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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Vol. XII of XXVIII

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1 MR. WALTERS: Yes, sir, Your Honor.

2 THE COURT: Solicitor, you may proceed.

3 MR. PASCOE: May it please the Court. I'm
4 going to be very brief, Your Honor, in my opening
5 remarks. I want to start by thanking this Court for
6 accepting the plea last week and more importantly
7 for accepting the awesome responsibility of
8 determining whether the defendant should be
9 sentenced to the death penalty or life in prison for
10 his horrendous act.

11 As the Court is well aware, the State alleged
12 four aggravating circumstances as to why we're
13 seeking the death penalty. First, the defendant
14 committed the murder during the commission of a
15 burglary; it was committed during the commission of
16 a larceny; it was committed during the commission of
17 a robbery while armed with a deadly weapon; and the
18 fourth one being that it was committed due to
19 Captain Myers' duties as a law enforcement officer.

20 As for the first three aggravating
21 circumstances, Your Honor, of course, they were
22 admitted to last week. Certainly, the first two
23 were admitted to last week in the guilty plea of the
24 burglary and the larceny. And it only takes one
25 aggravating circumstance to make the defendant

1 eligible for the death penalty.

2 As for the fourth circumstance that the State
3 alleges, Your Honor, we will present evidence that
4 the defendant may have known that Captain Myers was
5 a law enforcement officer and that that may have led
6 to Captain Myers' death.

7 But without a doubt, Your Honor, without a
8 doubt that the State will prove beyond any doubt
9 whatsoever is that the most important reason the
10 defendant, Mikal Mahdi, killed Captain Jimmy Myers
11 is because his heart and mind was full of hate and
12 malice. Mikal Deen Mahdi's actions in the last
13 several years, Your Honor, have been the epitome of
14 evil. We're going to present evidence in the next
15 two days to let this Court know the impact that
16 Mr. Mahdi's cold-blooded act has had on the victims
17 and friends of Captain Jimmy Myers.

18 We're also going to present evidence to give
19 you a full picture of who that man is right there.
20 This is a man, Your Honor, whose evil ways and whose
21 total disregard for human life did not begin on July
22 the 18th, 2004 and they didn't end three days later
23 with his arrest. This is a man, Your Honor, who has
24 attempted to kill in the past, who has killed in the
25 past and who, when given the opportunity, will kill

1 again. And it is for these reasons and more that at
2 the close of this case, I'm going to stand before
3 this Court and ask that you sentence the defendant,
4 Mikal Mahdi, to death. Thank you.

5 MR. KOGER: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. KOGER: Solicitor Pascoe.

8 Your Honor, Mr. Mahdi stood before you on
9 Thursday and he admitted to you his guilt on these
10 particular charges. He took full responsibility on
11 Thursday for what he did back on July 18th, 2004.

12 Over the next two days, we, as the defense, are
13 going to offer mitigation evidence. We're going to
14 offer evidence that at the time of this particular
15 crime, that he was 21 years of age and very young.

16 We will also offer mitigation evidence that
17 Mr. Mahdi grew up in difficult circumstances.
18 Mother left him at age four, left him with his
19 father to raise he and his brother. And we will
20 offer evidence through our social worker expert that
21 his father was ill-equipped for this responsibility
22 and, therefore, for a significant portion growing
23 up, Mr. Mahdi was left to raise himself.

24 We're also going to offer evidence from a
25 prison adaptability expert that's going to state

1 that if Your Honor choose to show mercy in this
2 particular case, that Mr. Mahdi could adapt to
3 prison life for the rest of his life.

4 As far as the aggravating circumstances set
5 forth by the State, and they set forth four of them,
6 we will show that -- offer evidence that Mr. Mahdi
7 did not know, at the time of the commission of the
8 crime, that he -- that Mr. -- that he knew Mr. Myers
9 was a police officer. And even though the State has
10 set forth four aggravating circumstances, that is
11 the aggravating circumstance that has been the most
12 prominent in this particular case.

13 And, Your Honor, once we offer our mitigation
14 evidence and once you take into consideration the
15 aggravating circumstances that come from the State,
16 we would ask, at the close of this proceeding, we
17 will ask for mercy. And we will ask you to show
18 this mercy of giving Mr. Mahdi life in prison
19 without parole. Thank you.

20 THE COURT: All right. Solicitor, your first
21 witness.

22 MR. PASCOE: May it please the Court. With the
23 Court's permission, before we call the first
24 witness, I would ask that the guilty plea from last
25 week, the entire plea, be incorporated into the

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1 record for the purposes of this sentencing phase.

2 THE COURT: What says the defense?

3 MR. WALTERS: No objection, Your Honor.

4 THE COURT: All right.. The entire guilty plea
5 from last week will be incorporated into the
6 sentencing phase.

7 MR. PASCOE: And one more quick motion, Your
8 Honor, we would like to make a motion that if the
9 Court wants to at its own convenience, that it can
10 go visit the crime scene some time today or
11 tomorrow.

12 THE COURT: Very well.

13 MR. SORENSON: May it please the Court, Your
14 Honor. The State calls Sergeant Darren Frost.

15 DARREN FROST,

16 having been duly sworn, testified as follows:

17 THE CLERK: Please state your full name for the
18 record, please.

19 THE WITNESS: Sergeant Darren Frost.

20 DIRECT EXAMINATION

21 BY MR. SORENSON:

22 Q Good morning, Sergeant Frost.

23 A Good morning.

24 Q If you would, please tell the Court where it is
25 that you're employed.

1 A I work for the Satelllite Beach Police
2 Department.

3 Q And how long have you been with the Satelllite
4 Beach Police Department?

5 A Approximately six years.

6 Q And if you would, just tell the Court a little
7 bit about what your current duties are with
8 Satelllite Beach.

9 A I'm a supervisor as level of sergeant and I'm a
10 canine officer for the department.

11 Q And if you would, tell the Court where exactly
12 is Satelllite Beach located.

13 A Satelllite Beach is located central Florida on
14 the east coast. It's just south of Coco Beach, just
15 south of Cape Canaveral area.

16 Q If you would, describe just briefly kind of
17 what kind of community that is in Satelllite Beach.

18 A It's a residential community. It's a beach
19 side community. We have schools, hotels and mostly
20 residents in that community.

21 Q And how big is your department?

22 A Our department has, approximately, 20 sworn
23 officers. And our city has, approximately, 16 to
24 20,000 residents.

25 Q If I could, Sergeant, I want to turn your

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1 attention back to Wednesday, July 21st of 2004.

2 Were you working as an officer with Satellite Beach
3 at that time?

4 A Yes, sir, I was.

5 Q Okay. And were you, in fact, involved in the
6 arrest of the defendant in this case, Mikal Mahdi?

7 A Yes, I was.

8 Q Okay. And if you would, just describe for the
9 Judge how that came about, him being arrested in
10 Satellite Beach.

11 A At, approximately, seven o'clock in the
12 evening, we received a call that there was possibly
13 an impaired driver on State Road A1A, which is the
14 major highway that runs through our community.
15 Sergeant Fuller was dispatched to that call. I was
16 close to the location where the complainant had
17 observed this vehicle.

18 As I started heading towards that direction, I
19 saw Sergeant Fuller with his emergency lights and
20 siren on behind the vehicle. I could hear his radio
21 traffic. The radio traffic indicated that the
22 vehicle wasn't stopping. It wasn't fleeing at a
23 high rate of speed, it just wasn't pulling over.

24 Q What kind of vehicle was that?

25 A It was a white pick-up truck. I believe it was

1 a Dodge pick-up truck.

2 Q What happened then?

3 A I was heading southbound. They were heading
4 northbound. I flipped around behind Sergeant
5 Fuller's vehicle, concerned that the driver, that
6 the only occupant of the white pick-up truck was an
7 impaired driver. I moved to the lane adjacent to
8 Sergeant Fuller so that vehicles couldn't pass us.
9 I was concerned that the -- there may be an
10 accident.

11 At that point, we continued northbound on A1A
12 for, approximately, half a mile to almost a mile.
13 There were numerous areas where the vehicle could
14 have pulled off, it didn't. It just kept on going
15 straight. It did make a right-hand turn onto a
16 beach access road. As it did, it made a wide,
17 right-hand turn. The vehicle struck a stop sign,
18 knocked over the stop sign.

19 Q Let me show you what's marked as State's
20 Exhibit Number 75 where you indicated that the truck
21 knocked over a stop sign and came to rest on that
22 beach access road.

23 A It finally came to a rest. It was still
24 moving.

25 Q Okay. I show you State's Exhibit Number 75.

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1 Is that a picture of the vehicle after it finally
2 did come to rest?

3 A Yes, it is.

4 MR. SORENSON: Your Honor, we'd offer State's
5 75 into evidence.

6 MR. WALTERS: No objection, Your Honor.

7 THE COURT: It's admitted without objection.

8 (State's Exhibit Number 75, photograph,
9 admitted into evidence.)

10 BY MR. SORENSON:

11 Q So you indicated as it came around the turn,
12 hit the stop sign, what happened then before the
13 vehicle came to rest?

14 A As the -- after it hit the stop sign, the
15 driver's door of the vehicle started to open prior
16 to the vehicle stopping. I put my patrol car in
17 park and exited my patrol car with the intention of
18 tackling the driver. As usually my experience and
19 training, when that door opens up like that,
20 somebody's usually going to attempt to flee on foot
21 from the police.

22 Q Of course, at that point in time, what did you
23 think you were dealing with?

24 A We thought we were dealing with the possibility
25 of an impaired driver. The radio traffic didn't

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1 indicate that the tag on the vehicle was stolen at
2 the time of the vehicle not stopping. I don't know
3 if we realized whether or not the tag exactly
4 matched that truck. It came back on a truck, as I
5 recall, but not exactly that truck.

6 Q You indicated as you stopped your vehicle and
7 got out, did the driver of that white truck then
8 exit his vehicle?

9 A Yes. He was coming out of the vehicle as I was
10 getting out of my vehicle. I came around the
11 driver's door of my vehicle and started to run
12 towards the driver of the pick-up truck. And as I
13 did, the driver started to run away from the pick-up
14 truck. The pick-up truck was still moving, still in
15 drive and still moving and so the pick-up truck
16 separated from the driver and the driver started to
17 head towards the beach away from me.

18 Q If you would, describe what you observed as
19 that driver of that vehicle began to flee towards
20 the beach area.

21 A As I could see the back of the person, I could
22 see the barrel of what appeared to be a gun on his
23 left side as he was moving away from me.

24 Q Okay. And did he begin to turn towards you at
25 any point in time where you got a better look at

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1 what he was holding?

2 A It was definitely a barrel of a gun, there was
3 no mistaking it. I started to yell, Gun;- gun, he's
4 got a gun as the other officer, Sergeant Fuller, was
5 on the other side of the pick-up truck that was
6 still moving. And I drew my service gun, pointed it
7 at the defendant, gave him directions to stop and
8 drop the gun.

9 Q And how was he dressed at that point in time;
10 do you recall?

11 A Yes, sir. He was wearing no shirt, no shoes.
12 And, at the time, I thought it was blue shorts he
13 was wearing.

14 Q And as you gave him the orders to drop that
15 gun, what did Mr. Mahdi do?

16 A Mr. Mahdi started to turn towards me, I aimed
17 my gun at the center of his body mass and was
18 preparing to shoot. He continued to turn towards
19 me. The gun was pointed away from me as he turned.
20 And as he turned, I could see the front of his body
21 and he had the gun up close to the center of his
22 body and his hand was close to the trigger mechanism
23 on the handle of the gun. And as the gun started to
24 turn, I prepared to shoot and Mr. Mahdi dropped the
25 gun.

1300

1 Q And did you, at that point in time, were you
2 able to get a look and see what kind of weapon it
3 was that he had?

4 A I didn't take an inventory of it, but what
5 sticks in my mind is that I immediately recognized
6 it as an assault rifle and there was a magazine clip
7 that was in the bottom of the rifle and that -- that
8 he had dropped it and that he cont -- then he
9 started to run again towards the beach.

10 Q Okay. Let me stop you right there, Sergeant.
11 You indicated that he had dropped the weapon at that
12 point in time?

13 A Yes, sir.

14 Q Did you have an opportunity later on, when that
15 weapon was secured, to then see it?

16 A Yes, sir.

17 Q If I could show you State's Exhibit Number 77,
18 do you recognize that weapon?

19 A Yes, sir.

20 Q Is that the weapon that Mr. Mahdi had that day
21 when he exited that white pick-up truck?

22 A Yes, sir, it is. It's just absent the --

23 Q State's Exhibit Number 76?

24 A Correct.

25 Q So that clip was in the gun?

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1301

1 A Yes, sir.

2 Q Was it loaded with all the projectiles in the
3 bag with it?

4 A I didn't remove the clip from the gun, but I
5 was told that it was fully loaded.

6 MR. SORENSON: Your Honor, at this time, we'd
7 offer State's 76 and 77 into evidence.

8 THE COURT: What says the defense?

9 MR. WALTERS: No objection, Your Honor.

10 THE COURT: It's admitted without objection.

11 (State's Exhibit Number 76, gun clip, and
12 State's Exhibit Number 77, gun, admitted into
13 evidence.)

14 BY MR. SORENSON:

15 Q Sergeant, you indicated after Mr. Mahdi dropped
16 that weapon, that he then ran towards the beach?

17 A Yes, sir.

18 Q How far were you from the beach at that point
19 in time?

20 A Very close, on top of it. It's a dead end, so
21 just a beach access road. There's maybe four or
22 five houses on it and it just dead ends right into
23 the beach.

24 Q And you had indicated earlier when I talked to
25 you about your current duties, that you are a canine

1302

1 officer with Satellite Beach?

2 A Yes, sir.

3 Q Were you in that same capacity back then in
4 July of '04?

5 A Yes, I was.

6 Q And did you have your canine with you that day?

7 A Yes, I did.

8 Q What was your canine's name?

9 A Flex.

10 Q Flex. And did Flex get involved at all, at
11 that point in time, in attempting to apprehend
12 Mr. Mahdi?

13 A Yes, he did. As Mr. Mahdi ran towards the
14 beach, I used the remote door release from my patrol
15 car that's located on my patrol belt to activate
16 that release to release the canine from the back of
17 my patrol vehicle. Unfortunately, I was a little
18 bit too far away from my patrol vehicle for it to
19 instantaneously work. It allowed Mahdi to get over
20 the dune and get down onto the beach area. When I
21 was able to activate the door, the door release, the
22 dog was deployed. I gave the dog the command to
23 apprehend Mahdi.

24 Q And did Flex go after Mr. Mahdi at that point
25 in time?

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1303

1 A Yes, he did.

2 Q Was he able to catch him on the beach?

3 A No. He was recalled -- I had to recall him
4 prior to Flex apprehending Mahdi.

5 Q Okay. If you would, describe then for the
6 Judge what happened then as far as attempting to
7 track down and catch Mr. Mahdi.

8 A As the canine was deployed and went over the
9 dune onto the beach area, the dune -- the beach area
10 was very crowded with kids and adults. It's kind of
11 a busy little area right there. Plus, we have a
12 timeshare condominium that is the next condominium
13 down. Mahdi was able to get back up into the dune
14 area that was heavily vegetated and I lost sight of
15 him. And per our department policy, when I lose
16 sight of the suspect that the canine's been deployed
17 upon, I have to recall the canine unless that
18 suspect is in a fenced-in area, which he wasn't. So
19 I recalled the canine, hooked him up to a leash and
20 then tracked Mahdi.

21 Q Was he ultimately found?

22 A Yes.

23 Q Where was it that Mr. Mahdi was found?

24 A The canine tracked him to the south building of
25 a timeshare condominium complex called Las Olas.

1304

1 Q How close was that to where he had abandoned
2 the white pick-up truck?

3 A About half a block.

4 Q And if you would, describe for the Judge the
5 circumstances surrounding -- was he taken into
6 custody in that condominium complex?

7 A Yes, he was.

8 Q If you would, describe for the Judge the
9 circumstances surrounding Mr. Mahdi being taken into
10 custody.

11 A As I was using the radio to radio for
12 assistance, further officers to set up a perimeter
13 in the general area, the canine tracked him to the
14 south building of the Las Olas Condominium Complex
15 through the underground parking garage and into a
16 stairwell. As soon as the dog -- at this point,
17 there were no additional officers, I had to enter
18 the building with the dog and myself with no backup
19 officer.

20 We went into a stairwell, which is kind of an
21 external stairwell, it's a concrete stairwell, and
22 immediately the dog's behavior changed, indicated to
23 me that he was in scent pool and that the suspect
24 was close at hand. I radio'd that information to
25 the perimeter officers as they were coming to the

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1305

1 area.

2 We then started to clear the condominium
3 complex one level at a time. And as I got to the
4 top floor, the fifth floor of the complex, one of
5 the perimeter officers radio'd and advised that they
6 saw a person matching the description that I'd given
7 of Mahdi running across what they thought was the
8 third floor of that condominium complex. I ran
9 down, used the stairwell to run down to the third
10 floor with the canine.

11 As I got to the third floor, the officer
12 corrected his assessment of the location and said it
13 was the fourth floor not the third floor. I ran
14 back up the stairwell with the dog to the fourth
15 floor. It was empty. I went up to the fifth floor
16 where I again made contact with the Defendant Mahdi.

17 Q Okay. And what was he doing when you got up on
18 to that fifth floor -- that's an external hallway?

19 A Yes, sir, it's an external hallway. And Mahdi
20 was running away from me, south, running away from
21 me. I deployed the dog to apprehend him. He jumped
22 up on to a walkway ledge facing the parking lot and
23 told me that he was going to jump if I let the dog
24 bite him.

25 Q What did you do at that point in time?

1306

1 A At this point in time, I had no idea who Mahdi
2 was. I recalled the canine. I put him in a down.
3 I had Mahdi at gunpoint. He was standing on the
4 ledge. At that time, I realized he wasn't wearing
5 blue shorts, he was wearing boxer shorts, just
6 underwear. I could see his hands. I could see the
7 majority of his waist. I felt confident that he
8 didn't have a weapon on him. If he did, it may have
9 been a knife. I holstered my weapon and then
10 attempted to talk him off the ledge and talk him out
11 of committing suicide.

12 Q Did he come down off of the ledge?

13 A Yes, he did. He came off the ledge. As he
14 came off the ledge, my uniform's a lit bit different
15 today than what I usually wear when I'm with the
16 dog, I have a tactical uniform in which my gun is on
17 my leg in a tactical holster, Mahdi's eyes went to
18 my gun and he started to walk towards me. I used my
19 department issued taser. I removed that from my
20 holster. It's got a laser sight. It emits a red
21 dot.

22 I put that on -- the laser sight, the red dot,
23 on Mahdi's chest, told him to stop, told him to get
24 on his knees. He hesitated. The dog started to get
25 up and bark. And as the dog started to approach

DARREN FROST - DIRECT BY MR. SORENSON

1307

1 Mahdi, Mahdi went down on his knees. I told him to
2 interlace his fingers behind his head and not to
3 move.

4 At that point, I approached Mahdi. There were
5 still not enough officers available yet for an
6 additional officer to come up. I felt confident,
7 though, with the dog being there and with Mahdi
8 being on his knees that I had a tactical advantage,
9 I took him into custody using handcuffs. I
10 handcuffed him behind his back and then started to
11 walk him out.

12 As we started to walk out down towards the
13 stairwell, he was wrestling around a little bit.
14 The dog took that as an aggressive movement on his
15 part, the dog wanted to try and bite him. I felt
16 Mahdi wanted to try and jump. I couldn't get to my
17 radio, I had both hands full. I was able to put
18 Mahdi up against a little alcove area and reach my
19 pack set to ask for another officer to come up, that
20 the suspect was in custody and he was walked out of
21 the condominium complex back to the patrol cars.

22 Q And you've been this whole time referring to
23 the person that you had apprehended that ran from
24 you and that you apprehended as Mr. Mahdi, do you
25 see him in the courtroom here today, Sergeant?

1 A Yes, I do.

2 Q Can you point him out for the Court?

3 A Mahdi is wearing the orange corrections
4 uniform, sitting on the far, as I'm facing,
5 left-hand side of the defense table.

6 Q That's the individual that you took into
7 custody down in Satellite Beach back on July 21st?

8 A Yes, it is.

9 Q Now, where was he taken after he was taken into
10 custody?

11 A He was walked out of the condominium complex.
12 He was walked back to the patrol cars -- at the
13 patrol car. He was placed into a patrol car at that
14 point. The vehicle that he was in had started to be
15 searched. They found an I.D. indicating that the
16 person we had in custody was Mahdi. That I.D. was
17 run through the NCIC computer data base that a hit
18 came back on Mahdi's name that he had active
19 warrants out of two states, I believe, on murder
20 charges, one of which was to a law enforcement
21 officer.

22 Q And that was in South Carolina that one?

23 A Yes, sir.

24 Q Was he ultimately taken back to your police
25 station, Satellite Beach?

DARREN FROST - DIRECT BY MR. SORENSON

1309

1 A Yes. At that point, he was removed from the
2 patrol car and shackled in addition to the
3 handcuffs. And he was transported back to our
4 police department awaiting transport to the county
5 jail.

6 Q And sitting back at the police station, was he
7 making any small talk with you as far as asking you
8 any questions about the area?

9 A He was. He would ask how much houses went for
10 in the area. I told him, you know, starting around
11 300,000 and then, you know, a million dollars up on
12 the beach. He made some statements as to that would
13 explain why he didn't see any homeless people.
14 Every time he pulled into a beach access, he would
15 see a police car. He made those types of
16 statements.

17 Q Did you then make any comment to him about what
18 had happened?

19 A I did. Approximately two months prior to the
20 arrest of Mr. Mahdi, I had -- was fortunate enough
21 to have the birth of my second son and I have his
22 picture in my patrol car. So as I was getting back
23 into my patrol car getting ready to go back to the
24 station, a picture of my family is there.

25 When I got back to the station, we were talking

1310

1 about the houses and whatnot, I told Mahdi, I
2 thanked him for not using that weapon on me. That
3 weapon is a .223 round, it would have gone through
4 me, my vest and whoever, six people standing behind
5 me. It's a highly, lethal round. If I was actually
6 standing behind the door of my patrol car, that
7 bullet would have gone through the door, through my
8 vest, through me. So I thanked him for not using it
9 and complying with my commands to drop his weapon
10 when I requested him to do so and allowing me to go
11 home to my family that night.

12 Q Did he say anything in response to that, to you
13 making that statement to him?

14 A He did. He looked at me, in very cold eyes,
15 said, The weapon was struck on a three shot -- the
16 selector was stuck on a three shot and I don't think
17 I could have got you -- I couldn't have shot you,
18 the other cop, and excuse my language, that fucking
19 dog.

20 MR. SORENSON: Thank you, Sergeant. Please
21 answer any questions the defense has.

22 MR. WALTERS: We have no questions, Your Honor.

23 THE COURT: Thank you, Officer. You may step
24 down.

25 MR. PASCOE: May it please the Court. Can

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1311

1 Sergeant Frost be excused? We had to put him up
2 first because he's got a plane flight in the next
3 hour.

4 THE COURT: Any objection?

5 MR. WALTERS: No objection, Your Honor.

6 THE COURT: Thank you for coming, Officer.
7 You're excused.

8 MR. PASCOE: The State calls Amy Myers.

9 THE COURT: Ms. Myers, if you'll come forward
10 to be sworn.

11 AMY TRIPP MYERS,
12 having been duly sworn, testified as follows:

13 THE CLERK: State your full name for the
14 record, please.

15 DIRECT EXAMINATION

16 BY MR. PASCOE:

17 Q Good morning, Amy.

18 A Good morning.

19 Q Speak up as loud as you can, at least so Judge
20 Newman and the court reporter can hear you and Mr.
21 Walters. Where do you live, Amy?

22 A First of all, my name is Amy Tripp Myers.

23 Q And where do you live?

24 A Orangeburg County.

25 Q How are you related to the victim, Jimmy Myers?

1 A His wife.

2 Q How long had you and Captain Jimmy Myers been
3 married as of July the 18th, 2004?

4 A Approximately, a year and two or three months.

5 Q And how long ago -- well, let me ask this.
6 What day did y'all get married?

7 A April the 26th, 2003.

8 Q How long had you known Jim Myers before you
9 even got married to him?

10 A We had been together for about -- a little over
11 six years.

12 Q Okay. Describe for Judge Newman just how close
13 a relationship you and Captain Jimmy Myers had?

14 A We were inseparable. We did everything
15 together.

16 Q And the two of you confided in each other?

17 A Yes, sir.

18 Q And, in fact, how much time did you and Jimmy
19 spend in that year and a half that you were married
20 to him?

21 A Well, it wasn't just the year and a half, it
22 was the six years that we were together. All of our
23 free time that we weren't working.

24 Q Talked to each other everyday, saw each other
25 everyday?

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1313

1 A Yes, sir. I mean, we had a little system where
2 when I was away, I would page him a special code
3 that said I love you. I mean -- and I could do
4 that, and he would do that back to me, I could do it
5 many times a day.

6 Q And where was Jimmy working when you met?

7 A At the Orangeburg Department of Public Safety.

8 Q And, obviously, he was working there when you
9 were married as well?

10 A Yes, sir.

11 Q What were Jimmy's duties at the Orangeburg
12 Police Department?

13 A He was a captain with the special operations
14 division.

15 Q How long did he serve with the police
16 department?

17 A He was with -- he served under the department
18 of public safety, they combined in 1987 and from
19 that point on, he served in public safety for a
20 total of 17 years.

21 Q Specifically, how long was he a police officer?

22 A Well, I mean, it would have been the 17 years.
23 I mean, they -- everybody was considered a public
24 safety officer at that point.

25 Q And, in fact, what did he do even before he

1 became a public safety officer?

2 A He worked with the fire department for 14
3 years.

4 Q So how many years of public service in all did
5 Captain Jimmy Myers have with Orangeburg as a
6 fireman and a police officer?

7 A A little over 31 years.

8 Q Now, where were you working back in July of
9 2004?

10 A At the South Carolina State Law Enforcement
11 Division.

12 Q And what were your duties at SLED back then?

13 A I was a special agent assigned in the
14 investigative unit in the Low Country and I also
15 performed security detail as needed.

16 Q When did you leave SLED?

17 A September of this year.

18 Q This year, just a couple months ago?

19 A Yes, sir.

20 Q And why did you leave SLED?

21 A Many reasons, but one of the reasons was the
22 trial was coming up. And this has been a very
23 stressful time in my life and I needed to take some
24 time for myself and prepare for the trial and heal.

25 Q And where were you and Jimmy living back in

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1315

1 July of 2004? In Orangeburg?

2 A Yes, sir.

3 Q City of Orangeburg?

4 A Yes, sir.

5 Q Did he or the two of you own any property in
6 Calhoun County?

7 A Yes, sir.

8 Q And where was that property?

9 A It was close to -- it was close to the
10 intersection of Highway 21 and Road 22, right near
11 I-26.

12 Q I'm going to show you what's been marked as
13 State's Exhibit Number 1.

14 MR. WALTERS: No objection, Your Honor.

15 BY MR. PASCOE:

16 Q Just to give the Judge an idea of where the
17 property is. Does State's Exhibit 1 accurately
18 depict the area in Calhoun County where you could
19 actually point out where the farm is?

20 A Yes, sir.

21 Q It's an aerial of the area?

22 A Yes, sir.

23 MR. PASCOE: I ask that State's Exhibit Number
24 1 be admitted into evidence. I think without
25 objection, Your Honor.

1 MR. WALTERS: Without objection.

2 THE COURT: It's admitted.

3 (State's Exhibit Number 1, blowup
4 photograph, admitted into evidence.)

5 BY MR. PASCOE:

6 Q If you could, Amy, sitting right there, you
7 don't have to get up, okay, maybe just point out to
8 the Judge where I-26 is.

9 A I-26 is here.

10 Q And that's heading which direction?

11 A This is heading south towards Charleston. It's
12 going --

13 Q East?

14 A Or whatever. This is towards Charleston. This
15 is towards Columbia.

16 Q And what road is that right there?

17 A This is Road 22, Burke Road.

18 Q And what's that?

19 A This is the Hess Station, the Wilco Hess
20 Station.

21 Q Where is Highway 21 on State's Exhibit 1?

22 A It's right here. It would come and then
23 intersect right in here (indicating).

24 Q Where is -- point out for the Judge in this
25 area where your farm would be with Jimmy, where you

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1317

1 and Jimmy's farm is?

2 A It would be right in here (indicating) -- well,
3 actually, it would go to the road at some point.

4 Q Okay. How would you enter your farm if you
5 were coming in from the road?

6 A There was a road on Highway 21 that we would
7 use to access our property.

8 Q Approximately, how many acres is the property?

9 A Thirty-seven.

10 Q And what's on the property?

11 A A pond, a shed, fields. We did stuff for
12 wildlife.

13 Q How long did Jimmy own that property?

14 A We bought the property in April of 2001.

15 Q And how often would he go out there?

16 A Hundreds of times, I mean, everyday that he was
17 there in town.

18 Q How often did you go out there?

19 A Not quite as many as him, but just about
20 everyday. I mean, there were periods of time when I
21 would go out everyday, sometimes numerous times of
22 day, hundreds of times.

23 Q And what types of things would the two of you
24 do when you go out -- together, when you go out on
25 that property?

1318

1 A I mean, that's where our dreams were. We did
2 everything.

3 Q I want to ask you some specific questions about
4 that weekend, Friday, July 16th, okay? Where did
5 you and Jimmy end up going that Friday night?

6 A Edisto Island.

7 Q And why did you go to Edisto Beach?

8 A (No response.)

9 Q Are you okay?

10 A We went to celebrate.

11 Q Was that your birthday that week?

12 A Yes, sir. We went to celebrate his sister's
13 birthday, my birthday and his daughter's birthday.
14 We all had birthdays in July. And my birthday was
15 that Tuesday and his daughter's birthday was that
16 Friday.

17 Q Is that his daughter, Jan?

18 A Meredith.

19 Q Jan is his sister?

20 A Yes.

21 Q Was it her birthday as well?

22 A Her birthday was earlier in the month.

23 Q So Jan, Meredith and yourself?

24 A Yes, sir.

25 Q And where did y'all end up staying that Friday

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1319

1 night and Saturday night?

2 A At his sister's -- his sister had access to a
3 creek house, we stayed there.

4 Q And how long did you and Jimmy end up staying
5 down at the beach?

6 A Till Sunday.

7 Q That would be Sunday the 18th?

8 A Yes, sir.

9 Q And did y'all drive back together?

10 A Yes, sir.

11 Q And, approximately, what time did y'all get
12 home from the beach that Sunday?

13 A Approximately, four o'clock p.m.

14 Q And did Jimmy end up going anywhere eventually
15 that afternoon?

16 A Yes, sir.

17 Q And where did he end up going to?

18 A To his father's house.

19 Q Where does his father live in relation to
20 y'all?

21 A Approximately -- just a little over two miles
22 away.

23 Q So a pretty quick trip?

24 A Oh, yes, sir, six or seven minutes.

25 Q Okay. And, approximately, what time did Jimmy

1 go visit his dad that night?

2 A I don't remember the exact time, but somewhere
3 between 5:30 and six o'clock that evening.

4 Q Why did he go see his dad that night after
5 y'all got back?

6 A Two years earlier his mother had died and he
7 always -- every morning he went to see his dad to be
8 with his dad and drink coffee and to talk and just
9 kind of bond with his father and to help his father
10 with the loss of his wife, and he had not been to
11 see him that weekend and so he went there to see him
12 that evening.

13 Q And what vehicle did Jimmy take when he went
14 out to see his dad?

15 A His city owned vehicle.

16 Q His C-O vehicle?

17 A His city owned vehicle.

18 Q City owned vehicle. And was Jimmy on-call at
19 that time, that Sunday night?

20 A Yes, sir.

21 Q In the capacity as a captain with the
22 Orangeburg Police Department?

23 A Yes, sir.

24 (Pause.)

25 MR. WALTERS: No objection to State's 13, Your

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1321

1 Honor.

2 BY MR. PASCOE:

3 Q Let me show you what's been marked, and we'll
4 come back to this later, State's Exhibit 13. Do you
5 recognize the vehicle in State's Exhibit 13?

6 A Yes, sir.

7 Q And what do you recognize it to be?

8 A That was the truck that the city issued to him.

9 Q The one that he drove to the shed that night?

10 A Yes, sir.

11 MR. PASCOE: And I don't believe there's any
12 objection to State's Exhibit 13 being admitted into
13 evidence, Your Honor.

14 THE COURT: It's admitted.

15 (State's Exhibit Number 13, photograph,
16 admitted into evidence.)

17 BY MR. PASCOE:

18 Q When he left your house to go to his dad's that
19 late afternoon, early evening, did you have a
20 specific time when you expected him to come home?

21 A No, sir.

22 Q When did you get concerned about Jimmy's
23 failure to return home that night?

24 A As I was cooking supper, I just glanced at the
25 clock and realized it was a little after 9:00 and

1 looked outside and it was dark. And I was just like
2 this isn't right, he should have been home by now.

3 Q And what did you end up doing when you started
4 getting concerned right after nine o'clock?

5 A I called him on his cell phone. I didn't get
6 an answer, so I called him on his pager thinking
7 that he might have been away from his cell phone and
8 I didn't get a response and that was very unusual
9 because Jim was very prompt with answering his
10 pagers, you know, when someone would page him, he
11 was very prompt at responding. So I called his
12 dad's to find out if he was still over at his dad's
13 because as far as I knew, that was the only place
14 that he was going. And I learned that he had left,
15 approximately, 6:45 that evening. So, obviously, I
16 became very worried. I got in the car and went to
17 his office to see if he was at his office and he
18 wasn't. I called --

19 Q And how did you know he wasn't in his office at
20 the time?

21 A The lights were out.

22 Q So what did you do next?

23 A I called the city dispatch to find out whether
24 he had been called out to any particular scene or
25 gotten caught up in a call and they said that they

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1323

1 hadn't heard from him and so I went out to the farm.
2 On the way up, I called Lieutenant Bill Cartwright
3 and Captain Mike Adams, his best friend, and
4 realized that Mike was in Myrtle Beach.

5 Q That's Captain Mike Adams was in Myrtle Beach?

6 A Yes, sir. And I couldn't get in touch with
7 Bill, so I continued out to the farm.

8 Q Tell the Judge what you did when you got --
9 approximately, what time did you get to the farm,
10 first of all?

11 A I think it was, approximately, 9:15, right
12 around 9:15.

13 Q And what did you do when you first entered the
14 property itself?

15 A Well, I got there hoping that the gate was
16 going to be shut, that way I knew he wouldn't have
17 been down in there and it was open. So I knew that
18 he was down there. And I was -- I had been worried
19 other times about him, but that particular night I
20 was just really, really worried about him. I just
21 felt like he was hurt and needed my help when I saw
22 the gate open. So I drove down the road and pulled
23 into our driveway, which is a long driveway, and saw
24 that the light was on in the shed and -- but his
25 truck wasn't in front of the shed where he normally

1 parks.

2 Q The white, police, city issued truck?

3 A Correct, but it was not in front of the shed
4 where he normally parks, so I continued down that
5 road. There's a pond across from the shed, but
6 there's a -- the dam where we feed the ducks and
7 feed the fish and stuff, that was a little bit
8 further down, so I thought maybe he had driven down
9 there to maybe feed the ducks or something.

10 So I drove down there and saw that his truck
11 was not there and turned back around to go look for
12 him elsewhere. And as I was driving back, I noticed
13 that the door to the shed was open and I knew that
14 wasn't right at all. So I honked my horn thinking
15 that maybe he was around the pond somewhere and I
16 didn't hear any kind of response. So I thought,
17 well, I'll just take a quick peek in the shed to
18 make sure he's not there and -- before I go look for
19 him somewhere else.

20 Q And you went in the shed?

21 A Yes.

22 Q And tell the Judge what you observed when you
23 went in the shed.

24 A I found Jim lying face down.

25 Q Could you immediately tell his condition?

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

1325

1 A Yes, sir.

2 Q That he had died? He was dead?

3 A Yes, sir.

4 Q I want to show you what's been marked as
5 State's Exhibit 67. Do you recognize that?

6 A Yes, sir, except his shirt was on.

7 Q But does that accurately depict the way you had
8 to find your husband that night on July the 18th,
9 2004?

10 A Yes, sir, but I saw his face and that made it
11 worse.

12 MR. PASCOE: I'd ask that State's Exhibit 67 be
13 admitted into evidence, Your Honor.

14 THE COURT: Mr. Walters?

15 MR. WALTERS: No objection, Your Honor.

16 THE COURT: It's admitted without objection.

17 (State's Exhibit Number 67, photograph,
18 admitted into evidence.)

19 BY MR. PASCOE:

20 Q So other than Jim being in the casket, that's
21 the last image you have of your husband?

22 A Yes, sir. And, actually, that picture does not
23 accurately describe it in that it doesn't show his
24 face and that's what I saw was his face.

25 Q And can you even begin to describe how you felt

1 that night when you discovered Jim's body and what
2 you were going through?

3 A I knew that the man I loved was gone
4 immediately and all of the dreams that we had would
5 never be fulfilled.

6 Q What did you end up doing when you discovered
7 Jim's body lying in the shed like that? Who did you
8 call?

9 A I started screaming and screaming and
10 screaming. I couldn't stop. And, finally, I called
11 my lieutenant, Greg Whetstone, to let him know the
12 situation. I couldn't get in touch with him. So I
13 called city dispatch, who told me to call 911 and I
14 called 911.

15 Q And the EMT's and law enforcement arrived at
16 the scene while you were there?

17 A Yes, the EMT's. I went to the gate to escort
18 the EMT's and Calhoun County Sheriff's Office in.
19 And my lieutenant arrived a little while later and
20 then my captain arrived thereafter, some time
21 thereafter.

22 Q And, Amy, you had the -- have you had
23 opportunities after that night, and that night
24 unfortunately, to actually review items that were in
25 the shed that were out of place?

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

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1 A Yes, sir.

2 Q Okay. And I'm not going to go over every item
3 with you, but there are a few items I want to show
4 you first and go through for the Court, okay? I'm
5 going to show you State's Exhibits 5 and 4. Do you
6 recognize those?

7 A Yes, sir.

8 Q And what are those photos of?

9 A The back door where Mr. Mahdi broke in.

10 Q Were those marks to that back door there prior
11 to July 18th, 2004?

12 A No, sir.

13 Q And it accurately depicts the forced entry --

14 A Forced entry, yes, sir.

15 MR. PASCOE: I'd ask that State's Exhibits 4
16 and 5 be admitted into evidence, Your Honor.

17 MR. WALTERS: No objection Your Honor.

18 THE COURT: They're admitted without objection.

19 (State's Exhibit Numbers 4 and 5,
20 photographs, admitted into evidence.)

21 BY MR. PASCOE:

22 Q And maybe using, just to give the Court an idea
23 of which door we're talking about, I'm going to show
24 you, for demonstrative purposes, State's Exhibit 2,
25 okay?

- 1 A Yes, sir.
- 2 Q This is an accurate depiction of the shed and
- 3 the doors of the shed?
- 4 A Yes, sir.
- 5 Q Which door, if you can point on this exhibit
- 6 for the Judge, had those forced entry marks?
- 7 A This rear door (indicating).
- 8 Q And which door would you and Jimmy always go in
- 9 when you entered the shed?
- 10 A Pretty much all the time that door.
- 11 Q And y'all would park over here in this area
- 12 (indicating)?
- 13 A Correct.
- 14 Q And show the Judge where you found Jimmy lying
- 15 that night?
- 16 A Right here (indicating).
- 17 Q And, Amy, are there any other vehicles that are
- 18 at -- were at the shed that are always kept on the
- 19 property?
- 20 A Yes, sir.
- 21 Q And what vehicle was that?
- 22 A We kept his personal vehicle at the shed. We
- 23 didn't have room at my house.
- 24 Q Do you recognize the photos in State's Exhibit
- 25 15?

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

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- 1 A Yes, sir.
- 2 Q And what do you recognize those photos to be?
- 3 A That was Jim's truck.
- 4 Q That was always kept at the shed?
- 5 A Yes, sir.
- 6 Q Basically?
- 7 A Correct.
- 8 Q And it was kept out there on -- prior to July
- 9 18th and that night of July 18th?
- 10 A Correct.
- 11 MR. PASCOE: I'd ask that State's Exhibit 15 be
- 12 admitted into evidence, Your Honor.
- 13 MR. WALTERS: Without objection, Your Honor.
- 14 THE COURT: It's admitted without objection.
- 15 (State's Exhibit Number 15, photograph,
- 16 admitted into evidence.)
- 17 BY MR. PASCOE:
- 18 Q Was there any damage to the vehicle on the
- 19 night of July 18th that wasn't there prior to then?
- 20 A Yes, sir.
- 21 Q If you could, point it out for the Court.
- 22 A This lock had been drilled out. This is the
- 23 passenger door lock and the ignition switch had been
- 24 mauled up and was unable to be driven until it was
- 25 repaired and replaced.

- 1 Q Is there anything missing on the blue vehicle,
2 the blue truck?
- 3 A Yes, sir.
- 4 Q And what is that?
- 5 A His license plate.
- 6 Q And the license tag was on there prior to July
7 18th?
- 8 A Yes, sir.
- 9 Q Who had the keys to the blue truck at the shed?
- 10 A We both had a set of keys.
- 11 Q And where would Jim keep his set of keys to the
12 blue truck?
- 13 A Sometimes in his pocket. I didn't really keep
14 up with that.
- 15 Q Now, you testified already that you worked at
16 SLED at the time of Jim's murder?
- 17 A Yes, sir.
- 18 Q What did you keep at the shed with regards to
19 your employment?
- 20 A I was working on a case, an investigative case,
21 that I was trying to write a report on. I had
22 collected all of the information and was trying to
23 put together a final report.
- 24 Q And every piece of material or everything that
25 y'all document at SLED, basically your reports and

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1 everything, what's the caption up at the top?

2 A State Law Enforcement or For Law Enforcement
3 Only, definitely marked Law Enforcement.

4 Q And I want to show you what's been marked as
5 State's Exhibit number 7, okay?

6 A Yes, sir.

7 Q Do you recognize that photo?

8 A Yes, sir.

9 Q And what does that photo depict?

10 A The little area where I had made a little
11 makeshift desk so that I could work on the report.

12 Q Does this accurately depict the way the items
13 were after Jim's death when you discovered him on
14 July 18th, 2004?

15 A Yes, sir.

16 MR. PASCOE: I'd ask that State's Exhibit 7 be
17 admitted into evidence.

18 THE COURT: Mr. Walters?

19 MR. WALTERS: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (State's Exhibit Number 7, photograph,
22 admitted into evidence.)

23 BY MR. PASCOE:

24 Q And explain for the Judge whether these items,
25 all of these SLED items, your notebooks and

1 everything, were out of place or in place that
 2 night?
 3 A They were out of place.
 4 Q And how were they out of place?
 5 A This notebook was closed and packed away, all
 6 of these papers were -- and files were inside of
 7 this box and...
 8 Q So, obviously, somebody took the time to take
 9 these items out and look at them?
 10 A Yes, sir.
 11 Q While inside the shed?
 12 A Yes, sir.
 13 Q Did Jim keep any weapons or firearms at the
 14 shed?
 15 A Yes, sir.
 16 Q And what type of weapons did he keep at the
 17 shed?
 18 A He kept a .22 and a shotgun.
 19 Q And the .22 is that a rifle?
 20 A Yes, sir.
 21 Q Did either you -- Jim or yourself ever alter
 22 any of those weapons at all?
 23 A No, sir.
 24 Q Do you recognize the items in photograph 39?
 25 A Yes, sir.

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1 Q And what do you recognize those to be?

2 A The butt of the shotgun and the barrel of the
3 shotgun.

4 MR. PASCOE: I'd ask that State's Exhibit 39 be
5 admitted into evidence, Your Honor.

6 THE COURT: What says the defense?

7 MR. WALTERS: No objection, Your Honor.

8 THE COURT: It's admitted without objection.

9 (State's Exhibit Number 39, photograph,
10 admitted into evidence.)

11 BY MR. PASCOE:

12 Q So that's -- again, just to reiterate, that's
13 the butt of the shotgun?

14 A Yes, sir.

15 Q Somebody had sawed off?

16 A Yes, sir.

17 Q And that's the barrel of it there?

18 A Yes, sir. And that's right -- this is the work
19 bench above there. So it's right under the work
20 bench and beside the work bench.

21 Q And the shotgun was originally brown?

22 A Correct.

23 Q Somebody spray painted it black?

24 A Correct. I found the bucket where the barrel
25 had been sprayed -- or the gun had been sprayed.

- 1 Q Now, those two items, the shotgun and the .22,
2 those weren't recovered on July the 18th, were they?
- 3 A No, sir.
- 4 Q They were taken?
- 5 A Yes, sir.
- 6 Q And as you're aware, you've heard the testimony
7 of course, the white truck was recovered in Florida
8 on July 21st?
- 9 A Yes, sir.
- 10 Q In State's Exhibit 13, was this damage to the
11 vehicle there prior to July the 18th?
- 12 A No, sir.
- 13 Q Is this the license tag that goes with Jim's
14 city issued police truck?
- 15 A No, sir.
- 16 Q Tell Judge Newman what that tag goes to.
- 17 A That goes to his personal truck.
- 18 Q The blue truck?
- 19 A The blue truck, yes.
- 20 Q In State's Exhibit 15?
- 21 A Yes, sir.
- 22 Q Okay. And what does the tag that was located
23 in the back seat go to?
- 24 A His city issued vehicle, the white truck.
- 25 Q What sorts of items did Jim routinely keep in

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

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1 his pockets?

2 A Stuff normal people keep, keys, change. He did
3 keep his badge in his pocket and a knife, a comb,
4 sometimes he had his badge.

5 Q So his badge, comb, change, stuff like that?

6 A You know, I mean, it varied from day-to-day.

7 Q You testified his pager was kept in his pocket,
8 too?

9 A Yes, sir.

10 Q I'm going to show you what's been marked as
11 State's Exhibit 9, okay? Do you recognize what's in
12 State's Exhibit 9?

13 A Yes, sir.

14 Q And what does that depict in State's Exhibit 9?

15 A The back portion of the shed.

16 Q Does it accurately depict the way it was that
17 night of July 18th after Jimmy's death?

18 A Yes, sir.

19 MR. PASCOE: I ask that State's Exhibit Number
20 9 be admitted into evidence, Your Honor.

21 THE COURT: Mr. Walters?

22 MR. WALTERS: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (State's Exhibit Number 9, photograph,
25 admitted into evidence.)

1 BY MR. PASCOE:

2 Q And if you could, Amy, I want you to -- what

3 are the significance of the items that are on this

4 chair right here for the Court? What is that right

5 there?

6 A That's a little pocket knife.

7 Q And where did Jim keep that pocket knife?

8 A In his pocket.

9 Q And what else do you see on that chair?

10 A It looks like a penny or maybe some change or

11 something, a comb and that was a key to the Mule and

12 tractor.

13 Q Where did Jim keep all of those items?

14 A In his pocket.

15 Q What is this right here?

16 A It's his pager.

17 Q And where did Jim keep that?

18 A In his pocket.

19 Q Did you ever receive or recover Jim's badge

20 after July the 18th?

21 A No, sir.

22 Q The one that he would keep in his pocket?

23 A Uh...

24 Q You never recovered it?

25 A I mean, he didn't always keep it in his pocket.

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1 Q But did you ever recover it?

2 A No, sir.

3 Q And, Amy, you didn't know the defendant, Mikal
4 Mahdi, back in July 18th, 2004?

5 A No, sir.

6 Q He never had permission to be on your property,
7 did he?

8 A No, sir.

9 Q Just a couple more questions, okay?

10 A Yes, sir.

11 Q Where were you and Jim married?

12 A At the shed.

13 Q The same area where you had to find your
14 husband dead?

15 A Yes, sir.

16 Q And at my request, did you get a few -- four
17 photos that we could share with the Court about the
18 importance of that area to you?

19 A Yes, sir.

20 Q I'm going to show you State's Exhibit 79, 80,
21 81 and 82. Are these the photographs that you
22 brought to court today of you and Jim?

23 A Yes, sir.

24 MR. PASCOE: I'd ask that these be admitted
25 into evidence, Your Honor.

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1 MR. WALTERS: No objection, Your Honor.

2 THE COURT: They are admitted.

3 (State's Exhibit Numbers 79 through 82,
4 photographs, admitted into evidence.)

5 BY MR. PASCOE:

6 Q I'm going to go over a couple of them with you,
7 okay?

8 A Okay.

9 Q I'm going to show them to the Court. That door
10 in State's Exhibit 81, what does that go to?

11 A Back side of the shed, the back room.

12 Q And, in fact, the whole back side of State's
13 Exhibit 82 where you and Jim are having that photo,
14 what area is that right there?

15 A The wing side, I mean, that's the door that we
16 normally entered. And then over here would be the
17 back door.

18 Q And, in fact, the door right here is the door
19 that you went in and found your husband dead?

20 A Yes, sir.

21 Q You testified earlier about the last image that
22 you'll ever have to have of your husband, Jim, in
23 the casket and, of course, in the shed. Did you
24 want to bring another image to the courtroom today?

25 A Yes, sir.

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

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1 Q Do you recognize State's Exhibit 78?

2 A Yes, sir.

3 MR. PASCOE: I'd ask that State's Exhibit 78 be
4 admitted into evidence, Your Honor.

5 THE COURT: What says the defense?

6 MR. WALTERS: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (State's Exhibit Number 78, photograph,
9 admitted into evidence.)

10 BY MR. PASCOE:

11 Q And, finally, Amy, although I think you've
12 really done it throughout your testimony today, but
13 if you could, describe for Judge Newman as best you
14 can just the impact that Jim's death has had on your
15 life.

16 A I'd like to read something that I've written.

17 MR. PASCOE: Do you want me to let you read it
18 first? Do you want to read what she's going to read
19 first?

20 MR. WALTERS: Yes.

21 MR. PASCOE: Can I have that, Amy? Give us one
22 minute, okay?

23 (Pause.)

24 MR. WALTERS: No objection, Your Honor.

25 THE COURT: It's admitted without objection.

1 BY MR. PASCOE:

2 Q Okay. You can go ahead and read that to the
3 Court, okay?

4 A Your Honor, the day that Jim and I bought the
5 farm on April 20th, 2001, the day after Jim's 53rd
6 birthday, we celebrated by camping out by the pond,
7 the pond where our dreams would become our reality.
8 We snuggled up to the warm fire and were sung to
9 sleep by the croaking frogs. The next morning we
10 awoke to the mist rising off the pond, our pond, the
11 same pond in which Mr. Mahdi threw Jim's favorite
12 fishing pole during his brief but much too long
13 visit.

14 Nearly a year later, the day after Valentine's
15 day 2002, Jim and I looked at the newly raised walls
16 of our shed, hugged each other and like giddy
17 children full of hope, scratched our names in the
18 freshly poured concrete just a few feet away from
19 the spot where Jim took his last breath.

20 About a year later on April 26th, 2003, Jim and
21 I, surrounded by our families and beaming with love
22 for each other, pledged our vows of love and
23 marriage just ten feet in front of the same door
24 that Mr. Mahdi used to break into our shed.

25 A little over a year later, the fateful evening

AMY TRIPP MYERS - DIRECT BY MR. PASCOE

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1 of July 18th, 2004, I found the love of my life, my
2 soulmate, the partner that my life revolved around
3 lifeless, lying in a pool of blood and his body
4 burned by someone who didn't even know him. As I
5 screamed those blood curdling screams of pain and
6 anguish, I instantly knew that the man with whom I
7 had just spent the last six years of my life
8 dreaming of a beautiful future was gone like a
9 vapor. I died that night and haven't been the same
10 person since.

11 Today, nearly two and a half years later, the
12 grounds that were our sacred paradise that we kept
13 so neatly manicured are grown up with dog fennel,
14 Polkberry plants and other various weeds. I have
15 yet to walk that once familiar ground between the
16 pond and the shed without my heart tearing apart
17 missing Jim and thinking about all of our
18 unfulfilled dreams.

19 Sir, we didn't have enough time together.
20 Thank you.

21 MR. PASCOE: Thank you, Amy.

22 MR. WALTERS: We have no questions, Your Honor.

23 THE COURT: You may step down.

24 We'll take a ten minute recess.

25 (Brief Recess.)

JAMES R. WOODLEY - DIRECT BY MR. PASCOE

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1 (State's Exhibit Number 83, receipt, and
2 State's Exhibit Number 84, photograph, were marked
3 for identification purposes.)

4 THE COURT: Solicitor, your next witness.

5 MR. PASCOE: Thank you, Your Honor. The State
6 would call Sheriff James Woodley.

7 JAMES R. WOODLEY,

8 having been duly sworn, testified as follows:

9 THE CLERK: State your full name for the record
10 please, sir.

11 THE WITNESS: Sheriff James R. Woodley.

12 DIRECT EXAMINATION

13 BY MR. PASCOE:

14 Q Good morning, Sheriff.

15 A Good morning.

16 Q I want to thank you for coming down here today.

17 And are you the sheriff for Brunswick County,

18 Virginia?

19 A Yes, sir.

20 Q How long have you been the sheriff at Brunswick
21 County?

22 A Next month will be 15 years.

23 Q And how long have you been in law enforcement
24 all together?

25 A Thirty-three years.

JAMES R. WOODLEY - DIRECT BY MR. PASCOE

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1 Q And if you could, tell the Judge where exactly
2 Brunswick County is in Virginia.

3 A Brunswick County is approximately 340 miles
4 north from here on 95 to 58, central part of
5 Virginia.

6 Q How large is Brunswick County?

7 A Five hundred seventy-nine square miles,
8 approximately, 18,600 population.

9 Q And how many deputies do you have on your
10 police force?

11 A At this time?

12 Q Yes, sir.

13 A Thirteen field deputies.

14 Q How many did you have back in 1998?

15 A Eight.

16 Q Are you familiar with the defendant, Mikal
17 Mahdi?

18 A Yes, sir. I've met him twice.

19 Q And tell the Judge about how you met him?

20 A The first time I met the gentleman was there
21 was some stolen property found at the residence he
22 was living in at the southern part of Brunswick
23 County east. And then I met him again when we had a
24 standoff. The --

25 Q I was going to ask you specifically about that

1 standoff on June 30th, 1998. Go ahead and if you
2 could, describe that for the Court. What happened?

3 A It was approximately -- I got the call around
4 11:15, between 11:15 and 11:30 that morning. The
5 deputy had a juvenile order to take the individual
6 back to the detention center. And we had a show
7 cause for his father for failure to appear.

8 The gentleman in question, he was convicted for
9 breaking and entering in a house in Mecklenburg
10 County and the day of sentencing, they failed to be
11 there. So the court sent a detention order for us
12 to pick him up and also a failure to appear for the
13 father because he was released to his custody.

14 Q And for clarification, the adjudication was for
15 the defendant, Mikal Mahdi, for the breaking and
16 entering?

17 A Yes, sir.

18 Q And that's why you went to go pick him up, as
19 well as the father for failure to show up in court?

20 A Yes, sir.

21 Q Where did you have to go to pick up the
22 defendant?

23 A At his grandmother's residence, which is about
24 a mile and a half out of town on Highway 46. We
25 call it the Mayfield section.

JAMES R. WOODLEY - DIRECT BY MR. PASCOE

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1 Q And what items had the defendant stolen in that
2 breaking and entering conviction?

3 A The report was auto -- like speakers, tape
4 player and also it was a handgun, a .44 caliber
5 magnum, that was stolen from the house in
6 Mecklenburg County.

7 Q And that weapon was never recovered?

8 A No, sir.

9 Q And did that give you some concerns on that
10 morning, in the afternoon?

11 A Yes, sir.

12 Q Tell the Judge what happened as you and your
13 deputies went to pick the defendant up, Mr. Mahdi --
14 Mikal Mahdi.

15 A I got on the scene approximately, like I said,
16 11:30. By me being familiar, knowing the
17 defendant's father, I went there and tried to talk
18 to him to get him to surrender. A deputy had gone
19 there prior and the father had came out. He
20 explained to him why he was on the scene and that's
21 when his father dropped the paper at his feet and
22 said, We're not going, and ran back in the house.

23 When I got the call and got on the scene, I
24 talked to the father through the window, no results.
25 And while I was standing between the living room

1 window and the door, the other officers was putting
2 on their gear, the bullet proof vests and getting
3 weapons out of the vehicle and I heard the
4 individual holler to his father, The MF's got guns
5 out there, and some liquid came out of the window.

6 Q Did he say MF's?

7 A No.

8 Q What did he say?

9 A He said, The mother fuckers got a gun.

10 Q And who said that?

11 A The individual, the defendant.

12 Q Mr. Mikal Mahdi sitting in the courtroom?

13 A Yes, sir.

14 Q Tell the Court what happened.

15 A At that time, some liquid came out of the
16 window over my shoulder. I exited back to my
17 vehicle.

18 Q And describe for the Judge how long this
19 standoff took place and what happened.

20 A I arrived on the scene, I'm saying we probably
21 started about 11:15 that morning. And at 8:30 that
22 afternoon, we went into the residence and subdued
23 the individual and his father and brought them out.
24 So close to eight hours.

25 Q And when you brought the defendant out, did he

JAMES R. WOODLEY - CROSS BY MR. KOGER

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1 say anything to you?

2 A He made a statement -- we had him in custody
3 and was bringing him out, two officers on each side,
4 he made the statement that, I'm going to kill a cop
5 before I die.

6 Q And, Sheriff, for clarification, the person who
7 told you, back on June the 30th, 1998, after he was
8 arrested, that he was going to kill a cop before he
9 died, do you see him in the courtroom today?

10 A Yes, sir.

11 Q Point him out for Judge Newman.

12 A The defendant over here dressed in orange,
13 sitting next to his attorney.

14 MR. PASCOE: Thank you, sir. Answer any
15 questions the defense counsel has for you.

16 CROSS-EXAMINATION

17 BY MR. KOGER:

18 Q Mr. Woodley, you testified to just having two
19 incidents in which you dealt with Mikal Mahdi?

20 A Yes, sir.

21 Q And on this particular incident with the
22 standoff, it was mainly with the father, correct?

23 A Sir?

24 Q This incident here with the standoff was with
25 the father, correct?

- 1 A No, sir, it was both of them. We had a
2 detention order to pick him up, the defendant, to
3 take him to the juvenile detention center. And we
4 had a show cause for the father for failure to
5 appear in court with the juvenile.
- 6 Q So his case was already adjudicated at that
7 particular point?
- 8 A Yes, sir.
- 9 Q It was already adjudicated. And what age was
10 Mr. Mahdi at that time?
- 11 A Fifteen.
- 12 Q Fifteen?
- 13 A Yes, sir.
- 14 Q And had you had any prior dealings with the
15 father before that time?
- 16 A Yes, sir.
- 17 Q Okay. I think you stated in your testimony
18 that you actually went to see -- and you attempted
19 to talk with him, correct?
- 20 A Correct.
- 21 Q All right. Prior to that incident, how long
22 had you known the father?
- 23 A We grew up together.
- 24 Q You grew up together?
- 25 A Yes, sir. We went to high school together.

JAMES R. WOODLEY - CROSS BY MR. KOGER

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1 Q All right. So you had a prior dealing with the
2 father as far as it relates to any type of charges
3 or anything?

4 A Yes, sir.

5 Q Okay. So other than you growing up with the
6 father, you had a law enforcement history -- well,
7 he had a law enforcement history with you, correct?

8 A I wouldn't say a history, just a couple of --
9 it was simple assault on family members.

10 Q And you felt comfortable enough, because you
11 grew up together, to try to talk with him?

12 A Correct.

13 Q What was his response, the father's response?

14 A He didn't respond to us. He didn't come out.

15 Q He didn't respond at all?

16 A No, sir.

17 Q Prior to that incident, did you have a good
18 relationship with his father?

19 A Just speaking to him when I see him, you know.
20 Like I said, we went to high school and elementary
21 school together, just speaking to him, that's all.

22 Q So he was never any problem with you speaking
23 -- y'all speaking back and forth during that time?

24 A No, sir.

25 Q Were you aware of the circumstances that his

1 father was bringing up Mr. Mahdi?

2 A Yes, sir.

3 Q Okay. Did he have a difficult time bringing up
4 Mr. Mahdi?

5 A No, sir.

6 Q Okay. Not -- the type of relationship that the
7 two of y'all had, would y'all -- you say speak, did
8 y'all ever get into any in-depth conversation, talk
9 to each other or anything?

10 A About his family?

11 Q About his family.

12 A No, sir.

13 Q Y'all didn't go out or anything?

14 A No, sir.

15 Q Okay. Y'all would just say hi and bye?

16 A Correct.

17 MR. KOGER: No further questions. Thank you.

18 THE COURT: Solicitor.

19 MR. PASCOE: Just one question, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. PASCOE:

22 Q Sheriff, in your capacity in law enforcement,
23 did you know of any occasions where there were any
24 allegations that the father had ever physically
25 abused his son, Mr. Mahdi?

JAMES R. WOODLEY - RECROSS BY MR. KOGER

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1 A No, sir. I would say, in law enforcement, that
2 his father was overprotective with the two boys when
3 he raised them.. . .

4 MR. PASCOE: Thank you, Sheriff.

5 RECROSS-EXAMINATION

6 BY MR. KOGER:

7 Q But as Sheriff of Brunswick County, you
8 wouldn't have any access to any DSS records or
9 anything, would you?

10 A I didn't quite --

11 Q You wouldn't have access to any DSS records as
12 Sheriff of Brunswick County?

13 A No, sir. . .

14 MR. KOGER: Thank you. No further questions.

15 THE COURT: Thank you, Sheriff. You may step
16 down.

17 MR. PASCOE: Linda Coulson, Your Honor.

18 LINDA LEE COULSON,

19 having been duly sworn, testified as follows:

20 THE CLERK: Please state your full name for the
21 record please, ma'am.

22 THE WITNESS: My name is Linda Lee Coulson.

23 DIRECT EXAMINATION

24 BY MR. PASCOE:

25 Q Good morning, Ms. Coulson. I want to thank you

1 for coming down here today. Where do you currently
2 work, Ms. Coulson?

3 A I currently work for the Goochland Department
4 of Social Services in Goochland, Virginia.

5 Q How long have you worked there?

6 A I've worked there, approximately, eight years.

7 Q Where were you working back in 1997?

8 A I worked for the Reception and Diagnostic
9 Center, which is part of the juvenile justice
10 system.

11 Q In the State of Virginia?

12 A In the State of Virginia, in Bon Air, Virginia.

13 Q What years did you work with the Department of
14 Juvenile Justice?

15 A I worked there from, approximately, from
16 September of 1994 through the end of January 1998.

17 Q And what were your duties with the Reception
18 and Diagnostic Center at DJJ?

19 A I was a counselor at the center, which was part
20 of an assesement team to evaluate all juveniles
21 committed to the juvenile justice system in
22 Virginia.

23 Q Okay. And were you a counselor for a
24 defendant, Mikal Mahdi, back in December of 1997?

25 A Yes, sir, I was.

LINDA LEE COULSON - DIRECT BY MR. PASCOE

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1 Q And what was the defendant committed to the
2 department of juvenile justice for back then?

3 A He was committed for two counts breaking and
4 entering and two counts grand larceny.

5 Q And how old was Mr. Mahdi at the time?

6 A He was age 14 years, nine months.

7 Q And as the defendant's counselor, did you
8 assist in preparing an evaluation on him while he
9 was committed at the Reception and Diagnostic
10 Center?

11 A Yes, sir, I did.

12 Q And you're actually using that to refresh your
13 memory right now?

14 A Yes, sir, I am.

15 Q And, also, do you have a copy of your
16 evaluation?

17 A Yes, sir, I do.

18 Q Can I see that evaluation?

19 A Uh-huh.

20 (State's Exhibit Number 85, evaluation, was
21 marked for identification purposes.)

22 Q I'm going to show you what's now been marked as
23 State's Exhibit 85. Is that your evaluation of
24 Mr. Mahdi when you were his counselor?

25 A Yes, sir, it is.

1 Q And does it accurately depict your entire
2 evaluation?

3 A Yes, sir.

4 MR. PASCOE: I'd ask that State's Exhibit 85 be
5 admitted into evidence, Your Honor.

6 THE COURT: What says the defense?

7 MR. WALTERS: Without objection, Your Honor.

8 THE COURT: It's admitted.

9 MR. PASCOE: Thank you, Your Honor.

10 (State's Exhibit Number 85, evaluation,
11 admitted into evidence.)

12 BY MR. PASCOE:

13 Q And, specifically, what were your duties as
14 Mr. Mahdi's counselor?

15 A My duties were to conduct an interview with
16 him, to do what is called a substance abuse
17 evaluation using an instrument called the Sassy and
18 to make treatment recommendations to the rest of the
19 staffing team on the day of his staffing.

20 Q And as his counselor, you were aware of his
21 range of intellectual functioning?

22 A Yes, sir. I was made aware of that at the time
23 of his staffing.

24 Q And what was his range of functioning,
25 intellectual functioning.

LINDA LEE COULSON - DIRECT BY MR. PASCOE

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1 A In the juvenile justice system there in the
2 Reception and Diagnostic Center, he was tested to
3 have a full scale IQ of 108.

4 Q And that's the upper end range then?

5 A That was in his record considered to be in the
6 upper average range, yes, sir.

7 Q And when did Mr. Mahdi's evaluation begin with
8 you, ma'am?

9 A He was received at the Reception and Diagnostic
10 Center on December 2nd of 1997.

11 Q And when was your evaluation completed?

12 A And my evaluation was completed as of January
13 14th, 1998.

14 Q Now, the evaluation is in evidence so I don't
15 want you to go over the entire evaluation. The
16 Judge will have time to read it later. But I want
17 to highlight a few things with you, specifically on
18 page two of the socialization information. How did
19 Mr. Mahdi describe himself to you?

20 A He described himself as a quiet person who is
21 always up to something. He denied that he has any
22 strengths except for robbing people.

23 Q And now on page one of the community
24 information, how did the defendant describe himself
25 among his peers?

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1 A He described himself as a leader among his
2 peers. He described himself as -- he stated, I'm my
3 own person.

4 Q Did you also document information he gave you
5 concerning substance abuse and the sell of drugs?

6 A Yes, sir. As far as substance abuse, he
7 admitted to regular use of marijuana. He reported
8 that he began smoking marijuana at age 12 and
9 admitted that he had been smoking heavily on a daily
10 basis since that time. He advised me that he had
11 been involved in selling crack cocaine since Spring
12 of that year, which would have been 1997.

13 Q And, again, this is all coming from 14-year-old
14 Mikal Mahdi?

15 A Yes, sir.

16 Q His strength is robbing people?

17 A Yes, sir.

18 Q As well as all of the other information you've
19 given. And as far as Mr. Mahdi, did he give you his
20 view as far as escapes and trying to elude law
21 enforcement? And, specifically, I'm looking at page
22 two of the community information.

23 A Yes, sir. He was describing some incidents
24 leading to an arrest. He advised me that the police
25 had stopped him and required that he sit in a police

LINDA LEE COULSON - DIRECT BY MR. PASCOE

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1 vehicle.

2 DEFENDANT MAHDI: Hey, I've never seen this
3 woman in my life.

4 THE WITNESS: He stated that he opened the seat
5 belt and left the car and began running, said that
6 it didn't feel good going to jail.

7 BY MR. PASCOE:

8 Q So he testified that escape was to be expected?

9 A Yes. He also stated, No one's just going to
10 say I'm going to go.

11 Q And what was your opinion as the defendant
12 is -- of the defendant as far as his respect for
13 others?

14 A His comments to me during the interview
15 suggested that he had little respect for the rights
16 and property of others. He expressed no remorse for
17 any of his incidents leading to the charges. And he
18 also expressed no empathy for the impact of his acts
19 upon others.

20 Q And did he exhibit any aggressive behavior
21 while he was at the diagnostic center? I'm looking
22 at the supervision information.

23 A According to records at the cottage he was
24 housed at, he was charged with assaulting another
25 youth in his cottage, which did result in bodily

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1 injury, but I don't have the details other than
2 that.

3 Q And, finally, what were your recommendations
4 back in January of '98 as far as what to do with the
5 defendant?

6 A The evaluation team recommended that he be
7 housed at the Hanover Juvenile Correctional Center.
8 And I'm looking for -- the treatment recommendations
9 included substance abuse services, values
10 clarification, self-esteem, family services and
11 problem solving skills. It was recommended that he
12 receive treatment in those areas.

13 MR. PASCOE: Thank you again, Ms. Coulson.

14 THE COURT: Cross-examination.

15 MR. WALTERS: May it please the Court, Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MR. WALTERS:

19 Q Ms. Coulson, can I see the report you have
20 there, ma'am?

21 A (Witness complies.)

22 Q Now, this report that was prepared, you
23 prepared this report, ma'am?

24 A Yes, sir, I did.

25 Q And it's your testimony that you personally saw

LINDA LEE COULSON - CROSS BY MR. WALTERS

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1 Mikal Mahdi?

2 A I do not remember Mr. Mahdi. I remember -- I
3 recognize my signature. I know I wrote that report.
4 It's been almost nine years since I worked at the
5 Reception and Diagnostic Center.

6 Q My question is, is that did you personally meet
7 with Mr. Mahdi --

8 A Yes, sir, I did.

9 Q -- and assess his condition?

10 A And my signature on that report would document
11 that I did in order to complete that report.

12 Q All right. Well, let's go through what it says
13 on the report. It essentially goes through and says
14 that you're the counselor; is that correct?

15 A Yes, sir, that is correct.

16 Q It also says that a gentleman named Lance
17 Burton is the person that was the cottage
18 supervisor?

19 A That's correct.

20 Q And, also, there was an educational evaluator
21 named Steve Holdron; is that right?

22 A That's correct.

23 Q And then there's a psychologist named Michael
24 Shoomate (ph); is that correct?

25 A That is correct.

1 Q All right. Now, the first report that you have
2 here is the evaluation profile and it goes through
3 the date of birth. And it gives an ESR staffing
4 date. Of course, it's a typed written report. And,
5 of course, in this report, it goes through your
6 assessment with regards to Mr. Mahdi. Now, I know
7 it was nine years ago. When were you contacted by
8 the Solicitor's office?

9 A The first time, earlier this year, back in
10 January I believe.

11 Q And then you went and you pulled out this
12 report; is that correct?

13 A Sir, I don't have copies of the department of
14 correction reports at my house. They were kept in
15 the juvenile justice office.

16 Q All right. But, nevertheless, you went back
17 and reviewed this report to prepare for today; is
18 that right?

19 A Yes, sir.

20 Q And it's your testimony that you personally met
21 with Mr. Mikal Mahdi?

22 A It would be my testimony, yes, sir, that I
23 personally met with him in order to complete that
24 report.

25 Q And did you talk with his father in regards to

LINDA LEE COULSON - CROSS BY MR. WALTERS

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1 his condition or anything of that nature?

2 A I don't recall talking to his father and
3 there's no documentation on the report.

4 Q Did you talk to his mother with regards to
5 Mr. Mahdi?

6 A No, sir.

7 Q So you didn't talk to his mother. You didn't
8 talk to his father. Did you talk to any other
9 family members?

10 A No, sir.

11 Q Now, most of the information that you have
12 obtained, you would draw that from other individuals
13 working within the system; is that right?

14 A No, sir. Most of the information actually that
15 I placed in my report was from my interviews with
16 Mr. Mahdi, information that he reported to me.

17 Q All right. So this child was 14 years old at
18 this time?

19 A Yes, sir.

20 Q And it's your testimony that this is
21 information you obtained from Mr. Mahdi?

22 A Yes, sir.

23 Q Now, you indicated that -- I want to make sure
24 I'm clear about your testimony. You said some
25 detrimental things. And the things that you related

1 to this Court, you've indicated that this was told
2 to you by Mr. Mahdi?

3 A Yes, sir.

4 Q Now, in discussing this issue with Mr. Mahdi,
5 did you go through his home life?

6 A There is a section in the report where we
7 discussed his family, yes, sir.

8 Q I understand that, but did you discuss his
9 mother and the absence of his mother?

10 A There is a reference in my report that he had
11 not had recent contact with his mother.

12 Q Well, I believe --

13 A He did not provide a lot of information to me.
14 The information in my report regarding his family
15 was information that he provided to me.

16 Q Well, I want to make sure we're clear because
17 His Honor is making a very important decision today.

18 A Yes, sir.

19 Q Your report simply states that the report
20 indicates that his mother is 34 years old and her
21 employment status is not reported; is that correct?

22 A That information would have come from the
23 committing juvenile record. I believe he was
24 committed from Brunswick. And juveniles, when
25 they're committed, usually come to the Reception and

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1 Diagnostic Center with reports completed by the
2 local probation department.

3 Q All right. Well, what I'm getting at is, is
4 that you don't rely on a 14-year-old kid to give you
5 all of the information, you draw upon other sources;
6 is that right?

7 A Any other information that is supplied to the
8 Reception and Diagnostic Center.

9 Q But in the process of preparing your report,
10 you gather information from other sources. You've
11 never talked to the parents. You never talked to
12 his mother. You never talked to his father. And
13 you had a conversation with the child; is that
14 right?

15 A Yes, sir, that's how the reports are completed.

16 Q So as far as having a complete picture of
17 what's going on with the kid, you just don't have
18 that, do you?

19 A I did not have access to talking to either his
20 mother or his father.

21 Q All right. Did you talk to his grandmother?
22 She's present in the courtroom. Do you remember
23 talking to her?

24 A No, sir. None of these individuals came to
25 talk to me or contacted me at the Reception and

1 Diagnostic Center.

2 Q But in the process of talking to this kid, did
3 you make an attempt to talk to any family members?

4 A Sir, that is not the way the reports are
5 completed at the Reception and Diagnostic Center.
6 We do not go into the field and interview anyone.

7 Q All right. So what you're telling this Judge
8 is, is that in order for you to draw a report
9 together, you rely on the previous reports that have
10 been submitted, is that correct, because that's your
11 testimony?

12 A Yes, sir.

13 Q All right. So whatever someone else has
14 written, you rely on that. And in addition to that,
15 you simply talk to the child?

16 A Yes, sir.

17 Q So between the child and the other reports, you
18 draw up an assessment and then you sign your name to
19 it?

20 A And also the behavior of the juvenile while at
21 the Reception and Diagnostic Center.

22 Q All right. Well, let's go into that. You
23 stated that you assess the behavior of a child while
24 they're there -- do you have a copy of your report?

25 A You have the copy of my --

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1 Q No. I'm asking -- you came here to testify
2 today.

3 A Yes, sir.

4 Q The Solicitor walked over and handed this to
5 me. What do you have with you today to testify in
6 this court about Mr. Mahdi? Do you have any
7 documentation? You're here testifying as an expert,
8 what documentation do you have with you?

9 MR. PASCOE: Objection, Your Honor, testifying
10 as expert, what documentation he's holding in his
11 hand.

12 THE COURT: You may answer the question. The
13 objection is overruled.

14 THE WITNESS: I had the report that you're
15 holding in your hand, which I wrote back in 1998.

16 BY MR. WALTERS:

17 Q All right. So what you're saying is, is that
18 this documentation that was handed to you from nine
19 years ago, as far as any other documentation with
20 you in regards to Mr. Mahdi and your assessment of
21 his condition, mainly remains the same, that you
22 relied on some reports that were written by other
23 individuals; is that right?

24 A Correct.

25 Q And you relied on information that was given to

1 you by a 14-year-old kid; is that right?

2 A Yes, sir.

3 Q And you never talked to his mother. You've
4 never talked to his father. You've never talked to
5 his grandmother. You've never talked to anybody in
6 his family; is that right?

7 A That is correct.

8 Q And you consider that to be a proper evaluation
9 of Mr. Mahdi?

10 A At the time we -- for what I was asked to
11 evaluate, yes. I was asked to evaluate his
12 perceptions of the criminal acts he'd been involved
13 in and what ideas he had about his future, that was
14 what my report was about.

15 Q You signed your name to this document, Linda L.
16 Coulson, Counselor, Reception and Diagnostic Center;
17 is that correct?

18 A Yes, sir.

19 Q Tell me, why should this Court take into
20 consideration what you said in any serious manner
21 when you never talked to the family, you never
22 talked to anyone with regards to this kid and you
23 relied on reports that were filed by other law
24 enforcement officials?

25 A My report was mainly on the acts that the

LINDA LEE COULSON - CROSS BY MR. WALTERS

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1 juvenile had been involved in and his comments about
2 those acts and most of my comments in my report
3 resulted from that.

4 Q Don't you consider this to be a biased report
5 because what you did was is -- you're a counselor
6 and what you're supposed to do is assess the child,
7 is that right, the home life, his academic life,
8 things of that nature? You determined his IQ, his
9 family and then you're supposed to make an
10 assessment; is that correct?

11 A My job was not to assess the whole life of
12 Mr. Mahdi, no, sir.

13 Q But the point I'm making is, is that the report
14 that you have before this Court today is biased
15 because it's written based on reports written by law
16 enforcement and, of course, your conversations with
17 a 14-year-old kid; is that correct?

18 THE COURT: Which question do you want her to
19 answer?

20 BY MR. WALTERS:

21 Q Is your report biased because you did not get
22 the full picture?

23 A Sir, I felt I did get the full picture on
24 Mr. Mahdi's comments about the criminal acts he had
25 been involved in.

1 Q But you were contacted over a year ago and this
2 is the only documentation that you have?

3 A Yes, sir, that's the only report I wrote while
4 at the Reception and Diagnostic Center in reference
5 to Mr. Mahdi.

6 MR. WALTERS: Your Honor, I have no further
7 questions.

8 MR. PASCOE: Thank you, Ms. Coulson.
9 We call Ms. Cindy Collins next, Your Honor.

10 THE COURT: Solicitor, you referenced some
11 report that I would be looking at, did you offer
12 that into evidence?

13 MR. PASCOE: Yes, sir, it's in evidence.

14 THE COURT: State's Exhibit Number...

15 MR. PASCOE: 85.

16 THE COURT: What says the defense?

17 MR. WALTERS: Your Honor, it's been admitted.
18 And under Rule 901, I believe she authenticated the
19 document and stated that she signed the document. I
20 just ask the Court to take into consideration my
21 cross-examination with regards to that document. I
22 don't think we can prohibit it under the rules of
23 evidence.

24 THE COURT: The exhibit is admitted.

25 *****

CINDY COLLINS - DIRECT BY MR. PASCOE

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1 CINDY COLLINS,
2 having been duly sworn, testified as follows:
3 THE CLERK: Please state your full name for the
4 record, please.
5 THE WITNESS: Cindy Collins.
6 DIRECT EXAMINATION
7 BY MR. PASCOE:
8 Q Good afternoon, Ms. Collins?
9 A Hello.
10 Q I want to thank you for coming down here. You
11 also live in the Richmond, Virginia area?
12 A Yes, I do. *
13 Q Where do you work?
14 A I work for the Virginia Department of
15 Corrections.
16 Q And how long have you worked at the department
17 of corrections in Virginia?
18 A Twenty-three years.
19 Q What are your duties there?
20 A I am the criminal records manager.
21 Q And have you testified before in your capacity
22 as a criminal records manager for the department of
23 corrections in Virginia?
24 A Yes, I have.
25 Q Both inside the State of Virginia and outside?

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- 1 A Yes, sir.
- 2 Q Do you keep records of regularly conducted
3 business activity at the Virginia Department of
4 Corrections?
- 5 A Yes, I do.
- 6 Q And is it the regular practice of the
7 department of corrections in Virginia to have a
8 custodian or a qualified person, such as yourself,
9 compile those records?
- 10 A Yes, it is.
- 11 Q And you are one of those such persons, ma'am?
- 12 A I am.
- 13 Q And, Ms. Collins, did you receive a request
14 from my office for any and all records the
15 department of corrections has on the defendant,
16 Mikal Mahdi, date of birth Redacted, offender number
17 Redacted?
- 18 A Yes, I did.
- 19 Q And did you, as a qualified custodian of those
20 records, gather them and turn those copies over to
21 my office?
- 22 A Yes, sir.
- 23 Q And better yet, more importantly, did you also
24 gather those records up in Virginia and bring them
25 down with you last night?

CINDY COLLINS - DIRECT BY MR. PASCOE

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1 A Yes, sir, I did.

2 Q The documents are in this envelope right here?

3 A Yes, they are.

4 (State's Exhibit Number 86, records, were
5 marked for identification purposes.)

6 Q I hand you what is State's Exhibit 86. And,
7 again, you were the person that put those documents
8 together?

9 A Yes, I was.

10 Q And what are those documents?

11 A This is Mr. Mahdi's criminal record for his
12 incarceration period with the State of Virginia.

13 Q And those records are kept in the ordinary
14 course of business for the State of Virginia
15 Department of Corrections?

16 A Yes, sir.

17 MR. PASCOE: I'd ask that those documents be
18 admitted into evidence under 803(6), Your Honor.

19 MR. WALTERS: May it please the Court, Your
20 Honor. I believe under the rules, if she's a
21 custodian of records and she's testified they're
22 kept in the normal course, we have no objection.

23 THE COURT: They are admitted.

24 (State's Exhibit Number 86, records,
25 admitted into evidence.)

1 MR. PASCOE: That's the only question I have
2 for you. Thank you.

3 THE COURT: Any cross-examination?

4 MR. WALTERS: No questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may leave
6 the records with me and you may step down.

7 MR. PASCOE: The State calls Officer Mike
8 Koehler, Your Honor.

9 THE COURT: Mr. Pascoe, other than family
10 members, are the witnesses sequestered?

11 MR. PASCOE: Yes, sir, they have been. We have
12 kept them in that back room.

13 THE COURT: Is that right, Mr. Walters?

14 MR. WALTERS: That's correct.

15 MR. PASCOE: Other than the victim impact
16 witnesses.

17 THE COURT: As it relates to expert witnesses
18 for either side, those witnesses are not
19 sequestered; is that right?

20 MR. WALTERS: Yes, sir, that's my
21 understanding. Our expert witnesses are here. And
22 we didn't make a motion to sequester and, of course,
23 the Solicitor agreed to it.

24 MR. PASCOE: We didn't make a motion to
25 sequester either, Your Honor. We just did it just

MICHAEL KOEHLER - DIRECT BY MR. PASCOE

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1 sort of in an abundance of caution.

2 MR. WALTERS: Two of our experts are present,
3 Mr. Akin and, I believe, also Ms. Hammock.

4 THE COURT: Defense expert witnesses are not
5 sequestered, nor are State expert witnesses.

6 MR. PASCOE: Thank you, Your Honor.

7 MICHAEL KOEHLER,
8 having been duly sworn, testified as follows:

9 THE CLERK: State your full name for the record
10 please, sir.

11 THE WITNESS: Officer Michael Koehler.

12 DIRECT EXAMINATION

13 BY MR. PASCOE:

14 Q Good afternoon, Officer Koehler?

15 A Good afternoon.

16 Q Where do you work, sir?

17 A Richmond City Police Department.

18 Q And how long have you been with the Richmond
19 City Police Department?

20 A About eight years now.

21 Q What are your duties at the city police
22 department in Richmond?

23 A I work patrol south side of Richmond off of
24 Jeff Davis.

25 Q And do you know the defendant, Mikal Mahdi?

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1 A I know him from an incident that occurred back
2 in 2000.

3 Q And, sir, you've probably handled, what,
4 thousands of incidents since then, or hundreds
5 certainly?

6 A Yes.

7 Q Is there any reason why you can still remember
8 this defendant?

9 A It was a unique incident and a potentially very
10 serious one.

11 Q How old was the defendant back on November
12 23rd, 2000?

13 A He was 17.

14 Q Tell the Judge what led up to the incident with
15 the defendant on November 23rd, 2000.

16 A I was initially going to his house with another
17 officer in order to serve a summons on him for
18 slashing his mother's tires, as well as serve an
19 outstanding detention order and to place him in
20 custody for that.

21 Q And what ended up happening? How did you go
22 about approaching him?

23 A I asked the other officer to go with me and we
24 -- as we pulled into his parking lot of his home, he
25 and his father, Sareef Mahdi, saw us pull in and

MICHAEL KOEHLER - DIRECT BY MR. PASCOE

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1 they came out to meet us at the cars. At that
2 point, I issued Mikal Mahdi a summons for the
3 vandalism for slashing his mom's tires. And after
4 doing that, I advised him that he also had an
5 outstanding warrant, outstanding detention order and
6 that he needed to place his hands behind his back.

7 And when I attempted to then take hold of him,
8 he got upset. His dad, Sareef Mahdi, tried to calm
9 him down real quickly, did not work. He started to
10 pull away. We then had to wrestle him to the
11 ground. When we did that, at that point, I heard
12 the other officer yell at Mikal Mahdi to get his
13 hands off my gun. At that point, I saw that Mikal
14 Mahdi had his hands on the other officer's gun. The
15 officer, as we are trained to do, grabbed his own
16 gun and was holding it in his holster.

17 Mikal Mahdi's father, Sareef Mahdi, at that
18 point, jumped in and got in my way, yelling, Do not
19 hurt my son. I pushed him off of me. He pushed me
20 back. I then pulled out my pepper spray and sprayed
21 the father, Sareef Mahdi, and then turned to Mikal
22 Mahdi and sprayed Mikal Mahdi in the face with the
23 pepper spray. It did not seem to have any effect.

24 So I immediately went to my asp baton, it's an
25 expandable baton. And as we're trained with the asp

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1 baton to avoid the trunk and the head and go for the
2 extremities and avoid the joints, I administered one
3 hit to the father, Sareef Mahdi, in his lower leg
4 and then proceeded to strike Mikal Mahdi several
5 times in the lower leg.

6 At which time, I heard and saw Mikal Mahdi say,
7 Stop, I'll put my hands behind my back, it hurts.
8 He let loose of the gun. And, at that point, we're
9 able to place him in custody.

10 Q And you testified now, now he's in custody,
11 that you were serving a summons for slashing tires.
12 Was he arrested for anything else after that
13 incident for that day?

14 A Yeah. Well, he also had the outstanding
15 warrant for him and we also charged him in addition
16 with obstruction with force, as well as assault on a
17 police officer.

18 Q And did you ever take a statement from the
19 defendant, Mikal Mahdi, concerning the incident that
20 day?

21 A Yes. After reading his Miranda rights, he
22 stated, he slashed his mother's tires because she
23 wouldn't come to the door when he knocked. I kind
24 of asked him why he would slash the tires just for
25 that and he referred to her as a crazy bitch and

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1 that you don't know what she's like and that he
2 should have killed her.

3 As far as the gun, I asked him about why he
4 grabbed the officer's gun and he said, Just to pull
5 him off of me so I could get away. He was also
6 begging me and the other officer if we would shoot
7 him and what it would take to do that and that if we
8 could place the handcuffs in front so he could come
9 at us so we could shoot him.

10 Q And in the State of Virginia, at the age of 17,
11 are you an adult or a juvenile?

12 A He's a juvenile at 17.

13 Q And did you go to his court hearing on the
14 obstruction charge and the resisting arrest?

15 A Yes, there was a trial for that.

16 Q Tell the Court what happened during that trial.

17 A He was a little unruly. During the whole
18 proceeding, he kept pacing. And in juvenile court,
19 you stand before the judge, all the parties stand
20 there, he was pacing back and forth. He was huffing
21 and puffing. He was kind of going (indicating),
22 just getting extremely agitated. And his attorney,
23 as well as the judge had to calm him down and
24 admonish him several times that he needed to calm
25 down.

1 Q And the person that you had to arrest back on
2 that day, sir, November 20th, 2000, who said he
3 should have killed his mother after you arrested
4 him, do you see him in the courtroom?

5 A Yes, sir.

6 Q Could you point him out for Judge Newman?

7 A Yes. He's sitting right of counsel, defense
8 counsel, in the orange shirt.

9 MR. PASCOE: Answer any questions the defense
10 counsel has for you, sir.

11 MR. WALTERS: May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. WALTERS:

14 Q Officer, I want to make sure I'm pronouncing
15 your name correctly. Is it Koehler?

16 A Yes, sir.

17 Q You indicated that -- let me go backwards here.
18 You stated that the young man was angry because his
19 mother wouldn't come to the door; is that correct?

20 A Right.

21 Q So, evidently, he wasn't at his home, he was at
22 his mother's home; is that correct?

23 A That was the original call that I had got was
24 there was a report to go to his mom's house about
25 the slashing of the tires. And, yes, she said, and

MICHAEL KOEHLER - CROSS BY MR. WALTERS

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1 other witnesses said, he was at her door and --

2 Q And he was knocking on that door trying to
3 contact his mother?

4 A Right.

5 Q And she wouldn't answer the door?

6 A Right.

7 Q And, evidently, he became agitated because his
8 mother wouldn't open the door and he cut the tires
9 on her car; is that correct?

10 A Right, I would assume.

11 Q After you apprehended the young man, he gets
12 inside the vehicle and then he asked you to please
13 shoot him; is that correct?

14 A He was asking that while we were processing
15 him, heading towards --

16 Q Sort of a death by cop situation, Please shoot
17 me?

18 A Right.

19 Q And he asked you several times to shoot him; is
20 that correct?

21 A Yeah.

22 Q In your experience when a child is asking
23 someone to shoot them, you know they're in serious
24 trouble?

25 A It's not necessarily a good sign. He was

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1 upset.

2 Q It wasn't a good sign. It shows there's
3 something wrong here. And, evidently, there's
4 something wrong with this child and his mother; is
5 that correct?

6 A (No response.)

7 Q That's the only assumption you can draw
8 implicitly from what happened?

9 A Right. He was upset and he -- yeah. I don't
10 know what he was upset about, but he was certainly
11 upset at the incident that had just occurred.

12 Q You would agree that it is different, it is
13 unique for a child to be angry with his mother and
14 to ask that, you know, someone please shoot me,
15 someone please kill me?

16 A You're asking about the psychology of them, I
17 really don't know. I can just tell you what he
18 said. And I really -- I can't read his mind. I
19 don't know what he was thinking or what he has going
20 on.

21 Q But you do make assessments based on someone's
22 behavior and that dictates how you act; is that
23 correct? You didn't pull the gun out to shoot him,
24 you just said the kid's sort of messed up in the
25 head and he's got some problems, didn't you?

MICHAEL KOEHLER - CROSS BY MR. WALTERS

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1 A Well, I reacted to the situation that was
2 before me and that's the way I reacted and the tools
3 that I had on hand.

4 Q Yes, I understand. Now, let's also talk about
5 his father. His father was present when this
6 altercation occurred; is that correct?

7 A That's right.

8 Q And I believe that the father was standing
9 there -- and let's make sure we're clear on exactly
10 why you were there. You stated that there were two
11 issues really. You charged him with obstruction of
12 force, you know, obstruction with force on a police
13 officer after the incident occurred, but what were
14 the reasons why you were originally there?

15 A I was there to serve a summons for vandalism,
16 as well as to issue a detention order and place him
17 in custody for the detention order.

18 Q All right. So the kid is actually standing
19 there with his father. Is his father aware of what
20 he had been doing?

21 A Aware of what -- aware as what --

22 Q As a father, I'm standing there with my kid and
23 the police show up, evidently I know this kid has
24 been in trouble; isn't that correct?

25 A Right. I had talked to the father earlier that

1 day and so he was aware of the circumstance.

2 Q And what do you think of a father that's aware
3 that his kid's in trouble, knows the circumstances
4 surrounding that and he's standing there when the
5 police arrive and then he gets into the altercation?

6 A I'm sorry? What's your question?

7 Q What do you think of a father, after you talked
8 to him on the phone and told him, Your kid's in
9 trouble, you still have to go out and pick him up
10 and you go out to pick him up and his father gets in
11 the middle of the confrontation, what do you think
12 of that man as a father?

13 A I don't know what I think of him as a father.
14 I don't know him as a father.

15 Q My question is, is that if you call some
16 fathers on the phone and you say, your kid's in
17 trouble, they immediately grab the kid and they
18 bring them to the police and say, what can we do,
19 what's wrong; is that correct?

20 A Sareef Mahdi, Mr. Mahdi, when I talked to him,
21 was not very cooperative the first time and --

22 Q Well, let's talk about that. You stated he
23 wasn't cooperative. What type of person was he, on
24 a scale of one to ten, ten being very cooperative,
25 one being totally resistant, polarized in a

MICHAEL KOEHLER - CROSS BY MR. WALTERS

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1 position, where would he fall?

2 A He was a bit resistant and he was --

3 Q Is he a one? Is he a ten?

4 A I don't know where to put it on that scale.

5 I've seen a lot worse. I've certainly seen a lot of
6 people that are way more cooperative. He was
7 cooperative enough to when I asked him to call me
8 when Mikal got home so I could deal with the
9 business at hand, he did call me. I had to -- I had
10 to kind of tell him that, you know, if he didn't, we
11 might have to go another route and that I suggest
12 that he call me, so I had to -- it wasn't exactly a
13 friendly conversation. He wasn't being completely
14 cooperative when I was talking to him at his home.
15 I asked if Mikal Mahdi was home and if I could look
16 in the house, he let me look, but he was obviously
17 upset at doing that. His other son was slamming
18 doors when I was in the house, so it wasn't exactly
19 a comfortable situation. He did not appreciate me
20 being there.

21 Q So when you say he wasn't completely
22 cooperative, this behavior within his home was
23 sanctioned by his father; is that correct? He
24 allowed the other kid to slam doors while you were
25 there, was that appropriate?

1384

1 A That was not appropriate. He obviously didn't
2 appreciate me being there and he was perfectly --
3 felt comfortable in allowing anybody to show that
4 they were uncomfortable with me being there and
5 didn't want me there.

6 Q All right. So let's assess his father. First,
7 you call him on the phone and he's not completely
8 cooperative. Then when you go to the home, he
9 allows another child to slam doors and he's not
10 cooperative and let's you in the house, but he let's
11 you go around the house; is that correct?

12 A Right.

13 Q Then when you arrive and you say, Look, I've
14 got to pick this kid up, he actually gets in the
15 middle of the confrontation; is that right?

16 A He does. He initially was trying to calm down
17 his son.

18 Q And this is the man that's raising Mikal Mahdi;
19 is that right?

20 A I can only assume.

21 Q Now, when you arrived there, you stated that
22 there was an issue with regards to slashing the
23 tires. Did you ever talk to his mother?

24 A I did talk to his mom.

25 Q And what did she say?

MICHAEL KOEHLER - CROSS BY MR. WALTERS

1385

1 A She just gave a report as to what happened.

2 Q So the mother was just passive as usual; is
3 that right?

4 A That's the first time I talked to her. I can't
5 say whether that's usual or not. She was just
6 giving a report for her vandalism.

7 Q But you would agree that if you were the mother
8 of a child and the child slashed your tires and
9 there's -- something bad has occurred in your home,
10 you would have a lot to say, wouldn't you? You've
11 got kids, suppose your kid slashed your tires, what
12 would you say?

13 A I don't have kids, but it was not an unusual
14 report. She simply gave a report that I take
15 thousands of times for, often times, family members
16 doing this kind of thing. It's a daily, hourly -- I
17 go on probably a domestic call an hour and it was
18 not any different than the thousands I've been on.

19 Q All right. But the point I'm making and the
20 picture I want to draw here is, is that, number one,
21 we've got a dad who's noncompliant, who begrudgingly
22 allows you to do your job; is that right?

23 A I guess that's a fair characterization.

24 Q And, two, we've got a mother who just simply
25 gives a report and she doesn't want anything else to

1 do with the whole situation; is that right?

2 A She was just giving a vandalism report for
3 insurance purposes, I assume, or what have you. She
4 was telling me what happened to her car.

5 Q Right. And we've got a little boy in the
6 middle of this that's saying, Kill me, please shoot
7 me, kill me; is that right?

8 A He wasn't so little, but, at some point, he did
9 say that. That was one of the things he said in our
10 process.

11 Q Yes or no, he said it?

12 A He did say it.

13 MR. WALTERS: Your Honor, I have no further
14 questions.

15 THE COURT: Redirect?

16 MR. PASCOE: Thank you, Officer Koehler. I
17 appreciate you coming down.

18 Do you want us to call the next witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. PASCOE: Moises Rivera.

22 MOISES RIVERA,
23 having been duly sworn, testified as follows:

24 THE CLERK: Give us your full name for the
25 record please, sir.

MOISES RIVERA - DIRECT BY MR. PASCOE

1387

1 THE WITNESS: Moises Rivera.

2 DIRECT EXAMINATION

3 BY MR. PASCOE:

4 Q Good afternoon, Mr. Rivera.

5 A Good afternoon, sir.

6 Q Where are you from, sir?

7 A Originally from Brooklyn, New York, came down
8 from Richmond, Virginia.

9 Q Where are you living now?

10 A Richmond, Virginia.

11 Q And how long have you lived in Richmond,
12 Virginia?

13 A Eleven years.

14 Q You've still got a lot of that Brooklyn accent,
15 though, don't you?

16 A Yes, sir.

17 Q Are you here under subpoena, sir?

18 A No, sir.

19 Q Did you come here willingly on your own free
20 will?

21 A Yes, sir.

22 Q Why is that?

23 A I just wanted to tell my story, what happened
24 to me.

25 Q Are you married, Mr. Rivera?

- 1 A Yes, sir.
- 2 Q Do you have any children?
- 3 A Three children.
- 4 Q What are their ages?
- 5 A Eighteen, 16 and 14.
- 6 Q What type of work do you do today, sir?
- 7 A I'm a maintenance and supervisor of a cleaning
- 8 crew.
- 9 Q And where are you in charge of that maintenance
- 10 crew?
- 11 A ACAC Fitness Center in Richmond.
- 12 Q And what did you do before you went into
- 13 maintenance work?
- 14 A I was a police officer.
- 15 Q Where were you a police officer?
- 16 A Richmond, Virginia.
- 17 Q What years were you in the police force?
- 18 A From 1995 until the end of 1999.
- 19 Q And why did you leave the police force?
- 20 A My kids were missing me. I was working
- 21 overtime, court time and regular shift.
- 22 Q Did you also serve any time in the military?
- 23 A Six years, sir.
- 24 Q Okay. In which branch and when were those
- 25 years?

MOISES RIVERA - DIRECT BY MR. PASCOE

1389

1 A Navy active from '84 to '88 and inactive from
2 '88 to 1990.

3 Q Mr. Rivera, I want to ask you some questions
4 now about April the 17th of 2001. Do you remember
5 that day pretty well?

6 A Yes, sir.

7 Q Did you know the defendant, Mikal Mahdi, before
8 that day?

9 A No, sir.

10 Q Where were you working on that day, April 17th
11 2001?

12 A Bethany Springs, Stratford Hills Apartments as
13 maintenance.

14 Q And where exactly is that in Richmond?

15 A It's south side on Forest Hill Avenue.

16 Q Does that involve Stratford Hills Apartments
17 and Bethany Springs Apartments?

18 A Yes, it's connected.

19 Q Tell Judge Newman what led up to your
20 confrontation with the defendant, Mr. Mahdi, that
21 day.

22 A I got a call from my supervisor stating that
23 there were teens or young people behind an apartment
24 building and I walked up there to see what was going
25 on and I saw a gentleman there at a window and I

1 said, What you doing? And he jumped me and we
2 started fighting. I picked him up, pulled him off
3 of me, he cut me on my arm. And what I thought he
4 was punching me in my back, he was stabbing me with
5 a knife in my back.

6 Q Tell the Judge what ended up happening when you
7 finally pulled him off.

8 A I pulled him off and I asked him, Why you
9 cutting me? And he took off running. I took three
10 steps, collapsed, started coughing up blood and I
11 was rushed to MCV.

12 Q And describe for Judge Newman the injuries that
13 you suffered as a result of those stabbings.

14 A I got my lung punctured. He stabbed me five
15 times in the back, one in my arm. I had to be in
16 the hospital for six days with a lung tube draining
17 blood. My body went into shock. They had to put an
18 I.V. in my neck to give me whatever they had to give
19 me.

20 Q And you testified you were in the hospital for
21 six days?

22 A Six days.

23 Q How much pain were you in?

24 A I couldn't even laugh or move.

25 Q And when you finally got out of the hospital

MOISES RIVERA - DIRECT BY MR. PASCOE

1391

1 after almost a week, what kind of medications were
2 you on?

3 A I was on Percocet for two months when I was out
4 of work.

5 Q In fact, how long was it until you were able to
6 go back to work?

7 A Two months.

8 Q How close did you come to dying?

9 A I died. I died in the ambulance. They revived
10 me.

11 Q And do you still actually carry the scars?

12 A Yes, I do, plus some extra ones, one from the
13 lung tube and two of them in my belly because they
14 had to put a camera to see if I had any internal
15 bleeding from my stomach because I was coughing up
16 blood.

17 Q Now, the defendant, Mr. Mahdi, he was captured
18 that day for what he did to you?

19 A Yes.

20 Q And was he convicted?

21 A Yes.

22 Q What sentence did he get?

23 A Three years I think it was.

24 Q I'm going to show you what's been marked as
25 State's Exhibit 68 through 74. You've had an

1 opportunity to look at these?

2 A Yes.

3 Q Do you recognize all of those photographs?

4 A Uh-huh.

5 Q Do they accurately depict the scene and your
6 clothing from the day you were stabbed?

7 A Yes.

8 MR. PASCOE: Your Honor, I'd ask that State's
9 Exhibits 68 through 74 be admitted into evidence.

10 THE COURT: What says the defense?

11 MR. WALTERS: No objection, Your Honor.

12 THE COURT: They are admitted without
13 objection.

14 (State's Exhibit Numbers 68 through 74,
15 photographs, admitted into evidence.)

16 BY MR. PASCOE:

17 Q I'm just going to go over a few photographs for
18 the Court, okay? What do the photographs in State's
19 Exhibit 70, 71 and 72 depict?

20 A The apartment that he was at when I walked up
21 to him.

22 Q Okay. And what was wrong with the glass to the
23 apartment when you walked up on it?

24 A It was broken.

25 Q And State's Exhibit 73, that's just a good shot

MOISES RIVERA - DIRECT BY MR. PASCOE

1393

1 of the apartment that he was trying to break into
2 where you were?

3 A Yes, sir.

4 Q Okay. And, finally, State's Exhibits 68, 69
5 and 74, do they depict your clothing from when you
6 were stabbed?

7 A Yes.

8 Q What's this on your shirt?

9 A Blood.

10 Q And what are these holes in your shirt?

11 A More blood and from where he stabbed me.

12 Q And these are all your clothes, too?

13 A Yes.

14 Q Obviously, the EMT's just stripped you of your
15 clothes at the scene?

16 A Yes. They stripped me. They cut it open.

17 Q So they had to revive you in the ambulance?

18 A Yes, sir.

19 Q Did you ever come into contact with the
20 defendant's father, Mr. Sareef Mahdi?

21 A Yes, I did.

22 Q And tell the Court about that.

23 A He came on to the property and he saw me and he
24 came up to me with his hand extended out apologizing
25 what happened to me.

1 Q And that was the defendant's father?

2 A Yes.

3 Q And, finally, sir, the man who stabbed you and
4 left you to die back on April 17th of 2001, do you
5 see him in this courtroom?

6 A There he goes in the orange.

7 Q Any doubt in your mind that's the man?

8 A No doubt.

9 MR. PASCOE: Thank you. Answer any questions
10 the defense has for you.

11 MR. WALTERS: May it please the Court.
12 Solicitor.

13 CROSS-EXAMINATION

14 BY MR. WALTERS:

15 Q Mr. -- is it Rivera?

16 A Yes, sir.

17 Q And what's your first name?

18 A Moises.

19 Q Moises. Okay, I want to make sure I pronounce
20 it right. Let's make sure we're clear about this in
21 your testimony to His Honor. Number one, you were a
22 police officer from 1995 through 1999; is that
23 correct?

24 A Yes.

25 Q So your tenure as a police officer ended in

MOISES RIVERA - CROSS BY MR. WALTERS

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1 1999?

2 A Yes, sir.

3 Q And this incident occurred in April of 2001?

4 A Yes, sir.

5 Q So you were a maintenance supervisor at this
6 apartment complex, but you were not a police
7 officer?

8 A No, sir, I was not a police officer.

9 Q Now, it's my understanding that in this
10 particular altercation, you had approached the
11 individuals that were there drinking and moving
12 around the apartment; is that correct?

13 A I only approached one individual.

14 Q All right. But let's make sure we're clear.
15 Number one, you were not a police officer when you
16 approached these individuals; is that correct?

17 A Yes, sir.

18 Q It's been several years, you were not
19 functioning in the capacity of a police officer?

20 A Yes, sir.

21 Q Number two, you didn't have authority to go in
22 and inquire and investigate as a police officer, did
23 you? You're the maintenance supervisor?

24 A Yeah, I wasn't inquiring anything. I just
25 asked him what he was doing there, that's all.

1 Q All right. Here's my point. You were trained
2 as a police officer. Once you get it in your blood,
3 you can't get it out your blood, all right?

4 A Okay.

5 Q You stopped being a police officer at the end
6 of 1999; is that correct?

7 A Yes, sir.

8 Q All right. But then once you found out there
9 was an altercation that was going on at the
10 apartments, that's when you approached these
11 individuals and, of course, you probably went into
12 your mode as a police officer who you are --

13 MR. PASCOE: Objection to the term individuals,
14 Your Honor. He's already testified he approached
15 one person, the defendant, so I would object.

16 THE COURT: The objection is sustained.

17 BY MR. WALTERS:

18 Q You approached an individual. And when you
19 approached that individual, you went into your mode
20 as a police officer. You said, Who are you, what's
21 going on; is that correct?

22 A All I asked him is what's going on. I didn't
23 go into no police mode. I just asked him what's
24 going on.

25 Q All right. Isn't it true that when you

MOISES RIVERA - CROSS BY MR. WALTERS

1397

1 approached him, you also had a wrench in your hand?

2 A No, it's not true.

3 Q Isn't it true that you also had your devices
4 that you use as a maintenance supervisor in your
5 hands?

6 A All I had in my pocket was a six in one
7 screwdriver.

8 Q But the fact remains that as far as making an
9 inquiry to find out what was going on and
10 investigating the process of what was going on with
11 these individuals, you didn't have authority to do
12 that?

13 A Yes, I did. My supervisor asked me to go check
14 out what's going on.

15 Q All right. Now, this altercation that occurred
16 between you and Mr. Mahdi, you were not functioning
17 as a police officer, we'll never know today, the
18 year 2006, what was said between the two of you; is
19 that correct?

20 A I told you what was said.

21 Q All right. But nevertheless, as far as the
22 altercation that occurred between the two of you,
23 your testimony is, is that Mr. Mahdi got the best of
24 the confrontation between the two of you; is that
25 right?

1 A Yes, he jumped me.

2 Q And then after that confrontation, it's my
3 understanding that Mr. Mahdi then ran away; is that
4 right?

5 A Yes.

6 Q And then his father came along and it's your
7 testimony that he apologized to you for what
8 happened; is that right?

9 A Yes, quite a few months later.

10 Q What was said by Mr. Mahdi?

11 A The father?

12 Q Yes.

13 A He said, I apologize for what my son did to
14 you.

15 Q All right. So the father arrived, he wanted to
16 apologize for what his son had done and you accepted
17 the apology; is that correct?

18 A Yes.

19 MR. WALTERS: Beg the Court's indulgence, Your
20 Honor.

21 (Pause.)

22 MR. WALTERS: Your Honor, we have no further
23 questions.

24 THE COURT: Solicitor?

25 MR. PASCOE: Very briefly, Your Honor.

MOISES RIVERA - REDIRECT BY MR. PASCOE

1399

1 REDIRECT EXAMINATION

2 BY MR. PASCOE:

3 Q The pictures that the Court has of those
4 apartments, who was working at those apartments?

5 A I was and my supervisor and other coworkers.

6 MR. PASCOE: That's all I have, Your Honor.

7 Thank you.

8 THE COURT: Anything further?

9 MR. WALTERS: No, sir, Your Honor.

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

11 MR. PASCOE: Do you want me to call one more
12 witness before lunch, Your Honor?

13 THE COURT: Proceed.

14 MR. PASCOE: The State calls Joseph Owen.

15 JOSEPH PARSON OWEN,

16 having been duly sworn, testified as follows:

17 THE CLERK: State your full name for the record
18 please, sir.

19 THE WITNESS: Joseph Parson Owen.

20 DIRECT EXAMINATION

21 BY MR. PASCOE:

22 Q Good afternoon, Agent Owen.

23 A Good afternoon.

24 Q Where are you from, Mr. Owen?

25 A I am from the State of Virginia, working out of

1 the employ of Virginia Probation Office.

2 Q And, specifically, you're a probation agent,
3 sir?

4 A That's correct.

5 Q And what are your duties as a probation agent
6 in Virginia?

7 A In the State of Virginia as an adult probation
8 officer, I monitor offenders who are released on
9 supervised probation by the courts or either are
10 ordered to serve a period of supervised probation
11 after released from incarceration.

12 Q And what area of Virginia are you a probation
13 agent for?

14 A The Sixth Judicial Circuit which covers
15 Brunswick County. And it also covers the counties
16 of Prince George, Sussex, Surry, the City of
17 Hopewell and the City of Emporia.

18 Q Do you know the defendant, Mikal Mahdi, in the
19 courtroom today?

20 A Yes I do.

21 Q And in what capacity do you know Mr. Mahdi?

22 A I was assigned as his probation officer upon
23 his release from incarceration in May of 2004.

24 Q What was he incarcerated for and placed on
25 probation for after his incarceration?

JOSEPH PARSON OWEN - DIRECT BY MR. PASCOE

1401

1 A A malicious wounding conviction received in the
2 Richmond Circuit Court, Richmond, Virginia Circuit
3 Court.

4 Q And is malicious wounding a felony or a
5 misdemeanor in Virginia?

6 A It is a felony.

7 Q And when was the defendant convicted for that
8 malicious wounding?

9 A He was convicted and sentenced on July 16th,
10 2001.

11 Q For the incident of April of 2001?

12 A That's correct.

13 Q What is the defendant's date of birth?

14 A His date of birth is Redacted.

15 Q So he was 18 at the time he committed this
16 offense in April of 2001?

17 A That's correct.

18 Q And, finally, in Virginia you are an adult at
19 the age of 18?

20 A That's correct.

21 Q What sentence did the defendant receive for
22 that malicious wounding conviction on Mr. Rivera?

23 A He received a 180 month sentence with 141
24 months suspended, conditioned upon a period of
25 supervised probation up to 15 years upon his

1 release.

2 Q So the defendant was given 39 months in prison,
3 that was his sentence on July 16th, 2001. When did
4 he get released from prison and start his probation?

5 A He was released May the 12th, 2004.

6 Q And do you have some forms with you today, sir,
7 specifically his conditions of release form and a
8 firearms form?

9 A Yes, I do.

10 Q Can I see those so I can show the defense?

11 A (Witness complies.)

12 (State's Exhibit Number 87, conditions of
13 probation, and State's Exhibit Number 88, felony
14 weapon form, were marked for identification
15 purposes.)

16 Q I'm going to show you now what's been marked as
17 State's Exhibit 87. Let me know if you recognize
18 that document.

19 A Yes, I do.

20 Q What do you recognize that to be?

21 A These are the conditions of supervised
22 probation that were signed with Mr. Mahdi on
23 5/17/04.

24 Q And is that an exact copy of the same form of
25 everything you went over with the defendant,

JOSEPH PARSON OWEN - DIRECT BY MR. PASCOE

1403

1 Mr. Mahdi, yourself on that day?

2 A Yes, it is.

3 MR. PASCOE: I'd ask that State's 87 be
4 admitted into evidence, Your Honor.

5 THE COURT: What says the defense?

6 MR. WALTERS: No objection, Your Honor.

7 THE COURT: They are admitted.

8 (State's Exhibit Number 87, condition of
9 probation form, admitted into evidence.)

10 BY MR. PASCOE:

11 Q And with regards to State's Exhibit 87, when
12 did the defendant's probation begin?

13 A Upon his release on 5/12/04.

14 Q And what were the terms of Mr. Mahdi's
15 probation? You can go over those 11 terms for the
16 Court.

17 A Condition one was to obey all federal, state,
18 local laws and ordinances. Condition two was to
19 report any arrest, including a traffic ticket within
20 three days to the probation officer. Condition
21 three is to maintain a regular employment and notify
22 my probation officer promptly of any changes in my
23 employment. Condition four, I'll report in person
24 by telephone and as otherwise instructed by my
25 probation officer.

1 Condition five, I will permit my probation
2 officer to visit my home and place of employment.
3 Condition six, I will follow my probation officer's
4 instructions and be truthful, cooperative and report
5 as instructed. Condition seven is I will not use
6 alcoholic beverages to the extent that it disrupts
7 or interferes with my employment or orderly conduct.
8 Condition eight, I will not unlawfully use, possess
9 or distribute controlled substances or related
10 paraphernalia.

11 Condition nine, I will not use, own, possess,
12 transport or carry a firearm. Condition ten, I will
13 not change my residence without permission of my
14 probation officer. I will not leave the State of
15 Virginia or travel outside of a designated area
16 without permission of my probation officer. Eleven,
17 I will not abscond from supervision. I understand I
18 will be considered an absconder when my whereabouts
19 are no longer known to my supervising officer.

20 Q And did the defendant understand each and every
21 one of these terms?

22 A Yes, he did. I went over each one
23 individually. And at the end of the form, there is
24 a signature blank where it says, I have read the
25 above or had the above read and explained to me and

JOSEPH PARSON OWEN - DIRECT BY MR. PASCOE

1405

1 my signature or remark below acknowledges the
2 receipt of these conditions and agree to the
3 conditions set forth.

4 Q Signed by both you and the defendant?

5 A That's correct.

6 Q While -- one of the terms of the defendant's
7 probation not to possess a firearm was also against
8 the law?

9 A Yes, it was.

10 Q And why is it against the law?

11 A Due to the felony status of Mr. Mahdi, his
12 conviction or felony.

13 Q And was the defendant made aware of that?

14 A Yes, he was.

15 Q Specifically, let me show you what's been
16 marked as State's Exhibit 88. Do you recognize that
17 document?

18 A Yes, I do.

19 Q What do you recognize that to be?

20 A This is a firearm form that we have convicted
21 felons who are placed on supervised probation sign
22 stating that as a felon, they realize they do not
23 have the privilege to hunt with a firearm and
24 certainly do not have the privilege to purchase, own
25 or carry a firearm.

1 Q And is that the exact same form that you went
2 over with the defendant, a copy of the form you went
3 over with the defendant?

4 A Yes, it is.

5 Q Same condition as it was in back on May the
6 17th, 2004?

7 A Yes, it is.

8 MR. PASCOE: I'd ask that that State's Exhibit,
9 Your Honor, be admitted into evidence.

10 MR. WALTERS: No objection, Your Honor.

11 THE COURT: It's admitted without objection.

12 (State's Exhibit Number 88, firearm form,
13 admitted into evidence.)

14 BY MR. PASCOE:

15 Q And, sir, did the defendant understand the
16 terms of that document?

17 A Yes, he did.

18 Q Who went over it with him?

19 A I did.

20 Q And what did you have the defendant do to
21 acknowledge that he understood that form, that
22 document?

23 A He signed the document and dated it 5/17/04.

24 Q Let me ask you this, Agent Owen. How long was
25 the defendant on probation?

JOSEPH PARSON OWEN - DIRECT BY MR. PASCOE

1407

1 A Approximately, two months.

2 Q Were there any apparent problems or violations
3 in May or June of 2004, the first month and a half
4 to two months that he was out?

5 A Not that we were aware of.

6 Q When and how did the defendant first violate
7 his probation? When did you learn that he first
8 violated his probation?

9 A A urine screen was secured on July 14th of '04
10 that was later tested positive for marijuana.

11 Q And the date again on that, sir, is -- what was
12 it again?

13 A July 14th of 2004.

14 Q So less than two months after going on his
15 terms of probation, was the defendant in violation
16 of one of the terms?

17 A Yes, that would be a violation of condition
18 eight.

19 Q Did you ever even get to address that
20 violation, though?

21 A No, we did not.

22 Q And why not?

23 A Mr. Mahdi left the area before it could be
24 addressed.

25 Q And was leaving the State of Virginia a

1 violation of his probation?

2 A Yes, it was.

3 Q And let me show you from here, if the defendant
4 was in possession of State's Exhibit 84, a .380
5 caliber handgun, on July the 15th -- 16th of 2004,
6 was that a violation of his probation?

7 A Yes, it would be.

8 Q And was it a violation of probation to be in
9 possession of State's Exhibit 77?

10 A Yes, it would be.

11 Q And all together, sir, you know what the
12 defendant's violations were with regards to his
13 probation?

14 A Yes, I do.

15 Q And what are the defendant's violations up in
16 the State of Virginia after being on probation for
17 two months?

18 A At this point, he would be violation of
19 condition one for a news law violation. He would
20 also be in violation of condition eight for using
21 marijuana. He would also be in violation of
22 changing his residence without permission, which is
23 condition ten, as well as condition 11 because his
24 whereabouts were not known to our office from 7/15
25 until his arrest on 7/21/04.

JOSEPH PARSON OWEN - CROSS BY MR. KOGER

1409

1 Q And, sir, the man who took less than two months
2 to violate all of those terms of probation, do you
3 see him in the courtroom?

4 A Yes, I do.

5 Q If you could, point him out for the Court.

6 A He has an orange jumpsuit on beside two
7 attorneys at the table to my left.

8 MR. PASCOE: Thank you, Agent Owen. Answer any
9 questions the defense counsel has for you.

10 THE COURT: Mr. Koger.

11 CROSS-EXAMINATION

12 BY MR. KOGER:

13 Q Mr. Owen, what was the schedule of appointments
14 from the time he was released on May 12th?

15 A The appointments were set by me. The frequency
16 would be determined by our office. I was seeing
17 him, as well as a surveillance officer was also
18 editing the case for additional contacts, that was
19 due to the nature of the offense which he was placed
20 on supervision for, as well as his age.

21 Q Okay. So what you testified to that he was
22 released on May 12th?

23 A That's correct.

24 Q And he signed initial paperwork on May 17th?

25 A That's correct.

1 Q So, actually, did he come to the office or did
2 you go to his residence?

3 A He contacted our office to report that he had
4 been released, which we had also received
5 notification of his release. He was then seen at
6 the Brunswick County Sheriff's Department when his
7 opening paperwork was executed.

8 Q On May 17th?

9 A On May 17th, that's correct.

10 Q Okay. According to your file, what was his
11 next scheduled appointment after May 17th?

12 A I then met with him at his approved residence
13 on May the 19th.

14 Q And that was two days later?

15 A Yes. And his grandmother was also there.

16 Q And what was the approved residence? Do you
17 recall the address?

18 A The approved address was 18793 Christiana
19 Highway in Lawrenceville, Virginia.

20 Q That's the residence of the grandmother?

21 A That's correct.

22 Q Okay. And what was his next scheduled
23 appointment?

24 A His next time he was seen by someone from our
25 office was in late May. It was done by the

JOSEPH PARSON OWEN - CROSS BY MR. KOGER

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1 surveillance officer. It was not done by me.

2 Q Okay. Now, you said surveillance officer, he
3 actually came into the office or he came --

4 A No. He went to the residence and visited with
5 him at his residence.

6 Q Okay. And let me ask you this here. When the
7 probation officer and the defendant are not actually
8 meeting, is there any type of telephone reporting or
9 anything that they have to call in?

10 A There's no telephone requirements, no.

11 Q All right. No telephone requirement?

12 A No.

13 Q So the next time your office and Mr. Mahdi met
14 was in late May, correct?

15 A That's correct.

16 Q Okay. And what was the next meeting between
17 the two of you?

18 A My next meeting with him was on June 16th of
19 2004.

20 Q June 16th. Did your surveillance officer meet
21 with him between late May and June 16th?

22 A I do not recall. I do not have his notes with
23 me, but he did meet with him also in June.

24 Q Before June 16th or after June 16th?

25 A I'm not sure. I don't have the notes with me.

1 Q Did you meet Mr. Mahdi anymore in June?

2 A No, I did not. I met with him on June the 16th
3 and that was my last contact with him.

4 Q Okay. And so you're testifying to that the
5 surveillance officer also met with him at least once
6 in June?

7 A To the best of my recollection, that's correct.

8 Q So what we actually have here is that Mr. Mahdi
9 complied at least five times to the reporting
10 function of probation and parole, correct?

11 A Yes, he did.

12 Q Okay. And during that time he was meeting with
13 you, did y'all discuss about potential gainful
14 employment and things of that nature?

15 A Yes, we did.

16 Q All right. Did he secure gainful employment
17 during that time?

18 A He did not secure full-time gainful employment.
19 It was reported that he was doing some construction
20 work on a home in Lawrenceville, that he was
21 basically doing the work in order to possibly be
22 allowed to reside there.

23 Q So he was attempting to get employment?

24 A Yes. At his initial session, of course,
25 employment was one of the goals that was stated for

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1 him to try to secure and obtain full-time
2 employment. And in the short period of time we were
3 working with that, to our knowledge, that is what he
4 was trying to do.

5 Q Okay. And, of course, from your earlier
6 statement that the residence in which he was staying
7 with the grandmother, that was approved?

8 A Yes.

9 Q And at least for that period for the two
10 months, it was working out?

11 A That's correct.

12 Q So, actually, in the two months of supervision
13 that your office had with Mr. Mahdi, he was
14 complying with the mandates of probation and parole,
15 correct?

16 A That is correct with the exception of the urine
17 screen, which was secured on July 14th of '04.

18 Q Okay. But for May and June he was complying?

19 A He was complying.

20 MR. KOGER: Okay. Thank you.

21 MR. PASCOE: No, sir.

22 Thank you, Agent Owen.

23 THE COURT: All right. Thank you.

24 MR. PASCOE: With the Court's permission, can
25 we break for lunch? We have more witnesses coming

AMANDA JEAN WEAVER - DIRECT BY MR. SORENSON

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1 around 2:00, 2:30.

2 THE COURT: All right. We'll be in recess
3 until 2:15.

4 (Whereupon, there was a luncheon recess.)

5 (State's Exhibit Numbers 89 through 91,
6 photographs, were marked for identification
7 purposes.)

8 THE COURT: Solicitor, next witness.

9 MR. SORENSON: The State calls Amanda Weaver.

10 AMANDA JEAN WEAVER,
11 having been duly sworn, testified as follows:

12 THE CLERK: State your full name for the
13 record, please.

14 THE WITNESS: My full name is Amanda Jean
15 Weaver.

16 DIRECT EXAMINATION

17 BY MR. SORENSON:

18 Q Good afternoon, Ms. Weaver.

19 A Good afternoon.

20 Q If you would, tell the Court where it is that
21 you live.

22 A In Brunswick County, 18811 Christanna Highway.

23 Q Is that in Lawrenceville, Town of
24 Lawrenceville?

25 A Yes, it is.

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- 1 Q And how long have you lived there?
- 2 A I've lived at that address for approximately 13
- 3 years.
- 4 Q And do you know the defendant in this case,
- 5 Mikal Mahdi?
- 6 A Yes, I do.
- 7 Q And how long have you known Mr. Mahdi?
- 8 A Ever since, maybe -- it's been now maybe about
- 9 ten years or more.
- 10 Q Okay. And how is it that you knew him?
- 11 A Through his grandmother, we're neighbors.
- 12 Q His grandmother live -- does she still live
- 13 next door to you?
- 14 A Yes, she is.
- 15 Q And how long has she lived next door to you?
- 16 A I'm not sure because she's been residing there
- 17 before I moved there.
- 18 Q Okay. So when you moved there --
- 19 A She was already there, yes.
- 20 Q All right. Now, are you aware -- let me ask
- 21 you this, Ms. Weaver, are you aware of the fact that
- 22 the defendant was released from prison back in May
- 23 of 2004?
- 24 A Yes, I am.
- 25 Q And did he move back to Lawrenceville, Virginia

1 at that point in time?

2 A Yes, he did.

3 Q And in that time frame from May of 2004, when
4 he was released from prison, until July of 2004, do
5 you know what he was doing for a living during that
6 two month time period?

7 A Besides doing little odd jobs or whatever to
8 make whatever money he needed, I knew, through him,
9 that he was doing a little drug pedaling or pushing
10 or whatever.

11 Q What kind of drugs was he selling; do you know?

12 A Marijuana.

13 Q Marijuana. All right. And did he ever
14 actually talk to you about that, about selling
15 drugs?

16 A Yes, he did.

17 Q What did he tell you about his drug selling?

18 A In his words exactly, and I quote, he would
19 pretty much go out and knock off little, young drug
20 dealers around in Lawrenceville and show them how it
21 originally was supposed to be done as he knew how to
22 do it.

23 Q And by him -- did he use that term, Knocking
24 somebody off?

25 A Yes, he did.

VOLUME IV OF V

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CALHOUN COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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APPELLANT

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1 Q What did you think he meant by that?

2 A Well, being an African-American and young, the
3 term that they use around the neighborhood for
4 knocking someone off is pretty much, as they would
5 say, picking them off, killing them.

6 Q During that time period from when he was
7 released from prison in May of '04 through July, did
8 you ever see Mr. Mahdi with a gun during that time
9 period?

10 A During that time period, not -- no.

11 Q Did you ever see him -- let me ask you this.
12 Did he ever have an opportunity to ask you to help
13 him put a gun back together?

14 A Yeah, but that was like -- it could have been
15 near the end of that couple of months period of
16 time. It was a black nine millimeter that had been
17 taken apart. I don't know who took it apart.

18 Q That's what I was talking about. During that
19 two month time period, did you have an opportunity
20 to see him with a gun?

21 A Yes.

22 Q If you would, tell the Court about that.

23 A I was -- actually, I had just gotten home from
24 doing an odd job for someone and he approached me in
25 my backyard with it in a little kind of black tin

1 case, like black or grayish like and it was all to
2 pieces. And he wanted to know whether I knew how to
3 put it together and I told him, yeah. And he wanted
4 to know if I would do it for him and I told him, no.
5 Because I pretty much lied to him and told him I
6 couldn't do it without having a book to do it with,
7 but I knew how to put it together.

8 Q Let me ask you this. Did you know that he was
9 on probation at that point in time?

10 A No, I didn't.

11 Q Now, let me ask you, did you, back in 2004, did
12 you own a gun at that time?

13 A Yes.

14 Q And what type of gun was that that you owned?

15 A It was a .380 semiautomatic.

16 Q And how long had you had that .380
17 semiautomatic pistol?

18 A I've had that gun ever since 1991.

19 Q And do you know the serial number to that gun?

20 A Not right off, no, I don't.

21 Q Let me ask you this. Was there a time back in
22 1999 when you asked the Brunswick County Sheriff's
23 Office to hold that gun for you?

24 A Yes, there was.

25 Q And did you ultimately get that gun back later

AMANDA JEAN WEAVER - DIRECT BY MR. SORENSON

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1 that year?

2 A Yes, I did.

3 Q Did you get a receipt documenting that gun, the
4 fact that they were holding it, with the serial
5 number on it?

6 A Yes.

7 Q Let me show you State's Exhibit Number 83. Is
8 that a copy of the receipt indicating when you had
9 turned that gun over to the sheriff's office and
10 when you got it back in 1999?

11 A Yes, it is.

12 Q And does that indicate the serial number to
13 that .380 pistol on it?

14 A Yes.

15 MR. SORENSON: Your Honor, at this time, we'd
16 offer State's 83 into evidence.

17 THE COURT: Any objection?

18 MR. WALTERS: No objection, Your Honor.

19 THE COURT: It's admitted without objection.

20 MR. SORENSON: Thank you, Your Honor.

21 (State's Exhibit Number 83, receipt,
22 admitted into evidence.)

23 BY MR. SORENSON:

24 Q If you would, just publish for the Court what
25 the serial number on that .380 pistol is.

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1 A Yes. It's AP-157924.

2 Q Let me show you State's Exhibit Number 84. Do
3 you recognize those photographs?

4 A Yes, I do.

5 Q What are those photographs of?

6 A These are photographs of a gun that I purchased
7 in 1991.

8 Q Is that that same .380 pistol that you had
9 just --

10 A Yes, it is.

11 Q The same one that's documented on this receipt
12 right here?

13 A Yes, it is.

14 MR. SORENSON: Your Honor, at this time, we'd
15 offer those photographs into evidence. I think
16 they've just been marked for I.D. at this time.

17 MR. WALTERS: No objection, Your Honor.

18 THE COURT: It's admitted without objection.

19 MR. SORENSON: Thank you, Your Honor.

20 (State's Exhibit Number 84, photograph,
21 admitted into evidence.)

22 BY MR. SORENSON:

23 Q Now, Ms. Weaver, back in July of 2004, did
24 Mr. Mahdi know that you owned this .380 pistol?

25 A Well, yes, he did.

AMANDA JEAN WEAVER - DIRECT BY MR. SORENSON

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1 Q And tell the Court how it is that he knew that
2 you owned that pistol.

3 A He kind of frequented my house just to sit and
4 talk. And he happened to come over one day when I
5 had just finished cleaning it and was about to put
6 it away.

7 Q Okay. Does he actually -- so he saw you with
8 the gun?

9 A Yes, he did.

10 Q Did he see where you put the gun away, too?

11 A Well, at first, I didn't think he did, but then
12 later on, I realized, yeah, he did.

13 Q Where was it that you kept that gun in your
14 house?

15 A In my bedroom right in the bottom drawer of a
16 vanity table that I had.

17 Q And your bedroom, is that --

18 A It's adjacent to my kitchen. When you come in
19 through my back door, you enter my kitchen and you
20 can see my bedroom from there.

21 Q Okay. Now, I want to turn your attention, if I
22 could, Ms. Weaver, back to Tuesday, July 13th of
23 2004. Do you recall anything unusual happening that
24 day about your house when you got home?

25 A Yes, I do very clearly. I had just come from

1 over at my mother's taking my brother and my nephew
2 home from helping me do some yard work. And when my
3 daughter and I arrived back at home, I stopped her
4 in the kitchen because I noticed that my living room
5 window, the blind was up and I didn't recall leaving
6 it up. And then as I made her return to the car and
7 I proceeded to check close in the house, I noticed
8 that my inside window was down, but the storm glass
9 was up and the screen was out.

10 Q Now, did you have an opportunity, at that time,
11 on that Tuesday, July the 13th, to look to see if
12 your .380 pistol was in your bedroom in the vanity
13 drawer?

14 A No, I didn't because after proceeding through
15 the house and searching, I didn't notice anything
16 missing or anything pretty much disrupted, no more
17 than the items I had on my desk slid over or
18 whatever, but I pretty much thought I had did it
19 earlier that day, so I didn't have any alarm to, you
20 know, check that.

21 Q Let me ask you, was Mr. Mahdi, the defendant,
22 was he around your house that day or in your
23 neighborhood that day?

24 A Yes, he was, earlier that day when I proceeded
25 to leave to go take my brother and my nephew back to

AMANDA JEAN WEAVER - DIRECT BY MR. SORENSON

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1 my mom's.

2 Q Now, that would be Tuesday, July 13th of 2004?

3 A That's correct.

4 Q Did something happen the following week on that
5 Monday, the 19th, that caused you to go look and see
6 if your gun was in the vanity?

7 A Yes, it did. I was on the phone talking with
8 my mom and we were both commenting on different
9 things that we had seen on the news. And we had saw
10 this incident on there where a police officer had
11 been shot. And, at the time, we both assumed that
12 it was in Richmond.

13 Q Okay. Who was it that they were looking for at
14 that time --

15 A Mikal Mahdi.

16 Q Mr. Mahdi?

17 A Yes.

18 Q And as a result of seeing that information on
19 the news, did you then go check and see if your gun
20 was there?

21 A Yes. When they flashed his picture up, then I
22 let my mom know that I knew who he was. And like I
23 said, we both assumed it was done in the Richmond
24 area. She instructed me to get my gun out as a
25 protectionary (sic) cause for myself and my

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1 daughter. And when I went to get the gun, I noticed
2 it was not where I put it. So I asked her to hold
3 on while I proceeded to look very closely to make
4 sure and we couldn't find it anywhere.

5 Q Did you ultimately end up contacting law
6 enforcement about --

7 A Yes. I called Officer Washburn and reported it
8 to him.

9 Q And he's with the Brunswick County Sheriff's
10 Office?

11 A Yes.

12 Q Now, you had said, ma'am, that you've known the
13 defendant for about ten years; is that correct?

14 A That's correct.

15 Q Let me ask you, during that ten year period of
16 time, has he ever had the opportunity to express to
17 you his opinion regarding white people?

18 A Yes, very clearly.

19 Q And what was that opinion that Mr. Mahdi
20 expressed to you?

21 A In his belief to him, all white people were
22 white devils.

23 Q White devils?

24 A That's correct.

25 Q That was a term that he used?

AMANDA JEAN WEAVER - DIRECT BY MR. SORENSON

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1 A Very -- quite a few times.

2 Q How about his opinion regarding police officers
3 or law enforcement?

4 A He had a very strong dislike for police
5 officers.

6 Q And that is something he had expressed to you
7 over time, also?

8 A Yes.

9 Q And, Ms. Weaver, I want to -- one last thing I
10 want to do. If I could --

11 MR. SORENSON: And these are just marked for
12 I.D. at this point in time, Your Honor.

13 Q -- show you, Ms. Weaver, State's Exhibits
14 Number 89, 90 and 91. Do you recognize the
15 individual that's in those three photographs?

16 A Yes, I do.

17 Q And who is that that's in those three
18 photographs?

19 A This is Mikal Mahdi.

20 Q Is that gun that he's holding, does that appear
21 to be consistent with your .380 pistol that
22 disappeared at some time?

23 A It's exactly mine.

24 MR. SORENSON: Your Honor, at this time, we'd
25 offer these three into evidence.

1 MR. WALTERS: Your Honor, we would object. We
2 believe those pictures are highly prejudicial to my
3 client's case. And, of course, under the
4 circumstances of Your Honor being the fact finder,
5 we would again object because we believe they're
6 more prejudicial than probative.

7 The gun's already been admitted into evidence,
8 a picture of it has previously by the exhibit that
9 was submitted by Mr. Sorenson. There's no need for
10 an additional picture to be submitted of the gun
11 that she identified this time with regards to the
12 subsequent exhibits. You've already seen the gun
13 one time.

14 MR. SORENSON: Your Honor, I'll be glad, if
15 you'd rather, to hold off on offering these until we
16 have the witnesses from North Carolina here. That
17 may be the better time, if they're going to object
18 to all of that, to take that up.

19 THE COURT: Have them marked for identification
20 purposes at this time.

21 And on the issue, Mr. Walters, regarding the
22 testimony by this witness of knocking off some thugs
23 or juveniles or whatever the specific testimony was,
24 is there any objection to that testimony?

25 MR. WALTERS: Your Honor, of course, I was

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1 going to address it on cross-examination. Of
2 course, there's a great latitude that's allowed
3 within the sentencing phase as far as the testimony.
4 And, of course, she's testifying that somehow this
5 was communicated to her by the defendant in this
6 particular case. It has never been substantiated,
7 but, of course, we're going to address that on
8 cross-examination.

9 THE COURT: But there's no objection to the
10 testimony?

11 MR. WALTERS: We would object to it, Your
12 Honor. And, certainly, we're going to address it in
13 cross-examination, also.

14 THE COURT: I'll sustain the objection and
15 strike that testimony from the record.

16 MR. SORENSON: I believe that would be all that
17 I have at this time, Your Honor. These are just
18 marked for I.D. at this time?

19 THE COURT: Yes, sir.

20 Mr. Walters..

21 MR. WALTERS: May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. WALTERS:

24 Q Ms. Weaver, what is your full name, please?

25 A Amanda Jean Weaver.

1 Q Where are you employed, ma'am?

2 A I'm not employed. I'm on disability.

3 Q And what's your disability that you suffer
4 from?

5 A I've had three back surgeries.

6 Q Three back surgeries?

7 A Yes.

8 Q Where were you employed before you were
9 disabled by your three back surgeries?

10 A Was I employed before?

11 Q Yes, ma'am. Have you ever worked?

12 A Yes.

13 Q How old are you?

14 A I'm 38.

15 Q You're 38. What was your first job?

16 A My first job was working at a nursing agency.

17 Q All right. And how long did you work there?

18 A I worked there for, approximately, nine years.

19 Q All right. And then where did you work after
20 that?

21 A I drove a tractor trailer truck.

22 Q How long did you do that?

23 A I did that for 12 years.

24 Q All right. And what did you do after that?

25 A After that, I just worked at an auto part

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1 store.

2 Q All right. And how long did you work there?

3 A I worked there for three years.

4 Q All right. And after that?

5 A And after that, I worked nowhere.

6 Q All right. And then you were disabled with the
7 three surgeries; is that right?

8 A That's correct.

9 Q Now, you said you've known Mikal Mahdi for
10 about ten years; is that correct?

11 A That's correct.

12 Q All right. And you also testified -- do you
13 have a family member that's involved in law
14 enforcement?

15 A Do I have a family member that's -- no, I don't
16 have -- I no longer have a family member that's
17 involved in law enforcement.

18 Q But there was a brother or someone that was in
19 law enforcement; is that correct?

20 A No, you didn't hear me say that.

21 Q All right. So let me make sure I'm sure. You
22 don't have any family or friends that are in law
23 enforcement?

24 A They are no longer in law enforcement, no.

25 Q All right. Your testimony was, is that Mikal

1 Mahdi had been involved in some type of drug
2 peddling; is that correct?

3 A That is correct.

4 Q And your testimony was, is that he had
5 testified that somehow he'd knock someone off?

6 A No, he didn't testify, he told me that that's
7 what he was going to do.

8 Q Why didn't you pick up the phone and call the
9 police and tell them that I've got this information
10 this young man has told me and I believe it's
11 pertinent to the issue of drug peddling here in
12 where you live?

13 A Because during the time when he told me, this
14 young man had -- was kind of on the high side. When
15 I say on the high side, I witnessed him drinking
16 three or four quart bottles of Colt 45 beer, that's
17 malt liquor.

18 Q Let's back up because you just testified in
19 front of this Judge as if you were having a normal
20 conversation and that somehow Mr. Mahdi told you
21 that he had knocked off some drug dealers?

22 A No. He told me he was going to knock them off.

23 Q All right. So let's make sure we're clear on
24 your testimony. The Judge just asked me if I
25 objected to it, you indicated to Mr. Sorenson that

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

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1 he had knocked off some drug dealers; isn't that
2 right?

3 A No. I indicated that that's what he said he
4 was going to do.

5 Q All right. So let's make sure we're clear on
6 your testimony.

7 A Exactly.

8 Q It never happened?

9 A What never happened?

10 Q He never knocked off any drug dealers?

11 A He never knocked them off is what you're
12 saying?

13 Q What I'm saying is the representation that you
14 made to this Judge is a lie?

15 A No. What I'm saying is he told me that that's
16 what he was going to do.

17 Q All right. So let's make sure we're clear. It
18 never happened?

19 A Well, I'm not -- you know --

20 Q You don't have --

21 A -- I can only tell you what he did --

22 Q -- any personal knowledge --

23 MR. SORENSON: Your Honor, I object.

24 THE WITNESS: I can tell you what he did.

25 THE COURT: Just a moment, ma'am. When there's

1 an objection, stop talking and let me rule on the
2 objection.

3 Mr. Sorenson, go ahead.

4 MR. SORENSON: Argumentative would be the main
5 basis of the objection, Your Honor. Also, I thought
6 you just struck all of this from the record.
7 Obviously, I guess, if he's going to go back into
8 it, I mean, that's fine, but, I mean, he objected,
9 you struck it and now suddenly he's gone back in and
10 he's basically arguing with -- not only
11 misrepresenting what she said, but arguing with her
12 about it.

13 MR. WALTERS: May it please the Court. Your
14 Honor, I not only objected, but I stated, on
15 cross-examination, I would clearly explore this
16 issue. I didn't state clearly explore this issue, I
17 said on cross-examination, we will address the
18 issue.

19 THE COURT: All right. The objection is
20 sustained as to being argumentative and also as to
21 not allowing the witness an opportunity to give an
22 answer prior to asking another question. You may
23 proceed.

24 BY MR. WALTERS:

25 Q He never knocked off anyone?

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

1433

1 A (No response.)

2 Q You have no personal knowledge of Mr. Mahdi
3 knocking off anyone, yes or no?

4 A Yes, I do.

5 Q What knowledge do you have?

6 A I know what he told me he was going to do.

7 Q Do you have any personal knowledge as to
8 whether he performed --

9 A If you're asking me if I stood there and
10 watched him do it, no, I didn't.

11 Q So you have no --

12 A But I can tell you what he sat in my house and
13 told me he was going to do.

14 Q And he told you that while he was drinking; is
15 that correct?

16 A Exactly, and I figured that just because he was
17 drinking, he was just flapping his gums off. Do you
18 think I would just, in my wildest dreams, think he
19 would just walk out there and do it after drinking?
20 No. He was just pretty much flapping his gums off,
21 that's what I believed that he was doing.

22 Q So as far as this line of testimony about him
23 knocking off someone, he was just flapping his gums?

24 A That's what he told me he was going to do so
25 that's all I can tell you is what he told me he was

1 going to do.

2 Q All right. Now, you also stated that he
3 brought to you a black nine millimeter that was in
4 pieces; is that correct?

5 A That's correct.

6 Q All right. And how old do you think he was at
7 that time; do you remember? Do you have an idea?

8 A No, I have no idea of how old the gun was, no,
9 I don't.

10 Q Okay. How old was he, Mr. Mahdi?

11 A Mr. Mahdi was 21 years old.

12 Q Okay. And how old were you at that time,
13 ma'am?

14 A Well, given to the point that that was just two
15 years ago, then I guess I was only 36.

16 Q All right. So it never occurred to you that
17 you should pick up the phone and maybe call the
18 police if this young man has a gun he's trying to
19 put together, you had previous conversation that he
20 said he was involved in some type of activity with
21 drugs? You never picked up the phone? You never
22 called anyone?

23 A No, I didn't because I didn't see any need to.
24 Like I told you, I thought he was just flapping his
25 gums off.

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

1435

1 Q Okay. So, again, this testimony that you've
2 given this Court is all because Mr. Mahdi was just
3 flapping his gums? It's not substantiated --

4 A I'm just telling you what he told me.

5 Q Now, you also testified that you had a .380; is
6 that correct?

7 A That is correct.

8 Q And then your testimony was, is that, you know,
9 you asked the sheriff to hold this gun for you; is
10 that right?

11 A That's correct.

12 Q I believe there was some type of domestic
13 dispute at your home; is that right?

14 A Yes, there was.

15 Q All right. And then you stated that he
16 frequented your home; is that correct?

17 A That's right.

18 Q All right. So let me get this straight now.
19 You've got a young man who's flapping off his gums
20 about possibly killing some people. He's also
21 brought you a gun and said, How do I put this
22 together? But then you allow this man to come in
23 your house and actually sit down and talk with you
24 and commune with you and come inside of your home?

25 A Well, he had been coming to my house and

1 sitting and talking and communing with me inside my
2 home before he started flapping his gums and before
3 he brought the nine millimeter to me to put
4 together.

5 Q Ma'am, your credibility is on the line. I'm
6 asking you a question.

7 A I'm answering your question.

8 Q He frequented your home after he told you that
9 he was going to kill someone and that he asked you
10 to put a gun together, you ask -- you're telling me
11 that you're going to tell this Judge that you
12 allowed --

13 A No, he frequented my home before that.

14 Q -- him to come in your house?

15 A He frequented my home before that. After
16 Mr. Mahdi had told me all of this and wanted me to
17 put this gun together, I didn't see Mr. Mahdi
18 anymore until I was leaving my home and I saw him
19 riding back up the street on a bicycle.

20 Q Let me ask you a question. Why should we
21 believe anything you have to say today --

22 A Well, that's up to you.

23 Q -- considering your actions?

24 A That's up to you because I'm only telling you
25 what he told me.

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

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1 Q All right. So this individual that walked in
2 your home and talked about killing people, this
3 individual that comes in your home and says, I want
4 to put a gun together, this individual who sat in
5 your house and, evidently, he drank in your house,
6 all right, and he sat inside of your home, you
7 allowed him to continue to come in your home and
8 then you testify that Tuesday, July 13th, your house
9 was broken into; is that correct?

10 A That is correct.

11 Q All right. And, evidently, you didn't have any
12 idea who broke in your house; is that right?

13 A That's right.

14 Q All right. So you didn't call the police, did
15 you?

16 A Yes, I called the police when I realized my gun
17 was gone.

18 Q All right. And the impression we get is, is
19 that you never suspected that it was Mr. Mahdi, did
20 you?

21 A Did I ever suspect it was him? No, I didn't
22 suspect it was him.

23 Q Well, let me get this straight now. The man
24 that came in your home and told you he was going to
25 kill other people, the man that came in your home

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1 and said, How do I put together a gun, the man that
2 came in your home that sold marijuana and was
3 knocking off or supposedly flapping his gums about
4 knocking off other drug dealers, you didn't suspect
5 that he was doing anything wrong, did you?

6 A If you're asking if I suspected he stole my
7 gun, no, I didn't. Now, as far as suspecting
8 whether he'd done anything wrong, I didn't follow
9 him like a blood hound everyday to know what he was
10 doing.

11 Q Why should this Judge believe anything you have
12 to say?

13 A Well, he's the Judge. I'm just telling you
14 what I know.

15 Q All right. Well, let's move on in your
16 testimony here. When you suspected that your house
17 had been broken into, you said you filed a report?

18 A That's correct.

19 Q Then there was a news flash. As I understand,
20 you said you were talking to your mama; is that
21 right?

22 A There was a news flash before I filed the
23 report about my gun being missing, that's what
24 prompted me to file the report.

25 Q Wait a minute now. You filed a report about a

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

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1 domestic dispute. What was the domestic dispute
2 about?

3 A The domestic dispute was years before.

4 Q No. What was the domestic dispute about? Tell
5 the Judge.

6 A The domestic dispute was about a young man came
7 to my house, because his wife and her kids were out
8 in the dark and had nowhere to stay, so he came to
9 my house to try to abuse her and I made him get off
10 of my property. That's what the domestic dispute
11 was about. It had nothing to do with this.

12 Q So there was another young man that was in your
13 home that was married to someone else and there was
14 a dispute about him being at your house, what was
15 it?

16 A What young man in my home being married to
17 someone else?

18 Q Ma'am, I'm just asking you a question. You
19 said that there was a dispute?

20 A No, I didn't even recall anything about any man
21 being in my house married except for myself and my
22 husband, or ex-husband now.

23 Q Okay. But you got this news flash that came
24 up, okay?

25 A That's correct.

1 Q And, evidently, you saw Mr. Mahdi's face; is
2 that right?

3 A Exactly, after I saw the --

4 Q All right. You knew --

5 COURT REPORTER: I can only take one person at
6 a time.

7 BY MR. WALTERS:

8 Q When you saw the news flash, you said you
9 looked for your gun; is that right?

10 A After I conversated (sic) with my mom on the
11 phone and she encouraged me to pull my gun out for
12 protectionary (sic) purposes after what we seen
13 flashed on the news.

14 Q And, at that time, when you went to look for
15 your gun, you said the gun was missing?

16 A Exactly, it wasn't where I put it.

17 Q Okay. And then you contacted the police; is
18 that right?

19 A No. I proceeded to look further in the house
20 to see if I had put it somewhere else and it wasn't
21 there because I knew it was only one place that I
22 put it. And when I noticed it wasn't there and I
23 conversated (sic) with my mom again and then she
24 encouraged me to go ahead on and call the police and
25 file a missing report and that's what I did.

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

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1 Q Okay. And so you filed a report stating that
2 your gun was missing?

3 A That's correct.

4 Q All right. Did you ever talk to the police and
5 say, I know who Mr. Mahdi is or I believe Mr. Mahdi
6 took my gun?

7 A No. I only identified Mr. Mahdi once I was
8 questioned by some investigators.

9 Q All right. And when the investigators
10 contacted you, that's when you had the discussion
11 about Mr. Mahdi; is that right?

12 A That is correct.

13 Q All right. So I want to make sure I'm clear
14 about your testimony. Mr. Mahdi was in your home,
15 he talked about drug peddling, but you say he was
16 flapping his mouth?

17 A That's what I figured because he'd been
18 drinking.

19 Q All right. And he was in your home and he
20 asked you how to put together a gun?

21 A No, he wasn't in my home when he asked me to
22 put the gun together.

23 Q He was in the yard?

24 A He was in my yard, that's correct.

25 Q And he was flapping his gums and you said, no,

1 I can't show you how to put the gun together?

2 A He asked me if I knew how to put it together
3 and I said, yeah. He asked me if I would do it for
4 him and I told him, no, because I had to have a book
5 to do it, which I didn't have to have a book, I just
6 didn't want to be involved with it.

7 Q All right. And it's my understanding that he
8 frequented your home even after he talked about
9 killing other people?

10 A No, he didn't. He came to my home before.
11 After he had discussed doing that and then asked me
12 about the gun, then I didn't see him anymore until I
13 saw him riding down the street on a bicycle.

14 Q But you never asked him, don't come back in my
15 home, don't be a part of my life, I believe
16 you're --

17 A Why? He didn't harm me in any kind of way. He
18 didn't pose a threat to me.

19 Q So it was okay to talk about killing other
20 people and it was okay to talk about the use of
21 marijuana and knocking people off and flapping your
22 gums as long as it didn't involve you?

23 A He did not pose a threat to me. He didn't pose
24 a threat to my child. Like I said, after drinking
25 the amount that I knew he had drink and saw him

AMANDA JEAN WEAVER - CROSS BY MR. WALTERS

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1 drink, he was intoxicated, so I pretty much figured
2 that the alcohol was making him talk.

3 Q You're going to sit here with a straight face
4 and tell us you didn't think this man was a threat
5 to your children?

6 A I have one child. No, I didn't. My child was
7 never at home when he came by my house. She was in
8 school.

9 MR. WALTERS: I have no further questions.

10 THE COURT: Any redirect?

11 MR. SORENSON: No, sir, Your Honor.

12 THE COURT: Thank you, ma'am. You may step
13 down.

14 MR. SORENSON: May she be excused, Your Honor?

15 THE COURT: Any objection to this witness being
16 excused?

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

18 THE COURT: You're excused, ma'am. Thank you
19 for coming.

20 MR. PASCOE: The State calls Corey Pitts, Your
21 Honor.

22 COREY T. PITTS,

23 having been duly sworn, testified as follows:

24 THE CLERK: State your full name for the
25 record, please.

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1 THE WITNESS: Corey T. Pitts.

2 DIRECT EXAMINATION

3 BY MR. PASCOE:

4 Q Good afternoon, Corey.

5 A Good afternoon.

6 Q Where do you live, sir?

7 A Redacted

8 Q And what county is that in?

9 A Newberry.

10 Q Do you work?

11 A Yes.

12 Q Where do you work?

13 A South Carolina Employment Security Commission.

14 Q And how long have you worked there?

15 A Six years.

16 Q I want to direct your attention now to the
17 early morning hours of Sunday, July the 18th of
18 2004. What were you doing that morning?

19 A I was -- I had just left -- dropped a friend
20 off at home and I was heading to get some gas to
21 head back to my house.

22 Q Okay. And prior to that morning, Sunday, July
23 18th, did you ever know the defendant, Mikal Mahdi?

24 A No.

25 Q Ever had any dealings with him before that

COREY T. PITTS - DIRECT BY MR. PASCOE

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1 morning?

2 A No.

3 Q And what area of town were you? Where were you
4 after you dropped your friend off when you were
5 going to get gas?

6 A I was at the intersection of Washington and
7 Bull Street in Columbia, South Carolina.

8 Q Okay. And tell the Judge what happened to you
9 at, approximately, 3:25 that morning.

10 A I was sitting at a traffic light waiting to
11 make a left turn and I was carjacked at gunpoint.

12 Q And where exactly -- what road were you on?

13 A I was on Washington Street to make a left on to
14 Bull Street.

15 Q And what vehicle were you driving?

16 A 2000 Ford Expedition, red.

17 Q Do you recognize the vehicle in State's Exhibit
18 16?

19 A Yes.

20 Q And what do you recognize that to be?

21 A That's my Ford Expedition.

22 Q It's the same Expedition you were driving that
23 early morning on July 18th?

24 A That is the same Expedition.

25 MR. PASCOE: I ask that State's Exhibit 16 be

1 admitted into evidence, Your Honor.

2 MR. WALTERS: No objection, Your Honor.

3 THE COURT: It's admitted without objection.

4 (State's Exhibit Number 16, photographs,
5 admitted into evidence.)

6 BY MR. PASCOE:

7 Q Was anybody else with you when you were driving
8 the Expedition that morning, taking a left on Bull
9 Street?

10 A No, sir.

11 Q And before I forget, though, looking at State's
12 Exhibit 16, you can see from there, is that your
13 license tag on the front and back of State's Exhibit
14 16?

15 A No, sir.

16 Q Did you have South Carolina tags?

17 A I did, sir.

18 Q And if you could, Corey, tell the Judge exactly
19 what happened to you, how you got carjacked that
20 morning.

21 A I was at the traffic light waiting to make a
22 left turn and I was looking in my department -- my
23 -- I have a compartment in the center console,
24 looking for a C.D. and when I looked up, there was a
25 gun in my face, told me to get out get and walk --

COREY T. PITTS - DIRECT BY MR. PASCOE

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- 1 get the F out and walk.
- 2 Q Exactly what did the person say to you?
- 3 A Get the fuck out and walk.
- 4 Q Were you scared?
- 5 A Definitely.
- 6 Q Had you ever felt like that before?
- 7 A Never in my life.
- 8 Q Did you get a good look at what the gun looked
9 like?
- 10 A I did, sir.
- 11 Q Let me show you what's been marked as State's
12 Exhibit 84. Do you recognize that?
- 13 A Yes, sir.
- 14 Q Is that gun consistent or inconsistent with the
15 one that the defendant used on you?
- 16 A Seems to be consistent.
- 17 Q In fact, what did you tell the police that
18 morning on July the 18th that the gun looked like?
- 19 A I saw chrome.
- 20 Q And after you got out of the vehicle, what did
21 you end up doing?
- 22 A I went to the left towards the sidewalk.
- 23 Q And where did you go?
- 24 A I walked up for about three blocks to the
25 Baptist Medical Center and called for help.

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1 Q And who did you call?

2 A The police department.

3 Q And you told them what happened?

4 A I did.

5 Q Gave them a very good description of the
6 defendant, the person that did this to you?

7 A As best I could, sir.

8 Q When did you learn that the vehicle was
9 recovered?

10 A The next morning, I think, around nine o'clock,
11 I think.

12 Q And the person who put that gun to your face
13 and told you to get the F out of that red
14 Expedition, do you see him in the courtroom today?

15 A Yes, sir.

16 Q If you could, point him out for Judge Newman.

17 A (Indicating).

18 Q The man wearing the orange, Mikal Mahdi?

19 A He is wearing the orange, sir.

20 MR. PASCOE: Thank you. Answer any questions
21 defense counsel has for you.

22 CROSS-EXAMINATION

23 BY MR. WALTERS:

24 Q Good afternoon, Mr. Pitts.

25 A Good afternoon.

COREY T. PITTS - CROSS BY MR. WALTERS

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1 Q Now, Mr. Pitts, when you testified with regards
2 to where you were going that night, let's talk about
3 that. I believe you gave a statement to the police
4 and what the statement said was, is that you were
5 coming from Little Mountain; is that correct?

6 A No. I told them I was coming from a friend's
7 house.

8 Q All right. And I believe you went over to
9 Vista Commons, didn't you?

10 A Yes.

11 Q And I believe you were supposed to leave Vista
12 Commons and you were supposed to go over to Metts
13 Road; is that right?

14 A No. I left Vista Commons to go to get some gas
15 from the Hot Spot.

16 Q And then when you left Vista Commons, you were
17 headed to Metts Road; is that correct?

18 A No. When I left the Vista Commons, I went to
19 -- I was on my way to get some gas.

20 Q All right. And did you go get gas on Bull
21 Street?

22 A I was heading up Washington to make a left on
23 to Bull to get gas.

24 Q All right. But my question is, is that where
25 you were coming from when you say you were coming

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1 from a friend's house?

2 A I was coming from the Vista Commons, sir.

3 Q All right. And where were you coming from
4 before you arrived at Vista Commons?

5 A I was coming from home, sir.

6 Q And that would be Little Mountain; is that
7 correct?

8 A That is correct.

9 Q All right. So answer my question. You were
10 coming from Little Mountain, you were going to Vista
11 Commons; isn't that right?

12 A That's correct.

13 Q All right. And then after you got your gas,
14 you were supposed to go back out on Metts Road; is
15 that correct?

16 A That is correct.

17 Q All right. So we're clear on where you were
18 supposed to travel; is that right?

19 A Yes.

20 Q All right. And the question I have is, and I
21 want to carefully just go through your testimony,
22 when you left Little Mountain and you left Vista
23 Commons, what sense did it make for you to go down
24 on Bull Street when you had to go back out on Metts
25 Road?

COREY T. PITTS - CROSS BY MR. WALTERS

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1 MR. PASCOE: Objection, Your Honor. This is
2 argumentative. What sense do these questions make?

3 THE COURT: Who did the direct of this witness?

4 MR. PASCOE: I did, Your Honor.

5 THE COURT: All right. The objection is
6 overruled.

7 BY MR. WALTERS:

8 Q You stated that you were headed out to Metts
9 Road; is that correct?

10 A Yes.

11 Q And I believe you put that in your statement to
12 the police?

13 A I was headed to get some gas and then to Metts
14 Road, sir.

15 Q But could you explain to me, it doesn't make
16 any sense when you go through your testimony or
17 statement that you'd given to the police, you went
18 to Vista Commons and then you went downtown
19 Columbia; isn't that right?

20 A That's the way to get to Bull Street, sir.

21 Q All right. Could you tell the Judge and tell
22 the people here what you were doing down on Bull
23 Street at three o'clock in the morning?

24 A I was heading to get some gas, sir.

25 Q There isn't a gas station at 1400 Bull Street,

1 is there?

2 A There is not, but there is a traffic light and
3 Bull Street leads to the Hot Spot, sir.

4 Q Tell the Judge what people do down on Bull
5 Street at three o'clock in the morning.

6 A I have no idea, sir.

7 Q You don't know?

8 A No.

9 Q All right. Inside your vehicle they've shown
10 some pictures, inside that vehicle you had what?

11 A I had a checkbook, sir.

12 Q You had about 75 condoms, didn't you?

13 A Yes.

14 Q You also had tampons, too, didn't you?

15 A Yes, that were not mine, but -- well, not that
16 I know of.

17 MR. PASCOE: Objection.

18 THE WITNESS: I'm not sure of tampons, sir.

19 THE COURT: Sir, when there's an objection,
20 please don't talk any further.

21 MR. PASCOE: Object to relevance, Your Honor.
22 This is totally irrelevant the scope of this
23 cross-examination.

24 MR. WALTERS: May it please the Court. Your
25 Honor, the witness has testified, he's also given a

COREY T. PITTS - CROSS BY MR. WALTERS

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1 statement to the police, I'm allowed to
2 cross-examine him with regards to what he was doing
3 there, why he was there. He's testified with
4 regards to the actions of my client. It's
5 probative, it's relevant and it's material.

6 If the prosecution didn't want to go into that,
7 they simply could have talked about the carjacking
8 itself. He claims that he was going down there to
9 get some gas and things of that nature and, of
10 course, I'm allowed to cross-examine him with regard
11 to the statement that he gave to the police.

12 In addition to that, when I talk about tampons
13 and condoms, these were pictures that were provided
14 by the Solicitor's office of his car, in this
15 vehicle and what was inside the vehicle. It's
16 probative, it's relevant and it's material. He's
17 painting the picture that says, I was just out for
18 the night, I was going to get some gas and someone
19 carjacked me and I'm saying that's totally not
20 correct.

21 THE COURT: Your objection is overruled.

22 You may proceed.

23 BY MR. WALTERS:

24 Q You had about 75 condoms in that car, you also
25 had tampons in that car?

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1 A I did not have 75 -- there should not have been
2 75 condoms in that car.

3 Q Fifty?

4 A No, that is not correct.

5 Q Fifty?

6 A There could have been condoms in the car, yes,
7 sir.

8 Q Did you have about 50?

9 A I'm not sure how many it was.

10 Q All right. Tell the Judge you don't know what
11 goes on at like three o'clock in the morning down on
12 Bull Street, do you?

13 A That I do not.

14 Q And, in fact, when you were down on Bull
15 Street, you stopped your vehicle and you were
16 inquiring of other people what was going on?

17 A Did not, sir.

18 Q In fact, you were riding through on Bull Street
19 because you were looking for some action?

20 A No, I did not, sir.

21 Q Okay. And in this particular case, what
22 happened was, is that you're saying that you ran up
23 on Mr. Mahdi; is that right?

24 A I met Mr. Mahdi at the traffic light, sir,
25 waiting to make a left turn.

COREY T. PITTS - CROSS BY MR. WALTERS

1455

1 Q You pulled over at the traffic light, didn't
2 you?

3 A That is not correct, sir. I was waiting at the
4 traffic light to make a left turn.

5 Q You didn't have a dispute with Mr. Mahdi?

6 A Did not, sir.

7 Q Okay. And in this particular vehicle, when you
8 pulled over and you talked to Mr. Mahdi and you had
9 50 or so condoms and your tampons and you pull your
10 car over and you're talking to Mr. Mahdi, you're
11 saying that he pulled a gun out on you at that time?

12 A Sir, I met Mr. Mahdi at the traffic light
13 waiting to make a left turn.

14 Q Right. But, see, you were supposed to be going
15 out to Metts Road and you went downtown Columbia,
16 why did you do that?

17 A As I said, sir, I was heading to get some gas.

18 Q You're saying there isn't a gas station that's
19 closer to Vista Commons than other down -- other
20 than down on Bull Street?

21 A To my knowledge, sir, there is no gas station
22 that's open that late in that area.

23 Q Mr. Pitts, it's your testimony that something
24 bad happened to you, but, Mr. Pitts, you also
25 voluntarily went down Bull Street looking for some

1 action?

2 A I did not, sir.

3 Q All right. And after this event occurred, you
4 also stated that you went to the police; is that
5 correct?

6 A When I left -- I walked to the Baptist Hospital
7 and, yes, I called for the police.

8 Q Okay. And then that's when you gave a
9 description of the person that had taken your
10 vehicle; is that right?

11 A As best I could, sir.

12 Q Okay. And then, of course, you received
13 information that the vehicle had been recovered in
14 Calhoun County?

15 A I did the next day, sir.

16 MR. WALTERS: Your Honor, I have no further
17 questions.

18 THE COURT: Anything further, Mr. Solicitor?

19 MR. PASCOE: No questions.

20 Thank you very much, Mr. Pitts.

21 THE COURT: You may step down, sir.

22 MR. SORENSON: The State calls Stephen Curtis.

23 STEPHEN CURTIS,

24 having been duly sworn, testified as follows:

25 THE CLERK: State your full name for the

STEPHEN CURTIS - DIRECT BY MR. SORENSON

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1 record, please.

2 THE WITNESS: Stephen Curtis.

3 THE COURT: Solicitor, before you start,
4 everyone let's just stand for a moment.

5 (Pause.)

6 DIRECT EXAMINATION

7 BY MR. SORENSON:

8 Q Good afternoon, Agent Curtis.

9 A Good afternoon.

10 Q If you would, please tell the Court where
11 you're employed.

12 A I'm currently employed with the South Carolina
13 State Law Enforcement Division in Columbia.

14 Q And what are your duties and responsibilities
15 with SLED?

16 A Currently, I'm a lieutenant assigned to the
17 inspections unit at the headquarters, SLED.

18 Q Is that a recent promotion that you received?

19 A Yes, sir, it is.

20 Q Prior to that, what capacity were you employed
21 at SLED?

22 A I was an agent assigned to the latent print
23 crime scene unit.

24 Q And how long did you work in that capacity?

25 A A little over eight years.

1 Q And prior to that, where were you employed?

2 A I was a deputy sheriff at the Richland County
3 Sheriff's Office in Columbia.

4 Q Okay. And did you work in their crime scene
5 unit at Richland County for a period of time, also?

6 A Yes, sir. Over the course of ten years, I had
7 several different assignments from uniform patrol
8 officer to crime scene investigator to -- I ended up
9 being a sergeant over the robbery homicide unit.

10 Q And did you have an opportunity, Agent Curtis,
11 to respond out to the homicide scene of Captain
12 Myers back on July 18th of '04?

13 A Yes, sir, I did.

14 Q About what time did you get out there that
15 evening?

16 A We arrived, approximately, 11:30 p.m., I
17 believe it was.

18 Q And if you would, describe -- if you would,
19 describe for the Court the scene as it was when you
20 found it that evening.

21 A We had gotten directions to come to a dirt
22 road, I believe it was off of Burke Road off of
23 Highway 21. I was told this was the Saint Matthews
24 area. It was probably about two tenths of a mile
25 off of Burke Road down a dirt road when we came to a

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1 clearing where a metal fabricated building shack was
2 present and there were several police cars there and
3 the crime scene tape was up. They had some lights
4 set up and a lot of officers were there at the
5 scene.

6 Q Was, Captain Myers, still there, his body still
7 there?

8 A Yes, sir, it was.

9 Q And if I could, I'd like to show you -- if you
10 would, first of all, describe for the Judge what the
11 condition of Captain Myers was when you arrived out
12 there that evening?

13 A Well, after I was briefed by Lieutenant
14 Whetstone with SLED there at the crime scene, we
15 went inside just to take a quick look and a walk
16 through. Mr. Myers was laying face down in the
17 workshop area. The shed was actually divided into a
18 -- the larger portion was like a workshop area with
19 bench and tools and some machines and things like
20 that and then the back area was, I guess, being
21 converted to make a living quarters. So in the
22 front area, the workshop area, Mr. Myers was laying
23 face down on the cement next to the workbench there
24 near the front door.

25 Q Let me initially show you, Agent, if I could,

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1 State's Exhibits 20 and 21, ask you do those depict
2 the outside of the shed as you found it that
3 evening?

4 A Yes, sir. These are photographs of the
5 exterior from both sides of the building.

6 MR. SORENSON: Your Honor, we'd offer State's
7 20 and 21 into evidence.

8 MR. KOGER: Without objection, Your Honor.

9 THE COURT: Admitted without objection.

10 (State's Exhibit Numbers 20 and 21,
11 photographs, admitted into evidence.)

12 BY MR. SORENSON:

13 Q You had indicated the condition of Captain
14 Myers when you arrived out there. Let me show you
15 State's Exhibit Numbers 3, 61 and 60 and ask you to
16 take a look at those?

17 A Yes, sir. These are photographs of Mr. Myers
18 laying -- like I said, he was face down, head
19 towards the front door, laying in the workshop area.
20 I could tell, just by initial observation, he had
21 several gunshot wounds. And the shirt and parts of
22 his hair on the back of his head and stuff looked
23 like they had been burned.

24 Q In fact, were there several matches that were
25 found laying not only on Mr. Myers, but also around

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1 his body?

2 A Yes, sir. There was -- we collected those.
3 There were several matches on him, laying around him
4 and there was a heavy odor of gasoline or a
5 petroleum product you could smell when you stepped
6 inside the building.

7 Q The matches that were all collected from around
8 Captain Myers had all been -- had been struck?

9 A Yes, sir, they were spent matches, yes, sir.

10 MR. SORENSON: Your Honor, at this time, we'd
11 offer State's 3, 60 and 61 into evidence.

12 MR. ROGER: Your Honor, we would object to
13 entering of those three pictures in evidence. A
14 picture of Officer Myers had been entered earlier
15 and we object to it. The entering of those pictures
16 would be cumulative and highly prejudicial.

17 THE COURT: What says the State?

18 MR. SORENSON: Your Honor, can I see -- I'm not
19 sure I know what -- I know that there was another
20 picture we used, but I can't find it to be honest
21 with you. And it may be that one of these is
22 cumulative to that, but -- Your Honor, in looking at
23 -- this is State's Exhibit Number 67, I believe this
24 is in evidence?

25 THE COURT: Yes, sir.

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1 MR. SORENSON: We would withdraw State's
2 Exhibit Number 61.

3 THE COURT: 61 is withdrawn.

4 MR. SORENSON: The other two, Your Honor, I do
5 believe one of them indicates -- shows the matches
6 on Captain Myers' head area, which is not depicted
7 in the other photograph, and the other one helps
8 kind of relate to the body to where it is inside of
9 the shed area.

10 THE COURT: What says the defense?

11 MR. KOGER: Let me see those photos.

12 (Pause.)

13 MR. KOGER: Your Honor, we still would contest
14 entering of Exhibit Number 3 as evidence because it
15 is quite like the one that's already in, Number 67.

16 THE COURT: Exhibits are admitted over
17 objection.

18 (State's Exhibit Numbers 3 and 60,
19 photographs, admitted into evidence.)

20 BY MR. SORENSON:

21 Q Have you had an opportunity, Agent Curtis, to
22 review State's Exhibit Number 2, which, I think, has
23 been marked for I.D.?

24 A Yes, sir, I did.

25 Q Does that appear to accurately depict the

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1 interior, also, I guess, the exterior of the shed as
2 it was found that evening?

3 A Yes, sir, it does.

4 MR. SORENSON: Your Honor, at this time, I
5 would offer State's Exhibit Number 2 into evidence.

6 MR. KOGER: Without objection, Your Honor.

7 THE COURT: It's admitted.

8 (State's Exhibit Number 2, photograph,
9 admitted into evidence.)

10 BY MR. SORENSON:

11 Q Did you have an opportunity that evening, Agent
12 Curtis, to process that crime scene?

13 A Yes, sir, I did.

14 Q And were you able to -- in addition to the
15 matches and the parts of Captain Myers' body that
16 appeared to have been burned, were you able to find
17 any other areas inside the shed where it looked like
18 somebody had attempted to start something on fire?

19 A Yes, sir. The workbench area had some burn
20 marks on it as well, looked like one or two small
21 spots had maybe had something put on them or some of
22 the items had attempted to be set on fire.

23 Q Showing you State's Exhibit Number 43, does
24 that depict that?

25 A Yes, sir.

1 MR. SORENSON: Your Honor, we'd offer State's
2 43 in evidence.

3 MR. KOGER: Without objection, Your Honor.

4 THE COURT: It's admitted without objection.

5 (State's Exhibit Number 43, photograph,
6 admitted into evidence.)

7 MR. SORENSON: Your Honor, if I maybe could
8 have Agent Curtis to step down.

9 THE COURT: Yes, sir, you may.

10 (Witness leaves the witness stand.)

11 BY MR. SORENSON:

12 Q If you would, Agent, kind of going back to, I
13 guess, the photographs depicting Captain Myers'
14 body, if you could kind of show where he was located
15 at when you arrived there?

16 A All right. He was laying, approximately, in
17 this location here (indicating). Like I said, his
18 head was pointed towards this front door and his
19 feet towards the back room. This would have been
20 the shop area, as I called it, and then the back
21 room of the shed.

22 Q All right. And this is kind of the front of
23 the building here, I guess?

24 A Yes, sir.

25 Q And this is a roll up kind of garage type door?

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1 A Yes, sir.

2 Q And the area that was depicted in State's 43
3 that appeared to be burned, where was that located?

4 A That's going to be on top of this workbench
5 that's set up against the wall, approximately, in
6 the middle. Like I said, Captain Myers was here and
7 that area was up on top of the bench there.

8 Q Now, did you have an opportunity in processing
9 that crime scene, Agent Curtis, to recover any shell
10 casings out there?

11 A Yes, sir. We had several shell casings
12 recovered from the crime scene.

13 Q And, specifically, the casings that appeared to
14 be .22 caliber rifle casings, let me show you
15 initially State's Exhibit Number 33, does that
16 depict one of those shell casings?

17 A Yes, sir.

18 Q Okay. Actually, I'm going to let you look
19 through the whole stack, State's Exhibit Numbers 33,
20 34, 44, 52, 53, 54, 55, 56, 57, 58 and 59. If you
21 would, look through all those.

22 A These are all photographs of the shell casings
23 that we took inside the crime scene.

24 Q Were those all collected and taken into
25 evidence that night?

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1 A Yes, sir, they were.

2 MR. SORENSON: Your Honor, at this time, we'd
3 offer those photographs into evidence.

4 MR. KOGER: Without objection, Your Honor.

5 THE COURT: They are admitted without
6 objection.

7 (State's Exhibit Numbers 33, 34, 44 and 52
8 through 59, photographs, were admitted into
9 evidence.)

10 MR. SORENSON: Additionally, Your Honor, I'm
11 sorry, I missed two other photographs.

12 BY MR. SORENSON:

13 Q State's Exhibits Number 24 and 25, does that
14 depict one other shell casing that was found right
15 outside the shed.

16 A Yes, sir. The prior ones were all inside the
17 shed and then these last two photographs are of the
18 shell casing that was found outside.

19 MR. SORENSON: We would offer State's 24 and 25
20 also into evidence.

21 MR. KOGER: Without objection.

22 THE COURT: They're admitted without objection.

23 (State's Exhibit Numbers 24 and 25,
24 photographs, admitted into evidence.)

25 BY MR. SORENSON:

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1 Q If I could, I'm going to give these to you and
2 if you could, kind of just holding up each
3 photograph, just kind of point to -- show the Judge
4 on the diagram where that item would be located.

5 A In the crime scene photo, Your Honor, you can
6 see we've got several things marked here, but number
7 eight would have been the shell casing from outside
8 and that was under the awning to the right of the
9 shed and that one was actually outside in this
10 general area just outside the front door.

11 And going in the order of the photographs,
12 marker number 26 depicts a shell casing here and
13 that would have been down here, near the end of the
14 workbench here (indicating).

15 THE COURT: Where was the first one again,
16 please?

17 THE WITNESS: The first one was actually
18 outside on the exterior of the shed here. There's
19 an awning -- there was awnings on both sides, so
20 these vehicles are underneath the awning. And the
21 swing and everything, there's an awning over that.
22 So that shell casing would have been just generally
23 right here outside of the front door to the right a
24 little bit.

25 BY MR. SORENSON:

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1 Q Was that door open when you got there?

2 A When I got to the scene, this door was open,
3 yes, sir. And then marker -- and this is my marker
4 26 in my photographs, Your Honor, but that shell
5 casing would have been located here outside of this
6 door from the back room area and to the end of the
7 workbench.

8 Twenty-five is another shell casing, that was
9 over here near the stove by this tub, somewhere in
10 that general area there.

11 Twenty-nine was a shell casing that was back
12 here near this air compressor that -- when I got
13 there, like I said, the door was open and it would
14 have been behind the door, between the door and the
15 air compressor.

16 Q I'm showing you State's Exhibit Number 31.
17 Does that show that air compressor with the door
18 open?

19 A Yes, sir. With the door pulled all the way
20 open, it sits right up against it. And that shell
21 casing was right there between the door and the
22 casing (sic).

23 MR. SORENSON: We'd offer Number 31 into
24 evidence also, Your Honor.

25 MR. KOGER: Without objection.

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1 THE COURT: It's admitted.

2 (State's Exhibit Number 31, photograph,
3 admitted into evidence.)

4 THE WITNESS: Photograph 21 depicts a shell
5 casing back here in the back room area on the floor
6 near this red wagon and the chair. Close up of that
7 same shell casing.

8 Twenty-two, another shell casing that was back
9 -- back in this area of the back room, a blow up of
10 item 22. Twenty-three was back here in the corner
11 in the back room. And then 30 was actually back in
12 this general vicinity right here. And 31 was back
13 up here near the table.

14 All of those were found in this back room area.
15 So I think it was a total of five back here and then
16 three more up here and then one outside here
17 (indicating) underneath the awning near the front
18 door.

19 BY MR. SORENSON:

20 Q And what type of shell casings were those that
21 were recovered?

22 A As I recall, they were all .22 caliber shell
23 casings.

24 Q Okay. Now, did you find any projectiles either
25 in or around the shed area?

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1 A Yes, sir, we did.

2 Q Showing you State's Exhibit Number 48, what's
3 depicted in that photograph?

4 A This is a close up of a projectile or a bullet
5 hole in this door. And that door is going to be the
6 door that leads from the shop area to the back room.
7 And it's on the -- if you're in the back room, it's
8 on the inside of the door. So if that door were to
9 close, the projectile struck the door coming from
10 the back room out towards the shop area and it was
11 lodged in the door so it didn't go all the way
12 through.

13 Q You actually recovered that projectile out of
14 that door?

15 A Yes, sir. We cut a hole there in the door and
16 got it out.

17 MR. SORENSON: Your Honor, we'd offer State's
18 48 into evidence.

19 MR. ROGER: Without objection.

20 (State's Exhibit Number 48, photograph,
21 admitted into evidence.)

22 BY MR. SORENSON:

23 Q Showing you State's Exhibit Number 39, what's
24 depicted in that photograph?

25 A This item here is the end of a rifle or a

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1 shotgun stock or butt. And right here you can see
2 is the end of the barrel, a shotgun barrel or a
3 rifle barrel. These two items appeared to have been
4 recently cut just in looking at them. We located
5 those items here at the end of the workbench. There
6 was like a vice attached to the worktable here on
7 the end and they were on the floor laying there just
8 at the end of the table.

9 Q Showing you State's Exhibit Number 51, what's
10 depicted in that photograph?

11 A This is a photograph of the back room area back
12 from, approximately, this area (indicating) taken --
13 it shows the wagon. You can see some of the items.
14 There were several -- looked like pocket knives and
15 some stuff and some tools sitting on the chair, just
16 showing -- coming back towards, what we call, the
17 bath area.

18 MR. SORENSON: Your Honor, we'd offer State's
19 51 into evidence.

20 MR. ROGER: Without objection.

21 THE COURT: 51 is in.

22 (State's Exhibit Number 51, photograph,
23 admitted into evidence.)

24 BY MR. SORENSON:

25 Q Showing you State's Exhibit Numbers 4 and 5 and

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1 these are in evidence I believe, but did you have an
2 opportunity to photograph some damage that was done
3 to one of the exterior doors?

4 A Yes, sir. This is going to be the locking area
5 of the rear door here, showed some scrape marks on
6 that door.

7 Q And show you State's Exhibit Number 6. What's
8 depicted in State's Exhibit Number 6?

9 A This is a set of keys and a door lock or alarm
10 system. We found those underneath the workbench up
11 against the wall, approximately in this area here
12 (indicating). We had to crawl up under the bench to
13 find those.

14 Q Are you aware of what those keys ended up going
15 to?

16 A I believe that there was a vehicle that was
17 left at another location, to my knowledge, that was
18 the keys from that.

19 Q The Ford Expedition over at the Hess Station?

20 A Yes, sir.

21 MR. SORENSON: Your Honor, at this time, we'd
22 offer State's Number 6 into evidence.

23 MR. KOGER: Without objection.

24 THE COURT: Admitted without objection.

25 (State's Exhibit Number 6, photograph,

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1 admitted into evidence.)

2 BY MR. SORENSON:

3 Q And then showing you State's numbers 40, 41 and
4 42, what's depicted in those photographs?

5 A These are photographs of some blood stains that
6 were present on the workbench.

7 MR. SORENSON: Your Honor, at this time, we'd
8 offer State's 40, 41 and 42 into evidence.

9 MR. KOGER: Without objection.

10 THE COURT: Admitted without objection.

11 (State's Exhibit Numbers 40 through 42,
12 photographs, admitted into evidence.)

13 BY MR. SORENSON:

14 Q Hold them up for the Judge, show him where
15 those are...

16 A Your Honor, this is a side view of the bench.
17 If you were standing in this area facing the
18 workbench, they were on the side of the top counter
19 portion here, approximately, and Mr. Myers' body was
20 here (indicating). Just kind of shows the direction
21 that the blood, as it struck the side of the
22 workbench, in which it flowed. We took those for
23 documentation.

24 Q What -- in looking at that blood spatter, what,
25 if anything, can you tell from that blood spatter as

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1 far as in relation to where Mr. Myers' body was
2 found, also?

3 A Well, just in looking at the size and shape and
4 the direction of these stains just indicated to me
5 that perhaps as he moved forward, he started to fall
6 in this general vicinity and his body ends up here.
7 So that was some blood that had exited his body and
8 struck the side of the workbench and it was arching,
9 going in a downward and a forward direction,
10 consistent with him moving forward coming from the
11 back room towards the front door. And as he starts
12 to fall, that just kind of struck that side of that
13 bench going downward and forward.

14 Q You can have a seat, Agent.

15 A (Witness resumes the witness stand.)

16 Q Now, in searching that crime scene, did you
17 find any firearms at that scene?

18 A No, sir, I did not.

19 Q Did you have an opportunity several days later
20 on July 22nd to go down to Satellite Beach, Florida?

21 A Yes, sir, I did.

22 Q Okay. And did you have an opportunity at that
23 point in time to -- what was the reason you were
24 going down there?

25 A Mr. Myers' police vehicle had been recovered

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1 down there at Satellite Beach and myself and another
2 agent went down there to process the vehicle and
3 collect any evidence that we thought might be
4 connected with this incident.

5 Q And State's Exhibit Number 13, is that
6 photographs of the vehicle that you collected down
7 there in Satellite Beach?

8 A Yes, sir, it is. It was a large Dodge truck, a
9 white one.

10 Q Have pictures of other items that were found
11 inside the truck?

12 A Yes, sir. We went in there and photographed.
13 Prior to doing that and taking anything out of
14 there, we would have photographed it to show the
15 condition that it was in when we got to that scene.

16 Q And this tag that's on the truck here in the
17 photographs, that's the license tag that was on the
18 truck when you retrieved it?

19 A Yes, sir. When we got there, that's exactly
20 the way it was. They had it secured in a -- like a
21 sally port area that was locked. And we got there
22 and they took us in there and looked at it and we
23 opened it up and we started working on it there,
24 photographing it and processing it and going through
25 and inventorying items inside the truck.

1 Q And this municipal government tag, that was
2 found inside the truck?

3 A That was laying there on the seat when I opened
4 the door and started taking photographs, yes, sir.

5 Q Are you aware of whether that tag belonged on
6 this truck?

7 A It was my understanding that it was. I didn't
8 personally run any of the tags to see who the owners
9 of vehicles they were from, but it was my
10 understanding that was supposed to be on that truck.

11 Q Let me back you up. State's Exhibit Number 15,
12 did you take those photographs where they -- they
13 depict the scene out there and the blue truck that
14 was out there at the crime scene?

15 A Yes, sir, that was the truck on the side of the
16 shed there.

17 Q Did it have a license tag on it out there at
18 the scene?

19 A Later on, I was advised that it had had one.
20 At the time there at the crime scene, we didn't know
21 if it had one or not. It didn't appear to be
22 functioning, so I didn't know if it had one.

23 Q But it didn't have a tag on it out there --

24 A No, sir, not there. There was no tag on it
25 there when we looked at it.

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1 Q Did you bring that Dodge truck back to South
2 Carolina?

3 A Yes, sir, I did.

4 Q Now, when you were down in Satellite Beach, did
5 you retrieve any other weapons at that point in
6 time?

7 A They turned over a couple of firearms to us at
8 that scene, the Satellite Beach P.D. people did.

9 Q Let me show you State's Exhibit Number 77. Is
10 that one of the items that they turned back over to
11 you?

12 A Yes, sir. They turned in, I believe, it was a
13 Ruger Mini 14 and a shotgun that they had recovered
14 in the vehicle or with the defendant there when they
15 located him.

16 Q Let me show you this item. It's not marked
17 yet.

18 (State's Exhibit Number 92, shotgun, was
19 marked for identification purposes.)

20 Q Is this the shotgun that they turned over to
21 you, also?

22 A Yes, sir, it is.

23 MR. SORENSON: Your Honor, at this time, we'd
24 offer State's 92 into evidence.

25 MR. KOGER: Without objection, Your Honor.

1 THE COURT: Admitted without objection.

2 (State's Exhibit Number 92, shotgun,
3 admitted into evidence.)

4 BY MR. SORENSON:

5 Q Was there ammunition from both of those weapons
6 also that was turned over that was found inside the
7 truck?

8 A Yes, sir. There was quite a bit of .223 and
9 shotgun cells in the vehicle themselves. And I
10 can't recall -- I believe there was some ammunition
11 with the guns that Satellite Beach had recovered in
12 the guns and stuff as well.

13 Q State's Exhibit Number 76 --

14 A I know there were several magazines.

15 Q Lastly, Agent Curtis, did you have an
16 opportunity to have a .22 rifle that was turned in
17 also that was recovered in Jacksonville, Florida?

18 A Yes, sir. Agent Ed Carroll turned that over to
19 me to be processed and then sent it to firearms for
20 analysis. I received that directly from him.

21 Q Is this the rifle that was matched up to the
22 shell casings that were found out there at the
23 scene?

24 A As I understand, yes, sir, that was the gun
25 that I got and turned over to firearms.

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1 MR. SORENSON: Your Honor, at this time, we'd
2 offer this into evidence, also.

3 MR. KOGER: Without objection.

4 THE COURT: Admitted without objection.

5 (State's Exhibit Number 93, rifle, admitted
6 into evidence.)

7 MR. SORENSON: Beg the Court's indulgence.

8 (Pause.)

9 MR. SORENSON: That would be all I have, Your
10 Honor. Thank you.

11 THE COURT: Mr. Koger.

12 MR. KOGER: May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. KOGER:

15 Q Agent Curtis, did you do any follow-up
16 investigations at the scene other than the night of
17 the incident?

18 A Yes, sir. We went back out there, I believe,
19 twice more.

20 Q Twice more?

21 A Yes, sir.

22 Q When was the first time after you did the
23 initial investigation?

24 A Can't give you the exact date, but I think it
25 was -- I was originally called on the 18th and we

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1 finished up the morning of the 19th. So I would
2 have gone to the autopsy in Newberry later on the
3 19th.

4 On the 21st, we went back out there because the
5 victim's wife had had a chance to walk through and
6 there were some items she said looked like they had
7 been moved, so we went back out there to see what
8 she was talking about.

9 And then we went back on the 22nd to look at
10 the blue truck and there was a couple of other items
11 that they felt like might have been disturbed that
12 we weren't aware of in the original crime scene.
13 And then later on the 22nd is when we went down to
14 Satellite Beach, Florida.

15 Q So the last time you went out to the scene on
16 the incident was July the 22nd of 2004?

17 A Yes, sir.

18 Q All right. And do you have any idea of what's
19 the arrangement of the items in the shed now?

20 A Currently, no, sir, not now. I haven't been
21 out there since 2004.

22 Q Okay. And these firearms right here were found
23 inside the truck down in Satellite Beach, correct?

24 A They had all of those -- well, they had the
25 shotgun and the Ruger in their custody. They were

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1 not inside the vehicle when I did my analysis and
2 examination of the vehicle. They were turned over
3 to me. And then the .22 rifle came in later. Agent
4 Ed Carroll had gotten that, I believe, from
5 Jacksonville and then turned that over to me.

6 Q Okay. But the ones that were found at
7 Satellite Beach is not alleged to have been the
8 murder weapon, correct?

9 A That's my understanding, yes, sir.

10 MR. KOGER: Thank you. No further questions.

11 THE COURT: Anything further?

12 MR. SORENSON: No, sir.

13 THE COURT: Thank you, Officer.

14 Next witness.

15 MR. PASCOE: May it please the Court. If it's
16 all right with the Court, we'd make a motion at this
17 time for the Court to go view the scene.

18 THE COURT: What says the defense?

19 MR. KOGER: Sir?

20 THE COURT: What says the defense, motion for
21 the Court to view the scene?

22 MR. KOGER: No objection, Your Honor.

23 THE COURT: All right. The Court will view the
24 scene. Does the defendant want to go to the scene?

25 MR. WALTERS: No, sir, Your Honor.

1 **THE COURT:** Mr. Mahdi, if you will stand for
2 me, please.

3 Mr. Mahdi, you have the right to be present at
4 every critical stage of these proceedings. And I've
5 determined that viewing the scene -- alleged crime
6 scene or the crime scene is a critical stage of the
7 proceeding and you have the right to go there if you
8 would like to go. Do you wish to go to the crime
9 scene?

10 **DEFENDANT MAHDI:** No, sir, Your Honor.

11 **THE COURT:** Do you waive your right to go to
12 the crime scene?

13 **DEFENDANT MAHDI:** Yes, I do, sir.

14 **THE COURT:** All right. The defendant has
15 waived his right to go to the crime scene. How many
16 miles away is that?

17 **MR. PASCOE:** I can tell you by minutes. It's
18 probably about ten minutes away.

19 **THE COURT:** So we'll be in recess about 45
20 minutes or so.

21 All right. The parameters of visiting the
22 crime scene is that no one will be permitted to
23 discuss the matter at the crime scene or to talk to
24 me about what is being observed or talk about it in
25 my presence other than viewing the scene that the

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1 witnesses have testified concerning. So we'll be in
2 recess.

3 (Brief Recess.)

4 (State's Exhibit Number 94, DVD, was marked
5 for identification purposes.)

6 THE COURT: Solicitor, next witness.

7 MR. SORENSON: May it please the Court, Your
8 Honor. The State calls Detective Mike Poe.

9 MICHAEL S. POE,
10 having been duly sworn, testified as follows:

11 THE CLERK: Please state your full name for the
12 record.

13 THE WITNESS: Michael S. Poe.

14 DIRECT EXAMINATION

15 BY MR. SORENSON:

16 Q Good afternoon, Detective Poe.

17 A Good afternoon.

18 Q If you would, tell the Court where it is that
19 you're employed.

20 A I'm a detective with the Winston-Salem, North
21 Carolina Police Department.

22 Q And how long have you been employed with
23 Winston-Salem Police Department?

24 A January will be 19 years.

25 Q And how long have you been employed as a

1 detective with them?

2 A I've been a detective two different times.

3 This last time since 2001.

4 Q So the last five or so years?

5 A Yes.

6 Q I want to turn your attention, if I could, back
7 to the evening of July 15th of 2004. Did you have
8 an opportunity that night to respond out to the
9 Exxon station -- to an Exxon station there in
10 Winston-Salem?

11 A Yes, I did.

12 Q Where exactly is that Exxon station located at?

13 A At 140 South Broad Street.

14 Q And what was the purpose of you responding out
15 there that night?

16 A Reported homicide.

17 Q And who was the victim in that case?

18 A Christopher Jason Boggs.

19 Q And if you would, when you got on the scene,
20 could you describe the scene for the Court?

21 A The scene was secured by officers conducting a
22 preliminary investigation that had responded to the
23 911 calls. We responded. It was roped off. We did
24 a briefing, contacted the person there from the
25 business. And at some point shortly thereafter, I

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1 spoke with personnel that were affiliated with the
2 business trying to determine who the victim would be
3 inside working there.

4 Q And was the victim who you identified as
5 Mr. Boggs was he present at the scene still there?

6 A Yes.

7 Q So he was dead on arrival of law enforcement
8 and EMS personnel?

9 A His body was still inside the store.

10 THE COURT: Mr. Sorenson, this evidence is
11 being offered under State v. Skipper?

12 MR. SORENSON: Yes, sir.

13 THE COURT: To show the defendant's
14 characteristics?

15 MR. SORENSON: Prior bad character, yes, sir.

16 THE COURT: All right. You may proceed.

17 MR. SORENSON: Thank you, Your Honor.

18 BY MR. SORENSON:

19 Q Did you then assist, Detective Poe, in
20 retrieving any items from the store that evening?

21 A I did.

22 Q Okay. And what was the item that you ended up
23 retrieving from that Exxon station?

24 A The store surveillance tape.

25 Q And this Exxon station, is it a gas station

1 slash convenience store?

2 A Yes, it is.

3 Q Okay. And when you enter the store, where is
4 the cashier located at?

5 A When you enter the store, the cashier is
6 located to the left behind a window and then there's
7 a door that you can go around to go in to get into
8 that area.

9 Q And is there a surveillance camera set up
10 somewhere in that cashier area to capture the front
11 counter there where transactions would take place?

12 A Yes.

13 Q And were you able to get a hold of the tape
14 from that surveillance camera that evening?

15 A Yes.

16 Q Okay. And what did you -- where did you go and
17 what did you do with that tape?

18 A After we -- two of us went in and secured the
19 tape, we went back out, briefed again, I took the
20 tape and went back to the public safety center.

21 Q And did you have an opportunity to view that
22 tape then back at your public safety center?

23 A I did.

24 Q And did it capture the homicide of Mr. Boggs?
25 Was it captured on that surveillance tape?

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1 A Yes.

2 Q Okay. And if you would, just briefly describe
3 for the Court what you observed when you viewed that
4 tape back at your public safety center.

5 A It shows the defendant coming into the store.
6 He places a, what I believe, to be a 40 ounce beer
7 of some type on the counter. At some point, his arm
8 goes out of view and then I see him go up with a gun
9 and shoots the victim in the face with the gun. The
10 victim falls back.

11 And then I see the defendant, if I could show
12 you, come up on to the counter (indicating) with one
13 hand and the gun in the other hand and fire a second
14 shot at the victim. At that point, I immediately
15 called back to the crime scene and said, There's
16 some type of advertisement mat on the counter. I
17 said, The suspect put his hand all over the map,
18 make sure you seize the map.

19 Q Okay. Let me ask you, that tape, has a copy of
20 it been put on to DVD for us?

21 A Yes.

22 Q Have you had an opportunity to view that DVD
23 today?

24 A Yes, I did.

25 Q Does it accurately depict what you observed

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1 when you saw that surveillance tape back on July the
2 15th of 2004?

3 A Yes.

4 MR. SORENSON: Your Honor, and we've marked
5 that as State's Exhibit 94. It's actually in my
6 computer right now. But, Your Honor, we'd offer
7 State's 94 in evidence at this time.

8 MR. WALTERS: Your Honor, I would object.

9 THE COURT: And the basis for the objection?

10 MR. WALTERS: Your Honor, it's highly
11 prejudicial in this particular case. There's been
12 testimony by the officer with regards to the
13 occurrence and what happened. The tape itself would
14 be more prejudicial than probative with regards to
15 this issue. Moreover, it's cumulative. There's
16 been testimony already given with regards to this
17 issue.

18 Moreover, the finder of fact in this particular
19 case is sitting Circuit Court Judge. He doesn't
20 need to be educated on the process of what occurred.
21 The officer has given a graphic depiction by showing
22 what occurred in the station in North Carolina, so I
23 don't believe it's for the edification of the Court,
24 it's cumulative and highly prejudicial.

25 THE COURT: Mr. Sorenson.

1 MR. SORENSON: May it please the Court, Your
2 Honor. The State's position, Your Honor, is that
3 while it may be prejudicial, it's highly relevant.
4 We still have to prove to the Court that the
5 defendant did, in fact, commit this crime and it's
6 captured on video tape where it's pretty clear when
7 you look at it, there's no doubt about it, A, who it
8 is, so it gives you a clear look at the perpetrator
9 of the crime.

10 You also see where he touched on the counter,
11 which is going to be relevant with our next witness
12 that ends up lifting fingerprints off of an
13 advertisement off of that counter. It also shows
14 the gun, which is consistent with the gun that was
15 stolen from Amanda Weaver that she testified about
16 earlier. In that regard, we think it's highly
17 relevant, Your Honor, and that relevancy would
18 outweigh any prejudicial effect.

19 THE COURT: Mr. Walters.

20 MR. WALTERS: Your Honor, it's cumulative
21 again. There's already been testimony by Amanda
22 Weaver with regards to the .380 and she identified
23 the .380. The picture of the .380 was put into
24 evidence. In addition to that, this particular
25 detective has testified that Mikal Mahdi is the

1 individual that he saw in the video that was
2 shooting this individual.

3 So we have a gun identified by Amanda Weaver,
4 we have testimony by this particular officer not
5 only, you know, testimony that there was a shot
6 fired, he gets up or he stands up and said, If
7 you'll allow me, he gives you a graphic detail about
8 how the shots occurred. Moreover, he even gives you
9 an indication how they identified the defendant.

10 In this particular case, the video itself is
11 highly prejudicial. It's not probative. It's not
12 material. It doesn't further prove anything that's
13 before the Court. There's already been testimony
14 with regards to that particular issue.

15 Perhaps another approach should have been taken
16 by the prosecution in this case simply by stating
17 that we found a video and this is what it shows, but
18 that's not the case. The course of action that they
19 chose in this particular case is they've got
20 testimony by Amanda Weaver identifying the gun.
21 We've got a picture of the gun that's been entered
22 into evidence. In addition to that, we have
23 testimony of a detective who identified Mr. Mahdi,
24 states that Mr. Mahdi is the individual that shot
25 not only once, but shot twice and that his hand was

1 placed on the mat. And he identified him, said,
2 grab the mat so you can identify this particular
3 person.

4 What purpose does it serve and how does it
5 further advance the interest of what's being done
6 here? And when I say advance the interest of what's
7 being done here, that they have to prove aggravating
8 circumstances and we come forward with mitigating
9 circumstances. Once you've heard testimony once
10 with regards to a shooting and you've heard
11 testimony twice with regards to a shooting and
12 someone has identified a gun once and then they
13 identified the gun twice, what purpose does it serve
14 other than being cumulative?

15 This is a case of, you know, their reach is
16 exceeding their grasp. What they've got here is, is
17 that we want to put everything into evidence under
18 the circumstances and we want you to consider
19 everything under the sun, but under our rules, it
20 would be considered cumulative and highly
21 prejudicial to continue to go down this road.

22 THE COURT: Mr. Sorenson.

23 MR. SORENSON: Your Honor, additionally --
24 well, one other thing I thought of with regards to
25 that, first of all, I don't feel it's cumulative. I

1 mean, I feel if anything, it's corroborative of this
2 detective's testimony and the other testimony that
3 Your Honor is going to hear.

4 Additionally, Your Honor, this evidence is --
5 we're offering it to show the defendant's bad
6 character under State v. Skipper. And I think in
7 looking at that video, Your Honor, is that that will
8 go a long way towards supporting that bad character.
9 And having an officer testify about it or even
10 ultimately seeing still photos just doesn't quite
11 capture the malice that's present in this act, Your
12 Honor, that we're seeking to introduce.

13 THE COURT: At this stage, all evidence that I
14 would think that the State would offer would be
15 prejudicial and that's the purpose of the evidence
16 to attempt to persuade the Court on the issue. This
17 is offered for the Court to consider as to the
18 defendant's characteristics and it's not being
19 offered as proof of any alleged statutory
20 aggravating circumstance because that's not the
21 aggravating circumstance that is alleged. What is
22 the standard of proof, therefore, as you see it,
23 Mr. Walters?

24 MR. WALTERS: May it please the Court. Your
25 Honor, this entire proceeding, the question I

1 believe that's before the Court is could this man
2 survive in prison, does he have the ability to be
3 adaptable to live within the prison system or, in
4 this particular case, should he be put to death?

5 In this particular case, the testimony that's
6 been given with regards to Mr. Mahdi about his
7 behavior, it doesn't show a malice or a wicked
8 heart. We first had the testimony of one particular
9 officer and he testified that, well, they pulled a
10 weapon, and he said, if I didn't have three lugs
11 inside of here, I could have shot this particular
12 person and I didn't know what to do about the dog.

13 If he's incarcerated, he's not going to have a
14 weapon. He's not going to be able to shoot a dog.
15 He's not going to be able to shoot a police officer.

16 The second witness that testified was Amanda
17 Weaver. She testified that someone stole her .380
18 and there was possibly some talk where he was
19 drinking.

20 THE COURT: Are you going to give your closing
21 argument now as opposed to later?

22 MR. WALTERS: No, sir, I'm not.

23 THE COURT: Or are you just giving me a preview
24 of it or --

25 MR. WALTERS: I apologize, Your Honor. The

1 point is, is that the testimony that's being offered
2 is not relevant toward the issue of whether he could
3 -- the adaptability and the survivability of this
4 man in prison as opposed to putting him to death.
5 And, of course, once you have one witness testify
6 with regards to certain events, what purpose does it
7 serve to have five or six witnesses testify to the
8 same event over and over again?

9 THE COURT: I pose the same question then to
10 you, Mr. Sorenson. What's the test as to
11 admissibility of this evidence?

12 MR. SORENSON: Your Honor, I think there's some
13 cases that specifically say that it doesn't have to
14 be beyond a reasonable doubt. I think there's even
15 another case that indicated it doesn't have to be
16 clear and convincing, but I still think we have to,
17 Your Honor, prove to Your Honor, I mean, that is the
18 defendant. I mean, he hasn't conceded that, I don't
19 believe, that -- that it is him that, in fact, that
20 committed this crime.

21 THE COURT: At the beginning of the trial, the
22 Court inquired of the defendant as to whether the
23 defendant conceded anything as to evidence. And, of
24 course, anything that's conceded by the defendant
25 the State may not necessarily have to prove.

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1 And this is an issue that the Court ruled on
2 and ruled that it would be excluded from the jury
3 hearing during the guilt phase as being more
4 prejudicial than probative. Of course, when you get
5 to the sentencing phase, then the -- a separate
6 question is presented to the Court. And the
7 question before me now is as to whether or not this
8 evidence is of any possible benefit to the Court as
9 the Court considers the defendant's characteristics
10 as outlined in the case of State versus Skipper.
11 Over the objection of the defense, I'm going to
12 allow the item into evidence.

13 MR. WALTERS: Thank you, Your Honor.

14 (State's Exhibit Number 94, DVD, admitted
15 into evidence.)

16 MR. SORENSON: Your Honor, at this time, I
17 would like to publish State's Exhibit Number 94 for
18 the Court.

19 THE COURT: Yes, sir.

20 (Whereupon, State's Exhibit Number 94 was
21 played for the Court.)

22 (During the playing of State's Exhibit
23 Number 94, the following occurred.)

24 BY MR. SORENSON:

25 Q There's no sound; is that correct, Detective?

1 A Correct.

2 Q In the center of the counter there, Detective
3 Poe, is that -- that kind of the black outline, is
4 that the advertisement that you were referring to?

5 A Yes, it is.

6 (The playing of State's Exhibit Number 94
7 was completed.)

8 Q If I could, show you State's Exhibit 91. Is
9 that a still photograph off of the video?

10 A Yes, it is.

11 Q Does that indicate where Mr. Mahdi had placed
12 his left hand on that advertisement?

13 A Yes, it is.

14 MR. SORENSON: Move to offer State's Number 91
15 into evidence, Your Honor.

16 THE COURT: What says the defense?

17 MR. WALTERS: No objection, Your Honor.

18 THE COURT: It's admitted without objection.

19 (State's Exhibit Number 91, photograph,
20 admitted into evidence.)

21 BY MR. SORENSON:

22 Q And you had indicated, Detective, that --
23 earlier that after you had observed that portion up
24 to the point where you saw Mr. Mahdi, individual,
25 lean over the counter with his hand on the counter,

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1 that you then contacted other officers, crime scene
2 officers, that were at the scene?

3 A Yes, I did.

4 Q About collecting that advertisement?

5 A Yes.

6 MR. SORENSON: Thank you, Detective. Please
7 answer any questions Mr. Walters has.

8 MR. WALTERS: May it please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WALTERS:

12 Q I want to make sure I got your name correct.
13 Your last name is Pope?

14 A Poe, P-o-e.

15 Q Okay. I'm sorry. You've been a detective with
16 Winston-Salem Police Department for 19 years; is
17 that correct?

18 A Been employed by the Winston-Salem Police
19 Department. I haven't been a detective the entire
20 time.

21 Q All right. And this homicide occurred at the
22 Exxon station on Broad Street; is that right?

23 A Yes.

24 Q And I believe that the tape that we have is the
25 information that you reviewed that identified

1 Mr. Mahdi; is that correct?

2 A This is a DVD version of it.

3 MR. WALTERS: Your Honor, I have no further
4 questions.

5 THE COURT: Anything further from the State?

6 MR. SORENSON: Not from this witness, Your
7 Honor, no, sir.

8 THE COURT: Thank you, Officer. You may step
9 down.

10 MR. SORENSON: The State calls Phillip Seats.

11 PHILLIP SEATS,

12 having been duly sworn, testified as follows:

13 THE CLERK: State your full name for the
14 record.

15 THE WITNESS: Phillip Seats.

16 DIRECT EXAMINATION

17 BY MR. SORENSON:

18 Q Good afternoon, Investigator. If you would,
19 please tell the Court where it is that you're
20 employed.

21 A Winston-Salem Police Department in
22 Winston-Salem, North Carolina.

23 Q What are your current duties with the
24 Winston-Salem Police Department?

25 A I'm a crime scene supervisor.

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1 Q And how long have you been employed in that
2 capacity?

3 A I have been a crime scene supervisor for six
4 years. I have been with the department for ten.

5 Q Okay. I want to turn your attention, if I
6 could, Investigator, back to the evening of July
7 15th, 2004. Did you have an opportunity to respond
8 out to the Exxon station on Broad Street in
9 Winston-Salem in reference to a homicide?

10 A Yes, I did.

11 Q And were you involved with other officers out
12 there in processing that scene that night?

13 A Yes.

14 Q If you would, describe for the Court what --
15 when you got there, what the condition of the scene
16 was out there.

17 A When I responded to the scene, the parking lot
18 area had been roped off with crime scene tape.
19 There were numerous detectives and officers and
20 other crime scene personnel there. The main crime
21 scene consisted of the interior of the business.
22 Upon entering the business, there's a counter area
23 to the left and the decedent was located behind the
24 counter area.

25 Q Were there any shell casings that were

1 collected from that area that evening?

2 A There were two shell casings.

3 Q Okay. And where were they collected from?

4 A One shell casing was located just inside of the
5 teller window on the counter. And a second shell
6 casing was located behind the counter area on the
7 ground at the decedent's feet.

8 Q Do you recall what caliber those shell casings
9 were?

10 A They were .380 automatic Remington and Peters.

11 Q .380 shell casings?

12 A Yes.

13 Q And how about any projectiles? Were there any
14 projectiles found out there at the scene?

15 A At the time, we located one projectile.

16 Q And where was that located at?

17 A It was in a package of BC Headache Powders on a
18 counter shelf behind the teller area.

19 Q Are you aware of whether another projectile was
20 recovered from the victim at the autopsy?

21 A Yes, there was one.

22 Q And are you aware if any other crime scene
23 personnel found another projectile at some later
24 date?

25 A Yes. On the following day, a second technician

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1 was dispatched to the office area, which is
2 basically behind the teller counter. We had -- did
3 a preliminary search the day of the incident;
4 however, due to numerous papers, we were unable to
5 locate it. We secured the scene and the second unit
6 did locate the projectile.

7 Q Were you aware of how many times Mr. Boggs was
8 shot?

9 A To my knowledge, twice.

10 Q Twice. And those items, those shell casings
11 and those projectiles, were they submitted somewhere
12 for further testing?

13 A They were submitted to the North Carolina State
14 Bureau of Investigation.

15 Q Okay. Is that where they have a firearms
16 analyst there?

17 A Yes.

18 Q All right. Let me ask you, did you also -- was
19 there some other item that you were instructed to
20 collect because it had some significance in this
21 case?

22 A Yes.

23 Q And what was that item?

24 A My primary responsibility was latent prints.
25 In watching the crime scene video, I was instructed