

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRADLEY GERALD MULLINS,

APPELLANT

APPELLATE CASE NO. 2013-002662

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (December 2-5, 2013).....	1
OPENING STATEMENT BY MR. DeBUSK.....	2
OPENING STATEMENT BY MR. DIGGS.....	7
TESTIMONY	
TALMADGE "GENE" ELLIOTT	
Direct Examination by Mr. Hucks.....	13
Cross-Examination by Mr. Diggs.....	28
Redirect Examination by Mr. Hucks.....	30
ROGER DALE STEVENS	
Direct Examination by Mr. Hucks.....	31
Cross-Examination by Mr. Diggs.....	40
CORPORAL TIM FIKE	
Direct Examination by Mr. Hucks.....	42
Cross-Examination by Mr. Diggs.....	45
PETER CESTARE	
Direct Examination by Mr. DeBusk.....	48
Voir Dire by Mr. Diggs.....	49
Direct Examination by Mr. DeBusk (continued).....	51
Cross-Examination by Mr. Diggs.....	84
Redirect Examination by Mr. DeBusk.....	94
AMY ELIZABETH STEPHENS	
Direct Examination by Mr. DeBusk.....	95
Cross- Examination by Mr. Diggs.....	98
FRANCIS MARION KNIGHT, JR.	
Direct Examination by Mr. DeBusk.....	99
Cross Examination by Mr. Diggs.....	101
Redirect Examination by Mr. DeBusk.....	102

DETECTIVE ALAN JONES

Direct Examination by Mr. DeBusk	103
Cross-Examination by Mr. Diggs	107
Redirect Examination by Mr. DeBusk	109

DELILAH MULLINS

Direct Examination by Mr. Hucks.....	111

VERNE ALLEN RAY

Direct Examination by Mr. DeBusk	121
Cross-Examination by Mr. Diggs	124
Redirect Examination by Mr. Hucks	128

CHARLES EDGAR MULLINS, SR.

Direct Examination by Mr. Hucks	130
Cross-Examination by Mr. Diggs	149
Redirect Examination by Mr. Hucks	161
Recross Examination by Mr. Diggs.....	162

EDWARD PROCTOR, JR.

Direct Examination by Mr. DeBusk	163
Cross-Examination by Mr. Diggs	170
Redirect Examination by Mr. DeBusk	173

CHARLES HENDERSON MULLINS

Direct Examination by Mr. Hucks.....	176
Cross-Examination by Mr. Diggs	196
Redirect Examination by Mr. Hucks	207

ARLIE GENE MULLINS

Direct Examination by Mr. Hucks.....	209
Cross-Examination by Mr. Diggs	220

ANTHONY EARL RAY

Direct Examination by Mr. Hucks.....	224
Cross-Examination by Mr. Diggs	248
Redirect Examination by Mr. Hucks	277

INVESTIGATOR GINGER POP

Direct Examination by Mr. Diggs.....	283
Cross-Examination by Mr. Hucks	283

CARLENE MERCK	
Direct Examination by Mr. Diggs.....	285
Cross-Examination by Mr. Hucks	294
KEENA STANLEY	
Direct Examination by Mr. Diggs.....	295
Cross-Examination by Mr. Hucks	297
LATONYA RAY	
Direct Examination by Mr. Hucks.....	299
Cross-Examination by Mr. Diggs.....	301
RENEWAL OF MOTION FOR DIRECTED VERDICT.....	306
CLOSING ARGUMENT BY MR. DIGGS	319
CLOSING ARGUMENT BY MR. HUCKS.....	346
CHARGE ON THE LAW	372
JURY QUESTION (Hand of one)	392
ALLEN CHARGE.....	399
VERDICT	402
MOTION FOR A NEW TRIAL	405
SENTENCING	409
INDICTMENTS	411
NOTICE OF APPEAL	415
COURT'S EXHIBIT# 2 (COURT'S INSTRUCTIONS TO JURY).....	418
CERTIFICATE OF COUNSEL.....	446

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 2013-GS-26-04042
04043

December 2nd - 5th, 2013

BEFORE: The Honorable Larry B. Hyman

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

BRADLEY GERALD MULLINS,

Defendant.

 **ORIGINAL**

APPEARANCES:

J. Scott Hucks, Esq.
George DeBusk, Esq.
Attorneys for the State.

William I. Diggs, Esq.
Attorneys for the Defendant.

OPENING STATEMENTS - MR. DeBUSK

1 I'm doing it. I want you to listen carefully, but
2 you'll have an opportunity to have the charge on the
3 law with you, and then you'll begin your deliberation
4 process.

5 Anything further from the State?

6 MR. HUCKS: No, sir.

7 MR. DIGGS: No, Your Honor.

8 THE COURT: All right. We're ready to proceed. We
9 need to swear the jury.

10 (Whereupon, the jury was sworn.)

11 THE COURT: State, you may proceed.

12 MR. DeBUSK: If you go to Loris, you find Red Bluff
13 Road and you head out of town towards the Waccamaw
14 River, pretty soon you'll pass a Hot Spot gas station,
15 and then to your right comes Heritage Road, turn right
16 and go down just a little bit, and you might have to
17 look carefully, but you'll find a little road called
18 Dew Lane. On Dew Lane, about half way down, is a house
19 way back in the woods. It's the kind of place you are
20 not going to go there unless you are going there. You
21 can't see it from the paved road, barely see it. It is
22 like a farm road.

23 In September 2008, that was the home of Kelly Joe
24 Elliott. He was retired. He was in his late 60s. He
25 didn't do much. He was an avid outdoorsman, loved to

OPENING STATEMENTS - MR. DeBUSK

1 hunt and fish. He lived in that house and he spent
2 most of his time nearby at, like, a hunt camp with his
3 buddies. But every night he would come up to the house
4 to sleep. A collection he kept, and what turned out to
5 be his downfall, a collection of guns, long guns,
6 sporting guns, shotguns, pistols, like many outdoorsmen
7 who is a gun collector.

8 One night in early September, something happened to
9 Kelly Joe Elliott. None of his friends knew what
10 happened. Two of his friends, Gene Elliott, his
11 cousin, and Dale Stevens got worried about Kelly Joe
12 when they didn't hear from him for awhile. They went
13 over one Sunday afternoon to check on Kelly Joe. The
14 door was ajar. They walked in there, and they took in
15 a smell that, to a veteran, only meant one thing, the
16 smell of death in the house. They backed out, called
17 911.

18 The police came and secured the scene. The crime
19 scene experts came in and started assessing that scene.
20 They found on the room of the living room Kelly Joe
21 Elliott dead, covered with a comforter. They started
22 looking around and checking the crime scene carefully.
23 That gun collection was gone. A few of them were left,
24 but the bulk of them, all valuable guns, gone.

25 There were bullet holes in the wall where there was

OPENING STATEMENTS - MR. DeBUSK

1 shots fired inside the house. Two bullet holes in
2 Kelly Joe Elliott. One came in on the right side,
3 around the armpit area, and one right over his left ear
4 execution style right through his brain. No gun where
5 he was shot, just Kelly Joe Elliott covered by a
6 comforter. Clearly, fowl play.

7 They investigated, took many pictures, took
8 measurements, made diagrams, hunted for witnesses, but
9 they didn't have any luck, and it became a cold case.
10 You watch TV, you've heard those cold cases unsolved.

11 A couple years passed and they got a lead.
12 Statement from one witness led to another witness and
13 another witness, flushed out all of these witnesses.
14 They were all part of an extended family, most of them
15 named Mullins, some Rays. Each had a little bit of
16 recollection of this case, each had a little knowledge,
17 each heard something. They started putting it
18 altogether, and a story emerged.

19 The defendant, Bradley Mullins, and his cousin,
20 Anthony Ray, decided to get the gun collection from
21 Kelly Joe Elliott. Brad Mullins rented a house from
22 Kelly Joe Elliott. He had prior knowledge where his
23 house was and knew he was a gun collector. They go
24 over there, go in the house and start stealing guns.
25 They clean out everything they find in the house, but

OPENING STATEMENTS - MR. DeBUSK

1 there was one door that was locked. They had to be
2 greedy, get that one last mile. Brad Mullins kicks
3 that door in. Behind that door is a place where Kelly
4 Joe Elliott sleeps, no clothes on, he's asleep. When
5 they bust down the door, he grabs one of his guns and
6 he comes out to defend himself and property, fires a
7 couple of shots. Through the struggle, Anthony Ray
8 shoots Mr. Elliott knocking him down, shoots him in the
9 right side. He loses his gun. Brad Mullins picks up
10 that gun, and execution style, right at the right side
11 of the head (indicates).

12 That is the story that comes out from all of these
13 witnesses. The interesting thing about that story is
14 all of those things that the crime scene went in there
15 and measured and looked at, photographed, all the facts
16 of the crime scene weren't released to the public, but
17 they all fit exactly with that story, corroborated
18 exactly what the Mullins family told them, and that is
19 the story you'll hear today.

20 The judge told you who I am. I'm George DeBusk,
21 I'm an assistant solicitor. My co-counsel Scott Hucks
22 with the solicitor's office. "Solicitor" means we
23 represent the State. The judge says the State has the
24 burden, Mr. Hucks and I have that burden. Because it
25 is our burden, and it is one of the most important

OPENING STATEMENTS - MR. DeBUSK

1 Constitutional protections that anyone in this country
2 has, to be proven guilty rather than being assumed
3 guilty, because that is our burden, it is very
4 important for you to know exactly what that burden is.
5 We have to prove the elements of the crimes charged
6 beyond a reasonable doubt.

7 The crimes charged here are murder, killing of
8 another with malice aforethought, and burglary in the
9 first degree, entering someone else's residency without
10 consent, with the intent to commit a crime, and having
11 some aggravating factor, being in the nighttime, that
12 is one aggravating factor. Another possible
13 aggravating factor is becoming armed while you are in
14 the course of the burglary. Another is committing an
15 act of violence in the residence. Just one of those
16 will do. You don't need more than one.

17 So it is murder, killing of another with malice
18 aforethought, and that doesn't mean premeditated, it
19 means when the fatal blow was struck, that person had
20 malice towards the victim, and then the burglary first.
21 You'll hear testimony from the stand, from the officers
22 who looked at that crime scene and from the people who
23 learned the facts of the crime later. You'll hear from
24 the other person in that house when Kelly Joe Elliott
25 was killed, Anthony Ray.

OPENING STATEMENTS - MR. DeBUSK

1 You'll determine at the end if we've proven our
2 case beyond a reasonable doubt. The judge will tell
3 you about a reasonable doubt, just like the law, and
4 that is his instruction and that is what the law is,
5 and that is what you follow. He won't be able to tell
6 you exactly what reasonable doubt is. He can't draw a
7 picture of reasonable doubt. Reasonable doubt is proof
8 that leaves you firmly convinced. It is a value of a
9 community. That is why we have this cross-section of
10 the community. You have to decide if we've proven our
11 case sufficiently to punish Bradley Mullins.

12 I ask you for your careful attention to the facts
13 that will come from that stand. Carefully remember
14 what you hear. Learn the facts. Look at the exhibits,
15 and in the end, come back and render a just verdict. I
16 thank you in advance for your attention.

17 MR. DIGGS: May it please the Court.

18 THE COURT: Yes.

19 MR. DIGGS: Notwithstanding what you were just
20 told, His Honor will tell you this man is an innocent
21 individual, presumed to be innocent, and nothing that
22 the solicitor said right now changes that, nothing they
23 said. It is a tragic and sad case. We wouldn't be
24 civil human beings if we didn't acknowledge that. It
25 is not my place -- I don't know the family. My client

OPENING STATEMENT - MR. DIGGS

1 doesn't know the family. It wouldn't be my place right
2 now to make an apology to them for the loss of a loved
3 one or express condolences. I don't think an "apology"
4 would be the right word. My client has pled not
5 guilty.

6 I think at the end of this trial, and I would
7 submit to you, we'll know who did do the shooting. We
8 can't prove a negative, that is why the burden of proof
9 is on the State. The evidence is going to show that
10 these alleged witnesses that came forward year after
11 year made many different conflicting statements. It
12 wasn't until the State begins to focus in and say,
13 okay, we'll prosecute this young man, and if you help
14 us do that, we'll make concessions to you so that you
15 don't get prosecuted for murder. There were three
16 other people charged with this murder, but now there is
17 only one. Concessions have been made to all the
18 others. Concessions, and by that I mean we're not
19 going to charge you with murder if you get in and help
20 us convict Bradley Mullins, we're not going to charge
21 you with the murder.

22 I'm not a solicitor. I don't make those decisions,
23 but when you're looking at a witness -- every witness
24 that gets up here claims to know anything about the
25 case -- not law enforcement, I'm talking about lay

OPENING STATEMENT - MR. DIGGS

1 witnesses -- every one has given an inconsistent
2 statement. It is contrary to what their testimony will
3 be, so how are you going to weigh in that circumstance
4 beyond a reasonable doubt that this man, who didn't get
5 any concessions, is the one who committed the murder?

6 My job, and it's going to be fairly simple,
7 although it is important, is to show you why when they
8 bring those witnesses in and say it was Brad that did
9 it, why you can't believe that, you can't trust that.
10 There is a glaring hole in every statement that they've
11 made. If somehow they are smart enough or they've been
12 coached enough by whomever -- not saying these guys did
13 it -- but whomever. If they were able to get together
14 and get their stories straight so there are not any
15 holes -- I want you to think about this. Let's see how
16 well they do in explaining away the holes that occurred
17 a year ago or two years ago when they were supposedly
18 fresher, their memories were fresher than now --
19 certainly than in 2013 -- about what happened. Oh, all
20 of a sudden for trial we can get everything straight so
21 it falls in line with what the theory of the case is.
22 Two years ago in 2011, they couldn't do that.

23 So it is a sad case and tragic case, and I extend
24 my condolences to this family of Kelly Joe Elliott. I
25 don't know them. I don't have a right to console them.

OPENING STATEMENT - MR. DIGGS

1 Right now it is not my job, or yours. Our job is to
2 get to the truth, which means verdict, the truth of
3 what happened in this case. It is a tragic, sad case.
4 I would submit to you that the State is largely relying
5 on that fact alone to convict my client. It is so
6 tragic and so sad, they are hoping you'll look past the
7 problem with the facts and say, okay, he must be guilty
8 because somebody had to do this, you know, these two,
9 three witnesses said it was Brad, so maybe we'll go
10 with that, notwithstanding the holes in their stories
11 previously given and made.

12 So there are two things that I want to stress.
13 Imagine -- I mean, we can imagine sitting with the
14 Elliott family and having lost a loved one in our
15 family in that manner, we can imagine that. Then I
16 want you to try to imagine what it is like to be
17 Bradley Mullins now sitting in this courtroom with the
18 State of South Carolina pointing at him saying, Okay,
19 Mr. Mullins, we think you did this.

20 It is just a sad, tragic, horrible case. It is
21 probably going to be pretty easy to convict, but that
22 is not the way our system works completely. You are
23 part of the process, and you -- and only you
24 collectively as a jury -- can put the brakes on the
25 State's process here and say, Wait a minute, there is a

OPENING STATEMENT - MR. DIGGS

1 burden of proof here. Your proof goes beyond simply
2 proving a sad and tragic case, you have to prove who
3 the guilty party is, or at minimum in this case, you
4 have to prove that Brad Mullins did it.

5 Your job -- think about that, your job is to look
6 at the prosecution and say, Yep, we think you are
7 right, we're satisfied beyond a reasonable doubt, go
8 ahead, deal with this man. Or you can say, Wait a
9 minute, notwithstanding the fact it is a tragic and sad
10 and terrible case, we don't have enough evidence to get
11 over the reasonable doubt, burden of proof. Listen and
12 think about this when you hear the evidence.

13 Let's go back a moment. I want you to think about
14 it as it unfolds. This is why it is important not to
15 make up any minds right now early on in the case about
16 guilt or innocence. I'm asking you to wait until the
17 whole case is over. If you hear anything striking
18 saying he must be guilty, hold off on drawing that
19 conclusion until everything was presented to you.

20 The question I want you to think about during the
21 course of the trial, and it is probably going to be
22 true, is that evidence is going to be presented that my
23 client knew Mr. Elliott, knew he had a gun collection,
24 knew he kept it in his house. Ask yourselves, Why
25 would that be the person you would choose to burglarize

OPENING STATEMENT - MR. DIGGS

1 in the middle of the night knowing that the man in
2 there had an arsenal, probably armed and probably would
3 shoot you when you went in. Why would Brad do that?
4 I'll suggest that at the end of this case if Bradley
5 Mullins was there -- and I suggest and my position is
6 that he wasn't -- but if he was there, this gentleman
7 was already dead, okay.

8 The bottom line is that it is an extremely
9 important job that you do. My client, and this is
10 certainly the most important day in his life, to be
11 accused of murder in the fashion that the prosecutor
12 just accused my client, it is a horrible and terrible
13 thing for that accusation to be made against you, and
14 what we're doing is asking you to make sure you do that
15 duty that you swore to do, hold him to his burden of
16 proof and say, okay, here is what the facts are as we
17 determine base on all of the evidence.

18 We appreciate your involvement here. Certainly it
19 is the most important time of my client's life. He's
20 never gone through anything of this significance in his
21 entire life, and I'm sure you can understand why I'm
22 saying that. We just appreciate you. We appreciate
23 the system. The fact that we have a system that allows
24 an accused to have a trial that is open to the public
25 and fair and under the law that has been established in

OPENING STATEMENT - MR. DIGGS

1 this nation. We thank you very much. We'll try not to
2 take any more time as needed in the case to properly
3 represent Mr. Mullins, but I would submit to you at the
4 end of this case you'll have a lot of doubt about what
5 happened. You'll have a lot of doubt about what
6 happened. If I do my job, I'm going to be able to show
7 you why you should have that doubt.

8 Again, if you knew a man was the owner of an
9 arsenal of weapons and known for carrying a gun, is
10 that who you would pick to burglarize in the middle of
11 the night? No. It is a good story, but doesn't make
12 logical sense. Their case won't make logical sense,
13 but we'll see how this goes. Again, Mr. Mullins and I
14 very much thank you and appreciate your service.

15 MR. HUCKS: At this time the State will call Gene
16 Elliott to the stand.

17 (GENE ELLIOTT, having been duly sworn, testified as
18 follows:)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Talmadge Elliott. Gene is a
21 nickname.

22 DIRECT-EXAMINATION

23 BY MR. HUCKS:

24 Q Why does everyone call you Gene?

25 A No one in the family knows. We never figured it

OPENING STATEMENT - MR. DIGGS

1 out. I've just always had that name.

2 Q What do you go for a living?

3 A I'm retired. I retired two years ago. I owned
4 and managed an NAPA parts store in Loris.

5 Q How long did you own the NAPA store in Loris?

6 A Partially since '72; 100 percent since '88.

7 Q Now, I want to ask you, how did you know Kelly
8 Joe or Kelly? What did you call him?

9 A Joe.

10 Q Joe. How long did you know Kelly Joe?

11 A Known him all my life. We were cousins.

12 Q Is he younger or older than you?

13 A He was about two years older than I am.

14 Q Safe to say you've known him all your life?

15 A Oh, yeah.

16 Q How would you describe your relationship with
17 Mr. Elliott personally, or Joe?

18 A Joe was a cousin, he was a good friend. He was a
19 pal. We hung out a good bit together. He was just a
20 good friend and a relative.

21 Q Had he always lived -- I guess you lived near one
22 another?

23 A Yeah.

24 Q Had you always lived near one another?

25 A No, sir. Joe, at some point after graduating

GENE ELLIOTT - DIRECT EXAMINATION

1 school, went to work with Agrico Chemical Company and
2 traveled. He traveled over the east coast, midwest,
3 out in that section. Larry on, somewhere around 1982,
4 three, around in there, he moved back to Loris and
5 built a house that he had on Dew Lane.

6 Q Is that the same house that we're here about
7 today?

8 A Yes, sir. Yes, sir, it is.

9 Q Now, how often -- from the time Joe moved back
10 into town, how often, would you say, that you and Joe
11 hung out together?

12 A Two, three, four times, maybe, a week.

13 Q And over how many years?

14 A Ever since he moved back to Loris, from '82,
15 three, in there.

16 Q And so not only would you consider him your
17 family, you considered him a very good friend?

18 A Correct.

19 Q And you had been hanging out with him how many
20 days a week, would you say?

21 A Two, three to four.

22 Q For 30 years?

23 A Correct.

24 Q Now, did you ever know Mr. Elliott or Joe to own
25 any guns?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Yes, sir. He had probably 30, 35. I don't know
2 exactly, but I would say about that many.

3 Q Now, you're saying over the whole course of his
4 life he had 35, or what do you mean he had 35 or so?

5 A In the later years, like in the '90s, 2000's.

6 Q At any given time, he would have 30, or he only
7 owned 30 over the whole course of time that you knew
8 him?

9 A At any given time he would have 30.

10 Q Was it common knowledge that Joe had guns?

11 A Yes, sir.

12 Q Now, did you and Joe shoot with one another?

13 A Yes, sir.

14 Q How often would you say you shot guns together?

15 A Maybe once, twice a week. We would skip two,
16 three weeks and get a new gun, shoot that for awhile,
17 put it up, get another, shoot it for awhile, put it up.
18 It was just off and on.

19 Q I'm going to ask you a question to explain to the
20 jury. What is E-Camp?

21 A E-Camp is a little shack type of thing that we
22 sort of put together. It is made out of poles, has a
23 tin top. We would get together over there. About a
24 hundred yards from it we have a dirt bank that we
25 usually would use for a target. We would get together

GENE ELLIOTT - DIRECT EXAMINATION

1 over there about all the time. We just named it
2 E-Camp, "E" for "Elliott." Just a hangout place.

3 Q When you say all shot guns together, is that
4 where you would shoot guns?

5 A Correct.

6 Q How close is E-Camp to Joe Elliott's house?

7 A Across a little branch. I would say 200, maybe
8 300 yards, 250.

9 Q So if you are coming down Dew Lane and
10 Mr. Elliott's house is on the right -- and I'll show
11 you pictures in a minute -- E-Camp, the shooting range,
12 is the next thing you see on that road?

13 A Correct. Yes, sir.

14 Q His last name was Elliott, just like yours?

15 A Yes, sir.

16 Q Big sign that says "E-Camp"?

17 A On the building, yes, sir.

18 Q Now, I'll show you a few pictures. Do you know
19 what Joe's address was?

20 A Dew Lane, I don't know the number. ?
21 Something like that. I don't know the correct number
22 of it.

23 Q I'll show you a couple of pictures, three it
24 looks like.

25 MR. HUCKS: May I approach?

GENE ELLIOTT - DIRECT EXAMINATION

1 THE COURT: Certainly.

2 Q (MR. HUCKS) I'll show you State's 71. Can you tell
3 me what that is?

4 A That is Kelly Joe Elliott.

5 Q Is that a picture within the time frame of when
6 Mr. Elliott would have died, pretty close?

7 A I would say so, within a year.

8 Q That would be a decent physical representation of
9 Mr. Elliott?

10 A Yes, sir.

11 Q That is about the same size and build he would
12 have been at the time of his death?

13 A Yes, sir.

14 MR. HUCKS: Your Honor, the State would move
15 State's Exhibit No. 71 into evidence.

16 MR. DIGGS: No objection.

17 THE COURT: Without objection.

18 (State's Exhibit 71 admitted.)

19 MR. HUCKS: May I publish it to the jury?

20 THE COURT: You may.

21 (Whereupon, Exhibit 71 is published.)

22 Q (MR. HUCKS) What is that?

23 A That is Dew Lane that goes down past Joe's house
24 and down past E-Camp.

25 Q Is that on the paved road, or the other end of

GENE ELLIOTT - DIRECT EXAMINATION

1 the road?

2 A Going to be by the paved road.

3 Q That is Heritage Road?

4 A Yes, sir.

5 Q And is that a true and accurate reflection of the
6 intersection where Heritage cuts off at Dew?

7 A Yes, sir.

8 Q Is this a rural area, or in town?

9 A Rural, country.

10 MR. HUCKS: Your Honor, we would move State's No.
11 70 into evidence.

12 THE COURT: Any objection?

13 MR. DIGGS: No.

14 THE COURT: Without objection, 70.

15 (State's Exhibit 70 was admitted.)

16 THE COURT: Have you given the court reporter an
17 opportunity mark it?

18 MR. HUCKS: They've been previously marked, yes,
19 sir.

20 THE COURT: Okay. Thank you.

21 Q (MR. HUCKS) I'll show you State's 73. Tell me what
22 that is.

23 A The front of Joe's house. You would be standing
24 on Dew Lane looking towards the front of it.

25 Q If somebody were driving by Joe's house, that is

GENE ELLIOTT - DIRECT EXAMINATION

1 the view they would see?

2 A Yes, sir.

3 Q Now, I noticed the grass is a little disheveled
4 there. Is that about what that yard would have looked
5 like at the time Mr. Elliott was killed?

6 A Yes, sir.

7 Q How far would you say -- and if you don't know,
8 tell me you don't know -- that his house sits from Dew
9 Lane, the dirt road?

10 A I would say 60 yards.

11 Q In there a fair amount of vegetation and trees
12 around the house?

13 A Yes, sir.

14 Q Is it easy to see what is going on -- can you see
15 it from the paved road at all?

16 A Not from the paved road, no, sir.

17 Q Is it easy to see from the dirt road?

18 A Yes, sir. Driving by, that is what it would look
19 like.

20 Q But that is how far away it would be from the
21 dirt road?

22 A About 60, 70 yards.

23 MR. HUCKS: At this time we would move State's
24 Exhibit 73 into evidence.

25 MR. DIGGS: No objection.

GENE ELLIOTT - DIRECT EXAMINATION

1 THE COURT: Without objection.

2 (State's Exhibit 73 admitted.)

3 MR. DIGGS: Could we approach for just a second?

4 THE COURT: Certainly.

5 (Whereupon, a bench conference was had.)

6 MR. HUCKS: May I publish it to the jury?

7 THE COURT: You may.

8 Q (MR. HUCKS) Now, there is a lot of trees and
9 vegetation and bushes growing around Joe's house, even
10 when he lived there?

11 A That's right.

12 Q From where Joe's vehicle was usually parked,
13 could you see if his truck was home from the dirt road?

14 A No, sir, you could not.

15 Q Now, do you remember the last time that you spoke
16 to, met with or had a conversation with Joe Elliott?

17 A It was either on Monday or maybe Sunday, one or
18 the other, I can't remember for sure.

19 Q Which Sunday or Monday?

20 A Like the 7th. I don't recall the dates.

21 Q How long would you say it was before you realized
22 he was deceased?

23 A From that Monday to that next following Sunday
24 afternoon.

25 Q Six, seven days?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Correct. Yes, sir.

2 Q Now, you talked -- what was -- don't tell me
3 anything he would have told you, but tell me what you
4 talked about with Joe and when? How did that last
5 meeting go that you had with Joe?

6 A Might have talked about guns, maybe going to a
7 gun show, just regular every day talking. I can't
8 remember for sure what we talked about.

9 Q That's fine. But without a doubt you spoke with
10 him six, seven days prior to when you discovered he was
11 deceased?

12 A Yes, sir. Yes, sir.

13 Q Do you remember the day that you went to Joe's
14 house and went into the house?

15 A That was a following Sunday. I think it was
16 September 14th.

17 Q September the 14th. Do you remember
18 September 14th clearly?

19 A Yes, sir.

20 Q Walks us through what you did the day of
21 September 14th in relation to Joe.

22 A Well, if I wanted to get up with Joe, I would go
23 by E-Camp. Joe stayed there the bigger portion of the
24 day just hanging out there. I went by, didn't see him.
25 I went by E-Camp two, three days that week and didn't

GENE ELLIOTT - DIRECT EXAMINATION

1 see him. Sunday afternoon I was like, Well, I haven't
2 seen Joe, maybe he is at the house, maybe he's sick. I
3 pulled up behind his Blazer at the house. It rained
4 like Thursday, Friday, somewhere in there. There was
5 no tire tracks leaving where he had backed the Blazer
6 out of the driveway.

7 Q Hang on for me. Why would that have struck you
8 as funny?

9 A Because Joe was in and out every day, two times a
10 day. I've never known him to stay in, you know, and
11 not be out within two, three days.

12 Q So you notice there is not any tire tracks in the
13 driveway. What do you do then?

14 A I'm wondering what is wrong, so I said maybe he's
15 gone -- we have a friend, Dale Stevens, that he would
16 hunt or fish with a lot, so maybe they went on a
17 fishing trip. I backed out and called Dale. He said,
18 no, he hadn't gone for a fishing trip with him, he
19 didn't know anything about it. I said, Well, Dale,
20 something I think is wrong. I said we need to see what
21 we can find out here. So Dale meets me at E-Camp, and
22 we drive over to Joe's house.

23 Q What happens when you get to Joe's house?

24 A Well, the Blazer is still sitting there. We get
25 out and walk up to the back door. We're going to see

GENE ELLIOTT - DIRECT EXAMINATION

1 what we can find, if Joe is inside sick or whatever.
2 We go up to the back door and the storm door, I think,
3 was closed. We opened the storm door. The back wooden
4 door was partially opened, and the pane closer to the
5 lock was broken out.

6 Q I'll stop you for just one second. I hate to
7 interrupt you.

8 MR. HUCKS: If I may approach?

9 THE COURT: You may.

10 Q (MR. HUCKS) This is State's No. 75. What is that?

11 A That is the back door to Joe's house.

12 Q When you went up to the back door, is that the
13 view you would have had?

14 A Yes, sir.

15 Q What is different about that picture?

16 A The door is opened here and the wood door is
17 completely opened.

18 Q But this is a true and accurate reflection of the
19 back door of Joe Elliott's house?

20 A Yes, sir.

21 Q As it would have looked when you left the house?

22 A That's right.

23 Q And State's 78, what is that?

24 A That was the pane that was broken out of the back
25 of the wooden door, back door.

GENE ELLIOTT - DIRECT EXAMINATION

1 Q When you talked about the pane on the knob side
2 being broken out, is that the pane you are talking
3 about?

4 A Yes, sir.

5 Q That is what you saw when you approached the
6 house?

7 A That's right.

8 MR. HUCKS: Your Honor, at this time we move
9 State's Exhibits 75 and 78 into evidence.

10 MR. DIGGS: No objection.

11 THE COURT: Without objection, 75 and 78.

12 (State's Exhibits 75 and 78 admitted.)

13 Q (MR. HUCKS) What did you do when you got there and
14 saw the door ajar?

15 A We pushed it opened and started to walk in. The
16 first room in the house is a little wash room, then you
17 turn and go into the kitchen. We got to the edge of
18 the kitchen, and the smell was terrible. I looked at
19 Dale, and I can't remember what I said exactly, but
20 something to the effect of, Vietnam all over again.

21 Q Why would you have said that?

22 A Because of the smell.

23 Q What did that smell lead you to believe?

24 A That Joe was inside, that he was dead.

25 Q It was a smell you smelled before?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Correct.

2 Q Did you recognize that smell?

3 A Correct.

4 Q I'll show you something. Do you recognize this
5 at all?

6 A Yes, sir. That is the inside of Joe's house.

7 Q Had you been inside Joe's house before?

8 A Yes, I have.

9 Q This is not a photograph. It is a digital
10 recreation, but is it true and accurate?

11 A Yes, sir. Looks to be.

12 Q And it looks to be a reflection on what the
13 inside of Joe's house would look like?

14 A Yes, sir.

15 Q Is it a true and accurate reflection, to the best
16 of your knowledge, of the inside of Joe Elliott's
17 house?

18 A Yes, sir.

19 MR. HUCKS: At this time we would move State's 69
20 into evidence.

21 MR. DIGGS: No objection.

22 THE COURT: Without objection, 69.

23 (State's Exhibit 69 was admitted.)

24 Q (MR. HUCKS) Show them where you would have come in
25 from? First of all, where was your vehicle parked at?

GENE ELLIOTT - DIRECT EXAMINATION

1 A We parked in the driveway.

2 THE COURT: If Mr. Hucks gets in your way, let me
3 know.

4 A This is the back door that we started up here.
5 This is a little wash room here. There is a door into
6 the kitchen, so we come up and go in the back door,
7 turn and start getting about right there (indicates),
8 just barely through the doorway, that is when we
9 smelled the odor in there. We thought something was
10 wrong and we better call the police or whatever.

11 THE COURT: Yes, sir.

12 JUROR: I was just wondering if --

13 THE COURT: You can't ask questions. Can you see
14 what he is testifying to?

15 JUROR: Yeah, I'm looking at this picture, but I'm
16 trying to make sure I'm not upside down.

17 THE COURT: You may not ask any questions,
18 unfortunately. In this state, you can't.

19 Q (MR. HUCKS) What did you do once you smelled that
20 smell in the house, Mr. Elliott?

21 A Where -- I'm sorry?

22 Q What did you do after you smelled the smell?

23 A We backed out and decided that we better call the
24 police.

25 Q Did you?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Who called the police?

3 A I can't remember.

4 Q Either you or Mr. Stevens?

5 A I think Dale did.

6 MR. HUCKS: Nothing further. Answer any questions
7 that Mr. Diggs might have for you.

8 CROSS-EXAMINATION

9 BY MR. DIGGS:

10 Q Do you have the photograph up there of the view
11 of the home? Let me ask, if you would, look at State's
12 73. That is the view from the dirt road, I understand,
13 of the house?

14 A Yes, sir. Standing in the road in Dew Lane
15 looking towards to the front of the house.

16 Q And where did Mr. Joe Elliott park his vehicle
17 when he was at home?

18 A Behind the house.

19 Q Now, the glass that was broken in the door --

20 A Yes, sir.

21 Q -- you, of course, don't know when that was
22 broken?

23 A No, sir.

24 Q Do you remember the last time you were at the
25 house and saw the door intact?

GENE ELLIOTT - CROSS-EXAMINATION

1 A Probably a year.

2 Q So while it could have been on the night of the
3 shooting, it wasn't necessarily that night?

4 A Sorry?

5 Q In other words, that glass door could have been
6 broken on the night of the shooting, but you don't know
7 if that is the case?

8 A No, sir.

9 Q Now, if you were breaking in the back of the
10 house, committing a burglary, would you be able to see
11 the car at home then?

12 A Yes, sir.

13 Q So the person who broke in the house definitely
14 would have been able to see Mr. Joe Elliott's vehicle
15 prior to that break-in?

16 A Yes, sir.

17 Q So the fact that you can't see the vehicle from
18 the road, Dew Lane, that is really of no consequence;
19 wouldn't you agree with that?

20 A Right. That's right.

21 Q Okay.

22 MR. DIGGS: Beg the Court's indulgence.

23 THE COURT: Certainly.

24 (A brief pause in the proceedings.)

25 MR. DIGGS: That is all I have. Thank you.

GENE ELLIOTT - CROSS-EXAMINATION

1 REDIRECT-EXAMINATION

2 BY MR. HUCKS:

3 Q Just two things to verify. This side faces Dew
4 Lane?

5 A Here (indicates).

6 Q So the truck would be here?

7 A Yes, sir.

8 Q So could you have seen the truck from the dirt
9 road?

10 A No, sir. No, sir. There was a big bush in this
11 corner right there (indicates).

12 Q Okay. One more question. Was Joe ever known to
13 leave and go somewhere and leave the truck at home?

14 A Not normally.

15 Q If he were to go fishing with somebody, would he
16 ride with that person?

17 A If he would have gone fishing, he probably would
18 have left it at E-Camp or with that person.

19 Q But he could have left his vehicle somewhere and
20 ridden with someone else?

21 A Yes, sir.

22 Q When you saw his truck, you thought that he rode
23 somewhere with Dale?

24 A After I saw there was no tire tracks coming out,
25 yes.

GENE ELLIOTT - REDIRECT-EXAMINATION

1 follows:)

2 THE WITNESS: Roger Dale Stevens.

3 DIRECT-EXAMINATION

4 BY MR. HUCKS:

5 Q Good to see you this afternoon. What do you do
6 for a living?

7 A Retired.

8 Q Retired from?

9 A AT&T Communications.

10 Q Now, how long did you work at AT&T?

11 A 29 years.

12 Q When did you retire?

13 A 2002.

14 Q And how did you know Joe Elliott?

15 A Joe and I met in, I think, about 2003 and became
16 really good friends.

17 Q How did you meet?

18 A He came to our house for a cookout by a mutual
19 friend.

20 Q How close a friend would you consider Joe
21 Elliott?

22 A I would say Joe and I were very good friends.

23 Q Now, how many times a week would you say that
24 since 2002 or three that you and Joe Elliott hung out?

25 A Probably two -- twice a week.

DALE STEVENS - DIRECT EXAMINATION

1 Q And was it a weekly routine, or something that
2 just happened?

3 A It was -- it got to be a routine. Joe would come
4 to our house every Monday afternoon and then I would
5 usually call Joe the latter part of the week, and I
6 would go by his place.

7 Q And when you say you went by his place, did you
8 go by his house, or where did you go?

9 A No. Over to the farm, past his house to the
10 E-Camp, to the cookout.

11 Q Tell the jury about E-Camp. What is E-Camp?

12 A E-Camp has been called a glorified lean-to, okay.
13 It is just a shed, small shed, a cookout station that
14 Joe had and Gene Elliott. They had a shooting range
15 there. It was on Joe's farm. Just a hangout place.

16 Q So you three retired fellows would get together
17 and hang out at E-Camp?

18 A Yeah.

19 Q What did you do there?

20 A Cook.

21 Q Cook?

22 A Cook.

23 Q Now, are you into guns like the other two?

24 A No, I'm not.

25 Q What is your hobby?

DALE STEVENS - DIRECT EXAMINATION

1 A Well, I was in racing.

2 Q What did you and Joe do together?

3 A I got Joe involved in the Waccamaw River program,
4 which I'm a member of. By the way, Joe was an active
5 member and he was the 2008 volunteer of the year for
6 the River Keeping Program, which we take care of the
7 Waccamaw River, do clean-ups and river sweeps.

8 Q Now, when was the last time that you saw Joe
9 Elliott alive? When did you see him alive?

10 A The Monday afternoon of the week that we lost
11 Joe.

12 Q Now, that would have been September the 9th?

13 A I don't know.

14 Q You don't know that. That's fair. Now, what day
15 did you guys discover Joe?

16 A On a Sunday.

17 Q And the Monday before -- so six days prior?

18 A Six days prior, right.

19 Q What was that interaction with Joe like? What
20 happened?

21 A On Monday he came over to our house, our home,
22 and stayed probably 30 minutes, maybe 4 o'clock in the
23 afternoon. We just chatted, and he left.

24 Q What was the purpose of the visit?

25 A Just a friendly visit.

DALE STEVENS - DIRECT EXAMINATION

1 Q Did you have a regular Monday afternoon meeting?

2 A Mostly, yeah. Yeah.

3 Q Trying to get cooking or something while he was
4 there?

5 A Oh, yeah. Yeah.

6 Q Now, when was the last time you tried to contact
7 Joe?

8 A Well, as I told you, Joe would come over on a
9 Monday afternoon. I would usually call Joe Thursday,
10 Friday, call his cell phone. Joe would say come over,
11 and I would. I would stay 30 minute, 45 or an hour, if
12 we didn't cook something. I called Joe that Thursday
13 or Friday afternoon. I didn't get an answer. I didn't
14 think anything big. I just let it go.

15 Q Now, when did Gene Elliott call about Joe?

16 A Gene called me on that Sunday afternoon,
17 mid-afternoon.

18 Q What was the substance -- what did you do as a
19 result of the conversation? Don't talk about what you
20 talked about, but what did you do after you got off the
21 phone with him?

22 A I met Gene over at Joe's farm, at the camp.

23 Q What did you all do?

24 A We went to check on Joe.

25 Q What happened? Walk this jury through what you

DALE STEVENS - DIRECT EXAMINATION

1 did from the time you got to Dew Lane until you called
2 the police.

3 A Gene and I both had our vehicles. We drove back
4 to Joe's house, which is back up towards the highway
5 from the farm. We went into the driveway, got out of
6 our vehicles, walked around. Joe's black truck, we
7 called it the Blazer, the Jimmy was in the driveway
8 around behind the house, sort of. It had rained that
9 weakened, I'm thinking Friday night or Saturday
10 morning, and you could tell Joe's vehicle hadn't been
11 moved.

12 So when Gene and I walked to the front of the
13 vehicle, we noticed the back door, the first back door
14 that went into the house into the laundry room, the
15 lower pane was broken. The glass was removed or broken
16 out. The door was ajar like this (indicates). Gene
17 and I walked up the steps. I opened the storm door,
18 and this door was ajar. You could see the glass on the
19 floor, which looked awful fresh, to me. I went in the
20 wash room --

21 MR. DIGGS: With all due respect, I move to
22 strike -- I don't think that is an appropriate
23 characterization of the evidence by this witness. He
24 would not be in a position to know if it was a fresh
25 break, and so I would object to it.

DALE STEVENS - DIRECT EXAMINATION

1 THE COURT: I'll sustain it. I'll ask the jury to
2 disregard the remark of "fresh." Glass on the floor is
3 fine, but "fresh" would be an opinion.

4 Q (MR. HUCKS) Let me stop you there for a minute.

5 I'll show you a few exhibits, if I may approach.

6 First of all, just to clear up this glass thing. Was
7 the glass inside the door, or outside?

8 A Inside the door on the floor.

9 Q If you were walking in and out of your house,
10 would you step across glass for a long time before you
11 cleaned it up?

12 A No. No. No.

13 Q I'll show you what is entered into evidence as
14 State's Exhibit No. 70. Can you recognize that at all?

15 A That's turning off of Heritage Road, the paved
16 road, going down Dew Lane.

17 Q That is the -- what is the significance of Dew
18 Lane? Where does Joe live?

19 A Dew Lane. He stays there on Dew Lane along the
20 right.

21 Q Now, I'll show you a picture here. State's
22 No. 71, already in evidence. What is that?

23 A That is Joe Elliott.

24 Q Whose boat is that?

25 A That's my boat.

DALE STEVENS - DIRECT EXAMINATION

1 Q And is that a true and accurate reflection of
2 what Joe Elliott would have looked like on or about the
3 time he was killed?

4 A That's correct.

5 Q Is that his similar physical stature? That is
6 what he would have looked like size, weight, all of
7 that?

8 A Stance, exactly.

9 Q I'll show you what has previously been entered as
10 State's 75. What is that?

11 A That is the back storm door and the wood door
12 here that opens up that we went into.

13 Q Is that where you would have entered into Joe's
14 house?

15 A Yes.

16 Q I'll show you State's 78. What is that?

17 A That is the wood door going into the laundry room
18 with the broken glass.

19 Q When you talk about a broken window, is that the
20 window you are talking about?

21 A Yeah.

22 Q Where was the glass from that window?

23 A It was inside of the house on the wash room
24 floor.

25 Q I'll ask you for the next portion of your

DALE STEVENS - DIRECT EXAMINATION

1 testimony to look at what is previously entered into
2 evidence as State's Exhibit 69. I'll come around this
3 side to show the jury. When you get to Joe's house,
4 where do you pull up to Joe's house at? Where is the
5 highway?

6 A It is over here (indicates). Dew Lane coming
7 here.

8 Q So this is the dirt road?

9 A Up here. This is the driveway here of paved
10 concrete, driveway besides Joe's house coming from Dew
11 Lane, the dirt road.

12 Q All right, sir. When you guys drove over there,
13 what happened?

14 A We parked here (indicates). Gene and I walked --
15 and this is the steps and the door that we went into
16 (indicates), this door here.

17 Q What happened once you went through that?

18 A I pushed the wood door open with the back of my
19 hand. We walked into the wash room, and then the wash
20 room -- there was a doorway that made a turn where you
21 would go into the kitchen and then the den area. When
22 Gene and I got almost in the doorway to make that turn,
23 I was starting to make the turn. I was in front. I
24 could smell the smell that you would recognize as a
25 smell of death.

DALE STEVENS - DIRECT EXAMINATION

1 Q Why would you recognize that?

2 A Well, can I tell you, Gene looked at me and said,
3 Vietnam. That is exactly what he said. And I said,
4 Yes.

5 Q Why would that smell have been familiar to you?

6 A Both Gene and I had smelled that in Vietnam.

7 Q What did that smell lead you to believe?

8 A That somebody was in the house. I told Gene that
9 there was something very bad wrong in the house. I had
10 a feeling Joe was there.

11 Q What did you do after that?

12 A We went straight back outside.

13 Q What did you do after you got out there?

14 A We called 911.

15 Q Who did?

16 A I did.

17 Q Whose phone did you use?

18 A Gene's.

19 Q Do you own a cell phone?

20 A No. No.

21 Q Why not?

22 A I don't need one.

23 Q If I worked for AT&T, I wouldn't want one either.

24 A You're right.

25 MR. HUCKS: Nothing further.

DALE STEVENS - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MR. DIGGS:

3 Q Out of curiosity, Mr. Stevens, why didn't you go
4 to the front door?

5 A We just don't go to the front doors here in Horry
6 County.

7 Q So you never went to the front door when you
8 would go over to Mr. Elliott's?

9 A No, I never have.

10 Q Which bedroom did he use?

11 A I don't know that.

12 Q Had you ever seen Mr. Elliott use the front door?

13 A No.

14 Q You had been friends with him since 2003?

15 A I'm thinking 2003. It was about five years.

16 Q So you would go over there a couple of times a
17 week, but never use the front?

18 A Not to his house, sir. I didn't go to his home.
19 We went to the farm, E-Camp.

20 Q Where they would shoot?

21 A The shooting range.

22 Q Was there a pond?

23 A Joe had like three, four ponds. There was.

24 Q Had you ever been inside his home over the course
25 of your friendship?

DALE STEVENS - CROSS-EXAMINATION

1 A I had on two occasions.

2 Q So you just didn't go in there often?

3 A No, I did not.

4 Q You are pretty sure that you saw him alive on
5 Monday afternoon?

6 A Yes, sir. I know that.

7 Q So we could pinpoint that date by getting a
8 calendar from 2008?

9 A Yes.

10 Q You saw him Monday afternoon?

11 A Correct.

12 Q Now, have you spoken with anyone else that saw
13 him after that time?

14 A That week?

15 Q Yes.

16 A No. No.

17 Q You understand my question? Since that time,
18 over the last five years, have you spoken with anyone
19 who said, Oh, you know, I saw him after Monday?

20 A No.

21 Q I saw him on Tuesday, Wednesday?

22 A No. Not to my knowledge, I have not.

23 MR. DIGGS: Thank you. That is all I have.

24 MR. HUCKS: We ask that he be released from the
25 subpoena so he can remain in the courtroom.

TIM FIKE - DIRECT EXAMINATION

1 THE COURT: Any objection?

2 MR. DIGGS: No, sir.

3 MR. DeBUSK: State calls Corporal Tim Fike of the
4 Horry County Police Department.

5 (TIM FIKE, having been duly sworn, testified as
6 follows:)

7 THE CLERK: State your name and spell your last
8 name.

9 THE WITNESS: Timothy James Fike, F-I-K-E.

10 DIRECT-EXAMINATION

11 BY MR. DeBUSK:

12 Q Who is your employer?

13 A Horry County Police Department.

14 Q How long have you been with them?

15 A Ten years.

16 Q What is the name of your work?

17 A I operate under uniform patrol, answer calls for
18 the service of the public for the county.

19 Q How about in September of 2008, what were your
20 duties then?

21 A Same duties, patrolled the Loris area, Horry
22 County, answering calls of service.

23 Q Were you on duty September 14th?

24 A Yes.

25 Q Did you respond to Dew Lane?

TIM FIKE - DIRECT EXAMINATION

1 A Yes.

2 Q Do you remember what address?

3 A , I believe, Dew Lane.

4 Q I hate to ask the obvious, what county is that?

5 A Horry County.

6 Q Thank you. What were the circumstances of that
7 call?

8 A It was given as a welfare check on the residence.
9 I believe a friend of the person that lived there went
10 to check on him and was unable to make contact, and so
11 he called to have us come out just to check the
12 residence and make sure he was okay, or if he was okay.

13 Q What did you do when you arrived at Dew
14 Lane?

15 A When I arrived I spoke briefly with the
16 complainant that called, I believe it was Gene. He
17 kind of told me they went there and found the back door
18 of the residence opened. So I went up to the residence
19 and announced who I was, officer of the Horry County
20 Police. I went inside to check on the residence, and
21 that is whenever I found the victim deceased in the
22 living room area of the residence. I continued to
23 check the residence to make sure nobody else was in
24 there.

25 Q Clearing to make sure no one else was there?

TIM FIKE - DIRECT EXAMINATION

1 A Yes.

2 Q Did you find anybody else?

3 A No, sir. Once I did that, I came out and secured
4 the crime scene and called my supervisor to get
5 everything else rolling.

6 Q What happened at the house next, as far as the
7 police were concerned?

8 A It was secured. Nobody else was to enter the
9 house, and then crime scene and supervisors and
10 everybody else started to arrive.

11 Q I don't know how to ask this. When you walked
12 in, was there an obvious smell?

13 A Yes.

14 Q So it was pretty clear something was wrong when
15 you went in there?

16 A Yes.

17 Q Did you take any further part in the
18 investigation after you secured the scene?

19 A No, sir.

20 Q I'll show you what is marked as State's Exhibit
21 68 and ask if you recognize this?

22 A Yes.

23 Q What is that?

24 A A map of the area of Horry County going from
25 Loris over towards Galvant's Ferry.

TIM FIKE - DIRECT EXAMINATION

1 Q There are two locations marked. Are you familiar
2 with those?

3 A Yes.

4 Q Is one of them Dew Lane?

5 A Yes.

6 Q Is that a true and accurate representation of
7 that location?

8 A Yes, sir.

9 Q What is the other address?

10 A Jones Brothers Road.

11 Q Are you familiar with that area?

12 A Yes, sir.

13 Q Is that located on the map?

14 A Yes, sir.

15 MR. DeBUSK: At this time we submit 68 into
16 evidence.

17 MR. DIGGS: No objection.

18 THE COURT: Without objection, 68.

19 (State's Exhibit 68 was admitted.)

20 MR. DeBUSK: Thank you. Answer any questions
21 defense may have.

22 CROSS-EXAMINATION

23 BY MR. DIGGS:

24 Q Is this a record you generated?

25 A Yes, sir.

TIM FIKE - CROSS-EXAMINATION

1 Q Do you need to refresh your memory about dates
2 and stuff like that?

3 A I might need to.

4 Q What day did you get -- or what day according to
5 your information did the 911 call come in?

6 A September 14th, 2008.

7 Q All right. September 14th, do you know what
8 day that was?

9 A Not off the top of my head. I don't recall the
10 actual day.

11 Q And how long after that call came in was it
12 before you responded to that residence?

13 A Just going by memory, probably around ten
14 minutes, five to ten minutes.

15 Q Now, did you observe anything about the body in
16 particular, or was that left up to someone else?

17 A The initial observance, I could see what appeared
18 to be blood around him.

19 Q The body was actually covered up with some kind
20 of material?

21 A Yes, sir. I believe it was a rug or something of
22 that nature.

23 Q A blanket?

24 A Possibly.

25 Q Did you remove the blanket to look at the body?

TIM FIKE - CROSS-EXAMINATION

1 A No, sir.

2 Q So is that basically the extent of the reporting
3 you do on the case?

4 A Yes.

5 Q I'm not going to introduce it into evidence at
6 this point, but maybe we could mark it for
7 identification.

8 (Defendant's Exhibit 1 marked.)

9 MR. DIGGS: Nothing else.

10 MR. DeBUSK: Nothing from the State. We ask that
11 he be released from the subpoena.

12 THE COURT: There is no objection?

13 MR. DIGGS: No objection.

14 THE COURT: You are released.

15 MR. DeBUSK: May we approach briefly?

16 THE COURT: Yes.

17 (Whereupon, a bench conference was had.)

18 THE COURT: Ladies and gentlemen, I'm informed that
19 the next witness will be a rather lengthy witness, it
20 is a witness with Crime Scene, and it is after 4:30
21 now. I don't want to keep you late, and I don't want
22 to break up his testimony. It could go on for an hour,
23 maybe two hours, I don't know. So what I'm going to do
24 is let you go home. I'll ask you to be back in your
25 jury room at 9:30 in the morning. Mr. Ropp, you are

PETER CESTARE - DIRECT EXAMINATION

1 A The Horry County Police Department.

2 Q How long have you been with them?

3 A I've been with Horry County Police since 2003.

4 I'm a lieutenant and commanding officer of the Crime
5 Scene Investigation Unit.

6 Q Describe what Crime Scene Investigation Unit does
7 to the jury.

8 A We do the forensic side of the investigation.
9 Most people can equate to TV and CSI. It is nothing
10 like what you see on TV. It is quite different. They
11 make things dramatic and pretty looking. We do the
12 science side of the investigation to see if the
13 evidence presents itself in any investigation.

14 Q Now, you have been with Horry County for ten
15 years. How long have you been in law enforcement?

16 A Since 1981. I'm formally employed by the New
17 York City Police Department, New York City Housing
18 Police Department where I was commander of the Major
19 Case Investigations Unit.

20 Q How long have you been do crime scene analysis?

21 A Probably for the better portion of my career,
22 about 1987 to present.

23 Q About 25 years?

24 A Yes, sir.

25 Q You told us how long you were employed, but what

PETER CESTARE - DIRECT EXAMINATION

1 is your training and background specifically in crime
2 scene reconstruction?

3 A New York Police Academy. I've been trained by
4 South Carolina Police Academy. I've been trained by
5 the federal government, Glenco Law Enforcement Academy
6 in Georgia. I've attended probably 50 different
7 schools throughout the country, most recently through
8 the New York City medical examiner's office.

9 Q Have you been ever qualified as an expert in the
10 area of crime scene reconstruction before?

11 A Yes, sir, I have, several times.

12 Q Approximately how many?

13 A I would think at least seven or eight.

14 MR. DeBUSK: Your Honor, at this time the State
15 would proffer Lieutenant Cestare as an expert in crime
16 scene investigation.

17 MR. DIGGS: Your Honor, just brief voir dire.

18 VOIR DIRE

19 BY MR. DIGGS:

20 Q You are employed full time by Horry County?

21 A Yes, sir.

22 Q Do you have any income from any our source?

23 A Pension from New York City.

24 Q Is that pension sufficient to sustain your
25 lifestyle if you were not to be employed in Horry

VOIR DIRE - MR. DIGGS

1 County?

2 A Yes, sir, it is.

3 Q Do you earn a salary in Horry County?

4 A Yes, sir, I do.

5 Q Is it equal to, or more or less? How does it
6 compare with your pension?

7 A I would say it is about --

8 MR. DeBUSK: I'll object as to relevance.

9 MR. DIGGS: It's whether he has a financial
10 interest in the case.

11 THE COURT: I'll let you pursue it a little bit
12 further, but I hope you can tie it together.

13 MR. DIGGS: Pardon?

14 THE COURT: I hope you can tie this into something.

15 Q (MR. DIGGS) You were on the payroll when you did
16 your investigation in this case?

17 A Yes, sir, I was.

18 Q And you received regular paychecks from Horry
19 County at the time of the work you did on the case?

20 A Yes, sir.

21 Q And it was equivalent to the regular amount of
22 pay you received from your full-time employment?

23 A I don't know if I understand that.

24 Q Do you receive a regular paycheck?

25 A Yes, sir.

VOIR DIRE - MR. DIGGS

1 Q On a weekly, monthly basis?

2 A Biweekly, yes.

3 Q That is what you were receiving from Horry County
4 at the time you did your work on this case?

5 A Yes, sir.

6 Q Okay.

7 MR. DIGGS: That is all I have.

8 THE COURT: All right. I find that he is qualified
9 as an expert in the field of crime scene
10 reconstruction.

11 MR. DIGGS: And, Your Honor, would you note my
12 objection for the record, certainly not based on his
13 qualifications, but simply the financial connection?

14 THE COURT: All right. Thank you.

15 DIRECT EXAMINATION (CONT.)

16 Q (MR. DeBUSK) Let me ask you to clarify. Are you
17 receiving any extra compensation for testifying or
18 testifying as an expert?

19 A No, sir.

20 Q Will you receive any pay other than your regular
21 salary whether you testify or not?

22 A No, sir.

23 Q Were you on duty September 14, 2008?

24 A Yes, sir, I was.

25 Q Did you respond to Dew Lane that day?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A Yes, I did.

2 Q Do you recall what address you went to?

3 A Yes, sir. I responded to --

4 Q What are you consulting?

5 A These are notes that I comprised from the

6 investigation. I responded to Dew Lane, .

7 Q A what county is that in?

8 A Horry County.

9 Q Let me show you what is State's Exhibit 83 and
10 ask if you recognize that?

11 A Yes, sir, I do recognize it.

12 Q What does that show?

13 A An aerial photograph or an aerial picture.

14 Q It is not in evidence, so don't show it.

15 A It is an aerial photograph looking over the top
16 of Dew Lane and the Kelly Joe Elliott house.

17 Q There is an orange sticker with the initials
18 "K-J-E," could you place that sticker in the area of
19 Mr. Elliott's house?

20 A Yes, sir. (Witness complied.) I've done that.

21 Q Thank you.

22 MR. DeBUSK: We offer this into evidence at this
23 time.

24 MR. DIGGS: No objection.

25 THE COURT: Without objection, 83.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 (State's Exhibit 83 was admitted.)

2 MR. DeBUSK: We'll publish it by PowerPoint in a
3 few minutes, Your Honor.

4 THE COURT: Very well.

5 Q What was your role at that scene when you
6 responded?

7 A I was requested to come to that scene in a crime
8 scene capacity and to supervise the operations of crime
9 scene investigation at that location.

10 Q Were any other crime scene officers working with
11 you?

12 A Yes, sir, Investigator Robert Deal.

13 Q Do you know the location of Robert Deal?

14 A Yes, sir. He is out of the country on military
15 duty.

16 Q When you went there, what did you see?

17 A I'm sorry?

18 Q What did you see when you went to Dew Lane?

19 A I responded to that address. It was somewhat
20 difficult to see the house as I was coming in --

21 Q Just a moment. State's exhibit 70 and 73, do
22 those give an idea of the location of the house and how
23 hard it was to see?

24 A Yes, sir, they do.

25 Q Please proceed.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A As I came into Dew Lane, I traveled down a short
2 distance, and on the right-hand side is where the
3 address is, but the patrol units on the scene had to
4 give me directions into it because it is not easily
5 seen from the roadway. I turned into the driveway, and
6 you could barely see the front of the house from the
7 driveway. I made my way with the my vehicle up the
8 driveway almost to end of the driveway, towards the
9 back of the residence.

10 Q Okay. While you were there as part of the crime
11 scene investigation, did you and/or Officer Deal take
12 any photos?

13 A Yes, sir, we did.

14 Q I would like you to look at photos and ask if you
15 can identify those and place the numbers on the record,
16 State's Exhibits 10, 11, 12, 13, 14, 15, 16, 34, 41,
17 42, 45, 47, 49, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61,
18 62, 63, 64, 65, 66, 72, 76, 80 and 81. I'll ask if you
19 recognize these?

20 A (Witness examines documents.)

21 (A brief pause in the proceedings.)

22 A Yes, I recognize every one these photographs.

23 Q What are they?

24 A They were taken by myself or Robert Deal at
25 Dew Lane.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Are they fair and accurate representations of the
2 state of the crime scene when you and Investigator Deal
3 examined them?

4 A Yes, sir.

5 MR. DeBUSK: We would like to offer these as
6 authenticated at this time, and we may admit them with
7 future witnesses.

8 THE COURT: They are marked for identification.

9 MR. DeBUSK: Thank you, Your Honor.

10 Q State's 17, 35, 36, 43, 44, 48, 50, 57, 79 and 84
11 to 90 inclusive, I'll ask if you recognize these?

12 A (Witness examines documents.)

13 (A brief pause in the proceedings.)

14 A Yes, sir, I recognize them.

15 Q What are they?

16 A They are taken by myself or Officer Deal.

17 THE COURT: These are all crime scene photographs,
18 and you are marking them for identification?

19 MR. DeBUSK: We're going to admit these.

20 THE COURT: Go on, but let me review them if they
21 are crime scene.

22 MR. DIGGS: May I approach and look at them at the
23 same time?

24 MR. DeBUSK: We reviewed these yesterday.

25 MR. DIGGS: I have, but if it is okay.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 THE COURT: Go ahead.

2 Q (MR. DeBUSK) Are they fair and accurate
3 representations of the crime scene when you and Officer
4 Deal examined it?

5 A Yes, sir.

6 Q Would they help you in aiding you in explaining
7 to the jury what happened at the crime scene?

8 A Yes, they would.

9 MR. DeBUSK: We would move to admit these into
10 evidence.

11 THE COURT: Without objection, they are admitted.
12 And, again, that was -- please put it in the record so
13 we have no questions as to what you are admitting.

14 MR. DeBUSK: 90, 89, 88, 87, 86, 85, 84, 79, 57,
15 50, 48, 44, 43, 36 and 35, and also 17.

16 (State's Exhibits 90, 89, 88, 87, 86, 85, 84, 79,
17 57, 50, 48, 44, 43, 36, 35, 17 admitted.)

18 THE COURT: You had another group?

19 MR. DeBUSK: These are marked, but not admitted.

20 THE COURT: Let me peruse those while you are
21 questioning. Admitted without objection?

22 MR. DIGGS: Yes, sir.

23 Q (MR. DeBUSK) We also did a PowerPoint presentation,
24 did you review that PowerPoint presentation?

25 A Yes, I did.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Did it include the photographs we just went
2 through?

3 A Yes, they did.

4 Q And it includes a diagram; is that right?

5 A Yes, it does.

6 Q Is this a fair and accurate representation of
7 that diagram?

8 A Yes, sir, it is.

9 MR. DeBUSK: For the record, I'm referring to
10 State's 69, which I had upside down. Is that better?

11 A That's fine.

12 Q (MR. DeBUSK) State's 69 is the fair and accurate
13 representation?

14 A Yes, sir.

15 Q Now, I want to ask you about items collected at
16 the scene. Did you collect any projectiles at the
17 scene, you and Officer Deal?

18 A Yes, we did.

19 Q What -- where did you collect them?

20 A We collected two projectiles, one was on the
21 floor in the kitchen/dining area, the second was on a
22 bookshelf in the living room area.

23 Q State's Exhibit 90 and State's Exhibit 57, do
24 those reflect the place you collected those
25 projectiles?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A May I show these to the jury?

2 Q Yes, they are in evidence.

3 A State's Exhibit 90 depicts a projectile laying on
4 a tile floor in the kitchen/dining area of the
5 residence. It was marked with an evidence marker, No.
6 1. That is how we mark our pieces of evidence as we go
7 through the residence.

8 State's Exhibit 57 indicates a projectile on the
9 bookcase in the living room area of the residency, and
10 you'll see that is marked with a "No. 2" indicating
11 that was a second piece of evidence collected.

12 Q Lieutenant Cestare, sometimes we slip in jargon.
13 Can you be specific about what "projectiles" are?

14 A It is a fired bullet. It is the portion of the
15 bullet that comes out when you fire a gun.

16 Q So these were already fired bullets?

17 A Yes, sir, that is correct.

18 Q Okay. What was done with those projectiles when
19 they were collected from the house?

20 A They were collected and sent to our state crime
21 lab, state law enforcement crime lab, to be analyzed to
22 see if they were consistent with each other and any of
23 the evidence on them, markings or debris, was
24 consistent with the scene.

25 Q Let me ask you. Who actually took them,

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 collected them into evidence and preserved them to take
2 them to SLED, as we call it, state law enforcement?

3 A They were collected by Officer Robert Deal,
4 packaged and marked by Officer Deal, transferred to
5 SLED by him as well, and transferred back after
6 testing.

7 Q When a piece of evidence is collected, do you --

8 MR. DIGGS: I would object to the testimony unless
9 he has personal knowledge of Officer Deal --

10 MR. DeBUSK: I was going to get to that.

11 THE COURT: Establish your foundation.

12 MR. DeBUSK: Yes, sir, still establishing
13 foundation.

14 Q (MR. DeBUSK) As the supervisor of the crime scene
15 investigation, do you have responsibility for the
16 caretaking of evidence and caretaking of the records?

17 A Yes, sir. I have overall control of all evidence
18 that the county maintains, and I direct personnel as to
19 what gets taken to SLED and how it is -- should be
20 proceeded.

21 Q And you are what is called a records custodian
22 for the evidence department?

23 A Yes, sir.

24 Q Examining the records pertaining to this
25 evidence, can you testify that that is what

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Investigator Deal did with his evidence?

2 A Yes, sir, I can. I directed Robert Deal to take
3 these to SLED, and I have the chains of custody.

4 Q And you were present at the scene when they were
5 collected, and directed the activities; is that
6 correct?

7 A Yes, sir.

8 Q So you had direct oversight of the actions and a
9 paper trail?

10 A Yes, sir, that is correct.

11 Q So you could testify what Officer Deal with those
12 items?

13 A Yes, sir, I can.

14 Q And, again, this is the same Officer Deal that is
15 in Afghanistan?

16 A Yes, sir, that is correct.

17 Q Or overseas with the military.

18 A Overseas, yes, sir.

19 Q During the course of this investigation, were any
20 other projectiles collected?

21 A Yes, sir. A third one was collected during
22 autopsy.

23 Q Who did the autopsy?

24 A The autopsy was performed at Grand Strand
25 Regional Medical Center by Edward Lee Proctor. He is

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 our resident forensic pathologist and performs a
2 majority of the autopsies in this county.

3 Q Did you or someone in your supervision attend
4 that autopsy?

5 A Yes, sir.

6 Q Who collected that projectile?

7 A That was collected by Officer Robert Deal.

8 Q What did he do with that, based on your
9 supervisory position?

10 A Again, it was collected into evidence by
11 Investigator Deal, carried back to the police
12 department. It was entered into our evidence
13 inventory, and it was then transported to SLED for a
14 comparison against the two projectiles that were
15 recovered from the residence.

16 Q Now, what is this item I'm showing you?

17 A That is packaging from SLED that contains three
18 fired projectiles.

19 Q It is sealed now, but would you open it in the
20 presence of the Court, please?

21 A Yes, sir. (Witness complied.)

22 Q What are the two items you took out?

23 A The two items -- actually three items -- I took
24 out is -- one is a clear package containing three
25 transport tubes, each tube with a fired projectile in

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 it.

2 Q Is that the kind of packaging that Horry County
3 uses when they collect a projectile?

4 A Yes, sir, it is. This is the packaging that came
5 back from SLED. It has the state law enforcement seals
6 on it.

7 Q How many tubes, I should be specific --

8 A Yes.

9 Q -- the plastic bag is from SLED?

10 A The plastic bag is from SLED as well. It has
11 Investigator Robert Deal's initials and name on it and
12 a case number.

13 MR. DeBUSK: Since they are packaged, we asked to
14 mark this as a single exhibit.

15 THE COURT: You don't intend to open it?

16 MR. DeBUSK: I don't see any reason to open it.

17 MR. DIGGS: I agree with that.

18 THE COURT: All right. Mr. Diggs has no objection.

19 MR. DeBUSK: I'll let Mr. Diggs examine them.

20 MR. DIGGS: No objection.

21 Q (MR. DeBUSK) Now, at this point would you --

22 MR. DeBUSK: What is our number?

23 COURT REPORTER: We are going on to 96.

24 (State's Exhibit 96 marked.)

25 Q (MR. DeBUSK) Would you look at State's Exhibit 96

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 and explain what those are to the jury?

2 A Okay. In this sealed package is three tubes.

3 Again, each tube containing a fired projectile. The
4 tubes are numbered No. 1, No. 2 and, again, No. 2. No.
5 1 is a projectile that was recovered from the residence
6 and corresponds with Photograph No. 1 here, which would
7 have been the projectile recovered off of the
8 kitchen/dining room floor.

9 The first No. 2 is a projectile also collected from
10 the residence, and it corresponds with State's
11 Exhibit 57, which is a photograph showing that
12 projectile and the bookcase along with an evidence
13 marker. The second one marked No. 2 indicates it was
14 covered -- recovered at autopsy. This is a projectile
15 that was recovered from the head of the Kelly Joe
16 Elliott.

17 Q And just to be completely clear, where would
18 those have been stored prior to be taking to the State
19 Law Enforcement Division?

20 A Secured in an evidence facility in the Horry
21 County Police building.

22 Q Does that have limited access?

23 A Yes, sir. It is limited to myself and my staff.

24 Q Okay. And, again, it was Investigator Deal who
25 carried those to the state law enforcement?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A Yes, sir. Also in that envelope from SLED is two
2 separate envelopes marked Item 1 and Item 2. Item 1,
3 again, corresponds with Projectile No. 1 that was
4 recovered from the kitchen/dining room floor, marked in
5 State's Exhibit 90, marked evidence Item 1. This is
6 debris collected from the nose of the projectile, which
7 they found consistent with sheetrock.

8 Item No. 2, which corresponds to Projectile No. 2,
9 the first one recovered from the residence as shown
10 here in the photo, the bookcase, there's debris with
11 wood embedded -- that was embedded in the tip of the
12 bullet consistent with the bookshelf where the bullet
13 was recovered from.

14 Q Just to keep things straight, the last one you
15 talked about was the one -- first one, I'm sorry, the
16 drywall --

17 A Yes, sir.

18 (State's Exhibit 97 marked.)

19 Q (MR. DeBUSK) Were you able --

20 MR. DIGGS: Sorry to interrupt. Those were 96, 97,
21 were they entered into evidence?

22 MR. DeBUSK: They are not yet because there is
23 further chain to be proven.

24 Q (MR. DeBUSK) One more thing, Lieutenant. At the
25 autopsy, were any other items collected by Officer

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Deal?

2 A Yes, sir. He also collected some x-rays from --
3 that were taken of Kelly Joe Elliott.

4 (State's Exhibits 98 and 99 marked.)

5 Q (MR. DeBUSK) I'll ask you if you recognize State's
6 Exhibit 99?

7 A Yes, sir. It is two x-rays, the first one is a
8 chest x-ray taken of Kelly Joe Elliott. The second one
9 is an x-ray of the head of Kelly Joe Elliott.

10 Q Were those in Horry County evidence?

11 A Yes, sir, they have been.

12 Q Are they the x-rays that were collected at the
13 autopsy?

14 A Yes, sir, they are.

15 (State's Exhibits 93 - 95 marked.)

16 Q I'll show you State's Exhibits 93, 94 and 95 and
17 ask if you recognize these?

18 THE COURT: Are you marking x-rays for
19 identification.

20 MR. DeBUSK: We'll offer them into evidence later.

21 THE COURT: He's identified those documents, but
22 let's go ahead, before we move on to anything else, and
23 have them at least marked for ID.

24 MR. DeBUSK: I believe we did. They are Composite
25 Exhibit 99, State's 99.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 THE COURT: Thank you.

2 MR. DeBUSK: Place them together in the envelope.

3 A Can I show them to the jury?

4 Q Not yet.

5 A 93 is a photograph rendition of the chest x-ray
6 from Kelly Joe Elliott. 94 and 95 are photographs
7 renditions of the head x-ray of Kelly Joe Elliott.

8 Q Are they fair and accurate representations of
9 what was on those x-rays taken at autopsy?

10 A Yes, sir, they are.

11 MR. DeBUSK: At this time, the State would offer
12 94, 95, 96 and 99.

13 MR. DIGGS: We don't object to it.

14 THE COURT: Without objection.

15 (Whereupon, Exhibits 94, 95, 96 and 99 admitted.)

16 MR. DeBUSK: Can I get the screen, please?

17 Q (MR. DeBUSK) You've reviewed this PowerPoint?

18 A Yes, sir.

19 Q And the items, the photo and diagrams on it, they
20 were the items already in evidence; is that correct?

21 A Yes, sir. The photos that were looked at
22 earlier, yes.

23 Q Does it contain certain ovals and circles
24 indicating where the photographs were taken?

25 A Yes, sir. They were placed into the PowerPoint

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 to help the viewer to see it.

2 Q Are they fair and accurate?

3 A Yes, they are.

4 Q If you would, I'm going to give you a laser
5 pointer to aid you. If we could go through the crime
6 scene with the jury and explain what you did and what
7 you saw.

8 A This is an image of an overview of the -- of Dew
9 Lane showing Kelly Joe Elliott's residence. As you can
10 see, this would be the start of Dew Lane here coming
11 up, and the driveway to the Elliott residence is right
12 here. This is the residence here. It is kind of tough
13 to see because of the brush around it. The house is
14 pretty well secluded from the roadway. You wouldn't
15 know it was there unless you were accustomed to the
16 area and know the area to some degree. As I said, I
17 had trouble finding it and I knew where I was
18 responding to.

19 Q Does that correspond to State's Exhibit 83?

20 A Yes, sir, that is the same as State's Exhibit 83.

21 Q Once again, the sticker of 83 indicates the
22 sticker of the house?

23 A Yes, sir.

24 Q I'll ask about this area right here. What is
25 this?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A That is the start of Dew Lane. As you can see,
2 it is a dirt road. I don't know the direction of
3 travel on it, but as you travel down that, the Elliott
4 residence will be on the right side some distance down
5 the road.

6 Q What is that large sort of greenish thing to the
7 house?

8 A There is a pond right here next to the driveway.
9 The pond is on one side of the driveway, the residence
10 is on the other side. Looking at the picture as you
11 see it, the pond is to the right of the driveway, being
12 right here (indicates), and the house is to the left of
13 the driveway.

14 Q Let's look at that specifically where the oval
15 is. What is that?

16 A That is a view of the front of the house on the
17 day that we responded there. That shows the residence
18 from Dew Lane.

19 Q This is on September 14, 2008?

20 A Yes, sir, that is correct.

21 Q And that is the state of the growth around the
22 house at that time?

23 A Yes, sir. And as you can see, the house is set
24 back off the roadway and somewhat difficult to see if
25 you are not accustomed to the area.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q For the jury's edification, what are the yellow
2 strip things?

3 A The yellow is crime scene tape that was placed
4 surrounding the residence by the responding patrol
5 officers. Once they responded and realized they had a
6 crime scene, they surrounded the perimeter to keep any
7 on-lookers and stuff away from the scene and preserve
8 any potential evidence within that barrier.

9 Q Okay. Let's move on. What is this?

10 A That is a CAD overview of what the residence
11 looked like on the day in question. Looking here, the
12 driveway that you saw, if we could almost flip the
13 house, you would understand it a little better. The
14 driveway comes in this way, the pond being over here,
15 so we're looking at a reverse image of what we just
16 saw.

17 The driveway comes in, circles into the back of the
18 house. There is an entrance door here. There is a
19 screened-in porch here, living room here, master
20 bedroom here, kitchen and dining area here, laundry
21 room, and so forth. There is bedrooms and a dining
22 area up here. This is the front door of the residence,
23 which is what you saw in that photograph before, which
24 you would have seen from Dew Lane from the dirt road
25 side of the house.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q I'll ask you about this area here. What would we
2 see here (indicates)?

3 A Okay. That is the driveway, comes in here and it
4 actually makes like a --

5 MR. DeBUSK: Can we bring the light down just a
6 little bit to make it easier to see. Thank you.

7 A The driveway comes in from here and kind of makes
8 a sharp turn to the left to the rear of the residence.
9 The vehicle you see here, that is Mr. Elliott's vehicle
10 parked behind the residence where he would generally
11 park it. This is the screen porch that I just
12 explained to you from the prior photo, and then the
13 door to the back of the residence is in here. As you
14 can see, the house is pretty well surrounded by
15 overgrown brush and so forth. It is quite difficult to
16 see anything in and around the house.

17 MR. DeBUSK: Court's indulgence one moment.

18 (A brief pause in the proceedings.)

19 MR. DeBUSK: Thank you, Your Honor.

20 Q (MR. DeBUSK) Was that vehicle there when you
21 arrived?

22 A Yes, sir, it was. It shows the vehicle you just
23 saw in the previous photograph. It was parked nose in,
24 or front in, so it is obvious that the vehicle was
25 pulled straight in and parked.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Look at this area specifically, what do we see
2 here?

3 A This is the door, the vehicle would be parked
4 right here, this is the screen porch. This is the door
5 leading into the back of the residence that comes into
6 somewhat of like a laundry room leading into the
7 kitchen/dining room and further on into the residence.

8 Q Let's look closer at that door. Do you notice
9 anything unusual about the door?

10 A Yes, sir. Right here you'll see this is what is
11 referred to as a nine panel door. It has nine
12 individual glass panels in it. It is a wood frame
13 door. There is two locking mechanisms, a door knob,
14 lock and a dead bolt, which is pretty much standard on
15 many doors today. This pane of glass closest to the
16 locks was broken, and it was broken from the outside
17 in. The glass was scattered about on the inside of the
18 residence with no -- or minimal glass on the outside,
19 which would indicate that the glass was broken from the
20 outside to inside. It is closest to the door locks,
21 both locks, which would indicate that that glass was
22 broken to access the locks on the residence.

23 Q Based on your expertise as a crime scene
24 reconstructionist, what does that indicate to you?

25 A That is generally an indication --

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 MR. DIGGS: We would renew our objection and ask
2 that it continues.

3 THE COURT: All right. I'll allow him to testify.
4 Overrule the objection.

5 A That generally would indicate a forced entry into
6 the house commonly found in a burglary.

7 Q (MR. DeBUSK) Move on a little bit to this area
8 here. What is that?

9 A That is a gun cabinet that is in the living room
10 of the residence leading towards the master bedroom,
11 but it is in the living room of the residence, and as
12 you can see, that, too, has glass doors in it and a
13 cabinet underneath it.

14 Q Were there any intact firearms in that cabinet
15 when you arrived?

16 A No, sir, there were not.

17 Q What is that item at the bottom of the cabinet?

18 A Stock, just a wood portion of a rifle. The
19 mechanisms and so forth for the rifle are not there,
20 just the wood portion of the -- what is referred to as
21 the stock.

22 Q But there were no intact firearms?

23 A No, sir, there were not.

24 Q I'll take you to the master bedroom. Is this the
25 state it was in when you arrived?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A No, sir. The mattress was slightly towards the
2 bed more. We moved it a little bit to be able to view
3 the complete underside of it, but that is the master
4 bedroom of the residence. That is the bedroom that
5 Kelly Joe Elliott slept in.

6 Q You knocked the mattress entirely off?

7 A It was partially off.

8 Q Does that indicate anything to you?

9 A Yes, sir. And going further in some of the
10 pictures you'll see most of the rooms were found in
11 this state, and, again, that would indicate that
12 someone was looking for something in the residence
13 commonly found in burglaries.

14 Q I'll ask you about this spot here. What was
15 that?

16 A This is the master closet in the master bedroom
17 and as you can see, there are a number of items
18 scattered about the floor and items that are somewhat
19 disheveled or displaced on the shelving. There is also
20 some empty boxes that contain -- that are believed to
21 have contained firearms in them, and those boxes were
22 found empty.

23 Q How about on the left hanging from the rod, what
24 looks like handles on them?

25 A Those are gun cases, typical of what you would

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 store or carry a firearm in. Those also were empty.

2 Q And the yellow and green boxes on the top of
3 those four shelves?

4 A Those are boxes of ammo. We found a considerable
5 amount of ammunition in the house or boxes of
6 ammunition, generally consistent with someone who owns
7 firearms and has ammunition for them.

8 Q Now, you found boxes and cases. Did you find any
9 intact firearms in that closet?

10 A No, sir, I don't believe we did.

11 Q Let me look at the living room view here for a
12 moment. What is that under the comforter on the floor?

13 A This is the condition we walked into the living
14 room as we found it. This is Mr. Elliott lying under a
15 comforter, that is how we found him as we entered the
16 residence.

17 Q What was his position when you took the comforter
18 off?

19 A He was lying with his head this way, he is on his
20 right side and somewhat on a side position laying on
21 his right side with his hands or arms intertwined with
22 one another. So his head is here, feet extend this way
23 back towards what would be the master bedroom door.
24 You can see that the house has a number of items in it,
25 clothing and so forth, strewn about. The house is

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 somewhat unkempt, and seeing the totality of the house
2 and knowing that Mr. Elliott lived there alone, it is
3 kind of common on how you might find things.

4 He appeared to be not one of the neatest people,
5 but looking through -- as you go back to the photo that
6 we just left with the closet and so forth -- it is
7 consistent with someone having gone through the closet
8 looking for something.

9 Q Just to make clear, Mr. Elliott was found lying
10 on his right side; is that correct?

11 A Yes, sir.

12 Q So his right side of the chest was against the
13 floor?

14 A Yes, sir.

15 Q Just to orient that discolored thing sticking
16 from under the comforter --

17 MR. DIGGS: Your Honor, may we approach?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was had.)

20 THE COURT: Let's send the jury out for a moment.
21 Brings up the light.

22 (The jury exits at 10:30 a.m., and the following is
23 heard out of the presence of the jury.)

24 THE COURT: Mr. Diggs.

25 MR. DIGGS: I understand this witness has been

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q (MR. DeBUSK) You testified that Mr. Elliott's body
2 was found with his right side against the ground. Was
3 it covered as it is in this picture?

4 A Yes, sir. That is exactly the way we found it.
5 This is Mr. Elliott laying here. His head would be
6 here. What you see sticking out of the blanket here is
7 his hand, some blood here and his body extends back
8 with his feet closest towards back here, which is the
9 master bedroom. The gun cabinet from the earlier
10 photograph, this item right here --

11 Q I'll ask you, the hand that's visible, that is
12 not the normal color of a hand, is it?

13 A No, sir, it is not. As you can see, the state
14 that we found Mr. Elliott's body in was in
15 decomposition, which means he had been deceased for
16 some period of time.

17 Q I hate to go into something unpleasant, but it
18 kind of smelled, too?

19 A Yes, sir, it did.

20 Q Were you present when they transported the body,
21 Mr. Elliott?

22 A Yes, sir, I was.

23 Q Where was Mr. Elliott's body taken?

24 A He was removed from the scene after we were done
25 documenting everything with photographs and notes. He

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 was then transported to Grand Strand Regional Medical
2 Center for forensic autopsy.

3 Q When you were examining the body before it was
4 taken out, did you notice any external wounds?

5 A Yes, sir, I did. When we uncovered the body,
6 removed the blanket or comforter that was on top of
7 him, the entire body was in a state of decomposition.
8 There was bug activity and so forth, discoloration.
9 However, part of our investigation entails moving or
10 manipulating the body to get an overview to see if
11 there is any obvious causes of death or signs to
12 indicate what may have happened. In doing that, I
13 observed what appeared to be a gunshot wound on the
14 right side of Mr. Elliott in the chest region.

15 Q Is that the portion against the ground?

16 A Yes, sir. That was the portion against the
17 ground. I also observed what appeared to be a gunshot
18 wound to the head of Mr. Elliott. Those were the only
19 two obvious signs of traumatic wounds that I could see
20 at that time.

21 Q Just to be clear, you could not see that chest
22 wound until you rolled the body?

23 A That's correct. The chest wound was not visible
24 until we physically rolled the body over where I saw
25 the right side. At the state you see it in, the right

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 side was against the carpeting or flooring of the
2 residence of the living room.

3 Q I'll bring your attention to this door between
4 the living room and the bedroom. What was the state of
5 that door?

6 A All right. What you see here, this is the
7 bedroom door. It swings inward from the living room.
8 This doorway leads into a closet further in, the bed,
9 arm chair and night stand and so forth. On the lower
10 portion of this door you'll see broken paneling. It is
11 a solid wood core door. The paneling on the bottom is
12 broken and you can see pieces of it lying here, and
13 you'll see pieces of it lying at the entrance of the
14 doorway as well.

15 Q Like that (indicates)?

16 A Yes, sir. These are panels from that lower panel
17 of the door on the locking side. It is the hinged
18 side, and it swings inward into the bedroom. This is
19 the door knob, or locking side. Those are the panels
20 looking at the door from the living room, it would be
21 the lower right side of the door.

22 Q Based on your training and experience in crime
23 scene reconstruction, what does that indicate to you?

24 A That is generally a forced entry type of thing.
25 The panel was kicked in in an attempt to gain entry

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 into the room.

2 Q I want to bring your attention to the projectiles
3 and the locations they were recovered. Did you do
4 anything to reconstruct the trajectories of those?

5 A Yes, sir. It is common in any type of
6 investigation involving bullets and paths that bullets
7 travel -- we refer to them as trajectory. We did so in
8 this case, and we placed two bullet trajectories in
9 these residence.

10 Q Explain what you see in this picture.

11 A This is -- if we could -- can you go back to the
12 overview of the residence for a minute? Are we close
13 enough we can get back to that? Okay. This wall right
14 here separates the kitchen from the living room. There
15 is like a hallway or walk-around here that brings you
16 from the kitchen, slash, dining room into the living
17 room and then continues into the room. Okay.

18 Back now to that picture. All right. So this is
19 standing against that walkway looking up at the wall,
20 kitchen/dining room is here, the bookcase and living
21 room is on this side. What you see here is two
22 different trajectory rods. The first one is showing a
23 bullet hole through the top of the wall near the
24 ceiling which then strikes the kitchen, slash, dining
25 room ceiling, and you see the sheetrock. When I

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 mentioned earlier in the particles obtained from the
2 nose of the projectile from the kitchen, slash, dining
3 room where they mentioned sheetrock, that is where it
4 came from. The bullet went through the wall here,
5 which is a sheetrock here, struck the ceiling, dragged
6 it across the ceiling for a couple of inches and then
7 dropped onto the floor in that dining room/kitchen.

8 Q Let's talk about that one for a moment. What is
9 the purpose of the trajectory rod?

10 A The trajectory rod shows the path of travel. In
11 any type of incident where you -- where we've got
12 projectiles or bullets fired, we try to determine the
13 point of origin, which is where the initial firing of
14 the gun occurred, and the final rest. The final rest
15 in this case was the ceiling, that is what stopped it.
16 As you can see, it is hard to tell from the photograph,
17 but the angle is slightly upward.

18 Q Let's move to the next photograph. There you go,
19 that might help.

20 A You can see this is the kitchen/dining room side,
21 living room side on the other side of the wall. As you
22 can see, the trajectory comes upward through the wall
23 and strikes the ceiling here. That projectile, or
24 bullet, drops to the floor. That is the one you saw in
25 the earlier photo under -- this is just beneath that

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 mark in the ceiling. There is like a dinette table,
2 and what you see here is the leg of the chair. That
3 was our Evidence Marker No. 1. You can see in the
4 projectile what appears to be some white debris, that
5 is the sheetrock that was found at the state lab in the
6 nose of the bullet.

7 Q Were you able to reconstruct the point of origin
8 of that particular shot?

9 A Yes, sir. We were able to tell with a fair
10 amount of certainty that that bullet was fired from the
11 area of the bedroom door, or what lined up to be the
12 bedroom door. The trajectory of that round is fired
13 from somewhere in this area here, and it is upward --
14 slightly upward where it goes through the top portion
15 of this wall and strikes the ceiling.

16 Q Look at this view. Would you indicate what the
17 point of origin was?

18 A Based on the trajectory angle of that ballistic
19 rod, we were able to tell that that shot was fired from
20 somewhere in the area of right here near this doorway.
21 That is the doorway leading into the bedroom. That is
22 the wood you saw on the floor where the panel was
23 broken on the door, and the angle or trajectory of the
24 bullet is upward from this angle through that wall and
25 into the ceiling.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Let's move on to the other bullet collected from
2 the bookshelf area. What is this?

3 A Okay. This is -- there is a lot to see in this
4 photo. This is that wall operating the kitchen/dining
5 room on this side, living room this side. This mark is
6 the trajectory of the angle we were just talking about.
7 You can see the portion of the rod. We use two
8 different color rods to indicate two different
9 trajectories. The black is the trajectory coming from
10 somewhere in the area of the bedroom door going through
11 the wall and striking the ceiling. The second one, it
12 is hard to tell from the photo, but you can see that
13 this angle is sharply upward, and it comes from the
14 area of -- just adjacent to this is almost like, I
15 guess, a wet bar or cabinetry that had some type of a
16 bifold -- vented bifold doors over the top of it. In
17 one of the coming photos you should be able to see
18 that.

19 But this trajectory is sharply upward. You know,
20 it indicates that the bullet was fired from somewhere
21 down here near the doorway, fired almost what looks
22 like a 45-degree angle upward, penetrates the outer
23 skin of the bookcase, strikes the top of the bookcase,
24 it stops and drops onto the shelf here.

25 Q We'll move to the other photos. Is this a

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 different view of the same thing?

2 A Yes, sir. It is looking from the wet bar or
3 vented closet area, and you can see it rounded sharply
4 directing upward.

5 Q Again, you've explained this?

6 A Yes. That is -- the bullet came through the
7 bookcase on the side, struck the top and dropped down.

8 Q And on this photo could you indicate the area
9 where you believe the point of origin of that shot --

10 A You'll see that vented door, there is a second
11 vented door that is down on the ground and busted, to
12 some degree. The angle is this way coming from the
13 door upward through the skin of the bookshelf and
14 strikes the top, and the bullet is found right up here.

15 Q Just to orient with the photos, can you indicate
16 where the body was recovered?

17 A The body is right behind the couch, head this
18 way, feet this way. The bookcase is here. The vented
19 closet door is right here. The mark in the ceiling
20 through the wall is about here.

21 Q Thank you.

22 MR. DeBUSK: If we could get the lights back up.

23 We'll talk about the second bullet trajectory.

24 One of the doors was broken down, and one was still
25 hanging?

PETER CESTARE - CROSS-EXAMINATION

1 A Yes, sir. One was on the ground and one was in
2 the opened position and pushed back.

3 Q And was that door lying in the zone of travel
4 between the kitchen and the living room?

5 A Yes, sir, it was.

6 MR. DeBUSK: No further questions.

7 CROSS-EXAMINATION

8 BY MR. DIGGS:

9 Q I'm sorry, I forgot your rank.

10 A Lieutenant.

11 Q Lieutenant. Okay. Did you have anything to do
12 with collecting telephone records?

13 A No, sir, I personally did not.

14 Q So you weren't involved in that aspect of the
15 investigation?

16 A No, sir.

17 Q Now, let me ask you a little bit about the
18 discoloration of Mr. Elliott's arm. Do you have any
19 familiarity with the decomposition process of a human
20 body?

21 A Yes, sir, I do.

22 Q And are you familiar with the State's theory as
23 to when the shooting occurred?

24 A No, sir, I don't believe I know what you are
25 talking about there.

PETER CESTARE - CROSS-EXAMINATION

1 Q You don't know what the state is claiming the
2 date was that this shooting took place?

3 A No, sir, I do not.

4 Q But when you went out there -- and a lot of the
5 evidence that you base your opinions on -- was
6 collected on the 14th of September; do you agree with
7 that?

8 A Yes, sir. That is correct.

9 Q Okay. So the death of Mr. Elliott and that type
10 of discoloration of his arm, which you indicated a
11 certain degree of decomposition at that time, do you
12 have any opinion about when the death would have
13 occurred based on your experience and the exposure you
14 have to decomposition?

15 A The only thing I can tell you is that it occurred
16 sometime obviously before the 14th. Any number of
17 things can affect how quickly decomposition occurs,
18 obviously, weather, temperature --

19 Q We know this body was in the home, it was inside
20 a house?

21 A Yes, sir.

22 Q And that house had air conditioning?

23 A No, sir, it did not.

24 Q It had no air conditioning?

25 A There was air conditioning on in the master

PETER CESTARE - CROSS-EXAMINATION

1 bedroom only. The rest of the house did not have air.

2 Q Okay. Do you know that of your own knowledge, or
3 explain to us how you know that?

4 A Part of our investigation involves, obviously,
5 detailing everything about the house that will help us
6 in any way make a determination. We found a window
7 unit in the master bedroom was on and powdered on when
8 we arrived. No other unit in the house was on or
9 powdered on.

10 Q He was laying there in front of the bedroom door?

11 A A good distance from it, several feet.

12 Q And that door was open?

13 A Yes, sir.

14 Q And the cool air would have then flowed in that
15 direction?

16 A Yes, sir. That would be correct.

17 Q Now, let me ask you something. Why would you
18 testify to a drawing of this floor plan that was not to
19 scale?

20 A We don't do any of our drawings to scale. They
21 are basically for recollection purposes.

22 Q Did you tell us before your testimony that it was
23 not to scale?

24 A No, sir, I don't think anyone asked me that
25 question.

PETER CESTARE - CROSS-EXAMINATION

1 Q All right. Is it your intent to draw the diagram
2 to best fit with your testimony?

3 A No, sir, we draw a diagram based on the way we
4 observe the location that we are --

5 Q But it is not to scale?

6 A No, sir.

7 Q So it is not intended to give us the best
8 depiction you can with respect to where the various
9 important items of evidence are located in the house?

10 A No, sir, that is the purpose of photographs.

11 Q But you just testified in your testimony that it
12 was difficult to see from the photograph. Didn't you
13 say those words, "it is difficult to see from the
14 photograph," but this is --

15 A From that individual photograph. That is why we
16 take a collage of photographs of the entire residence
17 and the outside of the residence.

18 Q Did you take any other photographs to make a
19 collage to illustrate for us where that was coming
20 from, the direction of the trajectory was in?

21 A Yes, sir. There was a number of photographs
22 taken. I don't know the exact number, but not all of
23 them have been entered here today.

24 Q And you didn't tell us about those, you didn't
25 show us when you were talking about the trajectories?

PETER CESTARE - CROSS-EXAMINATION

1 A No, sir. I can only talk about the photographs
2 you entered into evidence.

3 Q I haven't entered any.

4 A Or the State enters.

5 Q When you saw that body, how many days do you
6 think it had been dead?

7 A I don't think I could give you an opinion other
8 than to say more than one.

9 Q All right. And in your opinion -- let's go back.
10 You were talking about where the car was located at the
11 back door. Could you -- it would be unreasonable,
12 wouldn't you agree with me in this respect, for someone
13 to break in the back door, as you testified to in your
14 opinion, to be able to break in the back door without
15 seeing the car parked there?

16 A That's correct, you would have had to see the
17 vehicle.

18 Q So whoever went in the house knew the vehicle was
19 there?

20 A Yes, sir.

21 Q Now, isn't it true that there was a light on in
22 that bedroom?

23 A I don't recall right now without looking back.

24 Q Could you look at something and answer that, if
25 you can reasonably access that information? I don't

PETER CESTARE - CROSS-EXAMINATION

1 want you to spend hours, but if you could look at that
2 and confirm that the bedroom light was on.

3 A (Witness examines documents.)

4 (A brief pause in the proceedings.)

5 A I can't confirm that for you, no, I'm sorry.

6 Q (MR. DIGGS) Okay. Now, you didn't know
7 Mr. Elliott; isn't that true?

8 A No, sir, I did not.

9 Q Of course, you never had been in that home prior
10 to your work on this case?

11 A Correct.

12 Q And you can't testify about what the condition of
13 the home was or was not in prior to your visit on the
14 14th?

15 A No, sir, I have no knowledge of the house prior
16 to that day.

17 Q And your opinion about the home having been
18 rummaged through is not based on anything other than
19 what you saw there that day?

20 A No, sir. It is based on 30-some odd years of law
21 enforcement and having been to well over a thousand
22 death investigations and various types of
23 investigations. That was an opinion I was able to
24 render based on my observations in that house that day.

25 Q All right. But those 30 years of experience

PETER CESTARE - CROSS-EXAMINATION

1 didn't include any exposure to Joe Elliott?

2 A No, sir..

3 Q Or his home?

4 A No, sir, not until that day.

5 Q Now, you don't know -- you showed us a photo of a
6 gun cabinet. You don't know what was in that cabinet
7 prior to that occasion?

8 A I do not.

9 Q And I think you testified that something appeared
10 to have been taken from the closet shelves. I
11 apologize if I'm misquoting you, but what was your
12 testimony about the closet shelves?

13 A There were empty gun boxes and cases throughout
14 the residence.

15 Q But you don't know what was there before
16 Mr. Elliott was killed?

17 A No, sir, I have no knowledge.

18 Q You are in a position to testify about what was
19 taken?

20 A No, sir.

21 Q When you were looking at the photographs, did you
22 see a photograph of the home's front door that had the
23 spider cobweb on it?

24 A Yes, sir, I did.

25 Q So do you remember where those cobwebs were?

PETER CESTARE - CROSS-EXAMINATION

1 A Yes, sir. Both inside and outside. There were
2 cobwebs all around the edges of the door.

3 Q So that door didn't get used a lot?

4 A I believe it would not, correct.

5 Q All right. Again, you testified as to a
6 statement that this scene appeared, to you, to be one
7 in which someone was looking for something and, again,
8 you base that on your 30 years of experience?

9 A Yes, sir.

10 Q Which doesn't include, though, any knowledge of
11 Mr. Elliott's home?

12 A Prior to that day, yes, sir.

13 Q Prior to that day. All right. Now, when you
14 were doing your investigation, did you have access to
15 any statements about witnesses?

16 A No, sir, I don't believe I did. As I stated,
17 mine is the forensic side.

18 Q So you didn't have a need to go and look at any
19 statements any witnesses had made in this
20 investigation?

21 A No, sir. But commonly in any investigation there
22 is a dialogue between the detectives doing the
23 interviewing portion and the crime scene personnel
24 doing the science side of it.

25 Q Did you have such a conversation in this case?

PETER CESTARE - CROSS-EXAMINATION

1 A There was several times when we spoke back and
2 forth, yes, sir.

3 Q All right. Do you remember who it was that you
4 spoke with?

5 A The case agent at the time was Detective Rusty
6 Crocker. I know we spoke with him, and I know we spoke
7 with several other detectives at the scene that day.

8 Q And this is Detective Crocker in the courtroom,
9 is it not?

10 A Yes, sir. He's in the courtroom today.

11 Q And he relayed to you general information about
12 the case, which you relied upon in terms of your
13 investigation and the conclusions you reached, a
14 combination of both of those?

15 A No, sir. His information has no correlation to
16 the conclusions we reach in science. Science is what
17 tells us what we find.

18 Q Sure. But if you don't -- if there is no
19 correlation, why do you bother to talk to him?

20 A We basically bring forward information to them
21 that may be helpful to them as far as what we're
22 finding evidence wise on a scene.

23 You have to understand, initially we don't allow
24 anybody else in the scene until we've documented it.

25 Q So I thought you were telling me that the

PETER CESTARE - CROSS-EXAMINATION

1 detectives had conveyed certain information to you, and
2 then you began to undertake your work?

3 A They did from a standpoint of name and so forth
4 of who the victim was.

5 Q But not any evidentiary type of stuff about this
6 happened, this happened?

7 A No, sir.

8 Q To give you sort of an over -- again, an
9 overview, and that's it?

10 A No, sir. Evidence in the scene or in the
11 residence was our determination to make, and then to
12 bring that information forward to the detectives.

13 Q Did the detectives ever tell you that certain
14 witnesses made certain statements?

15 A Not that I can recall, no, sir.

16 Q And is that unusual, or is that something that
17 you generally don't rely on?

18 A That has no bearing on what I do.

19 Q And you don't have any interest in it, really?

20 A No, sir. Any investigation involves two
21 entities, the science side of it and the investigative
22 side of it.

23 Q Okay.

24 MR. DIGGS: Thank you. That is all.

25

PETER CESTARE - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

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BY MR. DeBUSK:

Q State's 69, is this the diagram we used in the PowerPoint?

A Yes, sir. That is the diagram from the PowerPoint.

Q What does the last line say?

A "Not to scale."

Q So you are not trying to hide that, are you?

A No, sir. We did not do complete measurement calculations of the entire house, it is just to show an overview of what the house would look like.

Q To orient the jury. And used in combination with the crime scene photos, is that an effective way to present --

A Yes, sir. The photos are an accurate version of what we saw that day, and it kind of sets the basis for how we do a drawing or a sketch of an incident location, in this case Dew Lane.

MR. DeBUSK: Thank you. Your Honor, we move to have him released from the subpoena.

MR. DIGGS: I don't think we have any objection.

THE COURT: You are released from your subpoena. Please raise the screen, if you would, Tammy.

MR. DeBUSK: State calls Amy Stephens, South

AMY STEPHENS - DIRECT EXAMINATION

1 Carolina Law Enforcement Division.

2 (AMY STEPHENS, having been duly sworn, testified as
3 follows:)

4 THE CLERK: State your name and spell your last
5 name for the Court.

6 THE WITNESS: Amy Elizabeth Stephens,
7 S-T-E-P-H-E-N-S.

8 DIRECT-EXAMINATION

9 BY MR. DeBUSK:

10 Q Who is your employer?

11 A South Carolina Law Enforcement Division, also
12 known as SLED.

13 Q How long have you been with them?

14 A Approximately eight years.

15 Q What are your duties?

16 A I work in the evidence control department as a
17 forensic technician. Our daily responsibilities are to
18 log in, package and transfer evidence for forensic
19 analysis.

20 Q I take it you handle a lot of evidence?

21 A Yes, I do.

22 Q You would have no way of recognizing this by just
23 remembering, would you (indicates)?

24 A No.

25 Q Do you keep records?

AMY STEPHENS - DIRECT EXAMINATION

1 A We do.

2 Q Do you mark evidence?

3 A We do.

4 Q If I show you these items in this package and ask
5 if you recognize these, how would you recognize it?

6 A The SLED lab number on the label on this physical
7 piece of evidence corresponds with the chain of custody
8 for this case.

9 Q And specifically three items in the plastic bag,
10 did you receive those in the course of your duties?

11 A Yes, I did.

12 Q And when and from whom did you receive those?

13 A I received these items on September 26, 2008 at
14 10:35 a.m. from Robert Deal with the Horry County
15 Police Department.

16 Q What did you do with them?

17 A When I receive them, I would have placed them in
18 this envelope here, logged the information into our
19 computer system and affixed this label to the outside
20 of the document documenting the lab number assigned to
21 this case.

22 Q Since you've identified that envelope, let's get
23 it marked.

24 (State's Exhibit 100 marked.)

25 MR. DIGGS: That is just the envelope?

AMY STEPHENS - DIRECT EXAMINATION

1 MR. DeBUSK: Yes.

2 THE COURT: Are you offering it?

3 MR. DeBUSK: Yes.

4 MR. DIGGS: No objection.

5 THE COURT: Okay. Without objection, 100.

6 (State's Exhibit 100 was admitted.)

7 Q (MR. DeBUSK) What did you do with these after you
8 logged them?

9 A I transferred them to the firearm intake storage
10 area, evidence room.

11 Q For whose attention?

12 A Whoever is assigned to the case, and in this
13 particular case it was David Black of the firearms
14 department.

15 Q Did you receive it back at some point?

16 A I returned it out of the firearms intake and
17 physically transferred it to David Black; after that, I
18 had no contact with it.

19 Q Let me ask about the two envelopes in front of
20 you, State's Exhibits 97 and 98. What are those?

21 A They appear to be -- they are related to SLED Lab
22 No. 814598, Item No. 1.1 and 2.1.

23 Q When you see a number like that, 1.1 and 2.1,
24 what does that mean?

25 A It is a subitem. It is basically a piece of

AMY STEPHENS - CROSS-EXAMINATION

1 evidence taken from the parent item that is submitted
2 to us from the submitting agency.

3 Q But 2.1 and 1.1 did not exist when you gave it to
4 firearms?

5 A Correct.

6 Q Did you alter those items or change them in any
7 way while they were in your custody?

8 A No, I did not.

9 MR. DeBUSK: Thank you. Answer any questions Mr.
10 Diggs may have.

11 CROSS-EXAMINATION

12 BY MR. DIGGS:

13 Q You got the packet from whom?

14 A Robert Deal with the Horry County Police
15 Department.

16 Q And you don't know where he got it?

17 A No, sir.

18 MR. DeBUSK: We ask that she be released from her
19 subpoena.

20 THE COURT: Any objections?

21 MR. DIGGS: No, sir.

22 THE COURT: You are released. Thank you.

23 MR. DeBUSK: Frank Knight.

24 (FRANCIS (FRANK) KNIGHT, having been duly sworn,
25 testified as follows:)

FRANCIS (FRANK) KNIGHT - DIRECT EXAMINATION

1 THE CLERK: State your name and spell your last
2 name for the record.

3 THE WITNESS: Frank Knight, K-N-I-G-H-T -- Francis
4 Marion Knight, Junior, K-N-I-G-H-T.

5 DIRECT-EXAMINATION

6 BY MR. DeBUSK:

7 Q Who is your employer?

8 A Grand Strand Regional Medical Center.

9 Q What are your duties?

10 A Imaging service director.

11 Q Do you help maintain the records of images taken
12 at Grand Strand?

13 A Yes.

14 Q That includes x-rays?

15 A Yes.

16 Q Let me show you what is marked as State's
17 Exhibits 93, 94 and 95. I'll ask if you can recognize
18 these?

19 A Yes, I do.

20 Q What allows you to recognize those?

21 A Speaking with a radiologist, Dr. Fortman, I think
22 he's the one that read these radiographs.

23 Q Were they maintained in the records of Grand
24 Strand Regional Center?

25 A Yes.

FRANCIS (FRANK) KNIGHT - DIRECT EXAMINATION

1 Q Do you know when they were taken?

2 A I do not right offhand, no.

3 Q Do you know who ordered them?

4 A Dr. Proctor, I believe, pathologist.

5 Q So these are images that were taken by Grand

6 Strand, stored at Grand Strand, and taken at the

7 request of Dr. Proctor of whom?

8 A I'm sorry?

9 Q Who was the patient?

10 A I'm not sure. I don't know the name.

11 Q Okay.

12 A Is the name on here? Elliott, Kelly Joe Elliott.

13 Q That is part of the records of --

14 A Correct.

15 Q So those are images of Kelly Joe Elliott ordered

16 by Dr. Proctor?

17 A Yes.

18 Q Thank you.

19 Let me ask you, there is a date where it says

20 "portable skull" of the top item, is that the date the

21 images were taken?

22 A Yes, that is correct.

23 Q What is that?

24 A 9/15/2008.

25 Q September 15, 2008?

FRANCIS (FRANK) KNIGHT - CROSS-EXAMINATION

1 A Yes.

2 MR. DeBUSK: I believe these are in evidence.

3 Answer any questions defense might have.

4 CROSS-EXAMINATION

5 BY MR. DIGGS:

6 Q Mr. Knight, did you have any involvement with
7 these particular images at any point prior to this
8 morning?

9 A I did not. I did not have any involvement, no.

10 Q When was the first time you saw them?

11 A About two weeks ago.

12 Q Okay. And what was the purpose for looking at
13 them at that time?

14 A The solicitor's office came by and spoke to us,
15 and that is when I looked at them with the radiologist.

16 Q What did they ask you to do?

17 A Possibly explain the process of how the images
18 are taken at the hospital and kept and stored.

19 Q Who did take those images?

20 A One of the technologists.

21 Q Is that done during the autopsy, or when is that
22 done?

23 A During the autopsy. The pathologist will request
24 the films we take, and they go and take the x-rays.

25 Q So Dr. Proctor asked that those two images be

FRANCIS (FRANK) KNIGHT - REDIRECT EXAMINATION

1 taken in this particular case?

2 A Correct.

3 Q And the obvious reason -- and I don't want you to
4 speculate -- would be because these two images show
5 projectiles or bullet in some fashion?

6 A I don't know.

7 Q All right.

8 MR. DIGGS: Mr. Knight, I appreciate it, but I
9 don't think I have any additional questions for you at
10 this time.

11 MR. DeBUSK: Just one.

12 REDIRECT-EXAMINATION

13 BY MR. DeBUSK:

14 Q You are the custodian of the images?

15 A That's right.

16 Q Did you take the images?

17 A No.

18 MR. DeBUSK: We ask him to be excused.

19 THE COURT: You are excused.

20 MR. DeBUSK: State calls Detective Alan Jones of
21 the Horry County police department. Alan Jones.

22 (ALAN JONES, having been duly sworn, testified as
23 follows:)

24 THE CLERK: State your name and spell your last
25 name for the Court.

FRANCIS (FRANK) KNIGHT - REDIRECT EXAMINATION

1 THE WITNESS: Alan Jones, J-O-N-E-S.

2 DIRECT-EXAMINATION

3 BY MR. DeBUSK:

4 Q Who is your employer?

5 A I am employed with Horry County Police
6 Department.

7 Q How long have you been with them?

8 A Approximately 13 years.

9 Q What is the nature of your work at this time?

10 A At this time, I'm assigned to the narcotics unit
11 as a detective.

12 Q How about back in March of 2011?

13 A March of 2011, I was a detective with the violent
14 crimes unit.

15 Q Were you involved in the investigation of the
16 death of Kelly Joe Elliott?

17 A Yes, I was.

18 Q In the course of your work in that case, did you
19 encounter the defendant, Brad Mullins?

20 A Yes.

21 Q Where did you locate him?

22 A I traveled up to the Red Onion City in Virginia.

23 Q What is the name of the city?

24 MR. DIGGS: Can we approach for a second?

25 THE COURT: Yes.

ALAN JONES - DIRECT EXAMINATION

1 (Whereupon, a bench conference was had.)

2 Q (MR. DeBUSK) What was the name of the town where
3 you saw --

4 A The name of the town was Red Onion.

5 Q You went to Red Onion, Virginia. What did you do
6 with Mr. --

7 A I interviewed him there in relation to the Kelly
8 Joe Elliott homicide.

9 Q Why did you do that?

10 A We received information that he was a suspect --

11 Q You received information by others?

12 A Yes, sir.

13 Q And based on the information of others, that is
14 why --

15 A Yes, sir. That is correct.

16 Q Before you interviewed him, did you inform him of
17 his Miranda legal rights?

18 A Yes, sir. I advised him of his legal Miranda
19 rights.

20 Q How do you do that normally? Do you read them
21 off of a form?

22 A We have a form that we read it off.

23 Q Were you able to have him sign the form at this
24 location?

25 A No, sir. I did not have the ability to do that

ALAN JONES - DIRECT EXAMINATION

1 at that time.

2 Q Were you able to record it at that time?

3 A No, sir. At that point in time, we were not able
4 to use any type of recording device.

5 Q But you did inform him of his rights?

6 A Yes, sir. Correct.

7 Q Did he appear to understand?

8 A Yes.

9 Q Did you threaten or coerce him to get a statement
10 from him?

11 A No, sir.

12 Q Did you deprive him of anything that he wanted,
13 drinks, rest, anything like that?

14 A No, sir, not at all.

15 Q Did you offer any reward if he made a statement?

16 A No, sir.

17 Q Did he appear to be under the influence of drugs
18 or alcohol or anything during the interviews?

19 A No, sir, he did not appear to be under the
20 influence of any type of drugs or alcohol.

21 Q Did he appear to be willing and of sound mind?

22 A Correct.

23 Q How long did you interview him for?

24 A The interview lasted approximately 15, 20
25 minutes.

ALAN JONES - DIRECT EXAMINATION

1 Q Did you bring up the name of "Kelly Joe Elliott"?

2 A Yes, I did.

3 Q Okay.

4 A The interview started off, you know, advising who
5 I was and where I was from and that I was assigned to
6 the homicide investigation unit.

7 Q Did you ask him if he knew Kelly Joe Elliott?

8 A I did. I asked Mr. Mullins if he was familiar
9 with Kelly Joe Elliott, and he advised me that at
10 sometime in the past he rented a residence from
11 Mr. Elliott.

12 Q Did he say where that residence was?

13 A Yeah, it was in Horry County. I further advised
14 him I was there investigating the death of Mr. Elliott,
15 at which time I could physically see Mr. Mullins' heart
16 beating in his shirt.

17 Q So you are saying his demeanor changed?

18 A Yes, sir. And you could see physically his heart
19 beating harder.

20 Q What happened next?

21 A Mr. Mullins requested counsel.

22 Q Did you continue to question him?

23 A No.

24 Q Did you terminate the interview?

25 A Yes, sir, I did.

ALAN JONES - CROSS-EXAMINATION

1 Q Thank you?

2 MR. DeBUSK: Answer any questions defense may have.

3 CROSS-EXAMINATION

4 BY MR. DIGGS:

5 Q Now, do you have the report that you wrote about
6 this interview?

7 A My standard report is a case activity report
8 written. I type it up when it takes place.

9 Q Do you have access to it?

10 A Yes, I do.

11 Q In front of you? Can you pull it up and read it?

12 A I have it in my back pocket.

13 Q Not the whole report, but I want to look at your
14 statement, your comment about the heart beating. Tell
15 us what you said specifically?

16 A In my report of investigation, specifically
17 written in here, Upon advising Bradley we're
18 investigating Mr. Elliott's death, I could visibly see
19 Bradley's heart beating.

20 Q That is the extent of it?

21 A Yes, sir.

22 Q That is what you chose to put in your report at
23 that time when interviewing my client?

24 A Yes, sir.

25 Q You noticed his heart beating?

ALAN JONES - CROSS-EXAMINATION

1 A Yes, sir.

2 Q Now, have you ever been accused of murder?

3 A No, sir.

4 Q But don't you imagine, or is it pretty common,
5 when you speak to defendants and approach a subject of
6 a murder, potential defendants, they become -- the
7 heart speeds up a little bit?

8 A I would assume it would.

9 Q I mean, that's something that is going to get
10 your attention and your excitement peaked, isn't it,
11 your interest?

12 A It would to most people, I would assume.

13 Q That is going to -- anyone, that you, being a
14 detective and working for the police force, you go in
15 and accuse them of being -- investigating them for a
16 murder, that is going to cause their heart to beat and
17 raise? It is not uncommon, you agree?

18 A Yeah. In certain situations, yes. I've seen it
19 affect different people differently.

20 Q And so did you offer that observation for its
21 evidentiary value?

22 A I offered that observation because during the
23 course of the interview with Mr. Mullins, I didn't
24 physically see that until I said that we were
25 specifically there for the investigation of

ALAN JONES - CROSS-EXAMINATION

1 Mr. Elliott's death.

2 Q And that was the first time that he -- it
3 occurred to him, Wait a minute, this man is
4 investigating me for a murder; wouldn't that be fair to
5 say?

6 A Yeah. Because if I recall correctly, at the time
7 I actually said that he was a suspect in the murder,
8 and that is why I was there to speak with him.

9 Q That didn't cause his heart to race?

10 A Yes, sir. That is when I actually saw --
11 physically saw it.

12 Q So when he learned that information, that is when
13 you noticed the increase in the heart rate?

14 A Yes. When I advised him I was there because he
15 was a suspect of a homicide, I could physically see his
16 heart beating.

17 Q And that would -- that is not necessarily
18 indicative of guilt, wouldn't you agree? That is
19 indicative of a flight-or-fight stimulus?

20 A Yes, sir.

21 MR. DIGGS: I think that is all I have.

22 REDIRECT-EXAMINATION

23 BY MR. DeBUSK:

24 Q If you had nothing to do with a murder, do you
25 think that would make your heart --

ALAN JONES - CROSS-EXAMINATION

1 A I have never seen it in someone that didn't have
2 some type of guilt or guilty conscious.

3 MR. DeBUSK: Thank you. We ask that Detective
4 Jones be excused.

5 MR. DIGGS: We may need him, and I don't want to
6 release him.

7 MR. DeBUSK: We won't release him.

8 MR. DIGGS: If he can just be available.

9 MR. DeBUSK: Is he remaining sequestered
10 or --

11 THE COURT: He'll remain sequestered. You may step
12 down.

13 MR. DeBUSK: May we approach for scheduling?

14 THE COURT: Yes.

15 (Whereupon, a bench conference was had.)

16 MR. HUCKS: At this time the State calls Delilah
17 Mullins to the stand.

18 (A brief pause in the proceedings.)

19 MR. HUCKS: May we take a five-minute recess just
20 to be able to grab the witness?

21 THE COURT: All right.

22 (The jury exits at 11:39 a.m., and a recess is
23 taken.)

24 (The jury enters at 11:55 a.m., and the following
25 is heard in the presence of the jury.)

DELILAH MULLINS - DIRECT EXAMINATION

1 THE COURT: All right. Mr. Hucks.

2 MR. HUCKS: We call Delilah Mullins to the stand.

3 (DELILAH MULLINS, having been duly sworn, testified
4 as follows:)

5 THE CLERK: State your name and spell your last
6 name for the record.

7 THE WITNESS: Delilah Mullins, M-U-L-L-I-N-S.

8 MR. HUCKS: You are soft spoken.

9 DIRECT-EXAMINATION

10 BY MR. HUCKS:

11 Q What do you do for a living, Delilah?

12 A I waitress.

13 Q Where do you waitress?

14 A Orangeland Seafood, Florence, South Carolina.

15 Q So you live about an hour from here?

16 A Yeah, somewhere in there.

17 Q I'm going to ask you a bunch of stuff, because
18 you are kind of the person I need to talk with about
19 some stuff. I don't want you to be uncomfortable. If
20 you don't know, just say you don't know. How are you
21 related to Brad Mullins?

22 A I was married to -- I'm still married to Charles
23 Mullins.

24 Q I'll give you a list of names and tell me how you
25 are related to each of these. I want to try to line it

DELILAH MULLINS - DIRECT EXAMINATION

1 up as well as I can. Who is Charles Mullins, Senior?

2 A It is my husband.

3 Q How is he related to Brad?

4 A It is his brother's son.

5 Q So Brad is his nephew?

6 A Yes.

7 Q And who is Charles Mullins, Junior?

8 A It is his son.

9 Q And that is your?

10 A Husband's -- my stepson.

11 Q How about Arlie Mullins?

12 A It is his nephew as well.

13 Q So how about Anthony Ray?

14 A It is his nephew as well.

15 Q So would you consider your family -- or that

16 family -- you and Charles are separated now?

17 A We are.

18 Q But would you consider that family a close-knit

19 family?

20 A Oh, yeah. Tight.

21 Q What do you mean, "Oh, yeah"?

22 A They are tight.

23 Q What is the Mullins clan -- I'll call them the

24 "Mullins clan," it is easier, what does the Mullins

25 clan do for a living?

DELILAH MULLINS - DIRECT EXAMINATION

1 MR. DIGGS: I object.

2 THE COURT: Call it the "Mullins family."

3 MR. DIGGS: And casting the whole character of the
4 family into question, I would object to that line of
5 questioning and characterization.

6 THE COURT: Well, I don't know where he's going
7 yet. So far he's identified them as a family.

8 Q (MR. HUCKS) This whole crowd works together?

9 A Absolutely.

10 Q They spend a lot of time together?

11 A Yes, sir.

12 Q What does the crowd that hangs around and spends
13 a lot of time together do for a living?

14 A Construction.

15 Q Now, is that how you came into acquaintance with
16 Brad Mullins? Is that how you got to know him, through
17 your husband, Charles?

18 A Through the marriage of him, yes.

19 Q What does everyone call Charles Senior?

20 A Moon.

21 Q So if I call him "Moon," you feel comfortable
22 talking about him --

23 A Yes.

24 Q So if the jury hears us talking about "Moon," I'm
25 talking about who?

DELILAH MULLINS - DIRECT EXAMINATION

- 1 A Charles.
- 2 Q That is your husband?
- 3 A Yeah, my husband.
- 4 Q Estranged husband, you are separated?
- 5 A Yes, sir.
- 6 Q Where did you live on or about September 11,
7 2008? Did you live in Horry County?
- 8 A I did.
- 9 Q Do you know the address of where you lived?
- 10 A Johnson Brothers Road.
- 11 Q That is within the confines of this county?
- 12 A It is Aynor.
- 13 Q I'll show you what is marked as State's 5. Do
14 you recognize that?
- 15 A That is my house -- or used to be my house.
- 16 Q That is where you lived in 2008?
- 17 A Yes, sir.
- 18 Q Who lived there with you?
- 19 A My husband, me and my children and Allen Ray.
- 20 Q How many children do you have?
- 21 A Five.
- 22 Q And one on the way?
- 23 A Actually, I have more than that, but with Charles
24 I have five.
- 25 Q With Charles you have five. How many total do

DELILAH MULLINS - DIRECT EXAMINATION

1 you have?

2 A This is nine.

3 Q Wow. You recognize that as the residence you
4 were in 2008?

5 A I do.

6 MR. HUCKS: The State would move State's Exhibit 5
7 into evidence?

8 THE COURT: Mr. Diggs?

9 MR. DIGGS: No objection.

10 THE COURT: Without objection, 5.

11 (State's Exhibit 5 was admitted.)

12 Q (MR. HUCKS) Did you ever have an occasion -- you
13 say this family is close knit, did you ever have an
14 occasion to overhear or speak with Brad Mullins about
15 what happened on or about September 11, 2008?

16 A I did.

17 Q And how did that come about? What -- tell us the
18 environment in which you heard him say something?

19 A We were having a cookout, the family. There was
20 several of us.

21 Q Would that cookout have been at this house?

22 A Yes, sir.

23 Q All right.

24 MR. HUCKS: I'll request to publish the evidence,
25 State's 5?

DELILAH MULLINS - DIRECT EXAMINATION

1 THE COURT: You may.

2 Q (MR. HUCKS) Spin this way for me. The jury can't
3 quite see it. It is a little small. I should have
4 blown it up. What is this area here?

5 A Where we had the picnic tables.

6 Q What is it?

7 A This is my carport.

8 Q What was under the carport?

9 A The picnic tables.

10 Q And when you had family gatherings, where did
11 everyone sit?

12 A At the picnic tables.

13 Q What would you do when the family came over?
14 What was your deal? What did you do when all of the
15 people came over?

16 A Cooked and cleaned, dishes, wait on everybody.

17 Q Wow. Now, when you were having a cookout, what
18 we're about to talk about, would it have happened under
19 this carport here?

20 A Yes, sir.

21 Q Now, I'll publish this to the jury so they can
22 see what we're talking about. So you are having a
23 cookout. What happens at the cookout? You are
24 cleaning and cooking and bringing stuff out, what
25 happens? What do you overhear?

DELILAH MULLINS - DIRECT EXAMINATION

1 A Um...

2 Q Give us details. I know it was a long time ago.

3 A It has. Sorry.

4 Q Who is sitting around this picnic table?

5 A There's Brad, there's Anthony, there's -- there's
6 Brad, Anthony, Robin, Robin's daughter.

7 Q Who is Robin and Robin's daughter?

8 A Robin was a lady that Brad was dating.

9 Q And her daughter?

10 A And her daughter.

11 Q Who else?

12 A There was Arlie, Charles Junior, Charles, there
13 was Thomas, there was Bubba or Jason. I'm sorry, there
14 was several.

15 Q That is a pile of Mullins.

16 A It is.

17 Q What, if anything, did you hear Brad Mullins say
18 around that table? I know you are nervous, just
19 breathe.

20 A I am. That they had went to a house.

21 Q Who went to a house? Who did he say?

22 A That him, Little Charlie, which is Charles
23 Junior, Arlie and Anthony went to a house to rob it.
24 The man wasn't supposed to be there. The man ended up
25 being there. Him and Anthony had went in, and during

DELILAH MULLINS - DIRECT EXAMINATION

1 robbing the house --

2 Q Who and Anthony?

3 A Brad and Anthony.

4 Q Went into where?

5 A Into the home. During robbing the home, the man
6 woke up, and after being woke up, started shooting.

7 Q What was he wearing? What did he say the man was
8 wearing?

9 MR. DIGGS: Your Honor, I object to what they said.
10 Listen, she has to be -- my client has to be --

11 THE COURT: Wait a minute. Let's take the jury
12 out. Take the jury out.

13 (The jury exits at 12:06 p.m., and the following is
14 heard out of the presence of the jury.)

15 THE COURT: All right.

16 MR. DIGGS: We object to hearsay. She can't
17 testify to what they said, and the only thing that she
18 can testify to is what supposedly my client said that
19 she heard.

20 THE COURT: I think that you are correct. I
21 believe that Rule 801 contains an exception for
22 statements made by a party. I believe that anything
23 she heard him say would be admissible, not only
24 Rule 801, but also under Rule 803 -- excuse me, 804,
25 possibly, depending on what she may say, is a statement

DELILAH MULLINS - DIRECT EXAMINATION

1 against -- I think under either rule on what she heard
2 him say, 804 if it is against his interest, or 801 if
3 it is his statement, a statement that she heard him
4 say. I believe that Mr. Diggs' objection is well
5 taken, if the objection is against something someone
6 else said.

7 MR. DIGGS: Correct. That is the objection. What
8 the State is trying to do is wrap all of this crowd
9 together and whatever statements that were made by
10 anyone in that crowd be attributable to my client,
11 which I would submit is improper.

12 THE COURT: I think he probably could do that if he
13 were to show where he had adopted it as his own or made
14 by a person authorized by him to make a direct
15 statement.

16 MR. HUCKS: My question was what exactly did you
17 hear Brad Mullins say out of his mouth.

18 MR. DIGGS: Your question was, What did they say.

19 THE COURT: All right. Well, we understand the
20 rule, right? We understand that 801 and 803?

21 MR. HUCKS: Yes, sir.

22 THE COURT: Bring the jury in.

23 I would add that 804 is applicable when the
24 claimant would not be available for trial, one of those
25 exceptions is where he could not be required to

DELILAH MULLINS - DIRECT EXAMINATION

1 testify, okay..

2 (The jury enters at 12:11 p.m., and the following
3 is heard in the presence of the jury.)

4 THE COURT: Go ahead.

5 Q (MR. HUCKS) Delilah, I'll get back to it. Just
6 take a deep breath. I know it is nerve racking. It
7 will be okay, I promise.

8 What exactly, just to clarify for purposes of the
9 record, just to clarify, what exactly -- and you may
10 have to go back a little in your testimony -- what
11 exactly did you hear Brad Mullins say happened on or
12 about September 11, 2008? What did you hear him say?

13 A That him and Anthony, Arlie and Charles Junior
14 had went to a house to rob it. Little Charlie and
15 Arlie dropped them off. They went into the house to
16 rob it. The man wasn't supposed to be there. During
17 robbing it, Anthony fired and missed when the man woke
18 up shooting, and then Brad, therefore, took place and
19 killed him.

20 Q Did Brad tell you or say what the man was
21 wearing?

22 A He didn't. None of that.

23 Q Now, did he say what they did from there?

24 A No, sir.

25 Q You don't remember, or he didn't say?

VERNE ALLEN RAY - DIRECT EXAMINATION

1 A I had an air conditioner and bed.

2 Q Did you stay in there exclusively, or did you
3 stay in the house, too?

4 A I stayed there exclusively, until it got cold.

5 Q Now, the right-hand side, what would you keep in
6 there? You are in construction, so what did you keep
7 in there?

8 A Sometimes tools, mostly stuff, furniture and
9 stuff.

10 Q Okay. Now, is that where you were on or about
11 September the 11th of 2008?

12 A Yes, sir.

13 Q Do you remember that night?

14 A Yes, I do.

15 Q Did you have an occasion to either overhear Brad
16 Mullins have a conversation that night or be involved
17 in a conversation that night?

18 A Yes.

19 Q Please tell the jury what you overheard Brad
20 Mullins say that night.

21 A After they pulled up and started unloading
22 things, Brad said he killed an old man, and if I came
23 out, he'd kill me too.

24 Q Now, where were you when you overheard this?

25 A In the left-hand side of the shed.

VERNE ALLEN RAY - DIRECT EXAMINATION

1 Q If you are on your side of the shed, where would
2 Brad Mullins have been?

3 A Five, six feet from the door.

4 Q Was he outside or inside the shed with you?

5 A Outside of the shed.

6 Q So who was with Brad Mullins when you overheard
7 him make this statement?

8 A Anthony, Little Charlie and Brad.

9 Q The three other fellows I asked you about
10 earlier?

11 A Yes.

12 Q Did you -- who did you hear -- don't tell me what
13 they said, but who did you hear in that conversation
14 with Brad? Who did you hear talking as well?

15 A Anthony and a few moments later, Charles Edgar.

16 Q You've known -- how long have you known all of
17 these boys, all four of them?

18 A Their whole lives.

19 Q Did you know them well enough to recognize their
20 voices through that wall?

21 A Yes.

22 Q And what did you hear Brad Mullins say about that
23 night?

24 A That he killed an old man.

25 Q What happened after you heard that?

VERNE ALLEN RAY - DIRECT EXAMINATION

1 A Shortly after that, Anthony was talking to
2 Charlie, Charles Edgar.

3 Q Don't tell me what everybody else said except
4 Brad, because they are not here, just legal stuff, but
5 what else -- what happened after this? Did anybody
6 come talk to you?

7 A They walked off for awhile, and then they came
8 back and unloaded and --

9 Q What did they unload?

10 A I didn't see them unload at that point.

11 Q How do you know somebody was unloading something?

12 A I could hear them.

13 Q What was the next thing you saw or heard with
14 your own two eyes and two ears?

15 A That is when I was asked to clean and oil the
16 guns.

17 Q How many guns did someone bring to you to have
18 cleaned and oiled?

19 A Six or eight.

20 Q Did you do that?

21 A Yes.

22 Q Where did you put them?

23 A I cleaned them, set them on my bed and oiled them
24 and stood them up, and Charles came and got them.

25 Q Do you have any idea where they went or what

VERNE ALLEN RAY - DIRECT EXAMINATION

1 happened to them from there, not what you heard
2 somebody say, but your own personal knowledge?

3 A No.

4 Q Now, where did this whole crowd go after that?

5 A I don't know, they just left.

6 Q Did you ever see or hear anything else with your
7 own two eyes and ears about this day?

8 A No.

9 Q Now, what kinds of guns did you see? What kinds
10 of guns were unloaded?

11 A Lever actions.

12 Q Do you know what calibers?

13 A 30-30, 25-6 and .22 caliber.

14 Q And that is the ones you remember?

15 A Yes.

16 Q Any doubt in your mind what you heard that night?

17 A No.

18 Q Has your testimony here been the truth?

19 A Yes.

20 MR. HUCKS: Nothing further.

21 CROSS-EXAMINATION

22 BY MR. DIGGS:

23 Q You were interviewed by detectives in this case
24 in March of 2011?

25 A Yes.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 Q Do you remember saying, I don't know if Brad was
2 with them or not? Do you remember saying that at about
3 eight minutes and ten seconds into the interview?

4 A No.

5 Q You don't remember saying it? If we played it
6 back for you at some point, do you think that would
7 refresh your memory?

8 A Yes.

9 Q Let me ask you this. Did you intend to tell
10 those detectives the truth at that time, to the best of
11 your recollection?

12 A Yes.

13 Q And you were telling them the truth; isn't that
14 true?

15 A Yeah.

16 Q You know Delilah, do you not?

17 A Yes.

18 Q And I'm not implying anything romantic, but she's
19 a friend of yours, you used to babysit her children;
20 isn't that true?

21 A Yes.

22 Q And you know that Charles beat her up, her
23 husband?

24 A Yes.

25 Q And you wouldn't -- you know Little Charlie who

VERNE ALLEN RAY. - CROSS-EXAMINATION

1 telling them that when he was there at the shed next to
2 you?

3 A I just...

4 Q He just happened to say it again, whether he knew
5 it or not, that is your testimony?

6 A Yeah.

7 Q Anthony Ray is your -- he's a blood relative?

8 A Yes.

9 Q Have you had any conversations with him about his
10 involvement in the murder?

11 A Yes.

12 Q He's confessed to it, hasn't he?

13 A He said he was part of it.

14 MR. HUCKS: Objection, hearsay, Your Honor. This
15 is direct hearsay.

16 THE COURT: Let's take the jury out a moment.

17 (The jury exits at 2:38 p.m., and the following is
18 heard out of the presence of the jury.)

19 THE COURT: Are we headed down the road of 804, is
20 that where we're going, Mr. Diggs?

21 MR. DIGGS: Can I look at it? I don't have my
22 book. Yes.

23 THE COURT: All right. A statement tending to
24 expose or declare criminal liability in an offer to
25 exculpate the accused is not admissible unless it

VERNE ALLEN RAY - CROSS-EXAMINATION

1 MR. DIGGS: Before we do, can I get about where we
2 were on the cross-examination?

3 (Last question read.)

4 MR. DIGGS: I'll withdraw that, and I have one or
5 two more questions.

6 THE COURT: Let's bring them back in.

7 MR. HUCKS: We ask that you inform the jury to
8 strike the response.

9 THE COURT: He said he was involved in it.

10 (The jury enters at 2:54 p.m., and the following is
11 heard in the presence of the jury.)

12 THE COURT: Ladies and gentlemen, just before I
13 sent you out there was a question posed to this witness
14 speaking of when Anthony Ray -- something like he
15 confessed to it, and the response said he was involved
16 in it, something very similar to that. Please put that
17 question and that response out of your minds. I'm
18 striking it from this record. You will not consider
19 it. You may hear that testimony or you may not hear
20 that testimony later in the trial, and that will be for
21 you to consider depending whether it is offered or not,
22 or whether there is any testimony later in the trial.

23 As to the question that was asked just before I
24 sent you out and the response, strike it from your
25 memory, it is no longer a part of this record.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 Mr. Diggs.

2 Q (MR. DIGGS) Mr. Ray, when you heard this statement
3 in the shed that evening, did you go and advise law
4 enforcement, anybody, about what you overheard?

5 A No.

6 Q Why didn't you do that?

7 A Because I didn't believe it at first.

8 Q You didn't believe it?

9 A No.

10 Q And why did you not believe it?

11 A The boy was drunk.

12 Q I'm sorry?

13 A The boy was drunk when he made the statement.

14 Q My client?

15 A No.

16 Q Who was drunk?

17 A Anthony.

18 MR. DIGGS: I don't think I have any additional
19 questions. I appreciate it very much, thank you.

20 THE COURT: Mr. Hucks, anything further?

21 REDIRECT-EXAMINATION

22 BY MR. HUCKS:

23 Q Allen, you still hang out with Moon, live with
24 Moon?

25 A No.

VERNE ALLEN RAY - REDIRECT EXAMINATION

1 Q Do you even know where Moon lives?

2 A No, sir.

3 Q And what state do you live in?

4 A Virginia.

5 Q And do you still hang out with Delilah?

6 A No.

7 Q And do you know what state she lives in?

8 A I believe she's here in South Carolina somewhere.

9 Q So you are at least two states away from them?

10 A Yes.

11 Q So do you have any dog in this fight, whatsoever,
12 at this stage?

13 A No.

14 MR. HUCKS: Nothing further, Your Honor.

15 THE COURT: You may step down, thank you.

16 MR. HUCKS: Your Honor, may we approach very
17 briefly?

18 (Whereupon, a bench conference was had.)

19 MR. HUCKS: The State calls Charles Mullins Senior
20 to the stand.

21 (CHARLES MULLINS SENIOR, having been duly sworn,
22 testified as follows:)

23 THE CLERK: State your full name and spell your
24 last name for the record.

25 THE WITNESS: Charles Edgar Mullins, M-U-L-L-I-N-S.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 MR. HUCKS: Before we get started, I neglected to
2 ask for purposes of the record if Mr. Ray could be
3 released from his subpoena at this time so he could go
4 home.

5 THE COURT: Any objection?

6 MR. DIGGS: I don't think we have any objection.

7 THE COURT: All right. He's released from his
8 subpoena.

9 DIRECT EXAMINATION

10 BY MR. HUCKS.

11 Q Mr. Mullins, before we get started, what nickname
12 do you go by?

13 A Moon.

14 Q How did you get that nickname?

15 A That nickname was gave to me years ago. My
16 favorite color is green, my birthday falls between
17 Christmas and the first of the year, and I wanted a new
18 motorcycle helmet, and I got one with a half moon on
19 each side and the name "Moon" engraved on the back of
20 it.

21 Q Why did you pick that name?

22 A I didn't pick it. Actually, my ex-wife did.

23 Q What do you do for a living?

24 A Carpenter, and I was a truck driver for a long
25 time, but I do remodeling, renovations, commercial,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 residential, industrial, it doesn't matter.

2 Q And what do you call yourself when people ask
3 what you do for a living? You have a business name?

4 A C.E. Mullins Construction.

5 Q So you build stuff?

6 A I do.

7 Q Or tear stuff down, or something?

8 A Yes, sir.

9 Q Let me ask you before we get started, how are you
10 related to the defendant in this case, Brad Mullins?

11 A Brad is my nephew, my brother's son.

12 Q How many siblings do you have?

13 A I have 15 biological children, but two
14 step-children.

15 Q Siblings.

16 A Oh, brothers and sisters. Six brothers, besides
17 myself, and two sisters that are deceased, and two
18 brothers that are deceased, so nine of us.

19 Q Now, whose child is Brad?

20 A My brother's child, Thomas Earl Mullins.

21 Q How about Charles Henderson Mullins?

22 A He is my son.

23 Q If I say "Little Charlie" or "Charles Junior,"
24 does that make sense to you?

25 A That makes sense. Little Charlie is what we've

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 called him all his life.

2 Q And Anthony Ray, how he is related?

3 A Oldest sister's third child.

4 Q Now, how about --

5 A Fourth child, I'm sorry.

6 Q How about Arlie Mullins, how are you related to
7 him?

8 A Arlie is my brother's son, Tony Eugene Mullins.

9 Q Would that be "Gene," if someone says "Gene"?

10 A Everyone calls him Gene, yes, sir.

11 Q Except you?

12 A I call him Gene.

13 Q Now, where did you live on or about September 11,
14 2008?

15 A I'm sorry?

16 Q September 11, 2008, whereabouts would you have
17 lived?

18 A In Aynor.

19 Q Let's see if we can refresh your memory with
20 State's 68, Johnson Brothers Road?

21 A Galivants Ferry, yes, sir.

22 Q Is that the road you lived on?

23 A Yes, sir.

24 Q Is that the address at the time?

25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q This picture is not in evidence yet, so I won't
2 show it to you, but State's Exhibit 5, which is in
3 evidence, do you recognize that?

4 A That was my home.

5 Q That is where you lived on or about that date?

6 A That is where I lived.

7 Q Now, how about State's Exhibit No. 4, is that
8 just a different view of the same place?

9 A That is the same home, yes.

10 Q Is that where you lived?

11 A That is where I lived.

12 MR. HUCKS: We move State's Exhibit No. 4 into
13 evidence?

14 THE COURT: Mr. Diggs?

15 MR. DIGGS: No objection.

16 THE COURT: Without objection, 4.

17 (State's Exhibit 4 admitted.)

18 Q (MR. HUCKS) I'll show you one more thing that was
19 admitted into evidence. I'll show you what is entered
20 as State's 8.

21 A That was the building behind my house on
22 Galivants Ferry,

23 Q So that was your backyard?

24 A Yes, sir.

25 Q That is the front yard, backyard (indicates)?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Is this where you lived on or about September 11,
3 2008?

4 A It is.

5 Q Now, on or about September 11, 2008, do you
6 remember when you had a bunch of folks come into town?

7 A Yes, sir.

8 Q What was everybody in town for?

9 A We were actually finishing a job in Durham, North
10 Carolina. I renovated a shopping center there, been
11 there for five-and-a-half months. We brought my
12 campers and work trucks and tools and different stuff
13 home and was getting ready to go to Louisiana for some
14 -- I don't remember which hurricane it was, but it came
15 through, and I was going to go do repair work in
16 Louisiana at that time.

17 Q So I just want to clarify. You were coming from
18 where?

19 A Durham, North Carolina.

20 Q And you were in Galivants Ferry?

21 A Galivants Ferry.

22 Q And you were getting ready to go to?

23 A Louisiana.

24 Q What were you going there for?

25 A I'm sorry?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q What were you going to Louisiana for?

2 A Work hurricane damage.

3 Q Make some money?

4 A Yes, sir, make money.

5 Q Now, walk us through what happened that day.

6 What do you remember from that day?

7 A Well, I mean, I had a lot of people at my house.

8 Q Give us a list. How many people would you say
9 was at your house and who would you remember?

10 A My brother, Thomas, was there. My brother, Gene,
11 was there. Brad was there, Anthony was there. My son,
12 Charles, was there. Arlie was there, my wife, children
13 who were younger, S. , AC, T. (phonetic) and
14 C.

15 We were doing karaoke, drinking a few beers,
16 cooking out, just doing a family thing, basically.

17 Q I'll show you one of these exhibits we just
18 looked at with you here, No. 4, State's 4. Now, I'll
19 walk around the other side, if that's all right?

20 A Yes, sir.

21 Q Look at this photograph with me. The jury might
22 not be able to see all of it. Where would everybody
23 have been hanging out? You said you were hanging
24 around the house, where?

25 A Well, I mean, my vehicles were here, my karaoke

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 system was set up underneath the carport. I had a
2 large picnic table back in this area and, you know,
3 speakers were in this area, singing, having fun, you
4 know, everybody just scattered about throughout the
5 area.

6 Q Mostly under the shed and in the yard?

7 A Mostly. It was warm, a nice, warm evening.

8 MR. HUCKS: May I publish these to the jury?

9 THE COURT: They are in?

10 MR. HUCKS: Yes, sir.

11 THE COURT: You may.

12 Q (MR. HUCKS) Walk us through what you remember from
13 that evening. You are out there hanging out, singing
14 karaoke, having beers?

15 A Everybody just enjoying themselves. It got into
16 the night, I don't recall exactly what time, but kind
17 of cleaning up things. I'm just going to be plain
18 spoken about this. The boys decided they were going to
19 go for a ride.

20 Q Which boys? You said "the boys," what do you
21 mean?

22 A Brad, Anthony, Charles and Arlie.

23 Q Why do you call them "the boys"?

24 A They all seemed like my children, I called them
25 my boys.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q Why would you consider them your children?

2 A Brad and Anthony, Arlie, they've all lived with
3 me in and out for many years, you know. Stayed with me
4 probably as much as they stayed with their parents, I
5 guess. I love them like my own children. They worked
6 with me for the longest time. From the time they were
7 young teenagers, they've worked with me on different
8 jobs. I paid them by the hour, split jobs with them,
9 whatever it took to try to keep everybody going. I've
10 tried to treat all of my nephews and nieces as I treat
11 my own children.

12 Q How many children do you have? We had Delilah.

13 A I have 17, 15 biological, two step, nine girls,
14 eight boys, two sets of twins.

15 Q The boys went for a ride. What did you do after
16 boys went for a ride?

17 A My wife and kids and I, we went into the house
18 and relaxed for a few minutes and went to bed. Me, my
19 wife and our children, when they were babies they slept
20 with us. My baby, C. , was about -- she was
21 young, I don't know exactly how old she was, three
22 months old, five months, she was very young. We went
23 to bed. I was married to a woman 21 years my junior,
24 you know.

25 Q Who were you married to?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A I was married to Delilah Mullins.

2 Q Are you still married?

3 A Delilah and I are married, but going through a
4 separation. We've been separated for close to three
5 years now.

6 Q And do you live in the same state?

7 A No, sir.

8 Q You live within four hours of each other?

9 A Four-and-a-half, something like that.

10 Q Just clarifying. Now, what happens? You go to
11 bed, what happens?

12 A I went to sleep. Now, I don't mean to talk loud,
13 I'm deaf in my left ear and 30 percent deaf in my right
14 ear, and that is why I say "what" or "huh."

15 I was woke up late in the night, over into the
16 morning maybe.

17 Q Who woke you up?

18 A My son.

19 Q Before we get into what happened, because I know
20 that is coming up, don't say what anybody told you in
21 the world except whatever you heard come out of Brad
22 Mullins' mouth. You can say you talked to your son
23 about something, but you can't say he told me this,
24 that or the other.

25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q You get woke up by your son, which one?

2 A Charles.

3 Q You have 15 of them.

4 A Charles.

5 Q What do you do as a result of him waking you up?

6 What happens?

7 A I got up and followed him outside to the building
8 at the back of my property.

9 Q When you say the building at the back of your
10 property, is that what you are talking about
11 (indicates)?

12 A Yes.

13 Q State's 8?

14 A Yes, sir.

15 Q Now, what side of that building would you walk up
16 to?

17 A The gray doors, double doors. Not the single,
18 just on the tool side of the building.

19 THE COURT: Just for a moment, turn towards the
20 jury. I don't think they know what you are talking
21 about.

22 MR. HUCKS: I was just getting ready to hand it
23 over to them.

24 Q (MR. HUCKS) When you walked up there, what
25 happened? You walked over there with Charles Junior,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Charlie?

2 A Guns. There was guns everywhere in my building.

3 There was rifles and shotguns and pistols.

4 Q How many guns did you see?

5 A A number. I couldn't say. Several.

6 Q More than five, less than five?

7 A More than five.

8 Q More than ten, less than ten?

9 A Twelve, 15 maybe.

10 Q Just to the best of your recollection, that is
11 all I'll ask you. When you go over there, what happens
12 when you see all of these guns?

13 A I freaked out.

14 Q Why would you freak out?

15 A Because I'm a convicted felon, I'm not supposed
16 to be around any firearms at all. I don't own
17 firearms, I'm not supposed to be around any. My words
18 was, I don't know where they come from, don't care, get
19 them the hell off my property, get them away from here,
20 I don't want them here. They were loaded -- started
21 being loaded into the Blazer.

22 Q Whose Blazer was it?

23 A Charles, my son.

24 Q Keep going. They loaded -- who did you see
25 loading?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A It was Allen Ray, Anthony Ray, Brad. There were
2 pistols, handguns put into a pillow case, larger guns
3 in the back of the Blazer, I walked away. I didn't
4 want to be around them or near them, and the Blazer
5 left.

6 Q Now, at any time during the conversation that you
7 had up there, did you have an occasion to talk to Brad
8 Mullins?

9 A I did talk with my nephew, but it really wasn't
10 about things, but it really wasn't that night. We
11 later --

12 Q Let me rephrase. What did you do after that
13 night?

14 A Did I talk to him that night? Nothing other than
15 get the guns off of my property.

16 Q What did you do after they were off your
17 property? Did you make your trip to Louisiana?

18 A Yeah. The next day I had bought a larger tool
19 trailer going to Louisiana. There was no electricity,
20 so I was carrying four, five generators. I was
21 carrying several miter saws, two, three air
22 compressors, nail guns, enough to run two, three crews
23 if I needed to, enough to supply us energy for lights
24 or whatever we needed, several 5-gallon cans to tote
25 gas for the generators.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 We pulled out. After my son came back -- he left,
2 this was on a Thursday or Friday, my son left, Charles,
3 went home to his wife and children for the weekend as
4 he always does, and he comes back on Sunday. The
5 trailer had been loaded with tools, it was hooked to
6 the Chevrolet truck I bought for my son. I bought five
7 trucks that year. Actually, one work truck and one
8 pleasure truck for myself and one Ford truck, four
9 door, for my wife and children, and an extended cab for
10 my son, John, and a four-door Chevrolet for my son,
11 Charles.

12 Q So you all go and leave to Louisiana?

13 A We left and went to Louisiana.

14 Q What happens when you get to Louisiana, if
15 anything?

16 A Guns come out of my trailer. No pistols, no
17 handguns, just six or eight long guns. Three of them
18 were Remington shotguns, I couldn't tell you what the
19 rest were.

20 Q What happened to those guns in Louisiana?

21 A They were sold.

22 Q Who sold them?

23 A Anthony Ray.

24 Q Now, what happens on your trip? Do you get rich,
25 clean up and get rich?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A No, sir. When you go to do -- I wasn't real
2 experienced in this. You have to go through FEMA on
3 these jobs, and they can cause you a lot of troubles.
4 I couldn't get the work like I thought, not enough to
5 keep us going. We left Louisiana, and I went on into
6 Texas above Orange County, Texas. The hurricane came
7 through there, and I still couldn't suffice enough work
8 to get the money I was spending, so I just brought
9 everybody and the tools and the trailer, and came back
10 to South Carolina.

11 Q How long was this trip from the time you pulled
12 out of Galivants Ferry to the time you pulled back in,
13 how long would you say you were gone?

14 A Less than two weeks.

15 Q At what point in time would those guns have been
16 sold?

17 A Um....

18 Q Just an estimation is fine.

19 A Within the third day of being in Louisiana.

20 Q Now, once you got home, what, if anything,
21 happened in reference to a conversation with this
22 fellow over here, Mr. Mullins, Brad?

23 A I was watching the evening news in the bedroom of
24 my home and my smaller children watch the bigger TV in
25 the living room. During the evening news, the news

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 flash of a murder, homicide, in Horry County came up,
2 and the reflection of the guns and the time of the --
3 that they were stating, it got into my mind, and I
4 decided to talk to my nephews about it.

5 Q When you talked to your nephews, which two did
6 you talk to?

7 A With Anthony Ray and Brad.

8 Q Well, just tell us for purposes of why we're here
9 today, tell us what you talked to Brad about. Did you
10 talk to Brad?

11 A I did.

12 Q What did you talk with Brad about? Tell the jury
13 about that conversation.

14 A I asked Brad did they have anything to do with
15 the -- with the breaking and entering and stealing of
16 those guns and the murder.

17 Q What did he tell you?

18 A This is family, and this is hard, I want you to
19 understand this. What I was told is they had went to
20 the...

21 Q I know it is tough, but what did he tell you?
22 You said "they."

23 A They went to the man's property, and they went
24 into his cabin by the pond and had taken two, three
25 guns out of the cabin. During the course of those

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 guns, I suppose one was a .22 rifle.

2 Q Don't suppose nothing, just tell us what he said.

3 A One was a .22 rifle. They found shells to it.

4 When they left the cabin, they went to the main house,
5 went inside of it and searched the rooms and gathered
6 several guns, all but one, and when they tried to enter
7 the room, the room was locked. By rattling the door,
8 the man hollered, came out of the door naked with a
9 handgun. He said they were running through the house,
10 and they separated. He had my nephew, Brad, pinned in
11 the living room and was going to shoot him with a
12 handgun.

13 Q Brad told you this?

14 A Yes. My nephew, Anthony Ray, was standing in the
15 kitchen area of the house, I believe they said, with a
16 .22 rifle.

17 Q Don't tell me what they said; tell me what he
18 said.

19 A Anthony was standing in the other end of the
20 house somewhere, and shot the man with a .22 rifle in
21 the shoulder area. The man turned the gun on Anthony,
22 when he turned the gun on Anthony, Brad said he took
23 him to the floor and took the pistol away from him, the
24 man begged him not to kill him, Brad said you were
25 going to kill me, good night, and pulled the trigger,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 he said, shot him in the head.

2 Q I'll ask you a series of questions here. Do you
3 know Joe Elliott, ever met him?

4 A I met him one time. I didn't know the man
5 personally. I only have spoken to him one time in my
6 life and his. My brother and I, Brad's daddy, Thomas,
7 was together. I do a lot of pond fishing, and I had
8 been over to my nephew's, James, house, me and my
9 brother. Me and Tom were talking about fishing, and
10 Tom told me about Joe having a pond. We rode down
11 there to see Mr. Elliott, and he did have a pond, and
12 Mr. Elliott --

13 Q Don't tell us anything Mr. Elliott told you. You
14 had a chance to meet with him?

15 A I did.

16 Q Did you have a beer with him or something?

17 A He offered us a beer, he did, but I didn't drink
18 anything.

19 Q Did Brad Mullins ever tell you how he knew Joe
20 Elliott during your conversations you had with him?

21 A Brad used to rent from Joe Elliott.

22 Q Is there something that Brad told you over the
23 course of some time that you knew him?

24 A Brad said he lived in one of Joe's houses.

25 Q At some time prior?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION.

1 A Yes.

2 Q I will talk with you about something I have to,
3 and I don't mean to embarrass you, and you need to
4 know, and the jury needs to know, I'm going to have to
5 ask you, Mr. Mullins, you have a pretty substantial
6 criminal record?

7 A I do.

8 Q I mean, I'm going to go through it with you just
9 a little bit. For the purpose of making sure the jury
10 knows, and because any criminal convictions are
11 admissible against you. In 2004 you got convicted of
12 giving a false name or address to the police?

13 A Guilty of it.

14 Q Now, don't try to explain, I'll just ask you
15 about them. You were convicted and charged in 2004 and
16 convicted in 2006?

17 A Yes, sir. Guilty of it.

18 Q In 2009, you were convicted of conversion of
19 payments for real estate property improvements?

20 A Plain out guilty, yes.

21 Q In 2001, you were charged and convicted of
22 failing to perform construction after being paid?

23 A Yes, sir. Convicted and plead to it, yes.

24 Q 2002, you were convicted of using threatening
25 language over a telephone; is that correct?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A I plead to it. I don't remember it, but I plead
2 to it.

3 Q You were convicted of it?

4 A Yes, sir.

5 Q In 1983 you were convicted of fraud; is that
6 right?

7 A Yes, sir.

8 Q 1990, felony, uttering a bad check?

9 A Guilty.

10 Q 2001, convicted of grand larceny?

11 A Guilty.

12 Q 2003, convicted of a bad check?

13 A Yes, sir. Guilty.

14 Q In Tennessee. 2006, convicted of felony theft in
15 Tennessee?

16 A Guilty.

17 Q 2007, bad check in Tennessee?

18 A Guilty.

19 Q 2007, convicted of a felony bad check in
20 Tennessee?

21 A You just asked me that, guilty, yes, sir.

22 Q That's in there twice, then.

23 A Okay.

24 Q 1993, six counts of bad checks?

25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q 2007, arrested as a fugitive in Kentucky?

2 A Yes, sir.

3 Q 2011, petty larceny in South Carolina?

4 A Yes, sir.

5 Q Is that a fair and accurate representation of
6 your criminal history?

7 A Yes, sir.

8 Q You said on every one of these I was guilty,
9 plead guilty, why did you plead guilty of all of them?

10 A I was guilty of them.

11 Q Does any of that, whatsoever, have anything to do
12 with why you are here today?

13 A No, sir. My record won't reflect anything to
14 me -- if I'm wrong, I'm wrong. If I'm right, I'm
15 right. I argue with the devil a bit, but that has
16 nothing to do with me telling the truth today.

17 MR. HUCKS: Nothing further.

18 CROSS-EXAMINATION

19 BY MR. DIGGS:

20 Q How are you?

21 A I'm sorry? I can't hear good.

22 Q How are you?

23 A Doing fine. How are you.

24 MR. DIGGS: Your Honor, may I pull the podium over?

25 THE COURT: Certainly.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q (MR. DIGGS) Mr. Mullins, are you incarcerated right
2 now?

3 A No, sir.

4 Q But for your testimony here today, though, you
5 would be; isn't that true?

6 A Do what now?

7 Q But for your testimony here today, you would be
8 incarcerated?

9 A No, sir.

10 Q Let me ask you this. Do you remember when you
11 were locked up down in Cartersville, Georgia?

12 A Sure do.

13 Q A couple of detectives came down and talked to
14 you about this case?

15 A Sure do.

16 Q What year was that?

17 A What year?

18 Q Yes, sir.

19 A 2011.

20 Q 2011. All right. Now, do you remember at that
21 time when you were in trouble with Georgia, the State
22 of Georgia, and your probation agents were there at the
23 interview?

24 A They were.

25 Q And depending how truthful you were to the

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 detectives here, they were going to try to help you out
2 in Georgia?

3 A They had said something about two years, but that
4 didn't happen.

5 Q But before you made the statement, they were
6 telling you We're going to try to help you out if
7 you'll just tell the truth to these guys from Horry
8 County, correct?

9 A I didn't have no other choice but to tell the
10 truth.

11 Q And then you were looking at a possible accessory
12 after the fact charge here in Horry County, remember
13 that?

14 A I do.

15 Q And remember when they told you that they were
16 going to drop that if you cooperated and just told them
17 the truth, do you remember that?

18 A No, sir, I don't remember that.

19 Q Do you want to read the transcript of your
20 conversation?

21 A If it is there, I guess I'll have to recall back
22 on it, but I've had a lot happen to me in five years.

23 Q And do you remember when the charges were pending
24 against you in Florence County, South Carolina?

25 A I do.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q And they promised they would drop those?

2 A It wasn't dropped.

3 Q Were you prosecuted?

4 A It is right there in my record, 2011.

5 Q All right. You got prosecuted for what in
6 Florence County?

7 A Something over some scrap metal. I don't
8 remember what it was. I can't remember.

9 Q All right. Couple of things I want to ask you
10 about before we get into the substance of your
11 testimony. Your son, Charlie, was charged with this
12 murder as well, wasn't he?

13 A He was, and he is.

14 Q And you didn't -- you don't want to see him
15 prosecuted for the murder?

16 A I hate to see either one of them prosecuted for
17 murder.

18 Q But your preference would be if one could be
19 saved, it would be Charlie?

20 A I would say if you are man enough to do the
21 crime, you are man enough to pull the time; I did.

22 Q Didn't you tell the investigators that you had a
23 relationship with Anthony such that sometimes you felt
24 like he was your own son?

25 A Not only Anthony, but Brad, his brother James,

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 all of them.

2 Q I didn't see that in the transcript, but that may
3 be the case.

4 A That is like writing a biography on the Mullins,
5 that would take probably five years.

6 Q Specifically, you mentioned Anthony?

7 A Anthony is like one of my children, and so is
8 Brad.

9 Q Let's go back to that 2011 interview. You told
10 the officers there in 2011 basically the same thing you
11 told us here today in court; isn't that true?

12 A Sure did.

13 Q Except for one difference.

14 A That was?

15 Q It was Anthony who told you this, not Brad. Do
16 you remember that?

17 A I'm not here on Anthony's murder case, I'm here
18 on Brad's.

19 Q That doesn't affect who it was that told you the
20 story back in 2011; isn't that true? Why did you come
21 in today and say it was Brad that told you?

22 A I'm questioned on Brad, not on Anthony, but
23 Anthony told me the same thing, if you want to hear
24 that.

25 Q When did Brad tell you this? After your 2011

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 interview?

2 A No, sir.

3 Q It was before the interview?

4 A It was long before.

5 Q And you forgot to tell the police that when they
6 were down there in 2011?

7 A Sir, these boys drink a lot. These boys use a
8 lot of drugs, and I've caught them in so many lies I
9 didn't know what to believe.

10 Q But you were clearheaded?

11 A I'm very clearheaded, and an intelligent man.

12 Q Especially at the 2011 interview in Cartersville,
13 Georgia. You weren't foggy from drugs and alcohol.
14 You would have known as that time, would you not, that
15 Brad, my client, had confessed the murder to you, and
16 my question to you simply is, Why didn't you tell the
17 officers at that time?

18 A I did tell the officers at that time.

19 Q You told them what Anthony confessed to you.

20 A And Brad.

21 Q All right. That is your testimony?

22 A (Deponent nods head.)

23 MR. DIGGS: Your Honor, we have a transcript that
24 was prepared of this 2011 interview. Just for the
25 record, I would like to have it marked for

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 identification.

2 THE COURT: Show it to the State.

3 MR. HUCKS: It's mine. I've given it to him.

4 THE COURT: You agree it is an accurate transcript,
5 and you want it marked for identification?

6 MR. HUCKS: Yes, sir. I have no problem marking it
7 for identification purposes. If he intends to put it
8 into evidence, I have an objection.

9 MR. DIGGS: I wouldn't need to do that if the State
10 stipulates that what this witness says is this
11 statement was made by Anthony.

12 MR. HUCKS: If he wants to put it in evidence and
13 cross-examine him, he's more than welcome, but I won't
14 stipulate to it.

15 MR. DIGGS: Could we approach?

16 THE COURT: Sounds like he just gave you what you
17 were asking for. He said if you want to cross-examine
18 this witness with that transcript, that he agrees to
19 its authenticity, essentially; is that right?

20 MR. HUCKS: If we can approach for a second.

21 THE COURT: Certainly.

22 (Whereupon, a bench conference was had.)

23 Q (MR. DIGGS) Let me go about it this way,

24 Mr. Mullins?

25 A I didn't hear you.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q Let me go about it this way.

2 A Okay.

3 Q I'm holding your transcript that was prepared for
4 this trial, and it was given to me. A copy was
5 provided to me as one of the attorneys in the case. I
6 want to look at Page 49 where you are being interviewed
7 by Detective Jones. If you would, please, sir, let me
8 ask you -- can you read this? Do you need glasses?

9 A Yes.

10 THE COURT: Read the question and ask him.

11 Q (MR. DIGGS) Here is the question: So you told us
12 then that they -- what Anthony -- what Anthony had
13 told you was that they went in the house, kind of went
14 through there, and they got to the last bedroom and
15 the door was locked. You said: Well, he said they
16 went into the cottage first thing.

17 Now, I'm asking you if that's the way you remember
18 the conversation taking place?

19 A The conversation taking place was that they went
20 into the cottage, is where the first guns came out of.

21 Q So you dispute the accuracy of the facts
22 contained in the question that this is what Anthony
23 told you?

24 A I'm sorry, I don't understand the question.

25 Q Do you dispute the accuracy of this transcript

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 with respect to that particular factual matter written?

2 It says that Anthony told you, and you are saying that
3 is not correct, that it was Brad that told you?

4 A They both told me. I was asked what Brad told
5 me, I wasn't asked what Anthony told me.

6 Q But in 2011 you didn't tell the detectives,
7 correct?

8 A What now?

9 Q You didn't tell the detectives that?

10 A The detectives didn't ask me what Brad said, they
11 asked me what Anthony said.

12 Q And, basically, your response was he said they
13 separated, he ended up at the kitchen door, Brad ended
14 up in the living room, so I'm assuming they came -- the
15 kitchen and living room has got to be there
16 comparatively together somewhere, in the area, and he
17 said the man had a gun and had it leveled out on Brad.

18 Basically, it's the same story. I'm not quoting
19 anymore from your transcript, but that is basically the
20 same testimony you gave this afternoon in court,
21 correct?

22 A Correct.

23 Q And at least in this transcript you attribute
24 that information to what Anthony told you?

25 A What Anthony told me, correct. If you are asking

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 the question -- Anthony was the first one that I spoke
2 with, and then I spoke with Brad later.

3 Q Let me ask you this. When did you speak to Brad?

4 A When I did speak with Brad?

5 Q Yes, sir. About this case specifically?

6 A To give you an exact date, I can't, but I can
7 tell you it was within a day or two after we came back
8 from our trip.

9 Q All right. So it was after your return from
10 Louisiana?

11 A That's correct.

12 Q And not before you went down there?

13 A No, sir.

14 Q And not before -- let me ask you this. Strike
15 that last -- when -- on the day that the guns showed up
16 at the shed, had there been a barbecue or cookout at
17 the home?

18 A That evening before, yes.

19 Q And was -- how long thereafter was it before you
20 went down to Louisiana?

21 A The following Monday.

22 Q All right. Were any other barbecues or cookouts
23 or anything held at your home before you left?

24 A No, sir.

25 Q Now, would there have been an opportunity at that

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 time for Brad to have said, By the way, guys, I killed
2 a guy the other day?

3 A At that time?

4 Q Yeah, before you went down to Louisiana.

5 A Nope. Brad or anybody else had not spoken on the
6 issue.

7 Q And there wasn't -- there wasn't an opportunity
8 for everybody to get together and have that kind of
9 conversation; isn't that true?

10 A These boys hung around together all the time.
11 I'm a family man, I stay at home with my family.

12 Q But you don't recall there being any cookouts or
13 anything of that nature after the guns showed up and
14 you ordered them off your property, after that?

15 A No, sir. I'm not going to say none of them
16 wasn't over for dinner because I always keep somebody
17 at my house for dinner.

18 Q But you don't recall specifically such an
19 occasion?

20 A No, sir.

21 Q And, typically -- and I apologize, but I'll get
22 it straight in my head. I know I've asked, but how
23 many days before you left to go to Louisiana after that
24 night that the guns showed up?

25 A It was within a four- to five-day range. I'm

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 thinking this particular night was on a Thursday, I'm
2 thinking. It's been five years, I can't remember
3 exactly the night, but I can tell you it was towards
4 the end of the week. I left that Monday going -- that
5 Monday morning going to Louisiana.

6 Q Monday morning?

7 A Yes, sir.

8 Q So if the guns showed up on a Saturday?

9 A What now?

10 Q Do you remember when the guns showed up? That is
11 what you said you can't remember?

12 A I said the night of the barbecue or grill-out --
13 not necessarily a barbecue, but a grill-out. They left
14 supposedly to get some marijuana, coke. Whatever they
15 were going to get to smoke or do, I don't know. I was
16 woke up late that night, early over in the morning,
17 sometime after midnight, that is when the guns showed
18 up on my property.

19 (A brief pause in the proceedings.)

20 MR. DIGGS: Bear with me, please, sir.

21 (A brief pause in the proceedings.)

22 MR. DIGGS: I beg the Court's indulgence just a
23 second.

24 Q Mr. Mullins, one last question. Did you recently
25 sell your son a couple of guns?

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 A Do what?

2 Q Did you recently sell Little Charlie a couple of
3 guns?

4 A My son?

5 Q Yes.

6 A I don't own no guns.

7 Q Did you sell him any?

8 A No, sir.

9 MR. DIGGS: Your Honor, thank you, that is all I
10 have.

11 REDIRECT EXAMINATION

12 BY MR. HUCKS:

13 Q Who did you talk to about this night? When you
14 got back from Louisiana and Texas, who did you talk to
15 about what happened at Mr. Elliott's house?

16 A On the first occasion, I spoke with Anthony Ray.

17 Q Don't say what he told you, but you talked to
18 Anthony?

19 A Yes, sir.

20 Q Now, who did you talk to after you talked to
21 Anthony?

22 A With my nephew, Brad.

23 Q Is everything you have testified to here today
24 about what Brad told you, what Brad told you?

25 A Yes, sir.

CHARLES MULLINS SENIOR - REDIRECT EXAMINATION

1 MR. HUCKS: Nothing further.

2 RECROSS-EXAMINATION

3 BY MR. DIGGS:

4 Q You didn't mention that to the police in 2011?

5 A Do what now?

6 Q Did you not mention Brad's alleged confession to
7 the police in the year 2011?

8 A No, sir, I didn't.

9 MR. DIGGS: Thank you.

10 MR. HUCKS: Nothing further. We ask that he be
11 excused.

12 MR. DIGGS: We may ask -- if we could ask him to
13 stay around for a day or so.

14 THE COURT: He's not released under the subpoena,
15 then.

16 Mr. Mullins, you may step down, but I ask you not
17 to leave until excused by the Court.

18 MR. DIGGS: Thank you.

19 MR. HUCKS: I think Dr. Proctor is here.

20 THE COURT: Bobby, take them to the jury room. I
21 see some heads nodding that they need a break.

22 (The jury exits at 3:48 p.m., and a recess is
23 taken.)

24 THE COURT: Bring them in.

25 (The jury enters at 4:01 p.m., and the following is

EDWARD PROCTOR - DIRECT EXAMINATION

1 heard in the presence of the jury.)

2 THE COURT: We have all the jurors back.

3 Mr. Hucks.

4 MR. DeBUSK: I call Dr. Edward Lee Proctor.

5 (EDWARD PROCTOR, having been duly sworn, testified
6 as follows:)

7 THE CLERK: Please state your full name for the
8 record and spell your last.

9 THE WITNESS: Edward Proctor, Junior, P-R-O-C-T-O-R.

10 DIRECT-EXAMINATION

11 BY MR. DeBUSK:

12 Q Where do you practice?

13 A I practice medicine in Myrtle Beach.

14 Q Where is your office?

15 A My office is actually in the hospital, Grand
16 Strand.

17 Q What is your role there?

18 A I'm a pathologist engaged in the anatomic
19 pathology, clinical pathology, and forensic.

20 Q You are a duly licensed physician?

21 A Yes, sir.

22 Q And surgeon?

23 A Not a surgeon.

24 Q Just a physician?

25 A Physician.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q In any state other than South Carolina?

2 A North Carolina.

3 Q How long have you been practicing as a physician
4 -- licensed physician?

5 A Licensed physician, since 1980 or '81.

6 Q Where did you receive your medical training?

7 A Went to Medical University of South Carolina in
8 Charleston and did my pathology residency at Walter
9 Reed Army Medical Center, Washington DC.

10 Q Does your work include the performance of
11 autopsies?

12 A Yes.

13 Q How many autopsies do you reckon you've done?

14 A Probably five or six now.

15 Q You told us your area of specialty, and that
16 includes forensic pathology?

17 A Correct.

18 Q Could you tell the jury what forensic pathology
19 involves?

20 A Forensic pathology is the field of pathology
21 engaged in the medicolegal investigation of death. We
22 get a request from a coroner, investigative authorities
23 and we take the deceased and do an external exam,
24 internal exam, microscopic exam when necessary,
25 toxicological, and based upon the information we get as

EDWARD PROCTOR - DIRECT EXAMINATION

1 a result of that examination and any information we can
2 get from investigative authorities, we perform a cause
3 and manner of death.

4 Q Are you a member of any specialized medical
5 groups or associations?

6 A I'm the member of the College of American
7 Pathologists and the American Society of Clinical
8 Pathologists, and board certified by the American Board
9 of Pathology.

10 Q What are the requirements for such
11 certifications?

12 A Requirements for certification is to complete a
13 residency program in pathology, and complete either a
14 training or experience in the subspecialty, such as
15 forensic pathology, acceptable to the Board of
16 Pathologists, and then you have to sit for a prolonged
17 examination.

18 Q Have you ever been qualified in the court of law
19 as an expert in pathology?

20 A Yes, sir, I have.

21 Q Can you guess how many times?

22 A A number.

23 Q Several?

24 A Yes.

25 MR. DIGGS: We stipulate.

EDWARD PROCTOR - DIRECT EXAMINATION

1 THE COURT: He would stipulate that he's an expert
2 in the field of forensic pathology.

3 MR. DeBUSK: Thank you.

4 Q (MR. DeBUSK) Did you have an occasion to do an
5 autopsy on Kelly Joe Elliott?

6 A Yes, sir, I did.

7 Q Where was it done? Where was it performed?

8 A In my facility at Grand Strand in Myrtle Beach.

9 Q When you have a person come for an autopsy, do
10 you often request x-rays?

11 A We use x-rays at times when we deem it necessary
12 to locate foreign objects, bullets, or to determine the
13 number of fractures or anything like that.

14 Q I'll show you what is in evidence as State's
15 Exhibits 93, 94 and 95 and ask if those are familiar to
16 you?

17 A Yes, sir.

18 Q What are they?

19 A These are x-rays taken at the time of this
20 autopsy.

21 Q And, again, you would take those to help locate
22 the foreign objects?

23 A Yes, sir. Yes, sir.

24 Q Let me ask you, when you received Mr. Elliott's
25 body, what was its condition?

EDWARD PROCTOR - DIRECT EXAMINATION

1 A The condition of this body was in a fairly
2 advanced degree of decomposition, about three, four
3 days postmortem.

4 Q Are you able to put a more precise number?

5 A I cannot.

6 Q Why is that?

7 A There are a lot of factors that enter into
8 determining decomposition, was the body outside in the
9 open air, was the body in a house, was it air
10 conditioned, non-air conditioned. Decomposition is
11 either accelerated by heat or slowed down by cool, and
12 it is very, very subjective.

13 Q So the range of three to four days?

14 A That is as good as I can do, yes, sir.

15 Q Thank you. Were you still able to determine the
16 cause of death in these injuries?

17 A Yes, sir.

18 Q What external injuries did you find on
19 Mr. Elliott?

20 A Really, truly, found lots of, you know,
21 postmortem changes, but the most significant findings
22 were two gunshot wounds, one gunshot wound to the left
23 head just above the ear, and a gunshot wound to the
24 right chest in the posterior axillary line towards the
25 back area.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q Were you able to tell how many bullets caused
2 these two injuries?

3 A Two.

4 Q Was there any indication on the body of the
5 distance which these were fired, close or far, or can
6 you tell?

7 A I could not tell.

8 Q Was that because of the state of decomposition?

9 A Yes, sir.

10 Q Thank you. What internal injuries were
11 associated with those wounds?

12 A The head wound caused extensive fractures to the
13 bones of the skull. It passed through the brain
14 causing extensive damage to the brain tissue itself.
15 There was a fracture of the right skull, and the
16 projectile was recovered from just under the skin on
17 the right side.

18 Q So is it true it exited the skull on the right
19 side, but not the skin?

20 A Passed through the bone, but not the skin.

21 Q What would the results of that injury have been?

22 A That injury would have been lots of blood and
23 just destruction of the tissue.

24 Q Would it have been fatal?

25 A Yes, sir, that would have been fatal.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q Would it have caused instant unconsciousness?

2 A It would have caused rapid loss of consciousness,
3 yes, sir.

4 Q How about the shot to the torso?

5 A The torso shot passed in a left to right
6 direction. It penetrated the lungs and was within the
7 vertebral column, thoracic area.

8 Q Would that be immediately fatal?

9 A It would have been a significant wound,
10 particularly penetrating the lungs, and without rapid
11 intervention, it could be fatal.

12 Q But not immediately?

13 A Not immediately, no, sir.

14 Q What would the consequence be of it hitting the
15 spine?

16 A I did not completely disarticulate everything.
17 It was difficult to find the bullet, so we left it
18 there. I cannot tell you whether it hit the cord
19 structures itself. It was found within the vertebral
20 body adjacent to the spinal cord.

21 Q Would it have been an injury that would have
22 knocked the victim down?

23 A In all likelihood, it would have, yes, sir.

24 Q Did you determine a probable cause of death?

25 A My cause of death was multiple gunshots wounds

EDWARD PROCTOR - DIRECT EXAMINATION

1 with extensive trauma.

2 Q Finally, would you be able to indicate for the
3 jury using this rod and my body the trajectories?

4 A I can.

5 MR. DeBUSK: Your Honor, may the witness --

6 THE COURT: Yes, he may.

7 A The head wound was left head, above the ear, left
8 to right and anterior towards this direction, found
9 under the skin on the right side over here. The chest
10 wound was what we call the posterior axillary line, the
11 back half of the chest, left to right direction,
12 slightly and superior, and entered the vertebral
13 column, the bony part of the spine, at the T-4 level of
14 the chest up in here.

15 MR. DeBUSK: Please answer any questions defense
16 may have.

17 CROSS-EXAMINATION

18 BY MR. DIGGS

19 Q Since we are talking about the wound to the head
20 you just demonstrated, could you talk about the
21 trajectory of the bullet as it went into the skull and
22 how it traversed through the brain?

23 A Right. It penetrated the bony skull just above
24 -- make sure I have it -- left ear. It passed in a
25 left to right direction, slightly anterior. So it came

EDWARD PROCTOR - CROSS-EXAMINATION

1 sort of above the ear, slightly anterior and was
2 removed from the soft tissue on the right side.

3 Q Was the trajectory itself horizontally level?

4 A It was relatively level, more angled from
5 posterior to anterior (indicates).

6 Q Okay. On the decomposition question, I wanted
7 to -- and I heard your testimony on direct, but do you
8 have your report there with you?

9 A I do.

10 Q You say in your report in the front, I think it
11 is the front, "External Description," The decomposition
12 changes are greater than three to four days.

13 A At least three to four, possibly longer.

14 Q So at least. At that point, you were indicating
15 possibly longer?

16 A It could be. At least three to four days.

17 Q There is a photo of Mr. Elliott that's been
18 admitted into evidence. It shows him under a blanket
19 in a position where he was found by his friends. This
20 is State's Exhibit No. 17, and I want to show you this.
21 It's been testified that that is the depiction of the
22 scene, that that is how Mr. Elliott was found.

23 I want you to focus on the front portion where
24 Mr. Elliott's arm is sticking out from underneath the
25 blanket. We had it on projection this morning, and it

EDWARD PROCTOR - CROSS-EXAMINATION

1 was much larger and you could see it. Do you see what
2 I'm talking about, the gentleman's arm sticking out
3 (indicates)?

4 A Okay. Okay.

5 Q In particular, Dr. Proctor, I want to have you --
6 if you can make it out from that picture, look at the
7 black discoloration of the arm.

8 A Uh-huh.

9 Q Is that something that is typical with the
10 decomposition of change?

11 A Yes, sir.

12 Q And is that identified within any particular
13 stage of decomposition?

14 A Again, it is very difficult. Seeing this in the
15 confines of that house, it was un-air conditioned and
16 80 to 90 degrees in that house over a period of time,
17 those changes can occur in a rapid fashion, and
18 certainly could be less than three to four days. If it
19 is like 72 degrees in here, using that as a standard,
20 three, four days, possibly, plus or minus a little bit.
21 All in all, without knowing exact temperatures, it is
22 very difficult to give you more exact.

23 Q Did anyone make any effort to give you that
24 additional information?

25 A No, sir, they did not. No. My autopsy is

EDWARD PROCTOR - CROSS-EXAMINATION

1 strictly based upon my experience in the number I've
2 seen, which is why I say it is variable.

3 Q And for his skin to turn to the dark color, it
4 definitely is going to require some passage of time?

5 A It will require time. If it was in the bright
6 sunshine, outside, it could happen in less than 24
7 hours, but in the cold or an air conditioned area, it
8 could take longer.

9 Q , Ten or 20 days?

10 A Sometimes it can. Sometimes, yes.

11 MR. DIGGS: I appreciate it --

12 Q (MR. DIGGS) Oh, the holes in the body were
13 basically the same size?

14 A Yes, sir.

15 Q One was round, one was oval?

16 A Sort of depends. If it is a straight shot, it is
17 more round. If it is at more of an angle, it is what
18 they call an abrasion collar, and it bevels the skin.

19 Q But those definitely, per your examination and
20 measurements, were the same size?

21 A Pretty much, yes, sir.

22 MR. DIGGS: That is all I have.

23 REDIRECT-EXAMINATION

24 BY MR. DeBUSK:

25 Q Would the size of the holes necessarily correlate

EDWARD PROCTOR - REDIRECT EXAMINATION

1 with the size of the caliber of the bullet?

2 A Usually the size of the hole correlates with the
3 power of the round. Like a low velocity round or
4 smaller bullet, such as a .22, has a smaller hole.
5 When you get to the larger rounds, .58, .357, .40
6 calibers, the holes are similar, but they can vary
7 based on slight deflections in the skin, or if it is
8 tight against a bone, it makes a larger hole.

9 Q So it is hard to tell?

10 A Hard to tell. Without having the projectile
11 itself, I would be very reticent to tell you whether or
12 not I knew the caliber. I could say it is large versus
13 small caliber.

14 Q And as to the time of death, do I take it that it
15 could be anywhere from 24 to ten days, depending on
16 conditions?

17 A Depending on conditions. It is very variable. I
18 have had no other information from investigative
19 authorities as to when this man was last seen alive, no
20 information as to when was the last time that house had
21 been checked, those things. So it is strictly going
22 on --

23 Q It is an educated guess?

24 A For lack of a better term, yes, sir.

25 Q Educated guess?

EDWARD PROCTOR - REDIRECT EXAMINATION

1 A Yes, and with lots of variation.

2 Q You said the round went by the ear and recovered
3 from the head?

4 A Yes, sir.

5 Q So you got the round?

6 A The round was recovered and it was given to
7 investigative authorities.

8 MR. DeBUSK: Thank you. No further questions.

9 THE COURT: You may step down.

10 MR. DeBUSK: Could he be excused?

11 MR. DIGGS: We have no objection.

12 THE COURT: Doctor, you are released from your
13 subpoena.

14 MR. HUCKS: May we approach for scheduling matters?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was had.)

17 THE COURT: We had a conference with the attorneys,
18 and what we have left -- and we have made a lot of
19 progress, but rather than keeping you over, I know you
20 have obligations with children and things, I'll go
21 ahead and let you go. It is almost 4:30. I'll ask you
22 to be back in your jury room in the morning at 9:30.
23 Did Bobby have something for you this morning? He will
24 in the morning as well, okay. Bobby, if you would,
25 take the jury to the jury room and make sure they get

BY THE COURT

1 MR. DeBUSK: State's 46, 77, 82 were authenticated,
2 but not yet admitted.

3 MR. DIGGS: Could I look at them again? That's
4 fine.

5 (State's Exhibits 46, 77, 82 were admitted.)

6 (The jury enters at 9:57 a.m., and the following is
7 heard in the presence of the jury.)

8 THE COURT: We have our jury and alternates here in
9 the courtroom. Mr. Hucks.

10 MR. HUCKS: Thank you, Your Honor. The State would
11 call Charles Mullins.

12 (CHARLES MULLINS, having been duly sworn, testified
13 as follows:)

14 THE CLERK: State your name and spell your last
15 name for the Court.

16 THE WITNESS: Charles Henderson Mullins,
17 M-U-L-L-I-N-S.

18 DIRECT-EXAMINATION

19 BY MR. HUCKS:

20 Q Do you mind if I call you Charlie?

21 A Sure.

22 Q Now, Charlie, what do you do for a living?

23 A Construction.

24 Q And how long have you done construction?

25 A My whole life.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Q And how old are you?

2 A Twenty-nine.

3 Q Now, I'm going to ask you a couple of drawn out
4 questions, and I need you to explain for the jury some
5 stuff. Tell me how you are related to these people.
6 How are you related to Charles Edgar Mullins?

7 A That's my father.

8 Q How are you related to Arlie Mullins?

9 A He is my cousin.

10 Q First cousin?

11 A First cousin.

12 Q Now, how are you related to Anthony Ray?

13 A He's also my first cousin.

14 Q How are you related to Brad Mullins?

15 A My first cousin as well.

16 Q Now, how well would you say you know Arlie and
17 Anthony and Brad? How would you describe your
18 relationship with those three fellows?

19 A I semi-know them. I know of them. The
20 relationship is really distant. Not that I've been
21 raised up with them.

22 Q Okay. Now, explain to me what is your
23 relationship with your father, Charles Edgar, explain
24 that for the jury?

25 A I don't have a real relationship with my father.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Him and my mother divorced when I was little. They
2 split up. He went on his way. I seen him
3 periodically, that is how I got to know the majority
4 side of his family, when I would see him here and
5 there, but as far as having a real together
6 relationship with that side, I never had one, not until
7 after I got up in age, 19, 20, somewhere in there.

8 Q What did you do when you were 19 or 20 to get a
9 relationship with your dad's side of the family?

10 A Doing the line of work I do, I become pretty good
11 at what I do.

12 Q What is that line of work?

13 A Construction, reading blueprints, framing,
14 painting, remodeling, that has become my trade.

15 Q Is that the same thing your daddy does?

16 A Semi. It is what he tries to do.

17 Q Is that how you gained a relationship with your
18 father?

19 A Yes.

20 Q And how did that come about, explain that a
21 little bit? You are 19, 20 years old, and what
22 happens?

23 A My father is really good at getting work. He's
24 always -- when I first was getting together with him,
25 he would -- he offered to pay me really well, when I

CHARLES H. MULLINS -DIRECT EXAMINATION

1 wasn't working my full-time job. So I would take off
2 -- when he got something good, he paid me good, asked
3 me to come help him, and that is pretty much what I
4 done. I went and ran his jobs for him.

5 Q Is that the relationship you had with your father
6 back in September of 2008?

7 A Yeah.

8 Q Now, tell us how you came to be in or about Horry
9 County in September of 2008.

10 A Well, we had been -- prior to that, we had been
11 doing work in Durham on some shopping centers.
12 Everything kind of dried up, work got slow and my
13 father had me come to his place in South Carolina and
14 said we were going to meet him, me, him, some more of
15 the other family members, go to Louisiana to do some
16 storm damage. There was a hurricane coming through.

17 Q Let me stop you. When you said there was other
18 family members, does that include the defendant, Brad
19 Mullins?

20 A Yes.

21 Q And Anthony Ray?

22 A Yes.

23 Q And Arlie Mullins?

24 A Yes.

25 Q Did you have a chance to become close with those

CHARLES H. MULLINS -DIRECT EXAMINATION

1 fellows over the time you worked with them?

2 A Semi. Not as close as every day walking, talking
3 right beside them, just distant close, I guess.

4 Q Distant close?

5 A Yeah. Knowing of them. I can't tell you in
6 detail what they do, how they act, all of that.

7 Q Do you remember the week on or about
8 September 11, 2008? Do you remember that week?

9 A Yes, sir.

10 Q I want you to tell the jury about what you
11 remember from that week.

12 A Okay. Like I said before, I come in. My father
13 had asked me about coming in, going to Louisiana to do
14 some work. It was me and several other family members
15 were going to meet at his place. We all met up, all of
16 my cousins came in, a couple of my uncles, father's
17 family. The day of whenever everyone got in town, or
18 everyone was there, we were sitting out back just
19 hanging out, you know, all of the guys sitting around
20 talking and carrying on, drinking.

21 Q Was this some sort of a cookout environment? You
22 had a bunch of people around, or what would you call
23 it?

24 A Just a gathering. I mean, all the guys were just
25 shooting shit out back, excuse me. Anyway, we are

CHARLES H. MULLINS -DIRECT EXAMINATION

1 talking and carrying on, just everything, really. We
2 got talking about guns, hunting. A lot of the people
3 in my family, cousins, their fathers, they collect, buy
4 and sell, they are fans of guns. In this conversation,
5 Brad called me over to the side and asked me -- kind of
6 whispered if I would be interested in getting rid of
7 guns for him, if I knew where I could. I told him, no,
8 I didn't have any idea, so he kind of shrugged it off,
9 and we went back to the conversation.

10 Q Let me stop you for a minute. Why would you say
11 no? Anything about that question raise your eye?

12 A I mean, it did to the point -- I mean, spur of
13 the moment, he just -- just knowing that side of my
14 family, you know, knowing they stay in and out of
15 trouble, it is kind of odd he called me to the side and
16 whispered instead of everybody, so I didn't feel that
17 it was the right thing.

18 Q So what happened after you told him no?

19 A He just kind of shrugged if off and went back to
20 carrying on with everybody else, as well as myself.

21 Q Okay.

22 A This time, before we were getting ready to head
23 out of town, I went back in the house to speak to my
24 father to talk to him about me going home and spending
25 time with my kids before we left, but he said he didn't

CHARLES H. MULLINS -DIRECT EXAMINATION

1 know how long we were going to be gone or what we would
2 get into.

3 MR. HUCKS: Hold on.

4 Q (MR. HUCKS) All of these conversations that you
5 guys would have had, I want to show you and ask you if
6 you recognize it, if I can find it. We have a pile of
7 exhibits here.

8 (A brief pause in the proceedings.)

9 Q (MR. HUCKS) State's Exhibit No. 4, what is that?

10 A That's my father's house.

11 Q When you say you guys had all of these
12 interactions over the course of the afternoon or
13 evening, is this where it would have happened?

14 A Yeah.

15 Q I'm walking to the other side of you here. Point
16 out for the jury -- and I know it is small --
17 whereabouts would these conversations have taken place?

18 A Back over here on the back side of this carport.

19 Q So here in the carport, under it or behind it?

20 A Yeah. Yeah.

21 Q When you said you were having these
22 conversations, who all was involved in these
23 conversations?

24 A Me, Brad, Anthony, Arlie, Anthony's uncle Allen
25 may have been standing there, I'm not sure, but I know

CHARLES H. MULLINS -DIRECT EXAMINATION

1 the four of us was there.

2 Q All right. Would anybody else have been in a
3 position to overhear the conversation you and Brad had
4 about the guns?

5 A I wouldn't think so, not unless they are really
6 good listeners.

7 Q So what happened after you had that discussion?

8 A I went in, spoke to my father about leaving. I
9 was going to go home with my kids. When I came back
10 out after being with him to find out when we would
11 leave and all of that, Brad approached me again and
12 asked if I cared to take him over to a buddy's house to
13 pick up a bag of pot.

14 Q Were you guys pot smokers, the whole crowd?

15 A Yeah, on occasion -- not...

16 Q That evening, as everything was going on, were
17 you all drinking?

18 A Yeah. They were all drinking, I hadn't drank
19 anything.

20 Q Smoked a little pot?

21 A Yeah.

22 Q Was the whole crowd smoking pot?

23 A Yeah, I believe.

24 Q So was it unusual when he said he wanted pot for
25 the trip, was that an unreasonable request?

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A No.

2 Q What did you do?

3 A Sure. I don't care. He was just going up the
4 road. So we got in the vehicle, me, Brad, Arlie,
5 Anthony. I had a four-door Chevy Blazer. We got in.

6 Q A four-door Blazer, is that a big size vehicle?

7 A No, it is small size. It is not the full size.

8 Q Four door. Where was everybody sitting in this
9 thing?

10 A I was driving. Arlie, my cousin, got in the
11 passenger's seat, Brad was directly behind him and
12 Anthony was behind me.

13 Q What did you do after you got in the truck?

14 A We got in the truck and Brad started giving me
15 directions, the way to go. We took off up the road,
16 and on the way, I asked him -- turned and asked where
17 exactly are we going, and he said we're going to go get
18 them guns. I hit my brake and I said, no, I told you,
19 I'm not going to do that, that's not going to happen.
20 No, I'm just messing with you, we're going to get a bag
21 of pot before we leave. I said, Okay. So I kept
22 going.

23 Q Who told you how to get to where you were?

24 A Brad.

25 Q And tell the jury how that would have happened,

CHARLES H. MULLINS -DIRECT EXAMINATION

1 how did he tell you?

2 A He just told me where to turn, you know. I don't
3 have any idea where I'm going, make a left here, right
4 here as we come to turns.

5 Q How long would you say you drove for?

6 A Thirty minutes or so.

7 Q Pretty good distance?

8 A Yeah.

9 Q Where did you end up?

10 A I ended up on Dew Lane.

11 MR. HUCKS: If I may approach, Your Honor.

12 Q I'll show you something, Charlie. This is
13 already entered as State's 68. I'll ask you if you
14 recognize -- you might not recognize the addresses, but
15 do you recognize Johnson --

16 A That is my father's house.

17 Q Is that where you would have left from that day?

18 A Yes, sir.

19 Q Dew Lane, Dew Lane, that would have been
20 where you ended up?

21 A Yeah.

22 Q And how long did you say it took you to get from
23 there to driving the whole way?

24 A Thirty minutes, give or take, not a hundred
25 percent sure.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Q What happens when you get to Dew Lane?

2 A Well, as we turn into Dew Lane, before I get to
3 where I stopped at, Brad told me to pull up out front.
4 He said, Don't pull in, just drop me and Anthony off,
5 the guy don't care for people coming in, so drop us
6 here at the front, you guys run up the road, give me a
7 few minutes, come back and I'll be done. Which is a
8 given if you are going to get a bag of pot, I don't
9 think that the guy would want somebody he didn't know
10 in his house.

11 Q Who got out of the car?

12 A Brad and Anthony.

13 Q What did you do then?

14 A When they stepped out, Arlie and myself kept
15 going down Dew Lane, just a little dirt road. When we
16 got to the end, it is like a gait there, you can't go
17 any further. We turned around and came back out. It
18 is not very long. When I got to the hard top road, I
19 went to the left, opposite of the way we came in, there
20 was nothing but back roads. So we rode a little bit,
21 and I came up to a store. We figured we would stop and
22 get a drink since we were out, but they were closed, so
23 we turned around. Few more minutes we come back by.
24 When I pulled in, Anthony and Arlie were standing
25 beside the road waiting. I pulled up, didn't even

CHARLES H. MULLINS -DIRECT EXAMINATION

1 park, I just -- as soon as I pulled up, they walked
2 around to the back of my vehicle and popped opened my
3 hatch.

4 Q SUV?

5 A Yeah.

6 Q There is the glass that opens, or the whole
7 hatch?

8 A No. You can do both, hit the button on the back
9 of the tailgate and the glass will open, or turn it and
10 let the other half down.

11 Q Which did they do?

12 A Just popped the glass.

13 Q Did the interior lights come on?

14 A The interior light, the only one I had was above
15 me, it didn't work. The only lights I had was the dash
16 inside.

17 Q Now, what did they do when they popped your
18 hatch?

19 A They set something in the back of my truck. They
20 shut the hatch, came back around, got in the vehicle
21 the same way they got in, Brad got in on the
22 passenger's side, Anthony behind me. They got in, shut
23 the door. As Brad sat down, he had a little white sack
24 with him. He sat down with it.

25 Q What do you mean? Describe this.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A Well, I didn't get a chance to focus in on it, he
2 just had --

3 Q Like a zip-lock bag?

4 A Kind of like a sack, maybe a pillow case. It was
5 whitish color. Anyhow, he sat down with it. When I
6 turned to look, Anthony leaned forward and he just had
7 a weird look, kind of like he saw a ghost, and I asked
8 him what is wrong with you, and when I asked Anthony,
9 Brad answered for him, and he said, Nothing is wrong
10 with him, he's good. Let's go. Keep going. Okay. So
11 I pulled off, went back to the end of Dew Lane, turned
12 around the same way I did before, but when I came back
13 to the hard top, we went left instead of the way we
14 came in, the opposite way.

15 Q Who told you to do that?

16 A Brad.

17 Q Who gave you directions from there on out back to
18 your father's?

19 A Brad.

20 Q Did you know how to get there?

21 A No.

22 Q Did you know how to get back?

23 A No, sir.

24 Q Tell us about the trip back.

25 A We rode for a little ways, not a whole lot of

CHARLES H. MULLINS -DIRECT EXAMINATION

1 talking going on at this point. We turned down a long
2 two-lane road. On the way down the road, Brad pointed
3 at a spot on side of the road and said, Stop right
4 here, I need to get out. So when I stopped the
5 vehicle, we stopped. I was right in front of a bridge.
6 Beside it, there was an old abandoned building. I'm
7 assuming he's getting out to use the bathroom. As I
8 went to exit my side to use the bathroom, when he got
9 out, the baggy came out with him, and he throwed it as
10 he stepped out. I assume he used the bathroom, I did.
11 I got back in the vehicle, and we proceeded back to my
12 father's house.

13 Q What happened when you got to your Daddy's house?

14 A I pulled in, went beside the building, the
15 carport in the picture. I pulled aside of it, and
16 there is a building in the backyard, I parked in front
17 of it.

18 Q Hang on a second. I'll show you another exhibit.
19 It is entered as State's Exhibit 8. What is that?

20 A That's the building.

21 Q Tell us anything you know about this building.
22 Tell the jury what is the difference in the gray door
23 side and the wood door side, if any?

24 A There is not really a difference in the doors.

25 Q I mean, on that side of the shed.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A There is three parts to the shed. This is the
2 shed in my daddy's backyard. This side they kept tools
3 and stuff for construction, this side he kept his
4 motorcycles in, and in the middle part Anthony's uncle
5 made a bedroom in there.

6 Q Who are you talking about "Anthony's uncle"?

7 A Allen. He had a bed, little stereo, air
8 conditioner in the back wall, what have you.

9 Q Now, when you pulled up there, what happened?

10 A When I pulled back into my father's house, we
11 pulled around the building. Everybody gets out of the
12 vehicle. I walk into my dad's house. I'm nervous, and
13 I'm ready to go home.

14 Q What are you nervous about?

15 A Just kind of putting everything together that
16 just happened, you know, the mentioning of guns, then
17 not mentioning of guns, and then Anthony's face and
18 Brad throwing a bag into the river. I was ready to go
19 home. I didn't feel like staying no more.

20 I went in. As soon as I got in there, I spoke to
21 my father to say I was going home, call me, let me know
22 when he was ready to pull out and go to Louisiana. He
23 said that is fine, and grabbed my two bags. I walked
24 back out to the shed. When I walked out, Anthony,
25 Arlie, Brad and Allen were all standing out there.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 They had the tailgate down on my truck. There was a
2 couple of shotguns, I think, laying on my tailgate.
3 Anthony and Brad were standing there holding the gun,
4 and when I walked up, I asked who they belonged to, and
5 Brad said -- he just shrugged and said, They are mine.
6 I said okay, and left it at that.

7 I told him I was leaving, whatever. I would be
8 back whenever. As I walked away, Brad asked me what I
9 was driving home, and I said I'm going to take my
10 truck, and he said can I use your Blazer while you are
11 gone, and I said the keys are in the house, and I drove
12 home.

13 Q Where is home at?

14 A Bristol, Virginia.

15 Q So you drive back to Bristol?

16 A Yes, sir.

17 Q How long do you stay at Bristol for?

18 A A couple of days, just spent time with my kids.

19 Q How many kids do you have? We've heard about all
20 of the kids everybody else has.

21 A I have four.

22 Q What do you do -- how long do you stay in
23 Bristol?

24 A Couple of days.

25 Q What do you do?

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A Construction work -- oh, I'm sorry.

2 Q Time wise.

3 A Nothing. I came in and spent time with my kids,
4 hung out, just playing, being a father, you know.

5 Q When do you come back to Horry County?

6 A A couple of days after that. After I had gotten
7 home, my dad called me and said, you know, if I was
8 ready, come on, he was ready to pull out and go to
9 Louisiana.

10 Q What were you going to go to Louisiana for?

11 A We were going to go for storm damage. There was
12 a hurricane coming through, and he thought since
13 everything kind of dried up around there, we could go
14 make some money. I told him that is fine, I'll be
15 ready. He asked if I cared on the way back if I would
16 swing through Durham and pick up a couple of guys
17 working with us.

18 Q Did you do that?

19 A Yes, sir. I told him I had no problem. I picked
20 them up as extra hands.

21 Q So you swing by there and go back to Horry County
22 at that point in time?

23 A Yes, sir.

24 Q What happens when you get back here?

25 A When I get to my dad's, everybody is pretty much

CHARLES H. MULLINS -DIRECT EXAMINATION

1 ready to go except I have to haul the trailer. That
2 was the main reason my father called, no one had a
3 truck big enough to haul the trailer but me.

4 So I get back, the trailer is loaded. I hook it up
5 to the truck, changed a few things. Not long after
6 that, we pulled out and headed back towards Louisiana.

7 Q What happens when you get to Louisiana, if
8 anything?

9 A On our way, in the mix of everyone changing out
10 vehicles, it is a long drive, everybody is taking
11 turns, you know. My father and I got in a conversation
12 and he asked me --

13 Q Don't tell us what your father asked you. You
14 can say what you told him to any question your dad
15 asked you, but not what he told you.

16 A I explained to my father that I didn't have any
17 involvement in anything in a question I was asked, that
18 I didn't have any knowledge of it. He was just curious
19 and wanted to know because of something he heard, and
20 that was it, you know. We went on kind of bond time,
21 chatting, carrying on.

22 When we got down to Louisiana, we didn't stay long.
23 Nothing wasn't going on. It wasn't as bad as, I guess,
24 it was anticipated as being. For the amount of people
25 and stuff that we had, we figured if we couldn't get

CHARLES H. MULLINS -DIRECT EXAMINATION

1 work, funds were short, everybody was getting hairy
2 wanting to figure it out, what we were going to do. We
3 decided we were going to head back.

4 As a result of a question I was asked, I called
5 Brad off to the side and asked Brad if it was true if
6 he had killed a man, and he said he did. At first I
7 didn't know how to take it. I said, no, he didn't, and
8 he chuckled and said, All right, I didn't. I said, If
9 you did, when? He said, The night you took me to my
10 buddy's house, he said, I shot a man. Boy, where is
11 the gun at if you did, and he said, I threw it in the
12 river. At this time, everything kind of circled around
13 me, and I was ready to go. I didn't say anything more
14 about it.

15 I talked to my father and said we needed to head
16 back home, I wanted to go home. We started heading
17 back. On the way back, the fuel pump went out of my
18 truck. We had to stop and fix it. There was a truck
19 stop somewhere. We stopped, got the parts, got working
20 on it. In the middle of all of this, my dad met people
21 at the truck stop and talked with them about us staying
22 at their house for a couple of days to kind of get
23 everything together and figured out what we were going
24 to do, where we were going.

25 While we were there, everybody was trying to figure

CHARLES H. MULLINS -DIRECT EXAMINATION

1 out their money, how much we had, if we had enough to
2 get back home to do what we needed to do. I overheard
3 Brad tell my daddy if he would help him sell his guns,
4 he would have enough money for everybody to get back
5 home. So my father went in, spoke with the lady at the
6 house, and she had a couple of guys that she knew, I
7 guess, come over and look at them. They came over and
8 looked at them, and they took them. After that, we all
9 loaded up the vehicles and the trailers, and we started
10 heading back home.

11 On my way back, my mother contacted me. I had been
12 putting applications through the union. I was a member
13 of the UBC, and they called and wanted me to come to a
14 job they had for me at a power plant in Carbo. So when
15 we got back to my daddy's house, everybody got all of
16 their crap out, I unloaded the tools, trailers, took my
17 truck and I headed home. That is pretty much the last
18 time...

19 Q Over two years after all of this stuff took
20 place, the police come to see you, right?

21 A (Deponent nods head.)

22 Q Why did two years lapse before you told anybody
23 this?

24 A One, I didn't want to believe it; two, I was
25 scared to say anything.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 MR. HUCKS: Nothing further.

2 CROSS-EXAMINATION

3 BY MR. DIGGS:

4 Q Do you remember when you were interviewed this
5 year by the solicitor and his investigator? That was
6 you?

7 A Yes.

8 Q And did you lie to them?

9 A No, sir.

10 Q You were truthful?

11 A Yes, sir.

12 Q All right. So you found out about this murder
13 because Brad admitted it to you?

14 A Yes, sir.

15 Q Did you tell them that earlier this year?

16 A Tell who?

17 Q The investigator.

18 A Yes, sir.

19 Q Didn't you tell them that your dad talked to you
20 about that and told you about it?

21 A That my father mentioned it.

22 Q When did he mention it?

23 A On our trip to Louisiana.

24 Q Let me ask you this. Do you remember when you
25 told them that on the way to Louisiana you and your dad

CHARLES H. MULLINS - CROSS-EXAMINATION

1 had a conversation, and your dad asked you what
2 occurred that night; do you remember that?

3 A Yes, sir.

4 Q Do you remember what you told him?

5 A Yes, sir.

6 Q What did you tell him?

7 A I told him that I didn't know.

8 Q You told him you didn't know?

9 A Yeah.

10 Q Let me get you to look at the transcript of your
11 alleged statement at that time.

12 (A brief pause in the proceedings.)

13 Q (MR. DIGGS) What did you tell your dad in the
14 conversation you had with him about that particular
15 incident?

16 A I can't recall word for word. When my father
17 asked about my involvement and I said I didn't have any
18 involvement in it, if I knew what took place, I told
19 him didn't know.

20 Q Now, I'm confused, because the conversation that
21 you had with the solicitor and your testimony given
22 here, as to given here (indicates). I want to back up,
23 and kind of bear with me. I apologize. I want to go
24 through this again.

25 On your direct -- tell me how you learned of the

CHARLES H. MULLINS - CROSS-EXAMINATION

1 murder, what did you testify to in your direct
2 examination about the murder and your learning about
3 it?

4 A Which time?

5 Q What do you mean?

6 A My trip with my father?

7 THE COURT: Mr. Diggs, I think you need to explain
8 what "direct" means.

9 Q (MR. DIGGS) In your testimony you just gave when
10 the solicitor was asking you questions, you told us
11 about how you learned about the shooting. I want you
12 to repeat that for me at this point. Tell me when you
13 first found out that Brad supposedly had committed the
14 murder..

15 A On our trip to Louisiana, my father asked me
16 about the night that I took them to their buddy's
17 house, he said Brad told him that he killed a man.

18 Q So your dad tells you that Brad had told your dad
19 that he killed a man?

20 A Yes, sir.

21 Q And then after that, you went to Brad and asked
22 him about it?

23 A Yes, sir.

24 Q All right. Now, that's a little bit different
25 from your testimony a minute ago, correct, because it

CHARLES H. MULLINS - CROSS-EXAMINATION

1 interjects your father into the scenario whereby you
2 learned about the shooting, does it not?

3 MR. HUCKS: Objection, Your Honor. He's asking him
4 to testify to hearsay, and I specifically asked him not
5 to testify to hearsay when I was direct examining him.

6 MR. DIGGS: Your Honor, I'm asking him questions if
7 I want to --

8 THE COURT: I'll let him go forward.

9 MR. HUCKS: Thank you.

10 Q (MR. DIGGS) So at this point --

11 MR. DIGGS: Bear with me just a second, Judge.

12 (A brief pause in the proceedings.)

13 Q (MR. DIGGS) All right. Now, in your testimony --
14 let's go back again. Tell me when it was that Brad
15 confessed that murder to you, when did that occur?

16 A When we were in Louisiana.

17 Q When you were in Louisiana, all right. All
18 right.

19 Do you realize that in your direct examination,
20 when the solicitor was talking to you about the case,
21 that you said when you arrived back at the house, that
22 you picked up Anthony and Arlie.

23 A No, sir.

24 Q You said that. Do you want the court reporter to
25 read it back?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 A When I arrived at the house? No, sir, I picked
2 up Anthony and Brad.

3 Q But you testified initially that you picked up
4 Anthony and Arlie, that is in the record.

5 A That I said -- no, sir, and if I did, I
6 apologize.

7 Q Because you are here to testify against Brad,
8 that is your purpose for being here today?

9 A My purpose is to tell the truth of what happened.

10 Q Like you did in -- when did you first talk to the
11 police about this case?

12 A I'm not sure of the date.

13 Q Where were you when that conversation occurred
14 when they came to talk to you?

15 A When I first got picked up on this?

16 Q Yeah.

17 A I was at work.

18 Q Where was that?

19 A Bristol, Virginia.

20 Q Bristol, Virginia?

21 A Yes, sir.

22 Q And the police came there and talked to you about
23 the case, and what did you tell them?

24 A I didn't say anything to the police at that time.

25 Q You said you didn't do anything wrong, correct?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 A Correct. I haven't done anything wrong.

2 Q Did you volunteer any information about the case?

3 A No, sir.

4 Q Did you know about the case?

5 A Now knowing what I know --

6 Q No. I mean when the police were there talking to
7 you about the case, did you know about it?

8 A No.

9 Q But Brad confessed to you?

10 A Yes, sir.

11 Q And you discussed it with your dad?

12 A Yes, sir.

13 Q Why didn't you tell the police that?

14 A Because I didn't believe it. I was scared. I
15 didn't know if it was true and if it were --

16 Q Okay. Okay. You had an opportunity at that
17 point to tell them the truth, and you didn't?

18 A No, sir. I was scared.

19 Q Of the police?

20 A Of my cousin.

21 Q You are scared of your cousin?

22 A Yes, sir.

23 Q When you talked -- bear with me, please.

24 (A brief pause in the proceedings.)

25 Q (MR. DIGGS) Was there a time when your dad sold you

CHARLES H. MULLINS - CROSS-EXAMINATION

1 a couple of guns?

2 A Yes, sir.

3 Q When was that?

4 A That was while I was there at his house.

5 Q During the same time frame?

6 A I'm not sure -- within. I was visiting him.

7 Q So sometime in September of 2008, in that time
8 frame?

9 A Yes, sir.

10 Q What kind of guns were those?

11 A Couple of shotguns..

12 Q Now, let's talk a minute about the car that you
13 all drove that night.

14 A Yes, sir.

15 Q Tell us, if you would, what model it was, make
16 and model?

17 A '96 or '97 Chevy Blazer.

18 Q How does the hatch on the back of the car work?

19 A It had a push button on the back, or you could
20 open it from inside, either way.

21 Q From the back? Didn't the car have to be in
22 park?

23 A No.

24 Q It didn't?

25 A No.

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Now, when you were coming back to pick up Anthony
2 and Arlie, or Anthony and Brad, your testimony was that
3 you saw them put something in the back of the vehicle,
4 repeat that for me.

5 A When I pulled back up to pick up Anthony and
6 Bradley, they walked to the back of my vehicle. I
7 didn't witness them setting anything in my vehicle. I
8 know they set something in it, but I didn't see it.

9 Q How did they do that? How was it done? Do you
10 know who did it, both of them, does one of them do it
11 without the assistance of the other?

12 A Don't know. I don't know.

13 Q And did you notice an effect that it had on your
14 vehicle when they put whatever it was in the back of
15 the car?

16 A No, sir.

17 Q Do you know what it was? Was it a bag?

18 A I didn't see.

19 Q Was there a time you ever saw it?

20 A No, sir.

21 Q Moving on. When you saw Brad throw something
22 into the water off the bridge, tell me again where he
23 was seated in the car?

24 A He was seated on the passenger's side, rear.

25 Q And the bag, pillow case, whatever, was

CHARLES H. MULLINS - CROSS-EXAMINATION

1 positioned between his legs?

2 A Yes, sir.

3 Q That's your testimony. And he got out, and when
4 he got out, he took that bag and threw it over the
5 bridge?

6 A Yes, sir.

7 Q Just a couple more things. Did you know -- how
8 long had Brad lived in this area prior to September of
9 2008, if you know?

10 A I don't know.

11 Q Didn't you help him unload a truck when he moved
12 here?

13 A No, sir.

14 Q You didn't?

15 A No, sir.

16 Q You don't have any recollection of that?

17 A No, sir.

18 Q One more area. When you came down again, will
19 you tell me what day it was that you came into town to
20 your dad's house?

21 A I don't remember what day. I didn't drive
22 straight in. I was already in town with my father
23 between Durham and his house.

24 Q What was going on that day when you were at the
25 house in the afternoon before the evening that you

CHARLES H. MULLINS - CROSS-EXAMINATION

1 testified about going over to this place out in the
2 country?

3 A I don't understand what you mean.

4 Q I'm asking you to describe for me what was going
5 on earlier that day, you know, the day when this murder
6 supposedly occurred?

7 A Nothing that I can recall. Just talking about
8 our trip.

9 Q All right. Was there a cookout going on?

10 A Not that I recall.

11 Q Was there any women out there mingling among the
12 cousins?

13 A No, not at that time. During the day, of course
14 my father lives there, so.

15 Q After that day, was there ever another cookout
16 that took place, to your knowledge?

17 A Not to my knowledge.

18 Q So you went on back to Bristol that night or the
19 next day?

20 A No. I -- the night that all of this took place
21 is the night I went back home.

22 Q Right. And you got back home, and then how long
23 was it before you came back to this area to go to
24 Louisiana?

25 A Couple of days.

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Not very long?

2 A No, sir.

3 Q Do you have any idea at this point about how many
4 guns supposedly were stolen?

5 A No.

6 Q You haven't discussed that with the solicitor's
7 office or anybody?

8 A I mean, I discussed that there were several
9 taken, but as far as a direct number, I don't know.

10 Q Have you seen the list that the solicitor's
11 office or the -- not the solicitor's office, but that
12 the investigators prepared listing all of the items
13 that were -- all of the weapons taken from the home
14 supposedly that night?

15 A No, sir.

16 Q You haven't seen that?

17 A No, sir.

18 Q Has the charge of murder been dropped against
19 you?

20 A No, sir.

21 Q Still pending?

22 A Yes, sir.

23 Q And the outcome of that charge is based on what
24 you say today and the outcome of this trial?

25 A What do you mean?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Do you agree that that is a correct statement?

2 A I don't understand. Can you --

3 Q Do you hope that the charge of murder against you
4 is dropped?

5 A Well, I certainly hope it is taken into
6 consideration.

7 Q What is your understanding on how that charge is
8 going to be dismissed?

9 A I have not had an understanding of anything being
10 dismissed.

11 Q So you are going to stand trial for murder?

12 A Yes, sir.

13 MR. DIGGS: That is all I have. Thank you very
14 much.

15 REDIRECT EXAMINATION

16 BY MR. HUCKS:

17 Q What are you charged with today?

18 A Murder, burglary and robbery.

19 Q Have any of those cases been disposed of?

20 A No, sir.

21 Q Are you aware of the potential penalties you are
22 looking at?

23 A Yes, sir.

24 Q Now, we're talking about your daddy's place in
25 the picture we showed you, the house your daddy lived

CHARLES H. MULLINS - REDIRECT EXAMINATION

1 in. Was it common to have a bunch of people around
2 there?

3 A My father is -- like everybody huddles around him
4 everywhere he goes, people all the time.

5 Q So is it unusual for him to have a pile of people
6 around his house cooking out, any of that stuff?

7 A No, sir. No, sir.

8 Q So it wouldn't -- so if somebody called something
9 "a cookout," would it have to be sending out
10 invitations and fry chicken and people start --

11 A No.

12 Q It is a common occurrence?

13 A My dad is a country guy. He eats all the time.
14 There is always food cooking, and everybody is welcome.

15 MR. HUCKS: Nothing further.

16 MR. DIGGS: Nothing.

17 THE COURT: You may step down.

18 MR. HUCKS: We ask that Mr. Mullins be excused from
19 his subpoena.

20 MR. DIGGS: We don't object.

21 THE COURT: You are released from your subpoena.
22 Thank you very much.

23 MR. HUCKS: State calls Arlie Mullins.

24 (ARLIE MULLINS, having been duly sworn, testified
25 as follows:)

CHARLES H. MULLINS - REDIRECT EXAMINATION

1 THE CLERK: State your full name and spell your
2 last name for the Court.

3 THE WITNESS: Arlie Gene Mullins, M-U-L-L-I-N-S.

4 DIRECT-EXAMINATION

5 BY MR. HUCKS:

6 Q Slide up a little bit and get closer to that
7 microphone so we can hear you so you don't have to bend
8 over.

9 Arlie, what do you do for a living?

10 A Carpenter.

11 Q And don't tell us your address, but where do you
12 live?

13 A West Virginia.

14 Q Now, how long have you been a carpenter?

15 A Most of my life. I would say 20 years.

16 Q Now, I'm going to ask you a couple of things
17 here. How are you related to Charles Senior Mullins?

18 A He's my uncle.

19 Q Your daddy's brother?

20 A Father's brother, yes.

21 Q And how about Anthony Ray, how are you related to
22 him?

23 A His mother was my father's sister, and she's
24 passed.

25 Q How about Charles Henderson Mullins?

ARLIE MULLINS - DIRECT EXAMINATION

1 A That is my uncle Charlie's son.

2 Q And Brad Mullins?

3 A That is my uncle Tommy's boy, my dad and all of
4 them are brothers.

5 Q So all of these people we're talking about, they
6 are all your first cousins?

7 A That is correct.

8 Q I'm going to jump into it. Do you remember on or
9 about September 11, 2008, do you remember the week of
10 September of 2008?

11 A Yes.

12 Q You know what we're here for?

13 A Yes, sir.

14 Q Do you remember the day on or about September 11
15 of 2008 when you got in the car with Charlie?

16 MR. DIGGS: Object to the leading.

17 MR. HUCKS: I'll withdraw.

18 THE COURT: Rephrase.

19 Q (MR. HUCKS) Please explain to this jury what you
20 remember on or about September 11, 2008.

21 A The day in question, I guess, we were all hanging
22 out at my uncle Moon's house, Charles Senior.

23 Q When you say all of you, how many people were at
24 Moon's house?

25 A There was several of us. Of course my father,

ARLIE MULLINS - DIRECT EXAMINATION

1 myself, Tommy, which is Brad's father, Brad, Anthony,
2 Little Charlie, and there may have been a couple
3 others. Allen Ray may have been around there, and
4 Delilah was there, which is Big Charlie, Moon's, wife.
5 I think that was it.

6 Q So walk us through that day. What is going on?

7 A Everybody is just hanging out. We had a cookout,
8 drinking some beer. It started to get late, so somehow
9 or another Brad and Anthony, they asked Little Charlie
10 to take them --

11 Q I'll stop you for a second. We're -- you can't
12 tell us anything that Anthony may have said. Tell us
13 anything that you heard Brad. What anybody in the
14 world said, don't tell us, but anything that you heard
15 Brad say, tell us, okay, but nothing about what anybody
16 else said.

17 A Okay. So Brad asked Little Charlie for a ride to
18 one of his friend's house.

19 Q Do you know what the purpose of that trip was?

20 A Yes. They were going to pick up a bag of
21 marijuana.

22 Q Keep going.

23 A So, anyhow, I told Little Charlie I would ride
24 with him to give Brad a ride to his friend's so he
25 didn't have to ride by himself.

ARLIE MULLINS - DIRECT EXAMINATION

1 Q What kind of vehicle did you ride in?

2 A It was a green Blazer, small SUV Blazer.

3 Q How many doors did it have on it?

4 A Four.

5 Q And tell me where everybody was sitting inside
6 this Blazer.

7 A Let's see. Charlie was driving, I was in the
8 right-front passenger's seat and Brad and Anthony --
9 sorry, Brad was in the back.

10 Q And Anthony?

11 A He was in the rear -- the passenger's seat in the
12 back.

13 Q Do you know who was sitting behind who?

14 A No, I don't.

15 Q Okay. That is fine. Now, you get in a car, and
16 what happened -- SUV?

17 A From that point, we started to his friend's
18 house, and we drove for quite a while.

19 Q How long would you say you drove for?

20 A I would say probably 20, 30 minutes.

21 Q Who gave directions on how to get to this
22 friend's house?

23 A Brad did.

24 Q Explain how that kind of went.

25 A He was just giving directions from the rear of

ARLIE MULLINS - DIRECT EXAMINATION

1 the vehicle to Charles, Little Charlie, on how to get
2 to where they were going, where they wanted to go,
3 their destination. He kept giving him directions
4 pretty much turn by turn until we got to where they
5 wanted to be dropped off.

6 Q How long did you say the drive took?

7 A I would estimate 20 to 30 minutes.

8 Q And do you know where you ended up?

9 A On a dirt road.

10 Q What happened when you got to the dirt road?

11 A Little Charlie -- we went down the dirt road.

12 Little Charlie pulled up, and it was to a driveway,
13 didn't go into the driveway. Brad and Anthony exited
14 the vehicle and they went up to the driveway. From
15 that point, Little Charlie and I left and we drove up
16 the road for a few minutes. I don't know, it was
17 probably 15, 20 minutes we were gone.

18 Q Do you remember where you went?

19 A I believe we went to the store up the road, I'm
20 not sure.

21 Q After you drove around for 15, 20 minutes, what
22 did you do?

23 A After we did that, we came back to roughly the
24 same spot, and they got -- to pick them up.

25 Q And who did you all pick up?

ARLIE MULLINS - DIRECT EXAMINATION

1 A Brad and Anthony.

2 Q And what happened when you went to pick them up,
3 what did you do?

4 A When we stopped to pick them up, they popped the
5 rear hatch of the SUV and they put in -- they had a
6 large -- looked to be -- sleeping bag in their hands,
7 and they loaded that into the back of the vehicle and
8 shut the vehicle and got back in.

9 Q Hang on for me. When you say they popped the
10 hatch, I guess this thing would have had a glass hatch
11 or tailgate or something?

12 A Yes, sir, something like that. It would have
13 been -- I think you could either push button the glass
14 and let it up and then open the rear. Like a tailgate.

15 Q The tailgate went down?

16 A I believe it swung to the right -- I mean the
17 left of the vehicle. It was on a hinge.

18 Q So what did you see him put back there?

19 A It was a -- looked to be a sleeping bag to the
20 best of my...

21 Q Did you see what was in it?

22 A Not at that time, no.

23 Q What happens after they got back in the vehicle?

24 A There we started back towards my uncle Charlie's
25 house. We drove for a few minutes, and Charlie had to

ARLIE MULLINS - DIRECT EXAMINATION

1 pee, so he pulled over. We were on a paved road,
2 pulled over at the side of a bridge right there and got
3 out of the vehicle and took a pee, got back in. Brad
4 exited the vehicle, and they threw something over the
5 -- he threw something over the side of the rail, which
6 appeared to be a pillow case.

7 Q Now, was he -- I'm confused, so explain it. You
8 all were parked on a bridge?

9 A Yes. We stopped on the side of the bridge.

10 Q So he would have gotten out and slung
11 something -- he would have been slinging it over the
12 bridge?

13 A Yes, sir. He threw it over the railing of the
14 bridge.

15 Q You saw that?

16 A Excuse me?

17 Q Did you see that?

18 A Yes.

19 Q So then what happened?

20 A From there, he got back in the vehicle and we
21 went back to my uncle Charlie's house, Moon.

22 Q What happened when you got back to Moon's house?

23 A When we got back to Moon's, we pulled around the
24 back of the house. There was a little road, I think,
25 beside the breezeway or carport to the right. We

ARLIE MULLINS - DIRECT EXAMINATION

1 pulled back there, that is where they told him to go
2 park.

3 From there, they opened the hatch and took out --
4 which at that time you could plainly see, it was a
5 sleeping bag. Both of them unloaded it and put it into
6 the building, and from there they opened the bag which
7 was full of long guns.

8 Q Do you know the difference between a long gun and
9 pistol?

10 A Yes. It was rifles or shotguns.

11 Q How many would you say you saw?

12 A I would say approximately 10 to 15.

13 Q I'll show you a few things, if I may approach.

14 THE COURT: Certainly.

15 Q (MR. HUCKS) What was entered into evidence as
16 State's 8. Is that where you would have parked the
17 car?

18 A Yes, sir.

19 Q What is that, explain to the jury.

20 A This here was a tool shed that they kept the
21 tools in, and I think Moon used to keep a motorcycle
22 under the opened part back there.

23 Q What is significant, if anything, about the brown
24 wooden door?

25 A To my knowledge, nothing. I think Allen Ray may

ARLIE MULLINS - DIRECT EXAMINATION

1 have stayed in there.

2 Q I'll show you State's No. 4, which is not entered
3 into evidence -- which has been entered. State's 4,
4 what is this?

5 A That is Moon Mullins' house.

6 Q And that is where you would have been cooking out
7 all afternoon?

8 A Yes.

9 MR. DIGGS: Are they talking about things that have
10 been introduced into evidence?

11 MR. HUCKS: Yes, they are in evidence already.

12 MR. DIGGS: He was talking about Exhibit 4?

13 THE COURT: I think they are in.

14 MR. HUCKS: Yes, they are in. And No. 7, I'm
15 working on that in a minute.

16 MR. DIGGS: Thank you, Your Honor.

17 Q (MR. HUCKS) What happens once you get back to
18 Moon's house and you see this thing come out of the
19 back of the Blazer?

20 A At that time, they took it out and set it in the
21 building.

22 Q Who is "they"?

23 A They being Anthony and Brad.

24 Q What did they do with it?

25 A They put it inside the building and unfolded

ARLIE MULLINS - DIRECT EXAMINATION

1 it -- or unzipped it, I'm sorry -- and then you could
2 see the guns. From that point, I said I don't want
3 anything to do with this, and walked away.

4 Q Where did you go?

5 A I went in the house.

6 Q Now, what happened once you went into the house?
7 Who did you talk to?

8 A I talked to my father and got something to drink,
9 water, talking to my father. After that, I walked back
10 out on the back porch.

11 Q I'll stop you for a second. I'll show you what
12 is marked as State's Exhibit No. 7?

13 MR. DIGGS: We don't object.

14 THE COURT: Without objection.

15 (State's Exhibit 7 admitted.)

16 Q (MR. HUCKS) What is that?

17 A The back porch of Moon's home.

18 Q Is that where you would have went?

19 A I was standing over here (indicates).

20 Q I'll walk to the side. I know this is tough for
21 the jury, but point out where you were standing.

22 A Around this rail.

23 Q And this shed, is that the same shed we looked at
24 in the other picture?

25 A Yes, sir.

ARLIE MULLINS - DIRECT EXAMINATION

1 Q So what, if anything, did you see or hear while
2 you were in the back porch?

3 A I was standing there smoking a cigarette. Brad
4 and Anthony, they were standing over there talking to
5 my uncle Moon. They were kind of whispering amongst
6 themselves, and I heard them say that they may have
7 killed somebody, so --

8 MR. HUCKS: Your Honor, the State would move to
9 republish all of these, the new exhibit and exhibits.

10 THE COURT: They are all in?

11 MR. HUCKS: Yes, sir.

12 Q (MR. HUCKS) What happened after you overheard this
13 conversation?

14 A From that point, I went back in the house and sat
15 around with my father for a bit, and we went to bed.

16 Q Did you stay at Moon's?

17 A Yes. That's about it.

18 Q Did you ever see any of these guns again?

19 A Did I ever -- no, sir.

20 Q Did you ever touch one, pick one up, anything
21 like that?

22 A No.

23 Q Did you have an occasion -- if ever, did you have
24 occasion to go to Louisiana with this crowd?

25 A About, I guess, after the night in question, it

ARLIE MULLINS - DIRECT EXAMINATION

1 was probably, I would say, five days, three, five days
2 later we left to go to Louisiana to do hurricane
3 relief.

4 Q How long did you stay there?

5 A My father and I, we stayed approximately three
6 days to -- three to five days, and we left. He and I
7 and Brad's father, Tommy, he left with us as well, we
8 went to Mississippi, Macon, Mississippi.

9 Q Now, I'll ask you, what are you sitting in this
10 courtroom charged with here today?

11 A I'm charged with murder, burglary and I believe
12 theft.

13 Q Have you been promised anything for your
14 testimony?

15 A No, sir.

16 MR. HUCKS: Thank you. No further questions.

17 CROSS-EXAMINATION

18 BY MR. DIGGS:

19 Q Arlie, if I may call you that?

20 A That's fine.

21 Q Mr. Mullins, do you remember when you were
22 interviewed back up in West Virginia, April the 2nd,
23 2011?

24 A Yes.

25 Q Do you remember the detectives coming up there

ARLIE MULLINS - DIRECT EXAMINATION

1 and talking to you about this case?

2 A I do.

3 Q You were pretty upset about it in terms of you
4 didn't want to get in trouble for this stuff?

5 A That's correct.

6 Q You made it clear to them you didn't want to have
7 anything to do with it, you didn't want to get in
8 trouble for something you didn't do?

9 A Exactly right.

10 Q And do you remember at about 13 minutes and 30
11 seconds into your interview where you said I didn't
12 have any idea about what these guys were doing?

13 A I do.

14 Q Now, did you follow that up by saying that later
15 I learned -- I heard Brad say he was killing somebody?

16 A No, I didn't say Brad.

17 Q You didn't say anything, did you?

18 A Excuse me?

19 Q You didn't say anything?

20 A I said "they." I overheard they.

21 Q At that time you overheard them?

22 A I overheard they, them, Brad and Anthony.

23 Q Did you tell the police that you heard Brad and
24 Anthony discussing a murder back in April 2, 2011?

25 A Yes, I did.

ARLIE MULLINS - CROSS-EXAMINATION

1 Q Did anybody ever come and ask you to point out
2 where the gun or the bag had been thrown over the
3 bridge?

4 A Yes..

5 Q Did you help them do that?

6 A Did I help them do what?

7 Q Did you help the law enforcement authorities?

8 A Yes, I went with them.

9 Q And did they find the gun?

10 A No, sir.

11 Q Did they find anything remotely similar to what
12 you said you saw him throw over the bridge?

13 A Not to my knowledge.

14 Q Did you have any trouble remembering where it
15 was?

16 A I didn't know where it was exactly, because I'm
17 not from the area. I knew it was on a bridge.

18 Q Did it look like the one you saw Brad throw the
19 bag over?

20 A I couldn't tell you that. It was dark.

21 Q Well, why did they select that bridge to do the
22 search?

23 A They didn't select just one bridge. We went to
24 many bridges.

25 Q Even in that situation, they never found anything

ARLIE MULLINS - CROSS-EXAMINATION

1 that fit the description of what you said you saw --

2 A Not to my knowledge.

3 Q -- thrown over the side? Did you ever in the
4 presence of Charles, Moon -- Charles Senior, a/k/a
5 Moon, did you ever try and tell him that they had
6 admitted killing somebody?

7 A No.

8 Q Mr. Mullins, I appreciate it.

9 MR. DIGGS: Nothing further.

10 THE COURT: Redirect?

11 MR. HUCKS: Nothing, Your Honor.

12 THE COURT: You may step down.

13 MR. HUCKS: If I could have the Court's indulgence
14 to speak with the bailiffs?

15 MR. DeBUSK: May Mr. Arlie Mullins be excused from
16 his subpoena?

17 MR. DIGGS: No objection.

18 THE COURT: We've been at it for an hour and 20
19 minutes. Let's give the jury a break.

20 (The jury exits at 11:07 a.m., and the following is
21 heard out of the presence of the jury.)

22 THE COURT: We'll be at ease for about ten minutes.

23 (Whereupon, a recess was taken.)

24 THE COURT: Bring in the jury.

25 (The jury enters at 11:24 a.m., and the following

ARLIE MULLINS - CROSS-EXAMINATION

1 is heard in the presence of the jury.)

2 THE COURT: Come around, sir, if you would.

3 (ANTHONY RAY, having been duly sworn, testified as
4 follows:)

5 THE CLERK: State your full name and spell your
6 last for the Court.

7 THE WITNESS: Anthony Earl Ray, R-A-Y.

8 DIRECT-EXAMINATION

9 BY MR. HUCKS:

10 Q Good morning. Where do you live?

11 A I think it is Ridgeland, South Carolina.

12 Q Where do you live?

13 A Leiber Correctional Institution.

14 Q What are you doing at Leiber?

15 A Fifteen years.

16 Q For why?

17 A Because we committed a first degree burglary.

18 Q Are you in prison -- or why are you in prison
19 right now?

20 A First degree -- I got convicted of first degree
21 burglary.

22 Q And is that why we're here today?

23 A Yeah.

24 Q Is it the same thing we're here for today?

25 A Yes, sir.

ANTHONY RAY - DIRECT EXAMINATION

1 Q Are you still charged with any crimes at this
2 point in time?

3 A Yes, sir.

4 Q What are you charged with?

5 A Armed robbery and murder.

6 Q Are these in relation to these exact same sets of
7 circumstances we're here for today?

8 A Yes, sir.

9 Q How are you related to Charles Edgar Mullins, or
10 Moon?

11 A That is my uncle.

12 Q That would be your --

13 A Mama's brother.

14 Q How are you related to Little Charlie?

15 A First cousin.

16 Q That would be?

17 A Moon's son.

18 Q How about Arlie Mullins?

19 A That is my first cousin.

20 Q How would that be related?

21 A Another one of my mother's brothers.

22 Q How are you related as you sit here today to Brad
23 Mullins?

24 A My first cousin.

25 Q Same relationship across the board?

ANTHONY RAY - DIRECT EXAMINATION

1 A Yeah.

2 Q Now, do you remember the day of September 11,
3 2008?

4 A Yes, sir.

5 Q I'm going to ask you to walk this jury through
6 the events that happened that day from your
7 perspective; can you do that?

8 A Yes, sir.

9 Q So what happened that day? Let's talk about the
10 daytime, what happened?

11 A Well, me and two other gentlemen drove from North
12 Carolina to South Carolina to Moon's house. We had a
13 few beers, few hours later, the four of us left.

14 Q The four -- what did you all do at Moon's house
15 during the day?

16 A We were drinking, hanging out.

17 Q I know you are nervous. Calm down a little bit.
18 I'll ask you to tell the story a little bit as we talk,
19 okay?

20 A Yeah.

21 Q What did you all do during the day? Was it a
22 cookout, cook --

23 A We cooked on the grill, drank a few beers.

24 Q How many people would you say were there?

25 A I would say eight, ten people.

ANTHONY RAY - DIRECT EXAMINATION

1 Q A fair amount?

2 A Yeah.

3 Q They weren't all Moon's young'uns, were they?

4 A Not all of them.

5 Q So you cook and eat and have beers. What
6 happened?

7 A Well, the four of us -- I don't know how the
8 conversation came up, but along with Moon we got on the
9 subject of going to Mr. Elliott's house for a robbery
10 of his guns.

11 Q The four of you is who?

12 A Me, Little Charlie, Arlie Mullins and Bradley
13 Mullins.

14 Q And where do you all have this conversation at?

15 A I think right under the carport.

16 Q I'll approach you and show you a couple of
17 things. I want you to tell me if you recognize them.

18 MR. HUCKS: They are all in evidence, Your Honor.

19 Q This is entered into evidence as State's 4. What
20 is that?

21 A Moon's trailer.

22 Q Is this the house you had been at all day?

23 A Yes, sir.

24 Q Let me ask you to go back a little ways. While
25 you were in town, why were you in Horry County or

ANTHONY RAY - DIRECT EXAMINATION

1 Galivants Ferry?

2 A We came down to meet up to go to Louisiana,
3 because there was hurricane, to do some storm relief.

4 Q So what kind of work did you do prior to being
5 incarcerated?

6 A A carpenter.

7 Q What kind, build cabinets?

8 A Anything, yeah. I mean, roofing work, siding,
9 framing, paint.

10 Q So you guys are at Moon's, start talking. What
11 do you talk about?

12 A Well, we had been there all day and -- well, a
13 good part of the day, and the subject came up about
14 going to rob this house for guns.

15 Q Now, did anybody at the group indicate that they
16 knew Mr. Elliott?

17 A I'm not sure, because his name never came up.
18 I'm not sure. I mean, right then, no.

19 Q So did you know the gentleman's name whose home
20 you were going to?

21 A No. No.

22 Q So what happens once this conversation starts
23 about going to his house?

24 A Well --

25 Q Who starts the conversation?

ANTHONY RAY - DIRECT EXAMINATION

1 A I'm not sure who started it. I'm not sure. But
2 the five of us were there talking about it.

3 Q All of you, together?

4 A Yeah.

5 Q You said five instead of four. Who is the
6 fifth person?

7 A Moon Mullins.

8 Q Moon Mullins?

9 A Yes, sir.

10 Q Now, what is this conversation about?

11 A Well, the subject came up about this house had a
12 large amount of guns in it.

13 Q And what did you all decide to do?

14 A We decided to go get them.

15 Q What did you do then?

16 A Well, it got about twilight. It wasn't dark when
17 we left.

18 Q When you say "twilight," what do you mean?
19 Before dark?

20 A It is just approaching dark, you know, not quite
21 dark yet, but it wasn't -- daylight was falling down.

22 Q What do you all get into when you leave?

23 A Little Charlie's Blazer.

24 Q Where is everybody sitting in the Blazer?

25 A Little Charlie is driving, Arlie is sitting in

ANTHONY RAY - DIRECT EXAMINATION

1 the passenger's seat, Bradley sitting behind Little
2 Charlie and I'm sitting behind the passenger's seat,
3 behind Arlie.

4 Q Where do you all go?

5 A I'm not exactly sure.

6 Q Let me rephrase. Who told you where to go?

7 A Bradley Mullins.

8 Q How did he do that?

9 A Well, he was sitting in the back seat and
10 pointing the way.

11 Q So he's in the back seat. Who is driving?

12 A Little Charlie.

13 Q So --

14 A He's directly behind Little Charlie.

15 Q And this man is telling him how to go?

16 A Yes, sir.

17 Q How is he doing it like, Take a left, take a
18 right?

19 A Yes, sir.

20 Q Now, what happens when you get to where you are
21 going?

22 A Well, we get out and --

23 Q Who gets out? Explain it for me.

24 A All four of us got out, because like I said, me
25 and Brad were in the back seat, so it was a small

ANTHONY RAY - DIRECT EXAMINATION

1 truck, you know. All four of us got out. I approached
2 the front door, he approached the back door. I beat on
3 the front door, no answer. No answer. I hear the back
4 door window break. I go around to the back, and he's
5 gained access to the house through the back glass
6 window on the back porch.

7 Q Hold on a moment. I'm going to show you
8 something. I'll show you a couple of things, if I can
9 find them. This is State's 73 already in evidence. Do
10 you recognize that?

11 A Yeah, it was dark when we got there.

12 Q What is that?

13 A That is Mr. Elliott's house.

14 Q Is that the house you went to that night?

15 A Yes, sir. I think. I mean, it is all covered
16 up. I mean, we weren't that far off.

17 Q Does that look to be it?

18 A Yeah, it looks to be it.

19 MR. HUCKS: This is already in evidence, I'm just
20 publishing it to the jury.

21 THE COURT: All right.

22 Q (MR. HUCKS) I'll show you State's No. 78, which is
23 already entered. Do you recognize that?

24 A That is the back door.

25 Q And who broke that window out?

ANTHONY RAY - DIRECT EXAMINATION

1 A Bradley Mullins.

2 Q Why was that window broken out?

3 A To gain access to the house.

4 Q Why were you gaining access to the house?

5 A To rob it, commit first degree burglary.

6 Q When you pulled up to the man's house, was it
7 dark or light outside?

8 A It was dark.

9 Q Nighttime?

10 A Yes, sir.

11 Q And how long did you say you beat on that door?

12 A I would say a good five minutes.

13 Q What was the purpose?

14 A To see if he was home.

15 Q Why was that important?

16 A Because, I mean, we wouldn't have went in if he
17 was home.

18 Q What was your intention when you pulled up at
19 that house that I just showed you a picture of?

20 A To rob the guns.

21 Q To steal?

22 A Yeah.

23 Q At night?

24 A At night. It is not something you do in the
25 daytime.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What happens when you get in the house?

2 A Well, there is -- Brad comes first, I come around
3 to the back. There is guns there. Start putting the
4 guns on a blanket, pulling them out to the back, longs
5 guns, shotguns and rifles.

6 Q How many guns would you say you took out of that
7 house?

8 A Shotguns and rifles?

9 Q Yeah.

10 A Probably anywhere from 15 to 20.

11 Q All right.

12 A It was quite a bit, around 15, 20 or so.

13 Q How long would you say you guys drove in that
14 truck going to that house?

15 A Fifteen, 20 minutes.

16 Q I'm going to show you what has previously been
17 entered as State's Exhibit 69. Do you recognize this?

18 A Yeah.

19 Q What is this?

20 A The inside of the house.

21 Q Is that the house you were in?

22 A Yes, sir.

23 Q The house you all were robbing?

24 A Yes, sir.

25 Q Is that the house you were there intending to rob

ANTHONY RAY - DIRECT EXAMINATION

1 at nighttime?

2 A Yes, sir.

3 Q I'll walk around over here. I'm going to ask you
4 to point some stuff out to the jury.

5 Is this a true and accurate reflection of what the
6 house looked like?

7 A Yeah.

8 Q Where did you come in the house at?

9 A Right here.

10 Q Where did you go once you came in the house?

11 A We came in --

12 Q Pull the microphone --

13 A We went in all of the rooms.

14 Q Where did you collect guns from?

15 A There was guns in every room.

16 Q Kind of point it out.

17 A There was guns here, gun cabinet here, guns
18 behind closet doors, dining room, I mean guns and
19 bullets scattered throughout the whole house.

20 Q How many guns did you see in the house?

21 A Shotguns and rifles?

22 Q Yeah.

23 A Fifteen, 20.

24 Q How many handguns?

25 A Probably just as many.

ANTHONY RAY - DIRECT EXAMINATION

1 Q As you are coming through the house, walk us
2 through what happened. You and Brad are in this man's
3 house stealing his stuff; what do you do with it?

4 A Pulling it out the back door and sticking them on
5 the blanket.

6 Q Where is the blanket at that you are talking
7 about?

8 A Laying there (indicates).

9 Q Who is putting the blanket in the backyard to put
10 the stuff on?

11 A I did.

12 Q While you are in there taking stuff, what are you
13 doing? Making trips? How does this work?

14 A Yeah, making trips, opening cabinet doors,
15 opening closets. We weren't trashing the -- trashing
16 the house.

17 Q Did you open drawers?

18 A Yeah, cabinets, drawers.

19 Q What is this here?

20 A That is a gun cabinet.

21 Q Now, what was in that gun cabinet?

22 A Rifles, shotguns and pistols.

23 Q Now, at some point in time you get to a locked
24 door. Show me which door was locked?

25 A This door here.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What was that door to?

2 A To the bedroom.

3 Q What did you think that door was to?

4 A We had been there probably 20, 25 minutes, a good
5 bit, and we figured that is probably where most of the
6 guns were.

7 Q Hang on for me. You were in this house 25
8 minutes?

9 A 20, 25 minutes, yeah. A good while.

10 Q And while you were there, what happens when you
11 get to that door?

12 A It is locked. Big wooden door, and it is locked.

13 Q So what happens?

14 A Brad Mullins kicked the bottom panel in with his
15 foot.

16 Q What happens when he kicks the door?

17 A His foot gets stuck, he fell down and he went to
18 pull the foot out, and seconds later Mr. Elliott comes
19 out shooting.

20 Q When you say "Mr. Elliott," you are talking about
21 the man living in the house?

22 A I didn't know his name, but, yeah.

23 Q What was the man wearing that came out of the
24 bedroom?

25 A Absolutely nothing.

ANTHONY RAY - DIRECT EXAMINATION

- 1 Q He was naked?
- 2 A Naked.
- 3 Q What did he have in his hand?
- 4 A A pistol.
- 5 Q What kind?
- 6 A Revolver..
- 7 Q A revolver?
- 8 A Yeah.
- 9 Q He comes out. What is he doing?
- 10 A He was shooting.
- 11 Q What happens when he starts shooting?
- 12 A I tried to run for the door.
- 13 Q Let me show it to the jury again. Keep this up a
- 14 few more minutes.
- 15 A Right here, I ran for the door.
- 16 Q Where were you at when you started hearing
- 17 shooting?
- 18 A I was here at the gun cabinet.
- 19 Q So he was --
- 20 A Coming out the door. Brad was there, and we took
- 21 off running.
- 22 Q So when you saw the gun --
- 23 A Ran.
- 24 Q Which way did you go?
- 25 A Through here, trying to come out that door.

ANTHONY RAY - DIRECT EXAMINATION

1 Q Could you get out that door?

2 A No, it was locked.

3 Q Then what is the next thing you see?

4 A Brad runs over here in this corner here, and
5 Mr. Elliott comes out and has a gun pointed on him.

6 Q Put that microphone closer to your face, I can
7 hardly hear you and I'm next to you.

8 A Brad was here. Mr. Elliott was here with a gun
9 turned on him. I turned around. As we had been
10 collecting guns, I had a little .22 rifle in my hand.
11 I hold it up, screamed at him to put the gun down, put
12 the gun down. When he points the gun at me, I shot
13 him. He fell down, and Bradley goes on top of him.
14 This is kind of behind the couch, but Brad -- by the
15 time I got up there, Brad shot him in the head.

16 Q How did Brad shoot him in the head?

17 A It was with a pistol.

18 Q Was he standing at his feet or head?

19 A At his head.

20 Q What did you see when he shot him in the head
21 with his own gun?

22 A His head exploded.

23 Q Now, where did you shoot Mr. Elliott?

24 A In the shoulder, side area.

25 Q Why did you shoot him?

ANTHONY RAY - DIRECT EXAMINATION

1 A Because he pointed his gun at me.

2 Q You were robbing his house, he had a right to

3 point a gun at you, didn't he?

4 A Yeah.

5 Q So you are sitting in front of this jury

6 admitting that you shot this man?

7 A Yes, I did.

8 Q Where did you shoot him?

9 A In the side area. I thought it was the shoulder.

10 Q And where did this man here (indicates) shoot

11 him?

12 A In the head.

13 Q I'll show you a few things and I'll ask you to

14 identify them. If you can't, that is all right.

15 State's No. 36, what is that?

16 A The bedroom door. That is where Brad kicked it

17 out.

18 Q What bedroom door?

19 A Mr. Elliott's.

20 Q The bedroom the man came out of?

21 A Yes, sir.

22 Q What is that hole in it?

23 A That is where Brad kicked it out.

24 Q That is where his foot got stuck?

25 A Yeah.

ANTHONY RAY - DIRECT EXAMINATION

- 1 Q I'll show you State's 17, what is that?
- 2 A That's the living room.
- 3 Q What living room?
- 4 A Mr. Elliott's living room.
- 5 Q What is that blanket there?
- 6 A That is Mr. Elliott.
- 7 Q I'll show you State's No. 43, what is that?
- 8 A That is one of the closets in the house.
- 9 Q What was in that closet?
- 10 A Guns and bullets. Guns and bullets.
- 11 Q Did you steal any guns out of there?
- 12 A Yeah.
- 13 Q Did Brad steal any guns?
- 14 A Yeah.
- 15 Q Were you acting in concert together the entire
- 16 time you were in that man's house?
- 17 A Yes, sir.
- 18 Q I'll show you State's No. 35, what is that?
- 19 A His living room and the gun cabinet.
- 20 Q What gun cabinet?
- 21 A The one in the living room. It had rifles and
- 22 pistols in it.
- 23 Q The one you pointed out on the diagram?
- 24 A Yes, sir.
- 25 Q State's No. 86, what is that?

ANTHONY RAY - DIRECT EXAMINATION

1 A Mr. Elliott's bedroom.

2 Q What is that at the bottom?

3 A The door that was kicked out. That is the door,
4 the pieces of the door.

5 Q Where someone's foot went through it?

6 A Yes.

7 Q Whose foot went through it?

8 A Bradley Mullins'.

9 Q What did you all do after you shot Joe Elliott?

10 A When I shoot him in the shoulder, he fell down.
11 Bradley shoots him in the head. I exit out of the back
12 of the house. Brad stays in there a minute. I run to
13 the truck. Brad eventually comes out with a sack of
14 pistols.

15 Q What kind of sack?

16 A Like a pillow case full of pistols.

17 Q What happens?

18 A We get in the truck and leave.

19 Q Did you have any conversation once you get in the
20 truck?

21 A It was pretty heated.

22 Q What do you mean?

23 A Well, everybody was yelling at each other and it
24 was -- I don't remember what we said, but, you know.

25 Q What would you have said?

ANTHONY RAY - DIRECT EXAMINATION

1 A I mean, apparently -- I mean, we shot him and
2 Brad killed him and, I mean, I don't remember exactly
3 everything that was said.

4 Q You don't remember? That is fine. Where did you
5 go?

6 A Went back to Moon's house.

7 Q What did you do at Moon's house?

8 A We go to the back of the shed, guns get pulled
9 out of the truck and in the shed.

10 Q I'll show you something.

11 A That is the shed.

12 Q State's 8. What is significant about that shed?

13 A That's where we went to and took the guns in.

14 Q Where did you put the guns in the shed?

15 A In this area.

16 Q Blue side or --

17 A Blue side.

18 Q Where did you put them in there?

19 A There was an opening, and I think there was a
20 bench, and we were setting them around.

21 Q How many guns were there?

22 A It was quite a bit.

23 Q Who helped unload them? Who unloaded them out of
24 the Blazer and stuffed them in that shed?

25 A I'm not sure who got them out.

ANTHONY RAY - DIRECT EXAMINATION

1 Q Did you do it?

2 A No, sir.

3 Q Did Brad do it?

4 A I'm not sure.

5 Q That's fair. And No. 4?

6 A That is Moon's house.

7 Q That is the house you guys returned to?

8 A Yes, sir.

9 Q What happens once you get back to Moon's house
10 and unload the guns?

11 A The pistols are out, rifles are out. Moon comes
12 out, and everybody is talking and holding a pistol and
13 keeping it. Everything decided not to keep the
14 pistols, put them back in the sack and take them and
15 dispose them.

16 Q Where did you dispose of them?

17 A A swamp.

18 Q Drove to a swamp and threw them out?

19 A Yeah.

20 Q I'll show you -- to get back to your story --
21 state's 88.

22 A The gun cabinet.

23 Q What gun cabinet?

24 A In Mr. Elliott's living room.

25 Q What is that cabinet at the bottom opened for?

ANTHONY RAY - DIRECT EXAMINATION

1 A That is where a large part of the pistols were.

2 Q And in the upper half?

3 A Rifles, shotguns. There was guns everywhere.

4 Q You thought you hit the mother load, huh?

5 A Yeah.

6 Q What happened after Moon came out and you started
7 talking and you disposed of the pistols, what happened
8 after?

9 A Bradley left before we disposed of the pistols.
10 Me and Little Charlie and Brad got in Little Charlie's
11 other truck, full-size truck, and drove to the swamp
12 and disposed of them, got thrown in the swamp.

13 Q Were they still --

14 A Still in the same bag.

15 Q Where did you all go?

16 A I'm not -- back to Moon's house.

17 Q Then what happened?

18 A Went to bed.

19 Q Went to bed?

20 A Uh-huh.

21 Q How about Monday, what did you do then, following
22 Monday?

23 A I'm not sure exactly what day -- it was a few
24 days later we left to go to Louisiana.

25 Q What did you go to Louisiana for?

ANTHONY RAY - DIRECT EXAMINATION

1 A Storm damage, to help with a hurricane.

2 Q Is that why you went there, to steal the guns to
3 get money, or what?

4 A No. We had money to go on. I'm not sure why we
5 did it.

6 MR. HUCKS: All of the exhibits I showed the
7 witness are already in evidence, if I can publish them
8 to the jury?

9 THE COURT: All right.

10 Q (MR. HUCKS) What did you do when you got to
11 Louisiana?

12 A We were working, did roofing work, mostly roofing
13 work.

14 Q How long did you stay in Louisiana?

15 A I think about a week or two.

16 Q And then did you see any of those guns again?

17 A Yeah.

18 Q How? Tell me about it. What happened to those
19 guns from Mr. Elliott's house?

20 A That night, after we were out there in the shed,
21 my Uncle Verne, Allen Ray, ended up putting the rifles
22 back in the tool trailer sitting out there.

23 Q Was that tool trailer supposed to go with you all
24 to Louisiana?

25 A Yeah. Yeah. We get down there, and after a

ANTHONY RAY - DIRECT EXAMINATION

1 couple of weeks, we were staying at this woman's house
2 and my uncle Moon sold all the guns to another
3 gentleman. I'm not sure if she introduced him or -- I
4 don't know remember how that gentleman came over, I'm
5 not sure.

6 Q Somebody came and bought the guns?

7 A Yeah.

8 Q Did you all come back?

9 A No. Before the guns were stolen, my cousin,
10 Arlie, and his dad --

11 Q Before the guns were stolen?

12 A Before they were sold I mean. Arlie, his dad and
13 my uncle Tommy --

14 Q Who is Tommy?

15 A That is his dad, Brad's dad. They left to go to
16 Mississippi, I believe. That was before the guns were
17 sold. And then after the guns were sold, we went to
18 Texas.

19 Q How long did you stay in Texas?

20 A We didn't stay there long. A week, I would say,
21 a few days.

22 Q Then what happened? Where did you go?

23 A We came back to Moon's house.

24 Q And that was back to Horry County?

25 A Yeah.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What did you do once you got back to Horry
2 County? Did you hang around?

3 A We hung around for a day or, so and then Moon
4 took me home, Moon and Brad.

5 Q Where is home?

6 A North Carolina.

7 Q What part?

8 A Johnson County, Smithfield.

9 Q Near Raleigh?

10 A 40 miles east of Raleigh.

11 Q Did you ever tell anybody about what happened
12 that night?

13 A My wife asked me about it.

14 Q You say your wife, who is that?

15 A Latonya Ray.

16 Q When was this?

17 A I'm not sure.

18 Q Before you were arrested?

19 A Oh, yeah. Yeah. Way before.

20 Q You are talking about a two-year window?

21 A Yeah. I would say about seven, eight months
22 after it happened. She heard about it.

23 Q She asked you about it?

24 A Well, yeah.

25 Q What did you tell her?

ANTHONY RAY - DIRECT EXAMINATION

1 A I told her some of it. I didn't tell her all of
2 it, but the basics, that I shot him and Brad killed
3 him.

4 Q Why did you tell her, of all people?

5 A That's my wife. I don't keep many secrets.

6 MR. HUCKS: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. DIGGS:

9 Q That is curious. Did you -- were you aware that
10 Latonya, after you talked to Latonya about it, she
11 called Delilah?

12 A I'm pretty sure she didn't. I don't know. I've
13 seen the statements, but I don't know.

14 Q You don't know if she did or not?

15 A She never spoke to me about it. I don't think
16 she even had Delilah's number. I'm not sure.

17 Q Okay. Let's go back and talk to you a little bit
18 more about what happened as the four of you were going
19 over to the residence. Your testimony is that you
20 didn't know it was Mr. Elliott, per se, you just knew
21 it was a place?

22 A Uh-huh.

23 Q A guy lived there with a lot of guns?

24 A Yeah.

25 Q And when you, in fact, arrived in town that day,

ANTHONY RAY - CROSS-EXAMINATION

1 the other four of them, that being Arlie, Charlie,
2 Charlie Senior, or Mr. Moon, and Brad were already
3 talking about this?

4 A I'm not sure.

5 Q But at least that is the --

6 A The impression, yeah.

7 Q -- impression you had? And that is what you told
8 the investigators back in July of this year?

9 A Yes, sir.

10 Q And Moon knew the guy?

11 A I'm not sure.

12 Q He rented from him before?

13 A I don't think Moon did.

14 Q But you told investigators that he had?

15 A No. Bradley had.

16 Q Yeah, but you told investigators that Brad and
17 Moon rented --

18 A I don't know if Moon rented off of him or not.

19 Q Brad and Moon rented off the guy before. That is
20 at 6:34, six minutes and 34 seconds into your
21 interview.

22 Now, did you have the impression that Moon had been
23 by there earlier in the day?

24 A Yeah. Yeah. That was the impression, that he
25 wasn't home.

ANTHONY RAY - CROSS-EXAMINATION

1 Q That is how you learned or assumed that
2 Mr. Elliott -- or no one would be home that evening?

3 A Yeah. Yeah. We was told he wasn't home.

4 Q How much did moon figure into the planning, if
5 you know, about the burglary?

6 A I mean, he didn't say, You boys go down. He knew
7 we was going to do it beforehand.

8 Q You have a pretty close relationship with Moon?

9 A Sometimes. We all have.

10 Q But you and he had probably a special
11 relationship as opposed to the other cousins?

12 A I don't know about that.

13 Q But it was a good relationship?

14 A At times, yeah. At times.

15 Q It was agreed that the four of you would go and
16 break in and take the guns?

17 A Yeah.

18 Q The four of you guys, who were eventually the
19 ones who got in the Blazer and drove over there?

20 A Yeah.

21 Q And that was Little Charlie, and we met him. I
22 know you weren't in the courtroom, but he's testified.
23 Arlie?

24 A Yes, sir.

25 Q He's testified, too. And then you and Brad?

ANTHONY RAY - CROSS-EXAMINATION

- 1 A Yes, sir.
- 2 Q The four of you were --
- 3 A Only me and Brad entered the house.
- 4 Q I understand that. But the four of you
- 5 understood there was going to be a burglary?
- 6 A Oh, yeah. Oh, yeah.
- 7 Q You all took gloves?
- 8 A Yeah. I was wearing cotton gloves.
- 9 Q So you wouldn't leave any prints?
- 10 A Yeah.
- 11 Q It was your understanding that all four of you
- 12 would go in the house and take whatever valuables you
- 13 could find, but especially the guns?
- 14 A Yeah.
- 15 Q Now, in your statement, prior statement, Charlie
- 16 was the driver and Arlie was in the front?
- 17 A Yes, sir.
- 18 Q And where were the other two seated?
- 19 A Brad is directly behind Little Charlie, and I'm
- 20 directly behind Arlie.
- 21 Q Okay. Now, who goes to the front door?
- 22 A I do.
- 23 Q You notice there was a pickup or something in the
- 24 front yard?
- 25 A Yeah.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Now, have you looked at the photos of the house?
2 I was sitting back there and I didn't see specifically.
3 Did the solicitor show you any photographs of
4 Mr. Elliott's house?

5 A Yeah.

6 Q You saw a pickup in the front yard?

7 A I'm not sure if it was front or side.

8 Q You saw a vehicle there?

9 A Yeah.

10 Q Would that be the vehicle we're looking at, this
11 Exhibit 69, is that the vehicle?

12 A Yeah.

13 Q That you saw?

14 A It is kind of on the side.

15 Q So when you said you saw a pickup in the front,
16 you meant that vehicle, wherever it was located?

17 A Yeah. When you are coming down the driveway it
18 is kind of....

19 Q So you all -- everybody saw that?

20 A Yeah.

21 Q When did you first see that?

22 A When we first came down the drive.

23 Q Now, you are standing there at the front door
24 banging on the door?

25 A Pretty good, yeah.

ANTHONY RAY - CROSS-EXAMINATION

1 Q In an attempt to wake up or arouse whoever was
2 there so they would come to the door?

3 A Yeah.

4 Q Were you banging on the door before you saw the
5 vehicle, or afterwards?

6 A After. We come up and you could see the vehicle
7 when you got out.

8 Q So you got out and walked back around to the
9 front?

10 A I don't...

11 Q You tell me what happened.

12 A We got out and went straight to the front. You
13 don't walk around. I mean, you went straight to the
14 front.

15 Q If I'm not mistaken, in your interview you said
16 you saw the pickup in the front yard and you went over
17 to the front door?

18 A Uh-huh.

19 Q But isn't it true you can't see that pickup from
20 the front?

21 A You can see it when you come in the driveway.

22 Q Up here is the front door, where my thumb is,
23 correct?

24 A Yeah.

25 Q How were you able to see?

ANTHONY RAY - CROSS-EXAMINATION

1 A When we came around.

2 Q Where did you all drive to?

3 A They stopped the truck about a hundred yards
4 before we got to the house.

5 Q Yeah, but then what did you do? You walked
6 around to the back?

7 A No, I didn't walk around to the back.

8 Q But you --

9 A You saw the back end of the truck.

10 Q You could see it from where you all were coming
11 from, from whatever direction? You were on the way to
12 the front door, but you saw this car parked here?

13 A Yeah.

14 Q So you felt -- banged on the door, and you said
15 for five minutes. That is pretty long.

16 A It was a couple of minutes. I was beating on the
17 door long enough time for Brad to go to the back.

18 Q Any reasonable person would have thought if
19 anybody was in there, they would have --

20 A He would have come up, yeah.

21 Q What time was it?

22 A It was dark when we got there. It wasn't dark
23 when we left, so a period between twilight.

24 Q And this being in September?

25 A Between 6:00, 8 o'clock. It was dark when we got

ANTHONY RAY - CROSS-EXAMINATION

1 there.

2 Q Then Arlie and Brad --

3 A They were out of the truck.

4 Q They got out of the truck and went to the back?

5 A I don't know where they went.

6 Q In your statement in July you told the
7 investigator, quote, Arlie and Brad went to the back.

8 A They did after the shooting started, yeah.

9 Q This indicates to me, the way I read your
10 statement, that they went to the back before they went
11 in the house.

12 A Them two never went in the house, and I didn't
13 know -- I was at the front.

14 Q You said Arlie and Brad --

15 A They were out of the vehicle, I'm not sure where
16 exactly they went.

17 Q You told them, though, in July, that that is
18 where they went?

19 A I said --

20 Q Arlie and Brad?

21 A No. Brad went around to the back. Arlie and
22 Little Charlie were out.

23 Q Why did you tell them in July that Arlie went to
24 the back?

25 A I don't know where they went. I don't know if

ANTHONY RAY - CROSS-EXAMINATION

1 they went to the back. I didn't see them, I was at the
2 front.

3 Q Arlie and Brad went somewhere?

4 A Arlie and Little Charlie. Brad went to the back.

5 Q But you gave a statement to the officers back in
6 July of this year?

7 A Yeah.

8 Q And you deny you made the statement that Arlie
9 and Brad went to the back?

10 A I'm not sure.

11 Q You could have made it?

12 A It is possible.

13 Q During that interview?

14 A It's possible.

15 Q When you went around to the back, what did you
16 observe at that point?

17 A I stood at the front when I heard the back window
18 break, and that is when I went to the back. When I got
19 around to the back, Brad already gained access to the
20 inside of the house, and I went in after him.

21 Q Then what did you see at that point, if anything?
22 What happened at that time?

23 A We started robbing the house.

24 Q Who -- did you see Brad after you came around to
25 the back to go in?

ANTHONY RAY - CROSS-EXAMINATION

1 A He was already in the house.

2 Q What was he doing when you got there?

3 A Grabbing guns.

4 Q Didn't you tell the officers he was coming out of
5 the house with -- carrying a bunch of guns?

6 A He was in there getting the guns.

7 Q Was he in the house or bringing them out?

8 A He never came out the door with them yet.

9 Q But do you deny telling the detectives or
10 investigators that he was coming out of the door with
11 the guns?

12 A He was coming back out, but I don't know if he
13 came out the door.

14 Q You were there looking at him?

15 A He hadn't come out of the door yet, but he was
16 coming out, yeah.

17 Q And you were there about ten minutes?

18 A Probably there a little longer than that.

19 Q But you said ten minutes this summer in July?

20 A I might have.

21 Q You all were putting the guns on a blanket?

22 A Yeah.

23 Q You testified you put the blanket down there.
24 Where did you get the blanket?

25 A I think Brad handed it to me.

ANTHONY RAY - CROSS-EXAMINATION

1 Q You don't recall?

2 A No, sir. It was kind of....

3 Q But it was Mr. Elliott's, nothing you all
4 brought?

5 A No. It wasn't nothing we brought, no.

6 Q Now, you heard gunshots. Where were you when you
7 heard the gunshots?

8 A In the living room at the gun cabinet.

9 Q Didn't you tell the detectives or the
10 investigator that when you were outside you heard the
11 gunshots?

12 A I'm not sure.

13 Q Do you deny you said that?

14 A I'm not sure.

15 Q Do you deny you said you went running in the
16 house once you heard the gunshots?

17 A I'm not sure.

18 Q Are you sure about your testimony that you were
19 standing there in the kitchen when he came out firing?

20 A I was in the living room.

21 Q All right. And you ran to the kitchen?

22 A No, I ran to the front door.

23 Q Where were you when you shot Mr. Elliott?

24 A By the front door.

25 Q By the front door?

ANTHONY RAY - CROSS-EXAMINATION

1 A Yes, sir.

2 Q I stand corrected. I thought that you said you
3 ran over to the kitchen area?

4 A No. I was at the front door trying to get out.

5 Q Now, you shot him with a .22?

6 A Yeah.

7 Q When Mr. Elliott came out, did you see him
8 firing?

9 A Oh, yeah.

10 Q Now, did you tell the investigator that?

11 A I'm not sure. I mean, I didn't see him.

12 Q Because that was another story you told --

13 A I heard the gunshots, and I knew Bradley didn't
14 have a gun.

15 Q Brad went in and he wasn't armed?

16 A Nobody was armed.

17 Q You were armed.

18 A I grabbed the gun from inside the house that was
19 one of Mr. Either's gun.

20 Q Didn't you say you went to a shed and got a gun?

21 A No.

22 Q Maybe I'm mistaken.

23 A Yeah, maybe.

24 Q But what kind of gun was it?

25 A I think it was a 22. rifle.

ANTHONY RAY - CROSS-EXAMINATION

1 Q That is what you used to shoot Mr. Elliott?

2 A In the side area, yeah.

3 Q In the side. Okay. You were -- shows us again
4 where you were when Mr. Elliott came out of the
5 bedroom?

6 A When he came out of the bedroom, I was right
7 there by the gun cabinet (indicates).

8 Q So he comes running out of the bedroom and he's
9 like right in your face?

10 A Well, Brad comes out first.

11 Q Out of the bedroom?

12 A No, he comes off the floor and Mr. Elliott is
13 behind him.

14 Q Wait a minute. Mr. Elliott -- what happened?

15 A Brad kicks in the door, falls on the ground,
16 starts to get up and Mr. Elliott opens the door and
17 comes out.

18 Q All right. Where are you when he comes out?

19 A By the gun cabinet. I went around the couch and
20 by the front door.

21 Q I'm pointing to where you were?

22 A Yeah.

23 Q When Mr. Elliott comes out of the door, so you
24 guys were like right on top of each other?

25 A Yes, sir.

ANTHONY RAY - CROSS-EXAMINATION

1 Q And you ran away?

2 A Oh, you better believe it.

3 Q And Mr. Elliott was shooting his gun?

4 A Yeah.

5 Q Was he firing warning shots?

6 A I'm not sure. I think he was firing at Brad.

7 Q But you know -- or do you know of --

8 A My back was turned, I'm not sure if he was --

9 Q You knew this man had a lot of guns, right?

10 A Yeah.

11 Q Wouldn't you assume he knew how to use them?

12 A I assumed he wasn't there at all.

13 Q I know, but wouldn't it be reasonable to assume

14 that Mr. Elliott, having all of these guns --

15 A You would think so.

16 Q Coming out firing with a loaded pistol, 30

17 something?

18 A I don't know what it was.

19 Q But you would assume he knew how to use the gun?

20 A It is good to assume that.

21 Q Especially somebody who was 2, 3 feet away from

22 him?

23 A That is a good assumption.

24 Q But he missed?

25 A He didn't hit me. I guess he didn't hit Brad

ANTHONY RAY - CROSS-EXAMINATION

1 neither.

2 Q There is Brad, he didn't get shot.

3 A Hitting a moving target.

4 Q I thought he was laying on the floor?

5 A He wasn't on the floor for long. He got up and
6 was moving. He didn't stay there. He was right there.
7 The door opened, he didn't lay there on the floor and
8 let Elliott go over top of him, he got up and ran too.

9 Q Brad did?

10 A Oh, yeah, ran to the corner.

11 Q Did you see a bookshelf, anything of that nature
12 in the house?

13 A I'm not sure.

14 Q You don't remember.

15 A There was a lot of stuff in the house, it was
16 pretty trashy.

17 Q But you agree with me, at least on this diagram,
18 this is marked the kitchen area?

19 A Yeah.

20 Q It says "kitchen" right there. All right. And
21 he was over here in front of the bedroom door?

22 A Yeah.

23 Q Brad was on the floor here, and you were over
24 here in the foyer?

25 A No. No. No.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Let's go -- correct me, then.

2 A Yeah. The door is right there, Brad kicked in
3 the door, fell on the floor. I guess he was in here,
4 the man. When he came moving -- I don't know where he
5 was at, but when Brad gets in that way, I run around
6 here at that door.

7 Q That is the back door?

8 A That is the front door. He corners Brad in this
9 area. I'm screaming, Putting the gun down, put the gun
10 down. I had the .22 pointed directly at him. When he
11 turned and point that gun at me, I shot him, he fell
12 down. Brad went over there, behind the couch. There
13 was moving around to get him, and I saw him blow his
14 brains out.

15 Q You were going -- you were helping Brad when you
16 were collecting the guns?

17 A Yeah.

18 Q And how did you collect the guns when you were
19 carrying the .22?

20 A The .22 came out of the gun cabinet, I believe.

21 Q You don't remember where you got it?

22 A There was guns everywhere at that moment.

23 Q So it happened to be loaded?

24 A Every gun in that house was loaded.

25 Q But you don't remember where you picked up the

ANTHONY RAY - CROSS-EXAMINATION

1 .22?

2 A At one point in time, in that house, the whole
3 time we was there, I had a gun in my hand, and so did
4 Brad, a different gun.

5 Q When were you walking out and putting them on the
6 blanket?

7 A In between. I mean, you can't carry 20 guns in
8 one arm.

9 Q I understand that, but you would go out, put the
10 guns on the blanket?

11 A Oh, yeah.

12 Q And go back --

13 A And get more, look for more.

14 Q He kicks in the door?

15 A Huh?

16 Q At that point, Brad kicks in the door?

17 A At one point in time, yeah.

18 Q But you are still holding guns?

19 A I was at the gun cabinet when he kicked in the
20 door.

21 Q Okay. So that is when you grabbed a gun?

22 A I don't know if I had it in my hand then or --
23 like I said, there was guns everywhere, loaded guns,
24 every gun in the house was loaded.

25 Q Whenever Brad kicked the door in, you had a gun,

ANTHONY RAY - CROSS-EXAMINATION

1 just happened to have it, and ran across the room with
2 it?

3 A You better believe it.

4 Q And this was already after Mr. Elliott fired two
5 shots, at least two?

6 A It happened pretty fast after the door was kicked
7 in. It happened pretty quick.

8 Q So he turns and looks at you, and tell us what
9 happened.

10 A Well, he had Brad in the corner pointed at him.
11 I was screaming at him, Put the gun down, put the gun
12 down. When he trained the gun on me, I shot him in the
13 -- I thought I shot him in the shoulder area, but
14 apparently I shot him in the side.

15 Q What side did you shoot him in?

16 A I'm not sure. I think it was this side.

17 Q Right.

18 A I think, I'm not sure on that.

19 Q Did he turn around and point it?

20 A He turned it on me.

21 Q I wonder how you got access to his right side?

22 A It happened pretty quick. I thought I got his
23 shoulder.

24 Q When you shot him, what happened?

25 A He fell down, and he was down.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Fell down on the floor. Did he go down on his
2 knees?

3 A I don't know. He was behind the couch, I
4 couldn't see that part.

5 Q Could you see him at all?

6 A Not after he fell to the ground. He fell to the
7 ground. Brad jumps over on him. I come around,
8 because I had to go around the couch to get out of the
9 house.

10 Q You went around to the back of the sofa?

11 A I was closer than me to you when Brad blew his
12 brains out. I mean, his head exploded. I have to live
13 with that for the rest of my life.

14 Q What did you do with the gun you had?

15 A Apparently I still had it in my hand. I kept
16 running.

17 Q Ran where?

18 A Out the back door into the truck.

19 Q What are you calling the "back door"?

20 A The door we went in.

21 Q You came and ran out this door?

22 A Yes, sir.

23 Q Which is right beside the front door?

24 A No -- yeah. It is the side. That is what I call
25 the back door. It was dark when we got there, dark

ANTHONY RAY - CROSS-EXAMINATION

1 when we left.

2 Q So where were Arlie and Charlie at this time?

3 A When I came out the back door, they were right
4 there, grabbed the rifles carried them.

5 Q Picked up the blankets with the rifle?

6 A Yes, sir.

7 Q And did what?

8 A Carried them to the truck.

9 Q Okay. And what -- was any conversation taking
10 place?

11 A Yeah. They were like, What happened? What
12 happened? We were like, We shot him. We shot him. It
13 seemed like forever, but I'm pretty sure it wasn't.
14 Brad came out, threw something in the back, found later
15 it was a bag of pistols. We left, still arguing.
16 There was a lot going on, I mean.

17 MR. DIGGS: Bear with me for a second.

18 (A brief pause in the proceedings.)

19 Q (MR. DIGGS) In the interview you had with the
20 investigator, didn't you tell him that Brad was
21 struggling with the man on the ground -- we mean the
22 floor -- and the pistol went off?

23 A I might have.

24 Q Why did you tell him that?

25 A As I said, I don't know if the gun hit the ground

ANTHONY RAY - CROSS-EXAMINATION

1 or he took it away from him.

2 Q Just went off?

3 A Brad was in control of that gun when it went off.

4 Q How could you tell?

5 A Because I was behind him.

6 Q You already ran behind?

7 A Oh, yeah. I seen when he pulled the trigger.

8 Yeah, he was in control.

9 Q You saw him pull the trigger?

10 A Yes, I did, and he was in full control of the
11 pistol.

12 Q Where were you standing -- let me show you one
13 more time on the diagram of the house. Where were you
14 standing when you saw him pull the trigger?

15 A In this area. I was about as far as from me to
16 you from him.

17 Q You were right behind him?

18 A Yeah.

19 Q And Mr. Elliott was facing in your direction?

20 A His head was, yeah, towards that way.

21 Q And, again, where were you standing before you
22 ran over there?

23 A Right here.

24 Q Okay. Then all of you piled back in the car,
25 four of you. Where did you go?

ANTHONY RAY - CROSS-EXAMINATION

- 1 A Back to Moon's house.
- 2 Q You didn't go anywhere to dispose of any weapons?
- 3 A No, not at that time we didn't.
- 4 Q Went back to Moon's house?
- 5 A Yeah.
- 6 Q Did you meet with Moon there?
- 7 A Yeah. He came out the door.
- 8 Q Tell me about that.
- 9 A We were all out there.
- 10 Q You can't tell me what Moon said?
- 11 A I don't remember what everybody said.
- 12 Q What was going on?
- 13 A All the guns are laid out.
- 14 Q Of course the four of you guys knew the shooting
- 15 occurred?
- 16 A Yeah.
- 17 Q Charlie, Arlie and you?
- 18 A Yeah. Yeah. They are not -- the other two
- 19 didn't know what was going on in the house because they
- 20 never went inside the house.
- 21 Q But they certainly heard the shots?
- 22 A Oh, yeah.
- 23 Q And what happened at that point. You got the
- 24 guns unloaded, put them in the shed.
- 25 A We were all talking, talking about, I'm going to

ANTHONY RAY - CROSS-EXAMINATION

1 keep this pistol and keep that. The subject came up
2 about not being able to keep the pistols. They were
3 stolen handguns, no value to anybody. I mean, they are
4 about worthless. Most handguns are registered,
5 especially in the state I'm from. So being stolen
6 handguns, the only person that wants to buy it is
7 another convicted felon to do a crime with.

8 Q So what happened?

9 A Well, Brad left. He took little Charlie's truck.
10 I don't know if he went to his sister's house,
11 girlfriend's I'm not sure. I wasn't with him. About
12 an hour, hour-and-a-half later, the three of us, me,
13 Little Charlie and Arlie, get in Little Charlie's
14 full-size pickup truck.

15 Q Not the one you drove to --

16 A No. Brad had that little vehicle.

17 Q And what happened at that point?

18 A Well, we drove to -- I don't remember where we
19 drove. I'm not from down here.

20 Q A house in the woods, country?

21 A It was a swamp area.

22 Q And what happened?

23 A Little Charlie and Arlie grabbed the pillow case,
24 and the .22 rifle I shot Mr. Elliott with was with the
25 pistols.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Did you make sure that that was going to be
2 disposed of?

3 A Oh, yeah. Yes, sir.

4 Q Now, after the disposal of the weapons, the three
5 of you went back to Moon's house?

6 A Yes, sir.

7 Q And I believe you indicated you spent the night
8 there, or did you?

9 A We all did, yes, sir.

10 Q Did anybody, to your knowledge -- let me ask it
11 this way. Did you have any discussions with Moon about
12 what had happened that night?

13 A I believe -- I mean -- I believe the subject came
14 out while we were out in the barn about what happened.

15 Q Did Delilah know about it?

16 A She came out. I don't know if she knew about the
17 murder, but she saw the guns there.

18 Q She knew the guns was there?

19 A Yeah. The next day I believe the talk --
20 everybody knew the guns were there. I mean, they
21 didn't know exactly what happened, but everybody there
22 was just about family.

23 Q Isn't it true -- and I'm sorry if I missed this
24 earlier, but in your July interview with the
25 investigator you said you didn't know if Brad kicked in

ANTHONY RAY - CROSS-EXAMINATION

1 the door?

2 A I didn't say -- I'm pretty sure I didn't say
3 that. I knew Brad kicked in the door.

4 Q Do you remember saying, I don't know if Brad
5 kicked the door in? The man came out of the bedroom, I
6 don't know if Brad kicked the door in?

7 A I'm not sure about that.

8 Q You could have said that?

9 A Maybe.

10 Q Did you hear Brad say anything when the shooting
11 took place?

12 A No.

13 Q Did he say --

14 A No. No.

15 Q Did he say, Good night, Sucker, or something?

16 A No. I've seen all the statements, and the man
17 didn't say nothing. I didn't know it at the time, but
18 after reading the autopsy report, apparently I shot
19 him. His lung was shot. I've been a deer hunter all
20 my life. I've shot animals and deer, and they don't
21 make much of a sound after that. The man didn't beg
22 for his life. It happened really quick, but it wasn't
23 like that.

24 Q And you sold the guns down in Louisiana?

25 A Moon did, yeah.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Moon sold them?

2 A I was present, yeah. Me and Charlie.

3 Q You saw him selling them?

4 A Yeah.

5 Q And you split up the money, and Moon got his
6 share?

7 A Moon got his share, Little Charlie. Arlie, when
8 he left -- Brad got his share. Arlie, he took a double
9 barrel shotgun made in the 1800s, probably worth quite
10 a little bit of money for his part.

11 Q Who took it?

12 A Arlie did. Everybody took their part in this.

13 Q Do you have any knowledge about what ultimately
14 happened to that particular gun?

15 A I've heard rumors.

16 Q But you don't have any direct knowledge?

17 A I wasn't there. I've never been in this city.

18 Q Now, with respect to the gloves you had, what
19 happened to those?

20 A I think we probably carried them to work with us.
21 You know, they were cheap gloves, \$1.20 cotton gloves.

22 Q You're charged with the murder presently?

23 A Yeah.

24 Q You're hoping, am I not correct, to get rid of
25 that charge?

ANTHONY RAY - CROSS-EXAMINATION

1 A Well, I'm not -- I haven't been promised
2 anything.

3 Q I'm not asking you that.

4 A I shot the man.

5 Q Did they promise you that they would revisit the
6 issue after the trial?

7 A No, they didn't.

8 Q Nobody said anything about that?

9 A Yeah, it is going to be handled after the trial.
10 I am hoping with my testimony I might get a little
11 reduced sentencing.

12 Q Aren't you looking for like 15 years?

13 A I'm looking for whatever they give me.

14 Q Haven't you made that statement? That is a long
15 time, but less than 30.

16 A I'm doing 15 years for first degree burglary,
17 that is the statement I made.

18 Q And you don't have to worry about the murder
19 case?

20 A Armed robbery carries up to 30 years. I mean --
21 I'm not sure if I don't have to worry about that
22 murder. I believe in South Carolina it's
23 the-hand-of-one-is-the-hand-of-all.

24 Q Well, that is what the detectives told you, isn't
25 it?

ANTHONY RAY - CROSS-EXAMINATION

1 A I've heard it from a lot of people.

2 Q Don't you think mental intent and knowledge and
3 understanding figures into the mix, too?

4 A I'm not sure how it works. I'm a carpenter.

5 Q I can strike the question. I'm sorry I brought
6 that up.

7 MR. DIGGS: Bear with me for a second.

8 (A brief pause in the proceedings.)

9 Q (MR. DIGGS) You've written a lot of letters since
10 you were locked up?

11 A Yeah. I stayed at J. Reuben Long for almost
12 two-and-a-half years.

13 Q And that is one way to relieve tension or get
14 your mind off of stuff?

15 MR. DIGGS: Your Honor, can he look at this?

16 THE COURT: Pardon?

17 MR. DIGGS: Can I hand it to him so he can review
18 it?

19 THE COURT: Certainly.

20 Q (MR. DIGGS) I want to ask you to take a minute to
21 see if you recognize --

22 A That is my handwriting.

23 Q And those are letters you wrote?

24 A To my wife.

25 Q To your wife, for the most part. In those

ANTHONY RAY - CROSS-EXAMINATION

1 letters, a lot of times, wouldn't be fair to say, that
2 you express remorse about it?

3 A Of course I do.

4 Q Have you made any statements to any of the other
5 detainees at J. Reuben Long that you were going to come
6 in here and lie?

7 A No.

8 Q So you haven't made any statements like that?

9 A I've been in Leiber for the last few months.

10 Q Okay. Point taken. You have been. But before
11 you went there, did you say you were going to take your
12 deal and go in here and lie in court?

13 A No, I never said that.

14 Q Never made any statement like that?

15 A No.

16 Q Ronald Legg, do you know him?

17 A Yeah.

18 Q Did you make a statement like that to him at J.
19 Reuben Long?

20 A No.

21 Q Or Mr. Jeremy Crawford?

22 A I don't think I know a Jeremy Crawford.

23 Q You deny making a statement to him?

24 A Yeah.

25 Q That you're going to take a deal, come in here

ANTHONY RAY - CROSS-EXAMINATION

1 and lie?

2 A No, I never said nothing like that.

3 Q We may bring them in here and impeach your
4 testimony.

5 MR. HUCKS: Objection, Your Honor.

6 THE COURT: All right. Let's move on to something
7 else.

8 THE WITNESS: I mean, Mr. Legg, I believe, is in
9 jail for sexually molesting little kids.

10 Q (MR. DIGGS) He hasn't been convicted, has he?

11 MR. HUCKS: Objection, Your Honor.

12 THE COURT: Mr. Diggs, let's go on now.

13 MR. DIGGS: Thank you. I believe that is all I
14 have of this witness. Thank you.

15 THE COURT: Mr. Hucks.

16 REDIRECT-EXAMINATION

17 BY MR. HUCKS:

18 Q I want to hit a couple of things with you. Are
19 you and Moon close anymore?

20 A I'm not close with anybody anymore.

21 Q Why don't you hang out with Moon?

22 A I'm in jail.

23 Q You've been in jail for how long?

24 A Two-and-a-half years now. A little over
25 two-and-a-half years now.

ANTHONY RAY - CROSS-EXAMINATION

1 Q If you weren't in jail, would you be hanging out
2 with Moon anymore?

3 A No. I mean, everybody in the family, even his
4 own kids, use Moon just when they need money. One way
5 or another, he's going to cheat you out of most of it.

6 Q Who went in that man's house?

7 A Me and Bradley.

8 Q Anybody else?

9 A No, nobody else went inside.

10 Q Was that man breathing when you went in the
11 house?

12 A Yes.

13 Q And was it nighttime when you went in there?

14 A Yes, sir.

15 Q And was he breathing when you left the house?

16 A No, he wasn't.

17 Q Show us -- I missed part of what Mr. Diggs went
18 over with you -- when the man comes out of the bedroom,
19 where are you standing?

20 A Right here.

21 Q Where is Brad?

22 A Right there in the floor. I mean he got up. I
23 mean he fell down, but it wasn't like he broke his
24 neck, I mean he got up. The door was still shut.

25 Q Seeing a gun will do that to you.

ANTHONY RAY - REDIRECT EXAMINATION

1 A Yes, it will.

2 Q Now, where do you go when you see Brad come out
3 and the man with the gun?

4 A Around here.

5 Q What door do you go to?

6 A That door.

7 Q You kept saying "front door," but is this the
8 door you're talking about?

9 A Yeah. I don't know what it is.

10 Q That's fine. Where are you standing when you
11 shoot Mr. Elliott?

12 A Standing at the door.

13 Q Where did you shoot him on his body?

14 A In the side. I think it is this side, I'm not
15 sure. I was aiming for his shoulder.

16 Q Now, where was Brad at when you shot him?

17 A In this area here.

18 Q And Mr. Elliott, what was Mr. Elliott doing to
19 Brad?

20 A He had the gun pointed at Brad over in that area.
21 I'm over here. I could not get the door opened. I
22 turned around, and he is pointing the gun. I'm
23 screaming, Put the gun down, put the gun down. He
24 turned the gun towards me, I shot him. I did not want
25 the man to die.

ANTHONY RAY - REDIRECT EXAMINATION

1 Q Was Joe Elliott a threat to anybody after you
2 shot him?

3 A He was no threat after I shot him. He was on the
4 ground. We could have left. He fell on the floor. He
5 was not a threat.

6 Q Now, the .22 rifle you say you shot Mr. Elliott
7 with, where did you get it from, do you remember?

8 A I'm not sure. I think I got it from the gun
9 cabinet.

10 Q In his house?

11 A Inside the house.

12 Q Did you bring it in the house?

13 A No, we didn't carry no guns in there. We were
14 not armed when we went to the house.

15 Q You were going to get guns?

16 A Yeah. I mean, none of us had a gun to begin
17 with.

18 Q Now, when Mr. Diggs was cross-examining you,
19 quite a few times when he asked you about Mr. Elliott
20 coming out, he asked if you tried to run, and you said,
21 You better believe it; what do you mean?

22 A Somebody has a gun. I mean, I'm not going to
23 stand there and get shot intentionally. I mean, I went
24 to moving. I mean, he had a gun in his hand.

25 MR. HUCKS: Nothing further.

ANTHONY RAY - REDIRECT EXAMINATION

1 MR. DIGGS: May we approach for a second?

2 (Whereupon, a bench conference was had.)

3 MR. DIGGS: Nothing further.

4 THE COURT: You may step down.

5 MR. HUCKS: Mr. Diggs and, Judge, can we approach

6 one more moment?

7 (Whereupon, a bench conference was had.)

8 THE COURT: Ladies and gentlemen, we're going to
9 break for lunch. I'll ask you to be back here about 2
10 o'clock. That will give you an hour-and-a-half. Mr.
11 Ropp, will you take the jury out? Do not discuss the
12 case with anyone or allow anyone to discuss it with
13 you.

14 (The jury exits at 12:31 p.m., and the following is
15 heard out of the presence of the jury.)

16 THE COURT: We'll be back at 2 o'clock.

17 (Whereupon, a lunch recess was taken.)

18 THE COURT: Okay. Let's bring them in.

19 (The jury enters at 2:05 p.m., and the following is
20 heard in the presence of the jury.)

21 THE COURT: We have our jurors and alternates.

22 Mr. Hucks, call your witness.

23 MR. HUCKS: At this time, that is the extent of the
24 State's case and we rest.

25 THE COURT: State rests. Well, it was nice to have

THE COURT

1 the jury, and the jury may say let's resolve it by
2 hearing the testimony.

3 (Court's Exhibit 1 marked.)

4 (The jury enters at 2:27 p.m., and the following is
5 heard in the presence of the jury.)

6 THE COURT: We have all of our jurors back. Ladies
7 and gentlemen of the jury, the State has, as you heard,
8 rested. We will begin with the defense.

9 MR. DIGGS: Thank you, Your Honor. We would call
10 Investigator Pop back to the stand.

11 THE CLERK: Ginger Pop.

12 (GINGER POP, having been duly sworn, testified as
13 follows:)

DIRECT-EXAMINATION

14 BY MR. DIGGS:

15 Q You remember when you testified earlier in this
16 trial?

17 A Yes, sir.

18 Q And you were part of the investigative team that
19 investigated this particular case?

20 A I have been.

21 Q I want to ask you if you had an opportunity back
22 on July 15th of this year, 2013, to go and interview
23 Anthony Ray with respect to this case?

24 A I did.

GINGER POP - DIRECT EXAMINATION

1 Q And at that time, during the course of the
2 interview, did he make a statement to you to the effect
3 that he heard some gunshots and so he ran into the
4 house?

5 A Yes. Would you like me to say basically what he
6 said?

7 Q Yes, if you have it.

8 A I do. Without reading it verbatim, he says that
9 he was tying up a blanket when he heard a shot from
10 inside the house. He couldn't remember how many shots
11 he heard. He states he went to the back door and he
12 could see Brad and this man wrestling over a gun, the
13 gun goes off, he said he shot him in the head, and the
14 man's head exploded.

15 Q Now, I'm sorry I had to bring you up on the stand
16 for that purpose, but thank you for doing that.

17 MR. DIGGS: Answer any questions that counsel may
18 have.

19 CROSS-EXAMINATION

20 BY MR. HUCKS:

21 Q You had an occasion to interview him after that
22 interview?

23 A Yes, sir.

24 Q What day is that?

25 A July 23.

GINGER POP - CROSS-EXAMINATION

1 Q How many days after the interview Mr. Diggs asked
2 you about?

3 A It was the 15th for my first interview, and the
4 second was the 23rd.

5 Q So eight days? Ten minus two, there you go. So
6 eight days you interviewed Anthony Ray?

7 A Correct.

8 Q Was the statement he gave you that day consistent
9 with the statement he gave you --

10 A The statement on the 23rd was consistent with the
11 statement he made today.

12 Q And there were inconsistencies between that
13 initial statement and the statement on the 23rd?

14 A Yes.

15 Q The 15th and 23rd had differences?

16 A Yes.

17 Q But the 23rd and today were consistent with one
18 another?

19 A They were.

20 MR. DIGGS: That is all I have.

21 THE COURT: You can step down.

22 MR. DIGGS: We came car Carlene Merck.

23 (CARLENE MERCK, having been duly sworn, testified
24 as follows:)

25 THE CLERK: State your full name and spell your

CARLENE MERCK - DIRECT EXAMINATION

1 last for the Court.

2 THE WITNESS: Carlene Merck, M-E-R-C-K.

3 DIRECT-EXAMINATION

4 BY MR. DIGGS:

5 Q You are here because we've subpoenaed you to come
6 and testify; is that correct?

7 A That's correct.

8 Q And would you tell us what, if any, your
9 relationship to Bradley Mullins would be?

10 A He's my brother.

11 Q All right. What kind of relationship do you have
12 with him? Have you -- would you say it's a typical
13 brother/sister relationship? Have you been estranged?
14 Could you describe that?

15 A No. We have a very loving, close connection
16 relationship.

17 Q Okay. Now, if he had something important to
18 occur in his life, would it be in keeping with his
19 habit, or does he have any habit, would you say, of
20 disclosing or confiding in you of certain things going
21 on in his life?

22 A Absolutely.

23 MR. HUCKS: Objection. He's asking her to
24 speculate as to what is going on in this man's mind at
25 any given time and if he would come to her if he knew

CARLENE MERCK - DIRECT EXAMINATION

1 something.

2 MR. DIGGS: I'll rephrase.

3 THE COURT: I think he was merely asking her about
4 habits. If you will, rephrase it in such a fashion was
5 it his habit to confide in her, I think that is okay,
6 but any further we're getting out of the realm --

7 Q (MR. DIGGS) Has he had the habit of confiding in
8 you over the course of your lifetime as brother and
9 sister?

10 A Absolutely. We've been very close growing up.

11 Q Now, has Brad Mullins ever confided in you that
12 he committed a murder?

13 A No.

14 Q Now, if he had done so and had made statements to
15 the general public that he had done so, would you be
16 surprised that he did not discuss that with you?

17 A Absolutely.

18 Q So based on your relationship with him and the
19 habits and conduct that he has engaged in over the
20 course of your lifetime, you would have expected him to
21 at least mention this to you?

22 A I would have thought so, yes.

23 Q Before he goes out and discusses it with a number
24 of different people?

25 A Yeah. Yes, sir.

CARLENE MERCK - DIRECT EXAMINATION

1 Q Did you have occasion to of go over to
2 Mr. Mullins Senior, his home, a fellow named Moon?

3 A Yes, sir. We used to gather every once in
4 awhile, have barbecues, set up karaoke, just good
5 family time.

6 Q Do you remember a time when the group of the
7 Mullins, the individuals, including Brad, who worked in
8 construction, do you remember them going on a trip to
9 Louisiana?

10 A I do.

11 Q You have an independent recollection of that time
12 frame?

13 A Yes, sir.

14 Q And of course you've known about this case
15 pending against your brother now for sometime?

16 A Absolutely. Yes, sir.

17 Q And you've been out to the jail, for example, to
18 meet with him? At least you can communicate on the
19 telephone.

20 A Oh, yes.

21 Q And talk with him. So have you thought about
22 that time frame?

23 A I've ran that time frame many a times.

24 Q Was there a time when the family would gather at
25 Moon's home and have a cookout or socialize, that kind

CARLENE MERCK - DIRECT EXAMINATION

1 of thing?

2 A Yes.

3 Q Would that occur often, or can you tell us how
4 frequently things like that would happen?

5 A Well, we would try to do something. During that
6 time frame we would do something generally, if not
7 every weekend, every other weekend, every couple of
8 weeks.

9 Q Now, do you think that was basically how things
10 were going back in September of 2008?

11 A Oh, yeah, because our whole family was kind of
12 around.

13 Q All right. Do you recall specifically any outing
14 that you were in attendance at at the Mullins'
15 residence, Mr. Mullins Senior, wherein Charlie, Arlie,
16 Brad and the other members of the family might have
17 been in attendance?

18 A Yeah. We went one night. We all went to one of
19 the local places to play some pool. It was me and my
20 husband at the time, Brad and Robin, Boone, which is
21 Daniel Mullins, my baby brother and his girlfriend
22 Jennifer. We were all there, Little Charlie, Arlie.

23 Q And you said Brad was there as well?

24 A Oh, yes, Brad was absolutely with us.

25 Q Do you remember any occasion on that occasion

CARLENE MERCK - DIRECT EXAMINATION

1 wherein Brad and Charlie and Arlie and Anthony left
2 together?

3 A No.

4 Q You don't recall any such situation?

5 A No, sir.

6 Q All right. Now, on the occasion that you can
7 recall in that time frame, do you remember spending any
8 time with your brother and/or any other people in that
9 evening, in the evening hours?

10 A Well, yes.

11 Q Tell us about that.

12 A The night we all got together and went out.
13 There was an altercation at the bar with Charles Senior
14 and two women, and it started a fuss. Brad, Robin,
15 myself, my ex-husband, my baby brother and his
16 girlfriend, we left. We got, as you can say, out of
17 Dodge. We went home. We spent the rest of the evening
18 there.

19 Q Okay. Brad was with you in that situation?

20 A Yes.

21 Q Now, was there ever a time on that occasion when
22 he left and went out for some period of time and then
23 returned?

24 A Not that I can ever recall.

25 Q He stayed -- would it be your testimony he stayed

CARLENE MERCK - DIRECT EXAMINATION

1 in the home that night?

2 A Yes, sir.

3 Q All right. Now, in any situation like that, and
4 I want to be sure that the time you are describing to
5 the best of your recollection fits closest with the
6 alleged incident in this case; is that your testimony?

7 MR. HUCKS: May we approach, briefly?

8 THE COURT: I'll send the jury out.

9 (The jury exits at 2:39 p.m., and the following is
10 heard out of the presence of the jury.)

11 THE COURT: All right. Let's hear it.

12 MR. HUCKS: Yes, Your Honor, she's getting directly
13 into alibi, and I don't know if it is strategy. If you
14 don't say what day it is, it is not an alibi, but we've
15 never been put on notice of an alibi. Mr. Diggs and I
16 spoke last week, and I even told him I won't go to the
17 rule if you put me on notice of an alibi, just put me
18 on notice of an alibi, and he said specifically we do
19 not have an alibi.

20 THE COURT: Mr. Diggs, you are getting into alibi.

21 MR. DIGGS: That's as close as I'm going to get. I
22 don't know a date. The only thing I can do is -- let
23 me back up and phrase it this way.

24 THE COURT: And neither does the state.

25 MR. DIGGS: An alibi is not an alibi unless it

CARLENE MERCK - DIRECT EXAMINATION

1 later when she saw him at her home -- we'll negate the
2 time that he spent with her, okay. I won't go to that
3 time frame. I'll leave open the possibility that he
4 left with the other three and committed a murder, but I
5 want her to testify about what she saw in his conduct
6 and his demeanor when he came to spend the night.

7 THE COURT: To that extent, I'll let you go. I'm
8 not going to strike the testimony, but tread lightly.

9 MR. DIGGS: Absolutely I will.

10 THE COURT: All right. Bring in the jury.

11 (Whereupon, the jury enters at 3:48 p.m. and the
12 following is heard in the presence of the jury.)

13 Q (MR. DIGGS) Where I want to focus right now is the
14 day of the picnic cookout. Was Bradley spending the
15 night at your house on those occasions, during that
16 time frame?

17 A Most of the time. We would get together, play
18 cards on the weekends. We all cooked together, go
19 back, play cards. I couldn't do a whole lot because I
20 was pregnant with my daughter so, you know, I was
21 around and about. I was on bedrest, and his girlfriend
22 at the time was helping me with my children.

23 Q I want you to think back. When he would spend
24 the night -- on those occasions when you would play
25 cards, was there times that he spent the night and just

CARLENE MERCK - DIRECT EXAMINATION

1 didn't go home, or was he living there actually?

2 A Until he moved into his trailer, yes, he was
3 living with me; him, his girlfriend, her daughter and
4 her baby.

5 Q This is the time frame of the calendar year of
6 2008?

7 A Yes, sir.

8 Q Now, I want to specifically ask you if ever there
9 was an occasion when you saw him when he appeared to be
10 in an estranged state of mind, by that, I mean
11 something other than normal?

12 A No. Never.

13 Q I want you to imagine maybe a hypothetical that
14 included a situation where an individual in the
15 community had been murdered and that your brother had
16 actually --

17 MR. HUCKS: Objection.

18 THE COURT: It calls for pure speculation.

19 MR. DIGGS: It is a hypothetical.

20 MR. HUCKS: It is improper.

21 THE COURT: Send the jury back out.

22 (The jury exits at 2:50 p.m., and the following is
23 heard out of the presence of the jury.)

24 MR. HUCKS: First of all, he's asking her to
25 speculate as to what his state of mind might have been

CARLENE MERCK - DIRECT EXAMINATION

1 THE COURT: I will allow you, Mr. Diggs, to ask
2 her, as I stated earlier, if on that evening she saw
3 him any time when he appeared to be upset or agitated,
4 that is what I'm going to let you ask her. I hope she
5 would not know how he would have acted if he committed
6 a murder.

7 MR. DIGGS: That occurred to me a moment ago,
8 exactly.

9 (The jury enters at 2:55 p.m., and the following is
10 heard in the presence of the jury.)

11 THE COURT: Mr. Diggs.

12 Q (MR. DIGGS) Ms. Merck, let me ask you if on any
13 occasion during that time frame when your brother was
14 in your home, did you ever see him in any state of
15 being upset or agitated?

16 A No, sir, never.

17 Q Now, have you ever had an opportunity to observe
18 your brother's relationship with his mom?

19 A Oh, yes. We all have a very close connection.

20 Q And you maybe don't know this, and I don't want
21 you to guess, but has he had the type of relationship
22 with his mother that he also would confide in her about
23 certain things?

24 A I would think so, yes.

25 MR. DIGGS: Thank you very much. I apologize for

CARLENE MERCK - DIRECT EXAMINATION

1 the delay here, but thank you. That is all I have.

2 CROSS-EXAMINATION

3 BY MR. HUCKS:

4 Q I want to summarize your testimony, and if I get
5 it wrong, correct me. So sometime in some month in the
6 year --

7 MR. DIGGS: I object. If we could approach. We
8 don't --

9 (Whereupon, a bench conference was had.)

10 Q (MR. HUCKS) Just to summarize your testimony,
11 sometime in some month in 2008 you saw your brother
12 after a cookout, you all went to a bar while you were
13 pregnant and he stayed the night with you and he
14 didn't act funny afterwards?

15 A First of all, I wasn't drinking. It wasn't just
16 a bar, we went to play pool. Last I checked, there was
17 nothing wrong with that. What I was saying is right
18 around in September, August, end of August, September,
19 first part of October, we all were very close knit. We
20 did lots of family events together.

21 Q When were you on bedrest while you were pregnant?

22 A I went on bedrest in -- it was around the second
23 week of September, third week. I had a fibroid tumor
24 attached to the placenta, and I was being sent back and
25 forth to Charleston because it was affecting the blood

CARLENE MERCK - CROSS-EXAMINATION

1 supply to my daughter.

2 Q So the second week of September, would you agree
3 with me, the second week of September would be
4 somewhere between, let's say, the 7th and the 14th of
5 September, if September would have started on a Monday?

6 A I can't give you exact dates because it has been
7 so long ago, but what I'm telling you is I spent a lot
8 of time in my home with my children, with my brother
9 and his girlfriend.

10 MR. HUCKS: Nothing further.

11 MR. DIGGS: Nothing further.

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

13 MR. DIGGS: We would call Keena Stanley.

14 (KEENA STANLEY, having been duly sworn, testified
15 as follows:)

16 THE CLERK: State your full name and spell your
17 last name for the record. THE WITNESS: Keena Stanley.

18 DIRECT-EXAMINATION

19 BY MR. DIGGS:

20 Q Where do you live?

21 A Virginia.

22 Q Do you know Brad Mullins?

23 A Yes, sir.

24 Q How do you know him?

25 A He's my son.

KEENA STANLEY - DIRECT EXAMINATION

1 Q All right. Let me ask you this. What kind of
2 relationship have you had with him and do you have with
3 him right now? Would you say it is a good
4 relationship?

5 A Definitely. I've always had a good relationship
6 with my son.

7 Q So there is not any estrangement or any problems
8 like that between you and your son?

9 A No.

10 Q And to your knowledge, has there ever been?

11 A No.

12 Q You've always been, would it be fair to say,
13 close and stayed in contact?

14 A Always. Always.

15 Q And you know your son, correct?

16 A Yes, sir.

17 Q Has he had a habit in his life in confiding in
18 you?

19 A Bradley always confides in me. If he had
20 girlfriend problems or anything, it was, Hey, Mom, what
21 can I do or what should I do. Yeah, we always had
22 talks.

23 Q Let me ask you this. Was there ever a time when
24 Bradley came to you and confessed he committed a
25 murder?

KEENA STANLEY - DIRECT EXAMINATION

1 A No. Never.

2 Q And would it be in keeping with his conduct and
3 habit to confess such a thing to people in general, but
4 not to his own family and yourself specifically?

5 A No.

6 Q It would be inconsistent?

7 A Bradley would never -- I mean, he would surely
8 tell me first, Hey, Mom, I've done this or that.
9 Bradley has never told me anything like that, never.

10 Q And I appreciate your coming, and I know it was
11 very brief, but I appreciate you coming and testifying
12 to that point.

13 MR. DIGGS: The solicitor may have questions.

14 CROSS-EXAMINATION

15 BY MR. HUCKS:

16 Q I won't keep you real long. You know your son
17 worked with his uncle, Moon, for some period of time,
18 right?

19 A Some, yeah.

20 Q And they worked on something in Durham together;
21 is that right?

22 A I don't know where they worked at.

23 Q But he worked for Moon for some period of time?

24 A I don't know if he worked for him or with him, I
25 just know, you know, that.

KEENA STANLEY - CROSS-EXAMINATION

1 Q That they were working together in some fashion?

2 A Yeah. They did painting and drywall and stuff, I
3 think.

4 Q And they did that in several different states,
5 are you aware of that?

6 A Yeah.

7 Q Over the course of that, he spent a lot of time
8 with his cousins who also worked for Moon?

9 A I don't know how much time he spent with his
10 cousins. I wasn't there. I live in Virginia.

11 Q But he tells you everything?

12 A Well, yeah, but...

13 MR. HUCKS: Nothing further.

14 MR. DIGGS: Nothing further.

15 THE COURT: You may step down.

16 MR. DIGGS: Your Honor, I don't think we are going
17 to call additional witnesses at this point.

18 THE COURT: That's it?

19 MR. DIGGS: So the defense will rest.

20 THE COURT: Very well.

21 MR. HUCKS: We have a quick matter of law.

22 THE COURT: Yes. If you would, take the jury out.

23 (The jury exits at 3:04 p.m., and the following is
24 heard out of the presence of the jury.)

25 MR. HUCKS: Your Honor, just to clarify before we

THE COURT AND ATTORNEYS

1 that helps the Court out.

2 THE COURT: I'll let you do it here in court. You
3 know the parameters. Bring in the jury.

4 MR. HUCKS: Would the Court like to make that page
5 I passed up as a Court's exhibit, or you don't believe
6 it should be, which is just the notes consistent with
7 Ms. Pop's testimony?

8 THE COURT: Yes.

9 (The jury enters at 3:33 p.m., and the following is
10 heard in the presence of the jury.)

11 MR. HUCKS: We call Latonya Ray to the stand.

12 (LATONYA RAY, having been duly sworn, testified as
13 follows:)

14 THE CLERK: Please state your full name and spell
15 your last for the Court.

16 THE WITNESS: Latonya Ray, R-A-Y.

17 DIRECT-EXAMINATION

18 BY MR. HUCKS:

19 Q How are you this afternoon?

20 A Fine.

21 Q I'm going -- what do you do for a living?

22 A House clean.

23 Q Housecleaning. And you don't have to tell
24 everybody where exactly you live, but what state do you
25 live in?

LATONYA RAY - DIRECT EXAMINATION

1 A North Carolina.

2 Q Who is your husband?

3 A Anthony Ray.

4 Q Are you guys together or estranged?

5 A We're separated.

6 Q How long did you -- were you guys married or were
7 you married?

8 A Fifteen years.

9 Q Now, without trying to lead you too far along
10 here, did you ever have occasion to talk with Anthony
11 Ray about what happened in Joe Elliott's house on or
12 about September 11, 2008?

13 A Yes, sir.

14 Q Now, don't tell me a whole story, okay, but tell
15 me what -- first, tell me how did you hear about it?
16 What was going on? What did Anthony talk to you about?

17 A Anthony was having nightmares real bad, and one
18 night he had a bad nightmare and it woke me up, and
19 that is when he told me.

20 Q Now, I don't need you to get in a big long story,
21 but I want you to tell me what Anthony told you
22 happened inside the house between him and Brad Mullins
23 and the man there, okay, just that.

24 A He said that him and Brad was in the house
25 getting the guns. They went and robbed the man, got

LATONYA RAY - DIRECT EXAMINATION

1 his guns. They went to this door, it was locked, Brad
2 kicked the door in. The man got out of bed naked and
3 shooting at them. Anthony shot the man in the chest
4 and it knocked the gun out of his hand. Brad came
5 around, went over there, I don't know where he came
6 from, but he got the gun that the man was shooting at
7 them with and told the man to say good night, and shot
8 him in the head.

9 Q Don't say who said what, but what actions did he
10 do?

11 A He shot the man in the head and killed him.

12 Q Now, at -- when did Anthony tell you all of this?
13 When did he wake you up with the nightmares and --

14 A Around September/October of 2008.

15 Q Had he already been arrested or charged with this
16 crime?

17 A No.

18 Q Had anybody been arrested or charged with this
19 crime at all?

20 A No, sir.

21 Q Has your testimony here been the truth?

22 A Yes, sir.

23 MR. HUCKS: Nothing further, Your Honor.

24 CROSS-EXAMINATION

25

LATONYA RAY - CROSS-EXAMINATION

1 BY MR. DIGGS:

2 Q He told you in September or October of 2008 this
3 statement?

4 A Yes, sir.

5 Q And he also, did he not, tell you in that
6 statement that it was Mr. Kelly Elliott that was the
7 victim?

8 A He didn't say no names.

9 Q When did you learn the name that it was Kelly
10 Elliott?

11 A Whenever I got brought here.

12 Q And in April of 2013 you were interviewed by the
13 investigators in this case?

14 A Yes, sir.

15 Q And you told them this statement you just made
16 about Anthony relaying to you the homicide of Kelly
17 Elliott. Now, are you sure you are supplying that
18 name, or did Anthony supply that name in 2008?

19 A The investigators told me what his name was.

20 Q All right. At this point you are repeating what
21 the investigators told you?

22 A No, sir.

23 Q Who told you "Kelly Elliott"?

24 A Whoever came down and questioned me told me that
25 Kelly Elliott had died and asked me.

LATONYA RAY - CROSS-EXAMINATION

1 Q See if you remember your part of the interview
2 making this statement. The investigator says, Okay.
3 Do you know why we're here today? And your answer is,
4 Yes, ma'am --

5 MR. HUCKS: Your Honor, object. I don't know if
6 this is an appropriate transcript or not. My secretary
7 typed it up.

8 MR. DIGGS: All right.

9 Q (MR. DIGGS) Let me ask you this. Do you remember
10 the first time you learned the name of Kelly Elliott?

11 A Yeah.

12 Q When was that?

13 A The investigators.

14 Q And was that this year?

15 A Yeah.

16 Q Or could it have been 2011?

17 A No. It was this year.

18 Q Let me ask you, in this conversation or
19 statement, did Anthony tell you where the guns had been
20 disposed of?

21 A In every room. There was a gun in every room.

22 Q No. No. No. Did he tell you anything about a
23 swamp?

24 A Yeah. He said that the murder weapon was in the
25 swamp.

LATONYA RAY - CROSS-EXAMINATION

1 Q Do you remember what he said, what he told you in
2 terms of where that swamp was located?

3 A I can't remember.

4 Q Did he say it was somewhere in either Tennessee,
5 Kentucky or Mississippi?

6 A I can't remember.

7 Q Do you want to see a transcript of your
8 interview?

9 A Yeah, that's mine. Can't remember.

10 Q So if the investigator said that is a statement
11 that you gave earlier this year, you wouldn't dispute
12 that?

13 A Huh-huh.

14 MR. DIGGS: That is all I have.

15 MR. HUCKS: Nothing, whatsoever.

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

17 MR. HUCKS: We ask that she be excused.

18 THE COURT: Without objection, she's excused.

19 MR. HUCKS: The State rests its rebuttal case.

20 THE COURT: Ladies and gentlemen of the jury, it is
21 almost 4:00. A charge on the law and argument in this
22 case will be rather lengthy. There, again, I don't
23 want to keep you over into the evening and begin your
24 deliberations. We could be here late into the night,
25 and I don't want to do that. So we'll be back at 9:30.

THE COURT TO THE JURY

1 The case ended as far as the evidence is concerned.

2 When we come back, I'll allow the attorneys to make
3 final arguments and I'll charge you on the law and you
4 can deliberate this case. Again, remember, do not
5 discuss this case with anyone, don't do any independent
6 research, don't Facebook, YouTube or anything like
7 that. Mr. Ropp, take them to their jury room.

8 MR. ROPP: Certainly.

9 (The jury exits at 3:43 p.m., and the following is
10 heard out of the presence of the jury.)

11 THE COURT: All right, gentlemen. Drew has
12 prepared my charge. It has been E-mailed to each of
13 you. Also E-mailed is the verdict forms, which I have
14 prepared. Please review and be here at 9:00 in the
15 morning with any suggested charges or changes. Please
16 have them reduced to writing. It would be greatly
17 appreciated if as soon as you have it done, E-mail them
18 back to Drew so he can look over them and bring them to
19 my attention. I want to be here about
20 9 o'clock in the morning so we can have a charge
21 conference, make sure we are on the same page of the
22 charges, and we'll then let you argue and I'll charge
23 the jury and we'll submit it to them. Thank you
24 gentlemen -- wait a minute. Let's have you renew your
25 motions.

MOTIONS

1 MR. DIGGS: Your Honor, we would renew the motion
2 for directed verdict with respect to the murder. Now
3 that we've heard additional testimony, it shows that a
4 rational trier of fact would be unable to conclude the
5 presence of malice in the case. The additional
6 testimony beyond that that existed in the record at the
7 time previously when the motion was made comes from
8 family members who were sworn to tell the truth and
9 indicated that having evidenced throughout the lives of
10 the witness would show that the witness would have --
11 that the defendant would have confided in them before
12 he would have gone out and made some kind of quasi
13 public statement in front of a number of people that he
14 committed a murder.

15 Even if we go back to the evidence at the time the
16 State rested, there's not consistent evidence that
17 would reasonably support guilt beyond a reasonable
18 doubt with respect to the element of malice, so we
19 would make the motion for a directed verdict.

20 THE COURT: As to the murder?

21 MR. DIGGS: With respect to the murder, Your Honor.

22 MR. HUCKS: Your Honor, we would renew our
23 arguments and ask that it is saved for the record the
24 arguments made earlier. In the light most favorable to
25 the State, several codefendants, along with family

MOTIONS

1 members of the defendant, have more than established in
2 the light more favorable to the State that the
3 defendant be convicted of murder at this time.

4 THE COURT: And I would agree with the State that
5 there is substantial circumstantial evidence and ample
6 direct evidence when taken in the light most favorable
7 to the State for a verdict, should the jury return one
8 in this matter, and I would respectively deny your
9 motion.

10 Now, as to the burglary, I'm assuming you are
11 making the same motion?

12 MR. DIGGS: Same motion, although we argue that it
13 is stronger now because we've heard evidence from
14 family members who have known the defendant all of his
15 life, and we submit the verdict of guilty beyond a
16 reasonable doubt is not supported by the evidence in
17 the case and need not be submitted to the jury because
18 it doesn't arise to the threshold that the credibility
19 and reliability of the evidence needs to meet in order
20 to be submitted to the jury.

21 THE COURT: All right. And I would, again, deny
22 your motion. The issue before me is whether or not
23 there is any evidence, direct or circumstantial
24 evidence, and taken all the evidence in the light most
25 favorable to the State, which would support a verdict

MOTIONS

1 against your client. I certainly think there is enough
2 to send it to the jury, and I will send it to the jury.

3 Okay. Let's be in here at 9 o'clock in the
4 morning, gentlemen.

5 (Whereupon, the proceedings for December 4, 2013
6 concluded, and the following took place on December 5,
7 2013 at 9:06 a.m. out of the presence of the jury.)

8 THE COURT: Gentlemen, yesterday I provided both of
9 you a copy of my proposed charge electronically, and I
10 have been with you this morning discussing additions to
11 my charge. I think that there are a couple of issues
12 that we need to place on the record, one being the
13 State's request for a charge on felony murder. I'll
14 hear you on that, Mr. Hucks.

15 MR. HUCKS: Yes, sir. Your Honor, the felony
16 murder charge we passed up and asked to have it added
17 to the Court's standard charges is the charge set forth
18 in State versus Norris. Norris subsequently has been
19 overruled by State V. Torrence on a completely
20 different issue, but in Lowery V. State, Your Honor,
21 which is -- I don't have the citation, Opinion
22 No. 26436 from South Carolina Supreme Court, decided on
23 February 11, 2008, it holds that -- in Footnote No.
24 4 -- that the proper charge on the applied malice is
25 the Norris charge.

THE COURT AND ATTORNEYS- MOTIONS

1 In that particular case, the judge gave a charge in
2 line with the Norris. The jury went out, came back
3 with a question, he gave a different charge on felony
4 murder to the jury at that time. When he did that, the
5 Court ruled that the subsequent charge was an improper
6 charge --

7 THE COURT: It is my understanding that that charge
8 essentially -- the supplemental charge -- told the jury
9 that if they determined that -- if the murder was
10 committed during the commission of a felony, they must
11 find malice.

12 MR. HUCKS: Yes, sir, Your Honor.

13 THE COURT: And that was a burden shifting charge.
14 The supreme court, of course, reversed and remanded for
15 that reason.

16 The charge that you have proposed, I believe, is
17 the standard Norris charge, and correct me if I'm
18 wrong, and that charge is if one intentionally kills
19 another during the commission of a felony, then
20 implication of malice may arise -- may arise. If facts
21 are proved beyond a reasonable doubt sufficient to
22 raise an inference of malice, this inference is an
23 evidentiary fact to be taken into consideration by the
24 jury along with other evidence in the case. I further
25 charge you that the offense of first degree burglary is

THE COURT AND ATTORNEYS- MOTIONS

1 a felony. That is the requested charge?

2 MR. HUCKS: Yes, sir.

3 THE COURT: Mr. Diggs, I'll hear you.

4 MR. DIGGS: We object to it. With all due respect,
5 it undermines the requirements that the State has in
6 proving murder itself. It is confusing, I would
7 submit, and it need not be because the Court's charge
8 sufficiently covers the elements of murder elsewhere in
9 the charge.

10 More importantly, this speaks to a different degree
11 of malice. I understand malice -- some might view as
12 malice, but when a man walks in a home to steal a gun
13 and he's not even armed, and under the State's theory
14 of the case didn't know the man was there, didn't know
15 Mr. Elliott was in the home, it requires a big step
16 from that degree of criminal intent to the one of
17 committing a murder. So we would -- we object to the
18 charge on that ground, because it is just not
19 sufficient. They don't equate equally in the law. We
20 object to it on that ground.

21 Also, I would argue, again, with all due respect,
22 that in order to get this charge the State has to show
23 through some evidence that my client is only guilty
24 under a scenario where that inference would come into
25 play, like he's rummaging through the house, not armed,

THE COURT AND ATTORNEYS- MOTIONS

1 he is stealing a few guns and that all of the sudden he
2 is confronted by Mr. Elliott and they struggle, it
3 becomes a life-and-death struggle. All the sudden it
4 becomes elevated from simple house breaking, depending
5 on the time of the day, to one of murder. That is not
6 what the State is claiming. They are claiming that my
7 client cold bloodedly shot this man in the head and
8 killed him. So the inference would not be applicable
9 in that situation. Unless they want to abandoned that
10 and stipulate there was a struggle and that is why the
11 shooting ended up happening.

12 Lastly, if they get that charge, then we ought to
13 get a counter charge that says voluntary manslaughter
14 is a possible verdict.

15 THE COURT: Well, I have considered a charge of
16 voluntary manslaughter, however, I have read carefully
17 State versus Schuler, which is a 2001 case, I believe.
18 That case seems to be -- at least in my opinion --
19 pretty much on all fours with the case that we have
20 here. Of course, voluntary manslaughter requires the
21 showing that the -- the killing took place in the heat
22 of passion and that there was sufficient justifiable
23 provocation on the part of the victim.

24 In the Schuler case, the defense counsel made a
25 very interesting argument. In that case, of course, we

THE COURT AND ATTORNEYS- MOTIONS

1 had three individuals -- or there were three
2 individuals who were robbing an armed -- or an armored
3 car. A shoot-out ensued, and one of the guards was
4 killed. The Court rejected -- the trial court -- and I
5 think rightfully so -- the argument that this was heat
6 of passion with provocation because the defendant's
7 action had brought about the difficulty.

8 The defense then argued, interestingly, that the
9 provocation was that the victim was attempting to
10 complete a citizen's arrest of the defendant, and he
11 was using more force than would have been allowed in
12 that circumstance. Again, the Court rejected that
13 argument -- the supreme court rejected it -- stating
14 that the problem with that is that there was no
15 evidence that the victim was trying to complete a
16 citizen's arrest of the defendant, first of all.
17 Again, that the defendant had brought on the difficulty
18 himself.

19 So I don't think this is a situation where there is
20 any evidence to support a charge to the jury on
21 voluntary manslaughter. There is certainly no
22 provocation that would have justified a shooting.
23 Maybe there is some evidence of heat of passion. There
24 was a struggle, but there is no provocation, so I
25 respectively deny your request for a charge on

THE COURT AND ATTORNEYS- MOTIONS

1 voluntary manslaughter.

2 MR. DIGGS: I assume you've overruled our objection
3 to actually giving the charge as requested by the State
4 on that issue?

5 THE COURT: I will.

6 Now, gentlemen, you have received copies of the
7 charge, and you understand what is in the charge. I
8 believe we all know how I'm going to charge. I will,
9 though, give you another opportunity to renew your
10 objections after the jury has been charged in this
11 matter, but for all intents and purposes, you have been
12 protected on the record at this point, okay.

13 MR. DIGGS: Thank you, Your Honor.

14 MR. HUCKS: Thank you.

15 THE COURT: Let's bring the jury in.

16 MR. HUCKS: We intend to open on the law.

17 (Whereupon, the jury enters at 9:42 a.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: Ladies and gentlemen of the jury, as I
20 informed you yesterday, all of the evidence is in this
21 case and we're at that point where the attorneys will
22 be giving you their final summations or final
23 arguments. I want to remind you, as I told you at the
24 beginning of this trial, that summations or arguments
25 are not evidence. You are to only consider the

CLOSING ARGUMENT - MR. HUCKS

1 evidence that you heard from the witness stand. These
2 attorneys are going to point out to you or stress upon
3 you what their positions are in the case and will speak
4 to you about the evidence that you have heard, as well
5 as the law that is applicable in this case. Remember,
6 you, as a jury, are the ultimate judges of the facts in
7 the case. You will determine what the facts are, and
8 only from the evidence you have heard from the witness
9 stand. You will apply only the law as I give it to
10 you. If the lawyers tell you something -- and I don't
11 expect them to do so -- if they tell you something that
12 would vary from the law as I instruct you, you must
13 follow the law as I give it to you. All right, Mr.
14 Hucks.

15 MR. HUCKS: I didn't get a chance to introduce
16 myself. I'm Scott Hucks. I'm an assistant solicitor
17 with the Horry County Solicitor's Office. I have a job
18 today and over the course of this week to prove to you
19 12 folks beyond a reasonable doubt through the evidence
20 that we put up, through what you saw on the witness
21 stand and the papers and pictures, and all of the stuff
22 we handed you to prove to you --

23 THE COURT: Excuse me. I don't want to interrupt
24 you. I think we have feedback. I want the jury, of
25 course, to be able to hear you and not be distracted,

CLOSING ARGUMENT - MR. HUCKS

1 and Mr. Diggs.

2 MR. HUCKS: I can slide it away, if you don't mind.

3 THE COURT: Whatever works. All right. Thank you.

4 MR. HUCKS: My job is to prove to the 12 of you
5 that will be left over at the end of the case that Brad
6 Mullins, seated over there with his attorney, committed
7 a crime, two crimes. He's charged with two crimes in
8 front of you. He's charged with burglary in the first
9 degree, and he's charged with murder.

10 I'll talk to you about what the law says about
11 burglary and murder. We'll talk about what a
12 reasonable doubt is. The job that I have here, and the
13 job that Mr. Diggs has and the job the judge has, they
14 are all very clearly defined. You have seen it on TV,
15 you know what we do. You sat through it, you know what
16 we do. Your job is the most important one in the
17 courtroom, and it is the most unpleasant, because no
18 one wants to sit here in a courtroom in judgment of a
19 fellow man. But we picked you, all of us, we picked
20 you because nobody could do a better job in finding the
21 truth, finding justice in this particular case.

22 So in order to prove to you that Brad Mullins
23 committed these crimes, we are going to have to prove
24 some elements to you.

25 Can I get the screen, please, Madam Clerk?

CLOSING ARGUMENT - MR. HUCKS

1 Murder. He's charged with murder sitting right
2 here in this courtroom. He's charged with murder.
3 What is a murder? We think we know what a murder is.
4 We have all seen TV and heard about murder, but what is
5 it under the law? The Judge will tell you at the
6 end -- when I'm done talking and Mr. Diggs -- and
7 whatever he tells you, that is the law.

8 I'll tell you what I believe the law to be, so if I
9 say anything that disagrees, go with him, because he's
10 the judge, I'm the lawyer. It is always good to follow
11 the judge whenever he disagrees with a lawyer.

12 What is murder? Murder is a killing. It is a
13 killing, an unlawful killing when you take the life of
14 another person -- of a person -- with malice
15 aforethought. Malice is a lot of things. Malice is
16 the key to murder. Just taking someone's life is not
17 always murder. It requires malice, an element of
18 malice. Malice could be expressed or implied.

19 Now, what is malice? Malice, under the law, means
20 that you have the wrongful intent to injure a person
21 when you kill him, that you meant to strike the fatal
22 blow. "Aforethought" means that when you struck the
23 fatal blow, you meant to do it. Malice is a wrongful
24 intent, and "aforethought" means you meant to do it.
25 It means you had a wrongful intent and you meant to

CLOSING ARGUMENT - MR. HUCKS

1 commit the wrongful intent. You meant to do the action
2 you did that took the life of another person.

3 Murder is one of the shortest statutes we have in
4 South Carolina because it is really that simple. Did
5 you kill someone and mean to do the action you did when
6 you killed them? Don't need premeditation. I don't
7 need to get into my car and drive over to your house
8 intending to kill you for it to be a murder. It is not
9 premeditation.

10 "Aforethought" does not mean you -- that Brad
11 Mullins went to Joe Elliott's house and intended to
12 kill him. It means that at the time Brad Mullins
13 killed Joe Elliott, he intended to do the action that
14 took his life.

15 He also sits before you charged with burglary in
16 the first degree. First degree burglary, this is one
17 of those laws that South Carolina adopted from the old
18 time common law, and it is not much different than 200
19 years ago. It means you entered a dwelling, a place a
20 person lives is a dwelling, a place where someone
21 stays -- in this case, you know what you got. You've
22 heard it, you've seen it -- without consent. He went
23 into somebody's house without permission. A place
24 someone was staying without permission, and with the
25 intent to commit a crime when you went in there. He

CLOSING ARGUMENT - MR. HUCKS

1 walked in there intending to commit a crime, and it is
2 accompanied by an aggravating factor.

3 In south Carolina we have a litany of aggravating
4 factors. You go into a dwelling with the intent to
5 commit a crime without permission to be there, and one
6 of these things has to be true. The ones that we're
7 going to talk about here are: What is an aggravating
8 factor? Entering or remaining in the nighttime. You
9 heard the evidence. You heard the evidence. They left
10 at twilight, got there after dark. You go into
11 someone's house to commit a crime after dark, or you
12 are there when it gets dark, then it is burglary in the
13 first degree.

14 Or, if you go into someone's house with the intent
15 to commit a crime, and while you are there, you come in
16 armed, or you become armed. You either bring a gun, or
17 you get a gun while there. That is burglary first
18 degree.

19 Or, if you go into someone house with the intent to
20 commit a crime, and while you there you cause physical
21 injury to a person that is not involved in your crime,
22 a person in the residence. While you are there, you
23 physically injure somebody, you hurt somebody, you
24 shoot somebody in the head.

25 Any of those, any one of those, is enough for

CLOSING ARGUMENT - MR. HUCKS

1 burglary in the first degree. We have three. We have
2 three. We showed you these three because they are the
3 ones that apply directly to this case.

4 I'm going to come back and talk to you in a few
5 minutes after Mr. Diggs speaks, and we'll worry about
6 this in a minute. I thank you for your time, look
7 forward to have a chance to talk about the facts with
8 you a little bit more in a few minutes.

9 THE COURT: Mr. Diggs.

10 MR. DIGGS: Good morning. I guess we need to turn
11 the lights back.

12 The State gets to address you twice at the end of
13 the case, in part, because they have the burden of
14 proof because they get the last argument if there are
15 certain things I didn't do, present evidence or
16 something like that. So under our procedure, the State
17 gets to open on the law, and then you'll hear from the
18 defense attorney, and then you hear from the State
19 again, and that is what is going to happen today. This
20 will be the last time that you get to hear anything
21 from me -- or you have to hear anything from me -- in
22 this case.

23 Yesterday afternoon we had a chance to put on a
24 couple of family members, immediate family members,
25 sister and mother. And I know initially you think that

CLOSING ARGUMENT - MR. DIGGS

1 it is a hokey thing. Why do you pull in that? But you
2 got people that Brad grew up with, sister and his
3 mother, who both testified, and I would submit they
4 were believable, they didn't come in and try to side
5 step, you know, spin things. I would submit they were
6 straightforward, believable, saying I think that if
7 Brad committed a murder and he wanted to talk about it,
8 he would have come and said, Look, I've done something
9 and I need to talk about it. I want to talk about it.
10 But in all of the years since 2008, all of the years
11 that he's kept in communication with his family, that
12 hadn't happened. We had a chance to hear from those
13 two ladies yesterday that that hasn't happened. Yet,
14 the State's theory is that my client was out, in
15 effect, broadcasting it to whomever within hearing shot
16 that he made this statement. I would submit that that
17 is kind of weird and kind of strange. You would
18 question whether or not that sounds like something that
19 would happen.

20 On a number of occasions you had witness after
21 witness come up and say, Oh, yeah, I heard him say
22 this. What I want to do is spend a little bit of time
23 analyzing those witnesses and the circumstances under
24 which those -- that testimony was made.

25 One thing I want to talk about just briefly, and it

CLOSING ARGUMENT - MR. DIGGS

1 is kind of interesting, psychologically speaking,
2 maybe, everybody refers to this case as "Anthony and
3 Brad." Anthony and Brad did this, Anthony and Brad did
4 that. Yet, Brad was the man -- he supposedly knew the
5 man, knew he had the guns, knew where he lived, planned
6 the whole thing and committed the murder and, yet, it
7 is never "Brad and Anthony," it is "Anthony and Brad."
8 I submit that Anthony did this, and we'll get into it
9 in a minute why the other members of the Mullins
10 extended family began to come around Brad (sic) and try
11 to help him, dump this off on Brad and kind of save
12 Anthony, to the extent that we can.

13 I would submit that plan is working so far, because
14 I would submit commonsense tells you at this point that
15 Brad (sic) has some kind of deal going with the State
16 in the event -- that Anthony has a deal going with the
17 State in the event that Brad is convicted here. There
18 is plenty of reasons in the evidence -- holes in the
19 State's case, I would say, to show initially that
20 wasn't what was happening. As the years went on, it
21 began to congeal. The opportunity presented itself to
22 pull another person in here, shift the blame off on
23 that person, Brad, and we'll help Anthony.

24 Anthony is the son of Moon's sister. I don't
25 remember if she is still alive or not. You may recall.

CLOSING ARGUMENT - MR. DIGGS

1 I don't know if it was asked, but I think his dad
2 passed away, I think he went to a funeral or something.
3 So for whatever reason, Moon had a special relationship
4 with Anthony that he didn't have with the other boys.
5 The reason for that is understandable, given Anthony
6 was his sister's child. The other boys were -- Arlie
7 and Charlie and Brad, they were children of his
8 brothers or himself, you know, but Anthony was the
9 sister's child. Moon took him under his wing, and he
10 helped him out more because of that situation. I don't
11 know of any other way to explain it.

12 If you look at the evidence that was presented in
13 this case, begin to ask yourself, Beyond a reasonable
14 doubt, do I have a reasonable doubt about this case.
15 You know, you wouldn't be human if you didn't have a
16 reasonable doubt in this case. We know Anthony fired a
17 shot. He said -- he told you. Dr. Proctor said, Yeah,
18 that shot would have been fatal, maybe not immediately,
19 but it would have killed him. Mr. Elliott would have
20 died from that shot. Anthony tells you he shot him.
21 So we know Anthony is qualified to be charged with
22 murder as just defined by the State. We know at least
23 who is partly responsible, if not completely, wholly
24 responsible. We know that.

25 The only question now is, okay, is Anthony right

CLOSING ARGUMENT - MR. DIGGS

1 here -- is he telling the truth when he brings in
2 another person to take the fall so that he can get a
3 better deal? He'll have to do some time in prison, but
4 a little -- less time is better than more time, and
5 that is where we are. We see Moon's influence, okay,
6 on his son Charlie, his nephew Arlie. Arlie's dad
7 lives up in Pennsylvania somewhere. I don't know if
8 you remember that, but they coalesce a little bit and
9 begin to help.

10 Think about it. Here is why I say that. All of
11 them heard Brad confess to murder almost immediately,
12 right? Almost immediately. All of them testified to
13 that. Even Delilah, all of them. Not one person went
14 to the police. Not even after they saw -- I didn't
15 believe it, you know. I thought he was BSing, and I
16 didn't believe he really killed him. But then it was
17 on the TV news. At that point, you put one and one
18 together and you think, A murder occurred here, I have
19 a responsibility to check it out.

20 Now, I know there is certain things of family
21 loyalty, but, my goodness, all of these people and not
22 one goes to the police? Think about it. Not one
23 person in 2008, all of whom heard a man confess to
24 murder, all of them who saw it on TV or were told
25 directly that a murder had happened, and none of the

CLOSING ARGUMENT - MR. DIGGS

1 people, none of them, go to the police and report it
2 and say, Look, I might know a lead that would help you
3 solve this case. Not one person did it. Does that
4 cause a reasonable doubt in this case? Of course it
5 does.

6 I would suggest to you that they didn't go, because
7 that never happened. Somebody is working an influence
8 here about -- well, I mean, look, we talked about it,
9 and I'll get into it a little more detail, but all of
10 these people -- let's move on to 2011 when, finally,
11 Delilah goes to the police. Think about this. Why
12 does she go to the police? Was it to talk about a
13 murder, or was it to report the fact that Moon was
14 beating her? She's being beaten, okay, and she's got
15 her husband, she knows who is somehow connected to this
16 thing, so it is a way for her to get out. So she goes
17 to the police and ultimately tells them about this
18 murder and how some of Moon's family were involved in
19 it.

20 Now, for the State, that is a problem. They want
21 to get evidence in directly from Delilah against Brad,
22 and there is a thing called "hearsay." So she can't
23 tell what other people have told her, so she's got to
24 have some direct knowledge herself. So she comes in
25 and she sits on that stand and she says, you know, I

CLOSING ARGUMENT - MR. DIGGS

1 was at a cookout and I heard Brad say he killed a man.
2 Then I said, Well, didn't you tell the police that
3 Latonya -- you know, Anthony's wife -- didn't you say
4 she called you not too long ago and told you about it,
5 and she says, Yes.

6 All right. For two years Delilah sits on the fact
7 that Brad confessed to everybody in the yard that he
8 committed a murder. Brad keeps it from his mom and
9 sister, he doesn't want them to know he's a bad boy,
10 but he's willing to tell everybody out at the cookout?
11 A cookout that probably was attended by his sister, but
12 she doesn't hear that. She doesn't know anything about
13 it.

14 You see the influence of Moon Mullins on her
15 testimony. I would respectfully submit that is what is
16 happening here. She's married to what she perceives to
17 be a horrible man. She is in a horrible situation.
18 He's beating her. She told you -- she showed the
19 bruises on her body to the detectives that day. Help
20 me, she says, and she sees an opportunity to tell the
21 truth about Moon. He knows about this murder, he's
22 beating me, I need out of the situation. What does she
23 say on the stand? They are separated.

24 Is that a reason to have a doubt about what her
25 believability and creditability of her testimony is?

CLOSING ARGUMENT - MR. DIGGS

1 There is a reason to doubt it. Is that a situation
2 that we trust, or do we hesitate to act in that
3 situation? Are we going to say this man is a murderer
4 because of what Delilah said? No. We are going to
5 have a doubt about that.

6 She might be telling the truth, but the Judge is
7 going to tell you that is not going to be sufficient to
8 convict my client of murder, or any other person. It
9 is beyond a reasonable doubt. I have no reasonable
10 doubt about Delilah's honesty? Of course we have a
11 doubt about it, and that is a reasonable position to be
12 in this case. She has a reason to fudge on the facts a
13 little bit. It doesn't match with what her conduct has
14 been for the last five years, but, you know, it fits
15 good enough for the government to work it, I heard Brad
16 say this. Although, she didn't tell the police that in
17 2011, or ever, to my knowledge. I mean, if I'm wrong
18 about it, I'm sure they can and will correct me.

19 I didn't talk about Mr. Elliott or Mr. Stephens
20 because I have no doubt they were up there telling the
21 truth. They were trying to help get to the bottom of
22 this case for their friend and the friend's family.
23 One thing we learned is that Mr. Elliott owned what, in
24 effect, was a homemade firing range. That man owned
25 guns, according to the testimony, more than 30 weapons

CLOSING ARGUMENT - MR. DIGGS

1 in that house, and the reason we know that, there was
2 as many as 15 pistols, as many as 15 rifles in that
3 house that were taken, supposedly. I assume they were
4 from Mr. Elliott's home that night.

5 So he knew how to fire. He knew what a gun was.
6 He knew how to operate it and fire it. If someone was
7 within feet of him breaking into his house, he would
8 know how to shoot and kill them. He's not going to be
9 wildly firing off through the house, through ceilings
10 and walls missing the burglars, and we'll come back to
11 that in a minute. If he had confronted a burglar, he
12 was quite capable of handling the situation right then,
13 but he didn't.

14 We got -- and I would submit we have knowledge from
15 those two witnesses that Mr. Elliott not only owned
16 these guns, he probably had one around him most of the
17 time, had one that night. Everybody admits he came out
18 with the gun in his hand, okay. That puts us in a
19 position of this: My client who rented from
20 Mr. Elliott years before, my client who knew about
21 Mr. Elliott's reputation for being a gun owner
22 enthusiast, we come to a situation where in the
23 nighttime, where he won't be able to look at the
24 driveway to see if there is any tracks or not, my
25 client supposedly, unarmed, didn't have -- he wasn't

CLOSING ARGUMENT - MR. DIGGS

1 armed, breaks in a house of a man he knows is a gun
2 enthusiast who is going to be armed and knows how to
3 use a weapon for defense. He breaks in and strolled
4 through the house and took out the guns knowing that
5 his car is there.

6 My question would be, at the minimum, even if you
7 thought he was gone, okay, let's say for some reason
8 you thought that Mr. Elliott wasn't home that night --
9 although it certainly would be his habit to be there --
10 wouldn't you -- first of all, would you break in? The
11 answer would be, no. Does that cause you to have a
12 reasonable doubt about my client's guilt? Yes. If he
13 knows the man, and, heavens, wouldn't you be sure you
14 went in there sometime when Mr. Elliott -- when you
15 knew he was gone? Aren't you going to have a backup
16 plan? Well, what if by some chance he's at home, what
17 am I going to do? At least you are going to carry a
18 gun. But, no, under this fantasy that we're being told
19 this week is that didn't happen. My client breaks into
20 the door -- not Anthony, by the way, it is Brad --
21 breaks in the door, strolls through the house unarmed.
22 That is a stupid decision, not just because it is a
23 criminal act and it is stupid to do, but he's putting
24 himself in real danger, possibly, you know, getting
25 confronted and shot. You wouldn't do that. That is a

CLOSING ARGUMENT - MR. DIGGS

1 reason to have a doubt about this case. Wouldn't he
2 arm himself to break in, you know, to kill the man,
3 protect himself? He didn't do that in this case,
4 because it didn't happen. Anthony, went in the house,
5 Anthony was around. He shot Mr. Elliott. I would
6 submit that that is a reason to have a doubt about this
7 case and my client's guilt.

8 Peter Cestare was the crime scene -- I think he was
9 a corporal or lieutenant, I don't remember, but he was
10 a crime scene investigator, reconstruction expert. He
11 showed us a lot of -- maybe not a lot, but some
12 photographs of the bullet trajectory. Just a couple of
13 these I wanted to address. There was another one that
14 showed this better, but remember these trajectories?
15 Look at that one. There is another photograph that
16 shows -- look where that trajectory is coming from. It
17 is coming from the floor, I would submit. Whoever
18 fired that shot was on the floor, okay. It wasn't
19 firing warning shots running out of the bedroom, that
20 was on the floor.

21 You know why the detective didn't mention it,
22 because that doesn't fit in with the State's theory of
23 the case. We are left here to try to figure out what
24 happened. It is not our responsibility to do that, it
25 is the State's responsibility to prove my client is

CLOSING ARGUMENT - MR. DIGGS

1 guilty of murder beyond a reasonable doubt. But that
2 shot was fired by someone on the floor. That is why we
3 have a jury, to bring collective commonsense from the
4 community into the courtroom to help us make these
5 factual determinations. I would submit that that is
6 what -- State's Exhibit 44, I would submit -- and to a
7 certain extent No. 48 -- I would submit that that
8 causes a reasonable doubt, at least, with respect to
9 Anthony's description of, well, he heard a couple of
10 shots as Mr. Elliott came out of the bedroom
11 (indicates). On one occasion, he said I was outside
12 and ran in. On the other occasion he says, Well, I was
13 over here -- I think he said he was near the gun rack,
14 and when the gentleman, Mr. Elliott, comes out of the
15 bedroom, he runs over here to the corner of the living
16 room adjacent to the kitchen. Right? Do you remember
17 when he said that?

18 I would submit that that didn't happen. That would
19 cause me to have a doubt, reasonable doubt, about the
20 State's theory, that aspect of the State's theory of
21 the case. They'll fall back and say there are other
22 ways this could happen, and try to address those too,
23 but that aspect of Anthony's testimony, I would submit
24 to you, we can reject because Mr. Elliott was -- if he
25 had the gun, Mr. Elliott was on the floor, he fired a

CLOSING ARGUMENT - MR. DIGGS

1 shot, gun is up into the cabinets and into the ceiling,
2 near the ceiling. We see the State's proven that with
3 the trajectory.

4 So with this witness, Cestare, he's got a lot of
5 years experience, 25 years, and he worked up in New
6 York, worked for Horry County for 10 years, but notice
7 what he's doing -- and if he could have tied Brad
8 Mullins to this case, he would have done it, but he
9 didn't because he couldn't.

10 It is almost like, Okay, here's what I got. He's a
11 crime scene expert. This is a murder case. It is like
12 he comes up here and says, Okay, this case stinks, but
13 I have to do my job, so here is what I found, and,
14 there, we're going to drop it in your lap. What does
15 he explain to you? Nothing. He hadn't given you
16 anything, really, that is going to help you decide this
17 case. You are going to have a reasonable doubt,
18 because their most qualified technical person, the
19 crime scene investigator, just kind of washes his
20 hands and says, Beyond me, I'll leave it to the jury.

21 You know what, you work within parameters. If that
22 causes you to have a doubt about the case, you have to
23 exercise that doubt and find him not guilty. Anthony
24 is going to prison. Anthony is the one who is at
25 least, if not wholly, responsible for this death. It

CLOSING ARGUMENT - MR. DIGGS

1 is not going to make that family feel better if an
2 innocent man goes to prison. They wouldn't ask you to
3 do that. Anthony is not innocent. Anthony should pay
4 the price, because beyond a reasonable doubt we know he
5 did it, at least in part. That is what the legal
6 system is for. Better that a hundred guilty men goes
7 free than one innocent goes to prison. Remember that
8 old saying? It was a certain number. Ten? I don't
9 know.

10 We don't gain anything by guessing and speculating
11 that Brad Mullins is guilty because Anthony says he is.
12 Delilah -- and I think it was Moon, and we'll get to
13 him -- said we overheard him say this. That is not our
14 job. Our job and your job, a juror's job, is to put
15 the brakes on this. Wait a minute, this case doesn't
16 measure up. There are reasonable doubts here for
17 several reasons. We can't convict this man of murder.

18 This is the most heinous crime we have in our
19 society, and it requires a higher degree of liability.
20 The Court has a responsibility. Let me tell you, they
21 have done the best they could, but the evidence is not
22 here. I would submit the evidence is not here, because
23 it should be the easiest thing in the world to prove an
24 assassination killing of a man in his own home, but we
25 don't have that. We're left to guess and look at the

CLOSING ARGUMENT - MR. DIGGS

1 creditability of every single lay witness that got on
2 the stand, except these first two gentlemen that
3 testified, Mr. Stevens and Mr. Elliott.

4 Amy Stevens testified and talked about the chain of
5 custody of the bullets, to some extent. Then we have
6 the gentleman from the hospital that came and testified
7 about the x-rays.

8 Bear with me. Sorry. All right.

9 There is supposed to be competent forensic evidence
10 that the State has introduced here. We know that the
11 bullet -- Dr. Proctor was right here and described the
12 bullet as coming in on the left side of the skull.
13 Remember how Anthony said, Blew his head open? Well,
14 there is the bullet, you know. His head didn't get
15 blown opened. It goes through and -- goes through the
16 skull, but caught underneath the skin, so the head
17 didn't explode. The hole wasn't big enough for the
18 bullet to come out. The skin was intact and caught it.
19 You heard the doctor testify about that.

20 This bullet was the same -- a bullet that was fired
21 from the same weapon that the other two bullets fired
22 from. You know, the bullets that were shot up into the
23 living room and fell on the kitchen floor and fell on
24 the shelf, remember those? So there is a total of
25 three bullets that were found that came from the same

CLOSING ARGUMENT - MR. DIGGS

1 weapon. It was like a .38 caliber, and the gentleman,
2 Mr. Black, testified, I think yesterday or the day
3 before, in the afternoon about what types of guns would
4 have made those -- fired that bullet. They were all
5 the same gun.

6 There was one more bullet that was fired, there
7 were four shots fired, that we know of and the evidence
8 shows, and here is the fourth bullet. Okay? This is
9 the x-ray of Mr. Elliott showing where that bullet is
10 in his body during the autopsy. That is the
11 fourth bullet.

12 Now, what did Dr. Proctor say about that bullet?
13 He said the hole in the skull and the hole in the chest
14 were the same diameter. The one in the chest was
15 slightly oval, but it could be because of the angle,
16 but it was basically the same caliber.

17 Now, he left some leeway there. Could have been
18 another caliber, but I remember him saying you wouldn't
19 see that with a .22. Do you remember when he said
20 that? You wouldn't see that hole if a .22 bullet had
21 made it. It is more like the other three. Doesn't
22 that make sense, they were fighting over the gun? He
23 just couldn't retrieve this bullet in the autopsy, so
24 we're left not to know about what the caliber of that
25 bullet was. Could it have been from the same weapon?

7

CLOSING ARGUMENT - MR. DIGGS

1 Yeah. Could it have been because the diameter of the
2 wounds were the same? They were the same. Does that
3 have a basis for causing you to have a reasonable doubt
4 here about the State's theory of the case? I submit it
5 does.

6 If it was a .22 bullet, it would have been a lot
7 smaller and the doctor would have noted that. Dr.
8 Proctor has been testifying for a long time. It is
9 just about impossible to catch him in anything, okay.
10 And the reason you can't is because he's so straight
11 forward. He's not going to spin it one way or the
12 other. He'll agree with you if you said, yeah, it
13 could be that way. I tried to push him on the length
14 of the decomposition time, and he wouldn't go there.
15 So the best I could do was, Well, you said in your
16 report it extends beyond three or four days. Yeah, he
17 said that, but he just stuck to that number. He
18 thought it was three, four days, which kind of fits
19 with the State's time line, but it he wasn't sure.

20 He was sure about the diameter of those holes in
21 Mr. -- the wounds in Mr. Elliott's body, they were the
22 same, .22 and .38. Do you think they make the same
23 wound? No. One is going to be almost twice as big as
24 the other. Did Anthony shoot with him a .22? No.
25 There is no -- other than his testimony, there was

CLOSING ARGUMENT - MR. DIGGS

1 nothing that suggests that happened. I submit it is a
2 doubt in this case that is a reasonable doubt about my
3 client's guilt. You have to return a verdict of not
4 guilty in that situation.

5 But we're not through. I want to talk about Moon
6 and Little Charlie. Moon -- he's the one I started off
7 saying, Look, in my opinion, put all of this thing
8 together. He's pulling the strings. I know where you
9 guys can get some guns, I went by there and I don't
10 think he's going to be home on such-and-such time, so
11 you might want to break in there and get the guns.
12 That is what Anthony said. That part could be true, we
13 don't know, but what we do know is that when Moon gave
14 his statement -- remember now, he's in Georgia and has
15 charges in Cartersville, Georgia, charges in Florence,
16 potentially charges here for this case. He wants to go
17 home to his family, and he's willing to tell those guys
18 everything he can to work a deal out. The detectives,
19 they want to solve a murder. They don't think Moon did
20 it, okay, so they are willing to bargain and make
21 concessions with him.

22 He's supposed to do nine years in Georgia over a
23 number of years. He has charges in Florence. He said,
24 Well, it is on my record, but he's not in prison. So
25 whatever the penalty was didn't include any jail time,

CLOSING ARGUMENT - MR. DIGGS

1 and he's charged here. But you know what he said in
2 Georgia? Anthony confessed to me. Anthony committed a
3 murder. He does not say Brad and Anthony, or Anthony
4 and Brad. He does not say Brad confessed. He said
5 Anthony committed a murder. I can get it on wire.
6 He's willing to do anything.

7 Why didn't he tell them then that Brad had
8 confessed? He said, Well, we were talking about
9 Anthony at that time, so I didn't bring it up. Please.
10 The plan hadn't fully solidified at that point to shift
11 the burden away from his favorite nephew, and certainly
12 not from his son, Little Charlie. You know what, he's
13 thinking, I wish I could help the boy, Anthony. So
14 maybe if we bring somebody down with him, put the blame
15 on somebody else, we can help him a little bit. And he
16 has. At that time, it hadn't solidified enough in his
17 brain, in his mind, to say -- come out with that plan,
18 so he neglects to tell them about Brad.

19 Then, all of a sudden, we get to the latest
20 interview -- bear with me for a second. Down in
21 Pamplico, I believe, he indicated it was in March 2011.
22 2011 was a pivotal year, because that is when people
23 began to understand about this case. The detectives
24 are on the scent now, and they begin to pull a string
25 that is unraveling.

CLOSING ARGUMENT - MR. DIGGS

1 Bear with me just a second.

2 He's down in Cartersville, Georgia with Detective
3 Jones and another detective, and I don't if his name
4 came out in the testimony. He acknowledges in that
5 interview that Anthony confessed. So it brings us up
6 to March of 2013 when the investigator from the
7 solicitor's office has him in Florence, South Carolina
8 and he does an interview at that time. He says, for
9 the first time, Brad is involved in this case. Brad
10 confessed to him. Finally, after five years, he comes
11 up with the story that Brad did this, Brad goes in and
12 Brad shoots the man. I know Anthony might have shot
13 him, but Brad shot him in the head. His delay in
14 reporting that, his delay where he neglects to mention
15 that in Cartersville, Georgia earlier to the detectives
16 is neglected. His failure to disclose that two years
17 ago, and now just this year, year of the trial, he
18 comes in with Brad.

19 Is that a reason to have a doubt about this case?
20 It is a reasonable doubt to believe that part of the
21 State's case, and it is another doubt -- another
22 justification for a doubt not to convict my client of
23 this murder that Anthony Ray acknowledges that he did,
24 at least in part.

25 Charlie is interesting. Charlie is Moon's son, we

CLOSING ARGUMENT - MR. DIGGS

1 remember that from the testimony. Charlie says, We
2 dropped them off, I didn't have anything to do with it.
3 I didn't know anything about it. That is not what
4 Anthony says. Anthony says all of them knew about it.
5 Charlie and Arlie, remember him saying that? Moon knew
6 about it. Moon is the one that sent us up there. We
7 all went together. We were going to break in and steal
8 the stuff, that is what Anthony said.

9 You might say, You know what, that is bull.
10 Because these other two witnesses, Charlie and Arlie,
11 said they didn't have anything to do with it, they just
12 rode down the street and back. Until Charlie was
13 testifying in this courtroom -- and I had the court
14 reporter prepare what he said, and what he later
15 said --

16 MR. HUCKS: Objection, Your Honor. If we may
17 approach, Your Honor?

18 THE COURT: Okay.

19 (Whereupon, a bench conference was had.)

20 MR. DIGGS: I just wanted to make sure that what we
21 heard over here was what was actually said from the
22 witness stand, because the witness didn't realize he
23 said it. I pulled in -- he's talking about he was at
24 the store and he was coming back to the house, remember
25 that part of the testimony, this is Little Charlie.

CLOSING ARGUMENT - MR. DIGGS

1 This is the son -- Moon's son. When I -- when I pulled
2 in -- not "when we pulled in." When I pulled in,
3 Anthony and Arlie were standing beside the road
4 waiting.

5 If you don't believe me or if you want to honor the
6 State's objection to that, you have the right to ask
7 the court reporter to play it back for you so you can
8 hear it too, and maybe you don't need to because you
9 heard it at the time. This is telling -- this is, with
10 all due respect, damaging to the State's case.

11 When I pulled in, Anthony and Arlie were standing
12 beside the road waiting. That is what that man said
13 from the stand. You can say, Oh, it was a slip of the
14 tongue, I meant to say Brad. Or it could be he was
15 telling the truth and it just slipped out before he
16 caught himself to get Brad -- no. No. No. No, not
17 Arlie, Brad. It was Anthony and Brad, not Anthony and
18 Arlie like I said. That is a reason to have a doubt.

19 If you were riding around with your cousin and you
20 said, My cousin -- and it was true, your cousin -- my
21 cousin and I went to the store, and my cousin and I was
22 coming back and I saw my cousin was standing there
23 waiting on me. You are not going to make that kind of
24 mistake. That is not a reasonable mistake to have in
25 terms of a slip of the tongue. The truth came out of

CLOSING ARGUMENT - MR. DIGGS

1 him for a second when he wasn't aware of it. It is a
2 subconscious slip. Freudian slip. You don't make that
3 kind of mistake in a murder prosecution unless you are
4 lying about what happened, unless you forget, Wait a
5 minute, he's the fall guy. I meant the Patsy and
6 Anthony were there, not Arlie. It was Brad and Arlie
7 -- Brad and Anthony. You know, it is not the kind of
8 mistake he's going to make, and it is a reason to have
9 a reasonable doubt about this case in who killed
10 Mr. Elliott.

11 Notwithstanding all of the stuff, notwithstanding
12 the fact that Anthony admits he shot him, and the
13 doctor says, Yeah, that was a fatal shot. We want to
14 go further and prosecute this man, because after all,
15 we're going to put him in jail for a long, long time,
16 and Anthony gets a deal. That is not why we are here.

17 Arlie, you know, when he testified -- why in 2011,
18 or whenever it was when they talked to him, why didn't
19 he say "Anthony and Brad" or "Brad and Anthony"? Why
20 did he say "they"? He couldn't even -- not even Arlie.
21 He couldn't say at that time "they" because he probably
22 didn't know specifically what the final story was going
23 to be. I don't know. But if some detectives were
24 talking to you about a murder, would you just say
25 "they"? Wouldn't you use names? But by this year, Oh,

CLOSING ARGUMENT - MR. DIGGS

1 yeah, put Brad in there, it was Brad.

2 Now, we all went out and threw the guns in the
3 swamp, and the Horry County people went out there and
4 tried to find them. All of these guns, all of these
5 bridges, nothing. Latonya says they threw them in the
6 swamp down in Mississippi or Louisiana or Kentucky,
7 somewhere. Well, all of the witnesses say, Oh, no,
8 that was in Horry County. But they didn't find them.
9 So all we have to do is rely on them, which is not
10 credible, and certainly not credible when you are
11 talking about reasonable doubt in a murder case.

12 I want to talk to you just a minute about the
13 shooting of Mr. Elliott. What did happen? We know he
14 was shot in the chest -- brain, chest. When
15 Mr. Elliott comes out of this room firing the guns like
16 Anthony said, Anthony runs over here, right? Somehow,
17 miraculously, he becomes armed with a .22.
18 Mr. Elliott, he's pointing the gun, supposedly, at
19 Brad, and then Charlie -- excuse me, Anthony shoots.
20 Mr. Elliott notices him, turns around, faces him,
21 right? Anthony supposedly starts yelling, Put the gun
22 down, put the gun down, and then shoots him, right?
23 But you know what is odd about it? He shoots him in
24 the right chest over here. How in the heck did Anthony
25 have that angle at Mr. Elliott to shoot him in the

CLOSING ARGUMENT - MR. DIGGS

1 right chest? He would have shot him straight in the
2 chest -- or in the left chest, had he not completely
3 turned around. I promise you, Mr. Elliott didn't go,
4 Oh, okay. That is not what he would have done. That
5 is unreasonable, and it is a justification for a
6 reasonable doubt in this case. It is absurd to suggest
7 that from this standpoint in the room, okay.

8 You make a shot across the living room floor into
9 the man's right chest? How is that going to happen?
10 It didn't happen. When this man came out of his
11 bedroom, why was he wildly firing through the air? It
12 didn't happen. What Anthony said was Brad kicked in
13 the door, not Anthony. Brad kicked in the door, and
14 Mr. Elliott comes out firing or confronts him, and we
15 break it.

16 It could have been a struggle, because on one
17 occasion Anthony says they struggled. On another
18 occasion, he says, Oh, Mr. Elliott had the gun trained
19 on him, holding him at bay up against the wall. That
20 is the two versions that Anthony told. I would submit
21 what makes equally as much sense and fits better with
22 the physical evidence is that when Anthony kicked the
23 door in, Mr. Elliott came out and they struggled.
24 Mr. Elliott was armed, and they struggled and fell down
25 on the floor. There were shots fired from that angle

CLOSING ARGUMENT - MR. DIGGS

1 on the floor that went up into the ceiling over there
2 near the kitchen, a struggle (indicates). The gun goes
3 off, and it shoots him in the right chest, which puts
4 Mr. Elliott in a very vulnerable position, and it
5 allows Anthony to finish him off with a shot to the
6 head on the left side.

7 Anthony -- do you remember the photograph of the
8 body under the blanket? The man who killed Mr. Elliott
9 put a blanket over him. The man who killed Mr. Elliott
10 had nightmares about it. The man who killed
11 Mr. Elliott confessed to his wife about it. The man
12 who killed Mr. Elliott was the favorite nephew of Moon
13 Mullins. The man who killed Mr. Elliott was acting
14 probably on information, if not instruction, of
15 Mr. Mullins, Moon Mullins, to go in there and see what
16 you can steal.

17 Moon is a liar. I'm a convicted felon and I don't
18 have anything to do with guns, but his son says, Yeah,
19 he sold two guns right before we went to Louisiana.
20 Anthony killed Mr. Elliott. Maybe he didn't mean to,
21 but he went in the home, he put all the guns on the
22 blanket outside on the ground, and the other three put
23 them in the truck. Then, Anthony says when we got back
24 to Moon's house, Brad left. After Brad had just
25 murdered Mr. Elliott, according to Anthony, he leaves

CLOSING ARGUMENT - MR. DIGGS

1 and then all the guns stay with the other three? The
2 other three go off and throw them in the swamp,
3 remember when he testified to that? All of that is a
4 reason to have a doubt about this case.

5 There is no way a rational finder of fact could
6 return a guilty verdict as to murder against my client,
7 Brad Mullins, in this case. I think we pretty much
8 went through the evidence that we have. I don't know
9 of anything else that the State can bring up, you know,
10 other than those witnesses to satisfy their burden of
11 proof in the case. The question is not could Brad have
12 done this with Anthony, yeah, he could have. But is it
13 so beyond a reasonable doubt? No. It is a long way.

14 Listen, I talked a long time, and I know it is
15 boring and hard, but it's important. You guys swore to
16 uphold the responsibilities and follow the law as
17 jurors in the case, and we appreciate it, because if
18 you weren't here as a check over the government, Brad
19 Mullins would be in a different place.

20 Let's go back to his mom and his sister. Were they
21 credible? Did they try to spin things? Do they have
22 -- I mean, it is family, they would have known these
23 things. I submit that had they known, they would have
24 forced him to go to the police. I submit to you that
25 those two women wouldn't have sat on that information.

CLOSING ARGUMENT - MR. DIGGS

1 They would have expected more out of their family
2 member, their son, their brother. As I said, this is
3 the last time I get to speak about it. You've been
4 very attentive, and I appreciate your help. I know
5 Mr. Mullins appreciates it. If not for the system, if
6 not for you agreeing to participate in this process at
7 this time, he would be in a very different place, I
8 think we all would.

9 I would argue that a not guilty verdict is required
10 in this case because the evidence just doesn't satisfy
11 the burden of proof of guilty beyond a reasonable
12 doubt. Thank you.

13 MR. HUCKS: Thank you, Your Honor. Just a minute
14 here, guys. We've talked a little bit and you heard
15 Mr. Diggs get into all of these statements and
16 codefendants and the State's witnesses, but I want to
17 talk to you, to start with, about what does the
18 evidence show. If you take out all of the
19 discrepancies, every little thing that Mr. Diggs asked
20 you to take out, take that stuff out, and I'm going to
21 tell you a few things. I'll tell you what I think the
22 evidence shows.

23 You heard Moon Mullins, and I believe you heard
24 either Mr. -- one of Mr. Elliott's two friends who
25 testified towards the beginning, Mr. Stephens or

CLOSING ARGUMENT - MR. HUCKS

1 Mr. Elliott, I think you heard at least one or two of
2 them when they talked that he was a drinker. He had
3 drinks. I like a few drinks myself. So let's talk
4 about the last night of Mr. Elliott's. Let's talk
5 about it for a minute.

6 Mr. Elliott is in his bedroom, comes home, takes
7 his clothes off. He comes from wherever he was that
8 day, he comes home, takes his clothes off, climbs in
9 his bed, shuts the door, turns on the air conditioner.
10 You heard Lieutenant Cestare talk about there was one
11 unit running in his bedroom, and that was the only air
12 conditioner in his house. He goes to his bed, air
13 conditioner humming right next to his head. He's
14 sleeping, probably sleeping one off, maybe,
15 potentially. I've done it. He is laying in his bed
16 here (indicates), air conditioner by his head, humming
17 air conditioner, sleeping deep because maybe he had a
18 couple of drinks, naked in his bed in a place that is
19 absolutely okay. It is okay to be naked in your bed,
20 in your house, the one place he has a right to be
21 protected from the entire rest of the world.

22 He's there, and while he's snoring in his bed, Brad
23 Mullins and Anthony Ray, and maybe the rest of the
24 crowd, are planning on taking advantage of him. They
25 are planning on going to his house. They are sitting

CLOSING ARGUMENT - MR. HUCKS

1 under a carport at this house discussing what they are
2 going to do to steal this man's guns. Why? Why would
3 they steal his guns? Think about it for a minute. Why
4 were they stealing the guns? What were they doing on
5 Monday? They were here, but going to Louisiana. They
6 needed traveling money. They needed to get out of
7 town. They needed to get out of town and pay for hotel
8 rooms or campground, or wherever it is this crowd stays
9 when they are out of town.

10 They get in the car. Brad Mullins, what do we know
11 about Brad? Who is the only person that had a personal
12 relationship with Mr. Elliott? Who was it? We all
13 know who it was, that guy sitting at that table sitting
14 there. He had a personal relationship with Mr. Elliot.
15 So while he is asleep in his bed with his air
16 conditioner going by his head in his house, these guys
17 are planning. They plan.

18 They go over, and they don't go in -- think about
19 it. You heard Anthony testify, We pulled up this long
20 driveway, went up this driveway. One more quick point.
21 Joe Elliott is a 70-year-old man. He is 70 years old,
22 sleeping in his own bed while a bunch of 20-somethings
23 or 30-somethings come into his house. You hear Anthony
24 say, I went to the front door, Brad went to the back.
25 I beat on the front door for a few minutes.

CLOSING ARGUMENT - MR. HUCKS

1 Joe Elliott is laying in his bed, maybe he has a
2 headache, maybe he has just the air conditioner buzzing
3 in his ear, but he's asleep. Anthony beats on the
4 front door and beats on it and beats on it, but Joe
5 Elliott doesn't wake up. He's under all of this noise.
6 I'm sure you guys in your life experience know how loud
7 they can be. Where does Brad come into the house at?
8 He comes back here, right? What is the furthest point
9 in this entire house from Joe Elliott? It is right
10 there, it is the back door.

11 Anthony tells you that he hears glass breaking. He
12 hears glass break, bang, crack. What does he tell you
13 that means? That means Brad made entry. I beat on the
14 door, he must not be home because I've been beating and
15 he won't answer. He's not home. The truck is in the
16 drive, and you heard his dear friend and cousin say he
17 thought he went fishing with Dale, which leads to a
18 reasonable assumption that it wasn't uncommon for his
19 truck to be home if he wasn't there.

20 They go in. There is no need to be in a hurry,
21 none, the man isn't home. The man is not there. But
22 at some point in time, Joe Elliott figures out what is
23 going on, that is what the evidence shows you. What do
24 they say happened when they get to this bedroom door?
25 Was that door sitting wide opened, or shut to keep the

CLOSING ARGUMENT - MR. HUCKS

1 air conditioning from the window unit? It was shut.
2 What else was it? It was locked. They couldn't open
3 it.

4 When they got to it, they couldn't open it. So
5 Brad Mullins rears back and kicks the bottom panel of
6 that door in. There is that bottom panel kicked out,
7 and there is that window air conditioner still blowing,
8 not a big one either (indicates).

9 Let's talk about the location of the house before
10 we get into what happens after the door gets kicked in.
11 Joe Elliott had at some point in time figured out what
12 was going on and locked that door. We're talking about
13 the country, folks. I don't know if you guys know
14 where this road is, but I live out in that general
15 direction. You have to pump some light into that
16 place. Look at the aerial, we are talking way out in
17 the country in a house that sits off of the road and
18 completely surrounded by foliage to the point you can
19 barely see the front door. Perfect victim. Perfect
20 house to go to and burglarize.

21 The man ain't going to be home. Just in case, we
22 will knock on his door. They go to his house, beat on
23 the door, he don't answer. They go around, break in
24 the back door. Why? Because they are burglars, they
25 don't want anyone to see them from the road.

CLOSING ARGUMENT - MR. HUCKS

1 What did Anthony say? We weren't in any hurry, no
2 hurry at all. Brad and I were cleaning that man out.
3 He said there were guns everywhere. We went through
4 every room, and there were guns leaning in the corners,
5 in closets, opening doors, a big gun cabinet slammed
6 full, bottom cabinet with pistols.

7 So that door gets kicked in. When that door gets
8 kicked in, Joe Elliott's last line of defense to
9 protect his life, his liberty, his property, to protect
10 himself from these people ransacking his house is to do
11 what? To do what? Grab a gun and come out fighting.
12 He just wants -- at this point in time he just don't
13 want them in the house. He don't want to die.

14 He comes out of his bedroom at that point in time
15 with a gun, and when he does, Brad is on the floor. He
16 sees a big naked fellow coming at him with a gun, so he
17 starts scrambling. Anthony is over here at the gun
18 cabinet. He sees a big naked fellow at him, so what
19 does he do? He starts scrambling, too. They separate.
20 Anthony says he runs over here, tries to get out of the
21 door that is right here to get on the back deck. The
22 door is locked, can't get out.

23 I can contend that the evidence in this case -- you
24 heard Lieutenant Cestare, and it may be in one of these
25 pictures, but you heard from the crime scene fellow --

CLOSING ARGUMENT - MR. HUCKS

1 there you go, State's No. 35. There is a set of louver
2 doors in front of a bar or cabinet area, and one of
3 those is knocked down on the ground, knocked down. You
4 get these to look at yourself in the back when you get
5 there.

6 So what happens? Brad Mullins gets in a struggle
7 with Mr. Elliott. They get in a struggle. Mr. Elliott
8 comes out, comes through his door, goes from sleeping
9 soundly, maybe got a headache, comes out naked with his
10 last line of defense, a handgun that he had, comes out
11 and he fires, boom. When he fires, it goes up straight
12 from his bedroom. You can see the view in these
13 pictures. Straight out his bedroom door into the
14 ceiling above this bookcase, straight shot into the
15 ceiling. Fires a little high. There is a struggle.
16 This struggle comes in here somewhere where, at that
17 time, they bounce off of that set of louver doors. You
18 see them? It is broke down, they hit that. When he
19 does, that door is right across from the magic bullet
20 that Mr. Diggs has talked to you about. He has a gun
21 in his hand. He is struggling with this fellow, boom,
22 they are into these louver doors. The gun goes off and
23 shot into the side of the bookshelf from right here.
24 The bar doesn't show up right here, you have to look at
25 them better in these pictures. Boom, that magic bullet

CLOSING ARGUMENT - MR. HUCKS

1 is up through there.

2 Mr. Elliott -- because Brad Mullins is fighting for
3 stuff so he can take something that he didn't work for
4 and he didn't earn, Mr. Elliott is not fighting for
5 stuff, he is fighting for his life. He is fighting for
6 his life, he gets the best of Brad Mullins. He takes
7 that gun and trains it on Brad Mullins, but he didn't
8 shoot him, did he? He didn't shoot Brad Mullins. He
9 don't want to shoot his tenant, someone that he
10 personally knew. At this point, he just woke up. He
11 tried to hide in his bedroom. People came in, and he
12 had to defend himself. So he has Brad Mullins trained
13 right here. Here is Brad Mullins. He doesn't even
14 know Anthony Ray is even there. He's been so worried
15 about Brad Mullins. He doesn't want to shoot Brad
16 Mullins. He knows Brad Mullins.

17 A fellow with a gun range in his backyard and 30
18 guns, you reckon he doesn't know how to shoot someone?
19 He doesn't want to shoot Brad Mullins, he knows him, so
20 he has him trained.

21 Anthony Ray, what does he say? I pulled up the .22
22 rifle because I didn't want him to kill my cousin. I
23 did that so he wouldn't kill my cousin. I put it up
24 and I said, Put down the gun. I don't think that is
25 what he said, but he did something, because at that

CLOSING ARGUMENT - MR. HUCKS

1 point in time Joe Elliott goes from here, to here.
2 When he goes to here, what happens? He is fully opened
3 up, and Anthony Ray is standing there with a .22 rifle
4 and shoots him. Where is that going to go? Exactly
5 where Dr. Proctor showed you where that hole is. Boom,
6 right under his arm towards the back past the
7 centerline of his body. It goes through and hits him
8 in the lung.

9 At that time he's choking on his own breath. It
10 goes through and hits him in the spine. When it hits
11 him in the spine, he falls like a sack of bricks.
12 There is nothing he can do. He falls like a sack of
13 bricks. What side does he fall on? He falls on his
14 right side, on top of the bullet wound. You can see it
15 in this picture here. You have a cardboard copy to
16 take back with you. But he falls on his right side,
17 boom.

18 At that point in time the fellow who he had the gun
19 on, the fellow who he knew and probably didn't have the
20 heart to shoot him, comes over, and out of sheer anger
21 and frustration, picks up Mr. Elliott's gun and shoots
22 him in the left side of the head, opposite side of
23 where he is laying.

24 That gets us into a neat discussion about bullets.
25 I was going to put it off, but I'll talk to you about

CLOSING ARGUMENT - MR. HUCKS

1 the expert, Mr. Black, who knows a lot more about
2 bullets than anyone. These bullets, there is three
3 different versions of these x-rays that you will get to
4 take back with you to the jury room. State's No. 95
5 and 93 are on scale with each other. You can tell,
6 because if you laid it one another, the jaw line
7 matches. There is a couple other ones, and they are
8 not to the same scale because they are blown up and
9 shrunk. But you can lay these two over each and tell
10 they are to scale.

11 You heard Mr. Black say that he tested three
12 bullets, one from the kitchen floor that went above the
13 bookshelf through the wall and fell on the floor. You
14 heard him say he tested one that went this way through
15 the bookshelf, an upper angle, hit the bookshelf and
16 rolled down and landed on one of the shelves, you heard
17 him say that. He tested the one that came out of Joe
18 Elliott's head. All three of those were what? All the
19 same caliber, same projectile. He called them a
20 jacketed soft point, or a non-jacket hollow point
21 bullet, which he said, up here, were designed to expand
22 on impact and increase the amount of damage that is
23 imparted on a body. They are designed for personal
24 defense to shoot at people or animals with, that is
25 what they are designed for.

CLOSING ARGUMENT - MR. HUCKS

1 He also said they have what is called a cannelure.
2 Anyone who is into reloading knows about cannelure.
3 The cannelure, which he testified to, is a part of the
4 bullet, of an expanding bullet, that when that bullet
5 expands, it makes a mushroom and expands out and gets
6 as big as it can. I believe he said something to the
7 effect of it keeps it from pulling all the way apart,
8 it stops the expansion. It gets it to expand to a
9 certain point, and it stops, which makes an interesting
10 thing. You heard Dr. Proctor that the bullet holes
11 were close to the same size. He can't say they were
12 exact. He wouldn't say anything was exact, if you have
13 ever heard Dr. Proctor testify before. Also, while the
14 holes were close to the same size, he equivocated, I
15 don't know what calibers they were. He said they could
16 be different. Some holes are ovular depending where
17 they go in, some are square on. It depends what they
18 hit.

19 Look at these x-rays. This bullet went in, you see
20 the piece of the skull missing? It went in, comes
21 across, hits the bone on the other side of the skull
22 and stops in the skin here. You can see it. You can
23 see the light colors that are the bullet in Mr.
24 Elliott's head, right across. You see a couple of
25 pieces shear off of it as it went through, that is it,

CLOSING ARGUMENT - MR. HUCKS

1 which would be directly in line with Mr. Black's
2 testimony.

3 That bullet was designed to expand and go through,
4 cause damage and stop. It hit both sides of the skull.
5 It went into two pieces of bone. Now, this bullet was
6 so powerful -- the bullet in his head was so powerful
7 it managed to go through two pieces of skull, all of
8 his brain matter and end up under his skin on the side
9 of his head.

10 Look at the bullet wound in the chest. Now, when
11 you look at it to scale, look at this. Here is what is
12 left of the .38 or .357, and here is what is left of
13 the .22. No cannellure on that bullet. You see that
14 bullet expand and stop? Do you see it hit any bones,
15 anything? You heard Dr. Proctor said it went through,
16 nicked along and lodged in his spine. It is a
17 substantially smaller bullet, and a bullet not to
18 expand or have a cannellure to keep it from expanding.
19 It is a bullet that fragmented a lot on the way in. I
20 contend to you that that goes directly in line with the
21 State's case as opposed to some
22 magic-bullet-wrestling-around theory.

23 What happens after Joe Elliott is killed? Think
24 about it. Joe Elliott is dead. He is laying on his
25 floor, dead. Only one person that anybody puts in this

CLOSING ARGUMENT - MR. HUCKS

1 place, and he even knows Joe Elliott. Who is that?
2 That guy right there. That fellow. He is the only one
3 that knows Joe Elliott. He can't stand -- he cannot
4 stand for Joe Elliott to be laying on that floor with
5 his head blown off staring at him while he cleans him
6 out. So what does he do? This is a man he rented
7 from, so what does he do? He covers him up. Takes the
8 blanket off of Joe Elliott's bed and he goes back out
9 and he covers Joe Elliott up on the floor of the living
10 room.

11 I'll show you a closet that Lieutenant Cestare said
12 was off of Joe Elliott's bedroom. You can see this is
13 State's No. 43. You can see when you look here that
14 pistol ammo, rifle ammo, pistol boxes. What did
15 Anthony say Brad came out of the house with? A pillow
16 case with pistols in it. So Brad went in Joe Elliott's
17 bedroom, got that blanket, covered him up and went back
18 in his bedroom, opened his bedroom closet and cleaned
19 him out some more. He wasn't a threat anymore. He
20 wasn't a threat the minute Anthony shot him. He wasn't
21 a threat when his spine was shot and laying on the
22 ground helpless. He wasn't a threat anymore.

23 It took more than one person to haul of these guns
24 out of here. You are talking about a gun cabinet, that
25 by all accounts, would have had a pile of guns in it.

CLOSING ARGUMENT - MR. HUCKS

1 We don't know the exact number. We know there was a
2 pile of them. Everybody kept saying there was a pile
3 of them. There was a number of them. Some said seven,
4 eight. Somebody said 15, 18. There is a pile of guns
5 in this house that came out. He is a gun collector.
6 His buddies like to go shooting with him at his range.
7 He is retired trying to live his life, and his life was
8 stolen.

9 Here is what I was looking for earlier, State's 44.
10 There is that angle Mr. Diggs showed to you. There is
11 that angle. Does that go to the floor? No. It goes
12 to the broken louver door. You can see in this picture
13 here. You can see in State's 35 this is a broken
14 louver door under that rod. That is a struggle. That
15 is a man fighting for his life.

16 Now, Joe Elliott died. It took years for there to
17 be a break in this case, whatsoever. Madam Clerk, can
18 we turn the lights up a little bit? My eyes aren't
19 good enough to read in the dark. Excuse me one minute.

20 After Joe Elliott was executed on his floor, these
21 boys go back to Moon's house, Moon's house, Moon's
22 house. You have seen this 40 times, Moon's house.
23 They go there. Where do the guns go? Moon's house.
24 Where do the guns go? Moon's shed. Allen's shed where
25 Allen lived.

CLOSING ARGUMENT - MR. HUCKS

1 I'll try to take it -- I don't want to talk about
2 the defendants, because we'll get into that. I want to
3 talk to you a little bit about punishment and reward,
4 all right. There is a thing when you are a jury and
5 you have to decide who is telling you the truth and who
6 may not be telling the truth, and who is telling part
7 of the truth. The Judge will tell you what you can do
8 and what you can't do.

9 Who has no friends to reward and no enemies to
10 punish in this case? Three people in this case have no
11 friends to reward anymore or enemies to punish anymore.
12 Think about it now. Delilah. Delilah. You heard her
13 say Moon and her separated years ago because he beat
14 the tar out of her. They have 19 kids, or something.
15 He beat the tar out of her. She couldn't take it no
16 more, so she left. She lives at least two states away
17 from where he lives, doesn't want nothing to do with
18 him. What does she do? She came in here and testified
19 openly and honestly, and if you saw the look in her
20 eyes, she came in here and she testified, and you hear
21 what she said, and it made sense. We were at Moon's
22 house, my old house, while there, we were having a
23 cookout. We always had cookouts. Some of the other
24 people said, We always had people around. Little
25 Charlie said, My daddy always has pots cooking and

CLOSING ARGUMENT - MR. HUCKS

1 people around him, right? There is always pots cooking
2 and people around, so we're cooking. Delilah says, I
3 have to do all of the cooking and wrangling 40
4 young'uns. They are at Moon's house cooking and Brad
5 and Anthony and a couple other people are sitting
6 around the picnic table. She overhears a conversation
7 involving Brad and Anthony talking to everybody at the
8 picnic table. You heard me tell her, Don't tell us
9 anything Anthony said, just what came out of Brad's
10 mouth. She told a story, didn't she? She told a
11 story. Not one friend left to reward, and not one
12 enemy left to punish. She told the story.

13 Allen Ray, that is number two. That is the fellow
14 who has no one to reward or punish. What is Allen Ray?
15 You saw him, he's dog gone near a bum, right? You
16 heard him testify or talk and saw his demeanor when he
17 was in here. You heard a couple other witnesses say
18 Allen lives wherever he lives, kind of gets around and
19 does his thing, works construction and makes due. You
20 heard he was living in a shed with a bed and air
21 conditioner. Now, what did Allen say? Allen said, I'm
22 laying in bed when I hear the truck pull up. When the
23 truck pulls up, I overhear the boys getting out of the
24 truck talking, and I can distinctly make out Brad and
25 Anthony's voices. I distinctly recognized their

CLOSING ARGUMENT - MR. HUCKS

1 voices, and they are talking about killing somebody,
2 how they killed somebody. How they killed somebody.
3 Then I heard Moon's voice in there with them, and I
4 heard Brad tell Moon, We killed somebody, and then they
5 walk away.

6 He doesn't hear anything for awhile. Then they
7 walk back and he hears a little bit of talking, but not
8 related to that. Then they open the door to his side
9 of the shed where he lived, wooden side, and they show
10 him a bunch of guns. I need you to clean them so we
11 can sell them. Allen Ray doesn't have anybody. You
12 heard, he isn't close with anybody in the crowd. He
13 lives somewhere else a long, long ways away and want
14 nothing to do with them because they killed somebody.

15 Who is left that is out of people to reward or
16 punish? Anthony. All three of the codefendants in
17 this case, Arlie, Charlie and Anthony, sat in the this
18 witness stand and they told you, We're sitting up here
19 charged with burglary and murder, that is what we're
20 charged with now. Anthony didn't say that. He said,
21 I'm still charged with murder, but I took the
22 responsibility for my burglary, and not only did I do
23 it, Brad did it with me.

24 Think about what Anthony told you a little bit.
25 This is interesting. Who did Anthony put in it? Every

CLOSING ARGUMENT - MR. HUCKS

1 single person that told a story told a story that
2 minimized their part, except for the three people that
3 have nobody left to reward or punish, Anthony, Delilah
4 and Allen. Everybody else kind of minimized their
5 part. We see this a lot, everybody sees is a lot.

6 When you are a kid and you're caught breaking a
7 window and you try to blame it on your cousin, right,
8 or say, I only held the rock and he threw it. That
9 stuff happens, I got it. These three folks got nobody
10 left. Did you see Anthony Ray up here? Did you see
11 his shoulders slumped down the way he was looking at
12 you all? What did he tell you? I, with Brad, planned
13 a burglary of this man's house. I didn't know who the
14 man was. Moon told us he didn't think the man would be
15 home, and Brad knew the man, so we got in the car, and
16 the entire way there, Brad said left turn here, right
17 turn. He's the Garmin, right, teaching them how to get
18 there.

19 When they get there, what does Anthony say? I beat
20 on the door. I beat on the door. This guy went to the
21 back door. He broke the window. We went in. We stole
22 everything but the fillings out of his teeth while we
23 was there, because he wasn't supposed to be home.
24 While we were there, Joe Elliott woke up, came out,
25 held Brad at gunpoint. I killed Joe Elliott, that is

CLOSING ARGUMENT - MR. HUCKS

1 what Anthony said. I shot him, and I didn't know it at
2 the time, but I know it now since my case is further
3 along, my shot would have killed Joe Elliott. Joe
4 Elliott was harmless.. He was harmless on the floor
5 choking on his own breath, and Brad Mullins in sheer
6 anger grabbed the revolver, boom, left side of the
7 head. That is what Anthony says.

8 Why would Anthony have to lie at this stage? Think
9 about it. He's here broken. He's here broken. He's
10 in here in prison telling you what happened in that
11 house while he was there. Telling you not only did
12 Brad kill him, I killed him too. We killed him. Think
13 about that. That should be, from my perspective, the
14 most compelling testimony in the whole case, we killed
15 him. We killed him together. We robbed him. We
16 planned the robbing. We went to his house. We broke
17 into the house as a team. They are a team, folks.

18 If you haven't learned anything about this crowd so
19 far through this trial, you learned that they are
20 family, tight knit group. You heard Brad's mama
21 testify she didn't know where he worked, what he did,
22 but he tells her everything, right? You heard the
23 sister say they went out while she was pregnant and
24 played pool at a bar, or something, and he would have
25 told us these things. I contend to you that your mama

CLOSING ARGUMENT - MR. HUCKS

1 and sister aren't the people you talk to about this
2 stuff, right? You talk about it with the people that
3 you don't think are going to think less of you for
4 blowing a man's head off in his house. If you learned
5 anything from the Mullins family, they are the kind of
6 folks you can talk that way around.

7 It took years before this came to light. That is
8 honest. It is what it is. Delilah, when Delilah came
9 forward, finally, after one punch too many, she came
10 forward and had details of this case. She had intimate
11 details. How would she know that the man was shot on
12 the side of the head and once in the chest? How would
13 she know that? She heard it out of this man and
14 Anthony Ray's mouth, because they are a team. They are
15 a team.

16 I'll talk with you about Charlie and Arlie.
17 Charlie and Arlie's statement, there is no doubt they
18 are trying to minimize anything they had to do with it.
19 They are minimizing it, right? They don't want nobody
20 -- if they helped plan it, they don't want anybody to
21 know they helped plan it. But they came in here and
22 testified, and everything single one of these witness
23 have a common theme. If you strip away the
24 inconsistencies between any of the stories, what is
25 consistent? What is consistent? What is consistent is

CLOSING ARGUMENT - MR. HUCKS

1 Charlie drove the car, Arlie is in the passenger's
2 seat, other two boys in the back. Brad gave directions
3 to get there. We got there. Brad and Anthony got out
4 of the car. Brad and Anthony went in the house,
5 everybody agrees on that.

6 When Brad and Anthony got back in the car, they had
7 a comforter full of guns -- or sleeping bags, whatever.
8 So bam, bam, bam. Moon, who is minimizing his role, as
9 natural to do, Moon's story is exactly the same thing.
10 He told me boom, boom, boom. The common core here --
11 if there wasn't differences in it, you would have to
12 think they were lying because everybody sees things
13 differently. I might look at that door swing open and
14 somebody walk through it and we'll talk about different
15 hair styles or gait differently or different watch.

16 So let's look at what is consistent across the
17 board. What is also consistent? This guy cannot keep
18 his trap shut. There's an old saying in law that a
19 fish wouldn't get caught if he kept his mouth shut,
20 right? But he didn't. He came back. He's a thug, got
21 in with the thug crowd and bragged about what he did.

22 Now, as a jury you have to ask yourself a lot of
23 questions --

24 MR. DIGGS: I object to the characterization. It
25 is outside the evidence to "thug."

CLOSING ARGUMENT - MR. HUCKS

1 THE COURT: We're in closing arguments. Go ahead,
2 Mr. Hucks.

3 MR. HUCKS: Thank you, Your Honor.

4 He comes back and can't keep his trap shut, mouth
5 shut. He has to tell somebody. That is street credit,
6 man. He's going to get points with the crowd. Nobody
7 is going to bother him no more. So he tells the people
8 he thinks he can tell to get the most out of it.

9 Another thing you notice out of the Mullins family
10 and Ray family is when they testify they try to spin it
11 to make them look the best they can, all of them, every
12 one of them. So he does the same thing, the exact same
13 thing. He spins this murder tale to get all of the
14 credibility he can get to make himself look as bad as
15 he can. He wants to tell people that will respect that
16 kind of story.

17 As cliché as it is to say, if you want to prosecute
18 the devil, you have to go to hell for your witnesses.
19 That is where they come from. These are all people
20 eating out of the same bowl. These are all people cut
21 out of the same cloth.

22 Now, I want to talk to you about something Arlie
23 said, and I'm looking to get into his statement. You
24 heard it, and it is a lot like Charlie and what you
25 heard all of these people say. What, 15, 18 witnesses

CLOSING ARGUMENT - MR. HUCKS

1 you had to sit through?

2 Allen, who I contend has nobody to reward or
3 punish, says they pulled right up here in this Blazer,
4 backed it up, started taking guns out. I overheard
5 Brad and Anthony talking about killing somebody and
6 stealing and burglarizing. They walked away, and when
7 they walked away, everything got faint, I couldn't hear
8 what they were saying. When they came back, they asked
9 me to clean these guns.

10 What does Arlie say happens? I went to the back
11 porch to smoke a cigarette because I was freaking out.
12 I saw Brad and Anthony and Moon walk across the yard
13 and get close enough to me where I overheard a
14 conversation about them burglarizing and robbing and
15 killing somebody. Think about it. All we have to do
16 is concentrate on the common thread. What makes sense?

17 The key thing the jury has to ask itself in
18 deciding what is and isn't beyond a reasonable doubt,
19 and the Judge is going to tell you about reasonable
20 doubt, and if I say something that disagrees with him,
21 you go with him, because he's smarter than I am, and
22 he's the judge.

23 Now, there is a common theme here. What makes
24 sense? What makes sense? All four of these boys,
25 except Charlie Junior, depending who you ask, grew up

CLOSING ARGUMENT - MR. HUCKS

1 together. They are raised in an extended family. They
2 work together every day, went to Raleigh, went to
3 Durham, built a shopping center, smoked marijuana
4 together, drank beer together. These are tight folks.
5 What emphasis, whatsoever, would all three of these
6 other people have to put Brad Mullins in that truck or
7 in that house? What? There is not one. There is not
8 one. There is not a reason to put him there.

9 What reason would Anthony Ray have to sit on this
10 witness stand and tell you, I'm in prison for this
11 crime and he did it with me? What other -- what reason
12 would he come to do that? None. There's not one.
13 What makes sense here? When you start weighing through
14 the facts and weigh through the exhibits and weigh
15 through the testimony, come back and ask for something
16 if you want to, but the common thread, common theme
17 here is the story that I told awhile ago. Brad Mullins
18 and Anthony Ray went in Joe Elliott's house. They
19 didn't think he would be home. They went in the
20 nighttime to steal guns. Beat on the door. When he
21 came out, they shot him, not one of them, both of them.
22 They are both culpable for the burglary and murder of
23 Joe Elliott.

24 Court's indulgence. One moment, Your Honor.

25 (A brief pause in the proceedings.)

CLOSING ARGUMENT - MR. HUCKS

1 MR. HUCKS: I thank you for your time. I know it's
2 been way more long and drawn out than you expected, but
3 this is the most important day in Brad Mullins' life,
4 and this is an oath that you took to sit here being the
5 judge of your fellow man. The State has to prove the
6 elements through the witnesses that we presented and
7 the evidence we put in. We have to prove to you that
8 he committed each crime beyond a reasonable doubt.
9 What is a reasonable doubt? There is several
10 definitions, and the Judge will give them to you. A
11 reasonable doubt causes a reasonable person to hesitate
12 to act. Another way of saying it is, Are you firmly
13 convinced? Are you firmly convinced that Brad Mullins
14 played a role in this? If you are, he's guilty. He's
15 guilty. If you are firmly convinced, he's guilty.
16 I'll tell you something else. Last thing I'll
17 leave you with. South Carolina has a rule of law, and
18 the Judge will talk to you about it, it is the hand of
19 one, is the hand of all. Hand of one, is the hand of
20 all. You heard Anthony Ray say it when he was up here.
21 If you believe that Anthony and Brad Mullins were in
22 that house robbing that man together, and that the
23 death of Joe Elliott was a reasonable outcome of
24 robbing a man's house while he is home, committing a
25 burglary first and stealing guns, then it don't matter

CLOSING ARGUMENT - MR. HUCKS

1 who shot him. It don't matter. They are in there
2 together, and that is a reasonable outcome that can
3 happen from robbing a man's house and stealing his
4 guns. It don't matter. He's guilty. Thank you for
5 your time.

6 MR. DIGGS: May we approach for a second?

7 (Whereupon, a bench conference was had.)

8 THE COURT: I'm sure you need a break, and I'm
9 going to give you one before I charge you. Mr. Ropp,
10 if you'll take the jury.

11 (The jury exits at 11:34 a.m., and the following is
12 heard out of the presence of the jury.)

13 THE COURT: Mr. Diggs?

14 MR. DIGGS: Your Honor, the information we have
15 from Dr. Proctor's testimony, I thought, but at least
16 in his autopsy report, Mr. Elliott was 68, not 70 as
17 argued by the State. I would submit when you get into
18 that area, two or three years makes a lot of difference
19 in terms of one's ability to participate in a struggle.
20 It just sounds -- when you say a 70-year-old man, it
21 sounds more important than it should be if one is in
22 their late 60s.

23 THE COURT: I'm going to tell the jury that they
24 will deliberate and base a verdict on the evidence they
25 have heard. If there was any evidence as to his age,

THE COURT AND ATTORNEYS

1 they heard it. If Mr. Hucks misquoted anything, I'm
2 sure they will bring him to bear on it, as they would
3 you, okay.

4 MR. DIGGS: I think I'm supposed to say outside of
5 the record evidence, so that is the way I would phrase
6 the objection.

7 THE COURT: Thank you. We'll take a break.

8 (A recess was taken.)

9 (The jury enters at 11:49 a.m., and the following
10 is heard in the presence of the jury.)

11 THE COURT: Let the record indicate all of the
12 jurors are back in the courtroom.

13 Ladies and gentlemen, at the beginning of the trial
14 I told you it's been my practice to provide the jury
15 with a transcript of my charge, and to that end I'll be
16 reading you my charge from a prepared transcript. I
17 have to give you a verbatim transcript, and that's why
18 I read it. I can certainly appreciate the fact that
19 the charges in these cases are often lengthy and
20 certainly complex, and I don't believe it is fair to
21 expect you, as jurors, to remember everything that I
22 have told you, and that is the reason that I like to
23 give you a copy of the charge that you can refer back
24 to during your deliberations.

25 Let me say this. You should not focus in on any

JURY CHARGE

1 one part of the charge and ignore the other portions of
2 the charge. The charge is a document that should be
3 taken as a whole, and it should be read as a whole, and
4 you should consider all of the parts together --

5 MR. DIGGS: I can't hear you, sorry, Judge.

6 THE COURT: -- in your deliberations. Anyone else
7 have trouble? Can you hear me.

8 JUROR: I can hear you now.

9 THE COURT: Let me remind you that during this
10 trial you and I have certain duties to perform, and as
11 the trial judge, it is my responsibility to preside
12 over the trial of the case, and I also have the duty to
13 rule on the admissibility of the evidence offered
14 during the trial.

15 You are to consider only the competent evidence
16 before you. If there was any testimony or words
17 stricken from the record during this trial, you must
18 disregard that testimony. You are to consider only the
19 testimony that has been presented from this witness
20 stand, any exhibits that have been made a part of the
21 record in this case and any stipulations of counsel.

22 I have the additional duty to charge you the law
23 applicable to this case. As the presiding judge, I am
24 the sole judge of the law of this case. It is your
25 duty as jurors to accept and apply the law as I now

JURY CHARGE

1 state it to you. If you already have an idea as to
2 what the law is or what the law ought to be and it does
3 not agree with what I tell you the law is, you must
4 abandon this idea because you are sworn to accept the
5 law and apply the law exactly as I state it to you.

6 In every case tried in this court before a jury,
7 the jury becomes the sole and exclusive judge of the
8 facts in that case. A trial judge cannot intimate,
9 state, comment on or make any statement to a trial jury
10 about the facts in the case. Since you, the jury, are
11 the sole judge of the facts in this case, you are not
12 to infer from what I've said during the progress of
13 this trial and ruling on the admissibility of the
14 evidence, or otherwise, or anything that I say now
15 during the course of this instruction to you that I
16 have any opinion about the facts in this case. The law
17 does not allow me to have an opinion about the facts in
18 this case. This is a matter solely for you, the jury,
19 to determine. As jurors, it is your duty to determine
20 the effect, value, weight and truth of the evidence
21 presented during this trial.

22 Now, the indictments in this case charge the
23 defendant with murder and first degree burglary. I
24 remind you that the fact that the defendant was
25 arrested, charged and indicted in this case is not

JURY CHARGE

1 evidence in this case and is not to be considered by
2 you as evidence of guilt in this case, nor does it
3 create any presumption or inference of guilt. These
4 documents are simply the formal written instruments
5 which contain the charges made against the defendant.
6 The indictments are simply the formal documents by
7 which the case is brought into this court.

8 The defendant has pled not guilty to both of these
9 indictments, and those pleas put the burden on the
10 State to prove the defendant guilty. A person charged
11 with committing a personal offense in South Carolina is
12 never required to prove himself innocent. I charge you
13 that it is an important rule of the law that the
14 defendant in a criminal trial, no matter what the
15 seriousness of the charge may be, will always be
16 presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proved by
18 evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 This presumption of innocence does not end when you
21 begin your deliberations, but it accompanies the
22 defendant throughout the trial until you reach a
23 verdict of guilt based on evidence satisfying you of
24 that guilt beyond a reasonable doubt. The presumption
25 of innocence is like a robe of righteousness placed

JURY CHARGE

1 about the shoulders of the defendant which remains with
2 the defendant until it has been stripped from the
3 defendant by evidence satisfying you of the defendant's
4 guilt beyond a reasonable doubt.

5 The presumption of innocence is not mere legal
6 theory. It is not just a legal phrase. It is a
7 substantial right to which every defendant is entitled
8 unless you, the jury, are satisfied from the evidence
9 of the defendant's guilt beyond a reasonable doubt.

10 The State has the burden of proving the defendant
11 guilty beyond a reasonable doubt. Some of you may have
12 served as jurors in civil cases where you were told
13 that it is only necessary to prove that a fact is more
14 likely true than not true, such as by a greater weight
15 or preponderance of the evidence. In criminal cases,
16 the State's proof must be more powerfully than that; it
17 must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendant's guilt.
20 There are very few things in this world that we know
21 with absolute certainty, and in criminal cases the law
22 does not require proof that overcomes every possible
23 doubt. If based on your consideration of the evidence
24 you are firmly convinced that the defendant is guilty
25 of the crimes charged, you must find the defendant

JURY CHARGE

1 guilty. If, on the other hand, you think there is a
2 real possibility the defendant is not guilty, you must
3 give the defendant the benefit of the doubt and find
4 him not guilty.

5 What is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause
7 a reasonable person to hesitate to act. There are two
8 types of evidence which are generally presented during
9 the trial, direct evidence and circumstantial evidence.
10 Direct evidence is the testimony of a person who claims
11 to have actual knowledge of a fact, such as an
12 eyewitness. It is evidence which immediately
13 establishes the main fact to be proved. Circumstantial
14 evidence is proof of a chain of facts and circumstances
15 indicating the existence of a fact, it is evidence
16 which immediately establishes collateral facts from
17 which the main fact may be inferred. Circumstantial
18 evidence is based on inference and not on personal
19 knowledge or observation. The law makes absolutely no
20 distinction between the weight or value to be given to
21 either direct or circumstantial evidence, nor is a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence.

24 You should weigh all of the evidence in the case.
25 After weighing all of the evidence, if you are not

JURY CHARGE

1 convinced of the defendant's guilt beyond a reasonable
2 doubt, you must find the defendant not guilty.

3 Necessarily, you must determine the credibility of
4 witnesses who have testified in this case. Credibility
5 simply means believability. It becomes your duty, as
6 jurors, to analyze and evaluate the evidence and
7 determine which evidence convinces you of its truth.
8 In determining the believability of witnesses who have
9 testified in this case, you may believe one witness
10 over several witnesses, or several witnesses over one
11 witness. You may believe a part of a witness's
12 testimony, and reject the remaining part of the
13 testimony of that same witness. You may believe the
14 testimony of a witness in its entirety, or reject the
15 testimony of a witness in its entirety. You may
16 consider whether any witness has exhibited to you any
17 interest, bias, prejudice or other motive in this case.
18 You may also consider the appearance and manner of a
19 witness while on the witness stand.

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions. An
22 exception to this rule exists for witnesses we call
23 "expert witnesses," a witness who by education and
24 experience has become expert in some art, science,
25 profession or calling may state an opinion as to

JURY CHARGE

1 relevant and material matter in which the witness
2 claims to be an expert, and may also state the reasons
3 for the opinion.

4 You should consider any expert opinion received in
5 evidence in this case, and like any other evidence,
6 give it the weight you think it deserves. If you
7 decide that the opinion of an expert witness is not
8 based on sufficient education and experience, or if you
9 conclude that the reasons given in support of the
10 opinion are not sound or that the opinion is outweighed
11 by other evidence, you may disregard the opinion
12 entirely. An expert witness' testimony is to be given
13 no greater weight than that of other witnesses simply
14 because the witness is an expert. Further, you are not
15 required to accept an expert's opinion even though it
16 is not contradicted.

17 A statement alleged to have been made by the
18 defendant to law enforcement has been admitted into
19 evidence in this case. While the Court has determined
20 that the statement is admissible, I instruct you that
21 you make the ultimate decision of whether or not the
22 defendant made the statement. If the defendant did
23 make the statement, you must determine whether the
24 statement was made by the defendant voluntarily and of
25 his own free will. This means that the statement was

JURY CHARGE

1 not caused by pressure, force, fear, threats, coercion
2 or intimidation or by hope or a promise of leniency or
3 a reward of any kind.

4 In determining whether the statement was
5 voluntarily, you should consider both the
6 characteristics of the defendant and the details of the
7 questioning. Some of the factors that you must
8 consider are the age of the defendant, defendant's
9 education or lack of education, the defendant's mental
10 ability or capacity, the defendant's IQ or
11 intelligence, the defendant's background and
12 environment, the place and length of the detention, the
13 nature of the questioning and the advice, or lack
14 thereof, to the defendant of his Constitutional rights
15 including, but not limited to, the right to remain
16 silent that any statement could be used against him in
17 a court of law, the right to have an attorney present,
18 that if he could not afford an attorney, a lawyer would
19 be appointed to represent him without any cost, and
20 that he could stop making a statement at any time.

21 You must carefully consider all of the surrounding
22 circumstances before you give any weight for an alleged
23 statement. The State has the burden of proving beyond
24 a reasonable doubt that the alleged statement was
25 voluntary. If you determine that it was, you may give

JURY CHARGE

1 the statement any further consideration that you deem
2 proper. You must decide what weight, if any, could be
3 given to the alleged statement. If you determine the
4 alleged statement was not the free and voluntary
5 statement of the defendant, you should not consider the
6 statement at all.

7 I instruct you, and emphasize, that the fact that
8 the defendant did not testify is not a factor to be
9 considered by you in any way in your deliberations and
10 in your consideration on the question of the guilt or
11 innocence of the defendant. It must not be considered
12 by you in any manner, whatsoever. A defendant has a
13 Constitutional right to remain silent, and the
14 assertion of this right must not be considered by you
15 in your deliberations. I repeat, under your oath, you
16 are to draw no conclusion, whatsoever, from the fact
17 that the defendant in this case did not testify. The
18 fact that the defendant didn't testify should not even
19 be discussed in the jury room. The burden of proof, as
20 I have stated to you, is on the State. The defendant
21 is not required to prove his innocence. The burden of
22 proof remains on the State to prove guilt beyond a
23 reasonable doubt.

24 The defendant is charged with murder. The State
25 must prove beyond a reasonable doubt that the defendant

JURY CHARGE

1 killed another person with malice aforethought. Malice
2 is hatred, ill-will or hostility towards another
3 person. It is the intentional doing of a wrongful act
4 without just cause or excuse and with the intent to
5 inflict an injury or under circumstances that the law
6 will infer an evil intent. Malice aforethought does
7 not require that malice exist for any particular time
8 before the act is committed, but malice must exist in
9 the mind of the defendant just before and at the time
10 of the act or at the time the act is committed;
11 therefore, there must be a combination of previous evil
12 intent and the act.

13 Malice aforethought may be expressed or inferred.
14 These terms "express" and "inferred" do not mean
15 different kinds of malice, but merely the manner in
16 which malice may be shown to exist; that is either by
17 direct evidence or by inference from the facts and
18 circumstances which are proved.

19 Expressed malice is shown when a person speaks
20 words which express hatred or ill-will for another, or
21 when the person prepared beforehand to do the act which
22 was later accomplished. For example, lying in wait for
23 a person or any other act of preparation going to show
24 that the deed was within the defendant's mind would be
25 expressed malice. Malice may be inferred from the

JURY CHARGE

1 conduct showing a total disregard for human life. If
2 one intentionally kills another during the commission
3 of a felony, an implication of malice may arise. If
4 facts are proved beyond a reasonable doubt sufficient
5 to raise an inference of malice, this inference is an
6 evidentiary fact to be taken into consideration by the
7 jury along with other evidence in the case.

8 I further charge you that the offense of first
9 degree burglary is a felony. The defendant is charged
10 with first degree burglary. The State must first prove
11 beyond a reasonable doubt that the defendant entered a
12 dwelling without consent. A dwelling is any building
13 or portion of a building in which a person ordinarily
14 sleeps. A building constructed as a dwelling that has
15 never been occupied cannot be considered a dwelling for
16 purposes of burglary, but a building is a dwelling even
17 if the residence is temporarily absent from the
18 building. In order to prove that the defendant entered
19 the dwelling, the State does not have to show the
20 defendant's entire body entered the dwelling, the
21 smallest entry is sufficient. It may be any part of
22 the body such as a hand, foot or even an instrument
23 such as a hook or other instruments. In addition, the
24 State does not have to prove that force was used to
25 gain entry. If a person enters a building by using

JURY CHARGE

1 deception or to trick or misrepresentation to get the
2 defendant to enter, this an entry without consent.

3 Next, the State must prove beyond a reasonable
4 doubt that the defendant intended to commit a crime,
5 either a felony or a misdemeanor, at the time of the
6 entry. The mere entry into a dwelling without consent
7 is not burglary. If the intent to commit a crime is
8 formed after the entry, it is not a burglary. On the
9 other hand, if the defendant intended to commit a crime
10 at the time of the entry, it is a burglary even if the
11 intent was abandoned after entry. It does not matter
12 that the intended crime was not complete. Intent may
13 be shown by acts, conduct of the defendant and other
14 circumstances from which you may naturally and
15 reasonably enter intent.

16 Finally, the State must prove beyond a reasonable
17 doubt, one, when entering while in the dwelling or when
18 fleeing the defendant or an accomplice was armed with a
19 deadly weapon or explosive. A deadly weapon is any
20 article, instrument or substance which is likely to
21 cause death or great bodily harm. Whether an
22 instrument has been used as a deadly weapon depends on
23 the facts and circumstances in each case. The
24 following are examples of instruments which may be
25 deadly weapons: A pistol, a shotgun, a rifle, a dirk,

JURY CHARGE

1 a dagger, a knife, a slingshot, metal knuckles, a
2 razor, gasoline, a fire bomb or Molotov cocktail,
3 lighter fluid, a gun may be a deadly weapon even if it
4 is not operating.

5 Or, number two, when entering while in the dwelling
6 or when fleeing the defendant or an accomplice caused
7 physical injury to anyone not participating in the
8 crime.

9 Or, three, when entering while in the dwelling or
10 when fleeing, the defendant or an accomplice used or
11 threatened to use a dangerous object.

12 Or, four, when entering while in the dwelling or
13 when fleeing, the defendant or an accomplice displayed
14 what was or appeared to be a knife, pistol, revolver,
15 shotgun, rifle, machine gun or other firearm.

16 Or, number five, the defendant entered or remained
17 in the dwelling in the nighttime. Nighttime is the
18 period between sunset and sunrise during which there is
19 not enough daylight to recognize a person's face except
20 by artificial light or moonlight.

21 If a crime is committed by two or more people who
22 are acting together in committing a crime, the act of
23 one is the act of all. A person who joins with another
24 to commit an unlawful act is criminally responsible for
25 everything done by the other person which happens as a

JURY CHARGE

1 probable or natural consequence of the acts done in
2 carrying out the common plan and purpose. For example,
3 two people can be guilty of killing another when only
4 one of the two had a gun, there was only one bullet,
5 and only one of the two fired the shot that caused the
6 death. If two or more people are acting -- are
7 together, acting together, assisting each other in
8 committing the offense, the act of one is the act of
9 all, or as it is sometimes said, The hand of one is the
10 hand of all.

11 Prior knowledge that a crime is going to be
12 committed without more is not sufficient to make a
13 person guilty of that crime. Mere knowledge that
14 another person is going to commit a crime, even if the
15 defendant is present when the crime is committed, is
16 not sufficient to convict the defendant as a principal
17 guilt as a -- guilt as a principal is shown by actual
18 or constructive presence at the scene as a result of
19 prior arrangement; therefore, a finding of a prior
20 arranged plan or common scheme is necessary for a
21 finding of guilt as a principal.

22 The State must prove beyond a reasonable doubt by
23 competent evidence the theory of the hand of one is the
24 hand of all. A principal in a crime is one who either
25 actually commits the crime or who is present, aiding,

JURY CHARGE

1 abetting or assisting in committing the crime. When a
2 person does an act in the presence and with the
3 assistance of another, the act is done by both. Where
4 two or more acting with a common plan or intent or
5 present at the commission of a crime, it does not
6 matter who actually commits the crime all are guilty.
7 The hand of one is the hand of all.

8 Present at the commission of the crime means to be
9 sufficiently near to aid and abet and assist in the
10 commission of the crime. However, again, mere presence
11 at the scene of a crime is not sufficient to convict
12 one as a principal on the theory of aiding and
13 abetting.

14 Intent is also a necessary element, for there must
15 have been a common design or intent to commit the
16 crime, and the crime must have been committed pursuant
17 thereto with the person aiding and abetting by some
18 overt act. Intent means intending the result which
19 actually occurs, not accidentally or involuntarily.
20 Intent may be shown by acts and conduct of the
21 defendant and other circumstances from which you may
22 naturally and reasonably infer intent. The State must
23 prove these elements beyond a reasonable doubt.

24 The indictments in this case allege two different
25 offenses against the defendant. The charges are

JURY CHARGE

1 Indictment No. 1, murder; Indictment No. 2, first
2 degree burglary. Each indictment charges a separate
3 and distinct offense. You must decide each indictment
4 separately on the evidence and the law applicable to it
5 uninfluenced by your decision as to any other
6 indictment. The defendant may be convicted or
7 acquitted on one or both of the offenses charged.

8 You may be asked to write -- you will be asked to
9 write a separate verdict of guilty or not guilty for
10 each indictment. Now, Mr. Foreman, there are two
11 possible verdicts which you may find on the indictment
12 in this case, guilty or not guilty. There is no
13 significance, whatsoever, in the order in which I state
14 these possible verdicts, it just means I have to state
15 one first and the other second.

16 Ladies and gentlemen, your verdict must be a
17 unanimous one. Mr. Foreman, when the jury agrees on
18 the verdict, you will write the verdict on the verdict
19 forms and sign your name as foreperson. Then, you will
20 knock on the jury room door and inform the bailiff that
21 you have reached a verdict. At that time, we will
22 bring you back into the courtroom. I'm going to send
23 you back into your jury room. I'm going to ask that
24 you not begin your deliberations until you are told to
25 do so by the clerk or the bailiff. There are some

JURY CHARGE

1 matters I have to take up with the lawyers. It might
2 -- I might have to bring you back into the courtroom, I
3 don't think so, but if I do, I will. However, if I
4 send in the exhibits in this case, and I send into you
5 a copy of the charge, which I will mark as Court's
6 Exhibit No. 2, and the verdict forms, that will be your
7 signal to begin your deliberations, all right. If I
8 bring you back out, I'll give you further instruction,
9 but if I send in the exhibits, the charge and the
10 verdict forms, you will begin. All right.

11 Now, the verdict forms are simple. They simply
12 state, As to the charge of burglary first degree, we,
13 the jury, unanimously find the defendant -- and you
14 circle one. Again, it makes no difference as to which
15 one is first, you just have to put them down in that
16 fashion. The second one says, As to the charge of
17 murder, we, the jury, unanimously find the defendant --
18 and you circle one. Mr. Foreperson, you will sign each
19 one.

20 Mr. Ropp, will you please take the jury into the
21 jury room? Will you segregate the alternates until I
22 give you further instructions.

23 (The jury exits at 12:17 p.m., and the following is
24 heard out of the presence of the jury.)

25 (Court's Exhibit 2 marked.)

JURY CHARGE

1 THE COURT: Mr. Diggs, I already noted your
2 objection concerning the charge on felony murder, and I
3 have noted your -- your request for a charge on
4 voluntary manslaughter. Would you add any grounds to
5 that, to just restate the ones you have?

6 MR. DIGGS: Just note the new -- no new grounds,
7 just the arguments we made previously. I think I
8 stated all of the grounds at that time, both with
9 respect to their request to charge, and the fact, from
10 our view, that charge requires the voluntary
11 manslaughter.

12 THE COURT: All right. Anything further?

13 MR. DIGGS: Nothing.

14 MR. HUCKS: No, sir.

15 THE COURT: Okay. If you would, gentlemen, come
16 forward, make sure that all of the exhibits are marked
17 and review the verdict forms.

18 (A discussion was had off the record.)

19 THE COURT: Do we have all of the exhibits?

20 MR. HUCKS: Yes, sir.

21 THE COURT: Bradley, if you would, take those and
22 the charge and the verdict forms and inform the foreman
23 that they may begin their deliberations. Let's bring
24 out the alternates.

25 (Whereupon, the jury starts deliberations at 12:21

JURY DELIBERATES

1 p.m., and the following is had out of the presence of
2 the jury.)

3 THE COURT: You were my alternates. Once the jury
4 begins deliberations, I don't inject my alternates back
5 in, so your service has been completed. I certainly
6 appreciate you being here. As I'm sure you've heard
7 this week, we could not hold court without your
8 willingness to be here. You have performed a very high
9 civil duty. Thank you for coming. You are welcomed to
10 stay with us if you would like. I can't let you back
11 in the jury room with your fellow jurors, but if you
12 choose, Keaton will take you -- make sure you get out
13 of the courthouse. You are released if that is what
14 you wish to do. Thank you again. Your service is
15 completed for the week, I believe. Thank you.

16 (Whereupon, the alternates are excused at 12:22
17 p.m., and the court is in recess.)

18 (The following takes place at 2:23 p.m. out of the
19 presence of the jury.)

20 THE COURT: The jury asked the question, Could we
21 see transcripts, Moon, Charlie Junior and Anthony. I
22 will simply tell them we have no transcripts.
23 Transcripts are not available, but we will play back
24 any testimony that they would like to hear. Anything
25 further from the State?

JURY QUESTION

1 MR. HUCKS: No, sir.

2 THE COURT: Defense?

3 MR. DIGGS: Nothing.

4 THE COURT: Bring them in.

5 (Court's Exhibit 3 marked.)

6 (The jury enters at 2:25 p.m., and the following is
7 heard in the presence of the jury.)

8 THE COURT: Mr. Foreman, I see you have a question,
9 Can we see transcripts of Moon, Charlie Junior,
10 Anthony. We have no transcripts. All of the testimony
11 is recorded. Earlier you may have heard one of the
12 lawyers refer to a page he had done. The day before he
13 had asked the court reporter to find a page for him.
14 It would take several days for a transcript to be
15 prepared, however, we have audio recordings of each of
16 these witness' testimony and we could certainly play
17 that back for you, any portion of it, all of it,
18 whatever you wish. We could do that for you in the
19 courtroom here. Is that what you would like,
20 Mr. Foreman?

21 FOREPERSON: That is what we would like.

22 THE COURT: Any order in which you would like to
23 have them played?

24 FOREPERSON: No.

25 THE COURT: I'm going to take you back in the jury

JURY QUESTION

1 room. I'm going to give my court reporter -- she'll
2 need five, ten minutes to download the recordings and
3 have them prepared to be played back when you return,
4 okay.

5 (A recess was taken.)

6 (Whereupon, the following is had in the presence of
7 the jury.)

8 THE COURT: All right. The jury is back in. Are
9 you ready?

10 (Whereupon, portions of the audio were played back
11 for the jury.)

12 THE COURT: They said that's good. Okay. I'll
13 return you to your jury room.

14 (Whereupon, the jury exits at 3:30 p.m., and court
15 is in recess.)

16 (The following is had out of the presence of the
17 jury.)

18 THE COURT: This is the question, With the "hand of
19 one," if the defendant was convicted for the burglary
20 in the first degree, does that mean that he is guilty
21 of murder because he was present?

22 MR. DIGGS: I would say you can't answer that
23 because, you know, you've charged on the law and that
24 would be like undermining what the Court's charge was
25 on the --

JURY QUESTION

1 MR. HUCKS: Recharge the "hand of one."

2 MR. DeBUSK: They have it back there.

3 MR. HUCKS: Oh, they do have it. So I don't think
4 it --

5 MR. DeBUSK: The law --

6 THE COURT: I'm going to say this. I'm going to
7 answer by saying this, Mere presence alone does not
8 mean that he is guilty of murder, then I'm going to
9 reread the "hand of one is the hand of all," which, I
10 believe, contains -- I was looking at the felony
11 murder.

12 MR. HUCKS: It is at the end of malice.

13 THE COURT: Okay. All right. I want to be very
14 careful about that. They are asking about the hand of
15 one is the hand of all. That is what I'm going to say,
16 unless you have something to add to it. I'll say, Mere
17 presence during the burglary does not mean that he is
18 guilty of murder because he was present, and then I'm
19 going to read -- reread my charge of the hand of one is
20 the hand of all, just a couple of pages. Bring them
21 in.

22 MR. HUCKS: May we approach briefly while the jury
23 is coming in?

24 THE COURT: Yes.

25 (Whereupon, a bench conference was had.)

JURY QUESTION

1 (Court's Exhibit 4 marked.)

2 (Whereupon, the jury enters at 3:35 p.m., and the
3 following is had in the presence of the jury.)

4 THE COURT: Mr. Foreperson, I have your note, and
5 as I read it, it says, With the hand of one, if the
6 defendant was present for the burglary in the first
7 degree, does that mean he is guilty of murder because
8 he was present? Let me say this. Mere presence is not
9 enough to make him guilty of the murder. Mere
10 presence, alone.

11 I'm going to read to you again, perhaps it will be
12 clearer if I read it to you, my charge on "hand of one,
13 hand of all." Listen carefully.

14 If a crime is committed by two or more people who
15 are acting together in committing a crime, the act of
16 one is the act of all. A person who joins with another
17 to commit an unlawful act is criminally responsible for
18 everything done by the other person, which happens as a
19 probable or natural consequence of the act done in
20 carrying out the common plan and purpose. For example,
21 two people can be guilty of killing another when only
22 one of the two had a gun, there was only one bullet and
23 only one of the two fired the shot that caused the
24 death. If two or more people are together, acting
25 together, assisting each other in committing the

JURY QUESTION

1 offense, the act of one is the act all or as is
2 sometimes said, The hand of one, is the hand of all.

3 Prior knowledge that a crime is going to be
4 committed without remorse is not sufficient to make a
5 person guilty of that crime. Mere knowledge that
6 another person is going to commit a crime even if the
7 defendant is present when the crime is committed is not
8 sufficient to convict the defendant as a principal.
9 Guilty as a principal is shown -- guilt as a principal
10 is shown by actual or constructive presence at the
11 scene as a result of prior arrangement. Therefore, a
12 finding of a prior arranged plan or common scheme is
13 necessary for a finding of guilty as a principal.

14 The State must prove beyond a reasonable doubt by
15 competent evidence the theory of the hand of one is the
16 hand of all. A principal in a crime is one who either
17 actually commits the crime, or who is present, aiding,
18 abetting or assisting in the crime. When a person
19 doesn't act in the presence of and with the assistance
20 of another, the act is done by both. Where two or more
21 acting with a common plan or intent are present at the
22 commission of the crime, it does not matter who
23 actually commits the crime. All are guilty. The hand
24 of one is the hand of all.

25 Present at the commission of a crime means to be

JURY QUESTION

1 sufficiently near to aid and abet and assist in the
2 commission of the crime. Again, however, mere presence
3 of a crime -- mere presence at the scene of a crime is
4 not sufficient to convict one as a principal on the
5 theory of aiding and abetting. Intent is also a
6 necessary element where there must have been a common
7 design or intent to commit the crime, and the crime
8 must have been committed pursuant thereto with the
9 person aiding and abetting by some overt act.

10 Intent means intending the result which actually
11 occurs not accidentally or involuntarily. Intent may
12 be shown by acts and conduct of the defendant and other
13 circumstances from which you may naturally and
14 reasonably infer intent. The State must prove these
15 elements beyond a reasonable doubt. I hope that that
16 will help you with this. If you need further
17 assistance from the Court, please let us know. Okay.

18 (The jury exits at 3:41 p.m., and the following is
19 heard out of the presence of the jury.)

20 THE COURT: All right. We'll be at ease.

21 (The court was in recess.)

22 (Whereupon, the following is had out of the
23 presence of the jury.)

24 THE COURT: All right. I have a note from the
25 foreman of the jury. The foreman of the jury indicates

ALLEN CHARGE

1 that the jury is deadlocked. I intend to bring the
2 jury back in and give them the Allen charge, but I will
3 hear from you, Mr. Diggs.

4 MR. DIGGS: Your Honor, I never liked the Allen
5 charge, I always felt it pressured the jury into doing
6 something it wasn't inclined to do. You know, I would
7 -- the jurors are adults, mature, if they understand
8 they can't reach a verdict by agreement, then I would
9 submit they probably understand it and that they are
10 not going to reach a verdict, and so I would object to
11 the Allen charge.

12 THE COURT: All right.

13 MR. HUCKS: The State's position is that the Allen
14 charge is appropriate, it's been recognized as
15 appropriate the next step after a jury being locked up.

16 THE COURT: I think it is, and I'm going to give
17 them an Allen charge. I'll give it one time as
18 required by statute, and we'll see what happens. Bring
19 the jury in.

20 MR. HUCKS: Judge, may Mr. Diggs and I approach
21 briefly, I have a procedure question?

22 THE COURT: Yes. Hold them up at the door.

23 (Whereupon, a bench conference was had.)

24 (Court's Exhibit 5 marked.)

25 (Whereupon, the jury enters at 4:49 p.m., and the

ALLEN CHARGE

1 following was had in the presence of the jury.)

2 THE COURT: Mr. Foreman, I received your note that
3 you are deadlocked, and I know you have been working
4 hard and been working for quite a few hours now. It is
5 my duty to give you one additional charge, and it has
6 to do with trying to reach a verdict because,
7 hopefully, you can make another effort and reach a
8 verdict in this case. I have very brief comments that
9 I would like to make by way of further instruction on
10 the matter of you being able to reach a verdict.

11 As I have already told you, you are the sole judges
12 of the facts and the evidence in this case. Now, as
13 the judge, I'm not permitted to give even a hint as to
14 how I feel about any factual matter in this case,
15 certainly, you could give no -- and certainly could
16 give you no hint about what verdict you ought to reach
17 in this case. It is my duty to state the law of the
18 case as I have done, and it is your duty to bring in a
19 verdict now. But I can say this, that when a matter is
20 in dispute, and it is not always for two men or women
21 to agree, and when 12 of you must agree, it becomes
22 obviously correspondingly difficult. It is important
23 that litigation -- and this is litigation -- be ended,
24 if it may be ended, without a single one of you doing
25 violence to your own conscience. No juror is expected

ALLEN CHARGE

1 to give up an opinion based on reasoning satisfactory
2 to him or herself merely for the purpose of being in
3 agreement, and I want you to understand that. You are
4 not called upon very often to try cases, and there is
5 some 50 judges who work -- whose work it is is to try
6 cases from day-to-day throughout the year. It is not
7 very unusual -- almost unheard of -- for a jury to go
8 out and promptly return a verdict, this is what would
9 happen if a jury normally was in agreement to begin
10 with. At the same time, we usually get a verdict.

11 What this means is that it is normal for jurors to
12 disagree at first, but the fact that we normally get a
13 verdict also means that after reasonable persons lay
14 aside all extraneous matters and determine to decide a
15 case based on the law and the evidence, they do come to
16 a common understanding and write a verdict. It has
17 never been intended that the verdict of a jury should
18 be the verdict of any one person, on the other hand,
19 the verdict of the jury is the collective reasoning of
20 all persons put together, and that is why we have a
21 jury, so that we could have the benefit of collective
22 thought, collective reasoning.

23 It becomes your duty to tell the other jurors how
24 you feel about the case and why you think as you do,
25 and I'm sure that you have been doing just that. On

ALLEN CHARGE

1 the other hand, it becomes the other jurors' duty to
2 listen to you and to exchange views with you and to
3 give each other's thought such meaning as you think it
4 should have. So to some degree it could be said that
5 jury service is a matter of give and take.

6 If you do not agree on a verdict, it just means
7 that at some future term of court, before some other
8 judge perhaps, and that some other jury will sit where
9 you are sitting now, the same participants will come
10 and the same lawyers will probably come and ask
11 basically the same questions, and presumably and
12 probably they'll get pretty much the same answers, and
13 we'll go through the whole process again. I have no
14 reason to think that any other 12 citizens of Horry
15 County will be more capable of solving this controversy
16 than you.

17 So I'm going to ask you at this time to return to
18 your jury room and deliberate further and see if you
19 cannot write a verdict in this case. I want to close
20 this part of this added charge by reminding you again
21 that while it is important that litigation be ended, it
22 should be ended in the form of a verdict by which no
23 juror does violence to his own conscience. No juror is
24 expected to give up an opinion based on reasoning
25 satisfactory to himself or herself and merely for the

ALLEN CHARGE

1 purpose of being in agreement. With that added
2 instruction, I'm going to ask you to return to your
3 jury room and try one more time to reach a verdict.

4 (Whereupon, the jury exits at 4:59 p.m., and the
5 following is had out of the presence of the jury.)

6 THE COURT: Anything further from the State?

7 MR. HUCKS: No, sir.

8 THE COURT: Anything from defense?

9 MR. DIGGS: Nothing.

10 THE COURT: Okay.

11 (The court is in recess.)

12 (Whereupon, the following is had out of the
13 presence of the jury.)

14 THE COURT: We have a verdict. Bring in the jury.

15 (Whereupon, the jury enters at 5:56 p.m., and the
16 following is heard in the presence of the jury.)

17 THE COURT: Mr. Foreman, have you reached a
18 verdict?

19 FOREPERSON: Yes, we have.

20 THE COURT: Was it an unanimous verdict?

21 FOREPERSON: Yes, it was.

22 THE COURT: Will you give your verdict forms to Mr.
23 Ropp, please.

24 Madam clerk, you may publish the verdict.

25 THE CLERK: The Court of General Session,

VERDICT

1 Indictment No. 2013-GS-26-04043, State of South
2 Carolina, Horry County, State of South Carolina versus
3 Bradley Gerald Mullins. As to the charge of burglary
4 first degree, we the jury announce that we find the
5 defendant guilty, signed by foreperson, Michael Hawley,
6 December 5, 2013.

7 In the Court of General Sessions, Indictment
8 2013-GS-26-04042, State of South Carolina, County of
9 Horry, State of South Carolina versus Bradley Gerald
10 Mullins. As to the charge of murder, we the jury
11 announce we find the defendant guilty, signed by
12 foreperson, Michael Hawley, December 5, 2013.

13 Ladies and gentlemen of the jury, if this is your
14 verdict, so signify by raising your right hand.

15 THE COURT: Thank you. Mr. Diggs, any requests for
16 individual voir dire?

17 MR. DIGGS: Your Honor, I would --

18 THE COURT: I mean polling.

19 MR. DIGGS: Yes, sir.

20 THE CLERK: Please stand. When I call your number
21 I'll ask you two questions, after each question, please
22 be seated.

23 JUROR 311, is this your verdict?

24 JUROR 311: Yes.

25 THE CLERK: Is this still your verdict?

JURY POLLING

1 THE CLERK: Still your verdict?

2 JUROR 196: Yes.

3 THE CLERK: Juror 137, is this your verdict?

4 JUROR 137: Yes.

5 THE CLERK: Still your verdict?

6 JUROR 137: Yes.

7 THE COURT: Thank you very much. All right. Mr.
8 Diggs, I'll hear you.

9 MR. DIGGS: Under the rule applicable to post-trial
10 situations, I would ask that we be permitted to submit
11 post-trial motions within the next ten day period.

12 THE COURT: Are you asking me to defer sentencing?

13 MR. DIGGS: Well, I would submit that the proper
14 time to sentence would be after some reflection on the
15 case, maybe tomorrow.

16 THE COURT: I'm not going to grant that. I'm going
17 to require you to make your motions now.

18 MR. DIGGS: Your Honor, we would make the motion,
19 but we would request the Court's indulgence to maybe
20 amend or modify those motions within the next ten days.
21 What we would do is ask for a new trial based on the
22 motions that we have made in the course of the
23 proceeding, specifically with respect to the Court's
24 decision to charge the inference of malice from the
25 burglary.

MOTION - MR. DIGGS

1 I would submit that, you know, the grounds that we
2 set forth at that time, specific grounds, prove to be
3 based on the questions that were asked by the jury
4 during the deliberations. It seemed to -- the factual
5 issues seemed to have come into play wherein that
6 charge might have been applicable, you know, in the
7 deliberations itself in terms of reaching the decision
8 on the murder charge. So we would ask for a new trial
9 based on the perceived error that we believe exists
10 because of the charge that was given, given at the
11 request of the State, Your Honor.

12 I remind the Court -- and of course there's no need
13 for us so do that, but the Court initially did not
14 include that charge in the instructions, and at the
15 request of the State made the decision to assert it.
16 So based on that, and the argument that we made at the
17 time, that if that charge was to be given, in the event
18 that there was only evidence in the record that
19 supported the use of that type of inference from the
20 burglary then the manslaughter charge would have been
21 appropriate as well, and because the Court refused at
22 that time to give the charge, we would assert that the
23 Court should reconsider the rulings that were made at
24 that time, grant a new trial based on those errors.

25 Your Honor, we also made a motion, if you recall,

MOTION - MR. DIGGS

1 about a rational trier of fact finding guilt beyond a
2 reasonable doubt based on the evidence in this case.
3 We believe that the evidence was not sufficient for a
4 rational finder of fact to prove guilt with respect to
5 murder beyond a reasonable doubt. That is based on
6 just the inconsistencies and in the statements that
7 were given by all of the State's witnesses who
8 professed as eyewitnesses to either watching the
9 shooting, in the case of Anthony, or lead to the
10 shooting -- alleged oral confessions in the presence of
11 Delilah, Verne Ray, Moon Mullins, I think Charlie
12 testified to that; and I'm not sure, but I know Arlie
13 did. I know he was out on the porch and he heard this
14 conversation. The fact that none of those statements
15 came into existence in effect until two years after the
16 initial interviews had been conducted by the detectives
17 in the case is simply not reliable evidence, not
18 reliable. It is untrustworthy the rational trier of
19 fact could not conclude under our system, I
20 respectively submit, guilt beyond a reasonable doubt.

21 THE COURT: Mr. Hucks.

22 MR. HUCKS: Yes, sir. As to the charge on the
23 inference on malice, it is an appropriate charge. We
24 discussed it and we argued it at length. It is an
25 appropriate charge. It is the current state of South

MOTION - MR. DIGGS

1 Carolina state law and the current position of the
2 State Supreme Court was an appropriate charge and do
3 not believe that was in any error, whatsoever, and
4 would not entitle the defendant to a new trial.

5 Secondly, a rational trier of fact has just
6 returned a verdict of guilty in this particular case on
7 each of these charges, and we believe that there was
8 substantial evidence in the record to allow the jury to
9 make that decision, and now they have made that
10 decision. We believe that if those are the two issues
11 I wrote down, I believe that that would be the extent
12 of the response to each of those issues.

13 THE COURT: Mr. Diggs, do you want to respond?

14 MR. DIGGS: Your Honor, I don't know if I would
15 want to respond directly to what counsel said. I
16 believe we covered it in motions at this point, but I
17 would submit in this case, because it is an unusual
18 case, it would be appropriate to say -- and the fact
19 that the Court had given an Allen charge because a
20 previous announcement by the jury that they were
21 deadlocked and didn't want to reach a verdict, and the
22 Allen charge was given, I would ask the Court at this
23 point to make sure the jurors understand that they
24 can't change their mind later. Once they leave here,
25 that verdict is going to be in place and it is not

MOTION - MR. DIGGS

1 going to be possible for a juror to call tomorrow --

2 THE COURT: Mr. Diggs, I'm not going to reinstruct
3 this jury to rethink about their verdict again.

4 MR. DIGGS: I'm not asking to send them back and
5 think about it, but maybe just to let them know this is
6 a final verdict.

7 THE COURT: Well, certainly it is a final verdict
8 Mr. Diggs.

9 MR. DIXON: Pardon?

10 THE COURT: It certainly is a final verdict. I
11 listened to the case, and we've been going on this for
12 four days. I don't remember trying a murder case with
13 more overwhelming evidence than I have seen in this
14 case. We have eyewitnesses, we have witnesses who
15 implicated themselves in this matter, we have witnesses
16 who have no interest at this point and who have
17 testified. Delilah Mullins, how in the world would she
18 have even known about this incident to report it even
19 though it was some years later unless she was told?

20 MR. DIGGS: By Anthony. She was told by Anthony --
21 or Anthony's wife. But, Your Honor, I appreciate your
22 patience in listening to me and hearing us out. You've
23 been -- you've given us ample opportunity to express
24 all of the objections, and we appreciate that. I know
25 maybe it is an unusual request to ask about -- telling

SENTENCING

1 something that I would never do and that I would -- I
2 don't know how to express it. I know I'm going to
3 spend the rest of my life in prison, but I know in my
4 heart that I didn't do it, and I'll never be the person
5 that I have been made out here to be, no matter where
6 I'm at, because some day I have to answer to that man
7 upstairs, I'll be comfortable with answering to him,
8 but I assure you, the other three won't. They will
9 never be comfortable. Sorry for your loss.

10 THE COURT: All right. Mr. Mullins, this jury
11 after lengthy deliberations has found you guilty of the
12 offenses of burglary in the first degree and murder. I
13 have listened carefully to the evidence in this case,
14 and as I have mentioned a moment ago, I found the
15 evidence overwhelming, not only was it overwhelming,
16 but it was evidence of a violation of these offenses or
17 commission of these offenses in the most heinous
18 manner.

19 Listening to the evidence it became fairly clear to
20 me that Mr. Elliott was killed because he could
21 identify you, and that is probably the only way -- the
22 only reason he was killed. He was executed. The law
23 in this state provides for a penalty for burglary
24 between 15 years and life. That penalty is provided so
25 that the trial judge can exercise his discretion in

SENTENCING

1 determining where in that range this offense falls. I
2 can think of no situation worse or mortifying than
3 having someone evade your home and shoot you. Evade
4 your home for purposes of stealing from you. I can't
5 think of any way this burglary could be worse.

6 So I think the maximum sentence is required. On
7 Indictment Number 04042 -- excuse me, 43, burglary in
8 the first degree, sentence of the Court is that you be
9 confined to State Department of Corrections for the
10 balance of your life.

11 The murder was a cold, heartless execution, and on
12 Indictment 04042 for murder, the sentence of this Court
13 is that you be confined for the balance of your life.
14 These are current sentences. Thank you very much.

15 Do you have a sentencing sheet?

16 MR. DeBUSK: We're passing them up, Your Honor.

17 THE COURT: Ladies and gentlemen, of the jury,
18 thank you for your service. I know this was a
19 difficult, difficult week for you. It is difficult for
20 all of us. It is difficult for me as a trial judge.
21 As I mentioned a moment ago, I've been doing this for
22 many, many years, and it is never easy, particularly
23 sentencing. I believe that you, as jurors, did your
24 job well. You worked hard. I appreciate what you have
25 done. This community appreciates what you have done.

WITNESSES

John Townsend Horry County Police Department

DOCKET NO. 2013-GS-26-04042

The State of South Carolina

County of Horry

J. Scott Hucks

13H02972

COURT OF GENERAL SESSIONS

September, 2013 TERM

ARREST WARRANT NUMBER

M840245

CDR: 0116 16-03-0010, 0020

DOA: 6/21/2013

THE STATE

VS.

ACTION OF GRAND JURY

Bradley Gerald Mullins

W/ M

Hayside

Clintwood, VA 24228

DOB:

SSN:

Foreperson of Grand Jury

Date:

SEP 25 2013

ATTORNEY: Diggs, William I.

VERDICT

Indictment for

MURDER

ORIGINAL

Foreperson of Petit Jury

Date:

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

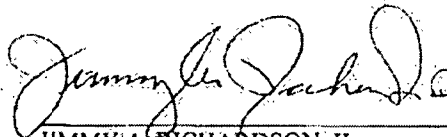
At a Court of General Sessions, convened on September 25, 2013, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010, 0020

That Bradley Gerald Mullins did in Horry County, on or about September 11, 2008, willfully, feloniously, and intentionally kill the victim, Kelly Joe Elliott, with malice aforethought, either express or implied, by means of a gunshot wound to the chest and the head, and the victim did die as a proximate result thereof on or about September 11, 2008, in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

John Townsend Horry County Police Department

DOCKET NO. 2013-GS-26- **04043**

The State of South Carolina

County of Horry

J. Scott Hucks

13H02972

COURT OF GENERAL SESSIONS

September, 2013 TERM

ARREST WARRANT NUMBER

M840246

CDR: 0079 16-11-0311

DOA: 6/21/2013

THE STATE

vs.

Bradley Gerald Mullins

W/ M

Hayside

Clintwood, VA 24228

DOB:

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 25 2013

ATTORNEY: Diggs, William I.

VERDICT

Indictment for

**BURGLARY
FIRST DEGREE**

ORIGINAL

Foreperson of Petit Jury

Date:

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

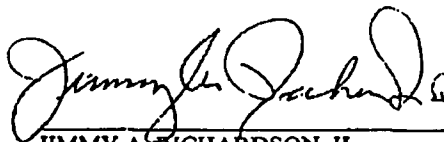
At a Court of General Sessions, convened on September 25, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Bradley Gerald Mullins did in Horry County on or about September 11, 2008, enter the dwelling of Kelly Joe Elliott located at Dew Lane Loris SC, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of General Sessions
Larry B. Hyman, Jr., Circuit Court Judge

Warrants No.: M840245 & M840246

The State of South Carolina,

Respondent.

v.

Bradley Gerald Mullins

Appellant.

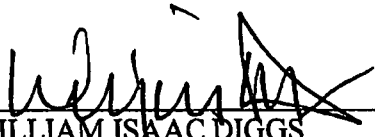
NOTICE OF APPEAL

Bradley Gerald Mullins, appeals his conviction of Murder and Burglary 1st Degree, the life sentence imposed there for in this case, and the Order Denying Defendant's Post Trial Motion from the bench. The sentence was imposed by the Honorable Larry B. Hyman, Jr., on December 5, 2013, from the bench. Appellant also appeals the denial of his post trial motions, which denial was entered on December 5, 2013.

This 13 day of December, 2013

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS
ATTORNEYS AT LAW
1700 Oak Street, Suite D
Myrtle Beach, S.C. 29577
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WILLIAM ISAAC DIGGS
ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of General Sessions
Larry B. Hyman, Jr., Circuit Court Judge

Warrants No.: M840245 & M840246

The State of South Carolina,

Respondent.

v.

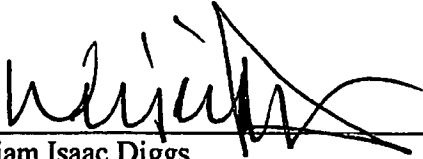
Bradley Gerald Mullins

Appellant.

CERTIFICATE OF SERVICE
NOTICE OF APPEAL

This is to certify that I have this 13th day of December, 2013, deposited in the U.S. Postal Service one copy of the Appellant's Notice of Appeal in the above case with postage prepaid and addressed to opposing counsel at the following address:

Jimmy A. Richardson, II, Solicitor
Scott Hucks, Assistant Solicitor
Post Office Box 1276
Conway, SC 29526



William Isaac Diggs

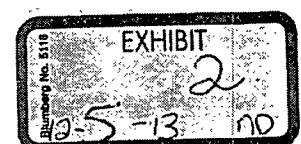
Myrtle Beach, South Carolina

Other Counsel of Record:
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ATTORNEYS FOR RESPONDENT

DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE



LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENTS CHARGE THE DEFENDANT WITH MURDER AND FIRST DEGREE BURGLARY. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THESE DOCUMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE DEFENDANT. THE INDICTMENTS ARE SIMPLY THE FORMAL DOCUMENTS BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO BOTH OF THE INDICTMENTS, AND THOSE PLEAS PUT THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF

RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF

THE DOUBT AND FIND HIM NOT GUILTY.

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE

EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE,
IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT
BEYOND A REASONABLE DOUBT, YOU MUST FIND THE
DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

STATEMENT OF DEFENDANT

A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT TO LAW ENFORCEMENT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING. SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE: (1) THE AGE OF THE DEFENDANT; (2) THE DEFENDANT'S EDUCATION OR LACK OF EDUCATION; (3) THE DEFENDANT'S MENTAL ABILITY OR

CAPACITY; (4) THE DEFENDANT'S I.Q. OR INTELLIGENCE; (5) THE DEFENDANT'S BACKGROUND AND ENVIRONMENT; (6) THE PLACE AND LENGTH OF DETENTION; (7) THE NATURE OF THE QUESTIONING; AND (8) THE ADVICE, OR LACK THEREOF, TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE

GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN

WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.

IF ONE INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A FELONY, AN IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE, THIS INFERENCE IS AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH OTHER EVIDENCE IN THE CASE. I FURTHER CHARGE YOU THAT THE OFFENSE OF

FIRST DEGREE BURGLARY IS A FELONY.

FIRST DEGREE BURGLARY

THE DEFENDANT IS CHARGED WITH FIRST DEGREE BURGLARY. THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT.

A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF BURGLARY. BUT, A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE TEMPORARILY ABSENT FROM THE BUILDING.

IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING. THE SMALLEST ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY, SUCH AS A HAND OR FOOT, OR EVEN AN INSTRUMENT, SUCH AS A HOOK OR OTHER INSTRUMENT. IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE WAS USED TO

GAIN ENTRY.

IF A PERSON ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR A MISDEMEANOR, AT THE TIME OF THE ENTRY. THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE ENTRY, IT IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A CRIME AT THE TIME OF THE ENTRY, IT IS A BURGLARY EVEN IF THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT:

(1) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE WAS ARMED WITH A DEADLY WEAPON OR EXPLOSIVE.

A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

THE FOLLOWING ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A KNIFE, A SLING SHOT, METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB OR MOLOTOV COCKTAIL, AND LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING; OR

(2) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN FLEEING, THE DEFENDANT OR AN ACCOMPLICE CAUSED PHYSICAL INJURY TO ANYONE NOT PARTICIPATING IN THE CRIME; OR

(3) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN

FLEEING, THE DEFENDANT OR AN ACCOMPLICE USED OR
THREATENED TO USE A DANGEROUS OBJECT; OR

(4) WHEN ENTERING, WHILE IN THE DWELLING, OR WHEN
FLEEING, THE DEFENDANT OR AN ACCOMPLICE DISPLAYED
WHAT WAS OR APPEARED TO BE A KNIFE, PISTOL, REVOLVER,
RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM; OR

(5) THE DEFENDANT ENTERED OR REMAINED IN THE
DWELLING IN THE NIGHTTIME. NIGHTTIME IS THE PERIOD
BETWEEN SUNSET AND SUNRISE DURING WHICH THERE IS NOT
ENOUGH DAYLIGHT TO RECOGNIZE A PERSON'S FACE, EXCEPT
BY ARTIFICIAL LIGHT OR MOONLIGHT.

HAND OF ONE

~~IF~~ IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE ACTING TOGETHER IN COMMITTING A CRIME, THE ACT OF ONE IS THE ACT OF ALL. A PERSON WHO JOINS WITH ANOTHER TO COMMIT AN UNLAWFUL ACT IS CRIMINALLY RESPONSIBLE FOR EVERYTHING DONE BY THE OTHER PERSON WHICH HAPPENS AS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE COMMON PLAN AND PURPOSE. FOR EXAMPLE, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER PERSON WHEN ONLY ONE OF THE TWO HAD A GUN, THERE WAS ONLY ONE BULLET, AND ONLY ONE OF THE TWO FIRED THE SHOT THAT CAUSED THE DEATH. IF TWO OR MORE PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER IN COMMITTING THE OFFENSE, THE ACT OF ONE IS THE ACT OF ALL OR, AS IT IS SOMETIMES SAID, "THE HAND OF ONE IS THE HAND OF ALL".

PRIOR KNOWLEDGE THAT A CRIME IS GOING TO BE COMMITTED, WITHOUT MORE, IS NOT SUFFICIENT TO MAKE A PERSON GUILTY OF THAT CRIME. MERE KNOWLEDGE THAT ANOTHER PERSON IS GOING TO COMMIT A CRIME, EVEN IF THE

DEFENDANT IS PRESENT WHEN THE CRIME IS COMMITTED, IS NOT SUFFICIENT TO CONVICT THE DEFENDANT AS A PRINCIPAL. GUILT AS A PRINCIPAL IS SHOWN BY ACTUAL OR CONSTRUCTIVE PRESENCE AT THE SCENE AS A RESULT OF PRIOR ARRANGEMENT. THEREFORE, A FINDING OF A PRIOR ARRANGED PLAN OR COMMON SCHEME IS NECESSARY FOR A FINDING OF GUILT AS A PRINCIPAL. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT BY COMPETENT EVIDENCE THE THEORY OF THE HAND OF ONE IS THE HAND OF ALL.

A PRINCIPAL IN A CRIME IS ONE WHO EITHER ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING, OR ASSISTING IN COMMITTING THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. WHERE TWO OR MORE, ACTING WITH A COMMON PLAN OR INTENT, ARE PRESENT AT THE COMMISSION OF A CRIME, IT DOES NOT MATTER WHO ACTUALLY COMMITS THE CRIME. ALL ARE GUILTY. THE HAND OF ONE IS THE HAND OF ALL. PRESENT AT THE COMMISSION OF A CRIME MEANS TO BE SUFFICIENTLY NEAR TO AID AND ABET AND ASSIST IN THE COMMISSION OF

THE CRIME. HOWEVER, MERE PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. INTENT IS ALSO A NECESSARY ELEMENT, FOR THERE MUST HAVE BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME AND THE CRIME MUST HAVE BEEN COMMITTED PURSUANT THERETO WITH THE PERSON AIDING AND ABETTING BY SOME OVERT ACT. INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT. THE STATE MUST PROVE THESE ELEMENTS BEYOND A REASONABLE DOUBT.

MULTIPLE CHARGES

THE INDICTMENTS IN THIS CASE ALLEGE TWO DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE:

INDICTMENT NO. 1: MURDER

INDICTMENT NO. 2: FIRST DEGREE BURGLARY

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ONE OR BOTH OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH INDICTMENT.

JURY VERDICT

THERE ARE TWO POSSIBLE VERDICTS WHICH YOU MAY FIND ON THE INDICTMENTS IN THIS CASE: GUILTY OR NOT GUILTY. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE POSSIBLE VERDICTS; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE. MR. FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON THE VERDICT FORMS AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

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FEB 13 2015

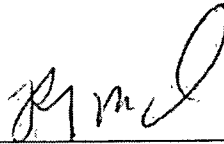
SC Court of Appeals

446

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 13th, 2015



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

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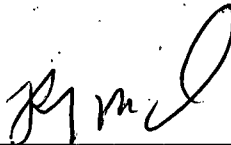
FEB 13 2015

SC Court of Appeals **446**

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February 13th, 2015



Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

FEB 13 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

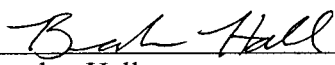
BRADLEY GERALD MULLINS,

APPELLANT

APPELLATE CASE NO. 2013-002662

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, Senior Assistant Deputy Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of February, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.