

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JAN 21 2015

S.C. Supreme Court

DARRELL BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000779

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (JANUARY 28 – MARCH 1, 2008)	1
FINAL BRIEF OF APPELLANT.....	813
FINAL BRIEF OF RESPONDENT	839
COURT OF APPEALS’ OPINION NO. 4765 (FILED DECEMBER 15, 2010).....	876
PETITION FOR REHEARING (DECEMBER 30, 2010).....	885
ORDER DENYING PETITION FOR REHEARING (JANUARY 28, 2011)	898
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	899
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS.....	925
SUPREME COURT ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS (MAY 25, 2012).....	956
APPLICATION FOR POST-CONVICTION RELIEF.....	957
RETURN	965
POST-CONVICTION RELIEF HEARING TRANSCRIPT (NOVEMBER 12, 2013).....	970
ORDER OF DISMISSAL	1032
INDICTMENTS	1045

COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-VS-

DARRELL BURGESS,

Defendant.

TRANSCRIPT OF RECORD

05-GS-32-4561, et al

January 28-March 1, 2008
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge; and a jury.

A P P E A R A N C E S:

SAMUEL R. HUBBARD, III, Deputy Solicitor
ROBERT M. MADSEN, Senior Asst. Solicitor
Attorneys for the State

J. BRADLEY BAKER, Esquire
Attorney for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

INDEX

1	Jury Impaneled	41
2	Jury Sworn	150
3	Opening Statement by Mr. Hubbard	158
4	Opening Statement by Mr. Baker	167
5	State Rests	673
6	Directed Verdict by Mr. Baker	674
7	Questioning of the Defendant	677
8	Defense Rests	735
9	Directed Verdict by Mr. Baker	737
10	Closing Argument by Mr. Baker	744
11	Closing Argument by Mr. Hubbard	758
12	Jury Charge	771
13	Verdict	791
14	Jury Polling	792
15	Sentence of the Court	809
16	Certificate	811

INDEX OF WITNESSES

17		
18		
19		
20	<u>WITNESSES:</u>	<u>PAGE</u>
21	JAMES RICHARDSON	
22	In Camera Examination By Mr. Madsen	58
23	In Camera Examination By Mr. Baker	64
24	ROGER WAYNE BEAVER	
25	In Camera Examination By Mr. Hubbard	73

1	NEZZIE BURGESS	
2	In Camera Examination By Mr. Baker	84
3	In Camera Examination By Mr. Madsen	89
4	In Camera Examination By Mr. Baker	94
5	JEFF PALKOWSKI	
6	In Camera Examination By Mr. Madsen	96
7	In Camera Examination By Mr. Baker	99
8	In Camera Examination By Mr. Madsen	101
9	In Camera Examination By Mr. Baker	102
10	MICHAEL MELTON	
11	Direct By Mr. Madsen	173
12	In Camera Examination By Mr. Baker	214
13	In Camera Examination By Mr. Madsen	218
14	Cross By Mr. Baker	226
15	Redirect By Mr. Madsen	235
16	Recross By Mr. Baker	236
17	WILLIE WOMBLE	
18	Direct By Mr. Madsen	238
19	Cross By Mr. Baker	246
20	Redirect By Mr. Madsen	247
21	STEVE BAUMGARDNER	
22	Direct By Mr. Madsen	259
23	LAURA GRIMES GOULD	
24	Direct By Mr. Hubbard	262
25	In Camera Examination By Mr. Hubbard	273

1	LAURA GRIMES GOULD	
2	Direct By Mr. Hubbard	.276
3	Cross By Mr. Baker	.295
4	TROY CRUMP	
5	Direct By Mr. Hubbard	.302
6	Cross By Mr. Baker	.306
7	SCOTTIE RICE FRIER	
8	Direct By Mr. Madsen	.307
9	Cross By Mr. Baker	.314
10	JAMES JOHNSON	
11	Direct By Mr. Hubbard	.316
12	Cross By Mr. Baker	.355
13	Redirect By Mr. Hubbard	.367
14	Recross By Mr. Baker	.375
15	SAMUEL JOSEPH WASHINGTON, JR.	
16	Direct By Mr. Hubbard	.377
17	SAMUEL B. GUNTER	
18	Direct By Mr. Madsen	.380
19	MICHAEL TALUS WISE	
20	Direct By Mr. Madsen	.389
21	Cross By Mr. Baker	.418
22	Redirect By Mr. Madsen	.428
23	SANDRA SCOTT	
24	Direct By Mr. Madsen	.431
25	Cross By Mr. Baker	.437

1	SANDRA SCOTT	
2	Redirect By Mr. Madsen	.441
3	Recross By Mr. Baker	.442
4	JEFF PALKOWSKI	
5	Direct By Mr. Hubbard	.443
6	Cross By Mr. Baker	.455
7	KENNETH CORRELL	
8	Direct By Mr. Madsen	.457
9	Cross By Mr. Baker	.464
10	JAMES L. HICKMAN	
11	Direct By Mr. Madsen	.465
12	Cross By Mr. Baker	.471
13	Redirect By Mr. Madsen	.473
14	JOHN ALLEN MOORE	
15	Direct By Mr. Madsen	.474
16	Cross By Mr. Baker	.488
17	VELLO PAAVEL	
18	Direct By Mr. Hubbard	.491
19	Cross By Mr. Baker	.508
20	TRAVIS BASS	
21	Direct By Mr. Madsen	.510
22	MICHAEL PHIPPS	
23	Direct By Mr. Madsen	.518
24	Cross By Mr. Baker	.522
25	---	

1	SHELLEY ULYAK	
2	Direct By Mr. Madsen	.523
3	Cross By Mr. Baker	.535
4	SAMMY A. ALFAKIR	
5	Direct By Mr. Madsen	.542
6	Cross By Mr. Baker	.558
7	Redirect By Mr. Madsen	.560
8	ERIC TYRELL	
9	Direct By Mr. Madsen	.573
10	In Camera Examination By Mr. Madsen	.581
11	In Camera Examination By Mr. Baker	.582
12	In Camera Examination By Mr. Madsen	.593
13	Direct By Mr. Madsen	.594
14	Cross By Mr. Baker	.608
15	LUKE NATHANIEL FOSSUM	
16	Direct By Mr. Madsen	.614
17	Cross By Mr. Baker	.627
18	Redirect By Mr. Madsen	.628
19	Recross By Mr. Baker	.630
20	JOEL STEVEN SEXTON	
21	Direct By Mr. Hubbard	.634
22	Cross By Mr. Baker	.666
23	Redirect By Mr. Baker	.670
24	Recross By Mr. Baker	.671
25	Redirect By Mr. Hubbard	.672

1 TRACY KLEIN

2 Direct By Mr. Baker 696

3 Cross By Mr. Madsen 698

4 REGINALD WILLIAMS

5 Direct By Mr. Baker 701

6 Cross By Mr. Hubbard 704

7 MICHAEL MCQUARLEY

8 In Camera Examination By Mr. Baker 711

9 In Camera Examination By Mr. Madsen 715

10 FREDERICK LOUIS SUMMERS

11 In Camera Examination By Mr. Baker 717

12 In Camera Examination By Mr. Madsen 720

13 TONYA AYCOCK

14 In Camera Examination By Mr. Baker 722

15 In Camera Examination By Mr. Hubbard 725

16 ALICE BALLARD

17 In Camera Examination By Mr. Baker 727

18 In Camera Examination By Mr. Hubbard 730

19

20 STATE'S EXHIBITS

21	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
22	1	Photograph	139	179
23	2	Photograph	139	179
24	3	Photograph	139	179
25	4	Photograph	139	179

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	5	Photograph	139	181
4	6	Photograph	139	181
5	7	Photograph	139	181
6	8	Photograph	139	181
7	9	Photograph	139	181
8	10	Photograph	139	181
9	11	Photograph	139	181
10	12	Photograph	139	181
11	13	Photograph	139	181
12	14	Photograph	139	181
13	15	Photograph	139	181
14	16	Aerial diagram	139	176
15	17	Diagram (home)	139	177
16	18	Photograph	146	244
17	19	Photograph	146	244
18	20	Photograph	146	244
19	21	Photograph	146	277
20	22	Photograph	146	
21	23	Photograph	146	277
22	24	Photograph	146	
23	25	Photograph	146	277
24	26	Photograph	146	
25	27	Photograph	146	654

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	28	Photograph	146	654
4	29	Answering machine	186	186
5	30	Telephone	186	187
6	31	Tape (messages)		212
7	32	Aerial diagram	244	
8	33	Photograph	250	280
9	34	Photograph	250	280
10	35	Fired bullet		283
11	36	Fired bullet		283
12	37	Fired bullet	284	287
13	38	Fired bullet		286
14	39	Fired bullet		286
15	40	Fired bullet		287
16	41	Fired bullet		287
17	42	Photograph		304
18	43	Photograph		304
19	44	Statement (Johnson, redacted)	369	376
20	45	Enterprise rental agreement		378
21	46	Photograph		399
22	47	Photograph		399
23	48	Photograph		399
24	49	Receipt (Market Express)	433	437
25	50	Photograph	434	435

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	51	Photograph	434	435
4	52	Photograph		448
5	53	Photograph	448	
6	54	Photograph	448	
7	55	Photograph	448	
8	56	Photograph		448
9	57	Photograph	448	
10	58	Photograph	448	
11	59	Photograph	448	
12	60	Photograph		448
13	61	Photograph	448	
14	62	Photograph	448	
15	63	Photograph	448	
16	64	Photograph		448
17	65	Evidence from burn site	452	452
18	66	Evidence from burn site	452	453
19	67	Evidence from burn site	452	454
20	68	Evidence from burn site	452	454
21	69	Evidence from burn site	452	455
22	70	Photograph		460
23	71	Photograph		460
24	72	Photograph		460
25	72	Photograph		460

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	73	Photograph		460
4	74	Taurus pistol (.38)	461	463
5	75	Photograph	467	471
6	76	Photograph	467	471
7	77	Photograph	477	481
8	78	Photograph	477	481
9	79	Photograph	477	481
10	80	Photograph	477	481
11	81	Photograph	477	481
12	82	Photograph	477	481
13	83	Photograph	477	481
14	84	Photograph	477	481
15	85	Photograph	477	481
16	86	Photograph	477	481
17	87	Photograph	477	481
18	88	Diagram (home)	477	481
19	89	Cell phone	517	518
20	90	Photograph	519	521
21	91	Photograph	519	521
22	92	Subscriber info	526	532
23	93	Subscriber info	542	545
24	94	Diagram (Cingular)	542	546
25	95	Phone coverage areas	542	549

1	STATE'S EXHIBITS			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	96	Phone coverage areas	542	549
4	97	Diagram (cell		
5	98	Chart (Sprint calls)	564	579
6	99	Chart (Virgin Mobile calls)	564	601
7	100	Chart (cell towers)	564	595
8	101	Chart (cell towers)	564	619
9	102	Subscriber info (Wise)	564	578
10	103	Call reports	564	600
11	104	Chart of injuries (Slice)		644
12	105	Chart of injuries (Fauscette)		644
13	DEFENDANT'S EXHIBITS			
14	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
15	1	Statement (Scott)	438	439
16	2	Autopsy information		672
17	3	Statement (McQuarley)	713	
18	4	Statement (Summers)	718	
19	5	Statement (Aycock)	722	
20	6	Statement (Ballard)	727	
21				
22				
23				
24				
25				

COURT'S EXHIBITS				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	1	Statement form	60	
4	2	Search warrant	80	
5	3	Booking photo (Burgess)	80	
6	4	Statement (Johnson)	80	
7	5	Search warrant return	87	
8	6	Search warrant return	87	
9	7	Diagram (home)	90	
10	8-9	Photographs	92	
11	10	Investigative report	101	
12	11	Note from juror (Pinner)	253	
13	12	Statement (Johnson, original)	372	
14	13	Statement (Scott)	441	
15	14	Subpoena and affidavit	633	
16	15	Note from jury	789	

17 13

18

19

20

21

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23

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Lexington County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : McMahon, R. Knox

TRIAL TYPE : Criminal

PANEL ID : 05-GS-32-4561

COURTROOM CTR

DESCRIPTION : the state v. Darrell Burges

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STPLTFF	DEF	CRT	REMARKS
1 Bratcher, Janet Mikell	26	W	F	()	()	()	①
2 Hakim, Johnny M	94	W	F	()	()	()	②
3 Gardner, Lisa E	83	W	F	()	(1)	()	
4 Angel, Terry Kay	6	W	F	()	(2)	()	
5 Bell, James S	17	W	M	()	(3)	()	
6 Heustess, Kristina Y	107	W	F	()	()	()	③
7 Mccaskill, Julie C	161	W	F	()	()	()	④
8 Drafts, Claude R	71	W	M	()	(4)	()	
9 Foushee, Carol N	80	W	F	()	(5)	()	
10 Sides, Ellen N	213	W	F	()	()	()	⑤
11 Emanuel, Joseph E	72	W	M	()	()	()	⑥
12 Chapman, Steven A	41	W	M	()	(6)	()	
13 Weiss, Patricia K	244	W	F	()	()	()	⑦
14 Pinner, Allen G	184	W	M	()	()	()	⑧
15 Jones, Teresa F	128	W	F	()	(7)	()	
16 Hutto, Edward L JR	120	W	M	()	(8)	()	
-17 Rhodes, Valerie D	195	B	F	()	()	()	⑨
18 Poole, Wesley T	185	W	M	()	(9)	()	
19 Mccarter, William J	160	W	M	()	()	()	⑩
20 Dickerson, Sandra K	66	W	F	(1)	()	()	
21 Cox, Kenneth P	50	W	M	()	(10)	()	
22 Lorick, Susan P	147	W	F	(2)	()	()	
23 Smith, Toni L	223	W	F	()	()	()	⑪
24 Mize, Thomas G JR	170	W	M	(3)	()	()	

Lexington County Courthouse
RANDOM STRIKE SHEET

15

JUDGE NAME : McMahon, R. Knox
TRIAL TYPE : Criminal
PANEL ID : 05-GS-32-4561
COURTROOM CTR

DESCRIPTION : the state v. Darrell Burges

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	STPL	DEF	CR	REMARKS
25 Hill, James A JR	108	W	M	(4)	()	()	
26 Hilton, Rebecca J	111	W	F	()	()	()	(12)
~~Wheeler, Wendy W~~							
27 Lux, Wendy W	151	W	F	()	(1)	()	
28 Potter, Kimberly B	186	W	F	(1)	()	()	
29 Beer, June H	15	W	F	()	(2)	()	
30 Babb, Rhonda J	8	W	F	()	()	()	(13) ALT #1
31 Culli, Linda F	58	W	F	()	()	()	(14) ALT #2
32 Little, Joyce R	145	W	F	()	()	()	
33 Hipwell, Elizabeth M	112	W	F	()	()	()	
34 Mcmillan, Linda C	165	W	F	()	()	()	
35 Corbett, Kenneth M	47	W	M	()	()	()	
36 Barefoot, June W	10	W	F	()	()	()	
37 Doby, Gloria D	67	W	F	()	()	()	
38 Bradley, Lori A	24	W	F	()	()	()	
39 Hargreaves, Charlotte S	96	W	F	()	()	()	
40 Hill, Ruth M	109	W	F	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

1 (The following proceedings were reported on
2 January 28, 2008).

3 THE COURT: Solicitor, you may call your first
4 case for trial.

5 MR. MADSEN: Thank you, Your Honor. The State
6 will call the State versus Darrell Burgess,
7 05-GS-32-4561, one count of murder; 05-GS-32-4563
8 another count of murder; 05-GS-32-4564, possession of a
9 firearm or knife during the commission of a violent
10 crime. All indictments have been true billed.

11 (Hands to Court).

12 THE COURT: Thank you, Solicitor.

13 Ladies and gentlemen of the jury panel, the
14 State has called its first case for trial, and I have a
15 series of questions to ask you. I would again remind
16 you for purposes of these questions that you are still
17 under oath. The oath that was administered to you
18 earlier today would still apply.

19 There are three separate indictments
20 2005-GS-32-4561, 2005-GS-32-4563, and 2005-GS-32-4564.
21 I am going to read them for you. I would note that the
22 indictments are not evidence. They are not any evidence
23 of the allegations contained therein. They are merely
24 the formal documents, the formal charging papers, by
25 which a defendant is placed on notice of the charges

1 that have been placed against him or her.

2 The first indictment reads that Darrell
3 Burgess, along with Michael T. Wise, did in Lexington
4 County, on or about September 5, 2005, unlawfully kill
5 one David Slice with malice aforethought either express
6 or implied, to wit, by means of shooting the victim with
7 a handgun in violation of 16-3-10 of the Code of Laws of
8 South Carolina 1976 as amended.

9 The next indictment 2005-GS-32-4563 reads that
10 Darrell Burgess, along with Michael T. Wise, did in
11 Lexington County, on or about September 5th of 2005,
12 unlawfully kill one Kim Fauscette with malice
13 aforethought either express or implied, to wit, by means
14 of shooting the victim with a handgun in violation of
15 16-3-10 of the Code of Laws of South Carolina 1976 as
16 amended. Those are two true bill indictments for
17 murder.

18 The third indictment, 05-GS-32-4564, reads
19 that Darrell Burgess, along with Michael T. Wise, did in
20 Lexington County, on or about September 5, 2005,
21 knowingly and willfully possess a firearm or visibly
22 display what appeared to be a firearm or visibly display
23 a knife during the commission of a violent crime, to
24 wit, a handgun in violation of 16-23-490 of the Code of
25 Laws of South Carolina. That is a true bill indictment

1 for possession of a firearm or knife during the
2 commission of a violent crime. Again, these are merely
3 the formal charging documents by which a defendant is
4 placed on notice of the charge or charges placed against
5 him or her.

6 The State in this case is represented by
7 Deputy Solicitor Hubbard and Assistant Solicitor,
8 Mr. Madsen. Mr. Hubbard, would you please introduce
9 yourself and Assistant Solicitor Madsen and any other
10 members of the Solicitor's staff who are going to assist
11 you in the trial of this case.

12 MR. HUBBARD: Yes, sir, I'm Deputy Solicitor
13 Rick Hubbard. I work for Donnie Myers here in Lexington
14 County. This is Senior Assistant Rob Madsen who will be
15 with me on this case.

16 THE COURT: Thank you, Solicitor. The
17 Defendant is present. He is represented by Mr. Brad
18 Baker. Mr. Baker, if you would please stand and
19 introduce yourself and any members of your firm that are
20 going to assist you in the trial of this case and also
21 introduce your client.

22 MR. BAKER: Yes, sir, Your Honor. I'm Brad
23 Baker. I practice here with the Salley law firm in
24 Lexington. This is my client, Mr. Darrell Burgess, and
25 sitting at the table is Ms. Deb Rish, who is my

1 paralegal and who will be assisting me in the trial.

2 THE COURT: Thank you, Mr. Baker. Is any
3 member of the jury panel related by blood or marriage or
4 close personal friends of either Assistant Solicitor
5 Hubbard or Madsen or any member of the Lexington County
6 Solicitor's Office? If so, please stand.

7 (There is no response).

8 THE COURT: Has any member of the jury panel
9 or a member of your immediate family ever been
10 represented by Deputy Solicitor Hubbard or Madsen or any
11 member of the Lexington County Solicitor's Office? If
12 so, please stand.

13 (There is no response).

14 THE COURT: Is any member of the jury panel
15 related by blood or marriage or close personal friends
16 of Mr. Brad Baker, the attorney for the Defendant in
17 this case, or any member of his law firm? He practices
18 with Brett Salley. If so, please stand.

19 (Juror stands).

20 THE COURT: Yes, ma'am, your number and name,
21 please?

22 PROSPECTIVE JUROR: Number 206, Kelly Sawyer.

23 THE COURT: Ms. Sawyer, have you been
24 represented or are you friends?

25 PROSPECTIVE JUROR: A relative.

1 THE COURT: Relative of?

2 PROSPECTIVE JUROR: Actually my father-in-law
3 is the counsel for the codefendant in this case.

4 THE COURT: So Mr. Lourie Salley, which is a
5 different law firm; correct?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Mr. Lourie Salley, your
8 father-in-law, represents Mr. Wise; is that correct?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: I believe I will set aside,
11 Ms. Sawyer, for the trial of this case. Thank you,
12 Ms. Sawyer. You may be seated. Were there any others?
13 Any other members of the jury panel related by blood or
14 marriage or been represented by Mr. Baker or any member
15 of his firm? If so, please stand.

16 (There is no response).

17 THE COURT: Is any member of the jury panel
18 related by blood or marriage or close personal friends
19 of the Defendant in this case, Mr. Darrell Burgess? If
20 so, please stand.

21 (There is no response).

22 THE COURT: Is any member of the jury panel or
23 a member of your immediate family were they close
24 personal friends of the victims named in the indictment,
25 either David Slice or Kim Fauscette? If so, please

1 stand.

2 (There is no response).

3 THE COURT: These indictments allege an
4 incident that occurred in Lexington County, on or about
5 September 5, 2005, allegedly involved a handgun. Does
6 any member of the jury panel have any knowledge about
7 the case? If so, please stand.

8 (Juror stands).

9 THE COURT: Ms. Sawyer, I have set you aside.
10 Thank you so much. Any others?

11 (There is no response).

12 THE COURT: Does any member of the jury panel
13 have any bias or prejudice towards the parties, that
14 being either the State or the Defendant, or the subject
15 matter involved in this case? If so, please stand.

16 (There is no response).

17 THE COURT: Has any member of the jury panel
18 heard or know anything about the case from any source
19 whatsoever? If so, please stand.

20 (There is no response).

21 THE COURT: Is any member of the jury panel
22 related by blood or marriage or close personal friends
23 with anyone employed with a state, local, federal or
24 military law enforcement agency? If so, please stand.

25 (There is no response).

1 THE COURT: Has any member of the jury panel
2 ever been employed by a state, local, federal or
3 military law enforcement agency? If so, please stand.

4 (There is no response).

5 THE COURT: Is any member of the jury panel a
6 member of or contributor to any organization that has as
7 its primary purpose the prevention of crime or advocacy
8 of victims rights? Such organizations are M.A.D.D.,
9 S.A.D.D., C.A.V.E. or C.A.D.R.E. If so, please stand.

10 (Juror stands).

11 THE COURT: Your number and name, please?

12 PROSPECTIVE JUROR: Two-thirty-nine, Herman
13 Watson, Jr. I have contributed to M.A.D.D.

14 THE COURT: And the fact that you are a
15 contributor to M.A.D.D., Mr. Watson, could you still be
16 a fair and impartial juror to both the State and the
17 defense in this case?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Thank you, Mr. Watson. You may be
20 seated. Has any member of the jury panel or a member of
21 your immediate family or close personal friend ever been
22 a victim of a violent crime? If so, please stand.

23 (Juror stands).

24 THE COURT: Yes, ma'am, your number and name,
25 please?

1 PROSPECTIVE JUROR: Sixty-seven, Gloria Doby.

2 THE COURT: Ms. Doby, was it you or a member
3 of your immediate family?

4 PROSPECTIVE JUROR: It was me.

5 THE COURT: When was that, ma'am?

6 PROSPECTIVE JUROR: When I was 12, I was shot
7 in a robbery.

8 THE COURT: The fact that you were a victim of
9 a violent crime, could you still be a fair and impartial
10 juror to both the State and the defense in this case?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am. You may be
13 seated. Yes, sir, your number and name, please?

14 PROSPECTIVE JUROR: One hundred, Steve
15 Harriman.

16 THE COURT: Was it you or a member of your
17 immediate family, Mr. Harriman?

18 PROSPECTIVE JUROR: Me.

19 THE COURT: When was it?

20 PROSPECTIVE JUROR: The early '90s, three
21 incidents. I was robbed at gunpoint at a hotel on the
22 night shift.

23 THE COURT: Three separate times?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: The fact you were a victim of

1 three separate violent crimes, could you still be a fair
2 and impartial juror to both the State and the defense in
3 this case?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, sir. You may be
6 seated. Any others?

7 (There is no response).

8 THE COURT: I will decline to ask number
9 seven, number eight, number nine. Is there any member
10 of the jury panel that has served on a jury for a
11 criminal offense in the past, whether it be magistrate's
12 court, city court, state or federal court? If so,
13 please stand.

14 (Jurors stand).

15 THE COURT: I will start over here with this
16 young lady. Your name and number, please.

17 PROSPECTIVE JUROR: Linda McMillan, 165. It
18 was magistrate's court two years back.

19 THE COURT: And the fact that you served on a
20 criminal jury in magistrate's court in the past, could
21 you still be a fair and impartial juror to both the
22 State and the defense in this case?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you, ma'am. You may be
25 seated. Yes, sir, your number and name, please?

1 PROSPECTIVE JUROR: Forty-three, Wade Cobb.

2 It was a drunk driving case about five years ago.

3 THE COURT: That was city court, magistrate's
4 court?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: The fact that you were a member of
7 a jury on such a case, could you still be a fair and
8 impartial juror to both the State and the defense in
9 this case?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Thank you. You may be seated.
12 Yes, ma'am, your number and name, please?

13 PROSPECTIVE JUROR: Patricia Weiss, 244. I
14 was in magistrate's court a few years ago.

15 THE COURT: I'm sorry, I didn't get your
16 number.

17 PROSPECTIVE JUROR: Two hundred forty-four.

18 THE COURT: And tell me again when it was,
19 ma'am.

20 PROSPECTIVE JUROR: Years. I can't remember
21 it's been so long ago.

22 THE COURT: Could you still be a fair and
23 impartial juror to both the State and the defense in
24 this case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you, ma'am. You may be
2 seated. Yes, ma'am, your number and name, please?

3 PROSPECTIVE JUROR: One hundred nine, Ruth
4 Hill.

5 THE COURT: When was it, Ms. Hill?

6 PROSPECTIVE JUROR: Magistrate's court in
7 July or August.

8 THE COURT: Of last year?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Congratulations. You keep getting
11 called for jury duty. The fact that you were a juror in
12 magistrate's court July of last year, could you still be
13 a fair and impartial juror to both the State and the
14 defense in this case?

15 PROSPECTIVE JUROR: Absolutely.

16 THE COURT: Thank you, Ms. Hill. You may be
17 seated. Yes, sir, your number? If all of y'all would
18 please stand, then I won't skip over any of you if there
19 are any others. Yes, sir, your number and name, please?

20 PROSPECTIVE JUROR: Nineteen, Jackie Berley.
21 It was simple possession and D.U.I.

22 THE COURT: When was that?

23 PROSPECTIVE JUROR: About 10 or 12 years ago.

24 THE COURT: Could you still be a fair and
25 impartial juror to both the State and the defense in

1 this case?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you, sir. You may be
4 seated. Yes, sir, this gentleman.

5 PROSPECTIVE JUROR: Stephen Hunt, city court,
6 D.U.I.

7 CLERK: Number 118, Your Honor, Stephen Hunt.

8 THE COURT: Mr. Hunt, could you still be a
9 fair and impartial juror to both the State and the
10 Defendant in this case?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Thank you, sir. You may be
13 seated. Yes, ma'am, your number and name, please?

14 PROSPECTIVE JUROR: Twenty-six, Janet
15 Bratcher.

16 THE COURT: When was it, ma'am?

17 PROSPECTIVE JUROR: A year ago, magistrate's
18 court.

19 THE COURT: Could you still be a fair and
20 impartial juror to both the State and the defense in
21 this case?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you, ma'am. Yes, sir, your
24 number and name, please?

25 PROSPECTIVE JUROR: Seventeen, Scott Bell.

1 THE COURT: When was it, Mr. Bell?

2 PROSPECTIVE JUROR: It was back in the '80s.
3 It was drug charges, robbery.

4 THE COURT: Could you still be a fair and
5 impartial juror to both the State and the defense in
6 this case?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Yes, ma'am, your number and name,
9 please?

10 PROSPECTIVE JUROR: Two-twenty-seven, Jill
11 Spence.

12 THE COURT: When was it, ma'am?

13 PROSPECTIVE JUROR: It was several years ago,
14 a D.U.I.

15 THE COURT: Ms. Spence, could you still be a
16 fair and impartial juror to both the State and the
17 defense in this case?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Thank you. Yes, sir.

20 PROSPECTIVE JUROR: One-seventy, Thomas Mize.

21 THE COURT: When was it, Mr. Mize?

22 PROSPECTIVE JUROR: Several years ago in
23 magistrate's court, D.U.I.

24 THE COURT: Could you still be a fair and
25 impartial juror to both the State and the defense in

1 this case.

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you, sir. Yes, sir.

4 PROSPECTIVE JUROR: One-thirteen, William
5 Hobbs.

6 THE COURT: When was it, Mr. Hobbs?

7 PROSPECTIVE JUROR: This past November,
8 magistrate's court, but we never heard a case.

9 THE COURT: You were called to jury duty, but
10 never actively served on a case?

11 PROSPECTIVE JUROR: Right, sir.

12 THE COURT: Based on that experience, could
13 you still be a fair and impartial juror to both the
14 State and the defense in this case?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you, sir. Yes, ma'am, over
17 here against the wall?

18 PROSPECTIVE JUROR: One-twenty-eight, Teresa
19 Jones, several years ago served on magistrate's court.

20 THE COURT: Based on that could you still be a
21 fair and impartial juror to both the State and the
22 defense in this case?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: Several years ago

1 magistrate's Court in Cayce, West Columbia for a D.U.I
2 it was several years ago and also back in college, I
3 served in Richland County on a shoplifting case back in
4 the late 70s.

5 THE COURT: This is Mr. Watson?

6 PROSPECTIVE JUROR: Herman Watson, Jr.
7 Number 239.

8 THE COURT: Based on those experiences,
9 Mr. Watson, could you still be a fair and impartial
10 juror to both the State and the defense in this case?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Yes, ma'am, your number and name,
13 please?

14 PROSPECTIVE JUROR: One-sixty-seven, Barbara
15 Mesaros, magistrate's court a couple of years ago.

16 THE COURT: Based on that experience, could
17 you still be a fair and impartial juror to both the
18 State and the defense in this case?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Thank you, ma'am. You may be
21 seated. Yes, ma'am.

22 PROSPECTIVE JUROR: Number 6, Terry Angel,
23 magistrate's court, a drug charge probably in the '90s.

24 THE COURT: Could you still be a fair and
25 impartial juror to both the State and the defense in

1 this case?

2 PROSPECTIVE JUROR: Yes, I can.

3 THE COURT: Thank you. You may be seated.

4 Has any member of the jury panel or a member of your

5 immediate family or close personal friend ever been

6 charged in a criminal case? If so, please stand.

7 (Jurors stand).

8 THE COURT: Let's see. I have Mr. Watson?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Was it family or a friend?

11 PROSPECTIVE JUROR: It was my daughter.

12 THE COURT: The fact that your daughter was
13 charged in a criminal case, could you still be a fair
14 and impartial juror to both the State and the defense,
15 Mr. Watson?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you, sir. You may be
18 seated. Yes, sir, your number and name, please?

19 PROSPECTIVE JUROR: One-seventy, Thomas Mize.

20 THE COURT: Mr. Mize, was it you or a family
21 member?

22 PROSPECTIVE JUROR: Family member.

23 THE COURT: Could you still be a fair and
24 impartial juror to both the State and the defense in
25 this case?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Thank you. Yes, ma'am.

3 PROSPECTIVE JUROR: One-twenty-one, family
4 member.

5 THE COURT: When was it, ma'am, about?

6 PROSPECTIVE JUROR: Back in the 80s.

7 THE COURT: The fact that you had a family
8 member charged, could you still be a fair and impartial
9 juror to both the State and the defense in this case?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Thank you, ma'am. You may be
12 seated. Yes, ma'am.

13 PROSPECTIVE JUROR: Sandra Dickerson,
14 Number 66.

15 THE COURT: Was it you or a family member,
16 Ms. Dickerson?

17 PROSPECTIVE JUROR: A family member.

18 THE COURT: When was it?

19 PROSPECTIVE JUROR: About three years ago.

20 THE COURT: Could you still be a fair and
21 impartial juror to both the State and the defense in
22 this case?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you, ma'am. You may be
25 seated. Yes, ma'am.

1 PROSPECTIVE JUROR: One-eighty-six.

2 THE COURT: This is Ms. Potter?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Was it you or a family member,
5 Ms. Potter?

6 PROSPECTIVE JUROR: Family member. Actually
7 he has pending charges. He has been in Lexington County
8 jail for two years, a cousin.

9 THE COURT: And the fact that there are
10 pending charges against a cousin and he is in jail now
11 in Lexington, could you still be a fair and impartial
12 juror to both the State and the defense in this case?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you, ma'am. You may be
15 seated. Yes, ma'am.

16 PROSPECTIVE JUROR: Number 94, family member,
17 been charged but not got to trial yet.

18 THE COURT: Based on those facts, could you
19 still be a fair and impartial juror to both the State
20 and the defense in this case?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Ma'am?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Thank you, ma'am. You may be
25 seated. Yes, ma'am.

1 PROSPECTIVE JUROR: Number 6, Terry Angle,
2 brother-in-law's brother, capital murder. He is on
3 death row, and that was, I believe, in the late '70s,
4 early '80s.

5 THE COURT: And based on that fact, could you
6 still be a fair and impartial juror to both the State
7 and the defense in this case?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you, ma'am. You may be
10 seated. Yes, ma'am, your number and name, please?

11 PROSPECTIVE JUROR: Ninety-five, Betty Hall, a
12 family member.

13 THE COURT: Was it Ms. Hall?

14 PROSPECTIVE JUROR: Ninety-five, I believe.

15 THE COURT: Based on that could you still be a
16 fair and impartial juror to both the State and the
17 defense in this case?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Thank you, Ms. Hall. You may be
20 seated.

21 I would decline to ask number 13. Ladies and
22 gentlemen of the jury panel, I will call a list of names
23 of potential witnesses in the trial of this case. I
24 will call five at a time. I have been provided two
25 lists. One list has last 73 names on it. Another list

1 has 14. So there could be some overlap. I'm not sure.
2 Be that as it may, the question is if you are related by
3 blood or marriage or if you are close personal friends
4 with any of these witnesses or potential witnesses whose
5 names I call.

6 If any of the witnesses are present, when your
7 name is called, I would ask you to please stand and face
8 the jury panel. I would tell the jury the witnesses are
9 not required to all be here at this time.

10 Michael Melton; Laura Grimes-Gould, Lexington
11 County Sheriff's Department; Lieutenant Scottie Frier,
12 Lexington County Sheriff's Department; Sergeant Jeff
13 Palkowski, Lexington County Sheriff's Department;
14 Detective Steve Baumgardner. This is Detective
15 Baumgardner with the Sheriff's Office. Thank you.

16 Detective James Richardson. This is Detective
17 Richardson with the Sheriff's Office. Sergeant Lee
18 Marshall with the Sheriff's Department. Deputy B.
19 Womble, Lexington Sheriff's Department.

20 Officer K. Poole, Springdale Police
21 Department; Sergeant Ken Correll, Lexington Sheriff's
22 Office; Troy Crump, Lexington County Sheriff's
23 Department; W.D. Johnson, Lexington County Sheriff's
24 Department.

25 The next six will be with the Sheriff's

1 Office: Candy Kyzer, Beth Harmon, Sergeant Barbara
2 McMullen, Detective Sam Gunter, Detective Roger Beaver,
3 Detective Eric Kirkland, Detective Kevin Atkins.

4 The next, there is no indication of their
5 employment: Mary Taylor; Shannon Hall; Jason Hall;
6 DeFay Phillips; and Detective Terry Govan, Lexington
7 Sheriff's Department. The next five: Teresa Spires;
8 Kimberly Smith; Mark Rischbieter, Enterprise Car Rental;
9 Elise Swarner, Cambridge Plaza Hotel; James Johnson, and
10 Mary Johnson.

11 The next five are with S.L.E.D., the State Law
12 Enforcement Division: Vello Paavel, Jeff Parrot, Joe
13 Powell, L.E. Corley, D.H. Eargle. Christen Barrickman,
14 Richland Sheriff's Department; Detective Eric Russell,
15 Lexington County Sheriff's Department; Dr. Joel Sexton;
16 Dr. Janice Ross; Detective John Moore, Lexington County
17 Sheriff's Department. This is Detective Moore. Thank
18 you, Detective Moore.

19 Melvin Burgess, Emily Rhinehart, with
20 S.L.E.D.; Helen Miller Bledsoe; Bill Bledsoe; Latisha
21 Davis; Detective Luke Fossum, Lexington County Sheriff's
22 Department; Nezzie Burgess; Patrick Mitchell; Sharon
23 Wise.

24 Sam Washington, Enterprise Car Rental; Sandra
25 Scott; Lillian McBride; Tonya Aycock; Alicia Ballard;

1 Linda Bolton; Diana Braswell; Steve Klein; Tracy Klein;
2 Michael McQuarley.

3 Brian Riley; Frederick Summers; Jamie
4 Thompson; James Thompson; William Thornburg; Reginald
5 Larry Williams; Sam Alfakir, A-L-F-A-K-I-R, with
6 Cingular Wireless; Shelley Ulyak, U-L-Y-A-K, with Virgin
7 Mobile; Eric Tyrell, with Sprint, Sharif Gandi,
8 Cambridge Plaza Hotel. The next three are with the
9 Lexington Sheriff's Department: Detective Mike Burke.
10 This is Detective Burke. Detective Travis Bass. This
11 is Detective Bass. Detective Mike Phipps.

12 I believe I have called some of these names
13 but rather than rely on my memory, I will recall them
14 since there are just 14 more. Tonya C. Aycock, Alicia
15 Ballard, Linda Bolton, Diana Braswell, Steve Klein,
16 Tracy Klein, Michael McQuarley, Michael Melton, Bryan D.
17 Riley, Frederick Summers, James Thompson, William
18 Thornburg, Reginald Williams.

19 Is any member of the jury panel related by
20 blood or marriage or close personal friends of any of
21 the individuals whose names I just called? If so,
22 please stand.

23 (Juror stands).

24 THE COURT: Yes, sir, your number and name,
25 please?

1 PROSPECTIVE JUROR: One-nineteen, Ralph
2 Hutchins.

3 THE COURT: Are you related or friends?

4 PROSPECTIVE JUROR: Friends with two of them
5 that might have been working with E.M.S.

6 THE COURT: Who would that be?

7 PROSPECTIVE JUROR: Teresa Spires and Candy
8 Kyzer.

9 THE COURT: I believe Ms. Kyzer is with the
10 Sheriff's Office.

11 PROSPECTIVE JUROR: I don't know.

12 THE COURT: I'm not sure about Ms. Spires.
13 The fact that you are friends with Ms. Spires or
14 Ms. Kyzer, could you still be a fair and impartial juror
15 to both the State and the defense in this case?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you, sir. You may be
18 seated. Yes, ma'am, your number and name, please?

19 PROSPECTIVE JUROR: One-twenty-four, Ellen
20 Jones. I work with Candy Kyzer's sister.

21 THE COURT: You work with Candy Kyzer's
22 sister?

23 PROSPECTIVE JUROR: Sister.

24 THE COURT: Where do you work?

25 PROSPECTIVE JUROR: Sandhills Family Medicine.

1 THE COURT: The fact that you work with
2 Ms. Kyzer's sister, could you still be a fair and
3 impartial juror to both the State and the defense in
4 this case?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am. Yes, sir, your
7 number and name, please?

8 PROSPECTIVE JUROR: Number 50, Cox.

9 THE COURT: Mr. Cox, you are friends or
10 related?

11 PROSPECTIVE JUROR: Friends with Roger Beaver.

12 THE COURT: Friends with Roger Beaver?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: That's Detective Beaver with the
15 Sheriff's Department?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: The fact you are friends with
18 Detective Beaver, could you still be a fair and
19 impartial juror to both the State and the defense in
20 this case?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you, sir. You may be
23 seated. Any others?

24 (There is no response).

25 MR. MADSEN: Judge, we need to add Michael T.

1 Wise.

2 THE COURT: One further name is Michael T.
3 Wise. Is any member of the jury panel related by blood
4 or marriage or close personal friends of Michael T.
5 Wise? If so, please stand.

6 (There is no response).

7 THE COURT: Any additional voir dire from the
8 State?

9 MR. MADSEN: None from the State, Your Honor.

10 THE COURT: From the defense?

11 MR. BAKER: None, Your Honor.

12 THE COURT: Finally, ladies and gentlemen of
13 the jury panel, does any member of the jury panel know
14 any reason whatsoever why you feel like you could not be
15 a fair and impartial juror in the trial of this case to
16 both the State and the defense? If so, please stand.

17 (There is no response).

18 THE COURT: All right. Madame Clerk, I find
19 the panel is qualified for the trial of State versus
20 Darrell Burgess. If you would please give us a jury.

21 CLERK: Yes, sir. Give us just one moment,
22 Your Honor. We are drawing them now.

23 THE COURT: All right. Ladies and gentlemen
24 the clerk is now preparing a list of names. It's done
25 by computer. When that is prepared, she will call your

1 name and number. She will ask you to gather up your
2 personal belongings that you may have with you today and
3 please come forward.

4 You would come forward to the podium in front
5 of my bench where the microphone is at. Come through
6 the gates and come forward. If you would turn around
7 and face back out towards your peers, the clerk will
8 then say: What says the State?

9 The State will either say: Present the juror
10 or excuse the juror. If the State says, "Excuse the
11 juror," the clerk will advise you to return to your
12 seat. If the State says, "Present the juror," then it
13 goes to the defense.

14 The clerk will then ask the defense: What say
15 the defense? They will either say, "Present or excuse
16 the juror." If they say, "Present," you have then been
17 selected as one of the jurors in the trial of this case,
18 and you would be seated in the jury box to my front
19 right. The State has five; is that correct?

20 MR. MADSEN: That is correct.

21 THE COURT: Five, as they call it, peremptory
22 strikes. The defense has ten peremptory strikes. Don't
23 be offended if you are not selected for the jury in the
24 trial of this case. The week is young. There are other
25 cases that need be to be tried.

1 (The jury is impaneled at 12:20 p.m.)

2 (During the jury selection process, the jurors
3 were called forward and peremptory strikes were
4 exercised as noted by the attached voir dire sheet made
5 a part of this record at page 14).

6 THE COURT: Solicitor, Mr. Baker, would you
7 approach the bench, please.

8 (Whereupon there was a bench conference off
9 the record in the presence of the jury but out of the
10 hearing of the jury).

11 THE COURT: Ladies and gentlemen of the jury
12 panel, I'm going to ask y'all to please go with our
13 bailiff to your jury room momentarily. Do not discuss
14 the case amongst yourselves during this brief recess.
15 If you will please go with Mr. Derrick, our bailiff.

16 (The jury retires to the jury room).

17 THE COURT: Ladies and gentlemen of the jury
18 panel, I have one motion to take up before I will be
19 able to release you from jury service for the remainder
20 of the day. I have to take that motion up outside of
21 your presence.

22 So I would ask you if you would please take
23 about a 15-minute recess outside of the courtroom, and
24 please be back in place -- they will let you in. It
25 should be about 20 till. Thank you very much.

1 (The jury panel leaves the courtroom).

2 THE COURT: Mr. Derrick, if you would bring
3 Ms. Weiss, please.

4 (The juror enters the courtroom).

5 THE COURT: Ms. Weiss, during the course of
6 jury selection, Mr. Derrick, the bailiff, informed me
7 that you made a statement to him. Could you tell me
8 what that was?

9 JUROR: I was looking at the Defendant, and I
10 kept looking at him. I thought he looked familiar to
11 me. I do not recognize the name, but the more I look at
12 him, I believe he has been to my home, but I don't know
13 for sure. It just keeps hitting me that he has, so I
14 don't know.

15 THE COURT: Where do you live?

16 JUROR: In Chapin.

17 THE COURT: In Chapin?

18 JUROR: Yes. I might be wrong, but as soon as
19 I saw him, it just hit me that he looked very familiar
20 to me.

21 THE COURT: Would that have been under social
22 circumstances?

23 JUROR: We have a pond in our back yard. We
24 have people come and fish all the time. That's why I
25 wouldn't know the name. We have people come, and I wave

1 and talk about what they may have caught and that kind
2 of situation, but that's it. We probably wouldn't have
3 exchanged names because we have so many people coming
4 and going.

5 THE COURT: The fact that he may have been to
6 your home -- and you are not certain about it -- would
7 you still be a fair and impartial juror to both the
8 State and the defense?

9 JUROR: I feel like I can. I just felt like I
10 needed to make that point, but I feel like I could.

11 THE COURT: Thank you. You may step back with
12 the other jurors. Please do not discuss that with any
13 of your fellows jurors.

14 (The juror leaves the courtroom).

15 THE COURT: Do y'all need any additional voir
16 dire, Solicitor?

17 MR. MADSEN: No, sir.

18 THE COURT: Mr. Baker?

19 MR. BAKER: No, sir, Your Honor.

20 THE COURT: Do you have any position,
21 Solicitor, Mr. Baker?

22 MR. MADSEN: Your Honor, I think it's in the
23 Court's discretion. She obviously -- it bugged her
24 enough that she brought it up, but it's in the Court's
25 discretion.

1 MR. BAKER: I don't have anything to add, Your
2 Honor.

3 THE COURT: Sir?

4 MR. BAKER: I don't have anything to add, Your
5 Honor. He does not think that he has been to her home,
6 just to put that on the record.

7 THE COURT: So if nobody has a motion to
8 remove her for cause, I will leave her on. When this
9 panel gets back, I'll -- are there any motions regarding
10 the jury selection process from the State?

11 MR. MADSEN: None from the State.

12 THE COURT: From the defense?

13 MR. BAKER: None from the defense.

14 THE COURT: I understand y'all have some
15 motions. When do we want to bring our trial panel back?

16 MR. MADSEN: It's if all right with Your
17 Honor, we can start in earnest tomorrow morning with the
18 openings.

19 MR. BAKER: That's fine, Your Honor.

20 THE COURT: At 9:30?

21 MR. MADSEN: Yes, sir.

22 THE COURT: As far as the panel. What motions
23 do we have? I don't want to hear them right now, but
24 just tell me what they are.

25 MR. MADSEN: I know we have got a Jackson v.

1 Denno. I believe that they are going to move to
2 suppress or to quash the indictment, to suppress some
3 evidence that was retrieved out of Mr. Burgess' home. I
4 don't know what else we have.

5 MR. BAKER: Your Honor, just a few others. I
6 have got a motion in limine in regards to the photos of
7 the victim, Your Honor, also autopsy photos. There is
8 Jackson v. Denno, as mentioned, a State v. Lyle matter,
9 which Your Honor may take up, I guess, after the State
10 closes their case, and just a motion regarding no
11 introduction of the Defendant's criminal record. I may
12 have a few other matters, Your Honor, but I think that
13 would cover it.

14 THE COURT: All right. When the panel gets
15 back in here, I will release this panel for the
16 remainder of the day. Then I will release this panel
17 until 9:30. We will break for lunch and get started
18 after lunch.

19 THE COURT: Mr. Burgess, is there any reason
20 you can't put your shirttail in?

21 THE DEFENDANT: Not really.

22 THE COURT: How about put your shirttail in
23 for us. Sheriff, if you would have him to go out and
24 arrange his clothing appropriately.

25 (Pause).

1 THE COURT: Thank you, Mr. Burgess. One
2 further thing. I have tried cases with some of the
3 attorneys in the courtroom but not all of them. For
4 those of you that do know, I will reiterate it for those
5 of you who don't know. At least you will know it. I
6 don't like speaking objections. If you object, if you
7 can do it by either saying hearsay or rule number
8 whatever.

9 If it goes completely over my head, if I don't
10 know exactly what you are talking about, either A., I
11 will send the jury out or B., I will ask you to approach
12 the bench.

13 The second thing is I don't like bench
14 conferences. I think jurors think one side or the other
15 is trying to hide something from them when, in fact,
16 neither side is really trying to hide anything from
17 them. That doesn't mean I won't have a bench conference
18 if I can we do something quickly without sending the
19 jury in and out. Just be mindful of that.

20 I really don't like arguing about objections
21 in front of the jury. If there is a legal matter that
22 needs to be heard outside the presence of the jury, just
23 tell me, and we will send the jury out. There is no
24 problem with that.

25 I told that panel to be back at 20 till. I

1 will be on standby until I release that panel, and we
2 will bring the other panel in. All right. Court will
3 be on standby until the balance of the panel returns to
4 the courtroom.

5 (Whereupon there was a recess).

6 THE COURT: Mr. Bailiff, if you would bring
7 our jury in, please.

8 (The jury returns to the courtroom).

9 THE COURT: It appears our jury is back
10 present in the courtroom. Thank you very much, ladies
11 and gentlemen of the jury, for your attention and your
12 patience this morning and this early afternoon.

13 I have a number of matters to take up, a
14 number of motions I need to take up outside of your
15 presence this afternoon in regards to this and other
16 matters. Therefore, I'm not going to hold you captive
17 this afternoon in your new temporary home, your jury
18 room.

19 Momentarily I am going to release you for the
20 remainder of the day and ask you to please be back in
21 your jury room at 9:30 in the morning. Please be back
22 promptly at 9:30 in the morning.

23 Please remember that during this and all
24 breaks, you are not to discuss this case with anyone.
25 This will include your fellow jurors your family, your

1 friends, people involved in the trial or anyone else.
2 If anyone tries to talk with you about the case, please
3 let me know immediately.

4 Remember, do not read, watch or listen to any
5 news reports about this trial. Do not do any
6 independent investigation nor any investigation on the
7 internet. Remember to keep an open mind about the case
8 until I instruct you to begin your deliberations.

9 I am going to give you your first assignment
10 in the morning upon your return. I would ask that you
11 please select among yourselves a foreperson for this
12 jury. That person would be the jury's spokesperson here
13 in the courtroom and also would be responsible for
14 signing and writing out the verdict in this case.

15 Any one of the 12 on the primary jury is
16 authorized to serve as the foreperson of that jury. Of
17 course, Ms. Babb and Ms. Culli, y'all are both in the
18 status as alternate jurors. Although I'm sure you would
19 do a fine job as foreperson of the jury, you would not
20 be authorized to serve since you are now in the
21 alternate status. You may participate in the selection
22 process.

23 The foreperson will generally sit where this
24 gentleman here is sitting, the chair closest to the
25 Court, closest to the bench. When you arrive in the

1 morning, once you have completed that process in
2 selecting your own jury foreperson, write that name out
3 for me, give it to Mr. Derrick, our fine bailiff. He
4 will give it to me, and I will hopefully promptly get
5 you back into the courtroom.

6 I recall there were a number of jurors in the
7 panel that had prior jury service. You don't have to
8 have prior jury service, but whatever criteria y'all
9 choose to select your foreperson is certainly fine with
10 me.

11 With that being said, again, you are excused
12 for the remainder of the afternoon and evening. I would
13 ask you to please be back promptly at 9:30 in the
14 morning. Any questions or anything?

15 (There is no response).

16 THE COURT: With that being said, you may now
17 go with our bailiff, and you are excused for the day.
18 Thank you very much.

19 (The jury is excused for the day at
20 12:52 p.m.)

21 THE COURT: Any objections to anything I told
22 the jury from the State?

23 MR. MADSEN: Nothing from the State, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. BAKER: None Your Honor.

2 THE COURT: Anything before we break for lunch
3 from the State?

4 MR. MADSEN: No, sir.

5 THE COURT: Defense?

6 MR. BAKER: No, Your Honor, not at this time.

7 THE COURT: Court will be in recess until
8 2:00 p.m., and we will take up our motions at that time.
9 Thank you very much.

10 (Whereupon there was a luncheon recess).

11 THE COURT: All right. Do y'all have a
12 preference on what order you want to take the motions
13 in?

14 MR. MADSEN: We probably ought to do the
15 motion to quash first.

16 MR. BAKER: Sure.

17 THE COURT: All right, Mr. Baker.

18 MR. BAKER: Your Honor, may it please the
19 Court. The defense has a motion to quash the
20 indictment, specifically the murder indictments in this
21 matter, with the ultimate position being that there is
22 no subject matter jurisdiction.

23 I am making this motion pursuant to South
24 Carolina Code Section 17-19-30. The argument is that
25 these indictments fail to meet time and place

1 requirement under 17-19-30.

2 Section 17-19-30, as Your Honor is I'm sure
3 very sure familiar, it says: Every indictment for
4 murder shall be deemed and adjudged sufficient and good
5 in law which, in addition to setting forth the time and
6 place, together with a plain statement divested of all
7 useless phraseology of the manner in which the death of
8 the deceased was caused, charges that the defendant did
9 feloniously, willfully, and with malice aforethought
10 kill and murder the deceased.

11 The big problem we have, Your Honor, with the
12 indictments in this case, as I mentioned before, is as
13 to the time and place positions in the indictment which
14 basically says that -- the indictment in this case says:
15 On or about September 5, 2005, unlawfully kill one Kim
16 Fauscette with malice aforethought, either express or
17 implied, to wit -- then it goes on to say, I think, in
18 Lexington County. It does the same thing for the
19 indictment of David Slice.

20 In this case, Your Honor, it would be our
21 position that that is not sufficient just to say, "On or
22 about and in Lexington County." In this
23 casespecifically the facts of this case, there are
24 several matters that I think are relevant to this
25 argument and the position of the Defendant.

1 The evidence shows there could be some
2 inconsistencies in the time of death. The autopsy in
3 this case says the victims died around 12:05 a.m. I
4 understand the evidence in the case that the State is
5 going to present says or their position is going to be
6 that my client was in this area around 3:20 a.m. in the
7 morning, which would be some three hours after the
8 autopsy report indicates.

9 There is also, as I understand, going to be
10 some testimony that several individuals were in and out
11 of this house after the alleged time of death, for some
12 12 to up to 14 hours after they are alleging that my
13 client was supposedly there.

14 There was a roommate who came in and actually
15 spent the night in the house while these victims were
16 supposedly dead according to the State's case. My
17 argument would be based on that, we don't have
18 sufficient -- there's not sufficient specifics in the
19 indictments to respond as to the time and place as
20 required by the statute.

21 THE COURT: Thank you. Thank you very much,
22 Mr. Baker. Solicitor.

23 MR. MADSEN: Your Honor, from my reading of
24 that statute and my reading of the case law, if we put
25 on there a date and then in Lexington County, that

1 satisfies the time and date requirement. We believe it
2 is an appropriate indictment.

3 THE COURT: Do you have any cases, Solicitor?

4 MR. MADSEN: Your Honor, I pulled State versus
5 Rector, R-E-C-T-O-R, which is 158 S.C. 212. That was a
6 1930 case. There is some argument in there, but
7 ultimately what they wanted was that the place in there
8 would be mentioned, as it had been in Greenville County.

9 Then there was a second case, State versus
10 Blakeney, 33 S.C.111. That was decided in 1890. In
11 that case they needed to put the wording, I believe, in
12 Chesterfield County.

13 THE COURT: Anything in reply, Mr. Baker?

14 MR. BAKER: Your Honor, I would just say that
15 Mr. Madsen, I think, is relying on some case law that is
16 fairly old. I'm looking at a statute that specifically
17 says that for a murder indictment, they have got to have
18 a time and place.

19 As I indicated, I think it's fairly important
20 in this case that we have a little bit more detail about
21 time and place as to the alleged act so that we can
22 absolutely respond to the indictment in this case.

23 THE COURT: Based on my reading of 17-19-30
24 and some of the cases cited thereafter, specifically
25 Winns versus State, 611 S.E.2d 901, that particular case

1 cites the code section.

2 It then goes on to say that the Court has held
3 an indictment for murder is sufficient if the offense is
4 stated with sufficient certainty and particularity to
5 enable the Court to know what judgment to pronounce, the
6 Defendant to know what he is called upon to answer, and
7 if an acquittal or a conviction thereon may be pled as a
8 bar to any subsequent prosecution.

9 Further, the Court must look at the indictment
10 with a practical eye in view of the surrounding
11 circumstances. Whether an indictment could be more
12 certain or definite is irrelevant. In the Winns case,
13 there was the argument that came up through P.C.R. that
14 the attorney was ineffective at trial because he failed
15 to bring the exact argument Mr. Baker is now bringing.

16 The P.C.R. court held that -- or our State
17 Supreme Court held that it was not ineffective
18 assistance of counsel when they looked back at the
19 particular indictment. Perhaps the indictment could
20 have been more definite and certain.

21 It clearly states on or about September 5,
22 2005, that the incident did occur in Lexington County.
23 It occurred with malice aforethought either express or
24 implied, by means of shooting the victim. I would
25 respectfully deny the motion as to 05-GS-4561 and

1 05-GS-4563. Your next motion, Mr. Baker?

2 MR. BAKER: Yes, sir, Your Honor. The next
3 motion is a motion in limine regarding the introduction
4 of any photos of the victims following the crime or any
5 autopsy photos based on the fact they are immaterial,
6 irrelevant, and only serve to arouse the sympathy of the
7 jury.

8 This is based on South Carolina Rule 401,
9 402, 403, the Eighth Amendment, the Fourteenth
10 Amendment. The Eighth Amendment is cruel and unusual
11 punishment. The Fourteenth Amendment is due process. I
12 just ask that those pictures be excluded and not be
13 allowed to be published to the jury.

14 THE COURT: Solicitor, are you going to offer
15 photographs?

16 MR. MADSEN: We are going to offer
17 photographs. We are not sure at this point which ones
18 we are going to offer, but quite honestly I think at
19 this point in time this motion would be premature.

20 Obviously before we offer something into
21 evidence, whether it be a written document or
22 photograph, we will show it to Mr. Baker. If he has an
23 objection, I think the appropriate time would be to
24 handle it then.

25 THE COURT: For purposes of time, if you can

1 show him what you think you are going to offer, there
2 may be some he doesn't object to. I don't know. I
3 haven't seen any of them.

4 MR. BAKER: The only thing I have seen are
5 some thumbnail pictures, Your Honor. I don't know if
6 they have blown any up or what they have got.

7 THE COURT: Just make sure he gets the
8 opportunity to review them before there is an attempt to
9 introduce them into evidence so we don't have to bounce
10 the jury in and out.

11 MR. BAKER: Your Honor, the next motion is to
12 exclude -- and my understanding is this may be something
13 the State may want to respond to. I don't know whether
14 they want to put up any testimony.

15 There is a very brief portion -- and it's not
16 actually a handwritten statement and it's not signed.
17 It's basically a report from the Sheriff's Office after
18 they get my client into custody where he, at least
19 according to this report, they say he made certain
20 comments.

21 It's my understanding from the Solicitor's
22 Office that they may be intending to introduce at least
23 a portion of the statement. I'm not exactly clear what
24 exactly they intend to introduce.

25 In the report it says that they take my client

1 from the Lexington County Detention Center, and
2 Detective Richardson advised Mr. Burgess of his Miranda
3 rights verbally and asked Mr. Burgess to sign a Miranda
4 form. Mr. Burgess refused.

5 Richardson and Baumgardner asked Mr. Burgess
6 questions about the homicide. Mr. Burgess became
7 evasive and did not respond to the questions. Just on
8 that point, Your Honor, I think that's my client
9 invoking his Fifth Amendment. Certainly that wouldn't
10 be proper to allow that in.

11 Then Mr. Burgess said: I see what y'all are
12 doing. This is some of that T.V. shit, to quote it.
13 Burgess stated he knew the victims and had been at their
14 house several times, but he did not kill them. Then
15 Mr. Burgess could not account for his whereabouts on
16 September 4th or 5th, and then he stated he wanted a
17 lawyer.

18 As far as the inability to account for your
19 whereabouts on the 4th or 5th, Your Honor, I think that
20 is more of an observation than a statement. I don't
21 know exactly what they are planning to say that my
22 client said at the time.

23 I would just object to these statements,
24 again, on the fact that that is an observation and not a
25 statement. It would seem to me that if you introduce

JAMES RICHARDSON -- IN CAMERA -- MR. MADSEN

58

1 this, my client was simply asserting his right to remain
2 silent.

3 I think it would be improper to point out to
4 the jury that he refused to give a statement or he was
5 evasive and essentially would amount to a shifting of
6 the burden to my client to prove his innocence.

7 THE COURT: Thank you, Mr. Baker. Solicitor.

8 MR. MADSEN: Your Honor, we are ready to
9 conduct a Jackson v. Denno.

10 THE COURT: All right.

11 MR. MADSEN: Call James Richardson to the
12 stand.

13 JAMES RICHARDSON, being
14 first duly sworn, testified as follows:

15 CLERK: State your full name.

16 THE WITNESS: Detective James Richardson,
17 R-I-C-H-A-R-D-S-O-N.

18 IN CAMERA EXAMINATION

19 BY MR. MADSEN:

20 Q Detective Richardson, where are you employed?

21 A Lexington County Sheriff's Department.

22 Q And how long have you been employed there?

23 A About three years, sir.

24 Q What are your job responsibilities now?

25 A I'm a major crimes and gang investigator.

1 Q What does a major crimes and gang investigator do?

2 A I investigate crimes against persons, such as
3 homicides, aggravated assaults, and things such as
4 that.

5 Q And you have been at the Sheriff's Office how long?

6 A Three years.

7 Q Did you have law enforcement experience prior to
8 coming to the Sheriff's Department?

9 A Yes, sir, I've been in law enforcement since 1987
10 in the military and with the Richland County
11 Sheriff's Department.

12 Q On 9/14 did you have an occasion to be involved in
13 this case?

14 A I did, sir.

15 Q Can you tell me about that.

16 A On September 14th, September 14, 2005, at about
17 11:00 hours or 11:00 o'clock, myself and Detective
18 Baumgardner and several others went to a residence
19 on [REDACTED] which is Darrell Burgess'
20 home, to execute a search warrant.

21 After the tactical team breached the door,
22 Mr. Burgess was located and was given over to
23 myself and Detective Baumgardner. We escorted him
24 outside and unhandcuffed him and set him in the car
25 with us.

JAMES RICHARDSON -- IN CAMERA -- MR. MADSEN

60

1 We asked him if he would like to come with us
2 and talk with us about the homicides. Mr. Burgess
3 said that he did not want to leave the area. We
4 were then notified by Detective Burke that
5 Mr. Burgess was under arrest for narcotics.

6 Mr. Burgess was then rehandcuffed and
7 transported to the Sheriff's Department where he
8 was advised of his rights on the rights advisement
9 form, which is also a statement form.

10 (Court's Exhibit Number 1 is marked for
11 purposes of the record).

12 BY MR. MADSEN:

13 Q Let me show you what has been marked as Court's
14 Exhibit Number 1. Do you recognize that?

15 A Yes, sir.

16 Q What is that?

17 A This is a rights advisement statement form for the
18 Sheriff's Department.

19 Q And is that the actual form that you utilized with
20 Mr. Burgess?

21 A It is, sir.

22 Q How did you go over the rights with him on that
23 form?

24 A I filled out the top portion, which is his personal
25 information. I then slid the form around in front

1 of him so he can read it as I read along. I
2 advised him that before answering any questions or
3 making any statements, Investigator Richardson and
4 Investigator Baumgardner, a person who identified
5 themselves as Lexington County investigators, duly
6 warn and advised.

7 Then I advised him verbally that he has the
8 right to remain silent. Anything he says can or
9 will be used against him in a court of law. That
10 he has the right to stop -- he has a right to talk
11 to a lawyer for advise before answering any
12 questions and to have him or her present with him
13 during questioning.

14 I also advised him that if he had no money for
15 lawyer's fees, the Court will appoint one to
16 represent him without cost to him if he wishes. If
17 he decides to answer questions now without a lawyer
18 present, he will still have the right to stop
19 answering questions at any time. He also has the
20 right to stop answering questions at any time until
21 he talks to a lawyer. Once advised he indicated
22 that he waived it, but he would not initial the
23 form.

24 Q When you gave him that form, you said you slid it
25 around to him?

1 A Yes, sir.

2 Q Were you able to determine whether or not he could
3 read or write?

4 A Absolutely, yes, sir. At the top of the form in
5 the middle of the form, it says that he had
6 completed a G.E.D. and school, which he initialed
7 stating that he can read and write.

8 Q He agreed to waive but he would not sign the form?

9 A That's correct, sir.

10 Q What happened next?

11 A We began to talk to him about the homicides, and
12 Mr. Burgess was evasive about when we were trying
13 to talk to him about where he had been that weekend
14 and things along those lines. We couldn't pin him
15 down. He would say something along the lines: I
16 was here and there or I was at this place or that
17 place. Eventually we got to the point where we had
18 to ask very direct questions for him to answer.

19 Q Such as what?

20 A Well, we started asking him did he know Kim and
21 David, and he said -- we also asked him if he knew
22 anything about the murders. He stated he did know
23 them and that he had been to their house on several
24 occasions, but he didn't know anything about the
25 murders.

1 He then became agitated and said, "This is
2 some kind of T.V. shit." Then we went on and asked
3 him about specifics about where he was on Sunday,
4 the 4th, and Monday, the 5th.

5 He replied on Sunday, the 4th, he wrecked his
6 car and after wrecking his car he went directly
7 home. When we prompted him about the 5th, he then
8 got real agitated again and said he wanted a
9 lawyer.

10 Q After he requested a lawyer, what did you do?

11 A We stopped the interview immediately and went ahead
12 and processed him into the Lexington County jail.

13 Q When you were talking with the Defendant, did he
14 appear to be under the influence of alcohol and/or
15 narcotics?

16 A No, sir.

17 Q At any point in time, did you promise him anything?

18 A No, sir, we did not.

19 Q At any point in time, did you deny him food, drink,
20 bathroom breaks?

21 A No, sir.

22 Q At any point in time, did you threaten or coerce
23 him to get him to talk with you?

24 A No, sir.

25 Q That's all the questions I have. If you would

1 answer any questions Mr. Baker has.

2 THE COURT: Thank you, Solicitor. Mr. Baker.

3 IN CAMERA EXAMINATION

4 BY MR. BAKER:

5 Q Detective Richardson, is it true that Mr. Burgess
6 requested an attorney while he was still at his
7 residence?

8 A No, sir, not to me.

9 Q Did he not tell you and the other investigators
10 while y'all were at his residence that he didn't
11 wish to answer any questions?

12 A No, sir, he did not.

13 Q But he refused to go?

14 A He said he did not want to leave the area.

15 Q Let me ask you, you testified that he was evasive.
16 You can't say -- you can just say he was evasive.
17 You can't say exactly what he said or didn't say?

18 A No, sir. No, I can't say exactly what he said or
19 how he said it.

20 Q And you also testified that when he was asked on
21 the 4th about his whereabouts, he said he had
22 wrecked his car and went home. Then when he was
23 asked about his whereabouts on the 5th, he got
24 agitated and asked for a lawyer?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q So he didn't give you any information, other than
4 he got agitated and requested a lawyer about his
5 whereabouts on the 5th?

6 A Yes, sir.

7 Q So you don't really have anything that you can add
8 about how he answered the questions or what he did
9 or what he said?

10 A No, sir.

11 MR. BAKER: I think that's all I have got,
12 Your Honor.

13 THE COURT: Thank you.

14 (Pause).

15 MR. BAKER: One more question.

16 BY MR. BAKER:

17 Q Detective Richardson, is there any audio of this
18 interrogation?

19 A No, sir.

20 Q There is no audio of this interrogation?

21 A No, sir.

22 THE COURT: Anything in redirect, Solicitor?

23 MR. MADSEN: No, Your Honor.

24 THE COURT: Thank you, Detective Richardson.

25 You may step down. Yes, sir, Solicitor.

1 MR. MADSEN: Your Honor, up until the point
2 where he invokes his right to counsel, I believe
3 everything prior to that would come in. He is the
4 subject of a custodial interrogation. He is given his
5 rights. He was allowed to read along. He had indicated
6 he could read.

7 Although he decided that he would not actually
8 write "to waive," he indicated orally to them he would
9 waive. They asked him questions. He answered some of
10 those questions. He did not invoke until the end. So
11 we believe that everything up until that point is fair
12 game.

13 THE COURT: Mr. Baker.

14 MR. BAKER: Your Honor, just as I pointed out
15 originally when I raised this issue, I don't know that
16 there is a whole lot of testimony about what my client
17 actually said. It's just that he became evasive,
18 agitated, and then asked for a lawyer.

19 Again, I think that gets into improper
20 comments about my client's right to remain silent and
21 invoking his right to remain silent. Again, it could
22 amount to a shifting of the burden to my client to prove
23 his innocence. Again, it's not a statement, it's just a
24 observation that he was agitated.

25 THE COURT: The only question I have,

1 Solicitor, is the characterization of being evasive as
2 opposed to specific statements that he gave. I mean, he
3 says: Where were you at? If he answers: Well, I was
4 at the Hess Station. No, wait a minute. I was here,
5 there, in other words, if he puts himself different
6 places. That is more of a characterization. It's the
7 officer's opinion about the Defendant's failure to
8 answer appropriately.

9 If you can give me some guidance or give me
10 some case law on that, I don't have an issue -- I mean,
11 based on the record I have before me, he was under
12 arrest, a custodial interrogation. He advised him of
13 his Miranda rights. He can read and write. He doesn't
14 want to initial his rights, but the officer has
15 testified he has waived his rights. There is nothing
16 else in the record, so I think that's fine.

17 I think the substance of where the officer
18 said: Well, we asked him or I asked him very direct
19 questions, did he know Kim and David? He had been to
20 the house, but he doesn't murder them. Then the T.V.
21 statement and that Sunday, the 4th, he wrecked his car.
22 Then I asked him about the 5th and he became real
23 agitated. He could obviously testify as to his
24 observations, and he asked for a lawyer and they stopped
25 the interview.

1 I still have a concern about the evasive
2 answer. I don't know what that means in the record. I
3 have concerns that that gives the jury the opportunity
4 to speculate on that issue.

5 MR. MADSEN: Your Honor, we will not present
6 that, as far as the evasive answer.

7 THE COURT: In other words, I think the
8 officer can testify to the conversation that he has, but
9 that would appear to allow the jury to speculate at this
10 point. Do you have anything further on that issue,
11 Mr. Baker?

12 MR. BAKER: Your Honor, I would just add I
13 think Your Honor hit the nail on the head as to the
14 point I was trying to make. I think evasive is just an
15 observation and an opinion of the officer, not a
16 statement.

17 If Your Honor sees fit to let it in, I guess,
18 a portion of the statement, I would just want to clarify
19 that I assume, "But I did not kill them," would be part
20 of the statement that would come in.

21 THE COURT: You are asking me -- what I'm
22 hearing -- you are asking me is that part of the
23 statement that would also be allowed in?

24 MR. BAKER: Correct, if you are going to allow
25 in that portion.

1 THE COURT: I think that would be admissible
2 also. If the solicitor didn't bring it out, I think you
3 could bring it out under the rule of completeness and
4 under State versus Jackson.

5 I don't think they can cherry pick, so to
6 speak, bits and pieces of that statement in that regard.
7 If they did, I think you can bring it out. You can
8 bring that out.

9 I find that based on the totality of the
10 circumstances and the record before me, including the
11 officer's testimony concerning the fact that the
12 Defendant had a G.E.D., could read and write, he was in
13 custody; however, I find that the statement given
14 complied with Miranda.

15 Further, based on the officer's testimony, he
16 wasn't under the influence, no threats or promises or
17 such, it was voluntary and that it is admissible, with
18 the exception I would redact the issue on the
19 evasiveness, the evasive answer on that question. Your
20 next motion, Mr. Baker?

21 MR. BAKER: Your Honor, the next motion -- and
22 it may require some testimony -- is to suppress any
23 evidence that was gathered per a search warrant of my
24 client's house.

25 I think the testimony from my client's mother,

1 and this is per South Carolina Code Section 17-13-150,
2 that -- excuse me, Your Honor. The warrant was not
3 actually served on Ms. Burgess. She requested a copy of
4 the warrant and arrived at her house while they were
5 searching the home.

6 They indicated that they would leave a copy of
7 the warrant at the house. They then continued to search
8 the home. As they were leaving, she requested a copy of
9 the warrant again.

10 She was told at that point that a copy of the
11 warrant was inside the house on the table. At that
12 point she goes inside. The officer is gone. All she
13 finds is a return to the warrant.

14 This case has come up potentially for trial on
15 a number of occasions, Your Honor. Prior to one of
16 these matters coming up for trial in the past, the
17 warrant was actually mailed to Ms. Burgess over two
18 years actually after her home was searched after this
19 issue was raised. I would just have her testify about
20 what happened on this occasion.

21 THE COURT: All right. So you are not
22 questioning the affidavit on the search warrant at all?

23 MR. BAKER: Well, really, Your Honor,
24 truthfully we would be challenging the warrant itself
25 and the search and the execution of the warrant, for the

1 very reason that she wasn't, at the time the house was
2 searched, provided with a copy of the affidavit.

3 THE COURT: Isn't the State required to go
4 forward as far as the affidavit on the search warrant,
5 if that's part of your motion?

6 MR. BAKER: They probably would need to, Your
7 Honor.

8 MR. HUBBARD: Your Honor, is he going into the
9 affidavit or he is just going into whether -- the
10 substance of the affidavit or just whether we followed
11 proper procedure with the service?

12 THE COURT: That's what I was asking.

13 MR. BAKER: Both, Your Honor.

14 THE COURT: If he was just going into the
15 procedures, I think that's different then if he is going
16 into the affidavit on the search warrant also. I wasn't
17 clear, Solicitor.

18 MR. HUBBARD: That wasn't also clear, if he
19 was going on the affidavit, what part he is attacking
20 there. I think we are entitled to know what he is
21 attacking if he is going into the affidavit itself.

22 MR. MADSEN: That is our understanding is he
23 has to give some kind of specific factual or legal
24 grounds to support it. He has given it obviously on the
25 execution but not the affidavit portion.

1 MR. BAKER: I just wanted to confirm, Your
2 Honor, that the affidavit that is attached to the
3 warrant was actually firsthand knowledge of the officer
4 who signed that.

5 THE COURT: Well, I didn't think it had to be.
6 I could be wrong. I thought you could get an affidavit
7 of a search warrant based on hearsay. It has to be
8 truthful because of that case out of Horry County. It
9 was Judge Pieper, and I can't recall the name of it
10 right now that they decided last year where it was a
11 falsehood or an alleged falsehood in the affidavit. It
12 can be based on hearsay is my understanding of the law.

13 MR. HUBBARD: If Your Honor wishes us to
14 proceed, the officer that actually procured the warrant
15 and was the affiant had firsthand knowledge and is
16 willing to testify about it. He was one of the
17 investigators on the case. He did not execute it.

18 THE COURT: I understand.

19 MR. HUBBARD: It's up to Mr. Baker, I guess,
20 Your Honor, if he wants to proceed.

21 THE COURT: I want the record clear one way or
22 the other. Obviously if it gets to a point to where --
23 and I'm not saying it ever would -- but if it ever got
24 to the point where it was looked at by an appellate
25 court, right now there is nothing in the record about

1 the quality of the affidavit of the search warrant.

2 MR. HUBBARD: We can pursue that right now.

3 The State calls Roger Beaver to the stand.

4 THE COURT: Detective Beaver.

5 ROGER WAYNE BEAVER, being
6 first duly sworn, testified as follows:

7 CLERK: Have a seat. State your full name on
8 the record. Once you have a seat.

9 THE WITNESS: My name is Roger Wayne Beaver.

10 IN CAMERA EXAMINATION

11 BY MR. HUBBARD:

12 Q Detective Beaver, where do you work?

13 A I'm currently working with the South Carolina
14 Department of Labor, License, and Regulation. I
15 was previously employed with the Lexington County
16 Sheriff's Department from March 2003 until
17 November 2007.

18 Q September of 2005, what area of the Sheriff's
19 Department were you working in?

20 A I was working the major crimes unit.

21 Q Were you in any way involved with the investigation
22 into the deaths of David Slice and Kim Fauscette?

23 A Yes, I was.

24 Q Was that on or about September 5, 2005?

25 A Yes, it was. I carried the original search warrant

ROGER BEAVER -- IN CAMERA -- MR. HUBBARD

74

1 for the house down that afternoon and became
2 actively involved in it starting that afternoon
3 once the bodies had been discovered.

4 Q The search warrant you are talking about in that
5 case was the search warrant of the victim's house?

6 A The victim's house, that is correct.

7 Q That's what began your roll in this case?

8 A That's true.

9 Q The victim's residence is at [REDACTED]

10 A That is correct.

11 Q Swansea?

12 A Yes, sir.

13 Q And working that case, you were aware of the two
14 deaths?

15 A Yes, I was.

16 Q Did you also become aware in your investigation of
17 these two murders, what type of caliber weapon was
18 most likely used?

19 A Yes. We were told, I believe from the autopsy
20 results, it appeared to be a .38, .357 caliber
21 revolver.

22 Q Now, September 9th, do you recall a fellow by the
23 name of James Johnson being arrested?

24 A Yes, I do.

25 Q And he was arrested on unrelated charges at that

1 time?

2 A On unrelated drug charges.

3 Q September 13th, did you have an opportunity to talk
4 with Mr. Johnson?

5 A Yes. Detective Baumgardner and I sat in the
6 interview room with Mr. Johnson and obtained a
7 rather lengthy statement that ran several hours.

8 Q And was this statement put in writing?

9 A Yes, it was. I wrote it for Mr. Johnson at his
10 request. He was so nervous he could not hardly
11 write. He was shaking.

12 Q I want to show you a copy, my copy, of this
13 statement. Does that look like a copy of the
14 statement that you took?

15 A Yes, sir, it does.

16 Q Is that about seven pages?

17 A Yes, sir, seven pages.

18 Q Of course, the front page involves the Miranda
19 warnings?

20 A Yes, sir, it does.

21 Q In his statement to you and to Detective
22 Baumgardner, did Mr. Johnson give you his
23 whereabouts the late hours of September 4th and the
24 early morning hours of September 5th?

25 A Yes, he did. He implicated himself as being

1 present at the victims' residence when Darrell
2 Burgess showed up.

3 Q Did he indicate that he knew the victims?

4 A Yes, he did. He said he knew the victims. He had
5 known them for several months at that time and that
6 he had gone over there. Kim Fauscette had called
7 him, and he had gone over there to collect some
8 money that she owed him.

9 Q Was he there, per his statement to you, when
10 Mr. Burgess showed up or was Mr. Burgess already
11 there?

12 A He was there when Mr. Burgess showed up because in
13 his statement he told us that Ms. Fauscette looked
14 out the window and saw Darrell Burgess walking up,
15 and Darrell Burgess came in the residence and said
16 he wrecked his car near Larry Sharpe's store.
17 Mr. Johnson thought that Mr. Burgess would want a
18 ride somewhere.

19 Q Did he indicate in his talking to you or in the
20 written statement that it appeared Kim Fauscette
21 and David Slice knew Darrell Burgess?

22 A Yes.

23 Q And did James Johnson indicate to you whether he
24 knew Darrell Burgess?

25 A Mr. Johnson indicated to us that he had known

- 1 Darrell Burgess for over ten years because Mr.
2 Burgess lived across the street from him over on
3 [REDACTED], [REDACTED], which is where
4 Mr. Burgess lives.
- 5 Q [REDACTED] is right across the street from
6 Mr. Johnson's house?
- 7 A That is correct.
- 8 Q While Mr. Burgess was in the residence of the
9 victims, what, if anything, did Mr. Johnson tell
10 you?
- 11 A That they were sitting there talking and had been
12 chatting for 10 or 15 minutes, and all of sudden
13 Mr. Burgess got up and started shooting. He asked
14 him what was going on. He said he had to do it,
15 that there had been some money stolen from Kim
16 Fauscette's mother's boyfriend. He had some money
17 and he had to take care of matters. He told
18 Mr. Johnson not to say anything about it.
- 19 Q Let me back you up a little bit.
- 20 A Okay.
- 21 Q When he stood up and began shooting, did he give
22 any kind of description of the weapon?
- 23 A Yes, he said Mr. Burgess had a shiny revolver.
- 24 Q Did he indicate witnessing both the shootings of
25 Mr. Slice and Ms. Fauscette?

ROGER BEAVER -- IN CAMERA -- MR. HUBBARD

78

1 A Yes, he did.

2 Q Did he indicate whether he heard at some point when
3 the gunshot stopped firing, and he heard something
4 else?

5 A When the gunshots started firing, he got up and
6 started towards the door.

7 Q Did he indicate if he heard any clicking?

8 A Yes, he heard clicking. He said he heard the gun
9 snap several times as Mr. Burgess was pulling the
10 trigger.

11 Q Indicating the weapon --

12 A The gun had run out of ammunition.

13 Q Mr. Johnson said he went where after he heard that
14 the weapon appeared to be out of ammunition?

15 A He ran out the front door and hid in the woods
16 until he saw Mr. Burgess walk off a few minutes
17 later.

18 Q Did he indicate also about gunshots occurring after
19 he was in the woods.

20 A No, sir, he did not.

21 Q Do you remember in his statement?

22 A In his statement he wrote that he was scared and
23 fearful for his life that the gunshots would start
24 coming in his direction.

25 Q Did he indicate he saw Mr. Burgess sometime after

1 this incident?

2 A Yes. The next day he encountered Mr. Burgess, and
3 Mr. Burgess told him to keep his mouth shut and not
4 talk about it, and he better carry it to his grave.

5 Q At some point also did he approach Mr. Johnson
6 about a ride?

7 A Yes. He told Mr. Johnson he needed him to carry
8 him to Enterprise car rental in West Columbia so he
9 could get a rental car.

10 Q Did Mr. Johnson comply with that?

11 A Yes, he did.

12 Q Was that the basis of Mr. Johnson being arrested as
13 an accessory after the fact of murder in this case?

14 A Yes, sir.

15 Q For assisting Mr. Burgess to get a rental car?

16 A As far as I know.

17 Q Let me show you something else and see if you can
18 identify this document. Whose photograph is in
19 this document?

20 A Darrell Burgess. This is the photograph that we
21 showed James Johnson to be sure that we were
22 talking about the right Darrell Burgess, and this
23 is a previous booking sheet of Mr. Burgess at the
24 Lexington County Detention Center.

25 Q What, if anything, did Mr. Johnson write on that

ROGER BEAVER -- IN CAMERA -- MR. HUBBARD

80

1 form?

2 A He recognized this person as being Darrell Burgess.

3 MR. HUBBARD: Your Honor, I think what I would
4 like to do at this time -- Your Honor, perhaps I should
5 make Court's exhibits of the actual search warrant and
6 this booking photo with Mr. Johnson's signature on it.
7 I would be willing to make a Court's exhibit of the
8 statement Mr. Johnson gave. If I can make Court's
9 exhibits of these items for purposes of this hearing.

10 THE COURT: Yes, sir.

11 (Court's Exhibit Number 2-4 are marked for
12 purposes of the record).

13 THE COURT: Which is which on those exhibits,
14 Solicitor?

15 MR. HUBBARD: Your Honor, Court's Exhibit
16 Number 2 would be the search warrant, Number 3 would be
17 a booking photo where James Johnson identifies
18 Mr. Burgess as being the man there that night, and
19 Court's Exhibit Number 4 is a copy of the written
20 statement by Mr. Johnson. If Your Honor would like, I
21 will pass them up for your review.

22 (Hands to Court).

23 MR. HUBBARD: Your Honor, I have got some
24 follow-up questions obviously.

25 THE COURT: All right. Do you need these?

1 MR. HUBBARD: No, sir, you can hang on to
2 those, Your Honor.

3 BY MR. HUBBARD:

4 Q Roger, at the time -- Detective Beaver -- at the
5 time with this information, you went to what judge?

6 A I went to Judge Morgan the next morning and
7 obtained a search warrant. I outlined the case to
8 him, explained my knowledge and involvement in the
9 case and told him at great length about the
10 information we had gained from Mr. Johnson that
11 someone would have had to had been there present to
12 have known all the facts Mr. Johnson gave to us.

13 Q When you presented this affidavit and this
14 testimony to Judge Morgan, were you under oath?

15 A Yes, I was.

16 Q And the search warrant you sought was on the same
17 day you interviewed James Johnson?

18 A I believe it was the next morning. The 14th was
19 the date. I believe we interviewed him on the
20 13th.

21 Q And after you presented this information to the
22 judge, did you go into all the detail about James
23 Johnson's statement?

24 A Yes, I went into great length with Judge Morgan
25 about the facts of this case and explained my

ROGER BEAVER -- IN CAMERA -- MR. HUBBARD

82

1 knowledge of it and told him about Mr. Johnson
2 being present at the time, about how he identified
3 Darrell Burgess knowing him for over ten years from
4 living across the street.

5 Q Is that how he got the address of [REDACTED]?

6 A Yes, it is.

7 Q That's what you focused on for the search warrant?

8 A Yes, sir.

9 Q And the items being searched, did you mention a
10 revolver or any type of weapon that may have been
11 used?

12 A Yes, we were looking for a .38, .357 revolver, any
13 ammunition, and any other trace evidence,
14 fingerprints or evidence that would link the
15 killings at [REDACTED] [REDACTED] to Darrell Burgess.

16 Q In fact you have in here, quote: Any other items
17 which might be used to link Burgess to the
18 aforementioned murders?

19 A That's correct.

20 Q Once you obtained a search warrant, what did you do
21 with it?

22 A I carried it back to Lieutenant Frier who was in
23 process of arranging to have the narcotics team
24 execute this search warrant because they were far
25 more experienced at executing search warrants than

1 we were in major crimes.

2 MR. HUBBARD: Beg the Court's indulgence.
3 Your Honor, I believe that's all I have at this time.

4 THE COURT: Thank you, Mr. Hubbard.
5 Mr. Baker.

6 MR. BAKER: Your Honor, based on Detective
7 Beaver's testimony that he had firsthand knowledge and
8 actually interviewed Mr. Johnson, I don't have any
9 questions of him regarding the actual affidavit but now
10 move on to the actual execution of the search warrant.

11 THE COURT: Let me make sure this is correct,
12 Detective Beaver. The information you testified to in
13 great detail you provided to Judge Morgan?

14 THE WITNESS: Yes, sir.

15 THE COURT: Whether or not it's in the
16 affidavit -- there is some in the affidavit -- but there
17 was additional testimony that you gave, that you
18 provided --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- to Judge Morgan. And did you
21 provide -- in other words, you went over the statement
22 that Mr. Johnson had given you? You went over that
23 statement with Judge Morgan?

24 THE WITNESS: Yes, sir, I did.

25 THE COURT: Did you show Judge Morgan Court's

NEZZIE BURGESS -- IN CAMERA -- MR. BAKER

84

1 Exhibit Number 3?

2 THE WITNESS: I do not recall if I showed him
3 that exhibit or not.

4 THE COURT: Did you tell him about that
5 exhibit?

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you. I just wanted to
8 clarify that in my mind. You have no questions based on
9 my questions, do you, Mr. Baker?

10 MR. BAKER: No.

11 THE COURT: Thank you. You may step down.

12 MR. BAKER: Your Honor, we can now move to my
13 objection to that actual execution of the warrant. I
14 would call Ms. Nezzie Burgess to the stand.

15 THE COURT: Ms. Burgess, if you would come
16 around, please.

17 NEZZIE BURGESS, being
18 first duly sworn, testified as follows:

19 CLERK: Have a seat up there please, ma'am.
20 Speak up loud and clear. Once you have a seat, state
21 your name on the record, please.

22 THE WITNESS: Nezzie Burgess.

23 IN CAMERA EXAMINATION

24 BY MR. BAKER:

25 Q Ms. Burgess, where do you reside?

- 1 A [REDACTED] Gaston.
- 2 Q And can you just tell me, on September 14, 2005, I
- 3 think you were at work and you got a phone call; is
- 4 that correct?
- 5 A Yes, sir.
- 6 Q Can you explain to the Court what happened.
- 7 A I got a phone call stating that police officers was
- 8 at my home and took one of my sons to jail, which
- 9 was Darrell, and had another one in the car
- 10 handcuffed. So I think it was Investigator
- 11 Palkowski that I talked with, and he stated that
- 12 they were searching my home. I asked him for a
- 13 search warrant, did they have a search warrant, and
- 14 he said yes, that he would give it to me before he
- 15 leaves.
- 16 Q Let me stop you there, Ms. Burgess. Did you then
- 17 travel to your home?
- 18 A Beg your pardon?
- 19 Q You were you at work and then you traveled to your
- 20 home?
- 21 A Yes.
- 22 Q And you actually own this residence?
- 23 A Yes, I do.
- 24 Q And about what time did you arrive at the
- 25 residence?

1 A I am thinking it was around lunchtime, pretty much
2 around noon or after.

3 Q Around noon on September 14th?

4 A Yes.

5 Q Tell me, who did you communicate with once you
6 arrived at the residence?

7 A Investigator Palkowski.

8 Q Palkowski. And then take it from there. What
9 happened when you asked him about the search
10 warrant?

11 A When I asked him about the search warrant, he said
12 he would give me one before he leaves. So he stood
13 out there in the yard asking me questions and
14 stuff. So then he had me to read a paper or
15 something, a statement that someone had written and
16 gave to him.

17 So after I read the statement, I asked him
18 again for a search warrant, and he said he will
19 give it to me. When they finished the searching of
20 my home and everything, whenever he got ready to
21 leave and I asked him again for the search warrant,
22 he said it was inside on the table. So when he
23 left I went inside and I looked on the table. It
24 was, I guess, things that they took from my home, a
25 list of things.

1 MR. BAKER: Let me get this marked.

2 (Court's Exhibit Number 5 is marked for
3 purposes of the record).

4 BY MR. BAKER:

5 Q Can I show you, Ms. Burgess, what has been marked
6 Court's Exhibit Number 5 and ask you if you can
7 identify that?

8 A Yes, that's it.

9 Q And is that the only document that they left at
10 your house on September 14th?

11 A It was the front and back.

12 Q Is that a copy of the back of it?

13 A The back of it.

14 MR. BAKER: If you would mark this, please.

15 (Court's Exhibit Number 6 is marked for
16 purposes of the record).

17 BY MR. BAKER:

18 Q What has been marked Court's Exhibits 5 and 6 were
19 the only things that were left at your house?

20 A That's the only things, yes.

21 Q When they searched your house?

22 A That's correct.

23 Q And the only thing this is is a list of the items
24 they actually removed from your house; is that
25 correct?

NEZZIE BURGESS -- IN CAMERA -- MR. BAKER

88

- 1 A That's correct.
- 2 Q Ms. Burgess, did you have any way of knowing what
3 they had authority to be looking for at your house?
- 4 A Only before he left when he had me to read the
5 paper. He stated that -- Investigator Palowski
6 stated -- that they were looking for a weapon or
7 money or something.
- 8 Q He just stated that to you? You didn't actually
9 have the opportunity to hold the warrant and look
10 at it and see what they were looking for?
- 11 A No, no.
- 12 Q Did you have any way of knowing that they had
13 authority to actually be searching your home?
- 14 A No, I didn't.
- 15 Q Did you have any way of knowing whether the actual
16 search warrant had been signed?
- 17 A No, I didn't.
- 18 Q Was there damage done to your house when they were
19 there?
- 20 A Tremendously.
- 21 Q Have you, since September 14, 2005, actually
22 received a copy of the warrant?
- 23 A Yes, I did. I think it was like June. I think
24 around June 13, 2007, I received a warrant.
- 25 Q So almost two years after they actually searched

1 your home and removed items from it, you received a
2 copy of a search warrant, which was mailed to you
3 or how did you get it?

4 A I'm thinking it was -- it didn't have a stamp on
5 it, so I'm thinking it was hand delivered.

6 Q Somebody hand delivered it to you in 2007?

7 A Yes.

8 Q On a search that took place in 2005?

9 A (Witness nods). (Indicating affirmative response).

10 MR. BAKER: That's all I have, Your Honor, for
11 Ms. Burgess.

12 THE COURT: Thank you, Mr. Baker. Solicitor.

13 **IN CAMERA EXAMINATION**

14 BY MR. MADSEN:

15 Q Ms. Burgess, were you home when the search warrant
16 was executed?

17 A The one at...

18 Q At your residence at [REDACTED]?

19 A June 13th?

20 Q Where were you? You said you came home later.
21 Where were you when it was executed?

22 A Are you talking about the day they searched my
23 home?

24 Q Yes.

25 A No, I was on my way home. I got a phone call.

NEZZIE BURGESS -- IN CAMERA -- MR. MADSEN

90

1 Q Where were you?

2 A Where were I?

3 Q Yes, ma'am?

4 A I believe I was either at work or in Newberry, one
5 of the two.

6 Q Where do you work at?

7 A At Belk's Department Store.

8 Q And how far is that from your house?

9 A It's like a 20-minute drive, I believe.

10 (Court's Exhibit Number 7 is marked for
11 purposes of the record).

12 BY MR. MADSEN:

13 Q Let me show you what has been marked as Court's
14 Exhibit Number 7 just so we can kind of understand.
15 Is that basically a rough outlay of your house?

16 A Yes, it is.

17 Q Which one on there is listed -- which one is your
18 bedroom?

19 A The master bedroom.

20 THE COURT: I couldn't quite hear that answer.

21 THE WITNESS: The master bedroom.

22 BY MR. MADSEN:

23 Q That's listed on there as master bedroom number
24 four?

25 A Number four.

- 1 Q Who was else living with you back then?
- 2 A My son Melvin.
- 3 Q Which bedroom on there was his?
- 4 A Bedroom number three.
- 5 Q And then who else besides Melvin was living with
- 6 you?
- 7 A And Darrell.
- 8 Q Which bedroom was his?
- 9 A Bedroom two, which he and my other son occupied.
- 10 Q Who is your other son?
- 11 A Chris Burgess.
- 12 Q He goes to school, doesn't he?
- 13 A Yes, he did.
- 14 Q Where was he going to school back then?
- 15 A South Carolina State.
- 16 Q Was he living up at South Carolina State, but then
- 17 he'd still come back and, I guess, visit?
- 18 A Yes.
- 19 Q So whatever happened before you get there, you are
- 20 not real sure. You said something about when you
- 21 get there, is one of your sons still there?
- 22 A One of them was, Melvin.
- 23 Q Melvin was still there?
- 24 A Yes.
- 25 Q How about Darrell, was he still there?

NEZZIE BURGESS -- IN CAMERA -- MR. MADSEN

92

1 A Darrell was gone.

2 Q So you don't know whether or not either Darrell or
3 Melvin received a copy of the search warrant, do
4 you?

5 A They didn't.

6 Q But do you know that -- I mean, how do you know
7 that?

8 A Because Melvin would have gave it to me if he did
9 receive it. I was standing outside talking with
10 him in the car, and he said they did not give him a
11 search warrant.

12 (Court's Exhibit Number 8-9 is marked for
13 purposes of the record).

14 BY MR. MADSEN:

15 Q When you got there, who did you make contact with
16 first?

17 A Investigator Palkowski walked up to me.

18 Q Let me show you Court's Exhibit Number 8. Do you
19 recognize the two folks in that picture?

20 A It's me.

21 Q So one of them is you?

22 A Yes.

23 Q Do you know who the fellow is standing right beside
24 you? Do you recall that?

25 A He told me his name was Investigator Palkowski.

- 1 Q You had met him before. Let me show you State's
2 Exhibit Number 9. Is that just kind of a blow-up
3 of that picture?
- 4 A Uh-huh. (Indicating affirmative response).
- 5 Q That's you standing there. You have got something
6 in your hands. Can you see what that is? You are
7 looking down.
- 8 A It's a paper that he gave me to read, a statement.
- 9 Q What was it that Detective Palkowski gave you to
10 read?
- 11 A It was a statement that -- whatever the man's
12 name -- James that lived across the street from me.
- 13 Q How many pages was it, do you recall?
- 14 A I'm not sure. I didn't read it all.
- 15 Q Was it one page, two pages, ten pages?
- 16 A I think it was either one page or two pages. I'm
17 not sure.
- 18 Q Just one or two pages?
- 19 A (Witness nods). (Indicating affirmative response).
- 20 MR. MADSEN: I will pass these up.
- 21 (Hands to Court).
- 22 BY MR. MADSEN:
- 23 Q On what I showed you that I passed up to the judge,
24 whose room was bedroom number two?
- 25 A Darrell's.

NEZZIE BURGESS -- IN CAMERA -- MR. BAKER

94

1 MR. MADSEN: That's all the questions I have.

2 THE COURT: Thank you, Solicitor. Anything on
3 redirect, Mr. Baker?

4 MR. BAKER: A few more, Your Honor.

5 IN CAMERA EXAMINATION

6 BY MR. BAKER:

7 Q Mr. Burgess, when you asked the officer, the
8 officers at your house, whether they had a copy of
9 the warrant, did they tell you they had given it to
10 Melvin or Darrell?

11 A No, they didn't.

12 Q Had Melvin or Darrell ever said that they received
13 a copy of the warrant?

14 A They never received a copy.

15 Q And you never received a copy of the warrant or the
16 signed affidavit supporting the warrant on
17 September 14, 2005?

18 A No.

19 Q And, in fact, it was actually delivered to you in
20 2007; is that correct?

21 A That's correct.

22 Q After you found the return in your home on the
23 table where they had told you the affidavit or the
24 warrant would be, did you then try to get in touch
25 with the officer?

- 1 A I did.
- 2 Q And tell me what happened.
- 3 A I talked with him. I was really upset because the
- 4 way they did my house and didn't have a search
- 5 warrant. I asked him where was the search warrant.
- 6 He said it was there in the house. I told him that
- 7 was not a search warrant.
- 8 Q That was just the return that you found in the
- 9 house?
- 10 A The things they took out of my house.
- 11 Q Thank you, Ms. Burgess. I think that's all I have.
- 12 THE COURT: Thank you, Mr. Baker. Anything in
- 13 recross, Solicitor?
- 14 MR. MADSEN: No, Your Honor.
- 15 THE COURT: Thank you. Thank you very much,
- 16 Ms. Burgess. You may step down.
- 17 THE WITNESS: Thank you.
- 18 THE COURT: Mr. Baker, do you have any other
- 19 witnesses concerning this issue?
- 20 MR. BAKER: I do not, Your Honor.
- 21 THE COURT: Solicitor, do you have any
- 22 witnesses concerning this issue?
- 23 MR. MADSEN: We do. Your Honor, we would call
- 24 Sergeant Jeff Palkowski.
- 25 JEFF PALKOWSKI, being

JEFF PALKOWSKI -- IN CAMERA -- MR. MADSEN

96

1 first duly sworn, testified as follows:

2 CLERK: Once you have a seat, state your full
3 name and spell your last.

4 THE WITNESS: Detective Sergeant Jeff
5 Palkowski, P-A-L-K-O-W-S-K-I.

6 IN CAMERA EXAMINATION

7 BY MR. MADSEN:

8 Q Sergeant Palkowski, where are you employed?

9 A Lexington County Sheriff's Office.

10 Q What are your job duties now?

11 A I'm a detective sergeant with the major crimes
12 unit.

13 Q Back in September of 2005, what were your duties
14 back then?

15 A I was in the same capacity.

16 Q Did you have an occasion to become involved in the
17 search warrant of Darrell Burgess' home?

18 A Yes, sir, I did.

19 Q Could you tell us about that, please?

20 A A warrant was obtained for the search of the
21 Burgess residence for some items that might be
22 related to the homicide of Kim Fauscette and David
23 Slice. As a result of that, I participated in the
24 search warrant.

25 Q And what did you do once you got there?

- 1 A Narcotics actually did the entry. I actually
2 assisted in the search until the point where
3 Ms. Burgess had come home.
- 4 Q Then what did you do?
- 5 A I went outside to speak with Ms. Burgess and
6 explained to her why we were there, what the
7 allegations were, and told her we were there as a
8 result of a search warrant.
- 9 Q And while you were talking with her at that point
10 in time, did you provide her or allow her to read
11 anything?
- 12 A Yes, sir, I did.
- 13 Q What was that?
- 14 A I gave her a copy of the search warrant to read.
- 15 Q Let me show you what has been marked as Court's
16 Exhibits 8 and 9. Do you recognize yourself in
17 that photograph?
- 18 A I do.
- 19 Q And who is that standing beside you?
- 20 A It's Ms. Burgess.
- 21 Q Can you notice anything with what she is doing?
- 22 A She's reading a copy of the search warrant.
- 23 Q Let me ask you this. Taking a look at Court's
24 Exhibit Number 2, what is that?
- 25 A It's the search warrant for the Burgess residence.

- 1 Q If you take that front page off and the back page,
2 which is what?
- 3 A The return.
- 4 Q How many pages do you have left?
- 5 A It's two pages, sir.
- 6 Q What are those?
- 7 A It is the actual search warrant and the second page
8 is the affidavit.
- 9 Q What does the affidavit contain?
- 10 A The affidavit is the reason that we are there, what
11 we are looking for, and the probable cause behind
12 it.
- 13 Q And had you been involved in the interview of James
14 Johnson?
- 15 A No, sir.
- 16 Q Did you even have a copy of his statement back
17 then?
- 18 A I did not.
- 19 Q As far as the search warrant that you gave her to
20 read, do you recall whether you got a copy of that
21 back?
- 22 A I do not.
- 23 Q Would that have been -- would you have taken that
24 back?
- 25 A I would have no reason to.

1 Q When a search warrant is executed, what is the
2 normal protocol as far as what y'all do with the
3 search warrant? How many copies do y'all take out?

4 A We take two copies.

5 Q And what is that for?

6 A One copy is the Defendant copy and the other copy
7 is the Court copy.

8 MR. MADSEN: That's all the questions I have.

9 THE COURT: Thank you, Solicitor. Mr. Baker.

10 IN CAMERA EXAMINATION

11 BY MR. BAKER:

12 Q Sergeant Palkowski, you didn't provide a copy of
13 the search warrant and affidavit to Mr. Darrell
14 Burgess or Mr. Melvin Burgess, did you?

15 A I did not.

16 Q And Ms. Nezzie Burgess, when she arrived home, she
17 was the homeowner, and she actually asked you for a
18 copy of the warrant; did she not?

19 A Yes, sir.

20 Q Did you just -- it's your testimony you gave her a
21 copy to read or did you give a copy that she could
22 keep?

23 A I gave her a copy to read, sir.

24 Q And I think you indicated in your testimony earlier
25 that your recollection is -- or you are not real

JEFF PALKOWSKI -- IN CAMERA -- MR. BAKER

100

1 clear about whether you left a copy or didn't leave
2 a copy?

3 A That's correct.

4 Q You just don't recall whether you left a copy or
5 not?

6 A I don't remember if a copy was left or it was left
7 in her possession.

8 Q And you don't remember whether the warrant was
9 actually served on her when the affidavit was
10 served on her?

11 A She read it, yes, sir. It was served on her.

12 Q But you don't recall whether you actually left her
13 a copy?

14 A That would explain the return being left in the
15 residence with no affidavit attached to it.

16 Q Do you have any explanation, Sergeant Palkowski,
17 about why the search warrant was actually delivered
18 to Ms. Burgess in 2007?

19 A I do not, sir.

20 Q And, again, you don't have any recollection of
21 whether you actually left a warrant or not?

22 A I do not.

23 MR. BAKER: I think that's all I have got,
24 Your Honor.

25 THE COURT: Thank you, Mr. Baker.

1 MR. MADSEN: One other thing if I might.

2 (Court's Exhibit Number 10 is marked for
3 purposes of the record).

4 IN CAMERA EXAMINATION

5 BY MR. MADSEN:

6 Q Did you do an investigative report, Sergeant
7 Palkowski?

8 A Yes, sir.

9 Q Let me show you what has been marked as Court's
10 Exhibit Number 10.

11 A Yes, sir.

12 Q What is that?

13 A It's a copy of a supplemental incident report
14 prepared by myself.

15 Q And when was that prepared?

16 A It was prepared on September 17, 2005.

17 Q Could you flip over to the last page. Could you
18 read the last sentence.

19 A "Ms. Burgess was allowed to read the search warrant
20 and felt that Darrell did not kill anybody."

21 Q And when did you write that?

22 A The 17th of September, 2005.

23 MR. MADSEN: That's all the questions I have.

24 THE COURT: Anything else, Mr. Baker?

25 MR. BAKER: Yes, sir, Your Honor.

1 IN CAMERA EXAMINATION

2 BY MR. BAKER:

3 Q Sergeant Palkowski, this report dated September 17,
4 2005, says Ms. Burgess was allowed to read the
5 search warrant and felt that Darrell did not kill
6 anybody. It doesn't say the search warrant was
7 served on Ms. Burgess and the affidavit was served
8 on Ms. Burgess, does it?

9 A It says what it says, sir.

10 MR. BAKER: That's all I have got, Your Honor.

11 THE COURT: Thank you, Mr. Baker. Thank you,
12 Sergeant. You may step down. Any other witnesses on
13 this issue?

14 MR. BAKER: No, Your Honor, not from us.

15 THE COURT: Solicitor, any other witnesses on
16 this issue?

17 MR. MADSEN: No, sir.

18 THE COURT: Then the only issue I did not rule
19 on but I will rule on is I think the affidavit on the
20 search warrant is sufficient under both the Fourth
21 Amendment and 17-13-140 and the case law in South
22 Carolina as far as the affidavit is concerned. I
23 understand that's what that objection was.

24 Then, Mr. Baker, I would be glad to hear from
25 you as far as 17-13-150 is concerned.

1 MR. BAKER: Your Honor, the argument is this
2 warrant was not executed properly. South Carolina Code
3 Section 17-13-150 indicates that when any person is
4 served with a search warrant, such person shall be
5 furnished with a copy of the warrant, along with the
6 affidavit upon which such warrant was issued.

7 The testimony that we have heard from
8 Ms. Burgess was that the only thing that was left at her
9 home was a return. She did not receive a copy of the
10 search warrant. She did not receive a copy of the
11 affidavit supporting the search warrant.

12 The testimony of Sergeant Palkowski is that he
13 did not serve Darrell Burgess nor Melvin Burgess with a
14 copy of the warrant. He doesn't recall whether he left
15 a copy with Ms. Burgess or not.

16 I think the evidence is clear that the warrant
17 was not properly served in this case. Therefore, any
18 evidence which was seized at the residence should be
19 suppressed.

20 I think it's even more indicative of actually
21 what happened, the fact that she received a copy of the
22 search warrant and affidavit some two years after or
23 close to two years after the actual search took place.

24 THE COURT: Thank you, Mr. Baker. Solicitor.

25 MR. MADSEN: Your Honor, I had provided

1 Ms. Burgess -- and, in fact, I even have a copy of my
2 letter. Mr. Baker had previously indicated to me that
3 she had felt that she had not gotten a full copy. So I
4 sent her a letter indicating, "As a courtesy, I have
5 enclosed a full copy," also indicating that both Darrell
6 and Melvin had previously been provided copies through
7 their discovery. That was something that I mailed out
8 to her.

9 Your Honor, we have got Sergeant Palkowski who
10 testifies that she is provided that search warrant. It
11 is four pages. If you take off the front page and the
12 back page, you basically have that affidavit. She had
13 indicated that she was provided with a statement that
14 would -- that she took a look at that she thought was a
15 couple of pages.

16 Your Honor has in the record James Johnson's
17 statement which is seven pages long. It's our
18 contention, Your Honor, that she was provided a copy of
19 the affidavit, and the return was left inside. Those
20 two pages are what she was provided.

21 Sergeant Palkowski placed in there -- and we
22 have had some photographs that we put in that shows
23 this. She has identified herself and Sergeant
24 Palkowski. She is leaning down reading something in her
25 hands.

1 We do believe that we have complied with
2 17-13-150 in furnishing a copy of the search warrant,
3 and the items taken out in that search warrant should
4 not be excluded.

5 THE COURT: Thank you, Solicitor. Before I
6 rule I'm just curious about a few things. Mr. Baker,
7 let's assume that the officer didn't comply with
8 17-13-150. What is the prejudice to Mr. Burgess?

9 MR. BAKER: Your Honor, the prejudice is, I
10 think, just in the actual execution of the warrant and
11 not knowing what it is they are there to look for, what
12 it is they are there investigating, what they are
13 authorized to actually take.

14 THE COURT: I'm not trying to cut you off. I
15 want you to put whatever you want in the record, but
16 what I'm saying is the complaint is the officers did not
17 provide her with a copy of the search warrant, the
18 homeowner. What is the prejudice to him though in that
19 regard? That's what I have kind of a -- that's what I
20 am trying to understand or what I'm asking.

21 MR. BAKER: Right. Well, like I said, Your
22 Honor, you have got to have -- you've obviously got to
23 have probable cause to have a warrant to come in there.
24 The homeowner or at least the person being searched
25 needs to have some idea and some safeguard of the fact

1 that they have authority to be there, the fact that they
2 have authority to search the home and actually have
3 knowledge of what they are actually looking for.

4 Otherwise, I think they are in a situation
5 where they are prejudiced because they don't know what
6 the search warrant is about, what they are looking for.
7 Again, I think the evidence ought to be suppressed
8 because I think the evidence -- it was not properly
9 served.

10 THE COURT: All right. My understanding under
11 State versus Mollison, which is 459 S.E.2d 88, some
12 deficiencies in search warrants are so substantial that
13 they require exclusion of the evidence.

14 For example, if a warrant is issued on the
15 strength of an officer's oath rather than sworn
16 affidavit, that would be defective and require
17 suppression of the evidence seized. However, failure to
18 comply with inconsequential ministerial requirements of
19 the statute does not require suppression in the absence
20 of prejudice to the Defendant.

21 They give examples: Failure to list all of
22 the items seized on the return or failure to make a
23 return in ten days is a ministerial error and does not
24 require suppression unless the Defendant was prejudiced
25 by the error.

1 Although the Defendant does argue that he is
2 prejudiced by the error, I fail to see how, assuming
3 that the officer failed to comply with 17-13-150.
4 However, based on the record before me, given the
5 officer's testimony and photographs, Court's Exhibit
6 Number 8 and 9, it appears that Ms. Burgess was given a
7 copy of the affidavit and search warrant and that the
8 return would have been left inside.

9 Because the officers would have had to fill
10 that document out after they recovered -- I don't have
11 the search warrant back in front of me now -- but it's
12 some eight to ten to twelve items, and that was also
13 left inside. So I guess initially I see no prejudice.
14 I see that it's ministerial in my opinion --

15 THE DEFENDANT: Excuse me, Your Honor.

16 THE COURT: -- and on top of that, I would say
17 that based on my evaluation of the evidence before me,
18 that the officers did comply on September 14th.

19 Then if I plainly read the statute, it says:
20 When any person is served with a search warrant, such
21 person shall be furnished with a copy of the warrant,
22 along with the affidavit upon which that warrant was
23 issued. It appears the officers were already in the
24 process of executing the search warrant, and they could
25 have just left a copy at the home.

1 If Mr. Burgess needs to talk with his
2 attorney, I will allow him to do so. I can't have you
3 interrupting, Mr. Burgess. You can certainly talk with
4 Mr. Baker. If you need a break, talk to Mr. Baker. I
5 will certainly allow you to do that. Do we have other
6 motions?

7 MR. BAKER: Your Honor, I think we do have a
8 few other matters.

9 THE COURT: Let's take about a 15-minute
10 recess. If you need the opportunity to talk to
11 Mr. Burgess during that period of time, let me know,
12 Mr. Baker. Thank you. Court will be in recess 15
13 minutes.

14 (Whereupon there was a recess).

15 THE COURT: Yes, sir, Mr. Baker.

16 MR. BAKER: Your Honor, I have got a couple of
17 other motions. First of all, I want to bring to the
18 Court's attention that I have been told by Mr. Burgess
19 that he wishes to fire me at this time. I just wanted
20 to let the Court know.

21 I don't know if Mr. Burgess wants to speak to
22 that. While I'm on that subject, Your Honor -- and this
23 is a matter I had written Mr. Burgess about and intended
24 to bring up to the Court anyway -- I do all the court
25 criminal work for my firm.

1 I think Mr. Salley was originally appointed on
2 this case. I have been handling it for two, two and a
3 half years. So I just want to make sure there is not
4 going to be any problem.

5 I told Mr. Burgess I'm the one that's going to
6 try the case. I've been the one handling it, the only
7 one who has been handling it for over two and a half
8 years.

9 Aside from that, he just indicated -- he
10 didn't mention that issue, but he indicated he did want
11 to fire me just a few moments ago. I did want to bring
12 that to the Court's attention.

13 THE COURT: All right. Mr. Burgess, I would
14 be glad to hear from you.

15 THE DEFENDANT: Your Honor, this is a decision
16 I made a few minutes ago when he was making the decision
17 on the motion to suppress. The things I felt he didn't
18 do, I wasn't -- I don't think I can let that go on
19 during my trial. No, I just don't think he is important
20 enough to represent me on such severe charges.

21 THE COURT: I mean, Mr. Burgess, it appears
22 that Mr. Baker has so far made all the motions that any
23 good trial lawyer would make. In fact, he has made
24 motions in addition to some of the motions that good
25 lawyers would make, for example, 17-13-150 and 17-13-30,

1 I believe it was, the sufficiency of the indictment and
2 such like that.

3 Obviously you are facing very serious
4 consequences should you be convicted, Mr. Burgess. I
5 wouldn't want you to be facing a jury with those serious
6 charges without legal counsel, without an attorney.

7 THE DEFENDANT: Right.

8 THE COURT: He has been working on your case
9 for two years. It appears from my observations -- and
10 these are the only observations I have had from being in
11 the courtroom today -- that he is well versed in the
12 case, in the trial. What do you want to do, proceed as
13 your own lawyer?

14 THE DEFENDANT: No, sir, I don't want to
15 proceed as my own lawyer because I myself are not
16 educated enough in the law to proceed with such matters.
17 But it's one thing to file motions, and it's another
18 thing to argue motions, argue them effectively.

19 I assisted in getting him to file those
20 motions. I did some research and work myself and had
21 him file those motions, but like I said, it's one thing
22 to file the motion and another thing to argue the
23 motion.

24 I don't feel like he argued those motions
25 effectively. And if he didn't do that effectively, I

1 can't put myself in such a situation to have to go
2 through trial on these charges, uneasy about his conduct
3 what it would be during trial.

4 THE COURT: Mr. Burgess, just because you lose
5 a motion perhaps, just because I rule against you -- and
6 it's not against you -- I rule based on my understanding
7 of the law. It's not that I rule for or against you or
8 for or against the State.

9 I look at the facts and try to apply the facts
10 to the law as I understand the law is. It's not a
11 matter of arguing a particular way or not arguing a
12 particular way, it's a matter of presenting that
13 information to the Court and allowing the Court to rule.

14 Quite frankly, that's why we have appellate
15 courts. My understanding of the law might not be
16 correct if it were ever to get to an appeal. You know
17 that. Like you say, you helped prepare these motions
18 and such. That's what you are telling me. I take you
19 at your word, and I think a client should be involved
20 with his attorney because it's your case, it's your
21 decisions.

22 THE DEFENDANT: I kind of got, you know, upset
23 because I asked him to sort of object to when you was
24 talking about the probable cause issue. I feel like the
25 police, they are over there telling lies basically, and

1 he didn't object. So I'm getting upset at this.

2 THE COURT: That's really not a basis for an
3 objection that you feel like somebody is telling a lie.
4 That's what the jury ultimately fleshes out on the
5 credibility.

6 THE DEFENDANT: It's not so much them telling
7 lies, it's the things that -- you are asking for
8 probable cause. For him to know -- excuse me, not
9 probable cause, prejudice -- for him to know where the
10 prejudice or a lie is at and not say anything, then I
11 feel like he's messing up my case and messing up the
12 chances of me winning this motion.

13 THE COURT: Well --

14 THE DEFENDANT: I was telling him -- excuse
15 me. Go ahead, Your Honor.

16 THE COURT: No, sir, that's all right. You
17 are not interrupting me. I appreciate your attitude
18 right now, Mr. Burgess. But as far as prejudice, that
19 was my concern. Just because somebody doesn't get a
20 piece of paper at a certain date and time, if that's
21 actually what happened, the question becomes: How does
22 that prejudice an individual?

23 THE DEFENDANT: Right.

24 THE COURT: What is the substantive
25 prejudicial effect of that?

1 THE DEFENDANT: Right.

2 THE COURT: I believe based on my
3 understanding that I ruled consistent with what the case
4 law is in South Carolina. All you are asking me is you
5 don't want Mr. Baker to represent you, you want to fire
6 him; correct?

7 THE DEFENDANT: Correct.

8 THE COURT: Is that what you are asking me?

9 THE DEFENDANT: Correct.

10 THE COURT: Well, the State over here is ready
11 for trial. We have selected a jury.

12 THE DEFENDANT: I'm ready for trial, too, just
13 not with this counsel. I mean, two murder charges, no.
14 If it was dealing with drug charges, no. But I can't --
15 I just don't feel the energy into the case.

16 I still feel like the points could have been
17 argued better. So I'm not going to get into a trial and
18 on cross examination, there is no effective aggression
19 in it. I don't feel like that would be a smart move.

20 THE COURT: So you want me to call another
21 lawyer to come in here today and start representing you?

22 THE DEFENDANT: I mean, sir, you do what is
23 necessary, but please don't subject me to fail on
24 account of having bad counsel. You do what you have to
25 do.

1 THE COURT: I don't feel like you've got bad
2 counsel.

3 THE DEFENDANT: I'm not saying Mr. Baker is
4 bad counsel. He is just not what I feel I want to go
5 into this thing with.

6 MR. BAKER: Can I speak, Your Honor?

7 THE COURT: Yes, sir.

8 MR. BAKER: I know Your Honor is in a tough
9 situation, but based on what he said, I will make a
10 motion to be relieved. If he doesn't have any
11 confidence in me, I don't feel like I can effectively
12 represent him if he doesn't have any confidence in me
13 going forward in the trial. I would make a motion to be
14 relieved based on that.

15 THE COURT: There is a difference between
16 effective and then your client having confidence in you.
17 I don't think those things are the same. Anything
18 further, Mr. Burgess?

19 THE DEFENDANT: Evidently you've made your
20 decision.

21 THE COURT: No, sir, I haven't made my
22 decision.

23 THE DEFENDANT: I mean, on the motions, the
24 whole situation. I'd just like to say I had another
25 opportunity to bring that motion into existence, but I

1 was foolish and I pled out.

2 These people came into my mother's home. They
3 ransacked the door. My name was sitting right on the
4 front porch. The ransacked the door and come into the
5 house, ten guns in my face.

6 I'm asking them, what's the problem. They got
7 masks on. They handcuffed me in the house, take me
8 outside, place me in the car for a second, uncuff me,
9 asking me questions. I asked them could I call an
10 attorney.

11 "You don't need an attorney, you know. You
12 don't need an attorney. Would you come down and answer
13 questions?" They are inside the house, rummaging
14 through the house, claim they find drugs and lock me up
15 and take me down to the police department.

16 Sometime later my other brother, he is
17 transported down there. We ran into each other. I get
18 on the phone with my mother. She's ecstatic (sic). She
19 tells me --

20 THE COURT: Mr. Burgess, let me stop you a
21 minute. I don't think you talking helps your case. I
22 just don't. It doesn't hurt it with me, but you have a
23 right to remain silent.

24 THE DEFENDANT: Right.

25 THE COURT: I would suggest at this point,

1 beside just addressing your motion, I would suggest that
2 you not address substantive issues in the case, all
3 right?

4 THE DEFENDANT: I don't feel like I have
5 anything to hide, but anyway with counsel, you can make
6 your ruling on that.

7 THE COURT: Thank you, Mr. Burgess. Does the
8 State have a position, Solicitor?

9 MR. MADSEN: Your Honor, we are ready to go
10 forward. I can tell Your Honor that I have dealt with
11 Mr. Baker on this case. I talked to him as late as
12 Saturday. He had called me or e-mailed me in reference
13 to some things.

14 We had gotten this case ready in the past with
15 a codefendant, and at the same time we were able to work
16 that codefendant out. I know that I had met with
17 Mr. Baker on that. He has reviewed everything, had the
18 case file, has seemed to me to do, as Your Honor noted,
19 everything, plus a little bit more on top of that.

20 Certainly this seems like the 11th hour.
21 We've got a jury waiting. We've got individuals slated
22 to come in from New Jersey and Atlanta via Kansas for
23 trial. We are ready to go, Your Honor.

24 I just don't think that basically saying he
25 doesn't argue aggressively enough is a basis to fire an

1 attorney. I've tried quite a few cases in this
2 courtroom and dealt with Mr. Baker in this case, and he
3 stacks up with any of the other attorneys I have dealt
4 with, probably a little bit more so because of his work
5 ethic.

6 THE COURT: Thank you, Solicitor. Anything in
7 reply, Mr. Baker?

8 MR. BAKER: Nothing, other than what I have
9 already said, Your Honor. I do feel like I am put in a
10 pretty tough situation where I'm representing a
11 defendant facing two murder charges and potentially life
12 in jail, and he is now indicating he doesn't have any
13 faith in me.

14 THE COURT: Well, I'm going to deny your
15 motion, Mr. Burgess. I find that you have an
16 experienced trial counsel that has been representing you
17 very effectively thus far.

18 I would say this, if at any time you need time
19 to confer with your attorney, I will certainly allow you
20 to do so. I tell you like I tell all parties, whether
21 it be plaintiffs or criminal defendants, this isn't some
22 kind of judicial marathon up here. I don't have a time
23 table by which we have to finish this trial by.

24 So if at any time you wish to talk with your
25 attorney and discuss particular matters, I will

1 certainly allow you to do so. I will respectfully deny
2 your motion.

3 Do you have other motions, Mr. Baker?

4 MR. BAKER: A couple other things, Your Honor.
5 First of all, just this morning I was provided with, and
6 I understand the State intends to introduce, some copies
7 of letters that they are going to represent were written
8 by my client to one of the codefendants.

9 I would just object to those letters being
10 introduced. I understand from the prosecution that they
11 don't actually have a return address of my client. I'm
12 not sure on that.

13 Also being given over at this late hour,
14 certainly I think a handwriting expert might have been
15 appropriate. I don't know that they are actually signed
16 by my client.

17 They are just represented by the codefendant,
18 Mr. Wise, to be from my client. We would just object to
19 those being introduced at this point, the fact I am
20 getting them at this late hour.

21 THE COURT: All right. Solicitor.

22 MR. MADSEN: Your Honor, at this point in
23 time, we don't even know we are going to introduce these
24 or not. We met with the codefendant on Saturday. He
25 had indicated to us at that point in time that he had

1 some letters that Mr. Burgess had sent to him. He
2 provided those to us, I believe, Sunday morning. We
3 provided it to Mr. Baker this Monday morning when we had
4 it.

5 At this point in time, we don't know if we are
6 going to introduce them. We don't quite understand some
7 of them. They might not have relevance to our case. If
8 at some point in time we do decide we are going to
9 introduce these, we will certainly let Mr. Baker know at
10 the appropriate time.

11 THE COURT: How do we know those are letters,
12 if we know, from Mr. Burgess?

13 MR. MADSEN: At this point in time, I don't
14 know if I can answer that question. We got these from
15 Mr. Wise, who is the codefendant. Until I talk with him
16 I can't give Your Honor an answer to that.

17 I plan on doing that this afternoon. He might
18 be able to come back and say, "I know that's Darrell
19 Burgess' handwriting." I don't have an answer until I
20 talk with him.

21 THE COURT: I will consider that a motion in
22 limine. At this point they would not be introduced
23 without some authentication. As Mr. Baker has brought
24 up, it may be that you end up with an issue concerning
25 expert testimony. Of course, I know you don't need

1 expert testimony for handwriting evidence, but it
2 certainly would have to be authenticated.

3 Mr. Baker, do you have other motions?

4 MR. BAKER: The next motion is State versus
5 Lyle, Your Honor, regarding a motion to suppress any
6 mention of any of my client's criminal record, which I
7 understand we may address that later. It's kind of a
8 State v. Lyle and motion to suppress in one to find out
9 what, if anything, they plan on introducing.

10 I understand maybe there is some statement
11 that they are going to say or one of the codefendants
12 made claim that my client made at some point on
13 September 4th or 5th.

14 THE COURT: Solicitor.

15 MR. MADSEN: Your Honor, what I think
16 Mr. Baker is talking about is it's my understanding
17 Mr. Wise's testimony would be that when he goes to the
18 Cambridge Plaza Hotel or the old Best Western off of 26,
19 he sees Mr. Burgess' car, ends up going to a hotel room
20 where Mr. Burgess is, along with a white lady and a
21 black lady.

22 Mr. Wise says Mr. Burgess would whisper in the
23 ear of the black lady to come back at some point in
24 time, and he asked Mr. Wise if he had a gun. Mr. Wise
25 told him he did not.

1 He told him that he wanted to, quote, unquote,
2 kill these bitches. He makes that statement. They end
3 up leaving from there. I believe that's what he is
4 talking about.

5 MR. BAKER: That's correct, Your Honor. Just
6 during the plea this morning, I discovered that he may
7 intend to testify to that fact. I would just argue,
8 Your Honor, that doesn't go toward identity or existence
9 of common scheme or plan, that it is not so closely
10 related to the crime that was actually committed that it
11 should be excluded and not be allowed before the jury.

12 THE COURT: So this was on the 4th of
13 September?

14 MR. MADSEN: It's probably the early morning
15 hours of the 5th, the same time as the murder. The
16 murders occur probably sometime in the early morning
17 hours.

18 THE COURT: Of the 5th?

19 MR. MADSEN: Of the 5th.

20 THE COURT: This is afterwards?

21 MR. MADSEN: Before. This is right before,
22 probably within the hour.

23 THE COURT: He asked -- the allegations are
24 Mr. Burgess asked Mr. Wise for a gun because he was
25 going to kill these two females?

1 MR. MADSEN: And then the next stop was
2 actually when the Defendant or Mr. Burgess got an actual
3 gun and ended up killing two people.

4 THE COURT: So how would that be admissible
5 then on the two females?

6 MR. MADSEN: Judge, we think it goes not only
7 to motive, but state of mind, part of the res gestae.
8 It shows his mindset at that point in time. I think
9 Mr. Wise would testify that when he gets there, he can
10 tell that Mr. Burgess has been drinking or is
11 inebriated, that he is upset about something.

12 He asked him for a gun. There are two women
13 at that point in time he says he is going to kill.
14 Probably within the hour he ends up killing two other
15 people. We certainly think that that would be
16 probative.

17 THE COURT: So the whole issue is your theory
18 then that Mr. Burgess just wants to kill two people?

19 MR. MADSEN: No, sir. Ultimately you have
20 got -- it just kind of shows his state of mind. I think
21 Mr. Wise would testify that he is angry, that he does
22 ask him for the gun. He tells him he doesn't have one.
23 The next stop is they go get a gun.

24 MR. BAKER: Your Honor, I think the law is
25 that evidence of another crime or bad act must have a

1 direct bearing on or be related to the commission of the
2 later crime.

3 In this case I think it's too far removed.
4 Certainly under 403 the probative value of that evidence
5 is substantially outweighed by any prejudice that there
6 might be, and the evidence should be excluded.

7 MR. HUBBARD: Judge, if I can jump in. There
8 is one other thing that we did not go into that is
9 important about those statements.

10 THE COURT: Yes, sir.

11 MR. HUBBARD: Mr. Wise, as you know, pled this
12 morning to accessory after the fact. He still had
13 pending charges for accessory before the fact and for
14 murder itself.

15 Our contention, when we are looking at
16 Mr. Wise, that these statements, some kind of statements
17 about killing two people were made. Obviously we've had
18 to wrestle with Mr. Wise because you are going to hear
19 he loves Darrell Burgess like a brother.

20 It has been like pulling teeth to get him into
21 court to see what he is going to do on his charges. It
22 is very conceivable for this jury to think that those
23 statements weren't about two women but about two
24 victims.

25 It's going to be a credibility issue for the

1 very witness we put up, Mr. Wise, who in many ways is
2 really coming from the other side of the courtroom. He
3 is protecting himself, but he's still got a man over
4 here that we are trying that he wants to protect.

5 Your Honor, it comes down to a credibility
6 issue there, and I believe the real issue -- and I know
7 it's our witness, Your Honor, but at the same time, just
8 because we are putting him up doesn't mean we have to
9 buy his entire statement.

10 He says enough to implicate Darrell Burgess,
11 and I don't know that he realizes he says as much as he
12 says. But, Your Honor, those statements, it's just --
13 and it's within the hour.

14 In fact, he is called by Darrell Burgess to
15 the hotel to pick up Darrell Burgess that night. That's
16 where he meets him. He says he's agitated. He is
17 talking about killing these two women, wants a gun.

18 Then they go to his house to get a gun. The
19 next stop they are going to Gaston. That's if you
20 believe that first stop wasn't planning to kill these
21 two people in Gaston.

22 If the jury wants to believe Michael Wise is
23 guilty of more than he pled, they have the right to
24 think that in figuring out the facts, the whole truth.
25 They don't have anything they can do about it because

1 the focus is still going to be on Mr. Burgess.

2 It's clearly relevant. It's clearly relevant
3 and shows the state of mind of a man who, within an hour
4 or two, ends up pulling a trigger. That's why we think
5 it's admissible, Your Honor.

6 THE COURT: Well, I was trying to go through
7 the Rolodex, as slim as it is, in my mind of some of the
8 Lyle cases, like Beck, like Cheeseborough, like Beckham,
9 like Williams, like Smith. I'm trying to see -- first
10 off, it may be a credibility issue as to Mr. Wise.

11 But how does that then come into play,
12 considering the fact that evidence of other crimes or
13 wrongs must be shown by clear and convincing evidence?
14 How does that come into play, number one? Then, number
15 two, it wouldn't go to identity because you have an
16 eyewitness.

17 I don't know if your eyewitness is going to
18 testify or not. I don't know, but I think he is on the
19 list. So I don't think an eyewitness is necessary
20 there. I assume it wouldn't go to the existence of a
21 common plan and scheme where he just wants to shoot two
22 people at different times, common plan and scheme.

23 I assume it wouldn't go to absence of mistake
24 or accident. I assume that won't be his defense, that
25 he accidentally shot two people. Let me look at some of

1 the cases.

2 Right now I will just take that under
3 advisement as a motion in limine. I just can't quite
4 determine where it's going right now. I assume there is
5 no issue about not bringing up his criminal record
6 unless he testifies.

7 MR. HUBBARD: That's correct, Your Honor.

8 THE COURT: That was part of Mr. Baker's
9 objection or motion.

10 MR. BAKER: Your Honor?

11 THE COURT: Let me ask you this. Is there any
12 independent corroboration that there were two females,
13 one Caucasian and one African-American, at the motel?

14 MR. MADSEN: No, sir.

15 MR. HUBBARD: Your Honor, I guess going back
16 to that, we are not saying that -- we aren't sure he is
17 intending to kill two people at a motel basically is
18 what we are saying.

19 We're saying basically the importance is he
20 was talking about killing two people, and it would be up
21 for the jury to believe whether -- who he was trying to
22 kill that night.

23 Circumstantially, isn't it a coincidence that
24 within an hour or so, he does kill two people? That's
25 kind of where we are going with that. A motive, talking

1 with the man who drove him there, who waited there for
2 him, and who drove him away from the scene, a motive to
3 kill two people. The second thing is the state of mind
4 to kill, and he acted on that state of mind.

5 THE COURT: I will look at some of those
6 cases. If you have any you want me to look at, I will
7 be glad to do that.

8 MR. MADSEN: Yes, sir.

9 THE COURT: Any other motions, Mr. Baker?

10 MR. BAKER: Your Honor, a couple of other
11 things. The State has named a couple of witnesses from
12 different phone companies, Your Honor. I'd just like to
13 note on the record an objection to those people
14 testifying because I don't know whether the solicitor
15 has been able to get in touch with them, but I don't
16 have any way of contacting these people.

17 I don't have any addresses. All I have is
18 names. I don't have any phone numbers. It's my
19 understanding that potentially some of their testimony
20 is going to be -- maybe they are even going to be
21 testifying as experts, I don't know.

22 But I think in this kind of situation if they
23 are going to come in here and start testifying about
24 being able to pinpoint locations of cell phone use and
25 so forth, I ought to have had a right before now to have

1 been able to talk to them and find out what it is they
2 are going to rely on, what the basis is for the
3 testimony and so forth, especially if it's going to be
4 expert testimony. I haven't been given that
5 opportunity. I don't even know if the solicitor knows
6 how to get in touch with these individuals.

7 THE COURT: What about these folks, Solicitor?

8 MR. MADSEN: Judge, whatever I had to get in
9 contact with them, I have given to Mr. Baker. There is
10 one that I have not been able to get in contact with.
11 We have made arrangements for him coming here. He left
12 me an e-mail address and a phone number, I believe.

13 Mr. Baker has both of those. In fact, I know
14 and I think I told Mr. Baker on Friday, as I was calling
15 him trying to get in contact with him, as soon as I hung
16 up, I had a voicemail from him indicating that Mr. Baker
17 had tried to contact him.

18 I called the number right back as soon as I
19 hung up, could not get in touch with him. He is
20 traveling from Kansas to Atlanta to testify in another
21 case there and then will come here.

22 The other two, I have provided Mr. Baker with
23 Shelley Ulyak, who is from Cingular, her number. She
24 can be tough to get in touch with. I've never been able
25 to call her straight out and get her. It's generally a

1 call back from her.

2 Then there is another gentleman from Cingular
3 that, as I told Mr. Baker, generally they don't give you
4 contact numbers. They contact you. I gave him what I
5 had on that, but I can't force him to call him or to
6 call him back. I'm sure he left messages.

7 THE COURT: When do you anticipate them being
8 here?

9 MR. MADSEN: The lady from New Jersey, Shelley
10 Ulyak, is coming in Wednesday morning, flying back out
11 Wednesday night. The gentleman from Sprint is coming
12 from Kansas to Atlanta, I believe, late Tuesday, driving
13 from Atlanta to Lawrenceville, Georgia, testifying there
14 apparently Wednesday morning, coming here sometime
15 Wednesday afternoon, and we are flying him back to
16 Kansas Thursday evening.

17 The gentleman from Cingular is local here. I
18 got an e-mail from him today about some kind of conflict
19 he has on, I believe, the 31st and wanting to testify at
20 other times, but quite honestly I haven't had a chance
21 to get back with him.

22 THE COURT: It's the lady from New Jersey, the
23 gentleman from Kansas, and the local gentleman. Just
24 make sure Mr. Baker has the opportunity to interview
25 these individuals.

1 MR. BAKER: Just for the record, Your Honor, I
2 have spoken with Ulyak, a female. I did speak with her.
3 For the record the two that I was concerned about is Sam
4 Alfakir from Cingular and Eric Tyrell from Sprint. I
5 was given an e-mail for Eric Tyrell, which I have sent
6 him an e-mail. I didn't have a phone number and I
7 hadn't got a response.

8 THE COURT: Just make sure he gets an
9 opportunity to speak with them before they testify or we
10 will take it up in camera or both. Thank you,
11 Solicitor.

12 MR. BAKER: Your Honor, the other things are
13 just a couple of really housekeeping matters. I'd just
14 like to renew my Rule 5 and Brady motion, Your Honor, on
15 the record.

16 It's my understanding from listening to the
17 guilty plea earlier of Wise, I think I have a fair
18 understanding of what the offer is or the agreement is
19 with him. I just want to make sure what, if any,
20 agreements there are with Johnson so that I'm aware of
21 those and I can prepare for cross examination.

22 THE COURT: All right. Solicitor.

23 MR. MADSEN: There are no agreements with
24 James Johnson. He has obviously heard what we have in
25 place with Mr. Wise.

1 THE COURT: All right. You have fully
2 complied with Rule 5 and Brady, Solicitor?

3 MR. MADSEN: Yes, sir.

4 MR. BAKER: A couple of other things, Your
5 Honor. Just maybe a remainder to the individuals that
6 were involved in the search of Ms. Burgess' home not to
7 get into other illegal matters which may have been -- or
8 illegal items which may have been found. There were
9 allegedly some drugs found there, just to remind the
10 witnesses on that.

11 THE COURT: I assume you weren't going into
12 that, Solicitor.

13 MR. MADSEN: No, sir.

14 MR. BAKER: Then I would make a request and,
15 of course, this would be more appropriate tomorrow that
16 the witnesses in the case be sequestered.

17 THE COURT: As far as sequestering witnesses,
18 I obviously allow it. I don't know who the individuals
19 are that may be related to the victims. Obviously, they
20 can remain, their chief investigating officer, their
21 evidence custodian. These other type of witnesses for
22 example, the telephone witnesses, I personally don't see
23 any need. You are talking about primarily fact
24 witnesses?

25 MR. BAKER: Correct, Your Honor.

1 THE COURT: I will grant that motion as to
2 fact witnesses and the other officers, except the chief
3 officer and the evidence custodian.

4 MR. BAKER: One other matter, Your Honor.
5 There is one witness I have attempted to serve. We got
6 an affidavit of non-service on several different
7 occasions. I actually have her cell phone. I talked to
8 her, but she will not give me her address. She is in
9 Rock Hill, Tracy Klein.

10 I have not been able to get her under subpoena
11 and secure her presence here and anticipate that I may
12 need her testimony in the defense case. Based on that
13 if I can't get her to trial, I think the rules allow me
14 to make a motion for a continuance if I tried to serve
15 her, and I have.

16 Even through lunchtime we were trying to get
17 up with her. I don't know if law enforcement or anyone
18 from the Solicitor's Office can assist. Maybe they know
19 where she is, but that is the situation. I am trying to
20 get her under subpoena, but I have not been able to.

21 THE COURT: All right. Solicitor, do you have
22 any position on her? Do you know who she is?

23 MR. MADSEN: I know who she is but don't
24 really understand the relevance. We have not talked
25 with her, and we do not know where she is at.

1 MR. BAKER: I can speak to the relevance, Your
2 Honor, if I need to.

3 THE COURT: All right. I will certainly
4 listen to whatever motion I need to listen to if you
5 comply with Rule 7 of the Rules of Criminal Procedure.
6 I would be glad to see if the sheriff is willing to
7 assist in the service if she is necessary and relevant.

8 MR. BAKER: We certainly think it would be
9 beneficial, Your Honor, if I can possibly get the
10 sheriff to assist. I am trying to find the affidavit of
11 non-service.

12 THE COURT: Do you know where she is at?

13 MR. BAKER: I'm sorry?

14 THE COURT: Do you know where she's at or
15 where she stays?

16 MR. BAKER: I know she's in Rock Hill. I have
17 a cell phone number. My process server has tried to
18 serve her on a number of occasions and has been unable
19 to reach her.

20 There is a statement in the file that I was
21 provided in discovery where she is one of the
22 individuals who entered this home after they allege that
23 my client killed these two people.

24 She makes some statement about entering the
25 back of the home, seeing these individuals watching T.V.

1 and hearing possibly one of the victims clear their
2 throat. This was sometime after they were supposedly
3 murdered.

4 THE COURT: Do you have that statement?

5 MR. BAKER: Your Honor, if I need to publish
6 this to the prosecution, I can.

7 (Hands to Court).

8 THE COURT: As I understand this, this would
9 be and this would depend on whatever time -- the State
10 is alleging that the incident occurred the early morning
11 hours of the 5th, correct?

12 MR. BAKER: That's correct, Your Honor, at
13 3:00 a.m. on the 5th.

14 THE COURT: This statement is that between
15 6:30 and 7:00 p.m. on the 5th?

16 MR. BAKER: Correct.

17 THE COURT: She heard David -- that's David
18 Slice? Is that who the reference is to?

19 MR. BAKER: Yes, sir, correct.

20 THE COURT: Clearing his throat and watching
21 T.V.

22 MR. BAKER: That would be after the 3:00 a.m.
23 period of time, right.

24 THE COURT: What time did the officers respond
25 to the residence?

1 MR. MADSEN: On the 6th.

2 THE COURT: The 6th. Have you run her on
3 N.C.I.C., Solicitor, to see if she is there?

4 MR. MADSEN: Until this point in time, I
5 wasn't aware that they were necessarily wanting to call
6 her as a witness. So, no, sir, and I have not spoken
7 with her.

8 MR. BAKER: Your Honor, she is on our witness
9 list.

10 THE COURT: Sir?

11 MR. BAKER: She is on our witness list.

12 THE COURT: Are there any steps that can be
13 taken to assist in attempting to locate Ms. Klein,
14 Solicitor? I know I'm sounding like Judge Clary, but
15 sometimes I can't help myself.

16 MR. MADSEN: With her being in Rock Hill and
17 only having a cell phone and not a hard address, I
18 really don't know to be quite honest. I've never had
19 any contact with her during the entire case. I've read
20 the statement and know who she is, but she has never had
21 any contact with our office.

22 THE COURT: Tell me what you want me to do,
23 Mr. Baker.

24 MR. BAKER: Your Honor, if I can't secure her
25 attendance, I would ask and I think the rules allow me

1 to ask for a continuance per Rule 7 (b) based on the
2 fact that we have attempted process on her and have been
3 unable to get her under subpoena. That has been really
4 through the weekend.

5 THE COURT: Solicitor, can you have someone
6 contact or an officer contact Ms. Klein's mother at the
7 residence in Lexington County in Gaston and see if they
8 can talk with her mother and see if they can get an
9 address. Because it appears the process server talked
10 with an unidentified teenage female at that residence
11 that did not know the address in Rock Hill.

12 MR. MADSEN: If Mr. Baker will provide me that
13 information, I will provide it to law enforcement.

14 THE COURT: It looks like -- and he can give
15 you a copy of this affidavit of non-service. You don't
16 have any objection to that, Mr. Baker?

17 MR. BAKER: No, sir, Your Honor.

18 THE COURT: It looks like the same address,
19 the Gaston address that's on her statement where her
20 mother lives, Solicitor. Was the 25th the first time
21 you attempted to effect service or your process server?

22 MR. BAKER: I think it says January 19th,
23 20th, and 24th, Your Honor.

24 THE COURT: All right. Anything further?

25 MR. BAKER: That's it's from the defense, Your

1 Honor.

2 THE COURT: Anything from the State?

3 MR. MADSEN: Your Honor, we filed a motion
4 with Mr. Baker as far as third-party guilt, but I don't
5 think we need to go there at this point in time unless
6 that becomes an issue during trial.

7 MR. BAKER: I'm sorry, Your Honor. I was
8 conferring with my client.

9 THE COURT: Third-party guilt. He said he
10 filed a motion, but he doesn't think we need to visit
11 that at this time until we get further into the trial.

12 MR. BAKER: I would agree with that, Your
13 Honor. I know there are some witnesses I have under
14 subpoena that may go to that issue that I would call in
15 the defense case if things go -- or at least I plan on
16 doing that. At that time I guess we will make that
17 decision.

18 There is a situation with one of the first few
19 witnesses I understand that the State may call, that
20 being Mr. Michael Melton, who gave a statement
21 indicating he had seen these victims be threatened on a
22 number of occasions by a particular individual, not my
23 client, that I did intend to cross examine him about,
24 just to let the Court know and to let the solicitor
25 know.

1 THE COURT: Is that what you are referring to,
2 Solicitor?

3 MR. MADSEN: That was one of the things that I
4 thought is that Michael Melton, who is the roommate, had
5 indicated in the past that the victims had had a dispute
6 with an individual they knew as Twelve at various times.

7 Certainly, Your Honor, we think based on the
8 that, that is going to fall under third-party guilt
9 because it just basically casts some bare speculation
10 that since they've had disputes in the past with Twelve,
11 if I remember correctly probably over drug debts, that
12 that means that Twelve is the person. That certainly
13 will fall under third-party guilt.

14 THE COURT: I would tend to agree with that
15 based on what I know; however, if that witness
16 testifies, and I believe you said his name was Melton?

17 MR. BAKER: Michael Melton, Your Honor.

18 THE COURT: Perhaps we could take that part of
19 the testimony up in camera if you can tie it in any
20 closer or anything of that nature.

21 MR. MADSEN: He will be our first witness.

22 THE COURT: All right.

23 MR. BAKER: And depending on how Your Honor
24 rules ultimately on this motion or this issue, I might
25 have to proffer some things, Your Honor, out of the

1 presence of the jury.

2 THE COURT: All right. Anything further,
3 Solicitor?

4 MR. MADSEN: No, Your Honor.

5 THE COURT: Court will be in recess until
6 9:30 in the morning. Thank you very much.

7 (Whereupon the proceedings were concluded for
8 January 28, 2008).

9 (The following proceedings were reported on
10 January 29, 2008).

11 (State's Exhibits Number 1-17 are marked for
12 identification).

13 THE COURT: Before we get started, the clerk
14 came to me with a question concerning a juror this
15 morning.

16 Madame Clerk, would you relate to the parties
17 what you related to me concerning the juror this
18 morning.

19 CLERK: Yes, sir, Your Honor. Juror number
20 72, Mr. Emanuel, approached me in the hallway, said that
21 he needed to let you know that he recognized a lady in
22 the audience.

23 He didn't say who or the name. He said he
24 wasn't sure of the name. He didn't recognize the name,
25 but he did recognize her face, that it's either her son

1 or her husband, but some kind of kin of hers works with
2 him, and he wanted to speak with the judge about it.

3 THE COURT: I assume y'all want me to bring
4 him out and ask him about that.

5 MR. HUBBARD: I think that would be prudent,
6 Your Honor. We are getting our victim's family in right
7 now if it happens to be one of the victims.

8 THE COURT: Is that correct, Mr. Baker?

9 MR. BAKER: Yes, Your Honor.

10 THE COURT: If you would bring me just
11 Mr. Emanuel, please.

12 (The juror enters the courtroom).

13 THE COURT: Good morning, Mr. Emanuel. How
14 are you, sir?

15 JUROR: Great.

16 THE COURT: The clerk, Ms. Frick, related some
17 information to me this morning. Would you relate that
18 to me now in court.

19 JUROR: Yes, sir, I actually yesterday evening
20 realized that I knew somebody that worked with me that
21 was a family member here. When I come in and you let
22 the jurors back out, I recognized somebody I knew. Her
23 brother actually works with me.

24 THE COURT: When you say a family member, that
25 would be a family member of one of the victim's family

1 or a family member of Mr. Burgess?

2 JUROR: Victim's family.

3 THE COURT: Do you know who that person is or
4 do you see her in the courtroom?

5 JUROR: I believe it's Georgette Slice.

6 THE COURT: Georgette Slice. So that would be
7 a member of Mr. Slice's family?

8 JUROR: Yes, sir.

9 THE COURT: You work with her?

10 JUROR: I work with her brother. He actually
11 works for me.

12 THE COURT: Her brother actually works for
13 you?

14 JUROR: Yes, sir.

15 THE COURT: The fact that Ms. Georgette
16 Slice's, a member of the victim's family, brother works
17 for you.

18 JUROR: Yes, sir.

19 THE COURT: And you are his supervisor?

20 JUROR: Yes, sir.

21 THE COURT: Could you still be a fair and
22 impartial juror to both the State and the defense in
23 this case?

24 JUROR: Yes, sir.

25 THE COURT: All right. Thank you. You may

1 step back to your jury room. Do not speak about this to
2 any other members of the jury, Mr. Emanuel.

3 JUROR: Yes, sir.

4 (The juror leaves the courtroom).

5 THE COURT: Would y'all have any additional
6 voir dire from the State?

7 MR. MADSEN: No, sir.

8 THE COURT: From the defense?

9 MR. BAKER: Your Honor, I might just ask
10 whether he discussed that in the back with any other
11 members of the jury. Just based on what he said up to
12 this point, I would ask that he be removed for cause.

13 THE COURT: You would ask what?

14 MR. BAKER: That he be removed from the jury
15 for cause.

16 THE COURT: All right. What relationship is
17 Georgette Slice to the victim David Slice?

18 MR. MADSEN: His estranged wife. I wouldn't
19 call her an ex-wife. I think they were still married,
20 but they were estranged. Obviously Mr. Slice was living
21 with Kim Fauscette at that time.

22 THE COURT: So what relationship, Solicitor,
23 would be the individual that Mr. Emanuel is saying he
24 works with or supervises to David Slice?

25 MR. MADSEN: My guess is brother-in-law.

1 MR. BAKER: That's my understanding.

2 THE COURT: Brother-in-law. Bring him back in
3 for me, please.

4 (The juror returns to the courtroom).

5 THE COURT: Mr. Emanuel, just a couple more
6 questions. You have not discussed this with anyone in
7 the jury room prior to me talking to you about it or
8 since?

9 JUROR: No, sir.

10 THE COURT: As I understand the relationship,
11 the gentleman you work with would have been David's
12 brother; is that correct?

13 MR. MADSEN: Probably brother-in-law.

14 THE COURT: David's brother-in-law. What is
15 the gentleman's name you work with?

16 JUROR: Eugene Ford.

17 THE COURT: Eugene Ford. So that would have
18 been David's brother-in-law?

19 JUROR: Yes, sir.

20 THE COURT: So the fact, again, the fact that
21 you work with one of the victim's brothers-in-law, could
22 you still be a fair and impartial juror to both the
23 State and the defense in this case?

24 JUROR: Yes, sir.

25 THE COURT: You haven't heard anything about

1 the case?

2 JUROR: No, sir.

3 THE COURT: Prior to being selected for jury
4 service?

5 JUROR: No, sir.

6 THE COURT: You didn't even know that it had
7 happened?

8 JUROR: Right.

9 THE COURT: When you say right.

10 JUROR: I didn't know, you know, put names and
11 faces together, Slice. I just recognized the face.

12 THE COURT: Now that you have put those names
13 and faces together, you still have no recollection of
14 any knowledge about the case?

15 JUROR: No, sir.

16 THE COURT: All right. Thank you,
17 Mr. Emanuel. You may return to your jury room.

18 (The juror leaves the courtroom).

19 THE COURT: Anything further, Solicitor,
20 Mr. Baker?

21 MR. MADSEN: No, sir.

22 MR. BAKER: Your Honor, I would again ask that
23 Mr. Emanuel be removed for cause. He has indicated that
24 he is a supervisor of one of the victim's family
25 members.

1 I think it's human nature that he could not be
2 impartial in this matter and would ask that he be
3 removed for cause from the jury. I think it would be
4 proper for that to happen at this point.

5 THE COURT: Yes, sir.

6 MR. MADSEN: I just think he gave appropriate
7 answers that he could be fair and impartial. This is
8 obviously a murder case, and he hasn't even heard from
9 this fellow that works for him that there is an
10 estranged brother-in-law who has been murdered.

11 I think that is telling, and he has answered
12 the Court, was solid in his answers, that he would be
13 fair and impartial and had not heard anything or
14 discussed anything about the case.

15 THE COURT: Yes, sir. I would have to deny
16 your motion based on State versus Elmore. In that case
17 actually a relative of one of the prosecutor's was
18 selected for jury and was authorized to be a member of
19 that jury.

20 I think I have to take jurors at their word.
21 I can't second-guess that. That's why I even went and
22 asked him once he put the face and name together if he
23 recollected anything about the facts of the case, and he
24 says he knows nothing. I can't sit up here and decide
25 that jurors won't follow the law.

1 MR. BAKER: Just to put a couple of things on
2 the record, Your Honor.

3 THE COURT: Certainly.

4 MR. BAKER: Obviously, had I known this prior
5 to selection of the jury, I would have struck
6 Mr. Emanuel from the jury. I have been denied that
7 right at this point.

8 He has indicated he works with a family member
9 of the victim. I think he would be -- it's just
10 prejudice to my client for us to go forward with him on
11 the jury.

12 THE COURT: All right. Thank you. Thank you,
13 Mr. Baker. Anything before we bring in our jury? Let
14 me get these photographs marked. The first ones I am
15 going to have marked are three photographs. I
16 understand there was no objections to those three. That
17 was the three that were clipped together, 18, 19, and
18 20. Would you mark these for identification purposes.

19 (State's Exhibit Number 18-20 are marked for
20 identification).

21 THE COURT: And then this group as 21 through
22 28 for identification.

23 (State's Exhibits Number 21-28 are marked for
24 identification).

25 THE COURT: As to State's 21 through 28 for

1 identification purposes only, at this time I'm going to
2 exclude State's 22. I think it shows basically the same
3 thing as State's 21 for identification. So it would not
4 be authorized in evidence.

5 State's 23 for identification -- and when I
6 say I will allow them, I'm saying I think they are
7 appropriate under 401, that they are relevant. They
8 are, of course, subject to testimony by the witnesses
9 that there is some connection between these photographs
10 and either a witness' testimony to corroborate certain
11 information or an expert witness' testimony, whether it
12 be ballistics or pathology.

13 So they are not in evidence yet. They are
14 subject to testimony in that regard. I'm excluding
15 State's 24 for identification under 403. I just think
16 given the time frame, as I understand it, from when the
17 homicide occurred to when it was reported that it shows
18 a large amount of blood on the body, under and around
19 the body of the female victim.

20 State's 25 for identification is again subject
21 to testimony tying it in with some fact in issue.

22 MR. BAKER: I'm sorry, Your Honor, are you
23 excluding these?

24 THE COURT: I am excluding absolutely 22 and
25 24. The others I'm saying it's still subject to

1 testimony in the case.

2 As far as State's 26 and 27 for
3 identification, Solicitor, they both show the forehead
4 wound to the victim, the female victim. One has and one
5 has not the scale in it. Of those I will exclude one of
6 those absolutely.

7 MR. MADSEN: The one with the scale is the one
8 that we would like to use.

9 THE COURT: I'm excluding State's 26 for
10 identification. State's 27 again is subject to being
11 tied in and State's 28.

12 I make those rulings based on State versus
13 Gerald, 564 S.E.2d 362, and I believe it's State versus
14 Ward, a 2007 case. I only have the West Law, 2007 W.L.
15 1893908.

16 I find that these photographs are not
17 calculated to arouse the sympathies or prejudice of the
18 jury. The probative value, subject to testimony of
19 course, would outweigh their prejudicial effect.

20 All of these that I am potentially allowing
21 are subject to being corroborated by witness testimony.
22 Do you understand that, Solicitor?

23 MR. MADSEN: Yes, Your Honor.

24 THE COURT: Do you understand that, Mr. Baker?

25 MR. BAKER: Yes, sir, Your Honor. You are

1 ruling per my motion in limine yesterday?

2 THE COURT: Correct.

3 MR. BAKER: On the photos.

4 THE COURT: Correct.

5 MR. BAKER: Just for the record, Your Honor,
6 it's my understanding you are allowing in 21, 23, 25,
7 26, 27, and 28.

8 THE COURT: No. I haven't allowed anything at
9 all, but they may elicit testimony on 21, 23, 25, 27,
10 and 28. I'm absolutely excluding 22, 24, and 26. As I
11 say, all of it is subject to testimony to corroborate
12 with whatever witness if they can do that.

13 MR. BAKER: I would just ask, Your Honor, that
14 the solicitor publish those pictures to me prior to them
15 attempting to introduce them so I can make the
16 appropriate objection on the record at that time.

17 THE COURT: All right. Generally you would
18 have to lay a foundation and show it to him, Solicitor,
19 if you would do that.

20 MR. MADSEN: Yes, sir. Can we take 22, 24,
21 and 26 and put them some place so they don't get mixed
22 in?

23 COURT REPORTER: I will do that, Judge.

24 THE COURT: Anything prior to bringing in our
25 jury? Anything additional.

1 MR. MADSEN: No, Your Honor.

2 THE COURT: Mr. Baker.

3 MR. BAKER: No, sir, Your Honor, not at this
4 time.

5 THE COURT: If you would bring us our jury,
6 please. It looks like juror Pinner is our foreperson.

7 (The jury returns to the courtroom at
8 9:54 a.m.)

9 THE COURT: Mr. Pinner?

10 FOREMAN: Yes, sir.

11 THE COURT: You are the foreperson?

12 FOREMAN: Yes, sir.

13 THE COURT: I hope that wasn't too difficult a
14 task with the election and such.

15 FOREMAN: No, sir.

16 THE COURT: I certainly appreciate you serving
17 for us.

18 Madame Clerk, would you swear our jury,
19 please.

20 CLERK: Yes, sir.

21 (The jury is duly sworn).

22 THE COURT: Mr. Foreman, ladies and gentlemen
23 of the jury, the case we are about to try is the case of
24 the State versus Darrell Burgess. What I will now say
25 is intended to serve as an introduction to the trial of

1 this case.

2 These remarks are not a charge on the law in
3 this case. I will instruct you on the law at the end of
4 the trial before you retire to consider your verdict.
5 This is merely an explanation of the procedure we will
6 follow in the trial so that you may better understand
7 what may be happening.

8 The Defendant is charged by indictments filed
9 in this court with the crimes of murder, two counts, and
10 possession of a firearm during the commission of a
11 violent crime, the elements of which will be explained
12 to you later.

13 These indictments, as I stated earlier, are
14 simply the charge by which the case is brought into
15 court, and they are not in any sense evidence of any of
16 the allegations they contain.

17 The Defendant has pled not guilty to these
18 indictments. The State therefore has the burden of
19 proving each and every element of the indictments beyond
20 a reasonable doubt. It will be your duty, ladies and
21 gentlemen, to decide whether the State has met that
22 burden.

23 Your purpose as jurors is to find and
24 determine the facts. You are the sole judge of the
25 facts. If at any time I make any comment regarding the

1 facts, you must disregard it.

2 You are to determine the facts from the
3 testimony you hear and the other evidence introduced in
4 court. It is up to you to determine the inferences
5 which you feel may properly be drawn from the evidence.

6 It is especially important that you perform
7 your duty of determining the facts diligently and
8 conscientiously because ordinarily there is no way to
9 correct an erroneous determination of the facts by a
10 jury.

11 On the other hand and with equal emphasis, the
12 same law that makes you the judges of the facts makes me
13 the judge of the law. The law as given by the Court is
14 the only law you may consider.

15 You must accept and follow it even though you
16 may disagree with it. I cannot tell you what the facts
17 are, and you cannot disagree with me about what the law
18 is or should be.

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

25 Until I advise you to begin your

1 deliberations, you must not discuss this case with
2 anyone, including your fellow jurors, friends, family
3 members, and anyone involved in this case. After the
4 case is submitted to you, you must discuss it only in
5 the jury room with your fellow jurors.

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

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

18 It is important that you keep an open mind and
19 not decide any issue in the case until all of the
20 evidence has been presented, the parties have made their
21 closing arguments, and I have instructed you on the law
22 in the case.

23 It is your responsibility to determine the
24 guilt or innocence of the Defendant, and your verdict
25 must be based solely on the evidence as it is presented

1 to you in this trial and on the law as I instruct you
2 during and at the close of the trial.

3 In just a moment, the solicitor will make what
4 is called an opening statement in which the solicitor
5 will explain to you the issues in the case or at least
6 what the solicitor thinks the issues are in the case.
7 Mr. Baker, the attorney for the Defendant, may also make
8 an opening statement, although he is not required to do
9 so.

10 What the attorneys tell you during their
11 opening statement is not evidence in the case. It is
12 only their contention as to what the issues are. The
13 evidence in this case will be presented to you by the
14 testimony of sworn witnesses from this witness stand
15 and/or by any exhibits that may be introduced into
16 evidence.

17 From time to time during the trial, you may
18 here one of the lawyers say something like: Your Honor,
19 I believe we have a question of law or a matter of law
20 to discuss with you or Your Honor, may we approach the
21 bench or sometime I myself might find it necessary to
22 excuse you from the courtroom for a short while so the
23 attorneys and I may discuss a matter of law.

24 The reason for this is because you are the
25 judges of the facts in this case, and sometimes when I

1 am discussing matters of law with the attorneys, it may
2 be necessary for me to make some comment as to the facts
3 in connection with ruling whether or not a particular
4 law applies.

5 Since I am not supposed to tell you what I
6 think the facts are, I will then excuse you from the
7 courtroom while these discussions take place so that in
8 no way will you be influenced by anything that I might
9 say or do in connection with the facts.

10 In determining what the true facts are, you
11 must decide whether or not the testimony of the
12 witnesses is believable. It will be my responsibility
13 to rule as a matter of law as to whether certain
14 testimony is admissible at all or not, but once the
15 testimony is admitted whether or not you believe it is
16 solely for you to determine.

17 In deciding whether to believe a witness, you
18 have the right to consider the interest of any witness,
19 the bias of any witness, the prejudice of any witness,
20 the opportunity for the witness to have seen the matters
21 and things about which the witness may testify, and the
22 way the witness acts on the witness stand.

23 You have a right to consider anything that is
24 in the record that will help you evaluate the testimony
25 of the witnesses. That means it will be your duty to

1 pay close attention to these witnesses, to observe the
2 witnesses, to listen to the witnesses and to pay close
3 attention to the attorneys and to the Court.

4 Don't let your thoughts wander but give strict
5 attention to the testimony in the case so that at the
6 end of the testimony, after the arguments of counsel and
7 the charge on the law by the Court, you will then be in
8 a position to determine what the true facts are and to
9 apply the law to those facts and thus render a true and
10 just verdict.

11 It will be your added responsibility,
12 Mr. Foreman, to preside in the jury room and be the
13 jury's spokesperson here in court. It will also be your
14 duty to write the verdict, but I will give you further
15 instructions about that at the conclusion of the case.

16 Just several housekeeping matters. As I tell
17 jurors, when I want to take a break, we take a break.
18 The same goes for y'all. If you have been out here
19 sitting too long, your thoughts will wander. You'll get
20 to squirming in your seats. You won't realize how hard
21 it can be sometime to sit for an hour and a half or two
22 hours.

23 If anybody needs a break, please raise your
24 hand, and when y'all take your break, we will take our
25 break. It's no problem whatsoever. This is not some

1 type of judicial marathon. Again, if anybody needs a
2 break, please raise your hand and we will take our
3 break.

4 If you cannot hear, particularly those jurors
5 further away, we have a speaker system obviously in the
6 courtroom. I tend to speak loudly because I do want you
7 to hear. But if you cannot hear a particular witness or
8 the attorneys, please raise your hand, cup your ear, get
9 my attention, the attention of one of our fine bailiffs.
10 If you can't hear the testimony, you will not be able to
11 determine what the true facts are.

12 Many times in cases diagrams, exhibits,
13 photographs may be introduced. Sometime they may be
14 passed among the jury while you are out here in your
15 jury box.

16 If a document or photograph or chart or
17 exhibit is introduced in evidence and I allow it into
18 evidence, you will also have that document with you in
19 your jury room during your deliberations.

20 My point being is you do not have to memorize
21 them as they are passed among the jury while you are out
22 here in the courtroom. You, of course, may take all the
23 time you want to look at them as they are being passed;
24 however, you will have those documents in the jury room
25 during your deliberations.

1 Mr. Foreman, if you or any members of the jury
2 have any questions or concerns during the trial of the
3 case, just write out a note for me, knock on the door,
4 give it to the bailiff, and he will certainly get it to
5 my attention.

6 In order to preserve everyone's rights, I will
7 give the parties an opportunity to object to anything I
8 have said. Any exceptions to what I have said to the
9 jury by the State?

10 MR. HUBBARD: No, sir, Your Honor.

11 THE COURT: By the Defendant?

12 MR. BAKER: None, Your Honor.

13 THE COURT: We will now begin the trial.

14 Solicitor, you may address the jury.

15 **OPENING STATEMENT**

16 MR. HUBBARD: Thank you, Your Honor. In the
17 early morning hours of September 5, 2005, Kim Fauscette
18 and the man she lived with, David Slice, were in their
19 home watching T.V.

20 Kim Fauscette heard a noise, heard someone
21 coming to her door. She got up, went to the door, she
22 opened it, and there she saw a face, a familiar face,
23 someone she knew, someone she obviously trusted.

24 She opened that door and let him in, and the
25 minute that door opened, ladies and gentlemen, the

1 instant that door opened, the clock started ticking.
2 She had minutes to live. David Slice had minutes to
3 live.

4 You are going to hear that the man that came
5 in that house came there for one reason, to kill two
6 people, Kim Fauscette and David Slice. He was ready for
7 business.

8 You are going to hear of a brutal, brutal
9 murder where people were shot repeatedly, where the man
10 doing the shooting even reloaded to make sure his job
11 was done. That familiar face, that man at the door, is
12 that man right there, Darrell Burgess, a brutal, heinous
13 crime.

14 The judge is going to tell you what the
15 definition of murder is. It's the intentional killing
16 of another human being with malice aforethought. Malice
17 means a cold-hearted wicked intent, a malignant heart.

18 Ladies and gentlemen of the jury, when you
19 hear these facts, this is about as malignant as it gets.
20 But as we walk you through what happened those early
21 hours, we need to take you into another world, a world
22 you are probably not familiar with.

23 It's a world you might read about in the
24 newspapers, a world you might see on the news, but a
25 world that is probably pretty foreign to you. It's a

1 dark world. It's an ugly world. It's a world that
2 involves drugs. It involves a lifestyle that most of
3 you are probably not familiar with you. You might know
4 someone who is but it's distant.

5 David Slice and Kim Fauscette were crack
6 addicts, ladies and gentlemen. They were up those early
7 morning hours smoking crack, and they weren't alone.
8 There was a man by the name of James Johnson, an
9 acquaintance, friend, a fellow crack addict, a man you
10 are going to hear from.

11 He is going to tell you that he has been
12 addicted to drugs since Vietnam, and this little group
13 of people in this home, not bothering anybody else, not
14 doing what was right, but smoking crack.

15 Ladies and gentlemen, as you hear about drugs
16 and about this world that nobody should approve of, I
17 want to ask you to take a step back and look at what is
18 going on. We are not asking you to approve of the
19 actions of the victims or the actions of anybody you
20 hear of up on this stand that were involved in drugs.

21 We know that when you hear everything, ladies
22 and gentlemen, that you are going to see there was a
23 crime far outweighing anything like smoking crack
24 cocaine. You are here because there were two brutal
25 murders.

1 Just as we are taking you into this dark
2 world, I want to remind you, you have walked into a
3 strange world today. You walked through those doors and
4 when they brought you in and stood you up here and you
5 took an oath, it's a world of law.

6 You are not here to judge our victims. You
7 are here to judge the actions of a man. He killed those
8 victims. We are not hear to say what we think about
9 these people who were smoking drugs, but what we do here
10 today will say a lot about who we are.

11 James Johnson, the man that was there that
12 night, he is going to testify. He is going to testify
13 that he went over there for the purpose of taking them
14 drugs. You are going to hear James Johnson, one of
15 those guys when he takes drugs some place, he is
16 probably going to smoke it with them.

17 You are going to hear he has got a nickname
18 Tony Red. He is an older fellow. Like I said he was in
19 Vietnam. He has been on drugs forever. He's not some
20 flashy big-wheeling drug dealer. He is pathetic.

21 That night, ladies and gentlemen, he saw what
22 happened. He was there. He was in that room right when
23 it happened. He is going to tell he was sitting there,
24 the T.V. is on, they had smoked some crack: David
25 Slice, Kim Fauscette, James "Tony Red" Johnson.

1 They had smoked some crack, were drinking
2 beer, chitchatting. When Kim got up, she heard that
3 noise. When she opened the door, James Johnson
4 recognized Darrell Burgess. Darrell Burgess is much
5 younger than James Johnson, but he recognized that man
6 Darrell Burgess because he lives right across the street
7 from him, and he has for some time.

8 He said when he walked in the door, there was
9 nothing unusual, although they asked him, "How did you
10 get here? We didn't hear a car."

11 "My car broke down."

12 James Johnson figured he must be here for a
13 ride, no talk about that. They sat down. James Johnson
14 is sitting here (indicating), Darrell Burgess is to his
15 right, David Slice is to his left, and Kim Fauscette is
16 on the floor. The T.V. is on.

17 He said that they were there 10, 15 minutes,
18 just small chitchat. All of a sudden, Darrell Burgess
19 gets up and pulls out a revolver and shoots right past
20 James Johnson, shoots at David Slice, and then moves
21 forward to Kim Fauscette on the floor and starts
22 shooting her.

23 James Johnson jumps up. "What are you doing?"

24 "Shut up. Sit down. Take it to your grave.
25 It doesn't involve you."

1 This is very fast, ladies and gentlemen. He
2 shoots David Slice, shoots Kim Fauscette, and goes back
3 over to David Slice and keeps shooting. He's going to
4 describe the weapon he see as a shiny gun.

5 But what is going to stick in his mind,
6 besides just the chaos of gunfire, is when he hears the
7 clicking sound of an empty pistol being fired at a man
8 who appears to be dead.

9 At that point James Johnson runs out that
10 front door because he sees Darrell Burgess is reloading,
11 and he doesn't want to be next. He's going to tell you
12 he ran out to the woods, right outside of the home David
13 Slice and Kim Fauscette lived in and he hid.

14 Ladies and gentlemen, you are going to hear
15 about the gunshots. You are going to hear about a
16 pistol that carries five rounds. Seven were fired that
17 night. The two final rounds, ladies and gentlemen, were
18 what you might call "I want to make sure they are dead"
19 rounds.

20 David Slice got one right here (indicating),
21 and Kim Fauscette, as she laid on the floor, got one
22 right on the top of her head. "Tony Red" James Johnson,
23 hiding out in the woods, see Darrell Burgess come out of
24 that house.

25 "Red, where are you? I ain't going to hurt

1 you. You need to go. You need to get in your car and
2 go. I ain't going to hurt you."

3 James Johnson is smarter than that. He waits.
4 He waits until he sees Darrell Burgess, that man who he
5 has known for so long, walk away. Then he gets in his
6 car and he leaves.

7 You are going to hear as daylight approaches,
8 James Johnson makes it back home, tells his wife. He
9 gets a knock on the door from his neighbor Darrell
10 Burgess.

11 "Did you tell anybody about what happened last
12 night?"

13 "I haven't said a word, haven't said a word."

14 You are going to hear eventually at some
15 point the day after, he comes to James Johnson and says,
16 "I need a ride. I need you to take me to rent a car.
17 My car did break down, and I need a ride."

18 James Johnson complied. You are going to hear
19 he is scared. He knows this man is bad. He just saw
20 him commit two horrible murders. He's not running to
21 the law. He has been smoking crack, ladies and
22 gentlemen. He's scared.

23 When you saw James Johnson, he will be in a
24 jumpsuit because he has been held over at the Lexington
25 County Detention Center for giving that ride and for not

1 saying anything about what he saw. He has been charged
2 as accessory after the fact.

3 Another person you are going to hear from,
4 ladies and gentlemen, is someone who didn't really even
5 know the victims but who knows Darrell Burgess and knows
6 him like a brother, Michael Wise.

7 Michael Wise took Darrell Burgess to that
8 residence. Michael Wise dropped him off and waited for
9 him. Michael Wise heard the gunshots coming out of that
10 residence. He tried to call Darrell Burgess. "What's
11 going on?"

12 And Michael Wise is going to tell you before
13 they made it to that residence, Darrell Burgess wanted
14 to make a stop by his house and that when he went in and
15 came back out, the one thing he brought back out was a
16 revolver.

17 The reason why they were going to this address
18 on [REDACTED] [REDACTED] in Gaston where David Slice and Kim
19 Fauscette had lived was because he had some business to
20 take care of.

21 Michael Wise heard those gunshots, and when
22 Michael Wise was getting ready to pull out of there,
23 this man jumps back in his car and says, "Go." Michael
24 Wise takes him, sees him throw the pistol out, takes him
25 by a gas station where he buys fuel and burns up some

1 clothing and ends up taking him home and later assists
2 him in getting a car rental as well.

3 Michael Wise is going to tell you he loves
4 this man like a brother. They grew up together. He had
5 to make a choice, and he chose Darrell Burgess. So when
6 you see him, he is going to be wearing a jumpsuit, too.

7 He has faced and has pled to accessory after
8 the fact of murder. He's got a murder charge over him
9 for this whole thing as well and accessory before the
10 fact charge. He made his choice. His choice was on the
11 other side of this courtroom.

12 This is brutal, folks. Right now you may be
13 asking yourselves: What's behind all of this? Ladies
14 and gentlemen, I wish we could tell you. Thankfully the
15 law realizes that motive is not necessary and does not
16 have to be proven because motive is sometimes something
17 you can never really figure out.

18 What drives a man to shoot another man, to
19 shoot a woman and to make sure that they are dead by
20 putting the final rounds in their heads? Who knows?
21 The law realizes you cannot open someone's mind up and
22 see what they are thinking, but you can judge by their
23 actions. You are going to see the actions that occurred
24 the early hours of September 5, 2005.

25 Again, folks, we are in a world of law. What

1 you have heard is distasteful and what you are going to
2 hear is distasteful. We are not here to judge drug use.
3 We all admit that is bad. You are here because two
4 people were brutally, brutally murdered.

5 At the end of this trial, ladies and
6 gentlemen, when you go back in that jury room and you
7 review all the evidence and you consider all the
8 testimony you have heard, like Kim Fauscette you are
9 going to recognize that face. But unlike Kim Fauscette
10 and David Slice, you are going to recognize that Darrell
11 Burgess for who and what he really is. He's a
12 cold-hearted, brutal, scheming murderer.

13 THE COURT: Thank you. Thank you, Solicitor,
14 Mr. Baker.

15 OPENING STATEMENT

16 MR. BAKER: Yes, sir. May it please the
17 Court. Ladies and gentlemen of the jury, I'm Brad
18 Baker. I represent Mr. Darrell Burgess. I introduced
19 myself to y'all earlier when we were selecting a jury.
20 One thing I want to remind the members of the jury of,
21 and Your Honor instructed you on that briefly earlier,
22 is what I say to you and what Mr. Hubbard says to you is
23 not evidence.

24 Mr. Hubbard has stood up here and made some
25 obviously awful allegations about some things that they

1 alleged that my client did. What he says to you is not
2 evidence. The evidence in this case will come from the
3 witness stand and from the exhibits, if any are
4 introduced during this trial.

5 Mr. Hubbard and Mr. Madsen are the prosecutors
6 in this case, and they have the burden of proof in this
7 case. As Your Honor indicated to you, the Defendant
8 doesn't even have to give an opening statement.

9 The Defendant in this case has to prove
10 nothing. He doesn't have to prove he is innocent. The
11 State has to prove these allegations they are making
12 here today to you beyond a reasonable doubt.

13 And what is reasonable doubt? Your Honor will
14 instruct you on what reasonable doubt is. Reasonable
15 doubt is a doubt that would cause a reasonable person to
16 hesitate to act.

17 Now, what reasonable doubt or the standard of
18 reasonable doubt is a higher standard than mere
19 probability. They have to prove more to you, ladies and
20 gentlemen, that Mr. Burgess probably committed these
21 crimes. Reasonable doubt is more than mere probability.
22 I would just ask, ladies and gentlemen, during this
23 trial you hold the State to their burden of proof.

24 As Mr. Burgess sits here today, he is an
25 innocent man. He remains innocent until and only if the

1 State proves he is guilty of these crimes beyond a
2 reasonable doubt to your satisfaction, ladies and
3 gentlemen.

4 This is an opening statement, ladies and
5 gentlemen. It's a chance for us to get up here and tell
6 you what we think the evidence is going to show and what
7 we think the evidence may not show. Until these
8 witnesses actually get on the stand, we don't know
9 exactly what they are going to say.

10 But I'm fairly confident one thing you are not
11 going to hear during this case is that there is any
12 physical evidence to indicate that Mr. Darrell Burgess
13 committed these crimes.

14 There's no fingerprints of Mr. Burgess at the
15 scene. There's no D.N.A. of my client at the scene.
16 There's no hair of my client at the scene. You are
17 going to hear some testimony about the fact that law
18 enforcement obtained some of my client's clothing.

19 You are not going to hear any evidence about
20 there being any blood of the victims on those clothes.
21 You are not going to hear any evidence about any gunshot
22 residue or evidence that my client had fired a gun. You
23 are not going to hear any evidence about there being any
24 fiber or trace evidence of my client at the scene.

25 I would ask you just to think about that

1 during this trial. There is not going to be any
2 evidence that they have any footprint impressions of my
3 client from the scene.

4 They have recovered a gun in this situation.
5 There's no fingerprints of my client on that gun. No
6 evidence that my client owned that gun. I would ask
7 that you consider that and think about that during this
8 trial.

9 As was indicated to you, ladies and gentlemen,
10 you are going to hear from two witnesses primarily in
11 this case, a Mr. James Johnson and Mr. Michael Wise.
12 And as the solicitor indicated to you, Mr. Johnson by
13 his own admission is a drug seller. He is a seller of
14 crack cocaine, and he is by all practical purposes a
15 crack addict.

16 Mr. Michael Wise, who is also going to testify
17 for the State in this case, is a convicted felon. Think
18 about the reasons that they are testifying. What do
19 they have to gain by testifying in this case?

20 I would ask you to consider that, do they have
21 anything to gain or are they credible, while they are
22 testifying. Do they have incentive to tell lies?
23 Please think about that.

24 The evidence is going to show, ladies and
25 gentlemen, that Mr. Johnson, the story he's going to

1 tell you when he testifies is not the only story that he
2 has told in this case.

3 He was initially questioned by law enforcement
4 and stated he didn't know anything about this case,
5 didn't know anything about these murders. During the
6 questioning of Mr. Johnson, the law enforcement was able
7 to produce evidence of phone records that Mr. Johnson --
8 they knew Mr. Johnson had been communicating with these
9 victims.

10 The evidence is going to show that Mr. Johnson
11 on the night these victims were killed went over to
12 their residence to deliver drugs, which he did on a
13 regular basis, that he went over there to collect on a
14 drug debt, and the evidence is going to show that they
15 owed him money and that he, in fact, collected on that
16 drug debt while he was at their residence and then goes
17 over to another individual's home and buys more crack
18 cocaine.

19 The evidence is going to show that Mr. Johnson
20 smoked a considerable amount of crack cocaine on the
21 night in question and also that he was also consuming, I
22 think, some alcoholic beverages as well.

23 He initially denied knowing anything about
24 this case. He spent four days in jail. Then after four
25 days in the Lexington County Detention Center, he

1 implicates my client.

2 Why is he testifying? He is facing some
3 serious charges in this case. Ask yourself, does he
4 have incentive? Is he trying to get out of something?
5 Is he trying to cover himself?

6 You are also going to hear from Mr. Michael
7 Wise. The story you are going to hear from Mr. Michael
8 Wise is not going to be the only story Mr. Wise has told
9 in this case either.

10 Mr. Wise initially indicated that on the night
11 in question, he picked up my client from a motel and
12 took him home, and then Mr. Wise went home and that was
13 the end of the story. That was the story that Mr. Wise
14 told law enforcement when he was initially questioned
15 about this matter. Mr. Wise then also spends some time
16 in the Lexington County Detention Center and then
17 changes his story. He then implicates my client after
18 the fact.

19 Mr. Wise has pled guilty to accessory after
20 the fact in this case. He is facing a sentence of 15
21 years. He was originally facing two murder charges and
22 two accessories before and after the fact charges. He
23 was originally facing six charges and life imprisonment,
24 and now he has worked himself out a deal where he is
25 looking at a maximum of 15 years. Ask yourself, does he

1 have reason to testify and reason to not tell the truth
2 in this case?

3 I think, ladies and gentlemen, after you've
4 had a chance to consider all the evidence, and I would
5 ask that you -- I know you will give it the attention it
6 deserves once you had a chance to consider all the
7 evidence, and you will find that the State has not met
8 their burden of proof, and you will find my client not
9 guilty. Thank you very much.

10 THE COURT: Thank you, Mr. Baker. Solicitor,
11 you may call your first witness.

12 MR. MADSEN: The State calls Michael Melton.

13 MICHAEL MELTON, being
14 first duly sworn, testified as follows:

15 CLERK: State your full name on the record.

16 THE WITNESS: Michael Melton.

17 THE COURT: You may have to speak up a little
18 bit for us, Mr. Melton, so everyone on the jury can hear
19 you; all right, sir?

20 THE WITNESS: I'm from Fayetteville, North
21 Carolina.

22 DIRECT EXAMINATION

23 BY MR. MADSEN:

24 Q How old are you, Mr. Melton?

25 A Fifty.

1 Q You grew up in Fayetteville. When did you end up
2 coming down to South Carolina?

3 A Approximately about 1995.

4 Q Are you married?

5 A I'm separated.

6 Q How long have you been separated?

7 A About seven years.

8 Q Do you have any children?

9 A I have three.

10 Q What are they?

11 A I have a daughter in North Carolina, and I have a
12 daughter and son in South Carolina.

13 Q And how about any grandchildren?

14 A I have one granddaughter.

15 Q Where does she live?

16 A North Carolina.

17 Q And who is your daughter that lives in North
18 Carolina?

19 A Shannon Hall.

20 Q And how old is Shannon?

21 A Twenty-four.

22 Q In the past, Michael, what kind of work have you
23 done?

24 A I normally drive a truck. The last job I had was
25 driving a truck, lot clearing.

- 1 Q And did something happen to you when you were
2 driving a dump truck for the lot clearing?
- 3 A Yes, sir. I was getting off the side of the truck,
4 and when I got down I stepped on a log and twisted
5 my ankle real bad.
- 6 Q And when you twisted your ankle real bad, did you
7 have to do anything medically?
- 8 A Yes, sir.
- 9 Q What was that?
- 10 A Eventually I had to have my right ankle operated
11 on.
- 12 Q Let me ask you, Michael, have you had a drug
13 problem?
- 14 A Yes, sir.
- 15 Q What has been your drug of choice?
- 16 A Crack cocaine.
- 17 Q Give me an idea, Michael, how long have you been
18 using crack cocaine?
- 19 A Since 1985.
- 20 Q Did you know the victims?
- 21 A Yes, I did.
- 22 Q How did you know David Slice and Kim Fauscette?
- 23 A I was renting a room from them.
- 24 Q And do you recall what the address was that you
25 were renting the room at?

1 A [REDACTED].

2 Q Let me show you what has been marked as State's
3 Exhibit Number 16, I believe without objection. Do
4 you recognize that?

5 A Yes, sir.

6 Q What is that?

7 A That's an aerial view of [REDACTED].

8 THE COURT: State's 16 without objection,
9 Mr. Baker?

10 MR. BAKER: That's correct, Your Honor.

11 THE COURT: State's 16 is in evidence without
12 objection.

13 (State's Exhibit Number 16 is received into
14 evidence).

15 BY MR. MADSEN:

16 Q Let me show you what has been marked State's
17 Exhibit Number 17. Do you recognize that?

18 A Yes, sir.

19 Q What is that?

20 A That's the trailer house I was staying in.

21 MR. MADSEN: This is State's Exhibit 17, I
22 believe without objection.

23 THE COURT: Is that correct, Mr. Baker, no
24 objection to State's 17?

25 MR. BAKER: That is correct, Your Honor.

1 (State's Exhibit Number 17 is received into
2 evidence).

3 BY MR. MADSEN:

4 Q Michael, looking at State's Exhibit Number 17, what
5 is that a diagram of?

6 A Of the trailer house I was living in, that I was
7 renting a room in.

8 Q Before their murders give me an idea, how long had
9 you been living here with Kim and David?

10 A Approximately two and a half, three months.

11 Q And kind of get me oriented. What is marked down
12 here as bedroom number one, whose bedroom was that?

13 A That's the master bedroom, Kim and David's room.

14 Q How about bedroom number two, who stayed in there?

15 A That was my bedroom.

16 Q And Kim and David, what was their relationship?

17 A Girlfriend/boyfriend.

18 Q Were they that way when you moved in?

19 A Correct.

20 Q And as far as your bedroom, could you come through
21 this hallway door (indicating)?

22 A No, sir. Prior to, before I moved in for some
23 reason they had stuffed a couch up in that doorway,
24 and it was wedged up in there pretty good.

25 Q So how would you end up getting into your bedroom?

MICHAEL MELTON -- DIRECT -- MR. MADSEN

178

1 A I would enter into the back bathroom, which is a
2 door leading to my bedroom.

3 Q Can you show me on here how you would end up
4 getting in there?

5 A (Witness leaves the witness stand). Right through
6 here (indicating).

7 THE COURT: You have to keep your voice up,
8 Mr. Melton, when you are away from the microphone.

9 A I entered this door right here (indicating) to the
10 bathroom, and my bedroom door was right here
11 (indicating).

12 Q Could you see out of this door down the hall?

13 A No, sir.

14 Q So you entered down through bathroom two?

15 A Correct.

16 Q Was that your bathroom?

17 A Yes, sir.

18 Q Did they have their own bathroom that they used?

19 A Yes, sir. Their bathroom was right here
20 (indicating).

21 Q Have a seat for me.

22 A (Witness resumes the witness stand).

23 Q Let me show you what has been marked as State's
24 Exhibit, 1, 2, 3, and 4, I believe without
25 objection. Take a look at those for me.

1 A (Witness complies).

2 Q What are those photographs of?

3 A The trailer house I resided in.

4 Q Do you know notice something on State's Exhibit

5 Number 1? You had said something about the

6 address. What is actually the address on

7 [REDACTED]?

8 A It's [REDACTED]

9 Q And that's the [REDACTED] address?

10 THE COURT: And that is correct, those are
11 without objection, Mr. Baker, State's 1 through 4?

12 MR. BAKER: Correct, Your Honor.

13 (State's Exhibits Number 1-4 are received into
14 evidence).

15 BY MR. MADSEN:

16 Q Can you tell the jury, what is State's Exhibit
17 Number 1? What is that a photograph of?

18 A That's the front side of the trailer house.

19 Q And that door there on the left-hand side, is that
20 the front or the back door?

21 A That would be the front door.

22 Q So kind of orient us then on State's Exhibit
23 Number 17. That door that we see in that
24 photograph, what door is that on here?

25 A (Witness leaves the witness stand). That would be

MICHAEL MELTON -- DIRECT -- MR. MADSEN

180

1 this door here (indicating) with the steps, the
2 front porch.

3 Q And State's Exhibit Number 2, what is that a
4 photograph of?

5 A That would be the same trailer house, a front view
6 of it.

7 Q And that window that we see right here
8 (indicating), kind of orient us on that diagram.
9 Where is that at?

10 A This would be this window right here (indicating)
11 in the master bedroom, which was Kim and David's.

12 Q Is State's Number 3 about the same angle?

13 A Yes, sir, just a little different.

14 Q That car behind, that car we see in that photograph
15 right here (indicating) whose car is that?

16 A That was a car that belonged to Kim.

17 Q And then in State's Exhibit Number 4, that shows --
18 what door does that show?

19 A That shows the front door.

20 Q Was there a deck, I guess?

21 A Yes, sir.

22 Q When you lived with -- you said you had a crack
23 cocaine problem for how long?

24 A Since 1985.

25 Q When you lived with Kim and David, did they use

1 crack cocaine also?

2 A Yes, they did.

3 Q Let me show you State's 5, 6, 7, 8 -- let me show
4 you State's Exhibits 5 through 15. Take a look at
5 those, Mike, and tell me if you recognize those.

6 A (Witness complies). These are pictures of the
7 inside of the trailer that I resided at.

8 Q I will put these on the overhead head up here. I
9 will ask you questions. Will you kind of orient us
10 on State's Exhibit Number 17?

11 A Yes, sir.

12 THE COURT: This is 5 through what?

13 MR. MADSEN: Number 5 through 15, Your Honor.

14 THE COURT: And that's without objections,

15 Mr. Baker?

16 MR. BAKER: That's correct, Your Honor.

17 THE COURT: Thank you. State's 5 through 15
18 without objection are in evidence.

19 (State's Exhibits Number 5-15 are received
20 into evidence).

21 BY MR. MADSEN:

22 Q I've got State's Exhibit Number 5 up. That shows a
23 T.V. in a doorway. Make sure, Mr. Melton, to keep
24 your voice up.

25 A Yes, sir. That would be the living room right here

MICHAEL MELTON -- DIRECT -- MR. MADSEN

182

- 1 (indicating).
- 2 Q State's Exhibit Number 6, what door is that
- 3 showing?
- 4 A That would be the front door.
- 5 Q And that television that's pictured in that?
- 6 A Yes, sir.
- 7 Q Where is that at on that diagram?
- 8 A Right here (indicating) in front of the windows.
- 9 Q State's Exhibit Number 7 is the same thing?
- 10 A Yes, sir.
- 11 Q How about State's Exhibit Number 8? I guess it
- 12 shows a water jug with some change in it, a
- 13 candle --
- 14 A Yes, sir.
- 15 Q -- and a C.D. rack.
- 16 A That would be right here (indicating), in this
- 17 corner right here (indicating).
- 18 Q And it shows on State's Exhibit Number 8, I guess a
- 19 little stair right there. Where is that going up
- 20 into?
- 21 A Yes, sir, that's going up into the master bedroom.
- 22 Q Take a look at State's Exhibit Number 9, which is a
- 23 love seat. Where is that love seat located on
- 24 State's Exhibit Number 17?
- 25 A The love seat would be right here (indicating),

1 right in the living room corner, the left-hand
2 corner.

3 Q And is there a way to get back in the kitchen from
4 behind there?

5 A Yes, sir, but it's always been blocked off by the
6 love seat.

7 Q And, in fact, State's Exhibit Number 10, does it
8 show kind of where that love seat blocks it off?

9 A Yes, sir.

10 Q Let me show you State's Exhibit 11, what is that a
11 photograph of?

12 A That would be the kitchen, the front of the kitchen
13 where the stove is at right here (indicating).

14 Q And then on there in the corner, I see a little
15 table. Is there something y'all would keep on that
16 table?

17 A Yes, sir, they kept the phone on this table right
18 here (indicating).

19 Q Right there (indicating)?

20 A Yes, sir.

21 Q Let me show you State's Exhibit Number 12. What is
22 that a photograph of?

23 A That's a photograph of the table with the phone on
24 it.

25 Q And State's Exhibit Number 13, whose bedroom is

MICHAEL MELTON -- DIRECT -- MR. MADSEN

184

- 1 that?
- 2 A That would be my bedroom, which is bedroom two.
- 3 Q And how about State's Exhibit Number 14, whose
- 4 bedroom is that? Do you want to take a look at it
- 5 up close?
- 6 A Yes, sir. That would be the master bedroom.
- 7 Q That's kind of looking back towards the bathroom
- 8 back in toward the house?
- 9 A Yes, sir.
- 10 Q Go ahead and have a seat for me.
- 11 A (Witness resumes the witness stand).
- 12 Q Mike, that [REDACTED] what county is
- 13 that house in?
- 14 A Lexington County.
- 15 Q Looking at State's Exhibit Number 16, can you point
- 16 out where you all were living at?
- 17 A (Witness leaves the witness stand). This trailer
- 18 right here (indicating).
- 19 Q When you would kind of go in and out, which way
- 20 would you go in or out generally off of Fish
- 21 Hatchery?
- 22 A We come in this way right here (indicating).
- 23 Q And go down this way (indicating)?
- 24 A Yes, sir.
- 25 Q Why is that, as compared to going this way

1 (indicating)?

2 A Going this way (indicating) was a lot bumpier,
3 rocky. A lot of people got stuck down here, and we
4 had pulled chains across from the entrance down
5 here (indicating) to keep the people from coming in
6 that way.

7 Q So you couldn't get in through this road
8 (indicating)?

9 A No, sir.

10 Q Would you show us where the road is where you would
11 come in towards your address on [REDACTED] I
12 mean, the driveway.

13 A The drive would be right here (indicating).

14 Q Go ahead and have a seat.

15 A (Witness resumes the witness stand).

16 Q Michael, is it true that you were convicted of a
17 couple of shopliftings back in 2003; isn't that
18 correct?

19 A Yes, sir.

20 Q And let me step back, September of '05, you said
21 you are how old?

22 A I'm 50.

23 Q And when exactly is your birthday?

24 A [REDACTED].

25 (Attorneys confer).

MICHAEL MELTON -- DIRECT -- MR. MADSEN

186

1 (State's Exhibits Number 29-30 are marked for
2 identification).

3 BY MR. MADSEN:

4 Q Mike, take a look at State's Exhibit Number 29 for
5 I.D.

6 A Would you want me to take it out of the bag?

7 Q If you want to. Do you recognize what that is?

8 A Yes, sir, this is a phone that was in the living
9 room or in the kitchen.

10 Q Let me show you State's Exhibit Number 12. Is that
11 the one pictured in State's Exhibit 12?

12 A Yes, sir, same one.

13 MR. MADSEN: Your Honor, at this point in
14 time, we would move to move State's Exhibit Number 29
15 for I.D. purposes into evidence.

16 MR. BAKER: I don't have any objection, Your
17 Honor.

18 THE COURT: State's 29 is in evidence without
19 objection.

20 (State's Exhibit Number 29 is received into
21 evidence).

22 BY MR. MADSEN:

23 Q Take a look at State's Exhibit Number 30 for me.

24 A This would be the actual phone receiver.

25 Q That went on what is in that photograph?

1 A Yes, sir.

2 MR. MADSEN: Your Honor, we would move State's
3 Exhibit Number 30 for I.D. purposes into evidence.

4 MR. BAKER: No objection, Your Honor.

5 THE COURT: State's 30 is in evidence without
6 objection.

7 (State's Exhibit Number 30 is received into
8 evidence).

9 BY MR. MADSEN:

10 Q Your birthday is September 4, correct?

11 A Correct.

12 Q Back when you were living with Kim and David, were
13 you living with them in September of '05?

14 A Yes, sir, I was.

15 Q That early part of September, did you have some
16 kind of special trip planned?

17 A Yes, sir, I did.

18 Q Would you tell the jury where you were going.

19 A I had planned to go to North Carolina to see my --
20 to spend the weekend with my daughter and my
21 grandchild and her family.

22 Q And when you say go -- where did they live again?

23 A Fayetteville, North Carolina.

24 Q And do you recall when you left?

25 A Yes, sir, I left on the Wednesday prior.

MICHAEL MELTON -- DIRECT -- MR. MADSEN

188

- 1 Q And when did you end up coming back?
- 2 A I returned back on Monday, which was Labor Day.
- 3 Q How did you end up getting up there to North
- 4 Carolina?
- 5 A I rode a Greyhound bus.
- 6 Q Who paid for your ticket?
- 7 A My daughter.
- 8 Q And once you got up there, when did you end up
- 9 coming back?
- 10 A Monday, Monday afternoon.
- 11 Q How did you physically get to the Greyhound
- 12 station? Who took you to the bus stop?
- 13 A Before I left for North Carolina?
- 14 Q Before you left.
- 15 A I had David to drop me there.
- 16 Q Who was supposed to pick you up when you came back
- 17 from North Carolina?
- 18 A David or Kim.
- 19 Q And how were you supposed to work that out?
- 20 A I was supposed to call them when I left North
- 21 Carolina to let them know what time I would be
- 22 there.
- 23 Q When you come back, give me an idea, when do you
- 24 leave North Carolina on that Monday?
- 25 A I will say somewhere around noon, shortly after.

1 Q Did you do anything before you got -- or before you
2 left North Carolina as far as your ride?

3 A I made several calls, one or two, to Kim and David
4 to try to let them know what time I would be there
5 in Columbia.

6 Q Did they ever pick up or answer?

7 A No, sir, they didn't.

8 Q How about once you got back to Columbia to the bus
9 stop -- and this bus stop we are talking about,
10 where is that physical location, do you know?

11 A Downtown Columbia.

12 Q Once you get there, what did you do? Do Kim and
13 David meet you there?

14 A No, sir.

15 Q What do you do?

16 A I try once again on the phone to reach them.

17 Q Were you successful?

18 A No, sir, I wasn't.

19 Q How about tell me this, how do you then end up
20 getting home?

21 A I caught a cab ride from the bus station.

22 Q Do you have an idea, Michael, about what time you
23 end up getting home?

24 A I arrived back to [REDACTED] [REDACTED] about 5, 5:30.

25 Q Which way do you end up coming in on State's

- 1 Exhibit Number 16?
- 2 A Looking up, it would be the second.
- 3 Q Y'all come in this way (indicating)?
- 4 A Yes, sir, we go in that way.
- 5 Q When you would come to the house, was there a way
- 6 you generally would enter?
- 7 A Yes, sir.
- 8 Q Which way was that?
- 9 A Kim and David always left the back door unlocked
- 10 for me.
- 11 Q This right up here (indicating) on State's Exhibit
- 12 17?
- 13 A Yes, sir.
- 14 Q When you got there that day, when the cab dropped
- 15 you off, was that back door open?
- 16 A No, sir, it was locked.
- 17 Q What did you end up having to do?
- 18 A I walked around to the front door.
- 19 Q When you came in the front door, what happened
- 20 next?
- 21 A I opened the door right up and walked in.
- 22 Q Did you see Kim and David in there?
- 23 A Yes, sir.
- 24 Q When you got home that day, did you kind of have
- 25 something on your mind?

- 1 A Yes, sir, I did.
- 2 Q What was that?
- 3 A Crack cocaine.
- 4 Q Why is that?
- 5 A Well, when I left Thursday -- when I go see my
6 daughter, there's no drugs involved. If I get
7 caught doing drugs around her, I cannot see my
8 daughter or my grandbaby. So I leave it alone, and
9 I had, before I left, I had hidden some in my room.
- 10 Q So when you get home on that Monday, when's the
11 last time you had crack cocaine?
- 12 A Thursday before I left.
- 13 Q Where do you see -- when you get in there, do you
14 see Kim and David.
- 15 A Yes, I do.
- 16 Q Where are they at?
- 17 A David was sitting on the couch and Kim was laying
18 on the floor.
- 19 Q What did you think they were doing, Michael?
- 20 A Sleeping.
- 21 Q Do you want to wake them up?
- 22 A No, sir, I didn't.
- 23 Q Why is that?
- 24 A Because I couldn't -- I wouldn't have been able to
25 smoke in peace, smoke the drugs in peace.

MICHAEL MELTON -- DIRECT -- MR. MADSEN

192

1 Q You didn't want to share your crack cocaine?

2 A Well, the point of not sharing is that they would
3 keep on begging and begging and begging.

4 Q So once you get in, where do you end up going?

5 A First I sat down on the little love seat for a few
6 seconds.

7 Q This one right here (indicating)?

8 A Yes, sir.

9 Q What are you looking at?

10 A I noticed some pots and pans that are sitting in
11 front of the love seat, and I took a peak at those.

12 Q Those ones in State's Exhibit Number 5?

13 A Yes, sir, that's correct.

14 Q The interior of that house, how did Kim and David
15 keep the interior as far as light?

16 A It was always dark in there.

17 Q So as far as in State's Exhibit Number 5, that's a
18 lot lighter than it was normally kept?

19 A A lot lighter.

20 Q Is there something that they used to cover the
21 windows?

22 A Heavy drapes, really thick drapes.

23 Q After you got done looking at those, I guess, pots
24 or I guess bowls or whatever they are, what did you
25 end up doing?

1 A I ended up back in my bedroom where I can get high.

2 Q When you got back in your bedroom, did you get
3 high?

4 A Yes, I did.

5 Q At some point in time, did you end up leaving that
6 bedroom?

7 A Yes, I did.

8 Q When you got home that day, was the front door
9 locked when you got there?

10 A No, sir, it wasn't.

11 Q Let me back up a second. After you get high in
12 your bedroom, where do you then end up going?

13 A At first I go out the back door and go up to the
14 mailbox because I was expecting a check from
15 worker's comp.

16 Q Can you show me on State's 16, where is your
17 mailbox located on here?

18 A The mailbox would be at the end of this entrance
19 (indicating).

20 Q So when you come out of the house to go, which door
21 are you coming out of?

22 A I go out the back door.

23 Q And can you show the jury how you end up traveling
24 up there?

25 A I go up this way (indicating).

MICHAEL MELTON -- DIRECT -- MR. MADSEN

194

- 1 Q Is there a reason you go that way as compared to
2 coming around the front?
- 3 A Being again that my ankle was unsteady, being I had
4 it operated on, this side was a lot smoother. I
5 didn't have all the ditches and ruts to go in this
6 way to walk in.
- 7 Q Once you went up to that mailbox and you came back,
8 which door did you enter back into your house?
- 9 A Entered the back door again.
- 10 Q When you got back in the back door, what did you
11 do?
- 12 A Went straight to my bedroom.
- 13 Q What did you do in there?
- 14 A Got high some more.
- 15 Q At some point in time, did you end up getting a
16 call?
- 17 A Yes, sir, I did.
- 18 Q And who was that call from?
- 19 A Tracy Klein.
- 20 Q And based on that call, did she end up doing
21 something?
- 22 A Yes, sir.
- 23 Q What was that?
- 24 A She rode over to pick me up.
- 25 Q Were you supposed to go look at something back at

- 1 her house?
- 2 A Yes, sir.
- 3 Q What was that?
- 4 A She had an old car she was wanting to sell me.
- 5 Q Did she have a husband?
- 6 A Yes, sir.
- 7 Q What's his name?
- 8 A Steve.
- 9 Q When Tracy came and picked you up, did she come
- 10 inside?
- 11 A Tracy came inside.
- 12 Q Was Steve with her?
- 13 A No, sir.
- 14 Q And when Tracy came inside, what did y'all do or
- 15 where did you go?
- 16 A She came in the back door and went straight to my
- 17 room and took a couple of hits.
- 18 Q Of crack cocaine?
- 19 A Yes, sir.
- 20 Q After y'all took those hits of crack cocaine, where
- 21 did y'all go?
- 22 A We left out the back door and we drove to her
- 23 house.
- 24 Q At that point in time, at any point in time, had
- 25 you noticed whether Kim or David had moved?

- 1 A No, sir.
- 2 Q Give me an idea, when do you end up coming back
- 3 from the Kleins?
- 4 A Twelve-thirty, 1:00 o'clock in the morning, a.m.
- 5 Q Which way do you come in your house?
- 6 A The back door.
- 7 Q Do you go out in that living room or kitchen at
- 8 that time?
- 9 A No, sir.
- 10 Q Where do you go?
- 11 A Straight to my bedroom.
- 12 Q And once you get into your bedroom, what do you do?
- 13 A Get high some more.
- 14 Q Did you end up going to sleep that night?
- 15 A I dosed off a couple of times off and on.
- 16 Q Tell me about the morning. What happens in the
- 17 morning?
- 18 A I still had some more crack to smoke and my lighter
- 19 ran out.
- 20 Q When I say the morning, I'm talking the morning, I
- 21 guess, of the 6th.
- 22 A Yes, Tuesday morning. My lighter ran out. It was
- 23 about 6:30 and I had walked down to the store to
- 24 buy a lighter.
- 25 Q When you say 6:30, do we mean a.m. or p.m.?

- 1 A Six-thirty in the morning a.m. It's about a
2 15-minute walk there and back, 15 minutes there and
3 15 back. I bought a lighter and came back, walked
4 in the back door, straight to my bedroom.
- 5 Q What did you do when you got back in your bedroom?
- 6 A I was still smoking crack.
- 7 Q After you get done smoking that crack with the new
8 lighter, what do you do?
- 9 A I kind of dozed off a little bit.
- 10 Q At some point in time, do you get up?
- 11 A Yes, sir.
- 12 Q When you get up, where do you go?
- 13 A I walk into the kitchen to get something to drink.
- 14 Q Is that that area right there (indicating)?
- 15 A Yes, sir.
- 16 Q So this is, I guess, still the mid morning of the
17 6th?
- 18 A It's about 11:00 o'clock.
- 19 Q A.m.?
- 20 A A.m.
- 21 Q Did you notice when you go get a drink, something
22 that kind of looks suspicious to you?
- 23 A Yes, sir. I opened the icebox and got me something
24 to drink. Just something dawned on me to look over
25 to where they were, and I noticed that, you know,

1 they hadn't moved an inch, you know, not one inch.

2 Q So what do you do, Michael?

3 A I kind of tip over David and kind of got a little
4 close and kind of looked, and I knew he wasn't
5 right, something was wrong.

6 Q How about Kim?

7 A Kim was just laying there. I just freaked out.

8 Q Did you notice something about her?

9 A When I was looking at her, all I could see is she
10 was just laying with her -- kind of on her arm and
11 something black and glittery was at her head.

12 Q Did you know what the black and glittery was?

13 A No, sir, I don't.

14 Q What did you know at that point in time about Kim
15 and David?

16 A That they had been killed, been murdered.

17 Q What did you do, Michael?

18 A I ran out the door.

19 Q Did you run out with anything in your hand?

20 A Yes, sir, I had the phone in my hand.

21 Q This phone in State's Exhibit 30?

22 A Yes, sir.

23 Q Did you try to call anybody?

24 A Yes, sir, I did.

25 Q Who did you end up calling first?

1 A Being I was freaking out and high, too, I ended up
2 somehow or another calling Steve Klein.

3 Q After you ended up talking with him or realize you
4 had called him, what did you do?

5 A He kind of calmed me down and explained to me that
6 I needed to hang up and call 9-1-1.

7 Q Were you inside the house or outside the house when
8 that happened?

9 A I had made it outside.

10 Q On State's Exhibit Number 16, which way do you end
11 up coming out when you come out of the house then?

12 A I go out the front door.

13 Q Where are you starting to go?

14 A You can't tell here, but there is a little weed
15 patch right here (indicating). The fence was going
16 through there and the woods behind the house.

17 Q So [REDACTED] kind of matches -- or there is a fence
18 coming back here (indicating)?

19 A Yes, sir.

20 Q And whose house is that?

21 A Miss Mary is the only thing I knew her by.

22 Q And when you talked with Steve Klein and he told
23 you to hang up and call 9-1-1, were you able to
24 call 9-1-1 on that phone?

25 A The time all that happened, I was out of reach for

MICHAEL MELTON -- DIRECT -- MR. MADSEN

200

1 the cordless phone to activate.

2 Q And where did you end up going then?

3 A The only place I could think of that would be home
4 is Miss Mary.

5 Q So what happened when you got there?

6 A I knocked on the door and I was just telling her
7 she needed to call 9-1-1, that Kim and David was
8 dead.

9 Q Did she call 9-1-1?

10 A After she walked in, walked over with me, and she
11 went back in the trailer -- I never did go back
12 in -- after that she called.

13 Q Michael, I want you to listen to this. Tell me if
14 you recognize these voices.

15 MR. MADSEN: Hang on a second. I hit the
16 delete.

17 THE COURT: Has Mr. Baker heard this?

18 MR. BAKER: I haven't heard this.

19 THE COURT: You have not?

20 MR. BAKER: No, I have not.

21 THE COURT: Before he publishes it,

22 Mr. Foreman, ladies and gentlemen of the jury, if you
23 would step momentarily to your jury room. Do not
24 discuss the case amongst yourselves during this brief
25 recess.

1 (The jury retires to the jury room).

2 (State's Exhibit Number 29 is played for the
3 Court).

4 MR. MADSEN: That's all I wanted to play. I
5 plan on putting in the first three, Your Honor.

6 THE COURT: The first three. The first three
7 would be calls that he made -- he, Mr. Melton -- made
8 from?

9 MR. MADSEN: The bus stop.

10 THE COURT: The Greyhound bus station in
11 Columbia to the residence?

12 MR. MADSEN: Yes, sir.

13 THE COURT: Do you have any objections to the
14 first three, Mr. Baker?

15 MR. BAKER: I don't have any objections to the
16 calls of Mr. Melton.

17 THE COURT: All right. Are you going to
18 redact it for purposes of it going to the jury,
19 Solicitor, at some point in time? You can play them
20 now. I'm just saying --

21 MR. MADSEN: I don't know if there is any way
22 to do it. I guess we can take a look at it far as
23 deleting those other ones.

24 THE COURT: I don't think I would delete it.
25 At any rate --

1 MR. MADSEN: I think it's a tapeless one. So
2 I don't know if the tape would pull out.

3 COURT REPORTER: Judge, I can make a tape of
4 it.

5 THE COURT: All right. Thank you. How much
6 longer do you have on direct of Mr. Melton?

7 MR. MADSEN: Five minutes.

8 THE COURT: Let's bring our jury back in. We
9 will continue with direct. Go ahead, Solicitor.

10 MR. MADSEN: Judge, before the jury comes in,
11 one issue we should have addressed a little bit earlier
12 is I had brought out for impeachment purposes
13 Mr. Melton's two convictions on shoplifting in '03,
14 which are obviously crimes of dishonesty within ten
15 years.

16 His record actually only shows one, but
17 Mr. Melton has told me that there were two of those. He
18 has been convicted in 2005 of violation of the sex
19 offender registry, I think twice, but those are charges
20 that were under one year, one year or under.

21 Additionally obviously he has indecent
22 liberties with a child from North Carolina, which would
23 have been '92, which he got probation and no prison time
24 on is my understanding. Then the grand larceny that I
25 believe is older that would fall outside the ten years.

1 I did not ask him about those because they did
2 not seem to fall within the realm of being impeachable
3 within the time, but I thought Mr. Baker had indicated
4 that that would be something we could take up during our
5 break.

6 But obviously that's something I would want to
7 talk to him about. He ended up with four counts of
8 grand larceny. I've got a five-year suspended sentence.
9 I believe that was in 1994 -- or excuse me -- 1983.

10 THE COURT: He has got how many convictions in
11 1983?

12 MR. MADSEN: 1983, it looks like four counts
13 of a felony, larceny, out of Fayetteville, received five
14 years probation.

15 THE COURT: And then what is the next record?

16 MR. MADSEN: Indecent liberties with a child,
17 again out of North Carolina, 1991.

18 THE COURT: What was the sentence on that?

19 MR. MADSEN: Two years probation. It might
20 have been some confinement with probation and some
21 community service.

22 THE COURT: Two years probation and community
23 service.

24 MR. MADSEN: Correct. It says on the rap
25 sheet, three years confinement at that time, two years

1 probation.

2 THE COURT: Three years confinement, two years
3 probation?

4 MR. MADSEN: Yes, sir.

5 THE COURT: What is next?

6 MR. MADSEN: I believe next is the two
7 shopliftings in '03.

8 THE COURT: What was his sentences on that?

9 MR. MADSEN: Thirty days and/or \$440.

10 THE COURT: What's next?

11 MR. MADSEN: Two separate counts in '05 of
12 violations of sex offender registry. He received 90
13 days on each of those in '05.

14 THE COURT: Both of those were in '05? No
15 probation or anything, just 90 days?

16 MR. MADSEN: Yes, sir. First offense is a
17 90-day offense and second offense is one year.

18 THE COURT: So I would assume your position,
19 Solicitor, is under 609 (b), the '83 felony larceny would
20 be outside the ten-year rule?

21 MR. MADSEN: Yes, sir.

22 THE COURT: Do you want to address those
23 Mr. Baker, the '83 charges?

24 MR. BAKER: Your Honor, I would just argue
25 they go toward credibility, Your Honor, and I think it's

1 in your discretion. If you find the probative value is
2 outweighing any prejudice, the rule allows you to admit
3 that evidence. I think it does go toward this witness'
4 credibility. It is a crime of dishonesty and would
5 argue that it ought to be admitted.

6 THE COURT: And as to the 1991 indecent
7 liberties?

8 MR. BAKER: I would have the same argument,
9 Your Honor. I think that's certainly a heinous crime
10 and certainly should be considered a crime of dishonesty
11 and ought to be admitted in your discretion.

12 THE COURT: Then 2003 and 2005 violation of
13 sex offender registry?

14 MR. BAKER: Just the same argument as the '91
15 conviction. I think failing to register as a sex
16 offender is certainly a crime of dishonesty and trying
17 to hide something and trying to run from the system. I
18 certainly think it ought to be admissible and something
19 the jury ought to hear about.

20 THE COURT: Solicitor, do you have any
21 position on any of these?

22 MR. MADSEN: Your Honor, I certainly think
23 that the old grand larcenies fall. Although crimes of
24 dishonesty, they fall outside of the ten years.
25 Additionally you have the indecent liberties, which is

1 not a crime of dishonesty but still falls outside of the
2 ten years.

3 So even if it did fall within the ten-year
4 rule, I think Your Honor would then have to do a 403
5 balancing, but regardless it's outside of the ten years.
6 Crimes of dishonesty are generally those type of crimes
7 which involve some time of larceny, some type of lying,
8 such as perjury or grand larceny or forgery or a fraud.

9 They are not potential sentences of one year.
10 The first offense is a 90-day offense. Second offense
11 is a straight one year. I think you need to be over one
12 year to comply with those rules.

13 We believe that beside the shopliftings, which
14 we have brought out on direct examination, that none of
15 those other things on the his record are appropriate for
16 impeachment, given our rules.

17 THE COURT: I am not going to allow the 1983
18 larcenies under 609 (b). I'm not going to allow the
19 1991 indecent liberties. However, the 2005 violation of
20 sexual offender registry twice, I think that does
21 involve false statement or non-statement to police or
22 dishonesty. I think that should be admissible. Clearly
23 it does not go to 609 (b). I would say it goes to
24 609 (a)(2). Anything further before we bring in our
25 jury?

1 MR. MADSEN: No, sir.

2 MR. BAKER: No, Your Honor.

3 THE COURT: If you would bring our jury,
4 please.

5 (The jury returns to the courtroom).

6 THE COURT: It appears our jury is back
7 present in the courtroom. Solicitor, you may proceed.

8 DIRECT EXAMINATION

9 BY MR. MADSEN:

10 Q Mr. Melton, just to jump back, why did you end up
11 going to North Carolina?

12 A To visit my granddaughter.

13 Q And who ended up purchasing your ticket?

14 A My daughter.

15 Q And did she have anyone beside your granddaughter,
16 anyone else live with her?

17 A Her husband.

18 Q What is his name?

19 A Jason Hall.

20 Q And your daughter is Shannon Hall?

21 A Yes, sir.

22 Q What part of North Carolina do they live in?

23 A Fayetteville.

24 Q When you end up getting back, and I guess on -- was
25 it the 6th that you said that you realized that Kim

MICHAEL MELTON -- DIRECT -- MR. MADSEN

208

1 and David are dead?

2 A Yes, sir, that Tuesday.

3 Q Again, you said back when you were living with
4 them, you used to do what kind of work?

5 A While I was living with them, I was unemployed.

6 Q And how do you end up unemployed? How did you hurt
7 yourself?

8 A When I got off my dump truck, I twisted my ankle
9 real bad.

10 Q Do you have a job now?

11 A Not at the present time.

12 Q Are you waiting to hear back from anyone?

13 A Yes, I am.

14 Q Who is that?

15 A U.S. Foods.

16 Q Before you lived with Kim and David at [REDACTED]
17 [REDACTED] where did you live?

18 A I lived in [REDACTED] [REDACTED] [REDACTED].

19 Q Is that that little place in front?

20 A Okay, [REDACTED] was before then. But right before I
21 moved in with Kim and David, I stayed right in
22 front of their trailer. They had another trailer
23 there.

24 Q So you lived somewhere else on [REDACTED] [REDACTED]?

25 A Yes, I did.

- 1 Q And then before you moved in with Kim and David,
2 where did you live?
- 3 A The trailer right next to theirs.
- 4 Q Could you point that out on State's Exhibit 16?
- 5 A Right here (indicating).
- 6 Q And I had asked you about your two convictions for
7 shoplifting in '03?
- 8 A Yes, sir.
- 9 Q I failed to mention you were convicted in '05, I
10 guess, of a couple of counts of violation of sex
11 offender registry?
- 12 A Yes, sir.
- 13 Q Was one of them for moving from that trailer in
14 front to [REDACTED]?
- 15 A Yes, sir.
- 16 Q The [REDACTED]?
- 17 A Yes, sir.
- 18 Q When you came out, and I guess you or Miss Mary
19 called 9-1-1, who ended up coming to the house?
- 20 A Miss Mary.
- 21 Q What did she do?
- 22 A She walked in inside first.
- 23 Q Did you go back inside?
- 24 A No, I didn't.
- 25 Q At some point in time, did law enforcement end up

MICHAEL MELTON -- DIRECT -- MR. MADSEN

210

1 coming in?

2 A Yes, they did.

3 Q How long did it take after y'all called for law
4 enforcement to get there?

5 A I don't remember. It wasn't long though.

6 Q Were you upset?

7 A I was very upset.

8 Q Tell me this, Michael, do you know who Tony Red is?

9 A Yes, I do.

10 Q Can you tell me who he is? Who is Tony Red?

11 A Tony Red was a drug dealer.

12 Q Did he do more than just sell drugs?

13 A Yes, sir.

14 Q What else would he do?

15 A He would come over and spend a lot of time at Kim
16 and David's.

17 Q When he would come over and spend time at Kim and
18 David's, what would he end up doing with them?

19 A He would get just as high as we would get.

20 Q He smoked crack, too?

21 A Yes, sir, he did.

22 Q Would he come over there pretty frequently?

23 A Yes, sir.

24 Q When law enforcement came out that day on the 6th
25 and talked with you, were you shaken up?

1 A Yes, sir.

2 Q Did you tell them what you told us here today?

3 A Not at first.

4 Q Why is that?

5 A Because whoever killed those two would pretty much
6 want to kill me being I lived there, and I was
7 really scared.

8 Q Let me ask you this. State's Exhibit Number 29,
9 tell me if you recognize this voice.

10 (State's Exhibit Number 29 is played).

11 BY MR. MADSEN:

12 Q Michael, did you recognize that voice on that
13 answering machine?

14 A Yes, sir.

15 Q Whose voice was that?

16 A That was my voice.

17 Q Was that those calls you previously testified
18 about?

19 A Yes, sir.

20 MR. MADSEN: Your Honor, I think the court
21 reporter has made a tape of just that specific part. We
22 would move to move that into evidence.

23 THE COURT: All right. No objection?

24 MR. BAKER: No objection, Your Honor.

25 THE COURT: That would be what number, Madame

MICHAEL MELTON -- DIRECT -- MR. MADSEN

212

1 Court Reporter?

2 COURT REPORTER: Number 31, Your Honor.

3 (State's Exhibit Number 31 is received into
4 evidence).

5 BY MR. MADSEN:

6 Q Michael, answer any questions Mr. Baker has.

7 THE COURT: Mr. Foreman, and ladies and
8 gentlemen of the jury, I think this would be an
9 appropriate point for us to take our morning recess. We
10 did not break while y'all did earlier. So we are going
11 to take about a 15-minute recess.

12 During the break please remember, do not
13 discuss the case with anyone. That includes your fellow
14 jurors or anyone else. If anyone tries to talk with you
15 about the case during this brief recess, please let me
16 know immediately.

17 Remember to keep an open mind about the case
18 until you have heard all the evidence, the closing
19 arguments, and the charge on the law by the Court. With
20 that, Mr. Foreman, ladies and gentlemen of the jury, if
21 you would please go with our bailiff.

22 (The jury retires to the jury room).

23 THE COURT: Mr. Melton, you may certainly step
24 down and refresh yourself during this brief recess;
25 however, remember you are under oath subject to cross

1 examination and perhaps redirect examination. So you
2 may not discuss your testimony with anyone during this
3 recess.

4 Anything further from the State before we take
5 our recess?

6 MR. MADSEN: No, Your Honor.

7 THE COURT: From the defense?

8 MR. BAKER: Your Honor, just as a matter of
9 housekeeping, I guess once we -- before we bring the
10 jury back in, we may want to address third-party guilt
11 on cross examination.

12 THE COURT: We can certainly do that. We will
13 do that when we come back from our break. Thank you,
14 Mr. Baker.

15 (Whereupon there was a recess).

16 THE COURT: Do we have Mr. Melton, Solicitor?
17 If we can get him.

18 CLERK: He is coming in the back door, Your
19 Honor.

20 (Pause).

21 THE COURT: If you would come back around,
22 please, Mr. Melton.

23 THE WITNESS: Yes, sir.

24 MICHAEL MELTON, having being
25 previously duly sworn, resumed the witness stand and

1 testified as follows:

2 THE COURT: Mr. Baker, do you want to take up
3 the third party issue now?

4 MR. BAKER: Yes, sir, Your Honor. While the
5 jury is out, it's probably an appropriate time do it. I
6 guess, Your Honor, I can ask him the questions I would
7 intend to ask and then Your Honor rule or we can argue
8 about it.

9 THE COURT: I will let you make your proffer
10 of testimony. You can question him now. Then I will
11 hear from you and the State.

12 IN CAMERA EXAMINATION

13 BY MR. BAKER:

14 Q Mr. Melton, how long did you live with
15 Ms. Fauscette and Mr. Slice?

16 A Approximately two and a half months.

17 Q You knew they were drug users?

18 A Yes, I did.

19 Q And that they were heavy drug users?

20 A Yes, I did.

21 Q They would regularly have drugs delivered to their
22 house; is that correct?

23 A Yes, sir.

24 Q And right after these victims were killed, you
25 immediately thought this was drug related; didn't

1 you?

2 A Yes, I did.

3 Q And, in fact, you gave a statement to law
4 enforcement indicating the fact that you thought
5 this was drug related?

6 A Yes, I did.

7 Q And you indicated to law enforcement that Kim and
8 David would go deep into debt with certain drug
9 dealers, and you often were concerned about how
10 they were going to be able to pay that debt back?

11 A They wouldn't go extremely deep, but, yes, they
12 would go from person to person.

13 Q And you were concerned that they weren't going to
14 be able to pay back these drug dealers?

15 A Right.

16 Q And, in fact, you actually witnessed and you
17 indicated in your statement firsthand some threats
18 and altercations that certain drug dealers made
19 towards Kim and David; did you not?

20 A Yes, sir.

21 Q In fact, you indicated that you saw an individual
22 who goes by the nickname Twelve come over to the
23 house and demand and actually I think you said he
24 jacked up David and demanded that he get his money;
25 is that right?

MICHAEL MELTON -- IN CAMERA -- MR. BAKER

216

1 A Yes, sir.

2 Q And Twelve is not Mr. Burgess, is it?

3 A No, sir.

4 Q And Twelve got pretty upset when he was over there
5 trying to get his money, was he not?

6 A Correct.

7 Q In fact, you indicated in your statement he
8 threatened David; didn't he?

9 A Correct.

10 Q And you indicated that he walked right into the
11 residence, jacked up David and said, "I'm going to
12 get paid"?

13 A When he walked in, he didn't directly jack David up
14 right at the moment. He said he was going to get
15 paid one way or the other.

16 Q Did you also hear about him -- tell me what
17 happened after he jacked up David.

18 A I walked out the room.

19 Q Did you also know that he made -- Twelve -- made
20 threats toward Kim?

21 A As far as Kim said.

22 Q She indicated he had threatened her?

23 A Yes.

24 Q And indicated that he had forced her to give him
25 some money?

- 1 A She gave him some money, yes.
- 2 Q Did you indicate to Mr. Burgess at some point you
- 3 knew who killed these people?
- 4 A To who now?
- 5 Q Mr. Burgess, my client. Did you tell Mr. Burgess
- 6 you knew who killed David and Kim?
- 7 A No.
- 8 Q You never told him?
- 9 A No, sir.
- 10 Q While you were at this residence for some 18 hours,
- 11 I think from the time you got home from your trip
- 12 to Fayetteville, did you touch the victims?
- 13 A No, I didn't.
- 14 Q Did you fire a gun?
- 15 A No, sir.
- 16 Q Did you handle a gun?
- 17 A No, sir.
- 18 Q What happened to David's car?
- 19 A What car are you referring to?
- 20 Q Did he have to pay off a drug debt with his car?
- 21 A Which car are you referring to?
- 22 Q Did he ever have to pay off any drug debt with any
- 23 car?
- 24 A He said he made a trade with a dealer.
- 25 Q A trade for what?

MICHAEL MELTON -- IN CAMERA -- MR. MADSEN

218

1 A For dope.

2 Q For drugs?

3 A Yes.

4 Q Do you know whether or not Kim and David owed
5 Mr. Burgess any money?

6 A All I can say is what David had told me one time.

7 Q What was that?

8 A That David didn't owe him, but he owed David.

9 MR. BAKER: Your Honor, I think that is all I
10 have got as far as the third-party guilt.

11 THE COURT: Solicitor, do you have any
12 questions in that regard?

13 IN CAMERA EXAMINATION

14 BY MR. MADSEN:

15 Q My understanding from the statement that you gave
16 on the 6th, Twelve threatening David was, I guess,
17 a few weeks before you ended up leaving and coming
18 back?

19 A Yes, sir.

20 Q On like a Friday or something like that?

21 A Yes, sir.

22 Q And as far as what happened between Twelve and Kim,
23 you didn't witness any of that?

24 A No, sir, I didn't.

25 Q That came from her telling you?

1 A Correct.

2 Q And as far as the trading something, the car for, I
3 guess, drugs by David, did you witness that or was
4 that something you were told?

5 A That's something I was told.

6 MR. MADSEN: That's all the questions I have.

7 THE COURT: Thank you, Solicitor. Mr. Baker,
8 I would be glad to hear from you.

9 MR. BAKER: Your Honor, I would just ask that
10 I be allowed to go into the cross examination that I
11 just covered in front of Your Honor. In this case there
12 are multiple witnesses, not just Mr. Melton, who
13 indicate or who have indicated to law enforcement that
14 these individuals were deeply in debt and indebted to
15 certain drug dealers.

16 The name Twelve has come up on multiple
17 occasions. I think from Mr. Melton and Ms. Alice
18 Ballard as well, who indicated that he had threatened
19 these two individuals. I would ask that it be
20 admissible and allow the jury to consider this evidence.

21 THE COURT: Thank you, Mr. Baker. Solicitor.

22 MR. MADSEN: Thank you, Your Honor. Our
23 argument would be and we filed a motion on this. In
24 reference we would cite State versus Gregory and State
25 versus Holmes. I can pass up copies of those to Your

1 Honor.

2 THE COURT: I have Gregory and I have Holmes
3 versus South Carolina. You have State versus Holmes
4 also?

5 MR. HUBBARD: Actually I've got Holmes versus
6 South Carolina, a Supreme Court case.

7 THE COURT: I have it.

8 MR. MADSEN: I have handed those to Mr. Baker.
9 I think if you look under Gregory, it indicates that
10 evidence offered by the accused as to the commission of
11 a crime by another must be limited to such facts as are
12 inconsistent with his own guilt and such facts as raise
13 a reasonable inference or presumption as to his own
14 innocence. Evidence which can have no other effect but
15 cast a bare suspicion on another or to raise a
16 conjectural inference as to the commission of a crime by
17 another is not admissible.

18 It goes on to say: An orderly and unbiased
19 judicial inquiry as to the guilt or innocence of a
20 defendant on trial does not contemplate that such
21 defendant be permitted by way of defense to indulge in
22 conjectural inferences that some other person might have
23 committed the offense for which he was on trial or by
24 fanciful analogy to say to the jury that someone other
25 than he is more probably guilty.

1 Then the newer case is obviously Holmes which
2 says that: Such evidence may be excluded where it does
3 not sufficiently connect the other person to the crime,
4 as for example, where the evidence is speculative or
5 remote or does not tend to prove or disprove a material
6 fact in issue at the Defendant's trial.

7 It goes on to say that: Before such testimony
8 can be received, there must be such proof of connection
9 with it, such a train of facts or circumstances as tends
10 to clearly point out such other person as the guilty
11 party.

12 We clearly have from -- obviously you have two
13 parts, the stuff that is hearsay which would not come in
14 I believe because of hearsay, and the stuff that he
15 witnessed with David and Twelve.

16 That certainly is a couple of weeks before.
17 It is remote. He simply just says that they got into
18 some kind of dispute. It's perfectly on point with just
19 leaving conjecture, just throwing it out there and
20 making inference that maybe somebody else committed it.
21 It is not inconsistent with Mr. Burgess' guilt, and
22 therefore we do not believe it is admissible.

23 THE COURT: Thank you, Solicitor. Yes, sir,
24 Mr. Baker.

25 MR. BAKER: Your Honor, I have looked at the

1 Holmes case, as well as the Gregory case. I think in
2 looking at the case law surrounding this issue, Your
3 Honor, one of the unique things about this case is, and
4 I guess it's spoken of in the Holmes case, where it
5 talked about prior cases in South Carolina where they
6 excluded third party guilt based on the fact there was
7 overwhelming scientific evidence or forensic evidence to
8 link an individual to a crime.

9 In this case there is no forensic evidence to
10 link my client to this crime. I think it's a unique
11 situation. There's no forensic evidence linking him to
12 this crime.

13 Also, coupled with that is the fact there are
14 a number of witnesses who indicate that they see the
15 same individuals threaten these victims on a number of
16 occasions, not just one person has indicated it. I will
17 proffer that testimony when the time comes, Your Honor,
18 in the defense case, if necessary.

19 There are several other witnesses who saw this
20 Twelve individual threaten the victim. The Supreme
21 Court of South Carolina has said in Holmes versus South
22 Carolina that the U.S. Constitution guaranties criminal
23 defendants a meaningful opportunity to present a
24 complete defense. I would just ask that this evidence
25 and move that this evidence be admitted.

1 THE COURT: Thank you, Mr. Baker. I am not
2 going to allow it at this time. That is not to indicate
3 that I am going to allow it at a later time. That is to
4 indicate you have told the Court that there may be other
5 witnesses that would have testimony as to Twelve or
6 other individuals.

7 I haven't heard all the testimony, but at this
8 time I think it would be conjectural. I do not think it
9 is inconsistent with the Defendant's guilt. It does not
10 reach the standard of Gregory, nor the standard of
11 Holmes.

12 There was some questions I thought that you
13 asked that did not go to third-party guilt at all, for
14 example -- and I assume the solicitor, but I don't know
15 if the solicitor has objections or not -- he did ask
16 about if David and Kim were regular heavy drug users.
17 Would you have an objection to that, Solicitor?

18 MR. MADSEN: No, sir.

19 THE COURT: Obviously, as the solicitor
20 pointed out, it would be regardless of my third party
21 conclusion under Gregory and Holmes, he witnessed
22 nothing according to him between Kim and Twelve;
23 therefore, that would be hearsay.

24 Obviously, you could -- I think you can ask
25 him on cross examination whether or not he, Mr. Melton,

1 indicated to Mr. Burgess that he, Mr. Melton, knew who
2 committed the offense. Do you have objection to that
3 question, Solicitor?

4 MR. MADSEN: No, sir.

5 THE COURT: I don't think that goes to third
6 party. I think that's just proper cross examination.
7 I'm not sure about the basis of his knowledge right now
8 about trading his car for dope. That also could go to
9 the issue of his heavy drug use, which the State doesn't
10 object to. Was that personal knowledge?

11 MR. MADSEN: I missed that part, Your Honor,
12 I'm sorry.

13 THE COURT: There is some testimony that David
14 traded a car for dope. Was that based on personal
15 knowledge?

16 MR. MADSEN: That's my understanding. He
17 testified that he was told that by David, did not
18 witness that himself. That would obviously be hearsay.

19 THE COURT: Unless he had personal knowledge
20 of that, he would not be allowed to testify. That's not
21 third-party guilt either, trading a car for dope.
22 There's no indication of who may or may not have turned
23 David into a corpse.

24 But I will say this, upon your completion of
25 your examination, I will direct that Mr. Melton remain

1 subject to subpoena so that as these other witnesses
2 testify -- this is the first witness I have heard from,
3 as the jury has. I don't know what may be coming.

4 So as the other witnesses come, if you have
5 got other testimony that Twelve -- the testimony
6 concerning Twelve is speculative, conjectural testimony
7 at this point. If you have other testimony that changes
8 that, I don't want you to lose him as a witness
9 necessarily if that changes.

10 MR. BAKER: Thank you, Your Honor. Your Honor
11 he is under subpoena, I think, both by myself and the
12 State.

13 MR. MADSEN: We will not release him from
14 ours.

15 THE COURT: Anything further before we bring
16 in our jury, Mr. Baker?

17 MR. BAKER: Your Honor, I don't know whether
18 this was -- I had asked him during questioning whether
19 he had touched the victims, was handling a gun or firing
20 a gun.

21 THE COURT: I think you can ask him that. I
22 didn't go over that specifically. I don't think that
23 has any -- I don't think that has anything to do with
24 third party. I think given the fact that he -- given
25 the time frame, obviously you can ask him that. Do you

MICHAEL MELTON -- CROSS -- MR. BAKER

226

1 have objection to that, Solicitor? I can rule on it
2 now.

3 MR. MADSEN: No, sir.

4 THE COURT: I think I ruled on it before you
5 objected. Anything further?

6 MR. BAKER: I think that's it, Your Honor.

7 THE COURT: If you would bring us our jury,
8 please.

9 (The jury returns to the courtroom).

10 THE COURT: It appears our jury is back
11 present in the courtroom. Mr. Baker, you may cross
12 examine the witness.

13 MR. BAKER: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. BAKER:

16 Q Mr. Melton, your testimony I think is that on
17 September 5th at approximately 5 or 5:30, you
18 arrived home and walked in through the front door
19 of this mobile home; is that correct?

20 A Yes, sir.

21 Q And I think there may be a diagram over here. Your
22 testimony is you walked right in this door
23 (indicating) at about 5 or 5:30 on September 5,
24 2005; is that correct?

25 A Yes, sir.

1 Q And as you walked in that door, you saw nothing
2 unusual to lead you to believe there had been any
3 crime committed in that residence; did you?

4 A No, I didn't.

5 Q And, in fact, you actually sat down on this love
6 seat (indicating); did you not?

7 A Yes, I did.

8 Q And you sat there for a few moments, and while you
9 are sitting on that love seat, you again saw
10 nothing in that residence that led you to believe
11 there had been a crime committed in there?

12 A No, I didn't.

13 Q And you saw nothing in that residence that led you
14 to believe on September 5, 2005, around
15 5:00 o'clock, 5:30, that Kim and David had been
16 injured in any way; did you?

17 A As I said, it was dark in there, and I thought they
18 was asleep.

19 Q If you thought they had been injured, you would
20 have certainly alerted somebody to that; would you
21 not?

22 A Most definitely.

23 Q And you didn't see anything to lead you to believe
24 they had been injured?

25 A No, I didn't.

1 Q And you don't even know as a fact whether they had
2 been injured at that point, do you?

3 A At that point, no.

4 Q You don't have any way of knowing when they
5 actually were shot, do you?

6 A No, I don't.

7 Q You come in at 5:00 o'clock or so on September 5,
8 2005, through the front door, you sit on the love
9 seat, look at some pots and pans. Then you go to
10 the kitchen to fix yourself some tea; is that
11 correct?

12 A No, sir, I fixed me a glass of tea beforehand.

13 Q So you then fix yourself some tea and then you went
14 and sat on the love seat?

15 A Yes.

16 Q And then at some point, you go back to your room
17 and, and you smoke some crack; is that correct?

18 A Yes, I do.

19 Q Then you stay in your room until what time, seven
20 or eight?

21 A Seven or eight.

22 Q And then at that point, you -- or at some point in
23 time, you are in touch with the Kleins; is that
24 correct?

25 A Yes, sir.

1 Q And then at what time does Tracy Klein come over to
2 pick you up?

3 A I'd say between eight and nine. I'm not sure what
4 time.

5 Q Eight and nine p.m. on September 5, 2005?

6 A (Witness nods). (Indicating affirmative response).

7 Q And Tracy Klein enters into that residence at 8,
8 9:00 o'clock on September 5th, and she doesn't see
9 anything that leads her to believe that any crime
10 had been committed?

11 A She entered through the back door, so she wouldn't
12 have seen anything anyway.

13 Q No matter where she entered, she didn't see
14 anything that led her to believe that there had
15 been a crime committed in that residence; did
16 she?

17 A No, sir.

18 Q And then y'all go into your room and smoke some
19 more crack?

20 A Yes, we do.

21 Q And then at some point, you leave and you stay gone
22 for several hours; is that correct?

23 A Correct.

24 Q And you stayed gone until you say 12 or 12:30 on
25 September 5th?

- 1 A Yes, sir.
- 2 Q Now, we are going into September 6th, I guess?
- 3 A Correct.
- 4 Q And then you come home on September -- the early
5 morning hours of September 6th, I guess it is, and
6 you again don't see anything that leads you to
7 believe there had been any crime committed in that
8 residence?
- 9 A Once again, I'm coming through the back door. You
10 cannot see the front part where they are at.
- 11 Q But you had already gone through the front door?
- 12 A One time gone through the front door.
- 13 Q You don't have any idea of knowing -- you have no
14 idea whether they were murdered while you were gone
15 over to Tracy and Steve Klein's house, do you?
- 16 A No, sir.
- 17 Q It's certainly possible they could have been, is it
18 not?
- 19 A I don't know.
- 20 Q Then at some point on September 6th, early morning
21 hours, you slept for some period of time?
- 22 A A short period of time.
- 23 Q And then you wake up again at 7:00 a.m.
24 approximately, and you go to the store; is that
25 correct?

1 A Right.

2 Q And you then exit the residence again, and you come
3 back some 30 minutes later; is that correct?

4 A Correct.

5 Q Again, as you are exiting the residence and you are
6 entering the residence, you don't see anything that
7 leads you to believe there had been any crime
8 committed at that residence?

9 A Not entering through the back door, no.

10 Q And when you went -- when did you go check the
11 mail?

12 A I checked the mail when I first got home.

13 Q And that was after you had actually originally
14 entered the residence?

15 A Correct.

16 Q And then you went back out to check the mail?

17 A The back door, correct.

18 Q And going in and out of the residence at that
19 point, you don't see anything that leads you to
20 believe there had been crime committed at that
21 residence?

22 A No.

23 Q And you have testified that you actually saw some
24 blood around 11:00 o'clock on September 6th, 2005;
25 is that correct?

MICHAEL MELTON -- CROSS -- MR. BAKER

232

1 A Correct.

2 Q How much blood did you see?

3 A Very little.

4 Q And I think you may have testified earlier,
5 Mr. Melton, that you knew that Mr. Slice and
6 Ms. Fauscette were heavy drug users?

7 A Yes, I did.

8 Q And they would often have drugs delivered to their
9 home?

10 A There would be people to come over and sell drugs
11 and smoke drugs with them.

12 Q And, in fact, are you aware that Mr. Slice once
13 traded his vehicle for drugs?

14 MR. MADSEN: Judge, I will object if this is
15 calling for hearsay.

16 BY MR. BAKER:

17 Q Are you aware of that? Do you have personal
18 firsthand knowledge?

19 THE COURT: I will overrule the objection if
20 he can answer it.

21 A I was told that --

22 THE COURT: You don't have any personal
23 knowledge of that?

24 THE WITNESS: No, sir.

25 THE COURT: With that being said, I would

1 sustain the objection and advise the jury that you are
2 not to consider that question nor that answer. You have
3 to put that out of your mind. I know it's very hard to
4 unring the bell, but you cannot consider that question
5 nor that answer.

6 You may proceed, Mr. Baker.

7 BY MR. BAKER:

8 Q Mr. Melton, you were in this home for about 18
9 hours from the time you returned from Fayetteville
10 until you actually discovered Kim and David had
11 been injured; is that correct?

12 A I was gone several hours. I hadn't figured up my
13 time, no.

14 Q So you got there about 5:00 p.m. on September 5,
15 2005?

16 A About 5:30.

17 Q And you don't actually determine or figure out they
18 have been injured until September 6th about
19 11:00 a.m.; is that right?

20 A Right.

21 Q So that's over 12 hours?

22 A Okay.

23 Q At least. Would you agree with me that's about 18
24 hours?

25 A Yes.

1 Q While you are at that residence, did you -- for
2 that period of time from 5:00 p.m. until 11:00 a.m.
3 on September 6th -- did you touch the victims in
4 any way?

5 A No, I did not.

6 Q Did you handle a weapon?

7 A No, sir.

8 Q Did you fire a gun?

9 A No, I didn't.

10 Q And is it true, Mr. Melton, that you told
11 Mr. Darrell Burgess that you know who killed these
12 people?

13 A No, I didn't.

14 Q And, Mr. Melton, you have been convicted twice for
15 failing to indicate your location or where you
16 reside --

17 A Yes, sir.

18 Q -- as a result of your second offender registry?

19 A Yes, sir.

20 (Pause).

21 MR. BAKER: Your Honor, I think that's all I
22 have.

23 THE COURT: Thank you, Mr. Baker. Anything in
24 redirect?

25 MR. MADSEN: Just a few, Your Honor.

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1 Q When you went up to Kim and you said you saw
2 something around her head, what was that?

3 A It looked like something black and glittery.

4 Q When did you realize that was blood or did you?

5 A I never did realize it was blood.

6 Q Once you saw that, where did you go?

7 A Out the front door.

8 MR. MADSEN: That's all the questions I have.

9 THE COURT: Any anything on recross,
10 Mr. Baker?

11 MR. BAKER: Just a couple of questions, Your
12 Honor.

13 **RECROSS EXAMINATION**

14 BY MR. BAKER:

15 Q You have indicated, Mr. Melton, that Mr. Slice was
16 right here (indicating) and Ms. Fauscette was right
17 here (indicating)?

18 A Correct.

19 Q You were on this love seat (indicating)?

20 A Correct.

21 Q And to you where they were and what they were doing
22 looked normal? You did not see anything unusual?

23 A I thought -- they had been working for Kim's mother
24 in clearing a lot, and when they went to work for
25 her, she would work them real hard, and they would

1 come back dog tired. That's what I thought had
2 happened, being pots and pans were there.

3 Q As far as you knew, they were taking a nap?

4 A Correct.

5 Q And what was different on September 6th at
6 11:00 a.m. when you sat in there on that love seat?

7 A Well, I kind of knew -- I figured David would have
8 to go to work and just something didn't seem right.

9 Q Was it just as dark?

10 A It was just as dark.

11 Q So nothing had really changed in there at that
12 point?

13 A No.

14 MR. BAKER: Thank you, Your Honor.

15 THE COURT: Thank you Mr. Baker. Thank you,
16 Mr. Melton. You may step down. You are still subject
17 to subpoena.

18 Solicitor, you may call your next witness.

19 MR. MADSEN: Your Honor, the State would call
20 Deputy Billy Womble.

21 THE COURT: Ladies and gentlemen, I have
22 ordered the witnesses be sequestered. There is some
23 delay in getting them in and out of the courtroom under
24 that procedure.

25 Come around, Deputy Womble, and be sworn.

WILLIE WOMBLE -- DIRECT -- MR. MADSEN

238

1 WILLIE WOMBLE, being
2 first duly sworn, testified as follows:

3 CLERK: Speak up loud and clear and state your
4 full name, spelling your last.

5 THE WITNESS: My name is Willie Womble,
6 W-O-M-B-L-E.

7 DIRECT EXAMINATION

8 BY MR. MADSEN:

9 Q Deputy Womble, where are you employed?

10 A Lexington County Sheriff's Department.

11 Q And how long have you been employed there?

12 A Since May of 2001.

13 Q What are your current job duties?

14 A I am a resident deputy for the Lexington County
15 Sheriff's Department and am on the S.W.A.T. team.

16 Q What does a resident deputy do?

17 A We are here to directly work liaison between the
18 sheriff and the community, whatever we are assigned
19 to.

20 Q Where is your area?

21 A Lexington, just the whole Lexington community.

22 Q The city?

23 A It's between the town, up into Gilbert, outside of
24 Irmo.

25 Q And how long have you been doing that?

1 A Two years.

2 Q Prior to that were you a resident deputy somewhere
3 else?

4 A I was in Red Bank.

5 Q Red Bank?

6 A Yes, sir.

7 Q Is that across 6?

8 A That's at Highway 6, Platt Springs Road, up into
9 Gaston, Swansea and the outskirts of Emmanuel
10 Church and Three Fountains.

11 Q How long were you a resident deputy there?

12 A A year.

13 Q You said besides being the resident deputy now for
14 Lexington, you do what else?

15 A I am a S.W.A.T. team member. I'm on S.W.A.T.

16 Q What does it mean? You get to do a bunch of cool
17 stuff on S.W.A.T. or what does S.W.A.T. do?

18 A We are a secondary response team for any law
19 enforcement officer. If a situation should take
20 place on scene, we are called to go out.

21 Q Back in September of 2005, what were your duties
22 back then?

23 A I was a field training officer on the road, which I
24 answered all calls on the road in the south region,
25 which would consist of Gaston, Swansea, Pelion, Red

WILLIE WOMBLE -- DIRECT -- MR. MADSEN

240

1 Bank, and Fairview.

2 Q So you were a road deputy in what is called the
3 south region?

4 A Yes, sir.

5 Q Did you have an occasion on September 6, 2005, to
6 end up coming to [REDACTED] [REDACTED]?

7 A Yes, sir.

8 Q Are you familiar with this area --

9 A Yes, sir.

10 Q -- on State's Exhibit Number 16?

11 A Yes, sir.

12 Q Where are you at when you get the call?

13 A I am on Fish Hatchery Road and -- I couldn't tell
14 you the name of the subdivision right off the top
15 of my head. It's a new coming subdivision. It had
16 no name. It was just a dirt road. I was working a
17 call there when the call from dispatch came over.

18 Q What kind of call are you working there?

19 A It was a suspicious vehicle where a teenage kid had
20 driven his car into a retention pond and got it
21 stuck.

22 Q Were you trying to help him get it out?

23 A He originally had construction workers trying to
24 help him get out. He became disgruntled with them
25 and they called us.

1 Q So you are out there and you get a call. What kind
2 of call do you get?

3 A It came over our radio from the Lexington County
4 communication dispatch that an individual had found
5 two people dead inside of a house.

6 Q So where do you go?

7 A We immediately left there, left that scene, drove
8 straight to [REDACTED]

9 Q Do you recall which way you come in off Fish
10 Hatchery?

11 A (Witness leaves the witness stand). We originally
12 came in off this way (indicating), Fish Hatchery
13 Road, and this (indicating) is the back way into
14 [REDACTED].

15 Q Thank you.

16 A (Witness resumes the witness stand).

17 Q And when you get to [REDACTED], who do you
18 encounter or what do you do?

19 A I originally, when I arrived on the scene, met with
20 a Michael Melton and a Mary Taylor who was on
21 scene. Michael Melton was standing outside the
22 residence towards the neighbor's -- the back side
23 of the neighbor's house. Ms. Taylor was on the
24 phone. I spoke with Mr. Melton who said, "They are
25 inside dead." Myself and another arriving deputy,

WILLIE WOMBLE -- DIRECT -- MR. MADSEN

242

1 Deputy Poole --

2 Q Let me ask you this. When you talked with Michael
3 Melton, what was his demeanor?

4 A He was nervous and shook up. He was pretty shaken
5 and jittery, nervousness.

6 Q And who was with you when you get there from law
7 enforcement?

8 A Deputy Brandon Poole.

9 Q After you encounter them outside, what do you and
10 Deputy Poole do?

11 A We go to the residence, make our presence known by
12 entering the house. Before we enter the house, we
13 advised, "Lexington County Sheriff's Department,"
14 made entrance to the house. Once we go inside the
15 house, we do a protective sweep, which is to make
16 sure no more victims or suspects or any people are
17 in the house to do any harm.

18 Q Do you recognize State's Exhibit Number 17?

19 A Yes, sir.

20 Q Tell the jury here. When you say that you enter to
21 do a protective sweep, what are you trying to do
22 when you do a protective sweep?

23 A Just make entry, give assistance to any victims
24 that could need help, check for any bad guys or
25 suspects that could possibly be in the area or any

1 other victims laying around the house.

2 Q When you did that protective sweep, did you find
3 anyone alive in the house?

4 A No, sir.

5 Q At some point in time, did you encounter some
6 victims?

7 A Yes, sir.

8 Q Let me show you what has been marked as State's
9 Exhibit Number 18, 19, and 20. Do you recognize
10 those?

11 A Yes, sir.

12 Q What are those photographs of?

13 A Those are the photographs of the victims as they
14 were when we found them inside the residence.

15 Q Did you go to those two victims?

16 A Yes, sir.

17 Q Did you check on them?

18 A Yes, sir, we can checked for vitals and life.

19 Q When you checked for vitals and life, did you find
20 anything?

21 A No response for any vitals or anything showing life
22 no, sir.

23 Q And at some point in time --

24 THE COURT: State's 18, 19, and 20 are in
25 evidence without objection?

WILLIE WOMBLE -- DIRECT -- MR. MADSEN

244

1 MR. BAKER: Without objection, Your Honor.

2 THE COURT: Thank you.

3 (State's Exhibits Number 18-20 are received
4 into evidence).

5 BY MR. MADSEN:

6 Q After you checked on them, did medical personnel
7 arrive?

8 A We had E.M.S. respond and they checked their
9 vitals.

10 Q Did they find any?

11 A No signs of life, no, sir.

12 MR. MADSEN: Let me get this marked, please.

13 (State's Exhibit Number 32 is marked for
14 identification).

15 BY MR. MADSEN:

16 Q Let me show you what has been marked as State's
17 Exhibit Number 32 for identification purposes. Do
18 you recognize this area on the map?

19 A Yes, sir.

20 Q What area is that?

21 A Gaston.

22 Q And how are you familiar with that area?

23 A Just from working and being on patrol there. I was
24 patrolling the area for approximately three to five
25 years.

1 Q And does State's Exhibit Number 32 for I.D.
2 purposes accurately reflect the Gaston area?

3 A Yes, sir.

4 Q Does it have [REDACTED] [REDACTED] on it?

5 A Yes, sir.

6 Q Once you checked on the victims and E.M.T.s checked
7 on the victims, what do you then do next?

8 A Once we completed the sweep of the house and
9 checked for anything, we immediately exited the
10 house, roped off for crime scene, started a crime
11 scene log, notified our major crimes and I.D.
12 units.

13 Q And did the major crimes and I.D. come out?

14 A Yes, sir.

15 Q When you say major crimes, what does that mean?

16 A That's our investigators that handle any case, such
17 as a homicide.

18 Q And when you say I.D., what are you talking about
19 there?

20 A That's our evidence personnel that come out and
21 take pictures, obtain any evidence and deal with
22 it, take it in the evidence for the crime, and put
23 it in our evidence lockers.

24 Q Answer any questions Mr. Baker has.

25 THE COURT: Thank you, Solicitor. Mr. Baker.

CROSS EXAMINATION

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BY MR. BAKER:

Q Deputy Womble, when you entered this residence on September 6th, was it obvious to you this was a crime scene?

A Once making entry it did come to my knowledge this would be a crime scene, yes, sir.

Q That was obvious to you once you entered?

A Once we got inside, yes, sir.

Q It was obvious to you these individuals had been injured?

A Yes, sir.

Q Based on your viewing of the crime scene, Deputy Womble, is it hard for you to believe some individual could remain in this house for some 18 hours without realizing there is a crime scene?

MR. MADSEN: Judge, I will object. I think that's speculation. He's asking him what another person --

THE COURT: I sustain the objection.

BY MR. BAKER:

Q Deputy Womble, did you locate any shell casings from this residence?

A I didn't notice any, but I was not looking for that. I was checking for victims or bodies.

1 Q Did you find any at the scene?

2 A I did not, my person. I did not personally find
3 any.

4 Q I think that's all I have got, Deputy Womble.

5 THE COURT: Thank you, Mr. Baker. Anything on
6 redirect, Solicitor?

7 MR. MADSEN: Just one.

8 REDIRECT EXAMINATION

9 BY MR. MADSEN:

10 Q When you went to that scene, what was your call
11 that you got?

12 A I received a call over -- from Lexington County
13 communication dispatch that there was two
14 individuals found to be dead inside of a residence.

15 Q So when you went in, you expected to find two dead
16 people?

17 A From that knowledge, yes, sir. To my knowledge
18 possibly there was two dead people.

19 Q That's all the questions I have.

20 THE COURT: Thank you. Recross?

21 MR. BAKER: None, Your Honor.

22 THE COURT: Thank you, Deputy Womble. You may
23 step down. Solicitor you may call your next witness.

24 MR. HUBBARD: Your Honor, may we approach for
25 scheduling?

1 THE COURT: Yes, sir.

2 (Whereupon there was a bench conference off
3 the record in the presence of the jury but out of the
4 hearing of the jury).

5 THE COURT: Mr. Foreman. ladies and gentlemen
6 of the jury, the parties inform me they have a legal
7 matter to take up, and rather than hold y'all back in
8 your jury room and try to take this matter up before
9 your lunch break, I am going to allow y'all to go on and
10 take your luncheon recess.

11 Please remember during this break, you are not
12 to discuss this case with anyone. That includes your
13 fellow jurors, your lunch mates, your family, your
14 friends or anyone else involved in the case.

15 Remember, if anyone tries to talk with you
16 about the case, please let me know immediately. Do not
17 read, watch or listen to any news reports about this
18 trial. Remember to keep an open mind about this case
19 until I instruct you to begin your deliberations.

20 I would ask you to please be back in your jury
21 room promptly at 2:00 p.m., at 14:00 hours, and have a
22 pleasant lunch. You are now excused until 2:00 o'clock.
23 Thank you very much.

24 (The jury is excused for lunch at 12:30 p.m.)

25 THE COURT: You have some matters you want to

1 take up before we break, Solicitor?

2 MR. HUBBARD: Your Honor, I know I wanted to
3 give the defense counsel before we get into the next
4 witness, as well as I know, Your Honor, just for
5 purposes of clarity for me since I have the next
6 witness, it's my understanding that you have reviewed
7 State's Exhibits for I.D. 21, 23, 25, 28, and 27.

8 I pass those back up, Your Honor. I know you
9 have not ruled on those for admissibility but as being
10 potentially admissible. I wanted to make sure I was
11 right on that and that I'm not mistaken.

12 THE COURT: You are correct. The others --
13 22, 24, and 26 -- I have ruled are not admissible. I
14 have not ruled that these are admissible. It depends on
15 the foundation and the testimony.

16 MR. HUBBARD: Right, yes, sir.

17 THE COURT: I just felt under Rule 403 that
18 the ones I have already excluded shall remain excluded.

19 MR. HUBBARD: Your Honor, I just wanted to
20 clarify that. I think that's really all I have got.
21 I've got two photographs I have shown Mr. Baker that
22 I may go ahead and get marked now as well for I.D.
23 purposes so we will go ahead and get a number on
24 them.

25 THE COURT: All right.

1 (State's Exhibits Number 33-34 are marked for
2 identification).

3 THE COURT: Thirty-three and 34 are for I.D.
4 only.

5 MR. HUBBARD: Yes, sir, at this time.

6 MR. BAKER: Your Honor, I know you addressed
7 the motion in limine only. I just ask that the
8 prosecutor, assuming the foundation is laid, you will
9 allow in 21, 23, 25, 27, and 28.

10 I just ask the solicitor to publish those to
11 me prior to them actually attempting to publish them for
12 the jury so that I can make the appropriate objection on
13 the record as I'm required to do.

14 THE COURT: That's 21, 23, 25, 27, and 28;
15 correct?

16 MR. BAKER: That's the ones you are allowing
17 in.

18 THE COURT: Again, I'm not allowing them in.

19 MR. BAKER: Or you are not excluding them?

20 THE COURT: There has been no testimony yet.
21 It's just that the others -- 22, 24, and 27 -- I'm
22 absolutely excluding. It just kind of depends on how
23 the testimony develops.

24 That's based on the motion in limine that you
25 brought up yesterday as far as the photographs, which

1 was actually your second motion right after your motion
2 to quash.

3 MR. BAKER: Correct.

4 THE COURT: All right. Let me get one further
5 thing straight on the record. As I look through my
6 notes, the letters that Mr. Baker brought up yesterday,
7 which was his fifth motion, allegedly written by the
8 Defendant to the codefendant, Mr. Wise, those are not
9 going to be offered, is that my understanding, at this
10 time?

11 MR. MADSEN: At this time.

12 THE COURT: All right. If that changes, of
13 course, that would be revisited but that's my
14 understanding. I know I didn't get this on the record
15 this morning. Ms. Tracy Klein has been served and is
16 under subpoena?

17 MR. BAKER: That's correct, Your Honor.

18 THE COURT: And is available for the defense
19 should the defense choose to call Ms. Klein.

20 MR. BAKER: She is under subpoena, Your Honor,
21 unless I hear otherwise. If I have any problem with
22 that, I will let the Court know.

23 THE COURT: If you do hear otherwise, let me
24 know, and I will certainly take appropriate action.

25 MR. BAKER: Sure.

1 THE COURT: Anything further before we take
2 our recess? From the State?

3 MR. MADSEN: No, Your Honor.

4 THE COURT: From the defense?

5 MR. BAKER: Nothing, Your Honor.

6 THE COURT: Court will be in recess until
7 2:00 p.m.

8 (Whereupon there was a luncheon recess).

9 THE COURT: Mr. Bailiff, bring me Mr. Pinner,
10 please.

11 (The juror enters the courtroom).

12 THE COURT: This is juror number 184,
13 Mr. Pinner. I received a note delivered to me by the
14 bailiff. It says: I, Allen Pinner, juror number 184,
15 am friends with the family of David Slice. I am just
16 now realizing how much I already know about this case.
17 I have been friends with Vickie Rawls for about six
18 years, which is the victim's sister. Therefore, I do
19 not think that I am able to make a fair decision.

20 Is that your note, Mr. Pinner?

21 JUROR: Yes, sir, I wrote that.

22 THE COURT: Is this accurate and correct?

23 JUROR: Yes, sir, exactly.

24 THE COURT: Have you said anything to any
25 other members of the jury concerning this matter?

1 JUROR: No, sir, not anybody on the jury, no,
2 sir.

3 THE COURT: Solicitor, do you have any
4 questions?

5 MR. HUBBARD: No, sir, Your Honor.

6 THE COURT: Mr. Baker?

7 MR. BAKER: I don't have any questions of this
8 juror.

9 THE COURT: I'm going to excuse Mr. Pinner
10 from service of this jury.

11 MR. BAKER: What is his juror number?

12 THE COURT: One hundred eighty-four. I am
13 going to excuse, based on this note, Mr. Pinner from
14 service on this jury. I appreciate you bringing that to
15 our attention.

16 JUROR: It was the last names. I wasn't sure.
17 Then I started putting two and two together.

18 THE COURT: If you would mark that as a
19 Court's exhibit.

20 (Court's Exhibit Number 11 is marked for
21 purposes of the record).

22 THE COURT: You are released from service on
23 this jury, and I would ask you to please call back after
24 6:00 p.m. tonight to the juror information number. I
25 appreciate your service.

1 MR. BAKER: Your Honor, is he the foreperson?

2 JUROR: Yes, sir, I am.

3 THE COURT: Excuse me?

4 MR. BAKER: I was asking if he was the
5 foreperson.

6 THE COURT: Yes, that's correct. I just
7 didn't hear you. I didn't understand what you said.
8 Thank you, Mr. Pinner.

9 (The juror leaves the courtroom).

10 THE COURT: It's my understanding that under
11 14-7-1340, we draw an alternate from the two alternates.

12 MR. MADSEN: It was always my understanding
13 that you took the next alternate.

14 THE COURT: Where does that understanding come
15 from?

16 MR. MADSEN: Just tradition. I don't know if
17 I have ever looked at the statutory language.

18 THE COURT: Mr. Baker.

19 MR. BAKER: Your Honor, without researching
20 that issue, I'm not sure without looking at that statute
21 myself.

22 MR. MADSEN: Your Honor, however the Court or
23 Mr. Baker wants to do it, we are fine with either of the
24 alternates.

25 THE COURT: I always had your understanding or

1 misunderstanding in the past, Solicitor. I think there
2 is a conflict between civil and criminal. I think my
3 understanding in criminal is you are supposed to draw
4 the name of one of the alternates, if there be more than
5 one, by ballot to serve in place of such discharged
6 juror. You don't have any objection to that procedure,
7 Solicitor?

8 MR. MADSEN: No, sir.

9 THE COURT: Do you, Mr. Baker?

10 MR. BAKER: I don't have any objection to that
11 procedure, Your Honor. I have a couple of matters
12 regarding the juror issue itself.

13 THE COURT: All right. I would be glad to
14 hear those.

15 MR. BAKER: Your Honor, this is now the second
16 situation we have had concerning a juror who may know
17 the family, the victims, know something about the
18 matter.

19 I think earlier on the record Mr. Emanuel
20 indicated he works with a member of the victim's family.
21 Based on that, Your Honor, this individual juror,
22 number 184, was the foreperson of the jury. I would
23 move for a mistrial in this case.

24 We have at least some -- we have had two
25 situations apparently where the individuals, for

1 whatever reason, didn't reveal this information when we
2 were striking this jury, which would have obviously been
3 information that would have been beneficial to us when
4 we were striking this jury, information we didn't have.

5 Based on that I think we would be entitled to
6 a mistrial or at least some polling of the jury if there
7 was anybody else on the panel who may know of something
8 else about this case. Because apparently these two
9 individuals either didn't understand it or didn't
10 realize it until it was too late.

11 THE COURT: All right. I would respectfully
12 deny your motion for a mistrial. I think they are two
13 separate and distinct situations. Mr. Emanuel stated
14 that as a result of seeing a young lady out in the
15 audience, he then realized that he worked with and
16 supervised, I guess, it would be her brother, which
17 would have been David Slice's brother-in-law.

18 His statement to the Court was: Given that
19 fact, I can still be a fair and impartial juror. I left
20 him on. This is a juror coming forward as the evidence
21 has unfolded and then says: I realize I know David
22 Slice.

23 David Slice may not be an uncommon name in
24 Lexington County in general and specific parts of
25 Lexington County also. He has said: I don't think I

1 can make a fair decision.

2 I don't know what more shows the quality of
3 jurors that we get, not only in Lexington but in South
4 Carolina, when one comes forward and says: I can make a
5 fair decision based on a certain set of facts and
6 circumstances. The other one says: I do not think I
7 can make a fair decision.

8 I have removed Mr. Pinner from the jury. I
9 have allowed Mr. Emanuel to stay on the jury. Both of
10 them indicated they had not provided any of this
11 information to their fellow jurors. So with that being
12 said, I would respectfully deny your motion for a
13 mistrial.

14 Madame Clerk, I understand Number 8 and
15 Number 51 are our alternates; is that correct?

16 CLERK: Number 8 and Number 58, Ms. Culli and
17 Ms. Babb.

18 THE COURT: Any objection from the State to
19 the clerk drawing one of those two?

20 MR. MADSEN: No, sir.

21 THE COURT: Any objection from the defense?

22 MR. BAKER: No, Your Honor.

23 THE COURT: And your motion is certainly
24 protected on the record.

25 MR. BAKER: Sure. Thank you.

1 THE COURT: If you would please draw one of
2 those two.

3 CLERK: Your Honor, I cut them out on paper
4 and put them in a cup.

5 THE COURT: I love this high tech.

6 CLERK: It's Rhonda Babb.

7 THE COURT: So Ms. Babb will now be on our
8 primary jury. Mr. Bailiff, if you would please bring
9 our jury, and Ms. Babb will now be on the primary jury.

10 (The jury returns to the courtroom at
11 2:16 p.m.)

12 THE COURT: It appears our jury is back
13 present in the courtroom. Ms. Babb?

14 JUROR: Yes, sir.

15 THE COURT: Ms. Babb, you are now a member of
16 the primary jury. You are no longer in the status of an
17 alternate. So you will be one of the 12 primary jurors
18 in the case. Ms. Culli will continue to serve as our
19 remaining alternate.

20 I ask each of you, has any member of the jury
21 panel heard anything about this case from any source
22 whatsoever, besides what you have heard in the courtroom
23 this week? If so, please stand.

24 (There is no response).

25 THE COURT: No one stands. Thank you very

1 much. With that we are continuing the trial of the case
2 by the presentation of the testimony by the State.
3 Solicitor, you may call your next witness..

4 MR. MADSEN: Detective Steve Baumgardner.

5 STEVE BAUMGARDNER, being
6 first duly sworn, testified as follows:

7 CLERK: State your full name spelling your
8 last, please.

9 THE WITNESS: My name is Steve Baumgardner,
10 B-A-U-M-G-A-R-D-N-E-R.

11 DIRECT EXAMINATION

12 BY MR. MADSEN:

13 Q Detective Baumgardner, where are you employed?

14 A I'm employed with the Lexington County Sheriff's
15 Department.

16 Q And how long have you been employed there?

17 A I've been employed since 1997 with the Sheriff's
18 Department, sir.

19 Q And back in 2005, specifically September, were you
20 a major crimes detective with the Sheriff's
21 Department?

22 A Yes, sir, I was.

23 Q On September 6, 2005, did you have an occasion to
24 go out to [REDACTED]

25 A Yes, sir, I was told to respond to that address.

STEVE BAUMGARDNER -- DIRECT -- MR. MADSEN

260

1 Q When you got out there, did you come in contact
2 with anyone?

3 A I came in contact with Mr. Michael Melton.

4 Q When you came in contact with him, could you tell
5 the jury what his demeanor was?

6 A He was visibly shaking, upset, somewhat dazed.

7 Q Did you and another detective take Mr. Melton
8 somewhere?

9 A Yes, sir. Detective Duane Peake and myself
10 escorted Mr. Melton to the Lexington County
11 Sheriff's Department.

12 Q What was the purpose for taking him to the
13 Sheriff's Department?

14 A That was to have Mr. Melton come with us to an
15 interview room and interview Mr. Melton at that
16 time.

17 Q Was a written statement taken from Mr. Melton?

18 A Yes, sir, there was.

19 Q As far as his whereabouts in North Carolina, were
20 you in charge of tracking that down?

21 A Yes, sir, I was.

22 Q Were you able to confirm or deny whether he was in
23 North Carolina when he said he was?

24 MR. BAKER: I will object to that, Your Honor.
25 It calls for hearsay.

1 THE COURT: I will overrule the objection.

2 This would be based on investigation, Solicitor?

3 MR. MADSEN: Yes, Your Honor.

4 THE COURT: Under State versus Davis and that
5 line of cases, I will allow him to testify to his
6 investigation.

7 BY MR. MADSEN:

8 Q Detective Baumgardner, through your investigation
9 who did you talk with?

10 A I talked with Mr. Melton's daughter, Ms. Shannon
11 Hall, via telephone from the Lexington County
12 Sheriff's Department.

13 Q Were you provided any documentation?

14 A Yes, sir, I was.

15 Q What was that?

16 A Ms. Hall sent me a statement from -- I can't recall
17 the name of the bank. It is a bank statement that
18 shows a withdrawal and a payment to Greyhound bus
19 company.

20 MR. MADSEN: That's all the questions I have,
21 subject to potentially later recall. Answer any
22 questions Mr. Baker has.

23 THE COURT: Thank you, Solicitor. Mr. Baker.

24 MR. BAKER: We wouldn't have any questions at
25 all at this point, Your Honor.

LAURA GOULD -- DIRECT -- MR. HUBBARD

262

1 THE COURT: Thank you, Mr. Baker. Detective
2 Baumgardner, you may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Solicitor.

5 MR. HUBBARD: The State calls Laura Grimes
6 Gould.

7 LAURA GRIMES GOULD, being
8 first duly sworn, testified as follows:

9 CLERK: Have a seat. Please state your name
10 loud and clear and spell your last, please.

11 THE WITNESS: My name is Laura Grimes,
12 G-R-I-M-E-S, Gould, G-O-U-L-D.

13 DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q Detective Gould, where do you work?

16 A I work for the Lexington County Sheriff's
17 Department.

18 Q How long have you been working there?

19 A I have worked there about nine years.

20 Q And what do you do for the Sheriff's Department?

21 A I'm currently assigned to the crime scene unit as a
22 crime scene investigator.

23 Q Back in September of 2005, were you a crime scene
24 investigator?

25 A Yes, sir, I was.

1 Q What are your duties as a crime scene investigator?

2 A As a crime scene investigator, we respond to crime
3 scenes and document evidence, collect evidence,
4 attend autopsies if it's a death investigation, and
5 report back to the criminal investigator.

6 Q So let me get this right. You are one of the ones
7 who comes on the scene that collects whatever
8 evidence you can find?

9 A Yes, sir.

10 Q You don't drive a Hummer or anything like that, do
11 you?

12 A No Hummers, sorry.

13 Q Were you called out to a crime scene September of
14 2005 involving a double homicide?

15 A Yes, sir, I was.

16 Q Specifically I want to ask you if you went to a
17 residence at [REDACTED] in Gaston?

18 A I did, yes, sir.

19 Q And what did you do when you got there. Let's
20 start off with this. Who did you see when you got
21 there?

22 A When I first arrived on scene, I spoke with the
23 deputy on the scene, who was Deputy Billy Womble.

24 Q He's also with the Sheriff's Department?

25 A Yes.

LAURA GOULD -- DIRECT -- MR. HUBBARD

264

1 Q He was the first responder?

2 A Yes, sir.

3 Q What did you do with regard to Deputy Womble?

4 A I spoke with Deputy Womble about what he was on
5 scene for and did an initial walk outside the
6 residence around the crime scene tape.

7 Q So the tape was already up around the residence?

8 A Yes, sir.

9 Q Did you walk around the entire residence?

10 A Yes, sir, I did.

11 Q What did you do after that?

12 A It was determined that there needed to be a search
13 warrant signed at the time. So what I did was I
14 took photos and video of the exterior of the
15 residence until the search warrant was signed.

16 Q I believe some of those photos may already be in
17 evidence. Let me show you three photos, State's
18 Exhibit 1, 2, and 3. Did you take those
19 photographs?

20 A Yes, sir, I did.

21 Q And this is the residence you showed up to in
22 September at [REDACTED]

23 A Yes, sir, it is.

24 Q And this is the residence you were going to process
25 for evidence?

1 A Yes, sir.

2 Q After you took photographs outside, what did you
3 do?

4 A After we completed that, the search warrant was
5 signed. We went into the residence at [REDACTED]
6 [REDACTED] and saw that we had two victims
7 in the house that were dead.

8 Q Two victims?

9 A Yes, sir.

10 Q Male and female?

11 A Yes.

12 Q You confirmed they were dead?

13 A E.M.S. did.

14 Q Is that protocol?

15 A Yes. E.M.S. responded before I was on scene to do
16 the little leads to confirm they were dead.

17 Q Thank you. Once inside the home, what did you do?

18 A Once inside the home, I did an initial walk through
19 the residence to see exactly what we had, what type
20 of materials that we would need to process the
21 scene.

22 Q Did you take photos inside the house?

23 A Yes, we took digital and .35-millimeter photos of
24 the house, along with a crime scene video.

25 Q Again, I believe we have some photographs that have

LAURA GOULD -- DIRECT -- MR. HUBBARD

266

1 been placed into evidence already. I will see if
2 you recognize these, specifically State's Exhibit
3 18, 19, and 20. Did you take those photographs?

4 A Yes, sir, I did.

5 Q And can you please tell us what that photograph
6 depicts?

7 A This photograph depicts Mr. Slice and Ms. Fauscette
8 in the residence where I found them when I went
9 inside.

10 Q Let me ask you, these photographs of Mr. Slice and
11 Ms. Fauscette, I want you to look at this chart,
12 which is State's Exhibit 17. I don't know if you
13 can see it from that angle. Can you point out
14 approximately where you found these victims?

15 THE WITNESS: Do you mind if I step down?

16 THE COURT: No, ma'am, I don't. Just keep
17 your voice up, please.

18 THE WITNESS: Yes, sir.

19 BY MR. HUBBARD:

20 Q I tell you what, why don't we do this. I will
21 stand on this side and you talk up loud so the
22 court reporter can hear you. Point out where you
23 found the victims.

24 A I found Mr. Slice right here (indicating) on the
25 sofa, and Ms. Fauscette right here (indicating).

1 She was laying with her head this way (indicating).
2 A partial of her upper body was kind of laying kind
3 of across the stairs. The stairs, you go up and
4 this is where your master bedroom would have been
5 or is.

6 Q If you'd stay right here. These photographs, who
7 do we see depicted right here in that photograph?

8 A That is Mr. Slice and this would be Ms. Fauscette.

9 THE COURT: What exhibit is that, Solicitor?

10 MR. HUBBARD: I'm sorry, Your Honor, State's
11 Exhibit Number 18.

12 THE COURT: Thank you.

13 BY MR. HUBBARD:

14 Q What room does it look like they are going up into
15 there (indicating), right behind what you are
16 shooting up into?

17 A This would have been what I would call the master
18 bedroom since it was the biggest room in the house,
19 and it also had the bathroom off of it.

20 Q State's Exhibit Number 19, is that just a different
21 angle?

22 A Yes, this is actually --

23 Q Step down here.

24 A I'm kind of shooting from the front door. The
25 couch is right here (indicating), and the master

1 bedroom and the stairs where Ms. Fauscette is to my
2 right.

3 Q State's Exhibit Number 20, again another angle?

4 A Yes.

5 Q It's just a little bit closer photograph?

6 A Yes, sir. I'm standing probably a couple feet away
7 from the end of the coffee table right there in the
8 middle of the living room.

9 Q Okay. You can have a seat.

10 A Thank you. (Witness resumes the witness stand).

11 Q I don't know if anybody has asked you or I don't
12 know if I have asked you this. But this residence,
13 what town was it in?

14 A It was -- I have it listed in Gaston, South
15 Carolina, which is in Lexington County.

16 Q Thank you. After you took photographs of the
17 victims, what did you do?

18 A We requested that the Coroner's Office come in as
19 well so they could do their photos, which is
20 protocol for the Coroner's Office. Then we
21 requested the body removal service, which is
22 Knight's, to come in and remove the bodies to be
23 placed at Lexington until the autopsy.

24 Q In taking photographs of the bodies, did you take
25 closer shots as well showing their wounds?

1 A Yes, the ones that I could without disturbing the
2 bodies at the time.

3 Q I want to show you three other photographs. Right
4 now they are marked State's Exhibit I.D. 21, 23,
5 and 25, and see if you recognize these photographs.

6 A Yes, sir.

7 Q Are these photographs you took at the scene that
8 day?

9 A Yes, sir, they are.

10 Q Photographs of the victims?

11 A Yes, sir.

12 Q Did you move them in any way prior to taking these
13 photographs?

14 A No, I did not.

15 Q The purpose of these photographs was to show what?

16 A The location and some of the trauma that was done
17 to the victims.

18 MR. HUBBARD: Your Honor, I offer these into
19 evidence at this time.

20 MR. BAKER: Your Honor, I would have an
21 objection to those. Do you want me to go on?

22 THE COURT: Ladies and gentlemen of the jury,
23 if you would please momentarily step to your jury room.
24 Do not discuss the case amongst yourselves during this
25 brief recess.

1 (The jury retires to the jury room).

2 MR. BAKER: Your Honor, I would just object to
3 those photos being entered into evidence subject to my
4 previously filed motion in limine per South Carolina
5 Rules of Evidence 401, 402, and 403.

6 Based specifically on 403, the probative value
7 of those pictures are substantially outweighed by the
8 danger of unfair prejudice. The fact under 401, 402
9 they are immaterial, irrelevant, and serve only to
10 arouse sympathy and prejudice of the jurors.

11 THE COURT: Could I see State's Exhibit 21,
12 22, 23, 24, and 25, Solicitor.

13 MR. HUBBARD: Your Honor, I'm handing up
14 State's I.D. 22, 24, and 26.

15 (Hands to Court).

16 THE COURT: Thank you. As far as the
17 officer's testimony, she testified that she took 21,
18 22 -- excuse me -- 21, 23, and 25. She took those at
19 the crime scene. They are photos of the victims that
20 shows their location at the crime scene and also trauma
21 done to the victim.

22 It is clear that they would be relevant under
23 401, and 402 is kind of the reverse of 401 just saying
24 that irrelevant evidence is inadmissible. As far as 403
25 is concerned and the balancing test, when I look at 21

1 and compare it with State's for identification 22, 21 is
2 a further shot away. Twenty-two is much closer.

3 It shows the facial features of the victim,
4 David Slice, much closer. I would allow 21. It appears
5 there are injuries that appears to my untrained eye is a
6 bullet wound, perhaps ballistic evidence also appears on
7 there, and it does show trauma to the victim's body. It
8 is not unduly inflammatory. In my opinion 21 is highly
9 probative.

10 As to State's Exhibit Number 23, it also shows
11 the pattern injury on the forehead of the victim, David
12 Slice, with a scale therein. It would clearly be
13 relevant under 401. I do not find it is unduly
14 prejudicial under 403.

15 State's Exhibit Number 25 shows a photograph
16 of the female victim at the crime scene on the stairs
17 with trauma to her face. I would allow that. I would
18 not allow 24 when I balance the two because 24 shows a
19 great amount of blood and such therein.

20 As I looked at the cases, there are a number
21 of cases I think are directly on point: State versus
22 Kelly, 460 S.E.2d 368; State versus Fletcher, 609 S.E.2d
23 572; State versus Crosby, 559 S.E.2d 352; and State
24 versus Brazell, 480 S.E.2d 64.

25 It's clear that these are corroborative, that

1 they show trauma, that they are not calculated to arouse
2 the sympathy or prejudice of the jury. In looking at
3 these photographs, there is not a tendency to suggest a
4 decision in this case on an improper basis.

5 If you look at the last page of State versus
6 Fletcher, the Honorable Ralph King Anderson lays it out
7 much better, much more eloquently than I could ever do.
8 It really summarizes the trial judge's duty and
9 responsibility in the case law in this type of case. So
10 I will allow State's 21, 23, and 25 into evidence.

11 Did you have any other objections while the
12 jury is out, Mr. Baker?

13 MR. BAKER: I do not, Your Honor. I guess --
14 do they intend to introduce the other two, 27 and 28?

15 THE COURT: With this witness, I do not know.

16 MR. HUBBARD: Your Honor, 21, 23, and 25 are
17 in evidence?

18 THE COURT: That's correct. Twenty-one being
19 the male victim, Mr. Slice; 23, being the male victim,
20 Mr. Slice; and 25, being the female victim,
21 Ms. Fauscette.

22 MR. HUBBARD: Yes, sir.

23 THE COURT: Mr. Baker brings up a good point
24 now, Solicitor. Are you going to attempt to introduce
25 27 and 28 through this officer?

1 MR. HUBBARD: Yes, sir, I am.

2 THE COURT: Why don't we elicit that
3 information at this time, and we won't have to send the
4 jury back out.

5 MR. BAKER: That's fine, Judge. I want to
6 make sure my objection and position is on the record.

7 THE COURT: Let me hear that testimony,
8 Solicitor.

9 IN CAMERA EXAMINATION

10 BY MR. HUBBARD:

11 Q Detective Gould, after you left the crime scene at
12 [REDACTED] did you then go to the
13 autopsy?

14 A Yes, it was the next day.

15 Q Was that in Newberry?

16 A Yes, sir, it was.

17 Q And as part of your duties at the autopsy, do you
18 collect evidence from the autopsy that the doctor
19 at the autopsy collects?

20 A Yes, sir.

21 Q And do you also take photographs?

22 A Yes, sir, we do.

23 Q I want to show you two photographs that have been
24 marked State's I.D. 27 and 28 and see if you
25 recognize those.

1 A I do. Those are the pictures of Ms. Fauscette.

2 Q Both pictures?

3 A Yes, sir.

4 Q And looking at State's I.D.27, what does that
5 show?

6 A It shows a laceration to the upper part of her
7 forehead.

8 Q And you took that photograph to show what?

9 A To show when she landed, her head hit the edge of
10 the stairs where there was a metal -- where you
11 tack down the carpet.

12 Q So when you found her at the scene, her head was on
13 the steps where the carpet had been tacked down?

14 A Yes, sir.

15 Q This wound that you photographed at the autopsy
16 corresponds with what you saw at the crime scene?

17 A Yes, sir.

18 Q Looking at State's I.D. 28, what is that depiction
19 of?

20 A That is a picture of a gunshot wound from the top
21 of Ms. Fauscette's head.

22 Q An entry wound?

23 A Yes.

24 Q And let me just ask you an obvious question. The
25 relevance of taking this photograph was to show

1 what?

2 A To show where one of the wounds were, one of the
3 gunshot wounds.

4 Q I notice the hair right around the wound has been
5 shaved back a little bit.

6 A The pathologist did that in order to make sure we
7 had a clear picture of one of the entry wounds on
8 Ms. Fauscette.

9 Q Prior to that the wound had not been as visible?

10 A No, sir, it had not.

11 Q And you photographed that to document that fact?

12 A Yes, sir.

13 MR. HUBBARD: Your Honor, I intend to elicit
14 this information and offer it at that time.

15 THE COURT: I'm not going to allow those to
16 come in evidence through this witness. I think she
17 should lay the foundation, but given the fact that those
18 are autopsy photographs -- and I realize, Solicitor, you
19 can't prove everything on a pinpoint -- I would also
20 want to hear the testimony of the pathologist, and I
21 assume you are going to call the pathologist.

22 MR. HUBBARD: Yes, sir.

23 THE COURT: That would be identification only
24 at this time.

25 MR. HUBBARD: Yes, sir.

LAURA GOULD -- DIRECT -- MR. HUBBARD

276

1 THE COURT: But you can certainly lay that
2 foundation that she is the officer who took those
3 photographs.

4 MR. HUBBARD: Yes, sir.

5 THE COURT: If you would bring us -- anything
6 further before we bring in our jury?

7 MR. BAKER: No, none from the defense, Your
8 Honor.

9 THE COURT: If you would bring our jury,
10 please, Mr. Derrick.

11 (The jury returns to the courtroom).

12 THE COURT: It appears our jury is back
13 present in the courtroom. Thank you very much, ladies
14 and gentlemen, for your continued patience and your
15 continued focus during the trial of this case.

16 Solicitor, you may proceed.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Detective Gould, I want to go back again and ask
20 you, you took additional photographs of the
21 victims, closer photographs; is that correct?

22 A Yes, sir, I did.

23 Q To show their wounds?

24 A Yes, sir.

25 Q I want to show you again what has been marked into

1 evidence State's Exhibit Number 21, 23, and 25.

2 Those are photographs you took?

3 A Yes, sir.

4 Q Depicting the wounds of the victims?

5 A Yes, sir.

6 Q If you would, with the Court's permission, I like
7 you to step down in front of the jury again.

8 THE COURT: Yes, ma'am, you may step down.

9 State's 21, 23, and 25 are in evidence subject to
10 defense previous objections.

11 (State's Exhibits Number 21, 23, and 25 are
12 received into evidence).

13 BY MR. HUBBARD:

14 Q Starting with this side of the jury, I would like
15 you to describe what we are seeing in State's
16 Exhibit 21.

17 A What we are seeing here is Mr. Slice. He is on the
18 couch inside the residence. He is laying on his
19 left side slumped over with his head resting on
20 what would be like the arm rest of the couch.

21 Q And this wound visible here?

22 A This right here is the wound visible, as you can
23 see with the blood as well.

24 Q Starting down here.

25 A Okay.

LAURA GOULD -- DIRECT -- MR. HUBBARD

278

1 Q State's Exhibit Number 23, this is also a picture
2 of who?

3 A This is also a picture of Mr. Slice, just a closer
4 in photograph of the wounds that I could see at the
5 time of the crime scene investigation when I was
6 there.

7 Q I notice a scale on this photograph. Who put that
8 scale in?

9 A I put that scale there in order for it -- so you
10 can see how big the bullet hole is right there.

11 Q Let's slide down here so this half of the jury can
12 see this as well. Is placing a scale like that
13 part of the protocol of taking photographs?

14 A Yes, sir, it is.

15 Q State's Exhibit 25. Who is that a picture of?

16 A That's Ms. Fauscette.

17 Q Is this as you found her?

18 A Yes.

19 Q Again, where is her head in this photograph?

20 A Her head is laying on -- if I remember correctly,
21 this (indicating) would be the step where you step
22 up and step up again into the master bedroom. Her
23 head is laying on that middle step right outside
24 the living room right outside the master bedroom.

25 Q I hate to do this, but what we see here, is that

1 tooth matter?

2 A Yes, it is.

3 Q Thank you. You can have a seat.

4 A (Witness resumes the witness stand).

5 Q Detective, after you took these photographs, you
6 mentioned something about you had the bodies
7 removed, the victim's bodies, Kim Fauscette and
8 David Slice's bodies removed?

9 A Yes. Once we had finished our processing of the
10 crime scene with the victims, the bodies, we had
11 the coroner come in and the coroner did his job and
12 had Knight's Removal Service to come in and take
13 the bodies.

14 Q After David Slice and Kim Fauscette were taken out
15 of their home, what did you do?

16 A After the bodies were removed, we started looking
17 around and locating possible evidence within that
18 crime scene. We photographed that evidence. Then
19 we assign a number or a letter to that one
20 particular piece of evidence. Then we rephotograph
21 the evidence with that number or that label next to
22 the evidence so we can keep track of where our
23 evidence came from.

24 Q I want to show you what has been marked State's
25 I.D. 33 and 34. Are those a couple of the

LAURA GOULD -- DIRECT -- MR. HUBBARD

280

1 photographs you took after David Slice and Kim
2 Fauscette had been removed?

3 A Yes.

4 Q And in State's I.D. 33 do you see the numerical
5 markers you were talking about?

6 A Yes, 16 and 17.

7 MR. HUBBARD: Your Honor, I offer these into
8 evidence at this time.

9 MR. BAKER: I don't have any objection to
10 those.

11 THE COURT: May I see those, Solicitor?

12 MR. HUBBARD: Yes, sir, Your Honor.

13 (Hands to Court).

14 THE COURT: State's 33 and 34 are in evidence
15 without objection; is that correct, Mr. Baker?

16 MR. BAKER: Yes, sir, Your Honor.

17 (State's Exhibits Number 33-34 are received
18 into evidence).

19 BY MR. HUBBARD:

20 Q Detective, if I can have you stand up one more
21 time.

22 THE WITNESS: May I?

23 THE COURT: Yes, ma'am, certainly. Thank you
24 for asking.

25 THE WITNESS: You're welcome.

1 (Witness leaves the witness stand).

2 BY MR. HUBBARD:

3 Q Looking at State's Exhibit Number 33, would you
4 please tell the jury what we are looking at
5 here.

6 A What you are looking at here is the couch where
7 David Fauscette was located.

8 Q David Slice?

9 A I'm sorry, David Slice, where Mr. Slice was
10 located. At 16 when we removed the cushion, we
11 found a projectile or a bullet that was kind of in
12 the crease of where the seat of the couch and the
13 back of the couch come together.

14 Seventeen is actually going to be for this
15 little hole right here (indicating). We were able
16 to find another bullet inside the couch itself.
17 I just didn't want to put my number right there.

18 Q While we are on this end of the jury, State's
19 Exhibit 34, is that a close-up shot of the hole
20 that you were talking about?

21 A Yes, that would be number 17.

22 Q Going down here, if you will explain again 16 and
23 17, what they represent.

24 A Sixteen and 17 represent the projectile or bullets
25 we found where David Slice was sitting. Sixteen,

1 like I said, we found once we removed the bottom
2 cushion and 17 would be this hole from the bullet
3 had gone through the couch.

4 Q And, again, State's Exhibit 34 is just a close-up
5 showing where item 17 was found?

6 A Item 17 where that hole is.

7 Q Okay.

8 A (Witness resumes the witness stand).

9 Q I want to see if you recognize these items. They
10 have not been marked but see if you recognize
11 those.

12 A Yes, these are 16 and 17 that were taken from the
13 pictures that I just explained.

14 Q Do you actually see the projectiles?

15 A Yes, they are in the bag.

16 Q Sixteen and 17?

17 A Yes.

18 Q And these are your markings that correspond with
19 the numbers you took in that photograph?

20 A Yes, that's my handwriting.

21 MR. HUBBARD: Your Honor, I offer these into
22 evidence at this time.

23 THE COURT: Mr. Baker?

24 MR. BAKER: I don't have any objection, Your
25 Honor.

1 THE COURT: State's 35 and 36 in evidence
2 without objection.

3 (State's Exhibits Number 35-36 are received
4 into evidence).

5 BY MR. HUBBARD:

6 Q So, Detective, State's Exhibit 35, which is your
7 item what?

8 A Sixteen.

9 Q This is the projectile you found under the cushion?

10 A Yes.

11 Q Then your item 17, which is State's Exhibit 36?

12 A Yes, sir.

13 Q That's the one you found in the cushion?

14 A Yes, sir.

15 Q What did you do with those items, your 16 and 17,
16 which are State's 35 and 36, these projectiles?

17 A I collected them and took them back to the
18 Sheriff's Department with me.

19 Q I want to ask you, did you have a partner also at
20 the scene that came following in behind you?

21 A Yes. It was actually two other crime scene
22 investigators that assisted me on the crime scene,
23 Investigator Troy Crump and Investigator Jim
24 Hickman.

25 Q Do you recall making a request of Troy Crump to

1 look for additional evidence?

2 A I did. Generally what we do with a homicide scene
3 is we do not release the scene until after the
4 autopsy. That way if other details during the
5 autopsy come up, we still have a search warrant in
6 effect for that residence.

7 Q And did Troy Crump go in the residence to look for
8 additional evidence?

9 A Yes. Once the pathologist determined how many
10 wounds were on the victims, we were a couple, I
11 think, bullets shy of lining up everything. So I
12 requested Investigator Crump to go back to the
13 scene since I was in Newberry and look for the
14 additional evidence that we needed.

15 Q I want to show you this item. It's marked as
16 Number 20 for I.D. It's your I.D. number, not
17 State's I.D. number. Do you recognize that item?

18 A Yes, this is the projectile and the casing that
19 Mr. Crump retrieved.

20 MR. HUBBARD: Your Honor, I offer those for
21 State's I.D. purposes at this point.

22 (State's Exhibit Number 37 is marked for
23 identification).

24 THE COURT: That's States 37 for I.D. only; is
25 that correct?

1 MR. HUBBARD: At this time, yes, sir.

2 BY MR. HUBBARD:

3 Q Detective, at some point did you take all of these
4 bullets to S.L.E.D.?

5 A Yes, I did.

6 Q Prior to going there, right after you left the
7 crime scene, where did you go?

8 A I went to the Sheriff's Department and placed all
9 my evidence in a secure area. Then I went home for
10 the evening so I could get up to go to Newberry the
11 next morning for the autopsy.

12 Q And at the autopsy, were both autopsies performed
13 the same day?

14 A Yes, they were.

15 Q And you were there for both autopsies?

16 A Yes, sir, I was.

17 Q Were you there when items were recovered from both
18 bodies?

19 A Yes, sir, I was.

20 Q As to David Slice, I want to see if you recognize
21 what I'm handing you now and see if these are items
22 that were recovered from his body?

23 A Yes, sir, they are.

24 Q These were recovered from the doctor in your
25 presence and given to you?

LAURA GOULD -- DIRECT -- MR. HUBBARD

286

1 A Yes.

2 MR. HUBBARD: Your Honor, I offer these into
3 evidence.

4 MR. BAKER: I don't have any objection.

5 THE COURT: Thirty-eight and 39 in evidence
6 without objection?

7 MR. BAKER: Yes, sir.

8 (State's Exhibits Number 38-39 are received
9 into evidence).

10 BY MR. HUBBARD:

11 Q So these two items, Detective, were actually found
12 in the body of David Slice?

13 A Yes, sir.

14 Q Again, you were there for the autopsy of
15 Ms. Fauscette?

16 A Yes, sir, I was.

17 Q Detective Gould, let me see if you recognize these
18 items as being items taken from her body during the
19 autopsy?

20 A Yes, sir, they are.

21 MR. HUBBARD: Your Honor, I offer these into
22 evidence as well.

23 THE COURT: State's 40 and 41 are in evidence
24 without objection; is that correct, Mr. Baker?

25 MR. BAKER: That's correct, Your Honor.

1 (State's Exhibit Number 40-41 are received
2 into evidence).

3 BY MR. HUBBARD:

4 Q So both of these items came from Ms. Fauscette?

5 A Yes, sir.

6 Q Back to the item recovered by Detective Crump, did
7 you take this item and all these other items that
8 you collected to S.L.E.D.?

9 A Yes, sir, I did.

10 MR. HUBBARD: Your Honor, if there is no
11 objection I will go ahead and introduce State's I.D. 37
12 as an exhibit as well.

13 THE COURT: All right. Mr. Baker?

14 MR. BAKER: That's the evidence by Mr. Crump?

15 MR. HUBBARD: I can put him up.

16 MR. BAKER: That's fine. I don't have any
17 objection.

18 THE COURT: State's Exhibit 37 is in evidence
19 without objection.

20 (State's Exhibit Number 37 is received into
21 evidence).

22 BY MR. HUBBARD:

23 Q Detective, I want to take you back to the crime
24 scene.

25 A Yes, sir.

LAURA GOULD -- DIRECT -- MR. HUBBARD

288

1 Q To [REDACTED] You have talked about
2 taking photographs and collecting evidence,
3 specifically bullets or fragments?

4 A Yes, sir.

5 Q Did you do anything else at the crime scene,
6 besides photographing evidence and collecting these
7 projectiles?

8 A Yes, sir, we did. We collected some other
9 evidence.

10 Q Did you dust for prints?

11 A Yes, sir, we did.

12 Q Did you get any prints of any value?

13 A I will look at my notes real quick. We dusted for
14 latent prints, and we lifted some prints at the
15 crime scene.

16 Q Any prints of value?

17 A Bear with me just one moment.

18 Q I might be available to help you with a question.

19 A Okay.

20 Q Based on our discussion in this case going over
21 your file, was there only one print that you got
22 any kind of match to?

23 A Yes, it was off of a Bud Light beer can, and it
24 came back to Ms. Fauscette.

25 Q But you did your job trying to dust and see who

1 might have been in or out of that place?

2 A Yes, sir.

3 Q Is it unusual in a house or in any type of office
4 where there's a lot of people coming in and out not
5 to be able to get prints of any real value?

6 MR. BAKER: I object to that. It calls for
7 speculation, Your Honor.

8 THE COURT: Well, Solicitor, if you will lay
9 the foundation.

10 MR. HUBBARD: I will back it up.

11 BY MR. HUBBARD:

12 Q Do you take prints as part of your ordinary, daily
13 job?

14 A Yes, sir, if I feel the need to.

15 Q And in taking and dusting for prints, are there
16 times when you can tell whether there is a print or
17 if it's a smear?

18 A Yes, sir. It depends on what type of person who
19 touches the surface, if they have sweaty fingers,
20 if they have oily fingers or dry fingers.

21 Sometimes it's very hard to develop latent prints
22 off of sometimes any type of surface.

23 Q And have you had an occasion to do prints prior to
24 this crime scene?

25 A Yes.

LAURA GOULD -- DIRECT -- MR. HUBBARD

290

1 Q Based on your experience and your training, have
2 you found it to be unusual not to find prints of
3 any value?

4 A Yes -- or excuse me.

5 Q I probably asked you a double negative.

6 A Yes, sir.

7 Q Is it unusual not to find prints of value?

8 A Yes. Yes, it is.

9 Q I'm not sure of what I just asked you.

10 A Unfortunately our job isn't like the C.S.I. on T.V.
11 It is sometimes very hard to find prints of value.
12 Sometimes you have to have a certain number of
13 points from the ridge detail on your print in order
14 to make identification. When people touch
15 surfaces, those type of points are just not there.
16 Because like I stated before, you know, the dryness
17 of somebody's hand, if their hands were wet, that
18 type of thing.

19 Q So even if you have someone, say like David Slice
20 who lives at that residence, it didn't surprise you
21 not to find prints of his in that area?

22 A No, it did not. They could have cleaned. When you
23 clean, of course, you wipe away prints.

24 Q Let me ask you about cleaning. As far as the
25 scenes you been into, the homes you have been into,

1 the places you have gone to process, how would you
2 describe this house, this home that you went into?

3 A The home was very neat and clean, very well kept.

4 Q I want to show you two other items just for I.D.
5 purposes. When you went to the autopsy, did you
6 take photographs?

7 A Yes, I did.

8 Q In looking at State's I.D. 27 and 28, who are those
9 of?

10 A That would have been of Ms. Fauscette.

11 Q And depicting her wounds?

12 A Injuries, some of her injuries, yes.

13 MR. HUBBARD: Your Honor, again, I am just
14 marking these for I.D. purposes.

15 THE COURT: State's 27 and 28 are for I.D.
16 only.

17 BY MR. HUBBARD:

18 Q Detective, after you collected -- and I think we
19 have been over this -- but the projectiles, you
20 took all of those to S.L.E.D.?

21 A Yes, I did.

22 Q To be processed there?

23 A Yes, I took everything to S.L.E.D.

24 Q Detective, please answer any questions that the
25 defense might have.

LAURA GOULD -- DIRECT -- MR. HUBBARD

292

1 A Yes, sir.

2 THE COURT: Mr. Baker.

3 MR. BAKER: Your Honor, I apologize, can I
4 take one matter up.

5 THE COURT: Certainly. Ladies and gentlemen
6 of the jury, if you would please step to your jury room
7 momentarily. Do not discuss the case amongst yourselves
8 during this brief recess. Please go with our bailiff.

9 (The jury retires to the jury room).

10 THE COURT: Yes, sir.

11 MR. BAKER: Your Honor, I think you had
12 previously ruled pictures 27 and 28 were not admissible,
13 and I know they weren't actually published to the jury,
14 but they were kind of moved around over there pretty
15 close to the jury. One time they were put on the table
16 face up. It certainly looked like to me that the jury
17 could have seen those photos. I just note that
18 objection as contrary to Your Honor's prior ruling on
19 those photos.

20 MR. HUBBARD: Your Honor, nothing was done
21 deliberately. Obviously I didn't design this
22 courthouse. I am basically sitting in the jury's lap.
23 I would love to have had some input on this, but no one
24 bothered to call me.

25 I put the pictures down to sit down, Your

1 Honor. They didn't stay where I put them. I have got
2 other things over them right now. I do intend to offer
3 them later. So if there is a problem, I think it will
4 be cured by the final witness. But I think we would
5 have to speculate that the jury saw these photographs
6 anyway.

7 THE COURT: All right. What are you asking me
8 to do?

9 MR. BAKER: Your Honor, I would just -- it
10 just looked like an issue that the jury could have
11 possibly seen those photos. They have been excluded or
12 at least not admitted up to this point. I'm just
13 objecting to that and I guess to that happening in the
14 future.

15 THE COURT: I guess I will recircle my wagon.
16 What you are asking me to do? I don't mind ruling. You
17 made your objection. I didn't notice but I wasn't
18 looking Mr. Baker quite frankly. I wasn't paying any
19 attention whatsoever.

20 MR. BAKER: Your Honor, I just point it out
21 for the Court and make the objection. Hopefully those
22 photos, at least until they are admitted, will be taken
23 out of the view of the jury, and they will not be
24 allowed to see them.

25 THE COURT: All right, sir. Well, I guess

1 your point being if they are not ever introduced into
2 evidence, they will never be published to the jury;
3 correct?

4 MR. BAKER: Correct, Your Honor. I was just
5 asking that it be -- I guess when they are being handled
6 in front of the jury, that they not be accidentally
7 published to the jury unless they have been admitted.

8 THE COURT: Solicitor, will you see to it that
9 they are not in view of the jury, 27, 28 or any other
10 photographs or items of evidence, and they are not
11 published to the jury until such time as they have been
12 introduced into evidence. All right.

13 MR. HUBBARD: Thank you, Your Honor.

14 THE COURT: Anything further?

15 MR. BAKER: That's it, Your Honor.

16 THE COURT: Bring us our jury, please -- I
17 tell you what. Let's just take our break at this time.
18 Court will be in recess.

19 Ma'am, you are under oath subject to cross
20 examination and potentially redirect. You may certainly
21 get down and refresh yourself during this brief recess,
22 but do you not discuss your testimony with anyone during
23 this recess.

24 THE WITNESS: Yes, sir.

25 THE COURT: We will take our break.

1 (Whereupon there was a recess).

2 THE COURT: Anything before we bring in our
3 jury, Solicitor?

4 MR. HUBBARD: No, sir.

5 THE COURT: Mr. Baker?

6 MR. BAKER: No, Your Honor.

7 THE COURT: If you would bring our jury,
8 please, Mr. Derrick.

9 (The jury returns to the courtroom).

10 THE COURT: It appears our jury is back
11 present in the courtroom. All parties are present. We
12 are now continuing with the trial of the case with the
13 cross examination by Mr. Baker.

14 MR. BAKER: Thank you, Your Honor.

15 **CROSS EXAMINATION**

16 BY MR. BAKER:

17 Q Detective Gould, I am going to show you what has
18 previously been put into evidence State's Exhibit
19 19 and 20.

20 A Okay.

21 Q And ask you, these pictures, these are pictures you
22 took as you were standing at the front door of this
23 mobile home; is that correct?

24 A Nineteen is close to the front door, and 20 was a
25 little bit inside, kind of in the middle of the

1 room.

2 Q So photograph 19 is what someone would see if they
3 were standing at the front door?

4 A That's what I saw when I was standing at the front
5 door, yes.

6 Q And you took that picture as you were standing at
7 the front door?

8 A Yes, right inside the front door. The front door
9 was closed. I might have been standing -- if the
10 front door is here (indicating), kind of right here
11 (indicating) next to the front door. Does that
12 make sense?

13 Q And that picture is what you saw when you entered
14 the residence on -- what time was this on the
15 September 6th, 2005?

16 A I entered the residence once I was informed that
17 the search warrant was signed. If you give me a
18 minute I can tell you exactly what time that was.
19 I entered the residence as 13:40 hours, which would
20 have been 1:40 p.m.

21 Q And can you tell me, Detective Gould, the items you
22 removed from this residence?

23 A Yes, sir, one moment. On my search warrant return:
24 A blue address calendar book; eyeglasses; a black
25 cordless phone, which also had the base; the

1 answering machine; an empty Pall Mall cigarette
2 pack; the V.H.S. videotape, which would be my crime
3 scene video; Bud light beer can; another Bud Light
4 beer can; a white tissue with unknown substance; a
5 glass pipe with black tape; a glass ashtray with
6 ashes and cigarette butts -- I have that written
7 down twice -- another ashtray with cigarette butts
8 and another Bud Light beer can; small yellow pill
9 labeled Advil; another glass pipe with black tape,
10 a glass vase; a copper-colored projectile or
11 bullet; another copper-colored projectile; a glass
12 jug; black answering machine with phone base. And
13 when I called to speak with the Investigator Crump
14 the next day during the autopsy, can I read what
15 else we had on the search warrant? Is that what
16 you are looking for?

17 Q That's fine, sure.

18 A Another projectile and miscellaneous papers and
19 notebook.

20 Q And on any of those items that you removed from
21 this residence, you did not find the fingerprints
22 of Mr. Darrell Burgess on any of those items; did
23 you?

24 A Not on those items, no.

25 Q On any of those items that were removed from this

1 residence?

2 A No, but that is not uncommon.

3 Q Still there were no fingerprints of Mr. Burgess
4 that you found inside that residence?

5 A No, sir, there was not.

6 Q On what surfaces did you attempt to obtain
7 fingerprints?

8 A I have a copy of those latent print cards. If you
9 give me one moment, I can read off the back of
10 those what we dusted. (Pause). We dusted the
11 front door next to -- the right of the door window.
12 There was a small window on the front door. I
13 dusted the front door near the door handle. I
14 dusted the rear door and the rear door handle, and
15 that was it, all that was dusted at that location.

16 Q And those surfaces that you dusted, you did not
17 find any fingerprints of Mr. Darrell Burgess; is
18 that correct?

19 A No, I did not.

20 Q And you may not be the proper one to ask about
21 this, but were you involved in any taking of D.N.A.
22 evidence or fiber evidence from the residence?

23 A I was not involved in that portion, no.

24 Q Who would have been involved in that portion?

25 A Investigator Crump was the one out there the next

1 day while I was at the autopsy.

2 Q Are you aware of whether or not there was any fiber
3 evidence or serological evidence to link
4 Mr. Burgess to this residence?

5 A We did collect cigarette butts from the ashtrays
6 which were sent to S.L.E.D., but other than that
7 I'm not aware of anything.

8 Q And were there D.N.A. tests run on those cigarette
9 butts?

10 A I did not receive those results back. I would not
11 know.

12 Q But you don't have any tests that are positive
13 indicating that Mr. Burgess smoked any cigarettes
14 at this residence?

15 A Such as, like field tests?

16 Q Right.

17 A No, we do not do any of that type of testing out at
18 the crime scene. It's all sent to S.L.E.D. to
19 their D.N.A. lab.

20 Q And so you are not aware of any physical evidence
21 that links Mr. Burgess to this residence?

22 A I'm not, no.

23 Q And I believe in earlier testimony there were seven
24 rounds found at the residence; is that correct?

25 A At the residence there wasn't seven. There was...

LAURA GOULD -- CROSS -- MR. BAKER

300

1 Q Let me ask this. How many rounds were found total?

2 A Total? I'm trying to count to make sure I get the
3 right ones. Bear with me one second.

4 Q I think I asked you that question improperly.
5 There were seven total?

6 A I believe there were seven total.

7 Q Were there any shell casings at the scene when you
8 arrived?

9 A No. When we arrived there were no shell casings in
10 the residence or outside the residence.

11 Q Do you have any knowledge of any testing that was
12 done on any clothing that belonged to Mr. Burgess?

13 A I do not have any of that knowledge, no.

14 Q Who would have that knowledge?

15 A I'm not aware if Mr. Burgess' clothing was
16 collected or not.

17 Q You don't know whether any was collected or not?

18 A No, I don't know.

19 Q Are you aware of any items that might have been
20 taken from Mr. James Johnson's residence?

21 A I'm not sure who James Johnson is.

22 Q Are you aware of any items that may have been taken
23 or tested from Mr. Michael Wise?

24 A Not that I'm aware of, no.

25 Q Did you have any involvement in any testing or

1 taking fingerprints or trying to lift fingerprints
2 from any weapons in this matter?

3 A I will look at my lab item requests. I would keep
4 records of that. One second. (Pause). I don't
5 have any knowledge of processing any type of
6 weapons.

7 Q Do you have any knowledge of whether or not any
8 footprint impressions or tire impressions were
9 tested?

10 A Yes. There were photographs taken at the crime
11 scene of tire wear impressions. I'm not sure of --
12 I believe the only ones that were taken were tire
13 wear impressions, and they were examined by
14 Investigator Jim Hickman, who is also assigned to
15 crime scene unit.

16 Q Do you know what the results of those examinations
17 revealed?

18 A I have his report. Do you want me to read it
19 verbatim?

20 MR. HUBBARD: Your Honor, I think we'll
21 probably have to put up Detective Hickman. He may be up
22 a little bit later.

23 MR. BAKER: That's fine, Your Honor.

24 THE COURT: All right.

25 MR. BAKER: Your Honor, I think that's all I

TROY CRUMP -- DIRECT -- MR. HUBBARD

302

1 have got of Detective Gould.

2 THE COURT: Thank you, Mr. Baker. Solicitor,
3 anything on redirect?

4 MR. HUBBARD: No, sir, Your Honor.

5 THE COURT: Thank you, Detective. You may
6 step down.

7 THE WITNESS: Thank you, sir.

8 THE COURT: You may call your next witness.

9 MR. HUBBARD: Troy Crump.

10 THE COURT: Detective Crump.

11 TROY CRUMP, being
12 first duly sworn, testified as follows:

13 CLERK: Once you have a seat, speak up loud
14 and clear and state your full name, spelling your last.

15 THE WITNESS: My name is Troy Crump,
16 C-R-U-M-P.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Detective Crump, where do you work?

20 A Lexington County Sheriff's Department.

21 Q How long have you been there?

22 A I've been with the Sheriff's Department for ten
23 years now.

24 Q What do you do at the Sheriff's Department?

25 A I'm currently a senior crime scene investigator.

- 1 Q As a crime scene investigator, what do you do?
- 2 A We assist in collecting evidence at scenes, doing
3 reconstruction for crime scenes, photograph,
4 processing for prints.
- 5 Q Do you often work with Detective Gould?
- 6 A Yes.
- 7 Q I want to ask you, did you have any
8 responsibilities back in September of 2005?
- 9 A I did.
- 10 Q Do you recall being called out to an address in
11 Gaston at [REDACTED]
- 12 A Yes.
- 13 Q Do you recall why you were called out there?
- 14 A To help assist with a crime scene at that time. I
15 wasn't sure of the situation at that time.
- 16 Q When you got there, had that crime scene already
17 been processed or was it just starting?
- 18 A We were on standby at that time.
- 19 Q At some point do you recall getting a call from
20 Detective Gould from the autopsy?
- 21 A Yes.
- 22 Q And what was that call in reference to as far as
23 your duties?
- 24 A On the second day we were inside the residence, it
25 was determined that there was a missing bullet from

TROY CRUMP -- DIRECT -- MR. HUBBARD

304

1 one of the victims. Once I hung up with the phone
2 with her, I started looking in the general area
3 where we found her at or where she was located.

4 Q And did you locate anything that day?

5 A Yes.

6 Q What did you locate?

7 A Located a projectile or bullet that was lodged in
8 the wood of the steps that led up into the master
9 bedroom area.

10 Q I want to show you two photographs and see if you
11 recognize these.

12 A Those are my photographs.

13 Q Do those depict the steps where you found this
14 projectile?

15 A Yes.

16 MR. HUBBARD: I offer these into evidence at
17 this time.

18 THE COURT: All right. Without objection
19 Mr. Baker?

20 MR. BAKER: Yes, sir.

21 THE COURT: In evidence without objection.

22 (State's Exhibits Number 42-43 are received
23 into evidence).

24 BY MR. HUBBARD:

25 Q Detective, looking at State's 43, is that where you

1 peeled the carpet up?

2 A Yes, that's where I started to peel the carpet up
3 leading up to the steps.

4 Q And, again, this is where one of the victims was
5 found?

6 A Yes.

7 Q In State's 42 I see you have an identifying marker
8 there?

9 A Yes. That's where once I peeled the carpet back,
10 that's the actual middle step, and that's where the
11 bullet is lodged or was lodged.

12 Q I want to show you what has been marked State's
13 Exhibit Number 37 and see if you recognize that.

14 A It's the bullet that was collected out of the
15 stairs.

16 Q So the bullet in State's Exhibit 37 corresponds to
17 the bullet marker that we see here in State's
18 photograph 42?

19 A Yes.

20 Q This was the missing bullet?

21 A Yes.

22 Q Detective, if you would, have you seen this chart
23 marked State's Exhibit 17, the layout of the home?

24 A Yes.

25 Q If you would can you show us where the steps are

1 leading up to the master bedroom.

2 A This general area right here (indicating).

3 Q And is that where you located this particular
4 bullet?

5 A Yes, it is.

6 Q Thank you. Who did you turn that item over to?

7 A It was turned into the property room.

8 Q Please answer any questions the defense has.

9 THE COURT: Thank you, Solicitor. Mr. Baker.

10 CROSS EXAMINATION

11 BY MR. BAKER:

12 Q Detective Crump, were you involved in any of the
13 gathering of any of the physical evidence at the
14 scene?

15 A The first day, no.

16 Q What were you involved in on the second day, other
17 than what you have already testified to?

18 A We had responded back to the scene to finish out
19 the search warrant searching the rest of the
20 residence for any other evidence that might have
21 been missed that day.

22 Q Are you aware of any physical evidence -- and I
23 mean, fingerprints, D.N.A., fiber evidence -- that
24 links Mr. Darrell Burgess to this location?

25 A I have no -- I personally have no documentation

1 towards that.

2 Q Thank you, Detective Crump.

3 MR. BAKER: That's all I have, Your Honor.

4 THE COURT: Thank you. Anything on redirect,
5 Solicitor?

6 MR. HUBBARD: No, sir, Your Honor.

7 THE COURT: Thank you Detective Crump. You
8 may step down. Solicitor.

9 MR. MADSEN: The State would call Lieutenant
10 Scottie Frier.

11 SCOTTIE RICE FRIER, being
12 first duly sworn, testified as follows:

13 CLERK: Have a seat and state your full name.
14 Speak up loud and clear and spell your last.

15 THE WITNESS: My name is Scottie Rice Frier,
16 F-R-I-E-R.

17 DIRECT EXAMINATION

18 BY MR. MADSEN:

19 Q Lieutenant Frier, where are you employed?

20 A With the Lexington County Sheriff's Department.

21 Q And how long have you been with the Lexington
22 County?

23 A Since 1987.

24 Q What is your current capacity there?

25 A I currently serve as the Deputy Commander of the

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

308

1 violent crimes unit, otherwise known as the major
2 crimes unit at the Sheriff's Department.

3 Q Could you explain to the jury, day in and day out,
4 what are your current duties?

5 A Our unit consists of detectives and C.S.C.
6 Detectives, victim advocates, and forensic drug
7 agents that handle the investigations of violent
8 crimes against persons that occur within Lexington
9 County, South Carolina.

10 Q Back in September of '05, were you in that same job
11 that you are now?

12 A I was in the unit. I was serving as a sergeant at
13 that time.

14 Q As a sergeant how were you duties different than
15 they are today?

16 A Not much differently the way we were structured.
17 My job was very similar at that time. I would
18 oversee the investigative efforts of those types of
19 crimes I described earlier within Lexington County.
20 The title changed differently but the job is pretty
21 much the same.

22 Q Have you got more people under you now?

23 A Yes, sir, we did take in a few other entities, drug
24 lab work and fingerprint work. It's still
25 basically the same unit working the same type

1 crimes.

2 Q Did you have an occasion on September 6, 2005, to
3 respond to [REDACTED] in Gaston?

4 A Yes, sir, I did.

5 Q What was the reason that you responded out there?

6 A We had gotten a call originally that two bodies had
7 been located within a mobile home there, and we
8 began an investigation into those deaths.

9 Q What do you do when you get out to [REDACTED]
10 [REDACTED]

11 A Basically just somewhat oversee the investigative
12 efforts. You will have two different entities that
13 are responsible for activities there. You will
14 have your crime scene investigators that are
15 processing the evidence inside the crime scene, and
16 then you will have detectives who would show up to
17 begin interviewing witnesses, doing a neighborhood
18 canvas, basically doing an investigation as to what
19 happened and what went on inside.

20 Q When you say neighborhood canvas, would you tell
21 the jury what you are talking about.

22 A We send respective detectives to the homes that
23 surround the area to knock on doors, see who is
24 home. Basically it's a witness canvas trying to
25 see who heard what, when.

1 Q Let me show you what has been marked as State's
2 Exhibit Number 16. Is that the area that was
3 canvassed?

4 A Yes, sir. That's an overhead view of that area,
5 yes, sir.

6 Q Were you aware if y'all were able to turn up any
7 information on that canvas that day?

8 A Not anything that was of a critical need to follow
9 up on immediately.

10 Q Take a look at State's Exhibit Number 17.

11 A Yes, sir.

12 Q Do you recognize that?

13 A That appears to be a floor plan or diagram of the
14 trailer where the two bodies had been located.

15 Q At some point in time, did you get a chance to walk
16 through that crime scene?

17 A Yes, sir, I did.

18 Q When was that?

19 A It was on that date. It should be noted on the
20 crime scene log the specific time I entered, but it
21 was on the date that the discovery was made.

22 Q Once you go in and take a look, as a sergeant over
23 major crimes, can you kind of tell the jury what is
24 your thought process once you walk through that
25 crime scene.

1 A We just began trying to assess, as much as we can,
2 what type of event may have taken place and start
3 trying to identify or locate specific items of
4 evidence that we think will be pertinent or crucial
5 to trying to identify exactly what happened and
6 apprehend any offenders.

7 Q Did you denote when you walked through there any
8 type of forced entry?

9 A There did not appear to be any.

10 Q Why is that important or is that important to you
11 at that point in time?

12 A The entire scene, including the fact that there was
13 not any forced entry, the victims for lack of a
14 better term seemed to be in what we kind of looked
15 at as comfortable positions. One of the subjects
16 was seated on the couch. The other was on the
17 floor. There was no evidence of any disarray or
18 struggle in the house. It kind of took on the
19 appearance that they possibly knew who had come to
20 the home, maybe had them inside the home by their
21 request.

22 Q When you assessed that at that point in time, what
23 do you do then?

24 A We just try to figure out what their activity was,
25 the victims, sometimes referred to as a

SCOTTIE FRIER -- DIRECT -- MR. MADSEN

312

1 victimology. If you don't know who the bad guy is,
2 for a lack of better term, then you start trying to
3 figure out everything you can about the victims to
4 find out who they had contact with most recently,
5 who had been in and out the house, who they had
6 been communicating with.

7 Q So at that point in time, this is basically a
8 who-done-it?

9 A Yes, sir, for lack of a better term. We had no
10 idea who we were looking for from the onset.

11 Q You didn't have a witness who saw the crime or
12 anything at that point in time?

13 A Absolutely not at this point, no, sir.

14 Q When you've got one of those who-done-it and you
15 did this -- was it victimology?

16 A Yes, sir.

17 Q Who are you trying to talk to or who are you trying
18 to find? What are you trying to do with that
19 victimology?

20 A Then you start talking to friends and acquaintances
21 of the victims: Who do they associate, what times
22 do they come and go from the home, do they have
23 people who frequent the home more so than not, when
24 is the last time you specifically saw them, did you
25 see them with someone, things of that nature.

1 Q As far as were you aware whether or not [REDACTED]

2 [REDACTED] had phone service?

3 A We did determine that there was a land line or hard
4 line phone into that residence.

5 Q And what, if anything, did you do in reference to
6 that phone?

7 A Once of the immediate things we do was ensure a
8 phone record search had been done on the phone
9 activity of that home. That's oftentimes a very
10 critical aspect of what we do. Most oftentimes
11 people are going to use telephones.

12 Q Why is it, as far as people using telephones, why
13 is that important within that realm of victimology,
14 I guess?

15 A A lot of times that gives us the most recent
16 persons that they communicated with. It's starts
17 identifying telephone numbers that they may
18 frequently call or numbers that may frequently call
19 into the home. It sometimes associates us to
20 people who have had business dealings with or
21 contact with the victims.

22 Q Based on those phone records from [REDACTED]
23 [REDACTED], was there someone that you wanted
24 detectives to talk to?

25 A Yes, sir. That hard line phone -- the hard line

SCOTTIE FRIER -- CROSS -- MR. BAKER

314

1 phone had activity from sometime in the night prior
2 to the date the bodies were found into the early
3 morning hours of that day. There was one specific
4 telephone number that came up 10 or 11 times, and
5 then the phone service abruptly stopped -- or not
6 the phone service -- but the phone activity
7 abruptly stopped at that address at that time. The
8 phone number that became of interest subsequently
9 related to a James Anthony Johnson. An alias that
10 we had established for him was Tony Red.

11 Q So at that point in time, y'all wanted to talk with
12 a Tony Red?

13 A Yes, sir. Detectives were instructed to see if we
14 couldn't locate him pretty quickly.

15 Q Answer any questions the Mr. Baker has.

16 THE COURT: Thank you, Solicitor. Mr. Baker.

17 CROSS EXAMINATION

18 BY MR. BAKER:

19 Q Just briefly, Lieutenant Frier.

20 A Yes, sir.

21 Q Based on a review of the victim's phone records,
22 you wanted to talk to one person, that being James
23 Johnson; is that correct?

24 A The phone number we were interested in, we were
25 able to associate to James Johnson at that time,

1 yes, sir.

2 Q And there was no phone record or phone number of
3 interest that was related to Mr. Darrell Burgess;
4 is that correct?

5 A Mr. Baker, I don't know if I can completely answer
6 that. The phone record identifications that they
7 did subsequent to that may have linked back to him.
8 I don't know the answer to that.

9 Q Nothing that you reviewed or what you reviewed led
10 you to want to talk to Mr. Johnson and not
11 Mr. Burgess; is that correct?

12 A Nothing at this moment that I remember exactly,
13 yes, sir.

14 Q Thank you.

15 THE COURT: Anything on redirect, Solicitor?

16 MR. MADSEN: No, Your Honor.

17 THE COURT: Thank you, Lieutenant. You may
18 step down.

19 THE WITNESS: Yes, sir. Thank you, Your
20 Honor.

21 MR. HUBBARD: The State calls James Johnson.

22 JAMES JOHNSON, being
23 first duly sworn, testified as follows:

24 CLERK: Once you have a seat, I need you to
25 speak up loud and clear, stating your full name on the

1 record and spell your last.

2 DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q Mr. Johnson, if you would state your name?

5 A James Johnson.

6 THE COURT: You may have to speak up for us a
7 little bit, Mr. Johnson --

8 THE WITNESS: James Johnson.

9 THE COURT: -- so everybody can hear you.

10 Thank you.

11 BY MR. HUBBARD:

12 Q Mr. Johnson, do you go by a nickname?

13 A Tony Red.

14 Q Tony Red?

15 A Yes, sir.

16 Q Where do you live, Mr. Johnson?

17 A In [REDACTED], Lexington County.

18 Q [REDACTED]. Is that in Gaston?

19 A Yes, sir.

20 Q Where did you grow up?

21 A In Swansea.

22 Q Did you go to school in South Carolina?

23 A Yes, sir.

24 Q Where did you go to school?

25 A Monroe Pinkney.

- 1 Q Did you finish school there?
- 2 A No, sir.
- 3 Q Did you drop out?
- 4 A Yes, sir.
- 5 Q What grade?
- 6 A Ninth.
- 7 Q From school did you ever go in the military?
- 8 A Yes, sir.
- 9 Q And what branch of the military did you go into?
- 10 A The Army.
- 11 Q And during your time with the Army, did the United
- 12 States Army send you anywhere?
- 13 A Vietnam.
- 14 Q Had you ever been out of the country before?
- 15 A Not until Vietnam.
- 16 Q That was your first time?
- 17 A Yes, sir.
- 18 Q How long were you in Vietnam?
- 19 A A year.
- 20 Q When you got back, at some point did you get
- 21 married?
- 22 A Yes, sir.
- 23 Q Who is your wife?
- 24 A Mary Johnson.
- 25 Q Are you still married to Mary Johnson?

- 1 A Yes, sir.
- 2 Q How long have y'all been married?
- 3 A Thirty-five years.
- 4 Q Do you have any children?
- 5 A Two.
- 6 Q What are their names?
- 7 A Melissa and Jane.
- 8 Q Two daughters?
- 9 A Yes, sir.
- 10 Q Are they adults now?
- 11 A Yes, sir.
- 12 Q What type of work do you do?
- 13 A Carpentry.
- 14 Q Mr. Johnson, this may sound kind of offbeat, but
- 15 you are obviously in an orange jumpsuit. Where are
- 16 you staying now?
- 17 A Lexington County Detention Center.
- 18 Q Is it true you've got charges right now pending on
- 19 you?
- 20 A Yes, sir.
- 21 Q Accessory after the fact of murder?
- 22 A Yes, sir.
- 23 Q Misprision of a felony?
- 24 A Yes, sir.
- 25 Q And distribution of crack cocaine?

- 1 A Yes, sir.
- 2 Q The misprision and accessory charge comes out of
3 this case?
- 4 A Yes, sir.
- 5 Q While we are talking about what you've got pending,
6 I want to ask you about your prior record. Back in
7 May of 2002, you were convicted of two counts of
8 distribution of crack cocaine?
- 9 A Yes, sir.
- 10 Q And one count of distribution of crack cocaine
11 within proximity of a school?
- 12 A Yes, sir.
- 13 Q And as you sit here today in front of this jury
14 with pending charges, what, if any, deals have been
15 made with you about your charges?
- 16 A None.
- 17 Q No promises have been made?
- 18 A No, sir.
- 19 Q After you testify what is going to happen to you?
- 20 A I'm going back to jail.
- 21 Q Do you have any idea what is going to be done with
22 your charges?
- 23 A No, sir.
- 24 Q You are basically walking without a net on a
25 tightrope?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

320

- 1 A You could say that.
- 2 Q Let's talk about this case.
- 3 A Yes, sir.
- 4 Q Do you know or did you know David Slice and Kim
- 5 Fauscette?
- 6 A Yes, sir.
- 7 Q Prior to their killings in September of 2005, how
- 8 long had you known them?
- 9 A Maybe about ten -- nine or ten months.
- 10 Q Did you know them to live apart or together?
- 11 A Together.
- 12 Q And the address you knew them to live at, was that
- 13 on [REDACTED] [REDACTED] in Gaston?
- 14 A Yes, sir.
- 15 Q I want to show you what has been marked as State's
- 16 Exhibit 16. Do you see this photograph?
- 17 A Yes, sir.
- 18 Q Do you see their residence on here?
- 19 A Yes, sir.
- 20 Q Can you point it out for me to the best of your
- 21 ability.
- 22 A Right where the arrow is pointing.
- 23 Q Right here (indicating)?
- 24 A Yes, sir.
- 25 Q This is [REDACTED] [REDACTED]?

- 1 A Right.
- 2 Q Fish Hatchery Road (indicating)?
- 3 A Yes, sir.
- 4 Q The home of David Slice and Kim Fauscette?
- 5 A Yes, sir.
- 6 Q Had you been to that house before?
- 7 A Numerous times.
- 8 Q During your times over at David and Kim's, did you
- 9 know them to have a roommate?
- 10 A Yes, sir.
- 11 Q Did you know that guy's name?
- 12 A Mike.
- 13 Q Just knew him by Mike?
- 14 A Yes, sir.
- 15 Q Would that be Michael Melton?
- 16 A Could be.
- 17 Q How did you know David Slice and Kim Fauscette?
- 18 A From a friend of mine from the corner.
- 19 Q A friend of yours introduced y'all?
- 20 A Yes, sir.
- 21 Q What did you do together when you would get with
- 22 Kim Fauscette and David Slice?
- 23 A We would smoke crack cocaine.
- 24 Q Was that basically the basis of your friendship
- 25 with them?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

322

- 1 A Yes, sir.
- 2 Q Who would buy the crack cocaine for y'all to smoke?
- 3 A They would.
- 4 Q And would you provide it to them?
- 5 A Yes, sir.
- 6 Q When you would provide them the crack cocaine,
- 7 would they just smoke it or would you jump in and
- 8 smoke, too?
- 9 A We would smoke together.
- 10 Q Let me ask you about smoking crack cocaine. How
- 11 long have you been using drugs?
- 12 A For about -- ever since I went in the military.
- 13 Q Since Vietnam?
- 14 A Yes, sir.
- 15 Q What did you start smoking in Vietnam?
- 16 A When I went to Vietnam.
- 17 Q What type of drugs were you doing then?
- 18 A Marijuana and sampled some heroin.
- 19 Q Heroin?
- 20 A (Witness nods). (Indicating affirmative response).
- 21 Q When did you first start using crack cocaine?
- 22 A In '82.
- 23 Q Basically from Vietnam all the way up to today,
- 24 have you been using drugs on and off?
- 25 A Yes, sir.

- 1 Q Do you know a fellow by the name of Michael Wise?
- 2 A Yes, sir.
- 3 Q How do you know him?
- 4 A He stay in the neighborhood.
- 5 Q Again, your neighborhood is called what?
- 6 A [REDACTED].
- 7 Q [REDACTED]?
- 8 A Yes, sir.
- 9 Q In Gaston?
- 10 A Yes.
- 11 Q Did Michael Wise live in [REDACTED]?
- 12 A Yes, sir.
- 13 Q Do you know anything about Michael Wise? Do you
- 14 know if he knows Darrell Burgess?
- 15 A Yes, sir.
- 16 Q Do you know that he does?
- 17 A Yes, sir.
- 18 Q Are they about the same age?
- 19 A I believe so.
- 20 Q Did you know them as being friends with one another
- 21 or strangers?
- 22 A They was friends.
- 23 Q Do you know Darrell Burgess?
- 24 A Yes, sir.
- 25 Q How long have you known Mr. Burgess?

- 1 A At least 15 years, at least that many.
- 2 Q Mr. Burgess is a bit younger than you; is that
- 3 correct?
- 4 A Yes, sir.
- 5 Q Where does Mr. Burgess live in relation to you?
- 6 A Across the street.
- 7 Q Across the street from your house in [REDACTED]?
- 8 A Yes, sir.
- 9 Q How long had he been there?
- 10 A He was there before I moved in.
- 11 Q So when you moved into [REDACTED], he was
- 12 already living across the street?
- 13 A Yes, sir.
- 14 Q Did you know him when he was much younger?
- 15 A Well, I seen him, yeah.
- 16 Q Know of him?
- 17 A Yes, sir.
- 18 Q And do you see the Darrell Burgess that lives
- 19 across your street, that has lived across your
- 20 street and that you known for 15 years or so, in
- 21 this courtroom today?
- 22 A Yes, sir.
- 23 Q Can you point him out. To the best of your
- 24 ability, I've know you got shackles on or tell us
- 25 where he is sitting.

1 A Sitting over at the table.

2 Q On the other side of the courtroom?

3 A Yes, sir.

4 Q Next to his lawyer, Mr. Baker?

5 A Yes, sir.

6 Q I want to ask you, do you recall going to David and
7 Kim's house?

8 A Yes, sir.

9 Q At [REDACTED] Circle on the night of September 4th,
10 2005, and staying on into the early morning hours
11 of 2006 -- I mean, September 6th -- do you remember
12 that?

13 A Right.

14 THE COURT: Tell me those dates again,
15 Solicitor.

16 MR. HUBBARD: I may have butchered them, Your
17 Honor.

18 BY MR. HUBBARD:

19 Q The night of September 4, 2005, and on into the
20 early morning hours of September 5, 2005?

21 A (Witness nods). (Indicating affirmative response).

22 Q Do you remember being there during that time?

23 A Yes, sir.

24 Q When you got to Kim and David's house, was anybody
25 else there?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

326

- 1 A No, sir.
- 2 Q Their roommate Michael Melton was not there?
- 3 A No, sir.
- 4 Q September 4th when you first went over there, why
- 5 did you go over there?
- 6 A Kim called me at home and told me she had some
- 7 money that she owed me.
- 8 Q She told you she had money she owed you?
- 9 A (Witness nods). (Indicating affirmative response).
- 10 Q What was that money for?
- 11 A Crack.
- 12 Q And did you go to pick it up?
- 13 A Yes, sir.
- 14 Q About how much money are we talking about?
- 15 A Eighty dollars.
- 16 Q When you got there, did she give you that money?
- 17 A Yes, sir.
- 18 Q And what did you do?
- 19 A I took it.
- 20 Q Did you just sit down and y'all talk about, "This
- 21 is the money," or did you go buy crack?
- 22 A Yeah, she wanted me to get her some crack.
- 23 Q What did you do with her money?
- 24 A Took it and bought -- I added it with what she gave
- 25 me and bought a hundred dollars worth.

- 1 Q So you took the money she owed you and coupled with
2 the money you already had?
- 3 A Right.
- 4 Q And brought a hundred dollars worth of crack?
- 5 A Yes.
- 6 Q Did you smoke that yourself or what did you do with
7 that hundred dollars worth of crack.
- 8 A We smoked it together.
- 9 Q Who is we?
- 10 A Me, Kim, and David.
- 11 Q Where did y'all do that?
- 12 A At her house.
- 13 Q Did you just make one trip to buy crack cocaine or
14 did you make --
- 15 A Several.
- 16 Q -- several trips, okay. When you would go out to
17 buy the crack, did y'all communicate by phone?
- 18 A She would call me and try to rush me back.
- 19 Q Beside smoking crack were you drinking anything?
- 20 A Yes, sir.
- 21 Q What were y'all drinking?
- 22 A Beer and mixed drinks.
- 23 Q Looking at this diagram, State's Exhibit 17, does
24 this look like a familiar layout right here of the
25 residence?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

328

- 1 A Yes, sir.
- 2 Q When y'all were watching T.V. or in this room,
3 excuse me, were y'all in this part of the room or
4 in one of the bedrooms?
- 5 A In the living room.
- 6 Q Speak up for me?
- 7 A The living room.
- 8 Q In the living room. What is this right here
9 (indicating)?
- 10 A Sofa.
- 11 Q Excuse me?
- 12 A A sofa.
- 13 Q What is this (indicating)?
- 14 A Love seat.
- 15 Q What is right here?
- 16 A T.V.
- 17 Q This is in the living room area?
- 18 A Yes, sir.
- 19 Q This is where y'all sat and smoked crack cocaine?
- 20 A Yes, sir.
- 21 Q Was the T.V. on or off during that time?
- 22 A It was on.
- 23 Q It was on?
- 24 A Yes, sir.
- 25 Q While y'all smoked crack and drank beer, did y'all

1 talk?

2 A Yes, sir.

3 Q While you were with David Slice and Kim Fauscette
4 in their house in their living room, did anyone
5 else show-up?

6 A Yes, sir.

7 Q Can you tell us about that.

8 A We was sitting and talking and smoking, and Kim got
9 up and looked out the window. She thought she
10 heard something, and she seen somebody coming down
11 through the driveway.

12 Q Okay.

13 A She went and opened the door.

14 Q What door did she open?

15 A The front door.

16 Q Is that the front door depicted on State's Exhibit
17 17 right there?

18 A Yes, sir.

19 Q Had Kim been over here (indicating) on the floor?

20 A Yes, sir.

21 Q And she got up to open this front door?

22 A Right.

23 Q When she opened that front door, did somebody come
24 in the house?

25 A Yes, sir.

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

330

- 1 Q Who came in that house?
- 2 A Darrell.
- 3 Q Darrell who?
- 4 A Burgess.
- 5 Q Darrell Burgess?
- 6 A Yes, sir.
- 7 Q The same man sitting in this courtroom?
- 8 A Yes, sir.
- 9 Q The same man that lives across the street from you?
- 10 A Yes, sir.
- 11 Q The same man you have known for some 15 years?
- 12 A Yes, sir.
- 13 Q Based on her reaction, did you know or from your
- 14 prior knowledge, did you know if she knew Darrell
- 15 Burgess?
- 16 A Yes, sir.
- 17 Q And David Slice, did he know Darrell Burgess?
- 18 A Yes, sir.
- 19 Q When Darrell Burgess came in the house, did he say
- 20 anything?
- 21 A No, sir.
- 22 Q What happened then?
- 23 A He sit down, and me and Kim was asking him
- 24 questions about where his car was and where he was
- 25 coming from.

- 1 Q Where his car was and where he was coming from?
- 2 A Yes, sir.
- 3 Q Did he tell you?
- 4 A He told us that he had wrecked his car.
- 5 Q Okay.
- 6 A He was running from the police.
- 7 Q All right.
- 8 A He came down through the woods and came to the
- 9 house.
- 10 Q So he's saying he wrecked his car and he was
- 11 running from the police and came through the woods
- 12 to their house?
- 13 A Yes, sir.
- 14 Q That was his explanation as to why y'all didn't see
- 15 his car?
- 16 A Yes, sir.
- 17 Q Did he ask you for a ride?
- 18 A No, sir.
- 19 Q While Darrell Burgess was there, were y'all still
- 20 smoking crack?
- 21 A No, sir.
- 22 Q Do you recall Darrell smoking anything?
- 23 A He lit up a cigarette.
- 24 Q He lit up a cigarette, his own cigarette or one
- 25 that y'all provided?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

332

- 1 A His own.
- 2 Q Okay. Was this just a regular cigarette?
- 3 A Newport.
- 4 Q Did you ask him about that cigarette as he smoked
- 5 it?
- 6 A I asked him to save me a short off of it.
- 7 Q You asked him for what?
- 8 A Leave me some of the cigarette.
- 9 Q A short?
- 10 A Yes, sir.
- 11 Q Basically when he smoked half of it to give you the
- 12 last half?
- 13 A Yes, sir.
- 14 Q Did he do that?
- 15 A Yes, sir.
- 16 Q How long was Darrell Burgess in this house with Kim
- 17 and David and you?
- 18 A How long was he in there?
- 19 Q Yes. How long was he there?
- 20 A Well, about 10 or 15 minutes.
- 21 Q Ten or 15 minutes. I want to ask you, looking at
- 22 State's Exhibit 17 again, you mentioned he sat
- 23 down. Did he sit down in the living room with
- 24 y'all?
- 25 A Yes, sir.

- 1 Q Again, this area right here (indicating)?
- 2 A (Witness nods). (Indicating affirmative response).
- 3 Right.
- 4 Q Let's start with David Slice. Where was he seated?
- 5 A On the sofa where the circle at.
- 6 Q Where the circle is?
- 7 A Yes.
- 8 Q That's where David Slice was seated?
- 9 A Yes, sir.
- 10 Q How about Kim Fauscette?
- 11 A She was sitting on the floor in between the coffee
- 12 table and the T.V.
- 13 Q About where this circle (indicating) is, somewhere
- 14 in that area?
- 15 A Somewhere around there.
- 16 Q Where were you seated?
- 17 A On the sofa, on the other end.
- 18 Q So you were on the opposite end of the sofa from
- 19 David Slice?
- 20 A Right.
- 21 Q Where was Darrell Burgess seated?
- 22 A On the love seat.
- 23 Q The love seat being right here (indicating)?
- 24 A Right.
- 25 Q So it's Darrell Burgess, you, David Slice, and Kim

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

334

1 Fauscette?

2 A (Witness nods). (Indicating affirmative response).

3 Q Is that correct?

4 A That's right.

5 Q Now, was there much talking going on at this point?

6 A No.

7 Q Anything unusual in your mind at this point?

8 A No.

9 Q I want you to describe what happens next to this
10 jury. What, if anything, did you notice happen in
11 that house next?

12 A I heard a gunshot.

13 Q Okay.

14 A I looked up and Darrell had the gun aiming towards
15 David, and I jumped up and said, "Darrell." He
16 told me: "Sit down, Red. Take this to your
17 grave." So I sit back down. So he shot David
18 again. Then he walked around and shot Kim, and
19 then he walked on over and was trying to shoot
20 David some more, but the gun started snapping.
21 Then he got ready to unload his gun, and I got up
22 and ran.

23 Q So while you are sitting here on the sofa, the next
24 thing you notice there is a gunshot?

25 A Yes, sir.

- 1 Q Who was shooting that gun?
- 2 A Darrell.
- 3 Q Who?
- 4 A Darrell.
- 5 Q Darrell Burgess?
- 6 A Yes, sir.
- 7 Q Is he still on the love seat?
- 8 A No, he was standing up.
- 9 Q I tell you what, maybe if -- I will not have you
- 10 stand up. About where was he when you looked up?
- 11 A About somewhere over -- right over in there
- 12 (indicating).
- 13 Q Right over in this area here (indicating)?
- 14 A Right.
- 15 Q When he fired the next shot and you saw him
- 16 shooting at David, where did he move to next?
- 17 A Then he came around this way (indicating).
- 18 Q This way (indicating) toward the T.V. around the
- 19 coffee table?
- 20 A Yes, sir.
- 21 Q Who was he heading towards?
- 22 A He was heading towards Kim.
- 23 Q Did you see him firing at Kim?
- 24 A Yes, sir.
- 25 Q After he was through firing at her, what did you

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

336

- 1 see him do?
- 2 A He went on around to where David was sitting at and
- 3 was starting -- trying to fire at him, but the gun
- 4 was snapping.
- 5 Q Does he come back around the coffee table that way
- 6 or does he come back around where you are?
- 7 A He comes on around the coffee table.
- 8 Q Around past Kim around the coffee table?
- 9 A Right.
- 10 Q Back to David Slice?
- 11 A Yes, sir.
- 12 Q Let me get this straight. I know that's a small
- 13 diagram. But if you are seated right here
- 14 (indicating), David Slice is right here
- 15 (indicating), and Kim is right over here
- 16 (indicating). Again, you are right here
- 17 (indicating). That's where Darrell was
- 18 (indicating), to your right?
- 19 A Yes, sir.
- 20 Q Is that correct?
- 21 A That's correct.
- 22 Q Are you saying you heard a shot first or saw him
- 23 shoot first?
- 24 A I heard.
- 25 Q When you looked up, who was standing?

- 1 A Darrell.
- 2 Q He was standing in front of you?
- 3 A On the side.
- 4 Q To the side?
- 5 A Uh-huh. (Indicating affirmative response).
- 6 Q He was firing at which person, David or Kim?
- 7 A David.
- 8 Q When he had fired at David, did he walk on your
- 9 side of the coffee table or did he walk around the
- 10 coffee table to get to Kim?
- 11 A He walked around.
- 12 Q Around, away from you?
- 13 A Right.
- 14 Q And you observed him shooting Kim?
- 15 A Yes, sir.
- 16 Q And then he came back to David?
- 17 A Yes, sir.
- 18 Q Around the coffee table?
- 19 A (Witness nods). (Indicating affirmative response).
- 20 Q You said you jumped up, and said what?
- 21 A I said, "Darrell," and he told me to shut up and
- 22 sit down and take it to my grave. I sit back down.
- 23 Q When you sat down, you mentioned that when he came
- 24 back around to David, after he had shot Kim and
- 25 comes back around to David, what did you hear?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

338

- 1 A The gun snapping.
- 2 Q When you say snapping, do you mean the gun is
- 3 firing or what are you talking about?
- 4 A He was pulling the trigger, but it wasn't firing.
- 5 Q Pulling the trigger but an empty gun?
- 6 A (Witness nods). (Indicating affirmative response).
- 7 Q Now, this gun, can you describe it for this jury?
- 8 A It was a revolver, silver revolver.
- 9 Q Silver revolver. A revolver along with a spinning
- 10 wheel with the bullets in it?
- 11 A Yes, sir.
- 12 Q He had fired everything and it was just cricking?
- 13 A Right.
- 14 Q When you heard that clicking sound, what did you
- 15 do?
- 16 A I got up and ran out the door.
- 17 Q Which door did you run out, James?
- 18 A The front door.
- 19 Q Where did you run to?
- 20 A Back up in the woods.
- 21 Q At some point when you heard that clicking, did you
- 22 see Darrell reaching for anything else?
- 23 A He was reaching in his pocket like he was getting
- 24 some bullets or something. I ain't sure. I didn't
- 25 find out. I didn't wait to find out.

- 1 Q You weren't waiting to find out if he was
2 reloading?
- 3 A (Witness nods). (Indicating affirmative response).
- 4 Q When you ran outside, you said you ran where?
- 5 A Back up behind the trailer in the woods.
- 6 Q Again, I know this is a distant shot here, State's
7 Exhibit 16, their mobile home, their house is right
8 here (indicating). You run in the woods?
- 9 A Back behind the house.
- 10 Q Is this (indicating) behind or in front?
- 11 A Behind.
- 12 Q So you run back there (indicating)?
- 13 A Yes, sir.
- 14 Q Again, is it light or dark at this point?
- 15 A Dark.
- 16 Q It's dark?
- 17 A (Witness nods). (Indicating affirmative response).
- 18 Q Who are you hiding from?
- 19 A From Darrell.
- 20 Q Darrell Burgess?
- 21 A Yes, sir.
- 22 Q Do you recall as you sit here today whether you
23 heard anything else, any other sounds, coming out
24 of that house?
- 25 A I heard some more gunshots.

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

340

1 Q You heard clicking, you're outside, and now you
2 hear more gunshots?

3 A Yes, sir.

4 Q While you were hiding in the woods, did you at any
5 time see Darrell Burgess come out of that house?

6 A Yes, sir.

7 Q Did he say anything to you?

8 A Yes, sir.

9 Q What was he saying?

10 A He was telling me that he wasn't after me, that I
11 better come on out and get in my car and leave.

12 Q He was saying he wasn't after you?

13 A Yes, sir.

14 Q What name was he using to call you?

15 A Red.

16 Q "Red, I'm not after you"?

17 A Yes, sir.

18 Q What else did he tell you to do?

19 A Come out and get in my car and leave.

20 Q Did you do what he said?

21 A No, sir.

22 Q Why?

23 A I was scared.

24 Q I want to ask you about being scared. You had just
25 seen two people get killed, correct?

- 1 A Yes, sir.
- 2 Q When was the last time you've been that scared?
- 3 A When I was in Vietnam.
- 4 Q What did you do while you were hiding in those
5 woods?
- 6 A Praying, I guess.
- 7 Q Let me ask you something, too. You had said that
8 Darrell Burgess had smoked a cigarette?
- 9 A Yes, sir.
- 10 Q And you had bummed a short off of him?
- 11 A Yes, sir.
- 12 Q Did you take that out the door with you?
- 13 A Yes, sir.
- 14 Q Do you know where it is?
- 15 A I outed the cigarette when I got out in the field.
- 16 Q It's somewhere out there?
- 17 A (Witness nods). (Indicating affirmative response).
- 18 Q That's the only thing you ever saw him put in his
19 mouth?
- 20 A Yes, sir.
- 21 Q When you heard Darrell Burgess calling your name,
22 was he inside or outside that house?
- 23 A Outside.
- 24 Q What did you do?
- 25 A I stayed there until he left.

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

342

1 Q And how did you see him leave? Did he drive off?

2 A No, he walked.

3 Q Did he walk through the woods or did he walk on

4 [REDACTED] [REDACTED]? What did he walk on?

5 A He walked on [REDACTED] [REDACTED] up the road, the
6 dirt road.

7 Q When you say up the road, up the circle?

8 A Yes, sir.

9 Q After he was out of your sight, what did you do?

10 A I got in my car and went on up the road to where he
11 went.

12 Q Was your car parked right outside that mobile home?

13 A Yes, sir.

14 Q And you drove up that same way?

15 A Yes, sir.

16 Q You have been in that area before. Is that the
17 easiest way to get out of there?

18 A Yes, sir.

19 Q The road is not as rough going that way?

20 A That's right.

21 Q When you drove down [REDACTED] [REDACTED] and you got
22 to Fish Hatchery, which way did you go?

23 A To the left.

24 Q When you got here (indicating) to Fish Hatchery,
25 you went left?

- 1 A Right, a left.
- 2 Q Left. Is that the way you would go to get home?
- 3 A Yes, sir.
- 4 Q And where did you go?
- 5 A I went to a friend of mine house.
- 6 Q Who was that friend?
- 7 A Paul.
- 8 Q As you are driving down [REDACTED] [REDACTED] before
- 9 you even got out of there, did you see Darrell
- 10 Burgess?
- 11 A No.
- 12 Q Did you see any other cars?
- 13 A I seen a car coming out in front of me. It made a
- 14 left, too.
- 15 Q On [REDACTED] [REDACTED] onto Fish Hatchery?
- 16 A Yes, sir.
- 17 Q Did you know if that was Darrell Burgess or not?
- 18 A I wasn't sure.
- 19 Q Did you follow in right behind them?
- 20 A No, sir.
- 21 Q What did you do?
- 22 A I stayed until they got out of sight.
- 23 Q So you waited?
- 24 A Yes, sir.
- 25 Q You say when you finally made that turn, that left

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

344

- 1 turn on Fish Hatchery, you went to whose house?
- 2 A Paul.
- 3 Q Paul?
- 4 A Yes, sir.
- 5 Q Is Paul a friend of yours?
- 6 A Yes, sir.
- 7 Q How long were you at Paul's?
- 8 A About 30 or 45 minutes.
- 9 Q What did you do while you were at Paul's?
- 10 A Smoked some crack.
- 11 Q James, I want you to explain something for me. You
- 12 had just seen two people get killed. The first
- 13 thing you did is leave and go smoke crack?
- 14 A I needed something for my nerves definitely.
- 15 Q Is that what you needed?
- 16 A Yes, sir.
- 17 Q After you left Paul's, where did you go?
- 18 A Home.
- 19 Q Who's at home?
- 20 A My wife.
- 21 Q Your daughters don't live at the house anymore?
- 22 A No, sir.
- 23 Q Did you stay home that night?
- 24 A No, sir.
- 25 Q What did you do?

- 1 A I went home, got some money, and left.
- 2 Q Why did you do that, James?
- 3 A I was scared to stay there.
- 4 Q This home again, who lives across your street?
- 5 A Darrell Burgess.
- 6 Q Darrell Burgess?
- 7 A Yes, sir.
- 8 Q Did you tell your wife what had happened?
- 9 A Yes, sir.
- 10 Q This is September 5th that you make it home, right?
- 11 A Yes, sir.
- 12 Q Is it still dark outside or is it light at this
- 13 point?
- 14 A Still dark.
- 15 Q At some point do you return to your house?
- 16 A Yes, sir.
- 17 Q Is it still September 5th?
- 18 A Yes, sir.
- 19 Q Is it daylight or dark outside?
- 20 A Daylight.
- 21 Q So you stayed out for a while?
- 22 A Yes, sir.
- 23 Q When you get home, do you go into your house?
- 24 A Yes, sir.
- 25 Q During the daylight hours of September 5th, do you

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

346

- 1 remember anybody coming by your house?
- 2 A Yes, sir.
- 3 Q Who came by your house?
- 4 A Darrell.
- 5 Q Darrell who?
- 6 A Darrell Burgess.
- 7 Q Your neighbor?
- 8 A Yes, sir.
- 9 Q The man you had seen at [REDACTED] [REDACTED]?
- 10 A Yes, sir.
- 11 Q Did you talk to Darrell Burgess?
- 12 A Yes, sir.
- 13 Q Did he come to your door or your house or did you
- 14 go to his?
- 15 A He came to mine.
- 16 Q Did you talk to him?
- 17 A Yes, sir.
- 18 Q Did you stand inside or outside of your house?
- 19 A Outside.
- 20 Q Where was your wife?
- 21 A Inside.
- 22 Q What did Darrell Burgess ask you?
- 23 A He asked me did I say anything. I told him hell
- 24 no.
- 25 Q He wanted to know if you had talked?

- 1 A (Witness nods). (Indicating affirmative response).
- 2 Q James, did you ask him why he did what he did?
- 3 A I asked why did he do that. He said it had to be
- 4 done. He couldn't be trusted. I asked him, I
- 5 said, "Why did you do it while I was in there?" He
- 6 said, "You act like you wasn't leaving."
- 7 Q So you asked him why did you do what you did, and
- 8 he said it had to be done?
- 9 A (Witness nods). (Indicating affirmative response).
- 10 Q That he couldn't be trusted?
- 11 A (Witness nods). (Indicating affirmative response).
- 12 Q Who was the he? Who did that he mean to you?
- 13 A David.
- 14 Q David Slice?
- 15 A (Witness nods). (Indicating affirmative response).
- 16 Q It had to be done, he couldn't be trusted, and you
- 17 asked him why did he do it while you were there?
- 18 A Yes, sir.
- 19 Q And what was his response?
- 20 A That I act like I wasn't leaving.
- 21 Q You didn't act like you were going to be leaving?
- 22 A (Witness nods). (Indicating affirmative response).
- 23 Q Did he tell you something else before he left your
- 24 house after talking to you?
- 25 A Yes, sir.

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

348

1 Q What did he say?

2 A He told me, "Red, take that to your grave."

3 Q Take it to your grave?

4 A (Witness nods). (Indicating affirmative response).

5 Q Is that the same thing he said to you in that
6 mobile home?

7 A Yes, sir.

8 Q When he started shooting?

9 A Yes, sir.

10 Q September 6th, the next day, do you recall seeing
11 Darrell Burgess again?

12 A Yes, sir.

13 Q Did you go to his house, he comes to yours or where
14 did you see him?

15 A He came to my house.

16 Q What, if anything, did he ask you?

17 A He asked me did I heard anything yet.

18 Q Asked if you had heard anything?

19 A Yes, sir.

20 Q About the killings?

21 A Yes, sir.

22 Q What did you tell him?

23 A No.

24 Q Did you talk to him about your concerns and your
25 worries?

- 1 A Yes, sir.
- 2 Q What were you worried about as far as what officers
3 might find in that house?
- 4 A My fingerprints on the beer can, the glasses, I
5 mean all over.
- 6 Q Were you afraid you were going to be blamed for
7 this?
- 8 A Yes, sir.
- 9 Q This is a house you went over to all the time?
- 10 A Yes, sir.
- 11 Q What was his response to you when you said, "I'm
12 afraid I will get in trouble for something I didn't
13 do?"
- 14 A He said, "Red, don't worry about it. You know you
15 ain't did nothing." I said, "Well, I told you my
16 fingerprints is all over the place." He said, "If
17 they arrest, you know you ain't did nothing. I got
18 some money, got \$9,000 in my pocket. I'll get you
19 out."
- 20 Q He said for you not to worry about it, you didn't
21 do anything?
- 22 A Yes, sir.
- 23 Q And he has got money, he'll get you out?
- 24 A Yes, sir.
- 25 Q Did he say he had 9,000?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

350

- 1 A Yes, sir, showed me a stack.
- 2 Q A stack, a wad of bills?
- 3 A Yes, sir.
- 4 Q He didn't count it for you?
- 5 A No, sir.
- 6 Q But he told you that was \$9,000?
- 7 A Yes, sir.
- 8 Q And you didn't need to worry?
- 9 A Yes, sir.
- 10 Q Do you know where that money came from?
- 11 A No, sir.
- 12 Q Later that same day, September 6th, did you see him
- 13 yet again?
- 14 A Yes, sir.
- 15 Q Where did you see him?
- 16 A He came to my house again.
- 17 Q What, if anything, did he ask you when he came to
- 18 your house?
- 19 A He asked me would I take him to get -- to rent a
- 20 car.
- 21 Q Did you agree to take him to get a car?
- 22 A Yes, sir.
- 23 Q Why did you do that?
- 24 A I didn't want to, but I was still scared.
- 25 Q Scared of who?

- 1 A Of Darrell.
- 2 Q You mentioned being scared of getting caught and
3 being blamed for this, and you have talked about
4 being scared of Darrell Burgess. What were you
5 scared of most, being blamed or Darrell Burgess?
- 6 A Darrell.
- 7 Q So you took him -- where did you take him?
- 8 A On Knox Abbott Drive.
- 9 Q To a car rental place on Knox Abbott Drive?
- 10 A Yes, sir.
- 11 Q Do you remember which one you took him to?
- 12 A Yes, sir.
- 13 Q Which one?
- 14 A It was -- I think it was Enterprise.
- 15 Q The Enterprise on Knox Abbott Drive?
- 16 A Yes, Enterprise.
- 17 Q Did you drop him off there or what did you do?
- 18 A I waited on him for awhile. He went in and checked
19 on a car.
- 20 Q You stayed in your car and he went inside?
- 21 A Yes, sir.
- 22 Q Did you see him looking at a car?
- 23 A Yes, sir.
- 24 Q What car was he looking at?
- 25 A It was a Pontiac.

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

352

- 1 Q A Pontiac?
- 2 A (Witness nods). (Indicating affirmative response).
- 3 Q Do you know what kind of Pontiac? If you don't
- 4 that's okay.
- 5 A No, sir.
- 6 Q Do you know if it was a big car, medium car or
- 7 small car?
- 8 A A little hatchback.
- 9 Q A hatchback, a Pontiac hatchback?
- 10 A (Witness nods). (Indicating affirmative response).
- 11 Q Did he come and get back in your car?
- 12 A Yes, sir.
- 13 Q Where did you take him from there?
- 14 A To a drive-through restaurant.
- 15 Q Why did you do that?
- 16 A He asked me to take him down there.
- 17 Q He had not rented the car yet?
- 18 A No, sir.
- 19 Q Do you remember what restaurant you took him to?
- 20 A I take him to the chicken place, Zaxby's.
- 21 Q Zaxby's on Knox Abbott?
- 22 A Yes, sir.
- 23 Q Did you drop him off there or did he stay with you?
- 24 A No, I dropped him off and kept on going.
- 25 Q You didn't look back?

- 1 A No, sir.
- 2 Q Was that the last time -- did you see him again
- 3 after that at any time?
- 4 A Yes, sir.
- 5 Q When was that?
- 6 A It was a day or so later out in his yard.
- 7 Q Did y'all speak?
- 8 A No, sir.
- 9 Q You just saw him out in his yard?
- 10 A Yes, sir.
- 11 Q So the last conversation you had with him was
- 12 September 6, 2005?
- 13 A Yes, sir.
- 14 Q James, I've got to ask you this. Why didn't you
- 15 call the cops?
- 16 A I didn't want to be in trouble with them either.
- 17 Q Had you been smoking crack that night?
- 18 A Yes, sir.
- 19 Q They had been smoking, David and Kim, had been
- 20 smoking crack?
- 21 A Yes, sir.
- 22 Q What were you afraid of as far as law enforcement
- 23 was concerned?
- 24 A That I'd get in trouble with them.
- 25 Q That you would be blamed?

JAMES JOHNSON -- DIRECT -- MR. HUBBARD

354

1 A Yes, sir.

2 Q The same thing you had talked to Darrell about?

3 A Yes, sir.

4 Q Do you remember when they sat down with you and
5 spoke with you?

6 A Yes, sir.

7 Q The first time you talked to them, did you tell
8 them the truth or not?

9 A No, sir.

10 Q Why didn't you tell law enforcement the truth the
11 first time you sat down with them?

12 A I was still scared.

13 Q Scared of what, James?

14 A My family was still out there, too.

15 Q Your family was still out there?

16 A Yes, sir.

17 Q Again, you have talked about a fear of law
18 enforcement blaming you for these murders and a
19 fear of Darrell Burgess?

20 A (Witness nods). (Indicating affirmative response).

21 Q When you talked to law enforcement, what was your
22 biggest fear?

23 A Darrell.

24 Q Darrell was still out there?

25 A Yes, sir.

1 Q Was your family still out there?

2 A Yes, sir.

3 Q James, did you end up telling the truth?

4 A Yes, sir.

5 Q Did you end up writing a statement for law
6 enforcement?

7 A Yes, sir.

8 Q As you sit here today in an orange jumpsuit with
9 charges coming out of this, what deals or promises
10 have been made from my office, law enforcement, and
11 you?

12 A None.

13 Q You are walking without a net?

14 A Yes, sir.

15 MR. HUBBARD: No further questions at this
16 time.

17 THE COURT: Thank you, Solicitor. Mr. Baker.

18 CROSS EXAMINATION

19 BY MR. BAKER:

20 Q Mr. Johnson.

21 A Yes, sir.

22 Q The story you have told here today is not the only
23 story you have told about this matter; is that
24 correct?

25 A Huh?

1 Q Isn't it true you originally told law enforcement
2 you didn't know anything about this situation?

3 A That's right.

4 Q And you told them you didn't know what had happened
5 to Kim and David; is that correct?

6 A That's right.

7 Q And did they ask you why you had been talking to or
8 traveling to the home of Mr. Larry Williams?

9 A Yes, sir.

10 Q And you originally told them you didn't recall why
11 you had gone to the home of Mr. Larry Williams; is
12 that correct?

13 A Did I originally tell them that?

14 Q Right.

15 A No, they asked me about a phone number.

16 Q Correct. You were picked up by law enforcement on
17 September 9, 2005; is that correct?

18 A Right.

19 Q And you were originally a prime suspect in this
20 crime; is that correct?

21 A Right.

22 Q And did Detective Baumgardner and Detective
23 Richardson or Detective Beaver tell you why they
24 were questioning you?

25 A First they told me it was about a drug charge.

1 Q Did they tell you anything else about why they were
2 questioning you?

3 A Yes.

4 Q About what?

5 A When they arrested me, they told me it was about a
6 drug charge.

7 Q What did they tell you about this crime?

8 MR. HUBBARD: Your Honor, I think he needs to
9 ask it a little differently. It's just hearsay here. I
10 think if he changes the form of question, it won't be a
11 problem.

12 BY MR. BAKER:

13 Q Did they tell you they wanted to question you about
14 anything else, Mr. Johnson?

15 A When are you talking about?

16 Q When they took you into custody?

17 A When they took me into custody, they told me that I
18 was -- the officer told me that he believed I was
19 under arrest for a drug charge.

20 Q When did they tell you they wanted to talk to you
21 about this incident?

22 A After I got to the jail, they took me over to the
23 Sheriff's Office.

24 Q And did they tell you they wanted to talk to you
25 about this particular situation?

- 1 A They asked me did I know David and Kim.
- 2 Q Did they tell you why they wanted to speak with you
- 3 about that?
- 4 A They did later on.
- 5 Q Did they explain the crime to you?
- 6 A Yes.
- 7 Q Did they explain to you what happened to David and
- 8 Kim?
- 9 A Not at that time.
- 10 Q On the evening of September 4, 2005, and the early
- 11 morning hours of September 5, 2005 -- and I think
- 12 it's going to be September 4th -- you actually were
- 13 communicating with Ms. Kim Fauscette and David
- 14 Slice a number of occasions on the telephone; is
- 15 that correct?
- 16 A Uh-huh. (Indicating affirmative response).
- 17 Q And you were a regular supplier of drugs to them;
- 18 is that correct.
- 19 A Yeah, I got high with them regular.
- 20 Q And you were a source of drugs for them; is that
- 21 correct?
- 22 A Well, they liked to get high with me.
- 23 Q And you would take them drugs; is that correct?
- 24 A Right.
- 25 Q And you actually went over there on September 4,

1 2005, to go collect on a drug debt; is that
2 correct?

3 A Right .

4 Q And you, in fact, did collect some money from them
5 that evening?

6 A Right.

7 Q And then you, in fact, leave there at some point,
8 and you paid off a drug debt you owed to Mr. Larry
9 Williams; is that correct?

10 A No, sir.

11 Q That's not correct?

12 A No.

13 Q Did you give a statement to law enforcement --

14 A Yes, sir.

15 Q -- Mr. Johnson?

16 A Yes, sir.

17 Q Is that not what you told law enforcement?

18 A No, sir.

19 Q What was it you told law enforcement?

20 A I told them that's when I went to get some drugs.

21 Q Mr. Johnson, you have indicated that you were in
22 fear for your life on this occasion, the night of
23 September 4th, the early morning hours of September
24 5th. You then, after seeing what you have
25 described as a situation where these two

JAMES JOHNSON -- CROSS -- MR. BAKER

360

1 individuals were shot, you don't call the police,
2 you don't call 9-1-1, you don't do anything to try
3 to get assistance for them. You go over to someone
4 else's residence and smoke some crack with them.

5 Is that what you have testified to?

6 A Yes, sir.

7 Q And then I think you have indicated that you then
8 at some point, did you not go home to your house
9 and get more money?

10 A Yes, sir.

11 Q On the early morning hours of September 5th?

12 A Yes, sir.

13 Q And then you got more money from your wife, and you
14 actually went out again and smoked more crack?

15 A No, sir. I bought some cigarettes, put some gas in
16 the car, and rode around.

17 Q So you were in fear for your life, but you go home,
18 see your wife, get more money, and then you left?

19 A That's right.

20 Q So you left your wife there by herself?

21 A That's right.

22 Q But you were in fear for your life is what you are
23 telling this jury; is that correct?

24 A That's right.

25 Q But yet you left your wife there by herself?

- 1 A That's right.
- 2 Q And your testimony is that you reside across the
3 street from Mr. Darrell Burgess?
- 4 A That's right.
- 5 Q So you were so afraid of him, you left your wife
6 there by herself?
- 7 A I was in the car. If the car wasn't there, he know
8 I ain't there.
- 9 Q So you weren't concerned for your wife's safety?
- 10 A Not at that time. He didn't know whether she know
11 anything or what.
- 12 Q You were so afraid of Mr. Burgess that you agreed
13 to give him a ride to the car rental place on
14 September 6th; is that correct?
- 15 A Yeah.
- 16 Q You have testified earlier, Mr. Johnson, that you
17 had smoked with Kim and David over a hundred
18 dollars worth of crack cocaine --
- 19 A Yes, sir.
- 20 Q -- on this evening?
- 21 A Yes.
- 22 Q Had you been smoking crack all day?
- 23 A No, sir.
- 24 Q And you had been drinking as well?
- 25 A All day, no, sir.

JAMES JOHNSON -- CROSS -- MR. BAKER

362

1 Q How long had you been drinking?

2 A When I came over there.

3 Q So you had smoked a considerable amount of crack
4 cocaine and had several drinks?

5 A Yes, sir.

6 Q Was it safe to say you were pretty high?

7 A I wouldn't say pretty high, I was high.

8 Q And you smoked over a hundred dollars worth of
9 crack cocaine?

10 A We smoked over a hundred dollars worth, the three
11 of us.

12 Q Is it safe to say you are a crack addict,
13 Mr. Johnson?

14 A If you want to say that. I smoke crack.

15 Q In your experience in dealing with people who are
16 crack addicts and smoke crack, have you seen
17 situations where people do violent things to
18 collect, to get more crack?

19 A Get more crack?

20 Q Yes.

21 A Maybe see, yeah.

22 Q You have seen that in the crack world?

23 A Right.

24 Q And you were picked up on September 9, 2005, and
25 the story that you've told here today, you didn't

1 tell this to law enforcement until September 13,
2 2005; is that correct?

3 A That's right.

4 Q And you spent some four days in the Lexington
5 County Detention Center?

6 A That's right.

7 Q After doing that you then implicated Mr. Burgess?

8 A Yes, sir.

9 Q And you are currently facing, I think, a charge of
10 misprision of a felony?

11 A Yes, sir.

12 Q And I believe -- what other charges are you facing?

13 A Accessory after the fact.

14 Q As well as some drug charges?

15 A Yeah.

16 Q You are testifying here. Is it your understanding
17 that you are going to get some leniency on those
18 charges?

19 A I hope so but I ain't been promised nothing.

20 Q You are testifying here hoping to get some leniency
21 on those charges; is that correct?

22 A Yes, sir, I'm hoping.

23 Q You are expecting to get a deal?

24 A Not really.

25 Q You are hoping to get a deal?

- 1 A Hoping to get a deal.
- 2 Q You are hoping they will take it easy on you
- 3 because of this story you told her today?
- 4 A The truth I told you today, yes.
- 5 Q You are hoping you won't go to jail?
- 6 A Well, I already been in jail.
- 7 Q You are hoping you will get out?
- 8 A I hope so.
- 9 Q Has the Solicitor's Office promised you anything as
- 10 a result of your testimony?
- 11 A No, sir.
- 12 Q How many times have you met with them in
- 13 preparation for today?
- 14 A Twice.
- 15 Q Just two times recently?
- 16 A Yes, sir.
- 17 Q How many times before that?
- 18 A One time a couple of months ago and the other day.
- 19 Q So you met with them on two occasions?
- 20 A Yes, sir.
- 21 Q To prepare for your testimony today?
- 22 A Yes, sir.
- 23 Q According to your story, Mr. Johnson, what time did
- 24 Mr. Burgess arrive at this residence?
- 25 A Around about four.

1 Q What time?

2 A About four.

3 Q And you have been in the Lexington County Detention
4 Center since September 9, 2005?

5 A Yes, sir.

6 Q Have you seen Mr. Michael Wise while you've been in
7 the Lexington County Detention Center?

8 A Yes, sir.

9 Q You have. That's the same place he has been
10 housed, isn't it?

11 A Yes, sir.

12 Q And you and he talked about this case?

13 A Not this case, we talked.

14 Q So you are telling me y'all are both in prison on
15 the same charges, and y'all haven't even talked
16 about this case?

17 A We talked about -- yeah, we talked about this case.

18 Q You did talk about this case?

19 A Yeah, this case.

20 Q Did y'all talk about wanting to make sure your
21 stories were straight?

22 A No.

23 MR. BAKER: The Court's indulgence just one
24 minute, Your Honor.

25 THE COURT: Yes, sir.

JAMES JOHNSON -- CROSS -- MR. BAKER

366

1 (Pause).

2 MR. BAKER: Just one question, Your Honor.

3 BY MR. BAKER:

4 Q Is it true, Mr. Johnson, you had given a statement
5 to law enforcement, and you've actually signed the
6 statement; is that correct?

7 A Yes, sir.

8 Q And you told law enforcement in that statement when
9 you, according to your story, when you ran outside,
10 you didn't know whether you heard anything else
11 after that point; is that correct?

12 A That I didn't know if I heard anything?

13 Q Right.

14 A Yes.

15 Q And I think that's inconsistent with your testimony
16 earlier; is that correct? Didn't you testify
17 earlier you said you thought you heard more shots?

18 A Uh-huh. (Indicating affirmative response).

19 Q And you originally told law enforcement you didn't
20 know whether you heard anything or not?

21 A That's right.

22 Q So that has changed?

23 A Yeah.

24 MR. BAKER: Your Honor, I think that's all I
25 have got of Mr. Johnson.

1 THE COURT: Thank you, Mr. Baker. Solicitor,
2 anything on redirect?

3 MR. HUBBARD: A few follow-ups.

4 REDIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q Mr. Johnson, as to the time Darrell Burgess arrived
7 at that residence where David and Kim were living,
8 were you aware of the time or were you just
9 guessing about approximately what time?

10 A Approximately. I didn't know, approximately about
11 that time.

12 Q So somewhere in that area?

13 A Yes.

14 Q September 9, 2005, you are arrested; correct?

15 A Right.

16 Q And taken to the jail?

17 A (Witness nods). (Indicating affirmative response).

18 Q And initially it's a drug charge?

19 A Yes, sir.

20 Q And you talked to law enforcement, and you don't
21 tell them the truth?

22 A That's right.

23 Q September 13th, did you talk to law enforcement
24 again?

25 A Yes, sir.

JAMES JOHNSON -- REDIRECT -- MR. HUBBARD

368

- 1 Q And what I'm handing you here, I want you -- to
2 identify this if you can?
- 3 A Yes, sir.
- 4 Q What is this?
- 5 A My statement.
- 6 Q This is whose statement?
- 7 A Mine.
- 8 Q How many pages is this?
- 9 A Seven.
- 10 Q Seven pages?
- 11 A (Witness nods). (Indicating affirmative response).
- 12 Q What you said in that statement, did you say
13 that -- did you write that statement -- or hang on.
14 Let me ask you that again. Did you give that
15 statement to law enforcement before or after you
16 met Michael Wise in the jail?
- 17 A That was before.
- 18 Q Before?
- 19 A (Witness nods). (Indicating affirmative response).
- 20 Q You gave them a written statement, and then while
21 you are in jail Michael Wise shows up?
- 22 A Yeah.
- 23 Q And you say you and Michael Wise talked?
- 24 A Right.
- 25 Q But y'all didn't talk about this case?

1 A Not really. He asked -- do you want to know what
2 he asked me?

3 Q Sure.

4 A He just asked me, said that he had had in a motion
5 that I told the truth, that I didn't see him at the
6 house or during that time. I told him yeah. He
7 said, "I see in your statement that you didn't see
8 me," and I didn't see him. He asked me and I told
9 him no, all I seen was Darrell.

10 Q That it was Darrell?

11 A Yes.

12 MR. HUBBARD: Your Honor, I'd offer it in
13 evidence at this time.

14 MR. BAKER: Your Honor, I would have objection
15 to that.

16 THE COURT: Mark it as State's 44 for
17 identification purposes and let me look at it, State's
18 Exhibit 44.

19 (State's Exhibit Number 44 is marked for
20 identification).

21 THE COURT: Do you have anything further,
22 Solicitor?

23 MR. HUBBARD: Your Honor, if Your Honor is
24 considering whether that can go in, I would like to
25 address that.

1 THE COURT: All right. Well, I was going to
2 look at all of it. It's seven pages.

3 MR. HUBBARD: Yes, sir, I understand, Your
4 Honor had to look through it and everything first, too.
5 I don't know if Your Honor would like to take a break to
6 do that.

7 MR. BAKER: Just so you are aware, Your Honor,
8 I may have one or two recross questions.

9 THE COURT: Let me take the time to look at
10 this. While I do this, ladies and gentlemen of the
11 jury, if you would please go to your jury room
12 momentarily.

13 During this brief recess, do not discuss the
14 case amongst yourselves. Remember to keep an open mind
15 until you have heard all the testimony in the case.
16 Thank you very much. You are excused to your jury room.

17 (The jury retires to the jury room).

18 THE COURT: Do you have any objections to what
19 now has been marked as State's Exhibit Number 44 for
20 identification, Mr. Baker?

21 MR. BAKER: I would, Your Honor. First of
22 all, I think on page 4, there is some hearsay in there
23 of David Slice.

24 THE COURT: I would agree with that, page 4 of
25 7. Solicitor, do you see that where it talks about,

1 "Before David Slice was killed, he told me several times
2 that Kim's mother's boyfriend was ripped off for
3 47,000."

4 MR. HUBBARD: Yes, Your Honor.

5 MR. BAKER: In addition, Your Honor,
6 Mr. Johnson has testified. I think introducing the
7 statement is improper. This is a handwritten statement.
8 When you put that in, you are denying the Defendant the
9 right to cross examine someone about the handwritten
10 statement or at least what was in that statement.

11 THE COURT: You can cross him all you want, if
12 I let it in, about the statement. The issue is that, I
13 take it, the issue is he made this story up, and he made
14 this story up with Michael Wise.

15 He didn't have access to Michael Wise prior to
16 9/13 of '08 -- and maybe he did on the street. I don't
17 know if he did or didn't -- but they didn't concoct this
18 together. Whether it's true or not now, I don't know
19 the answer. I think you have to redact that issue on
20 page 4 of 7, Solicitor.

21 MR. HUBBARD: We can do that, Your Honor.

22 THE COURT: Also on page 6 of 7, there is some
23 reference: Have you ever seen Mr. Burgess with a gun
24 before? That's the question. The answer is: I think I
25 have, but I don't know what type. It's about midway

1 down on page 6 of 7.

2 MR. HUBBARD: Your Honor, I guess just to
3 clarify the record, I did not state exactly why we were
4 putting this in, but it's under Rule 801, specifically
5 Section (d) about prior statements by a witness and
6 Subsection (b) about consistent statements when there is
7 an allegation of recent fabrication.

8 There is also a case, in fact, out of
9 Lexington County, State versus Malcolm D. Jeffcoat that
10 is 565 S.E.2d 321, a 2002 case, Court of Appeals, citing
11 that same rule and holding to that same principle.

12 THE COURT: All right. I think with those
13 redactions, it's admissible. Of course, Mr. Baker may
14 fully cross examine him concerning this.

15 MR. HUBBARD: Your Honor, in order to redact
16 it, would you like us to make -- leave that as maybe a
17 Court's exhibit and then take and make a copy and make
18 it an exhibit.

19 THE COURT: Whatever the court reporter wants,
20 however she wants it marked.

21 COURT REPORTER: That's sounds good.

22 (Court's Exhibit Number 12 is marked for
23 purposes of the record).

24 MR. HUBBARD: Your Honor, I will have that
25 done right now.

1 THE COURT: You are not going to publish it to
2 the jury, those parts. We can go on and cross examine
3 him about it.

4 MR. HUBBARD: Yes, sir, we will do that on a
5 break.

6 THE COURT: It won't be published to the jury
7 as far as page 4 of 7 concerning \$47,000 and page 6 of 7
8 concerning having seen him in the past with a gun.

9 MR. HUBBARD: Yes, sir.

10 THE COURT: All right.

11 MR. HUBBARD: Should we, since I am offering
12 it into evidence, I want to make sure we have a number
13 now, Your Honor, too.

14 THE COURT: I have a number. I have State's
15 Exhibit 44.

16 MR. HUBBARD: Good enough.

17 THE COURT: Anything further, Mr. Baker?

18 MR. BAKER: I may have a couple of questions
19 of Mr. Johnson.

20 THE COURT: I meant prior to bringing the jury
21 in.

22 MR. BAKER: No, Your Honor. You have ruled on
23 that matter.

24 THE COURT: If you would bring us our jury
25 please, Mr. Bailiff.

1 (The jury returns to the courtroom).

2 THE COURT: It appears our jury is back
3 present in the courtroom. All parties are present.
4 Solicitor, you may proceed.

5 MR. HUBBARD: One quick follow-up question.

6 REDIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q That statement you gave to law enforcement, the
9 written statement, September 13, 2005, when did you
10 meet with me and my office?

11 A That was last year.

12 Q 2007?

13 A Yeah.

14 Q Did you meet with me just recently?

15 A Right.

16 Q Those two times?

17 A Right.

18 Q So 2007 and now in 2008?

19 A Right.

20 Q But your statement was September 13, 2005?

21 A Yes, sir. Can I add something? And when they were
22 saying why didn't I make the statement when I was
23 arrested on the 9th --

24 Q I tell you what, you don't need to explain anything
25 else. That's good enough, Mr. Johnson.

1 THE COURT: Thank you, Solicitor. Mr. Baker.

2 RECROSS EXAMINATION

3 BY MR. BAKER:

4 Q A couple of quick questions. Mr. Johnson, I think
5 you indicated when you did speak to Mr. Wise while
6 y'all were both at the Lexington County Detention
7 Center, y'all were speaking about the statements
8 each of you had made; is that correct?

9 A No.

10 Q Tell me what you said.

11 A I said he said that he had got his motion or
12 something and said that I didn't -- I told the
13 truth about what happened.

14 Q So he was telling you he had seen your statement;
15 is that correct?

16 A Right.

17 Q And did you, Mr. Johnson, ever tell law enforcement
18 that you believed that Mr. Burgess, according to
19 your story, had had a drag of cigarette at the
20 residence but that it had been put out prior to the
21 shooting?

22 A Prior to it? Afterwards.

23 Q So you didn't ever tell them you had put that
24 cigarette -- or that cigarette had been put out
25 before?

1 A I put it out afterwards. I told them that I put it
2 out out in the field after I had ran out the house.

3 Q And you told them your story was that y'all had
4 shared a cigarette while y'all were in the house?

5 A Exactly.

6 MR. BAKER: I think that's all I have got.

7 THE COURT: Thank you, Mr. Johnson. You may
8 step down.

9 MR. HUBBARD: Your Honor, just to make sure,
10 the statement is now in evidence?

11 THE COURT: State's 44 in its redacted version
12 is in evidence.

13 (State's Exhibit Number 44 is received into
14 evidence).

15 MR. HUBBARD: Thank you, Your Honor.

16 THE COURT: Thank you Mr. Johnson you may step
17 down. Solicitor, do you have a short witness?

18 MR. HUBBARD: Yes, sir, I think we do.

19 THE COURT: All right. Let's press on with
20 one more witness for the day. You can call your next
21 witness.

22 MR. HUBBARD: Yes, sir. He ought to be pretty
23 short, Your Honor. Sam Washington.

24 SAMUEL JOSEPH WASHINGTON, JR.,
25 being first duly sworn, testified as follows:

1 CLERK: Once you have a seat, speak up loud
2 and clear and state your full name, spelling your last,
3 please.

4 THE WITNESS: My name is Samuel Joseph
5 Washington, Jr.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Mr. Washington, where do you work?

9 A Enterprise rental car.

10 Q What office do you work at?

11 A I currently work at the office on Garners Ferry
12 Road. Previously I did work at the office on Knox
13 Abbott.

14 Q Knox Abbott?

15 A Correct.

16 Q Back in September of 2005, were you working at the
17 one at Knox Abbott?

18 A Yes, sir.

19 Q What was your position there?

20 A I was the branch manager there.

21 Q I want to ask you, have you been questioned about a
22 car rental that occurred in September of 2005
23 involving this case?

24 A Yes.

25 Q I show you a document and see if you can recognize

SAMUEL WASHINGTON -- DIRECT -- MR. HUBBARD

378

1 this document as being something that is produced
2 by Enterprise?

3 A Absolutely.

4 Q What is this document?

5 A This is a closed rental contract or a closed rental
6 receipt actually.

7 Q And the date of the car rental is what?

8 A From September the 6th to September the 12th.

9 Q And the renter is who?

10 A Michael Wise.

11 MR. HUBBARD: Your Honor, I'd like to offer
12 this into evidence at this time.

13 THE COURT: Mr. Baker.

14 (Attorneys confer).

15 MR. HUBBARD: No objection, I believe, Your
16 Honor.

17 THE COURT: That would be State's 45 in
18 evidence without objection, Mr. Baker?

19 MR. BAKER: That's correct.

20 (State's Exhibit Number 45 is received into
21 evidence).

22 BY MR. HUBBARD:

23 Q Mr. Washington?

24 A Yes.

25 Q The type of vehicle rented, can you tell from this

1 document?

2 A Yes, sir, it's a silver Pontiac Vibe.

3 Q And the rental date again was?

4 A September 6th to September 12th.

5 Q And the person in whose name it was rented was?

6 A Michael Wise.

7 Q And does it have the town in which he is from?

8 A Yes, Gaston.

9 Q Thank you very much.

10 THE COURT: Thank you, Solicitor. Mr. Baker.

11 MR. BAKER: I don't have any questions.

12 THE COURT: Thank you. Thank you very much
13 for being here, Mr. Washington. You may step down and
14 you are excused.

15 MR. HUBBARD: Yes, sir, Your Honor, I would
16 ask that he would be excused.

17 THE COURT: Any objection, Mr. Baker?

18 MR. BAKER: No, Your Honor.

19 THE COURT: Thank you very much. Solicitor,
20 do you have another short witness?

21 MR. HUBBARD: Yes, sir, we have one more
22 witness.

23 MR. MADSEN: Call Detective Sam Gunter.

24 THE COURT: If you would come around,
25 Mr. Gunter, and be sworn.

1 SAMUEL B. GUNTER, being
2 first duly sworn, testified as follows:
3 CLERK: Have a seat. State your full name
4 upon the record once you are seated and spell your last.
5 THE WITNESS: Samuel B. Gunter, G-U-N-T-E-R.
6 DIRECT EXAMINATION
7 BY MR. MADSEN:
8 Q Detective Gunter, where do you work?
9 A Lexington County Sheriff's Office.
10 Q Back in September of '05 -- let me ask you this.
11 How long have you worked at the Sheriff's Office?
12 A A little over 17 years.
13 Q Seventeen years?
14 A Yes, sir.
15 Q The majority of that time, what kind of
16 investigations have you been involved in?
17 A The majority of the time was narcotics.
18 Q And back in September of '05, what department did
19 you work in then?
20 A Major crimes.
21 Q Did you have an occasion on September 14th of '05
22 to request something from Enterprise car rental?
23 A Yes, sir, I did.
24 Q What was that?
25 A A car rental. At that time I was looking for a --

1 I had a particular car description of a gray
2 hatchback type vehicle and was looking for anyone
3 who may have rented a car matching that description
4 from the Enterprise on Knox Abbott Drive.

5 Q Did you go out to that enterprise on Knox Abbott
6 Drive?

7 A Initially, yes, sir.

8 Q Were you able to get anything there?

9 A No, sir, they couldn't. Their computer system from
10 there, they couldn't go back and tell me the
11 information that I need.

12 Q So what did you then do?

13 A If I'm not mistaken, they gave me a phone number.
14 I called an office and spoke with a Ms. Holloway.
15 I spoke with her, advised her what I needed, and
16 she in turn contacted me back when she had the
17 information for me.

18 Q Let me show what has been marked as State's Exhibit
19 Number 45. Do you recognize that?

20 A Yes, sir.

21 Q What is that?

22 A That is what Ms. Holloway faxed to me as the car
23 that they had rented matching the description that
24 I had given her as to what we were looking for.

25 Q Was there a name associated with that rental?

SAMUEL GUNTER -- DIRECT -- MR. MADSEN

382

1 A Yes, sir.

2 Q What was that name?

3 A Michael Wise.

4 Q Detective Gunter, through your investigation were
5 you able to determine whether Michael Wise knew the
6 Defendant, Darrell Burgess?

7 A Yes, sir, I was.

8 MR. MADSEN: That's all the questions I have.

9 THE COURT: Thank you, Solicitor. Any cross
10 examination, Mr. Baker?

11 MR. BAKER: I don't have anything.

12 THE COURT: Thank you very much, Detective
13 Gunter. You may step down.

14 THE WITNESS: Yes, sir.

15 THE COURT: I take it that's a no.

16 MR. MADSEN: We have nothing short.

17 MR. HUBBARD: This next one is going to be
18 lengthy, Your Honor.

19 THE COURT: Perhaps this would be a good time
20 to take our evening recess if there are no objections.

21 MR. BAKER: None.

22 THE COURT: Ladies and gentlemen of the jury
23 panel, again, I remind you and before the end of the
24 week, you will be able to remind me, during this recess you
25 are not to discuss this case with anyone. This includes

1 your fellow jurors, your family, your friends or anyone
2 involved in this case.

3 If anyone should try to talk with you about
4 the case, please let me know immediately. Remember, do
5 not read, watch or listen to any news reports about the
6 trial. Do not do any investigation on the internet or
7 any independent investigation.

8 Remember to keep an open mind about this case
9 until I instruct you to begin your deliberations. As
10 you have noticed, we no longer have a foreperson. I
11 have excused him from his duties as a juror in this
12 case.

13 I would ask when y'all return in the morning
14 at 9:30 if you would please elect -- it seems to be
15 quite a campaign season for forepersons on our jury --
16 please elect a person amongst the 12.

17 Ms. Culli, our alternate, again, would not be
18 authorized to serve. I'm sure she would do a fine job,
19 but she still has the status of an alternate. If you
20 would you elect a foreperson among yourselves. Please
21 write that name out for me.

22 When you have completed that, knock on the
23 door and give it to the bailiff, and we will try to get
24 you back out promptly. See you at 9:30 in the morning.
25 I hope you all have a pleasant evening.

1 (The jury is excused for the day at 5:20 p.m.)

2 THE COURT: Anything further from the State?

3 MR. HUBBARD: Your Honor, the only thing would
4 be a housekeeping matter. With the exhibit, the
5 statement, I would suggest letting us make a photocopy
6 if that's okay with Your Honor.

7 We will redact the photocopy. Put the exhibit
8 number on that photocopy, and then I would request that
9 the original somehow be retained perhaps as a Court's
10 exhibit for appeal purposes and for record purposes so
11 they can see what was redacted.

12 THE COURT: All right. Do you have any
13 problem with that, Madame Court Reporter?

14 COURT REPORTER: No, sir.

15 THE COURT: That will be fine. If you will
16 make a copy of the original and then redact it. Keep
17 the original in its form as it is now.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: Once we have the redacted exhibit
20 marked, we will make State's 44, the original, Court's
21 exhibit.

22 MR. HUBBARD: Yes, sir.

23 THE COURT: Anything further?

24 MR. HUBBARD: No, sir. I will show you and
25 defense counsel that redacted version to make sure we

1 did it right.

2 THE COURT: Anything further, Mr. Baker?

3 MR. BAKER: Nothing, Your Honor.

4 THE COURT: We will see y'all promptly at
5 9:30. Thank you very much.

6 (Whereupon the proceedings were concluded for
7 January 29, 2007).

8 (The following proceedings were reported on
9 January 30, 2007).

10 THE COURT: Before we get started, State's 44
11 for identification, do we have that squared away?

12 MR. HUBBARD: Yes, sir, Your Honor.

13 THE COURT: Have you had an opportunity to
14 look at that, Mr. Baker?

15 MR. BAKER: I have, Your Honor.

16 THE COURT: May I see it.

17 MR. HUBBARD: I am passing up the redacted
18 version.

19 (Hands to Court).

20 THE COURT: The original is now marked as
21 what?

22 COURT REPORTER: Court's Exhibit 12.

23 THE COURT: Court's Exhibit 12. Thank you.
24 Anything further from the State before we bring in our
25 jury?

1 MR. MADSEN: One last thing. I had marked
2 this as State's Exhibit Number 32 for I.D. purposes,
3 which is a map. I intend to introduce this through
4 Mr. Wise. I think Mr. Baker has an objection. It's got
5 cell tower information on it which I will utilize later.

6 But at this point in time what I'm going to
7 utilize it for is just an overview map and have Mr. Wise
8 track his routes on it. He won't say anything about
9 anything else on here about the cell tower things, but I
10 certainly do need that to help flush out his testimony.

11 THE COURT: Mr. Baker?

12 MR. BAKER: Your Honor, I don't have any
13 problem with a map being introduced. But without some
14 authentication testimony about those cell phone towers,
15 I don't think it's proper to let it in. I don't believe
16 Mr. Wise will be able to testify about the cell phone
17 towers.

18 THE COURT: I agree Mr. Wise would not be able
19 to testify. He may be able to testify there is a cell
20 phone tower at some location.

21 MR. MADSEN: I'm not going to ask him about
22 those. We are not going to make any reference to those.

23 THE COURT: That's not the purpose for which
24 Mr. Wise is being offered. I will allow him to use it
25 as State's for identification Number 32 for

1 demonstrative purposes at this time without any
2 reference to the cell tower information.

3 Then if that's authenticated at the
4 appropriate time, the jury won't even know what the
5 information is at this point in time. If it's not
6 authenticated, then State's 32 would not be in evidence,
7 but he can use it for demonstrative purposes at this
8 time.

9 MR. BAKER: Thank you.

10 THE COURT: Anything further Mr. Solicitor?

11 MR. MADSEN: No, Your Honor.

12 THE COURT: Mr. Baker?

13 MR. BAKER: No, Your Honor.

14 THE COURT: If you would bring us our jury
15 please.

16 (The jury returns to the courtroom at
17 9:35 a.m.)

18 THE COURT: It appears our jury is back
19 present in the courtroom. All parties and the attorneys
20 are present. Mr. McCarter, you are now serving as the
21 foreperson.

22 One thing. Yesterday afternoon I allowed into
23 evidence State's 44. It was marked for identification.
24 It has now been allowed into evidence. It is a copy of
25 a document. The copy is in evidence rather than the

1 original.

2 I have determined that portions of that
3 particular document, State's 44, would not be admissible
4 in the trial of this case. Being so, I have had those
5 portions redacted or removed; therefore, you have a copy
6 of the original rather than the original. You have a
7 document with the removed items from it.

8 The fact that I have ordered that portions be
9 redacted of State's Exhibit Number 44 should not be
10 considered by you for any purposes during your
11 deliberations. You may consider State's Exhibit
12 Number 44, but do not speculate or consider why or what
13 I may have redacted from the document. It's not
14 relevant, and it's not proper evidence in this case.

15 With that being said, we are now continuing
16 with the trial of the case by the presence of testimony
17 by the State.

18 Solicitor, you may call your next witness.

19 MR. MADSEN: Your Honor, the State calls
20 Michael Wise to the stand.

21 THE COURT: Mr. Wise.

22 MICHAEL TALUS WISE, being
23 first duly sworn, testified as follows:

24 CLERK: Once you have a seat, speak up loud
25 and clear on the record and state your full name,

1 spelling your last.

2 THE WITNESS: My name is Michael Talus Wise,
3 W-I-S-E.

4 DIRECT EXAMINATION

5 BY MR. MADSEN:

6 Q Michael, where did you grow up?

7 A I grew up in the [REDACTED] neighborhood in
8 Gaston.

9 Q Where did you go to high school at?

10 A I went to high school at Airport and Keenan.

11 Q Which one did you go to last?

12 A Keenan.

13 Q Did you graduate from Keenan?

14 A No, I got my G.E.D. later.

15 Q What year did you end up dropping out of Keenan?

16 A '95, '96, one of those.

17 Q You said you got your G.E.D. What did you do after
18 you got your G.E.D.?

19 A I went into the Marine Corps.

20 Q Where did you go to basic training for the Marine
21 Corps?

22 A I went to basic at Parris Island.

23 Q How about after you got done with basic, where did
24 you end up going?

25 A I went to the school of infantry at Camp Geiger,

1 North Carolina.

2 Q You went to the school of infantry. What was your
3 ultimate job in the Marines supposed to be?

4 A Admin, personal admin.

5 Q What does a personal admin do?

6 A Secretary, something like that.

7 Q But you still went to the school of infantry? Why
8 was that?

9 A That's correct. All Marines are basically
10 infantry.

11 Q When you were in the Marines, did you end up
12 getting in some trouble?

13 A Yes, I did.

14 Q Did you get convicted of a couple of armed
15 robberies?

16 A Yes, I did.

17 Q And conspiracy to commit robbery?

18 A That's correct.

19 Q I guess, possession of a weapon?

20 A Yes, that is correct.

21 Q That was what year?

22 A '97.

23 Q You ended up getting sentenced to ten years?

24 A That's correct.

25 Q Ultimately were you dishonorably discharged from

1 the Marines?

2 A Yes, I was.

3 Q Let me ask you, as you sit up there, you've got an
4 orange jumpsuit on. Where are you staying at right
5 now?

6 A The Lexington County jail.

7 Q And it's true that in this case you were charged
8 with two counts of murder?

9 A Yes, that's correct.

10 Q And accessory before the fact?

11 A Yes.

12 Q And then accessory after the fact?

13 A That is correct.

14 Q And on Monday in this courtroom, you have pled
15 guilty to an accessory after the fact?

16 A That is correct.

17 Q And there has been no promises by me or anyone else
18 as to what your sentence on that accessory after
19 the fact could be?

20 A That's correct.

21 Q You know that you are facing up to 15 years on
22 that?

23 A Yes, I do.

24 Q And I guess you also had an old '97 receiving
25 stolen goods?

1 A That's correct.

2 Q As part of that plea, those two murders, the
3 accessory before and the receiving stolen goods are
4 going to be dismissed, and you are pleading or you
5 pled to that accessory after the fact; correct?

6 A That is correct.

7 Q Let me ask you, after you got out of the Marines,
8 where did you end up going?

9 A I came back home to the Gaston area.

10 Q What kind of work did you do then?

11 A I started out doing carpentry with my uncle.

12 Q Who is your uncle?

13 A Milton Mack.

14 Q At some point in time, did you end up leaving the
15 Gaston area?

16 A Yes, I did. I moved to Columbus, Georgia.

17 Q Let me ask you for this. For those people who
18 don't know, where is Columbus, Georgia located?

19 A South of Atlanta.

20 Q And who was living in Columbus, Georgia back then?

21 A My dad.

22 Q When you went there, what kind of job did you plan
23 on doing in Columbus, Georgia?

24 A That's when I started doing mobile electronics
25 again.

1 Q When we say mobile electronics, are we talking
2 installing stereos?

3 A Stereos. Mobile electronics is pretty much
4 anything that runs off 12 volts. It could be
5 alarms, remote starters, key entry, in-car
6 multimedia navigation, pretty much anything that
7 runs off 12 volts pretty much.

8 Q Installing that stuff or putting that in, is it
9 complicated?

10 A It can be but the principles are pretty simple.

11 Q At some point in time, do you end up moving back to
12 Lexington?

13 A Yes, I do.

14 Q Give me an idea. How long did you end up living in
15 Columbus, Georgia?

16 A About nine months.

17 Q Why do you end up coming back to Lexington?

18 A A friend of mine started mobile electronics in this
19 area. I came up here to briefly to help him and
20 figured out that there is a market for people who
21 speak Spanish and also do mobile electronics.

22 Q You said a market for people who speak Spanish.
23 How do you play into that?

24 A I speak Spanish.

25 Q When you end up coming back, where do you end up

MICHAEL WISE -- DIRECT -- MR. MADSEN

394

1 staying?

2 A I moved into my mom's old house on [REDACTED] in
3 [REDACTED].

4 Q Is that pretty much the place that you grew up at?

5 A Yes, that is correct.

6 Q And that's in [REDACTED]?

7 A Yes.

8 Q Give me an idea, how long have you known the
9 Defendant in this case?

10 A Since we were kids.

11 Q What neighborhood does he live in?

12 A [REDACTED].

13 Q Do you know what his address in [REDACTED] is or
14 what road he lives on?

15 A I'm not sure the address. It's [REDACTED], I think.

16 Q Give us an idea, how far is that away from where
17 you live?

18 A Just around the corner.

19 Q Who was there living in [REDACTED] first, you or
20 the Defendant?

21 A I think I was.

22 Q And how long have you and he been friends?

23 A More than 15 years.

24 Q Let me ask you, did something go on with you and
25 the Defendant back when you were 15?

- 1 A Yeah, I took a bunch of pills one time. I was
2 depressed when I was a kid. I went up to Darrell's
3 house, I guess to talk to him or whatever, and he
4 saw something was wrong and got me some help.
- 5 Q Have you always been appreciative to him for that?
- 6 A Of course.
- 7 Q Before this case did anyone really know about that?
- 8 A Nope.
- 9 Q When you were living in Lexington, did you talk
10 with the Defendant often?
- 11 A A lot.
- 12 Q Let me take you then to September 4, 2005. Do you
13 remember that evening?
- 14 A Yes, I do.
- 15 Q Can you kind of tell me where you were at?
- 16 A I was home for the night in bed.
- 17 Q When you say home at night, what address are we
18 talking about?
- 19 A At [REDACTED].
- 20 Q So you are in [REDACTED]. Who is there with
21 you?
- 22 A My girlfriend.
- 23 Q At some point in time, do you start receiving some
24 calls?
- 25 A Yes, I do.

1 Q Can you tell me about that, please?

2 A I got several calls on my cell phone. I didn't
3 answer the phone at first because I was in bed, and
4 I wasn't really trying to talk to anybody. But the
5 phone kept ringing, so I answered it.

6 Q Who was on the other end of it?

7 A It was Darrell.

8 Q What did Darrell want?

9 A He said he had a wreck and he needed somebody to
10 pick him up.

11 Q And what did you do with your girlfriend?

12 A She and her mother had been planning to cook out
13 for Labor Day, which was the next day. So she
14 decided to go to her mother's house to help her get
15 ready. I told her I would come over and help in
16 the morning after I got up.

17 Q Let me ask you, back during this time how many cell
18 phones did you have?

19 A Two.

20 Q Why did you have two?

21 A My girlfriend had a Cingular phone and my phone was
22 on Sprint. She calls me during the daytime and
23 burn up plan minutes. So I got a Cingular prepaid
24 phone so we can pretty much talk unlimited during
25 the day without running up the plan minutes.

- 1 Q Do you remember on your Cingular prepaid what that
2 phone number was?
- 3 A [REDACTED].
- 4 Q [REDACTED]?
- 5 A That's correct.
- 6 Q That was your phone?
- 7 A Yes.
- 8 Q And what was the number on your Sprint?
- 9 A [REDACTED].
- 10 Q Was that phone actually in your name or someone
11 else's?
- 12 A No, the sprint phone was in my sister's name.
- 13 Q Who is your sister?
- 14 A Sharon Wise.
- 15 Q You said that Darrell called and wanted you to come
16 get him. Where did you go get him at?
- 17 A The old Best Western motel off Airport Boulevard.
- 18 Q Is that near any kind of, I guess, highway or
19 interstate?
- 20 A Yes, it's right off of I-26.
- 21 Q Does anyone go with you to the hotel?
- 22 A No, I'm alone.
- 23 Q Can you tell the jury, once you get to the hotel,
24 what happens?
- 25 A I tried to call Darrell back, but something was

MICHAEL WISE -- DIRECT -- MR. MADSEN

398

- 1 wrong with his phone. The call wouldn't go
2 through. I called the number. He called me back.
3 It was the lobby of the hotel. I didn't know he
4 had a room there or whatever. So I rode around
5 looking for signs of accident -- ambulance, police
6 or whatever. I didn't see his car or anything. I
7 ride around for a while, rode around the parking.
8 I saw a guy standing in front of the front door,
9 and I asked him had he seen a wreck. He was like
10 no. So just I rode around the parking lot some
11 more. I came back and explained what Darrell's car
12 looked like. He said, "Oh, it's in the back."
- 13 Q And were you able to find Darrell's car?
- 14 A Yes, it was parked like in the handicap parking
15 spaces in the back.
- 16 Q Let me ask you, what kind of car did the Defendant
17 have?
- 18 A It's a Grand Prix older model. I'm not sure the
19 year.
- 20 Q Let me show you State's Exhibit Number 46, 47, and
21 48 -- I believe without objection, Your Honor. Do
22 you recognize those photographs?
- 23 A Yes, sir I do.
- 24 Q What are those photographs of?
- 25 A That's the car that Darrell was at the hotel with

1 that night?

2 THE COURT: Forty-six through 48 in evidence
3 without objection; is that correct, Mr. Baker?

4 MR. BAKER: That's correct, Your Honor.

5 (State's Exhibits Number 46-48 are received
6 into evidence).

7 BY MR. MADSEN:

8 Q On State's Exhibit 46 here, what is this a
9 photograph of?

10 A That's Darrell's Grand Prix.

11 Q Is that the car that you were looking for that
12 night at that old Best Western off of 26?

13 A Yes, I was.

14 Q Did you end up finding it?

15 A Yes, I did.

16 Q What did you notice when you found that Grand Prix?

17 A That it was a pretty clean car, but I noticed
18 immediately it had some damage on the driver's
19 side.

20 Q Were you able to find the Defendant after you found
21 his car?

22 A Yes, I did.

23 Q Where was he at?

24 A He was upstairs, I guess, on the balcony or
25 whatever, and he saw me and I saw him up there. I

MICHAEL WISE -- DIRECT -- MR. MADSEN

400

1 got on the elevator and went up.

2 Q Once you went up, did you go to a room?

3 A Yes, I did.

4 Q Besides Darrell was anyone else in that room?

5 A There was two other people, two women. I'm not
6 sure their names.

7 Q Did you know them?

8 A No.

9 Q At some point in time when you were leaving from
10 that room or about to leave, did the Defendant ask
11 you for anything?

12 MR. BAKER: Your Honor, I will object.

13 THE COURT: That's under 404 (b)?

14 MR. BAKER: That's correct, Your Honor 404
15 (b), and that's pursuant to my previous motion on that
16 matter.

17 THE COURT: Your objection is noted for the
18 record and overruled. Thank you. You may proceed,
19 Solicitor.

20 BY MR. MADSEN:

21 Q Mr. Wise, what did the Defendant ask you for?

22 A He mentioned something about a gun.

23 Q What did you tell him?

24 A I don't recall if I actually said I don't have a
25 gun or whatever, but I just pretty much walked

1 away.

2 Q Did you give him a gun?

3 A No.

4 Q Did you have a gun?

5 A No.

6 Q From that old Best Western, where did y'all -- or

7 let me ask you, when did you get down to the

8 parking lot, do you see the fellow that you had

9 seen earlier when you asking about the car?

10 A Yeah. On the way out he is walking towards

11 Darrell's car, and I stopped him asked him could he

12 keep an eye on the car until in the morning when we

13 come back and have it towed.

14 Q Why did you want him to keep an eye on the car?

15 A Darrell was worried about somebody breaking into it

16 and stealing his music.

17 Q When you see Darrell there at the hotel room, what

18 is his demeanor?

19 A I could tell he had been drinking.

20 Q When y'all end up leaving from that hotel, where do

21 you go?

22 A To his house in [REDACTED].

23 Q Is there somewhere you end up going before you go

24 to his house?

25 A He was trying to find -- I don't know if a it's

1 girlfriend of his or whatever -- but he was trying
2 to find the girl to let him borrow her car or
3 whatever.

4 Q Where did you end up taking him?

5 A Went to a house in Gaston, I guess where the girl
6 live or either where the car was supposed to be,
7 but couldn't find it, I guess, couldn't find her.

8 Q Did you actually go to a house?

9 A Yes.

10 Q Was that girl there?

11 A I don't know, but he didn't go in and I didn't see
12 her.

13 Q Did that seem to upset him that she wasn't there?

14 A I don't know. I mean, they were arguing about the
15 car or whatever. I don't know if it was because
16 she wouldn't let him hold the car or whatever
17 because she wasn't there.

18 Q After you leave that girl's house, where do you and
19 he go?

20 A We go to Hardee's on 321 just about at the Pilot
21 station close to I-26.

22 Q What does the Defendant want there?

23 A Same thing, I guess. He wants to borrow a car.

24 Q Does he end up talking to a girl there about a car?

25 A I don't know if he talked to her or not.

- 1 Q Does he get out of the car?
- 2 A Yeah. He goes to the door, but it's late so the
- 3 door is locked, so he can't get in.
- 4 Q After y'all leave that Hardee's on 321, where do
- 5 you take him next?
- 6 A To [REDACTED].
- 7 Q To whose house?
- 8 A His house.
- 9 Q When you are taking him back there, what are you
- 10 planning on doing?
- 11 A Going home, going to sleep.
- 12 Q When you get to his house, what happens?
- 13 A He said, "Hold up for a minute." He goes inside
- 14 the house and comes back out briefly.
- 15 Q When he comes back out, what happens?
- 16 A He gets back in the car. He had a silver gun in
- 17 his hand like this (indicating).
- 18 Q A silver gun?
- 19 A Yeah.
- 20 Q Do you know the difference between a semiautomatic
- 21 and a revolver?
- 22 A Yes, I do.
- 23 Q Do you know which one of those he had?
- 24 A It was a revolver.
- 25 Q When he gets back in, how do you see the gun?

MICHAEL WISE -- DIRECT -- MR. MADSEN

404

- 1 A The door closed. The light goes off. I think he
2 turned the overhead light on and said -- at first
3 he said he needed to go down the road, which I
4 would assume was Piney Road, but he turned the
5 light on and said, you know, holding it like this
6 and said, "Take me down the road."
- 7 Q Did you take him down the road?
- 8 A Yes, I did.
- 9 Q Where did you end up taking him?
- 10 A To a trailer where I later found out was [REDACTED]
11 [REDACTED].
- 12 Q And did you know that was [REDACTED] [REDACTED] back
13 then?
- 14 A No.
- 15 Q What road was that, the place you took him off of,
16 do you know the main road?
- 17 A I think that's Fish Hatchery Road.
- 18 Q Let me show you State's Exhibit Number 16. Do you
19 recognize where you parked your car at?
- 20 A Yes, it's the first driveway on the left. So they
21 have an arrow pointing to it right there.
- 22 Q This one right there (indicating)?
- 23 A That one right there.
- 24 Q Do you know what the address of that was at that
25 time?

1 A No, I did not.

2 Q Did you even know that that was named [REDACTED]

3 [REDACTED] then?

4 A No, I did not.

5 Q Once you got there and parked your car there at

6 [REDACTED] [REDACTED] [REDACTED], what did the Defendant do?

7 A He said hang on, he would be right back. He got
8 out of the car. I thought we were at one of those
9 mobile home type neighborhoods, but it was dark. I
10 couldn't tell exactly which way he went.

11 Q Once he leaves what do you end up doing?

12 A I sat there and watched a D.V.D.

13 Q What were you watching on the D.V.D.

14 A It was a Sade concert.

15 Q Give me an idea, as you are sitting there, what
16 ends up happening next? Does the Defendant come
17 right back?

18 A No. I actually end up calling him a couple of
19 times trying to find out what was taking so long.
20 I'm not sure whether the call actually went through
21 the first time or what. It took longer than I
22 thought for him to come back to the car.

23 Q While you are sitting watching that Sade concert,
24 do you hear something?

25 A I got the music up, but it sound look I heard like

1 maybe four gunshots, which I turned the music down
2 to listen.

3 Q Once you hear those four gunshots, what do you do?

4 A I called Darrell to find out whether he had heard
5 that, too, or what was going on.

6 Q Did he leave that gun that he had in the car with
7 you?

8 A If he did I didn't see it.

9 Q At some point in time, do you get in touch with him
10 on his phone?

11 A Yeah. He said pretty much he was coming. He'd be
12 right there or whatever.

13 Q What do you end up doing, Mike?

14 A By the time I talked to him, I was leaving. I was
15 backing the car out and getting ready to leave. I
16 really didn't know what was going on, but I wasn't
17 trying to be sitting there in the middle of the
18 night like that and I heard a gunshot. So I was
19 pulling off.

20 Q What happens while you are pulling off?

21 A I hear like a bump on the top of the car. My back
22 door opens and Darrell is like, "Hold up," and I
23 stopped and he closes the door and gets in the
24 front.

25 Q Once he gets in the front, what does he say to you?

- 1 A He said, "Drive, just go."
- 2 Q Is there something else he mentions about a person
- 3 to you?
- 4 A He said something about Tony Red, finding Tony Red
- 5 or going to Tony Red or something like that.
- 6 Q When you pull out and he hops in, where do you end
- 7 up going?
- 8 A He wanted me to take him to this club called
- 9 Pleasers off Bluff Road.
- 10 Q What kind of club is Pleasers?
- 11 A Kind of like a nudie bar slash strip club slash
- 12 sports bar. It's like a hole-in-the-wall club.
- 13 Q Let me show you what has been marked as State's
- 14 Exhibit Number 32 for I.D. purposes at this point,
- 15 demonstrative purposes. Can you kind of show me.
- 16 If this (indicating) is [REDACTED] [REDACTED] [REDACTED] where
- 17 you are at, and this (indicating) is Fish Hatchery
- 18 Road, what route do you end up taking to go to
- 19 Pleasers?
- 20 A I take, I guess that's Busbee Road. This right
- 21 here (indicating) is the back way to get to 321,
- 22 and then 321 to Sandy Run over to --
- 23 Q The Sandy Run on 26?
- 24 A Yeah.
- 25 Q Is that here (indicating)?

- 1 A That one yeah.
- 2 Q You hop on there?
- 3 A Right. I get on I-26 right there.
- 4 Q When you get on I-26, do you get on another
- 5 interstate after that?
- 6 A Yes, I get on 77 to go towards Bluff Road.
- 7 Q Up here (indicating)?
- 8 A Uh-huh. (Indicating affirmative response).
- 9 Q I guess -- is that Bluff Road there (indicating)?
- 10 A Right.
- 11 Q Let me ask you, he wants you to take him to
- 12 Pleasers. When you are on 77, I guess that's
- 13 northbound there what, happens while you are in the
- 14 car?
- 15 A I got the music up again. I kind of hear the noise
- 16 from rolling the window down. I look over and see
- 17 Darrell like throw something out the window.
- 18 Q Do you know what he throws out the window?
- 19 A It was silver. I guess it was a gun. They found
- 20 the gun later.
- 21 Q Do you end up going to Pleasers?
- 22 A Yes.
- 23 Q What happens when you get in the parking lot of
- 24 Pleasers? What do you expect to happen?
- 25 A I thought I was going to drop him off there.

- 1 Q Does he get out of the car?
- 2 A No, he does not.
- 3 Q What does he tell you that he wants you to do?
- 4 A I mean, we sat there for a minute and I said, "Do
- 5 you want to go in there?" He didn't. He said he
- 6 didn't want to go in there. I was pretty much
- 7 like, "Where do you want to go?" So I started
- 8 going towards I.H.O.P. on Assembly, and he said he
- 9 needed to get some gas.
- 10 Q Do you find an open gas station?
- 11 A Yes.
- 12 Q What road was that gas station on?
- 13 A It's the Hess Station on Elmwood.
- 14 Q Once you get there, is there anything that the
- 15 Defendant asks you to get for him?
- 16 A He said get a gas can and some gas.
- 17 Q Do you do that?
- 18 A Yes, I do.
- 19 Q Once you get that gas can and gas, where do you end
- 20 up going in your car?
- 21 A It's a little side road right beside like 126 where
- 22 you get on 26 on Elmwood. There was like a little
- 23 driveway off to the right of that. I parked right
- 24 there. There's kind of like a metal barrier. I
- 25 couldn't go into the driveway, and I stopped right

1 there.

2 Q When you stopped right there, what did the
3 Defendant do?

4 A He hopped out with the gas can and went behind the
5 barrier, and I could see like a fire, a fire start.

6 Q Did you see what he was burning?

7 A No, I did not.

8 Q He hopped out with the gas can. When he ends up
9 coming back to your car, does he bring that gas can
10 back?

11 A No.

12 Q Once he gets back into the car, where do you end up
13 going with him then?

14 A I take him to his house.

15 Q Where do you go after that?

16 A I go home.

17 Q Did you do anything at your house then?

18 A Go to sleep.

19 Q Did something happen the next morning, Michael?

20 A Yeah. About 9:00 o'clock my doorbell was ringing
21 and Darrell -- it's Darrell. He wants to go get
22 his car, get the tow truck or whatever. So I take
23 him to Best Western to do that.

24 Q Are you there at the Best Western when the tow
25 truck gets there?

- 1 A Yes.
- 2 Q Once the tow truck gets there, is there some place
3 you and the Defendant go after that?
- 4 A We go to the Burger King.
- 5 Q Did you get breakfast?
- 6 A Yeah.
- 7 Q Once you get at that Burger King, is there
8 something that you asked the Defendant?
- 9 A Basically like, "What's the deal with the fire,"
10 you know. He said it was some clothes.
- 11 Q Did you ask him about what had gone on the night
12 before?
- 13 A I asked but he really wouldn't tell me anything.
14 He said it don't affect me. Don't worry about it.
- 15 Q After you and he went to that Burger King, where
16 did you end up going?
- 17 A Went to his house in [REDACTED].
- 18 Q When you got to his house in [REDACTED], where
19 did you go?
- 20 A I sat on the front porch waiting for the tow truck.
- 21 Q Where did the Defendant go?
- 22 A There's a guy across the street named Tony Red. He
23 went across the street to talk to Tony Red for
24 awhile.
- 25 Q At some point in time while you are waiting over

1 there, did the tow truck show up?

2 A Yes, the tow truck.

3 Q What did you do when the tow truck showed up?

4 A Pointed to the guy where to put the car, and he sat
5 the car down, and the tow truck left and I left.

6 Q Let me show you on State's Exhibit Number 46, is
7 that where you had him put the car?

8 A Yes.

9 Q State's Exhibit Number 47, did the Grand Prix have
10 that brown door --

11 A No.

12 Q -- that night?

13 A No.

14 Q I show you State's Exhibit Number 48. Is that the
15 damage that you saw?

16 A It looks like it.

17 Q Let me ask you, Michael, when you go and you are
18 waiting on the tow truck and that comes there, and
19 you see the Defendant go across to Tony Red's
20 house, does he go in the house?

21 A No, they are talking in the yard.

22 Q He's talking to Tony Red?

23 A Yes.

24 Q After the tow truck puts the car in the Defendant's
25 yard, where do you go or what do you do?

- 1 A Get in my car and leave.
- 2 Q Let me ask you, do you know Tony Red?
- 3 A Yes, I do.
- 4 Q What can you tell me about Tony Red?
- 5 A He's a crack head. For as long as I know him, he
6 smoke crack.
- 7 Q Do you see the Defendant again that day? I guess
8 the day that we have been talking about is
9 September 5th?
- 10 A Labor Day. No, I don't see him anymore that day.
- 11 Q Do you receive a call from the Defendant the next
12 day on the 6th?
- 13 A Right, I do.
- 14 Q And tell me what the Defendant wanted?
- 15 A I think I might already told him I'd rent the car,
16 and he was calling me about the car rental.
- 17 Q Do you meet him some place?
- 18 A Yeah, I meet him at the Enterprise on Knox Abbott
19 Drive.
- 20 Q How were you going to pay for that?
- 21 A He was going to pay for that. He'd just got to get
22 the money orders. I told him to stop and get the
23 money orders on the way, and I'd meet him there.
- 24 Q Is there a reason that you needed to rent that for
25 him instead of him?

MICHAEL WISE -- DIRECT -- MR. MADSEN

414

1 A I had an account with people. I had a car. You
2 got to have a car or they won't rent you a car.

3 Q Do you end up renting him a car?

4 A Yes, I do.

5 Q Do you recall what type of car it was?

6 A A gray Pontiac Vibe.

7 Q Can you kind of describe what a Vibe is?

8 A One of those little really small station wagon type
9 cars.

10 Q When you rent that car at the Enterprise, do you
11 just give it to him right there at the Enterprise?

12 A No. The guy he was with, Tony Red, took him to
13 Zaxby's or whatever, and I told him I'd meet him
14 there. It's just maybe a couple of buildings down.

15 Q Once you end up giving him that car, where do you
16 go or what do you do?

17 A I gave him the car. I was with my girlfriend at
18 that time. I don't remember what I did after that.

19 Q Michael, do you end up talking with law enforcement
20 on September 16th on Friday night?

21 A Yes, I did.

22 Q Did you tell them everything that you told this
23 jury here today?

24 A No, I did not.

25 Q Do you remember what parts you left out?

- 1 A I didn't tell them anything about taking Darrell on
2 any errands or anything. I just told them I picked
3 him up because he wrecked his car.
- 4 Q So you left out the whole [REDACTED] [REDACTED] thing?
- 5 A Yes, I did.
- 6 Q How about the next day on the 17th, did you sit
7 down and talk with law enforcement again?
- 8 A Yes, I did.
- 9 Q Did you tell them what you told us here today?
- 10 A Yes, I did.
- 11 Q After you got done talking to law enforcement, did
12 you go anywhere with law enforcement?
- 13 A I showed them where whatever the silver thing was
14 that was thrown out the window, I showed them where
15 the fire was at.
- 16 Q Let me ask you, on that Friday when you first came
17 in, they ended up arresting you on that old warrant
18 on that receiving stolen goods; is that correct?
- 19 A Yes, they did.
- 20 Q So after you got done talking with them on the
21 17th, you went out and about?
- 22 A Yes.
- 23 Q Did you try to show them on 77 where Darrell threw
24 that silver object out?
- 25 A Yes.

MICHAEL WISE -- DIRECT -- MR. MADSEN

416

- 1 Q Did you have a little bit of trouble knowing
2 exactly where it was at?
- 3 A Yes, I did.
- 4 Q What was it that you were kind of looking for?
- 5 A I recall it being a bridge overpass.
- 6 Q When y'all were -- so you were looking for a bridge
7 overpass. Did y'all end up stopping at multiple
8 bridge overpasses?
- 9 A Yeah, there were more bridges than I thought.
- 10 Q At that point in time, did you find anything?
- 11 A Not to my knowledge.
- 12 Q You didn't see anything or you didn't see anyone
13 else find anything?
- 14 A No.
- 15 Q How about after that, did you take them to that
16 Hess Station?
- 17 A Yes.
- 18 Q After y'all went to the Hess Station, where did you
19 end up going?
- 20 A I showed them where the fire was, the general area.
- 21 Q You took them to where the fire was?
- 22 A Right.
- 23 Q At some point in time, did you take them to where
24 you parked on [REDACTED] [REDACTED]?
- 25 A Yes, I did.

- 1 Q After that did you talk with law enforcement again
2 on the 18th of September?
- 3 A Yes, I did.
- 4 Q Did you give a written statement to them on the
5 25th?
- 6 A I did.
- 7 Q Let me ask you, Michael, has it upset you that you
8 were charged with two counts of murder?
- 9 A Of course.
- 10 Q Why is that?
- 11 A Because I didn't commit any murders..
- 12 Q Besides what the Defendant told you about wanting
13 to find Tony Red that night, do you have any idea
14 what the -- did you see what went on in that house
15 that night?
- 16 A No, I did not.
- 17 Q Did you know Tony Red was in that house?
- 18 A No, I did not.
- 19 Q Let me ask you, do you know David Slice or Kim
20 Fauscette?
- 21 A No, I do not.
- 22 Q Ever meet them?
- 23 A No.
- 24 Q Prior to you parking right there on [REDACTED], had you
25 ever been back around [REDACTED] [REDACTED]?

MICHAEL WISE -- CROSS -- MR. BAKER

418

1 A No, I had not.

2 Q Michael, if you could answer any questions
3 Mr. Baker has, please.

4 THE COURT: Thank you, Solicitor. Mr. Baker.

5 MR. BAKER: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BAKER:

8 Q Mr. Wise, when you originally spoke to law
9 enforcement or actually when you spoke with them on
10 September 17th, 2005, the second time you spoke to
11 them, did they promise you they would take care of
12 you and not charge you with anything if you gave
13 them a statement?

14 A No, sir, they didn't.

15 Q And you originally told law enforcement, I think it
16 was on September 16th, that you didn't know
17 anything about this matter; is that correct?

18 A That's correct.

19 Q You told them you had gotten a call from
20 Mr. Burgess and you had gone and picked him up,
21 that he had wrecked his car, that you had taken him
22 by a house and then by Hardee's, and you had taken
23 him. That was the end of the story; is that
24 correct?

25 A Yeah, that's correct.

1 Q And it's also true that you have been in Lexington
2 County Detention Center since, when,
3 September 16th, 2005?

4 A Yes, that's correct.

5 Q While you have been in there for over two years,
6 you have seen Mr. James Johnson or Tony Red while
7 you have been in there?

8 A Yes, I have.

9 Q And y'all have spoken about this case; is that
10 correct?

11 A Yes, we have.

12 Q And after originally speaking with law enforcement
13 on September 16, 2005, you then spent the night in
14 Lexington County Detention Center, and you spoke
15 with them again on the 17th; is that correct?

16 A Yes.

17 Q That's when you changed your story and implicated
18 Mr. Burgess?

19 A That's correct.

20 Q What time is it, Mr. Wise, according to your story
21 that Mr. Burgess originally called you on the night
22 of September 4th?

23 A I don't even know. I wasn't looking at the clock.

24 Q And did you not say in your statement to law
25 enforcement that you didn't recognize his number?

1 A That's correct. I didn't recognize one of the
2 numbers that was calling.

3 Q Don't you talk to him on a regular basis?

4 A He didn't call from his cell phone one of the
5 times, at least one of the times.

6 Q But he called you several times from the cell
7 phone, did he not?

8 A I believe he did. I recognized his number finally.
9 That's why I picked up.

10 Q What time did you pick him up?

11 A I don't know. I wasn't looking at the clock. I
12 just ran out the house to go pick him up.

13 Q When he first called you, was it before midnight?

14 A I don't know.

15 Q How long from the time he called you did you go
16 pick him up?

17 A From the time I talked to him, it was -- I went
18 right there pretty much.

19 Q And then according to your testimony, what time do
20 you get to the motel?

21 A I don't know.

22 Q You don't have any idea what time it is?

23 A I mean it's late. I'm in the bed, but as far as
24 actually what time it is, I don't know. I wasn't
25 looking at the clock.

1 Q Do you know what time you actually took Mr. Burgess
2 home for good?

3 A No, I do not.

4 Q And your story is, Mr. Wise, that you didn't know
5 anything about anything; is that correct? You had
6 no idea what was going on?

7 A I didn't say that.

8 Q You took Mr. Burgess, according to your story, back
9 to his house, he gets a gun and says, "I need to go
10 take care of some business," and your story you
11 didn't know anything about anything and that
12 anything bad is about to happen?

13 A I didn't say that he got the gun.

14 Q So you don't know whether he got a gun or not?

15 A I mean, I don't know whether he already had it or
16 what. I just know I saw a gun at his house.

17 Q Is that the only time you saw the gun?

18 A Between that and when it went out the window, I
19 guess so.

20 Q Do you know whether it was a gun that went out the
21 window?

22 A No, I don't.

23 Q You, according to your testimony earlier, you don't
24 even know if when he got out of the car, he had the
25 gun?

- 1 A I don't know. I didn't see it.
- 2 Q You didn't see it?
- 3 A I didn't see it in the car. So, I mean...
- 4 Q But you don't know whether he had it or not?
- 5 A I can't say for 100 percent certainty that he
- 6 definitely had the gun with him, but why would he
- 7 leave it in the car?
- 8 Q Why is it, Mr. Wise, that you are following these
- 9 instructions of Mr. Burgess?
- 10 A We go way back. I help him out if I can.
- 11 Q And your story is you didn't know anything about
- 12 what was going on?
- 13 A Not at that point.
- 14 Q Did you originally tell law enforcement you were
- 15 driving him around that evening because you were
- 16 scared of him?
- 17 A No, I did not.
- 18 Q You didn't tell them that?
- 19 A No.
- 20 Q You didn't tell them you were frightened by his
- 21 behavior?
- 22 A No, I did not.
- 23 Q You didn't handwrite that in your statement?
- 24 A Yeah, I did write that in my statement.
- 25 Q Because you weren't actually scared of him?

1 A No, I was not.

2 Q So you lied in your statement?

3 A Embellished.

4 Q You embellished in your statement?

5 A Yes, I did.

6 Q So you are telling the jury that there are parts of
7 your statement you embellished and are not true; is
8 that correct?

9 A All the facts are correct. I mean, but the
10 subjective part, the part of what I thought about,
11 I embellished that.

12 Q See you put some thought into that statement, and
13 you embellished parts of it to make yourself look
14 good; is that correct?

15 A I guess you could say that.

16 Q And that was your way of trying to get yourself out
17 of this situation to get out of jail; is that
18 correct?

19 A That's what was suggested to me.

20 Q What was suggested to you?

21 A Yes, that's correct.

22 Q By who?

23 A I talked to the police officers. They pretty much
24 was telling me, you know, put this type -- I need
25 to write a statement and that type of deal, so I

1 did.

2 Q Did they tell you what to say?

3 A They would suggest it.

4 Q So law enforcement suggested to you what you needed
5 to put in your statement?

6 A Yes.

7 Q So you wrote down in that statement what law
8 enforcement told you to put in the statement?

9 A Not as far the facts, but as far as my impressions,
10 yes.

11 Q To make yourself look good?

12 A That is correct.

13 Q And to implicate Mr. Burgess?

14 A That is correct.

15 Q And the only thing you actually admitted to in your
16 statement that you did anything wrong was that you
17 actually told them you went in the Hess Station; is
18 that correct?

19 A That's correct.

20 Q And you told them that only because you, I assume,
21 feared there might be some video of you; is that
22 correct?

23 A I told them that because it was true.

24 Q And I think your story is that he gets --

25 Mr. Burgess -- gets out of the car, and you see a

1 fire. Then he gets back in the car, but he didn't
2 have any clothes with him, and he's still got
3 clothes on when he gets back in the car. He didn't
4 have any clothes in his hands when he gets out of
5 the car; is that correct?

6 A That's correct.

7 Q And you are currently facing charges pending
8 against you, two counts of murder, I think two
9 counts of accessory before and two counts of
10 accessory after the fact of murder?

11 A The same charges Darrell has, except accessory
12 before and after, too, on top of that.

13 Q So you are facing life in prison?

14 A That is correct.

15 Q And based on the fact that you have agreed to
16 testify, you were given the opportunity to plead
17 guilty to one count of accessory after the fact; is
18 that correct?

19 A Based on the fact that that's the only thing I'm
20 guilty of, I plead to accessory after the fact.

21 Q And that carries a maximum sentence of 15 years; is
22 that correct?

23 A Yes.

24 Q So you have gone from facing life in prison to
25 facing now 15 years?

1 A I don't think I ever was really facing life. They
2 just charged me with those crimes.

3 Q They just charged you with those crimes to get you
4 to testify and embellish your story?

5 A I can't say why somebody did something. I can only
6 say what happened.

7 Q You are hoping that based on your testimony here
8 today that you are going to get some benefit from
9 the Solicitor's Office, and they are going to help
10 you out; is that correct?

11 A I hope. I hope I hit the lottery, too. What's the
12 chances of that happening?

13 Q And you are hoping they are going to take it easy
14 on you?

15 A The judge can do what he wants to do. I mean, it's
16 a zero to 15 plea.

17 Q Have y'all put anything in writing?

18 A They pretty much said they will drop the accessory
19 after -- I mean -- the accessory before murder and
20 the firearm charge.

21 Q How many times have you met with the Solicitor's
22 Office to prepare for your testimony?

23 A I'm not even sure.

24 Q Did you tell the Solicitor's Office that law
25 enforcement told you to embellish your story?

- 1 A I don't know if it came up or not.
- 2 Q So that's the first time you mentioned that; is
- 3 that correct?
- 4 A I don't know.
- 5 Q And according to your testimony, you are sitting at
- 6 [REDACTED] [REDACTED] [REDACTED] listening to or watching a
- 7 D.V.D.; is that correct?
- 8 A That's correct.
- 9 Q And its' by your own testimony very loud?
- 10 A It's not very loud. I mean, I'm not beating the
- 11 block down, but I can hear it.
- 12 Q And your testimony is you parked right here
- 13 (indicating)?
- 14 A Right there.
- 15 Q And that's a long way from [REDACTED]; is it not?
- 16 A It would appear so.
- 17 Q And are you certain, Mr. Wise, you even heard
- 18 gunshots?
- 19 A I heard something I don't know.
- 20 Q You don't know whether it was gunshots or not?
- 21 A I mean, it sounded like gunshots.
- 22 Q When you saw Mr. Johnson, Mr. Wise, in the
- 23 Lexington County Detention Center did y'all talk
- 24 about what your testimony would be here today?
- 25 A No, we did not.

1 Q Did y'all talk about the statements you had given
2 in this case?

3 A No, we did not. I did not.

4 Q You did not?

5 A I did not.

6 Q Did Mr. Johnson tell you what his statement was?

7 A Yes, he did.

8 Q And just to clarify, Mr. Wise, there are portions
9 of your statement that you have given in this case
10 that are not the truth; is that correct?

11 A All the facts are true. All the facts as to what
12 actually happened are true.

13 Q You embellished your statement based on what law
14 enforcement told you to say?

15 A That is correct.

16 MR. BAKER: Your Honor, I think that's all the
17 questions I have at this point.

18 THE COURT: Thank you, Mr. Baker. Anything on
19 redirect?

20 MR. MADSEN: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. MADSEN:

23 Q When Mr. Baker has been asking you -- well, let me
24 ask you this. On the 16th you don't give the full
25 statement to law enforcement?

- 1 A No, I do not.
- 2 Q The parts that you leave out, who are you trying to
3 protect?
- 4 A Darrell, of course.
- 5 Q Do you remember, when you gave that written
6 statement, do you remember what the first line that
7 you wrote in that written statement is?
- 8 A I think I said I loved Darrell like a brother.
- 9 Q That's true, isn't it?
- 10 A Yes.
- 11 Q And the part he was talking about as far as the
12 embellishment, that's just you saying that you were
13 afraid Darrell might shoot you with the gun, and
14 that's why you did what you did?
- 15 A Right.
- 16 Q As far as the facts that you told this jury, you
17 didn't get those from law enforcement?
- 18 A No, I did not.
- 19 Q Let me ask you this, Michael. If someone outside
20 of your family was to know something about you, who
21 would that be?
- 22 A Probably Darrell.
- 23 Q You and he talked a bunch, didn't you?
- 24 A Yes.
- 25 Q Do you recall -- can you give me the last four

1 digits or let me ask you this. Did he have one or
2 more cell phones?

3 A I know he had at least two. I don't know.

4 Q Can you give me the last four digits of one that he
5 would call you on, do you remember those?

6 A 1040.

7 Q Do you remember the 1st three?

8 A I think it's 546.

9 MR. MADSEN: That's all the questions I have.

10 THE COURT: Anything on recross, Mr. Baker?

11 MR. BAKER: No, Your Honor.

12 THE COURT: Thank you. Thank you, Mr. Wise.
13 You may step down. Solicitor, you may call your next
14 witness.

15 MR. MADSEN: Judge can we take a five-minute
16 break?

17 THE COURT: All right. Mr. Foreman, ladies
18 and gentlemen of the jury, if you would please step to
19 your jury room. Five minutes, it never works, five
20 minutes. Do not discuss the case amongst yourselves
21 during this brief recess. We will take about a
22 15-minute recess. Thank you very much.

23 (The jury retires to the jury room).

24 (Whereupon there was a recess).

25 THE COURT: Are we ready for our jury?

1 MR. MADSEN: Yes, Your Honor.

2 THE COURT: Mr. Baker, anything before we
3 bring in our jury?

4 MR. BAKER: No, Your Honor.

5 THE COURT: All right, Mr. Derrick.

6 (The jury returns to the courtroom).

7 THE COURT: It appears our jury is back
8 present in the courtroom. All the parties are present
9 with their attorneys.

10 Solicitor, you may call your next witness.

11 MR. MADSEN: Your Honor, the State calls
12 Sandra Scott.

13 THE COURT: Ms. Scott, if you will come around
14 please. This young lady will swear you in.

15 SANDRA SCOTT, being
16 first duly sworn, testified as follows:

17 CLERK: I need you to speak up loud and clear.
18 Once you have a seat, state your full name and spell
19 your last, please.

20 THE WITNESS: Sandra Scott, S-C-O-T-T-

21 DIRECT EXAMINATION

22 BY MR. MADSEN:

23 Q Ms. Scott, where are you employment?

24 A Market Express, 1027 Elmwood Avenue.

25 Q Is that also known as the Hess station?

SANDRA SCOTT -- DIRECT -- MR. MADSEN

432

- 1 A Yes, it is.
- 2 Q How long have you been employed there?
- 3 A June will be 13 years.
- 4 Q The Market Express or the Hess Station that you
- 5 work at, where is it located?
- 6 A 1027 Elmwood.
- 7 Q That's in Columbia?
- 8 A Right.
- 9 Q What do you do there?
- 10 A I'm a cashier shift leader.
- 11 Q What does a shift leader do? Do you do scheduling?
- 12 A No, I'm like next in charge. After the manager and
- 13 the assistant manager leave, I'm in charge of
- 14 whatever shift I'm on.
- 15 Q Who is the manager out there?
- 16 A Ny Chi (phonetic).
- 17 Q And how about the assistant manager?
- 18 A Lillian McBride.
- 19 Q And how long have you worked there?
- 20 A It will be 13 years in June.
- 21 Q Back on September 4, 2005, did you start working
- 22 sometime during the night?
- 23 A I came in at 9:45 p.m.
- 24 Q Do you remember whether it was busy or not?
- 25 A The first couple of hours we were.

1 Q At some point in time, did it end up slowing down?

2 A About two.

3 Q Do you remember at some point after that someone
4 coming in in reference to a gas can?

5 A Yes, two black males.

6 Q Can you tell me about that?

7 A I was in the cooler stocking the cooler, and my
8 coworker, she is new, she was on the register. The
9 two black males wanted a gas can, but she didn't
10 know where it was. So she called me out, and I
11 came out and showed them where the gas can was at.
12 So they purchased the gas can and they also got
13 some diesel gas. I asked them, I said, "What you
14 going to do with that little bit of gas," you know.
15 I said, "That's not enough to, you know, start or
16 bring your car." He said, "Well, I ran out of gas.
17 We just going to put this in and then come back and
18 fill it up." I said okay and they left.

19 Q Did they ever come back?

20 A No, sir.

21 MR. MADSEN: Let me get this marked.

22 (State's Exhibit Number 49 is marked for
23 identification).

24 BY MR. MADSEN:

25 Q Let me show you what has been marked as State's

SANDRA SCOTT -- DIRECT -- MR. MADSEN

434

1 Exhibit Number 49 for I.D. purposes. Do you
2 recognize what that is?

3 A It's gas on number 12, purchased diesel, and a gas
4 can for \$3.69.

5 Q Is there a time on there?

6 A The time is 04:19.

7 Q That's 4:19 in the morning?

8 A Yes.

9 Q And what pump was that purchased on?

10 A Pump 12.

11 Q And what is pump 12 there at the Hess Station?

12 A Diesel.

13 MR. MADSEN: Let me also get this marked,
14 please.

15 (State's Exhibit Number 50-51 are marked for
16 identification).

17 BY MR. MADSEN:

18 Q Let me show you what is marked as State's Exhibit
19 Number 50 without objection. Do you recognize
20 where that is?

21 A This is pump eight right here.

22 THE COURT: You may need to keep your voice up
23 a little bit for us, Ms. Scott.

24 BY MR. MADSEN:

25 Q Let me ask you this. What building is that there?

1 A This is Market Express.

2 Q That's where you work?

3 A Right.

4 Q And that right there (indicating), is that where
5 the pumps are?

6 A Right, this is the pump facing the building.

7 Q You had talked about pump 12, which was a diesel
8 pump?

9 A Diesel, pump 12.

10 Q Let me show you State's Exhibit number 51, I
11 believe without objection. Do you recognize that?

12 A Yes, that's the diesel pump.

13 Q Where is that located kind of in reference to
14 State's Exhibit Number 50?

15 A As you are coming out the door, it's directly in
16 front of the front door.

17 Q Right in front of this green awning?

18 A Right.

19 THE COURT: State's 50 and 51 is in evidence
20 without objection Mr. Baker?

21 MR. BAKER: That is correct, Your Honor.

22 (State's Exhibits Number 50-51 are received
23 into evidence).

24 BY MR. MADSEN:

25 Q Now, State's Exhibit Number 49 for I.D. purposes,

SANDRA SCOTT -- DIRECT -- MR. MADSEN

436

1 again, what does that show on that receipt?

2 A The grocery is 3.69 is for the gas can and prepaid
3 number 12, which is the diesel pump, two dollars.

4 Q And do you recognize those receipts as the type of
5 receipts that you have?

6 A It's our receipt.

7 Q And do you keep those in the regular course of
8 business?

9 A Yes, sir.

10 Q Was this one provided to law enforcement?

11 A Yes, it was.

12 Q Who was it provided to law enforcement by?

13 A Lillian McBride, the assistant manager.

14 MR. MADSEN: Your Honor, we would move State's
15 Exhibit 49 into evidence.

16 THE COURT: Any objections, Mr. Baker?

17 MR. BAKER: Can I ask one question as far as
18 foundation goes?

19 THE COURT: All right. I will allow you to
20 ask the question.

21 MR. BAKER: Ms. Scott, is there anything else
22 in this store that costs \$3.69?

23 THE WITNESS: No, sir, not grocery.

24 MR. BAKER: Nothing else?

25 THE WITNESS: Huh-uh. (Indicating negative

1 response).

2 MR. BAKER: That's fine.

3 THE COURT: Any objection?

4 MR. BAKER: No.

5 THE COURT: State's 49 for identification is
6 in evidence without objection.

7 (State's Exhibit Number 49 is received into
8 evidence).

9 BY MR. MADSEN:

10 Q The two black males who purchased the diesel fuel
11 and the gas can, do you see them come back
12 afterwards?

13 A No, sir, they didn't.

14 Q That's all the questions I have. Answer any
15 questions Mr. Baker has.

16 THE COURT: Thank you, Solicitor. Mr. Baker.

17 CROSS EXAMINATION

18 BY MR. BAKER:

19 Q Ms. Scott, do you recall giving a statement to
20 Detective Baumgardner, I believe on October 7,
21 2005?

22 A Yes.

23 Q I will show you a document.

24 MR. BAKER: Your Honor, I probably need to get
25 this marked for identification purpose.

SANDRA SCOTT -- CROSS -- MR. BAKER

438

1 (Defendant's Exhibit Number 1 is marked for
2 identification).

3 BY MR. BAKER:

4 Q Ms. Scott, let me show you what has been marked
5 Defendant's Exhibit 1 and ask you if you recognize
6 that document.

7 A (Pause). Uh-huh. (Indicating affirmative
8 response).

9 Q And I think pursuant to this document you asked
10 Investigator Baumgardner to write this statement
11 for you and then you signed it; is that correct?

12 A Yes.

13 Q And is that your signature --

14 A Yes, it is.

15 Q -- down at the bottom of this first page of
16 Defendant's Exhibit 1?

17 A Yes, it is.

18 Q Is that also your signature on the second page of
19 Defendant's Exhibit 1?

20 A Yes, it is.

21 Q Can you show me anywhere, Ms. Scott, within this
22 document that it indicates that you saw two black
23 males come in the Hess Station?

24 A They were already in the store when I came out of
25 the cooler.

1 Q Doesn't it say within this statement: That a man
2 came in, grabbed a can? It never mentions two
3 black males within the statement, does it?

4 A No, it doesn't, but it was two black males.

5 Q It only talks about one?

6 A Right.

7 MR. BAKER: Your Honor, I would move to put
8 Defendant's Exhibit 1 into evidence.

9 THE COURT: Solicitor?

10 MR. MADSEN: No objection.

11 THE COURT: Defense 1 is in evidence without
12 objection.

13 (Defendant's Exhibit Number 1 is received into
14 evidence).

15 BY MR. BAKER:

16 Q Ms. Scott, did you just fail to mention to
17 Detective Baumgardner there were two black men?

18 A No, I didn't.

19 Q But it's not anywhere in that statement?

20 A I told him it was two.

21 Q Did he write something inconsistent with what you
22 told him?

23 A I don't know, sir.

24 Q But that's your signature on that document?

25 A That's my signature on there.

1 Q So your testimony is you told Detective Baumgardner
2 there were two black males, although you signed a
3 statement back in October of 2005 indicating there
4 was one?

5 A I didn't say it was just one. I said it was two in
6 the store.

7 Q Could it be that your memory has faded on that
8 item, on that matter?

9 A No.

10 Q Your memory certainly would have been better back
11 in October of 2005 concerning this incident than it
12 is today; is that correct?

13 A Well, I can't remember how the dudes looked, how
14 the young men looked, but I know it was two black
15 males.

16 Q So your testimony is you told Detective Baumgardner
17 there were two black males, but yet he wrote a
18 statement up that only mentions one black male; is
19 that correct?

20 A If that's what the statement says, yes.

21 Q And you signed it?

22 A Yes.

23 Q Did he tell you what to say?

24 A No, he didn't tell me what to say. I told him what
25 I saw.

1 Q And he wrote up the statement and you signed it?

2 A Right.

3 MR. BAKER: Thank you, Your Honor. I think
4 that's all I've got.

5 THE COURT: Anything in redirect, Solicitor?

6 REDIRECT EXAMINATION

7 BY MR. MADSEN:

8 Q Ms. Scott, in this statement -- Judge, it's little
9 bit hard to read since it's a copy? Do you have a
10 problem if we put in the original?

11 THE COURT: I thought it was my eyes. You
12 want to put in the original. Do you have any
13 objections, Mr. Baker?

14 MR. BAKER: I don't have any objection with
15 the original.

16 THE COURT: If you would mark that as Court's
17 13.

18 (Court's Exhibit Number 13 is marked for
19 purposes of the record).

20 BY MR. MADSEN:

21 Q On there when you are talking about one man, I
22 guess you say in here: I told the man to look
23 under the oil. The man grabbed the can and took it
24 to the register. What does it say that you said?

25 A I said, "That ain't going to get you far." The man

1 said, "I ran out of gas and need some gas to get
2 back here."

3 Q And when you are talking about a man there, you are
4 talking about the man who came in and bought the
5 gas?

6 A Right.

7 MR. MADSEN: That's all the questions I have.

8 THE COURT: Anything on recross, Mr. Baker?

9 **RECROSS EXAMINATION**

10 BY MR. BAKER:

11 Q Ms. Scott, when you testified earlier that you saw
12 two black males, are you saying one came in the
13 store or both came in the store?

14 A One came in the store. The other one was at the
15 car.

16 Q So there was only one black male who came in the
17 store?

18 A Right.

19 MR. BAKER: That's all I have.

20 THE COURT: Thank you, Ms. Scott. You may
21 step down. Any objection to Ms. Scott being excused?

22 MR. MADSEN: None from the State.

23 THE COURT: From the defense?

24 MR. BAKER: None, Your Honor.

25 THE COURT: Thank you Ms. Scott, you are now

1 excused. Solicitor, you may call your next witness.

2 MR. HUBBARD: The State calls Jeff Palkowski.

3 JEFF PALKOWSKI, being
4 first duly sworn, testified as follows:

5 CLERK: Speak up loud and clear. State your
6 name and spell your last.

7 THE WITNESS: My name is Detective Sergeant
8 Jeff Palkowski, P-A-L-K-O-W-S-K-I.

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q Sergeant, where do you work?

12 A I work at the Sheriff's Office.

13 Q How long have you been there?

14 A I've been there about 13 years.

15 Q What do you do for the Sheriff's Department?

16 A I'm a detective sergeant over the major crimes
17 unit. I supervise a major crimes team.

18 Q Do you do anything else at the Sheriff's
19 Department?

20 A I also have collateral duty on the S.W.A.T. team
21 and as an arson investigator.

22 Q Back in 2005, what were your duties?

23 A The same capacity. I was a detective sergeant.

24 Q Of other detectives in your crime unit?

25 A Yes, sir.

JEFF PALKOWSKI -- DIRECT -- MR. HUBBARD

444

1 Q Do you recall becoming involved in this matter
2 involving Darrell Burgess and Michael Wise?

3 A Yes, sir, I do.

4 Q Let me you ask specifically, do you recall a time
5 when you and your officers were talking to Michael
6 Wise?

7 A Yes, sir.

8 Q Was there a time when you, officers, and Michael
9 Wise left the Sheriff's Department?

10 A Yes, sir, there was.

11 Q What was the purpose of that?

12 A The purpose of that was Michael Wise was going to
13 show us locations where possible evidence might
14 have been discarded, and he was going to point out
15 that direction so we could locate it.

16 Q Specifically what item were you looking for?

17 A Specifically we were looking for a weapon. We were
18 also looking for partial burnt clothing or remnants
19 of clothing.

20 Q On September 17th, before y'all went out, had y'all
21 discussed this matter with Mr. Wise?

22 A Yes, sir.

23 Q And then he was agreeing to go with you to show you
24 or try to show you where these items might be?

25 A That's correct. He was going to take us to the

1 locations.

2 Q Did you go with Mr. Wise?

3 A I was in a vehicle behind Mr. Wise, but, yes, sir,
4 I did.

5 Q Do you remember what other detectives might have
6 been involved?

7 A Detective Baumgardner was riding with me, and in
8 the vehicle in front with Mr. Wise was Detective
9 Sam Gunter and Detective James Richardson.

10 Q Do you recall what item you began to look for at
11 first?

12 A The first thing we went to look for was obviously
13 the gun. We went to a location off I-77 right
14 outside of Gaston.

15 Q Did you find it?

16 A No, sir. We went to about three different
17 locations over a stretch of interstate, but we
18 weren't able to locate it.

19 Q This is on I-77?

20 A Yes, sir.

21 Q What areas were you looking in, like these
22 overpasses or these regular strips of road or do
23 you remember?

24 A We were looking more specifically in the location
25 of an overpass, maybe over a river or something to

JEFF PALKOWSKI -- DIRECT -- MR. HUBBARD

446

1 that effect.

2 Q And you didn't find the pistol at that time?

3 A No, sir, it was pretty rough terrain and very
4 thick.

5 Q Where did you head after that?

6 A After that we went to a location off of Elmwood to
7 a Hess Station. That's one of the places that we
8 ended up at.

9 Q Why did you go here?

10 A This was the location that Mr. Wise said they
11 actually purchased a gas can and the fuel to
12 subsequently burn the clothes that were being worn
13 by Mr. Burgess.

14 Q After you went to that Hess Station, where did you
15 go?

16 A Right after the Hess Station, we went down the
17 road, probably only about a mile and a half on
18 I-26. There is an access road right beside the
19 Elmwood cemetery. We turned into a little rut road
20 so to speak.

21 Q And can you describe that road. Is it unimpeded or
22 is there a point in time where you can't drive
23 down?

24 A There is actually a cattle gate that covers or
25 blocks the access.

1 Q Did y'all drive up to that cattle gate or did you
2 stop prior to that?

3 A We couldn't go any further. We had to go on foot.

4 Q You stopped your car at the cattle gate?

5 A Yes, sir.

6 Q Did you walk beyond it?

7 A Yes, sir.

8 Q Who was leading y'all beyond that cattle gate?

9 A Mr. Wise.

10 Q Did you find anything beyond that cattle gate?

11 A Yes, sir, we did.

12 Q What did you find?

13 A He took us to a burnt pile. It was pretty obvious
14 that it was a burnt pile off to the side in the
15 middle of the sand. We located remnants of a gas
16 can. We located remnants of denim clothing. We
17 could locate or we could see parts of the remnants
18 of jeans and teeth from the zipper, including the
19 actual zipper head.

20 Q Sergeant, I want to show you a series of
21 photographs and see if you recognize these
22 photographs.

23 A Yes, sir.

24 Q Were those taken at the time y'all were out
25 tracking down the burned remnants?

JEFF PALKOWSKI -- DIRECT -- MR. HUBBARD

448

1 A That's correct. I took all these photographs
2 myself.

3 MR. HUBBARD: Your Honor, I offer these into
4 evidence without objection.

5 MR. BAKER: I don't have any objection.

6 THE COURT: They are in evidence without
7 objection, 52 through 64.

8 (State's Exhibits Number 52-64 are received
9 into evidence).

10 BY MR. HUBBARD:

11 Q Detective if I could get you to step down real
12 quick.

13 A (Witness leaves the witness stand).

14 MR. HUBBARD: With the Court's permission.

15 THE COURT: Yes, sir.

16 BY MR. HUBBARD:

17 Q Detective, if you would for the jury, this
18 photograph, which is State's 64, do you see an
19 overpass in this photograph?

20 A Yes, sir, that's 126.

21 Q One-twenty-six. And, again, this is right off of
22 what road?

23 A Off of Elmwood.

24 THE COURT: If you keep your voice up for us,
25 please.

1 THE WITNESS: Yes, sir.

2 BY MR. HUBBARD:

3 Q State's 63, again, is that an overpass you see in
4 the distance?

5 A That's the same overpass.

6 Q The vehicle we see there, who owns that vehicle?

7 A That's Detective Richardson's vehicle.

8 Q That's the same road --

9 A Yes, sir.

10 Q -- just a distant shot. And State's 62?

11 A It's a closer picture showing the cattle gate.

12 Q State's 61?

13 A That would show Mr. Wise and Detective Baumgardner.

14 Q Do you see the gate there as well?

15 A Yes, sir.

16 Q Now, State's 60?

17 A I can explain this. It's an obvious burn stack or
18 burn pile that we observed in the sand.

19 Q And State's 58 and 59?

20 A Just closer views, sir.

21 Q Detective, was this a big burn pile or how big
22 would you describe? Was it small or how would you
23 describe it?

24 A It was small.

25 Q State's 57, there's some items that were not there

1 previously. What is that?

2 A Those are the bags that were -- those would have
3 been subsequent items that I would have seized out
4 of the burnt pile.

5 Q And the bags which you used to collect the
6 evidence?

7 A Yes, sir.

8 Q Let me show you two photo, photos very similar, 55
9 and 56. State's 55 and 56, what are we looking at
10 here?

11 A What you see here is, for lack of a better word, I
12 guess, is the nipple so to speak of a gas can. If
13 you look close, you can see the actual teeth of the
14 zipper and then the zipper head.

15 Q State's 53 and 54, what are we seeing here,
16 Detective?

17 A Those are partial burnt remnants of a pair of what
18 is believed to be blue jeans. You can see the
19 remnants.

20 Q And finally State's 52?

21 A That's the ring of the gas cap that actually
22 secures the lid when you are transporting gas and
23 stuff like that.

24 Q And all of these items were found at that burnt
25 pile?

1 A Yes, sir.

2 Q You can take the stand, Detective.

3 A (Witness resumes the witness stand).

4 Q Again, in State's 57, there are bags there?

5 A Yes, sir.

6 Q And those are bags that you used to collect
7 evidence?

8 A Correct.

9 Q I want to show you a series of bags and see if you
10 can recognize these. If you could look at those
11 bags on those labels and see if you recognize
12 those.

13 A Yes, sir, these are the same bags in the
14 photograph.

15 MR. HUBBARD: Your Honor, I offer all these
16 bags into evidence. There's four of them -- five of
17 them, excuse me.

18 THE COURT: Mr. Baker?

19 MR. BAKER: Your Honor, can I just get some
20 explanation of what is in the bags.

21 MR. HUBBARD: I thought you just looked. If
22 you would like to look at them again, that's fine.

23 MR. BAKER: I did look at the bags, but I
24 wasn't sure what they were.

25 THE COURT: Mark them for identification

JEFF PALKOWSKI -- DIRECT -- MR. HUBBARD

452

1 purposes only at this time.

2 (State's Exhibits Number 65-69 are marked for
3 identification).

4 BY MR. HUBBARD:

5 Q Detective let's start with State's I.D. 65. Can
6 you tell us what is in this bag?

7 A Do you want me to open it?

8 Q Actually just read the label.

9 A It's listed as a gas can lid.

10 Q Is that the lid that you recovered from the scene
11 September 17th?

12 A Yes, sir, that gas ring.

13 MR. HUBBARD: Your Honor, I offer this in
14 evidence.

15 THE COURT: Any objection on 65?

16 MR. BAKER: No, Your Honor.

17 THE COURT: State's 65 is in evidence without
18 objection.

19 (State's Exhibit Number 65 is received into
20 evidence).

21 BY MR. HUBBARD:

22 Q Sixty-six, can you do the same and describe what is
23 in that bag.

24 A This is listed as burnt remnants of trouser and gas
25 can.

1 Q Again, are these items you recovered September 17,
2 2005?

3 A Yes, sir.

4 Q Depicted in the photograph?

5 A Yes, sir.

6 MR. HUBBARD: Your Honor, I would offer 66
7 into evidence.

8 THE COURT: Any objection?

9 MR. BAKER: None, Your Honor.

10 THE COURT: State's 66 in evidence without
11 objection.

12 (State's Exhibit Number 66 is received into
13 evidence).

14 BY MR. HUBBARD:

15 Q And 67, if you would look at that.

16 A This is listed as burnt remnants of clothing.

17 Q Again, is this something you collected
18 September 17, 2005, that day?

19 A Yes, sir.

20 MR. HUBBARD: I would offer this into
21 evidence.

22 THE COURT: Any objection?

23 MR. BAKER: No objection, Your Honor.

24 THE COURT: State's 67 in evidence without
25 objection.

JEFF PALKOWSKI -- DIRECT -- MR. HUBBARD

454

1 (State's Exhibit Number 67 is received into
2 evidence).

3 BY MR. HUBBARD:

4 Q Sixty-eight?

5 A Also burnt remnants of clothing.

6 Q Again, did this come from that same burn pile
7 September 17th?

8 A That's correct, sir.

9 MR. HUBBARD: I offer this into evidence.

10 THE COURT: Any objection?

11 MR. BAKER: No objection, Your Honor.

12 THE COURT: State's 68 in evidence without
13 objection.

14 (State's Exhibit Number 68 is received into
15 evidence).

16 BY MR. HUBBARD:

17 Q And finally if you would look at State's I.D. 69?

18 A Also burnt remnants of clothes.

19 Q In that same burn pile?

20 A Yes, sir.

21 MR. HUBBARD: Your Honor, I offer this into
22 evidence.

23 THE COURT: Any objection?

24 MR. BAKER: No objection.

25 THE COURT: State's 69 in evidence without

1 objection.

2 (State's Exhibit Number 69 is received into
3 evidence).

4 BY MR. HUBBARD:

5 Q Detective, once you collected these items, did you
6 and your officers take Mr. Wise back to the
7 Sheriff's Department?

8 A Yes, sir, we did.

9 Q And put him back in the jail?

10 A Yes, sir.

11 Q Thank you. Please answer any questions the defense
12 might have.

13 THE COURT: Thank you, Solicitor. Mr. Baker.

14 CROSS EXAMINATION

15 BY MR. BAKER:

16 Q Detective Palkowski, this situation that you
17 testified about here today was September 17; is
18 that correct?

19 A Yes, sir.

20 Q And all the evidence gathered on September 17th was
21 at the direction of Mr. Wise; is that correct?

22 A That's correct.

23 Q And I think you testified about some items and some
24 photographs of some evidence, Exhibit 65 through
25 69, and 65 is a gas cap; is that correct?

JEFF PALKOWSKI -- CROSS -- MR. BAKER

456

1 A Yes, sir.

2 Q Are you aware, Detective Palkowski, whether there
3 were any forensic tests or examinations done on
4 that gas cap?

5 A There were none.

6 Q There were none?

7 A No, sir.

8 Q Was there an attempt made?

9 A I don't believe so, sir.

10 Q So you are not sure whether they attempted to
11 obtain any fingerprints off that gas cap?

12 A I don't know.

13 Q You don't know?

14 A No, sir, I don't know.

15 Q Was there any testing or forensic testing done on
16 any of the items seized at this scene?

17 A No, sir, I don't believe so.

18 Q So there is no forensic evidence or physical
19 evidence from the matters you gathered at the
20 direction of Mr. Wise on September 17th that
21 implicates Mr. Burgess or implicates Mr. Burgess
22 had anything to do with this situation?

23 A I'm not following you.

24 Q Was there any physical evidence to link Mr. Burgess
25 to this burn pile?

1 A Just Mr. Wise.

2 Q No physical evidence?

3 A No, sir, not that I'm aware of.

4 MR. BAKER: Thank you, Your Honor. That's all
5 I have.

6 THE COURT: Anything on redirect, Solicitor?

7 MR. HUBBARD: No, Your Honor.

8 THE COURT: Thank you, Detective. You may
9 step down. Solicitor, you may call your next witness.

10 MR. MADSEN: Sergeant Ken Correll.

11 KENNETH CORRELL, being
12 first duly sworn, testified as follows:

13 CLERK: Have a seat. Once you have a seat,
14 speak up loud and clear and state your full name,
15 spelling your last.

16 THE WITNESS: My name is Kenneth Correll,
17 C-O-R-R-E-L-L.

18 **DIRECT EXAMINATION**

19 BY MR. MADSEN:

20 Q Sergeant Correll, where are you employed?

21 A Lexington County Sheriff's Office.

22 Q And how long have you been employed there?

23 A Approximately 20 years.

24 Q How many?

25 A Approximately 20 years.

KENNETH CORRELL -- DIRECT -- MR. MADSEN

458

1 Q Twenty years. What do you do now for the Sheriff's
2 Department? What are your job duties?

3 A I'm the detective sergeant in investigations.

4 Q And as a detective sergeant in investigations, are
5 there certain detectives that you are responsible
6 for?

7 A Yes, sir.

8 Q Let me ask you, back on September 20th of 2005, did
9 you have an occasion to become involved in this
10 case?

11 A Yes, sir, I did.

12 Q Could you tell the jury where you were at?

13 A I was at the office. We were asked to look for an
14 item that may be on the side of the road, a
15 firearm, by Detective James Richardson.

16 Q And did you go out to an area?

17 A Yes, sir, we went off I-77 at the Alex Sanders
18 bridge.

19 Q When you get out to that area, kind of describe to
20 me what that area right there looked like?

21 A Right off the edge of the bridge is a lot of tall
22 grass. It's very woodsy. It's an embankment.
23 It's a pretty rough area.

24 Q And once you get out there, do you conduct a
25 search?

1 A Yes, sir, we do. We do a line search where, I
2 believe, seven deputies lined up together to do a
3 methodical search on the edge of the road. It just
4 makes it more efficient. We get about arm's length
5 away and then walk to the edge of the bridge or
6 there is an incline and a fall-off. So we walked
7 that line.

8 Q So did you start from the road and walk away from
9 it?

10 A We were on the edge of the road, at the edge of
11 bridge, walking parallel with the roadway towards
12 the bridge.

13 Q When you are doing that on that line search, do you
14 find anything?

15 A Yes, sir. On the return trip I noticed a shiny
16 object in the tall grass. It's about four-foot
17 tall. There was a firearm you could see laying in
18 the grass.

19 (Attorneys confer).

20 MR. MADSEN: I believe these are without
21 objection.

22 THE COURT: Is that without objection,
23 Mr. Baker?

24 MR. BAKER: That is correct, Your Honor.

25 THE COURT: Thank you.

KENNETH CORRELL -- DIRECT -- MR. MADSEN

460

1 (State's Exhibits Number 70-73 are received
2 into evidence).

3 BY MR. MADSEN:

4 Q Let me show you, start with 70, 71 and 72. Do you
5 recognize those?

6 A Yes, sir, I do.

7 Q What are those photographs of?

8 A That's me standing by the firearm in the tall
9 grass.

10 Q Is that the shiny object that you saw that day?

11 A Yes, sir, it is.

12 Q Whose foot is that in this photograph?

13 A That's my foot.

14 Q State's Exhibit Number 71, what is that a
15 photograph of?

16 A That's a Taurus pistol.

17 Q Is that the pistol that you found?

18 A Yes, sir.

19 Q State's Exhibit Number 72, what is that a
20 photograph of?

21 A A Taurus .38 special pistol.

22 Q Can you see a serial number on that pistol?

23 A I can.

24 Q What is that serial number?

25 A T.A.95968.

1 Q Let me show you State's Exhibit Number 73. What
2 are those photographs of?

3 A The same Taurus .38 special and my foot and my
4 person. I'm in this photograph.

5 Q So this fellow up in the corner with I guess the
6 floppy hat, that's who?

7 A That's me.

8 Q When you come upon that pistol, are you the one who
9 actually collects it?

10 A No, sir. When I located the firearm, I waved my
11 hand and Detective Hickman was on the scene. He is
12 our crime scene investigator. He took care and
13 custody of the firearm.

14 Q And that firearm, given your law enforcement
15 experience, is that a semiautomatic or a revolver?

16 A That is a revolver.

17 (State's Exhibit Number 74 is marked for
18 identification).

19 Q Let me show you State's Exhibit Number 74 --

20 THE COURT: Let me stop you a minute,
21 Solicitor. Is that gun locked?

22 MR. MADSEN: I was going to ask him about
23 that. It is.

24 THE COURT: Y'all are familiar with -- I know
25 you are, Solicitor, and I'm sure Mr. Baker is -- the

KENNETH CORRELL -- DIRECT -- MR. MADSEN

462

1 handling and the use of firearms in the courtroom during
2 the trial. If it is locked, I would advise the jury
3 that it would be locked at all times. It would not be
4 pointed at any individuals during the course of these
5 proceedings and remained locked.

6 I don't know if any ammunition would be
7 introduced into evidence, but the weapon and ammunition,
8 if any would be introduced, would not be in the jury
9 room at the same time. With that being said, solicitor,
10 you may proceed.

11 BY MR. MADSEN:

12 Q Sergeant Correll, what number is that?

13 A Seventy-four.

14 Q Do you recognize State's Exhibit number 74 without
15 objection?

16 A Yes, sir.

17 Q What is that?

18 A This is the Taurus .38 special which I found.

19 Q Let me ask you, as it sits right there, can that be
20 fired?

21 A No, sir.

22 Q And why is that?

23 A It has a lock through the cylinder.

24 Q What does that do to stop it from firing?

25 A It will not allow the cylinder to close.

- 1 Q So it's safe?
- 2 A It's safe.
- 3 Q What kind of gun is that?
- 4 A It's a Taurus .38 special.
- 5 Q Is that the same gun you found that day on
- 6 September 20th?
- 7 A Yes, sir.
- 8 Q And what is the serial number of that gun?
- 9 A T.A.95968.
- 10 Q Tell me one more time.
- 11 A T.A.95968.
- 12 Q Is that the same gun in State's Exhibit Number 72?
- 13 A Yes, it is.
- 14 Q Sergeant Correll, can you step down and just show
- 15 the jury State's Exhibit Number, I believe, 74.
- 16 A (Witness leaves the witness stand).
- 17 Q Walk down this way --
- 18 THE COURT: State's 74 is in evidence without
- 19 objection, Mr. Baker?
- 20 MR. BAKER: That's correct, Your Honor.
- 21 THE COURT: Thank you.
- 22 (State's Exhibit Number 74 is received into
- 23 evidence).
- 24 BY MR. MADSEN:
- 25 Q Who ultimately ended up collecting that?

KENNETH CORRELL -- CROSS -- MR. BAKER

464

1 A Detective Jim Hickman.

2 Q And what does he do at the Sheriff's Office? You
3 can have a seat.

4 A (Witness resumes the witness stand). He is our
5 crime scene investigator.

6 Q Answer any questions Mr. Baker has, please.

7 THE COURT: Thank you, Solicitor. Mr. Baker.

8 CROSS EXAMINATION

9 BY MR. BAKER:

10 Q Is it true Sergeant Correll, there were no
11 fingerprints of Darrell Burgess found on that gun?

12 A I don't know. That's not my...

13 Q You don't have any idea?

14 A No, sir.

15 Q And is it also true that there was a trace of
16 ownership done on that gun, and it did not belong
17 to Darrell Burgess?

18 A I don't know. I was there to search for the gun.
19 That's all.

20 MR. BAKER: Thank you, Your Honor. I think
21 that's all I have got.

22 THE COURT: Anything on redirect, Solicitor?

23 MR. MADSEN: No, Your Honor.

24 THE COURT: Thank you, Sergeant. You may step
25 down. Solicitor, you may call your next witness.

1 MR. MADSEN: The State would call Detective
2 Jim Hickman.

3 JAMES L. HICKMAN, being
4 first duly sworn, testified as follows:

5 CLERK: Have a seat, please, sir. Once you
6 have a seat, state your full name. Speak up loud and
7 clear and spell your last.

8 THE WITNESS: James L. Hickman, H-I-C-K-M-A-N.

9 DIRECT EXAMINATION

10 BY MR. MADSEN:

11 Q Detective Hickman, where are you employed?

12 A Lexington County Sheriff's Department.

13 Q How long have you been there?

14 A About 20 years.

15 Q What is your job with the Lexington County
16 Sheriff's Department?

17 A I'm a senior crime scene officer.

18 Q How long have you been a crime scene Officer?

19 A At Lexington about 18 years.

20 Q Did you have an occasion to become involved in this
21 case on September 20, 2005?

22 A Yes, sir, I did.

23 Q And where were you at?

24 A I was at Lexington. I was requested to go to a
25 location in the county to assist a ground search

JAMES HICKMAN -- DIRECT -- MR. MADSEN

466

1 with the metal detector that we had in crime scene.

2 Q And did you go out and do that?

3 A Yes, sir, I did.

4 Q At some point in time did someone find something
5 out there?

6 A Yes, sir. Sergeant Correll located the object we
7 were looking for, which was a handgun.

8 Q Were you able to get a latitude and longitude of
9 where you found that gun?

10 A Yes, sir.

11 Q Let me show you State's Exhibit Number 32 for I.D.
12 purposes, just for demonstrative purposes. Can you
13 show me on there where that handgun was located?

14 A Right along here (indicating) on I-77 and just
15 before you get to the river bridge in Lexington
16 County.

17 Q And that's the longitude and latitude that you took
18 to show where that was at?

19 A Yes, sir.

20 Q Now, let me show you what has been marked into
21 evidence as State's Exhibit Number 74 and ask if
22 you recognize that.

23 A (Pause). Yes, sir, I do.

24 Q What is that?

25 A This is the Taurus .38 special that we found that

1 morning on I-77.

2 Q Let me show you State's Exhibits 70 through 73.

3 Who took those photographs?

4 A I did.

5 Q And are those photographs of State's Exhibit

6 Number 74?

7 A Yes, sir, they are.

8 (State's Exhibits Number 74-75 are marked for
9 identification).

10 BY MR. MADSEN:

11 Q Let me show you State's Exhibits 75 and 76 and ask
12 if you recognize those photographs.

13 A Yes, sir, I do.

14 Q Who took those photographs?

15 A I did.

16 Q And what are those photographs of?

17 A State's Exhibit 75 is the side view of the .38
18 special that we found showing the serial number and
19 the basic size of it. State's Exhibit 76 is a view
20 of the cylinder where we see what ammunition is in
21 it.

22 Q When you collected that gun out there, did it have
23 any ammunition in it?

24 A No, sir.

25 Q Is that what is shown on State's Exhibit Number 76?

1 A Yes, sir.

2 Q Now, on a revolver like this if it's fired, is
3 there going to be something left in this little
4 cylindrical thing?

5 A Yes, sir.

6 Q What is that?

7 A That would be the shell casing.

8 Q Did you find any empty shell casings?

9 A No, sir, I did not.

10 Q Once you collected and took those photographs of
11 State's Exhibit Number 74, the gun, did you then
12 eventually take that to S.L.E.D.?

13 A Yes, sir.

14 Q Or was it taken to S.L.E.D.?

15 A It was taken to S.L.E.D.

16 Q Do you know whether or not it was processed for
17 fingerprints?

18 A Yes, sir. There was none found as I know of.

19 Q And does that surprise you being a crime scene
20 investigator that there was no fingerprints found
21 on a gun?

22 A No, sir, it does not.

23 Q Why is that?

24 A The gun had been laying outside in the grass, and
25 the location we found it was the side of a road.

1 It was in tall grass, morning dew can wash
2 fingerprints away. Just because you touch some
3 thing, there is no sign that a fingerprint will be
4 there. We certainly hope there is, but most of the
5 time there's not. The weather conditions -- hot,
6 dry cold -- it can destroy fingerprints real easy,
7 the environmental conditions. In this case being
8 outside, I wouldn't expect to find any.

9 Q Let me ask you this. As far as your job as a crime
10 scene investigator, is it like we see on T.V.?

11 A No, sir, I wish it was.

12 Q Do you drive a Hummer?

13 A No, sir, I've asked for one twice and been refused
14 both times.

15 Q Let me ask you, if I take my hand -- and we all
16 just saw me put my finger right there and touch
17 there -- are you going to get my fingerprint off
18 that rail?

19 A It depends on a lot of things, mainly two things.
20 It's the environmental condition. What condition
21 is it? Are we out in the rain? Are we out in the
22 snow? Is it going to be hot, cold, things like
23 that. It also depends on the person himself.

24 Most of you know if you have real oily skin,
25 you are more than likely to leave a good

JAMES HICKMAN -- DIRECT -- MR. MADSEN

470

1 fingerprint. If you've got real dry skin like we
2 do in the wintertime, it's a good chance you won't
3 leave anything. It also has something to do with
4 what you put it on.

5 Wood is a -- we need like a nonporous item,
6 but we can get them off just about anything. But a
7 lot of times in the oils and secretions that come
8 out of your fingers, they just soak right in and
9 destroy it. It depends on the movement. It
10 depends on a lot of things.

11 Q So if I touch say this granite here, is that going
12 to be a better surface than, say, if I just put my
13 finger here on my lapel?

14 A Yes, sir. That's what I consider a nonporous item.
15 It's got a pretty smooth surface on top, yes, sir.
16 I would stand a better chance of getting it off
17 there.

18 Q How about if I touch my clothing here?

19 A No, sir.

20 Q Why is that?

21 A Your clothing is -- the secretions that come out of
22 your fingers, the oils that come out, they will
23 soak right into the fabric. The fabric is also
24 made of individual cloth or string, as you put it.
25 It's wove together. So it's extremely hard to get

1 it off of cloth.

2 Q Could you answer any questions Mr. Baker has,
3 please.

4 THE COURT: Was State's 75 and 76 in evidence
5 without objection?

6 MR. BAKER: They were, Your Honor.

7 THE COURT: Thank you.

8 (State's Exhibits Number 75-76 are received
9 into evidence).

10 CROSS EXAMINATION

11 BY MR. BAKER:

12 Q Detective Hickman, in some cases fingerprints can
13 be a very important piece of evidence; is that
14 correct?

15 A Yes, sir.

16 Q You, in your line of business, rely on fingerprints
17 a great deal; is that correct?

18 A Yes, sir.

19 Q And, in fact, people are and have been convicted of
20 crimes based on the fact that y'all found or you
21 find a fingerprint or someone in your department
22 has found fingerprints in certain locations; is
23 that correct?

24 A Yes, sir.

25 Q And is it true, Detective Hickman, that if you are

1 looking for fingerprints inside a location, you are
2 much more likely to find them than outside?

3 A Again, I sort of hesitate to say yes on that, but
4 more than likely you are correct.

5 Q You are more likely to find them inside than
6 outside?

7 A Yes, sir.

8 Q And surfaces such as a door handle or a door might
9 be good surfaces to find a fingerprint on; is that
10 correct?

11 A It depends on what it's made out of. You would
12 stand a real good chance of finding one on the
13 doorknob, but it also depends on what it's made out
14 of and the door itself, how is it painted, what
15 kind of paint is it on, and things like that.

16 Q In your line of business, you have found
17 fingerprints on door handles and doors; is that
18 correct?

19 A Yes, sir.

20 Q And when this gun was located, there was no
21 ammunition in the gun and no shell casings?

22 A No, sir.

23 Q Was there any evidence or were you able to obtain
24 any evidence that this gun had recently been fired?

25 A No, sir.

1 Q Thank you, Detective Hickman. I think that's all I
2 have.

3 THE COURT: Thank you, Mr. Baker. Anything in
4 redirect, Solicitor?

5 REDIRECT EXAMINATION

6 BY MR. MADSEN:

7 Q Would it surprise you that if, say, a door handle
8 or a door area was dusted, and you didn't get
9 fingerprints off of anyone -- or from anyone off
10 that door handle?

11 A No, sir, it would not surprise me at all.

12 MR. MADSEN: That's all the questions I have.

13 THE COURT: Thank you. Recross?

14 MR. BAKER: None, Your Honor.

15 THE COURT: Thank you, Detective Hickman. You
16 may step down.

17 THE WITNESS: Thank you, sir.

18 Solicitor, you may call your next witness.

19 MR. MADSEN: Your Honor, the State would call
20 Detective John Moore.

21 JOHN ALLEN MOORE, being
22 first duly sworn, testified as follows:

23 CLERK: Have a seat, please, sir. State your
24 full name, spelling your last.

25 THE WITNESS: John Allen Moore, M-O-O-R-E.

1 DIRECT EXAMINATION

2 BY MR. MADSEN:

3 Q Detective Moore, where are you employed?

4 A I am employed with the Lexington County Sheriff's
5 Office.6 Q How long have you been with Lexington County
7 Sheriff's Department?8 A I've been with Lexington County almost five years
9 now. I've been a police officer in the State of
10 South Carolina for 25.11 Q Before you came to Lexington County, where did you
12 work at?

13 A Orangeburg County.

14 Q What did you do in Orangeburg County?

15 A I was captain over narcotics in Orangeburg.

16 Q And here in Lexington what do you do with the
17 Lexington Sheriff's Department?18 A I'm a detective assigned to the narcotics division
19 of the Sheriff's Office.20 Q Obviously if you are a narcotics detective, you
21 deal with drugs?

22 A Yes, sir.

23 Q Is there a part of being a narcotics detective that
24 puts you in certain areas that, say, major crimes
25 or road officers won't do as far as searches?

1 A In the narcotics division, we handle mostly search
2 warrants and do entry to the residences of drug
3 dealers. So we do a lot of search warrants on a
4 weekly basis.

5 Q And based on your experience in entering
6 residences, do you sometimes get requests for major
7 crimes when they utilize search warrants?

8 A Yes, sir.

9 Q And how so?

10 A I'm sorry?

11 Q How so?

12 A We normally, if it's a major crime or a detective
13 of a property crime or anybody else that has a
14 search warrant, they will, if there's any factors
15 involved that could be dangerous or evidence
16 recovery, they will ask us to do it.

17 Q Did you have an occasion on September 14, 2005, to
18 become involved in this case?

19 A Yes, sir, we done the entry on this residence.

20 MR. BAKER: Your Honor, I may have a matter.

21 THE COURT: You have a matter of law?

22 MR. BAKER: Yes, sir, Your Honor.

23 THE COURT: Mr. Foreman, and ladies and
24 gentlemen of the jury, if you would please step to your
25 jury room. Do not discuss the case amongst yourselves

1 during this brief recess.

2 (The jury retires to the jury room).

3 THE COURT: Yes, sir.

4 MR. BAKER: Your Honor, I just wanted to note
5 an objection. I think Solicitor Madsen is about to
6 introduce pictures of the inside of the residence,
7 Mr. Burgess' residence.

8 I would just like to note my objection
9 pursuant to my previous motions to suppress all the
10 evidence gathered at the residence due to the failure
11 to serve, properly serve, the search warrant per
12 17-13-150.

13 The argument would be the same as I made
14 before, Your Honor, in that my client was prejudiced by
15 the fact that this warrant was not properly served and
16 not properly executed when this home was searched and
17 the evidence was gathered from the home.

18 THE COURT: What items, what photographs are
19 you offering, Solicitor? I didn't see those during the
20 arguments on the suppression.

21 MR. MADSEN: Judge, I can pass them up. We
22 are going to offer a diagram of the home to have the
23 detective explain their entry and then ultimately those
24 photographs that just document the interior of the home.

25 We have taken out, as Your Honor may or may

1 not remember, there were some drug items in that
2 retrieved from the home. We are not intending to
3 introduce any of those photographs. It is basically to
4 just document the interior of the home.

5 THE COURT: Subject to your previous motion, I
6 would certainly allow this in. I ruled based on
7 Detective Beaver, Ms. Burgess, and Detective Palkowski's
8 testimony, the affidavit, the booking photograph, and
9 the statement by James Johnson, Court's Exhibit 2, 3,
10 and 4, I have ruled that the search warrant was valid.
11 There was appropriate probable cause.

12 I did rule that no testimony concerning
13 illegal drugs could come in. Based on that I am going
14 to allow this testimony. Do you have any specific
15 objections otherwise, besides the objection previously
16 made to the diagrams or the photographs?

17 MR. BAKER: Other than the previous
18 objections, Your Honor, just the evidence gathered
19 inside the house per the failure of them to properly
20 serve the search warrant.

21 THE COURT: All right. If you will have all
22 these marked now, Solicitor.

23 (State's Exhibits Number 77-88 are marked for
24 identification).

25 THE COURT: If you would bring us our jury

1 please Mr. Bailiff.

2 (The jury returns to the courtroom).

3 THE COURT: It appears our jury is back
4 present in the courtroom. All parties are present,
5 along with the attorneys. Solicitor, you may proceed.

6 DIRECT EXAMINATION

7 BY MR. MADSEN:

8 Q When you go to serve the search warrant at [REDACTED]
9 [REDACTED] at the Defendant's house, can you just
10 describe what that process is as far as how you
11 make entry.

12 A Yes, sir, I can. Once there is a search warrant
13 obtained and our office is notified of it, we go
14 ahead and start formulating a plan to make entry as
15 safely as possible into any residence.

16 This particular day we showed up in a van, and
17 the entry team came out. Myself, I was on the
18 shield, which is the ballistics shield for the
19 first one going through the door.

20 Q Let me ask you this. Is there a reason you end up
21 being the first one through the door on the shield?

22 A A lot of experience on the shield in going through
23 residences, doors.

24 Q Okay.

25 A This particular day when I came through, the team

1 follows close. As we approach the front door, we
2 encounter the Defendant's brother, who is outside
3 on the step. We got him detained and then breached
4 the front door, which is making entry with a
5 sledgehammer or a ram or whatever.

6 Then the team -- I went through the door with
7 the rest of the team following. As soon as I
8 entered the residence, there is a living room, and
9 I had the shield and did kind of circle and started
10 down the hallway. When I started down the
11 hallway --

12 Q Let me stop you here real quick. When you go in, I
13 mean, do you just kind of go in and everyone else
14 waits outside and you say all clear or how do y'all
15 end up going in?

16 A The whole team comes through the door following.
17 We want the whole team to come through the door.
18 In police entries like that, you've got a fatal
19 frontal. That's right at that door. So we try to
20 get everybody through each door as fast as
21 possible.

22 Q And when you pop, which way do you go, right or
23 left?

24 A I come in with the shield and try to do a 180 of
25 the room, just making sure we don't encounter

1 anybody or if we encounter anybody, to control that
2 individual. When we made entry into the living
3 room, there was nobody in the living room.

4 Q So which way did you cut?

5 A I cut back right and put the shield down the
6 hallway to handle the farthest threat.

7 Q Let me ask you this. When you cut right, per your
8 procedures, the person who is coming in directly
9 behind you, which way would they cut?

10 A The one coming directly behind me would cut left.

11 Q And how about the third person?

12 A The third person would follow me. That puts
13 security on all four corners of that wall as
14 quickly as possible.

15 Q Let me show you State's Exhibit Number 88. Do you
16 recognize that?

17 A Yes, sir, that's the residence diagram of the
18 interior.

19 Q Do you recognize that as being the residence you
20 entered that day?

21 A Yes, sir.

22 MR. MADSEN: Your Honor, we would offer that
23 into evidence.

24 THE COURT: Eighty-eight is in evidence
25 subject to previous objections.

1 (State's Exhibit Number 88 is received into
2 evidence).

3 BY MR. MADSEN:

4 Q Can you step down and show the jury, when you make
5 entry, show them what you do.

6 A Sure. (Witness leaves the witness stand).

7 Q Before I ask you any questions on that, let me show
8 you State's Exhibits 77 through 87 and ask if you
9 recognize those.

10 A That's the residence.

11 Q I just want you to take a look through all of them.

12 A Yes, sir.

13 Q See if you recognize them.

14 A (Pause). Yes, sir.

15 Q What are those photographs of?

16 A Of the residence.

17 MR. MADSEN: Your Honor, we move State's
18 Exhibit Number 77 to 87 into evidence.

19 THE COURT: State's Exhibit 77 to 87 are in
20 evidence subject to previous objections.

21 (State's Exhibits Number 77-97 are received
22 into evidence).

23 BY MR. MADSEN:

24 Q Let's start with State's Exhibit Number 77. What
25 is that a photograph of?

JOHN MOORE -- DIRECT -- MR. MADSEN

482

- 1 A The front of the residence.
- 2 Q And looking at the front of this residence, you
- 3 said you encountered someone out on the front
- 4 steps?
- 5 A That's correct.
- 6 Q Can you show the jury on there where that's at.
- 7 A Right here (indicating).
- 8 Q What is done with him?
- 9 A He's taken into protective custody at that point,
- 10 detained.
- 11 Q So that's here (indicating) on State's Exhibit
- 12 Number 88?
- 13 A Yes, sir, that's correct.
- 14 Q And you said you are the shield man. Could you
- 15 show us on here when you enter, what do you do?
- 16 A I come through the door, and we use the shield to
- 17 do sort of a 180 for protection of the team, the
- 18 rest of them following through.
- 19 Q Let me show you State's Exhibit Number 78 and 79.
- 20 What does that show?
- 21 A That's the living room entry way.
- 22 Q Is that what you see when you come in?
- 23 A Yes, sir.
- 24 Q And so once you don't see anyone in there, which
- 25 way do you cut?

- 1 A Cut down the hallway.
- 2 Q Let me show you what has been marked State's
- 3 Exhibit Number 82.
- 4 A Yes, sir.
- 5 Q What is that?
- 6 A That's the hallway.
- 7 Q So once you cut down the hallway on the shield, is
- 8 there someone coming behind you?
- 9 A Yes, sir. When I turn that shield to the hallway,
- 10 I hesitate just for a second until somebody nudges
- 11 me that, yeah, we are okay, we are behind you.
- 12 Q And when you start going, where is that hallway on
- 13 State's Exhibit Number 88?
- 14 A Right here (indicating).
- 15 Q When you start coming down this hallway, do you
- 16 encounter anyway?
- 17 A We take the first shield to the first opening, the
- 18 first door opening. When I turned that shield into
- 19 that door, I encountered the Defendant coming off
- 20 his bed.
- 21 Q What do you then do with that shield?
- 22 A I maintained -- I stopped and maintained him. I
- 23 control him with the shield with its borders.
- 24 Q Let me show you State's Exhibit Number 83.
- 25 A Yes, sir, I recognize that.

1 Q What is that?

2 A This is bedroom two.

3 Q Is that the bedroom that you encountered the
4 Defendant in?

5 A Yes, sir, that's correct.

6 Q So when you encounter him, what do you do?

7 A I give him orders to control him: Let me see your
8 hands. Let me see your hands.

9 Q When you come in the front door originally, are you
10 saying anything?

11 A Yes, sir.

12 Q What is that?

13 A "Sheriff's Office search warrant," and it's
14 announced at least two to three times.

15 Q Once you encounter the Defendant in the bedroom and
16 give him those orders, what happens to the
17 Defendant?

18 A I maintain him with this shield. "Let me see your
19 hands." He complied. The man behind me went and
20 detained him by handcuffing him on the bed of the
21 Defendant in his room.

22 Q And then once that is done, where do you then go?

23 A Once he is controlled, I back out and go back down
24 the hallway and start clearing each and every room
25 with that shield.

- 1 Q Do you recall what room number six was?
- 2 A Bathroom.
- 3 Q Did you encounter anyone in that room?
- 4 A No, sir.
- 5 Q How about in bedroom number three, did you
- 6 encounter anyone there?
- 7 A No, sir.
- 8 Q Let me show you State's Exhibit Number 85. Do you
- 9 recognize that?
- 10 A Yes, sir.
- 11 Q What is that?
- 12 A That's bedroom three.
- 13 Q That's this bedroom here (indicating)?
- 14 A Yes, sir.
- 15 Q Do you encounter anyone in what is designated as
- 16 master bedroom four or master bathroom?
- 17 A No, sir.
- 18 Q Let me show you State's Exhibits Number 86 and 87
- 19 and ask if you recognize those.
- 20 A Yes, sir, that's bedroom number four and the
- 21 bathroom -- I'm sorry the entrance way to the
- 22 bedroom and the bed.
- 23 Q Besides the Defendant do you encounter anyone else
- 24 on the inside of the home?
- 25 A No, sir. This particular bedroom I felt like it

1 was a woman who owned the bedroom because it was so
2 neat and clean.

3 Q You don't have, like in State's Exhibit 87, you
4 don't have a stuffed elephant on your bed at home?

5 A No, sir.

6 Q Once you have made sure that there is no one else
7 in [REDACTED] -- what do they call that?

8 A That is a security sweep.

9 Q Once you have done that security sweep, do you then
10 have some other duties?

11 A Yes, sir.

12 Q What are those duties?

13 A They assign me to a room or we get everybody
14 assigned to a room, usually two personnel, two
15 employees in each room, two detectives in each
16 room, and we do a thorough search of the residence.

17 Q Let me show you what has been marked as State's
18 Exhibits Number 80 and 81. Do you recognize those?

19 A That's the kitchen.

20 Q Do you recall what your search areas were?

21 A In the residence I had room two.

22 Q Let me show you what has been marked as State's
23 Exhibit Number 84. Do you recognize that?

24 A Yes, sir.

25 Q What is that a photograph of?

- 1 A That's a photograph of cell phones and money and
2 cigarettes on the headboard.
- 3 Q What room were those found in?
- 4 A Room two, bedroom two.
- 5 Q Remind me, what room was the Defendant coming out
6 of?
- 7 A Bedroom two is where I encountered him.
- 8 Q The same bedroom that this picture is out of?
- 9 A That's correct.
- 10 Q Let me show you State's Exhibits number 46, 47, and
11 48 and ask if you recognize those?
- 12 A Yes, sir, I do.
- 13 Q What are those photographs of?
- 14 A Pictures of the vehicles on the outside of the
15 residence.
- 16 Q You can have a seat.
- 17 A (Witness resumes the witness stand).
- 18 Q Let me ask you this. Are you familiar with the
19 term scrivener in relation to searches and search
20 warrants?
- 21 A Scriber.
- 22 Q Scriber?
- 23 A Right.
- 24 Q What is that?
- 25 A That's someone that scribes the search warrants.

1 Each line of the search warrant is a recovery of
2 evidence, and we write out what we found, where we
3 found it, and who found it.

4 Q Let me ask you, who is this scribe this day?

5 A This particular day it was a detective with us. I
6 believe it was Mike Bird.

7 Q And was there some place on State's Exhibit
8 Number 88 that he set up that day?

9 A I believe he sat up in the living room right there
10 off from the kitchen. We started in the kitchen,
11 and then I think we went back to the living room at
12 the end of writing up everything. So we were
13 bringing evidence to him after it's been
14 photographed.

15 Q Detective Moore, if you could answer any questions
16 from Mr. Baker, please?

17 THE COURT: Thank you, Solicitor. Mr. Baker.

18 CROSS EXAMINATION

19 BY MR. BAKER:

20 Q Detective Moore, I think your testimony was when
21 you encountered Mr. Burgess, he followed the
22 instructions that you gave him?

23 A Yes, sir, he complied to everything.

24 Q Did he comply with everything you asked him to do?

25 A Yes, sir.

1 MR. BAKER: Thank you, Your Honor. That's all
2 I have got.

3 THE COURT: Thank you. Anything in redirect,
4 Solicitor?

5 MR. MADSEN: No, Your Honor.

6 THE COURT: Thank you, Detective Moore. You
7 may step down. Solicitor, you may call your next
8 witness.

9 MR. HUBBARD: Your Honor, may we approach on a
10 scheduling matter?

11 THE COURT: Yes, sir.

12 (Whereupon there was a bench conference off
13 the record in the presence of the jury but out of the
14 hearing of the jury).

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 of the jury, the parties inform me this would be the
17 appropriate time for our luncheon recess. It is a
18 little earlier than usual; however, it should assist in
19 the efficiency of our time for this afternoon. Y'all
20 all believe that, right? You believe what I tell you?

21 Be that as it may, we are going to take our
22 luncheon recess until about 1:30. I would remind you
23 during the recess, do not discuss the case with anyone.
24 That includes your fellow jurors, your lunch mates, your
25 family, your friends, anyone involved in the trial.

1 If anyone tries to talk with you about the
2 case, please let me know immediately. Remember to keep
3 an open mind about the case and do not begin your
4 deliberations until you are instructed to do so. I
5 would ask you to please be back in your jury room
6 promptly at 1:30. Thank you very much. You are now
7 excused.

8 (The jury is excused for lunch at 12:15 p.m.)

9 THE COURT: Court will be in recess until
10 1:30.

11 (Whereupon there was a luncheon recess).

12 THE COURT: Anything before we bring in our
13 jury from the State?

14 MR. HUBBARD: No, sir, Your Honor.

15 THE COURT: From the defense?

16 MR. BAKER: No, Your Honor.

17 THE COURT: If you would bring us our jury.

18 (The jury returns to the courtroom at
19 1:35 p.m.)

20 THE COURT: It appears our jury is back
21 present in the courtroom, as are all the parties and
22 their attorneys. We are continuing the trial of the
23 case by the presentation of the testimony by the State.
24 Solicitor, you may call your next witness.

25 MR. HUBBARD: Thank you, Your Honor. The

1 State calls Vello Paavel.

2 THE COURT: Mr. Paavel, come around, please.

3 VELLO PAAVEL, being
4 first duly sworn, testified as follows:

5 CLERK: Have a seat, please, sir. Speak up
6 loud and clear. State your full name, spelling your
7 last.

8 THE WITNESS: My name is Vello, Paavel,
9 V-E-L-L-O, P-A-A-V-E-L.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Agent Paavel, where do you work?

13 A I work for the South Carolina Law Enforcement
14 Division, which is commonly known as S.L.E.D. In
15 particular I work in the forensic services
16 laboratory in the firearms department where I am a
17 firearm and tool mark examiner.

18 Q How long have you worked in the firearms
19 department?

20 A I've been in the firearm department for almost 21
21 years. During my initial employment in the
22 firearms department, my responsibilities included
23 latent print, crime scene, and some firearms
24 identification. For the past 19 years, I have been
25 doing strictly firearm and tool mark

1 identification.

2 Q And when you talk about firearm and tool mark
3 identification, what are your day-to-day duties
4 with S.L.E.D.?

5 A Currently my duties involve the supervision of the
6 department and case work. When I'm doing case work
7 what we are primarily doing is examining fired
8 bullets, fired cartridge cases, firearms, and other
9 tools and tool marks to try to find a common origin
10 if possible.

11 In particular if we have fired bullets from a
12 scene, we try to determine what type of firearm
13 could have fired it. If we have a firearm for
14 comparison purposes, we will examine the firearm,
15 test fire it and microscopically compare the
16 evidence bullet to the test bullets and try to
17 determine that they were fired by that gun or not.
18 We do the same with cartridge cases.

19 Also in general tool mark examination, if you
20 have a burglary, if somebody pries on a door, pries
21 open a window, we try to compare the tool marks
22 that are found there to a suspect tool that may
23 have been recovered.

24 I'm also responsible for examining firearms to
25 determine if they are functioning properly. If

1 they have been altered, we do a chemical serial
2 number restoration on firearms in the case that
3 firearms have had the numbers obliterated.

4 We are also involved in the destruction of
5 firearms. Many agencies turn over firearms to us
6 for destruction. But generally what I do is
7 examine firearms and ammunition components to
8 determine whether or not they are related. We
9 issue reports and then testify in court on our
10 findings.

11 Q Have you had any special training or education to
12 assist you in your duties?

13 A Yes, sir. One of the requirements to work in our
14 building or department, you have to have some sort
15 of degree. I attended the University of South
16 Carolina. I have a Bachelor's of Science degree
17 and majored in chemistry. The bulk of my training
18 in firearms and tool mark identification or the
19 actual microscopic comparison, I received that
20 training at S.L.E.D.

21 During my initial employment, I had to work
22 under the supervision of the court qualified
23 examiners. During that time period I was given
24 books to read, articles to read. I was given
25 tests. I had to successfully complete and pass

VELLO PAAVEL -- DIRECT -- MR. HUBBARD

494

1 these tests. I was allowed to assist other
2 examiners with case work and with practical
3 problems.

4 After I successfully completed my training
5 program, I was allowed to work cases on my own and
6 testify. Also during that training program, I was
7 given the opportunity to attend certain schools.
8 After I completed that training program, I also was
9 able to attend certain schools in firearms
10 identification and in firearms function and how
11 they work.

12 Prior to my law enforcement career, I was
13 actually in the firearms business locally here in
14 Columbia. I worked in and ultimately managed a gun
15 shop. My primary responsibilities were to buy,
16 sell, and repair firearms.

17 Since I completed my training program at
18 S.L.E.D. and was allowed to work cases on my own, I
19 have testified approximately 300 times as an expert
20 in South Carolina general sessions court and in
21 federal courts.

22 MR. HUBBARD: Your Honor, at this time I would
23 like to offer Agent Vello Paavel as an expert in
24 firearms and tool mark identification.

25 MR. BAKER: No objection, Your Honor.

1 THE COURT: Thank you. Just a moment,
2 Solicitor.

3 Mr. Foreman, and ladies and gentlemen of the
4 jury, normally a person cannot give opinion testimony.
5 Normally when a person testifies, they must testify as
6 to what they either saw, heard or sensed by smell or
7 something of that nature.

8 However, there is an exception when someone is
9 qualified because of education or experience or
10 training. They are permitted to give their opinions in
11 certain areas if the Court qualifies them that way.

12 This witness, Agent Vello Paavel, will be
13 qualified in the area of firearms and tool mark
14 identification to give opinion testimony in that area.
15 That does not mean that you must accept the opinion, but
16 it is evidence for you to use in any way you see fit.

17 Thank you, Solicitor. You may continue.

18 MR. HUBBARD: Thank you, Your Honor.

19 BY MR. HUBBARD:

20 Q Agent Paavel, other than the supervisory duties
21 that you have today, were your duties substantially
22 the same back in September of 2005?

23 A Yes, sir. In September of 2005, my primary
24 responsibilities were working cases, training other
25 examiners, testifying in court, and general

VELLO PAAVEL -- DIRECT -- MR. HUBBARD

496

1 operations that we encountered in the day-to-day
2 work in the firearms and tool mark department.

3 Q I want to ask you about September of 2005. Do you
4 recall the Lexington County Sheriff's Department
5 presenting you some items to review, to have you
6 review and examine?

7 A Yes, sir. The Sheriff's Department did submit some
8 evidence for examination in September of 2005 in
9 reference to this case.

10 Q The case involving the victims, Kim Fauscette and
11 David Slice?

12 A That's correct, sir.

13 Q I would like to show you some items and see if
14 these were the items that were submitted for your
15 examination. Agent Paavel, I will read out our
16 evidence numbers, State's Exhibit 36, 37, 35, 40,
17 41, 39, and 38.

18 A Yes, sir, I had an opportunity to view these before
19 I came here into the courtroom to testify. These
20 are the items or some of the items that I examined
21 in reference to this case. In particular these are
22 seven fired bullets or projectiles.

23 Q When we talk about projectiles, I've got a diagram
24 I have asked you to look at.

25 MR. HUBBARD: Mr. Baker, you have had an

1 opportunity to see this?

2 MR. BAKER: It's my understanding you will use
3 that as demonstrative evidence only.

4 MR. HUBBARD: Yes, that's correct.

5 BY MR. HUBBARD:

6 Q Agent Paavel, this diagram, can you tell us what
7 this is a diagram of?

8 A It's a cutaway of an unfired cartridge or a piece
9 of ammunition that has not been fired.

10 Q And the portion that you have been asked to
11 examine, what portion would that be in this
12 diagram?

13 A That's the top, the gray and silver portion near
14 your head or closer to your head. That's the
15 projectile. That's the part that actually comes
16 out the cartridge case itself, goes down the gun
17 barrel, and travels toward a target.

18 Q And the piece that holds it in, the brass piece,
19 what is that called?

20 A That brass-colored piece is the cartridge case.
21 It's a cutaway here so you can see the powder
22 inside. Normally it's simply a brass-colored
23 cylinder. It may or may not have a rim or a flange
24 protruding from it, but it will look like a small
25 cylindrical piece of brass.

VELLO PAAVEL -- DIRECT -- MR. HUBBARD

498

1 Q And the brass portion that we are just talking
2 about, you were not asked to examine brass pieces;
3 were you?

4 A No, sir, I did not received any fired cartridge
5 cases for examination.

6 Q Just the fired projectile?

7 A That's correct, sir.

8 Q When once you got the projectiles, what
9 examinations did you perform?

10 A At the time that I received these, I did not have a
11 firearm for comparison. So what I do in cases like
12 that is, first of all, document what I have. I
13 look and see what I have. I have work sheets that
14 I have to fill out on the evidence.

15 I weigh, measure the projectiles. I look and
16 see how they are constructed. I record that
17 information. I look for trace materials that may
18 be present, such as blood or dry wall or paint.

19 Then what I do is mark the projectile in a way
20 that I can recognize it later. Normally that's the
21 laboratory case number, a S.L.E.D. item number, and
22 my initials.

23 I also will look for the rifling impressions
24 that are found on the bullet. When a bullet is
25 fired out of the cartridge case and that bullet

1 goes through that gun barrel, the outside of the
2 bullet comes in contact with the inside of the gun
3 barrel.

4 Inside the gun barrel, you have rifling.
5 Rifling is a series of helical grooves that are
6 placed in the inside of the gun barrel by the
7 manufacturer. Between these grooves you have
8 raised areas called lands, L-A-N-D-S.

9 The manufacturer puts rifling in the barrel so
10 the rifling can literally grip that bullet and
11 cause it to spin. If you look down a gun barrel
12 with rifling, you will see these grooves. They may
13 go to the left or they may go to the right,
14 clockwise or counterclockwise.

15 The purpose of the rifling and the twist and
16 spin is to cause the bullet to spin. All of you
17 have seen a football or thrown a football. You
18 know if have got a good tight spiral, it spins and
19 travels better. The same principle applies here.

20 A bullet has to spin in order for it to be
21 stable and travel properly toward its target.
22 That's why the manufacturer puts rifling in the
23 barrel.

24 The benefit for me as a firearms examiner, I
25 am looking at the microscopic marks -- and