221.

24 Q All right, thank you, sir. That's all
25 about the motel receipt to this point.

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1 THE COURT: All right. We're going
2 to take a brief recess. And it'll be about a one-
3 cigarette break, so about ten or fifteen minutes.
4 And you need to remain seated, please.

5 MR. McDUFFIE: All right.

6 (Jury out at 11:50 a.m. for
7 break.)

8 THE COURT: Please let the record
9 reflect that the jury and the alternate are absent
10 from the courtroom.

11 MR. BARFIELD: And, Your Honor, based
12 on the sidebar we had, it's my understanding that I
13 have Mr. Swerling's and the Court's permission to
14 speak to the witness during the recess briefly about
15 a matter.

16 THE COURT: A limited matter.

17 MR. BARFIELD: A limited matter.

18 THE COURT: That's correct. The
19 Court will be at ease.

20 MR. BARFIELD: It's no big deal. Let
21 me tell you something real quick.

22 (Court in recess.)

23 MR. SWERLING: Judge, we have one
24 unresolved issue. The Solicitor agrees, as I
25 understand, that the witness is not going to go into

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1 the fact that at the motel there was a trip made to
2 go ahead and purchase cocaine.

3 MR. BARFIELD: And the witness has
4 been instructed not to make reference to trips from
5 the hotel to buy drugs.

6 MR. SWERLING: But it's my
7 understanding that the Solicitor does intend to try
8 and elicit from the witness that Mr. Cook said,
9 "With the money, I'm going to go buy some marijuana
10 and cocaine." And I would still object to that as
11 not being probative.

12 I think it puts his character at
13 issue. It's not part of the res gestae of the
14 crime. And it certainly -- if you look at balancing
15 the 403 and doing a 403 analysis, it's unduly
16 prejudicial and far outweighs its probative value.
17 So I would object to that as not being part of the
18 res gestae and certainly not probative or relevant
19 at this point. And certainly, under the 403
20 analysis, it would fail, too.

21 MR. BARFIELD: Let me respond
22 briefly.

23 THE COURT: Yes, sir.

24 MR. BARFIELD: The context of this
25 would be -- if it develops -- would be this witness

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1 and perhaps another witness to follow this witness
2 would say that Mr. Cook gave them a figure or an
3 amount of money that he got during the robbery and
4 told them several things he intended to do with the
5 money and, in fact, some things that he did do with
6 the money.

7 Witnesses might testify that he
8 gave some of the money to his brother, that he
9 intended to buy a Cadillac with some of the money,
10 that he intended to buy some marijuana with some of
11 the money, that he intended to buy cocaine with some
12 of the money.

13 Now, again, we're talking about
14 what I contend are statements that Mr. Cook made to
15 witnesses about what he was going to do with the
16 proceeds of this armed robbery. I think that is --
17 and I think is part of the res gestae.

18 I think that is completely different
19 than having a witness simply testify that some
20 conversation unrelated to the robbery, Cook said,
21 "Yes, I buy dope all the time, and I went and bought
22 dope yesterday, and I intend to go buy dope
23 tomorrow."

24 I think that's completely different.
25 He is discussing what he is going to do with the

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1 proceeds of this illegal act.

2 THE COURT: Well, I think in that
3 context that it would be part of the res gestae and
4 admissible.

5 MR. SWERLING: Your Honor would allow
6 my objection to be noted at the time that testimony
7 is offered rather than me having to stand up?

8 THE COURT: Exactly.

9 MR. BARFIELD: No problem.

10 THE COURT: Noted at the time.

11 MR. BARFIELD: Otherwise, the State
12 is ready to go.

13 THE COURT: All right. Can we have
14 the jury, please, ma'am?

15 And you're still under oath.

16 (Jury in at 12:56 p.m.)

17 THE COURT: Please let the record
18 reflect that the trial jury and alternate are
19 present in the courtroom.

20 Mr. Solicitor?

21 EXAMINATION CONTINUED

22 BY MR. BARFIELD:

23 Q Mr. McDuffie, I think when we stopped for
24 the break a little bit ago, we had talked about the
25 motel room at Ramada Limited. Again, I don't think

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1 I asked you this, but where is the Ramada Limited?

2 A It's in Ridgeway.

3 Q And what roads is it at?

4 A It's on 34, at one of the exits.

5 Q At the interstate?

6 A Yes.

7 Q Seventy-seven?

8 A Yes.

9 Q All right. Did you, and Darryl Cook, and
10 Ant Green spend the night -- spend some time
11 starting in the early morning hours of Saturday,
12 November 24, 2001, at the Ramada Limited?

13 A Yes.

14 Q And about how long -- you said there were
15 two rooms. Who was in the room with you?

16 A Well, I went in the room with Darryl Cook.

17 Q And was there a female involved in some of
18 this that night?

19 A Yes, but the female, she wasn't with me.

20 Q That's fine. And what was her name?

21 A Connie Brown.

22 Q And who was she with?

23 A She was with Anthony Green.

24 Q About how long were all of y'all at the
25 motel?

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1 A Well, I'd say maybe a couple, a few hours.

2 Q All right. And about what time did you
3 end up being -- what time did you get to the motel?

4 A Six-thirty, quarter to seven, something
5 like that. I know it was in the morning.

6 MR. SWERLING: If you could, just
7 pull that microphone down a little closer.

8 MR. BARFIELD: We're not picking on
9 you, but you've got to talk into the microphone.

10 THE COURT: Slide up in the chair a
11 little bit, and it'll help a little.

12 Q You can't slide the chair. You've got to
13 slide your butt.

14 A All right, I got you. It was about
15 quarter to seven.

16 Q In the morning?

17 A Yes.

18 Q And about what time did everybody break
19 camp from the motel and leave?

20 A I'd say about ten, something after ten --
21 something like that.

22 Q The same morning?

23 A Yes, the same morning.

24 Q I'm going to jump ahead. How did you get
25 -- you didn't have a car with you, is that correct?

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1 A No.

2 Q How did you get away from the motel to
3 wherever you desired to go?

4 A Well, I called my aunt when they left.

5 Q What's your aunt's name?

6 A Patricia Ford. And --

7 Q All right, stop right there. You called
8 your aunt when they left?

9 A Yes.

10 Q Who left?

11 A Green and -- Ant Green and Darryl Cook
12 left. And so by the time my aunt came and picked me
13 up, they had made it back. So when Darryl got out
14 of the car, Green left, and me and my aunt -- Darryl
15 got in the car with us, and my aunt gave Darryl a
16 ride home.

17 Q All right. Where did your aunt take you?

18 A Where she lived at, where we're staying
19 now.

20 Q You were staying where your aunt lived?

21 A Yes.

22 Q Okay. And do you know -- did Anthony
23 Green leave about the same time y'all did, or do you
24 know?

25 A Well, I don't know if he left for good.

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1 But I know he pulled off like he was leaving.

2 Q That's fine. Did you see Darryl Cook any
3 more -- well, did y'all let Darryl Cook out at his
4 house?

5 A Yes.

6 Q Did you see Darryl Cook any more --

7 A No, I haven't.

8 Q -- during the day on Saturday, November
9 24, 2001?

10 A No -- no, I haven't.

11 Q Okay. At some point, did you become aware
12 that Jackie McGuirt had been shot and robbed?
13 That's a "yes" or "no."

14 A Yes.

15 Q Okay. When did you find out that that had
16 happened? Not how, not who told you, but when did
17 you find out?

18 A I found out that night -- that night, that
19 same night it happened, I found out that night.

20 Q All right. Did you find out that night
21 before you were at Amps Club?

22 A Yes, before I was at Amps, yes.

23 Q All right, now. At any point -- and this
24 is just a general question. Again, this is a "yes"
25 or "no." At some point from the -- at some point,

1 did you and Darryl Cook have conversation about what
2 had happened to Jackie McGuirt?

3 A Yes.

4 Q When did you and he first have
5 conversation about what happened to Jackie McGuirt?
6 And let me finish the question before you answer.

7 A All right.

8 Q Was it at Amps?

9 A No, it wasn't at Amps.

10 Q Okay. Was it after Amps?

11 A Basically, it was after Sensations. We
12 was on the way back, you know, from Sensations going
13 to the room, and he had asked did we hear about it.

14 Q All right. Who was present when Darryl
15 starts talking about --

16 A It was me --

17 Q -- the McGuirt situation?

18 A It was me, him, and Anthony Green during
19 the time.

20 Q Who brought it up?

21 A He did.

22 Q And what did Darryl first say?

23 A What did he say? He asked did we hear
24 about McGuirt, and --

25 Q Did you respond?

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1 A Yes. And I was like, "Yes." And then he
2 was like do we think he's going to die. And I was
3 like --

4 Q Did you respond to that?

5 A Yes. I was like, "I hope not."

6 Q And what did Darryl say?

7 A And then he said he hopes he do.

8 Q All right. Was there further conversation
9 about what had happened to Jackie McGuirt?

10 A Not while we was on our way to the room.

11 Q All right. Later on, while you were at
12 Ramada, was there any further conversation between
13 you and Darryl Cook about what happened to Jackie?

14 A To be honest, yes, he basically told me.

15 Q All right. And I, again, probably will
16 stop you and interrupt you some. But what did
17 Darryl Cook tell you about Jackie McGuirt's robbery
18 and shooting?

19 A He told me he was the one that did it.

20 Q All right, stop. Did he tell you -- just
21 go ahead. I'm sorry to stop you. Go ahead. Tell
22 us everything you remember that Darryl told you.

23 A From what I remember, he told me he did
24 it, said he shot McGuirt up in the upper part.

25 Q Did he tell you why he shot Mr. McGuirt?

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1 A I guess when he went in there to get the
2 money, you know.

3 Q Go ahead. Just continue to tell us.

4 A When he went in there to do what he was
5 doing, he told me he did it, you know.

6 Q All right. Did Darryl tell you what he
7 did, other than shoot Mr. McGuirt?

8 A He said he had to shoot something about
9 six times to get the tape out or something.

10 Q Go ahead.

11 A And after he told me that, you know, my
12 eyes got big, you know. Being I was with him, my
13 eyes got big, and I was like, "Oh, he's the one did
14 it," you know.

15 Q Then what?

16 A And so, you know, after he told me he did
17 it, he left with Green, you know what I'm saying.

18 Q All right.

19 A They ended up leaving.

20 Q All right, let me --

21 A And I called my aunt. That's when I used
22 the telephone.

23 Q All right, I'm going to ask you some
24 specific questions. Did Darryl tell you whether or
25 not he got anything from McGuirt or McGuirt's Tire

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1 Service?

2 A Yes.

3 Q What did he tell you he got?

4 A Well, far as I can remember, six thousand.

5 Q Six thousand what?

6 A Cash.

7 Q Money?

8 A Money, yes.

9 Q Did he tell you what he had done with the
10 money up to that point?

11 A Well, what I remember, I know he told me
12 that he had it in five different places. You know,
13 I don't know if he had --

14 Q Did he tell you whether he had given any
15 money to anybody?

16 A Yes, he made a suggestion about he was
17 going to give his -- what he was going to give his
18 brother. He didn't say he gave it, but he was
19 saying what he was going to give his brother.

20 Q Well, did he tell you what he was going to
21 do with the money that he had in five different
22 places? Let me ask you that question.

23 A Yes.

24 Q What did he say he was going to do with
25 the money?

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1 A Buy him a car, you know.

2 Q Did he say he was going to do anything
3 else with the money?

4 A Yes.

5 Q What?

6 A He said he was going to buy him a car and
7 get him some, you know, marijuana.

8 Q Okay.

9 A And that was basically it.

10 Q Did he tell you how he got to Mr.
11 McGuirt's station before this occurred?

12 A Far as I know, I remember him telling me
13 he walked.

14 Q Did he tell you where he left from to go
15 to McGuirt's?

16 A The Shell station. He hid behind the
17 Shell station.

18 Q Have you ever walked from the Shell
19 station to McGuirt's or to downtown Ridgeway?

20 A I have before, yes.

21 Q Okay. Is it a long walk or a pretty short
22 walk?

23 A It's not that long from where we -- you
24 know, where the Shell station is at.

25 Q Thank you.

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1 A It's not that far.

2 Q Did he tell you -- did he describe for you
3 his confrontation with Mr. McGuirt inside the
4 station?

5 A You know, he really didn't describe it to
6 me, you know. But far as I was told that --

7 Q Just tell me what Cook said. That's what
8 I'm asking.

9 A He said he went in there and told him to
10 give him the money. And he said McGuirt tried to
11 grab him or something, and he ended up shooting him.

12 Q All right. You said a minute ago that he
13 had to shoot something about six times to get the
14 tape out. Did Darryl tell you anything about the
15 tape other than that?

16 A Other -- no, no, that's all I know right
17 there.

18 Q Do you know -- you said that you and
19 Darryl Cook were in the same room, and you
20 identified State's Exhibit Number One Fifteen as
21 Room 221, as the room y'all were in. Do you know
22 who paid for that room?

23 A He did.

24 Q Did you see him pay for it?

25 A Yes.

1 Q Did he pay for it with -- how did he pay
2 for it?

3 A I just know he went -- I was sitting in
4 the car.

5 Q Okay.

6 A He just went out there and went inside and
7 paid for it, you know.

8 Q That's fine. I'm going to ask a stupid
9 question about strip clubs. Did you spend any money
10 at the strip club?

11 A Yes, I had my own money, yes.

12 Q That's fine. Did Darryl spend any money
13 at the strip club?

14 A To be honest with you, I ain't seen Darryl
15 spend no money.

16 Q That's fine.

17 A To be honest, you know, I ain't seen him
18 spend no money up in there.

19 Q All right, that's fine.

20 MR. BARFIELD: Beg the Court's
21 indulgence for one moment.

22 THE COURT: Yes, sir.

23 Q Thank you. Answer anything Mr. Swerling
24 has, Mr. McDuffie.

25 A All right.

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1 THE COURT: Thank you, Mr. Solicitor.

2 Mr. Swerling, cross?

3 CROSS-EXAMINATION

4 BY MR. SWERLING:

5 Q Back on November 23, 2001, how old were
6 you at that time?

7 A Twenty-three.

8 Q And you and Anthony Green were good
9 friends?

10 A Yes, and Darryl, all of us.

11 Q All of you?

12 A All of us.

13 Q And since that time, you stay in touch --
14 you said you hadn't talked to Darryl since that
15 time. But do you stay in touch with Anthony Green?

16 A No.

17 Q Just parted ways?

18 A Well, really, everybody got their -- like
19 I said, I got married. And during all this, I've
20 been in a bad car accident. So, you know, everybody
21 has their own life and has to do their own thing.

22 Q Have you -- when was the last time you saw
23 Anthony Green?

24 A I ain't seen Anthony Green since we came
25 here. Just like when we had to come here, I seen

1 him.

2 Q You mean within the last year or so?

3 A I'd say about six months.

4 Q Six months?

5 A Yes.

6 Q But prior to that time, you saw him?

7 A You know, I'd see him come through the
8 way, Ridgeway, and that's it. But far as us
9 hanging, huh-huh.

10 Q Not since 2001, you haven't hung together?

11 A A little after that, yes. Yes, we did.

12 Q You hung together for some time after
13 that?

14 A Yes.

15 Q And, of course, it's fair to say you and
16 he had discussed what happened that evening, isn't
17 that true?

18 A Who?

19 Q You and Mr. Green have discussed what
20 happened that evening?

21 A You're talking about the situation?

22 Q Yes.

23 A Yes.

24 Q So that would not be unusual for the two
25 of you to discuss the events of that evening and

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1 that morning, isn't that true?

2 A Yes, you're right.

3 Q Now, let me ask you something. Do you
4 know where Anthony Green was at 6:00 that evening?

5 A He was in the -- once we got the room, he
6 was in another room with the female.

7 Q I'm talking about at 6:00 in the evening.

8 A Oh, I have no idea where he was, no, sir.

9 Q Where were you?

10 A I was over at my baby mama's house the
11 whole day.

12 Q Where -- I'm sorry?

13 A Ridgeway.

14 Q In Ridgeway?

15 A Yes.

16 Q Okay. That's where you lived?

17 A No, that ain't where I lived. I lived in
18 Ridgeway, but during that time, I was -- you know,
19 my son wasn't that old, and, you know, I used to be
20 over there as much time as I can.

21 Q So you were actually in Ridgeway --

22 A Yes.

23 Q -- at 6:00 on that Friday, is that right?

24 A Yes.

25 Q And where did Anthony Green live?

- 1 A He lived like right on 21.
- 2 Q In Ridgeway?
- 3 A Yes.
- 4 Q So he was in Ridgeway, far as you know?
- 5 A I can't say that. I don't know.
- 6 Q You don't know?
- 7 A I don't know.
- 8 Q What kind of pistol did he own?
- 9 A Who?
- 10 Q Anthony Green.
- 11 A I ain't never seen Green with no gun.
- 12 Q You never saw him with a pistol?
- 13 A No.
- 14 Q What kind of pistol did you have?
- 15 A I ain't never had no pistol.
- 16 Q You've never had a pistol?
- 17 A No.
- 18 Q So neither one of you ever had any guns?
- 19 A Far as I can say, I never had a gun. But
- 20 by being with Green, I never seen him with a gun
- 21 neither, you know.
- 22 Q Okay, that's fine. Now, when was the
- 23 first contact you had with Darryl Cook that day?
- 24 I'm not sure I understood what the sequence of
- 25 events was..

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1 A Oh, it was that evening sometime, you
2 know, I had called him. You know, I asked him what
3 he was doing, you know what I'm saying.

4 Q Do you know where he was at that time, or
5 where did he say he was?

6 A Well, during that time, he told me he was
7 at the movies, just leaving the mall going to the
8 movies. And then after that, he was going to get
9 dropped off at Amps.

10 Q Okay. Did he tell you he was with Monica?

11 A He told me -- I didn't know who he was
12 with, but he said a girl.

13 Q All right. And did you have a prearranged
14 time that you were going to meet at Amps?

15 A We usually get together and go to Amps
16 every weekend, the fellows, every weekend. It ain't
17 been no, you know what I'm saying, every now and
18 then. That was just a Ridgeway thing. The boys get
19 together, and we go to Amps.

20 Q Okay.

21 A And so --

22 Q Pretty big crowd there that night?

23 A Yes.

24 Q Okay. Drinking?

25 A Yes.

1 Q Were you drinking?

2 A Yes.

3 Q And was Anthony drinking?

4 A Anthony really don't drink. You know, if
5 he drinks, he'll probably have one drink. But he's
6 not a drinker.

7 Q What about -- did you see Darryl drinking?

8 A Yes.

9 Q He was drinking, too. Did you drink a
10 lot?

11 A Yes, we got drunk.

12 Q You got pretty good, didn't you?

13 A Yes.

14 Q Okay. And you started about what time --
15 about 10:00? Between 10:00 and 11:00, you were
16 there?

17 A Well, I know I got there about -- I'll say
18 I got there something after eleven.

19 Q About eleven, all right. And there was
20 nothing unusual about Darryl at the Amps?

21 A No, it wasn't nothing unusual.

22 Q Nothing was discussed, nothing was said?

23 A Nothing was discussed, nothing was said.

24 He was just --

25 Q Now, something I was curious about. You

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1 had said that you had heard about Mr. McGuirt
2 earlier in the evening?

3 A Yes, my girlfriend -- at the time, she was
4 my girlfriend -- her friend called her. Her friend
5 called her, named Tameka Lewis, called her and asked
6 her did she hear about McGuirt, you know what I'm
7 saying. So she was on the phone with her friend,
8 Tameka Lewis. That's how I heard about it, because
9 I was playing with my son.

10 Q Okay. So you knew about it prior to going
11 to Amps?

12 A Yes.

13 Q And there was no discussion about that
14 then?

15 A There was no discussion about it.

16 Q Y'all were just having a good time?

17 A Just having a good time.

18 Q Now, Amps, as far as I remember what you
19 testified to and I guess what the investigation
20 revealed, you left Amps about three --

21 A Yes.

22 Q -- 2:30, 3:00?

23 A Yes.

24 Q And you went to Sensations?

25 A Yes.

- 1 Q Is that correct?
- 2 A Yes.
- 3 Q Sensations is in Columbia?
- 4 A Yes, right on Two Notch.
- 5 Q And was it the three of you, or was the
- 6 young lady with you as well?
- 7 A The young lady had followed us with her
- 8 cousin.
- 9 Q Okay. So they were in another vehicle,
- 10 but they went down to Columbia as well?
- 11 A Yes.
- 12 Q Is that right?
- 13 A Yes.
- 14 Q And you were in Sensations until 6:00 --
- 15 A Yes.
- 16 Q -- 6:30 in the morning?
- 17 A Yes, something like that.
- 18 Q Did you continue to drink?
- 19 A Yes.
- 20 Q Were either you or Ant -- at that point in
- 21 the evening, had you used any kind of drugs?
- 22 A Me, I have, yes, you know.
- 23 Q That evening.
- 24 A Yes.
- 25 Q Okay. What did you use?

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- 1 A Cocaine.
- 2 Q Okay. Did you see Ant using anything?
- 3 A No.
- 4 Q So you were drinking, and you had used
- 5 some cocaine --
- 6 A Yes.
- 7 Q -- that evening?
- 8 A Yes.
- 9 Q Okay. And I'm not trying to embarrass
- 10 you.
- 11 A No, you're not embarrassing me. I'm just
- 12 speaking the truth.
- 13 Q You were high?
- 14 A Yes, I was high. We was all high.
- 15 Q Now, a decision was made to go to the
- 16 motel --
- 17 A Yes.
- 18 Q -- in Ridgeway on the way home?
- 19 A Yes.
- 20 Q Now, who went to the motel? Did the two
- 21 vehicles go to the motel, or did you all go in one
- 22 vehicle -- or did the girl go at all?
- 23 A Yes, she went. The girl was there. She
- 24 was in the other room.
- 25 Q She went with Ant?

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1 A Yes, we went. I remember it was just me,
2 Darryl, and Anthony in Anthony's car.

3 Q Okay. Now, you said that -- and correct
4 me if I'm wrong. But I think you said that Darryl
5 started talking or had asked Mr. McGuirt?

6 A Yes, on the way coming back.

7 Q Coming back --

8 A Yes.

9 Q -- from Columbia over to Ridgeway?

10 A Yes.

11 Q Well, do you remember Christine Sloan?

12 A Who?

13 Q You remember she was the prosecutor in the
14 case. She worked for the Solicitor's Office at that
15 time, attractive young lady. She was the
16 prosecutor. Do you remember her?

17 A No, I do not.

18 Q Do you remember speaking to her sometime a
19 couple of years ago?

20 A No, honestly, I don't.

21 Q You don't remember? Do you remember
22 speaking to any prosecutor a couple of years ago?

23 A To them about the case?

24 Q Yes.

25 A I remember. I remember talking to

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1 Investigator Greg Boney. I remember talking to a
2 few people, remember faces, but not --

3 Q Okay. So you don't know their names?

4 A Yes.

5 Q But you know you got -- you obviously have
6 been interviewed before in preparation for this
7 case, correct?

8 A Yes.

9 Q And certainly over the last several years.
10 Did you tell -- and I'll just tell you the person
11 you did speak with was Christine Sloan, okay?

12 A All right.

13 Q Would you accept that as true if I told
14 you that's who it was?

15 A I don't know. That's something you know.
16 I don't know her name.

17 Q Would you dispute that, I'm saying?

18 MR. BARFIELD: I think the witness
19 has answered the best he can. If he doesn't know
20 her, he doesn't know her.

21 MR. SWERLING: All right, that's
22 fine.

23 Q Did you tell the prosecutor in connection
24 with this case, when you were being interviewed,
25 that you, and Green, and Cook left Sensations

1 together, and you were passed out, and you woke up
2 at the Ramada Inn?

3 A Yes, I did.

4 Q Okay.

5 A Yes, I remember that -- yes.

6 Q All right.

7 A Yes, I did.

8 Q So when you spoke to the prosecutor or
9 that person in connection with this case several
10 years ago, you said that when you left Sensations,
11 you passed out, and you didn't wake up till the
12 Ramada Inn?

13 A Yes.

14 Q Is that true?

15 A Well, you know, I ain't going to say I
16 passed out all the way out. But I dozed off and on,
17 because, like I said, I was high. I'm not going to
18 sit here and lie to the Court or to anybody, you
19 know. But I know the discussion -- I know what I
20 heard in the car, you know what I'm saying.

21 Q Well, I know what you're testifying to
22 today.

23 A Yes.

24 Q But you told her, "Me passed out."

25 A Yes, but then I --

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1 Q "Me, Green, Cook" --

2 THE COURT: Let him finish.

3 MR. SWERLING: Yes, sir.

4 THE COURT: Go ahead, please, sir.

5 A But then I also changed that, too, you
6 know. I also told them that I heard the
7 conversation. I was in the conversation.

8 Q Well, would you look at these notes and
9 see if that's true?

10 A I may not have did that to her, but --

11 MR. BARFIELD: Your Honor, I'm going
12 to object to the line of questioning concerning the
13 document that Mr. Swerling is referring to, and I
14 can argue it. If we need to do it out of the
15 presence of the jury, I will. It's not a big deal.
16 Mr. Swerling is cross-examining the witness based
17 upon notes written by other folks.

18 MR. SWERLING: The Solicitor tells me
19 it's Mike Greene from SLED. So I was under the
20 impression these were from Christine Sloan.

21 MR. BARFIELD: But my point is it's
22 not sworn statements or even unsworn statements
23 signed by the witness. It's notes taken by either
24 an investigator or a former prosecutor. And I don't
25 think the witness can truly answer the questions.

1 They're not his writings.

2 MR. SWERLING: Judge, I'm using them
3 to see if they refresh his memory.

4 THE COURT: And I think that he has
5 adequately indicated that regardless of what you
6 have refreshed his memory with that he recalls what
7 he heard. And I don't think I'm going to allow you
8 to go further along that line of questioning.

9 MR. SWERLING: Well, Judge, can I
10 just -- can we just establish that he did say that
11 to Mike Greene?

12 THE COURT: He has already indicated
13 that he might have said that.

14 MR. SWERLING: Okay, all right.

15 Q Now, today what you're telling the jury is
16 you remember this conversation in the car? This is
17 six years later.

18 A Yes, of course.

19 Q Okay. But at some point, you said you
20 were passed out. So which is the truth?

21 A Which is true?

22 Q Yes.

23 A I done said the truth. I done told you
24 the truth, man, you know what I'm saying. Like I
25 told you, yes, I heard the conversation in the car.

Robert T. McDuffie - Cross

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1 At first, I said I was passed out when I heard the
2 conversation.

3 Q You've also indicated you participated in
4 the conversation?

5 A Yes.

6 Q Well, you can't hear the conversation,
7 participate in the conversation, and also be passed
8 out, Mr. McDuffie, isn't that true?

9 A Yes, but, like I said, I heard the
10 conversation. I participated in the conversation,
11 you know.

12 Q Now, you woke up at the motel, and you and
13 Darryl got in one, is that correct?

14 A Yes.

15 Q And your testimony is -- or is it your
16 testimony -- that he was talking about it again?

17 A Yes.

18 Q Was there anybody else present when he was
19 talking?

20 A It was just me and him, one on one.

21 Q And according to you, what I understand
22 you're saying is that he told you stuff in a lot of
23 detail that you recalled when you spoke with the
24 police on November 30th, didn't he?

25 A Uh-huh.

1 Q He told you how he got in the place?

2 A No, I don't -- I just recall he told me
3 what happened between him and McGuirt when he got
4 there.

5 Q You told them that -- according to you, he
6 said how he got there to the place. You just --

7 A He walked.

8 Q -- testified that --

9 A He walked.

10 Q -- he walked to the place.

11 A Yes.

12 Q You remember that, how he got in and how
13 he had -- he and Mr. McGuirt had a confrontation,
14 correct?

15 A Yes.

16 Q Told you how much money he got?

17 A Yes.

18 Q Told you that he had it stored in five
19 different places?

20 A Yes.

21 Q Gave some money to his brother -- he told
22 you that?

23 A Yes.

24 Q He told you he had a skully cap on --

25 A Yes.

Robert T. McDuffie - Cross

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1 Q -- you remember that?

2 A Yes, I remember all that.

3 Q He said he gave his brother a gun --
4 remember that?

5 A Yes.

6 Q You had a lot of information.

7 A Yes, and that's what I was told when we
8 was in the room.

9 Q And then later on, he actually described
10 for you where Mr. McGuirt was coming from when the
11 shots were fired. That's what you put in the
12 statement.

13 A Yes, he was saying McGuirt was coming from
14 the back, you know what I'm saying. That's been so
15 many years ago, but I remember, you know what I'm
16 saying.

17 Q And you remembered even -- you told the
18 police how many times he said he shot that tape to
19 get it out, correct?

20 A Yes.

21 Q Did he told you where the tape was?

22 A He didn't tell me, but he said he shot
23 something to get the tape out. He didn't describe
24 where the tape was.

25 Q But he didn't tell you where the truck

- 1 was?
- 2 A No.
- 3 Q Didn't tell you what he did with the
- 4 truck?
- 5 A No.
- 6 Q Didn't tell you if he even took the truck?
- 7 A No.
- 8 Q But he told you -- you remembered the
- 9 amount of money he said he took?
- 10 A Yes.
- 11 Q When you got back to the motel, the
- 12 discussion didn't include Mr. Green at all --
- 13 A No.
- 14 Q -- according to you, is that right?
- 15 A No, because it was just me and him in the
- 16 room talking.
- 17 Q Let me ask you something. Did you find on
- 18 November 23rd -- I mean, you're there, and of course
- 19 you're high?
- 20 A Yes.
- 21 Q You're pretty wasted?
- 22 A Yes, pretty wasted.
- 23 Q But you remembered this conversation --
- 24 A Yes.
- 25 Q -- okay, correct?

Robert T. McDuffie - Cross

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1 A Yes.

2 Q And you remembered not only the
3 conversation, but you remembered great detail about
4 the conversation?

5 A Yes.

6 Q Okay. But you're wasted -- wasted enough
7 to be passed out most of the time in the back seat,
8 correct?

9 A Yes.

10 Q But miraculously, on November 30th, you
11 have all this detail in your head, correct?

12 A Yes.

13 Q Because the police didn't speak with you
14 until November 30th, correct?

15 A Yes.

16 Q And when the police came to speak with
17 you, they put some pressure on you, didn't they?

18 A Yes. Yes, I ain't never been in no
19 situation like that.

20 Q I mean, they were threatening to arrest
21 you, correct?

22 THE COURT: Mr. Swerling --

23 MR. SWERLING: Yes, sir.

24 THE COURT: -- he was still in the
25 process of answering --

Robert T. McDuffie - Cross

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1 MR. SWERLING: I'm sorry.

2 THE COURT: -- the other question.

3 MR. SWERLING: I didn't mean to cut
4 him off.

5 THE COURT: Do not cut him off.

6 A Like I was saying, I ain't never been in
7 no situation like that.

8 Q Right.

9 A You know, I ain't got no reason to sit up
10 here and lie and make myself look good or anybody
11 else look good. I'm just telling y'all what I was
12 told.

13 Q But I'm trying to ask you a few questions,
14 okay?

15 A All right.

16 Q What I'm asking is this. The police
17 scared you, didn't they?

18 A Yes, I ain't going to lie. Like I said,
19 I've never been in a situation like this.

20 Q And they threatened to arrest you, didn't
21 they?

22 A So many words, yes.

23 Q Okay. And they took you down to the
24 Sheriff's Department, didn't they?

25 A Yes.

Robert T. McDuffie - Cross

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1 Q And how many investigators were
2 interviewing you?

3 A Far as I remember, it was just Mr. Greene
4 and Mr. Gill, if I'm saying it right, if I'm calling
5 his name right.

6 Q Mr. Boney, Mr. Ginyard?

7 A Mr. Ginyard, yes, I know him as Yogie.
8 He's a deputy, yes.

9 Q And did they interview you with Mr. Green,
10 or was Mr. Green down there as well?

11 A No, it was just me, Mr. Greene, and Yogie
12 in the room.

13 Q And they yelled at you a little bit,
14 didn't they?

15 A Basically, they wanted to know the truth.

16 Q And the statement -- this handwritten
17 statement -- was this written in your handwriting or
18 theirs?

19 A I believe that's their handwriting.

20 Q It's your signature but their handwriting?

21 A Yes, my signature but their handwriting.

22 Q Okay. And you -- on that day when you --
23 this is seven days later -- you remembered all the
24 details that we just talked about that you put in
25 your statement, correct?

1 A Yes.

2 Q But what you're telling the jury -- and I
3 just want to make sure I understand, okay? What
4 you're telling the jury today is that you heard part
5 of the conversation from Sensations --

6 A Well, part of the conversation from
7 Sensations. He didn't say he did it, you
8 understand?

9 Q Oh?

10 A He didn't say he did. He just asked did
11 we hear about it.

12 Q Okay. So now we've gotten something
13 different.

14 A No, that's what the talk was about from
15 Sensations.

16 Q Okay. So the only thing that he said
17 after leaving Sensations -- I just want to get --
18 look, I'm just trying to understand it myself, okay?

19 A All right, then. Well, I'm trying to get
20 you to understand me, too.

21 Q The only thing you're saying that was
22 discussed after you left Sensations was did you hear
23 about it?

24 A Yes, he asked did we think he was going to
25 die, and we said no.

Robert T. McDuffie - Cross

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1 Q And that was it?

2 A Yes, that was the only conversation coming
3 from Sensations about Mr. McGuirt.

4 Q Okay. So the rest of the conversation
5 took place --

6 A In the room.

7 Q -- in the room --

8 A Yes.

9 Q -- between you and he alone?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q And that's what you're sure of now?

14 A Yes.

15 Q Okay. I don't have anything further.

16 THE COURT: Thank you, Mr. Swerling.

17 MR. BARFIELD: Beg the Court's
18 indulgence for one moment.

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. BARFIELD:

22 Q At the time you were talked to by Eric
23 Gill and Michael Greene with law enforcement,
24 November 30, 2001, which would have been a week to
25 the day from when it happened, had you done anything

1 that would get you arrested connected with the
2 robbery and shooting of Jackie McGuirt?

3 A No, I haven't.

4 Q All right. Did anything they said or did
5 to you cause you to tell them anything other than
6 the truth?

7 A No. Like I say, I ain't never been in no
8 situation like that, you know what I'm saying. So,
9 of course, I was scared, you know.

10 Q Did you know what they were going to talk
11 to you about?

12 A No -- after they picked me up, yes, yes.

13 Q Okay.

14 A Yes, I knew what they was going to talk to
15 me about.

16 Q Were you nervous about having to talk to
17 them about that?

18 A Yes.

19 Q Had you done anything wrong other than
20 knowing about it?

21 A No.

22 Q Did you tell them the truth?

23 A Yes.

24 Q Thank you, sir. That's all.

25 THE COURT: Thank you, Mr. Solicitor.

Robert T. McDuffie - Redirect

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1 Mr. Swerling, recross?

2 MR. SWERLING: No further questions.

3 THE COURT: Thank you. You may step
4 down.

5 MR. BARFIELD: We'll do it however
6 you want to do it. He may be excused if he -- I'd
7 ask that he be excused if he'd like to be.

8 THE COURT: Mr. Swerling?

9 MR. SWERLING: That's fine.

10 THE COURT: Okay. You can leave if
11 you'd like.

12 MR. BARFIELD: Mr. McDuffie, if you
13 need something for work or whatever, go to the
14 clerk's office.

15 MR. McDUFFIE: Okay.

16 MR. BARFIELD: Thank you.

17 THE COURT: Who is your next witness?

18 MR. BARFIELD: I'm not sure.

19 THE COURT: All right. That makes
20 that call.

21 It's now five minutes to 1:00.
22 We'll break for lunch at this time. I ask you,
23 please, to return to your jury room at 2:30. Thank
24 you. I again remind you, please do not discuss the
25 case.

Robert T. McDuffie - Redirect

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1 (Jury out at 12:56 p.m.
2 until 2:30 p.m. for lunch.)

3 THE COURT: Please let the record
4 reflect that the trial jury and the alternate are
5 absent from the courtroom. Anything from the State
6 before we break for lunch?

7 MR. BARFIELD: No, sir.

8 THE COURT: Defendant?

9 MR. SWERLING: No, Your Honor.

10 THE COURT: Thank you. We'll be at
11 ease till 2:30.

12 (Court in recess for
13 lunch.)

14 MR. BARFIELD: Your Honor, the State
15 is ready, but there is one preliminary matter we
16 need to probably go on the record about, Mr.
17 Swerling and I, of which I informed you and Mr.
18 Swerling before we came out a minute ago.

19 It was reported to me shortly
20 after the Court recessed for lunch, while I was
21 still up here at the office, that Mr. McDuffie, who
22 was the last witness that testified, and Mr. Green,
23 who is my next witness, apparently left here
24 together for the lunch break, walked down to the
25 street to -- I think everybody here knows there's a

Robert T. McDuffie - Redirect

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1 sandwich shop or something like that, and apparently
2 went in and sat down at a table.

3 Betty Sue, one of the Bailiffs,
4 was in there already and saw them. She was there
5 when they came in. They sat down, and she
6 apparently said something to them about it not being
7 such a good idea that they were together. So
8 apparently it wasn't a very long period of time that
9 they were, in fact, together.

10 Shortly thereafter, of course, I
11 became aware, and then I let law enforcement know
12 about it. I think we sent Lt. White down the street
13 to see if he could see if he saw them. And he, in
14 fact, saw them and told Mr. Green to come on back up
15 here. And Mr. Green showed back up here.

16 During the lunch hour, I told
17 him to go back in the jury room and, of course, did
18 not have any conversation with him, other than just
19 to tell him to go wait in the jury room. I have not
20 inquired as to either one of those witnesses.

21 I have not had any conversation
22 with them other than to tell Mr. McDuffie the reason
23 for him being sent for to come back up here. I
24 said, "The Judge is going to inquire whether y'all
25 talked about this over lunch."

Robert T. McDuffie - Redirect

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1 They are both here. If the
2 Court feels a need to make an inquiry about that,
3 we're happy for the Court to do that. And,
4 otherwise, we're ready to go forward.

5 THE COURT: All right, we'll get Mr.
6 McDuffie in first, I guess.

7 MR. BARFIELD: I call Robert
8 McDuffie.

9 Come on around. Just come back
10 around to the witness chair briefly, please, Mr.
11 McDuffie.

12 MR. McDUFFIE: All right.

13 THE COURT: And you're still under
14 oath.

15 MR. McDUFFIE: All right.

16 EXAMINATION

17 BY THE COURT:

18 Q The Court has been informed that at lunch
19 you and Mr. Green, who will be the next witness, sat
20 down in a restaurant booth together.

21 A It was for briefly, but it wasn't no
22 discussion. The only thing it was, he paid for my
23 food. Then the lady, she came and told us. He went
24 on one side, and I stayed on the other side. And I
25 ate my food, and I left. It wasn't no discussion

Robert T. McDuffie (Recalled In-Camera)

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1 about what went on.

2 Q That's what I need to ask you.

3 A Okay.

4 Q Did you all discuss the case --

5 A No, sir.

6 Q -- your testimony, or anything of that
7 nature?

8 A No, sir, it wasn't nothing about that.

9 Q That's your sworn oath?

10 A Yes, sir.

11 THE COURT: Okay. Anything
12 additionally, Mr. Swerling?

13 MR. BARFIELD: I don't have any
14 questions of Mr. McDuffie.

15 MR. SWERLING: No, Your Honor.

16 THE COURT: All right, thank you.

17 MR. McDUFFIE: Thank you.

18 MR. BARFIELD: May Mr. McDuffie be
19 excused to leave the courthouse?

20 THE COURT: Yes.

21 MR. BARFIELD: And I would ask the
22 Court to admonish him if he sees Mr. Green anywhere
23 within a hundred yards until some --

24 MR. McDUFFIE: I won't call him or
25 nothing.

Robert T. McDuffie (Recalled In-Camera)

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1 MR. BARFIELD: Thank you.

2 Please call Anthony Green in,
3 please.

4 I presume you're ready for
5 Mr. Green --

6 THE COURT: Yes.

7 MR. BARFIELD: -- the next witness?

8 CLERK OF COURT: You want me to swear
9 him?

10 THE COURT: Yes, ma'am, please.

11 CLERK OF COURT: If you'll just come
12 around here.

13 (The witness was sworn.)

14 CLERK OF COURT: Please be seated.

15 EXAMINATION

16 BY THE COURT:

17 Q How are you doing?

18 A I'm okay.

19 Q And your name, please, sir?

20 A Anthony L. Green.

21 Q Mr. Green, the reason that we're calling
22 you in right now is that we were informed that you
23 and Mr. McDuffie sat in the same booth at a
24 restaurant at lunch. And we need to inquire whether
25 or not that period or any other time you and he

Anthony Green (In-Camera)

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1 discussed the case or the testimony.

2 A No, sir.

3 Q And that's your sworn oath?

4 A Yes, sir.

5 THE COURT: Mr. Solicitor?

6 MR. BARFIELD: I don't have any
7 questions of Mr. Green.

8 MR. SWERLING: No questions.

9 THE COURT: All right. And he is
10 your next witness?

11 MR. BARFIELD: He is.

12 THE COURT: Okay, you can just remain
13 seated.

14 MR. BARFIELD: Permission to walk
15 outside the courtroom for something I need real
16 quick.

17 Thank you, I'm ready.

18 THE COURT: All right.

19 If we could have the jury,
20 please, ma'am.

21 (Jury in at 3:00 p.m.)

22 THE COURT: Please let the record
23 reflect that the trial jury and the alternate are
24 present in the courtroom. I hope you all had a nice
25 lunch.

Anthony Green (In-Camera)

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1 Mr. Solicitor?

2 MR. BARFIELD: The State calls
3 Anthony Green.

4 THE COURT: Mr. Green is on the stand
5 and has already been sworn.

6 You're still oath.

7 MR. BARFIELD: Does he need to be
8 sworn in the presence of the jury? I don't know if
9 he does or not. Does it make any difference?

10 THE COURT: Well, go ahead and swear
11 him again.

12 CLERK OF COURT: I'm going to swear
13 you in again.

14 (The witness was sworn.)

15 ANTHONY L. GREEN, having
16 first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BARFIELD:

19 Q Mr. Green, I'm going to tell you the same
20 thing that all of us in the courtroom have been
21 telling everybody who's gotten on that witness stand
22 today. Number one, the chair doesn't slide, so
23 you've got to lean up.

24 A All right.

25 Q And, number two, that microphone is on,

Anthony Green - Direct

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1 and you've got to get right up there on it so you
2 can talk. Everybody has got to hear what you say.
3 State your -- your name is Anthony Green?

4 A Yes, sir.

5 Q All right, that ain't loud enough.

6 A Yes, sir.

7 Q I'm going to keep telling you that. I
8 don't mean to be disrespectful, but you've got to
9 talk real loud.

10 Q Do you have a -- do people call you a
11 nickname?

12 A Call me Green.

13 Q Do some people call you "Ant"?

14 A Yes, sometimes.

15 Q I think Robert McDuffie earlier referred
16 to you as Ant. Is that something that sometimes
17 people call you?

18 A Yes.

19 Q Where do you live now -- not an address
20 but what community or town?

21 A I stay in Richland County now.

22 Q Where were you living on November 23,
23 2001?

24 A With my mama.

25 Q And where does your mama live?

Anthony Green - Direct

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- 1 A [REDACTED]
- 2 Q And is that in Winnsboro?
- 3 A Ridgeway.
- 4 Q Ridgeway?
- 5 A Yes, sir.
- 6 Q Up to that time, how long had you lived in
- 7 Ridgeway?
- 8 A All my life.
- 9 Q Do you know Robert McDuffie?
- 10 A Yes, sir.
- 11 Q And you know him by a nickname?
- 12 A Pee Wee.
- 13 Q Do you know Darryl Cook?
- 14 A Yes, sir.
- 15 Q And how long had you known Darryl Cook
- 16 prior to November of 2001?
- 17 A About the same, about all my life.
- 18 Q Is he younger than you, or older than you,
- 19 or about the same age?
- 20 A Younger.
- 21 Q Do you see Darryl Cook in the courtroom
- 22 today?
- 23 A Yes, sir.
- 24 Q Where is he sitting, and what's he got on?
- 25 What's his appearance?

Anthony Green - Direct

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1 A Blue shirt, collared shirt, with glasses
2 on, bald head.

3 Q And between Mr. Swerling and Ms. Kelly?

4 A Yes.

5 MR. BARFIELD: Dixon, is that right?

6 MS. SWITZER: Switzer.

7 MR. BARFIELD: Switzer.

8 MR. SWERLING: Switzer.

9 MR. BARFIELD: I apologize.

10 Q Generally, what were you doing during the
11 day on Friday, November 23, 2001 -- during the day?

12 A Well, I worked like four tens, so I worked
13 like four days a week. And we got Fridays off.

14 Q Where you working back then?

15 A I was working for a company called Pike
16 Electric out of Rock Hill.

17 Q A utility contracting company?

18 A Yes.

19 Q Did you work on that Friday, which was the
20 day after Thanksgiving?

21 A No, I didn't work that Friday.

22 Q That's fine. Sometime that evening, did
23 you have communication with Darryl Cook?

24 A Yes, I did.

25 Q And who initiated the communication

Anthony Green - Direct

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1 between you and Darryl?

2 A I had talked to him and his brother on
3 Bishop Squirewell Road across the railroad track.

4 Q All right, stop right there. His brother
5 -- and I'll interrupt you from time to time, I
6 apologize. But what is his brother's name?

7 A I've always known him as Rod Cook.

8 Q Rod?

9 A Yes.

10 Q Now, where is Bishop Squirewell Road?

11 A Coming down Highway 21, right beside the
12 Presbyterian church.

13 Q Do you know what the cut is?

14 A Yes.

15 Q Is Bishop Squirewell and the cut one and
16 the same?

17 A Yes, that's it.

18 Q And is there -- where does Bishop
19 Squirewell run from, from where to where?

20 A It runs from Highway 34 to Highway 21.

21 Q And do you know what the Shell station is

22 --

23 A Yes, I know what the Shell station is.

24 Q -- when I use that phrase?

25 A Yes.

Anthony Green - Direct

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1 Q Where is the Shell station?

2 A It's on Highway 21, too.

3 Q And how close is the Shell station to the
4 cut, or Bishop Squirewell?

5 A Like a hip and skip, whatever.

6 Q That's fine. How were you traveling that
7 day?

8 A In my car.

9 Q Were you by yourself in your car?

10 A Yes.

11 Q And you said a minute ago you saw Darryl
12 and his brother, Rod. Where did you see Darryl and
13 Rod?

14 A I think about right through there by where
15 the railroad tracks was.

16 Q All right. Railroad tracks on what road?

17 A On Bishop Squirewell Road, the cut road.

18 Q Okay. Do you remember what time of day it
19 was that you saw Rod -- Darryl and Rod on the cut?

20 A No, I don't remember what time of day it
21 was.

22 Q Was it daytime?

23 A Yes, it was daytime.

24 Q Was it before suppertime?

25 A I mean, it depends what you call supper.

Anthony Green - Direct

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1 Q Well, was it daylight?

2 A Yes, it was daylight.

3 Q Thank you. Did you and Darryl Cook have
4 any conversation by phone at any time later that
5 day?

6 A Not till later that night.

7 Q How late that night did you and Darryl
8 talk by phone?

9 A About 7:00, 7:30, somewhere that night.

10 Q Friday night?

11 A Yes, sir.

12 Q All right. At some point, did you become
13 aware that the incident had occurred at McGuirt's
14 Tire Store?

15 A Yes.

16 Q Don't quote anybody. But how did you find
17 out something had happened at McGuirt's?

18 A I had rode through there -- rode through
19 that area.

20 Q Was anything going on when you rode
21 through there?

22 A No, not -- you couldn't see from -- I
23 mean, you couldn't see by riding through, but you
24 could tell something had done happened, occurred
25 there.

Anthony Green - Direct

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1 Q Well, did you stop there at some point?

2 A Yes, I had stopped there.

3 Q And don't --

4 A I think it was raining or something like
5 that.

6 Q Okay, that's fine. Don't quote anybody.
7 But did you talk to somebody there at the McGuirt's
8 Tire?

9 A Yes.

10 Q Did you find out what happened as a result
11 of that?

12 A Yes.

13 Q Now, when did that occur in relation to
14 you and Darryl talking on the telephone at 7:00 or
15 7:30 -- if you remember? If you don't, fine.

16 A I think it was after, I mean -- no,
17 before, before. It was before.

18 Q So you knew -- before you talked to Darryl
19 on the phone, you knew that something had happened
20 at McGuirt's?

21 A Yes.

22 Q When you and Darryl talked on the
23 telephone at 7:00 or 7:30, did he call you, did you
24 call him?

25 A He called me.

Anthony Green - Direct

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1 Q And what did y'all talk about?

2 A Well, he asked me was I going to the club
3 that night. I told him yes. He said he was at the
4 movies.

5 Q All right. When you say "the club," what
6 club are you talking about?

7 A It's this club used to be on Farrow Road,
8 Amps.

9 Q Amps?

10 A Yes.

11 Q Between -- did you see Darryl Cook at some
12 point that night after the time frame we're talking
13 about right now? After talking to Darryl on the
14 phone, did you see him later on that night
15 somewhere?

16 A I seen him at the club.

17 Q All right. About what time was it -- did
18 you go to Amps? Let me back up, and let me ask the
19 question. Did you go to Amps, first of all?

20 A Yes -- yes, I went.

21 Q And approximately what time?

22 A I'd say --

23 Q And I'm not talking about to the minute,
24 but generally what time?

25 A I'd say between nine -- from nine to

Anthony Green - Direct

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1 eleven, somewhere along in that time.

2 Q Friday night?

3 A Yes.

4 Q Was Darryl there when you got there?

5 A I can't remember.

6 Q That's fine. How did you get to the club?

7 A I drove.

8 Q What kind of car did you have?

9 A A Mustang.

10 Q Anything special about your Mustang?

11 A Convertible.

12 Q Pardon?

13 A Convertible.

14 Q Convertible?

15 A Yes.

16 Q Did anybody go with you to Amps?

17 A No.

18 Q Did you see Pee Wee McDuffie at Amps?

19 A Yes, he was there.

20 Q Okay. And, again, do you remember whether

21 he was there when you got there, or did he come

22 later?

23 A I can't remember.

24 Q That's fine. Did you, and Pee Wee

25 McDuffie, and Darryl Cook get together at Amps?

Anthony Green - Direct

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- 1 A Yes.
- 2 Q Did y'all talk at Amps?
- 3 A Yes.
- 4 Q How crowded was Amps?
- 5 A It was pretty crowded.
- 6 Q How long did you stay at Amps?
- 7 A Stayed till it closed.
- 8 Q And about what time did it close?
- 9 A I'd say about 2:30 -- somewhere around
- 10 about 2:30, somewhere along in there.
- 11 Q In the morning?
- 12 A Yes.
- 13 Q We're into Saturday now, is that correct?
- 14 A Yes.
- 15 Q Did you, and Pee Wee McDuffie, and Darryl
- 16 Cook make any plans about after Amps?
- 17 A Yes.
- 18 Q What was the plan?
- 19 A We went to another club called Sensations.
- 20 Q All right, stop right there. Where is
- 21 that other club?
- 22 A It's on Two Notch Road.
- 23 Q And is that near Columbia?
- 24 A Yes, in Richland County.
- 25 Q What kind of club is Sensations?

Anthony Green - Direct

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- 1 A A strip club.
- 2 Q All right, sir. Did y'all go to
- 3 Sensations?
- 4 A Yes.
- 5 Q How did you get there?
- 6 A I drove.
- 7 Q Who rode with you?
- 8 A Me, Pee Wee, and Darryl.
- 9 Q Okay. Did anybody else follow along or
- 10 participate -- not participate, but tag along with
- 11 y'all in another automobile?
- 12 A Yes.
- 13 Q Who was that other person or persons?
- 14 A A girl named Connie.
- 15 Q Do you remember her last name?
- 16 A Brown.
- 17 Q Was she a girlfriend of yours, or a friend
- 18 of yours, or a relative of yours?
- 19 A A friend of mine.
- 20 Q Okay. How did she end up -- did she end
- 21 up at Sensations?
- 22 A Yes.
- 23 Q And how did she get there?
- 24 A She drove, too.
- 25 Q How long did you stay at Sensations?

Anthony Green - Direct

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- 1 A We stayed a little while.
- 2 Q Did you leave Sensations?
- 3 A Yes, we left Sensations.
- 4 Q Did all three of you -- you, and Pee Wee
5 McDuffie, and Darryl Cook -- leave together?
- 6 A Yes.
- 7 Q Where was Connie Brown when y'all left
8 Sensations?
- 9 A She left, too.
- 10 Q In her car?
- 11 A Yes.
- 12 Q Where did you go from Sensations? Let me
13 stop you. Was it daylight or dark when you left
14 Sensations, if you remember?
- 15 A It was dark.
- 16 Q Was it still Saturday morning?
- 17 A Yes.
- 18 Q Do you know how close to breakfast time?
19 I don't want you to guess. But just do you have any
20 idea what time it was you left Columbia?
- 21 A I know it was still morning time, in
22 between morning time and daylight.
- 23 Q Okay.
- 24 A Because, you know, the time changed -- the
25 time was changing fast during then.

Anthony Green - Direct

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1 Q Right. When you left Sensations, where
2 did you go?

3 A To a motel in Ridgeway.

4 Q The name of the motel?

5 A Ramada.

6 Q And where in Ridgeway is that motel? What
7 road or roads is it on or near?

8 A Oh, it's off of 34.

9 Q Near what?

10 A Near the Waffle House and the Exxon gas
11 station.

12 Q Is it near any other major highway?

13 A The interstate, 77.

14 Q Thank you, sir. Did you rent a room at
15 the Ramada Limited?

16 A Yes.

17 Q Now, I'm showing you State's Exhibit
18 Number One Hundred Fourteen. Take a look at it just
19 a minute. Is that familiar to you?

20 A Yes.

21 Q That was previously identified as a
22 receipt for Room 212, and it apparently bears the
23 signature of Anthony Green. Is that the room you
24 rented?

25 A Yes.

Anthony Green - Direct

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1 Q And is that your signature?

2 A Yes, that's my signature.

3 Q Now, did you occupy Room 212 for some
4 period of time --

5 A Yes.

6 Q -- that Saturday morning, November 24th?

7 A Yes.

8 Q Did somebody occupy it with you?

9 A Yes, Connie did.

10 Q Okay. Were you aware of where Darryl Cook
11 and Pee Wee McDuffie were when y'all were at the
12 Ramada Inn --

13 A Yes.

14 Q -- in relation to the motel itself?

15 A Yes.

16 Q Was there another room rented?

17 A Yes.

18 Q And who stayed in that other room?

19 A Pee Wee and Darryl.

20 MR. BARFIELD: Beg the Court's
21 indulgence for one moment.

22 THE COURT: Yes, sir.

23 MR. BARFIELD: Could we have a
24 sidebar briefly?

25 THE COURT: Yes, sir.

Anthony Green - Direct

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1 Mr. Foreman, ladies and
2 gentlemen of the jury, there is a very brief legal
3 matter that we need to take up outside your
4 presence. And if you'd please retire to the jury
5 room, we'll have you back in very shortly. And this
6 time, it really will be.

7 (Jury out at 3:15 p.m.)

8 THE COURT: Please let the record
9 reflect that the trial jury and the alternate are
10 absent from the courtroom.

11 MR. BARFIELD: Your Honor, the same
12 issue relates to Mr. Green as related to Mr.
13 McDuffie concerning anticipated testimony that while
14 they were are all at the Ramada, one or two runs
15 were made to another location to purchase drugs.

16 And I forgot to bring that to
17 the Court's attention concerning Mr. Green, and I
18 certainly have not talked to Mr. Green about it. We
19 can do it on the record. I would just like
20 permission to admonish him --

21 THE COURT: Yes.

22 MR. BARFIELD: -- that he can't get
23 into that.

24 THE COURT: Yes, sir.

25 MR. BARFIELD: Mr. Green, let me

Anthony Green - Direct

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1 explain this. I believe in your statement at some
2 point you said people left the motel to go to
3 another location to buy drugs that night?

4 MR. GREEN: Yes.

5 MR. BARFIELD: And we have all agreed
6 and the Court has ruled that that part of the events
7 is not an admissible bit of testimony. So at no
8 time do I want you to make any reference to you, or
9 Darryl Cook, or Pee Wee McDuffie leaving the motel
10 to go to some other location to buy drugs while
11 y'all were staying at the Ramada, okay?

12 MR. GREEN: Okay.

13 MR. BARFIELD: Do you have any
14 question about that?

15 MR. GREEN: No.

16 MR. BARFIELD: Even if I ask it,
17 don't answer it. I don't think I'm going to ask it,
18 but don't say anything about it.

19 MR. GREEN: Okay.

20 MR. BARFIELD: Thank you.

21 Is that satisfactory, Mr.
22 Swerling?

23 MR. SWERLING: Yes.

24 Judge, I'm just going to renew
25 my objections made during the last witness about

Anthony Green - Direct

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1 allowing any testimony that Darryl Cook said
2 anything about buying drugs. I'd like to renew that
3 objection and allow it to be contemporaneously with
4 any question and answer when it's asked.

5 THE COURT: And I'll rule the same
6 way as I did last time, that in the proper context
7 it's appropriate.

8 MR. BARFIELD: Yes, sir.

9 THE COURT: All right.

10 MR. BARFIELD: And we were referring
11 to statements Mr. Cook made about what he was doing
12 with the proceeds --

13 THE COURT: Right.

14 MR. BARFIELD: -- of the robbery.

15 THE COURT: Yes.

16 MR. BARFIELD: Other than that, I'm
17 ready.

18 (Jury in at 3:19 p.m.)

19 THE COURT: Please let the record
20 reflect that the trial jury and the alternate are
21 back in the courtroom.

22 MR. BARFIELD: Thank you, Judge.

23 THE COURT: Yes, sir, Mr. Solicitor.

24 EXAMINATION CONTINUED

25 BY MR. BARFIELD:

Anthony Green - Direct

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1 Q Mr. Green, approximately how long -- well,
2 let me jump ahead. At some point, did the four of
3 you -- meaning McDuffie, Green, Cook, and Brown --
4 leave the Ramada Limited? That's kind of a "yes" or
5 "no."

6 A No.

7 Q Did the party break up, is what I'm asking
8 you?

9 A Yes.

10 Q And did all four of y'all leave for the
11 last time from the Ramada about the same time?

12 A No.

13 Q Okay. Who left first -- to leave and be
14 gone from the Ramada?

15 A I left first.

16 Q And about how long was it that you had
17 been at the Ramada before you left, or about what
18 time was it when you left, if you can recall?

19 A Well, me and the woman was in the room
20 together. So I left her in the room, and Pee Wee
21 and Darryl had their own room. So probably about
22 like 20 or 30 minutes, somewhere along in there.

23 Q All right. My question is, at some point
24 Saturday morning, did you leave the Ramada Limited
25 to be gone from there? Were you done with the room?

Anthony Green - Direct

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1 A Yes.

2 Q And how long -- about what time was it
3 when you left to be gone for good from the Ramada
4 that Saturday?

5 A I'd say about checkout time -- before
6 checkout time.

7 Q And -- help me -- what time was checkout
8 time? Was it morning or afternoon?

9 A Well, checkout time was like -- well, see,
10 we came in late that morning, so I think checkout
11 time was like over to like to the next day.

12 Q Did you stay till the next day?

13 A No, I didn't stay the next day.

14 Q Did you leave there sometime Saturday
15 morning?

16 A Yes.

17 Q Were you the first to leave, as far as you
18 know?

19 A Yes, I was the first to leave.

20 Q Okay. Now, at any point -- and I'm again
21 going back -- well, first of all, when you went to
22 Amps, did you know that Mr. McGuirt had been robbed
23 and shot?

24 A Yes.

25 Q When you were at Amps, did you and Darryl

Anthony Green - Direct

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1 Cook have any conversation about Mr. McGuirt being
2 robbed and shot -- at Amps?

3 A Not until we left.

4 Q All right. When you left Amps, was there
5 any conversation between you and Darryl Cook about
6 Mr. McGuirt being robbed and shot?

7 A Yes.

8 Q Now, where were you when this conversation
9 occurred?

10 A On the interstate.

11 Q In what?

12 A In my car.

13 Q Headed where?

14 A To Sensations.

15 Q All right. So between Amps and
16 Sensations?

17 A Yes.

18 Q And how did the issue about Mr. McGuirt
19 being robbed and shot come up in your car on the way
20 to Columbia? Who brought it up?

21 A I think Darryl said that he had heard that
22 he had got shot.

23 Q Darryl said that?

24 A Yes.

25 Q And just relate the conversation that

Anthony Green - Direct

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1 occurred after that.

2 A And, you know, the conversation kept on.
3 And he said he heard he had got shot. And I was
4 like, "Man, I wonder who done that?" And he was
5 like --

6 Q Who said that?

7 A I said, "Man, I wonder who done that?"

8 Q Okay. And then what?

9 A And he was like, "I did."

10 Q Darryl said, "I did it"?

11 A Yes.

12 Q And just continue to relate any
13 conversation between you and Darryl Cook about Mr.
14 McGuirt's situation, about the event.

15 A He said he shot him three times.

16 Q Did he say anything in more detail about
17 shooting him three times?

18 A He said he shot him in the neck, the back,
19 and the chest.

20 Q Did he say anything else about the event?

21 A He said he's supposed to die from that.

22 Q Did he say anything else about the event?

23 A He said he took like \$6,000.

24 Q What else did he say, if anything?

25 A He said he was going to buy a car with it.

Anthony Green - Direct

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1 Q Did he say what else he was going to do
2 with any of the money?

3 A He said his brother had the money, and he
4 got rid of the tapes.

5 Q Stop right there. He said his brother had
6 the money?

7 A Yes.

8 Q Did he use the brother's name?

9 A Yes.

10 Q What name did he use?

11 A Rod.

12 Q All right. You said he got rid of the
13 tapes. Who got rid of the tapes for Darryl?

14 A He said he burned the tapes.

15 Q Darryl said Darryl burned the tapes?

16 A He said he burned the tapes and the
17 gloves.

18 Q All right. What about gloves? Tell the
19 jury what you heard about gloves.

20 A He said he had gloves. He said he had
21 gloves, and his brother got rid of the gun. He said
22 his brother got rid of the gun.

23 Q Okay. Did he tell you -- did he give you
24 any explanation for why he shot Mr. McGuirt?

25 A He said he tried to struggle with him.

Anthony Green - Direct

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1 Q Did he say anything about a VCR?

2 A Yes, he said the VCR had a tape in it. He
3 said he got rid of the VCR, and the tape, and his
4 gloves.

5 MR. BARFIELD: Beg the Court's
6 indulgence for one moment.

7 THE COURT: Yes, sir.

8 Q Did he -- how did he describe the amount,
9 \$6,000? Is that what he -- did he say \$6,000?

10 A No, the first time he said like six
11 double-zero.

12 Q And you took that to mean what?

13 A Like six hundred.

14 Q And did he change that?

15 A Yes, he changed it.

16 Q What did he change it to?

17 A Like six three-zero.

18 Q What did you take that to mean?

19 A Six thousand.

20 Q Did Darryl tell you how he got to
21 McGuirt's? Did he make any comments about going
22 there?

23 A No.

24 Q Did he make any comments about leaving
25 there? Did he say where he went or how he got away

Anthony Green - Direct

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1 from there?

2 A No, he said he drove Jackie's truck.

3 Q He did say that?

4 A Yes.

5 Q Did he say where he drove Jackie's truck?

6 A I can't remember that.

7 Q Did he say what path he took, is what I'm
8 asking?

9 A He said he went down through the cut.

10 Q Answer anything Mr. Swerling has, please.

11 THE COURT: Thank you, Mr. Solicitor.

12 Mr. Swerling, cross?

13 MR. SWERLING: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. SWERLING:

16 Q Mr. Green, y'all were friends, correct --
17 all of you?

18 A Yes.

19 Q And you lived -- actually lived in
20 Ridgeway?

21 A Yes, sir.

22 Q Since this time, you and Mr. McDuffie have
23 talked about this case, correct?

24 A We have or haven't?

25 Q You have.

Anthony Green - Cross

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1 A No.

2 Q Never discussed the case with Mr.
3 McDuffie?

4 A No, sir.

5 Q So since November 23, 2001, you and he
6 have not discussed the events of that evening, is
7 that correct?

8 A No.

9 Q As a matter of fact, y'all were seen at
10 lunch today together, weren't you?

11 A Yes.

12 Q Okay. And you were told it was better to
13 separate?

14 A Yes.

15 Q But you never talked about the case?

16 A No, I was just paying for his food.
17 That's all.

18 Q Well, you were sitting together?

19 A Yes.

20 Q Go back to November of 2001. Now, from
21 what I understand, you actually stopped at McGuirt's
22 Tire Store whenever these events were going on. Is
23 that what your testimony is and what your statement
24 revealed. You actually were the one that stopped?

25 A Yes.

1 Q You were there when the police were there.
2 You were there when EMS was there.

3 A No.

4 Q And you knew something was going on.

5 A No, I wasn't there when the EMS was there.

6 Q But the police were there?

7 A I mean, I don't know about that part.

8 Q Well, why did you stop?

9 A I said I was driving through there.

10 Q You were driving through there, and you
11 knew something had happened?

12 A Yes.

13 Q Well, what was it that made you believe
14 that something happened?

15 A It was like -- like I told you, it was
16 dark.

17 Q Pardon?

18 A It was dark, and I was talking to Mr.
19 McGuirt's daughter.

20 Q You were talking to Mr. McGuirt's
21 daughter?

22 A Yes.

23 Q Outside of the tire store?

24 A Yes.

25 Q And what time was that?

Anthony Green - Cross

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1 A I can't remember.

2 Q You don't remember seeing any police
3 there?

4 A No, because she had told me that her daddy
5 had been shot and robbed.

6 Q Uh-huh. You don't remember anything about
7 any EMS being there?

8 A No.

9 Q The only person you saw was Ms. Susan
10 McGuirt, is that your testimony is?

11 A I seen her and a guy.

12 Q That's all that you saw there?

13 A Yes.

14 Q And what time was that -- six?

15 A I can't remember the time.

16 Q Was it before six? Was it after six --
17 early evening, late evening?

18 A It was like late evening.

19 Q Was it before you spoke with Mr. Cook or
20 after you spoke with Mr. Cook?

21 A It was before.

22 Q So it was before -- what did you say --
23 you spoke with him about 7:00 --

24 A Yes.

25 Q -- something near 7:00?

1 A Seven o'clock, seven-thirty.

2 Q I just want to make sure I understand.
3 You don't remember any police being there, and you
4 don't remember any EMS being there. But you spoke
5 with Ms. Susan McGuirt --

6 A Yes.

7 Q -- and she told you what had happened?

8 A Yes.

9 Q Did you know Ms. Susan McGuirt?

10 A I mean, I just met her at that time.

11 Q So you just stopped out of curiosity?

12 A I mean, you could tell something had done
13 went down, I mean, just to see how everything was
14 looking.

15 Q Well, I'm trying to find out from you --
16 maybe you can describe for the jury -- what it is
17 that made you stop at McGuirt's Tire Store on the
18 same evening that her dad was shot -- because you
19 admit you did?

20 A Yes, I did. I did. I think during that
21 night, all the lights and stuff was on. Usually,
22 all the lights and stuff don't be on like that
23 around in a little area like that.

24 Q And what do you remember observing when
25 you -- you pulled your car up into the station?

Anthony Green - Cross

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- 1 A No, I pulled right there on the side.
- 2 Q And you got out?
- 3 A Yes.
- 4 Q And you walked up to speak with her?
- 5 A Yes.
- 6 Q How long did you stay?
- 7 A I didn't stay long.
- 8 Q How long?
- 9 A I stayed probably about 15 or 20 minutes.
- 10 Q And did anybody police try and talk with
- 11 you at that time?
- 12 A No.
- 13 Q So you were seen there at the station --
- 14 you would have been seen, because Ms. McGuirt saw
- 15 you?
- 16 A Yes, I talked to her, his daughter.
- 17 Q The daughter?
- 18 A Yes.
- 19 Q And was Mr. McGuirt still there, do you
- 20 know, when you were speaking to the daughter, or do
- 21 you know whether he had been removed from the scene?
- 22 A He hadn't been removed, because, like I
- 23 told you before, I didn't see no police or nothing
- 24 like that.
- 25 Q All right. What kind of pistol did you

- 1 own at that time?
- 2 A I never owned a pistol.
- 3 Q No -- you never had one?
- 4 A No.
- 5 Q Didn't have one on that occasion and that
- 6 night?
- 7 A No.
- 8 Q Now, you do have a record, right?
- 9 A Yes, I've got a record.
- 10 Q You were convicted in 1997 of distribution
- 11 of crack cocaine?
- 12 A Yes.
- 13 Q Now, let me see if I understand. So you
- 14 said that Darryl Cook called you?
- 15 A Yes.
- 16 Q What number would he have called you on?
- 17 A I had a 479-1344.
- 18 Q And you said it was about 7:20?
- 19 A Yes, in between 7:00 and 7:30.
- 20 Q Four seven nine --
- 21 A One three four four (479-1344).
- 22 MR. SWERLING: If the Court would
- 23 indulge me one moment.
- 24 THE COURT: Yes, sir.
- 25 Q Would you look at this phone bill, State's

Anthony Green - Cross

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1 Exhibit Number Twenty? It's a phone bill for
2 November 23, 2001, for Mr. Cook. And around this
3 time, do you see your phone number down there
4 anywhere? And this would be the number that was
5 being called. Do you see your number anywhere there
6 on the 23rd of November?

7 A No.

8 Q You said he was at the movies, correct?

9 A Yes.

10 Q Let's go a little bit later into the
11 evening. And I'm not trying to trip you up or
12 anything. I'm just looking to see if your number
13 shows up anywhere. Do you see it?

14 A No, I don't see it.

15 Q So you don't see it anywhere on the 23rd?

16 A No.

17 Q But he was at the movies when he called?

18 A Yes.

19 Q You didn't go to Amps with Mr. McDuffie or
20 Mr. Cook. You just happened to be there, correct?
21 You drove yourself there?

22 A Yes.

23 Q And when you got there, Mr. McDuffie was
24 there, and Mr. Cook was there?

25 A Yes.

1 Q They were already talking to each other?

2 A I mean, when I seen them. I mean, I can't
3 tell really, no. I mean, I came on my own.

4 Q Okay. You came on your own, but they were
5 already there?

6 A Yes.

7 Q And you got there what time -- 11:00,
8 12:00?

9 A Yes, in between that time -- in between
10 from nine to about eleven.

11 Q A lot of people there?

12 A Yes.

13 Q Were you drinking?

14 A No.

15 Q Did you drink at all that night?

16 A No.

17 Q Smoke anything or do anything that night?

18 A Smoking, no. I don't even smoke
19 cigarettes.

20 Q What about any kind of drugs?

21 A No.

22 Q So you were stone-sober the whole evening

23 --

24 A Yes.

25 Q -- is that right?

Anthony Green - Cross

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1 A Yes.

2 Q And you stayed at Amps until, what, 2:30,
3 3:00 in the morning?

4 A Yes, till about 2:30. Then we left and
5 went to Sensations.

6 Q And Darryl obviously didn't say anything
7 to you about Mr. McGuirt?

8 A No.

9 Q And from what I understand of your
10 testimony, you didn't say anything to him about Mr.
11 McGuirt?

12 A No.

13 Q But you knew at that point that he had
14 been shot?

15 A Yes.

16 Q Because you talked to Susan McGuirt --

17 A Yes.

18 Q -- is that right?

19 A Yes.

20 Q By the way, did you know at that point
21 whether he was alive or not?

22 A He was still alive.

23 Q And how did you know that?

24 A I mean, that's what she said -- he's still
25 alive.

Anthony Green - Cross

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1 Q That's what she said -- he was still
2 alive?

3 A Yes.

4 Q Now, when you left Amps, you were going to
5 Sensations down in Columbia --

6 A Yes.

7 Q -- on Two Notch Road?

8 A Yes.

9 Q And in the car with you -- you were
10 driving?

11 A Yes.

12 Q And Darryl Cook was in the car?

13 A Yes.

14 Q And Robert McDuffie was in the car?

15 A Yes.

16 Q Where was McDuffie?

17 A Back seat.

18 Q And so I think what I understood your
19 testimony to be to the jury is that all of a sudden,
20 Darryl Cook starts opening up about Mr. McGuirt,
21 starts confessing to this crime?

22 A No, he said he had heard he had got shot.

23 Q Right. And then, according to you, he
24 started talking about what he had done, correct?

25 A Yes.

Anthony Green - Cross

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1 Q Okay. And that was on the way from Amps
2 down to Sensations?

3 A Yes.

4 Q Well, you must have been shocked that all
5 of a sudden, Darryl Cook was admitting to having
6 shot Mr. McGuirt?

7 A Yes, I was.

8 Q Did you tell him that you had been by
9 there?

10 A No.

11 Q Did you tell him that you had talked to
12 Susan McGuirt?

13 A No.

14 Q So you never told him anything about your
15 being there?

16 A No.

17 Q But, according to you, he told you -- just
18 he confessed to the whole crime?

19 A Yes, he did. I mean, he was telling me
20 like me bits and pieces --

21 Q Yes.

22 A -- you know, when we was riding along.

23 Q But he confessed?

24 A Yes, he confessed.

25 Q I mean, he told you about what happened

Anthony Green - Cross

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1 inside?

2 A Yes.

3 Q He didn't tell you how he got there,
4 though?

5 A No, he didn't tell me how he got there.

6 Q Didn't tell you -- he told you he took
7 money. You're very clear about the fact that it was
8 \$6,000?

9 A Yes.

10 Q You said he told you that he shot three
11 times?

12 A Do what?

13 Q Once in the neck, once in the back -- and
14 where was the other one -- in the chest?

15 A Yes.

16 Q So he told you that, three times?

17 A Yes.

18 Q You remember that?

19 A Yes.

20 Q And he told you that he was wearing
21 gloves, you remember that?

22 A Yes.

23 Q He told you that he took the VCR and the
24 tapes --

25 A And burned them.

Anthony Green - Cross

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1 Q -- and burned them, right?

2 A Yes.

3 Q And you remember him telling you that he
4 burned the VCR?

5 A He said he burned it. He said he burned
6 the tapes and the VCR.

7 Q And the VCR --

8 A Yes.

9 Q -- that's what I'm asking.

10 A Yes.

11 Q And then he told you that -- you said he
12 told you that he drove through the cut. That's what
13 you told the police. Isn't that what you told the
14 police?

15 A I can't remember back that far. No, I
16 didn't say nothing about him driving through the cut
17 or nothing like that.

18 MR. SWERLING: Excuse me one moment.

19 THE COURT: Yes, sir.

20 Q Let me ask you to look at a statement you
21 gave to the police on November 24th. Didn't you
22 tell the police that he said, "I shot him three
23 times and rode through the cut after"?

24 A Yes.

25 Q So while you were in the car with Mr.

Anthony Green - Cross

604

1 McDuffie going from Amps to Sensations, he was
2 telling you all this about going through the cut,
3 burning the tape, wearing gloves --

4 A Yes.

5 Q -- taking the \$6,000, is that right?

6 A Yes.

7 Q And then, of course, you stayed at
8 Sensations till the morning --

9 A Yes.

10 Q -- 6:00 or so?

11 A Well, see, we left -- when we left Amps,
12 it was like morning time anyway, like 2:30 or 3:00
13 in the morning time. Yes, it was still morning.

14 Q And then you decided -- when did you
15 decide to go to the hotel in Ridgeway?

16 A Like I done told, I couldn't remember the
17 time.

18 Q Did the young lady ride with you to the
19 hotel in Ridgeway?

20 A No.

21 Q She took her own car?

22 A She took her own car.

23 Q You and she stayed in one room --

24 A Yes.

25 Q -- is that right?

Anthony Green - Cross

605

1 A Yes.

2 Q And, of course, you and Darryl were not in
3 a room together?

4 A No.

5 Q You didn't talk to Darryl about this
6 incident at the motel because you weren't in the
7 same room together, correct?

8 A That's right.

9 Q Did you call the police?

10 A Did I?

11 Q Yes.

12 A No.

13 Q I mean, somebody had just a few hours
14 before told you he committed a shooting, a robbery,
15 correct?

16 A No, I didn't say nothing about he did
17 that.

18 Q Well, you said he told you that?

19 A Yes, he told me that. But I didn't
20 commit, you know, to call nobody or nothing like
21 that.

22 Q That's what I said. He told you earlier
23 between Amps and Sensations that he had committed a
24 robbery that you saw, you stopped at?

25 A Yes.

Anthony Green - Cross

606

1 Q And that you spoke with Ms. Susan McGuirt
2 about?

3 A Yes.

4 Q Did you pick up the phone at the hotel --
5 I mean, you made a few phone calls from the motel.

6 A No, I admit it. I didn't call no police
7 or nothing like that, no.

8 Q You didn't call the police?

9 A No.

10 Q And you didn't have a gun with you that
11 night?

12 A No.

13 Q Now, when you left, you left and you
14 didn't ride from the motel with Mr. McDuffie and Mr.
15 Cook, did you?

16 A Did I ride with them?

17 Q Yes. You left on your own?

18 A No, I left on my own.

19 Q Okay. And they went home with Mr.
20 McDuffie's aunt --

21 A Yes.

22 Q -- didn't they?

23 A Yes.

24 Q Where did you go?

25 A I went home, too.

Anthony Green - Cross

607

1 Q Where were you at 6:00 that evening, on
2 Friday night?

3 A Riding around.

4 Q Just riding around?

5 A Yes, I had -- see, I had left from the
6 Waffle House that night. And when I came through
7 there, by where Mr. McGuirt was, that's when I had
8 seen a situation had done went down.

9 Q Which way were you riding? When you were
10 riding past Mr. McGuirt's store, were you -- was the
11 store on the right, or was it on the left?

12 A Coming from the way I was riding, it was
13 on the right.

14 Q So you just pulled right in?

15 A Yes.

16 Q Next door -- what did you say? Where did
17 you say you pulled?

18 A Pulled up on the side there.

19 Q Side?

20 A Yes.

21 Q Nobody chased you away?

22 A Huh?

23 Q Nobody chased you away?

24 A Anybody chase me?

25 Q Nobody chased you away?

Anthony Green - Cross

608

1 A No, no, no.

2 Q When did the police first contact you?

3 A I think like on a Monday or something like
4 that -- in between a Saturday and a Monday.

5 Q Well, what this statement's got is
6 November 24th at 8:24 p.m. So it would have been
7 that Saturday.

8 A Yes.

9 Q Is that right?

10 A Yes.

11 Q And did they take you down to the
12 Sheriff's Department?

13 A Yes.

14 Q So they came to your house?

15 A Yes, I think they did.

16 Q All right. And then they took you to the
17 Sheriff's Department?

18 A Yes.

19 Q Did they tell you you were under arrest?

20 A No.

21 Q Did they threaten to arrest you?

22 A No.

23 Q When you got down to the Sheriff's
24 Department, wasn't there some discussion at all
25 about you being some accomplice in this thing -- you

Anthony Green - Cross

609

1 being involved in this thing?

2 A No.

3 Q Well, were any kind of threats made that
4 they were going to arrest you for this?

5 A No.

6 Q Were you afraid?

7 A No.

8 Q Well, what did -- did they tell you they
9 wanted you to tell them what happened?

10 A They told me just tell basically, you
11 know, where I was and what happened.

12 Q This statement of November 24th, is that
13 in your handwriting or theirs?

14 A That's my handwriting.

15 Q And they came back to see you again on the
16 27th of November, correct?

17 A Yes.

18 Q They wanted to take an additional
19 statement from you?

20 A Yes.

21 Q So at no time in between from the 24th at
22 8:30 till the 27th at all, there was never any kind
23 of threats or coercion or any pressure on you --

24 A No.

25 Q -- that you might be arrested?

Anthony Green - Cross

610

- 1 A No.
- 2 Q Did they ever ask you where you were?
- 3 A Yes, they asked where I was.
- 4 Q At 6:00?
- 5 A Yes.
- 6 Q Did they ask you if you have a gun?
- 7 A No, they didn't ask me that.
- 8 Q Did you shop at McGuirt's?
- 9 A Yes, I did.
- 10 Q Did you get gas at McGuirt's?
- 11 A No, I used to get mostly like tires and
12 oil changes and stuff like that. I think I borrowed
13 a jack from them one time. My truck had broke down
14 beside the interstate, and he let me borrow like a
15 one-ton jack. But my uncle fussed at me and told me
16 to go back there and give him the jack, because the
17 jack was worth more than the truck.
- 18 Q Did the police ever ask you whether you
19 ever had a hooded jacket or a jacket with a hood on
20 it?
- 21 A No.
- 22 Q Did the police ever ask you about taking
23 any of your clothes, like a jacket or blue jeans --
24 you had blue jeans, right?
- 25 A Yes, I had blue jeans.

Anthony Green - Cross

611

1 Q Did you have a pair of white tennis
2 sneakers or sneakers?

3 A Yes.

4 Q Did they ever look at those?

5 A Ever looked at them?

6 Q Did they ever look at them?

7 A No.

8 Q You have a skully cap?

9 A I mean, what kind of skully cap?

10 Q I don't know.

11 A No.

12 Q I mean, do you have a skully cap, or did
13 you have a skully cap?

14 A No -- no.

15 Q Did you have a jacket with a hood on it?

16 A No.

17 Q Never have?

18 A No.

19 Q No one can -- do you know anyone who can
20 verify where you were at 6:00 on the 23rd?

21 A Oh, I was at the Waffle House, like I was
22 saying.

23 Q You said you were riding around before?

24 A Yes. Yes, I was at the Waffle House.

25 Q By yourself?

Anthony Green - Cross

612

1 A Yes.

2 Q That's all I have.

3 THE COURT: Thank you, Mr. Swerling.

4 MR. BARFIELD: Nothing else for this
5 witness.

6 THE COURT: Redirect?

7 MR. BARFIELD: I call Qurbitt Jones.

8 THE COURT: Oh, you do not have
9 redirect?

10 MR. BARFIELD: No, I do not. I'm
11 sorry, I'm sorry.

12 THE COURT: You may step down.

13 MR. BARFIELD: While Mr. Jones is
14 being brought in, may we have a sidebar?

15

16 THE COURT: Swear the witness,
17 please, ma'am.

18 (The witness was sworn.)

19 CLERK OF COURT: Please be seated.
20 Just speak into the mike and state your name for the
21 record.

22 MR. JONES: Qurbitt Jones.

23 MR. BARFIELD: Mr. Jones, let me get
24 my paperwork ready. I'll be with you in just a
25 second.

Qurbitt Jones - Direct

613

1 QURBITT JONES, having first
2 been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q How old are you, Mr. Jones?

6 A Twenty-two.

7 Q And where do you live, what community?
8 I'm not looking for your address, but what community
9 do you live in?

10 A Shady Grove.

11 Q And where is that?

12 A Old Airport Road.

13 Q All right.

14 COURT REPORTER: I'm sorry, I didn't
15 understand.

16 Q You've got to talk loud and speak into --

17 A Old Airport Road.

18 Q Old Airport Road. Is that in Fairfield
19 County?

20 A It is, sir.

21 Q Do you know where Ridgeway is?

22 A Yes, sir.

23 Q Is it -- do you know where -- you're in
24 Winnsboro right now. Do you live closer to
25 Winnsboro or Ridgeway?

Qurbitt Jones - Direct

614

- 1 A Winnsboro.
- 2 Q Winnsboro?
- 3 A Yes, sir.
- 4 Q Do you know Darryl Cook?
- 5 A Yes, sir.
- 6 Q Do you see him in the courtroom today?
- 7 A Yes, sir.
- 8 Q Where is Darryl sitting? What's he
- 9 wearing? What does he look like?
- 10 A What he's wearing?
- 11 Q Right.
- 12 A He's wearing a blue shirt.
- 13 Q Does he have a bald head?
- 14 A Yes, sir.
- 15 Q Is he at that table over there next to the
- 16 man in the suit?
- 17 A Yes, sir.
- 18 Q All right. Now, you've got to talk read
- 19 loud, and you've got to use that microphone, okay?
- 20 A Yes, sir.
- 21 Q Does Darryl have a sister?
- 22 A Yes, sir.
- 23 Q What's his sister's name?
- 24 A Crystal.
- 25 Q And at some point, did you become aware

' Qurbitt Jones - Direct

615

1 that Darryl had been arrested and charged with the
2 incident that we're here for today?

3 A Yes, sir.

4 Q Sometime after that -- I don't want you to
5 tell me what anybody said. But at some time after
6 Darryl Cook got arrested, did you have a
7 conversation with Crystal Cook? Don't tell me what
8 she said, but did you talk to her?

9 A Yes, sir.

10 Q After you talked to Crystal Cook, did you
11 do anything?

12 A Yes, sir.

13 Q What did you do?

14 A What did I do?

15 Q Yes, sir.

16 A Went and got a gun.

17 Q Went and got a gun from where?

18 A Out of a car.

19 Q Car where?

20 A Where?

21 Q Where was the car?

22 A Oh, in Ridgeway.

23 Q Where in Ridgeway?

24 A Between his mother's house.

25 Q All right, hold on. Was the car at

Qurbitt Jones. - Direct

616

- 1 somebody's house?
- 2 A No, sir.
- 3 Q Was the car at a store?
- 4 A No, sir.
- 5 Q Was the car on a dirt road? Where was the
- 6 car?
- 7 A Where was the car -- between the house.
- 8 Q Between whose house?
- 9 A His grandmother's house, grandfather's
- 10 house.
- 11 Q Whose grandfather's house?
- 12 A Mr. Cook.
- 13 Q Darryl's?
- 14 A Yes, sir.
- 15 Q Between Darryl's grandfather's house and
- 16 whose house? That's my question.
- 17 A Oh, his mother's house.
- 18 Q Darryl's mother's house?
- 19 A Yes, sir.
- 20 Q You've got to say "yes" --
- 21 A Yes, sir.
- 22 Q -- or "no," if that's the case.
- 23 A Yes, sir.
- 24 Q What kind of gun was it?
- 25 A I think it was a .380. I'm not sure.

Qurbitt Jones - Direct

617

1 Q You think it was a .380?

2 A Yes, sir.

3 Q How long after Darryl got arrested did you
4 get the gun that you think was a .380 out of the
5 car?

6 A I'm not sure.

7 Q Okay. What did you do with the gun?

8 A I gave it to a friend of mine.

9 Q How long did you have the gun?

10 A Probably been like a week.

11 Q Who is the friend that you gave it to?

12 A My friend, Jasper Sanders.

13 Q Have you seen the gun since you gave it to
14 Jasper Sanders?

15 A No, sir.

16 Q Thank you, sir. Answer anything Mr.
17 Swerling has.

18 THE COURT: Thank you, Mr. Solicitor.

19 Mr. Swerling?

20 MR. SWERLING: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. SWERLING:

23 Q You're in jail right now, right?

24 A Yes, sir.

25 Q And you're serving a sentence of one year

1 for failure to pay child support?

2 A Yes, sir.

3 Q And you were held in contempt of court
4 order on that court order and put in jail how long
5 ago?

6 A Say what, now?

7 Q How long ago was that?

8 A It was about two months ago.

9 Q Two months ago?

10 A Yes, sir.

11 Q All right. And the child that you failed
12 to child support for is a child that you have with
13 Darryl Cook's sister --

14 A Yes, sir.

15 Q -- is that correct?

16 A Yes, sir.

17 Q And at some point in the past, in the last
18 few months, she went to Family Court to try and get
19 child support from you, correct?

20 A I don't know if she went. I know I went
21 to court.

22 Q You went to court, and you had not paid
23 your child support to her, so you were arrested?

24 A Yes, sir.

25 Q And you've been in jail since that time?

Qurbitt Jones - Cross

619

1 A Yes, sir.

2 Q And you're going to serve a year's
3 sentence?

4 A Yes, sir.

5 Q Now, also what you're saying is that it
6 was his sister who asked you to do this --

7 A Yes, sir.

8 Q -- is that right? Okay. Now, of course,
9 you didn't tell anybody that back in 2001, did you?

10 A No, sir.

11 Q And you didn't tell anybody about that in
12 2002, did you?

13 A No, sir.

14 Q Or 2003, or 2004 --

15 A No, sir.

16 Q -- or 2005?

17 A No, sir.

18 Q Not even 2006?

19 A No, sir.

20 Q It was just 2007, wasn't it?

21 A Yes.

22 Q Pardon?

23 A Yes, sir -- yes, sir.

24 Q As a matter of fact, the time that you
25 told anybody about it was -- let's see. You were

1 served with a warrant on June 20, 2007?

2 A Yes, sir.

3 Q So the first time you told anybody about
4 it was about four months ago?

5 A Yes, sir.

6 Q And you were in jail at that time?

7 A No, sir.

8 Q You weren't in jail when you were served
9 with the warrant?

10 A Oh, yes, sir, I was in jail then, yes,
11 sir.

12 Q Okay. And were you in jail on the child
13 support at that time?

14 A Yes, sir.

15 Q You were arrested and put in jail?

16 A Yes, sir.

17 Q And you were charged with accessory after
18 the fact of a violent crime --

19 A Yes, sir.

20 Q -- is that right?

21 A Yes, sir.

22 Q So let's talk about this. So for six
23 years, you didn't say a word about this thing?

24 A No, sir.

25 Q Crystal goes to Family Court to get child

Qurbitt Jones - Cross

621

1 support. She gets child support, correct?

2 A Yes, sir.

3 Q You don't pay it?

4 A Yes, sir, I paid, but I haven't been
5 paying lately.

6 Q Some Judge didn't think you had been --

7 A Yes, sir.

8 Q -- and put you in jail for a year?

9 A Yes, sir.

10 Q Sometime around the same period of time in
11 June of '07, you get charged with accessory after
12 the fact of a violent crime in helping to dispose of
13 this weapon, right?

14 A Yes, sir.

15 Q So it all sort of comes together at the
16 same time, doesn't it? Is that right?

17 A Yes, sir.

18 Q And right now as you sit here today, the
19 Solicitor has got a hammer over your head about the
20 accessory after the fact of a violent crime, doesn't
21 he?

22 A Yes, sir, I still have the charge.

23 Q You still have the charge. Mr. Lee is
24 representing you?

25 A Yes, sir.

Qurbitt Jones - Cross

622

1 Q Okay. You're looking at jail time --
2 substantial jail time, ten to fifteen years?

3 A Yes, sir.

4 Q And, of course, by testifying now, you're
5 hoping to get something out of that, aren't you?

6 A No, sir, I'm not.

7 Q You're not hoping to get anything?

8 A No, sir.

9 Q So you think that you're going to testify,
10 and nothing's going to happen?

11 A I don't know.

12 Q Pardon?

13 A I don't know.

14 Q Well, you're hoping, aren't you?

15 A Like I say, I really don't know.

16 Q Now, my question was this. Are you hoping
17 you're going to get some help?

18 A No, I'm not hoping for nothing.

19 Q I'm sorry, I can't understand.

20 A I said I'm not hoping for anything, sir.

21 Q You're not hoping for anything?

22 A No, sir.

23 Q Well, let's go back a little bit. When --
24 what kind of gun did you have at that time?

25 A I didn't have any gun.

Qurbitt Jones - Cross

623

1 Q You never owned a gun?

2 A No, sir.

3 Q Did you see Darryl Cook on November 23rd?

4 Weren't you over at his house?

5 A No, sir, I can't remember back then.

6 Q You can't remember back then?

7 A No, sir.

8 Q Well, you remember taking a gun out of the
9 car.

10 A Yes, sir.

11 Q Were you, or were you not, over at his
12 house on November 23rd between 5:00 and 7:00?

13 A Like I said, I don't remember. I don't
14 think so.

15 Q And didn't you see Darryl at his house
16 when you were visiting Crystal?

17 A No, sir.

18 Q Did you take Darryl to the gas station for
19 anything?

20 A No, sir.

21 Q Do you remember that?

22 A No, sir.

23 Q Did you take him to Tracy Jones' house?

24 Do you remember that?

25 A No, sir.

1 Q Pardon?

2 A No, sir.

3 Q You know, we tried to talk to you for a
4 couple of years there to find out what you had done
5 during that day. You remember that?

6 A Yes, sir.

7 Q My investigator tried to talk to you?

8 A Yes, sir.

9 Q You wouldn't talk to him, right?

10 A Yes, sir.

11 Q Well, let me ask you this. What day was
12 it -- well, how long after November 23rd was it that
13 you had this conversation with Crystal?

14 A I can't remember, sir.

15 Q Well, was it one day, was it a year, or
16 was it five years?

17 A I can't remember, sir.

18 Q So it could have been just last June?

19 A It could have been, but it wasn't, sir.

20 Q So when was it?

21 A I don't really know.

22 Q Was it closer to the events of November
23 23rd?

24 A I really can't recall.

25 Q Well, let me ask you this. Was it within

Qurbitt Jones - Cross

625

1 six months of November 23rd?

2 A Probably so. I don't remember.

3 Q You have no idea?

4 A No, sir. That's been six years ago, sir.

5 Q Was it within a year after November 23,

6 2001?

7 A I don't know. It could have been. I

8 really don't know. Like I said, I don't remember.

9 Q You remember going there?

10 A Yes, sir.

11 Q You remember where the car was?

12 A Yes, sir.

13 Q Is that right?

14 A Yes, sir.

15 Q It was between -- where was the car, now?

16 A Between his grandfather's house and his

17 mother's house.

18 Q Okay. You remember exactly the location?

19 A Yes, sir.

20 Q And it was a gray Nissan?

21 A Yes, I think so.

22 Q Is that right?

23 A Yes, sir.

24 Q Well, that's what you told the police.

25 A Yes, sir.

1 Q What if I told you they don't own a gray
2 Nissan? What would you say then?

3 A I said that's the car it was.

4 Q So you remember exactly where it was,
5 exactly what kind of car it was, but you have no
6 idea whether it was in 2003, 2004, 2005, 2006, is
7 that right?

8 A Yes, sir.

9 Q You have no idea. And you're not even
10 sure it was a .380, isn't that true?

11 A No, sir. I really don't know what kind of
12 gun it was.

13 Q You don't know what kind of gun it was?

14 A No, I don't know anything about guns like
15 that. I don't really know nothing.

16 Q Did somebody ever suggest to you it might
17 have been a .380?

18 A No, sir.

19 Q No, sir. But you are telling this jury
20 right now that whatever gun you got on whatever day
21 you got it and from wherever you got it, you don't
22 know if it was a .380 or not?

23 A No, sir, I don't.

24 Q You can't tell --

25 A That's what I told the officers.

Qurbitt Jones - Cross

627

1 Q I'm sorry, I didn't mean to cut you off.

2 A No, sir. I told the officers that.

3 Q Told the officers you didn't know whether
4 it was a .380 or not?

5 A Yes, I said I think it was, but I don't
6 know.

7 Q You think?

8 A Yes.

9 Q Did they tell you they were looking for a
10 .380?

11 A No, sir.

12 Q Did somebody ever say to you they were
13 looking for a .380?

14 A No, sir.

15 Q But you know you didn't know whether it
16 was a .380?

17 A Yes, sir. It could have been a .9-
18 millimeter, could have been a .30.

19 Q Could have been a .9-millimeter?

20 A Could have been a .45 -- I don't know.

21 Q Was it a revolver with a cylinder, or was
22 it a semi-automatic with a clip?

23 A Clip.

24 Q Was it big, or was it small?

25 A It was kind of small, I guess.

1 Q Was it black, or was it silver?

2 A Black.

3 Q Black gun?

4 A Yes, sir.

5 Q With a clip?

6 A Yes, sir.

7 Q Long .9-millimeter or a long semi-
8 automatic or a short one?

9 A I guess it was like this, I guess.

10 Q You know what I'm talking about. Some of
11 them are more compact than others?

12 A No, sir, I really don't know what you're
13 talking about.

14 Q You don't know?

15 A No, sir.

16 Q You don't know because you never saw it?

17 A No, I ain't never saw the type of gun.

18 Q You never saw the type of gun?

19 A No, sir.

20 Q So you have no idea?

21 A No, sir.

22 Q As a matter of fact, do you remember
23 Carlisle McNair, my investigator, used to be a
24 captain with the Lexington County Sheriff's
25 Department, came to see you?

Qurbitt Jones - Cross

629

1 A Yes, sir.

2 Q And that was on September 18, 2007, when
3 we finally found out you were in jail, remember?

4 A Yes, sir.

5 Q You remember you talked to him?

6 A No, we really didn't talk.

7 Q Well, you're sure about that?

8 A Yes, sir. I really didn't say anything to
9 him.

10 Q You didn't tell Mr. McNair that you didn't
11 know anything about a .380-caliber pistol?

12 A I told him that. Everybody I talked to, I
13 told them I didn't know anything about guns, period.

14 Q And you didn't tell him that you told the
15 investigators what they wanted to hear, because you
16 thought they were going to help you?

17 A No, sir.

18 Q You didn't tell him that?

19 A No, sir.

20 Q Did you also tell him that this .380
21 pistol that Sanders saw had nothing to do with this
22 case?

23 A No, sir.

24 Q You didn't tell Mr. McNair that?

25 A No, sir.

Qurbitt Jones - Cross

630

1 Q Well, I guess the bottom line is, Mr.
2 Jones, you're in jail because of Darryl's sister --

3 A Yes, sir.

4 Q -- correct, because you didn't pay your
5 child support?

6 A No, I'm not in jail because of her. I'm
7 in jail because of me.

8 Q Pardon?

9 A I'm in jail because of me.

10 COURT REPORTER: What did he say?

11 MR. SWERLING: Because of him -- me.

12 Q You're in jail for the child support?

13 A Yes, sir, because I didn't pay my child
14 support.

15 Q Right. You have a charge over your head -
16 -

17 A Yes, sir.

18 Q -- as an accessory after the fact?

19 A Yes, sir.

20 Q You have no idea when this gun -- whenever
21 it was taken out of that car?

22 A No, sir, I can't remember.

23 Q Pardon?

24 A No, sir, I can't remember.

25 Q You can't remember. And if you took a gun

Qurbitt Jones - Cross

631

1 out of the car, you have no idea what kind of gun it
2 was?

3 A No, sir. I can tell you what kind I think
4 it was, but I'm really not sure.

5 Q Pardon?

6 A I'm really not sure what kind it was.

7 Q Well, it's a big issue, and you can't say
8 for sure?

9 A No, sir.

10 Q You don't know?

11 A No, sir.

12 Q What did you do with it?

13 A What did I do with it? I gave it my
14 friend, Jasper.

15 Q When did you give it to him?

16 A Probably like a week later after I had got
17 it.

18 Q So you remember giving it to him a week
19 later --

20 A Yes, sir.

21 Q -- but you don't remember when in a period
22 of five years when you got it?

23 A No, sir.

24 Q But you remember giving it to him?

25 A Yes, sir.

Qurbitt Jones - Cross

632

1 Q Where were you when you gave it to him?

2 A We was up in Winnsboro.

3 Q Where?

4 A Probably at the Arms Apartments.

5 COURT REPORTER: At what apartments?

6 Q Arms Apartments?

7 A Yes, sir.

8 Q And were you at his house?

9 A No, sir, just hanging out.

10 Q Hanging out?

11 A Yes, sir.

12 Q And how did it come about that you gave
13 him the gun?

14 A I just showed it to him, and he said he
15 wanted one, so I gave him it to him. I guess
16 somebody stole it from him.

17 Q I'm sorry -- say what now?

18 A I said he said he wanted one. I showed it
19 to him and gave it to him. And I guess somebody
20 stole it from him.

21 Q Why did you give it to him?

22 A He said he wanted one, so I just gave it
23 to him.

24 Q He said he wanted a gun?

25 A Yes, sir.

Qurbitt Jones - Cross

633

1 Q Are you a gun dealer?

2 A No, sir.

3 Q Are you in the habit of giving people
4 guns?

5 A No, sir. That's just my friend, like a
6 brother to me.

7 Q So you just happened to give him this
8 particular gun that you say you got from the Cooks'
9 car?

10 A I didn't tell him where I got it from.

11 Q Whose car was it, by the way?

12 A I really don't know.

13 Q When you got it out --

14 A Yes, sir.

15 Q -- where was it in the car?

16 A Under the seat.

17 Q It was under the seat?

18 A Yes, sir.

19 Q Which seat?

20 A Passenger.

21 Q Was the car parked in front of somebody's
22 house?

23 A No, sir. It was parked in the middle of
24 the two houses.

25 Q In the middle of the two houses?

- 1 A Yes, sir.
- 2 Q Was anybody else there?
- 3 A No, sir.
- 4 Q Was Crystal there with you?
- 5 A No, sir, wasn't nobody there.
- 6 Q Well, how did you know it was under the
- 7 passenger seat?
- 8 A Because Crystal told me.
- 9 Q She told you it was under the passenger
- 10 seat?
- 11 A Yes, sir.
- 12 Q And where did you keep the gun?
- 13 A Where did I keep the gun? I really didn't
- 14 keep it. I kept it at my house till I gave it away.
- 15 Q And you gave it away within a week after
- 16 you got it?
- 17 A Yes, sir.
- 18 Q It was black, semi-automatic, something
- 19 gun?
- 20 A Yes, sir.
- 21 Q Did you get money for it?
- 22 A No, sir.
- 23 Q Have you ever talked to Mr. Sanders about
- 24 it since that time?
- 25 A No, sir.

Qurbitt Jones - Cross

635

1 Q That's his name?

2 A Yes. We didn't think nothing about it.

3 We didn't think there was no big deal about it.

4 Q Well, let me ask you something. Did you
5 know that Darryl was charged with shooting a Mr.

6 McGuirt --

7 A Yes, I knew he was charged.

8 Q -- and robbing him?

9 A Yes.

10 Q Pardon?

11 A Yes, sir, I knew he was charged with it.

12 Q Okay. And did you know then when you went
13 ahead and got that gun that you might have been
14 getting the gun that was used in this case?

15 A No, sir. I don't think he did it, because
16 I don't know --

17 Q You don't think he did it?

18 A No, sir, because I really don't think that
19 was the gun.

20 Q Based on the information you have, you
21 don't think he did it, is that right?

22 A I'm not sure. I don't know. I don't
23 think so.

24 Q So, therefore, going and getting the gun
25 was no big deal for you, is that right?

Qurbitt Jones - Cross

636

1 A No, sir.

2 Q Because you had no idea or didn't even
3 think or didn't think that this gun was used in any
4 kind of crime, is that right?

5 A No, sir, that's right.

6 MR. SWERLING: That's all I have,
7 Your Honor.

8 THE COURT: Thank you, Mr. Swerling.

9 MR. BARFIELD: I might have a couple
10 more.

11 THE COURT: Any redirect to this?

12 MR. BARFIELD: Perhaps.

13 REDIRECT EXAMINATION

14 BY MR. BARFIELD:

15 Q I'm going to ask you just a couple of more
16 questions, Mr. Jones -- well, I say a couple. It'll
17 be a few more than that, but a few questions. Do
18 you read and write?

19 A Yes, sir, I read and write.

20 Q All right. And I didn't mean anything by
21 asking that question. Take a -- I'm handing you
22 something to ask you to look at that, first of all.
23 Tell me when you've looked at it enough to be able
24 to answer a couple of questions.

25 A Okay.

Qurbitt Jones - Redirect

637

1 Q All right, answer out loud. What is this
2 piece of paper I just showed you?

3 A That's a warrant.

4 Q For you for the charge involving the gun?

5 A Yes, sir.

6 Q Now, I'm putting my finger down there by a
7 number. What is that number?

8 A June 20, 2007.

9 Q Is that when you got arrested on this
10 warrant?

11 A Yes, sir.

12 Q And continue to talk loud for me, please,
13 sir. Now, after you got arrested on that warrant,
14 did you get bonded out? You've got to say -- you've
15 got to answer out loud.

16 A Yes, sir.

17 Q Holler at me, okay?

18 A Yes, sir, I got out.

19 Q What day did you get out?

20 A The 21st.

21 Q Of the same month?

22 A Yes, sir.

23 Q How long did you stay in jail on this
24 arrest warrant when you got arrested for the gun
25 matter involving Darryl Cook's case?

1 A I guess it wasn't over a day, I guess.

2 Q A day. When did you end up going to the
3 detention center on the child support case involving
4 your child with Crystal Cook?

5 A Two months later.

6 Q Thank you.

7 A August.

8 Q Now, I'm showing you that piece of paper.

9 A Yes, sir.

10 Q What is that?

11 A That's a statement.

12 Q Speak louder, okay?

13 A Statement.

14 Q Whose statement?

15 A Mine.

16 Q About this gun?

17 A Yes, sir.

18 Q And what date did you give this statement
19 to law enforcement about this gun?

20 MR. SWERLING: Your Honor, may we
21 approach for a sidebar?

22 Q Mr. Jones, again, you said that's a
23 statement you gave law enforcement. What date did
24 you give law enforcement a statement about this gun?

25 A The 19th.

Qurbitt Jones - Redirect

639

1 Q Of what month?

2 A June.

3 Q Of what year?

4 A Oh seven.

5 Q And when, again, did you get put in jail
6 for not paying child support?

7 A August.

8 Q Of what year?

9 A Oh seven.

10 Q Thank you, sir. That's all the questions
11 I have.

12 MR. SWERLING: No questions, Your
13 Honor.

14 THE COURT: Thank you. You may step
15 down.

16 MR. BARFIELD: Jasper Sanders.

17 (The witness was sworn.)

18 CLERK OF COURT: Please be seated.
19 You need to turn your chair around -- there you go -
20 - and speak into the mike. State your name for the
21 record.

22 MR. SANDERS: Jasper Sanders.

23 MR. BARFIELD: Beg the Court's
24 indulgence for one moment.

25 THE COURT: Yes, sir.

Jasper Sanders - Direct

640

1 JASPER SANDERS, having
2 first been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q State your name, please, sir.

6 A Jasper Sanders.

7 Q Mr. Sanders, how old are you?

8 A Twenty-two.

9 Q And are you currently incarcerated in the
10 South Carolina Department of Corrections?

11 A Yes, sir.

12 Q And where are you incarcerated?

13 A Trent.

14 Q Trent?

15 A Trent Correctional Institution.

16 Q And do you know what county that's in?

17 A Edgefield.

18 Q And what kind of a sentence are you doing
19 at Edgefield?

20 A A YOA sentence.

21 Q And what are you doing a YOA sentence for?

22 A Common-law robbery.

23 Q And when did you go to Trent, and when did
24 you get convicted and sentenced for the common-law
25 robbery?

Jasper Sanders - Direct

641

- 1 A April 10, 2006.
- 2 Q Where do you live? Where's your home?
- 3 A [REDACTED]
- 4 Q And what town or community is that in?
- 5 A Columbia, South Carolina.
- 6 Q Columbia?
- 7 A Yes, sir.
- 8 Q Are you familiar with Fairfield County?
- 9 A Yes, sir.
- 10 Q Do you have relatives here?
- 11 A Yes, sir.
- 12 Q Are there people you know here?
- 13 A Yes, sir.
- 14 Q Do you know Darryl Cook?
- 15 A Somewhat, yes, sir, I know him.
- 16 Q All right. And how long have you known
- 17 Darryl Cook?
- 18 A I've been in the county jail with him.
- 19 Q Okay. Other than that, did you know
- 20 Darryl Cook? You've got to answer out.
- 21 A No, sir.
- 22 Q Do you know Qurbitt Jones?
- 23 A Yes, sir.
- 24 Q How do you know Qurbitt Jones?
- 25 A I grew up with Qurbitt Jones.

Jasper Sanders - Direct

642

1 Q Did you use to live in Fairfield County,
2 or did he use to live in Richland County?

3 A I use to live in Fairfield County.

4 Q Okay. How long ago did you last live in
5 Fairfield County?

6 A Two thousand one, two thousand two.

7 Q All right. Where were you living in
8 Fairfield County?

9 A Arms Apartments.

10 Q Up here in Winnsboro?

11 A Yes, sir.

12 Q Now, at some point, have you ever received
13 a firearm from Qurbitt Jones?

14 A Yes, sir.

15 Q First of all, can you tell us about when
16 you received a firearm from Qurbitt Jones?

17 A Sometime in 2001, 2002.

18 Q Do you know for sure when?

19 A No, sir. I just know it been a hot day,
20 and we was sitting in the car.

21 Q All right, hold on.

22 A I know that. It was during the
23 summertime.

24 Q Okay, that's all right. Where was --
25 where were you, and where was Qurbitt Jones when

Jasper Sanders - Direct

643

- 1 this whole thing about a firearm came up?
- 2 A In the car.
- 3 Q In whose car?
- 4 A In Qurbitt's car.
- 5 Q And what is the connection between you and
- 6 Qurbitt? Are y'all friends, relatives?
- 7 A Friends.
- 8 Q Okay. Where were you and Qurbitt in his
- 9 car when the gun came up?
- 10 A In the front seat, in the passenger side.
- 11 Q No, where in the community.
- 12 A Oh, Shady Grove.
- 13 Q And where is that?
- 14 A Qurbitt's house.
- 15 Q All right. And how did the issue of the
- 16 gun come up?
- 17 A I just seen the gun on the floor by the
- 18 seat.
- 19 Q What kind of gun was it?
- 20 A A black gun, a .380. I think it said .380
- 21 on the side.
- 22 Q You saw .380 on the side of it? You've
- 23 got to say "yes" or "no."
- 24 A Yes, sir.
- 25 Q Big gun, little gun?

Jasper Sanders - Direct

644

- 1 A Medium-size gun.
- 2 Q All right. Where was it when you saw it?
- 3 A On the floor, by the seat.
- 4 Q Did you ask Qurbitt anything about it?
- 5 A I asked him can I hold it.
- 6 Q Did he let you hold it?
- 7 A Yes, sir.
- 8 Q Did you keep it?
- 9 A Yes, sir.
- 10 Q Did you ask him if you could keep it?
- 11 A Not to have, but to borrow -- could I keep
- 12 it.
- 13 Q What did you ask Qurbitt about the gun?
- 14 A I just said, "Brother, let me hold the
- 15 gun." And he was like, "Yes, you can hold it."
- 16 Q And how long did you hold the gun?
- 17 A Not that long, a couple of months -- about
- 18 five months.
- 19 Q Where were you living then?
- 20 A Richland County.
- 21 Q In Columbia?
- 22 A Yes, sir.
- 23 Q And with whom were you living then?
- 24 A I was living with my mama then.
- 25 Q Do you remember anything else that was --

Jasper Sanders - Direct

645

1 was there anything else written on the gun that you
2 noticed?

3 A No, sir. It was just a black gun that
4 said .380 on the side, and that's it. I think it
5 had a little cocker thing on the back of it.

6 Q Was there any brand on it?

7 A Oh, you're talking about like type of gun?

8 Q What kind?

9 A It said High Point on there.

10 Q High Point?

11 A Yes, sir.

12 Q All right. Did you ever shoot the pistol?

13 A Yes, sir.

14 Q Where did you shoot it?

15 A I don't remember exactly.

16 Q How long after you took it from Qurbitt or
17 got it from Qurbitt did you shoot it?

18 A Maybe a week, week or two.

19 Q Target shooting or shooting at something?

20 A I just shot it in the water.

21 Q Okay. Where did you keep the gun?

22 A At my mama's house.

23 Q Where at your mama's house?

24 A In the shed.

25 Q Do you have the gun?

Jasper Sanders - Direct

646

- 1 A No, sir -- presently, no sir.
- 2 Q Yes.
- 3 A No, sir.
- 4 Q What happened to the gun?
- 5 A The gun got stolen from me. That's what
- 6 I'm thinking anyway. I put the gun up. I went to
- 7 get it. The gun was gone.
- 8 Q About when did that occur? How long was
- 9 it after you got the gun from Qurbitt that it got
- 10 gone?
- 11 A I noticed it in five months. That's why
- 12 I'm saying I had the gun about five months.
- 13 Q When the gun was gone, was anything else
- 14 missing?
- 15 A Yes, sir.
- 16 Q What?
- 17 A My dog, my mama's car.
- 18 Q Did they all get gone at the same time?
- 19 A Well, close around, yes, sir.
- 20 Q Did you report the theft of this gun?
- 21 A No, sir.
- 22 Q Did you ever tell the police that you had
- 23 the gun until this case came up?
- 24 A No, sir.
- 25 Q Now, at the time that you got this gun

Jasper Sanders - Direct

647

1 from Qurbitt Jones, do you know where he got it
2 from?

3 A No, sir.

4 Q Did he ever tell you where he got it from?

5 A No, sir.

6 Q Did you have any idea that it might or
7 might not have any connection to Darryl Cook?

8 A No, sir. I didn't know about -- you know,
9 about this situation here.

10 Q Thank you, sir. Answer anything Mr.
11 Swerling has.

12 THE COURT: Thank you, Mr. Solicitor.

13 Mr. Swerling, cross?

14 CROSS-EXAMINATION

15 BY MR. SWERLING:

16 Q Mr. Sanders, you're right now in the
17 Department of Corrections, correct?

18 A Yes, sir.

19 Q And you're serving a sentence because you
20 stuck somebody up?

21 A Yes, sir -- common-law robbery, yes, sir.

22 Q Well, you stuck somebody up, robbed them?

23 A Yes, sir, you could say that -- common-law
24 robbery.

25 Q Well, that's what common-law robbery is,

1 robbing somebody by force, correct?

2 A Yes, sir.

3 Q And you're sitting in the Department of
4 Corrections on June 20, 2007, and the police show
5 up?

6 A Yes, sir.

7 Q And they want to talk to you about a gun?

8 A Yes, sir.

9 Q Correct?

10 A Yes, sir.

11 Q And you hadn't thought about that gun in
12 years, had you?

13 A No, sir.

14 Q You didn't know there was anything
15 particular about that gun that would raise any kind
16 of questions in anybody's mind, did you?

17 A No, sir.

18 Q So June 20, 2007, the police show up. Who
19 was it, by the way -- Mr. Boney?

20 A Yes, sir.

21 Q Somebody else?

22 A Yes, sir. Yes, sir, there was somebody
23 else, but I can't remember his name. But he wasn't
24 by himself.

25 Q Okay. And they wanted to know about this

Jasper Sanders - Cross

649

1 .380, is that right?

2 A He asked about a gun, yes, sir.

3 Q And where did you ever hear the word high-
4 power?

5 A That's the only gun I ever knew like made
6 by .380 or something like that.

7 Q Pardon?

8 A That's the only gun I ever heard of being
9 called a .380 before.

10 Q The only gun you ever heard that was
11 called a .380?

12 A Yes, sir.

13 Q I'm sorry, I don't understand. You mean
14 the only manufacturer of a gun, the .380?

15 A Yes, sir.

16 Q Was a High Point?

17 A Yes, sir.

18 Q So in June of 2007, you remembered not
19 only the caliber of the weapon, you're telling this
20 jury here, but you remembered the manufacturer of
21 the gun?

22 A Yes, sir, basically. I mean, I knew
23 somebody else bought a gun like that. That's the
24 only gun I ever heard of a .380 before.

25 Q No, I'm not asking you about a .380.

Jasper Sanders - Cross

650

1 That's the only gun you've ever -- maybe I'm
2 misunderstanding. A .380 is the only caliber of gun
3 you ever heard of?

4 A By -- yes, sir, by saying high-power in
5 front of it, yes, sir, a High Point.

6 Q High power or High Point? This is two
7 different -- it's different.

8 A That's what you just said just now. You
9 said high-powered, sir.

10 Q High Point.

11 A High Point .380, yes, sir.

12 Q Is that what -- you're saying it was a
13 High Point .380?

14 A Yes, sir, it said .380 on the side, yes,
15 sir.

16 Q All right. But how did you know it was a
17 High Point gun. Where did you ever get the words
18 "High Point" from?

19 A That's the only gun I ever knew being a
20 .380.

21 Q So you're saying that the words "High
22 Point" were on the gun itself?

23 A Could have been. I think so, yes, sir.

24 Q Could have been, or maybe was, or you
25 don't know?

Jasper Sanders - Cross

651

1 A I'm saying I know the words .380 been on
2 the gun.

3 Q I'm not asking you about the words ".380."
4 I'm not asking you about the words ".380." You said
5 it was a .380 gun?

6 A Yes, sir.

7 Q Okay. Have you ever held any other guns
8 before?

9 A Yes, sir.

10 Q Have you ever seen any other guns before?

11 A Yes, sir.

12 Q You knew that this was a .380?

13 A Yes, sir.

14 Q And did you buy ammunition for the gun?

15 A No, sir.

16 Q Ammunition was already in the gun?

17 A Yes, sir.

18 Q It was a black gun?

19 A Yes, sir.

20 Q My question was this. High Point, where
21 did you get the words "High Point" from -- from the
22 police, or was it something that you remember? I'm
23 trying to find out where you got this.

24 A It was just something that I remembered,
25 sir. Every time I ever heard of a gun being a .380,

Jasper Sanders - Cross

652

1 it's been a High Point .380, sir. That's why I said
2 High Point .380.

3 Q Okay, that's what I thought you said. So
4 any time you've ever heard of a .380, it's always
5 been a High Point .380?

6 A Yes, sir.

7 Q Have you ever heard of a high-powered
8 .380?

9 A No, sir -- yes, just now when you said it,
10 now.

11 Q Well, I'm asking you, is there a
12 difference between the words to you in your mind as
13 to a high-power .380 or a High Point .380?

14 A "Power" and "point" is two different
15 words.

16 Q Yes.

17 A No, sir.

18 Q So what do you remember the gun to be?

19 A It's been a .380, a black .380.

20 Q But manufactured by who?

21 A I mean, I can't remember whether it said
22 High Point on it or not, now.

23 Q You don't remember?

24 A No, sir. You're trying to confuse me.

25 Q No, I'm just trying to find out where you

Jasper Sanders - Cross

653

1 got the words "High Point" from.

2 A Which means that the words "High Point," I
3 can't remember whether it was on the gun or not. I
4 remember the gun being a black gun, and it said .380
5 on the side. I remember .380.

6 Q Mr. Sanders, I understand what you are
7 saying. My question to you is this. You specified
8 a specific type of .380, a High Point.

9 A Yes, sir.

10 Q And what I'm trying to find out is, where
11 did you hear those words "High Point"?

12 A From any other time I ever heard of the
13 gun a .380 before.

14 Q Did you ever own a .380?

15 A Just that one.

16 Q Did you ever handle a .380?

17 A Just that one.

18 Q So what's every other time?

19 A I mean, I've got people, you know what I'm
20 saying, some relatives who I've heard them talking
21 about guns. They might have had a gun before and
22 said .380 -- a High Point .380.

23 Q So your relatives told you about a High
24 Point .380?

25 A Yes, sir.

Jasper Sanders - Cross

654

- 1 Q Your friends told you about a High Point
2 .380?
- 3 A Yes, sir.
- 4 Q Did you ever hear of a Sig Sauer .380?
- 5 A No, sir.
- 6 Q Did you ever hear of a Glock .380?
- 7 A No, sir.
- 8 Q Did you ever hear of a Remington .380 --
- 9 A No, sir.
- 10 Q -- or Smith and Wesson .380?
- 11 A No, sir. I've heard of Smith and Wesson
12 before.
- 13 Q But never -- only a High Point, is that
14 right?
- 15 A Yes, sir.
- 16 Q All right. When did you get this gun from
17 Mr. Jones?
- 18 A About summertime, 2001, 2002.
- 19 Q Well, you said you knew it was the summer
20 of 2001 -- or summer, that's what you said?
- 21 A Yes, sir, I know it was hot that day. It
22 was real hot.
- 23 Q But you don't remember what year it was?
- 24 A No, sir, not exact. I mean, I can't
25 remember the year. But I know it was --

Jasper Sanders - Cross

655

1 Q I'm sorry, go ahead.

2 A I said, but I know it been hot, though.

3 Q So it could have been in the summer of
4 2001?

5 A Yes, sir.

6 Q And -- or it could have been any other
7 summer after that?

8 A No, not any other summer after that.

9 Q So it could have been, and probably was,
10 summer of 2001?

11 A From -- yes, sir, I remember it was one of
12 them two. I know it wasn't 2003.

13 Q How old were you then?

14 A About 16 -- 15 or 16, or something like
15 that.

16 Q Is that about the time you remember
17 getting the gun?

18 A Yes, sir.

19 Q You wouldn't have, of course, been allowed
20 to own a gun?

21 A No, sir.

22 Q Isn't that true?

23 A Yes, that's true.

24 Q Now, let's talk about when you got it,
25 okay, or where. You lived where -- at the Arms

Jasper Sanders - Cross

656

- 1 Apartments?
- 2 A Yes, sir.
- 3 Q And Mr. Jones lived where?
- 4 A Shady Grove.
- 5 Q Sherry Road?
- 6 A Shady Grove.
- 7 Q I'm sorry, Shady Grove. Where is Shady
- 8 Grove? I'm not familiar.
- 9 Q I don't remember the road. I know it's
- 10 Shady Grove Road, I know that. It's like -- I don't
- 11 remember the road. What is it, 34 right there, by
- 12 the intermediate school, going in the direction of
- 13 the intermediate school.
- 14 Q It's not at the Arms Apartments?
- 15 A No, sir.
- 16 Q How far is the Arms Apartments from Shady
- 17 Grove Road.
- 18 Q Several miles.
- 19 Q Several miles?
- 20 A Yes, sir.
- 21 Q And you were in whose car?
- 22 A In Qurbitt's car.
- 23 Q And what kind of car did he have?
- 24 A Like an Altima or something -- Altima.
- 25 Q Okay. And you were at his house?

Jasper Sanders - Cross

657

1 A Yes, sir.

2 Q And you said you were in the car?

3 A Yes, sir.

4 Q So you were definitely not at your house?

5 A No, sir.

6 Q You were definitely not at the Arms
7 Apartments?

8 A No, sir.

9 Q And you were sitting in the car, and you
10 happened to see it under the seat, is that what I
11 understood you to say?

12 A Yes, sir.

13 Q And you just happened to say at that
14 point, "Can I hold the gun?"

15 A Yes, sir.

16 Q And Mr. Jones said, "Of course, you could
17 hold the gun."

18 A Yes, sir.

19 Q He never told you there was anything wrong
20 with the gun?

21 A No, sir.

22 Q Never told you where he got the gun from?

23 A No, sir.

24 Q Never told you whose gun it was?

25 A No, sir.

1 Q Never told you it was paid for?

2 A Paid for, no, sir.

3 Q So at that point, you just said, "I want
4 to hold it for a while"?

5 A Yes, sir.

6 Q Did he give it to you?

7 A Yes. When I asked him could I hold it, he
8 was like, "Yes, you could hold it."

9 Q Well, did he give it to you, I mean, or
10 was it just a loan?

11 A Yes, he was meaning for me to give it back
12 to him, yes, sir.

13 Q He meant for you to give it back?

14 A Yes, sir.

15 Q So you didn't pay him for it?

16 A No, sir.

17 Q Now, he told you at that point, didn't he,
18 that he had connections? You asked him where the
19 gun came from?

20 A Yes, sir.

21 Q And he told you he had connections?

22 A Yes, you could say that.

23 Q Well, I don't want to say it.

24 A Yes, sir.

25 Q Isn't that what you told the police?

Jasper Sanders - Cross

659

1 A Yes, sir.

2 Q And so you took the gun. Did you take
3 ammunition with it as well?

4 A Yes, it had some bullets in it.

5 Q Did you take a box of ammunition?

6 A No, sir.

7 Q How many bullets were in the clip?

8 A I can't remember.

9 Q Was it an eight-round clip, fourteen-round
10 clip, or what?

11 A I didn't know how many bullets were in
12 there, but it had some bullets in there.

13 Q And you said you fired it a few times?

14 A Yes, sir, about two or three times.

15 Q Well, let's see. If it was only, let's
16 say, eight rounds in the clip, where did you get the
17 additional ammunition from?

18 A What you mean, ammunition?

19 Q You never emptied the clip?

20 A No, sir.

21 Q So you only -- when you shot it a couple
22 of times, you never emptied the clip at once at all?

23 A No, sir.

24 Q Now, this gun that mysteriously shows up
25 under the seat of Mr. Jones' car at Mr. Jones' house

1 that you get as a loan, this particular gun, nobody
2 knows where it is?

3 A Where it is?

4 Q Yes. .

5 A No, sir, not right now, I don't.

6 Q Where did you put the gun?

7 A In my mama's shed.

8 Q And your mom lived where?

9 A In Columbia.

10 Q In Columbia. And what you're saying is at
11 some point in the past -- is that what I understand
12 you to say -- that some things were stolen?

13 A Yes, sir.

14 Q And the gun was stolen?

15 A Yes, sir.

16 Q Did anybody know where the gun was?

17 A That's what I'm thinking, too -- no, sir.

18 Q Nobody knew where the gun was?

19 A No, sir.

20 Q Well, when the gun was stolen, was
21 anything else stolen at that time?

22 A Yes, sir. Around that time, my dog got
23 stolen, a lot of stuff got stolen.

24 Q Well, I'm not talking about around. I'm
25 talking about at that time.

Jasper Sanders - Cross

661

1 A I mean, not -- I don't know if the gun got
2 missing the same day my dog got stolen. I looked
3 for it, see what I'm saying? I don't know --

4 Q So you don't know what --

5 A -- if it's the same. I don't know if
6 that's the same day when my dog, that the gun get
7 stolen the same day. I'm saying around that time.

8 Q So what you're saying is that things got
9 taken from the shed like your dog --

10 A Yes, sir.

11 Q -- like the car --

12 A Yes, sir.

13 Q -- some other items?

14 A Yes, sir.

15 Q And when you went to look, the gun was
16 also gone?

17 A Yes, sir.

18 A Is that what you're saying?

19 A Yes, sir.

20 Q Was it reported stolen?

21 A No, sir.

22 Q Was any of it reported stolen?

23 A My mama did. She said her car had been
24 stolen. We looked for the dog and stuff, but --

25 Q But you never reported the gun was stolen?

Jasper Sanders - Cross

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1 A No, sir.

2 Q And until June 20, 2007, you never thought
3 about that gun again, did you?

4 A No, sir.

5 Q Anybody tell you -- what's your sentence,
6 a Youthful Offender?

7 A Yes, sir.

8 Q Anybody say they're going to help you out,
9 write a letter to the Department of Corrections or
10 anything for you coming up here today?

11 A No, sir.

12 Q Are you charged with anything?

13 A No, sir.

14 Q Did anybody threaten to charge you with
15 anything?

16 A No, sir.

17 Q Did they tell you you could be an
18 accessory after the fact?

19 A No, sir.

20 Q Did anybody ever say that to you?

21 A No, sir.

22 Q That's all I have. Thank you.

23 MR. BARFIELD: Just a couple of real
24 quick follow-up.

25 REDIRECT EXAMINATION

Jasper Sanders - Redirect

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1 BY MR. BARFIELD:

2 Q And I just want you to tell what you
3 remember, one way or the other. Did you see .380
4 written on the barrel of that gun?

5 A Yes, on the sides, yes, sir.

6 Q Okay. Did you see High Point written on
7 the gun? If you did, fine; if you didn't, fine.
8 But did you, or didn't you?

9 A I can't remember, sir. I remember seeing
10 .380 for sure.

11 Q That's fine.

12 A I know I seen that.

13 Q That's what you say, though -- .380, but
14 you don't know about the High Point?

15 A I can't really remember.

16 Q That's fine. That's fine.

17 A Yes, sir.

18 Q Thank you, sir.

19 MR. BARFIELD: No other questions
20 from this witness.

21 MR. SWERLING: Nothing, Your Honor.

22 THE COURT: Thank you, sir.

23 You may step down, sir.

24 MR. BARFIELD: Your Honor, this
25 witness is excused, or I would ask this witness be

Jasper Sanders - Redirect

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1 excused.

2 THE COURT: Yes, sir. You're free to
3 go back home.

4 MR. BARFIELD: This might be a good
5 time to take a short one, if you want to.

6 THE COURT: How long is the next
7 witness going to be?

8 MR. BARFIELD: I've got a fairly
9 brief next witness.

10 THE COURT: Okay. We'll take about a
11 one-cigarette break.

12 (Jury out at 4:32 p.m.)

13 THE COURT: Please be seated.

14 (Jury in at 5:00 p.m.)

15 THE COURT: Please let the record
16 reflect that the trial jury and the alternate are
17 present in the courtroom.

18 Mr. Foreman, ladies and
19 gentlemen of the jury, we have substantial non-jury
20 work to complete today, some legal matters that
21 we're going to do. We have medical issues and long-
22 made plans that are going to interfere with
23 tomorrow.

24 So the good news is that we're
25 going to let you go home now, and you don't have to

Jasper Sanders - Redirect

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1 come back tomorrow. But you do have to come back
2 Monday morning at 10:00. And if we accomplish as
3 much during the remainder of the day as we
4 anticipate. then there'll be several witnesses on
5 Monday and then the opening or the closing
6 statements and the charge on the law, and you begin
7 your deliberations on Monday.

8 So I'm saying that we're
9 finished with you for today. You will not need to
10 report tomorrow. And if you could come back,
11 please, Monday morning, 10:00. I remind you, again
12 -- that's three days -- please don't discuss it,
13 don't go to the scene, don't go any of the areas
14 that you've heard mentioned during the trial.

15 And I will ask you each under
16 oath on Monday if you followed my instructions.
17 It's that important. This is an important
18 articulation, and we have to handle it accordingly.
19 I hope you all have a nice weekend. I think the
20 weekend is supposed to be beautiful. I think it's
21 supposed to rain tomorrow, but right now, rain would
22 be pretty beautiful, as dry as it is.

23 And I just appreciate all of
24 your attention. It's been apparent from the start
25 that you all have all been engaged and involved in

Jasper Sanders - Redirect

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1 the process. That's good for everybody. That's
2 good for the State. That's good for the defendant.
3 And I look forward to seeing you again Monday
4 morning, 10:00. Thank you.

5 THE COURT: Anything additionally
6 from the State?

7 MR. BARFIELD: Publicity.

8 THE COURT: Excuse me. We were
9 pretrial contacted by a number of media sources.
10 None have been here this week that we are aware of.
11 And it might be that it slipped through their crack
12 and they try to make up for it between now and
13 Monday by contacting you or by broadcasting what's
14 going on with the case.

15 Again, you just have to isolate
16 yourself from that. If you see it come on the TV,
17 or on the radio, or in a newspaper article, you just
18 have to ignore it until this is over. Thank you.

19 And thank you for the
20 reminder.

21 MR. BARFIELD: Yes, sir.

22 (The jury was excused for
23 the day.)

24 THE COURT: Please let the record
25 reflect that the trial jury is absent from the

Jasper Sanders - Redirect

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1 courtroom.

2 Mr. Solicitor?

3 MR. BARFIELD: Your Honor, the next
4 two witnesses in the normal flow of this case will
5 be Chief Deputy Keith Lewis and --

6 MR. HILL: Cpl. Chris Hill.

7 MR. BARFIELD: -- Cpl. Chris Hill
8 concerning identification procedures. But we have
9 determined that he's -- well, I'd call Keith Lewis
10 first.

11 (The witness was sworn.)

12 CLERK OF COURT: Please be seated.

13 IN-CAMERA EXAMINATION

14 BY MR. BARFIELD:

15 Q State your name, please.

16 A Keith Lewis.

17 Q And, Mr. Lewis, by whom are you employed?

18 A Fairfield County Sheriff's Office.

19 Q Are you currently the chief deputy for the
20 Fairfield County Sheriff's Office?

21 A I am.

22 Q And were you employed in that capacity on
23 November 23, 2001?

24 A I was.

25 Q And did you participate in the

Keith Lewis (In-Camera) Direct

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1 investigation of the shooting and robbery of Jackie
2 McGuirt at his station down in Ridgeway?

3 A I did.

4 Q At some point that night, did you become
5 aware that your deputy, now I think corporal, Chris
6 Hill had seen something that might be significant --

7 A I did.

8 Q -- in the case? And did you talk to Chris
9 Hill about that?

10 A I did.

11 Q And without -- we don't need to get into a
12 lot of detail about that. But what did you find out
13 Chris Hill or who -- describe what the information
14 was that Chris Hill gave you in a nutshell, not any
15 detail about it.

16 A That he had seen a subject leaving the --
17 Mr. McGuirt's station, and it was going to be close
18 to the time of the actual robbery.

19 Q All right. And did you gather from Chris
20 Hill that he got a good enough look at the person to
21 perhaps be able to identify somebody in one manner
22 or another?

23 A I did. I asked him if he thought he could
24 remember who he saw or could describe who he saw to
25 an artist.

Keith Lewis (In-Camera) Direct

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1 Q And did -- after you received that
2 information, did you contact the State Law
3 Enforcement Division to see if they could send up a
4 forensic artist to do what we commonly would call a
5 composite drawing of the suspect?

6 A I did.

7 Q Did a forensic artist come up here?

8 A He did.

9 Q And was it Roy Paschal of SLED, as far as
10 you know?

11 A It was.

12 Q All right. Did he and Chris Hill get
13 together somewhere?

14 A Yes. If I'm not mistaken, they met at the
15 substation in Ridgeway.

16 Q And for some period of time, did they stay
17 together to work on a composite?

18 A They did.

19 Q Did a composite get completed?

20 A It did.

21 Q Now, I'm going to hand you -- this is a
22 photocopy. I frankly don't know where the original
23 one went, but that's a photocopy. Do you recognize
24 that?

25 A I do.

Keith Lewis (In-Camera) Direct

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1 Q Is that a photocopy of the composite
2 drawing Roy Paschal of SLED made after interviewing
3 Chris Hill?

4 A It is.

5 MR. BARFIELD: You want it marked in
6 some fashion?

7 MR. SWERLING: Let's mark it as an
8 exhibit for this hearing.

9 MR. BARFIELD: A Court's exhibit,
10 perhaps? We've gone four days. We do have some
11 Court's exhibits.

12 THE COURT: Yes, we've got a number.

13 MR. BARFIELD: I forgot.

14 COURT REPORTER: Court's Number
15 Seven, Your Honor.

16 THE COURT: Court's Number Seven into
17 evidence.

18 (Court's Exhibit Number
19 Seven, Chris Hill Composite Drawing, was entered in
20 evidence.)

21 Q Chief Lewis, I'm going to hand you Court's
22 Exhibit Number Seven. After that composite drawing
23 was completed, did you get a chance to look at it?

24 A I did.

25 Q Now, prior to that document, Court's

Keith Lewis (In-Camera) Direct

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1 Exhibit Number Seven, being placed into your hands,
2 did you have a name of any suspect prior to that --
3 somebody that you -- well, suspect, somebody you
4 suspected? Had any names come up prior to you
5 getting that composite in your hands?

6 A No, sir.

7 Q Okay. When you saw the composite, did you
8 have any thoughts yourself about who a suspect might
9 be?

10 A I did.

11 Q And who was that suspect?

12 A Darryl Cook.

13 Q Does that composite to you look like
14 Darryl Cook looked back in November of 2001?

15 A In 2001, it does.

16 Q Okay. Did you -- in connection with your
17 thought that Darryl Cook was the man that Chris Hill
18 had told Roy Paschal to draw, based on how it came
19 out, did you do anything else to continue the
20 identification process?

21 A I asked Lt. -- Sgt. Boney, Investigator
22 Boney to have SLED to do a photo line-up and include
23 Darryl Cook's photograph in that line-up.

24 Q Now, did the Sheriff's Office routinely do
25 its own photo line-ups back then?

1 A Not in 2001. SLED did our line-ups for
2 us.

3 Q And how would you -- well, first of all,
4 did Fairfield County Sheriff's Office have a picture
5 of Darryl Cook on November 23rd or 24th of 2001?

6 A We very well may have. I'm not sure.

7 Q Did you use your picture?

8 A No, we did not.

9 Q How did SLED know what Darryl Cook you're
10 talking about when y'all wanted SLED to put Darryl
11 Cook in the line-up?

12 A We used date of birth, Social Security
13 Number, or any identifying numbers or anything about
14 that person to make sure we had the same individual.

15 Q All right, now, to your -- and did y'all
16 send that information through Greg Boney to SLED on
17 Darryl Cook, identifying information so they could
18 see if they had a picture of him?

19 A Yes.

20 Q Now, did you request that anybody else be
21 in that line-up?

22 A No, sir.

23 Q I'm going to jump way ahead. Did you
24 ultimately see the line-up?

25 A I did.

Keith Lewis (In-Camera) Direct

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1 Q And was there a picture of Darryl Cook in
2 it?

3 A It was.

4 Q And are you sure that that is a picture of
5 Darryl Cook, that's the defendant in this case?

6 A Yes.

7 Q Okay. Do you know what kind of picture
8 SLED pulls up to put in a line-up?

9 A They use driver's license photographs,
10 state identification photographs. And at the time,
11 SLED had a collection of photographs that they just
12 kept for line-ups.

13 Q Okay. Do you know what kind of photograph
14 that is of Darryl Cook?

15 A I do not.

16 Q Now, to your knowledge, did a line-up get
17 put together?

18 A It did.

19 Q How many pictures are in the line-up?

20 A Six.

21 Q Was it a one-page document with six
22 different pictures?

23 A Yes --

24 Q Are all --

25 A -- or it's a folder.

1 Q Right. Are all the pictures numbered,
2 separately numbered?

3 A Some line-ups are numbered, you know,
4 photo one, two, three, four, five, six.

5 Q I'm talking about this line-up.

6 A I can't remember. I'd have to see it.

7 Q Okay, that's fine. Well, let me jump
8 ahead. Were arrangements made -- when did you
9 request that a line-up be put together? When did
10 you send Greg Boney on the task of getting a line-up
11 put together?

12 A I made the request the night of the
13 robbery and the shooting, which would have been not
14 that night but early that Saturday morning, probably
15 2:00 in the morning. And it was an assignment for
16 Investigator Boney to do first thing Saturday
17 morning.

18 Q Right. Daylight?

19 A Yes, sir.

20 Q And did somebody get sent to SLED to pick
21 it up?

22 A They did.

23 Q Who got sent to SLED to pick it up?

24 A Chris Hill.

25 Q Now, did Chris Hill -- who sent Chris Hill

Keith Lewis (In-Camera) Direct

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1 to SLED, do you know?

2 A I'm pretty sure I did.

3 Q Did you tell Chris Hill what he was going
4 to SLED for?

5 A I told he was going to pick up a package
6 from SLED and where to go to.

7 Q Did you tell him what was in the package
8 or what the nature of the package was?

9 A I can't remember if I told him what was in
10 the package. I told him the package would be sealed
11 and not to open it.

12 Q All right. Did he, as far as you know, go
13 to SLED?

14 A He did.

15 Q Did he meet back up with you somewhere
16 with a package?

17 A He did.

18 Q Where did he meet back up with you?

19 A He met with me on Highway 34 between
20 Ridgeway and I'll say Lugoff --

21 Q Is that --

22 A -- 34 below Ridgeway.

23 Q Is that about the time or shortly after
24 the time the truck -- Mr. McGuirt's truck -- had
25 been discovered?

Keith Lewis (In-Camera) Direct

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1 A It was.

2 Q Was that where he came through, the
3 general area?

4 A He did.

5 Q Did he hand you something when he came
6 there?

7 A He handed me a brown envelope.

8 Q And was it a SLED envelope?

9 A Yes.

10 Q Was it sealed up?

11 A It was.

12 Q Had the seal been broken in any fashion?

13 A No, sir.

14 Q Did you determine from Chris Hill whether
15 he had opened it, or looked at it, or done anything
16 to manipulate it?

17 A I could not tell that anything had been
18 done to it.

19 Q Did you ask him whether he had done
20 anything? Do you remember whether you asked him?

21 A I didn't ask him. It didn't appear to me
22 that it had ever been opened.

23 Q All right. Did you immediately deal with
24 him about the line-up or just take it from him?

25 A I just took it from him.

Keith Lewis (In-Camera) Direct

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1 Q And what did you do with it after you took
2 it from him?

3 A I had the SLED agents that was assisting
4 us, and Investigator Boney, and Chris Hill to meet
5 us at the Ridgeway Police Department.

6 Q And at the Ridgeway Police Department, did
7 you open up the envelope?

8 A I did.

9 Q And I'm handing you --

10 MR. BARFIELD: Well, let's put it as
11 a Court's exhibit again. And it had a State's
12 exhibit on it from a prior proceeding. We'll put a
13 Court's exhibit over that sticker.

14 COURT REPORTER: Exhibit Number
15 Eight.

16 (Court's Exhibit Number
17 Eight, Line-Up from Chris Hill, was entered in
18 evidence.)

19 Q Chief, I'm going to hand you Court's
20 Exhibit Number Eight at this point. Is this the
21 line-up that was in the envelope that Chris Hill
22 brought to you down on 34?

23 A It is.

24 Q And is Darryl Cook's picture in it?

25 A It is.

1 Q And are those numbered pictures on that
2 line-up?

3 A They are.

4 Q And what number is Chris -- Darryl Cook's
5 picture?

6 A Number four.

7 Q All right. Now --

8 MR. BARFIELD: And, Your Honor, just
9 for the record, let me kind of clarify this a
10 minute. Mr. Swerling and I -- well, this was
11 introduced as an exhibit, and we went through all
12 the same questions about the envelope and stuff.
13 And, frankly, I don't know where the sealed envelope
14 got to after this got introduced in the prior
15 proceeding, and I hope that's not an issue.

16 MR. SWERLING: I don't think it's an
17 issue.

18 MR. BARFIELD: Thank you.

19 MR. SWERLING: It was not something
20 that was forensically tested.

21 MR. BARFIELD: Okay.

22 MR. SWERLING: I do remember there
23 was an envelope.

24 MR. BARFIELD: I just don't have the
25 envelope to show him now to say was it still sealed.

Keith Lewis (In-Camera) Direct

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1 Q Did you present that line-up to Chris
2 Hill?

3 A I did.

4 Q When you presented that line-up to Chris
5 Hill, did you tell him, number one, that there was a
6 suspect in the line-up?

7 A I did not.

8 Q Did you tell him, number two, the names of
9 any of the people in the line-up?

10 A I did not.

11 Q To your knowledge -- by the time Chris
12 Hill was being presented the line-up, to your
13 knowledge, in your presence had anybody used the
14 name Darryl Cook or given Chris -- had you heard
15 anybody tell Chris Hill anything about Darryl Cook?

16 A I didn't, no, sir.

17 Q Okay. Did you suggest that Chris Hill
18 ought to pick anybody out of that line-up?

19 A No, sir.

20 Q Did you direct Chris Hill to any
21 particular picture in that line-up and suggest that
22 that is somebody he ought to pick?

23 A No, sir.

24 Q Did you do anything suggestive at all to
25 try to produce an identification by Chris Hill from

Keith Lewis (In-Camera) Direct

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1 among the six pictures in that line-up?

2 A No, sir.

3 Q Did you present that line-up to Chris
4 Hill?

5 A I did.

6 Q Did he look at it?

7 A He did.

8 Q How do you know he looked at it?

9 A I watched him look at it.

10 Q All right. How long did he look at it?

11 A He looked at it for several minutes. I
12 paid attention to him. And when he took it -- I was
13 watching his eyes -- I could see him look at each
14 individual picture, and I saw him hesitate in the
15 bottom left corner. I saw him look through it, and
16 he said, "It's number four."

17 Q Did he ever pick any number other than
18 four?

19 A No, sir.

20 Q Did he ever express any hesitation about
21 the number four picture being the person he had
22 seen?

23 A No, sir.

24 Q Again, I never have really asked you this.
25 Was the purpose of this line-up to see if Chris Hill

Keith Lewis (In-Camera) Direct

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1 could identify from among those pictures the person
2 he had seen at Jackie McGuirt's the evening before?

3 A Yes, sir.

4 Q And is that who he indicated? Number
5 four, is that who he indicated he had seen at Jackie
6 McGuirt's?

7 A That is who he indicated he saw coming
8 from the store.

9 Q Now, do y'all -- with this line-up and
10 your general procedures even with other line-ups in
11 November of 2001, was there any documentation on the
12 line-up or any separate forms to indicate which
13 numbered picture Chris Hill picked?

14 A No, sir.

15 Q Was that your standard procedure?

16 A It is, and there's a reason for it.

17 Q And the reason is what?

18 A Well, we might have to show that line-up
19 to other witnesses.

20 Q Okay.

21 A And we don't want anybody marking on the
22 line-up to indicate that someone had picked a
23 certain picture out. So we don't do any markings on
24 the line-up.

25 Q All right. But was it documented in

Keith Lewis (In-Camera) Direct

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1 reports written by you or others that Chris Hill
2 picked out Darryl Cook's picture from that line-up?

3 A Yes. And there was also other officers in
4 the room when he looked at this line-up.

5 MR. BARFIELD: Your Honor, that's all
6 the questions I have of Chief Lewis about the line-
7 up.

8 THE COURT: Mr. Swerling, cross?

9 CROSS-EXAMINATION

10 BY MR. SWERLING:

11 Q Where did you run into Mr. Hill and he
12 gave you that information?

13 A About seeing someone?

14 Q Correct.

15 A At the Ridgeway Police Department.

16 Q Okay. Do you remember about what time
17 that was?

18 A I would want to say it was close to around
19 eight to eight-thirty at night.

20 Q So both of you just happened to be at the
21 Ridgeway Police Department, and at that point, for
22 the first time Hill said, "I saw somebody coming out
23 of McGuirt's"?

24 A No, sir. It's my understanding that Chris
25 Hill was leaving Ridgeway around six or somewhere

Keith Lewis (In-Camera) Cross

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1 around that time, and he was going home. He had
2 actually went home.

3 Q Correct.

4 A And I believe he overheard the traffic on
5 the radio that a robbery had occurred in Ridgeway.
6 And that's when he thought about seeing a person
7 leaving that store. So he came back to let us know
8 what he had seen.

9 Q Okay. So he came back, and he related to
10 you. And then at that point, you decided to go
11 ahead and get Mr. Paschal up from SLED?

12 A Yes, sir.

13 Q To do a composite?

14 A Yes, sir.

15 Q And, as Mr. Barfield asked, you had no
16 names at that point of any suspects?

17 A No.

18 Q And Paschal got here, if I can recall
19 correctly, somewhere -- it was around 12:00 to 1:00
20 to go ahead and do the composite?

21 A Yes, sir. It had to be close to midnight
22 or after midnight.

23 Q And based upon -- he and Hill sat down,
24 and then based upon that, Paschal went ahead and did
25 a composite based upon Hill's information?

1 A Yes, sir.

2 Q Okay. From what I understand, you went
3 ahead and you saw the composite, which we've now
4 seen in evidence, and you thought of Darryl Cook?

5 A I did.

6 Q I'm just curious, because we're in camera
7 right now. Where did you think that you had seen
8 Darryl Cook before?

9 A I just know Darryl, and I've had dealings
10 with Darryl in prior cases.

11 Q From a prior case or cases?

12 A In prior cases, yes, sir.

13 Q All right. So during the course of the --
14 and that would have been, what, about 1:00 or 2:00
15 in the morning, something like that, when you saw
16 the composite?

17 A Yes, sir. It would probably be 1:30. If
18 I'm not mistaken, we kind of called it that night
19 around 2:30.

20 Q Okay.

21 A And that would have been before 2:30.

22 Q All right. Mr. Boney was given
23 instructions to go ahead and get a composite -- get
24 a line-up together?

25 A Yes, sir.

Keith Lewis (In-Camera) Cross

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1 Q And so there was no other suspects
2 developed during the course of that evening or in
3 the morning, correct?

4 A No suspects. We was looking for some --
5 we was running down leads during this time.

6 Q Correct.

7 A We had some information about an
8 individual that was seen in the parking lot with a
9 small child.

10 Q Right.

11 A And we was trying to find out who that
12 was, and we was doing that kind of stuff.

13 Q And I think we even went through that last
14 time. You spoke with him on Saturday sometime and
15 determined he was visiting someone --

16 A He was visiting for Thanksgiving.

17 Q -- out of town for Thanksgiving. So that
18 morning, do you remember about what time Greg -- do
19 you remember what time Mr. Hill was sent to SLED to
20 get the line-up, the photos? Was it in the morning
21 or the afternoon?

22 A I would say it was close to around
23 lunchtime or 12:00.

24 Q Okay.

25 A If I'm not mistaken, I came out around

Keith Lewis (In-Camera) Cross

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1 9:15 Saturday morning. The pickup truck had been
2 found down on 34. I had also -- after that, I had
3 went to Richland Hospital --

4 Q Correct.

5 A -- to check with the family. And it would
6 have been around noon when Officer Hill picked that
7 up.

8 Q Okay. Now, I'm just curious, and I don't
9 know if I asked you this last time, so I'm going to
10 ask you now. Why was Mr. Hill sent to go get the
11 photo spread? Is there any particular reason?

12 A It's just that we was kind of strung out.
13 Everybody was tied up, had details and things to do,
14 and Chris was available -- the only reason.

15 Q He goes to SLED. He comes back. And do
16 you remember what time it was when he got back and
17 handed you the line-up, photo spread?

18 A I know that when the pickup truck was
19 found on 34, part of the VCR machine was also found
20 near the pickup truck. We had a concern that maybe
21 the tape from the VCR machine could also have been
22 thrown out. We had a lot of people looking in the
23 woods and on the side of the highway, trying to see
24 if they could find that actual tape.

25 Q Right.

Keith Lewis (In-Camera) Cross

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1 A After I came back from the hospital, which
2 would have been after lunch, I went back to Highway
3 34 to see if they'd found anything. And that's
4 where Officer Hill came back with the line-up. So
5 I'd say close to 1:00 in the afternoon.

6 Q Somewhere along there.

7 A One-thirty.

8 Q And that's when Darryl Cook was identified
9 as a suspect?

10 A That's when he picked him out, just a few
11 minutes after that, at the police department.

12 Q Other than saying that you wanted Darryl
13 Cook's photo in there, you had no other
14 characteristics -- you didn't -- there was nothing
15 else you had any input into putting that photo
16 spread together --

17 A No, sir.

18 Q -- is that correct?

19 A I did not.

20 Q Okay. That's all I have.

21 MR. BARFIELD: Nothing else for this
22 witness.

23 Chris Hill.

24 (The witness was sworn.)

25 CLERK OF COURT: State your name for

Keith Lewis (In-Camera) Cross

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1 the record.

2 MR. HILL: My name is Chris Hill.

3 IN-CAMERA EXAMINATION

4 BY MR. BARFIELD:

5 Q Cpl. Hill, you're employed by the
6 Fairfield County Sheriff's Office?

7 A Yes, sir.

8 Q All right. Were you working for the
9 Sheriff's Office on November 23, 3001? Were you on
10 duty for the Sheriff's Office?

11 A Yes, sir.

12 Q Well, did you moonlight?

13 A Yes, sir.

14 Q Did you have permission to moonlight?

15 A Yes, sir.

16 Q Did you moonlight for the Bank of
17 Ridgeway?

18 A Yes, sir.

19 Q Did you moonlight for the Town of
20 Ridgeway?

21 A Yes, sir.

22 Q And were you allowed to do that wearing
23 your Sheriff's Office uniform and driving a
24 Sheriff's Office car?

25 A Yes, sir.

Chris Hill (In-Camera) Direct

689

1 Q Did you work for the Bank of Ridgeway
2 during the day, Friday, September [sic] 23, 2001?

3 A Yes, sir.

4 Q Did you -- what time did you get off?

5 A The bank closed at six.

6 Q Did you get off at six or thereabouts?

7 A Probably five after.

8 Q Did you get a check from the Bank of
9 Ridgeway?

10 A Yes, sir.

11 Q Did you cash your check?

12 A Yes, sir.

13 Q Were you in uniform that you normally
14 would wear for the Sheriff's Office?

15 A Yes, sir.

16 Q Driving a Sheriff's Office car?

17 A Yes, sir.

18 Q Where did you go when you got off work at
19 the bank?

20 A I left the bank and went up to the
21 Ridgeway Police Department to speak with Chief
22 Hughley Gratic.

23 Q And where -- I don't think we'll go into
24 all this detail. How close -- do you know where
25 McGuirt's Tire is?

Chris Hill (In-Camera) Direct

690

1 A Yes, sir.

2 Q Where is the police department in relation
3 to McGuirt's Tire?

4 A McGuirt's Tire is directly -- almost
5 directly behind the Ridgeway Police Department --

6 Q All right.

7 A -- and also the fire department.

8 Q Is it one -- is it safe to say that
9 McGuirt's Tire is one street over from Ridgeway PD?

10 A Yes, sir.

11 Q How long did you stay at the PD?

12 A No more than about five minutes, at the
13 most.

14 Q Did you talk to Chief Gratic?

15 A Yes, sir.

16 Q Where did you go -- where were you
17 intending to go when you left the PD?

18 A I was intending to go home.

19 Q And where is home for you?

20 A Fairfield County.

21 Q Fairfield County?

22 A Yes, sir.

23 Q Near Ridgeway, near Winnsboro, south of
24 Ridgeway -- where is it?

25 A Near Ridgeway.

Chris Hill (In-Camera) Direct

691

1 Q Okay. Now, this is State's Exhibit Number
2 One in this case, and I'm going to ask you a couple
3 of questions about it. Which way -- show me where
4 McGuirt's tire is.

5 A Right here.

6 Q Which road did you -- tell me your path as
7 you left Ridgeway PD to head home?

8 A When I left the Ridgeway PD, I took a
9 right on this street right here.

10 Q Do you know what the name of this street
11 is right here?

12 A No, sir.

13 Q That's fine. How big a street is it? How
14 long a street is it?

15 A Fairly short street.

16 Q One block?

17 A Yes, sir.

18 Q Or whatever the distance is between the
19 main street and the street that --

20 A Yes, sir.

21 Q Do you know, is McGuirt's on Dogwood? Is
22 that right?

23 A Dogwood, yes, sir.

24 Q Okay. Is there a stop sign at the end of
25 this street?

Chris Hill (In-Camera) Direct

692

1 A To the right.

2 Q Is that it?

3 A Yes, sir.

4 Q Are there railroad tracks that cross this
5 street?

6 A Yes, sir.

7 Q Is that the railroad tracks?

8 A Yes, sir.

9 Q Is there a space on the other side of the
10 railroad tracks so you can pull your car over the
11 railroad tracks and stop again before you pull out
12 onto Dogwood?

13 A Yes, sir, probably about a car length.

14 Q All right. Now, do you know what that is,
15 or what that was back in November of '01?

16 A It used to be a barber shop.

17 COURT REPORTER: Wait a minute. I
18 can't --

19 MR. BARFIELD: We're both talking.
20 I'm sorry. Let me ask the question again.

21 COURT REPORTER: Thank you.

22 Q What was that in November of '01?

23 A The barber shop.

24 Q Okay. Did you see anything unusual at
25 McGuirt's Tire when you headed home?

Chris Hill (In-Camera) Direct

693

1 A Yes, sir.

2 Q Don't tell me what yet. That's a "yes" or
3 "no."

4 A Yes, sir.

5 Q What time was it when you saw something?

6 A It was 6:13.

7 Q How do you know it was 6:13?

8 A When I made the right turn onto this
9 street right here, I looked to change the radio, and
10 I had a digital clock on my radio.

11 Q And the clock said?

12 A Six-thirteen.

13 Q What did you see?

14 A Actually, when I turned to the vicinity of
15 McGuirt's Tire, I saw an unidentified black male,
16 had a --

17 Q That's good for right now.

18 A Okay.

19 Q Did you make a turn from this street onto
20 Dogwood?

21 A Yes, sir.

22 Q Which way did you turn, right or left --

23 A I turned right.

24 Q -- as shown in this photo?

25 A Right.

1 Q All right. Now, at what point -- were you
2 making the turn, or were you looking straight at the
3 station when you first saw the unidentified black
4 male?

5 A Looking straight at the station.

6 Q Where was the unidentified black male?

7 A On the picture, it would be right in this
8 area right here.

9 Q And was the unidentified black male
10 standing still or moving?

11 A He was moving.

12 Q Moving in what direction?

13 A To the right.

14 Q And to the right in the picture?

15 A Yes, sir.

16 Q Now, did you know what kind of truck
17 Jackie McGuirt drove?

18 A Yes, sir.

19 Q And what kind of truck did he drive?

20 A It was a black and red extended cab.

21 Q Chevrolet pickup?

22 A Yes, sir.

23 Q Was the truck there when you were watching
24 all this?

25 A Yes, sir.

Chris Hill (In-Camera) Direct

695

1 Q Where was the truck? Show us that on the
2 picture.

3 A The truck was parked along in this area
4 right here, facing that-a-way.

5 Q Facing the woods?

6 A Yes, sir.

7 Q Facing the back of the station?

8 A Yes, sir.

9 Q All right. Now, did you get a good look
10 at the young black male?

11 A Yes, sir.

12 Q Were there any lights on at the station on
13 the outside?

14 A Yes, sir.

15 Q Where were the lights on the station on
16 the outside?

17 A The lights were actually up under this
18 island right here and also illuminated by the street
19 light.

20 Q Okay. Was the lighting good, or bad, or
21 fair?

22 A I'd say good, because I had my headlights
23 on also.

24 Q Okay. Well, that's my next question. Did
25 you have headlights on your car?

- 1 A Yes, sir.
- 2 Q Was the unidentified black male ever in
3 the beam of your headlights?
- 4 A Yes, sir.
- 5 Q Did you get a good look at the face of the
6 unidentified black male?
- 7 A Yes, sir.
- 8 Q How long were you able to observe the
9 unidentified black male?
- 10 A About three to four minutes.
- 11 Q Three to four minutes?
- 12 A Yes, sir -- well, seconds. Because when
13 we was coming down the road, that's when I looked
14 over there. It was probably about three to four
15 seconds probably.
- 16 Q All right. Now, do you remember anything
17 about what he was wearing?
- 18 A Yes, sir.
- 19 Q What was he wearing?
- 20 A He had on a multi type -- multi-striped
21 shirt on, blue jeans, and I remember he had some
22 white shoes -- tennis shoes -- on.
- 23 Q Okay. Did he have anything in his hands
24 or arms that you could tell?
- 25 A It appeared that he had something under

Chris Hill (In-Camera) Direct

697

1 his left armpit.

2 Q All right. Could you tell what it was?

3 A No, sir.

4 Q Was it big enough for you to see from
5 where you were?

6 A No, sir.

7 Q I mean, was it big enough for you -- well,
8 let me don't ask that question. Did it appear that
9 he had something under his left arm?

10 A Yes, sir.

11 Q What was he doing with his right arm?

12 A He had the right arm up under the left
13 armpit.

14 Q Could you tell what he had under his left
15 arm?

16 A No, sir.

17 Q Did he ever look at you?

18 A Yes, sir.

19 Q Did y'all make eye contact?

20 A Yes, sir.

21 Q Did you greet each other with a wave?

22 A No, sir.

23 Q Were there any words or greetings
24 exchanged verbally?

25 A No, sir.

1 Q All right. Did he stop when you saw him?
2 A No, sir.
3 Q Did he keep moving?
4 A Yes, sir.
5 Q How far did he move before you weren't
6 looking at him anymore?
7 A He was -- actually, he was from out under
8 the island when I had made my turn.
9 Q Okay. Did you think anything of it at
10 that point?
11 A No, sir.
12 Q Did you think or know one way or the other
13 whether the station was open or closed?
14 A No, sir.
15 Q Did you see Jackie McGuirt anywhere
16 around?
17 A No, sir.
18 Q Did you see another human being anywhere
19 on the premises of the station other than this
20 unidentified -- then-unidentified black male?
21 A No, sir.
22 Q Did you go home?
23 A Yes, sir.
24 Q Did you think anything of it before you
25 got home?

Chris Hill (In-Camera) Direct

699

1 A No, sir.

2 Q Did you find out after you got home or on
3 the way home, perhaps, that something had happened
4 to Jackie McGuirt?

5 A Yes, sir.

6 Q How did you find that out?

7 A I got a call from a relative of mine.

8 Q Okay. And once you got that call from the
9 relative, did you check in with somebody from the
10 Sheriff's Office?

11 A Yes, sir.

12 Q Who did you talk to?

13 A It was Sgt. Bruce Ginyard.

14 Q Did you find out what had happened?

15 A Yes, sir.

16 Q At that point, did what you had seen at
17 the station at 6:13 start ringing any bells for you?

18 A Yes, sir.

19 Q What did you do?

20 A I was told by Sgt. Ginyard could I return
21 back to Ridgeway and 25 him at -- well, meet him at
22 McGuirt's Tire.

23 Q And did you?

24 A Yes, sir.

25 Q And did you tell at some point somebody

Chris Hill (In-Camera) Direct

700

1 with the Sheriff's Office details about what you had
2 seen?

3 A Yes, sir.

4 Q Did you eventually tell Chief Deputy Keith
5 Lewis what you had seen?

6 A Yes, sir.

7 Q At some point, did you meet with a fellow
8 named Roy Paschal of SLED to describe this person
9 that you had seen?

10 A Yes, sir.

11 Q And where did y'all meet?

12 A We met at the -- at that time, we had a
13 substation in Ridgeway.

14 Q Okay. And did Roy -- did you describe for
15 Roy Paschal the person that you had seen, the facial
16 features of the person you had seen?

17 A Yes, sir.

18 Q Did he draw a picture while you were
19 describing this?

20 A Yes, sir.

21 Q Did he show you the picture when the
22 picture was done?

23 A Yes, sir.

24 Q I'm showing you Court's Exhibit Number
25 Seven. Is that the picture that Roy Paschal drew?

Chris Hill (In-Camera) Direct

701

1 A Yes, sir.

2 Q Now, let me back up just a minute. Before
3 and up to 6:13 on November 23, 2001, did you know
4 who Darryl Cook was?

5 A No, sir.

6 Q To your knowledge, had you ever seen
7 Darryl Cook?

8 A No, sir.

9 Q To your knowledge, had you ever heard
10 anybody talking about a Darryl Cook?

11 A No, sir.

12 Q Unknown person to you?

13 A Yes, sir.

14 Q Now, when he drew this picture -- when Roy
15 Paschal presented you this picture, did you know a
16 name to put with that picture?

17 A No, sir.

18 Q Okay. Now, did you eventually go home
19 Friday night or early Saturday morning?

20 A Yes, sir.

21 Q Did you come back out to work Saturday
22 morning?

23 A Yes, sir.

24 Q At some point, did you get sent somewhere
25 by probably Greg Boney?

Chris Hill (In-Camera) Direct

702

- 1 A Yes, by Chief Deputy Lewis.
- 2 Q Where did you get sent?
- 3 A To SLED.
- 4 Q Did you know why you were going to SLED?
- 5 A No, sir.
- 6 Q Well, were you told -- where were you told
- 7 to go?
- 8 A They told me a building to go and that
- 9 they was expecting me.
- 10 Q All right. And were you told that you
- 11 were there to pick up a package or to pick up a
- 12 person?
- 13 A I was told to go pick up an item.
- 14 Q Did you pick up an item at SLED?
- 15 A Yes, sir.
- 16 Q How was it packaged when you got it?
- 17 A It was in a yellow vanilla envelope, and
- 18 it had tape on it.
- 19 Q Was it sealed up?
- 20 A Yes, sir, and I signed a chain-of-custody
- 21 form.
- 22 Q Did you at any time ever open that
- 23 envelope --
- 24 A No, sir.
- 25 Q -- before you handed it off to somebody

Chris Hill (In-Camera) Direct

703

1 else?

2 A No, sir.

3 Q Did you know what was in the envelope?

4 A No, sir.

5 Q By that time on that Saturday morning, had
6 you heard the name Darryl Cook --

7 A No, sir.

8 Q -- by the time you headed to SLED?

9 A No, sir.

10 Q Nobody from the Sheriff's Office had told
11 you Darryl Cook was a suspect?

12 A No, sir.

13 Q You had not heard any radio traffic about
14 Darryl Cook being a suspect?

15 A No, sir.

16 Q Not been in any briefings with law
17 enforcement about Darryl Cook being a suspect?

18 A No, sir.

19 Q Okay. Where did you take the package you
20 picked up from SLED?

21 A Highway 34 East.

22 Q Who did you give it to?

23 A Chief Deputy Lewis.

24 Q Was it sealed when you gave it to him?

25 A Yes, sir.

Chris Hill (In-Camera) Direct

704

1 Q Did he unseal it in your presence there?

2 A No, sir, he went to the Ridgeway Police
3 Department.

4 Q Did you go there separately?

5 A Yes, sir.

6 Q When you got to the Ridgeway PD, did Chief
7 Deputy Lewis have the package with him?

8 A Yes, sir.

9 Q Did he open it up?

10 A Yes, sir.

11 Q Did he tell you what was in the package at
12 some point?

13 A No, sir.

14 Q Well, did he open it up and hand you the
15 contents?

16 A No, sir. He opened it up and asked me did
17 I see who that I saw that night --

18 Q All right.

19 A -- or had seen that night.

20 Q I'm handing you Court's Exhibit Number
21 Eight. Have you ever seen that before?

22 A Yes, sir.

23 Q Is that the content of the package that
24 you had picked up at SLED?

25 A Yes, sir.

Chris Hill (In-Camera) Direct

705

1 Q Now, you can just keep it right there with
2 you for a minute. When Chief Lewis gave you that --
3 you know that to be a line-up, is that correct?

4 A Yes, sir.

5 Q When he gave you that line-up, first of
6 all, did he tell you that there was a suspect in
7 that line-up?

8 A No, sir.

9 Q Did he tell you that you should pick
10 anybody out of that line-up?

11 A No, sir.

12 Q Did he give you the names of any of the
13 people in that line-up?

14 A No, sir.

15 Q Did he do anything at all to suggest to
16 you that you should make an identification from that
17 line-up?

18 A No, sir.

19 Q Did anybody else in the room do any of the
20 things I've just asked you?

21 A No, sir.

22 Q Did you look at the line-up?

23 A Yes, sir.

24 Q Did you see in that line-up the person
25 that you had seen at Jackie McGuirt's station at

Chris Hill (In-Camera) Direct

706

1 6:13 the night before?

2 A Yes, sir.

3 Q And did you indicate that person's picture
4 by number on that line-up?

5 A Yes, sir, I did.

6 Q Who did you pick?

7 A Number four.

8 Q And at the time you picked number four,
9 did you know what name went with that face?

10 A No, sir.

11 Q Did you fill out a form, make a mark on
12 the line-up, or do anything in writing to indicate
13 who you had picked?

14 A No, sir.

15 Q You're sure you picked number four?

16 A Yes, sir.

17 Q Thank you, sir. Answer anything Mr.

18 Swerling has.

19 THE COURT: Thank you, Mr. Solicitor.

20 Mr. Swerling?

21 CROSS-EXAMINATION

22 BY MR. SWERLING:

23 Q Mr. Hill, we can agree it was dark then,
24 correct?

25 A Yes, sir. The sun was going down.

Chris Hill (In-Camera) Cross

707

1 Q Pardon?

2 A Yes, sir. The sun was going down.

3 Q Well, let's see. At 6:00 in November, it
4 would have been down a long time already.

5 A Yes, sir.

6 Q So lights were on, it was dark out, you
7 had your headlights on?

8 A Yes, sir..

9 Q And the only illumination was your
10 headlight and an overhead light -- street light --
11 in front of McGuirt's?

12 A Yes, sir.

13 Q Okay. From what I understand, you made a
14 right turn after the railroad tracks this way,
15 correct?

16 A Yes, sir.

17 Q So the closest you would have gotten is
18 when you made the right turn to where this
19 individual was somewhere over here?

20 A Yes, sir.

21 Q And did the person always have his -- when
22 he was walking, he was walking to the right,
23 correct?

24 A No, actually, he was -- when I'm going
25 this way, he was walking to the left.

- 1 Q Tell me about that.
- 2 A Hold the picture up, and I'll show you.
- 3 Q Yes.
- 4 A Well, actually, to me, he would be walking
- 5 this way.
- 6 Q That's what I mean.
- 7 A Which would have been my left as I made
- 8 the turn, yes, sir.
- 9 Q Okay. On the picture, it would be to the
- 10 right?
- 11 A Yes, sir.
- 12 Q Okay. And did he ever turn around and
- 13 face you?
- 14 A No, sir.
- 15 Q Okay. So he was always walking toward the
- 16 right?
- 17 A Yes, sir.
- 18 Q Okay. Now, the individual you saw, he
- 19 didn't have anything on his head, correct?
- 20 A No, sir.
- 21 Q And you described him as being clean-
- 22 shaven, correct?
- 23 A Yes, sir.
- 24 Q Close-cut hair, correct?
- 25 A Yes, sir.

Chris Hill (In-Camera) Cross

709

1 Q He had a blue-and-white windbreaker on?

2 A No, sir.

3 Q What did he have on? I thought --

4 A Striped shirt.

5 Q Striped shirt?

6 A Yes, sir.

7 Q Okay. Did he have any kind of coat on or
8 jacket on at all?

9 A No, sir.

10 Q So it was just a -- when you say a shirt,
11 are you talking about a shirt like this, like this
12 white shirt, or a polo shirt?

13 A Like a polo shirt.

14 Q Okay. Buttoned to three --

15 A Three button.

16 Q -- three-button polo shirt?

17 A Yes, sir.

18 Q That's all he had on?

19 A Yes, sir.

20 Q Sleeveless?

21 A I can't remember.

22 Q Okay. But it was definitely no jacket --

23 A No, sir.

24 Q -- no sweatshirt --

25 A No, sir.

Chris Hill (In-Camera) Cross

710

- 1 Q -- nothing like that, just a shirt?
- 2 A Yes, sir.
- 3 Q Okay. And he was walking this way,
- 4 correct?
- 5 A Yes, sir.
- 6 Q And I don't mean this way. I'm talking
- 7 about in this direction.
- 8 A Yes, sir.
- 9 Q I think you described him as about, what,
- 10 5'8", 5'10"?
- 11 A Between 5'7" and 5'8", if I recall right.
- 12 Q And when you were with Mr. Paschal --
- 13 remember a guy from SLED, the composite artist?
- 14 A Yes, sir.
- 15 Q You told him that the guy weighed between
- 16 a hundred and a hundred and ten pounds.
- 17 A I don't recall telling him that. I don't
- 18 recall that.
- 19 Q Well --
- 20 A The only thing he asked me was the
- 21 identifying features, which we did from the neck up.
- 22 Q Well, let me just tell you -- there's no
- 23 jury here right now --
- 24 A Yes, sir.
- 25 Q -- that's what he says.

Chris Hill (In-Camera) Cross

711

1 A Okay.

2 Q Would you dispute that?

3 A Yes, sir.

4 Q You would dispute that you told him a
5 hundred to a hundred and ten pounds?

6 A Yes, sir.

7 Q We're going to need him here, then,
8 Monday. But definitely told him he didn't have any
9 hair?

10 A Yes, sir.

11 Q No facial hair --

12 A Yes, sir.

13 Q -- a full head of hair? And you went back
14 to your house?

15 A Yes, sir.

16 Q By the way, what do you say you told him
17 the weight was?

18 A I told him between -- if I recall, I
19 probably told him it was perhaps in between 130 to
20 140 pounds.

21 Q All right. And you didn't see any gloves?

22 A No, sir.

23 Q Do you remember what kind of pants the guy
24 had on?

25 A Blue jeans.

1 Q And you said white sneakers?

2 A Yes, sir.

3 Q You told everybody that as well. You went
4 home, and then you heard some traffic on the radio
5 about what had happened?

6 A No, sir. I got a phone call from a
7 relative.

8 Q You got a phone call -- I'm sorry -- from
9 a relative of yours?

10 A Yes, sir.

11 Q Okay, telling you what had happened?

12 A Asked me what's going on in Ridgeway.

13 Q Okay. Then you got in touch with Mr.
14 Ginyard somehow?

15 A Yes, sir.

16 Q And he told you to come back?

17 A He told me what had happened, and he asked
18 me could I come back down there.

19 Q After -- and you told him at that point
20 that you thought you had seen somebody?

21 A Yes, sir.

22 Q And do you remember about what time that
23 was you got back down there?

24 A No, sir.

25 Q The next day, you had no idea about a name

Chris Hill (In-Camera) Cross

713

1 of Darryl Cook when you went out to SLED to get that
2 photo line-up?

3 A No, sir.

4 Q How about look at this. Look at Court's
5 Exhibit Number Eight. And would you tell me --
6 correct me if I'm wrong -- there's only one person
7 in that whole photo spread that doesn't have any
8 facial hair, isn't it?

9 A That doesn't?

10 Q That does not.

11 A Could you -- in reference to --

12 Q Well, numbers one, two, three, five, and
13 six have facial hair, don't they?

14 A No.

15 Q Mustache -- a little mustache or a little
16 side hair?

17 A Number six looks like he's clean-shaven.
18 By this picture, he looks like he's clean-shaven.

19 Q Okay. Well, one, two, three, and four
20 have some kind of hair on their face, don't they --
21 one, two, three, and five?

22 A It appears number one does, number three,
23 number five. And number two, I can't say.

24 Q Do you see a little bit of a mustache on
25 number two?

Chris Hill (In-Camera) Cross

714

1 A I can't say. It looks like he's clean-
2 shaven. He could have been unshaved.

3 Q Clearly, number four, the one you picked
4 out, has no hair on his face?

5 A No, sir.

6 MR. SWERLING: That's all I have for
7 you.

8 THE COURT: All right, thank you.

9 MR. BARFIELD: I don't have any other
10 questions for Chris Hill concerning the
11 identification procedures. I don't have anything
12 else of this witness. I would like to get a copy of
13 that.

14 THE COURT: Are there going to be any
15 additional witnesses called in the in-camera
16 hearing?

17 MR. BARFIELD: Mr. Swerling might. I
18 don't know.

19 MR. SWERLING: No, not in camera.

20 MR. BARFIELD: And I would simply
21 argue to the Court, if we're going to make arguments
22 about it now, that, of course, you haven't seen the
23 line-up. I think you'd have to look at the line-up.

24 I see nothing, number one, about
25 the line-up itself that is unduly suggestive or any

715

1 sufficient dissimilarities between these pictures on
2 the line-up to make it unduly suggestive.

3 And I would argue that the
4 identification procedures, both through the
5 composite drawing and the line-up itself, as it was
6 presented to Chris Hill, there's nothing in the
7 record to suggest that it was unduly suggestive.

8 MR. SWERLING: And, Judge, just, of
9 course, what I would argue is a very minor point
10 here as far as the -- I don't have to discuss it at
11 length. But Mr. Hill said that the person he saw
12 had no facial hair.

13 And the line-up, if you look at
14 the line-up, I would argue that numbers one, two,
15 three, and five definitely have some facial hair.
16 And number six, I would agree, does not have any
17 facial hair. But neither does number four, which is
18 Darryl Cook, the person picked out.

19 So the fact that Mr. Cook is
20 only one of two people in there that does not have
21 any facial hair I would suggest is unduly suggestive
22 in light of that's what his description was, that
23 the person didn't have any facial hair. So you're
24 immediately eliminating four of the people.

25 THE COURT: Well, facial hair is a

1 temporary phenomenon.

2 MR. SWERLING: That's true.

3 THE COURT: If it were some other
4 discrepancy, I might give more weight to that. But
5 the fact that when this photograph was taken, he
6 didn't have it. He may have had it later.

7 As a matter of fact, one of your
8 witnesses said he had a little facial hair -- or one
9 of the witnesses that's testified. But I find that
10 looking at the totality of the circumstances, under
11 the standards set forth in Neal versus Biggers,
12 State versus Scipio -- S-C-I-P-I-O -- and State
13 versus Drayton, that it is a reliable, non-
14 suggestive line-up.

15 And this is based on the
16 opportunity of Officer Hill to view the accused, the
17 degree of attention, the accuracy of his prior
18 description, the level of certainty demonstrated by
19 the witnesses, by the witness, and the length of
20 time between the crime and the confrontation. And
21 based on this, I find it to be a non-suggestive
22 photo line-up and to be appropriate.

23 MR. SWERLING: Thank you, sir.

24 MR. BARFIELD: Thank you, Judge. I
25 don't have anything else about this issue.

717

1 THE COURT: All right. Court will be
2 at ease on this case until Monday morning at 10:00.

3 MR. BARFIELD: Yes, sir.

4 -- End of Transcript--

5 (The conclusion of this trial was reported reported
6 by Circuit Court Reporter Karen Tracy.)

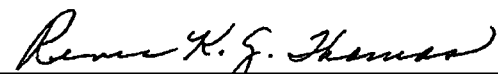
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON OCTOBER 15, 16, 17, AND 18, 2007, IN WINNSBORO, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE FIRST DAY OF MARCH, 2008.



REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA)

County of Fairfield)

) COURT OF GENERAL SESSIONS

) 02-GS-20-546

) 02-GS-20-82

) 02-GS-20-133

) 02-GS-20-132

The State,)

vs.)

Darryl Termayne Cook)

Defendant,)

) PARTIAL
) TRANSCRIPT OF RECORD

October 22, 23, 2007
Winnsboro, South Carolina

BEFORE:

THE HONORABLE KENNETH G. GOODE, JUDGE and a jury.

APPEARANCES:

DOUG BARFIELD, SOLICITOR
Attorney for the State

JACK B. SWERLING, ESQ.
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

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1 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
2 identification only.)

3 THE COURT: Is the defendant in?

4 MR. BARFIELD: We need Mr. Cook. I'm sorry.
5 (Pause).

6 THE COURT: Is the State ready?

7 MR. BARFIELD: State's ready.

8 THE COURT: Defendant?

9 MR. SWERLING: Yes, sir.

10 THE COURT: If we could have the jury, please, ma'am.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:42 a.m.)

13 (Last exhibit marked by previous court reporter was
14 State's Exhibit 115 and Court's Exhibit 8.)

15 THE COURT: Please let the record reflect that the
16 trial jury and alternates are present in the courtroom.

17 Mr. Foreman and ladies and gentlemen of the jury, if
18 you'd please stand, raise your right hand.

19 (The jury was sworn).

20 THE COURT: You have not spoken with anyone about
21 this case?

22 (All jurors indicated in the negative).

23 THE COURT: You have not visited the scene of the
24 alleged occurrence?

25 (All jurors indicated in the negative).

1 THE COURT: And have not listened to or involved
2 yourself in any media coverage?

3 (All jurors indicated in the negative).

4 THE COURT: All right. Thank you very much.

5 I hope that you all had a nice weekend, and we're
6 ready to resume the trial today. Mr. Solicitor?

7 MR. BARFIELD: The State calls Chief Deputy Keith
8 Lewis.

9 KEITH LEWIS, after being duly sworn,
10 testified as follows:

11 THE CLERK: State your name for the record.

12 THE WITNESS: Keith Lewis.

13 DIRECT EXAMINATION:

14 BY MR. BARFIELD

15 Q Mr. Lewis, by whom are you employed?

16 A Fairfield County sheriff's office.

17 Q Well, first of all, how long have you been in law
18 enforcement?

19 A Twenty-eight years and seven months.

20 Q Okay. How many days and hours?

21 A I can probably tell you the days but not the hours.

22 Q How long have you been employed by the Fairfield
23 County Sheriff's Office?

24 A Right at 24 years.

25 Q All right, sir. And your current position with the

1 Fairfield County Sheriff's Office is what?

2 A I am the Chief Deputy.

3 Q Which means what from a chain of command standpoint?

4 A I'm the Assistant Sheriff. I'm the next slot below
5 the sheriff.

6 Q All right, sir. And was that your position on
7 November 23rd, 2001?

8 A It was.

9 Q Did you become aware of the events that had
10 transpired at McGuirt's Tire Service in Ridgeway that
11 evening?

12 A I did.

13 Q Did you come out and actually work the investigation
14 yourself, along with others?

15 A I did.

16 Q Do you remember about what time you went out?

17 A 7:30, a quarter till eight, eight o'clock that night.

18 Q All right, sir. At some point that evening, did you
19 become aware that Corporal Chris Hill of the Fairfield
20 County Sheriff's Office had some information that might
21 pertain to the investigation?

22 A I did.

23 Q Did you at some point meet with Chris Hill?

24 A I did.

25 Q Do you recall when and -- approximately -- well,

1 where and approximately when you talked to Chris Hill?

2 A It would be close to nine o'clock that night, 8:30, a
3 quarter to nine, somewhere in there, and it was at the
4 Ridgeway Police Department.

5 Q Did you get the gist of the information that Chris
6 Hill possessed?

7 A I did.

8 Q And I'm not going to ask you to repeat it at this
9 point, but did you become aware that Chris Hill had seen
10 somebody around McGuirt's Tire in roughly the timeframe
11 that this incident was alleged to have occurred?

12 A I did.

13 Q Was Chris Hill able to give you detail about what he
14 had seen? Again, don't tell me what he said, but was he
15 able to give you some detail about what he had seen?

16 A He was able to get a description of the person that
17 he saw.

18 Q Now, based upon that -- well, let me back up. When
19 you talked to Chris Hill about what Chris Hill had seen,
20 did you give Chris Hill the names of any suspects that you
21 might or might not have had at that point in the
22 investigation?

23 A No, sir, didn't have any at the time.

24 Q Based upon your conversation with Chris Hill from an
25 investigative standpoint, did you do anything to try to

1 further the case along?

2 A I did.

3 Q And what did you do?

4 A I asked Investigator Boney if he would contact
5 S.L.E.D. to see if we could get an artist, a composite
6 drawer, to come up and talk with Chris to see if we could
7 get a drawing of the person that he saw.

8 Q And to your knowledge, did Greg Boney make those
9 arrangements?

10 A He did.

11 Q Did S.L.E.D. send an agent up here to attempt to make
12 a drawing of the person Chris Hill had seen?

13 A He did.

14 Q Do you know who that agent was?

15 A It was agent Roy Parcell (phonetic).

16 Q Paschal.

17 A Paschal.

18 Q Did you ever see Roy Paschal from S.L.E.D. that
19 evening?

20 A I saw him briefly, yes.

21 Q Where did you see Roy Paschal?

22 A He came to the Ridgeway Police Department when he got
23 to Ridgeway.

24 Q Was Chris Hill at the Ridgeway Police Department
25 then?

1 A He did. He did.

2 Q Were you present when information was exchanged
3 between Chris Hill and Roy Paschal in order for Roy
4 Paschal to make the drawing?

5 A No.

6 Q Did you sit through that process?

7 A No, I did not.

8 Q Did you at some point become aware that the process
9 had been completed and the drawing was done?

10 A I did.

11 Q Did you at some point see the compositive drawing of
12 the person Chris Hill says he saw?

13 A I did.

14 Q All right. Let me back up a little bit. About what
15 time of night was it, if you can recall, when Chris Hill
16 and Roy Paschal got together?

17 A I would say it would be close to eleven o'clock at
18 night, maybe after 11 because of the S.L.E.D. agent -- I'm
19 not sure where he lives, but he doesn't -- I'm pretty sure
20 he don't (sic) live in Fairfield. He had to be called
21 out. He had to come to the location. It would be after
22 11, close to midnight, probably when he arrived.

23 Q All right, sir. At some -- let me jump ahead a
24 minute. Did you stay out into early Saturday morning?

25 A I did.

1 Q And about how long were Fairfield County Sheriff's
2 Office folks working this case from the time you all first
3 got dispatched until sometime early Saturday morning? How
4 long did people stay out that night and into the next
5 morning?

6 A Most of us stayed out until 2:30, three o'clock
7 Saturday morning.

8 Q All right. Now, do you remember about what time it
9 was -- did you -- I might have asked you this a minute
10 ago. Did you see the composite drawing, yourself, at some
11 point Friday night into Saturday morning?

12 A I did.

13 Q And do you remember when that was?

14 A I would say it would be around one o'clock or so.

15 Q All right. And when you looked at the composite
16 drawing, did it ring any bells to you?

17 MR. SWERLING: Your Honor, several things. First of
18 all, I'd like to reserve all objections heretofore made
19 concerning the identification issue.

20 Secondly, I don't think any foundation has been laid.
21 It seems like it's sort of out of order. It seems like
22 Mr. Hill or Mr. Paschal would have testify first. In
23 order for Mr. Lewis to make any kind of a statement -- his
24 opinion is really not an issue in this case. Third, I
25 don't think that's relevant or probative.

1 THE COURT: Mr. Solicitor?

2 MR. BARFIELD: Well, Your Honor, this testimony is
3 foundational testimony to basically establish the course
4 of the investigation and the reasons for the course that
5 was chosen in this investigation, which led to some other
6 things that were done the next day to help identify and
7 arrest a suspect.

8 I can ask him -- I'm simply laying a foundation for
9 what was done, and the next witness certainly would be
10 Chris Hill to testify further about the composite and some
11 other things.

12 THE COURT: I find it to be appropriate. I'll allow
13 it.

14 BY MR. BARFIELD

15 Q Well, let me ask you this: I'm handing you what's
16 been marked as Court's exhibit number seven. Take a look
17 at that just a minute.

18 (Pause).

19 Are you familiar with that document?

20 A I am.

21 Q Is that a photocopy of an original document?

22 A It is.

23 MR. BARFIELD: Your Honor, at this time this is
24 Court's exhibits seven at this point. I would like to
25 have it marked State's Exhibit number 109 maybe?

1 THE COURT REPORTER: 116.

2 MR. BARFIELD: 116 for identification purposes only.

3 (WHEREUPON, State's Exhibit No. 116 was marked for
4 identification only.)

5 MR. BARFIELD: Mr. Swerling has a handful of
6 witnesses that we forgot.

7 MR. SWERLING: They need to be sequestered, as well.
8 I didn't know if they had somewhere --

9 MR. BARFIELD: We can find somewhere for -- how many?
10 Four young ladies?

11 MR. SWERLING: Sorry.

12 THE COURT: No problem. Glad you thought of it when
13 you thought of it.

14 BY MR. BARFIELD

15 Q All right. Chief Lewis, I'm handing you what's been
16 marked for identification purposes State's Exhibit
17 Number 116 which you previously said you recognized. What
18 is that document, first of all?

19 A This is the composite drawing that the S.L.E.D. agent
20 did for us that night.

21 Q All right. Now, when you saw that drawing, did it
22 resemble anybody that you knew?

23 A It did.

24 Q Who did it resemble?

25 MR. SWERLING: Same objection, Your Honor.

1 THE COURT: Yes, sir.

2 BY MR. BARFIELD

3 Q Who did it resemble?

4 A It resembled Darryl Cook.

5 Q Okay. And this is kind of a yes or no question. Did
6 you know Darryl Cook and what he looked like prior to you
7 looking at that composite drawing?

8 A Yes.

9 Q I'll ask you this question, too, like I've asked lots
10 of others. Do you see Darryl Cook in the courtroom today?

11 A I do.

12 Q And where is Darryl sitting and what does he have on?

13 A He is sitting beside Mr. Swerling, and he has on a
14 blue striped shirt. And I can't see his pants, but he has
15 glasses on.

16 Q And how about his hair?

17 A His hair is short.

18 Q All right. From November 23rd of 2001 to now, has
19 his appearance changed any?

20 A It has.

21 Q Anything about him changed?

22 A It has.

23 Q How has he changed?

24 A He has had a lot of weight.

25 Q Okay. Now, after concluding that this photograph

1 resembled Darryl Cook, what did you do?

2 A I gave instructions for S.L.E.D. to do a photo lineup
3 with Darryl Cook's picture in it to be made up.

4 Q Now, at the time this case was being investigated,
5 did the Fairfield County Sheriff's Office put together its
6 own lineups?

7 A No, we did not. S.L.E.D. did our lineups for us at
8 that time.

9 Q And when S.L.E.D. would do a lineup for you, how
10 would S.L.E.D. know to put a particular picture in the
11 lineup?

12 A We would request it.

13 Q And how -- what kind of information would you give
14 S.L.E.D. so that they would include a picture of that
15 person in the lineup?

16 A We would give their name, race, date of birth, Social
17 Security number, to make sure we had the right John Doe,
18 so to speak.

19 Q All right. Did you know what sources S.L.E.D. used
20 for photographs to put people in lineups?

21 A They used several different sources. They used South
22 Carolina driver's license pictures. They use your South
23 Carolina identification card pictures, and I believe they
24 used some --

25 Q That's fine.

1 A -- Department --

2 Q That's fine.

3 A -- of Corrections.

4 Q That's fine.

5 Who did you instruct to get the lineup put together
6 by S.L.E.D.?

7 A Investigator Greg Boney.

8 Q And to your knowledge, did he do that?

9 A He did.

10 Q When did this lineup process begin, the request for
11 it and all of that? When was all of that taking place?

12 A I put in the request early that Saturday morning
13 around two, 2:30 before we went in for the night, and of
14 course, S.L.E.D. started the process some time Saturday
15 morning at their headquarters in Columbia.

16 Q Was there some plan formulated to actually get the
17 lineup in hand from the State Law Enforcement Division?

18 A They was going to notify us once it was complete, and
19 we had to send someone to pick it up.

20 Q And did you send somebody to S.L.E.D. to pick up a
21 lineup?

22 A We did.

23 Q Who actually did the sending, if you recall? If you
24 don't, that's fine.

25 A Probably me.

1 Q That's fine. And who got sent to S.L.E.D. to pick up
2 the lineup?

3 A Officer Chris Hill.

4 Q When the request was made for the lineup, was Darryl
5 Cook, this defendant over here, was his information sent
6 to S.L.E.D. with a request that his picture be in the
7 lineup?

8 A It was.

9 Q Now, again, did you see Chris Hill before the lineup
10 was retrieved from S.L.E.D. on Saturday morning after
11 everybody came back out?

12 A I just can't remember if I saw him or not before.

13 Q All right. That's fine. To your knowledge -- well,
14 had you up to this point, the point that Chris Hill is
15 going to get the lineup, had you talked to Chris Hill and
16 given him the name of any suspects in this case?

17 A Not that I know of, no, sir.

18 Q Okay. Did Chris Hill go to S.L.E.D.?

19 A He did.

20 Q Did he come back from S.L.E.D.?

21 A He did.

22 Q Did you meet with Chris Hill?

23 A I did.

24 Q Where did you first meet with Chris Hill?

25 A I first met with him on Highway 34 on the other side

1 of Ridgeway like you're going to Camden, Lugoff.

2 Q What were you doing down on Highway 34?

3 A Some evidence from the crime scene had been located
4 in a wooded area.

5 Q Specifically what, the big item, I guess?

6 A Mr. McGuirt's pick up truck and the V.C.R. machine
7 that came from the store.

8 Q Did Chris Hill have anything with him when he met
9 with you down off of 34?

10 A That afternoon when he met with me, he gave me a
11 brown envelope.

12 Q And where did the -- could you tell where the
13 envelope had come from?

14 A It had come from S.L.E.D.

15 Q Was it sealed up?

16 A It was.

17 Q Did it appear to have been opened in any fashion?

18 A No, it did not.

19 Q Did you talk to Chris Hill -- did Chris Hill have any
20 specific instructions? Let me back up.

21 When you sent Chris Hill to S.L.E.D., did you tell
22 him what he was going to get?

23 A I told him he was going to pick up a lineup in a
24 package that was sealed and not to open it and bring it
25 back to me.

1 Q All right. When it got back to your hands, was it
2 still stealed?

3 A It was.

4 Q To your knowledge, did Chris Hill open it, look at it
5 prior to the proper time later on?

6 A He did not.

7 Q Did you immediately open it there on -- off of 34?

8 A No, sir, I did not.

9 Q What did you do? What did you do with it?

10 A I kept it in my possession. I got in contact with
11 Investigator Boney and S.L.E.D. agents and asked them to
12 meet us at the Ridgeway Police Department so that we could
13 show Officer Hill the lineup.

14 Q Did Chris Hill go to the Ridgeway P.D.?

15 A He did.

16 Q Did you take the line up with you to the Ridgeway
17 P.D.?

18 A I did.

19 Q And at the Ridgeway P.D. who all was present when
20 Chris Hill showed up and you had the lineup, if you
21 recall?

22 A To the best of -- to the best of my recollection, it
23 was myself, Officer Hill, Investigator Boney, Special
24 Agent or S.L.E.D. Agent Hal Sporton (phonetic) and Agent
25 Michael Green.

1 Q Also with S.L.E.D.?

2 A With S.L.E.D.

3 Q When you got to Ridgeway P.D., had you opened the
4 envelope up prior to getting to Ridgeway P.D.?

5 A I did not. I opened it in front of the officers.

6 Q Was it still sealed when you opened it?

7 A It was.

8 Q I'm showing you an item that's been marked Court's
9 Exhibit number eight. Take a look at that and just see if
10 you recognize that?

11 A I do.

12 Q Generally speaking, what is that?

13 A A photo lineup.

14 Q Is that the photo line up that you're referring to
15 that came back in a sealed envelope?

16 A Yes, sir.

17 Q And how many pictures are in the lineup?

18 A Six.

19 Q Are there -- is there any way that the pictures are
20 differentiated from each other, designated differently?

21 A There's a number under each picture.

22 Q All right. All right. When you opened that -- Your
23 Honor, at this time, I'd ask that the lineup be marked for
24 identification purposes, State's number 117.

25 MR. SWERLING: Just for identification?

1 MR. BARFIELD: Yes, sir.

2 THE COURT: Just for identification.

3 (WHEREUPON, State's Exhibit No. 117 was marked for
4 identification only.)

5 BY MR. BARFIELD

6 Q All right. Chief, I'm going to hand you State's
7 exhibit 117 for identification which you previously said
8 was the lineup that Chris Hill brought back to you.

9 When you opened that lineup up at the Ridgeway P.D.,
10 what did you do with it? Just describe the process from
11 there on, and I'll stop you when I need to.

12 A I looked at it. Of course, it was in a folder. I
13 looked at it, and then I asked Officer Hill if he would
14 look at it and see if he could identify anybody in this
15 lineup that he saw the night before leaving the crime
16 scene.

17 Q Did you, number one -- well, again, up to that point,
18 to your knowledge, did Chris Hill know a named suspect in
19 the case, to your knowledge?

20 A To my knowledge, no.

21 Q Did you tell Chris Hill the names of any of the six
22 people in that lineup?

23 A No, I did not.

24 Q Did you tell Chris Hill that the suspect was in the
25 lineup?

1 A I did not.

2 Q Did you tell Chris Hill that he should pick anybody
3 out of the lineup?

4 A I did not.

5 Q Did you tell Chris Hill that he should pick any
6 particular person out of the lineup?

7 A I did not.

8 Q And the same questions I just asked you apply -- I'm
9 going to ask it again. Did any of the other people in the
10 room do any of those things that I just asked you about?

11 A No, sir, not at all.

12 Q Did you or anybody in the room do anything to suggest
13 to Chris Hill that he should make any kind of
14 identification based on that lineup?

15 A No, sir, we did not.

16 Q At some point, did Chris Hill have that lineup,
17 State's Exhibit 117 for identification, in his hands?

18 A He did.

19 Q All right. Did you observe him while Chris Hill had
20 it in his hands?

21 A I did.

22 Q What was he doing while he had it in his hands?

23 A He was -- I could tell by his eyes that he was
24 looking at each individual picture, and he went through
25 all six of them.

1 Q And did he at some point make an identification from
2 that lineup?

3 MR. SWERLING: Judge, this is just completely out of
4 order. I mean, Chris Hill hadn't testified yet. Whatever
5 Mr. Lewis is going to testify to is based on hearsay.

6 MR. BARFIELD: I don't mind stopping and putting him
7 down and rearranging things and calling people out of
8 order, in order, if we need to. I don't mind doing that.

9 THE COURT: I think he was just going to ask him did
10 he name someone and --

11 MR. BARFIELD: Well, even if I asked that question,
12 if it's not proper to go further, I'm still going to have
13 to call Keith Lewis back up later.

14 THE COURT: Let's go ahead and do that.

15 MR. BARFIELD: Stop?

16 THE COURT: Out of an abundance of caution, yes, sir,
17 to keep the record clear.

18 MR. SWERLING: Judge, if the Solicitor represents,
19 and I have no doubt that he will, that he's going to call
20 Mr. Hill and will put Mr. Lewis back for that purpose,
21 then fine. I won't object at that particular point.

22 I just want to make sure. I haven't seen Mr. Hill.
23 This is an unusual, unorthodox way of going about it. So
24 if Mr. Hill is going to be the next witness, I'll just go
25 ahead and let Mr. Lewis testify.

1 MR. BARFIELD: Chris Hill is here. I certainly
2 intend to call him. I will tell you that I will call --
3 will call him briefly and then Chris (indicating).

4 MR. SWERLING: Based on that representation, we'll --
5 based on that representation, we'll let him testify but
6 subject to all the previously stated objections.

7 THE COURT: Yes, sir.

8 MR. BARFIELD: Out of the abundance of caution, I
9 would ask somebody to walk out there and make sure that
10 Chris Hill is out there, ready to go and healthy and well
11 and not planning on leaving us.

12 Thank you, Officer.

13 (Pause).

14 BY MR. BARFIELD

15 Q Did Chris Hill make an identification on that lineup?

16 A He did.

17 Q And by number, who did he identify?

18 A He identified number four.

19 Q And he identified number four as what person?

20 A As the person he saw leaving Jackie McGuirt's the
21 night before.

22 Q And number four, do you know the identity, and did
23 you on November 24th, I guess of 2001, know the identity
24 of number four?

25 A I did.

1 Q And who is number four?

2 A Darryl Cook.

3 Q Any question about that?

4 A No, sir.

5 Q Did Chris Hill do any writing, make any marks, fill
6 out any forms, any kind of writing at all to indicate that
7 number four is the person he picked?

8 A Not on -- not on the lineup he didn't. Now, he might
9 have with Investigator Boney as far as the statement.

10 Q Okay.

11 A He might have did it that way. I'm not sure.

12 Q How come he wouldn't have put a big old red circle
13 around number four if that's who he was picking out? Why
14 didn't you all do it that way?

15 A Well, we don't do it that way because this lineup
16 might get shown to other witnesses, and we didn't want any
17 marks on this lineup that would make someone think that
18 someone had picked a certain person out.

19 MR. BARFIELD: Thank you, sir. That's all the
20 questions I have of Chief Lewis at this point.

21 Well, let me -- yeah, at this point.

22 THE COURT: Mr. Swerling, cross?

23 MR. SWERLING: Yes, sir.

24 CROSS-EXAMINATION:

25

1 BY MR. SWERLING

2 Q Mr. Lewis, you met Keith Hill somewhere -- I mean,
3 Chris Hill around, what, nine o'clock you said the first
4 time?

5 A Yes, sir, that was close to it.

6 Q And then Mr. Paschal was called from S.L.E.D., and
7 you're saying he got there around 11 or you're not really
8 sure. It was around -- I think the testimony has been
9 about twelve o'clock.

10 A Yes, sir.

11 Q Okay. You wouldn't --

12 A It was getting late.

13 Q And your notes reflect that you had a meeting at the
14 Ridgeway Police Department at two o'clock, two a.m.?

15 A It was at two or 2:30, yes, sir.

16 Q Okay. So that would have been when you saw the
17 composite, and it reminded you of Darryl Cook; is that
18 correct?

19 A I feel comfortable saying that I saw the composite
20 probably 30 minutes before we had that meeting.

21 Q That's fine. That's fine.

22 A But that meeting was kind of to get everybody
23 together to see where we was at (sic) and what our next
24 steps were going to be and who I needed to send home and
25 who needed to stay.

1 Q But no question, 1:30, two o'clock in the morning
2 when this was all going on?

3 A That's correct.

4 Q And the request of Investigator Boney to go ahead and
5 put together a lineup, that was made the following morning
6 or later -- late morning?

7 A At two or 2:30 when we had that meeting, that's when
8 I talked with Investigator Boney about having the lineup
9 done the next morning.

10 Q Okay. But that's nowhere -- so the decision was made
11 then, but the actual going out to S.L.E.D. to get the
12 lineup was not done until the following morning when Chris
13 Hill went out there?

14 A That's correct.

15 Q Or in the early afternoon, whenever it was.

16 A That's correct.

17 Q And as a matter of fact, there were -- you were
18 checking out leads and suspects even on Saturday morning;
19 is that correct?

20 A Yes.

21 Q Saturday afternoon?

22 A Yes.

23 Q I think your notes reflect that somebody was
24 identified being around McGuirt's Tire Service with a
25 child sometime around the events around six o'clock on the

1 23rd; is that correct?

2 A That's correct.

3 Q And that person was questioned on Saturday afternoon?

4 A That is correct.

5 Q And that person you discovered had really just been
6 down here visiting for Thanksgiving?

7 A That's correct.

8 Q So everything was very fluid, I guess for lack of a
9 better word, as far as the investigation going into the
10 morning and the afternoon of the 24th?

11 A Correct.

12 Q Until the identification by Mr. Hill was made, and
13 that was about what time, around two o'clock in the
14 afternoon, one, two o'clock in the afternoon?

15 A One, two o'clock Saturday afternoon.

16 Q Okay. And that's when you focused in on Darryl Cook?

17 A That's correct.

18 MR. SWERLING: That's all. Thank you.

19 THE COURT: Thank you, Mr. Swerling.

20 MR. BARFIELD: That's all from this witness.

21 THE COURT: All right. Thank you. You may step
22 down, Mr. Lewis.

23 MR. BARFIELD: I call Roy Paschal.

24 ROY PASCHAL, after being duly sworn,
25 testified as follows:

1 THE CLERK: Please be seated. State your name for
2 the record.

3 THE WITNESS: Roy B. Paschal, P-A-S-C-H-A-L.

4 DIRECT EXAMINATION:

5 BY MR. BARFIELD

6 Q Before I start asking you questions, can I hold that
7 document that you and I looked at earlier this morning?

8 Mr. Swerling and I would request that we get a copy
9 front and back of this prior to getting into this, if
10 that's okay.

11 MR. SWERLING: That's fine.

12 THE COURT: That's fine. Madam clerk, could we get a
13 copy front and back?

14 MR. BARFIELD: It can be separate pages but just both
15 sides.

16 THE COURT: Two, please, ma'am.

17 THE CLERK: Okay.

18 MR. BARFIELD: Does she have to go downstairs to do
19 that?

20 THE COURT: No. The only reason she had to go
21 downstairs the other day, they don't have long paper up
22 here.

23 (Pause).

24 MR. SWERLING: Judge, again reserving all objections
25 heretofore made concerning this issue and the fact that

1 Mr. Hill is going to be called after Mr. Paschal, then
2 there won't be any objection to having Mr. Paschal testify
3 first.

4 Just in actuality, I just -- that was for testifying
5 after Mr. Hill, but based upon the Solicitor's previous
6 representation he still will testify, we'll take him out
7 of order. That's fine.

8 THE COURT: So noted.

9 BY MR. BARFIELD

10 Q State your name please, sir.

11 A Roy B. Paschal.

12 Q By whom are you employed?

13 A By the South Carolina Law Enforcement Division,
14 probably better known as S.L.E.D.

15 Q How long have you been employed by S.L.E.D.?

16 A Approximately 30 years.

17 Q And what is your current position at S.L.E.D.?

18 A I'm the supervisor in the Forensic Arts Department.

19 Q And when I say a composite drawing, is that a proper
20 term to use with S.L.E.D. work in your department?

21 A Yes, sir, it is.

22 Q Did you -- are you a -- are you called a forensic
23 artist?

24 A Forensic artist, yes, sir.

25 Q Were you a forensic artist back in November of 2001?

1 A Yes, sir, I was.

2 Q Did your services get requested from the Fairfield
3 County Sheriff's Office in connection with an incident
4 that had occurred that evening on November 23rd, 2001?

5 A Yes, it did.

6 Q Did you come to Fairfield County?

7 A I did.

8 Q Do you remember where you went?

9 A To the Ridgeway Police Department.

10 Q Did you meet with somebody in Fairfield County at the
11 Ridgeway P.D. when you got here?

12 A Yes, sir. I met with a Mr. Chris Hill.

13 Q And prior to coming to Ridgeway that evening or --
14 well, about what time was it when you came, do you recall?

15 A The composite itself was done approximately
16 11:30 p.m.

17 Q All right. And prior to meeting with Chris Hill at
18 about 11:30 p.m. had you ever met Chris Hill, or did you
19 know him?

20 A No, I had not, had not met with him.

21 Q Without reciting the information, did you become
22 aware that Chris Hill perhaps was a witness from the
23 standpoint of seeing somebody who might have been involved
24 in a crime?

25 A Yes.

1 Q Did you know what your purpose was in coming to
2 Ridgeway?

3 A Yes. My purpose was to meet with a witness, and they
4 would give me a verbal description of what the individual
5 looked like and attempt to do a composite drawing.

6 Q And did you go through that process with Chris Hill?

7 A Yes, sir, I did.

8 Q Explain for the jury a little bit about how that
9 works. You're sitting there with Chris Hill. Just tell
10 us how it goes.

11 A Yes. We sit side by side, and I instruct the witness
12 that he is to direct the drawing. If he wants something
13 changed, moved around, if the head is too big, make it
14 smaller; if the head is too small, make it larger, if the
15 nose is too big.

16 We work back and forth, back and forth. Initially,
17 we get a verbal description of what the person looked
18 like. It's a starting point. Then we get to a point
19 where the witness is pleased with the drawing.

20 Q Now, do drawings -- generally, what would a composite
21 drawing show of the person who is being sketched?

22 A It's a likeness of the individual. What we try to
23 work toward is something that resembles the person,
24 something they can -- it's an investigative tool to assist
25 investigators in either developing suspects or eliminating

1 suspects.

2 Q And what part of the person normally would you draw
3 when you're doing the sketch?

4 A Draw basically just the upper part of the shoulders
5 and the neck and head.

6 Q Would that be different if there was anything unusual
7 or striking about some other -- other part of the person's
8 body?

9 A That's correct. Anything that might assist in
10 identifying or help the investigator to develop a suspect.
11 For example, if the person has had some unusual feature,
12 say a withered limb or something or an unusual item of
13 clothing or some jewelry or a tattoo, anything that might
14 assist, we would attempt to create a likeness of that.

15 Q Now, did you get a description of the person Chris
16 Hill had seen from Chris Hill?

17 A Yes, I did.

18 Q And I'm going to jump ahead. How long does it
19 take -- in a usual situation, how long does it take you to
20 actually get the sketch done?

21 A Anywhere from an hour to an hour-and-a-half.

22 Q Are there occasions when you'll start a sketch and
23 the witness will say, "So much needs to be changed," that
24 you start over?

25 A Yes, that's correct.

1 Q In this case, was it a one-time sketch on one piece
2 of paper?

3 A A one-time sketch on one piece of paper.

4 Q All right. Did you get a description from Chris Hill
5 of the person that you were going to attempt to draw?

6 A Yes, I did.

7 Q And did you record your description from Chris Hill
8 in some fashion?

9 A Yes, I did.

10 Q How did you record it, where and how?

11 A Made some quick notes on the back of the composite
12 itself.

13 Q And is that the original of the composite you have in
14 your hands?

15 A Yes, it is.

16 Q Let me ask you this: Is this a copy, two pages, but
17 a copy of the front and back of the original that you have
18 in your hands?

19 A Yes, sir, it is.

20 Q What -- describe -- give the information that Chris
21 Hill gave you as the description of the person that you
22 were going to attempt to draw?

23 Well, let me first ask you this: Is there anything
24 on this document, the original of which you have in your
25 hand, that identifies this drawing to this case?

1 A Yes. On the front of the drawing, my signature
2 occurs, and on the back of the drawing is a drawing
3 with -- it's a signature of the witness in this case.
4 Also, at the top is the victim's name as indicated on the
5 case.

6 Q And is that victim's name listed as Jackie McGuirt?

7 A Yes, sir. Yes, sir, it is.

8 Q All right. Tell the jury how Chris Hill described
9 this person to you?

10 A He described the individual as 5'10", 100 to
11 110 pounds, slender, 18 to 20. It says pounds, but I
12 assume that was -- my mistake, meant to be years of age.

13 Q Is that your handwriting?

14 A Yes, sir.

15 Q Your handwriting that you're relying to us?

16 A These are my notes, quick notes, in the case.

17 Q Go ahead.

18 A Dark blue sweat shirt, blue and white windbreaker,
19 black male, brown skinned, real close cut.

20 Q And you meant by real close cut, what?

21 A Indicate the hair.

22 Q Okay. What difference does it make what kind of
23 clothes a witness describes somebody having on when you're
24 just going to draw from the neck up?

25 A Well, we'll indicate in the drawing itself at the top

1 what the individual had on. Basically, it's to assist the
2 witness, because often the face will not look right unless
3 the clothing is consistent or is right.

4 So it's one, to help the witness, to draw them into
5 the drawing, into the sketch, to make a better sketch.
6 Also, it's a way to get the witness involved in the
7 composite. We start with things they know, and then we
8 work to things that may trouble them, may have a little
9 bit more trouble with.

10 Q Did you and Chris Hill sit side by side as you
11 sketched a picture?

12 A Yes, we did.

13 Q And again, is that the original, and is this a copy
14 of that picture that we both looked at momentarily a
15 little bit ago?

16 A Yes. I have the original, and that accurately
17 reflects the information on the original.

18 Q All right. About how long did it take you to do this
19 sketch?

20 A I did not time it, but I assume an hour,
21 hour-and-a-half, somewhere in that neighborhood.

22 Q Was there any significance to the face that you had
23 drawn to yourself?

24 A No, sir. This is -- for lack of a better term, this
25 is a fairly straightforward composite.

1 Q All right. And again, the face that you drew, did it
2 mean anything to you from the standpoint of who it was or
3 anything else about that person?

4 A No, sir, not at all.

5 Q And when you got through with the composite, what --
6 when you got through with Chris Hill, what did you do with
7 what you had drawn?

8 A The sketch at that point in time was turned over to
9 the investigators.

10 Q Okay. A copy of it or the original?

11 A The copies. I maintained the original.

12 Q And you have maintained the original since
13 November 23rd or 24th, of 2001?

14 A Yes, sir. It's been secured at S.L.E.D.

15 MR. BARFIELD: Your Honor, at this time I think it --
16 I don't know how you want to do it, but we've got a
17 photocopy, one photocopy of just the front of Agent
18 Pascal's work which was initially marked Court's seven.
19 It's now been marked for identification as State's 116.

20 I'm, at this time, going to offer into evidence
21 another photocopy, including the back sheet, which is now
22 two pages, and I'll -- we can put them altogether. We can
23 put them both together and call it State's 116, or I can
24 give this a separate number.

25 THE COURT: Let's give it a separate number.

1 MR. BARFIELD: All right. At this time, I would
2 offer the composite, front and back, and the two-page form
3 as State's number 118.

4 MR. SWERLING: I'm just preserving all previously
5 stated positions regarding the identification.

6 THE COURT: All right. Subject to the Defendant's
7 objection, admitted into evidence, State's 118.

8 (WHEREUPON, State's Exhibit No. 118 was marked for
9 identification and received into evidence.)

10 BY MR. BARFIELD

11 Q Just a couple of other quick questions, Agent
12 Paschal. Does weight have anything to do with how you
13 draw when you're asking a witness to give you some
14 estimate of the weight of the person that's going to be
15 drawn?

16 A Weight is an indication of build.

17 Q Okay.

18 A And once we know the build, we know if the person is
19 described as slender. It would affect the basic shape of
20 the head, such as that. It's a way to communicate.

21 If someone says a person is slender or their weight
22 is low, that indicates one thing. We'll put that on the
23 drawing.

24 Q And what was the weight that Chris Hill gave you,
25 according to your notes?

1 A It's 110 to 110 pounds (sic).

2 Q Would 20 or 30 pounds, one way or the other, made any
3 significant difference in the --

4 MR. SWERLING: Objection, Your Honor. That's pure
5 speculation. No foundation has been laid. Whether or not
6 an identification has been made is irrelevant to this
7 witness. It's relevant to the identification witness, not
8 this witness.

9 MR. BARFIELD: Let me ask him a couple of other
10 foundational questions.

11 THE COURT: Sustained.

12 BY MR. BARFIELD

13 Q State's Exhibit 118, did you draw that picture?

14 A Yes, I did.

15 Q Was it based on the description that Chris Hill gave
16 you?

17 A Yes, it was.

18 Q Was part of that description the weight range that
19 Chris Hill gave you?

20 A Yes, it was.

21 Q As the artist, is the size and shape of that face
22 consistent with that weight range?

23 MR. SWERLING: Objection, Your Honor. That's not --
24 again, it's what Chris Hill identified. Mr. Paschal took
25 the information he gave. Mr. Hill approved that

1 composite.

2 He's now trying to ask Mr. Paschal questions about
3 what Mr. Paschal would think about the identification.
4 That's not proper. I mean, it's not the right witness to
5 ask it. There's no foundation for it.

6 THE COURT: Well, I think --

7 MR. BARFIELD: Judge --

8 THE COURT: I think that it is, and I'll allow it.
9 Overruled.

10 BY MR. BARFIELD

11 Q Well, let me ask him a couple of other questions
12 before I come back to that.

13 Do you recall in your conversations with Chris Hill
14 whether there was any -- you said you drew one picture.

15 A That's correct.

16 Q Do you recall -- is it possible for you to have a
17 picture partially -- a composite sketch partially complete
18 and then modify that same drawing?

19 A Very common.

20 Q Could you -- for example, if you had somebody's head,
21 could you widen the head on the same picture?

22 A That's correct.

23 Q All right. Do you recall at any point during your
24 work with Chris Hill on this case whether you made any
25 changes to the size or shape of the head of the person you

1 drew?

2 A I do not recall on this individual case, but it is
3 routine, almost standard procedure, that the head shape is
4 adjusted back and forth. Initial description is just a
5 starting place.

6 Q Okay.

7 A And then we begin to make modifications as a matter
8 of communication. What one person may say is slender,
9 someone else may not be slender, so we focus on the
10 drawing itself.

11 Q Who has final approval of what you draw from the
12 standpoint of -- do you decide whether you have drawn it
13 right, or does the witness decide whether you have drawn
14 it right?

15 A The witness.

16 Q Would your starting point for the size and shape of
17 the head have been any different if the weight had been
18 different from the witness's description?

19 A Yes. If he had said the person was, say, obese or
20 fat, we may have started with a more rounded head.

21 Q Okay. From your perspective as the forensic artist,
22 would a difference in weight from your starting point, not
23 what the witness says looks like him, but from your
24 perspective, what you put on paper with your pencil, if
25 there was a 20 or 30-pound difference, would your starting

1 point have been different in this case?

2 A No, sir. Usually the general description, such as
3 slender, because weight is -- we'll call it highly
4 subjective. Guessing someone's weight exactly can be
5 extremely difficult. It's just a range.

6 MR. BARFIELD: Okay. Thank you, sir. Answer
7 anything Mr. Swerling has.

8 THE COURT: Thank you, Mr. Solicitor.
9 Mr. Swerling?

10 MR. SWERLING: Yes, sir.

11 CROSS-EXAMINATION:

12 BY MR. SWERLING

13 Q Mr. Paschal, that is true it's a range, but 100 to
14 110 pounds is a very slight individual.

15 A Yes, sir.

16 Q Would you agree with that?

17 A Yes, sir.

18 Q Okay. Or what we would call had slender individual.

19 A Yes, sir.

20 Q Actually, a petite or small individual?

21 A At that height, yes, sir.

22 Q Yeah, 5'10", 100 to 110 pounds is a --

23 A Pretty small.

24 Q Petite, slight individual.

25 A Yes, sir.

1 Q So it -- I just want to make sure. His description
2 to you was 5'10"?

3 A Correct.

4 Q Correct? And 100 to 110 pounds?

5 A That's correct.

6 Q And he had -- the person had on a -- is it -- correct
7 me if I'm wrong. I'm trying to just get this through. Is
8 it a dark blue sweat shirt, is that what you had on?

9 A Yes, sir.

10 Q And also a blue and white windbreaker?

11 A That's correct.

12 MR. SWERLING: Okay. All right. Thank you very
13 much.

14 THE COURT: Thank you, Mr. Swerling.

15 MR. BARFIELD: That's all from this witness, and I
16 would ask that he be excused.

17 MR. SWERLING: I have no objection. Thank you.

18 THE COURT: Thank you --

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You're released from your subpoena.

21 MR. BARFIELD: Chris Hill.

22 MR. SWERLING: While he's coming in, can I step out
23 in the hall?

24 THE COURT: Yes, sir.

25 CHRIS HILL, after being duly sworn,

1 testified as follows:

2 THE CLERK: State your name for the record.

3 THE WITNESS: Chris Hill.

4 MR. BARFIELD: Hang on a minute. We have to wait on
5 Mr. Swerling to come back.

6 (Pause).

7 DIRECT EXAMINATION:

8 BY MR. BARFIELD

9 Q Mr. Hill, by whom are you employed?

10 A Fairfield County Sheriff's Office.

11 Q How long have you been employed by the Fairfield
12 County Sheriff's Office?

13 A Seven years.

14 Q You're a corporal right now; is that correct?

15 A Yes, sir.

16 Q Were you working for the Fairfield County -- were you
17 employed by the Fairfield County Sheriff's Office back in
18 November of 2001?

19 A Yes, sir.

20 Q Did you work on duty for the Fairfield County
21 Sheriff's Office on Friday, November 23rd of 2001?

22 A No, sir.

23 Q Did you work on Friday November 23rd of 2001?

24 A Yes, sir.

25 Q All right. At that time, and I guess perhaps now,

1 too, maybe I should ask, were deputies allowed to -- and
2 I'll use the term moonlighting, moonlight and do security
3 work for other folks?

4 A Yes, sir.

5 Q Did you, yourself, do work for other entities back in
6 November of 2001?

7 A Yes, sir.

8 Q Among them was the Bank of Ridgeway one of the folks
9 that you worked for?

10 A Yes, sir.

11 Q Did you work for the town of Ridgeway sometimes in
12 addition to your duties as a sheriff's deputy?

13 A Yes, sir.

14 Q Did you have permission from the sheriff and the
15 Sheriff's Department to do those things?

16 A Yes, sir.

17 Q When you did that, did -- when you worked for the
18 Bank of Ridgeway, who paid you?

19 A The Bank of Ridgeway.

20 Q When you worked for the town of Ridgeway, who paid
21 you?

22 A Town of Ridgeway.

23 Q When you did those duties, did you wear your
24 Fairfield County Sheriff's Office uniform?

25 A Yes, sir.

1 Q When you did those duties, did you have all of your
2 Fairfield County Sheriff's Office, the duty belt and all
3 of that with you?

4 A Yes, sir.

5 Q Did you wear your badge?

6 A Yes, sir.

7 Q Did you -- would you drive your Fairfield County
8 Sheriff's Office patrol car?

9 A Yes, sir.

10 Q Who did you work for on Friday, February -- November
11 23rd, 2001?

12 A Bank of Ridgeway.

13 Q And what was your job for the Bank of Ridgeway that
14 day?

15 A To provide security for the bank.

16 Q And doing that would entail doing what? During the
17 day, where would you be? What would you be doing?

18 A Just I guess me inside the bank and outside, make
19 sure nobody is trying to rob the bank or whatever.

20 Q What time did the bank close that day?

21 A Six o'clock.

22 Q Where -- stupid question. What town is the Bank of
23 Ridgeway in?

24 A Ridgeway.

25 Q The one that you worked at that Friday?

1 A Ridgeway.

2 Q And where is it in Ridgeway?

3 A Palmer Street.

4 Q Which street is -- where is Palmer Street? Well, let
5 me ask you a couple of other things. Does Ridgeway have a
6 police department?

7 A Yes, sir.

8 Q Where is it?

9 A Probably about a half a -- not even half a block.

10 Q From?

11 A From the bank, the Bank of Ridgeway.

12 Q And do you know what street the police department is
13 on?

14 A It's on Palmer Street also.

15 Q Is Palmer Street the main street in Ridgeway?

16 A Yes, sir.

17 Q All right. If you're standing on Palmer Street
18 looking at the front of the police department, is the bank
19 to the right or to the left?

20 A Standing in front of the police department, the bank
21 would be to the left.

22 Q Okay. On down the street?

23 A I'm sorry, to the right.

24 Q Back towards Winnsboro?

25 A Yes, sir.

1 Q Okay. Is it on the same block as the police
2 department?

3 A Yes, sir.

4 Q Were you familiar with McGuirt's Tire Service back in
5 November of 2001?

6 A Yes, sir.

7 Q Did you know Jackie McGuirt?

8 A Yes, sir.

9 Q Did you know what kind of automobile Jackie McGuirt
10 drove?

11 A Yes, sir.

12 Q What kind of automobile did he generally drive?

13 A It was a black and red. Like a Chevy, standard cab.

14 Q Truck?

15 A Yes, sir.

16 Q Let me see if I can find a picture of it real quick.

17 Bear with me just one second, Your Honor.

18 THE COURT: No problem.

19 (Pause).

20 BY MR. BARFIELD

21 Q I'm showing you State's Exhibit Number 11, Corporal
22 Hill. Do you recognize what's shown in that picture?

23 A Yes, sir.

24 Q What's shown in that picture?

25 A Mr. McGuirt's truck.

1 Q Where is McGuirt's Tire Service in relation to
2 Ridgeway P.D.?

3 A McGuirt's Tire sits behind Ridgeway P.D. almost at an
4 angle.

5 Q And is it on the same street?

6 A No, sir.

7 Q Do you know what street McGuirt's Tire Service is on?

8 A I think it's Dogwood.

9 Q I'm showing you -- I'm holding up for you State's
10 Exhibit Number one. What is shown in State's Exhibit
11 Number one?

12 A McGuirt's Tire.

13 Q All right. Can you see the police department for
14 McGuirt's Tire?

15 A Yes, sir. You can see the back, the back part of it.

16 Q Is there any street that connects Palmer Street, the
17 main street, and Dogwood, the street that McGuirt's is on?

18 A Yes, sir.

19 Q Do you know the name of that street?

20 A No, sir.

21 Q How long is that street?

22 A It's not very long.

23 Q Is it -- does it stretch for more than one block? Is
24 it a one-block street, or do you know?

25 A I would estimate probably a block, a half a block.

1 Q All right. Is that street shown in State's Exhibit
2 Number one, this picture that I'm holding up?

3 A Yes, sir.

4 Q Point -- put your finger on the street.

5 A That would be this street here.

6 Q All right. What is just beyond where your fingers
7 are crossing the street?

8 A The railroad track.

9 Q Is there a stop sign at the end of that street?

10 A No, sir.

11 Q Is that where -- point to the stop sign.

12 A (Indicating).

13 Q And what's on the other side of the railroad tracks
14 before you get to Dogwood on the ground?

15 A On the ground?

16 Q If you cross the railroad tracks, where are you?

17 A If I cross the railroad tracks, I'm on Dogwood.

18 Q Before -- before you get on Dogwood?

19 A It's a stop, a stoplight.

20 Q All right. Is there room to have your car between --
21 on the other side of the railroad tracks? In this
22 picture, is there room to have your car on the other side
23 of the railroad tracks before you pull onto Dogwood?

24 A Yes, sir.

25 Q All right.

1 A A car right there.

2 Q While I got it up let me ask you another couple of
3 questions. Is there any building to the right of
4 McGuirt's Tire Service?

5 A Yes, sir.

6 Q Point your -- put your finger on that.

7 A (Complies).

8 Q And what is that building?

9 A It used to be the barbershop.

10 Q Is it still there?

11 A No, sir.

12 Q Is the building still there?

13 A The building is still there.

14 Q Is there another building on the other side of what
15 used to be the barbershop?

16 A Yes, sir.

17 Q Where is it? Is it shown in the picture, first of
18 all?

19 A No, you can't hardly see it.

20 Q What is the other building?

21 A Like a lady's hairdresser now.

22 Q Okay.

23 A Yes, sir.

24 Q All right. Just a few more questions about the
25 picture. Had you been to McGuirt's Tire Service before

1 November 23, 2001?

2 A No, sir.

3 Q Had never been in the building?

4 A No, sir.

5 Q Never been a customer there?

6 A No, sir.

7 Q Okay. All right, thank you. That's all about that
8 right now.

9 Did you work all day at the Bank of Ridgeway?

10 A Yes, sir.

11 Q What time did you get off?

12 A Six o'clock.

13 Q Did you get paid that day?

14 A Yes, sir.

15 Q How did the Bank of Ridgeway pay you that day?

16 A They paid us in a check.

17 Q What did you do about your check? Do you get paid
18 for each day that you work one day at a time?

19 A Yes, sir; yes, sir.

20 Q What did you do with your check when you got off?

21 A I cashed it there.

22 Q Where did you go after you cashed the check?

23 A I left the Bank and went to the Ridgeway Police
24 Department.

25 Q And who was the chief at Ridgeway at the time?

1 A Hughley Gratic.

2 Q Was he at the police department?

3 A Yes, sir.

4 Q Why did you go to the police department?

5 A To ask about working security for the town, if

6 needed.

7 Q And did he need any help that night?

8 A No, sir.

9 Q What was your intention after you spoke to Chief

10 Gratic and found out he didn't need any help?

11 A Go home.

12 Q Where did you live back then?

13 A Syrup Mill Road, the Simpson Community.

14 Q To get to -- well, that's all right. Did you head

15 home?

16 A Yes, sir.

17 Q Which path -- where did you park your police car at

18 the Ridgeway P.D.?

19 A Right on the opposite side of the road in front of

20 the P.D., in front of the old Thomas building.

21 Q And where did you go after you left Ridgeway P.D.?

22 A Well, after I left the Ridgeway P.D., I turned --

23 came -- pulled my car to the side of the bank. It was

24 about time for the bank to close.

25 After I left the bank, I went to the P.D. When I

1 left the P.D., I made an immediate right to the -- to that
2 little side strip right there.

3 Q All right. I'm going to hold it -- which -- where --
4 let me see how to ask this. Well, just again, start
5 describing. When you left the P.D., where did you park
6 your car at the police department?

7 A Around the P.D.

8 Q On the same side of the street as the P.D.?

9 A Yes, sir.

10 Q Facing which direction?

11 A Facing this direction (indicating).

12 Q Okay. Where did you go when you got in your car
13 after you left the P.D.?

14 A After I got in my car and left the P.D., I made an
15 immediate right onto the side street.

16 Q This street that's shown in State's number one --

17 A Yes, sir.

18 Q -- where your fingers are? I got it too far away.
19 Did you go to the railroad tracks?

20 A Yes, sir.

21 Q Did you cross over the railroad tracks?

22 A Yes, sir, I did.

23 Q What did you do when you crossed over the railroad
24 tracks?

25 A Crossed over the railroad, stopped, made a stop.

1 Q All right. Stop right there. When you were on that
2 street --

3 A Yes, sir.

4 Q -- moving and when you stopped after you crossed the
5 railroad tracks, could you -- were there any lights on at
6 McGuirt's Tire Service?

7 A Yes, sir.

8 Q Were there any outside lights on?

9 A Yes, sir, there was.

10 Q Where were outside lights on at McGuirt's Tire
11 Service?

12 A On the island.

13 Q Hold on a minute. I'll get it over there closer to
14 you.

15 A If you're in the island here, right here, right here
16 and the street light here basically illuminated the
17 parking lot.

18 Q All right. How good was the lighting?

19 A Very well. I also had on my headlights.

20 Q Well, that was my next question. Was it daylight or
21 dark when this was going on?

22 A It was dark.

23 Q Did you have your car lights on, headlights?

24 A Yes, sir, I did.

25 Q When you were stopped at the stop sign, what part --

1 where were your headlights pointing?

2 A Straight ahead facing this area right here
3 (indicating).

4 Q Did you see Jackie McGuirt -- let me back up. You
5 said you had never been to McGuirt's Tire Service, but did
6 you know who Mr. Jackie McGuirt was?

7 A Yes, sir, I did.

8 Q Did you see him anywhere around the station when you
9 were at the stop sign?

10 A No, sir.

11 Q Or approaching the stop sign? Did you see his truck
12 anywhere around when you were approaching or at the stop
13 sign?

14 A Yes, sir, I did.

15 Q Where was the truck?

16 A The truck was parked over there (indicating).

17 Q Okay.

18 A Actually, it was facing the building, to the right of
19 the building by the barbershop.

20 Q Now -- all right. Are there gas pumps at McGuirt's?

21 A Yes, sir.

22 Q Where are the gas pumps?

23 A The gas pumps are right here, as if this was the pump
24 right here (indicating).

25 Q Is there another diesel pump somewhere along the side

1 of the building?

2 A No, sir, this one back here.

3 Q Pardon?

4 A Not besides this one right here, and the gas pumps
5 are here.

6 Q All right. Now, did you see anything as you either
7 approached or stopped at the stop sign?

8 A Yes, sir.

9 Q What -- first of all, what was it that you saw?

10 A A black male.

11 Q All right. When you first saw the black male, number
12 one, were the lights that you described on the outside of
13 the station on or off when you saw the black male?

14 A They were off.

15 Q Were the headlights on your car on or off when you
16 saw the black male?

17 A It was off.

18 Q Was the black male in or not in the beam of your
19 headlights when you saw him?

20 A It was in the beam.

21 Q Where was the black male when you first saw him?

22 A When I first saw him, he was in this area right here
23 (indicating).

24 Q And you're indicating where in relation to that
25 window on the side of the station?

1 A I'm assuming this right here would be the office
2 area, storage area here.

3 Q Okay.

4 A The storage area.

5 Q Let me hold this better. It's flopping around.
6 Where was the black male when you first saw him?

7 A In this area right here.

8 Q All right. Was he -- what was he doing when you saw
9 him?

10 A He was walking in this direction.

11 Q Did you see his eyes?

12 A No, sir, I didn't.

13 Q Were you face to face, I guess, is what I'm asking.
14 Did your eyes meet at any time?

15 A Yes, sir.

16 Q Did you communicate with this person at all?

17 A No, sir.

18 Q Did you waive at him?

19 A No, sir.

20 Q Did you blow the horn at him?

21 A No, sir.

22 Q Did you roll your window down and say anything to
23 him?

24 A No, sir.

25 Q Did he communicate with you in any fashion?

- 1 A No, sir.
- 2 Q No hand signals or anything?
- 3 A No, sir.
- 4 Q All right. Describe -- what was the person doing
5 when you saw him, first?
- 6 A Like I said, when I saw him --
- 7 Q Was he moving or standing still?
- 8 A He was moving.
- 9 Q Moving in what direction? Trace the direction with
10 your finger.
- 11 A Moving in this direction (indicating).
- 12 Q All right. How was he moving?
- 13 A Basically, at a general pace between generally, you
14 know -- I can't say he was in a hurry.
- 15 Q You can't say he was in a hurry?
- 16 A No, sir.
- 17 Q Did he ever run?
- 18 A No, sir.
- 19 Q Did you ever confront this person?
- 20 A No, sir, I didn't.
- 21 Q Did you ever pull into the parking lot at McGuirt's?
- 22 A No, sir.
- 23 Q Did you ever ride around the building to look for
24 anything?
- 25 A No, sir.

1 Q Where did you go after you stopped at the stop sign?

2 A To the right on Dogwood.

3 Q Did you -- after you took a right on Dogwood, did you
4 see this black male anymore?

5 A No, sir.

6 Q Did you see where the black male went?

7 A No, sir, I didn't.

8 Q How close did the black male get to Mr. McGuirt's
9 truck?

10 A When I made that turn, he was -- like I indicated, he
11 was basically in this area right here.

12 Q Okay. Was he still moving when you made your turn?

13 A No, sir.

14 Q Did you see any other human being anywhere around
15 Jackie McGuirt's when you saw this black male walking in
16 the parking lot?

17 A No, sir, I didn't.

18 Q Did you get a good look at him?

19 A Yes, sir.

20 Q Describe, first of all, the -- not clothing yet but
21 the appearance of the black male.

22 A He appeared to be -- he was clean shaven.

23 Q How about hair on his head?

24 A No.

25 Q Did you notice anything about that?

1 A Low haircut.

2 Q A low haircut?

3 A Yes, sir.

4 Q Hang on just a minute. Clean shaven, low haircut.

5 A Yes, sir.

6 Q What else?

7 A Clothing.

8 Q Anything else about his appearance, first of all?

9 A No, sir. He had glasses on.

10 Q Pardon?

11 A Glasses.

12 Q He had on glasses?

13 A Yes, sir.

14 Q You saw glasses?

15 A Yes, sir.

16 Q Clothing?

17 A Well, a striped shirt like a Polo shirt.

18 Q Okay. Anything else about clothing?

19 MR. SWERLING: What was the last thing he said?

20 MR. BARFIELD: Striped shirt like a Polo shirt.

21 THE WITNESS: Blue Jeans.

22 BY MR. BARFIELD

23 Q Blue colored blue jeans?

24 A Yes, sir, blue colored blue jeans and white tennis

25 shoes.

1 Q Anything else about his appearance?

2 A No, sir.

3 MR. BARFIELD: Beg the Court's indulgence one moment.

4 THE COURT: Yes, sir.

5 (Pause).

6 BY MR. BARFIELD

7 Q Did you make any notations or have any recollection
8 of the tone of skin? You said a black male. Anything
9 about the tone of his skin?

10 A I'd say medium skinned.

11 Q Did you make any notations or have any recollection
12 about age range?

13 A I would say between 18 to 20.

14 Q How about height?

15 A About five -- between 5'7", 5'8".

16 Q How about weight?

17 A 130 to 140 pounds.

18 Q Anything on his head?

19 A No, sir.

20 Q Was there anything to you that was unusual about what
21 you saw?

22 A No, sir.

23 Q Could you tell if this person had anything on his
24 person carrying anything, pulling anything, kicking
25 anything?

1 A No, sir. It appears that he had something under his
2 left arm.

3 Q Now, how -- describe how his arms were?

4 A His right arm was up under his left armpit area.

5 Q All right. Could you tell, in fact, whether there
6 was anything under his left arm?

7 A No, sir.

8 Q Do you know what time it was when you saw what you've
9 just described to the jury?

10 A Yes, sir. It was 6:13 p.m.

11 Q How do you know it was 6:13 p.m.?

12 A When I made a right onto that side street, I looked
13 down to change the radio station. On my patrol car I had
14 a digital clock, and the clock said 6:13.

15 Q Did you go home?

16 A Yes, sir, I did.

17 Q Was that the end of your interaction with this person
18 you saw at McGuirt's?

19 A Yes, sir.

20 Q When you got home, did you come back out -- as a
21 sheriff's deputy did you come back out sometime Friday
22 night?

23 A Yes, sir, I did.

24 Q Did you find out something had happened to Jackie
25 McGuirt?

1 A Yes, sir.

2 Q Don't relate anything anybody told you, but did you
3 call somebody after you found out something had happened?

4 A Yes, sir.

5 Q And who did you call?

6 A Sergeant Bruce Ginyard.

7 Q And did you go somewhere after talking to Bruce
8 Ginyard?

9 A Yes, sir.

10 Q Where did you go?

11 A Back to McGuirt's tire.

12 Q Did you get some detail about what had occurred at
13 McGuirt's Tire at that point?

14 A Yes, sir, I did.

15 Q Now, I'm going to ask you a general question as it
16 applies to the next few hours of your involvement in this
17 case. Were you ever given the name of a suspect in this
18 case?

19 A No, I wasn't.

20 Q Did you ever hear people talking, overhear
21 conversation among law enforcement or otherwise about the
22 name of a suspect in this case?

23 A No, I didn't.

24 Q Prior to November 23, 2001, had you ever met Darryl
25 Cook?

1 A No, sir.

2 Q To your knowledge, prior to November 23, 2001, had
3 you ever heard the name of Darryl Cook?

4 A No, sir.

5 Q Now, when you got back to -- did you come to Ridgeway
6 that night?

7 A Yes, sir.

8 Q Did you talk to somebody other than Bruce Ginyard
9 about what you had seen at McGuirt's Tire?

10 A Yes, sir.

11 Q Who did you tell it to?

12 A Chief Deputy Keith Lewis hand Investigator Greg
13 Boney.

14 Q And did you meet with somebody from S.L.E.D. later
15 that night?

16 A Yes, sir, I did.

17 Q Would that have been Roy Paschal?

18 A Yes, sir, I did.

19 Q I'm showing you what's been introduced into evidence
20 as State's exhibit number 118. Do you recognize what that
21 is?

22 A Yes, sir.

23 Q Where did you meet with Roy Paschal?

24 A At that time we had a substation in Ridgeway.

25 Q Did you give information to Roy Paschal?

- 1 A Yes, sir, I did.
- 2 Q Did he draw this picture while you were there in his
3 presence?
- 4 A Yes, sir.
- 5 Q Does this look like the person you saw?
- 6 A Yes, sir.
- 7 Q Did you stay out all night?
- 8 A Yes, sir, until probably about 1:00 a.m. the next
9 morning.
- 10 Q Did you come out the next day to work this case?
- 11 A Yes, sir, I did.
- 12 Q Did you make a trip the next day, Saturday?
- 13 A Yes, sir, I did.
- 14 Q Where did you go?
- 15 A S.L.E.D. headquarters on Broad River Road.
- 16 Q Do you remember about what time of day it was that
17 you went to S.L.E.D. headquarters?
- 18 A No, sir. It was somewhere around noontime.
- 19 Q Do you know -- did you know why you were going to
20 S.L.E.D.?
- 21 A No, sir.
- 22 Q What were you told to do at S.L.E.D.?
- 23 A I was told to go in and pick up an item.
- 24 Q Did you know what the item was?
- 25 A No, sir, I didn't.

- 1 Q Were you told where at S.L.E.D. to go?
- 2 A Yes, sir.
- 3 Q A specific building or place?
- 4 A Yes, sir.
- 5 Q Did you pick up an item at S.L.E.D.?
- 6 A Yes, sir, I did.
- 7 Q And describe the item that you picked up.
- 8 A It was vanilla (sic) envelope.
- 9 Q Was it sealed up?
- 10 A Yes, sir, it was.
- 11 Q Did you know what was in it?
- 12 A No, sir.
- 13 Q Was there any writing on the outside of it to tell
- 14 you what was in it?
- 15 A No, sir.
- 16 Q Was there any time -- well, I'm going to jump ahead.
- 17 What did you ultimately do -- well, who did you give it
- 18 to?
- 19 A I took it back to Ridgeway and gave it to Chief
- 20 Deputy Lewis.
- 21 Q At any time prior -- at any time from the point that
- 22 you picked it up at S.L.E.D. until you handed it over to
- 23 Keith Lewis, did you open it up?
- 24 A No, sir.
- 25 Q Did anybody ever tell you what was in it --

1 A No, sir.

2 Q -- prior to that time or during that time?

3 A No, sir.

4 Q Did you meet with Keith Lewis?

5 A Yes, sir, I did.

6 Q Where did you see him with the item that you had in
7 hand?

8 A Well, we went to the Ridgeway Police Department.

9 Q Did you see him somewhere before that?

10 A Yes, sir. He was on Highway 34 East.

11 Q Did you go down there and see Keith Lewis down there?

12 A Yes, sir.

13 Q All right. Did you go somewhere from 34 East? Where
14 did you go next?

15 A To the Ridgeway Police Department.

16 Q And who was there? Did Keith Lewis come there?

17 A Yes, sir.

18 Q All right. Now, I'm going to show you what's been
19 marked for identification 117, still?

20 THE COURT REPORTER: Yes. It's still I.D.

21 BY MR. BARFIELD

22 Q This is State's Exhibit number 117 for
23 identification. Don't tell me what it is, but do you
24 recognize that?

25 A Yes, sir.

1 Q And when did you first see that?

2 A When Chief Deputy Lewis took it out of the vanilla
3 (sic) envelope.

4 Q Where?

5 A At the Ridgeway Police Department.

6 Q What day?

7 A Saturday.

8 Q About what time?

9 A Around -- almost probably around two.

10 Q Now, when Keith Lewis took this out, did you get to
11 look at it?

12 A Yes, sir.

13 Q Could you tell what it was when he was pulling it out
14 of the envelope?

15 A No, sir.

16 MR. SWERLING: If I could preserve all previously
17 stated objections regarding identification.

18 THE COURT: Yes, sir.

19 BY MR. BARFIELD

20 Q At some point when he got it out of the envelope, did
21 you get a chance to see it while it was still in his
22 hands?

23 A No, sir.

24 Q All right. Did he give it to you?

25 A No. He laid it out on the desk.

1 Q Did you know generally what this was?

2 A Yes, sir.

3 Q And generally what was it?

4 A Yes, sir.

5 Q What was it?

6 A It was a lineup.

7 Q At any point -- again, up to that point, had anybody
8 given you the name Darryl Cook as a suspect in this case?

9 A No, sir.

10 Q When Keith Lewis laid this on the table, did he tell
11 you that there was a suspect in here that you should
12 identify?

13 A No, sir.

14 Q What did he tell you?

15 A He asked me did I see the person that I saw that
16 night at McGuirt's.

17 Q Did you look at this lineup?

18 A Yes, sir, I did.

19 Q Did anybody suggest to you that you should pick
20 anybody out of the lineup?

21 A No, sir.

22 Q Did anybody suggest to you that you should pick any
23 particular person out of the lineup?

24 A No, sir.

25 Q Did anybody give you the names of any of the six

1 pictures in this lineup?

2 A No, sir.

3 Q Again, I'm handing you State's number 117 for
4 identification purposes. Did you look at it?

5 A Yes, sir.

6 Q Did you look at all six pictures?

7 A Yes, sir, I did.

8 Q Did you see on State's Exhibit Number 117 for
9 identification the face of the person you had seen at
10 McGuirt's Tire Service earlier that -- earlier on -- the
11 day before, Friday afternoon?

12 A Yes, sir.

13 Q Did you indicate who that person was?

14 A Yes, sir, I did.

15 Q And who did you pick?

16 A Number four.

17 Q When you picked number four, did you recognize who
18 that was?

19 A No, sir.

20 Q I mean by name or somebody you knew?

21 A No, sir.

22 MR. BARFIELD: Your Honor, at this time, I'd offer
23 State's 117 for identification as exhibit 117.

24 MR. SWERLING: Preserving all previously stated
25 objections.

1 THE COURT: Subject to the Defendant's previously
2 stated objections, State's 117, photo lineup, into
3 evidence.

4 (WHEREUPON, State's Exhibit No. 117 was admitted into
5 evidence.)

6 MR. BARFIELD: And Your Honor, while we're doing
7 this, this is the one-page copy of this.

8 MR. SWERLING: Same position, Your Honor.

9 THE COURT: And what's it numbered?

10 MR. BARFIELD: I would also offer State's Exhibit
11 number 116 for identification as State's Exhibit 116.

12 THE COURT: Subject to the same objections.

13 (WHEREUPON, State Exhibit No. 116 was admitted into
14 evidence.)

15 BY MR. BARFIELD

16 Q Do you see in the courtroom today the person that you
17 saw at McGuirt's Tire at 6:13 on Friday, November 23,
18 2001?

19 A Yes, sir.

20 Q Where is he sitting, and what is he wearing?

21 A He's sitting at the defendant's table.

22 Q What does he have on?

23 A White T-shirt, a little -- like a grayish striped
24 shirt, button-up front shirt.

25 Q The fellow seated next to Mr. Swerling in the middle

1 of this table?

2 A Yes, sir.

3 Q Any question about that?

4 A No, sir.

5 Q Are you sure that's the man you saw at McGuirt's Tire
6 Service on November 23rd?

7 A Yes, sir.

8 MR. BARFIELD: Thank you, sir. Answer anything
9 Mr. Swerling has.

10 THE COURT: Thank you, Mr. Solicitor.

11 Mr. Swerling?

12 CROSS-EXAMINATION:

13 BY MR. SWERLING

14 Q Mr. Hill, Mr. Cook has on a pair of glasses.

15 A Yes, sir.

16 Q And your testimony is that you -- the person you saw
17 on November 23rd had on a pair of glasses?

18 A I don't know. It's been a while.

19 Q That's what you just testified to about five minutes
20 ago.

21 A I don't know, sir. I don't ask a series of
22 questions. I testify.

23 Q Mr. Hill, did you just tell the jury five minutes ago
24 that the person you saw on November 23rd had a pair of
25 glasses on? You just said it five minutes ago. If you

1 can't remember five minutes ago, how do you remember six
2 years ago?

3 A It was a series of questions that were asked by the
4 prosecution. I don't ask.

5 Q And I'm asking --

6 A I don't ask.

7 Q And I'm asking you.

8 A Well, I mean...

9 Q Did you just tell the jury that the person you saw on
10 November 23rd had on a pair of glasses?

11 A I could have said it, sir. I don't know.

12 Q You don't know if you just said five minutes ago that
13 the -- could you read that back for me?

14 THE COURT REPORTER: Give me one second.

15 (Pause).

16 (The court reporter reads back testimony.)

17 BY MR. SWERLING

18 Q Four times.

19 A I thought they were talking about the -- if you hold
20 up the picture, I thought they were talking about the
21 glass in the -- what I said is subject to that,
22 Mr. Swerling. Well, you're trying to get me all confused
23 when I -- you know.

24 Q Mr. Hill, there's -- there's no confusion to the
25 question.

1 A Sir, I'm just answering the questions of what the
2 prosecutor was showing me -- I mean, the prosecutor was
3 showing me the pictures.

4 Q I don't know what you're saying.

5 A Yes, sir.

6 Q The court reporter just read back your testimony, and
7 the solicitor asked you four times.

8 A Yes, sir.

9 Q "Did you see glasses"?

10 A Well.

11 Q And you said, "Yes, sir".

12 A Well, that was moving mighty fast. I know what I saw
13 that night, Mr. Swerling.

14 Q Well, I'm still asking you, did you see the person
15 with glasses? You testified and that's what you told the
16 jury, isn't that true?

17 A I saw a person --

18 Q Mr. Hill.

19 A -- with no glasses, but when he asked me the
20 question, I don't know. He had the picture up. I don't
21 know what he was saying about the glass in the picture or
22 what, Mr. Swerling.

23 Q The glass in the picture?

24 A If you hold up that picture, you will see a
25 plateglass window right there, that height.

1 Q That's what you're saying?

2 A He's up there asking the questions. I'm just
3 answering, but I know what I saw that night.

4 Q Well, the question is -- the jury needs to understand
5 what you saw that night.

6 A Well, I'll tell the jury that I know what I saw that
7 night --

8 Q Okay. You told --

9 A -- on November 23rd.

10 Q And you told Mr. Barfield in response to four
11 different questions that the person had on glasses, isn't
12 that true? Isn't that what you just testified to?

13 A Maybe I misinterpreted the question wrong.

14 Q Well, again, I still don't know what your answer is.
15 You just told in response to what the Solicitor said,
16 didn't you tell the jury that the person you saw on
17 November 23rd had on glasses?

18 A The subject didn't have on no glasses on November
19 23rd. Maybe I misinterpreted Mr. Barfield's question.

20 Q Four times?

21 A Sir, this is my first time -- well, actually, this is
22 not my first time testifying.

23 Q Not your first time.

24 A The prosecutor is asking questions, and I'm answering
25 those questions.

1 Q I agree.

2 A Okay.

3 Q The prosecutor is asking questions, and you're
4 answering them.

5 A Yes, sir.

6 Q And you told the jury four different times that the
7 person had on glasses.

8 A Well, the subject --

9 Q Is that your testimony?

10 A The subject didn't have on glasses.

11 Q He did have on glasses?

12 A Didn't.

13 Q He did not have on glasses?

14 A No, sir. If that's my testimony, I got the question
15 misinterpreted.

16 Q So you're telling the jury now he did not have on
17 glasses?

18 A No, sir, he didn't.

19 Q Okay. All right. Because you now realize that you
20 have testified on two occasions, last Thursday, which was
21 the 18th of October --

22 A Yes, sir.

23 Q -- and you testified on October -- let me see. I
24 want to make sure I get it right.

25 Excuse me one minute, Your Honor. I think I grabbed

1 the wrong piece of paper.

2 (Pause).

3 You testified on October 18th, 2007. You also
4 testified in a prior proceeding, a hearing, on
5 August 14th, 2006, and you also spoke with Mr. Paschal
6 that night of November 23rd. You never mentioned glasses
7 to anybody.

8 A Also, I don't recall testifying in October neither.

9 Q You don't recall testifying last October?

10 A No, sir.

11 Q You have to be kidding me.

12 A Is it a deposition or is it --

13 Q In a prior proceeding right on that witness stand, in
14 a prior proceeding, in a prior hearing.

15 A Oh, in a hearing, yes, sir, I did.

16 MR. BARFIELD: I didn't hear. I'm sorry, I didn't
17 hear the question.

18 BY MR. SWERLING

19 Q He first said he didn't remember testifying in a
20 prior proceeding on August 14th, 2006.

21 You do remember it now?

22 A You said October.

23 Q October 18th, last week; august 14th, 2006.

24 A Yes, sir.

25 Q You do remember that?

1 A Yes, sir.

2 Q Okay. Now, let me ask you a few follow-up questions.

3 You see this guy -- you know Mr. McGuirt's is supposed to
4 be closed around six. Is that what you testified to?

5 A Yes, sir. He normally would be closed around that
6 time, but being a Friday, he normally piddled around
7 because he stayed like three minutes from me, his place of
8 business.

9 Q Right. And this was 6:13 in the evening?

10 A Yes, sir.

11 Q It was dark out?

12 A Yes, sir.

13 Q And you see a black male walking out of his business?

14 A Yes, sir, not out of his business.

15 Q Which --

16 A In the vicinity.

17 Q In the vicinity of his business walking toward the
18 area where his truck is?

19 A Yes, sir.

20 Q With something under his arm, correct?

21 A Yes, sir.

22 Q And you're telling this jury here that you didn't
23 stop him?

24 A No, sir.

25 Q You didn't stop him to question him?

1 A No, sir.

2 Q Okay. You saw the lights on in the place?

3 A Yes, sir.

4 Q But nothing appeared to be unusual to you; is that
5 correct?

6 A No, sir.

7 Q Okay. How long have you been on the police force?

8 A Seven years.

9 Q Seven years. Now, when you're coming down, I think
10 it might have been -- excuse me one moment. I'm showing
11 you what's State's Exhibit number one. I'm going to stand
12 over here so you can see the jury. What you're saying is
13 you saw this man walking this way, correct?

14 A Yes, he was walking right here (indicating).

15 Q And he had his right shoulder towards you, correct?

16 A Yes, sir.

17 Q And he never turned around bodily so you could see
18 his frontal body, did he?

19 A No, sir, he didn't.

20 Q Okay. So he was walking the whole time with his
21 right to you?

22 A Yes, sir.

23 Q But you said you came face to face with him or you
24 saw his face?

25 A Yes, sir. When I turned on this side street, we

1 both -- we turned and we both looked at each other.

2 Q Okay. But whoever this was standing right around
3 here with something under his arm and Mr. McGuirt still
4 there, you just kind of drove off?

5 A Yes, sir.

6 Q You didn't stop?

7 A No, sir.

8 Q Okay. All right. He was walking towards his truck?

9 A Towards this area, yes, sir.

10 Q Okay. All right. Now, you first saw him -- like
11 there's a stop sign right here?

12 A Yes, sir.

13 Q You were coming this way; is that right?

14 A Yes, sir.

15 Q And you were driving in this direction towards the
16 station, correct?

17 A Yes, sir.

18 Q Okay. And there's -- this road goes in front of
19 Mr. McGuirt's Tire Service, correct?

20 A Yes, sir.

21 Q Okay. That's the road you were going to make a right
22 turn on?

23 A Yes, sir.

24 Q Okay. So you never got any closer than the stop
25 sign, did you?

1 A That's rare. That's on the other side of the stop
2 sign.
3 Q Yeah.
4 A Yes, sir.
5 Q When you made the right turn?
6 A Yes, sir.
7 Q But you never went into the parking lot?
8 A No, sir, I didn't.
9 Q You never crossed over the road?
10 A No, sir.
11 Q And the person was over here in the corner of the
12 building?
13 A Yes, sir.
14 Q Yeah, right in the corner of the building.
15 A Yes, sir.
16 Q All right. Now, you had previously told my
17 investigator, and you previously testified that it was
18 about 50 feet.
19 A Yes.
20 Q Isn't that true?
21 A Yes, sir. I didn't -- I'm not saying it, but I --
22 you know, don't know the exact...
23 Q That was your estimate?
24 A Yes, sir.
25 Q About 50 feet?

1 A My estimate.

2 Q And then you made a right turn. You had your
3 headlights on?

4 A Yes, sir, I did.

5 Q Where were -- where were the other lights that you
6 could see that illuminated the area?

7 A The stoplight, the pole light.

8 Q Okay.

9 A And the lights under the station.

10 Q The lights under the station.

11 A Yes, sir.

12 Q Okay. Now, you went home?

13 A Yes, sir.

14 Q And then found out later that something had happened
15 at McGuirt's Tire Service, correct?

16 A Yes, sir.

17 Q And then you went back out to the Ridgeway Police
18 Department, correct?

19 A I went back to McGuirt's Tire.

20 Q Okay. And at that point you told someone that you
21 had seen someone out there at around 6:13?

22 A Yes, sir.

23 Q And you remembered 6:13?

24 A Yes, sir.

25 Q In other words, there was -- you left at -- I mean,

1 you made that right turn, and you did not stop, did not
2 investigate, didn't do anything but you still remember the
3 time?

4 A Yes, sir.

5 Q I just wanted to make sure.

6 Now, when -- your testimony today was that the person
7 was about 5'7" to 5'8", correct?

8 A Yes, sir.

9 Q About 18 to 20 years of age?

10 A Yes, sir.

11 Q Medium skin?

12 A Yes, sir.

13 Q White tennis shoes?

14 A Yes, sir.

15 Q Blue jeans?

16 A Yes, sir.

17 Q Correct, a Polo shirt, correct?

18 A Like a golf, Polo shirt.

19 Q Yeah, a golf Polo shirt. He had no jacket on, no
20 nothing, no sweat shirt, I mean, not full length sleeves
21 or windbreaker or anything like that, correct?

22 A He had on full length sleeves, a Polo shirt, yes,
23 sir.

24 Q He had on a short sleeved Polo shirt.

25 A No, sir.

1 Q He had a Polo shirt on?

2 A I can't even say it right.

3 Q A button-down Polo shirt. Isn't that what -- well,
4 let me remind you --

5 A Right now a Polo shirt is either short sleeved or
6 long sleeved.

7 Q Well, let me remind you on Thursday in a hearing --

8 A Yes, sir.

9 Q -- you said a short sleeved Polo shirt?

10 A I don't recall saying no short sleeved. You asked me
11 was it a Polo shirt, a three button or a four button --

12 Q Okay.

13 A -- Polo shirt. You're talking about the shirt like I
14 got on referring to yourself or what, and I told you.

15 Q And you told me what, a three button or a four
16 button?

17 A I think I told you a four button.

18 Q Okay. And do you remember whether it was long
19 sleeved or short sleeved?

20 A Long sleeved.

21 Q Okay. All right. But it definitely wasn't a sweat
22 shirt, and there definitely wasn't a jacket on at the end
23 of this either?

24 A No, sir.

25 Q It was definitely nothing on his head, correct?

1 A No, sir.

2 Q And it was definitely nothing on his face, correct?

3 A No, sir.

4 Q Correct? No facial hair, correct?

5 A No, sir.

6 Q Okay. He definitely had on white tennis shoes?

7 A Yes, sir.

8 Q Okay. A low haircut?

9 A Yes, sir.

10 Q Now, we established he did not have on glasses,

11 correct?

12 A Yes, sir.

13 Q Okay. Now, you said there was something under his

14 left arm.

15 A There appeared to be something under his left arm.

16 Q But you didn't investigate that?

17 A No, sir. He didn't do nothing to warrant me to go

18 and investigate it.

19 Q Now, you said that also -- the last thing I wanted to

20 talk to you about is you said that person was about 130,

21 140 pounds.

22 A Yes, sir.

23 Q Okay. Now, that night around 12, one o'clock, you

24 met with the composite artist from S.L.E.D. Do you

25 remember that?

1 A Yes, sir.

2 Q Roy Paschal?

3 A Yes, sir.

4 Q All right. And you have testified that this is the
5 person that you felt was the person who you saw at
6 Mr. McGuirt's Tire Service at 6:13 on the 23rd, correct?

7 A Yes, sir.

8 Q Okay. And you talked to Mr. Paschal as he was doing
9 this composite, correct?

10 A Yes, sir.

11 Q And didn't -- did you tell Mr. Paschal on that
12 occasion that the person you saw was not 5'7" or 5'8" but
13 about 5'10"?

14 A I can't recall.

15 Q You can't recall that?

16 A No, sir.

17 Q But you could have told him that?

18 A I could have.

19 Q Okay. And that's different than what you're
20 testifying today?

21 A No, sir. I don't -- I didn't see his -- notice what
22 he was wearing. He asked me to describe what I saw, and I
23 told him.

24 Q That's what I'm asking.

25 A Yes, sir.

1 Q On November 23rd, do you deny telling Roy Paschal
2 that the person you saw was not 5'7" or 5'8" but he was
3 5'10"?

4 A (There was no response).

5 Q You deny it?

6 A I don't deny it because to my -- I can't recall what
7 I told him. I can't recall, you know, the question what
8 he asked me but you know, I just told him what he asked me
9 and describe the person that I saw.

10 Q Well, a person -- you say you can't recall what you
11 told him, is that what you said?

12 A Because I wasn't there watching him writing his notes
13 and stuff. I'm trying to put a mental picture of what I
14 saw when he asked me to describe what I saw.

15 Q No, I understand, sir, but what I'm saying is you
16 said you can't recall what you told him?

17 A No, sir. He would ask me questions, and he was
18 writing and he was drawing and doing everything else.

19 Q Well, what you told him on the 23rd of November
20 should be the same as what you're telling the jury today,
21 isn't it, shouldn't it?

22 A Yes, sir.

23 Q Okay. So you don't know if you -- you don't remember
24 if you told him he was 5'10"?

25 A I can't recall if I told him that.

1 Q Okay. Okay. And did you tell Mr. Paschal that the
2 person you saw was about 110 -- 100 pounds, 100 to
3 110 pounds?

4 A I cannot recall.

5 Q You cannot recall that?

6 A No, sir.

7 Q Now, do you remember last Thursday you said at that
8 hearing we had that you said no, you did not tell him
9 that?

10 A I can't recall that.

11 Q You can't recall that either?

12 A No, sir.

13 Q So you could have told Mr. Paschal that the person
14 who you now say was 130 to 140 pounds was only 100 pounds?

15 A No, sir, I could have.

16 Q You could have?

17 A Yes, sir.

18 Q That's what I'm asking.

19 A Well, I don't recall. I don't know what weight that
20 I estimated in what I said.

21 Q Well, that's what I'm asking you.

22 A Yes, sir.

23 Q What did you tell Mr. Paschal?

24 A It's been almost six years ago.

25 Q Well, the truth is the same on the 23rd of

1 November --

2 A Yes, sir.

3 Q -- as it is on the 22nd of October, 2007?

4 A I don't recall what I told Mr. Paschal.

5 Q Well, was the person 5'10" or was the person 5'7" to
6 5'8"?

7 A Sir, it was a guesstimation.

8 Q I'm asking you.

9 A Between 5'7", 5'8".

10 Q Okay. So if he wrote down 5'10", that would be
11 wrong?

12 A No, sir. I don't know. He could have heard me
13 wrong. I don't know.

14 Q Could have heard you wrong?

15 A Yes, sir.

16 Q Okay. Could he also have heard you wrong about the
17 100 to 110 pounds?

18 A I don't know.

19 Q Well, could he have?

20 A He could have.

21 Q Because you're saying that's not what you said?

22 A Yes, sir.

23 Q Is that what you're saying?

24 A Yes, sir. I didn't -- I don't recall telling him
25 110 pounds.

1 Q You do not recall telling him that?

2 A No, sir.

3 Q Okay. Because you agree someone who is 140 pounds
4 and 110 pounds or 100 pounds, there's a difference?

5 A Yes, sir, there is.

6 Q Okay. Especially if they are 5'8" or 5'9" or 5'10"?

7 A Yes, sir.

8 Q Okay. Because that would be kind of a real skinny
9 person, wouldn't it?

10 A Yes, sir.

11 Q A very slender, slight person.

12 A Yes, sir.

13 Q Okay. Now, you said on -- you're telling the jury
14 today that the person had on a Polo shirt, whether it's
15 long sleeved or short sleeved, but a collar and three or
16 four buttons, correct?

17 A That's correct.

18 Q Did you tell Mr. Paschal that he had his Polo shirt
19 on?

20 A Yes, sir, I did.

21 Q You did. You would not have told him that he had on
22 a sweat shirt?

23 A No, sir.

24 Q Okay. And let's see. I think you told the jury
25 today that he did not have -- that's all he had on. You

1 didn't see any kind of outer jacket or windbreaker or
2 anything like that, correct?

3 A Yes, sir; that's correct.

4 Q Okay. So you could not have told Mr. Paschal that
5 the person had on a windbreaker?

6 A No, I can't recall. I didn't tell him that he had on
7 a wind breaker.

8 Q You did not tell him that? Pardon?

9 A And a Polo shirt.

10 Q A Polo shirt?

11 A Yes, sir.

12 Q Okay. All right. So your description of what you're
13 telling the jury today is the person was 5'7" to 5'8", 130
14 to 140 pounds, correct?

15 A Yes, sir.

16 Q Clean shaven with a Polo shirt?

17 A Yes, sir.

18 Q Okay. Blue jeans and white tennis shoes?

19 A White tennis shoes.

20 Q With no facial hair?

21 A Yes, sir.

22 Q White tennis shoes?

23 A Yes, sir.

24 Q Okay. And something under his left arm?

25 A There appeared to be something under his left arm.

1 Q But you could not tell what it was that was under his
2 left armpit?

3 A No, sir, I couldn't.

4 Q Okay. And you would agree that the truth would be
5 the same whether it was told on November 23rd or was it
6 told on October 22nd, 2007, six years later? The truth
7 doesn't change. You agree with that?

8 A Yes, sir, it should.

9 Q It should be the shame?

10 A Yes, sir.

11 MR. SWERLING: That's all I have.

12 THE COURT: Thank you, Mr. Swerling.

13 MR. SWERLING: Thank you, Your Honor.

14 MR. BARFIELD: Just one quick follow up.

15 REDIRECT EXAMINATION:

16 BY MR. BARFIELD

17 Q When you say Polo shirt, are you aware that there's a
18 brand of clothing called Polo?

19 A Yes, sir.

20 Q Now, are you talking about a polo shirt like a dress
21 shirt like this with a collar that button up and wear a
22 tie with or a knit shirt?

23 A A knit shirt.

24 MR. BARFIELD: Okay. Thank you. That's all.

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

1 I think this would be a good time to take a break.

2 MR. BARFIELD: Yes, sir. Thank you.

3 THE COURT: We'll have about a cigarette-and-a-half
4 break.

5 (WHEREUPON, the jury left open court at approximately
6 12:14 p.m.)

7 THE COURT: Anything from the State before we bring
8 the jury?

9 MR. BARFIELD: No, sir.

10 THE COURT: Anything from the Defendant?

11 MR. SWERLING: No, sir.

12 THE COURT: Bring the jury, please, ma'am.

13 (WHEREUPON, the jury came into open court at
14 approximately 12:38 p.m.)

15 THE COURT: Please let the record reflect that the
16 trial jury and alternate are present in the courtroom.

17 Mr. Barfield?

18 MR. BARFIELD: I call Greg Boney.

19 THE COURT: Come forward and be sworn, please, sir.

20 GREG BONEY, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please be seated. State your name for
23 the record.

24 THE WITNESS: Greg Boney, B-O-N-E-Y.

25 DIRECT EXAMINATION:

1 BY MR. BARFIELD

2 Q Mr. Boney; by whom are you employed?

3 A Fairfield County Sheriff's Office.

4 Q How long have you been employed by the Fairfield
5 County Sheriff's Office?

6 A Over 13 years.

7 Q And what is your current job with the Fairfield
8 County Sheriff's Office?

9 A Criminal Investigator.

10 Q Were you working as a criminal investigator for the
11 sheriff's office on November 23rd, 2001?

12 A Yes, sir, I was.

13 Q Did you become the lead investigator in the incident
14 that occurred at McGuirt's Tire Service involving the
15 victim, Jackie McGuirt?

16 A Yes, I did.

17 Q Did you go out that night to McGuirt's Tire?

18 A Yes, I did.

19 Q Now, at some point during that evening -- well, did
20 you become aware that the composite drawing, which has
21 been introduce into the evidence as State's Exhibit number
22 118, was going to be done and ultimately was done?

23 A Yes, I did.

24 Q And at that point did Darryl Cook, based on Keith
25 Lewis's testimony, did Darryl Cook become a suspect?

1 A Yes, he did.

2 Q At some point were arrest warrants obtained for
3 Darryl Cook?

4 A Yes, sir, on Saturday -- it was in the afternoon
5 hours, I obtained an armed robbery warrant on Mr. Cook.

6 Q Was there any effort made to locate Mr. Cook?

7 A Yes, there was.

8 Q Saturday?

9 A Yes, sir, there was.

10 Q At some point during this investigation did the
11 sheriff's office discover that Cook and others, perhaps,
12 had been at the Ramada Limited down at 77 and 34?

13 A Yes, sir.

14 Q As a result of that information, what did the
15 sheriff's office -- what did y'all do?

16 A Search warrants were obtained for both rooms.

17 Q Were y'all -- well, let me back up. Did somebody --
18 did y'all actually determine two specific rooms that had
19 been rented by these four folks or two folks?

20 A Yes, we did.

21 Q And were search warrants obtained for those two
22 rooms?

23 A Yes.

24 Q Were they served and executed on those two rooms?

25 A Yes, sir, they were.

1 Q Was anybody or anything there when the search
2 warrants were executed?

3 A No, sir.

4 Q No property taken, no items seized --

5 A No, sir.

6 Q -- connected with this case?

7 A No, sir.

8 Q After Darryl Cook became a suspect, did you do
9 anything with respect to Cook himself to search for
10 evidence in the case?

11 A A search warrant was obtained on his residence on
12 Highway 21 South.

13 Q Now, did you know who Darryl Cook lived with?

14 A Yes, sir.

15 Q And who did he live with?

16 A His mother.

17 Q And his mom's name is what?

18 A Geraldine Cook.

19 Q What did the search warrant cover by way of areas
20 that y'all were going to search?

21 A The residence, any outbuildings or vehicles in the
22 yard.

23 Q Was that search warrant executed or served on the
24 property of Geraldine Cook where Darryl lived?

25 A Yes, sir, it was.

1 Q Were any clothing items seized? Well, let me back
2 up. By the time that search warrant was served on Darryl
3 Cook's mom's house, again, was it your -- did you know
4 where Darryl Cook lived?

5 A Yes, sir, I did.

6 Q Did he live at his mama's house?

7 A Yes, he did.

8 Q By the time that search warrant was obtained and
9 served, was there information about a description of the
10 suspect who you thought to be Darryl Cook, clothing and
11 otherwise?

12 A Yes, sir.

13 Q Okay. Were any clothing items seized during the
14 execution of the search warrant at Darryl Cook's mom's
15 house?

16 A Yes, they were.

17 Q Did they turn out to have any value for the sheriff's
18 office from an evidentiary standpoint?

19 A No, sir.

20 Q I'm showing you State's Exhibit Number 51 I believe
21 it is. Do you recognize what's shown in that photograph?

22 A Yes, sir, I do.

23 Q I'm also showing you State's Exhibit Number 45. Do
24 you recognize what's shown in that photograph?

25 A Yes, sir, I do.

1 Q First of all, what's 45? What is that a picture of?

2 A Forty-five is a green sofa that was located inside
3 McGuirt's Tire.

4 Q And 51 is a picture of what?

5 A A footwear impression left on one of the cushions of
6 that sofa.

7 Q The same sofa shown in 45?

8 A Yes, sir.

9 Q At some point did you become aware that there was a
10 footprint on a cushion on a sofa at McGuirt's Tire?

11 A Yes, sir, I did.

12 Q And when did you become aware of that?

13 A That Friday night.

14 Q Did you see it yourself?

15 A Yes, I did.

16 Q Did you familiarize yourself with it?

17 A Yes, I did.

18 Q During the execution of the search warrant at Cook's
19 mom's house, were you looking for shoes?

20 A Yes, sir.

21 Q Did you take any shoes when that search warrant was
22 executed?

23 A No, sir, we did not.

24 Q Did you see any shoes?

25 A Yes, sir.

1 Q Did any shoes that you saw at Cook's house resemble
2 in any way the footprint on the couch at McGuirt's Tire?

3 A No, sir.

4 Q How thorough was the search at Cook's house?

5 A Very thorough.

6 Q Did Darryl Cook get arrested on the warrant that you
7 had obtained on Saturday the 24th of November '01?

8 A Yes, sir, he did.

9 Q And what date was he taken into custody?

10 A That following Monday, I believe it was the 26th,
11 2001, November 26th.

12 Q Qurbitt Jones and Jasper Sanders testified the other
13 day about some information relating to a gun. Did you
14 receive that information to investigate that line of
15 information?

16 A Yes, sir, I did.

17 Q Without quoting anybody, don't quote anybody but when
18 did you get information about this gun that the jury heard
19 some testimony about?

20 A In April of this year.

21 Q And did you have a name associated with that
22 information and the gun to try to track this down?

23 A Yes, sir, I did.

24 Q And what name was associated with it initially?

25 A Qurbitt Jones.

1 Q Did you look for Mr. Jones?

2 A Yes, I did.

3 Q Let me back up just a little bit. Do you know
4 whether Qurbitt Jones in the past or currently had any
5 relationship with the Cook family? Did you know that? If
6 you don't, that's fine.

7 A I don't recall.

8 Q That's fine. Did you find Qurbitt Jones in April?

9 A No, I did not.

10 Q Did you find him in May?

11 A No, sir.

12 Q Did you find him in June?

13 A Yes, sir.

14 Q When in June did you find Qurbitt Jones?

15 A June 19th.

16 Q Had you made -- prior to June 19th had you made any
17 determination about whether you were going to charge
18 Qurbitt Jones with any offense related to this gun in this
19 case?

20 A Yes, sir, I had.

21 Q Did you, in fact, obtain an arrest warrant for him at
22 some point?

23 A Yes, sir, I did.

24 Q When -- when did the arrest warrant get issued?

25 A On April 18th, 2007.

1 Q While you were searching for Mr. Jones, did y'all
2 have the arrest warrant outstanding?

3 A Yes, we did.

4 Q And again, you said you located Mr. Jones when?

5 A On June 19th, 2007.

6 Q And did he at some point give you a statement about
7 his knowledge of this gun?

8 A Yes, he did.

9 Q On what date did that occur?

10 A On the 19th.

11 Q Of what month of what year?

12 A June 19th, 2007.

13 Q And was Mr. Jones at some point served with the
14 arrest warrant and placed into custody?

15 A Yes, he was.

16 Q What date did that occur?

17 A On the 20th of June, 2007.

18 Q Did he get bonded out?

19 A Yes, sir, he did.

20 Q When did that occur?

21 A I believe it was within the day.

22 Q Okay. Back in June?

23 A Yes, sir.

24 Q Do you have any knowledge of his difficulties with
25 someone named Crystal Cook over -- about child support?

1 Do you have any personal knowledge about any of that at
2 all?

3 A Just that he did.

4 Q Okay. After speaking with Qurbitt Jones concerning
5 the gun, did that lead you to somebody else?

6 A Yes, sir, it did.

7 Q Who did that lead you to?

8 A Jasper Sanders.

9 Q Okay. Thank you. Investigator Boney, I'm going to
10 ask you if you can identify this document that I'm handing
11 you right now. What is that?

12 A It's a photo of Mr. Cook's residence and also of his
13 grandfather's residence I took myself.

14 Q When you say -- all right. When you say Mr. Cook's
15 residence, actually, whose house is it?

16 A Geraldine Cook's.

17 Q Okay. And how is granddaddy -- Darryl's granddaddy,
18 which side of the family?

19 A His mother's side.

20 Q And do you know granddaddy's name?

21 A John Miller.

22 Q Okay. You took this photograph over the weekend?

23 A I took it last Friday.

24 Q And what road is this photograph taken on?

25 A Highway 21.

1 MR. BARFIELD: Your Honor, at this time, I'd offer
2 this photograph as State's number -- probably 119?

3 MR. SWERLING: No objection.

4 THE COURT: State's the 119 into evidence without
5 objection, a photograph.

6 (WHEREUPON, State's Exhibit No. 119 was marked for
7 identification and received into evidence.)

8 BY MR. BARFIELD

9 Q I'm going to hand you State's Exhibit Number 119
10 briefly. I'm going to hold it this way. You hold it.
11 Which house is Geraldine Cook's house?

12 A The blue house with black shutters right here
13 (indicating).

14 Q And which house is granddaddy's house?

15 A The split level house here (indicating).

16 Q All right. Speak up loudly. Is there a driveway
17 between the two houses?

18 A Yes, there is, on 21 in between the houses.

19 Q All right. Thank you.

20 In connection with your investigation of this case,
21 I'm going to show you something else. I'm not going to
22 hold it up yet, but do you recognize that?

23 A Yes, sir, I do.

24 Q What is that?

25 A It's an aerial photo map of the Ridgeway area.

1 Q Does it show several of the landmarks that have been
2 testified about in this case?

3 A Yes, it does.

4 Q And this -- is this the official tax map, or actually
5 two that have been stuck together, for Fairfield County?

6 A Yes, it is.

7 MR. BARFIELD: Your Honor, at this time, I'd offer
8 this two-piece map which is all put together as State's
9 number 120.

10 MR. SWERLING: No objection.

11 THE COURT: State's the 120 into evidence without
12 objection.

13 (WHEREUPON, State's Exhibit No. 120 was marked for
14 identification and received into evidence.)

15 MR. BARFIELD: Permission to set up the easel and
16 have Mr. Boney step down for a couple of minutes?

17 THE COURT: Yes, sir.

18 MR. BARFIELD: Come down here, please, sir, for a
19 couple of minutes.

20 (Complies.)

21 (Pause).

22 BY MR. BARFIELD

23 Q All right. Investigator Boney, did you undertake,
24 number one, to get those maps and prepare that exhibit?

25 A Yes, I did.

1 Q I'm going to ask you are you familiar with the
2 Ridgeway area?

3 A Yes, I am.

4 Q Are you a native of Fairfield County?

5 A No, sir.

6 Q How long have you been living in Fairfield County?

7 A I still live in Blythewood.

8 Q You don't live in Fairfield County, do you?

9 A No, sir.

10 Q How long -- how do you get to work every day?

11 A I usually come up through Ridgeway out of Blythewood
12 on Highway 21.

13 Q And been doing that how many years?

14 A Thirteen.

15 Q All right. You're familiar with the roads and
16 streets in and around the Ridgeway Community?

17 A Yes, I am.

18 Q Are you familiar with the businesses and other
19 establishments by name in and around the Ridgeway area?

20 A Yes, I am.

21 Q I'm going to ask you to identify some places on this
22 map by inserting pushpins, if I can get them opened.
23 Where is McGuirt's Tire Service or was it -- and all of
24 these questions I'm asking you relate to November 23rd,
25 2001. Where is McGuirt's Tire Service?

1 A Right here, on Dogwood Avenue (indicating).

2 Q All right. And use my pencil. Point to Dogwood
3 Avenue, and you're going to need to step back so the jury
4 can see you.

5 A (Indicating).

6 Q All right. Now, where did -- what road -- where does
7 Dogwood Avenue run out?

8 A It runs into Highway 21.

9 Q I'm going to ask you some general questions. If
10 you're coming down Dogwood and get on Highway 21, is
11 Highway 21 designated north and south or east and west?

12 A North and south.

13 Q And if you're headed in the direction away from
14 McGuirt's Tire, are you headed north or south on 21?

15 A South.

16 Q And if you keep going, where are you going to end up?

17 A In Blythewood then Columbia.

18 Q All right. Is the Shell Station shown on that map?

19 A Yes, sir.

20 Q Point to it, and then I'm going to give you a pushpin
21 for it. Stick the pushpin in at the Shell Station.

22 A (The witness complies.)

23 Q What road is the Shell Station on?

24 A It's kind of -- it's in the fork of the road on
25 Highway 21 South and Coleman Street. This is Coleman

1 Street as you turn off toward the Shell Station.

2 Q All right. Well, let me ask you this: In relation,
3 again, to McGuirt's Tire, is there a street behind
4 McGuirt's Tire?

5 A Yes, there is.

6 Q And what street is that?

7 A Coleman.

8 Q Okay. Now, is there a road -- is the Shell Station
9 right in the fork of a road?

10 A Yes, this is.

11 Q Is there a road -- can you get -- without going all
12 the way out to the end of Coleman Street, can you get from
13 Coleman Street to 21 at the Shell Station?

14 A Yes, you can.

15 Q How can you do that?

16 A It's like a gravel parking lot area behind the
17 station, if you drive straight across it.

18 Q Is Bishop Squirewell Road, which has also been
19 referred to as the cut, shown on that map?

20 A Yes, it has.

21 Q Trace the path of Bishop Squirewell with the pencil.

22 A (Complies.)

23 Q Do you know it as the cut?

24 A Yes.

25 Q Does Bishop Squirewell connect any two roads?

1 A It connects Highway 21 South and Highway 34 East.

2 Q Now, and you say Bishop Squirewell takes that big
3 bootleg -- not bootleg. That might have been a big turn
4 -- that Dogwood, those two hard turns?

5 A Yes, it does.

6 Q If you put a -- right in the center somewhere,
7 Squirewell, Bishop Squirewell, put a pushpin.

8 A (The witness complies.)

9 Q Where is Highway 34?

10 A (Indicating).

11 Q And if you -- and is Highway 34 designated north and
12 south or east and west?

13 A East and west.

14 Q If you head out Highway 34 away from -- where is
15 downtown Ridgeway? Where is the Main Street in Ridgeway?

16 A This is the main street right here.

17 Q And is that considered Highway 34 or Highway 21 or do
18 you know?

19 A It's called Palmer Street but highway 21 and 34 run
20 together right there on that street.

21 Q Okay. Now, if you head away from Ridgeway on the
22 lower part of the photograph, are you headed east or west?

23 A East.

24 Q And where are you going to end up?

25 A Lugoff, Camden area.

- 1 Q Where -- is Longleaf Road shown on that map?
- 2 A Yes, it is.
- 3 Q Where is Longleaf Road?
- 4 A Right here (indicating).
- 5 Q And does Longleaf Road connect two or more highways?
- 6 A Yes, it does.
- 7 Q What does it connect?
- 8 A Highway 21 South and 34 East.
- 9 Q If you would, put a pushpin at the intersection of
- 10 Longleaf Road and Highway 34 East?
- 11 A (The witness complies.)
- 12 Q What is at the intersection of Longleaf and 34 East?
- 13 Is there -- are there any landmarks down there?
- 14 A Yes, sir. There's a basketball court and also a
- 15 church.
- 16 Q Where is the church?
- 17 A Right here (indicating).
- 18 Q Put a pushpin where the church is.
- 19 A Place the pushpin at the center of the road?
- 20 Q I beg your pardon? Put it where the church is.
- 21 A (The witness complies.)
- 22 Q Do you know the name of that church?
- 23 A Immanuel Baptist Church.
- 24 Q Is the area where Jackie McGuirt's truck and the
- 25 V.C.R. and other miscellaneous things were found shown on

1 that map?

2 A Yes, it is.

3 Q Where is that?

4 A Down 34 East right here.

5 Q Now, did you go down there and examine all of those
6 areas?

7 A Yes, I did.

8 Q And when the stuff was discovered down there?

9 A Yes, I did.

10 Q What's on that road? Is it a driveway? Is it a big
11 road, a paved road?

12 A Yes, sir. It's a driveway leading back into the
13 Weldon house.

14 Q And is --

15 A It's a little way out.

16 Q Now, put a pushpin approximately where the truck was
17 discovered.

18 A (The witness complies.)

19 Q Did you at some point during your investigation of
20 this matter have occasion to measure distances between the
21 various points that you have shown the jury?

22 A Yes, sir.

23 Q Approximately -- and did you measure them in your
24 car?

25 A Yes, I did.

1 Q Did you drive those distances to measure them?

2 A Yes, I did.

3 Q Approximately how far from McGuirt's Tire Service to
4 the Shell Station, first of all?

5 A Approximately eight-tenths of a mile. That's coming
6 out of the back, back driveway on Coleman Street, and
7 there's a Shell Station that way.

8 Q Did you measure it coming down Dogwood to 21?

9 A No, sir, I didn't.

10 Q Okay. But you said eight-tenths of a mile coming out
11 Coleman Street?

12 A Yes, sir.

13 Q How far is it from the Shell Station to the area --
14 generally the area of Longleaf and 34 and Immanuel church?

15 A 1.4 miles approximately.

16 Q And show the first two points of that. Shell
17 Station, 1.4 you said?

18 A Yes.

19 Q Approximately how far from Longleaf, 34, and the
20 church to where the truck was located?

21 A Four-tenths of a mile, approximately.

22 Q How far, approximately, from McGuirt's Tire to where
23 the truck was located? From the red pushpin to the
24 farther -- I'm sorry, the white pushpin to the farthest
25 pushpin?

1 A Approximately 2.6 miles.

2 Q Did you drive that distance --

3 A Yes, sir.

4 Q -- coming out Coleman Street?

5 A Yes, I did.

6 Q And what kind of speed were you driving?

7 A Speed limit.

8 Q And about how long did it take you to drive from
9 McGuirt's to where the truck was found?

10 A Approximately four or five minutes.

11 Q Is Darryl Cook's residence, which you described on
12 State's Exhibit Number 119, shown on that photograph?

13 A Yes, sir.

14 Q Put a pushpin in the approximate location where
15 Cook's house is.

16 A (The witness complies.)

17 Q Did you measure how far it is from Darryl Cook's
18 house to the Shell Station?

19 A Yes, sir, I did.

20 Q About how far?

21 A Approximately four-tenths of a mile.

22 MR. BARFIELD: Your Honor, that's all the questions I
23 have of Investigator Boney at this point, probably will
24 need to ask him some more questions about another matter
25 after awhile.

1 THE COURT: All right. Thank you, Mr. Solicitor.

2 Cross, Mr. Swerling?

3 MR. SWERLING: Your Honor, can I reserve my questions
4 until he completes his examination?

5 THE COURT: Yes, sir.

6 MR. BARFIELD: I think we're at a point where we
7 probably need to conclude Investigator Boney after lunch.

8 THE COURT: All right. We'll have additional
9 testimony from Mr. Boney after lunch, but we're going to
10 break for lunch at this time.

11 I'm going to ask you to return to your jury room at
12 2:35, and we'll resume the trial at that time. Please do
13 not discuss the case. Thank you.

14 (WHEREUPON, the jury left open court at approximately
15 1:06 p.m.)

16 THE COURT: Anything from the State before lunch?

17 MR. BARFIELD: Let me explain to you the reason we
18 had to break. Mr. Boney is prepared to testify in a
19 little bit, after lunch, that Mr. Cook did give a
20 statement. It's not something I would characterize as a
21 confession, by any means, but it was a statement. He was
22 in custody, almost a month after he had been arrested.

23 I think I'm going to want him to testify about that.
24 That was not something Mr. Swerling and I discussed
25 earlier. I believe Mr. Swerling probably would request a

1 Jackson V. Denno hearing before I get into that, and
2 that's why I stopped.

3 MR. SWERLING: Judge, I've explored that with
4 Mr. Cook about the statement, and he tells me that the
5 statement was given after he was given his Miranda
6 warnings, and he signed a Miranda acknowledgment and a
7 waiver.

8 He tells me he was not forced or coerced; that he
9 intelligently signed that and waived his rights, and he
10 did give a statement. He has identified the statement as
11 his, so I don't want to waste the Court's time in light of
12 what my client tells me. We will go ahead and allow the
13 statement in.

14 MR. BARFIELD: Thank you.

15 MR. SWERLING: Without objection, but I would like
16 him to -- you to query him on the record so there's no
17 question about that.

18 MR. BARFIELD: And there's one additional fact that
19 I'd like to throw into this mix. This all occurred way
20 before I got involved in this case, but the investigative
21 notes from Chief Deputy Lewis indicates that on that
22 Monday morning a lawyer from Columbia called and said
23 Mr. Cook was going to turn himself in.

24 To my knowledge we don't have anything from some
25 lawyer at that time saying that he was, in fact, represent

1 Mr. Cook, but if there's any issue about that, we need to
2 waive that.

3 MR. SWERLING: There's no issue about it. It's a
4 voluntary statement. We don't have any objection to it
5 coming in.

6 THE COURT: And Mr. Cook, you heard your attorney,
7 Mr. Swerling, state that he had discussed the statement
8 that you gave.

9 You have reviewed that statement, I guess today or
10 yesterday or recently, and that you were not coerced. You
11 had no force. You had been Mirandized, and you do not
12 object to that statement coming in. I think that's a good
13 paraphrase of -- I hope it is of what Mr. Swerling said.
14 Is -- is that still your position?

15 THE DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: All right. Thank you.

17 MR. BARFIELD: Nothing further from the State before
18 lunch.

19 MR. SWERLING: Nothing further.

20 MR. BARFIELD: I would request that Mr. Swerling and
21 I have two minutes with you before everybody breaks camp
22 about the scheduling in general.

23 THE COURT: All right. I'll see you in chambers.

24 MR. BARFIELD: Thank you, Judge.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Anything from the State before we bring
2 the jury?

3 MR. BARFIELD: No, sir.

4 THE COURT: Defendant?

5 MR. SWERLING: No, sir.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:50 p.m.)

8 THE COURT: Please let the record reflect that the
9 trial jury and alternate are present in the courtroom. I
10 hope each of you have a nice lunch.

11 Mr. Solicitor?

12 MR. BARFIELD: Your Honor, I will continue my
13 questioning of Investigator Greg Boney.

14 BY MR. BARFIELD

15 Q Investigator Boney, I think you testified before
16 lunch that Darryl Cook was taken into custody on Monday,
17 October 26th of 2001?

18 A That's correct.

19 Q Was he still in custody at the Fairfield County
20 Detention Center on December 21st of 2001?

21 A Yes, sir, he was.

22 Q And on that date, did you and Eric Gill, also an
23 investigator with the Sheriff's Office, go meet with
24 Mr. Cook at the detention center?

25 A We did.

1 Q And was the purpose of that meeting to talk to him
2 about this case?

3 A Yes, it was.

4 Q I'm going to hand you a document, two pages stapled
5 together, and ask you to take a look at it briefly, both
6 pages.

7 A (The witness complies.)

8 Q Do you know what that is?

9 A Yes, I do.

10 Q What is the first page of that document?

11 A The first page is the Fairfield County Sheriff's
12 Office waiver of rights form in which the defendant was
13 advised of his Miranda warnings and signed it.

14 Q All right. Was that all completed?

15 A Yes, it was.

16 Q Did Mr. Cook sign it?

17 A Yes, he did.

18 Q And does it bear a date?

19 A 12/21/01.

20 Q All right. And what is the second page? Just in
21 general, what is it?

22 A It's a statement form.

23 Q And is it a filled out statement form?

24 A Yes, it is.

25 Q Whose statement is it?

1 A Darryl Cook.

2 Q And is it signed and dated also by Darryl Cook?

3 A It's signed by Darryl, but it's notarized by Eric
4 Gill.

5 Q All right. And is that Darryl Cook's statement that
6 you took on December 21 related to this case?

7 A Yes, it is.

8 Q This is the originals of these two documents?

9 A Yes, sir.

10 MR. BARFIELD: Your Honor, at this time, I'd offer
11 the statement as State's Exhibit 121.

12 MR. SWERLING: No objection, Your Honor.

13 THE COURT: State's 121?

14 MR. BARFIELD: Yes, sir.

15 THE COURT: State's 121 into evidence of without
16 objection.

17 (WHEREUPON, State's Exhibit No. 121 was marked for
18 identification and received into evidence.)

19 MR. BARFIELD: Thank you, sir. Answer anything
20 Mr. Swerling has.

21 THE COURT: Mr. Swerling, cross?

22 MR. SWERLING: Thank you.

23 CROSS-EXAMINATION:

24 BY MR. SWERLING

25 Q I just have a few questions. On November 26th,

1 Mr. Cook turned himself in, right?

2 A Yes, sir; that's correct.

3 Q Okay. And that was at the jail or the Sheriff's
4 Department?

5 A I believe he came to the Sheriff's Office.

6 Q Okay. And when he was interviewed, you explained to
7 him that he did not have to talk with you, correct?

8 A Yes, sir, I did.

9 Q You explained to him that he could have a lawyer if
10 he wanted to?

11 A Yes, sir.

12 Q If he couldn't afford one, the State would provide
13 one, correct?

14 A That's correct.

15 Q And he didn't have a lawyer with him, correct?

16 A Correct.

17 Q He didn't ask for a lawyer during any time that you
18 all were interviewing him, did he?

19 A No, sir.

20 Q Okay. And so he gave you a statement freely and
21 voluntarily, correct?

22 A Yes, sir, he did.

23 Q All right. He didn't assert any rights that he had
24 not to give you a statement or ask for a lawyer?

25 A No, sir.

1 Q Is that correct?

2 A No, sir.

3 Q And he signed and initialed these documents and also
4 signed the statement for you?

5 A Yes, sir, he did.

6 Q Is that correct?

7 A Yes, sir.

8 Q Okay. And it's my understanding that his dad, I
9 believe, signed a consent for you to search the house, as
10 well? Do you recall that when you all went out there?

11 A No, sir, I don't.

12 Q I have a consent to search. Would you tell me if
13 that is -- it may be a different search, but Mr. Cook
14 signed that?

15 A Yes, this was a separate house.

16 Q Another house?

17 A Yes, sir.

18 Q Okay. So it was another house that was searched, but
19 there was a consent to search by Mr. Cook?

20 A Yes, sir.

21 Q Okay. All right. Okay. I just didn't know which
22 one this went to, okay.

23 A Okay.

24 Q Now, that search that you conducted, I think you told
25 Mr. Barfield was an extensive search?

1 A Yes, sir.

2 Q And you were looking for anything that had anything
3 to do with the case?

4 A Yes, sir.

5 Q You were looking for a gun?

6 A Yes, sir.

7 Q Didn't find a gun?

8 A No, sir.

9 Q Looking for a skully cap, didn't find a skully cap?

10 A No, sir.

11 Q Didn't find a windbreaker with a hood?

12 A No, sir.

13 Q Didn't find a windbreaker?

14 A I don't recall.

15 Q Okay. Well, if you had, you would have seized it,
16 correct?

17 A Yes.

18 Q Didn't find a Polo shirt matching the description
19 Mr. Hill would have provided?

20 A No, sir.

21 Q Didn't find the glasses Mr. Hill was talking about,
22 did you?

23 A No, sir.

24 Q Okay. Didn't find a sweatshirt that Mr. Hill was
25 describing or anybody described?

1 A No, sir.

2 Q Okay. Mr. Hill, I think, talked about a Polo shirt,
3 but you had some information it might have been a sweater
4 or a sweatshirt, correct?

5 A Yes, sir.

6 Q You had some information it might be a jacket with a
7 hood on it?

8 A Yes, sir.

9 Q You didn't find any of those things?

10 A No, sir.

11 Q You didn't find a pair of white tennis shoes?

12 A I believe there were some white tennis shoes but
13 none...

14 Q None you were looking for. So there was nothing
15 found in Mr. Cook's house of any evidentiary value in this
16 case; is that correct?

17 A That's correct.

18 Q And nothing that was found at his house that would in
19 any way connect him to this particular case, is that true?

20 A That's true.

21 Q Okay. And had -- had you found that, you would have
22 taken it, you would have sent it to S.L.E.D. It would
23 have been analyzed to see whether or not it had any value
24 as far as evidence is concerned; is that correct?

25 A Yes, sir.

1 Q Okay. Now, the description of -- that Mr. Hill or
2 anybody else might have given out or whatever information
3 you were gathering, that was not public information,
4 correct?

5 A Not completely, no, sir.

6 Q No. I mean, it was something with law enforcement.
7 It wasn't what Mr. Hill told you, for example. Let's say
8 Mr. Hill. Whatever Mr. Hill told you was information you
9 had, but it was not communicated to Darryl Cook?

10 A No, sir.

11 Q I mean, there's no way, as far as you know, that
12 Darryl Cook would have known what evidence you were
13 looking for when you went to search his house, correct?

14 A Not during the time of the search warrant, no, sir.

15 Q Correct. Now, one other question I wanted to ask you
16 was Mr. -- I think the solicitor was talking to you about
17 Mr. Qurbitt Jones.

18 Mr. Qurbitt Jones, the warrant was issued back in
19 April, but it actually was not executed or served on him
20 until June of 2007; isn't that correct?

21 A That's correct.

22 Q Okay. I think, I believe, June 20th of 2007?

23 A Yes, sir.

24 Q Okay. So that would have been the first time that
25 Mr. Jones was taken into custody in connection with this

1 accessory after the fact of a violent crime warrant; is
2 that correct?

3 A Yes. He was actually picked up on the 19th, and the
4 warrant was served on the 20th.

5 MR. SWERLING: Right. Let me see. I think that's
6 all I have. Thank you.

7 THE COURT: Thank you, Mr. Swerling.

8 MR. SWERLING: Thank you.

9 MR. BARFIELD: Nothing else from this witness.

10 THE COURT: Thank you. You may step down.

11 MR. BARFIELD: I call Joan McGuirt.

12 JOAN MCGUIRT, after being duly sworn,
13 testified as follows:

14 THE CLERK: Thank you. Speak into the mic.

15 THE WITNESS: Joan McGuirt.

16 THE COURT: Ms. McGuirt, at any time during your
17 testimony if you need, feel like you need, to take a break
18 or a tissue or water or anything, just let the Court know.

19 THE WITNESS: I need a tissue.

20 (Pause).

21 Thank you.

22 DIRECT EXAMINATION:

23 BY MR. BARFIELD

24 Q Ms. McGuirt, where do you live?

25 A Ridgeway, South Carolina.

1 Q How long have you lived in Ridgeway?

2 A Forty-one years.

3 Q What is your -- what street do you live on in
4 Ridgeway?

5 A [REDACTED]

6 Q And who was Jackie McGuirt.

7 (There was no response).

8 (crying).

9 A He was my wonderful, wonderful husband of over 35
10 years.

11 THE COURT: Take all the time you need, Ms. McGuirt.

12 (Pause).

13 (crying).

14 A Okay.

15 Q What did Mr. McGuirt do for a living?

16 A He -- he ran McGuirt's Tire Service and gasoline
17 station.

18 Q And where was McGuirt's Tire Service?

19 A It's located in Ridgeway on Dogwood Avenue.

20 Q How far from the station to the house, your house?

21 A Two, two-and-a-half blocks.

22 Q Okay. How long did he run McGuirt's Tire Service?

23 A Twenty-two years.

24 Q Does your family own McGuirt's Tire Service any
25 longer?

1 A No.

2 Q Do you own the property that it's operated out of
3 anymore?

4 A No, sir.

5 Q What eventually happened with McGuirt's Tire Service,
6 the business?

7 A It was sold.

8 Q Okay. What are you by profession?

9 A Registered nurse.

10 Q Are you currently working as a registered nurse?

11 A I am a licensed registered nurse.

12 Q Are you employed anywhere right now?

13 A Not employed anywhere right now.

14 Q Are you a registered nurse -- how long had you been a
15 registered nurse?

16 A About 15 or so years.

17 Q Were you employed as a nurse back on November 23,
18 2001?

19 A Yes, sir.

20 Q Did you have any role in your husband's business,
21 take any part in his business?

22 A I did.

23 Q What was your role in the business?

24 A I did the bookwork and the tax work that was done
25 quarterly.

1 Q Okay.

2 A And I did the books of -- like manual bookkeeping.
3 We didn't do computers then. It was like a general
4 ledger, not a legal ledger.

5 Q Did y'all have an accountant who did your tax
6 returns?

7 A Yes. We had a person that did the 1040 return and
8 sent the books back up for the next year.

9 Q All right. How much --

10 A And did our estimated taxes.

11 Q All right. Of the 22 years or so your husband ran
12 the business, how long were you his bookkeeper?

13 A All the time.

14 Q Was there a checkbook for the business?

15 A Yes.

16 Q Were there employees for the business?

17 A Yes, sir.

18 Q Were you generally familiar with the employees of the
19 business?

20 A Yes, sir.

21 Q How long have you known Arthur Robinson?

22 A Probably in the early '80s.

23 Q Okay. How did the employees of the business get
24 paid?

25 A They were written a check by --

1 Q I'm sorry. Go ahead.

2 A They were written a check out. My husband then would
3 cash their check so they didn't have to go to the bank to
4 have it cashed.

5 Q Okay.

6 A Out of the money bag that he contained.

7 Q Did your husband keep the checkbook most of the time
8 or some of the time, at least?

9 A He actually -- I worked during the day or night
10 shifts, but he would -- he would write out a lot of the
11 checks, and I would enter the checkbook and do the
12 balancing of the checkbook and the bank statements along
13 with all of the other entries that were required for the
14 station business.

15 Q In one way or another, did you eventually have
16 knowledge of all the checks that got written?

17 A Oh yes, oh yes.

18 Q Okay.

19 A I entered them -- I entered them when I did the
20 books, the general ledger. That's where they were entered
21 individually.

22 Q All right. To your knowledge, was a young man named
23 Darryl Cook ever employed by your husband, Jackie McGuirt,
24 at McGuirt's Tire?

25 A No, sir.

1 Q How often did you go by the store?

2 A Pretty often. I'd say several times a week.

3 Q Had you ever seen someone that you then knew or now
4 know as Darryl Cook working at the store?

5 A Never --

6 Q Doing --

7 A -- no, sir.

8 Q Doing odd jobs, sweeping, cleaning up, doing
9 anything?

10 A No, I did not see him.

11 Q To your knowledge, did you ever come across any
12 checks written by your husband or write any checks
13 yourself payable to a young man named Darryl Cook?

14 A No, sir.

15 Q I'm going to jump way ahead again.

16 A Okay.

17 Q I'm showing you State's Exhibit Number 11. Do you
18 recognize what's shown in that picture?

19 A (Nods in the affirmative).

20 (Crying).

21 That's -- that's my husband's pickup truck.

22 Q How often did he drive that truck?

23 A Every day.

24 Q We're going to talk about November 23, 2001 in a
25 little bit, but did you become aware on November 23, 2001

1 that the truck was missing from the station?

2 A Yes, sir.

3 Q And was it recovered by law enforcement?

4 A Later?

5 Q Did you get the truck back?

6 A Yes, we got the truck back.

7 Q Did you keep the truck?

8 A We sold the truck.

9 Q What did you get for the truck when you sold it?

10 A 6,000, I think.

11 Q Okay.

12 A I know 6,000.

13 Q 6,000?

14 A Yes, 6,000.

15 Q Thank you, ma'am. How many days a week was the
16 station opened?

17 A Monday through Saturday.

18 Q Did your husband work --

19 A Half --

20 Q I'm sorry.

21 A Half day on Wednesday.

22 Q Did your husband always work all six days?

23 A Basically, yes.

24 Q Did he some --

25 A He rarely took any time off.

1 Q All right. Did your husband have a procedure that he
2 followed -- what time was closing time, not Wednesday. I
3 know Wednesday is different, but other days of the week,
4 what was the procedure? What was the closing time?

5 A Six p.m.

6 Q Were you familiar with your husband's habit and
7 routine concerning closing up for the day at
8 six o'clock --

9 A Yes.

10 Q -- or sometime before? And generally, what would he
11 do to close up?

12 A He would take all of the money and the checks and the
13 credit cards that he had done for the day and put it into
14 a Ridgeway Bank bag.

15 Q All right. Stop right there. Again, I'm going to
16 show you State's Exhibit Number 23. Take a look at that
17 and tell me if you recognize that.

18 A Yes, I do.

19 Q And what is -- what is shown in that picture?

20 A It's the Bank of Ridgeway banking vinyl bag that he
21 used.

22 Q Okay. Is that your husband's store bank bag?

23 A That is it.

24 Q Okay. Thank you, ma'am. Now, he would put the
25 money, the cash and the checks and credit card slips in

1 the bank bag and do what with in it when he --

2 A He would bring it home, and then he would put it into
3 a closet.

4 Q Okay. At some point, did he -- did somebody count it
5 up? When did that occur? What did --

6 A That occurred at the station as he ended the process
7 of the -- you know, the day, finalizing the day business.

8 Q Did he, from time to time, make deposits of proceeds
9 that ended up in that Bank of Ridgeway bag?

10 A He made a deposit on Mondays.

11 Q Did he sometimes make other deposits?

12 A He -- yes, because there was a period where he did
13 that. Then the Bank of Ridgeway changed their policy on
14 that -- that they could not deposit the money as per se
15 getting cash.

16 Q That's fine. My question is were there sometimes
17 days other than Mondays that he put money in the bank from
18 the store?

19 A No, not -- not to my knowledge.

20 Q Did he have -- was there any special service that he
21 provided customers on Fridays at the store?

22 A What he did, he would have to write a check out of
23 his checkbook, the service station checkbook, and it would
24 be a large check. He would go cash that check at the Bank
25 of Ridgeway.

1 On Friday morning, he would have a larger amount of
2 money in that bag on Friday evening to cash payroll checks
3 for a logging company group and others, and they, in turn,
4 would pay their bills.

5 Q Okay. Ms. McGuirt, I'm going to show you three
6 pieces of paper one at a time. Take a look at that and
7 tell me if you know what that is.

8 A That's the bank statement.

9 Q From what month of what year?

10 A October 31st, 2001 to November 30th, 2001.

11 MR. BARFIELD: Beg the Court's indulgence one moment.

12 THE COURT: Yes, sir.

13 (Pause).

14 BY MR. BARFIELD

15 Q Is this the entire bank statement for the month of
16 November, 2001?

17 A Yes, sir.

18 Q How many pages are with that bank statement from
19 November of 2001?

20 A Three.

21 Q All right. I'm going to ask you a couple of specific
22 questions about it. On page three were any deposits made
23 on November 23rd of 2001?

24 A The amount of \$8,810.76.

25 Q Was that deposited?

1 A On 11/23.

2 Q Of '01?

3 A '01.

4 Q Now, I'm showing you what -- by the name at the top

5 says it's a deposit ticket. Can you tell me what that is?

6 A 11/23/01.

7 Q Amount?

8 A Yes, sir.

9 Q How much is the amount?

10 A \$8,810.76.

11 Q Whose handwriting was that in?

12 (Crying).

13 A That's my husband's handwriting.

14 Q Does that deposit ticket match the deposit that you

15 just told us about from the statement?

16 A Yes, sir.

17 Q All right. Let me hold the papers back real quick.

18 I'm referring you to page one of the statement and ask you

19 if any large checks were written on November 23 of 2001 on

20 the first page of the statement?

21 A On 11/23, \$8,810.76.

22 Q What check number was that?

23 A 9916.

24 Q And I'm handing you a yellow piece of paper to ask if

25 you can identify that, please, ma'am.

1 A (Nods in the affirmative).

2 Q What's that?

3 A That is a McGuirt's Tire check that was written for
4 cash in the amount of \$8,810.76.

5 Q And the number of that check please, ma'am?

6 A 9916.

7 Q Is that the check that goes with this one?

8 A 11/23/01.

9 Q Is that the check that goes with this entry you just
10 told us about on page one?

11 A Yes.

12 MR. BARFIELD: Thank you, ma'am.

13 Your Honor, at this time I would offer the statement,
14 which is three pages long, with the deposit slip and the
15 check, which I propose to staple all together as State's
16 Exhibit 122.

17 MR. SWERLING: No objection.

18 THE COURT: State's 122 into evidence, bank records
19 without objection.

20 (WHEREUPON, State's Exhibit No. 122 was marked for
21 identification and received into evidence.)

22 BY MR. BARFIELD

23 Q I'm going to ask you a couple of other questions
24 about your family. You have got a daughter?

25 A I do.

1 Q And your daughter's name?

2 A Susan.

3 Q Do you have a son?

4 A I do.

5 Q His name?

6 A Jessie Edward, Jr.

7 Q What do you call?

8 A Eddie.

9 Q Eddie. And who is older?

10 A Susan.

11 Q Eddie lives with you?

12 A He does.

13 Q Susan does not right now?

14 A Does not.

15 Q Was there any significance for the date

16 November 23rd, 2001 unrelated to the events that happened
17 to your husband? What day was it?

18 A It was a Friday.

19 Q And --

20 A And I had the day off work.

21 Q And what day was it in relation to any holidays, if
22 any?

23 A It was the day after Thanksgiving.

24 Q Did you know whether your husband planned to work the
25 following day, Saturday, November 24th, 2001?

1 A He was not planning to work on that Saturday on the
2 24th.

3 Q Did your family have any plans for Friday night,
4 November 23rd, 2001?

5 A Yes; yes, sir.

6 Q What was your plan?

7 A We had invited friends over to eat leftover
8 Thanksgiving.

9 Q And who were the friends?

10 A Karen, Dan, and Daniel Ruff.

11 Q Was Susan at your house during the daytime on that
12 Friday?

13 A In the early part of the day.

14 Q Earlier part of the day.

15 A No, sir.

16 Q Did your husband work that Friday?

17 A Yes, sir.

18 Q Was Eddie home with you all day that Friday?

19 A No, sir.

20 Q Where was Eddie?

21 A Eddie was with Karen and Daniel.

22 Q What time did -- I'm sorry.

23 What time did you expect your husband home that
24 afternoon?

25 A Normally expect?

1 Q That Friday afternoon.

2 A His -- the time he usually got off was six.

3 Q Did he plan to work the full day that day? Was it a
4 full day for him, I guess, is my question.

5 A Well, he planned to -- I got a phone call stating
6 that he was not -- he was going to get off a little
7 earlier.

8 Q How much was a little earlier, how much earlier?

9 A He called me at a quarter till six.

10 Q And don't tell me what he said, but did you talk to
11 your husband on the phone at 5:45 that evening?

12 A I did.

13 Q After talking with him on the phone, what time did
14 you expect him to be home?

15 A I would say less than five minutes.

16 Q Did he drive back and forth from home to the store?

17 A He did.

18 Q Do you recall what the -- did Susan come to your
19 house that afternoon?

20 A She did.

21 Q Do you recall about what time she got there in
22 relation to you getting a phone call from Mr. Jackie? Was
23 she there when your husband called?

24 A Yes. She was at our house at that time.

25 Q Do you remember who Chris was?

1 A Yes, I do.

2 Q Was he at your house --

3 A He did.

4 Q -- at some point that evening?

5 A Yes, he was.

6 Q Did your husband come home within five minutes or so

7 of calling you at a quarter till six?

8 A No, he did not.

9 Q Did he come home at all that night?

10 A No.

11 (Crying).

12 (Pause).

13 Q Did you hear from him anymore while you were still at

14 your house?

15 A No.

16 Q At some point did somebody do something?

17 A At -- at -- yes. At a point we did. We...

18 Q Who was there -- when you say "we", who was there?

19 A Susan and I were talking.

20 Q Okay. Eddie is not back yet?

21 A No.

22 Q The Ruff's aren't there yet?

23 A No.

24 Q Just you and Susan and Chris at some point?

25 A Yes, sir.

1 Q What did you all decide -- what did you decide to do
2 or anybody decide to do?

3 A We were -- she and I were talking about she wanted to
4 get a flashlight, and then we were talking about we were
5 concerned and worried that Jackie had not come home.

6 Q What time was it by the time y'all are starting to be
7 worried about him not being home?

8 A 6:20 p.m.

9 Q So what happened?

10 A Susan calls the station. She does not get an answer.

11 Q What happened next? Do you know about what time it
12 was Susan called your daddy -- her daddy?

13 A I'm thinking 6:20 or something.

14 Q Okay.

15 A In that area.

16 Q What happened next?

17 A Susan and her friend get ready and go up to the
18 station.

19 Q Did you go with them at that point?

20 A No, I did not.

21 Q Was Eddie back yet?

22 A No, he was not.

23 Q Were the Ruff's over yet?

24 A No.

25 Q Was anybody there with you when Susan and Chris left?

- 1 A No one but me.
- 2 Q How long did Susan and Chris stay gone before you
- 3 heard or something else occurred?
- 4 A (There was no response).
- 5 Q What happened next?
- 6 A Susan and Chris leave the house, I think 6:40, that
- 7 time, or a little -- proximity.
- 8 Q Sometime after 6:30?
- 9 A Yeah, it was more close to 6:40, 6:35, 40.
- 10 Q Okay.
- 11 A And they -- they were -- they were gone for some
- 12 time.
- 13 Q And then what happened?
- 14 A The phone rings.
- 15 Q Did you answer it?
- 16 A I answered the phone.
- 17 Q Who was on the other end?
- 18 A It was Susan.
- 19 Q What did she say?
- 20 A She said, "Mom, get up here. Dad -- dad's been
- 21 shot." She was crying hysterically.
- 22 Q Did you converse with her to get any detail during --
- 23 A No.
- 24 Q -- that conversation?
- 25 A No. No. I just -- I just -- just -- I just put the

1 phone down, went and got my keys, and I just got in my car
2 and sped to the station.

3 Q When you got to the station, were there any police
4 officers there?

5 A I think there was a police right ahead of me right
6 at...

7 Q Okay. Was there an ambulance or any medical
8 personnel on the scene when you got there?

9 A No, sir.

10 Q Was -- were Susan and Chris there?

11 A Yes, sir.

12 Q Did law enforcement, other than Gratic, arrive
13 sometime thereafter?

14 A Yes, sir.

15 Q Who do you next remember being there in law
16 enforcement other than Chief Gratic?

17 A Bruce Ginyard.

18 Q Okay. Before it was all over with, were there a
19 bunch of law enforcement there?

20 A Yes, sir.

21 Q Before it was all over with, were there a bunch of --
22 or some E.M.S. people there?

23 A Yes, sir.

24 Q Where did you go when you first got there?

25 A I go -- I go into the station, and I find my husband

1 lying in the little office area on his back up against the
2 door that goes into the area where tire supplies are
3 stored.

4 Q Was anybody immediately there with him then --

5 A No.

6 Q -- standing over him, doing anything to him?

7 A No, sir.

8 Q Don't get into any conversations with your husband at
9 this point, but describe his appearance as you observed
10 his appearance.

11 A I find a horror, horror, bloody scene. My husband
12 was bleeding from under his upper head to -- to his --
13 around his waist, and blood was pooled on the floor, the
14 blood all around his neck. Blood was -- dry blood area
15 was on the side of his face, on his ear, hair was --
16 hairline was wet the blood. His -- his work shirt was
17 saturated with blood. His face was white as a sheet and
18 the discoloration, purple lips, around his mouth, and his
19 hands were white. I looked at his nail beds and they were
20 purple.

21 Q Was he breathing?

22 A He was breathing.

23 Q Was he breathing okay?

24 A He was doing a little labored breathing and...

25 Q Was --

1 A He -- he spoke to me in a weak voice.

2 Q That was my next question. Was he able to talk to
3 you?

4 A He was able to talk.

5 Q Describe his voice.

6 A In a weak voice, he says...

7 MR. SWERLING: Your Honor, I just want to note our
8 objection, preserve all positions we've taken with regard
9 to the testimony of the conversation.

10 THE COURT: Yes, sir, so noted.

11 BY MR. BARFIELD

12 Q All right. Did you and Jackie McGuirt have a
13 conversation?

14 A Yes, we did.

15 Q Now, when you're talking to your husband, do you know
16 where Susan was?

17 A Susan was -- the office area there's a little waiting
18 area over there where the couch is.

19 Q Okay.

20 A She was over at that area on the telephone.

21 Q Do you know where Gratic was?

22 A Gratic?

23 Q Let me ask you a different question. Was anybody
24 right there with you with Mr. Jackie when you were talking
25 to him?

1 A Gratic, I remember seeing him working with his radio.

2 Q Okay. But again, my question is was anybody
3 immediately in your presence where you were with your
4 husband when you were talking to him?

5 A No, sir.

6 Q All right. Describe -- did you and your husband have
7 a conversation about what had happen occurred?

8 A Yes, we did.

9 Q Relate the conversation, and I might stop you from
10 time to time to get some detail, but relate what you and
11 your husband talked about as he lay there in the floor.

12 First of all, let me ask you this, and maybe I -- I
13 don't want to twist you up, but did he relay to you -- no,
14 you just go ahead. Describe the conversation.

15 A In a weak voice he -- he just said, "Make sure the
16 door is locked. I don't want him to come back in and hurt
17 y'all."

18 Q Go ahead.

19 A He said, "I have been so scared because I thought I
20 was going to die before somebody found me." He said, "I
21 have prayed to God to stop the bleeding and to clot my
22 blood because you have had me on an aspirin daily and" --

23 Q What -- what's the -- explain to the jury. What --
24 you took that to mean? What's the deal about the aspirin?

25 A An aspirin is a blood thinner.

1 Q Okay.

2 A It thins the blood and prevents clotting, so that it
3 prevents heart attacks and strokes.

4 Q Did you make him take aspirin?

5 A I did.

6 Q Okay.

7 A A large one.

8 Q Go ahead. Relate the conversation.

9 A He says, "I prayed to God that I could live and see
10 my family one more time to tell them I loved them dearly."

11 I guess my nursing instinct kicked in just to make me
12 stay calm and just say, "Well, how long has he been
13 bleeding?" I asked him -- I asked -- I said, "When were
14 you shot?"

15 He said, "Ten minutes until six." And --

16 Q What time was it when you were having this
17 conversation with him? By then about what time is it?

18 A I think it was close to an hour later.

19 Q Okay. Go ahead. Did you and he have any
20 conversation about his condition?

21 A He just says, "I'm having a hard time breathing."

22 Q Okay. How about movement?

23 A He says that as he was coming back --

24 Q No, not that.

25 A He said --

1 Q I hate to interrupt. Let me interrupt --

2 A He told me -- he told me -- he told me right upfront
3 that he was paralyzed.

4 Q Okay. Did you at any point see him move his lower
5 extremities while you were there in the station with him?

6 A No, sir.

7 Q I'm going to jump way ahead again. When he went to
8 work on November 23rd, 2001, was he able to walk?

9 A Yes, sir.

10 Q At any point after you're talking to him on the
11 station floor on November 23rd, 2001, was he able to walk?

12 A No, sir.

13 Q Go ahead.

14 A The next thing I asked him is, "Who did this?"

15 He says, "As I was coming out the back from the back
16 storage area door -- area, I opened the door and the boy,
17 you know who it is, that stole from me, from the station,
18 and I caught him on the video some years ago, was standing
19 there with a gun in his hand. I asked him not to shoot
20 me, just to take the money and leave."

21 The boy put the gun slanted at his -- at his neck
22 area, and he said, "This -- now this time you're going to
23 give it up, and he began shooting."

24 He said, "I felt the bullet hit my spinal cord, and I
25 felt the numbness and I fell down. I played dead," and

1 the boy kicked him. He kicked him in the head and in his
2 leg, and they were limber. So the boy took his wallet and
3 the money bag and he left. Then --

4 Q Stop right there. Let me catch up with you. All
5 right. Go ahead. You said he took the wallet, the money
6 bag, and he left?

7 A Yes, sir, and a minute later he came back in, and he
8 kicked me again. He said, "I was so scared that he came
9 back in to put a bullet in my head, but he put the gun
10 down by -- by my hand and reached over and got the set of
11 keys off of my belt."

12 And he got -- then -- he said, "I couldn't use my
13 hand to get the gun because it was -- I couldn't use it.
14 I didn't have any use of my hands."

15 He said, "But then the boy started shooting the
16 video, the security camera system, and he shot it and he
17 took out the video compartment container."

18 Q Did you --

19 A Then he -- he left.

20 Q Were you aware that your husband had a video
21 surveillance system in the store?

22 A I was.

23 Q And I interrupted you. You said what after that?

24 A The boy left with a -- with the video.

25 Q Did your husband tell you anything about -- by way of

1 a description of this person who had done this to him?

2 A Yes. When I asked him who did it to him, he said in
3 a form that -- that -- he said, "I knew he meant to kill
4 me because he had on gloves. He had a jacket with a hood,
5 and he didn't have it over his head."

6 Q Did not?

7 A Did not.

8 Q Did he describe the young man's appearance or the --
9 the man's appearance?

10 A He said -- I asked him. He said he was -- he had --
11 was clean shaved and had a bald-like head.

12 Q Did your husband relate to you anything that he did
13 or tried to do after this man left?

14 A He heard the phone ringing, and he said he tried to
15 get a broom to -- you know, to get the phone and try to
16 get some help but he could not. He could not move
17 anything.

18 Q And now a couple of back-up questions. Other than
19 perhaps seeing it in this courtroom, did you ever see --
20 until court -- was the V.C.R. in the station after this
21 occurred?

22 A After that?

23 Q After the incident occurred with your husband --

24 A No, it was --

25 Q -- is the V.C.R. there?

1 A It was not in the station.

2 Q All right. Did you --

3 A It was out, taken out.

4 Q To your knowledge, did anybody ever find your
5 husband's keys? I might not have ever asked anybody this
6 before. Were the keys with the truck when the truck got
7 found or do you recall?

8 A I don't recall.

9 Q Okay. Was any money returned to you from the Bank of
10 Ridgeway money bag that is shown in State's Exhibit 23?

11 A I -- I don't recall. I was with my husband for
12 almost four months in the hospital.

13 Q Okay.. Did anybody ever bring you any money and say
14 this was recovered?

15 A No. No, sir.

16 Q I don't want you to answer any details about this,
17 but you said your husband said it was a boy that stole
18 from him before and got caught on video. Were you aware
19 of an incident --

20 A Yes, yes, sir.

21 Q -- that had occurred at some time in the past?

22 A Yes, sir.

23 Q Okay. Did your husband -- did E.M.S. eventually
24 arrive at the station?

25 A They did.

1 Q Was your husband attended to by E.M.S. people at the
2 station?

3 A Yes, sir.

4 Q Did he get transported from the station to another
5 location?

6 A Yes, sir.

7 Q Where did he go?

8 A Richland Memorial.

9 Q How long did he stay at Richland Memorial?

10 A I'm thinking -- I think for five days or so.

11 Q What part of the -- what unit at Richland Memorial
12 was he in, at least, initially?

13 A The trauma unit.

14 Q Did he ever have surgery at Richland Memorial?

15 A He had a surgical procedure.

16 Q Okay. After Richland Memorial where did your husband
17 get treatment?

18 A He went to Shepard's Center in Atlanta, Georgia.

19 Q Who went with him?

20 A Some of -- most of our family, but Eddie and I stayed
21 down there.

22 Q How long was he at Shepherd's Center?

23 A From November to the first of March.

24 Q Where did he go after Shepherd's Center?

25 A We went to --

1 Q Did he come home at some point?

2 A He came home.

3 Q And how did -- how was he -- how did he get around
4 after he got -- after -- what did he -- what was the
5 Shepherd's Center? What did he go to the Shepherd's
6 Center for?

7 A It was a spine -- a specialized spinal cord injury
8 and facility.

9 Q And --

10 A It's attached to the Piedmont Hospital.

11 Q All right. How did he get around after this injury
12 to himself?

13 A Wheelchair.

14 Q Forever?

15 A Forever.

16 Q Did he have any medical problems at the Shepherd
17 Center related to --

18 A He had problems. He had -- he had gotten infections.
19 He had a problem with a stent put in his arm. He had --
20 there was a kidney stone that they found and they needed
21 to do the lithroscopic (sic) thing on him, blow up the
22 kidney stone.

23 Q Okay. After he got home from the Shepherd Center,
24 did he live in your home?

25 A He did.

1 Q Did he have medical care from -- you said March of
2 '02, is that correct, when he came home?

3 A Yes.

4 Q Did he continue to receive medical care?

5 A Yes.

6 Q Did he continue to receive medical care at least
7 locally or at least more locally than Atlanta between
8 March of '02 and his ultimate death?

9 A He did. We went back to Shepard Center for a couple
10 of things to -- because he was needing to have his
11 medicine, a better dosage for the muscle problem or
12 contraction of Baclofen --

13 Q I'm sorry. After he got out of the Shepherd's
14 Center, did he have any more infections?

15 A Yes, he did.

16 Q Did he receive treatment for those infections?

17 A He did.

18 Q Was any of that treatment while he was at home?

19 A Yes.

20 Q Was any of that treatment -- did any of that
21 treatment include hospitalization?

22 A Yes, it did.

23 Q About October 22nd of 2002, was your husband
24 hospitalized?

25 A He was.

1 Q And is that the correct date? Am I giving you the
2 right date?

3 A That is the correct date.

4 Q Where did he get hospitalized on --

5 A He was at Fairfield Memorial.

6 Q How long did he stay there?

7 A Basically, they transferred him like in the morning
8 hours to the Baptist Hospital and that was on the 23rd or
9 24th.

10 Q In Columbia?

11 A Yes.

12 Q Were you with him at Fairfield Memorial?

13 A I was.

14 Q Were you with him at Baptist?

15 A I was.

16 Q Is your husband alive today?

17 A No.

18 (Crying).

19 No, it's -- he's not.

20 Q When did he die?

21 A Officially, October 26th.

22 Q Of what --

23 A 2002.

24 Q Where?

25 A At the Baptist I.C.U.

1 MR. BARFIELD: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (Pause).

4 Are you okay, Ms. McGuirt?

5 THE WITNESS: Uh-huh.

6 (Pause).

7 MR. BARFIELD: I believe that's all the questions I
8 have. If Mr. Swerling will ask you some, please answer
9 his, too.

10 THE COURT: Thank you, Mr. Solicitor.

11 Mr. Swerling?

12 MR. SWERLING: Your Honor, I have no questions.

13 THE COURT: Thank you, Ms. McGuirt. You may step
14 down.

15 MR. BARFIELD: I am very close, I believe, to
16 uttering those magic words but would like five minutes or
17 so to kind of look through my stuff to make sure. Well, I
18 do know one thing I want to do.

19 Your Honor, I believe last week I marked for
20 identification State's Exhibit Number 98.

21 Could I see your sheet again?

22 THE COURT REPORTER: Sure.

23 MR. BARFIELD: Which was identified by a witness or
24 witnesses as the V.C.R., I would like to introduce that as
25 State's Exhibit 98 at this point, just to clear it up.

1 MR. SWERLING: That was the V.C.R. found at the
2 truck?

3 MR. BARFIELD: Near the truck, yes.

4 MR. SWERLING: No objection.

5 THE COURT: Okay. 98 into evidence without
6 objection, the V.C.R. case. Is it the V.C.R. or the case?

7 MR. BARFIELD: It's the case. It's the -- it's the
8 video cassette recorder, not the tape but the recorder.

9 (WHEREUPON, State's Exhibit No. 98 having been
10 previously marked for identification now received
11 into evidence.)

12 MR. BARFIELD: Your Honor, with that, if I could have
13 about five minutes.

14 THE COURT: All right. Court will be at ease about
15 five minutes.

16 (WHEREUPON, the jury left open court at approximately
17 3:46 p.m.)

18 THE COURT: The lady with the medical appointment
19 tomorrow, if you could remain in the Court just for a
20 second, please, ma'am.

21 Mr. Solicitor, if you'll wait just a second.

22 MR. BARFIELD: Yes, sir.

23 THE COURT: I spoke with this juror briefly in the
24 hallway. She explained to me that she had.

25 THE JUROR: A doctor appointment in Columbia.

1 THE COURT: A medical appointment tomorrow at what
2 time?

3 THE JUROR: Two o'clock. I have to go to Columbia.

4 THE COURT: And it's in Columbia. I told her that we
5 would talk about it later, about we don't know how long
6 the deliberations will take, and is it an appointment that
7 can be rescheduled?

8 THE JUROR: Well, I had a hard time getting it. It
9 took me over a month to get the appointment. They said
10 they were so booked up. I had to get my doctor up here to
11 get the appointment for me.

12 THE COURT: What's the State's position?

13 MR. BARFIELD: Well, the State's first observation is
14 I would guess we're moving along pretty good, but I would
15 guess a good likelihood we ain't going to be done at
16 two o'clock tomorrow. That's my first observation.

17 THE COURT: Well, one o'clock. Otherwise, she has to
18 be there at two.

19 MR. BARFIELD: One o'clock. Otherwise I think we
20 just -- could we get the juror's name and number?

21 THE JUROR: Teresa Kennedy.

22 THE CLERK: Teresa Kennedy?

23 THE COURT: Teresa Kennedy.

24 Mr. Swerling?

25 MR. SWERLING: Judge, if I could just explore some

1 options with the Solicitor.

2 THE COURT: Sir?

3 MR. SWERLING: I would like to be able to explore
4 some options with you and the Solicitor to try and
5 accommodate the juror.

6 THE COURT: If you'll just go join the jury, and
7 we'll give you a decision.

8 THE JUROR: Okay.

9 THE COURT: Thank you, ma'am.

10 THE JUROR: Thank you. We'll be at ease. I'll be in
11 chambers.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: Anything from the State before we bring
14 the jury?

15 MR. BARFIELD: Yes, sir. I'm going to rest when the
16 jury comes back in. I understand based upon that,
17 Mr. Swerling wants to get some motions on the record since
18 the jury is already out. Once the jury comes in, I'll
19 formally rest.

20 MR. SWERLING: That's fine. I'll put my motions on
21 the record now as long as they're noted after the State
22 rests.

23 THE COURT: Yes.

24 MR. SWERLING: Judge, I think -- Solicitor, tell me
25 so I don't waste time arguing, attempted kidnapping.

1 MR. BARFIELD: That's correct. That's out, yes, sir.
2 I do not believe I presented any evidence of attempted
3 kidnapping. In retrospect that testimony came from
4 witnesses Judge Manning ruled could not testify about it
5 further.

6 MR. SWERLING: Judge, therefore, with respect to the
7 murder indictment, the armed robbery indictment, and the
8 grand larceny indictment, we would move at this time for a
9 judgment of acquittal. I would ask the Court to take all
10 the evidence in the light most favorable to the State,
11 which is what you're required to do.

12 Our position is the State has failed to offer as
13 sufficient evidence as to each and every element of
14 murder, armed robbery, and grand larceny so as to allow
15 the jury to consider the case.

16 I'm asking that -- we ask you to go ahead and direct
17 a verdict of not guilty as to each one of those
18 indictments.

19 THE COURT: Thank you. Motion denied.

20 Any additional motions?

21 (There was no response).

22 If I could have the jury, please.

23 MR. SWERLING: Judge, before you bring the jury, we
24 had discussed your talking to the defendant about his
25 right to testify or not. You may want to do that before

1 the jury comes in so we can go right to our case.

2 THE COURT: All right. Mr. Cook, I've been informed
3 by your attorney that there is a possibility that you will
4 not testify.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, you understand that under our
7 constitution and laws you have an absolute right to
8 testify, and do you, in fact, wish to waive that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you discussed this fully with
11 Mr. Swerling?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, the jury will be instructed that
14 they cannot consider the fact that you have not testified,
15 but it needs to be a knowing and informed decision on your
16 part that you wish not to testify.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You have had enough time to think about
19 it?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You understand --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- everything that has been explained to
24 you by both the Court and Mr. Swerling?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Any questions that you'd like to ask,
2 Mr. Swerling, on the record?

3 MR. SWERLING: No, Your Honor, just -- well, I think
4 you covered it, but I mean, you're fully satisfied that
5 you understand the implications of testifying versus not
6 testifying?

7 THE DEFENDANT: Yes, sir.

8 MR. SWERLING: And I am not making the decision for
9 you. You're making the decision?

10 THE DEFENDANT: Yes, sir. I'm making it for myself.
11 Yes, sir.

12 THE COURT: All right. Thank you. Thank you.

13 MR. BARFIELD: Are you going to address the juror
14 with the issue before we get started this afternoon? I
15 just don't know if she is wondering about that or not, to
16 her, I guess, is what I'm asking?

17 THE COURT: With the medical appointment?

18 MR. BARFIELD: Yes, sir.

19 THE COURT: I'll...

20 MR. BARFIELD: I just anticipate when she comes back
21 in here in a minute, she is going to want to know what
22 your --

23 THE COURT: What was her name?

24 THE CLERK: Kennedy, Teresa Kennedy.

25 THE COURT: I don't think we need to do that --

1 outside the presence of other jurors, do you?

2 MR. BARFIELD: No, I don't think so.

3 THE COURT: Okay. Bring the jurors in, please.

4 (WHEREUPON, the jury came into open court at
5 approximately 4:37 p.m.)

6 THE COURT: Please let the record reflect that the
7 trial jury and alternates are present and alternate are
8 present in the courtroom.

9 Ms. Kennedy, we're going to ask you to remain with us
10 until such time as it's necessary for you to leave.

11 THE JUROR: All right.

12 THE COURT: That may not -- we may not reach that
13 point.

14 Yes, sir.

15 MR. BARFIELD: Your Honor, that's the case for the
16 State of South Carolina.

17 THE COURT: Thank you. Would have -- let the record
18 reflect that the motions made prior to the entry of the
19 jury or after the State had rested and ready for you to
20 proceed with your case, Mr. Swerling.

21 MR. SWERLING: All right. Thank you, Your Honor.

22 Your Honor, we'd call Betty Miller.

23 Judge, while we're getting Ms. Miller, if I can, the
24 State and myself have stipulated to a record of Mr. Cook's
25 booking information when he was arrested on November 26th,

1 2001 at 14:42, and we're offering this as an exhibit.

2 MR. BARFIELD: No objection.

3 THE COURT: All right. Defense number one into
4 evidence without objection.

5 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
6 identification and received into evidence.)

7 BETTY MILLER, after being duly sworn,
8 testified as follows:

9 THE CLERK: Please be seated. State your name for
10 the record.

11 THE WITNESS: Betty Miller.

12 MR. SWERLING: Your Honor, could I just publish this
13 so the jury can circulate it?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION:

16 BY MR. SWERLING

17 Q Okay. Ms. Miller, would you identify yourself to the
18 jury and for the record?

19 A I'm Betty Miller. I'm Termayne's aunt.

20 Q Okay. And Termayne is?

21 A My nephew.

22 Q Okay. And you're talking about Darryl when you say
23 Termayne?

24 A Darryl.

25 Q Okay. You call him Termayne?

- 1 A Yes, I do.
- 2 Q Okay. And would you just briefly -- how many --
- 3 you're related to which part of the family, his father or
- 4 his mother?
- 5 A His mother.
- 6 Q Okay. How many other sisters or brothers are there?
- 7 A I'm the oldest of ten.
- 8 Q Oldest of ten?
- 9 A Uh-huh.
- 10 Q Okay. And the family is from where?
- 11 A Ridgeway.
- 12 Q All right. Now, would you tell the jury a little bit
- 13 about where -- some of the family lives in the same area;
- 14 is that correct?
- 15 A All of us are close together.
- 16 Q Okay. And they still live in Ridgeway?
- 17 A Most of us, yes.
- 18 Q Okay. Where does Ms. Cook live?
- 19 A Right now, she has moved over to Woodrow.
- 20 Q Okay. And where did they live on November --
- 21 A Right next to my father.
- 22 Q Okay. And who lived with your father?
- 23 A Who lives with him now?
- 24 Q No. Who lived with him on November 23rd?
- 25 A My nieces. It was just a house full of them, like my

1 nieces, my grand -- my great niece, my brothers. It was
2 house full people.

3 Q House full of people between both houses?

4 A Uh-huh.

5 Q And I think -- let me just show you State's Exhibit
6 Number 119. Is that a picture of Ms. Cook's house and
7 your father's house?

8 A Yes.

9 Q Okay. Now, you said a lot of people are living --
10 your dad's name --

11 A That's a recent picture though, right?

12 Q Recent.

13 A Yes, sir, no longer there.

14 Q No, but at the time, November 23rd.

15 A Yes.

16 Q What is your dad's name?

17 A John Miller, Sr. Everyone calls him Cricket.

18 Q Cricket.

19 A Yes.

20 Q Is it fair to say that between the two homes back on
21 November 23rd, 2001, there was a lot of activity?

22 A Yes.

23 Q A lot of people going back and forth --

24 A Yes, sir.

25 Q -- and also in between the homes --

1 A Yes.

2 Q -- between the two houses?

3 A Yes.

4 Q Okay. On November 23rd, 2001 did you have an
5 occasion to see Termayne or Darryl?

6 A Darryl was with me.

7 Q Okay. And what time did you get together with
8 Darryl?

9 A I picked Darryl up about 1:15.

10 Q Okay.

11 A He had an appointment at two o'clock at Randstad.

12 Q Okay. Now, where did you live at that point? You
13 live in Ridgeway, as well?

14 A Yes, I live in Ridgeway.

15 Q Okay.

16 A I lived across the street.

17 Q Okay. And across the street from where?

18 A From my dad's.

19 Q From where your dad and Ms. Cook lived at that time?

20 A Uh-huh.

21 Q And he asked you -- you said he had an appointment at
22 Randstads?

23 A Yes.

24 Q And what is Randstad?

25 A That's a job service.

1 Q Okay. And where was that?

2 A That was -- it's located behind Columbia Mall.

3 Q Okay. And how is it that you were the one that came
4 to take him down to Columbia?

5 A Because his mom had to work that day.

6 Q Okay. So you volunteered to do that?

7 A Yes, I did.

8 Q Did you go to Randstad that day?

9 A Yes, we did.

10 Q All right. Did Darryl fill out an application?

11 A Yes. He took all of his paperwork in. He done
12 everything he had to do.

13 Q Okay. Now, he was supposed to meet someone or have
14 an interview that day. Was that person there?

15 A No, she wasn't.

16 Q Okay. And as a result of that did he submit the
17 application?

18 A Yes, he did.

19 Q And -- but did not get interviewed that day?

20 A No, he didn't.

21 Q Okay. Now, that was about -- you left Ridgeway about
22 what time?

23 A I left about a quarter after one.

24 Q And got to Columbia around what time?

25 A About a quarter till two.

1 Q And do you recall about what time it was you left
2 Randstad?

3 A It had to be in the area of -- because you see, after
4 he done all of his paperwork, it might have been about
5 2:30, three.

6 Q Okay. Now, did you have arrangements to go somewhere
7 else with Darryl?

8 A I had to take him for an eye appointment.

9 Q Okay. And the eye appointment was where?

10 A Over at Harbison --

11 Q And do you recall --

12 A At American Best.

13 Q American Best. Is American Best also called National
14 Vision?

15 A Yes, it is.

16 Q Okay. And was that a prearranged appointment to take
17 him over there?

18 A Yes.

19 Q Okay. And did you, in fact, take him over there?

20 A Yes, I did.

21 Q Okay. Do you remember about what time you got there?

22 A It had been around about -- like I say, we left there
23 between three o'clock or so, and it was raining. It took
24 me a little longer to get there than usual, so we got
25 there probably about four.

1 Q And do you recall about how long you were at American
2 Best?

3 A We were there for a while.

4 Q Did he go ahead and order a set of contact lenses?

5 A Yes, he did.

6 Q And were you there when he did so?

7 A Yes, I was.

8 Q All right. Now, he didn't get them that day?

9 A No, he didn't.

10 Q All right. Did he also order glasses that day or was
11 it just the contacts?

12 A I think he had -- he usually wears his glasses.

13 Q Okay. But that day do you recall exactly what he was
14 ordering other than -- was there anything other than
15 contacts?

16 A I don't remember about glasses.

17 Q Okay. All right. So do you remember what time you
18 left American Best or National Vision?

19 A We left between 4:30, maybe about a quarter, 20
20 minutes until five.

21 Q Okay. Now, when you left the eyeglass place or eye
22 place, did you stop anywhere else?

23 A No.

24 Q And where did you go when you left there?

25 A I got back on the interstate. You know, everybody

1 knows Harbison is kind of busy that time of the day --

2 Q Okay.

3 A -- and it's raining.

4 Q Now --

5 A So it took me a little longer to get home.

6 Q Now, you personally cannot identify this document but
7 Your Honor, the State and the defense have stipulated
8 these are the records of America's Best, which is now also
9 known as National Vision.

10 They show that there was a prescription issued that
11 date or a contact made that date on November 23, 2001 when
12 these items were ordered, so I'm going to have those
13 marked as an exhibit, as well.

14 THE COURT: Defendant's two, all right.

15 MR. BARFIELD: No objection.

16 THE COURT: Into evidence without objection.

17 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
18 identification and received into evidence.)

19 MR. SWERLING: I think it's a stipulation these are
20 the records, so the custodian won't be called.

21 MR. BARFIELD: Yes.

22 MR. SWERLING: And Your Honor, I'd like to pass this
23 around to the jury, as well.

24 BY MR. SWERLING

25 Q You left Columbia and you came back to Ridgeway?

1 A Yes, we did.

2 Q And do you recall about what time it was you got back
3 to Ridgeway?

4 A It was between like five, six o'clock, somewhere
5 around in that area.

6 Q And where did you take Darryl?

7 A I took him back to his mother's.

8 Q And you dropped him off there?

9 A Right.

10 Q Did you see him again that evening?

11 A No.

12 Q So you're saying you got -- you got him back to the
13 house at around what time?

14 A Between five and six o'clock and maybe on a little
15 after five, in between those times.

16 Q Okay. Now, is today the first day you're being asked
17 to recall the events of that evening?

18 A No.

19 Q Have you --

20 A I talked with you.

21 Q You talked with me. You talked with --

22 A Yes, I have.

23 Q You talked with my investigator. Okay. And are you
24 aware that information was turned over to the Solicitor?

25 A I was.

1 MR. SWERLING: Okay. All right. Answer any
2 questions the Solicitor might have.

3 THE WITNESS: Okay.

4 MR. SWERLING: Thank you.

5 THE COURT: Thank you, Mr. Swerling.

6 Mr. Solicitor?

7 CROSS-EXAMINATION:

8 BY MR. BARFIELD

9 Q You are Geraldine's sister; is that correct?

10 A Yes, I am.

11 Q Okay. And I've been saying Darryl Cook for a
12 week-and-a-half. Does the family call him Darryl, Darryl
13 or Termayne --

14 A We call him both.

15 Q Okay. So I'm not wrong when I'm using Darryl?

16 A No, you're not.

17 Q Okay. You took Darryl to Randstad?

18 A Yes.

19 Q Do you -- do you know how to spell that? I'm not
20 being smart. I just don't know.

21 A Really?

22 No, I don't.

23 Q Okay. Randstad is an employment service?

24 A Uh-huh.

25 Q Darryl was unemployed on November 23rd, '01; is

1 that --

2 A He just became unemployed.

3 Q -- correct? Be but he was unemployed on
4 November 23rd of 2001; is that correct?

5 A Uh-huh.

6 Q He wasn't drawing a check from anybody at that --

7 A I don't know that.

8 Q -- at that time? Okay.

9 A I don't know that.

10 Q Okay. Well, he wasn't employed. Did you know he had
11 been employed at the Belk Distribution Center?

12 A Yes.

13 Q He wasn't employed at the Belk Distribution Center on
14 that Friday November --

15 A No.

16 Q -- 23rd; is that correct?

17 THE COURT REPORTER: I'm sorry, Your Honor. If they
18 could finish saying what they're saying before they start
19 talking. I'm having difficulty with that overlap.

20 THE COURT: Okay.

21 BY MR. BARFIELD

22 Q He was not employed on November 23, '01, is that --
23 at the Belk Distribution Center; is that correct?

24 A That's correct.

25 Q You took Darryl to America's Best or National Vision

1 to order some contact lenses; is that correct?

2 A Yes.

3 Q He wore glasses and contacts at various times; is
4 that correct?

5 A Yes.

6 Q And it was raining that afternoon when y'all were in
7 the Columbia area; is that correct?

8 A Yes, it was.

9 Q Is it your recollection that it continued to rain --

10 A Yes.

11 Q -- throughout the evening?

12 A Yes.

13 Q Did you say that your house is across the street from
14 where Darryl was living then and where your daddy lives?

15 A Yes.

16 Q And I believe it was your testimony that lots of
17 relatives -- how many Miller family homes are there within
18 eyesight of each other down there, yours?

19 A Two.

20 Q All right.

21 A Mine is not in eyesight.

22 Q Okay. So yours is across the road and either up or
23 down the road?

24 A Down the road.

25 Q All right. And who lived -- to your knowledge on

1 November 23rd, 2001 not who was there then but who lived
2 in Geraldine's house on November 23, 2001 --

3 A Her and the family.

4 Q Well, tell me who they were.

5 A Darryl, Crystal, Rod, and herself, and the grand
6 baby. Well, she hadn't gotten it yet, but I would say
7 grandbaby. She wasn't born as of yet.

8 Q All right. So only three people lived at that house?

9 A Uh-huh, four counting Geraldine.

10 Q That's right. I left out Darryl. Who actually lived
11 in your dad Cricket's house on November --

12 A I don't remember everybody that stayed there.

13 Q Well, try. Are they your relatives?

14 A Uh-huh.

15 Q Go slow. I'm going to write them down. Your dad?

16 A My father. Like I said, my nieces and my nephews.

17 Q Well, how many nieces and nephews?

18 A Maybe four of my nephews.

19 Q How many nieces?

20 A And maybe two of my nieces.

21 Q Two nieces, four nephews, your dad, obviously.

22 A Uh-huh.

23 Q Was your mama living?

24 A No. My mother has been deceased.

25 Q Okay. Who else lived there?

1 A That's it.

2 Q So at least seven people lived in that house?

3 A Uh-huh, and my sisters. I forgot about them.

4 Q How many sisters?

5 A Joyce was there and my other sister. She was there
6 periodically.

7 Q So two sisters from time to time stayed there?

8 A Uh-huh.

9 Q Anybody else?

10 A Not that I can recall.

11 Q Darryl's -- when -- do you know where the Shell
12 Station is up 21 from back toward Ridgeway from your dad's
13 house and Geraldine's house at the time?

14 A Uh-huh, yes.

15 Q Okay. It's half a mile or so?

16 A Not really half a mile.

17 Q Not far at all?

18 A No.

19 Q Easy walking distance --

20 A Yes.

21 Q -- from Geraldine's house to the Shell Station?

22 A Yeah.

23 MR. BARFIELD: Thank you, ma'am. Answer anything
24 else.

25 MR. SWERLING: Nothing else, Your Honor. I'd ask the

1 witness be allowed to be excused.

2 MR. BARFIELD: No objection.

3 THE COURT: You're released from your subpoena. You
4 can leave if you wish, ma'am.

5 MR. SWERLING: Thank you.

6 Betty -- I'm sorry, Joyce, Joyce Miller.

7 THE CLERK: Place your left hand on the Bible raise
8 your right hand.

9 JOYCE MILLER, after being duly sworn,
10 testified as follows:

11 THE CLERK: Please be seated. Speak into the mic and
12 state your name for the record.

13 THE WITNESS: Joyce Miller.

14 DIRECT EXAMINATION:

15 BY MR. SWERLING

16 Q Hi, Ms. Miller. Could you tell the jury what your
17 relationship is to Darryl or...

18 A I'm Darryl's aunt.

19 Q And do you call him Darryl or Termayne?

20 A I call him Main.

21 Q Main?

22 A Uh-huh.

23 Q All right. And what is your relationship to
24 Ms. Miller who just testified, Betty.

25 A My older sister.

1 Q Now, she has kind of given us a little bit of
2 background of the family, but where do you live?

3 A I live in Columbia.

4 Q Okay. On November 23, 2001, where did you live?

5 A In Ridgeway.

6 Q Okay. And who did you live with?

7 A I lived with my father.

8 Q Okay. And your father lived in a house next to
9 Ms. Cook?

10 A Yes, sir.

11 Q And across from your sister?

12 A Yes, sir.

13 Q Okay. Let me just go to those events. On November
14 23, do you recall being at your dad's house or were you
15 living that day?

16 A Yes, sir.

17 Q And do you recall seeing Darryl that day?

18 A Yes, sir.

19 Q Could you relate to the jury when you saw him and
20 what were the circumstances?

21 A It was approximately -- a little bit after
22 six o'clock, because I had just gotten off work. He was
23 standing in the back door smoking a cigarette. I asked
24 him why he was smoking that nasty thing, and we walked in
25 the house together.

1 Q When you're saying it's a little bit after
2 six o'clock, could it be 15 minutes one way or the other?

3 A Yes, sir.

4 Q Okay. And you saw him smoking a cigarette?

5 A Yes, sir.

6 Q And other than that conversation, what you just
7 relayed to the jury, you said to him, did you have any
8 other conversation with him that evening?

9 A I just asked him how his day went.

10 Q Okay. And do you know where he had been that day?

11 A He had went for a job interview.

12 Q Okay. And did he go with anybody you know?

13 A He went with my sister, Betty.

14 Q Okay. And did you see him any at all -- at all any
15 -- at any later time during that everything, or are you
16 pretty much saying that sometime 15 minutes one way or the
17 other from a few minutes past six?

18 A I had seen him, you know, in and out of the house,
19 you know, because we were all sitting around.

20 Q All right. Now, let me ask you this: This is almost
21 six years ago, okay.

22 A Yes, sir.

23 Q Is this the first time you have been called on to
24 relate where you were and where Darryl was on
25 November 23rd, around six o'clock?

1 A Other than when I talked to you.

2 Q Okay. And you have talked to me on several
3 occasions?

4 A Yes, sir.

5 Q All right. Have you also talked to my investigator
6 on several occasions?

7 A Yes, sir.

8 Q And other people from my office, as well?

9 A Yes, sir.

10 Q And did we make you aware of the fact that your name
11 was going to be turned over to the Solicitor as a witness
12 for about that timeframe?

13 A Yes, sir.

14 Q Has anybody contacted you from the State or sheriff's
15 department or Solicitor's Office?

16 A No, sir.

17 MR. SWERLING: All right. Answer any questions that
18 the solicitor might have, okay.

19 THE WITNESS: Okay.

20 THE COURT: Thank you, Mr. Swerling.

21 Mr. Barfield?

22 CROSS-EXAMINATION:

23 BY MR. BARFIELD

24 Q Just a few. Geraldine is your sister?

25 A Yes, sir.

- 1 Q You're -- are you the youngest?
- 2 A No, sir. I'm number eight.
- 3 Q Eight?
- 4 A Uh-huh.
- 5 Q From the -- being close to the youngest but not
- 6 quite?
- 7 A Right.
- 8 Q All right. Geraldine was living next to your dad,
- 9 Cricket --
- 10 A Yes, sir.
- 11 Q -- in November of 2001; is that correct?
- 12 A Uh-huh.
- 13 Q Who lived in her house then?
- 14 A She and her children.
- 15 Q Who would be Darryl and who?
- 16 A Crystal.
- 17 Q And who?
- 18 A Rodrigues.
- 19 Q Anybody else live there?
- 20 A No, sir.
- 21 Q All right. Who lived in your daddy's house in
- 22 November of 2001?
- 23 A Well.
- 24 Q Give me all the names.
- 25 A Myself.

- 1 Q All right. Hold on. Go ahead.
- 2 A My two children.
- 3 Q All right. Their names?
- 4 A Miana, Marquez (phonetic).
- 5 Q A boy and a girl?
- 6 A Huh-uh, two boys.
- 7 Q All right. That's -- so your dad is one and then you
- 8 and your two children?
- 9 A Uh-huh.
- 10 Q Who else?
- 11 A My sister, Tonya, and her child.
- 12 Q So that's two more. Who else?
- 13 A My niece, Latista (phonetic) and Sonia.
- 14 Q Is that two nieces?
- 15 A Uh-huh.
- 16 Q Now, who is -- did their parent live there?
- 17 A No, huh-uh.
- 18 Q Were they grown ups?
- 19 A No, huh-uh.
- 20 Q How old or young were they, teenagers or little
- 21 children?
- 22 A They were teenagers.
- 23 Q All right. So that's two more, Latista and Sonia.
- 24 Who else?
- 25 A That's it.

1 Q So let me count up, about two, four, six, about eight
2 people there?

3 A Uh-huh, right.

4 Q Now, on November 23rd, 2001, you said that you saw
5 Darryl six o'clock, give or take 15 minutes either way; is
6 that right?

7 A Correct.

8 Q Standing in the doorway smoking a cigarette at your
9 daddy cricket's house or his house?

10 A At my dad's house.

11 Q Your dad's house. Who else was there when you saw
12 that?

13 A When I got out of the car, he was standing at the
14 back door by his self (sic).

15 Q Okay. All right. But who else was on the property
16 when you saw Darryl smoking a cigarette in the back door?
17 You pulled up?

18 A Uh-huh.

19 Q All right. Who was there?

20 A Who was in the house?

21 Q Who was inside or outside when Darryl Cook was there
22 smoking a cigarette? Everybody's name, please, ma'am.

23 A I know my dad was there. My children were there.

24 Q All right. Who else?

25 A That's it.

1 Q So Tonya and her child weren't there. Tonya and her
2 child weren't there?

3 A Huh-uh.

4 Q Latista and Sonia weren't there. Nobody else there?

5 A (Nods).

6 Q You have got to answer out.

7 A Oh, I'm sorry.

8 Q That's fine. That's fine. They don't -- they don't
9 take a head shake. She has got to record it.

10 MR. BARFIELD: Thank you, ma'am. That's it.

11 MR. SWERLING: Your Honor, I ask that Ms. Miller be
12 allowed to be excused.

13 MR. BARFIELD: No objection.

14 THE COURT: You're released from your subpoena,
15 ma'am. You may leave, if you wish.

16 MR. SWERLING: Thank you.

17 I call Crystal Cook. Come on around.

18 THE COURT: Come on around and be sworn.

19 THE CLERK: I need you to raise your right hand and
20 place your left hand of the Bible.

21 CRYSTAL COOK, after being duly sworn,
22 testified as follows:

23 THE CLERK: Please be seated. State your name for
24 the record.

25 THE WITNESS: Crystal Cook.

DIRECT EXAMINATION:

1
2 BY MR. BARFIELD

3 Q Okay. Ms. Cook, how old are you?

4 A Twenty-one.

5 Q And where do you live?

6 A I stay at [REDACTED]

7 Q Hood Road?

8 A Uh-huh.

9 Q Okay. And who do you live with?

10 A My mother, Geraldine Cook.

11 Q All right. Is that your mom sitting over there?

12 A Yes.

13 Q Is that your dad?

14 A Yes.

15 Q And on November 23, 2001, where were you living?

16 A I was staying at 1269 U.S. Highway, which is my
17 grand's address, but I stayed in the blue house.

18 Q Now, you say it's your grand's address? Is that
19 what --

20 A Yeah, I use my grand's address.

21 Q Okay. And let me show you what's State's Exhibit
22 number 119. Does that look like the house you were living
23 in and your granddad was living in?

24 A Yes, sir.

25 Q Okay. And that's on November 23rd, correct?

1 A Yeah. That's the house we were staying at on
2 November 23rd.

3 Q Staying at, okay. Your mom -- who was staying there?

4 A Me, my mom, my brother, Darryl, and Rod every once in
5 a while.

6 Q Okay. There's a lot of family that lives in that
7 area; is that right?

8 A Yeah.

9 Q Okay. And do you all kind of go back and forth
10 between your grandfather's house and your aunt's house
11 which is across the way?

12 A Yes, sir.

13 Q Okay. Because you have got a lot of -- you have some
14 cousins, aunts, and uncles?

15 A Yeah.

16 Q On your mom's side, we already know that there's ten
17 children. What about on your dad's side?

18 A I don't know how many children are on there.

19 Q A bunch?

20 A Yeah.

21 Q Okay. You don't know -- do you know -- do you have
22 contact with his family?

23 A No.

24 Q Okay.

25 A Not like that.

1 Q Pardon?

2 A No, not like that.

3 Q Okay. All right. Now, on November 23rd, 2001 were
4 you seeing a fellow named Qurbitt Jones?

5 A Yes.

6 Q He was there that day?

7 A Yeah.

8 Q He was at the house that day?

9 A Yes.

10 Q Now, how long had you been seeing Mr. Jones?

11 A My ninth grade year in high school.

12 Q Starting in ninth grade?

13 A Yeah.

14 Q Now, let me go back to November 23rd, 2001. Did you
15 have an occasion to see your brother some time between
16 five and seven?

17 A Yes.

18 Q Tell the jury where you seen him.

19 A At our residence in the blue house between like six,
20 6:30, during those times.

21 Q And do you remember what he was doing?

22 A No, just talking at the house, and Qurbitt took him
23 to the store. That's the only thing I remember them
24 doing.

25 Q How long were they gone?

1 A About five, ten minutes.

2 Q Do you remember the last time you saw your brother
3 that evening?

4 A Walking out the door. That's about it.

5 Q Do you remember, recall, what time it might have
6 been?

7 A No, not the time.

8 Q Okay. So you saw him somewhere between six and
9 6:30 at the house?

10 A Uh-huh.

11 Q Is that what you're saying?

12 A Yes, sir.

13 Q And would that be fair to say, give or take, 15
14 minutes or so one way or the other?

15 A Yeah.

16 Q Is that fair to say?

17 A Yes, sir.

18 Q Okay. Now, let me ask you this: Is today the first
19 time you're being called on to remember that date and
20 where you were and where your brother was?

21 A Yeah, besides you and your investigator talking to
22 me.

23 Q Okay.

24 A This is the first time.

25 Q So this is -- you discussed this before with me, my

1 investigator, members of my office?

2 A Yes, sir.

3 Q Is that correct? And we told you that your name
4 would be turned over to the Solicitor's Office --

5 A Yes, sir.

6 Q -- as a witness for where Darryl was at that time; is
7 that correct?

8 A Uh-huh.

9 Q Has anybody contacted you to talk to you about it?

10 A No, sir.

11 Q Now, let me jump forward a little bit, okay.

12 A Okay.

13 Q In 2000 -- well, let me ask you, did you have a baby?

14 A Yes.

15 Q And who is the daddy?

16 A Qurbitt Jones.

17 Q Okay. And when was the baby born?

18 A May 19, 2002.

19 Q Okay. And at some point during the year of 2006, did
20 you have an occasion -- well, let me -- well, actually
21 2004. Did you have an occasion to take Qurbitt Jones to
22 court to get child support?

23 A Yes, sir.

24 Q And was he ordered to pay child support?

25 A Uh-huh.

1 Q Okay. Was he ordered, in fact, to make child support
2 payments of \$56.69 weekly?

3 A Yes, sir.

4 Q Okay. I'm going to show you what's an official court
5 record from the Family Court. If you can recognize that,
6 is that the order of support?

7 A Yes, sir.

8 MR. SWERLING: Your Honor, we're going to offer this
9 in.

10 MR. BARFIELD: I've seen it. No objection.

11 THE COURT: All right. Defendant's...

12 MR. SWERLING: Pardon?

13 MR. BARFIELD: Three, I think, into evidence without
14 objection.

15 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
16 identification and received into evidence.)

17 BY MR. SWERLING

18 Q Now, Ms. Cook, let me ask you this: Did Mr. Jones
19 make the child support payments as he was ordered to by
20 the court?

21 A No.

22 Q Okay. And did you have occasion to take him back to
23 court on -- for the arrears or the amount that had been
24 building up on the child support payments to make him pay
25 -- make him pay the payments?

1 A Whatever they have like regular court for Family
2 Court, yeah. We were supposed to appear. I didn't have
3 to but he did, but he never showed.

4 Q Okay. Do you know how many times that scheduled, to
5 your own knowledge, that he didn't show?

6 A They do it like every nine or some months out of the
7 year. I'm not sure.

8 Q Okay. So from 2004 when this order was entered, were
9 there attempts made, to your own personal knowledge, to
10 get him to pay the child support?

11 A I didn't make him pay it, but it was up to him to pay
12 it.

13 Q No. What I'm saying is the court made him pay it.

14 A Yeah.

15 Q Okay. You started the proceedings back in 2004.
16 What I'm asking you is did the court try to make him pay
17 the child support payments?

18 A I -- yeah.

19 Q Okay.

20 A Uh-huh.

21 Q Now, sometime in 2006, did he get arrested for
22 failure to pay child support?

23 A Yes.

24 Q Was that something you initiated, or was it something
25 the court did?

1 A They did, the court.

2 Q And was he, in fact, arrested in August of 2006?

3 A To my knowledge, he was arrested.

4 Q And do you know what his -- I'm sorry. He was
5 arrested -- I apologize. Do you know when he was
6 arrested? I'm saying 2006. That's when he was arrested
7 on another charge.

8 A Oh, yeah.

9 Q Do you know when he was arrested for the child
10 support payments. I got my two charges confused, I'm
11 sorry. I apologize.

12 A No.

13 Q Okay.

14 A I don't know when he was arrested for that.

15 Q Pardon me?

16 A No. I do not know when he was arrested --

17 Q Okay.

18 A -- for the child support payments.

19 Q Is he currently serving a sentence for the child
20 support?

21 A As we speak.

22 Q And that is a one-year sentence?

23 A To my knowledge.

24 Q Okay. But you did not -- I guess the point I'm
25 trying to make is you did not go to court to get him

1 arrested?

2 A Huh-uh.

3 Q The court went ahead and put him in jail for a year
4 because he wasn't paying his child support?

5 A Yeah. They did that.

6 Q Is that correct?

7 A Uh-huh.

8 Q Did this order for his arrested and what he's now
9 serving have anything to do with this case whatsoever?

10 A No.

11 MR. SWERLING: Okay. All right. Answer any
12 questions the Solicitor has, okay.

13 THE WITNESS: Okay.

14 THE COURT: Thank you, Mr. Swerling.

15 Mr. Solicitor?

16 CROSS-EXAMINATION:

17 BY MR. BARFIELD

18 Q Actually, the child support case which requires
19 Qurbitt Jones to pay child support was something that was
20 initiated by D.S.S.; is that correct?

21 A No. I went up there and filed it.

22 Q Well, read the caption of the case. Who is listed as
23 the Plaintiff in the case?

24 A Yeah, it says D.S.S.

25 Q It's D.S.S. child support case, is it not?

1 A Yeah. That's what it says, but I filed it.

2 Q The money -- well -- this order was initiated or
3 signed by the judge on May 4th of 2004; is that correct?

4 A Uh-huh.

5 Q You have got to say yes or no.

6 A Yes.

7 Q That's fine. It's not for me. It's because she
8 records it, and they can't record an "uh-huh".

9 He made payments, I assume. At some point, he made
10 some payments; is that correct?

11 A Every once in a while but...

12 Q Did the payments come straight to you? Did they go
13 through the court and then get sent to you --

14 A Yes.

15 Q -- or did they go to D.S.S.?

16 A They went to court and then sent to me.

17 Q Okay. And for him to get in trouble, you didn't have
18 to do anything for him to get in hot water about this
19 child support; isn't that correct?

20 A No.

21 Q He didn't pay it. The court knew he wasn't paying;
22 isn't that correct?

23 A Basically.

24 Q And if he didn't pay, the court knew he wasn't
25 paying. The court would send for him to come to court; is

1 that correct?

2 A Basically.

3 Q And that's exactly what happened some time roughly
4 August of 2006; is that correct?

5 A I assume. I don't know. I don't question it.

6 Q You don't know when he got put in jail for not paying
7 child support, do you?

8 A Nope.

9 Q Do you know that it was 2006?

10 A On the first time he got arrested, yeah.

11 Q Well, let me back you up just a minute. He is
12 currently in the Fairfield County Detention Center because
13 a Family Court judge put him there for not paying the
14 child support in your case; is that correct?

15 A Uh-huh.

16 Q Now, how did you find out he was in jail for not
17 paying child support this time? How did you find that
18 out?

19 A His mom.

20 Q And when did you find out from his mom that he was in
21 jail for not paying child support?

22 A I called her because my daughter wanted to go see
23 her.

24 Q Okay. Within the last two or three months?

25 A Yes, during the summer.

1 Q All right. So some time summer or later is when he
2 went to jail for not paying child support?

3 A I assume.

4 Q Okay. Well, prior to him going to jail for not
5 paying child support, did he see your daughter?

6 A Yeah.

7 Q Did he come around?

8 A Yeah.

9 Q When is the last time you remember seeing Qurbitt
10 Jones on the street in street clothes?

11 A I don't know, because I don't keep up with him like
12 that.

13 Q Okay. He doesn't deal with you about your child?

14 A No.

15 Q Sometime, though, summer or later he went to jail for
16 not paying child support?

17 A Yeah.

18 Q Your granddaddy is Cricket? One of your aunts called
19 him Cricket. Is that what people call your granddaddy?

20 A That's what they call him.

21 Q He lives next door to where you and your mom and Rod
22 and Darryl used to live?

23 A Uh-huh.

24 Q And back in November of 2001, who all was living
25 there?

1 A Several people stayed there. I didn't stay there.

2 Q You don't know. And you said on November 23rd of
3 2001, some time six to 6:30, give or take 15 minutes,
4 Darryl was at your mom's house?

5 A Uh-huh.

6 Q And you said at some point late that afternoon about
7 that time Qurbitt Jones drove Darryl up to the Shell
8 Station?

9 A Yes.

10 Q Do you remember it was raining that day?

11 A No. I'm not sure if it was raining that day.

12 Q And Darryl didn't have a job back on November 23rd,
13 2001, did he?

14 A He had a job. I'm not sure if he had a job that
15 specific day, but he was working.

16 Q Where was he working?

17 A Bose.

18 Q When did he start working at Bose?

19 A I don't know.

20 Q Do you have any idea why he would have gone to
21 Randstad in Columbia after having been taken there by your
22 aunt, Betty Miller? Why -- do you know why Betty Miller
23 would have taken him to Randstad in Columbia to interview
24 for a job on November 23rd, 2001 if he had a job?

25 A I don't know.

1 Q Okay. Do you know whether your aunt, Betty Miller,
2 took him to Randstad on November 23rd, 2001 to interview
3 for a job? Do you know one way or the other?

4 A From just knowing, no, but talking to her, yeah.

5 Q So she did?

6 A I assume she did. That's what they said.

7 Q Okay. So Darryl didn't have a job on November 23rd,
8 2001; is that correct?

9 A I said he had a job.

10 Q Well, why is he interviewing for a job when he has
11 already got a job?

12 A I don't know.

13 MR. BARFIELD: Okay. Thank you, ma'am. That's all.

14 THE WITNESS: Okay.

15 MR. SWERLING: Just one follow up.

16 THE COURT: Just a second, ma'am.

17 CROSS-EXAMINATION:

18 BY MR. SWERLING

19 Q Ms. Cook, I think I confused you, and I apologize for
20 it, but was this the first time that Mr. Jones has been
21 arrested for child support, or has he been arrested
22 before?

23 A He was arrested before for child support.

24 Q Okay. And you're also aware that he was arrested for
25 a warrant, an accessory after the fact?

1 A Yes.

2 Q Okay. So he's been arrested a few times?

3 A Yes.

4 Q Okay. And you initially were the one that took out
5 or tried to get child support --

6 A Yes.

7 Q -- from Mr. Jones, correct?

8 A Uh-huh.

9 Q D.S.S. picks up those cases, however. Do they not?

10 A Yeah.

11 Q Okay. And you don't have to keep going back to
12 court; isn't that correct?

13 A Uh-huh, yes.

14 Q They go ahead and decide or they bring the person
15 back to court; isn't that correct.

16 A Yes.

17 MR. SWERLING: Okay. All right. That's all I have.
18 Thank you.

19 THE WITNESS: Uh-huh.

20 THE COURT: Any recross, Solicitor?

21 MR. BARFIELD: None.

22 THE COURT: All right. You may step down, ma'am.

23 MR. SWERLING: Your Honor, that would be our case.

24 THE COURT: All right. As you just heard, the
25 defense has rested its case. There will be certain legal

1 matters that we'll need to take up today, but they won't
2 involve you, the jury.

3 Now, we're going to start a little earlier tomorrow.
4 We're going to start at 9:30, and so I ask you please to
5 return to your jury room tomorrow morning at 9:30. Thank
6 you very much.

7 (WHEREUPON, the jury left open court at approximately
8 5:16 p.m.)

9 THE COURT: Please let the record reflect that the
10 trial jury and alternate are absent from the courtroom.
11 Anything additionally from the defendant?

12 MR. SWERLING: Judge, we would just renew the motions
13 made at the conclusion of the State's case for a directed
14 verdict and ask that our arguments may then be made to be
15 reflected in the record at this time.

16 THE COURT: All right, sir. Thank you. I rule the
17 same, which is I deny the motions.

18 MR. BARFIELD: Just from a procedural standpoint, of
19 course, Mr. Swerling offered some evidence, and that I
20 think gives me the last argument. My intention is to
21 waive my opening and just simply argue one time and last
22 in the morning.

23 THE COURT: Okay. So we'll argue and charge in the
24 morning and, of course, once we have arguments and the
25 charge, then we have to dismiss the alternate. I'm going

1 to go ahead and dismiss her in the morning when we start.

2 MR. SWERLING: Dismiss the alternate, you mean?

3 THE COURT: At least that's my inclination at this
4 time.

5 MR. BARFIELD: I'm not sure I'm following you. Let
6 me make sure. Not dismiss the juror who says she has a
7 problem for tomorrow afternoon but go ahead and cut the
8 alternate lose?

9 THE COURT: No, I'm sorry. I misspoke. The lady
10 with the medical appointment, I'm going to dismiss her and
11 seat the alternate in the morning.

12 MR. SWERLING: Well, Judge, of course, obviously,
13 that's in your discretion, but I would ask the Court to
14 reconsider that. That juror was chosen as part of our
15 original jury, and you know, certainly she has a medical
16 appointment.

17 I'm sympathetic to that, but you know, she is part of
18 the regular panel, and absent her being sick or some
19 family emergency or some medical emergency, I think she
20 should serve on the panel.

21 The jury may -- as a matter of fact, the jury may
22 reach a verdict by then. I don't know.

23 THE COURT: But the alternate will be gone by then.
24 In other words, if we dismiss the alternate at the -- in
25 the normal course, which is after argument and charge, and

1 it gets to the point that she's in that time bind, but we
2 can examine her more closely in camera as to the purpose
3 of her appointment and examine it further in the morning.

4 MR. SWERLING: Yes, sir. I'm reluctant to do that.
5 However, I just don't think I can consent or not object to
6 a juror on the regular panel being excused for those
7 reasons.

8 THE COURT: Well, we'll examine her in camera in the
9 morning, find out exactly what the situation is. If it is
10 one that needs to be attended to tomorrow, then we'll
11 dismiss her. If it's not, then we'll just have her make
12 different arrangements.

13 MR. SWERLING: Yes, sir.

14 MR. BARFIELD: Thank you, Judge.

15 THE COURT: Anything additionally before we break for
16 the day?

17 MR. BARFIELD: Nothing from the State?

18 MR. SWERLING: No, Your Honor.

19 THE COURT: Court will be at ease until 9:30.

20 (There was an overnight recess).

21 (The following was heard in chambers with Juror
22 Teresa Kennedy).

23 THE COURT: Ms. Kennedy, you know, as a man, when
24 there's a medical issue, you can just say, "You know,
25 Hamp, what's wrong?"

1 With a lady, things can get a little more sensitive.
2 I -- if I'm asking you something that is of a sensitive
3 nature, I apologize for it, but we kind of have to know.

4 We're to the point where we need to ask you about
5 what this appointment is this afternoon.

6 JUROR: I got thyroids, and I go to a thyroid doctor
7 in Columbia. The doctor that I was going to, she got
8 married, and she left. She left Columbia, so they had to
9 take all of her patients and give them to the doctors
10 that's already in there. That's why I had a hard time
11 getting this appointment.

12 THE COURT: Okay. And you take medication for this?

13 JUROR: Yes, but see, I went to my regular doctor up
14 here, and she told me I need to go to my thyroid doctor,
15 because I had been sick with it.

16 THE COURT: Okay.

17 JUROR: They might need to raise my medicine.

18 THE COURT: Who is your doctor here?

19 JUROR: Dr. Stutts. I got my appointment card.

20 THE COURT: Oh, I trust that you're okay. Well,
21 that -- if you didn't get to see her until next week or
22 later this week, would you be okay?

23 JUROR: Yeah, I mean, yeah, if you get my
24 appointment. I had hard time getting it. I had to get
25 Dr. Stutts to call down there to get me an appointment.

1 They kept calling and putting me off. They said they were
2 so booked up with their own patients that they had to work
3 us in.

4 THE COURT: What name do they have you listed under
5 at the doctor's office?

6 JUROR: Teresa Kennedy.

7 THE COURT: Susie Kennedy.

8 JUROR: Teresa, Teresa Kennedy.

9 THE COURT: Teresa Kennedy?

10 JUROR: Yes.

11 THE COURT: And it's Dr. Stutts.

12 JUROR: Yes.

13 THE COURT: Okay. Well, I'm satisfied that we can
14 get a different appointment for you, I would think. Do
15 you know that number of the office?

16 JUROR: Dr. Stutts, it's 461 -- you're talking about
17 Dr. Stutts or the one in Columbia?

18 THE COURT: Dr. Stutts.

19 JUROR: 6461.

20 THE COURT: Yes. Let me hold the card for the one in
21 Columbia. That might be the better one. Let me call
22 them.

23 JUROR: They had to write it up there because they
24 done changed it so many times.

25 (Whereupon, His Honor made a telephone call.)

1 THE COURT: And what doctor do you see?

2 JUROR: Allison. That's who I was seeing, but she's
3 not down there. I'm seeing Brandon, Mr. Brandon.

4 (Pause).

5 Thank you.

6 THE COURT: Sorry to be so much trouble.

7 JUROR: Okay.

8 THE COURT: I can see you already rescheduled three
9 times.

10 JUROR: I have. Thank you.

11 THE COURT: All right. And you got the date and all
12 now.

13 JUROR: Yes, next Tuesday is good.

14 THE COURT: Anything --

15 JUROR: That's it?

16 THE COURT: -- from the State or the Defendant as to
17 this witness?

18 MR. SWERLING: No.

19 THE COURT: Juror, excuse me.

20 MR. BARFIELD: Thank you, ma'am.

21 THE COURT: All right. We'll have you in court in
22 just a second.

23 MR. BARFIELD: Easy enough. The State is ready
24 otherwise.

25 THE COURT: Is the defendant in?

1 MR. BARFIELD: We need Mr. Cook. I'm sorry.

2 (Pause).

3 THE COURT: Is the State ready?

4 MR. BARFIELD: State's ready.

5 THE COURT: Defendant?

6 MR. SWERLING: Yes, sir.

7 THE COURT: If we could have the jury, please, ma'am.

8 (The following was held in open court.)

9 THE COURT: Anything from the State before we bring
10 in this jury?

11 MR. BARFIELD: Nothing.

12 MR. SWERLING: Nothing, Your Honor, except
13 Mr. Barfield did agree there was -- actually, this should
14 have gone in with the -- this is Defendant's Exhibit
15 number four, should have gone in with the jail record
16 which is Defendant's Exhibit number one, and the Solicitor
17 has no objection to it going in at this time.

18 THE COURT: That's Defendant's four?

19 MR. SWERLING: Yes, sir.

20 THE COURT: All right. Without objection; is that
21 correct, Mr. Solicitor?

22 MR. BARFIELD: That is correct.

23 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
24 into evidence.)

25 THE COURT: The jury, please, ma'am.

1 (WHEREUPON, the jury came into open court at
2 approximately 10:23 a.m.)

3 THE COURT: Please let the record reflect that the
4 trial jury and alternate are present in the courtroom.

5 Mr. Foreman and ladies and gentlemen of the jury, it
6 is now time for the closing statements by the State and
7 the defense. The State waives its opening on the law?

8 MR. BARFIELD: That is correct.

9 THE COURT: Mr. Swerling, I'll be happy to hear from
10 you.

11 CLOSING STATEMENT:

12 MR. SWERLING: Thank you. May it please the Court.
13 Solicitor. Mr. Foreman, ladies and gentlemen, good
14 morning. I hope you all are well.

15 Well, this trial, I think, has gone on and lasted a
16 little bit longer than anybody even anticipated, but it's
17 going to end today.

18 First of all, I'd like to thank you for staying tuned
19 in and paying attention over the last seven days, or this
20 is the seventh day of the trial because it's not easy to
21 do.

22 Sometimes, you know, you're over there in a full day
23 in court, and in the afternoon you get a little tired, you
24 get a little sleepy.

25 One thing I've noticed, and I think the Solicitor

1 will join in this, is this jury never stopped paying
2 attention. You paid attention the entire time. You paid
3 attention to what was on the witness stand, what people
4 were saying on the witness stand and what the evidence was
5 that came in from the State. We thank you for that. That
6 is a difficult thing to do.

7 The oath that you took is a solemn oath. What you're
8 doing is you're sitting as a jury impaneled here in
9 Fairfield County, and you're sitting as a buffer between
10 the State of South Carolina, the government, and a citizen
11 who is accused of a crime.

12 When I say you're a buffer, in other words, nothing
13 can happen. There is no end result to this thing unless
14 you say so, and whatever you say is going to be what
15 stands.

16 If at the conclusion of this case and you go in the
17 jury room and deliberate, you find that there's no
18 reasonable doubt in this case, then you have to come back
19 and you have to return a verdict of guilty of one or more
20 of these crimes.

21 But on the other hand, sitting as a buffer, you are
22 the ones that decide whether or not the State has met its
23 burden of proof. You're the ones that decide whether or
24 not from the evidence or lack of evidence there's a
25 reasonable doubt in the case.

1 If you find that there's a reasonable doubt, then you
2 must acquit. Those are the rules under which we operate
3 in this system of justice.

4 Juries have been doing it for a couple of hundred
5 years, and they'll continue to do it as long as we
6 maintain our sovereignty here, and I'm sure that's going
7 to be more for many, many years even after all of us are
8 gone.

9 The point is this: We have the best system on earth.
10 A person does not have to come forward and prove their
11 innocence, because in most cases, that would be difficult
12 to prove you didn't do something. That is why the State
13 is required to prove that you did do something.

14 They have to prove that beyond a reasonable doubt.
15 They have to eliminate from your mind any reasonable doubt
16 that you may have about the guilt or innocence of the
17 person.

18 In England, in Scotland, just to give you an analogy,
19 what -- in Scotland they have three verdicts: It's
20 guilty, not guilty, and not proven guilty because
21 sometimes people think well, you know, when we say not
22 guilty, that means one thing, but really, what we do is we
23 merge those two things. We merge those two things.

24 We said, "It's not a question of just not guilty.
25 It's a question of not proven guilty." That's really

1 what's happening here is that the State must prove guilt
2 beyond a reasonable doubt.

3 You may have some suspicion. You may have some
4 feelings about what the State has alleged and whether or
5 not Mr. Cook did something or didn't do something, but
6 that's not enough, because in many circumstances that
7 people find themselves in, you could -- you could say that
8 about a lot of different people in a lot of different
9 situations. "I suspect that he did something," or "I
10 suspect that this person did something." That's not
11 enough under our system.

12 You have to prove it beyond a reasonable doubt. If
13 they don't meet that level, then it has to be a verdict of
14 not guilty.

15 In this case, I submit to you there is not sufficient
16 evidence, either from the evidence that was presented or
17 the evidence that was not presented, the lack of evidence,
18 that there is a reasonable doubt in this case.

19 They have not proven this case beyond a reasonable
20 doubt, and that doesn't -- it's not a -- that's not
21 chastising in any way the Solicitor or the police or
22 anybody else, because they have to put together the facts
23 they have from their investigation.

24 They have to come and present it to a jury. Who
25 decides whether or not they have proved their case beyond

1 a reasonable doubt? You, the buffer that we're talking
2 about.

3 Now, what is reasonable doubt? Reasonable doubt is
4 something that causes you to hesitate in the more
5 important things in your life. Reasonable doubt is not
6 just something we use in the courtroom. It's something
7 that we use in every important decision that you make.

8 When you make an important decision in your life, you
9 analyze it. You consider what other people say. You
10 consider what you may get on the internet. You may do
11 some researching, talk to other people about it.

12 Then you either make a decision to do something or
13 you don't make a decision because you have some reasonable
14 doubt about it.

15 In real life, even if you have reasonable doubt,
16 sometimes you go ahead and do it anyway. Like, "I can't
17 afford that house, but I'm going to buy it anyway."

18 The difference is taking your experiences from the
19 outside and bringing them to the inside of the courtroom.
20 If you have a reasonable doubt, you have to say so.

21 A reasonable doubt means that the person must be
22 acquitted. It means that the State has not proven guilt
23 beyond a reasonable doubt. Remember the way it says,
24 proving guilt beyond a reasonable doubt.

25 So that's where we are at the case at this point. I

1 told you at the beginning of the case there's a
2 presumption of innocence, and right now, you are supposed
3 to be looking at Darryl Cook as presumed innocent. Still
4 even after hearing all of the evidence, even after hearing
5 our arguments, after hearing the judge's charge on the law
6 in a few minutes, you are to presume him innocent.

7 The only time that presumption can leave is when you
8 go in the jury room and 12 of you who will decide the case
9 agree that they have proven the case beyond a reasonable
10 doubt.

11 If, in fact, that happens, then you can return a
12 verdict of guilty as to one or more of the charges. With
13 any one of you, any two of you, any number of you have a
14 reasonable doubt, then you are to say so. You are to
15 speak up. You are to tell the other members of the jury
16 that I have a reasonable doubt. The State hasn't
17 satisfied me.

18 At the conclusion of that process, we submit to you
19 that when you look at all of the evidence or the lack of
20 evidence and the inconsistencies between what some of the
21 witnesses have said and where we are on this case, you
22 will have a reasonable doubt as to both charges.

23 You have to determine the credibility of the
24 witnesses. That's your function in this case. You have
25 to decide who got on the stand who is telling the truth.

1 You have to decide what their motives are, their
2 interests, their biases, their prejudices.

3 You have to decide whether or not they were
4 consistent with what they've said before and consistent
5 with other people who are testifying or whether they're
6 consistent with the evidence in the case or inconsistent
7 with other people in the case will testify, inconsistent
8 with the physical evidence.

9 You decide who is telling the truth and who is not.
10 You can believe one witness against ten, or you can
11 believe ten against one. No one can invade your province
12 about how to evaluate that and who to believe in the case,
13 but obviously, the credibility of a witness is extremely
14 important in this case because a lot of the information in
15 this case depends upon your believing the witness who got
16 on the stand and told you that evidence.

17 We submit that the State can't choose their
18 witnesses. The defense doesn't choose their witnesses.
19 Sometimes the facts choose the witnesses, but the
20 witnesses, many of the witnesses got up on the stand in
21 this case, were inconsistent with what they had said
22 before, inconsistent with what other people had said.
23 Inconsistent with some of the physical evidence we know.

24 That's something you have to evaluate in determining
25 reasonable doubt, because their testimony, the State is

1 asking you to rely on it to come back with a verdict of
2 guilt against a man charged with murder and armed robbery.

3 Now, I'm not going to really go into the law because
4 the judge -- the jury charge in this case, even though it
5 contains some complicated legal principles is pretty
6 straightforward.

7 The judge is going to tell you what I just told you
8 about reasonable doubt, presumption of innocence. Talk to
9 you about the credibility of witnesses. He's also going
10 to define murder, and he's going to define armed robbery.
11 Those are pretty self-explanatory.

12 You will understand those after the judge tells you
13 what the elements are in the case, but what's important in
14 this case, and what I'm going to ask you to remember is
15 that Darryl Cook has said he did not kill anyone. Darryl
16 Cook has said he did not rob anybody.

17 He appeared in front of the court and entered a plea
18 of not guilty. That speaks as loud as anything you will
19 hear in this case or that you have heard in this courtroom
20 over the last seven days.

21 The Judge will also tell you this: The fact that he
22 did not testify is not even a factor you can consider.
23 It's not something you can discuss. No one in the jury
24 room is allowed to discuss the fact that Mr. Cook did not
25 testify. That's because our forefathers a long time ago,

1 when they devised this beautiful system we have, decided
2 that a person does not have to testify, does not have to
3 get up on the stand because it's the State's burden to
4 prove that guilt beyond a reasonable doubt.

5 No inference can be drawn from a person not taking
6 the stand, because there's all kinds of reasons why a
7 person might -- may not take the stand.

8 So because of the fact that there's so many different
9 reasons why a person may not take the stand, it's not even
10 a factor you can consider and discuss. I ask you not to.
11 I know that you will follow your oath as jurors in this
12 case. I'm satisfied with that.

13 Now, let me get into some of the facts of the case,
14 some of the testimony in this case that you probably are
15 considering, things that you should be thinking about,
16 things you're probably going to discuss.

17 What I'd like you to also remember is this: Under
18 our system, I have to speak first. Because the State has
19 the burden of proof, as we've been talking about to prove
20 guilt beyond a reasonable doubt, they get to speak last.
21 They get to respond to what I say. I don't get to stand
22 back up here afterwards.

23 Mr. Barfield will be the last person that you hear
24 before the judge. You will not hear Swerling again.

25 Now, what I would ask you to do is when Mr. Barfield

1 does get up here and he talks to you about the way he
2 views the case, what he's asking you to consider, if you
3 try to kind of in your mind say, "Well, what would
4 Mr. Swerling say in response to that," because knowing
5 Mr. Swerling is not going to be able to get back up here.
6 I'd ask you to do that.

7 I just want to explain to you what the procedure is
8 so you don't think I don't want to get back up. The rules
9 don't allow me to get back up. Mr. Barfield gets to
10 address you last because he has the burden of proof.

11 In this case we talked about starts off with the
12 credibility of witnesses. What I'd like you to consider
13 in talking about this case is this: Sometimes when we
14 have a situation, and I'm not trying to cast any
15 aspersions on anybody because sometimes it's just a
16 natural process that happens.

17 We come to some conclusion, or we come to some belief
18 that somebody may have done something, and then all of a
19 sudden everything starts going in that direction.
20 Everything that you do, everything you say, everything
21 that happens in the case, or in any kind of situation in
22 life starts working toward that ultimate goal in saying
23 we're proving to someone or proving to yourself that what
24 you concluded from the beginning is, in fact, the result.
25 We call that a result-oriented approach.

1 In this particular case, I submit to you that at some
2 point there was a result-oriented approach given to this
3 case; that at some point Darryl Cook became a suspect in
4 the case for some reason or another, and that everything
5 started going in that direction to try to show that Darryl
6 Cook was the individual on November 23rd who killed
7 Mr. McGuirt.

8 I'll point out to you some reasons why I submit to
9 you that what we have here was a result-oriented approach
10 in this case, and that other things were never considered.
11 Other things were never eliminated, and that in and of
12 itself creates some reasonable doubt.

13 I want to start off by telling you, before I start
14 talking about the facts, that no one here, no one is
15 saying that this was not a tragedy.

16 What happened to Mr. McGuirt, what happened to his
17 family, is something that makes my heart hurt, makes all
18 your hearts hurt.

19 No one should have to go through what Mr. McGuirt
20 went through. No one should have to go through what Joan
21 and Susan McGuirt went through.

22 In no way by standing here defending Mr. Cook and
23 defending the principles that we hold so sacredly in this
24 country is anybody saying anything less. I want you to
25 understand that.

1 If you'll recall, I didn't even ask Ms. McGuirt a
2 question, no questions, because she has gone through
3 enough suffering. She has had an extremely difficult
4 time. No one should ever have to go through what
5 Ms. McGuirt went through or her daughter went through.

6 Their experience was not something to be
7 cross-examined and tested in front of you or the jury.
8 That would have been just not appropriate, and so we
9 didn't do it. But I want you to consider some of the
10 things that they said in your evaluation of the case, but
11 at no point do I want you to think anybody is in any way
12 minimizing or in any way mitigating what happened on
13 November 23rd.

14 It is a tragedy. Unfortunately, in this courtroom we
15 deal with tragedies every single week in one form or
16 another. In this courtroom -- you go around the state,
17 there's 46 of them. Around the country, there's thousands
18 of them. It happens all the time.

19 You, the jury, have to weigh through it and sift
20 through it and come up with a result and you will, and you
21 will.

22 We take 12 people from every aspect of life, every
23 part of the community. We put them together, and we get
24 them to agree on a verdict in the case. You know what, it
25 works.

1 People do come together and decide what the ultimate
2 issues are in a case. Let me talk about the first person
3 who is involved in this situation, Chris Hill.

4 Ladies and gentlemen, we're not talking about a
5 layperson and what layperson's observations are. We're
6 talking about an experienced law enforcement officer.
7 We're talking about someone who on November 23rd, as
8 absurd as it may sound, told you that at six o'clock, 613,
9 he was riding past Mr. McGuirt's.

10 He knows Ms. McGuirt to be closed at six o'clock. He
11 saw the lights on. He saw an individual leaving or going
12 from Mr. McGuirt's store toward his truck with something
13 under his arm.

14 This experienced law enforcement officer didn't make
15 a stop, didn't go over and make an inquiry, didn't wonder
16 who is going on. Why do I point that out? Because a lot
17 of this case, 90 percent of this case, depends upon what
18 Chris Hill told you, whether or not he made an accurate
19 identification of the person who was walking from
20 Mr. McGuirt's over to the truck.

21 You have to first start off with the fact that how
22 absurd it is, that if he had that attention given to that
23 particular person walking across the parking lot at 6:13
24 with the lights on at Mr. McGuirt's store, and he's
25 holding something under his arm, and he has identified a

1 blank male who he is going to be looking at closely enough
2 to be able to identify to you six years later, he doesn't
3 have curiosity as to what's going on.

4 Why do I raise that? Was Chris Hill there in the
5 area? I don't doubt that, but did Chris Hill make an
6 accurate description or an accurate identification? I
7 submit to you he did not. I submit to you he wasn't
8 paying attention.

9 I submit to you that if he saw somebody, he just
10 made -- he made the right turn because logic would tell
11 you that if he said he saw what he said he saw, he would
12 have stopped, and he would have checked it out as to why
13 when it's dark and the lights are on, Mr. McGuirt's store
14 is still open, and there's an unidentified black male
15 walking with something under his left arm. He would have
16 stopped to see what was going on. Left arm, he saw
17 something under his left arm.

18 Ladies and gentlemen, do you remember what the
19 conversation was between me and him? Did he ever -- when
20 he was walking, what side it was to you, his right arm.
21 He was walking this way. He was walking from this
22 direction to that direction.

23 Did he ever turn around? No.

24 Did you see his face? I saw his face.

25 Well, what that brings to me, or to my mind, is this:

1 How do you see something under his left arm if he was
2 walking in this direction, and he's over there 50 feet
3 away and the person's left is never exposed to him?

4 You know, these are the kinds of things that you'll
5 have to evaluate with reasonable doubt. The description
6 he gave, this is not something coming from Jack Swerling.

7 He got up and told you in the courtroom that the
8 person had on a Polo shirt, a polo type shirt, no jacket,
9 nothing on his head, clean shaven, 5'7" to 5'8", 130 to
10 140 pounds.

11 That night when he sat down with Roy Paschal, a
12 forensic expert, composite expert from S.L.E.D., he said
13 this: 5'10", 100 to 110 pounds, slender, 18 to 20 years
14 old, dark blue sweat shirt, a blue and white windbreaker,
15 blue and white windbreaker, a dark blue sweatshirt, blue
16 and white windbreaker.

17 Now, ladies and gentlemen, that's the notes that
18 Mr. Paschal made, the S.L.E.D. agent, when he spoke with
19 Chris Hill at 12 or one o'clock that morning. That is not
20 the testimony you heard in this courtroom in the last
21 couple of days. It's not even close. It's just not even
22 close.

23 Mr. Hill, a person who he described at 100 to
24 110 pounds, 5'10", is a very slender, slight individual.
25 Just use your common sense. If you see someone who is

1 5'10" and 100 to 110 pounds, that is a very thin person.
2 That's what he told the S.L.E.D. agent that night, but
3 realizing at some point over the last few years, well,
4 obviously that can't be, and we have Darryl Cook in
5 custody, and Darryl Cook is the suspect in the case, well,
6 we need to start conforming our testimony to try to show
7 that it was Darryl Cook.

8 So Mr. Hill comes in and gives you a completely
9 different description than what he gave the S.L.E.D. agent
10 that night. Which do you think is a more accurate
11 description, what he gave you in court six years later or
12 what he told the S.L.E.D. agent that night?

13 You know there's a difference between someone who is
14 5'7" and 5'8" and weighs 130 to 140 pounds, a person who
15 is 6'0" or 5'10", I'm sorry, I don't want to exaggerate,
16 5'10" and 100 to 110 pounds. You know it's a difference.
17 You know you wouldn't make that mistake. You know that.

18 Let me tell you what the real realty of it is.
19 There's Darryl Cook. When he was booked in to the
20 Fairfield County jail on 11/26/2001 at 2:42 in the
21 afternoon, 2:42 in the afternoon, you look up there in the
22 upper right-hand corner, his height is 5'11". His weight
23 is 200 pounds, 200 pounds. It's right there. The record
24 doesn't lie.

25 Now, you tell me is there any similarity between an

1 individual who is 5'11", 200 pounds and an individuals who
2 5'10" and 100 to 110 pounds? You know the answer. There
3 is no similarity, and that's something that the State is
4 going to have to respond to.

5 They're going to have to respond to that, because if
6 Chris Hill's identification falls, this case falls. I
7 submit to you his identification is as fraught and faulty
8 as anything that could possibly have been said in this
9 courtroom.

10 Let me go one step further. Chris hill, you know,
11 and it is difficult. I submit to you Chris Hill just
12 didn't tell the truth. He conformed his testimony to what
13 he thought the facts were, and it got so bad in this
14 courtroom the other day, it got so bad, that when he
15 looked over there and he saw Darryl Hill was wearing
16 glasses, for the first time in six years when the
17 Solicitor asked him, he said, "Well, what else?" He said
18 he had on glasses. Do you remember when we read it back?

19 The solicitor said, "Did you say glasses?" Yeah, he
20 had on glasses.

21 "I mean glasses?" Yes, it was glasses. Four times
22 the question was asked and answered, "glasses".

23 Folks, did you believe that? Can you sign a verdict
24 form and say a person is guilty beyond a reasonable doubt
25 based upon that kind of testimony?

1 When I got up on cross-examination and asked Mr. Hill
2 about it, because frankly, sitting over there stunned that
3 he said that, he started backing up right away. What did
4 he tell you?

5 Well, I don't know exactly what he told you because
6 he went all over the board on that. "I don't remember
7 what I said three minutes ago. I was confused when the
8 Solicitor asked me the question. I thought the Solicitor
9 was talking about the windows behind the suspect, the
10 windows, the glass window behind the suspect." That's how
11 absurd his testimony got right in front of your eyes, and
12 that is what the State is asking you to say beyond a
13 reasonable doubt that that description, that
14 identification, was the right identification, was an
15 accurate identification.

16 I submit to you that before you can get anywhere else
17 in this case, before you go any further in this case, you
18 have to accept that identification beyond a reasonable
19 doubt. I submit to you, you can't. It's not reliable.
20 It is not reliable.

21 The S.L.E.D. agent drew a composite. Chief Deputy
22 Lewis said, "Well, that looks like Darryl Cook."

23 Well, you'll have the pictures. You have seen Darryl
24 Cook sitting over there. You look at this photograph
25 of -- this is the booking photo on November 26th, and you

1 look at this and see if there's any kind of similarity.
2 You tell me whether you can look at those two and say
3 that's Darryl Cook.

4 There's one thing -- there's many things on this.
5 You look at it closely. I don't want to spend all of the
6 time going through this, but you look at it closely.

7 The person right there, his ears are very close to
8 his head. You know, you don't -- sometimes it's the
9 features, you know. You can't put the features down on
10 the composite.

11 Sometimes it's difficult to look at these things and
12 say it's a particular person, but look at it. Look at his
13 ears. I mean, his ears are extremely extraordinary.
14 They're not just ordinary, look how they protrude out of
15 the person's head.

16 I'm not trying to make fun of my client, but if you
17 were viewing this person, you wouldn't be drawing this
18 person. It just doesn't make -- it just doesn't connect
19 at all. It doesn't connect.

20 Mr. Hill makes an identification two o'clock in the
21 afternoon the next day. At that point, according to Chief
22 Deputy Lewis, you know, we decide to go ahead and try to
23 arrest Darryl Cook.

24 Now, that is Tuesday the next day, okay. Mr. Hill
25 said the person he saw was clean shaven. Mr. McGuirt told

1 Ms. McGuirt that the person was clean shaven.

2 Monica Simpson told you that Darryl Cook had hair.
3 You look at this photo. It's not the best photo in the
4 world, but there is facial hair there. It may be slight,
5 it may not be prominent, but there's facial hair there.
6 You look at that.

7 Let's talk about what Ms. McGuirt -- or by the way,
8 sometimes I say you can look at the evidence or lack of
9 evidence. I think it's very interesting, and I submit to
10 you something you ought to question is why was not Chief
11 Gratic called in this case by the State.

12 Did he say something that was inconsistent with what
13 the State's theory was in the case? Because I assure you,
14 if he had -- was going to come in and say something
15 consistent with what the State's case was, the State would
16 have called him.

17 Chief Gratic, the first person on the scene, the
18 first person on the scene, was not called as a witness in
19 this case for you. That's the State's burden. It's their
20 Chief. It's their officer. You need to question why he
21 was not called as a witness in the case by the State.

22 Ms. McGuirt. Ms. McGuirt went through a very
23 shocking experience. It was a very, very difficult time.
24 No one in any way can underestimate the experience she
25 had.

1 If this is a difficult thing to argue to you, and I
2 believe that -- well, I can't say I believe, but I submit
3 to you that Ms. McGuirt's probably thinks in retrospect
4 that Mr. McGuirt made the statements that he did that she
5 attributed to him.

6 At some point that she -- that all came together for
7 her. I don't know when. I don't know if it was that day
8 or six years later or four years later or three years
9 later.

10 Let me tell you why I say that. I submit to you it
11 wasn't that day. It may be hard for her now to
12 distinguish that, but ladies and gentlemen, according to
13 Ms. McGuirt at 6:30 in the evening on the Friday that
14 Mr. McGuirt was shot, he made the statements about that
15 boy on the video, the one I caught stealing a few years
16 ago.

17 It took Susan McGuirt a week to go ahead and get that
18 video. You think about that. The police are looking for
19 a suspect in the case. If they had known it was someone
20 on the video, it wouldn't have taken no week to go ahead
21 and get that video.

22 The other thing that I think, I submit to you, is
23 extremely important in this case is remember, they did not
24 have a suspect. They didn't have a suspect until the
25 composite was drawn, and according to Keith Lewis, "It

1 looked like Darryl Cook." You determine whether or not it
2 looked like Darryl Cook or not.

3 That's two o'clock in the morning. What happened
4 between 6:30 and two o'clock? The police are all over the
5 place. No one else heard those comments, no one. Chief
6 Gratic is not here to tell you he heard the comments.
7 Mr. Ginyard is not here to tell you about those comments.
8 Susan McGuirt isn't here to tell you about those comments.
9 No other police officer. Tracy Connor, who was the E.M.S.
10 person never told you about those comments.

11 If those comments has been made by Mr. McGuirt, then
12 certainly Darryl Cook would have been a suspect, and they
13 wouldn't have had to call in a S.L.E.D. composite artist
14 to draw a picture of the suspect, because they would have
15 known who it was. They would have known who it was.

16 Certainly, even if they had to call in a composite
17 artist at twelve o'clock, one o'clock in the morning, they
18 certainly would have known it was Darryl Cook long before
19 issuing a warrant for him later on, Tuesday afternoon,
20 only after Chris Hill made an identification.

21 Remember what Keith Lewis said. On the morning of
22 the 24th, they were questioning some fellow who had been
23 walking near the station with his kid. He was a suspect
24 in the case. It turns out he was just visiting somebody
25 in Ridgeway for Thanksgiving.

1 The point I'm trying to make is this: If
2 Ms. McGuirt -- what she remembered was accurate, then
3 other people would have known about it.

4 Someone would have been -- it would have been
5 communicated to somebody in law enforcement. Someone
6 would have started looking for Darryl Cook as the person
7 in the video who robbed Ms. McGuirt's some years ago, but
8 it wasn't until two o'clock the next afternoon that he was
9 an official suspect.

10 You heard Keith Lewis tell you that, and it doesn't
11 make any sense if they knew that it was Darryl Cook, or
12 the person who stole money from Mr. McGuirt at 6:30, that
13 they would be calling in a composite artist at 12:00 on
14 Friday night and doing a lineup Saturday afternoon at 12
15 or one o'clock. It just doesn't make any sense.

16 Remember also what Ms. McGuirt said Mr. McGuirt said,
17 the person was wearing a windbreaker -- not a windbreaker
18 or -- a jacket with a hood.

19 Chris Hill didn't see anybody with a jacket and a
20 hood. He said the person had on a Polo shirt. According
21 to Ms. McGuirt, Mr. McGuirt said the person had on a
22 sweatshirt. No. Chris hill said the person had on a Polo
23 shirt. Do you remember that?

24 There's a difference in the testimony of the
25 description of the individual. So how do you reconcile?

1 How can you reconcile those two different descriptions?

2 Mr. McGuirt says one thing to Ms. McGuirt. Chris
3 Hill describes somebody completely different, no jacket,
4 no sweatshirt, a Polo shirt.

5 There's a lot of things that just cannot be
6 reconciled in this case. That's what reasonable doubt is
7 all about.

8 Now, let's talk about this video for a second. You
9 look at the video. You'll have it in the jury room. You
10 certainly can look at the video again.

11 You decide, not that it's really relevant to this
12 case as far as whether or not he stole something or not,
13 but you look at the video because the issue is whether or
14 not that's the person on the video.

15 First of all, the State argues that he did take
16 something out of the register. He took the money out of
17 the register, but yet, in the next few frames Mr. McGuirt
18 opens the register and sells a soda to Darryl Cook.

19 Now, if money had been taken from the register, as it
20 was alleged, and as being alleged, and Mr. McGuirt goes
21 into the register a few minutes later and opens it up and
22 lets Mr. Cook buy a soda from him, if there was money
23 missing from the register, he would have noticed it at
24 that point.

25 So I questioned from the very beginning whether or

1 not there was any kind of theft at all from this register,
2 at all.

3 Now, Ms. Cook did like any mother, I guess, would.
4 She didn't want her son to be prosecuted, so she agreed to
5 pay it back, but everybody agrees Darryl Cook never, ever
6 said he did it.

7 He never participated in discussions, never agreed to
8 make the payment back. His mother did, to protect him.
9 You go back and you look at the video to see whether or
10 not that whole theory is anything that makes sense at all.

11 Let's talk about a few other things. We know -- you
12 have got Chris Hill. You have Joan McGuirt. You have
13 Susan McGuirt. You have Tracy Connor. They testified.
14 Then you have a series of witnesses who said -- well, you
15 had Arthur Robertson and Tyrone Woodard.

16 Arthur Robertson had said that Darryl Cook had
17 stopped by the store on a couple of occasions. Once two
18 weeks before, one a week before.

19 Ms. McGuirt didn't even know who Darryl Cook was. He
20 had to tell him. He had to say, "That's Darryl Cook."

21 Mr. Robertson didn't see Darryl Cook on the day of
22 the incident, on November 23rd. He was, as he said, "All
23 of the sudden, he's out to lunch" at the same time that
24 Tyrone Woodard says, "I saw him at 3:15."

25 Now, folks, again you talk about a result-oriented

1 approach. This is what it's all about, a result-oriented
2 approach. They want to get Darryl Cook in that store at
3 some point during the day.

4 The only time Mr. Robertson was not in the store and
5 could not see Darryl Cook was at 3:15. So Mr. Woodard all
6 of the sudden conveniently comes in and says, "Well,
7 Mr. Robertson was on a lunch break. I saw him in the
8 store buying soda," but he never said that before.

9 Now, what's wrong with that? Again, it's that
10 result-oriented approach, trying to make a thing work, a
11 round peg in a round hole. That's what they're doing in
12 this case, because guess what, Darryl Cook was in Columbia
13 with his aunt on the afternoon of November 23rd.

14 Now, we can't give you the exact time. She told you
15 that he -- she picked him up for this appointment at
16 Randstad and took him over to get his glasses and didn't
17 get home until between five and six.

18 I submit to you she's a fairly credible witness.
19 Well, what proves that? The glasses were ordered on
20 November 23rd, 2001. Here is a record. Proof, proof
21 positive, that they're in Columbia that day.

22 I submit to you that whole testimony about Darryl
23 Cook being in the store that day, not that it's that
24 important, frankly, whether he was there or he wasn't
25 there because it's a store, but Darryl Cook was not there

1 on November 23rd, 2001. They're trying to get him there,
2 but you know what, they've got to look at the facts of the
3 case just like everybody else does.

4 Then they present Bryson Oliver and Brian Hare who
5 say they picked up Darryl on the highway. Now, ladies and
6 gentlemen, he was down there. He was walking on the
7 highway. That doesn't mean, in no way does it suggest,
8 that he was at the store and committed a robbery and a
9 murder; that he picked them up. He called them, and he
10 picked them up -- they picked him up.

11 They didn't see a gun. They didn't see a V.C.R.
12 They didn't see any money. There was no discussion about
13 it. Yet, two, a couple of hours later, several hours
14 later, he's telling other people, not his family, people
15 he knows really well, he's telling those people, "I
16 committed a murder," but according to those two people,
17 they didn't see anything on him that would be consistent
18 with what you heard in this case. They didn't hear
19 anything from him. There was no discussion about it.

20 They picked him up because he was on the road.
21 Between the time that his aunt dropped him off, between
22 the time the other folks at the house saw him, he was on
23 the road, and he was walking.

24 Ladies and gentlemen, if he had had a gun, money, as
25 they said he took, if he had on a windbreaker, if he had

1 on the clothes they said he was wearing, the skully cap or
2 whatever it was, Brian Hare and Bryson Oliver certainly
3 would have seen that, but they didn't see anything. Those
4 are the State's witnesses, not my witnesses. Those were
5 the State's witnesses.

6 Then you have Monica Simpson. Monica Simpson says,
7 "Well, he picked me up, and he was spending some money
8 that night."

9 I guess the theory of the State is if he's going out
10 the day after Thanksgiving and doing some shopping for a
11 couple of hundred dollars, he must have robbed
12 Mr. McGuirt.

13 Well, does that add up? The fact that you have a
14 couple of hundred dollars in your pocket and you're going
15 to buy clothes the day after Thanksgiving when everything
16 is on sale, does that mean you're a killer?

17 The State is trying to get you to think that way,
18 trying to get you to suggest that. I submit to you that
19 does not necessarily add up.

20 Monica Simpson said they had done that before, they
21 had gone out shopping before. He had spent money on her
22 before. They went to the movies that night. There was
23 nothing unusual. She didn't testify about anything
24 unusual.

25 She drops them off because she doesn't want to go to

1 the nightclub. Now, let's talk about two people right
2 now, Robert McMillan and Anthony Green.

3 Folks, both of these folks have been convicted of
4 crimes. You have heard the testimony. I'm not going to
5 repeat it. You have to determine their credibility. I
6 mentioned it, Mr. Green has anyway.

7 You have to determine their credibility. You have to
8 determine whether or not out of the clear blue Darryl Cook
9 is going to admit to killing Mr. McGuirt. You have to
10 decide that, whether or not he's just going to go ahead
11 and do that, whether or not that makes any sense, whether
12 that appeals to your common sense or not. I submit to you
13 it should not. I also submit to you that if you break
14 down their testimony, you realize there's lies being told.

15 I submit to you that a lot of pressure was put on
16 those two young men. I submit to you that they were
17 threatened to be prosecuted themselves, and to save their
18 own goat and skin, they implicated Darryl Cook.

19 Why do I suggest that? First of all, isn't it
20 interesting that -- isn't it just amazing to you that
21 Anthony Green stopped by McGuirt's Tire Service, didn't
22 see any police, didn't see any big commotion, saw Susan
23 McGuirt. He got out, and he spoke with Susan McGuirt.

24 Did she get up on the witness stand and said she
25 remembers speaking to Mr. McDuffy? No -- I mean

1 Mr. Green? No.

2 What was Mr. Green doing at that station when Ms. --
3 Susan McGuirt was there, he found out that her father had
4 been shot? Where was all the commotion that we all know
5 was there? He doesn't describe it.

6 I have got to tell you, folks. I find it real
7 strange that Mr. Green stopped by the station at around
8 six o'clock, real strange, and Susan McGuirt said my
9 father has been shot.

10 You consider that for what it's worth. Was he
11 driving by just to see if anybody -- you know, sometimes
12 people -- the perpetrator of the crime returns to the
13 scene of the crime. We've all heard that.

14 MR. BARFIELD: Your Honor, I'm going to object. I
15 think he's going into evidence that is not arguable, and
16 there was no evidence to support the argument. I hate to
17 object during an argument, but I -- there's some pretty
18 clear law on that.

19 MR. SWERLING: Well, Your Honor, there's a reasonable
20 inference from the record. Mr. Green said he was there.

21 THE COURT: Well --

22 MR. SWERLING: I'm arguing inferences.

23 THE COURT: I think what he's objecting to is
24 irreverent to returning to the scene, things of that
25 nature.

1 MR. SWERLING: Your Honor, that's an inference.

2 THE COURT: I sustain.

3 MR. SWERLING: Anyway, you consider Mr. Green being
4 there. You consider how they described Mr. Cook admitting
5 to this offense.

6 First of all, let's talk about what they said, that
7 Darryl Green said he shot the person three times. You
8 know that, that he burned the V.C.R.

9 Well, we know that's not true. If Darryl Cook is
10 admitting to things, why would he be admitting to things
11 that were not true? That he got the skully cap from his
12 brother, no evidence of that.

13 In other words, they're getting you, wanting you to
14 believe things that Darryl Cook told them about the crime
15 which is just not true, which makes no sense. If the
16 person is going to admit to the crime, he'll admit to the
17 crime.

18 Here is where it really gets interesting. According
19 to Robert McDuffy, Mr. Cook told him in the car what
20 happened when they were riding from Sensations back to
21 Ridgeway at the motel. That's what his testimony was.

22 On cross-examination, he admitted he told
23 Mr. Squires, the S.L.E.D. agent -- remember, I thought it
24 had been Ms. Sloan, her notes. He thought, and he told
25 her or him, that he was asleep. He was passed out in the

1 car, didn't hear anything.

2 So which is it? Is it what he said in the statement
3 several years ago, that they were riding from Sensations
4 back to Ridgeway, and Mr. Cook makes his full confession,
5 or was it that he was passed out, didn't hear anything in
6 the car, and Mr. Cook told him about it in the motel which
7 is what he told the agent some time afterwards.

8 Why is that important? Because if he was passed out
9 in the car and he didn't hear the conversation, and he
10 didn't hear about it until at the motel, then that means
11 that Anthony Green never heard the conversation at all,
12 because if it was said in the motel as Mr. McDuffy told
13 the agent, Mr. Green wasn't in the room. Do you remember
14 that? They had two separate rooms.

15 So it's got to be one or the other. He's either
16 passed out in the backseat and doesn't hear anything, and
17 he gets the information when he's at the room, which means
18 that Anthony Green didn't hear it, or the information was
19 passed from Darryl to him while they were riding from
20 Sensations to Ridgeway.

21 There's something wrong with that because what
22 Mr. Green tells you is that the conversation about Darryl
23 Cook admitting to these things was when they were riding
24 from Amps to Sensations, a different time period.

25 It was told to them at around three o'clock, 3:30 in

1 the morning when they were riding from Amps to Sensations.

2 What happens in these kinds of cases? You have
3 people getting on the stand that are making a claim.
4 They're making what they offer is proof of an issue, but
5 they can't stand up under cross-examination because
6 they're -- and they're inconsistent with each other.

7 Is that the kind of testimony that you want to rely
8 on to say that someone committed a murder or an armed
9 robbery? Those two characters who can't get their story
10 straight after six years.

11 By the way, never talked about the case either, never
12 have discussed the case, but they give you on two
13 different times when this information was revealed, and if
14 you believed McDuffy, what he told Mr. Squires, Anthony
15 Green never would have heard the conversation because it
16 took place in the motel room.

17 Ladies and gentlemen, those are the kinds of things
18 that we're talking about that is reasonable doubt. Does
19 it stand up? Does it pass the test that you want to hear
20 in a courtroom before you can come back with a verdict of
21 guilty in the case? Guilty beyond a reasonable doubt.

22 Well, maybe, maybe -- you know, there's a lot of
23 confusion here. I mean, we hear about Chris Hill's
24 identification, what Mr. McGuirt told Ms. McGuirt and what
25 Anthony Green said, what Robert McDuffy said.

1 You know, there's got to be some forensic evidence.
2 There's got to be some evidence that links Mr. Cook to the
3 crime. Well, there's not. There's no fingerprints that
4 came back to him.

5 There was a latent print found on the register in the
6 store, but nobody ever eliminated people who were working
7 in the store or who were there that night.

8 There were footprints found in the blood. They
9 turned out to be the E.M.S. people, but there were never
10 any other footprints determined to be Mr. Cook.

11 You have no fingerprints. You have no fingerprints.
12 You have no blood. There's no D.N.A. They do a search at
13 his house. They don't find a skully cap. They don't find
14 a sweatshirt. They don't find a windbreaker. They don't
15 find any white sneakers of any evidentiary value.

16 They don't take anything into custody, no guns, no
17 bullets, no money, no bag. There's got to be something
18 that links up Mr. Cook to this case besides Mr. Hill's
19 identification. There's got to be something, but there
20 isn't.

21 With all the awesome power of the sheriff's
22 department and S.L.E.D., there's not one piece of physical
23 evidence in this case that links Darryl Cook to that crime
24 scene, not one because it does not exist.

25 You heard what Chief -- I mean, what Investigator

1 Boney said. You heard what Chief Lewis said. We did the
2 searches. We did -- the scene was processed. We
3 forensically processed the scene, but we did not find
4 anything that linked Darryl cook, evidentiary wise, to
5 this.

6 When you go through them, you click them out. Is it
7 likely -- now, you remember this. Out in that scene where
8 the truck was, the only thing they found was that V.C.R.
9 and the money bag.

10 If Mr. McGuirt had been shot by Darryl Cook, and
11 there was blood all over the place, as has been described
12 by a number of witnesses, Tracy Connor, Ms. McGuirt, the
13 police, Darryl Cook would have had something on him. They
14 would have been able to find something with some of his
15 blood on it. They would have been able to find sneakers
16 or pants or a shirt or a sweater or a jacket or a skully
17 cap or a hood on a jacket. They found nothing. They
18 found nothing.

19 That's got to bother you. That's got to constitute
20 in your mind reasonable doubt about whether they've got
21 the right person or not.

22 We say, "Well, you know, they got Qurbitt Jones.
23 They have got Jasper Sanders."

24 Folks, this is again trying to make that end result,
25 result oriented, six years after the fact, five, someone

1 comes up and says, "You know, I think Qurbitt Jones had
2 that pistol."

3 Do you remember what the testimony was from Anthony
4 Green or Robert McMillan? The gun was given to his
5 brother to get rid of. That's what they said, but all of
6 the sudden, they're focusing on -- and Qurbitt Jones, and
7 they serve him with a warrant.

8 They put the pressure on him. There's still a
9 warrant on him for accessory after the fact of taking that
10 gun and disposing of it. Now, does he have it? No, I
11 don't have it anymore. Well, but I did. I'm admitting to
12 it. It was five years later. I'm not trying to help
13 myself. I'm not worried. I'm not -- you know, I got a
14 charge against me, but I'm not really going to, you know,
15 say anything about Darryl Cook that's going to hurt him.
16 I'm just telling the truth. That's what he said.

17 Well, you know what his record is. You know that he
18 was put in jail by Darryl's sister in the Family Court.
19 She didn't directly do it, but she was asking for child
20 support.

21 Qurbitt Jones is sitting in a jail on a year child
22 support order, a one-year sentence for child support, and
23 Qurbitt Jones all of the sudden miraculously five years
24 later comes up and says, "I'm the one with the gun. I had
25 the gun. I got the gun from the car." Well, do you

1 believe that? Does that appeal to your common sense?

2 Nobody knew about it before. It comes out five years
3 later. You go to ask Qurbitt Jones about it. Where was
4 he? Well, he says it was in the car, but when did you get
5 it? Well, I don't know. Was it 2001, 2002, 2003 ---
6 2000? Nobody knows.

7 Does that appeal to your common sense? Do you think
8 he was pressured enough that he got worried about it? All
9 he has got to say, folks, all he has got to say is, "I
10 gave the gun to Jasper Sanders," okay. That's all he has
11 to say.

12 He may have given a gun to Jasper Sanders, but I
13 submit to you it wasn't the gun they're looking for. All
14 of the sudden it comes out to a .380. Isn't that amazing?
15 It's a 380. Five years later, he remembers it's a .380
16 pistol.

17 He said he gave it to Jasper Sanders at the Arms
18 Apartments. He remembered him. It was at the Arms
19 Apartments. He gave it to him at the Arms Apartments.

20 Well, again, ladies and gentlemen, this is how you
21 break down when people are not telling the truth. Jasper
22 Sanders said, "Well, I got the gun. I don't remember when
23 I got it, but I got it at Shady Lane. We were sitting in
24 the car, and I saw the gun on the passenger's seat. I
25 said, can I have that gun? He got it at Shady Lane."

1 Two different stores. If -- again, it doesn't add
2 up. They're telling you two different stories because
3 they can't get together to tell the perfect story. When
4 people are not telling the truth, there's only one way to
5 tell the truth.

6 If they're not telling the truth, then you get two
7 different stories. That's what's happened here. He got
8 it at Shady Lane, not at the Arms Apartments, but guess
9 what, just guess what, that gun is gone. It's missing.
10 It got stolen.

11 I can't give it to you. I can't tell you where it is
12 because it got stolen. Well, did you make a report? No.
13 Was a report made? No. Does anybody know about it? No.
14 This is the kind of testimony the State is asking you to
15 rely on.

16 We presented to you three witnesses that said Darryl
17 Cook was at difficult places. One we definitely know he
18 was in Columbia between one and about 5:30 when his aunt
19 got him home.

20 We definitely know, based upon that testimony, that
21 he was at the house between the two houses, his
22 granddaddy's house and his house, somewhere between
23 5:30 and 6:30.

24 Now, nobody is relying on exact times. The witnesses
25 we put up all said, "Well, I'm not going to say it was

1 exactly 6:15 or exactly six o'clock, but it's 15 minutes
2 one way or the another."

3 Ladies and gentlemen, that's credible testimony.
4 That gives you testimony that Darryl Cook was at another
5 place other than at McGuirt's Tire Service around
6 six o'clock when the State said he was there.

7 Well, there you have it. That is the testimony that
8 I'm submitting to you, you should be looking at. Now, if
9 I've said something that doesn't square with what your
10 recollection is, you use your recollection because you're
11 the jury in the case.

12 The Solicitor and I are advocates. We may not
13 necessarily state it exactly as it is because we're
14 talking notes as we're listening to the testimony. We're
15 getting up and getting down. We're making objections.

16 Your testimony, your recollection of the testimony,
17 is what's accurate in this case. So neither one of us
18 would intentionally tell you something that is not true,
19 neither Mr. Barfield nor myself.

20 So you recall it as you remember it, but I've raised
21 enough issues with you, I submit, that that word
22 reasonable doubt should be in there. You have to look
23 when people are not telling the truth. When people are
24 trying to get a result oriented -- or a result-oriented
25 result or a conclusion, you have to look at the little

1 things. You have to look at the things that don't add up,
2 and that's what I'm asking you to do in this case.

3 There's so much reasonable doubt in this case that I
4 submit to you it would be virtually impossible to come
5 back with a verdict of guilty, that you could be
6 comfortable saying that I have no doubt, no reasonable
7 doubt, that Mr. Cook committed those murders, that murder
8 or that armed robbery.

9 I submit to you that from the evidence or the lack of
10 evidence, the State has failed to prove that guilt beyond
11 a reasonable doubt.

12 Now, this is unlike a game or a contest. You know,
13 right now we're in football season. Somebody has got to
14 win and somebody has got to lose. We all want to win. We
15 don't want to lose, but in a courtroom, everybody should
16 be winning, as well because when justice is done, when the
17 truth is told, we as a society win every single time.

18 In a courtroom, the word "verdict" means to speak the
19 truth. If your verdict speaks the truth, then we as a
20 whole, we win, because it means our system is working.

21 Speaking the truth does not necessarily just mean a
22 guilty verdict. Speaking the truth means a not guilty
23 verdict or not proven verdict when the facts don't add up
24 beyond a reasonable doubt.

25 Ladies and gentlemen, in this case I submit to you

1 that it does not add up; that the State has not proven
2 guilt beyond a reasonable doubt.

3 On behalf of Mr. Cook, I again thank you for
4 listening. I appreciate your attention. I appreciate
5 your future deliberations in the case.

6 We believe that when you come back with a verdict
7 after you deliberate, you will say there's reasonable
8 doubt in this case, and your verdict will be not guilty.
9 Again, thank you very much for your attention.

10 THE COURT: Thank you, Mr. Swerling.

11 Mr. Solicitor?

12 MR. BARFIELD: If it please.

13 Mr. Swerling (indicating).

14 CLOSING STATEMENT:

15 MR. BARFIELD: Ladies and gentlemen, on behalf of the
16 State of South Carolina, I also thank you very much for
17 your service in this case. You came here a week ago
18 Monday, didn't have any idea what you were getting
19 yourself into. Didn't have any idea how long you were
20 going to be here. Didn't have any idea what kind of case
21 it was or how many witnesses you were going to hear, but
22 you stuck with us and paid careful attention.

23 There were a lot of witnesses in this case. There
24 was a lot of evidence presented to you. There were lots
25 of numbered exhibited, some of which are laid out up here.

1 Some of which are down below the bar.

2 You had to hear about all of those things, and when
3 you go to the jury room in just a little while, you'll
4 take all of that back there with you. But it's been kind
5 of a tough road, and what you're doing is very important.

6 We certainly appreciate your patience and ask you to
7 continue to be patient for just a little while as I make
8 my comments to you about this case.

9 You did hear a lot of witnesses. You did hear a lot
10 of factual information. It has been a pretty long trial.
11 In addition to that, because of the situation we were in
12 at the end of last week, there was a gap, a break for you
13 between the presentation of part of the case and the
14 presentation of the rest of the case.

15 On top of all of that, as you can see, my table has
16 been full of papers and notebooks and pads and all kinds
17 of stuff, and Mr. Swerling's has, too. We have stuff to
18 look at. We have notes. We have statements. We have
19 copies of files.

20 You have got nothing except your memory, and that is
21 asking a lot of you to go through seven days worth of
22 testimony and remember everything.

23 I'm going to talk about the factual matters in this
24 case, and I think I need to because it's been such a long
25 case and because we rely on you to just search your memory

1 to determine what the facts are. I am going to go over a
2 good bit of factual material and again ask you to be
3 patient while I do that.

4 November 23rd, 2001, a Friday, the day after
5 Thanksgiving, Jackie McGuirt, you now know, was a small
6 businessman in Ridgeway which is a tiny town 10 miles
7 south of here, McGuirt's Tire. His wife is Joan. His
8 daughter is Susan. His son is Eddie.

9 Friday afternoon, he's closing up his store. He is
10 not going to work the next day, Arthur Robertson is, and
11 Jackie McGuirt is going to go home to his family and be
12 met there by the Ruff family who is bringing Jackie
13 McGuirt's son home from a day in Columbia, but he doesn't
14 ever get there.

15 He called Joan McGuirt at about a quarter till six
16 and said, "I'm closing up, be home in a little bit." She
17 expected him within five minutes. He only lives blocks
18 from the station.

19 You heard descriptions from I think probably Joan and
20 Arthur Robertson about what Jackie McGuirt did to close
21 the station up. He gathered the money up, put all of the
22 receipts, the credit receipts, the checks, the cash in a
23 money bag, took the money bag home.

24 As Jackie McGuirt was doing that that evening after
25 all the other help had left, he gets confronted by a young

1 man as he comes out of the back room of the store. The
2 young man has a pistol, and the young man sticks that
3 pistol in Jackie McGuirt's face and demands the money bag.

4 Now, there's testimony that there was a struggle over
5 the gun. There might or might not have been a struggle
6 over the gun, but at some point you know that the young
7 man with that pistol fired one shot at the upper part of
8 Jackie McGuirt's body, and you know now from evidence and
9 testimony in this case that that bullet, this bullet,
10 State's Exhibit Number 102, taken from Jackie McGuirt's
11 clothing at the hospital that Friday night or that
12 Saturday morning, this bullet right here blasted through
13 the left side of Jackie McGuirt's neck, went through his
14 spinal column and came out the right side of his back.
15 You'll have some pictures in here that show you where
16 those wounds were.

17 Jackie McGuirt immediately fell paralyzed to the
18 floor, never to walk again on his own. The young man took
19 the money bag and left, and Jackie McGuirt is lying there
20 in his own blood unable to move, and the young man comes
21 back in once or twice, perhaps.

22 Jackie McGuirt fearing, knowing that he's alive.
23 He's alive and he knows he's alive, but fearing getting
24 shot in the head, again getting shot, plays dead.

25 The young man, in fact, I submit to you, is hoping

1 that Jackie McGuirt is dead. The only witness to this
2 crime at that point, and he kicks Jackie McGuirt to see if
3 he'll move, and he played dead. He didn't move.

4 The young man, knowing there is a video surveillance
5 system in that store, concludes well, you know, maybe I
6 better get the tape out of here so there's not a picture
7 of me doing all of this, but the video cassette recorder
8 is in a locked box, so the young man shoots away until he
9 can blast open the box to get the V.C.R. out, which I
10 submit to you contained the tape.

11 He gets Jackie McGuirt's keys off his side. He's
12 taken his wallet out at some point because the wallet is
13 lying by Jackie's side when people get to him. He takes
14 the keys, the big old set of keys off of Jackie McGuirt's
15 side, which I submit to you had his truck key on it, and
16 he takes off with the money bag, the V.C.R., the tape, the
17 keys, and the truck. He heads out of town. That's what
18 happened to Jackie McGuirt on November 23, 2001 just
19 before 6:00 o'clock.

20 Now, I told you when I got up here on my opening
21 statement that Darryl Cook did this. I told you in my
22 opening statement that you didn't and couldn't know at
23 that time that Darryl Cook did this, and I, in fact, told
24 you that the law says you have to presume from that point
25 all the way through now, and through your deliberations

1 until you reach a verdict, you have to presume that Darryl
2 Cook did not do it, but I'm telling you now that you know
3 he did it. When you get in that jury room and start
4 deliberating this case and look at this evidence, you're
5 going to conclude that he did.

6 Now, I'm going to put up the easel in a minute and
7 show you some things. I want to talk about a couple of
8 other things first.

9 Jackie McGuirt got shot in the neck. There's no
10 question about it. That happened on November 23, 2001.
11 You have heard testimony that Jackie McGuirt lived for a
12 little over 11 months, and that he died on October 26th,
13 2002.

14 Now, the burden of proof in this case is certainly on
15 the State of South Carolina as to every element of the
16 offenses that Darryl Cook is charged with, including the
17 element of the offense that what Darryl Cook did killed
18 Jackie McGuirt.

19 I'm not going to talk too much about that, but you
20 heard medical testimony in this case which explains to
21 you, or explained to you, the mechanism of Jackie
22 McGuirt's death.

23 You heard, number one, from Tracy Connors of E.M.S.
24 You heard from Dr. Jeffrey Brown who is the surgeon who
25 treated Jackie McGuirt at Richland Memorial that night.

1 You heard by way of a stipulation from Brock Bowman, the
2 spinal cord rehabilitation doctor in Atlanta. You heard
3 from Dr. Roger Gaddy who was Jackie McGuirt's family
4 doctor for years and years and years and also treated him
5 at Fairfield Memorial in October of '02 in the days before
6 he was transferred to Baptist where he died.

7 You heard from Dr. Thomas Edwards, who was
8 Mr. McGuirt's treating physician at Baptist where he did
9 die, and finally, you then finally you heard from Dr. Joel
10 Sexton who performed the autopsy on Mr. McGuirt's body.

11 I'm not going to tell you all of that again, but the
12 bottom line is this: The chain of events from both a
13 factual and a medical standpoint leading to Jackie
14 McGuirt's death are as follows: He got shot in the neck.
15 He got paralysis, was paralyzed as a result of that spinal
16 cord injury.

17 In addition to his legs and a good bit of the use of
18 his hands being paralyzed, some organs are paralyzed. His
19 bladder, your bladder, is a muscle. His bladder is
20 paralyzed.

21 Your brain has to send signals through nerves to
22 muscles to make them move, and because he was paralyzed,
23 his brain couldn't make his bladder move which means he
24 couldn't go to the bathroom on his own. He had to be
25 catheterized.

1 The doctors told you that if you have got some
2 foreign body stuck into you, there's an increased risk of
3 infection.

4 You heard testimony of repeated urinary tract
5 infections that Jackie McGuirt got which required
6 antibiotic treatment, both at home and hospitalizations
7 with intravenous antibiotic treatment.

8 Where did he go from there? Well, the infections
9 require the antibiotic treatment, and antibiotics kill
10 bacteria. You have good bacteria and bad bacteria in your
11 body, and sometimes antibiotics kill the good bacteria.
12 That's exactly what happened to Jackie McGuirt's gut, in
13 his digestive system, in his colon. Good bacteria died.
14 The bad bacteria, clostridium visticile overgrew,
15 multiplied way too much.

16 It caused a condition called colitis, which was an
17 inflammation of the colon, which led to peritonitis which
18 resulted in the colon actually being perforated or broken
19 through so that that germ in his gut got into his blood
20 system.

21 When bacteria gets in your blood system, the
22 infection in your blood system is called sepsis. As you
23 heard, sepsis makes your blood pressure go down, your
24 white blood cell goes way up, and eventually if you don't
25 respond to treatment, your organs shut down. In this

1 case, Jackie McGuirt's heart stopped on October 26th,
2 2002.

3 The bottom line is had he not been shot, he wouldn't
4 have died on October 26th, 2002. So there is the
5 causation for his death.

6 You have heard a lot of testimony in this case from
7 witnesses both for the State and the defense about times,
8 about what happened when.

9 I, too, will tell you that sometimes there's not a
10 whole lot of precision about time. First of all, lots of
11 us aren't watching our watches all the time, and events
12 occur and we're not looking at our watch when the events
13 occur, so we have to just kind of guess, make some
14 estimate of the time.

15 I submit to you that I -- I remember generally when I
16 got home last night, but I couldn't put it within probably
17 a 30-minute timeframe. It's not a precise science if
18 you're not looking at a timepiece.

19 If you are looking at a timepiece, all the timepieces
20 aren't synchronized. So two people might view an event
21 and look at it on his or her own watch and might tell you
22 a different time.

23 There's not going to be absolute massive type
24 precision about times that people might have described to
25 you. You have to look at the general scheme of things and

1 the chronology of events to see if those times make sense.

2 You have as State's Exhibit Number 120, I believe, an
3 aerial photograph which I want to put on the board for a
4 couple of minutes.

5 I submit to you it's significant, the locations and
6 the distances shown on this aerial photograph are
7 significant. I want to point out a few things to you.

8 You heard Greg Boney testify about what is what on
9 this aerial photograph. You have to keep this in mind as
10 you stew over the testimony in this case.

11 What's the first place we got? Right there, that
12 white pushpin, that's Jackie McGuirt's Tire Service right
13 there. Coming out the back of Jackie McGuirt's is Coleman
14 Street in Ridgeway, which leads to the red pushpin which
15 is the Shell Station.

16 Behind the Shell Station, or the parking lot
17 surrounding the Shell Station, provides access from
18 Coleman Street to Highway 21, which is also the other side
19 of the Shell Station in the fork.

20 Straight across from the Shell Station is Bishop
21 Squirewell Road, which it was referred to by several
22 people as the cut. It winds around and comes out on
23 Highway 34.

24 Down Highway 34 at its intersection with Longleaf,
25 which is this road right here, 34 and Longleaf, there is a

1 church called Immanuel Baptist Church. That's where that
2 red pushpin is. On down 34, or east on 34 toward Lugoff,
3 is the location where Jackie McGuirt's truck was found in
4 the woods on a little road which leads up to a house.

5 Now, what's -- what's -- and also, this pushpin right
6 here is down Highway 21. That's the Darryl Cook's house.
7 What are the distances again? Let me remind you of the
8 distances. From Darryl Cook's house, where he was living
9 at the time, to the Shell Station is less than half a
10 mile, about four-tenths of a mile.

11 From Jackie McGuirt's Tire Service out the back down
12 Coleman to the Shell Station is about eight-tenths of a
13 mile. From the Shell Station right here to the church
14 down near the intersection of 34 and Longleaf is about 1.4
15 miles. From the church to where the truck was abandoned
16 is about four-tenths of a mile.

17 Now, the whole distance from McGuirt's down to where
18 the truck was, about two-and-a-half miles. Drive time at
19 normal speed limits from McGuirt's down to where the trunk
20 was abandoned, four or five minutes. It doesn't take long
21 to get from point A, McGuirt's, to point Z where the truck
22 was. Keep that in mind.

23 Darryl Cook committed this offense and tried his best
24 to keep folks from finding out that he had done it. What
25 did he do? Well, he was around people during the day that

1 Friday, earlier in the day, who have become for him what
2 he would say are alibi witnesses.

3 He was around people after he committed these crimes
4 who created for him alibi witnesses, but the problem with
5 all of that is there's a gap from when people saw him
6 earlier in the day and when people saw him later in the
7 day during which this crime occurred. That gap was
8 certainly long enough for it to have occurred based on
9 times and geography and distances from point to point to
10 point.

11 He does not have an alibi. I'll talk more about that
12 later. He does not have an alibi that covers the time
13 this crime occurred.

14 What else did he do to try to keep from getting
15 caught in this case? He wore gloves. He wore gloves when
16 he went to McGuirt's Tire and committed this murder and
17 this robbery. How do you know he wore gloves? Jackie
18 McGuirt told Joan McGuirt he had on gloves. Darryl Cook
19 told Anthony Green, "I wore gloves." That's the testimony
20 that you heard about gloves. No gloves, no prints. He
21 wore gloves.

22 What else did he do? Well, he went into this store,
23 which is shown in State's Exhibits 1 and 2, and I'm going
24 to hold up State's number two. He went into this store,
25 which has a big old window right there in the office area

1 on the front of the store.

2 The testimony was, although you can't see because
3 there's not a side view right here, there is a big old
4 window on the other side in the office area, and the
5 testimony from more than one witness is those blinds and
6 those windows were never down.

7 Darryl Cook goes into Jackie McGuirt's about the time
8 it's getting dark and is going to commit this murder and
9 this robbery inside of that office area just inside those
10 windows, and the lights are on inside the store. So he's
11 certainly not going to do that or finish it up anyway with
12 those blinds up, so he puts the blinds down so he won't
13 get caught, so nobody will see him finishing up inside of
14 there.

15 What else did he do to keep from getting caught? He
16 took the V.C.R., which I submit to you contained a tape
17 which had pictures of him doing it, probably. Never found
18 the tape, we know that, but he took it.

19 He took it because he knew the system was in there
20 because the system had gotten him in trouble in '96. He
21 had been in there in 1996 and it got him caught, so when
22 he goes back in on November 23rd, 2001, he sure as heck is
23 not going to leave a tape in there.

24 He shoots up the box, takes the V.C.R., which it had
25 a tape in it, I submit, and takes it out of there. Never

1 found the tape, tore up the V.C.R. It's a State's
2 Exhibit. You'll be able to look at it in the jury room.
3 He busted it open, left it out there in the woods in a
4 remote area.

5 How do we know that Darryl Cook did it, disposed of
6 the V.C.R.? Because he told Anthony Green and Pee Wee
7 McDuffy that he did it. He told both of them when he was
8 talking about this crime, that he disposed of those items
9 which could have implicated him, had they been found with
10 the tape in them.

11 What else did they do to try to avoid being detected
12 in this case? Well, you heard testimony that Darryl Cook
13 didn't have a car. He depended -- well Monica Simpson
14 said he didn't have a car. "I took him that night. He
15 rode with me."

16 He drove eventually, but he didn't have a car. So he
17 has to get to McGuirt's on foot, presumably. Don't know
18 that, don't know how he got there, but I submit there is
19 certainly room for you to conclude that he walked to
20 McGuirt's.

21 He gets to McGuirt's, and he's now shot and robbed
22 Jackie McGuirt, and he has got a V.C.R. he has to do
23 something with because he can't get the tape out of it.
24 He's kind of in a jam. What do I do now? I'm in downtown
25 Ridgeway, just shot a man, stole his money, got to carry

1 this V.C.R. out of here so nobody can find the tape with
2 my picture on it. What am I going to do?

3 So what does he do? He takes Jackie McGuirt's keys
4 and takes Jackie McGuirt's truck and hauls tail away from
5 town and ditches the truck out there in the woods trying
6 to conceal his crime.

7 He was in a hurry. You know he was in a hurry
8 because he gets to the woods, he dumps the truck, he hops
9 out of the truck. At some point, he takes the cash out of
10 the Bank of Ridgeway bag, which you'll see a picture of
11 sitting in the floorboard of that truck.

12 He has gotten what he came for. He has got the cash.
13 He leaves the door of the truck open. It's raining. I
14 mean, it's not -- he doesn't care about Jackie McGuirt's
15 truck at that point, but he's also in a hurry.

16 So he leaves the door to the truck open and just
17 abandons it, takes the V.C.R. some yards away from the
18 truck, the V.C.R. some yards away from the truck, and
19 tosses it out in the woods.

20 Now, you know he has got another problem now because
21 there's Darryl Cook, don't have a car, who has now
22 borrowed Jackie McGuirt's truck as a getaway vehicle from
23 a murder and a robbery.

24 He's out in the middle of nowhere, and he has got to
25 get back somewhere. I'm going to come back and talk about

1 that in a little bit.

2 Now, what else did he do to conceal the crime? Well,
3 he got rid of the gun. I don't have the gun. You don't
4 have the gun. There's evidence about a gun. There's
5 ballistic information about bullets and -- fired bullets
6 and fired shell casings, cartridge casings. I'm going to
7 talk about that in a little bit, but he got rid of the
8 gun.

9 It's clear that Jackie McGuirt got shot with a gun,
10 and Darryl Cook had the gun, and Darryl Cook got rid of
11 the gun. Again, I'll talk about that a little bit more.
12 He wasn't going to keep that gun lying around there.

13 Now, you heard testimony about the clothing that he
14 was described as having worn. You heard testimony about
15 the footwear impression on the green sofa, and there's a
16 picture of that in Jackie McGuirt's.

17 You heard testimony about all of the physical things
18 that were involved in this case. I'm telling you that
19 Darryl Cook is somebody who kind of planned this thing
20 out. It got messed up at the end, but he had this thing
21 planned out.

22 He wasn't about to leave stuff lying around for
23 anybody, the police or anybody, to find. They did a
24 search warrant at his house. He didn't have anything
25 there. It's logical not to keep stuff lying around. He

1 got rid of it somewhere, like he got rid of everything
2 else that implicated him in this crime or tried to, at
3 least.

4 Let's talk about the defense of alibi. First of all,
5 I will tell you that the law says, and I accept that I
6 have the burden of proof in this case to prove that Darryl
7 Cook did this.

8 The burden is on me and my side of this courtroom.
9 He doesn't have to prove anything. There is something in
10 the law called the defense of alibi. Now, it's a defense.
11 He can present evidence of it, which he did. It still
12 doesn't mean he has to prove it. It means I have to
13 disprove it, and I accept that, but what does alibi mean?

14 Alibi basically means in relation to the commission
15 of the crime that I was somewhere else other than where
16 that crime occurred, and therefore, I did not commit the
17 crime. That's what Darryl Cook is saying through the
18 witnesses that were presented. "I was somewhere else, and
19 I didn't commit the crime."

20 Look at the alibi. I have prepared some notes which
21 I submit to you reflect the timeline for this case, and
22 I'm going to refer to it.

23 It starts early in the day. You know that Monica
24 Simpson and Darryl Cook had some sort of a relationship
25 which caused them from time to time to get together.

1 The first documented time that we have is phone
2 record 11 -- and you'll have State's Exhibit Number 20
3 with you in the jury room to look at, and there are some
4 phone calls on here that you need to pay attention to,
5 which I'll talk about from my chart up here.

6 Friday, November 23rd, 2001, 11:17 a.m. there is a
7 call from Monica Simpson to Darryl Cook on Ms. Tobias's
8 telephone. There's the number. It's on this record.
9 They just talked. 1:30, another call from Simpson to
10 Cook, and again, the number for Cook is 546-2923. That's
11 the cell phone he was carrying, witnesses have told you
12 that.

13 Simpson called Cook twice, 11:17 and 1:30 from
14 Ms. Tobias's telephone. The second time Ms. Simpson
15 called Cook, he tells her, "Call me back at six o'clock --
16 no, seven o'clock."

17 What's he doing? Well, apparently, I'm arguing to
18 you, sometime by that afternoon, Darryl Cook knows what
19 he's planning on doing that night. He tells her to call
20 him back at six o'clock so they can get together but
21 changes that to seven o'clock, which again, puts him
22 beyond the time that he committed this crime.

23 What happens about two o'clock that afternoon? Well,
24 Bryson Oliver goes over to Brian Hare's house. Who is
25 Bryson Oliver? Darryl Cook's cousin, a relative. He's

1 over at Brian Hare's house.

2 There was communication back and forth between the
3 two of them at 2:59 p.m. Again, Darryl Cook's cell phone
4 number calls Bryson Oliver at 479-8520 at 2:59 looking for
5 Patrick, I think is what the testimony was. Patrick
6 Oliver is Bryson's brother.

7 Now, the State doesn't dispute that Darryl Cook was
8 in Columbia that afternoon, was communicating with people
9 by cell phone. What's critical is when Darryl Cook got
10 back from Columbia and what he did.

11 I submit to you it doesn't make any difference at all
12 what Darryl Cook is doing in Columbia, where he was or
13 anything else. He's back in time to commit this crime.
14 How do we know that? You have got Darryl Cook's statement
15 in evidence, and it's not yet been published to you, but
16 I'm going to publish portions of it. You'll have the
17 whole thing back there, and you can read it all you want
18 to.

19 Darryl Cook in his own statement, and I'm quoting,
20 says -- he's talking about his aunt taking him to
21 Columbia, "We then went home. This was around 4:30 or
22 4:45 p.m. that we got home." Darryl Cook's own statement
23 tells you he's back in Ridgeway at 4:30 to 4:45 in the
24 afternoon.

25 What does that tell you about his aunt Betty Miller's

1 alibi? It tells you that it ain't an alibi. Betty
2 Miller's testimony has absolutely nothing to do with
3 whether or not Darryl Cook committed this crime because
4 everything she told you about happened up there before
5 Darryl Cook says he got home and was taken by her to his
6 home 4:30 to 4:45 in the afternoon.

7 Her testimony means nothing. Discount it, ignore it.
8 Don't pay any attention to it. It just doesn't help
9 Darryl Cook at all.

10 It's also interesting, you can determine whether you
11 believe a witness, what a witness says, by looking at how
12 the witness is responding to questions on the witness
13 stand, how the witness deals -- what the witness looks
14 like, whether the witness is squirming, whether the
15 witness is straightforward appearing.

16 Ms. Miller didn't want to answer questions I asked
17 her at all. I submit to you what she says has nothing to
18 do with whether Darryl Cook committed this offense.

19 Now, Darryl Cook -- the testimony from Tyrone Woodard
20 is Darryl Cook goes into Jackie McGuirt's store that
21 Friday afternoon and buys a soda. Now, again, what time
22 did that occur? I can't tell you for certain what time
23 that occurred.

24 Tyrone Woodard said, and also Arthur Robertson talked
25 about how lunch hours are staggered at Jackie's -- or were

1 back then, and there are early lunch hours all the way to
2 late lunch hours way up in the afternoon.

3 I think Tyrone -- excuse me, I think Arthur testified
4 that he didn't go to lunch until three or 3:30 that
5 afternoon. That's almost supper for some folks.

6 Tyrone Woodard said Darryl Cook came in the store
7 that day sometime in the afternoon and bought a soda and
8 told during a late lunch -- he said either during a late
9 lunch when Arthur was gone to lunch or after Arthur had
10 left early for the day.

11 I submit to you it could have been anytime from
12 mid-afternoon to not too far from closing time when Darryl
13 Cook could have gone in that store and bought that soda.
14 I submit to you that he, in fact, did go in that store and
15 buy a soda directly from Jackie McGuirt that day.

16 What next? Darryl Cook is at the Shell Station,
17 which is four-tenths of a mile from his house to the Shell
18 Station, walking distance. He's at the shell station
19 between five and 5:30 p.m. with his brother, Rod Cook.

20 How do you know that? Because Darryl Cook's
21 statement says, "Then around five or 5:30 we went to the
22 Shell Station." He's talking about rod. His statement
23 talks about Rod being asleep on the couch. "We hung
24 around. We hung -- we hung out around the house. Then
25 around five or 5:30 we went to the Shell Station."

1 So Darryl Cook in his own words is telling you at
2 5:30 he is at the Shell Station. So again, nothing that
3 anybody can alibi him for, for any time prior to that,
4 gets you anywhere.

5 He is at the Shell Station at five to 5:30 p.m. How
6 else do we know he's at the Shell Station from five to
7 5:30 p.m.? Patrick Oliver was also at the Shell Station
8 until 5:30. Patrick Oliver, again, Darryl Cook's cousin
9 told you he was at the Shell Station himself at 5:30.
10 When he left, Darryl Cook is still at the Shell Station.
11 So we have Darryl Cook at the Shell Station, 5:30 p.m.

12 We progress. Susan McGuirt comes back from Columbia.
13 She has been shopping. She goes by the station some time
14 5:30ish and her dad is there. Nothing has happened yet.
15 It's 5:30 in the afternoon.

16 Susan goes by the store, sees her dad, doesn't stop,
17 nothing unusual. This terrible thing has not happened,
18 but it's about to. 5:40 to 5:45 p.m., Jackie McGuirt
19 called home, talked to Joan, "I'm closing early. I'll be
20 there in a couple of minutes." She expected him home in
21 five minutes or so.

22 What else do we know about what's going on with
23 Jackie McGuirt? Crawford Wilson is at the Century House,
24 which is just on the other side of the barbershop from
25 Jackie McGuirt's. Jackie McGuirt's, barbershop, Century

1 House.

2 Crawford Wilson is outside. It's supper time. I
3 don't have a time on that, nobody does, but he heard a
4 noise that he said sounded like a firecracker. I can't
5 tell you that it was a gunshot, but there's evidence for
6 you to infer that it was. It was significant to Crawford
7 because he went in, and he told his mama about it, and
8 it's suppertime.

9 5:50 is when Jackie told Joan McGuirt that he got
10 shot, 5:50 p.m.

11 Chris Hill. Well, let me go back. Well, I'll come
12 back to that in a minute. Chris Hill, the identification.
13 What do you know about the lighting circumstances at
14 McGuirt's Tire? You heard testimony from Chris Hill and
15 from Susan McGuirt about lighting.

16 The testimony that you heard, and I'm putting up
17 State's number two for you to look at again, is that there
18 was lighting all over the place at that store. You can
19 see, if you look at this picture closely, that's the eaves
20 of the building. There was lighting under there. That's
21 the canopy over the gas pumps that was lighting under
22 there.

23 You can see in the picture the street light that is
24 on the telephone pole. There's lighting there, and Susan
25 McGuirt told you at the time there was a floodlight on

1 that same pole illuminating the parking lot.

2 Chris Hill has all of that light to be able to
3 illuminate the person that he subsequently identified. In
4 addition to that, Chris Hill has pulled up on the other
5 side of the railroad tracks in this area at the stop sign
6 with his headlights pointing straight across into the
7 parking lot in the area where he says he saw Darryl Cook
8 walking away from that store.

9 He told you he looked directly -- he said their eyes
10 met at some point. He looked directly -- they looked
11 directly into each other's eyes.

12 Now, you can certainly be walking with your right
13 side to a witness but turn your head and be identified by
14 that witness with all that light, and I submit to you that
15 that's exactly what happened.

16 The circumstances are Chris Hill has seen a person at
17 a business, the lights of which are on. The automobile of
18 the owner is still at the station. Chris Hill had no
19 reason to suspect that Darryl Cook was up to anything bad.
20 There was nothing there, other than Darryl Cook, to
21 suggest that something bad was going on.

22 If all the lights are off, perhaps, and he sees
23 Darryl Cook walking away from there carrying something
24 when -- maybe he thinks he burglarized it. Maybe I will
25 pull into the parking lot, but Jackie McGuirt's truck is

1 there. The inference is Jackie McGuirt is still doing
2 business there, so Chris Hill does not make an inquiry.

3 Again, what you're looking at, what Chris Hill is
4 interested in is what this person looks like. Certainly,
5 he has got a body and clothing and stuff to make some
6 observation of, but he's looking for a face. That's
7 exactly what he did. Fully illuminated with all that
8 light, he's looking for a face.

9 You have got the pictures. You have got a composite
10 drawing by Roy Paschal. You have got a booking photo, and
11 you have got a lineup photo.

12 Now, you decide whether you think the people in these
13 photos look similar. It's for you to decide, but the
14 consistent thing about all of these is a fairly narrow
15 face, if any facial hair, not much at all, and certainly
16 not much hair on the head. That is consistently how
17 witnesses described Darryl Cook in this case.

18 The composite drawing, State's Exhibit Number 118,
19 lead Keith Lewis to conclude that looks like Darryl Cook,
20 and Darryl Cook is now a suspect. No question about that.
21 And because you now have a suspect, you need to see if
22 your witness can identify that suspect in a more formal
23 manner.

24 Let me -- let me go back and talk about the lineup
25 for just a minute -- not the lineup, the composite. It is

1 one thing for an artist to sit down and look at my face
2 and draw my face as he sees it. It is a completely
3 different thing for an artist to talk to somebody who has
4 seen my face and have that person describe my face and
5 draw that face.

6 Roy Paschal told you -- well, first of all, I submit
7 to you that this composite is not designed, necessarily,
8 to be a picture of the suspect, to look just like the
9 suspect. It is designed as an investigative tool to see
10 does this lead us somewhere else? Does this lead us to
11 the name of somebody who we can develop as a suspect?
12 It's an investigative tool.

13 I tell you, this is not supposed to be a photograph
14 or a face-to-face drawing between artist and Darryl Cook
15 showing Darryl Cook's face. It's an investigative tool,
16 and it served its purpose in this case 100 percent because
17 with this tool, Keith Lewis said, "That looks like Darryl
18 Cook." He didn't say that is Darryl Cook. Nobody can say
19 it is Darryl Cook because it's not a direct picture of
20 Darryl Cook's face.

21 It looked like Darryl Cook, and therefore, Darryl
22 Cook became a suspect. That led to State's Exhibit
23 Number 117, a photographic lineup put together by S.L.E.D.
24 of only one picture that anybody had any interest in.

25 They wanted to make sure, Keith Lewis wanted to make

1 sure, he got Darryl Cook's picture in there, and that is
2 picture number four. The rest of the pictures, as long as
3 they're pretty similar, it doesn't matter who they are.
4 In fact, it doesn't matter who they are.

5 They put together a lineup for Chris Hill to be able
6 to take a look at to see if he could identify the person
7 he had seen at the station. Now, the procedures for that,
8 I submit to you, were not in any way suggestive. You
9 heard how that happened.

10 Chris Hill picked up the sealed envelope, gave it to
11 Keith Lewis on 34. They met at the Ridgeway P.D. He
12 looked at it, presented it to Chris Hill and asked him if
13 he recognized anybody.

14 Chris Hill, number one, did not know Darryl Cook, had
15 never seen him before, did not know who Darryl Cook was,
16 did not know the name Darryl Cook, had not heard the name
17 Darryl Cook up to that point in the investigation as a
18 suspect.

19 He had no reason to favor one person over any other
20 or to favor anybody shown in this lineup because he didn't
21 know Darryl Cook from Adam. And yet, without hesitation,
22 he picked number four, who we all now know is Darryl Cook.
23 Even his mama said, "That's Darryl. That's my son."

24 Again, same general appearance, fairly slim face, no
25 facial hair -- not much facial hair, if any, and certainly