

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIO ANGELO HUNSBERGER,

APPELLANT

APPELLATE CASE NO. 2012-207290

RECORD ON APPEAL

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21

22 (Some exhibits were marked and admitted in a
23 previous trial and not used in this trial.)

24

25

1 (The following proceedings were held on
2 January 9, 2012.)

3 **THE COURT:** All right. Solicitor.

4 **MR. MAYE:** May it please the Court, Your Honor.
5 The State now calls for trial indictment
6 2002-GS-19-110, the State of South Carolina versus
7 Julio Angelo Hunsberger, an indictment for murder.
8 It was true billed at the March term of 2002 here in
9 Edgefield County. The State now calls this case for
10 trial.

11 **THE COURT:** All right. Thank you, Solicitor.

12 Ladies and gentlemen of the jury panel, if you
13 will please give me your complete and undivided
14 attention. We're going to go through a procedure
15 whereby we select a jury for the trial of the case
16 that has been called for trial. As a result of
17 that, I will ask you certain questions to determine
18 your eligibility to serve as jurors on this
19 particular trial. Please consider yourselves still
20 under oath based on the oath being administered to
21 you by the Clerk earlier this morning.

22 As part of this procedure, I will read to you
23 the indictment. The indictment that I hold is not
24 evidence. It is the formal charging document by
25 which an individual is placed on notice of the

1 tonight. Any questions?

2 (There was no response.)

3 **THE COURT:** Thank you very much. It has been
4 my pleasure and privilege to be with you this
5 morning. You're now excused. Please call back
6 after six o'clock.

7 (The remaining jury panel was excused.)

8 **THE COURT:** Does the State have any pretrial
9 matters, Solicitor?

10 **MR. MAYE:** Your Honor, I'm unaware of any
11 pretrial matters. There may be a Denno issue as to
12 one witness, but other than that -- that would
13 encompass one witness, but I don't know of anything
14 else.

15 **THE COURT:** All right. Mr. Williams, do you
16 have any pretrial matters?

17 **MR. WILLIAMS:** Yes, sir, Your Honor.

18 **THE COURT:** All right.

19 **MR. WILLIAMS:** I have a, first off, a move to
20 sequester the witnesses in this matter and that's a
21 request, Your Honor, particularly of the
22 incarcerated witnesses that they will be segregated
23 one from the other until called to testify.

24 These folks have had an opportunity to testify
25 in these trials on multiple occasions. And I think

1 it gives them an opportunity to consort with one
2 another and to consult with one another and to
3 basically get their stories together. All of these
4 folks are basically --

5 **THE COURT:** That's fine, Mr. Williams. I'm
6 going to grant your motion.

7 **MR. WILLIAMS:** Okay. Thank you.

8 **THE COURT:** All right. Sequester the witnesses
9 one from the other as far as the incarcerated
10 inmates.

11 Do you have other motions -- now, what about
12 other witnesses? You want other witnesses --

13 **MR. WILLIAMS:** Other witnesses, Your Honor, I
14 would just ask that they will be away from the
15 courtroom until called to testify, of course, with
16 the exception of Investigator Doran.

17 **THE COURT:** What other witness do you have? Of
18 course, Ms. Sturup can remain under the Victims'
19 Bill of Rights. What other witnesses do you have,
20 Solicitor?

21 **MR. MAYE:** Your Honor, I'll, certainly, I'll
22 submit to sequestration. And chief investigator,
23 Randy Doran, will remain. Of course, the victim's
24 mother we would ask that she be allowed to remain.
25 All the rest of them we'll exclude from the

1 courtroom.

2 I'd ask for that to extend to any defense
3 witnesses, that they not be present for any
4 testimony in this trial if they intend to call them
5 as defense witnesses.

6 **MR. WILLIAMS:** That's fair.

7 **THE COURT:** All right. Then that's granted.

8 And I'm leaving it up to y'all to police it. I
9 don't know who all the witnesses are, okay?

10 Any others?

11 **MR. WILLIAMS:** Yes, Your Honor. I have a
12 motion to dismiss on the basis of my client's
13 failure to be brought to trial in a very timely
14 fashion. He was basically arrested in January of
15 2002, allowed to be extradited to the State of
16 Georgia I believe in 2005 --

17 What month? August was it?

18 **DEFENDANT:** February 16th.

19 **MR. WILLIAMS:** February of 2005. He sat in a
20 pretrial status, a detained status for a significant
21 period of time. He was allowed to be -- or
22 relinquished to the State of Georgia and -- at that
23 time, he was relinquished to the State of Georgia.
24 South Carolina chose not to bring him to trial
25 within three years.

1 We would submit, Your Honor, that on the basis
2 of the passage of time, that we'll be able to
3 demonstrate that his opportunity for a fair day in
4 court has been prejudiced.

5 **THE COURT:** Do you intend to call witnesses in
6 that regard?

7 **MR. WILLIAMS:** My client, Your Honor.

8 **THE COURT:** All right. How long will that
9 take?

10 **MR. WILLIAMS:** I imagine it will take no more
11 than about 30 -- no more than 30 minutes.

12 **THE COURT:** All right. I'll take that up this
13 afternoon.

14 **MR. WILLIAMS:** Yes, sir. I do have about two
15 other issues that I would want to raise outside of
16 the presence of the jury as the Court would require
17 of me. And the other two is basically a motion
18 regarding what we believe is vindictive or selective
19 prosecution.

20 We believe that my client falls under the State
21 versus 192 Coin-Operated Video Machines, the
22 analysis that was applied in that case where we can
23 demonstrate that the prosecution was selective in
24 that there are other individuals who are similarly
25 situated. However, my client has been singled out.

1 And we believe that we'll be able to
2 demonstrate that there's a second prong of that
3 test, which -- his decision to remain silent or his
4 -- exercise of his right to remain silent, which is
5 a substantial right. He's being punished for his
6 choice to have exercised that right and not assist
7 the State in the prosecution of one Steven Barnes.

8 Finally, Your Honor, we do have an
9 identification issue as it relates to two of the
10 State's witnesses. Those particular witness --
11 well, three of the State's witnesses, Cave, Griffin
12 and Thatcher. We believe that, at the time,
13 certainly there has been a great passage of time and
14 there have been a number of trials in which these
15 witnesses have talked about certain facts against
16 Steven Lewis Barnes in the State of Georgia, against
17 my client in the State of Georgia and against Steven
18 Lewis Barnes here in the State of South Carolina.

19 However, we have to go back to the original
20 time in which they say they were confronted by the
21 presence of my client. And if we are able to go
22 back to that time, I believe I'll be able to
23 demonstrate to the Court that these folks will be
24 unable or that they'll be questionable for them to
25 be able to identify my client here in an in-trial

1 confrontation. And if we're able to demonstrate
2 that, Your Honor, we would ask that they not be
3 permitted to point him out because he's going to be
4 the man sitting next to me at the defense table.

5 Certainly, they'll be able to point him out
6 today, but if I'm able to delve into the facts as
7 they were some ten years ago prior to the arrest of
8 my client and other testimony that they have given
9 in the past regarding how long they had known my
10 client, how long they had known one Steven Lewis
11 Barnes, supposedly who my client was associated
12 with, their ability to know the distinctive
13 characteristics of my client, Your Honor, there was
14 some individual who has been alleged to be known as
15 a Chico. And unfortunately, or fortunately, my
16 client has a name of Julio, which is a Hispanic name
17 and it's a common name and often times it's a slang
18 name for Hispanic people or particularly people who
19 are of Latin/Hispanic ancestry as he is. He's
20 Puerto Rican. And the term "Julio" is often just
21 loosely applied to any Puerto Rican person.

22 And we would ask the Court to allow me to delve
23 into the identification issues prior to being
24 confronted with the jury and them selecting my
25 client as the man or, yes, I know him, he's the man

1 seated to the attorney's right in the black suit. I
2 know what they'll say because, you know, it's
3 obvious that that's what they'll say. And those are
4 the four issues that I would be raising.

5 **THE COURT:** All right. Solicitor, can you tell
6 me the order in which Cave, Griffin or Thatcher will
7 testify, if they will be offered today?

8 **MR. MAYE:** Cave first, in all likelihood,
9 Griffin second, and Thatcher third, in all
10 likelihood.

11 **THE COURT:** Mr. Williams, how long -- when I
12 ask these questions and I say how long are these
13 motions going to last, I don't object if the motions
14 last all week. I want you to understand that. I'm
15 not holding you to any timeframe. I'm just trying
16 to administratively decide in my mind when to have
17 the jury report back either this afternoon or
18 tomorrow, that's all I'm trying to do right now in
19 asking the questions.

20 **MR. WILLIAMS:** Yes, sir. Judge, I imagine --
21 I'm going to try to keep it as concise as possible,
22 but I imagine it could get a little lengthy because
23 of the prior testimony as given by these
24 individuals.

25 And I may add, Judge, that I have requested the

1 transcriptions of the testimonies of Ms. Thatcher
2 and Mr. Cave from last week to be electronically
3 transmitted to me. And the court reporter indicated
4 that she would be able to get maybe one of them to
5 me this afternoon, but the other one it would
6 probably be in the morning.

7 Now, I know that I'm asking a lot of the Court
8 if I would ask you to allow for that to occur, but,
9 you know, I'm not going to --

10 **THE COURT:** If you ask what?

11 **MR. WILLIAMS:** Just for time to allow for that
12 to occur.

13 Now, if the Court is not inclined to wait that
14 long, I certainly defer to the Court's wisdom, but I
15 would like an opportunity to get those
16 transcriptions, if I can. If not, we have a great
17 deal that we think we can work with even if we don't
18 get the transcriptions from last week. But we would
19 love them, I'll just add that. We would love to
20 have them.

21 **THE COURT:** Solicitor, do you have any position
22 as far as the time is concerned?

23 **MR. MAYE:** Your Honor, you know, if he's going
24 to get Thatcher's this afternoon, I'd say he'd be
25 very safe. I'd say it'll be tomorrow before she's

1 going to testify and so I don't think that will hold
2 anything up. So all the rest of them we're
3 certainly prepared to go forward on at any time.

4 **THE COURT:** Well, are they going to take -- are
5 the motions going to take all afternoon?

6 **MR. WILLIAMS:** They could probably take at
7 least until later in the afternoon, yes, sir.

8 **THE COURT:** Then do y'all want the jury to
9 report back at 9:30 in the morning?

10 **MR. MAYE:** Your Honor, we're ready to go at any
11 time. We're ready to strike and go now. I mean,
12 this is -- all of these motions are on the part of
13 the defense. I have absolutely no way of knowing
14 where these would go or how long they would take.
15 We're ready to go right now. So I'll leave that to
16 the Court's discretion.

17 **THE COURT:** All right. Thank you.

18 All right. Bring us our jury panel, please.

19 (The jury returns to the courtroom.)

20 **THE COURT:** Where do you normally have our
21 alternate sit, Madame Clerk?

22 **THE CLERK:** On the end.

23 **THE COURT:** All right. There's four ends.
24 Which end?

25 **THE CLERK:** That one (indicating).

1 **THE COURT:** So, let's see, Ms. Hutto and
2 Mr. Rabenold, if y'all would always -- now, you want
3 them to take the two seats on the back left; is that
4 correct?

5 **THE CLERK:** Yes, sir.

6 **THE COURT:** All right. If y'all would always
7 maintain those two seats.

8 All right. Let's see if I can play some more
9 musical chairs now let's see what else happens.
10 Mr. -- what did you teach, Mr. Henderson?

11 **JUROR:** Agriculture.

12 **THE COURT:** Mr. Henderson, I'm going to appoint
13 you the foreperson of this jury, that means you'd be
14 the jury spokesperson here in the courtroom and
15 responsible for signing and recording the verdict.
16 I'll give you further instructions concerning that.

17 Madame Clerk, where do you normally have the
18 foreperson sitting?

19 **THE CLERK:** They sit in that first chair.

20 **THE COURT:** I told you we were going to play
21 some more musical chairs.

22 All right. The other members of the jury
23 panel, y'all are welcome to sit wherever you would
24 like to sit. You can keep the same seat if you can
25 lineup properly. I found many times jurors are very

1 territorial. They like to sit in the same seat each
2 and every time and have the same perspective each
3 and every time. I do need our foreperson and our
4 two alternates to maintain those seats and then I
5 need to just keep up with numbers.

6 Momentarily, I'm going to release you for the
7 afternoon. I have a number of pretrial motions that
8 I must hear. Those have to be heard outside of your
9 presence. I don't know how long they'll take, but
10 they'll probably take most of the afternoon and I
11 don't want to hold you captive back there in your
12 jury room while I'm out here hearing these motions.

13 So I'm going to -- and the purpose of hearing
14 motions outside -- well, there's several purposes,
15 but one thing is in hopes that the trial will move
16 more efficiently once those motions have been heard
17 and resolved by the Court. So as I say, momentarily
18 I'm going to release you from jury service for the
19 remainder of the afternoon and I'll tell you a
20 reporting time in a few moments.

21 I would advise you that during the trial of
22 this case while you're on jury duty, you may not
23 discuss the case with anyone else, that includes
24 your fellow jurors, family, friends or anyone. You
25 may not read, listen to or watch any news reports

1 about the case whether newspaper or radio,
2 television or the like.

3 You may not use your computer, cellular phone
4 or other electronic device with communication
5 capabilities while in attendance at trial or during
6 deliberations. You may use these devices during
7 luncheon recesses and obviously during your evening
8 recess; however, you may not use those devices to
9 obtain or disclose information about the case when
10 you're not in court.

11 Prohibited information about the case includes,
12 but is not limited to, the following: Any
13 information about a party, a witness, an attorney or
14 a court officer, any current or past news accounts
15 about the case, any information collected through
16 your jury research on any topics raised or testimony
17 offered by any witness or any information collected
18 through your research on any other topics that you
19 might think would be helpful in deciding the case.

20 You decide the case based on the evidence and
21 the testimony presented from the witnesses
22 testifying before you from this witness stand under
23 oath, any diagrams, photographs or exhibits that may
24 be introduced and the law as I tell you the law is,
25 not from any outside source whether it be other

1 people, whether it be the Internet, whether it be
2 the newspaper, radio, television or anything
3 whatsoever. You may not do any independent
4 investigation, investigation of any kind or any
5 investigation on the Internet. I know y'all will
6 follow my instructions in that regard.

7 I'm going to release you for the afternoon and
8 the evening, ask you to please report back promptly
9 at 9:30 in the morning, if you would please report
10 back promptly at 9:30 in the morning. I assure you
11 I can tell time, so -- although I didn't realize my
12 computer hadn't updated -- hadn't upped time so to
13 speak, but hopefully we'll start promptly at 9:30 in
14 the morning.

15 Any questions?

16 (There was no response.)

17 **THE COURT:** Thank you very much. You now --
18 yes, sir.

19 **JUROR:** Where do we report at?

20 **THE COURT:** The bailiff will tell you that.
21 Will you take care of that?

22 If you'll go back to your jury room now, the
23 bailiff will advise you of how to return into the
24 courtroom in the morning.

25 Any other questions?

1 (There was no response.)

2 **THE COURT:** Thank you very much. I hope y'all
3 have a pleasant afternoon and evening.

4 (The jury was excused for the day.)

5 **THE COURT:** All right. Anything further before
6 we take our luncheon recess?

7 **MR. WILLIAMS:** Nothing from the defense, Your
8 Honor.

9 **THE COURT:** Solicitor.

10 **MR. MAYE:** Nothing else before the recess, Your
11 Honor. Thank you.

12 **THE COURT:** All right. We'll be in recess
13 until 2:15. Court will be in recess until 2:15.
14 Thank you very much.

15 (Whereupon, there was a luncheon recess.)

16 **THE COURT:** All right. We're back on the
17 record 2002-GS-19-110. The parties are present on
18 behalf of the State, the Assistant Solicitor. The
19 defendant is present along with his attorney,
20 Mr. Williams. For purposes of pretrial motions,
21 Mr. Williams, I'll be glad to hear from you on your
22 motion to dismiss.

23 **MR. WILLIAMS:** Yes, sir, Your Honor. As I
24 rise, I rise on behalf of my client's rights under
25 the Sixth Amendment of the United States

1 Constitution, as well as Article 1 Section 14 of the
2 South Carolina Constitution in which a person is
3 entitled to a speedy trial. I would submit to the
4 Court that my client has been denied his right to a
5 speedy trial and the only remedy that is appropriate
6 is basically the dismissal of the charges against
7 him.

8 Your Honor, I do have a hurdle that I have to
9 overcome with my argument. And the one hurdle is
10 simply that it has to be shown that the defendant
11 asserted his right in order for that to be a factor,
12 but the case that I'm referring to is a United
13 States case, a U.S. case. And it's actually the
14 case of -- and I apologize -- it's the case of
15 Barker and it's found at 407 U.S. 531. And,
16 essentially, what it says is that even if a
17 defendant fails to assert his right for a speedy
18 trial, it's not conclusive, but it does make it more
19 difficult for us to show that such a violation has
20 occurred.

21 Now, essentially, what the position that my
22 client takes is, is that although he did not assert
23 his right to a speedy trial, the continual denial of
24 his due process, in that the State failed to bring
25 his case to trial within a reasonable time, is

1 tantamount to a violation of his constitutional
2 rights. We simply believe that the State was
3 dilatory in its duty and just failed to bring this
4 case to trial.

5 Judge, I would assert that ten years is a
6 significant enough passage of time that the Court
7 could, on its own motion, find that that is a
8 violation of his right to a speedy trial.

9 And I would further substantiate my argument by
10 just alleging that the State had every opportunity
11 to try him within the first three years of him being
12 in pretrial detention here in South Carolina.
13 Unfortunately, he was represented by the now
14 deceased O. Lee Sturkey during that timeframe.

15 I was subsequently appointed to his case, I
16 believe, it was July of 2010 and that appointment
17 was prior to the trial of the State of South
18 Carolina versus Steven Barnes. Mr. Sturkey had -- I
19 think he had been deceased for some period of time
20 even prior to my appointment. So, at that point,
21 Your Honor, I wasn't really sure if the State truly
22 intended to try him.

23 As you may be aware, my client is doing a life
24 sentence in the State of Georgia presently and
25 essentially --

1 **THE COURT:** I thought Mr. Sturkey passed away
2 December of 2010.

3 **MR. WILLIAMS:** Is that when it was?

4 **THE COURT:** I thought it was around the
5 timeframe Ms. Butler was sworn in as a probate
6 judge.

7 **MR. WILLIAMS:** Well, I can assert to the Court
8 that even prior thereto, he had some issue in that
9 he was suspended from the practice of law even prior
10 to his death. So I know that there was some period
11 of time in which my client was in a flux and I think
12 he had no attorney at all. And quite honestly, you
13 know, this will piggyback an argument that I'll make
14 at a later time or a subsequent motion that will
15 follow this motion with regard to what we believe
16 has been a selective prosecution of my client.

17 Judge, it's a two-prong test, I believe it is
18 -- or actually it's a four-prong test. It's
19 basically the Court considers these four things:
20 The length of delay, the reason for the delay, the
21 defendant's assertion of the right and prejudice to
22 the defendant. And, again, that's Barker versus
23 Wingo, 407 U.S. 514.

24 It goes on to say, as I indicated earlier on in
25 my argument, that the defendant's failure to assert

1 the right, says, Although not conclusive, makes it
2 more difficult to show that the right was violated.

3 Now, the position I simply take is his failure
4 to assert his right, I think, is coupled with the
5 fact that he was basically in a flux, did not have
6 an attorney. I was not representing him until
7 leading into the Barnes trial. I was -- didn't even
8 know what his circumstances were until I was
9 appointed some, I guess, eight years after his
10 arrest, eight and a half years to him after his
11 arrest.

12 And quite honestly, Judge, as I indicated to
13 you, when I was appointed to him, it was under the
14 guise of, well, what's going to happen with him? Is
15 he going to cooperate in the prosecution of Steven
16 Barnes? How do we address that issue?

17 And, essentially, I did not consider the filing
18 of a speedy trial motion immediately because, again,
19 with him doing a life sentence and based on some
20 assertions made to me by the Solicitor, I wasn't
21 certain that he would be tried in this case, did not
22 believe he would be, did not believe it was
23 appropriate to file a speedy trial motion.
24 Sometimes that can be a dangerous proposition. You
25 may get just what you ask for. And, essentially, we

1 didn't file it.

2 But, again, I don't believe his -- our failure
3 to file it or my client's failure to assert it is
4 necessarily conclusive to the fact that he's going
5 to be prejudiced by the substantial delay in time.

6 We believe prejudice will be demonstrated by
7 the conflicting evidence that will come from the
8 varying witnesses based on prior testimonies they've
9 given over the last six, seven years and last week.
10 Their stories have varied over time and we believe
11 that that's an obvious demonstration of prejudice.

12 We further believe, Judge, that the State's own
13 role in failing to bring him to trial is solely on
14 the State and it's not on him. And the fact that he
15 failed to assert it, I don't think should
16 necessarily defeat our claim that his rights have
17 been violated to a fair and speedy trial on the
18 basis of this substantial delay.

19 **THE COURT:** Thank you.

20 (Pause.)

21 (Court's Exhibit Number 1, letter, marked
22 for identification purposes.)

23 **THE COURT:** All right. Solicitor.

24 **MR. MAYE:** May it please the Court, Your Honor.
25 I'm informed that Julio Hunsberger was served with

1 warrants in this case in January of 2002. He
2 remained in custody here from 2002, I think, till
3 '05 when officials in Georgia sought him being
4 turned over to them. He was released to Georgia.

5 He was prosecuted between September the 5th and
6 the 12th of 2006 and convicted of kidnapping with
7 bodily injury along with his co-defendant, Alex
8 Hunsberger. I think he was actually convicted
9 September the 12th of 2006. At that time, he was
10 serving a life -- he was sentenced to life in the
11 Georgia system, Your Honor. I understand he may
12 have a parole eligibility release date in the next
13 six or seven years.

14 Judge Keesley basically did not address
15 anything in involving Julio Hunsberger. To my
16 knowledge, as of this date, Julio Hunsberger has
17 never made any motion for a speedy trial and it's
18 never been raised by this defendant, which I know is
19 one of the factors that must be addressed in this
20 case.

21 I know that it has been -- this crime occurred
22 September the 3rd of 2001, Your Honor, as to the
23 length of time, but as to the delay in this case,
24 Your Honor, it was always our intent to dispose of
25 the case against Steven Lewis Barnes prior to

1 dealing with any of the co-defendants in this case.

2 Solicitor Myers noticed Steven Lewis Barnes for
3 the death penalty. As Your Honor was aware, we had
4 an extremely difficult time getting the murder case
5 against Steven Lewis Barnes scheduled. It was
6 pending for a number of years in front of another
7 circuit judge here in South Carolina. And, in fact,
8 Your Honor, it was never resolved until Your Honor
9 became involved and we were able to schedule it and
10 get this case prosecuted and it was prosecuted in
11 November of 2010. We were waiting certainly to
12 prosecute that case prior to dealing with any of the
13 co-defendants' case.

14 We've never had any assertion of any desire on
15 the part of Julio Hunsberger, the defendant in this
16 case, to have his case addressed in any expedient
17 manner. I attempted to call this case as soon as we
18 were through with the prosecution of Steven Lewis
19 Barnes. And prior to that date, I had notified both
20 of the defense attorneys, Mr. Chesser and
21 Mr. Williams, that we intended to proceed against
22 Alex and Julio Hunsberger.

23 Certainly, my direction from Solicitor Myers
24 was to dispose of all the charges against these
25 defendants that were pending. We did attempt to

1 call the case against Julio Hunsberger the weeks of
2 both October 3rd and October 10th of 2011. At that
3 time, the defense moved for a continuance and the
4 continuance was granted. Certainly, in this case,
5 Your Honor, we had tried to move it along --

6 **THE COURT:** When was that continuance?

7 **MR. MAYE:** The continuance was granted during
8 the October 3rd term of court. I attempted to call
9 both Alex and Julio Hunsberger's case during the
10 week of October 3rd and October 10th and those cases
11 were continued over my objection, Your Honor. We
12 were prepared to go forward at that time. They
13 moved for a continuance.

14 I know one of the factors is, you know, how the
15 right's been asserted. And it's certainly never
16 been asserted in this case up until now. And, in
17 fact, the defense sought a continuance at the one
18 time that we did try or attempt to call this case to
19 trial.

20 We're prepared to go forward at this time, Your
21 Honor. I don't know of any factors that would
22 trigger, other than the passage of time, a review of
23 this from the standpoint of a speedy trial motion
24 prior to today. I certainly leave it to the wise
25 discretion of the Court in this case, but there were

1 a lot of circumstances. It was not a typical case.
2 There was a capital case that arose and was tried.
3 Steven Lewis Barnes was convicted. As soon as that
4 prosecution took place, we did everything that we
5 could in order to try to get both of these
6 defendants back here in order to prosecute them.

7 Alex Hunsberger, his codefendant, contested our
8 extradition here which delayed us in some regard.
9 We have proceeded against this defendant with all
10 deliberate speed, Your Honor.

11 I know that there have been a number of cases
12 in South Carolina, one of the ones I'm looking at
13 here, State versus Geer, G-e-e-r, it's a Court of
14 Appeals case -- or, excuse me, State versus Evans,
15 Court of Appeals case, I think had a 12-year delay.
16 So it's certainly not unprecedented in this case. I
17 know that some of the speedy trial cases I've looked
18 at have been delays of ten years, delays of 12
19 years.

20 There's just a lot of circumstances that went
21 into this. There certainly was no intentional delay
22 of this case on the part of the State. They were
23 extradited and returned -- I mean, they were given
24 over to Georgia, a separate sovereign, who initiated
25 a prosecution. They have been serving time over

1 there.

2 I know that both of these defendants were
3 basically granted a PR bond by Judge Keesley so that
4 they could be returned to Georgia, Your Honor. And
5 under most circumstances, a person has been held in
6 South Carolina or by this sovereign when you're
7 talking about a speedy trial issue, but since they
8 were released here in, I believe, '05, they were not
9 back in South Carolina until I believe the very
10 first part of October is when Julio Hunsberger
11 returned back here to South Carolina for the first
12 time, Your Honor, in order for us to address this
13 charge that's been pending since he was served back
14 in January of 2002.

15 **THE COURT:** When was he -- when were they
16 granted -- when was Mr. Julio Hunsberger granted a
17 PR bond?

18 **MR. MAYE:** I think that Judge Keesley basically
19 released both of them with no bond knowing that
20 Georgia had a hold on them and that was done back in
21 2005. It was done at the time that they were
22 transferred back to Georgia, both of them were, Alex
23 and Julio, is my understanding. And they were
24 released at that time with a Georgia hold on them.
25 I have an order here...

1 **MR. WILLIAMS:** Your Honor, if I may just
2 interject?

3 **THE COURT:** Yes, sir.

4 **MR. WILLIAMS:** Just one issue. My client
5 indicates to me that was his brother that received
6 -- that was released with a PR bond. I think he had
7 counsel that was rattling the cage just a bit more
8 as it relates to the issue of a speedy trial than
9 was the counsel that was appointed to my client at
10 that time. He indicates to me that he was not given
11 a PR bond, but I'm not sure that it's that material
12 in your consideration. But I would like to address
13 what the Solicitor did raise.

14 **THE COURT:** Yes, sir.

15 **MR. WILLIAMS:** I'd just like to address what
16 the Solicitor did raise. I think in certain
17 circumstances, as the Barker case indicates, that
18 the failure of a defendant to assert the right is
19 not always dispositive. And I believe if we're able
20 to demonstrate the prejudice, able to demonstrate
21 that it was Julio all on his own -- and I will also,
22 as it relates to the issue of us requesting the
23 continuance, my client got to South Carolina on
24 September 30th of 2011. I had not had an
25 opportunity to meet with him but on one prior

1 occasion before he was moved back away from Augusta,
2 back to some part of lower Georgia on the other side
3 -- well on the other side of Savannah and Dublin and
4 had only met with him on one occasion. And I did
5 request a continuance because I thought it was
6 fundamentally unfair for me to proceed to trial
7 having only met with him on that one occasion and
8 that one occasion was actually regarding his
9 consideration to testify for the State in the Barnes
10 case.

11 And, Judge, last thing, my motion would have
12 been the same in October of 2011 as it is here in
13 January of 2012. We still think that there is a
14 substantial period of time that has passed and he's
15 been prejudiced by the same.

16 **THE COURT:** All right. Well, I want to get
17 straight on the tracking Mr. Hunsberger. When I use
18 the name Mr. Hunsberger, I'm referring to Julio. If
19 I refer back to his brother, I will state that, but
20 I want y'all to track for me what the paperwork is
21 from his arrest to appointment of his counsel to how
22 he came to be released, if he was, from South
23 Carolina to Georgia or if he was just -- consented.
24 I just want to get that straight. I'm just not
25 clear on that yet.

1 What does that paperwork show as far as his
2 first appearances, his lawyers, his transfer back to
3 Georgia, how did -- in '05, how did that come about?

4 **MR. MAYE:** Your Honor, I was looking at Alex --
5 and I may have been confused in this case. I know
6 that when Alex Hunsberger was released, we released
7 Julio. They were similarly situated. Danny Craig,
8 the prosecutor in Georgia, indicated to us that he
9 wanted to try both of them together when they were
10 tried in 2006.

11 Those inquiries were made back in 2005 and I
12 know both of them were turned over to Georgia, I
13 believe, in '05, but I don't know the exact date. I
14 can find out from the jail the exact date that they
15 were released to Georgia for prosecution on the
16 kidnapping charges that were tried between September
17 5th and the 12th of 2006.

18 And, Your Honor, I may need to step out of the
19 courtroom long enough to go retrieve the other
20 paperwork involved in this case.

21 **THE COURT:** Sure.

22 (Pause.)

23 **MR. MAYE:** Your Honor, Julio Hunsberger was
24 served with the arrest warrant for murder in this
25 case, Your Honor, on January the 25th of 2002, that

1 is the date that I have on the return on his arrest
2 warrant. He was served January 25th, 2002, with the
3 warrant -- the underlying warrant for which he's now
4 -- we've now called to trial. Looks like that
5 arrest warrant is G-679758. It was issued January
6 the 25th of 2002 by Judge Brenda Carpenter.

7 I would have to defer to the Clerk of Court to
8 find out when he was appointed the public defender
9 in this case afterwards.

10 I do have correspondence initially from John
11 Delgado on behalf of Julio Hunsberger, and that
12 correspondence is dated May the 11th of 2004, where
13 he indicates that he would be representing
14 Mr. Hunsberger and moved -- looks like to me,
15 pursuant to this letter of May 11th of 2004, we were
16 forwarded a motion to set bond that's dated May 11th
17 of 2004, here, Your Honor, that was submitted by
18 John Delgado.

19 We subsequently received word from him that he
20 would not be representing Mr. Hunsberger, that he
21 and Mr. Hunsberger were unable to -- his family were
22 unable to come to terms regarding representation.
23 And that letter is dated February the 11th of 2004.
24 And he indicates that he would not be representing
25 the Hunsbergers and that -- my understanding at that

1 point in time -- at some point thereafter, Your
2 Honor, I know the public defender was appointed to
3 him and I don't know that date.

4 (Pause.)

5 **MR. MAYE:** May it please the Court, Your Honor.
6 Julio Hunsberger was released back to Georgia on
7 February the 16th of 2005, 1445 hours is my
8 understanding.

9 **THE COURT:** Thank you.

10 (Pause.)

11 **THE COURT:** That tracking is correct.
12 Mr. Hunsberger was arrested, served with the warrant
13 January 25th of '02.

14 **MR. WILLIAMS:** Yes, sir.

15 **THE COURT:** He was placed in the Edgefield
16 County Detention Center. There's various documents
17 in here, appears he was advised of first appearance
18 rights and such like that.

19 I do not see his bond hearing. I do see the
20 document in there that the Solicitor referred to
21 earlier, May 11th, '04 request for a bond hearing
22 from a private attorney out of Columbia, South
23 Carolina, as opposed to Columbia County, Georgia,
24 requesting a hearing to set bond. That was
25 evidently withdrawn, the limited representation was

1 withdrawn before that ever occurred.

2 Then in February 16th of '05, he was
3 transferred to Georgia. I do not see a
4 documentation in the clerk's file of a transfer.
5 I'm not sure if documentation stays in the clerk's
6 file as far as transfer is concerned.

7 Do you dispute that date, any of those dates,
8 so far, Mr. Williams?

9 **MR. WILLIAMS:** Your Honor, my client --

10 **THE COURT:** And I'm going to -- I've got other
11 dates I'm going to add. I just want to see if we're
12 on the same -- in sync from January 25th of '02 to
13 February 16th of '05.

14 **MR. WILLIAMS:** So far as the serving of the
15 warrant, January 25th of '02 and February 16th, '05,
16 we agree. He indicates that he was actually in
17 custody on January 22nd and submitted himself to the
18 authorities on that date, turned himself in freely
19 and voluntarily. And then the warrant was served on
20 that date of the 25th.

21 **THE COURT:** So when he goes to Georgia 2/16/05,
22 he's been in jail from January 22nd, '02 to February
23 16th of '05 in Edgefield County, by my count, that's
24 three years and 24 days.

25 **MR. WILLIAMS:** Yes, sir, Your Honor.

1 **THE COURT:** Now, during that time, it appears
2 he was appointed a former tri-county public defender
3 to represent him, Mr. Sturkey. There is a letter in
4 here from Judge Keesley to Mr. Hunsberger concerning
5 that and concerning the issue of Mr. Alex Hunsberger
6 receiving a bond hearing in McCormick County and
7 Judge Keesley, I wouldn't call it an explanation,
8 but Judge Keesley's letter going to Mr. Julio
9 Hunsberger concerning the fact that he did not
10 appear at that bond hearing, he, Mr. Hunsberger, nor
11 Mr. Sturkey.

12 Now, if I track this correctly then, from
13 2/16/05, just by the dates that I had previously
14 been given, he's incarcerated in Georgia and is then
15 convicted in Georgia September 12th?

16 **MR. MAYE:** Yes, sir.

17 **THE COURT:** Of '06.

18 **MR. MAYE:** Yes, sir.

19 **THE COURT:** Is that correct?

20 **MR. MAYE:** Yes, sir.

21 **THE COURT:** Do you agree with those dates,
22 Mr. Williams?

23 **MR. WILLIAMS:** We do agree, Your Honor.

24 **THE COURT:** And for that, he receives a life
25 sentence.

1 **MR. WILLIAMS:** Yes, sir.

2 **THE COURT:** It appears in here that, I believe
3 it is -- I don't see the exact date quite frankly,
4 but it appears that Mr. Seigler, who became
5 tri-county public defender after Mr. Sturkey, was
6 appointed to represent Mr. Hunsberger and there is a
7 petition by Mr. Seigler to be relieved. That
8 petition is dated 5/18/2010. The Clerk of Court of
9 Edgefield, I think, forwarded the letter.

10 At any rate, I signed an order June 14th, 2010,
11 relieving Mr. Seigler because Mr. Seigler
12 represented Mr. Barnes in a...

13 **MR. YOUNG:** It was throwing bodily fluids case,
14 Your Honor.

15 **THE COURT:** In a criminal matter, not the
16 murder case, but in a criminal matter. So he had
17 that conflict and then it looks like June of that
18 same year, looks like I appointed Mr. Williams.

19 **MR. WILLIAMS:** And, Your Honor, I think I
20 misspoke earlier on the record when I said -- I
21 think I indicated it was July, but I know it was
22 somewhere along the summer --

23 **THE COURT:** It may be July.

24 **MR. WILLIAMS:** No, sir, it was June. I looked
25 at it as well.

1 **THE COURT:** I didn't take it as you
2 misspeaking. I could have forgotten that day. I
3 just looked at the order a minute ago.

4 **MR. WILLIAMS:** I just wanted to clear it up.

5 **THE COURT:** All right. But it looked like you
6 were appointed in June of 2010.

7 **MR. WILLIAMS:** Yes, sir.

8 **THE COURT:** So his lawyer situation goes from
9 Mr. Sturkey to Mr. Seigler to Mr. Williams, correct?

10 **MR. WILLIAMS:** Yes, sir.

11 **THE COURT:** And from June 16th, '05 in pretrial
12 detention to 9/12/06 when he's sentenced, he's in
13 the, I don't know what they call it, but I'm going
14 to call it the Georgia Department of Corrections.
15 And then he comes to South Carolina under the
16 Interstate Compact?

17 **MR. MAYE:** Yes, sir, Your Honor. We sought his
18 release -- what date did we petition Georgia for his
19 release?

20 **MR. YOUNG:** Your Honor, I prepared
21 documentation that Judge Keesley signed that
22 acknowledged the -- prior to the documentation being
23 submitted, he signed that -- the documentation went
24 out on August 12th of this year, this past year.
25 And Judge Keesley, I believe, had to sign off on

1 this some time just prior to that, I believe within
2 a day or two of that. It was mailed to Mr. Lloyd
3 Spickard (phonetic) on August 12th of 2011.

4 He responded, Your Honor, by -- through a
5 process which requires, as the Court's aware, the
6 Governor signed the documentation itself to have him
7 returned. That came back to us on September 7th of
8 2011, in terms of the date of -- the judge -- the
9 signature by the Governor. And we received that
10 within about three or four days of that. We
11 actually received it on October 5th I believe it
12 was.

13 **THE COURT:** All right. And then y'all were
14 going to call it for trial and, of course,
15 Mr. Williams requested a continuance at the October
16 term.

17 **MR. WILLIAMS:** Yes, sir, Your Honor. I think
18 he got here on September 30th, 2011, and I did
19 request a continuance.

20 **THE COURT:** All right. Well, it appears
21 that -- do y'all want to address any of the other
22 factors before I review the length of delay any
23 further? I know you've already addressed the
24 defendant's position as far as prejudice with the
25 fact that the co-defendants has testified in

1 numerous trials in South Carolina and in Georgia --
2 in other trials in South Carolina and in Georgia,
3 the passage of time, the inconsistency of their
4 testimony. That's how I hear it, Mr. Williams.
5 Please don't let me, and I know you won't, let me --
6 allow me to put words in your mouth. I don't mean
7 it like that.

8 **MR. WILLIAMS:** That's -- you're doing a great
9 job, Your Honor.

10 **THE COURT:** I'm recapping what you said
11 previously as far as the prejudice to
12 Mr. Hunsberger's concern from his position.

13 **MR. WILLIAMS:** And we put that squarely on the
14 State, Your Honor. I take the position that my
15 request for a continuance in October of 2011 was not
16 necessarily my relinquishing of my argument that I'm
17 making because I would have made the same argument.
18 I just want some time to be able to meet with my
19 client and be in a reasonable proximity to be able
20 to communicate with him regarding our defense.

21 **THE COURT:** Well, I understand that. You're in
22 kind of a catch 18, as I call it, at that point.
23 And Judge Keesley addressed that in his order, his
24 written order that -- his orders are always --

25 **MR. WILLIAMS:** Thorough.

1 **THE COURT:** -- very well written and very well
2 thought out. And he clearly indicates that no part
3 of the order is intended to apply to or address any
4 matter of a speedy trial.

5 I certainly understand any attorney worth his
6 or her salt that is faced with a trial of this
7 seriousness on September 3rd and the term is
8 beginning October 3rd requesting a continuance.
9 Preparation is a key to victory and you didn't have
10 time to prepare it.

11 **MR. WILLIAMS:** And I'm going to say September
12 30th, Your Honor.

13 **THE COURT:** Right. I thought -- whenever it
14 was, September 30th.

15 **MR. WILLIAMS:** Yes, sir.

16 **THE COURT:** I understand that. And any other
17 areas you want to address on behalf of the
18 defendant?

19 **MR. WILLIAMS:** Your Honor, just, again, the
20 issue of the Sixth Amendment, his right to a speedy
21 trial, which is echoed in our State Constitution at
22 Article 1 Section 14. And, again, the Barker case
23 indicates that the defendant's failure is not
24 conclusive as it relates to his right to raise this
25 issue. It's not conclusive as though, that he's now

1 subsequently defeated because he failed to raise the
2 issue at some time prior thereto. And we believe
3 that the other factors are significant enough that
4 the Court could presume prejudice on the basis of
5 the substantial passage of time.

6 **THE COURT:** Thank you.

7 Solicitor, I heard your argument previously.
8 Anything you want to add?

9 **MR. MAYE:** Nothing else, Your Honor. Thank
10 you.

11 **THE COURT:** All right. Well, I've looked at
12 various cases, those cited both by the defense and
13 by the State. I've sat here and reviewed, not while
14 y'all were talking either, it was during that long
15 pause because it takes more than a long pause for
16 the Court to get through a United States Supreme
17 Court decision because they write a lot and that's
18 Barker versus Wingo at 407 U.S. 514, 1972 case,
19 which is a murder case.

20 The petitioner was not brought to trial for
21 more than five years after he's been arrested.
22 During which time, the prosecution obtained numerous
23 continuances initially for the purpose of trying
24 petitioner's alleged accomplice so that his
25 testimony, if conviction resulted, would be

1 available at the petitioner's trial. Before the
2 accomplice was finally convicted, he was tried six
3 times. Petitioner made no objection to the
4 continuance until three and a half years after he
5 was arrested.

6 And it elucidates -- it is an opinion by
7 Mr. Justice Powell. And it elucidates the factors
8 that Mr. Williams talks about. And it does go on to
9 say that time alone -- or not time alone, but the
10 lack of demand for a speedy trial alone does not
11 automatically trump his -- or waive his right. It's
12 a constitutional right and it's really difficult --
13 you don't waive a constitutional right by silence,
14 by inactivity, it has to be some kind of knowing and
15 intelligently waiver free and voluntary of a
16 constitutional right, but it goes on to say that
17 would be one factor to -- for a court to consider in
18 the balancing test that is involved.

19 Speedy trial, as it states in that Supreme
20 Court decision, are unique creatures as opposed to
21 the right to counsel, a right to a jury trial, right
22 to cross-examination because many times a defendant
23 doesn't want a speedy trial. A defendant out on
24 bond maybe never wants a trial speedy or otherwise.
25 Memories fade, witnesses become less cooperative,

1 witnesses die, witnesses become incompetent, many
2 occasions witnesses are incarcerated for other
3 crimes, it affects their credibility and that is to
4 some assistance to a defendant. Or, there are those
5 that would hold that philosophy. And, clearly, from
6 a commonsensical point of view, that may be true,
7 that may be true.

8 But when you look at this timing, I look at the
9 three years and 24 days initially and then he goes
10 to Georgia both in pretrial detention and the --
11 from 2/16/05 until August of '11, after he's
12 convicted, he remains in the State of Georgia for
13 six years and about eight months. He has attorneys
14 during this period of time, either Mr. Sturkey, Mr.
15 Seigler or Mr. Williams. Also, during the three and
16 a half year period of time, he has talked with a
17 private attorney for a bond hearing and that, of
18 course, fell by the wayside for whatever reason.

19 So I don't think you can look at the cold
20 number from '02 to '12 and say ten years. I think
21 that six or eight month period of time while he's in
22 Georgia, it's not like he's in pretrial detention in
23 South Carolina nor is it like he's out on bond, but
24 he is a convicted defendant in the Georgia
25 Department of Corrections.

1 Upon his return, I also do not think that you
2 could look at the -- Mr. Williams' motion for a
3 continuance and then foreclose his right to make
4 that motion for a speedy trial or it could have any
5 weight and value added to it whatsoever. I just
6 feel like a defense attorney if he stood up and
7 says, well, we demand a speedy trial, and the
8 State's over there ready to try the case and he's
9 got three to five days to try a major case like
10 this, it would be a recipe for a disaster in my
11 opinion. I think an attorney has to have proper
12 time to prepare, meet with his client and talk with
13 his client.

14 In analyzing the prejudice to the defendant,
15 again, I would find that the fact that years have
16 passed may be to his advantage, or at least not to
17 his disadvantage. Those memories may have been
18 dimmed, inconsistent statements may be used to
19 impeach some of the witnesses involved.

20 There's no allegation that there are any
21 witnesses that are unavailable. When I look at
22 State versus Evans, that's a delay of 12 years, part
23 of that was appellate process. This was, Ms. Evans
24 was the one that her children were burned in a
25 terrible fire up in Chesterfield County and it took

1 quite a number of years to try the case. And,
2 ultimately, her conviction -- her statement was
3 found to be taken in violation of Jackson versus
4 Denno. But in her motion for a speedy trial, she
5 alleged that there were four witnesses, one of which
6 by the time the State called the case for trial, had
7 Alzheimer's, two of which were deceased and the
8 fourth that was not available, unable to be found.

9 Even in light of that 12 year delay, although
10 part of it was for the appellate process, the State
11 appealed the Jackson versus Denno hearing. The
12 court found that that did not constitute prejudice
13 in that regard.

14 I think once you get past the -- you look at
15 the right to a speedy trial and you look at those
16 factors under Barker versus Wingo, and there is some
17 indication that there is somewhat of a presumed
18 prejudice because of the length of delay, I find,
19 based on the totality of the circumstances here of
20 what's been presented, that the defendant would not
21 be prejudiced.

22 The reason for the delay, again, I take that
23 balancing, for whatever reason, Mr. Barnes was not
24 tried for eight years and some months. And I don't
25 think you can say, well, I'm not going to try the

1 co-defendant until I try Mr. Barnes. I think
2 Mr. Hunsberger's due process rights are separate and
3 distinct from the State's prosecutorial plan so to
4 speak on the defendants and the co-defendants
5 involved in the Sturup homicide.

6 I think given the fact that he was a sentenced
7 prisoner in Georgia and that he was, for that length
8 of time, that he would not have been released, that
9 it was not unreasonable for the State to take the
10 position that they wanted to try the one defendant
11 that they sought the death penalty on in the case
12 first and disposed of that case first.

13 Again, I think that's a balancing. Looking at
14 State versus Evans, 688 S.E.2d 583, looking at
15 Doggett versus United States, 1 -- excuse me -- 505
16 U.S. 647, looking at Barker versus Wingo that's
17 previously been cited, I would deny Mr. Hunsberger's
18 motion for a speedy trial.

19 You have other motions, Mr. Williams. You had
20 a motion based on --

21 **MR. WILLIAMS:** And, Your Honor, just for the
22 record, I take exception to the Court's ruling.

23 **THE COURT:** Certainly, yes, sir.

24 You have a motion -- I have a motion,
25 vindictive selective prosecution under 192

1 Coin-Operated Video Machines.

2 MR. WILLIAMS: Yes, sir, Your Honor.

3 THE COURT: All right.

4 MR. WILLIAMS: If it pleases the Court. Your
5 Honor, I offered up to the court reporter what I
6 guess will be, at this point, a court's exhibit a
7 letter written by myself to my client on October the
8 11th, 2010. Again, it was confirming that we had
9 met one another for the first time on September
10 22nd, 2010.

11 And, Judge, as an officer of the court, you
12 know, I know candor is very important. And I
13 candidly will advise the Court that an overture was
14 made to me by the Solicitor's office that,
15 essentially, if you don't cooperate with the
16 prosecution of this death penalty case, everybody
17 who doesn't cooperate is going to get prosecuted.
18 And I believe that's selective prosecution.

19 I believe the State versus 192 Coin-Operated
20 Video Games talks about the two prong test that
21 should be considered. And the two prong test is
22 this: It says, first, The defendant must show that
23 he has been singled out for prosecution while others
24 similarly situated have not been prosecuted for
25 conducts similar to that which he was prosecuted.

1 The second factor, Your Honor, is, The
2 defendant must demonstrate that the government's
3 discriminatory selection of him for prosecution was
4 based upon an impermissible ground such as race,
5 religion or his exercise of his First Amendment
6 right to free speech.

7 I don't think it's an extrapolation to say that
8 his exercise of his right to not speak or his right
9 to remain silent under the Fifth Amendment is just
10 as important in a free society as it is the First
11 Amendment, the right to speak freely. And I would
12 suggest to the Court that the State's prosecution of
13 my client and his brother is basically selective
14 prosecution for their failure to do the dance in the
15 prosecution of the State of South Carolina versus
16 Steven Barnes.

17 I will also note just for the record that my
18 client and his brother are the only two Hispanic
19 individuals in this mêlée that is alleged to have
20 occurred that ended in the loss of the life of one
21 Samuel Sturup. And they have been the only two to
22 be prosecuted.

23 I would suggest to the Court that the other
24 folks who have been just as involved are not going
25 to be prosecuted. I don't think there are any plans

1 to prosecute them. And, quite frankly, I don't
2 think there would have been any plans to prosecute
3 my client had he done the dance. But, again, he
4 chose to exercise his right to remain silent under
5 the Fifth Amendment. And I think that you could
6 even argue that as to a -- there's a First Amendment
7 right to be quiet. He has a right to shut up, he
8 has a right to speak and he chose to shut up.

9 Again, certainly, we understand that the Fifth
10 Amendment is more applicable to the right against
11 self-incrimination, but I would also suggest that
12 the right to remain silent is affected by the First
13 Amendment as well, that's a manner of speech as
14 well, to not to speak.

15 And I would suggest to the Court that the
16 State's decision to prosecute him is selective and
17 we take exception to it. And I, you know, whether
18 the Solicitor is candid or not, I believe what I say
19 is absolutely candid with this tribunal.

20 **THE COURT:** Thank you, Mr. Williams.
21 Solicitor.

22 **MR. MAYE:** May it please the Court, Your Honor.
23 Certainly, the State has an absolute obligation to
24 prosecute those cases in which we believe that a
25 probable cause and justice dictates. There had

1 always been an intent on the part of the State in
2 this case to prosecute all of the individuals that
3 were involved in this case.

4 And none of the individuals, even the ones that
5 testified against Mr. Barnes, have any plea
6 agreements. They've stated numerous times for the
7 record, we've never discussed with them, we've
8 always told them that they had charges pending in
9 this case. We've never made any agreements with
10 them in any regard. We intend to go forward with
11 the prosecution, always did, with all of these
12 individuals.

13 There was a question as to Alex and Julio
14 Hunsberger as to whether or not Solicitor Myers
15 intended to notice them for the death penalty, Your
16 Honor. These two individuals, Alex and Julio
17 Hunsberger, are not similarly situated with the
18 other co-defendants in this case, Your Honor. Each
19 of them has been convicted of kidnapping with bodily
20 injury in Georgia. The others were convicted of
21 assault.

22 These individuals, from the testimony that was
23 proffered in Barnes' trial and from all of the
24 discovery and in each of the preceding hearings that
25 we have seen, there was information that Julio and

1 Alex Hunsberger put this young man in the trunk of
2 an automobile over in Georgia, drove him over to
3 South Carolina leading the way, taking him to an
4 area of family property of theirs here in Edgefield
5 County where this murder took place, Your Honor,
6 where they participated in the murder. They are not
7 similarly situated with the other three
8 co-defendants in this case, Your Honor; in that
9 regard.

10 Your Honor, I know that this is a letter dated
11 October 11th of 2010, from Mr. Williams to his
12 client in this case. Your Honor, I felt like in
13 this case, prior to Mr. Barnes' prosecution in this
14 case, I felt like that everybody that was involved
15 in this ought to be fed out of the same spoon and
16 certainly at least given a chance to cooperate, if
17 they wanted to, against Mr. Barnes who was
18 unquestionably the ring leader of the entire, I
19 guess, proceeding that took place, all of the events
20 of violent acts that took place against Mr. Sturup
21 on the night of his death including the beating and
22 torture that took place over in Georgia at the green
23 house, I guess is the area over in Georgia.

24 I know that many defendants seek and would like
25 an opportunity to testify against co-defendants in

1 this case. I certainly feel like, as a prosecutor,
2 there is at least some duty to try to feed people
3 out of the same spoon, to try to -- that those that
4 are similarly situated, and even in the case of
5 Steven Barnes where it came to Alex and Julio
6 Hunsberger, to at least give them an opportunity to
7 testify if they wanted to.

8 Never has the State indicated to anyone that we
9 intended to punish anyone for exercising any of
10 their right to remain silent or to refuse to
11 cooperate against any individual. I've never issued
12 any threats in this case. To the contrary, Your
13 Honor, he's certainly entitled to remain silent in
14 this case. I've not made plea agreements with any
15 of those individuals that have testified against
16 Steven Lewis Barnes or testified against Alex
17 Hunsberger.

18 Last week when we tried a similarly situated
19 co-defendant, Alex Hunsberger who was tried last
20 week, Your Honor, I note that this same motion was
21 raised at his trial, but I have never posed any
22 threats, never told anyone that I intended to
23 prosecute anybody based on whether or not they
24 intended to cooperate or not. We intend to pursue
25 these charges against all of these defendants in

1 some regard, Your Honor, but certainly never been
2 any threats in this case. There's been no selective
3 prosecution.

4 We've got an obligation to prosecute those
5 cases in which we believe that there's sufficient
6 probable cause to go forward. This is certainly a
7 terrible crime that was perpetrated against the
8 victim, Samuel Sturup, and we have tried to move
9 forward in as evenhanded a fashion as we could.

10 Solicitor Myers did not notice these two
11 individuals for the death penalty, which I would
12 certainly say inured to their benefit. And there
13 has been no threats made. I have never corresponded
14 with anyone or given any indication, either in
15 writing or orally, that I intended to punish anyone
16 for whether or -- for exercising any constitutional
17 right in regard to any of the individuals that
18 participated in the killing of Mr. Sturup or his
19 kidnapping in Georgia.

20 **THE COURT:** Thank you.

21 Mr. Williams.

22 **MR. WILLIAMS:** Your Honor, I'd just indicate to
23 my friend, Mr. Maye, that it wasn't a threat. It
24 actually evolved into a promise and he's delivered
25 on his promise. I still think it's the same.

1 Again, these are folk who are similarly
2 situated and they are not being treated the same.

3 **THE COURT:** Well, that case doesn't say they
4 have to be treated the same. First off, 192 is a
5 civil case.

6 **MR. WILLIAMS:** It is. I do not disagree, but
7 it talks -- the standard is the same under the U.S.
8 case.

9 **THE COURT:** I agree with that. They analogize
10 it to criminal prosecution. And I guess the
11 question is, are the co-defendants being prosecuted?

12 **MR. MAYE:** Your Honor, the co-defendants
13 certainly face all of these charges in this case.
14 They have not been given any plea deals in this case
15 and we will proceed against them in some fashion in
16 the future. I do not know what that is because we
17 haven't made a decision in that regard yet.

18 **THE COURT:** And my question is -- my question
19 is not, are they being prosecuted for the same
20 thing, that's irrelevant. That's part of the --
21 prosecutorial authority under the constitution. And
22 under State versus Ridge, they have unfettered
23 decision making in the determination of how they're
24 going to resolve a particular case.

25 Have they been indicted?

1 **MR. MAYE:** Your Honor, I don't know the status
2 of their charges in this case, Your Honor. I cannot
3 tell you at this time. I can tell you, as an
4 officer of the court, we intend to pursue these
5 charges against these individuals, but as to the
6 timing of that, I cannot give you an answer to that.

7 **MR. WILLIAMS:** Judge, one thing, and I'm going
8 to sit down, as it relates to their charges in
9 Georgia and their failure to be charged for
10 kidnapping, they were indicted for kidnapping in
11 Georgia, but these same folk are the ones who chose
12 to testify against Steven Barnes in various manners
13 over in Georgia and they received nolle prosequi
14 waivers of those kidnapping charges, I do believe, in
15 exchange for their cooperation.

16 **THE COURT:** That may be. I don't think that's
17 unconstitutional. I don't think that's selective
18 prosecution.

19 Mr. Hunsberger can make his decision to go to
20 trial or to plead guilty, number one. Number two,
21 if he chooses to go to trial, he can make his
22 decision of whether or not he wants to testify or
23 not testify. And if he doesn't want to testify,
24 I'll certainly charge the jury in that regard that
25 cannot be held against him. He could have made his

1 decision to attempt to get in a position of one of
2 the co-defendants, not Mr. Barnes' position, but one
3 of the co-defendants that are listed as -- on the
4 witness list, but, again, that's his decision.

5 In every case -- every case, every defendant is
6 different. Every defendant in the same case many
7 times may be different. You may have some that
8 don't have prior records, you may have some that do
9 have prior records, you may have some more on the
10 peripheral, some closely involved in the nexus of
11 the crime itself, but I don't think it meets either
12 the first or the second prong of 192.

13 Solicitor, you did not address, but
14 Mr. Williams did bring up, the issue of
15 Mr. Hunsberger's heritage, that he and his brother
16 were the only two Hispanic males. Did that go into
17 your consideration in any manner whatsoever?

18 **MR. MAYE:** Your Honor, as an officer of the
19 court, in all candor, I can say that is one thing
20 that I do not look at involving any prosecution. I
21 don't purposely -- often times the first time that I
22 know the race of any individual is when they appear
23 at a roll call proceeding.

24 Absolutely no decision regarding prosecution
25 was made with a factor of his gender, his race, his

1 background. None of those factors have ever entered
2 into any of my thinking in the prosecution of any
3 case, most certainly and specifically not in his.
4 And I am unaware of any even discussion of the fact
5 of his race playing any factor in any aspect of any
6 decision involving prosecution or what charges would
7 be sought against what individuals in this crime.

8 **THE COURT:** Anything else you would like to put
9 on the record, Mr. Williams?

10 **MR. WILLIAMS:** As it relates to this issue?

11 **THE COURT:** Yes, sir.

12 **MR. WILLIAMS:** Your Honor, I will just say that
13 they are Hispanic and that's what they are and the
14 facts speak for themselves. They're being
15 prosecuted and no one else has been.

16 **THE COURT:** All right. Certainly. Thank you,
17 Mr. Williams.

18 Now, the next motions that I have was the
19 motions on the identification issues of Mr. Cave,
20 Mr. Griffin and Ms. Thatcher; is that correct?

21 **MR. WILLIAMS:** Yes, sir.

22 **THE COURT:** All right. Now, tell me the status
23 of your transcripts.

24 **MR. WILLIAMS:** Your Honor, I just got an e-mail
25 from Ms. Sigwald and what she indicated to me was

1 that they would be available -- she said it would be
2 tomorrow morning is what she indicated to me, but,
3 you know, I'm prepared to do what I need to do.

4 **THE COURT:** Well, this is like a...

5 **MR. MAYE:** Biggers hearing.

6 **THE COURT:** Thank you. I was trying to push
7 Jackson versus Denno out of my mind and get the
8 right one in my mind. That's what you want is a
9 Biggers hearing?

10 **MR. WILLIAMS:** Your Honor, what I'm looking for
11 is a Biggers hearing. And I will say specifically
12 there's not necessarily a lineup issue as it relates
13 to Cave and Griffin, not specifically a lineup issue
14 that we're raising, but it's more or less the
15 factors of when they encountered or when they
16 allegedly encountered my client, the time of day,
17 did they get in the car with him, where were they,
18 was it not dark, you know, those kind of issues,
19 their opportunity to observe my client, how close by
20 they were, these kinds of issues, and whether or not
21 they knew him before and if they had any gained
22 familiarity with my client.

23 I believe the only familiarity that they had
24 with my client has been the subsequent prosecution
25 of my client in the State of Georgia. I think even

1 on last week, Mr. Griffin indicated that he thought
2 they were white guys that arrived at the alleged
3 green house over in Augusta. And I believe that's
4 going to be in the record.

5 So -- and I believe the Solicitor, as an
6 officer of the court, would acknowledge that that's
7 what he said. I'm not ordering his transcript. I
8 hope the Solicitor can remember that that's what he
9 said or else I may have to order his transcript as
10 well. I'm trying to figure out if that's --

11 Do you recall that not being said?

12 **THE COURT:** Do you want to call these people,
13 these individuals, as witnesses in camera?

14 **MR. WILLIAMS:** Yes, sir.

15 **THE COURT:** Well, let's take about a ten minute
16 recess and line them up. I'll be glad to hear it.

17 **MR. WILLIAMS:** That will be fine.

18 **MR. MAYE:** Thank you, Your Honor.

19 **THE COURT:** Court will be in recess ten
20 minutes.

21 (Brief Recess.)

22 **THE COURT:** All right. How do y'all propose we
23 proceed with this hearing?

24 **MR. MAYE:** Your Honor, under Neil versus
25 Biggers, I understand once they challenge the

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1 identification, we intend to call the witnesses to
2 the stand. I'll go through with them the scenario
3 for identification, the five factors that would fall
4 into play, and then turn each of the witnesses over
5 to cross-examination because every Neil versus
6 Biggers hearing that I've ever done was done in that
7 fashion and that's how I would propose that we
8 proceed as to each of the three witnesses in this
9 case in which we intend to make an identification.

10 **THE COURT:** Are you ready to proceed,
11 Mr. Williams?

12 **MR. WILLIAMS:** Yes, sir, Your Honor.

13 **MR. MAYE:** The State would call Richard Cave to
14 the stand.

15 **RICHARD CAVE,**
16 having been duly sworn, testified as follows:

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

19 **THE WITNESS:** Richard Cave, C-a-v-e.

20 **DIRECT EXAMINATION**

21 **BY MR. MAYE:**

22 **Q** Mr. Cave, if you would, I'm going to direct
23 your attention -- the purpose of this hearing is
24 specifically for an identification of the defendant
25 in this case, Mr. Julio Hunsberger. I want to

1 direct your attention specifically to the purpose of
2 this hearing.

3 On September the 3rd of 2001, shortly after the
4 time that Steven Lewis Barnes made a telephone call,
5 did two individuals arrive in an automobile there at
6 the scene, I believe, at in
7 Augusta, what is otherwise known as the green house,
8 did two individuals arrive?

9 A Yes, they did.

10 Q Let me ask you this: Did you have a clear
11 opportunity to view those two individuals when they
12 arrived there at the green house?

13 A Yes, I did.

14 Q How did they arrive? Were they walking? Were
15 they in an automobile? How did they get there?

16 A Arrived in a car.

17 Q Okay. Was there adequate light in order for
18 you to be able to see the facial features of the two
19 individuals that arrived there in that automobile at
20 the green house?

21 A Yes, it was.

22 Q What was the source of that illumination there?

23 A We had light poles and the moon.

24 Q Okay. All right. How intently was your
25 attention focused on these two individuals when they

1 arrived there? Now, this was on the heels of the
2 beating that Samuel Sturup had taken place and
3 after Mr. Barnes made that phone call. How acutely
4 was your attention focused? How strong was your
5 attention focused on these two individuals?

6 A That was all that was going on. When I seen
7 them got out the car, that's how I recognize them.

8 Q Could you see their faces?

9 A Yes, sir.

10 Q Okay. Could you see the bodies and their body
11 structure?

12 A When they got out the car, yes.

13 Q Okay. All right. Let me ask you this: Is one
14 of the individuals that arrived there in that
15 automobile, is he present here in the courtroom?

16 A Yes, he is.

17 Q Where is he present in the courtroom?

18 A Sitting right over there (indicating).

19 Q How is he dressed? Describe how he's dressed
20 and where he's seated in the courtroom.

21 A In the orange jumpsuit.

22 Q He's in the orange jumpsuit next to the
23 attorney?

24 A Yes, sir.

25 MR. MAYE: Your Honor, for this purpose of this

1 hearing, I'd ask to reflect that he has identified
2 the defendant in this case, Mr. Julio Hunsberger.

3 **THE COURT:** All right. So reflect.

4 BY MR. MAYE:

5 **Q** Let me ask you this: Are you absolutely
6 certain that the individual that you saw there at
7 the green house is the same individual that's seated
8 there in the orange jumpsuit? Are you absolutely
9 100 percent sure?

10 **A** Yes, I am sure.

11 **Q** Okay. Let me ask you this: Is your
12 identification of him here today based on seeing him
13 at the green house there at that location? Is your
14 identification here today based on seeing him then
15 or as a result of seeing any photographs of him
16 later, any subsequent appearances of him in court at
17 any other time? What did you base your
18 identification on, back then or something else?

19 **A** Well, he had newspaper articles, then we had a
20 trial in --

21 **THE COURT:** Slow down for me and say that
22 again.

23 **THE WITNESS:** We had newspaper articles and
24 then we had a trial in '05.

25 BY MR. MAYE:

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1 Q Let me ask you this: Is your identification of
2 him today based on you seeing him at the scene there
3 that night?

4 A Uh-huh.

5 Q Okay. Let me ask you further. After y'all
6 left the green house over there on Cherry Street in
7 Augusta, did y'all travel to a location here in
8 Saluda County across one field through a narrow
9 passageway into a second field; do you recall that?

10 A Yes, sir.

11 Q Okay. Did the individuals that had loaded him
12 up in the automobile over there on Cherry Street,
13 did they exit that same vehicle here in South
14 Carolina into that second field?

15 A Yes, sir.

16 Q Okay. Is that individual, is that the same
17 individual that got in the car the one you had
18 previously identified as Julio Hunsberger?

19 A Yes, sir.

20 Q Did you see him get out of an automobile there?

21 A Yes, sir.

22 Q Okay. Was there sufficient light for you to be
23 able to see him and identify him, his facial
24 features, his body structure, all of that?

25 A Yes, sir.

1 Q Okay. What was the source of the illumination
2 there?

3 A The moon.

4 Q Okay. Once y'all -- once they got out of the
5 automobile there, where did they then go once they
6 left the automobile?

7 A We all went into the field.

8 Q Okay. After y'all went into the field, where
9 did y'all all then go?

10 A To a smaller field inside the wood area.

11 Q Okay. At the time that y'all fired shots and
12 at the time that y'all went up into the area where
13 Samuel Sturup was eventually shot and killed, were
14 you able to see the defendant in this case, Julio
15 Hunsberger?

16 A Yes, I was.

17 Q Could you see his face? Could you clearly
18 identify him?

19 A Yes, sir.

20 Q Okay. After y'all left the area of the
21 shooting, did y'all subsequently go to a mobile
22 home?

23 A Yes, sir.

24 Q Okay. Once y'all entered the mobile home, were
25 the lights on in the mobile home?

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1 A Yes, they were.

2 Q Okay. Were you able to see Julio Hunsberger
3 inside that trailer there?

4 A Yes, I did.

5 Q Okay. Was your attention intently focused on
6 him? Did you give him your full attention there
7 where you could see him?

8 A Where I seen him, yes, I seen him.

9 Q Okay. Is there any doubt in your mind that the
10 individual that's seated here in the courtroom in
11 the orange jumpsuit that that is the same individual
12 that was at the green house on Cherry Street that
13 night? Is it the same individual that was there at
14 the scene where y'all unloaded --

15 A Yes, sir.

16 Q -- where Mr. Sturup was unloaded out of the
17 automobile and where he was subsequently killed?

18 A Yes, sir.

19 Q Same individual?

20 A Yes, sir.

21 Q At the trailer, after the time of the shooting,
22 is Julio Hunsberger the same individual that was
23 there at that trailer?

24 A Yes, sir.

25 Q Okay. Is your identification of him here today

1 based solely on you seeing him at each of those
2 three occasions on September the 3rd of 2001?

3 A Yes, sir.

4 Q Okay. Were you able to subsequently identify
5 him during a trial between September the 5th and
6 September the 12th of 2006, based on you seeing him
7 there that night?

8 A Yes, sir.

9 Q Okay. Are you 100 percent certain that that's
10 the same individual?

11 A Yes, sir.

12 MR. MAYE: Beg the Court's indulgence.

13 (Pause.)

14 MR. MAYE: Answer any questions the defense has
15 for you.

16 THE COURT: Mr. Williams.

17 MR. WILLIAMS: Court's indulgence, Your Honor.
18 If I might just have one quick break, I've just got
19 this cough that is annoying.

20 THE COURT: All right. Yes, sir.

21 (Pause.)

22 MR. WILLIAMS: Judge, I'm ready.

23 THE COURT: All right. Yes, sir, you may
24 proceed.

25 MR. WILLIAMS: I apologize.

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1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q Mr. Cave, I apologize for the walking out just
4 a moment ago. But I noticed you testified just
5 moments ago that you had saw my client in a prior
6 trial in September of 2006; is that right?

7 A Yes, sir.

8 Q Okay. Had you seen him at any other times
9 prior to 2006?

10 A At the crime scene.

11 Q At the crime scene. Okay. Have you seen him
12 subsequent to 2006?

13 A Meaning what?

14 Q That means after. Have you seen him after,
15 until this day?

16 A No, sir.

17 Q Okay. Let me ask you this question: Did you
18 have a prior familiarity or did you know my client
19 prior to September of 2001?

20 A No, sir.

21 Q You did not know him at all?

22 A No, sir.

23 Q Had you seen him before in the presence of
24 yourself or one Steven Barnes?

25 A I seen him that night. Other than that, no.

1 Q That night, okay. Now, let's talk about that
2 night. At the green house, did you not testify in
3 the trial last week against one Alex Hunsberger?

4 A I did.

5 Q Was there power at the green house?

6 A Talking about electricity?

7 Q Yes.

8 A No, sir.

9 Q There was no power, okay. And did you not also
10 testify that it was at night; is that right?

11 A Yes, sir.

12 Q About what time of night?

13 A I got there at 10:00.

14 Q I'm sorry, at 10:00?

15 A At ten o'clock p.m.

16 Q Okay. And let's say September, generally
17 speaking in September, 10:00 p.m., it is dark, isn't
18 it?

19 A You're right.

20 Q Okay. And I want you to tell me about how
21 close were you to my client when he allegedly
22 arrived at the crime scene?

23 A He wasn't too far, a couple feet away from me.

24 Q All right. Now, I'm going to walk towards you
25 and I want you to tell me when I'm as close as you

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1 were to him, okay?

2 **A** Back up some.

3 **Q** Okay. I'll do that.

4 **A** Standing back to that little gate area right
5 there.

6 **Q** About here (indicating)?

7 **A** Yes, sir.

8 **Q** All right. So this is as close as you got to
9 my client when he was at the alleged crime scene at
10 the green house?

11 **A** No. When he got out the car, that's how -- he
12 got out the car, I was that far away.

13 **Q** All right. How many people got out of the car?

14 **A** Two.

15 **Q** Two, okay. And you indicated that both persons
16 got out and how close did the other individual get
17 to you?

18 **A** When they got out the car, they was about that
19 far, but through the night, it was a little closer,
20 yes.

21 **Q** Through the -- no, no, no, I'm wanting to stay
22 at the green house, okay, and I'll talk to you about
23 what transpired thereafter, okay. But at the green
24 house, how close did you get to my client?

25 **A** Pretty close.

1 Q All right. This is about as close as it was --

2 A No. He got closer than that, but I was
3 speaking of when he got out the car, that's how far
4 he was.

5 Q Okay. Now, tell me how close he got to you.
6 I'm going to walk towards you and you tell me when
7 I'm as close as you ever got to my client there on
8 Cherry Street in Augusta, Georgia --

9 A All right.

10 Q -- on the night of September 3rd, 2001, okay.

11 (Mr. Williams walks towards the witness.)

12 Q Closer?

13 A Yes, sir.

14 Q All right. Closer?

15 A About right there.

16 Q About right here?

17 A Yes, sir.

18 Q All right. And it was absolutely dark; is that
19 right?

20 A No, it wasn't absolutely dark. It got light
21 poles and stuff out there.

22 Q Light posts?

23 A Yes, sir.

24 Q Okay. Are they white light or were they
25 subdued light or I'd say greenish or bluish?

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1 **A** More like orangish.

2 **Q** More like orange?

3 **A** Yeah.

4 **Q** Okay. So it wasn't white light, was it?

5 **A** No.

6 **Q** Okay. And, again, you had no gained
7 familiarity with my client?

8 **A** No, sir.

9 **MR. WILLIAMS:** Your Honor, I'm going to take a
10 good guess and say I'm approximately eight feet away
11 from the defendant.

12 **THE COURT:** All right. Solicitor, do you agree
13 with that?

14 (Pause.)

15 **THE COURT:** Well, y'all can measure it if you
16 want. It's got to be in the record one way or the
17 other.

18 **MR. MAYE:** Your Honor, approximately. I would
19 guess -- without pulling a tape, I couldn't tell you
20 definitive.

21 **THE COURT:** All right. Approximately eight
22 feet, all right.

23 **MR. WILLIAMS:** I'm no carpenter, Judge, but I
24 believe that was about eight feet away.

25 **BY MR. WILLIAMS:**

1 Q Now, do you believe you got any closer to my
2 client there at the crime scene than eight feet, the
3 distance that I just --

4 A I don't think so, no.

5 Q Okay. Now, is it not my understanding that
6 when they came there, they stayed right near the car
7 to open the trunk?

8 A I didn't see them open the trunk.

9 Q Okay. Well, let me ask you this: What did you
10 see?

11 A I seen them conversating (sic) with Barnes.

12 Q They came and did what?

13 A When they came, Barnes pulled them to the side
14 and they had a conversation with Barnes.

15 Q Were you privy to that conversation?

16 A I was a witness to it, yeah.

17 Q No. Were you a party to it?

18 A No.

19 Q Okay. And a private conversation, people don't
20 necessarily want to get close to others because they
21 don't want to hear what they're saying, do they?

22 A That is true.

23 Q All right. So he wasn't extremely close to
24 you, was he?

25 A Not during that conversation, no.

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1 Q Okay. Neither was anyone else that may have
2 been there, they weren't extremely close to you at
3 that time, were they?

4 A Speaking of who, anyone else?

5 Q Anyone else who might have come there in a car
6 who might fit the description of my client?

7 A They stayed -- when they had a conversation, I
8 was a good feet away.

9 Q You were a good bit away is that what you just
10 said?

11 A Yeah.

12 Q Okay. And when you say a good bit away, tell
13 me about how far away.

14 A About right there.

15 Q Okay. Now, let me ask you this: How did it
16 come to pass that my client got within eight feet of
17 you? Describe that to me.

18 A Walking by.

19 Q Just walking by. Was he walking to the car or
20 was he walking towards you?

21 A Walking by.

22 Q Walking by.

23 A Like to the dirt area in the driveway.

24 Q To the dirt area in the driveway?

25 A Yes, sir.

1 Q All right. Now, the green house, it was kind
2 of on a side street, wasn't it? Cherry Street, is
3 that not like a side street?

4 A Off of Washington Road, yes.

5 Q Right. And then it's not on Washington Road
6 though, is it?

7 A It's off of Washington Road, a side street,
8 yeah.

9 Q And you believe that there were street lights
10 out there?

11 A It's a shopping center across the street.

12 Q Okay.

13 A And they do have light poles along the side
14 street.

15 Q All right. And you feel as though that
16 illuminated sufficient light for you to be able to
17 see my client clearly?

18 A I do.

19 Q Okay. Mr. Cave, I'm going to ask you a couple
20 of things relating to what you believe my client did
21 when he arrived at the green house. Tell me exactly
22 what you saw, who you believed to be my client do.

23 A He conversated (sic) with Barnes.

24 Q All right. He came, had the conversation with
25 Barnes. You were not privy to that conversation,

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1 right?

2 A No, sir..

3 Q All right. And then somehow he walked within
4 eight feet of you, give or take?

5 A Yes, sir.

6 Q Okay. And how quickly did this encounter
7 occur?

8 A Talking about timeframe?

9 Q Yes.

10 A I mean, it -- I can't really say how much time
11 within the events that happened, but, you know.

12 Q Okay. Now, prior to their arrival, you and
13 some other folk had been beating on Mr. Sturup,
14 hadn't you?

15 A Not me, no.

16 Q Okay. Well, at least your buddy, Mr. Griffin,
17 he had been beating on him along with Mr. Barnes,
18 hadn't he?

19 A Yes, sir.

20 Q Okay. So when, allegedly, my client arrived,
21 were they sticking around, hanging out, wanting to
22 beat on him, too, or were they just there to get in
23 and out?

24 A No. When they got there, the fight was over
25 with.

1 Q The fight was over with?

2 A When they got there, yes.

3 Q All right. How quickly did it take them to get
4 Mr. Sturup in the trunk of the car?

5 A I didn't see them put him in the trunk.

6 Q All right. Did you see Mr. Barnes put him in
7 the trunk of the car?

8 A No, I didn't.

9 Q Did you see anybody raise the trunk of the
10 car --

11 THE COURT: None of this goes to suggestiveness
12 on the identification, so I don't see how that's
13 relevant to the issue you've raised in your motion,
14 Mr. Williams.

15 The issue you raised in your motion, and quite
16 frankly I'm not even sure you're entitled to a Neil
17 versus Biggers hearing as I sit here and review the
18 law, is his ability to identify one, two individuals
19 that came to that location in an automobile that
20 night, whether or not that person is in the
21 courtroom.

22 MR. WILLIAMS: Your Honor, I think given the
23 timing, the lighting and the distance away, I think
24 those are all relevant issues. And the time of the
25 encounter is the purpose or the line of questioning

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1 I was trying to establish here with this particular
2 witness with regard to the time of the encounter or
3 how long the encounter would have occurred.

4 THE COURT: All right. You may proceed.

5 MR. WILLIAMS: Thank you, Your Honor.

6 BY MR. WILLIAMS:

7 Q How long would you say it occurred from the
8 time the car arrived and the car leaving that the
9 individuals arrived in?

10 A I'm not really that sure really.

11 Q All right. Would you say it was one minute?
12 Do you know how long a minute is?

13 A Yeah, I pretty much do.

14 Q All right. Do you think it was one minute?

15 A It was longer than that.

16 Q Okay. Do you think it was five minutes?

17 A A little longer than that.

18 Q You think it was more than five minutes?

19 A Yes, sir.

20 Q Okay. How many minutes do you think it was
21 before that car came and you wound up following
22 behind that car into the State of South Carolina?

23 A Let's say 30 minutes to an hour.

24 Q So they were at least there 30 minutes to an
25 hour?

1 **A** I'll say 30 minutes to an hour.

2 **Q** Okay. And what were they doing, just talking
3 with Mr. Barnes the entire time?

4 **A** Pretty much.

5 **Q** Out there in the dark?

6 **A** He the only one that knew him.

7 **Q** You've never seen him before?

8 **A** No, sir.

9 **Q** My client, never saw him before?

10 **A** Not since then, no.

11 **MR. WILLIAMS:** Your Honor, those are all the
12 questions I have of this witness -- Court's
13 indulgence, Your Honor.

14 **THE COURT:** Yes, sir, certainly.

15 (Pause.)

16 **BY MR. WILLIAMS:**

17 **Q** I've got a quick question for you. Had you
18 known a Carlos Gomez?

19 **A** No.

20 **Q** Okay. Were you aware that he was an associate
21 of Steven Barnes?

22 **A** No.

23 **Q** How about a Chico?

24 **A** No.

25 **MR. WILLIAMS:** Okay. Thank you, sir.

1 **THE COURT:** Redirect.

2 **MR. MAYE:** Nothing else, Your Honor. Thank
3 you.

4 **THE COURT:** You may step down.

5 Give me a minute before you call your next
6 witness.

7 (Pause.)

8 **THE COURT:** All right. Call your next witness.

9 **MR. MAYE:** Your Honor, the State would call
10 Antonio Griffin.

11 Prior to that time, Your Honor, I just would
12 ask for the purpose of this hearing or possibly
13 during the ensuing trial, I know there are certain
14 items of fact that the State could ask the Court to
15 take judicial notice of. I'm going to hand up, and
16 I don't know what research the Court might want to
17 do to verify this, but from my calculations I have
18 and the information that I have been provided, is
19 that September the 2nd at 1643 hours eastern
20 standard time was the full moon on September the 3rd
21 -- or would have been September the 2nd at 1643
22 hours eastern standard time 2001.

23 Also, having that -- information that I have is
24 from a NASA web site. And then I also have one that
25 goes back to the United States Naval Observatory

1 with moon phases. And it shows that the full moon
2 occurred September the 2nd at 2143, and that's Zulu
3 time or universal time and I think eastern standard
4 time is five hours less than that.

5 I'm going to hand these up to the Court. And I
6 would, at the appropriate time, ask the Court to
7 take judicial notice. I know that the Court can
8 take judicial notice of certain items such as
9 sunrise, sunset. I would certainly think that
10 phases of the moon would go into that same category
11 and would ask the Court to take judicial notice that
12 the date of September 3rd was one day after a full
13 moon which would have occurred at 1643 hours on
14 September the 2nd.

15 **THE COURT:** Mr. Williams.

16 **MR. WILLIAMS:** Your Honor, I mean, certainly I
17 believe the Court can take judicial notice of what
18 it so chooses in its discretion. However, that's --
19 there's been no astronomical testimony offered by
20 any astronomer to help us to be able to verify that
21 this was actually the case.

22 **THE COURT:** Well, this is NASA. They've been
23 to the moon.

24 **MR. WILLIAMS:** Yes, sir. And I just don't see
25 my NASA scientist, that's what I'm worried about.

1 **THE COURT:** They're going to Mars now.

2 **MR. WILLIAMS:** Yes, sir.

3 **THE COURT:** They got curiosity out there flying
4 around.

5 **MR. WILLIAMS:** If we had the control commander
6 here, Judge, I wouldn't take exception to it, but
7 since we don't, I'm going to take exception to it.

8 **THE COURT:** Well, I tell you this, you look up
9 whether it was cloudy or clear.

10 **MR. WILLIAMS:** Yes, sir.

11 **MR. MAYE:** And, Your Honor, I have that
12 information --

13 **THE COURT:** And -- because you can have a full
14 moon and if you have a full moon on a cloudy night,
15 it's -- obviously, it's not as good an ability to
16 see as if it was a clear night.

17 **MR. WILLIAMS:** I agree.

18 **THE COURT:** I will take this into judicial
19 notice without them having to bring someone from
20 the -- if it was a weather report, in the future, I
21 would question that even if I was standing outside
22 and it's raining on me. I'm not saying you can
23 believe the weather man, but you can for the past.

24 **MR. WILLIAMS:** Yes, sir.

25 **MR. MAYE:** And, Your Honor, along that same

1 vein, I have the summary of weather from the
2 Farmer's Almanac for Edgefield County for our
3 inquiry and I'm going to pass it up to the Court,
4 that it was clear, that the -- clear visibility and
5 absolutely zero precipitation for that calendar date
6 of September the 3rd.

7 **MR. WILLIAMS:** I trust that more than I trust
8 that NASA report, Judge.

9 **THE COURT:** I'm not too sure I would -- I'm an
10 avid reader of the Farmer's Almanac. However, I
11 think you can go to the U.S. climatology or
12 something of that nature and check on that,
13 Mr. Williams. I'll give you an opportunity to do
14 that, but for purposes of this hearing, I'll take
15 the phase of the moon into judicial notice.

16 **MR. MAYE:** Thank you, Your Honor.

17 **THE COURT:** All right. You may call your next
18 witness.

19 **MR. MAYE:** The State would call Antonio Griffin
20 to the stand.

21 **ANTONIO GRIFFIN,**
22 having been duly sworn, testified as follows:

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

25 **THE WITNESS:** Antonio Griffin, G-r-i-f-f-i-n.

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1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Mr. Griffin, let me direct your attention
4 directly, September the 3rd of 2001, at
5 over in Augusta. Shortly after the time that
6 Samuel Sturup suffered the beating at the hand of
7 Mr. Barnes and others there, Mr. Barnes made a phone
8 call and two individuals arrived shortly thereafter;
9 is that correct?

10 A Yes, sir.

11 Q Did you have an opportunity to see those two
12 individuals that arrived there at the scene?

13 A Yes, sir.

14 Q Was there adequate light in order for you to be
15 able to see them there at in
16 Augusta on that night?

17 A Yes, sir.

18 Q Did they have your full attention at that time?

19 A Yes, sir.

20 Q Were you able to see their facial features and
21 their body structure in detail at that point in
22 time?

23 A Yes, sir.

24 Q Was your attention firmly and clearly focused
25 on them at that time?

1 **A** Yes, sir.

2 **Q** Is the individual that you saw there that night
3 on Cherry Street, is he present here in the
4 courtroom today?

5 **A** Yes, sir.

6 **Q** Could you point him out?

7 **A** Right there with the orange jumpsuit on next to
8 the lawyer with the black suit.

9 **MR. MAYE:** For the purposes of this hearing,
10 I'd ask that the record reflect he's identified
11 Julio Hunsberger as this individual.

12 **THE COURT:** Speak up and tell me your answer
13 again, please.

14 **THE WITNESS:** Sir, the guy with the orange
15 jumpsuit on next to the lawyer with the black --

16 **THE COURT:** So reflected.

17 **BY MR. MAYE:**

18 **Q** Are you 100 percent certain that that
19 individual seated there in the orange jumpsuit is
20 the same individual that appeared there that night?

21 **A** Yes, sir.

22 **Q** Okay. Do you base your identification here in
23 the courtroom today based on seeing him back there
24 on the 3rd of 2001?

25 **A** Yes, sir.

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1 Q No other factor, just your identification of
2 him based on seeing him that night on the 3rd; is
3 that correct?

4 A Yes, sir.

5 Q All right. Did you also have an occasion to
6 see him at the scene of this crime when they exited
7 the vehicle into that second field here in Edgefield
8 County in South Carolina?

9 A Yes, sir.

10 Q Was there sufficient lighting for you to be
11 able to see him when they got out of the vehicle
12 there at the scene?

13 A Yes, sir.

14 MR. WILLIAMS: Objection, Your Honor. He's
15 leading and leading further and further.

16 THE COURT: Well, we're in camera. So you may
17 ask your next question, Solicitor.

18 BY MR. MAYE:

19 Q Where y'all went and Sam Sturup was shot, were
20 you able to see Julio Hunsberger?

21 A Yes, sir.

22 Q Could you see his facial features?

23 A Yes, sir.

24 Q Was your attention clearly focused on him at
25 that time?

1 A Yes, sir.

2 Q When you went back to the mobile home after the
3 time of the shooting and went inside, did you have
4 an opportunity to see Julio Hunsberger, the
5 individual you've identified here?

6 A Yes, sir.

7 Q Did y'all go inside of a residence there?

8 A Yes, sir.

9 Q Were the lights on inside that residence?

10 A Yes, sir.

11 Q Were you close enough to him to be able to see
12 his facial features and make an identification of
13 him?

14 A Yes, sir.

15 Q Are you absolutely certain that the individual
16 that you've identified in the courtroom as Julio
17 Hunsberger is the same individual that was there in
18 that mobile home here in Edgefield County on that
19 same night?

20 A Yes, sir.

21 Q You're a hundred percent certain?

22 A Yes, sir.

23 Q Okay. Is your identification of him based
24 solely on seeing him there at the crime scene?

25 A Yes, sir.

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1 Q Let me ask you: Is the individual that you've
2 identified as Julio Hunsberger, is that the same
3 individual that was there at Cherry Street, at

4
5 A Yes, sir.

6 Q Is it the same individual that was there at the
7 crime scene when they got him out of the vehicle?

8 A Yes, sir.

9 Q Is it the same individual that was there and
10 present when the shots were fired at Samuel Sturup
11 in the wooded area here in Edgefield County?

12 A Yes, sir.

13 Q And is it the same individual that was there in
14 the mobile home afterwards?

15 A Yes, sir.

16 Q You are a hundred percent certain of that?

17 A Yes, sir.

18 Q Let me ask you this: During a trial back in
19 2006 between February -- September the 5th and
20 September the 12th of 2006, were you able to
21 identify Julio Hunsberger at that time?

22 A Yes, sir.

23 Q Were you able to identify him solely on seeing
24 him back on the date of this crime on that day?

25 A Yes, sir.

1 Q Okay. And is that the same individual that was
2 there in the courtroom in 2006 that's seated here
3 today?

4 A Yes, sir.

5 Q You're a hundred percent certain of that?

6 A Yes, sir.

7 MR. MAYE: Okay. Answer any questions the
8 defense has for you.

9 THE COURT: Thank you, Solicitor.

10 Mr. Williams.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q Mr. Griffin, you participated in a trial last
14 week as well, did you not?

15 A Yes, sir.

16 Q And it was the trial of Alex Hunsberger?

17 A Yes, sir.

18 Q Okay. I'm going to ask you to take your
19 attention, if you will, to that September evening
20 that was at the green house on Cherry Street, okay?

21 A Yes, sir.

22 Q Do you recall that you had testified on
23 yesterday that you had been fighting with Sam
24 Sturup some?

25 A Yes, sir.

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1 Q As well as Steven Barnes and Ms. Thatcher?

2 A Yes, sir.

3 Q Okay. And do you recall you said that you were
4 outside?

5 A Yes, sir.

6 Q Okay. Was it daylight hours?

7 A Nighttime.

8 Q About what time was it; do you recall?

9 A Not really. I know we got dropped off there by
10 Kay's dad. He was going to work. So, I guess, he
11 went to work at 9:00. So it was around some time
12 after 9:00.

13 Q Somewhere around nine o'clock?

14 A Yes, sir.

15 Q Okay. And you don't doubt or you have no
16 question in your mind that it was dark?

17 A Yes, sir. It was nighttime.

18 Q Yes, sir. Okay. And let me ask you about that
19 house. Did it have power in it?

20 A I don't know.

21 Q You don't know?

22 A I ain't been inside the house. We was all
23 outside.

24 Q Did you see any lights on on the inside that
25 illuminated to the outside?

1 A I didn't pay attention.

2 Q You didn't pay attention?

3 A No, sir.

4 Q Okay. All right. Now, let me ask you this:

5 In the trial of Alex Hunsberger, you indicated that
6 a car arrived, that Mr. Sturupp was put in the trunk
7 and then you all left; is that right?

8 A Yes, sir.

9 Q Okay. Tell me a little bit about how long that
10 incident or that encounter would have taken in terms
11 of the car arriving and then you all leaving.

12 A What, you want me to guess?

13 Q No. I mean, I want you to try to give me your
14 best estimate. I mean, did it take about one
15 minute, did it take 30 minutes, did it take an hour
16 in terms of the car arriving in which you believe my
17 client would have come to the green house in and the
18 car leaving, as well as Mr. Cave and yourself
19 leaving in a separate vehicle coming into the State
20 of South Carolina?

21 A I mean, if I give you an answer, I'd be
22 guessing.

23 Q I want you to guess then. Give me your best
24 guess, though, that's the only thing I'm asking for.

25 MR. MAYE: Now, Your Honor, at this point in

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1 time, I'm going to have to object. He says he just
2 doesn't know and he's going to be purely speculating
3 on it, that calls for frank speculation. I'm going
4 to object on the grounds that it will be speculation
5 and he says he can't do that.

6 THE COURT: I'm going to sustain the objection.

7 BY MR. WILLIAMS:

8 Q So you don't know how long it took. Is that
9 your answer?

10 A Yes, sir.

11 Q Okay. So you don't know if it took an hour or
12 two hours?

13 A It wasn't no two hours.

14 Q And you don't know if they just came, put
15 Mr. Sturup in the trunk and left, you don't know
16 that either?

17 A No, sir.

18 Q Okay. All right. Now, did you also not
19 testify on yesterday that when they arrived, you
20 thought they were white guys?

21 A Yes, sir, I did.

22 Q I mean, not yesterday, on last week. Forgive
23 me, okay.

24 A Yes, sir.

25 Q So, basically, does my client look like a white

1 guy to you today?

2 **A** When I first saw him. I didn't know he was
3 Hispanic till after we got locked up.

4 **MR. WILLIAMS:** Mr. Hunsberger, if you don't
5 mind, just stand.

6 (Defendant stands.)

7 **Q** Does Mr. Hunsberger look like a white guy to
8 you today?

9 **A** He can go for a white guy.

10 **Q** You think he could?

11 **A** Yeah. I met plenty Hispanics look like white
12 guys.

13 **MR. WILLIAMS:** You can have a seat, Mr.
14 Hunsberger.

15 **Q** So you thought he was a white guy and you still
16 think he's a white guy; is that right?

17 **A** I know he's not a white guy now.

18 **Q** How do you know he's not a white guy now?

19 **A** From his name, the papers saying he was
20 Hispanic, whatever.

21 **Q** All right. So you saw some stuff in the paper
22 about him as well, didn't you?

23 **A** Of course.

24 **Q** All right. You testified in a trial over in
25 Georgia, did you not?

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1 A Yes, sir.

2 Q Okay. And in that trial, you also indicated
3 you believed they were white guys, didn't you?

4 A At first.

5 Q Okay. Now, race is kind of a quantitative
6 term, I guess it is. Mr. Cave, he's a light-skinned
7 black guy, isn't he?

8 A Yes, sir.

9 Q He's your buddy?

10 A Yes, sir.

11 Q But you can tell he's black, can't you?

12 A Yes, sir.

13 Q Okay. I'm not as dark as some black people, am
14 I?

15 A No.

16 Q But you can tell I'm black, can't you?

17 A Yes, sir.

18 Q Okay. But on that night, you couldn't tell my
19 client was Hispanic?

20 A I never met him before, that was my first time
21 meeting him.

22 Q On that night, you could not tell that my
23 client was Hispanic, could you?

24 A No, sir.

25 Q You thought he was white, didn't you?

1 A Yes, sir, when I first met him.

2 Q All right. And that was the only time you had
3 ever met my client before?

4 A Yes, sir.

5 Q You have no gained prior knowledge or prior
6 familiarity with him, do you?

7 A No, sir.

8 Q Now, let me ask you this: Y'all had the
9 opportunity to come over into South Carolina, were
10 y'all in the same car?

11 A No, sir.

12 Q Okay. As to individuals who had left with
13 Mr. Sturup in the trunk, were y'all in the same
14 car?

15 A Was I in the car with them?

16 Q Yes.

17 A No, sir.

18 Q Okay. How close did you get to my client on
19 that evening?

20 A What you mean?

21 Q How close did you get to my client on that
22 evening?

23 A They pulled in the yard. I was in the yard.

24 Q Okay. But he got close enough for you to think
25 he was a white guy, that's how close you got?

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1 A Yes, sir.

2 Q Okay. Let me ask you, when you came over into
3 South Carolina, you indicated that you all went
4 through a field; is that right?

5 A Yes, sir.

6 Q Okay. And when you went into that field, did
7 you all have your lights on, your bright lights on?

8 A We had them on, then they turned them off.
9 Then we went through and got on another field,
10 everybody had got out the car then.

11 Q All right. So y'all were basically walking out
12 there in the dark?

13 A It was dark, but you could see what's going on.

14 Q Okay. And, at any point, did you change your
15 opinion that my client was white, Hispanic or
16 otherwise?

17 A I mean, out there with all these guns waiving
18 everywhere, I wasn't looking to see, okay, he's a
19 white guy, Hispanic, that wasn't a priority to me.
20 So I wasn't studying him, what kind of shoes he got
21 on, clothes, how long his hair is, that wasn't a
22 priority. When I see guns, I'm looking at these
23 guns.

24 Q I understand. All right. And you were out
25 there with the big man?

1 A Yes, sir.

2 Q Okay. In the dark, okay. Now, the incident
3 that would have occurred, did you get very close to
4 my client?

5 A Yes, sir, all us was together.

6 Q Okay. But you didn't look at him, you was
7 looking at the gun?

8 A I looked at everybody.

9 Q Okay. All right. Now, there's some testimony
10 that you all returned to a mobile home; is that
11 right?

12 A Yes, sir.

13 Q Okay. There's also some testimony that who you
14 believed to be my client's brother along with my
15 client went to the rear of the trailer; is that
16 right?

17 A Yes, sir.

18 Q Along with Mr. Barnes?

19 A Yes, sir.

20 Q Okay. And then Mr. Barnes left y'all sitting
21 out front; is that right?

22 A Yes, sir.

23 Q My client and his brother allegedly remained in
24 the back of the trailer; is that right?

25 A Yes, sir.

ANTONIO GRIFFIN (IN CAMERA) - CROSS BY MR. WILLIAMS

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1 Q Mr. Barnes came out and asked y'all how you
2 felt about it?

3 A Yes, sir.

4 Q Is that right?

5 A Yes, sir.

6 Q Okay. When you left the trailer, did my client
7 come out from the back?

8 A No, sir.

9 Q He stayed in the back?

10 A Yes, sir. We left alone.

11 Q Y'all left separately, didn't you?

12 A Yes, sir, in the car we was in.

13 MR. WILLIAMS: All right. Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. WILLIAMS: I don't have any other
17 questions.

18 THE COURT: Thank you.

19 Solicitor.

20 MR. MAYE: Nothing else. Thank you.

21 THE COURT: Thank you, Mr. Griffin. You may
22 step down.

23 All right. Solicitor.

24 MR. MAYE: The State would call Charlene
25 Thatcher.

CHARLENE ANN THATCHER (IN CAMERA) - DIRECT BY MR. MAYE

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1 CHARLENE ANN THATCHER,

2 having been duly sworn, testified as follows:

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

5 THE WITNESS: My name is Charlene Ann Thatcher,
6 T-h-a-t-c-h-e-r.

7 THE COURT: Speak up for me a little bit,
8 please.

9 All right. Solicitor.

10 DIRECT EXAMINATION

11 BY MR. MAYE:

12 Q Ms. Thatcher, let me direct your attention
13 specifically to September the 3rd of 2001, out at
14 the green house at in Augusta.
15 After the time that Steven Lewis Barnes and you and
16 Mr. Cave and Mr. Griffin had an encounter with
17 Mr. Sturrupe that resulted in him receiving injury, a
18 phone call was made and two individuals subsequently
19 arrived; do you recall that?

20 A Yes, sir.

21 Q Did you have an opportunity to see the
22 individuals that arrived there at Cherry Street?

23 A Yes, sir.

24 Q Was your attention clearly focused on them?

25 A Yes, sir.

CHARLENE ANN THATCHER (IN CAMERA) - DIRECT BY MR. MAYE

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1 Q Did you have an adequate opportunity to see
2 their facial features and their body structure
3 there?

4 A Yes, sir.

5 Q Was there sufficient light in order for you to
6 be able to see and recognize them?

7 A Yes, sir.

8 Q Let me ask you this: Is the individual that
9 you -- one of the individuals that you saw arrive
10 after Mr. Barnes made a phone call, is he present
11 here in the courtroom?

12 A Yes, sir.

13 Q Could you point him out and describe where he
14 is, what's he wearing?

15 A He's sitting right there, sir, (indicating)
16 next to his lawyer in the orange jumpsuit, sir.

17 MR. MAYE: Your Honor, I'd ask that she's
18 identify -- the record to reflect she's identified
19 Julio Hunsberger in this case.

20 THE COURT: All right. So reflected.

21 BY MR. MAYE:

22 Q Let me ask you this: Are you absolutely 100
23 percent certain that the individual that arrived out
24 there at the green house is the same individual
25 that's seated there that you identified as Julio

1 Hunsberger?

2 A Yes, sir.

3 Q Let me ask you this: When Sam Sturup was
4 placed in the trunk of the automobile, who was there
5 and present when he was put in the trunk of the
6 automobile?

7 A Me, Griffin, Cave, Barnes and the Hunsbergers,
8 sir.

9 Q Okay. Did you see Alex and Julio Hunsberger as
10 he was placed -- Sam Sturup was placed in the trunk
11 of the car?

12 A Yes, sir.

13 Q Okay. Let me ask you this: Did y'all
14 subsequently follow that same automobile into South
15 Carolina?

16 A Yes, sir.

17 Q When y'all stopped in South Carolina, did the
18 individual that you previously identified here in
19 the courtroom, Julio Hunsberger, did he get out of
20 that same vehicle when he got to South Carolina?

21 A Yes, sir.

22 Q Could you see him clearly at that point in time
23 and did you recognize him as being the same
24 individual that you saw putting him in the car over
25 there in -- on Cherry Street?

CHARLENE ANN THATCHER (IN CAMERA) - DIRECT BY MR. MAYE

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1 A Yes, sir.

2 Q When y'all went out into the wooded area where
3 Sam Sturup was shot, did you see Julio Hunsberger
4 at that point in time?

5 A Yes, sir.

6 Q Could you see his facial features? Was there
7 sufficient light for you to be able to see him?

8 A Yes, sir.

9 Q Was your attention clearly focused on him?

10 A Not clearly, but I seen him, sir.

11 Q Okay. Let me ask you this: When you went back
12 to the trailer after the time of the shooting, were
13 you able to see the individual that you've
14 identified as Julio Hunsberger there in that
15 trailer?

16 A Yes, sir.

17 Q Okay. Was there sufficient light inside the
18 trailer for you to be able to see and identify him?

19 A Yes, sir.

20 Q Okay. Is your identification of him here today
21 in the courtroom based on seeing him at Cherry
22 Street out there at the scene of the shooting and at
23 the trailer, is that all based on seeing him that
24 night?

25 A Yes, sir.

1 Q Okay. Was your attention focused on him enough
2 at that period of time to make that identification
3 that night?

4 A Yes, sir.

5 MR. MAYE: Okay. Answer any questions the
6 defense has for you.

7 THE COURT: Thank you.

8 Mr. Williams.

9 MR. WILLIAMS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q Ms. Thatcher, it's getting late in the
13 afternoon, isn't it?

14 A Yes, sir.

15 Q It's a little tiring, isn't it?

16 A Yes, sir.

17 Q Okay. I want you to do your best to answer my
18 questions as accurately as you can, okay?

19 A Yes, sir.

20 Q Prior to September of 2001, did you have a
21 gained familiarity or did you know Mr. Julio
22 Hunsberger?

23 A No, sir.

24 Q Had you ever seen him before?

25 A No, sir.

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1 Q Are you familiar with an individual by the name
2 of Chico as an associate of Mr. Steven Barnes?

3 A No, sir.

4 Q How about an individual by the name of Carlos
5 Gomez?

6 A Yes, sir.

7 Q I'm sorry, I didn't --

8 A Yes, sir.

9 Q Was he an associate of Mr. Steven Lewis Barnes?

10 A Yes, sir.

11 Q On that evening, how long was it that it took
12 for the car to arrive at the green house that you
13 believe my client was in and leave that scene or
14 leave that area; do you know?

15 A How long, approximately, that they stayed?

16 Q That's right, before they left with Sam Sturup
17 in the trunk.

18 A No longer than ten minutes, sir.

19 Q No longer than ten minutes. So they weren't
20 there to have an hour long or 30-minute long
21 conversation; is that right?

22 A Not that I recall, sir.

23 Q You don't recall them being there longer than
24 about ten minutes?

25 A Not that I recall, sir. It's been ten years.

1 Q I understand. Your memory a little cloudy on
2 that issue?

3 A Yes.

4 Q But do you believe they stayed there longer
5 than ten minutes to put Mr. Sturup in the car?

6 A I'm not sure, sir. You just told me to give
7 you an estimated time.

8 Q That's right. And that's your best estimate?

9 A Yes, sir.

10 Q Ten minutes?

11 A Yes, sir.

12 Q Okay. And do you recall if there was power in
13 the green house? Now, you actually went inside, did
14 you not?

15 A Yes, sir.

16 Q Was there power in that house?

17 A I'm not going to be able to remember that, sir.

18 Q Okay. Did you previously testify that there
19 was no power in that house?

20 A I don't remember if I have.

21 Q You just don't remember; is that right?

22 A Yes, sir.

23 Q Do you recall if it was daytime or nighttime
24 when the car would have arrived?

25 A It was nighttime, sir.

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1 Q Okay. And do you recall if the individuals
2 that got out of the car came very close to you?

3 A No, sir.

4 Q You don't recall or they didn't come very close
5 to you?

6 A I don't recall.

7 Q Okay. I just want to know how is it that you
8 can recall that you saw my client there at the
9 scene, but you can't recall as to whether or not he
10 got very close to you?

11 A Meaning, sir?

12 Q The Solicitor asked you if you recall seeing my
13 client at the scene and you know it was him, there
14 was enough light, you could see his face --

15 A I can remember faces, sir, but you're asking me
16 days -- I mean, times of the day and stuff like that
17 and lights and, no, I don't recall that, sir.

18 Q Okay. Well, do you recall how close the
19 individual got to you on that evening? That was my
20 question.

21 A Sir, the only time we were close that evening
22 was when the boy was shot and that wasn't too close.
23 It was about approximately where he is at right now.

24 Q Okay. And it was dark?

25 A Yes, sir.

1 Q And you didn't ride in the car with my client
2 or who you believed to be my client, did you?

3 A No, sir.

4 Q Okay. Who did you ride in the car with?

5 A Griffin, Cave and Barnes.

6 Q At any point was my client as close to you as I
7 am to you right now?

8 A No, sir.

9 Q At the green house, did he get this close to
10 you?

11 A No, sir.

12 Q Out somewhere in Edgefield County here off of
13 Community Road was he as close to you as I am now?

14 A In his trailer, yes.

15 Q No. I'm talking about there, out in the woods?

16 A No, sir.

17 Q Now, I'm going to ask you about the trailer.

18 Do you recall testifying that my client and his
19 brother went to the rear of the trailer when y'all
20 arrived at the trailer?

21 A Not when we arrived. When we settled in, they
22 went back to the trailer to get some stuff to wipe
23 the guns down. Yes, sir, I did testify to that.

24 Q And did they stay in the back while Mr. Barnes
25 came from the back to ask y'all how you felt about

CHARLENE ANN THATCHER (IN CAMERA) - CROSS BY MR. WILLIAMS

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1 it?

2 **A** Everybody was up front when he asked us how we
3 felt about it, sir.

4 **Q** Including my client?

5 **A** Yes, sir, because each and every one of us had
6 to answer him.

7 **Q** Okay. And I'm going to ask you this: How long
8 did that encounter occur?

9 **A** Sir, I have no clue.

10 **Q** You have no idea. Did y'all just sit around
11 for 30 minutes or so talking about you killing
12 Mr. Sturup?

13 **A** I know it wasn't -- no, sir. It was just a yes
14 or no answer how do you feel.

15 **Q** Okay. And did who you believe to be my clients
16 leave with you all?

17 **A** No, sir.

18 **Q** Okay. Who you believe was my client stayed
19 behind and you all left?

20 **A** I don't know, sir.

21 **Q** You were interviewed by a Richard Roundtree,
22 were you not?

23 **A** Yes, sir.

24 **Q** And did you not give him the name of my client
25 during that interview?

1 **A** Sir?

2 **Q** Did you not say that you knew Julio Hunsberger
3 during the interview with Mr. Richard Roundtree?

4 **A** Yes, sir.

5 **MR. WILLIAMS:** Okay. I don't have anything
6 further.

7 **THE COURT:** Redirect, Solicitor.

8 **MR. MAYE:** Nothing. Thank you.

9 **THE COURT:** Thank you, Ms. Thatcher. You may
10 step down.

11 Anything further, Solicitor?

12 **MR. MAYE:** Nothing further, Your Honor. Those
13 are the three witnesses which we would rely upon for
14 I.D. at this point in time. One other individual
15 knows the defendant in this case, but it's not from
16 the crime scene and it's not from -- it's not an
17 identification based on the crime scene. So I don't
18 know that it will be an issue at this point in time.
19 If it becomes an issue at some point in time in the
20 future, we can take that up.

21 **THE COURT:** Anything, Mr. Williams?

22 **MR. WILLIAMS:** Your Honor, I would move to ask
23 the Court to exclude the in-court identifications of
24 all three witnesses. I believe that they didn't
25 have sufficient time to observe my clients -- my

1 client. They had no gained familiarity with him.
2 Admittedly, Your Honor, we all would take judicial
3 notice that nine or ten o'clock at night in
4 September in Augusta, Georgia, it's going to be
5 dark.

6 Judge, I believe Mr. Griffin particularly
7 indicated that he didn't get close enough to my
8 client to be able to distinguish whether he was
9 white or Hispanic. I would suggest to the Court
10 that that is a pretty good indication that he
11 couldn't identify my client at that time. And I
12 would suggest that he would not, him in particular,
13 not be allowed to identify my client in trial.

14 I would also suggest to the Court that Mr. Cave
15 and Ms. Thatcher have relied upon their knowledge of
16 news accounts, as well as Mr. Cave's prior testimony
17 against my client in his trial in Augusta. These
18 individuals did not have sufficient time to observe
19 this -- who they believe to be my client. They
20 didn't have a sufficient opportunity to be close
21 enough to make out any distinguishing details in the
22 dark of night. And they all indicated that they
23 didn't get very close to my, allegedly, get very
24 close to my client. Even at the mobile home, one
25 indicated that my client never returned from the

1 rear.

2 I just don't believe that will be sufficient
3 time to make an accurate identification of anyone,
4 particularly out in the dark. I just don't believe
5 that to be sufficient time. And I would suggest to
6 the Court that none of these individuals should be
7 permitted to make an in-court identification of my
8 client because it would be prejudicial to him, and I
9 believe that it would defeat certain aspects of our
10 defense.

11 **THE COURT:** All right. Thank you very much.

12 Well, as I looked at the law, and that's why I
13 asked the Solicitor to start with the procedure that
14 we would follow, State versus Lewis, 609 S.E.2d 515,
15 held that the requirement that a court review the
16 totality of the circumstances to determine whether
17 an identification is reliable does not apply to a
18 first time in-court identification.

19 When I read footnote number nine in that
20 particular decision, it indicates to me that the
21 Court of Appeals in this case found that the
22 protection afforded a defendant when there has been
23 an out-of-court identification does not apply to the
24 situation where there has been only an in-court
25 identification. If there had been a pretrial

1 identification, a hearing is mandated on the
2 admissibility of that identification.

3 As the Solicitor points out and as
4 Mr. Williams, Neil versus Biggers is the rule to
5 protect criminal defendants against suggestive
6 identification procedures. And you look at those
7 factors: The opportunity of the witness to view the
8 accused, the witness' degree of attention, the
9 accuracy of the witness' prior description, the
10 level of certainty demonstrated by the witness at
11 the confrontation, and the length of time between
12 the crime and the confrontation.

13 As our Supreme Court has concluded, Neil versus
14 Biggers does not apply to in-court identifications
15 and that the remedy for any alleged suggestiveness
16 of an in-court identification is cross-examination
17 and argument. The United States Supreme Court has
18 not extended its exclusionary rule to in-court
19 identification procedures that are suggestive
20 because of the trial setting.

21 In an abundance of precaution, I allowed the in
22 camera hearing to question the identification of the
23 witnesses, of the identification witnesses to be
24 cross-examined by the defense attorney. And he ably
25 did that. Regardless, a defendant is not deprived

1 of a fair trial if there's in-court identification
2 because the defense is able to explore weaknesses
3 and suggestiveness of identification in front of the
4 jury.

5 It really goes more to rather than 104, State's
6 602, lack of personal -- excuse me -- Rule 602, lack
7 of personal knowledge, a witness may not testify to
8 a matter unless evidence is introduced sufficient to
9 support a finding that the witness has personal
10 knowledge of the matter. If the witness has
11 personal knowledge, it then becomes a matter for the
12 jury, it's a jury issue.

13 Also, on news reports or prior observation in
14 the courtroom setting, the news reports is not State
15 action unless it can be shown that the State perhaps
16 picked up the phone and said, witness X, watch the
17 six o'clock news tonight and see if you identify
18 anybody, or something of that nature. So I -- and
19 they said, well, news reports, but at the same time
20 Mr. Cave went back to, well, it's based on what I
21 saw that night, all of them did. It's just a jury
22 issue to weigh their credibility or believability
23 quite frankly.

24 I will look at those factors should the Supreme
25 Court decide that the law should change to -- or I'm

1 misinterpreting the law perhaps that they were
2 entitled to a hearing under Biggers. Each of them
3 had the opportunity to see the defendant at three
4 separate locations, Cherry Street, off of Washington
5 Road in Augusta, the field in Edgefield County at
6 the scene of the homicide and in the trailer off of,
7 I understand, Community Road. It was night. There
8 is a full moon, I'm taking judicial notice of that,
9 that it appears that there was some degree of
10 attention.

11 There had been no prior accuracy. There had
12 been no presentation. There certainly had been no
13 misidentification. All of them appears to be
14 certain. One of them claims, Mr. Cave I believe,
15 there was an eight feet, that it was an extended
16 period of time. Time is a relative thing also. One
17 at the minimum of ten minutes. The other up to 30
18 minutes at the green house.

19 So I would say if I were to analyze the Neil
20 versus Biggers, there is sufficient evidence in the
21 record that there's no potential for
22 misidentification based on suggestiveness.

23 Anything further, Mr. Williams, any other
24 motions?

25 **MR. WILLIAMS:** No, sir, Your Honor.

1 **THE COURT:** Solicitor.

2 **MR. MAYE:** Nothing else from the State, Your
3 Honor.

4 **THE COURT:** So I take it the decks will be
5 clear to start then at 9:30 in the morning.

6 **MR. WILLIAMS:** Yes, sir.

7 **MR. MAYE:** Yes, sir, Your Honor. We'll be
8 prepared.

9 **THE COURT:** And, Mr. Hunsberger, will be
10 dressed out; is that correct, Sheriff?

11 **OFFICER:** Yes, Your Honor.

12 **THE COURT:** All right. Thank you very much.
13 Court will be in recess until 9:30 in the morning.
14 Thank y'all very much. I hope y'all have a pleasant
15 evening.

16 (Whereupon, the proceedings were concluded
17 for January 9, 2012.)

18 (The following proceedings were held on
19 January 10, 2012.)

20 **THE COURT:** Before we get started, this was not
21 marked yesterday. This will be Court's Exhibit
22 Number 2 on the phases of the moon.

23 (Court's Exhibit Number 2, phases of the
24 moon, marked for identification purposes.)

25 **THE COURT:** Anything from the State before we

1 bring in our jury?

2 MR. YOUNG: No, sir.

3 THE COURT: From the defense?

4 MR. WILLIAMS: Your Honor, I beg to ask the
5 Court, what was Exhibit Number 2?

6 THE COURT: The phases of the moon, Court's
7 Exhibit Number 2. It was handed up yesterday,
8 offered. I accepted it, but I don't think it got it
9 marked.

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And your objection is certainly
12 still noted for the record.

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: All right. Anything further,
15 Mr. Williams, before we bring in our jury?

16 MR. WILLIAMS: No, sir, Your Honor.

17 THE COURT: All right. I signed a document
18 yesterday for media coverage of this court
19 proceeding by WRDX T.V. News 12 in Augusta, Georgia,
20 or it says North Augusta, South Carolina. That is
21 authorized under Rule 605 of the South Carolina
22 Rules of Appellate Procedure concerning the
23 administration of the courts.

24 As part of that -- as part of that rule, that
25 rule indicates the various guidelines and

1 requirements that the media must adhere to. I
2 expect them to scrupulously adhere to those
3 guidelines.

4 Further, I'm trying to see the exact subsection
5 that refers to members of the jury, 605(f)(2)(iii),
6 The members of the jury may not be photographed
7 except when they happen to be in the background or
8 other subject being -- the background of other
9 subjects being photographed. Camera and audio
10 coverage of prospective jurors during selection is
11 prohibited. Of course, that's not an issue because
12 it was not covered during selection.

13 I have placed on this form, No filming of
14 jurors in any manner whatsoever. So make sure that
15 the equipment is appropriately posted to comply with
16 that order.

17 All right. Bring us our jury, please.

18 (The jury enters the courtroom at 9:35 a.m.)

19 **THE COURT:** Madame Clerk, will you swear our
20 jury, please?

21 **THE CLERK:** Yes, sir.

22 (The jury was duly sworn by the Clerk of
23 Court at 9:37 a.m.)

24 **THE CLERK:** Is there any member of the jury
25 panel that was unable to take the oath, please raise

1 your hand?

2 No hands were raised.

3 **BAILIFF:** Judge, they would like to know if
4 they can take notes.

5 **THE COURT:** All right. I'll cover that with
6 them. Thank you very much.

7 Madame Clerk, the jury wanted to know if they
8 can take notes. After my instructions to them, if
9 you have the materials for them, I will allow you to
10 pass that out.

11 I'll give you a specific charge as to that. I
12 don't think you need to take notes during my opening
13 remarks. You may do so if you have the material,
14 but you certainly do not need to. These are very
15 preliminary remarks in this regard.

16 Ladies and gentlemen of the jury, the case we
17 are about to try is the case of the State versus
18 Julio Angelo Hunsberger. What I will now say is
19 intended to serve as an introduction to the trial of
20 this case. These remarks are not a charge or
21 instruction on the law in this case. I will
22 instruct you on the law that applies to this case at
23 the end of the trial before you retire to consider
24 your verdict. This is merely an explanation of the
25 procedure that we will follow in the trial so that

1 you may better understand what may be happening.

2 As I have just stated, you may be -- you will
3 be authorized to take notes during the trial.

4 Please keep in mind that part of the determination
5 of a witness' credibility you may take into account
6 the demeanor, the manner, the way the witness
7 testifies while on the witness stand. And sometimes
8 when you're taking notes, as you drop, you know,
9 drop your head in your intention to write down a
10 note, you may miss the particular nuance of a
11 witness's demeanor. So just keep that in mind. I'm
12 a note taker myself and then, of course, sometime
13 after the fact, I have a hard time reading my notes,
14 but I am a note taker.

15 Also, keep this in mind: The notes of one
16 juror are no better than the memory of your fellow
17 juror. In other words, one juror's memory is as
18 good as your notes.

19 Also, you will not be authorized to have your
20 notes with you during any breaks, during luncheon
21 recess, over the evening hours until such time as
22 the case is submitted to you for your deliberations.
23 What will happen with your notes during that period
24 of time, they will be secured by the Clerk.

25 So if you'll, when you get your pads and

1 pencils, just write your juror number on there so
2 that -- and if you don't know that, I'm sure Madame
3 Clerk has them memorized, you just ask her and get
4 your juror number on that and always turn them
5 upside down on your chair as you walk out. And they
6 will be appropriately secured by the Clerk's office
7 and will not be reviewed in any manner by anyone, by
8 anyone.

9 The defendant, as you know, is charged by an
10 indictment filed in this court with the crime of
11 murder. The elements of which will be explained to
12 you in full and complete detail later. This
13 indictment is simply the charge by which the case is
14 brought into court and it is not, in any sense,
15 evidence of any of the allegations it contains.

16 The defendant has pled not guilty to this
17 indictment. The State, therefore, has the burden of
18 proving each of the elements of the indictment
19 beyond a reasonable doubt. It will be your duty,
20 ladies and gentlemen, to decide whether the State
21 has met that burden.

22 Your purpose as jurors is to find and determine
23 the facts. You are the sole judge of the facts in
24 this case. If, at any time, I make any comment
25 regarding the facts, you must disregard it. You are

1 to determine the facts from the testimony you hear
2 and the other evidence introduced in court.

3 It is up to you to determine the inferences
4 which you feel may properly be drawn from the
5 evidence. It is especially important that you
6 perform your duty of determining the facts
7 diligently and conscientiously because ordinarily
8 there is no way to correct an erroneous
9 determination of the facts by a jury.

10 On the other hand and with equal emphasis, the
11 same law that makes you the judges of the facts make
12 me the judge of the law. The law as given by the
13 Court is the only law you may consider. You must
14 accept and follow it even though you may disagree
15 with it. I cannot tell you what the facts are, you
16 cannot disagree with me about what the law is or
17 what the law should be.

18 Your job is to take the law as I give it to you
19 and apply it to the facts as you find them from the
20 testimony of the witnesses testifying under oath
21 from this witness stand and any other evidence that
22 is introduced. After doing that, you will render
23 your verdict, a true and just verdict, under the
24 solemn oath that you have just taken as jurors.

25 Until I advise you to begin your deliberations,

1 you must not discuss this case with anyone, that
2 includes your fellow jurors, your family, your
3 friends or anyone else. After the case is submitted
4 to you, you must discuss it only in the jury room
5 with your fellow jurors.

6 The attorneys, the parties in this case have
7 been advised that they are not to talk to you at
8 all. So if you see anyone involved in the case and
9 they do not even say hello, they're not being
10 unfriendly or rude, they are merely following my
11 instructions.

12 Further, during the trial, do not read, watch,
13 listen to any news reports about the case. This
14 includes anything that may be in the newspaper or on
15 the Internet, radio or television. You must not
16 consider anything that you may have read or heard
17 about the case outside of the courtroom whether
18 before or during the trial.

19 As an aside, I have authorized, under our rules
20 in South Carolina, the presence of the news media to
21 film the trial. I recall when cameras were first
22 authorized in the courtroom back in the late 80s, I
23 guess it was, the mid 80s, and I thought, gosh,
24 that's just going to change the whole nature of the
25 judicial process, but I realize -- that was when I

1 sat where these gentlemen sit today, these
2 attorneys, not where I sit now. But I realized if
3 you're focused on the task at hand, you're not even
4 aware of the camera and you'll focus on your task at
5 hand in determining the facts in reaching that true
6 and just verdict.

7 For your information, I further advised the
8 media representative they're not to film the jury in
9 any manner. That is my ruling and it is authorized
10 under our rules of court in South Carolina. So you
11 just focus on your task at hand and focus on the
12 evidence and the testimony of the witnesses as they
13 appear on the witness stand and testify before you.

14 Ladies and gentlemen, it is important that you
15 keep an open mind and not decide any issue in this
16 case until you've heard all of the evidence that's
17 been presented, the parties have made their closing
18 arguments and I have instructed you on the law in
19 this case. You have but one function in this case
20 and that is to render that true and just verdict and
21 find the truth regardless of from where that truth
22 may come. So you must listen to all the witnesses,
23 don't prejudge the case until you begin your
24 deliberations and make your decisions.

25 It is your solemn responsibility to determine

1 the guilt or the innocence of Mr. Hunsberger and
2 your verdict must be based solely on the evidence as
3 it is presented to you during this trial and on the
4 law as I instruct you during and at the close of the
5 trial.

6 In just a moment, the Solicitor will make what
7 is called an opening statement in which the
8 Solicitor will explain to you the issues in the case
9 or at least what the Solicitor thinks the issues are
10 in the case. Mr. Williams, the attorney for
11 Mr. Hunsberger, may also make an opening statement,
12 although he is not required to do so.

13 The burden of proof is on the State to prove
14 its case beyond a reasonable doubt. A defendant in
15 South Carolina is presumed to be innocent regardless
16 of the seriousness of the charge that has been
17 placed against him.

18 What the attorneys tell you is not evidence.
19 It is only their contention as to what the issues
20 are. In that regard, the questions of the attorneys
21 is not evidence, it's the responses from the
22 witnesses. The questions are the framework by which
23 the responses come from the witnesses before you for
24 your consideration to determine what the truth is,
25 what the facts are in that regard.

1 The evidence in this case will be presented by
2 the testimony of those sworn witnesses and any
3 exhibits that may be introduced into evidence.

4 As an aside and to follow up on any exhibits,
5 many times if a photograph or a diagram or a
6 physical item of evidence is introduced, it may be
7 handed to our foreperson and passed among the jury
8 panel while you're out here in the courtroom in your
9 jury box. You may look at those items and take as
10 much time as you wish to look at those items while
11 you're in the courtroom.

12 Please keep in mind, if I allow an item to come
13 into evidence, whether it's a photograph or a
14 physical item or the like, that will not be the only
15 opportunity you will get to view that item. All
16 those items will be with you in your jury room at
17 the time of your deliberation. Look at it all you
18 wish out here in the jury box keeping in mind that
19 will not be the only opportunity, the only time that
20 you will get to view those items.

21 From time to time during the trial, you may
22 hear one of the lawyers say something like, Your
23 Honor, I believe we have a question of law or a
24 matter of law to discuss with you, or, Your Honor,
25 may we approach the bench. And some time I, myself,

1 may find it necessary to excuse you from the
2 courtroom for a short while so the attorneys and I
3 can discuss a matter of law. This is not to hide
4 anything from you.

5 The reason for this is because you are the
6 judges of the facts in this case. And sometimes
7 when I am discussing matters of law with the
8 attorneys, it may be necessary for me to make some
9 comment as to the facts in connection with ruling
10 whether or not a particular law applies. I am not
11 supposed to tell you what I think the facts are, so
12 I will excuse you from the courtroom while these
13 discussions take place so that in no way will you be
14 influenced by anything that I might say or do in
15 connection with the facts.

16 The goal is to get the admissible, most
17 reliable evidence before the jury for the jury's
18 consideration to determine what the facts are.

19 In determining what the true facts are in the
20 case, in using your good judgment and your common
21 sense, you must decide whether or not the testimony
22 of the witnesses is believable. It will be my
23 responsibility to rule, as a matter of law, as to
24 whether or not certain testimony is admissible at
25 all or not, but once the testimony is admitted,

1 whether or not you believe it, is solely for you,
2 the jury, to determine.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of any
5 witness, the bias of any witness, the prejudice of
6 any witness, the opportunity for the witness to have
7 seen the matters and things about which the witness
8 may testify and the way the witness acts or the
9 witness' demeanor while on the witness stand.

10 You have the right to consider anything that is
11 in the record that will help you evaluate the
12 testimony of the witnesses. That means it will be
13 your duty to pay close attention to these witnesses,
14 to observe them, to listen to them, to pay close
15 attention to the attorneys and to the courts. Don't
16 let your thoughts wander, but give strict attention
17 to the testimony in this case so that at the end of
18 all the evidence, the arguments of counsel and the
19 charge on the law by the Court, you will then be in
20 a position to determine what the true facts are, to
21 apply the law as I instruct you to those facts and
22 thus render a true and just verdict.

23 Mr. Foreman, it will be your added
24 responsibility to preside in the jury room and to be
25 the jurors' spokesperson here in the courtroom. It

1 will also be your duty to write and sign the
2 verdict, but I will give you further instructions
3 about that at the conclusion of the case.

4 Administratively, ladies and gentlemen, just a
5 few more points, I found, and I tell jurors from
6 time to time, I found what I'm charge of as a trial
7 judge. I'm in charge of taking breaks. Well, this
8 isn't some type of judicial marathon. If, at any
9 time, you need a break, I've asked you don't let
10 your thoughts wander, focus on the evidence, focus
11 on the testimony, if any time any of you need a
12 break and we haven't taken one, please raise your
13 hand. Y'all will take y'all's break, we will take
14 our break. Again, this is not some type of judicial
15 marathon.

16 Believe me, having been in a courtroom pretty
17 much since I was six years old, quite frankly, your
18 thoughts may wander. They can wander. Don't let
19 that happen, focus on the evidence. And, please, do
20 not hesitate any time you need a break, please let
21 me know.

22 Also, from time to time, I tell you this
23 because a juror in a previous case brought it up to
24 me, from time to time, you may see me on my
25 computer. I don't e-mail. I don't tweet, Pete. I

1 don't do any of that. I may anticipate a legal
2 issue coming around the curve and I do my legal
3 research -- well, let me rephrase that. I do my
4 light lifting. Ms. Rogers does my heavy lifting as
5 far as legal research. If that is distracting to
6 you, please let me know. I assure you my focus is
7 on the witnesses.

8 If any time you cannot hear a witness or cannot
9 see a particular item of evidence that may be
10 introduced, please let me know or let the Clerk or
11 the bailiff know and we'll have the witness stand up
12 or move around in some manner. If you can't hear
13 the witnesses, if you can't see the witnesses, can't
14 see the testimony or the exhibits, you won't be able
15 to determine what the true facts are and we want you
16 to be able to have the opportunity to see and to
17 hear.

18 All right. Any objection from the State to
19 anything I have informed the jury, Mr. Young?

20 **MR. YOUNG:** There are no objections, Your
21 Honor.

22 **THE COURT:** Anything from Mr. Hunsberger,
23 Mr. Williams?

24 **MR. WILLIAMS:** No, sir, Your Honor.

25 **THE COURT:** All right. Madame Bailiff, if you

1 will just hand out the pads and the pens at this
2 time prior to our brief opening statements.

3 (Pause.)

4 **THE COURT:** All right. Everybody set?
5 All right. Solicitor, you may address the
6 jury.

7 **MR. YOUNG:** Thank you, Your Honor. May it
8 please the Court.

9 **THE COURT:** Yes, sir.

10 **MR. YOUNG:** Mr. Williams.

11 **MR. WILLIAMS:** Yes, sir.

12 OPENING STATEMENT

13 **MR. YOUNG:** The 3rd of September 2001 was a
14 horrible day for 16-year-old Samuel J. Sturup. He
15 was at home that day with his mother, Ms. Shirley
16 Sturup.

17 Ms. Shirley, would you stand up please, just
18 one a moment?

19 (Shirley Sturup stands.)

20 **MR. YOUNG:** Thank you.

21 Horrible day. He got up, did the normal
22 things, got dressed, got a bath, left. His mother
23 never saw him later that day. She never saw him
24 again for the rest of that week or the second or the
25 third or the fourth week in September. She didn't

1 see him again the first, third or fourth week in
2 October. She didn't see him the first two weeks in
3 November.

4 And then she got a visit. She got a visit from
5 Randy Doran, who's seated right there next to her.
6 And she found out what had happened, in some regard,
7 to her son on that day. What law enforcement found
8 wasn't much. There wasn't much to work with.

9 The mother had gone to Georgia authorities to
10 try to find out where her son was. Mr. Doran, when
11 he came to her, came during the last of November,
12 during the -- through the 20th. And the question
13 now is what could have happened to her son? Who did
14 this? How could they have left him where he was?
15 What could have happened and what did go on during
16 that period of time he was gone?

17 Mr. Doran, investigator with the Edgefield
18 County Sheriff's Office, began to work with Georgia
19 authorities after a skull was dragged up in a yard
20 here in Edgefield County with a bullet hole in it.
21 And that skull led to efforts to try to discover
22 where the rest of the remains were and when they
23 were found.

24 Ultimately, ultimately, working as they did
25 through November and December, ultimately in 17

1 January of 2002, they made an arrest of a man by the
2 name of Steven Lewis Barnes. They arrested him and
3 then they subsequently arrested Alex and Julio
4 Hunsberger. They arrested them and then people
5 started talking. There were other people involved.

6 The situation is, as it turns out, that the
7 people who started talking were teenagers who'd been
8 called by this man Barnes to an address in Augusta
9 at . They went to that address
10 at his request. And when they got there, they saw
11 Barnes and Steven -- excuse me -- Mr. Samuel Sturup
12 and there was an argument going on, a confrontation
13 that started out verbally, but it got physical.

14 These teenagers, these two boys, Cave and
15 Griffin, were there with a woman named Charlene
16 Thatcher and they beat up on Samuel Sturup. They
17 beat up on him because Barnes said, Where's my
18 money? Where's my money? You owe me money,
19 Sturup.

20 The money issue became a big issue, a huge
21 issue. And those kids were encouraged to beat up on
22 him and try to get him to turn over the money. It
23 got so bad that Sam finally said, It's behind a
24 toilet in my house. It's behind the toilet in my
25 house. Well, you better not be lying.

1 And when the threat extended to his family,
2 when young Sturrupe heard the words that, you know,
3 something's going to happen to your family if that
4 money's not there, he said, Well, I lied. I lied,
5 it's not there. It's not there. I just lied to
6 stop the beating.

7 And, folks, you're going to hear from these
8 teenagers different versions of all this beating and
9 things. It's not all going to be the same, okay.
10 But what is going to be the same is that after this
11 beating happened, a phone call was made by Barnes.
12 And after that phone call is made, Alex and Julio
13 Hunsberger drove up in their car. And they drove up
14 in their car and they stayed there a while and they
15 had a conversation with Barnes. And then they
16 loaded young Samuel Sturrupe into the trunk of that
17 car.

18 Instead of doing what Sam was asking, to go
19 home, begging to go home, they put him in that car
20 and they drove him across the river, across the
21 river from Georgia into South Carolina. They led
22 the way in their car across the river into South
23 Carolina and they turned into Edgefield County. And
24 they came into Edgefield County and they drove into
25 Community Road area on the south side and they drove

1 down a road they knew and they pulled into a field
2 and their cars stopped.

3 Barnes has been following them the whole way
4 with these teenagers in the car and they get out of
5 that car. And instead of letting young Sam Sturup
6 go, instead of letting him go, a beaten up young
7 man, they point the weapon, go that way through the
8 woods, through the fields, over a fence. And Sam
9 Sturup now leads the way into the woods followed by
10 this entourage of people.

11 The Hunsbergers are there. Cave, Griffin,
12 Thatcher are there. And a man with a gun, Big Man
13 they call him, is there with a gun. And there's
14 other guns. And they take him into a spot and
15 Barnes tells them, We're all going to shoot him.
16 We're all going to get our hands dirty.

17 And he gets behind Charlene Thatcher and he
18 holds that gun with her and they shoot Samuel
19 Sturup. But before Samuel Sturup gets shot, he
20 says one last thing, I ain't got your money.

21 But that shot doesn't kill him right then
22 because he's still talking, he's still talking. So
23 the gun gets passed and they shoot him. All of them
24 shoot him. Samuel Sturup's life ended in that
25 little place in Edgefield County that night.

1 The story continues. Where are you going to go
2 now? They walk away from that location to a
3 trailer. The Hunsbergers lead the way. And they go
4 into a trailer. Barnes and the Hunsbergers go off
5 and talk a little bit. The rest of them are all
6 gathered around together except for them and they
7 talk a little bit. And then a bag with the guns in
8 it comes out and for the first time, the Hunsbergers
9 stay. Barnes and the others get in the car and they
10 go back across the river. The guns go into the
11 water.

12 Law enforcement works and works. And they take
13 the bones to where they got to go to get
14 identification. They take things they find at the
15 scene for identification. They know who they're
16 dealing with when they tell Ms. Sturup where her
17 son's been since September 3rd of 2001.

18 They don't recover the guns. They dive, but
19 they don't recover them. They get projectiles at
20 the scene, but they don't have anything for
21 comparison, no guns.

22 The day that Randy Doran goes and tells the
23 mother that her son's dead is the day that things
24 have really started to roll and information has come
25 about that we can start to use that we can make a

1 solid determination of what we're here to do today
2 and that information collected by law enforcement is
3 going to be presented to you. And you'll hear from
4 these witnesses who were there at the scene, who
5 were there when the beating happened and who were
6 there when the shooting happened and heard the
7 shots, saw some of it. And you'll be in a position
8 to start judging the demeanor and the character of
9 these witnesses and make a decision for yourself.

10 Today's the day you'll begin to hear the
11 evidence. Today's the day when you start to hear
12 what happened to Samuel J. Sturup.

13 When [sic] the end of this case, when all the
14 evidence is before you, there is something you're
15 going to have to do, it is your job to render a
16 verdict in this case. That's an old word in some
17 ways. It comes from a Latin root. The word is
18 veredicto. It means to speak the truth, to speak
19 the truth.

20 The State of South Carolina welcomes the burden
21 of proof beyond a reasonable doubt. We welcome it.
22 And at the end of this case, we're going to ask this
23 jury to render a verdict of guilty of murder against
24 Julio Hunsberger. Thank you.

25 **THE COURT:** Thank you, Solicitor.

1 Mr. Williams.

2 **MR. WILLIAMS:** Pleases the Court.

3 **THE COURT:** Yes, sir.

4 **MR. WILLIAMS:** Mr. Foreman, ladies and
5 gentlemen of this jury, we're here this morning to
6 talk about something that is not pleasant at all to
7 talk about, okay. We're here to talk about the
8 murder of a very young man. Nothing at all is
9 pleasant about what we're getting ready to expose
10 you to. There's nothing nice about this case.

11 I will submit to you there's nothing nice about
12 a number of the witnesses that are going to testify
13 before you in this case. One, Steven Lewis Barnes
14 was a pimp, a panderer and just an absolutely wicked
15 human being and he associated with other lecherous
16 human beings.

17 The folks who are going to testify before you
18 this morning and this afternoon are associates of
19 this man who are absolutely lecherous people. And I
20 will submit to you that one Charlene Thatcher, who
21 will come before you, she will admit to you that
22 she's a prostitute. She will admit to you that she
23 was under the influence of Steven Barnes. I believe
24 she will admit to you that she was often under the
25 influence of drugs. And I believe she will also

1 admit to you that she too joined in some of this
2 lecherous conduct that it required to get people
3 under this man's spell.

4 Now, Mr. Young described some of these
5 witnesses as teenagers. I'm going to tell you these
6 young man were some ruffians and they were seeking
7 to be like Big Man. That's what Steven Barnes was
8 to them, the Big Man. And they wanted to be like
9 the Big Man. They were willing to do some pretty
10 rough stuff in order to be like the Big Man.

11 Now, one other thing that I'm going to submit
12 to you and I'm going to ask you to consider is this
13 Ms. Thatcher, her job. She's going to admit to you
14 that she's been a prostitute since she was 14 years
15 old. Now, over that term and over her life, I can
16 assure you that she's learned how to manipulate
17 things. She's learned, being under the influence of
18 this Steven Barnes, she's learned some things will
19 get you in trouble, some things will get you out of
20 trouble.

21 Ladies and gentlemen, she's also going to admit
22 to you that she knows she's in trouble. She's got
23 pending charges for the very same act for which my
24 client has been accused of.

25 This case has a lot of twists and turns and

1 your job is going to be tough. It's up to each of
2 you to navigate those twists and turns.

3 Now, here's what I want you to consider,
4 though, is that my client sits there presumed to be
5 innocent and that's a kind of tough thing to do to
6 presume one innocent.

7 Well, how do you presume one innocent? How do
8 we do that? Well, the way I've heard it described
9 is you presume one innocent as though they may have
10 come into this very courtroom guarded by a shield.
11 You could not even see who was behind the shield.
12 You would not know who that was behind the shield.
13 It may be a preacher. It may be a teacher. It may
14 be a doctor or a nurse. Heaven forbid, it may be a
15 lawyer behind the shield. Someone well respected,
16 someone who would deserve every reasonable doubt.

17 I submit to you that my client deserves the
18 benefit of every reasonable doubt because he sits
19 here accused of one of the most serious crimes known
20 to man.

21 Ladies and gentlemen, I submit to you that
22 between the investigation between these two states,
23 Georgia and South Carolina, the bad act that
24 occurred over in Augusta, the bad act that occurred
25 over here in South Carolina, there was a great deal

1 of information sharing. Investigator Doran, there
2 was an Investigator Richard Roundtree over in
3 Augusta, Investigator Doran here in Edgefield.
4 They're talking.

5 Well, this body happens to be found near the
6 property of my client or his parents. It happens to
7 be found near there. And you're going to hear that
8 one Steven Lewis Barnes had a known associate by the
9 name of Carlos Gomez. My client has a Hispanic
10 name. His name is Julio. And often times -- these
11 are street people now. In the streets, people will
12 call someone with a Hispanic heritage Julio, might
13 call him something -- anything other than his name.
14 I submit to you my client's name happens to be
15 Julio. He happens to be Hispanic, but he was not a
16 known associate of one Steven Lewis Barnes.

17 These folks who take this stand are going to
18 say they had never -- they're going to tell you they
19 have known Steven Barnes, but they're going to tell
20 you, I've never known your client magically until
21 that night, okay, that dark night. That night in
22 which they didn't get in a car with him, that night
23 in which they went into a dark field in Edgefield
24 County, but they're going to tell you that all of a
25 sudden, they're able to recognize my client.

1 One of those witnesses, Mr. Antonio Griffin,
2 he's going to admit to you that he thought the
3 people who came were white. I thought they were
4 white guys. Yeah, but now I know it was him.

5 Well, what happened? What happened? How could
6 that happen? How could I go from thinking that
7 these are white guys to, oh, no, I'm sure that it
8 was your client?

9 I submit to you that the pressure got on them
10 over in Georgia because each of the individuals who
11 are going to take that stand who are fact witnesses
12 to this alleged incident are going to come out here
13 in a prisoner's jumpsuit, that's because they're
14 prisoners. They've been locked up since this
15 incident, deservedly so, because they were involved
16 in it, okay. But in order to try to help
17 themselves, they've implicated my client and they're
18 still trying to help themselves by implicating my
19 client.

20 You can't go from thinking this is a white boy
21 or these were white guys to all of a sudden, oh,
22 yeah, it's your Hispanic client and I'm sure about
23 it. If that doesn't create a reasonable doubt in
24 your mind, ladies and gentlemen, I submit to you
25 that it should.

1 Ladies and gentlemen, I ask you to accept my
2 client as though he's wrapped in a robe of
3 righteousness. That's what the law says. That's
4 how you presume him to be innocent, that he deserves
5 every reasonable doubt, that he is innocent until
6 all of the evidence is in.

7 And you all have the absolute duty, the
8 authority to make judgments on the credibility of
9 these witnesses. At the end of this case, I'm going
10 to ask you to consider the source of your
11 information. I'm asking it of you now and when I
12 get up at the end of this case, I'm going to ask it
13 of you again, consider the source of the information
14 that you have.

15 Mr. Foreman, ladies and gentlemen, I thank you.

16 **THE COURT:** Thank you very much, Mr. Williams.

17 Solicitor, you may call your first witness.

18 **MR. YOUNG:** Thank you, Your Honor. The State
19 calls Mr. Grover Dais.

20 GROVER DAIS, JR.,

21 having been duly sworn, testified as follows:

22 **THE CLERK:** Have a seat. State your full name
23 and spell your last name, please.

24 **THE WITNESS:** My name is Grover Dais, Jr., last
25 name, D-a-i-s.

DIRECT EXAMINATION

1
2 BY MR. YOUNG:

3 Q Mr. Dais, I'm going to direct your attention
4 back to November 2001. Where did you live, sir?

5 A

6 Q Where is that located, sir?

7 A On the south side of Edgefield.

8 Q Is that in this county or another county?

9 A In Edgefield County.

10 Q All right, sir. And, sir, in that timeframe,
11 November 2001, do you recall on that day coming
12 across something that kind of scared you or shocked
13 you?

14 A In the latter part during November of 2001,
15 having a builder's permit, I was doing some cleaning
16 up and discovered what appeared to me was a human
17 skull. After having this aware, I contacted,
18 through 9-1-1, contacted the Edgefield County
19 Sheriff's Department in which a officer -- a officer
20 arrived. After the officer arrived, there was a
21 second officer that arrived, discussed later
22 affirming this was a human skull. Investigator did
23 arrive and the area was concealed as a crime scene
24 area at that time.

25 Q Okay. Now, you say you came across this. What

GROVER DAIS, JR. - DIRECT BY MR. YOUNG

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1 part of your yard was it in; do you remember?

2 A It was in my front yard to the, if you're
3 looking at my house, to the left.

4 BAILIFF: Excuse me, the jury can't hear.

5 BY MR. YOUNG:

6 Q Okay. Mr. Dais, I'm going to have to ask you
7 to do this: Why don't you just take this microphone
8 here please, just point it down right at you. Let
9 me step all the way over here, encourage you to talk
10 all the way over here. I'll stand back out of the
11 way and talk all the way over here to me.

12 A Yes, sir.

13 Q Okay. Now, I'm going to ask you to repeat a
14 small portion of this. Where did you find this
15 skull?

16 A It was in my front yard to the left of my
17 house. When you're looking in the front yard, it's
18 to the left out near the highway, which will be
19 Community Road off of Highway 25.

20 Q Okay. Do you recall seeing Investigator Doran
21 at any time?

22 A Yes, sir.

23 Q Did he come out there?

24 A Yes, sir. I think Investigator Doran was the
25 fourth or fifth person that arrived.

1 Q Okay. And you say they roped this area off?

2 A Yes, sir.

3 Q Okay. And did you do anything to touch that
4 skull or anything after you saw it?

5 A No, sir.

6 Q Did you move it anywhere?

7 A No, sir.

8 Q All right. And I want to ask you if, prior to
9 that time, you had noticed any animal activity?

10 A Prior before that by me being incarcerated, as
11 visiting that place, preparing for the clean up to
12 the -- if you're looking in the front yard to the
13 right of it, there was a big pine tree there and I
14 observed what appeared to be vultures, maybe 15 or
15 20 vultures that was in this area at the time. And
16 conferring with my next-door neighbor, she had
17 observed -- also observed this.

18 Plus, she also had observed -- had brung to my
19 attention that she had smelled a bad odor. And I
20 stated to her, because of the season, and it was
21 hunting season, that maybe it was a deer that
22 possibly had died, but I never took the initiative,
23 because of the cleaning up, to go and inspect it.
24 But the buzzard was there, I noticed them for at
25 least three or four days before I started to clean

1 up.

2 Q All right. Now, during the period of time,
3 you're in an orange jumpsuit?

4 A Yes, sir.

5 Q And you're incarcerated right now serving time,
6 right?

7 A Yes, sir.

8 Q You're in the department of corrections, but
9 you're here temporarily, right?

10 A Yes, sir.

11 Q Now, you've been incarcerated for a substantial
12 period of time in the past here in Edgefield,
13 haven't you?

14 A Yes, sir.

15 Q And during the period of time in November,
16 October of 2003 through December of 2004, you were
17 incarcerated here as well; is that correct?

18 A Yes, sir.

19 Q During that period of time, did you happen to
20 bump into a person known to you as Julio Hunsberger?

21 A Yes, sir.

22 Q Is he present in the courtroom?

23 A Yes, sir.

24 Q Where is he?

25 A Sitting at the table (indicating).

1 Q Okay. Can you describe for me how this
2 gentleman is dressed in comparison with the person
3 sitting next to him?

4 A Sir?

5 Q Can you describe how he's dressed?

6 A Yes, sir. He has a black suit with a black and
7 white tie.

8 Q Black and white tie?

9 A Yes, sir.

10 Q Well, there's kind of a gray --

11 A Gray and black. I'm sorry.

12 Q Okay. Well, there's a gray and black tie on
13 the gentleman next to him. Which of the two --

14 A The one to the left. I'm sorry.

15 Q To the left of the two people?

16 A Yes, sir.

17 Q All right, sir.

18 MR. YOUNG: We'd ask that the record reflect,
19 Your Honor, that he has correctly identified
20 Mr. Julio Hunsberger.

21 THE COURT: So reflected.

22 BY MR. YOUNG:

23 Q All right, sir. And during this period of
24 time, I'm going to ask you while you're incarcerated
25 there with him, did he approach you and have a

1 conversation with you about this incident?

2 A Not directly.

3 Q Tell me.

4 A While being incarcerated at the Edgefield
5 County Detention Center, sharing a room, Mr. Julio
6 brought up the fact about a discussion about a
7 murder. And during this discussion with another
8 inmate is that I took the initiative to have him
9 aware or made him aware of who I was. And after
10 having him aware of who I was, he was affiliated or
11 he was known by my son through their going to school
12 together. Also, he had me aware that he lived in
13 the neighborhood, which I wasn't aware of.

14 And during another discussion is he brought to
15 the fact of describing the area of where the body
16 was found and the way that it was discovered is that
17 the ground or the evidence was contaminated and also
18 it was tampered with. In talking to him and
19 discussing the matter with him is that I had him
20 aware that because of my time incarcerated and what
21 I had made aware of is that I didn't want any parts
22 of it.

23 But he took the initiative, you know, to let me
24 know is that -- or describe to me that the way that
25 the law enforcement had discovered the body and had

1 contaminated the area and the chain of custody was
2 contaminated with. And I just let him know that I
3 didn't, you know, at that time, that I didn't feel
4 obligated to answer any questions, that I didn't
5 want to be involved with it.

6 Q Okay. Did you know where he was talking about
7 when he was describing this area, what area he was
8 describing?

9 A Yes, sir, that was the area directly in my
10 backyard.

11 Q Is that behind your house?

12 A Yes, sir.

13 Q In the woods?

14 A Yes, sir.

15 Q Was that generically the area where you seen
16 animal activity?

17 A Yes, sir.

18 Q Now, prior to that time, did you know anything
19 specifically about the area where this alleged body
20 was found?

21 A No, sir.

22 Q Didn't know anything about that until he said
23 that?

24 A No, sir.

25 Q Now, you didn't have this conversation because

1 law enforcement asked you to have this conversation?

2 A No, sir.

3 Q This was just something he just brought up?

4 A Yes, sir.

5 Q Did he describe this area in terms of making
6 mention of a gate or anything else in connection
7 with this area?

8 MR. WILLIAMS: Your Honor, I object to the
9 leading question.

10 THE COURT: You can rephrase your question,
11 Solicitor.

12 BY MR. YOUNG:

13 Q What, if anything, did he say regarding a gate
14 in this area?

15 A Describing where the body was found was how the
16 law enforcement got to where the actual body was and
17 that was a gate area, as well as crossing the fence
18 and doing this gated -- where this gated area is and
19 crossing this fence, there's a wooded area from this
20 field to where the body was actually found is that
21 you would have to -- there would have to be a lot of
22 traveling to get to this area.

23 Q Did he mention anything about any evidence that
24 may have been discovered or not discovered?

25 A That was also an after -- it was after the fact

1 that Investigator Doran had took me and bring me
2 back to my -- that was something about --

3 Q Just a moment. Did he tell you anything about
4 any specific evidence?

5 A Yes, sir.

6 Q That was or wasn't found?

7 A Yes, sir.

8 Q What?

9 A It was a beer can.

10 MR. YOUNG: All right. I don't have any
11 further questions.

12 THE COURT: All right. Mr. Williams.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Mr. Dais, when did this conversation allegedly
16 occur between my client and yourself?

17 A During the month of my -- during the year of my
18 incarceration between 2003 and 2004, Edgefield
19 County Department Detention Center E-side.

20 Q Okay. And you testified in a trial last week,
21 did you not?

22 A Yes, sir.

23 Q Okay. Let me ask you this: You're presently
24 incarcerated in the South Carolina Department of
25 Corrections?

- 1 A Yes, sir.
- 2 Q Okay. Are you eligible for parole?
- 3 A Yes, sir.
- 4 Q Okay. Are you hopeful to make parole?
- 5 A No, sir.
- 6 Q You don't care to make parole?
- 7 A No, sir. I'm currently into an ATU, which is
- 8 an alcohol and drug treatment center program. And
- 9 my completion of that program, if I made parole, is
- 10 that I would have to discontinue that program and
- 11 right now I think that program mean more to me than
- 12 making parole.
- 13 Q All right. And ATU that's an Addictions
- 14 Training Unit; is that right?
- 15 A Yes, sir.
- 16 Q So you're having a problem with addictions?
- 17 A I did have.
- 18 Q You did have?
- 19 A Yes, sir.
- 20 Q And you want to finish up the program?
- 21 A Yes, sir.
- 22 Q Okay. I'm going to ask you, Mr. Dais, did you
- 23 provide this information to law enforcement at any
- 24 point prior to your receiving a subpoena from me?
- 25 A Can you make that -- clarify that?

1 Q All right. You received a subpoena from me on
2 late last week, did you not, Friday?

3 A Yes, sir.

4 Q Did you not? Yes. Didn't you say yes?

5 A From investigator -- from Officer Harris.

6 Q Okay. You received that from me last week,
7 right?

8 A From Officer Harris.

9 Q Yes, you did receive that subpoena from me?

10 A I received --

11 THE COURT: Well, I think he's saying that
12 Officer Herring served the subpoena, I think, is
13 what --

14 MR. WILLIAMS: The difference --

15 THE COURT: I believe.

16 MR. WILLIAMS: Yes, sir.

17 THE COURT: But you may continue, Mr. Williams.
18 I just think that's what his response was.

19 BY MR. WILLIAMS:

20 Q And that came from me, did it not?

21 A (No response.)

22 Q It came from my office, didn't it?

23 A I couldn't say.

24 Q All right. It had Randall D. Williams on it,
25 didn't it?

1 A Yes, sir.

2 Q Okay. All right. Now, the information that
3 you just gave the Solicitor had you given him that
4 information at any point prior to you receiving my
5 subpoena?

6 A No, sir.

7 Q All right. What took you so long?

8 A (No response.)

9 Q What took you so long to tell the Solicitor
10 this information?

11 A (No response.)

12 Q Do you have an answer?

13 A No, sir.

14 Q Are you hopeful that the Solicitor will write a
15 letter of support for your parole?

16 A I just made the statement, sir, that I would --
17 I didn't -- refused the granted parole because of
18 the program that I have.

19 Q So you didn't have the information that you
20 just gave the ladies and gentlemen of this jury.
21 You didn't make that available to the Solicitor
22 until just some time this weekend or Monday; is that
23 right?

24 A What are you asking me?

25 Q Let me do a better job.

- 1 A Okay.
- 2 Q The information that you just relayed to the
- 3 jury --
- 4 A Yes, sir.
- 5 Q -- you had not, prior thereto, given that
- 6 information to the State?
- 7 A No, sir.
- 8 Q Although the State had subpoenaed you to the
- 9 trial of Steven Barnes?
- 10 A That conversation never came up between me,
- 11 Steven Barnes or me or Alex or --
- 12 Q I'm not asking you that question. You were
- 13 subpoenaed in the case of the State of South
- 14 Carolina versus Steven Barnes, were you not?
- 15 A Yes, sir.
- 16 Q Okay. So it was about a murder, wasn't it?
- 17 A Yes, sir.
- 18 Q Okay. You were subpoenaed in the State -- in
- 19 the case of the State of South Carolina versus Alex
- 20 Hunsberger, were you not?
- 21 A Yes, sir.
- 22 Q I'm sorry?
- 23 A Yes, sir.
- 24 Q All right. And that information was never
- 25 brought up in that trial?

GROVER DAIS, JR. - REDIRECT BY MR. YOUNG

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1 A Yes, sir.

2 Q Is that yes or no?

3 A Yes, sir.

4 Q You brought that information up to --

5 A No, sir. I didn't bring that information up.

6 MR. WILLIAMS: Okay. Thank you, sir. I don't
7 have any other questions.

8 MR. YOUNG: May the State proceed, Your Honor?

9 THE COURT: Yes, sir. Redirect. I apologize,
10 Solicitor.

11 REDIRECT EXAMINATION

12 BY MR. YOUNG:

13 Q Have you ever been asked any questions prior to
14 this past week about Julio Hunsberger?

15 A No, sir.

16 Q You testified in other trials?

17 A Yes, sir.

18 Q It never came up, did it?

19 A No, sir.

20 Q You've been promised anything for what you're
21 doing today?

22 A No, sir.

23 Q By me?

24 A No, sir.

25 Q By Mr. Maye?

1 **A** No, sir.

2 **Q** By anyone else in the Solicitor's office?

3 **A** No, sir.

4 **MR. YOUNG:** I don't have any further questions.

5 **THE COURT:** Recross, Mr. Williams.

6 RECROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 **Q** Do you have anything personal against my
9 client?

10 **A** No, sir.

11 **Q** Okay. There's a question I neglected to ask
12 you. Where did your son go to high school?

13 **A** Merriwether.

14 **MR. WILLIAMS:** Okay. Thank you, sir.

15 **THE COURT:** All right. Thank you very much,
16 Mr. Dais. You may step down.

17 All right. Solicitor, you may call your next
18 witness.

19 **MR. YOUNG:** Your Honor, I need to check on the
20 status of an exhibit. May I please have the Court's
21 indulgence for just one moment?

22 (Pause.)

23 **MR. YOUNG:** The State calls Lieutenant Randy
24 Doran.

25 **THE COURT:** All right. If you'll come around

RANDY DORAN - DIRECT BY MR. YOUNG

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1 and be sworn, please.

2 RANDY DORAN,

3 having been duly sworn, testified as follows:

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

6 THE WITNESS: Randy Doran, D-o-r-a-n.

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q Lieutenant Doran, who are you employed by, sir?

10 A Edgefield County Sheriff's Office.

11 Q And how long have you been employed by them,
12 sir? And how long have you been in law enforcement?

13 A I've been employed with the Edgefield County
14 Sheriff's Office for 21 years.

15 Q And how long -- does that include your whole
16 time in law enforcement?

17 A Yes, sir.

18 Q All right, sir. In the course of your duties,
19 the -- well, let's just say 2000 -- that included
20 2001, correct?

21 A Yes, sir.

22 Q And then in the course of those duties, your
23 job as an investigator, did you have occasion to go
24 out to the Community Road area of Edgefield County
25 on or about November 19, 2001?

1 A I did.

2 Q All right, sir. And would you tell me what the
3 purpose was in going out there?

4 **A** Yes, sir. I had received a call from my
5 captain, my chief deputy, Roger Lowe, they had been
6 called out to I responded after
7 his initial call to me to respond to that location.

8 Once I arrived at I was met by
9 Captain Lowe, Sergeant Chris Astin, Deputy Marty
10 English.

11 Q All right, sir. And when you got out there,
12 what did you find, if anything?

13 **A** I was shown by Captain Lowe and Sergeant Astin
14 and Deputy English that -- where a human skull was
15 laying in the front yard of

16 Q Would you describe this skull as you saw it?

17 **A** It was a human skull.

18 **MR. WILLIAMS:** Objection, Your Honor.

19 THE COURT: Overruled.

20 **THE WITNESS:** It was a human skull. It had the
21 top teeth still intact in the skull. And it also
22 had a hole to the back of the head, which at that
23 time I believed to be a bullet hole.

24 BY MR. YOUNG:

25 Q Okay. And did you do anything in terms of

1 documenting the location of that?

2 **A** Yes. I took photos of that skull.

3 **Q** Would you be able to recognize a photo of that
4 again if you saw it?

5 **A** Yes, sir.

6 **Q** Let me show you what's been marked as State's
7 Exhibit 5, ask you what that is, sir?

8 **A** It's a photo that I took of the human skull
9 that I just described.

10 **Q** Does that fairly and accurately demonstrate the
11 skull as you saw it?

12 **A** Yes, sir.

13 **MR. YOUNG:** The State offers State's Exhibit 5,
14 Your Honor.

15 **MR. WILLIAMS:** Your Honor, I'd just like to see
16 it.

17 **THE COURT:** Certainly.

18 (Pause.)

19 **MR. WILLIAMS:** I have no objection to it.

20 **THE COURT:** State's 5 is in evidence. Let me
21 see it, Solicitor.

22 (Pause.)

23 **THE COURT:** All right. State's 5 is in
24 evidence without objection.

25 **MR. YOUNG:** Thank you, Your Honor.

1 (State's Exhibit Number 5, photograph,
2 admitted into evidence.)

3 BY MR. YOUNG:

4 Q Now, with regard to State's Exhibit Number 5,
5 whose property was this located on?

6 A The skull was located on Grover Dais.

7 Q What specific address is that?

8 A

9 Q Where is that located in terms of Edgefield
10 County?

11 A It's on the south side of the county.

12 Q Is that in the county?

13 A Yes, sir, Edgefield.

14 Q And when you located the skull, did this prompt
15 any further action?

16 A Yes, sir.

17 Q What did you do?

18 A We started searching the yard area and the
19 wooded area of Actually, Deputy
20 English and Sergeant Astin was also -- and Chief
21 Deputy Lowe was also in the process of doing the
22 search after the photo was taken of the skull.

23 Q All right. Let's get oriented toward where you
24 are in Edgefield County first. Let me ask you what
25 this is and if you recognize it. This is State's

1 Exhibit Number 2.

2 A It's a diagram of Edgefield and part of the
3 south side of Edgefield County.

4 Q Does this fairly and accurately layout
5 Edgefield County and the relationship to the
6 Community Road area?

7 A Yes, sir.

8 MR. WILLIAMS: I offer no objection to it,
9 Judge.

10 THE COURT: State's 2 is in evidence without
11 objection.

12 (State's Exhibit Number 2, map, admitted
13 into evidence.)

14 BY MR. YOUNG:

15 Q I gave you a pointer earlier there, Lieutenant
16 Doran. If you would please, sir, I would like for
17 you, if you could, just to describe how you would
18 get from this courthouse down to this area you have
19 described in Edgefield County. Use that pointer to
20 trace the outline of how you do that.

21 A This yellow circled area up here would be the
22 Edgefield County Courthouse. If you follow the
23 yellow line, that's Highway 25 coming out of
24 Edgefield. It's on -- actually called Augusta Road.
25 You get down there to the pine house in Trenton, you

1 would take a right at the pine house.

2 Q Is there another major demarker there of --

3 A Yes, sir. If you would turn back to the left,
4 that's Highway 121 going towards Johnston. And if
5 you were to stay straight, that's Highway 19 going
6 towards Aiken.

7 Q Is there any service station in the area?

8 A Yes, sir. It's a Billy's Superstore.

9 Q Okay. And where would you turn in relation to
10 Billy's Superstore to go in the direction of
11 Community Road?

12 A Well, you could actually -- it was another
13 little yield road here to your right, you can
14 actually yield onto 25 or you can go up to the red
15 light there at the intersection and turn right and
16 just follow Highway 25 on down approximately, I
17 would have to say, approximately ten miles or so and
18 it would turn into a four-lane highway. Once you
19 turn -- once you got on the four-lane highway down
20 on 25, you'd come to an intersection right here
21 (indicating). The black arrow to the -- the black
22 line to the right right there would be Jacob McKie
23 Road. And the red line here, marker, would be
24 Community Road.

25 Q Okay. All right. And then there's a road

1 that's marked in there in red. What is that road?

2 **A** The red is Community Road.

3 **Q** That's Community Road?

4 **A** Yes, sir.

5 **Q** All right. Now, how far down Community Road on
6 that map would it be until you got to
7 approximately?

8 **A** Just right in this area right here. Once you
9 turn on to Community Road off 25, like I said
10 Community Road goes straight for probably about a
11 three quart -- about a quarter of a mile or so,
12 maybe not quite that far, and it bears off to your
13 right, but if you stay straight right in this area
14 (indicating), that's what they call Lakeview Road.
15 You come on down in this area right here. It makes
16 a 90-degree turn and Lake View comes all the way
17 back out to Community Road. Also, right here at
18 this 90-degree turn, it's a dirt road that you call
19 Lakeview Extension.

20 **Q** Okay. Let me show you what's been marked as
21 State's Exhibit Number 3, and having previously
22 shown this to the defense. What does this show?

23 **A** That's a diagram of the actual crime scene and
24 field area that we had entered getting to the crime
25 scene.

1 Q Okay. And what's this in the far right-hand
2 corner down here at the bottom?

3 A That would be an aerial shot of the area,
4 Community Road and 25, Lakeview, Lakeview Extension.

5 Q So it's a general overlook?

6 A Yes, sir.

7 Q Now, if I could just briefly, is there any kind
8 of major marker of any kind to make you know you're
9 turning off on the right road to go to Community
10 Road as you head down 25?

11 A Yes, sir. Right here at Highway 25 and
12 Community, there's a building there. It used to be,
13 back when this incident took place, it was Brights
14 Laundry Mat. He also had a car wash on one end of
15 it. And if I remember correctly, there was a little
16 small store in the middle of it.

17 Q Okay. Does this, in State's Exhibit 3, show in
18 more detail the location of that laundry mat and the
19 outline of the roads and Grover Dais' house?

20 A Yes, sir.

21 Q Does it also show locations where certain types
22 of evidence were found?

23 A Yes, sir.

24 Q Would you briefly describe what additional
25 evidence you may have found either that day or the

1 next day?

2 **A** That first day on November the 19th, after we
3 had searched 252 Community Road, the area on that
4 side, we crossed over to 253 Community Road. And
5 Deputy English had located at the driveway of 253 a
6 leg bone or femur bone is what we thought it was at
7 the time.

8 **Q** Does that also show on this diagram?

9 **A** Yes, sir.

10 **Q** The location of where you found it?

11 **A** Yes, sir.

12 **MR. YOUNG:** Okay. The State would offer
13 State's Exhibit Number 3.

14 **MR. WILLIAMS:** Your Honor, I object to the hand
15 drawn portion of Exhibit Number 3. The aerial
16 photograph I have no objection to, but I'm not
17 certain that that's a fair-scaled, accurate
18 depiction of what would have occurred out there and
19 I object to it on that basis.

20 **THE COURT:** May I see it, please?

21 (Pause.)

22 **THE COURT:** All right. State's 3 is in
23 evidence subject to objection. It's marked -- the
24 handwritten part is marked not to scale. There is a
25 aerial photograph. The jury will be able to view

1 both the hand drawn part and the aerial photograph
2 with the understanding the hand drawn is not to
3 scale.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: All right. State's 3 is in
6 evidence.

7 (State's Exhibit Number 3, diagram, admitted
8 into evidence.)

9 BY MR. YOUNG:

10 Q If I could then, I would like to orient this
11 particular diagram to this map first, which is
12 State's 1 to State's 3. Could you just orient this
13 again? Is there -- roughly this orientation should
14 be just a blowup of a certain area and which area on
15 this map is blown up?

16 A This area right here is Highway 25. This is
17 Community Road. This is the Brights Laundry Mat,
18 car wash --

19 Q Let me stop you right there. Where is that on
20 State's Exhibit Number 2?

21 A Okay.

22 Q Where is it on the map?

23 A Highway 25 would be in this area (indicating).

24 Q Okay. Is that --

25 A And Community Road.

1 Q Okay. Is that the area that's blown up on
2 State's Exhibit 3?

3 A Yes, sir.

4 Q Okay. That was my question. Thank you.

5 All right. Now, would you describe normally
6 what's on this diagram?

7 THE COURT: Are you going to use 2? Are you
8 referring to --

9 MR. YOUNG: I'm sorry, Your Honor. I
10 apologize. That was very inaccurate. Thank you.
11 BY MR. YOUNG:

12 Q State's Exhibit 3 is I'm asking you to describe
13 what is on State's Exhibit 3, the diagram.

14 THE COURT: Why don't you put it up top now
15 then. Some of the jurors don't seem to be able to
16 see it, Solicitor.

17 MR. YOUNG: Thank you, Your Honor. I
18 apologize.

19 THE COURT: Thank you.

20 BY MR. YOUNG:

21 Q Go ahead. I'm sorry.

22 A This area right in here would be Highway 25.
23 This line here was actually Community Road. This
24 square here is actually Bright's Laundry Mat and car
25 wash.

1 Q All right. And then go on down and tell me
2 where you found these items of evidence.

3 A Once you turn on Community Road, like I say, it
4 bears off to your right and goes on down, I would
5 say, maybe a mile, maybe not quite a mile, and come
6 on past, Lakeview Road will turn back to your left
7 right there, just follow Community Road on down.
8 This would be Grover Dais' residence, which is 252.

9 Q All right. Now, stop you right there. I'm
10 going to make sure it's absolutely clear. Is the
11 Grover Dais' residence, as you're headed, appears to
12 be, south on Community Road, is it to your right or
13 your left?

14 A To your left.

15 Q All right, sir. And then can you point out
16 then in relation to that particular residence of
17 where you found the skull?

18 A The skull was located in this area (indicating)
19 just back north of the residence that was actually
20 out in the front yard close to the Community Road.
21 There was a light pole and a tree in that area that
22 it was between.

23 Q All right. Now, if I took State's Exhibit
24 Number 5 and I showed it to you here, what's in the
25 background of State's Exhibit 5?

1 A The human skull that I mentioned earlier.

2 Q What's in the background of State's Exhibit 5,
3 background?

4 A A fenced area and a Edgefield County Sheriff's
5 car.

6 Q And is it on a road?

7 A Yes, sir, Community Road.

8 Q All right. So it's on the road. And so if
9 it's oriented correctly, State's Exhibit 5 would
10 then be somewhere like this (indicating)?

11 A Yes, sir.

12 Q So in relationship to this diagram, State's
13 Exhibit 5 would be somewhat like this with the skull
14 being found on the left-hand side of the road?

15 A Yes, sir.

16 MR. YOUNG: All right. I'm going to put
17 State's Exhibit 5 right here, Your Honor, next to
18 that diagram.

19 THE COURT: All right.

20 BY MR. YOUNG:

21 Q And you say you also found a leg bone?

22 A Yes, sir.

23 Q Where was that found again?

24 A It was across the road on your right-hand side.
25 It was a mailbox, driveway that said 253 Community

1 Road. The actual leg bone was found in the ditch
2 area of the driveway.

3 Q And on what day was that found?

4 A That was the same day on November the 19th.

5 Q All right. Now, did you do some more
6 investigation?

7 A Yes, sir. On that day, we actually searched
8 the area of 253. We had searched that area until
9 darkness. We had to call the search off because of
10 darkness.

11 Q All right. Did you continue your investigation
12 the next day?

13 A Yes, sir.

14 Q What did you do the next day?

15 A Well, we had -- the night before I had
16 contacted the fire chief of the Merriwether Fire
17 Department and the fire chief of the County Line
18 Fire Department to get some assistance in helping us
19 search the area on the morning of the 20th.

20 Q All right. And in relation to what is -- you
21 discovered so far, where did you conduct this
22 investigation in relation to the diagram here?

23 A We met back out on Community Road at 253. I
24 think it was around either between 8:00, 8:30 that
25 morning. We started back searching a larger area of

1 253.

2 Q Then what else did you do? Did you search any

3 other area?

4 A Yes, sir. Like I say, we searched 253 for

5 approximately an hour or so, didn't locate anything.

6 So we crossed back over to 252, this wooded area in

7 here (indicating).

8 Q So now you're on -- if you're headed south on

9 Community Road, you're on the left-hand side of the

10 road?

11 A Yes, sir.

12 Q The same side of the road that Grover Dais'

13 house is on?

14 A Yes, sir.

15 Q All right. What did you do on that side of the

16 road?

17 A It was around 30 minutes or so, I was informed

18 by the chief of Merriwether Fire Department that she

19 had located a pair of blue jean pants and also she

20 had smelled a strong odor.

21 Q Okay. All right. Now, did you take

22 photographs of it?

23 A Yes, sir.

24 Q And where did you find it?

25 A Where did I find the pants?

1 Q Where did you take the photograph?

2 A The photograph was taken of the pants
3 approximately, maybe in this area, the wooded area.

4 Q There's a notation here of scene of more bones.
5 What does that mean?

6 A Yes, sir. A few feet from the -- a few feet
7 from the blue jean pants, we had located several
8 bones that were scattered out in this area.

9 Q All right. Now, when you started looking in
10 this area back in here, did you take photographs?

11 A Yes, sir.

12 Q All right. And did you continue your
13 investigation that day or what did you do?

14 A Yes, sir.

15 Q What all did you do the rest of that day?

16 A Like I say, when we had taped off -- when we
17 found the blue jean pants, we had taped off the
18 area. And like I say, we started doing a search.
19 The first thing I started looking at was how --
20 trying to find the easy way to get into this
21 location with, you know, more equipment, crime scene
22 unit and more equipment to get into this area
23 because if you go back towards Community Road, it
24 was such a wooded area you couldn't get any vehicles
25 into that area. So I was trying to find a better

1 way to get to the actual crime scene.

2 Q And so what did you do?

3 A Went back out and got into -- well, we noticed
4 -- I noticed an opening -- in this area, I noticed
5 an open field (indicating). There was a gate in
6 that area there and I noticed this is an open
7 hayfield here, so went back and got in the patrol
8 vehicle and came back out on Community Road and went
9 up to Lakeview Road and took a right onto Lakeview
10 Road.

11 We came -- I came all the way down to the
12 90-degree turn, made a right turn onto Lakeview
13 Extension, which is a dirt road, followed Lakeview
14 Extension on through this area right here. There's
15 actually another gate right there that was open,
16 came into this area right here. There's a larger
17 hayfield that opened up into this area, came on in.
18 It was a tree line here and it was an open area
19 right in this area here to your right and that's
20 when I had started noticing that this hayfield
21 started opening up.

22 Q Okay. How did you get back to that gate?

23 A I came on up to another opening right here and
24 took a right onto this hayfield here, went down this
25 wood line area right here. I got to this area right

1 here, it was a narrow dirt road and it had trees on
2 both sides of it. The little dirt road is probably
3 a third of a mile or less. It came into a second
4 hayfield. I just came on down this hayfield and
5 it's a wood line to your right. I just came on down
6 until I recognized a gate at the end of this
7 hayfield right here (indicating).

8 Q All right. Would you be able to recognize
9 pictures of what you took there at the scene?

10 A Yes, sir.

11 Q The gate, any other evidence you may have found
12 there and how to get in there?

13 A Yes, sir.

14 Q Let me show you what's been marked State's
15 Exhibit Number 6. What's that?

16 A This is a photo of the actual gate at the
17 second hayfield.

18 Q All right. Show me on that scene right there
19 where that gate is.

20 A It would be the gate right in this area right
21 here (indicating).

22 Q Where it's marked gate?

23 A Uh-huh.

24 Q Does this fairly and accurately represent the
25 gate you saw that day?

1 **A** Yes, sir.

2 (Pause.)

3 **MR. WILLIAMS:** No objection to it.

4 **THE COURT:** State's 6 in evidence without
5 objection.

6 **MR. YOUNG:** Thank you, Your Honor.

7 (State's Exhibit Number 6, photograph,
8 admitted into evidence.)

9 BY MR. YOUNG:

10 **Q** State's Exhibit 6 now posted. Now, again,
11 where is 6 in relation to that gate that's depicted
12 on that scene there, on that diagram, State's
13 Exhibit 3?

14 **A** The gate would be at the end of this second
15 hayfield.

16 **Q** All right. Do you recognize State's Exhibit
17 Number 7?

18 **A** Yes, sir.

19 **Q** What's that?

20 **A** It's actual -- a photo that I had taken. Once
21 I crossed over the gate, there's actually a barbed
22 wire fence also in that area. I had to cross over
23 that barbed wire fence and it led up to -- this area
24 here actually led up to the actual crime scene where
25 the remains were found.

1 Q So this leads from the gate toward Grover Dais'
2 house?

3 A Yes, sir.

4 Q In that direction generally, towards Community
5 Road generally?

6 A Yes, sir.

7 Q All right. Does this fairly and accurately
8 represent what you took that day?

9 A Yes, sir.

10 (Pause.)

11 MR. WILLIAMS: No objection to it.

12 THE COURT: State's 7 is in evidence without
13 objection.

14 (State's Exhibit Number 7, photograph,
15 admitted into evidence.)

16 BY MR. YOUNG:

17 Q All right, sir. Now, with regard to -- I want
18 you to take a look at State's 8 and 9 and tell me
19 what they are.

20 A 9 -- 8 and 9 is actually two photos that I had
21 taken of the blue jeans that were found.

22 Q Okay. The blue jeans that were found?

23 A Yes, sir.

24 Q All right. And these blue jeans -- could you
25 describe for me about these blue jeans?

1 **A** Yes, sir. Like I say, when I went back into
2 the crime scene after arriving in the hayfield, I
3 went -- the first thing I went to process was the
4 actual blue jeans. And I noticed they had a belt
5 with a large belt buckle. You really couldn't make
6 out what the belt buckle had said. I noticed in the
7 right front pocket there was a key ring that had a
8 Monte Carlo emblem on the actual key ring. It had
9 two house keys. It had a Bi-Lo bonus card and a
10 Kroger bonus card. I think that was all that was on
11 that actual key ring.

12 **Q** Okay. And then did you see anything with
13 regard to this belt? Was there any identifying
14 information on the belt?

15 **A** Yes, sir. Once I actually picked the pants up,
16 on the rear of the pants at the belt, there was a
17 name engraved in the belt which said Samuel.

18 **Q** Okay. Now, did there -- the scene of more
19 bones, does it relate in any way to State's Exhibit
20 Number 10?

21 **A** Yes, sir.

22 **Q** What is that? What is State's 10?

23 **A** This is a photo that I took. It's actually a
24 darkened area where you could tell some type of
25 liquid had soaked into the ground.

1 Q Is there any smell associated with that area?

2 A Yes, sir, a strong odor coming from it.

3 Q Did it bear any relationship to the pants?

4 A Yes, sir. This was actually, probably, I would
5 say, ten feet from the pants.

6 Q Okay. Did you collect anymore bones in that
7 area?

8 A Yes, sir.

9 Q All right. With regard to State's Exhibits
10 Number 8, 9 and 10, do these fairly and accurately
11 represent what you saw and collected by photographic
12 evidence that day?

13 A Yes, sir.

14 MR. YOUNG: State offers into evidence State's
15 8, 9 and 10, Your Honor.

16 MR. WILLIAMS: No objection, Your Honor.

17 THE COURT: State's 8, 9 and 10 is in evidence
18 without objection.

19 (State's Exhibit Numbers 8 through 10,
20 photographs, admitted into evidence.)

21 BY MR. YOUNG:

22 Q All right. These items of evidence, the pants
23 and the bones, are they in one central location?
24 Are they around the area? How did you collect them?
25 Tell me how you collected them.

1 A Like I say, we collected the pants to start off
2 with. Just a few feet from the pants, there was a
3 yellow cigarette lighter laying on the ground, we
4 collected that. Just a few more feet from the
5 cigarette lighter was the actual darkened area where
6 the strong odor was coming from. There was bones
7 and teeth, loose teeth, in that area.

8 Q And what did you do with all the stuff that you
9 collected up?

10 A Took it to -- we collected it that day. And
11 the very next day it went to Dr. Joel Sexton in
12 Newberry for autopsy.

13 Q With regard to the pants, were you able to
14 locate any bones in and around the pants?

15 A Yes, sir. I failed to mention, I think it was
16 in the right pants leg, there was a leg bone inside
17 that pair of pants.

18 Q So is it fair to say that these bones were
19 scattered?

20 A Yes, sir.

21 Q Now, I'm going to show you what's been marked
22 as State's Exhibit Number 4. How would you describe
23 that, as either larger or smaller representation of
24 what is State's Exhibit 3?

25 A I would say larger.

1 **Q** Okay. Does this fairly and accurately, but
2 just in a larger way, lay out, not to scale, the
3 area that you searched and the area you gained
4 entrance to in order to conduct the search?

5 **A** Yes, sir.

6 **MR. WILLIAMS:** Your Honor, I do object to it on
7 the basis of its failure to be to scale.

8 **MR. YOUNG:** It's offered as not to scale, Your
9 Honor.

10 **THE COURT:** All right. Is it indicated not to
11 scale?

12 **MR. YOUNG:** Yes, sir.

13 **THE COURT:** All right. I will allow it in
14 evidence subject to Mr. Williams' objection.
15 State's 4 is in evidence.

16 (State's Exhibit Number 4, diagram, admitted
17 into evidence.)

18 **BY MR. YOUNG:**

19 **Q** Now, would you please just describe briefly
20 again the area that you were searching in which you
21 found the darkened area, the pants, the bones, the
22 additional bones after going through the gate?

23 **A** Yes, sir. The gate would have been in this
24 area right here (indicating). We conducted the
25 search just across the gate, I would say, probably

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1 20 or 30 yards inside the wooded area by the -- just
2 over the gate and the barbed wire fence..

3 Q All right. And, again, where is Mr. Dais'
4 house?

5 A Mr. Dais' house is right here (indicating).

6 Q All right. And just, again, briefly describe
7 how you gained entrance to the gate.

8 A This is Highway 25, I believe, out here.
9 Highway 25 would be out in this area. That could be
10 actually Lakeview Road that goes this way. This
11 would be your -- this darkened line here would be
12 Lakeview Extension.

13 Like I say, I came in on Lakeview Extension.
14 There was an opened gate right there in that area,
15 came on through that gate. Tree line to your --
16 would have been to my right another open field out
17 here, which is another larger hayfield, came on
18 through Lakeview Extension here. There's an opening
19 to the right, came on up, another tree line here.

20 I actually came on up in this area right here,
21 which is another open area. I actually turned into
22 this area. I followed this hayfield on down the
23 wooded area all out this -- in this area here,
24 followed this field all the way down through a
25 narrow, shorter dirt road here which had trees on

1 both sides, came through that little narrow dirt
2 road stayed straight on down until I located the
3 actual gate right there.

4 Q Okay. And then so State's 5, just on this
5 diagram, which is I believe you previously described
6 as a skull, just point to where that would have been
7 found roughly.

8 A The skull would have been found in this
9 location by Community Road (indicating).

10 Q All right. 6 is the gate you previously
11 described?

12 A Yes, sir. Once you come into the second
13 hayfield, just follow it all the way down, the gate
14 would be in this area right here.

15 Q 7 is a wooded area behind the gate?

16 A Yes, sir. It would -- like I say, once you
17 cross over the gate within just a few feet, you came
18 to a barbed wire fence that went back up this way
19 and then came back and went across that way. And
20 once you crossed over the barbed wire fence, you can
21 see that area.

22 Q And then 8, 9 and 10 are the area that are
23 inside that wooded area, correct?

24 A Yes, sir.

25 Q Okay. Now, when you went -- did you go into

1 the pockets again of this pair of pants?

2 A Yes, sir. In the right rear pocket was a one
3 dollar bill.

4 Q Okay. In addition to that, to the keys you had
5 mentioned earlier?

6 A Excuse me?

7 Q They were in addition to the keys that you
8 mentioned earlier?

9 A Yes, sir.

10 Q And did you collect those items?

11 A Yes, sir, I did.

12 Q Would you be able to recognize them again if
13 you saw them?

14 A I would.

15 Q I'll hand up what's been marked as State's
16 Exhibit 17 and 18 and ask you if you recognize them,
17 sir?

18 A Yes, sir, I do.

19 Q All right, sir. What are they?

20 A State's Exhibit 17 is actually the Bi-Lo bonus
21 card I was referring to, the Kroger bonus card, two
22 keys and a Monte Carlo symbol on the key ring.

23 Q Are those the ones that you collected from the
24 pocket of the pants that are in State's Exhibits 8
25 and 9?

1 **A** Yes, sir.

2 **Q** What about the other exhibit?

3 **A** State's Exhibit 18 is actually the one dollar
4 bill that I removed from the pair of blue jean
5 pants.

6 **Q** That was also collected from the blue jean
7 pants?

8 **A** Yes, sir.

9 **Q** Those are the items?

10 **A** Yes, sir.

11 **Q** From the pants?

12 **A** Yes, sir.

13 **Q** And you collected these items at the scene?

14 **A** Yes, sir.

15 **MR. YOUNG:** The State offers into evidence
16 State's Exhibits Number 17 and 18.

17 **THE COURT:** Mr. Williams?

18 (Pause.)

19 **MR. WILLIAMS:** Your Honor, I offer no objection
20 to it.

21 **THE COURT:** All right. And tell me again what
22 is 17?

23 **MR. YOUNG:** Your Honor, Number 17 is a key fob
24 with keys and a Bi-Lo bonus card.

25 **THE COURT:** All right.

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1 **MR. YOUNG:** One of those key fob-type bonus
2 cards. Number 18, Your Honor, is a dollar bill.

3 **THE COURT:** Thank you. State's 17 and 18 is in
4 evidence without objection.

5 **MR. YOUNG:** Thank you, Your Honor.

6 (State's Exhibit Number 17, keys and bonus
7 cards, and State's Exhibit Number 18, one dollar
8 bill, admitted into evidence.)

9 **THE COURT:** In about five more minutes,
10 Solicitor, we're going to take a break.

11 **MR. YOUNG:** That'll be fine, Your Honor. I'll
12 wrap this up and I can do a sequential stop, I
13 think, pretty easily here.

14 BY MR. YOUNG:

15 **Q** Investigator Doran, while you were there at
16 that scene, was any firearms information or evidence
17 collected?

18 **A** Yes, sir.

19 **Q** Now, I'm talking about on the day you were
20 there to obtain these pants?

21 **A** Yes, sir.

22 **Q** What evidence was obtained?

23 **A** We -- I located a .40 caliber Smith and Wesson
24 shell casing.

25 **Q** All right, sir. And would you be able to

1 recognize that again if you saw it?

2 A Yes, sir.

3 Q I hand you what's been marked as State's
4 Exhibit 19. Do you recognize that?

5 A Yes, sir, I do.

6 Q All right. What is that?

7 A What is it?

8 Q Yes, sir.

9 A It's a shell casing, a .40 caliber shell
10 casing. It's a Smith and Wesson.

11 Q Is that the .40 caliber shell casing that you
12 collected at that scene?

13 A Yes, sir.

14 Q Thank you very much.

15 MR. YOUNG: State offers State's Exhibit Number
16 19, Your Honor.

17 THE COURT: Mr. Williams.

18 MR. WILLIAMS: No objection, Your Honor.

19]THE COURT: State's 19 is in evidence without
20 objection.

21 (State's Exhibit Number 19, shell casing,
22 admitted into evidence.)

23 MR. YOUNG: Thank you, Your Honor. This might
24 be the best time.

25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen of the jury, I believe we'll take us a
2 morning recess of about 15 minutes. I would ask you
3 to please take your notes and pads and then lay them
4 upside down on your -- that's fine there also, Mr.
5 Juror, on that table. But if you lay them on your
6 seat, turn them upside down.

7 Please remember my instructions to you. Do not
8 discuss this case with anyone including your fellow
9 jurors during this brief recess. Take about a
10 15-minute recess. Thank you very much. You may now
11 go with your bailiff.

12 (The jury retires to the jury room.)

13 **THE COURT:** All right. As to the objections to
14 State's 2 and 3, the diagrams not to scale, they're
15 clearly marked both not to scale. Under State
16 versus Brown, 697 S.E.2d 622, State versus Rye,
17 R-y-e, 651 S.E.2d 321, reading specifically from
18 Brown, the State acknowledges that the diagrams are
19 not to scale.

20 It's my understanding from Captain Doran's
21 testimony that they're fair and accurate depictions
22 of the area off of Community Road enlarged from
23 State's Exhibit Number 4, I believe. And then --
24 that's not correct -- that you start with State's
25 Number 2, the large area, then you go to State's 3,

1 the diagram of the crime scene with an aerial, and
2 then State's Number 4 of an even more enlarged area
3 of where they found these items, the blue jeans and
4 various other objects. His testimony is they're
5 fair and accurate representations not to scale.

6 I find in my discretion they are admissible.
7 They're not misleading. They help explain the
8 testimony of the officer in that regard.

9 All right. Thank you very much, Mr. Doran.
10 You may certainly step down, refresh yourself. You
11 may not discuss your testimony during this brief
12 recess.

13 We'll be in recess 15 minutes.

14 (Brief Recess.)

15 **THE COURT:** All right. Anything from the State
16 before we bring in our jury?

17 **MR. YOUNG:** No, sir.

18 **OFFICER:** They're still waiting on two jurors,
19 Judge.

20 **THE COURT:** What do you mean we're still
21 waiting? They weren't supposed to go anywhere.

22 (Whereupon, a brief conversation was held
23 off the record.)

24 **THE COURT:** All right. Well, let me know if
25 they go next time because nobody informed me.

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1 (Pause.)

2 **BAILIFF:** They're ready now.

3 **THE COURT:** All right. Bring us our jury,
4 please.

5 (The jury returns to the courtroom.)

6 **THE COURT:** All right. Our jury is present in
7 the courtroom. Our witness has returned, Officer
8 Doran.

9 Solicitor, you may proceed.

10 **MR. YOUNG:** Thank you, Your Honor.

11 BY MR. YOUNG:

12 **Q** Lieutenant Doran, subsequent to your
13 investigation in the immediate ground area where you
14 located these bones and the other evidence you
15 collected, did you participate in an aerial survey
16 of this area?

17 **A** Yes, sir, I did.

18 **Q** And were you present when the photographs were
19 taken from the various angles of approach in this
20 area around where the crime scene was located?

21 **A** Yes, sir, I was.

22 **Q** Would you be able to recognize photographs that
23 were taken from those aerial approaches?

24 **A** Yes, sir.

25 **Q** All right, sir. I'm going to ask you first if

1 you can identify State's Exhibits 11, 12, 13 -- I'm
2 sorry, let me put my glasses on -- 11, 12, 13, 14
3 and, I think, 15 and 16. Would you please look at
4 those and tell me, individually, can you identify
5 each one of those individual photographs?

6 **A** Yes, sir, I'm familiar with those.

7 **Q** What are those photographs?

8 **A** State's Exhibit 11 --

9 **Q** Well, just a moment. Just tell me just
10 generically what all of them are.

11 **A** They're aerial shots of the actual Highway 25,
12 Community Road, Lakeview, Lakeview Extension area.

13 **Q** Are those the photographs that were taken
14 during the aerial survey?

15 **A** Yes, sir.

16 **Q** Do they fairly and accurately represent aerial
17 photographs of the area of the crime scene and the
18 approach to the crime scene?

19 **A** Yes, sir.

20 **MR. YOUNG:** Have you seen these, sir?

21 **MR. WILLIAMS:** Yes, sir. No object --

22 **MR. YOUNG:** The State would offer these
23 exhibits into evidence, Your Honor.

24 **THE COURT:** Without objection, Mr. Williams?

25 **MR. WILLIAMS:** Yes, Your Honor, without

1 objection.

2 THE COURT: All right. State's 11, 12, 13, 14,
3 15 and 16 is in evidence without objection.

4 MR. YOUNG: All right, sir. Thank you.

5 (State's Exhibit Numbers 11 through 16,
6 photographs, admitted into evidence.)

7 BY MR. YOUNG:

8 Q Now, if you could, sir, I am going to hold up
9 State's Exhibit Number 11 and I'm going to -- you
10 tell me how to orient this photograph in relation to
11 State's Exhibit Number 3, okay, so that when I hold
12 them up, the jury will be able to understand how
13 this relates to that photograph.

14 A Okay.

15 Q This is State's Exhibit Number 11 now. How do
16 I orient it in relation to 25?

17 A You need to turn it to -- there you go.

18 Q About like that?

19 A No.

20 Q In relation to that diagram now.

21 A Yes, sir.

22 Q About like that (indicating)?

23 A Right. Uh-huh.

24 Q All right. So if I held it up here, this would
25 be the correct orientation?

1 A Yes, sir.

2 Q All right. State's Exhibit Number 11. Can you
3 point out here any of the -- for instance, is this
4 building, which appears to be a blue roof building
5 on the State diagram number 3, is that apparent in
6 any way on State's Exhibit Number 11?

7 A Yes, sir.

8 Q Where is it?

9 A I can't -- you got a glare in the picture.

10 Q I'm sorry. How about that?

11 A Right here (indicating).

12 Q All right. Right there, okay. And so then the
13 sweep would then be of the road behind it and what
14 road would that be?

15 A That would be Community Road right in this
16 area.

17 Q All right. This is State's Exhibit Number 12.
18 And just generically what is that here? And this
19 appears to be a trailer, what is that?

20 A That's the residence of Grover Dais of
21

22 Q All right. In relation to this then, how would
23 this appear? How should I orient it?

24 A Just like it is.

25 Q Okay. All right, sir. And so, therefore, in

1 this orientation, where would this representation of
2 a trailer be on State's Exhibit Number 3?

3 **A** It would be in this area right here, just come
4 on down Community Road past Lakeview and be this
5 residence right here on your left.

6 **Q** All right. Now, can you describe there's -- in
7 the diagram, it indicates there was a leg bone and a
8 skull found. Can you -- are those apparent in the
9 locations on State's Exhibit 12?

10 **A** Yes, sir.

11 **Q** Where would they be?

12 **A** On this photo?

13 **Q** Yes, sir.

14 **A** The skull would have been located out in this
15 area. The leg bone would have been located in that
16 area.

17 **Q** Okay. And that appears to be another home or a
18 dwelling over there.

19 **A** Address of 253.

20 **Q** Okay. This is State's Exhibit Number 13. Sir,
21 generically, what does this describe?

22 **A** It describes the Lakeview Extension area, two
23 hayfields, also the residence of Mr. Dais at 252 --

24 **THE COURT:** Keep your voice up a little bit for
25 me.

1 BY MR. YOUNG:

2 Q Yes, sir, you're going to have to speak up so
3 this jury can hear you. Repeat that, please.

4 A Lakeview Extension, the two hayfields and
5 Grover Dais' residence.

6 Q All right. Sir, if I am to orient this, what
7 appears to be two hayfields in this picture, how
8 would I orient it to relate correctly to State's
9 Exhibit Number 3? How would I turn it?

10 A It will be a slight angle to your right.

11 Q Like this (indicating)?

12 A Yes, sir.

13 Q All right. So holding this up then would you
14 depict on this diagram, State's Exhibit 3, where
15 these two fields are represented in State's Exhibit
16 13, the photograph?

17 A Yes, sir.

18 Q Where are they?

19 A This area right here, this would be the first
20 hayfield, and the second hayfield (indicating).

21 Q Okay. Now, I noticed down in the foreground of
22 State's Exhibit 13, there appears to be some form of
23 dwelling, some form of dwelling. What is that?

24 A It's a mobile home.

25 Q There's a mobile home? And where does this --

1 where would this -- if I was to depict this mobile
2 home, would it be apparent anywhere on State's
3 Exhibit 3?

4 **A** Yes, sir. If you -- like I say, if you
5 continued on in to Lakeview Extension, you follow
6 Lakeview Extension until you come to this mobile
7 home just past the hayfield on the right.

8 **Q** This block here referred to as a trailer?

9 **A** Yes, sir.

10 **Q** Thank you. All right. State's Exhibit 13.

11 State's Exhibit 14. Sir, now, once again, what
12 is this?

13 **A** This is an aerial shot of the Lakeview
14 Extension area, both hayfields and the mobile home I
15 was talking about.

16 **Q** Are the entrances to these hayfields anywhere
17 depicted on this photograph?

18 **A** Yes, sir, they are.

19 **Q** Where are they? Show me where they are on this
20 photograph.

21 **A** Right here (indicating).

22 **Q** Would you show the jury what you just pointed
23 out? Where are these entrances in -- by the way,
24 where are the entrances on State's Exhibit 3?

25 **A** They would be in this Lakeview Extension here

1 of the first -- the first opening to the right would
2 be right here.

3 Q So would this be the correct orientation then?

4 A Yes, sir.

5 Q Would you please point out where these
6 entrances are on State's Exhibit 14, the photograph?
7 I'm sorry. I twisted it. I apologize. Where on
8 here? Point on this.

9 A The first one would be right in this area and
10 the second one would be in this area right in here
11 (indicating).

12 Q Okay. All right. Now, this is State's Exhibit
13 15. What area is this depicted on the diagram of
14 State's 3?

15 A It's an aerial shot of the second hayfield of
16 the wooded area where the crime scene was and a
17 picture of the residence of

18 Q Grover Dais' house?

19 A Yes, sir.

20 Q All right. Is the area of the gate anywhere on
21 this photograph, area of the gate?

22 A Yes, sir.

23 Q Where is it right on there?

24 A (Indicating).

25 Q I'm going to put it up here and I want you to,

1 if you don't mind -- can you see that from where
2 you're located?

3 A Yes, sir.

4 Q Actually, you can step down here.

5 A I'm fine.

6 Q Can you show the gate on 15 and the gate on 3,
7 where the gate would have been located?

8 A The gate would have been in this area right in
9 here (indicating).

10 Q And where is the gate on 3?

11 A The gate on which one?

12 Q Number 3, the diagram.

13 A Right in this area.

14 Q Okay. Where is the crime scene area where the
15 skull -- excuse me -- where the pants and darkened
16 area were located?

17 A Located in this area here.

18 Q And Mr. Dais' house?

19 A Right there.

20 Q All right. Now, let me show you 16. What's
21 that?

22 A This is an aerial shot of Community Road. And
23 it's showing which is Mr. Grover
24 Dais' house and the hayfield and the wooded area
25 behind Mr. Dais' house.

1 Q Mr. Dais' house is in the background in 15. Is
2 it more to the background or the foreground in 16?
3 A Excuse me?
4 Q Is it more to the foreground or the background?
5 A It's the background.
6 Q All right. Well, where is the gate in relation
7 to this?
8 A It will be in this area right here.
9 Q Let me put this up here and you point out both
10 on this -- point out those two items, Mr. Dais'
11 house and the hayfield, that you referred to and the
12 gate.
13 A Mr. Dais' house would be right here and
14 Community Road here. And Mr. Dais' house is in this
15 location. The gate would have been in this area
16 right in here (indicating):
17 Q So if I was to orient this in relation to this
18 map, would it be roughly like this (indicating)?
19 A Yes, sir.
20 Q So you're looking from the opposite view from
21 the previous Number 15?
22 A Yes, sir.
23 Q All right. Thank you, sir. All right. Now,
24 I'd like to go back to the dates involved for just a
25 moment.

1 **MR. YOUNG:** Your Honor, I've had this calendar
2 created of the months of September, October,
3 November, December and January, from September of
4 2001 to January 2002. I would ask the Court to take
5 judicial notice of the calendar for that time period
6 and ask if there's any objection to this diagram.

7 **MR. WILLIAMS:** There's no objection, Your
8 Honor.

9 **THE COURT:** Are you going to offer it in
10 evidence?

11 **MR. YOUNG:** Yes, sir. I'm going to offer this
12 as State's Exhibit Number 1.

13 **THE COURT:** All right. State's 1 is in
14 evidence without objection.

15 (State's Exhibit Number 1, calendars,
16 admitted into evidence.)

17 BY MR. YOUNG:

18 **Q** All right. Using the now blank sort of map of
19 the time, that calendar, what day was Labor Day on?

20 **A** November 3rd.

21 **Q** November?

22 **A** September 3rd. I'm sorry.

23 **Q** September, okay. All right. Let's put that up
24 here, Labor Day. That would be Labor Day.

25 Now, at some point in time, you indicated to me

1 that you started a search at Mr. Dais' house on

2 What day was that that you began

3 the search?

4 **A** November the 19th.

5 **Q** Okay. And that would have been Monday,

6 November 19th. And what did you discover that day?

7 **A** Skull, leg bone.

8 **Q** All right. So we have the skull and the leg

9 bone on this day. And y'all kept searching. I

10 believe you testified earlier you went on the other

11 side of the road and found the leg bone?

12 **A** Yes, sir.

13 **Q** And you kept searching. What happened on the

14 20th?

15 **A** The 20th, we located an actual crime scene

16 where the blue jean pants and bones were --

17 **Q** So you get blue jeans. You get -- what else do

18 you get out of the blue jeans?

19 **A** Bi-Lo and Kroger bonus card, two keys, a Monte

20 Carlo car ring emblem.

21 **Q** I'm going to put Bi-Lo and key chain; is that

22 fair?

23 **A** Yes, sir.

24 **Q** And dollar bill?

25 **A** Dollar bill.

1 Q What about --

2 A Shell casing.

3 Q Okay. So we got a shell casing. So you get
4 more bones and you collect all those bones up. And
5 I think you said you testified earlier you took them
6 to Newberry?

7 A Yes, sir.

8 Q Now, when did you go to Newberry with that?

9 A On November 21st.

10 Q So the next day you go to Newberry. What's the
11 purpose of going to Newberry?

12 A To do an autopsy.

13 Q All right. So you begin that autopsy. Now,
14 you began that autopsy. At some point you had to go
15 make a decision as to who this was. And you had
16 that Bi-Lo key where you -- did you make an effort
17 to try to trace this Bi-Lo key in any way?

18 A I did.

19 Q And based on the information you collected off
20 of that Bi-Lo key, were you able to make an
21 identification of any kind?

22 A Yes, sir.

23 Q Like what kind of identification?

24 A The information that I received from the card
25 was the last name Sturrrup.

1 Q And what did you do with that kind of
2 information? What did you do with it?

3 A I first contacted Aiken County Sheriff's Office
4 to see if they had anybody missing by the last name
5 of Sturup. They did not. I contacted Richmond
6 County Sheriff's Office and asked them did they have
7 anybody by the last name of Sturup missing. And
8 they confirmed that they did have a 16-year-old male
9 by the name of Samuel Sturup that was reported
10 missing from their jurisdiction.

11 Q Did they give you an address to go to?

12 A Yes, sir.

13 Q Who lived at that address?

14 A Samuel Sturup's mother, Shirley Sturup.

15 Q Based on that collection of information, did
16 you go see her?

17 A Yes, sir, I did.

18 Q What day did you go see her?

19 A November the 23rd.

20 Q What's the address in Augusta you went to?

21 A 2613 Dublin Drive, Augusta, Georgia.

22 Q I'm going put down tell Ms. Sturup, okay?

23 A Yes, sir.

24 Q All right. So you went and told her. Now, at
25 this point, you're doing -- you're doing in an

- 1 effort to try to figure out what happened in
2 conjunction with other authorities, correct?
- 3 A Yes, sir.
- 4 Q Who are those other authorities?
- 5 A Richmond County Sheriff's Office.
- 6 Q All right. And they had begun their
7 investigation, too?
- 8 A Yes, sir.
- 9 Q All right. So, at this point, both of y'all
10 are running an investigation?
- 11 A That's correct.
- 12 Q At some point did they make an arrest of
13 anyone?
- 14 A Yes, sir.
- 15 Q Who did they arrest?
- 16 A They arrested Steven Lewis Barnes, Charlene
17 Thatcher and a Kesha Burton, I believe, was, at that
18 point, on --
- 19 Q Do you know -- do you know when they arrested
20 Steven Lewis Barnes?
- 21 A They actually done a search warrant on his
22 residence on January the 17th.
- 23 Q But when did they arrest him?
- 24 A On the 17th.
- 25 Q Okay. Now, let me go back up here to the

1 November timeframe. You had certain information and
2 you were developing other information throughout
3 this time; is that correct?

4 A Yes, sir.

5 Q Did you make an effort to ever go back to that
6 crime scene or ask anybody to assist you going back
7 to that crime scene?

8 A Yes, sir.

9 Q Who?

10 A I'd been talking to Investigator Richard
11 Roundtree that was over in Augusta, Georgia. He had
12 relayed that, through his investigation, had relayed
13 information to me that Charlene Thatcher --

14 MR. WILLIAMS: Objection.

15 BY MR. YOUNG:

16 Q Okay. Here's what I wanted to ask you: Did
17 you ask any agency to assist you in going back to
18 that crime scene and conduct further investigation?
19 Who did you ask?

20 A Yes, sir.

21 Q Who?

22 A Like I said before, Richmond County Sheriff's
23 Office and the State Law Enforcement Division out of
24 Columbia, which is known as SLED.

25 Q Yes, sir. And they -- when did they go back to

1 the crime scene?

2 A January the 23rd.

3 Q January the 23rd.

4 A Let me make sure that's correct. (Pause.)

5 Yes, sir, January the 23rd.

6 Q Okay. So this is -- can I put down SLED crime

7 scene?

8 A Yes, sir.

9 Q Who came out there?

10 A Steven Curtis from SLED was there, Agent Mike

11 Perry, which was the investigator that was working

12 with me on the case.

13 Q At any time now -- now, you had this .40

14 caliber shell casing, correct?

15 A Yes, sir.

16 Q At any time during the SLED crime scene

17 investigation, were any kind of other firearms

18 evidence collected at that crime scene?

19 A Yes, sir, there were.

20 Q What was collected?

21 A There was two bullets that were located.

22 Q Were you present when they were located?

23 A Yes, sir.

24 Q Did you see them recovered?

25 A Yes, sir.

1 Q Where were they recovered from?

2 A They were recovered from the stained area that
3 I had talked about earlier.

4 Q Does this State's Exhibit 10 bear any relation
5 to that description you just gave us, the location
6 of the area where they were recovered?

7 A Yes, sir, it does.

8 Q How does it relate?

9 A This is the actual stain area where we had
10 located the -- some more teeth and some bones
11 scattered out in that area.

12 Q Well, were they recovered from the darkened
13 area or were they --

14 A Darkened area, yes, sir.

15 Q Okay. So they were actually recovered from it?

16 A Right.

17 Q Did he have -- how did he do that? Did you
18 watch him do that?

19 A Yes, sir. They brought in a metal detector and
20 used it over this darkened area.

21 Q Okay. Were they laying on the ground?

22 A Well, they --

23 Q The bullets laying on the ground?

24 A No, sir. They had got a detection from the
25 metal detector and they started digging in this

1 darkened area.

2 Q So they recovered it from the ground?

3 A Yes, sir.

4 Q Inside the ground?

5 A Right.

6 Q All right. And did those bullets -- or, excuse
7 me -- projectiles ever come back to you?

8 A Yes, sir.

9 Q Do you have them in your possession?

10 A Yes, sir.

11 Q Did you see them recovered at the scene?

12 A Yes, sir.

13 Q Where are these bullets, these projectiles?

14 A I have them right here.

15 (State's Exhibit Numbers 23 and 27,
16 projectiles, marked for identification purposes.)

17 Q All right, sir. Now, you had information then
18 at that point that perhaps other weapons were
19 involved?

20 A I did.

21 Q All right. If other weapons were involved,
22 what efforts did you try to make to try to find the
23 weapons?

24 A We actually went over -- we had information
25 that the -- possibility there were some weapons that

1 were dropped off over a couple of bridges.

2 Q Dropped off, what do you mean by dropped off?

3 A They were thrown over the bridge.

4 Q Thrown over?

5 A Yes, sir.

6 Q Thrown over the bridge what area?

7 A The information we had was I-20 bridge going
8 back into Augusta, Georgia. Also, had information
9 that there's a possibility that they could have been
10 thrown on the Fifth Street on the Gordon Highway
11 Bridge.

12 Q Okay. This is the Savannah River area you're
13 describing?

14 A Yes, sir.

15 Q All right. And did you make any effort to try
16 to conduct any search of those areas around those
17 bridges?

18 A Yes, sir.

19 Q All right. How did you do that?

20 A Myself and Agent Perry with SLED we called in
21 the South Carolina DNR. They have a dive team
22 that's stationed out of Spartanburg, I believe, and
23 they came in and searched the area for us.

24 Q And they searched what area?

25 A The first area we searched was the Fifth Street

1 Bridge and the Gordon Highway Bridge.

2 Q Fifth Street and Gordon Highway?

3 A That's right.

4 Q All right. And so they went to the Fifth
5 Street and Gordon Highway area. And did they go
6 into the water underneath this bridge?

7 A Yes, sir.

8 Q On both bridges?

9 A Yes, sir.

10 Q Were they able to recover any firearms from
11 either of those locations?

12 A No, sir.

13 Q At this point and at any point in your
14 investigation, did you recover a firearm that you
15 were able, in your investigation, to recover a
16 firearm for comparison analysis?

17 A No, sir, I did not.

18 Q You had no firearms to compare what you
19 retained at the scene either from the .40 caliber or
20 what was obtained by SLED?

21 A No, sir.

22 Q Did you request a ballistics analysis?

23 A No, sir. We sent everything in, but -- we did
24 request it, but SLED couldn't do anything with it
25 because no weapons were found at the crime scene.

1 Q Okay. Do you know roughly when they did this
2 underwater search?

3 A It was late January.

4 Q Some time in late January. Would it have been
5 after the crime scene?

6 A Yes, it was after the 23rd.

7 Q So I'm going to write through here underwater
8 search somewhere in here. I'm just going to -- I'm
9 going to put it over several days. You don't know
10 exactly when, do you?

11 A No, sir, not exactly.

12 Q But it just happened during the latter part?

13 A Yes, sir.

14 Q Underwater search. I'm terrible at writing.

15 All right. Now, let me ask you another
16 question. With regard to this crime scene on the
17 23rd and the further search, did you ever take any
18 people that were arrested out to that scene?

19 A Yes, sir.

20 Q Who?

21 A Charlene Thatcher.

22 Q When did you take her out there?

23 A It was on the 23rd, January the 23rd of 2002,
24 around three o'clock in the afternoon.

25 Q And when you took her out to that area, how did

1 you go?

2 **A** I actually met Investigator Roundtree and
3 Investigator Karl, which is a female investigator,
4 from Richmond -- both of them was from Richmond
5 County Sheriff's Office and they had Ms. Charlene
6 Thatcher in their vehicle with them and we met at
7 Community Road and Highway 25.

8 **Q** Okay. At this point then you have the results
9 of the autopsy, you have information about keys and
10 a dollar bill. Did you show these keys and dollar
11 bill to anyone?

12 **A** Yes, sir, I did.

13 **Q** Who did you show them to?

14 **A** Ms. Sturup.

15 **Q** Was she able to recognize them?

16 **A** Yes, sir, she did.

17 **Q** And you had all that information. And then in
18 January some time, did you make an arrest of Julio
19 and Alex Hunsberger?

20 **A** Yes, sir, I did.

21 **Q** Roughly, when did you arrest them?

22 **A** The Defendant here, Julio Hunsberger, was
23 located at his residence at
24 which is in Edgefield County.

25 **Q** How far away is it in these diagrams?

1 **A** Probably a couple hundred yards.

2 **Q** From where? Let me go back to the big map. Is
3 it on State's Exhibit Number 2? Would it be
4 generally available in terms of the area? Could you
5 see it on there?

6 **A** Yes, sir. The best way I can describe it is
7 you're coming down Highway 25 coming through the
8 Bettis Academy intersection. And once you come down
9 25, as soon as you get on the four lane, the first
10 intersection you come to on the -- would be in the
11 left area here (indicating), that's actually Mt.
12 Zion Road. You follow Mt. Zion down maybe a quarter
13 of a mile or so and it takes -- takes a right-hand
14 turn, which is called Sandy Springs Road.

15 **Q** All right. Where is Sandy Springs Road in
16 relation to that red line, which you told us before
17 is Community Road, where is it? The residence,
18 where is it?

19 **A** It would be over in this area (indicating).

20 **Q** Okay. Is it on this smaller map here on
21 State's 3? Can you see it on that or is it off the
22 map?

23 **A** That residence would have been located back in
24 over in this area (indicating).

25 **Q** Okay. That's fine. Would you say about 200

1 yards?

2 A Yes, sir.

3 Q From the edge of that field there?

4 A Yes, sir.

5 MR. YOUNG: Mr. Williams, may have some
6 questions for you, please answer them.

7 THE COURT: Thank you, Solicitor.
8 Mr. Williams.

9 MR. WILLIAMS: Please the Court.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q Investigator Doran, you indicated earlier that
13 there were a number of opportunities to go back to
14 the crime scene; is that right?

15 A Yes, sir.

16 Q Okay. Would you tell me for the benefit of the
17 ladies and gentlemen of the jury the amount of times
18 that law enforcement went to the crime scene, okay,
19 including the first discovery?

20 A Four times.

21 Q Okay. And was it the fourth and final time
22 that you met with the folks from Georgia in which
23 Charlene Thatcher was present?

24 A Yes, sir.

25 Q Okay. And that was January the 23rd of 2002?

1 A Yes, sir.

2 Q Okay. Prior thereto you had been communicating
3 with the people in Georgia quite a bit, hadn't you?

4 A Yes, sir.

5 Q Okay. The purpose for that communication was
6 to try and locate a suspect; is that right?

7 A That's correct.

8 Q Okay. And during that time, you discovered
9 that there was a person of interest by the name of
10 Carlos Gomez, did you not?

11 A Yes, sir.

12 Q Okay. And did you figure out or locate Carlos
13 Gomez?

14 A Yes, sir, I did.

15 Q Okay. And where was he from?

16 A He was from the Augusta area.

17 Q Okay. And for the benefit of myself and the
18 ladies and gentlemen of the jury, what was his
19 heritage?

20 A He was a Mexican.

21 Q Mexican. So he was a person of Hispanic
22 dissent?

23 A Yes, sir.

24 Q Okay. All right. And did you discover whether
25 or not he was an associate of one Steven Lewis

1 Barnes?

2 A No, sir, I didn't know that.

3 Q You never knew that?

4 A No, sir.

5 Q Okay. And let me ask you this: The body or
6 the skeletal remains that were discovered here in
7 Edgefield County were on the property of whom?

8 A I was first -- I was first informed that it was
9 Henry Hunsberger, but I later found out that the
10 property owner was a Gerald Richardson.

11 Q And you indicated that you believed my client
12 to live at here in Edgefield
13 County?

14 A That's where he was arrested at, yes, sir.

15 Q All right. Now, did there come a point in time
16 in which you believed that there was a vehicle in
17 which was associated or would have been associated
18 with my client?

19 A Yes, sir.

20 Q Okay. Was it more than one vehicle that you
21 believe that could have been associated with my
22 client and perhaps with this crime?

23 A One vehicle.

24 Q Just one?

25 A Yes, sir.

1 Q Okay. You certain it wasn't two?

2 A Associated with --

3 Q I mean, that you believed to be associated
4 perhaps with this particular crime?

5 A Oh, two, two with the crime, yes, sir.

6 Q Okay. All right. And I want to ask you, if
7 you would, do you recall assisting Agent Perry at
8 all with regard to trying to locate the vehicles you
9 believed to be associated with this crime?

10 A Agent Perry actually done that on his own.

11 Q He did it on his own?

12 A Yes, sir.

13 Q Did you become aware of it based on his written
14 reports?

15 A Yes, sir.

16 Q And you -- those were shared with you in your
17 investigation too, weren't they?

18 A That's correct.

19 Q Okay. And I want to ask you, was there not a
20 Buick Skylark that was associated or that you
21 believed to be associated perhaps with the crime for
22 which we're in trial today?

23 A That was a light gray, silver, 1990 Buick that
24 was associated with the defendant here.

25 Q Okay. And it was a Skylark?

1 **A** I'm not sure if it was a Skylark or not.

2 **Q** Okay. Well, let me ask you this: Do you have
3 any information in your file that would assist you
4 in informing us as to what the actual make of that
5 car was?

6 **A** The only information I have here is the
7 statement that Agent Perry had taken from the
8 defendant's brother, Joseph Hunsberger, that
9 mentioned a light-colored Buick.

10 **Q** Okay. And you don't know the make and model of
11 that particular Buick?

12 **A** It's got on the statement that it was a 1990
13 Buick LeSabre.

14 **Q** Okay. All right. Now, did you discover that
15 there was another make and model Buick that you
16 believe to be associated with my client?

17 **A** There was another vehicle mentioned, but never
18 was located.

19 **Q** Okay. Now, were there not two searches of two
20 different vehicles?

21 **A** The only search that I was involved in was this
22 light-colored Buick.

23 **Q** And you actually discovered that it didn't
24 belong to my client, did you not?

25 **A** No, sir.

1 Q You never discovered it did not belong to my
2 client?

3 A What I discovered was it belonged to Henry
4 Hunsberger, but your client drove the vehicle at
5 certain times.

6 Q Okay. And so Henry Hunsberger was the owner of
7 the vehicle?

8 A Yes, sir.

9 Q And at the time that it was actually discovered
10 for the purpose of search, who was the owner of the
11 vehicle?

12 A Actually, Horace Griffin had took possession of
13 it and he had told Agent Perry that Mr. Hunsberger
14 had turned the car back in because he was unable to
15 pay for it.

16 Q Okay. So Mr. Griffin basically gave you
17 consent to search the vehicle, did he not -- or not
18 you, but law enforcement?

19 A Yes, sir.

20 Q And the vehicle was searched?

21 A Yes, sir.

22 Q Okay. The trunk of the vehicle was searched?

23 A Yes, sir.

24 Q It was searched thoroughly, wasn't it?

25 A Yes, sir.

1 Q Okay. Was there any evidence gleaned from that
2 vehicle that would have been associated with a
3 trauma, blood or anything of that nature, any kind
4 of fiber or hair evidence discovered in the trunk of
5 that vehicle?

6 A No, sir.

7 Q Okay. Now, you're not aware of a prime or a
8 prime gray Buick vehicle?

9 A No, sir.

10 Q Not aware of a second vehicle that may have
11 possibly been associated with my client or this
12 crime?

13 A No, sir.

14 Q And you weren't involved in that?

15 A No, sir.

16 Q And even if you were, there was no evidence of
17 a vehicle I'm describing that would have been
18 connected to this crime scene in any way with any
19 kind of fiber, hair or blood evidence; is that
20 right?

21 A That's right.

22 Q The information you got regarding a Julio came
23 from the State of Georgia in their investigation,
24 did it not?

25 A That's right.

1 Q Okay. Nothing on your side of the
2 investigation gleaned the information of a Julio,
3 did it?

4 A No, sir.

5 Q Mr. Roundtree, did he share his information
6 with you regarding how he gleaned that information
7 regarding a Julio?

8 A He had --

9 Q I want to make sure you answer my question as I
10 ask it, okay. Did he share the information as to
11 how he gleaned the name Julio? Did he share that
12 with you?

13 A Yes, sir.

14 Q He did?

15 A Yes, sir.

16 Q Okay. Now, you're a fairly seasoned
17 investigator here in Edgefield. You've been working
18 here for 21 years?

19 A Yes, sir.

20 Q Okay. Now, Joseph or Jose Hunsberger, you know
21 him, don't you?

22 A Yes, sir.

23 Q Okay. He was employed by the sheriff, was he
24 not?

25 A Yes, sir. He was a jailer.

1 Q A jailer, okay. All right. And I want to turn
2 your attention to the item that you talked about
3 moments ago in which Joseph Hunsberger indicated to
4 you that his father had owned a 1990 Buick LeSabre;
5 is that right?

6 A Yes, sir.

7 Q And he gave you that information without any
8 hesitation, did he not?

9 A Yes, sir. He actually gave that information to
10 Agent Perry, not me.

11 Q Okay. Was he reluctant to share any
12 information as you know of?

13 A No, sir.

14 Q Okay.

15 **MR. YOUNG:** Your Honor, I'm going to object to
16 that. How can he know what another person said?
17 There's no foundation for him to even be able to
18 answer that question.

19 **THE COURT:** It's hearsay. Sustained.

20 **BY MR. WILLIAMS:**

21 Q Let me ask you this: Did Jose Hunsberger share
22 certain information with you in your investigation?

23 A Yes, sir.

24 Q All right. Did he not indicate to you that if
25 you wanted to get in touch with his brothers, he'd

1 be more than happy to get them in touch with you?

2 MR. YOUNG: Your Honor, I'm going to object to
3 this. This is really getting far-field in hearsay.

4 THE COURT: It is hearsay. Sustained.

5 BY MR. WILLIAMS:

6 Q You were cooperated with by my client, were you
7 not? He turned himself in to you?

8 A No, sir, he did not turn himself in.

9 Q He didn't appear at the Edgefield County Law
10 Enforcement -- or Detention Center of his own free
11 will?

12 A He sure didn't.

13 Q Okay. Tell me how did he get there.

14 A We had met with Richmond County earlier on the
15 22nd of January. Investigator Roundtree advised me
16 that he was in the process of getting a warrant for
17 Mr. Julio Hunsberger's arrest for kidnapping and
18 aggravated assault. So I advised him once he got
19 the warrant and was able to enter it into NCIC,
20 which is the national crime computer database is
21 when wanted people get put into it, that gives other
22 states the authority to make the arrest of a certain
23 individual, I think it was around 12:30 that same
24 day I received a call from Richard Roundtree stating
25 that he did have warrants on Julio Hunsberger and I

1 advised him at that time we'd make an attempt to
2 take him into custody.

3 **Q** All right. And did y'all go to his home to get
4 him?

5 **A** Yes, sir. We went to
6 around four o'clock that same day on the 22nd.

7 **Q** And he came with you voluntarily, didn't he?

8 **A** He was placed under arrest.

9 **Q** I understand, but you didn't have any problems
10 with him?

11 **A** No, he didn't give us any problems.

12 **Q** He didn't resist you?

13 **A** No, sir.

14 **MR. WILLIAMS:** I don't think I have any other
15 questions. I would ask the Court to indulge me for
16 just a moment.

17 **THE COURT:** Yes, sir, Mr. Williams.

18 (Pause.)

19 **MR. WILLIAMS:** Just real quick, Your Honor.

20 **THE COURT:** Certainly. You take all the time
21 you need, Mr. Williams.

22 **MR. WILLIAMS:** Your Honor, I apologize.

23 **THE COURT:** No, sir, you go right ahead.

24 **BY MR. WILLIAMS:**

25 **Q** Investigator Doran, prior to my client's

1 arrest, he actually appeared to the Edgefield County
2 Detention Center voluntarily about on January the
3 21st in which you interviewed him for about an hour
4 and a half; isn't that true?

5 **A** Not to my knowledge.

6 **Q** Not to your knowledge?

7 **A** No, sir.

8 **Q** You don't recall a conversation that you had
9 with him regarding a scar -- him possibly being Scar
10 Face?

11 **A** No, sir. The name Scar Face came up from some
12 other information that I received.

13 **Q** And let me ask you this: Was it November 23rd
14 of 2001 that he actually appeared to you
15 voluntarily, prior to his arrest?

16 **A** To my knowledge, he didn't volunteer to come in
17 at all. The only time that I've talked to him was
18 on the afternoon of January the 22nd.

19 **Q** Never in November of 2000 -- in the previous
20 year, 2001, that he -- he never come up there to
21 talk to you?

22 **A** Not to my knowledge.

23 **Q** And you don't have anything in your reports
24 that would assist you in that regard?

25 **A** No, sir. Like I say, if he would have -- if he

1 would have came any other time, I would have had
2 Miranda waivers because I would have definitely put
3 him under Miranda warnings before I actually talked
4 to him. And in my file, I only have one Miranda
5 that was done on the 22nd, which he -- after that
6 Miranda was filled out, he refused to answer any
7 questions and he never was questioned any further
8 about the incident from me.

9 Q Okay. In November, he wouldn't have been a
10 suspect anyway, would he?

11 A In November?

12 Q Of 2001?

13 A No, sir.

14 Q Okay. And his brother worked at the sheriff's
15 office?

16 A Yes, sir.

17 MR. WILLIAMS: Thank you.

18 THE COURT: Thank you, Mr. Williams.

19 Redirect, Solicitor.

20 MR. YOUNG: One moment, Your Honor.

21 THE COURT: Certainly.

22 (Pause.)

23 MR. YOUNG: The State has no further questions,
24 Your Honor.

25 THE COURT: All right. Thank you very much,

1 Lieutenant Doran. You may step down.

2 All right. Solicitor, you may call your next
3 witness.

4 **MR. MAYE:** The State would call Richard Cave.

5 **THE COURT:** All right. Richard Cave.

6 (Pause.)

7 RICHARD CAVE,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** Have a seat. State your full name
10 and spell your last name, please.

11 **THE WITNESS:** Richard Cave, C-a-v-e.

12 DIRECT EXAMINATION

13 BY MR. MAYE:

14 **Q** Mr. Cave, tell the ladies and gentlemen of the
15 jury where you're from. Where did you grow up?

16 **A** Augusta, Georgia.

17 **Q** Who were your family members over there? Who
18 were you living with back in 2001? Tell the ladies
19 and gentlemen of the jury where you resided, who you
20 were living with at that time?

21 **A** My mother, my stepdaddy, a sister and two
22 brothers.

23 **Q** Okay. Up until that point in time in 2001,
24 prior to Labor Day of 2001, had you lived with them
25 all your life there over in Augusta?

- 1 **A** Yes, sir.
- 2 **Q** Okay. What were you doing on a day-to-day
- 3 basis?
- 4 **A** Going to school and working.
- 5 **Q** Where were you in school at that time? What
- 6 kind of school was it or what school?
- 7 **A** Lucy Craft Laney High School.
- 8 **Q** So you were at Lucy Laney High School and how
- 9 old were you back then?
- 10 **A** Seventeen, 16.
- 11 **THE COURT:** How old?
- 12 **THE WITNESS:** Sixteen, 17.
- 13 **THE COURT:** Thank you.
- 14 Thank you, Solicitor.
- 15 BY MR. MAYE:
- 16 **Q** Let me ask you this: In conjunction with this
- 17 case, you had a friend that also was involved; is
- 18 that correct?
- 19 **A** Yes, sir..
- 20 **Q** Okay. Who was he?
- 21 **A** Antonio Griffin.
- 22 **Q** Okay. How did y'all know each other? Were
- 23 y'all friends?
- 24 **A** Yes, sir. We was in the band together.
- 25 **Q** What kind of band are you talking about?

1 A Marching band.

2 Q So you two were in the high school marching
3 band together?

4 A Yes, sir.

5 Q And you were in high school at the time?

6 A Yes, sir.

7 Q Had you ever been in any trouble at all in your
8 life up till that point in time?

9 A No, sir.

10 Q Okay. Did there come a time prior to Labor Day
11 of 2001 that you met a man named Steven Lewis
12 Barnes?

13 A I did.

14 Q Tell the ladies and gentlemen of the jury about
15 meeting Steven Lewis Barnes and how you got involved
16 with him.

17 A I went to a friend's birthday party and he was
18 present and I wanted to buy a car from him and
19 that's how we got acquainted.

20 Q What kind of car were you talking to him about
21 that you wanted to buy or purchase?

22 A He had a box Chevy for sell.

23 Q What's a box Chevy?

24 A It was around in the year '82 to like '91.

25 Q What kind of or what brand?

1 A A Caprice.

2 Q Caprice?

3 A Yes, sir.

4 Q So that's a box Chevy?

5 A Yes, sir.

6 Q What's a bubble Chevy?

7 A It's round.

8 Q Okay. Now, what year model do the bubble

9 Chevys start?

10 A Starts around like '91, '92.

11 Q So y'all are talking about Chevrolet Caprices?

12 A Yes, sir.

13 Q The squared off ones and the more rounded ones

14 that occurred in '92 and '93?

15 A Yes, sir.

16 Q All right. So you were interested in that car.

17 What went on between the two of you in regard to any

18 discussions you had about the car and how did you

19 get to know Mr. Barnes? How did that progress?

20 A From there, we started going to clubs together.

21 Q What kind of clubs?

22 A Nightclubs and stuff like that.

23 Q Okay. Well, let me ask you this: What drew

24 you to Steven Barnes? You said that y'all had in

25 common, you wanted this car that he had, this box

1 Chevy. What else drew you to Steven Barnes?

2 A He had females around, money, cars.

3 Q Okay. You're 17 in high school at that time?

4 A Yes, sir.

5 Q And I would assume that's a pretty big priority
6 for you at the time, wasn't it?

7 A At the time, yes.

8 Q All right. Prior to Labor Day of 2001, about
9 how many times did you get together with Steven
10 Barnes?

11 A It was about four times.

12 Q About four times?

13 A Yes, sir.

14 Q Let's talk about Labor Day. Let's talk about
15 September 3rd of 2001. Where did you go that day?
16 What happened?

17 A I got a call from Steven Barnes to meet him at
18 Cherry Street, the green house.

19 Q The green house on Cherry Street?

20 A Yes, sir.

21 Q Let me show you what, at this point in time,
22 has got a mark on it says State's Exhibit 20. Does
23 that fairly and accurately represent the green house
24 place there?

25 A Yes, sir.

1 **MR. MAYE:** I'm going to move to admit this into
2 evidence at this time subject to any objection.

3 **MR. WILLIAMS:** No objection, Your Honor.

4 **THE COURT:** State's 20 is in evidence without
5 objection.

6 (State's Exhibit Number 20, photograph,
7 admitted into evidence.)

8 **BY MR. MAYE:**

9 **Q** So you met him on Cherry Street at the green
10 house?

11 **A** Yes, sir.

12 **Q** When you got to the green house who went with
13 you?

14 **A** Antonio Griffin.

15 **Q** Okay. How did y'all get over to the green
16 house where you were? How -- you said you got a
17 phone call from Barnes?

18 **A** Yes, sir.

19 **Q** How did you get hooked up with Griffin?

20 **A** Griffin was already at my house at that time.

21 **Q** Okay. How did y'all get over there?

22 **A** My stepdad.

23 **Q** Did he take y'all and drop y'all off in that
24 area?

25 **A** Yes, sir.

1 Q Okay. Had Antonio Griffin, during the time,
2 subsequent times that you've been with Barnes after
3 you had met him, had he been hanging out with y'all
4 as well?

5 A Yes, sir.

6 Q Okay. Tell them what happened or what was
7 happening at the green house when you arrived.

8 A When we pulled up, it was an argument going on.

9 Q Who was arguing?

10 A Steven Barnes and Samuel Sturrrup.

11 Q Had you ever seen this individual Samuel
12 Sturrrup before?

13 A No, sir.

14 Q Did you know him or have any connection with
15 him?

16 A No, sir.

17 Q Okay. What was the scope of the argument? I
18 mean, what were they talking about and tell them
19 what was happening?

20 A When I got out the car, I overheard them
21 arguing over some money.

22 Q Okay. What was going back and forth in between
23 them as they were having this argument?

24 A Steven was blaming him about stealing some
25 money and Sam was saying he didn't have the money.

- 1 Q Okay. What was the next thing that happened
2 after they started the argument about money?
- 3 A Steven started beating on him.
- 4 Q How was he beating on him? What happened?
- 5 A Started off with a fist and then he went to a
6 shock absorber.
- 7 Q Shock absorber, okay. I'm going to show you an
8 item marked State's Exhibit 21 at this point in
9 time. Is that consistent with the type of shock
10 absorber that you're talking about that you saw him
11 be struck with?
- 12 A Yes, it is.
- 13 Q Okay. He punched him with his fist, he hit him
14 with a shock absorber. What happened next?
- 15 A Sam was saying he didn't have the money.
- 16 Q What was the next thing that happened in
17 between them?
- 18 A Steven kept asking him, then Sam switched the
19 story up saying he had the money.
- 20 Q He then changed his story and said he had the
21 money?
- 22 A Yes, sir.
- 23 Q Okay. How did he change the story and what did
24 he say in regard to the money?
- 25 A He said his money was at his mother's house

1 behind the toilet in the bathroom.

2 Q Okay. What did Barnes say to him once he told
3 him and changed up the story and said, yes, I have
4 the money and it's behind the toilet at my mother's,
5 what did Barnes say?

6 A He said if he was to go to his mother's house
7 and not find the money, he was going to kill
8 everybody in the house.

9 Q Okay. What did Sam Sturup then say once he
10 was confronted with that, what was the next thing he
11 said?

12 A He changed his story again, he didn't have the
13 money.

14 Q Why did he say that he had admitted that he had
15 the money?

16 A He just wanted him to stop beating him.

17 Q Did he relate that to Barnes at that time?

18 A Yes, sir.

19 Q Okay. What else happened in regard to this
20 dispute over the money? What was the next thing
21 that happened?

22 A Steven Barnes' little brother pulled up.

23 Q What was his name?

24 A I know him by Little Man.

25 Q Okay. They called him Little Man?

1 A Yes, sir.

2 Q Is that William Harris?

3 A Yes, sir.

4 Q Okay. What did everybody call Barnes, Steven

5 Lewis Barnes?

6 A Big Man.

7 Q Big Man, okay. Once Little Man got there, what

8 happened or what took place?

9 A Steven told his little brother about the

10 problem and Little Man pulled the gun out and put it

11 inside of Sam's mouth.

12 Q Okay. What happened next? How did the

13 argument progress? What happened?

14 A It just ended up going back and forth.

15 Q Okay. Anybody else get blamed for it?

16 A Yeah, Charlene Thatcher.

17 Q Okay. What happened once they pulled Charlene

18 in and she got blamed for it, what happened next?

19 A Charlene Thatcher and Samuel Sturup started

20 arguing amongst who had the money.

21 Q What happened after that?

22 A Steven walked off and made a phone call.

23 Q Okay. After he made that telephone call, what

24 happened?

25 A He turned around asking everybody did they know

1 anything about the money, asking Sam did he have the
2 money and everybody denied it.

3 Q Once he made that telephone call, who arrived?

4 A The Hunsbergers.

5 Q The Hunsbergers?

6 A Yes, sir.

7 Q All right. When these -- how did they get
8 there? Did they walk? Did they drive? How did
9 they get there?

10 A In their vehicle.

11 Q Drove up in a car?

12 A Yes, sir.

13 Q All right. What did they do when they got
14 there?

15 A Steven motioned and they had a little huddle
16 up. They started talking among themselves.

17 Q Okay. Were you privy to what they were talking
18 about when they were huddled up and talking?

19 A No, I couldn't hear it.

20 Q Okay. Were you able to see clearly, the
21 individuals arrived you describe as the Hunsbergers
22 in this case, were you able to see them?

23 A Yes, sir.

24 Q Let me ask you this: Is one of the individuals
25 that you described as Hunsberger, is he present here

1 in the courtroom that arrived there that night?

2 A Yes, he is.

3 Q If you could point him out and say how he's
4 dressed and where he's seated in this courtroom.

5 A Right over there in the black suit next to his
6 lawyer.

7 MR. MAYE: Your Honor, I'd ask that the record
8 reflect he's identified Julio Hunsberger, the
9 defendant in this case at this time.

10 THE COURT: That's the gentleman to the left at
11 the table?

12 THE WITNESS: To the far left, yes.

13 THE COURT: All right. Thank you.

14 The record so reflects he's identified the
15 defendant, Julio Hunsberger.

16 BY MR. MAYE:

17 Q Let me ask you this: Now, it's nighttime at
18 this point in time; is that correct?

19 A Yes, sir.

20 Q Was there enough light there for you to be able
21 to see and clearly identify this person?

22 A Yes, sir.

23 Q You're absolutely 100 percent certain that the
24 person that appeared there and arrived that night is
25 Julio Hunsberger, the defendant here in this

1 courtroom?

2 A Yes, sir.

3 Q All right. Once the Hunsbergers -- what's the
4 other brother's name?

5 A Alex.

6 Q Okay. Once Alex and Julio got there and they
7 talked with Barnes there, what was the next thing
8 that happened?

9 A They started talking among themselves and
10 everybody -- Steven told us to get inside the car.

11 Q Who was us? Who got in Steven's car?

12 A I, myself, and Charlene Thatcher, Antonio
13 Griffin and Steven Barnes.

14 Q Okay. Let me ask you this: Antonio was a
15 buddy of yours. Y'all were in the high school band
16 together, right?

17 A Yes, sir.

18 Q Charlene Thatcher, how did you know her?

19 A She always be with him. I thought that was his
20 girl or something.

21 Q You thought Charlene Thatcher was his
22 girlfriend?

23 A Yes, sir.

24 Q Now, you'd only been with him just a few times
25 going to some clubs?

1 A Yes, sir.

2 Q Right. What car did y'all get into, what kind

3 of car was it?

4 A A white Caprice.

5 Q Tell me everybody that was in the white

6 Caprice. What kind of Caprice was this?

7 A A bubble Chevy.

8 Q A bubble Chevy?

9 A Yes, sir.

10 Q Tell me everybody that got in that bubble Chevy

11 there.

12 A Steven Barnes, Antonio Griffin, Charlene

13 Thatcher and myself.

14 Q Who was driving?

15 A Steven Barnes.

16 Q Okay. As y'all all left there, did you see

17 Alex and Julio Hunsberger get in the car?

18 A Yes, I did.

19 Q Okay. Did you see what had happened in regard

20 to Sam Sturup there right there? Did you see

21 whether he got in the car or how he got in the car?

22 A No, sir.

23 Q Okay. How did y'all leave? Did there come a

24 time that y'all left there?

25 A Yes, sir.

- 1 Q Okay. Do you know exactly how long you were
2 there?
- 3 A Not really.
- 4 Q Okay.. As y'all left, who left first? Who
5 drove off first?
- 6 A The Hunsbergers.
- 7 Q Okay. Where did y'all go once y'all left
8 there?
- 9 A We followed them. Steven told us we were going
10 to Sam's house.
- 11 Q He said y'all were going to Sam's, okay. Who
12 was leading?
- 13 A The Hunsbergers.
- 14 Q Okay. Describe to the ladies and gentlemen of
15 the jury as best you can how y'all traveled and
16 where y'all went following the Hunsbergers.
- 17 A From the green house, we hit the intersection
18 that went across the bridge going to Carolina. From
19 that street, it leads to a smaller road and that
20 road leads to a dirt road.
- 21 Q Let me ask you this: At any point in time, did
22 anybody in y'all's car do anything to control where
23 that vehicle in front of y'all went?
- 24 A No, sir.
- 25 Q Okay. So y'all followed?

1 A Yes, sir.

2 Q In as much detail as you can -- once y'all
3 turned off the dirt road, did y'all go into a field?

4 A Yes, sir.

5 Q Describe to the ladies and gentlemen of the
6 jury as much as you can in as much detail what
7 happened once y'all turned and went into that first
8 field.

9 A After we got off the dirt road, went into a
10 grass area field that led to a narrow path. After
11 the narrow path, it led to a smaller open field.

12 Q Okay. Let me show you what's been marked
13 State's 4 at this point in time. You have described
14 to them going across a big field through a narrow
15 area and into another field.

16 A Yes, sir.

17 Q Is that consistent with the layout of the area
18 that y'all went through?

19 A Yes, sir.

20 Q Okay. All right. Once y'all went from the big
21 field through the little narrow gap and into the
22 other field, what happened?

23 A We stopped at a gate.

24 Q You stopped at a gate?

25 A Yes, sir.

1 Q Okay. Is that about the area y'all stopped at
2 up in here (indicating)?

3 A Yes, sir, in that corner..

4 Q All right. What happened? How did everybody
5 get out? Tell them with as much detail as you can
6 what happened when y'all got there and stopped.

7 A Steven got out the car, Hunsbergers got out the
8 car and then Steve told us to get out the car.

9 Q Okay. What was the next thing that you saw?

10 A Steven went to the back of the Hunsbergers'
11 trunk and opened up the trunk.

12 Q What happened and what did you see once the
13 trunk of the Hunsbergers' car got opened up?

14 A Sam got out the car.

15 Q Up until that point in time had you been aware
16 that since y'all left the green house, that Sam
17 Sturup was in the trunk of the Hunsbergers' car?

18 A No, I didn't know that.

19 Q Was that the first time you realized it?

20 A Yes, sir.

21 Q Okay. What condition was he in when he got out
22 of the trunk of the car the Hunsbergers were in?

23 A He had a busted up arm and his face was bruised
24 up.

25 Q Okay. What happened next?

1 A He told Sam to walk in front of me and Antonio
2 Griffin, Charlene Thatcher and head towards the
3 gate.
4 Q Okay. Is that the area we're talking about, a
5 gate (indicating)?
6 A Yes, sir.
7 Q Okay. I'm going to show you State's 6 here.
8 Is that the gate?
9 A Yes, it is.
10 Q Where did y'all then go?
11 A He told us to hop over the gate.
12 Q Who was in front?
13 A Sam.
14 Q Did everybody do that?
15 A Yes, sir.
16 Q Okay. The Hunsbergers come with y'all?
17 A Yes, sir.
18 Q Where did y'all go next then?
19 A After that -- after that gate, it's a smaller
20 fence and he told us to hop over the fence.
21 Q What kind of fence is that, wood fence? What
22 is it?
23 A It's a small, little metal --
24 Q You grew up in Augusta?
25 A Yes, sir.

1 Q How about a barbed wire fence, would that be
2 it?

3 A Barbed wire.

4 Q All right. Once y'all went over the barbed
5 wire fence, where did y'all go?

6 A To a narrow path.

7 Q Let me show you this, State's 7. That the path
8 y'all went up?

9 A Yes, sir.

10 Q What happened next?

11 A After the narrow path, you have a smaller area
12 in the wooded area that opened up to a smaller
13 field.

14 Q All right. What happened next?

15 A Steven Barnes told Samuel Sturrupe, he asked him
16 again did he have the money.

17 Q What did Sam say back to him?

18 A He didn't have the money.

19 Q What happened next?

20 A Steven pulled out his gun.

21 Q Then?

22 A And told everybody that everybody had to take a
23 shot.

24 Q Said that everybody is going to have to take a
25 shot?

- 1 **A** Yes, sir.
- 2 **Q** What happened next?
- 3 **A** He gave Charlene Thatcher the gun.
- 4 **Q** What happened next?
- 5 **A** He went behind her and helped her put the gun,
6 she was crying and she help -- he helped her shoot
7 the gun.
- 8 **Q** How did he help her? Tell the ladies and
9 gentlemen of the jury how he helped her shoot the
10 gun.
- 11 **A** He was behind her with his arms around her and
12 helped her aim the gun.
- 13 **Q** Then what happened?
- 14 **A** The gun went off.
- 15 **Q** The next thing that happened?
- 16 **A** Sam dropped.
- 17 **Q** He dropped?
- 18 **A** Yes, sir.
- 19 **Q** What happened next?
- 20 **A** Charlene passed me the gun.
- 21 **Q** What did you do?
- 22 **A** Shot the gun.
- 23 **Q** What happened next?
- 24 **A** I gave the gun to Antonio, Antonio Griffin.
- 25 **Q** What happened next?

1 A I went back; me and Charlene was instructed to
2 go back to the car.

3 Q How many more shots did you hear?

4 A Four more.

5 Q You heard four more shots?

6 A Yes, sir.

7 Q You're absolutely certain that Alex and Julio
8 Hunsberger were there at that time, too?

9 A Yes, sir.

10 Q What happened next?

11 A Steven was the last one to leave from the back
12 of the field and he told us to get inside the car.

13 Q Did y'all go back out to the area where the
14 cars were?

15 A Yes, sir.

16 Q Then what happened?

17 A The Hunsbergers came, got inside their car and
18 we followed them outside -- out the field.

19 Q Who led the way, once y'all left the field
20 where y'all had left the cars, who led the way out
21 of there?

22 A The Hunsbergers.

23 Q And you're absolutely certain that Julio
24 Hunsberger seated right there was in that vehicle?

25 A Yes, sir.

- 1 Q Leading the way. Where did y'all go?
- 2 A We went to a mobile home.
- 3 Q Okay. Was it on that same property?
- 4 A Yes.
- 5 Q All right. What happened next?
- 6 A Everybody got out the car and Julio and Alex
- 7 went inside the trailer and we followed.
- 8 Q They went in the trailer first?
- 9 A Yes, sir.
- 10 Q They appeared to be at home there?
- 11 A Seemed like they had a key.
- 12 Q All right. Let me show you State's 14. Do you
- 13 recognize the two fields in there?
- 14 A Yes, sir.
- 15 Q Trailer back over here that went to on the
- 16 property?
- 17 A Yes, sir.
- 18 Q Once the Hunsbergers were led the way back to
- 19 that trailer, what happened next?
- 20 A Steven told me, Antonio Griffin, Charlene
- 21 Thatcher to sit on the couch.
- 22 Q What happened and what conversation took place?
- 23 A None. It was a very short conversation.
- 24 Q What happened next?
- 25 A Steven and the Hunsbergers went to the back.

1 Q Steven and the Hunsbergers went back to the
2 back?

3 A Yes, sir.

4 Q Okay. What happened next?

5 A We just sat there waiting. Then, finally,
6 Steven came back and told us time to go.

7 Q Did you have any conversation back at the woods
8 or anywhere else as in regard to Sam leaving or
9 going anywhere or doing anything?

10 A Yes, sir.

11 Q What conversation did you have?

12 A Antonio asked him how did he know that Sam
13 wasn't going to get up and go to the neighbors.

14 Q What was the response?

15 A Steven Barnes said he shot him in the head.

16 Q Okay. Once the Hunsbergers and Barnes went
17 back in the back of the trailer and then came back
18 to the front, what did y'all all do?

19 A He said it was time to go so we went outside
20 the trailer and went inside the car.

21 Q Okay. Who all left that residence at that
22 point in time with you?

23 A Steven Barnes, Antonio Griffin, Charlene
24 Thatcher and myself.

25 Q Did Alex and Julio Hunsberger leave that

1 trailer?

2 A No, sir.

3 Q Let me ask you this: Had you ever, at any

4 point in time in your entire life, had any

5 connection with that property down there on

6 Community Road in South Carolina?

7 A No, sir.

8 Q Who led the way over there?

9 A The Hunsbergers.

10 Q Whose trailer did y'all go to afterwards?

11 A Hunsbergers.

12 Q Who led the way to that trailer?

13 A The Hunsbergers.

14 Q Once y'all left the Hunsbergers' trailer, where

15 did y'all then go?

16 A Toward the bridge where he stopped at.

17 Q What happened when you stopped on the bridge?

18 A Steven gave Antonio Griffin a bag and a gun and

19 told him to throw it into the water.

20 Q What did he do as a result of being told to do

21 that?

22 A Got out the car and threwed the gun into the

23 water.

24 Q Okay. What happened next?

25 A We all went back to the green house on Cherry

1 Street.

2 Q Okay. Once y'all got back to the green house,

3 what did y'all do?

4 A He told us we were going to stay the night and

5 he would come back in the morning and pick us up.

6 Q Okay. Then what happened?

7 A We slept after that night.

8 Q Do what now?

9 A We slept there overnight.

10 Q You slept there overnight. What did you do the

11 next day?

12 A He came back and picked me up, took me home.

13 Q Okay. What then happened?

14 A He told Antonio to burn the clothes and he was

15 going to reimburse everybody for their clothes.

16 Q Did you give your clothes?

17 A Yes, sir.

18 Q Whatever you were wearing that night?

19 A Yes, sir.

20 Q And y'all had thrown the guns over the bridge?

21 A Yes, sir.

22 Q Okay. Did you go on about your business and

23 your life at that point in time?

24 A Yes, sir.

25 Q When was the next time that you heard anything

1 about this or anything took place involving this?

2 A When I got locked up.

3 Q All right. When did you first realize that the
4 police had found this body over in South Carolina?

5 How did that happen?

6 A Actually, when I got locked up, I know -- I
7 noticed everything had came down.

8 Q Okay. You got charged as well over in Georgia,
9 didn't you? You got charged and you pleaded guilty
10 to aggravated assault over there for your role in
11 what took place at the green house involving Sam
12 Sturup, didn't you?

13 A Yes, sir.

14 Q You got 18 years in prison, too, didn't you?

15 A Yes, sir.

16 Q Okay. As to the charges here in South Carolina
17 for anything that you potentially face involving the
18 shooting and death of Sam Sturup, his murder, has
19 anybody promised you anything for your testimony in
20 this case?

21 A No, sir.

22 Q Has anybody ever asked you to say anything that
23 was not true in this case?

24 A No, sir.

25 Q Do you have any promises about what will happen

1 with your charges up until this point in time?

2 A No, sir.

3 MR. MAYE: Answer any questions the defense has
4 for you.

5 THE COURT: Thank you, Solicitor.

6 Mr. Williams.

7 MR. WILLIAMS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q Mr. Cave, I see you are in a orange jumpsuit.

11 A Yes, sir.

12 Q All right. Where do you live permanently or
13 right now?

14 A Right now I'm housed in Edgefield right now.

15 Q Okay. Before you came to Edgefield, where were
16 you?

17 A In Georgia State Prison, Reidsville.

18 Q Reidsville?

19 A Yes, sir.

20 Q Okay. And how long were you at Reidsville?

21 A I've been there three years now.

22 Q Okay. Prior to being at Reidsville, where were
23 you?

24 A I've been in numerous accounts. I've been to
25 Hancock, Calhoun, Frank Scott over a ten-year

1 period.

2 Q So you've been in various detention centers in
3 the State of Georgia?

4 A Yes, sir.

5 Q Okay. Now, did you graduate high school or did
6 you have an opportunity to graduate?

7 A I got locked up.

8 Q You got locked up.

9 A I was in 12th.

10 Q You were in the 12th grade?

11 A Yes, sir.

12 Q All right. And you can read and write, can't
13 you?

14 A Yes, sir.

15 Q Okay. And if I ask you to help me read and
16 write -- or read something relating to your prior
17 testimony, do you think you'd be able to do that?

18 A Yes, sir.

19 Q Okay. Now, the Solicitor asked you about your
20 convictions in Georgia, okay?

21 A Yes, sir.

22 Q You pled guilty to one count of aggravated
23 assault; is that right?

24 A Yes, sir.

25 Q You received a sentence of 18 years?

1 **A** Yes, sir.

2 **Q** Okay. Now, did anything -- were you charged
3 with something other than aggravated assault?

4 **A** Kidnapping at the time.

5 **Q** Okay. And over in the State of Georgia, you
6 had an attorney, didn't you?

7 **A** Yes, sir.

8 **Q** And that was a Mr., was it, Leonard or
9 something like that?

10 **A** I had William Sussman.

11 **Q** Oh, Mr. Bill Sussman, that's right. And he
12 advised you as it related to the charges you were
13 facing, did he not?

14 **A** Yes, sir.

15 **Q** Okay. And he advised you that --

16 **MR. MAYE:** Your Honor, I'm going to object to
17 any hearsay or any advice that he got from counsel
18 at this point in time. All of that would be
19 hearsay.

20 **THE COURT:** I think you can rephrase the
21 question if I'm tracking correctly, Mr. Williams.

22 **MR. WILLIAMS:** I'll take care of it.

23 **THE COURT:** But if I'm not tracking correctly,
24 if it's going completely over my head, I'll have the
25 jury step out, but I think you can rephrase the

1 question. I agree with the Solicitor, it is hearsay
2 at this point.

3 **MR. WILLIAMS:** Okay.

4 **BY MR. WILLIAMS:**

5 **Q** Were you made aware that the charge of
6 kidnapping that you faced in the State of Georgia
7 could carry a life sentence?

8 **A** Yes, sir.

9 **Q** Okay. And were you also advised that if you
10 cooperated, that that charge would be dropped
11 against you?

12 **A** Yes, sir.

13 **Q** Okay. So you do understand how this kind of
14 works, don't you?

15 **A** I'm still new to it.

16 **Q** You're still new --

17 **THE COURT:** What was the answer?

18 **THE WITNESS:** I told him I'm still new to it.

19 **BY MR. WILLIAMS:**

20 **Q** But you've been in prison for some ten years?

21 **A** They don't teach you law though.

22 **Q** But you do understand the difference between
23 life and 18 years, don't you?

24 **A** I do.

25 **Q** Okay. And it's preferable to do 18 years than

1 it is life?

2 A Yes, sir.

3 Q All right.

4 MR. WILLIAMS: If I might approach the witness,
5 Your Honor.

6 THE COURT: Yes, sir, certainly.

7 BY MR. WILLIAMS:

8 Q I'm going to hand to you a transcription that
9 the Solicitor has of your prior testimony. Do you
10 see page 229?

11 A Yes, sir.

12 Q Do you see where it first says your name,
13 Richard Cave?

14 A Yes, sir.

15 Q And then it says, Having been first duly sworn,
16 sworn, was examined and testified as follows.

17 A Yes, sir.

18 Q All right. So when you were sworn, were you
19 sworn in much the same manner that you were here
20 today?

21 A For to...

22 Q Over in Georgia.

23 A Talking about for when they investigated, when
24 I first got locked up?

25 Q No, sir.

- 1 A Or you're talking about for the case --
- 2 Q When you testified between September 5th and
- 3 September 12th, 2006, in a case that involved my
- 4 client and his brother, were you sworn just as you
- 5 were here today?
- 6 A I was.
- 7 Q Okay. And when you take that oath, you say, I
- 8 swear or affirm to tell the truth; is that right?
- 9 A That's true.
- 10 Q The whole truth?
- 11 A That's right.
- 12 Q And nothing but the truth?
- 13 A That's right.
- 14 Q And you say, so help me God?
- 15 A That's right.
- 16 Q Okay. All right. And that's what you did
- 17 there, isn't it?
- 18 A That's right.
- 19 Q Okay. I'm going to ask you if you would, sir,
- 20 turn to page 270.
- 21 A (Witness complies.)
- 22 Q Are you on page 270?
- 23 A Yes, sir.
- 24 Q Okay. I'm going to begin at the very top. It
- 25 says -- you see where it says Q, that means

1 question, okay. Now, I'm going to ask the question
2 and I want you to read your answer after you were
3 sworn, okay?

4 **MR. MAYE:** Your Honor, I'm going to object at
5 this point in time. If he wants to ask him a
6 question in an attempt to impeach him of something
7 on a previous transcript, that would be appropriate,
8 but asking him to publish testimony from a previous
9 trial without being asked any questions is improper
10 and I object to that.

11 **THE COURT:** You have to comply with Rule 613,
12 ask him if he made a prior incon -- what statement
13 he made and then if it is inconsistent, you can
14 certainly impeach him based on whether it's a
15 transcript, a written statement, oral statement or
16 what have you, but you can't publish his testimony
17 in that regard. So I would sustain the objection as
18 to the form of the question.

19 **MR. WILLIAMS:** All right.

20 **BY MR. WILLIAMS:**

21 **Q** Well, let me just ask you the question. You
22 understood that you faced a life sentence over in
23 the State of Georgia?

24 **A** Yes, sir.

25 **Q** Okay. And you understood that if you

1 cooperated with the D.A., Mr. Danny Craig, that that
2 life sentence would be taken from over your head?

3 A Yes, sir.

4 Q And that's what you did, isn't it?

5 A Yes, sir.

6 Q All right. I'm going to ask you, if you will,
7 sir, in that trial -- turn to page 272 before I ask
8 you this question.

9 A (Witness complies.)

10 Q Now, during that trial were you able to
11 distinguish my client, Julio Hunsberger, from his
12 brother, Alex Hunsberger?

13 A Yes, sir.

14 Q You were?

15 A Yes, sir.

16 Q All right. I would love for you to turn your
17 attention to page 272. And I will like for you to
18 turn to line -- or to read down to line 13. And
19 Mr. Hadden, Mr. Hunsberger's former attorney, asked
20 you this question. Do you see line 13?

21 A Yes, sir.

22 Q He asked you, Who is this here? What was your
23 answer?

24 A I couldn't tell you.

25 Q Would you say that clearly? I didn't quite

1 understand.

2 A I couldn't tell you.

3 Q Okay. Who's that there? Could you tell me
4 what your answer was?

5 A I couldn't tell you.

6 Q And then the question, it was, So what you're
7 telling me today is you don't know the difference
8 between Julio and Alex; is that right? What's your
9 answer?

10 A That is true.

11 Q Okay. So when I asked you earlier in that
12 trial that you were unable to distinguish my client
13 from his brother and you answered that you were, is
14 that still your answer?

15 A Yes, sir.

16 Q I'm going to ask you --

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 step out just a moment, please. Do not discuss the
19 case during this brief recess. Leave your notes --
20 we're not taking a luncheon recess yet, so leave
21 your notes out here. I'll have you back out in just
22 a moment.

23 (The jury retires to the jury room.)

24 THE COURT: Let me make sure I'm tracking
25 correctly, Mr. Williams.

1 **MR. WILLIAMS:** Yes, sir, Your Honor.

2 **THE COURT:** If your question was to him
3 initially, Were you unable to distinguish between
4 Alex and Julio in the trial of September of '06 and
5 his answer was yes, does that mean he was unable to
6 distinguish between Alex and Julio in the trial of
7 '06?

8 **MR. WILLIAMS:** Your Honor, my understanding of
9 his answer here today was that he was able to
10 distinguish one from the other in that trial.

11 **THE COURT:** Well, then what -- there's a
12 difference between able and unable. Maybe I
13 misheard.

14 **MR. WILLIAMS:** Your Honor, I just have to defer
15 to the court reporter for the question that I asked,
16 but I can tell you what I intended to ask.

17 **THE COURT:** I'm not complaining about your
18 question whatsoever. I just wanted to know if I was
19 tracking that properly or not. Thank you very much.

20 Bring us our jury, please.

21 **MR. MAYE:** Your Honor, just briefly --

22 **THE COURT:** Yes, sir.

23 **MR. MAYE:** -- before we come back. Now, I will
24 object that this is somewhat out of context because
25 the difference is from that transcript, he just

1 didn't know their name. He's never had any problem
2 identifying them. He just didn't know their names
3 to be able to distinguish one from the other. He's
4 always been able to identify one from another, just
5 his name.

6 **THE COURT:** Well, that would be subject to
7 either redirect or Rule 106 or the rule of
8 completeness.

9 **MR. MAYE:** I'll handle that.

10 **MR. WILLIAMS:** Your Honor, before we bring the
11 jury back out, it's my intent to demonstrate that he
12 indicated that he told investigators that he
13 couldn't recognize either of them.

14 **THE COURT:** And I'm not going to prohibit you
15 from -- for fully exploring that. I wasn't trying
16 to do that. I just wasn't sure I was tracking
17 correctly that he either was unable or was not
18 unable. I'm not cutting you off in any manner
19 whatsoever in that regard, Mr. Williams.

20 **MR. WILLIAMS:** Yes, sir.

21 **THE COURT:** All right. Bring us our jury,
22 please.

23 (The jury returns to the courtroom.)

24 **THE COURT:** Thank you very much, ladies and
25 gentlemen, for your patience. Please continue to

1 give the parties your complete and undivided
2 attention.

3 Mr. Williams.

4 MR. WILLIAMS: Thank you, Your Honor.

5 BY MR. WILLIAMS:

6 Q Mr. Cave, did you not tell law enforcement
7 officers in Augusta, Georgia, that you could not
8 recognize either my client nor his brother?

9 A I did.

10 Q You did tell them that?

11 A Yes, sir.

12 Q Okay. And you concede that in the trial that
13 you intended to testify truthfully?

14 A Yes, sir.

15 Q Okay. And you, in fact, described the
16 individuals that you were investigated about or that
17 you were questioned about as light skin; did you
18 not?

19 A Light skin Hispanic.

20 Q Now, let me ask you, do you still have the
21 transcription that I have -- had given you in front
22 of you?

23 A Yes, sir.

24 Q Would you please turn to page 273?

25 A (Witness complies.)

1 **Q** And do you see your answer at the very
2 beginning? Would you publish that into the record?

3 **MR. MAYE:** Now, Your Honor, again, I'm going to
4 object. If he wants to ask him questions, but
5 asking him to naked publish things into the record
6 is improper and I --

7 **THE COURT:** Y'all hadn't handed me a
8 transcript. I'm in a vacuum. I'm flying a plane on
9 instruments in the fog and I'm not qualified. It's
10 just that simple. I don't know the context he's
11 asking the -- I'm not snapping at -- well,
12 Solicitor, when I say I'm not snapping at you, I'm
13 saying that while I'm snapping at you, I don't mean
14 to snap at you, but I'm just in a vacuum in this
15 regard.

16 Now, what page are we referring to?

17 **MR. WILLIAMS:** Page 273, Your Honor.

18 **THE COURT:** All right. What are you going ask
19 him in this regard?

20 **MR. WILLIAMS:** Your Honor, he indicated in his
21 answer --

22 **THE COURT:** Just direct me to the line.

23 **MR. WILLIAMS:** The very first line.

24 **THE COURT:** And I think it's the form of the
25 question, Mr. Williams, as opposed to just

1 publishing it. Is that -- step up over here,
2 please, Mr. Williams and Solicitor, step up here
3 just a moment.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 **THE COURT:** All right. You may ask the
8 question in the proper form, Mr. Williams.

9 **MR. WILLIAMS:** Your Honor, Court's indulgence
10 for one moment.

11 **THE COURT:** Yes, sir.

12 (Pause.)

13 BY MR. WILLIAMS:

14 **Q** Did you previously describe my client
15 differently than you're describing him today?

16 **A** I did.

17 **Q** Okay. And how did you describe him?

18 **A** Light skin.

19 **Q** Would you -- you concede that you're a light
20 skinned person, don't you?

21 **A** That's true.

22 **MR. WILLIAMS:** That's all I have.

23 **THE COURT:** Thank you very much, Mr. Williams.
24 Solicitor.

25 *****

1 REDIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Mr. Cave, you've always been able to identify
4 Alex and Julio Hunsberger. You just didn't know
5 them by name; isn't that correct?

6 MR. WILLIAMS: Objection, Your Honor, he's
7 leading.

8 THE COURT: You may rephrase the question,
9 Solicitor.

10 BY MR. MAYE:

11 Q Did you always know which one was Alex and
12 which one was Julio?

13 A Yes, sir.

14 Q Okay. But let me ask you this: By name, did
15 you know them always?

16 A No, sir.

17 Q Okay. Let me ask you again: Is the
18 individual, one of the two individuals that you've
19 collectively referred to as the Hunsbergers, is he
20 here present in this courtroom?

21 A Yes, he is.

22 Q Julio Hunsberger that you've previously
23 identified, you're a hundred percent certain of
24 that?

25 A Yes, sir.

1 Q Okay. In the early stages of this, you had
2 trouble with their names as to which was Alex and
3 which was Julio, did you not?

4 A Yes, sir.

5 Q Okay. Prior to seeing them there and them
6 showing up that night at the green house, did you
7 know either one of them?

8 A No, sir.

9 Q Do you have anything against Alex and Julio
10 Hunsberger?

11 A No, sir.

12 Q Do you have any connection with that property
13 out there in the scene of this murder except for
14 Alex and Julio Hunsberger?

15 A No, sir.

16 Q At all times have you been able to identify
17 Julio Hunsberger as one of the two individuals that
18 was out there?

19 A Yes, sir.

20 Q Whatever his first name was?

21 A Yes, sir.

22 MR. MAYE: Answer anything the defense has for
23 you.

24 THE COURT: Mr. Williams.

25

RECROSS-EXAMINATION

BY MR. WILLIAMS:

Q Isn't it true that you indicated that you told law enforcement authorities from the very beginning that you didn't recognize them?

A Yes, sir.

MR. WILLIAMS: Thank you.

THE COURT: Thank you very much, Mr. Cave. You may step down.

MR. MAYE: Your Honor, I have one other question along with that line if I may be permitted.

THE COURT: Is it new?

MR. MAYE: Directly deals with what he just asked there.

THE COURT: All right. I'll allow it under Rule 611.

RE-REDIRECT EXAMINATION

BY MR. MAYE:

Q You'd previously been asked did you misidentify them. You first lied, told law enforcement you didn't know any of them, didn't you?

A That is true.

Q Told them you didn't know Antonio, didn't you?

A That's right.

Q Told them you didn't know anybody or anything

1 about this, didn't you?

2 A Yes, sir.

3 Q But you later cooperated with law enforcement
4 and gave full information, didn't you?

5 A And told the truth.

6 MR. MAYE: Nothing else. Thanks.

7 THE COURT: Mr. Williams.

8 RE-RE-CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q When you told law enforcement you didn't
11 recognize them, you weren't under oath, were you?

12 A No, sir.

13 Q But when Mr. Hadden, his former attorney, asked
14 you if you had not recognized them, you were,
15 weren't you?

16 A Yes, sir.

17 MR. WILLIAMS: All right. Thank you, Your
18 Honor.

19 THE COURT: Thank you very much, Mr. Cave. You
20 may step down, Mr. Cave. Good luck to you.

21 All right. Ladies and gentlemen, momentarily
22 we're going to take our luncheon recess. I would
23 like to say, as you may recall in my opening
24 comments to you, that my rulings on evidence or my,
25 from time to time, asking you to step out on my own

1 has nothing whatsoever to do with the parties or the
2 parties' manner in which they may be presenting
3 their case.

4 They are advocates, the Solicitor, of course,
5 for the State of South Carolina and Mr. Williams, of
6 course, for his attorney [sic], Mr. Hunsberger. And
7 my rulings in no way should indicate that I favor
8 one side or the other. I do not -- I do not have
9 any opinion about the facts of this case. The law
10 and our constitution does not allow me to have such
11 an opinion. Please keep that in mind.

12 I will remind you of your responsibilities and
13 your duties under your oath during these recesses.
14 Perhaps you'll be able to state this back to me
15 before the week is out, before the case is over.

16 During this recess, you may not discuss this
17 case with anyone including your fellow jurors, lunch
18 mates, family, friends or anyone else. If anyone
19 tries to talk with you about the case, please let me
20 know immediately. Do not read, listen to or watch
21 any news reports about the case.

22 You may not use your computer, cellular phone
23 or other electronic device with communication
24 capabilities or any other method to obtain or
25 disclose information about the case when you're not

1 in court. Information about the case includes, but
2 is not limited to, the following: information about
3 a party, a witness, an attorney or a court officer,
4 news accounts of the case, information collected
5 through juror research on any topics raised or
6 testimony offered by any witness or information
7 collected through juror research on any other topic
8 that the juror might think would be helpful in
9 deciding the case.

10 As you've heard me say in the past and you will
11 hear me say again, you decide the case based on the
12 evidence and the testimony you hear from the
13 witnesses testifying under oath in this courtroom
14 and the law as I instruct you on the law.

15 Please remember to keep an open mind about the
16 case and do not begin any deliberations until I
17 instruct you to do so.

18 We'll take our luncheon recess. It is now, if
19 my computer is correct, I have about 1:15. We'll
20 say till 2:30. If you'll be back promptly at 2:30
21 in your jury room. If you leave your notes upside
22 down on your chair, I will have the Clerk's office
23 secure them during the recess.

24 Thank you very much. I hope y'all have a
25 pleasant lunch.

1 (The jury was excused for lunch.)

2 **THE COURT:** If there is going to be
3 cross-examination of other witnesses that involve
4 prior statements or prior testimony, I would order
5 that I be provided a copy of those transcripts. And
6 if both sides doesn't have them, share them.

7 I'm not complaining about you. I just know a
8 lot can happen to files over ten years and a lot of
9 times they're not where you want them to be at the
10 time you may need them. I think if we all cooperate
11 in that regard at least, it would make those issues
12 go smoothly. And I know you have two other,
13 potentially, two other witnesses that may be in the
14 same position.

15 **MR. WILLIAMS:** Yes, sir, Your Honor. I'll make
16 sure. I did have an extra copy, but I thought the
17 Solicitor actually had -- well, I think he does
18 because I got them from him.

19 **THE COURT:** I'm sure he does, but he may not
20 have it right there on his desk.

21 **MR. MAYE:** I do. I just didn't have it in the
22 courtroom.

23 **THE COURT:** That was the only point I was
24 making, too. I'm not fussing at you at all,
25 Mr. Williams.

1 **MR. WILLIAMS:** Yes, sir.

2 **THE COURT:** Madame Clerk, would you secure the
3 jurors' notes during the luncheon recess?

4 **THE CLERK:** Yes, sir.

5 **THE COURT:** Anything else before we take our
6 break, Solicitor?

7 **MR. MAYE:** Nothing else. Thank you, Your
8 Honor.

9 **THE COURT:** Mr. Williams?

10 **MR. WILLIAMS:** No, sir.

11 **THE COURT:** Thank y'all very much. I hope
12 y'all have a pleasant lunch.

13 (Whereupon, there was a luncheon recess.)

14 (State's Exhibit Number 54, photograph,
15 marked for identification purposes.)

16 **THE COURT:** All right. The parties are
17 present, the Solicitors on behalf of the State and
18 Mr. Williams on behalf of his client who is also
19 present, Mr. Hunsberger.

20 Anything before we bring in our jury from the
21 State?

22 **MR. MAYE:** Not from the State, Your Honor.
23 Thank you.

24 **THE COURT:** From the defense?

25 **MR. WILLIAMS:** No, sir, Your Honor.

1 **THE COURT:** All right. Bring in our jury,
2 please.

3 (The jury returns to the courtroom.)

4 **THE COURT:** All right. Our jury is back
5 present in the courtroom. We're continuing the
6 trial of the case by the presentation of testimony
7 and evidence by the State in its case in chief.

8 Solicitor, you may call your next witness.

9 **MR. MAYE:** The State would call Dr. Joel Sexton
10 to the stand.

11 **THE COURT:** All right. Dr. Sexton.

12 JOEL STEVEN SEXTON,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** State your full name and spell your
15 last name, please.

16 **THE WITNESS:** Dr. Joel Steven Sexton.

17 DIRECT EXAMINATION

18 BY MR. MAYE:

19 **Q** Dr. Sexton, if you would, tell the ladies and
20 gentlemen of the jury a little bit about your
21 background and your particular area of expertise.

22 **A** I'm a pathologist with a subspecialization in
23 forensic pathology. That means that I went through
24 medical school, finishing in 1968, at the then
25 Medical University of South Carolina. I, after

1 that, took a residency in pathology, which is
2 basically the study of disease as interpreted by
3 examining tissue.

4 Pathologists supervise the laboratory to ensure
5 that the tests that are done on urine and spinal
6 fluid and blood are done accurately. And the
7 pathologist also helps your physician interpret
8 those results to know whether you're getting better
9 or worse or, to begin with, whether you have some
10 sort of illness or disease. A pathologist is also
11 the person that examines tissue removed at surgery
12 to determine if there's cancer in that tissue or
13 some other condition that's treatable to help your
14 physician better understand how to treat you.

15 The pathologist is the person that does
16 autopsies on persons dying in the hospital with the
17 consent of the family and the request of the
18 physician to learn more about that person's illness
19 or disease and how they might be able to treat it
20 better in the future, as well as for the family's
21 benefit to understand and the doctor's benefit to
22 understand exactly what the symptoms were due to.

23 Forensic pathologists have this same training,
24 but in addition have further training in how to
25 investigate a body at a scene of death, a body in

1 the morgue and where we do a complete external
2 examination and autopsy collecting samples of
3 evidence, as well as fluids for toxicology and for
4 examination under the microscope to make sure we
5 understand if there's any natural disease present
6 and whether it played a role, whether there's a
7 traumatic injury that was or was not fatal and
8 whether there's any sort of drug or chemical that
9 might have affected the person's judgment or caused
10 death.

11 The toxicology is examined by the State Law
12 Enforcement Division. We simply collect those
13 samples for them.

14 So as a forensic pathologist in the last 28
15 years, actually I've been retired three years, for
16 the last 31 years in Newberry, I've been the
17 supervisor of the pathology department, which means
18 I supervise the laboratory there, as well as acting
19 as a consultant for the coroners in the upper part
20 of the state, about 28 of them sent cases to us.

21 Prior to that, I was the chief medical examiner
22 in Charleston, South Carolina, from '72 until '83
23 when I moved to Newberry. And I was also an
24 associate professor of pathology at the medical
25 university during that time.

1 As a medical examiner, that means a medical
2 equivalent of a coroner, a person that examines
3 bodies at scenes of death, determines if an autopsy
4 is needed and then does that autopsy.

5 Q Dr. Sexton, have you been previously qualified
6 as an expert witness in the area of forensic
7 pathology in the courts of the State of South
8 Carolina?

9 A Yes, I have.

10 Q Approximately, how many times have you been
11 qualified?

12 A Hundreds of times, probably over 700 times in
13 the 40 years I've been doing this.

14 Q Dr. Sexton, I would say it's probably safe that
15 you've testified more and examined more bodies than
16 just about anybody in the courts of the State of
17 South Carolina, haven't you?

18 A Possibly. For a short period of time or
19 actually a pretty extended period of time, there
20 were only two of us doing most of the cases from
21 Charleston. For the last 30 years, we've probably
22 had about five in the state doing forensic autopsies
23 with specialized training in forensic pathology.
24 Like myself, I have board certification nationally
25 in anatomical, clinical and forensic pathology.

1 **MR. MAYE:** Your Honor, at this time, I'm going
2 to offer him for an expert in the area of forensic
3 pathology and certainly offer him up to the defense
4 for any cross-examination as to his qualifications
5 as an expert.

6 **THE COURT:** Thank you, Solicitor.
7 Mr. Williams.

8 **MR. WILLIAMS:** Your Honor, I'm familiar with
9 Dr. Sexton's lengthy record of work in the State of
10 South Carolina. I have no objection to him being
11 qualified as an expert in the area of forensic
12 pathology.

13 **THE COURT:** Thank you, Mr. Williams.

14 Mr. Foreman, ladies and gentlemen of the jury,
15 normally a person cannot give opinion testimony.
16 Normally when a person testifies, they must testify
17 as to either what they saw, heard or sensed by smell
18 or something of that nature. However, there is an
19 exception. When someone is qualified because of
20 education, training, experience in a particular
21 field, they are permitted to give their opinion in
22 certain areas if the Court qualifies them that way.

23 This witness, Dr. Joel Sexton, will be
24 qualified in the area of forensic pathology to give
25 opinion testimony in that area. That does not mean

1 that you must accept the opinion, but it is evidence
2 for you to use in any way you see fit.

3 Thank you, Solicitor. You may continue.

4 BY MR. MAYE:

5 Q Dr. Sexton, let me ask you, as it pertains to
6 this case on November the 21st of 2001, were you
7 provided with information and items of apparently
8 human remains in order to examine in your capacity
9 as a forensic pathologist in this case?

10 A Yes. The coroner from here, Mr. Thurmond
11 Burnett, contacted us and told us that they had
12 found some human remains, what he felt were human
13 remains and we told him to go ahead and bring them
14 to us. We examined these. And it turns out there
15 was some clothing including a pair of jeans that
16 were a size 46 with a belt and at least most of a
17 human body.

18 The skull and the jawbone were present with
19 almost all of the teeth present only two were
20 missing that had fallen out after skeletonization
21 because the socket was not healed. It was an open
22 socket.

23 In addition, the -- most of the right leg bone
24 was present as part of the right hip. The left leg
25 only had the lower portion of the leg present. And

1 there was a portion of the right shoulder, but none
2 of the arms were present. But there was enough for
3 us to make an identification and to determine a
4 cause of death because when we examined the skull,
5 we noted there was a gunshot wound and x-rays showed
6 that there was still a bullet inside the skull.

7 When we examined the entire body along with the
8 personal effects and compared that with the medical
9 records, dental records and the history that was
10 brought with the body, we were able to make an
11 identification.

12 The decedent had with him some keys in this
13 pocket of his jeans that opened his residence, had
14 on the key chain a tag that was for Bi-Lo and it was
15 registered in his sister's name. The clothing was
16 about his size. And the belt had his name embossed
17 on it. Samuel Sturrup, Jr. was embossed on the back
18 of the belt. In addition, the dental records did
19 match with this -- the dental records matched the
20 teeth that we found with the skeleton.

21 In addition, the x-rays, as I mentioned, showed
22 a bullet inside the skull. When we removed the top
23 of the skull to look at that carefully to see what
24 damage had occurred, we could see the bullet along
25 with some brain tissue that showed a contusion,

1 meaning it had been traumatized as if you get a
2 bruise on your arm if you're hit with something and
3 it swells up and turns different colors of purple
4 and maroon and brown and finally yellow and goes
5 away. That kind of bruising is where small vessels
6 are broken and the blood oozes out and this can
7 occur in the brain tissue as well. So we know this
8 gunshot wound occurred while the decedent was alive;
9 otherwise, there would not have been contusion of
10 that portion of brain that's left.

11 It's always amazed me that you get a body
12 that's almost completely skeletonized and still have
13 brain tissue remaining in many of these cases.

14 So it was clear that he was shot in the back of
15 the head, somewhat close to the top of the back of
16 the head with the bullet passing downward, to the
17 left and toward the front and being lodged here on
18 the left side of the skull when we examined the
19 body.

20 Q Dr. Sexton, excuse me just a moment.

21 (Pause.)

22 Q Dr. Sexton, I'm going to show you three charts
23 here that have been premarked, State's 26, State's
24 25 and State's 24. I'd ask you are these diagrams
25 that you prepared contemporaneous with doing your

1 forensic examination of the remains that were
2 provided to you?

3 A Looking at my records that I brought with me,
4 these are identical blowups to the dental record
5 that I prepared there, a dental chart, a chart of
6 the skeletal remains and a diagram of the head
7 showing the path of the bullet.

8 MR. MAYE: At this time, I'm going to offer
9 these three exhibits, these blowups, into evidence
10 subject to any objection, of course, from the
11 defense.

12 MR. WILLIAMS: There are no objections, Judge.

13 THE COURT: State's 24, 25 and 26 is in
14 evidence without objection.

15 (State's Exhibit Numbers 24 through 26,
16 diagrams, admitted into evidence.)

17 BY MR. MAYE:

18 Q Dr. Sexton, I'm going to show you a photograph
19 marked State's Exhibit 22, ask you if you can
20 identify that?

21 A Yes. This Exhibit 22 is a blowup photograph of
22 one of the photographs I took of the bullet. The
23 bullet was what's referred to as a semi-jacketed
24 bullet. Hollow point bullets are frequently
25 semi-jacketed, meaning the outside of the bullet is

1 copper. It's a cup made out of copper in which lead
2 is poured and solidified so that when it strikes
3 something, it tends to expand and stay in the
4 individual.

5 A part of the copper jacket had fragmented the
6 core, the lead core. And lead is easily moldable,
7 had flattened out. So you have multiple pieces, but
8 it represents one bullet. There was only one bullet
9 hole in the skull. And this is -- these are the
10 jacket and the core with fragments from one bullet
11 that are removed from the head of Samuel Sturup and
12 photographed.

13 MR. MAYE: At this time, I'm going to offer
14 this photograph into evidence at this time if
15 there's no objection.

16 MR. WILLIAMS: No objection.

17 THE COURT: State's 22 is in evidence without
18 objection.

19 (State's Exhibit Number 22, photograph,
20 admitted into evidence.)

21 BY MR. MAYE:

22 Q Dr. Sexton, I'm going to hand you eight
23 individual photographs and I'm going to ask you if
24 these are photographs that were taken there at the
25 time that you performed the autopsy on the skeletal

1 remains of the -- pursuant to the request by the
2 coroner here in Edgefield County?

3 **A** Yes. These are duplicate photographs of the
4 ones that I have with me and they each bear the
5 autopsy number and a ruler that's a one-inch ruler
6 that also shows centimeters at the bottom. And
7 these are photographs taken at the time of autopsy
8 by myself of Samuel Sturup, Jr.

9 **MR. MAYE:** Your Honor, I'm going to offer these
10 photographs, these eight, into evidence at this time
11 subject to any objection.

12 **MR. WILLIAMS:** There are none, Your Honor, no
13 objection.

14 **THE COURT:** All right.

15 **BY MR. MAYE:**

16 **Q** Dr. Sexton, if I can ask you to utilize the
17 blowups, State's 24, 25, and '6, and whatever
18 photographs that are in evidence here that would
19 assist you in explaining to the jury what you
20 carried out as a result of your examination of the
21 remains provided to you.

22 **A** May I approach the bulletin board?

23 **Q** Absolutely.

24 **THE COURT:** Just one moment. State's 55
25 through 62 is in evidence without objection. Thank

1 you. You can continue.

2 (State's Exhibit Numbers 55 through 62,
3 photographs, were marked and admitted into
4 evidence.)

5 (Witness leaves the witness stand.)

6 **THE WITNESS:** This represents a view as though
7 you opened your jaw wide enough for the dentist to
8 see the inside of your upper jaw and lower jaw. And
9 all that's showing is that there were some teeth
10 that were missing after death and some that had
11 restorations in it. And it was this we used along
12 with the other information to identify Samuel
13 Sturrrup, Jr.

14 **THE COURT:** What exhibit is that, Doctor?

15 **THE WITNESS:** I apologize. This is Exhibit 26.

16 **THE COURT:** Thank you.

17 **THE WITNESS:** I've already discussed Exhibit
18 22, which is -- I'll place over here.

19 Exhibit 25 is just a means of identifying what
20 portions of the skeleton were still there. Once we
21 cleaned the skeleton up, there was a complete skull,
22 most of the vertebrae from the spine and part of the
23 thorax, number of ribs from both sides and most of
24 this leg and the bottom of the portion of this leg
25 with a little bit of this left shoulder, but as you

1 see, a major portion of the body had been removed
2 after decomposition and by animals.

3 So this just gives us an idea of what portions
4 of the body were still present, but the important
5 portions were the skull, which shows this entrance
6 gunshot wound and enough of the skeleton to know it
7 was one individual and it was a black male.

8 This, which is Exhibit Number 24, simply shows
9 four views of the head -- or of a head. And we're
10 simply showing that the bullet entered here high on
11 the back of the head, passed downward into the front
12 and to the left and that it became somewhat
13 fragmented as shown in Exhibit 22, which shows the
14 lead core and the -- the lead core and the copper
15 jacket with some fragments of both surrounding the
16 two major portions of the bullet.

17 I'll show this to both ends of the jury. This
18 is Exhibit 55 and it again shows the same
19 photograph, the lead core, the copper jacket and
20 fragments of the same.

21 Again, Exhibit 55 shows the bullet fragment.
22 You can see a lead core here at this point and a
23 copper jacket with fragments of the jacket.

24 I always take it from both sides so I can
25 identify it later, plus it had some identifying

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1 marks on it.

2 Here again is from the other side you can see a
3 little different picture. You can see part of the
4 base and the lead core here. You can see the powder
5 base of the jacket, although I'm sure from where you
6 are, it's pretty hard to see that, but when you look
7 at it close up, you can.

8 So this helps me identify the bullet in court
9 later as being a single bullet with a lead core that
10 has a base, a copper jacket that has a base and
11 multiple fragments. Some of the jacket -- most of
12 them are a jacket, some are from the core.

13 This shows the skeleton as we found it or as we
14 were able to reconstruct it. As you can see, all
15 the bones are there nice and clean at this point
16 with some black curly hair.

17 **THE COURT:** What number was that, Doctor?

18 **THE WITNESS:** This last one is 62 showing the
19 skeleton. We've laid the skeleton out, the portions
20 that we had, along with the black curly hair that
21 was present.

22 Exhibit Number 56 shows the left side of the
23 skull. And we can tell from the appearance of this
24 that that's the side that was against the ground
25 because of the damp looking appearance here with

1 some mold on it.

2 The reason I show this on this Exhibit 56 is
3 that in addition to the normal suture lines that
4 allow your skull to slowly grow as you get older,
5 there's a fracture line here that doesn't have those
6 little zigzags that you see on the suture line below
7 it and above it, but it's a fracture line that stops
8 at one of those suture lines. And the bullet was
9 found underneath this area. There's another
10 fracture right under the number. And that was 56.

11 58 shows the other side of the head and the
12 fracture extended all the way across the front of
13 the head and stopped here at this suture line in
14 Exhibit Number 58. So the impact on the inside of
15 the head was sufficient to not only fracture the
16 point of impact here on the left, but all the way
17 across the front of the head to the other side.

18 And so 56 shows the left side of the skull with
19 the damp moldy area here indicating that side was
20 down on the ground at the time the body or the
21 skeleton was found, fracture across here, fracture
22 underneath it right here, the bullet's inside the
23 skull there, the fracture extends on across. Down
24 below this is one of the normal suture lines which
25 are little zigzag lines where the bones are growing

1 slowly apart.

2 58 shows a close up of the other side of the
3 head where you can see that fracture comes all the
4 way across the skull to the other side of the head
5 indicating how severe the impact was.

6 Exhibit 60 shows the back of the head. You can
7 see above the ruler the little zigzag line or the
8 suture line that goes from the front of the head
9 back to the back and the bullet hole goes in almost
10 inside that suture line. So this is where the
11 bullet enters. It's a larger hole than usual
12 because I'm sure it's probably been partially
13 changed by animals after death.

14 61, Exhibit Number 61, shows a copy of the
15 x-ray that we took showing the bullet present inside
16 of the skull.

17 Exhibit 59 shows the x-ray from the front. And
18 you can see the hole here in the back and you can
19 see the lead fragments and the jacket over here on
20 the left side adjacent to a little fracture.

21 Exhibit 60 shows the back of the skull and
22 above. You can see the suture line coming down from
23 above this label and you can see the hole here near
24 the back and the top of the skull.

25 Exhibit 61 shows an x-ray -- photograph of an

1 x-ray showing the bullet with its fragments here on
2 the front of the skull in the left area. It's clear
3 on Exhibit 59 that the hole is here in the back of
4 the skull and here to the left are fragments of the
5 bullets. It's a little hard to see on the frontal
6 view because you're looking through the thickness of
7 the skull only down one side, which is near the
8 entrance of the bullet. And there's a little
9 fracture there, as well as a fracture coming out of
10 that hole in the back of the head. And that's each
11 of the photographs.

12 (Witness resumes the witness stand.)

13 BY MR. MAYE:

14 Q Dr. Sexton, the remains that you were presented
15 were primarily skeletal. All of the soft tissue had
16 either been -- you said there was evidence of --
17 that animals had gnawed on the body, is that
18 correct, or the remains that you were provided with?

19 A That's correct. A lot of the bones were
20 missing. The ones that were present, the ends of
21 the bones had been gnawed. So it was obvious that
22 animals had attacked the body after death, as well
23 as decomposition.

24 Q So you had no soft tissue left?

25 A That is correct except --

1 Q And so if there was any injury to soft tissue,
2 you would have no way of knowing that, would you?

3 A Except for the brain tissue that I mentioned
4 earlier which did show --

5 Q That was inside the skull?

6 A Inside the skull which did show a contusion.
7 But as far as the rest of the body, there could have
8 been other injuries that could not -- would not be
9 detected because we did not have all of the tissue.

10 Q Okay. So if you had bullet wounds that passed
11 through and through in soft tissue, you wouldn't
12 have any way of knowing that, would you?

13 A That's correct. Even if they hit bone that was
14 later removed by the animals, I still would not have
15 any indication that that occurred.

16 Q And you did not have all the bones in order to
17 examine them?

18 A That is correct.

19 Q There's also a possibility -- sometimes when
20 slugs enter a body, they lodge in soft tissue, they
21 don't pass through and through, do they?

22 A Most of the time they do lodge in the body.
23 It's just some of the larger calibers that'll go
24 through, but often times they will stay in the body.

25 Q So if animals scattered remains, you don't know

1 where evidence or even if there was any at that
2 point, you just can't tell, can you?

3 **A** That is correct.

4 **Q** Dr. Sexton, let me ask you this: To a
5 reasonable degree of medical certainty, do you have
6 an expert opinion as to the identity of the remains,
7 skeletal remains, that were provided to you in this
8 case here from Edgefield County?

9 **A** I do.

10 **Q** Who was that individual based on your -- to a
11 reasonable degree of medical certainty, who was that
12 individual?

13 **A** In my opinion within reasonable medical
14 certainty, the decedent was Samuel Sturup, Jr.

15 **Q** Let me ask you this: To a reasonable degree of
16 medical certainty, do you have an expert opinion as
17 to the cause of death as to Samuel Sturup, Jr.?

18 **A** Yes, I do.

19 **Q** What would that be?

20 **A** It was the destruction of brain tissue and
21 fracture of the bone due to the gunshot wound to the
22 back of his head.

23 **Q** Dr. Sexton, as to whether or not there were any
24 other injuries or he was dying from other injuries
25 that may or may not have been mortal or fatal, you

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1 did not have information with which to draw any
2 other conclusions as to soft tissue injuries, did
3 you?

4 **A** That is correct. He certainly could have had
5 an injury or injuries other than this that with time
6 would have killed him, but certainly a gunshot wound
7 in this area (indicating), the back of the skull
8 going through not only the brain tissue, but a area
9 called ventricles.

10 Inside the brain fluid is manufactured in the
11 choroid plexus and it circulates inside the brain
12 and then outside so that it allows the brain to be
13 cushioned by floating in this cerebrospinal fluid.
14 When the bullet passed through this ventricle on the
15 left side, it also -- as you know, any force exerted
16 on a liquid is carried in every direction. So the
17 force of that blast of the bullet going through the
18 left ventricle on this side would have gone down to
19 the brain stem because that ventricle passes on
20 through that part of the brain. And that part of
21 the brain, the brain stem, the medulla and the pons,
22 control our heartbeat and respiration, so it would
23 have immediately caused unconsciousness and probably
24 would have caused death in a very short period of
25 time.

1 **MR. MAYE:** Begging the Court's indulgence.

2 (Pause.)

3 **BY MR. MAYE:**

4 **Q** Dr. Sexton, there's one other item I'm going to
5 show you marked State's 33. I probably should have
6 given you earlier, but I'm going to ask you, for the
7 purposes of making a complete record here, if you
8 can identify the items in State's 33?

9 **A** This is an evidence bag that I sealed and
10 labeled across the seal at the top with heat seal.
11 It has the name of the decedent and our autopsy
12 number on it. It has a vial in it. And it's
13 labeled as Exhibit 33.

14 Inside the plastic bag is a vial that's also
15 labeled by myself with my initials and the autopsy
16 number and the name of the decedent. Inside the
17 vial is the lead core and the copper jacket and the
18 multiple fragments. And the lead core has my mark
19 as does the jacket. So this is the bullet that I
20 removed from the skull of Samuel Sturup, Jr.

21 **MR. MAYE:** At this time, Your Honor, I'm going
22 to offer that into evidence.

23 **THE COURT:** Mr. Williams.

24 **MR. WILLIAMS:** I have no objection.

25 **THE COURT:** All right. State's 33 is in

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1 evidence without objection.

2 (State's Exhibit Number 33, bullet
3 fragments, admitted into evidence.)

4 BY MR. MAYE:

5 Q Dr. Sexton, let me show you what's been marked
6 for identification here as State's 28 and State's 32
7 and ask you if those are case histories and
8 summaries of the results of the autopsy that you
9 performed in your forensic examination of the
10 remains that you determined were Samuel Sturup,
11 Jr.?

12 A Actually 32 and 28 are both identical copies of
13 the autopsy report that I prepared. 28 is out of
14 order, but the pages are numbered at the top right.
15 And this one happens to have the second page on top
16 whereas 32 has them in order.

17 MR. MAYE: At this point in time, Your Honor,
18 I'm going to offer State's 32 into evidence at this
19 time.

20 MR. WILLIAMS: Your Honor, I will offer an
21 objection to it as duplicative.

22 THE COURT: All right. Mark it for
23 identification purposes only, State's 32 for I.D.
24 only.

25 MR. MAYE: And, Your Honor, I've withdrawn any

1 duplication. I only have 32 that has those three
2 copies and not the other that I would offer in
3 evidence at this time, not duplicate copies of
4 anything that's previous enter -- previously been
5 put into evidence.

6 MR. WILLIAMS: Your Honor, I still believe it's
7 duplicate to the testimony offered by the expert.

8 THE COURT: All right. I've had it marked as
9 32 for I.D.

10 MR. WILLIAMS: Thank you.

11 (State's Exhibit Numbers 28 and 32, autopsy
12 report, marked for identification purposes only.)

13 MR. MAYE: Please answer any questions the
14 defense has for you at this time.

15 THE COURT: Thank you very much, Solicitor.

16 Mr. Williams.

17 CROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q Good afternoon, Dr. Sexton.

20 A Good afternoon.

21 Q I would ask that -- you know, I'm just a lawyer
22 and not a doctor, so there are certain medical terms
23 that you've used in your findings that I probably
24 can't really pronounce, but as it relates to the
25 region of the brain, which you indicated that the

1 bullet passed from the rear downward and to the
2 left, what's that region of the brain?

3 A Well, there are several regions. It went
4 through the occipital lobe, which is the back
5 portion of the brain, and then the left parietal
6 lobe and actually caused some damage to the left
7 temporal lobe. But what was more significant is in
8 that region, there's a hollow space that is filled
9 with liquid, the cerebrospinal fluid, and we call
10 that region a ventricle and that ventricle
11 communicates to the base of the brain which controls
12 your heartbeat and respiration.

13 Q And, Dr. Sexton, you also indicated earlier
14 that there was a fracturing that would have gone
15 from one side of the skull to the other; is that
16 right?

17 A That's correct. The fracture started in this
18 location (indicating) sort of like a crow's foot.
19 In other words, it started here and it radiated
20 across the front of the head across the back side of
21 the head and upward from that location.

22 Q So it was kind of a spidering of sorts or a
23 spider webbing kind of a fracture?

24 A Yes, that's correct.

25 Q And you also indicated that if there was that

1 sort of trauma to the brain -- or you would expect
2 it to be to the brain based on the brain matter that
3 you found?

4 A That's correct.

5 Q And you would have expected that it actually
6 passed through the brain; is that right?

7 A Yes, that's correct.

8 Q And then upon its lodging or its impact on the
9 opposite side of the skull from which it entered or
10 the portion of the skull in which it impacted, it
11 created the fractures?

12 A Yes, that's correct, from within.

13 Q Yes, sir. You would expect that to occur
14 within a very short period of time if one were to
15 suffer that kind of injury, wouldn't you?

16 A If you were giving statistics, yes, you would
17 say within a fairly short period of time would be
18 most likely. There are also exceptions to the rules
19 in general, but when it goes through that part of
20 the brain because it tends to stop your heartbeat
21 and respiration, then you can only live a matter of
22 minutes before the brain itself starts to die. So I
23 would have expected him to have died within minutes
24 and would have been unconscious immediately after
25 receiving this particular gunshot wound to the head,

1 but that's within a reasonable medical certainty,
2 that's not absolute.

3 Q And that is your opinion, however, that death
4 would have occurred within a very short period of
5 time with that kind of injury that you discovered?

6 A Yes, that's correct.

7 Q And, Dr. Sexton, finally, with that sort of
8 injury, you didn't find any other trauma to the body
9 parts or the skeletal remains that you were
10 provided?

11 A Yes, that's correct. No other injuries were
12 present on what we received. But as I mentioned,
13 there was no soft tissue and a number of bones that
14 were not received that were lost either to animals
15 or just not able to be found.

16 Q And let me make sure I ask this question
17 properly. So your opinion of the death that would
18 have occurred within a reasonable degree of medical
19 certainty in a short period of time is based upon
20 the injury that you found?

21 A Yes, that is correct.

22 MR. WILLIAMS: Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. WILLIAMS: I have nothing further, Dr.

1 Sexton.

2 **THE COURT:** Thank you.

3 Solicitor.

4 **MR. MAYE:** Nothing else. Just ask that Dr.

5 Sexton be released.

6 **THE COURT:** Thank you very much, Doctor. You
7 may be excused.

8 **MR. YOUNG:** State calls Gerald Richardson.

9 GERALD RICHARDSON,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat. State your full name
12 and spell your last name, please.

13 **THE WITNESS:** Gerald Richardson,

14 R-i-c-h-a-r-d-s-o-n.

15 DIRECT EXAMINATION

16 BY MR. YOUNG:

17 **Q** Mr. Richardson, do you own property in
18 Edgefield County?

19 **A** Yes.

20 **Q** All right, sir. And do you know roughly how
21 much property it is?

22 **A** It's a total of 82 acres.

23 **Q** And what part of the county is it located in?

24 **A** Trenton, South Carolina.

25 **THE COURT:** I can't hear.

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1 **THE WITNESS:** Trenton.

2 BY MR. YOUNG:

3 **Q** And how long have you owned this property?

4 **A** Since 1986.

5 **Q** And would you be able -- prior to court, you
6 were asked to recognize possibly some diagrams, some
7 photographs associated with your property. Would
8 you be able to recognize those again if you saw
9 them?

10 **A** Yes.

11 **Q** Let me show you what's been marked and admitted
12 as State's Exhibit Number 14. Do you recognize that
13 photograph?

14 **A** Yes.

15 **Q** All right. Let me have that back for just a
16 second. And I'm going to show you a diagram,
17 State's Exhibit Number 4. And you've seen this
18 before?

19 **A** Yes.

20 **Q** Okay. And does this diagram, this picture,
21 bear a relationship to property you own?

22 **A** Yes.

23 **Q** Okay.

24 **MR. YOUNG:** Your Honor, I'm going put this up
25 on the board here.

1 **Q** Using that pointer, and I'm going to turn this
2 slightly for you so you can see it better, and can
3 you tell me, and just use that pointer to roughly
4 outline any property you may own that's on this
5 diagram?

6 **A** Let me get oriented.

7 **Q** Let's just start with the photograph. How
8 about this, this photograph?

9 **A** Okay.

10 **THE COURT:** What photograph?

11 **MR. YOUNG:** This is State's Exhibit 14, Your
12 Honor.

13 **THE WITNESS:** The property goes along this line
14 and straight down the fence and straight to the
15 page.

16 **BY MR. YOUNG:**

17 **Q** Let me put this up here. Can you see that from
18 there?

19 **A** Yes.

20 **Q** All right. Now, how about step down there
21 briefly.

22 **THE COURT:** Keep your voice up, please, when
23 you're away from the microphone.

24 (Witness leaves the witness stand.)

25 **BY MR. YOUNG:**

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1 Q What I want you to do is use that pointer and
2 roughly outline the area you own with the pointer on
3 that picture, State's 14.

4 A Back...

5 **THE COURT:** Solicitor, I can't hear and it's
6 not getting in the record.

7 BY MR. YOUNG:

8 Q Step back right here. I want you to point out,
9 again using the pointer, point out the area on the
10 picture, which is State's Exhibit 14, the area,
11 outline the area of the land you own.

12 A (Witness complies.)

13 Q All right. Now, do you see -- do you see a --
14 in this picture here, do you see any dwellings in
15 that picture?

16 A Trailer.

17 Q All right. I'm going to put this back up here
18 and ask you point to that trailer you just pointed
19 out to me.

20 A It's not on here.

21 Q Well, show on the picture.

22 A On the picture?

23 Q Yes, sir, on the picture.

24 A (Witness complies.)

25 Q Now, who put that trailer there?

- 1 A I did.
- 2 Q You put that trailer there. Do you know what
- 3 that address is?
- 4 A 355 Lakeview Road.
- 5 Q Okay. Now, that trailer is located on this
- 6 land. And can you point out on this diagram, using
- 7 the pointer again, roughly the same outline of land
- 8 and where that trailer might be?
- 9 A That would go down to here, across to here,
- 10 that trailer would be over in here somewhere.
- 11 Q The trailer would be off to the right?
- 12 A Correct.
- 13 Q All right. And that's on your land?
- 14 A Yes.
- 15 Q Okay. Now, what's up on this diagram? Is all
- 16 of this in Edgefield County?
- 17 A I'm not certain where the county line is.
- 18 Q Is your land in Edgefield?
- 19 A My land is in Edgefield County.
- 20 Q All right. And when you first bought this
- 21 property, did you own more of what's owned up here
- 22 than you now own?
- 23 A Yes.
- 24 Q Did you sell any of it?
- 25 A Yes, ten acres.

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- 1 Q All right. And where was that acreage you
2 sold?
- 3 A It would be from beyond this fence out here,
4 but this isn't there, it's over here.
- 5 Q Okay. That's fine.
- 6 A It goes from here, out to the road and over and
7 down through here.
- 8 Q So you sold some land?
- 9 A Yes.
- 10 Q In addition to what's up here? In other words,
11 you don't own it now, but you did own it?
- 12 A Correct.
- 13 Q All right. And you put a trailer on that
14 property?
- 15 A Yes.
- 16 Q Would you take your seat again?
- 17 A (Witness resumes the witness stand.)
- 18 Q Now, do you know a person by the name of Julio
19 Hunsberger?
- 20 A Yes.
- 21 Q Do you know Alex Hunsberger?
- 22 A Yes.
- 23 Q How do you know them?
- 24 A I was married to their mother.
- 25 Q You were married to their mother?

1 **A** Yes.

2 **Q** And during the period of time that you owned
3 this property, were you married to their mother?

4 **A** Yes.

5 **Q** And you still own the property?

6 **A** Yes.

7 **Q** And to your knowledge, did Alex and/or Julio
8 Hunsberger have access to that trailer --

9 **MR. WILLIAMS:** Your Honor, I'm going to object
10 to him continuing to use the name of my client's
11 brother.

12 **THE COURT:** What's the grounds? What rule do
13 you cite for that to be objectionable?

14 **MR. WILLIAMS:** Your Honor, my client's here on
15 trial and I'd just ask the Solicitor to keep his
16 comments related to my client.

17 **THE COURT:** I'll overrule the objection.
18 Solicitor, you may continue.

19 **MR. YOUNG:** Thank you, Your Honor. May I
20 rephrase the question?

21 **THE COURT:** Certainly.

22 BY MR. YOUNG:

23 **Q** During the time that you owned this property,
24 you were married to Ms. -- what's her name?

25 **A** Ezra Hunsberger.

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1 Q Hunsberger. And during the period of time that
2 you were married to her, were you acquainted with
3 Julio and Alexander Hunsberger?

4 A Yes.

5 Q To your knowledge, did either Julio and/or
6 Alexander Hunsberger have access to that trailer?

7 A Yes.

8 Q And that trailer, did they have a key?

9 A Yes.

10 Q All right.

11 THE COURT: Well, I tend to agree with
12 Mr. Williams now. It's not did they have a key.
13 You need to rephrase that question. I will strike
14 that question from the record and Mr. Richardson has
15 not responded to that question.

16 MR. YOUNG: Thank you, sir.

17 BY MR. YOUNG:

18 Q Did Alex Hunsberger have a key?

19 A Yes.

20 Q Okay. And have you seen either Alex and/or
21 Julio in that trailer before?

22 A Yes.

23 Q Or since?

24 THE COURT: I'm going back to Mr. Williams now.
25 The question is, have you seen Julio Hunsberger --

1. **MR. YOUNG:** I'll rephrase it to Julio
2 Hunsberger.

3 **THE COURT:** -- in that trailer?

4 **BY MR. YOUNG:**

5 **Q** Have you seen Julio Hunsberger in that trailer?

6 **A** Yes.

7 **Q** All right. And do you also own any property on
8 or around

9 **A** Yes.

10 **Q** What do you own there?

11 **A** Mobile home.

12 **Q** Mobile home. And have you ever seen Julio
13 Hunsberger at

14 **A** Yes.

15 **Q** And who resides at 270 Sandy Springs?

16 **A** Ezra.

17 **Q** Your wife, your former wife?

18 **A** Yes.

19 **MR. YOUNG:** I don't have any further questions.
20 Would you answer any questions Mr. Williams may have
21 for you?

22 **THE COURT:** Thank you very much, Solicitor.
23 Mr. Williams.

24 ****

25 ****

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q Mr. Richardson, I just have a couple of
4 questions for you. How many mobile homes were on
5 your property here in Edgefield County?

6 A At one point, there were three.

7 Q Okay. At one point, there were three?

8 A (Witness nodded head.)

9 Q Ezra stayed at the Sandy Springs Road address?

10 A Correct.

11 Q And that would -- that would be Ezra
12 Richardson; is that right?

13 A Yes.

14 Q Your former wife?

15 A Yes.

16 Q The mother of my client?

17 A Yes.

18 Q Did Tony Popple stay at one of your mobile
19 homes?

20 A I don't know him.

21 Q You don't know Antonio Popple?

22 A No, sir.

23 Q Do you know Kay Kyles?

24 A Yes.

25 Q Did she stay at one of the mobile homes on your

1 property?

2 A Yes.

3 Q But you don't know Antonio Popple?

4 A Not by that name. Are you talking about Tony,
5 Ms. Kyles' son?

6 Q Yes.

7 A Okay. I knew him.

8 Q He stayed in a different mobile home on your
9 property, did he not? Ms. Kyles stayed in one and
10 Tony stayed in another; is that right?

11 A Yes.

12 Q Ezra stayed in the third one?

13 A Correct.

14 MR. WILLIAMS: All right. Thank you, sir.

15 MR. YOUNG: I don't have any further questions,
16 Your Honor.

17 THE COURT: Thank you very much,

18 Mr. Richardson. You may step down.

19 All right. You may call your next witness.

20 MR. YOUNG: The State calls Richard [sic]
21 Gordon.

22 Your Honor, if we may ask that the last witness
23 be excused.

24 THE COURT: Any objection, Mr. Williams?

25 MR. WILLIAMS: No, sir.

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1 **THE COURT:** All right. Mr. Richardson, the
2 last witness, is excused.

3 I also excused Dr. Sexton. I assume you had no
4 objection?

5 **MR. WILLIAMS:** No, sir, I did not. Thank you,
6 Your Honor.

7 JAMES GORDON,
8 having been duly sworn, testified as follows:

9 **THE WITNESS:** Gordon, G-o-r-d-o-n. My first
10 name is James.

11 DIRECT EXAMINATION

12 BY MR. YOUNG:

13 **Q** Mr. Gordon, where do you work and how long and
14 describe your job?

15 **A** I work with the Richmond County Sheriff's
16 Office. I've worked there since 1996. Prior to
17 that -- well, there was a consolidation. So prior
18 to consolidation, I worked with the Augusta Police
19 Department.

20 **Q** All right, sir. And what do you do for a
21 living?

22 **A** I work, as I said before, with the Richmond
23 County Sheriff's Department. I work in the crime
24 scene unit for the Richmond County Sheriff's Office.
25 I have been in that there since 2001.

1 Q Okay. And during the period of January 2002,
2 did you have occasion to be assigned to go collect
3 evidence at two locations in Augusta?

4 A I did.

5 Q That would be Wrightsboro Road. I believe the
6 address would be And the other one would be

7

8 A 177, I think, Cherry --

9 Q Okay.

10 A Yes.

11 Q All right. And did you, in fact, go to 170
12 Cherry Street -- to the Cherry Street address?

13 A I'm sorry?

14 Q Did you go to that Cherry Street address?

15 A I did.

16 Q Okay. Would you be able to recognize a picture
17 of it if you saw it again?

18 A I would.

19 Q Let me show you what's been admitted as State's
20 Exhibit 20 and ask you if you recognize it?

21 A I do.

22 Q And what's the address mentioned on that?

23 A It is

24 Q Oh, okay. Thank you. With regard to
25 while you were there at that

1 location, what were you looking for?

2 A I was there assisting other officers in a
3 search. I was generally looking for items in
4 connection with another incident that had occurred.
5 I collected items from that location. And I can
6 advise you what items I collected, received, if you
7 wish.

8 Q Did you also expose photographs?

9 A I did.

10 Q Okay. Actually, did you expose the photograph
11 that was State's 20?

12 A I did.

13 Q All right. And when you were there -- would
14 you be able to recognize some of these pictures you
15 described at the Cherry Street address?

16 A Yes.

17 Q All right. I'm going to show you what's been
18 marked as State's Exhibit 30 and 31. Can you
19 recognize those?

20 A I do.

21 Q And what are they, sir?

22 A They are photographs taken from behind the
23 residence at of a ladder and
24 underneath the ladder, two automobile struts.

25 Q Two automobile struts?

1 A Correct.

2 Q What do you mean by struts?

3 A Hydraulic -- just hydraulic struts, the lifts
4 that hold a vehicle on.

5 Q Would you be able to recognize one of those
6 again if you saw it?

7 A Yes.

8 Q Let me hand you up what's been marked as
9 State's Exhibit 21 and ask you if you can recognize
10 it?

11 A I do.

12 Q What is that?

13 A I'm sorry?

14 Q What is that?

15 A This is the black strut that was there.

16 Q The black strut. You collected -- that's one
17 of the two you collected?

18 A It is, sir.

19 Q And can you just briefly describe where this
20 was in relation to the front, back or side of the
21 house, where this was found?

22 A It was in the rear of the house. The ladder
23 was essentially up against the house. It was
24 underneath the ladder in the back.

25 Q Do both these pictures fairly and accurately

1 describe the position and location of where you
2 recovered these two struts?

3 A Yes.

4 Q Of which 21 is one?

5 A Yes.

6 MR. YOUNG: Any objection to it?

7 MR. WILLIAMS: No objection.

8 THE COURT: State's?

9 MR. YOUNG: 30 and 31, Your Honor.

10 THE COURT: I thought it was 21. I'm sorry.

11 THE WITNESS: 21 is this.

12 THE COURT: You're offering photos?

13 MR. YOUNG: I have two photos, Your Honor, 30
14 and 31. The strut has been admitted already as --
15 it has not been admitted, it's 21.

16 THE COURT: All right. So 30 and 31, photos,
17 are in evidence without objection. Is that correct,
18 Mr. Williams?

19 MR. WILLIAMS: The photos, yes, Your Honor.

20 (State's Exhibit Numbers 30 and 31,
21 photographs, admitted into evidence.)

22 BY MR. YOUNG:

23 Q And, sir, is this, in fact, the strut, as you
24 call it, that you collected from underneath these
25 ladders?

1 **A** It is.

2 **MR. YOUNG:** The State would offer State's
3 Exhibit Number 21, Your Honor.

4 **MR. WILLIAMS:** I would object to it on the
5 basis of its relevance to the facts alleged against
6 my client.

7 **THE COURT:** All right. 21 is in evidence
8 subject to objections.

9 **MR. WILLIAMS:** Thank you, Your Honor.

10 (State's Exhibit Number 21, shock absorber,
11 admitted into evidence.)

12 BY MR. YOUNG:

13 **Q** All right, sir. Would you be able to recognize
14 a map showing the location of Cherry Street in
15 relation to its surrounds?

16 **A** I would.

17 **Q** Let me show you what I have marked as State's
18 Exhibit Number 29 and ask you, sir, what is that?

19 **A** It's a map. It's generally of the Augusta area
20 showing on it.

21 **Q** Okay. And does that fairly and accurately set
22 out where was?

23 **A** Where it was, yes.

24 **Q** It's not there anymore, is it?

25 **A** That is correct.

1 Q is fairly and accurately
2 displayed in this map?

3 A It is.

4 Q And this is to scale?

5 A Yes, it appears to be to scale.

6 MR. WILLIAMS: I have no objection to it.

7 MR. YOUNG: Your Honor, this is State's Exhibit
8 29, we offer it.

9 THE COURT: State's 29 is in evidence without
10 objection.

11 (State's Exhibit Number 29, map, admitted
12 into evidence.)

13 BY MR. YOUNG:

14 Q Just so you can describe it for the jury, if
15 you're coming down Washington Road from I-20, where
16 would Cherry Street be?

17 A If you're coming down Washington Road from
18 I-20, it would be essentially on top of the hill.
19 As you rise, you go past Longhorns, California
20 Dreaming. It would be on your -- it's not quite a
21 mile and a half away from I-20. It would be on your
22 right. And if you turn down Cherry Street, you
23 would be stopped eventually by the railroad tracks.

24 Q Okay. So it abuts up to the back of the
25 railroad track area?

1 **A** It does.

2 Q Okay. And on the opposite side of the railroad
3 track from Cherry Street, what would there be?

4 **A** River Watch Parkway.

5 Q Okay. Thank you. All right, sir. Now, did
6 you also have occasion, as I indicated, to go to
7 ?

8 **A** I did, sir.

9 Q And your purpose in going there, sir?

10 **A** Was to assist Investigator Scott White in
11 collecting evidence, basically, a fire burning
12 location.

13 Q All right. And you were looking for evidence
14 of any burning in that area?

15 **A** Yes.

16 Q And did you locate such evidence?

17 **A** Yes. I located a fire pit. Next to the fire
18 pit was like a 50-gallon drum that had been used to
19 burn items.

20 Q And did you collect any evidence from the drum?

21 **A** I collected the drum itself and items from it
22 and items from that fire pit.

23 Q Did you expose photographs of that?

24 **A** I did.

25 Q Would you be able to recognize them again if

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1 you saw them?

2 **A** I would.

3 **Q** Let me show you what's been marked as State's
4 Exhibit 34, which is a photograph, and State's
5 Exhibit 35 and ask if you can look at them and
6 recognize them?

7 **A** Yes.

8 **Q** What are they?

9 **A** 34 is the big drum, the 55-gallon drum, and the
10 fire pit in the rear of -- correction --

11 . And State's Exhibit 35 are items
12 that was -- excuse me -- that were recovered from
13 the fire pit.

14 **MR. YOUNG:** The State offers into evidence
15 Exhibits 34 and 35, which are the burn barrel and
16 the residue from the burn barrel.

17 **THE COURT:** Mr. Williams.

18 **MR. WILLIAMS:** Your Honor, I don't have any
19 objection to the photographs.

20 **THE COURT:** State's 34 and 35 is in evidence
21 without objection.

22 (State's Exhibit Numbers 34 and 35,
23 photographs, admitted into evidence.)

24 **BY MR. YOUNG:**

25 **Q** Sir, as to the type of residue noted in this

1 photograph, which I hold up is 35, this residue that
2 you found in the bottom of 34, which is the burn
3 barrel, how would you describe this residue?

4 A Burnt.

5 Q Well, in terms of what it was?

6 A There were metal pieces, there were work
7 pieces, there was some cloth, there were some
8 eyeglass frames. I have a list if you would rather
9 me read off what was in there.

10 Q Did you find any evidence of fabric and other
11 things?

12 A Yes. There was a piece of cloth.

13 MR. YOUNG: Would you please answer any
14 questions Mr. Williams has for you?

15 THE COURT: Thank you, Solicitor.

16 Mr. Williams.

17 MR. WILLIAMS: Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 CROSS-EXAMINATION

21 BY MR. WILLIAMS:

22 Q Mr. Gordon, you were familiar with that Cherry
23 Street address and residence at the time it existed
24 back in 2001 -- well, early 2002?

25 A In 2002, yes, sir.

1 Q Okay. And did you have the occasion to
2 actually go into the inside of that residence?

3 A I had been on the inside of the residence
4 during the course of the search.

5 Q And only if you recall, do you recall if there
6 was power in that residence?

7 A I cannot say for sure, sir.

8 Q You don't remember?

9 A I do not remember. It was a daylight search.

10 Q Would you describe it as a fairly run down
11 home?

12 A It wasn't really run down. It was a bit
13 cluttered.

14 Q Cluttered, okay. And off Washington Road -- at
15 night, did you ever go to the residence at night?

16 A I've been by the location at night many times.

17 Q And is it well lighted?

18 A It's generally visible, but it's -- in terms of
19 well lighted, I was not there during the night in
20 reference to whether there's a street light right
21 there. I just do not know.

22 Q Okay. You said it was visible to you, though?

23 A Yes.

24 Q I mean, even at night?

25 A Even at night, you know, you knew where the

1 location was. As I said, it sits right next to a
2 Longhorns and -- or just across the street from it.
3 And, normally, I've eaten there several times since
4 then even since it's been gone and I can see where
5 it was.

6 Q Okay. But it's back -- it's not on Washington
7 Road, it's back from Washington Road?

8 A It is down Cherry Street, yes, sir, it is.

9 MR. WILLIAMS: No more questions, Your Honor.

10 MR. YOUNG: No further questions, Your Honor.

11 THE COURT: Thank you very much, Mr. Gordon.

12 You may step down.

13 MR. YOUNG: We'd ask that Investigator Gordon
14 be released, Your Honor, so he can return to his
15 duties.

16 MR. WILLIAMS: No objection.

17 THE COURT: Thank you. You may be released.

18 THE WITNESS: Thank you, sir.

19 THE COURT: All right. You may call your next
20 witness.

21 MR. MAYE: The State will call Antonio Griffin.

22 THE COURT: How long is this witness going to
23 be?

24 MR. MAYE: It won't be extremely brief, Your
25 Honor, I wouldn't imagine.

1 **THE COURT:** Why don't we take a recess.

2 Mr. Foreman, ladies and gentlemen of the jury
3 panel, I think we'll take our afternoon recess.
4 I'll remind you during this recess please do not
5 discuss this case with anyone, that includes your
6 fellow jurors or anyone else.

7 We'll take about a 15-minute recess. If you'll
8 leave your pads upside down on the chair. They'll
9 be secured during this break. Thank you very much.
10 You may now go with your bailiff.

11 (The jury retires to the jury room.)

12 **THE COURT:** All right. Court will be in recess
13 15 minutes.

14 (Brief Recess.)

15 **THE COURT:** All right. Anything from the State
16 before we bring in our jury?

17 **MR. MAYE:** Nothing from the State, Your Honor.
18 Thank you.

19 **THE COURT:** Defense?

20 **MR. WILLIAMS:** Your Honor, I have a couple of
21 transcriptions that I may want to go ahead and
22 provide to the State and the Court.

23 **THE COURT:** All right. Yes, sir.

24 **MR. WILLIAMS:** As it relates to this witness.

25 **THE COURT:** All right. Thank you.

1 (Mr. Williams hands documents to the
2 Solicitors and the Judge.)

3 **THE COURT:** Thank you, Mr. Williams.

4 **MR. WILLIAMS:** Your Honor, it's one more.

5 **THE COURT:** Sure.

6 **MR. WILLIAMS:** I learned.

7 **THE COURT:** Thank you.

8 All right. Bring us the jury, please.

9 (The jury returns to the courtroom.)

10 **THE COURT:** All right. Our jury is back.

11 Solicitor, you may call your next witness.

12 **MR. MAYE:** The State would call Antonio
13 Griffin.

14 **ANTONIO GRIFFIN,**

15 having been duly sworn, testified as follows:

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

18 **THE WITNESS:** Antonio Griffin, G-r-i-f-f-i-n.

19 **DIRECT EXAMINATION**

20 **BY MR. MAYE:**

21 **Q** Mr. Griffin, tell the ladies and gentlemen of
22 the jury where you're from.

23 **A** Augusta, Georgia.

24 **Q** Let's go back to 2001 just before Labor Day of
25 2001. Who were you living with and who were your

1 family members? Where did you reside over in
2 Augusta?

3 A My mom and all my family is from Augusta.

4 Q Okay. What were you doing day-to-day just
5 before Labor Day 2001? Day in, day out, what were
6 you doing?

7 A I was working, going to school. I was in the
8 band.

9 Q You were in the band?

10 A Yes, sir.

11 Q What kind of band are we talking about?

12 A High school band.

13 Q Okay. Did you know Richard Cave and was he a
14 friend of yours?

15 A Yes, sir.

16 Q Okay. Tell the ladies and gentlemen of the
17 jury how you and Mr. Cave came to know Steven Lewis
18 Barnes.

19 A A girl that I was with at the time, we was
20 broke up at the time. When we got back together,
21 she was hanging with Barnes. So me being her
22 boyfriend, I wanted to know who he was so that's how
23 I met him.

24 Q Did y'all start to hang out with Steven Lewis
25 Barnes at that time?

1 **A** Yes, sir. We went to the club my first time
2 meeting him.

3 **Q** Okay. Did you hang out with him some prior to
4 Labor Day of 2001 when all these events took place?
5 Did you get together with him a few times?

6 **A** Yes, sir.

7 **Q** Okay. Why did you like hanging out with Steven
8 Lewis Barnes? What was the attraction?

9 **A** He had some nice cars with rims on it. And we
10 went to the club. We was, like, in three cars. He
11 had a lot of females and it was a lot of guys. So I
12 liked the environment, you know, be around a lot of
13 females like that.

14 **Q** I understand. Let's talk about Labor Day,
15 September 3rd of 2001. What were you doing that day
16 and what happened?

17 **A** Me and Richard -- we didn't have school the
18 next day, it was on a Sunday, and me and Richard
19 wanted to go out to the club again. So we was
20 calling Big Man, which is Barnes. We was calling
21 him all day and he wouldn't never answer his phone.
22 So he called back later on that night and we asked
23 him to come pick us up. He said he couldn't, he was
24 taking care of some business. He was like, But if
25 y'all get dropped off up here where I'm at, then

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1 I'll drop y'all back off at home later on.

2 So we asked Richard's stepdad, he was on his
3 way to work on Washington Road. So he said, I'll
4 drop y'all off. So he dropped us off. That's how
5 we end up at Cherry Street.

6 Q Okay. Show you State's 20, the green house,
7 Cherry Street. Do you recognize that?

8 A Yes, sir.

9 Q What happened when you got to the green house?

10 A We got there, Barnes was there, Sam and his
11 brother, Little Man. They was arguing with Sam over
12 some money, saying some money was missing, fighting,
13 arguing over money.

14 Q Tell us what was going on, what was going back
15 and forth in between them?

16 A We got there, Sam was like he didn't have the
17 money. And they kept accusing him of having some
18 money. And then at first, when we got down there,
19 we shook hands and everything. And he was like,
20 yes, he done stole my money. So I'm thinking he
21 talking about me and Richard. We was like, Who? He
22 was like, No, Sam. We was like, Who was Sam?
23 Because I done see him before, but I never knew his
24 name. I seen him when we went to that club that one
25 time. So he told Sam to came there again. Then he

1 was like, This is Sam.

2 So he was like -- they got back to arguing
3 again about the money. So he was like, Man, y'all
4 jump him. So he told me and Richard to jump him.
5 So I looked at Richard, Richard looked at me crazy.
6 And Sam actually thought we was going to jump him so
7 I guess he wanted to get the first lick off of me,
8 swung at me. Me and him just got to fighting,
9 nobody else just me and him, but the fight didn't
10 last long. Big Man, Little Man broke it up.

11 Q What was the next thing that happened?

12 A I remember he kept going back to him asking him
13 about money and he wanted to hit on Sam. And Sam --
14 it was a car in the yard, which was Little Man's
15 car, and he was chasing him around the car telling
16 him, There ain't no need to run because when I hit
17 you, when I connect, you're going to feel it, this
18 and that.

19 So I remember somehow China name, which was
20 Charlene, her name got in it saying that she
21 might've had the money. So I remember they called
22 her out the house, that's when I know that she was
23 there, they called her out the house. And they
24 asking her where the money. She's like she ain't
25 got no money.

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1 So they start beating her down with a broom and
2 she fell back through the door, through the screen
3 of the door while it was closed. And they told her,
4 Bring it back out your purse. So she brought it
5 back out her purse. And I remember they got it and
6 emptied it out on the porch and she didn't have the
7 money. She was crying, was like, I told you I ain't
8 had no money. So they was like, uh, well, he must
9 be lying on you. So they was like, yeah.

10 So he gave her the broom and was like, Well,
11 hit him. She was like, No, I'm not fixing to hit
12 him. And he was like, Bitch, if you don't hit him,
13 I'm going to hit you again with the broom. So she
14 walked up to him, was tapping him soft like this
15 (indicating). So they're laughing, which is Little
16 Man and Big Man, and, Hit him harder, hit him
17 harder. So tapping on him again. So they was like,
18 Man, just go on back in the house. So they went
19 back in the house.

20 Q What was the next thing that happened?

21 A I remember he came and asked me and Richard,
22 What y'all think about this, what y'all think? We
23 was like, We don't know, man. We don't know what's
24 going on.

25 So I remember Little Man name came in it, which

1 is Big Man's brother, that he might have had the
2 money. So Little Man got heated. He pulled out a
3 gun and said, I ain't got no money. He pulled out a
4 wad of money also saying, I got money. I ain't got
5 to steal from my brother. And I remember him
6 telling Sam to open his mouth. He put the gun in
7 Sam's mouth, was fixing to shoot him and Big Man
8 actually stopped him, was like, Man, that's serious,
9 you ain't got to do all that.

10 And I remember later on Little Man got a call
11 on his phone. He walked to the street, which is
12 outside the yard, came back in the yard, said, Man
13 I'm fixing to go, I'll be back. So Big Man came
14 again asking, Man, what y'all think, smoking a
15 cigarette. We was like, Man, we don't know, we
16 don't know what's going on.

17 So he went back and asked Sam again and I
18 remember Sam saying, Yeah, man, I got your money.
19 He was like, You sure you got my money? He was
20 like, Yeah, man. He was like, Well, where is it?
21 He said, It's at the house. He's like, What, you
22 done gave it to your mama or something? He's like,
23 No, man, I got it hid. He's like, Hid where? He's
24 like, I got it hid good behind the toilet. So he's
25 like, you mean to tell me if I'm going to go to your

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1 house, I'm going get my money? He was like, Yeah,
2 man. So he was like, If we go up there and you try
3 to scream for help, I'm going to kill everybody in
4 the house.

5 So he came back again to me and Richard was
6 like, We're going to go. We're going to wait till,
7 like, after some time after 12 o'clock and go and
8 then we'll go get the money then. So I remember he
9 went back and asked Sam after a while, Man, you sure
10 you got my money? And Sam wouldn't answer him. I
11 remember Sam was just sitting there looking at him.

12 So he jumped at him, Man, you got my money? He
13 was like, No, man. He was like, What? He's like,
14 Man, I just wanted you to stop hitting me, man. He
15 said, I ain't got no money, man. So he hit him,
16 pow, Yes, you do got my money because you wanted a
17 grill in your mouth and this and that. So he pulled
18 out a gun, was like, Forget it, I'm through talking,
19 this and that. He say, We fixing to go for a walk.

20 So he called Charlene back out the house. And
21 I remember we walked around the house through some
22 woods and got on the railroad tracks. We walked
23 down the railroad tracks and he made Sam walk in
24 front of us. I remember we stopped some ways down,
25 then he tried to give Charlene the gun to shoot him

1 then. And she was like, No, I'm not fixing to shoot
2 him. He was like, Well, somebody fixing to shoot
3 somebody because one of y'all got my money. And he
4 actually pretended like he was fixing to give Sam
5 the gun and she started screaming and hollering and
6 grabbed it and was like, Please don't let him shoot
7 me, please don't let him shoot me. So he laughed
8 and stuff. He was like, I ain't going to let him
9 shoot you.

10 So he looked at me and Richard was like, Y'all
11 want to shoot him? We was like, No, man. So he was
12 like -- Sam was like, Man, just go on and take me
13 home, man, I ain't got no money, just take me home.
14 He was like, All right, I'll take you home.

15 So all us walk back to the house and he told us
16 to go in the yard while he walked up the street. He
17 walked up the street for a while. He was on his
18 cell phone. So after a while, I really don't know
19 how long it was, he came back down the street. When
20 he came back down the street, a car pulled in the
21 yard.

22 Q Who pulled up in that car?

23 A The two brothers.

24 Q Last names?

25 A Two Hunsbergers.

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1 Q The two Hunsberger brothers pulled up?

2 A Yes, sir.

3 Q Okay. What was the next thing that happened?

4 A Well, I remember they got out the car. They
5 went to the street because Big Man was still in the
6 street. They went and talked to him for a quick
7 little hot second. They came back and stood by the
8 car. Then he called me and Richard to him. He was
9 like, Man, I'm fixing to go on and take him home
10 since he want to go home so bad. He's like, Y'all
11 want to ride with me or y'all want me to drop y'all
12 off at home? We was like, Man, we cool, we'll ride
13 with you.

14 So he called Charlene out the house, like,
15 Y'all go on and get in my car. So we got in his
16 car. I remember I got in the front seat, Charlene
17 and Richard got in the back seat. Then after a
18 while, he came and got in the car, then we followed
19 their car to Carolina.

20 Q Let me ask you this: When the two Hunsbergers
21 got there, was there enough light for you to be able
22 to see what was going on?

23 A Yes, sir.

24 Q Was your attention focused on them? Could you
25 see them?

1 **A** Yes, sir.

2 **Q** All right. Is Julio Hunsberger, is he present
3 here in the courtroom today? Is that one of the
4 ones that was there?

5 **A** Yes, sir.

6 **Q** Where is he here in the courtroom today?

7 **A** The guy with the black suit on next to the
8 black lawyer with a suit on.

9 **Q** To the left of the lawyer there?

10 **A** Yes, sir.

11 **MR. MAYE:** I'd just like for the record to
12 reflect he's identified the defendant in this case,
13 Julio Hunsberger.

14 **THE COURT:** So reflected.

15 **BY MR. MAYE:**

16 **Q** Are you absolutely certain that that's the same
17 guy that showed up there at the green house?

18 **A** Yes. I'll never forget nothing about that
19 night who was there or whatever.

20 **Q** All right. Tell me everybody that got in the
21 car with Barnes there.

22 **A** Me, Barnes, Charlene and Richard.

23 **Q** Okay. What happened? What did the Hunsbergers
24 do in the car that they were driving? What happened
25 next?

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1 A I remember Big Man, his car was in front of the
2 yard, he came and got in the car. Their car backed
3 out the yard. We backed up and followed them and we
4 came to Carolina.

5 Q Who was leading the way?

6 A The Hunsbergers.

7 Q Did anybody in the car that you were in do
8 anything to direct where y'all went once y'all left
9 the green house?

10 A No, sir. We was following them.

11 Q Okay. As best you can recall tell them about
12 what kind of roads you went on and what happened as
13 y'all were following the Hunsbergers?

14 A I remember we went back down Washington Road,
15 somehow we got to Broad Street. We went over 15
16 Street Bridge and got on -- I remember going down
17 25, remember making a right on a road, then turning
18 off on a dirt road, then going across a field.

19 So when we go on across the field, we stop and
20 Big Man and one of the -- the driver of the other
21 car got out the car, they talked for about a quick
22 five seconds and then got back in the car. They
23 turned their headlights off and then we went through
24 some woods and came to another open field.

25 Q Let me talk to you about State's Exhibit 4.

1 Talking about you went through one field and then
2 through a narrow gap and then to a bigger field; is
3 that correct?

4 A Yes, sir.

5 Q I want you to look at State's 4 up there. Is
6 that a fairly consistent diagram of the way the
7 first field was laid out, the gap y'all went through
8 and the second open field that y'all ended up in?

9 A Yes, sir.

10 Q Okay. Who was leading the way when y'all
11 turned off the dirt road and went across those
12 fields?

13 A The Hunsbergers.

14 Q Okay. Did y'all have any communication with
15 anybody in the car or anything as that car turned
16 off the dirt road and went across those fields and
17 back up in those woods?

18 A No, sir.

19 Q Okay. What happened when y'all stopped?

20 A When we stopped, Big Man got out the car and
21 the driver of the other car, they got out -- both of
22 them got out the car. One of them had a gun. I
23 remember the driver, whoever was driving, they had a
24 gun and Big Man had a gun. I remember they popped
25 the trunk of their car and Sam was in the trunk.

1 Q Okay. At that point in time were you aware
2 that Sam Sturup was in the trunk of the car that
3 the Hunsbergers were in?

4 A No, sir.

5 Q Did you see them put him in the trunk at the
6 scene?

7 A No, sir.

8 Q Okay. What was the next thing that happened?

9 A Well, they tried -- I thought he was dead
10 because they was telling him to get up, but he was
11 sleep. And they kept tapping him, like, Get up, get
12 up, man. So he got up. He got out of the trunk.

13 And I remember Big Man telling him, Walk, walk.
14 He was like, For what? He was like, Man, if you
15 don't walk, I'm going to shoot you right here. So
16 he made him walk in front of us. We walked across
17 the field, got to a gate, crossed the gate, went
18 through some more woods and came through an open
19 area inside the field -- inside the woods.

20 Q Let me show you State's 6. Is that the gate
21 y'all crossed?

22 A Yes, sir.

23 Q Once y'all crossed that gate to start with, the
24 metal gate, where did you then go?

25 A Through some woods, then we came to a little

1 open area inside the woods.

2 Q Let me show you State's 7. Is that the path
3 y'all walked up through the woods?

4 A Yes, sir.

5 Q What was the next thing that happened?

6 A I remember he made us stop, but he made Sam
7 walk off in front of us some, a couple of yards or
8 whatever. And he was like, okay. Big Man was like,
9 okay, this is what's fixing to happen, everybody
10 fixing to shoot, but I'm going to make China shoot
11 first so if she tell, everything will fall back on
12 her.

13 She started crying again, like, Big Man I told
14 you I'm not fixing to shoot nobody, I got a kid, I
15 don't want this on my head. He was like, Bitch, if
16 you don't shoot him, I'm going to kill you. He
17 looked at me and Richard, That go for y'all too.

18 So she started crying. He gave her the gun.
19 He backed up behind all of us. And she was standing
20 there for a long time just with the gun. She was
21 like, I don't know how to shoot. So he came behind
22 her, aimed, said, All you got to do is pull the
23 trigger. He backed up again. And she sat there for
24 a long time just crying, holding the gun and she
25 shot.

1 And one of the brothers got the gun from her,
2 he shot. He shoved the gun to me. I walked up,
3 shot at the ground. Richard got the gun. Then the
4 last one who shot had his own gun. So that's when
5 Big Man was like, Y'all go on back to the car. So
6 we run on back through the field --

7 Q Let me get this straight. One of the
8 Hunsbergers had their own gun there?

9 A Yes, sir.

10 Q But you don't know which one?

11 A No, sir.

12 Q And one of them you said had a gun when they
13 got out of the car; is that correct?

14 A Yes, sir.

15 Q Okay. What was the next thing that happened?

16 A Running back through the field, jumped the
17 gate, got to the cars -- before we got to the car, I
18 heard another shot. So when we got to the cars, I
19 turned around, Charlene and Big Man running through
20 the -- running across the field now because they was
21 the only ones left in the woods.

22 So we got back in the car. We leaving. And I
23 remember I asked Big Man, I was like, Man, how you
24 know this man ain't fixing to get up and go get some
25 help? Because he was alive when we left the woods.

1 So he was like, He ain't going to get up, he
2 ain't going to get up. So I was like, Man, how you
3 know? I said, That man was alive when we left the
4 woods. He was like, I shot him in the head, he
5 ain't going to get back up. So I'm like (indicating
6 sound), All right. So we go to a trailer --

7 Q Who led the way once y'all left the field where
8 the automobiles were, who led the way out of there?

9 A The Hunsbergers.

10 Q Did y'all follow them?

11 A Yes, sir.

12 Q Were they in their car?

13 A Yes, sir.

14 Q And y'all got back in the same car you arrived
15 in?

16 A Yes, sir.

17 Q What happened next?

18 A Got to the trailer. They led the way in. They
19 opened the door. We came through the kitchen. And
20 I remember Big Man was like, Y'all sit down in the
21 living room, I'll be back.

22 Q Okay. Who got in the trailer? Who led the way
23 in the trailer?

24 A The Hunsbergers.

25 Q Who opened it up and who went in it?

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1 **A** The Hunsbergers.

2 **Q** Okay. What happened once you got up inside
3 this trailer?

4 **A** We got in the trailer. We went through the
5 kitchen and came to the living room and Big Man was
6 like, Y'all sit down right here, I'll be back. So
7 the Hunsbergers and Big Man went back to the back
8 room. And we was there for a while.

9 And I remember I was sitting there watching
10 T.V. MASH was on, whatever time that come on,
11 12:00, one o'clock, whatever, that's around what
12 time it was. So I remember he came back to check on
13 us. And I asked him for a cigarette. And, um, I
14 got cousins who smoke cigarettes, they said it calm
15 your nerves. So I tried to smoke a cigarette
16 because I'm scared, I don't know what's going on.

17 And he sat down, was like, uh, he laughing. He
18 was like, If something like this go down again,
19 y'all think y'all can do it again? So I looked at
20 him. So he's laughing. So he was like, Y'all going
21 to be all right, y'all going to be all right.

22 So he went back to the back. They stayed back
23 there for a long time again. So he came back, like,
24 Y'all come on. So he had a bag in his hand. So we
25 left and headed back to Augusta.

1 Q And y'all all left. Where did the Hunsbergers
2 stay?

3 A They stayed at the trailer.

4 Q They stayed at the trailer, okay. What was the
5 next thing that happened?

6 A I remember he made Richard drive and Big Man
7 was in the passenger seat and I was in the back with
8 China. And I remember we come across the bridge
9 coming back to Augusta. And he threw the bag over
10 to me in the back seat, like, I want you to throw
11 this in the water. So he made Richard stop and I
12 got out the car. He was like, Hold on, not yet, not
13 yet. Because cars was coming. So I wait till the
14 car passed, whatever. I just stepped one foot out,
15 threw it in the water, got back in the car. We went
16 back to the green house.

17 Q Y'all went back to the green house?

18 A Yes, sir.

19 Q Let me ask you this to go through: At the
20 green house, out there when y'all got out of the
21 car, when you went up in the woods and when you got
22 back to the trailer, did you have an adequate
23 opportunity to see Julio Hunsberger, the defendant
24 in this case?

25 A Yes, sir.

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1 Q You're absolutely 100 percent sure that the
2 individual that's seated right there that you've
3 identified as Julio Hunsberger is the same person
4 that was there at all of those places?

5 A Yes, sir.

6 Q Could you see him inside that trailer? Was it
7 lit up in there?

8 A Yeah. Lights on, all the lights was on when we
9 got in there, the kitchen light, living room light,
10 all that.

11 Q You recognize his facial features and you know
12 who he is?

13 A Yes, sir.

14 Q Okay. What was the next thing that happened
15 once y'all got back over there to the green house?

16 A Got back to the green house and I remember I
17 fell asleep in the car because I wouldn't get out
18 the car and he woke me up. I remember Big Man woke
19 me up, was like, Man, you can go in the house and
20 lay down. So when I went in the house and laid
21 down, Richard was already in there in one of the
22 rooms in the bed laying down. So we woke up in the
23 morning, a guy -- because we come through the house,
24 come back outside, it was daytime. So a guy was
25 like, Big Man said he'll be back later to come get

1 y'all.

2 So he came back later on and he took us to a
3 hotel on Bobby Jones. And when we got to the hotel,
4 Charlene was in the hotel. So he dropped us off.
5 He was like, Man, I'm going to be back. I got to go
6 take care of something. Y'all just stay here. So
7 we're like, All right. So we stayed there for a
8 long time, but I remember he called twice to check
9 up on us asking if we was all right, whatever.

10 He finally came and got us, took us home. He
11 took me home first. And we sat in the car and he
12 gave me a bag, was like, Man, I want y'all to burn
13 your clothes, burn y'all clothes y'all got on. So I
14 was like, All right. He was like, You got something
15 to burn them? I was like, Yeah.

16 So he was like, Man, look, I don't want y'all
17 to run your mouth, the same thing can happen to
18 y'all. Y'all ain't got nothing to worry about
19 because if any heat going to fall down, it's going
20 to fall down on me or my brother. His mama, don't
21 nobody know y'all, so y'all just keep your mouth --
22 I said, Man, you ain't got to worry about me saying
23 nothing. And he was like, all right.

24 So he dropped me off. And I think the next day
25 I went and got Richard clothes and we went in my

1 backyard and I burnt the clothes.

2 Q You burnt your clothes in your backyard?

3 A Yes, sir.

4 Q 34, is that the burn barrel at your house?

5 A Yes, sir.

6 Q 35, burned up items of clothes, clothing, stuff

7 out of that burn barrel at your house?

8 A Yes, sir.

9 Q You did what he told you, you burned the stuff

10 up, didn't you?

11 A Yes, sir.

12 Q After he left and you burned up all those

13 items, did you go back to doing your normal day in,

14 day out activities?

15 A Still going to school, working, not saying

16 nothing to nobody.

17 Q When did you realize that they had found Sam

18 Sturup's body over here? What happened?

19 A Some time later I remember I was in history

20 class and the teacher, sometimes he'll give out

21 newspapers and have the class to read it and explain

22 what you read, you know, brush up on your vocabulary

23 and stuff like that and comprehension. So I

24 remember a girl was sitting next to me and she was

25 reading about this body being found. So I'm like, I

1 want to read that after you get through. She was
2 like, Yeah. So I read it and I remember I asked the
3 teacher can I go to the bathroom. So I went to the
4 bathroom and I just sat there about 15, 20 minutes
5 just looking in the mirror.

6 And I remember when I got home later on that
7 day, Big Man called me, he was like, Have you heard?
8 I was like, Yeah, man. He was like, Man, look, I
9 said y'all just don't say nothing, man, you know
10 what I'm saying. Like I say, any heat fall down on
11 us, it's going to be on me and my brother, don't
12 nobody know about y'all. Like I say, the same thing
13 going to happen to y'all, man. Y'all just are going
14 to keep y'all mouth closed. I was like, Yeah, man.
15 I said, I ain't going to say nothing, man.

16 And I remember before then he had called me and
17 he was like, Guess what? So I'm like, What? He was
18 like, Man, he was like, Man, I was taking a walk in
19 my backyard, and he say, I seen little pieces of
20 paper shredded up everywhere. So I'm like, Yeah.
21 He say, So I followed the trail to the paper.

22 And I guess he had his money buried in the
23 backyard. I guess that's what all this about, some
24 money.

25 Then he's like, Man, he said, Man, the dogs got

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1 to my money, man. The dogs had found the money, dug
2 the money up and ripped the money up. So he's like,
3 So he didn't steal the money. So I'm like, What?
4 So he was like, Well, what's done is done. So I'm
5 like...

6 So we hung up the phone and, I mean, the man
7 died for nothing. I mean, I started crying and I
8 just laid down in my bed because, I mean, that
9 hurted [sic] me.

10 Q Came a time afterwards that you got arrested
11 though, didn't it?

12 A Yes, sir.

13 Q You got charged with kidnapping, you got
14 charged with aggravated assault, didn't you?

15 A Yes, sir.

16 Q When you first talked to Richard Roundtree, you
17 told him a bunch of lies too, didn't you?

18 A I told him I ain't know nothing and know
19 nobody. Because I was in 12th grade, I was in class
20 when the police came and locked me up and I left
21 school in handcuffs. So I'm thinking I'm just
22 fixing to talk to them when they come -- I ain't
23 never been in no trouble before, no record, nothing
24 like that. So I'm thinking he was just fixing to
25 talk to me and bring me back to school. So I'm

1 like, Man, I don't know nothing. I don't know these
2 folks and this and that.

3 So he was like, If you don't tell me what I
4 want, I'm going to tell the judge to give you life,
5 this and that, yelling at me and all this other
6 stuff there. So he left, came back about 15, 20
7 minutes. I was like, Man, I'll tell you what you
8 want to know, so.

9 Q You didn't tell all the truth. You just told
10 what little bit you had to tell, didn't you?

11 A He ask me a question, I tried to answer it as
12 discrete as possible because I -- I'm thinking still
13 I'm fixing to go home or I got to go back out. I'm
14 still thinking about my family. These folk know
15 where my mama stay, they know where my girl stay,
16 know where my cousin stay, you know, know where my
17 family stay at.

18 So, I mean, if they tell about -- if they kill
19 somebody over some money, what you think they'll do
20 over somebody who rat on them, tell them? So he
21 asked me questions, I answer with a yes or no
22 answer, try the smallest possible -- if he ain't ask
23 me nothing, I ain't tell him.

24 Q If he didn't already know something, you didn't
25 cooperate, that's right, isn't it?

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- 1 **A** Yes, sir.
- 2 **Q** You didn't put anybody's name in unless you
- 3 already knew about it -- or he knew about it, did
- 4 you?
- 5 **A** Yes, sir.
- 6 **Q** Came a time, though, that you did fully
- 7 cooperate though, didn't you?
- 8 **A** Yes, sir.
- 9 **Q** But you pleaded guilty to aggravated assault
- 10 and you got an 18-year sentence in prison in
- 11 Georgia, didn't you?
- 12 **A** Yes, sir.
- 13 **Q** Did you have, prior to going over there,
- 14 following the Hunsbergers out to this spot in South
- 15 Carolina, did you have any connection with this
- 16 piece of property or this place in South Carolina
- 17 where Sam Sturup got murdered?
- 18 **A** No, sir. I ain't never been there.
- 19 **Q** Who led the way over there?
- 20 **A** The Hunsbergers.
- 21 **Q** Have you ever had any trouble being able to
- 22 identify Julio Hunsberger, the defendant in this
- 23 case?
- 24 **A** No, sir.
- 25 **Q** All right. Has anybody ever asked you in

1 testifying in any proceeding to say anything that
2 wasn't the truth in this case?

3 **A** No, sir.

4 **Q** Is what you've told the jury up here about the
5 participation of Julio Hunsberger, the defendant in
6 this case, the truth?

7 **A** Yes, sir.

8 **MR. MAYE:** Answer any questions the defense has
9 for you.

10 **THE COURT:** Thank you, Solicitor.
11 Mr. Williams.

12 **MR. WILLIAMS:** Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 **Q** Mr. Griffin, you admit you are a liar, don't
16 you?

17 **A** No, sir.

18 **Q** Well, when the Solicitor asked you just a
19 moment ago if you had told some untrue things to
20 Investigator Roundtree, you told him you had, didn't
21 you?

22 **A** I told him at first that I didn't know anybody,
23 then I told the truth after that.

24 **Q** That wasn't true when you told Investigator
25 Roundtree that you didn't know anybody, was it?

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1 A No, sir.

2 Q Well, if it's not true, it's thus untrue, isn't
3 it?

4 A Yes, sir.

5 Q Now, as I look at you here today, I notice
6 you're in an orange jumpsuit. Where were you housed
7 before you came to Edgefield County?

8 A Prison.

9 Q Where?

10 A Georgia.

11 Q Where?

12 A A prison in Georgia.

13 Q Yes, sir, which prison in Georgia?

14 A South Georgia, Autry.

15 Q What's the name of it?

16 A Autry.

17 Q Autry? Did you say Autry?

18 A Yes, sir.

19 Q Okay. And over in Georgia, you were
20 represented by an attorney, Leon Lark; isn't that
21 true?

22 A Yes, sir.

23 Q And you entered into a plea deal over in
24 Georgia, didn't you?

25 A Yes, sir.

1 Q In exchange for your testimony, kidnapping was
2 not prosecuted; isn't that true?

3 A Yes, sir.

4 Q And kidnapping in the State of Georgia carries
5 a life sentence, doesn't it?

6 A I think so.

7 Q So you agreed to testify in order to remove the
8 life sentence from over your head; isn't that true?

9 A That was in the plea agreement.

10 Q That was in your plea agreement?

11 A Yes, sir.

12 Q Here in Edgefield you're still -- you still
13 face the possibility of prosecution, don't you?

14 A Yes, sir.

15 Q But you're cooperating here today, aren't you?

16 A Yes, sir.

17 Q Are you hoping that maybe the same thing that
18 happened in Georgia will happen in South Carolina?

19 A Yes, sir.

20 Q You're testifying here today, aren't you?

21 A Yes, sir.

22 Q Do you recall testifying in the trial of my
23 client in September of 2006?

24 A Yes, sir.

25 Q Okay. Do you recall indicating, after you had

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1 taken an oath to tell the truth, that you did not
2 know them prior to their arrest?

3 **A** Besides the night of the crime.

4 **Q** Okay. And on that night, you indicated that
5 you thought they were white boys, didn't you?

6 **A** I didn't know they was Hispanic or white. I
7 didn't know them.

8 **MR. WILLIAMS:** Court's indulgence, Your Honor.

9 **THE COURT:** Yes, sir.

10 (Pause.)

11 **BY MR. WILLIAMS:**

12 **Q** In the trial of my clients in Georgia, you
13 testified that you really thought the individuals
14 that arrived at the green house were two white boys,
15 did you not?

16 **A** Yes, sir.

17 **Q** Okay. Now, this even after you would have had
18 the opportunity to go to South Carolina and observe
19 them in close proximity to each other or in a
20 lighted trailer, you still thought they were white
21 boys, didn't you?

22 **A** I really didn't pay attention to them like
23 that. I mean, I remember everybody face that was
24 there and just I never met them before, never seen
25 them again afterwards. So they got out the car, I

1 seen this light skin, his brother's light skin, so I
2 was like white boys, okay. Never met them before.

3 I met plenty Hispanics, her color, her color
4 (indicating). They're Hispanic, though. You
5 wouldn't know though unless they tell you. Met some
6 speak perfect English, you wouldn't know unless you
7 tell me.

8 Q But here today you can recognize my client
9 without a problem and you know it was him back then;
10 is that right?

11 A I recognize him from the crime.

12 Q That's what I understand, but even in the
13 testimony of the trial in 2006, you said that's what
14 you thought they were, white boys?

15 A Yes.

16 Q Isn't that true?

17 A Yes, sir.

18 Q Isn't it true in that trial you admitted that
19 you thought it was Investigator Roundtree who had
20 told you the name of the Hunsbergers?

21 A No, I seen it in the paper.

22 MR. WILLIAMS: Court's indulgence, Your Honor.

23 (Pause.)

24 Q How far did you go in school?

25 A Twelfth grade.

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1 Q Did you wind up graduating after this incident?

2 A No, I got my GED.

3 Q Did you do that while you were in prison?

4 A Yes, sir.

5 MR. WILLIAMS: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes, sir.

8 BY MR. WILLIAMS:

9 Q I'm going to pass you the trial transcript of
10 this case, okay. And at the bottom, there are
11 numbers and I want you to refer to this number,
12 okay?

13 A Yes, sir.

14 Q Now, I'm going to ask you to turn to page 358.

15 A (Witness complies.)

16 Q Did you find 358?

17 A Yes, sir.

18 Q Okay. I'm going to ask you to look at line
19 nine. Do you see line nine?

20 A Yes, sir.

21 Q I'm going to ask you the question there and I
22 would like for you to read the response. Now, you
23 were under oath in that trial, weren't you?

24 A Yes, sir.

25 Q You're under oath today, aren't you?

1 A Yes, sir.

2 Q Did the investigator ever say we want you to
3 come in and identify Alex or Julio or Carlos or Rico
4 or anything like that? What was your answer?

5 A No.

6 Q And what was your further response?

7 A I remember him asking me about who came in the
8 other car or what car Sam was in. I told him two
9 white boys, the other dudes were there and he told
10 me -- I think he told me the Hunsbergers then.

11 Q So it was Investigator Roundtree who told you
12 the name of the Hunsbergers, right?

13 A Yes, sir.

14 Q Okay. You had never met them before?

15 A No, sir, not prior to this incident.

16 Q Admittedly in September at nine o'clock at
17 night or ten o'clock at night, it's dark, isn't it?

18 A Yes, sir.

19 Q You didn't ride in the car with the two
20 individuals that arrived at the green house, did
21 you?

22 A No, sir.

23 Q Do you remember indicating to Investigator
24 Roundtree that you didn't know who led the way into
25 the woods? Do you remember saying that?

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1 A No, sir, I really don't.

2 Q Okay. If I gave you something to refresh your
3 recollection, do you think you would be able to give
4 me a response?

5 A If you're fixing to showing me a transcript
6 from when I got locked up 2002 --

7 Q Yes, sir.

8 A -- they played a tape of my transcript in that
9 court and they found out it was a lot of misprints
10 in that transcript.

11 Q Okay. Well, I'm going to ask you do you recall
12 indicating that you didn't know who led the way?

13 A I'll read it if you want me to read it, but
14 like I told you, it was a lot of misprints in that
15 transcript. They played my tape for the jury and
16 the jury even saw that a lot of stuff that was on
17 that paper wasn't even in my -- on my tape.

18 Q All right. Let me ask you this: Out there
19 when Mr. Sturup was being beat up, you joined in,
20 didn't you?

21 A No. I fought him. I was the only one that had
22 fought him and Big Man hit him. Ain't nobody jump
23 on him. I admitted to that.

24 Q And Investigator Roundtree asked you why did
25 you do that, didn't he?

1 A Yes, sir.

2 Q And you said because he had took my money;
3 isn't that right?

4 A No, sir.

5 Q All right. Now, again, if I ask you to refer
6 to a transcript --

7 A Yeah, I read that's in there, but that's -- I
8 never said that. If you can bring my tape here from
9 there, you'll see on that tape I never said that was
10 my money.

11 Q You said you were dropped off by Mr. Cave's
12 stepfather; is that right?

13 A Yes, sir.

14 Q How far did he work away from where you were?

15 A From what I know, he worked at a skating rink
16 called Red Wing, that was -- it wasn't too far, it
17 wasn't too close.

18 Q It wasn't too far and it wasn't too close.

19 A No.

20 Q Okay. It was September, wasn't it, early
21 September, Labor Day?

22 A Yes, sir. We didn't have school that next day.

23 Q Here in the south Labor Day isn't very cold, is
24 it?

25 A No. I remember I had on a T-shirt that night.

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1 Q Okay. What prevented you and Mr. Cave, for
2 that matter, from walking to where his stepfather
3 was when all of this was going on with guns,
4 fighting, beating people with a shock absorber?
5 What prevented y'all from walking to where his
6 stepfather was?

7 A Well, first of all, nobody never beat nobody
8 with a shock absorber. Second of all, put yourself
9 in my position, you done seen two guns already. If
10 you call yourself like, man, I'm fixing to go, now
11 these folks fixing to plan on killing this man, if
12 you fixing to go, I mean they may think, what, y'all
13 fixing to go tell? I mean, he didn't really know
14 me, I didn't really know him. So I just stayed,
15 waited it out.

16 Then he said, I'm fixing to take him home and
17 I'll take y'all home later. So I thought it was
18 over with. I'm not fixing to leave, I mean, that's
19 stupid. I ain't had no way home. I stayed way from
20 Washington Road to -- from the bottom, if you know
21 about Augusta, from all the way where this at, how
22 am I going to get home? You know what I'm --

23 Q That skating -- I'm sorry. Go ahead.

24 A I mean, that was -- I'm not fixing to leave.
25 And then there ain't nobody plan on -- there ain't

1 nobody tell us, well, I'm fixing to go kill him, is
2 you going to come with me or nothing like that. It
3 wasn't none of that.

4 Q That skating rink that you're talking about,
5 isn't it right near the Mercedes dealership or the
6 -- I believe it's the Mercedes dealership right on
7 Washington Road just beyond Rhinehart's? Do you
8 know where I'm talking about?

9 A I heard of Rhinehart's, but I don't know what
10 kind of dealership is in -- nothing like that. I
11 really don't.

12 Q Well, the skating rink, let's say, it's not
13 very far from the California Dreaming or the
14 Longhorn Steakhouse, is it?

15 A I really can't recall where them places at. I
16 know across the street is a Waffle House. I done
17 went to that Waffle House before, Burger King, I-20
18 Highway Bridge, whatever. I mean, it's a lot of
19 restaurants on that street. A lot of them I never
20 went to so I don't know exactly where each
21 restaurant is.

22 Q You were hanging out with the Big Man, weren't
23 you?

24 A That was my second or third time meeting him.

25 Q And he had plenty of girls around. Did you

1 know those girls were prostitutes?

2 A No, sir. I only seen all those girls, which it
3 was a lot of guys also, and all us wasn't in one
4 car. All us went out, he paid everybody way in the
5 club. I had money in my pocket myself, but he paid
6 everybody way in. And, you know, everybody was on
7 all the girls. I mean, never mentioned to me that
8 he had no prostitutes. I ain't never seen him have
9 no women on no block and whatever pimps do,
10 whatever.

11 Q Did you ever know him to have them in hotel
12 rooms?

13 A No, sir. I never seen none of those girls no
14 more -- the first time I met them, we went to a club
15 called County Line. I never seen them females no
16 more. I only seen China, which is Charlene, the
17 night of the incident and I probably seen her once
18 again after that. But I always thought that was his
19 girlfriend because every time I seen her she was
20 hugged up on him kissing him and stuff like that,
21 so.

22 Q So you saw China again after this incident; is
23 that right?

24 A I think I seen her one time after this incident
25 again.

1 Q So did you see her in the presence of one
2 Steven Lewis Barnes after this incident?

3 A Yes, sir.

4 Q So you went back around this guy even after you
5 knew he killed somebody?

6 A Yes, sir.

7 Q You were hanging with the Big Man, weren't you?

8 A He told us, You tell, the same thing going to
9 happen to y'all. So if he call my house and try to
10 come around, like I said, and I try to avoid him,
11 the first thing he's going to think, well, he must
12 fixing to tell. He know where my mama and everybody
13 stay at.

14 So if he call, you know, I sit there and talk
15 to him. I try to gain his trust, you know what I'm
16 saying, so he wouldn't think I was going to tell or
17 anything like that. So if he wanted to hang out, I
18 hang out with him. If he wanted to call and talk to
19 me, I talk to him. If he wanted to come to my house
20 and just sit in the front yard and talk, okay.

21 Q Do you admit that you were guilty of assaulting
22 Samuel Sturup, Jr.?

23 A I took a plea for that.

24 Q Do you admit that you were guilty of assaulting
25 him in an aggravated manner?

ANTONIO GRIFFIN - REDIRECT BY MR. MAYE

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1 **A** Yes, sir, I fought him.

2 **MR. WILLIAMS:** Court's indulgence, Your Honor.

3 **THE COURT:** Yes, sir, certainly.

4 (Pause.)

5 **MR. WILLIAMS:** I don't have any further
6 questions, Your Honor.

7 **THE COURT:** Thank you very much.

8 Solicitor, any redirect?

9 **MR. MAYE:** Just a couple, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MAYE:

12 **Q** You were asked specifically about items that
13 were on page 358 of the transcript of the
14 Hunsbergers trial, September -- between September
15 the 5th and the 12th of 2006. I'd like for you to
16 look at page 357, the very page before, on line 12
17 and 13, in response to this question, All right --

18 **MR. WILLIAMS:** Your Honor, I object. I'd like
19 for him to do what I was required to do and just ask
20 a question.

21 **MR. MAYE:** Your Honor, I'm going into a prior
22 consistent statement in response to him being
23 impeached off of the very next page of this same
24 transcript.

25 **THE COURT:** All right. Tell me what line are

1 you going to refer to, Solicitor.

2 **MR. MAYE:** Page 357 question line eight through
3 11, answer line 12 and 13.

4 **THE COURT:** All right. Give me just a moment.

5 (Pause.)

6 **THE COURT:** All right. That would be
7 appropriate under Rule 106 and State versus Jackson.
8 Your objection is noted, Mr. Williams.

9 **MR. WILLIAMS:** Thank you, Your Honor.

10 **THE COURT:** You may proceed, Solicitor.

11 BY MR. MAYE:

12 **Q** Let me read you this question: All right. How
13 did you ever put a name to these people you called
14 -- a couple of dotted lines -- When you testified
15 yesterday, you called two Hispanic guys, how did you
16 ever put a name to these two Hispanic guys?

17 How about read for me your answer, line 12 and
18 13, on that page. What's your response to that
19 question?

20 **A** When we got locked up and they was in the
21 paper, I learned their names. I guess they were
22 Spanish.

23 **Q** Did you have any difficulty identifying Julio
24 Hunsberger in 2006?

25 **A** No, sir.

ANTONIO GRIFFIN - RECROSS BY MR. WILLIAMS

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1 **Q** Do you have any difficulty identifying him here
2 in this courtroom today?

3 **A** No, sir.

4 **MR. MAYE:** Nothing else. Thanks.

5 **THE COURT:** Recross, Mr. Williams.

6 RECROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 **Q** You also indicated that you believe you learned
9 their names from Investigator Roundtree, didn't you?
10 You indicated that as well?

11 **A** I guess he mentioned their name, yes, sir.

12 **MR. WILLIAMS:** Thank you.

13 **THE COURT:** All right. Thank you very much,
14 Mr. Griffin. You may step down.

15 All right. Solicitor, who is your next
16 witness?

17 **MR. YOUNG:** Mr. Stephen Curtis, Your Honor.

18 **THE COURT:** All right. Call your next witness,
19 please.

20 **MR. WILLIAMS:** Your Honor, may we approach?

21 **THE COURT:** Yes, sir.

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

25 **THE COURT:** How long will this next witness

1 take?

2 MR. YOUNG: Approximately 15 to 20 minutes for
3 us.

4 THE COURT: He's from out of town?

5 MR. YOUNG: Yes, sir, he is.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen, we need to take a quick refreshment
8 break, rest. However, there is one witness I would
9 like to conclude today that will, famous last words,
10 won't be that lengthy. You'll probably learn before
11 the week's out that South Carolina trial judges
12 don't know how to tell time.

13 But I would like to get through this one
14 witness this evening if at all possible. So let's
15 take about a ten minute recess. One of the parties
16 needs a refreshment break. If you'll leave your
17 notes upside down on the table. Do not discuss the
18 case during this brief recess.

19 Does anyone have a commitment this evening now?

20 All right. Thank you so much.

21 (The jury retires to the jury room.)

22 THE COURT: All right. Sheriff, I understand
23 Mr. Hunsberger needs to use the restroom, if y'all
24 would make those arrangements. We'll be in recess
25 about ten minutes.

STEPHEN CURTIS - DIRECT BY MR. YOUNG

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1 (Brief recess.)

2 THE COURT: All right. Anything before we
3 bring in our jury, Solicitor?

4 MR. YOUNG: No, sir.

5 THE COURT: Mr. Williams.

6 MR. WILLIAMS: No, sir, Your Honor.

7 (The jury returns to the courtroom.)

8 THE COURT: All right. Our jury is back,
9 present in the courtroom.

10 Thank you very much, ladies and gentlemen, for
11 your patience. This would be our last witness of
12 the day and I would ask you to please continue to
13 give the parties your complete and undivided
14 attention.

15 Madame Clerk, would you swear our witness?

16 STEPHEN CURTIS,

17 having been duly sworn, testified as follows:

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

20 THE WITNESS: Stephen Curtis, C-u-r-t-i-s. And
21 Stephen is with a P-H.

22 DIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q Mr. Curtis, give us your background, where
25 you're employed and go from your time when you first

1 started in law enforcement, sir.

2 A I started quite some time ago. I was
3 originally employed with the Richland County
4 Sheriff's Office way back in the mid 80s and I held
5 a couple of different positions there, deputy,
6 investigator, that kind of thing.

7 The latter portion of my career was spent at
8 SLED in Columbia, the South Carolina State Law
9 Enforcement Division. My main focus there, the
10 majority of my time was in the crime scene unit.
11 The last two years I was there I was the lieutenant
12 in charge of the Internal Affairs Unit.

13 But I retired from law enforcement back in 2008
14 and have been a college instructor since then. And,
15 currently, I'm over at Piedmont Tech in Greenwood in
16 the criminal justice program.

17 Q In 2001, were you employed with SLED?

18 A Yes, sir, I was.

19 Q Specifically, sir, were you asked on January
20 23rd of 2002 to go to a crime scene as requested by
21 Edgefield County Sheriff's Office?

22 A Yes, sir. I was in the crime scene latent
23 print unit at that time and about 2:30 in the
24 afternoon on the 23rd was asked to respond to a
25 homicide scene that they had here in Edgefield

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1 County and met a deputy out near Lakeview Road. And
2 he drove us in and showed us where they needed us to
3 come in.

4 Q And, sir, I placed up on the board here State's
5 Exhibit 4, which is a diagram. Do you recognize
6 this as having a relationship to the crime scene
7 area that you went to?

8 A Yes, sir. I mean, that shows an overall from a
9 bird's-eye view from the Lakeview Road where we
10 would have come in at and then into the pasture
11 lands was quite a ways off of that road into the
12 area where they had recovered some remains a couple
13 of months previous. They had requested me to come
14 in and assist them with going through the crime
15 scene, specifically to excavate some of the area
16 looking for projectiles or spent bullets that may
17 have been involved in that incident.

18 Q To gain access to the crime scene, did you
19 cross any kind of barrier?

20 A There was about a half mile, three quarters of
21 a mile of a field coming off of the Lakeview Road
22 area there and then through some, a wooded area and
23 then through another pasture land coming to a, what
24 I call, a cattle gate, a big metal gate, with some
25 of the fence running along the side of it.

1 Q Is that depicted anywhere on the diagram?

2 A Yes, sir. Do you want me to --

3 Q Yes. Use that pointer.

4 A All right. Just real briefly, that is part of
5 the Lakeview Road area. And we would have come in
6 roughly around in here (indicating) and then crossed
7 through this field. And this is the wooded area I
8 was talking about. I recall coming through a small
9 patch of woods there, brush, bushes and trees, that
10 kind of thing, and then coming through another
11 pasture.

12 And then down in this area they had the fences
13 running along here and we had the gate. And that's
14 where I met Investigator Doran out there and a
15 couple of other officers and that's where they
16 wanted us to take a look and see if we could assist
17 them with this investigation.

18 Q Did you expose photographs of that gated area?

19 A Yes, sir, I did.

20 Q Would you be able to recognize it again if you
21 saw it?

22 A Yes.

23 Q Let me show you what's been marked as State's
24 Exhibit Number 50. Do you recognize that, sir?

25 A Yes, sir. These are three photographs of the

STEPHEN CURTIS - DIRECT BY MR. YOUNG

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1 gate from a couple of different angles. And on the
2 bottom portion of the photographs, there's the SLED
3 code and the case number that goes along with that.
4 But that's just -- that's what I call a cattle gate.

5 Q What you call a cattle gate?

6 A Yes, sir, but that's, you know, you can see the
7 fence, the post and so forth.

8 Q And does this fairly and accurately depict the
9 gate as you saw it on that day?

10 A Yes, sir, it does.

11 MR. YOUNG: The State offers State's Exhibit
12 Number 50, Your Honor.

13 MR. WILLIAMS: No objection, Your Honor.

14 THE COURT: State's 50 is in evidence without
15 objection.

16 (State's Exhibit Number 50, photograph,
17 admitted into evidence.)

18 BY MR. YOUNG:

19 Q Now, if I could, sir, I'd like now to ask you
20 do you normally take steps when you come into a
21 crime scene area to document any findings?

22 A One of the basic premises of processing a crime
23 scene is to create a historical record, so part of
24 that is going to be through diagrams, some of it
25 will be through photography, taking overall

1 photographs of the scene and then individual pieces
2 of evidence and things of interest within it, and
3 then sketches and notes to go along with that, try
4 to completely document it as much as possible to
5 assist in the investigation as it continues and then
6 later on for presentation in court.

7 Q And, sir, did you take any steps to diagram and
8 make any distance notations as to what you found in
9 that area?

10 A Yes, sir. In this particular crime scene, you
11 know, we found a couple of items in there and we
12 were marking the location of those and the distances
13 from, in this instance, from Lakeview Road across
14 through the fields to give some idea of the spacing
15 and relationship of items within the crime scene.
16 So taking measurements, getting sketches,
17 photographs to go along with that is part of the
18 process.

19 Q Yes, sir. And did you sketch it or diagram
20 that specific area?

21 A Yes, sir, I did.

22 Q All right. Would you be able to recognize a
23 blown up rendition of that sketch or diagram if you
24 saw it again?

25 A Yes, sir.

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1 Q Let me show you what has been marked as State's
2 Exhibit Number 36 and ask you to take a look at
3 that. Do you recognize that, sir?

4 A That is the -- or is a blowup or enlargement of
5 the crime scene sketch that I did. It has the case
6 number and my name on the bottom of that. And this
7 is just a rough drawing showing the location and
8 some of the distances and some of the items that we
9 collected or found in that crime scene.

10 And like I said, the main purpose in the
11 sketches and stuff is to show a relationship because
12 you can't capture, a lot of times if the crime scene
13 is fairly large, you can't capture all of the things
14 in one photograph. So when it comes time for the
15 court to see this, the sketch will aid and then
16 looking at the photograph and piecing that together.

17 Q And this aided you both at the scene and would
18 it aid the jury now?

19 A Yes, sir, it would.

20 Q Now, I noticed in this particular diagram that
21 there are a series of numbers with descriptions next
22 to it at the top left-hand corner. What are those?

23 A Those are items of interest that we found
24 there, except this crime scene was a little bit old,
25 so in going in there, I'm looking for -- well, with

1 any crime scene, I'm looking for things that are out
2 of place or are obviously pieces of evidence or
3 maybe of interest to the investigation. In this
4 particular instance, there were several items found
5 within the proximity of where Investigator Doran was
6 showing us where they had recovered the body or some
7 of the skeletal remains and where they were wanting
8 us to look at for, like I said, to recover possible
9 projectiles.

10 Q Yes, sir. Now, and these -- the sequence of
11 numbers, do they bear relationship to the sequencing
12 in which you actually found these items?

13 A Yes, sir. Again, with the crime scene -- in
14 working a crime scene from a physical evidence
15 standpoint, you're looking at coming from the
16 outside of the crime scene working your way in,
17 particularly in homicide cases where the body's
18 going to be almost the central focus point of the
19 scene. So you don't want to walk into and go
20 straight to the body because you might damage or
21 destroy evidence that's there, so you work from the
22 outside.

23 So in this particular instance, starting at
24 about the gate, we started looking for evidence.
25 And when we found things that appeared to be out of

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1 place or could be connected with this incident,
2 measurements from the gate were taken, the sketch
3 was completed to show their relationship and then
4 photographs, some close-up photographs, and then
5 some midrange photographs to document that as well.

6 So starting with number one, which is going to
7 be closest to the gate, working my way through the
8 crime scene until we reached the other edge is one
9 way that we processed it.

10 Q All right. Does this, therefore, fairly and
11 accurately represent the crime scene as you
12 documented it on that day with distances as noted
13 from the gate toward the rear?

14 A Yes, sir, it is.

15 MR. YOUNG: State would now offer State's
16 Exhibit Number 36.

17 THE COURT: Mr. Williams.

18 MR. WILLIAMS: Your Honor, I would ask -- I
19 will take exception to it on the basis of its
20 failure to be to scale.

21 THE COURT: Is that so indicated, Solicitor?

22 MR. YOUNG: Your Honor, this is indicated only
23 as to distances. The State will stipulate that it
24 is not otherwise as to scale other than as to
25 distance.

1 **THE COURT:** And then the positions of the items
2 one to the other.

3 **MR. YOUNG:** Yes, sir. It's a relationship of
4 items one to the other coming from the gate through
5 the crime scene as it proceeded toward the direction
6 of Community Road.

7 **THE COURT:** Not to scale?

8 **MR. YOUNG:** Not to scale, sir.

9 **THE COURT:** All right. I will allow State's 36
10 into evidence subject to Mr. Williams' objection.

11 **MR. YOUNG:** Thank you, Your Honor.

12 (State's Exhibit Number 36, crime scene
13 chart, admitted into evidence.)

14 BY MR. YOUNG:

15 **Q** Now, with regard to these items that you noted
16 are found, I'm going to pass up -- you said you also
17 took photographs?

18 **A** Yes, sir.

19 **Q** All right. Now, I have taken the liberty of
20 putting these particular photographs in an order
21 which may or may not relate to the order in which
22 these items, one through seven, have been noted
23 here. Would you take a look at these photographs
24 and tell me if they do bear a relationship and if
25 they are recognizable?

STEPHEN CURTIS - DIRECT BY MR. YOUNG

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1 **A** Yes, sir. These are some of the photographs
2 that I took at the crime scene.

3 **Q** Are these the photographs of items one, two,
4 three, four and seven?

5 **A** Yes, sir, they are. In showing the
6 photographs, one of the things that we do is we
7 place a placard with a number present on them. So
8 the placard number in the picture's going to
9 correspond with the item number on my diagram.

10 **Q** All right, sir. And in taking these -- and I'm
11 looking for an additional photograph. I apologize.
12 Just give me one moment, please.

13 In taking these photographs, you took them in
14 such a fashion that you fairly and accurately
15 represent what you saw at the scene?

16 **A** Yes, sir, they do.

17 **Q** All right. And are they, in fact, the
18 photographs you took that day?

19 **A** Yes, sir, they are. They have the SLED case
20 number stamped into them.

21 **Q** All right, sir. Now, with regard to State's
22 Exhibits Number 38 and 41, take a look at those and
23 what do they show?

24 **A** State's Exhibit 38 is a picture of me holding
25 one of the projectiles that was excavated from the

1 dirt area there on Lakeview Road. And State's
2 Exhibit 41 is a picture of some blue denim material,
3 which is item number seven on the diagram from that
4 same crime scene.

5 Q All right, sir. Now, up on this -- up on this
6 board, you can use the pointer if you would please,
7 sir, and you have indicated up there five and six.
8 What are those?

9 A All right. Five and six back here about two
10 thirds of the way into the crime scene over to the
11 left a little bit, that's going to be the location
12 where the two projectiles were dug up out of the
13 dirt.

14 Q Okay, sir. And the photograph -- would you be
15 able to recognize a photograph of that area that you
16 took projectiles from if you saw it again?

17 A Yes, sir.

18 Q Let me show you what's been introduced as
19 State's Exhibit Number 10 and ask you if you can
20 identify that?

21 A This is going to be one of the photographs we
22 took of the actual area where five and six were
23 recovered. The ground there is discolored, looks to
24 be darker in color. It's more moist. It's one of
25 those things that in working crime scenes

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1 particularly outdoors, when a body decomposes,
2 you'll get, you know, as the liquids and stuff
3 escape from the body, they'll soak or saturate
4 whatever's underneath them, so a lot of times that
5 will remain there. So when we went out there, you
6 could tell there was a discoloration in that
7 particular area.

8 Plus Investigator Doran had indicated to us
9 when we got out there that this was the general area
10 where they had found the remains and the information
11 that he was working on, that's where they wanted us
12 to concentrate on looking for the projectiles.

13 Q All right, sir. So in taking -- in going to
14 this area in State's Exhibit Number 10, that relates
15 to the numbers five and six there?

16 A Yes, sir. Right up -- like I said, right up
17 there about two thirds of the way into the crime
18 scene from the gate and then over to the left. And
19 you can see on my measurements there of ten feet
20 three inches, approximately, from item number four.

21 Q And 38 and 41 -- or excuse me -- 38 and 41,
22 yes.

23 A Yes, sir.

24 Q Excuse me. 38 -- I hand -- I'll hand you
25 another photograph, sir. I'm sorry. 38 and 37,

1 sir. Would you -- do you recognize both of those
2 photographs as related to the projectiles in any
3 fashion?

4 **A** Yes, sir. 37, State's Exhibit 37 is one of the
5 projectiles. And State's Exhibit 38 is the other
6 projectile that we were able to dig up.

7 **Q** And that's where you retrieved those, from five
8 and six?

9 **A** Yes, sir. From that location there, like I
10 said, to the left a little bit where I've indicated
11 item five and six on the diagram.

12 **THE COURT:** Are those in evidence?

13 **MR. YOUNG:** I have not offered them yet, Your
14 Honor. I will offer them now, 38 and 37.

15 **BY MR. YOUNG:**

16 **Q** These are fair and accurate representations of
17 what you recovered?

18 **A** Yes, sir, they are.

19 **MR. WILLIAMS:** There's no objection.

20 **THE COURT:** All right. State's 38 -- State's
21 37 and 38 is in evidence.

22 (State's Exhibit Numbers 37 and 38,
23 photographs, admitted into evidence.)

24 **BY MR. YOUNG:**

25 **Q** All right, sir. Now, those two bullets --

STEPHEN CURTIS - DIRECT BY MR. YOUNG

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1 excuse me, I apologize -- projectiles, those two
2 projectiles, would you be able to recognize them now
3 if you saw them?

4 **A** Well, the containers that they're in, when
5 they're recovered, you can see in the photographs
6 they've got a lot of dirt on them and that kind of
7 thing. I'm not a ballistics examiner, so I'm not
8 going to -- when I recover them, I'm going to try to
9 keep them in as pristine a condition as possible.
10 So I didn't clean off any of the dirt or anything
11 like that. So as soon as I collected them, I put
12 them in tissue paper and then placed them in a metal
13 or tin container and sealed the container.

14 So I would have marked the container, I
15 wouldn't have marked the bullets or done anything
16 with them because I don't want to risk contaminating
17 or altering those pieces of evidence that might
18 hinder the firearms examiner. So packaging and
19 stuff, I would recognize, yes, sir.

20 **Q** All right, sir. And would you be able to
21 recognize 23 and 27 if you saw them again?

22 **A** Item -- State's Exhibit item 23 and 27 are the
23 two tin containers that I placed the projectiles in.
24 They have my initial and some information on the
25 top, as well as the seal tape on the side. The

1 initial and date corresponds with the date they were
2 collected.

3 **Q** So 37 -- excuse me -- 37 and 38 are projectiles
4 that you placed in those two containers?

5 **A** Yes, sir.

6 **Q** All right, sir. Now, briefly, if I can go back
7 now just for the sake of understanding this, you
8 went from the gate through the crime scene area that
9 you were processing and numbering as you went and
10 taking photographs?

11 **A** Yes, sir.

12 **Q** All right. Now, just briefly again, does
13 State's Exhibit Number 48 represent number one along
14 with State's 49?

15 **A** 48 is a midrange and 49 is a close-up of the
16 blue denim material that's indicated as item number
17 one in the crime scene diagram.

18 **MR. YOUNG:** The State offers 48 and 49, Your
19 Honor.

20 **MR. WILLIAMS:** No objection to them, Your
21 Honor.

22 **THE COURT:** State's 48 and 49 is in evidence
23 without objection.

24 (State's Exhibit Numbers 48 and 49,
25 photographs, admitted into evidence.)

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1 BY MR. YOUNG:

2 Q Would you take a look at State's Exhibits 39,
3 42 and 47? Do they relate in any way to item number
4 two?

5 A 47, 42 and 39 are photographs of item number
6 two in the diagram, which was a piece of bone or
7 appeared to be a piece of bone to my knowledge. And
8 those were in the crime scene.

9 THE COURT: Are those in evidence?

10 MR. YOUNG: We offer these in evidence, Your
11 Honor.

12 THE COURT: Well, they can't be published if
13 they're --

14 MR. YOUNG: I'm sorry. I apologize. We offer
15 those in evidence.

16 MR. WILLIAMS: I have no objection.

17 THE COURT: 39, 42 and 47 is in evidence
18 without objection.

19 (State's Exhibit Numbers 39, 42 and 47,
20 photographs, admitted into evidence.)

21 BY MR. YOUNG:

22 Q All right. With regard to item number three,
23 would you take a look at State's Exhibits 40, 44 and
24 43?

25 A 40, 44 and 43 are different range photographs

1 of item number three, which also appeared to be a
2 bone or a piece of bone to me there at the crime
3 scene.

4 Q Thank you, sir.

5 MR. YOUNG: We offer 40, 44 and 43, Your Honor.

6 MR. WILLIAMS: No objection.

7 THE COURT: State's 40, 43 and 44 is in
8 evidence without objection.

9 (State's Exhibit Numbers 40, 43 and 44,
10 photographs, admitted into evidence.)

11 BY MR. YOUNG:

12 Q Now, sir, you had, I believe, item number four
13 also documented. Would you look at 45 and 46,
14 please?

15 A 45 and 46 are two more photographs of what
16 appear to be bone to me and those are items four in
17 the crime scene diagram.

18 MR. YOUNG: We offer State's Exhibit Number 45
19 and 46, Your Honor.

20 MR. WILLIAMS: No objection.

21 THE COURT: State's 45 and 46 in evidence
22 without objection.

23 (State's Exhibit Numbers 45 and 46,
24 photographs, admitted into evidence.)

25 BY MR. YOUNG:

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1 **Q** Last but not least, State's Exhibit Number 41
2 is -- appears to be the last object. Does that bear
3 any relationship to the diagram?

4 **A** 41 is a photograph of blue denim material,
5 which is item number seven, the placard that has
6 number seven on it, so that's going to be item
7 number seven in the crime scene diagram.

8 **Q** Does all of this fairly and accurately
9 represent the photographs you took at the scene?

10 **A** Yes, sir, they do.

11 **MR. YOUNG:** We offer State's Exhibit 41.

12 **MR. WILLIAMS:** No objection.

13 **THE COURT:** State's Exhibit 41 is in evidence
14 without objection.

15 (State's Exhibit Number 41, photograph,
16 admitted into evidence.)

17 **BY MR. YOUNG:**

18 **Q** To your knowledge, Investigator Curtis, were
19 any firearms introduced or offered for comparison
20 with the projectiles you found?

21 **A** Not to my knowledge. None of them were turned
22 into me. It is possible that if Edgefield County
23 had come across the gun that they wanted compared,
24 they could have directly submitted that to the
25 firearms lab in Columbia, but that day that I was

1 out here and the couple times in followup with
2 Investigator Doran, they never had a firearm to give
3 to me to take in for examination or anything like
4 that. So short answer, to my knowledge, no.

5 **MR. YOUNG:** Thank you, sir.

6 Your Honor, the State would go ahead and offer
7 at this time State's Exhibits Number 23 and 27.

8 **MR. WILLIAMS:** Your Honor, I just would ask
9 that the witness be allowed to break the seal so the
10 ladies and gentlemen of the jury will be able to
11 actually look at what was recovered because it's a
12 bit unfair for them to look at canisters.

13 **THE COURT:** Do you have an objection to that,
14 Solicitor?

15 **MR. YOUNG:** No, sir, I don't have an objection
16 to that at all.

17 **THE COURT:** So you don't have an objection to
18 the admissibility of the items?

19 **MR. WILLIAMS:** I do not.

20 **THE COURT:** All right. State's 23 and 27 is in
21 evidence without objection subject, of course, to it
22 being the items within 23 and 27 that the officer
23 has testified to.

24 (State's Exhibit Numbers 23 and 27,
25 projectiles, admitted into evidence.)

STEPHEN CURTIS - CROSS BY MR. WILLIAMS

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1 **MR. YOUNG:** Yes, sir. And I'll ask him to go
2 ahead and open them at this time to verify that very
3 fact.

4 **THE WITNESS:** (Witness complies.)

5 That appears to be a projectile that's still
6 some dirt on it.

7 **THE COURT:** You need to speak up when you're
8 that close to --

9 **THE WITNESS:** I'm sorry. State's Exhibit 23 is
10 a projectile covered with dirt in the container.

11 State's Exhibit 27 is also a projectile wrapped
12 in tissue paper covered with some dirt.

13 BY MR. YOUNG

14 **Q** Did you place these two projectiles in these
15 two boxes?

16 **A** Yes, sir, I did.

17 **Q** And are they the projectiles?

18 **A** Yes, sir, they are.

19 **MR. YOUNG:** I believe they've been offered,
20 Your Honor.

21 **THE COURT:** All right. Mr. Williams.

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 **Q** Mr. Curtis.

25 **A** Yes, sir.

1 Q As it relates to several of the State's
2 Exhibits, you indicated that it appeared to be bone;
3 is that right?

4 A Yes, sir.

5 Q Okay. But you don't have any educational
6 training to verify that it was a human bone or an
7 animal bone or anything of that nature, do you?

8 A No, sir. I'm not an anthropologist. It just
9 appeared from my experience, it was bone material.

10 Q Just bone?

11 A Yes, sir.

12 Q Could have been a deer, could have been a dog
13 and perhaps human as well?

14 A That is possible, yes, sir.

15 MR. WILLIAMS: I don't have any other
16 questions.

17 THE COURT: Redirect.

18 MR. YOUNG: No further questions, Your Honor.

19 THE COURT: Thank you very much for being with
20 us.

21 MR. YOUNG: We ask that Mr. Curtis be excused,
22 Your Honor.

23 THE COURT: Any objections?

24 MR. WILLIAMS: No, sir, Your Honor.

25 THE COURT: Thank you for being with us,

1 Mr. Curtis. You may step down. You may be excused.

2 Perhaps now would be a good time to take our
3 evening recess, Solicitor, Mr. Williams.

4 **MR. WILLIAMS:** Yes, sir, Your Honor.

5 **THE COURT:** All right. Mr. Foreman, ladies and
6 gentlemen of the jury, we are going to take our
7 evening recess. Again, I will remind you during
8 this recess, you're not to discuss this case with
9 anyone, that includes your fellow jurors, family,
10 friends or anyone else. Do not watch, listen to or
11 read any news reports about the case. Do not use
12 your computer, cellular phone or any other
13 electronic device to obtain or disclose information
14 about the case.

15 Information about the case includes information
16 about a party or a witness or an attorney or a court
17 officer, news accounts of the case, information
18 collected through juror research on any topics
19 raised or testimony offered by any witness or
20 information collected through juror research on any
21 other topic that you think might be helpful in
22 deciding the case.

23 Remember you must decide the case based on the
24 evidence and the testimony you hear from the
25 witnesses testifying under oath from this witness

1 stand, any diagrams, exhibits or the like placed
2 into evidence and the law as I tell you the law is.

3 I would like to thank you very much for your
4 patience today and your hard work and the attention
5 that you have shown all the parties throughout the
6 course of this proceeding.

7 With that being said, prior to you leaving, if
8 you would leave your note pads upside down on your
9 chair, the Clerk's office will collect them and
10 secure them overnight. I would ask you to please be
11 back promptly at 9:30 in the morning and I hope
12 y'all have a pleasant evening. Thank you very much.

13 (The jury was excused for the day.)

14 **THE COURT:** By my count, Solicitor,
15 Mr. Williams, in reviewing the witness list on
16 behalf of the State, it appears the State would have
17 no more than two more witnesses.

18 **MR. MAYE:** That's correct, Your Honor.

19 **THE COURT:** How long do you anticipate those
20 will take, Solicitor?

21 **MR. MAYE:** You know, Charlene Thatcher will
22 take, I would say, as long as either as Mr. Cave or
23 Mr. Griffin. My last witness, Ms. Sturup, will be
24 very brief, no more than ten minutes.

25 **THE COURT:** All right. So we may, in fact,

1 finish before the first break or around the time of
2 the first break.

3 MR. MAYE: I would anticipate that absent
4 something that I'm unaware of, at least the State's
5 testimony.

6 MR. WILLIAMS: Your Honor, I do hope to give a
7 fairly extensive cross-examination of that witness
8 Thatcher.

9 THE COURT: Sure. And I was just reviewing it
10 in my mind based on Mr. Griffin and based on
11 Mr. Cave. It may be longer. It's fine with me if
12 it takes all day. You understand what I'm saying?
13 I'm just trying to do it for planning purposes now.

14 Mr. Williams, you did hand up a number of -- a
15 witness list with a -- eight witnesses listed, one
16 of which was also listed on the State's witness
17 list. There are seven remaining unless you wanted
18 to recall Mr. Dais. I would just advise, of course
19 I'd have to hear motions and all, but depending on
20 the outcome of those motions, if the case goes
21 forward, I would just advise for you to have your
22 witnesses present and available tomorrow at the call
23 of court.

24 MR. WILLIAMS: Yes, Your Honor.

25 THE COURT: All right. If nothing else, here's

1 your transcripts, Mr. Williams.

2 **MR. WILLIAMS:** Thank you, Your Honor.

3 **THE COURT:** Thank you for providing those to
4 the Court. If you'd have one for me with
5 Ms. Thatcher in the morning. Court will be in
6 recess until 9:30. Thank y'all very much.

7 (The proceedings were concluded for January
8 10, 2012.)

9 (The following proceedings were held on
10 January 11, 2012.)

11 **THE COURT:** All right. Anything from the State
12 before we bring in our jury, Solicitor?

13 **MR. MAYE:** Nothing from the State, Your Honor.
14 Thank you.

15 **THE COURT:** From the defense, Mr. Williams?

16 **MR. WILLIAMS:** No, sir, Your Honor.

17 **THE COURT:** All right. Thank you.

18 If you'll bring our jury, please.

19 (The jury enters the courtroom at 9:45 a.m.)

20 **THE COURT:** Mr. Foreman, ladies and gentlemen
21 of the jury, good morning. I apologize for the
22 delay. I had a matter I had to address that had
23 nothing to do with this case nor these parties.
24 They're all present, in fact, early and ready to go.

25 Also, I received the note, Mr. Foreman, from

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1 the jury. I wanted to address that this morning. I
2 do not see the gentleman present at this time.
3 Typically, I don't allow people in and out of the
4 courtroom once the trial starts until the break
5 anyway. If the gentleman appears, I will address
6 that.

7 All right. With that being said, we're
8 continuing the trial of the case by the presentation
9 of evidence and testimony by the State in its case
10 in chief. If you'll please continue to give the
11 parties your complete and undivided attention.

12 Solicitor, you may call your next witness.

13 MR. MAYE: The State would call Charlene
14 Thatcher.

15 THE COURT: All right. If you'd step forward
16 and be sworn for me, please, Ms. Thatcher.

17 CHARLENE ANN THATCHER,
18 having been duly sworn, testified as follows:

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

21 THE WITNESS: Charlene Ann Thatcher,
22 T-h-a-t-c-h-e-r.

23 DIRECT EXAMINATION

24 BY MR. MAYE:

25 Q Ms. Thatcher, if you would, speak up as much as

1 you can and speak to the jury, tell them where
2 you're originally from.

3 **A** Massachusetts, sir.

4 **Q** When did you first come to Augusta, Georgia?

5 **A** August 1st, 2001, sir.

6 **Q** Okay. Did you know or come to know shortly
7 thereafter a man named Steven Lewis Barnes over in
8 Augusta?

9 **A** Yes, sir.

10 **Q** Did you have association with him and, in fact,
11 worked with him as a prostitute over in Augusta?

12 **A** Yes, sir.

13 **Q** All right. I want to talk to you about Labor
14 Day of 2001, on September the 3rd of 2001. When was
15 the first time that you encountered Steven Lewis
16 Barnes on that day and relate to the jury what y'all
17 did at the very outset when you first talked to him
18 that day and move forward from there?

19 **A** When I first talked to Barnes that day, he came
20 over to the motel room that he was renting for me to
21 have sex with me and then he left me there. Then he
22 came back later on that day to pick me up and he
23 told me not to bring anything with me, that we're
24 going on a mission.

25 **Q** Going on a mission?

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1 **A** Yes, sir.

2 **Q** Okay. Where did y'all go when you left the
3 hotel room there? What happened?

4 **A** We went to Cherry Street, the green house.

5 **Q** Let me show you State's 20. Talking about the
6 same place? Is that the green house?

7 **A** Yes, sir.

8 **Q** What happened when you got to the green house,
9 Ms. Thatcher?

10 **A** Barnes ordered me to go inside the house.

11 **THE COURT:** Speak up just a little bit for me.

12 **THE WITNESS:** Barnes ordered me to go inside
13 the house.

14 BY MR. MAYE:

15 **Q** He told you to go inside the house?

16 **A** Yes, sir.

17 **Q** What was the next thing that happened?

18 **A** People were pulling into the parking lot of the
19 green house.

20 **Q** People started arriving?

21 **A** Yes, sir.

22 **Q** Okay. What happened next, Ms. Thatcher?

23 **A** William Harris arrived with Samuel Sturup, and
24 then, like, maybe 15, 20 minutes later, Tony and
25 Richard --

- 1 Q Now, let me get this straight. William Harris,
2 was that Steven Lewis Barnes' brother, right?
- 3 A Yes, sir.
- 4 Q What nickname did they call Barnes?
- 5 A Big Man.
- 6 Q How about his brother, Mr. Harris, what did
7 they call him?
- 8 A Little Man.
- 9 Q Okay. And you said Cave and --
- 10 A Griffin.
- 11 Q -- Griffin arrived?
- 12 A Yes, sir.
- 13 Q Okay. What happened next, Ms. Thatcher?
- 14 A I was still inside the house. Barnes ordered
15 Cave and Griffin to fight Sturup.
- 16 Q Describe it, tell them what happened.
- 17 A I really don't know, sir. I just heard a bunch
18 of commotion because I was inside the house. I
19 didn't get to see.
- 20 Q Okay. What was the next thing that happened?
- 21 A William Harris came inside the green house and
22 started beating on me and told me to come outside
23 and he was beating me with a broom.
- 24 Q Okay. What was that next thing that happened?
- 25 A They sat me on the porch and started, they

1 meaning Harris and Barnes, started questioning me
2 asking me if I stole some money from Barnes.

3 Q What did you tell them when they asked you
4 about stealing money?

5 A No. If I had stolen money, I'd be gone.

6 Q Okay. What happened next?

7 A Then for, like, an hour or so, they kept
8 fighting me and -- well, not fighting me, but
9 beating on me and Sturrupe and asking us if we stole
10 the money. And Sturrupe kept saying I probably took
11 it because I was a prostitute and pickpocket. And
12 then they just kept playing mind games and asking us
13 questions about the money.

14 Q Okay. What did Sam Sturrupe, what did you hear
15 him say and what was the progression of what he told
16 them when they were accusing him of stealing the
17 money?

18 A At first, he said that he didn't steal the
19 money. Then, as time went on, he admitted to
20 stealing the money.

21 Q Okay. What happened after he admitted that he
22 had stolen the money, what happened then? What did
23 Barnes say?

24 A I can't remember exactly what he said, but
25 Sturrupe told him that he would -- he asked Barnes to

1 take him home and that he'll give him the money
2 that's underneath his bed.

3 Q Told him to take him home?

4 A Uh-huh.

5 Q He had the money at home?

6 A Yes, sir.

7 Q Okay. What was the next thing that happened?

8 A Barnes told him that he'll take him home.

9 Q All right. What happened next?

10 A We went -- well, before that, before they said
11 all that, we was on the train tracks and --

12 Q What happened on the train tracks?

13 A Barnes played this mind game with me and
14 Sturup saying one of us has to kill each other to
15 prove that we didn't steal the money. This is
16 before he admitted to stealing the money. And he
17 was going to give Sturup the gun to shoot me and I
18 told him nobody's shooting anybody.

19 Q Okay. What happened next out there at the
20 tracks at that point in time?

21 A So then Barnes ordered Sturup to walk off with
22 Cave and Griffin back to the green house and then
23 Barnes told me that I was going to kill Sam for him.

24 Q He told you that you were going to kill Sam for
25 him?

1 A Yes.

2 Q Okay. What was the next thing that happened?

3 A Then we left the train tracks and went back to
4 the green house. Before we went to the train
5 tracks, Barnes called the Hunsbergers on the phone
6 to come meet him at the green house. Then after we
7 left the train tracks, they were just pulling up.

8 Q Okay. So tell about when the Hunsbergers
9 arrived there when they pulled up. Is that who
10 pulled up? You said they were just arriving, who
11 arrived?

12 A Julio and Alex Hunsberger.

13 Q Okay. What happened next?

14 A Well, then Barnes started talking to Julio and
15 Alex and Cave and Griffin and he was asking
16 everybody what they want to eat and he asked Sam
17 what do you want to eat for his last meal. And then
18 Sam just kept begging him to please bring him home
19 and he told him that he was going to bring him home.
20 Then he said after a while for everybody to get
21 inside the vehicles and for Sam to get inside the
22 Hunsbergers' trunk.

23 Q He told Sam to get in the trunk of the
24 Hunsbergers' car?

25 A Yes, sir.

1 Q Did you actually see them -- him get into the
2 trunk of the Hunsbergers' car there?

3 A Yes, sir, but nobody forced him to get inside
4 the trunk, he just went inside the trunk.

5 Q Were the Hunsbergers standing there when he got
6 into the trunk of their car?

7 A Yes, sir.

8 Q All right. Once he told y'all to get in the
9 car, what car did y'all get in and who was driving?

10 A I got inside of Barnes' Caprice and Barnes
11 drove the car. And Cave and Griffin was in the car
12 with us, also.

13 Q Who led the way once y'all left the green
14 house?

15 A The Hunsbergers led the way in their vehicle.

16 Q All right. When y'all eventually stopped the
17 vehicle and got out, where were you? Tell the
18 ladies and gentlemen of the jury, describe to them
19 as best you can, what the surroundings were where
20 you stopped the car after y'all followed the
21 Hunsbergers over from Georgia.

22 A When the car stopped, I was told to get out the
23 vehicle. And when I looked up, it was an open
24 field, like a lot of grass, but very big, wide open
25 space with trees around, but very open space.

CHARLENE ANN THATCHER - DIRECT BY MR. MAYE

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1 Q Okay. What was the next thing that happened
2 once y'all got there?

3 A Barnes ordered Sturup to walk in front of
4 everybody.

5 Q Okay.

6 A And then everybody started walking.

7 Q Did you see Sam Sturup get out of the vehicle?
8 Did you see him get out?

9 A Yes, sir. He got --

10 Q Where was he and where did he get out of?
11 Where was he riding?

12 A He got outside of the trunk. They opened the
13 trunk and he got out of it.

14 Q Okay. What happened next?

15 A Barnes ordered Sturup to walk in front of
16 everybody. And he walked in front of everybody.
17 Then everybody followed him, behind him.

18 Q Where did y'all go? Describe how you traveled.

19 A He went over some type of fence like thing.

20 Q Let me show you State's 50. Do you recognize
21 that?

22 A Yes, sir.

23 Q Is that what y'all traveled over?

24 A Yes, sir.

25 Q Once y'all went over that gate there, what

1 happened next? Where did y'all go?

2 **A** Barnes told Sam to stop and pick a place to
3 die. So he kept walking a little bit and then he
4 stopped and then everybody surrounded him. Barnes
5 was to my right. Cave and Griffin was to my left.
6 And the Hunsbergers was to Cave and Griffin's left.
7 And Barnes ordered me to shoot Sturup and I shot
8 him in the stomach first.

9 **Q** How did that happen? How did you do that
10 shooting and how was it carried out when you shot
11 him?

12 **A** Barnes held the gun to my back and Griffin was
13 pointing a gun towards me from his -- where he was
14 standing and they was like, Shoot him, shoot him,
15 shoot him. They kept telling me to shoot him.

16 **Q** Did you, in fact, shoot him?

17 **A** Yes, sir.

18 **Q** What happened next?

19 **A** Then Barnes took the gun from me and just shot
20 Sturup in the head.

21 **Q** Okay. Did you hear other shots or did you see
22 others fire there at that time?

23 **A** Yes, sir, but it was, like, very fast and --

24 **Q** As to each shot when each person fired, did you
25 see impact or did you see the body shake?

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1 A Yes, sir.

2 Q Once everybody there shot -- now, tell me

3 everybody that was there, name them.

4 A Me, Barnes, Griffin, Cave and the Hunsbergers.

5 Q Which of the Hunsbergers, name them

6 individually?

7 A Alex and Julio Hunsberger.

8 Q Everybody shot, you're sure?

9 A Yes, sir.

10 Q And everybody hit?

11 A Yes, sir.

12 Q All right. Once everybody shot, where do y'all

13 go? What happens next?

14 A Once everybody shot, everybody was trying to

15 leave the scene, but Barnes was standing there

16 lingering, looking at the body and I was freaking

17 out and Alex told me to come on and leave the scene.

18 So I went with him, but I was pulling on Barnes and

19 he finally came, too.

20 And we left and went back in our vehicles. And

21 we followed the Hunsbergers to a trailer and we went

22 inside there and discussed the murder. And the

23 Hunsbergers went in the back of the trailer to find

24 something to clean the guns with to take the

25 fingerprints off. Then Barnes asked us how did we

1 feel about the murder.

2 Q Did they do that? Did they, in fact, clean the
3 guns off there?

4 A Yes, sir.

5 Q All right. What happened next?

6 A Then I can't really remember what all happened,
7 but I know we left, me, Barnes, Cave and Griffin,
8 and we went inside Barnes' vehicle. We went across
9 the bridge, halfway, the bridge that comes from
10 Augusta to South Carolina. And Griffin threw the
11 guns inside the water, inside of a plastic bag. And
12 then we left and went to the green house and we
13 stayed there all night until the next day and then
14 we went back to my motel room.

15 Q Okay. Let me ask you this: The individual
16 that you've identified as Julio Hunsberger that
17 you've testified that you saw at the green house --

18 A Yes, sir.

19 Q -- and again at the scene of the crime when he
20 got out of the vehicle and in the woods and back at
21 the trailer where the fingerprints and all were
22 wiped off, is Julio Hunsberger, is that individual
23 here in the courtroom today?

24 A Yes, sir.

25 Q Could you point him out and describe how he's

1 dressed and where he's seated?

2 A He's sitting at that brown table in a black
3 suit with a black and white tie.

4 MR. MAYE: Your Honor, I just ask the record to
5 reflect she's identified the defendant, Julio
6 Hunsberger.

7 THE COURT: So reflected.

8 BY MR. MAYE:

9 Q You're absolutely certain that that's him,
10 that's the same individual?

11 A Yes, sir.

12 Q Okay. After the time of this killing out there
13 and after Labor Day, did you continue to see Julio
14 Hunsberger?

15 A Yes, sir, numerous times.

16 Q You saw him numerous times?

17 A Yes, sir.

18 Q Okay. What was the nature of your interaction
19 with him during the subsequent times that y'all saw
20 each other?

21 A Just him hanging around Barnes a lot and...

22 Q Did you have sexual relations?

23 MR. WILLIAMS: Objection, Your Honor, he's
24 leading.

25 THE COURT: Yes, sir, you -- I would sustain

1 the objection.

2 BY MR. MAYE:

3 Q How close did you get with Julio Hunsberger,
4 the individual that you've identified from the
5 crime?

6 A We've had sexual dealings before.

7 Q After that time, after the time of the killing?

8 A Yes, sir.

9 Q So you know him, don't you?

10 A Yes, sir.

11 Q After all of this took place, after Labor Day,
12 September the 3rd of 2001, there came a time that
13 you got arrested and you got caught, didn't you?

14 MR. WILLIAMS: Objection, Your Honor. He's
15 continuing to lead the witness.

16 THE COURT: I would overrule that. This just
17 focuses on a particular period of time.

18 You may continue.

19 You may answer the question if you know the
20 answer, Ms. Thatcher.

21 THE WITNESS: I kind of forgot the question,
22 sorry.

23 BY MR. MAYE:

24 Q There came a time that you got caught that
25 y'all got discovered in this, wasn't there?

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- 1 A I was arrested twice, sir.
- 2 Q Okay. Y'all got arrested in this case because
- 3 William Harris told on you; isn't that right?
- 4 A Yes, sir.
- 5 Q Now, Ms. Thatcher, for your participation in
- 6 what went on at the green house over in Georgia, you
- 7 pleaded guilty to aggravated assault, didn't you?
- 8 A Yes, sir.
- 9 Q And you also pleaded guilty involving an
- 10 unrelated crime that you were involved in with
- 11 Mr. Barnes and were sentenced to that as well,
- 12 weren't you?
- 13 A Yes, sir.
- 14 Q Okay. And you got how much time?
- 15 A Eighteen years, sir.
- 16 Q Okay. Ms. Thatcher, as to your involvement in
- 17 this case and your actions there that night, are you
- 18 guilty of murder?
- 19 A Yes, sir.
- 20 Q Has anybody promised you anything in regard to
- 21 what would happen with any potential charges that
- 22 you face for the actions and the death -- the
- 23 actions that resulted in the death of Sam Sturup
- 24 here in South Carolina?
- 25 A No, sir.

1 **Q** Has anybody made you any specific plea
2 agreements or promised you anything?

3 **A** No, sir.

4 **Q** Is everything you've told the jury up here in
5 regard to this -- your testimony, is it true?

6 **A** Yes, sir.

7 **MR. MAYE:** Beg the Court's indulgence.

8 (Pause.)

9 **MR. MAYE:** Answer any questions the defense has
10 for you, Ms. Thatcher.

11 **THE COURT:** Thank you, Solicitor.

12 Mr. Williams.

13 **MR. WILLIAMS:** Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 **Q** Ms. Thatcher, you are how old today?

17 **A** Twenty-eight, sir.

18 **Q** You're 28 years old. And you say you moved to
19 Augusta, Georgia, on August the 1st of 2001?

20 **A** Yes, sir.

21 **Q** And that was at the behest of whom or at the
22 request of who?

23 **A** Jana McCarty, sir.

24 **Q** Jana McCarty?

25 **A** Yes, sir.

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- 1 Q You're familiar with Ms. McCarty?
- 2 A Yes, sir.
- 3 Q Where were you before you moved to Augusta,
- 4 Georgia?
- 5 A Boston, Massachusetts, sir.
- 6 Q You weren't in the Washington, DC, area?
- 7 A No, sir.
- 8 Q You were never in the Washington, DC, area?
- 9 A No, sir, maybe on the Greyhound bus traveling
- 10 to here, but, no, sir.
- 11 Q But Boston, Massachusetts?
- 12 A Yes, sir.
- 13 Q Now, you indicated at some point earlier that
- 14 you had been a prostitute since you were 14 years
- 15 old?
- 16 A No, sir.
- 17 Q You never testified to that?
- 18 A No. I was a prostitute when I was 17, sir. I
- 19 may have been having sex since I was 14, but not a
- 20 prostitute, sir.
- 21 Q You're facing a murder charge here in the State
- 22 of South Carolina, aren't you?
- 23 A Yes, sir.
- 24 Q And you realize that murder in South Carolina
- 25 would carry a penalty from 30 years up to life in

1 prison?

2 A Yes, sir.

3 Q You know that, don't you?

4 A Yes, sir.

5 Q You were arrested in January of 2002, weren't

6 you?

7 A Yes, sir, twice.

8 Q All right. You were arrested for armed

9 robbery, burglary, kidnapping, another count of

10 kidnapping, prostitution, and the possession of a

11 firearm during certain crimes. You were charged

12 with all of those things, weren't you?

13 A I don't remember, sir, but it sounds right.

14 Q It does sound right?

15 A Yes, sir.

16 Q Are you disputing that those -- I mean, you're

17 admitting that they sound familiar?

18 A Yes, sir.

19 Q All right. And you were represented by

20 counsel, a Marty Pitts, in the State of Georgia,

21 weren't you?

22 A Yes, sir.

23 Q In the State of Georgia, armed robbery could

24 have carried or carries -- do you know the penalty

25 for armed robbery in Georgia?

1 A No less than ten years and it can go up to life
2 I think. I go to a law library, so I studied that
3 kind of stuff.

4 Q How about burglary, do you recall what those
5 carry?

6 A Less than armed robbery.

7 Q Now, kidnapping, that could carry up to life in
8 prison, couldn't it?

9 A Yes, sir.

10 Q You had two counts of that, didn't you?

11 A Not that I recall, sir. I don't really know.

12 Q Okay. If I showed you your plea agreement,
13 would that refresh your recollection?

14 A I know that my plea agreement says that I have
15 -- I've been sentenced to 20 years, serve 18, two
16 years probation, and that my kidnapping with bodily
17 injury was dismissed, and that the deal was under
18 the aggravated assault charge and pending Columbia
19 County charges, but they didn't specify armed
20 robbery, but that's the charge. And that's what my
21 plea agreement says, sir.

22 Q And the Columbia County charge, that involved
23 you and Big Man?

24 A Yes, sir.

25 Q Is that right?

1 A Yes, sir, and a couple of other people too,
2 sir, females.

3 Q And that was a situation in which you had a
4 prospective John who had a lot of money in his
5 house; isn't that right?

6 A Three prospective Johns, yes, sir.

7 Q Three prospective Johns?

8 A Yes, sir.

9 Q You were aware of two of them, though, weren't
10 you?

11 A Yes, sir, until --

12 Q One was hiding in a room, right?

13 A Yes, sir.

14 Q Okay. And you along with someone by the name
15 of Little Bit; is that right?

16 A Yeah, Marsha Rogers, sir.

17 Q But her nickname was Little Bit, right?

18 A Yes, sir.

19 Q You and Little Bit went into the home and the
20 plan was to -- or the manner in which this robbery
21 occurred was that you would call out to Big Man or
22 give him a signal letting him know that there was
23 more money in the house; isn't that right?

24 A No, sir, that was not the plan, but that's how
25 it happened.

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1 Q Okay. Well, the plan was that two of you --

2 A To prostitute and that's it, but then I got the
3 idea in my head to rob the person, yes, sir.

4 Q And you developed the idea that here's a lot of
5 money --

6 A Yes, sir.

7 Q And you knew you had somebody big and bad
8 enough to rob somebody with you, too, didn't you?

9 A Yes, sir.

10 Q And that was Big Man?

11 A Yes, sir.

12 Q He carried a gun most all the time, didn't he?

13 A Yes, sir.

14 Q Did you not testify earlier that the first time
15 you ever claimed to have seen my client was the
16 night of September of 2001?

17 A Yes, sir.

18 Q September 3rd?

19 A Yes, sir.

20 Q Okay. You didn't get life in prison for
21 kidnapping over in Georgia, did you?

22 A No, sir.

23 Q You didn't get life in prison for robbery over
24 in Georgia, did you?

25 A No, sir.

- 1 Q And the reason why you didn't is because you
2 chose to cooperate over there, didn't you?
- 3 A Yes, sir.
- 4 Q All right. Now, once you got arrested, you did
5 what most people do, didn't you, you made a deal?
- 6 A No, sir. I didn't make a deal until 2003, sir.
- 7 Q All right. But you made a deal once you were
8 arrested, right, or this was after your arrest that
9 the deal occurred?
- 10 A No, sir. I did not get any plea agreements
11 until 2003, sir.
- 12 Q You were arrested in 2001, right?
- 13 A Two.
- 14 Q Or 2002?
- 15 A Yes, sir.
- 16 Q So after you were arrested and charged --
- 17 A A whole year and a half later, yes, sir.
- 18 Q -- a year and a half later.
- 19 A Yes, sir, I made a deal.
- 20 Q All right. Well, here we are about ten years
21 later in this situation, aren't we?
- 22 A Yes, sir.
- 23 Q I want to ask you about Investigator Richard
24 Roundtree. Over the course of this investigation,
25 you became familiar with him, didn't you?

1 A Meaning, sir?

2 Q I'm sorry?

3 A Meaning, sir?

4 Q You became familiar with Investigator Roundtree
5 over the course of this investigation?

6 A Yes, sir, familiar with him like seeing him
7 more than once, yes, sir.

8 Q All right. As a matter of fact --

9 MR. MAYE: Your Honor, I have a matter to take
10 up outside the presence of the jury at this time.

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen, if you'll please leave your notes upside
13 down in your chair and return to your jury room. Do
14 not discuss the case during this brief recess.

15 (The jury retires to the jury room.)

16 THE COURT: All right. Solicitor.

17 MR. MAYE: Your Honor, from my participation in
18 the previous trial involving Steven Lewis Barnes, I
19 know that it was raised in this case an allegation
20 that there was an improper relationship on the part
21 of this witness and Investigator Richard Roundtree.

22 I would object to any questions along that
23 line, Your Honor, because we would maintain that
24 that's self-serving hearsay, unless there's some
25 foundation -- he can ask her outside the presence of

1 the jury if she did that or if that took place, but
2 for them to ask her, we would maintain it's
3 self-serving hearsay, no foundation, nothing prior
4 to this time and this trial has brought up anything
5 regarding this matter. I've never seen anything
6 that indicates that that is the case.

7 I know that it was a naked allegation at the
8 time of the capital case involving Mr. Barnes, but I
9 would specifically object and ask if they've got
10 anything to ask in that regard, that they proffer it
11 outside the presence of the jury because we would
12 object on the basis that it is self-serving hearsay
13 and would only be asked for an attempt to try to
14 posit that before the jury.

15 **THE COURT:** All right. Mr. Williams.

16 **MR. WILLIAMS:** Your Honor, I would indicate to
17 the Court that there was an actual press
18 investigation that was done and I think it was based
19 on reports that were gleaned from the Richmond
20 County Sheriff's Office. Investigator Roundtree
21 allegedly took this particular defendant out of the
22 jail some seven times and on a number of those
23 occasions, they were unescorted. And I just had the
24 article from the Augusta Chronicle printed out and
25 delivered to me and I can allow the Court to review

1 that article.

2 I have a foundation for asking the question,
3 Judge, a good faith basis for asking the question.

4 **THE COURT:** What was the question you wanted to
5 ask? I forgot the question that the Solicitor
6 referred to -- objected to.

7 **MR. WILLIAMS:** I didn't get to it, Judge, but I
8 just asked her if she became familiar with
9 Investigator Roundtree over the course of this
10 investigation, that was the question.

11 **THE COURT:** She answered that. She said, I was
12 familiar with him to the extent that I was in his
13 presence more than one time. That question has been
14 asked and answered.

15 **MR. WILLIAMS:** Yes, sir. And then, I think,
16 that's when the Solicitor rose to object to any --
17 or to address this issue is the reason why he rose
18 at that time.

19 **THE COURT:** All right. Well, ask the questions
20 you want to ask her. I don't have anything to rule
21 on right at this moment.

22 **MR. WILLIAMS:** All right. You want me to ask
23 her now, Judge?

24 **THE COURT:** Yes, sir.

25

1 IN CAMERA EXAMINATION.

2 BY MR. WILLIAMS:

3 Q Ms. Thatcher, you realize you're still under
4 oath although we're outside the presence of the
5 jury?

6 A Yes, sir.

7 Q Okay. And you're prepared to tell the truth?

8 A Yes, sir.

9 Q Investigator Roundtree, you did become familiar
10 with him over the course of this investigation,
11 didn't you?

12 A Yes, sir.

13 Q Okay. And over the course of this
14 investigation, he took you out of the jail a number
15 of times, didn't he?

16 A Yes, sir, to call my family. And I used to ask
17 him a lot of questions that he would not answer
18 about my case, but he always let me use the phone.

19 Q Now, what phone did he let you use?

20 A The one in his office.

21 Q Okay. And were you always escorted?

22 A Just by him. I never knew that it was not the
23 right thing to do or anything like that because he
24 always came down to the jail and the office is
25 inside for one -- away, so I did not know that that

1 was not professional or whatever. I didn't know
2 until all this crap happened on the news.

3 Q Well, I didn't ask you if you knew it was
4 appropriate, I just wanted to know if it happened.

5 A Yes, that's what I'm answering you.

6 THE COURT: Well, if the question is, were you
7 always escorted, the answer is, yes, she was
8 escorted by Detective Roundtree, correct?

9 MR. WILLIAMS: I understand. I will probably
10 go on to ask the question as to whether or not there
11 was anyone other than Investigator Roundtree.

12 THE COURT: All right. Go right ahead.

13 THE WITNESS: Not in his office, sir, but there
14 were people up there.

15 BY MR. WILLIAMS:

16 Q Okay. Was there a door to his office?

17 A Yes, sir.

18 Q Could that door be closed?

19 A Yes, sir.

20 Q Was there a pane in the window of that office,
21 if you understand what I'm asking you?

22 A A window pane in the office, I probably won't
23 even remember that, sir, honestly.

24 Q Okay. All right. And are you aware that
25 Investigator Roundtree was punished or had some

1 punishment relating to that conduct?

2 **A** No, sir. I've just been investigated that's
3 all.

4 **Q** You were investigated by individuals from
5 Richmond County regarding those issues?

6 **A** Internal affairs, sir, yes, twice, once in the
7 jail and once two years ago in prison.

8 **Q** Okay.

9 **MR. WILLIAMS:** Your Honor, that's all I would
10 want. I wouldn't want much more than that.

11 **THE COURT:** All right. Solicitor.

12 **MR. MAYE:** Your Honor, it's all hearsay and it
13 bears no relevance to this case. I would
14 specifically ask this witness, you know, if any
15 misconduct took place or anything appropriate [sic]
16 took place, if she could respond.

17 But, Your Honor, again, I think it's clearly an
18 attempt to try to interject some collateral issue,
19 newspaper hearsay. There's nothing else at this
20 point in time. To my knowledge, I've never been
21 advised that any action was taken for any
22 inappropriate behavior. And we would maintain that
23 any probative value regarding this line of
24 questioning would certainly be outweighed by any
25 prejudicial effect. It has nothing to do with the

1 merits of this case.

2 **THE COURT:** Mr. Williams.

3 **MR. WILLIAMS:** Your Honor, I think it
4 absolutely has a lot to do with the merits of this
5 case in that Investigator Roundtree basically was
6 the chief investigator of the case which arose in
7 Georgia and that had a direct relationship with
8 information that was shared with Investigator Doran
9 and that's already in this court's record.

10 **THE COURT:** Well, here's the questions as I
11 understand them: You followed up on her
12 familiarity.

13 **MR. WILLIAMS:** I'm sorry, Judge, I didn't --

14 **THE COURT:** Here's the questions as I
15 understand them: You followed up on the question of
16 her familiarity with Detective Roundtree, that there
17 was a number of times he took her out of the jail to
18 his office and allowed her to call her family from
19 his office phone and she would ask him questions and
20 he wouldn't always respond. She was always escorted
21 by him and there were other officers around. There
22 was a door to his office that could be shut. And
23 she does not remember if there was a window pane.
24 That's not hearsay. That's her testimony as to
25 events that occurred, that she was allowed to use

1 the telephone.

2 As far as whether or not Investigator Roundtree
3 was investigated or punished, that is not before the
4 Court and that would not be admissible, but you can
5 ask her about using the telephone and being escorted
6 to his office. I guess the jury could take some
7 type of inference that by being allowed to call her
8 family, that she was being untruthful with the Court
9 or in some manner.

10 **MR. WILLIAMS:** Your Honor, I would venture to
11 ask the Court permission to also ask her about the
12 internal affairs investigation.

13 **THE COURT:** No, sir. I'm not going to allow
14 that, that's not admissible. She says, I don't know
15 that he was punished. And internal affairs, she was
16 questioned once in the jail and once two years ago.
17 I just fail to see the nexus between an internal
18 affairs investigation on Detective Roundtree and
19 Ms. Thatcher's testimony before the Court.

20 **MR. WILLIAMS:** Your Honor, as it relates to
21 Investigator Roundtree's provision of information to
22 Mr. Doran regarding my client and the eventual
23 arrest of my client, I think it does bear a
24 relationship. And I understand the Court's ruling,
25 but I will just note for the record that I take

1 exception to it.

2 **THE COURT:** Certainly. Well, you know, your
3 problem is that is hearsay. You know, Detective
4 Roundtree is not testifying, his credibility is not
5 before the Court. Detective Doran's is,
6 Ms. Thatcher's is, Mr. Griffin's is, Mr. Cave and
7 the other witnesses, law enforcement witnesses and
8 Dr. Sexton. But you're interjecting an issue based
9 on hearsay that's not before the Court, so his
10 credibility is not an issue for this jury.

11 **MR. WILLIAMS:** Your Honor, I would just --

12 **THE COURT:** And I understand your -- I think I
13 understand your objection for the record.

14 **MR. WILLIAMS:** I am. And I'm also saying for
15 the record that I believe the Court is limiting my
16 ability to fully cross-examine this witness.

17 **THE COURT:** I am limiting your ability to the
18 extent that I'm not allowing you to ask her whether
19 or not she knows Detective Roundtree has been
20 punished related to that contact because her answer
21 is, A, I don't know. So she hasn't --

22 **MR. WILLIAMS:** But she -- excuse me.

23 **THE COURT:** She has no personal knowledge.

24 **MR. WILLIAMS:** But she does know if she was
25 investigated by internal affairs concerning her

1 familiarity or relationship with Investigator
2 Roundtree.

3 THE COURT: You want to ask her if she was
4 interviewed by internal affairs in that regard?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: I will allow you to ask that. I'll
7 allow you to ask that.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: But you can't comment on the
10 results of that investigation or anything.

11 MR. WILLIAMS: I'm leaving it at that, I
12 promise you.

13 THE COURT: Solicitor, do you have anything to
14 add?

15 MR. MAYE: Your Honor, the only thing -- I just
16 want to, while we've got the jury out, if he intends
17 to ask her if she had an inappropriate sexual
18 relationship with Richard Roundtree, I'd ask that he
19 ask her outside the presence of the jury and we have
20 an answer to that if he intends to ask her that when
21 the jury comes back in. It's my understanding that
22 we have a pretty clear ruling on those topics being
23 hearsay, but like I said, I just don't want, through
24 any window, which I would maintain to be
25 self-serving hearsay, to interject the idea before

1 the jury that there was an inappropriate sexual
2 relationship.

3 I know clearly the purpose of these questions
4 is to interject before the jury that there was an
5 inappropriate sexual relationship between these two
6 and Roundtree was investigated, whether or not there
7 was any truth to that at all or whether or not it
8 actually took place or not at all.

9 I mean, there's no question, I know -- I've
10 often heard the Court say, this is a search for the
11 truth. There's no other reason for this line of
12 questioning than to put before this jury the idea
13 that this witness had an inappropriate sexual
14 relationship with Richard Roundtree, who is not a
15 witness in this case at all and his credibility is
16 not an issue, and that internal affairs investigated
17 it.

18 My only goal in asking the jury to step out,
19 which is something I don't typically do, is to keep
20 that which I would maintain is strictly self-serving
21 hearsay to that end from coming before the jury and
22 that was my purpose in asking the jury to step out.

23 **THE COURT:** Yes, sir. Thank you very much,
24 Solicitor.

25 **MR. WILLIAMS:** Your Honor, I intend to limit my

1 question to what the Court told me to limit it to on
2 that issue.

3 THE COURT: Well, let me make sure I'm clear.
4 You're not going to ask her about a sexual
5 relationship between her and Detective Roundtree?

6 MR. WILLIAMS: I am not. I am not.

7 THE COURT: Anything further?

8 MR. MAYE: Nothing else, Your Honor. Thank
9 you. And I apologize for the interruption.

10 MR. WILLIAMS: Your Honor, I will ask -- I
11 don't think it's relevant. I don't think it's
12 relevant.

13 THE COURT: If you need to talk to your client
14 and you want to ask something else, go right ahead,
15 Mr. Williams.

16 MR. WILLIAMS: I'm going to ask this other
17 witness now that we're outside the presence of the
18 jury, it's something that the client has interjected
19 and I will ask it of the witness.

20 THE COURT: All right. Well, we'll take it up
21 outside the presence of the jury. Go right ahead.

22 BY MR. WILLIAMS:

23 Q Did you have an inappropriate sexual
24 relationship with any of the jailers in the Richmond
25 County Detention Center?

1 **A** Yes, sir, one officer, sir. And he was fired.

2 **THE COURT:** All right. You asked.

3 **MR. WILLIAMS:** I did.

4 **THE COURT:** You got the answer.

5 **MR. WILLIAMS:** I would like permission to ask
6 that question in the presence of the --

7 **THE COURT:** I don't think that's admissible. I
8 can't think of what rule that would be admissible
9 under.

10 **MR. WILLIAMS:** I just think --

11 **THE COURT:** This young lady has admitted,
12 admitted, she's stated, I've been a prostitute since
13 I was 17 years old. So she's -- that's nine years;
14 is that right? Didn't you say you're 28,
15 Ms. Thatcher?

16 **THE WITNESS:** Yes, sir. So that's 11 years.

17 **THE COURT:** Ma'am?

18 **THE WITNESS:** Yes, sir, since I was 17.

19 **THE COURT:** Since you were 17 --

20 **THE WITNESS:** Yes --

21 **THE COURT:** -- isn't that what you testified
22 to?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** All right. So that's -- did I do
25 my math right? It's 11 years. I'm sorry. I had 18

1 and 27. I went to Catholic school. So that's 11
2 years.

3 She's admitted, I've been a prostitute for 11
4 years and had sex since I was 14 years of age.
5 She's admitted the crime she pled to in regard to
6 Mr. Sturup. She's admitted, not only has she
7 admitted the other charges, she's gone into the
8 details of the other charges, that she was in
9 Columbia County with three Johns, as these
10 individuals were described, that had money and she
11 perceived the idea to rob them.

12 So the fact that -- quite frankly, the fact
13 that she did or did not have inappropriate conduct,
14 sexual conduct with a jailer is not admissible under
15 any rule that I know or else -- I mean, then we're
16 just trying a different case.

17 **MR. WILLIAMS:** The only thing that I would
18 offer to the Court is simply that I believe it
19 affects her credibility. I believe it does affect
20 her credibility and the fact that this particular
21 witness may be extremely manipulative.

22 **THE COURT:** Well, then if you look at the Rules
23 of Evidence on credibility of unconvicted conduct,
24 that's what you're talking about. I assume she was
25 not convicted of any crime in regards to having an

1 inappropriate sexual relationship with a jailer.

2 Then I look at -- really, I look at, I guess,
3 404(b), which is similar to the Lyles testimony,
4 Character evidence not admissible to prove conduct,
5 exceptions and other crimes. Those are admissible
6 to show motive, identity, existence of a common plan
7 or scheme, or absence of mistake or accident,
8 intent.

9 You know, that's inappropriate character
10 evidence. I don't see -- it doesn't come in under
11 609.

12 Even if she had a conviction, I haven't done
13 the research, I'll be glad to, but even if she had a
14 conviction for prostitution, I don't know -- I don't
15 know the answer to this question, but prostitution
16 is a crime of dishonesty or false statement. It's
17 certainly not a crime that I'm aware of for which
18 you could receive a sentence in excess of one year.
19 It doesn't come under that anyway. So I don't know
20 what rule of evidence it would be admissible under.

21 **MR. WILLIAMS:** Yes, sir, Your Honor.

22 **THE COURT:** So I would stand by my ruling, that
23 will not be admissible.

24 **MR. WILLIAMS:** And just so that I'm clear as to
25 how far I can go on this issue, I can simply ask

1 this witness essentially that she had a familiarity
2 with Investigator Roundtree over the course of this
3 investigation. He took her out of her jail cell
4 into his office on multiple occasions with only him
5 escorting her, and that she was spoken to by an
6 internal affairs investigator regarding that issue
7 some time ago and then again two years ago.

8 **THE COURT:** If that's her responses. I think
9 you can ask those questions. I'll allow you to ask
10 that.

11 **MR. WILLIAMS:** That's as far as I'm going,
12 Judge. I just wanted to make sure that's as far as
13 I was permitted to go.

14 **THE COURT:** Anything further, Solicitor?

15 **MR. MAYE:** Nothing else, Your Honor.

16 **THE COURT:** Anything further, Mr. Williams?

17 **MR. WILLIAMS:** No, sir, Your Honor.

18 **THE COURT:** All right. Bring us our jury,
19 please.

20 (The jury returns to the courtroom.)

21 **THE COURT:** All right. Welcome back, ladies
22 and gentlemen. Thank you very much again today for
23 your patience. We're continuing with the
24 cross-examination of Ms. Thatcher by Mr. Williams.

25 Mr. Williams.

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1 **MR. WILLIAMS:** Thank you, Your Honor.

2 CROSS-EXAMINATION cont.

3 **BY MR. WILLIAMS:**

4 **Q** Ms. Thatcher.

5 **A** Yes, sir.

6 **Q** I just wanted to follow up with you. Did you
7 become familiar with Investigator Roundtree over the
8 course of this investigation?

9 **A** Yes, sir.

10 **Q** Okay. And during that time, did Investigator
11 Roundtree take you from the jail out, down into his
12 office?

13 **A** Yes, sir.

14 **Q** Okay. And did he take you down into his office
15 on multiple occasions?

16 **A** Yes, sir.

17 **Q** Did he permit you to use the phone to call your
18 family?

19 **A** Yes, sir.

20 **Q** Was it just you and Investigator Roundtree on
21 some of those occasions and no one else?

22 **A** Yes, sir.

23 **Q** Were you -- were there investigators from the
24 Internal Affairs Division of the Richmond County
25 Sheriff's Office who spoke to you about that issue

1 some years ago?

2 A Yes, sir.

3 Q And were there investigators from the Richmond
4 County Sheriff's Office Internal Affairs Division
5 which asked you about that issue some two years ago?

6 A Yes, sir.

7 Q Okay. Ms. Thatcher, I want to direct your
8 attention, if I might, to the night of September 3rd
9 of 2001 again. You were working as a prostitute for
10 Steven Barnes?

11 A Yes, sir.

12 Q Okay. And you were familiar with other girls
13 who worked as prostitutes for Steven Barnes?

14 A Yes, sir.

15 Q Now, Mr. Barnes had a lot of rules that he
16 imposed on you all, didn't he?

17 A Yes, sir.

18 Q Some of that included that it would be two of
19 you going into a hotel room or to a John's house at
20 one time, right?

21 A No, sir.

22 Q Let me make sure I ask the question
23 appropriately, okay. He would send two of you in,
24 one of which would take the money back to his car?

25 A No, sir.

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1 Q That's not how it happened?

2 A That's how the armed robbery happened, but, no,
3 sir, not every --

4 Q That wasn't one of his rules?

5 A No.

6 Q All right. Was one of his rules that you never
7 take the money directly from the John's hand?

8 A Yes, sir.

9 Q Okay. Was one of his rules that you --

10 MR. MAYE: Now, Your Honor, I'm going to object
11 at this point in time to relevance. I've given a
12 lot of leeway in asking about this. It's not
13 relevant evidence in this case and I would object to
14 this line of questioning.

15 THE COURT: Step up here for me, Mr. Williams,
16 Solicitor, please.

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

20 THE COURT: I will sustain the objection.
21 Thank you very much. Thank you, Solicitor.

22 MR. WILLIAMS: Thank you, Your Honor.

23 BY MR. WILLIAMS:

24 Q I'm going to ask you about a young lady by the
25 name of Jana McCarty. She was one of the girls that

1 worked with Mr. Barnes as well, right?

2 A No, sir.

3 Q Okay. She was not?

4 A She worked for him before the murder, but after
5 the murder, no, sir, she worked for herself.

6 Q Okay. And I want to ask you, on one occasion,
7 were you familiar that Mr. Sam Sturup was asked to
8 watch her by Mr. Barnes?

9 A Yes, sir.

10 Q Okay. And his duty was to kind of watch her
11 and not let her go anywhere, right?

12 A Yes, sir.

13 Q And Mr. Sturup was supposed to do that for
14 Mr. Barnes?

15 A Yes, sir.

16 Q You were familiar with Mr. Sturup. He hung
17 around with Mr. Barnes quite a bit?

18 A No, sir. I only seen him one time before the
19 murder -- no, two times. The first time -- if you
20 don't mind me telling you?

21 Q I don't mind.

22 A Okay. The first time I met him, Barnes had me
23 and Ms. McCarty fighting each other and then -- and
24 he was just watching the fight. The second occasion
25 I met him was when we went to two different clubs,

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1 the County Line and it used to be called Choo-Choos,
2 but it's something else now.

3 THE COURT: What now?

4 THE WITNESS: Two different clubs. And that's
5 what -- where all this came, the murder and all
6 that, came from anyway was from that night at the
7 club. That's it, those are the only two occasions
8 I've seen him.

9 BY MR. WILLIAMS:

10 Q Now, Mr. Sturrupe was seven -- I'm sorry -- 16
11 years old, right?

12 A To my knowledge in jail, yes, but in the
13 streets, I did not know. Yes, sir.

14 Q I understand, but you learned he was 16 years
15 old, didn't you?

16 A Being incarcerated, yes, sir.

17 Q Okay. And could you tell me about what size of
18 a young man he was?

19 A He was hefty.

20 Q And would you say hefty being six feet tall?

21 A I don't know about his height, sir.

22 Q But he was stout?

23 A Yes, sir.

24 Q He was kind of a big boy?

25 A Yes. He was taller than some, but I can't

1 really tell you how tall.

2 Q And he was going to the clubs with Mr. Barnes,
3 too?

4 A Yes, sir.

5 Q Okay. On this particular night, a lot
6 happened, didn't it?

7 A The particular night of the club?

8 Q September -- I'm sorry -- September 3rd of
9 2001, the night of Mr. Sturup's death?

10 A Yes, sir.

11 Q Quite a bit happened, didn't it?

12 A Yes, sir.

13 Q Do you recall telling Investigator Roundtree
14 that you were beat with a broom?

15 A Yes, sir, by William Harris, sir.

16 Q By William Harris?

17 A Yes, sir.

18 Q On this particular night, do you recall telling
19 Investigator Roundtree that you were actually poked
20 between your legs with the broom?

21 A Yes, sir.

22 Q And on this particular night, Mr. Barnes sort
23 of had you and Mr. Sturup pitted against each
24 other; isn't that right?

25 A What do you mean pitted, sir?

1 Q I apologize. He had Mr. Sturup wanting to
2 blame you for stealing money and you in turn were
3 saying, no, it wasn't me, maybe it was Sam. Didn't
4 that --

5 A Yes, sir.

6 Q So you all were kind of at odds or had -- he
7 created that though, didn't he?

8 A Yes, sir.

9 Q You indicated also that you had never, prior to
10 this incident, saw my client; is that right?

11 A Yes, sir.

12 Q But you testified on direct examination that
13 subsequent to this incident, you saw my client a
14 lot?

15 A Subsequent means afterwards, sir?

16 Q Yes, I'm sorry.

17 A That's okay. Yes, sir.

18 Q In the business of prostitution, you're
19 required to become familiar or pretend to be
20 familiar with prospective customers even though you
21 aren't that familiar with them, aren't you?

22 A Yes, sir.

23 Q Kind of create a fantasy?

24 A Yes, sir.

25 Q Do you admit that in the business of

1 prostitution, that it's sometimes a bit of a
2 manipulative business?

3 A No, sir.

4 Q You don't think you manipulate people into
5 believing something that isn't true?

6 A No, sir.

7 MR. WILLIAMS: Court's indulgence, Your Honor.

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

9 (Pause.)

10 BY MR. WILLIAMS:

11 Q Do you recall testifying in a trial just last
12 week?

13 A Yes, sir.

14 Q Do you recall saying in that trial that prior
15 to the night of the death of Mr. Sturrupe, you were
16 familiar with my client?

17 A No, sir.

18 Q You don't recall saying that?

19 A No, sir.

20 Q And prior to, that means before the death of
21 Mr. Sturrupe, you knew my client?

22 A No, sir.

23 Q You didn't testify to that?

24 A No, sir.

25 MR. WILLIAMS: If I might approach?

1 **THE COURT:** Yes, sir, Mr. Williams.

2 **BY MR. WILLIAMS:**

3 **Q** You also indicated that it was just ten days
4 that you had been working for Mr. Barnes; is that
5 right?

6 **A** Yes, sir.

7 **Q** Okay. I'm going to ask you, if you would, look
8 at page 17, lines 6 through 13. If you will look at
9 those and don't read them aloud, just them to
10 yourself.

11 **A** (Witness complies.)

12 **Q** Have you read them?

13 **A** Yes, sir.

14 **Q** Okay. In that trial, did you not say that you
15 knew my client during the ten days leading up to
16 that night of the death of Mr. Sam Sturup, Jr.?

17 **A** No, sir, I did not say that. May I say what it
18 says?

19 **Q** Sure.

20 **A** Okay. What you're saying is -- what you're
21 reflecting on is line 14 where it says, Okay, now --
22 this is the question: Okay. Now, Julio Hunsberger
23 was, during that ten days that you'd been here, he
24 was an acquaintance of Steven Barnes; isn't that
25 right? And I said: Yes, sir.

1 Q Well, how would you know someone is an
2 acquaintance of an individual?

3 A Because on the tenth day that I knew Barnes, he
4 called Julio Hunsberger and he showed up on the
5 tenth day and that's what this is pertaining to,
6 sir. Sorry.

7 Q And that's your answer?

8 A Yes, sir.

9 Q Okay. And then the question on line 12 and 13,
10 the question says: Okay. But you knew Julio
11 Hunsberger, didn't you?

12 A Yes, sir, but it had nothing to do with the
13 days. It just asked before that about Alex
14 Hunsberger, if I knew Alex Hunsberger, and I said,
15 no.

16 Q But you said, yes, you knew Julio Hunsberger,
17 didn't you, in that trial?

18 A Yes, sir, but it didn't ask when did I know
19 him, sir.

20 Q You took an oath last week, did you not?

21 A Yes, I did, sir.

22 Q You took an oath this morning?

23 A Yes, sir.

24 Q You took an oath in the trial State of South
25 Carolina versus Steven Barnes, didn't you?

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1 **A** Yes, sir.

2 **Q** Do you remember a young lady by the name of
3 LaShonda Lott or LaShanda Lott?

4 **A** Yes, sir.

5 **Q** And she was about 18 years old when you met
6 her?

7 **A** No, sir, she was 17.

8 **Q** Seventeen?

9 **A** Yes, sir.

10 **Q** And right when you were arrested on the armed
11 robbery charges, she was with you all, wasn't she?

12 **A** Yes, sir.

13 **Q** And she was reluctant to become a participant
14 into this escort/prostitution thing, wasn't she?

15 **A** Yes, she was, sir.

16 **Q** All right. But part of your job was to kind of
17 get her ready, wasn't it?

18 **A** Yes, sir.

19 **Q** Okay.

20 **MR. MAYE:** Your Honor, again, I'm going to
21 object to the relevance. This just gets back to
22 that same issue. It's just not relevant evidence in
23 this case.

24 **THE COURT:** Yes, sir, move on, Mr. Williams.

25 **MR. WILLIAMS:** Your Honor, I beg the Court's

1 indulgence.

2 **THE COURT:** Yes, sir, certainly.

3 (Pause.)

4 BY MR. WILLIAMS:

5 **Q** When you first were investigated by
6 Investigator Roundtree regarding this issue and this
7 incident, you talked about what transpired, didn't
8 you?

9 **A** Yes, sir.

10 **Q** Okay. And you essentially said you shot first?

11 **A** Yes, sir.

12 **Q** And then didn't you go on to indicate that
13 Steven Barnes shot him in the head second?

14 **A** Yes, sir.

15 **Q** So you were the first shot somewhere in the
16 area of the stomach you believe?

17 **A** Yes, sir.

18 **Q** And then thereafter he begged for his mother,
19 didn't he?

20 **A** (No response.)

21 **Q** He was on his knees. Isn't that what you told
22 the investigator?

23 **A** Yes, sir.

24 **Q** And then he was begging for his mother at that
25 point, wasn't he?

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1 **A** He was begging for his life.

2 **Q** And then that's when Mr. Barnes came in and
3 shot him in the head and that's when you freaked
4 out, isn't it?

5 **A** Yes, sir.

6 **MR. WILLIAMS:** I don't have any other
7 questions.

8 **THE COURT:** Redirect, Solicitor.

9 **MR. MAYE:** Nothing. Thank you.

10 **THE COURT:** Thank you.

11 Thank you very much, Ms. Thatcher. You may
12 step down.

13 All right. Solicitor, you may call your next
14 witness.

15 **MR. MAYE:** The State would call Shirley Sturupp
16 to the stand.

17 **THE COURT:** All right. Ms. Sturupp, if you
18 would come around and be sworn, please.

19 SHIRLEY STURUP,
20 having been duly sworn, testified as follows:

21 **THE CLERK:** Have a seat. State your full name
22 and spell your last name, please.

23 **THE WITNESS:** Shirley Sturupp, S-t-u-r-r-u-p.

24 *****

25 *****

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Ms. SturruP, I'm going to ask you directly, as
4 a victim in this case, Samuel SturruP, was that your
5 son?

6 A Yes, sir.

7 Q Let me talk to you about Labor Day of 2001.
8 Tell me about when you last saw your son and what
9 the circumstances were.

10 A Will had come to pick my son up and Sam took a
11 shower, changed. He said he was going to a cookout.
12 And I last saw him in the afternoon on September
13 3rd, 2001.

14 Q And you're talking about William Harris --

15 A Yes, sir.

16 Q -- Little Man or Mr. Barnes' brother in this
17 case. He picked him up there. Was that at your
18 residence in Augusta?

19 A Yes, sir.

20 Q Did he come home that night?

21 A No, sir.

22 Q How about the next day and the next weeks did
23 he come home?

24 A No, sir, he never came home.

25 Q I want to talk to you about November the 23rd

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1 of 2001. Had you filed reports indicating that your
2 son was missing at that point in time and had you
3 been searching for him?

4 A Yes, sir.

5 Q Did Investigator Randy Doran from the Edgefield
6 Sheriff's Office, did he come to you on November the
7 23rd of 2001?

8 A Yes, sir.

9 Q Did he bring with him items of personal
10 property? And I'm going to talk about specifically,
11 at least one of them, item 17, these keys that are
12 in this bag here.

13 A Yes, sir.

14 Q Were you able to identify those keys as the
15 keys that your son, Sam Sturup, had, that those
16 were his keys?

17 A Yes, sir.

18 Q Keys to your residence and the vehicles that he
19 was allowed to operate?

20 A Yes, sir.

21 Q Did he ask you to make an identification of
22 items of clothing, a belt with the name Samuel on
23 it, and items of clothing to see whether or not you
24 could identify those items as belonging to your
25 missing son?

1 **A** Yes, sir.

2 **Q** Were you able to make an identification of
3 those clothes --

4 **A** Yes, sir.

5 **Q** -- that they showed you the photographs?

6 **A** Yes, sir.

7 **Q** Were those items of clothing Samuel's?

8 **A** Yes, sir.

9 **Q** You never saw him again after that time he left
10 with Mr. Harris on the 3rd, September the 3rd of
11 2001, on Labor Day?

12 **A** No, sir.

13 **Q** And you never saw him again?

14 **A** No, sir.

15 **MR. MAYE:** Please answer any questions the
16 defense has for you.

17 **THE COURT:** Thank you, Solicitor.

18 Mr. Williams.

19 CROSS-EXAMINATION

20 **BY MR. WILLIAMS:**

21 **Q** Ms. Sturrupe, first off, I hope you're doing
22 well this morning. Certainly, we understand that
23 it's not an easy place for you to be.

24 **A** Yes, sir.

25 **Q** I just have two questions. Did you report your

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1 son missing immediately?

2 **A** Not immediately because I was hoping and asking
3 and searching myself hoping that I could find
4 something out. And then after that, I had to report
5 it to the authorities.

6 **Q** And had he gotten to that age in which he was
7 getting a little bit less than easy to control?

8 **A** Yes, sir. The age of 16 is a challenging age,
9 yes, sir.

10 **MR. WILLIAMS:** Those are the only questions
11 that I have.

12 **THE COURT:** Thank you, Mr. Williams.
13 Redirect.

14 **MR. MAYE:** Nothing else. Thank you.

15 **THE COURT:** Thank you very much, Ms. Sturrup.
16 You may step down.

17 All right. Solicitor, you may call your next
18 witness.

19 **MR. MAYE:** The State rests at this time, Your
20 Honor.

21 **THE COURT:** Thank you, Solicitor.

22 Mr. Foreman, ladies and gentlemen of the jury,
23 you've just heard the State has rested as far as its
24 case in chief is concerned. You've heard all the
25 evidence and all the testimony you're going to hear

1 from the State in its case in chief.

2 We're going to take about a 15-minute recess.

3 During this recess, do not discuss this case with

4 anyone including your fellow jurors. Please

5 remember my additional instructions to you. If

6 you'd leave your pads upside down on your chair.

7 Remember to keep an open mind and do not begin your

8 deliberations until you are instructed to do so by

9 the Court. You may now leave your pads and go with

10 your bailiff. Thank you very much.

11 (The jury retires to the jury room.)

12 **THE COURT:** All right. Any motions from the

13 State?

14 **MR. MAYE:** Nothing from the State -- no motions

15 at this time from the State, Your Honor. Thank you.

16 **THE COURT:** From the defense?

17 **MR. WILLIAMS:** Yes, Your Honor.

18 **THE COURT:** All right. I'll be glad to hear

19 you.

20 **MR. WILLIAMS:** Your Honor, at this time, we

21 would move for a directed verdict of not guilty. We

22 believe that the State has not offered sufficient

23 evidence into the record for which a reasonable jury

24 could conclude beyond a reasonable doubt that my

25 client is guilty of the offense of murder. We don't

1 believe that there have been any testimony of any
2 credible nature that's been offered that implicates
3 my client into this crime. And we would ask that
4 the Court would direct a verdict of not guilty on
5 his behalf.

6 **THE COURT:** All right. I would respectfully
7 deny the motion. I think there is sufficient direct
8 and substantial circumstantial evidence.

9 As I review the witnesses, the ten witnesses
10 that have testified in this case, three witnesses,
11 Cave, Griffin and Thatcher, place Julio Hunsberger
12 at the residence known as or
13 Cherry Road, I'm not sure, Augusta, Georgia, on the
14 night of 3 September '01 in the presence of
15 Mr. Barnes and also of William Harris and also of
16 the victim in this case, Samuel. There's testimony
17 that Mr. Barnes uses the telephone and two
18 individuals appear that are identified by each of
19 these individuals, Cave, Thatcher and Griffin, as
20 Alex Hunsberger and Julio Hunsberger after
21 Mr. Barnes has made this phone call.

22 That Barnes, Thatcher, Griffin, Cave get into
23 Barnes' vehicle, follow a vehicle occupied by Alex
24 and Julio Hunsberger out of Augusta, out of the
25 State of Georgia into South Carolina off of

1 Community Road off of Lakeview Road into an area
2 that is, my understanding from the testimony, is
3 owned by Gerald Richardson who was previously
4 married to Julio Hunsberger's mother. That after
5 they stopped, both vehicles in this caravan, that
6 the trunk is popped and Mr. Samuel Sturup gets out
7 of the trunk in a weakened condition.

8 That this -- these number of individuals, would
9 be one, two, three, four, five, six, go down into
10 this large field crossing a fence, crossing a barbed
11 wire -- over a gate, crossing a barbed wire fence.
12 That Mr. Sturup is basically being forced down into
13 this area. That there are at least two weapons
14 involved or seen. That Barnes directs all of the
15 individuals that they will shoot Mr. Sturup.

16 The testimony, although, is not internally
17 consistent one with the other. Ms. Thatcher states
18 she fires first, Barnes second. Cave and Griffin
19 tell different, but there is testimony that all the
20 individuals present shoot Mr. Sturup.

21 They leave that location and go to a trailer
22 located in that general area. There is testimony
23 that Mr. Julio Hunsberger may have had access to a
24 trailer in that area and a key to that trailer.
25 There is testimony that Mr. Julio Hunsberger is a --

1 was an associate of Mr. Barnes. There's other
2 corroboration of the co-defendants that have
3 testified including items recovered from Cherry
4 Street, the shock absorber, and including items that
5 are recovered from the burn barrel at the 1300 block
6 -- residence on Wrightsboro Road.

7 So I would respectfully deny your motion. As
8 you say, it's an issue of credibility, for the jury
9 to decide the credibility and the believability of
10 the witnesses that have testified in the case.

11 Any other motions, Mr. Williams?

12 **MR. WILLIAMS:** Yes, sir, Your Honor. I'd like
13 to simply renew my motion for the dismissal of this
14 matter in that it was brought to trial in a
15 substantially delayed manner. And we believe that
16 with the showing of such inconsistencies of the
17 memories of the witnesses and with a showing of such
18 inconsistencies of their testimonies, we believe
19 that he's been prejudiced by it. And we believe
20 it's appropriate for the Court to dismiss this on
21 the basis of this -- of the State's failure to bring
22 it to trial in a speedy manner pursuant to Article 1
23 and Section 14 of the South Carolina Constitution,
24 as well as the Sixth Amendment.

25 **THE COURT:** Thank you, Mr. Williams. I would

1 renew my previous ruling in that regard.

2 Mr. Hunsberger, would you come around, please,
3 and be sworn? Come around to the microphone, you
4 and your attorney.

5 Madame Clerk, would you place Mr. Hunsberger
6 under oath?

7 JULIO A. HUNSBERGER,

8 having been duly sworn, testified as follows:

9 **THE COURT:** Mr. Hunsberger, I need to go over
10 some things with you. I do this with everyone who
11 is on trial and I need your responses to be under
12 oath, that's why I had the Clerk place you under
13 oath. Do you understand?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** And speak up for me so I can hear
16 you clearly and distinctly. Tell me your full name.

17 **DEFENDANT:** Julio Angel Hunsberger.

18 **THE COURT:** And how old are you, Mr.
19 Hunsberger?

20 **DEFENDANT:** Thirty-four, sir.

21 **THE COURT:** How much education do you have?

22 **DEFENDANT:** Eleventh grade.

23 **THE COURT:** We've reached the stage of the
24 trial where the State has rested and your side, the
25 defense, now has the opportunity to present evidence

1 for the jury to consider. Do you understand where
2 we are in the trial?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** In that regard, you, through your
5 attorney, may call witnesses to testify on your
6 behalf. If you choose to testify yourself, you may
7 do so. Do you understand?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** No one can force you to testify.
10 You have an absolute right to remain silent. And if
11 you choose not to testify, I will tell this jury
12 that they cannot hold your silence against you in
13 any manner. I will tell them they're not to even
14 discuss that in the jury room. Do you understand?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** If your side offers no evidence at
17 all, in other words, if neither you nor anyone on
18 your behalf testifies or offers any exhibits, then
19 your attorney, Mr. Williams, will get to make the
20 last, the final argument to the jury. Otherwise,
21 the prosecutor gets to make the last argument to the
22 jury. Do you understand?

23 **DEFENDANT:** Sir, I was told that, yes, sir.

24 **THE COURT:** Does the defendant have a criminal
25 record that would subject him to impeachment under

1 Rule 609?

2 MR. MAYE: Your Honor, he has a conviction in
3 1996, which is outside of ten years, but it is for
4 giving false name, address or birth date to a law
5 enforcement officer and that is from Georgia,
6 February the 14th of 1996, which we would maintain
7 is a crime of dishonesty or false statement. He
8 also has a charge of theft by receiving stolen
9 property that was a January the 30th of 1998
10 conviction.

11 He has a burglary conviction, 2/13/1998, for
12 which he was found guilty, Your Honor. He was
13 originally charged with two counts of burglary. He
14 pleaded guilty to one, received a three-year
15 sentence of incarceration with three years of
16 probation to follow. We would maintain burglary is
17 a crime of dishonesty.

18 That's the record that I show. Anything else
19 that he has prior to that time, driving offenses and
20 things, that would be too old and would not deal
21 with dishonesty. We would maintain that those
22 convictions, though, do deal with dishonesty and
23 would be eligible for impeachment.

24 THE COURT: All right. When I look at Rule
25 609(b), Time limits, it indicates that evidence of a

1 conviction more than ten years old as calculated
2 herein, is not admissible unless the proponent gives
3 to the adverse party sufficient advance written
4 notice of intent to use such evidence to provide the
5 adverse party with a fair opportunity to contest the
6 use of such evidence.

7 Solicitor, has the State provided Mr. Williams
8 with written notice of its intent to use this --
9 convictions that are more than ten years old?

10 **MR. MAYE:** No, sir. I did not do that, Your
11 Honor, in this case. I did not intend to offer
12 these. And whatever ruling that the Court dictates
13 based on that, we'll be happy with.

14 **THE COURT:** All right. I think that's a
15 mandatory requirement in that regard. So I would
16 not allow the '96, '98 or '98 conviction for, in
17 sequence, false information to police, theft of
18 receiving stolen goods and burglary.

19 Anything others, Solicitor?

20 **MR. MAYE:** Nothing else, Your Honor.

21 **MR. WILLIAMS:** Your Honor, he does have the
22 kidnapping conviction. Certainly, we would contest
23 it on the basis of it's essentially the same facts
24 of this case. And I believe the weight -- the
25 balancing test is required. I think it would

1 dictate, I hope it would dictate that the Court
2 would find that it would be too prejudicial to
3 commit.

4 **THE COURT:** Did you intend to use that? It's
5 been before the jury quite frankly, the Georgia
6 trials, the Georgia convictions, not so much as it
7 goes to credibility of course, but to his
8 involvement.

9 I would agree with you what a trial judge -- a
10 trial jury did as far as finding him guilty or not
11 guilty in Georgia, in other words, if they would
12 have found him not guilty in Georgia, I would no
13 more allow that in as I would allow that they found
14 him guilty in Georgia because it's a different
15 venue, it's a different jury, it's a different law,
16 so --

17 **MR. MAYE:** I would not intend to offer it, Your
18 Honor. I don't even want the Court to have to reach
19 the balancing test on that. I wouldn't intend to
20 offer it. I think it's, in all likelihood, probably
21 before the jury in any regard. So I wouldn't
22 intend to offer it.

23 **THE COURT:** So, in that regard, I don't think
24 there's any record -- I think his record has been
25 settled.

1 **MR. WILLIAMS:** Yes, sir.

2 **THE COURT:** Mr. Hunsberger, the decision about
3 whether you testify or not is your decision to make
4 and yours alone. I expect that you may confer with
5 your attorney or with others whose opinions you
6 value on life's important decisions, but the
7 decision about whether or not you testify or not is
8 your call to make, your decision. Do you
9 understand?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Has anyone exercised any undue
12 influence over you to get you to choose to testify
13 or not to testify?

14 **DEFENDANT:** Other than the situation where he
15 spoke about back in 2010, September 22nd.

16 **THE COURT:** I'm sorry, I misunderstood.

17 **DEFENDANT:** About the situation in 2010,
18 September 22nd, when he came and see me for the
19 first time, he had indicated that the D.A. would --
20 well, they were supposed to show up over there,
21 somebody from the office over here was supposed to
22 show up over there and ask whether or not I was
23 going to testify against one, Mr. Steven Lewis
24 Barnes.

25 **THE COURT:** All right. But I'm talking about

1 your testimony in your trial, that's all we're
2 talking about now. Has anyone used any undue
3 influence on you to get you to testify or not to
4 testify in this trial?

5 **MR. WILLIAMS:** Oh, no, sir.

6 **THE COURT:** All right. Today are you under the
7 influence of any medication, drugs or alcohol or
8 anything that affects your thinking ability?

9 **DEFENDANT:** No, sir.

10 **THE COURT:** Do you suffer from any physical or
11 mental or nervous problem that affects your thinking
12 today?

13 **DEFENDANT:** No, sir.

14 **THE COURT:** Whatever decision you make about
15 whether to testify or not to testify in your trial
16 will be your decision made of your own free will and
17 accord. Do you understand?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Do you have any questions you would
20 like to ask me about your right to testify or not to
21 testify?

22 **DEFENDANT:** Nothing that I can think of, sir.

23 **THE COURT:** All right. And if you think of
24 any, you just let your attorney know and I'll be
25 glad to address it.

1 I'm not going to ask him what his decision is
2 at this time. I'll give you the opportunity to
3 discuss further with him, Mr. Williams.

4 Thank you very much, Mr. Hunsberger.

5 Mr. Williams, could I ask this: Do you intend
6 to offer any evidence or testimony irrespective of
7 your client?

8 **MR. WILLIAMS:** Your Honor, we're still talking
9 about that. And I've explained to him the
10 repercussion of doing that that the Court just so
11 very well went over with him.

12 **THE COURT:** All right. Well, we'll take us
13 about a 15-minute recess -- well, we'll say 20
14 minutes and perhaps that will give you an
15 opportunity to speak further with your client in
16 that regard.

17 **MR. WILLIAMS:** Thank you. Your Honor.

18 **THE COURT:** Thank you very much. Court will be
19 in recess 20 minutes.

20 (Brief recess.)

21 **THE COURT:** Anything from the State before we
22 bring in our jury?

23 **MR. MAYE:** Nothing from the State, Your Honor.

24 **THE COURT:** Defense?

25 **MR. WILLIAMS:** Your Honor, I neglected to renew

1 one motion and that was the motion of the malicious
2 prosecution of my client.

3 And I would also, just for the record, like to
4 raise that, Your Honor, he's being tried for facts
5 that are substantially similar for things that he's
6 already doing time for. And we would ask that the
7 Court would consider that the State's prosecution be
8 estopped simply because the issues that were raised
9 in his previous trial were substantially similar to
10 the issues raised in this trial. And we believe it
11 may even be -- the argument of collateral estoppel
12 may be appropriate and I would ask the Court to
13 consider that as well.

14 **THE COURT:** I'd be glad to look at any research
15 you'd like for me to look at.

16 Solicitor, do you care to comment?

17 **MR. MAYE:** Your Honor, only briefly. He was
18 prosecuted by a separate sovereign for an un --
19 well, a crime that occurred over in Georgia within
20 their jurisdiction. The crime of kidnapping can
21 occur at any point in time. And under this set of
22 facts, certainly we could have maintained some sort
23 of prosecution for kidnapping for any period of time
24 that Samuel Sturup was detained against his will in
25 the trunk of that automobile. We specifically chose

1 not to.

2 He's charged with murder, a separate and
3 distinct crime that had occurred in its entirety,
4 the homicide aspect of it, occurred here with the
5 exception of him being transported from the scene
6 there in Georgia. From the research that we did in
7 this case, I can't imagine there could be any
8 meaningful challenge to prosecute -- to bar the
9 prosecution of the murder.

10 **THE COURT:** All right. I'll take it under
11 advisement. I'm going to look at a couple of cases.

12 Of course, as the Solicitor points out,
13 kidnapping is a continuing crime. A person
14 unlawfully restrained in one location, the
15 kidnapping continues until such time as that person
16 regains his or her freedom, which, of course, never
17 occurred in this case. And there are separate
18 sovereigns.

19 But I'm going to look up a couple of cases. So
20 I will say I'll take it under advisement in that
21 regard, Mr. Williams. And if there's any cases you
22 want me to look at, if you get the opportunity, I'll
23 also be glad to look at them.

24 **MR. WILLIAMS:** Yes, sir.

25 **THE COURT:** Do you have anything further?

1 **MR. WILLIAMS:** No, sir, Your Honor.

2 **THE COURT:** Might I ask are you going to
3 present any evidence or testimony?

4 **MR. WILLIAMS:** Your Honor, my client and I have
5 conferred pretty intently and it is not our intent
6 to offer any evidence or testimony.

7 **THE COURT:** So the seven witnesses, I believe,
8 that remain on the witness list, you're not going to
9 call them?

10 **MR. WILLIAMS:** No, sir.

11 **THE COURT:** All right. So then the -- when the
12 jury -- generally, what I do, my procedure,
13 Mr. Williams, is I bring the jury out after the
14 State has rested at this stage and I tell them again
15 the State's rested. The defendant -- we're at the
16 stage now where the defendant may present evidence
17 and testimony if a defendant chooses to do so, that
18 the State bears the burden of proving its case
19 beyond a reasonable doubt and the defendant is
20 presumed to be innocent. And I say both reasonable
21 doubt and presumption of innocence, not the full and
22 complete charge.

23 **MR. WILLIAMS:** Yes, sir.

24 **THE COURT:** And I tell them, of course, the
25 defendant may present evidence and testimony if he

1 chooses to do so, so we now turn our attention to
2 Mr. Williams. And I'll ask you, and then I take it
3 you would then formally rest.

4 **MR. WILLIAMS:** Yes, sir.

5 **THE COURT:** At that point, I tell the jury
6 you've now heard all the evidence and all the
7 testimony you're going to hear in the trial of this
8 case. And I tell them what procedure we then follow
9 as far as the closing arguments are concerned.

10 Given the hour -- I do not like to break
11 between closing arguments. I personally don't like
12 to break between closing arguments and the charge
13 unless it's a refreshment break. In other words, I
14 don't want to have the Solicitor make his closing,
15 sit down and then take a lunch break or either have
16 the Solicitor make his closing, sit down, then you
17 make your closing, sit down and then take a lunch
18 break before I charge.

19 My preference would be to once we start, we
20 don't stop until we finish, unless we take a
21 refreshment break depending on how long. If that
22 suits y'all's schedule, I think I'll let the jury go
23 to lunch and just tell them to be back at whatever
24 an hour and a half later is and we'll just start at
25 that point.

1 Any of y'all have any objection to that? Now,
2 y'all know me, I'll work right now. We'll press on,
3 but --

4 **MR. WILLIAMS:** Your Honor, that'll give me an
5 opportunity to gather a few of my thoughts, those
6 that are left and --

7 **THE COURT:** All right. I agree with that. I
8 -- I mean, not your thoughts. I agree, having sat
9 where both of y'all sat over the years, I would have
10 preferred that, too.

11 Solicitor.

12 **MR. MAYE:** Judge, I'll do whatever you want me
13 to do. I'll get up right now and argue or I'll come
14 back after lunch. I'll do whatever the Court tells
15 me to do.

16 **THE COURT:** All right. Thank you very much.

17 I take it the State could also briefly open and
18 close on the law, but I take it you're just going to
19 have one argument, Solicitor?

20 **MR. MAYE:** I'm -- under these circumstances,
21 certainly I will waive any opening on the law.

22 **THE COURT:** So you're going to close?

23 **MR. MAYE:** Yes.

24 **THE COURT:** And then after your closing, then
25 Mr. Williams and then -- after that.

1 **MR. MAYE:** Yes, sir.

2 **THE COURT:** All right. Well, after they've had
3 this extended break, let's bring them out and we'll
4 give them an extended break.

5 (The jury returns to the courtroom.)

6 **THE COURT:** All right. Our jury is back.

7 Ladies and gentlemen, as you heard prior to the
8 recess, the State has rested, that means you've
9 heard all the evidence and all the testimony you're
10 going to hear from the State in its case in chief.

11 The defendant may now present evidence if the
12 defendant chooses to do so. A defendant is never
13 required to prove himself or herself innocent. A
14 defendant has no burden of proof. The State has the
15 burden of proving its case and each and every
16 element of the offense charged by proof beyond a
17 reasonable doubt.

18 Regardless of the seriousness of the criminal
19 charge brought against an individual, that
20 individual is presumed to be innocent throughout the
21 course of the trial, throughout the course of your
22 deliberations unless and until you, the jury, are
23 satisfied by evidence convincing you of the
24 defendant's guilt beyond a reasonable doubt.

25 So understanding that the defendant does not

1 have to present evidence, that it has no burden of
2 proof, we now turn to Mr. Williams. As I say, a
3 defendant can present evidence if he chooses to do
4 so. And we ask Mr. Williams --

5 Mr. Williams, you may call your first witness.

6 **MR. WILLIAMS:** Your Honor, the defense rests.

7 **THE COURT:** Thank you very much, Mr. Williams.

8 As you've heard now, ladies and gentlemen, the
9 defense has rested. What that means is you've now
10 heard all the evidence and all the testimony that
11 you're going to hear in the trial of this case from
12 both the State and the defense. We're at the point
13 of the closing arguments by the attorneys.

14 Now, the procedure we follow in a case such as
15 this is the State would close first, would present
16 its closing argument. The Solicitor would present
17 its closing argument on behalf of the State first.
18 That will be followed by the closing argument by
19 Mr. Williams on behalf of his client,
20 Mr. Hunsberger.

21 After the two closing arguments, I then
22 instruct you or charge you, as we say, on the law
23 that applies to the facts of this case, both the
24 general criminal law and the specific criminal law
25 as to the offense of murder, and the elements and as

1 to the form of the verdict.

2 It's hard to estimate the time involved in
3 that. It's hard to estimate how long the closings
4 may take. They're not as they were at one time in
5 our society where closing arguments would last
6 upwards of hours or anything of that nature, but
7 then again it's a hard thing to estimate. The
8 advocates do want to present arguments on behalf of
9 their clients and I certainly give them the
10 opportunity to do so.

11 My instruction to you is probably in excess of
12 30 minutes, somewhere around 30 minutes give or
13 take.

14 With that being said, I think what I'll do -- I
15 don't like to break those up either. Once we start
16 the closings, I like to move through them and move
17 through my charge. I think we're just going to take
18 our luncheon recess now and have the attorneys come
19 back fresh so to speak after lunch and we'll start
20 that procedure and then we'll go right through.

21 I realize you had somewhat of an extended
22 break. The law requires me to take up certain
23 matters outside of your presence when the State
24 rests. I did that. So I think we'll take a recess.

25 I'd ask you to please be back promptly at 1:30

1 -- let me make sure my computer is telling me the
2 truth today -- well, it's 11:53. We'll say 1:15.
3 If you'd be back -- y'all remind me of that now.
4 Don't let me be early or late. Yesterday I came out
5 early and then I ended up late. 1:15. I'm going to
6 write it on my hand, 1:15, so I'll remember what
7 time. If y'all would please be back promptly at
8 1:15, we'll begin that next stage of the process.

9 I would ask you to please leave your notes on
10 your chair. They will be secured by the Clerk's
11 office in your absence. You're now free to go to
12 lunch.

13 Do not discuss the case with anyone. Do not
14 begin your deliberations until you're instructed to
15 do so. Remember to keep an open mind until you've
16 heard the closing arguments and the instruction on
17 the law by the Court.

18 You're now released for lunch. Please be back
19 at 1:15. Thank you very much. I hope y'all have a
20 pleasant lunch.

21 (The jury was excused for lunch.)

22 **THE COURT:** Any request to charge, Solicitor?

23 **MR. MAYE:** None from the State, Your Honor.

24 Thank you.

25 **THE COURT:** Mr. Williams?

1 **MR. WILLIAMS:** Your Honor, I will just inquire
2 as to the Court of the -- the Court's charge on the
3 presumption of innocence and if it doesn't bother
4 the Court, that I hear what the Court intends to
5 charge.

6 **THE COURT:** It doesn't bother me a bit.

7 I charge: The defendant has pled not guilty to
8 this indictment and that plea puts the burden on the
9 State to prove the defendant guilty.

10 A person charged with committing a criminal
11 offense in South Carolina is never required to prove
12 himself -- sometimes I say himself or herself --
13 innocent.

14 I charge you that it is an important rule of
15 the law that the defendant in a criminal trial, no
16 matter what the seriousness of the charge may be,
17 will always be presumed to be innocent of the crime
18 for which the indictment was issued unless guilt has
19 been proven by evidence satisfying you of that guilt
20 beyond a reasonable doubt. This presumption of
21 innocence does not end when you begin your
22 deliberations, but it accompanies the defendant
23 throughout the trial until you reach a verdict of
24 guilt based on the evidence satisfying you of that
25 guilt beyond a reasonable doubt.

1 The presumption of innocence is like a robe of
2 righteousness placed about the shoulders of the
3 defendant which remains with the defendant until it
4 has been stripped from the defendant by evidence
5 satisfying you of the defendant's guilt beyond a
6 reasonable doubt.

7 The presumption of innocence is not a mere
8 legal theory. It is not just a legal phrase. It is
9 a substantial right to which every defendant is
10 entitled unless you, the jury, are satisfied from
11 the evidence of the defendant's guilt beyond a
12 reasonable doubt.

13 **MR. WILLIAMS:** Your Honor, and with regard to
14 the Court's instruction on witness credibility.

15 **THE COURT:** I charge a general credibility
16 charge. I do, you know, that they have to determine
17 the credibility or the believability and that you
18 can believe one over many, many over one, part, you
19 don't count the number of witnesses, you know, and
20 such as that, and the bias, prejudice, interest. I
21 also have a charge in here -- and, of course, I also
22 charge expert testimony --

23 **MR. WILLIAMS:** Yes, sir.

24 **THE COURT:** -- in that regard. That's what I
25 charge.

1 **MR. WILLIAMS:** Yes, sir, I'm satisfied.

2 **THE COURT:** All right. Now, what about
3 accomplice liability, Solicitor?

4 **MR. MAYE:** Certainly, Your Honor, hand of one,
5 the hand of all, I would just ask for a charge in
6 that regard, and, certainly, that would be the law
7 in this state.

8 I don't suspect -- last week we had a big issue
9 about duress and duress is certainly not a defense
10 to murder. The defense last week asked for a charge
11 of duress, which the Court declined to do last week.
12 There's certainly nothing in evidence to indicate
13 that.

14 And from the cross-examination, I know that
15 basically mistaken identity and not present -- no
16 presence at the crime scene is the defense in this
17 case and -- but I would ask that the Court charge
18 the hand of one, hand of all.

19 **THE COURT:** If I do that, I'm going to charge
20 mere knowledge and mere presence.

21 **MR. MAYE:** Agreed, agreed. That's appropriate.

22 **MR. WILLIAMS:** Yes, sir, Your Honor.

23 **THE COURT:** And what about the factors on
24 identification?

25 **MR. MAYE:** Leave that to the Court's

1 discretion, Your Honor.

2 **MR. WILLIAMS:** I would want to hear the Court
3 -- what the Court would propose. I believe it would
4 be appropriate.

5 **THE COURT:** Well, you know, as I think back
6 over the identification testimony, I have this
7 charge that I use from State versus Simmons: An
8 issue in the case is the identification that the
9 defendant is the person who committed the crime
10 charged, then the State has the burden of proving
11 identity beyond a reasonable doubt. You must be
12 satisfied beyond a reasonable doubt of the accuracy
13 of the identification of the defendant before you
14 may convict the defendant.

15 Identification testimony is an expression of
16 belief or impression by a witness. You must
17 determine the accuracy of the identification of the
18 defendant. You must consider the believability of
19 each identification witness in the same way as you
20 would any other witness.

21 And it goes into the factors, opportunity to
22 observe, how long or short, how far or close,
23 lighting, whether the witness had a chance to see
24 the person or know the person in the past, the
25 burden's on the State. It specifically includes the

1 identity of the defendant. If, after examining the
2 testimony, you have a reasonable doubt as to the
3 accuracy, you must find the defendant not guilty.

4 **MR. WILLIAMS:** Your Honor, I'm satisfied with
5 that as well.

6 **THE COURT:** All right. Well, why don't we take
7 our recess and -- 1:15? All right, 1:15. Court
8 will be in recess till 1:15 -- oh, no, wait just a
9 minute.

10 Come around here, Mr. Hunsberger, just a
11 moment. Before I released the jury, I failed to ask
12 you, and your attorney indicated to me he had
13 discussed with you during the break whether or not
14 you were going to testify or not testify, what
15 decision did you make?

16 **DEFENDANT:** That I will not.

17 **THE COURT:** Is that your decision?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Is that your own free will and
20 accord?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you have any questions you would
23 like to ask me about that?

24 **DEFENDANT:** I have a lot of them, but I'm --
25 disregard, sir.

1 **THE COURT:** And nobody forced you to make that
2 decision?

3 **DEFENDANT:** No, sir.

4 **THE COURT:** That's your decision?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** All right. And, also, you're not
7 going to call any witnesses or present any
8 testimony. Was that your decision in conference
9 with your attorney?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** And you understand the form we
12 follow now is the Solicitor will close first to the
13 jury followed by your attorney will have the last
14 argument to the jury?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Thank you. Thank you
17 very much.

18 **MR. WILLIAMS:** Thank you, Your Honor.

19 **THE COURT:** All right. Court will be in recess
20 till 1:15.

21 **MR. MAYE:** Your Honor, just one thing for the
22 record. I'm not necessarily requesting this as a
23 request to charge, I'm passing up to the Court
24 merely for informational purposes. I was provided
25 last week with language of hand of one out of State

1 versus Dickman and mere presence from State versus
2 Condrey. I'm going to pass those up to the Court.

3 I'm not requesting that they be charged. I'm
4 only doing that because I happen to have it in my --
5 if it is of any assistance to the Court, I'm handing
6 it over. Thank you.

7 **THE COURT:** Dickman is a great assistance to me
8 because it was cited in a case called State versus
9 Mattison. You might want to look up some time.

10 **MR. WILLIAMS:** Judge, there was one thing that
11 was raised this morning, while we're still here and
12 on the record, and I'm not trying to keep us over
13 time, but this morning was there an issue that the
14 jury had and I don't -- I'm not --

15 **THE COURT:** Yes, sir. They wanted me to speak
16 to the T.V. reporter because he was clicking his
17 pen. And he never appeared, so I never spoke to
18 him.

19 **MR. WILLIAMS:** I understand.

20 **THE COURT:** And I was going to speak to him.
21 And I never heard his pen click, and I've asked the
22 Clerk staff. But I got that note, Please ask the
23 news reporter not to click his pen.

24 **MR. WILLIAMS:** I see.

25 **THE COURT:** And since he never appeared, I

1 never addressed it. I didn't address it with y'all.

2 I have that note and I'll have that note marked.

3 **MR. WILLIAMS:** I was just curious.

4 **THE COURT:** All right. Thank you.

5 (Whereupon, there was a luncheon recess.)

6 **THE COURT:** Anything from the State before we
7 bring in our jury?

8 **MR. MAYE:** Nothing from the State, Your Honor.
9 Thank you.

10 **THE COURT:** Defense?

11 **MR. WILLIAMS:** No, sir.

12 **THE COURT:** All right. Bring our jury, please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Thank you, Madame
15 Bailiff.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 welcome back. I hope y'all had a pleasant lunch.

18 As you recall, we're now going to proceed with
19 the closing arguments by the attorneys. First, will
20 be the Solicitor on behalf of the State, that will
21 be followed by Mr. Williams on behalf of his client,
22 Mr. Hunsberger. After the closing arguments,
23 depending on how long we've been out here, we may
24 take a short recess and I will then instruct you on
25 the law that applies to this case. You will then be

1 directed to begin your deliberations with your
2 fellow jurors in your jury room.

3 Please give the parties your complete and
4 undivided attention as you have done so throughout
5 the trial of this case.

6 With that being said, Solicitor.

7 **MR. MAYE:** May it please the Court, Your Honor.

8 **THE COURT:** Yes, sir.

9 CLOSING ARGUMENT

10 **MR. MAYE:** Ladies and gentlemen, first off, I
11 want to thank you for being here. I know that when
12 each of you went down to the mailbox, however long
13 ago it was, and you got that letter from Ms. Newby
14 here, the Clerk of Court here in Edgefield, I doubt
15 if anybody's heart leapt, if they were thrilled that
16 they had been summoned here for jury duty.

17 Winston Churchill once said that service on a
18 jury is the highest duty that a citizen has during
19 peacetime. At one point in time, people used to
20 have to work on the roads, we had the draft. There
21 were a variety of different things that were
22 compulsory public service.

23 Service on a jury is the last one. And it is
24 vitally important for everyone that lives here in
25 Edgefield County because just as surely as Judge

1 McMahon sits up there with his robe on and he
2 presides, I know he jested earlier and said he's in
3 charge of taking breaks, but unquestionably, you've
4 seen throughout the course of the trial, the Judge
5 runs the courtroom. And at the conclusion of all
6 the arguments in this case, it's undisputed the
7 Judge is going to charge you with what the law is.

8 But just as surely as Judge McMahon sits up
9 there with his robe on, the 12 of you that go back
10 in that jury room to deliberate, each of the 12 of
11 you sit as the judges of the facts in this case.

12 At the beginning of Labor Day 2001, September
13 the 3rd of 2001, Samuel Sturrupe was a healthy,
14 robust, young man as he left the company of his
15 mother there in his house in Augusta. By the
16 evening hours of Labor Day of 2001, by light of a
17 nearly full moon, Samuel Sturrupe laid dead here in
18 Edgefield County in a place he did not know, dead
19 from multiple gunshots right here in Edgefield
20 County.

21 Now, you've heard and the State, at the outset
22 of this case, we've told you we've got the burden of
23 proof here and we welcome it.

24 Julio Hunsberger sits here in this courtroom
25 before you today and throughout the course of this

1 trial that you've heard over the last few days,
2 charged with murder. This is an old and very
3 historic courthouse. You can look around at the
4 pictures on the wall up here, but we're talking
5 about the ultimate crime. There is no more serious
6 crime heard in any courtroom anywhere than murder.

7 Murder's a little different than a lot of
8 things. I think any good investigator will tell you
9 that.

10 This prosecutor never was much of a student of
11 literature, but you can go all the way back to 1390,
12 Chaucer wrote in the Canterbury Tales, Murder will
13 out, that see we day by day. In 1596, Shakespeare
14 wrote, Truth will come to light. Murder cannot be
15 hid long.

16 Nowhere more evident than in this case because
17 when the sheriff's office went out there, Sam
18 Sturup had gone from when he left his mother's
19 house on September the 3rd of 2011, by November the
20 19th of 2001, all that was left of Samuel Sturup
21 were bones scattered over several acres, a dark spot
22 in the ground here. All that was flesh and blood of
23 Samuel Sturup soaked in the ground here, right here
24 in Edgefield County. For that very reason, Samuel
25 Sturup, this all happened in Augusta, he was a

1 citizen in Augusta, he'll forever be a citizen here
2 because all that was flesh and blood of him bleached
3 out into the ground in the soil right here in
4 Edgefield County.

5 When Randy Doran and the officers and all of
6 the sheriff's men went out and began to look at what
7 had happened, a skull with a bullet hole in it,
8 bones scattered across the ground, they set to work.
9 And I submit to you they started the grinding,
10 tedious work that a good and a seasoned investigator
11 starts and they started searching and they started
12 looking. They started, and sometimes it's not very
13 glamorous, digging in the dirt with their bare hands
14 and fingers looking for evidence, looking for clues,
15 doing the tedious, methodical work that a seasoned,
16 thorough investigator does, sealed off that area and
17 began to search for bones.

18 They knew they had a skull with a bullet hole
19 in it. They knew they had human bones. And they
20 began to search outward in an ever expanding radius
21 till they found what was left of Samuel Sturup, a
22 dark spot in the ground, empty pair of blue jeans,
23 bones scattered when they gathered up his remains to
24 take them to Dr. Sexton. They couldn't even find
25 all his bones. The animals had gnawed on him,

1 spread him over who knows where. They couldn't even
2 recover him all.

3 But Randy Doran set to work as a methodical
4 investigator and he began to look, gathered up what
5 he had there. He took it to Dr. Sexton and you've
6 heard his credentials. He began to look in outlying
7 counties, was somebody missing. He looked in Aiken
8 County. It didn't take him long, though, till he
9 talked to Georgia authorities. He had a belt with a
10 young man's name on it and he started working.

11 I talked to you a little bit about how murder
12 is a little bit different than other crimes, but
13 they say that some crimes whisper, some more serious
14 crimes speak in a firm voice, but the State submits
15 to you, ladies and gentlemen, murder cries out, it's
16 different, cries and wails. When they had nothing
17 but a pair of blue jeans, the few items of bone that
18 they found, the few clues that they had, it was just
19 whispering at that point in time. When they found
20 out they had somebody missing, it began to speak.

21 Investigator Doran started working on this
22 case. He gathered up, once he found out they had an
23 individual missing, he got dental records, he
24 started gathering evidence in this case. He took
25 those things to Dr. Sexton. They made an

1 identification of this man.

2 And I submit to you, you heard the scientific
3 testimony of Dr. Sexton in this case, but I submit
4 to you when Investigator Randy Doran took these keys
5 that are in evidence that you'll have to take back
6 in the jury room and the photographs of empty blue
7 jeans and a belt to Ms. Sturrrup over here in her
8 home, they didn't need any DNA and they didn't need
9 any advanced scientific techniques. A mama that had
10 washed that young man's clothes and taken care of
11 him, do you think they needed anything beyond that?
12 She knew where the son was at that point in time
13 that she had been searching for since Labor Day when
14 he left never to return. He didn't need scientific
15 evidence, that was it right there. They could have
16 stopped, but they didn't.

17 And you've already heard in this case from the
18 evidence, and you've got it. The evidence in this
19 case comes from the stand up here. The State's got
20 the burden of proof. We told you at the outset we
21 welcome the burden in this case.

22 Investigator Doran began working with other
23 authorities and it didn't take long. And you've
24 heard it up here from the stand, murder won't stay
25 hid long because it's the ultimate crime. And

1 William Harris, the very man that took this boy away
2 from his mama's house there, and you've heard all
3 about his involvement, him being out there at the
4 scene, he told on them. And the pieces started
5 falling together.

6 You've heard the testimony in this case. Sam
7 Sturup out there at the green house. And the
8 reason we went through such repetition, is this the
9 green house, showing people pictures, is this the
10 gate you went through, Sam Sturup there in the yard
11 at the green house there over on Cherry Street in
12 Augusta confronted by Sam -- by Steven Lewis Barnes
13 arguing back and forth over money.

14 Ladies and gentlemen, I submit to you in this
15 case Steven Barnes was an evil, evil man, absolutely
16 no question of that. You won't get anything but an
17 amen from the State in that regard. And you've
18 heard a lot of talk in this case about what a
19 terrible monster he was. He was a pimp. He was a
20 drug dealer. He was a bad man. He was an armed
21 robber. He was every conceivable thing that anybody
22 could be in the world of crime.

23 There's a young man, and you've heard it
24 alluded to in this case, Sam Sturup, 16, too old to
25 be clinging to anybody's coat tails, but not really

1 old enough to be a man to make man-size decisions.
2 He started running around and hanging around with
3 Barnes.

4 There they are at that house and you heard all
5 that went back and forth there, the theater of him
6 accusing him of taking money. Who knows if any
7 money was even missing. You heard from Antonio
8 Griffin later, he said he found the money, it wasn't
9 even missing to begin with.

10 I submit to you it wasn't anything like that.
11 It was just power control, mean man, pitting them,
12 playing them off one to the other, laughing and
13 snickering about it, accusing one of taking the
14 money and then the other, pitting them against each
15 other, fighting. You heard all of that drama and
16 back and forth that went on out there at the green
17 house.

18 And you heard the testimony from the State's
19 witnesses in this case and each of them told you,
20 oh, this is what happened. You know, they were
21 fighting back and forth. Oh, you know, we fought a
22 little bit.

23 I am sure you will hear in this case quite an
24 attack on these witnesses in this case. And I
25 submit to you their stories don't all match up not

1 in every regard because they're trying to distance
2 themselves from this, trying to step back from it,
3 oh, you know, I didn't really beat on him that bad.
4 Oh, when I went out there in the woods, I shot in
5 the ground. Just anything they can to distance
6 themselves, to back away from the evil, the horrible
7 nature of this case, a savage beating that that
8 young man incurred out there at the green house.

9 There's no question about that, they beat him
10 up and they were participating. Well, they were
11 showing out for Steven Barnes, for each other,
12 whatever was happening.

13 You know that's a bunch of nonsense, a lot of
14 regard to, oh, you know, I really didn't do it. I
15 thought he was going to jump on me. That's a bunch
16 of junk. That's the State's own witnesses. That's
17 an attempt on their part to distance themselves from
18 it. Make no bones about it, they beat that boy
19 there at the green house.

20 And when he was confronted with that, what did
21 he say? And you've heard all of the witnesses up
22 here, as he was confronted, Barnes says, Where's my
23 money? I want my money. And he eventually says,
24 oh, I've got it. I got it. It's at home.

25 I submit to you that's a 16-year-old boy, like

1 a homing pigeon, when they get in trouble, not old
2 enough to be a man, he wants to go home to his mama
3 when all this starts. When he's there being accused
4 of taking this money, getting beat up, he wants to
5 go home.

6 But as much as he wanted to go home, he wasn't.
7 going to bring that on his family to go to their
8 house and he said, no, that's not true. I just told
9 you that to get you to quit beating me. So they
10 never went to their house, because it wasn't about
11 money.

12 After the beating at the green house, though, I
13 submit to you Charlene Thatcher told you at the
14 outset that Steven Barnes had related to her, We're
15 going on a mission. And throughout the course of
16 this you heard punctuated, Pick out a spot where you
17 want to die, somebody's going to die tonight. You
18 heard all of those. The wheels were set in motion,
19 he was going to die.

20 But what did Steven Lewis Barnes need over
21 there at the green house? He needed a place to kill
22 Sam Sturup and he needed men mean enough and hard
23 enough to come help him.

24 You heard from Cave and Griffin in this case,
25 16, 17-year-old little boys in the band trying to

1 run with a thug. They told you out there, Well,
2 when Barnes said we're all going to leave and get in
3 the car, we didn't know where he lived. We thought
4 maybe he was going to take him home.

5 Who knows whether or not they thought that was
6 the truth or not, it doesn't matter. What Steven
7 Lewis Barnes needed was two men hard enough, mean
8 enough and evil enough to come and assist him and he
9 called the right two men to come.

10 Julio Hunsberger and his brother Alex come over
11 to the green house in Augusta, Georgia, from
12 Edgefield to that spot over in Augusta, Georgia,
13 that green house where a young 16-year-old Sam
14 Sturup had just been beaten by this group of thugs
15 because that's all it amounts to. And what did they
16 do once they were summoned there and they talked to
17 Mr. Barnes? Where did Sam Sturup go at that point
18 in time? In the trunk of their automobile like
19 something out of a bad gangster movie.

20 When you're talking about murder, some of that
21 language in some of the old cases is good. The
22 Judge is going to charge you with the law at the
23 conclusion of this case, but murder is killing
24 another person with malice aforethought.

25 The old cases define malice as a depraved heart

1 bent on wickedness. Malice, long and short, that's
2 just meanness.

3 Two men with depraved enough hearts bent on
4 wickedness that they would put a 16-year-old boy in
5 the trunk of an automobile. You think they didn't
6 know what his fate was going to be? Who puts
7 somebody in the trunk of a car for any other purpose
8 than taking them to their demise? One, so they
9 won't know where they're going and nobody else see
10 it. No chance he was going to jump out if they
11 stop, they put him in the trunk right there with
12 Steven Lewis Barnes. And they kidnapped him. They
13 restrained him against his will when he was placed
14 in the trunk of that car. And who led the way?

15 Now, Steven Lewis Barnes over there, he had
16 engineered this beating and pitting all these people
17 against each other, but he didn't lead the way from
18 the green house. You've heard witness after witness
19 testify in this case, they don't know anything about
20 this spot here in Edgefield County.

21 Who leads the way? Julio and Alex Hunsberger.
22 Right here to this property, cross the bridge, down
23 25, cross down Community Road, turning off, going
24 across one cleared field in the middle of the night,
25 and you didn't hear any testimony that they stopped

1 or they hesitated or Barnes told them to do one
2 thing, they go straight from this open field through
3 this narrow gap into this field in about as remote
4 of a spot as anyone can imagine in Edgefield County
5 with this young man and never stop.

6 Ladies and gentlemen, do you think for a moment
7 that they didn't know that they were taking him to
8 be murdered? Why in the world else would they have
9 put him in the trunk of a car and driven straight
10 from over there on Cherry Street to this spot? What
11 other reason could there possibly be? They weren't
12 taking him home. They sure weren't bringing him
13 over to Edgefield County for a burger at the
14 poolroom or a drink and a pack of crackers at
15 Brights Laundry Mat up there at the end of the road
16 of 25. They were taking him because he was going to
17 get killed.

18 And the Judge is going to charge you at the
19 conclusion of this case, the law. And in South
20 Carolina, the hand of one is the hand of all. The
21 Judge will charge you with that.

22 As surely as somebody got together with another
23 group of folks, three people, and they decide they
24 want to rob a bank and one drives and the other two
25 go inside and the one driving never sets foot inside

1 the bank, never does a thing, just whistles and
2 looks out the window while they're in the bank, if
3 someone in the bank is there carrying out that crime
4 kills someone, the hand of one is the hand of all
5 and they're all guilty of murder.

6 When they picked Sam Sturup up and put him in
7 the trunk of that car and drove him here to
8 Edgefield County and he got out of the trunk of
9 their car, dropped off right there, they could have
10 left at that point in time and gone out about their
11 merry way and not even been in those woods where Sam
12 Sturup got shot and they'd still be guilty of
13 murder. The hand of one is the hand of all.

14 They kidnapped this young man. They brought
15 him over here from Georgia, from Cherry Street, into
16 South Carolina. They knew where they were going on
17 property that belonged to their family members right
18 there where they live. Who else in the world would
19 have known this spot existed? Stopping in that
20 second field, climbing a gate, climbing a barbed
21 wire fence, going back into a path back into the
22 woods, who else in the world would have known that
23 spot even existed other than Alex and Julio
24 Hunsberger?

25 Steven Lewis Barnes, the monster he was, he

1 didn't know where that spot was. He's from over in
2 Augusta, Georgia, running wild.

3 These high school boys up here that testified,
4 Cave and Griffin, these band mates, the marching
5 band friends, they didn't know where this spot was.
6 One of them didn't even know what a barbed wire
7 fence was, didn't know what to call it. City young
8 men, they didn't have any connection with that spot
9 here in Edgefield County.

10 Certainly this prostitute, Ms. Thatcher, that
11 had -- had not long been coming down here from
12 Boston, Massachusetts, she didn't know where that
13 spot was, but you can bet Julio Hunsberger did. And
14 if there was any question about it, later when he
15 talked to Grover Dais in the Edgefield County
16 Detention Center and he knew all of the details of
17 the spot and the evidence that the police had found,
18 you know he'd been there. He knew where that spot
19 was because he was there when they took Sam
20 Sturup's life and he participated in it.

21 They get this young man out of the trunk of
22 that car. They march him across that gate, across
23 that barbed wire fence. They take him up in the
24 woods and they shoot him.

25 And, again, I submit to you the State's

1 witnesses, they're all over the map with this as to
2 who shot first and, oh, I shot in the ground. I
3 submit to you they're trying to distance themselves
4 from it, staying away from that, but they all shot,
5 whether or not they were showing out for Barnes.
6 Charlene Thatcher in this case told you, We all
7 shot. I saw the body jump when each of the shots
8 struck the body.

9 By the light of a nearly full moon here in
10 Edgefield County, they shot this boy. They murdered
11 him, no question about it.

12 You can say anything you want about Charlene
13 Thatcher, a prostitute, oh, she lines up armed
14 robberies, all the evil things that she does, every
15 evil thing, the State let a lot of that go on you
16 might not have otherwise even heard, misguided young
17 lady, bad news, prostitute. But she sat right up
18 there on that stand and she told you, I'm a
19 murderer, I killed that boy. She knows it just as
20 soon as she fell in with Steven Barnes as he told
21 her, we're going on a mission, and they brought him
22 across here and they fired shots at that young man,
23 sure, they're murderers. The hand of one is the
24 hand of all, all of them participated and led to his
25 demise. Sam Sturup is dead because of all of them,

1 including Julio Hunsberger.

2 This is his trial and his day. It's easy to
3 let the evil of Steven Barnes overshadow things, all
4 of the nonsense and the foolishness that went on,
5 the meanness that took place out there at that
6 scene. This is Julio Hunsberger's day.

7 What happens after the shooting? They lead the
8 way. They go back to this trailer on the property.
9 And what happened? Scheming, manipulating, gaming
10 this, they killed this boy. Oh, no, the Hunsbergers
11 in this case, specifically Julio Hunsberger and his
12 brother Alex, as they get done, they're already
13 scheming on it, going to clean the fingerprints off
14 the gun, erasing all this evidence, distancing
15 themselves [sic] from it.

16 The State's three witnesses up here, the ones
17 that testified in this case, they attempted to
18 distance themselves from it, had inconsistencies. I
19 submit to you if you heard three people tell exactly
20 the same story on events that took place that long
21 ago, then somebody put them in exactly the same room
22 and had them get their stories together and line
23 them up perfectly. It just doesn't happen that way.

24 But one thing that is consistent with each and
25 every one of those witnesses, Mr. Cave, Mr. Griffin,

1 Ms. Thatcher, who arrived there in that automobile
2 over on Cherry Street after the call of Steven
3 Barnes. Julio Hunsberger and his brother Alex. Who
4 led the way from South Carolina? Julio and Alex.
5 Who went out there into the field with us, got the
6 man out of the trunk of that automobile? Julio and
7 Alex Hunsberger. Who shot? Julio and Alex
8 Hunsberger. Whose house did they go back to after
9 the killing? Julio and Alex Hunsberger. Who wiped
10 off the guns and helped them cover their tracks?
11 Julio and Alex Hunsberger.

12 Every single one of them sat up here and
13 pointed that young man out, Julio Hunsberger. Are
14 you certain? Are you absolutely, 100 percent
15 certain that based on what you saw there at that
16 scene and nothing else, is that the man? Yes. Each
17 and every one of them, their stories are all
18 consistent in that regard.

19 And I submit to you you're going to hear some
20 attempt in this case, oh, some third party, somebody
21 else, they're confused, made some other
22 identification, called them -- thought they were
23 white men at some point in time. That's all been
24 thoroughly aired out. All of them told you without
25 hesitation, they've identified him over and over

1 again, Julio Hunsberger. There he sits.

2 You think Charlene Thatcher didn't know him?
3 She had sex with him. She ran with him afterwards,
4 after the time of this murder. She stayed around
5 him. She knows who he is. Certainly, she knows who
6 he is.

7 And mind you, ladies and gentlemen of the jury,
8 they'd already been told on at the outset because
9 you know from the testimony in this case, William
10 Harris had already ratted them out.

11 Police are not stupid. They picked up the
12 pieces from a scattered remains of Sam Sturup to
13 the complete case that you've heard here throughout
14 the last couple of days in this courtroom.

15 You've heard all the evidence in this case.
16 You've heard from each of the State's witnesses.
17 Again, Steven Barnes was a bad man. And you heard
18 testimony up here that, oh, well, you know, when
19 we're out there, we were told to shoot or get shot.

20 I told you at the outset, the Judge is going to
21 charge you with what the law in the State of South
22 Carolina is, but one thing you're not going to hear
23 from the Judge in this case, I submit to you, is
24 that duress or shooting somebody else because
25 somebody threatened you is a defense to murder,

1 because that absolutely is not the law in South
2 Carolina. You can't shoot somebody else because
3 somebody threatened you and tells you they're going
4 to hurt you if you don't. Duress is not a defense
5 to murder. And I repeat that: It is not a defense
6 to murder.

7 These young man up here tell you, oh, you know,
8 I shot the ground, I shot because I thought he was
9 going to get me. That is not a defense to murder.

10 The State tells you right up front, the three
11 witnesses we called that were eyewitnesses at the
12 scene, all of them are murderers. They all
13 participated. You can't shoot somebody else because
14 they're told.

15 Now, they could have shot Steven Lewis Barnes
16 right between the eyes out there. They could have
17 defended themselves, self-defense, even using deadly
18 force against him if they'd been threatened in that
19 regard, but they can't weigh their lives as being
20 worth more than that of Sam Sturup and decide
21 they're going to murder him, malice, meanness, a
22 depraved heart bent on wickedness. We don't make
23 those kind of judgment calls in weighing one life
24 against another. The law does not permit that.
25 Duress is not a defense to murder, absolutely not.