

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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Appeal from Horry County
J. Cordell Maddox, Jr., Circuit Court Judge

S.C. Supreme Court

LUTHER GARNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001312

APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) INDICTMENT #07-GS-26-927, 928, 1536
3

4 THE STATE OF SOUTH CAROLINA,)
5)
6 PLAINTIFF,)
7)
8 -VS-)
9 LUTHER GARNER,)
10)
11 DEFENDANT.)
12

TRANSCRIPT OF RECORD

May 29th & May 30th, 2007
Conway, S. C.

11 B E F O R E:

12 HONORABLE EDWARD B. COTTINGHAM, JUDGE, AND A JURY
13

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

15 JIMMY A. RICHARDSON, II, ESQUIRE
16 AND

17 CANDICE A. LIVELY, ESQUIRE
18 Assistant Solicitors, Fifteenth Judicial Circuit
19 Attorney for the State

20 STUART M. AXELROD, ESQUIRE
21 Attorney for the Defendant

22 LINDA W. MCCALL
23 OFFICIAL REPORTER
24
25

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NOTE: STATE, DEFENDANT OR COURT EXHIBITS PRESENTED OR ENTERED INTO EVIDENCE AFTER MAY 30, 2007, WERE ACCEPTED BY ANOTHER COURT REPORTER DURING THE PORTION OF THE TRIAL HELD ON MAY 31, 2007, AND ARE NOT A PART OF THIS TRANSCRIPT OF RECORD.

REMARKS OF THE COURT

8

TUESDAY, MAY 29, 2007

(The Court convenes the trial of this case with all parties present in the courtroom.)

REMARKS OF THE COURT

THE COURT: Good morning, ladies and gentlemen. Please be seated.

Let the record reflect that the defendant is in the courtroom and all parties are present.

First, ladies and gentlemen of the jury, I didn't have the pleasure of meeting you this morning during your initial roll call but I want to say to you. I'm Judge Cottingham from Bennettsville, South Carolina. I serve here by the appointment of the Chief Justice as the Chief Judge for the Administration of the Criminal Courts, and I, too, want to join with Judge Thomas in welcoming all of you here to a term of General Sessions Court.

Your presence here is absolutely required. We say under our system of jurisprudence and properly so that an individual in a criminal case shall not be deprived of his or her liberty, not for one day unless and until a jury of their peers, and their peers you are, have found him guilty by evidence beyond a reasonable doubt. That concept protects your liberty. With equal emphasis, it protects mine.

And so we are here today bound by some rather serious matters, serious duties.

I concluded many years ago that other than in times of war, a

REMARKS OF THE COURT

9

1 citizen of this magnificent country will never be required to
2 perform a higher duty than that of jurors, particularly in a
3 criminal case where an individual's liberty is at stake.

4 I would understand that all of you are here at considerable
5 inconvenience to your families, to your work place and to your
6 daily pursuits and understanding that a lot of you would just
7 prefer to be somewhere else. Having said that, thought, I
8 appreciate very deeply your services recognizing that you are here
9 at considerable inconvenience, and to the extent that we can, we
10 will inconvenience you as little as possible.

11 As an example, from your number today, I'm going to select
12 twelve jurors in a case with two alternates. So, I'll require
13 fourteen of you, and the rest of you will be excused for the rest
14 of the day.

15 And what was Judge Thomas' instructions, ma'am? To call in
16 after 6:00 tonight?

17 CLERK OF COURT: Yes, sir.

18 THE COURT: And for those of you who are not among the
19 fourteen selected, please call in after 6:00 tonight for further
20 instructions.

21 I don't know how long Judge Thomas' case will take nor this
22 one but sometimes witnesses become unavailable. We think a case is
23 going to last for a couple of days. Sometimes things happen, and
24 it does not, and so we ask you to call in in case her case or this
25 case for some reason might break down.

REMARKS OF THE COURT

10

1 Now, the case that - - call your case, please, Solicitor.

2 MR. RICHARDSON: Your Honor, the State calls the case of
3 The State v. Luther Garner a/k/a Kariem Ward. He's charged with
4 murder, burglary first, armed robbery, attempted armed robbery. I
5 believe that's the extent of the indictment.

6 THE COURT: Alright.

7 I have four indictments in front of me. Is that correct?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Alright.

10 Ladies and gentlemen, the State has called these cases of
11 murder, burglary in the first degree and armed robbery and
12 attempted armed and to these indictments that I hold in my hand,
13 this defendant specifically pleads not guilty.

14 He doesn't have to prove a thing. He is presumed innocent.
15 The State must prove him guilty if they can by evidence to your
16 satisfaction unanimously beyond a reasonable doubt.

17 Now, one of the indictments is murder. Now, I tell you in
18 this case that the State does not seek the penalty of death.
19 Consequently, I tell you that only for the purpose of knowing that
20 this is not a death penalty case. You will not be sequestered. We
21 will be working from 9:30 until 1:00 and from 2:30 until around
22 5:00 ordinarily until the case is concluded.

23 In addition to the murder charge, he is also charged with
24 having committed at that same time and place these other charges to
25 all of which he specifically pleads not guilty.

REMARKS OF THE COURT

11

1 These indictments are simply the formal manner by which this
2 defendant and any defendant is brought to court. The allegations
3 are allegations only and in no sense any evidence against this
4 defendant. The evidence, if any, comes from this witness stand
5 under oath and from such other matters as may be introduced into
6 the trial of this case.

7 Prior to proceeding, do you have a witness list that you would
8 like for me to examine, and, Mr. Axelrod, do you have one?

9 MR. AXELROD: Your Honor, my witness list is downstairs. I
10 can go get it.

11 My witness list is downstairs.

12 THE COURT: Go bring it.

13 I'm surprised you don't have it.

14 MR. AXELROD: I didn't know - - Your Honor.

15 THE COURT: Go get it. That's fine.

16 (Attorney leaves the courtroom to get witness list while the
17 Court awaits his return.)

18 THE COURT: Now, Solicitor, it may be that depending on
19 another engagement that I have, I may break at 4:00 today. I'll
20 have to let you know a little later on in the day.

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: But generally speaking, with other than today
23 for you who are selected, we'll start at 9:30 in the morning and
24 break around 1:00. Start at 2:30 and then quit in the afternoons
25 at 5:00 or 5:30.

VOIR DIRE

12

1 THE COURT: Ladies and gentlemen, hopefully, he'll be back
2 here shortly.

3 You know, we have Murphy's Law, and, of course, all of you are
4 familiar with it. Anything can go wrong, it will. We also have
5 Cottingham's Law, and that is that Murphy was an optimist.

6 (Attorney for the defendant returns to the courtroom.)

7 VOIR DIRE

8 THE COURT: Alright, sir. You have that information?

9 MR. AXELROD: Yes, sir. I'll get it out of my case.

10 THE COURT: Alright, sir.

11 Let me go ahead and while you doing that, let me go ahead and
12 talk to the jury for a few minutes.

13 You got it?

14 MR. AXELROD: Yes, sir.

15 THE COURT: Alright, sir.

16 MR. AXELROD: Absolutely.

17 Ladies and gentlemen of the jury panel, I'm about to ask of
18 you certain questions concerning the case which the Solicitor has
19 just called wherein the defendant Luther Garner also known as
20 Kariem Ward has been indicted under these various charges of
21 murder, burglary first degree and armed robbery and attempted armed
22 robbery to which he has specifically pled not guilty.

23 Now, there are no right or wrong answers for you to give with
24 regard to the questions I ask of you. I'm simply trying to
25 determine whether or not you have any knowledge from any source

VOIR DIRE

13

1 concerning the facts and circumstances in the case or if any of you
2 have previously formed or expressed an opinion concerning the facts
3 and circumstances of this case.

4 I tell you at the outset that there's nothing particularly
5 wrong with you having listened to or heard any facts concerning the
6 case nor is anything wrong with you having maybe discussed the
7 case. I want to make sure, though, that whatever your verdict is
8 is based on the law and evidence in this courtroom and from no
9 other source.

10 I also want to make sure that - - we all develop biases and
11 prejudices based on experiences in life. I also want to insure
12 that you have no biases against the State of South Carolina or the
13 Solicitor's Office who prosecutes the case. Equally important, I
14 want to make sure that you have no biases or prejudices against
15 this defendant who to - - who answers to these charges and has pled
16 not guilty.

17 Now, my first inquiry, and, Mr. Axelrod, first, introduce
18 yourself, Solicitor, representing the Fifteenth Judicial Circuit.

19 MR. RICHARDSON: Thank you, Your Honor.

20 My name is Jimmy Richardson. I'm an Assistant Solicitor here
21 in Horry County, and this is Ms. Candice Lively. She's going to
22 also be helping with this case.

23 THE COURT: Alright.

24 My first inquire - - have any of you been victims or working
25 with the Solicitor's Office or witnesses in a case of any kind

VOIR DIRE

14

1 within the last year or so? Has anybody had any involvement with
2 the Solicitor's Office?

3 Any of you have any close personal relatives employed by the
4 Solicitor's Office of the Fifteenth Circuit? If so, please stand.

5 Your name, sir?

6 MR. BARNHILL: Willie Barnhill.

7 THE COURT: And Good morning, Mr. Barnhill. What is your
8 response?

9 MR. BARNHILL: Well, I'm the second cousin to the Solicitor.

10 THE COURT: Second cousin to who?

11 MR. BARNHILL: Mr. Richardson.

12 THE COURT: And you're willing to claim that, aye?

13 That would not affect your ability to be fair to him and to
14 the defendant, would it?

15 MR. BARNHILL: No, sir.

16 THE COURT: I think not.

17 Thank you, Mr. Barnhill. I accept that as information.

18 MR. AXELROD: Your Honor, may we ask the juror's number?

19 THE COURT: Yes, sir.

20 May I have your jury number, please?

21 MR. BARNHILL: Sixteen.

22 THE COURT: Sir?

23 MR. BARNHILL: Sixteen.

24 THE COURT: Sixteen, fine.

25 Now, Mr. Axelrod, please stand.

VOIR DIRE

15

1 Mr. Axelrod is in the - - he was in the Public Defender's
2 Office at one time. Now has his own private practice.

3 Any of you clients of Mr. Axelrod or have you been in the
4 immediate past? If so, please stand.

5 Alright. You may sit down.

6 This defendant has two names. It is Luther Garner, a/k/a
7 Kariem Ward.

8 What is his real name, Mr. Axelrod?

9 MR. AXELROD: Luther Garner.

10 THE COURT: Sir?

11 MR. AXELROD: Luther Garner.

12 THE COURT: Does he also go under the name of Kariem Ward?

13 MR. AXELROD: I'm not sure, Your Honor. People in this
14 trial are going to say - - -

15 THE COURT: Well, I ask the defendant.

16 Are you also known as Kariem Ward?

17 MR. GARNER: Only Kariem, Your Honor.

18 THE COURT: Sir?

19 MR. GARNER: Kariem.

20 MR. AXELROD: Kariem.

21 THE COURT: You are known as Kariem?

22 MR. GARNER: Yes, sir.

23 THE COURT: Please turn and face the jury panel for me.

24 Any of you related by blood or connected by marriage to the
25 defendant who stands in front of you, Luther Garner, also known as

VOIR DIRE

16

1 Kariem? Any of you have any close personal relationships with
2 him? Any of you co-employees, church members, neighbors? How
3 many of you know Kariem Luther Garner or Kariem Ward in any
4 capacity whatsoever? If so, please stand.

5 You may be seated Mr. Ward or Mr. Garner.

6 Now, ladies and gentlemen, these indictments that I hold in my
7 hand as I've indicated to you is no evidence. It's simply the
8 allegations to which he has pled not guilty.

9 I'm going to read these allegations to you, and you'll have
10 them with you in the jury room so that you may respond to the
11 following inquiries.

12 As I said before, the State of South Carolina and this
13 defendant desire from your number twelve folks with no friends to
14 reward, no enemies to punish, twelve people who can say, "Judge, if
15 I'm selected as one of the twelve judges as finders of the facts,
16 I will base my verdict on the law and the evidence heard in this
17 courtroom and from no other source."

18 Now, in order to insure whether you've heard or know anything
19 about it, I'm going to read these allegations, and they are
20 allegations only.

21 First, as to the charge of murder, the allegations are which
22 are denied is that this defendant did in Horry County on or about
23 January 11th of 2005, unlawfully kill the victim, Amadro Flores - -
24 how is that last name pronounced? E-s - - -

25 MR. RICHARDSON: Espinozat.

VOIR DIRE

17

1 THE COURT: Pardon me?

2 MR. RICHARDSON: Espinozat.

3 THE COURT: Espinozat with malice aforethought, either
4 expressed or implied, by means of beating the victim in the hand
5 and that the victim died as a proximate result thereof in violation
6 of the applicable statute.

7 Now, in that connection, are any of you related to Amadro
8 Flores - - how you pronounce the last name?

9 MR. RICHARDSON: Espinozat.

10 THE COURT: Espinozat? If so, please stand?

11 Do any of you know Espinozat, the victim in any capacity
12 whatsoever?

13 Now, those are the allegations as to murder.

14 The allegations as to armed robbery is that this defendant did
15 in Horry County on the same; to-wit: On or about the 11th day of
16 January, while armed with a deadly weapon; to-wit: a gun; taking
17 away the personal property from the immediate presence of Espinozat
18 at that time.

19 And that under burglary first degree is that at that time on
20 or about January 11th did enter into the dwelling of the victim with
21 the intent to commit a crime therein while armed with a deadly
22 weapon.

23 And, then, with reference to the charge of attempted armed
24 robbery is that this defendant did in Horry County on or about the
25 11th day of January, the same day, while armed with a deadly weapon

VOIR DIRE

18

1 attempt to carry away personal property of the victim.

2 Now, all of this is said to have occurred on the 11th day of
3 January, 2005.

4 It's not likely but would any of you have read or heard
5 anything about it? Seen it on television? Had it discussed in
6 your presence? Know anything about it whatsoever?

7 Any of you formed or expressed any opinion as to the guilt or
8 innocence of anybody?

9 If anybody among you know anything at all about this case,
10 please stand.

11 Now, ladies and gentlemen, I - - pardon?

12 MRS. PARKINSON: My juror number is 199, Sabine Parkinson.
13 I've read about it in the newspaper.

14 THE COURT: Alright.

15 Have you discussed it with anybody?

16 MRS. PARKINSON: My husband, yeah.

17 THE COURT: Alright.

18 Have you formed or expressed an opinion? Don't tell me what
19 it is if you have. Have you formed or expressed an opinion as to
20 the guilt or innocence of anybody?

21 MRS. PARKINSON: No.

22 THE COURT: Can you set aside what you may have read in the
23 paper and it would have been approximately two years ago and base
24 your verdict on the law and evidence heard in this courtroom?

25 MRS. PARKINSON: I can.

VOIR DIRE

19

1 THE COURT: We find sometimes that the papers don't put the
2 exact facts. Sometimes I've tried cases and after reading about it
3 the next day after reading their version, I didn't think I was
4 there. So these things happen sometimes.

5 You are telling me that you may have read it or heard but made
6 no effort to conclude any guilt or innocence and can base your
7 verdict on the law and evidence in this case?

8 MRS. PARKINSON: That's right.

9 THE COURT: I think that you can.

10 Now, ladies and gentlemen, in our lifetime whether we like it
11 or not, we develop certain biases and prejudices. I want to
12 discuss that with you for a moment.

13 Some years I was preparing - - and this was another town - -
14 I was preparing to try a young man for felony DUI it being alleged
15 by the State that he killed a young girl while drunk driving, and
16 I asked the panel did anybody feel like that based on the trial
17 situation, they could not give both a fair trial.

18 A lady got up and said, "Your Honor, I can't give this
19 defendant a fair trial. My daughter was killed by a drunk driver
20 some eighteen months ago, and I couldn't be fair to him
21 regardless."

22 And I understood that, and I excused her.

23 A gentleman got up in the same panel, and said, "Judge, I
24 can't be fair to the State of South Carolina. They - - they
25 prosecuted my son three times for a similar offense until a jury

VOIR DIRE

20

1 found him not guilty, and I can't be fair to the State. I don't
2 like the way they treated my son."

3 I give you this solely as an example to indicate how we
4 develop biases and prejudices.

5 Now, in your life experiences you or some member of your
6 family may have had a violent crime thrust upon you, may have had
7 your home burglarized, may have been robbed. My question is based
8 on your prior experiences knowing the case that you are try here
9 today, do any of you feel that based on your prior experiences you
10 could not give both the State and the defendant a fair trial?

11 If anybody feels like that they can't be fair to both sides
12 and base their verdict on the law and evidence heard in this case,
13 I want you to stand.

14 Yes, ma'am. May I have your name?

15 MS. HENDRICKSON: Denise Hendrickson, Juror #121.

16 THE COURT: And may I have your jury number?

17 MS. HENDRICKSON: 121.

18 THE COURT: Would you come forward please?

19 Gentlemen, both the State and the defendant, let's be off the
20 record here.

21 And I appreciate your response. Let the lawyers come up.

22 Good morning to you.

23 (The Court speaks off the record to the juror and by and with
24 the consent of both counsel excuses this juror from the trial of
25 this case.)

VOIR DIRE

21

1 THE COURT: Alright.

2 Ladies and gentlemen, one quick other inquiry here before I
3 proceed.

4 Are any of you aware or conscious of any bias or prejudice
5 either for or against this defendant or for or against the State of
6 South Carolina?

7 Is there any reason that any of you now have to conclude or
8 feel that you cannot give both the State of South Carolina and this
9 defendant a fair trial?

10 If anybody says they can't be fair to either side, stand up
11 and I'll release you from this case.

12 The State of South Carolina and Mr. Axelrod represent the
13 defendant - - okay, come forward, please - - desire, as I've said,
14 twelve folks who will say, "Judge, whatever my verdict is, either
15 guilty or not guilty, on the law and evidence in this courtroom."

16 May I have your name, please?

17 MS. VEGA: April Vega.

18 THE COURT: Who?

19 MS. VEGA: April Vega.

20 THE COURT: And may I have your jury number?

21 (The Court addresses the juror, April Vega, Juror #275, off
22 the record and thereafter with consent of both counsel excuses her
23 from the trial of this case.)

24 THE COURT: Alright.

25 Now, ladies and gentlemen, for my information and information

VOIR DIRE

22

1 only, are any of you related by blood or marriage to any law
2 enforcement officer or is any member of your immediate family in
3 law enforcement.

4 That's more for my information, and when I talk about it, I'm
5 talking about South Carolina Law Enforcement Division, Sheriff's
6 Office, City Police, whatever?

7 Please stand if somebody would respond to that?

8 MS. INMAN: How close are you - - -

9 THE COURT: May I have your name, please?

10 MS. INMAN: Tracy Inman.

11 THE COURT: Yes, ma'am.

12 MS. INMAN: How close a relationship are you talking?

13 THE COURT: Well, just tell me what it is?

14 MS. INMAN: The Sheriff's Office.

15 THE COURT: What is it?

16 MS. INMAN: Like third or fourth cousin.

17 THE COURT: Oh, that's kissing cousins. You're alright.

18 MR. AXELROD: May we have the juror's number, please?

19 THE COURT: May I have your number, please?

20 MS. INMAN: 133.

21 THE COURT: Okay. That would not impede your ability to
22 be fair to everybody?

23 MS. INMAN: No, not at all.

24 THE COURT: And I ask that, and that's fine.

25 In Marlboro, that's kissing cousins.

VOIR DIRE

23

1 Anybody else?

2 Yes, ma'am. May I have your name?

3 MS. RHODES: Mary Rhodes.

4 THE COURT: And your jury number, please?

5 MS. RHODES: 226.

6 THE COURT: And your response?

7 MS. RHODES: I have an uncle who is a state trooper, first
8 cousin who is a state trooper, and a first cousin who is a city
9 police.

10 THE COURT: I accept that as information.

11 Anyone else?

12 Now, ladies and gentlemen, I have some lists here of folks who
13 may or may not be called as jurors on one side or the other, and my
14 question is. Are you related by blood or connected by marriage to
15 any of these folks or if you have some close, personal relationship
16 with them that I need to know about?

17 Any of you patients of Dr. Proctor of the Grand Strand
18 Hospital, please stand.

19 If any of these names you need to call, let me know and please
20 stand.

21 Lonya Sowden and Peter Cestaire of the Horry County Police
22 Department; Julie Ann St. Louis and Robbie Caulder of the Horry
23 County Police Department; Steve Lambert of SLED; A. J. Pierce,
24 Aynor, Alan Large, Horry County Police Department; Paul Graham,
25 Lori Rabon, Horry County; Deirdre Faulk; Robert Deal; Heather

VOIR DIRE

24

* 1 Brummett; Neil Livingston; Stuart Cottingham; John Lewis.

2 Anybody have any close connections with any of these?

3 Alright. These are some additional names that may or may not
4 be called.

5 Detective Chuck Powell; Detective David C-a-r-a-k-e-r.

6 MR. RICHARDSON: Caraker, Your Honor.

7 THE COURT: Alright.

8 Sgt. Maurice Jones; Detective Santiago; Detective Todd Cox;
9 Detective Dickson; Detective Squires; Sgt. Jason Freer; Detective
10 Ann Pitts; Sgt. Rick Bonney; Officer D-e-w-s-n-a-p, Dewsnap; Sgt.
11 Lucas Green; Officer Jeffrey Todd; Blaine Wimberly; Sherry
12 Wimberly; Jeff Gause; Kimiko Smith; David Hellman; Jerry Linsky;
13 Amanda Luckett; June Johnson; Elma Hensell; Alexander Blackburn;
14 Jennifer Moore; Earl Moore; Carolyn McLeod; Debra Stokes; Jennifer
15 Lynne Rush; Matthew William Tindall; Helen Henson.

16 Alright.

17 For the State, Mr. Richardson, any additional inquiries?

18 MR. RICHARDSON: No, sir.

19 THE COURT: Mr. Axelrod?

20 MR. AXELROD: No, sir, Your Honor.

21 THE COURT: Give us - - five and ten, of course.

22 MR. RICHARDSON: May we approach, Your Honor?

23 THE COURT: Yes, sir. Both of you may.

24 (Bench conference held off the record and in the presence of
25 the jury panel but outside the hearing of the jury panel.)

JURY SELECTION

25

1 THE COURT: Alonzo Lee Pierce.

2 JURY SELECTION

3 THE COURT: Alright.

4 Give instructions, Madame Clerk.

5 CLERK OF COURT: As I call your name, please come to the
6 about the middle of the room. Face that way, and I'll ask
7 questions of the State and the defendant and will tell you what to
8 do from there.

9 #86, Melinda Fitzpatrick.

10 THE COURT: What number was that?

11 CLERK OF COURT: #86.

12 THE COURT: Patrick?

13 CLERK OF COURT: Fitzpatrick.

14 What say the State?

15 MR. RICHARDSON: Please present the juror.

16 CLERK OF COURT: The defense?

17 MR. AXELROD: Please excuse the juror from the trial of this
18 case.

19 CLERK OF COURT: You're excused from the trial of this
20 particular case.

21 #73, Susan Depaul.

22 What say the State?

23 MR. RICHARDSON: Please present the juror.

24 CLERK OF COURT: The defense?

25 MR. AXELROD: Please swear the juror.

JURY SELECTION

26

1 CLERK OF COURT: Have a seat in the jury box, please.

2 #117, Thomas Hazzard.

3 DEPUTY: Excuse me, Donna.

4 You might want to tell them to take their belongings with them
5 as they go.

6 CLERK OF COURT: Please take your pocketbooks with you.

7 What say the State?

8 MR. RICHARDSON: Please present the juror.

9 CLERK OF COURT: The defense?

10 MR. AXELROD: Please swear the juror.

11 CLERK OF COURT: Have a seat in the jury box, please.

12 #170, Elaine Luscombe.

13 What says the State?

14 MR. RICHARDSON: Please present the juror.

15 CLERK OF COURT: The defense?

16 MR. AXELROD: Please excuse the juror.

17 CLERK OF COURT: You're excused from this particular case.

18 #269, Ben Tinnin.

19 What say the State?

20 MR. RICHARDSON: Please present the juror.

21 CLERK OF COURT: The defense?

22 MR. AXELROD: Please swear the juror.

23 CLERK OF COURT: Have a seat in the jury box, please.

24 #209, Bonita Pickett.

25 What say the State?

JURY SELECTION

27

1 MR. RICHARDSON: Please excuse Ms. Pickett.
2 CLERK OF COURT: You're excused from this particular case.
3 #288, Nikoletta Wilbanks.
4 What say the State?
5 MR. RICHARDSON: Please present the juror.
6 CLERK OF COURT: The defense?
7 MR. AXELROD: Please swear the juror in this case.
8 CLERK OF COURT: Have a seat in the jury box, please.
9 #199, Sabine Parkinson.
10 What say the State?
11 MR. RICHARDSON: Please excuse the juror.
12 CLERK OF COURT: You're excused from this particular case.
13 #115, Willie Hatcher.
14 What say the State?
15 MR. RICHARDSON: Please present the juror.
16 CLERK OF COURT: The defense?
17 MR. AXELROD: Please excuse the juror in this case.
18 CLERK OF COURT: You're excused from this particular case.
19 #217, Cory Quinn.
20 What say the State?
21 MR. RICHARDSON: Please excuse Mr. Quinn.
22 CLERK OF COURT: You're excused from this particular case.
23 #184, Leon Mcgeough.
24 THE COURT: How do you spell that, please?
25 CLERK OF COURT: M-c-g-e-o-u-g-h.

JURY SELECTION

28

1 What say the State?

2 MR. RICHARDSON: Please present the juror.

3 CLERK OF COURT: The defense?

4 MR. AXELROD: Excuse the juror.

5 CLERK OF COURT: You're excused from this particular case.

6 #133, Tracy Inman.

7 What say the State?

8 MR. RICHARDSON: Please present Ms. Inman.

9 CLERK OF COURT: The defense?

10 MR. AXELROD: Excuse her.

11 CLERK OF COURT: You're excused from this particular case.

12 #173, Caryn Maerlender.

13 What say the State?

14 MR. RICHARDSON: Please present the juror.

15 CLERK OF COURT: The defense?

16 MR. AXELROD: Swear the juror.

17 CLERK OF COURT: Have a seat in the jury box, please.

18 #106, Carol Griffin.

19 What say the State?

20 MR. RICHARDSON: Please present the juror.

21 CLERK OF COURT: The defense?

22 MR. AXELROD: Please excuse the juror.

23 CLERK OF COURT: You're excused from this particular case.

24 #290, Rodney Williams.

25 THE COURT: What was that number, please?

JURY SELECTION

29

1 CLERK OF COURT: #290.
2 What say the State?
3 MR. RICHARDSON: Please present the juror.
4 CLERK OF COURT: The defense?
5 MR. AXELROD: Swear the juror.
6 CLERK OF COURT: Have a seat in the jury box, please.
7 #4, Martha Allen.
8 What say the State?
9 MR. RICHARDSON: Please present the juror.
10 CLERK OF COURT: The defense?
11 MR. AXELROD: Swear her.
12 CLERK OF COURT: Have a seat in the jury box, please.
13 #160, Teresa Lawson.
14 What say the State?
15 MR. RICHARDSON: Please present the juror.
16 CLERK OF COURT: The defense?
17 MR. AXELROD: Swear the juror.
18 CLERK OF COURT: Have a seat in the jury box, please.
19 #14, Brett Barentine.
20 What say the State?
21 MR. RICHARDSON: Please present the juror.
22 CLERK OF COURT: The defense?
23 MR. AXELROD: Swear the juror.
24 CLERK OF COURT: Have a seat in the jury box, please.
25 #126, Timothy Horner.

JURY SELECTION

30

1 What say the State?

2 MR. RICHARDSON: Please excuse the juror.

3 CLERK OF COURT: You're excused from this particular case.
4 #226, Mary Rhodes.

5 What say the State?

6 MR. RICHARDSON: Please present the juror.

7 CLERK OF COURT: The defense?

8 MR. AXELROD: Please excuse the juror from the trial of this
9 particular case.

10 CLERK OF COURT: You're excused from this particular case.
11 #206, Frank Pervola.

12 What say the State?

13 MR. RICHARDSON: Please present the juror.

14 CLERK OF COURT: The defense?

15 MR. AXELROD: Swear the juror.

16 CLERK OF COURT: Have a seat in the jury box, please.
17 #239, Vance Shields.

18 What say the State?

19 MR. RICHARDSON: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. AXELROD: Please excuse the juror.

22 CLERK OF COURT: You're excused from this particular case.
23 #165, Janice Lincourt.

24 What say the State?

25 MR. RICHARDSON: Please present the juror.

JURY SELECTION

31

1 CLERK OF COURT: The defense?

2 MR. AXELROD: Swear the juror.

3 CLERK OF COURT: Have a seat in the jury box.

4 #16, Willie Barnhill.

5 What say the State?

6 MR. RICHARDSON: Please present Mr. Barnhill.

7 CLERK OF COURT: The defense?

8 MR. AXELROD: Excuse Mr. Barnhill.

9 CLERK OF COURT: You're excused from this particular case.

10 #174, Anthony Magdits.

11 What say the State?

12 MR. RICHARDSON: Please present the juror.

13 CLERK OF COURT: The defense?

14 MR. AXELROD: Swear the juror.

15 CLERK OF COURT: Have a seat in the jury box, please.

16 THE COURT: Alright.

17 We have now selected twelve jurors which constitutes the jury.

18 We're going to select two alternates. The strikes are one and two

19 as to each alternate, not cumulative.

20 Go ahead.

21 CLERK OF COURT: #179, Ricky Martin.

22 What say the State?

23 MR. RICHARDSON: Please present Mr. Martin.

24 CLERK OF COURT: The defense?

25 MR. AXELROD: Swear the juror.

JURY SELECTION

32

1 CLERK OF COURT: Have a seat in the jury box, please.

2 THE COURT: Alternate #1. There will be an alternate #2.

3 One and two, please.

4 CLERK OF COURT: #295, Carolyn Wolfe.

5 What say the State?

6 MR. RICHARDSON: Please present the juror.

7 CLERK OF COURT: The defense?

8 MR. AXELROD: Swear the juror.

9 CLERK OF COURT: Have seat in the jury box, please.

10 THE COURT: Alright.

11 That will constitute the jury and the alternates.

12 Take the jury to the jury room, please.

13 (The jury retires to the jury room at 12:34 p.m.)

14 THE COURT: Outside the presence of the jury, any motions
15 concerning the composition of the jury?

16 What say the State?

17 MR. RICHARDSON: None, Your Honor.

18 THE COURT: What say the defendant?

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

20 THE COURT: Alright.

21 The jury shall stand as given.

22 Alright.

23 Ladies and gentlemen, for you - - those of you who were not
24 selected, again, I appreciate your patience here this morning. I
25 appreciate your attendance.

REMARKS OF THE COURT

33

1 All of you, now, are excused to call in after 6:00 tonight.
2 Everybody - - if anybody does not understand the call-in procedure,
3 before you leave, now, would you please come forward so we can get
4 it straight?

5 Otherwise, you are now excused for the rest of the day.

6 (The remaining jury panel departs the courtroom with
7 instructions to call in after 6:00 tonight.)

8 THE COURT: Bring the jury back as soon as they're ready.

9 (The jury returns to the courtroom at 12:36 p.m.)

10 REMARKS OF THE COURT

11 THE COURT: Alright.

12 Ladies and gentlemen, it's about 12:30. We're going to start
13 the trial of this case promptly at 2:00. So, I'm going to release
14 you in just a moment to have lunch.

15 Please be back in your jury room, now, not in the courtroom
16 but in your jury room promptly at 2:00. Please wear your jury
17 badge at all times when you are on the courthouse grounds.

18 And the reason for that is sometimes folks start talking about
19 the case not realizing that you are a juror. With that sign there,
20 they should know.

21 If anybody - - it's not likely but sometimes people
22 inadvertently want to discuss some issue in the case. If that be
23 true, stop them and tell them you are a juror. If they continue,
24 walk away and let me know who they are. It's not likely but it's
25 happened in the past.

REMARKS OF THE COURT

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1 These are continuing admonitions during the trial of this
2 case.

3 We expect to conclude, certainly, maybe by Wednesday, surely
4 by Thursday.

5 Do not discuss this case with anyone. Let no one discuss it
6 with you. Make no independent inquiry. If something happens to be
7 in the newspaper or on the tv, I ask that you turn away.

8 And the reason for that is whatever your verdict is, we want
9 it based on the law and the evidence heard in this courtroom and
10 from no other place.

11 Now, Mr. Foreman - - I will appoint at 2:00 a Foreman or
12 Forelady among you to preside in the jury room and to be the jury
13 spokesman.

14 Do not discuss this case even among yourselves while the case
15 is going on.

16 You see, whatever your verdict is, it's got to be the
17 unanimous verdict of all you, and you need to hear all of the
18 testimony including the last witness who may have testified.

19 In addition to that, some folks, and I can understand it,
20 three or four of you break for lunch might want to discuss some
21 issue in the case, and that's improper for the following reasons.

22 Whatever your verdict ultimately is must be the unanimous
23 verdict of all twelve of you, and if several of you are discussing
24 some issue outside of the presence of the other, it's improper
25 because your fellow jurors are entitled to your thought process,

MOTIONS AND RULING OF THE COURT

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1 and they don't have it if you discussing it outside their presence.

2 So, our rules say you can't even discuss it among yourselves,
3 not even in the jury room until I have given you the case for your
4 deliberations.

5 You are now excused to be back in the jury room at 2:00.

6 (The jury departs the courtroom at 12:39 p.m. with
7 instructions to return at 2:00 p.m.)

MOTIONS AND RULING OF THE COURT

8 THE COURT: Alright.

9 You may be seated.

10 If there's any in limini matters to take up, let's take them
11 up at this time.

12 What say, first, the State?

13 MR. RICHARDSON: Your Honor, this case, um, there's
14 several, there's several - - there's two co-defendants charged:
15 Lee Pierce or Alonzo Pierce and Luther Garner.

16 THE COURT: The two are who, now?

17 MR. RICHARDSON: Lee Pierce and Alonzo - - I mean, Luther
18 Garner.

19 THE COURT: He's the one who stands here?

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Alright.

22 MR. RICHARDSON: Because of some statement issues, we have
23 chosen to just try Mr. Garner at this time. The charges are still
24 pending against his co-defendant to be dealt with at a later date.
25

MOTIONS AND RULING OF THE COURT

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1 Um - - -

2 THE COURT: Is Lee Pierce going to be a witness in this
3 case?

4 MR. RICHARDSON: Mr. Axelrod has him under subpoena. He
5 may very well be a witness. I do not believe so at this time, not
6 from the State.

7 THE COURT: Okay.

8 MR. RICHARDSON: He could - - it could but we've had no
9 dealings with Mr. Pierce.

10 THE COURT: Okay.
11 So, what's your motion?

12 MR. RICHARDSON: My motion is that Mr. Pierce along with
13 Mr. Garner and A. J. Pierce have all been tied up in specific
14 robberies beforehand before this, and, Your Honor, I believe that
15 it would be confusing to get into those robberies or any, ah,
16 robberies that there is not a conviction to support. There is just
17 allegations of robberies.

18 THE COURT: For what purpose he may want to get into them?
19 He may want to know if they've got some pending charge for the
20 purpose of inquiring if - - if you call him, whether or not there's
21 any deals out there.

22 MR. RICHARDSON: And, Your Honor, we would agree but to get
23 into the specifics of those charges - - -

24 THE COURT: Well, I don't know. I'd have to see what Mr.
25 Axelrod says, and I may have to wait until they testify. I may

MOTIONS AND RULING OF THE COURT

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1 require it in limini but let's see what he says.

2 Do you propose - - well, what do you propose, Mr. Axelrod?

3 MR. AXELROD: Well, Your Honor, my concerns would be that
4 Jimmy's - - I'm afraid that Jimmy's first witness, Ms. Sowdon, if
5 she's the first witness that she might open up the door to exactly
6 what Jimmy doesn't want to have happen.

7 I'm pretty much, I think, in agreement with the Solicitor that
8 there's some - - there's some robberies that occurred prior to this
9 murder. I don't want to see the State's witness sit up there and
10 bring out information about that because I'll immediately ask for
11 a mistrial.

12 I'm not trying to elicit that testimony either and - - and - -
13 -

14 THE COURT: Okay.

15 That answers that.

16 You not going to elicit it, are you?

17 MR. RICHARDSON: No, sir.

18 THE COURT: Okay.

19 Well, that answers that.

20 MR. AXELROD: And if it comes out, I will ask for a mistrial
21 at that point.

22 THE COURT: Well, I'll deal with it if it comes out. Maybe
23 if it comes out inadvertently.

24 It depends on who brings it out. You could possibly bring it
25 out yourself.

MOTIONS AND RULING OF THE COURT

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1 MR. AXELROD: Absolutely.

2 THE COURT: Now, I'll deal with it either by curative
3 instructions but, first, I'm going to tell you to caution her.
4 Don't bring it out.

5 MR. RICHARDSON: I will.

6 THE COURT: And I'll deal with it. I understand your
7 position.

8 MR. RICHARDSON: One other motion, and I - - I talked with
9 Your Honor about it.

10 THE COURT: He's not going to bring it out. He said so,
11 and he's an Officer of the Court, and I respect that.

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: Alright.

14 MR. RICHARDSON: On all of these we had indicted for on or
15 about the 11th day of January. I told Your Honor that we now
16 believe it was on the 10th day of January which falls in there.

17 THE COURT: That - - I don't believe that will be an issue.

18 MR. AXELROD: Well, it might be, Your Honor.

19 THE COURT: Well, no. Let's get it straight then if it is
20 an issue unless there be an alibi situation.

21 The indictment says on or about. He's charged with having
22 killed this person on or about the 11th of January. They say with
23 specificity it's the 10th. What is your objection to that?

24 MR. AXELROD: May I look at the indictment, first, Your
25 Honor?

MOTIONS AND RULING OF THE COURT

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1 THE COURT: I've looked at it, and I can assure you it says
2 on or about.

3 He needs to know the approximate time and the victim,
4 allegedly, what he's charged with. He's charged with killing this
5 particular named defendant on or about January 11th.

6 Now, absence some kind of alibi for that date, what is your
7 objection to it being on the 10th?

8 MR. AXELROD: No objection, Your Honor.

9 THE COURT: Okay.

10 Well, I think not.

11 MR. RICHARDSON: We would make a motion to change the
12 indictment to reflect the 10th instead of the 11th.

13 THE COURT: On or about the 10th?

14 MR. RICHARDSON: Yes, sir.

15 MR. AXELROD: At this point the indictment says on or about
16 the 11th, and I would ask that that is the way we go forward. The
17 State now wants to change it to the 10th. We prepared the case for
18 the 11th.

19 I understand on or about the 11th. I understand the Court's
20 terminology there.

21 THE COURT: You have no objection to the fact that they are
22 going to allege - - the proof is going to the 10th?

23 MR. AXELROD: It might. I can't - - I can't object to that
24 but I would just object to changing the indictment.

25 THE COURT: I think that on or about is sufficient because

MOTIONS AND RULING OF THE COURT

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1 he knows that you proceeding on the 10th which is on or about.

2 There's sufficient certainty to advise this defendant and this
3 attorney what he's charged with and that is the murder, the
4 robbery, the attempted robbery and the other one on the 10th of
5 January.

6 MR. RICHARDSON: And, Your Honor, of course, I believe that

7 - - -

8 THE COURT: 2005.

9 MR. RICHARDSON: Yes, sir.

10 And I believe that if he is found guilty of armed robbery, the
11 attempted armed robbery is just a lesser included. So we can draw
12 that up at the appropriate time - either armed robbery or attempt
13 to commit armed robbery but he couldn't be convicted of both.

14 THE COURT: I will submit one or the other but not both.

15 MR. RICHARDSON: We would ask that you submit to them both.
16 One is a lesser included of the, um - - -

17 THE COURT: Well, I'll deal with that when I hear it.

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: I can't rule on that at this time.

20 MR. RICHARDSON: Right.

21 THE COURT: Mr. Axelrod will understand that. I'll see
22 what the law is.

23 MR. AXELROD: Yes, sir.

24 THE COURT: Okay.

25 What else you got?

MOTIONS AND RULING OF THE COURT

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1 MR. RICHARDSON: There was one other - - -

2 THE COURT: If there's evidence of the 10th rather than the
3 actual commission of it, I'll bring instructions as to that.

4 Alright. What else?

5 MR. RICHARDSON: Your Honor, one of our proposed witnesses
6 is Stuart Cottingham. I would just make Your Honor aware, and Mr.
7 Axelrod that he is a U. S. Marshall.

8 THE COURT: He's not related to me in anyway unless he's a
9 tenth cousin.

10 MR. AXELROD: Or me, Your Honor. We got a Stuart and we got
11 a Cottingham.

12 Go figure.

13 You know, he's got my first name and your last name, Stuart
14 and Cottingham.

15 MR. RICHARDSON: Well, he's going to be limited as to what
16 he can say by federal law. He's a U. S. Marshall. He will be
17 able to testify about some things he did in order to find Mr.
18 Garner but the - - that - - part of that information will be
19 protected as far as the nuts and bolts of how he found him because
20 he is a federal agent.

21 THE COURT: Wait a minute, now.

22 Suppose the answer - - suppose the answer to the question is
23 critical to his defense?

24 MR. RICHARDSON: Your Honor, we will provide you with some
25 case law showing that he is not going to be able to give specifics

MOTIONS AND RULING OF THE COURT

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1 about what they went into to find Mr. Garner as far as tapping
2 phones, that sort of stuff that federal - - that's just the - - -

3 THE COURT: That wouldn't affect his that.

4 MR. RICHARDSON: Right.

5 THE COURT: I'll rule on that at the time.

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: But how they went about it won't necessarily be
8 - - what the thrust of his information is what Mr. Axelrod - - Mr.
9 Axelrod, he's a federal lawyer, too. He clearly understands the
10 limitations that they have.

11 MR. AXELROD: Yes, sir, Your Honor.

12 THE COURT: Alright.

13 I understand that.

14 MR. RICHARDSON: I believe that - - I believe that is it,
15 Your Honor. If I have anything else, I'll - - I'll bring it up
16 before we bring the jury back in.

17 THE COURT: Okay.

18 Yes, sir. What do you have?

19 MR. AXELROD: Your Honor, I would like to make a motion to
20 sequester the witnesses.

21 THE COURT: Yes, sir. I will do that.

22 Now, I leave it to you attorneys. You're entitled to have the
23 - - a member of the family here if you care to and the
24 investigating officer.

25 Anybody else?

MOTIONS AND RULING OF THE COURT

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1 MR. RICHARDSON: No, sir.

2 THE COURT: Alright.

3 I notice, perhaps, Spanish people here or Mexicans. Do we
4 need any interpreters, anything like that?

5 MR. RICHARDSON: No, sir.

6 THE COURT: Alright, sir.

7 They will be sequestered.

8 You provide a list - - I want yours sequestered, too, now.

9 MR. AXELROD: Oh, absolutely.

10 THE COURT: Alright.

11 I'm sure you've listed about twenty-five witnesses. There's
12 no way you going to call that many.

13 MR. AXELROD: They - - they're potential. It depends on what
14 the State does with the case.

15 THE COURT: Okay.

16 MR. AXELROD: That's why I listed them.

17 I erred on the side of caution, Your Honor.

18 THE COURT: That's fine. I would suggest that.

19 What else you got?

20 MR. AXELROD: Your Honor, one matter of scheduling. I talked
21 to Jimmy, Mr. Richardson, and he said that he's going to call a
22 certain witness, Ms. Sowdon, Sowdon, first.

23 That's going to be the longest witness I have to cross. It
24 might be an hour and a half. It might be two hours on my cross.

25 THE COURT: Depending on what I've got to do, I may quit at

MOTIONS AND RULING OF THE COURT

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1 4:00 today. I don't know. My schedule will make the call.

2 MR. AXELROD: Because what I was going to ask the Court was
3 if the Court wanted to do opening and start the trial tomorrow, it
4 might just be more coherent to the jury.

5 That was all I was saying.

6 THE COURT: No. What we'll do is we're going to have
7 openings, and we'll take this witness and see how far it goes on
8 direct, and then I'll have the cross examination, maybe, tomorrow.

9 MR. AXELROD: Yes, sir.

10 THE COURT: I don't believe that his direct will be over an
11 hour.

12 MR. RICHARDSON: No, sir. It shouldn't be.

13 THE COURT: I can't believe yours going to be any two hours
14 either.

15 MR. AXELROD: Well, now, this is the State's main witness.

16 This is - -

17 THE COURT: I understand.

18 MR. AXELROD: - - my case lays there, and my cross will be a
19 lengthy cross, Your Honor. Yes, it will.

20 THE COURT: Well, it may or may not be depending on what I
21 hear but I'll deal with that at the time.

22 MR. AXELROD: Yes, sir, Your Honor.

23 THE COURT: Okay.

24 Alright.

25 We're going to start at two.

MOTIONS AND RULING OF THE COURT

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1 Now, gentlemen, I can say this. Let's have short openings.
2 There's no reason to have a lengthy - -

3 MR. AXELROD: Alright.

4 THE COURT: - - this being a murder case, I'll give you
5 unlimited time at the conclusion.

6 MR. AXELROD: One more issue, and I forgot.

7 THE COURT: What's that?

8 MR. AXELROD: The issue of - - -

9 THE COURT: Did you hear what I say on opening?

10 MR. AXELROD: Yes, sir, Your Honor.

11 I think you said that you were going to keep it moderately
12 long to not long.

13 THE COURT: No, sir, I didn't say that, not for opening.

14 We're going to have a short opening, and I will have you a
15 lengthy at closing.

16 MR. AXELROD: Yes, sir.

17 THE COURT: Now, let's keep that in mind.

18 We're getting more and more I've found. We just opened that
19 up since I was admitted to the Bar. It use to be we didn't have
20 one. Now, we do and people try and make closing arguments out of
21 opening arguments, and that's not the intent of the rule.

22 What other thing you got now?

23 MR. AXELROD: Your Honor, I would that we have an officer of
24 the law in here right now to see if Juli Ann St. Louis is actually
25 in this courtroom. I have a subpoena that was issued for her to be

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1 here this morning. She's not here. I'm trying not to have her
2 arrested.

3 THE COURT: Wait a minute, now. One thing at the time.
4 Was this served?

5 MR. AXELROD: Yes, sir. I have proof of service.

6 THE COURT: What is this saying?

7 Well, you got to say who they served it on.

8 Served on - - where does she live?

9 MR. AXELROD: Well, I - - this morning - - I believe she
10 lives in the [REDACTED] [REDACTED] - - [REDACTED]

11 [REDACTED] [REDACTED], [REDACTED], [REDACTED]. There is some
12 concern about her place of residence.

13 What I did this morning, I found out where she lives.

14 Now, I know that the Solicitor is in contact with her. I'm
15 not trying to have her put in jail. I know that the Solicitor can
16 contact her and tell her that she needs to be here. He had contact
17 with her before. I served her. She has to realize that there's
18 some - - -

19 THE COURT: Can you reach her?

20 MR. RICHARDSON: I'll call her but I believe Mr. Axelrod
21 has got whatever information I've got. I have yet to see her. So,
22 and I can call her.

23 MR. AXELROD: But he's been in contact with her as the
24 Solicitor.

25 THE COURT: Does she have a telephone?

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1 MR. AXELROD: The Solicitor has it.

2 THE COURT: Here's what do. You call her. Tell her to be
3 here this afternoon at 2:00. If you are unable to reach her, I'm
4 going to authorize a Bench Warrant at that time, and if I have to
5 issue a Bench Warrant for her, she's going to stay in jail until
6 she's called. Otherwise, she can be here as a free person.

7 So, I tell you. First, find out if she, in fact, was served,
8 and then tell her to be here on that - - what does your subpoena
9 say?

10 MR. AXELROD: To be here at 9:00 this morning.

11 THE COURT: Can you do that for me?

12 MR. RICHARDSON: I will.

13 THE COURT: And report back to me about a quarter till two
14 before we call her.

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: Okay.

17 What other issues?

18 MR. AXELROD: That's it.

19 THE COURT: Alright.

20 I'll see you about 2:00.

21 . (The Court recesses this case for lunch at 12:53 p.m. and
22 thereafter resumes the trial of this case at 2:07 p.m.)

23 THE COURT: Have you marked the exhibits, gentlemen?

24 MR. AXELROD: Your Honor, I looked through them with him, and
25 I've asked him to pull the ones that are repetitious. They're

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1 still in the process of pulling the repetitious exhibits out, and
2 then I'll take a final look at them.

3 THE COURT: Alright.

4 Here's what we going to do. We're going to knock off around
5 3:30. After 3:30 this afternoon, I want all your exhibits marked.
6 Okay?

7 MR. AXELROD: Yes, sir, Your Honor.

8 THE COURT: Bring the jury in.

9 Solicitor, go tell them I want Frank Pervola to take the
10 Foreman's chair, please, Frank Pervola.

11 MR. AXELROD: Your Honor, on the Foreman's chair, how do you
12 spell the last name?

13 LAW CLERK: P-e-r-v-o-l-a.

14 MR. AXELROD: T-e-r?

15 LAW CLERK: P.

16 MR. AXELROD: Thank you.

17 (The jury returns to the courtroom at 2:09 p.m.)

18 JURY SWORN

19 THE COURT: Swear the jury for me.

20 (The Clerk of Court swears the jury.)

21 THE COURT: Mr. Pervola, I have designated you as
22 Foreperson of this jury. You will preside in the jury room and be
23 the jury spokesman in the courtroom.

24 Thank you.

25 You will always occupy that chair at all times. The

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1 alternates will occupy those two. The rest of you can sit as you
2 please.

REMARKS OF THE COURT

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4 THE COURT: Now, ladies and gentlemen, recognizing that for
5 many of you this is the first time that you would have sat as
6 finders of the facts of a criminal case, let me tell you how we
7 will proceed.

8 The Solicitor who has the burden of proof will make a short
9 opening statement to you as to what he says his case is about.
10 This is a guideline to help you follow the introduction of
11 evidence.

12 Mr. Axelrod will follow with a very short statement as to what
13 he says his case is about.

14 Now, each one of them at the conclusion of the testimony will
15 have a full opportunity to present their cases with regard to their
16 point of view.

17 Now, what the lawyers tell you is not evidence. Evidence
18 comes from this witness stand under oath.

19 Now, let me say this to you. This defendant comes into court
20 under the presumption of innocence. He don't have to prove a
21 thing.

22 The State of South Carolina has the burden of proving him
23 guilty if they can by evidence to your satisfaction unanimously.
24 This presumption of innocence remains with this defendant from the
25 time he walks into this courtroom throughout the trial and until

REMARKS OF THE COURT

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1 you, the jury, have found him guilty by evidence to your
2 satisfaction unanimously beyond a reasonable doubt.

3 There are several things I need to tell you at the outset.

4 You twelve and you alone are the sole and only finders of the
5 facts in this case.

6 I'm the judge of the law, and I will tell you what the law is
7 with regards to various issues that arise. I will tell you the
8 issues of what the State must prove as to each of these charges
9 beyond a reasonable doubt. The State has that burden.

10 You are also the judges and sole judges of the credibility
11 meaning the believability of each and every witness who testifies.

12 Sometimes jurors have said, "Well, Judge, you tell us we are
13 finders of the facts. How are we to know what the facts are?"

14 Well, you will judge the credibility and the believability of
15 every witness who testifies. You can believe all of what a witness
16 says or none. You may believe a small portion, disregard the
17 larger or the other way around.

18 Obviously, you would not determine the truth or falsity of a
19 matter by counting up the number of witnesses who have testified on
20 one side or the other.

21 So, you will determine what the facts are from the testimony
22 from the various witnesses and from such other matters as I may
23 have been permitted to be introduced into the trial of this case.

24 You know, you didn't leave your common sense on the streets of
25 Conway, South Carolina, when you came into this courtroom, and we

REMARKS OF THE COURT

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1 all know that in determining whether or not we want to believe
2 somebody or not or believe some portion of it or not, there are
3 certain tools that we use be it our neighbors, our wives, our
4 spouses, our children.

5 When folks tell us things, we size them up. We decide whether
6 we want to believe all of it, some of it or none of it. We always
7 ask ourselves. Do they know what they're talking about? How do
8 they come to know what they're talking about?

9 One of the tools we always use is, "Hey, does this person have
10 some cause or reason to want me to believe one way or the other?"

11 These are some of the tools that we use. You can thing of
12 other tools that you use in judging credibility and believability.

13 Mr. Foreman, and ladies and gentlemen, in judging the
14 credibility and believability of any witness who testifies, you
15 have but one single objective, just one, and that is to seek and to
16 find the truth.

17 You find where the truth is and permit that truth and those
18 facts to be applied to the law as I charge it to you and,
19 thereafter, reach a verdict.

20 Verdict comes from the Latin word "verdicto" meaning to speak
21 the truth.

22 There are two verdicts in this case and each of these cases.
23 One is not guilty and one is guilty.

24 From this moment on, nobody in this wide world can tell you
25 what the facts are.

OPENING STATEMENT BY MR. RICHARDSON

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1 I as presiding judge am not entitled to a factual opinion, and
2 I have none. If any word, ruling, mannerism of mine might
3 indicate to any of you how I feel about any factual situation,
4 please disregard that. I am not entitled to a factual opinion, and
5 I have none.

6 Short opening statement.

7 MR. RICHARDSON: Yes, sir, Your Honor.

8 OPENING STATEMENT BY MR. RICHARDSON

9 MR. RICHARDSON: Mr. Foreman, ladies and gentlemen of the
10 jury, we met a little earlier today. Again, my name is Jimmy
11 Richardson, and I'm an Assistant Solicitor here in Horry County.

12 It would be hard to imagine a more tormenting death than being
13 beaten to death more especially when you cannot understand your
14 attacker and your attacker cannot understand you.

15 You've heard just a small amount about this case already and
16 from that you've heard the victim's name being Amadro Espinozat.
17 You will hear that he was an illegal immigrant. He could not
18 speak English.

19 You will hear that on January 10, 2005, Luther Garner, along
20 with Lee Pierce and Lonya Sowdon went into Espinozat's house, and
21 Luther Garner beat him continuously over and over and over, upwards
22 of a hundred times.

23 You'll also hear from Dr. Proctor that this victim died as a
24 direct result of the beating that he sustained on January 10, 2005.

25 A lot of the information that you're going to hear is going to

OPENING STATEMENT BY MR. RICHARDSON

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1 come from the interpreter.

2 Lonya Sowdon will come in here and tell you that on that day
3 she did enter and she translated for Kariem or Luther Garner to
4 this victim, Mr. Espinozat, and she asked him, "Where are the
5 drugs? Where is the money?"

6 Repeating for him what Kariem Ward a/k/a Luther Garner was
7 saying to her.

8 She kept asking him, "Where's the drugs? Where's the money?"

9 She will translate back to Kariem, "There is no drugs. There
10 is no money. Pablo has gone back to Mexico to make a run."

11 If you haven't figured it out, Pablo owns a drug house in
12 Myrtle Beach. Espinozat lived at that drug house. You'll hear
13 testimony that Lee Pierce and Luther Garner are drug sellers and
14 that they went to this address because it was to be an easy lick
15 with a lot of money and a lot of cocaine, and Espinozat died as a
16 result of that.

17 You're going to hear from that interpreter. You're going to
18 hear from Dr. Proctor. You'll hear from several police officers
19 that came in, of course, after the fact. Saw this bloody mess and
20 reported what they saw, and you're going to hear from a couple of
21 gentlemen. One could easily have been referred to as a co-
22 conspirator yet did not arrive on the scene.

23 He'll telling you about the planning of this robbery, not the
24 murder but the robbery, and he'll tell you what each of these
25 people looked like when he saw them minutes after this attack, and

OPENING STATEMENT BY MR. RICHARDSON

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1 he'll tell you that Luther Garner was covered in blood.

2 You're going to hear from all of those witnesses, and at the
3 end of the day what he's charged with is murder. In other words,
4 did he kill this Espinozat with malice aforethought. It simply
5 means that he has planned it out even if it was a split-second
6 beforehand.

7 You'll also hear that he burglarized him by entering this
8 dwelling with the intent to commit a crime therein, of course, the
9 crime being the robbery.

10 The trick at the end of this is the armed robbery, whether or
11 not there was an armed robbery. Of course, I told you he was
12 armed. Maybe I didn't. The object that he used to beat this
13 victim to death with was a pistol.

14 The only thing, really, at the end of the day is whether or
15 not he got anything, and there's going to be testimony that he did
16 abscond with certain goods and services, and that's armed robbery.

17 At the end of the day, I'm going to ask you to come back after
18 hearing all of the facts to return a verdict guilty for murder,
19 guilty for either armed robbery or attempted armed robbery. You
20 can't pick both, and guilty of burglary in the first degree.

21 A terrible set of facts. Terrible when you're getting beat
22 to death and don't even know what your attacker is beating you for
23 but you're going to hear just that set of facts over the next few
24 days.

25 Thank you for your time and your attention.

OPENING STATEMENT BY MR. AXELROD

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1 THE COURT: Mr. Axelrod, you, too, are entitled to a short
2 opening statement.

3 MR. AXELROD: Thank you, Your Honor.

4 May it please the Court?

5 OPENING STATEMENT BY MR. AXELROD

6 MR. AXELROD: Good afternoon.

7 Luther Garner is not guilty.

8 The Court told you you are the finders of the facts. The
9 believability and the credibility of the witnesses from this stand
10 is what you're going to have to base your case on.

11 The judge said to you today that you cannot talk about this
12 case until this case is over because you cannot form an opinion.
13 You cannot talk among yourselves until the case has been heard
14 fully. If you have formed an opinion about what this man just said
15 to you, you need to erase that.

16 It doesn't get any bigger than this. You will remember this
17 week for the rest of your life, absolutely.

18 The Court told you. We call come in with prejudices and
19 biases. You have to leave them at the door.

20 You're going to sit in this courtroom, and you've taken an
21 oath as if you are in a vacuum. You've taken an oath that you're
22 going to base this case on these facts and not until you hear all
23 of the facts, and that is going to be the hardest thing for you to
24 do because we're human, and as humans, when we see things, we start
25 to process them.

OPENING STATEMENT BY MR. AXELROD

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1 Luther is not guilty, absolutely. Absolutely not guilty.
2 You will not be able to reach that verdict until you've heard this
3 whole case.

4 The State has the burden - beyond all reasonable doubt, beyond
5 all reasonable doubt.

6 When this case is over, if you say, "Maybe," or you say,
7 "Could have. I think so but I'm not sure."

8 You have taken an oath whether you like it or not to follow
9 the law, and the law is if you're not convinced beyond all
10 reasonable doubt, you have an obligation. You have a duty and an
11 oath to come back not guilty.

12 That is what's going to make this week tough because there's
13 no way the State is going to bring to you beyond all reasonable
14 doubt that Luther committed the crime they say he did, absolutely.

15 Pay attention. Follow your oath, and Luther is not guilty.
16 Thank you.

17 THE COURT: Thank you, Mr. Axelrod.

18 You may call your first witness.

19 MR. RICHARDSON: The State calls Lonya Sowdon.

20 (The witness takes the witness stand.)

21 LONYA SOWDON, being duly sworn, testifies
22 as follows:

23 CLERK OF COURT: Please state your name and spell it for
24 the record.

25 MS. SOWDON: My name is Lonya, L-o-n-y-a, Sowdon, S-o-w-d-o-

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 n.

2 DIRECT EXAMINATION BY MR. RICHARDSON:

3 Q. Lonya, where were you living back in January of 2005?

4 A. At the time of the crime I was staying at the Red Roof Inn in
5 Myrtle Beach.

6 Q. Do you - - did you know Lee Pierce at the time?

7 A. Yes, sir.

8 Q. Did you know Luther Garner?

9 A. Yes, sir.

10 Q. Did you know Luther by that name?

11 A. No, sir.

12 Q. How did you know Luther Garner?

13 A. As Kariem Ward.

14 Q. Did you have a drug use problem at that time?

15 A. Yes, sir.

16 Q. And how did you know Lee Pierce and Luther Garner?

17 A. They were my crack dealers. I bought crack from them.

18 Q. Okay.

19 THE COURT: Now, I charge the jury specifically that this
20 defendant is not charged with any drug charges. Everybody needs to
21 understand that. You understand that.

22 Proceed.

23 Q. Did you have an occasion to meet with Kariem Ward and Lee
24 Pierce on January 10, 2005?

25 A. Yes, sir.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Where was that?

2 A. I met them at Clay Apartments on Clay Pond Road off of, um,
3 Burcale Road in Myrtle Beach.

4 Q. Do you know who lived at that apartment?

5 A. I - - a girl that Lee was dating, Julianne - - Juli Ann.

6 Q. Okay.

7 A. I don't know her last name.

8 Q. Alright.

9 What caused you to go pick them up at Clay Pond Road, those
10 apartments?

11 A. When I was staying at the Red Roof Inn, they had asked me.
12 They'd been asking me repeatedly to give them a ride, and Lee was -
13 - had been, um, getting up the money to pay - - he wanted to go to
14 Conway. He had to come to Conway and pay his probation officer,
15 and they had asked me at the end of the week prior, and they called
16 me Saturday, and I had moved from the Red Roof Inn, and I was house
17 sitting for my employer in Murrells Inlet, and I was sick Sunday,
18 and they had called me and wanted me to come and pick them up
19 Monday morning.

20 Q. So, Monday morning was January 10, 2005?

21 A. Yes, sir.

22 Q. About what time did you pick them up at Clay Pond?

23 A. Um, it was about, ah, eight, about 8:00, maybe five minutes
24 after eight.

25 Q. Who got in - - first of all, what were you driving?

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. A Mustang Cobra Convertible, 2001.

2 Q. Is that your Mustang?

3 A. No. It was my employer's Mustang.

4 Q. And who got into that car at Clay Pond Road?

5 A. Kariem and Lee.

6 Q. And - - -

7 A. I was driving. Kariem got in the passenger side, and Lee was
8 riding in the back in the middle, not really in one of the seats in
9 the back.

10 Q. Where were you to go from Clay Pond Road?

11 A. Towards Conway. I went down Burcale. There's a little lip of
12 Forestbrook where Forestbrook Road ends to 544. They just told me
13 to drive towards Conway on 544.

14 Q. Did you - - tell me where you turned in and ultimately
15 stopped.

16 A. Um, there's a Pizza - - a Pizza business on the corner, um, I
17 think it's Santino's or Santiago's or something like that,
18 Santino's maybe.

19 Q. Santino's on 544?

20 A. At, um, Pine Valley Estates.

21 Q. Had you ever been back there before?

22 A. No.

23 Q. Alright.

24 How did you know to turn there?

25 A. They told me to turn. Kariem told me to turn.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Alright.

2 And where did you pull up?

3 A. He instructed me to go down the road and made a circle.
4 Actually, the first street we went down was a dead end street. It
5 was the wrong turn, and I had to come out and turn around, and we
6 went in a circle around the house, and I pulled in to the right
7 into the driveway.

8 Q. Was that at [REDACTED]

9 A. Yes, sir.

10 Q. And what was the purpose of going to [REDACTED]

11 A. Well, they on the way over there, Lee was talking about
12 getting money, and Kariem was going to get coke. He was going to
13 buy coke.

14 Q. And had you ever been to that address before?

15 A. No.

16 Q. How far was it from Julianne's house to [REDACTED] [REDACTED]?

17 A. Eight, ten miles, maybe. I don't know approximately.

18 Q. Tell us what happened when you arrived at [REDACTED] [REDACTED].

19 A. Well, when we got there was a blue pickup truck in the
20 driveway. Kariem got out of the car. Turned off the ignition.
21 Went to the door.

22 Lee was pushing the seat up, and he was in the middle of
23 ending a phone conversation with his girlfriend about their baby,
24 their little girl, and he went to the door. Knocked on the door.
25 Made reference to something about a home inspection.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. You talking about Kariem did this?

2 A. This one, yes.

3 Q. Alright.

4 Kariem Ward went to the door, knocked at the door and said
5 that he was there for a home inspection?

6 A. Yes.

7 Q. Alright.

8 Tell us what happened at that point.

9 A. He went in the house, and just a few minutes behind him, Lee
10 got out and went in. The door was still ajar. It was still open.

11 Q. Did anything cause Lee to get out and go to the door?

12 A. No. He'd ended - - he'd hung up on the phone and was - - and
13 went in the house.

14 Q. Did you ever have an occasion to go in the house at [REDACTED]
15 Drive?

16 A. Yes. They motioned for me to come into the house.

17 Q. Alright.

18 A. Kariem motioned for me to come into the house.

19 Q. Tell me what if anything did you see when you went into the
20 house.

21 A. When I walked into the house there was sofa to the left. Um,
22 there were some big boxes in the middle of the floor, like moving
23 boxes. There was a chair directly in the walkway of the door. Um,
24 there was a little, like a table area with a stereo, telephone
25 sitting on it, and he was standing up against the wall, and I

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 didn't know the man was on the floor until I heard him moan.

2 Q. Alright, now, who was standing against the wall?

3 A. Kariem.

4 Q. Did you see Lee?

5 A. No.

6 Q. Do you know where Lee was at?

7 A. He was somewhere in the back of the house. Sound like he was
8 tearing the house down.

9 Q. Okay.

10 A. He was throwing stuff, and he was in the back - - in the back
11 bedrooms of that house.

12 Q. Where was Kariem standing in relationship to the victim, the
13 decedent?

14 A. He was standing over him. He was - - he was - - the man was
15 behind the chair on the floor, and he was - - he was behind him
16 standing over him.

17 Q. Can you give us your impression of Kariem at the time when you
18 first saw him?

19 A. He was crazy. Sweating, pouring sweat, eyes that big.

20 Um, I didn't - - I knew - - I heard the man moan, and I looked
21 down, and he had blood coming down the side of his face. I mean,
22 he had already hit him before I got - - went into the house.

23 Q. Did you see any weapon?

24 A. I saw two weapons.

25 Q. Alright.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Describe the weapons for us.

2 A. One, and I'm - - I still am not - - it was a Glock, either a
3 45 or a 40 caliber, um, semi-automatic with a clip in it, and that
4 was in his pants.

5 And the one he - - he had one in his hand, and I had to sit
6 down with Horry County Police and go through firearms books for the
7 other one because I'd never seen - - I didn't know what it was.
8 I'd never seen one like it, and it was a large - - well, the barrel
9 was large. It was silver, and it had a clip that went up in the
10 handle, and it had a really long barrel on it, and I had never - -
11 -

12 Q. Why don't you put your hands up and show the jurors how long?

13 A. About like that. It was long but it was skinny. It wasn't
14 real fat.

15 Q. Were you able to determine what caliber or - - -

16 A. The - - the one I picked out in the book was a Desert Eagle
17 Target because it was a 22 - - I think they said 22 semi-automatic
18 target pistol.

19 Q. Alright.

20 A. It's for target. That long barrel kind of was for target
21 shooting.

22 Q. Now, tell us - - tell the jury if you will what happened. At
23 this point the decedent, the victim is down in the den. Tell us
24 what goes on there in the den.

25 A. He's, um, Kariem - - Luther - - Kariem is what I know him as.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Kariem was hollering at the man wanting to know where money and
2 cocaine was, and he kept screaming at him, and the man couldn't
3 understand him because everything he was saying was in Spanish. He
4 wasn't speaking in English.

5 Q. Can you speak any Spanish?

6 A. I speak a little Spanish, yes.

7 Q. Do you know what the victim was trying to tell the defendant?

8 A. He was, ah, begging him not to hurt him, that he didn't have
9 any money. He was saying he didn't - - there wasn't any money
10 there in the house, and he started screaming at me. "Ask him - -
11 " He said, "Ask him where the fucking cocaine and the money is."

12 He knew - - that he knew it was there.

13 And when I asked him, he said that somebody, and I didn't know
14 Pablo. I'd never heard this person's name. I didn't know these
15 people.

16 He said Pablo was gone to Mexico with the money to get more
17 cocaine, that there wasn't any money there. There was no cocaine
18 there.

19 Q. Is there anything else said by the victim to you?

20 A. Um, yeah.

21 Q. What was that?

22 A. He was, um - - he was begging me for his life. Begging me to
23 help him, to get him to stop hitting him.

24 Q. Did you refer that message to Luther?

25 A. I was screaming at him begging him to stop, and he wouldn't.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 He wasn't even - - he was somewhere else. He was like a rabid dog.

2 Q. Did Kariem ever hit him in your presence there in the den?

3 A. He hit him in the den. He hit him going up the hallway. The
4 man was trying to get up, and he had him by his hair hitting him
5 with the handle, the gun handle - - -

6 (Witness has become emotional and crying during testimony.)

7 THE COURT: Get her some - - a cup of water, please.

8 Stop a minute, ma'am, and let us get - - get her some water.

9 And any time you need to stop and collect yourself, you let me
10 know.

11 MS. SOWDON: Thank you.

12 THE COURT: Okay? Let's stop and take - - collect
13 yourself.

14 Thank you.

15 (Witness has water.)

16 THE COURT: Do you feel like proceeding, ma'am?

17 MS. SOWDON: Thank you.

18 THE COURT: If you feel like stopping anytime, let me know.

19 MS. SOWDON: Okay.

20 Q. Lonya, did Kariem ever hit Espinozat at any time there in the
21 den in your presence?

22 A. Yes.

23 Q. How many times?

24 A. In the den, um, twenty-five, thirty. He just kept hitting
25 him.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Describe the licks for us if you would.

2 A. His harms up over his head hitting him, and then he gets like
3 he's tired with one arm and starts hitting him with the other one.
4 He just switched hands and started hitting him with his other one.

5 Q. Did he ever shoot the victim?

6 A. A shot went off, and I don't believe - - I didn't know - - and
7 I don't know but I believe he was trying to shoot me because it
8 barely missed me. It went in the wall.

9 Q. The gun went off?

10 A. The gun went off.

11 Q. Alright.

12 And that was in the den.

13 A. Yes.

14 And Lee came out of the bedroom. There was a bedroom down
15 the hallway to the right. Actually, there was two bedrooms.

16 Lee came out of the back bedroom on the right-hand side, and
17 said, "What in the world? Did you shoot him? You sure to God you
18 didn't shoot him?"

19 And he was saying, "No."

20 And I was telling him to get off of him, you know, quit
21 hitting him. You know, he needs help. You're going to kill him.

22 Q. Did it ever come a time that the victim got up and got to his
23 feet?

24 A. He got up in the hallway. He was trying to come down - - he
25 was trying to get away going down the hallway.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Alright.

2 And describe for the jury, if you will, the trip down the
3 hallway. Where was the victim, and where was Kariem?

4 A. Kariem was over top of him. The man was trying to get up, and
5 he had his hair, and he was still hitting, and he was trying to get
6 up but he fell into the wall, and he slid down the wall.

7 Q. Was the victim still speaking to Kariem at this time?

8 A. He was mumbling. He wasn't, um, he wasn't muttering
9 coherent. He was mumbling and gurgling.

10 Q. Did you hear anything from Kariem to the victim or to you?

11 A. He - - he kept hollering, "Where is the money, and where is
12 the cocaine?"

13 And I said, "You need to stop and get this man some help.
14 You're going to kill him."

15 And he was - - he was crazy. He was somewhere else.

16 Q. Tell me how - - did the victim get up again from the hallway?

17 A. No. He got up one time and he - - he was struggling. He
18 didn't get all the way up. He didn't get all the way up because he
19 had hold of his head.

20 Q. Did Kariem hit him in the hallway?

21 A. He hit him in the hallway. He hit him right there in the
22 living room. He kept hitting him. He hit him repeatedly.

23 Q. Where did the victim come to rest?

24 A. He was laying in the hallway.

25 Q. Was he ever moved from that hallway?

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1 A. Yeah. He drug him into a bedroom.

2 Q. And who drug him?

3 A. He drug him into the bedroom and threw a big orange, like,
4 heavy duty, um, extension cord, electric cord at me and told me to
5 tie his feet, and I said, "No."

6 Q. Do you know whether or not the victim's feet were tied with
7 the extension cord?

8 A. He - - he tied his feet up. He was trying to get Lee to help
9 him tie him up, and Lee wouldn't help him. Lee never touched him.
10 Didn't lay a hand on the man.

11 Q. You're saying Lee did not assault the victim in this case,
12 Espinozat?

13 A. Yeah.

14 He didn't touch him.

15 Q. Now, you say he drug him to a back bedroom. Did he ever hit
16 him there?

17 A. He was still - - he was still screaming and hollering about
18 the money and something about a key, a key under a mattress for a
19 safe, and he was still hollering at the man, and he - - but he
20 wasn't responsive. There was blood everywhere.

21 Q. The victim didn't say anything back.

22 Can you describe, um, what, if any, noises were coming from
23 the victim?

24 A. He was making that gurgling sound. He was gurgling.

25 Q. Did there ever come a time that the victim quit making such

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1 gurgling sounds?

2 A. Yes. He was dead.

3 He kept saying - - Kariem kept saying he wasn't dead, and Lee
4 was hollering at him that he had done it. He was hurting him. He
5 was hurt. Quit hitting him, and he was still hitting him.

6 Q. Did you ever check to see whether or not the victim was
7 breathing?

8 A. I checked his pulse. He was dead.

9 Q. Did Kariem ever hit him after he was dead?

10 A. He, um, rolled him around, rolled him over and was screaming
11 at Lee to help him and screaming at me, screaming at both of us.

12 Excuse me.

13 Q. In total, you said about thirty - - twenty-five, thirty times
14 in the den. In total, can you give this jury some indication of
15 how many time Kariem Ward hit this victim?

16 A. Um, sixty, maybe a hundred times.

17 Q. At some point tell me about once the victim is dead, tell me
18 what happens next.

19 A. Started looking for car keys, for the keys to the car.

20 He was swearing up and down he didn't have them, and they were
21 in the - - in the back bedroom.

22 Q. You had to find the keys in the back bedroom?

23 A. Found the keys.

24 Q. Did you ever come to an agreement to leave?

25 A. He was ordering us to leave.

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1 I was in shock, and I really believe Lee was. I mean, I - -
2 I believe Lee was afraid, too.

3 MR. AXELROD: No, Judge, Your Honor, she can't testify as to
4 what Lee thought.

5 THE COURT: Well, I'll let the jury observe whatever she
6 says her observations were.

7 Go ahead.

8 That's for the jury to determine based on the totality of her
9 testimony.

10 Go ahead.

11 Q. Did y'all - - did you leave?

12 A. Yes.

13 Q. Any doubt in your mind that Espinozat was dead when you left?

14 A. No, he was dead.

15 He kept saying he was alive but he was dead.

16 Q. Luther kept or Kariem kept saying he was alive?

17 A. Yeah. He kept saying he was alive, that he'd be alright but
18 he was dead. He didn't have - - he had no pulse.

19 Q. Did you ever get anything from the victim?

20 A. To my knowledge I don't believe because I don't believe they
21 got anything because they were driving down the - - we were driving
22 down the road, Kariem was hollering at Lee about, "Did you find
23 anything? If you did, you better not be holding out on me."

24 And he was hollering about, kept asking Lee if he found
25 anything, if he got anything.

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1 Q. How was Kariem acting in the car leaving?

2 A. Still pouring sweat, still, like, very agitated, upset, you
3 know, just angry, mad.

4 Q. Where was he sitting?

5 A. He was in the passenger seat.

6 Q. And where was Lee?

7 A. Lee was in the back.

8 Q. And you were driving?

9 A. Yes.

10 Q. Did he ever make mention on leaving why he had picked this
11 particular place?

12 A. They were arguing about it coming down 544 that some topless
13 dancer, some girl that was a stripper had been there and told them
14 that there was, like, \$75,000 in cash, and anywhere from, ah, I
15 think they said eight to ten kilos of cocaine.

16 That the people there, the people that lived there were
17 cocaine dealers.

18 Q. Alright.

19 And riding down the road when you left [REDACTED] [REDACTED],
20 where were you going?

21 A. To - - we initially went to Summer [REDACTED], ah, [REDACTED]

22 [REDACTED] It's right there off 544, um, and they dropped the Glock
23 off, and he and Lee got out the car, and the man said - - he said,
24 "I need you to hang on to this for me."

25 And he said, "Hang on to it or get rid of it?"

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1 And he said, "Hang on to it."

2 And he said, "Does it have a body behind it?"

3 And Kariem said, "Not this one."

4 Q. Okay.

5 A. And they left it there, and they wanted to go to a place where
6 - - I can't think of the lady's name but it - - it was Paul. Paul,
7 um, Graham was staying with her in Socastee in a trailer.

8 He wanted to go there and get clothes - - get a change of
9 clothes.

10 Q. How close was Paul Graham's house to the swing bridge?

11 A. It's right there at it. To the exit or the turn but right
12 before the bridge. It's right there at the bridge.

13 Q. Okay.

14 Now, when you pull up to Paul Graham's house, who is driving?

15 A. Me.

16 Q. Who is in the front passenger seat?

17 A. Kariem.

18 Q. And who is in the back seat?

19 A. Lee.

20 Q. Alright.

21 Tell me what happened once you got to Paul Graham's house.

22 A. We pulled in, and Kariem sent Lee to get him some clothes, and
23 he kept - - and I don't know who was inside sending clothes out but
24 they - - he wouldn't - - he didn't want what they were sending.

25 They sent out a pair of shorts. They sent out a pair of

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1 pants that were totally too small, um, and then he told - - asked
2 Lee where Paul was, and Paul came outside, and he said - - -

3 MR. AXELROD: Objection. She can't testify to what Paul
4 would say.

5 THE COURT: Unless the defendant was present.

6 Ask her was the defendant present when this alleged
7 conversation took place.

8 Q. Was the defendant present when the conversation took place?

9 A. Yes.

10 Q. Alright.

11 THE COURT: Alright. You may testify.

12 MR. AXELROD: Your Honor, I would ask. I don't think the
13 defendant is present at this point.

14 THE COURT: Well, I'll let the jury determine.

15 Go ahead.

16 Q. Where was Luther Graham when this conversation, excuse me, um,
17 Kariem or Luther Graham when this conversation - - -

18 A. He was sitting beside me in the car with the door open.

19 Q. Alright.

20 Did - - tell me why if you know why Kariem Ward needed to
21 change clothes?

22 A. Because he had blood all over him.

23 Q. Alright.

24 A. All over his pants, his shoes, his shirt, all over him.

25 Q. How about Lee? Did he have any blood on him?

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1 A. Lee didn't have any blood on him.

2 Q. How about you? Did you have any blood?

3 A. No.

4 Q. Was Kariem Ward able to get clothes from Paul Graham that he
5 found suitable?

6 A. Yeah. Well, I mean, Paul came out and he told Paul to get
7 him something he could wear, and he came back out with sweat pants.
8 He brought him sweat pants and a zip-up sweat jacket.

9 Q. Did anybody else ever arrive at Paul Graham's house?

10 A. Julianne came over there, and when she got out of her car,
11 she, um, she was yelling getting out of her car, and she had, um,
12 jewelry missing. Somebody had taken some of her jury, and she was
13 screaming and hollering questioning everybody - - -

14 THE COURT: Wait a minute, now. I don't want to get into
15 that conversation. That's hearsay unless the defendant was
16 present.

17 Q. Was Luther Garner still present at that time?

18 A. Yeah. He was right there.

19 THE COURT: You may proceed. I'll let the jury make that
20 determination.

21 Q. So, she was upset that she thought that you had stolen her
22 jewelry?

23 A. She was, yeah, but she was basically accusing all of us, but
24 she, yeah, she primarily, yeah, she approached me about her
25 jewelry.

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1 Q. Is this the same Julianne whose home you picked up Luther
2 Garner and Lee Pierce from?

3 A. On Clay Pond, yeah.

4 Q. Was anyone with - - did anybody arrive with Julianne St.
5 Louis?

6 A. A. J.

7 Q. A. J. You don't know A. J.'s last name?

8 A. I don't know A. J.'s last name.

9 Q. Alright.

10 Anything else happen there at Paul Graham's house?

11 A. Um, Julianne - - she got back in the car. I got back in the
12 car. I let her go through my pocketbook. She was very upset, and
13 I - - I told her, "Girlfriend, I don't have your jewelry."

14 I let her go through my purse, and while she was going through
15 my pocketbook, he was changing clothes, and he told Lee to come
16 over there a minute, and he asked him how much money he had.

17 Lee said he didn't have any money, and he said, "Well, give me
18 the rest of that crack."

19 Lee had crack on him.

20 And then he - - Lee hollered at A. J. and asked A. J. if he
21 had any money, and A. J. said, "Well, not - - you know, I've got a
22 little bit but I have to get home."

23 And said something about he had to pay his rent or something
24 but anyway. He made A. J. give him his money.

25 Q. You're saying "he". Who was that?

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1 A. Luther, Kariem.

2 Q. Alright.

3 A. He made A. J. empty his pockets and give him his money, give
4 him what he had.

5 Q. Where was Lee at at Paul Graham's house?

6 A. He was standing behind the car between - - between her car.
7 I was pulled in, like, say this is where I was parked. She was
8 pulled in behind me like this, and he was standing between the two
9 vehicles telling A. J. he needed to go ahead and give him - - they
10 were arguing, and he told A. J. he need to give the money before he
11 killed him, too.

12 Q. What about Luther? Where was he at when this was going on?

13 A. He was standing - - he was sitting with his legs out of the
14 side of the car. He had changed his - - changed his clothes.

15 Q. And were you still in the vehicle in the driver's side?

16 A. I had to have - - I had my door open to hand her my pocketbook
17 so she could go through it to determine that I didn't have her
18 jewelry.

19 Q. Alright.

20 Did - - who left with you in the 2001 Mustang?

21 A. Kariem.

22 Q. How - - where did Lee go?

23 A. He went with Julianne.

24 Q. Julianne and A. J.?

25 A. Yes.

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1 Q. Alright.

2 Where did you and Kariem go after leaving Paul Graham's?

3 A. To a lady named Debbie Stokes, a lady that he knew from New
4 Jersey that worked out at Coastal Carolina University in
5 Forestbrook.

6 Q. Alright.

7 Did Kariem still have the bloody clothes with him at that time
8 when he was at Debbie Stokes'?

9 A. Yes.

10 Q. Did he have the gun with him?

11 A. Yes.

12 Q. Did the gun have any blood on it?

13 A. All over it, and it was wrapped in white, um, tee-shirt.

14 Q. Alright.

15 How long did you stay at Debbie Stokes' house?

16 A. Um, all - - all that - - all that day.

17 Q. Was there anybody there besides you, Debbie Stokes and Kariem
18 Ward?

19 A. Henry Brown.

20 Q. Alright.

21 A. Henry Brown had stayed with Debbie off and on in Aynor.

22 Q. Tell us what happened to the bloody clothes.

23 A. He put them in a fire and burned them by a little store in
24 Aynor.

25 Q. So, y'all left Debbie Stokes' house at some point and went to

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1 Aynor. Who was with you - - -

2 A. To take Henry Brown to Aynor.

3 Q. Alright.

4 A. He needed a ride.

5 Q. Was there anybody besides you, Henry Brown and Luther Garner
6 or Kariem Ward in the car?

7 A. No.

8 Q. Alright.

9 And where did he burn these clothes?

10 A. Um, Gum Street. I don't know the name - - it was just a
11 little, tiny, like a - - it's not even - - it's like a little block
12 store, not really a - - I don't know if it's a business.

13 Q. Okay.

14 A. It's beside a place where a bunch of them - - a bunch of
15 people hang out.

16 Q. Alright.

17 A. They stand around outside of it.

18 Q. And what - - did he burn his shoes, pants and shirt?

19 A. Everything.

20 Q. Is there anything that he didn't burn that he was wearing in
21 the house at, um, Amadro Espinozat's house?

22 A. He had a bag of, um, clothes that he had, um, given - - well,
23 actually, he put them in Julianne's floorboard, and there was, ah,
24 like a dress shirt, gold and white dress shirt that he had on over
25 the tee-shirt and a jacket, and I don't know what else was in the

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1 bag but I know that dress shirt was in there - -

2 Q. What about - -

3 A. - - and he - - -

4 Q. - - what about the clothes that he wore at the murder scene?

5 Are those the - - -

6 A. Those are the - - yeah, those are the clothes.

7 Q. Those are the clothes that he burned?

8 A. The jeans. The jeans, the socks, the boots.

9 Q. He had on boots?

10 A. He had on, ah, like, ah, tan - - I don't know if they were,
11 like, Wolverine. They were, like, work - - work boots with the,
12 you know, rubber sole around the bottom of them.

13 Q. Something like Wolverine Boots or these Timberline - - these
14 half boots that come up.

15 A. Yeah. Yeah. Not - - not. Yeah, about that much of their
16 ankle boots, like, work boots.

17 Q. Okay.

18 What happened to the 22, the gun that was used to beat
19 Espinozat to death?

20 A. He gave it to Henry Brown at Henry's momma's. He told him to
21 get rid of it, and, initially, when he got out of the car, he had
22 it wrapped up, and he was trying to hand it to Henry, and Henry
23 didn't want to - - I guess he didn't want to touch it, didn't want
24 to put his fingerprints on it.

25 And they put it. It was like a big, um, like an electrical -

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 --

2 Q. Spool?

3 A. Spool, yeah, wire -- that you put wires on or wires came off
4 of, and they put it down in the middle of it.

5 Q. Alright.

6 Did the Horry County Police ever present guns to you and ask
7 you, "Is this the murder weapon?"

8 A. Yes.

9 When I went with them after I called 911, um, when I was able
10 -- when I got to a phone, I called 911, and I actually accompanied
11 them. I was with the Horry County Police for several days and
12 showing them where I had been. Where we had been. Where I thought
13 he might be. Where he was the last time I saw him, and they were
14 getting -- obtaining, um, search warrants for the property.

15 Q. Did -- did you have any idea from what he had said to you
16 where he might be?

17 A. He -- he -- he wanted to go to New Jersey. He kept talking
18 about he tried to get, um, Ms. Stokes to take him to New Jersey.
19 She knew him from New Jersey. She was scared to death of him.

20 Q. Have you been able to listen to a tape previously of that call
21 to the police department?

22 A. Yes.

23 Q. Can you identify the voice? Were you able to identify the
24 voice on that tape?

25 A. It was me.

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1 Q. It was your voice?

2 A. Yes. It's my voice where I made the 911 call.

3 THE COURT: Have you had an opportunity to review that - -
4 excuse me, to review that tape?

5 MR. AXELROD: I never heard it.

6 MR. RICHARDSON: Your Honor, it was presented to him
7 earlier. It's just the Dispatch Tape.

8 THE COURT: That's alright.

9 I'll give him an opportunity to review that prior to his cross
10 examination.

11 Alright.

12 Go ahead.

13 MR. RICHARDSON: Do you want - - have him listen to it now.
14 I was trying to publish it through her.

15 THE COURT: No. Go ahead and publish it. That's fine.

16 If you tell me as an Officer of the Court you gave it to him,
17 I accept that.

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: But prior to cross examination in fairness to
20 him, I'll permit him to have an opportunity to look at it.

21 Go ahead.

22 She's already testified for the jury's consideration that she
23 called 911.

24 MR. RICHARDSON: This is actually a Dispatch Tape.

25 Your Honor, we would move State's Exhibit #1 into evidence and

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1 ask that it - - -

2 THE COURT: Well, let me hear it first.

3 MR. RICHARDSON: Okay.

4 THE COURT: Go ahead and play it.

5 Oh, you're not going to play it at this time?

6 MR. RICHARDSON: I was going to play it at this time.

7 THE COURT: Well, let me hear it, and then I'll determine
8 whether or not it goes into evidence.

9 I mark it for identification.

10 (The Court Reporter accepts State's Exhibit #1 for
11 identification only at this time.)

12 MR. RICHARDSON: Well, Your Honor, in order to be able to
13 play it - - -

14 THE COURT: Sir?

15 MR. RICHARDSON: If it's not in evidence, I won't be able
16 to play it right now.

17 THE COURT: No, sir.

18 Well, if you are without objection now, we'll put it in
19 evidence and then play it.

20 MR. AXELROD: I didn't - - I have an objection to it coming
21 in at this point.

22 THE COURT: I'm going to permit it to be played for
23 identification and then I'll think it appropriate, it will be in
24 evidence.

25 Play it.

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1 He asked that I put into evidence, and I will if I think it's
2 appropriate.

3 MR. AXELROD: Once it -- once it's played for the jury, Your
4 Honor, it would be in evidence.

5 THE COURT: Alright.

6 Send the jury out for just a minute.

7 I'll let you go out for just a second, and we'll listen to it.
8 You should have listened to it when they gave it to you.

9 (The jury retires to the jury room at 3:01 p.m.)

10 THE COURT: Alright.

11 Let's hear the tape.

12 You checked your file to see that you got it, Mr. Axelrod?

13 MR. AXELROD: I will, Your Honor.

14 THE COURT: Well, he says that he did.

15 (State's Exhibit #1 for I. D., the 911 Call Dispatch Tape is
16 played outside the presence of the jury.)

17 MR. RICHARDSON: Do you recognize that voice?

18 MS. SOWDON: That's my voice.

19 THE COURT: Play it.

20 (Tape continues to play.)

21 THE COURT: Alright.

22 What's the purpose of this. She's testified that she called
23 911.

24 MR. RICHARDSON: Your Honor.

25 THE COURT: Any contention that she didn't?

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1 MR. RICHARDSON: Your Honor, ah, the only thing is that
2 I've been told that this is in talking with Mr. Axelrod is going to
3 be why she wasn't charged with the murder the same as the others.

4 This is just showing that she immediately went to the police,
5 who she felt comfortable with and told them at her first opportune
6 time.

7 THE COURT: What you say, Mr. Axelrod?

8 MR. AXELROD: Well, I'd say several things, Your Honor.

9 I - - first, I'd say this tape has to come in through a 911
10 Custodian because there are so many cuts and bleeps and stuff. It
11 can't come in through her. It has to be the Custodian that has the
12 tape in the chain of custody, first of all.

13 I don't see how they're going to bring it in.

14 She can say she called 911. When a 911 Custodian gets up
15 there, then they can admit that tape if this Court allows them to
16 play it but at this point, it can't come through her.

17 MR. RICHARDSON: Your Honor, she can identify her voice - -
18 -

19 THE COURT: Wait a minute, gentlemen. That's pretty basic.

20 MR. RICHARDSON: Yeah.

21 THE COURT: If she - - she has identified - - first she has
22 said she called 911.

23 If she identifies that tape as her voice, it's for the jury's
24 consideration. You can argue that all you want to.

25 Bring the jury in. I'm going to let her - - let her testify.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 MR. RICHARDSON: Let me key it back up, Your Honor.

2 THE COURT: Alright.

3 Bring the jury in.

4 Now, I'm going to - - how much more direct examination you
5 got, counsel?

6 MR. RICHARDSON: Um, I've got - - I want her to go through
7 the chart.

8 It might be - - once we get through with direct, just break
9 and let Your Honor leave.

10 THE COURT: I want to leave no later than four. I prefer
11 to leave a few minutes earlier if I can.

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: Alright.

14 MR. RICHARDSON: That probably - - I can get through with
15 her, and then they can direct, I mean cross examine her tomorrow
16 her tomorrow.

17 THE COURT: That's right.

18 Okay.

19 Bring the jury in.

20 Now, you can confirm the call to 911 and let him verify that
21 that is the tape but based on - - -

22 MR. RICHARDSON: I'll skip all that first stuff anyway.

23 THE COURT: Okay.

24 Bring the jury in.

25 (The jury returns to the courtroom at 3:09 p.m.)

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1 THE COURT: Mr. Foreman, ladies and gentlemen, from time to
2 time during the trial of any case it may be necessary to send the
3 jury out based on some objection from an attorney or from the
4 judge. Always remember that nobody is trying to hide anything from
5 you but sometimes things come up that just are not for your
6 consideration.

7 So, if an attorney objects, don't hold that against him. He's
8 just simply trying to call to my attention a possibility of
9 testimony coming in that may not be relevant to this particular
10 case, and so just remember that nobody is trying to hide anything
11 from you that you're entitled to.

12 Alright.

13 You may resume your questioning, and then I will permit the
14 tape under proper questioning.

15 MR. RICHARDSON: Thank you, Your Honor.

16 Q. Ms. Sowdon, you've had another opportunity to hear this tape.
17 Do you recognize the voice on this tape?

18 A. Yes, sir. It's mine.

19 Q. It's your voice.

20 And who was this call made to?

21 A. Horry County 911.

22 Q. Alright.

23 MR. RICHARDSON: Your Honor, the State's position to
24 publish this tape now in evidence to the jury.

25 MR. AXELROD: Your Honor, I would - - -

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1 THE COURT: It's in evidence, and I would note his
2 objection, and if necessary, you can call the 911 operator to
3 further verify it but I am permitting it to be testified - -
4 entered into evidence to play it for the jury based on her
5 assertions that is her voice and her call, all of which is for the
6 jury to determine as finders of the facts.

7 MR. RICHARDSON: Yes, sir, Your Honor.

8 (The Court Reporter accepts State's Exhibit #1 into evidence,
9 and the Solicitor publishes the tape for the jury.)

10 MR. RICHARDSON: And I've skipped through a bunch of the
11 earlier stuff.

12 THE COURT: I understand.

13 MR. AXELROD: Your Honor, I - - I would ask that the tape be
14 played in its entirety.

15 MR. RICHARDSON: I will do that.

16 THE COURT: Alright. Do that. Run it back and play it in
17 its entirety.

18 MR. RICHARDSON: Y'all let me know if you can't hear it.

19 (The Solicitor plays tape from beginning to end.)

20 THE COURT: I will permit that into evidence.

21 MR. RICHARDSON: Thank you, Your Honor.

22 MR. AXELROD: Your Honor, I renew that objection.

23 THE COURT: I understand that.

24 Overruled.

25 MR. RICHARDSON: Your Honor, I - - I would mark a few

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1 photos also.

2 THE COURT: Have y'all exchanged these photos?

3 MR. RICHARDSON: Yes, sir.

4 MR. AXELROD: I've seen the photos but I need to see the ones
5 he wants to put in.

6 THE COURT: You didn't show him the ones that you propose
7 to put in?

8 MR. RICHARDSON: Yes, sir, we did.

9 MR. AXELROD: No - - -

10 THE COURT: Well, come up and look at them again.

11 THE COURT: I had asked y'all to exchange these prior to
12 save some time.

13 May I see these, too?

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: Yes, sir. You've seen these?

16 MR. AXELROD: I just want to - - -

17 MR. RICHARDSON: Do you have any objection to these?

18 THE COURT: Sir?

19 MR. AXELROD: No objections to those, Your Honor.

20 MR. RICHARDSON: I'm going to show them to her and see if
21 she can identify them. I was just seeing if there were any
22 objections to the photographs as they are.

23 THE COURT: These - - you have had an opportunity to review
24 these.

25 MR. AXELROD: I've seen them. As long as this witness can

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1 identify these photos.

2 THE COURT: In with no objection subject to the
3 identification by the witness.

4 MR. AXELROD: And, also, well, before they go into evidence.
5 Well, before they go into evidence, they're going to have to
6 establish the chain of who took those photos and stuff like that.

7 THE COURT: That's not necessary. I'll see what the
8 testimony is. You don't need the chain if she can identify them
9 and say that's the way it appeared.

10 MR. RICHARDSON: Yes, sir. You don't need a chain for
11 that.

12 THE COURT: I'll have to hear the testimony.

13 MR. AXELROD: Yes, sir, Your Honor.

14 THE COURT: If she can identify them and say that that's
15 the way the situation duplicates what was there, then it will be
16 sufficient.

17 MR. AXELROD: Yes, sir.

18 THE COURT: For the jury's consideration.

19 Q. Lonya, I'm going to hand you up what's marked as State's
20 Exhibit #7. Tell me if you recognize that photograph.

21 A. That's the home.

22 Q. That's the home on where?

23 A. That's the house on, um, [REDACTED] [REDACTED].

24 Q. Okay.

25 Does this fairly and accurately identify the home as it was on

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 January 10, 2005?

2 THE COURT: When she says "the home", which home where?

3 MR. RICHARDSON: She said "[REDACTED] [REDACTED]", Your Honor.

4 THE COURT: Okay. That's fine.

5 Q. This is the victim's home?

6 A. Six - - yeah.

7 Q. Alright.

8 Alright, Lonya, let me hand to you what's been marked as
9 State's Exhibit #6. Tell me if you recognize that.

10 A. That's the living room of the victim's home.

11 MR. RICHARDSON: The living room of the victim's home, Your
12 Honor.

13 Q. Does that fairly and accurately depict the scene as it would
14 have been on January 10, 2005?

15 A. Yes.

16 THE COURT: It is admitted.

17 Q. I hand to you what's been marked as State's Exhibit #5. Tell
18 me if you recognize that.

19 A. The, um, it's the hallway of the victim's home.

20 Q. Does that fairly and accurately depict the scene as it would
21 have appeared on January 10, 2005?

22 A. Yes.

23 THE COURT: All of these photographs are admitted.

24 MR. RICHARDSON: Thank you, Your Honor.

25 Q. I hand you what's been marked as State's Exhibit #4. Tell me

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1 if you recognize that.

2 A. That's the victim laying in the back bedroom on the left.

3 Q. Does this photograph fairly and accurately depict the scene as
4 it would have been in that hallway on January 10, 2005?

5 A. Yeah.

6 Q. Look at State's Exhibit #4 for just a minute.

7 If you need to take a break, just let us know.

8 Do you see anything odd about his clothing?

9 A. His shirt's off and his pants are pulled down, and his pockets
10 are out.

11 Q. His pockets are out. And you show that that fairly and
12 accurately depicts the scene as it would have been.

13 Did you check him when he was laying like this for life?

14 A. He was laying on his back.

15 Q. Okay.

16 THE COURT: It is admitted.

17 MR. RICHARDSON: Thank you, Your Honor.

18 Q. Let me hand you what has been marked as State's Exhibit #2 for
19 identification, excuse me, for evidence, and tell me if you
20 recognize that.

21 A. Give me just a minute, please.

22 MR. RICHARDSON: Court's indulgence just one minute, Your
23 Honor.

24 (The Court waits a moment or two to give the witness time to
25 compose herself.)

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 THE COURT: Proceed with the photograph.

2 MR. RICHARDSON: Thank you.

3 Q. Lonya, State's Exhibit #2, do you recognize that? Who is
4 that?

5 A. That is the victim.

6 Q. Does that fairly and accurately depict the scene as it would
7 have been on January 10, 2005?

8 A. Yes. Yes.

9 Q. Tell me about the victim's arms in that picture.

10 A. There's some - - his feet are tied with this orange, um,
11 electrical cord, and his arms are tied up with I don't know what.
12 There's some kind of wire. I don't know what kind of wire.

13 Q. Thank you.

14 MR. RICHARDSON: Your Honor, a couple more.

15 Q. Do you recognize State's Exhibit #3? What is that a
16 photograph of?

17 A. His feet.

18 Q. The same electrical cord? Does that fairly and accurately
19 depict the way his legs were tied up?

20 A. Yes, ma'am.

21 Q. Finally, the State would hand you what's been marked as
22 State's Exhibit #8. What is that a photograph of?

23 A. The car I was driving - - we were driving. I drove them both
24 in.

25 Q. And that's the 2001 Mustang. Does it fairly and accurately

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 depict the Mustang as it would have been on the 10th?

2 A. Yes.

3 MR. RICHARDSON: Your Honor, permission to publish.

4 THE COURT: Yes.

5 Mr. Foreman, he's going to publish these pictures at this time
6 but I tell you. During your deliberations anything in evidence
7 will be with you in the jury room.

8 You may pass them around very briefly.

9 MR. RICHARDSON: Thank you, Your Honor.

10 THE COURT: But you'll have a full opportunity to see them.
11 Give them to them and let them pass them around.

12 COURT REPORTER: And they are all in evidence, Your Honor?

13 THE COURT: All in evidence.

14 COURT REPORTER: Thank you, Your Honor.

15 MR. RICHARDSON: I believe without objection.

16 THE COURT: Yes, sir.

17 MR. AXELROD: Your Honor, I made an objection to the chain.

18 THE COURT: Well, to the chain only but I conclude that
19 upon the identification in her testimony, they are in evidence.

20 You did not object to the pictures as such, only to the chain.

21 Go ahead.

22 (The Solicitor publishes the photographs to the jury.)

23 MR. RICHARDSON: Your Honor, #8 is in. It is a picture of
24 the car.

25 THE COURT: Yes.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 (The Court Reporter accepts State's Exhibits #2, #3, #4, #5,
2 #6, #7 and #8 into evidence.)

3 MR. RICHARDSON: This is a diagram of the house.

4 THE COURT: Mr. Axelrod seen it?

5 MR. RICHARDSON: A diagram of the home.

6 MR. AXELROD: Can we approach a second, Your Honor?

7 THE COURT: Yes, sir.

8 (Bench conference held off the record in the presence of the
9 jury but outside the hearing of the jury.)

10 MR. AXELROD: Your Honor, we're not going to publish it yet.
11 So we can't show it to the jury yet. He's going to show it to the
12 witness but he can't publish it.

13 THE COURT: Well, I - - I'm not going to let it go into
14 evidence at this time subject to further testimony as to who drew
15 it but I'm going to let the witness on a limited basis testify.

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: And the jury, obviously, to understand her
18 testimony has got to see it.

19 Go ahead.

20 MR. RICHARDSON: I just want to put somewhat of idea what
21 room everybody is talking about.

22 THE COURT: That's fine.

23 I'll permit that on a limited basis, and then we'll have
24 whoever drew it for his cross examination.

25 Go ahead.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 MR. RICHARDSON: Your Honor, I'm going to ask her to step
2 down.

3 Keep your voice up so the Court Reporter can get it, alright?

4 (The witness stands before the jury.)

5 Q. Lonya, how about show - - are you familiar with this diagram?

6 Are you familiar with the house?

7 A. The diagram and some pictures.

8 Q. Alright.

9 Show the - - -

10 COURT REPORTER: I apologize but she needs to stand near
11 the microphone.

12 MR. RICHARDSON: Okay.

13 Is this one on.

14 Yeah.

15 Q. Lonya, come here.

16 MR. RICHARDSON: Can y'all see that?

17 Okay.

18 Q. Alright.

19 Lonya, you said this is the diagram of the victim's house.

20 A. Yes.

21 Q. Show the jury, if you will, where Kariem Ward came into the
22 house at.

23 A. Through the front door on the porch.

24 Q. Alright.

25 Is there another door?

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. There's a door off the side over here that leads off the
2 kitchen in the back under a carport.

3 Q. Alright.

4 Did you exit through the front door or the side door?

5 A. This side door on the side.

6 Q. Alright.

7 And where did you enter?

8 A. I came through - - and I went in the house. I went through
9 the front door right here.

10 Q. And when you came in this door, do you know where Lee was at
11 this time?

12 A. He was somewhere in the back of the house because you could
13 hear stuff like being thrown around and gone through. All I know
14 he was back there somewhere.

15 Q. Alright.

16 Lee was back in here.

17 Where did you first see the victim? Where was the victim when
18 you first came in?

19 A. He was on the floor. I didn't see him initially until I got to
20 right here on this chair and he was laying on the ground right
21 there, and Kariem was standing right there behind him - - over him.

22 Q. Alright.

23 And when you testified earlier about him being beaten several
24 times, where were you talking about the victim being?

25 A. Right here. Up the hallway. This is where he tried to get

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 up, and he got hold of the stand, and he hit the wall. He just
2 kind of slid down the wall right there. And then right here at
3 the edge of the, um, up into that bedroom.

4 Q. Alright.

5 And how did he come to rest in the bedroom?

6 A. He - - -

7 Q. Did he walk there or - - -

8 A. No. He pulled him from right here in the hallway with his
9 arms to the bedroom back there.

10 Q. Okay.

11 And when was the first time you saw Lee?

12 A. When the gun went off. He was right here and he had - - after
13 he came out of this bedroom. Actually, this first - - he came out
14 of this first bedroom and wanted to know if he'd shot him.

15 Q. Okay.

16 So that was up in here?

17 A. Yeah.

18 Q. Alright.

19 And you left through this door?

20 A. This door by the carport.

21 Q. Alright.

22 Where was your car parked in relationship to this?

23 A. Right here in the driveway.

24 Q. Okay.

25 You can go be seated.

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1 THE COURT: Alright.

2 I permit that to be marked for identification subject to
3 further proof.

4 MR. RICHARDSON: Yes, sir, Your Honor.

5 THE COURT: Alright.

6 (The Court Reporter accepts the diagram marked as State's
7 Exhibit #9 for identification only.)

8 Q. Lonya, it sounds like a silly question but what county did
9 this take place in?

10 A. Horry County.

11 Q. The murder took place in Horry County?

12 A. Yes, sir.

13 Q. And [REDACTED] is in Horry County?

14 A. Yes.

15 Q. A jurisdictional question.

16 A. Oh. Yes.

17 THE COURT: Any further questions?

18 MR. RICHARDSON: I believe that covers it, Your Honor.

19 THE COURT: Alright.

20 As he understands, Mr. Axelrod will have full and complete
21 opportunity for cross examination in the morning at 9:30.

22 Because of some prior commitments, we will break at this time.
23 Please be back in the jury room promptly at 9:30 in the morning,
24 and your fine Clerk of Court will either have some donuts or some
25 ham biscuits and some hot coffee. So be there a few minutes early

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1 so we can start promptly at 9:30.

2 Remember my admonitions. Don't discuss the case with anyone.
3 Let no one discuss it with you. Don't discuss it among yourselves.

4 Have a good evening, and I'll see you back at 9:30 in the
5 morning.

6 (The jury is released and departs the courtroom at 3:30 p.m.
7 to return Wednesday morning at 9:30.)

8 THE COURT: Alright.

9 There was one matter.

10 Mr. Axelrod, you indicated this morning at pretrial conference
11 that you had subpoenaed - - who was it?

12 MR. AXELROD: Julianne Noelle St. Louis, Your Honor.

13 THE COURT: And, ah, she was told to be here this morning
14 at 9:00 under the terms of her subpoena?

15 MR. AXELROD: Yes, sir, Your Honor.

16 THE COURT: Okay.

17 And she has not arisen, and, Solicitor, I asked you to find
18 her to and to make the contact.

19 MR. RICHARDSON: I contacted the only phone number that
20 I've got for her, Your Honor. I did leave her a voice mail.

21 Ms. Patty Fine also called the same number and left her a
22 voice mail she had to be here this afternoon under that subpoena.

23 THE COURT: Issue a Bench Warrant for her immediately.

24 Mike, this is an important witness we need to find. Get with
25 Mr. Axelrod.

MS. SOWDON - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Give him - - who is going to - - who is going to find her for
2 me?

3 DEPUTY: Your Honor, we'll find her somewhere down the road.

4 THE COURT: Alright.

5 Give the information to him.

6 Find her and lock her up.

7 DEPUTY: Alright.

8 THE COURT: And I want to - - I want to make sure she's
9 found tonight.

10 DEPUTY: Yes, sir.

11 MR. AXELROD: Yes, sir, Your Honor, and I have a lot of
12 information I can share with the Sheriff.

13 THE COURT: Do that, and he'll help you get her.

14 MR. AXELROD: Thank you, Your Honor.

15 THE COURT: Alright.

16 We are in recess until 9:00.

17 MR. RICHARDSON: Thank you, Your Honor.

18 THE COURT: The victim if he's not in jail, his bond is
19 revoked, and I assume he's in jail anyway.

20 MR. AXELROD: He is, Your Honor.

21 THE COURT: Okay.

22 Alright. This victim, this defendant - - this victim, do we
23 want her back - - not the victim, the witness, do we want her back
24 tomorrow?

25 MR. RICHARDSON: Yes, sir. For cross exam.

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1 MR. AXELROD: I got cross examination, Your Honor.

2 THE COURT: Yes, but other than that, you going to release
3 her after that?

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: You understand, now. Any question about you
6 be back here at 9:30 in the morning?

7 MS. SOWDON: Yes, sir, I'll be here.

8 MR. AXELROD: And, Your Honor, I might put a subpoena on her
9 to keep her after she's done in case I need her.

10 THE COURT: I - - I'm talking about my particular
11 arrangements. She'll be here for court.

12 MR. AXELROD: But I'm saying. After my cross examination, I
13 might have to bring her back in my case in chief if I put up
14 something based on the rest of the evidence.

15 I'll put a subpoena on her tomorrow.

16 THE COURT: That's fine.

17 But you be back at 9:30 in the morning. Okay?

18 MS. SOWDON: Yes, sir.

19 THE COURT: Alright. We are in recess.

20 MR. RICHARDSON: Thank you, Your Honor.

21 (The Court adjourns the trial of this case for the day to
22 convene at 9:30 a.m. on Wednesday.)

WEDNESDAY, MAY 30, 2007

(The Court reconvenes the trial of this case at 9:50 a.m. with all parties present in the courtroom.)

THE COURT: The State ready to proceed?

MR. RICHARDSON: Yes, sir, Your Honor.

THE COURT: Mr. Axelrod, the defendant ready?

MR. AXELROD: Yes, sir, Your Honor.

THE COURT: Let the record reflect that all parties are in the courtroom.

Bring the jury in.

MR. RICHARDSON: Do you want her to go ahead and take the stand, Lonya?

THE COURT: Yes, sir.

(The witness takes the witness stand.)

THE COURT: I remind you that you are still under oath.

MS. SOWDON: Yes, sir.

THE COURT: You had concluded your examination, Solicitor?

MR. RICHARDSON: Yes, sir.

THE COURT: Alright, sir.

(The jury returns to the courtroom at 9:51 a.m.)

THE COURT: Good morning, Mr. Foreman, ladies and gentlemen. I trust that the ham biscuits were satisfactory to everybody.

At the conclusion of yesterday's proceedings, the State had concluded its examination of its witness here. We will now go to

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Mr. Axelrod representing the defendant.

2 You may examine.

3 MR. AXELROD: Thank you, Your Honor.

4 Good morning, sir.

5 LONYA SOWDON, having previously been
6 sworn, testifies as follows:

7 CROSS EXAMINATION BY MR. AXELROD:

8 Q. Good morning, ma'am.

9 A. Good morning. How you doing?

10 Q. Good.

11 How are you this morning?

12 A. Just fine, thank you.

13 Q. Okay.

14 Now, you were never charged in this murder, were you?

15 A. No, sir.

16 Q. And in your testimony yesterday, you said that Lee never
17 touched the man?

18 A. No, sir, he didn't.

19 Q. Okay.

20 He's also been charged. Correct?

21 A. It's my understanding. I'm not really sure what he was
22 charged with.

23 Q. Now, and you told the jury a story yesterday. Correct?

24 A. I told the jury the truth yesterday.

25 Q. And isn't it true that you gave two prior statements to the

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 police, two other stories?

2 A. I gave two other recantments of what happened. I was
3 interviewed two times. That's correct. Yes, sir.

4 Q. So you were interviewed on January 12, 2005. Correct?

5 A. Yes, sir.

6 Q. And you gave a statement.

7 A. Uh-huh.

8 Q. And you were interviewed on January 14, 2005, and you gave a
9 statement.

10 A. Yes, sir.

11 Q. Stories.

12 A. True statements.

13 Q. Consistent statements.

14 A. To the best of my recollection, yes.

15 Q. But you have a very good recollection, don't you?

16 A. Actually, yes, I do.

17 Q. Because you have a photographic memory, don't you?

18 A. That's interesting that you would say that.

19 I have a very, very good recall of memory. Yes, sir, I do.

20 Q. You have a photographic memory, don't you?

21 A. Um, you'll have to ask a professional that. I've been told
22 that, yes.

23 Q. You told the police you have a photographic memory, didn't
24 you?

25 A. I sure did.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Excuse me?

2 A. I sure did.

3 Q. You told the police you had a photographic memory, correct, on
4 January 14th?

5 A. Uh-huh.

6 Q. And do you remember what you told them?

7 A. Prior to my first pregnancy I retained 86% of everything I
8 ingested. After my pregnancy, it dropped down to about 72%. Yes,
9 sir, that's what I told them.

10 Q. And anything you hear or read, everything you retain?

11 A. That's correct.

12 Q. So when you tell me that your stories are consistent to the
13 best of your ability, having a photographic memory with a retention
14 rate of between 72 and 86% depending on your pregnancy, you should
15 have very consistent stories?

16 A. Yes, sir.

17 Q. That's what we're going to talk about today, ma'am.

18 A. Okay.

19 Q. Now, you started your story yesterday by saying you were in
20 the Red Roof Inn.

21 A. That is correct.

22 Q. Okay.

23 Now, what day did the murder occur?

24 A. January 10th.

25 Q. Now, January 10th - - I got a little calender here. January

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 10th is what day?

2 A. It's Monday.

3 Q. It's Monday. Correct?

4 A. That's correct.

5 Q. And that's what it says on this calender?

6 A. Yes, sir.

7 Q. So, on January 10th, Monday, that was the murder?

8 A. Yes, sir.

9 Q. Okay.

10 Now. Where were you living the day before the murder?

11 A. I was in Murrells Inlet.

12 Q. Okay.

13 A. House sitting for my employer.

14 I. So, you're saying on the 9th of January, you were in Murrells
15 Inlet house sitting for your employer?

16 A. That is correct.

17 Q. But I thought you said you stayed at the Holiday - - at the
18 Red Roof Inn?

19 A. I was staying at the Red Roof Inn when I met Lee and Kariem.

20 Q. Okay.

21 THE COURT: Mr. Axelrod, if you asking her questions, look
22 at her. Don't look at the jury. She doesn't understand you
23 getting ready to ask a question.

24 MR. AXELROD: Okay.

25 THE COURT: Go ahead.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. So, when did you leave the Red Roof Inn?

2 A. I left on the 8th, the morning of the 8th - - which would have
3 been Saturday.

4 Q. So, you left Saturday morning?

5 A. That's correct.

6 Q. Okay.

7 Now, and you were doing what for your employer?

8 A. Marketing. He owns JLT Marketing. It's an national
9 automotive marketing company.

10 Q. Alright.

11 And who were you working for?

12 A. JLT Marketing, Incorporated.

13 Q. And - - and your - - your employer's name?

14 A. Gerald Linsky.

15 Q. Okay. Gerald Linsky.

16 A. That's correct.

17 Q. What did you do for Gerald Linsky?

18 A. Taxes, payroll, filing. I set all of his airline
19 appointments, um, his trip itineraries, ah, new dealer packets.
20 I worked in a capacity, basically, as an office manager.

21 Q. And when you say new dealer packets, what was that?

22 A. Those were for new automobile dealerships.

23 Q. And - - -

24 A. His business is nationwide.

25 Q. And what was that business?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. It's sales and marketing.

2 Q. Of what?

3 A. Of his services to automobile dealerships.

4 Q. What were those services?

5 A. He - - he goes into a dealership and guarantees them X amount
6 of sales per month if they use his sales and marketing system.

7 Q. So, does he do a floor plan for a dealership?

8 Tell the jury what a floor plan is.

9 A. Specifically, he - - he lays out - - I wasn't part of his - -
10 I didn't travel with him. I just did his paperwork. You have to
11 call Mr. Linsky and ask him about his floor plan.

12 Q. I'm not able to find him. That's why I'm going to ask you.

13 How long did you work for Mr. Linsky?

14 A. For four years.

15 Q. And do you remember when you started with him?

16 A. I started with him in two thousand and - - well, the end of
17 2000, November, 2000, and worked off and on part-time for a period
18 of about eight months, and then I went full-time with him.

19 Q. And did you have taxes taken out?

20 A. No. I was a 1099 independent contractor.

21 Q. Okay.

22 And when did you stop working for him?

23 A. Actually, right after the murder. The murder happened in
24 January. Ah, Hurricane Katrina hit Louisiana. I went to
25 Louisiana after Katrina.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Okay.

2 So, during this murder, you were employed by him?

3 A. That's correct.

4 Q. Ah, who was paying for you to stay at the Red Roof Inn?

5 A. He was.

6 Q. And why was he doing that?

7 A. My - - my husband and I had broken up. We were separating.

8 Q. So, you were working for him, and he was paying for your rent.

9 A. Well, he was not only paying me rent but he was paying me
10 money, and that - - the vehicle from his - - the vehicle I was
11 driving was his vehicle. The Mustang in reference to this crime
12 was his vehicle.

13 Q. Ah, now, was that part of the compensation package that you
14 could drive his vehicle?

15 A. If I needed it, yes, sir.

16 Q. And did you drive his vehicle very often?

17 A. Sporadically, not very often, not that much.

18 Q. Okay.

19 So, now, you testified that - - you testified yesterday. Tell
20 me if I'm wrong. And you pick up Kariem and Lee at Clay Pond
21 Apartments at 8:00 a.m. on Monday morning.

22 A. That's correct.

23 Q. And tell me why on January 12th - - did you see Kariem and Lee
24 on Sunday night?

25 A. I gave them a ride on Sunday night out to Julianne's

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 apartment.

2 Actually, I dropped Lee off on - - right there at Santell's on
3 a little secondary frontage road, and I took, um, A. J. and Kariem
4 to Julianne's apartment.

5 Q. Now, how long were you living at the Red Roof Inn?

6 A. I was there approximately about six weeks.

7 Q. Alright. Now, you told the police on the 12th of January that
8 everybody that lived there was either, and I'll quote your words.

9 "A crack dealer or a prostitute or a con artist."

10 A. I said there was one in every other room.

11 Q. Did you fit one of those rooms?

12 A. No, I did not.

13 Q. Okay.

14 Now, the night before, where did you see Kariem and Lee?

15 A. I saw them at the Red Roof Inn.

16 Q. On Sunday night.

17 A. They were actually making deliveries to the motel. They were
18 selling crack.

19 Q. But you weren't there Sunday night?

20 A. No. I'd gone back up there to get some things that I left in
21 a room right down the hallway.

22 Q. So, it's your testimony - - -

23 A. I couldn't take everything in the Mustang when I left. I had
24 to make a second trip.

25 Q. Okay.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 So, you didn't stay - - you didn't stay Sunday night there?

2 A. No, I did not.

3 Q. Then why did you tell the police, and I quote.

4 "They came over to my room Sunday night. You know it was
5 late."

6 A. That's not correct. That's not what I told them.

7 They came to my room Friday night. I checked out of the Red
8 Roof Inn on Saturday morning.

9 They called me all day Sunday, and Sunday I was sick. I
10 wasn't able to take them anywhere.

11 Q. You made a statement to the police on January 12, 2005. This
12 is a certified transcript of that tape recording.

13 You said to the police, "They came over Sunday, the day before
14 the homicide, and they said they had to go somewhere. They had
15 something real important to do. Could I take them? And it was,
16 like, 10:30 Sunday - - Sunday night. You know, it was very late.
17 It was late."

18 A. That was taken out of context. You need to review those
19 tapes. That did not happen Sunday night. That happened Friday
20 night.

21 Q. It's on the tape. You said it to the police officer.

22 A. Well - - -

23 Q. Were you lying then or are you lying - - -

24 A. No, I wasn't but it's possible that what I said was taken out
25 of context or there - - it might have been. There's a lot of

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 confusion after witnessing a murder, sir.

2 Q. Were you lying yesterday or were you lying then?

3 A. No, sir, I wasn't, and I'm not a liar.

4 Q. This is a taped statement you gave to the police - -

5 A. Well.

6 Q. - - transcribed by a Court Reporter.

7 A. I'm telling you that Friday night was the night that I saw
8 them.

9 Q. So, when you say to the police on a tape that it was a Sunday
10 night, that is a mistake.

11 A. That is a mistake because it was not Sunday night. It was
12 Friday night, and I have repeatedly if you'll review that tape.
13 Saturday, they kept calling me all day long Saturday. I was in
14 Murrells Inlet. I was also in Murrells Inlet on Sunday.

15 Q. You say on the tape the police officer that they knock on your
16 door Monday morning to take you somewhere.

17 A. That's not correct.

18 Q. The following line, "Kariem knocked on my door."

19 A. That would have been Saturday morning prior to my vacating the
20 Red Roof Inn.

21 Q. But for a person that has such a photographic memory with a
22 retention rate, you give a statement one day or two days after this
23 murder, and you're saying that they took it out of context, that
24 your words weren't what you said on tape.

25 A. I'm telling you what happened. I don't how the tape was

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 transposed. I don't know but I know during that period of time I
2 was in shock. I had just witnessed a murder.

3 Now, I've had a lot of time to think about this, and I have
4 total clarity about what happened, and make no mistake. Your
5 client murdered that man.

6 Q. But your stories change every day, don't they?

7 A. Well.

8 Q. They change to fit your - - your situation, don't they?

9 A. No, sir, they don't.

10 Q. We'll keep going.

11 A. Thank you.

12 Q. Now, it's your testimony you weren't in that hotel on Sunday.
13 you checked out on Saturday.

14 A. That's correct.

15 Q. So, how did you get your stuff on Sunday if you checked out on
16 Saturday?

17 A. I had things Saturday. I went back up and retrieved a
18 suitcase and a box of shoes.

19 Q. Where were they at?

20 A. They were down the hallway from me.

21 Q. They weren't in a room?

22 A. No, actually, they were in a room.

23 Q. What room?

24 A. They were in Room 514.

25 Q. How can you remember Room 514 so easily?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. Because the girl that lived there, she was one of the more
2 decent people on the floor, and I befriended her when I saw her.

3 She was also, she had just gone through a criminal domestic
4 violence situation with her husband, and she was also displaced
5 living in a motel room.

6 Q. So, she held your stuff in Room 514?

7 A. That is correct.

8 Q. And you checked out on Saturday which would have been the 8th?

9 A. That's correct.

10 Q. Because that fits your story better, doesn't it?

11 A. Excuse me?

12 Q. I said that fits your story better.

13 A. That's the truth.

14 I have records from the Red Roof Inn. You can retrieve them.
15 That's the truth.

16 Q. Now, when you went over to [REDACTED] - - what was the
17 truth? I'm sorry. I can retrieve the records?

18 A. You sure can.

19 Q. And - - -

20 A. They're available when I checked out of the Red Roof Inn.

21 I know when I checked out. They know when I checked out.
22 Retrieve those records.

23 Q. You checked out on the 8th.

24 A. Yes, I did.

25 Q. Because that's the truth.

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1 A. Saturday morning.

2 Q. Saturday morning you checked out. What time?

3 A. Um, I checked - - I had actually requested a late check-out
4 which would have been 1:00.

5 Q. Thank you.

6 Now, did you know why you were going to [REDACTED] [REDACTED]?

7 A. No.

8 There was discussion of Lee picking up money and Kariem
9 picking up powder cocaine.

10 Q. So, you knew what you were going?

11 A. I wasn't sure which. It could have been either or.

12 No, I wasn't exactly sure. I just knew that they had asked me
13 to drive them.

14 Q. Okay.

15 And how many weapons did everybody have?

16 A. It wasn't everybody. Kariem had two.

17 Q. What were they?

18 A. He had a Glock 45 and he had that silver, um, 22 Desert Eagle.

19 Q. Well, you told the police on January 14th, he had a Glock 9
20 Titanium. Correct?

21 A. That's not correct.

22 Q. Alright. Hang on.

23 A. They asked me if I'd seen a Glock 9 Titanium - - in either one
24 of their - - in them - - in the presence of either one of them, and
25 I said no.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Now, you were asked by Detective Livingston, "What did the
2 other one look like?"

3 And you testified, you gave a taped statement. You say, "It
4 was Glock 9 Titanium. You know, it was made out of Titanium, and
5 it was heavy."

6 Tell the jury how you knew it was a Glock 9 Titanium.

7 A. I actually own a Taurus 9 mm. Actually, it's my ex-husband's
8 but I have a Taurus 9 mm.

9 Q. Why did you tell the police it was a Glock 9 Titanium.

10 A. I said it looked like a Glock 9. It, in fact, was a Glock 45,
11 and I think they determined that from witnesses after the murder.

12 Q. But you agree with me. You did tell the police it was Glock
13 9 Titanium?

14 A. I said it looked like. Yes, sir. I did say it looked like
15 it.

16 Q. And your exact words, "And it was a Glock 9 Titanium."
17 Correct?

18 Not looked like, it was.

19 A. I wasn't sure what either of those weapons were - -

20 Q. You had - - -

21 A. - - until I sat down with Horry County Police with - - with
22 books on firearms, and I went through, spent hours to identify
23 those weapons.

24 Q. But when they - - -

25 A. I'm not a weapons specialist.

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1 Q. But you told them it was a Glock 9 Titanium.

2 A. I said it looked like a Glock 9 Titanium.

3 Q. Well, that makes you look like a specialist to me. How did
4 you know it was titanium?

5 A. Because I know the difference between plastic and metal.

6 Q. Tell the difference between steel, stainless steel and
7 titanium. Tell the jury that.

8 A. Stainless steel has a higher quality of silver. It's a more
9 concentrated silver.

10 What was the second part of that? And what does this have to
11 do with his trial?

12 Q. I'll ask the questions, and you answer them.

13 THE COURT: Wait a minute. Whoa. Wait a minute.

14 You slow your questions down, and you answer more
15 appropriately, now.

16 You are to answer questions, not ask them.

17 And you are to be more civil.

18 Now, now, proceed.

19 And both of you keep your voices down. We are in a courtroom.

20 Q. Didn't you tell the police that A. J. had showed you a Glock?

21 A. I said A. J. had one.

22 Q. A. J. has a Glock.

23 A. I don't know if he has one or not. He had one about a week
24 prior to this.

25 Q. He showed it to you. Correct?

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1 A. Yes.

2 Q. Okay.

3 Now, when - - when you were house sitting in Murrells Inlet,
4 how long did you stay there?

5 A. I was there prior to being at the Red Roof Inn, and I was
6 there after leaving.

7 Q. Okay.

8 A. I would house sit off and on while Mr. Linsky traveled.

9 Q. Okay.

10 How long were you at that Red Roof Inn? Let's nail that down.

11 A. A total of about six weeks.

12 Q. Okay.

13 Can you remember from when to when because you left on the 8th
14 of January. We know that.

15 A. I would have checked in around the - - I believe around the 3rd
16 of December.

17 Q. Okay.

18 Now, when you left on the 8th, how long did you stay at Mr.
19 Linsky's house? How long did you stay there, ma'am?

20 A. I stayed there for ten days.

21 Q. That would be from the 8th to the 18th?

22 A. You talking about after the murder.

23 Q. Well, you said you checked out on the 8th of January.

24 A. After the murder Horry County Police had me in protective
25 custody, and then I left. I spent one night in Murrells Inlet, and

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1 I went to Columbia, South Carolina where my uncle is.

2 Q. Okay. Hang on.

3 You were in protective custody. When did you go into
4 protective custody?

5 A. On the 12th.

6 Q. Now, who put you into protective custody?

7 A. Ah, Horry County Police.

8 Q. Which one? You know them all.

9 A. I think that's interesting.

10 It was Jason Freer and Scott Rutherford. Jason was protecting
11 me. He was, um, Traffic Patrol, and Scott Rutherford was the
12 Lieutenant, and I think Mr. Large was involved in - - in securing
13 me.

14 Q. Okay.

15 A. I was worried. I was afraid.

16 Q. Okay.

17 Well, I'm confused now.

18 You left the Red Roof Inn on the 8th of January.

19 A. Right.

20 Q. And the murder occurred on the 10th, you say. Monday.

21 A. That's correct.

22 Q. Okay.

23 When did you go into protective custody?

24 A. The 12th.

25 Q. Okay.

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1 Where was your protective custody at?

2 A. They put me in a motel room.

3 Q. Which one?

4 A. Um, Holiday Inn Express.

5 Q. Where at?

6 A. Barefoot Landing.

7 It's - - it's right beside Myrtle Beach Manor. It's past - -
8 it's past, ah, um, it's before you - - prior to getting to
9 Restaurant Row. It's right there at Restaurant Row.

10 Q. How long did you stay there?

11 MR. RICHARDSON: Your Honor, I'm going to object to
12 relevancy.

13 It is days after the murder, and they've pretty much cover
14 everything up to the murder where she was staying.

15 THE COURT: I don't know where he's going. I'm going to
16 give him certain latitude in this issue.

17 MR. AXELROD: Thank you, Your Honor.

18 MR. RICHARDSON: Thank you, Your Honor.

19 THE COURT: But you will have to tie this up, now.

20 MR. AXELROD: Well, we're going to go through it but I'm just
21 trying to establish where this woman says she is saying she stayed
22 at all these different dates.

23 It's very important to her story.

24 THE COURT: Is it relevant to any issue in this case?

25 MR. AXELROD: Yes, it is.

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1 THE COURT: Alright. You are an Officer of the Court, now.
2 I put you to make it relevant.

3 MR. AXELROD: It is relevant, Your Honor. It is relevant to
4 where she says she is on the 12th.

5 Q. So, when did you leave the Holiday Inn Express?

6 A. I would have left it that Friday. The 12th was Wednesday.
7 Actually, Saturday I left Myrtle Beach.

8 Q. On the 15th?

9 A. That's correct.

10 Q. Okay. So, now, the only nights we don't know where you were
11 living at, we don't know where you were living at on the 9th, the
12 10th, the 11th, but the 12th you said you went into protective
13 custody.

14 So, the night of the 9th, the day before the murder, you say
15 you were living in Murrells Inlet?

16 A. Murrells Inlet.

17 Q. Okay.

18 Now, the night of the 10th, the night of the murder, where were
19 you living?

20 A. I stayed at Debbie Stokes' house, Tarpon Bay in [REDACTED]

21 Q. And the night of the 11th, where did you stay?

22 A. Um, I was in Aynor. That was the night he burned his clothes.

23 Q. Where did you stay?

24 A. Um, there was a trailer across from that little store.

25 Q. What street?

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1 A. I believe it to be Gum Street.

2 Q. Whose house?

3 A. I'm not sure of the gentleman's name. He was related to
4 Kariem in some way.

5 Q. You remember everything else. You don't remember the name of
6 the person where you stayed that night?

7 A. It might have been Lewis, Lonnie. Actually, no, I don't
8 remember. I was still in shock. I don't remember. No, sir, I
9 don't.

10 Q. Okay. We'll get back to that.

11 A. Okay.

12 Q. Now, when you drove over to [REDACTED] [REDACTED], were you driving?

13 A. Yes, sir.

14 Q. Okay. Now.

15 It's important. So think about this.

16 Where was Kariem sitting?

17 A. He was in the passenger side in the front.

18 Q. Are you sure?

19 A. I'm positive.

20 Q. One hundred percent, absolutely, cross my heart, hope to die
21 positive?

22 A. One hundred and ten percent.

23 Q. Okay.

24 Then why did you tell the police two days later he was in the
25 back seat?

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1 THE COURT: Whoa. Whoa. Wait a minute.

2 You don't have to holler. Just ask her the question.

3 MR. AXELROD: I'm getting excited, Judge. I'm sorry. I
4 apologize.

5 THE COURT: Well, no.

6 A. I never said he was in the back seat.

7 Q. You never said it?

8 A. No. That's not correct. He was never in the back seat. He
9 was in the passenger seat. The only thing he put in the back seat
10 was he had a gun wrapped up, and he laid it in the back floor
11 board, and Lee moved over, and the gun was laying under the
12 passenger seat under the seat he was sitting in.

13 Q. Okay.

14 Two days after the alleged murder on the 12th of January in the
15 afternoon, you had a conversation with Detective Large and
16 Detective Livingston. Correct?

17 A. That's correct.

18 Q. And you gave a taped statement, correct?

19 A. Correct.

20 Q. And this is a transcript of that taped statement.

21 You say to Officer Large right here. You said to Officer
22 Large, "He got in the back."

23 And Detective Large says to you, "In the back seat of your
24 car?"

25 And you said, "Yes."

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1 A. Lee got in the back.

2 Q. You said Kariem.

3 A. No. Lee got in the back of the car. Kariem was in the
4 passenger seat beside me.

5 Q. Officer Livingston in that same conversation says to you
6 several minutes later, "Kariem was in the back?"

7 And you say, "Yeah."

8 A. That's not correct.

9 Q. And then Livingston says, "So, Kariem sat in the back. Where
10 was Lee?"

11 And you say, "Lee was up front with me."

12 A. Lee was never in the front seat of that car. There was never
13 a time that he rode in the front seat of that car.

14 Q. Then why does - - why does your taped statement - - -

15 A. I don't know who transposed that tape, and I'm not really
16 sure. There was a lot of questions flying at that time.

17 This man was sitting in the passenger seat beside me.

18 Q. So, you're saying a certified court reporter that makes a
19 transcript - - -

20 A. I'm not demeaning anybody's work. I don't know who transposed
21 that. I know what happened.

22 Q. You know - - -

23 A. He was beside me in the passenger seat.

24 Q. Well, why do you - - -

25 A. We have witnesses that can testify. They saw him. He was in

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1 the passenger seat.

2 Q. Why did you tell the police two days after them murder?

3 A. I didn't - - I didn't tell - - I never said Kariem was in the
4 back seat.

5 Q. Are you denying this - - -

6 A. There was never a time the man was in the back seat. That's
7 not true.

8 Q. Are you denying that you told the police that?

9 A. Yes, I am.

10 Q. And you're denying that the tape would lie?

11 A. Um, play the tape.

12 I mean, there was a lot of questions. There was a lot going
13 on. If that was said, I was confused at the time. He was never in
14 the back seat, never.

15 Q. You were confused?

16 A. I would have been confused with all the questions that were -
17 - I answered a lot of questions. I had no sleep for four days. I
18 was in shock. I was scared to death that bunch was going to come
19 after me. There was a lot going on at that time.

20 Q. Was it hard - - -

21 A. But I know that he was in the passenger seat. He was never in
22 the back.

23 Q. Was it hard - -

24 A. Lee was in the back.

25 Q. - - was it hard to keep your stories straight - -

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1 A. No, sir.

2 Q. -- with all --

3 A. No, sir.

4 Q. -- of your stories?

5 A. No, sir. It has not been because I know the truth.

6 I have relieved this every day since it happened. I can't
7 sleep. No. Nothing in your life prepares you for something like
8 this.

9 Q. The truth --

10 A. Nothing.

11 Q. -- the truth --

12 A. And the truth is he was in the passenger seat.

13 Q. The truth is on the 12th you said that he was in the rear.

14 A. That's not correct.

15 Q. How did you get into the car? When you left the scene, the
16 alleged scene where you were at, you were there. When you left it,
17 how did you get into the car?

18 A. He made me crawl across the gear shift. He put me through the
19 passenger door to the driver's door. Lee got in the back, and he
20 got in the passenger seat.

21 Once I was sitting in the car, he put the key in the car.

22 Q. You're fluid in Spanish, aren't you?

23 A. I wouldn't say fluent. I've had, ah, I've had about three
24 years. My sister is an interpreter. She's fluent in Spanish.

25 Q. You were able to ask this man where the dope and where the

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1 cocaine and where the money was, weren't you?

2 A. That's why he was screaming at me to ask him that.

3 Q. And you were able to ask him that. Correct?

4 A. I asked him (witness makes statement in Spanish which this
5 Court Reporter cannot interpret.)

6 Where's the coke and the money?

7 Q. Okay.

8 A. That's what I was instructed to do.

9 Q. So, you speak Spanish.

10 A. (Witness again makes a statement in Spanish which this Court
11 Reporter cannot interpret.)

12 Q. Yesterday - - -

13 A. (Witness again makes a statement in Spanish which this Court
14 Reporter cannot interpret.)

15 Q. So you speak Spanish.

16 A. Enough to get buy, yes, sir.

17 Q. Not just a little, you're fluent?

18 A. I've practiced.

19 Q. You're fluent.

20 A. No, I'm not fluent.

21 MR. RICHARDSON: She says she's not fluent in Spanish.

22 THE COURT: The jury will understand her reply.

23 Q. The gun went off. Tell me about the gun going off. You told
24 the jury about it yesterday. Tell me again. The gun went off.
25 When did the gun go off?

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1 A. He was beating him in the head with it.

2 Q. And when did it go off?

3 A. Ah, with - - we'd been there. Well, he'd been beating him
4 for probably about ten minutes.

5 Q. Well, where - - -

6 A. Screaming at him and beating him in the hallway.

7 Q. And where - - and how was he beating him with the gun?

8 A. He was holding the barrel and hitting him with the handle, the
9 butt of it.

10 Q. And then how did the gun go off?

11 A. Apparently, I guess it discharged from impact the way he was
12 hitting the man's head.

13 He swears up and down he wasn't trying to shoot me.

14 Q. So, he was never - - it's your testimony today that Kariem was
15 never holding the gun on him or something like that.

16 A. He didn't hold the gun on him. He beat him with it. He
17 didn't ever - - he wasn't trying to shoot him. He beat him to
18 death.

19 He had the gun. The only time he pointed the gun, he pointed
20 the Glock at me, and he pointed the Glock at Lee. That was the
21 only time I actually saw him pointing that - - the other gun. He
22 had two.

23 Q. He had two?

24 A. He had two, one in his waistband and one in his hand that he
25 was beating the man with.

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1 Q. Alright, so, but then you said he - - he had two guns out?

2 A. He had one in his waistband, one in his hand.

3 Q. But then you said he pointed one at you. Which one did he
4 point at you?

5 A. He had a Glock that he pointed at me initially, and he stuck
6 it back in his - -

7 Q. Okay.

8 A. - - waistband.

9 Q. Okay.

10 But my question to you was did Kariem ever hold the gun on the
11 guy and then shoot at him?

12 A. No, sir.

13 Q. Okay.

14 Cause you're saying that he's hitting him over the head, and
15 the gun goes off.

16 A. That's correct.

17 Q. You told Detective Large, "He was holding the big gun on him
18 initially when he fired it. He was pointing - - it was pointing
19 down. It didn't hit him."

20 Well, that - - that's contrary to what you said just now,
21 isn't it?

22 A. He was holding the big gun with the barrel of it. It had a
23 big long barrel on it, and he was holding it by the barrel of it,
24 and he was hitting him with the handle, the grip part of the gun.

25 Q. But you said he was holding the big gun on him initially when

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1 he fired it. He was - - he was pointing down. It didn't hit him.

2 A. It was - - it was in his hand. He was holding it on him to
3 hit him, not pointing and presenting. It wasn't like that.

4 Q. When you walked out, who had the guns?

5 A. Kariem had both of them.

6 Q. How long did he have both guns?

7 A. We left there, drove to [REDACTED] Pulled up to [REDACTED]
8 [REDACTED] and Lee and Kariem both got out. The man that was there
9 said, um, he said, "I need you to put this up for me, get rid of
10 it."

11 And he said, "Put it up or get rid of it?"

12 And he said, "Just put it up."

13 Q. Well - - -

14 A. And he said, "Does it have a body behind it?"

15 THE COURT: No. Let her finish.

16 MR. AXELROD: Well, she's testifying to hearsay.

17 A. No, I heard that. I witnessed that conversation. I was
18 sitting in the car with the windows down. I heard every bit of it.

19 He said, "Do you want me to hide it and put it up?"

20 And he said, "Yeah."

21 THE COURT: Who - - who is she referring to?

22 MS. SOWDON: I'm talking about Lee and Kariem.

23 MR. AXELROD: She's talking about somebody else.

24 THE COURT: No. I'm going to exclude that, now. That's
25 hearsay.

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1 MS. SOWDON: Okay.

2 THE COURT: That witness - - that's hearsay. That witness
3 would have to come in and testify.

4 Don't be testifying as to what somebody else has told you.

5 MS. SOWDON: Okay.

6 THE COURT: Objection sustained.

7 Q. Now - - now when you - - -

8 THE COURT: Let me explain to the jury what we call hearsay
9 testimony.

10 Our rule except for certain circumstances does not permit a
11 witness to say what somebody else said. Our rule is that that
12 somebody else has to come in here and testify to that subject to
13 cross examination

14 So when we say "hearsay" that's the testimony somebody who is
15 not in the courtroom.

16 Now, the testimony of the defendant is admissible but other
17 than that, somebody else is hearsay.

18 So when I - - they object, they are saying, "If you want that
19 testimony, bring that witness."

20 Okay?

21 You may proceed.

22 MR. AXELROD: Thank you, Your Honor.

23 Q. Alright.

24 This is important stuff we're going over. Right?

25 A. Very important.

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1 Q. Your testimony today that you went over to [REDACTED]?

2 A. It was [REDACTED]

3 Q. [REDACTED]

4 You went over to [REDACTED] after you left the [REDACTED] [REDACTED].

5 A. That's correct. It's right down the road.

6 Q. You went from [REDACTED] and then from [REDACTED] you
7 went to Paul's house?

8 A. Yeah. The place - - the trailer where Paul was staying in
9 Socastee.

10 Q. So, before you went to Paul's, you went somewhere else?

11 A. That is correct.

12 Q. Then why did you tell the police that when you left [REDACTED]
13 [REDACTED], you went right to Paul's house?

14 Were you lying then or are you lying now?

15 A. I'm not lying any time, and I'm going to say this one more
16 time.

17 I had - - I had not had any rest for four days. I was a
18 nervous wreck. I was in shock from what I had just seen, and I had
19 questions coming at me from everywhere. Okay?

20 We actually left [REDACTED] [REDACTED] and went to [REDACTED] [REDACTED]e. That
21 was the first place that I had Horry County Police go to to get a
22 subpoena for that weapon, and review you records, and that's
23 correct.

24 I spent days with them showing them places that I had never
25 even been having to backtrack to go to them so they could get

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1 subpoenas for these weapons.

2 Q. Yesterday you testified that you didn't have any blood on you.

3 A. No, sir.

4 Q. Is that correct?

5 A. They actually took my clothes. My - - -

6 Q. That wasn't my question. My question - - you can answer me
7 after you answer my question.

8 My question was you testified yesterday that you didn't have
9 any blood on you.

10 A. That's not - - that's not exactly the case. I did have blood
11 on me. I had splatters on my face and my arms but not - - I
12 should have clarified that. I was not soaked in blood. He was
13 soaked in blood.

14 Q. So, it was a lie yesterday when you told in direct examination
15 you said you had no blood on you?

16 A. No. No. I don't believe that was a lie. I believe I - - -

17 Q. But you had blood on you. That's what you're saying today?

18 A. Yeah. Yeah. Because I gave them my clothes. I gave - - I
19 don't know where they sent them to but I gave them the clothes that
20 I had on.

21 Q. Did you have blood on your face?

22 A. I just had some spatters on my face and on my arms.

23 Q. Did you have blood on your neck?

24 A. I had, um, yeah, I had a little bit on my right-hand side.

25 Q. Where else did you have blood?

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1 A. That's all.

2 Q. No other places?

3 A. Other than what would have been splattered on my clothes.

4 I mean, I didn't have - - I mean, it was splatter from where
5 he was hitting him with the butt of that pistol.

6 Q. Where did you tell the police you had blood?

7 A. Honestly, I don't recall where all. They said, "Where is
8 your clothes?"

9 And I went and got my clothes.

10 They could determine from the clothes. You'll have to look at
11 that paperwork.

12 Q. Well, you told the police you had blood on your neck. You had
13 blood in your hair.

14 A. I had splatters around my face.

15 Q. Anywhere else? Think real hard before I tell you what they
16 said you said. Why don't you tell me first?

17 A. Okay. I don't remember. So why don't you go ahead and tell
18 me.

19 Q. You told them you had - -

20 A. I really don't remember.

21 Q. - - you told them you had blood on your hands.

22 A. I don't - - no, that's not true. I didn't have blood on my
23 hands.

24 The only person that had blood on his hands would have been
25 Kariem. That would have been a statement in reference to a

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1 question about his hands, not mine.

2 Q. On January 14th, you told Detective Livingston who is not here
3 right now. He's outside. You told him, "I had blood on my face.
4 I had blood on my hands."

5 Are you lying today or were you lying then?

6 A. Sir, I would appreciate if you would quit calling me a liar.

7 Q. I would appreciate the answer to my question.

8 A. Okay.

9 Well, I never said I had blood on my hands. I had blood - -
10 I had splatters of blood, excuse me, on my face, around pieces of my
11 hair, on my arm, and I told them that it was possible that I would
12 have had splatters on my clothes.

13 I was in very close proximity to him when he was hitting him.

14 Q. So, on the tape that was transcribed when you say you had
15 blood on your hands, you're telling the jury that you never said
16 that?

17 A. I'm saying that I didn't have blood on my hands.

18 Q. Then why did you tell the police that on January 14th?

19 A. I said I had blood on me splattered. He had blood all over
20 his hands. He had blood all over him.

21 Q. Now, you told the jury that you went from [REDACTED] [REDACTED] to
22 [REDACTED] to Paul Graham's house?

23 A. Yes, sir.

24 Q. Now, your testimony on January 12th to the police was that when
25 you left [REDACTED] [REDACTED]e, somebody told you, "Go over to Paul's", and

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1 that's where you sent.

2 A. They did say, "Go to Paul's."

3 Q. And - - and that's where you say you went directly from

4

5 A. [REDACTED] - - [REDACTED] is about two tenths of a mile from
6 where this happened. We pulled in there. They asked - - they
7 asked the man to do something for them.

8 He said, "No, if it's got a body behind it, you can't leave it
9 here."

10 And they said, "Go to Paul's."

11 I'd only been to Paul's one time.

12 I said, "How do I get back to Paul's?"

13 Q. You testified on the 25th to the police, you gave a statement
14 to the police, a taped statement that was transcribed by a
15 certified court reporter. You stated to the police.

16 You stated that when you left [REDACTED] [REDACTED], "They told me to
17 take them over to Paul's. Lee said, 'Go to Paul's.'"

18 MR. RICHARDSON: Excuse me, Your Honor.

19 A. The 25th? When was this?

20 MR. RICHARDSON: I don't have a transcript from the 25th.
21 I've got the 12th and the 14th.

22 MR. AXELROD: I'm sorry. It was the 14th.

23 A. I don't remember one. I wasn't even here on the 25th.

24 THE COURT: Okay, now. Do you need it?

25 MR. AXELROD: No. No.

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1 MR. AXELROD: I made a mistake. It's the 14th. I'm on line
2 25.

3 THE COURT: Alright.

4 MR. AXELROD: It was just a - - that was my bad.

5 Q. Now, on the 14th, you told the police that Lee told you to go
6 to Paul's directly from [REDACTED] Now, you never told anybody you
7 went to [REDACTED] did you?

8 A. Sir, I'm going to say this again.

9 I was in shock. I was not - - it was not a rational decision
10 for me to drive anywhere. I shouldn't have even been behind the
11 wheel of a car in the state of mind that I was in considering what
12 I had seen, and I had - - I actually left that little part out.

13 It wasn't very long. It didn't - - it wasn't very long. It
14 was very short, and I told the truth. So - -

15 Q. You left - -

16 A. - - finish your questions.

17 Q. - - that little part out. Is that what you call it?

18 A. I recalled it afterwards. I had been up for four days, no
19 sleep, no sleep.

20 It came in the second. It came in the second interview. I
21 had time to calm down, get some rest, go back over it. I was a
22 nervous wreck.

23 Q. Well, what are you saying about the second interview? Was
24 that more accurate than your first one?

25 A. They both had very intricate details, I mean, as far as the

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1 way things happened but the Summer Drive, we were just in the
2 driveway and out of the driveway.

3 Q. But you never tell that to the police. You just say, "We went
4 straight to Paul's."

5 A. I didn't know - - at the time I didn't know the physical
6 address. I had to take Horry County Police back and show them
7 where it was, and I was at that time told, "This is [REDACTED]"

8 Q. But it wasn't important enough to put it in your 83 page
9 statement, was it?

10 A. I didn't - - I didn't have - - I mean - - they - - they - - I
11 answered questions for hours.

12 Q. Absolutely.

13 A. I don't know how many pages those statements are.

14 Q. For hours.

15 A. Well, I haven't rehearsed them. I haven't reviewed videos to
16 get my stories straight.

17 Q. Absolutely.

18 A. I'm - - I'm testifying to the best of my ability as to what
19 happened - -

20 Q. And we have all these - -

21 A. - - and it's the truth.

22 Q. - - and we have all these different stories is what we have.

23 A. Well, I'm sorry - - I'm - - well, I'm here to refute that.

24 THE COURT: You're interrupting her. Let her complete the
25 answer, and then you may proceed with your next one.

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1 Thank you.

2 Q. All your different stories.

3 A. I'm refuting several of those different statements. This is
4 the truth.

5 Q. Today is the truth.

6 A. This is the truth. I came to tell the truth. I didn't have
7 to come forward.

8 Q. So are - - -

9 A. I didn't have to do this.

10 Q. So are these all lies - - -

11 A. I didn't ask to be a part of this.

12 Q. Are these lies?

13 A. People asked me for a ride.

14 No, no, they are not lies.

15 Q. Is this the truth?

16 A. But some of what I said appears to have been misconstrued or
17 taken out of context. I know what happened, and I came here to
18 tell the truth.

19 Q. You came here to tell your story.

20 A. No. I came here to tell the truth.

21 Q. You don't want to go to jail for this murder, do you?

22 A. They could have charged me.

23 Q. They still can.

24 A. Well, if they need to they can. I wasn't part of this. I
25 would have never been a party to something like that. That man did

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1 not deserve to die. He shouldn't have been killed. He shouldn't
2 have been beaten like he was, and you're representing a murderer
3 that is guilty.

4 Q. Then why do you leave these important little bits out of your
5 story?

6 A. I was in shock.

7 Q. It suits you to - - -

8 A. No. - - Sir.

9 Q. It suits you, doesn't it?

10 A. No, sir, it doesn't.

11 Q. You're trying to make a story sound plausible.

12 A. I don't have - - I don't have to make a story sound plausible.
13 I know what happened.

14 THE COURT: Mr. Axelrod, you have to get on to another
15 issue, now.

16 MR. AXELROD: We'll move on.

17 THE COURT: Yes.

18 Q. How long - - now, it's your testimony today that you went from
19 [REDACTED] to [REDACTED] and then you drove to Paul's. That - -
20 that's absolutely the truth now?

21 A. Yes.

22 Q. Okay.

23 How long did you know Paul?

24 A. Roughly, um, Lord.

25 Q. Did you know him a long time?

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1 A. Not a long, long time. Maybe seven, eight months, something
2 like that.

3 Q. Is that a long time?

4 A. No, not in my opinion. No.

5 Q. Not in your opinion?

6 A. A long time is eighteen, twenty years. That's a long time.

7 Q. Eighteen, twenty years. You didn't know him eighteen or
8 twenty years?

9 A. No, sir, I did not.

10 Q. On the 14th of January - - Detective Livingston asked you, "Do
11 you know Paul?"

12 And you said, "Yes."

13 A. I said yeah. I knew of him - - knew him. He use to come with
14 them to deliver me crack. He drove them to bring me crack cocaine.

15 Q. Was he a dope dealer?

16 A. Paul was not a dope dealer.

17 Q. Did Paul work?

18 A. Paul worked but he was a user.

19 Q. Where did he - -

20 A. I worked. I was a user.

21 Q. - - where did he work?

22 A. He was working at, um, somewhere on Restaurant Row.

23 Q. Okay, you said. When they asked you if you knew Paul, and
24 you said yes, and then they said, "How do you know him?"

25 And you say, and I quote your words, "I've known him a long

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1 time."

2 Now, you just told the jury a long time is twenty-five to
3 thirty years. Now, you told them on the 14th you'd known him a long
4 time.

5 That was lie, wasn't it?

6 A. Well, I say a long time. It was longer than I'd known him.
7 I'd only known him five days.

8 Q. But you just told the jury a long time to you is twenty-five
9 to thirty years.

10 THE COURT: I will let the jury determine what is a long
11 time be it eighteen years or eight months.

12 Listen. Let the jury make that decision.

13 A. That's a trick question.

14 MR. AXELROD: Yes, sir, Your Honor.

15 Q. What day did you go to Paul's?

16 A. The 10th, January 10th.

17 Q. On the 10th.

18 Now, you say that you go to get Kariem some pants?

19 A. Clothes.

20 Q. Clothes.

21 Tell me again - - just tell me what happens when you pull up
22 there on the 10th, on Monday, the 10th.

23 A. That's correct.

24 Q. What happens?

25 A. Kariem opens the door and tells Lee to go in and get him some

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1 clothes.

2 "Go in the door."

3 The lady that Paul was living with came to the door initially,
4 and Paul was asleep. She went and woke him up. Lee came back
5 three or four times - - -

6 THE COURT: I don't want any hearsay testimony here now.

7 Q. Just tell me what happened.

8 THE COURT: You can say what the defendant said but don't
9 say what somebody else said, now.

10 A. Okay.

11 He went to the door. He kept bringing clothes back to the
12 car. They didn't fit him. One was a pair of those long shorts
13 like they wear. They're real baggy, um, he - - he didn't want
14 those, and Paul ended up coming outside and bringing him sweat
15 pants - - and a sweat jacket that zipped up.

16 Q. And then you testified yesterday that Lee changed right there
17 - - I'm sorry - - -

18 A. Lee did not change. Lee didn't - - Lee didn't have any blood
19 on him. Kariem changed in the car.

20 Q. Kariem changed in the car?

21 A. He sure did. he changed his pants in the car.

22 Q. Was it right there at the trailer?

23 A. It was right there in the car.

24 Q. Right there in the car? When they brought him the sweat
25 pants, he changed?

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1 A. He didn't immediately change, no.

2 Q. Okay.

3 A. He was holding them. There was a lot going on.

4 Ah, A. J. and Julianne pulled up. She got out upset over
5 jewelry she had missing which she later was - -

6 Q. Correct.

7 A. - - able to retrieve.

8 Q. Correct, and let me interrupt now.

9 And when - - when Julianne St. Louis pulls up and there is an
10 argument about jewelry, you testified yesterday under oath that
11 Luther was changing his clothes.

12 A. He had taken his shirt off. He had changed his shirt. He
13 didn't change his pants until after he had gotten the money and
14 made A. J. give him all his money that he had.

15 Q. Okay.

16 So, after A. J. allegedly gives him all his money, did he
17 change his pants right then?

18 A. He changed his pants in the car with the door open. I had the
19 car in reverse.

20 Julianne and Lee had pulled out. I backed out and was pulling
21 out, and that's when he changed his pants.

22 Q. Changed his pants.

23 A. That's correct.

24 Q. So, before you left Paul's house, you went from [REDACTED] Now
25 you're going to [REDACTED] and you go to Paul's. As you're

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1 pulling out of Paul's he changed his pants.

2 A. That's correct.

3 Q. Are you sure?

4 A. I'm positive.

5 Q. That's the truth?

6 A. Uh-huh.

7 Q. So, if you told the police something different earlier, would
8 you be lying?

9 A. No.

10 Q. They asked you about that on the 14th of January.

11 MR. AXELROD: And for the Solicitor's information, it's page
12 28, Mr. Solicitor.

13 Q. Detective Livingston asked you on line 15, "Did Kariem change
14 while he was in the car?"

15 And you answer on line 17, "He didn't never change into them."

16 Now - - -

17 A. That was at Paul's. That was in reference to the question
18 that was asked about Paul's house. He didn't - - they wanted to
19 know if he went inside Paul's house and changed his clothes, and he
20 did not go in the house to change his clothes.

21 Q. I'm glad you asked that because they asked, "Did he change
22 while he was in the car?"

23 And you say, "He didn't ever change. He just took clothes
24 with him. He never changed into them."

25 So, why are you going to tell the jury - - -

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1 A. He had on three shirts. He had on three shirts. He had on a
2 white tee-shirt, and he had on a dress shirt over it, and he had a
3 jacket on top of that.

4 He had on several different pieces of clothing, and he was
5 peeling out of those pieces of clothing. He used one of those
6 shirts to wrap that silver pistol up in it, and it laid in the
7 front floor board, and then when I drove off, he put it in the back
8 floor board - -

9 Q. Yeah - - -

10 A. - - in front of Lee's feet, and then Lee moved.

11 MR. RICHARDSON: Your Honor, just for clarification, I'd
12 like for her to read the sentence before that, and I believe that
13 she's entitled to do that.

14 THE COURT: She is.

15 You may show it to her.

16 He's questioning from this document, and if there's a sentence
17 before that she needs to know, go ahead.

18 MR. RICHARDSON: You will read that to the jury starting
19 with Detective Livingston's question to you.

20 A. Detective Livingston, "So, did while you were there and Paul
21 was going to get the sweat pants, did Kariem get out of the car to
22 change into those sweat pants?"

23 Ah, Ms. Sowdon, my response, "He didn't get out of the car."

24 Said Detective Livingston, "Did he change while he was in the
25 car?"

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1 Ms. Sowdon, "He didn't - - he didn't ever change into them."

2 MR. RICHARDSON: Thank you.

3 Q. "He just took them with him."

4 So, how do you tell the jury today and yesterday that he
5 changed - - you just told us. I'm going to ask you.

6 "He changed - - -

7 THE COURT: Don't face the jury. Face her, sir.

8 Q. "He." You just told us yesterday and today before I showed
9 you this statement and I was specific with you, "When did he change
10 into the pants?"

11 And you said as you were pulling out of Paul's, he changed the
12 pants, and you testified. You made a statement two and a half
13 years ago that he never changed in them.

14 Which is the lie, today or two years ago?

15 A. I never said that he didn't change his clothes. The question
16 that I was being asked was if he went into Paul's and changed his
17 clothes.

18 Q. The question you - -

19 A. He didn't change - -

20 Q. - - were being asked - -

21 A. - - his shoes. He still had his same boots on. He pulled
22 those sweat pants up over his boots.

23 Q. The question that was asked by Detective Livingston was, "Did
24 he change while he was in the car?"

25 And your answer is, "He didn't never change into them."

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1 Explain that to the jury.

2 A. Okay.

3 Well, actually, I don't end sentences in double negatives. I
4 wouldn't have said, "He didn't never change into them."

5 I would have said, "He never changed into them," if that, in
6 fact, was the truth. I'd have to hear that tape and see that tape.

7 He changed his sweat pants as we were pulling out of the
8 driveway. He still had on boots. They were still bloody.

9 He had taken two of his shirts off, the jacket he had and the
10 white tee-shirt because he wrapped the gun up in it.

11 The gold shirt that he had on in between still had blood all
12 over it. His blue jeans still had blood all over it. He had blood
13 all over him.

14 He was wearing a pair of glasses that day that had blood all
15 over them.

16 Q. You know. It's interesting. Every time I ask you about your
17 story, your story is just the way it is, and I go into a statement
18 with you, and then you say, "Oh, it wasn't that way."

19 Just like I asked you about changing the pants. When I show
20 you - - -

21 MR. RICHARDSON: Your Honor, I object.

22 THE COURT: Wait a minute.

23 MR. RICHARDSON: Is this a question or is he testifying?

24 MR. AXELROD: It's a question, Your Honor.

25 THE COURT: No, sir. He's asking her a question.

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1 MR. AXELROD: It's a question.

2 Q. Two years ago you make a statement, and then I asked you
3 specifically, "Did he change his pants?"

4 And you said, "Yes, he - - when we were pulling out."

5 And then when I confront you with the information of what you
6 gave in the taped statement, you - - you deny that those things
7 occur and you change your story that you're in shock and under
8 stress.

9 A. I was in shock and under stress.

10 Q. So - - so, anything you said two years ago, it only matters
11 what you want to say and believe today, isn't it?

12 A. No, that's not correct.

13 Q. Well, what - - -

14 A. That's not correct.

15 If the man was innocent it would be different. It's not
16 correct.

17 Q. What was your - - -

18 A. It very, very important right now.

19 Q. Well, what was Lee wearing on - - on his - - what kind of
20 shoes? You testified he had work boots. Tell me about that.

21 A. Lee didn't have on work boots. Kariem had on work boots.

22 Q. Okay.

23 Tell me about - - -

24 A. He had on tan work boots with a rubber sole around them.

25 Q. Tell - - -

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1 A. They had - - I don't - - like a, um, like a light colored shoe
2 lace like they - - they were work boots.

3 Q. Well, let's really go into a discussion and understand exactly
4 what these work boots were.

5 Tell me about these work boots. Were they high work boots?
6 Were they low work boots?

7 A. They were, like, ankle work boots, and they were tan.

8 Q. Alright.

9 Can you - - can you - - can you show the jury how far the
10 ankle work boots went up? Let's get specific on this.

11 A. They were work boots, like, boots that would come up to about
12 right there. Work boots.

13 Q. Maybe you need to come down here just so they can all see. I
14 don't know if they saw you. I want to be specific.

15 A. They were work boots that came up to about right here.

16 Q. Are they the ones that - - you can have a seat, now. Are they
17 the ones that, ah, that carpenters use and construction people or
18 plumbers?

19 A. Construction people, yeah, construction people.

20 Q. Construction people?

21 A. Carpenter boots, work boots.

22 Q. Are you positive that he was wearing construction work boots?

23 A. Initially he was wearing work boots. He changed into tennis
24 shoes after he went to Julianne's. Julianne had a bag of clothes
25 that he'd left with her. He had a pair of tennis shoes over there.

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1 There was a time - - period of time that he had on work boots, and
2 there was a period of time that he had on tennis shoes.

3 Q. But when - - when the police asked - - when the police asked
4 you what he was wearing at the time of the crime, you said he was
5 wearing sneakers.

6 A. That was Lee. Lee had on tennis shoes.

7 Q. You said, "Lee had on a pair of slip your feet in rubber black
8 shoes."

9 Do you remember telling the police that?

10 A. Lee would never wear something like that. No, I did not say
11 that. I said, "Lee had on a pair of black tennis shoes, black
12 sneakers."

13 Lee wouldn't wear slip-on shoes.

14 Q. So, you're denying. You're denying two and a half years ago,
15 you said, "Lee had on a pair of slip your feet in rubber black
16 shoes."

17 A. I never said that. Lee wouldn't - - Lee doesn't wear shoes
18 like that. That's not true.

19 THE COURT: What page are you on? What page and what line
20 are you on?

21 MR. AXELROD: I'm on page 23. I'm on - - I'm going to be
22 between lines 6 and 20.

23 THE COURT: Okay.

24 Proceed.

25 Q. Detective Livingston asked you, "Do you remember what shoes

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1 they were wearing, like boots or tennis shoes?"

2 And you said, "Lee had a pair of slip your feet in rubber
3 black shoes but they weren't sandals. They were just like a
4 shoe."

5 You deny that.

6 A. Lee never wore anything like that. I guess I'm denying that.
7 I don't believe - - -

8 Q. You said it.

9 A. I didn't say that. I - - I want to see the tape that says
10 I've said that because I did not say that.

11 Q. Maybe we're going to ask the judge if we can play this whole
12 tape.

13 A. Well, that might be a good idea because I did not say that.

14 Q. And then Detective Livingston asked you, he asked you, "How
15 about Kariem? What was he wearing?"

16 And you know what you said two and a half years ago? Tennis
17 shoes, not work boots, tennis shoes. But today you want to say
18 he was wearing work boots.

19 A. They asked me when they were issuing warrants for his arrest
20 when he fled Horry County. He was at large for a period of time.

21 Q. Just answer the question.

22 A. They wanted to know what he was wearing when I last saw him,
23 and I gave them a description, and the last time I saw him, he was
24 wearing the sweat pants with the tennis shoes and a sweat shirt.

25 That's the line of questioning right there because I never

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1 said. He had on work boots.

2 Q. In all your statements and all your - - your 140 pages of
3 statements, you never said he had on work boots. You said he had
4 on tennis shoes.

5 A. He had on tennis shoes when I last saw him. That's the
6 question I was asked.

7 "What was he wearing."

8 They wanted a description of what he was wearing when I saw
9 him last.

10 Q. What was Lee wearing?

11 A. Lee had on a pair of, like, Polo jeans, baggy jeans.

12 Q. What color?

13 A. What do you mean what color?

14 Q. What color?

15 A. They were like dark blue or black, like, a dark, real dark
16 color.

17 Q. And what color shirt was Lee wearing?

18 A. He had on a, um, a black leather jacket over a, like a - - I
19 don't know what they call it. Just like a - - like a jersey
20 shirt, long sleeves. I'm not. It wasn't a tee-shirt.

21 Q. Excuse me. What color was it?

22 A. It had writing on it.

23 Q. Was it black? Was it blue? Was it red?

24 A. I think it was, um, I don't know. That's a good question. I
25 don't know that right now. I don't recall that. I really don't.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. So, if I told you that two and a half years ago, you said Lee
2 was wearing a red pull-up, you would agree with that?

3 A. If I said that. I mean, I gave them a description
4 immediately. So, that would have been fresh in my mind.

5 I don't really remember what Lee - - he had on a black leather
6 jacket over it.

7 Q. Everything was fresh in your mind back then, wasn't it?

8 A. There was a lot going on in my mind back then. I was
9 overwhelmed. I was in shock. I was scared to death that this
10 bunch was going to come after me and retaliate.

11 No, look. I don't know. I don't know what you want me to
12 say.

13 Q. Well, I think it seems that - - well, I'd like you to say the
14 truth. I think it's hard to get to.

15 A. Well, I'm - - that's - - I'm trying to, and it hasn't been
16 hard to get to.

17 Q. Well, it seems - - -

18 A. You're trying to trick me with trick questions.

19 Q. No.

20 A. Ask some straight, open ended questions, and I'll answer them,
21 please.

22 Q. Absolutely, but it just seems that everything is just fresh in
23 your mind of what you want it to be, and you're in shock for every
24 time I show you an inconsistency in a tape recorded statement. Can
25 you explain that to me?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. I've already explained it to you.

2 I had had no sleep for days. I was - - I had a lot of
3 different investigators come in and talk to me. I'd been asked
4 all kinds of questions from narcotics to homicide to everybody and
5 their brother was asking me questions. I was answering them to the
6 best of my ability. I'm still doing that. That's the best I can
7 do.

8 Q. So, when you just told us it was fresh in your mind then, was
9 that true?

10 A. At the time I - - I could recall what was Lee was wearing. I
11 choose to forget that day, um, I know he had on a black jacket, and
12 I know he had on dark pants but he didn't have on any slip-on
13 shoes.

14 Q. So, it doesn't matter what's on the tape, does it?

15 A. Actually, well, I would say the tape is very significant but
16 I would - - I mean, I made two tapes. A lot of questions. No
17 rest, no peace of mind. I mean, I - - I don't know what you want
18 me to say.

19 And I am giving you the truth. So.

20 Q. So - - so when you say on page 23 that he had - - Lee had on
21 like a red pull-up, that would be - - that's the truth this time or
22 not?

23 A. If that's what it says. Honestly, I - - I - -

24 Q. Well - - -

25 A. - - I thought I was pretty descriptive about their clothing.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Yeah, you said Lee had - - you said Kariem had on tennis
2 shoes.

3 A. No. He didn't have on tennis - - that's not true. He had on
4 tennis shoes the last time I saw him.

5 THE COURT: Are you referring to the transcript of the 12th
6 or the 14th?

7 MR. AXELROD: On which question?

8 The last one I'm on right now? I'm referring to the
9 transcript on the 12th.

10 THE COURT: The 12th.

11 Could you provide us with a copy of that? I've got two copies
12 of the 14th up here but not the 12th.

13 MR. AXELROD: No. One should be the 12th and one should be
14 the 14th.

15 THE COURT: Both of them say the 14th.

16 MR. AXELROD: Let me get - - -

17 THE COURT: Both of them say the 14th.

18 MR. AXELROD: Your Honor, I have another one in my car.

19 THE COURT: Counsel, have you got the 12th?

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Bring it up here for me to look at.

22 He provided us - - both of them are the 14th.

23 You may proceed, counsel.

24 Q. Okay.

25 Now, You leave Paul's. Your testimony today is that Kariem

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1 changed, I think. He changed or didn't change I'm confused now.

2 A. He didn't totally change. He changed - -

3 Q. He changed - - -

4 A. He changed his pants. His pants were soaked with blood.

5 Q. Now.

6 Where did you go after you left Paul's?

7 A. Debbie Stokes' and Tarpon Bay.

8 Q. Okay.

9 Is there any - - before we get into this transcript, is there
10 any chance that you went somewhere else, and you just left out that
11 little part? Think about it for a second. I'm going to give you
12 a second to think about it.

13 A. We went to Debbie Stokes' in Tarpon Bay in [REDACTED]

14 Q. Nowhere else?

15 A. I - - after that, Aynor.

16 Q. We'll just go with Debbie - - Debbie's. How long did you stay
17 with Debbie Stokes?

18 A. Um, all day and went to Aynor and picked up Henry Brown. He
19 was another crack dealer that Kariem knew. Debbie knew him, too.

20 Q. Alright.

21 You left Paul's.

22 These guns, who had the guns?

23 A. One of them, um, he dropped off at [REDACTED] - - [REDACTED]

24 Q. Which one did they drop off at [REDACTED]

25 A. That would have been the Glock.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Okay.

2 So, when we went from [REDACTED] - - even though your taped
3 statement says you went straight to Paul's house, you went from
4 [REDACTED] to [REDACTED] [REDACTED] because you forgot to tell everybody that.
5 Right?

6 And that is where you dropped the Glock?

7 A. It was very quick.

8 They got out. The man met them on the porch. They got back
9 in. Gone.

10 Q. And dropped the Glock and out they go.

11 A. It happened very quick. Yeah.

12 Q. Bam, bam, and the Glock was gone.

13 A. That's correct.

14 Q. So, when you got to Paul's house, it's your testimony today,
15 and I don't want to put words in your mouth. It's your testimony
16 today that the only gun in the car at Paul's house or any time
17 after that was that alleged 22.

18 A. It wasn't alleged. It was a 22. That's correct.

19 Yes, that's the only gun that was in the car.

20 Q. The only gun because I want to be sure. The only gun in the
21 car because the Glock was already dropped off at [REDACTED]

22 A. That's correct.

23 Q. The piece that we forgot to say because it was quick. They
24 were in and they were out.

25 A. I don't believe I forgot to say that. That was in the

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1 testimony. I took the Horry County Police back to that house for
2 them to get - - obtain a search warrant to search that property for
3 that firearm.

4 I don't believe I left that out.

5 Q. Okay.

6 Now, you leave Paul's, and you go to Debbie Stokes'.

7 When was the last - - when was the next time you saw Lee?

8 A. Um, we saw him up at Tarpon - - Tarpon - - Forestbrook Grocery
9 Store. He came to Forestbrook Grocery Store to bring Kariem
10 crack.

11 Q. Excuse me. Someone coughed. I didn't hear you.

12 A. He came to Forestbrook Grocery Store to meet Kariem to give
13 him crack.

14 Q. And what time of day was this?

15 A. That would have been about 4:30.

16 Q. In the afternoon?

17 A. Yes, sir.

18 Q. So, you didn't see - - what time did you leave Paul's on
19 Monday?

20 A. It would have been about ten - - 10:20, ten after ten.

21 Q. Sure? Give or take a few minutes?

22 A. To the best of my recollection, yes, sir. That's about
23 right.

24 Q. You have a good recollection.

25 You have a good recollection, don't you?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. I know we left [REDACTED] [REDACTED]. When I started the car and the
2 clock came on, it was 9:23, and that was Monday, January 10th, the
3 day of the murder.

4 Q. And you left Paul's at approximately 10:10 to 10:20?

5 A. Yes.

6 Q. Now, who was in the car with you when you left?

7 A. When I left, it was myself and Kariem.

8 Q. And where did Lee and A. J. go.

9 A. Lee and A. J. went with Julianne - - Julianne.

10 Q. Ms. St. Louis?

11 A. I've never known her last name. If that's her last name, yes,
12 sir, Ms. St. Louis.

13 Q. Julianne.

14 A. Julianne. That's all I knew her as.

15 Q. Drove a Mustang?

16 A. Yes.

17 Q. 2004?

18 A. I don't know what year her Mustang was.

19 Q. Hardtop.

20 Yours was a convertible.

21 A. Well, the one I was driving was a convertible. It wasn't my
22 vehicle but, yes, her was a hardtop.

23 Q. Yours was Mr.?

24 A. Linsky. Linsky.

25 Q. Okay. Now.

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1 The question I want to get to is when you left Paul's and Lee
2 goes with Julianne in the other Mustang, do you ever see Lee again
3 until 4:30 in the afternoon?

4 A. No.

5 Q. Think about that for a second. Refresh your memory. You got
6 good recall. Go back to the day of this murder. Go back to
7 leaving Paul's. Going to Debbie Stokes'. You didn't see until
8 4:30. Think for a second. Did you see Lee any time else?

9 A. Not - - not that day.

10 Q. Okay.

11 Because we're going to talk about that now.

12 A. Okay.

13 MR. AXELROD: Your Honor, I'm going to be on the second
14 statement now. Somewhere in the area of page 30.

15 THE COURT: You're talking about the 14th?

16 MR. AXELROD: Yes, sir, Your Honor.

17 THE COURT: Alright, sir. Page 30.

18 Let the record reflect that I'm opening this transcript.

19 MR. AXELROD: I'll get Your Honor - - there was suppose to be
20 one for the 12th and the 14th. I'll get you another one as well as
21 the Reporter.

22 THE COURT: Go ahead.

23 Q. Detective Livingston says to you, "She got back in the car.
24 We got in the car."

25 And you nod your head correct, and Detective Livingston asked

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1 you, "Did they follow you anywhere or did they just leave and go?"

2 And you say, "They left."

3 Correct?

4 A. Uh-huh.

5 Q. Okay.

6 Where does Debbie Stokes live?

7 A. Off [REDACTED] in Tarpon - - well, I don't know if she
8 still lives there now but that's where she lived then. Off
9 [REDACTED] and Tarpon Bay.

10 Q. You're testifying on the 14th of January that Kariem says to
11 you, "Take me to Aynor."

12 A. He did say, "Take me to Aynor."

13 Q. Right after Julianne and Lee leave, he said, "Take me to
14 Aynor."

15 A. Uh-huh.

16 Q. And then you say - - "We got half way to Aynor."

17 Now, you just told the jury you went to [REDACTED] Here
18 you're saying two days - - three days after the alleged murder here
19 that you're saying you got half way to Aynor.

20 Now, why did you tell the police you went to Aynor when you
21 left Paul's house if you're telling the jury today that you went to
22 Debbie Stokes' house?

23 A. We didn't' go all the way. He wanted to go to Aynor. We
24 didn't go all the way to Aynor. I got half way to Conway, not
25 Aynor, and we turned around and went back to [REDACTED]

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1 Q. To Debbie Stokes'.

2 A. To her house.

3 Q. So it's your testimony today that when you turned around
4 somewhere in Conway, and I'm not trying to trick you, you went
5 directly to Debbie Stokes' house?

6 A. That's correct.

7 Q. Are you sure?

8 A. I'm positive because Henry Brown was already there.

9 We turned around and took - - we took him back to Aynor.

10 Q. Okay.

11 So, now, you leave Paul's and you head to Aynor and you turn
12 around. You go to Debbie Stokes' house. The Glock has already
13 been left at [REDACTED]

14 A. [REDACTED]

15 Q. Okay.

16 We got the parameters of where we're going to go.

17 A. He took the - - he took the 22 into Debbie Stokes' house.

18 Q. Okay.

19 A. Matter of fact, that night it was underneath her mattress.
20 She didn't have a bed frame.

21 Q. Okay.

22 A. She just had a mattress on the floor, and he put it up
23 underneath her mattress in her bedroom.

24 Q. Let me just back you up a bit.

25 Why did you tell the police that while you were going to

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1 Aynor, Lee called Kariem?

2 A. He did call him.

3 Q. And what did he tell him?

4 A. He told him he had re-upped. He had gone down to the Cadillac
5 Court Motel and he had re-upped. He had more cocaine. He had
6 more crack.

7 Q. You never told that to the police.

8 A. They didn't ask me that.

9 Q. But what you did tell the police is not that story, is it?

10 A. That's not true either.

11 Q. Okay.

12 A. They asked me. I answered the questions that the police asked
13 me, and I answered a lot of them.

14 Lee did, in fact, call, and he had gone to the Cadillac Court
15 Motel to re-up. He had gotten more crack.

16 Q. Isn't it true you told the police - - isn't it true that you
17 told the police that Lee called Kariem and told Kariem to come back
18 to meet him?

19 A. At Tarpon Bay at the grocery store.

20 Q. At the grocery store at Tarpon Bay.

21 A. At Tarpon Bay.

22 Q. But that was 4:30 in the afternoon. You just said you were
23 going to Aynor in the morning. Now, you just testified the
24 grocery store was 4:30 in the afternoon. Get your story straight
25 today.

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1 A. We went to Debbie's first. Lee had to wait on Julianne.
2 Julianne had to pick up her little girl or pick up her child from
3 somewhere.

4 We went to Debbie Stokes' house, and we were at Debbie Stokes'
5 house when Lee made that phone call for us to meet him, and we met
6 him at Tarpon Bay Grocery.

7 Q. Then why did - - -

8 A. At Forestbrook - - actually, it's Forestbrook Grocery Store.

9 Q. Then, tell me this.

10 Why did you tell the police from January 14th, why did you tell
11 Detective Livingston that, "Lee called Kariem and we went back to
12 meet him in the parking lot of the Sonic Restaurant."

13 A. That's right down the road from the Sonic Restaurant.

14 Q. You never told us you went to the Sonic until I bring it up.

15 A. We didn't meet him at the Sonic.

16 Q. Why did you tell the police?

17 A. We were suppose to meet him at the Sonic. We didn't meet him
18 at the Sonic.

19 Q. You never met him at the Sonic?

20 A. We didn't meet him at the Sonic. We met him at Forestbrook
21 Grocery Store.

22 Q. And then when you tell the police, "And then we met him right
23 there in the parking lot of the Sonic."

24 Is that a lie or is this a lie?

25 A. It wasn't - - we didn't meet him in the Sonic.

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1 Q. It says it. You told them it.

2 A. You're going to have to get the video, and I don't know how
3 many times you want me to say this. I mean, you can badger me all
4 you want to but it's not going to change what happened.

5 Q. Ma'am, I'm not badgering you.

6 A. I told you. I was in shock. I had a million questions being
7 hammered at me. I tried to answer all of them as best I could.

8 I - - I mean, I was under a lot of duress at that time, and I've
9 just - - I mean, I've already told you the truth.

10 Q. Why did you - - -

11 A. So, it's not going to change, and I don't know. I haven't
12 seen those transcripts.

13 Q. I know.

14 A. I mean, I - - they could have given them to me, and I could
15 have practiced them. I don't need to. I know what happened.

16 Q. Maybe they should have given them to you to practice.

17 A. No. I got - - no because the truth is the truth.

18 Q. Why - - why didn't you pick McDonald's? For being in so much
19 shock, why did you pick Sonic for story?

20 A. I didn't pick Sonic.

21 Q. You didn't pick Sonic?

22 A. I know Sonic is where we usually met him to buy crack from
23 him.

24 Q. You told the police you met in the parking lot of the Sonic,
25 and what did you tell the police Lee - - Lee gave to Kariem back?

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1 What did Lee give to Kariem in the parking lot of the Sonic?

2 I'm going to ask you before I tell you what you told the
3 police. What did Lee give Kariem in the parking lot of the Sonic?

4 A. He gave him crack.

5 Q. No.

6 You told the police he gave him the Glock. You gave - - he
7 gave him the Glock.

8 A. The man - -

9 Q. How he could get - - -

10 THE COURT: Wait a minute. Wait a minute. Let her answer
11 now.

12 Go ahead.

13 A. The man at [REDACTED] did not want to hold that firearm.
14 Lee and Julianne went back out there and retrieved that gun. Lee
15 told him and he looked him dead in his eyes, and they had question
16 - - there was a little spat there about whether him being afraid of
17 Kariem, and he told him that he wasn't afraid of him but he wasn't
18 going to hold his weapons either.

19 Q. Well - - -

20 A. And at the time he gave him the Glock back.

21 Q. But you never said that. You just told us that you went - -
22 excuse me.

23 A. Okay.

24 Q. You told us, ma'am, you told us. You went from Paul's towards
25 Aynor. You turn around. You go to Debbie Stokes' in [REDACTED]

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1 and the next time that you all saw Lee was at 4:30 at the grocery
2 store to re-up.

3 A. It was - - it was 4:30.

4 Q. But did - - but, now, you're saying, "Oh, the Sonic occurred."

5 A. I mean, if you're asking for - - I mean, if - -

6 Q. I'm asking for - - -

7 A. - - you detailed description.

8 THE COURT: Wait. One at a time, please.

9 A. You want a detailed description of that because if you do, you
10 should ask your client. He was there.

11 Q. I'm asking you because you made the statement.

12 A. Okay. Well, the statements I made, I was - - I - - I'm going
13 to say this again.

14 I answered a million and one questions for numerous people
15 within Horry County as far as their law enforcement. I answered -
16 - I answered them to the best of my ability. I'd had no sleep. I
17 was in shock, and I - - I mean, the biggest thing with that is,
18 yes, that there was a point in time when he was in receipt of that
19 Glock again.

20 And it happened at 4:30. We pulled - - we did actually pull
21 up to Sonic, and there was an Horry County police officer sitting
22 in the driveway.

23 If you need all the details, let's go ahead and talk about it.

24 There was an Horry County police officer sitting in the
25 driveway. He wasn't going to hook up with Lee because Lee would

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1 have been busted right there in the parking lot with possession of
2 crack cocaine with the intent to distribute it, and he had crack on
3 him, too, plus, he had marijuana.

4 So, instead of pulling into the Sonic, they follow us down the
5 road to the Forestbrook Grocery Store where we pulled into the
6 parking lot by the pay telephone which is where he started calling
7 him from when his cell phone battery died, and at that time Lee had
8 been to get more crack.

9 He owed Kariem money for marijuana, and there was an exchange
10 of crack and at that point in time he took the Glock back in his
11 possession.

12 The Glock wasn't his, and I don't know if the 22 was his or
13 not.

14 Q. Okay.

15 When did he take the Glock back?

16 A. 4:30.

17 Q. Are you sure? Are you really sure or are you making another
18 story? Think about it for a second. Take your time. It's
19 important.

20 A. I'm thinking I already told you what happened. I'm not
21 responsible for your belief system. That's what happened.

22 Q. Well, you told me - - -

23 THE COURT: You just, ah, you just answer counsel's
24 questions, now.

25 MS. SOWDON: Well, he's wearing me out, Your Honor. That's

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1 not right.

2 THE COURT: We don't need any side comments from you
3 either.

4 You answer the questions, please.

5 Alright. Proceed.

6 Q. You're telling the jury that when you left Paul's going half
7 way to Conway, your first story today was you went right to Debbie
8 Stokes' house. In fact, your testimony yesterday was you went to
9 Debbie Stokes' house.

10 Now, your testimony is because I brought up the Sonic that you
11 - - when did you go to Sonic?

12 A. You're asking me specific questions.

13 Q. When did you go to Sonic?

14 A. If you ask me to just go ahead and tell what happened, that
15 would be simpler. It would save a lot of time.

16 Q. You did that yesterday. I'm going to ask you when you went to
17 the Sonic.

18 A. Prior to him pulling into Forestbrook Grocery Store.

19 Q. What time was that? Just tell me the time.

20 A. It was around 4:30.

21 Q. Okay.

22 You went to the Sonic at 4:30?

23 A. Yes.

24 Q. In the afternoon?

25 A. That's correct.

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1 Q. And did - - what happened when you pulled into the Sonic at
2 4:30 in the afternoon?

3 A. Did - - I didn't actually pull in. Lee and Julianne were
4 sitting there, and Horry County police car pulled in.

5 Q. And what did you do?

6 A. He told me to drive on.

7 Q. Who told you?

8 A. I drove past it. Circled around. He called him on his cell
9 phone. He said, "Meet us. Meet us down the road."

10 Q. So, it's your testimony today that you never pulled into the
11 Sonic?

12 A. No. I didn't pull into the Sonic.

13 Q. Now, let - - let's talk about this before I go back over to
14 the transcripts.

15 At 4:30 in the afternoon it's your testimony today that you
16 drive by the Sonic, and you saw Lee and Juli sitting in the Sonic
17 and you saw a police officer. So Kariem told you to drive on.

18 A. Uh-huh.

19 Q. Okay.

20 Is it because - - then why did you tell the police you met him
21 in the parking lot of the Sonic, and he gave Kariem the Glock.

22 Tell that, now, because that doesn't make any sense that you
23 just said that you didn't go into the parking lot ever, and now
24 you're testifying that you made a statement to the police that Lee
25 gave him the Glock in the parking lot.

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1 A. When they asked me. They were asking me so many questions.
2 I mean, there were details that - - that weren't given. We jumped
3 - - we jumped from one subject to another, and I'd go back.
4 Sometimes I'd know who they were talking about. Sometimes I
5 wouldn't.

6 He didn't actually give him the Glock at the Sonic. It
7 happened at the Forestbrook Grocery Store by the pay telephone.

8 Q. I quote your words, "We met right there in the parking lot of
9 the Sonic, and he gave Kariem the Glock back and told him to take
10 it to his cousin's house."

11 So, tell me why - -

12 A. Okay. Well, I - - -

13 Q. - - tell me why those words are wrong.

14 A. Well, they're wrong because I was incorrect about the location
15 of where it - - where it transpired.

16 Q. But you were all - - you were correct until I show you this.

17 A. Excuse me?

18 Q. Well, you never said that? Is your testimony today that you
19 never said that that you met him the parking lot of the Sonic, and
20 he gave him the Glock?

21 A. I said he called him on the phone and was suppose to meet him.
22 We were suppose to meet him in the parking lot of the Sonic.

23 Q. At 4:30.

24 A. To get crack. No, there wasn't a specific time.

25 Q. But you met him at 4:30.

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1 A. To - - to get crack and for him to get that gun back.

2 Q. So, this happened all in the afternoon?

3 A. To take it to Aynor.

4 Q. This happened in the afternoon?

5 A. This happened - - because Lee was waiting on Julianne. She
6 had to pick up her child from - - from somewhere.

7 Q. So, it happened in the afternoon?

8 A. Yes.

9 Q. Not the morning?

10 A. No.

11 Q. Okay.

12 Now, the time you went to [REDACTED] - - 6 - - I'm not sure
13 of the address - - 6 something - - 621 [REDACTED] did you go to
14 [REDACTED] prior to going to Paul's?

15 A. Yes.

16 Q. Okay.

17 Now, did you go back to [REDACTED] after leaving Paul's?

18 A. Yes.

19 Q. And when was that?

20 A. That would have been after we met Lee and Julianne.

21 Q. And why did you go back to [REDACTED] the second time?

22 A. There's a girl that lived across the parking lot, Donica, that
23 he knew. I knew. I knew from buying crack from her. He knew her
24 from selling crack to her, and, then, I guess, turning around and
25 buying from her. He went - - he went by her trailer - - which was

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1 right down - - it was within about four houses of the first house
2 we went to.

3 Q. So, what was the reason for going to [REDACTED] again, the
4 second time? Was it to get drugs?

5 A. No. He had just gotten drugs from Lee.

6 Q. What was the purpose of going back to [REDACTED] the second
7 time?

8 A. Ah, I believe that was to get money from Donica. I'm not
9 sure. You'll have to ask him what he wanted to go back.

10 I don't know why he wanted to go back there.

11 Q. Did Lee have the gun at that point?

12 A. No.

13 Q. So, when you tell the police on January 14th that Lee gets in
14 your car and gives Kariem the Glock and tells him to take it over
15 to his cousin's house, that was a lie?

16 A. That was his cousin on [REDACTED] and his other cousin is
17 the person I'm talking about, Donica. She's right across the way.
18 They're about four houses apart.

19 Q. Right.

20 But you say that - - he gets in the car at the Sonic to take -
21 - he's taking the Glock back over the [REDACTED].

22 So, the Glock was already gotten rid of, and you just
23 testified the reason you went to [REDACTED] the second time was
24 for drugs.

25 A. He - - -

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1 Q. Get your story right.

2 A. I've already given you the right story. That's not what I
3 said.

4 Q. Was your right story your story today - - -

5 A. That's not what I said.

6 Q. That's not what you want to hear what you said.

7 A. No, that's not what I said.

8 Q. What did you say when you talked about the Sonic?

9 A. You just asked me about my previous testimony.

10 Q. Alright.

11 A. That's not what I said.

12 Q. I want to ask you about the Sonic.

13 You leave Paul's. Kariem tells you to take him to Aynor, and
14 you tell the jury yesterday what you do is you went to Debbie
15 Stokes'. You don't talk about the Sonic. You don't talk about
16 the Sonic until I bring up the Sonic because the Sonic doesn't make
17 any sense with your story.

18 A. I wasn't asked about the Sonic yesterday.

19 Q. Okay.

20 Tell me what happens with Juli at the Sonic. You tell me
21 what happened. Since you know everything and you have a good
22 recall, what happened to Juli at the Sonic?

23 A. I don't have - - they - - there wasn't anything that happened.
24 Actually, she was pulled. When she came out of the parking lot,
25 she was pulled over. That's what happened to Julie at the Sonic.

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1 The police pulled her over. Horry County police pulled her over
2 but Lee wasn't in the vehicle.

3 Q. Why wasn't Lee in the vehicle.

4 A. Because he had walked into the Sonic.

5 Q. Lee wasn't - - -

6 A. We passed the Sonic.

7 Q. Then tell me - - -

8 A. We passed the Sonic, and the Horry County police were in the
9 parking lot.

10 Q. Was that - - -

11 A. They pulled her coming out of the parking lot. That's what
12 happened to Julianne, and I don't know what the outcome of that
13 was. You'll have to ask her. I don't know that.

14 Q. Well, we're going to talk about your transcript.

15 So, what you tell the police on the 14th of January is that,
16 "We met them in the parking lot of the Sonic. Lee gives Kariem the
17 Glock and Lee - - and Kariem makes Lee get in the car."

18 Your story to the police that day was, "Kariem makes Lee get
19 in the car and they made Juli wait for them in the parking lot of
20 the Sonic in the morning."

21 Now, I want you to tell - - -

22 A. This wasn't in the morning. This did not happen in the
23 morning, and Lee did not - - Lee got into the car at Forestbrook
24 Grocery. This was well after we had already passed the Sonic. The
25 Horry County Police were in the Sonic. They pulled her over. She

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1 was coming - - I went past the Sonic. She was pulling out on the
2 back side of it, and they - - that's when they turned on their blue
3 lights.

4 Q. Then why did you tell the police that Juli waited in the
5 parking lot of the Sonic for you to return?

6 A. She was waiting with Horry County Police.

7 Q. Why - - why did you tell the - - why did you tell the police
8 she was waiting in the parking lot of the Sonic for you to return?
9 You just testified she wasn't in the parking lot.

10 A. No. I testified I didn't pull into the parking lot. She was
11 pulling into the parking lot.

12 Q. Then, how did Lee get to - - -

13 A. She - - that's where she got pulled over by the Horry County
14 Police was in the parking lot of the Sonic.

15 Q. Then, how did you - - -

16 A. The conversation that Kariem and Lee have on the telephone on
17 my way to Aynor was to meet Lee at the Sonic. We - - when we first
18 - - the first time we went by the Sonic, they weren't even there.
19 I was heading back down the road, back down 544 which is not that
20 far from [REDACTED] and going to Tarpon Bay, and he called
21 again, and Julianne had to pick up her little child.

22 Q. How many times you go to the Sonic?

23 A. We went to the Sonic two times.

24 Q. Two times. Now, when was that? Let's put that into the
25 story. Let's - - let's see what time that was.

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1 A. You're asking me specific - - specific questions. Why don't
2 you just ask me what happened, and I'll go ahead and give you the
3 time line - - -

4 THE COURT: Ma'am, you're not following the rule. Let him
5 go ahead and ask the questions, and you answer them, please.

6 MS. SOWDON: Okay.

7 Q. What time did you go to the Sonic?

8 A. It was around 4:30. Well, actually, it would have been right
9 before we went to Forestbrook Grocery. It would have been about 3
10 - - 3:30, probably about 3:30.

11 Q. And when was the other time you went to the Sonic?

12 A. We went by the Sonic at about 4:30.

13 Q. So, you went to the Sonic at 3:30 - - -

14 A. They weren't there the first time, and they were late. She
15 had gone to pick up her child.

16 Q. Did you ever park the car in the Sonic?

17 A. No.

18 Q. Then why do you tell the police you do? You answer me that
19 question. Why did you tell the police you park the car and Lee
20 gets into the car with you? Tell me why you told the police that.

21 A. He didn't get into the car at Sonic.

22 She got pulled over at the Sonic. Lee had dope on him.
23 That's what they call holding. That's why he didn't want to be in
24 the parking lot of the Sonic.

25 Q. Okay.

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1 Detective Livingston asked you - -

2 A. He walked inside of the Sonic.

3 Q. - - Detective Livingston asked you, "So you're leaving.
4 You're going to Aynor?"

5 And your exact words on tape are, "Yeah, we got half way to
6 Aynor, and Lee called Kariem on his cell phone and said come back
7 to meet him, and we met him right there in the parking lot of the
8 Sonic, and he gave Kariem the Glock back and told him to take it
9 over to his cousin's house.

10 And Kariem said, 'No. You've got to get in here, and you're
11 rolling with us. You're going to do this.'

12 So, Lee told Juli to wait on him."

13 A. That happened at Forestbrook Grocery. We'd already been to
14 the Sonic. She was pulled over in the parking lot of the Sonic.

15 Q. You make the story fit whatever you want it to fit today,
16 don't you?

17 A. That's not correct.

18 Q. Well, it's not - - that's not your story two years ago.

19 A. That was - - that's not correct, and I've already said. I
20 mean, I answered a million questions. I'd had no sleep. I was in
21 shock. I've gone over this a million times since then in my mind,
22 and I know what happened, and if you don't want the truth, why
23 don't you just stop questioning me?

24 Q. I do want the truth, and that's why I'm questioning you.

25 A. Well, it's important now. I mean, his freedom's at stake here

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1 but what he did was wrong, and he shouldn't have killed that man.

2 And it's very important.

3 Q. My question to you is and I need you to explain this to me is
4 that every time I show you an inconsistency of the story of yours,
5 you tell me. Your answer is you were in shock, and they asked you
6 a thousand questions, and then every time you want to say today or
7 yesterday, it's because it's crystal clear concerning, say, the
8 work boots or the tennis sneakers.

9 You know, your stories are inconsistent. They're gravely
10 inconsistent because you know what interests me is the first story
11 you never talk about the Sonic to the police. Your second story
12 you talk about the Sonic to the police, and you're very, very
13 graphic about having Juli waiting for you in the parking lot of the
14 Sonic.

15 Now, you're saying you were in shock. You were stressed, and
16 it never happened at the Sonic. It happened at the Forestbrook
17 Grocery Store.

18 Maybe the murder didn't happen the way you're saying either,
19 did it?

20 A. No, that's not true.

21 Q. Why should I believe that when I can't believe anything else
22 you're saying here?

23 A. Well, - - and I've said - - I'm going to say this again.

24 I don't know what - - clearly, some of the things I said were
25 taken out of context. That's not the - - you know, they may have

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1 been asking me something that I answered differently to or I
2 thought they were talking about somebody.

3 There was - - there was a lot of activity going on during
4 that time between questions for, ah, Horry County Narcotics - I've
5 already said this - the homicide investigators, the detectives.
6 There was a lot of questions from everywhere.

7 So, um - - Julianne had a little girl. She didn't want to be
8 in trouble. Lee's girlfriend, Mandy, has a little daughter by him
9 that they didn't want to be in trouble, didn't want to be involved,
10 didn't want - - didn't want to come forward.

11 I tried to get Julianne to come forward with me herself. That
12 didn't happen. They didn't want to cooperate. So.

13 Q. Okay.

14 Now, when did you leave Paul's, the time of day. 10:20? Is
15 that the time you said?

16 A. Yeah, about 10:20, 10:30, that's correct.

17 Q. And when did you arrive at Debbie Stokes' house?

18 A. Um, it was about 11:15, maybe a little bit later.

19 She was on her lunch break from Coastal.

20 Q. So, on - - on Monday, you get to Debbie Stokes' at 11:15.

21 A. Give or take fifteen minutes, yes, sir.

22 Q. How long did you stay at Debbie Stokes' and where did you go
23 from Debbie Stokes'? I want to get the time line like you asked
24 for. Let's get it straight.

25 What time did you leave Debbie Stokes'?

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1 A. We left there the first time to go get cigarettes.

2 Q. What time was that?

3 A. That would have been about, um, she was heading back to - - it
4 would have been about one, 1:00, we went to get cigarettes.

5 Q. And - - -

6 A. Actually, we bought beer, too.

7 Q. Okay.

8 A. And blunt rolls.

9 Q. Okay.

10 How much beer did you buy?

11 A. Um, it was, ah, actually, it was wine coolers. It was
12 Smirnoff, the Smirnoff Ice Green Apple Wine Coolers and two big - -
13 the big beers.

14 Q. You're not in shock now, are you? You remember that.

15 A. Are you being facetious?

16 Q. No, I asked a question.

17 THE COURT: Ma'am, don't ask questions. All you do is
18 please answer the questions, now. I told you twice. I will not
19 tell you again. Follow the rule.

20 A. Ask your question again, please. Ask it again.

21 Q. I said you were clear about that, weren't you? You remember
22 that. You weren't in shock then, were you?

23 A. No, actually, I was still in shock.

24 Q. But you remember what you drank?

25 A. No. I remember the money I had I bought that. That's what I

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1 bought.

2 Q. Were you high that day?

3 A. Yes, I was.

4 Q. What - - what drug - - let's start - - let's start with the
5 morning, the 10th, the Monday. What drugs did you do that day?

6 A. None.

7 Q. Okay.

8 We're at Monday afternoon, now. You say you're high. When
9 did you get high?

10 A. We got high Monday afternoon.

11 Q. When did you get high?

12 A. Monday afternoon.

13 Q. Where?

14 A. At Debbie Stokes' house.

15 Q. When she was on break at lunch?

16 A. Yes.

17 Q. You got high?

18 A. Henry Brown was there.

19 Q. And what kind of drugs did you do that day?

20 A. Smoked crack.

21 Q. Okay.

22 So, is it your testimony today that in the morning you weren't
23 high at all?

24 A. No.

25 Q. Didn't do any drugs?

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1 A. I didn't smoke any crack.

2 They - - he was smoking it when I picked him up.

3 Q. And you picked him up at Juli's that morning?

4 A. Clay Pond.

5 Q. At Juli's house?

6 A. Yes.

7 Q. Sure?

8 A. I'm positive.

9 Lee had been staying at a motel somewhere over near Fantail's.
10 There was a motel over there that we had gone to Thursday. It
11 was, actually, it was Friday night. We had gone to a motel over
12 there to get crack from Lee and A. J.

13 Q. Okay, now.

14 When you - - when you were asked to - - in the statement you
15 tell the police that you're at the Red Roof Inn Monday morning, but
16 you're saying that's totally a mistake?

17 A. I wasn't at the Red Roof Inn Monday morning. I left the Red
18 Roof Inn Saturday, Saturday morning.

19 Q. And you knew that they were going over to get drugs or
20 something. Correct?

21 A. When was this? I mean when?

22 Q. Monday morning.

23 And they were going - - when you were going to [REDACTED],
24 you thought that everybody was going over to buy - - get drugs.

25 A. Either get, yeah. Suppose to pick up some money, and Kariem

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1 was going to get cocaine.

2 Lee wanted to go - - he wanted to see his probation officer in
3 Conway.

4 Q. Okay.

5 Now, see if I have your time line, the time frame now.

6 You leave Paul's. You head towards Aynor. You turn around.
7 This is at 4:30 in the afternoon. So, you turn around. That's
8 when you drive by Sonic twice, and you go to [REDACTED] and you
9 get drugs and you get high at some point.

10 A. Yes. It was later afternoon by then. That's correct.

11 Q. Were you doing more crack in the afternoon? You did it at
12 11:15 in the morning. Were you doing it in the afternoon.

13 A. Didn't do it at 11:15 in the morning.

14 Q. Okay.

15 You just testified that when you went to Debbie Stokes' house
16 - - -

17 A. We - - we went to Debbie Stokes' house. It was 11:15 when
18 that happened.

19 Q. You just changed your story.

20 A. She was on lunch break, and Henry Brown was there.

21 Q. You just testified - - -

22 A. Actually, he was his way there from Aynor.

23 Q. You just testified - - -

24 A. And he was bringing crack to her house.

25 Q. You just testified at 11:15 in the morning you went over to

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1 Debbie Stokes' house. She was on her lunch break from Coastal, and
2 you got - - you smoked crack.

3 Q. We didn't smoke crack until after Henry Brown got there. He
4 didn't get there - - -

5 A. That's 11:15 in the morning.

6 Q. No. He didn't get there until, like, fifteen minutes until
7 one, and she had to go back to work but she went back to work and
8 got off early.

9 Q. So, when you told us that you - - -

10 A. She got off at, like, 2:30 that day.

11 Q. So, when you told us that you did crack at 11:15, that was a
12 lie now?

13 A. You asked me what time we went to Debbie Stokes' house, what
14 time we got there. You didn't ask me, no. It was after - - we -
15 - we had been there about an hour and a half, maybe almost two
16 hours when Henry showed up and we actually smoked crack.

17 Q. Okay. Now.

18 We're about 5:00 in the afternoon now. You're at Debbie
19 Stokes' house on Monday?

20 A. No. We're meeting Lee at Forestbrook Grocery.

21 Q. Okay.

22 And then you re-upped and you got more crack?

23 A. I didn't re-up. Lee owed him money.

24 Q. Okay.

25 So, did you get high at that point?

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1 A. We got high. Yeah, we got high Monday evening. That's
2 correct.

3 Q. What I want to know is from 4:00, what did you do in the next
4 two hours? Where did you go in the next two hours? You tell me
5 before I tell you.

6 A. Where did I go.

7 Q. Uh-huh.

8 A. Monday evening, the day of the murder?

9 Q. The day of the murder.

10 A. Went to - - went to Aynor.

11 Q. You went to Aynor.

12 A. We drove to Aynor to take Henry Brown home.

13 Q. Now, tell the jury what happened. I mean, okay. You go to
14 Aynor. So, Monday evening you go to Aynor. Tell me what happened.

15 A. What happened?

16 Q. What happened?

17 A. We dropped off Henry Brown and went back to Debbie Stokes'
18 house.

19 Q. Okay.

20 A. We didn't go to Aynor. We didn't stay in Aynor until Tuesday.

21 Q. You went to Aynor on Tuesday?

22 A. We went back to Aynor on Tuesday, and that's when I was taking
23 him home. He wanted me to take him to New Jersey. I wasn't going
24 to take him to New Jersey and I - - by that time I actually had
25 some clarity. I wasn't in shock anymore, and he looked at Henry

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1 Brown, and told Henry Brown, "I'm going to have to kill this
2 bitch."

3 And when he looked at me and said that, I said, "I have got a
4 problem with this because you are not going to kill me."

5 And I had already watched him kill somebody else.

6 And I told him, no, I wasn't taking him to New Jersey. If I
7 had to, I'd leave walking, and at that time I was riding with
8 Debbie Stokes. She was sitting in the driveway.

9 Q. Now, when you went to Henry Brown's that night, that night - -
10 Monday night, the night of the murder, Monday night. The murder
11 occurred Monday morning.

12 A. That's correct.

13 Q. This is Monday night. You go to Henry Brown's. How long did
14 you stay there?

15 A. We went there. He was at - - he was at his mother's home. he
16 was at his momma's house.

17 Q. So, you left?

18 A. That's correct.

19 Q. How long did you stay there? It's very important.

20 A. We - - we didn't stay there probably, ah, not long. About
21 twenty, thirty minutes maybe.

22 He gave him the - - that's when he gave him the silver - -
23 actually, that was Tuesday that he gave him the gun. That wasn't
24 Monday night.

25 He was hooking him up with crack.

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1 Q. Now, was this Henry Brown's house or Will's house?

2 A. Who is Will?

3 Q. I'm asking you.

4 You just spent Tuesday night at Debbie Stokes' house.

5 A. No.

6 That might have been - - that might have been the man's name
7 in Aynor on, ah, Gum - - Gum Road, Gum Drive.

8 Q. So, it's your testimony today that the only night - - -

9 A. His name might have been Will. Okay.

10 Q. So, it's your testimony today the only night that you spent at
11 Debbie Stokes' was on Monday night?

12 A. That's correct.

13 Q. Absolutely, the only night?

14 A. It was all night Monday night. Yes. Tuesday night - -
15 Tuesday night was in Aynor.

16 Wednesday morning the trailer that - - the trailer that was on
17 Gum Road, we left there, and there were some other people. I don't
18 know if he use to work for them or what but it was a different
19 trailer park. It was over on, ah, I think it was Ollie Road or
20 something. Anyway, that was at the other trailer park.

21 That's where he, um, that's where he was the last time I saw
22 him, and I was calling the Horry County Police from Debbie's cell
23 phone and the battery went dead but she didn't want to be involved.

24 Q. So, where were you Tuesday night, again? Will's house?

25 A. Ah - - there was a man on a mobile home on Gum Street. His

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1 name might be Will.

2 I apologize. I don't remember his name.

3 Q. So, you spent Tuesday night at Will's house. Right?

4 A. That's correct.

5 Q. Then why did you tell the police you spent Tuesday night at
6 Debbie Stokes' house?

7 A. I didn't tell the police that.

8 Q. Hang on.

9 A. We did go back to Debbie's house but we didn't spend the night
10 there. We spent - - we got to that man's house at about, ah, we
11 were over there, and then we left. We got there about eight - -
12 no, it would have been a little bit earlier because it wasn't dark.
13 About 4:00 on Tuesday, and then we left and we went back, and we
14 went back Tuesday night and actually spent the night there Tuesday
15 night.

16 Q. Where?

17 A. At that - - I assume Will. The man's name is Will.

18 Q. So, you didn't go to Debbie Stokes' Tuesday night?

19 A. Yes, we did go to Debbie's. We went there and smoked crack
20 Tuesday night.

21 Henry had stolen Debbie's pocketbook.

22 Q. Tell me about that.

23 A. He stole her purse.

24 Q. Tell me about that.

25 A. And she was afraid to make a police report because she - - -

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1 MR. RICHARDSON: Your Honor, I'm going to object.

2 I don't know how that's relevant that Henry Brown - - -

3 THE COURT: That's hearsay again. Let's - - let's don't
4 do that.

5 MR. AXELROD: Okay.

6 Q. On January 14th - - -

7 THE COURT: Mr. Axelrod, in the next five minutes, we going
8 to take a break. You've examined this witness for two hours att
9 that time.

10 MR. AXELROD: We can take a break now, Your Honor.

11 Maybe, it would be proper now. My throat is a little sore.

12 THE COURT: Sir?

13 MR. AXELROD: Can we take a break now, possibly? Now might
14 be a good time.

15 THE COURT: Alright.

16 Since my jury has been out here two hours. It's a good time
17 to take a break.

18 I'll let you go to your jury room for a few minutes and relax,
19 and we'll be calling you back very shortly.

20 Thank you.

21 (The jury retires to the jury room at 11:40 a.m.)

22 THE COURT: You may come down during the break.

23 MS. SOWDON: Okay. Thank you, sir.

24 THE COURT: I think - - she may need to go to the restroom.

25 (The witness leaves the witness stand.)

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1 THE COURT: Mr. Axelrod, you've been examining this witness
2 now for two hours, and we need to move on.

3 MR. AXELROD: Sir?

4 THE COURT: As an example, some of your questions - - this
5 is outside the presence of the jury. What kind of beer was it?
6 That has no relevance to any issue in this case, and a lot of your
7 - - I understand where you're going but a lot of your questions are
8 irrelevant to any issue.

9 MR. AXELROD: I understand, Your Honor.

10 THE COURT: I would ask, please, that you keep on track and
11 let's move on.

12 You've been on this witness stand for two hours. You started
13 at a quarter till ten, and it's now twenty minutes to twelve,
14 nearly two hours.

15 MR. AXELROD: Yes, sir. Yes, sir.

16 And, Your Honor, this will be my longest cross, and I did tell
17 the Court that.

18 THE COURT: Well, let's let - - -

19 MR. AXELROD: I'm going as fast as I can, Your Honor, and I
20 appreciate the latitude you're giving me.

21 THE COURT: Well, latitude but when you start talking about
22 what kind of beer was it, it's getting to where we don't need that.

23 MR. AXELROD: Yes, sir.

24 THE COURT: Alright.

25 We'll take a short break.

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1 COURT REPORTER: Your Honor, one moment.

2 I believe I need those transcripts as Court's Exhibits.

3 THE COURT: Yes, ma'am.

4 These transcripts - - where is Axelrod.

5 (The Court makes the two transcripts of taped statements
6 Court's Exhibits #1 and #2.)

7 THE COURT: It's in your car, I'm told.

8 Go get her the 12th, I want to make it a Court's Exhibit.

9 MR. AXELROD: I'll get it. You want a sealed copy?

10 THE COURT: This will be fine. The record will reflect
11 that I opened it.

12 The record will reflect that these two were presented to me
13 sealed, and I opened them, and I'm making them a part of the
14 Court's Exhibits.

15 Now, I want a sealed copy of the 14th.

16 MR. AXELROD: I'll do that.

17 COURT REPORTER: Thank you, Your Honor.

18 (The Court recesses the trial of this case and thereafter
19 resumes the trial of this case at 12:11 p.m.)

20 THE COURT: Alright.

21 You ready to resume.

22 Have the - - where is the witness, please.

23 Take the witness stand.

24 Bring the jury in.

25 MR. AXELROD: Your Honor, I have one bit of housekeeping

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1 before we bring in the jury.

2 THE COURT: What is that, sir?

3 Be seated, please.

4 (The witness takes the witness stand.)

5 MR. AXELROD: I have placed Ms. Sowdon, the witness, under my
6 subpoena. I would like to have my investigator - - I have my
7 investigator to get it from her or however you want to do it. I can
8 reach her in case I have to bring her back in my case in chief.

9 I just need to contact - - I haven't talked to her. She's on
10 the stand right now. I just want to be able to contact her if
11 there's a question.

12 THE COURT: Well, now, I can solve that problem for you.
13 I'll just keep her - - keep her in the courtroom.

14 MR. AXELROD: Well.

15 THE COURT: Or keep her back there sequestered with the
16 other witnesses.

17 MR. AXELROD: That would be fine.

18 THE COURT: I - - I'll keep her here.

19 We'll have her sequestered, and she will report along with
20 everybody else at 9:30 in the morning and take a lunch break and
21 leave at 5:00.

22 MR. AXELROD: And I would ask that since she has testified
23 that she be sequestered not to have any contact - - -

24 THE COURT: I just said I was going to do that.

25 MR. AXELROD: Okay.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Now, you don't know how to contact her by telephone or
2 anything.

3 MS. SOWDON: I gave him my cell phone number. I gave that
4 gentleman my cell phone.

5 MR. AXELROD: I just want to make sure that if we call it - -
6 if I'm able to call her, Judge. If I'm able to call her.

7 THE COURT: I'm going to tell you one more time, sir.

8 She's going to be here at 9:30 every morning. She's going to
9 break at lunch, be back at 2:00 and leave at 5:00.

10 MR. AXELROD: That will solve the problem.

11 THE COURT: Alright, sir.

12 Bring the jury in.

13 THE COURT: Mr. Axelrod, if you want her kept separate from
14 the other witnesses, I will do that for you.

15 MR. AXELROD: Yes, sir.

16 THE COURT: With everybody's agreement, I'll let her go
17 home and stay at home. That may be better.

18 We'll work that out. Just remain in the courtroom until I
19 tell you.

20 MS. SOWDON: Yes, sir.

21 (The jury returns to the courtroom at 12:13 p.m.)

22 THE COURT: Alright, sir.

23 You may resume your questioning, Mr. Axelrod.

24 MR. AXELROD: Yes, sir, Your Honor.

25 May it please the Court.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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CONTINUED CROSS EXAMINATION BY MR. AXELROD:

1 Q. Ma'am, you told us earlier that when you left [REDACTED] that
2 you had to call - - you weren't able to go into the driver's door.
3 Correct?
4

5 A. Yes, sir.

6 Q. You had to go into the passenger door, and you had to crawl
7 in.

8 A. Uh-huh.

9 Q. And it's true that you told the police on the 12th of January
10 that your testimony is that Kariem - - not your testimony. Your
11 statement to the police was that Kariem had blood everywhere.

12 Would you agree with that statement that you told the police?

13 A. That's correct.

14 Q. And would you also agree on the 14th that you told the police
15 that Kariem was covered in blood?

16 A. Yes.

17 Q. And would it also be a truthful statement, this statement that
18 it was all over him, meaning the blood on Kariem?

19 A. Yes, sir.

20 Q. And isn't it true that you also said on the 14th of January
21 that the blood was all over his legs, and I would think you would
22 mean the pants?

23 A. The front of his pants, yes, sir.

24 Q. And, also, on the 14th, you said the police that it was all
25 over his head and, actually, his face?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. He had blood around his hairline, his, yeah, his face, his
2 shirt, his arms - -

3 Q. And - -

4 A. - - hands.

5 Q. Oh, I'm sorry.

6 A. His arms, his hands, front of his pants, down the front of his
7 legs.

8 Q. And you testified. You told the police that he never took a
9 shower?

10 A. No, sir.

11 Q. Is that true or not true? While you were running around that
12 day, did he take a shower?

13 A. No.

14 Q. Never took a shower?

15 A. No.

16 Q. Covered in blood?

17 A. He removed his clothes and wiped - - wiped his body down.

18 Q. He changed all of his clothes?

19 A. By then, yes. He had taken all - - all of his bloody clothes
20 were off.

21 Q. At Paul's?

22 A. No. He still had on those boots, and he still had that, um,
23 there was a - - that white and, like, gold lame shirt.

24 Q. And isn't it true that on the 12th of January you told the
25 police that, excuse me, that Kariem's face was covered with blood.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 His shirt was soaked, and his pants were soaked. I guess you mean
2 blood.

3 A. Yes, sir.

4 Q. Now, you testified earlier, yesterday, that you said Kariem
5 was - - while he was in the car you said that Kariem was pouring
6 sweat? He was agitated.

7 A. Yes.

8 Q. He was angry in the passenger seat, and Lee was in the back.

9 A. Yes, sir.

10 Q. Now, I'm not going to rehash it but your statement earlier to
11 the police put Kariem in the back, and you discount that story?

12 A. Kariem was never in the back seat, sir.

13 Q. And the tape would not be wrong?

14 A. If the tape states that he was in the back seat, it's
15 incorrect. He was never in the back seat.

16 Q. Okay.

17 A. He was in the front seat.

18 Q. Now, you testified that this weapon was in the front. You
19 testified yesterday that the weapon involved was in the front on
20 the floor board. Is that correct?

21 A. Below his feet, yes, sir.

22 Q. And you testified that after you left Paul's - - after you
23 drove away from Paul's your testimony was that after you left
24 Paul's he put the gun under the passenger seat.

25 A. Behind his - - back behind the passenger seat, behind the seat

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 he was sitting in.

2 Q. Okay.

3 So, your testimony is you left Paul's. You're driving down
4 the road. Kariem takes the gun and at that point puts it in the
5 passenger - -

6 A. Put - -

7 Q. - - in the rear?

8 A. - - behind him. Yes, sir.

9 Q. While you're driving the road after the - - -

10 A. I was driving, and he - - yes.

11 Q. Now, have you ever been to that house before on [REDACTED]

12 A. No, sir.

13 Q. Did you know anything about the house?

14 A. I knew that it was a FHA 230 spec house.

15 Q. Well, other than knowing that it was a FHA 230 spec house, did
16 you know what was going on in that house?

17 A. No, sir.

18 Q. Did you know that there - - who was living in that house?

19 A. Not - - not prior to the crime. After the murder they - - I
20 became aware of it.

21 Q. How soon after the murder did you become aware of it?

22 A. We were driving down 544, and they were just - - -

23 Q. Well, what did you know about them?

24 A. All I knew was that some topless dancer they knew had been to
25 the house and had, um, witness - - had seen, like, \$75,000 worth of

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 cash and, um, a lot of cocaine. They said that they were big - -
2 they were big-time coke dealers.

3 Q. So, you knew they were dope dealers before the murder?

4 A. No. Actually - - no, I didn't. I didn't know the people.
5 I'd never been there.

6 Q. Well, refresh my memory about this person that had been there.
7 She told you that she saw \$75,000.

8 THE COURT: Now, I'm permitting this examination to come
9 in. It's hearsay but I'll permit it if you ask me to.

10 MR. AXELROD: I'm asking her.

11 THE COURT: Alright. Go ahead.

12 A. I never met the stripper that said that.

13 Q. Well, when did you find that these were coke dealers?

14 A. After we left the house.

15 Q. Who told you?

16 A. They were hollering at each other. They were arguing.

17 There was suppose to have been a safe and a key under a
18 mattress.

19 Q. Okay.

20 Let me ask you this question.

21 When the police asked you about it, you told the police that
22 you knew they were coke dealers. Correct?

23 A. After the fact, yes, sir.

24 Q. And what else did you tell the police about them being dope
25 dealers? Before I tell you what you said, why don't you tell the

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 jury if you remember what you said to them? What did you tell the
2 police about those people?

3 THE COURT: Let's find - - what - - what, ah, date are you
4 referring to? What transcript? What page number? What line,
5 please?

6 MR. AXELROD: I'm referring to January 14, 2005, page 61.

7 THE COURT: Alright.

8 MR. AXELROD: Line 20 through 25.

9 THE COURT: It you will permit me and counsel for the State
10 to follow you.

11 Go ahead.

12 Q. You told - - you told the police you knew they were dope
13 dealers, didn't you?

14 A. I knew after the fact. There was a lot of conversations
15 after - - after that transpired as to what their - - those peoples'
16 activities.

17 I did not know they were dope dealers before - - before we
18 went over there.

19 Q. Well, what did you learn that day in the car driving back from
20 [REDACTED] I mean, you told - - -

21 A. That they were Mexican. That they were from Mexico. That
22 they were illegal aliens. They - - they didn't have green cards.
23 Um, that there was suppose to be a lot of cash and that they were
24 selling a lot of cocaine out of that house.

25 Q. How do you know they were selling a lot of cocaine? Did you

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 ever see it?

2 A. No, sir.

3 Q. But you told the police they took orders for big.

4 A. Yeah, well that's - - I mean.

5 Q. You knew that.

6 A. No. I did - - I did not. I've never been - - I know a lot of
7 dope dealers in this county, and those weren't - - they're not on
8 the list. They weren't one of them.

9 Q. Well, why - - -

10 A. I didn't know those people..

11 Q. Well, why did you tell the police that they took orders for
12 big?

13 A. Because I had been - - that's what I was told. That's what I
14 heard.

15 Q. Where did you hear that?

16 A. They were having a conversation. I was driving down 544.
17 They were arguing over, "Did you find something? Are you holding
18 out on me? Did you find any money? Did you find any cocaine?"

19 They kept making reference to this stripper - -

20 Q. Why - - why - - -

21 A. - - that told them she saw a big massive quantity of cocaine
22 and lot of money in that house, and I never saw any money or
23 cocaine in that house. I never had any drug dealing activities at
24 that home.

25 Q. How many drug dealers do you run with?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. I don't run with any drug dealers.

2 Q. How many do you know? Dozens?

3 A. No.

4 Q. Thousands?

5 A. I mean, I probably know eight to ten.

6 Q. Okay.

7 Now, what kind of drugs would these people sell on [REDACTED]

8 [REDACTED], on [REDACTED] [REDACTED] You told the police what kind of drugs
9 they sold. So, how did you know that if you didn't know anything
10 about them?

11 A. The only thing - - the only thing I knew about them is what
12 was said after the murder.

13 Q. You told - - -

14 A. That's the only thing I knew is cocaine - - that they sold
15 powder cocaine in large quantities. There was kilos of cocaine.

16 Q. You had firsthand - - you had firsthand information of what
17 they sold, didn't you?

18 A. No, sir. I'd never been there.

19 Q. You told the police they sold eight-balls.

20 A. That's powder cocaine.

21 Q. But you told the police they sold eight-balls.

22 A. When we went by there, the whole - - the whole reason. I
23 didn't know that Lee. I didn't know - - I didn't know - - I did
24 not that Lee was going in for money - -

25 Q. You said - - -

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 A. - - or that he was going in to buy coke.

2 Q. You said - -

3 A. On the way - -

4 Q. - - ma'am, my question was - - -

5 A. - - the discussion on the way to the residence - -

6 THE COURT: Wait a minute, now.

7 A. - - on the way to the residence - - -

8 THE COURT: Now, wait a minute, please.

9 MR. RICHARDSON: I think she ought to be able to put in her
10 direct statement.

11 THE COURT: I think so.

12 MR. RICHARDSON: And I'll present her with it.

13 THE COURT: Mr. Axelrod, again, refer to what page and what
14 line.

15 MR. RICHARDSON: This is page 61. He quoted line 20
16 through 25, and this is on January 14, 2005.

17 THE COURT: Let her read.

18 MR. RICHARDSON: This is a series of questions that's he's
19 been asking her about.

20 Would you give your answer?

21 A. Starting where?

22 MR. RICHARDSON: Line 20.

23 And Mr. Axelrod has been questioning you.

24 A. Okay.

25 "Ms. Sowdon: I didn't know these people. I knew they were

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 dope dealers. I knew they took orders for big. They didn't sell
2 little stuff.

3 Detective Livingston: Okay. I think."

4 And then it says, "Ms. Sowdon: They would sell eight-ball -
5 - eight-balls, ounces and half ounces."

6 MR. RICHARDSON: Okay. Thank you.

7 THE COURT: Alright. You may proceed with your
8 questioning.

9 MR. AXELROD: Thank you.

10 Q. Now.

11 How did you know they sold ounces and half ounces?

12 A. From the conversation that Lee and Kariem were having on the
13 way home.

14 Q. Is it your testimony today you were never at that house
15 before?

16 A. I'd never been to that house.

17 Q. Lee never told you about Pablo?

18 A. I'd never - - Lee had never said the name Pablo to me. I'd
19 never heard the man's name. The first time I ever heard the man's
20 name was when the victim was saying that Pablo was gone to Mexico
21 to re-up. He was gone. He took the money to go get cocaine in
22 Mexico.

23 Well, he said, (Witness states phrase in Spanish which was
24 unintelligible to this Court Reporter.)

25 So he said - - that means Mexico City. He was gone to Mexico.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 That's the first time I'd heard any mention of a Pablo. I did
2 not know the victim. I did not know these people.

3 Q. The 911 tape - - I want to go back to something at Paul's
4 house before I get to the 911 tape.

5 Q. Your testimony was that Lee - - that Kariem changed clothes at
6 Paul's but on five different occasions when asked was he still
7 walking around with the same clothes on, you kept saying yes. That
8 was a mistake? That never occurred?

9 A. When they were asking me, they were asking me from points in
10 time what he was wearing and what he had taken off.

11 The sweat pants came from the lady where Paul was staying.
12 Paul hadn't been staying there that long. That's where the sweat
13 pants came from, and he gave him a sweat jacket to throw over - -
14 he had three layers of clothes on. He had on a tee-shirt. He had
15 on a nicer dress shirt, and he had on a jacket on top of that.

16 Q. But you told the police he was still wearing the same clothes
17 including the pants but today you change your story. Correct?

18 A. Well, at what point in time was this? I mean.

19 Q. You tell me because every time - - -

20 A. Well, no. I already know. I've already told you.

21 Q. Let's talk about it.

22 A. I mean, when they were asking me about what he was wearing,
23 they were trying to get a description to issue the warrant to have
24 him picked up. That was all the - - there was a lot of questions
25 about what he was wearing, how his hair was cut. What did he look

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 like?

2 And at that time the blood that he had on his pants was all
3 over the front all over the front of his pants. That's why he
4 needed the sweat pants.

5 Q. And you said he was sweating and wiping his forehead?

6 A. Yes.

7 Q. And you - - and you tell us that - - I know it's here
8 somewhere.

9 Did you ever have the opportunity to go up that hallway of
10 that house?

11 A. I went up that hallway to look for the keys in the back
12 bedroom.

13 Q. Okay.

14 Now, the 911 tape interests me. We played that. The jury
15 got to hear this one tape, and on the 911 tape, you - - first thing
16 you asked for. You called 9 - - you called Dispatch, and you
17 called and you asked for a Jay in the Warrants Division. Correct?

18 A. I said, "Is there a Warrant Officer?"

19 Q. Right. And you asked for Jay. You said, specifically, "Can
20 I speak to Jay in the Warrants Division?"

21 A. I don't remember asking for a Jay. I don't know a Jay in the
22 Warrants Division.

23 Q. And what day did you - - what day was that that you called
24 911?

25 A. That was, ah, Wednesday.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Okay.

2 And you were very cool, calm and collected on that day,
3 weren't you?

4 "Hi, can I speak to Warrants Division?"

5 Right? Be honest. We all heard it.

6 A. Well, no, I wasn't in shock anymore. I had heard him tell
7 Henry Brown, "I'm going to have to kill this bitch."

8 Q. Right.

9 A. And when that happened, I was very upset about it.

10 Q. That's right.

11 A. I was - - I was in shock. I was hysterical for days. I was
12 high for days, and after I came down and had some clarity and was
13 able to realize the magnitude of what had happened, I called for
14 help.

15 Q. Right.

16 A. Yes, sir. That's how it happened.

17 Q. And you weren't in shock anymore?

18 A. No, sir, I wasn't.

19 Q. Good. Because that statement to 911 was given before your
20 second statement to the police when you told the jury today - -

21 A. That's okay.

22 Q. - - you were in shock.

23 So, did you back into shock in police custody?

24 A. No.

25 You're making reference to two different occasions.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Q. No, I'm not.

2 A. On the 12th I was in shock. On the 14th - - from the 12th to
3 the 14th, I had four hours of sleep.

4 Q. Ma'am.

5 A. I slept at the M. L. Brown Building with the Horry County
6 Police. I was at the Horry County Police at the M. L. Brown
7 Building, and I was back there in the narcotics area on a couch.

8 Then they put me into a motel room.

9 I had no sleep. They were driving me - - you know, I was
10 trying to back track and go back to places that he had had me drive
11 to in Aynor that I had never been to before.

12 All I could do was just drive there for the location. I
13 didn't have a physical address.

14 Q. Ma'am, my question to you was, "On the 12th day of January, you
15 were cool, calm and collected?"

16 And you said to us. You testified and you told the jury
17 twice. You said, "I was no longer in shock on the 12th."

18 A. I was - - that's correct.

19 No, I was in shock on the 12th. By the 14th I wasn't in shock.

20 Q. You said - - -

21 A. I was upset by then. I was worried.

22 Q. You said - - -

23 A. There's a different frame of mind there.

24 Q. You said on the tape you were not in shock.

25 A. The man they were looking for was Henry Brown because he had

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 stolen Debbie's pocketbook.

2 Q. You said - - -

3 A. They were trying to find Kariem through Henry Brown.

4 Henry Brown's house or his momma's house is where he took the
5 actual murder weapon.

6 Q. Ma'am.

7 A. The weapon he murdered him with he carried to Henry Brown's
8 house in Aynor.

9 Q. Ma'am, is it your testimony today. You told us when you made
10 this call on the 12th of January, and what time did you make the
11 call?

12 A. Um, it would have been about 2:11, something after 2:00.

13 Q. Okay.

14 A. I mean, I'm not really sure. It was on Wednesday.

15 Q. You testified. You testify. You said, "I was not in shock
16 when I made that phone call."

17 That's what you said. You told us that.

18 A. Well, I - - -

19 Q. Is that true? Just answer that question.

20 A. Well, I just did state that but I probably should clarify
21 that.

22 I had gotten away from him. I wasn't under the auspices of
23 his - - I mean, I had just watched him - - I witnessed him murder
24 somebody.

25 So, you know, my demeanor and my attitude and my everything

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 was very different when I was able to get away from him.

2 Q. Well, then why - - -

3 A. And we - - -

4 Q. Well, then, why were you in shock with the police?

5 A. I said I was very tired. I was still in shock. I had to
6 relive it.

7 Have you seen this pictures, how horrible this was?

8 THE COURT: Now, we've had enough of that issue.

9 Let's move on, now.

10 Q. It seems that on the tape you're trying to make a deal because
11 you say, "Hey, by the way."

12 You know, you're looking for this person and you're looking
13 for that person.

14 "And, by the way, hey, guess what? I witnessed a homicide,
15 and I need to talk to Scott Rutherford. He's the only one I'm
16 going to give that information to.

17 By the way, I witnessed a homicide."

18 A. I said Vic Neal, and Vic was out on knee surgery.

19 Q. And - - -

20 A. I've had C. I. on file with the Horry County Narcotics for
21 some time.

22 Q. Let me ask - - -

23 A. And that can be validated.

24 These are people that I knew favorably through law
25 enforcement.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 THE COURT: No, ma'am, you're not answering his question.
2 Answer the question without going into a long explanation.

3 Ask the question again, Mr. Axelrod.

4 Q. You asked for Scott Rutherford, didn't you?

5 A. I sure did.

6 Q. And you said, "Hey."

7 You know, because your first thing when you called 911 or the
8 police, you don't phone and say, "Hey, there was a murder."

9 You go, "Hey, these people you looking for. You looking for
10 this, and you looking for that, and by the way, I witnessed a
11 homicide."

12 You said that, didn't you? In that order.

13 A. Actually, that's not correct.

14 Q. Well, hang on a second.

15 A. The first calls that were made were made from Aynor on Debbie
16 Stokes' cell phone.

17 There's another transcript of 911 tapes, and those were made
18 from Aynor, and I said, "If you dispatch an officer, you can pick
19 him up. I'm looking right at him."

20 There's a first set of 911 tapes that were made earlier that
21 morning from Aynor in front of Debbie Stokes on her cell phone.

22 Q. Then, why didn't you tell the police about the murder then - -

23 A. I did - - -

24 Q. - - or were you trying to get your stories straight?

25 THE COURT: Don't lean over and talk to the jury. Talk to

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 the witness.

2 MR. AXELROD: I'm not leaning over that way.

3 THE COURT: I've told you twice now.

4 MR. AXELROD: I was looking at the witness.

5 A. I didn't have to get my stories straight.

6 THE COURT: You were over there leaning on the jury rail.

7 A. I had already called 911 in reference to the murder from
8 Aynor. The call that you have a transcript of was in reference to
9 Henry Brown. Debbie Stokes' pocketbook and her wallet - -

10 Q. Right. Okay.

11 A. - - and his - - he was with Henry at the Micro-tel as reported
12 at the time.

13 Q. So, that's - - -

14 A. That's the second phone call.

15 Q. And then you talk about the murder.

16 A. There's another phone call.

17 Q. Right.

18 A. The first calls are of 911. I'm standing in front of the
19 murderer. I don't know where I am. I don't have any way out of
20 here. I'm on someone else's cell phone. There's another
21 transcript for 911, and it happened prior to this phone call.
22 This phone call was made about Henry Brown. They were already
23 looking for Henry Brown.

24 Q. This is the only 911 tape we have.

25 A. Well, I beg to differ. There's more than one.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 Get Debbie Stokes' cell phone records for that period of time.
2 I called earlier in reference to the homicide. I called them.
3 that was the latter phone call that was made, and there's several
4 parts on there.

5 I made - - I mean, I made reference. I actually called. I
6 asked for people. I wanted - - I said, "Who is the Watch Commander
7 on duty?" I said, "Who is on Traffic Patrol? Dispatch some
8 officers."

9 I didn't want to just give that information to anybody, and
10 that was around the time that Myrtle Beach had just fired nineteen
11 officers for impropriety in office, and they were all dirty, and
12 there was a lot going on in law enforcement.

13 I wanted to give that information to people that I knew and
14 trusted.

15 MR. RICHARDSON: Now, Your Honor, she's saying that she
16 made another tape.

17 MS. SOWDON: There is another tape.

18 MR. RICHARDSON: But what Mr. Axelrod is purporting to put
19 in has already been played before the jury.

20 MR. AXELROD: I just want to play it, Your Honor.

21 THE COURT: Is there two tapes?

22 MR. RICHARDSON: I don't have two tapes. She says there's
23 two tapes but this is, ah, this is the second tape that's already
24 been played.

25 THE COURT: Sir?

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 MR. RICHARDSON: This is the tape that's already been
2 played.

3 She said there's another tape. I don't know about that tape.

4 MR. AXELROD: This is the tape where she says, "Hey, I saw a
5 homicide."

6 THE COURT: No. I'm not - - -

7 MR. AXELROD: I just want to play it again for the jury.
8 Can't I - - can't we play it again to refresh her memory?

9 THE COURT: I don't see any need in playing it again.

10 MR. AXELROD: Well, can I - - well, I'll play it in my close,
11 then. We'll play it again for them. We'll do it again there.

12 THE COURT: You're not going to do it at this time.

13 MR. AXELROD: Okay.

14 THE COURT: The jury will have that tape in the jury room,
15 and we'll bring them out and play it at the appropriate time if
16 they ask for it. They've heard the tape and know what it is. If
17 they want to hear it again, I'll certainly make it available.

18 Q. What was Lee wearing at Paul's house?

19 Tell - - tell us what jacket he was wearing. What color
20 jeans? What color shirt, shoes, everything? Tell me what Lee
21 was wearing at Paul's house.

22 A. He had on dark colored jeans. I told you earlier. I don't
23 remember the color shirt.

24 MR. RICHARDSON: Your Honor, this has been asked and
25 answered. He's already gone through that.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 THE COURT: You've been through that, Mr. Axelrod.

2 MR. AXELROD: I'm just - - I'm just clarifying the issue,
3 Your Honor. It's an important point.

4 THE COURT: You're on the same issue. Get on to something
5 to something else. The jury has heard that. I've heard it twice.

6 Q. You sure that's what he was wearing that day?

7 A. He had on dark jeans. He had on a black leather jacket. He
8 did not have on black slide-on rubber shoes or I don't know where
9 that came from.

10 Q. It came from your statement, ma'am.

11 A. That's not what Lee had on. And he had on a pull-over shirt
12 of some kind. I don't know what color it was.

13 Q. And you say you stayed at Will's house until Wednesday
14 morning?

15 MR. RICHARDSON: Asked and answered, Your Honor.

16 MR. AXELROD: I'm trying to clarify the time line, Your
17 Honor.

18 THE COURT: Mr. Axelrod, she's answered this question, now.
19 You've had an hour and forty-five minutes initially. You've been
20 here thirty-five minutes this time, and you're going over old
21 ground. The jury has heard that.

22 MR. AXELROD: I'll move on to new ground.

23 THE COURT: Alright, sir.

24 Q. Did you testify - - did you tell the police in your statement
25 that Julianne took these chaps to do a lot of things? She schemed

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 with them?

2 A. She actually rode them. She would ride them and sit in the
3 car. So, I don't believe I said she schemed with them. She drove
4 them around.

5 She drove them to bring me crack. She drove them to bring
6 other people crack but she didn't - - she wasn't ever - - she was
7 in the car. She didn't ever get out of the car.

8 I never said she schemed. I said she drove them around to -
9 - to make dope deals, to drop off drugs.

10 Q. Did anybody ever tell you that they schemed with her?

11 MR. RICHARDSON: That's hearsay, Your Honor.

12 THE COURT: No, sir. I - - I sustain that.

13 Q. Your statement to the police is in talking about Luther - -
14 Kariem - -

15 A. Excuse me.

16 Q. "She took them to do a lot of stuff. They told me they had
17 some kind of scheme with her. A jumpstart."

18 Tell the jury about the jumpstart.

19 MR. RICHARDSON: Objection.

20 May we approach?

21 THE COURT: Yes, sir.

22 (Bench conference off the record and in the presence of the
23 jury but outside the hearing of the jury.)

24 THE COURT: No, sir. I'm going to sustain that objection.
25 We're going into another issue not related to this case.

MS. SOWDON - CROSS EXAMINATION BY MR. AXELROD

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1 And, now, Mr. Axelrod, I want to tell you. It's now twenty
2 until one. You will conclude your cross examination by 1:00. I
3 gave you an hour and forty-five minutes before we recessed. I'll
4 permit you to go one and give you another hour which is two hours
5 and forty-five minutes cross examining this witness, and you - -
6 you can look at the clock now.

7 You utilize your time like you want to but we going to stop
8 this cross examination at 1:00 period.

9 Alright. Proceed.

10 MR. AXELROD: Your Honor, I'm going to stop it a lot faster.

11 I'm going to ask the witness a question here that is paramount
12 to this case.

13 Q. It's your testimony, and you remember this crystal clear, one
14 hundred percent without a doubt that this murder occurred in the
15 morning of the 10th of January, 2005, absolutely without any chance
16 of making a mistake, now?

17 A. No shadow of a doubt.

18 Q. Tell the jury that. No shadow of a doubt.

19 A. This happened Monday, the morning of Monday, January 10th.

20 Q. Because you have a photographic memory and you retain between
21 76 and 82% on any given day?

22 A. My memory has nothing to do with that at this point. It
23 happened - -

24 Q. You do.

25 A. - - it happened Monday. I had left Saturday. I'd left the

MS. SOWDON - REDIRECT EXAMINATION BY MR. RICHARDSON

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1 Red Roof Inn. Sunday I was sick. I spent all day in Murrells
2 Inlet. Monday morning I went to pick them up, and it happened
3 Monday morning.

4 Monday night we stayed at Debbie Stokes. Tuesday we stayed in
5 Aynor.

6 Q. I'm not asking for a dissertation.

7 A. Well, that's the truth.

8 Q. I'm asking - - -

9 A. It happened Monday, January 10th in the a.m.

10 Q. I'm asking the question.

11 THE COURT: She's answered the question.

12 You asked her specifically to tell the jury one more time, and
13 she did. That is for the jury's consideration.

14 Q. And there's no chance that you're wrong?

15 A. None.

16 MR. AXELROD: That's it, Judge, for this time.

17 THE COURT: Alright.

18 You got any redirect, counsel?

19 MR. RICHARDSON: Just a couple, Your Honor.

20 REDIRECT EXAMINATION BY MR. RICHARDSON:

21 Q. Did Neil Livingston ever promise you anything for your
22 testimony?

23 A. Will Livingston?

24 Q. Neil Livingston.

25 A. Neil. No. I've never been promised anything for my

MS. SOWDON - REDIRECT EXAMINATION BY MR. RICHARDSON

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1 testimony.

2 Q. Alan Large ever promise you anything?

3 A. No.

4 Q. Did they contact you or did you contact them?

5 A. I contacted them.

6 Q. Did the Solicitor's Office very promise you anything - -

7 A. No.

8 Q. - - for your testimony?

9 A. No.

10 Q. Where was Luther sitting upon leaving [REDACTED] [REDACTED]?

11 A. He was in the passenger seat.

12 Q. Where was Lee?

13 A. In the back.

14 Q. And you were driving?

15 A. I was driving.

16 Q. Alright.

17 This Glock that Mr. Axelrod spent the majority of the morning
18 on, is that the murder weapon used to kill Espinozat?

19 A. No.

20 Q. Was the Glock ever used to hit Espinozat?

21 A. No.

22 Q. And the whole thing about [REDACTED] whether or not it took
23 place before you went to Paul Graham's or after, all of that deals
24 with the Glock?

25 A. Yes, sir.

MS. SOWDON - REDIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. The Glock was never used?

2 A. No.

3 Q. The gunshot that went off inside of the house, was that from
4 the Glock?

5 A. No, sir. It was the 22n.

6 Q. From the 22. Alright.

7 MR. RICHARDSON: Court's indulgence just one moment.

8 Q. Um, did anyone have a gun in the house besides Luther Garner?

9 A. No.

10 Q. Anybody hit Espinozat besides Luther Garner?

11 A. No.

12 Q. You're sure that Luther Garner is the one that killed
13 Espinozat?

14 A. I'm positive.

15 Q. Mr. Axelrod asked you about having any blood on your hands.
16 Did you ever check Mr. Espinozat for a pulse?

17 A. I checked his neck when he was laying right there in the
18 bedroom.

19 Q. Was there blood on Mr. Espinozat's neck?

20 A. There was blood all over him.

21 Q. Would there have been a possibility of you getting blood on
22 your hands?

23 A. Yeah. Yeah.

24 Q. You had blood on your face?

25 A. Right.

MS. SOWDON - RE-CROSS EXAMINATION BY MR. AXELROD

222

1 Q. You did have blood on your face?

2 A. Yeah. I had - - I had splatters of blood on my face. They
3 were around my hair.

4 Q. And there's no doubt that Mr. Garner whenever he changed
5 clothes burned those clothes?

6 A. That's correct.

7 Q. And burned the boots?

8 A. Yes, sir.

9 Q. And that was in Aynor?

10 A. Yes, sir.

11 Q. Alright.

12 MR. RICHARDSON: I have no further questions, Your Honor.

13 RE-CROSS EXAMINATION BY MR. AXELROD:

14 Q. When the Solicitor asked you about Detective Livingston, Neil,
15 do you call him Neil because you just did now?

16 A. I thought he said Will.

17 Q. What do you call - - do you call Detective Livingston Neil?

18 A. No. I didn't know his first name. I - - I've just known him
19 as Detective Livingston.

20 Q. Okay.

21 And you haven't been arrested and charged with murder, have
22 you?

23 A. No, I haven't.

24 Q. Because of the consistent stories you gave.

25 A. Because I didn't commit the murder.

MS. SOWDON - RE-CROSS EXAMINATION BY MR. AXELROD

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1 MR. AXELROD: Nothing further.

2 THE COURT: You may come down. Thank you.

3 (The witness leaves the witness stand.)

4 THE COURT: Alright.

5 It's quarter till one. I'll give you an hour and fifteen
6 minutes if I may for lunch. Please be in the jury room at 2:00,
7 and we'll be ready to proceed.

8 Thank you.

9 Please, now, don't discuss this case, not even among
10 yourselves.

11 Alright.

12 (The jury is released for lunch at 12:45 p.m. and departs the
13 courtroom to return at 2:00 p.m.)

14 THE COURT: Mr. Axelrod, during the break please bring us
15 that transcript of the 12th.

16 MR. AXELROD: I'm - - I'm going to have to order that from
17 the Court Reporter because I was suppose to have that for you.

18 THE COURT: You don't have the transcript?

19 MR. AXELROD: Well, what happened was you've got two sealed
20 for the same day. They made a mistake.

21 Do you understand what I'm saying? They made a mistake. I
22 gave you two sealed for the same day.

23 THE COURT: Are both of them the 14th? Both of them just
24 alike?

25 MR. AXELROD: And - - and that - - and I'll contact her.

MS. SOWDON - RE-CROSS EXAMINATION BY MR. AXELROD

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1 MR. RICHARDSON: And, Your Honor, at the close of the case,
2 I'm assuming Mr. Axelrod will do that but if not, we would ask that
3 any reference to the second - - the first interview be stricken if
4 he doesn't come up with the tape for Your Honor.

5 MR. AXELROD: I'll get it to you.

6 THE COURT: No, sir. He's going to get it for me, and
7 that's fine.

8 MR. AXELROD: Thank you.

9 THE COURT: I'm going to make a sealed copy of the 12th
10 available as a Court's Exhibit and I'm going to make the 14th
11 available as a Court's Exhibit.

12 He went through it exhaustively but it was not up here. He
13 gave me - - in fairness to him just through inadvertence, the Court
14 Reporter, apparently, sent him two copies of the 14th when he wanted
15 one copy of the 14th and one of the 12th.

16 MR. AXELROD: Absolutely, Your Honor.

17 I'm going to call the Court Reporter right now. Her
18 telephone number is right on it.

19 THE COURT: That's okay. Just get it for me.

20 Alright. We'll recess until 2:00.

21 (The Court recesses the trial of this case for lunch and
22 thereafter reconvenes the trial of this case at 2:07 p.m.)

23 THE COURT: Be seated, please.

24 Alright.

25 Counsel, come forward - - Axelrod.

MS. SOWDON - RE-CROSS EXAMINATION BY MR. AXELROD

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1 (Bench conference off the record and outside the presence of
2 the jury.)

3 THE COURT: Alright.

4 We ready?

5 Bring the jury in, please.

6 MS. LIVELY: We need to stipulate something, Your Honor, on
7 the record. We need to stipulate to something on the record
8 regarding - -

9 THE COURT: Alright.

10 MS. LIVELY: - - that were marked yesterday.

11 THE COURT: Alright. Go ahead.

12 MS. LIVELY: If that's okay.

13 Your Honor, we previously marked, um, for the record State's
14 Exhibits #10 through #39. The defense attorney has reviewed
15 these, and we have stipulated that these are in evidence.

16 I am not going to, um, use them with this particular witness
17 but just so that the record is clear, they are already in evidence
18 at this time.

19 THE COURT: Alright.

20 That's fine.

21 Let's go.

22 (The Court Reporter accepts State's Exhibits #10 through #39
23 as evidence.)

24 THE COURT: Bring the jury in.

25 He's got them. You want to give them to the Court Reporter.

MS. SOWDON - RE-CROSS EXAMINATION BY MR. AXELROD

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1 MS. LIVELY: That would be fine, Your Honor.

2 MR. AXELROD: I'm just looking through them one more time to
3 make sure that they're - - -

4 THE COURT: You've looked at them three times already.
5 Let's go.

6 Bring the jury in.

7 Thank you, ma'am.

8 (The jury returns to the courtroom at 2:09 p.m.)

9 THE COURT: Alright.

10 Call your witness, please.

11 MS. LIVELY: Yes, sir, Your Honor.

12 The State would call Dr. Edward Proctor to the stand.

13 THE COURT: Dr. Proctor.

14 (The witness takes the witness stand.)

15 THE COURT: Dr. Proctor. We express to you our
16 appreciation for your being here. We understand that you may have
17 some strep throat or some cold or something.

18 DR. PROCTOR: Yes, sir.

19 THE COURT: But we'll get you in and out as quick as we
20 can.

21 DR. PROCTOR: Thank you, Your Honor.

22 DR. EDWARD LEROY PROCTOR, JR., being duly
23 sworn, testifies as follows:

24 CLERK OF COURT: Please be seated.

25 Please state your full name and spell it for the record.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 DR. PROCTOR: I'm Edward Leroy Proctor, Jr., and that's P-r-
2 o-c-t-o-r.

3 MS. LIVELY: May it please the Court, Your Honor.

4 DIRECT EXAMINATION BY MS. LIVELY:

5 Q. Dr. Proctor, please state your, um, where you live for the
6 record.

7 A. I live in Myrtle Beach.

8 Q. Okay.

9 What is your occupation?

10 A. I am a physician engaged in the practice of Pathology.

11 Q. Alright.

12 And where did you receive your undergraduate degree?

13 A. I received my undergraduate degree at Clemson University.

14 Q. And after you received your undergraduate, where did you go to
15 further your medical education?

16 A. I, ah, received my medical degree from the Medical University
17 of South Carolina in Charleston, and then did a Pathology Residency
18 combined Anatomical Pathology/Chemical Pathology at Walter Reed
19 Army Medical Center in Washington.

20 THE COURT: Mr. Axelrod, you stipulate to the Doctor
21 Proctor's - - -

22 MR. AXELROD: I so stipulate, Your Honor. He is an expert.

23 THE COURT: Well, sure he is.

24 MR. AXELROD: Without a doubt.

25 THE COURT: Proceed.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 MS. LIVELY: Thank you, Your Honor.

2 Q. Now, that there's a stipulation that you're an expert in this
3 case in Forensic Pathology, did you have the opportunity to, um, do
4 an autopsy in regard to this case and the victim, Mr. Espinozat?

5 A. Yes, ma'am, I did.

6 Q. And what was the date of that autopsy?

7 A. Ah, the date of the autopsy was January 12, 2004.

8 Q. I'm going to show you a copy of your, um, report and ask you
9 if this is the report that you conducted for Horry County Police
10 Department.

11 A. Yes, ma'am.

12 Q. Is that your complete record of the autopsy?

13 A. Yes, ma'am.

14 Q. And does it accurately reflect the autopsy that was on that
15 day in January of 2005?

16 A. 2004. Yes, ma'am.

17 Q. I'm sorry. 2004.

18 No. I'm sorry.

19 A. Wait. It was 2005. That's a typo. I apologize. 2005.

20 Q. 2005.

21 A. 2005, yes.

22 Q. Okay. So, we're clear. Did you do the autopsy January,
23 2005?

24 A. That is correct.

25 Q. Okay.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 MS. LIVELY: Your Honor, we would move to introduce the
2 autopsy results into evidence as State's Exhibit #42.

3 THE COURT: Any objection?

4 MR. AXELROD: May I see it first, Your Honor?

5 THE COURT: Yes, sir.

6 MS. LIVELY: I have a copy for him as well as Your Honor.

7 MR. AXELROD: Just a copy that you're doing there.

8 THE COURT: Question him about the contents of that. It
9 may or may not be necessary to introduce it.

10 MR. AXELROD: Your Honor, I think that he can testify to it
11 but I don't think it actually should go in at this point.

12 THE COURT: I agree with that.

13 Just have him testify as to this.

14 Q. Now, Dr. Proctor, whenever you did the autopsy on January 12th
15 of 2005, please tell the jury what the condition of Mr. Espinozat
16 was?

17 A. Okay.

18 Ah, I performed an autopsy on Mr. Espinozat. Ah, my
19 examination revealed a gentleman who was badly beaten.

20 There were lacerations on the anterior forehead, lacerations
21 on the top of the head. There was a laceration on the bridge of
22 the nose with the nose being fractured and displaced under it.

23 Um, there was a lot of edema about the hands which constitute
24 defense wounds. He was putting his hands up to try to defend
25 himself.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 Ah, the remainder of my exam, the internal examination
2 revealed contusions which are large bruises, hematomas which are
3 collections of blood in the subcutaneous tissues of the scalp.
4 There was blood within the cranial cavity, and looking at the brain
5 itself, there were what we call hemorrhages in the brain which
6 occurred as a consequence of blunt trauma.

7 Q. Now, based upon your evaluation of the body and the brain as
8 you have discussed for the jury, now, were you able to determine
9 within a reasonable degree of medical certainty as to what the
10 cause of death was for Mr. Espinozat?

11 A. Yes, ma'am.

12 Q. And what was your conclusion?

13 A. He died as a result of a diffuse cortical injury of the brain,
14 i.e., the hemorrhages and swelling of the brain occurring secondary
15 to blunt trauma to his head.

16 Q. Now, you've mentioned the lacerations on the victim's head,
17 and I am going to show you two photographs marked as State's
18 Exhibit #40 and #41.

19 THE COURT: May I see those?

20 MS. LIVELY: Yes, sir.

21 MR. AXELROD: Your Honor, may we approach for a second?

22 THE COURT: Yes, sir.

23 (Bench conference is held off the record and in the presence
24 of the jury but outside the hearing of the jury.)

25 THE COURT: I'm going to have to let the jury go out for

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 just a moment, please.

2 I'll be calling you right back.

3 (The jury retires to the jury room at 2:15 p.m.)

4 THE COURT: These are -- outside the presence of the jury,
5 these are rather graphic photographs of the face. However, they do
6 have an evidentiary value to the State of South Carolina to show
7 the degree of harm imposed on this unfortunate victim, and it is
8 for that reason, the evidentiary value that these pictures contain
9 that I am going to let the jury see them.

10 Now, what is your objection?

11 MR. AXELROD: My objection, and we'll talk about -- we have
12 State's Exhibit #40 and we have State's Exhibit #41.

13 THE COURT: Alright.

14 MR. AXELROD: This is #41. This is #40.

15 THE COURT: Okay.

16 MR. AXELROD: On this one here I believe the State's position
17 for admitting this picture is the nose versus this one is of the
18 nose but it's clear that there is any blunt force trauma to the
19 nose. It's just some blood on the nose.

20 THE COURT: No. Look at the top of the skull. It shows
21 the skull split open.

22 MR. AXELROD: Well, the skull is split open on the other one,
23 Your Honor. I'm saying its there. That picture is showing it.

24 THE COURT: So, what do you agree? To let one of them in?

25 MR. AXELROD: Yeah. One of them in. I think it's a

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 repetitious photo. That's all.

2 THE COURT: I think that's - - he may have something there.
3 One's got to go in to show the doctor's testimony.

4 MR. AXELROD: Absolutely. I agree with that.

5 THE COURT: Alright.

6 Which one you want?

7 MR. AXELROD: Whatever one she wants.

8 THE COURT: Which one.

9 MS. LIVELY: Your Honor, I would definitely want the one
10 that shows both of the lacerations and the break to the nose, and
11 if I may clarify it. The reason why I marked #40 as well, it shows
12 the very top laceration is so dark in the #41 you can't see it but
13 here you can see the deep gash in the top of the head which is what
14 the doctor was just testifying to are the deep lacerations to his
15 head.

16 THE COURT: I'm going to let both of them in.

17 You are protected for the record.

18 I think that they have a significant evidentiary value that
19 better explains the doctor's testimony.

20 Bring the jury in.

21 You are protected for the record.

22 MS. LIVELY: Thank you, Your Honor.

23 THE COURT: The record will reflect that you agree to one
24 and object to the other but the other one has some additional
25 features for the jury's consideration.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 You may publish that at this time if you choose to.

2 MS. LIVELY: Thank you, Your Honor.

3 THE COURT: Have you moved to put it into evidence.

4 MS. LIVELY: I did - - Your Honor, I did but he had an
5 objection. So, at this time I'll give it to the doctor.

6 (The Court Reporter accepts State's Exhibits #40 and #41 into
7 evidence.)

8 THE COURT: Let the doctor further testify first.

9 Alright.

10 Bring the jury in.

11 (The jury returns to the courtroom at 2:18 p.m.)

12 THE COURT: Alright.

13 You may proceed.

14 MS. LIVELY: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION BY MS. LIVELY:

16 Q. Now, you've already observed and seen State's Exhibit #40 and
17 #41 which are now in evidence?

18 A. Yes, ma'am.

19 Q. Okay.

20 Now, I'm going to refer to just quickly the front page of your
21 report where you give an external description and state there are
22 two discreet lacerations on the forehead. Is that what you're
23 referring to in that picture of #40?

24 A. Yes, ma'am.

25 Q. Okay.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 And then you refer to the nose of the victim. What were your
2 findings with the nose of the victim?

3 A. The - - the nose of the victim, he had a small laceration
4 across the bridge of the nose but he had a displacing fracture of
5 the entire nasal bridge. You could actually take the nose and move
6 it all about the face.

7 Q. It was broken.

8 A. Yes, ma'am.

9 MS. LIVELY: Your Honor, at this time I would ask to publish
10 these pictures to the jury.

11 THE COURT: You may do so, and, Mr. Foreman, they will be
12 with you in the jury room.

13 MS. LIVELY: Thank you.

14 Q. Dr. Proctor, you've already testified that the victim died
15 from a severe beating. Could you tell how many times the victim
16 actually was beaten?

17 A. Ah, it's very hard to tell.

18 He had contusions on the thick part of his hands which are
19 defense wounds trying to ward off blows. He had the two
20 lacerations across the forehead. I think I described three
21 lacerations in the anterior scalp and the bridge of the nose
22 injury.

23 So that's three, two, five, six - - six about the face at
24 least, and it's hard to tell how many he was struck trying to ward
25 off with his hands.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 Q. Um, could you tell from your examination whether or not the
2 victim would have suffered before he actually expired?

3 A. A beating of this type causes the brain to swell, and that
4 takes some time, and he had blood inside the cranial cavity, and as
5 the blood becomes increased, the increased amount, there's just a
6 finite space inside the skull, and, actually, what happened is that
7 blood compressed the brain tissue and actually tried to force it
8 down through the frame and the magnum in the base of the skull.

9 So, he, um, he knew what had happened, and it took a period of
10 time for the brain to swell. So, yes, ma'am, he did suffer.

11 Q. And would the type of injury that he received to his head and
12 the defensive wounds to his hands, would that be consistent with
13 the use of a - - the handle of a gun or the barrel of a gun?

14 A. The - - the wounds that he had across his head, across his
15 nose and in the scalp, they were linear lacerations. Ah, it was a
16 blunt object but it was a blunt objection that had more of a
17 rounded edge.

18 Like, if you hit someone in the head, say, with a hammer, the,
19 you know, the round end of a hammer, it's going to leave a
20 particular type of contusion or fracture under it.

21 This man was struck with what I would best characterize as an
22 object that was more rounded, and it certainly could be the barrel
23 of a gun.

24 MS. LIVELY: Madame Court Reporter, could I have Exhibit #3.

25 THE COURT: Get your pictures back and give them to her.

DR. PROCTOR - DIRECT EXAMINATION BY MS. LIVELY

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1 They are in evidence.

2 MS. LIVELY: Thank you.

3 Q. Dr. Proctor, whenever this victim was brought to you for an
4 autopsy, what was around his arms and legs? Do you recall?

5 A. Yes, ma'am.

6 He, um, the feet were tied together with an extension cord,
7 and it looked like a charging cord of some sort of electronic
8 device, ah, was tied around the left forearm.

9 Q. I'm going to show you what's in evidence as State's Exhibit #3
10 and ask you if that is a picture of his feet as you recall them.

11 A. Yes, ma'am.

12 MS. LIVELY: One moment, Your Honor.

13 Q. As a part of your autopsy, did you - - did you do a Toxicology
14 Report?

15 A. Yes, ma'am.

16 Q. And what was the - - well, explain what a Toxicology Report is
17 just in case some of us don't know.

18 A. As a part of every forensic examination that we do, we draw
19 blood on the deceased, and we do a blood alcohol and we do drugs of
20 abuse to include, ah, amphetamines, barbiturates, benzos, cocaine,
21 PCP, marijuana, and several others.

22 Q. What was the result of your Toxicology Report on Mr.
23 Espinozat.

24 A. The blood ethanol was negative, and the blood drug screen was
25 negative.

DR. PROCTOR-CROSS EXAM.-MR. AXELROD/REDIR. EXAM.-MS. LIVELY 237

1 Q. Negative.

2 A. Yes, ma'am.

3 Q. Thank you so much, Dr. Proctor.

4 Answer any questions that Mr. Axelrod may have for you.

5 A. Okay.

6 CROSS EXAMINATION BY MR. AXELROD:

7 Q. Good afternoon, Doctor.

8 A. How are you?

9 Q. Doctor, tell the jury the date that Mr. Espinozat died?

10 A. He died on January 11, 2005.

11 Q. And here's a calendar of 2005.

12 A. Uh-huh.

13 Q. Can you tell the jury the day of the week that he died?

14 A. Ah, that was a Tuesday.

15 Q. Thank you.

16 MR. AXELROD: That will be all, Judge.

17 THE COURT: Alright.

18 MS. LIVELY: I have one question, Your Honor.

19 THE COURT: Go ahead.

20 REDIRECT EXAMINATION BY MS. LIVELY:

21 Q. What did you rely on in order to determine January 11th as the
22 death of Mr. Espinozat?

23 A. I relied on the clinical information given to me by the Office
24 of Horry County Coroner and the investigative authorities from
25 Horry County Police Department.

DR. PROCTOR - RE-CROSS EXAMINATION BY MR. AXELROD

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1 I also do an examination of the body. We look for evidence of
2 decomposition or break-down of tissues or whatnot, and there was no
3 significant decomposition at all.

4 Q. Do you know if he was in cold storage or anything?

5 A. Ah, he was placed in our morgue probably the night or the
6 morning of January 11th and would have been in our refrigerated
7 storage until the autopsy was performed the next day.

8 Q. Were you able to determine an exact time of death for Mr.
9 Espinozat?

10 A. No, ma'am.

11 Q. Okay.

12 Thank you.

13 RE-CROSS EXAMINATION BY MR. AXELROD:

14 Q. But to a degree - - a reasonable degree of medical certainty
15 it is your opinion to this jury that he died on Tuesday, January
16 11th?

17 A. Based upon my examination, the clinical information I had from
18 the investigative authorities, I feel that he died most likely on
19 January 11, 2005.

20 Q. And how many autopsies have you done in your lifetime, sir?

21 A. Probably about ten thousand.

22 MR. AXELROD: Nothing further.

23 Thank you, Your Honor.

24 THE COURT: Alright.

25 Any further questions?

DR. PROCTOR-REDIRECT-MS. LIVELY/RE-CROSS-MR. AXELROD

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1 REDIRECT EXAMINATION BY MS. LIVELY:

2 Q. Could Mr. Espinozat have died on the 10th?

3 A. Yes, ma'am.

4 Q. Thank you.

5 A. He could have.

6 MS. LIVELY: That's all I have.

7 MR. AXELROD: I can follow up on that.

8 RE-CROSS EXAMINATION BY MR. AXELROD:

9 Q. But you said based on the clinical observation that you used
10 and the decomposition of the body is why you are saying he died on
11 the 11th?

12 A. I'm saying that based upon my examination and clinical
13 information I was given by investigative authorities, the 11th is
14 certainly a strong possibility. Ah, the 10th could have been a
15 possibility.

16 It - - the body will decompose at different rates based on
17 temperatures of buildings and based on refrigeration, and based on
18 my examination, you know, it could have very easily have been the
19 10th.

20 He was found on the 11th, early morning hours. It could have
21 been late evening hours on the 10th.

22 Q. He was found on the 11th?

23 A. Uh-huh.

24 Q. And the police told you that the murder occurred on the 11th.

25 A. To the best of their knowledge. That's what they said.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 240

1 Q. They told you that, didn't they?

2 A. They told me they found him on the morning of the 11th.

3 Q. Okay.

4 A. And I found nothing in my examination, nothing in my
5 microscopic, morphologic or final description that would radically
6 dispute that.

7 Q. Thank you, Doctor.

8 THE COURT: Alright.

9 Doctor, you may come down, and I thank you for your attendance
10 under somewhat difficult circumstances, and we do hope you get
11 better very shortly.

12 DR. PROCTOR: Thank you, Judge. Appreciate it.

13 THE COURT: Alright.

14 (The witness leaves witness stand.)

15 THE COURT: Alright.

16 Call your next witness.

17 MS. LIVELY: Robbie Caulder.

18 (The witness takes the witness stand.)

19 INVESTIGATOR JOHN R. CAULDER, II, being duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION BY MS. LIVELY:

22 Q. Investigator Caulder, please state your full name for the
23 record.

24 A. John R. Caulder, II.

25 Q. And where are you currently employed?

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 A. Horry County Police Department.

2 Q. How long have you worked for Horry County Police?

3 A. Since 1998.

4 Q. What are your current duties at the police department?

5 A. I'm an investigator with the Crime Scene Unit.

6 Q. And how long have you been with the Crime Scene Unit?

7 A. Since 2004.

8 Q. So, the time of this crime, you were with the Crime Scene
9 Unit. Is that correct?

10 A. That is correct.

11 Q. And what type of, um, crimes will you actually investigate?

12 A. We investigate from burglaries to death investigations.

13 Q. Did you have the opportunity, um, in January, 2005, to
14 investigate the scene of the crime involved this case?

15 A. Yes, ma'am, I did.

16 Q. Okay.

17 Um, please tell the Court and the jury how you came to be
18 involved in that investigation.

19 A. On the date of the incident, I was notified by 911 Dispatch,
20 Horry County 911 Dispatcher, of a deceased male in the Conway
21 section of Horry County off of [REDACTED] [REDACTED] which is off Highway
22 544.

23 Myself, I responded from my location taking about forty-five
24 minutes, and when I got there found out what was going on from the
25 first responding officer.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 Q. Okay.

2 Now, what was the date that you actually arrived on this crime
3 scene?

4 A. Look at my notes.

5 Q. Okay.

6 A. It was January 11, 2005.

7 Q. And what time of the day was it that you arrived on the scene?

8 A. It was about 7:30 p.m.

9 Q. Now, Officer Caulder, when you arrived on the scene, was it
10 already secured by Horry County Police?

11 A. That is correct.

12 Q. Okay.

13 Tell, um, tell us what that means whenever a crime scene has
14 been secured.

15 A. A crime scene secured is when the first responding officer
16 gets there, and after the area, home, business or whatever it is is
17 secured by the first responding officer.

18 He then goes outside and sets up a parameter with yellow crime
19 scene tape and doesn't allow anyone to go in the scene afterwards.

20 Q. Did you have any, um, way of knowing whether or not people had
21 come and gone from that crime scene after Mr. Espinozat died other
22 than the police?

23 A. No, ma'am.

24 Q. Now, um, whenever you first came on the crime scene, what was
25 your initial duty whenever you got there?

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 243

1 A. My initial duty when I first arrive on the scene is to talk
2 with the detective, the lead detective and the first responding
3 officer to find out what had transpired at the location prior to me
4 arriving, um, get a little background.

5 Q. Who was the lead detective?

6 A. The lead detective was Alan Large.

7 Q. And who was with you to assist you in, um, collecting evidence
8 from the crime scene?

9 A. It was Senior Investigator Jeff Gause.

10 Q. And why was, um, Investigator with - - assisting you with this
11 crime scene?

12 A. Because I was new to the Crime Scene Unit, and I was still in
13 training. So he was there to kind of supervise, oversee what I was
14 doing.

15 Q. Now, was this your first murder investigation?

16 A. That is correct.

17 Q. Okay.

18 Um, had you dealt with a death investigation prior to that
19 time?

20 A. Yes, ma'am, I had.

21 Q. Okay.

22 So, whenever you got to the scene, um, how did you first enter
23 the home?

24 A. We entered the home through - - we entered the front door of
25 the residence. After - - after just making a quick overview of

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 244

1 the exterior or the residence, we went to - - there were two - -
2 three points of entry on this residence. There was front door,
3 a side door and a rear door.

4 Um, the rear door was locked by - - had a sliding glass door
5 and had a piece of bar, a piece of wood lodged down where you
6 couldn't get into it.

7 The side door was open, and it had a vinyl floor, and there
8 appeared to be some blood. So we didn't want to contaminate it,
9 and so we went into the front door of the residence.

10 Q. What was your first impression of the, um, scene whenever you
11 went into the home?

12 A. When we first walked into the home, we could see things. When
13 you walk through to the front door of the residence, the living
14 room is the room that you entered. Um, there was some items
15 strewn about on the floor. Um, there was several areas of blood
16 that had pooled up on the carpet, um, is what you could see, and
17 pretty much straight into the door you could kind of see that there
18 was a hallway leading to the back part of the residence but you
19 couldn't see down it. I could tell that some kind of struggle had
20 taken place inside of the living room due to the items being strewn
21 about in the living room and the large pool of blood.

22 Q. Officer Caulder, did you have an opportunity once you had gone
23 through the crime scene to actually diagram the scene as well as
24 the evidence collected in this case?

25 A. Yes, ma'am.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 Q. Okay.

2 I'm going to show you a blown up diagram which has been marked
3 as State's Exhibit #9 and ask you if you recognize - - if you
4 recognize this?

5 A. Yes, ma'am.

6 That's the drawing I - - I made of the scene.

7 Q. Okay.

8 And this is an accurate reflection of what you've done. It's
9 just been blown up. Is that correct?

10 A. Yes, ma'am.

11 MS. LIVELY: Your Honor, at this time I would move State's
12 Exhibit #9 into evidence.

13 THE COURT: I will permit it.

14 MS. LIVELY: Thank you, Your Honor.

15 MR. AXELROD: Without objection, Your Honor.

16 THE COURT: Thank you.

17 (The Court Reporter accepts State's Exhibit #9 into evidence.)

18 Q. Now, Officer Caulder, you've already stated that when you got
19 there, you entered the home through the front door of the
20 residence. Is that right?

21 A. Yes, ma'am.

22 Q. Did you check or did you take any latent prints off of the
23 front door of the residence?

24 A. Yes, ma'am.

25 I was able to actually lift a latent print from the front door

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 handle.

2 Q. Alright.

3 A. It's listed as #19 at the bottom of that sill.

4 Q. Okay.

5 And whenever you actually lifted it, you're saying it's right
6 here, #19?

7 A. Yes, ma'am.

8 Q. Okay.

9 So, um, each one of these numbers that you have on here is
10 evidence that you collected from that scene. Is that right?

11 A. Yes, ma'am. That is correct.

12 Q. Okay.

13 Now, whenever you were in the home, who is the one that was
14 taking the pictures of all of the evidence that was collected?

15 A. It - - myself.

16 Q. Alright.

17 And those pictures have been given to defense, and we've also
18 gone through them as well. Is that right?

19 A. Yes, ma'am.

20 Q. Okay.

21 I'm going to show you what has already been entered into
22 evidence by stipulation of the parties as State's Exhibits #10
23 through #39.

24 A. Okay.

25 Q. Okay?

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 And I'm going to show you State's Exhibit #18 and ask you if
2 that is what you testified to in regards to the latent prints take
3 from the from door of the home.

4 A. That is correct.

5 Q. Okay.

6 Was there - - were you able to use this print - - did you find
7 any type of a match or a consistent, um, print with anyone involved
8 in this case?

9 A. I was not able to. After comparing that latent, I was not
10 able to identify it to anyone involved in this case.

11 Q. Now, Officer Caulder, what kind of conditions have to be
12 present in order for a print to be one that can be matched or
13 consistent with either a defendant or anyone that would be, um,
14 have some contact with this particular house?

15 A. Um, it varies from condition, weather condition, body types,
16 skin type. Um, I can use myself. I'm an oily person meaning that
17 I have an oily complexion. Um, I would naturally on certain
18 conducive areas would be able to leave a print on something that
19 would be - - that could allow a print.

20 Prints are not always left on anything you touch. It has a
21 lot to do with that. So, the sweat from the oils from the
22 fingers, weather conditions if it's cold outside. It's hard to - -
23 and you're not sweating and much.

24 Um, the surface type. Generally, smooth surfaces such as
25 glass, metals. Door handles are easier to lift latent prints from

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 248

1 because they're more conducive to allowing the print to be there.

2 Q. What happens then with a house that has a great deal of
3 traffic on a door handle?

4 A. What happens even - - even in your own homes is once you turn
5 the handle, naturally, at turning, um, once you touch something, if
6 that were a conducive surface, you generally don't touch things
7 like that but door handles, you're turning it.

8 So, what happens is you're smearing your print. You're
9 leaving an impression but you're not leaving any type of readable
10 indentation or ridges from that print, and with high traffic it
11 happens the same way. You get so many overlays, everybody
12 touching the same area consistently. It's just going to leave
13 nothing, just a bunch of smears.

14 Q. So, is it as easy as CSI on television that you're just going
15 to find the perfect print and be able to match it to anyone?

16 A. No, ma'am.

17 Q. Okay.

18 And, um, how many different crime scenes have you investigated
19 where you attempted or have lifted, um, prints, and were actually -
20 - -

21 MR. AXELROD: Your Honor, the Solicitor is leading this
22 witness. If she asks a question - - -

23 THE COURT: I will permit that question but go ahead.

24 MS. LIVELY: Okay.

25 THE COURT: She - - she doesn't suggest the answer when she

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 says, "How many?"

2 Go ahead.

3 Q. How many times or how many crime scenes have you investigated
4 as, um, to lift latent prints?

5 A. I probably - - lifting prints including burglary, death
6 investigations, probably in excess of fifty to a hundred.

7 Q. And in those fifty to hundred crimes, how many times have you
8 actually matched or found a print consistent with someone charged
9 with a crime?

10 A. Probably about anywhere from about five percent of the time.
11 It's very rare.

12 Q. In this house how many of the prints were you able to match to
13 Mr. Garner, the defendant, Lonya Sowdon or Lee Pierce?

14 A. None.

15 Q. And do you recall how many prints that you lifted at the crime
16 scene?

17 A. Um - - - two at the crime scene.

18 Q. Okay.

19 And what were the problems with those prints whenever you
20 tried to further your investigation as to who left them?

21 A. With the comparison of the latent print?

22 Q. Yes.

23 In the one you got, #19 which was at the door, where was the
24 other print that you, um, that you lifted?

25 A. #20 is at the back door which is on the side of the residence.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 Q. Okay.

2 Right here at the back door?

3 A. That is correct. Yes.

4 Q. Okay.

5 What were the problems with those two prints?

6 A. They were of comparison quality. I was just unable to
7 identify them to any persons involved in the case meaning that I
8 was not able to find enough ridge or enough identifying markers
9 within a print to say that it was anyone involved in the scene or
10 at the scene.

11 Q. Okay.

12 On that same note were you able to say or eliminate that Mr.
13 Garner was at the scene?

14 A. No, ma'am.

15 Q. Okay.

16 Um, who - - who else's fingerprints did you take at the crime
17 scene?

18 A. At the crime scene, I did happen to get the post-mortem prints
19 from the victim.

20 Q. And why would you have gotten the victim's prints?

21 A. For comparison and elimination. Um, in case any latent lifts
22 were lifted at the scene, we could go ahead and identify - - try to
23 identify that back to the victim and go ahead and eliminate that
24 latent print.

25 Q. Now, Officer Caulder, when you were in the living room area -

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 251

1 - I believe that's how you referred to it, um, was there any blood?

2 A. Yes, ma'am.

3 There was - - there was blood near the - - between the couch
4 if you're looking at the scene, between the couch and the
5 television and stereo area where all the numbers 14 - - 14, 15, 16,
6 17 and 5, this area here had scattered spots of blood that had been
7 pooled up on the floor and led towards the hallway.

8 Q. Okay.

9 And when you were in that area, did you photograph the, um,
10 blood?

11 A. Yes, ma'am.

12 Q. Okay.

13 I'm going to show you already in evidence as State's Exhibit
14 #14 - - I think that's right - - #12, #13 and #14 and ask you if
15 that is what you are testifying to at this time.

16 A. Yes, ma'am.

17 Q. Okay.

18 So these markers that you have in the living room is where you
19 found blood. Correct.

20 A. That is correct. Those were items collected from where they
21 were near pools of blood.

22 MS. LIVELY: Your Honor, I'd ask that I be able to publish
23 those to the jury?

24 THE COURT: You may.

25 MR. AXELROD: Without objection, Your Honor.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 THE COURT: Thank you.

2 They are already in evidence.

3 MS. LIVELY: And, Your Honor, also, #18 is where they lifted
4 a latent print.

5 THE COURT: You may publish.

6 MR. AXELROD: Without objection, Your Honor.

7 Q. Now, when you leave the living room area, where did you take
8 your investigation after that point?

9 A. Generally from the way that Investigator Gause had taught me,
10 you start away from - - from the small - - what he deemed the small
11 area to the large area meaning the area that was furthest away from
12 the actual scene inside to the scene itself.

13 So, we would have started - - we went through the kitchen area
14 which is located to - - next to the carport on the far left, top
15 left. That was the kitchen area.

16 Q. Okay.

17 A. We worked in that kitchen area. We - - and then we would
18 have worked down the hall. Come back out from the living room into
19 the hallway toward the back bedrooms.

20 Q. Let me ask you a couple of questions about the kitchen area.

21 I'm going to show you what's been entered into evidence as
22 State's #15, #16 and #17, and ask you. What was the purpose of
23 those pictures?

24 A. The purpose of this one, State's evidence #17, is a placard
25 marked #3 that's showing a small brass metal item. State's Exhibit

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 253

1 #15 and #16 - #15 is of the vinyl flooring that leads to the side
2 door of the residence, um, showing some shoe impressions, and on
3 the floor, the vinyl floor that had been sprayed - - sprayed with
4 a chemical treatment called amino black. Um, amino black tests for
5 the presence of protein, blood, um, meaning that the dark area of
6 that of a shoe impression had come in contact with blood at some
7 point, and that person had walked across the floor.

8 Q. And that was on the kitchen area?

9 A. Leading up toward the side door.

10 Q. The side door?

11 A. Yes, ma'am.

12 Q. And you actually got #2 and #3 on the diagram as well?

13 A. Yes, ma'am.

14 Q. Okay.

15 And that's the shoe impression?

16 A. That is correct.

17 Q. And you just testified that that was consistent with blood
18 being left off of a shoe. Is that right?

19 A. Well, a shoe had come in contact with some blood and then
20 traveled across the floor.

21 MS. LIVELY: Your Honor, I'd like to publish these to the
22 jury as well.

23 MR. AXELROD: Without objection, Your Honor.

24 THE COURT: You may.

25 Q. Now, you were talking about moving back out of the kitchen

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 area and into the living room. Is that correct?

2 A. That's correct.

3 Q. Okay.

4 So, um, where did you head your investigation after that
5 point?

6 A. It -- when we would have moved from the living room, kitchen
7 area down the hallway.

8 Q. What did you notice whenever you entered the hallway?

9 A. Well, when we entered the hallway the first thing that was
10 noticed of significance -- of any significance was a small hole in
11 the wall of the hallway, the same side of the hallway that the
12 kitchen is on. The hole was that consistent with a fire
13 projectile had entered the wall, um, there was a shell casing on
14 the floor, and part of the drywall had apparently been cut, and
15 then it appeared that it had been pulled away with some type of
16 force.

17 There was blood on both sides of the wall leading down the
18 hallway, and then there was an orange drop cord -- orange
19 electrical cord that was leading from the living draped down the
20 hallway toward the back bedroom.

21 Q. Okay.

22 Now, when you saw this entry hole, did you know right away
23 that it was a bullet hole?

24 A. Yes, ma'am.

25 Q. And I'm going to show you State's Exhibit #35, #34 -- #32,

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 #33, #34 and #35.

2 Will you state what those photos detect?

3 A. State's Exhibit #35 is the actual bullet - - the entry point
4 in the hallway on that drywall, um, where the bullet hole was first
5 scene.

6 We traced - - the proceeding picture which is #34 is the - -
7 is the exterior wall on the back side of the house where the
8 projectile that had been fired was extracted from.

9 Number - - State's Exhibit #33 is an overview of that same
10 area that #34 is just a close-up version of.

11 And #32 is an overall view of the back area.

12 Q. Now, Officer Caulder, were you able to recover the casing for,
13 um, this bullet, the projectile?

14 A. We recovered a casing but due to the extensive damage to the
15 projectile weren't able to determine it back to it because it had
16 been just decimated. It had just gone through the wood and then
17 extracted from the wall. There was really no evidentiary value to
18 the projectile that was extracted from the wall.

19 Q. Were you able to determine what type of projectile it was
20 based on the casing that you found?

21 A. We could fond reasonably would believe that since the fond
22 trajectory path from the hallway through the kitchen and into the
23 far wall of the kitchen and into the exterior wall of the
24 residence, um, we determined it to be fired from that same type of
25 weapon which would have been a 22 caliber semi-automatic.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 256

1 Q. How did you know that it was a semi-automatic 22 instead of a
2 revolver?

3 A. A 22 ejects. A revolver is in a cylinder. So, naturally, if
4 it was one on the ground. If it had been a revolver, there would
5 have been four or five others on the ground because would have had
6 to dump the whole cylinder of the revolver.

7 A sem-automatic when it is fired once is just going to
8 automatically eject the casing.

9 MS. LIVELY: Your Honor, I'd like to publish these four
10 pictures to the jury.

11 THE COURT: They are already in evidence?

12 MS. LIVELY: Yes.

13 THE COURT: You may publish.

14 Q. Now, Investigator Caulder, what else did you see along the
15 walls of the hallway when you moved down that path?

16 A. Moving down the hallway, there were obvious smears and blood
17 spatter that was on both sides of the wall. You could tell where
18 something had been either made contact with the wall that had blood
19 on it causing the smears on the wall, and that led up to the back
20 bedroom on the left end - - the rear corner of the house.

21 Q. I'm going to show you what's already in evidence as State's
22 #20, #21 and #22, and ask you if this accurately reflects your
23 current testimony.

24 A. That's correct. It's showing the hallway looking from the
25 living room and the blood spatter and a scale view of the blood

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY 257

1 spatter that was on the walls and smears that were on the walls
2 leading toward the back bedroom of the residence.

3 Q. Okay.

4 And, Investigator Caulder, on the one you say that has the
5 measurement on it which is State's #22, what is the purpose of
6 having this ruler measurement?

7 A. The purpose of the scaled ruler is so that a person that is
8 familiar in blood spatter analysis can go back and determine if it
9 is a - - there's different types of blood spatter: Cast-off,
10 transfer, um, high velocity, medium velocity and low velocity all
11 caused from different methods, and a blood spatter person,
12 analyst (sic) can come back and look at that picture with that
13 scale and determine diameters of the blood spatter itself to tell
14 you whether it was high velocity, medium velocity or low velocity.

15 Q. And, um, where was the position of this ruler whenever you
16 placed it up against the wall?

17 A. It was from the floor to the top of the ruler. So, the bottom
18 of the ruler actually is touching the floor.

19 Q. And in State's #20, that's a just a view down the hallway?

20 A. Yes, ma'am.

21 Q. Alright.

22 MS. LIVELY: Your Honor, I'd ask to publish these as well?

23 THE COURT: Yes.

24 MR. AXELROD: Without objection, Your Honor.

25 THE COURT: You may publish.

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 MS. LIVELY: Thank you, Your Honor.

2 Q. Now, when you, um, back of the hallway, tell the jury at that
3 time what you observed.

4 A. Back to the back of the hallway, I did observe - - observe in
5 the left - - a set of feet that were sticking into the hallway from
6 the bedroom from about mid calf to the foot. They were bound by an
7 electrical cord, that same orange electrical cord that was leading
8 from the living room.

9 Um, the victim was lying on his right side. His pants - - he
10 wasn't wearing a shirt - - had some type of flannel bottoms. He
11 had some type of pajama-type bottoms on which were, obviously, a
12 little lower than his waist and with his boxers showing - - boxer
13 briefs showing up top.

14 Q. What else, if anything, did you notice about these pants?

15 A. That they had been, obviously, that he had been drug down the
16 hall because the pants had been pulled down, um, as far as which
17 would have been consistent with the person being dragged down the
18 hallway because the pants had started to come down below the
19 buttock area.

20 Q. And what was in the victim's pockets?

21 A. His - - his - - the pants had, obviously, been pulled out, the
22 pockets of the pants.

23 Q. Now, I'm going to show you what's already in evidence as
24 State's Exhibits #25, #26, #27 and #28. If you would please tell
25 the jury what's depicted in Exhibit #25, the significance of that

INVESTIGATOR CAULDER - DIRECT EXAMINATION BY MS. LIVELY

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1 picture?

2 A. Exhibit #25 is the blood spatter that is - - was on the door
3 of the bedroom where the victim was found. Um, it is - - this had
4 the scale, the same to show the diameter for a blood spatter person
5 to be able to tell the diameter of the blood spatter itself.

6 The top of the scale is at the top of the door hanging
7 downward toward the bottom of the door.

8 Q. Okay.

9 I'm going to now show you State's Exhibit #26 and ask you what
10 that picture depicts.

11 A. It's a view from the hallway looking into the bedroom.

12 Q. And what else is depicted in that picture?

13 A. It depicts the victim lying on his right side with his arms
14 kind of bent toward the - - into his stomach area with an obvious
15 wire, black wire bound around his left wrist.

16 Q. And how were his legs?

17 A. It doesn't depict it this picture.

18 Q. Okay.

19 Do you recall how his legs were when you found him?

20 A. They were - - they were bound - - they were out in the hallway
21 but they were bound together with the orange electric cord.

22 Q. And I'll show you Exhibits #27 and #28 which is already in
23 evidence and tell the jury if you would what the significance of
24 those two pictures are.

25 A. State's Exhibit #27 is a pair of off-white beige shorts that

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1 was collected from the bedroom where the victim was found just
2 about his head, and on it is a impression, a shoe impression, a
3 bloody shoe impression that was collected as evidence.

4 State's Exhibit #28 is of a - - it's of a doorframe just
5 outside of the room where the victim was found on - - in the
6 hallway, and on the doorframe itself is a picture of a bloody hand
7 impression.

8 Q. Okay.

9 Were you able to run the bloody hand impression in State's
10 Exhibit #28 to see if it was consistent with anyone who had been at
11 the crime scene?

12 A. No, ma'am.

13 After looking - - looking closely at the bloody impression,
14 there was not enough ridge detail for any type of identification or
15 classification.

16 Q. You could just look at it and know right away that you
17 wouldn't get a match?

18 A. That is correct.

19 Q. Okay.

20 What else about this crime scene made it difficult for you in
21 collecting these prints?

22 A. Because the - - throughout the entire residence from the
23 living room all the way including the bedroom where the victim was
24 found, the bathroom and the other two bedrooms had completely been
25 ransacked. Somebody had been through, um, strewn the bedding

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1 around, been through closets, been through the items that were in
2 the bedrooms such as clothing that was on the floor had been
3 scattered, thrown about. The mattresses were moved from their
4 base, the railing.

5 Someone in the back far end bedroom had been up into the
6 attic, and you could tell this by the - - by the insulation that
7 had been thrown out of the attic that had now piled up into the
8 closet as if they were looking for something.

9 Ah, the smears in the hallway and the blood on - - was tell -
10 - - that there was a struggle that going on while the victim was
11 being assaulted.

12 It was just pretty obvious that there was some type of
13 struggle or somebody hastily going through things looking for a
14 certain item. So.

15 Q. Um, how much blood were you dealing with at this crime scene?

16 A. There was a consistent amount of blood, um, from the living
17 room, um, down the hallway and where the victim had finally came to
18 rest.

19 Q. I'm going to show you - - and collect those from you if you
20 don't mind.

21 MS. LIVELY: Your Honor, if I may publish these to the jury?

22 THE COURT: You may.

23 MS. LIVELY: Well.

24 Q. You did testify that the rooms were in disarray?

25 A. Yes, ma'am.

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1 Q. Okay.

2 I'm going to show you Exhibits #30, #31 or #29, #30 and #31
3 and ask if that accurately - - if those pictures accurately reflect
4 what your testimony was regarding the condition of the room - - or
5 rooms?

6 A. Yes, ma'am.

7 Item #29, State's evidence, is the - - had a heating and air
8 unit system supplied duct work that was in the hallway where
9 someone had went in and pulled the insulation away as if looking
10 for something.

11 Q. Um, #30, State's Exhibit #30 is the far wall of the back - -
12 or the bedroom on the east end of the residence. It shows beside
13 the bed where the bed had - - the mattress and box springs had been
14 pulled away from the - - off the railing and off the wall.

15 And #30 is the clothing that had been just strewn about in the
16 bedrooms, just tossed about as if someone was looking for
17 something.

18 Q. Um, now you testified before that you'd investigated
19 burglaries. Is that correct?

20 A. Yes, ma'am.

21 MS. LIVELY: Your Honor, I'm going to publish these as well.

22 THE COURT: Yes, ma'am.

23 Q. How does this crime scene, um, appear to you in regards to the
24 possibility of a burglary?

25 A. It - - it was very consistent, um, with burglaries, um,

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1 whether they were - - they were looking for some known thing
2 meaning they were going through each room just moving items about
3 trying to locate something specific.

4 Q. Now, you've already testified that there was blood in the, um,
5 there was blood in the living room, wasn't it?

6 A. Uh-huh.

7 Q. And there was blood in the hallway?

8 A. That's correct.

9 Q. You also - - was there any blood in the bathroom?

10 A. There was several drops that was on the linoleum. It's right
11 there at the entrance of the bathroom, um, there were several
12 single drops of blood.

13 Q. And this was depicted in #23 and #24 in the evidence that you
14 collected?

15 A. That is correct.

16 MS. LIVELY: Your Honor, I would publish these as well.

17 THE COURT: Yes, ma'am.

18 Q. Now, Officer Caulder, just to back up for a moment.

19 You've got the number 3 in the kitchen area.

20 A. Yes, ma'am.

21 Q. Um, what was that number 3 piece of evidence?

22 A. We initially - - going through and collecting evidence, we
23 initially thought that the item collected from the kitchen floor by
24 the back of the side door was a shell casing. Um, after later
25 examination of the piece of evidence, it was determined to be a

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1 small brass rivet type item, um, that was definitely not a shell
2 casing but appeared to be some type of rivet - - rivet - - that
3 belonged to some type of mechanical operation. Not quite sure
4 what.

5 Q. Ah, but the casing that you did find, you said it was from a
6 22. Is that correct?

7 A. That is correct.

8 Q. What did you do to - - were you able to pull a print off the
9 casing?

10 A. No, ma'am.

11 Q. And why is that?

12 A. Um, casings are a tricky thing. Most of the time when you -
13 - a shell casing or ammunition is loaded into a weapon, you do
14 touch it, um, regardless of the conditions but once the casing is
15 loaded into the weapon whatever it may be, revolver or semi-
16 automatic, once it is placed in there, there is a small reaction or
17 an explosion that occurs when the primer initiates the - - the
18 powder to cause the lead to leave the barrel of the gun. It's a
19 small explosion.

20 Um, what happens is when there is a print on the casing when
21 it's put into - - when the ammunition was put into the gun is once
22 that explosion happens, it causes that heat, and it's going to
23 dissipate any type of sweat or oils that would have been on it. So
24 it's going to leave it pretty much useless as far as prints go.

25 Q. And have you tested this for yourself at some point?

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1 A. Yes, ma'am.

2 Q. And have you ever been able to pull a print off of a casing?

3 A. I have personally tested over a hundred shell cases fired by
4 me in a sterile environment and have never been able to lift one.

5 Q. Now, when you found Mr. Espinozat, what did you do with the
6 body? Whenever you found him laying on his side, what did you do?

7 A. At first - - first thing we do is we photograph him as is to
8 make sure that no evidence - - and search around him.

9 We used some chemical, that same amino black to test for more
10 shoe impressions by the head of the victim.

11 Um, after that we'll - - after making sure that there was
12 nothing else, we'll roll the body meaning to check for any other
13 area that maybe had wounds or whatever.

14 Um, it was very obvious that the victim had marks to his - -
15 to the front and rear of his head or lacerations.

16 Um, and after or before releasing or the coroner taking the
17 body, we cut the orange cord leaving the tied knot around the feet
18 of his ankle or his ankles, um, far enough down where we - - so we
19 don't hinder the knot.

20 Some forensic analysts are able to tell from the tie in the
21 knot if it was left-handed or right-handed.

22 Q. Um, when you arrived at the crime scene, you said this was
23 around 7:00 at night on the 11th. Is that right?

24 A. Yes, ma'am.

25 Q. Okay.

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1 Um, did you provide any of that information to Dr. Proctor
2 whenever you went to the autopsy?

3 A. When we arrive at the autopsy, we just tell and give Dr.
4 Proctor a brief scenario of what we found, um, able to determine at
5 the scene.

6 Q. Okay.

7 A. And, naturally, he views the body. As we - - it leaves the
8 scene, it arrives at the morgue in the same condition.

9 Q. And at that time did you have any other information regarding
10 the crime other than what you were able to collect inside the home?

11 A. No, ma'am.

12 Q. Um, at that time do you have any witnesses to give you any
13 guidance as to what occurred in the home?

14 A. No, ma'am.

15 Q. So all of the evidence that you collected that day or that
16 evening, I apologize, was just you doing your basic investigation
17 that you would do in a standard crime scene?

18 A. That is correct.

19 Q. Okay.

20 When did you conduct a supplemental investigation into this
21 case?

22 A. Supplemental as?

23 Q. Supplemental as to another piece of property involved in this
24 case?

25 A. The only other - - we, um, had two vehicles that were towed to

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1 the - - the Horry County Police Impound Lot which were two Ford
2 Mustangs, a 2001 Ford Mustang and a 2004 Ford Mustang which I was
3 a party to processing.

4 Q. Okay.

5 And, um, I'm going to show you what's already in evidence as
6 State's Exhibits #36, #37, #38 and #39 and ask you if these are the
7 pictures of the Mustangs that you're referring in regards to your
8 additional investigation in this crime.

9 A. Yes, ma'am.

10 Q. Okay.

11 And whose vehicle was that?

12 A. I'll take a look at my notes.

13 The 2001 Ford Mustang came back registered to a Jerry Linsky.

14 Q. Lisky?

15 A. Lisky. I'm sorry.

16 The 2004 Ford Mustang to the owner of a Donna Marie.

17 Q. Okay.

18 Now, let's just talk about the 2001 Mustang.

19 A. Okay.

20 Q. Okay.

21 Did you lift any prints off of this, um, vehicle?

22 A. Yes, ma'am.

23 Q. Okay.

24 And what were the results of the prints that you lifted off of
25 this vehicle?

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1 A. I was not able to identify them back to anyone involved that
2 had driven or been in the vehicle.

3 Q. Okay.

4 Once again, could you eliminate the defendant or any of the
5 other parties involved in, um, this matter?

6 A. No, ma'am.

7 Q. Um, in the same way?

8 A. No, ma'am.

9 I was unable to eliminate anyone.

10 Q. Okay.

11 Ah - - and State's Exhibit #39 which is already in evidence,
12 would you please tell the jury what those circles or those stickers
13 are depicting in that picture?

14 A. State's Exhibit #39 shows the inside - - the plastic - - the
15 plastic kick plate on the passenger side in the interior of the
16 vehicle where your - - where possibly your right foot sits when you
17 sit in the car, that little kick panel that's on the side.

18 These are the - - the dots indicate areas in the car that
19 tested presumptively positive for blood.

20 Q. Okay.

21 Who did that test?

22 A. I did.

23 Q. Okay.

24 And explain what the presumptive test is for blood.

25 A. The presumptive is what we - - it's called phenolphthalein.

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1 It' tests for the presence of proteins and iron in blood but it
2 doesn't differentiate between animal or human. It just says
3 whether presumptively it is blood or not.

4 Q. Okay.

5 And where, again, did you find these drops of blood?

6 A. They were on the kick panel, the plastic kick panel on the
7 front passenger side, front seat of the vehicle which would be
8 consistent of where your feet are, especially your right foot.

9 Q. Where else in that vehicle did you find blood?

10 A. Nowhere else in the vehicle.

11 Q. And did you, um, search that vehicle thoroughly?

12 A. Yes, ma'am.

13 MS. LIVELY: Your Honor, I'm going to publish these to the
14 jury.

15 THE COURT: Yes, ma'am.

16 Q. What did you do with the drops or the swabs that you took of
17 the blood in this vehicle?

18 A. The swabs were packaged and sent to SLED.

19 Q. Why did we not have anything from SLED in regards to, um,
20 those blood swabs?

21 A. There was not enough to get a profile or DNA profile from the
22 amount of blood that was collected from inside the car.

23 Q. But as you stated, you were able to confirm it was blood?

24 A. That is correct.

25 Q. Okay.

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1 Now, you've mentioned at the very beginning of your testimony
2 - - testimony, Investigator Caulder, that you - - this is your
3 first murder scene. Is that correct?

4 A. That is correct.

5 Q. Okay.

6 Is there anything that you would do differently now than you
7 did at that time when you investigated that murder scene?

8 A. Yes, ma'am.

9 Q. Okay.

10 What - - and what is that?

11 A. Um, first, with the, um, the prints. The post-mortem prints
12 from the victim would actually - - actually have gotten better when
13 the training progressed, um, the proper obtaining of those ten
14 prints from a deceased person. I'd have wanted to go back and
15 done those again if I'd have had the opportunity.

16 Q. What about all of the rest of the evidence that you collected,
17 um, on that evening of January 11th?

18 A. No, ma'am.

19 I feel pretty confident in as far as the processing of the
20 entire scene. Um, that is still the course or method I still use
21 with just the deviation on the proper technic for taking the ten
22 prints from the deceased.

23 Q. Thank you, Investigator Caulder.

24 Please answer any questions that Mr. Axelrod may have for you.

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1 CROSS EXAMINATION BY MR. AXELROD:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 MR. AXELROD: Your Honor, I need to get these marked for I.
5 D. purposes only.

6 THE COURT: May I see them, please?

7 You've had an opportunity to look at these pictures?

8 MS. LIVELY: I have, Your Honor, yes.

9 MR. AXELROD: There's twelve of them, Your Honor.

10 THE COURT: Alright.

11 They are marked for identification.

12 Here they are, Mr. Axelrod.

13 MR. AXELROD: Yes, sir, Your Honor.

14 I'm going to let the Court Reporter - - I'm going to let her
15 do her thing right now, if I may.

16 THE COURT: Yes, sir.

17 You want to mark them individually or as a group.

18 MR. AXELROD: Individually.

19 THE COURT: Alright, sir.

20 MR. AXELROD: I'll wait until the Court Reporter is ready.

21 THE COURT: You have them marked?

22 COURT REPORTER: Your Honor, that would be 1 through 12.

23 THE COURT: Okay.

24 Go ahead.

25 One through 12 marked for identification at this time.

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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1 (Court Reporter marks photographs as Defendant's Exhibits #1
2 through #12 for identification only.)

3 Q. Is it safe to say - - how long have you been in the Crime
4 Scene Unit, CSU? You're now CSI, right? You're CSU?

5 A. Same thing.

6 Um, a little over two and a half years.

7 Q. Okay.

8 And would it be fair to say you're a rookie?

9 A. That is correct.

10 Q. So, you said. You told us that, I believe, Investigator Jeff
11 Gause was your supervisor?

12 A. That is correct.

13 Q. How far? What was the extent of the supervision? Where did
14 it start and where did Gause's supervision end?

15 A. Um, it actually began. It began. It began daily, um, not
16 only - - -

17 Q. I'm not - - I'm not trying to confuse you.

18 My question, and I'll rephrase it to make it more specific.

19 At this crime scene, at [REDACTED] where did - - where did
20 Jeff Gause's begin there and, if at all, where did it end on this
21 one investigation?

22 A. It started at the beginning and ended at the end of the day.
23 It's - - it's - - your type of question is hard to answer because
24 it doesn't relate to this incident. It goes back to daily. It
25 would have to be answered daily. It can't - - -

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1 Q. He was there with you that night with everything?

2 A. That is correct.

3 Q. Now, he's no longer in Crime Scene.

4 A. That is correct.

5 Q. When did he leave Crime Scene?

6 A. He has been gone approximately a year and half, close to two
7 years.

8 Q. How much other stuff did he do with you after this initial
9 walk-through?

10 He was there on the log that evening on the 11th - - the 11th
11 of January.

12 A. That is correct.

13 Q. Tuesday night.

14 A. That is Tuesday night. That is correct.

15 Q. And you were told - - what were you told when the murder - -
16 what time did the murder occur? What did they tell you?

17 A. The only thing - - the only information I received is that the
18 murder occurred. They responded out, um, prior - - prior to my
19 notification. So they don't give any time of when the murder
20 occurred.

21 Q. Okay.

22 So you went out on the evening of the 11th which was a Tuesday
23 night?

24 A. That is correct.

25 Q. Okay.

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1 Now, after you finished your walk-through and marking
2 everything and taking all your pictures, did Jeff Gause help you
3 any further after that? That's my question.

4 A. Yes, sir.

5 Q. What did he help you with specifically?

6 A. Um, pretty much in a nutshell, he just kind of - - he just
7 kind of sat back, and, you know, if I needed help, I'd direct him
8 to what I needed to done as far as holding scales up to where but
9 as far as the scene, I did the scene. Then, he was just the
10 person that was there that would just go, "Are you sure? Is this
11 is?"

12 And, "Is that how - - would you do this way any different?"

13 He's just there as a question man.

14 Q. Kind of like Dad?

15 A. I mean, if you - - you sure everything is done the way you
16 want it done?

17 Q. Okay.

18 Now - - you told the jury in your testimony that you could
19 look at a print and determine from eyesight that it was
20 insufficient for you to get a match. Never test it.

21 Is that still your testimony? That you can just - - you can
22 eyeball a fingerprint and say, "That's not going to work."

23 A. Yes, sir.

24 Q. Now, explain to the jury what I believe - - is it AFIS?

25 A. Yes, sir.

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1 Q. Tell the jury what AFIS is.

2 A. AFIS is as in Automatic Fingerprint Identification System that
3 is - - we actually - - there's branches. Some departments have
4 them. Some don't. It is connected to the state server where it
5 reviews local files, state files and/or you could check it. If you
6 had our AFIS you could check it through the FBI.

7 Um, latent prints which are unknown prints, um, any type of
8 unknown print is referred to as a "latent print". Um, you put the
9 latent print into a computer system where you go in and you mark
10 points of minutia which are bifurcations ending ridges, islands
11 that are on the fingerprint itself formed by the ridges in your
12 print.

13 Um, you put one - - you put into the system, if it's a quality
14 to go into the system, then the system responds with X amount of
15 responses meaning that the person that's running the AFIS machine
16 has to go through each individual print to try and identify it back
17 to the print that the system has sent back.

18 Q. Now, tell the jury the schooling you would have to receive.
19 Have you gone to say, like, a fingerprint academy?

20 A. That is correct.

21 Q. And how long was your fingerprint academy?

22 A. Um, the initial - - the initial academy or the initial class
23 was forty hours, and it was provided by the South Carolina Criminal
24 Justice Academy.

25 Q. And did you get a certificate?

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1 A. That is correct.

2 Q. So you completed - - completed forty hours of fingerprint
3 analysis?

4 A. Actually, more, but that was the initial.

5 Q. How much more?

6 Well, at the time of this murder was there any more?

7 A. There was - - at this time of this murder none.

8 Q. No fingerprint school?

9 A. That is correct.

10 Q. Okay.

11 So, it is your testimony that prior to going to the
12 fingerprint school, you determined that you could look at a print
13 and say it was worthless, not do anything.

14 Now, did you ever consider sending that print that you used
15 your eyesight with to AFIS to say, see if it would match with them?

16 A. The prior testimony was not that I could do that before.
17 After I went to school, I could look at a print. That was prior
18 testimony.

19 What was the second part of the question again?

20 Q. My question to you is did you send it to AFIS? Did you send
21 it - - -

22 A. Did I know it was not a quality enough to go through AFIS.

23 Q. How do you know that, though?

24 A. Because when after - - -

25 Q. But your testimony - - -

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1 THE COURT: Wait a minute. Let him answer your question
2 now.

3 A. After going through the training and the training, I actually
4 went through the AFIS training prior to starting Crime Scene which
5 does not - - does not certify me on the way of looking at latent
6 prints but I went through training for the AFIS System.

7 So, prior to - - AFIS only accepts certain types of prints,
8 latent prints, meaning if a print is just a smear or there is not
9 enough ridge indentations of the ridges where I could read, then it
10 would be pointless to put into an AFIS machine - - the system where
11 I would have to read it again when I knew to begin with I couldn't
12 read it.

13 Q. But you had ridge detail in these lifts, didn't you?

14 A. Yes, sir.

15 Q. Absolutely, didn't you?

16 A. Oh, yes, sir.

17 Q. Have you ever sent a print to AFIS and it come back that it
18 wasn't sufficient to read?

19 A. No. The machine doesn't do that. That is a human which
20 would be me, the operator doing it. The machine doesn't kick
21 back. The machine just gives you responses meaning it just comes.
22 Sends back latent prints that are in the system or ten-prints that
23 are in the system that closely match the print that you enter
24 through your minutia points.

25 Q. So, you could enter a print that has ridge detail like you had

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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1 and you might come back with just nothing, then?

2 A. That is correct.

3 Q. Okay.

4 But you never took it upon yourself to even attempt it, did
5 you?

6 A. Me, no, sir.

7 Q. Okay.

8 Now - - you talked about splatter analysis? Did you ever do
9 splatter analysis?

10 A. It's spatter.

11 Q. Spatter?

12 A. No, sir. I - - I have never been to a spatter analysis
13 course.

14 Q. Okay.

15 So, it's fair to say that nobody did a spatter analysis of [REDACTED]

16 [REDACTED]

17 A. I wasn't involved if it happened. I - - it did not take
18 place that night.

19 Q. But you are the Crime Scene Investigator on this case. So you
20 would know if it was?

21 A. If there - - no, sir. Not necessarily.

22 Um, my supervisor can read blood spatter. I can't.

23 Q. Who signed off on this case?

24 A. My supervisor.

25 Q. Which is?

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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- 1 A. Peter Cestare.
- 2 Q. Okay.
- 3 Is he - - is he a Crime Scene guy?
- 4 A. Yes, sir.
- 5 Q. Okay.
- 6 And his last name?
- 7 A. Cestare.
- 8 Q. Can you spell that?
- 9 A. C-e-s-t-a-r-e.
- 10 Q. But to the best of your knowledge, no spatter was done?
- 11 A. No, sir.
- 12 Q. Okay.
- 13 Now - - now - - State's #29, #30 and #31.
- 14 Is that your handwriting?
- 15 A. Yes, sir.
- 16 Q. Did you testify that it had some blood on it?
- 17 A. Yes, sir.
- 18 Q. Did you send that blood to - - -
- 19 A. All blood swabs that were collected from the scene were sent
- 20 to the State Law Enforcement Division.
- 21 Q. And can you bring out for me now, the paperwork, the responses
- 22 from SLED? What does SLED send back to you?
- 23 A. They - - they don't send it to me. They send it to the lead
- 24 detective.
- 25 Q. And what did - - do you know what they sent him?

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1 A. No, sir.

2 Q. Let me ask this.

3 Did SLED send you back any - - do you have any paperwork that
4 SLED sent you back concerning other things you sent them?

5 A. They sent - - the only thing that I'm familiar with is they
6 send us back just the - - what's turned into the Evidence Room,
7 supply log-in up there.

8 MR. AXELROD: I'd like to mark for Defendant's #13 for I.D.

9 THE COURT: You may do that, and the record will reflect
10 that counsel for the State has seen this identification object.

11 (Court Reporter marks Defendant's Exhibit #13 for
12 identification only.)

13 Q. I'm going to let you look at this exhibit and see if you've
14 ever seen it before and read it just to familiarize yourself with
15 it.

16 A. I - - I'm familiar with what it is.

17 It's just an Analysis Report back from - - Lt. Jeffcoat with
18 SLED.

19 Q. And doesn't it - - doesn't it basically tell you that they
20 can't do any kind of analysis on anything unless you send them some
21 blood standards for them to compare it against?

22 A. That is correct.

23 Q. And you didn't send the blood standards, did you?

24 Take your time.

25 A. Yes, sir.

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1 Q. Did you send them?

2 A. Yes, sir.

3 Q. And did they test against them?

4 A. From the blood standard of the victim?

5 Q. Not the victim.

6 A. A blood standard was sent.

7 Q. Were the blood standards from the defendant, the co-defendant
8 and whatever eye witnesses, did anybody get blood from those
9 people?

10 A. No, sir.

11 Q. Okay.

12 Now, you said that you tested with amino black.

13 Well, let me back up.

14 You said twice that all of your investigations, all your
15 analysis could not exclude Mr. Garner from this case.

16 A. That's correct.

17 Q. And I ask you the question on the other side. If all your
18 investigation, your diligence, your hard work, everything you all
19 did, anything that you did - - is there anything that you did that
20 can include - -

21 A. No, sir.

22 Q. - - Mr. Garner?

23 A. No, sir.

24 The only thing - - the any type of latent print or blood work
25 that or blood evidence that I may have sent off did not come back

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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1 or identify to the defendant.

2 Q. In actuality, actually nothing can identify Mr. Garner as
3 being associated with this crime?

4 A. No, sir.

5 Q. Okay.

6 Now, I handed you up twelve pictures of a Mustang, and I
7 believe that was the 2001 Mustang that was owned by Jerry Linsky
8 that Deborah Snowden - - Sowdon says was involved in this crime.
9 Correct?

10 A. That is correct.

11 Q. And you can look at them. I'll let you look at them first.

12 A. Okay.

13 Q. And you send three items to SLED that you say tested positive
14 for blood, and they were on the kick panel?

15 A. Yes, sir.

16 Q. Plastic kick panel.

17 A. Yes, sir.

18 Q. Did you ever put - - let's just back up.

19 Let's just say - - let's just say we had a stain there. It
20 was red in color, and we didn't know what that was. What could
21 you do to tell what that stain might be - - that it might be
22 blood?

23 A. If it were what I assumed to be blood, first and foremost was
24 I'd take a swab of it. Collect that swab and save it. The
25 second thing I would be if I assumed it was blood, I would take the

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1 phenolphthalein which was the presumptive for the blood, and then
2 test it. See if - - test it if it was positive or negative for
3 presumptive blood.

4 Q. So, if I had a spot there, and then I wiped the spot off and
5 the spot was gone, and somebody told you, "Hey, I saw a spot there.
6 There was blood there."

7 Would you be able to take the phenolphthalein and test for the
8 existence of prior blood?

9 A. That is correct.

10 Q. Okay.

11 Q. Did you attack that Mustang with phenolphthalein?

12 A. Just in the spots that were evidence of being - - appeared to
13 me to be blood.

14 Q. Appeared to be - - appeared to you to be blood because they
15 were red in color?

16 A. They were - - blood has a very distinct characteristic. It's
17 not red. It's more of a blackish color once blood dries.

18 Q. But it didn't come back as blood to you, did it?

19 A. Off the kick panel.

20 Q. When you sent it to SLED, did it come back as blood?

21 A. It came back as blood.

22 Q. And they're telling you that there wasn't enough blood to test
23 DNA?

24 A. That's correct.

25 Q. Okay.

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1 Now, other than that kick panel, did you see. Well, tell - -
2 tell the jury what kind of seats were in this Mustang.

3 A. Cloth.

4 Q. Were they leather? Were they cloth?

5 A. They were cloth seats.

6 Q. They were cloth seats.

7 Investigator, I think you can answer this.

8 Are they the kind of seats that, say, when you go into a car,
9 you sit down in the car with a cup of coffee or you spill it, is
10 that the kind of stuff that gets absorbed in that cushion?

11 A. That's - - yes, sir.

12 Q. You found out the facts of this case. You talked to the
13 investigators. Then they had you process the 2001 Mustang. Is
14 that correct?

15 A. That is correct.

16 Q. Did you ever stand there after you processed this Mustang and
17 scratch your head and wonder why there's no blood in this car?

18 A. Wonder. Yes, sir, after the facts of the case, yes, sir.
19 Wonder but, um, after reviewing what we did learn at the scene and
20 that from what was consistent at the scene with the victim being
21 dragged, most of the blood is going to be on the front part of the
22 clothing or on the shoe, not the back side in which we sit on the
23 seat on.

24 Q. Right.

25 So, if you take the phenolphthalein and you put that on the

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1 carpet of the Mustang, did you even see blood on the floor of that
2 Mustang?

3 A. The floor was - - no, sir. The floor was so dirty and dusty
4 that there was - - it was hard to tell. I mean, there was - - you
5 know, contrary to popular CSI, there is no special light that shows
6 blood. It's just a flash light and the eyes. That's the only
7 special light and you can get down there and look for it.

8 And with the dirty consistency of this vehicle, that were the
9 only three areas, four areas that were found that appeared to be
10 blood before the presumptive was done.

11 Q. Can I see the one - - -

12 That's it.

13 But you agree with me. You scratched your head and wondered
14 the same question, didn't you? Why there was no blood?

15 A. Not wondered after I put - - pieced together the scene and
16 then this. This is the natural answer to your question.

17 Q. Did you ever the investigations, you know, after they'd done
18 their investigation whether or not these alleged people in this
19 car, whether they - - they had blood on them when they were in the
20 car?

21 A. Um, basically, the only - - the lead detective was informed of
22 what we were - - of what we found.

23 Um, they came - - the exchange of information is, you know,
24 this is what we have. This vehicle needs to be searched. The
25 suspect was allegedly on the passenger - - the front passenger seat

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1 of the vehicle, and we'd go from there.

2 Um, after we're through, we go back to the lead detective and
3 tell them what we have found or have not found.

4 Q. So, it's your testimony to this jury that those three spots
5 you consider to blood, it came back blood to you. You sent off to
6 SLED, and SLED told you it wasn't enough that they could even test
7 it, and what you're basically saying is there's not even a drop of
8 blood but isn't it true, a drop of blood, you can get DNA?

9 A. I'm not qualified to say how much blood it takes to get DNA.

10 Q. Did you ever ask them?

11 A. No, sir. I've never asked them how much or how little it
12 takes to get a DNA profile.

13 Q. Isn't it true that you can take a swab that you took and you
14 wet the swab? You wipe it on whatever you wipe it on, and that's
15 enough to take a DNA sample?

16 MS. LIVELY: I'm going to object, Your Honor.

17 He's already answered that.

18 THE COURT: I sustain that.

19 MS. LIVELY: He doesn't know.

20 THE COURT: He said he's not qualified to answer that.

21 MS. LIVELY: Thank you, Your Honor.

22 THE COURT: He's told you that.

23 Q. Can I see the results of what SLED - - did SLED send you back
24 a letter saying that there wasn't enough blood? Can I see that?

25 A. No.

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1 When we - - when we send stuff up to SLED, the questionnaire
2 that you have to fill out is, "Who is the lead detective? Who is
3 going to get the copy of it?"

4 So, the lead detective would have been mailed the copy of the
5 examiner's results.

6 Q. Okay.

7 And that again was Peter - - -

8 A. No. The lead detective was Alan Large.

9 Q. Oh.

10 So, if SLED sends something back, Detective Large will have
11 it?

12 A. If anything that was sent off, most of time if it was filled
13 out that he was, in fact, the lead detective, and the paperwork I
14 have says that Alan Large would be the lead detective.

15 Q. Now, if you have a smudged fingerprint and you can't. You say
16 you can look at it, and it's not going to be good enough for you,
17 what else can you do with that fingerprint to determine who it
18 belongs to? Tell the jury.

19 A. A fingerprint can also be taken. It can be swabbed for the -
20 - for DNA. You can swab the print because the sweat from the oils
21 also could possibly contain the DNA.

22 Q. And in actuality, you had some really strong ridge detail in -
23 - in one of these, don't you?

24 A. Yes, sir.

25 Q. Did you swab it and send it off for DNA?

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1 A. No, sir.

2 Q. Is that one of those things if you had to do over again you
3 would do differently?

4 A. Probably not.

5 Q. Would it help the jury with maybe what happened? Who the
6 fingerprint belonged to?

7 A. It would help the jury, yes. That is correct.

8 Q. So, wouldn't it make sense to maybe next time when at a murder
9 scene that we swab that and we send it off for DNA?

10 A. No, sir, not if I'm able to identify the print itself.

11 Q. But you weren't able to identify the print, were you?

12 A. That is correct.

13 Q. Okay.

14 I can look right at the picture. I can see detail. Can't
15 you?

16 A. Yes, sir.

17 Q. You could have swapped that.

18 A. Yes, sir.

19 Q. So, it's your testimony today that you don't have any results
20 of what was sent back from SLED?

21 A. Personally, from my case file, no, sir.

22 Q. Did you ever - - -

23 A. They - -

24 Q. I'm sorry.

25 A. - - they never sent me a copy.

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Did you ever seek to find out whether they sent anything back?

2 A. No, sir.

3 Q. So, just you just sent it up to SLED, and whatever happened to
4 it, happened to it?

5 A. No, sir.

6 Most of the time, they send it back to the lead detective - -

7 Q. Right - - -

8 A. - - and the lead detective, in most instances, if they haven't
9 received, what they'll do is they'll come back and make sure
10 because they are party to everything that goes on as far as what's
11 being sent to SLED when - - before everything is boxed up, packaged
12 and ready to go, we'll call the lead detective in on all cases
13 whether it's burglary to death investigations to make sure that
14 that's what we're agreeing together to be sent to SLED and what's
15 it being sent to SLED for.

16 So, and if after a - - since a backlog up there, after a short
17 while if nothing happens, they'll come back and ask if we've gotten
18 anything back or has it been turned back - - brought back from
19 Columbia, from SLED, and we say, "Yeah," then we call up there or
20 he'll call up there and try to find out what happened to our
21 examine's report on it.

22 Q. Now, you did a GSR Kit that night on, I believe, the roommates
23 of this - - of the deceased person?

24 A. I did not.

25 Q. Okay.

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD 290

1 Do you know if a GSR Kit was done that night - - on the 11th?

2 A. Give me just a brief moment.

3 Q. Why don't you check your report?

4 A. I did a GSR Kit for the victim.

5 Q. Okay.

6 And you did it that night on the 11th?

7 A. That is correct.

8 Q. Okay.

9 Are you aware if any other - - if any other GSR Kits were
10 done?

11 A. Showing that, um, three more GSR Kits were done. I can't
12 testify as to whether it was that night. I wasn't involved in the
13 taking. So, I don't know which detective turned it in.

14 Q. Did you also process the 2004 Mustang?

15 A. That is correct.

16 Q. Did you find any stuff in there?

17 A. One latent print from the passenger side door handle on the
18 2004 model.

19 Q. And did you use your naked eye to decide whether or not you'd
20 be able to use that?

21 A. No, sir.

22 After - - if we do. Most of the times when we look at a
23 print or get something with looks like a readable latent print,
24 we'll lift it. That goes back to your question about swabbing.
25 Once we put it and lift it and it looks like it has - - may have a

INVESTIGATOR CAULDER - CROSS EXAMINATION BY MR. AXELROD

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1 reasonable amount of identification points on it, we'll lift it.
2 Once it's put down and that's tape is put up under there, you start
3 to contaminate that may be no it.

4 That goes back to your question about swabbing.

5 So, that once we - - once we dusted the outside of that car
6 and that latent print was identified, then we go ahead and put the
7 lifting tape on it. I. D. it. Photograph it. Photograph it.
8 Then lift it. Put it on the backing cards and write where we got
9 it from, it's then determined whether through looking at it. You
10 can look at it and see if there's enough ridge detail, and we also
11 have an eye glass, a Henry Glass that we look through which is a
12 magnifying glass about that big and about that thick that we can
13 place on top of the print and able to point out areas of
14 identification.

15 Q. Did you do that?

16 A. Yes, sir.

17 Q. And did you find enough detail?

18 A. Nothing to support or identify to anyone involved in this
19 case.

20 Q. So, after all your crime scene investigation, would it be fair
21 to say that you cannot include Mr. Garner in this case?

22 A. 'Yes, sir, it would be safe to say I cannot include or exclude.

23 Q. You don't know?

24 A. That - - that - - other than the victim, yes, sir.

25 Q. You weren't there?

INVESTIGATOR CAULDER - REDIRECT EXAMINATION BY MS. LIVELY 292

1 A. No, sir. I was not there at the time it happened.

2 Q. And, also, you cannot - - you can't and tell this jury. You
3 can't even look at this jury and tell them that in that Mustang
4 that allegedly left the scene of that crime, you can't even tell
5 that jury whether or not there is a drop of that victim's blood in
6 that car.

7 A. No, sir.

8 The only think I can tell them was that there was blood inside
9 the car.

10 Q. But not enough - - not even enough to do a DNA sample, was
11 there?

12 A. That is correct.

13 Q. So, we don't know, do we?

14 A. No, sir.

15 MR. AXELROD: That's all.

16 THE COURT: Any redirect?

17 MS. LIVELY: Yes, Your Honor, briefly.

18 REDIRECT EXAMINATION BY MS. LIVELY:

19 Q. But you already said that you couldn't exclude the defendant
20 from being there. Correct?

21 A. That is correct.

22 Q. And the drops on the panel were blood?

23 A. That is correct.

24 Q. Confirmed by SLED. Correct?

25 A. That is correct.

INVESTIGATOR CAULDER - REDIRECT EXAMINATION BY MS. LIVELY 293

1 MR. AXELROD: Objection.

2 I - - I don't think we have any proof that it was confirmed by
3 SLED that they were blood. I believe that the officer testified
4 that his initial examination was that it was blood.

5 THE COURT: Continue your examination.

6 MS. LIVELY: Thank you, Your Honor.

7 Q. The, um, the pictures that are already in evidence regarding
8 the footprints, the bloody footprints going through the kitchen.

9 A. Yes, ma'am.

10 Q. Do you recall that?

11 A. Yes, ma'am.

12 Q. Now, would it be reasonable that the person that committed
13 this crime would have exited that way based on the bloody
14 footprints?

15 A. That is correct.

16 Q. Okay.

17 So, blood was left on the floor, and outside the home there
18 was what? Grass, pavement leading out that side door?

19 A. Yes.

20 There was concrete and then a gravelly type driveway.

21 Q. So, the blood on the bottom of the shoe it's very possible
22 would have been wiped clean?

23 A. That is correct.

24 Q. Do you agree?

25 A. Yes.

INVESTIGATOR CAULDER - REDIRECT EXAMINATION BY MS. LIVELY 294

1 Q. Okay.

2 On - - on - - what if a person got into the passenger side of
3 the vehicle and the bottom of their shoe would have been wiped
4 clean? Is it possible that there was blood on the side of the
5 shoe?

6 A. The possibility of the shoe, yes, ma'am.

7 Q. Still on the side?

8 A. Yes, ma'am.

9 Q. Okay.

10 Now, um, you had absolutely nothing to do with the subsequent
11 investigation after Lonya Sowdon came in and named the defendant as
12 being the murderer. Correct?

13 A. No, ma'am.

14 Q. All you did was just collect the evidence that was there
15 whenever you were called in on January 11th at 7:00 at night. Is
16 that right?

17 A. That and the two - - the two Mustangs is my total involvement.

18 Q. And who or what - - who - - how many suspects did you know of
19 at that time?

20 A. None.

21 Q. Okay.

22 And the seats in the 2001 Mustang, you looked over those
23 seats. You said that you went over the entire vehicle. Is that
24 correct?

25 A. That is correct.

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 295

1 Q. And why did you not use the phenol - - whatever the name of
2 that stuff is on the seats?

3 A. There was no area that were consistent with blood or any type
4 of - - I mean, as far as Mr. Axelrod pointed out, coffee stains.
5 There was nothing apparent there had been a stain whether it be
6 blood or coffee or coke. There was nothing that came out after
7 looking through the entire area that appeared to be on the seats.
8 So it would have been pointless to have started taking blind swabs.

9 Q. Okay.

10 And if it had been leather and someone had wiped it off, there
11 would have been more of a reason to use that. Is that correct?

12 A. That is correct.

13 Q. But with the cloth, you saw no spots. Right?

14 A. That is correct.

15 Q. Thank you.

16 MS. LIVELY: That's all I have.

17 RE-CROSS EXAMINATION BY MR. AXELROD:

18 Q. What you're saying. Because if you and I were to walk out
19 and look at that car not knowing the history, supposedly, of that
20 night, we never would have thought that it was involved in a
21 murder, would we?

22 A. I would have never - - if I stopped them on the side of the
23 road, there would be no reason to indicate. In just looking in the
24 car, no reason to indicate.

25 Q. And if somebody - - if somebody had to - - -

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 296

1 Let me show you this picture - Defendant's #1 and #2 for I. D.
2 purposes.

3 If somebody had to come in through the passenger side and roll
4 over to the driver's side, they'd be crawling over an awful lot of
5 plastic, wouldn't they?

6 A. That is correct.

7 Q. Now, did you find any blood going across there?

8 A. On the plastic center - - center console, no, sir.

9 Q. Okay.

10 And question. Steering wheel, did you ever find any blood on
11 the steering wheel?

12 A. On the steering wheel, no, sir.

13 Only area was the passenger kick plate.

14 Q. Those little dinky dots?

15 A. Yes, sir.

16 Dinky dots are small areas of blood.

17 Q. Thank you.

18 THE COURT: Alright.

19 You may come down.

20 Thank you.

21 (The witness leaves the witness stand.)

22 THE COURT: Ladies and gentlemen, you've been out here very
23 patiently since 2:00. Let's take a very short break.

24 I understand you have one more witness for this afternoon. Is
25 that correct?

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 297

1 MR. RICHARDSON: Might very well, Your Honor. We'll
2 discuss it, and we'll see if we're going to have another one.

3 THE COURT: Alright.

4 I'll let you go to the jury room for a few minutes.

5 (The jury retires to the jury room at 3:53 p.m.)

6 THE COURT: We are in recess.

7 (The Court recesses the trial of this case and thereafter
8 reconvenes the trial.)

9 THE COURT: Be seated.

10 Bring the jury in.

11 (The jury returns to the courtroom at 4:27 p.m.)

12 THE COURT: Alright.

13 Ladies and gentlemen, I'm advised by counsel that their next
14 witness is from out of town. Will be here at 9:30 in the morning.
15 It's about 4:30. You've been here very diligently all day long,
16 and I want to thank you for your efforts.

17 The sign of a good jury is one who is intensely listening to
18 all of the testimony, and I noticed that each of you has done that,
19 and that's just simply the signs of a good jury intent on doing
20 their duty, and we thank you for that.

21 I will ask then that we recess at this time. It's 4:30 and
22 that you be back in the jury room ready to go at 9:30 in the
23 morning.

24 Okay.

25 Have a good evening.

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 298

1 Thank you so much.

2 Remember my admonitions. Don't discuss the case, not even
3 among yourselves.

4 Thank you.

5 See you in the morning at 9:30. We'll have some donuts or
6 something for you.

7 (The jury departs the courtroom at 4:28 p.m. after having been
8 released by the Court to return at 9:30 on Thursday.)

9 THE COURT: Alright.

10 Outside the presence of the jury, anything further at this
11 time?

12 MR. RICHARDSON: No, sir, Your Honor.

13 THE COURT: Alright.

14 Now, gentlemen, if you've got any more exhibits, mark them
15 now. I thought that I had an understanding with you that we'd mark
16 all the exhibits, and we spent about fifteen minutes here marking
17 twelve pictures that should have been marked at 2:00 before we
18 started.

19 You got any more exhibits?

20 MR. AXELROD: I don't think so.

21 THE COURT: If you do, let's mark them ahead of time. We
22 got a jury here waiting, and we had to wait fifteen minutes while
23 that was done, and we could have done it at 9:00 this morning or
24 yesterday afternoon or - - but let's go ahead and mark our exhibits
25 if you've got any.

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 299

1 Anything further from the defense at this time?

2 MR. AXELROD: No, sir, Your Honor.

3 THE COURT: Alright, sir.

4 We are in recess until 9:30.

5 COURT REPORTER: Your Honor, the one transcript, the
6 original, may I have that now?

7 THE COURT: Yes.

8 Mr. Axelrod, you're going still get the - - the 12th?

9 MR. AXELROD: I called. I called.

10 THE COURT: Okay.

11 MR. AXELROD: She will locate that for me.

12 THE COURT: Okay.

13 Well, that's fine.

14 I'm putting the 14th in as Court's Exhibit at this time, and
15 I will permit.

16 (Court Reporter accepts Transcript of the 14th as Court's
17 Exhibit #2 and awaits deliver of Court's Exhibit #1 from
18 defendant's counsel in accordance with instructions from the
19 Court.)

20 MR. AXELROD: I apologize. I thought I had that thing.

21 THE COURT: I understand. That's no problem.

22 We'll work it out.

23 Alright. Thank you, gentlemen.

24 MR. RICHARDSON: Judge, on Ms. St. Louis, did you - - -

25 THE COURT: Sir?

INVESTIGATOR CAULDER - RE-CROSS EXAMINATION BY MR. AXELROD 300

1 MR. RICHARDSON: Ms. St. Louis, you going to have just
2 remain in custody?

3 THE COURT: I am.

4 MR. RICHARDSON: Okay.

5 THE COURT: I had to go get her under a Bench Warrant. I
6 have no - - I'm not going to send the Sheriff out to get her again.

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: Ah, you know any other solution to it? I let
9 her go, we go through the same thing again.

10 MR. AXELROD: She's just in jail.

11 If you - - if the Court tells her we need her, I have no
12 problem because I think that she has ties here. Her child is
13 here. Her family is here.

14 THE COURT: Where is she now as we speak?

15 MR. AXELROD: Downstairs.

16 THE COURT: Bring her up here a minute.

17 THE COURT: Alright, Mr. Axelrod, you asking that I release
18 her tonight?

19 MR. AXELROD: If she would tell the Court - - -

20 THE COURT: Okay.

21 I don't want you - - to ask for a mistrial if she doesn't show
22 tomorrow, now.

23 If you're satisfied with it, I'm prepared to do it but I - - -

24 MR. AXELROD: Well.

25 THE COURT: We'll see what she says.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

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1 MR. AXELROD: Okay, Judge. I understand.

2 THE COURT: I - - I understand what you're saying. It's
3 your witness, and I don't want to keep her locked up but at the
4 same time, I'm not going to mistry this case because she doesn't
5 show up tomorrow.

6 THE COURT: Have her come around, please.

7 (The witness Julianne St. Louis stands before the Court as the
8 Court addresses this witness.)

9 THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

10 THE COURT: Good afternoon.

11 Ma'am, you were subpoenaed under order of this Court to be
12 here yesterday morning. You were not here, and that's the reason
13 you are in handcuffs now because I had to send the Sheriff to get
14 you.

15 Now, you want to tell me why you didn't show up yesterday
16 under the Court's subpoena?

17 MS. ST. LOUIS: I didn't take it - - the way that it was
18 served and the way that it was, I didn't think it was a legal
19 document, and I was told that it wasn't. I mean - - -

20 THE COURT: How was it served on you?

21 MS. ST. LOUIS: He didn't ask for any identification. he
22 didn't show me any - - identification.

23 THE COURT: He did hand you the summons, though?

24 MS. ST. LOUIS: He didn't sign anything.

25 THE COURT: Well, he didn't have to do that.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

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1 MS. ST. LOUIS: I mean, he didn't - - -

2 THE COURT: Well, if you requested - - -

3 MS. ST. LOUIS: I didn't have to tell him anything that
4 was on the paper.

5 THE COURT: If you requesting the legality of my summons,
6 that it was mine, then you needed to call me so I could explain it
7 to you.

8 Now, I have two different situations here. I can leave you in
9 jail until your testimony is called or I can send you home with a
10 promise by you that you will be available when we need you.

11 Now, what - - what do you say to that?

12 MS. ST. LOUIS: That I promise I'll be here.

13 THE COURT: Okay.

14 Now, I don't want to leave you in jail but let me tell you
15 what would have happened. Had they called you and not have been
16 here under a subpoena, I would have had to mistry this whole case,
17 and we would have wasted one entire week because you decided that
18 something was illegal.

19 Do you understand that?

20 MS. ST. LOUIS: Yes, sir.

21 THE COURT: If I sound like I'm fussing at you, I am
22 because I was concerned that you were disobeying a Court Order.

23 Now, where will you be if I let you go home tonight?

24 MS. ST. LOUIS: The address the officer picked me up at.

25 THE COURT: Mike, would you get - - whose got that address.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

303

1 DEPUTY: I have it, Your Honor.

2 THE COURT: You got her phone number?

3 DEPUTY: Yeah. I'll get her phone number.

4 THE COURT: Now, let me tell you this.

5 You may or may not be called but I want you at that address.

6 Can you tell me you'll go home and stay there?

7 MS. ST. LOUIS: Yes, sir.

8 THE COURT: Now, if we call you and need you in the court,
9 I don't want to hear that you're at the corner grocery or somewhere
10 else.

11 You understand that?

12 MS. ST. LOUIS: Yes, sir.

13 THE COURT: Because rather than mistry this case, I will
14 adjourn it, and we'll run you down over the weekend, and then
15 you'll be in contempt of court, and I will put you in jail for six
16 months.

17 I don't want to do that.

18 Do you understand?

19 MS. ST. LOUIS: Yes, sir.

20 THE COURT: You have any other questions that you would
21 have me propound, Mr. Axelrod?

22 MR. AXELROD: No.

23 I just would like to tell the Court that the investigator that
24 served her did tell me that he asked for identification on Ms.
25 Louis. She showed it, and then he served her.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

304

1 THE COURT: I understand he would - - there's no question.
2 I saw the Affidavit of Service. It was served properly.

3 MR. AXELROD: I hate that she's in jail.

4 THE COURT: I know. I know you do, and I - - I don't' want
5 to leave her in jail but I can't have her decide for herself what's
6 legal and illegal.

7 Who did you talk to that say it was not a proper service? Who
8 gave you that information?

9 MS. ST. LOUIS: And another reason is I talked to him, and
10 he called me and gave me his word he wouldn't serve until after he
11 spoke with me, and then I was served.

12 MR. AXELROD: I served her Saturday.

13 She was suppose to call me Sunday, and she didn't call me, and
14 the investigator called Sunday.

15 MS. ST. LOUIS: That's not correct.

16 MR. AXELROD: All day Sunday.

17 MS. ST. LOUIS: I spoke to him that morning, and we were
18 suppose to meet Monday morning.

19 MR. AXELROD: I called her Sunday. No one responded.

20 THE COURT: That's alright.

21 There's two things.

22 Nobody wants to leave you in jail.

23 You understand that?

24 You may or may not be called. I can't tell you at this
25 moment. The State may call you or he may call you.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

305

1 The only thing I want to do is have your assurance that if I
2 let you go you will be available to us and I won't have to run you
3 down.

4 MS. ST. LOUIS: Yes, sir.

5 THE COURT: Okay.

6 I'm going to let her go home on that basis.

7 Now, we've got your phone number.

8 Now, do you understand that if you don't show, we'll find you
9 again?

10 MS. ST. LOUIS: Yes, sir.

11 THE COURT: What say the State?

12 MR. RICHARDSON: Your Honor, the State has no objection to
13 her being released.

14 THE COURT: How about it, Mr. Axelrod?

15 MR. AXELROD: I leave it to the Court.

16 THE COURT: Okay.

17 Alright.

18 I'm going to let you go.

19 Now, if I - - if I call for you, I don't want to hear, now,
20 that you somewhere else.

21 You understand that?

22 MS. ST. LOUIS: Yes, sir.

23 THE COURT: And I don't want to hear that somebody scared
24 you into testifying or not testifying. You're not worried about
25 that, are you?

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

306

1 MS. ST. LOUIS: No. No.

2 I was told they were looking for me. I'm more concerned to be
3 in jail than out of jail.

4 THE COURT: You want to stay in jail?

5 MS. ST. LOUIS: No, sir.

6 THE COURT: Are you - - you say somebody's looking for you?

7 MS. ST. LOUIS: Yeah. I was told that he - - -

8 THE COURT: Wait a minute.

9 That's alright.

10 MS. ST. LOUIS: No. No.

11 THE COURT: Well, I'm going to let you go.

12 Stay at home, please. Would you do that?

13 MS. ST. LOUIS: Yes, sir.

14 THE COURT: Alright.

15 We want to take care of you.

16 Alright. Thank you.

17 Let her go home and take her home for me.

18 Would you do that?

19 Okay?

20 Alright.

21 CLERK OF COURT: They need an order from somebody.

22 THE COURT: Who needs an order.

23 CLERK OF COURT: The jail needs an order to let her out of
24 jail.

25 DEPUTY: To release her.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

307

1 THE COURT: Well, the jail has got their responsibility.

2 I understand it.

3 Somebody going to take her home.

4 DEPUTY: Yes, sir.

5 THE COURT: Now, let me ask you this.

6 If somebody calls you, tries to bother you or something, would
7 you let us know immediately?

8 MS. ST. LOUIS: Yes, sir.

9 THE COURT: Who would you call?

10 MS. ST. LOUIS: I would call him.

11 THE COURT: No. If somebody - - if anybody tries to
12 bother you in any way, I want you to call the Solicitor.

13 You got her a card? Your card number?

14 MR. RICHARDSON: I've given her a card.

15 I've got her number, and she's got mine.

16 THE COURT: Okay.

17 If - - if anybody calls or threatens you or you have any
18 insecurity at all, you let me know, and I'll put somebody out there
19 to protect you.

20 Well, I'm going to do this. I'll do it this way.

21 And I thank the officers for their good efforts in getting her
22 here last night.

23 Have much difficulty finding her?

24 DEPUTY: She wasn't too hard to find.

25 THE COURT: Well, it won't be hard again.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

308

1 Let me continue to emphasize to you.

2 Chances are you won't be called at all but you could be.

3 Release from Bench Warrant.

4 You going to have to take her back out to the jail first?

5 DEPUTY: She has some things.

6 MS. ST. LOUIS: No, I don't.

7 I don't care if I even get my clothes.

8 THE COURT: They'll take care of you. Don't you worry
9 about it.

10 Alright.

11 You tell whoever's at the jail now that I want this witness
12 released.

13 DEPUTY: Yes, sir, I'll be sure and tell them.

14 THE COURT: Okay.

15 And I - - this is not an order that they usually find but it's
16 clear enough from me.

17 "Release from Bench Warrant."

18 DEPUTY: Yes, sir.

19 THE COURT: I want her to go home.

20 You call - - if you - - you call that number, now, if you have
21 any feelings of insecurity from anybody whatsoever.

22 You understand that?

23 MS. ST. LOUIS: Yes, sir.

24 THE COURT: Alright.

25 Thank you.

THE COURT ADDRESSES WITNESS JULIANNE ST. LOUIS

309

1 And I appreciate y'all's help.

2 MS. ST. LOUIS: Thank you.

3 THE COURT: Alright. Thank you.

4 Alright.

5 We are now in recess.

6 (The Court adjourns this case for the day to reconvene at 9:30
7 on Thursday.)

8 - - - END OF TRANSCRIPT - - -

9

10 NOTE: THE REMAINDER OF THIS TRIAL WAS TAKEN BY ANOTHER COURT
11 REPORTER.

GENERAL SESSIONS JURY SELECTION

CASE NO: 07 GS26 136, 1099, 927, 928 DATE: MAY 29, 2007PLAINTIFF: STATE ATTORNEY: Jimmy Richardson ASDEFENDANT: Luther ~~Gardner~~ ^{Gardner} aka ATTORNEY: Stuart Axelrod
Kariem WARDPRESIDING JUDGE: Edward B. Cottingham COURT REPORTER: LINDA W. MCCALL

STRIKES

JUROR #	NAME	RACE	SEX	COURT	STATE	DEF.	ACCEPT
86	Melinda Fitzpatrick	C	F			X	
73	Susan Dappul	C	F				✓
117	Thomas Hazard	C	M				✓
170	Elaine Luscombe	C	F			X	
269	Ben Tinnin	C	M				✓
209	Bonita Pickett	AA	F		X		
288	Nikoletha Wilbanks	C	F				✓
199	Sabine Parkinson	C	F		X		
115	Willie Hatcher	NA	M			X	
217	Cory Quinn	C	M		X		
184	Leon Mageough	C	M			X	
133	Tracey Thomas	C	F			X	
173	Caryn Maerlender	C	F				✓
106	Carol Griffin	C	F			X	
290	Rodney Williams	C	M				✓
4	Martha Allen	C	F				✓
160	Teresa Lawson	C	F				✓
14	Brett Barentine	C	M				✓
126	Timothy Horner	C	M		X		
226	Mary Rhodes	C	F			X	
206	Frank Pexvola Foreman	C	M				✓
239	Vance Shields	C	M			X	
165	Jamie Lincourt	C	F				✓
16	Willie Barnhill	C	M			X	
174	Anthony Magdits	C	M				✓
	Alternates						
179	Ricky Martin	C	M				✓
295	Carolyn Wolfe	AA	F				✓

CERTIFICATE OF COURT REPORTER

311

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced on the dates herein specified in the trial of the
9 captioned case, relative to appeal, in the Court of General
10 Sessions of Horry County, South Carolina.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13 October 8, 2007

14 Linda W. McCall

15 Linda W. McCall

16 Official Reporter
17
18
19

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 07-GS-26-927, 928, 1536

The State,)

Plaintiff,)

vs.)

TRANSCRIPT OF RECORD

Luther Garner, a/k/a)
Kariem Ward,)

May 31, 2007

through

June 1, 2007

Defendant.)

B E F O R E :

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Jimmy Richardson, Esquire
Candice Lively, Esquire
Attorneys for Plaintiff

Stuart Axelrod, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

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1 (On the record, Thursday, May 31, 2007.)

2 (The following takes place outside the presence of the jury.)

3 THE COURT: Good morning, ladies and gentlemen,
4 please be seated. All right, I understand we may have an
5 issue. Ms. Candice, you had an issue you wanted to get on
6 the record? Good morning, Mr. Axelrod.

7 MR. AXELROD: Good morning, Your Honor.

8 THE COURT: Yes, ma'am.

9 MR. AXELROD: Can I do one piece of bookkeeping,
10 housekeeping first?

11 MS. LIVELY: Go ahead.

12 MR. AXELROD: Your Honor, I would like to on the
13 record give up to the Court a sealed transcript from January
14 the 12th, 2005.

15 THE COURT: Good.

16 MR. AXELROD: And I do want to apologize to the Court.
17 It was my error.

18 THE COURT: Let the record reflect on yesterday I put
19 a sealed transcript in the record as Court's Exhibit dated
20 January the 14th, 2005. I now put in the record as a Court's
21 Exhibit a deposition of January the 12th of 2005 and herewith
22 hand it to you. So that will be two. My court reporter,
23 Ms. McCall, is sick this morning and this lady kindly agreed
24 to come in and substitute for her.

25 MR. AXELROD: Wonderful.

1 THE COURT: Ms. Candice, what is your situation
2 please?

3 MS. LIVELY: Yes, sir, Your Honor, I just wanted to
4 put on the record that our next witness is a US marshal. His
5 name is Stuart Cottingham.

6 THE COURT: Know Mr. Cunningham well, though we are
7 no relation.

8 MS. LIVELY: Exactly, and the ---

9 MR. AXELROD: Second cousin possibly?

10 THE COURT: A little further down the road. He's off
11 the same, Cottingham Creek in Marlboro County some, about six
12 generations ago maybe. Go ahead.

13 MS. LIVELY: Okay, well, now that that's out of the
14 way, what my concern is is that he is limited in what he is
15 allowed to testify to because they used certain electronic
16 devices and certain manners in which to locate a Defendant,
17 which is not to be disclosed on the record or in the presence
18 of a jury.

19 THE COURT: What is the substance of his testimony?

20 MS. LIVELY: The only thing that he is going to be
21 testifying to is I'm going to ask him how he became involved
22 in the investigation. He was contacted by Detective Large,
23 that he then used certain means in which to locate the
24 Defendant and he was arrested in July of 2005. That's pretty
25 much the substance of what he is going to testify to.

1 THE COURT: You don't need to know the certain means,
2 do you?

3 MR. AXELROD: I am fine with that, Your Honor. The one
4 question and the Solicitor ask it that way I'm perfectly
5 fine. My concern would be if he was to say -- I'm not sure
6 if he was going to say, "Well, and I put him up in the jail
7 in New Jersey." If he's going to testify that he located him
8 in New Jersey and brought him back here based on the warrant
9 that was out for him.

10 THE COURT: No, the bases for his finding him is not
11 necessary to your inquiry. We got that straight. I
12 understand.

13 MR. AXELROD: And my question is that he be limited
14 from saying that he put him in jail up there, just said he
15 brought him back is sufficient I think.

16 MS. LIVELY: Well, I believe he turned him over and
17 then he was brought back. It wasn't even that he put him in
18 jail is my understanding.

19 MR. AXELROD: Okay.

20 MS. LIVELY: So, I will make sure that's clear. I'm
21 going to talk to him right now.

22 MR. AXELROD: That's all.

23 THE COURT: All right, get it clear. Bring the jury
24 in and let's go.

25 MS. LIVELY: I will.

1 MR. AXELROD: Well, I think the Solicitor might need a
2 minute while she's out of the courtroom.

3 THE COURT: What is that?

4 MS. LIVELY: That's fine. You can bring them in. I
5 will come right back.

6 MR. RICHARDSON: Your Honor, yes, sir, I have got Peter
7 Cestare here.

8 THE COURT: Who?

9 MR. RICHARDSON: Peter Cestare.

10 THE COURT: Okay.

11 MR. RICHARDSON: And I wanted to have him look at the
12 photographs already in evidence so that he could pick out two
13 or three photographs.

14 THE COURT: Okay, come forward. I'll permit you to
15 withdraw them temporarily ---

16 MR. RICHARDSON: Thank you.

17 THE COURT: --- by and with the consent of
18 distinguished counsel for the Defendant.

19 MR. AXELROD: If the Solicitor wants to pull them out,
20 fine. I don't want him to show them to the witness who is
21 sequestered right now, that's all.

22 THE COURT: Why?

23 MR. AXELROD: Because the witness is sequestered. He's
24 going to show him pictures that he is going to testify to.

25 THE COURT: What is the purpose of showing it to him?

1 MR. RICHARDSON: I just want him to be able to look at
2 the blood down the hallway and pick out the ones that he can
3 testify to. Certainly he doesn't need the bloody ones of the
4 victim.

5 THE COURT: Well, just wait and ask him on the stand.
6 That doesn't hurt anything.

7 MR. RICHARDSON: All right.

8 THE COURT: Let's do that. All right, bring the jury
9 in. You can get him on the stand and say, "I can testify to
10 this or not." Just hand him the ones you want.

11 (WHEREUPON, the following takes place in the presence of
12 the jury.)

13 THE COURT: The jury is present. Good morning, Mr.
14 Foreman, ladies and gentlemen, I hope you enjoyed the
15 doughnuts that they provided for you. I know I enjoyed mine.
16 All right, call your next witness, Solicitor.

17 MR. RICHARDSON: The State would call Stuart Cottingham.
18 This is the one that Candice said she was going to ---

19 THE COURT: I understand.

20 WHEREUPON, Stuart Ervin Cottingham, Jr., after being
21 duly sworn, testified as follows:

22 THE CLERK: Please state your full name and spell
23 your last name for the Court.

24 MR. COTTINGHAM: My name is Stuart Ervin Cottingham,
25 Jr. My last name spelling it is C-O-T-T-I-N-G-H-A-M.

DIRECT EXAMINATION

1

2 BY MS. LIVELY:

3 Q What is your occupation?

4 A I am a deputy U.S. marshal. I am the deputy in charge
5 of the U.S. marshal's operation intercept fugitive task force
6 that covers an 11 county area here in the Pee Dee and Grand
7 Strand region.

8 Q Do I refer to you as Deputy Marshal Cottingham; is that
9 correct?

10 A That is correct.

11 Q Okay, so, Deputy Marshal Cottingham, how did you become
12 involved in this case?

13 A Detective Alan Large with the Horry County Police
14 Department contacted me in regards to a request for
15 assistance to help him locate a Luther Garner who was wanted
16 on a homicide charge that happened in January of 2005 here in
17 Horry County, South Carolina. We basically are a state,
18 local and federal fugitive task force that assists state,
19 local and county entities on their complex fugitive
20 investigations, and as such, we had -- Alan, Detective Large
21 had developed information that Mr. Garner may have fled out
22 of the state, which obviously the Horry County Police
23 Department lacks jurisdiction in other states. So, they
24 automatically reached out to me for assistance to continue
25 the investigation on a national or international scale.

Stuart Cottingham - Direct by Ms. Lively

10

1 Q Where did you look for Mr. Garner?

2 A First of all, we determined that he was not in South
3 Carolina. I issued what is known as a UFAP warrant on him,
4 unlawful flight to avoid prosecution. The investigation led
5 to the State of New Jersey, and I prepared a collateral lead
6 and I sent it to deputy US marshals on the New York, New
7 Jersey regional fugitive task force. I detailed that I
8 suspected that he was in the State of New Jersey. I gave
9 Deputy US Marshal Dan Pocheck [spelled phonetically] specific
10 information where I thought Mr. Garner was. Deputy Pocheck
11 acted upon it and arrested -- we had started -- we started
12 the investigation approximately in February of 2005 and we
13 were able to locate Mr. Garner in July of 2005 and placed him
14 in custody in New Jersey.

15 Q And was that the extent of your participation?

16 A Yes, it was.

17 Q Thank you. Answer any questions that Mr. Axelrod may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. AXELROD:

21 Q Sir, you are aware that Mr. Garner was born in Newark,
22 New Jersey; weren't you?

23 A I was aware that he had extensive ties to the State of
24 New Jersey, yes, I was.

25 Q Thank you. Nothing further.

1 THE COURT: You may come down and are released from
2 your subpoena. We thank you.

3 MR. COTTINGHAM: Thank you, Judge.

4 Whereupon, Peter Cestare, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please state your full name, spell your
7 last name for the Court.

8 MR. CESTARE: Good morning. My name is Peter Cestare,
9 C-E-S-T-A-R-E.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Mr. Cestare, where are you employed?

13 A I'm currently employed with the Horry County Police
14 Department. I am the specialist in charge of the crime scene
15 investigations unit.

16 Q How many people are under your command?

17 A Five right now.

18 Q And Robbie Caulder, is that one of your ---

19 A Yes, sir, he is one of my investigators.

20 Q How long have you been with Horry County?

21 A Just over four years now.

22 Q Is that the extent of your police work?

23 A No, sir, I was previously employed with the New York
24 City Police Department. I'm retired from there. I was in
25 charge of the major investigations unit, which included

Peter Cestare - Direct by Mr. Richardson

12

1 homicide investigation.

2 Q Do you have any specialized training with regard to
3 crime scene analysis?

4 A Yes, sir, I have been certified as an expert in crime
5 scene analysis and processing, crime scene reconstruction,
6 bloodstain pattern interpretation, mechanical methods of
7 death and injury. I have been an investigator for over -- an
8 active investigator in over 1000 investigations. I have
9 testified in over 200 cases. I've got a bachelor's degree in
10 clinical psychology and an associates degree in criminal
11 justice. I'm also a published author for the FBI law
12 enforcement magazine.

13 MR. RICHARDSON: Your Honor, the State would move
14 Mr. Peter Cestare in as an expert in crime scene analysis.

15 THE COURT: I would so find him qualified in that.
16 He's testifying as a fact witness in this case; is he not?

17 MR. RICHARDSON: As an expert witness, Your Honor.

18 MR. AXELROD: Your Honor, he's trying, he's trying --
19 the Solicitor is trying to put him in so he can render an
20 opinion. I think that we don't -- I don't think ---

21 THE COURT: Well, now, I'll deal with that. Is he
22 going to testify as a fact witness?

23 MR. RICHARDSON: Your Honor, he is going to testify
24 regarding blood spatter, not who done it, but just what
25 happened inside the hallway.

1 THE COURT: Let's hear the testimony. He is an
2 expert. Let me hear what he says.

3 MR. AXELROD: Yes, sir, Your Honor.

4 Q Mr. ---

5 THE COURT: Let me tell you, the question arises as
6 to an expert. An expert is an individual who by training or
7 experience are qualified in a certain field, and based on
8 that experience and qualifications an expert is entitled to
9 give his opinion on an area within his field. You as jurors
10 based on your experience may accept or reject his expert
11 opinion. Proceed.

12 MR. RICHARDSON: Thank you, Your Honor.

13 BY MR. RICHARDSON:

14 Q Are you -- would you be a detective?

15 A Specialist.

16 Q Specialist. Specialist Cestare, I'm going to hand you a
17 series of photographs already in evidence, and I have picked
18 out the ones that I think may be valuable to you. I will
19 call them in and ask if you've seen these before. I'm going
20 to ---

21 THE COURT: Identify them by a number now ---

22 Q I am.

23 THE COURT: --- so that the record will reflect what
24 you're talking about.

25 Q Hand you what's been previously entered as State's

Peter Cestare - Direct by Mr. Richardson

14

1 Exhibit Number 35. Have you seen that photograph before?

2 A Yes, sir, I have.

3 Q I also hand you what's been marked as State's Exhibit
4 Number 28. Have you seen that photograph before?

5 A Yes, sir, I have.

6 Q Hand you what has been marked as State's Exhibit Number
7 29. Have you seen that photograph before?

8 A Yes, sir, I have.

9 Q State's Exhibit Number 26, have you seen that?

10 A Yes, sir, I have.

11 Q State's Exhibit 25?

12 A Yes, sir, I have.

13 Q State's Exhibit 24?

14 A Yes, sir, I have.

15 Q State's Exhibit Number 23?

16 A Yes, sir, I have seen that, also.

17 Q State's Exhibit 22?

18 A Yes, sir, I have.

19 Q State's Exhibit Number 21?

20 A Yes, sir, I have.

21 Q State's Exhibit 20?

22 A Yes, sir, I have.

23 Q State's Exhibit 12?

24 A Yes, sir, I have.

25 Q State's Exhibit Number Five?

1 A Yes, sir, I have.

2 Q State's Exhibit Number Two?

3 A Yes, sir, I have.

4 Q State's Exhibit Number Five -- excuse me, State's
5 Exhibit 13?

6 A Yes, sir, I have.

7 Q All right.

8 MR. RICHARDSON: Your Honor, just to save time, I
9 think that's the ones. I'm just going to hand him the other
10 photographs already in evidence and ask him to look through
11 these and if there's any that he wants to testify regarding.

12 THE COURT: That's fine. Let him see them. They are
13 all in evidence.

14 Q Tell the -- tell us if you see any of them that you want
15 to use though by the number?

16 MR. AXELROD: Your Honor, I can't understand how the
17 witness can pick out the pictures that he wants to testify to
18 without being asked a question from the Solicitor first.

19 THE COURT: Well, the record, he has asked a
20 question. He has asked this question, would any of these
21 pictures help him further in his future testimony.

22 MR. AXELROD: Okay.

23 THE COURT: He's going to look at them and tell us
24 that.

25 MR. AXELROD: Okay.

Peter Cestare - Direct by Mr. Richardson

16

1 THE COURT: If they can he can testify to it. If
2 they can't he can say, "This is of no value to me."

3 MR. AXELROD: Yes, sir.

4 A Yes, sir, I've selected two additional photos, photo
5 State's Exhibit Number 16, photo State's Exhibit Number 41.

6 Q Thank you.

7 MR. AXELROD: Mr. Solicitor, may I see them before you
8 give it to the jury?

9 (Solicitor complies with request.)

10 MR. AXELROD: Thank you, sir.

11 MR. RICHARDSON: And Your Honor, these are all
12 previously in evidence.

13 THE COURT: All in evidence.

14 BY MR. RICHARDSON:

15 Q Let me ask you a few questions. Specialist, did you go
16 to the crime scene at [REDACTED] [REDACTED] on January 11th, 2005?

17 A No, sir, I did not.

18 Q Did you view the inside of this house at any time?

19 A No, sir, other than from photographs.

20 Q All right, tell me what you did view before coming to
21 court today.

22 A Investigator Caulder assigned to me is the investigator
23 that was processing this scene. As in any case, I review
24 their case report that they prepare on any investigation that
25 they go out on. I generally also review the photographs from

1 those investigations just to make sure that they've completed
2 their assignment as far as how our investigation is
3 conducted.

4 Q Did you ever review any statements made by witnesses?

5 A No, sir, not on this case no.

6 Q And what's the purpose of not reviewing those
7 statements?

8 A The statements are irrelevant to me as far as my role as
9 a supervisor in charge of the unit. My role is specifically
10 to see that they perform their function as an investigator to
11 the best of their ability at that time.

12 Q At some point were you shown those photographs and asked
13 if you had an opinion regarding what took place inside of the
14 residence at [REDACTED] [REDACTED]?

15 A Yes, sir, I was.

16 Q One other, let me hand you what has been marked as
17 State's Exhibit Number Nine for ID purposes. Would this --
18 have you seen this chart before?

19 A Not this chart. I have seen the sketch prepared by my
20 investigators relative to this scene, yes.

21 Q Would this be helpful in explaining to the jury your
22 findings?

23 A Yes, sir, it would be.

24 Q Okay.

25 All right, that's already in evidence, also?

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1 A Yes, sir, it's State's Exhibit Nine.

2 Q Could I see your photograph. I want to ask you about
3 some of these, and then you can, of course, go through the
4 other ones. All right, let me first hand you what has been
5 marked as State's Exhibit Number 20. Please tell the jury
6 what that is a photograph of?

7 A State's Exhibit 20 represents a photograph inside this
8 residence looking from here down that hallway.

9 Q Okay, also, State's Exhibit Number 22, can you tell me
10 what that photograph represents?

11 A Yes, sir, State's Exhibit 22 represents a photograph of
12 a bloodstain pattern that is on this wall in the residence
13 within the hallway.

14 Q And on the chart it's actually marked 22?

15 A Yes, sir, that's correct.

16 Q Would it help you to step down closer to the jury or
17 you're comfortable like this?

18 A I'm fine. Can you folks see okay?

19 (Jurors indicate affirmatively.)

20 A All right.

21 Q Okay, so, this photograph 22 was taken from this
22 hallway, the right-hand side of the hallway?

23 A Yes, sir.

24 Q Okay, tell me what if anything you can tell by that
25 photograph.

1 A All right, there is within this photograph a pattern of,
2 excuse me, a pattern of blood on the wall within that
3 hallway. Let me first say that when we look at patterns of
4 blood we categorize them in one of three ways. Blood spatter
5 is looked at in three different methods, low velocity, medium
6 velocity and high velocity blood spatter. Low velocity would
7 represent blood dripping or falling at a gravity type of
8 rate, an open cut or something like that and a blood drop
9 hits the floor. Medium velocity blood spatter is consistent
10 with being struck by an object or a hand and the blood
11 travels at a considerable larger speed. High velocity blood
12 spatter is consistent with a gunshot wound. It's much
13 smaller. It's more in a mist pattern and is traveling at a
14 much greater rate of speed. So, looking at this photograph
15 the bloodstain that I interpreted on this wall appears to be
16 medium velocity blood spatter, which would say that it is
17 being projected by either a hand or an object striking
18 someone. There is also a couple of smear or contact areas on
19 that wall where something came in contact with that wall that
20 caused the blood to transfer or smear onto the wall.

21 Q Would that be consistent with someone being pulled into
22 the blood spatter?

23 A This is consistent from what I see here with somebody
24 being struck with an object or a hand causing the smear type
25 of blood spatters on the wall. The smears or in this top

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1 corner it is kind of difficult to see is a kind of a loop of
2 blood, that's consistent with a transfer. One thing that I
3 will note from this photograph is that the ruler, we scale
4 blood. Blood should be scaled so that we can tell at what
5 height it is. The scale on this wall is placed at the floor
6 and it represents that the blood, this scale happens to be 36
7 inches. These are scales that I've issued to my
8 investigators. The blood pattern that you're looking at here
9 is no higher from the floor than 36 inches, which tells me
10 that the pattern is caused by somebody in a crouched or low
11 position to the floor. This is not someone who is standing
12 up and being struck. This is someone who is in a crouched or
13 towards the floor type of position and being struck.

14 Q Officer Cestare, are you saying that either his head or
15 his hair or some part of his body contacted the wall at
16 approximately three foot on that wall?

17 A Yes, sir, I would, I would have to say based on that
18 pattern that it's my opinion that it's probably hair that
19 struck the wall because if you look at it, the direction of
20 movement is this way in the photo in that hallway and there's
21 an upward slope to the blood which means something brushed
22 the wall. There's also a backward trail of blood that's,
23 that's almost kind of running backwards on it where something
24 contacted the wall, deposited a, an amount of blood which led
25 to that backwards trail of almost like a drip. We refer to

1 it as a smear and the motion of the blood is continuing in
2 this direction.

3 Q And is that consistent with an amount of blood or an
4 open wound coming in contact at three foot from the floor
5 down that hallway?

6 A Yes, sir, it is.

7 Q All right, now, tell us again about this series of
8 blood.

9 A Okay, this series of blood here the pattern is very ---

10 THE COURT: Did you identify that particular picture?
11 I'm not sure that you did.

12 A Yes, sir, it's State's Exhibit 22.

13 Q He's still acting off the same one, Your Honor.

14 A This pattern of blood here represents medium velocity
15 spatter, and again, as I said, medium velocity spatter is
16 caused by either an object striking someone or a hand
17 striking someone, and that's the force involved with the
18 blood leaving the contact point and striking in this case the
19 wall.

20 Q Is there any smears in this series of blood?

21 A Yes, sir, to the, to the right of the scale is a smear
22 of blood which would be consistent with contact against that
23 wall, someone was either -- had either brushed against that
24 wall, was pulled against the wall, something of that nature
25 caused that person to contact that wall and caused a smear of

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1 blood along that wall and that's at about the -- going
2 backwards from the scale it's at about two feet from the
3 ground. Looking down lower, there are patterns of blood in
4 an area of less than a foot from the, from the floor of that
5 hallway. So, again, this is not someone who is standing.
6 This is someone who is down in a crouched position or on
7 their knees or relatively close to the floor and being struck
8 at that time.

9 Q At some point is it fair to say that this -- some part
10 of an open wound touched at three foot on that hallway and
11 that that person or someone was again hit at one foot?

12 A Yes, sir. I can say that the person was hit at one
13 foot. As far as an open wound touching at three feet that I
14 can't determine from that. All I can say is that something
15 contacted that wall at about three feet and my guess would be
16 based on looking at that pattern that it's more than likely
17 hair that may be blood soaked that's striking the wall
18 because there is no direct -- looking at these other smears
19 there is definite contact, a part of the body or clothing
20 contacted that wall and caused a wide pattern smear. This
21 pattern at the top at the three foot range is very thin and
22 defined. If it had, if it had been an open wound or a piece
23 of skin or clothing contacting that wall the pattern would be
24 wider, which leads me to believe because it's so thin and
25 narrow that it's probably hair that struck the wall.

1 Q There's no doubt that someone was struck at about the
2 one foot mark?

3 A Yes, sir, that's my opinion.

4 Q Would that be consistent with -- just as a visual, will
5 you step down just a second to show them.

6 A Sure.

7 Q I don't think you can see me. All right, step back
8 over. Now, if someone were hit at this level or this level
9 would that leave a spatter against the wall?

10 A Yes, sir, it should, and that's my belief as to what
11 that pattern is here is that someone was struck low. We're
12 talking in a three foot range. We're no higher than this
13 throughout the majority of this hallway, which tells me that
14 the person is not standing. If the person were standing the
15 pattern from the way the blood strikes the wall it would be
16 different. There would be tails leading off of the blood in
17 a directional type of pattern. In this case there are not.
18 These are fairly consistent round patterns which tells me
19 that the person being struck is relatively close to that area
20 of the wall and more than likely, you know, either in a
21 crouched position or on their knees or some portion of them
22 is contacting the floor as well.

23 Q And I believe that State's Exhibit 21 is the same
24 photograph but without the ruler?

25 A Yes, sir, State's Exhibit 21 is a slightly closer photo

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1 of the same area without the scale in it. You can see that
2 same pattern here and the smear beneath it that you're seeing
3 in this photograph with the scale.

4 Q If you don't mind, Peter, stand right there a second.

5 A Uh-huh (affirmative response).

6 Q Let me hand you what has been marked as State's Exhibit
7 23 and what is that a photograph of?

8 A State's Exhibit 23 represents the entryway to a bathroom
9 which is located off that hallway which by the sketch is
10 indicated in this area here. What you're looking at is an
11 open doorway to a vinyl type of flooring that is going to be
12 the bathroom flooring. So, the photo is taken from here
13 looking into that bathroom.

14 Q What if anything does the blood pattern tell you in
15 that?

16 A Okay, on this photograph is again another unique pattern
17 of blood on the floor here. This, to me, is low velocity
18 blood spatter. This is dripping blood from an open wound or
19 from clothing or hair or something. Again, they're very
20 consistently round spheres of blood. Blood is different than
21 water in viscosity being that water could when you watch it
22 drip it forms like a teardrop type of motion. If you look at
23 a faucet when blood -- when water comes out of it it forms a
24 teardrop. Blood, however, when it's forming, falling stays
25 very consistently in spheres because of the viscosity of

1 blood, it's quite different than water would be. So, it
2 stays more in a sphere type of shape and when it hits the
3 ground it will radiate out or spine out from that sphere if
4 it's a direct downward drip and these are, there is no
5 smearing to this blood, no footprints or anything. My guess
6 from looking or my opinion from looking at this photograph is
7 that at some point the victim tried to get entry into the
8 bathroom for whatever reason, to seek refuge, whatever the
9 case may be and based on another photograph where I saw some
10 open head wounds, that was one of the photos that I added in,
11 Mr. Solicitor ---

12 Q Yes, sir.

13 A --- my guess is that these are probably blood spatter,
14 low velocity blood from ---

15 Q State's Exhibit 41.

16 A --- State's Exhibit 41 from open head wounds.

17 Q And State's Exhibit 24 I think that's just a close-up of
18 the ---

19 A Yes, sir, that's a close-up of it with an evidence
20 marker labeled number ten. Without looking at the evidence
21 sheet, the marker would indicate that we probably taken a
22 swab from that blood in an attempt to identify it.

23 Q Now, let me ask you about that. You may not, I know you
24 haven't been qualified on this, but as far as DNA, is it
25 possible to have a swab without enough blood to get DNA?

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1 Could you take a swab and it not have enough or if you don't
2 know you just don't know.

3 A I don't think I'm qualified to answer that.

4 Q Okay, all right. I am going to give you a few
5 photographs. This is State's Exhibit 12 and 13. Can you
6 tell the jury what you see and where you see them on those
7 photographs? I believe that Caulder had marked them.

8 A Yes, I'm just trying to look at the direction. Okay,
9 number, State's Exhibit 13 Investigator Caulder had labeled
10 this photo view of blood on living room floor in front of
11 television and stereo looking towards the side door and
12 kitchen. Living room over in this area looking towards the
13 side door and kitchen, so, we're looking in this direction.
14 State's Exhibit 12, interior wall that separates the kitchen
15 and living room with possible print on wall, two swabs taken
16 from print.

17 Q That was -- would -- does it say any numbers on it from
18 -- Five.

19 A Two, Number Two. So, that's looking back this way as
20 well. Both photos, one is just a long-range shot, one is a
21 closer range shot, very customary anytime we take photographs
22 we generally move in closer, start from far and move in
23 closer on them.

24 Q Does the blood pattern tell you anything there?

25 A Yes, in State's Exhibit 12 there is, again, a pattern of

1 blood on the rug in the living room. There are some patterns
2 of blood also on footwear that's laying on the floor in the
3 living room here. There's a considerable amount of blood
4 droplets. There's also some smearing area on the rug where
5 something is in contact with it, and in a closer look at this
6 same area is now labeled five, again, there's some smearing
7 in that blood, and I would have to think at that point it's
8 probably from somebody being on their knees or hands and
9 knees and down close to the rug because there's no footprint
10 in the blood. There is no, from what I can see, there is no
11 handprints or anything like that in it, but there is some
12 definite contact with this area of the floor where the blood
13 is smeared on that rug area.

14 Q Were you able to make a determination of whether or not
15 the struggle started in the hallway or in the living room?

16 A My opinion is the struggle began somewhere in the living
17 room, continued into the hallway, and ended up, ending here
18 at this last bedroom here on the left where the victim was
19 found deceased.

20 Q Let me give you some photographs of that last room.
21 I'll hand you what has been marked as State's Exhibits Number
22 Two, Number 25, Number 26 and Number 28.

23 A Yes, sir.

24 Q All right, and tell the jury where primarily those
25 photographs are taken from?

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1 A Okay, these photographs -- I will show each of them to
2 you. This is State's Exhibit 28, State's Exhibit 26, State's
3 Exhibit 25 and State's Exhibit Two are taken from this
4 hallway looking into this bedroom. What you're looking at
5 here is standing about here looking at the threshold entryway
6 to that bedroom. What you are looking at here is just a
7 closer shot standing probably more at the, at the doorjamb
8 itself looking into the bedroom. This photograph here is a
9 photograph of the doorjamb leading into the bedroom right in
10 this area right here and this photograph here is a photo of
11 the inside of this open bedroom, of the hallway side I should
12 say of this open bedroom door, you know, what you would see
13 on that doorway as you are walking into that room.

14 Q Tell us what if anything you gathered from looking at
15 those photographs.

16 A Okay, looking at State's Exhibit Two and 28, you'll
17 notice a large pool and smear of blood on the floor area
18 here. Prior to getting into that room you'll notice a smear
19 of blood and a particular pattern of blood on the wall right
20 here of the molding of that hallway. That's a close-up of
21 that photograph. What that photograph depicts to me is that
22 it's my opinion it's a backwards handprint, that that is a
23 handprint of someone who is down either on their knees or in
24 a crouched position and who has grabbed that molding on the
25 hallway in a motion either to support themselves to try and

1 regain their footing and get up or prevent themselves from
2 being taken into that room. You can see that it pulls
3 backwards. There is no viable print information that I can
4 say that, you know, that the investigator was able to
5 determine any fingerprints within that that blood. However,
6 it does look to me as if it is a backwards handprint as if
7 someone is trying to, you know, either support themselves or
8 prevent themselves from being pulled or taken into the room.

9 Q Let me ask you just a question on that, just to clarify
10 if you will for me, that could either be since we don't have
11 fingerprints someone bracing maybe the attacker hitting and
12 holding there or it could be someone trying to keep from
13 going in there. It shows a backwards handprint?

14 A Yes, sir.

15 Q Do we have any idea whose handprint that is?

16 A To my knowledge I don't.

17 Q And no one has asked you to say whether or not Luther
18 Garner has killed Espinozat?

19 A No, sir, I was simply asked to look at photographs and
20 render my interpretation based on them.

21 Q Are you able to do that consistently? I mean, is there
22 a science to looking at photographs and being able to tell a
23 story?

24 A Yes, sir, most, most cases that the crime scene unit
25 responds and investigates, bear in mind that we respond along

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1 with an assigned detective, our job is the forensic side of
2 the investigation to try and determine any evidence, things
3 that may be helpful, documents, scenes, sketch of scenes, you
4 know, and from that most often victims are not capable of
5 telling us what has occurred. So, we've got to be able to
6 look at a scene and determine based on experience and
7 education what we feel has occurred in that area. Now,
8 certain things like bloodstain pattern interpretation is
9 helpful in trying to tell a story of what occurred. You
10 know, and in this case that's exactly what I was asked was to
11 review the photos and be able to render an opinion of what I
12 believe occurred in this hallway and then I was shown the
13 sketch after looking at the photos and giving my opinion of
14 what I believe occurred and supported my beliefs and
15 conclusions based on what I saw in the sketch.

16 Q Let me ask you, is it -- is your findings consistent
17 with an attack in this area before you ever enter the
18 hallway?

19 A Yes, sir.

20 Q And would your findings be consistent with someone going
21 down the hallway, being dragged down the hallway and this
22 blood spatter on this side of the wall is your findings
23 consistent with that?

24 A Yes, sir, it is.

25 Q Is your findings also consistent with someone being

1 pulled back into the back room?

2 A Pulled or led into that back room, yes.

3 Q All right, and you did this -- before you did this did
4 you look at Lonya Snowden's statement?

5 A No, sir, I've never seen her statement.

6 Q Did you look at anyone's statement ---

7 A No, sir.

8 Q --- as to what happened inside of this house?

9 A No, sir, the only, the only two pieces of evidence that
10 I have looked at, not so much evidence, photographs, one,
11 yes, evidence and my investigator's report, which contains
12 nothing about statements or anything else. It is simple --
13 our mission is a simple fact-finding mission. You know,
14 we're not -- crime scene is not concerned with statements
15 that witnesses or victims or suspects made. Our job is a
16 simple fact-finding mission trying to tell a story of what
17 occurred and how it occurred.

18 Q We had picked out some other -- I'm sorry, go ahead.

19 A If I can go back for one moment.

20 Q Yeah.

21 A There is an additional photograph here and it's one of
22 the ones that I showed you a few moments ago, State's Exhibit
23 25, and I said it represents the hallway side of that door.
24 When the door is, and what I means is, when the door is in
25 the closed position for that room this would be the side that

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1 you would see facing in the hallway. In this case the victim
2 is found in an open doorway which means that door is opened
3 up into the room, and based on what I can see from here the
4 door is hinged on this side. So, it opens back toward this
5 closet area of that bedroom. What you are looking at here in
6 this case is a scale placed at the top of the door because we
7 always have to orientate the scale from one either a side,
8 top, bottom. The scale is oriented at the top of this door.
9 Now picture this door, I would have to believe is no
10 different than any other standard room door in a home. So,
11 you're looking at a pattern of blood here that has somewhat
12 of a swoop or partial circular motion coming down from about
13 the ten inches, 11 inches, let's say a foot from the top of
14 the door down to about probably, it's extending beyond what
15 the fold is here on the ruler. So, I would say it extends
16 beyond 25 inches from the top of that door. What that
17 represents to me more than likely is a -- something called
18 castoff blood. Castoff blood is when an object is striking
19 someone and you're giving a forceful motion and you're
20 striking someone with an object, as the object comes back up
21 for that next swing, there is blood that has transferred from
22 the person to the object. As the object comes back up, blood
23 is coming off of it, hence called castoff, and the fact that
24 it's in a somewhat swoop or a circular motion, kind of
25 follows the radius of one's arms swinging something, a fist,

1 an object or something of that nature.

2 Q So, would it be fair to say in your professional opinion
3 that this decedent was beaten as he was found here in the
4 doorway?

5 A Yes, sir.

6 Q All right, can you make an indication, and if you can't,
7 you can't, but can you make an indication as to how high he
8 was at the point that he was hit by the castoff?

9 A No, sir, I can't. I'm looking at the photos here, you
10 know, in my opinion, based on the fact that there is a
11 considerable amount of blood there, is that he's probably at
12 or relatively close to the floor because of the amount of
13 blood that's there and that -- so, that being considerably
14 higher than where he is leads me to believe that it is
15 castoff blood.

16 Q You can have a seat. I just want to hand you these
17 other ones that were picked out and if you see anything that
18 will help the jury, please let me know. If not, I think we
19 have covered the ones down the hallway.

20 A In State's Exhibit 35 my investigator has marked a
21 bullet hole in the wall.

22 Q Okay, and let me, let me show you this chart. Do you
23 see where on the chart he has sketched out bullet hole?

24 A Yes, that would be right here in the living room area,
25 you know, just before that hallway.

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1 Q Okay.

2 A State's Exhibit 16, which I believe is taken and is a
3 close-up view of the kitchen floor, kitchen floor area here,
4 Investigator Caulder has indicated it's a close-up view of
5 the kitchen floor and a bloody shoeprint. Looking at this
6 photograph there is a distinct pattern within that photograph
7 that represents the transfer of blood from something that
8 we're saying in this case is a footwear pattern or a transfer
9 from the bottom of a shoe with a pattern in that, in that
10 nature.

11 Q Let me ask you something on that, if I were to have
12 blood or we'll leave it at blood. I was going to say water,
13 but on the bottom of my shoe, and I walked from this kitchen
14 or this courtroom to the back, would I have less on the sole
15 of my shoe by the time I got to the back or is that ---

16 A Yes, sir, because it's transfer. What's happening is
17 the blood is going from your footwear to the flooring, rug,
18 whatever the case may be, and as you get further away from
19 the initial area where you obtained the blood on your shoe,
20 the transfer would get lighter and lighter and to the point
21 it becomes basically nonexistent. That would be to the ones
22 I used a moment ago. I think I'm looking at these here. No,
23 sir, I think I covered the photographs pretty well.

24 Q All right, and just to be clear here, you have not made
25 in your mind a determination of who did this?

1 A No, sir.

2 Q Or how many people did this?

3 A No, sir.

4 Q All right, I have no further questions. Please answer
5 any questions Mr. Axelrod has.

6 A Yes, sir.

7 CROSS EXAMINATION

8 BY MR. AXELROD:

9 Q I'm going to start where the Solicitor left off. Good
10 morning, sir. You have absolutely no idea who did this; do
11 you?

12 A I'm sorry.

13 Q You have no idea who did this?

14 A No, sir, I don't.

15 Q You don't know how many people did it?

16 A No, sir, I do not.

17 Q Looking at the picture where the man was in the hallway
18 where he's laying down in his final resting spot, you say
19 there's some castoff. When someone hits something and
20 there's castoff, is the castoff going this way or going this
21 way?

22 A All I can tell you, looking at that photograph is the
23 castoff is coming -- is in a swoop type of motion on that
24 door. Let me just find that photograph. Here we go.

25 Q Let me ask you a question first.

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1 A Uh-huh (affirmative response).

2 Q And I'm going to use this as -- I'm going to say that
3 right now, a little bigger, this is the hallway where the man
4 is found at the end, okay, the hallway to the bedroom.

5 A Uh-huh (affirmative response).

6 Q And the door is here, I believe, on this side; am I
7 correct?

8 A Facing down the hallway, yes, sir.

9 Q So, when you come down the hallway, you go into that
10 back bedroom, you have a door here, the man that passed away
11 he's laying right here. Now, you have castoff on this door;
12 am I correct?

13 A Uh-huh (affirmative response).

14 Q Now, if someone is hitting somebody which way does the
15 castoff go? That's my question. Does the castoff go back
16 that way or does the castoff go that way?

17 A No, castoff would be coming back with the object. It's
18 coming off the object and not the person.

19 Q So, would it be fair to say that if a right-handed
20 person hit somebody, the castoff would be coming back towards
21 the right?

22 A No, sir, it would depend what position they're standing
23 in. If I'm standing in front of you and I'm striking right-
24 handed ---

25 Q Well, let's say, let's say the man is down on the floor

1 ---

2 A Uh-huh (affirmative response).

3 Q --- let's just deal with exactly where we are, rather
4 than a hypothetical. The man is down on the floor and
5 someone is on top of him hitting him because you don't have
6 any footprints showing any other, any other feet in the other
7 way facing it. So, we have to assume that the perpetrator of
8 this crime is in the hallway hitting him. Is that true?

9 A I don't know if I could make that assumption but ---

10 Q Well, look in the picture and see if you have any
11 footprints of anybody standing there because you told the
12 Solicitor that the transfer, the further one leaves the scene
13 the transfer would dissipate. So, there should be transfer
14 there if the perpetrator was inside the bedroom. So, take a
15 look at that and then we'll go further.

16 A No, sir, there was a -- I'm trying to think if that's it
17 here. There was an article of clothing that had some type of
18 a footwear impression on it, and I don't know offhand where
19 that was. If I can take a look at the sketching end for a
20 minute.

21 Q Oh, absolutely.

22 A I have got a smaller version of the sketch in my notes
23 here. Let me just take a look at that. I believe that item
24 number 12 in the evidence was a pair of shorts that were
25 collected inside that bedroom, and if -- and I also believe

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1 that there was a partial bloody footwear impression on that
2 shorts which would tell me that someone had stepped in that
3 bedroom.

4 Q Okay, and let's just start there. If somebody had
5 stepped in that bedroom and had hit the person wouldn't there
6 have been spatter going back into the bedroom?

7 A Not necessarily. It -- from what I can see on the rug
8 most of the spatter is right in that threshold area of the
9 room.

10 Q And it would appear -- it actually would appear that the
11 person -- that when the person was hitting the person that's
12 in this room the person was in the hallway hitting them. It
13 would appear to be that way; wouldn't it?

14 A That I can't tell from the spatter what direction they
15 were in. They may -- they could very well have been in the
16 hallway. They could also have been within the room.

17 Q And if they're in the room would there be more than two
18 footprints?

19 A Not necessarily.

20 Q Okay, but if they were in the hallway the spatter -- you
21 would, you would tend to think that it could be a left-handed
22 person, wouldn't you, based on the curvature of the spatter
23 going to the door because if it was -- if they're in the
24 hallway hitting them, if all the action occurs in the hallway
25 and they were hitting them in the hallway and then they drag

1 | them into the room and they're hitting them and you're saying
2 | they're getting hit in the hallway, if they are hit by a
3 | right-handed person the spatter would be going to the right.
4 | That's what you testified on direct. That's all I'm asking,
5 | that it would make sense that the person hitting this person
6 | ---

7 | THE COURT: The jury will determine what he's
8 | testified to, not you. Go ahead.

9 | MR. AXELROD: Okay.

10 | BY MR. AXELROD:

11 | Q It could have been a left-handed person?

12 | A Every indication that I saw from the hallway tells me
13 | that it's a right-handed person.

14 | Q Why?

15 | A Because ---

16 | Q Tell me why it's a right-handed person. Let's start,
17 | let's start at the beginning of the hallway. Why is it a
18 | right-handed person when you see spatter on the wall?

19 | A Because it's my belief that the person is being pulled
20 | down that hallway.

21 | Q Okay, and then why is it a right-handed person that hit?
22 | Could it -- I would say that if you're -- if you say that as
23 | a crime scene investigator you put forth facts to create a
24 | story because you said it's actually a story. I'll quote
25 | your words. You say, "We tell a story." It's your opinion

1 of what occurred, what occurred and how it occurred, but
2 really not by who or anything else. So, you really don't
3 know whether it's a right-handed or left-handed person; do
4 you?

5 A I can't tell that from the blood spatter in -- at the
6 threshold of the doorway, but in the hallway, yes, I would
7 have to think that it is.

8 Q Why?

9 A Because of the positioning in the hallway, the person is
10 against this wall looking at -- would you bring that up
11 again? The person is against this wall, and it's my belief
12 that they were being pulled along this wall.

13 Q They were pulled. So, the person was pulled all the way
14 up this hallway; is that your testimony, the person was
15 pulled up this hallway?

16 A I can't testify that he was pulled up the entire hallway
17 but my belief is that.

18 Q His legs were tied.

19 A Okay.

20 Q Did you ever see that?

21 A Just from the photographs here.

22 Q So, if his legs were tied would it make sense that he
23 was pulled up the hallway?

24 A I don't think I'm qualified to answer that.

25 Q You're qualified to tell me -- well, let me ask you

1 this. The cord, the way the cord is, the cord was ---
2 MR. RICHARDSON: Your Honor ---
3 THE COURT: Yes, wait.
4 MR. RICHARDSON: --- he doesn't know when the guy's legs
5 were tied and Mr. Axelrod knows that.
6 MR. AXELROD: Well ---
7 MR. RICHARDSON: He is trying to lead him in that ---
8 THE COURT: No, this witness can handle himself.
9 MR. RICHARDSON: --- he was tied down the hallway.
10 THE COURT: The jury understands what's going on
11 better than we do. Go ahead.
12 MR. AXELROD: We, we have a -- we have an electrical
13 ---
14 THE COURT: Now, Mr. Axelrod, he has told you four
15 different times about the right hand and left hand.
16 MR. AXELROD: Yes, I understand.
17 THE COURT: Let's move on to something else.
18 MR. AXELROD: I'm going to the electrical cord.
19 BY MR. AXELROD:
20 Q Now, we have an electrical cord and it shows that it's
21 kind of like coiled or not taunt. Fair deal? And then it
22 gets taunt from here to here?
23 A According to the sketch, yes, sir.
24 Q Would you think the sketch is wrong?
25 A No, sir, I have no reason to believe it's not.

1 Q Okay, so, if every -- if every -- we're testifying that
2 everything else is the way that the crime scene investigator
3 Caulder drew it, it's taunt here. So, wouldn't that,
4 wouldn't that suggest to you that this person was dragged up
5 the hallway to that room?

6 A No, sir, I'm not, I'm not going to make any rendering on
7 that cord because I did not physically see the cord from any
8 photographs other than the photograph of the cord around the
9 victim's feet, but I have not seen anything, any photograph
10 with the cord in the hallway in any particular position.

11 Q But you really -- if Investigator Caulder drew this
12 picture you would think that it was, it was accurate? Did
13 you teach him to be an accurate drawer?

14 A Yes, I did.

15 Q Okay, and if he drew the picture from pictures he had
16 taken, can you render an opinion that it would be this way?

17 A If that's the way he drew it, that's the way he saw it.

18 Q Okay, now, when you send blood to SLED you get results
19 back; right?

20 A Yes, sir.

21 Q And if you send blood you get results whether they're
22 good results, bad results, but you get something?

23 A Yes, sir.

24 Q Tell the jury why we didn't get any results back from
25 SLED on all this blood stuff?

1 A I don't think I can speak about that, sir.

2 THE COURT: Wait a minute now. He's not testifying
3 in that area. He's testifying as a blood spatter expert.
4 You're going into another area.

5 MR. AXELROD: He was, he was qualified as an expert not
6 only on spatter ---

7 THE COURT: No, sir, I just heard what he said.
8 Answer his question.

9 A Sir, I have not seen any reports from SLED. The only,
10 the only two pieces that I have seen in this investigation is
11 Investigator Caulder's written report, which does not include
12 any SLED results and the photographs. So, I have not seen
13 any of that information.

14 Q Would it surprise you that they just didn't send it to
15 SLED and that's why we have no results?

16 A I don't think I understand your question, sir.

17 MR. RICHARDSON: Objection, Your Honor. He said that he
18 didn't know that.

19 THE COURT: He's not qualified to say what surprised
20 him or not.

21 MR. AXELROD: Okay.

22 THE COURT: I have permitted him to testify as a
23 blood spattering expert and you may examine him on that as
24 you have for the last 30 minutes. Now, let's move on.

25 Q You told the jury in your direct examination that the

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1 blood in the bathroom, the blood in the bathroom was from
2 drops?

3 A Yes, sir.

4 Q And your opinion is that somehow this man was dragged up
5 the hallway tied and bound, walked into the bathroom, what
6 you told the jury?

7 A I don't believe he walked into the bathroom, no, sir.

8 Q Well, if he was dragged up the hallway past the bathroom
9 you said that someone, if it's a drop, then it's kind of like
10 they're standing there, a drop would come down; correct?

11 A Yes, sir.

12 Q Fair enough. Now ---

13 A But not standing, my belief is that since everything in
14 this hallway is low, in the three foot and down range, that
15 this person is down in a crouch or their knees or partially
16 laying or something in that hallway.

17 Q Or they're being dragged, you testified that he was
18 being dragged up the hallway. You said that it was
19 consistent with being dragged up the hallway.

20 A No, I said the blood in the bathroom floor was
21 consistent with ---

22 Q Right.

23 A --- low velocity drops from an open wound, yes, sir.

24 Q From a wound. So, the wound could have been from the
25 person that committed this crime?

1 A I don't -- I can't say whose blood it is.

2 Q Well, if you want to tell the jury that it could have
3 been from the man with the open wound then, couldn't it
4 easily have been from the person that committed this crime?

5 A If he had an open wound, sure.

6 Q And when you commit a violent crime is it possible to
7 get wounds yourself when you're attacking someone they're
8 fighting back? Is it possible to get a scratch, a tear or a
9 cut, anything?

10 A Yes, sir.

11 Q And you even told the jury it would have been proper to
12 take a swab of that blood?

13 A Yes, sir.

14 Q And send it to SLED.

15 A Yes, sir.

16 Q Which they didn't do?

17 MR. RICHARDSON: Your Honor, he didn't say that. He
18 didn't say that.

19 THE COURT: The jury understands what he said and he
20 said he's here qualified as a blood spatter expert, not as a
21 blood expert or what SLED did or didn't do. He had said
22 three times now he's not familiar with that. Mr. Axelrod,
23 move on.

24 Q I want to ask you something. Mr. Solicitor asked you a
25 question. He asked you about transfer, that if I were

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1 standing here in blood, and we'll use blood as our example
2 because that's why we're here. If I was standing in blood
3 and had blood on my feet, the further I walk away the blood
4 would transfer from my shoes to whatever object it might be,
5 whether it's a rug or concrete, gravel, dirt, you name it,
6 it's transferring away, and the further I go the less I would
7 have on me; correct?

8 A Yes, sir.

9 Q Okay, now, if I just committed a crime, a homicide, and
10 I was covered in blood, just fully covered in blood from head
11 to toe and I am walking out the door and I get into a car,
12 would the transfer begin there, other than my seat, would
13 that be where the transfer would start?

14 A I don't think I can answer that without physically
15 seeing.

16 Q You answered about the transfer from the seat. That's
17 why I'm asking you about just transfer and my question is if
18 I don't touch anything, I'm covered in blood and I don't
19 touch anything, and then I come up and I rub against you, is
20 that when the transfer process starts?

21 A It would be determined on whether you had blood on the
22 bottom of your shoes. If you had no blood on the bottom of
23 your shoes but you have blood on your clothing then the
24 transfer is going to start when your clothing comes in
25 contact with some other object.

1 Q Absolutely. Thank you, sir.

2 THE COURT: You may -- you have any further questions
3 of this witness?

4 MR. RICHARDSON: Just one, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q On the cord, on Mr. Axelrod's hallway and with his
8 theory, if my feet are tied, in your expert opinion, if I am
9 being pulled is there any way for my head to end up in this
10 position if I'm being pulled by my feet? Is there any way
11 for my head to get down in here by pulling this rope?

12 A My own opinion would be no, I mean, if you were being
13 pulled by your feet, you would be feet first in the room, but
14 that's my opinion.

15 Q And certainly they could have pulled him down the hall
16 and then flipped him over or whipped the rope maybe or done
17 something, but it would seem that if your head is in this
18 room that either you're being pulled by the head or your feet
19 should be first, if that's Mr. Axelrod's theory.

20 A Yes, sir, that would be my opinion.

21 Q I have no further questions.

22 MR. RICHARDSON: Your Honor, I would ask he be able to
23 step down and be excused from his subpoena.

24 THE COURT: Yes, you may come down.

25 A Yes, sir.

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1 THE COURT: Mr. Foreman, ladies and gentlemen, it's
2 about 11:00 o'clock. I'll let you take a short break and
3 then we will resume again at 11:15. Thank you.

4 A Thank you, Your Honor.

5 THE COURT: Come forward both of you.

6 *****OFF THE RECORD*****

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 (On the record.)

10 THE COURT: Be seated. Have your next witness
11 brought in, Solicitor. Bring the jury in.

12 MR. AXELROD: Your Honor, I checked my notes and the
13 last witness actually got on the stand at 10:05 and he got
14 off the stand at five of 11. So, the entire testimony took
15 less than an hour between the both of us.

16 THE COURT: Well, it was five minutes testimony. So,
17 we wasted 55 minutes. Go ahead.

18 MR. AXELROD: Felt like two hours. It was only ---

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: The jury is present. Call your next
22 witness, please.

23 MR. RICHARDSON: Thank you, Your Honor. The State would
24 call A.J. Pierce.

25 WHEREUPON, Allen Pierce, after being duly sworn,

1 testified as follows:

2 THE CLERK: State your full name, spell your last
3 name for the Court.

4 MR. PIERCE: All right, my name is Allen Pierce, P-I-
5 E-R-C-E.

6 DIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q Do you also go by A.J.?

9 A Yes, sir.

10 Q All right, A.J., are you any kin to Lee Pierce?

11 A Yes, sir.

12 Q How are you related to him?

13 A First cousin.

14 Q All right, did you see -- do you know Luther Garner?

15 A Yes, sir.

16 Q How do you know him?

17 A In the hood.

18 Q What's -- does he have another name?

19 A Kariem.

20 Q What -- how do you refer to him?

21 A Kariem.

22 Q All right, were you with Kariem on the day that
23 Espinozat died?

24 A Huh-uh (negative response).

25 Q All right, tell me what you know about -- where did you

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- 1 stay the night before Espinozat died?
- 2 A Julianne's house.
- 3 Q Who was over at Julianne's house?
- 4 A Just me, Calvin, Lee and Julianne.
- 5 Q All right, did Lonya Snowden ever show up?
- 6 A No, Lonya wasn't there.
- 7 Q Did you ever see Luther?
- 8 A No, they pull up after the fact.
- 9 Q What you mean after the fact?
- 10 A They pull up when Lee called them.
- 11 Q All right, Lee called them and they came to Julianne's
- 12 house?
- 13 A Yeah, yeah.
- 14 Q All right, did you hear any conversation between Lee and
- 15 Luther?
- 16 A I don't know. I know they went in the back room and
- 17 talked.
- 18 Q All right, did you hear that conversation?
- 19 A It was, it was going on for like a month.
- 20 Q No, I'm talking about just that day. Did you hear
- 21 anything about Pablo or Espinozat?
- 22 A No, but I know they was going over there.
- 23 Q They were going over to whose house?
- 24 A Pablo's.
- 25 Q All right, and how do you know this?

1 A They was talking about it.
2 MR. AXELROD: Your Honor, he is eliciting hearsay right
3 now.
4 THE COURT: Yes, sir.
5 Q Don't -- just tell me if you heard Luther say anything.
6 A Yeah, both of them was talking about it.
7 Q All right, and what was the gist of Luther's
8 conversation?
9 THE COURT: Just talk about Luther now, the other,
10 you know, it would be hearsay.
11 Q That's right. Just tell me the gist of Luther's
12 conversation.
13 A See, I don't really know too much about it because him
14 and Lee was in the back room talking.
15 MR. AXELROD: Your Honor, he's testified that he
16 doesn't know the conversation.
17 THE COURT: Well, let's hear -- wait a minute now.
18 Ask him again.
19 Q Do you know what that conversation was with regards to?
20 A Drugs.
21 Q Whose drugs?
22 A I guess Pablo's.
23 Q All right, when -- did there come a time that Luther and
24 Lee came out of the back room?
25 A Yeah.

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1 Q All right, and what happened -- what did you do when
2 they came out?

3 A Me and my friend, Calvin Brown were sitting on the
4 chair, and we stood up, and we were about to follow behind
5 them, but he told us to sit our ass down.

6 Q All right, and why were you going with them?

7 A I don't know, just ---

8 THE COURT: With him being who please.

9 Q Why were you going with Lee and Luther? Why were you
10 and Calvin going with Lee and Luther?

11 A I just guess to be with them, but he told us to sit our
12 ass down.

13 Q Okay, and do you have any idea as to where they were
14 going at that time?

15 A Yeah.

16 Q And where was that?

17 A They were going straight to Pablo's.

18 Q Did you know Pablo before?

19 A I ain't -- I don't know him.

20 Q All right, you ever bought or sold drugs before?

21 A Yeah.

22 Q All right, do you have a criminal record?

23 A Yes, sir.

24 Q All right, and what's that for?

25 A Burglary first.

- 1 Q How long ago was that?
- 2 A About last year.
- 3 Q All right, do you remember who prosecuted you?
- 4 A Yes, sir.
- 5 Q Who was that?
- 6 A You, Mr. Jimmy.
- 7 Q All right, but this doesn't have anything to do with
- 8 your burglary?
- 9 A Yes, sir.
- 10 Q Tell me when's the next time you heard from either of
- 11 those?
- 12 A It's been a minute.
- 13 Q Sir?
- 14 A It's been a minute.
- 15 Q In a minute?
- 16 A Yeah.
- 17 Q No, I'm saying on that day, you say Luther and Lee left?
- 18 A Yeah. No, Lee called me like three hours later.
- 19 Q All right, and what did you do as a result of Lee
- 20 calling you?
- 21 A I answered the phone and he told me ---
- 22 MR. AXELROD: Your Honor, we are eliciting hearsay.
- 23 THE COURT: Wait a minute, now, you're getting into
- 24 -- I don't want to hear about Lee.
- 25 Q All right, no, I just want you to when Lee called you

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1 what did you do with what Lee had told you?

2 A Told him to run.

3 Q You told him to run? He told you something and you said
4 run?

5 A Yeah.

6 Q All right, did there come a time that you went to Paul
7 Graham's house?

8 A Yeah.

9 Q Was that the same day?

10 A Yes, sir.

11 Q All right, and what was the purpose of going to Paul
12 Graham's house?

13 A To pick, to pick Lee up.

14 Q All right, when you -- how did you get to Paul Graham's
15 house?

16 A Riding with Julianne.

17 Q When you go to Paul Graham's house where is that?

18 A The swinging bridge over there in Socastee.

19 Q And you were told to go to Paul Graham's house?

20 A Yes, sir.

21 Q When you pull up at -- who drove, you or ---

22 A Lonya -- no, Julianne drove.

23 Q All right, let me back up one minute. Before they left
24 did you say Lonya was with them?

25 A Uh-huh (affirmative response).

1 Q All right, so, Lonya took them wherever they were going?

2 A Yeah, she was the driver.

3 Q All right.

4 MR. AXELROD: Your Honor, he never testified to that.

5 He said that Lonya never showed up until after the fact.

6 That was his direct testimony. So, the Solicitor is leading

7 him in a question that he didn't testify to.

8 MR. RICHARDSON: No, I don't, I don't want to lead

9 him.

10 THE COURT: Go ahead.

11 BY MR. RICHARDSON:

12 Q I don't want to lead you.

13 THE COURT: Ask him, ask him again.

14 Q Did Lonya ever show up to pick up Lee and Luther?

15 A She was with them.

16 Q All right, now, when you got back do you remember how

17 long it was between when they left and you got the call to go

18 to Paul Graham's house?

19 A It was morning time.

20 Q All right, do you know what time in the morning?

21 A Huh-uh (negative response).

22 Q All right, was the sun up?

23 A It was coming up.

24 Q All right, what happened when you got over there at Paul

25 Graham's house? Who was there?

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1 A Lee, Lonya and Kariem.

2 Q Where was Lonya?

3 A In the -- on the driver's side.

4 Q Where was Kariem?

5 A Passenger side.

6 Q Where was Lee?

7 A Standing up beside the car.

8 Q Did you approach the car?

9 A No.

10 Q All right, did you ever have -- don't tell me what was
11 said, but did you ever have a conversation with Lee?

12 A Huh-uh (negative response).

13 Q All right, tell me what happened once you pulled up,
14 what you saw?

15 A When I pull up I seen Lee standing outside of the car.
16 So, I got out the car and walked behind Lee. Then I looked
17 in the car. I seen the blood on Kariem and then that's when
18 he asked for some money and I told Lee I wasn't going to give
19 him my money and he end up taking it anyway.

20 Q When you say he ended up taking your money who was
21 that?

22 A Kariem.

23 Q Kariem. Why would you let him have your
24 money?

25 A I don't know, just by listening what Lee said. Lee said

1 give it to him, so.

2 MR. AXELROD: Your Honor, Your Honor, we're, we're just

3 ---

4 THE COURT: Wait a minute now. Well, I sustain that.

5 Don't tell us what Lee said now.

6 A All right, so, I just took the money out my pocket and
7 gave it to him.

8 Q All right, and you say Luther had blood on him?

9 A Yes, sir.

10 Q Did you see any weapon?

11 A Yes, sir.

12 Q Where was the weapon?

13 A On his lap.

14 Q On whose lap?

15 A Luther's.

16 Q All right, did you notice anything about the
17 weapon?

18 A It was a long 25.

19 Q 25 caliber?

20 A It had a brown handle.

21 Q Approximately how long if you know?

22 A Probably like (indicating).

23 Q Well, do your hands.

24 A That long right there (indicating).

25 Q The pistol was that long?

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1 A Yeah, about that long right there (indicating).

2 Q Okay, did you see any blood on the gun?

3 A Huh-uh (negative response).

4 Q All right, how was the gun contained?

5 A Well ---

6 Q Was it in a holster?

7 A No.

8 Q All right, how, how did you see the gun? Was it on
9 anything?

10 A In his lap wrapped up in his shirt.

11 Q Wrapped up in his shirt on his lap and when you say he
12 who are you talking about?

13 A Luther.

14 Q Luther Garner, and Luther indicated that he wanted some
15 of your money?

16 A Yeah.

17 Q All right, tell me how Luther appeared.

18 A Crazy.

19 Q What do you mean crazy?

20 A Crazy man.

21 Q How about Lonya?

22 A She was looking all scared and stuff.

23 Q Was she still in the car?

24 A Yes, sir.

25 Q Did there ever come a time that Luther got out of the

1 car?

2 A No, sir.

3 Q All right, but you're sure you could see blood on

4 Luther?

5 A Yes, sir.

6 Q Did you see any blood on Lee?

7 A No, sir.

8 Q Do you know -- do you have any personal knowledge as to

9 whether Luther had anything to do with the planning this

10 crime?

11 A Well, they was in on it together.

12 Q Your cousin was in on it with him?

13 A Yeah, because they was talking about it.

14 Q All right, do you have any knowledge of your own as to

15 why they would have picked Pablo?

16 A Not really.

17 Q Okay, now, you said the extent of your criminal record

18 was a burglary?

19 A Yes, sir.

20 Q Haven't you also been locked up for your dog?

21 A Yes, sir.

22 Q All right, and when was -- tell, tell the jury what

23 happened with that.

24 A I was locked up for my dog for killing my aunt rabbit

25 and then they gave me 30 days. So, I had to do main cleanup

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1 on the county side. Then we went to max. The boys flood out
2 in max. So, we went to max and had to sweep the water up off
3 the floor and then some dude from behind the door responded
4 to me.

5 Q Don't say what anybody else said. I just want to get --
6 did Luther ever, Kariem ever say anything to you?

7 A And that's when Luther came up to the door start
8 talking, asking me and all that bull crap and ---

9 Q Wait a minute. I didn't understand.

10 A Start talking shit to me.

11 Q Yeah.

12 A And all that, so, I went to the door and was still doing
13 my work. He was telling me, like he was telling me when he
14 get out he was going to kill me and Lee. So, we didn't pay
15 that no attention. So, I kept doing my work, and then I
16 walked to the door he spit on me. So, I still ain't say
17 nothing. I just did what I had to do and get up out of
18 there.

19 Q Are you scared of Kariem?

20 A Uh-huh (negative response), I ain't scared of nobody.

21 Q All right.

22 THE COURT: One minute, Mr. Foreman, ladies and
23 gentlemen, there has come into this record the fact that this
24 witness has a prior record for burglary. Burglary is a crime
25 of dishonesty. Our courts have said that you may consider

1 that prior record as to his credibility and believability if
2 you choose to. All right, you may proceed. Have you
3 concluded, Mr. Richardson?

4 MR. RICHARDSON: The Court's indulgence just one moment,
5 Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. RICHARDSON:

8 Q Are you familiar -- where are you from?

9 A Aynor.

10 Q Are you familiar with a store in Aynor down in the hill
11 with a fire pit?

12 A Todd's.

13 Q Todd's. Do you live near Todd's?

14 A Yeah.

15 Q How far away do you live from there?

16 A Up the hill from Tedd.

17 Q All right, did you ever see Kariem Ward at that fire
18 pit?

19 A Yeah, they was down there burning stuff.

20 Q All right, do you know what they were burning?

21 A It had to been them clothes because me and my friend
22 passed by.

23 Q Who is your friend?

24 A Calvin Brown.

25 Q All right, is he also Calvin Ford?

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- 1 A Sir?
- 2 Q Does he also go by Calvin Ford?
- 3 A No, Calvin Brown.
- 4 Q Calvin Brown, okay, do you know where Calvin Brown is
5 now?
- 6 A He in Florida.
- 7 Q All right, do you remember who was with Kariem at the
8 fire pit?
- 9 A He was by hisself.
- 10 Q All right, and do you remember about when with reference
11 to the murder of Espinozat?
- 12 A I don't really know.
- 13 Q Do you know what day Espinozat died on?
- 14 A Huh-uh (negative response).
- 15 Q Do you know if that was the 10th or the 11th?
- 16 A No, sir.
- 17 Q Do you know if it was a Monday or a Tuesday?
- 18 A No, sir. I weren't keeping up with none of
19 that.
- 20 Q But are you sure that you were with Lee and Luther the
21 morning that Espinozat died?
- 22 A Yeah, that's when we was at Paul Graham's
23 house.
- 24 Q How about at Julianne's house?
- 25 A No, that's where they left from.

1 Q All right, were you at Julianne's house?

2 A Yes, sir.

3 Q All right, I have no further questions. If you would
4 answer any questions Mr. Axelrod might have.

5 CROSS EXAMINATION

6 BY MR. AXELROD:

7 Q Isn't it true that whatever morning you think the murder
8 occurred you were actually sleeping at Julianne's house and
9 you didn't see anybody leave?

10 A Yeah, I seen. I wasn't sleep though.

11 Q You weren't sleeping?

12 A No.

13 Q Who left?

14 A Julianne, Kariem and Lee.

15 Q Julianne, Kariem?

16 A And Lonya.

17 Q They left.

18 A Yeah, they left together.

19 Q Now, are you a drug dealer?

20 A No, sir.

21 Q You never -- did you ever sell drugs?

22 A Yeah, I did, but I ain't no drug dealer.

23 Q Were you selling drugs back in 2005?

24 A Yes, sir.

25 Q Were you selling drugs for Paul Graham?

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- 1 A No, sir.
- 2 Q Have you been to Pablo's house prior?
- 3 A No, sir.
- 4 Q You didn't know anything about Pablo?
- 5 A No, sir.
- 6 Q You've been arrested for two burglary first degree?
- 7 A Yes, sir.
- 8 Q Approximately two months after this murder occurred you
- 9 got arrested, March of '05?
- 10 A Yes, sir.
- 11 Q And how many guns do you own right now?
- 12 A I don't own no gun.
- 13 Q How many guns did you own back then?
- 14 A None.
- 15 Q You don't own a gun at all?
- 16 A No.
- 17 Q You never showed Lonya a gun.
- 18 A No.
- 19 Q You never showed her a Glock.
- 20 A No.
- 21 Q You never told her you owned a Glock?
- 22 A No. I only own pits.
- 23 Q Excuse me?
- 24 A I only own dogs.
- 25 Q No guns?

1 A No guns.

2 Q So, if Lonya was to say that you had a gun that wouldn't
3 be true then?

4 A No, sir.

5 MR. RICHARDSON: Your Honor, he's pitting the witnesses.

6 Q Now ---

7 THE COURT: Sir?

8 MR. RICHARDSON: He's pitting witnesses.

9 THE COURT: I will permit that one light inquiry. Go
10 ahead.

11 MR. AXELROD: Thank you, sir.

12 BY MR. AXELROD:

13 Q Now, you're first cousin to Lee Pierce?

14 A Yes, sir.

15 Q He's a Co-Defendant in this case?

16 A Yes, sir.

17 Q He's been charged with murder.

18 A Yes, sir.

19 Q You testified on direct exam that Lonya never showed up
20 till after the fact; isn't that correct?

21 A No, sir.

22 Q Okay, are you in the hood?

23 A Yes, sir.

24 Q What do you do in the hood?

25 A Work with Jim Parsley [spelled phonetically].

- 1 Q In the hood? What's the hood do?
2 A Make butter mints.
3 Q Make what?
4 A You say the hood?
5 Q The hood.
6 A I don't worry about the hood.
7 Q Are you in the hood?
8 A Yeah.
9 Q What do you do in the hood?
10 A Work with Jim Parsley.
11 Q And what is the hood?
12 A That's where everybody stay at, chill at.
13 Q Chilling and when you chilling with the hood what do you
14 do? Tell the jury what you do at the hood.
15 A Just drink, smoke weed and make money. That's it.
16 Q How do you make money, sell drugs?
17 A Yes, sir.
18 Q Fair deal. When you came out to the car, when you came
19 up to -- was Lonya in the Mustang?
20 A Yes, sir.
21 Q All right, was her door open?
22 A Yes, sir, the passenger side.
23 Q They were open? Okay, and now, when you looked in the
24 car did you see anything else in the car? Did you see any
25 blood in the car?

- 1 A Yes, sir.
- 2 Q Blood in the car?
- 3 A Yes, sir.
- 4 Q Tell the jury where you saw blood in the car.
- 5 A On Luther.
- 6 Q Where else? Did you see it on the console or anywhere
- 7 else?
- 8 A No, it was just on him.
- 9 Q It was just on Luther.
- 10 A Yeah.
- 11 Q Where else did you see it? Did you see it on his shoes?
- 12 Did you see it on his pants? Did you see it on his shirt?
- 13 A From his shirt on down to his shoes.
- 14 Q And he had a shirt on?
- 15 A He had his shirt off sitting in his lap with the gun up
- 16 under it.
- 17 Q You told the jury that he had the gun wrapped up in his
- 18 shirt.
- 19 A Yeah, wrapped up on his lap.
- 20 Q But then you told the jury you could see the gun. So,
- 21 how could you see the gun if it was wrapped up in his shirt?
- 22 A Because he unwrapped it and you could -- and I, and I
- 23 been seen the gun.
- 24 Q Okay, so, he unwrapped the gun for you, showed you the
- 25 gun and then he wrapped it back up.

1 A No, he ain't show me. He was -- I guess he was going to
2 change clothes in Paul Graham's house.

3 Q So, he took it out from under the clothes because you
4 told the Solicitor ---

5 A Yeah.

6 Q --- that it was wrapped in his shirt.

7 A It was.

8 Q And your first testimony you said that it was just
9 sitting on his lap where you could see it?

10 A No, it was on his lap with the shirt, with the shirt
11 over the gun.

12 Q And it was a long 22?

13 A Yes, sir.

14 Q How do you know it was a 20 -- or a long 25 you
15 testified to. How was it a long 25?

16 A Well, I don't know. It could have been a 22 or a 25.
17 It was a pistol.

18 Q Was it a Glock?

19 A No.

20 Q Do you ever shoot a Glock?

21 A No, I don't shoot no guns.

22 Q Are you allowed to have a gun?

23 A Hell no.

24 Q Why not?

25 A Because that ain't for me.

- 1 Q Because you're a felon?
- 2 A No, sir.
- 3 Q You're not a felon?
- 4 A No, sir.
- 5 Q You weren't convicted of a burglary first degree?
- 6 A Yes, sir.
- 7 Q Then you're a felon; aren't you?
- 8 A Well, I ain't know all that.
- 9 Q What was Lee wearing that day?
- 10 A He had on my Hawaiian shirt with some brown khakis on
- 11 and violet red boots.
- 12 Q Hang on one second. He had on your Hawaiian shirt?
- 13 A Yeah, yes, sir.
- 14 Q And what else?
- 15 A With some brown khakis.
- 16 Q Now, was that, was that shorts or was that pants?
- 17 A Pants.
- 18 Q Okay, brown khakis.
- 19 A With some violet red boots.
- 20 Q Volley red.
- 21 A Violet.
- 22 Q Violet red.
- 23 A Yeah.
- 24 Q Violet red, like purple?
- 25 A No, a violet red.

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1 Q Okay, boots. At this time back in '05, January of '05,
2 were you dealing drugs religiously?

3 A Not really. It was like a off and on situation.

4 Q Okay.

5 MR. AXELROD: The Court's indulgence.

6 That's all, Your Honor.

7 MR. RICHARDSON: Nothing further, Your Honor.

8 THE COURT: You may come down. Can he be now
9 released from his subpoena?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: All right, sir, you are released. Come
12 down, please. Thank you. All right, call your next witness.

13 MR. RICHARDSON: The State would call Paul Graham,
14 Paul Graham. The Court's indulgence just one moment, Your
15 Honor.

16 THE COURT: Yes, sir.

17 MR. RICHARDSON: Your Honor, he's here -- but I -- he
18 wasn't in the room. If we can give him a minute he might be
19 downstairs smoking, but ---

20 THE COURT: Well, send somebody down there for him.

21 MR. RICHARDSON: I have. I have.

22 MR. AXELROD: Your Honor, if he's lost his witness
23 right now maybe it'd be a good time just to take a break or
24 something for the jury, whatever they want to do.

25 THE COURT: Well, we just took a break. Do you have

1 anybody, any witness you can call at this time till we find
2 him?

3 MR. RICHARDSON: Paul will be short, Paul will be a
4 short witness.

5 THE COURT: Who else you got? I just hate to keep
6 the jury running back and forth.

7 MR. RICHARDSON: Yeah, let's give Paul just a minute.
8 There's Paul Graham.

9 WHEREUPON, Paul Graham, after being duly sworn,
10 testified as follows:

11 THE CLERK: Please state your full name and spell
12 your last name for the Court and talk into that microphone.

13 MR. GRAHAM: My name is Paul Graham, G-R-A-H-A-M.

14 DIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q Paul, where were living back in January of 2005?

17 A I was staying with a woman on -- off of [REDACTED] k
18 Road.

19 Q All right.

20 A Or not [REDACTED] parallel to [REDACTED] I don't
21 remember the name of the road.

22 Q Was that down near the draw bridge?

23 A Yes, sir.

24 Q Were you staying there back around January 10th or
25 January 11th of 2005?

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- 1 A Yes, sir.
- 2 Q Do you remember or do you know what date the 11th or the
3 10th or Monday or Tuesday that Espinozat died?
- 4 A I don't remember the exact date of it.
- 5 Q All right, now, the day before this or the night before
6 this did you have an occasion to meet with Kariem Ward?
- 7 A Yes.
- 8 Q Do you know Kariem?
- 9 A We partied that night.
- 10 Q All right, when you say, first of all, that night before
11 tell me who all was there and what you mean -- first, what do
12 you mean by partying?
- 13 A Lonya, Kariem and myself we stayed up that evening and
14 smoked a lot of crack.
- 15 Q When you say a lot of crack, how much is that?
- 16 A Several hundred dollars apiece.
- 17 Q So, Lonya has an extensive crack problem.
- 18 A Correct.
- 19 Q Did you know Lonya?
- 20 A Yes, prior to that.
- 21 Q All right, did you know Lee Pierce?
- 22 A Yes, sir.
- 23 Q How do you know Lee?
- 24 A He supplied me with drugs.
- 25 Q How about Kariem, how did you know him?

- 1 A He was an acquaintance of Lee's.
- 2 Q All right, who was at your girlfriend's house the night
3 before this murder smoking crack?
- 4 A Lonya, Luther and myself and Sonya.
- 5 Q Sonya is your girlfriend?
- 6 A Correct.
- 7 Q And you smoked several hundred dollars apiece?
- 8 A Correct.
- 9 Q Did there come a time that anyone left that trailer?
- 10 A Lonya and Luther left I want to say late night, one,
11 2:00 o'clock in the morning.
- 12 Q Okay, and what did you do when they left?
- 13 A I went to bed. I was out of dope at that point.
- 14 Q All right, the next day, I'm talking about the day that
15 Espinozat died, tell me how you were awoken or awakened?
- 16 A Lee was banging on the door profusely. I mean, for at
17 least 15 minutes, neither one of us wanted to let him in, but
18 he wouldn't go away. So, we let him in. He came in needing
19 clothing.
- 20 Q A right, tell me this, give me your impression, do you
21 know, have -- up until that time how well did you know Lee?
- 22 A I had known him extensively.
- 23 Q All right.
- 24 MR. AXELROD: Your Honor, I wasn't able to hear that
25 answer.

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1 A I've known him extensively a long, long period of time.

2 Q How did Lee act upon coming inside?

3 A He was very rattled, high strung, not his normal -- he's
4 usually calm around me. He's not ---

5 Q Do you know if Lee smokes crack?

6 A Not that I'm aware of.

7 Q But he sells crack?

8 A Yes, sir.

9 Q And on this particular day he was high strung and
10 nervous?

11 A Correct.

12 Q And he was asking you for clothes?

13 A Yes, sir.

14 Q Was the clothes for him?

15 A No, sir.

16 Q All right, who were the clothes for?

17 A Luther.

18 Q All right, did Lee leave with some clothes?

19 A He took three sets of pants and shirts out to the car at
20 different intervals and he kept coming back in and saying
21 these weren't acceptable, and I grabbed some more and I
22 walked out of the door because I was aggravated and I wanted
23 to get back to sleep.

24 Q All right, who was outside when you first walked out?

25 A Luther and Lonya were in the car. Lee was, Lee was in

- 1 front of me.
- 2 Q Okay, so, Lee was not in the car. Where was, where was
- 3 Luther?
- 4 A He was in the passenger side of the vehicle.
- 5 Q All right, and where was Lonya?
- 6 A Driving the vehicle.
- 7 Q And you have said that Lee was outside of the vehicle.
- 8 A Yes, sir.
- 9 Q Did you get a look at Kariem?
- 10 A Yes, sir.
- 11 Q All right, tell this jury your observations of Kariem on
- 12 that morning?
- 13 A He was highly agitated, so was Lonya who was driving.
- 14 They were bickering back and forth between Lee and Lonya and
- 15 everyone was just -- it was very unnerving.
- 16 Q What was that whole argument about?
- 17 A Clothing, money. I didn't know what was going on.
- 18 They were -- it just wasn't the normal early morning
- 19 conversation that you'd have.
- 20 Q But there was an argument about money?
- 21 A Correct.
- 22 Q And about clothing?
- 23 A Correct.
- 24 Q And Lonya seemed to be in on the argument as much as
- 25 any.

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1 A Yes, sir.

2 Q And Luther ---

3 MR. RICHARDSON: Sir, did you object?

4 THE COURT: No, I didn't hear anything.

5 MR. RICHARDSON: Okay.

6 BY MR. RICHARDSON:

7 Q And Luther ---

8 MR. RICHARDSON: I'm just gun shy.

9 MR. AXELROD: If I did I didn't hear it either.

10 MR. RICHARDSON: I'm just gun shy.

11 BY MR. RICHARDSON:

12 Q And Luther you say was agitated and angry.

13 A Yes, sir.

14 Q All right, did you see anything about -- could you say

15 anything about his clothing, Luther's clothing?

16 A He wasn't wearing a shirt. His pants and shoes were

17 covered with blood. He kept rubbing his hands down his pants

18 trying to brush it off or I don't know what he was doing if

19 it was the crack or Lee kept profusely rubbing his pants like

20 trying to get that -- get it off of him.

21 Q What was he doing with your clothing?

22 A I guess he needed a change of clothes to get rid of the

23 -- to get out of the bloody clothes that he was in.

24 Q Did he ever try on your clothes or how did he know

25 whether or not they would fit?

- 1 A He just was holding them up at the -- holding them out
2 the door and looking at them saying he wouldn't wear that.
- 3 Q Wouldn't wear that.
- 4 Did his legs ever come outside of the car?
- 5 A Not that I recall.
- 6 Q Did you ever see a bloody gun?
- 7 A No, sir, I didn't.
- 8 Q How do you know that it was in the morning?
- 9 A The landlord was coming around to mow the lot, so, you
10 know, and the -- I believe the sun was already up. It wasn't
11 pitch black like when I went to sleep so I knew it was
12 sometime in the morning.
- 13 Q Okay, and you had gone to sleep sometime after one when
14 they left.
- 15 A I don't know the specific time but it was, it was late
16 night. It was after 1:00 o'clock I'm sure.
- 17 Q And when they left you're saying it was Luther and
18 Lonya.
- 19 A That's correct.
- 20 Q Okay, the next time you saw them, the same two people?
- 21 A The same three.
- 22 Q The same three.
- 23 A Yeah, Luther, Lonya and Lee.
- 24 Q Had Lee been at your house the night before?
- 25 A I can't remember if he dropped off drugs or A.J. brought

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1 | them to me.

2 | Q But he wasn't there smoking the drugs.

3 | A No, sir.

4 | Q All right.

5 | A It was just the four of us smoking in the house.

6 | Q At some points in time you would buy drugs from A.J.?

7 | A He would deliver them for Lee or for himself.

8 | Q Okay, now, did there ever come an occasion that any
9 | other people pulled up at Sonya's house?

10 | A About five to ten minutes after this whole issue with
11 | the clothing A.J. and another blonde came in the Mustang.
12 | Luther told A.J. to give him money and then Lee said, "Give
13 | him money, damn it."

14 | MR. AXELROD: Your Honor, we're eliciting hearsay
15 | again.

16 | THE COURT: No, sir, I sustain that. Let's don't go
17 | what Lee said.

18 | MR. RICHARDSON: Right.

19 | THE COURT: He's permitted to say what the Defendant
20 | said if anything.

21 | BY MR. RICHARDSON:

22 | Q Kariem told A.J. to give him his money.

23 | A Correct.

24 | Q Did A.J. give him the money?

25 | A Yes, sir.

1 Q All right, at this point did you ever see Luther get out
2 of the car?

3 A No, sir.

4 Q And you had never -- you still hadn't seen a bloody gun?

5 A No, sir.

6 Q Tell me what occurred when the other car pulled up.

7 A Lonya got highly agitated at the girl in the other
8 Mustang over a silver jewelry box that was stolen from her
9 apartment and they started screaming and yelling and she was
10 out of the car.

11 Q Lonya was out of the car.

12 A Correct.

13 Q How about the other girl?

14 A I don't remember if she got out of the car but there was
15 so much yelling going on I didn't want to get Sonya in
16 trouble because I saw -- previously saw the landlord driving
17 by.

18 Q The landlord was the one cutting the grass?

19 A Yes, sir.

20 Q All right, initially before A.J. and the other girl
21 pulled up there was an argument about money and clothing?

22 A Yes, sir.

23 Q And there's no doubt in your mind that Luther or Kariem
24 was seated in the passenger?

25 A No doubt in my mind.

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1 Q And that Lonya was in the driver's side?

2 A That's correct.

3 Q How -- did you say Lonya was aggravated at that point
4 also?

5 A She was complaining. She needed ---

6 MR. AXELROD: Your Honor, we are eliciting testimony
7 again that's hearsay.

8 Q Just by her physical appearance, not by what she said?

9 A Highly agitated. She needed more crack at that point.

10 Q All right.

11 A You could just tell she was jonesing or, you know.

12 Q Now, then when A.J. and the other girl pull up a totally
13 separate argument breaks out?

14 A Yes, sir.

15 Q And that's over the jewelry.

16 A A silver jewelry box or something to that effect.

17 Q Were you ever able to determine what that initial
18 argument over money was about?

19 A No, sir.

20 Q Okay, did Lonya have blood on her?

21 A Not that I, not that I can recall.

22 Q What about Lee?

23 A I didn't see anything on Lee.

24 Q No doubt that Lee was there?

25 A No doubt.

1 Q Now, what caused this group to leave Sonya's house?

2 A I told everyone they needed to leave because the
3 landlord had threatened previously that loud commotion, it's
4 a quite neighborhood, that they didn't want, you know,
5 arguing and fights and partying going on there. So, I told
6 everyone to leave. A.J. left in the Mustang with the one
7 blonde and Lee left with Luther and Lonya.

8 Q So, A.J. left with the blonde and -- excuse me, Lee left
9 with A.J. and the blonde, and ---

10 MR. AXELROD: Your Honor, he testified that Lee left
11 with Luther and Lonya and the Solicitor is changing the
12 witness's testimony if the Court ---

13 THE COURT: I'll let the jury determine who said
14 what. Go ahead. Our jury will decide. Go ahead.

15 Q All right, yeah, please just tell us how everybody left
16 and if I've led you in any way you just tell us how it was.

17 A I believe that A.J. and, you know, I could -- this was a
18 long time ago. I believe it was A.J. and the blonde left
19 alone and Luther, Lonya and Lee left together. I could be
20 mistaken. I was, I was screaming at everyone to leave and I
21 proceeded to go back in the house at that point.

22 Q Okay, and when they left do you know how they rode? Did
23 Luther ever get in the back seat?

24 A I didn't -- I couldn't honestly tell you.

25 Q At the times that you were looking at Luther with the

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1 blood where was he seated?

2 A In the passenger seat.

3 Q Front passenger seat?

4 A Front passenger seat.

5 Q And who was driving?

6 A Lonya.

7 Q Okay, and then they left?

8 A Yes, sir.

9 Q Do you know anything other than -- do you know where the
10 guns went?

11 A No, sir.

12 Q All right, do you know about the clothes, the bloody
13 clothes?

14 A I don't know what happened to those either. I left town
15 a few weeks after this. So, I haven't been in contact with
16 anyone.

17 Q Does any of these people know where you're at now?

18 A No, sir.

19 Q Before you -- let me ask you this, as far as a criminal
20 record, and I don't have it in front of me -- do you have it?

21 MR. AXELROD: Your Honor, may we approach a second?

22 THE COURT: Yes, sir.

23 (Whereupon, a bench conference was held in the presence,
24 but out of the hearing of the jury.)

25 BY MR. RICHARDSON:

1 Q Paul, do you have any bad check convictions?

2 A Yes, sir.

3 Q Do you know if they're, and if you don't know, you don't
4 know, but were they misdemeanor, felony?

5 A They were misdemeanors.

6 Q Okay, any other, do you know of any felony record that
7 you would have?

8 A No, no, sir.

9 Q Okay, and you have, shortly after this you relocated?

10 A Yes, sir.

11 Q To some undisclosed location?

12 A I went into rehab for three months and changed my life.

13 Q All right, no doubt but during this time you were
14 addicted to cocaine?

15 A Yes, sir.

16 Q There was some testimony earlier that you actually drove
17 Lee and Kariem around and they would give you cocaine for
18 your driving them?

19 A I did that for a long time.

20 Q Okay, I have no further questions.

21 THE COURT: Again, Mr. Foreman, ladies and gentlemen,
22 I have permitted into this testimony concerning a prior
23 charge of bad checks. Again, if you care to use it at all,
24 it would only be to the credibility and believability and for
25 no other purpose. Our rules permit for crimes of

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1 dishonesty to go into the record for your consideration on
2 that issue of credibility and believability all of which you
3 may accept or reject, depending on your view of his
4 testimony. All right, sir, you may cross examine.

5 MR. AXELROD: Thank you, sir.

6 CROSS EXAMINATION

7 BY MR. AXELROD:

8 Q How long had you known Lonya at that point? How long
9 had you known her?

10 A I honestly couldn't tell you, maybe a month or so.

11 Q Who paid for your dope?

12 A I did, Lee did.

13 Q How did you pay for your dope? How did you make your
14 money?

15 A I worked sometimes.

16 Q You could smoke a couple of hundred dollars every night
17 and you made -- you worked enough to make your money?

18 A Well, I did a lot of driving.

19 Q So, maybe you smoked we'll say 1500, \$2000 a week of
20 drugs?

21 A Correct.

22 Q How many weeks did you smoke that much?

23 A A long period of time.

24 Q A year?

25 A At least.

- 1 Q Okay, so, each year you were smoking at least 100,000?
- 2 A Probably less than that but a considerable amount.
- 3 Q They gave it to you?
- 4 A Yes, sir.
- 5 Q They were your connection?
- 6 A Yes, sir.
- 7 Q Did you ever deal dope for them?
- 8 A I would deliver it for them.
- 9 Q So, you would take dope to someone's house?
- 10 A Yes, sir.
- 11 Q And I don't know -- if you, if you know, do you know if
- 12 that's, is that considered dealing in our state?
- 13 A I believe it is, sir.
- 14 Q Okay, in fact, you partied all night that night; didn't
- 15 you?
- 16 A Yes, sir.
- 17 Q Now, you had the opportunity to give a taped statement
- 18 to the police; didn't you?
- 19 A Yes, sir.
- 20 Q Okay.
- 21 MR. AXELROD: The Court's indulgence, Your Honor. Your
- 22 Honor, may the record reflect that I'm giving you a sealed
- 23 transcript of Paul Graham done by a certified court reporter
- 24 under seal to the court?
- 25 THE COURT: All right, Sir.

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1 MR. RICHARDSON: Your Honor, I would just ask that when
2 Mr. Axelrod refers to a question that he let us know today
3 what page he's on and what line.

4 THE COURT: He will do that.

5 MR. AXELROD: I will be more than happy to, Your Honor.

6 THE COURT: Thank you.

7 MR. AXELROD: Yes, sir, Your Honor.

8 BY MR. AXELROD:

9 Q Now, what I would like to discuss is do you remember
10 what Lee was wearing that day?

11 A Not off the top of my head.

12 Q Okay, you testified you told the police ---

13 THE COURT: What page and what line now?

14 MR. AXELROD: All right, one second, Your Honor, all
15 right, I'll do that.

16 Page six, line five approximately.

17 BY MR. AXELROD:

18 Q Let me ask you this before I ask you that question,
19 other than driving for these dope dealers, was that your work
20 at that -- was that your job?

21 A Yes, sir.

22 Q Okay, now, did you ever have the opportunity to -- did
23 Lee's -- did Lee have a wife?

24 A Yes, sir.

25 Q Did she drive with you, too?

- 1 A Sometimes.
- 2 Q So, you and her were the drivers?
- 3 A Some -- yes, sir.
- 4 Q Whose car would you drive?
- 5 A Mine.
- 6 Q And who would drive?
- 7 A I would.
- 8 Q So, for those two years that you did this was she your
- 9 driver? Was she with you? Was she always the person that
- 10 ran dope with you?
- 11 A Not always.
- 12 Q Okay.
- 13 A Most of the time it was myself and Lee, 90 percent of
- 14 the time it was Lee and myself.
- 15 Q And what other way did you know Lee's wife?
- 16 A I worked with her at a restaurant in town.
- 17 Q Which restaurant?
- 18 A I can't recall at this time.
- 19 Q I think that's an honest answer. Now, and ---
- 20 A Palmetto Grill, excuse me.
- 21 Q The Palmetto Grill?
- 22 A Yes, sir.
- 23 Q Where is that located?
- 24 A In between Briarcliffe and North Myrtle Beach.
- 25 Q Okay, now, is A.J. Lee's cousin?

Paul Graham - Cross by Mr. Axelrod

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- 1 A Yes, sir.
- 2 Q So, the two of them are dope dealers?
- 3 A Yes, sir.
- 4 Q Did you ever see Lee or A.J. have a gun?
- 5 A Yes, sir.
- 6 Q Did you see Lee have guns?
- 7 A Yes, sir.
- 8 Q Did you see A.J. have guns?
- 9 A Yes, sir.
- 10 Q I know you testified that -- you're saying that Luther
- 11 kept sending the pants back, he wouldn't wear this or wear
- 12 that.
- 13 A Yes.
- 14 Q He never got pants that day; did he?
- 15 A I believe he took the last pair.
- 16 Q Tell the jury what kind of pants they were?
- 17 A I honestly can't recall at this point.
- 18 Q So, you ---
- 19 A It was a -- it was three years ago.
- 20 Q So, you're not even sure if he took pants; are you?
- 21 A I'm pretty sure he took the last pair.
- 22 Q The last pair of pants?
- 23 A Correct.
- 24 Q Was it khaki, dress pants, do you remember?
- 25 A I believe they were sweatpants or I want to say they

1 were some kind of loose, baggy pants, sweatpants, running
2 pants, something like that.

3 Q I'm on page six, line five. You testified that Lee was
4 wearing overalls or coveralls?

5 A It could be possible.

6 Q Well, your exact words, "Did you see anything remarkable
7 about Lee," was asked to you by Detective Caraker, and your
8 response was, "He didn't have his shirt on. I think he had
9 -- they were like overalls or coveralls. They didn't look
10 like his normal clothing." You gave a taped statement to
11 that. Does that make sense?

12 A Yes.

13 Q If the police tape recorder did and that's what the
14 court reporter transcribed ---

15 A If that's what I said that's what I said. I'm not going
16 to debate it with you.

17 MR. RICHARDSON: Can he finish that line of question,
18 Your Honor?

19 THE COURT: Sir?

20 MR. RICHARDSON: I would just ask that he be able to
21 finish that line of question.

22 MR. AXELROD: The line of question was finished. We
23 went -- they didn't look like his normal clothes, that's the
24 last line.

25 MR. RICHARDSON: Your Honor, you'll notice they ask

1 about ---

2 MR. AXELROD: I asked the -- I'm asking -- I asked a
3 question and we got a response.

4 MR. RICHARDSON: I would just ask that he be able to
5 publish the rest of his answer.

6 MR. AXELROD: He did. We published the entire answer.
7 The answer was, "He didn't have his shirt on. I think he had
8 they were like overalls or coveralls. They didn't look like
9 his normal clothes to be."

10 THE COURT: What is it, what is it you wish to
11 publish?

12 MR. RICHARDSON: I thought he had gone in, "Did they
13 have blood on them?"

14 MR. AXELROD: I didn't ask that question.

15 MR. RICHARDSON: Did not. I'm sorry.

16 THE COURT: No, he never asked that. Go ahead.

17 MR. RICHARDSON: I'm sorry.

18 BY MR. AXELROD:

19 Q Now, you testified to the jury today that you all
20 partied, smoked four or five of you smoke \$1,000 worth of
21 crack and you ran out of dope about one or two in the
22 morning.

23 A I didn't run out. They left. Lonya and Luther left.
24 They had provided me with dope that evening so they could
25 party at that house. So, when they left there was no more

1 dope there.

2 Q And tell me why two years ago you told the police that
3 they showed up at two or three in the morning.

4 A I don't think I said a specific time what time they
5 showed up. I know it was late night.

6 MR. AXELROD: I'll direct the Court's attention to page
7 14.

8 BY MR. AXELROD:

9 Q And Detective Caraker says to you how did the blonde and
10 this other guy come to be at Sonya's house the night before?

11 MR. RICHARDSON: What line is that, Mr. Axelrod?

12 MR. AXELROD: Line 7, Mr. Solicitor.

13 BY MR. AXELROD:

14 Q Now, when did the police interview you?

15 A A week or two after the incident, I believe.

16 Q Okay, so, when you say that they came to your house the
17 night before, how do you establish the timeframe if you know
18 at all when this person was killed? Who is giving you the
19 timeframe? Did the investigators tell you a timeframe? Did
20 the detectives?

21 A Not that I'm aware of. They gave me a date but I
22 wasn't, I wasn't clear on the date.

23 Q Well, then how could you say to the police that they
24 came over the night before. That's my question to start
25 with.

Paul Graham - Cross by Mr. Axelrod

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- 1 A I don't know.
- 2 Q Neither do I, okay.
- 3 A Up to the ---
- 4 Q Let me ask you, let me ask you ---
- 5 A I had no, I had no other conversations with any of these
- 6 people. So, I'm assuming that was the night and that all
- 7 this happened.
- 8 Q But you don't know? In fact my ---
- 9 A A guy gets murdered and he comes to my house with bloody
- 10 clothes on, what, you know, I can't ---
- 11 Q But you don't know what happened; do you?
- 12 A All I know is the ---
- 13 Q Did you go down to the ---
- 14 A --- guy showed up at my house with bloody clothes on
- 15 highly agitated. That's all I know.
- 16 Q Did you go down to the Mustang?
- 17 A Yes, sir.
- 18 Q Did you look in the Mustang?
- 19 A Yes, sir.
- 20 Q Well, tell us what you saw in the Mustang.
- 21 A I saw Luther and Lonya in there arguing, Lee arguing
- 22 back and forth with the two of them.
- 23 Q You stuck your head in the Mustang?
- 24 A I didn't stick my head in the Mustang. I stood parallel
- 25 to the Mustang with the door open.

- 1 Q Okay, so, two feet away?
- 2 A A few feet away.
- 3 Q Two feet?
- 4 A Probably more than two feet.
- 5 Q Three feet?
- 6 A I couldn't honestly tell you.
- 7 Q Well, let's think about it because I think it's
- 8 important, two feet, three feet, you tell me how many feet.
- 9 A A few feet.
- 10 Q Is a few feet two feet? I'm not trying to trick you
- 11 now. I'm just trying to get an answer rather than a few
- 12 feet. Let me ask you a question.
- 13 A Closer, this distance right here. This distance right
- 14 here.
- 15 Q Right here, so?
- 16 A A little further back, but that distance.
- 17 Q Okay, okay, so, three feet?
- 18 A About approximately this distance.
- 19 Q Well, do me a favor. Turn sideways like you're in a
- 20 car.
- 21 A Okay.
- 22 Q Just right up to the edge here, come up to the edge, all
- 23 right. Now ---
- 24 A The door is open.
- 25 Q The door is open.

Paul Graham - Cross by Mr. Axelrod

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1 A And I was maybe a foot, take a foot back, probably to
2 there.

3 Q Okay, three feet, okay. Would it have been further, six
4 feet, ten feet?

5 A It was closer than ten feet.

6 Q Six feet?

7 A Approximately. I was close enough to hand him clothing.
8 So, yes, it had to have been -- it had to have been within
9 this range, okay.

10 Q To hand clothing you have got to be this close; right?

11 A Correct.

12 Q Then why did you tell the police six feet because if
13 it's six feet how in the heck do you hand clothes? Tell me
14 that. Let's just start there.

15 A Okay.

16 Q How do you hand clothes at six feet?

17 A Oh, I have long arms. I can reach in.

18 Q How tall are you?

19 A Six-three.

20 Q Good. Now, let's go back to the night before. Who came
21 over to your house the night before?

22 A A lot of people were in and out.

23 Q Did A.J., the blonde and the other guy deliver something
24 that night?

25 A I believe A.J. brought me dope.

1 Q Okay, and the question asked by Detective Caraker on
2 line seven is?

3 MR. RICHARDSON: What page, Mr. Axelrod?

4 MR. AXELROD: Page 14, Mr. Solicitor.

5 BY MR. AXELROD:

6 Q "How did the blonde and the other guy come to be at
7 Sonya's house the night before," and you answer, Mr. Graham,
8 "I think they were, I think A.J. and the blonde and the other
9 guy were delivering something over there," and Detective
10 Caraker goes, "Okay, all right, and," and you interrupt and
11 you finish and you say, "And that was probably two or
12 3:00 o'clock in the morning when they showed up."

13 A I wasn't worried about -- when, when you're high you're
14 not looking at any clocks or it was late night.

15 Q But would your, would your memory be better two years
16 ago or today?

17 A It's probably a little clearer today.

18 Q And then, so, when they -- the Detective asked you how
19 long they stayed you said that they partied for at least an
20 hour or so, they met other people, made sales in your house
21 and then they left.

22 A Correct.

23 Q And left before sunup?

24 A Absolutely.

25 Q So, they left at 5:00 o'clock in the morning?

Paul Graham - Cross by Mr. Axelrod

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1 A You don't -- I wasn't looking at a clock there.

2 Q Well, you're telling the Solicitor they left at
3 2:00 o'clock in the morning. Were you looking at a clock
4 then?

5 A No, I wasn't clear on the time. I know it was after
6 midnight and it was well before sunup they left.

7 Q But in your testimony two years ago you said they
8 arrived at ---

9 MR. RICHARDSON: Your Honor, asked and answered. He's,
10 he's went over that.

11 THE COURT: Well, I'll let him answer it again. Go
12 ahead.

13 Q But when you told the Solicitor they left at two you
14 didn't tell them you weren't sure that time; were you? That
15 was okay till I asked you this question.

16 A Well, when did I tell the ---

17 MR. AXELROD: I'll move on, Your Honor.

18 A Excuse me. When did I tell the Solicitor? I told a
19 police officer.

20 Q You told the Solicitor in your direct examination about
21 ten minutes ago they left at 2:00 o'clock in the morning.
22 That's where I started the conversation with.

23 A The timeline, I know it was after midnight and before
24 four in the morning, somewhere in that range. You don't -- I
25 -- no one was looking at a clock at that point.

- 1 Q Now, did you consider A.J. and Lee to be your boys in
2 the hood?
- 3 A They were my, my, my connection.
- 4 Q And being a crack addict that smokes ---
- 5 A Former.
- 6 Q At the time, former.
- 7 A Okay, former.
- 8 Q Former, and I'm not trying to imply that you are now.
9 Don't take it that way. Being a crack addict that smokes
10 \$100,000 at least a year in crack, drives around, peddles
11 dope so they can get more crack, how high on a scale of one
12 to 10, do you put these people? You put them on a pedestal
13 when you were an addict?
- 14 A No, sir, I wasn't a good person.
- 15 Q But you would commit crime for them.
- 16 A I did a lot of bad things when I was high.
- 17 Q For them.
- 18 A For them and for myself.
- 19 Q Okay.
- 20 A That's what an addict does; doesn't he?
- 21 Q I don't know. The police asked you about the blonde
22 that was driving the first car?
- 23 A Correct.
- 24 Q The police asked you about the blonde that was driving
25 the first car, I think it would be Lonya ---

Paul Graham - Cross by Mr. Axelrod

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1 A Correct.

2 Q --- and asked you what was she doing while this was
3 going on and your answer on page ---

4 MR. RICHARDSON: What page, Mr. Axelrod, please?

5 MR. AXELROD: Just getting ready to give it to
6 you, Mr. Solicitor, page 11, the question was on line 16.

7 BY MR. AXELROD:

8 Q The question again, "The blonde that was driving the
9 first car, what was she doing while this was going on," and
10 your answer was, "She just -- she was just high as hell
11 sitting in the front," and then Caraker, the detective, asked
12 you, "Okay, did she look like she was -- did she look like
13 she was like deaked up or stoned or something like that," and
14 your answer was, "Yes, yes."

15 A Correct.

16 MR. AXELROD: That's all, Your Honor.

17 THE COURT: All right, sir.

18 MR. RICHARDSON: Nothing further, Your Honor.

19 THE COURT: You may come down. May this witness now
20 be released?

21 MR. RICHARDSON: Please, sir.

22 THE COURT: All right, sir, I will release you from
23 your subpoena and thank you.

24 A Thank you.

25 MR. RICHARDSON: May we approach?

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury.)

4 THE COURT: All right, ladies and gentlemen, it's
5 1:30. Let's break for lunch and be back in your jury room
6 promptly at 2:00 o'clock. That's 12:30. Be back at two.
7 That'll give you an hour and a half. Thank you.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, we'll be back at two o'clock.

11 *****OFF THE RECORD*****

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Are you ready to go now?

16 MR. AXELROD: Judge, wherever you want me to go I will
17 go.

18 THE COURT: All right, where are we, Solicitor?

19 MR. RICHARDSON: Your Honor, the State is going to rest.

20 THE COURT: All right, sir, we have agreed so the
21 jury wouldn't come in and come out, I'll permit you to rest
22 in the presence of the jury, but you have agreed now to go
23 ahead and hear any motions as and if he had rested on the
24 record; is that correct?

25 MR. AXELROD: Yes, yes, and as long as -- I have no

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1 problem with you cleaning that up. Give me one second, Your
2 Honor, let me find a little book that says things I got to
3 do. There it is.

4 Your Honor, at this point I would like to make a motion
5 -- I would ask the Court to rule on them individually if we
6 could as we go through. I would ask, I would ask the Court
7 for a directed verdict; that there's absolutely no evidence,
8 no -- nothing that can go to the jury to -- that they can
9 even deliberate. I would ask the Court for that directed
10 verdict.

11 THE COURT: Well, obviously there is direct testimony if
12 believed by the one woman alone, in addition to that, there's
13 substantial circumstantial evidence if believed. I would
14 respectfully deny that motion. I assume your motion is based
15 on the insufficiency of the evidence, and I conclude there is
16 ample evidence, if believed.

17 MR. AXELROD: Yes, sir, and you understand the reason I
18 make this motion is to protect my record.

19 THE COURT: Well, sure.

20 MR. AXELROD: Your Honor, I have another motion to make
21 and it's a motion that, you know, I objected to, I'm trying
22 to think who, Lonya Snowden, in her -- Lonya Snowden in her
23 direct examination said what -- I think she said something
24 what Lee said or what A.J. said but she said some things, and
25 I objected to that, that was hearsay. It goes against the

1 confrontation clause for my client's constitutional rights.
2 The Court said that and correct me if I'm wrong that the
3 Court said and correct me if I'm wrong, but the Court said
4 that the statements were made in the presence of the
5 Defendant. Therefore, therefore it would be admissible. I
6 think it's not admissible at all.

7 THE COURT: You may or may not be right on that, but
8 that's an appellate issue. It's not before me. I conclude
9 that whatever -- if there be an error on that it was harmless
10 error, plus the fact that there was subsequent testimony that
11 would have cleared up that issue.

12 THE AXELROD: And what -- I'd like to ---

13 THE COURT: That used to be the rule and it may not
14 be now but it was harmless at best and then you will recall
15 after that I would not permit any of that testimony.

16 MR. AXELROD: Yes, and but I want, I want to make my
17 motion right now for the mistrial to protect my record and I
18 want to tell the Court why okay.

19 THE COURT: Yes.

20 MR. AXELROD: Your Honor, what I think was wrong about
21 the testimony, and I will agree with you to a degree that it
22 was -- what she testified to, what she said really wasn't of
23 value to a degree.

24 THE COURT: Correct, it was harmless error.

25 MR. AXELROD: But what was not harmless error was by

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1 her saying that she bolstered and bootstrapped her testimony.
2 It was as if she is like one blade of grass. She just pulled
3 a bunch more grass to her and said, "Hey, I'm a lawn," and
4 that's why I ask this Court for the mistrial, that she
5 bolstered, she bolstered.

6 THE COURT: No, sir, there's no basis for a mistrial.
7 If there is any error at law it would be an appellate issue.
8 I agree with you to the extent that any hearsay came in, it
9 was harmless in that it didn't go to a significant issue.

10 MR. AXELROD: And I agree with the Court there, I do.

11 THE COURT: All right, so, I would respectfully deny
12 that but if I'm wrong the Appellate Courts will deal with
13 that. What next, sir?

14 MR. AXELROD: I think that's it, Judge.

15 THE COURT: I'm going -- I don't hear you say so, but
16 I am going to direct a verdict on the armed robbery and I
17 will charge attempted armed robbery. There is no testimony
18 in this record that I'm familiar with that actually there was
19 a taking away; is it? I may be wrong.

20 MR. AXELROD: No.

21 MR. RICHARDSON: Your Honor ---

22 MR. AXELROD: I appreciate, Your Honor, because there
23 wasn't.

24 MR. RICHARDSON: I believe that there was testimony
25 by the last witness, Paul Graham, that said before A.J. or

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1 Julianne arrived that Lonya, along with Mr. Garner and Lee
2 Pierce were arguing over money. Now, the facts that they had
3 just left a murder scene and the Defendant ---

4 THE COURT: No, sir that ain't -- that ain't enough.
5 I'm going to charge attempted armed robbery.

6 MR. RICHARDSON: Thank you, Your Honor.

7 THE COURT: There is plenty of evidence if believed
8 as to murder, as to robbery in the first-degree, and as to
9 attempted armed robbery, but that would be a stretch to say
10 that because they were arguing over money they took it from
11 the deceased.

12 MR. RICHARDSON: Thank you, Your Honor.

13 THE COURT: I don't know where they -- I don't know
14 what they were arguing over. All right, Mr. Axelrod ---

15 MR. AXELROD: Sir?

16 THE COURT: --- are you prepared to go forward with
17 your witnesses now?

18 MR. AXELROD: Yes, at this time, Your Honor, as we
19 discussed prior I would ask the Court to enter into a
20 colloquy with my client.

21 THE COURT: I understand that. Please stand.

22 (Complies with request.)

23 THE COURT: We are at that time where you now will
24 have an opportunity to present any witnesses that you desire
25 to. In addition to that, you will have the absolute right to

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1 get on this stand and to testify under oath. You understand
2 that?

3 MR. GARNER: Yes, Your Honor.

4 THE COURT: In addition to that, if you elected not
5 to testify, I would charge the jury that that's your
6 constitutional right, as it is mine, and I would charge the
7 jury that the fact that you elected not to testify cannot
8 even enter into the jury deliberation in the jury room. You
9 understand that?

10 MR. GARNER: Yes, Your Honor.

11 THE COURT: You have the absolute right not to testify,
12 the absolute right to testify. Now, clearly you would
13 discuss this issue with your attorney, but the final decision
14 to testify or not to testify rests with you. At a later date
15 you can't say, "Well, I did one or the other because my
16 lawyer told me I had to." It's your call. You understand
17 that?

18 MR. GARNER: Yes, Your Honor.

19 THE COURT: Do you have any questions about what I've
20 said to you?

21 MR. GARNER: No, sir, Your Honor.

22 THE COURT: Do you desire to testify or not testify?

23 MR. GARNER: Not testify, Your Honor.

24 THE COURT: It is certainly your constitutional right
25 and I would advise the jury accordingly at the appropriate

1 time.

2 MR. GARNER: Thank you, Your Honor.

3 THE COURT: All right, bring the jury in. Now,
4 counsel ---

5 MR. AXELROD: Sir?

6 THE COURT: --- rest in the presence of the jury in
7 accordance with the agreement with counsel for the defense
8 we'll go forward with the defense's case.

9 MR. RICHARDSON: Will you tell them at this point that
10 you've made a ruling that only the attempted armed robbery
11 would come in or that'd be later?

12 THE COURT: Later.

13 MR. RICHARDSON: Okay.

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: Good afternoon Mr. Foreman, ladies and
17 gentlemen. The jury is present. What say now the Solicitor?

18 MR. RICHARDSON: Your Honor, in the case of State versus
19 Luther Garner a/k/a/ Kariem Ward, the State would rest.

20 THE COURT: All right, sir, Mr. Counsel for the
21 Defense, we are now ready. You may proceed with your
22 witnesses.

23 MR. AXELROD: Thank you, Your Honor. At this time we
24 would call Officer Oz Santiago.

25 WHEREUPON, Oz Santiago, after being duly sworn,

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1 testified as follows:

2 THE CLERK: Please be seated. Please state your full
3 name and spell your last name for the Court.

4 MR. SANTIAGO: My name is Ozvoldo [spelled phonetically]
5 Santiago. I spell S-A-N-T-I-A-G-O.

6 DIRECT EXAMINATION

7 BY MR. AXELROD:

8 Q And do you go by the name of Oz?

9 A Yes, sir.

10 Q Because I have one of your police report. It says
11 Detective Oz Santiago?

12 A Yeah, it's easier than my first name.

13 Q And your first name was?

14 A Ozvoldo.

15 Q I'll go with Oz, too. On January the 11th, 2005 -- do
16 you speak Spanish?

17 A Yes, sir, I do.

18 Q And do you do a lot of interpreting?

19 A Until just recently, yes, sir.

20 Q Okay, and on January 11th, 2005, did you have the
21 opportunity to go to [REDACTED] off of 544 and
22 interview several people of Spanish decent, Mexican that
23 spoke Spanish?

24 A Yes, sir.

25 Q In relation to this murder that occurred?

1 A Yes, sir.

2 Q And you interviewed -- I believe you first interviewed a
3 Jonas L. Trujillo?

4 A Trujillo.

5 Q Trujillo.

6 A Yes, sir.

7 Q And after -- that was a roommate?

8 A I could not tell you. I don't remember whether they
9 were roommates or not. I believe they were.

10 Q How about if I give you a copy of a report here because
11 I think that you did the interview in Spanish originally?

12 A Yes, sir.

13 Q Why don't you just take a second and I'm going to let
14 you look at these three pages and then I will let you refresh
15 your memory.

16 A (Complies with request.)

17 MS. LIVELY: Mr. Axelrod, which one are you referring
18 to?

19 MR. AXELROD: Oz Santiago's report.

20 THE COURT: Go ahead and ask them what questions
21 you've got and if he needs to refer to it he can.

22 MR. AXELROD: Well, I'm going to need to look at it
23 myself. I only have one copy. So, I'm probably going to
24 have to share it with the officer right now.

25 BY MR. AXELROD:

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1 Q Did -- when did the roommates tell you they arrived
2 home?

3 MS. LIVELY: Objection, Your Honor. That's hearsay
4 and these declarants are unavailable for trial.

5 THE COURT: I sustain that.

6 MR. AXELROD: Your Honor, it's admissible, it's
7 admissible, Your Honor. This is non-testimonial evidence
8 under State v. Ledner, a brand new case 2007. If we need to
9 discuss it we'll discuss it outside the presence of the jury.

10 THE COURT: You're just asking they when?

11 MR. AXELROD: Yes.

12 THE COURT: Let you go to the jury room just a
13 moment.

14 MS. LIVELY: Thank you, Your Honor.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: I'll permit him to answer when he
18 discussed it with them, but they're not going to -- he's not
19 going into the substance of their conversations, they're not
20 here subject to cross examination.

21 MR. AXELROD: Well, I'm going to put this on the
22 record, Your Honor ---

23 THE COURT: All right.

24 MR. AXELROD: --- because there's a brand new case and
25 it's State versus Ledner, L-E-D-N-E-R.

1 THE COURT: Okay.

2 MR. AXELROD: And I didn't have a printer, but I think
3 we're going to need to get this case. It was number 26310.
4 It was decided by the Supreme Court of South Carolina April
5 the 23rd, 2007. It's brand new law. It says, first, my
6 argument is this is a non-testimonial conversation.

7 THE COURT: I understand the difference between
8 non-testimonial and testimonial.

9 MR. AXELROD: Okay, okay, statements are non-testimonial
10 when they're made in the course of police interrogation under
11 circumstances objectively indicating that the primary purpose
12 of the interrogation or questioning ---

13 THE COURT: Nothing new about that case, that just
14 follows the existing law.

15 MR. AXELROD: --- is to enable police assistance to
16 meet an ongoing emergency. Now ---

17 THE COURT: Well, I need to know, first, inquire, I
18 need to know what relationship they have to any of the
19 parties here.

20 MR. AXELROD: They are roommates. They are roommates
21 with the dead person.

22 THE COURT: Okay, what is -- what information you
23 desire to elicit here?

24 MR. AXELROD: I was going to ask him when they -- what
25 time they came home from work and what time they discovered

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1 the body and what they did ---

2 THE COURT: I have no problem with that.

3 MR. AXELROD: --- and what time they went to work and
4 just those facts that this case specifically allows me to get
5 to.

6 THE COURT: Well, wait a minute. I'm going to let
7 that, that sort of stuff in. That's obviously
8 non-testimonial, but ---

9 MS. LIVELY: Your Honor, if I may ---

10 THE COURT: Uh-huh (affirmative response).

11 MS. LIVELY: --- respond. I don't want to cut you off
12 in what you're saying.

13 Your Honor, the problem that we have with the State --
14 with us having this information come in, just bottom line is,
15 these people are roommates with -- in a drug home who are not
16 available now for us to cross examine them. They had over an
17 hour and a half in which to call the police before they
18 started to tell this story to the police officers, to get
19 their story straight. We never had the opportunity to talk
20 to them.

21 THE COURT: Well, let me hear what he's going to say
22 and then I'll see whether or not I'm going to admit it or
23 not, but if it's basically consistent with what the facts are
24 thus far, we'll see what he says. I understand what you're
25 saying. If I conclude that what they say is in anticipation

1 of coming to court, it's testimonial. If I conclude it's
2 not, it's just a set of facts, I'll have to decide.

3 MS. LIVELY: Thank you, Your Honor.

4 THE COURT: But there's nothing new about his case,
5 non-testimonial and testimonial. I read that one. It just
6 affirms the existing law under the federal court, what was
7 the case, Chandler; was it?

8 MS. LIVELY: It was Crawford.

9 MR. AXELROD: Crawford.

10 THE COURT: Crawford.

11 MS. LIVELY: Your Honor, Crawford v. Washington.

12 THE COURT: Crawford.

13 MR. AXELROD: Crawford and Davis both differentiate
14 between the two.

15 THE COURT: Well, Crawford dealt with all of this.
16 There ain't nothing new about that case, for goodness sakes.
17 What testimony is it you wish to elicit from him?

18 MR. AXELROD: Shall I proffer it right now, Your Honor?

19 THE COURT: Yes, sir, please do.

20 MR. AXELROD: Thank you, Your Honor.

21 BY MR. AXELROD:

22 Q Officer ---

23 THE COURT: Under her continuing objection.

24 Q Officer, let me just get this so I can write them down
25 so when we do it I'll do it exactly as I asked you if the

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1 Court allows it.

2 You had a conversation with the roommates that found the
3 body; am I correct?

4 THE COURT: Roommates of who?

5 Q Roommates of the deceased?

6 THE COURT: Okay, go ahead.

7 A Mr. -- I think it was ---

8 THE COURT: Identify who you're talking about.

9 Q Mr. Espinozat, you had conversations with the roommates?

10 THE COURT: Who, what room -- what's their names?

11 Q Can you tell me the two roommates? You had, you had a
12 conversation with a Rene Trujillo and a Jonas Trujillo.

13 A Yes, sir, according to ---

14 THE COURT: Have you got a copy of the report now
15 that he's talking about.

16 MS. LIVELY: I do, Your Honor.

17 THE COURT: All right, let's go.

18 Q Rene and Jonas Trujillo, and they -- did they -- what
19 did they tell you? Did they tell you that they came home
20 from work and found Mr. Espinozat?

21 A I can only go by what I -- what's on here, yes, sir.

22 Q Okay, and when you interviewed them what did they tell
23 you?

24 A They stated that they got home from work and found him.

25 Q Okay, and did they tell you that when they went to work

1 he was okay that day?

2 A Yes, sir.

3 Q And did they tell you that on Monday night they were all
4 together?

5 A I'm sorry. I don't remember that.

6 Q Look on page two.

7 A According to what's right here, yes, sir, they said
8 they, they spent the night together.

9 Q Monday night.

10 A Monday evening.

11 Q And they went to work Tuesday, came home from work
12 Tuesday and found their roommate deceased?

13 A Yes, sir.

14 THE COURT: What you say about that.

15 MS. LIVELY: Well, Your Honor, I just renew my
16 objection. It's the same thing. These people were
17 interviewed by -- it was actually Detective Large and
18 Officer Santiago was there for interpretation purposes only.
19 They were interviewed at 8:56 p.m. They say they got home at
20 6:50.

21 THE COURT: Of what day please?

22 MS. LIVELY: On, I'm sorry, on the 11th.

23 THE COURT: Okay.

24 MS. LIVELY: Okay, which was Tuesday, and they told,
25 they told the police that they had gotten home around 6:15.

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1 So, they had over two hours, almost three, almost three hours
2 to corroborate whatever kind of statement or whatever they
3 were going to tell the police; and so, go through the house,
4 contaminate the scene, all of these things. So, we cannot
5 cross examine these people. They can't be found. They've
6 left. They've -- they're gone, nowhere to be found. So,
7 their statement is extremely important to us as well because
8 we could have gotten more information.

9 THE COURT: I'm going to deny, not permit this
10 testimony and you are protected for the record.

11 MR. AXELROD: Why? It's, it's non-testimonial.

12 THE COURT: Well, I think it is testimonial in my
13 view. It goes to a crucial element in this case ---

14 MR. AXELROD: Which is?

15 THE COURT: Which is the time frame, and they are not
16 here subject to cross examination. It would be totally
17 unfair to the State of South Carolina to let somebody come in
18 and change the time zone who's not even here subject to cross
19 examination, particularly given the fact that they are
20 closely related by being a roommate to the victim. Now, you
21 are protected for the record, but I'm not going to permit
22 this hearsay testimony.

23 MR. AXELROD: All right, and I just note that objection
24 because ---

25 THE COURT: I understand.

1 MR. AXELROD: --- because what it says, Davis, Davis,
2 cert was denied by the Supreme Court and the Supreme Court

3 ---

4 THE COURT: Would you like for me to make that report
5 a part -- a Court -- part of the court?

6 MR. AXELROD: Now, we'll do it just what we're saying,
7 but I want to finish what I'm saying if I can, Your Honor.

8 THE COURT: Please, go ahead.

9 MR. AXELROD: Thank you, Davis, this is what the
10 Supreme Court, "Davis appears to have resolved the issue,
11 holding that non-testimonial hearsay is not subject to the
12 confrontation clause."

13 THE COURT: I understand that, but I am telling you
14 it is testimonial. It is not non-testimonial, non-
15 confrontational.

16 MR. AXELROD: But, but based on Ledner, that it's an
17 ongoing investigation, there's an emergency, it wasn't, the
18 statements weren't given to ultimately try and have somebody
19 arrested later down the line. His statement was an open --
20 there were open questions to try to find out what happened
21 and because of that the law says it's non-testimonial.

22 THE COURT: No, sir, in this case that is a crucial
23 issue and I conclude that it is testimonial and the State
24 would have a full right to cross examine these people and I'm
25 not going to let it in and you are absolutely protected for

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1 the record. In the abundance of fairness, I will permit his
2 statement to be made a Court's Exhibit if you care to.

3 MR. AXELROD: I'll make the statement as a Court's
4 Exhibit. I would like to hold it right now and will make it
5 a Court's Exhibit.

6 THE COURT: Okay, anything else you want to elicit
7 from this witness?

8 MR. AXELROD: Your Honor, we are going to talk. We
9 will figure something out we can talk about.

10 THE COURT: All right, well, just as long as it's not
11 hearsay. Go ahead.

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right, you may proceed.

15 BY MR. AXELROD:

16 Q Officer, that night on the 11th you went ---

17 THE COURT: Let me again explain to the -- as I
18 explained to you yesterday, on certain occasions hearsay
19 testimony is not admissible and hearsay testimony is
20 testimony where a witness on the stand wants to testify about
21 what some other body told him, with few exceptions that is
22 hearsay and the reason is that person who told him should get
23 on this stand subject to cross examination and let the jury
24 have the opportunity to observe his credibility and
25 believability; and so, you won't have that opportunity if

1 somebody -- if we permit him to testify as to what somebody
2 else said. Somebody else has got to come here and say that
3 in your presence. All right, thank you.

4 Q Did you have, did you have a conversation with the
5 roommates when you went there?

6 A I spoke with two individuals, yes.

7 Q Okay, and you took a report?

8 A I did not make out a report, no.

9 Q Did you, did you tell your supervisors about what you
10 had, what you had heard?

11 A The individual who was conducting the investigation was
12 Detective Large and I spoke with him.

13 Q Okay, about the conversation you had -- you can't tell
14 me what those conversations were, but about the conversation
15 you had with the two roommates did you tell Detective Large?

16 A Yes, sir.

17 Q And did you believe, in talking to the roommates, did
18 you -- was their, was their story to you credible?

19 THE COURT: Wait a minute now. I have told you that
20 we're not going into their story unless they get on this
21 witness stand and testify.

22 MR. AXELROD: Not going into their story, but ---

23 THE COURT: No, sir, and I'm not going to require him
24 to say that one way or the other. Move to something else.
25 That's for the jury to determine, not him.

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1 MR. AXELROD: Well, what I'm asking is the trained
2 investigator ---

3 THE COURT: No, sir, I -- Mr. -- listen to me now. I
4 have ruled. Go forward. I'm not going to let any testimony
5 in as to what somebody else told him. They can come in this
6 courtroom and testify under oath.

7 MR. AXELROD: Did ---

8 THE COURT: Whether or not it's credible that's why
9 we use the hearsay rule. The jury determines whether it's
10 credible or not, not him.

11 BY MR. AXELROD:

12 Q Did you make a taped statement or a tape recorded
13 statement with the roommates?

14 A Yes, sir, I believe so.

15 Q And you turned that over to Detective Large?

16 A Yes, sir.

17 Q Nothing further.

18 THE COURT: All right, sir.

19 MS. LIVELY: I have no questions.

20 THE COURT: Come down. Thank you.

21 MR. AXELROD: Your Honor, I am going to get my next
22 witness.

23 THE COURT: All right, sir. They'll get him for you,
24 Mr. Axelrod.

25 MR. AXELROD: I am going to get my investigator, too,

1 Your Honor.

2 Your Honor, we call David Helman.

3 WHEREUPON, David Helman, after being duly sworn,
4 testified as follows:

5 THE CLERK: Please state your full name, spell your
6 last name for the Court.

7 MR. HELMAN: David Helman, H-E-L-M-A-N.

8 DIRECT EXAMINATION

9 BY MR. AXELROD:

10 Q Now, Mr. Helman, can you tell the jury what you do for a
11 living?

12 A I am the general manager of the Red Roof Inn in Myrtle
13 Beach right now.

14 MR. RICHARDSON: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (Whereupon, a bench conference was held in the presence
17 but out of the hearing of the jury.)

18 BY MR. AXELROD:

19 Q All right, how long have you been the general manager?

20 A At that property?

21 Q Yeah.

22 A Since December.

23 Q And before that were you a manager of Red Roof Inn?

24 A Yes, I've been with them 20 years.

25 Q And that's a long time?

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1 A Yes.

2 Q Now, I subpoenaed you to come here; did I
3 not?

4 A Yes.

5 Q And I ask you to bring the records concerning Lonya
6 Snowden when she stayed there?

7 A Yes.

8 Q And the records you brought are they the records that
9 you normally keep in the administration of a hotel
10 business?

11 A Yes.

12 Q And tell the jury what type of records you brought with
13 you and then we will go into the records.

14 A I basically have three types: registration slip
15 which they fill out when they check in; the receipt
16 showing date stayed; and then there are information that
17 shows the date, the time they checked in and all
18 that.

19 Q Okay, now, what I would like to do is to start with
20 we're eventually going to wind up on the 10th of January
21 2005. I'd like to start our conversation with you further
22 back. Can you tell the jury the earliest time that you have
23 Lonya Snowden staying in your hotel?

24 A It shows December 16th, actually a Gerald Linsky
25 rented the room, but Lonya Saunder [sic] was also on

1 there.

2 Q Lonya maybe Snowden?

3 A Or Sowden [sic], I'm sorry.

4 Q Sowden [sic], now, on December 16th, you have Gerald
5 Linsky renting the room ---

6 A Correct.

7 Q --- and Lonya Snowden also in the room?

8 A Correct.

9 Q Now, how was the room rented?

10 A What do you mean?

11 Q Which, which method of payment? Is it a credit
12 card?

13 A Yes.

14 Q Now, from that December 16th registration I am
15 looking at it, a sheet, at the bottom of that sheet does
16 that go -- does that sheet go to the 21st, the first
17 sheet?

18 A Right, it goes through the 23rd.

19 Q 23rd.

20 A Checking out on the 23rd.

21 MR. RICHARDSON: Your Honor ---

22 Q Are these two pages ---

23 MR. RICHARDSON: --- can we approach?

24 THE COURT: Yes, sir.

25 (Whereupon, a bench conference was held in the presence

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1 but out of the hearing of the jury.)

2 BY MR. AXELROD:

3 Q On the first set of records I'm showing you, Lonya

4 Snowden stayed in that room from December 16th to

5 December 21st?

6 A Correct.

7 Q And what happened then? Did she -- was the room -- what

8 room was she in?

9 A It was room 403.

10 Q So, from December 16th, December 23rd, she is in room

11 403?

12 A Correct.

13 Q Now, tell the jury what happened at December 23rd till

14 December 31st?

15 A Okay, they rechecked in for that time, the same

16 room.

17 Q Now, when you say to the -- when you tell us that

18 they rechecked in, explain to the jury what that

19 means.

20 A Basically just stayed over. We check them out and check

21 them back in every 14 days.

22 Q Or this one is looking every seven days if I'm

23 correct.

24 A Normally, they could have been. Normally, it's every 14

25 for cash.

1 Q But was it done by credit card?

2 A Or I'm sorry, credit card, even for credit card every
3 seven normally.

4 Q But right now, if the room was checked from the 12-16 to
5 the 12-23rd that would be a seven-day period?

6 A Yeah.

7 Q And then from the 12-23rd to 12-31 would be another
8 seven-day period?

9 A Correct.

10 Q Now, do you have any other slips that show other than
11 this is -- would this -- what would you call this in the
12 hotel business these forms?

13 A That's basically the receipt, a copy of the
14 receipt.

15 Q Is this like a ledger?

16 A It's the receipt we give the guest.

17 Q Okay, but does it show the money coming in and then the
18 charges against?

19 A Yes.

20 Q Okay.

21 A It's a second receipt.

22 Q Do you also have other types of information, check in
23 times and actually sign-in sheets when you sign in?

24 A Right, I have the registration slips and also something
25 that we don't give the guest. It's -- it shows the date and

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1 time.

2 Q All right, now, do you have the registration slips from
3 those days?

4 A Yes.

5 Q Can you get them out for us?

6 A All right, well, we have -- I don't think I have but
7 one.

8 Q Okay, we are missing one, but we have one from the 23rd
9 to the 31st; correct?

10 A Right.

11 Q What I want to do is I'm just going to have the court
12 reporter put these all together just to keep it simpler.
13 Tell the jury, tell the jury on January 1st, 2005 what
14 happened next to that room, Room 403?

15 A Well, actually, on 12-31 they re-registered again and
16 stayed over through the checkout was 1-6.

17 Q Now, when you say they stayed over, you just know that
18 it went on somebody's credit card, you don't know whether
19 that person was there?

20 A Correct.

21 Q Okay, it went on Mr. Linsky's credit card?

22 A That is correct.

23 Q Okay, so, now, it was re-rented or they paid again till
24 1-6-05. Now, tell the jury what happened from 1-6-05 to --
25 let me get you a calendar. Mark this. I'm showing you a

- 1 calendar from January 2005. I'm going to put that up there
2 for your information. Now, on 1-6 they re-rented the room;
3 is that correct?
- 4 A Correct.
- 5 Q And they re-rented it through what day, sir?
- 6 A January 9th, which was Sunday.
- 7 Q Sunday, so, on the 9th of January Miss Snowden was a
8 guest of that room?
- 9 A Correct.
- 10 Q And that was room 403?
- 11 A Correct.
- 12 Q Now, did Miss Snowden have the opportunity to rent
13 another room that day?
- 14 A It shows that she rented another room on the
15 9th.
- 16 Q And what time did she rent the room?
- 17 A 2:39 a.m.
- 18 Q So, Sunday morning, it would be Sunday morning the
19 9th at 2:30 in the morning she rented a second, another
20 room?
- 21 A Correct.
- 22 Q And that was room 402?
- 23 A Correct.
- 24 Q So, now, on Sunday the 9th she has room 402 and
25 403?

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- 1 A Correct.
- 2 Q Now, tell the jury when she left those rooms on the
3 9th?
- 4 A 402 was at 2:20 p.m. and this is what time they were
5 checked out. I don't know what time she left.
- 6 Q What time was that?
- 7 A Four -- 2:20.
- 8 Q 2:20 in the afternoon for which room?
- 9 A That was for 402.
- 10 Q And that was that extra new room that she took that day;
11 correct?
- 12 A Correct.
- 13 Q And 403 the room that she had been in for almost
14 ---
- 15 A That was ---
- 16 Q --- three quarters of a month?
- 17 A --- 12:29.
- 18 Q In the afternoon?
- 19 A Correct.
- 20 Q Sunday?
- 21 A Correct.
- 22 Q Now, I want to discuss Room 514 with you at the Red Roof
23 Inn. Can you tell the jury who was staying in room 514 of
24 the Red Roof Inn on that Sunday?
- 25 A We don't have 514. We only have four floors and then

1 each floor numbered by, you know, four would be fourth
2 floor.

3 Q So, it's your testimony that the hotel only has four
4 floors?

5 A Correct.

6 Q Did it ever have five floors?

7 A No.

8 Q You're sure of that?

9 A No, other than the roof access and a records
10 room.

11 Q I would like to admit all of this into evidence,
12 please?

13 THE COURT: Any objection? These are his official
14 records.

15 MR. RICHARDSON: No, sir, no objection.

16 THE COURT: All right, without objection I will
17 permit them.

18 MR. AXELROD: Your Honor, I'm just going to try to do
19 all these. I'm just going to -- I'm going to let the
20 Solicitor look at it if he wants to. I'm going to try to
21 group these into some kind of order.

22 (Whereupon, Defendant's Exhibit Numbers 14, 15, 16 and
23 17 admitted into evidence and appropriately marked.)

24 BY MR. AXELROD:

25 Q And these have Lonya Snowden's name on them; don't they,

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1 all these records?

2 A Yes.

3 Q Okay, and can we staple that?

4 A Now, a few of them it's under Sonder, but it's actually
5 a misspelling.

6 Q A misspelling, okay. We'll get that -- can we, can we
7 mark these and put them into evidence?

8 And you're sure about this?

9 A What I said, yes.

10 Q And these folks have any questions for you, please
11 answer them?

12 CROSS EXAMINATION

13 BY MR. RICHARDSON:

14 Q Were you working there on -- in January 2005?

15 A No.

16 Q You never seen Lonya Snowden?

17 A No.

18 Q Don't know who was in and out of the rooms?

19 A No.

20 MR. RICHARDSON: I don't have any further questions,

21 Your Honor.

22 MR. AXELROD: I have one more now on the redirect.

23 REDIRECT EXAMINATION

24 BY MR. AXELROD:

25 Q But these are the kind of records that hotels keep?

1 A Yes.

2 Q And computer-generated to a degree?

3 A Yes.

4 Q Thank you.

5 THE COURT: All right, sir, you may come down. Thank
6 you. Call your next witness.

7 MR. AXELROD: Thank you. We call Jerry Linsky.

8 WHEREUPON, Gerald L. Linsky, after being duly sworn,
9 testified as follows:

10 THE CLERK: Please state your full name and spell
11 your last name and speak into that microphone.

12 MR. LINSKY: Gerald L. Linsky, L-I-N-S-K-Y.

13 DIRECT EXAMINATION

14 BY MR. AXELROD:

15 Q Good afternoon, sir. We never met before today?

16 A No, sir.

17 Q We talked once I believe for a minute or two.

18 A On the phone, yeah.

19 Q I did tell you why I subpoenaed you though?

20 A Yes.

21 Q Tell the jury, do you know a woman by the name of Lonya
22 Snowden?

23 A I did.

24 Q Okay, and tell the jury when you first met her, if you
25 remember, month and year if you could?

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1 A I think in the fall of 2005, excuse me, fall of 2004. I
2 moved down here the summer of '04.

3 Q So, the fall of '04 you met Miss Snowden?

4 A Uh-huh (affirmative response).

5 Q Now, did you have the opportunity to know Miss Snowden
6 around December 2004?

7 A Yeah.

8 Q And did you ever use a credit card for her to live in a
9 Red Roof Inn?

10 A Yes.

11 Q Now, tell the jury why you used your credit card for
12 Ms. Snowden to live there?

13 A She had had a story that her and her kids had been
14 thrown out on the street and it was Christmas and they had
15 nowhere to live. So, I put up my credit cards so they could
16 stay at a hotel.

17 Q Basically being a good Samaritan?

18 A Yeah, and she had told me she had a big medical
19 settlement coming, so that not to worry about the money.

20 Q So, you basically lent her money?

21 A Yeah, repeatedly.

22 Q Now, did you know Miss Snowden back in 2000?

23 A No.

24 Q Did you even live in South Carolina in 2000?

25 A No, sir.

1 Q So, if Ms. Snowden had told somebody that she knew you
2 in 2000 would be that incorrect or correct?

3 A That would be a lie.

4 Q Now, did Ms. Snowden -- what do you do for a living?
5 Let me ask you that.

6 A I do sales seminars all over the country.

7 Q Now, when you do seminars for -- are you -- what type of
8 -- what are you doing in seminars?

9 A Attitude adjustment, motivation. I do it in the
10 automobile industry.

11 Q Now, do you prepare a package for the industry or do you
12 just make speeches to the industry?

13 A No, there's training kits that I use in my training but
14 it's 90 percent oral.

15 Q Now, was Miss Snowden aware of your job?

16 A She never was a part of it but I'm sure she knew what I
17 did.

18 Q She didn't work for you?

19 A No.

20 Q Hold on here. Isn't she the person that did your
21 payroll for you?

22 A All my reps are independent contractors, no.

23 Q Isn't she the person that did your taxes for you?

24 A No, I have had the same accountant for 17 years.

25 Q On January the 9th, 2005, tell the jury why you no

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1 longer rented a room for Lonya?

2 A There was some things that -- there was a condo I had
3 in Murrells Inlet and I had two dogs. One was disabled and
4 I had my godson down, but he had traveled back to Boston a
5 couple of times, and I let Lonya look after the dogs, and I
6 don't think she ever had a key. We, I don't even think
7 used to lock it but I came back from a trip and there was
8 some things missing from my place and I pretty much cut my
9 loss.

10 Q So, on the 9th of -- when did you tell her? Did you
11 tell her that day? Did you tell her the day before?

12 A As soon as I realized it was missing that was it.

13 Q You told her that's going to be it ---

14 A Yes.

15 Q --- because you had paid, if I'm right, a week in
16 advance.

17 A Yes.

18 Q So, sometime in that six-day period you told Lonya the
19 gravy train is over?

20 A It's done, yeah.

21 Q Now, do you own a 2001 Mustang?

22 A Yes.

23 Q I'm going to let you look at these. They've been
24 marked for identification but I'm going to let you look and
25 see if you can recognize this car. Take your time. Take a

1 minute.

2 A (Complies with request.) I recognize most of these.

3 Q All right, whichever ones you don't recognize ---

4 A Yeah, put those aside.

5 Q --- because there's two Mustangs in this case. This
6 would not be yours?

7 A Yeah, it's not the rest of them.

8 Q Okay. I'll give these back. Now, did any of the
9 detectives ever call you about this case?

10 A Jake, my godson, I was in, I believe, L.A., called me at
11 midnight and said that there was a bunch of police over at
12 our house, and he was all, you know, "What do I do? What do
13 I do," and I said, "Well, let me talk to one of the
14 officers," and I think it was Detective Caraker and he told
15 me they were going to impound my car, and I asked why and he
16 said there was -- it had been at the scene of an incident.
17 So, he said for me not to worry, by the time I got home my
18 car would be back. So, when I came home about six days later
19 my car still wasn't back.

20 Q And what did you do then?

21 A I called -- he had left his number with me, and I called
22 him and he apologized and said it was in the police impound
23 lot and that I would have to go get it.

24 MR. AXELROD: Okay, Your Honor, at this time I would
25 like to move into evidence State's 10, -- Defense's 10, 11,

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1 Two.

2 THE COURT: Tell me what they are for the
3 record.

4 MR. AXELROD: Could I give the numbers first?

5 THE COURT: Yes, sir.

6 MR. AXELROD: Then Three, Seven, Eight, Nine, and then
7 One and what they are is they are pictures -- I'll show it to
8 the Court.

9 THE COURT: Have you seen these pictures?

10 MR. RICHARDSON: Not those particular. Yeah, I guess
11 they're mine, but let me see which ones you're going to put
12 in.

13 MR. AXELROD: Pictures of his car.

14 MR. RICHARDSON: Aren't they already in?

15 MR. AXELROD: They're in for ID.

16 (Whereupon, Defense Exhibit Numbers One, Two, Three,
17 Seven, Eight, Nine, Ten and 11 [Photographs], introduced into
18 evidence and appropriately marked.)

19 BY MR. AXELROD:

20 Q When you picked your car up -- we will pass them around
21 but I'm going to show them. When you picked your car up from
22 the impound, did you notice anything different about your
23 car?

24 A I hadn't seen the car in a while because I had been
25 away, but there were three or four little yellow stick'ems on

1 the right passenger floor, like, like just little round
2 circles, number one, number two, number three and number
3 four.

4 Q And other than that?

5 A No.

6 Q Did you see any blood in your car?

7 A No.

8 Q Let me ask you something, what kind of seats did you
9 have in that car, what are they made out of? You're in the
10 automotive industry?

11 A They're, they're not leather. Yeah, they're cloth.

12 Q And are these the kind of seats that if you spill
13 something on them the stain or the spill or whatever it is
14 goes into the cloth?

15 A Yeah, unless it was water or something, yeah.

16 Q Do you still own that Mustang, that 2001?

17 A It's parked out front.

18 Q It's here?

19 A Yes, sir.

20 MR. AXELROD: Your Honor, ask that we allow the jury to
21 go downstairs and look at this car, the car that was actually
22 impounded.

23 THE COURT: No, sir, no, I'm not going to do that no,
24 sir. They know what a Mustang looks like. They've got
25 pictures here. They don't need to waste their time.

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1 MR. AXELROD: They might ---

2 THE COURT: Don't argue with me now. I have ruled on
3 it. The pictures are in the record. We're not going to
4 waste this jury's time to have them look in a car. Let that
5 be the record.

6 BY MR. AXELROD:

7 Q So, it's your testimony that there was no blood in this
8 car?

9 A I wasn't looking for it but I probably would have
10 noticed if there was blood in my car.

11 Q To this day have you seen blood in your car?

12 A No, but I mean, the car I assume has been cleaned. It's
13 been a while. You know, I mean, the car is not a -- it's
14 maintained. I mean, the car is not ---

15 Q Well, when you picked it up from the impound lot and
16 drove it home?

17 A No, I noticed four stickers and that's ---

18 Q And that was it.

19 A That's it, yeah.

20 Q And it's your testimony that Lonya Snowden never was
21 your employee?

22 A No.

23 Q Never worked for you?

24 A No.

25 Q And if she had told people she did that would not be the

1 truth?

2 A Yeah.

3 Q And she told you that her kids and her got kicked
4 out?

5 A Uh-huh (affirmative response).

6 Q Answer any questions that this man has for you.

7 CROSS EXAMINATION

8 BY MR. RICHARDSON:

9 Q Mr. Linsky ---

10 A Yes, sir.

11 Q --- my name is Jimmy Richardson. Tell us, did you ever
12 see any children of hers?

13 A Yeah.

14 Q How many kids has she got?

15 A I seen a little boy and a little girl.

16 Q All right, and they were staying at the motel?

17 A In and out. She had an ex-husband up in, I believe it
18 was Loris, and she had the kids, then she didn't have the
19 kids, then she had the kids.

20 Q And at times she would stay in the hotel, the Red Roof?

21 A Uh-huh (affirmative response.)

22 Q And you would pay for that?

23 A Not all the time, but yeah, I mean, she was over, over
24 at her mother's and then she would call me and say that she
25 got thrown out and it was freezing cold and it was raining

Gerald Linsky - Cross by Mr. Richardson

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1 and the kids had nowhere to go.

2 Q Did -- so, do you -- you're saying she stayed at the Red
3 Roof Inn sometimes and you didn't pay for it?

4 A It wasn't my day to watch her, but it went -- I think I
5 paid two or three times of that.

6 Q Okay, well, you also gave her the use of your car?

7 A No, I never gave her the use of my car. She had called
8 my godson Jake and said she needed to borrow a car to go see
9 her, I believe it was her sick mother or her sick grandmother
10 and Jake had a old I think it was like a 95 200 SX Nissan,
11 just an old beater, and apparently he had told her to take
12 that car on this trip and she ended up taking my car.

13 Q Well, did Jake give her the keys to the car?

14 A Yeah, I don't -- she didn't steal the car. I mean, Jake
15 -- she I assume came over and Jake gave her. I was away.

16 Q Did you know about her using the car?

17 A Not until Jake called me at 12:00 o'clock at night
18 telling me the police were at my home.

19 Q Oh, so, that's the first time you knew about her using
20 your car?

21 A Uh-huh (affirmative response).

22 Q How long had she used your car before that; do you know?

23 A Maybe once. When I say use she'd use Jake's and that's
24 about it.

25 Q So, do you know what day the police showed up? Do you

1 know what day you got that call?

2 A It was during the week because I travel on weekends. I
3 can ---

4 Q All right, so, it was during the week.

5 A Yeah.

6 Q But you don't know if it was Monday or Sunday or Tuesday
7 or when?

8 A I, I know I came home like five days later. So, I'm
9 thinking it had to be early in the week.

10 Q Early in the week?

11 A Yeah, don't hold me to that. I could look at my date
12 book, but I mean, you're talking a while ago.

13 Q I know it, but you don't remember if it was the 10th or
14 the 11?

15 A No, sir.

16 Q And you don't remember if it was a Monday or Tuesday?

17 A No.

18 Q Just early in the week. Did you know about Miss
19 Snowden's addiction to crack?

20 A I didn't at the time but I do.

21 Q You didn't know it back then?

22 A Well, you know, I wasn't stupid, but I didn't see the
23 full range of where, you know, why you kept needing money and
24 money, so.

25 Q Well, did you give her the money and money or ---

Gerald Linsky - Cross by Mr. Richardson

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1 A No, no, I mean, she -- I let her store the stuff. I had
2 a storage place down in Murrells Inlet and she told me she
3 had a big settlement coming from a medical issue and that if
4 I would help her that she would more than take care of me,
5 so.

6 Q How long had you known her at this point?

7 A Up till the night of the incident?

8 A Yes, sir.

9 A Well, we're talking from the fall of '04. What was the
10 night of the incident?

11 Q The night of the incident?

12 A Yeah, where she took my car.

13 Q Either the 10th or the 11th.

14 A Of?

15 Q Does that sound about right?

16 A Of?

17 Q January 2005?

18 A Okay, so four months.

19 Q You had known her about four months?

20 A Uh-huh (affirmative response).

21 Q And you were suspicious that maybe she did have a crack
22 problem?

23 A Yeah, as long as it wasn't in my house, you know, I've
24 got enough problems, so.

25 Q Did you have any sort of relationship with her?

1 A No.

2 Q Did you all date or anything like that?

3 A She would like to have but no.

4 Q All right, she wanted to date you?

5 A Yeah.

6 Q Okay, but you put her up in a motel for a while, about a
7 month?

8 A I don't know if it was a month. I'd say more like ten
9 days but, you know, there were kids involved in this one.

10 Q Okay, and how about her mother, you knew about -- where
11 did she live, her mother?

12 A Somewhere in Murrells Inlet, Garden City, somewhere down
13 there.

14 Q All right, had you ever been over there?

15 A I gave her a ride once because she was waiting for a
16 check and she went over and checked the mailbox. It wasn't
17 there.

18 Q Okay, do you know what sort of check? Was it from an
19 employment?

20 A No, it was a medical check or something.

21 Q I believe that's all I have.

22 REDIRECT EXAMINATION

23 BY MR. AXELROD:

24 Q Sir, in the four months you knew her, did you ever know
25 her, Miss Snowden, to have a job?

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1 A No, she had all sorts of things she said were pending
2 but no.

3 Q Okay, nothing further, thank you, sir.

4 THE COURT: You may come down then. Can this witness
5 now be excused from the State and Defendant?

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: You are now excused from your subpoena.
8 We thank you. Call your next witness.

9 MR. AXELROD: The Defense rests.

10 THE COURT: The Defense now rests?

11 MR. AXELROD: Yes, sir.

12 THE COURT: Anything in reply?

13 MR. RICHARDSON: No, sir, Your Honor.

14 THE COURT: All right, sir, let's let you go to the
15 jury room just a moment, please.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, sir, I want to hear any
19 motions at this time, please.

20 MR. AXELROD: Your Honor, I'm going to renew several
21 motions. I'm going to renew the motion I made for the
22 directed verdict which the Court ruled against. Is that
23 correct? I'm going to renew that motion.

24 THE COURT: You are renewing the motion previously
25 made at the end of the State's case?

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

2 THE COURT: I accept those motions and I would again
3 respectfully deny them on the basis that I've indicated.
4 There is ample evidence if believed here to submit the case
5 to the jury.

6 MR. AXELROD: I'm also going to renew that motion about
7 where I believe that Miss Snowden she bolstered her testimony
8 through the hearsay evidence that came in.

9 THE COURT: I would deny that motion, too.

10 MR. AXELROD: And I'm going to renew my motion right
11 now that the Court precluded me from having Detective Oz
12 Santiago testify that the roommate said that their roommate
13 was alive on Monday night and they came home from work on
14 Tuesday.

15 THE COURT: I clearly think that's testimonial. It
16 goes to one of the crucial issues in the case. They're not
17 subject here to cross examination, and clearly, that
18 testimony is rank hearsay and is not permissible under any
19 case, including the one that you referred to and certainly
20 not under Crawford versus United States. That's testimonial
21 and not non-testimonial.

22 MR. AXELROD: And also I want to make sure that Oz
23 Santiago's report is actually a Court's Exhibit.

24 THE COURT: The record will reflect it's a Court's
25 Exhibit.

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1 MR. AXELROD: And Your Honor, that's my motions now. I
2 would ask the Court, I spoke to the Solicitor, if, I mean,
3 this is a murder trial. Could we close in the morning?

4 THE COURT: I think not. It's just 3:00 o'clock.
5 We've been here.

6 MR. AXELROD: Okay.

7 THE COURT: I'm thinking about the jury. There's no
8 reason not to go forward here at 3:00 o'clock in the
9 afternoon.

10 MR. AXELROD: Okay, what I would like is could we take
11 a 15-minute break before?

12 THE COURT: Why, certainly. I will be glad to
13 accommodate you. Let me ask you this, as is my custom in
14 recent years I go ahead and charge the jury prior to
15 summation. Would you want me to do that now or wait until
16 after to charge, after your argument?

17 MR. AXELROD: I would, I would ask that you charge now.
18 That would give me another few minutes to compose my
19 thoughts.

20 THE COURT: All right, sir, and I will do that, and
21 of course, I will be back with some concluding remarks, too,
22 and there may be some additional charges that I might need
23 based on whatever your argument is, but you don't have any
24 objection to me going ahead and basically charge the jury.

25 MR. RICHARDSON: No, sir.

1 THE COURT: But I reserve the right now to recharge
2 on something else if I have missed it based on the ---

3 MR. RICHARDSON: Well, I think that helps them.

4 THE COURT: All right, let me ask you this, let's
5 quickly tell me the -- obviously, I am going to charge the
6 gentle presumption of innocence, credibility of witnesses and
7 that sort of thing. I am going to charge failure to testify.
8 I am going to charge murder, burglary in the first-degree and
9 attempted robbery. How about the hand of one the hand of
10 all?

11 MR. RICHARDSON: Yes, sir, Your Honor, I believe that
12 there is ample statements in that this was, of course, some
13 of them has said Lonya Snowden, but of course we have got a
14 co-defendant that is charged with murder right along with
15 him.

16 THE COURT: I'm going to charge that. Mr. Axelrod,
17 do you have any additional charges other than these that I
18 have mentioned?

19 MR. AXELROD: No, Judge, whatever you think is best
20 we'll go with today. I think that'd be good.

21 THE COURT: Well, if you have any additional charge.

22 MR. AXELROD: Judge, can I see a copy of your
23 reasonable doubt charge? Do you have that?

24 THE COURT: It's Victor versus Nebraska.

25 MR. AXELROD: Thank you, Your Honor, that would be

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1 fine.

2 MR. RICHARDSON: Your Honor, one other thing, and I
3 believe your charge already covers it, but just to make sure,
4 that burglary can be by trick not just ---

5 THE COURT: Oh, yeah, yeah, entering the property ---

6 MR. RICHARDSON: I thought so.

7 THE COURT: --- can be by deceit or trick, sure, can
8 be.

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: All right, let's take a 15-minute break
11 and we will move forward and I'll give you an opportunity.

12 MR. AXELROD: Can we start at 3:30, Your Honor?

13 THE COURT: We'll do that.

14 MR. AXELROD: Thank you.

15 THE COURT: Let the jury know that we're going to
16 begin final charge and final summation at 3:30. So, if they
17 -- if anybody needs a smoke or anything let them go down.
18 All right, thank you.

19 *****OFF THE RECORD*****

20 (On the record.)

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, are we ready to go?

24 MR. AXELROD: Your Honor, one point, issue I just want
25 to put on the stand, we -- on the record, we, we discussed in

1 chambers that, we discussed in chambers that at one point my
2 client, Mr. Garner was offered 18 years and he has turned
3 that down, and I just wanted to briefly put on the record
4 that he was offered that and did turn that down, just to
5 protect a PCR.

6 THE COURT: Well, of course, the trial judge, whoever
7 it would have been, could or could not have accepted it, but
8 it is a basis to put it down to protect you on post
9 conviction relief that he was so notified of that. You
10 understand that?

11 MR. GARNER: Yes, Your Honor.

12 THE COURT: And, of course, he exercised his
13 constitutional right to trial by jury, to which he is
14 absolutely entitled.

15 MR. AXELROD: And which he absolutely had.

16 THE COURT: He did, but I -- sometimes so that you'll
17 know sometimes Defendants when a trial goes adverse to them
18 at a post conviction relief quite often will say, "Well, my
19 lawyer didn't tell me that," but you are saying that he did
20 tell you that?

21 MR. GARNER: Yes, Your Honor.

22 THE COURT: And that's all right, that's the only
23 purpose of this. Bring the jury in, please.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

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1 Mr. Foreman, ladies and gentlemen, we have now
2 completed all of the testimony in the trial of this case and
3 we are down now to that stage where we will have the charges
4 on the law and the final summation of counsel, after which I
5 will be giving you the case shortly for your deliberation.

6 Ordinarily, under our rules we require the attorneys
7 to give their final summation first, after which I give you
8 the law of the case. Jurors have said to me in the past 10
9 to 12 years, "Judge, I wish you would have told me what the
10 law was first. I believe I could've followed their positions
11 better," and that makes sense to me. So, by and with the
12 consent of the attorneys for the State and the Defendant, I
13 am going to charge you the law now and after summation I will
14 be back with some concluding remarks regarding the law of the
15 case and, Mr. Foreman, I tell you there will be pencil and
16 paper provided in the jury room, and if you or any member of
17 your distinguished jury has any question about what the law
18 is, you write that down, let the bailiff know, and I'll be
19 delighted to bring you out and re-instruct you on any issue
20 with regards to the law, remembering now that neither I nor
21 nobody else can tell you twelve what the facts are. I recall
22 a case in Darlington County some years ago when we were
23 trying a young lady for arson, it having been alleged that
24 she burned a mobile home down. The jury came out with the
25 question, "Tell us whether she smoked or not." Well, that

1 question was never asked in the courtroom, consequently was
2 never answered, and I couldn't answer it. I knew she smoked
3 because I had given her permission to go outside the door and
4 have a smoke. I say this to you, base your verdict on the
5 law and the evidence in this case heard in this courtroom.

6 Now, as you are well aware, this Defendant is charged
7 with the various offenses upon these indictments that I have
8 in my hand. One is murder. One is burglary in the
9 first-degree and one is attempted armed robbery, to which
10 these indictments he specifically pleads not guilty, thereby
11 placing the burden of proof upon the State of South Carolina
12 of proving him guilty if they can to these charges by
13 evidence to your satisfaction unanimously beyond a reasonable
14 doubt. In consideration of these various indictments, each
15 indictment stands on its own. As to each indictment your
16 verdict would be one or two things, either not guilty or
17 guilty. Your verdict may be unanimous, may be not guilty as
18 to all of them, guilty as to all of them, not guilty to some
19 and guilty as to the other. I say this to you making no
20 statement as to what a verdict would be but only to say to
21 you you examine the evidence independently as to each
22 indictment and in making your decision as to not guilty or as
23 to guilty. Now, as you're well aware this Defendant has pled
24 not guilty upon these indictments, which places upon the
25 State the burden of proving the Defendant guilty beyond a

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1 reasonable doubt. A person charged with committing a
2 criminal offense in South Carolina is never ever required to
3 prove himself innocent. He doesn't have to prove a thing.
4 The State has got to prove him guilty beyond a reasonable
5 doubt. I charge you, therefore, that it is a vital, important
6 rule of law of evidence that the Defendant in a criminal
7 case, no matter how great or serious may be the offense with
8 which he is charged must always be presumed innocent until
9 the State has found him guilty beyond a reasonable doubt.
10 This presumption of innocence remains with this Defendant
11 throughout the trial from the moment of his arraignment
12 throughout the trial until you the jury have found him
13 guilty, if so, beyond a reasonable doubt. For it is the
14 solemn duty of the jury if not clearly convinced of his guilt
15 beyond every reasonable doubt to acquit the Defendant.

16 I've used the word reasonable doubt. The State has the
17 burden of proving a Defendant guilty beyond a reasonable
18 doubt. Some of you may have served as jurors in civil cases
19 where you were told that it is only necessary to prove that a
20 fact is more likely true than not. In criminal cases the
21 government's proof must be more powerful than that. It must
22 be beyond a reasonable doubt. Mr. Foreman, ladies and
23 gentlemen, proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the Defendant's guilt. There
25 are very few things in this world that we know with absolute

1 certainty, and in criminal law the law does not require proof
2 that overcomes every possible doubt. If based on your
3 consideration of the evidence you are firmly convinced that
4 the Defendant is guilty of the crime or crimes charged, you
5 must find him guilty. If on the other hand you think there
6 is a real possibility that he is not guilty, you must give
7 him the benefit of that doubt and find him not guilty. Now,
8 as I indicated at the beginning of the trial of this case,
9 under the Constitution of South Carolina, you are the sole
10 and only finders of the facts in this case. As trial judge I
11 am not entitled to a factual opinion, and I absolutely have
12 none. If any word, ruling or mannerism of mine might tend to
13 indicate to any of you how I feel about any factual situation
14 between these litigants, please disregard that, I am not
15 entitled to a factual opinion, and I absolutely have none.

16 You are the judges, too, the sole judges of the
17 credibility meaning the believability of the various
18 witnesses who have testified. We discussed this briefly at
19 the time you were impaneled as the finders of the facts in
20 this case, and I told you then, as I tell you now, that in
21 judging credibility and believability there are certain tools
22 that we use in life's experiences, be it raising our families
23 or work or pleasure or whatever. Some of the tools as an
24 example and an example only could be considered as the
25 appearance and manner of a witness who testified, sometimes

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1 referred to as the demeanor, was a particular witness
2 hesitant or forthright, was a witness's testimony consistent
3 or did it contain discrepancies? Obviously, you will always
4 consider what was the ability of a particular witness to know
5 about the facts which he or she may have testified to.
6 Obviously, you would always consider whether or not a
7 particular witness had a cause or reason to tell you one
8 thing or another. In other words, was that witness biased or
9 prejudiced. You are entitled to consider, if you choose, was
10 the testimony of a witness corroborated or made stronger by
11 other testimony and evidence, was it weaker or impeached by
12 such other testimony. As jurors you have a right to believe
13 one witness against that of many or the other way around.
14 You may, if you choose, believe one witness and disregard the
15 other. Now, most certainly you do not determine the truth or
16 falsity of a matter by counting up the number of witnesses
17 who may have testified on one side or the other.
18 Mr. Foreman, ladies and gentlemen, throughout this entire
19 process you have but one single objective in considering
20 believability, credibility, just one, to seek the truth. Let
21 your verdicts speak the truth. The word verdict comes from
22 the Latin word veredicto meaning to speak the truth. In
23 judging credibility and believability find that truth and
24 write your verdict accordingly.

25 Now, by the same constitution that makes unto you

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1 twelve the finders of the facts in this case, that august
2 document makes unto me the instructor in the law, and under
3 your oath as jurors you are required to accept the law as I
4 now charge it to you, even though you or I for that matter
5 might disagree with what the law is or ought to be for the
6 purposes of this case please accept the law as I charge it to
7 you. If I'm wrong there's another appellate court that can
8 correct me on the issue of law. You take, however, the facts
9 as you find them to be from the matters introduced in the
10 trial of this case, apply those facts to the law as I shall
11 charge it to you, and thereafter, reach that verdict,
12 veredicto meaning to speak the truth.

13 Now, ladies and gentlemen of the jury, the Defendant in
14 this case has not testified. This is his absolute
15 constitutional right as it is mine and yours and it is not a
16 factor or circumstance that you can take into your
17 consideration or even to allow it into your discussions in
18 the jury room. Under the Constitution of South Carolina and
19 under the United States Constitution it is his constitutional
20 right not to testify. The burden of proof is upon the State
21 to establish his guilt by competent testimony beyond a
22 reasonable doubt. The fact that this Defendant did not take
23 the witness stand in his own behalf does not create any
24 inference against him. The jury must not permit that fact to
25 weigh in the slightest degree against this Defendant nor,

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1 Mr. Foreman, should you permit that fact to even enter into
2 your discussion in the jury room, and I say that as strongly
3 as I can. In criminal cases, in a criminal case, relying in
4 whole or part, there are two types of evidence which are
5 generally presented during a trial, direct evidence and
6 circumstantial evidence. Direct evidence is testimony of a
7 person who asserts or claims to have actual knowledge of a
8 fact such as an eyewitness. Circumstantial evidence is proof
9 of a chain of facts and circumstances indicating the
10 existence of a fact. The law makes absolutely no distinction
11 between the weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of certainty
13 required of circumstantial evidence than of direct evidence.
14 You should weigh all of the evidence in the case. After
15 weighing and considering all of the evidence, if you are not
16 convinced of the guilt of the Defendant beyond a reasonable
17 doubt you must find him not guilty.

18 Now, as you are well aware the State of South Carolina
19 has charged in one of these indictments that this Defendant
20 is guilty of the charge of murder. So, it is, becomes
21 necessary for me to instruct you as to the law of that crime
22 in South Carolina.

23 What is murder by definition? Well, murder may be
24 defined as the willful felonious killing of a human being by
25 a human being with malice aforethought. Thus in order to

1 convict of murder the State must not only prove that the
2 killing of the deceased by the Defendant but must prove
3 further that it was done with malice aforethought, and such
4 proof must be beyond a reasonable doubt. Let's talk about
5 malice. Ladies and gentlemen, malice is a word suggesting
6 wickedness, hatred, a determination to do what one knows to
7 be wrong without just cause, excuse or legal provocation.
8 Malice need not be in the mind of the one doing the killing
9 any particular length of time before the act of killing to
10 render the killing murder. If it is present in the mind of
11 the one doing the killing any length of time before the act,
12 then its presence would be sufficient to render the killing
13 murder. Malice is said to be express when there is
14 manifested a violent, deliberate, intentional unlawfulness to
15 take away the life of another human being. Malice may be
16 implied where one intentionally and deliberately does an
17 unlawful act which he or she then knows to be wrong in
18 violation of his or her duty to another. Malice may be
19 implied where no excuse or legal provocation for the killing
20 appears and when the circumstances attending a killing show
21 an abandoned heart, a malignant heart fatally bent upon
22 mischief. Such implications or inferences are not
23 conclusive, and you the jury depending on your view of the
24 evidence may accept or reject the same.

25 The law says if one intentionally kills another with a

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1 deadly weapon or a dangerous instrumentality the implications
2 of malice may arise. If facts are proven beyond a reasonable
3 doubt sufficient to raise an inference of malice to your
4 satisfaction, this inference would be simply an evidentiary
5 fact to be taken into consideration by you the jury, the law
6 with all the evidence in the case and you may give it such
7 weight as you determine it should receive. In other words,
8 the inference of malice from the use of a deadly weapon or
9 dangerous instrumentality is simply another evidentiary fact
10 to be taken into consideration by you the jury and give it
11 such weight as you think it should receive. The law says if
12 one intentionally kills another during the commission of a
13 felony the implication of malice may arise. If facts are
14 proven beyond a reasonable doubt sufficient to raise an
15 inference of malice to your satisfaction this inference again
16 would be simply an evidentiary fact to be taken into
17 consideration by you the jury and to give it such weight as
18 you in your judgment determines it should receive. If the
19 evidence should show under what circumstances a shot was
20 fired or blow delivered or act committed which took the life
21 of another then you the jury would have to determine whether
22 under the totality of the circumstances the act was
23 malicious.

24 Now, I charge you, ladies and gentlemen, that it is the
25 law of this state that if a crime is committed by two or more

1 persons who are acting together in the commission of the
2 offense, the act of one is the act of both or all. By way of
3 illustration, two people can be guilty of killing another of
4 murder when only one of the two had the pistol and only one
5 shot was fired or blow delivered. If both are acting
6 together assisting each other in the commission of the
7 offense, the law says that under those circumstances the act
8 of one is the act of all, and as someone sometime said that
9 the hand of one is the hand of all. I charge you that if
10 several persons agree or conspire to commit a crime, each of
11 the persons is criminally responsible for the acts of his
12 associates or confederates which are done in the furtherance
13 or in the prosecution of the common purpose for which they
14 are combined. The common purpose may not have included or
15 may not have been involved in the killing, in the murder of
16 anyone, but if in executing this common design and purpose,
17 and if it was unlawful, and the execution of the common
18 purpose a homicide committed by one of the confederates or
19 one of the associates, and you the jury determine from the
20 proof beyond a reasonable doubt that the homicide was a
21 natural or probable consequence of the acts which were done
22 in pursuance of the common design, then all who are present
23 either actually or constructively and who participated in the
24 unlawful common design are as guilty as the slayer himself.
25 I charge you, however, that one co-conspirator is not

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1 responsible for the independent acts that are not reasonably
2 foreseeable growing out of the particular malice or any one
3 of the other co-conspirators.

4 I charge you that another principle of law which I
5 desire to call to your attention is where two or more people
6 are present acting in the commission of a crime or acting in
7 concert it does not make any difference which one fired the
8 fatal shot or delivered the fatal blow if they were acting in
9 concert.

10 Now, the Defendant upon another indictment is charged
11 with attempted armed robbery. Let me define larceny for you
12 first, which is stealing. Larceny first is there was a
13 taking; second, that the taking was the personal property of
14 another; third, that after being taken the property was
15 carried away; and fourth, that the taking and carrying away
16 of the property was done with the intent to steal. That's
17 larceny. Robbery is committing of the larceny with force and
18 violence. Armed robbery is committing the robbery of another
19 while armed with a deadly weapon. In this case the Defendant
20 is charged with the attempt, attempt of armed robbery. The
21 State must prove beyond a reasonable doubt, one, that there
22 was an attempt; two, that there was an attempt to rob; three,
23 that there was an attempt to rob while armed with a deadly
24 weapon. The State must prove that beyond a reasonable doubt,
25 not charged with robbery, charged with and they've got the

1 charge the State must prove that there was an attempt to
2 steal something by way of an armed robbery.

3 Now, upon another indictment this Defendant is charged
4 with burglary. Burglary is defined as the entering of
5 another without consent and with the intent to commit a crime
6 therein. To convict one of robbery in the first-degree, an
7 additional element must be found, and that is that the
8 Defendant at the time of the robbery was either armed with a
9 deadly weapon or threatened the use of a dangerous
10 instrumentality, instrument or displayed what appeared to be
11 a knife or another firearm. Now, I have told you that you
12 must be the entering without consent. If one enters the
13 premise of another under deceit or trickery or guile, that is
14 not consent. So, in order to convict this Defendant of
15 robbery in the first-degree, the State must prove -- of
16 burglary, I'm sorry, burglary in the first-degree the State
17 must prove that this Defendant entered the dwelling of
18 another without consent and with the intent to commit a crime
19 therein, and at that time had one of the following, not
20 necessarily all, but any one, that he was either armed with a
21 deadly weapon either himself or a co-defendant, threatened
22 the use of a deadly instrument or displayed what appeared to
23 be a knife or other firearm, and as to each of these elements
24 the State must prove that beyond a reasonable doubt.

25 Now, Madam Foreman, and ladies and gentlemen, you have

Charge

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1 been selected as fair and impartial jurors sworn to
2 impartially try and interpret the facts of this case, and
3 when you comply with your oath to do so, then no one will
4 have a right to criticize your verdict, and you would have
5 fully discharged your duty as jurors. You must not be
6 influenced by opinions or expressions of opinions, if any,
7 which you may have heard on the outside, but ladies and
8 gentlemen, you are to decide this case according to the
9 testimony that you have heard from the lips of the sworn
10 witnesses, the law and such other evidence as has been
11 introduced in the trial of this case, and as to those matters
12 Mr. Foreman, you will have them with you in the jury room.
13 As you are well aware now, the Defendant is charged on three
14 separate indictments to which he has tendered a plea of not
15 guilty. You will consider the evidence as to each
16 indictment, and your verdict as to each one will be either
17 not guilty or guilty and whatever your verdict is it must be
18 the unanimous verdict of all 12 of you. It cannot be a
19 verdict of the majority, obviously would not be one of the
20 minority. Mr. Foreman, when you and your distinguished jury
21 as to each indictment has reached a unanimous verdict please
22 turn the indictment over and they will be with you in the
23 jury room, under the word verdict write either not guilty or
24 guilty, sign your name, knock on the door, and we will
25 receive your verdict. Again, if there's any -- I may be back

1 with some concluding instructions, but I tell you, again,
2 that if any of you have any further charges on the jury, on
3 the law that you request just let me know. Now, will there
4 be an opening of the State or you waive the opening of the
5 State, Mr. Axelrod?

6 MR. AXELROD: Yes, Your Honor.

7 THE COURT: Do you desire an opening or what?

8 MR. RICHARDSON: No, sir, I will waive it.

9 THE COURT: All right, sir, you may proceed.

10 MR. AXELROD: Thank you, Your Honor. Your Honor, may
11 it please this Court. May it please the Court, Your Honor?

12 THE COURT: Yes, sir.

13 MR. AXELROD: I told you in opening you'll remember
14 this week. The law of South Carolina is that since the State
15 has the burden of proving Luther guilty beyond all reasonable
16 doubt, the State gets the last close. I will close first,
17 but I want you to keep in mind that when Mr. Richardson
18 addresses you, when he says things to you, I want you to
19 think in your mind what would Mr. Axelrod say if he had that
20 opportunity, what would he say in response to that and keep
21 that dialogue within yourself going as you deliberate. The
22 Judge said that you are the finders of the fact. The facts
23 came, whatever facts we have, came from this stand and from
24 the evidence and the exhibits that have been marked and will
25 go back into the jury room. The Court is the giver of

Closing by Mr. Axelrod

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1 the law, and I liken the law that the Court gives to a boxing
2 ring that you have ropes, and as the finder of the fact you
3 take those facts, and as the judge says, you have to apply it
4 to the law. So, take those facts and put them into that ring
5 because the boundaries in the ring are the law and you can
6 take those facts and you can push them against those ropes as
7 hard as you want to because there is some give and there is
8 some take, but they have to stay in that ring. You can't say
9 well maybe, sort of. You have to live with the law as the
10 Court said whether you like it, whether you think it should
11 be some other way, what it ought to be as the judge said.
12 You are bound, took an oath, that you would apply the law as
13 the Court gave it, not as you wish it would be. We are here.
14 The State has the burden. Your deliberation has to be
15 premised on the facts, did the State prove beyond all
16 reasonable doubt that Luther killed this guy? That's what it
17 comes down to, did they prove it beyond all reasonable doubt,
18 and we're going to go through this case and it doesn't get
19 any bigger than this. This is murder, but if you are back in
20 the jury room, and each of you individually have a voice and
21 a vote and a position, if you say, "Well, I don't know," you
22 are bound to come back not guilty. If you say, "I think so
23 but I'm not sure," whether you like it or not, you are bound
24 by the oath you took to come back not guilty. You might not
25 like this, but this is what separates us from anarchy, from

1 chaos, from the rest of the world.

2 There's that saying you here sometimes on TV, it is
3 better to let a guilty man go free than to convict an
4 innocent human. You have, you have to be, you have to be
5 firmly convinced. The Judge told you you have to be firmly
6 convinced. What is firmly convinced? Beyond all reasonable
7 doubt. It's springtime. It's baseball season. We've all
8 seen baseball on TV. People hit singles. People hit
9 doubles, but you know what, beyond all reasonable doubt is
10 it's a homerun. Now, it's not out of the ballpark. It's not
11 into McCovey Cove. It's not onto I-85 at the Braves'
12 stadium. It's not out of the park, but you know what, it's a
13 homerun. It is all the way, and when you say, "I'm not sure,
14 based on this, I can't tell. Well, we had this and we had
15 this. I am confused," it's your oath, it's your solemn oath
16 that you took and I ask you to hold to that oath all the way
17 through your deliberations, whether you like it or not, and I
18 told you, this is what was going to be so hard. I told you
19 not to form an opinion until you heard this whole case
20 because we're going to go through this case now, and usually
21 I don't use notes in the closing argument, but there is so
22 many inconsistencies of Lonya Snowden I had to write them all
23 down, and we're going to go through this case because, you
24 know, the Judge told you in the openings, in his opening
25 remarks, the Judge said it's your job to judge the

Closing by Mr. Axelrod

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1 credibility and the believability of witnesses. So, when
2 someone stands, sits in that stand right there and just out
3 and out lies time and time again, you're going to have say,
4 "Well, should I believe that? Is that credible? Is that
5 believable," because how many people did we hear from? The
6 first two days of the case we heard from Lonya Snowden. We
7 heard from Mr. Caulder. We heard from Dr. Proctor and we'll
8 start there because that's what we heard yesterday I believe,
9 Tuesday and Wednesday.

10 Lonya Snowden told us that she had a photographic
11 memory, between 72 and 86 percent retention rate depending on
12 whether or not she was pregnant, and I wanted to ask her what
13 the pregnancy had to do with it but that's what she told me.
14 She told us on that witness stand, she said under oath, she
15 swore under oath, she took an oath on this Bible, Lonya
16 Snowden took an oath on this Bible to tell the truth. She
17 told you she checked out of the Red Roof Inn on Saturday the
18 8th. Well, that's a lie. That's a lie. The investigators,
19 the police they're all here. They didn't testify. You know
20 why they didn't testify because they didn't do anything on
21 this case. That's why the lead investigator, Alan Large
22 right here that sat here the whole time, he's got a big badge
23 around his neck, Detective Livingston right beside him,
24 didn't testify because they know they didn't do anything.
25 They didn't even call the Red Roof Inn and say, "Did Lonya

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1 Snowden -- when was she there?"

2 She made these statements. Her statements on the 12, on
3 the 12th and the 14th, they're two days apart, they're a day
4 or so after this murder, there so far apart from each other
5 it's unbelievable that why didn't the State question it, why
6 didn't the police say, "Hey, let's look at this." She lied
7 when she said she left the 8th, and then she says, she says,
8 "I left the 8th, guaranteed I know that beyond all reasonable
9 doubt," and you know what, that was the one time that I
10 decided not to say to her, "Well, you know what the records
11 say you're there the 9th," because she would have told me
12 she was in shock because every time I showed a lie to her she
13 was in shock, but she wasn't in shock when she called 911.
14 She said, "I'm not in shock anymore," but she called 911 on
15 the 12th, the afternoon of the 12th and she gave her first
16 statement to the police the evening of the 12th and she's
17 back in shock in there. This is when I would not be in
18 shock. These guys have got guns, but she's in shock. She
19 lied. I was thinking it was going to be spontaneous
20 combustion, liar liar pants on fire, and we are just at the
21 first line of her story.

22 She tells you that she goes back to pick up her stuff
23 that day from room 514. I said, "Are you sure?" She said,
24 "Absolutely, positively, I'm sure I went to room 514." Well,
25 holy moly, what did David Helman tell us? He told us there

Closing by Mr. Axelrod

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1 is no room 514, and why? There is no floor, no fifth floor
2 at the Red Roof Inn. Okay, now, how much credibility do we
3 have from Lonya Snowden so far? Do we believe her or do we
4 not believe her.

5 I'm going to go to Jerry Linsky because she went to that
6 in the beginning when we talked about it and I'm going to
7 close with Jerry Linsky. She said she knew Jerry Linsky from
8 November of 2000 till shortly after the murder in 2005. She
9 knew him almost five years. Now, she said that from this
10 witness stand, right from here she said that, right from here
11 she said, "I know him five years." Now, that's a lie. Now,
12 what bothers me, and let me tell you what bothers me, and I
13 know it bothers him. Why would she lie about that?
14 Absolutely why would she lie about that? Why would she make
15 up a story that she's known the guy for five years? There's
16 absolutely no reason. There's no reason. If she's going to
17 lie about that and she's going to lie about the room and
18 she's going to lie about where she stayed, how can you
19 believe what she tells you about this murder? Now, I
20 thought it was interesting when I asked her, I said, "What
21 did you do with Mr. Linsky?" The way we came up about the
22 employer it came up from his car. She said that was my
23 employer's car, and I gave her the opportunity to tell us. I
24 said, "Well, what did you do for this guy?" She said and I
25 quote, she did his taxes, she did his taxes, she did his

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1 payroll, she said she puts his new car packages together for
2 the dealers, and I asked her, did he take out taxes on you
3 for those five years, and she said absolutely not. He gave me
4 1099s. Now, let me tell you, that's all a lie. That's a lie.
5 She lied to you. She sat right up here and she lied to you.
6 She lied to the Court, and that is if you believe Mr. Linsky.
7 If you believe Mr. Linsky, who I don't think had a dog in
8 this fight. He had a car in this fight but he didn't have a
9 dog in this fight, if you believe Mr. Linsky then this woman
10 she out and out lied. Every single statement we're going
11 through so far she lied. I'll tell you the one statement she
12 didn't lie about and we're going to finish with that, too.
13 She was there absolutely positively that woman was there.
14 She had spatter in her hair. She was there absolutely.
15 She had no criminal record but she was a CI for the
16 police. She was a confidential informant. What confidential
17 informant is that's somebody that gets in trouble. That's
18 someone that sells drugs, does drugs, does something, does
19 something wrong, whatever it might be, burglary, this or
20 that, and what they do is they say to the police, "Hey, I'll
21 work for you. I will do whatever you want me to do but don't
22 put me in jail." She had all the contacts. She knew what to
23 do. She knew what cops she wanted to talk to. She wanted to
24 talk to Scott Rutherford. She wanted to talk to Jay
25 Lawrence. You can listen to this tape. This tape is in this

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1 thing. You can take it back there, whatever the Judge will
2 let you do, whether you take it back there or you listen to
3 it out here. She was calm. She was calm. She was standing
4 there and she's saying, "Hey, by the way, I think you might
5 be looking for this guy. This guy is a drug dealer. He
6 might have some warrants on him, and by the way can I speak
7 to Scott Rutherford?" "Why do you want to talk to him?"
8 "Well, I would like to tell him that I witnessed a homicide,"
9 cool as could be. She witnessed a homicide. She knows how
10 to play the game. She knows how to play the game because she
11 did the homicide. She was there during the homicide,
12 absolutely.

13 I couldn't understand the story about the spatter. The
14 spatter this, the spatter, I agree, Lonya's story of how it
15 occurred was fine. I say to you the only thing is Luther
16 wasn't there and I'm going to tell you why before we're done.
17 Luther wasn't there.

18 Lonya said A.J. had a Glock. He testified, said he
19 didn't have a Glock, just a dope dealer, didn't have a Glock,
20 but Lonya said, "He had a Glock. He carried a Glock." She
21 told the police, "Well, the Glock that Luther had was a,"
22 what was it, a Glock 40 titanium and she knew exactly what
23 titanium was with a Glock. I submit that most of us don't
24 know what a titanium Glock looks like. I don't, but AJ has a
25 Glock and then A.J. denies to you on the stand, the one that

1 sells \$100,000 a year worth of crack just to one person, just
2 to Paul Graham, he does a hundred grand in crack but he'll
3 tell you, "Hey, I'm a -- I'm just a dope dealer."

4 She told you she spent the night of the 8th in Murrells
5 Inlet house sitting Mr. Linsky's house. It's not true. She
6 spent the night of the 8th at the Red Roof. In fact, you
7 know it's interesting, she stayed at the Red Roof from the
8 16th of December, all the way till the 9th of January. She
9 had one room. She had room 403. It was her room. She was
10 using that room. Clearly Mr. Linsky paid for the room. You
11 will have it back there. It's in evidence. You'll look at
12 it. It's got his credit card. It's got his name. It's got
13 his name, got her name, but what's interesting he says to
14 you, he tells you that he stopped the gravy train, you know,
15 the Wells Fargo wagon is going home, no more money coming to
16 you, told her that several days prior to that event. Well, I
17 don't think that's a coincidence. I don't think it's a
18 coincidence. She's doing crack. Maybe she's a crack who'.
19 I don't know. Said everybody else in the place was, and all
20 of a sudden she finds out, "Hey, I'm not going to be able to
21 live here anymore.. What am I going to do?" And what's
22 interesting is that day on the night of the 8th going into
23 the 9th she gets two rooms. The only time she's there the
24 whole time between the 16th and the 9th of January which
25 you'll have over there, she gets two rooms that day, and I

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1 think that's interesting. I don't think it's a coincidence.

2 I think it's interesting.

3 She says, she says, she testifies that Luther gets in
4 the back seat. It's clearly on the record. You can have the
5 court reporter play it back. She says on the record Luther
6 gets in the back seat, I'm sorry, in the passenger seat. I'm
7 sorry. She says Luther gets in the passenger seat of the car
8 going to [REDACTED] [REDACTED], coming back from [REDACTED] [REDACTED], but she
9 testified twice and it's in the record that on the 12th she
10 said Detective Large, who is sitting right there, she told
11 Detective Large that Luther got in the back of the car and
12 then on the same day because they were, they were doing an
13 interview together, this is Detective Livingston, she told
14 Detective Livingston that Luther got in the back. Now, she
15 told us on that stand she said, "There is a mistake there. I
16 didn't say it that way. They made a mistake." Well, you know
17 what? They didn't get up on the stand to tell you that they
18 made a -- she made a mistake because you know what it's on
19 tape. They know. They know she said it. You know it.
20 Well, I think that's a big point. I think all these points
21 are big. I think, you know, if you take enough grains of
22 sand you can make a beach. She said that, she said that
23 Luther made her climb over the passenger seat into the
24 driver's seat. You'll have these pictures back there but
25 these are bucket seats in the Mustang, the Mustang that was

1 downstairs today with the cloth on them. She had to climb
2 over from the passenger side to the driver side and here's a
3 woman that told you that she had spatter in her hair, she had
4 blood on her face, she had blood on her. She told you she
5 had blood. She told the police she had blood on her hands,
6 she had blood on her hands and she crawls across this car
7 with all this plastic and grabs that steering wheel, ain't no
8 blood, all right, no blood.

9 She said that Luther had blood everywhere. She told the
10 detectives in her taped testimony that Luther was covered in
11 blood, covered. She said it was all over him, and I quote
12 her, "The blood was all over Luther, all over his legs, all
13 over his head and his face. Luther was covered in blood.
14 Luther's face had blood on it. Luther's shirt was soaked
15 with blood and Luther's pants were soaked," and she told the
16 police, she had it, although she testified she had no blood
17 on her in her direct exam, in her statement to the police she
18 told the police that she had blood on her face, her neck, and
19 in her hair and let me tell you that's the spatter because
20 she testified she ain't nowhere near at the end there but she
21 had spatter in her hair and then she said she had blood on
22 her hands, and I submit to you she probably did, but there's
23 no blood in that Mustang, the Mustang that was downstairs
24 today with Mr. Linsky, never had blood in it.

25 We had conversation with Investigator Caulder. Caulder

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1 talked about transfer, and I thought that was interesting
2 that if I was standing in blood right here, and then I walked
3 out of the house and I walked into the drive, get into a car
4 that each step I took I would leave blood as I transferred it
5 and the further away I go the less blood I will have on me,
6 and that makes common sense, and the Judge told you you bring
7 to this case your common sense, that's common sense. That
8 makes sense.

9 She says he's covered in blood, his shirt, his pants,
10 his face, his hands, his legs. The way she says he's red all
11 over, and I will grant you she's alleging he walks out of
12 that house, okay, he walks out we're going to say. There's
13 no blood in the car in the floorboards. Now, we've got a man
14 soaked. It's as if it rained on him. He's soaked. He's
15 dripping. He's dripping wet with blood. He hasn't touched
16 anything, not one thing has he touched that we know of as he
17 walks out of that house. He is running out of that house.
18 He jumps. He makes her crawl across the seat. Then she says
19 he gets in the front seat, and you know what happens when he
20 gets in the front seat, the transfer begins, the transfer
21 starts. That blood is going to transfer. I'm running. I am
22 covered in blood, absolutely. I get in. I sit down. I
23 don't even know how I opened the door handle. There is no
24 blood on the door handle. I don't even know how I closed the
25 armrest. There's no blood there, but the transfer is

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1 beginning in this cloth seat, and I submit to you this is a
2 cloth seat. I submit to you that if I had blood on me, if I
3 did what they say that my client, if I did what they said
4 there'd be blood on this seat right now. This seat would
5 have blood on it. It would have something on it but it
6 doesn't have anything on it, and that disturbs me. That
7 disturbs me in this case, why that Mustang doesn't have blood
8 on it.

9 She says that my client is pouring sweat. My client is
10 soaked with sweat. It's pouring off of him. Well, that is
11 now going to mix with the blood. Now we've got sweat and
12 we've got blood. We have something that has more viscosity,
13 if that's the right word, something that can go further now
14 in the transfer, but I still see no blood, I see no blood.
15 Tell me how he got in the car. Tell me how he got out of the
16 car without any blood. That concerns me.

17 She tells you she went to [REDACTED] first and dropped
18 off the Glock and then she goes to Paul's, and as she was up
19 there I said, "Well, you said you went to Summer Drive, then
20 you went to Paul's." She said yes, but I said, "When you
21 told these gentlemen, these detectives, you told them in your
22 statement that, 'I -- we went from [REDACTED] straight to
23 Paul's,'" and I questioned her. She goes, "Oh, I left little
24 bits of facts out. We dropped the Glock off first." I'd
25 submit to you that when you're lying you make up stories.

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1 It's hard to remember what you say. She said to you
2 yesterday, the day before, that what she's saying to you now
3 is the truth, but I would submit to you you know what, every
4 time I showed her an inconsistency she was back in shock. I
5 was afraid we were going to have to call 911 during this
6 trial. I'm serious because that was her justification as if
7 a child, she got caught with her hand in the cookie jar.
8 "Mr. Nobody did it, Mr. Nobody," and she got caught. She
9 knows she was there and her Mr. Nobody is Luther. "He did
10 it."

11 She said she knew Paul a long time. Paul told you that
12 she didn't -- he didn't know her a long time, not at all, not
13 at all. Paul was just a happy-go-lucky guy smoking at least
14 \$100,000 a year worth of crack supplied by A.J. and Lee, no
15 problems. He was living the high life, know it.

16 She testified that she had no blood on her shirt to the
17 police. She testifies on the stand that in Paul's driveway
18 Luther is changing clothes. She testified to that. Paul
19 Graham told you Luther never got out of the car, never opened
20 the door. What did he say? He looked in. The door wasn't
21 open. That's what Paul said.

22 She testifies and she's got a good retention rate. She
23 testifies that Lee, the Co-Defendant, the one that's -- she
24 also accuses of this crime, Lee leaves with Julianne St.
25 Louis and A.J. That's what she testifies to. Lee leaves

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1 with Julianne -- Lee leaves with St. Louis and A.J., but Paul
2 Graham tells you that Lee left with Lonya. "You're sure of
3 that?" If that's an inconsistency, it's a little one, but
4 you know what, it's another one of those little specks that
5 we are going to build this beach with.

6 She testified to the police that Lee had black jeans on,
7 a black shirt and Lee had a gray pullover. That's what she
8 testified. Paul testified that he had on overalls or
9 coveralls. Now, A.J., he was colorful. He said, "Hey, Lee
10 had on a Hawaiian shirt with brown khakis" -- I've got to
11 look. I had to ask him about that twice, "And violet red
12 boots." So, Lonya has got Lee wearing black. Paul has got
13 him wearing overalls, and A.J. has got him wearing red violet
14 boots, brown khakis and not only a shirt, but a Hawaiian
15 shirt. Why is everybody's stories different? It bothers me.
16 This is a murder case. You are asked to find beyond all
17 reasonable doubt that Luther did this. She testifies on the
18 stand that Luther is wearing work boots. She came down,
19 showed them about above the ankle, maybe a little space,
20 showed them to you, and I said, "Are you sure? Are you
21 positive? Are you one hundred percent sure?" She said yes,
22 yes, yes, yes, yes, yes, yes, yes, yes, yes. I kept asking
23 her that and then I said, "But you told the police Luther was
24 wearing tennis shoes," and what was her answer, holy-moly
25 she's back in shock. She's in shock again. She's saying,

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1 "Oh, I was in shock. I meant this. I meant that." The only
2 thing I know that I know right now as we're going through
3 this, I know several things I'm going to tell you, but what I
4 know right now is I know Lonya was there. I know she
5 participated. I know she spoke fluent Spanish. She spoke
6 more Spanish than I could ever imagine I could speak. She
7 could ask where the coke and where the money was and Pablo
8 went to Mexico and she said, "Oh, I speak a little bit of
9 Spanish." Well, when I questioned her on that, she came back
10 with me, she got fluent. She asked me stuff, she said stuff
11 I was afraid to ask her what she said in Spanish to me. I
12 didn't want to know. I didn't think it was going to be nice.

13 The 911 tape, the call is made on Wednesday the 12th at
14 1:30 in the afternoon. It's made prior to her statements.
15 She makes the statement on the 12th. She makes a statement
16 on the 14th. That's Lonya. She makes a statement. "I
17 talked to I believe it's Jay in warrants division. I've got
18 some information about a Microtel Inn on 501, people running
19 from the law. Derrick's a crack dealer. I think I know
20 where he is. He's driving a blue truck, and by the way I
21 just happened to witness a homicide. Can I talk to Scottie
22 Rutherford? I've got some information for him," because she
23 knows what she did and she is a CI. She thinks she knows how
24 to clean this up because you know what she's getting away
25 with murder. She was never charged and every time I show her

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1 an inconsistency she showed me shock because you know what I
2 think we're getting through this, I think the only
3 information you have to base your opinion to come up beyond
4 all reasonable doubt is going to be her in the chair that has
5 no blood. What else do you have? Did the detectives get on
6 the stand? Did they tell you anything? They investigated
7 this case. We know they investigated the case. They didn't
8 tell you a thing, and I wonder why. It's only a murder case.
9 We pay our public servants. They're good guys. I know
10 they're good guys. It ain't their fault that they didn't get
11 up there. He didn't call them. He didn't call them, and he
12 has the burden. He has the burden. I don't.

13 I called a couple of people. I just thought you ought
14 to see a little bit more of her lies, and I thought they were
15 significant lies, the hotel and how about Jerry Linsky
16 because without me bringing that up, if I didn't bring that
17 up, you would think she worked for him. Now, she was here.
18 If she was here today I know something. I'll know -- I know
19 that she'll say to you, "Oh, my God, I must have had amnesia
20 because I've got total recall, 72 to 86 percent depending if
21 I'm pregnant or not, but I had amnesia. Oh, I couldn't have
22 known him since 2000, after you told me he wasn't even living
23 there. He wasn't even living there." I wish she was here
24 today. I wish she could get up there and tell you why she
25 said that. I do. I really, really do because that'd be a

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1 good story. She'd be fibbing some more. She is a liar. She
2 is. I'm sorry, but you know what, she lied to us all, not
3 just one lie or two lies or three lies, she gave as many lies
4 as she said that the guy that died got hit. She was there.
5 She said on the witness stand right there, she said to us
6 that Luther changed his clothes at Paul's. She told you
7 that, but she told Livingston and Large when asked by
8 Livingston, he asked her, "Did Luther change his clothes at
9 Paul's?" Oh, her answer's no. So, how much clearer do we
10 have to get?

11 She wasn't in shock when she made the 911 call and then
12 when I showed her that when she said, "Oh, you know, I was in
13 shock later," she didn't realize, she forgot that the 911
14 call was made before she gave her two statements, absolutely,
15 she forgot that, but we'll just squeeze it another way and
16 we'll say it is what it is right now.

17 Dr. Proctor, he told us the day that that was -- the
18 11th, a Tuesday, not a Monday. Lonya tells you it's Monday,
19 a big argument what day, what day is that? Do you know what?
20 They don't even know. I submit to you it was the 11th.
21 Proctor is right. He did 10,000, did the, he did the autopsy
22 the next day, said based on the decomposition of the body it
23 was the day before. Heck, did 10,000 of these, he ought to
24 know. He didn't put on his, he didn't put on his report that
25 maybe the 10th or the 11th or the 9th. He put the 11th. He

1 did an autopsy about 24 hours after the death. I think he
2 knows. It's important. It is, the date.

3 Did they ever get on the stand to tell you the date that
4 this happened? No, because they don't know. They want to
5 believe Lonya because you know what, you know what happened?
6 Lonya called them up and says, "Hey, I got some information
7 for you guys," and Lonya tells them this story, basically the
8 same story, not the story you heard today, yesterday. That
9 was the, that was the third story, but she tells them these
10 two stories and do you think that these two people ever sit
11 down and say, "Hey, you know, this stuff is inconsistent.
12 This stuff doesn't even make sense." They didn't say that,
13 absolutely not. They never even questioned it. They just
14 ran with it. They ran with it, and you know, if you don't
15 take a rotten apple out of the barrel the barrel gets rotten
16 and they didn't even know what they're doing because she's
17 guiding them. She is their seeing eye dog, and I probably
18 know why because she told them she has got a photographic
19 memory, and if you've got that, she has got to be right.

20 Let's talk about the evidence that came from the stand,
21 from this chair on that stand. Let's talk about the real
22 hard-core evidence that we've got. Robbie Caulder, a nice
23 man, said that he would do things differently in crime scene
24 as he's learning. As he learns he does things differently
25 and I appreciated that. That was the honest, truthful

Closing by Mr. Axelrod

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1 answer, and he said that he could not exclude Luther from
2 this case. He said that on the State's side and I said, "Can
3 you include him? Can you include him in this case," and he
4 said no. There is not one stitch of evidence. There is not
5 one minutia of a hard-core direct fact that Luther was there,
6 nothing. What you have is a crack hoe telling you stories.
7 Now if you want to believe her, if you think that she was
8 telling the truth, and that all these lies, the hundred lies
9 that she told you and told the police, whatever it is because
10 something has got to be a lie, if you think that just don't
11 matter and that's not significant then you go right on back
12 there and you convict him. Go right ahead because that's
13 your job, but I submit to you that if any of this, if any bit
14 of this says to you, in your back of your mind while you're
15 deliberating, "I'm not sure. I don't know. It's hard to
16 believe her," if you say back there it's hard to believe her
17 you have to by law come back not guilty. You have to. You
18 have to. That's the oath and that's what makes this America
19 whether you like it or not.

20 A.J. is a dope dealer. He said he was a dope dealer,
21 said he didn't carry guns. She said he carried guns, Lonya
22 said he carried guns, but who knows. She lies about
23 everything. We don't know whether that's true or not. I'm
24 not going to say because Lonya said he carried a gun that we
25 should believe her because we can't believe anything else she

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1 says, but he's a dope dealer. He's a dope dealer with his
2 cousin, Lee, Lee who is also indicted on this murder, Co-
3 Defendant, not being tried, not here, could have been. They
4 call it judicial economy. They say, "You know what we're
5 going to do we're going to try the two Co-Defendants together
6 because it's easier. We save money. We only need one
7 courtroom, one jury and one judge, and we'll do it in the
8 same amount of time, maybe a day longer," and then usually
9 what they say is they'll point the fingers at each other, but
10 you know what, they didn't do that. They didn't try them
11 together and I submit to you I wonder why. I still wonder
12 why they didn't testify, why didn't the police officers?

13 All right, when this is all over you're going to talk to
14 your family and you're going to say, "You know, it really
15 isn't like Law and Order," and your family is going to say
16 why, you say, "Well, the cops didn't even testify. All we
17 had was a crack hoe, a drug dealer, a guy that does \$100,000
18 a year in crack, smoking it, driving them." We also had a
19 hotel manager. "Well, maybe we should believe him." Heck,
20 we had Mr. Linsky. He seemed believable. "Let's believe him
21 or let's just believe all the dope dealers."

22 A.J. two months later gets convicted or arrested for two
23 burglary firsts and pleads guilty to burglary first, two of
24 them, two months after this murder. Pleads guilty to a
25 burglary the same as what this man is charged with here.

Closing by Mr. Axelrod

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1 THE COURT: Your time is expiring. You've been
2 talking for 45 minutes so that you'll know.

3 MR. AXELROD: I will be done in a few minutes, Your
4 Honor.

5 THE COURT: That'll be fine.

6 MR. AXELROD: I don't have much to go, Your Honor.

7 THE COURT: That's fine.

8 MR. AXELROD: It's important, Your Honor.

9 He says that he sees Luther at the fire pit burning
10 clothes. I think they concoct their stories. Lonya said she
11 was with him when he's burning the clothes. Does A.J. have a
12 reason to lie for Lee? Yes, he's his cousin. Does Paul
13 Graham have a reason to lie two weeks later? Sure. Why?
14 This is his connection. He gives him a hundred grand a year
15 in crack. He puts him on a pedestal. He is close to God in
16 Paul Graham's mind back in January of '05.

17 The officers ask Paul, "What did Lonya look like?" He
18 said, "She's just high as hell sitting in the front," and he
19 said she needed more crack. When asked by the investigators,
20 "Did she look like she was decked up or stoned or something
21 like that," and he said yes, yes. Helman tells you she was
22 there when she said she wasn't there. The Red Roof Inn
23 doesn't have a fifth floor. Linksy tells you there's a big
24 settlement coming, never did her taxes, never did his
25 payroll, never worked for him, not one day. She, never even

1 knew her to have a job at all, and it's really interesting,
2 he didn't even live here when she said he did or when she
3 knew him. I don't know where she knew him, a figment of her
4 imagination because she has got a big imagination.

5 I thought about it and I thought hard about this case.
6 I've had this case for a long time going on about two years,
7 and it just didn't seem right, and the more I looked at it
8 and you get the tapes and you transcribe the tapes and you
9 get the court reporter to look at it and they don't know this
10 date and they don't know that date and nobody did any
11 investigation and they didn't send any stuff to SLED and they
12 didn't test for anything, nothing. They did nothing. They
13 ran with that crack hoe's testimony, and I'm saying it don't
14 make sense. It don't make sense. Why isn't there, why isn't
15 there blood in that Mustang? I couldn't figure it out and
16 then I did. I will tell you why. Lonya was at the murder.
17 Lee was at the murder. A.J. was at the murder, but Luther
18 wasn't. He was never there, and they built this story to put
19 it on Luther and I'm going to tell you how I know that
20 because there's no blood in the Mustang, the Mustang was
21 never at the scene. The only people putting Luther at this
22 scene is Lonya who's lying, A.J. who's lying, Paul who has a
23 reason to lie. He's lying. That's all. There's not one
24 fact. Tell me how you get in the car, close the doors and be
25 covered in blood and not have any blood on you and a cloth

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1 seat in the Mustang. The car wasn't there, but she's telling
2 you that it was. She was there. The Mustang wasn't there,
3 and if the Mustang wasn't there, Luther wasn't there because
4 she is telling you that Luther is in the Mustang, and I'm
5 telling you the Mustang could not have been there, absolutely
6 could not have been there.

7 The Solicitor will close and after you hear his
8 statement just say, "What would Mr. Axelrod say in response,"
9 because you know what my response would be. Luther is not
10 guilty. He wasn't there. Think about it. Look at the
11 people that say he was. Do you have doubt? You don't have
12 one fingerprint. You don't have one blood drop. You don't
13 have DNA. They didn't do anything and you will make that
14 decision. You will live with that decision. The true
15 verdict is not guilty, not guilty.

16 THE COURT: Have you concluded, Mr. Axelrod?

17 MR. AXELROD: I am, I have, Your Honor.

18 THE COURT: Thank you, Mr. Axelrod. You may have a
19 closing, Mr. Richardson.

20 MR. RICHARDSON: May I approach?

21 THE COURT: Yeah.

22 (Whereupon, the bench conference was held in the
23 presence but out of the hearing of the jury.)

24 THE COURT: Mr. Foreman, ladies and gentlemen, I'm
25 going to -- we're going to take just a five-minute break

1 here. You've been here very patient. Let you go to the jury
2 room just a minute. When you come back out we'll have
3 closings of summations. I'll give you the case for your
4 deliberation. Some of you may need to stretch or rest just a
5 minute. Take that. We'll be back in about ten minutes.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Mr. Richardson, I will remind you now
9 it's five after five. So, tailor your remarks accordingly.
10 We don't need -- Mr. Axelrod talked about an hour, but you
11 don't need an hour.

12 *****OFF THE RECORD*****

13 (On the record.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right, Jimmy, Mr. Richardson, you
17 ready?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: All right, we ready to proceed?

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Bring the jury in, please.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: All right, Mr. Foreman, ladies and
25 gentlemen, we will have a final summation, and I

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1 will be giving you -- the case to you for your deliberation.

2 You may proceed, Mr. Richardson.

3 MR. RICHARDSON: Thank you, Your Honor. Thank you all
4 for your patience. It has been sort of a long trial. I am
5 glad I get a chance to respond to some of this. I wanted to
6 start off before I forget it responding to those initial
7 questions to clear it up for your edification. These two
8 gentlemen, they are police officers. The reason they are not
9 called is simply because they get out and gather witnesses.
10 They cannot testify to what those witnesses say. That's
11 hearsay. That's the reason that Mr. Axelrod couldn't get in
12 the testimony of that officer, Oz Santiago. That's it. They
13 go out and gather witnesses. Nobody is trying to hide
14 anything from you. It -- my job is different from the
15 defense counsel. You might not like Lonya. You might not
16 like A.J. There is a lot of people, but my job is to give
17 you the facts as they presented themselves. I am not here to
18 put somebody in jail that didn't do it. I'm not here to turn
19 somebody loose that did do it. My job is to present the
20 facts. That is what I am here for.

21 He asked about the Co-Defendants being tried together.
22 Now, there is certain rules of evidence, you don't need to
23 worry about them except for the fact that if people say
24 things against the other ones you can't try them together.
25 You just can't do it. So, that wasn't really being truthful

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1 with you to try to, to try to lead you down that path, and
2 finally, what wasn't being truthful with you is to tell you
3 that there was no blood in the car. Now, that was just not
4 true. Robbie Caulder told you, even Mr. Axelrod's client
5 told you that they found those stickers there, there was
6 blood in the car. He told you that it went to SLED, that it
7 did test for blood but that they didn't have enough to do
8 DNA. So, telling you that there was no blood in the car is
9 just not true. You heard several people tell you that and I
10 would submit to you that whose blood it is that's all DNA
11 could confirm, whose blood it is, and you all didn't check
12 your common sense when you came in here. If you need to
13 realize a SLED report to tell you that the blood come from
14 that individual then the battle is already lost. That is
15 where the blood came from. That's whose blood it was. Now,
16 that is the truth and you can go back and you can listen to
17 it. Robbie Caulder told you first of all, "I did a
18 presumptive test. It was blood. I swabbed it. I sent it to
19 SLED. They said it was blood, but they said there wasn't
20 enough to do DNA." So, well, that clears up those things.

21 I'm not going to talk with you as long as my friend,
22 Mr. Axelrod did because I don't have to hit on a lot of those
23 things. What Mr. Axelrod has done for you is to present to
24 you a lot of red herrings, a lot of side roads, a lot of
25 things that Lonya may have said that was not true. What,

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1 what difference does it make when she checked out of a hotel?
2 What difference does it make how long she knew this
3 particular individual? What difference does it make if she
4 filed taxes for somebody? My job is to move you back to what
5 happened and that is a murder that took place within the span
6 of a small amount of time inside of that house on [REDACTED]
7 [REDACTED], not what happened afterwards, and please, think about
8 something, please. Mr. Axelrod talked for just about an
9 hour, if not longer. How many times did he bring up what
10 took place inside of that house? None, none. The only time
11 he brought it up was when he said Lonya knew what happened
12 and Lonya did know what happened, and believe it or not, with
13 whatever you've seen on TV, it's very unusual to have an
14 eyewitness to a murder. It's very unusual to have an
15 eyewitness to a robbery. It's more likely that you would
16 have one to a robbery than a murder, but it's unusual to have
17 one for burglary either because people break into people's
18 houses at night. People break into -- when people aren't
19 home. A lot of times you don't see it. Murder, you've
20 always got an eyewitness just the guy can't testify because
21 he's dead, but in this case you've got one that could
22 testify. Listen, I don't mind telling you, my job is not to
23 get up here and gloss over stuff. My job is not to exclude
24 things from you. I can promise you my job is not to befriend
25 Lonya Snowden. That's his friend. A.J. is his drug selling

1 buddy. Lee Pierce, the Co-Defendant, that's his buddy. You
2 won't see me hanging out with any of those guys. That's not
3 my job. I didn't pick my witnesses. Had I picked my
4 witnesses I would assure you that you would have somebody
5 taking the stand named Reverend so and so or Preacher this,
6 but when you rob a drug house you're going to have this same
7 kind, you are going to have strippers, you are going to have
8 crack heads, you're going to have meth heads. That's what
9 you've got. I can't do nothing with that. If you all are
10 unfortunate enough or fortunate enough to sit on another
11 murder case that deals with a crack house, you're going to
12 find the same thing. Those are the kind of witnesses you've
13 got. Right? I mean, doesn't that just make sense that's
14 what you would have?

15 But Lonya did tell you some stuff that the evidence
16 backs up right down the line, and it's some of the same stuff
17 that Specialist Cestare told you. You remember he took the
18 stand and he said, "I watched this stuff from looking at
19 photographs." Remember? And he said, "Looking at these
20 photographs, I did not look at Lonya Snowden's statement. I
21 didn't take any statements," but he says, "I could tell that
22 there was a struggle and somebody went down in this section.
23 I can tell that someone was pulled down the hall this way."
24 Now, Mr. Axelrod tried to say, "Well, he was pulled down the
25 hall by his legs with that extension cord," but he said hair