

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Edgefield County
Clifton Newman, Circuit Court Judge

Opinion No. 2014-UP-381 (S.C. Ct. App. filed 11/5/2014)
02-GS-19-0109

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Alexander L. Hunsberger, Appellant.

Appellate Case No. 2012-206608

Appeal From Edgefield County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2014-UP-381
Heard September 9, 2014 – Filed November 5, 2014

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
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Assistant Attorney General Melody Jane Brown, all of
Columbia; and Solicitor Donald V. Myers, of Lexington,
for Respondent.

PER CURIAM: Alexander L. Hunsberger appeals his conviction for murder, arguing the trial court erred in denying his motion to dismiss the charge against him because his constitutional right to a speedy trial was violated as a result of the almost ten-year delay in bringing his case to trial. We affirm.

FACTS

On September 3, 2001, Samuel J. Sturup was shot and killed in South Carolina. Hunsberger was arrested for his murder on January 25, 2002. Hunsberger's brother, Julio, and Steven Louis Barnes were also charged with Sturup's murder.¹

Hunsberger was denied bail by order dated June 14, 2002. On November 17, 2004, he filed a motion for speedy trial. Judge William Keesley filed an order addressing Hunsberger's speedy trial motion on December 2, 2004. Judge Keesley noted he was "deeply concerned about the length of time that has transpired without bringing [Hunsberger] to trial." Judge Keesley acknowledged that part of the delay was because multiple defendants and different jurisdictions were involved and there was the possibility the State could seek the death penalty. However, Judge Keesley stated Georgia had disposed of the co-defendants' cases more than a year before and the court had instructed the Solicitor's office to make a decision about whether to serve the death penalty notice. Judge Keesley determined no circumstances warranted modification of his previous order, admonished the State to bring the case to trial in February 2005, and provided Hunsberger could reassert his motions if the case was not brought to trial in February 2005.

The State subsequently informed the court that it did not intend to try the case in February. As a result, Hunsberger renewed his motion. Judge Keesley filed a second order on January 28, 2005, denying Hunsberger's motion to dismiss, but granting him a \$50,000 personal recognizance bond. Judge Keesley stated Hunsberger "is not to be released from custody unless the holds placed by the State of Georgia are lifted. The State of Georgia may attempt extradition proceedings to secure possession of [Hunsberger]." Thereafter, the State released custody of Hunsberger to the State of Georgia. On September 12, 2006, Hunsberger was tried and convicted in Georgia for kidnapping Sturup. Some time later, the State

¹ Three additional defendants were convicted in Georgia of charges involving the kidnapping and assault of Sturup.

learned that although Hunsberger was given a life sentence in Georgia, he was eligible for parole after serving a term of imprisonment. Hunsberger was eventually returned to South Carolina to be tried for murder.

Hunsberger's South Carolina trial began on January 3, 2012. At the beginning of trial, Hunsberger renewed his motion to dismiss his case, asserting his right to a speedy trial was violated. Hunsberger asserted he would be prejudiced by the delay because the State's theory rested on the theory of "the hand of one is the hand of all" and the witnesses' memories would be faded or nonexistent. He also argued the State created the almost ten-year delay by waiting until he was eligible for parole in Georgia to bring the case to trial.

The State asserted the solicitor had wanted to proceed with Barnes' trial first to give Hunsberger the opportunity to testify against Barnes if he wanted to and the solicitor was not sure whether he intended to seek the death penalty against Hunsberger until after Barnes' trial was completed. Meanwhile, Georgia had wanted to try Hunsberger and sought his extradition back to Georgia. The solicitor relented and allowed Georgia to try him first. The State asserted it attempted to proceed with Hunsberger's trial in October 2011 upon completing Barnes' trial; however, Hunsberger refused to sign the extradition papers, which delayed transporting him back to South Carolina. Additionally, the State argued Hunsberger never asserted his right to a speedy trial during the seven years he was serving his life sentence in Georgia. Finally, the State contended Hunsberger was not prejudiced by the delay because all the witnesses testified in the Georgia case and he had the benefit of their sworn testimony to impeach them. All the co-defendants were also extradited to South Carolina and were prepared to testify against Hunsberger. After considering arguments from both sides, Judge Clifton Newman denied Hunsberger's motion to dismiss. Judge Newman asserted the State had "demonstrated legitimate reasons for the delay given the complex nature of the cases, [and] the problems involving prosecutions in multiple jurisdictions in this state as well as the State of Georgia."

Hunsberger renewed his motion to dismiss his case at the close of the State's case, arguing the changes in witnesses' testimony provided an example of the prejudice he suffered from the delay in bringing his case to trial. Judge Newman denied the motion, stating Hunsberger's counsel did "an effective job at pointing out to the witnesses in cross-examining them and impeaching them on prior inconsistent statements." He added the transcript was available to refresh witnesses' recollection and impeach them when needed. He further stated Hunsberger had not

"been deprived of his liberty because he's been incarcerated under another sentence." The jury convicted Hunsberger of murder, and the court sentenced him to thirty-three years' imprisonment. This appeal followed.

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009); see *State v. Evans*, 386 S.C. 418, 422, 688 S.E.2d 583, 585 (Ct. App. 2009) (applying the standard of review to speedy trial cases). Thus, on review, the court is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). "This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

LAW/ANALYSIS

Hunsberger argues the trial court erred in denying his motion to dismiss the charge against him because the almost ten-year delay in bringing his case to trial violated his constitutional right to a speedy trial. We disagree.

A criminal defendant is guaranteed the right to a speedy trial. U.S. Const. amend. VI; S.C. Const. art. I, § 14. "This right is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *State v. Pittman*, 373 S.C. 527, 548-49, 647 S.E.2d 144, 155 (2007) (quoting *United States v. MacDonald*, 456 U.S. 1, 8 (1982)). A "speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay." *State v. Langford*, 400 S.C. 421, 441, 735 S.E.2d 471, 481-82 (2012) (quoting *Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966)). "There is no universal test to determine whether a defendant's right to a speedy trial has been violated." *Evans*, 386 S.C. at 423, 688 S.E.2d at 586.

When determining whether a defendant has been deprived of his or her right to a speedy trial, this court should consider four factors: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. *State v. Brazell*, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). These four factors are related and must be considered together with any other relevant circumstances. *Barker*, 407 U.S. at 533. "Accordingly, the determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155. However, in *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992), the United States Supreme Court suggested in dicta that a delay of more than a year is "presumptively prejudicial." Also, in *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978), our supreme court found a two-year-and-four-month delay was sufficient to trigger further review. "[A] delay may be so lengthy as to require a finding of presumptive prejudice, and thus trigger the analysis of the other factors." *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155.

In *State v. Evans*, 386 S.C. at 424-26, 688 S.E.2d at 586-87, this court found a twelve-year delay in bringing a case to trial did not violate the defendant's speedy trial rights when the defendant's statement to police was suppressed; the appeals of the suppression order lasted for five years; after the appeals the case was transferred to an assistant solicitor, the solicitor was later elected solicitor of another circuit; and the defendant failed to establish she was prejudiced by the delay. In *State v. Cooper*, 386 S.C. 210, 217-18, 687 S.E.2d 62, 67 (Ct. App. 2009), this court held a delay of forty-four months did not violate the defendant's constitutional right to speedy trial when the delay was to some degree the result of prosecutorial and governmental negligence, but any presumption of prejudice was persuasively rebutted because the State withdrew its notice to seek death penalty; thus, the withdrawal could be construed as benefit the defendant resulting from delay.

On appeal, Hunsberger asserts the ten-year delay triggers the speedy trial analysis because the delay was presumptively prejudicial and weighed heavily against the State. He argues the reason for the delay was a deliberate attempt by the State to force him to testify against Barnes. Hunsberger claims he asserted his right to a speedy trial in 2004 and 2005. Additionally, he argues he had "no burden of pointing to specific prejudice"; however, he provided the testimony of Richard Cave, who stated "his testimony was the result of what he actually remembered

and what he read in transcripts and statements, not the basis of his own memory." Moreover, he argues he demonstrated through cross-examination that the memories of the witnesses were impaired by the passage of time. Lastly, he asserts he lived in a state of mental and emotional turmoil for almost a decade, waiting for the State to make a life-or-death decision.

Although almost ten years passed between Hunsberger's arrest and his trial, Hunsberger was only detained in South Carolina from January 25, 2002, to 2005, when he was released to Georgia. This three-year period was sufficient to trigger further review of his right to speedy trial, and he asserted his right two times before being transported to Georgia. *See Waites*, 270 S.C. at 108, 240 S.E.2d at 653 (determining a two-year-and-four-month delay was sufficient to trigger further review). Both of his motions were denied. Hunsberger was then tried, convicted, and sentenced in Georgia on September 12, 2006, to life imprisonment for the crime of kidnapping with bodily injury. He was incarcerated in Georgia and returned to South Carolina in October 2011. The State asserted it attempted to proceed with the trial in October 2011, but Hunsberger refused to sign the extradition papers, which delayed transporting him back to South Carolina. Hunsberger did not assert his right to a speedy trial during the time he was serving his life sentence in Georgia.

Hunsberger again asserted his right to a speedy trial at the beginning of his South Carolina trial in January 2012. Before denying the motion, Judge Newman addressed the length of the delay:

It's a rather unique case for a lot of reasons. It's unique in the sense that you have cross-border issues, you have Georgia wanting to pursue Georgia's case, but South Carolina wanting to pursue South Carolina's cases, each defendant asserting their individual constitutional rights and the State having a capital case that [it is] wanting to pursue and [has] successfully pursued. So this case doesn't follow the normal framework of cases where a person is -- has a charge outstanding and simply wants to get it tried, wants to get it over with. This is a case that has a number of complicated factors that bring us to this moment in time.

As for the reason for the delay, Judge Newman maintained the State had "demonstrated legitimate reasons for the delay given the complex nature of the cases, [and] the problems involving prosecutions in multiple jurisdictions in this state as well as the State of Georgia." *See United States v. Grimmond*, 137 F.3d 823, 828 (4th Cir. 1998) ("When a defendant violates the laws of several different sovereigns, . . . at least one sovereign, and perhaps more, will have to wait its turn at the prosecutorial turnstile. Simply waiting for another sovereign to finish prosecuting a defendant is without question a valid reason for delay."); *Waites*, 270 S.C. at 108, 240 S.E.2d at 653 (holding the "constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable"); *State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) (finding no violation of the defendant's right to a speedy trial, even though the delay was two years and two months, when the case was clearly complicated and required substantial time to investigate and prepare and there was no evidence the State purposefully delayed the trial); *State v. Smith*, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (holding the burden was on the defendant to show the delay was due to the neglect and willfulness of the State's prosecution).

Further, Hunsberger argues he was prejudiced because the witnesses' memories were impaired by the passage of time. The trial court found Hunsberger "has not shown any prejudice that might affect his right to a fair trial or his due process rights." All the witnesses were still available to testify, and the transcripts from the previous actions were available to Hunsberger to use to refresh witnesses' recollection and impeach the witnesses. Judge Newman stated Hunsberger did "an effective job at pointing out to the witnesses in cross-examining them and impeaching them on prior inconsistent statements." Hunsberger did not allege any witnesses or evidence were lost, the delay impacted his case, or an earlier trial would have resulted in a different verdict and sentence. *See Brazell*, 325 S.C. at 76, 480 S.E.2d at 70-71 (noting the three-year-and-five-month delay was negated by the lack of prejudice to the defense); *Kennedy*, 339 S.C. at 251, 528 S.E.2d at 704 ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."); *State v. Langford*, 400 S.C. 421, 445, 735 S.E.2d 471, 484 (2012) (finding a two-year delay in bringing the case to trial did not amount to a constitutional violation in the absence of any actual prejudice to the defendant's case). Judge Newman found Hunsberger was not deprived of his liberty because he had been incarcerated in Georgia under another sentence. In fact, Hunsberger may have received a benefit as a result of the delay because the State ultimately decided not to pursue the death penalty against him. *See Pittman*,

373 S.C. at 553, 647 S.E.2d at 157 (noting Pittman received some benefits as a result of the delay); *Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 (stating the State withdrew its notice to seek the death penalty; thus, the withdrawal could be construed as a benefit to Cooper resulting from the delay).

Therefore, looking at the *Barker* factors and the case as a whole, we find the trial court did not abuse its discretion in finding Hunsberger's constitutional right to a speedy trial was not violated and denying his motion to dismiss.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

APPELLANT

Appeal from Edgefield County

Clifton Newman, Circuit Court Judge

Opinion No. 2014-UP-381.

Appellate Case No. 2012-206608

PETITION FOR REHEARING

On November 5, 2014, this Court affirmed Appellant's convictions and sentences in an unpublished opinion. State v. Hunsberger, 2014-UP-381 (S.C. Ct. App. filed Nov. 5, 2014). Pursuant to Rule 221(a), SCACR, Appellant asks this Court to rehear this matter in light of the significant points overlooked and/or misapprehended by this Court in rendering its opinion, which will be explained more fully below.

This Court held the prosecutor's delay in calling Appellant's case to trial "was sufficient to trigger further review of his right to speedy trial." Certainly, Appellant has no objection to this finding. However, this Court's failure to consider the full ten-year delay between Appellant's arrest

and trial was an error of law. Whether a person is incarcerated, the length of that incarceration, and the location of that incarceration, is irrelevant to whether the speedy trial analysis is triggered. The only consideration is the time between the arrest and the trial. See Doggett v. United States, 505 U.S. 647 (1992)(explaining the eight and one-half years' delay between indictment and trial triggered the speedy trial analysis even where the defendant was incarcerated in another country for some period of that time and had returned to the United States voluntarily and was not incarcerated at all for six years). This consideration of only the time in which Appellant was incarcerated in South Carolina is erroneous and pervasively influences the entire opinion.

Additionally, this Court failed to address Appellant's argument that he was not required to demonstrate any prejudice at all because the length of time required a presumption of prejudice. A defendant is not required to show prejudice affirmatively to win a speedy trial claim.¹ Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). The Court granted relief to Doggett while noting that he "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either

“extenuated, as by the defendant’s acquiescence, or persuasively rebutted” by the prosecution. *Id.* at 658.

Appellant made clear that the substantial delay coupled with what must be considered at a minimum, the state’s gross negligence in failing to calling his case for trial compelled the Court to presume prejudice. Despite Appellant’s incarceration in a different jurisdiction, the ten-year delay before his trial must not be discounted or denied. Without question, ten years between an arrest and a trial is a substantial amount of time.²

Nevertheless, Appellant has shown prejudice. As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including “oppressive pretrial incarceration,” “anxiety and concern of the accused,” and “the possibility that the [accused’s] defense will be impaired” by the loss of memories and exculpatory evidence. *Barker v. Wingo*, 407 U.S. 514, 532 (1972). The Court observed that loss of memory “is not always reflected in the record because what has been forgotten can rarely be shown.” *Id.* According to the Court, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Id.* Being locked up hinders a defendant’s ability to gather evidence, contact witnesses, and prepare his defense. *Id.* at 533. Even a defendant who is not in jail prior to trial is disadvantaged “by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility.” *Id.*

Appellant provided at least one example of prejudice - during the capital trial of Steven Barnes, Appellant’s co-defendant, a witness, Richard Cave, admitted that his sworn testimony was

¹ “[N]one of the four factors identified [are] a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial.” *Barker v. Wingo*, 407 U.S. 514, 533 (1972).

² Eight years prior, in 2004, Judge Keesley called the delay “clearly bordering on excessive.” The trial judge described this as “the first case he had where ten years had passed between the arrest and trial.”

influenced by what he had read in transcripts and statements. Appellant also demonstrated through cross-examination that the memories of the witnesses were impaired by the passage of time. Additionally, the mental and emotional anguish Appellant suffered from the "sword of Damocles" controlled by the prosecution must receive significant weight and consideration. For almost a decade, Appellant lived in a state of mental and emotional turmoil waiting for the state to make a life-or-death decision.

Although the record is unclear at this time, Appellant's ability to receive credit for time served from the date of arrest is likely hindered by the state's failure to prosecute him earlier. The Department of Corrections often discounts pre-trial detainment in another state or detainment subsequent to a conviction in a different jurisdiction.

The Supreme Court has afforded different weights to the different reasons for the presumptively prejudicial delay. On the far end of the spectrum is a deliberate delay by the prosecution to impede the defendant's ability to defend himself. A prosecutor acts improperly if he intentionally delays a trial to gain some tactical advantage over a defendant or to harass a defendant. Barker, 407 U.S. at 531, n. 32 (citing United States v. Marion, 404 U.S. 307, 325 (1971); Pollard v. United States, 352 U.S. 354, 361 (1957)). Such a reason should be weighted heavily against the prosecution. Even neutral reasons weigh against the state because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531.

Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize

many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett, 505 U.S. at 657. Obviously, delays contributed to the defendant's conduct weighs against him. Vermont v. Brillon, 556 U.S. 81 (2009).

The stated reasons for the delay in the prosecutor calling Appellant's case to trial was that Solicitor Myers was deciding whether to seek the death penalty against Appellant and obtaining Appellant's cooperation against Barnes. Although Solicitor Myers decided very early on to seek death against Barnes, he was not sure whether he would seek death against Appellant until after Barnes' trial. By failing to try Appellant by February 2005 as instructed by Judge Keesley, the state consented to Appellant's extradition to Georgia. Appellant was tried in Georgia shortly thereafter – in 2005. Nevertheless, the first attempt by the prosecutor to extradite Appellant to South Carolina was “in the first part of 2011” following Barnes' conviction in November of 2010.

The delay was a deliberate attempt by the prosecution to force Appellant to testify against Barnes. The prosecutor held a “sword of Damocles” in the form of a threat of a death sentence over the head of Appellant for ten years in hopes of receiving Appellant's assistance in the prosecution of Barnes. There is simply no reason the prosecution had to wait for Barnes' trial to conclude before trying Appellant.

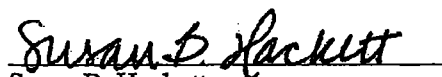
Without question, South Carolina had physical possession of Appellant from January 2002 until January 2005 when Judge Keesley granted Appellant a bond. During those three years, the prosecution made no attempt to prosecute Appellant. Appellant's trial in Georgia, and the disposition of the testifying co-defendants' charges were resolved in 2006, also resolving any so-called “cross-border issues.” Thus, for the six years after the Georgia convictions, there was no

"wait" at the "prosecutorial turnstile" as suggested by this Court's opinion and citation to United States v. Grimmond, 137 F.3d 823, 828 (4th Cir. 1998). To the extent any wait ever existed, the State of South Carolina was first in line as this jurisdiction had physical custody of Appellant in January 2002 and voluntarily relinquished him to Georgia.

There is no argument that the state can present except that Appellant's trial was delayed deliberately by the state in order for the state to gain an advantage in the trial of Steven Barnes. The prosecution rightly did not argue a crowded docket prevented trial of Appellant, as the order of Judge Keesley offered the creation of a special term of court in 2005. Additionally, the prosecution rightly did not argue the factual presentation of the case was complicated as it consisted primarily of the testimony of three eyewitnesses who cooperated immediately with law enforcement.

In light of the factors listed above that were overlooked and/or misapprehended by this Court in reaching its opinion, Appellant respectfully requests this Court rehear the matter and dismiss the charge against him.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

This 20th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

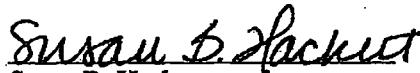
V.

ALEXANDER L. HUNSBERGER,

APPELLANT

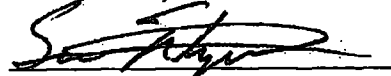
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Alexander L. Hunsberger, #98676, at Wheeler Correctional Facility, 195 North Broad Street, Post Office Box 466 Alamo, GA 30411, this 20th day of November, 2014.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of November, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

The State,		Respondent,
	v.	
Alexander L. Hunsberger,		Petitioner.
Appellate Case No. 2012-206608		

Unpublished Opinion No: 2014-UP-381

RETURN TO PETITION FOR REHEARING

This Court issued an opinion in the captioned case on November 5, 2014, affirming Petitioner's murder conviction. *State v. Hunsberger (Alexander)*, Unpublished Opinion No. 2014-UP-381 (S.C.Ct.App. filed November 5, 2014). On November 20, 2014, Petitioner filed a petition for rehearing. By letter dated November 21, 2014, this Court requested Respondent file a return to the petition. Pursuant to Rules 221 and 240, SCACR, and at the request of the Court, Respondent now makes a return to the petition, and submits the petition for rehearing should be denied. In support of this position, Respondent would respectfully show the Court:

1. In the referenced opinion, the Court concluded:

... looking at the *Barker* factors and the case as a whole, we find the trial court did not abuse its discretion in finding Hunsberger's constitutional right to a speedy trial was not violated and denying his motion to dismiss.

Petitioner apparently contends the Court erred in its legal conclusion based on the facts of the delay, particularly the Court's consideration of the time Petitioner was in Georgia. He argues "[w]hether a person is incarcerated, the length of that incarceration, and the location of that incarceration, is irrelevant...." (Petition, p. 2). Further, he argues "he was not required to demonstrate any prejudice at all because the length of time required a presumption of prejudice, though he did so by showing the passage of time dimmed memories, and the hovering threat of capital proceedings resulted in sustained angst. (Petition, pp. 2-5).¹ These are arguments forwarded in his brief to this Court. (FBOA, pp. 18-19). However, both Judge Newman and this Court in review of Judge Newman's ruling were obligated to consider the time in Georgia in a fair weighing of factors, along with the lack of prejudice. The *Barker*² test directs consideration of various aspects, with the assigning of weight to a number of circumstances and facts to effect a

¹ Petitioner also asserted as a basis for finding prejudice, that he may not receive credit for all the time served. (FBOA, p. 19). He again references that argument in petition for rehearing. (Petition, p. 4). However, as Respondent asserted in its brief, (see FBOR, pp. 23-24), this argument was not raised as a ground for the speedy trial motion and is procedurally barred. See, e.g. *State v. Byram*, 326 S.C. 107, 113, 485 S.E.2d 360, 363 (1997) (appellant's failure to raise constitutional issue to the trial court barred review on appeal); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."). Further, the factual basis for this argument was not developed below and should not be heard at this time. Defense counsel requested at sentencing credit for time served and a sentence that would run concurrent with the Georgia sentence. (See R. p. 204, lines 11-18). The transcript closes with the State attempting to confirm the steps for a concurrent sentence and defense counsel providing information for the case number and date of sentencing. (R. p. 218, line 6 – p. 221 line 2). The very fact the record is not fully developed on this point is another reason the argument should not be reached. See *State v. Tyndall*, 336 S.C. 8, 17, 518 S.E.2d 278, 283 (Ct. App. 1999) ("An appellant has a duty to provide this Court with a record sufficient for review of the issues on appeal."); Rule 210, SCACR (in general, "the appellate court will not consider any fact which does not appear in the Record on Appeal.").

² *Barker v. Wingo*, 407 U.S. 514 (1972).

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² *Barker v. Wingo*, 407 U.S. 514 (1972).

3. As both Judge Newman and this Court noted, *Barker* provides not only should the reason for the delay be considered, but also that those reasons should be examined as to relative justification:

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker v. Wingo, 407 U.S. at 531.

Judge Newman correctly found the reason for the delay here is multifaceted. There were at the outset of the prosecution two jurisdictions vying for the opportunity to pursue charges against a minimum of six individuals who participated in varying respects with the assault, kidnapping and murder. Further, the murder with aggravating circumstance(s) allowed for consideration of capital proceedings. In fact, capital proceedings were sought against co-defendant Steven Barnes. The State expressed its intent to try Barnes first, and the delay in Barnes' capital case caused additional delays in the subsequent trials. (R. p. 30, lines 17-24).³ The record well supports Judge Newman's findings on the complexity of the case. See *State v. Pittman*, 373 S.C. 527, 552, 647

³ The capital proceedings against Barnes carry their own delays and restrictions; thus, there is no unexplained delay in those proceedings which negatively affected the prosecutorial plan at issue here. While the prosecutorial plan alone may not completely justify delay, it is inescapable that the "main goals" of limiting "pretrial incarceration, minimiz[ing] the anxiety stemming from public accusation of the crime" and "long delays impairing an accused's defense" were not negatively affected here where Petitioner was serving a life sentence for the kidnapping of the murder victim. See *State v. Langford*, 400 S.C. at 440, 735 S.E.2d at 481.

S.E.2d 144, 157 (2007) (“Although it took a long time for the case to come to trial, any delay was the result of the complexities of this case.”); *Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 (noting “complexity of the case and the amount of time required to prepare for trial” in assessing justification for the delay).

4. As to Petitioner’s complaint about the treatment of the time in Georgia, the State had relinquished custody in early 2005.⁴ Georgia did not try the case until September 2006. The State could not seek simultaneous trials as these are separate sovereigns. This nearly two-year period may not be attributed directly to the State. See *United States v. Battis*, 589 F.3d 673, 679-680 (3rd Cir. 2009) (separating federal and state charges for purposes of speedy trial analysis, but finding decision to wait on state prosecution weighed against federal government, though not heavily as the federal government was not “intentionally undermining the defense”); *United States v. Seltzer*, 595 F.3d 1170, 1178 (10th Cir. 2010) (“We agree with our sister circuits that awaiting the

⁴ Of note, the offense was committed in September 2001, Petitioner was arrested in January 2002, and released to Georgia in February 2005, to stand trial; however, he was not convicted and sentenced in Georgia until September 12, 2006. (Opinion, [unnumbered] p. 2). Incarceration in South Carolina thus accounted for some of the delay in Georgia, with well-over a year delay even after the return. This shows a distinct disadvantage to both sovereigns and underscores the effect of the separate sovereigns issue in the instant case. See *United States v. Grimmond*, 137 F.3d at 828 (“When a defendant violates the laws of several different sovereigns, as was the case here, at least one sovereign, and perhaps more, will have to wait its turn at the prosecutorial turnstile. Simply waiting for another sovereign to finish prosecuting a defendant is without question a valid reason for the delay.”). While Petitioner essentially argues the case could have been tried before relinquishing custody to Georgia, this assumes much in regard to the necessary preparations for trial and, at any rate, would simply shift the wait to the Georgia conviction. It is inescapable that both sovereigns have the right to prosecute Petitioner for his crimes. It is also inescapable that Petitioner was legitimately incarcerated on his life sentence in Georgia and could not be simply released from incarceration upon disposition of the South Carolina charges. This is a different posture than one held merely in pre-trial detainment.

completion of another sovereign's prosecution may be a plausible reason for delay in some circumstances..."). Cf. *State v. Robbins*, 590 A.2d 1133, 1136-1137 (N.J. 1991), quoting *State v. Williams*, 224 A.2d 331 (N.J. 1966) ("Inasmuch as it is impossible for a person to be in two places at the same time, where one owes penalties to two separate sovereigns, one sovereign must relinquish its claim and allow the other to exact its penalty first."). After conviction, Petitioner began service of his Georgia sentence in Georgia. (See R. p. 24, line 12-25). In fact, he testified at the pre-trial hearing on the motion to dismiss that one of his reasons for not agreeing to extradition was he "needed to find out" how leaving Georgia would affect his Georgia appeal. (R. p. 36, lines 16-23). This marked hesitancy in returning to the State fails to show a desire for a speedy trial here. Again, this time should not count against the State. This is most assuredly so where Petitioner simply did nothing to force prosecution in South Carolina, though he had the ability to do so under the Interstate Agreement on Detainers.⁵ Without question, Petitioner asserted his right in late 2004 and again January 2005. This resulted in a bond that allowed Georgia to obtain custody and subsequently try him on the kidnapping charge. (R. p.226 [January 28, 2005 Order]). Essentially, Petitioner moved for relief under Section 17-23-90 and appropriate relief was granted at that time. (R. p. 222 [Notice of Motion and Motion for Speedy Trial]). See generally *State v. Campbell*, 277 S.C. 408, 288 S.E.2d 395 (1982) (denying speedy trial claim pursuant to statute where S.C. Code § 17-23-90 provides for release if not indicted and tried within certain time frame, not dismissal of the charge). After this grant of relief, however, Petitioner failed to

⁵ It is clear from the record that the State immediately set out to bring the Hunsbergers back to this jurisdiction for trial upon completion of the capital proceedings against Barnes. (R. p. 25, line 21 – p. 26, line 6). There was no delay of any consequence in seeking Petitioner's return after the capital proceedings concluded.

reassert or pursue his constitutional right to a speedy trial at any point until immediately before his January 2012 trial. (See R. p. 17, lines 21-25, acknowledging no request during six to seven years of the delay). In fact, he declined to allow extradition in 2011. (R. p. 36, lines 13-23). Simply, during the time that Petitioner argues the "cross-border" jurisdiction issues were resolved and the trial, (see FBOA, p. 18), he did not request return or trial. This must weigh heavily against him. *Barker v. Wingo*, 407 U.S. at 536 ("barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.").

5. Petitioner's assertion of *per se* prejudice from length of time alone is contrary to precedent. *Pittman*, 373 S.C. at 551, 647 S.E.2d at 156 (rejecting Pittman's argument "that the delay of his trial was so lengthy that it not only meets the requisite finding of delay, but also that the delay is presumptively prejudicial"). Other courts have examined similar delays and declined to find presumptive prejudice. See *United States v. Blanco*, 861 F.2d 773, 778 (2nd Cir. 1988) (rejecting general assertion of prejudice in ten year delay between indictment and trial where defendant at fault in delay and where "delay can just as easily hurt the government's case"); *United States v. Tchibassa*, 452 F.3d 918, 925-927 (D.C.Cir. 2006) (finding no presumptive prejudice where defendant more at fault than government in eleven year delay). Accord *United States v. Mendoza*, 530 F.3d 758, 764-765 (9th Cir. 2008) (noting that if government had "exercised due diligence," for speedy trial claim on delay of eight years, defendant would have had to have shown "specific prejudice to his defense" rather than assessing presumptive prejudice). The list of cases cited by Petitioner, (see Petition, p. 2), actually reflect cases

holding that the balancing test is proper, and do not support mere passage of time is dispositive as to a *per se* violation of the right.⁶ Even though Petitioner was tried for the 2002 charge in January of 2012, he had ample opportunity to thoroughly cross-examine the witnesses against him, including making use of prior sworn testimony – testimony that was available as a result of multiple actions both in South Carolina and Georgia. (See R. p. 19, line 24 – p. 21, line 9; p. 22, lines 18-25). Further, he does not contend any exculpatory witness or testimony is not unavailable. (See Petition, pp. 3-4). Petitioner has twice been convicted (once in Georgia, once here) on evidence of participation in the events that led to Samuel's murder, and readily admits his presence during the crime. (See R. p. 187, line 8 – p. 193, line 5; p. 216, lines 8-13). Petitioner argues, though, that the passage of time affected extent of memory and credibility of the witnesses against

⁶ For example, a quote from the unpublished case *United States v. Frith* cited by Petitioner, (see Petition, [unnumbered] p. 5) is particularly illustrative: "... the district court misunderstood the holding and rationale of *Doggett*. Although the court was correct that a showing of actual prejudice is not required in all speedy trial cases ... *Doggett* specifically noted that 'presumptive prejudice cannot alone carry a Sixth Amendment claim,' but rather must be considered in the context of the other factors, particularly the reason for the delay...." 1999 WL 387849, * 4 (4th Cir. 1999). Bad faith in a lengthy delay may occasion dismissal, but not simply a lengthy delay. *Id.* The Fourth Circuit concluded, "*Doggett* did not hold, as the district court apparently believed, that a sufficiently lengthy delay may be dispositive of a speedy trial claim irrespective of the other criteria for evaluating such a claim." *Id.* In sum, the case actually supports a detailed analysis of facts as reflected in the trial judge's ruling in balancing relevant factors, including a lack of prejudice and the absence of bad faith. Respondent notes the Fourth Circuit reversed the dismissal in *Frith* for "presuming prejudice" in the delay. "Because we conclude that the district court erred in conclusively presuming prejudice to Frith as a result of the seven-year delay between indictment and trial, we reverse the dismissal of the indictment as to Frith." *Id.* at 6. The same is true of *United States v. Clark*, 83 F.3d 1350, 1354 (11th Cir. 1996), also cited by Petitioner, where the Court reversed dismissal of an indictment noting "each case must be decided on its own facts." The Court resolved "mere conclusory allegations of impairment are insufficient to constitute proof of actual prejudice" and did not support relief where delay by government was unintentional. *Id.* The listed cases simply do not clearly support the proposition offered.

him. (See FBOA, p. 19; R. p. 194, line 22 – p. 195, line 13; Petition, p. 3). In effective rebuttal, the trial transcript demonstrates credibility was challenged by use of prior transcripts which preserved sworn testimony, (See R. p. 97, line 14 – p. 100, line 19; p. 144, line 25 – p. 145, line 5), and that contemporaneous notes were used to refresh memories, (See R. p. 144, lines 2-24; p. 172, line 7 – p. 173, line 13). The multiple trials and statements in essence preserved and/or created testimony for this Petitioner's use to his benefit. Judge Newman fairly and reasonably found no evidence of prejudice to Petitioner based on the passage of time:

Regarding ... problems the witnesses had remembering, Counsel did an effective job at pointing out to the witnesses in cross-examining them and impeaching them on prior inconsistent statements. The fact that there is a transcript to go over your testimony available, it accounts the opportunity to refresh the witness' recollection and to impeach where needed[.]

In looking at it, the trial to this point - - looking back I indicated in retrospectively on a position of prejudice, I don't see where the defendant has been prejudiced in any way. Based on the lapse of time, for the most part, everyone seems to have a pretty vivid memory. Of course, these matters will probably - - probably be forever etched in the memories and minds of people who were there involved, eye witnesses.

(R. p. 196, line 22 – p. 197, line 11).

As this Court found, his factual findings are well-supported and his reasoning sound. (Opinion, [unnumbered] p. 7). Further, the State ultimately decided against seeking the death penalty for Petitioner. (R. p. 23, lines 3-16). As such, the length of the delay in this aspect certainly holds no prejudice to Petitioner. (Opinion, [unnumbered], p. 7). *See Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 ("the State withdrew its notice to seek the death penalty; thus, the withdrawal could be construed as a benefit to Cooper resulting from the delay.").

6. Lastly, as to Petitioner's argument on deliberate delay to force cooperation, contrary to Petitioner's assertion that the State acted improperly in offering Petitioner the opportunity to testify against Barnes, (FBOA, p. 18; Petition, p. 5), this offer actually shows the State did not place isolated or undue pressure on Petitioner. The State had success in securing many of the co-defendants to testify against Barnes, and, the offer to allow the Hunsbergers to testify "might [have] go[ne] toward their benefit." (See R. p. 4, lines 14- 25; p. 26, lines 10-16). As the State acknowledged, it was their right to decide not to testify against Barnes. (R. p. 26, line 17 – p. 27, line 6). Even so, they had the same opportunities as the other co-defendants. This even treatment does not lend itself to attack here as evidence of an attempt to harm the defense. It is, however, a facet of the complexity.

7. In sum, the record well supports Judge Newman's factual findings which he correctly analyzed in the appropriate legal framework. This Court properly affirmed upon carefully reviewing the supporting facts of record and finding no abuse of discretion. (Opinion, [unnumbered] pp. 5-8). *See also State v. Cooper*, 386 S.C. 210, 218, 687 S.E.2d 62, 67 (Ct.App. 2009) (affirming denial of motion to dismiss finding trial judge's "decision was supported by the evidence"). Petitioner has failed to show rehearing is warranted.

CONCLUSION

Based on the forgoing, Respondent submits Petitioner has failed to show that rehearing is warranted. The petition should be denied.

Respectfully submitted,

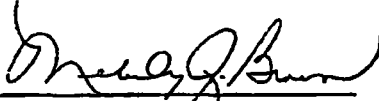
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December 1, 2014.
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

The State,	v.	Respondent,
Alexander L. Hunsberger,		Appellant.

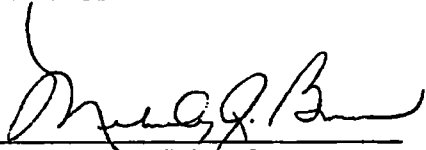
Appellate Case No. 2012-206608

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Return to Petition for Rehearing* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

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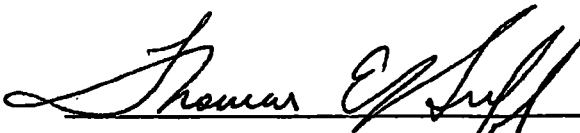
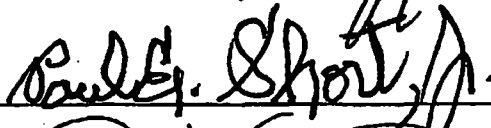
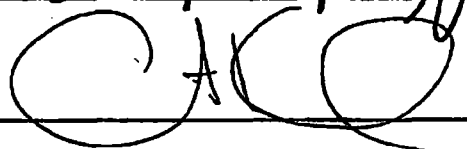
v.

Alexander L. Hunsberger, Appellant.

Appellate Case No. 2012-206608

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____. J.

_____. J.

_____. J.

Columbia, South Carolina

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FILED

December 17, 2014

John W. McIntosh, Esquire
Donald V. Myers, Esquire
The Honorable Clifton Newman

2015-08-25

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

APPELLANT

Appellate Case No. 2012-206608

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1 State of South Carolina) In the Court
 2 County of Aiken) Of General Sessions

3 Indictment No.: 2002-GS-19-0109
 4

5
 6 State of South Carolina,)
 7 Plaintiff.)
 8 vs.) Transcript of Record
 9) Volume I
 10 Alexander Hunsberger,)
 Defendant.)

11
 12
 13 January 3-6, 2012
 14 Edgefield, South Carolina

15
 16 B E F O R E:

17 The Honorable Clifton Newman, Judge and a jury.
 18

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1 TUESDAY, JANUARY 3, 2012

2 **PRETRIAL MOTIONS**

3 MR. MAYE: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. MAYE: Your Honor, it is the intent of the
6 State to try indictment 2005-GS-19-472, the State versus
7 Alexander L. Hunsberger, an indictment for murder. This
8 indictment was indicted in the December term of 2005. This
9 one was true billed by the Grand Jury of Edgefield County.

10 As a procedural background in this case, it's my
11 understanding that the defendant has motions involving a
12 speedy trial. As a procedural background, this case
13 involves the killing of -- on September 3rd of 2001 -- on
14 or about September 3rd of 2001, of the victim Samuel J.
15 Sturup. Alex and Julio Hunsberger were charged, along
16 with a codefendant, Steven Louis Barnes, who Solicitor
17 Myers and I tried on a capital case in November of 2010,
18 Your Honor.

19 There were also three other codefendants in this
20 case, Your Honor, that have all been convicted of Columbia
21 County Georgia charges, involving the kidnapping and
22 assault on that same victim, Samuel J. Sturup, that
23 occurred that same weekend, back in 2001.

24 THE COURT: Who was the trial judge in November of
25 2010?

1 MR. MAYE: In November of 2010, Knox McMahon, Judge
2 Knox McMahon, Circuit Judge, presided over Steven Louis
3 Barnes who was cap -- the only one of these defendants that
4 was noticed for the death penalty; and that capital case
5 proceeded and he was convicted in November of 2010.

6 Your Honor, in this case, after Mr. Sturup was --
7 the State's allegation -- was basically kidnapped and
8 beaten over in Georgia at the hands of Mr. Barnes, Alex
9 Hunsberger, the defendant in this case and Julio
10 Hunsberger, his codefendant, along with Charlene Thatcher
11 and two other male codefendants, Your Honor, that he was
12 brought over into South Carolina that same weekend; and all
13 of these individuals stood around a circle and basically
14 passed guns between themselves and fired shots into the
15 victim resulting in his death.

16 Alex and Julio Hunsberger were tried and convicted
17 over in Columbia County, Georgia, Your Honor, between --
18 the trial date was September 5th through the 12th of 2006,
19 over in Columbia County, Georgia. On September 12th of
20 2006, both Alex and Julio Hunsberger, who were tried
21 together as codefendants, were convicted of kidnapping with
22 bodily injury and sentenced to life in Georgia on that
23 date, September 12th of 2006.

24 Your Honor, it's my understanding, although we
25 initially received some conflicting information from

1 Georgia authorities, it is my understanding they do have a
2 parole eligibility and they will be eligibility for parole
3 sometime within the next six, seven years according to
4 Georgia Department of Corrections Authority.

5 Your Honor, we delayed -- we were not able to try
6 the capital case -- the State attempted on numerous
7 occasions to proceed forward with the case against Steven
8 Louis Barnes, the codefendant in this case, but it was not
9 tried until November of 2010. More than one judge was
10 assigned to that case. Eventually Judge McMahon was
11 assigned to it and it was tried in November of 2010. Your
12 Honor, they have been serving this life sentence over in
13 Georgia since September 12th of 2006.

14 The State in this case allowed the other three
15 codefendants to testify in the case against Steven Louis
16 Barnes that was done in November of 2010. We had hoped
17 that either Julio or Alex Hunsberger or both of them might
18 testify as State's witnesses against Steven Louis Barnes.
19 Both of them declined to do so. It was the hope of the
20 State to offer them at least some opportunity to testify,
21 which we thought, you know, might go toward their benefit
22 in this case if they would agree to cooperate and testify
23 against Mr. Barnes in this capital case. We extended that
24 offer right up until the time that we tried the case. It
25 was rejected by both of these codefendants. They refused

1 to cooperate in this case.

2 They have been held in Georgia since their
3 conviction September 12th of 2006, Your Honor. We have
4 attempted since that November 2010 case to proceed on these
5 two murder charges -- on the murder charges against both
6 Alex Hunsberger and his codefendant, Julio Hunsberger. We
7 were not able to get them back here and proceed with trial
8 until the October term of last year. On October 3rd and
9 October 10th, we attempted to go forward with the cases
10 against both Alex Hunsberger, the defendant in this case,
11 and his codefendant Julio Hunsberger. The defense at that
12 time requested a continuance --

13 MR. CHESSER: Your Honor, that's not true. We
14 never requested a continuance. So I just want to make that
15 clear.

16 MR. MAYE: Your Honor, it was my understanding in
17 this case --

18 THE COURT: I don't expect that you might agree
19 with many things that the solicitor might say. So save all
20 your disagreements until it's your turn to talk.

21 MR. CHESSER: Thank you, Your Honor.

22 THE COURT: All right. Go ahead.

23 MR. MAYE: Your Honor, we tried to call this case
24 at the last term of court. We were not able to proceed.
25 Part of the problem and the delay in this case has been

1 since Mr. Barnes was convicted in November, 2010, the
2 defendant in this case, Alex Hunsberger has refused and
3 contested extradition. We ran right up into the wire last
4 time in trying to get him back here in time. We
5 intended -- we intended to try this case October 3rd and
6 had to basically rearrange it in an attempt to try his the
7 10th because we were not able to -- because of his -- the
8 fact that he contested extradition -- basically the time
9 that the governor had to sign those warrants and transmit
10 him back to South Carolina did not run until right at the
11 last term of court.

12 We're prepared to go forward with Mr. Hunsberger's
13 case at this time, Your Honor. Certainly there's been no
14 deliberate attempt on the part of the State to delay the
15 proceeding against Mr. Hunsberger. We did want to give
16 them the chance to testify against the codefendant. They
17 did not do so. We're prepared to try these murder cases.
18 I think that the defense in this case would have to make
19 some showing of actual prejudice, the unavailability of a
20 witness, some sort of evidence not being available in order
21 to prevail on a motion to prohibit the State from going
22 forward and trying them for a lack of a speedy trial. But
23 we're prepared and ready to go forward with this case. We
24 submit it to the Court for consideration.

25 THE COURT: All right. Mr. Chesser.

1 MR. CHESSER: May it please the Court. As the
2 Court observed, it's natural that our position is going to
3 be somewhat different and so I wanted -- these are details
4 that I just want to touch on, things that were said just --

5 This event -- again the background is that the --

6 THE COURT: Let me ask you before you start, is
7 there an indictment some place that I should have to look
8 at?

9 MR. MAYE: Yes, sir, Your Honor. The indictment
10 that we're prepared to go forward on has been true billed
11 by the grand jury. We're going to proceed on the one that
12 was indicted at the March term of 2002. It's indictment
13 2002-GS-19-109. It was true billed by the grand jury at
14 the March term of 2002. It was actually served on
15 Mr. Hunsberger January 25th of 2002 in this case. That's
16 the return that I have.

17 THE COURT: Yes, sir?

18 MR. CHESSER: Thank you, Your Honor. The incident
19 that gave rise to this occurred on Labor Day of 2001.
20 That's September 3rd. There might be a question about
21 whether some events took place on the evening of September
22 2nd, but again, this -- late at night, Mr. Sturup was
23 brought over to Edgefield and then he was shot in the early
24 morning hours of September 3rd. The -- Mr. Hunsberger,
25 Alex -- and I think the Court is aware there's two

1 Hunsbergers that are accused in this case. One of them is
2 Julio and one of them is Alex. And, of course, I represent
3 Alex. But Alex was arrested on Jan 25th of 2002.

4 Now, I was appointed subsequent to that to
5 represent Mr. Hunsberger, and as it became clear that he
6 was to be retained without bail, in November of 2004, I
7 made a motion -- Mr. Hunsberger and I conferred and made a
8 motion for a speedy trial and I filed that written motion
9 with the clerk of court here in Edgefield. Judge Keesley
10 heard that motion in early December. I think it was
11 December 3rd of 2004, and I submitted to the Court a copy
12 of his order at that time.

13 And then, at that time, he said simply that he was
14 going to give the State a chance, but he encouraged the
15 State. He said, I'm going to set up a special term of
16 court, whatever it takes for y'all to get this done. This
17 came up again -- we renewed our motion, as is evidenced
18 again by the order of Judge Keesley in January of 2005,
19 where we again requested that the case be tried; and Judge
20 Keesley again encouraged the State in the strongest terms
21 to move forward with the case.

22 What happened, factually speaking, is that the
23 State had the Hunsbergers and Steven Barnes in custody in
24 Edgefield County, in the jail right down here. And they
25 were in the position to try him. In other words, they had

1 physical custody of him, but then at some point they just
2 decided -- and this again was in 2005, some -- at that
3 point Alex Hunsberger had been in custody for three years.
4 They decided to just let them go over to Georgia. They
5 said, We're going to let Georgia take care of him. And
6 that's when they released him to the custody of Georgia
7 because up until that time, the Hunsberger's and Mr. Barnes
8 were right here in the Edgefield jail. Mr. Barnes, the
9 State talked about how they tried him on a capital case
10 last year which, of course -- or in 2010, that's correct,
11 but he was actually tried and -- at whatever time the Court
12 deems appropriate, the State can correct me if I'm wrong --
13 he was tried on another charge of throwing bodily fluids on
14 somebody for his conduct in the Edgefield jail and that was
15 before his capital trial.

16 In any event, my point is that the State of South
17 Carolina, executive branch here, these prosecutors, they
18 made the decision to say, Well, we're just not going to
19 worry about it, we're going to let him go on back to
20 Georgia and see what happens over there, which they did.
21 And so Mr. Hunsberger stood trial over there for the
22 portion of this incident that took place in Georgia.

23 And again, if the Court will bear with me, you
24 know, you -- we've been dealing with this case for ten
25 years and it's new to you, so if you'll allow me -- what

1 happened over in Georgia, or what's alleged to have
2 happened is that Samuel Sturup was -- again, he was
3 about -- just 16 at the time, but he was a friend or he
4 hung around with Steven Barnes. Barnes was basically
5 running kind of a prostitution-combined-with-robbery type
6 of scheme. In other words, the girls were under his
7 control and they knocked on the door and then they would go
8 into some room at some hotel over there in Augusta and then
9 they'd give a signal and Barnes would come in and rob
10 whoever the supposed partner was.

11 So, anyway, Barnes -- my point is that on that
12 night of the incident, the night of September 2nd, Samuel
13 Sturup was called over there to a house that Steven Barnes
14 maintained and there he was beaten.

15 Now, I'll tell you that Mr. Maye stated that
16 Alexander Hunsberger did part of that beating and that's
17 never been maintained. What is actually shown by the
18 transcript of the trial and so forth is that the
19 Hunsbergers were there, they got there after this beating
20 had taken place. But in any event, the evidence over there
21 tended to show that this Samuel Sturup, the victim, was
22 placed into the back of a vehicle that was driven by Julio
23 Hunsberger and the evidence tended to show that Alexander
24 Hunsberger was in that vehicle and that it came over to
25 South Carolina and Samuel Sturup was in the back of that

1 vehicle and there's another vehicle with Steven Barnes and
2 some other of his friends and that's how they got over to
3 Edgefield. At any rate, the point I'm making is that the
4 State took the position to release him. They literally
5 decided not to prosecute him despite the encouragement of
6 the Honorable Judge Keesley and the State is responsible
7 for this delay. Under the -- at this time, if it please
8 the Court, I'd like to go through some of the principals
9 that I've set forth in writing. I don't know if you need
10 me to repeat them, but I'll be brief if it pleases the
11 Court.

12 THE COURT: I think you e-mailed it about an hour
13 and a half ago.

14 MR. CHESSER: Yes, sir.

15 THE COURT: So you need to explain it.

16 MR. CHESSER: Thank you, Your Honor.

17 The -- of course the right to a speedy trial is set
18 forth in the Sixth Amendment of the Federal Constitution
19 and the Fourteenth Amendment or 14th Section of Article 1
20 of the South Carolina Constitution. It's related to the --
21 I would say related to the right of due process,
22 undoubtedly the Federal Fifth Amendment and the State
23 Section 3 of Article 1. The -- there have been several
24 State cases that have dealt with the principal of the right
25 to a speedy trial and one of the ones that sets forth the

1 principals with clarity is a South Carolina case law, State
2 v. Pitman from 2007. And what it states is that in
3 determining whether the defendant had been deprived of the
4 right to a speedy trial, there are four factors: The
5 length of the delay, the reason for the delay, the
6 defendant's assertion of the right, and finally prejudice
7 to the defendant.

8 And so what the cases say is that there is no sort
9 of magic or mathematical formula for the application of
10 these principals but that the four has to apply, sort of an
11 unspecified type of balancing test; and also the Court has
12 to apply its own judgment. The -- this case goes on to
13 State that the length of the delay serves both as a factual
14 deterrent whether the right to a speedy trial had been
15 violated and it also serves as a triggering factor. In
16 other words, if the delay is not really that long, then you
17 don't really get into this debate.

18 In any event, there's no fixed time and then a
19 delay may be so lengthy that it requires a finding of
20 presumptive prejudice, which might be rebutted or in any
21 event, the State would bear the burden then of showing why
22 it's not prejudicial when the delay is very long. This,
23 again is -- they cite to a case law of State v. Wayes. But
24 that case in turn cites two cases from the South Carolina
25 Supreme Court, two cases from the South Carolina -- excuse

1 me not the South Carolina, but the United States Supreme
2 Court that are both fundamental in connection to this
3 particular question. One of them is Doggett, that's with
4 two G's and two T's. Doggett, U.S. 505, U.S. 647 from 1992
5 and another one is Barker versus Wingo, which is United
6 States Supreme Court case, 407 U.S. 514. That's, again,
7 that's from 1972. So these cases are twenty years apart,
8 but they both are cited in the current law as the primary
9 cases in this field.

10 Your Honor, this case, again, from South Carolina I
11 just cited and the federal law and so forth, states that
12 once the defendant has established that the delay is
13 sufficient to warrant analysis of the other factors, then
14 the Court must or should consider the reason for the delay.
15 And then it states that the ultimate responsibility for the
16 trial and for the timing of the trial rests with the State.
17 The Court should weigh heavily against the State any
18 intentional delays and the actual line is to impede the
19 defense by delays.

20 Where the reason for the delay is more neutral, the
21 Court should weigh it as heavily against the State. A
22 valid reason presented by the State would justify an
23 appropriate delay, the Court must also consider the
24 defendant's contribution to the delay and then consider
25 whether the defendant asserted his right. I submit that we

1 did in this case. Although that is not considered to be
2 conclusive. And then finally, it must determine whether
3 the defendant has suffered any prejudice.

4 Now, in this regard, what I'd like to point out to
5 the Court is the language from this Doggett U.S. case from
6 1992, where it states as follows: That the most serious
7 interest to be protected by guarantee to a speedy trial is
8 the possibility of the impairment of the defense.
9 Consideration and prejudice is not limited to the
10 specifically demonstrable and affirmative proof of
11 particularized prejudice is not essential to every speedy
12 trial claim. In fact, an unduly excessive delay can be
13 presumptively prejudicial. Regardless of whether the
14 defendant is able to show particularized prejudice or that
15 the delay warrants or that it warrants a binding
16 presumptive prejudice, the prejudice remains only one of
17 the four factors to be considered.

18 What that means is that there can be a presumption
19 of prejudice based on the length of an unreasonable delay,
20 which was caused by the prosecution by exercise of their
21 prerogative. And it says here in Barker versus Wingo, the
22 nature of a speedy trial right makes impossible to pinpoint
23 a precise time when the right must be asserted or waived,
24 but that fact is not argued for placing the burden or
25 protecting the rights solely on the defendants. The

1 defendant has no duty to bring himself to trial. The State
2 has that duty. Society has a particular interest in
3 bringing swift prosecutions and society's representatives
4 are the ones who should protect that interest.

5 At that point, Your Honor, having cited the
6 principals of the law, I would point out that the ten years
7 that we have here, the ten-year delay -- and here I'm
8 talking about between Alexander Hunsberger's arrest in
9 January of 2002 and today in January of 2012, I call that
10 ten years -- I would submit that is sufficient in the first
11 place of triggering the speedy trial analysis. And
12 secondly, it, itself, constitutes the first factor against
13 the State and for the defendant to establish that there has
14 been a violation of the right to a speedy trial in this
15 case.

16 This delay, I submit to Your Honor, again, as
17 evidenced by the fact that they allowed these defendant's
18 be released to Georgia in 2005, just said, We're going to
19 let Georgia handle it and then sort of take a look at it
20 four or five years down the road, that unfettered
21 discretion and choice of the State is -- what it basically
22 means is they took the decision not to try this case in a
23 speedy manner and the only reason they took it was because
24 they thought it would just get taken care of.

25 Now, subsequently, as Mr. Maye has indicated, they

1 did some research, in -- say, nine months ago whenever they
2 started trying to get the Hunsbergers over here they
3 discovered that they would be eligible for parole. What
4 they assumed was a life sentence in Georgia meant life, but
5 apparently, and I have taken a look at it myself, there is
6 a parole eligibility over there and so in some seven years
7 or so, presumably the Hunsbergers would be eligible for
8 parole. When the State found that out nine months or so
9 ago, they start putting this case back on the docket up
10 until then, it had been forgotten. The -- except with
11 respect to Steven Barnes because he was considered to be
12 the principal and presumably with him they -- I don't know
13 what they're thinking was, but with respect to him, I think
14 they continued to want to try him.

15 THE COURT: Did he raise the same issue, Steven
16 Barnes?

17 MR. CHESSER: Your Honor, I don't know.

18 THE COURT: Well, if it was ten years before he was
19 tried --

20 MR. CHESSER: Yes, sir, but --

21 THE COURT: Nine years.

22 MR. CHESSER -- his case was tried by Bob Harte as
23 the defense lawyer and I don't know what Mr. Harte -- you
24 know, if he didn't raise it.

25 THE COURT: You don't know, you don't know.

1 MR. CHESSER: Yes, sir.

2 THE COURT: Okay.

3 MR. CHESSER: The -- with respect to -- my main
4 point that I want to make is this delay is due to nothing
5 more than the decision of the State to say I'm -- We're
6 going to make Georgia take care of it; and the reason this
7 case is back on the docket is due to the fact that they
8 found out at some point, nine years after the fact, that
9 they would be parole eligible.

10 THE COURT: Well, what was wrong with that
11 decision?

12 MR. CHESSER: The decision was wrong because it
13 created a delay of nine to ten years in the prosecution of
14 this case when, in fact, the constitution provides that
15 Mr. Hunsberger has a right to a speedy trial.

16 THE COURT: Well, if he had been tried over here
17 and then in Georgia, then his speedy trial argument, he'd
18 be making in Georgia?

19 MR. CHESSER: Well, if he'd been tried then, that
20 would have been, say in 2005. Now, that was -- of course,
21 we had brought up our speedy trial motion then. What's --
22 that was in January of 2005. That was six years ago --
23 seven years ago. So the delay, instead of being three
24 years as it was at that time, three years from the date of
25 his arrest, it's now ten years, so I submit to you that

1 there's -- again, there's not a mathematical analysis in
2 this, but there's a very significant difference between
3 three years and ten years.

4 Now, if he'd done this -- now, again -- and the
5 other thing is this, if he'd been tried here in South
6 Carolina and convicted and Georgia would have expeditiously
7 asked for his return to Georgia, then he would have been
8 tried here, presumably in January of '05 when Judge Keesley
9 basically asked them to try it; and then if Georgia went
10 back and expeditiously, he could have been tried over there
11 in '05. The reason that he's -- that there's this delay of
12 five or six years between the trial in Georgia is simply
13 due to their not requesting their presence. There's no
14 reason to think that Georgia would have been equally
15 dilatory if they'd been tried in South Carolina first.

16 THE COURT: He's doing a life sentence in
17 Georgia --

18 MR. CHESSE: Yes.

19 THE COURT: -- at this time. And Georgia just
20 allows South Carolina to have him --

21 MR. CHESSE: They have to request him and they
22 didn't request it until 2011.

23 THE COURT: All right. And you said they just
24 allowed him to -- Georgia to have him.

25 MR. CHESSE: Back in '05, that's correct.

1 THE COURT: Through what mechanism are you talking
2 about?

3 MR. CHESSER: Georgia had a hold on him and it may
4 be -- well, the short answer is, I don't know. It may be
5 through cooperation between South Carolina and Georgia. I
6 don't know. It is my belief that they simply said, Yes,
7 you can come and get him.

8 Now, again, with respect to one -- another -- the
9 third prong of this analysis, is assertion of the right.
10 Again, we asserted it in '04 and '05 and again, they just
11 ignored this case up until last year.

12 With respect to prejudice, it -- I submit that --
13 well, I submit that when the State in its unfettered
14 discretion just decides to wait ten years to try a case,
15 Your Honor, if this provision of our state and federal
16 constitution is going to have any teeth at all, I think it
17 has to prevent the unfettered discretion of the State to
18 just wait ten years and then decide to try a case. But
19 having said that, with respect to specific -- our
20 prejudice, I want to also point out that the -- that the
21 United States court case Doggett -- we really don't have
22 the burden of pointing to specific prejudice because,
23 again, it could be presumably excessive and arbitrary to
24 let -- but, having said that, this is the transcript from
25 the trial of Steven Barnes and here's an example of a

1 witness for the State, Richard Cave, one of the people that
2 was over at that house in Augusta on the night of September
3 2nd when they came over here on the morning of September
4 3rd, and this is the cross-examination.

5 And Mr. Harte is asking him: Is it because you
6 didn't remember it well back then, and Cave says, No,
7 because I was younger. Mr. Harte says, You remember it
8 better now, nine years later. And Mr. Cave says, When you
9 got different transcripts and trials coming up, it will
10 eventually, it will come back to you. So Mr. Harte says,
11 Well you had the opportunity to read over all of your
12 previous testimony and statements and things like that?
13 Yes. And you done that recently? Yes.

14 So a lot of what you're going by is the testimony,
15 not necessarily what you remember. Mr. Cave says, yeah a
16 lot of it's what I remember. And Mr. Harte says, a lot of
17 it's what you remember and a lot of it's what you read from
18 the transcripts. And Mr. Cave says both.

19 The -- so the witnesses that are going to be
20 testifying -- again, what this case -- my understanding of
21 it, Your Honor, again, is I mentioned in the memorandum, in
22 Edgefield, there were two people who the testimony was that
23 had guns in their hands.

24 THE COURT: Do you have the entire transcript of
25 that other transcript with Mr. Harte or just the --

1 MR. CHESSER: I have the testimony of the
2 witnesses, Your Honor.

3 THE COURT: Just the witnesses. All right.

4 MR. CHESSER: The testimony of the witnesses, there
5 again, there was a transcript from the Georgia case too,
6 but it's that Steven Barnes had a gun and he had a gun and
7 he was threatening people; and there was also testimony
8 that Julio Hunsberger had a gun. And again, that's not
9 Alex, it's Julio.

10 THE COURT: Are they related, by the way?

11 MR. CHESSER: Yes, Your Honor, they're brothers.

12 THE COURT: Brothers.

13 MR. CHESSER: So the theory of the State, what I
14 submit, against Alex Hunsberger is, it's going to be hand
15 of all -- hand of one is the hand of all type theory.
16 That's my understanding. And the reason I say that is
17 because the autopsy, what it's going to show, Your Honor,
18 is that this -- Samuel Sturup, he died -- just to make it
19 clear, they found his remains and they were basically
20 bones, about two or three months after the fact and at that
21 time, they were just -- they were bones. And so an autopsy
22 was done to these bones and what they show is direct
23 evidence that there's one wound -- I say wound, it was
24 actually a shot to the head, that was fatal.

25 So, the State, when they tried Mr. Barnes, I think

1 consistently, they maintained that Barnes shot Samuel
2 Sturup in the head and killed him. So with respect to the
3 others, I give the Court a little preview, what they --
4 Richard Cave and others like that, what they typically
5 testified to is they fired in the ground or something of
6 that nature. There's nobody who gets up and says, I fired
7 this person and shot him except maybe Charlene Thatcher,
8 she was the first person to shoot. Mr. Barnes had a gun
9 and he was threatening these people.

10 Now Julio Hunsberger -- exactly what he did, or I
11 had to find out from the testimony -- but in any event, the
12 State is not going to be able to show that Alex Hunsberger
13 shot this guy. So what they're going -- the State's theory
14 has got to be that he, you know, was a willing participant
15 and that he helped, in other words, it's hand of one is the
16 hand of all type theory. He's there and he's participating
17 in it; and therefore, he's guilty of murder.

18 My point is this, is that the nuances of the
19 testimony, you know, who did what, who said what, exactly
20 when and what they said, all these things will be very
21 important. What we've got are witnesses -- because of the
22 State's arbitrary decision to delay this prosecution for
23 ten years, we've got people testifying, going back ten
24 years to September, the morning of September 3rd of 2001.
25 And that's because of the State's decision.

1 Thank you, Your Honor.

2 THE COURT: All right. Mr. Maye?

3 MR. MAYE: Your Honor, very briefly, I have been
4 involved in this case since the outset. Certainly
5 Solicitor Barnes' (sic) decision to seek the -- Solicitor
6 Barnes -- Solicitor Myers' decision to seek the death
7 penalty against Mr. Barnes and his alone. At the outset of
8 this case, Solicitor Myers did determine that he intended
9 to seek the death penalty against Mr. Barnes. Up until the
10 time that Mr. Barnes was convicted in November of 2010,
11 Solicitor Myers was not sure whether or not he intended to
12 seek the death penalty against Alex and Julio Hunsberger or
13 not. He delayed that decision until after Steven Louis
14 Barnes' trial was finished and he was sentenced to death as
15 to whether or not he was going to notice these two
16 individuals.

17 Alex and Julio Hunsberger were initially
18 apprehended in Hilda, South Carolina. Danny Craig, who was
19 the district attorney over in Georgia, the County that was
20 the individual -- that individual -- that eventually tried
21 them and resulted in their convictions September 12th of
22 2006, Georgia vigorously sought their return in order to
23 attempt to try them on the kidnapping and beating of the
24 victim in the case, Mr. Sturup, from over in Georgia.

25 Both of these individuals, the State of Georgia

1 attempted to extradite them to South Carolina, relinquished
2 both Alex and Julio Hunsberger to Georgia authorities.
3 They tried Alex and Julio Hunsberger. We also released
4 Steven Louis Barnes and he was tried over in Georgia and
5 received a life sentence for an unrelated crime in Georgia
6 that involved a home intrusion, armed robbery that he
7 carried out with other members of his criminal
8 organization. So all of these individuals were released
9 back the Georgia initially. Steven Barnes was released, he
10 was tried, he was sentenced to life. Alex and Julio
11 Hunsberger were released.

12 They were each sentenced to life for a kidnapping
13 with bodily injury. All the while, these charges, Alex
14 Hunsberger, this defendant in this case, was served with
15 it. He knew this charge was outstanding against him in
16 South Carolina. I know that one of the prongs of this test
17 is that the actions of the defendant in asserting his right
18 to a speedy trial, once it's been triggered that there was
19 some delay. Basically a defendant can't assert his right
20 once or twice and then rest on his laurels and do nothing.

21 In this case, Your Honor, since 2005, seven years
22 passed. Nothing was done on the part of Alex Hunsberger in
23 this case other than an attempt to delay coming back here
24 and being tried through his contesting extradition and not
25 wanting us to proceed at the last term of court. That's

1 the only action since 2005 in this case.

2 THE COURT: When did he contest extradition?

3 MR. MAYE: He contested extradition when we
4 attempted to bring him back -- as soon as we convicted
5 Steven Barnes in November of 2010, I notified both the
6 defense attorneys, both for Alex and Julio and I talked to
7 them prior to us trying Mr. Barnes as we were preparing for
8 his 2010 capital case. We sought the cooperation of both
9 Alex and Julio Hunsberger, asked that they testify against
10 Mr. Barnes through both their lawyers. Both of them,
11 through their attorneys, declined to testify against him.
12 Solicitor Barnes (sic) did not know whether or not he would
13 notice Alex and Julio Hunsberger or not. He elected not
14 to. He directed me at that time after Mr. Barnes received
15 the death penalty to proceed against Alex and Julio
16 Hunsberger on these two outstanding murder charges that
17 were against each of them respectfully.

18 Your Honor, we would basically --

19 THE COURT: I'm not sure you answered the question
20 as to when did he contest extradition.

21 MR. MAYE: Once we attempted to get him back here
22 in the first part of 2011. We convicted Steven Barnes in
23 November of 2010. We immediately began proceedings in
24 order to try to extradite him back here. He contested his
25 extradition in this case, Your Honor. And like I said, we

1 were right up against the clock at the last term of court
2 in October. He was still contesting it and he was not
3 actually available to us until the second week. We were
4 not going to be able to pick him up until the second week.
5 The case was continued. We were prepared, like I said, in
6 the October term of last year, to try it. I know that the
7 request for continuance -- we attempted to try it -- we
8 would have tried it but for the fact that the case was
9 continued over our objection.

10 Your Honor, this case, certainly, it went to their
11 benefit. Had they elected to testify against Mr. Barnes,
12 in all fairness, I've been involved in this case since the
13 outset. I felt like Alex and Julio Hunsberger should both
14 have the same opportunity to cooperate that the other
15 codefendants in this case received and they were offered
16 that. They rejected it, but...

17 THE COURT: He had a constitutional right to remain
18 silent --

19 MR. MAYE: Absolutely.

20 THE COURT: -- not to testify and not to help or --

21 MR. MAYE: Absolutely, Your Honor.

22 THE COURT: It's your prerogative -- their
23 prerogative to --

24 MR. MAYE: Yes, sir, we agree. And, Your Honor, I
25 thought in fairness they should be allowed the opportunity

1 to testify if they wanted to. They elected not to.
2 There's certainly no prejudice that attaches to them for
3 not doing so in this case, Your Honor, but it was the
4 intent of the State at all times to proceed against Alex
5 and Julio Hunsberger, but they were over in Georgia serving
6 a life sentence. Mr. Hunsberger did absolutely nothing
7 involving asserting his right to a speedy trial in the
8 seven years that ensued since then and it was not until
9 now, basically that he brings his right to a speedy trial
10 back up, when he realizes that we intend to try him on
11 these two charges.

12 Your Honor, again, I don't think that they can
13 point to any specific prejudice that attaches in this
14 delay. All of these witnesses, in contrary to that, Your
15 Honor, they now have the benefit of all of the sworn
16 testimony of all of these witnesses that they could go back
17 through and impeach any of them on. They've testified,
18 basically as to the facts in this case both in the Columbia
19 County, Georgia case, the kidnapping case, in which the
20 same codefendants testified against them. Each of these
21 same codefendants, Richard Cave, Charlene Thatcher, Antonio
22 Griffin, testified against Mr. Barnes. They have the
23 benefit of their testimony in that case.

24 THE COURT: So there was some evidence the
25 codefendants intend to testify against --

1 MR. MAYE: All three. Each of the three of them is
2 here. We brought them from Georgia. We extradited them
3 back here. They are serving -- Mr. Thatcher (sic) and
4 Mr. Griffin are serving eighteen year sentences -- no,
5 excuse me, Mr. Cave and Mr. Griffin are serving eighteen
6 year sentences for the kidnapping over in Georgia.
7 Charlene Thatcher is serving an 18 year sentence for that
8 and she was also a codefendant in the case against
9 Mr. Barnes over in Georgia. I think she actually has maybe
10 a twenty year sentence on that one as well.

11 But they're all here, housed in a South Carolina
12 facility. They are prepared to testify against Mr. Alex
13 and Julio Hunsberger. And --

14 THE COURT: What years did Mr. Barnes have trials
15 in Georgia?

16 MR. MAYE: Your Honor, he was tried -- he was tried
17 along -- at or near the date that the Hunsbergers were,
18 within a year or so of the Hunsbergers being tried. But he
19 was tried on another set of facts entirely. Mr. Barnes was
20 not tried on this kidnapping of Mr. Sturup or anything
21 involving the case, the capital case -- that was the
22 subject of the capital case.

23 THE COURT: Did he raise a speedy trial in his
24 capital case?

25 MR. MAYE: Yes, sir, Your Honor. That was raised

1 and it was not successful at that time is my understanding.

2 THE COURT: What did Judge McMahon say about all
3 that? The speedy trial?

4 MR. MAYE: He just denied it, Your Honor. I don't
5 know -- I don't remember -- and I'm doing this from memory,
6 Your Honor, but I am almost positive it was raised and --
7 prior to his proceeding and it was not granted. There was
8 no suppression and we were allowed to continue against
9 Mr. Barnes. But, Your Honor, there's certainly -- in this
10 case, I've been involved in it since the outset. There was
11 certainly no malice in any decision on the State to delay
12 the prosecution against either one of the Hunsbergers. It
13 was my hope that they would testify against Mr. Barnes. I
14 felt like they should receive the same opportunity as the
15 other codefendants. It was Solicitor Myers' decision as
16 well not to seek the death penalty against them. He
17 elected not to and like I said, I was directed to try the
18 murder cases against them that we have before us here
19 today.

20 THE COURT: So the arrest --

21 MR. MAYE: But they were served back then.

22 THE COURT: The arrest warrant says January of 2002
23 when he was arrested.

24 MR. MAYE: He was served with that murder warrant.
25 They were in custody since, I think, '01.

1 THE COURT: January 25th, 2002, is the date of the
2 arrest warrant and --

3 MR. MAYE: Yes, sir. He was taken into custody at
4 that time and served with warrants here and then they were
5 subsequently released to Georgia.

6 THE COURT: Then why has it taken ten years to
7 bring him to court, to trial?

8 MR. MAYE: We released them to Georgia --

9 THE COURT: Give me the bullets as to why it's
10 taken ten years.

11 MR. MAYE: Your Honor, it's taken ten years because
12 we intended to proceed against Steven Louis Barnes first.
13 Georgia wanted them back and from the outset of this case,
14 they vigorously sought their extradition back to Georgia.
15 We relented to Georgia and allowed them to go back and
16 allowed Georgia to try them. They were convicted at that
17 point in time. It was our intent, certainly to try
18 Mr. Barnes first, to give them the opportunity to testify
19 if they wanted to and then to proceed against Alex and
20 Julio Hunsberger. And in all candor, the State tried for
21 years to try Steven Louis Barnes and eventually it took
22 another judge being assigned to the case in order for us to
23 get it tried. And we sought that capital case being
24 implemented against Mr. Barnes for years. And -- but, like
25 I said, in the interim, he was serving a life sentence as

1 were the Hunsbergers.

2 And, again, Your Honor, they've been over there
3 since -- they haven't done anything in seven years in
4 regard to any right to speedy trial or trying to move this
5 case forward. It is only now that this right to a speedy
6 trial has been asserted again. And I think the cases are
7 clear that you can't do it once or twice and then sit and
8 do nothing. It has to be something -- we would maintain,
9 some continual effort and I don't think that that's the
10 case here. And certainly, Your Honor, there was no malice
11 or evil intent on the part of the State in delaying it
12 until now. We just were not going to try their case until
13 we had tried Steven Louis Barnes as principal in this case
14 and given them a chance to testify if they wanted to.

15 THE COURT: All right. What do you say about that,
16 Mr. Counselor?

17 MR. CHESSER: Well, Your Honor, I do have a few
18 final points. One is this language from Judge Keesley's
19 order of January 20th of 2005, just briefly, it says,
20 Mr. Hunsberger was before the Court and bail was denied by
21 order of a June 14th, 2002 order. In the December 2nd,
22 2004 order -- in other words, he heard our speedy trial
23 motion that day, the court offered to add a term of general
24 sessions court and expressed concern that the length of
25 time awaiting trial on this charge is clearly bordering on

1 excessive.

2 The Court repeatedly expressed in very strong terms
3 the need to have the case tried. The December order
4 provided that if the case is not tried in February of 2005,
5 motions may be renewed and directed the State to notify the
6 Court and defense counsel as to whether a special term
7 should be set. The State has indicated that it will not
8 take advantage of the offer to create a special term and
9 does not intend to try the case in February. The defense
10 has renewed its motions.

11 Your Honor, I'm going to talk about what the
12 State -- their explanation, sort of what they did.

13 THE COURT: Let me just comment on what you just
14 said. As a result of the State not electing to have this
15 special term of court, Judge Keesley, in effect released
16 them from custody and gave them --

17 MR. CHESSER: Yes, sir, that's correct. Your
18 Honor, and, at that point was when the State of South
19 Carolina decided to release them to Georgia.

20 THE COURT: Well, they got a life sentence over
21 there. That sounds like a pretty good move.

22 MR. CHESSER: Well, the point was that really what
23 the State did, and I will paraphrase, but I think actually
24 what they did, was they decided not to try him. This
25 case -- it wasn't that they were debating or they were

1 intending to try him. They decided not to try him and then
2 in two thousand -- 2010 or early 2011, they simply changed
3 their minds. That's what happened.

4 And finally, with regard to the point of law that
5 Mr. Maye makes about the idea of having to continually and
6 continually come back to court to assert the right, we
7 asserted it. It was a de facto decision by the State
8 that -- not to try him and then they subsequently, five or
9 six years later, they've changed their mind. But with
10 regard to that point, the law -- and this is again from
11 this United States case, Barker versus Wingo, says the
12 nature of the speedy trial right makes it impossible to
13 pinpoint a precise time in the process when the right must
14 be asserted or waived, but that fact does not argue for
15 placing the burden or protecting the rights solely on the
16 defendant.

17 A defendant has no duty to bring himself to trial.
18 The State has that duty as well as the duty of ensuring
19 them a trial consistent with due process. Moreover, for
20 the reasons expressed, society has a particular interest in
21 bringing swift prosecutions and society's representatives
22 are the ones who should protect that interest. But my
23 point, in short, is this. They decided in '05 they didn't
24 want to try him. They didn't intend to try him. They
25 literally changed their minds in late '10 or early '11 and

1 one of the things that Mr. Maye stated, we have never, ever
2 moved for a continuance. In October when Mr. Maye would
3 have liked to have tried this case, Mr. Hunsberger was
4 never transported over here and was not in South Carolina.
5 There was never any motions for a continuance.

6 THE COURT: Was he challenging extradition?

7 MR. CHESSEY: Your Honor, may I beg a moment from
8 the Court?

9 (WHEREUPON Mr. Chessy was conferring with his
10 client.)

11 THE COURT: Yes, sir?

12 MR. CHESSEY: Your Honor, on this particular point,
13 I would ask that Mr. Hunsberger be allowed to give just a
14 short testimony about what he did.

15 THE COURT: Sure.

16 MR. CHESSEY: Thank you, Your Honor.

17 Mr. Hunsberger if you would go to the stand.

18 THE COURT: Come forward, please.

19 MR. CHESSEY: You need to be sworn.

20 THEREUPON,

21 ALEXANDER L. HUNSBERGER,
22 after being duly sworn, testified as follows:

23 THE CLERK: Have a seat right here. State your
24 full name and spell your last name, please.

25 THE WITNESS: Alexander Hunsberger. Last name,

1 H-u-n-s-b-e-r-g-e-r.

2 THE COURT: Pull the mike down to your mouth, son.

3 THE WITNESS: Yes, sir.

4 EXAMINATION

5 By Mr. Chesser:

6 Q Okay. Mr. Hunsberger, what we're talking about now
7 is limited to the sort of actions that you may have taken
8 or when you maybe became aware of the intent to bring you
9 to South Carolina in either 2010 or 2011. So let me ask
10 you questions about that, okay?

11 A Yes, sir.

12 Q Now, I want you to speak up. You speak very
13 softly. I want you to speak into that mike and speak up.

14 Now, when did you become aware that South Carolina
15 was seeking your return?

16 A September -- it was about September 11th of 2011.

17 Q Okay. How did you become aware of it?

18 A Because my counsel brought me a form that says that
19 if I sign it, that's just going to make it consent so they
20 can bring me over here real fast. But even if I don't sign
21 it and refuse, I have twenty days to file a writ of habeas
22 corpus to contend against the extradition.

23 Q Okay. And so did you sign that piece of paper?

24 A No, I told them that I wanted to first notify my
25 lawyer, you know what I'm saying, about the paper to make

1 sure it's not anything other than just what it says on the
2 piece of paper.

3 Q Okay. Other than not signing that paper, did you
4 file any paperwork?

5 A No, sir.

6 Q All right. Please answer -- and that was in
7 September of 2011?

8 A That was September of 2011.

9 Q Okay. That's all the questions I have. Thank you.

10 THE COURT: Mr. Maye?

11 **EXAMINATION**

12 By Mr. Maye:

13 Q You didn't come back here voluntarily. We asked
14 you to come back here voluntarily and to consent to come
15 back here and you did not consent, did you?

16 A At first, sir, I said that I had to talk to my
17 lawyer because I needed to find out because my appeal is
18 still pending in Georgia. I don't have an appeals attorney
19 or anything else. I got an appeal that is pending from the
20 life sentence that I have in Georgia. So, of course, you
21 know, I wanted to find out first from my lawyer, Mr.
22 Chesser, before I signed it as far as what is going to
23 happen with my appeal in Georgia.

24 Q Let me ask you again, when you were asked whether
25 or not -- I'm not asking you why you did it. When they

1 asked you if you would consent to return to South Carolina,
2 you would not consent to return to South Carolina when they
3 asked you, would you not?

4 A I was willing to come to South Carolina --

5 Q But you would not consent to it, would you?

6 A Sir, I was willing to come to South Carolina. The
7 only problem was, is I needed to find out first what effect
8 the appeal process -- that I still had an appeal that was
9 pending in Georgia, would it affect my appeal.

10 Q In the months that ensued right up until October of
11 2010, did you ever say at any point in time, Oh, yeah, I'm
12 willing to come on back to South Carolina. I will waive my
13 habeas corpus petition. I'll re -- I'll go ahead and not
14 contest extradition in this case and I'll voluntarily come
15 back to South Carolina.

16 At any time, did you do that prior to us bringing
17 you back here against your will in October?

18 A Sir, I never contended against coming back to
19 Carolina to answer to these charges. Only thing that I
20 said whenever my counsel asked me in 2011, not 2010, but
21 2011 in September, when my counselor talked to me, I told
22 him that I needed to notify my lawyer first to see if it's
23 going to mess up my appeal in Georgia. That's the only
24 time that I was ever brought to -- any papers concerning
25 extradition back to South Carolina, September of 2011.

1 That was about three months ago.

2 Q But at no time after you were aware that South
3 Carolina attempted to bring you back, did you ever
4 voluntarily agree to come back, did you?

5 A Oh, I'll come back.

6 Q Well, we extradited you -- you're back here now as
7 a result of us extraditing you; isn't that correct?

8 A Yes, sir, because I never filed any writ of habeas
9 corpus, sir.

10 Q Okay.

11 MR. MAYE: Nothing else, Your Honor.

12 THE COURT: Anything else?

13 MR. CHESSER: No, Your Honor.

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

15 THE WITNESS: Thank you, sir.

16 THE COURT: Anything else?

17 MR. CHESSER: Nothing from the defense, Your Honor.

18 MR. MAYE: Your Honor, the only one thing that I
19 would address, as an officer of the Court, I can attest,
20 there was never any decision on the part of the State not
21 to proceed against Alex and Julio Hunsberger. I've been
22 involved in this case since the outset. It was always our
23 intent to proceed against Alex and Julio Hunsberger. There
24 was no decision not to proceed against them at any point in
25 time. There was no changing of mind as the defense would

1 certainly state and I can only say that as an officer of
2 the Court, and I've been involved in this case since the
3 absolute outset. It was always our intent to dispose of
4 these charges against these two individuals. It was only a
5 matter of when.

6 THE COURT: All right. Well, it's an interesting
7 issue. This is probably the first case I have had where
8 the -- where practically ten years have passed from the
9 time of the arrest to the time of trial. Certainly I've
10 had many speedy trial motions made before me. I have
11 granted many speedy trial motions. Typically, however, the
12 granting of the speedy trial motion results in a person
13 being released from jail and not the dismissal of the
14 charges.

15 So when this speedy trial motion came up before
16 Judge Keesley, initially, the defendant was being held
17 without bond. And Judge Keesley rightfully expressed his
18 concern about the delay and the need for the case to be
19 tried and for the State to make some decisions as to how
20 they were going to deal with the case. He put in the order
21 which states with some decision about whether or not
22 they're going to seek the death penalty and against whom
23 they're going to seek the death penalty. Mr. -- let me
24 make sure I get your name right.

25 MR. CHESSER: Chesser, Your Honor.

1 THE COURT: Thank you. Mr. Chesser, you know, been
2 aggressively defending as he should and begun pursuing the
3 issue and Judge Keesley responded by granting the PR bond
4 which would have released the defendant from custody and
5 generally when the defendants are out of jail, they don't
6 cry so much about getting a speedy trial as they do when
7 they're in custody. Judge Keesley granted the PR bond, but
8 said provided that there are no holds on him from Georgia.
9 However, in this case there were holds in Georgia, so he
10 wasn't released. He was released to Georgia.

11 Now, it is true that another five years or more has
12 now passed since all of that activity, but in the interim,
13 you've had a number of trials in Georgia, either two or
14 three. The brothers were tried together -- how many trials
15 were in Georgia?

16 MR. MAYE: They were tried together, Your Honor,
17 and then Mr. Barnes was tried for an unrelated event and
18 all of them received life sentences.

19 THE COURT: How about the other codefendants?

20 MR. MAYE: The other codefendants at the time that
21 they instituted the action in the trial against Alex and
22 Julio, they pled out at that time and testified. Two of
23 the three of them testified against Alex and Julio
24 Hunsberger during a joint trial, which they were convicted
25 of the kidnapping with bodily injury.

1 THE COURT: So in Georgia, you had cases involving
2 five people? Four people?

3 MR. MAYE: Yes, sir, Your Honor. In fact, everyone
4 of the codefendants have already been prosecuted in Georgia
5 with the exception of Mr. Barnes as to the fact pattern
6 that resulted in the death of Samuel Sturup.

7 THE COURT: All right. And the point is that after
8 Judge Keesley acted in releasing the defendant on these
9 charges with a PR bond and in effect granted his speedy
10 trial motion in providing the release, or it was provided
11 as to our statutory framework, quite a bit of activity has
12 taken place in Georgia, including both Hunsberger
13 codefendants being given life sentences, Barnes being given
14 a life sentence?

15 MR. MAYE: He was sentenced to life without parole
16 in Georgia and then subsequently got the death penalty
17 here.

18 THE COURT: Another codefendant, in addition to the
19 activity in Georgia, the capital case in South Carolina
20 against the codefendant Mr. Barnes, which now brings us to
21 Mr. Hunsberger, who's saying that after all this time, I've
22 been denied my right to a speedy trial, I've been
23 prejudiced and so the prejudice should be presumed based on
24 the length of time involved in the delay. It's a rather
25 unique case for a lot of reasons. It's unique in the sense

1 that you have cross-border issues, you have Georgia wanting
2 to pursue Georgia's case, but South Carolina wanting to
3 pursue South Carolina's cases, each defendant asserting
4 their individual constitutional rights and the State having
5 a capital case that they're wanting to pursue and have
6 successfully pursued.

7 So this case doesn't follow the normal framework of
8 cases where a person is -- has a charge outstanding and
9 simply wants to get it tried, wants to get it over with.
10 This is a case that has a number of complicated factors
11 that bring us to this moment in time.

12 Now, in evaluating this issue of prejudice, I
13 certainly understand defense counsel's argument that the
14 testimony of witnesses might be suspect due to them
15 attempting to recall something that happened almost a
16 decade ago. Of course, that can cut both ways with a jury.
17 I think that the issue of prejudice probably has to be
18 looked at prospectively; is that correct? Not
19 prospectively, retrospectively.

20 I think the only way that prejudice can be
21 determined in an instance like this is based on something
22 you demonstrated if there's a trial. I don't think that
23 prejudice can be assumed given the facts that I've heard.
24 I think the State has demonstrated legitimate reasons for
25 the delay given the complex nature of the cases, the

1 problems involving prosecutions in multiple jurisdictions
2 in this state as well as the State of Georgia.

3 Who knows what may develop during the course of the
4 trial. We may get some indication that the defendant's due
5 process rights have been violated or right to a fair trial
6 has been violated. Due to the length of time involved, but
7 I believe that the -- based on what I've heard the State
8 has shown that it has acted properly under the
9 circumstances and that the defendant has not shown any
10 prejudice that might affect his right to a fair trial or
11 his due process rights. I, therefore, deny the motion.

12 MR. CHESSER: Your Honor, the next thing that we
13 would have is -- my understanding, is that the State
14 intends to introduce a statement of Alexander Hunsberger.
15 I don't know that, but there is a statement.

16 THE COURT: It's a statement?

17 MR. CHESSER: Yes, sir. Well, actually what it is,
18 is there --

19 THE COURT: Alexander, your guy?

20 MR. CHESSER: Yes, sir.

21 THE COURT: Okay.

22 MR. CHESSER: What it is, is that there was an
23 Investigator Roger Lowe and he -- my understanding that he
24 will testify as to an oral statement and these are the
25 notes that he made.

1 MR. MAYE: Nothing from the State, Your Honor.

2 Thank you.

3 THE COURT: All right. Is the defense ready?

4 MR. CHESSER: Your Honor, I'd like to put a motion
5 on the record.

6 THE COURT: All right. Which one?

7 MR. CHESSER: Your Honor, we would move -- and
8 again, this is for a dismissal of the pending charge on the
9 basis of prosecutorial vindictiveness and we rely on the
10 South Carolina case of State versus Fletcher, which in
11 turn -- and the cite of that is 322, SE 256, 461, SC 2nd,
12 702, where it's an opinion from the Court of appeals from
13 1996.

14 What it states, it relies on the Supreme Court case
15 law. That is the Supreme Court of the United States which
16 states that you cannot punish a defendant for the exercise
17 of a constitutional right and this case -- what -- as I
18 understood from our hearing yesterday, what essentially
19 happened was that Mr. Hunsberger refused to testify in the
20 prosecution of Steven Barnes and for that reason, he is
21 being prosecuted whereas the other people who were present
22 are not being prosecuted for this murder.

23 And again, the reasoning of the prosecutor, the
24 reason the prosecution is pursuing this case is simply
25 because Mr. Hunsberger exercised his right to remain

1 silent. So based on that, Your Honor, we submit that this
2 prosecution is an act of prosecutorial vindictiveness and
3 that, in fact, on the basis for which the prosecution
4 described yesterday, it's a violation of the due process
5 clause of the 14th Amendment to the United States
6 constitution and, therefore, this charge should not and
7 cannot go forward. And we would move that it be dismissed
8 with prejudice at this time.

9 THE COURT: Mr. Solicitor?

10 MR. MAYE: Your Honor, Mr. Alex Hunsberger has
11 faced the same charge since he was served with the arrest
12 warrant in this case and indicted in 2002. There's been no
13 change in the intervening charge against him. Certainly
14 Mr. Hunsberger would have had the opportunity to testify
15 along with the other codefendants if he chose to. That in
16 no way affected our decision as to whether or not to go
17 forward with this charge or not. We've always been
18 prepared to prosecute this case, Your Honor. There's
19 certainly been no change in the charges. There's been no
20 change in our decision since the outset of this case.

21 We certainly have always intended to prosecute this
22 murder of Mr. Sturup to the full extent of the law. And
23 we're carrying that out in a neutral fashion, Your Honor.

24 THE COURT: All right. Anything further,
25 Counselor?

1 MR. CHESSE: No, Your Honor.

2 THE COURT: Well, in this Fletcher case, Fletcher
3 was prosecuted in a general sessions court, it looks like
4 Greenville County for pointing a firearm. He appealed,
5 claiming that the indictment and the charge was a result of
6 him appealing of a lesser charge in the municipal court
7 coming out of the same charge. There was an argument
8 outside of a restaurant and a municipal court charge, he
9 appealed the municipal court charge and the conviction was
10 reserved and while the charge was still pending, the
11 solicitor directly indicted him for assault with intent to
12 kill and pointing a firearm and the -- Fletcher asked the
13 judge to force the solicitor to select -- to elect between
14 the charges saying they were the same -- for the same
15 offense. The circuit judge dismissed the assault with
16 intent to kill, but refused to dismiss the pointing the
17 firearm and he went to trial and he was convicted and he
18 filed an appeal claiming that he was -- the prosecutor was
19 being vindictive because of him appealing that municipal
20 court case.

21 The Court of appeals says that the presumption of
22 prosecutorial vindictiveness is applied only where there is
23 a reasonable likelihood that an unexplained increase in a
24 defendant's sentence is due to the actual vindictiveness of
25 the sentencing authority where there is no such reason or

1 likelihood, the burden is upon the defendant to prove
2 actual vindictiveness. And in this particular case, in
3 Fletcher, they concluded that the -- they said that the
4 first question presented is whether the action of the
5 solicitor in this case warrant the application of the
6 prophylactic presumption of prosecutorial vindictiveness.
7 And we conclude they did not.

8 It says Fletcher exercised a procedural right to
9 appeal his conviction and a decision to charge Fletcher
10 with the offense of pointing a firearm was initiated at the
11 same time the municipal charge was brought and the action
12 was detrimental to the defendant, taken after he exercised
13 his legal right. The solicitor is then charged -- is
14 charged with the responsibility of prosecuting criminal
15 charges, including procurement of proper indictments for
16 the grand jury and the mere continuation of the
17 prosecution's existing charge does not warrant action,
18 which is prohibited as retaliatory in nature and it does
19 not give rise to the suggestion that a presumption of
20 vindictiveness is warranted. So long as the prosecutor has
21 probable cause to believe that the accused committed an
22 offense, the decision of whether or not to prosecute and
23 what charge to bring is -- rests entirely on the
24 prosecutors discretion.

25 And in that case, in this Fletcher case you cited,

1 they found sufficient evidence to conclude any
2 vindictiveness by a prosecutor. In this case, it seems as
3 if you're arguing to me, Mr. Chessser, that because the
4 solicitor didn't dismiss the murder charge, that the grand
5 jury indicted that this is vindictive?

6 MR. CHESSER: Well, that is one way to put it. But
7 the way that I would put it is that because Mr. Hunsberger
8 did not agree to testify against Steven Barnes, that he and
9 the other individual who did not agree to testify against
10 Steven Barnes, that being Julio Hunsberger, are being
11 prosecuted whereas nobody else who was present at the scene
12 is and what the -- in other words, the decision to
13 prosecute is based on the exercise of Mr. Hunsberger's
14 right to silence.

15 THE COURT: Well, what I heard from the solicitor
16 is that they wanted to first do the capital trial and that
17 they delayed this case to do the capital trial and it was
18 their hope and desire that Mr. Hunsberger would testify in
19 that case. Of course, the solicitor did not indicate in
20 the comments that the prosecution in this case was a
21 condition upon his testifying or not testifying. And
22 apparently, there's no plea agreement to suggest that the
23 State did not prosecute if he testified or would dismiss
24 the murder indictment if he testified.

25 You don't have a plea agreement, do you?

1 MR. CHESSER: No, Your Honor.

2 THE COURT: Well, I think it's -- you know, I have
3 no basis to conclude that the solicitor's vindictive. Of
4 course, when the solicitor mentioned yesterday that they
5 wanted him to testify for the State and they commented that
6 it's his prerogative to assert his right to remain silent
7 and not testify, he's not legally duty bound to assist the
8 State in any prosecution, but I can't leap far from there
9 to say that the State can't prosecute him because he didn't
10 cooperate and that it's an indication of being vindictive
11 from the State to prosecute him. Where he's been indicted
12 by the grand jury, the State has to prosecute him. Either
13 prosecute or dismiss and he's charged with murder and the
14 grand jury says that there's a basis to believe that he
15 committed the crime.

16 So the Fletcher case supports the proposition that
17 the State has the duty to prosecute but they have somehow,
18 increased the charge from one thing to another then
19 Fletcher indicates that there might be some suggestion of
20 vindictiveness if there's some increase or creation of new
21 charges as a result of the exercise of a constitutional
22 right. But based on what's in the record in this case, I
23 do not have any basis to agree with you and rule and
24 dismiss the charge based on what you've already got. So I
25 deny your motion.

Randy Doran - Direct Examination by Mr. Young

1 A Yes, sir, I was.

2 Q All right. On November 19th, 2001, did you have an
3 occasion to go out to the Community Road area of Edgefield
4 County?

5 A Yes, sir, I did.

6 Q What did you do?

7 A I was actually contacted by my captain, which is
8 Captain Rogers at that time. We responded to the [REDACTED]
9 [REDACTED], which is on the South Side of Edgefield
10 County off of Highway 25. Once I arrived at that, [REDACTED]
11 [REDACTED], I was confronted by Captain Lowe, Sergeant
12 Chris Ashton, Deputy Marty English, and they advised me at
13 the time of the situation that they had been called out,
14 to.

15 Q All right. Did you make any discoveries at that
16 location?

17 A Yes, sir, I did.

18 Q Was -- was anyone present in addition to the law
19 enforcement people? Were there civilians present?

20 A Yes, sir.

21 Q Who?

22 A The homeowner, Grover Dais.

23 Q Okay. And did you make any discoveries at that
24 location?

25 A Yes, sir.

Randy Doran - Direct Examination by Mr. Young

1 Q What did you find?

2 A I was shown a human skull that was laying on the
3 property.

4 Q Okay. And again -- who's property was it on?

5 A It was on the property of Grover Dais.

6 Q All right. Let me -- let me do it this way. I
7 want you to step down a moment, if you don't mind.

8 MR. YOUNG: Your Honor, this has been previously
9 marked as State's Exhibit 2 and shown to the Defense.

10 THE COURT: Any objection to it being entered into
11 evidence?

12 MR. CHESSER: I have no objection.

13 THE COURT: All right. It's in evidence.

14 (WHEREUPON State's Exhibit 2 was entered into
15 evidence.)

16 By Mr. Young:

17 Q All right. For purposes of demonstrating to the
18 jury where things are, would you please point out, Officer,
19 using this map, how would you get to the Community Road
20 area from this courthouse?

21 A You want me to show them?

22 Q Yes, sir.

23 A The courthouse being right here at the center of
24 Edgefield. After you start --

25 Q Okay. Let's do it this way.

Randy Doran - Direct Examination by Mr. Young

- 1 A It sure did.
- 2 Q Did it go with some other remains?
- 3 A Yes, sir.
- 4 Q All right. What did you do that day? Because you
- 5 had found a skull, what did you start to do that day?
- 6 A We started to search the area to see if we could
- 7 locate any other remains.
- 8 Q All right. And did you start -- how did you search
- 9 and where did you search?
- 10 A Well, actually, myself and Deputy English and
- 11 Sergeant Ashton and Captain Lowe was doing a search. He
- 12 was -- we located a bone, we thought maybe a leg bone.
- 13 Q All right.
- 14 A It was at the -- it was actually across the street
- 15 at a driveway of [REDACTED].
- 16 Q Okay. So this would be across the road?
- 17 A Yes, sir.
- 18 Q All right. And this leg bone, did you take -- did
- 19 you take into custody?
- 20 A Yes, sir.
- 21 Q All right. And was that submitted for -- as part
- 22 of the analysis?
- 23 A Yes, sir.
- 24 Q All right. Now, I'm going to hand you up what's
- 25 been marked as State's Exhibit No. 3 and just show it to

Randy Doran - Direct Examination by Mr. Young

1 you right now. But I'm going to ask you to take a look at
2 this and start, if you will, please, testify as to what
3 these markers mean here and what is this -- I'm showing
4 you, this is State's Exhibit No. 3. What is this?

5 A This is the diagram of the Community Road area
6 right here. This is the diagram of where the human skull
7 and the leg bone was located.

8 Q Okay. And does this area that's described here, do
9 you -- it has a representation of fields and wooded areas;
10 can you describe what you did on the 19th in relation to
11 the location of these items that are noted on here such as
12 the skull and the leg bone?

13 A Yes, sir.

14 Q Tell me.

15 A We started searching the area more thoroughly at
16 [REDACTED]; that's where the leg bone was found.
17 So we focused our search on that side of the highway and we
18 searched that area up until it started getting dark on us.

19 Q Uh-huh.

20 A And we had to call the search off.

21 Q All right.

22 A We didn't find anything else that day.

23 Q All right. And so did you do anymore searching on
24 any other day?

25 A Yes, sir. The very next morning on the 20th.

Randy Doran - Direct Examination by Mr. Young

1 Q How did you accomplish that?

2 A The night -- the night of November the 19th, I had
3 contacted the Merriweather Fire Department and the County
4 Line Fire Department and advised them of the situation that
5 I had and needed some manpower to search -- search the area
6 for some more human remains.

7 Q Okay. And did they come out and assist?

8 A Yes, sir, they did.

9 Q And when did they do that?

10 A We actually met the next morning on the 20th at 8
11 AM at the County Line Fire Department and we got everybody
12 together at the fire department and we went down to [REDACTED]
13 [REDACTED].

14 Q All right. All right. And did you do any
15 searching in that area?

16 A Yes, sir, we did.

17 Q What did you do?

18 A We started searching the [REDACTED] side.
19 We focused on that area for approximately two hours or so,
20 never located anything. So we went back across the road to
21 [REDACTED] and started searching on that side again.

22 Q And what, if anything, did you discover in that
23 time frame?

24 A Within about thirty minutes, I was notified by the
25 chief fireman -- person of the Merriweather Fire Department

Randy Doran - Direct Examination by Mr. Young

1 was Ms. Foreman, she had located a pair of bluejean pants
2 and she brought it to my attention.

3 Q And what did you do?

4 A I went over and located the pants that she was
5 talking about and also there was a very strong odor at that
6 time.

7 Q And where was this area you just described? Where
8 was it in relation to [REDACTED] -- the residence
9 at [REDACTED]?

10 A It was in a wooded area just behind the residence.

11 Q Behind it?

12 A Yes.

13 Q It was no longer on [REDACTED] property?

14 A Yes, sir, it was. It was well off -- I say it was
15 in a wooded area behind [REDACTED].

16 Q Okay. That's fine. And so you went backwards; did
17 you continue to go back through that area?

18 A Yes, sir.

19 Q All right. As you went back through that area,
20 what did you see behind it?

21 A I seen -- just on past the bluejean pants, we saw
22 some other bones and stuff laying on the ground and you
23 could actually see the fields started opening up on the
24 back side of that property.

25 Q So as you went from [REDACTED], you went into the woods

Randy Doran - Direct Examination by Mr. Young

1 A It was actually found at the driveway at [REDACTED] --

2 Q All right.

3 A -- Community Road; it's on the right-hand side down
4 Lakeview.

5 Q And the directions you had, you said you wanted to
6 try to get the law enforcement into it an easier way. What
7 was the route you took to get to this -- this easier route?

8 A , we went back out there with several county
9 vehicles. Came back to Community and Lakeview Road, took a
10 right turn, coming down Lakeview Road. That's the ninety
11 degree turn I was talking about earlier; it's the dirt road
12 to your right here, which is called Lakeview Extension. If
13 you come over down Lakeview Extension, you'll start getting
14 into stumps in this particular wooded area right here. If
15 you go to the dirt road comes one in and the hayfields --
16 the hayfield start over there to your right-hand side.

17 Q Okay.

18 A Then you've got tree -- you got a tree -- you've
19 got tree line's here, a little opening right there in that
20 little tree line and you got another opening here in the
21 tree line there.

22 Q Okay. And you indicated there's a square box right
23 there. What does that square box?

24 A If you go on, continue on down this dirt road,
25 which is Lakeview Drive Extension, this is actually a

Randy Doran - Direct Examination by Mr. Young

1 single-wide trailer sitting in that area.

2 Q All right. And so to gain access to this location
3 that you described, was a gate at the scene where the bone
4 or bones was found?

5 A Yes, sir. We cut across this hayfield. Followed
6 this hayfield on down to this area right here. There's a
7 smaller area -- there's a small dirt road that goes through
8 the trees on your left and trees on your right. If you go
9 on down there I think like maybe just a quarter of a mile
10 over there, then and there's a second hayfield started
11 opening up in this area.

12 Q All right. If I could, sir, if you don't mind,
13 just put that -- hand that back, sir.

14 A Okay.

15 Q You can return to your seat. Thank, you. If
16 you'll have a seat.

17 All right. And I'm going to hand you up what's
18 been marked as State's Exhibit 4 and ask you to take a look
19 at this. Now what's this?

20 A That's the diagram of the area that I just talked
21 about a while ago. That's the address of [REDACTED] and [REDACTED]ew
22 [REDACTED] -- [REDACTED] [REDACTED], the hayfields
23 and that wooded area.

24 Q Is it fair to say that this is the same thing but
25 more of a blowup and of the layout of where you were?

Randy Doran - Direct Examination by Mr. Young

1 A Yes, sir.

2 Q Okay. Is this the one with the -- the one we've
3 blown up?

4 A Right.

5 Q Okay. Now, this is State's Exhibit 4; does this a
6 fairly accurate to describe the same thing you just talked
7 about, just with a more -- let's just say, you find it
8 easier to see?

9 A Yes, sir.

10 Q To a degree.

11 MR. YOUNG: Any objection?

12 MR. CHESSER: No objection.

13 MR. YOUNG: All right.

14 By Mr. Young:

15 Q If you don't mind, I will put this -- if you don't
16 mind, stand right up here. I'm going to hold this up to
17 the side. Again, where is this same entrance to the fields
18 you talk about and so forth? And where is it dirt and
19 where is it -- where is it paved?

20 A This would be Community Road -- correction,
21 Lakeview Road.

22 Q Uh-huh.

23 A The 90-degree turn would be right here. The
24 Lakeview Extension, you take a right hand turn -- a right
25 hand turn and it turns into a dirt road at that point.

Randy Doran - Direct Examination by Mr. Young

1 Q At that point?

2 A Uh-huh.

3 Q Okay. Is it dirt all the way down here in here to
4 the entrances?

5 A It's dirt all the way to the opening, all the way
6 down to the trailer.

7 Q And what does this represent here with these two
8 double black lines?

9 A Those are smaller dirt roads with two fields on
10 both sides.

11 Q And that connected the two fields separated by a
12 wooded area?

13 A Yes, sir.

14 Q All right. And where is Grover Dais' house?

15 A Right here.

16 Q Now, there's an indication of a gate there?

17 A Yes, sir.

18 Q Would you show me -- show me that gate, please.

19 A Yes, sir. Once you come in this second field here
20 following, the edge of the field. Here's the line all the
21 way down to this corner right here. You've got a gate
22 right here -- a metal gate right here in that big area.

23 Q All right. Now, did you take -- did you take any
24 pictures of the stuff you found -- again, one of the things
25 you found was this pair of pants?

Randy Doran - Direct Examination by Mr. Young

1 A Well, the pair of pants were found next to the
2 wooded area right in here.

3 Q Okay.

4 A About twenty yards from the gate.

5 Q All right. And did you take pictures of that?

6 A Yes, sir.

7 Q Did you take pictures of any other items you might
8 have seen at the time there?

9 A Yes, sir.

10 MR. YOUNG: All right. Your Honor, I don't know if
11 I've specifically offered this. I am going to now offer
12 State's Exhibit 4.

13 MR. CHESSER: No objection.

14 THE COURT: It's admitted.

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

17 By Mr. Young:

18 Q I'm now going to hand up a series of photographs.
19 I'm going to hand up State's Exhibit 8, 9, and 10. I ask
20 you to look at them, please, and tell me if you recognize
21 them.

22 A Yes, sir, I do.

23 Q What are those?

24 A This first photo I have here is a photo of a pair
25 of bluejean pants.

Randy Doran - Direct Examination by Mr. Young

1 Q Okay. What's the other photos? What are they?

2 A Sir?

3 Q What do these photos have in them?

4 A This photo's a pair of bluejean pants with a belt,
5 belt buckle. In the right front pocket from was a Bi-Lo
6 Bonus card, a Kroger Bonus card, two -- two keys and a
7 Monte Carlo logo that was on the key chain.

8 Q All right, sir. And -- and did you at any time
9 collect any of that evidence?

10 A Yes, sir, I did.

11 Q All right. What did you collect?

12 A Like I said, we collected the bluejean pants, we
13 collected the Bi-Lo Bonus card, the Kroger Bonus card. We
14 also collected a one dollar bill that was in his right back
15 pocket.

16 Q Okay. All right. Now, if you would, sir, please
17 describe for me whether or not these or -- tell me whether
18 or not these pictures fairly and accurately depict the
19 location -- or I should say the location and the conditions
20 you saw of these pants and the other items at that time?

21 A Yes, sir.

22 Q What is State's Exhibit No. 10?

23 A No. 10 is photos of -- the one on the left would be
24 the -- going in from the gate I described earlier.

25 Q Which gate? Hold up State's 4 and tell me which

Randy Doran - Direct Examination by Mr. Young

1 Q Yes, sir.

2 A Like I said, we collected the bluejean pants. We
3 collected the Bi-Lo Bonus card, Kroger Bonus card, the key
4 chain, the keys, one dollar bill. We also collected a
5 yellow cigarette lighter, which was approximately about
6 five feet from the bluejean pants. Also in that area, I
7 located a .40 caliber shell casing. And we also collected
8 several human bones.

9 Q Okay. And you collected these bones and collected
10 this evidence. Would you be able to recognize this key
11 chain and the .40 caliber shell casing and the Bi-Lo card
12 again if you saw it?

13 A Yes, sir.

14 Q I'm going to hand you up what's been marked as
15 State's 17, 18, and 19, and I ask you to briefly take a
16 look at those.

17 A Yes, sir.

18 Q What are they? By the number if you please. Tell
19 me what they are by the number.

20 A Seventeen would be a Bi-Lo -- the Bi-Lo Bonus card
21 I was talking about, the Kroger Bonus card I was talking
22 about, two keys on a key ring and a Monte Carlo car key.

23 Q All right.

24 A That's attached to the key -- to the key ring.

25 Q State's Exhibit 18 and 19, are there any bearing or

Randy Doran - Direct Examination by Mr. Young

1 relationship to what you hold in your hand there?

2 A Yes, sir.

3 Q What are they and where were they found?

4 A This -- 17 was located in the right front pocket --

5 Q Okay.

6 A -- of the bluejean pants.

7 Q Okay. Did you find anything inside the legs of the
8 pants or inside the basic clothing area of the pants?

9 A Yes, sir. Once -- like I said, once we took
10 photos, we started to pick the pants up and started trying
11 to examine them a little bit more. And we had --- if I'm
12 right, I think it was the right leg bone had fell out of
13 the right pants -- the right pants leg. Also on the
14 belt -- the belt that's on the bluejean pants on the back
15 side -- on the back side of the belt had a name written in
16 the belt, Samuel.

17 Q So you noted that down there as well.

18 A Yes, sir.

19 Q All right. Now, what is 18?

20 A Eighteen is the one dollar bill I was describing
21 there that came out of his right back pocket.

22 Q Okay. And what is 19?

23 A Nineteen is the .40 caliber Smith and Wesson shell
24 casing that was located in the area.

25 Q Was this -- where was this located in relation to

Randy Doran - Direct Examination by Mr. Young

- 1 A Yes, sir.
- 2 Q Okay. Put that down.
- 3 A Okay.
- 4 Q All right. Let me take you back to these keys that
5 were discovered. Did you make an attempt to take action on
6 that Bi-Lo card, if you want to call it that, and the key
7 chain card? Whose card was it?
- 8 A One of them was a Bi-Lo Bonus card and one of them
9 was a Kroger Bonus card.
- 10 Q All right. Did you make an effort to obtain the
11 information off of that?
- 12 A Yes, sir, I did.
- 13 Q Did you obtain any information on it?
- 14 A Yes, sir.
- 15 Q And when you got that information, what action did
16 you take?
- 17 A I actually contacted Aiken County Sheriff's Office
18 to see if they had a person missing by the last name of
19 Sturup. They did not. I called Richmond County Sheriff's
20 Office and asked them the same question and they advised me
21 that at that time they did have a subject by the name of --
22 by the last name of Sturup that had been reporting missing
23 from their county.
- 24 Q You had information that a person by the name of
25 Sturup was missing from what authority?

Randy Doran - Direct Examination by Mr. Young

- 1 A Richmond county.
- 2 Q Okay. So did they provide you with any information
- 3 after that?
- 4 A Yes, sir.
- 5 Q What kind of information did you receive?
- 6 A I actually received the report -- the actual
- 7 missing persons report of a young man by the name of Samuel
- 8 Sturup.
- 9 Q Did you get an address off of that report?
- 10 A Yes, sir, I did.
- 11 Q Did you make an attempt, based upon that
- 12 information, to contact anyone?
- 13 A Yes, sir, I did.
- 14 Q Who'd you try to contact?
- 15 A On the 22nd, I believe it was, I contacted a Ms.
- 16 Shirley Sturup.
- 17 Q You contacted Shirley Sturup. Where did she
- 18 reside?
- 19 A She lived at [REDACTED] Augusta, Georgia.
- 20 Q Did you contact her?
- 21 A Sir?
- 22 Q Did you contact, Ms. Sturup?
- 23 A I did.
- 24 Q Is she present in the courtroom?
- 25 A Yes, sir, she is.

Randy Doran - Direct Examination by Mr. Young

- 1 Q And he made some more efforts to try to find more
2 evidence?
- 3 A Yes, sir.
- 4 Q All right. And were you present for that?
- 5 A Yes, sir.
- 6 Q Did they collect some more evidence?
- 7 A Yes, sir, they did.
- 8 Q And who was the person doing this?
- 9 A Steven Curtis.
- 10 Q Okay. And did they get the -- where are these
11 photos?
- 12 A Pardon? I didn't hear you.
- 13 Q Where'd they -- where'd they get the evidence from?
- 14 A I misunderstood you.
- 15 Q Where did they get this evidence from that they
16 collected?
- 17 A Where did they get it from?
- 18 Q Yeah.
- 19 A They got it -- it was -- the stained that I was
20 describing earlier.
- 21 Q The one in this picture here? State's Exhibit 10?
22 Is that the same area you're describing?
- 23 A Yes, sir.
- 24 Q And what'd they do in that area?
- 25 A They was using a metal detector. The metal

Randy Doran - Direct Examination by Mr. Young

1 detector was getting some kind of reading.

2 Q Okay.

3 A And they started digging in that area.

4 Q Okay.

5 A And --

6 Q Did you see them collect anything from the digging?

7 A Yes, sir.

8 Q What'd you see them collect?

9 A They collected two bullets from that area.

10 Q All right. So at some point in time, did you have
11 enough evidence to make some arrests?

12 A Yes, sir.

13 Q And when did you make those arrests? And who did
14 you arrest?

15 A The first arrest I made was on Julio Hunsberger.
16 He was arrested on January the 22nd, 2002.

17 Q All right.

18 MR. CHESSER: Your Honor, I object to testimony
19 about arrests and the sequence of the arrests. I think
20 what's relevant to the jury is the facts and evidence of
21 the case, but this evidence of arrests and sequence of
22 arrests and so on, I submit is irrelevant, and so I would
23 object to it.

24 THE COURT: Okay. Response by the State?

25 MR. CHESSER: Sir?

Richard Cave - Direct Examination by Mr. Maye

1 THE COURT: Okay. You ready to proceed?

2 MR. MAYE: The State's ready?

3 MR. CHESSER: The defense is ready, Your Honor.

4 THE COURT: Bring them on in.

5 THE BAILIFF: Yes, sir.

6 (WHEREUPON the jury entered the courtroom at 3:58
7 p.m.)

8 THE COURT: All right. The jury's back. Call your
9 next witness.

10 MR. MAYE: The State calls Richard Cave to the
11 stand.

12 THE COURT: All right.

13 THEREUPON,

14 RICHARD CAVE,
15 after being duly sworn, testified as follows:

16 THE CLERK: Have a seat. State your full name,
17 please, and spell your last name.

18 THE WITNESS: Richard Cave. C-A-V-E.

19 **DIRECT EXAMINATION**

20 By Mr. Maye:

21 Q Mr. Cave, if you would, tell the ladies and
22 gentlemen of the jury where you're from, where you grew up?

23 A Augusta, Georgia.

24 Q Okay. Do you have family members over there in
25 Augusta?

Richard Cave - Direct Examination by Mr. Maye

1 A Yes, I do, sir.

2 Q Okay. Tell the ladies and gentlemen of the jury
3 who are your family members. What kind of family situation
4 do you have?

5 A I live with my mama, step-daddy, my little sister,
6 and two little brothers.

7 Q Back in 2001, was that who you were living with?

8 A Yeah.

9 Q What were you doing day in and day out in 2001?
10 What was your activities?

11 A Going to school and working.

12 Q Okay. How old were you at that time?

13 A Eighteen.

14 Q Okay. What grade were you in and where were you
15 going to school?

16 A I was in twelfth grade at Laney -- Lucy Craft
17 Laney. Lucy Craft Laney.

18 Q Okay. You were in the twelfth grade?

19 A Yeah.

20 Q Okay. Let me ask you this, as far as it relates to
21 this case, you had a friend that was involved as well; is
22 that correct?

23 A Yes, sir.

24 Q What was his name?

25 A Antonio Griffin.

Richard Cave - Direct Examination by Mr. Maye

- 1 Q Okay. How did you know Mr. Griffin? What was
2 y'all's relationship and -- how did you know him?
- 3 A We both were in the same band.
- 4 Q In the same band?
- 5 A Yes, sir.
- 6 Q Okay. Now, what kind of band are you talking
7 about?
- 8 A Marching band.
- 9 Q Y'all were in the marching band at what school?
- 10 A Laney.
- 11 Q Okay. All right. Let me ask you this: During
12 that time in 2001, the subject of this case, did you come
13 to know a guy named Steven Louis Barnes?
- 14 A Yes, sir, I did.
- 15 Q Okay. Tell the ladies and gentlemen of jury how
16 you first met Mr. Barnes and came involved with all of
17 this?
- 18 A I was at a birthday party with a friend.
- 19 Q You were at a birthday party?
- 20 A Yes, sir.
- 21 Q Okay. Who was the party for?
- 22 A A female.
- 23 Q What was her relationship to you, if anything?
- 24 A None. I went with my friend, Tonio Williams.
- 25 Q Okay. You went with Tony to a party?

Richard Cave - Direct Examination by Mr. Maye

- 1 A Yes, sir.
- 2 Q Okay. Once you met Mr. Barnes, what did y'all have
- 3 in common, or what drew you to him?
- 4 A He had a car that I wanted to drive.
- 5 Q He had an automobile.
- 6 A Yes, sir.
- 7 Q Okay. So you're eighteen years old, were you into
- 8 cars pretty heavy at the time?
- 9 A Yes.
- 10 Q Okay. What kind of car did he have that appealed
- 11 to you?
- 12 A At the time had a Box Chevy.
- 13 Q A Box Chevy?
- 14 A Yes, sir.
- 15 Q Okay. Help me out here. Tell me what a Box Chevy
- 16 is.
- 17 A They were back from the 80's and the 90's.
- 18 Q Chevrolet; is that correct?
- 19 A Yes.
- 20 Q Caprice, like a police car?
- 21 A Yes, sir.
- 22 Q Okay. Tell me what the difference is between a Box
- 23 Chevy and a Bubble Chevy is.
- 24 A One's round and the other one's square.
- 25 Q Okay. What are the year models? We are talking

Richard Cave - Direct Examination by Mr. Maye

1 about Chevrolet Caprice?

2 A Yes, sir.

3 Q Okay. The Boxes are the square ones and they're
4 what years?

5 A I believe it's '82 to '92 or something.

6 Q Okay. And a Bubble Chevy Caprice, when did they
7 come in?

8 A Right around '92.

9 Q About '92 they started. Okay.

10 Well, what kind of conversation did you have with
11 Mr. Barnes in relation to the -- to the car? And what took
12 place between you and Mr. Barnes?

13 A I noticed he had a For Sale sign on it and I had a
14 conversation with him.

15 Q Okay. Did y'all basically -- did you start hanging
16 out with Mr. Barnes at that point in time?

17 A Yes, sir.

18 Q Okay. What was the extent of it? What kind of
19 things did you do?

20 A We'd go to clubs.

21 Q Okay. How frequent or how often -- because you're
22 eighteen years old and in school, what kind of schedule are
23 we talking about?

24 A Weekends.

25 Q Weekends. Prior to this -- the events taking place

Richard Cave - Direct Examination by Mr. Maye

1 in this case, about how many times would you say that you
2 got together with Mr. Barnes?

3 A About three or four.

4 Q Okay. About three or four.

5 Let's talk about Labor Day Weekend of 2001. Did
6 you have an occasion to go see Mr. Barnes?

7 A Yes, sir.

8 Q Tell the ladies and gentlemen of the jury about
9 going there and who went with you.

10 A Steven Barnes called my house.

11 Q Steven Barnes called your house?

12 A Yes, sir.

13 Q And who did he talk to?

14 A Me.

15 Q Okay. Who was with you at the time?

16 A Antonio.

17 Q Okay. Based on your conversation with Mr. Barnes,
18 where did y'all go; what did you do?

19 A We went over on Cherry Street.

20 Q Cherry Street?

21 A Yes, sir.

22 Q In what city?

23 A Augusta, Georgia.

24 Q Cherry Street in Augusta. Okay.

25 Where did you go? What did you call the place you

Richard Cave - Direct Examination by Mr. Maye

1 went to; what did you refer to it as?

2 A The green house.

3 MR. MAYE: I previously showed the defense in this
4 case State's 20.

5 By Mr. Maye:

6 Q Let me show you a picture that's marked State's 20?
7 Is that the green house where you went to meet Mr. Barnes?

8 A Yes, it is.

9 Q Okay.

10 MR. MAYE: Your Honor, I'm going to move to admit
11 this into evidence at this time.

12 MR. CHESSER: No objection.

13 THE COURT: It's admitted.

14 MR. MAYE: Okay.

15 (WHEREUPON State's Exhibit No. 20 was entered into
16 evidence.)

17 By Mr. Maye:

18 Q So you met Mr. Barnes at the green house. What was
19 happening and who was there when you and Antonio Griffin
20 went over to the green house on Cherry Street in Augusta?

21 A I noticed two people arguing.

22 Q Two people arguing?

23 A Yes, sir.

24 Q Okay. Tell the ladies and gentlemen of the jury
25 who was arguing and what was taking place?

Richard Cave - Direct Examination by Mr. Maye

- 1 A Steven Barnes and Samuel Sturup.
- 2 Q Okay. Did you know Samuel Sturup?
- 3 A No, sir.
- 4 Q Okay. Tell the ladies and gentlemen of the jury
- 5 what they were arguing about?
- 6 A About some money. Money that got stole.
- 7 Q Arguing about the money. Okay. Tell me everybody
- 8 that was there. You were there. Who else was there?
- 9 A Antonio Griffin, Steven Barnes, Charlene Thatcher,
- 10 and Samuel Sturup.
- 11 Q Okay. Who is Charlene Thatcher, did you know her?
- 12 A All I know is she was his girl at the time.
- 13 Q Whose girl?
- 14 A Steven Barnes.
- 15 Q Okay. Had you seen her before? There hanging out?
- 16 A Yes.
- 17 Q Okay. And you've been around her?
- 18 A Yes, sir.
- 19 Q All right. Did you have any connections with
- 20 Steven -- I mean, with Samuel Sturup at that time? Did
- 21 you -- had you ever hung out with him or know anything
- 22 about him?
- 23 A No, sir.
- 24 Q So you had no interaction with him?
- 25 A No, sir.

Richard Cave - Direct Examination by Mr. Maye

1 Q Okay. You said, and you previously testified that
2 when you got there, they were arguing about money. Tell
3 the ladies and gentlemen of the jury exactly what they were
4 saying and how it went back and forth between them about
5 arguing over money.

6 A Steven asked him did he have the money. Samuel
7 told him no. Steven said he had to have the money. They
8 kept going back and forth.

9 Q It kept going back and forth between them?

10 A Yes, sir.

11 Q Okay. Did Samuel Sturup, did he deny having the
12 money?

13 A At first he did.

14 Q He at first denied having any money from him?

15 A Yes, sir.

16 Q Okay. Did the argument between them, did it have
17 occasion -- did it turn violent?

18 A Yes, it did.

19 Q Okay. What did you observe or what did you see
20 there?

21 A Steven grabbed a shock absorber.

22 Q Steven grabbed -- Mr. Barnes?

23 A Yes, sir.

24 Q Grabbed a shock absorber and what did he do?

25 A He hit him Samuel on the arm, on the side of his

Richard Cave - Direct Examination by Mr. Maye

1 arm.

2 Q Okay. Let me show you what's been marked State's
3 21 in this case. Is that consistent with what you saw him
4 be struck with there at the scene on Cherry Street?

5 A Yes, it is.

6 Q Okay. What else did he do to Mr. Sturup to strike
7 him or hurt him in any way? What else happened?

8 A He just threatened him and, you know, throw a
9 couple of punches. That's all.

10 Q Okay. What was the next thing that happened after
11 he got struck and all that? What was the next thing that
12 happened in this argument between them over money?

13 A Samuel said he had the money.

14 Q He said he had money?

15 A Yes, sir.

16 Q Okay. Once he told Mr. Barnes that he had money,
17 what happened next?

18 A Steven said -- he asked him where the money was.
19 Samuel told him it was in his bathroom at his mother's
20 house behind the toilet.

21 Q Okay. So what happened once Mr. Sturup told him
22 that the money was behind the bathroom -- behind the
23 commode or toilet at his mom's house? What did Mr. Barnes
24 say then?

25 A Steven said if he was to go over to his mama's

Richard Cave - Direct Examination by Mr. Maye

1 house and not find the money, he was going to kill
2 everybody in the house.

3 Q Okay. What did Sam Sturup respond back to that?
4 What did he say then when he told him that?

5 A He changed his story.

6 Q He changed his story. What did he respond once he
7 said he was going to go back to the house, if he didn't
8 find it behind the toilet --

9 A That he had the money.

10 Q Why did he say that he had admitted then that he
11 had the money?

12 A He wanted him to stop the beating.

13 Q Okay. Did Mr. Barnes accuse anybody else there
14 take any money?

15 A Sam put it on Charlene Thatcher at one time.

16 Q Okay. Charlene Thatcher. Okay. What took place
17 after Charlene Thatcher got blamed for this?

18 A They started arguing.

19 Q Who started arguing?

20 A Sam, Steven, and Charlene.

21 Q Okay. What happened next?

22 A He asked Sam did he have the money. He said he
23 would go ahead and kill him.

24 Q All right. I'm going to short circuit this. Now,
25 the argument continued, it went on for some time; is that

Richard Cave - Direct Examination by Mr. Maye

1 correct?

2 A Uh-huh.

3 Q Did there come a time in or after the argument had
4 subsided between them, did there come a time that Mr.
5 Barnes made a telephone call?

6 A He did.

7 Q Okay. Tell the ladies and gentlemen of the jury
8 about him making that call, where he went in relation to
9 you.

10 A Well, I was walking in the street. Steven walked
11 up the street ahead of me and I seen him on the phone.

12 Q Okay. Shortly after he made that telephone call,
13 who arrived at the scene?

14 A The Hunsbergers.

15 MR. CHESSE: Objection. There's a lack of
16 foundation, Your Honor, in regard to any identification by
17 this witness and -- so I would object to him identifying
18 anybody without a basis for that identification.

19 THE COURT: All right. State's response solicitor?

20 MR. MAYE: Your Honor, he just said that the
21 Hunsbergers arrived. He identified them and said that the
22 Hunsbergers arrived there at the scene. It's a direct
23 question and he responded that the Hunsbergers arrived on
24 the scene, direct answer.

25 THE COURT: Okay.

Richard Cave - Direct Examination by Mr. Maye

1 MR. CHESSER: It's true, my information is that he
2 doesn't know Alex Hunsberger, he has no prior knowledge, he
3 didn't know anything about him and for him to come in and
4 testify to this something when he doesn't even know who
5 he's talking about. I submit there is a lack of foundation
6 again.

7 THE COURT: Solicitor?

8 MR. MAYE: Your Honor, that's all a part of the
9 cross-examination. It's a direct question and a direct
10 answer and he certainly would have the opportunity to
11 cross-examine him.

12 THE COURT: All right. The objection is overruled.

13 By Mr. Maye:

14 Q Let me ask you this. You said the Hunsbergers
15 arrived. Let me ask you this, describe what type of
16 individuals race-wise and --

17 A Hispanic.

18 Q Hispanic?

19 A Yes, sir.

20 Q Okay. Let me ask you this, is one of the two
21 individuals that you've identified as the Hunsbergers
22 arriving on the scene, is one of them present here in the
23 courtroom today?

24 A He is.

25 Q Could you point him out and identify this person?

Richard Cave - Direct Examination by Mr. Maye

1 A He's sitting over there by the gentleman with the
2 black tux on.

3 Q Tux on?

4 A Yeah. The suit.

5 Q Suit?

6 A Yeah.

7 Q Okay. What color jacket does he have on?

8 A He has a grayish -- gray jacket on.

9 Q Okay.

10 MR. MAYE: Your Honor, I would just ask that the
11 record reflect that he identified the defendant, Alex
12 Hunsberger in this case.

13 THE COURT: It does.

14 MR. MAYE: Okay.

15 By Mr. Maye:

16 Q So you're absolutely certain that this gentleman
17 over here is one of the two known as the Hunsbergers that
18 arrived?

19 A Yes.

20 Q Okay. After Alex and Julio Hunsberger got there,
21 what was the next thing that happened?

22 A The Hunsbergers and Steven started talking among
23 themselves.

24 Q Could you hear what they were saying?

25 A No, sir.

Richard Cave - Direct Examination by Mr. Maye

- 1 Q Okay. Once they had a conversation, what took
2 place next?
- 3 A Steven told everybody to get in the car.
- 4 Q Mr. Barnes told everybody --
- 5 A Steven Barnes.
- 6 Q -- to get in the car. Okay. Did you get in the
7 car?
- 8 A Yes.
- 9 Q Okay. Now, what kind of car did you get into?
- 10 A '92 Caprice, Bubble Chevy.
- 11 Q A Bubble Chevy. Okay.
- 12 A Yes, sir.
- 13 Q Okay. Who all got in the car with you?
- 14 A Steven Barnes, me, Charlene Thatcher, and Antonio
15 Griffin.
- 16 Q Okay. Y'all all got into the Bubble Chevy with Mr.
17 Barnes?
- 18 A Yes, sir.
- 19 Q Okay. How did the Hunsbergers arrive on the scene?
- 20 A In a car.
- 21 Q Okay. Where did Mr. Sturup go? Did you see where
22 he went at that point in time?
- 23 A No, sir.
- 24 Q Okay. Did y'all leave the -- what you refer to --
25 the green house on Cherry Street then?

Richard Cave - Direct Examination by Mr. Maye

1 A Yes.

2 Q Okay. And what order did you leave in the
3 automobiles?

4 A We followed the Hunsbergers.

5 Q You followed the Hunsbergers?

6 A Yes, sir.

7 Q Okay. Now, they were in a car together?

8 A Yes, sir.

9 Q Okay. Who led the way?

10 A Hunsbergers.

11 Q Okay. At any point in time did you see anybody in
12 the car or did you hear any communications where anybody
13 else directed where y'all went?

14 A No, sir.

15 Q So who decided where they were going from that
16 point on?

17 MR. CHESSER: Objection. He can't testify who
18 decided that, Your Honor.

19 THE COURT: All right. When there is an objection,
20 give the legal basis of the objection, the objection should
21 not be argued unless requested. The objection is
22 sustained.

23 By Mr. Maye:

24 Q Did anybody in your car do anything to dictate
25 where y'all went from that point in time?

Richard Cave - Direct Examination by Mr. Maye

- 1 A No, sir.
- 2 Q Where all did you follow the other car to?
- 3 A We went to the bridge and started across it.
- 4 Q What kind of road was it that you were on?
- 5 A It was an interstate.
- 6 Q Got on the interstate?
- 7 A Yes, sir.
- 8 Q You drove across the bridge?
- 9 A Across the bridge.
- 10 Q Okay. Where did you go next? What kind of road?
- 11 Did you make any turns?
- 12 A Yes. The interstate turned into a smaller road,
- 13 smaller highway.
- 14 Q Okay. Where did you go then?
- 15 A It got smaller. That smaller road lead to a small
- 16 dirt road.
- 17 Q Okay. So you went across the bridge, you were on
- 18 the interstate. You turned onto a small road; is that
- 19 correct?
- 20 A Yes, a dirt road.
- 21 Q Okay. And y'all turned -- did y'all turn off of
- 22 the smaller road --
- 23 A Onto a dirt road.
- 24 Q Okay. Who was leading the way the whole time?
- 25 A The Hunsbergers.

Richard Cave - Direct Examination by Mr. Maye

1 Q Okay. Once y'all got down to the dirt road,
2 describe where you went as you traveled off the dirt road.

3 A Well, it's a pretty long dirt road; we followed
4 along the dirt road to a grass area.

5 Q Okay. Once you went through the grass area,
6 where'd you go next?

7 A The grass area went to a smaller -- smaller road
8 near a path and that opened up to a big field.

9 Q Okay. Let me show you what's been marked in this
10 case as State's Exhibit No. 4, okay? Is this basically a
11 layout of the two fields and the narrow area that y'all
12 went through?

13 A Yes, it is.

14 Q Okay. Where did y'all end up stopped in relation
15 to this diagram when y'all got there?

16 A In this small little corner right there.

17 Q This area?

18 A Yes, sir.

19 Q Okay. Who was in front when y'all stopped?

20 A The Hunsbergers.

21 Q And who led the way?

22 A Hunsbergers.

23 Q Okay. Once y'all got there and you stopped, what
24 happened when y'all stopped the automobiles? What was the
25 next thing that happened?

Richard Cave - Direct Examination by Mr. Maye

- 1 A Steven -- Steven got out of the car. The
2 Hunsbergers got out of the car.
- 3 Q The Hunsbergers got out of their car, Steven got
4 out of his car?
- 5 A Yes, sir.
- 6 Q What was the next thing you saw?
- 7 A I seen them talking.
- 8 Q Okay. What happened next?
- 9 A They got Sam out of the trunk.
- 10 Q They got Sam Sturup out of where?
- 11 A The trunk.
- 12 Q Of whose car?
- 13 A Hunsbergers.
- 14 Q So Samuel Sturup was in the trunk of that car when
15 they stopped?
- 16 A Yes, sir.
- 17 Q Okay. What did you then do next after they got Sam
18 Sturup out of the trunk of the Hunsbergers' car?
- 19 A Steven told all of us to get out of the car.
- 20 Q Okay. So who was he telling all to get out of the
21 car?
- 22 A Me, Charlene Thatcher, Antonio Griffin.
- 23 Q Okay. What was the next thing that happened?
- 24 A He told us to follow Sam to the gate that was ahead
25 of us.

Richard Cave - Direct Examination by Mr. Maye

- 1 Q Okay. Let me show you State's 6. Is that the
2 gate?
- 3 A Yes, sir.
- 4 Q So y'all get to the gate. What happens next when
5 you get to the gate?
- 6 A He told us to jump over the gate.
- 7 Q What'd y'all do?
- 8 A Jumped over the gate.
- 9 Q Okay. Once y'all went over the gate, describe the
10 ladies and gentlemen of the jury where you went next.
- 11 A To a smaller fence.
- 12 Q To a smaller fence. What happened then?
- 13 A Jumped the fence.
- 14 Q Okay. Where'd you then go?
- 15 A Followed everybody to another smaller open area.
- 16 Q Okay. Let me show you State's 7, it's already into
17 evident.
- 18 Is that the pathway y'all went down after you went
19 over the second little fence?
- 20 A Yes, sir.
- 21 Q Tell me everybody that was walking there along with
22 Samuel Sturup and you.
- 23 A Charlene Thatcher, Antonio Griffin, myself, Steven
24 Barnes, and both of the Hunsbergers.
- 25 Q Okay. What was the next thing that happened?

Richard Cave - Direct Examination by Mr. Maye

- 1 A He told Sam to step in front of us and he asked Sam
2 one more time did he have the money.
- 3 Q Okay. What did Sam say when he asked him about the
4 money there?
- 5 A He didn't have the money.
- 6 Q He did not have the money.
- 7 A Yes, sir.
- 8 Q What time was it? Daytime, nighttime?
- 9 A That time of the day, it was really pretty dark.
- 10 Q Pretty dark. Do you have any idea about what time
11 it was?
- 12 A Between eleven and twelve.
- 13 Q On September the 3rd, 2001?
- 14 A Yes, sir.
- 15 Q All right. Once he asked him again about the
16 money, what was the next thing that happened?
- 17 A Sam started crying pleading for his life.
- 18 Q What happened next?
- 19 A Steven brings out a gun.
- 20 Q Then what happened?
- 21 A He gave it to Charlene.
- 22 Q What did he do once he gave the gun to Charlene?
23 What did Mr. Barnes say?
- 24 A He told -- he gave Charlene the gun and told
25 everybody that everybody was going to shoot one time and if

Richard Cave - Direct Examination by Mr. Maye

- 1 nobody don't shoot then he'll kill them.
- 2 Q Okay. What was the next thing that happened?
- 3 A He grabbed the girl around the side head, around
- 4 her back area and helped her shoot the gun.
- 5 Q What's the next thing that you saw?
- 6 A Sam hit the ground.
- 7 Q What happened next?
- 8 A Charlene handed me the gun.
- 9 Q Charlene handed you the gun?
- 10 A Yes, sir.
- 11 Q What did you do next?
- 12 A I shot the gun.
- 13 Q What was the next thing that happened after you
- 14 shot?
- 15 A I followed Charlene out the field.
- 16 Q Okay. Did you hear more successive shots at that
- 17 point in time?
- 18 A Yes, I did.
- 19 Q You know how many?
- 20 A Four more.
- 21 Q Okay. What happened next?
- 22 A I followed Charlene. Then Antonio was right behind
- 23 me. And was just waiting.
- 24 Q Okay. After y'all waited, sequentially, what was
- 25 the next thing that happened?

Richard Cave - Direct Examination by Mr. Maye

- 1 A Everybody come up back up at the cars and then
2 Steven was out there in the field toward the back.
3 Q He was the last one to leave from the back?
4 A In the field.
5 Q Once y'all got back out there to where the cars
6 were, where did y'all go?
7 A To the Hunsbergers'.
8 Q To the Hunsbergers'?
9 A Yes, sir.
10 Q What kind of residence was this?
11 A It was a trailer.
12 Q On the same property?
13 A Yes, sir.
14 Q Let me show you -- let me show you State's 13.
15 What I'm showing you here, is this the first field that
16 y'all went through?
17 A Yes, sir.
18 Q Does this indicate the narrow portion you went
19 through?
20 A Yes, sir.
21 Q Is this the field that y'all eventually stopped in?
22 A Yes, sir, it is.
23 Q Is this the trailer you've identified as the
24 Hunsbergers'?
25 A Yes, it is.

Richard Cave - Direct Examination by Mr. Maye

1 Q What did the Hunsbergers do when you got there to
2 their trailer?

3 A Got out of the car and went inside.

4 Q Who opened up the place for y'all to get in?

5 A The Hunsbergers.

6 Q How?

7 A They had a key.

8 Q Okay. Y'all went on in there?

9 A Yes, sir.

10 Q Did you ever have any connection with that trailer
11 at any point in time? Had you ever been there before?

12 A No, sir.

13 Q Who led the way from the second field where y'all
14 stopped after you got Sturup out and marched him into the
15 woods and shot him, who led the way from that field back to
16 the Hunsbergers' trailer?

17 A The Hunsbergers.

18 Q What took place there at the Hunsbergers' trailer
19 after the shooting?

20 A Steven Barnes and the Hunsbergers go into the back,
21 while me, Tony -- Antonio Griffin, and Charlene Thatcher
22 sit on the couch.

23 Q Y'all three stayed out in what area of the trailer?

24 A It had to be the living room.

25 Q Okay. Who went back in the back?

Richard Cave - Direct Examination by Mr. Maye

- 1 A Steven Barnes and the Hunsbergers.
- 2 Q All together?
- 3 A Yes, sir.
- 4 Q Okay. Did you hear anything that was going on at
- 5 that point in time?
- 6 A No, sir.
- 7 Q Once they all get back in the back of the trailer,
- 8 what was the next thing that happened?
- 9 A Steven Barnes came out and asked everybody how we
- 10 felt.
- 11 Q The three of you?
- 12 A Yes, sir.
- 13 Q What was said? What did you say?
- 14 A I told him I'm all right.
- 15 Q All right. What was the next thing that happened?
- 16 A He told us to get back inside the car.
- 17 Q Who got back in the car?
- 18 A Steven Barnes, Antonio Griffin, Charlene Thatcher,
- 19 and myself.
- 20 Q Okay. Where did y'all then leave and go back to?
- 21 A On the way back, we stopped at the bridge.
- 22 Q You stopped at the bridge. The interstate bridge?
- 23 A That leads back to Augusta.
- 24 Q Okay. What happened when y'all got back to the
- 25 interstate bridge?

Richard Cave - Direct Examination by Mr. Maye

1 A Steven said, Antonio go throw the gun into the
2 water.

3 Q What -- was the gun in anything? He handed it to
4 him just...

5 A He handed it to him.

6 Q Okay. What did he put the guns in before he threw
7 them over?

8 A A bag.

9 Q Okay. Did you see him get out and toss the guns
10 over?

11 A Yes, sir.

12 Q Okay. Did you bring any guns as you went over
13 there from Georgia?

14 A No, sir.

15 Q Okay. Where'd y'all go back to once y'all tossed
16 the guns off the bridge there on the interstate?

17 A Back to the green house.

18 Q Back to the green house on Cherry Street. And what
19 happened and where did you stay the remainder of the night?

20 A He told us to stay right there and he was gonna
21 pick us up in the morning.

22 Q Okay. Now y'all went back over the Augusta. Where
23 was the last time you saw the Hunsbergers?

24 A That was the last time.

25 Q Okay. Where did they stay? Did they go back to

Richard Cave - Direct Examination by Mr. Maye

- 1 Georgia with you or where did they stay?
- 2 A They stayed at the trailer.
- 3 Q Did they stay at -- were they at the trailer when
- 4 you; left?
- 5 A Yes, sir.
- 6 Q Okay. Did y'all stay the rest of the night at the
- 7 green house?
- 8 A Yes, sir.
- 9 Q Okay. What was the next thing that happened after
- 10 y'all spent the night there at the green house? Where'd
- 11 you go and what'd you do?
- 12 A Steven Barnes picked everybody up and took me home.
- 13 Q Took you home?
- 14 A Yes, sir.
- 15 Q Okay. Who else did he take home?
- 16 A Antonio Griffin.
- 17 Q Okay. What were y'all directed to do in regards to
- 18 the clothing that y'all were wearing? Y'all already got
- 19 rid of the gun?
- 20 A Yes, sir.
- 21 Q What were y'all directed to do that involved the
- 22 clothing?
- 23 A Told me to give my clothes -- my clothes to Tony
- 24 and told Tony to burn the clothes.
- 25 Q Okay. Let me ask you this. How old were you at

Richard Cave - Direct Examination by Mr. Maye

1 the time?

2 A Eighteen.

3 Q And you were in the high school band?

4 A Yes, sir.

5 Q All right. After this shooting took place, did you
6 tell anybody about this?

7 A No, sir.

8 Q Why not?

9 A I was scared.

10 Q Did there come a time though that you were taken
11 into custody by the law?

12 A Yes, sir.

13 Q Did you cooperate with the law enforcement and give
14 statements at that point in time?

15 A Yes, I did.

16 Q Okay. Let me ask you this. Did you go over in
17 Georgia and plead guilty to aggravated assault in Georgia
18 in relation to the assault that took place over in Georgia
19 of Samuel Sturup there at the green house?

20 A Yes, sir, I did.

21 Q Okay. You've already been sentenced to that,
22 haven't you?

23 A Yes, sir.

24 Q How much time did you get?

25 A Eighteen years.

Richard Cave - Direct Examination by Mr. Maye

1 Q Okay. And you know that charges are still
2 outstanding -- are you still facing any potential charges
3 that flowed from Samuel Sturup being murdered in South
4 Carolina here in Edgefield County, don't you?

5 A Yeah.

6 Q Okay. Has anybody made you any specific promises
7 about what would happen to you in this case?

8 A No, sir.

9 Q Now, you and Antonio Griffin hung out regularly,
10 right?

11 A Yes, sir.

12 Q Does he live over on Wrightsboro Road?

13 A Yes, he does.

14 Q [REDACTED]

15 A Yes, he does.

16 Q And y'all were good friends and hung out together
17 in the band?

18 A Yeah.

19 Q Okay. Did he take care of the burning of the
20 clothes that you were directed to do?

21 A Yes, he did.

22 Q At that residence?

23 A Yes, he did.

24 Q Answer any questions the defense asks for you.

25 ///

Richard Cave - Cross-Examination by Mr. Chesser

CROSS-EXAMINATION

1
2 By Mr. Chesser:

3 Q Mr. Cave, you testified here today that after the
4 shooting, you went back to the trailer, that you called the
5 Hunsbergers', right?

6 A Yes, sir, I did.

7 Q What knowledge do you have as to the ownership of
8 that trailer?

9 A Ownership? I don't know about the ownership.

10 Q Okay. Now, you testified that when you got back to
11 that trailer that Mr. Barnes and you called the
12 Hunsbergers, they were back in a room in the back, right?

13 A Yes, sir.

14 Q Do you recall testifying in 2010 in the trial of
15 Steven Barnes?

16 A Yes, sir, I do.

17 Q Okay. In that case, you testified under oath, did
18 you not?

19 A Yes, I did.

20 Q Okay. And you testified that when you got back to
21 the trailer, he -- Steven Barnes told all of you to sit
22 down, right?

23 A Yes, sir.

24 Q And he tells you not to mention what happened, that
25 he'll find out if anybody goes to the police, right?

Richard Cave - Cross-Examination by Mr. Chesser

- 1 A He did.
- 2 Q And he explained to you that the reason he wanted
3 everybody to shoot was so everybody would be dirty and
4 couldn't go to the police?
- 5 A Yes, he did.
- 6 Q And he asked you how you felt about this shooting,
7 right?
- 8 A Yes, sir.
- 9 Q And you told him you didn't know?
- 10 A Yes, sir.
- 11 Q In this testimony that you gave in this trial,
12 under oath, you don't say anything about the Hunsbergers
13 and Barnes going back alone in the back of the trailer, do
14 you?
- 15 A They never asked.
- 16 Q Sir?
- 17 A They never asked.
- 18 Q But you were explaining to that jury what happened
19 that night at the trailer, right?
- 20 A Yes, sir.
- 21 Q And you agree that you didn't mention anything
22 about Barnes and the Hunsbergers having some type of
23 confidential conversation, right?
- 24 A That's true.
- 25 Q All right. Now, you also had occasion to testify

Richard Cave - Cross-Examination by Mr. Chesser

1 in a trial in Georgia with respect to the events of that
2 night of September the 3rd, 2001, right?

3 A Yes, sir.

4 Q Okay. Now, you probably don't remember your
5 testimony from 2006, do you?

6 A Not really.

7 Q Okay. I want to show you something and let you
8 read it and see if it refreshes your memory, okay?

9 (WHEREUPON the witness was reading over the
10 transcript handed to him by defense counsel.)

11 THE WITNESS: Tell me what you want me to read now.

12 By Mr. Chesser:

13 Q What I'm going to ask you to do, Mr. Cave, is --
14 does that refresh your memory as to your testimony in 2006?

15 A It does.

16 Q Okay. I'll give this back to you if -- if you feel
17 like you need it back. At that -- under oath in 2006, you
18 testified that when you got into the trailer, you went
19 inside, right?

20 A Yes, sir.

21 Q And you were asked whether there was conversation
22 or did you remain quiet and your answer was, Everybody
23 remained really quiet, right?

24 A Yes, I did.

25 Q Okay. You were asked, Was there words spoken. And

Richard Cave - Cross-Examination by Mr. Chesser

1 your answer was, Not really.

2 A Yes, sir.

3 Q You testified under oath that you only stayed five
4 minutes, right?

5 A Yes, sir.

6 Q And at that point, Steve Barnes just told you, It's
7 time to go.

8 A Yes, sir.

9 Q At that point, everyone except the Hunsbergers,
10 according to your testimony, left, correct?

11 A Yes, sir.

12 Q Again, Mr. Cave, you testified under oath before a
13 jury in 2006 about what happened on the night of September
14 the 3rd or actually in the morning, right?

15 A Yes, sir.

16 Q And you didn't mention anything about any
17 confidential conversation between the Hunsbergers and
18 Steven Barnes, did you?

19 A No, sir.

20 Q Mr. Cave, you talked about how you came back
21 that -- in the early morning back to Georgia, right?

22 A Yes, sir.

23 Q And you stated, did you not, that you went back to
24 the green house?

25 A Yes, sir.

Richard Cave - Cross-Examination by Mr. Chesser

1 Q Okay. And this is the house in State's Exhibit No.
2 20?

3 A Yes, sir.

4 Q Mr. Cave, I want to ask you a little about that
5 house. Was there any electricity?

6 A No, sir.

7 Q Okay. This was a house utilized by Steven Barnes,
8 right?

9 A Yes, it was.

10 Q Okay. Didn't he have another house also?

11 A I don't know.

12 Q Okay. You stated that you were friends with him;
13 is that right?

14 A Yes, sir.

15 Q Okay. You had this interest in a vehicle that he
16 had, a car?

17 A Yes, sir.

18 Q And you stated that you associated with him on four
19 different occasions; is that right?

20 A Yes, sir.

21 Q Did that include going to parties?

22 A Yes, sir.

23 Q Okay. You referred to Charlene Thatcher as his
24 girl; is that right?

25 A Yes, sir.

Richard Cave - Cross-Examination by Mr. Chesser

1 Q Mr. Cave, isn't it true that you were aware that
2 she was, in fact, a prostitute working with and for Steven
3 Barnes?

4 A I didn't know he had a prostitute, sir.

5 Q Okay. Were you not aware that he was, in fact, in
6 the business of prostitution?

7 A No, I wasn't.

8 Q Okay. Were you not aware that he was, in fact, in
9 the business of robbing people?

10 A No, I wasn't.

11 Q Had you ever been to this green house before?

12 A Yes, I have.

13 Q Well, you know there was no electricity. Was there
14 any water?

15 A I wouldn't know.

16 Q Okay. This was the equivalent of a crack house;
17 was it not?

18 A When we go over there we would stay on the outside.

19 Q But you'd been there before, right?

20 A Yeah.

21 Q So no electricity, as far as you know, no water.
22 This was a house where -- it was -- it was utilized as a
23 meeting place by Mr. Barnes, right?

24 A It was.

25 Q All right. Now, are you aware that he had a house

Richard Cave - Cross-Examination by Mr. Chesser

1 set up with cameras --

2 MR. MAYE: Your Honor, I'm going to object. This
3 is about getting into self-serving hearsay. I've given a
4 lot of latitude on this. Which he's testified that these
5 are things beyond his knowledge and like I said, at some
6 point in time it gets to self serving hearsay. I object.

7 THE COURT: Okay. I have to hear the question?

8 MR. CHESSER: May I ask my question.

9 THE COURT: I have to hear the question to rule on
10 the objection.

11 MR. CHESSER: Did you know -- have you seen his
12 house with cameras and security bars?

13 THE WITNESS: I don't know.

14 THE COURT: I'm sorry. Is there an objection to
15 that question?

16 MR. MAYE: Yes, sir, Your Honor. This is exactly
17 along the lines -- it's all self-serving hearsay. He can
18 ask him questions that are not insinuating the answer and
19 ask him whether they are beyond the scope of his knowledge,
20 but like I said, that gets into self-serving hearsay. So I
21 will object.

22 THE COURT: All right. Overrule the objection.

23 By Mr. Chesser:

24 Q Have you seen the house with security cameras and
25 bars on the windows?

Richard Cave - Cross-Examination by Mr. Chesser

- 1 A No, sir.
- 2 Q Okay. Now, I want to go back to the early morning
- 3 hours of September the 3rd where you went back and you
- 4 stayed at the green house; is that right?
- 5 A Yes, sir.
- 6 Q You and Antonio Griffin, right?
- 7 A Yes, sir.
- 8 Q Anybody else?
- 9 A Charlene.
- 10 Q Okay. Now, you didn't want to stay there, did you
- 11 Mr. Cave?
- 12 A No, sir.
- 13 Q Isn't it true that you were scared of Steven
- 14 Barnes?
- 15 A Yeah.
- 16 Q Particularly after the events of that night?
- 17 A Yes, sir.
- 18 Q And when you were at the green house or outside of
- 19 it earlier that evening, before the shooting at some time,
- 20 he threatened to kill Samuel Sturup, did he not?
- 21 A Yes, sir.
- 22 Q He threatened to kill Charlene Thatcher, did he
- 23 not?
- 24 A Yes, sir.
- 25 Q In your presence, did he not beat her with a broom?

Richard Cave - Cross-Examination by Mr. Chesser

1 A I think so.

2 Q You think he did?

3 A Yeah.

4 Q All right. And what I'm getting at here, Mr. Cave,
5 is that you and everyone were scared of Steven Barnes,
6 right?

7 A Yes, sir.

8 Q Okay. And his nickname or street name was Big Man,
9 right?

10 A Yes, sir.

11 Q And he had a brother or half-brother that went by
12 the name, Little Man, right?

13 A Yes, he do.

14 Q Okay. Did you see Little Man put a gun in Charlene
15 Thatcher's mouth?

16 A Not Charlene, no.

17 Q Who did he put a -- who did he put the gun in the
18 mount of?

19 A Samuel.

20 Q Okay. Now, when you were leaving the green house,
21 you testified that you and Charlene and Antonio and Steven
22 Barnes all got into one vehicle, correct?

23 A Yes, sir.

24 Q Okay. And you saw the Hunsbergers get in the other
25 vehicle, right?

Richard Cave - Cross-Examination by Mr. Chesser

- 1 A That's what I seen, yeah.
- 2 Q Okay. You never saw them put Samuel Sturup in the
3 trunk of that car, did you?
- 4 A No.
- 5 Q Okay. Now, isn't it a fact that at the scene in
6 the field when you got there and the other vehicle got
7 there that you saw Steven Barnes himself get out and get
8 Samuel Sturup out of the back of the other vehicle?
- 9 A Yes, sir.
- 10 Q Okay. Barnes himself did that, right?
- 11 A He got him out of the trunk.
- 12 Q Sir?
- 13 A He got him out of the trunk, yes, sir.
- 14 Q I'm sorry, I didn't hear you. And Antonio; is that
15 what you said?
- 16 A I said he got him out of the trunk.
- 17 Q Out of the trunk, okay. Now, with regard to the
18 shooting of Samuel Sturup, Steven Barnes told everybody
19 there that if they didn't shoot, he would kill them; is
20 that correct?
- 21 A That is true.
- 22 Q Now, Charlene Thatcher, he more or less physically
23 compelled her to shoot; is that right?
- 24 A Yes, sir.
- 25 Q And after she shot, your testimony is that Samuel

Richard Cave - Cross-Examination by Mr. Chesser

1 Sturrupe fell?

2 A Yes, sir.

3 Q Okay. You were the second person to shoot, right?

4 A Yes, sir.

5 Q Okay. And after you shot, you gave that same gun
6 to Antonio Griffin, right?

7 A Yes, sir.

8 Q Okay. And did you see Antonio Griffin shoot?

9 A No, sir, I headed back.

10 Q Okay. As you headed back, did you hear a shot?

11 A Four shots.

12 Q Okay. Now, when Steven Barnes told you that he
13 would kill you or anyone who didn't shoot, did you believe
14 him?

15 A Yes.

16 Q At the green house before you left, Mr. Barnes had
17 been working on Samuel Sturrupe for -- well, let me ask you,
18 for an hour or two?

19 A Yes, sir.

20 Q Okay. And then your testimony was that you saw Mr.
21 Barnes strike Samuel Sturrupe with this, what looks to me, a
22 shock absorber or something like that?

23 A Yes, I did.

24 Q Okay. Did you, in fact, end up fighting Samuel
25 Sturrupe?

Richard Cave - Cross-Examination by Mr. Chesser

1 A No, sir.

2 Q Did Antonio Griffin end up fight with Sam Sturup?

3 A Yes, he did.

4 Q Okay. And he did that because he was ordered to by
5 Steven Barnes, right?

6 A Yes, he did.

7 Q And also in the presence of Steven Barnes' brother,
8 Little Man, who put a gun in Charlene -- excuse me, in
9 Samuel Sturup's mouth, that was intimidating as well, was
10 it not?

11 A Yes, it was.

12 Q Okay. Now, the fact is that the boss -- the man
13 that determined whether Samuel Sturup went home or whether
14 he died, at any time that man was Steven Barnes; isn't that
15 right?

16 A Yes, sir.

17 Q Let me ask you about something that was skipped
18 over -- or -- I want to make sure we have the full story
19 here. At the green house, you testified that you were
20 outside the green house the whole time, right?

21 A Yes, sir.

22 Q So the -- the beating of Samuel Sturup was a fight
23 between him and Antonio Griffin and hitting him with this
24 device, that took place outside of the house?

25 A Yes, sir.

Richard Cave - Cross-Examination by Mr. Chesser

1 Q Okay. What I want to ask you is this, after that,
2 didn't there come a point when you went onto some railroad
3 tracks behind that green house?

4 A Not to my knowledge.

5 Q Okay. Not to your knowledge. Okay. When you left
6 the green house, didn't you hear Steven Barnes tell Samuel
7 Sturup that he was taking him home?

8 A Yes, he did.

9 Q That's all the questions I have.

10 MR. MAYE: Redirect, Your Honor?

11 THE COURT: Yes, sir.

12 **REDIRECT EXAMINATION**

13 By Mr. Maye:

14 Q Now, this is not a trial for Steven Barnes here
15 today, is it?

16 A No, sir.

17 Q It's for Alex Hunsberger; is that correct?

18 A Yes, sir.

19 Q So you've been asked a multitude of questions
20 involving and related and pertaining to Alex Hunsberger
21 too, that you weren't asked in a trial of Steven Barnes; is
22 that correct?

23 A Yes, sir.

24 Q And you've given answers in this case, haven't
25 you --

Richard Cave - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q -- under oath. You, I believe testified, you
3 weren't asked about any further conversations with the
4 Hunsbergers once y'all got back to the trailer?

5 A No, sir.

6 Q But you testified under oath today that they did go
7 back to do that?

8 A Yes, sir.

9 Q And you testified in a previous trial that you
10 stayed -- y'all stayed about five minutes?

11 A Yes, sir.

12 Q Okay. Anything -- anything inconsistent about your
13 testimony with all of that?

14 MR. CHESSER: I object.

15 MR. MAYE: Withdrawn.

16 THE COURT: All right.

17 By Mr. Maye:

18 Q Who was standing there with Steven Louis Barnes
19 when they got Sam Sturup out of the trunk of that car?

20 A The Hunsbergers.

21 Q Did you see Steven Barnes do anything to control
22 where that vehicle was going once y'all left the green
23 house -- not the one that he was driving, but the one you
24 saw the two Hunsbergers driving?

25 A No, sir.

Richard Cave - Cross-Examination by Mr. Chesser

1 Q Did you see anything in the world that would have
2 kept them from going anywhere they wanted to go at that
3 point in time?

4 A No, sir.

5 Q But where did they go?

6 A To the field.

7 Q Where?

8 A To the wooded area.

9 Q Within what -- about a quarter of a mile of the
10 residence you saw the Hunsbergers go back to?

11 A Yes, sir.

12 Q So in the yard of their place?

13 A On their own property.

14 Q Did you see anybody other than the two of them that
15 were in the front of that automobile do anything to show
16 y'all where to go?

17 A No, sir.

18 Q To your knowledge, did anyone else in that
19 automobile know anything about that place? To your
20 knowledge?

21 A No, sir.

22 Q Did you ever hear Charlene Thatcher talk about that
23 place?

24 A No, sir.

25 Q You've been friends with Antonio Griffin for how

Richard Cave - Cross-Examination by Mr. Chesser

1 long?

2 A About seven years at that time.

3 Q Did you ever hear Antonio Griffin talk about some
4 field over in South Carolina?

5 A No, sir.

6 Q Nothing further.

7 MR. MAYE: Thank you, Your Honor.

8 THE COURT: Mr. Chesser?

9 MR. CHESSER: Thank you, Your Honor.

10 **RE-CROSS-EXAMINATION**

11 By Mr. Chesser:

12 Q We've already plowed this ground so many times, Mr.
13 Cave, but the fact is, in 2006, that trial did involve Alex
14 Hunsberger, didn't it?

15 A Yes, sir.

16 Q It involved exactly what happened that night or
17 that morning of September the 3rd, didn't it?

18 A Yes, sir.

19 Q And you testified here that your testimony under
20 oath at that trial didn't mention anything about the
21 confidential conversation between Steven Barnes and either
22 Hunsberger, right?

23 A I didn't say it.

24 Q Let me clear up a couple of other things. You
25 testified that the Hunsbergers arrived -- before September

Richard Cave - Cross-Examination by Mr. Chesser

1 the 3rd of 2001, you had never seen Alex Hunsberger before,
2 had you?

3 A No, sir.

4 Q Had you seen Julio Hunsberger?

5 A No, sir.

6 Q In connection with your associations with Steven
7 Barnes, were you aware that Julio Hunsberger was also an
8 acquaintance of Steven Barnes?

9 A At that time, I did not know.

10 Q Did not know that. Isn't it true that the person
11 driving the vehicle from Georgia to South Carolina was
12 Julio Hunsberger and not Alexander Hunsberger?

13 A I didn't know who's who.

14 Q The prosecutor asked you about whether there was
15 something stopping whoever was driving that first vehicle
16 from going in another direction. Let me ask you, if Steven
17 Barnes told you that he was going to kill you, which he
18 did, if you didn't do certain things, he could hunt you
19 down. Wouldn't you expect him to hunt you down?

20 A Yes, sir.

21 Q Thank you, that's all.

22 THE COURT: All right, sir. You may step down.
23 You may call your next witness.

24 MR. MAYE: The State would call Gerald Richardson
25 to the stand.

Gerald Richardson - Direct Examination by Mr. Young

1 THE COURT: I tell you what, we've been going for a
2 while, why don't we all stand up and stretch for a moment.

3 THEREUPON,

4 GERALD RICHARDSON,
5 after being duly sworn, testified as follows:

6 THE CLERK: Have a seat. State your full name.
7 Spell your last name, please.

8 THE WITNESS: Gerald Richardson. R-i-c-h-a-r-d-
9 s-o-n.

10 THE COURT: Thank you. Please slide forward if you
11 will. I need to talk to where we can hear you.

12 MR. YOUNG: Mr. Richardson, what I want you to do
13 is take that microphone and kind of position it so you'll
14 looking right at me, and I'll do sort the same thing. That
15 way the Court can hear us. Okay.

16 THE COURT: Can I have his name first, please.

17 MR. YOUNG: Gerald Richardson.

18 THE COURT: Thank you.

19 **DIRECT EXAMINATION**

20 By Mr. Young:

21 Q Mr. Richardson, do you own property in Edgefield
22 County?

23 A Yes.

24 Q Did you -- where -- where's your property located?
25 Where's this property located?

Gerald Richardson - Direct Examination by Mr. Young

- 1 A At [REDACTED]
- 2 Q Say it again?
- 3 A [REDACTED]
- 4 Q Okay. And have you -- how long have you owned this
- 5 property?
- 6 A I think it's since 1987.
- 7 Q All right. And have you ever placed any dwellings
- 8 on that property?
- 9 A There's some mobile homes on it.
- 10 Q All right, sir. And would you be able to recognize
- 11 a photograph of that area if you had an aerial photo?
- 12 A Yes.
- 13 Q Let me show you what's been marked as State's
- 14 Exhibit 14 -- Exhibit State's 14. Look at that and tell me
- 15 what that is right there.
- 16 A That's a tract of land, [REDACTED]
- 17 Q Do you own that land that's shown in there?
- 18 A Yes.
- 19 Q All right. If you don't mind, stand up for a
- 20 second. I want to show you this, okay? Using your finger
- 21 while I hold this thing, can you trace pretty much the
- 22 outline of where the [REDACTED] is itself? Is that a --
- 23 is that a -- at [REDACTED] Extension?
- 24 A That's right.
- 25 Q What -- is that a trailer? What is that?

Gerald Richardson - Direct Examination by Mr. Young

- 1 A Yes, sir. That's a trailer.
- 2 Q All right. Hold on. Where's that rest of the
- 3 trailer -- point to the trailer?
- 4 A (Witness points out a location on State's Exhibit
- 5 No. 14.)
- 6 Q That's the trailer right there?
- 7 A Yes.
- 8 Q Okay. Where's -- outline the property with your
- 9 finger if you can.
- 10 A This one here.
- 11 Q All right. So that -- the tracing -- if I can
- 12 repeat what I saw you trace. I saw you trace your finger
- 13 along a road line connected to this trailer and then it
- 14 went down this tree line, across the field to another field
- 15 in the back, across the very back of that field and back to
- 16 the front. Sort of like a square.
- 17 A Uh-huh.
- 18 Q Pretty much a square?
- 19 A (Witness nodded head.)
- 20 Q Okay. All that's yours?
- 21 A Yes, sir.
- 22 Q Now, when you first bought this property, did you
- 23 own some more land?
- 24 A Yes. There was an additional ten acres.
- 25 Q Okay. Let me show you this State's 15 real quick.

Gerald Richardson - Direct Examination by Mr. Young

- 1 Now, is that the corner of the land that's in the
2 14, is this the other corner of that land?
- 3 A Yes.
- 4 Q Okay. Did your property line go further back when
5 you first bought it?
- 6 A Originally it went in a straight line from here
7 right on past this guy's property.
- 8 Q Uh-huh.
- 9 A All that.
- 10 Q But you sold it?
- 11 A Yes.
- 12 Q All right. You don't own it anymore?
- 13 A No.
- 14 Q Do you know Alex, Alex Hunsberger?
- 15 A Yes.
- 16 Q How do you know him?
- 17 A He's my ex-wife's son.
- 18 Q Okay. And to your knowledge, has he ever lived at
19 that [REDACTED]
- 20 A Yes.
- 21 Q When did he live there, do you recall roughly?
22 Just give us a rough estimate. Sometime in 2000, '97?
- 23 A In the late 1990's, nine to 2001. Something like
24 that.
- 25 Q Did he -- did he live in that trailer on that

Dr. Joel Sexton - Direct Examination by Mr. Maye

1 Q Dr. Sexton, could you please relate to the jury the
2 steps you went through in performing an autopsy and making
3 an identification of the human remains that were brought to
4 you.

5 A In this case, the remains consisted primarily of
6 bones. The body that had been out long enough that
7 decomposition had occurred to the state where it was
8 primarily bones. Prior to that state, animals had fed on
9 the body for some period of time and had chewed the ends
10 off of some of the bones and removed some far enough that
11 away so they were not found. So what we did is, we
12 constructed the skeleton from the bones that were present.
13 We particularly examined, which, of course, it was intact
14 and had teeth present and compared that with the dental
15 records that were sent in. It was consistent.

16 In addition to the body was a pair of blue jeans
17 that were size forty-six, which is consistent with the size
18 the deceased wore. It had a belt that had the deceased's
19 name embossed on there, and a large buckle which was the
20 type of belt he normally wore.

21 In addition, there were some keys. One of which
22 fit his residence. A key tag on that from Bi-Lo, which was
23 in his sister's name. So, there were many things that were
24 used to identify him. The skeletal remains had no distinct
25 injuries other than post-mortem injuries by animals on the

Dr. Joel Sexton - Direct Examination by Mr. Maye

1 long bones, that is the arms, legs, chest and abdomen. The
2 head however, did have a gun shot wound. It entered high
3 on the back of the head and went downward to the left and
4 actually embedded itself in the thick base of the skull
5 just inside where your left ear is normally. And the
6 bullet was there still along with a portion of brain
7 tissue. It's amazing how long brain tissue can stay, even
8 in a skeleton. And there was clotted blood and a
9 contusion.

10 When a portion of the body is injured, blood beats
11 out of that area. If you've ever been bruised, you'll have
12 a dark area where the blood had leaked out of the small
13 vessels that were ruptured. The same occurs inside a gun
14 shot wound. And so there was a contusion in the area where
15 the bullet was lodged outside of the brain tissue and in
16 the brain tissue that remained, indicating that he was
17 alive when that gunshot was fired. And it would have gone
18 through not only the back of the cranium, but the left side
19 of the cranium, the parietal lobe, and the temporal lobe.
20 And in that left side of the brain is a ventricular space
21 and that's where the fluid is generated that engulfs the
22 brain and protects it. It's like a shock absorber to
23 prevent us from being injured from a blow like you see
24 people on the football field get all the time, they get
25 sort of knocked silly, but it doesn't damage their brain

Dr. Joel Sexton - Direct Examination by Mr. Maye

1 were provided?

2 A I do. I mentioned earlier that there was a
3 contusion and blood clots still around the bullet fragments
4 that were present, indicating that he was alive at that
5 very -- I shouldn't say very -- when that fatal injury
6 occurred. So my opinion within reasonable medical
7 certainty is cause of death was the injury to the brain due
8 to the gunshot wound to the head.

9 Q Dr. Sexton, I'm going to show you State's 28 in
10 this case.

11 A All right.

12 Q I ask if you can identify State's 28.

13 A This is a copy, an accurate copy of my autopsy
14 report, the pages are out of sequence, but you see at the
15 top right that indicates which one is page two of the
16 three, three of three, and the other one is the front page.

17 MR. MAYE: At this time, I'm going to offer this
18 report into evidence, subject to any objection.

19 MR. CHESSE: No objection, Your Honor.

20 THE COURT: It's admitted without objection.

21 (WHEREUPON State's Exhibit No. 28 was entered into
22 evidence.)

23 By Mr. Maye:

24 Q Dr. Sexton, I know that you reported your case that
25 there was a gunshot to the head that would have been fatal,

Dr. Joel Sexton - Cross-Examination by Mr. Chesser

1 but I believe you previously indicated if other rounds or
2 other bullets had passed through the soft tissues of the
3 body and the person was dying or had been wounded, you
4 wouldn't be able to tell if there was an absence of any
5 soft tissue; is that correct?

6 A That is correct. There were various parts of the
7 body that a bullet could pass all the way through and not
8 strike bone, or pass into the body and cause a serious
9 injury, and with the decomposition with the animal
10 destruction after that, that could have been removed from
11 the location. So, there certainly could have been injuries
12 to the soft tissue that I wasn't able to recognize. And
13 even injuries to some bones that were not present, so I
14 would not have been able to have seen that injury.

15 Q Okay. Answer any questions the defense has for
16 you, Dr. Sexton, thank you.

17 MR. CHESSER: May it please the Court? Dr. Sexton?

18 **CROSS-EXAMINATION**

19 By Mr. Chesser:

20 Q Dr. Sexton, you testified in the course of your
21 autopsy you found a jacket and a core of a bullet; is that
22 right?

23 A Yes, that's correct.

24 Q Can you explain to me and to the jury what a jacket
25 and a core, what that means in layman's terms?

Antonio Griffin - Direct Examination by Mr. Maye

1 A Yes, sir, that's correct.

2 Q So what you're saying is simply there's no way to
3 conclude or have an opinion one way or the other, right?

4 A That is correct.

5 Q Thank you, Dr. Sexton.

6 A You're welcome.

7 THE COURT: Redirect?

8 MR. MAYE: Nothing else. Thank you. We ask that
9 Dr. Sexton be released.

10 THE COURT: You are released.

11 DR. SEXTON: Thank you.

12 MR. MAYE: The State would call Antonio Griffin to
13 the stand.

14 THEREUPON,

15 ANTONIO GRIFFIN,
16 after being duly sworn, testified as follows:

17 THE CLERK: Have a seat. State your full name and
18 spell your last name, please.

19 THE WITNESS: Antonio Griffin. G-r-i-f-f-i-n.

20 **DIRECT EXAMINATION**

21 By Mr. Maye:

22 Q Mr. Griffin, if you would tell the ladies and
23 gentlemen of the jury, where are you originally from?

24 A Augusta, Georgia.

25 Q You got family members over in Augusta? Did you

Antonio Griffin - Direct Examination by Mr. Maye

1 grow up over there?

2 A Yes, sir.

3 Q Who are your family members over in Augusta?

4 A Brother, mom, grandparents, aunts, uncles, the
5 whole family.

6 Q Who were you living with on September the 3rd of
7 2001, at that time in September? Who were you residing
8 with?

9 A My mom.

10 Q What were you doing day in and day out at that time
11 in 2001?

12 A Going to school, working, in the band.

13 Q Okay. What kind of school were you in?

14 A High school.

15 Q What was the name of that high school?

16 A Laney High School.

17 Q Okay. Let me ask you this, another individual that
18 was involved with this case, was he a friend of yours? Mr.
19 Cave?

20 A Yes, sir.

21 Q How did you know Mr. Cave and what, if any,
22 relationship with him?

23 A We went to school together, were in the same band
24 together, worked together also.

25 Q Okay. Did y'all hang out on a regular basis? Know

Antonio Griffin - Direct Examination by Mr. Maye

1 each other well?

2 A Yes, sir. Every day.

3 Q Tell the ladies and gentlemen of the jury about you
4 meeting Steven Louis Barnes, when that was, what the nature
5 of your relationship with Mr. Barnes was.

6 A Well, at the time when I met him, me and a female
7 was -- we gotten together and they had been friends. I
8 wanted to know who he was. So I got to know him. The
9 first time I met him, I talked to her. They was going out
10 to the clubs, so I asked her, Ask him could we go off
11 somewhere. So he came, got us, and all of us went out to
12 the club.

13 Q Okay. What was the attraction to Mr. Barnes? Why
14 did you like him? Why did you like being -- why did you
15 like being around him?

16 A He had nice cars.

17 Q Were there usually some girls around where he was
18 around too?

19 A Uh-huh.

20 Q All right. Did the fact that you're an eighteen
21 year old high school student, I guess the cars and the
22 girls and all were an attraction to you; is that correct?

23 A Yes, sir.

24 Q All right. Prior to the September the 3rd of 2001,
25 and the events that lead to the death of Samuel Sturup,

Antonio Griffin - Direct Examination by Mr. Maye

1 about how many times had you got together with Mr. Barnes,
2 do you know?

3 A Twice, maybe three times because I remember he took
4 us home one time from Richmond. He took me and my girl
5 back to my house, yes, sir. So it was -- at the time I
6 went during that situation, that was the third time I met
7 him.

8 Q Tell the ladies and gentlemen of the jury about
9 September the 3rd of 2001, the day that Samuel Sturrup was
10 killed. What happened that day?

11 A Well, I mean it was a Sunday and the next day we
12 didn't have school, so me and Richard wanted to go out to
13 the club again, so we called Big Man, which is Steve,
14 called him all that day, he never answered the phone, so
15 later that night he called Richard's house, said, Anybody
16 been calling. We said, Yeah, man, we're trying to go out,
17 but he said, he couldn't do nothing right then because he
18 was in the middle of something, which was the situation
19 with Samuel we found out later. So he said he couldn't
20 come pick us up, but if we get dropped off, you know what
21 I'm saying, he'll take us back home. And so Richard ask
22 his step daddy. His step-dad told him he had to work and
23 he work right down the street from the house where they was
24 at, so he dropped us off at the house.

25 Q Okay. Where did he drop you off at?

Antonio Griffin - Direct Examination by Mr. Maye

1 A The house we called green house up off of
2 Washington Road.

3 Q Just a second. I'm going to show you State's 20.
4 Is that the green house?

5 A Yes, sir.

6 Q What was happening when you arrived at the green
7 house?

8 A Well, we got dropped off on Washington Road, so we
9 had to walk down the street because it was at the dead end,
10 so when we got down there and we saw Sam and Big Man, they
11 was arguing and fighting over money, and Little Man, which
12 is Big Man's brother.

13 Q Okay. What happened next?

14 A We got down there and he was like -- we shook hands
15 then. And he was like, Yeah man, you know somebody done
16 stole my money. So I asked him who, because I'm thinking
17 he talking about me and Richard because he mad when we got
18 down there. And he was like, No, no, no, Sam. So I'm
19 like, Who is Sam.

20 Sam was sitting down in the corner of the house on
21 another little porch so he came to us and he was like, Sam,
22 come here. So he came and he said, This Sam. So I was
23 like, all right. So they got back arguing again about the
24 money. Where my money at, man. I ain't got your money.
25 So he was like, Man, bump it. He said, Y'all jump him.

Antonio Griffin - Direct Examination by Mr. Maye

1 So, I'm like -- I looked at him and I looked at Richard.

2 So I guess Sam thought we was going to jump him for real

3 and he swung on me and I swung on him and we got in a

4 fight.

5 Q Okay. What happened next?

6 A Big Man broke it up. It didn't last probably about

7 twenty seconds. So Big Man broke it up. They laughed and

8 that's when Big Man his brother was laughing. So after

9 that, he got back asking about the money again. So I guess

10 Sam was back in the front of his car and it was Little

11 Man's car, so he started chasing him around the car.

12 Saying, no need to run, when I get you, you'll be dead, you

13 won't feel it, this and that. So after a while, he left

14 him alone, he couldn't catch him. So Sam was sitting back

15 -- sat on the side of the house where he was at.

16 Q Tell me everybody that was there at the green house

17 that you can remember. You already said that you and Mr.

18 Cave got there. Mr. Barnes, Big Man was there. Sturru

19 was there; is that correct?

20 A Yes, sir.

21 Q Everybody else that was there?

22 A Little Man. We found out later that Charlene was

23 there.

24 Q Okay. What else happened? What was the next thing

25 that happened?

Antonio Griffin - Direct Examination by Mr. Maye

1 A They got back to arguing. And I don't remember --
2 Somehow Charlene name came up, that she might have the
3 money. And they called Charlene out the house, they asked
4 if Big Man, Little Man asked her about the money. So she
5 saying, she ain't got the money, so one of them got the
6 broom, I believe it was Big Man, and started beating her
7 with a broom. She tried to run and fell back on the screen
8 on the house. So they told her to come back out the house
9 and bring her pocketbook. So she brought her pocketbook
10 back out. I believe she dumped it out on the porch. There
11 wasn't nothing in it. So she was like, I told you I ain't
12 have no money, I told you I ain't have no money. So he was
13 like, so Sam lying. And she was like, Yeah, he lying, I
14 ain't got your money.

15 So he gave her the broom and told him -- told her
16 to beat him with the broom. So she be like, what if she
17 don't want to. And he was like, You're going to beat him
18 or I'm going to beat your ass again. So she walked up to
19 him and started tapping him with the broom, crying. She
20 like, like that? And he laughing the whole time, so he's
21 like, Yeah, tap a little bit harder, tap a little bit
22 harder. So she started tapping him again and he laughed
23 and stuff. And he was like, You're going back to the
24 house. And he got the broom her and she went back in the
25 house.

Antonio Griffin - Direct Examination by Mr. Maye

1 Q What happened next?

2 A He asked again about the money. I remember Little
3 Man had came up this time, and, Maybe your brother got it,
4 because I ain't got your money. So Little Man, he pulled
5 out a stack of money, talking about, Man, I got money, I
6 ain't got to steal from my brother. And he was high. And
7 he pulled out a gun then and told Sam to open his mouth,
8 this and that. Big Man stopped him. Was like, man it
9 ain't that serious, it ain't that serious. He stopped
10 doing that.

11 So after that, I remember he came to me and Richard
12 and asked, Man what y'all doing? We was like, we don't
13 know what's going on, we don't know nothing about this.
14 So, I knew Little Man went and got his phone and he left
15 and said, I'll be back, I'm going out. And he left. He
16 never came back that night.

17 Q Okay. Let me ask you this, what did Sam end up
18 telling him towards the end of it in regard to where the
19 money was, whether or not he had it? How did that progress
20 between them?

21 A After they kept going back and forth about one
22 hour, Sam said that he did have it. And he said, So you
23 got the money? He's like, yeah. He said, where it's at?
24 He said, It's at home. So he was like, What, you gave it
25 to your mama or your sister or something? He's like, No, I

Antonio Griffin - Direct Examination by Mr. Maye

1 got it hid. He was like, how I know your folks ain't got
2 it. He said, man, I got it hid good behind the toilet. So
3 he was like, So you mean to tell me, if you go up to your
4 house, I'm going to get my money. So he was like yeah,
5 yeah. So he was like, all right. And he walked off. He's
6 like, and if I pull up there and find that you're lying
7 that you're trying to steal for good, I'm going to kill
8 everybody in the house. We go -- and then he said somebody
9 was going to go -- it was sometime after twelve. He was
10 like -- something about his mama -- something about
11 somebody at work. So he go then or some junk like that.

12 So he went back to smoking a cigarette. He was
13 like, all right. So he came and asked us, Man what y'all
14 think, what y'all think. We like man, we don't know man.

15 So after he smoked his cigarette, he asked again.
16 So when he asked him now, Sam was just looking at him. He
17 was like, Man you got my money, it's at the house. So Sam
18 was like, No man, I ain't got your money, man. He's like,
19 why you lying to me. He said, I just want you to stop
20 hitting me. So he pulled out a gun and hit him again. Hit
21 him again. Pulled out a gun and said, man I'm through
22 talking, it's over with. So he was like, we fixing to go
23 for a walk. And he called Charlene out the house.

24 Then all of us walked around the corner on the side
25 of the house at the railroad tracks. We had walked through

Antonio Griffin - Direct Examination by Mr. Maye

1 some woods to get there. So we got on the railroad tracks.
2 He made Sam walk in front of us, so we walking down the
3 tracks -- about six or seven minutes. He made us stop. He
4 tried to give Charlene the gun to shoot Sam. And she
5 started crying, she's like, I ain't trying to shoot nobody,
6 I don't want that on my head, I got a kid. So I remember
7 him saying, if you don't shoot him, I'm letting him shoot
8 you because one of y'all got my money.

9 So actually Sam was reaching for the gun like he
10 was going to give him the gun and Big Man was like, like he
11 was going to give him the gun. So she started crying. So
12 she ran up and grabbed him and pleading with him and
13 pleading with him. So he started laughing about the
14 situation.

15 So he looked at us, like did y'all want to shoot
16 him. I was like, No man. So he mad again. So he hit Sam.
17 He was like, Man, take me home. I ain't got no money, so
18 take me home. So he was like, All right.

19 All of us walked back to the house and I mean, he
20 told us to go sit on the porch. He walked up the porch
21 towards going towards Washington Road on his cell phone.
22 So sometime he walked back down the street. Another car
23 pulled in the yard.

24 Q Let me ask you this. Did he make any telephone
25 calls prior to that call -- that car coming and showing up

Antonio Griffin - Direct Examination by Mr. Maye

1 like it did?

2 A When he walked up the street, he was on his cell
3 phone then.

4 Q Okay. Could you hear what he was talking or who he
5 was talking to?

6 A No. When we came back to the house, he told us to
7 go back and sit on the porch and I'll go back in the yard.

8 Q Shortly after the time that he made that phone
9 call, though, who arrived?

10 A The two brothers, Julio and Alex.

11 Q Hunsberger; is that correct?

12 A Yes, sir.

13 Q All right. What happened once the Hunsbergers got
14 there?

15 A I remember they pulled in the yard and they got
16 out -- Big Man was actually still in the street; he wasn't
17 in the yard. So they got back -- they in the street, they
18 talked for a minute and he called me and Richard and told
19 me, he's like, Look man, I'm fixing to go and take him
20 home. Since he want to go home, I'm going to take him. He
21 said, Man, y'all want to ride with, I can to drop y'all
22 off. So I'm actually -- I'm thinking it's over with. So
23 I'm like, Man, we cool, man, we'll ride with you. So I'm
24 thinking, he's fixing to drop him off and we'll go to the
25 club or something, you know what I'm saying, for the rest

Antonio Griffin - Direct Examination by Mr. Maye

1 of the night.

2 So he was like, y'all go get in my car. So his car
3 was actually in front of the yard on the street. So we
4 went and got in his car. And he came shortly after that
5 and got in the car and I mean, we followed along they car
6 to Carolina.

7 Q Whose car?

8 A Julio and Alex.

9 Q Now, let me ask you this. Is Alex Hunsberger the
10 individual that you've identified as coming up there in
11 that car, is he present here in the courtroom?

12 A Yes, sir.

13 Q Could you identify where he is?

14 A The guy with the suit on with the glasses next to
15 the lawyer on that side of the room.

16 MR. MAYE: Your Honor, I'm just going to ask that
17 the record reflect that he's identified the defendant in
18 this case, Mr. Alex Hunsberger?

19 THE COURT: It does.

20 By Mr. Maye:

21 Q All right. When y'all leave the green house, okay,
22 could you tell who's in the car in front of you?

23 A Julio and Alex.

24 Q Did you know where Sam was? Did you see where he
25 was?

Antonio Griffin - Direct Examination by Mr. Maye

1 A No, sir.

2 Q Okay. As y'all left the green house, who was
3 following who? How'd y'all decide where to go?

4 A Well, Big Man just followed them. They backed out
5 the yard, he got behind them and followed them.

6 Q When they made turns, did he turn?

7 A Yes, sir.

8 Q Did you see Mr. Barnes doing anything to dictate
9 where the car in front went?

10 A No, sir.

11 Q Okay. So to the best that you can tell the ladies
12 and gentlemen of the jury, once y'all left the green house
13 over there with the Hunsbergers in front, where'd you go?

14 A I remember we went over the 15th Street Bridge.
15 And I remember going up 25 and I remember turning off,
16 making a right on a street and I remember us getting on a
17 dirt road. And I remember him turning off the dirt road,
18 following them on some grass. That's when he turned the
19 radio off. So I'm looking around like, ain't no more
20 houses here so I ain't never been to Sam house, I don't
21 know him. So I'm like, okay. So we going across the field
22 and I'm like there ain't no more houses, this is trees. So
23 he stopped, they stopped, got out the car, talked to him
24 for about five seconds, got back in the car. I mean, he
25 turned his head like somebody turned their head like he

Antonio Griffin - Direct Examination by Mr. Maye

1 saw. And he reached back and he told Charlene to put her
2 head in Richard's lap because I was in the front seat and
3 she wouldn't do it. She -- everybody was looking around,
4 you know what I'm saying. So he was like, Bitch I told you
5 to put your head in his lap. So she went down, jumped in
6 his lap. We go through some trees and came through another
7 field. That's when we stopped.

8 Q Did y'all get out of the car then?

9 A Yeah. Big Man pulled out a gun, told everybody to
10 get out of the car, and then they got out of the car, the
11 driver of their car had a gun. And I remember they popped
12 the trunk and Sam was in the trunk, so I'm thinking he's
13 dead because he ain't moving. And they telling him, Get
14 up, get up, get up.

15 Q Who's doing this?

16 A Big Man.

17 Q Okay.

18 A So he ain't move, so I'm like, man he's playing
19 dead. So he still ain't move and then he was asleep. He
20 woke up, he looked, he's like, man come on get out the car.
21 So he got out the car. So Sam and Big Man sitting there
22 staring at each other. He's like, Man walk in front, go
23 ahead, walk. So he's like, man -- he's like, Man, if you
24 don't walk I'm going to shoot you right here.

25 Q Let me ask you this. You said one of them in the

Antonio Griffin - Direct Examination by Mr. Maye

1 other car, one of the Hunsbergers had a gun?

2 A Yes, sir.

3 Q Okay. Let me show you a photograph here. Let me
4 show you what's State's 4. Take a look at this diagram
5 right here. This field here and this one in here. Is this
6 consistent with the area that y'all went to where you
7 eventually stopped?

8 A There's 25 here --

9 Q Yes, it -- yeah, here.

10 A Yes, sir. This is the wooded area. There was one
11 wooded are, passed some trees and came to another wooded
12 area.

13 Q Is this basically indicative of the wooded area
14 here? The field where y'all ended up?

15 A Yes, sir.

16 Q Okay. Continue on. Tell the ladies and gentlemen
17 of the jury what happened after y'all get out and y'all are
18 marching on. Where do y'all go first?

19 A We walk across a field, came to a gate. All of us
20 went over the gate, went through the woods.

21 Q Let me show you State's 6; is that the gate y'all
22 went over?

23 A Yes, sir.

24 Q What happened next?

25 A Went through the woods and we got to this open

Antonio Griffin - Direct Examination by Mr. Maye

1 space -- open area inside the woods. Big Man said to Sam,
2 Walk off in front of us some more, like ten feet or
3 whatever. He sat there so Big Man was like, Look this is
4 what's going to happen, everybody fixing to shoot, I'm
5 going to make Charlene shoot first because she's scared,
6 then we'll follow up. So she started crying again and was
7 like, I told you, I ain't going to shoot nobody, and this
8 and that.

9 He's like, Bitch if you don't shoot him, I'm going
10 to kill you. He looked at me and Richard, And both of
11 y'all too, you know what I'm saying. So Sam --- he say
12 he's like, Man before you do this, man I just want to make
13 sure I ain't got no money. So, Big Man did say nothing to
14 him. So he gave Charlene the gun. She crying, she sitting
15 there shaking. About sixty seconds, she said she didn't
16 know how to do. So he got behind her and aimed for her and
17 was like, all you got to do is pull the trigger. He backed
18 up behind everybody. So she sat there again for a long
19 time, a while, just sitting there crying and she shot him.

20 Q All right. What'd Sam do once she shot the first
21 time?

22 A He grabbed hisself and then one of the brothers
23 snatched the gun from her. He shot -- he shot Sam from the
24 ground.

25 Q One of the brothers, you talking about the

Antonio Griffin - Direct Examination by Mr. Maye

1 Hunsbergers?

2 A Yes, sir.

3 Q Okay. So he grabbed the gun and shot?

4 A Yes, sir.

5 Q Okay.

6 A Charlene ran back to Big Man. So after he shot, he
7 shoved the gun at me. So I walked up in front of everybody
8 with Sam on the ground and I shot at the ground and ---
9 Richard got the gun, but the other brother had his own gun
10 so Big Man was like, Oh no, just go back to the car, y'all
11 go back to the car. So he stayed in the woods. While we
12 run across the field, I heard another shot. When I got to
13 the car -- me and Charlene were across the field.

14 Q What happened next?

15 A We got to the car, I remember when we get in the
16 car I had asked him, I was like, Man, that guy's still
17 alive, how you know that he ain't able to get up and go try
18 to get some help? He's like, He ain't going no where. I
19 said, Man, how you know, man, you left him out in the
20 woods. He's like, I shot him in the head, he ain't going
21 nowhere.

22 So I know we went to a trailer and he made all of
23 us sit there in the bedroom, me and Richard and Charlene.
24 He and the brothers went to the back.

25 Q You went to a trailer?

Antonio Griffin - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay. Was it any of y'all's place or indicate --
3 who went first?

4 A The Hunsbergers did, they went in first.

5 Q They went in first. Okay. What else happened?

6 A We sitting there for a while. I remember by this
7 time I'm watching TV, MASH was on, so it had to be maybe
8 twelve or one o'clock or whatever. So I remember after a
9 while Big Man came in asking for a cigarette, but I don't
10 smoke, I got cousins and step brothers that smoke. He
11 said, It calm your nerves. So I tried smoking a cigarette
12 and he's sitting there looking at everybody like, I'm a
13 little juiced up. He's like, So when I get to go down
14 there again, y'all think y'all do it again? So I looked at
15 him and he started laughing. So he went back to the back
16 and stayed there for a while again. So after --

17 Q He went back to the back?

18 A He went into the back.

19 Q Who went with him?

20 A No, they was already back there.

21 Q So he went back with the Hunsbergers again?

22 A Yes, sir.

23 Q Okay.

24 A He came back and got -- he had a bag, we got in the
25 car, going back towards Augusta. He was sitting on the

Antonio Griffin - Direct Examination by Mr. Maye

1 passenger's side this time. Richard was driving. He made
2 Richard drive. Me and Charlene was in the back. We got to
3 the bridge. He moved back into the back seat and he be
4 like, throw this over water -- throw this over the bridge.
5 So when we stopped, I jumped right out, and there were some
6 cars coming so I was like, come on now. I let the cars go
7 by, I stepped right out, threw it over the bridge, and got
8 back in the car. Then we went back to the green house.

9 Q Okay. What happened when y'all got back to the
10 green house?

11 A He didn't take us home, we stayed until the next
12 day. I fell asleep in the car. I remember, he came to
13 woke me up and was like, Man you go in the house and lay
14 down. So I went in there. Richard was already in there
15 asleep. So I -- when I woke up in the morning, another guy
16 was there. I ain't never seen him before. He was like,
17 Big Man said he going to come get y'all later. So we sat
18 there about an hour, an hour and a half. He finally came
19 and got us.

20 After he came and got us, he still didn't take us
21 home. He took us on Bobby Jones hotel. Charlene was in
22 the hotel. So he was like, y'all just sit here I'm going
23 to be right back. So he was there for a couple of hours, a
24 long time. He kept calling, I think he called twice like
25 to check up on us, see if we was still there.

Antonio Griffin - Direct Examination by Mr. Maye

1 So he came and got us later on that day and took us
2 home. He dropped me off first. And he had some more bags,
3 he had some clothes in it. He was like, look man I want
4 y'all to burn these. He said, I want y'all to burn y'all
5 clothes too. He was like, Look I don't want y'all to say
6 nothing, you know what I'm saying, because the same thing
7 can happen to y'all, these folk don't know anything happen,
8 so it will fall on me and my brother, I'm asking y'all to
9 keep your mouth closed now.

10 I said, You ain't got to worry about me saying
11 nothing. So he went and dropped Richard off, I think that
12 day or the next day I went had got Richard clothes. He
13 came back around my house -- my mama's house and burnt a
14 barrel of their clothes.

15 Q Let me show you State's 34; is that the burn barrel
16 in the yard that you used?

17 A Yes, sir.

18 Q To burn up all the clothes?

19 A (Witness nodded head.)

20 Q How long was it before you eventually talked to law
21 enforcement? You eventually got arrested and talked to law
22 enforcement; is that correct?

23 A Yes, sir.

24 Q About how long was that?

25 A January 23rd, 24th I got locked up.

Antonio Griffin - Direct Examination by Mr. Maye

1 Q When did you first hear about Sam Stirrup's death?
2 When did that make it to you? What were the circumstances?

3 A I remember I was at school and I guess a
4 classroom -- well it's actually a history classroom. He
5 had to hand out newspapers to everybody sometimes and make
6 us read it and explain what you done read, the details.
7 And this next little girl was sitting beside me and I
8 remember she was reading about -- about they found a body
9 and I asked her, I said, let me see that when she was
10 through with it. So I read it. So I remember, I asked the
11 teacher, can I go to the bathroom. I went to the bathroom
12 just sat there -- sat in there about fifteen minutes just
13 looking in the mirror, scared. I was like, Man.

14 So I remember I got home, Big Man called me. He
15 was like, You heard. I said, Man, I already know. He was
16 like, Like I said, y'all need to be quiet, everything --
17 everything cool. If you say anything, you know, this can
18 happen to y'all too. Y'all just stay -- keep your mouth
19 closed. I said, man you ain't got to worry about us saying
20 nothing, man.

21 Q Prior to getting arrested, did you ever tell
22 anybody what y'all had done?

23 A No, sir.

24 Q Would you have ever said a word if you hadn't?

25 A Not to this day.

Antonio Griffin - Cross-Examination by Mr. Chesser

1 Q Well, let me ask you this: Were the events that
2 took place over at the green house in Augusta, did you
3 plead guilty to assault over there, got an eighteen year
4 sentence, didn't you?

5 A Yes, sir.

6 Q As to any potential charges for the events that
7 occurred related to the murder of Samuel Sturup here in
8 South Carolina, has anybody promised you anything as to
9 what would happen to any potential charges that you thinks
10 related to your involvement?

11 A No, sir.

12 Q Okay. Anybody promised you anything?

13 A No, sir.

14 Q Please answer any questions the defense asks of
15 you.

16 A Yes, sir.

CROSS-EXAMINATION

17
18 By Mr. Chesser:

19 Q Mr. Griffin, do you recall being interviewed by law
20 enforcement over in Augusta on January 23rd of 2002?

21 A Yes, sir.

22 Q That's a long time ago, right?

23 A Yes, sir.

24 Q Do you remember exactly what you said in that
25 interview?

Antonio Griffin - Cross-Examination by Mr. Chesser

1 A No, sir.

2 Q Do you recall telling Investigator, Mr. Roundtree,
3 that when that car with -- you testified, the Hunsbergers
4 were in -- pulled up to the green house that you only saw
5 one person get out of the car?

6 A I don't remember -- I might have said that, I could
7 have said that.

8 Q Okay. Let me show you something and ask you if it
9 refreshes your recollection.

10 (WHEREUPON the witness was looking at a document.)

11 By Mr. Chesser:

12 Q Mr. Griffin, does that refresh your recollection?

13 A Yes, sir.

14 Q So you sat down with Mr. Roundtree for an interview
15 on January the 23rd of 2002 at about ten in the morning,
16 right?

17 A Yes, sir.

18 Q And you told him then, Mr. Roundtree, you said,
19 when they pulled up at the house I just seen one dude get
20 out of the car. You said that, didn't you?

21 A I could have said that.

22 Q And you also said, again, and I just seen one dude;
23 isn't that what you said?

24 A I could have said that.

25 Q Okay. Now, you had occasion to testify in Augusta,

Antonio Griffin - Cross-Examination by Mr. Chesser

1 under oath, in a trial in connection with Alex Hunsberger
2 in 2006; did you not?

3 A Yes, sir.

4 Q Okay. And in that trial, you were under oath,
5 right?

6 A Yes, sir.

7 Q Okay. And at that trial, you testified under oath
8 that only one of them got out of the car; isn't that right?

9 A I don't remember saying that, again, I said it
10 twice. I said that two people got out of the car. When I
11 first got arrested, they got me from high school, they came
12 to school to lock me up. Brought me down to the
13 investigator, I told the man, no nobody at first. So then
14 he was like, I'm going to tell the judge to give you life.
15 So he left out the room. Came back fifteen minutes later.
16 I was like, Man, all right, I'm ready to talk. So then I
17 told him -- actually I was trying to keep my mouth closed
18 because sometimes he was just fixing to talk to me and let
19 me go back to school. I never been locked up before, don't
20 know nothing about the law, nothing.

21 So actually, I was really trying to keep my mouth
22 closed. He asked me a question, I answered with a simple
23 yes or no. I ain't went into no details and no
24 explanations. So actually, I was still trying to keep my
25 mouth closed because these folks know where my mama stay

Antonio Griffin - Cross-Examination by Mr. Chesser

1 at. They know where my grandmamma stay at and they know
2 where my cousins stay at. They know where my girl stay at.
3 So that's the explanation for that.

4 Yeah, I said it, but it was -- I was trying to keep
5 my mouth closed also.

6 Q Well, let me try to understand what you're saying.
7 Are you admitting that you told Investigator Richard
8 Roundtree in January of 2002 that only person got out of
9 that vehicle to --

10 A I said that, like I said, I was still trying to
11 keep my mouth closed.

12 Q Okay. Well I'm moving on now. I want you to
13 follow me, please.

14 A Okay.

15 Q To 2006 at a trial in Augusta where you testified
16 under oath, right? You recall that?

17 A Yes, sir.

18 Q Okay. I'm going to show you something and ask you
19 if it refreshes your recollection?

20 (WHEREUPON the witness was looking at a document.)

21 THE WITNESS: Well, if you look at this, it says,
22 So when they came, one of them, them was plural so it had
23 to be two.

24 By Mr. Chesser:

25 Q You said one --

Antonio Griffin - Cross-Examination by Mr. Chesser

1 A No. When one of them got out the car. When one of
2 them got out the car.

3 Q One of them --

4 A It say, one of them got out the car. I don't know
5 which one because there was more than one of them.

6 Q Well, I'm not trying to confuse you, Mr. Griffin.
7 You're saying two people arrived in a car, right?

8 A Two people arrived in a car.

9 Q What I'm asking you though, is didn't you testify
10 under oath in 2006 that only one of them got out of the
11 car?

12 A I could have said that.

13 Q Okay. Well --

14 A But you're missing the fact -- you're missing the
15 fact that there was two of them -- actually I thought they
16 was white guys when I first seen them. That was my first
17 time seeing them and my last time seeing them. I ain't
18 never saw them again. I didn't know they was Hispanic
19 until we got locked up. I didn't know they names. I
20 didn't know nothing. I didn't know his brother's name, I
21 didn't know Charlene's name. All I knew is Charlene. So
22 it's a lot I didn't know.

23 Q Well, Mr. Griffin, I'm really just trying to
24 establish one point.

25 A Okay.

Antonio Griffin - Cross-Examination by Mr. Chessser

1 Q And if you don't recall your testimony, then I'm
2 going to ask you simply to read this paragraph of this
3 transcript --

4 A Well, actually during that testimony --

5 Q -- of that trial?

6 A -- if you got the tapes of that testimony, he tried
7 to catch me up with a lie, but they played my tape. My
8 tape ain't said nothing. They just allowed me to -- they
9 played my tape, my tape ain't say nothing that's on there
10 right now.

11 Q Mr. Griffin, again, I'm not trying to confuse you.
12 You seem to be talking about an interview that took place
13 in 2002. I'm beyond that. I'm talking about your
14 testimony at trial in 2006, okay?

15 A Okay.

16 Q All right. I've got a transcript, the prosecution
17 has a transcript. And I'm going to ask you to read this
18 paragraph where you talk about the car ride, okay?

19 MR. CHESSER: This is marked as page 320 from the
20 transcript. It's also 2048 of the sort of discovery so...

21 By Mr. Chesser:

22 Q Mr. Griffin, I'll ask you to read this part marked,
23 A, for answer beginning at line 9 and ending through line
24 18. And if -- yeah, please read that.

25 A So they came, they, one of them got -- I don't know

Antonio Griffin - Cross-Examination by Mr. Chesser

1 which one got out the car. They met Big Man in the street
2 and they talked about ten quick seconds. That's when Big
3 Man called me over to him. He said, I'm fixing to take him
4 home. He said, you want to go home. He said, See I'm
5 fixing to take him home since he want to go home so bad,
6 y'all want to go home. And then we was like, No, man, we
7 straight. Like I said, I thought it was over with, now
8 that I'm seeing so he called Charlene out the house and
9 said, y'all go get in my car. And we went and got in the
10 car.

11 Q Thank you. Mr. Griffin, you testified that you and
12 Richard Cave went to the green house on -- during the day,
13 I think it would be September the 2nd on 2001, right?

14 A Yes, sir.

15 Q What time about was it that you arrived at the
16 green house?

17 A I remember it was nighttime. It had to be -- it
18 had to be around -- might've been nine or after that
19 because, like I said, Richard's dad drop us off. Richard's
20 dad was on his way to work; which is like right down the
21 street from the green house. So it had to be around nine.
22 Whatever time, it was dark, I know that.

23 Q Had you ever been to the green house before?

24 A No, that was my first time going there.

25 Q Okay. But you testified that you had a girlfriend

Antonio Griffin - Cross-Examination by Mr. Chesser

1 and she was an acquaintance of Steven Barnes?

2 A Yes, sir.

3 Q Okay. What was her name?

4 A Aretha Scott.

5 Q Okay. Was she also friends with Charlene Thatcher?

6 A Not that I know of. I ain't never seen them talk
7 or nothing like that.

8 Q You testified that you were -- like associating
9 with Steven Barnes because he had cars and women, right?

10 A Yes, sir.

11 Q And you were aware that those women were
12 prostitutes, right?

13 A No, sir.

14 Q You were aware that Charlene Thatcher was a
15 prostitute, right?

16 A I only know that she was his girl and that Steve
17 was always with her. She was like -- I never seen other
18 girls with him. If I see him sometimes I see her. I'd
19 only met her a couple times also, so...

20 Q Now, this green house, you and Richard Cave got
21 dropped off there and there's no electricity at that house,
22 is there?

23 A I don't know.

24 Q Were there any lights on?

25 A Actually the light -- the street light was out, so

Antonio Griffin - Cross-Examination by Mr. Chesser

1 it was dark and I mean I don't remember looking at all in
2 the house to see who went where, what lights on, it wasn't
3 on my mind that day, so I don't remember if lights was on.

4 Q Okay. You were outside the house?

5 A Yes, sir.

6 Q Okay. And Steven Barnes and Samuel Sturup were
7 arguing about this money?

8 A Yes, sir.

9 Q Now, Barnes at some point asked you to fight Samuel
10 Sturup, right?

11 A Me and Richard.

12 Q Asked both of you?

13 A Yes, sir.

14 Q And at that point, Sturup struck you; is that
15 right?

16 A Yes, sir.

17 Q At that point, y'all started fighting?

18 A Yes, sir.

19 Q Now, when did you first see anybody with a gun at
20 the green house?

21 A Little Man pulled out a gun.

22 Q Okay. And that's William Harris, right?

23 A Yes, sir.

24 Q And that's Steven Barnes' brother or half-brother,
25 right?

Antonio Griffin - Cross-Examination by Mr. Chesser

1 A All I know is they brothers. I don't know if it's
2 half or none of that.

3 Q Okay. He pulled out a gun and put it in Sam
4 Stirrup's mouth, right?

5 A Yes, sir.

6 Q Now, why didn't you leave at that time?

7 A I could not leave.

8 Q You could not leave?

9 A No.

10 Q Okay.

11 A I ain't got no car. I'm way over on Wrightsboro.
12 I stay way towards Bobby Jones. He said he would drive us
13 back up, so ain't no way I could leave.

14 Q Who told -- who told you that they were going to --

15 A Big Man said that he was going to drop us off.
16 When he was on the phone said, Y'all get dropped off up
17 here, I'm going to drop you off.

18 Q Are you saying that Little Man pulls out a gun,
19 puts it in the mouth of this sixteen year old and it's
20 inconvenient for you to leave? You find it inconvenient to
21 walk away?

22 A And go where?

23 Q What?

24 A And go where? I mean, if I walk off, I mean, I.
25 Okay. How can I walk off? I don't know what's going on

Antonio Griffin - Cross-Examination by Mr. Chesser

1 first of all. They're fighting hard over money. I had
2 seen him pull out a gun and put it in this man's mouth, so
3 if I walk off, I don't know if they think, okay what they
4 leaving for, they fixing to go tell, they fixing to go call
5 the police. I mean...

6 Q So the point is that you were scared at that point,
7 right?

8 A You can say that. I was scared.

9 Q When did you first see Steven Barnes with a gun?

10 A After the fact that Sam said he did have it and he
11 said again that he didn't have it. And he was like, You
12 through talking, and he pulled out a gun then.

13 Q Okay. And at that point, was Little Man, William
14 Harris, was he still there?

15 A No, he been left.

16 Q Okay. So Barnes pulls out a gun and let me get the
17 sort of time line straight. You testified that at some
18 point, Barnes accused Charlene Thatcher of having stolen
19 the money, right?

20 A Sam accused her.

21 Q Sam said that Charlene stole it?

22 A That she might have stole it.

23 Q And at that point, Barnes beat her with a broom
24 stick; is that right?

25 A Yes, sir.

Antonio Griffin - Cross-Examination by Mr. Chesser

1 Q Okay. Did that take place inside or outside the
2 house?

3 A Outside.

4 Q Okay.

5 A He called her outside and she was standing on the
6 porch.

7 Q So after Samuel Sturrupe first said he had the money
8 and then Barnes told him that he was lying, he would kill
9 everybody at his house, right?

10 A Yeah.

11 Q Okay. And then Sturrupe said that he really didn't
12 have the money, right?

13 A He said he just wanted him to stop hitting him,
14 that's why he told him that.

15 Q And at that point, you, Richard Cave, Charlene
16 Thatcher and Samuel Sturrupe and Steven Barnes went to the
17 railroad tracks near that green house, right?

18 A Yes, sir.

19 Q Okay. And Barnes played -- at first he said he was
20 going to shoot Samuel Sturrupe, right?

21 A He asked Charlene to shoot him.

22 Q Okay. And then he said he was going to let Sturrupe
23 shoot Charlene, right?

24 A (Witness nodded head.)

25 Q So Samuel Barnes was threatening people, right?

Antonio Griffin - Cross-Examination by Mr. Chesser

- 1 A Samuel Barnes?
- 2 Q Steven Barnes, sorry. Steven Barnes was
- 3 threatening people, right?
- 4 A Yes, sir.
- 5 Q He was manipulating people, right?
- 6 A Yes, sir.
- 7 Q And then you came back from the railroad tracks and
- 8 you testified that he made a call and the Hunsbergers
- 9 showed up, right?
- 10 A Yes, sir.
- 11 Q Now, before you left he told the people present
- 12 that he was going to take Sam home, right?
- 13 A Yes, sir.
- 14 Q And you believed him, right?
- 15 A Uh-huh.
- 16 Q So you weren't part of a plan to take Sam and kill
- 17 him, right?
- 18 A No, sir.
- 19 Q Because you thought you were taking him home?
- 20 A Yes, sir.
- 21 Q Okay. Now, you testified that you saw one of the
- 22 Hunsbergers with a gun, right?
- 23 A Yes, sir.
- 24 Q The other Hunsberger is named Julio Hunsberger,
- 25 right?

Antonio Griffin - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q Isn't it true that Julio Hunsberger was the one
3 with the gun?

4 A I don't know which one had the gun.

5 Q Isn't it true that Julio Hunsberger was the only
6 person to get out of that vehicle when it arrived at the
7 green house?

8 A No, sir.

9 Q Now, you walked to this field and everyone went a
10 certain distance into the field and then Barnes said to
11 stop, right?

12 A Yes, sir.

13 Q And it was dark and late at night?

14 A Yes, sir.

15 Q Okay. Barnes told everybody present that they
16 would either shoot or they would die, right?

17 A Yes, sir.

18 Q Did you believe him?

19 A Oh, yeah.

20 Q Then you stated that you fired into the ground?

21 A Yes, sir.

22 Q Now, let me ask you this, Mr. Griffin. Based on
23 what you did, were you guilty of murder?

24 A No, sir.

25 Q Now, you're testifying here today, testifying with

Antonio Griffin - Cross-Examination by Mr. Chesser

1 no promise from the State, right?

2 A No, sir.

3 Q You testified also in the death penalty case
4 against Steven Barnes, didn't you?

5 A Yes, sir.

6 Q Okay. Now, despite a promise, your hope is that
7 you won't be prosecuted for what took place in South
8 Carolina, right?

9 A I don't know what's going on. I'm just here to
10 testify what happened that night to get this behind me.
11 It's been going on too long -- ten years of my life. I'm
12 just cooperating, that's all. I don't know what's going to
13 happen after this.

14 Q Let me ask you a couple more questions about what
15 happened at the scene in the field. At some point, you
16 asked Barnes whether Steven (sic) Sturupp might tell
17 somebody or somebody might find out what happened, right?

18 A I was surprised he would leave him like that.

19 Q Okay. And what was his response to you?

20 A He said he shot him in the head and he ain't going
21 to get up. Because I remember when we left the woods, he
22 was still alive.

23 Q And who was the last person to leave that scene?

24 A Barnes and Charlene.

25 Q Okay. And did you hear Barnes fire a shot?

Antonio Griffin - Cross-Examination by Mr. Chesser

1 A I heard a shot, I don't know who shot it.

2 Q Okay.

3 A We got in the car and he said he shot it, so...

4 Q Okay. And he subsequently told you that he had
5 shot him in the head?

6 A Yes, sir.

7 Q When you arrived at the field, isn't it true that
8 Barnes asked everyone, Are you down for this?

9 A I don't -- I don't remember him saying that.

10 Q All right. That's all the questions I have. Thank
11 you.

12 THE COURT: Anything further?

13 MR. MAYE: No. Thank you, Your Honor.

14 THE COURT: All right. You may step down.

15 Next witness.

16 MR. YOUNG: Your Honor, the State requests just a
17 brief recess for the purpose of comfort.

18 THE COURT: Ladies and gentlemen, we'll take a
19 break. You can go to the jury room. Please do not discuss
20 the case.

21 (WHEREUPON the jury left the courtroom at 11:04
22 a.m.)

23 THE COURT: All right. We'll take a break.

24 MR. YOUNG: Thank you, Your Honor.

25 (WHEREUPON a recess was observed.)

Stephen Curtis - Cross-Examination by Mr. Chesser

1 you're not in any position to testify about whether it hit
2 the individual or hit the ground, are you?

3 A All I can say is that they were -- they were
4 recovered about six inches in the ground and that they were
5 in that darkened area. The sequence that they got in the
6 ground, I could not say. I did not examine them. I did
7 not attempt to see if there was any biological material on
8 them. The firearms examiner, if they would have noted that
9 kind of thing, then they would have made that decision to
10 do that, but I don't know that that would have been the
11 case.

12 Q Thank you, Mr. Curtis?

13 THE COURT: Anything further?

14 MR. YOUNG: The State has no further questions and
15 we ask that the witness to be excused, Your Honor.

16 THE COURT: Certainly. Thank you, sir.

17 Next witness.

18 MR. MAYE: The State calls Charlene Thatcher.

19 THEREUPON,

20 CHARLENE THATCHER,

21 after being duly sworn, testified as follows:

22 THE CLERK: Have a seat. State your full name and
23 spell your last name, please.

24 THE WITNESS: Charlene Thatcher, T-h-a-t-c-h-e-r.

25 ///

Charlene Thatcher - Direct Examination by Mr. Maye

DIRECT EXAMINATION

1
2 By Mr. Maye:

3 Q Ms. Thatcher, if you would just tell the ladies and
4 gentlemen of the jury, where are you originally from?
5 You're not an Augusta native. Where are you originally
6 from?

7 A Massachusetts.

8 Q When did you first come from Massachusetts to
9 Augusta, Georgia?

10 A August 1st, 2001.

11 Q Okay. What brought you down to Augusta, Georgia
12 from Massachusetts?

13 A A female.

14 Q Okay. Who did you know?

15 A Nobody but that female.

16 Q Okay. Did you become acquainted with a man named
17 Steven Louis Barnes after you came down here?

18 A Yes, sir.

19 Q Okay. I want to talk to you about Labor Day
20 weekend of 2001 out at the green house. Tell the ladies
21 and gentlemen of the jury what happened out there that day
22 at the green house over there in Augusta?

23 A I was taken over there by Steven Barnes in his car.

24 Q Okay.

25 A Because he said we were going on a mission.

Charlene Thatcher - Direct Examination by Mr. Maye

1 Q Okay. All right. What happened next?

2 A I was told to go inside the house, and I heard a
3 commotion outside. It sounded like people were fighting.

4 Q Okay. What was the next thing you saw or observed
5 there?

6 A Somebody came and got me out the house.

7 Q Okay. Who did you see there? When you went
8 outside, who did you see?

9 A Barnes, Griffin, Cave, and the boy.

10 Q Mr. Sturup?

11 A Uh-huh.

12 Q Okay. Who else was there? Was his brother, Little
13 Man -- what nickname did they call Steven Louis Barnes?

14 A Big Man.

15 Q Okay. How about his brother, Mr. Harris?

16 A Little Man. He was there too.

17 Q So William Harris was known as Little Man?

18 A Yes, sir.

19 Q Okay. Tell the ladies and gentlemen of the jury
20 what went on in between all of them when you were brought
21 out of the house.

22 A I was being beaten up and there was a
23 misunderstanding that I stole some money, and that's when I
24 got beat up. And then Sam got beat up too.

25 Q Okay. What was the next thing that happened?

Charlene Thatcher - Direct Examination by Mr. Maye

1 A We went to the train tracks and Barnes told us to
2 shoot each other, but we never did.

3 Q Told who to shoot each other?

4 A Sam and me.

5 Q Okay. All right. How about Mr. Harris, did he
6 stay there the whole time?

7 A No, sir, he left.

8 Q Okay. Did he leave before y'all went out on the
9 railroad tracks and all?

10 A He left -- yeah, after that.

11 Q Okay. Did you see him do anything or did he get in
12 any arguments with Sam?

13 A No, sir, I don't remember.

14 Q Okay. What was the next thing that happened after
15 y'all went out to the railroad tracks?

16 A We came back and Julio and Alex pulled up.

17 Q Okay. Julio and Alex who?

18 A Hunsberger.

19 Q Okay. I want you to look around the courtroom. Is
20 Alex Hunsberger present here in the courtroom?

21 A Yes, sir.

22 Q Could you point him out. What's he wearing?

23 A He's got glasses on and a tuxedo, or whatever that
24 is.

25 Q Kind of an olive suit, blue tie; is that correct?

Charlene Thatcher - Direct Examination by Mr. Maye

1 A Yes.

2 MR. MAYE: Your Honor, I'd just ask the record
3 reflect she's identified the defendant in this case, Alex
4 Hunsberger.

5 THE COURT: It does.

6 By Mr. Maye:

7 Q Okay. What happened once Alex and Julio Hunsberger
8 showed up?

9 A Barnes told Sam to go inside their trunk -- of
10 their car.

11 Q Of whose car?

12 A Julio and Alex's.

13 Q Okay. Were both Julio and Alex present at that
14 time, when he got in the trunk of their car?

15 A Yes, sir.

16 Q They were standing right there?

17 A Yes, sir.

18 Q Okay. What happened next?

19 A They got inside their vehicle after Sam went inside
20 the trunk, and then we went inside -- me, Barnes, Griffen,
21 Cave got inside our vehicle and we all left and came over
22 here.

23 Q Okay. Who was leading the way?

24 A The Hunsbergers.

25 Q Okay. And Sam Sturup was in the trunk of their

Charlene Thatcher - Direct Examination by Mr. Maye

1 car at this time, was he not?

2 A Yes, sir.

3 Q Okay. Who led the way? And tell the ladies and
4 gentlemen of the jury as much as you can remember about
5 where you went and what you saw as y'all followed the
6 Hunsbergers.

7 A Well, I didn't actually see anything. I was laying
8 down in the vehicle; but all I saw when we pulled up in
9 South Carolina was the Hunsbergers getting out of the car,
10 letting Sam out of the trunk.

11 Q They let him out of the trunk?

12 A Yes, sir.

13 Q Okay. So he was in the trunk of their car the
14 whole time?

15 A Yes, sir.

16 Q And they led the way from Georgia, all the way out
17 to where y'all stopped?

18 A Yes, sir.

19 Q Okay. What was the next thing that happened?

20 A Barnes ordered Sam to walk ahead of everybody, and
21 Sam led the way into the woods of the Hunsbergers'
22 property.

23 Q Okay.

24 MR. CHESSER: Objection to her testifying about
25 whose property. She doesn't have any -- there's no

Charlene Thatcher - Direct Examination by Mr. Maye

1 foundation for knowledge or opinion of that, Your Honor.

2 THE COURT: All right. Solicitor?

3 MR. MAYE: I'll withdraw it or have it stricken. I
4 don't care. It doesn't matter.

5 THE COURT: All right.

6 By Mr. Maye:

7 Q All right. Y'all were going up in the woods. What
8 happens next?

9 A Barnes told Sam to pick a place to die.

10 Q Okay.

11 A And then he stopped and then we shot him, each one
12 time.

13 Q Everybody shot him?

14 A Yes, sir.

15 Q You shot -- how did that take place?

16 A I shot him first in the stomach. Barnes shot him
17 in the head, and then I freaked out and got crazy; and I
18 don't remember anything else. But I know everybody shot
19 him once.

20 Q Everybody there shot him once?

21 A Yes, sir.

22 Q Okay. Who all had guns there? Who did you see
23 with guns out there at the scene to start with?

24 A There were three guns. Barnes had one gun in his
25 hand, in his right hand. He had it pointed towards my

Charlene Thatcher - Direct Examination by Mr. Maye

1 back. Then I had a gun in my hand, and then Griffin or
2 Cave, one of them had a gun in their hand; and the gun that
3 I had in my hand I passed off then Barnes, and he shot Sam
4 in the head with that, but there was only three guns, but
5 only two were used. And the two that were used were being
6 passed around.

7 Q Okay. Did you see any of the Hunsbergers with a
8 gun earlier that night?

9 A No, sir.

10 Q Okay. Once y'all all did the shooting there, what
11 took place next?

12 A After everybody shot, Alex told me to come on
13 because I was freaking out and everybody was leaving. But
14 I was scared to leave because Barnes was just staring at
15 the body for a long time and I was scared he was going to
16 shoot me so I just stood there with him.

17 Q Then what happened?

18 A Then I went with Alex over the -- this bar -- not
19 bar -- barbed wire fence thing.

20 Q Yeah.

21 A We stepped other that and then we went into the
22 vehicles.

23 Q Okay. Where did y'all go then? Who did you
24 follow?

25 A We followed the Hunsbergers into this trailer

Charlene Thatcher - Direct Examination by Mr. Maye

1 thing.

2 Q What happened there?

3 A We sat down and conversed about the murder.

4 Q Okay. What happened next?

5 A Barnes asked us how each of us felt.

6 Q Okay. Then what happened?

7 A Then each of us told him how we felt about it.

8 Q What next?

9 A Then Julio and Alex were going around in the
10 trailer looking for stuff to clean the guns up with. So
11 they wiped off the guns, the fingerprints, and then we all
12 left the trailer -- the Hunsbergers, me, Griffin, Cave,
13 Barnes -- and went our separate ways. And we went over the
14 bridge that's between Augusta and Carolina and Griffin had
15 the gun, one of the guns, inside of a plastic bag and threw
16 them in the water.

17 Q The guns the Hunsbergers had cleaned the prints
18 from?

19 A Yes, sir.

20 Q Okay. What happened next?

21 A Then me, Barnes, Cave, and Griffin went to Cherry
22 Street and we spent the night.

23 Q Then what happened?

24 A Then that's it. We went our separate ways the next
25 day.

Charlene Thatcher - Direct Examination by Mr. Maye

- 1 Q Okay. Now, in relation to the beating that Sam
2 Sturup took out there at the green house, you pleaded
3 guilty to aggravated assault; is that right?
- 4 A Yes, sir.
- 5 Q You got 18 years, right?
- 6 A Yes, sir.
- 7 Q Let me see if I can get this straight. You got
8 charged. Mr. Cave got charged.
- 9 A Yes, sir.
- 10 Q Antonio Griffin got charged.
- 11 A Yes, sir.
- 12 Q And William Harris was out there as well; is that
13 correct?
- 14 A Yes, sir.
- 15 Q He never got charged, though, did he?
- 16 A No, sir.
- 17 Q Who told on y'all?
- 18 A William Harris.
- 19 Q You also got a conviction over -- for a separate
20 crime involving armed robbery that was unrelated to the
21 beating that Sam Sturup took at the green house, right?
- 22 A Yes, sir.
- 23 Q How much time did you get for that.
- 24 A Eighteen years, run concurrently.
- 25 Q With that?

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q Okay. As to any potential charges that you face
3 here in South Carolina for Samuel Stirrup's murder out
4 there, has anybody made you any definitive promises about
5 what would happen in your case?

6 A No, sir.

7 Q All right.

8 MR. MAYE: Beg the Court's indulgence.

9 By Mr. Maye:

10 Q I want to ask you one thing. When Samuel Sturup
11 got out of the trunk of the Hunsbergers' automobile while
12 they were there, what was the condition of Samuel Sturup
13 at that point in time?

14 A He was fine.

15 Q He was all right at that point in time?

16 A Yes, sir.

17 Q Okay. But he had been beaten up back at the green
18 house, correct?

19 A Yes, sir.

20 Q Nothing else. Answer any questions defense has for
21 you.

22 THE COURT: Mr. Chesser?

23 **CROSS-EXAMINATION**

24 By Mr. Chesser:

25 Q Ms. Thatcher?

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q You're obviously dressed out. Are you currently a
3 prisoner in Georgia?

4 A Yes, sir.

5 Q Okay. You're doing a sentence for -- you were
6 convicted of armed robbery on August 26th of 2003?

7 A Yes, sir.

8 Q Okay. And your sentence on that was 18 years?

9 A Yes, sir.

10 Q Okay. Now, you pled to that armed robbery; is that
11 correct?

12 A Yes, sir.

13 Q And you had some other associated charges
14 dismissed?

15 A Yes, sir.

16 Q Okay. That was an armed robbery that you committed
17 with Steven Barnes?

18 A Yes, sir.

19 Q Okay. You were also convicted on January 1st of
20 2002 of prostitution?

21 A Yes, sir.

22 Q Okay. Let me talk a little bit about your
23 relationship with Mr. Barnes. How long had you known
24 Mr. Barnes, Steven Barnes, prior to September 3rd of 2001?

25 A Exactly ten days, sir.

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 Q Okay. And you said you came down to Augusta,
2 because you had a girlfriend here?

3 A Yes, sir.

4 Q And what was her name?

5 A Jenna McCarty, sir.

6 Q Okay. She in fact worked as a prostitute for
7 Steven Barnes; isn't that correct?

8 A Yes, sir.

9 Q Okay. And she -- well, in fact, when you met
10 Mr. Barnes, is it fair to say he immediately started to
11 abuse you?

12 A Yes, sir.

13 Q Okay. In other words, you didn't want to become a
14 prostitute, did you?

15 A I was already a prostitute, sir. I just didn't
16 want to be his prostitute.

17 Q I see. But he physically abused you, didn't he?

18 A Just that one time, sir.

19 Q Okay. But he used physical abuse to convince you
20 to agree to work for him as a prostitute, correct?

21 A Yes, sir.

22 Q Okay. Now, in those ten days, you actually
23 committed more than one robbery with Steven Barnes, didn't
24 you?

25 A No, sir.

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 Q Okay. Do you remember -- well, let me ask you
2 this, first. Mr. Barnes, in fact, had a method of robbing
3 people who used his prostitutes; is that correct?

4 A No, sir.

5 Q You don't agree with that?

6 A No, sir.

7 Q Okay. Do you recall being interviewed in 2002,
8 January 23rd, of 2002, or thereabout, by Investigators
9 Charlie and Howard for the Columbia County Sheriff's
10 Office?

11 A Yes, sir.

12 Q Okay. That's ten years ago, so it's probably hard
13 for you to remember what you said, isn't it?

14 A Yes, sir.

15 Q Okay. Let me show you something and ask you if it
16 refreshes your memory. That part right there.

17 Okay. Do you recall being interviewed by those
18 investigators?

19 A Yes, sir.

20 Q And you recall them asking you about robberies that
21 you and Barnes had committed in that area?

22 A Yes, sir.

23 Q And let me ask you again after you've reviewed
24 this: Didn't you tell them that you committed other
25 robberies in this area?

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 A Yes, sir.

2 Q Okay. And those robberies would have been
3 committed with Mr. Barnes, right? At his behest? At his
4 command, right?

5 A Yes, sir.

6 Q Okay. And let me ask you, specifically about --
7 about that again. After refreshing your memory, isn't it
8 true that what he would do was have a prostitute go in with
9 a customer, or however you want to put it, and then at some
10 point she would give Barnes a signal and Barnes would come
11 into the room with a weapon and rob the person. Isn't that
12 how he did it?

13 A Yes, sir.

14 Q Okay. Now -- so those ten days you spent here
15 prior to September 3rd of 2001 and including September 3rd
16 of 2001 must have been pretty traumatic for you?

17 A Yes, sir.

18 Q Pretty difficult, right?

19 A Yes.

20 Q Okay. Now, you talked about Alex Hunsberger in
21 your testimony here today; but isn't it true that you don't
22 know Alex Hunsberger?

23 A Meaning? Sir?

24 Q Meaning that the only time that you ever saw him
25 was the night, or the morning I guess, of September 3rd,

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 2001?

2 A Yes, sir.

3 Q That's correct, right?

4 A I believe so, sir.

5 Q Okay. But you knew Julio Hunsberger, didn't you?

6 A Yes, sir.

7 Q Okay. Now, Julio Hunsberger was -- during that ten

8 days that you'd been here, he was an acquaintance of Steven

9 Barnes; isn't that right?

10 A Yes, sir.

11 Q Okay. And he was also an acquaintance of Barnes'

12 brother, Little Man, or William Harris, right?

13 A Yes, sir.

14 Q Okay. Now, you saw Julio with either Little Man or

15 Big Man on several occasions during that ten day period;

16 isn't that right?

17 A Sir, it was longer than that. It was a five month

18 period.

19 Q I'm sorry. I thought you said ten days, so

20 that's --

21 A It was ten days, but I knew them for five months

22 before I got locked up?

23 Q Right. Okay. Well, that's a good point. So

24 during that five month period, you observed that Julio

25 Hunsberger was an acquaintance of William Harris and of

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 Steven Barnes, right?

2 A Yes, sir.

3 Q Okay. Now, talking about that particular -- the
4 events at the green house, Barnes had this green house and
5 he had another residence that he controlled; isn't that
6 correct?

7 A Yes, sir.

8 Q Okay. And the other residence was, in fact,
9 fortified and had cameras, correct?

10 A Yes, sir.

11 Q Because as you knew from the abuse and the
12 robberies, Barnes was a violent person, right?

13 A Yes, sir.

14 Q In addition to controlling prostitutes, he sold
15 drugs, didn't he?

16 A Yes, sir.

17 Q All right. And you knew him to carry a weapon,
18 right?

19 A Yes, sir.

20 Q All right. Now, on this night of September 3rd,
21 just to go over it chronologically, you were called to go
22 over to the green house; is that right?

23 A No, sir.

24 Q Okay. How did you happen to be at the green house?

25 A Barnes picked me up from the motel room that he was

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 renting for me.

2 Q Okay. And when you got to the green house with
3 Barnes was Samuel Sturup already there?

4 A Not yet, sir, but he pulled up with William Harris.

5 Q Okay. Williams Harris brought him over. All
6 right.

7 Now, Barnes accused Samuel Sturup of stealing his
8 money right?

9 A Yes, sir.

10 Q And was the amount at issue \$200; is that right?

11 A Yes, sir.

12 Q Okay. And then at one time, Samuel said it may
13 have been you that stole the money, right?

14 A Yes, sir.

15 Q And that was the point that Steven Barnes beat you
16 with a broom?

17 A No. Williams Harris beat me with the broom, sir.

18 Q Okay. William Harris. All right.

19 And William Harris, again he's Barnes' brother, is
20 that your understanding?

21 A Yes, sir.

22 Q All right. On that night, or that day, did you
23 observe William Harris to have a gun?

24 A Not that I recall, sir.

25 Q Okay. You did see, of course, Steven Barnes with a

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 gun, though, right?

2 A Yes, sir.

3 Q All right. Now, at some point, Richard Cave
4 arrived?

5 A Yes, sir.

6 Q All right. Now, and Antonio Griffen arrived?

7 A Yes, sir. They arrived around the same time, sir.

8 Q Okay. They -- okay. And Mr. Barnes directed
9 Antonio and Richard Cave to fight Samuel Sturup; is that
10 right?

11 A Yes, sir.

12 Q And, in fact, there was a fight between them,
13 right?

14 A As far as I know, sir. I didn't actually see it, I
15 was in the house.

16 Q Okay. Now -- and then there came a time when
17 Barnes took you and Samuel Sturup and Richard Cave and
18 Antonio Griffen out to the railroad tracks near the green
19 house, right?

20 A Yes, sir.

21 Q And at that point, he first asked you to shoot
22 Samuel Sturup, right?

23 A Yes, sir.

24 Q And then at some point, he offered the gun to
25 Samuel Sturup and told Samuel Sturup to shoot you, right?

Charlene Thatcher - Cross-Examination by Mr. Chesser

- 1 A Yes, sir.
- 2 Q But he didn't actually give him the gun?
- 3 A No, sir.
- 4 Q So he was threatening you and playing with your
5 mind so to speak; is that right?
- 6 A Yes, sir.
- 7 Q All right. Now, at some point you testified that
8 the Hunsbergers arrived in a vehicle. That was after the
9 incident on the railroad tracks, correct?
- 10 A Yes, sir.
- 11 Q Okay. And again, you knew Julio Hunsberger
12 already, right?
- 13 A Yes, sir.
- 14 Q And this was the only time you'd ever seen
15 Alexander Hunsberger, right.
- 16 A As far as I remember, sir, yes.
- 17 Q Okay. Now, at that point, with all of you present,
18 the people I've named, and the Hunsbergers there, Barnes
19 said that he was going to take Sam home; isn't that right?
- 20 A Yes, sir.
- 21 Q Okay. And you believed that, right?
- 22 A No, sir.
- 23 Q You didn't?
- 24 A No.
- 25 Q Okay. Is it based on Barnes' behavior as you knew

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 him up to that point, he was unpredictable, right? You
2 didn't know what he was going to do?

3 A Yes, sir.

4 Q He was a dangerous man though, right?

5 A Yes, sir.

6 Q Okay. At that point, when you got in the vehicle
7 to leave the green house, you were in fear of Steven
8 Barnes; isn't that right?

9 A Yes, sir.

10 Q Okay. And then he actually told you in the
11 vehicle, he told you to lay down, told you exactly what to
12 do, right?

13 A Yes, sir.

14 Q He liked to control you, right?

15 A Yes, sir.

16 Q All right. Now, when you got to the scene and
17 everyone got out of the vehicle, it was at that time that
18 Barnes said that Samuel Sturup was going to die; isn't
19 that right?

20 A No, sir.

21 Q But he had said before he was taking Sam home,
22 right?

23 A Yes, sir. He said at the Cherry Street house that
24 somebody's going to die tonight.

25 Q But then he changed it, right? Said he was going

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 to take Sam home?

2 A He told Sam that he was going to die that night.

3 Q Okay. But when y'all were getting in the vehicles

4 to leave, he told Sam he was going to take him home, right?

5 A In a sarcastic manner, sir, yes.

6 Q Okay. But you weren't sure what was going to
7 happen, were you?

8 A Yes, I was, sir.

9 Q Okay. You felt sure that Sam was going to get
10 shot?

11 A Yes, sir, because on the train tracks Barnes told
12 me I was going to kill Sam for him.

13 Q Now, when he told you that on the train tracks, the
14 Hunsbergers had not arrived had they?

15 A No, sir.

16 Q Okay. Now, in the field, you, in fact, were the
17 first one to shoot at Samuel Sturup; isn't that correct?

18 A Yes, sir.

19 Q Okay. And Barnes basically, physically controlled
20 you and made you shoot; isn't that right?

21 A Yes, sir.

22 Q All right. Now, you didn't want to do that, did
23 you?

24 A No, sir.

25 Q Okay. All right. But Barnes had told everybody

Charlene Thatcher - Cross-Examination by Mr. Chesser

1 there that they were all going to get their hands dirty;
2 didn't he say that?

3 A Something like that, sir, yes.

4 Q He did. I mean, he made it clear -- didn't he tell
5 everybody there that if they did not shoot that he would
6 kill them?

7 A Not everybody, sir.

8 Q Where were you when he made that threat, that if
9 you didn't shoot, you would die?

10 A Right there beside him, sir.

11 Q Okay. And where was Richard Cave?

12 A Somewhere like maybe five feet away from me on my
13 left.

14 Q Okay. And where were the Hunsbergers?

15 A Okay. Barnes was standing on the -- exactly on the
16 right side of me. I was standing on the left side of
17 Barnes. Richard Cave and Antonio Griffin was somewhere on
18 the left side of me and the Hunsbergers were standing
19 together on the left side of them somewhere on this side of
20 them.

21 Q Okay. So Barnes turned to that group of people and
22 told them if they didn't shoot they would die, right?

23 A Not that I recall, sir.

24 Q Okay. Now, you shot Samuel Sturup, and did he
25 fall at that time?

Charlene Thatcher - Cross-Examination by Mr. Chessser

1 A Sir, I don't even know, honestly.

2 Q Okay. But the next thing that happened was that
3 Steven Barnes took the gun from you and shot Samuel
4 Sturrupe. That's the next thing that happened, right?

5 A Yes, sir.

6 Q Okay. And he shot him in the head.

7 A Yes, sir.

8 Q And there's no doubt in your mind about that,
9 right?

10 A No, sir.

11 Q All right. Now, you testified that you freaked out
12 at that point, right?

13 A Yes, sir.

14 Q All right. So whether -- say for example Richard
15 Cave, he may have shot at the ground as opposed to shooting
16 at Samuel Sturrupe, right?

17 A No, sir. Because each shot, that body shook. I
18 remember that.

19 MR. CHESSER: Beg the Court's indulgence.

20 By Mr. Chessser:

21 Q The person who was in charge there, the only one
22 giving the orders about the shooting was Steven Barnes;
23 isn't that right?

24 A Yes, sir.

25 Q Okay. So the last ones to leave were you and

Charlene Thatcher - Cross-Examination by Mr. Chesser

- 1 Steven Barnes?
- 2 A Where, sir?
- 3 Q To leave the scene in the field.
- 4 A Barnes was the last one to leave, sir.
- 5 Q Okay. All right. But you agree that you were
- 6 distraught and you were crying and you were freaking out,
- 7 right?
- 8 A Yes, sir, I was distraught. I was crying and I
- 9 don't remember everything, but I remember a lot of things.
- 10 Q And you stated that at one time you covered your
- 11 eyes, right?
- 12 A Just when I shot Sam.
- 13 Q Now, based on what you did there, in fear of Steven
- 14 Barnes, are you guilty of murder, Charlene?
- 15 A Yes, sir.
- 16 Q You testified in the death penalty trial of Steven
- 17 Barnes, didn't you?
- 18 A Yes, sir.
- 19 Q And you're testifying for us today, right?
- 20 A Yes, sir.
- 21 Q And you hope to not be prosecuted for anything that
- 22 has to do with this crime, right?
- 23 A No, sir.
- 24 Q You want to be prosecuted, Ms. Thatcher?
- 25 A No, sir, but I don't have any hopes in it.

Charlene Thatcher - Redirect Examination by Mr. Maye

1 Q No hopes. You don't think about that, do you?

2 A No, sir.

3 Q It doesn't bother you, the idea of spending the
4 rest of your life in prison?

5 A I've already done ten years, sir. I don't mind it.

6 Q Okay. Nothing further.

7 MR. MAYE: Just briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 By Mr. Maye:

10 Q You said not everybody did he have to threaten.
11 Who did he leave out? Who did he not have to threaten in
12 order to get them to participate.

13 A The only person he threatened, sir, was me.

14 Q He only threatened you?

15 A Yes, sir.

16 Q Okay. So he didn't tell any of the rest of them,
17 If you don't shoot, you're going to get shot?

18 A No, sir.

19 Q Didn't tell Cave, didn't tell Griffin?

20 A No, sir.

21 Q And he didn't tell Alex and Julio Hunsberger?

22 A No, sir.

23 Q They shot, didn't they?

24 A Yes, sir. |

25 Q Without being threatened?

Charlene Thatcher - Recross-Examination by Mr. Chesser

1 A Yes, sir.

2 MR. MAYE: Nothing else.

3 THE COURT: Anything further?

4 MR. CHESSEY: Let me -- if it please the Court?

5 THE COURT: Sure.

6 **RECROSS EXAMINATION**

7 By Mr. Chesser:

8 Q Ms. Thatcher, you recall testifying, again at the
9 trial of Steven Barnes about a year and a half ago, right?

10 A A year ago, sir.

11 Q A year ago. All right. And you were asked then
12 who Barnes threatened with death if they didn't shoot,
13 right? You were asked that question at that time, right?
14 You don't remember?

15 A Not really, sir.

16 Q Okay. Let me show you a piece of paper and ask you
17 to read down towards the bottom. And I'll ask you if that
18 refreshes your recollection.

19 A Where do you want me to read, sir? Twenty-two or
20 twenty-three?

21 MR. CHESSEY: May I approach the witness.

22 THE COURT: Yes.

23 By Mr. Chesser:

24 Q I'd ask you to read from 20 through 25 and then the
25 first line of this page also.

Charlene Thatcher - Recross-Examination by Mr. Chesser

1 Now, at this point I just want you to -- I want to
2 ask if it refreshes your recollection as to your testimony
3 in the case of Steven Barnes. Does it?

4 A Do what?

5 Q Does it refresh your -- do you remember now what
6 your testimony was in the case of Steven Barnes?

7 A Yes, sir.

8 Q Okay. And in fact, you testified that Barnes was
9 giving the orders about the shooting, right?

10 A Yes, sir.

11 Q And that he was telling all of you that we have to
12 shoot or we'll be shot along with him; isn't that what
13 you testified to?

14 A Yes, sir, that's what it says on the paper.

15 Q And you were asked, You all had to shoot or be shot
16 and you testified, Yes, sir, correct?

17 A Yes, sir.

18 Q That's all. Thank you.

19 THE COURT: All right. Ma'am, you may step down.

20 All right. Next witness.

21 MR. MAYE: Your Honor, we're probably going to
22 have -- I would ask that this be a good stopping point.
23 Could we approach the bench?

24 THE COURT: All right. You don't need to.

25 MR. MAYE: Okay. That's fine. I was just making

Roger Lowe - Direct Examination by Mr. Maye

1 A No, sir.

2 Q Did you promise any hope of reward in exchange for
3 him giving you a statement in the case?

4 A No, sir.

5 Q Did you do anything at all in attempt to influence
6 whether or not he gave you a statement or not?

7 A No, sir.

8 Q Okay. Please relate to the ladies and gentlemen of
9 the jury what he told you. Tell them everything that he
10 told you once he had been advised of his rights and
11 indicated that he understood his rights.

12 A Okay. He began my telling me about himself and
13 that now he wants to become an attorney. He told me
14 then -- he told me that on the morning of Labor Day 2001,
15 around 2:00 to 2:30 a.m. that he was sleeping at [REDACTED]
16 [REDACTED] and was awakened by a phone call from his brother,
17 Julio Hunsberger.

18 Julio asked Alex to take a ride with him. Alex
19 said okay. And in about fifteen minutes, Julio drove up in
20 a gray Buick that belongs to Henry Hunsberger, the
21 stepfather of the brothers.

22 There was another vehicle behind the Buick, a large
23 white sedan-type vehicle. At that time, Alex could not see
24 who was in the white car. Julio was alone in the Buick.
25 Alex got in on the passenger side and asked what was up.

Roger Lowe - Direct Examination by Mr. Maye

1 Julio told him to be quiet and to ask no questions. He
2 drove away from [REDACTED] and turned north on U.S.
3 25.

4 After driving for a short period of time, Alex says
5 he dosed off because he was still sleepy. He was awakened
6 by Julio opening the car door. Alex looked around and
7 recognized that they were on their mother's property off of
8 Community Road. As Alex exited the vehicle, he saw three
9 black males getting out of the white car. He did not know
10 any of these three. They came up to Alex and Julio and one
11 of the black males was carrying a handgun that was tucked
12 into his left armpit.

13 The one with the gun then asked the group, Are you
14 down. One of the other black males said, Yeah, I'm down.
15 Then the other one said, I'm down. The one with the gun
16 then asked Julio, Are you down. Julio said, yes. Then he
17 turned to Alex and said, What about you? You down.

18 Alex said he had no idea what the man was talking
19 about but he said, I guess. The man then took the gun from
20 his armpit and held it in his right hand and asked loudly,
21 Are you down. Alex said, yes, I'm down.

22 At that point, the man with the gun asked Julio,
23 what is over there, and pointed to the woods. Julio said,
24 Woods and houses. And then pointed another direction and
25 said, What about there? Julio said, Woods. The man with

Roger Lowe - Direct Examination by Mr. Maye

1 the gun to Julio to open the trunk. So Julio opened the
2 trunk of the Buick and a large black male climbed from the
3 trunk with his own power. Alex says that he could tell the
4 man had been beaten because there was blood on his shirt
5 and chunks of meat hanging from his left arm.

6 The man with the gun then said, I'm going to get
7 the bitch, and went to the white car and returned with a
8 black female. Alex states that the female appeared to be
9 emotional and was having trouble walking. They all started
10 across the field to the woods with the man with the gun
11 bringing up the rear, all the while, holding the gun in his
12 right hand.

13 They came to a gate they all climbed over. Then
14 they came to another fence which they also climbed. When
15 all seven had walked about fifty feet into the woods after
16 the second fence, the man with the gun told them all to
17 stop. The male that had gotten out of the trunk began
18 saying, I swear I didn't do it. He said this over and over
19 again.

20 At that time, the man with the gun handed the gun
21 in his right hand to the female and then pulled another gun
22 from behind his back. He told the female to shoot him.
23 The female was literally hysterical and could not even hold
24 the gun up. The man then placed his arm around her
25 shoulder and took her right hand in his and steadied the

Roger Lowe - Direct Examination by Mr. Maye

1 gun. The gun went off, but Alex could not see who pulled
2 the trigger.

3 At that time, the man who had been in the trunk
4 said, Oh, shit, and fell to his knees. The man with the
5 gun then pointed the other gun at the victim and fired
6 again. He released the female and began to head back to
7 the fence. The man with the gun handed it to Julio
8 Hunsberger and said, I want to hear four more shots. The
9 man then took off after the girl. Julio fired a shot and
10 handed the gun to Alex and told him in Spanish, shoot into
11 the ground.

12 Alex then fired in the direction of the victim but
13 says he shot off to the side. The gun was then passed to
14 the other two black males who each fired a shot. The man
15 with the gun caught up with the female and threatened to
16 kill her as well.

17 All of the suspects then returned to cars and drove
18 to [REDACTED] and went inside. It was then that Alex
19 found out that the man with the guns was Steve Barnes.
20 Barnes made a comment about the victim being only 16 years
21 old. Alex became upset when he found out the age of the
22 victim and told Julio to get all these fuckers out of the
23 house. They all left at that time.

24 Alex asked Julio later why he had gotten him
25 involved and Julio told him not to talk about it. Alex

Roger Lowe - Direct Examination by Mr. Maye

1 could not explain why they came by his house prior to doing
2 the shooting. He claims no prior knowledge of the identity
3 of Steven Barnes.

4 Q Okay. On the 20th, the next day, did you receive
5 information that Alexander Hunsberger wanted to talk to you
6 further?

7 A I did. When I got to work that morning on the
8 20th, there was a note, or maybe a verbal message, for me
9 that Alex Hunsberger wished to speak with me again.

10 Q Now, he gave you that written statement on the
11 nineteenth, you got his warnings and all, but on the 20th
12 you got a new request to talk to him?

13 A Yes, sir, I did.

14 Q That he initiated?

15 A Yes.

16 Q Okay. Based upon you being contacted and informed
17 that wished to initiate further conversation with you, what
18 steps did you take?

19 A Around 9:30, I called back and asked the jailer to
20 bring Mr. Hunsberger to my office.

21 Q What happened when he got there?

22 A When he came up, he said that he wanted to make a
23 correction to what he had told me the day before.

24 Q Based on him saying that he wanted to correct
25 something in the statement that he had given you

Roger Lowe - Direct Examination by Mr. Maye

1 previously, did you go back through the process of Miranda
2 warnings and all that again?

3 A No, he simply stated he wanted to make a
4 correction, not make additions.

5 Q Okay. So relate to the ladies and gentlemen of the
6 jury what he told you the next day, the 20th when he came
7 back.

8 A When he was brought back to my office, he told me
9 that he wanted to change something he had told me the
10 previous day. He went on to say that he had, in fact, been
11 in Augusta with Julio when they went to a house off
12 Washington Road near the Cellular One office. When they
13 got there, Steve Barnes came out with the victim and had
14 him get into the trunk of the car driven by Julio.

15 It was at that time that Alex saw the condition of
16 the victim. Alex said that he did not participate in the
17 beating of the victim and was afraid to tell me that he was
18 in Georgia because he was afraid of the kidnapping charge.
19 He went on to tell me that everything else happened just as
20 he stated.

21 Q Okay. So the second time that he came back, he
22 reversed it. He first told you, they just showed up at his
23 house for no reason here in South Carolina and he just
24 ended up out there in the woods, that's what he related the
25 first time?

Roger Lowe - Direct Examination by Mr. Maye

1 A Yes.

2 Q But the second time he said, no, that was no true.

3 He was trying to basically get out from under the
4 kidnapping charge in Georgia and so he made that part up?

5 A Yes.

6 Q Did he tell you anything else?

7 A No, that was the last conversation I had with him.

8 Q At any point in time during all of your interaction
9 with him from the eighteenth when you took him to the
10 hospital, did you do anything to try to initiate a
11 conversation with him?

12 A No, sir.

13 Q Did you threaten him or coerce him in any way?

14 A No, sir.

15 Q Did you do anything at all to influence his
16 decision as to whether or not he spoke to you or not?

17 A No, sir.

18 Q At any point in time, did he indicate to you that
19 he wished to terminate the conversation and seek the advice
20 of counsel?

21 A No, sir.

22 Q Answer any questions that the defense has for you.

23 MR. MAYE: Beg the Court's indulgence, Your Honor,
24 one more thing. And I apologize.

25 ///

1 A Yes, sir.

2 Q After your son, Mr. Sturup, Sam Sturup, left
3 there with Mr. Harris on Labor Day, have you ever seen him
4 again?

5 A No, sir.

6 Q Answer any questions the defense has for you.

7 MR. CHESSER: The defense has no questions, Your
8 Honor.

9 THE COURT: Okay. Thank you. You may step down.

10 MR. MAYE: The State rests at this time, Your
11 Honor.

12 THE COURT: Ladies and gentlemen, the State has
13 rested. That means with their case in chief. I need to
14 discuss some matters with the lawyers at this time. If
15 y'all would go to the jury room. Please do not discuss the
16 case.

17 (WHEREUPON the jury left the courtroom at 2:30
18 p.m.)

19 THE COURT: The State has rested. Any matters of
20 law at this time?

21 **MID-TRIAL MOTIONS**

22 MR. CHESSER: May it please the Court. Your Honor,
23 at this time I would renew the motion that the case be
24 dismissed based on a violation of the defendant's rights to
25 a speedy trial under both the federal and state

1 constitutions on the grounds that I've previously stated.
2 And I would submit that the changes in the testimony of
3 these witnesses as demonstrated during cross-examination,
4 it is an example of the prejudice that we have suffered in
5 that their stories have changed.

6 For example, Antonio Griffin, his testimony in '06
7 was that he saw only one Hispanic male get out of the
8 vehicle that showed up at the vehicle at the green house.
9 Then his testimony here today is that he saw two people.
10 And the -- Charlene Thatcher, her testimony here today was
11 she couldn't even remember the robberies that she had
12 committed which goes, of course, to her credibility. And
13 these changes are due to the passage of time.

14 Prejudice is only, thought, in connection with this
15 motions, is only one factor. And, in fact, the case law
16 that we had discussed previously is to the effect that we
17 actually -- given that the delay was so substantial and was
18 due entirely to prosecutorial discretion; it's their choice
19 to put the case off, we actually don't have the burden to
20 show specific prejudice by submitting that there has been
21 specific prejudice shown.

22 In this regard, Your Honor, in connection with this
23 motion, I went over pretty much everything with you
24 earlier, but I'll ask to be allowed to submit a copy of my
25 memorandum of law on this as a exhibit to the Court?

1 THE COURT: You may.

2 MR. CHESSER: Thank you, sir.

3 THE COURT: All right. Response by the State?

4 MR. MAYE: Your Honor, I think for the previous
5 arguments that we've already had on this issue, not to
6 rehash those, but I think that there -- that the Court's
7 ruling was correct on that. And I won't add any further
8 argument to that for support.

9 THE COURT: I think given the number of trials and
10 different proceedings that were taking place both here and
11 in the state of Georgia involving these defendants and
12 others -- this defendant and other defendants, it's
13 something that is inherent after sorting out that process.
14 There a number of years with transpiring for some of these
15 guys would be brought to court. Particularly considering
16 the defendants have been given maximum prison sentences in
17 Georgia, also considering the character of the cases that
18 had to be prepared and tried here, I do not find any
19 prejudice that the defendant suffered. He hasn't been
20 deprived his liberty because he's incarcerated under
21 another sentence.

22 Regarding and problems the witnesses had
23 remembering, Counsel did an effective job at pointing out
24 to the witnesses in cross-examining them and impeaching
25 them on prior inconsistent statements. The fact that there

1 is a transcript to go over your testimony available, it
2 accounts the opportunity to refresh the witness'
3 recollection and to impeach where needed?

4 In looking at it, the trial to this point --
5 looking back I indicated in retrospectively on a position
6 of prejudice, I don't see where the defendant has been
7 prejudiced in any way. Based on the lapse of time, for the
8 most part, everyone seems to have a pretty vivid memory.
9 Of course, these matters will probably -- probably be
10 forever etched in the memories and minds of people who were
11 there involved, eye witnesses. I respectfully deny your
12 motion and make it a part of the record. Your issues are
13 preserved for appeal.

14 MR. CHESSER: Thank you.

15 Your Honor, I -- secondly, the defense at this time
16 would move for a directed verdict based on lack of direct
17 or substantial circumstantial evidence that would prove or
18 tend to prove that Alex Hunsberger is guilty of the offense
19 of murder. What the evidence has shown is that Steven
20 Barnes committed the murder of Samuel Sturup and we would
21 submit that what has been produced by the State is
22 insufficient to provide a substantial basis for a jury -- a
23 rational jury -- to conclude that Alex Hunsberger is
24 actually guilty of the charge or offense of murder.

25 THE COURT: What says the State?

1 Have you reached a verdict?

2 THE FOREPERSON: Yes, sir, we have.

3 THE COURT: Is it unanimous?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: All right. Thank you, you may pass it
6 up and you may be seated.

7 If the defendant will stand.

8 Madame Clerk, you may publish the verdict.

9 THE CLERK: Your Honor, this is Indictment No.
10 2002-GS-19-109, the State versus Alexander L. Hunsberger,
11 indictment for murder. The verdict is guilty. It is
12 signed by the foreperson, Deena Latargia.

13 Madame forelady, ladies and gentlemen of the jury,
14 if that is your verdict, please raise your hand.

15 All hands are raised.

16 THE COURT: All right. The verdict appears to be
17 unanimous. Any additional or individual polling requested
18 by the defense?

19 MR. CHESSER: No, Your Honor.

20 THE COURT: Any post-trial motions?

21 MR. CHESSER: No, Your Honor.

22 THE COURT: All right. Ladies and gentlemen, you
23 were called to serve. You have listened to the testimony.
24 You have thoroughly reviewed the evidence, re-listened to
25 some of the testimony and you have come up with a unanimous

1 verdict. I want to thank you for your services. You do
2 not volunteer, you were assigned to appear and you
3 responded to your call of duty. Certainly, no one would
4 want to have to undergo any type of jury trial of this
5 magnitude, but if the need arises, we certainly want to
6 have a jury of twelve people who are conscientious, who
7 would review the facts and spend the time necessary to come
8 to a proper decision. You have done that in this case and
9 we thank you for your services on behalf of the citizens of
10 this county and the State of South Carolina and all of the
11 participants.

12 Where you have found the person guilty, then it
13 becomes my duty to impose a sentence. You have no role in
14 the sentencing process, but I invite you to remain. If
15 you'd like to leave, you may at this time.

16 Mr. Solicitor, is there anything else prior to
17 proceeding with sentencing?

18 MR. MAYE: I'm not aware of anything that would
19 prohibit us from proceeding directly to sentencing, Your
20 Honor. I'll be heard if the Court cares to at any time.

21 **SENTENCE**

22 THE COURT: All right. Mr. Hunsberger, if you'll
23 rise and come forward for sentencing.

24 I'd be happy to hear from the counsel anything you
25 would like to offer.

1 MR. CHESSER: I would, Your Honor.

2 THE COURT: Yes, sir.

3 MR. CHESSER: In the first place, Your Honor, I
4 would just point out that he's been in custody since
5 January 24th of 2002. As the Court knows, we had some
6 pretrial matters and at some point he was transferred to
7 Georgia. That was in early 2005. Judge Keesley's order
8 was such that he granted him a bond, but subject to the
9 condition that he remain in custody, in fact, that he be
10 transferred to Georgia.

11 Of course, he went over to Georgia and there he was
12 tried for -- really in connection with this same event for
13 the kidnapping aspect of it, that is the carrying of the
14 person in the trunk. So over there, he caught a life
15 sentence. That's what he's serving in Georgia.

16 Now, the State investigated that and determined
17 that at some point, he's going to be eligible for parole
18 over in Georgia. We think it's going to be in a period of
19 about eight years from now. That's a guesstimate.

20 But as I understand it, the sentence that he's
21 facing now is either thirty or life.

22 THE COURT: Thirty to life.

23 MR. CHESSER: Thirty to life. And so what my
24 understanding also is that a murder sentence is a
25 day-for-day sentence, is that whatever he gets, he does.

1 And so my expectation is that over in Georgia, that he's
2 actually subject to a hold from South Carolina or something
3 to that effect, but to get to the point, Your Honor, the
4 statute gives you the power to start a sentence at a
5 particular date and what I would ask you to do -- the first
6 thing I'm -- I would ask you for is a thirty year sentence
7 and I will explain to you why I feel that that is -- I feel
8 that's appropriate.

9 In terms of what the evidence showed -- of course,
10 at this point, you're as familiar with this case as I am,
11 but what the evidence showed was that his brother had this
12 preexisting relationship and even as I argued, in all
13 likelihood, Steven Barnes communicated with his brother
14 that his brother came over and was the prime mover -- at
15 least in comparison to Alex Hunsberger. That is, you have
16 Julio Hunsberger and Alex Hunsberger.

17 What he did was he followed his brother's lead
18 according to the evidence. That's what the evidence would
19 show. He had no prior connection with this, and he had no
20 subsequent connection as the evidence would show. Steven
21 Barnes, without a doubt, was the moving force. And so
22 thirty years is treated by our department of corrections,
23 not literally as a life sentence, but as the effective
24 equivalent. It's that -- it's that long of course, as you
25 know.

1 He was about 23 at the time of his arrest and so if
2 he were to get thirty years -- well, depending on how it's
3 calculated and so forth. But even if it were to run from
4 that time, then you'd be talking about fifty-three years
5 old before he would get out. So what I'm asking you, Your
6 Honor, is for two things: I believe that given the fact
7 that the evidence tended to show that his role in this was
8 a follower and not an instigator, I would ask you for a
9 thirty year sentence.

10 Secondly, Your Honor, I believe that you have the
11 power to start this sentence as of the date of his arrest
12 from January the 24th of 2002 and I would ask you to
13 consider that.

14 THE COURT: Mr. Hunsberger?

15 THE DEFENDANT: The only thing I got to say is, you
16 know, I still have an appeal pending over there in Georgia
17 that I would like to address before, you know what I'm
18 saying, starting this sentence here.

19 THE COURT: You would like to...

20 THE DEFENDANT: I still have an appeal pending in
21 Georgia for the life sentence that I received over there,
22 and I would just like to address that appeal before I begin
23 another appeal over here.

24 THE COURT: All right.

25 THE DEFENDANT: I still have motions in the courts.

1 THE COURT: I understand. Do you have anything to
2 say with regard to sentencing?

3 THE DEFENDANT: Well, I mean, I really don't have
4 no decision on that, sir. I can only accept what you --
5 what you decide, sir. I hope, you know, I could at least
6 get thirty, I mean, the minimum for the participation, I
7 guess that they say that I had involved in this. Thank
8 you.

9 THE COURT: All right. Mr. Solicitor?

10 MR. MAYE: Your Honor, the State certainly and
11 totally recognizes that the sentencing is within the wise
12 discretion of the Court. And anything that I would say as
13 to sentencing would only be voicing a request certainly
14 respectfully to His Honor.

15 Mr. Hunsberger already, in March of 2007, was
16 convicted in Georgia for kidnapping. It is my
17 understanding that he would have -- would start coming up
18 for parole in seven or eight years. The Court certainly
19 has the power within its discretion in sentencing thirty
20 years being a minimum. The Court can sentence to any
21 number of years that the Court saw fit or sentenced up to
22 life, but only very respectfully request that you structure
23 a sentence in this case that speaks to the gravity of the
24 loss of the victim and the heinous nature of this crime.
25 We would ask that you hand down a sentence that would

1 ensure that he is never released again.

2 Thank you, Your Honor.

3 THE COURT: All right. Ms. Sturup, I'm happy to
4 hear from you.

5 MR. MAYE: She indicated that she understands that
6 she has a right to address the Court, Your Honor and I
7 think she's going to leave it in your hands. She's
8 declining to make any statements at this time.

9 THE COURT: All right. Thank you.

10 Any response to that as well.

11 MR. CHESSER: Yes, finally, as Mr. Maye indicated,
12 it's your awesome responsibility really to fashion an
13 appropriate sentence, but I would sort of repeat what I
14 said. What I am respectfully requesting is a sentence
15 beginning on the date that he was incarcerated from which
16 he has never been released, January 24th of '02, run
17 concurrent with his Georgia sentence and I have that case
18 number.

19 I don't make that request lightly. I think thirty
20 years day for day is a long time out of anybody's life.
21 And again, there were a number of participants in this and
22 according to the evidence, they had different roles and I
23 submit to you that the evidence tended to indicate that he
24 was a follower, but thank you very much, Your Honor.

25 THE COURT: Well, if he received a life sentence in

1 Georgia for kidnapping, what would justify anything less
2 for murder?

3 MR. CHESSER: Your Honor, you have a vast
4 experience here in the Courts of South Carolina, but I
5 don't know -- when they -- over there, when they say life,
6 they don't mean life. So it's a different sentence.

7 THE COURT: Well, what do they mean? This is kind
8 of interesting to me.

9 MR. CHESSER: Yes, sir. It's apparently a system
10 like we used to have for crimes in South Carolina where
11 somebody would get life or -- and then it would end up
12 being a fifteen year sentence or something like that. And
13 that's essentially what has happened over there. So even
14 the thirty year sentence is twice as long as what was
15 imposed in Georgia for that kidnapping.

16 So, in other words, our sentences, particularly in
17 murder, mean exactly what they mean and in Georgia they do
18 not. He got a certain sentence and he will serve a
19 fraction of it. Actually, if you were to look at what
20 fraction he's actually going to be required to serve from
21 life, you know, at twenty-three, you talk about fifty
22 years. He's actually might be required to serve fifteen
23 for example, or twelve.

24 So when you ask that question, the answer is that
25 the thirty year sentence that you would impose is two to

1 three times greater than the sentence that was effectively
2 imposed on him in Georgia.

3 THE COURT: Anything else from the State or the
4 defense?

5 MR. MAYE: Nothing from the State, Your Honor.

6 MR. CHESSER: Nothing from the defense, Your Honor.

7 THE COURT: Mr. Hunsberger, the fact of the matter
8 is that you facilitated the death of the victim in this
9 case by bringing him here to South Carolina to meet his
10 demise. Obviously, based on the long history of this
11 matter, the multiple parties involved, the many crimes
12 committed, many sentences have been imposed, including the
13 death penalty to the most culpable person. Other sentences
14 may still be imposed to those who have not been brought
15 forward to the bar of justice. But you find yourself to --
16 here today to answer for your participation and your
17 conduct that lead to the death of this young man.

18 In South Carolina, a person who is convicted of
19 murder is punishable by death or a mandatory minimum term
20 of imprisonment for thirty years to life. If the State
21 seeks the death penalty, there are some statutory
22 circumstance that is committed in the -- there's aggravated
23 circumstances beyond a reasonable doubt and that is ---
24 circumstances are found beyond a reasonable doubt, then the
25 judge must impose the sentence of life in prison. And life

1 imprisonment means until death without the possibility of
2 parole.

3 Now, you're asking me for a sentence of thirty
4 years. The trigger man has been sentenced to life
5 imprisonment. I'm sorry, the trigger man who masterminded
6 the entire ordeal has been sentenced to death. The State
7 has not sought the death penalty for your case. If the
8 State sought the death penalty, then the sentence likely
9 would be a mandatory sentence to life as opposed to thirty
10 years to life.

11 What would justify a sentence of less than life --
12 life in prison for you.

13 THE DEFENDANT: I don't understand what you're
14 asking, sir.

15 THE COURT: Why should I not sentence you to life
16 imprisonment given the fact that you have been found guilty
17 of murder by the jury in participating in this matter that
18 caused this young -- young man's death.

19 THE DEFENDANT: Well, I would only ask because my
20 participation was minor. I mean, yeah I was present, I
21 didn't deny that. But, I mean, as far as the whole entire
22 situation, I -- I really can't determine that Your Honor
23 because it's really up to you and it's your choice. The
24 only thing that I would hope for is the minimum, which is
25 thirty years because of my involvement and my

1 participation.

2 But the fact that I don't know none of these
3 individuals other than my brother, I mean, I can't really
4 determine how you would think, Your Honor. All I would do
5 is ask for -- for the minimum if possible, of course,
6 because anybody would ask for the minimum, but I can't
7 determine that.

8 THE COURT: Well, then you'll consider the fact
9 that the person's a stranger, someone that you have no
10 basis to have any type of grudge against, hard feelings
11 against, no reason to want to do any harm, to -- no one who
12 has done any harm to you.

13 Is life that meaningless as we have seen in this
14 trial?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: I mean, are we dealing with people with
17 such a malignant heart that it is of no consequence that
18 someone is tortured, thrown in the trunk of a car and shot
19 over and over again, tortured, and murdered?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: And for anyone who would participate in
22 such a -- what mercy, if any, would they deserve?

23 THE DEFENDANT: I can't answer that, Your Honor, I
24 don't know. I would only ask that the Court have mercy on
25 me.

1 THE COURT: The State is asking that I show you the
2 same degree of mercy that was shown to the victim on this
3 fateful night. And the amazing thing about this case is
4 the appearance of the participants involved. You have this
5 young lady who appeared before us, these young men who
6 appeared before us and we have Mr. Hunsberger here. You
7 don't look like a murderer. You don't talk like a
8 murderer. You seem to have a rather pleasant disposition.
9 And we've reached a stage in society where we're just at
10 risk of any ordinary looking person, might be dressed in a
11 suit and tie with thin-rimmed glasses who can give a
12 statement to their college professor is a murderer.

13 These young kids, normal looking, murderers. What
14 can you tell me about, Mr. Hunsberger -- Hunsberger?

15 MR. CHESSER: Your Honor, I became involved in this
16 case back in '02 or '03. I know his mother has always been
17 very involved with him. He's actually had a caring family.
18 His family has actually been here in court. He had a
19 brother that worked at one time for the Aiken jail. I
20 mean, he had some opportunities. With me, he's always
21 shown intelligence and the desire to cooperate, back then
22 and more recently when I've been working with him.

23 The events of this night -- this nightmare that we
24 had this trial about, I can only submit to you that it
25 would appear to me that it was a aberration in the sense

1 that it was started by Steven Barnes and then Julio
2 Hunsberger apparently called up his brother. Your Honor,
3 let me say one more thing briefly about sentencing, just as
4 sort of another sentencing factor that occurred to me. And
5 this is by no means a criticism in any sense of the State.

6 Frankly, Antonio Griffin and Richard Cave and
7 Charlotte (sic) Thatcher, there may be no deal, but my
8 expectation is that they are not going to be prosecuted.
9 Of course, they did something. You know, they testified in
10 the Steven Barnes case and they testified in this case.
11 But with the exception of Ms. Thatcher, who would appear to
12 me to be a victim, Richard Cave and Antonio Griffin are at
13 least as culpable or more so than the evidence indicated
14 that Alex Hunsberger was.

15 I am by no means sort of being self righteous or
16 trying to say that somehow Mr. Alex Hunsberger deserves
17 this thirty year minimum sentence in the sense of somehow
18 he's merited to it because as he said, it's not a question
19 of deserving it, it's asking for your mercy in connection
20 with an act that took place on that night.

21 But again, my point is that these two male
22 individuals -- my expectation is that they're going to get
23 out just like they're scheduled to in five or six years.
24 And they're at least as culpable. I would simply point
25 that out. And I'm definitely -- and that's with all

1 respect. I understand that the State has to make
2 decisions, you have to make decisions.

3 THE COURT: As far as Mr. Hunsberger's history,
4 what do you know of him? Personal history? Social
5 history? Criminal history?

6 MR. CHESSER: Well, my understanding, he's got no
7 children, he's unmarried. At one time, he had a pointing
8 and presenting charge pending in Aiken County. I don't
9 know how that was resolved, I would have to ask the State
10 if they have any details on that. But he's a high school
11 graduate. And again, with no significant criminal history.

12 THE COURT: Yes, sir.

13 THE DEFENDANT: Your Honor, I have two children.
14 One's twelve and one's ten. I completed the twelfth grade,
15 I went to college at Kerr Business College.

16 THE COURT: Where?

17 THE DEFENDANT: Kerr Business College.

18 THE COURT: Kerr Business College.

19 THE DEFENDANT: Yeah. That's in Augusta. So I do
20 have two children. One's twelve and one's ten.

21 THE COURT: What is your employment history?

22 THE DEFENDANT: I used to work -- I used to work as
23 an interior decorator for Patricia Hayes and then I did
24 Wrangler America. I did a lot of different things at Sonic
25 as well when I was younger, that's when I was younger. But

1 the majority was a full-time student.

2 THE COURT: And how old are you now?

3 THE DEFENDANT: I'm thirty-three, sir.

4 THE COURT: Well, there are some acts that we might
5 engage in that the -- we may be fortunate not to suffer the
6 consequences of those acts, but there are some acts for
7 which consequences must be suffered. Murder is one of
8 them. There is no -- you may go to a Christmas party and
9 drink and drink more than you need to drink and make it
10 safely home without suffering the consequences of crashing
11 into someone on the roadway. But then there's a murder.
12 And there are -- and that's a consequence -- and that for
13 which there is a consequence that must be suffered.

14 I think the solicitor indicated that but for the
15 kidnapping charge that there is prior criminal history;
16 isn't that right, Solicitor?

17 MR. MAYE: I have no record of it, Your Honor. I
18 don't think there's ever been a disposition. I don't the
19 disposition on the pointing and presenting charge. I just
20 know that he had that kidnapping. My understanding is he
21 got kidnapping with bodily injury over in Georgia, and the
22 only sentences for that according to what our research
23 indicates or life or death. And they apparently did not --
24 obviously did not seek the death penalty against him in
25 Georgia on that, but he got life, you know.

1 Obviously, I think the judge gave him what he could
2 give him and he gave him life under those circumstances and
3 I don't know anything more about their release dates other
4 than, obviously, they're -- they don't have the same
5 sentencing system we do.

6 THE COURT: Well, Mr. Hunsberger, ordinarily if I
7 had a person like you standing before me to be sentenced, I
8 would grill them to the nth degree to extract a sufficient
9 amount of information out of them for me to feel satisfied
10 as to the sentence that I impose. I respect your right to
11 be limited in your comments considering the fact that you
12 have appeals pending, or may have an appeal pending in this
13 case.

14 To the extent that you might have thought that as
15 long as you weren't the man in charge, that you were just
16 going along for the ride that you -- your culpability is
17 lessened, to the extent that you think that Mr. Sturup --
18 that because you didn't know him that you're not as
19 responsible as the people who knew him and wanted him dead.

20 I guess it didn't matter to you one way or the
21 other. It's just a frog on the log. He's an insignificant
22 piece of meat. What is it?

23 THE DEFENDANT: Your Honor, with all due respect to
24 you, sir, we human beings. And I know things occur that
25 sometimes is out of the controls of our hands or whatnot.

1 And like the solicitor said when he was going through the
2 course of the trial that we had possession of the gun and
3 maybe shot Mr. Barnes, then maybe that's self defense and
4 we can walk away from that, but how many people would know
5 something like that. Or how many people would even have
6 the intention to do something like that.

7 If I knew something like that and had knowledge of
8 the law to that extent or I know that if I shoot this man
9 that I can get away with all this, it wasn't even no
10 thoughts of that. The whole situations occurring
11 simultaneously is going real fast. You don't have really
12 no time to even debate. You really want to run. If I want
13 to run, yeah okay, run. Where am I going to go? Leave my
14 brother right there? This man done brought these people to
15 our property where my mom sleeps maybe about a hundred
16 yards away from the -- from the -- from the crime scene.

17 So all this is happening. No, I do not disregard
18 the man's life as just a piece of meat or anything like
19 that. He's an individual just like I am. And I know that
20 life is to be regarded, you know, with more respect than
21 that. But just the situation and what was going on. No,
22 there was no time to think about all that of, is this a
23 piece of meat or is this, you know what I'm saying, a human
24 life or whatnot.

25 My concern was, how am I going to be making sure

1 that I can walk out of here alive myself. I'm not looking
2 at nobody as a piece of meat, and she's a prostitute, she's
3 this and she's that. I'm looking at, how can I make sure
4 that I can walk away from this alive or I'll be in the next
5 one on that ground.

6 THE COURT: You say, this man brought these people
7 to your property.

8 THE DEFENDANT: I'm referring to my brother, Julio,
9 sir.

10 THE COURT: Your brother.

11 THE DEFENDANT: But I tried -- that's the only
12 reason why I'm standing here before you today. I -- I
13 cannot go over there and do no plea bargain or anything
14 like that, Your Honor, because it would effect -- I already
15 know the procedures now from being locked up ten years,
16 that when you go for plea bargaining, normally plea
17 bargaining means that you have to be willing to testify.
18 And that's one thing, Your Honor, is that I'm not trying to
19 get involved with that. I know, as a man now being, you
20 know, locked up for these ten years that there's a point in
21 life when you're going to have to take responsibilities for
22 whatever actions you have involved in anything.

23 Whether my actions were minor or major, I know that
24 there's still, you know what I'm saying, a point in my life
25 where I have to take responsibilities for my actions. I

1 know that, sir, and understand that. The only reason I
2 stand here before these people and you, Your Honor, is
3 because I said I was not guilty of murdering this
4 individual. Had it been my choice, had it been in my
5 control, this would have never happened or never occurred,
6 but it wasn't in my control to that extent of who -- who's
7 going to determine if this man lives or not.

8 My participation, yes, was minor and I know that if
9 anything, I've been found guilty by the jury and I respect
10 that, Your Honor, and I know that a sentence has to be
11 imposed and the only thing I ask is if my presence,
12 although it wasn't my intentions to harm this individual or
13 have any participation in this, all I ask is that the Court
14 have mercy on me and sentence me to the minimum, if
15 possible. But that's under your discretion, Your Honor.
16 That's the only thing I can ask of you.

17 MR. CHESSER: And Your Honor?

18 THE COURT: Yes, sir?

19 MR. CHESSER: I would just say that, you know,
20 minimum is a word that sounds like, well that's the
21 minimum. Well, we're talking about thirty years, day for
22 day in a man's life, and you know that, but I want
23 everybody to know that. That -- the legislature has
24 restricted your discretion so that, you know, we're not
25 talking about a minimum in any sense that normally would

1 refer -- we're talking about thirty years, day for day.
2 Which the legislature has determined in some cases is
3 appropriate for the crime of murder.

4 So, in other words, I don't think what we're asking
5 can be paraphrased as saying, let Alex Hunsberger off
6 light. What we're asking for is a thirty year day-for-day
7 sentence. So that's a better way of putting it. That is a
8 punishment. It is, I submit, appropriate, given what the
9 evidence indicates in this case, Your Honor.

10 THE COURT: All right. Thank you. It's a matter
11 of law. The law of this state for anything who is
12 sentenced would be entitled to credit for the time that
13 they've served, and you started serving the sentence here
14 -- or excuse me, incarcerated for a number of years, went
15 to Georgia, and now he's back here. I would think that
16 you'd be entitled to credit for time served.

17 Tragic case, unfortunate case, unfortunate for the
18 victim and unfortunate for you, Mr. Hunsberger.
19 Unfortunate for all of us.

20 The sentence of the Court is that you be committed
21 to the State Department of Corrections for a period of
22 thirty-five years. Good luck to you.

23 THE DEFENDANT: Thank you, Your Honor.

24 MR. CHESSER: Your Honor?

25 THE COURT: Yes, sir.

1 MR. CHESSE: I want to thank you for, you know,
2 your consideration, but I don't know these, exactly all
3 these technicalities, but what I would ask you is that you
4 allow his sentence to run concurrent with the sentence he's
5 serving in Georgia.

6 THE COURT: Concurrent with the sentence that he is
7 serving in Georgia. What about that sentence, solicitor?
8 A concurrent sentence -- I know you all deal with these
9 cross-the-border situations frequently between here and
10 Georgia. Is he entitled to -- is it a matter of
11 discretion, and where would he serve the sentence at?
12 Where's he going? Is he here or Georgia.

13 MR. MAYE: I imagine, given the length of his
14 sentence, I don't know the answer to that directly, Your
15 Honor, but I would imagine, given the fact that he is here
16 in our custody and received a sentence that outstrips that
17 from what he has remaining in Georgia. I imagine unless
18 Georgia request him back that we're going to keep him here,
19 and he will stay in the department of corrections here in
20 South Carolina. And like I said, my only request was that
21 this young man either through a period of years or not be
22 structured -- his sentence be structured to a point where
23 he couldn't be released anymore.

24 And I -- I don't know what he'll live to be, but
25 I'd certainly ask that you give him the maximum that you

1 can give him however you can structure that. That's as
2 respectfully as I can, Your Honor. But I would imagine --
3 we don't intend to release him. We intend to send him to
4 the South Carolina Department of Corrections so he can
5 start serving his sentence.

6 Georgia sentenced him to life over there, their
7 sentencing system is such that he's apparently going to
8 have parole eligibility in six or seven years and as far as
9 I'm concerned, any direction that I would give the sheriff
10 in this case is to remand him to the custody of the South
11 Carolina Department of Corrections with our hopes that they
12 would keep him for the entirety of that thirty-five years.

13 THE COURT: Okay.

14 MR. MAYE: Whatever he --

15 THE COURT: Thirty-five years.

16 MR. MAYE: Eighty-five percent, yes, sir.

17 THE COURT: Thirty-three years would be ninety-five
18 percent. But I think that considering it's a -- if all --
19 if all of the crimes occurred in this state, though they
20 are separate crimes, the ultimate is the murder. He
21 committed murder, he's guilty of murder based on the laws
22 of this state. I believe that a concurrent sentence would
23 be an appropriate sentence considering the -- we're dealing
24 with one sequence of events that culminated into the death
25 of the victim in this case. And in order for my sentence

1 to have the meaning that I intend it, the sentence will be
2 thirty-three years.

3 MR. CHESSER: Thank you, Your Honor.

4 THE COURT: Ladies and gentlemen, that's it. It's
5 not easy on any of us, we have to make choices and
6 decisions. Thank you all for the great work, the clerk
7 will mail the check to you for your jury service. You're
8 good to go for three years. You will not have to serve on
9 jury duty in this court for three years. You're exempted
10 for -- you're exempted for three years, you're disqualified
11 for the next year. So hopefully you won't be called in
12 again. Some of you may love jury duty.

13 Thank you all very much and I'd like to speak to
14 the foreperson before you leave.

15 You have the date of the sentence --

16 MR. CHESSER: Yes, sir.

17 THE COURT: -- from Georgia?

18 MR. CHESSER: Beg the Court's indulgence. I'm
19 going to pull that out and I'll let you know.

20 THE COURT: Do you have it, Mr. Solicitor?

21 MR. YOUNG: Your Honor, for the Court's
22 information, I'm actually sending an email to Mr.
23 Lowenstein, the administrator for the interstate act for
24 the State of Georgia. That's the means by which he was
25 brought here. I'm communicating with him the sentence and

1 he will inform us of what they believe the appropriate
2 steps should be taken.

3 THE COURT: All right. The only think I need is
4 the case number or the date of sentencing.

5 MR. CHESSER: Yes, sir, I'm going to get that for
6 you right now.

7 THE COURT: All right. Very good. Any other
8 matters?

9 MR. MAYE: Nothing else, Your Honor, thank you.

10 THE COURT: All right. Thank you all.

11 MR. MAYE: Thank you.

12 MR. CHESSER: Thank you, Your Honor.

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14 * * * * * END OF TRANSCRIPT * * * * *

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CLERK OF COURT
COUNTY OF EDGEFIELD, SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA
JAN 20 17 PM 2:10
ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

vs.

Alex Hunsberger,

Defendant

**NOTICE OF MOTION AND MOTION FOR
SPEEDY TRIAL**
Warrant G 679754
Murder

To: The Honorable Donald V. Myers
Solicitor, 11th Circuit

YOU WILL PLEASE TAKE NOTICE that the Defendant above named, by and through his undersigned attorney, will move on November 8th, 2004, at 9:30 am, or as soon thereafter as shall please the Presiding Judge, at the Edgefield County Courthouse, Edgefield, SC, as follows:

For an Order requiring that this case be tried during the November 15th, 2004 term of Court, or at the next succeeding term of Court, or, in the event the Defendant is not so tried, that the Defendant be released from confinement on his own recognizance. The Defendant has been incarcerated since January 25th, 2002 without bail. Bail was denied by written order of the Court dated June 14th, 2002. On April 29th, 2004, a bond hearing was held before the Honorable William P. Keesley, at which time bond was again denied by oral order, but with the provision that the issue of bond could be brought before the Court again if the State failed to try the Defendant at the next term of Court in Edgefield. The State has failed to so try the Defendant, and upon information and belief the State has no plans to try the Defendant in the foreseeable future.

The grounds for this motion are as follows:

1. §17-23-90 of the South Carolina Code of Laws.
2. Due process and right to speedy trial under the State and Federal Constitutions.
3. The unreasonable confinement of the Defendant without bail as set forth above.

Alternatively, the Defendant does hereby request and move the Court for a bond for the release of the Defendant pending the trial of this matter, on such terms and conditions as the Court shall deem appropriate.

November 16, 2004
Aiken, South Carolina



Michael Chesser
Attorney for the Defendant
PO Box 1018
Aiken, South Carolina 29802-1018
(803) 641-0477

COUNTY OF EDGEFIELD

CLERK OF COURT
ALLEN H. DUNN
2004 NOV 17 PM 2:10

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

vs.

CERTIFICATE OF SERVICE

Alex Hunsberger,

Warrant G 679754
Murder

Defendant

I, Michael Chesser, attorney for the Defendant, do hereby certify that I have served the foregoing Motion for Speedy Trial on the State of South Carolina by mailing same US mail 1st class postage-paid on this the 16 day of November, 2004, to the State as follows:

Lexington County Solicitor's Office
Attn: The Honorable Donald V. Myers
Solicitor, 11th Circuit
105 South Lake Drive
Lexington, SC 29072

Joe Mizzell, Ass't Solicitor
187 Saluda Airport Road
Saluda, SC 29138



Michael Chesser
Attorney for the Defendant
PO Box 1018
104 Park Avenue, SW
Aiken, SC 29802-1018
(803) 641-0477

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF EDGEFIELD)
 STATE OF SOUTH CAROLINA,)
)
 -vs-) ORDER
)
 ALEX HUNSBERGER,) Case Number: G-679754
)
 Defendant.)

2001 DEC -3 11:10:05

JERRY OF 6030
ALEX H. LEROI

WPK #1

The defendant is being held without bail on a charge of murder and seeks to have the court dismiss the charges based on the failure to give the defendant a speedy trial, denial of due process, unreasonable confinement without bail, as well as violation of S.C. Code Ann. §17-23-90. In the alternative, the defense moves to grant the defendant's release on a personal recognizance bond. He was previously before the court, and bail was denied by Order dated June 14, 2002. The motions are denied at this stage. However, the court is deeply concerned about the length of time that has transpired without bringing this defendant to trial. Three years in jail awaiting trial on this charge is clearly bordering on excessive, and the court will endeavor to establish a special term of court to handle this case during February. If the case is not tried in February 2005, the motions may be renewed.

Mr. Hunsberger is alleged to have participated in the murder of a person who was kidnapped from Georgia. It is alleged that several co-defendants were involved, including his brother Julio. The State of Georgia has placed a hold on the defendant, so if he were granted bail in South Carolina, he would still be incarcerated in Georgia. Part of the problem in disposing of these cases is the fact that multiple defendants and different

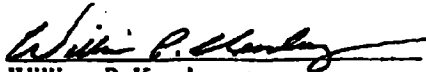
jurisdictions are involved, and there is the possibility that the State of South Carolina could seek the death penalty. However, Georgia has disposed of the cases involving the co-defendants over a year ago, and the court has instructed the Solicitor's office on at least two prior occasions that it must make a decision about whether to serve the death penalty notice.

This defendant is a danger to the community and a flight risk; but, he cannot be held indefinitely without a trial. The State is again admonished that unless immediate steps are taken to bring this case to trial promptly, the court will have no option under the constitutions of the United States and South Carolina except to release the defendant from jail in South Carolina. If the State intends to allow Georgia to take custody of this defendant and has no intention of trying this case in February, the Solicitor is to notify ^{#2} this court and defense counsel immediately, before the court goes to the trouble of creating a special term and the expense of drawing a jury venire.

At this point, there are no circumstances that warrant modification of the previous Order. If the case is not handled in February 2005, the defendant may reassert his motions.

AND IT IS SO ORDERED.

December 2, 2004


William P. Keesley
Judge

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

-vs-)

ALEX HUNSBERGER,)

Defendant.)

ORDER

Case Number: G-679754

2005 JAN 28 PM 1:29
EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

*Wpcc
#1*

On December 2, 2004, an Order was issued regarding the defense motions for dismissal and, in the alternative, for a setting of bail. The defendant is being held without bail on a charge of murder and seeks to have the court dismiss the charges based on the failure to give the defendant a speedy trial, denial of due process, unreasonable confinement without bail, as well as violation of S.C. Code Ann. §17-23-90. Under the extenuating circumstances presented here, the court feels that it has no option but to grant the defendant a Personal Recognizance Bond on this charge in the amount of \$50,000; provided, however, that the defendant is not to be released from custody unless the State of Georgia releases the holds that are currently placed on this defendant.

Mr. Hunsberger was before the court and bail was denied by Order dated June 14, 2002. In the December 2, 2004 Order, the court offered to add a term of General Sessions Court and expressed concern that the length of time awaiting trial on this charge is clearly bordering on excessive. The court has repeatedly expressed in very strong terms the need to have the case tried. The December Order provided that if the case is not tried in February 2005, the motions may be renewed and directed the State to notify the court and defense counsel as to whether the special term should be set. The State has

indicated that it will not take advantage of the offer to create a special term and does not intend to try the case in February. The defense has renewed its motions.

The court denies the motion to dismiss, but grants the motion for a Personal Recognizance Bond. Bail is set at \$50,000, Personal Recognizance, and the Magistrate is to complete the necessary paperwork. HOWEVER, THE DEFENDANT IS NOT TO BE RELEASED FROM CUSTODY UNLESS THE HOLDS PLACED BY THE STATE OF GEORGIA ARE LIFTED. The State of Georgia may attempt extradition proceedings to secure possession of the defendant.

AND IT IS SO ORDERED.

January 28, 2005


William P. Keesley
Judge

#2

COUNTY OF EDGEFIELD IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA
State of South Carolina,

vs.

Alex Hunsberger,
Defendant

ELEVENTH JUDICIAL CIRCUIT

MEMORANDUM RE MOTION TO
DISMISS FOR VIOLATION OF
RIGHT TO SPEEDY TRIALWarrant G 679754
Murder

Hunsberger was arrested on January 25th, 2002. The State intends to try this case on January 4th, 2012, after the passage of ten years. Hunsberger submits that under the facts of this case a delay of ten years in prosecution constitutes a violation of the rights to due process and a speedy trial as guaranteed under both the State and Federal Constitutions. S.C. Constitution Art. I, §§ 3 and 14; U.S. Constitution Amendments V and VI.

The applicable legal principles are set forth in *State v. Pittman*, 373 S.C. 527 at 549, 647 S.E.2nd 144 at 155 (SC 2007):

"In determining whether a defendant has been deprived of the right to a speedy trial, the court must consider four factors: 1) length of the delay; 2) reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). Accordingly, the determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense. *Id.*; *State v. Brazell*, 325 S.C. 65, 71, 480 S.E.2d 64, 68 (1997).

[12][13][14] The inquiry into the length of the delay functions as a trigger mechanism for the analysis of the three other factors. *Barker*, 407 U.S. at 530, 92 S.Ct. 2182. Although there is no fixed time in which a defendant must be tried, the right to a speedy trial may be violated where the delay is arbitrary or unreasonable. *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). Additionally, a delay may be so lengthy as to require a finding of presumptive prejudice, and thus trigger the analysis of the other factors. *Id.*

[15][16][17][18][19] Once the defendant has established that the delay is sufficient to warrant analysis of the other factors, the court must consider the reason for the delay. The ultimate responsibility for the trial of a criminal defendant rests with the State. *Barker*, 407 U.S. at 531, 92 S.Ct. 2182. Therefore, the court should weigh heavily against the State any intentional delays to impede the defense. *Id.* Where the reason for the delay is more neutral, the court should weigh it less heavily against the State. *Id.* A valid reason presented by the State may justify an appropriate delay. *Id.* However, the Court must also consider and weigh the defendant's contribution to the delay in determining whether the defendant's Sixth Amendment rights have been violated. *Waites*, 270 S.C. at 108, 240 S.E.2d at 653 (holding defendant's contribution to the delay of the trial militated against a finding of a violation of the right to a speedy trial).

[20][21] Next, the Court must consider the actions of the defendant in asserting the right to a speedy trial. "The *550 defendant's assertion of his speedy trial right ... is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531, 92 S.Ct. 2182. However, the defendant's failure to assert the right, although not conclusive, makes it more difficult to show that the right was violated. *Id.*

[22] Finally, the Court must determine whether the defendant has suffered any prejudice as a result of the delay. The United States Supreme Court has said that the most serious interest to be protected by the guarantee**156 to a speedy trial is the possibility of impairment of the defense. "[C]onsideration of prejudice is not limited to the specifically demonstrable ... and affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Doggett v. United States*, 505 U.S. 647, 654, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). In fact, an unduly excessive delay can be presumptively prejudicial. *Id.* at 655, 112 S.Ct. 2686. However, regardless of whether the defense is able to show particularized prejudice or the delay warrants a finding of presumptive prejudice, prejudice remains only one of the four factors to be considered in a speedy trial analysis. *Id.* at 656, 112 S.Ct. 2686."

Barko vs. Wingo, 407 U.S. 514 at 531, 92 S.Ct. 2182 (US 1972) instructs further:

"The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, but that fact does not argue for placing the burden of protecting the

right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons expressed, society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest."

The length of the delay in this case, 10 years, is sufficient to trigger the speedy trial analysis (*Pittman and Barker, supra*), and in itself constitutes a significant factor militating against the State. See *Doggett v. United States*, 505 U.S. 647, 651-652, 112 S.Ct. 2686 (1992). This delay is due to the unfettered discretion and choice of the State (see the language and observations in the Orders of the Court of 2004 and January of 2005, attached). *Inter alia*, the Court in its rulings on Hunsberger's motion for a speedy trial offered to set up a special term of court specifically for this case, and otherwise made apparent the Court's willingness to expedite this case in any way feasible, but the State refused to try the case. With respect to the assertion of the right, Hunsberger asserted his right to a speedy trial by way of motion filed in November of 2004. This motion was heard and ruled upon in December of 2004; the motion was renewed, heard and ruled upon again in January of 2005 (see attached Orders of The Honorable William P. Keesley).

The final factor to be weighed by this Court is prejudice to the Defendant. The United States Supreme Court has recognized a presumption of prejudice where the delay is extensive, as in this case, and has recognized further that "the presumption that pretrial delay has prejudiced the accused intensifies over time." *Doggett*, 505 U.S. at 652. With respect to the prejudice prong, *Doggett* also observes that specific instances of prejudice need not be shown: "consideration of prejudice is not limited to the specifically demonstrable, and ... affirmative proof of particularized prejudice is not essential to every speedy trial claim.... Thus, we generally have to recognize that excessive delay presumptively compromises the

reliability of a trial in ways that neither party can prove or, for that matter, identify." *Ibid* at 655.

Hunsberger asserts that the defense in this case will be prejudiced by the faded or nonexistent memories of the witnesses. The theory of the State in the prosecution of this case, it is submitted, will rest upon the theory of "the hand of one is the hand of all". The victim Stirrup was killed by a single shot to the head. The State has previously tried Steven Barnes for this murder, and the State contends that Barnes fired that fatal bullet. The State's evidence would indicate that two persons possessed firearms at the scene: Steven Barnes and Julio Hunsberger (not Alex Hunsberger). So the degree of participation or non-participation, the details and nuances of the acts of Alex Hunsberger, will be the subject of the testimony of the State's witnesses, regarding acts that took place in the middle of the night in an unlighted field ten years ago. It is not reasonable to believe that these witnesses will be able to recall with any accuracy the events of the early morning hours of September 3rd, 2001. Nor will the witnesses be able to recall the substance or details of the prior statements given to law enforcement officials, which will impede the defense's ability to effectively impeach these witnesses.

Wherefore, Hunsberger respectfully moves that this prosecution be dismissed with prejudice.

January 3, 2012
Aiken, South Carolina



Michael Chesser
Attorney for the Defendant
PO Box 1018
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chesserlaw@gmail.com

WITNESSES

Doran

ECSO

ARREST WARRANT NUMBER

G-679754

ACTION OF GRAND JURY

True Bill

Wm. C. Alexie
Foreperson of Grand Jury

Date: *5-25-02*

VERDICT

Guilty

Deon Latorja
Foreperson of Petit Jury

Date: *1-6-12*

DOCKET NO. 2002-GS-19- *109*

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MARCH TERM 2002

THE STATE

vs.

ALEXANDER L. HUNSBERGER

CDR# 0116

Indictment for

MURDER

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on March 25, 2002 the Grand Jurors of Edgefield County present upon their oath:

That ALEXANDER L. HUNSBERGER did in Edgefield County on or about September 3, 2001, feloniously, wilfully and with malice aforethought, kill one Samuel J. Sturup by means of shooting Mr. Sturup with a handgun and that the said victim died as a proximate result thereof, in violation of Section 16-3-10 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Edgefield)
 STATE)
 VS.)
 Mr. Alexander L Hunsberger)
 AKA:)
 Race: H Sex: M Age: 31)
 DOB: 11-14-1978 SS#:)
 Address:)
 City, State, Zip: North Augusta, SC 29841)
 DL#) SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2002GS1900109
 A/W#: G679754
 Date of Offense: 1/25/2002
 S.C. Code §: 16-03-0010; 16-03-0020
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was TO:

☐ CONVICTED OF or ☐ PLEADS

In Violation of § _____ of the S.C. Code of Laws, bearing CDR Code # _____
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
 (CSC w/min or 1st or Lowd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 33 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on Case No. 02-RCCR-26 in September 2006
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____
 *Fine: \$ _____
 \$14-1-206 (Assessments 107.5%) \$ _____
 \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 \$56-5-2995 (DUI Assessment) \$12 \$ _____
 \$56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 \$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 \$14-1-213 (Drug Court Surcharge) \$150 \$ _____
 \$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 \$56-5-2842(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 \$44-53-450(C) (Conditional Discharge) \$350 \$ _____
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

Clerk of Court/Deputy Clerk Shirley J Newby
 Court Reporter: Brenda Sigwald
 SCCA217 (08/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge C. Newby

Judge Code: 2127

Sentence Date JAN 6, 2012

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 21st, 2013

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

APPELLANT

Appellate Case No. 2012-206608

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court's failure to dismiss the pending criminal charge against Appellant violate his state and federal constitutional rights to a speedy trial where the crime allegedly took place on September 3, 2001, Appellant was arrested on January 25, 2002, but the case was not called for trial until January 3, 2012, almost a decade after Appellant's arrest?

STATEMENT OF THE CASE

Appellant was indicted by the Edgefield Grand Jury for murder on March 25, 2002 pursuant to Indictment 2002-GS-19-109. Indictment. The prosecution, represented by Ervin Maye and Frank Young, called the case for trial on January 3, 2012 before the Honorable Clifton Newman. Michael Chesser represented Appellant at the trial. R. 1. The jury found Appellant guilty of murder. R. 198, lines 9-12. Judge Newman sentenced Appellant to thirty-three years. R. 220, line 25 – R. 220, line 2; Sentence sheet.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

The trial court's failure to dismiss the pending criminal charge against Appellant violated his state and federal constitutional rights to a speedy trial where the crime allegedly took place on September 3, 2001, Appellant was arrested on January 25, 2002, but the case was not called for trial until January 3, 2012, almost a decade after Appellant's arrest.

On January 25, 2002, the state charged Appellant with the murder of Samuel J. Sturup, which the state alleged occurred on September 3, 2001. R. 2, lines 10-15; R. 7, lines 14-15; R. 8, line 3; R. 29, lines 22-23; Indictment. Thereafter, the Grand Jury indicted him for murder on March 25, 2002. R. 7, lines 9-14; Indictment.

Pretrial Motions

On June 14, 2002, Appellant was denied bail. Subsequently, a bond hearing was held before the Honorable William P. Keesley on April 29, 2004. Judge Keesley denied bail again; however, he provided that if the state failed to try Appellant during the next term, then Appellant could renew his motion. On November 17, 2004, Appellant filed a motion to dismiss the charges against him or release him on a personal recognizance bond based upon the state's failure to give him a speedy trial, denial of due process, unreasonable confinement without bail, and a violation of S.C. Code Ann. § 17-23-90. Judge Keesley heard arguments on the motion in December 2004. R. 8, lines 4-16; Motion filed 11/17/2004.

By order filed December 3, 2004, Judge Keesley denied the motions. Nevertheless, he remarked: "the court is deeply concerned about the length of time that has transpired without bringing [Appellant] to trial." Judge Keesley found "[t]here years in jail awaiting trial on this charge is clearly bordering on excessive." As a result, Judge Keesley offered to

establish a special term of court to resolve the case "during February." Judge Keesley provided that Appellant could renew his motions if the case were not tried in February 2005. R. 8, lines 4-16; Order filed 12/3/2004.

Judge Keesley's order recognized the unique nature of Appellant's criminal charge – the involvement of multiple co-defendants and jurisdictions and the possibility that South Carolina could seek the death penalty. Despite these challenges, Georgia "ha[d] disposed of the cases involving the co-defendants over a year ago." Additionally, the "court ha[d] instructed the Solicitor's office on at least two prior occasions that it must make a decision about whether to serve the death penalty notice." The court "again admonished [the state] that unless immediate steps [were] taken to bring this case to trial promptly, the court [would] have no option under the constitutions of the United States and South Carolina except to release the defendant from jail in South Carolina." Order filed 12/3/2004

Thereafter, Appellant renewed his motion for dismissal of the charge based upon the state's failure to give him a speedy trial, denial of due process, unreasonable confinement without bail, and a violation of S.C. Code Ann. § 17-23-90. By order filed January 28, 2005, Judge Keesley denied the motion to dismiss, but granted Appellant a personal recognizance bond in the amount of \$50,000. His order noted that Appellant would be released to Georgia due to the hold placed on him. According to the order, the prosecution informed the court that it would not "take advantage of the offer to create a special term" of court and had no intention of trying the case in February 2005. R. 8, lines 16-21; Order filed 1/28/2005.

The state agreed to release custody of Appellant to the State of Georgia. R. 8, line 22 – R. 9, line 20; R. 23, line 25 – R. 24, line 2; R. 30, lines 13-16. On September 12, 2006,

Appellant was tried and convicted in Georgia for kidnapping Sturup. R. 9, lines 21-22; R. 23, lines 17-24.

At some point, the prosecutor learned that although Appellant received a life sentence in Georgia, he was eligible for parole after service of a term of years. R. 3, line 24 – R. 4, line 4 (Prosecutor informed the judge that he received conflicting information from the Georgia authorities, but believed Appellant would be eligible for parole “sometime within the next six, seven years.”); R. 15, line 16 – R. 18, line 15. After Appellant was tried and convicted in Georgia in 2006, the first attempt by the prosecutor to extradite Appellant to South Carolina was “in the first part of 2011” following Barnes’ conviction in November of 2010. R. 25, lines 21-23. The prosecutor claimed that South Carolina was unable to pick up Appellant from Georgia in order to try him during the previous term of court, October of 2011. R. 25 line 25 – R. 26, line 9.

When the prosecutor was preparing the case against Barnes for trial, he sought Appellant’s cooperation. He asked Appellant to testify against Barnes. Appellant declined to assist the state in its prosecution of Barnes. According to the prosecutor, Solicitor Myers “did not know whether or not he would notice” Appellant for death. Ultimately, the Solicitor elected not to seek Appellant’s death, and instructed the prosecutor to proceed against Appellant on the outstanding murder charge. R. 4, lines 14-25; R. 25, lines 3-17; R. 29, lines 15-19.

Prior to the start of Appellant’s trial in South Carolina, Appellant filed a written motion to dismiss the charge against him based upon the state’s violation of his right to a speedy trial. As an initial matter, Appellant explained the state set his trial a decade after his arrest. Appellant argued the state’s significant delay in calling his case for trial resulted in

presumptive prejudice. R. 11, line 17 – R. 15, line 15; Motion dated 1/3/12. Appellant argued that he had “no burden of pointing to specific prejudice.” R. 19, lines 12-24; Motion dated 1/3/12. Nevertheless, Appellant provided at least one example of prejudice - during the capital trial of Steven Barnes, Appellant’s co-defendant, a witness, Richard Cave, testified that his testimony was the result of what he actually remembered and what he read in transcripts and statements. R. 20, line 24 – R. 21, line 18.

The prosecutor countered that “[a]t the outset of this case, Solicitor Myers did determine that he intended to seek the death penalty against Mr. Barnes. Up until the time that Mr. Barnes was convicted in November of 2010, Solicitor Myers was not sure whether or not he intended to seek the death penalty against [Appellant] or not. He delayed that decision until after Steven Louis Barnes’ trial was finished and he was sentenced to death as to whether or not he was going to notice [Appellant].” R. 23, lines 3-16.

The prosecutor also argued that Appellant “knew this charge was outstanding against him in South Carolina” and that he could not “assert his right once or twice and then rest on his laurels and do nothing.” R. 24, lines 12-20. According to the prosecutor, Appellant did nothing in seven years, since 2005, “other than attempt to delay coming back here and being tried through his contesting extradition and not wanting us to proceed at the last term of court.” R. 24, lines 21-25; R. 27, lines 6-11. According to the prosecutor, Appellant was required to make “some continual effort” to assert his constitutional rights. R. 31, lines 2-10.

The prosecutor further argued that the delay was to Appellant’s benefit. He “felt like [Appellant] should ... have the same opportunity to cooperate that the other codefendants in this case received.” R. 26, lines 10-16; R. 26, line 24 – R. 28, line 10. The

prosecutor claimed "it was the intent of the State at all times to proceed against [Appellant], but [he] was over in Georgia serving a life sentence." R. 27, lines 3-6; R. 38, lines 18-23. He claimed "there was certainly no malice in any decision on the State to delay the prosecution.... It was my hope that they would testify against Mr. Barnes. I felt like they should receive the same opportunity as the other codefendants." R. 29, lines 10-15; R. 31, lines 10-12.

The prosecutor claimed Appellant contested extradition. R. 25, lines 23-24. On this issue, Appellant testified that in September 2011, his counselor presented him with a form explaining that if he signed the form, he would be consenting to extradition to South Carolina. If he chose not to sign the form, then he would have twenty days to file a writ of habeas corpus to contest extradition. Appellant did not sign the form, explaining he wanted to speak with his attorney to determine any impact upon his appeal, which was pending in Georgia. Appellant did not file any paperwork or make any motions to contest extradition. Appellant stated unequivocally that he was willing to go to South Carolina. R. 35, line 6 - R. 38, line 9.

When the judge asked the prosecutor to explain why the case was not called for ten years, the prosecutor explained the prosecution "intended to proceed against Steven Louis Barnes first." R. 30, lines 6-12. He further stated "in all candor, the State tried for years to try Steven Louis Barnes and eventually it took another judge being assigned to the case in order for us to get it tried." R. 30, lines 20-24; R. 31, lines 12-14.

According to Judge Newman, this was the first case he had where ten years had passed between the arrest and trial. R. 39, lines 6-9. He described it as a unique situation because of the "cross-border issues" of Georgia and South Carolina wanting to pursue cases

against the same individuals, of each defendant asserting individual constitutional rights, and of the prosecution wanting to pursue a capital case. R. 41, line 24 – R. 42, line 6. Judge Newman refused to presume prejudice “given the facts.” He found the prosecutor “ha[d] demonstrated legitimate reasons for the delay given the complex nature of the cases, the problems involving prosecutions in multiple jurisdictions.” R. 42, line 20 – R. 43, line 2. In a later discussion, Judge Newman characterized the case as follows: “what I heard from the solicitor is that they wanted to first do the capital trial and that they delayed this case to do the capital trial and it was their hope and desire that [Appellant] would testify in that case.” R. 48, lines 15-19.

Testimony of Richard Cave

At the trial, the prosecution presented testimony from Richard Cave, an individual charged in Georgia and South Carolina regarding criminal acts against Sturup. R. 95, lines 16-25; R. 96, lines 1-5. Cave testified that he was friends with Barnes and that on Labor Day weekend of 2001, he and Antonio Griffin were with Barnes and others at a house in Georgia. R. 73, line 5 – R. 74, line 2; R. 75, lines 7-10. Cave observed Barnes arguing and fighting with Sturup. R. 74, line 18 – R. 75, line 6; R. 76 line 16 – R. 77, line 9. Later, Appellant and his brother arrived at the house in Augusta. R. 79, lines 12-14. Everyone got into cars and arrived at a field in South Carolina. R. 82, lines 1-8; R. 82, line 24 – R. 83, line 1; R. 85, lines 15-18. Cave observed Sturup exit the trunk of the car in which the Hunsbergers were traveling. R. 86, lines 9-13. The group walked to a wooded area where Barnes instructed each person to shoot Sturup. R. 86, lines 17-25; R. 88, line 18 – R. 89, line 1. Cave testified that after Charlene Thatcher shot Sturup, he shot Sturup. R. 89, lines

3-12. He and Thatcher left the area. He heard four more shots, but did not see the shooter. R. 89, lines 15-20.

On cross-examination, Cave agreed that he had testified in 2006 in a trial against Appellant in Georgia and in 2010 against Barnes regarding the events of that evening. R. 97, lines 14-16. He admitted that his testimony during the 2006 and 2010 trials was different from his testimony in 2012 in at least one respect – whether any one conversed after the shooting. R. 98, line 11 – R. 100, line 19; R. 112, lines 12-23.

Testimony of Antonio Griffin

Antonio Griffin testified against Appellant as well. He testified similarly to Cave regarding how the two arrived at Barnes' house and what they observed. R. 125, lines 8-24; R. 126, lines 6-19; R. 128, lines 1-25. Griffin testified that Barnes instructed him to fight Sturup. Griffin and Sturup fought for about twenty seconds before Barnes broke it up. R. 126, line 20 – R. 127, line 4. According to Griffin, Appellant and his brother arrived after the fight. R. 132, lines 8-12. In line with Cave's testimony, Griffin testified that everyone got in to cars, left Georgia, and went to South Carolina. R. 133, lines 2-6. Barnes instructed everyone to exit the cars at gunpoint. R. 135, lines 9-11. Griffin also observed Sturup exit the trunk of the car. R. 135, lines 11-24.

According to Griffin, everyone walked through the woods to an open space. Barnes told everyone they would shoot Sturup. When Thatcher resisted shooting Sturup, Barnes threatened to shoot her if she disobeyed him. Griffin testified that after Thatcher shot Sturup, one of the Hunsbergers grabbed the gun from her and shot Sturup. Someone thrust the gun at Griffin who "shot at the ground." Cave got the gun, but Barnes instructed them to

go to the car. While walking across the field, Griffin heard another shot. R. 138, line 25 –R. 138, line 13.

At the time of Appellant's trial, Griffin had pled guilty to assault in Georgia and received an eighteen year sentence for his involvement in the beating of Sturup, but he had "potential charges for the events that occurred related to the murder" in South Carolina. R. 143, lines 1-11.

Griffin did not remember everything he said in his statement to law enforcement on January 23, 2002. R. 143, line 19 – R. 144, line 1. He agreed that his testimony had been different from his statement regarding which of the Hunsbergers he observed do what. R. 144, lines 2-24. Griffin testified against Appellant in 2006 in Georgia. His testimony was different then as well. R. 143, line 25 – R. 146, line 11.

Testimony of Charlene Thatcher

Charlene Thatcher testified similarly to Cave and Griffin. She was a prostitute from Massachusetts who moved to Augusta, Georgia in August of 2001. R. 160, lines 3-10. She was with Barnes on Labor Day weekend of 2001. R. 160, lines 19-25. She observed Barnes, Griffin, Cave, William Harris, and Sturup outside the green house. She and Sturup were beaten for allegedly stealing money. R. 161, lines 1-24. She testified that Appellant and Julio arrived after the beatings. R. 162, lines 14-16. Barnes instructed Sturup to get into the trunk of the Hunsbergers' car. The others got into vehicles and left the area. R. 163, lines 7-22. When the cars stopped, she saw Sturup get out of the trunk. The group then walked into the woods. Barnes instructed Sturup to pick a place to die. R. 164, line 7 – R. 165, line 9. After the group stopped, they "shot him, each one time." She

shot Sturup first in the stomach, then Barnes shot Sturup in the head. She “freaked out and got crazy” and did not remember anything else. R. 165, lines 11-19.

On cross-examination, Thatcher testified that it was difficult to remember what she said ten years ago. R. 172, lines 7-14. After being confronted with her statement to police, she admitted that she had engaged in multiple armed robberies with Barnes. R. 172, line 15 – R. 173 , line 13. Initially, she denied that Barnes threatened everyone present that if they did not shoot Sturup, then he would shoot the resister. R. 181, lines 4-7; R. 181, lines 21-23; R. 184, lines 10-24. However, when she was confronted with her testimony from Barnes’ trial, she agreed she had testified that Barnes threatened everyone. R. 185, line 8 – R. 186, line 17.

At the time of Appellant’s trial, Thatcher had pleaded guilty to aggravated assault in relation to beating Sturup in Georgia. She understood she faced potential charges for her conduct in South Carolina. R. 168, lines 1-6; R. 179, lines 2-6. She had been convicted of armed robbery on August 26, 2003 and of prostitution on January 1, 2002. R. 170, lines 5-21.

Renewal of Motion

Appellant renewed his motion to dismiss at the close of the state’s case. Appellant argued that the changes in the testimony of the witnesses, which had been demonstrated through cross examination, provided an example of the prejudice Appellant suffered. Appellant pointed to the poor memories of Griffin and Thatcher due to the passage of time. Concerning the prejudice factor, Appellant indicated the delay was “so substantial and was due entirely to prosecutorial discretion” and therefore, Appellant had no burden to show

specific prejudice. Appellant also reminded the court that prejudice is only one factor for consideration. R. 194, line 22 – R. 195, line 25.

Judge Newman again denied the motion. He was persuaded that “given the number of trials and different proceedings that were taking place both here and in the state of Georgia involving these defendants and others ... it’s something that is inherent after sorting out that process.” Judge Newman remarked that Appellant had not “been deprived his liberty because he’s incarcerated under another sentence.” He found no prejudice to Appellant. R. 196, line 9 – R. 197, line 13.

Sentencing proceeding

During the sentencing proceedings, Appellant asked Judge Newman for a thirty-year sentence and to start his sentence as of the date of his arrest on January 25, 2002. R. 201, line 3 – R. 202, line 13; R. 204, lines 11-18. The prosecution asked for the judge to “hand down a sentence that would ensure that he is never released again.” R. 203, line 10 – R. 204, line 1. Judge Newman stated that “[t]he law of this state for anything who is sentenced would be entitled to credit for the time that they’ve served. ... I would think that you’d be entitled to credit for time served.” R. 217, lines 10-16. Although the sentence sheet indicated Judge Newman ordered Appellant to receive credit for time served as calculated by the Department of Corrections pursuant to the statute, the record lacked any affirmative indication that Appellant would receive credit for the ten years he waited disposition of this matter. R. 234

Discussion

The Sixth Amendment to the United States Constitution provides “In all criminal prosecutions, the accused shall enjoy the right to a speedy trial.” U.S. Const. amend. VI; see

also Klopper v. North Carolina, 386 U.S. 213 (1967); Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966). Additionally, our state constitution guarantees that “[a]ny person charged with an offense shall enjoy the right to a speedy trial.” S.C. Const. art. I, § 14. “The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused’s defense.” State v. Langford, 400 S.C. 421, ___, 735 S.E.2d 471, 481 (2012)(citing State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). If a court concludes a defendant’s right to a speedy trial has been violated, dismissal of the charges “is the only possible remedy.” Barker v. Wingo, 407 U.S. 514, 522 (1972).

The United States Supreme Court explained “[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon the circumstances.” Beavers v. Haubert, 198 U.S. 77, 87 (1905). Therefore, the Court explained the appropriate analysis for a speedy trial claim is “a balancing test, in which the conduct of both the prosecution and defendant are weighed.” Barker, 407 U.S. at 529. The Barker Court “identif[ied] some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right.” Those four factors are the length of the delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant. Id. at 530; see also Doggett v. United States, 505 U.S. 647 (1992); Vermont v. Brillon, 556 U.S. 81, 129 S.Ct. 1283 (2009); State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (1973); State v. Monroe, 262 S.C. 346, 204 S.E.2d 433 (1974); Waites, 270 S.C. at 107, 240 S.E.2d at 653; State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). However, “none of the four factors

identified [are] a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial.” Barker, 407 U.S. at 533.

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial “has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay.” Doggett, 505 U.S. at 652 (quoting Barker, 407 U.S. at 530-531).¹ The length of the delay that will trigger the inquiry is dependent upon the peculiar circumstances of the case. Barker, 407 U.S. at 530-531. Generally, the delay tolerated for an ordinary street crime is less than for a serious, complex conspiracy charge. Id. at 531.

The Barker Court found a delay between arrest and trial of well over five years to be clearly “extraordinary.” Barker, 407 U.S. at 533. Although seven months of that period was excused by the illness of a witness, the delay of “more than four years was too long a period.” Id. at 534. In Doggett, the Supreme Court noted that, depending on the nature of the charges, lower courts have generally found post-accusation delay “presumptively prejudicial” as it approaches one year. Doggett, 505 U.S. at 652; see also State v. Cooper, 386 S.C. 210, 217, 687 S.E.2d 62, 66 (Ct. App. 2009). The South Carolina Supreme Court found a two-year and four-month delay sufficient to trigger further review. Waites, 270 S.C. at 108, 240 S.E.2d at 653. The Court found a twenty-three month delay presumptively prejudicial where the charges were serious, but the factual proof was not complicated. Langford, 400 S.C. at ___, 735 S.E.2d at 482. Our Court also found a three year and five month delay sufficient to trigger the analysis. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64

¹ “The clock begins running on a defendant’s speedy trial right when he is ‘indicted, arrested, or otherwise officially accused.’” Langford, 400 S.C. at ___, 735 S.E.2d at 482 (quoting United States v. MacDonald, 456 U.S. 1, 6 (1982)).

(1997). This Court affirmed a circuit court's decision that a delay of forty-four months triggered the speedy trial inquiry. State v. Cooper, 386 S.C. 210, 216-217, 687 S.E.2d 62, 66-67 (Ct. App. 2009)

The Supreme Court afforded different weights to the different reasons for the presumptively prejudicial delay. On the far end of the spectrum is a deliberate delay by the prosecution to impede the defendant's ability to defend himself. A prosecutor acts improperly if he intentionally delays a trial to gain some tactical advantage over a defendant or to harass a defendant. Barker, 407 U.S. at 531, n. 32 (citing United States v. Marion, 404 U.S. 307, 325 (1971); Pollard v. United States, 352 U.S. 354, 361 (1957)). Such a reason should be weighted heavily against the prosecution. Even neutral reasons weigh against the state because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." Barker, 407 U.S. at 531.

Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness . . . and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned to a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

Doggett, 505 U.S. at 657. Obviously, delays contributed to the defendant's conduct weighs against him. Brillon, 556 U.S. at ___, 129 S.Ct. at 1290.

The third factor of the speedy trial analysis is the defendant's assertion of his right to a speedy trial. According to the Supreme Court, "[w]hether and how a defendant asserts his right is closely related to the other factors" because the strength of his efforts will be affected by the other factors. Barker, 407 U.S. at 531-532.

As an initial matter, a defendant is not required to show prejudice affirmatively to win a speedy trial claim. Moore v. Arizona, 414 U.S. 25, 26 (1973); see also United States v. Ferreira, 665 F.3d 701, 706-707 (6th Cir. 2011); U.S. v. Molina-Solorio, 577 F.3d 300, 307-308 (5th Cir. 2009); United States v. Frith, 181 F.3d 92 (4th Cir. 1999); United States v. Clark, 83 F.3d 1350, 1353-1354 (11th Cir. 1996). The Court granted relief to Doggett while noting that he "did indeed come up short" in making "any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence." As a result, the Court explained "we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify." In light of the difficult nature of proving prejudice, the Court held that the importance of presumptive prejudice increases with the length of delay. Doggett, 505 U.S. at 655-656. In the absence of proof of particularized prejudice, the state's negligence and a substantial delay will compel relief unless the presumption of prejudice is either "extenuated, as by the defendant's acquiescence, or persuasively rebutted" by the prosecution. Id. at 658.

As the United States Supreme Court has observed, unreasonable delay threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by the loss of memories and exculpatory evidence. Barker 507 U.S. at 532. The

Court observed that loss of memory “is not always reflected in the record because what has been forgotten can rarely be shown.” Id. According to the Court, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” Id. Being locked up hinders a defendant’s ability to gather evidence, contact witnesses, and prepare his defense. Id. at 533. Even a defendant who is not in jail prior to trial is disadvantaged “by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility.” Id.

Length of the delay

The ten year delay between Appellant’s arrest and trial was uncommonly long. Eight years prior, in 2004, Judge Keesley called the delay “clearly bordering on excessive.” The trial judge described this as “the first case he had where ten years had passed between the arrest and trial.” In light of the case law, Appellant’s case obviously triggers the speedy trial analysis as it is presumptively prejudicial. Although the case was a very serious one, it was not a complicated case to try. Primarily, the trial involved the testimony of three eyewitnesses regarding a single charge. The extraordinary length of the delay weighs heavily against the prosecution.

Reason for the delay

The stated reasons for the delay in the prosecutor calling Appellant’s case to trial was Solicitor Myers was deciding whether to seek the death penalty against Appellant and obtaining Appellant’s cooperation against Barnes. Although Solicitor Myers decided very early on to seek death against Barnes, he was not sure whether he would seek death against Appellant until after Barnes’ trial. By failing to try Appellant by February 2005 as instructed by Judge Keesley, the state consented to Appellant’s extradition to Georgia.

Appellant was tried in Georgia shortly thereafter – in 2006. Nevertheless, the first attempt by the prosecutor to extradite Appellant to South Carolina was “in the first part of 2011” following Barnes’ conviction in November of 2010.

The delay was a deliberate attempt by the prosecution to force Appellant to testify against Barnes. The prosecutor held a “sword of Damocles” in the form of a threat of a death sentence over the head of Appellant for ten years in hopes of receiving Appellant’s assistance in the prosecution of Barnes. There is simply no reason the prosecution had to wait for Barnes’ trial to conclude before trying Appellant.

Without question, South Carolina had physical possession of Appellant from January 2002 until January 2005 when Judge Keesley granted Appellant a bond. During those three years, the prosecution made no attempt to prosecute Appellant. Appellant’s trial in Georgia, and the disposition of the testifying co-defendants’ charges were resolved in 2006. Therefore, any cross-border issues were resolved by the end of 2006.

There is no argument that the state can present except that Appellant’s trial was delayed deliberately by the state in order for the state to gain an advantage in the trial of Steven Barnes. The prosecution rightly did not argue a crowded docket prevented trial of Appellant, as the order of Judge Keesley offered the creation of a special term of court in 2005. Additionally, the prosecution rightly did not argue the factual presentation of the case was complicated as it consisted primarily of the testimony of three eyewitnesses who cooperated immediately with law enforcement.

Assertion of right to speedy trial

Without question, Appellant asserted his right to a speedy trial. He filed multiple motions in 2004 and 2005 demanding to be tried in a timely manner. When the prosecution placed his case on the trial docket, Appellant again asserted his right to a speedy trial.

Prejudice

Appellant had "no burden of pointing to specific prejudice." In light of the outrageous length of the delay and the admitted reason for the delay, the presumption of prejudice to Appellant is great. Nevertheless, Appellant provided at least one example of prejudice - during the capital trial of Steven Barnes, Appellant's co-defendant, a witness, Richard Cave, testified that his testimony was the result of what he actually remembered and what he read in transcripts and statements, not the basis of his own memory. Appellant also demonstrated through cross-examination that the memories of the witnesses were impaired by the passage of time. Additionally, the mental and emotional anguish Appellant suffered from the "sword of Damocles" controlled by the prosecution must receive significant weight and consideration. For almost a decade, Appellant lived in a state of mental and emotional turmoil waiting for the state to make a life-or-death decision.

Although the record is unclear at this time, Appellant's ability to receive credit for time served from the date of arrest is likely hindered by the state's failure to prosecute him earlier. The Department of Correction often discounts pre-trial detainment in another state or detainment subsequent to a conviction in a different jurisdiction.

CONCLUSION

Appellant respectfully requests this Court reverse the decision of the lower court, hold that his federal and state constitutional rights to a speedy trial have been violated, and dismiss the charge of murder against him.

Respectfully submitted,

Susan B. Hackett
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Appellate Defender

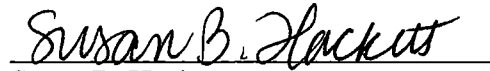
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This 10th day of September, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 10, 2013



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 10th day of September, 2013.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 10th day of September, 2013.

Sen. [Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

The State,		Respondent,
	v.	
Alexander L. Hunsberger,		Appellant.

Appellate Case No. 2012-206608

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court's failure to dismiss the pending criminal charge against Appellant violate his state and federal constitutional rights to a speedy trial where the crime allegedly took place on September 3, 2001, Appellant was arrested on January 25, 2002, but the case was not called for trial until January 3, 2012, almost a decade after Appellant's arrest?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Did the trial court fairly deny Appellant's motion to dismiss the 2002 charge of murder pending in South Carolina based on the complexity of the case involving multiple co-defendants and pending charges in separate jurisdictions, and where there was no prejudice to Appellant.

STATEMENT OF THE CASE

Sixteen-year-old Samuel J. Sturup was murdered in Edgefield County in September 2001. Appellant, Alexander L. Hunsberger, was arrested on January 25, 2002. (R. p. 8, line 3). In March 2002, an Edgefield County Grand Jury indicted Appellant for murder. (R. pp. 232). Appellant remained in custody in South Carolina until released to Georgia in or around January 2005 to stand trial for the kidnapping of the murder victim. (R. p. 226 [January 28, 2005 Order]). On September 12, 2006, after a Georgia jury convicted appellant and brother Julio Hunsberger,¹ of kidnapping with bodily injury, Appellant was sentenced to life imprisonment. (R. p. 3, line 16- p. 4, line 13).²

In early 2011, the State attempted to obtain custody for trial in this jurisdiction. Appellant did not consent which resulted in continuance of any 2011 hearing dates. (R. p. 25, line 21 – p. 26, line 9). Appellant eventually stood trial January 4-6, 2012, before the Honorable Clifton Newman and a jury. Michael Chessser, Esq., represented Appellant. In a pre-trial motion hearing held January 3, 2012, defense counsel moved to dismiss the pending murder charge in South Carolina for violation of the right to a speedy trial, which the trial judge denied. (R. p. 41, line 7–p. 43, line 11). The jury convicted as charged. (R. p. 198, lines 9-15). Judge Newman sentenced Appellant to thirty-three (33) years imprisonment. (R. p. 219, line 25 – p. 220, line 2). This appeal follows.

¹ The brothers were tried separately in this State. Appellant's brother's direct appeal is also before this Court. He also raises a speedy trial issue. *See State v. Julio Angelo Hunsberger*, Appellate Case No.: 2012-207-290.

² Julio Hunsberger's conviction was affirmed by the Georgia Court of Appeals on August 6, 2009. *Hunsberger v. State*, 683 S.E.2d 150 (Ga.App. 2009). Neither WestLaw nor the Docket/Case Inquiry System of the Georgia Court of Appeals (<http://www.gaappcals.us>) shows an opinion for Appellant (Appellant stated at sentencing that his appeal was pending, (see R. p. 202, lines 15-25)).

RESPONDENT'S STATEMENT OF FACTS

The victim in this case was sixteen-year-old Samuel J. Sturup. The evidence presented at trial demonstrated that Steven Barnes, as head of a criminal enterprise involving robbery and prostitution in Georgia, repeatedly beat and caused others to beat, Samuel over the suggestion of missing money. Barnes, with the help of Appellant, Appellant's brother, Julio Hunsberger, Charlene Thatcher, Richard Cave, and Antonio Griffin, took Samuel across the state line from Georgia into Edgefield, South Carolina. Barnes marched Samuel to an open field to be shot by the others, before Barnes personally fired a bullet into the back of Samuel's head inflicting the fatal wound.

Discovery of the Remains and Evidence at the Scene

On November 19, 2001, investigators from the Edgefield County Sheriff's Department were called to a remote field upon report of the discovery of a human skull. (R. p. 50, line 2 – p. 51, line 3). A search of the surrounding areas resulted in finding other bones and a pair of jeans with a belt displaying the name "Samuel." One of his leg bones was still in the pants leg. The pockets yielded two grocery store savings cards, a keychain with two keys, and a dollar bill. In the same area, investigators found a cigarette lighter, a .40 caliber shell casing, and extracted two bullets from the ground. (R. p. 52, line 4 – p. 55, line 24; p. 61, lines 4-7; p. 62, lines 2-8; p. 63, lines 7-16; p. 66, line 1 – p. 67, line 9).

Identification and Cause of Death

Information from the grocery cards discovered with the jeans gave investigators the name "Sturup." Searching records in neighboring jurisdictions, officers found a missing person report for Samuel Sturup. (R. p. 64, line 8 – p. 65, line 8). The autopsy

and review of dental records resulted in a positive identification of the remains as the remains of Samuel Sturup. (R. p. 118, lines 11-24). An examination of the skull indicated a gunshot wound to the head. Entry was "high on the back of the head" with a downward path. The bullet was recovered still lodged at the base of the skull along with some of the brain tissue. The brain tissue showed a contusion which indicated Samuel was alive at the time the wound was inflicted. (R. p. 119, lines 2-17). The cause of death was the gunshot wound to the head. (R. p. 120, lines 6-8). Other injury was impossible to determine due to the condition of the remains. (R. p. 121, lines 6-14).

Co-Defendant Testimony

Richard Cave testified that he, along with his friend, Antonio Griffin, went to Barnes' home in Georgia after a call from Barnes. It was Labor Day weekend 2001. Barnes was arguing with Samuel about missing money. (R. p. 73, line 8 – p. 75, line 6). Charlene Thatcher, who worked with Barnes and was also his girlfriend, was present, as well. (R. p. 75, lines 9-18). When Samuel denied having the money, Barnes grabbed a shock absorber and hit Samuel, and also beat him with his fist. (R. p. 76, line 9 – p. 77, line 9). Barnes threatened to kill Samuel. (R. p. 78, lines 22-23). Barnes made a telephone call. After the call, Alexander and Julio Hunsberger arrived. (R. p. 79, lines 7-14). Barnes and the Hunsbergers spoke to each other. The group then left in two cars. Cave testified they followed the Hunsbergers. After stopping, the Hunsbergers stood with Barnes and they got Samuel out of the trunk of the Hunsbergers' car. (R. p. 81, line 20 – p. 83, line 10; p. 110, lines 18-25). After directing everyone into a remote field, Barnes announced everyone would have to shoot Samuel or he would shoot them. (R. p. 88, line 19 – p. 89, line 1). Cave testified that he and Thatcher both shot Samuel and left the field. Cave

heard four more shots and noted Barnes was the last one to leave the field. (R. p. 89, line 3 – p. 90, line 4). The Hunsbergers led the group to a nearby trailer before the group scattered. (R. p. 90, line 5 – p. 91, line 17; p. 111, lines 1-21).

Antonio Griffin testified similarly. Griffin testified that after the Hunsbergers arrived at the Georgia House, the Hunsbergers and Barnes spoke apart from the group. (R. p. 132, lines 6 –18). Shortly thereafter, the group left in two cars, with the Hunsbergers in the lead. (R. p. 132, line 18 – p. 133, line 8). Griffin testified that after arriving in the field, Barnes instructed everyone to shoot Samuel or Barnes would kill them. (R. p. 137, lines 1-11). Thatcher shot Samuel. (R. p. 137, lines 14-19). One of the Hunsbergers (Griffin did not recall which one) grabbed the gun from Thatcher and fired. (R. p. 137, line 22 – p. 138, line 4). As they all gathered to leave, Barnes told Griffin that Barnes had shot Samuel in the head. (R. p. 138, lines 15-21).

Charlene Thatcher also testified at Appellant's trial. She testified that the Hunsbergers led the way to the remote field, and the Hunsbergers were with Barnes when taking Samuel out of the trunk of the Hunsbergers' car. (R. p. 163, line 7- p. 164, line 15). Thatcher admitted to shooting Samuel first in the stomach. She testified Barnes shot Samuel in the head. (R. p. 165, line 15 – p. 166, line 6). After returning to the cars, the Hunsbergers lead the way to a nearby trailer. (R. p. 166, line 25 – p. 167, line 1). In the trailer, the Hunsbergers looked for materials to clean the guns, and wiped the guns down. (R. p. 167, lines 9-19).

Other Evidence At Trial

Gerald Richardson testified that he was formerly married to Appellant's mother. Richardson owns property in Edgefield County and maintains mobile homes on the

property. Appellant lived at one of those homes from 1999 to 2001. (R. p. 114, line 21 – p. 117, line 24). That home was near the gated field where Samuel’s jeans and bones were found. (See R. p. 56, line 8 – p. 60, line 4).

In a statement to investigating officers, Appellant admitted to being present when Samuel was taken from Georgia into South Carolina, and admitted shooting at Samuel but stated he “shot off to the side.” (R. p. 187, line 8 – p. 193, line 5).

ARGUMENT

The trial judge fairly denied Appellant's motion to dismiss the 2002 charge of murder pending in South Carolina based on the complexity of the case involving multiple co-defendants and pending charges in separate jurisdictions, and where there was no prejudice to Appellant.

Relevant Facts:

On November 16, 2004, defense counsel moved for an order setting the "case [to] be tried during the November 8th, 2004 term of Court, or at the next succeeding term of Court, or, in the event the Defendant is not so tried, that the Defendant be released from confinement on his own recognizance." (R. p. 222 [Notice of Motion and Motion for Speedy Trial]). Within the motion, defense counsel advised:

The Defendant has been incarcerated since January 25th, 2002 without bail. Bail was denied by written order of the Court dated June 14th, 2002. On April 29th, 2004, a bond hearing was held before the Honorable William P. Keesley, at which time bond was again denied by oral order, but with the provision that the issue of bond could be brought before the Court again if the State failed to try the Defendant at the next term of Court in Edgefield. The State has failed to so try the Defendant, and upon information and belief the State has no plans to try the Defendant in the foreseeable future.

(R. p. 222 [Notice of Motion and Motion for Speedy Trial]).

Appellant also asked, in the alternative, "for a bond for the release of the Defendant pending the trial of this matter, on such terms and conditions as the Court shall deem appropriate." (R. p. 222 [Notice of Motion and Motion for Speedy Trial]).

On December 2, 2004, the Honorable William P. Keesley issued an Order denying the requested relief. However, Judge Keesley found the length of time troubling, and offered to attempt to "establish a special term of court to handle this case during February" 2005. (R. p. 224 [December 2, 2004 Order]). Judge Keesley also recognized that "[p]art of the problem in disposing of these cases is the fact that multiple defendants

and different jurisdictions are involved, and there is the possibility that the State of South Carolina could seek the death penalty.” (R. p. 224 [December 2, 2004 Order, pp. 1-2]). Judge Keesley also further recognized that “Georgia has placed a hold on the defendant, so if he were granted bail in South Carolina, he would still be incarcerated in Georgia.” (R. p. 224 [December 2, 2004 Order, p. 1]).

Defense counsel renewed the motions in January 2005. By Order dated January 28, 2005, Judge Keesley noted that the State declined the Court’s offer for a special term. (R. p. 226 [January 28, 2005 Order, pp. 1-2]). Judge Keesley again denied the motion to dismiss, but granted bond with the caveat “DEFENDANT IS NOT TO BE RELEASED FROM CUSTODY UNLESS THE HOLDS PLACED BY THE STATE OF GEORGIA ARE LIFTED.” (R. p. 226 [January 28, 2005 Order, p. 2 (emphasis in original)]).

Appellant was released to Georgia in 2005, for trial on a charge of kidnapping of the same victim. On September 12, 2006, upon conviction of the kidnapping charge, a Georgia court sentenced Appellant to life imprisonment (which, apparently, carries parole eligibility within a few years). Appellant thereafter began service of that sentence in Georgia. (R. p. 3, line 16- p. 4, line 4; p. 8, line 22 – p. 9, line 22; p. 16, lines 3-8; p. 18, lines 16-18; p. 23, line 17 – p. 24, line 13).

Steven Barnes was also indicted for the murder of Samuel J. Sturup. Barnes was tried in November 2010, convicted, and sentenced to death. (R. p. 23, lines 3-16; p. 41, lines 15-17). His case is, as of this writing, still pending on direct appeal in the Supreme Court of South Carolina.³ (Appellate Case No. 2010-178247, argued February 5, 2013).

³ Barnes does not raise a speedy trial issue in his direct appeal, but has argued that the Interstate Agreement on Detainers Act provided for dismissal of the murder charge where he was not tried within the statutorily set one hundred and eighty (180) days.

As noted, this matter actually involved multiple defendants facing various charges both in South Carolina and Georgia. The Hunsbergers and Barnes were released to Georgia to stand trial prior to their trials in South Carolina. (R. p. 23, line 17 – p. 24, line 11). Georgia convicted Barnes of matters relating to his criminal enterprise separate from the murder and sentenced him to life imprisonment. (R. p. 24, lines 3-8; p. 28, lines 16-22). As noted, the Hunsbergers were convicted and received a life sentence. (R. p. 24, lines 9-13). Additionally, Richard Cave pled guilty in Georgia to aggravated assault and received an eighteen year sentence. (R. p. 28, lines 5-6; p. 95, lines 16-25). Antonio Griffin also pled guilty to assault in Georgia and received an eighteen year sentence. (R. p. 28, lines 5-6; p. 143, lines 1-5). Charlene Thatcher pled guilty to aggravated assault, as well. She also received an eighteen year sentence. Further, she pled guilty to an unrelated armed robbery in Georgia (as a result of her participation in Barnes' criminal enterprise), received another eighteen year sentence, and was also convicted in 2002 of prostitution. (R. p. 28, lines 7-10; p. 168, lines 1 – 24; p. 170, lines 6-21).

The State attempted to try Appellant in early 2011, after conclusion of the capital trial for Barnes in November 2010. However, Appellant did not consent to the State's request for his return to South Carolina which resulted in a continuance. (R. p. 25, line 21 – p. 26, line 9). (See also R. p. 36, lines 13-23). The prosecuting attorney noted that the Solicitor had not determined whether to seek death on Appellant's murder charge until after Barnes' conviction. (R. p. 23, lines 3-16). The State also acknowledged that it extended the offer to have Appellant testify against Barnes in the capital case, but Appellant declined. The State further acknowledged that was his absolute right, but

again asserted that he had the same opportunity to cooperate as other co-defendants. (R. 4, lines 14-25; p. 6, lines 12-17; p. 26, line 10- p. 27, line 3; p. 29, lines 12-15).

The State was able to secure Appellant's presence and a jury trial was held in January 2012. (R. p. 25, line 21 – p. 26, line 9). Appellant argued that the charges should be dismissed for failure to provide a speedy trial. (See R. p. 41, line 7–p. 43, line 11). The trial judge, after hearing lengthy argument, and having received testimony on same from Appellant, denied the motion. In denying the motion, Judge Newman noted that since Appellant's release back to Georgia, there were a number of cases resolved in Georgia for the co-defendants, a trial was held for Appellant and his brother, and co-defendant Barnes was tried in a capital case in this State. (R. p. 40, line 1 – p. 41, line 20). He found this particular case was "unique in the sense that you have cross-border issues, you have Georgia wanting to pursue Georgia's case, but South Carolina wanting to pursue South Carolina's cases, each defendant asserting their individual constitutional rights and the State having a capital case that they're wanting to pursue and have successfully pursued." (R. p. 41, line 25 – p. 42, line 6). Judge Newman concluded:

... this case doesn't follow the normal framework of cases where a person is - - has a charge outstanding and simply wants to get it tried, wants to get it over with. This is a case that has a number of complicated factors that bring us to this moment in time.

(R. p. 42, lines 7-11).

He then turned to evaluating prejudice and addressed Applicant's assertion that prejudice should be assumed. Judge Newman concluded:

... I don't think that prejudice can be assumed given the facts that I've heard. I think the State has demonstrated legitimate reasons for the delay given the complex nature of the cases, the problems involving prosecutions in multiple jurisdictions in this state as well as the State of Georgia.

Who knows what may develop during the course of the trial. We may get some indication that the defendant's due process rights have been violated or right to a fair trial has been violated. Due to the length of time involved, but I believe that the - - based on what I've heard *the State has shown that it has acted properly under the circumstances and the defendant has not shown any prejudice* that might affect his right to a fair trial or his due process rights. I therefore, deny the motion.

(R. p. 42, line 22 – p. 43, line 11) (emphasis added).

Defense counsel renewed his motion at the close of the State's case. Defense counsel complained that the trial testimony well supported his earlier assertion that the passage of time dimmed memories and created prejudice, though, he argued, he need not show prejudice where the State was at fault in delaying the trial. (R. p. 194, line 22 – p. 195, line 21). Judge Newman again denied relief, noting the number of trials for all the co-defendants, the time for "sorting out that process," and the fact that Appellant was incarcerated in Georgia pursuant to the Georgia conviction since 2006, as factors that did not support the State was at fault such that relief was warranted. Further, he found no prejudice otherwise, noting that there were transcripts available for impeachment that were used at trial, and that "everyone seems to have a pretty vivid memory" of this most serious matter. (R. p. 196, line 9 – p. 197, line 12).

Appellant argues on appeal that Judge Newman erred in denying the motion where the facts supported that the prosecution deliberately delayed for advantage in attempt to "force Appellant to testify against Barnes." (FBOA, p. 18). He argues there was no other reason to delay prosecution. (FBOA, p. 18). Further, he argues that his trial in Georgia was completed in 2006. "Therefore, any cross-border issues were resolved by the end of 2006." (FBOA, p. 18). Appellant also argues "[t]here is no argument that the state can present except that Appellant's trial was delayed deliberately by the state in

order for the state to gain an advantage in the trial of Steven Barnes.” (FBOA, p. 18). As to prejudice, he asserts “the outrageous length of the delay and the admitted reason for the delay” renders “the presumption of prejudice to Appellant is great.” (FBOA, p. 19). Appellant also asserts that “memories of the witnesses were impaired by the passage of time,” and he suffered “mental and emotional anguish” having to wait for the State to determine whether to seek the death penalty against him. (FBOA, p. 19). Lastly, as a basis for finding prejudice, Appellant asserts that he may not receive credit for all the time served. (FBOA, p. 19).

Discussion:

The record fully and fairly supports Judge Newman’s finding that, in these discrete circumstances, delay was justifiable based on the complexity of the case and the multiple prosecutions in separate jurisdictions, and showed no prejudice to Appellant. This Court should affirm the denial of the motion to dismiss.

“A criminal defendant is guaranteed the right to a speedy trial.” *State v. Cooper*, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct. App. 2009), *citing* U.S. Const. amend. VI; S.C. Const. art. I, § 14; *State v. Pittman*, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). Yet, “[t]here is no universal test to determine whether a defendant’s right to a speedy trial has been violated.” *Id.*, *citing State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978)). Rather, a two-step inquiry has emerged. The first step is to determine whether the delay is of such length to require analysis. *See Doggett v. United States*, 505 U.S. 647, 652 (1992) (“Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay, ... , since, by definition, he cannot complain that the

government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with customary promptness.") (internal citation omitted). Once that triggering presumption is shown, a court may then consider any number of facts to understand the cause of the delay. *State v. Waites*, 270 S.C. at 108, 240 S.E.2d at 653 ("The two year four month delay between arrest and preliminary hearing is disturbing" and "[w]hile length of delay alone is not dispositive" the "two year four month delay between arrest and preliminary hearing" in that case was "sufficient to trigger ... review of the other three factors enumerated in *Barker v. Wingo*, and our consideration of 'such other circumstances as may be relevant'"). *See also State v. Cooper*, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct.App. 2009), *citing State v. Waites*, 270 S.C. at 107, 240 S.E.2d at 653 ("There is no universal test to determine whether a defendant's right to a speedy trial has been violated.").

The leading case setting out various factors to consider is *Barker v. Wingo*, 407 U.S. 514 (1972). The Supreme Court, acknowledging that each case turns on its own facts, provided the following guidance:

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

Barker v. Wingo, 407 U.S. 514, 530 (1972).

South Carolina courts generally follow these factors in assessing whether a violation has occurred. *See, e.g., State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012); *State v. Evans*, 386 S.C. 418, 688 S.E.2d 583, 586 (Ct.App. 2009). Considering the facts

of this case within that framework, the record well supports the denial of relief. Respondent will address each of the *Barker* factors separately as they apply here.

The Length of Delay

The time of ten years from arrest and indictment⁴ to trial is unusual when compared to delays referenced in a survey of published cases on speedy trial issues in this jurisdiction. *See, for example, State v. Langford, supra* (twenty-three month delay reviewed in armed robbery, first degree burglary and kidnapping case); *State v. Pittman, supra* (reviewing three year delay between arrest and trial in murder case); *State v. Waites, supra* (reviewing two year four month delay in assault and battery of a high and aggravated nature and pointing and presenting a firearm); *State v. Cooper, supra* (reviewing forty-four month delay on murder re-trial). *See also State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997) (reviewing three years and five months delay in armed robbery and murder case); *State v. Kennedy*, 339 S.C. 243, 528 S.E.2d 700 (Ct.App. 2000), *affirmed by State v. Kennedy*, 348 S.C. 32, 558 S.E.2d 527 (2002) (reviewing two year and two month delay in grand larceny, first degree burglary and financial transaction card fraud case); *State v. Smith*, 307 S.C. 376, 415 S.E.2d 409 (Ct.App. 1992) (reviewing three year delay in murder case). But it is not the outer limit. *See State v. Evans*, 386 S.C. 418, 688 S.E.2d 583 (Ct.App. 2009) (reviewing twelve year delay in manslaughter case). *Cf. State v. Lee*, 360 S.C. 530, 602 S.E.2d 113 (Ct.App. 2004) (reviewing twelve-year pre-indictment delay in CSC first degree and lewd act case). Even so, there is little question

⁴ “The clock starts running on a defendant’s speedy trial right when he is ‘indicted, arrested, or otherwise officially accused,’ and therefore we are to include the time between arrest and indictment.” *State v. Langford*, 400 S.C. at 442, 735 S.E.2d at 482.

such time could trigger the further evaluation of whether a violation has occurred. *See Doggett v. United States*, 505 U.S. 647, 652 n. 1 (1992) (“Depending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’”). Yet, the factual background shows certain breaks in the time period. Such breaks undermine a blanket assertion that the whole of the delay falls at the feet of the prosecution.

For instance, the prosecution requested to obtain custody in early 2011 after the Barnes trial had been completed. Appellant did not consent to extradition. Therefore, extradition proceedings could not be completed for a trial date in 2011. (R. p. 25, line 21 – p. 26, line 9). This nearly year-long delay may be directly attributed to Appellant and should not be assessed to the State. *State v. Langford*, 400 S.C. at 443, 735 S.E.2d at 483, citing *Vermont v. Brillon*, 556 U.S. 81 (2009) (“Delays occasioned by the defendant ... weigh against him.”). *See also State v. Pittman*, 373 S.C. at 549, 647 S.E.2d at 155 (“the Court must also consider and weigh the defendant’s contribution to the delay in determining whether the defendant’s Sixth Amendment rights have been violated.”).

At any rate, the reasons for the delay are more dispositive of the lack of a violation than the block of time Appellant relies upon. *See Doggett*, 505 U.S. at 652 n. 1 (“We note that, as the term is used in this threshold context, ‘presumptive prejudice’ does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* enquiry.”); *State v. Cooper*, 386 S.C. at 217, 687 S.E.2d at 66, quoting *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (“...the determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead

is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.””).

The Reason for the Delay

Barker provides not only should the reason for the delay be considered, but also that those reasons should be examined as to relative justification:

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Barker v. Wingo, 407 U.S. at 531.

The reason for the delay here is multifaceted. There were at the outset of the prosecution two jurisdictions vying for the opportunity to pursue charges against a minimum of six individuals who participated in varying respects with the assault, kidnapping and murder. Further, the murder with aggravating circumstance(s) allowed for consideration of capital proceedings. In fact, capital proceedings were sought against Steven Barnes who is now sentenced to death for Samuel’s murder. The State expressed its intent to try Barnes first, and the delay in Barnes’ capital case caused additional delays in the subsequent trials. (R. p. 30, lines 17-24). The record well supports Judge Newman’s findings on the complexity of the case.

Certainly, complexity in the case is a valid reason for delay in the proceedings. *Pittman*, 373 S.C. at 552, 647 S.E.2d at 157 (“Although it took a long time for the case to come to trial, any delay was the result of the complexities of this case.”); *Cooper*, 386

S.C. at 218, 687 S.E.2d at 67 (noting “complexity of the case and the amount of time required to prepare for trial” in assessing justification for the delay). *See also United States v. Brown*, 498 F.3d 523, 531 (6th Cir. 2007) (“the reasons for the delay weigh against finding a Sixth Amendment violation. First, the charges were complex, involving multiple defendants and” multiple charges); *United States v. Bass*, 460 F.3d 830, 837 (6th Cir. 2006) (“With regard to the five-year period between Bass’s arraignment and trial, it is apparent that the government was not any more to blame than Bass for this delay either. Bass’s case was complex, involving a large-scale drug and murder conspiracy that, at one point, encompassed seventeen defendants. That the delay was caused by the case’s complexity favors a finding of no constitutional violation.”); *United States v. King*, 483 F.3d 969, 976 (9th Cir. 2007) (noting complex cases with “numerous defendants and alleged co-conspirators”); *United States v. Register*, 182 F.3d 820, 827 (11th Cir. 1999) (noting “the complex nature of the charges and sheer number of defendants and issues involved also account for some of the delay”). Judge Newman correctly identified the complexity of the case in the number of defendants, the number of trials, the prosecutions in two States, and the capital proceedings for co-defendant Barnes.

Further, attempting to “collect witnesses” is a valid cause for delay. *See Doggett v. United States*, 505 U.S. at 656 (“Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. The government may need time to collect witnesses against the accused, oppose his pretrial motions, or, if he goes into hiding, track him down. We attach great weight to such considerations when balancing them against the costs of going forward with a trial whose probative accuracy the passage of time has begun by degrees to throw into question.”). *See also Barker v. Wingo*, 407 U.S. at 531 (“a

valid reason, such as a missing witness, should serve to justify appropriate delay.”). Contrary to Appellant’s assertion that the State acted improperly in offering Appellant the opportunity to testify against Barnes, (FBOA, p. 18), this offer actually shows the State did not place isolated or undue pressure on Appellant. The State had success in securing many of the co-defendants to testify against Barnes, and, the offer to allow the Hunsbergers to testify “might [have] go[ne] toward their benefit.” (See R. p. 4, lines 14-25; p. 26, lines 10-16). As the State acknowledged, it was their right to decide not to testify against Barnes. (R. p. 26, line 17 – p. 27, line 6). Even so, they had the same opportunities as the other co-defendants. This even treatment does not lend itself to attack here as evidence of an attempt to harm the defense. It is, however, a facet of the complexity.

Further still, it is clear from the record that the State immediately set out to bring the Hunsbergers back to this jurisdiction for trial upon completion of the capital proceedings against Barnes. (R. p. 25, line 21 – p. 26, line 6). There was no delay of any consequence in seeking Appellant’s return after the capital proceedings concluded.

It should be noted, as well, that the State had relinquished custody in early 2005. Georgia did not try the case until September 2006. The State could not seek simultaneous trials as these are separate sovereigns. This nearly two-year period may not be attributed directly to the State. *See United States v. Battis*, 589 F.3d 673, 679-680 (3rd Cir. 2009) (separating federal and state charges for purposes of speedy trial analysis, but finding decision to wait on state prosecution weighed against federal government, though not heavily as the federal government was not “intentionally undermining the defense”); *United States v. Seltzer*, 595 F.3d 1170, 1178 (10th Cir. 2010) (“We agree with our sister

circuits that awaiting the completion of another sovereign's prosecution may be a plausible reason for delay in some circumstances..."). Cf. *State v. Robbins*, 590 A.2d 1133, 1136-1137 (N.J. 1991), quoting *State v. Williams*, 224 A.2d 331 (N.J. 1966) ("Inasmuch as it is impossible for a person to be in two places at the same time, where one owes penalties to two separate sovereigns, one sovereign must relinquish its claim and allow the other to exact its penalty first."). After conviction, Appellant began service of his Georgia sentence in Georgia. (See R. p. 24, line 12-25). In fact, Appellant testified at the pre-trial hearing on the motion to dismiss that one of his reasons for not agreeing to extradition was he "needed to find out" how leaving Georgia would affect his Georgia appeal. (R. p. 36, lines 16-23). This marked hesitancy in returning to the State fails to show a desire for a speedy trial here. Again, this time should not count against the State. This is most assuredly so where Appellant simply did nothing to force prosecution in South Carolina, though he had the ability to do so.

The Defendant's Assertion of the Right

Without question, Appellant asserted his right in late 2004 and again January 2005. This resulted in a bond that allowed Georgia to obtain custody and subsequently try Appellant on the kidnapping charge. (R. p.226 [January 28, 2005 Order]). Essentially, Appellant moved for relief under Section 17-23-90 and appropriate relief was granted at that time. (R. p. 222 [Notice of Motion and Motion for Speedy Trial]). See generally *State v. Campbell*, 277 S.C. 408, 288 S.E.2d 395 (1982) (denying speedy trial claim pursuant to statute where S.C. Code § 17-23-90 provides for release if not indicted and tried within certain time frame, not dismissal of the charge). After this grant of relief,

however, Appellant failed to reassert or pursue his constitutional right to a speedy trial at any point until immediately before his January 2012 trial.

“[T]he defendant’s assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right.” *Barker v. Wingo*, 407 U.S. at 528. Multiple assertions of the right will weigh heavily in a defendant’s favor. *See, for example, United States v. Bass*, 460 F.3d at 837 (“Between his arraignment and trial, Bass filed three motions to dismiss based upon speedy trial grounds: (1) in January 1999, two months after the arraignment; (2) in March 2000; and (3) in March 2002. Accordingly, Bass asserted his right to a speedy trial, and this factor weighs in his favor.”).

As noted, Appellant failed to do anything to assert a speedy trial issue after he was released to Georgia in early 2005 until the time of his trial in January 2012. (See R. p. 17, lines 21-25, acknowledging no request during six to seven years of the delay). In fact, he declined to allow extradition in 2011. (R. p. 36, lines 13-23). Unlike his co-defendant Steven Barnes, he did not seek return and prosecution under the Interstate Detainer Act. Thus, in assessing the delay, the fact that Appellant failed to assert his right to a speedy trial after his release to Georgia is significant. *State v. Foster*, 260 S.C. 511, 197 S.E.2d 280 (1973) (finding no violation where during five of the seven year delay at issue, neither the State nor defendants “pursued the matter” and a “failure to assert the right will make it difficult for the defendants to prove that they were denied a speedy trial”). *See also United States v. Wanigasinghe*, 545 F.3d 595, 599 (7th Cir. 2008) (in review of eleven year delay after indictment but before arrest: “Wanigasinghe did not request a speedy trial during the time he was out of the country. We agree with the

district court's finding that he likely knew he had been charged with a crime but nevertheless did nothing to take care of the charges; quite the opposite. His failure to request a speedy trial is also a factor which weighs against him.").

Simply, during the time that Appellant now argues the "cross-border" jurisdiction issues were resolved and the trial, (see FBOA, p. 18), Appellant did not request return or trial. This must weigh heavily against him. *Barker v. Wingo*, 407 U.S. at 536 ("barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.").

Whether There Is Prejudice to the Defendant

As noted above, the delay itself is not dispositive of whether a violation has occurred. Neither is the time at issue dispositive of prejudice. *Pittman*, 373 S.C. at 551, 647 S.E.2d at 156) (rejecting Pittman's argument "that the delay of his trial was so lengthy that it not only meets the requisite finding of delay, but also that the delay is presumptively prejudicial"). Other courts have examined similar delays and declined to find presumptive prejudice. See *United States v. Blanco*, 861 F.2d 773, 778 (2nd Cir. 1988) (rejecting general assertion of prejudice in ten year delay between indictment and trial where defendant at fault in delay and where "delay can just as easily hurt the government's case"); *United States v. Tchibassa*, 452 F.3d 918, 925-927 (D.C.Cir. 2006) (finding no presumptive prejudice where defendant more at fault than government in eleven year delay). Accord *United States v. Mendoza*, 530 F.3d 758, 764-765 (9th Cir. 2008) (noting that if government had "exercised due diligence," for speedy trial claim on delay of eight years, defendant would have had to have shown "specific prejudice to his

defense” rather than assessing presumptive prejudice). The Supreme Court in *Barker* specifically noted the damage that may very well be done to the prosecution’s case:

A second difference between the right to speedy trial and the accused’s other constitutional rights is that deprivation of the right may work to the accused’s advantage. Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof. Thus, unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused’s ability to defend himself.

Barker v. Wingo, 407 U.S. at 521.

Even though Appellant was tried for the 2002 charge in January of 2012, he had ample opportunity to thoroughly cross-examine the witnesses against him, including making use of prior sworn testimony – testimony that was available as a result of multiple actions both in South Carolina and Georgia. (See R. p. 19, line 24 – p. 21, line 9; p. 22, lines 18-25). Further, he does not contend any exculpatory witness or testimony is not unavailable. Appellant has twice been convicted (once in Georgia, once here) on evidence of participation in the events that led to Samuel’s murder, and readily admits his presence during the crime. (See R. p. 187, line 8 – p. 193, line 5; p. 216, lines 8-13). Appellant argues, though, that the passage of time affected extent of memory and credibility of the witnesses against him. (See FBOA, p. 19; R. p. 194, line 22 – p. 195, line 13). In effective rebuttal, the trial transcript demonstrates credibility was challenged by use of prior transcripts which preserved sworn testimony, (See R. p. 97, line 14 – p. 100, line 19; p. 144, line 25 – p. 145, line 5), and that contemporaneous notes were used to refresh memories, (See R. p. 144, lines 2-24; p. 172, line 7 – p. 173, line 13). The multiple trials and statements in essence preserved and/or created testimony for this

Appellant's use to his benefit. At any rate, as Judge Newman found, there was no evidence of prejudice to Appellant based on the passage of time:

Regarding ... problems the witnesses had remembering, Counsel did an effective job at pointing out to the witnesses in cross-examining them and impeaching them on prior inconsistent statements. The fact that there is a transcript to go over your testimony available, it accounts the opportunity to refresh the witness' recollection and to impeach where needed[.]

In looking at it, the trial to this point - - looking back I indicated in retrospectively on a position of prejudice, I don't see where the defendant has been prejudiced in any way. Based on the lapse of time, for the most part, everyone seems to have a pretty vivid memory. Of course, these matters will probably - - probably be forever etched in the memories and minds of people who were there involved, eye witnesses.

(R. p. 196, line 22 – p. 197, line 11).

His ruling is well supported and his reasoning sound.

Further, though Appellant's case was considered for capital proceedings, the State ultimately decided against seeking the death penalty for Appellant. (R. p. 23, lines 3-16). As such, the length of the delay in this aspect certainly holds no prejudice to Appellant. *See Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 ("Judge Pieper noted the State withdrew its notice to seek the death penalty; thus, the withdrawal could be construed as a benefit to Cooper resulting from the delay.").

As far as Appellant's argument referencing credit for time served, (see FBOA, p. 19), this was not raised as a ground for the speedy trial motion. This argument is procedurally barred. *See, e.g. State v. Byram*, 326 S.C. 107, 113, 485 S.E.2d 360, 363 (1997) (appellant's failure to raise constitutional issue to the trial court barred review on appeal); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may

not argue one ground at trial and an alternate ground on appeal.”). Further, this issue was not developed below and should not be heard at this time. Defense counsel requested at sentencing credit for time served and a sentence that would run concurrent with the Georgia sentence. (See R. p. 204, lines 11-18). The transcript closes with the State attempting to confirm the steps for a concurrent sentence and defense counsel providing information for the case number and date of sentencing. (R. p. 218, line 6 – p. 221 line 2). Appellant concedes “the record is unclear at this time....” (FBOA, p. 19). Indeed, this record is not fully developed on this point which is another reason the argument should not be reached. *See State v. Tyndall*, 336 S.C. 8, 17, 518 S.E.2d 278, 283 (Ct. App. 1999) (“An appellant has a duty to provide this Court with a record sufficient for review of the issues on appeal.”); Rule 210, SCACR (in general, “the appellate court will not consider any fact which does not appear in the Record on Appeal.”).

At any rate, as more fully set out above, the record well supports Judge Newman’s factual findings which he correctly analyzed in the appropriate legal framework. Therefore, this ruling should be upheld on appeal. *Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 (affirming denial of motion to dismiss where appellate court found trial judge’s “decision was supported by the evidence”).

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

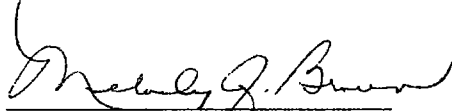
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September 9, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions
Clifton Newman, Circuit Court Judge

The State,

Respondent,

v.

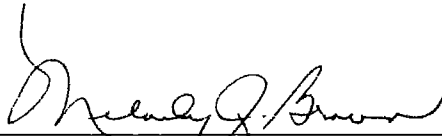
Alexander L. Hunsberger,

Appellant.

Appellate Case No. 2012-206608

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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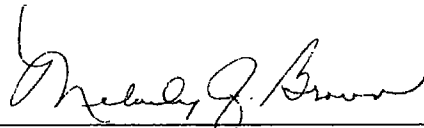
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PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Susan B. Hackett, Appellate Defender
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This 9th day of September, 2013.



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IN THE COURT OF APPEALS

Appeal from Edgefield County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALEXANDER L. HUNSBERGER,

APPELLANT

Appellate Case No. 2012-206608

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The trial court's failure to dismiss the pending criminal charge against Appellant violated his state and federal constitutional rights to a speedy trial where the crime allegedly took place on September 3, 2001, Appellant was arrested on January 25, 2002, but the case was not called for trial until January 3, 2012, almost a decade after Appellant's arrest.

Appellant's brief explained the relevant chronological procedural history of the speedy trial motion, the proper legal analysis, and Respondent's violation of Appellant's federal and state constitutional rights. Nevertheless, Respondent's brief raised multiple arguments that require reply by Appellant.

As an initial matter, the Respondent conceded the time of ten years from arrest to trial was "unusual when compared to delays referenced in a survey of published cases on speedy trial issues in this jurisdiction." FBOR at 14. Yet, Respondent argued "certain breaks in the time period ... undermine[d] a blanket assertion that the whole of the delay falls at the feet of the prosecution." FBOR at 15. One alleged break was Respondent's claim that Appellant did not consent to extradition proceedings in 2011. Therefore, Respondent argued one year of the ten-year delay was attributable to Appellant. FBOR. 15.

This argument contorts the facts presented to the trial judge. At the hearing, the prosecutor argued that Appellant attempted to delay his return to South Carolina by contesting jurisdiction "and not wanting us to proceed at the last term of court." R. 24, lines 21-25; R. 27, lines 6-11. However, the only actual evidence in the record concerning possible extradition was Appellant's testimony. Appellant stated that his counselor approached him in September of 2011 and asked him to sign a form consenting to extradition. The counselor explained that if he did not sign to consent, then he would have

twenty days to file a writ to contest extradition. Appellant did not consent immediately because he wanted the advice of counsel first. Appellant filed no writ of habeas corpus contesting jurisdiction. Thereafter, he was extradited to South Carolina. R. 35, line 6 – R. 38, line 9.

Respondent's attempt to blame Appellant for one year of the ten-year delay fails upon a review of the record and the actual evidence presented. Additionally, even if this Court determined Appellant had caused any delay due to his not signing the extradition consent, this occurred in September 2011, which was a mere four months before his case was called to trial. Therefore, the only delay that could be attributed to Appellant in this regard is four months. Nevertheless, Appellant contests any of the ten-year delay being attributed to any acts or omissions by Appellant.

Turning to additional alleged reasons for the delay, Respondent argued that two jurisdictions vied for the opportunity to pursue charges against a minimum of six individuals. FBOR at 16. The record failed to support Respondent's contention. The record clearly demonstrated Appellant was within the custody and control of South Carolina until the prosecution failed to try him within a reasonable amount of time. Only then did the trial judge set a personal recognizance bond enabling the state of Georgia to extradite Appellant. R. 8, lines 16-21; R. 226 (Order filed 1/28/2005). The prosecution did not attempt to regain custody and control of Appellant. In fact, the record also demonstrated no attempts by the State of South Carolina to extradite Appellant until 2011 despite the fact that Appellant had been tried and convicted in Georgia in 2006.

Respondent argued Appellant's case was "complex" and that such complexity was the reason for delay. FBOA at 16. A review of Appellant's trial transcript revealed

Appellant's case was not complex at all. The prosecution's case was very straightforward, involving the testimony of multiple eyewitnesses and police officers. The evidence also revealed the lay witnesses were prepared to testify at least as early as 2006 when they testified against Appellant in Georgia. R. 97, lines 14-16; R. 143, line 25 – R. 146, line 11.

Respondent argued that collecting witnesses was a valid cause for delay. Respondent contorts the case law supporting the proposition that collecting witnesses may support a cause of delay. The case law cited by Respondent concerned when a prosecution is delayed against an accused to collect witnesses against the accused. FBOR at 17. Here, the collecting of witnesses was the prosecution attempt to collect Appellant as a witness against a co-defendant. There was no need to delay Appellant's prosecution as the state had all the witnesses it required. Respondent's argument attempts to lay blame for the trial delay on Appellant because he refused to testify. The delay of Appellant's trial while the prosecution attempted to gather witnesses, including Appellant, to testify against Barnes was attributable to the state, not Appellant.

Although Respondent argued that the prosecution delayed Appellant's trial because it wanted to try Barnes first, and that after Barnes' trial, the prosecution actively sought a trial against Appellant, Respondent offered no explanation to justify why Appellant's trial and his constitutional rights would be dependent upon the trial of another. The prosecutor offered no reason for wanting to try Barnes first; he simply stated that the prosecutor wanted to do so.

The prosecutor very candidly admitted that the only reasons for delay were the prosecutor deciding whether to seek Appellant's death as punishment and the prosecutor attempting to force Appellant to testify against Steven Barnes. R. 4, lines 14-25; R. 25, lines

3-17; R. 29, lines 15-19; R. 23, lines 3-16; R. 26, lines 10-16; R. 26, line 24 – R. 28, line 10; R. 29, lines 10-15; R. 31, lines 10-12.

Recently, the Supreme Court of Georgia dismissed capital murder charges against a defendant based upon a delay of fifty-three months between indictment and the defendant's motion to dismiss. Buckner was indicted in December 2007 for kidnapping, molestation, and murder of a minor. Four years later, when Buckner had not been tried yet, he filed a motion to dismiss based upon his speedy trial right. State v. Buckner, 738 S.E.2d 65, 68 (Ga. 2013). Buckner's case had been set for trial on April 4, 2011, but the prosecution announced its intent to seek the death penalty on that date. In light of the announcement, the trial was continued and new lawyers were appointed to represent Buckner. Then, on August 25, 2011, the prosecution decided it would not seek death after all. Buckner's trial was set for February 2012. Buckner filed his motion to dismiss in December 2011. Id. at 69.

The Supreme Court of Georgia initially determined, and the prosecution conceded, that the delay of over fifty-three months (over four years), raised a presumption of prejudice. Id. The Court then examined the Barker-Doggett¹ factors. The Court acknowledged the charges serious, but found the prosecution had completed its investigation by the time Buckner was indicted. The case against Buckner was "no more complicated than most other cases involving such serious crimes." Therefore, the fifty-three month delay was uncommonly long and weighed against the state. Id. at 70.

The reasons for the delay were the negligent inaction of the prosecuting attorneys and the reassignment of the case among prosecuting attorneys. This delay of approximately

¹ Barker v. Wingo, 407 U.S. 514 (1972); Doggett v. United States, 505 U.S. 647 (1992).

thirty months weighed benignly against the state. Id. The Court attributed three months of the delay to the defense submitting a notice of conflict, which weighed benignly against Buckner. Id. However, the Court weighed more heavily the delay of ten months in which the prosecuting attorneys intended to seek the death penalty. The Court explained the announcement occurred late in the already delayed case and was unnecessary in light of the prosecutor's subsequent withdrawal of the notice. The prosecution must exercise its discretion to seek the punishment it deems appropriate in each case; however, the Court could not ignore that the state chose not to exercise its discretion until the eve of trial in a case that had been pending for forty months. The late decision was not based on the discovery of new evidence or other notable newly acquired information that would cause a reasonable prosecutor to reconsider the issue of punishment. The ten-month delay due to the death penalty announcement was the result of a deliberate decision by the prosecution and was something more than mere negligence. Id. at 71. The Court explained that seeking death in the case – one “involving a convicted sex offender accused of murder, kidnapping, and sexually abusing a child” – was hardly novel. Thus, the prosecuting agency should have reviewed the file and made its discretionary determination long before December 2010. Id.

Buckner did not assert his right to a speedy trial until almost four years after his indictment; therefore, this factor weighed heavily against him. However, his repeated insistence that the state comply with his discovery requests somewhat mitigated his late assertion. Id. at 72.

The Court further found Buckner suffered prejudice because his defense was impaired by evidence tampering. A 2003 investigation revealed that two police officers and one retired police officer entered the deceased's bedroom before it was secured by the

investigating officers. At least one of the officers tampered with evidence, including removing potential evidence from the bedroom. The officer instructed the deceased's family not to tell anyone about the police entering the bedroom. Id. at 73. Also, the officer who investigated the evidence tampering in 2003 was no longer able to recall important and material details of his investigation, the recordings of witnesses to the tampering had been lost, and the witnesses were either deceased or unable to recall important details. Therefore, Buckner was unable to explore what evidence at the crime scene was altered. Id.

Finally, in balancing the factors, the Court concluded that although Buckner's late assertion weighed heavily against him, the other factors weighed against the state. Therefore, the Court affirmed the dismissal of all charges against Buckner based upon the fifty-three month delay. Id.

Appellant's trial was delayed by the prosecution significantly longer than fifty-three months. In fact, the prosecution delayed calling Appellant's case to trial for ten years, or one hundred and twenty months, over double the delay in Buckner. While only ten months' of the delay in Buckner's case was the result of the prosecutor's inability to make a decision regarding whether to seek the ultimate punishment against him, the prosecutor against Appellant attributed the entire ten-year delay to his indecision in that regard. The prosecutor must not be permitted to hide behind its right to exercise discretion concerning punishment and its control of the docket to delay unreasonably Appellant's trial.

CONCLUSION

As requested in his brief, Appellant respectfully requests this Court vacate his convictions and sentences, and dismiss the charges against him.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

This 30th day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

October 30, 2013

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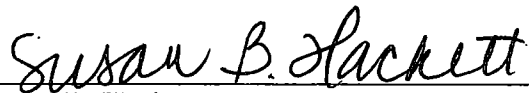
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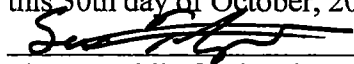
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of October, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 30th day of October, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.