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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2014-002026

GARY W. BENNETT, ...Respondent,

v.

STATE OF SOUTH CAROLINA, ...Petitioner.

APPENDIX

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2 COUNTY OF HORRY) 02-GS-26-772; 2765
3

4 The State of South Carolina,)
5 Plaintiff,)
6 -VS-)
7 Gary Wayne Bennett,)
8 Defendant.)
9

TRANSCRIPT OF RECORD

10 August 12-14, 2002
11 Conway, South Carolina

12 B E F O R E:

13 HONORABLE JOHN M. MILLING, Presiding Judge, and a Jury.
14

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OFFICIAL REPORTER

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 (SW) STATE WITNESS
 (DW) DEFENSE WITNESS
 (IC) IN CAMERA

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1 (THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY PANEL.)

3 THE COURT: Solicitor.

4 MR. KODMAN: The State has one motion prior to
5 trial.

6 THE COURT: All right, sir.

7 MR. KODMAN: The co-defendant in this case,
8 who is a witness for the State, will be testifying.
9 His name is Andrew Lindsay. Mr. Lindsay, in 1991, was
10 convicted in the State of Illinois of the crime of
11 second degree murder.

12 Your Honor, we're going to make a motion at
13 this time to prevent the Defense from being able to
14 impeach Mr. Lindsay regarding that prior conviction
15 for second degree murder.

16 Now, the first thing, Your Honor, I believe
17 Rule 609(a)(1) which is the evidentiary rule that
18 covers the impeachment of witnesses, and Your Honor,
19 under that rule, it says, "Evidence that a witness
20 other than the accused has been convicted of a crime
21 shall be admitted subject to Rule 403 if the crime is
22 punishable by death or imprisonment in excess of one
23 year."

24 Obviously, it was punishable by imprisonment
25 for more than one year. He received a fifteen year

1 sentence, so it does fall within the ten year range.
2 However, Rule 609 also says subject to Rule 403.
3 Rule 403, Your Honor, discusses when the prior
4 conviction -- when the probative value is
5 substantially outweighed by the danger of unfair
6 prejudice, and I have two cases that I'm going to
7 rely on, Your Honor.

8 The first case is State v. Green, and both of
9 the cases that I'm going to rely on -- most of the
10 cases I could find -- I couldn't find a case that
11 dealt with the specific issue of when a witness is
12 involved and you're trying to talk about whether it's
13 proper or improper, the impeachment of a witness,
14 most of the cases deal when it's the defendant, but I
15 think these cases are applicable because what the
16 Court does is the Court gives a five-pronged test
17 that the Court is supposed to look at when determining
18 the factors to go to, whether or not it is -- whether
19 the witness should be able to be impeached by a
20 particular crime.

21 The first case I'm going to hand up, Your
22 Honor, is Green v. State, and in that case, Your
23 Honor, on Page 4, it lists out the five factors to
24 consider when determining the probative value versus
25 the prejudicial effect of a prior conviction, and

MOTIONS

7

1 Number 3 is the similarity between the past crime
2 and the charged crime, and it would be the State's
3 position that this is a murder case that -- that the
4 witness is entitled to the protections under Rule
5 403 and that the obvious prejudicial -- the
6 prejudicial effect of having a prior conviction for
7 second degree murder in a murder case is obvious on
8 its face.

9 THE COURT: Mr. Lindsay is a co-defendant in
10 this case?

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

12 THE COURT: All right.

13 MR. KODMAN: The second point I'd make, Your
14 Honor, is I'm going to also hand up a case of State v.
15 Rollins. It's also a case dealing with the
16 impeachability of a witness -- I mean of a defendant.

17 I hand up Rollins for the proposition that if
18 Your Honor decides that no, I -- I feel like the
19 defendant should be impeached by that, by that
20 conviction, what Rollins does, or at least in the
21 Rollins case, and they said it was proper, was -- and
22 you can refer to the footnote -- it says they didn't
23 allow in Rollins -- them to go into exact -- what the
24 conviction was for.

25 The purpose of this rule is to hinge on that

1 witness's credibility and believability, and what they
2 did in Rollins was they said, "Well, we're not going
3 to let you ask the exact question that 'Isn't it true
4 on X-date you were convicted of X-crime?' but a more
5 general question of 'Isn't it true you were convicted
6 of a crime on such and such a date?'" and it would be
7 the State's position that there would be no prejudice
8 to the Defense in this case if they were limited to
9 being able to question the witness as to "Isn't it
10 true in 1991 you were convicted of a felony in the
11 State of Illinois for which you received fifteen
12 years?" and I think under the rules, that would be
13 what the rules permit the Defense to be able to go
14 into and that would not prejudice the defendant.
15 Thank you, Your Honor.

16 THE COURT: Mr. Gardner.

17 MR. GARDNER: I'd just point out to the Court
18 merely that we're dealing with a witness here, Your
19 Honor, not a defendant, and those rules and the case
20 law are provided to protect the defendant, and I
21 think that's why the rules are very different when
22 you're dealing with a witness as opposed to the
23 defendant.

24 Even these new cases deal with defendants and
25 they don't make mention of the witness, and I think if

MOTIONS

9

1 a witness, of all people, puts his credibility in
2 issue by taking the witness stand, and we're just
3 simply impeaching him on something that he has been
4 found guilty of.

5 **THE COURT:** What is his -- his, being Mr.
6 Lindsay's, status at this time as to the pending
7 charges as the co-defendant of Mr. Bennett?

8 **MR. KODMAN:** Mr. Lindsay is charged with
9 murder. He has signed a proffered agreement to
10 testify for the State, and do you want to know the
11 terms of that agreement or -- he is currently serving
12 a ten year sentence for burglary in the State
13 Department of Corrections which we can see that would
14 be totally impeachable and it's not similar to this
15 crime, that that would come out, but he's currently in
16 the Department of Corrections and he's signed an
17 agreement to testify, and in exchange for that he's
18 going to plead guilty to accessory after the fact in
19 exchange for his testimony, Your Honor.

20 **THE COURT:** And what is going to be the
21 issue -- since there are two people, what is going to
22 be the issue presented to the jury about this case?

23 **MR. KODMAN:** To be blunt, Your Honor, the key
24 piece of evidence, the most important piece of
25 evidence that we have linking the defendant to the

1 crime scene at all is the co-defendant, Your Honor, so
2 the jury -- the crux of the case is going to come down
3 to the co-defendant, or a lot of it.

4 There's going to be some peripheral issues
5 that are -- that go on, and obviously the defendant
6 may or may not testify. Those issues may come out,
7 but the crux of the case is going to come down to the
8 co-defendant, Your Honor.

9 May I add one more thing, Your Honor?

10 **THE COURT:** Yes, you may.

11 **MR. KODMAN:** I would just say the rule says
12 403 does apply to witnesses.

13 **THE COURT:** It basically, as I read it, it
14 talks about -- says, "Evidence that a witness other
15 than an accused that's been convicted shall be
16 admitted subject to 403 if the crime was punishable" -
17 - I don't know whether if that -- the way this
18 language is written whether it's actually giving the
19 403 exception to the accused or whether it's giving
20 the 403 exception to all witnesses because it reads,
21 "Evidence that a witness other than an accused has
22 been convicted of a crime shall be admitted subject to
23 403."

24 The 403 cases, as you have indicated, have
25 most often addressed whether there is more prejudice

1 to the defendant than probative value and hasn't
2 really addressed prejudice to a witness. Of course,
3 if a witness is not being tried for anything and the
4 whole rule on 609 is for purposes of impeachment and
5 to bring in the credibility of the witness as far as
6 his truthfulness is concerned, I don't know that
7 admitting evidence of the prior conviction of a crime
8 similar to the crime on which the defendant is being
9 tried is going to prejudice the witness like it would
10 prejudice the defendant because there's not going to
11 be a tendency for a jury to convict a defendant
12 because the defendant has got one of these similar
13 crimes as a prior history.

14 That's often the concern of the Court and the
15 risk that's involved is to convict the guy of the
16 third drug offense because he's got the two prior drug
17 offenses, whereas with the witness, particularly a
18 witness who has already negotiated a deal with the
19 State, he's not going to be convicted of anything
20 because he's going to be pleading guilty in return for
21 his testimony on behalf of the State, so I don't know
22 that there's any prejudice being created of the type
23 that's contemplated by these cases.

24 They haven't considered the prejudice, quite
25 frankly, to the State in presentation of the evidence,

1 but it's sort of unique.

2 **MR. KODMAN:** Well, I would just say, Your
3 Honor, that the appropriate question may be two-fold.
4 One, what -- what prejudice would come to the
5 defendant by limiting the impeachment by only asking
6 felony conviction year and term -- and term of years,
7 and I'd say the prejudice to the State is obvious in
8 that it's the same case, and although those cases do
9 talk about a defendant, I think that the analysis
10 would apply in this case, and if you look at 403 under
11 that rule and you said to yourself, "Well, when ever
12 would this be prejudicial, too prejudicial -- or more
13 prejudicial than probative to admit," I would say this
14 is a prime example of a case in which those
15 circumstances exist, because obviously the jury can
16 hear, "Okay, he has a conviction for this and this,"
17 and they aren't told to be able to consider that for
18 believability and credibility, and the obvious
19 implication there, Your Honor, is this is a murder
20 case, he is a co-defendant, and the jury ought not
21 decide the fact whether or not this defendant is
22 guilty or not guilty based on the fact that the
23 witness who's testifying against him has a prior
24 murder conviction.

25 **THE COURT:** Of course, Mr. Gardner, you'll be

1 able to cross examine him about any deals he has made
2 with the State in connection with his plea
3 arrangement.

4 **MR. GARDNER:** Yes, and that's a good point,
5 Judge. If -- if he had pled to some kind of murder
6 deal, there would be no question that I would be able
7 to go into that about his deal and what he just pled
8 to and attack his credibility, impeach him, so why are
9 we getting concerned that we have a witness that has a
10 prior conviction that's impeachable under all these
11 rules?

12 **THE COURT:** What I am going to do, as I am
13 sure you're going to be cross examining him about his
14 agreements with the State, but I can see some
15 potential prejudice to your client, Mr. Bennett, if a
16 jury felt like, all right, Mr. Bennett and Mr.
17 Lindsay are co-defendants in the trial of the
18 instant case. Mr. Lindsay is already someone with a
19 record for a prior second degree murder charge. Well,
20 if he says he's now involved in this murder in which
21 his co-defendant, Mr. Bennett, is also on trial for,
22 I'm concerned that your client may run the risk that
23 this jury's going to say birds of a feather flock
24 together.

25 **MR. GARDNER:** May I have one moment?

1 **THE COURT:** Certainly.

2 **MR. GARDNER:** I just want to explain where
3 we're going.

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

5 (PAUSE)

6 **MR. GARDNER:** Judge, I'm going to tell you
7 what this case boils down to in a nutshell. My
8 defendant's defense is he wasn't there, and it's
9 all going to boil down to who the jury believes.
10 If they believe the guy who's pled guilty to his
11 role in the murder or if they believe my guy was
12 there.

13 I don't think he's be -- they're either going
14 to believe they're birds of a feather or that he
15 wasn't there, and I don't think that that -- first of
16 all, we would disagree if that's -- our position,
17 respectfully, would not be that that would be part of
18 the order, but we would not have any problem with any
19 perceived prejudice to my client.

20 **THE COURT:** All right. At this particular
21 point in time, Mr. Gardner, I am going to limit you to
22 making inquiry without identifying it as a second
23 degree murder charge. Depending on how Mr. Lindsay
24 responds and how it goes, this is basically a motion
25 in limine and I do not, you know, object to you and

1 Mr. Kodman approaching the Bench if you feel like
2 there's an additional basis whereby your client would
3 be prejudiced improperly if you didn't have the
4 opportunity to make that inquiry.

5 MR. GARDNER: We understand, Your Honor.

6 THE COURT: I did this procedure one time in
7 another county and all of a sudden -- the guy was
8 being tried for drugs and he had a prior drug
9 conviction and I handled it in this same way, and on
10 the stand he said, well, he had never seen drugs
11 before except on television, and obviously that
12 changed the basis for which I was making my ruling, so
13 I allowed them to go back into it, so we'll grant the
14 motion in limine to that extent now, but if there is a
15 further basis for making that inquiry that comes up
16 during the presentation of the evidence, I'll allow
17 you to re-visit it.

18 MR. KODMAN: That's all the State had, Your
19 Honor.

20 THE COURT: All right.

21 Mr. Gardner.

22 MR. GARDNER: Thank you, Your Honor.

23 Very briefly, we move to sequester the
24 witnesses.

25 (Speaking to Mr. Kodman.) Do you object?

1 **THE COURT:** I think that would probably be
2 appropriate in a case such as this.

3 **MR. GARDNER:** Thank you, Your Honor.

4 This defendant is currently serv- -- obviously
5 I ---

6 **THE COURT:** We don't have to run them out
7 right now.

8 **MR. GARDNER:** No, no, no, no, no, Your Honor.
9 I understand ---

10 **THE COURT:** Y'all just keep your seat while we
11 are having these motions. Just before the jury comes
12 in, we will limit the number of people.

13 **MR. GARDNER:** I apologize to the Court and
14 anybody else in here. I just -- we are getting ready
15 for when the jury comes in, and that's what I would
16 just ask the Court to do.

17 This defendant has a prior conviction of at
18 least burglary first degree that I'm aware of. We'd
19 ask that that not be mentioned unless he puts it into
20 the record by testifying. I believe we've agreed to
21 that.

22 I'd also ask -- make a motion in limine that
23 the State be prevented from going into or mentioning
24 in its case in chief any allegations of the
25 defendant's character. I don't believe that would be

1 proper evidence in the case in chief and I
2 specifically -- I believe that there may be some
3 allegations that he has a violent temper.

4 THE COURT: Well, I don't think the State is
5 going to introduce evidence of character without the
6 defendant taking the stand.

7 MR. GARDNER: Yes, sir, and I think that's
8 proper. I just want to put that out there.

9 Another thing, I'm told that there's an
10 allegation that the co-defendant, that's Mr. Lindsay,
11 assaulted physically my client in lock-up or at the
12 Courthouse or somewhere before I represented him. I'd
13 ask that that not be mentioned at all either.

14 That just goes -- and that, I'm told -- I
15 wasn't there, but I'm told and I may have this
16 wrong, but that was initiated by Mr. Lindsay, the
17 co-defendant. I don't think it would be brought up,
18 but if it was brought up, it would be along the lines
19 of character. I just wanted to put that on the
20 record.

21 THE COURT: Well, we'll have to wait and see
22 what comes up on that, but it would sound like it
23 wouldn't be relevant to this case. Do you know ---

24 Is that something you were looking at, Mr.
25 Kodman?

1 **MR. KODMAN:** No, sir, Your Honor.

2 **MR. GARDNER:** And I think I may be being a
3 little too careful here, but as you're going to find
4 out, Your Honor, there's going to be some things --
5 and Mr. Kodman and I have talked about how to address
6 this and I think we've got a solution, but there's
7 going to be all kinds of allegations leading up to
8 this -- this event and there's going to be -- and I
9 don't think any of them are going to come in.

10 For example, there's an allegation that my
11 client's girlfriend and he got into a domestic
12 dispute which resulted in her contacting the police
13 to inform on him for the burglary, which ultimately
14 resulted in a chain of events which he is now on
15 trial for murder.

16 **MR. KODMAN:** Judge, I think I can wrap this
17 up.

18 Your Honor, obviously in speaking to the
19 witnesses, I've explained to them about what they can
20 and can't get into. Nobody wants to come back -- have
21 a mistrial and try this case again.

22 I think the one issue that -- and I'm agreeing
23 with everything I think Mr. Gardner has said at this
24 point, and just to get to the crux of what he's about
25 to come to, one of the motives that I think that we're

1 going to present to the jury was that the reason why
2 the defendant did what he did in this case was because
3 he wanted to get -- obtain the combination and keys to
4 the Taco Bell in order to rob the Taco Bell. The
5 victim in this case was one of the managers at the
6 Taco Bell.

7 There is some -- what the State does intend to
8 get into through some witnesses is, one, discussion --
9 mainly through two witnesses, through the defendant's
10 ex-girlfriend, Amber Vrooman, testimony about the
11 defendant's actions toward furthering this enterprise
12 of wanting to rob Taco Bell, as well as the co-
13 defendant, Andrew Lindsay, testifying about that, as
14 well as the both of them testifying about a prior
15 occasion that happened a couple of weeks prior to the
16 murder in which the defendant actually obtained one of
17 the victim's keys and him and the co-defendant, along
18 with Ms. Vrooman, did go to the Taco Bell in an effort
19 to try to rob it on that particular evening, and I'll
20 let Mr. Gardner respond to that.

21 I think that's the crux of where we're going
22 to disagree. I don't have any problems -- you know,
23 we're not going to try to elicit testimony about his
24 prior convictions or the prior fight.

25 THE COURT: Well, there would seem to me that

1 when we get to that particular point in time, I'm
2 going to have to have an evidentiary hearing out of
3 the presence of the jury, put the witness on the stand
4 and see what the witness is going to testify to as to
5 see whether or not it's a 404 exception or Lyle
6 exception or whether it is taboo.

7 **MR. GARDNER:** And that we've got it out in the
8 open, I agree with Your Honor. I believe that you're
9 absolutely correct. I just don't -- and I think we've
10 reached where we're going with this thing. That's
11 going to be one of the big issues and that we don't
12 want to violate any -- I think Horry County tried a
13 case like this and had to re-try it in 1992 over in
14 the other Courthouse, so we don't want to do that
15 either.

16 **THE COURT:** All right. Well, I'll do what I
17 can to keep that from happening. Y'all do what you
18 can, ---

19 **MR. GARDNER:** Thank you, Your Honor.

20 **THE COURT:** --- and we'll see what happens.
21 Anything else?

22 **MR. GARDNER:** No, Your Honor.

23 **THE COURT:** Very good. All right.
24 Have y'all got the list of forty?

25 **MR. GARDNER:** I do not, Your Honor.

1 MR. KODMAN: I don't think I need that, Your
2 Honor, as long as -- I've got my list with all of them
3 on there, so ---

4 THE COURT: Would you want a list of the forty
5 or ---

6 MR. GARDNER: I don't want her to go to any
7 extra trouble. I can use my big list.

8 THE COURT: All right. I'd like a list.

9 THE CLERK: All right.

10 THE COURT: She's going for the Court. If you
11 would like one, raise your hand.

12 MR. GARDNER: Yes, I would like one if you're
13 going.

14 THE COURT: What is the situation with respect
15 to bond at the current ---

16 MR. GARDNER: He's doing eighteen years right
17 now, Your Honor.

18 THE COURT: After the State calls the case,
19 have you got either originals or copies of the
20 indictments that I can use?

21 MR. KODMAN: I've got them right here, Your
22 Honor.

23 THE COURT: All right.

24 MR. KODMAN: I'll just hand them up to Your
25 Honor.

1 **THE COURT:** All right. Solicitor, do you
2 have any voir dire you would like for me to ask of
3 this jury panel?

4 **MR. KODMAN:** No, sir, Your Honor, other than
5 your normal questions.

6 **THE COURT:** Any specifics that the Defense
7 would inquire -- like me to inquire about?

8 **MR. GARDNER:** No, Your Honor.

9 **THE COURT:** All right, and the charges that
10 are against Mr. Bennett are what?

11 **MR. KODMAN:** Murder and armed robbery, Your
12 Honor.

13 **THE COURT:** Okay. Indictment 772 is which
14 one?

15 **MR. KODMAN:** Murder, Your Honor.

16 **THE COURT:** All right. Is the State ready for
17 the jury panel to be brought in?

18 **MR. KODMAN:** The State is ready, Your Honor.

19 **THE COURT:** Is the Defense ready for the jury
20 panel to be brought in?

21 **MR. GARDNER:** We are, Your Honor.

22 **THE COURT:** Very good. Thank you very much.

23 Do we have any witnesses or any participants
24 who are in the Courtroom, or any family members, or
25 anybody who may testify in the Courtroom other than

1 law enforcement officers? (No response.)

2 Okay. I just wanted to be sure everybody
3 that needed to be sequestered had been sequestered.

4 All right, and the lady in the white, you
5 are?

6 MS. ROSS: I'm Cathy Ross. I work with The
7 Horry Independent newspaper.

8 THE COURT: Very good. Thank you so much, and
9 obviously you know not to mention anything going on in
10 the presence of anyone?

11 MS. ROSS: Yes, sir.

12 THE COURT: All right.

13 Bring them on in.

14 All right, Solicitor and Mr. Gardner, what
15 we're going to do is the State (sic) has, of course,
16 drawn forty jurors at random and they pulled them out,
17 and as they pulled them out, they put them on a list.
18 I am not going to have the State (sic) re-shuffle, so
19 to speak, those forty names.

20 I am simply going to go and have them
21 identified and called by virtue of how they came on to
22 the list of forty because that's the way they would
23 have appeared if we had struck the jury at the time.

24 Any questions from the State?

25 MR. KODMAN: No, sir, Your Honor.

1 THE COURT: From the Defense?

2 MR. GARDNER: No, Your Honor.

3 THE COURT: Very good.

4 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF
5 THE JURY PANEL.)

6 THE COURT: Mr. Kodman, is the State ready to
7 proceed?

8 MR. KODMAN: Yes, sir, Your Honor.

9 THE COURT: You may call the case.

10 MR. KODMAN: Your Honor, the State calls 2002-
11 GS-26-772, the State of South Carolina versus Gary
12 Wayne Bennett. It's an indictment for murder, and
13 2002-GS-26-2765, the State versus Gary Wayne Bennett;
14 it's an indictment for armed robbery.

15 Your Honor, both indictments have been true
16 billed by the Horry County Grand Jury.

17 THE COURT: Thank you very much.

18 Ladies and gentlemen, you, of course, were
19 placed under oath earlier today when you answered
20 questions relating to your qualifications, and you are
21 still under oath as you are answering the questions
22 that I am getting ready to ask you now.

23 The State has called two cases that are
24 allegedly arising out of the same event and they will
25 be tried together. There are two indictments, but I

1 want to tell you as a group that the State has the
2 obligation to prove the defendant's guilt beyond a
3 reasonable doubt as to each of these indictments,
4 and so when you are considering a case that is being
5 presented to you and more than one indictment is
6 being tried, then you, of course, have to decide the
7 testimony and the evidence as to each charge to see
8 whether the State proves the guilt of the defendant
9 beyond a reasonable doubt as to each charge.

10 Now, as to the charge of murder contained in
11 Indictment 2002-GS-26-772, it is alleged that this
12 defendant did along with a co-defendant while here in
13 Horry County on or about May 23 in the year 2000,
14 wilfully, feloniously, and intentionally, with malice
15 aforethought, kill one Eva Marie Martin by cutting her
16 throat with a knife and that she did die as a
17 proximate result of those injuries here in Horry
18 County on or about May 23, 2000, that being in
19 violation of Section 16-3-10 of the 1976 Code of Laws,
20 as amended, as well as the common law of South
21 Carolina.

22 It is also alleged that here in Horry County,
23 that this defendant on or about May 23 in the year
24 2000, while armed with a deadly weapon, that being a
25 knife, did take and carry away personal property from

1 or in the immediate presence of Eva Marie Martin with
2 the intent to deprive her of the possession of that
3 property by use of force, threats, or intimidation in
4 violation of Section 16-11-33(a) of the 1976 South
5 Carolina Code of Laws, as amended.

6 Solicitor, without getting beyond any facts
7 that may be in dispute, what is the actual situs of
8 the allegation alleged here? Where is it alleged to
9 have actually occurred?

10 MR. KODMAN: In a mobile home park on Little
11 River Road, Your Honor.

12 THE COURT: All right. That would be in the
13 northern part of the county?

14 MR. KODMAN: The central part, ---

15 THE COURT: The central part?

16 MR. KODMAN: --- Myrtle Beach, Your Honor.

17 THE COURT: All right.

18 MR. KODMAN: Not in the City, but in the Horry
19 County part.

20 THE COURT: All right, out in the county.

21 Ladies and gentlemen, I first need to know if
22 there are any among you who have any information
23 whatsoever about these charges that it is alleged were
24 committed by the defendant, Gary Wayne Bennett. If
25 you know anything whatsoever about this case other

1 than what I have simply related to you today through
2 my explanations, if you would please stand. (No
3 response.) Thank you. Let the record reflect that no
4 one stood.

5 Mr. Gardner, the victim, Eva Marie Martin,
6 lived where?

7 MR. KODMAN: In the mobile home park where the
8 incident occurred.

9 THE COURT: And by whom was she employed?

10 MR. KODMAN: Taco Bell.

11 THE COURT: Taco Bell, all right.

12 The victim allegedly in this matter is Eva
13 Marie Martin. She lived in the mobile home park and
14 was employed with a Taco Bell.

15 Is there any member of the jury panel who is
16 related by blood or marriage to Eva Marie Martin? Did
17 you know her or members of her family? Did you live
18 in the community in which she lived? Did you have
19 contact with her through employment, some other type
20 of work, through some social organization, civic
21 service organization, some other type of community
22 organization or religious organization, or have such
23 contact and relationship with some member of her
24 family? If that applies to you, if you would please
25 stand. (No response.) Thank you. Let the record

1 reflect that no one stood.

2 Mr. Gardner, would you have Mr. Bennett rise.

3 **MR. GARDNER:** Yes, sir. (Mr. Bennett stands.)

4 **THE COURT:** If you'll simply turn around so
5 that the jury may view you for a moment. (Mr. Bennett
6 turns to face the jury panel.) Thank you, Mr.
7 Bennett. You may turn back and be seated.

8 Mr. Gardner, what is the area in which Mr.
9 Bennett grew up?

10 **MR. GARDNER:** He's from up-state New York.
11 What I was trying to figure out is how long he'd been
12 here. I think it's been about a year and a half, and
13 he lived in the Socastee area.

14 **THE COURT:** All right.

15 Mr. Bennett is someone who had lived in the
16 community about a year and a half in the Socastee
17 community area of Horry County.

18 I need to know if any of you are related by
19 blood or marriage to Mr. Bennett, did you know him
20 through living in the same neighborhood in which he
21 lived, working in the same area in which he worked,
22 attending social, charitable, religious or other type
23 of organizations or have any contact with Mr. Bennett
24 at all? If you did, if you would please stand at this
25 time. (No response.) Thank you. Let the record

1 reflect that no one stood.

2 Counsel, if y'all will approach just a moment
3 before I ask my next question.

4 (A Bench conference was held in the presence,
5 but out of the hearing, of the Court Reporter and the
6 jury panel.)

7 THE COURT: Ladies and gentlemen, I am going
8 to read out names of some twenty people who may be
9 witnesses in connection with the trial of the case.
10 They may not, in fact, testify.

11 Sometimes people who are identified, they are
12 basically identified as potential witnesses, but not
13 always are the entire numbers selected as witnesses
14 or decided to be called as witnesses by either side,
15 but it's always the safer practice to identify all
16 who may be witnesses and to find out whether or not
17 there is any connection that any particular member of
18 the jury panel has with a particular potential
19 witness.

20 I am going to go through the names of these
21 twenty witnesses or twenty potential witnesses. What
22 I will be asking with respect to each of these
23 witnesses is the same information that I have asked
24 with respect to Mr. Bennett and with respect to Ms.
25 Martin.

1 I need to know if any member of the jury panel
2 is related by blood or marriage to any of these
3 potential witnesses whom I will read out in just a
4 moment. I need to know if you live in the same
5 neighborhood they live in, whether you have contact
6 with them through your employment, whether you are
7 involved with them through church or some other
8 religious organization, or whether you have contact
9 with them through some type of social, civic, or
10 service organization, or if you happen to know them in
11 some other capacity.

12 Now, what I am going to do is I am going to
13 read the names out. If you recognize that you have
14 such an association or contact with one of these
15 potential witnesses, if you will go ahead and stand at
16 the time I call their name out. Then when I finish, I
17 will come back to those who may be standing and I will
18 get a little bit more information from you about your
19 connection with a particular witness.

20 If you happen to stand, you may know that
21 witness because they're your brother-in-law or your
22 sister-in-law, or you may know that witness simply
23 because you go to the same church together, so there
24 are various reasons that might call for you to stand,
25 but I think it will be a more efficient use of time

1 if I just go through all of these potential
2 witnesses.

3 These potential witnesses are as follows:
4 Detective George Merritt with the Horry County Police
5 Department; Officer R. C. Hardee with the Horry County
6 Police Department; Officer M. S. Bonner with the Horry
7 County Police Department; C.S.S. Jeff Gause with the
8 Horry County Police Department; Greg Barkalow with the
9 Myrtle Beach Fire and Rescue; Lander Werthimere with
10 the Myrtle Beach Fire and Rescue Department; Special
11 Agent Bill Knowles with the South Carolina Law
12 Enforcement Division; Agent Al Stuckey with the South
13 Carolina Law Enforcement Division; Dr. Edward Proctor
14 with the Grand Strand Regional Medical Center; Natasha
15 Adams from Seneca, South Carolina; Mary Young, Myrtle
16 Beach, South Carolina; Amber Vrooman, Surfside Beach,
17 South Carolina; Russell Jordan with the Horry
18 Telephone Cooperative; a custodian of records from
19 Verizon Wireless; Andrew Lindsay; Brandy Charles;
20 Diane Walker; William Gillippe; Tina McKenzie with the
21 Horry County Police Department; Todd Cox, Horry County
22 Police Department.

23 Again, if you have such contacts with any of
24 these potential witnesses, please stand at this time.

25 **MS. EASON:** I recognize a couple of ---

1 THE COURT: All right. I've got to get you to
2 tell me who you are. Your name?

3 MS. EASON: Laura Eason.

4 THE COURT: All right, this is Juror 109.
5 Whom is it that you recognize, Ms. Eason?

6 MS. EASON: I recognize Officer Knowles.

7 THE COURT: Which officer was that?

8 MS. EASON: Knowles.

9 THE COURT: Okay, with SLED?

10 MS. EASON: Right.

11 THE COURT: All right.

12 MS. EASON: And I think it's through my work.

13 THE COURT: And was there someone else?

14 MS. EASON: Not -- I don't really know.

15 THE COURT: All right, and you say you may
16 have had contact with the SLED agent through work?

17 MS. EASON: Right.

18 THE COURT: For whom are you employed?

19 MS. EASON: With The Sun News.

20 THE COURT: With The Sun News, and by virtue
21 of simply knowing that particular SLED agent or having
22 had some contact with him as a result of your
23 employment with The Sun News, can you be fair and
24 impartial to the State in this case, as well as the
25 defendant in this case?

1 MS. EASON: Yes.

2 THE COURT: Thank you, Ms. Eason. You may be
3 seated.

4 Ladies and gentlemen, the charges that have
5 been brought against the defendant, Mr. Bennett, are
6 the charges of murder and armed robbery. I need to
7 know whether or not there are any members of this jury
8 panel who themselves or some family member or close
9 personal friend has ever been the victim of a robbery
10 where someone has taken some item from them by threats
11 of force and intimidation or whether you have lost a
12 family member as a result of allegations that they
13 died as a result of being murdered by someone, so if
14 you have a family member whose life came to an end
15 under those types of circumstances, or you or some
16 family member or close personal friend have been the
17 victim in connection with a crime of robbery or armed
18 robbery or having had something taken from your person
19 by threat or force, whether it were some item such as
20 jewelry, cash, or you were the victim of a carjacking,
21 but if some -- you have ever been the victim of some
22 violence directed towards you or a family member has
23 been the victim of such, or a close personal friend
24 has been the victim of such, or you have
25 unfortunately lost a family member or close personal

1 friend as a result of circumstances where someone was
2 charged would murder, if you would please stand at
3 this time.

4 All right. Ms. Eason, I will come to you
5 first since you are the only one standing on this
6 side, and what is -- you have lost -- is it a result
7 of someone dying or a result of some item being taken
8 by force, threat, or intimidation?

9 MS. EASON: I had a cousin that was murdered
10 and my uncle was charged with involuntary
11 manslaughter.

12 THE COURT: All right. Now, as a result of
13 your having that type of experience, can you be fair
14 and impartial to the State and to the defendant in
15 light of the nature of the charges that have been
16 brought against this defendant for murder and armed
17 robbery? Can you be fair and impartial to both
18 sides?

19 MS. EASON: Yes, uh-huh.

20 THE COURT: Thank you very much. You may be
21 seated.

22 The lady in the green.

23 MS. WHITLOCK: Kelly Whitlock.

24 THE COURT: All right, Ms. Whitlock. Give me
25 just a moment.

1 Yes, ma'am, Ms. Whitlock, is yours a situation
2 where someone died under circumstances or is it that
3 somebody took something from you or a family member?

4 **MS. WHITLOCK:** From a family member. It's not
5 murder.

6 **THE COURT:** All right, so it was like a
7 robbery or an armed robbery or ---

8 **MS. WHITLOCK:** Armed robbery.

9 **THE COURT:** Armed robbery?

10 **MS. WHITLOCK:** Yes.

11 **THE COURT:** And this family member, is this
12 like a child or a distant cousin, or what?

13 **MS. WHITLOCK:** My brother-in-law.

14 **THE COURT:** Your brother-in-law, and is that
15 something that occurred in Horry County or elsewhere?

16 **MS. WHITLOCK:** It was not in Horry County.

17 **THE COURT:** And as a result of having had a
18 brother-in-law who has been the victim of a charge of
19 armed robbery -- or not a vic- -- yes, a victim in
20 connection with somebody else being charged with armed
21 robbery, can you be fair and impartial to both the
22 State and the defendant in light of the charges that
23 this defendant faces?

24 **MS. WHITLOCK:** I believe so.

25 **THE COURT:** All right. So we don't have any

1 equivocation, because we're trying to ensure a fair
2 and an impartial trial for everybody who comes into
3 Court, are you certain you cannot hold anything
4 against this defendant or are you concerned that you
5 may end up feeling one way because this happened to a
6 brother-in-law?

7 **MS. WHITLOCK:** I can be fair.

8 **THE COURT:** All right, very good. Thank you,
9 ma'am. You may be seated, Ms. Whitlock.

10 The gentleman -- my Clerk advised me that the
11 gentleman next to you, it appeared he was getting
12 ready to stand on the prior question.

13 **MR. WILSON:** Yes, I was. I'm employed at
14 H.T.C.

15 **THE COURT:** Your name is what?

16 **MR. WILSON:** Harris Wilson.

17 **THE COURT:** Let me find you. Just a second,
18 Mr. Wilson.

19 All right, sir. Yes, sir, Mr. Wilson.

20 **MR. WILSON:** And I recall you announcing a
21 Russell Jordan, security with H.T.C. I know Russell
22 Jordan.

23 **THE COURT:** All right, sir, and as a result of
24 your having knowledge of Russell Jordan because you
25 both work for the Horry County Telephone Cooperative,

1 can you be fair and impartial to both sides in
2 connection with the trial of this case?

3 MR. WILSON: Yes, I can.

4 THE COURT: Thank you, Mr. Wilson.

5 Yes, ma'am, your name?

6 MS. HOMSLEY: Susan Homsley, 183.

7 THE COURT: Yes, ma'am, Ms. Homsley. Is it a
8 situation where someone has died as a result of murder
9 type charges, or is it a robbery type situation?

10 MS. HOMSLEY: I have been robbed twice.

11 THE COURT: All right, and as a result, Ms.
12 Homsley, of your having been the victim of a robbery
13 on two occasions, do you feel that you can be fair and
14 impartial to both sides in connection with the trial
15 of this case?

16 MS. HOMSLEY: Yes.

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

18 All right, yes, ma'am, your name first.

19 MS. SOMMER: My name is Linda Sommer and I'm
20 343.

21 THE COURT: Yes, Ms. Sommer, what is your
22 situation?

23 MS. SOMMER: Okay, you said about being
24 charged, but I've had a couple of things. My brother
25 was hit off the road and died that way and they never

1 caught the guy.

2 THE COURT: All right, so your brother, from
3 what you are telling me, would have been walking along
4 the edge of the road ---

5 MS. SOMMER: He was driving.

6 THE COURT: He was driving, and he was struck
7 by another vehicle?

8 MS. SOMMER: Uh-huh (Affirmative response).

9 THE COURT: That vehicle fled and there's
10 never been any determination as to who that was?

11 MS. SOMMER: Right.

12 THE COURT: All right.

13 MS. SOMMER: And also, when I was a teenager,
14 my house was broken into, you know, and when I came
15 home, I had to go across the street to a neighbor, and
16 my house got broke into, into the garage -- through
17 the garage.

18 THE COURT: All right, and as a result as your
19 having had those things happen with respect to you,
20 can you be fair and impartial to the State and the
21 defendant as to the crimes that have been charged
22 against him?

23 MS. SOMMER: I would say I probably couldn't.

24 THE COURT: That is fine. I need for you to
25 honestly say you couldn't if you cannot, in fact, be

1 that way. All right, Ms. Sommer, I am going to excuse
2 you from any service on this trial. You will need to
3 call back after six o'clock like the other jurors
4 would, but I will excuse you at this time.

5 MS. SOMMER: Okay. I need to call back after
6 six?

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

8 All right, yes, ma'am.

9 MS. BREDEKAMP: Margaret Bredekamp, Juror
10 Number 45.

11 THE COURT: Yes, ma'am. Is yours a situation
12 where someone has died or is yours a situation where
13 something has been taken from you?

14 MS. BREDEKAMP: Died.

15 THE COURT: All right, and who was that?

16 MS. BREDEKAMP: My sister three years ago in a
17 domestic violence situation. She killed someone in
18 self-defense.

19 THE COURT: All right, and so your sister was
20 the one who was the -- you say the victim. She ended
21 up killing someone and it was found to be justifiable
22 as a result of the circumstances that existed at that
23 time?

24 MS. BREDEKAMP: That's right.

25 THE COURT: All right, and as a result of

1 that having happened and your being aware of that, can
2 you be fair and impartial to the State of South
3 Carolina and to the defendant, Mr. Bennett, as these
4 charges are being presented for consideration by the
5 jury?

6 MS. BREDEKAMP: I do think I can.

7 THE COURT: You can?

8 MS. BREDEKAMP: I think I can.

9 THE COURT: All right. Are you sure you can?

10 MS. BREDEKAMP: Oh, I'm sure.

11 THE COURT: Thank you so much. I appreciate
12 it.

13 Yes, ma'am, your name and number?

14 MS. ANDERSON: Tamara Anderson, Number 9.

15 THE COURT: Is yours as a result of someone
16 having died or something being stolen?

17 MS. ANDERSON: Well, one of them is -- we were
18 robbed twice in a week when I was a teenager.

19 THE COURT: All right.

20 MS. ANDERSON: And a few years ago, my aunt
21 died and the police weren't -- they couldn't really
22 determine if she was pushed down a flight of steps or
23 if she fell down them herself.

24 THE COURT: And so there were circumstances
25 that just were not clear as to whether it was an

1 accident or it was an intentional situation?

2 MS. ANDERSON: Yes.

3 THE COURT: And with that and with your having
4 been a victim a couple of times as a teenager when
5 someone broke in, can you be fair and impartial to
6 both the State and the defendant in connection with
7 these trials?

8 MS. ANDERSON: Yes, sir.

9 THE COURT: Thank you, ma'am. You may be
10 seated.

11 Ladies and gentlemen of the jury panel, is
12 there any among you for any reasons, whether they be
13 religious or moral, or for any reason whatsoever who
14 feel that they cannot simply sit and listen to the
15 testimony that is going to be presented to you, review
16 any documentary evidence that is admitted into the
17 trial of this case, listen to the instructions that I
18 will give you as to the law that you should apply to
19 the facts as you find them and not be able to give the
20 State of South Carolina, as well as the defendant, a
21 fair and impartial trial in this case?

22 If there's anybody who's got any problems
23 whatsoever doing that, if you would please stand at
24 this time. (No response.) Thank you. Let the record
25 reflect that no one stood.

1 Are there any further inquiries the State
2 would like for me to make?

3 **MR. KODMAN:** No, sir, Your Honor.

4 **THE COURT:** Any further inquiries the Defense
5 would like?

6 **MR. GARDNER:** No, Your Honor.

7 **THE COURT:** Now, ladies and gentlemen, as you
8 are aware, your names were randomly drawn and they
9 were placed on these sheets that I am holding, and if
10 we had been conducting the jury selection back earlier
11 in the day, you would have come forward in that same
12 order, and so what we're going to do at this time is
13 we're going to have you come forward just as your
14 names had been drawn on that occasion and ask that you
15 come up to where the podium is there and simply turn
16 around, and then the State will tell us first as to
17 whether they are going to accept you or excuse you in
18 connection with the trial of this case, and then after
19 the State makes its decision, then the Defense will
20 have a like opportunity as well.

21 You will either be invited to sit in the jury
22 box or you will be invited to sit back with the other
23 members of the jury panel.

24 As I told you earlier, do not get mad with
25 anyone and get your feelings hurt if you are or are

1 not chosen in connection with the trial of this case.

2 Thank you, ma'am.

3 THE CLERK: Elizabeth Thornal.

4 What say the State?

5 MR. KODMAN: Please present the juror.

6 THE CLERK: The Defense?

7 MR. GARDNER: Please excuse this juror from
8 this case, Your Honor.

9 THE CLERK: You're excused from the trial of
10 this case.

11 Lynn Bost.

12 What say the State?

13 MR. KODMAN: Please present the juror.

14 THE CLERK: The Defense?

15 MR. GARDNER: Please excuse this juror from
16 this case, Your Honor.

17 THE CLERK: You're excused from the trial of
18 this case.

19 Stacey Willette.

20 What say the State?

21 MR. KODMAN: Please present the juror.

22 THE CLERK: The Defense?

23 MR. GARDNER: Swear the juror, Your Honor.

24 THE CLERK: Please have a seat in the jury
25 box.

1 William J. Evans, Jr.

2 What say the State?

3 MR. KODMAN: Please present the juror.

4 THE CLERK: The Defense?

5 MR. GARDNER: Please excuse this juror, Your
6 Honor.

7 THE CLERK: You're excused from the trial of
8 this case.

9 Gwendolyn Simmons.

10 What say the State?

11 MR. KODMAN: Please excuse the juror from this
12 case.

13 THE CLERK: You're excused from the trial of
14 this case.

15 Number 9, Tamara Anderson.

16 What say the State?

17 MR. KODMAN: Please present the juror.

18 THE CLERK: The Defense?

19 MR. GARDNER: Please excuse this juror, Your
20 Honor.

21 THE CLERK: You're excused from the trial of
22 this case.

23 Number 61, Rudy Calciano.

24 What say the State?

25 MR. KODMAN: Please excuse the juror from the

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1 trial of this case.

2 THE CLERK: You're excused from the trial of
3 this case.

4 Number 13, Cecila Avila.

5 What say the State?

6 MR. KODMAN: Please present the juror.

7 THE CLERK: The Defense?

8 MR. GARDNER: Swear the juror, Your Honor.

9 THE CLERK: Please have a seat in the jury
10 box.

11 Number 204, Savirini Johnson.

12 What say the State?

13 MR. KODMAN: Please present the juror.

14 THE CLERK: The Defense?

15 MR. GARDNER: Swear the juror, Your Honor.

16 THE CLERK: Please have a seat in the jury
17 box.

18 Number 49, Christine Brown.

19 What say the State?

20 MR. KODMAN: Please present the juror.

21 THE CLERK: The Defense?

22 MR. GARDNER: Swear the juror, Your Honor.

23 THE CLERK: Please have a seat in the jury
24 box.

25 Number 45, Margaret Bredekamp.

1 What say the State?

2 **MR. KODMAN:** Please present the juror.

3 **THE CLERK:** The Defense?

4 **MR. GARDNER:** Swear the juror, Your Honor.

5 **THE CLERK:** Please have a seat in the jury
6 box.

7 Number 196, Todd Jezierski.

8 What say the State?

9 **MR. KODMAN:** Please excuse the juror from the
10 trial of this case.

11 **THE CLERK:** You're excused from the trial of
12 this case.

13 Number 183, Susan Homsley.

14 What say the State?

15 **MR. KODMAN:** Please present the juror.

16 **THE CLERK:** The Defense?

17 **MR. GARDNER:** Please excuse this juror, Your
18 Honor.

19 **THE CLERK:** You're excused from the trial of
20 this case.

21 Number 228, Rosetta Leonard.

22 What say the State?

23 **MR. KODMAN:** Please present the juror.

24 **THE CLERK:** The Defense?

25 **MR. GARDNER:** Swear the juror, Your Honor.

JURY SELECTION

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1 THE CLERK: Please have a seat in the jury
2 box.

3 Number 329, Kim Shimonis.

4 What say the State?

5 MR. KODMAN: Please present the juror.

6 THE CLERK: The Defense?

7 MR. GARDNER: Swear the juror, Your Honor.

8 THE CLERK: Please have a seat in the jury
9 box.

10 Number 276, Marilyn Olds.

11 What say the State?

12 MR. KODMAN: Please present the juror.

13 THE CLERK: The Defense?

14 MR. GARDNER: Please excuse this juror, Your
15 Honor.

16 THE CLERK: You're excused from the trial of
17 this case.

18 Number 289, Emily Perritt.

19 What say the State?

20 MR. KODMAN: Please present the juror.

21 THE CLERK: The Defense?

22 MR. GARDNER: Swear the juror, Your Honor.

23 THE CLERK: Please have a seat in the jury
24 box.

25 Number 383, Kelly Whitlock.

1 What say the State?

2 MR. KODMAN: Please present the juror.

3 THE CLERK: The Defense?

4 MR. GARDNER: Please excuse the juror.

5 THE CLERK: You're excused from the trial of
6 this case.

7 Number 130, Melodie Fowler.

8 What say the State?

9 MR. KODMAN: Please present the juror.

10 THE CLERK: The Defense?

11 MR. GARDNER: Swear the juror, Your Honor.

12 THE CLERK: Please have a seat in the jury
13 box.

14 Number 74, Marilyn Christopher.

15 What say the State?

16 MR. KODMAN: Please present the juror.

17 THE CLERK: The Defense?

18 MR. GARDNER: Please excuse this juror, Your
19 Honor.

20 THE CLERK: You're excused from the trial of
21 this case.

22 Number 211, Wendy Jordan.

23 What say the State?

24 MR. KODMAN: Please present the juror.

25 THE CLERK: The Defense?

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1 MR. GARDNER: Can I have one moment, Your
2 Honor?

3 THE COURT: Yes.

4 MR. GARDNER: Swear the juror, Your Honor.

5 THE CLERK: Please have a seat in the jury
6 box.

7 Number 109, Laura Eason.

8 What say the State?

9 MR. KODMAN: Please present the juror.

10 THE CLERK: The Defense?

11 MR. GARDNER: Please excuse this juror, Your
12 Honor.

13 THE CLERK: You're excused from the trial of
14 this case.

15 Number 149, Frank Goodwin.

16 What say the State?

17 MR. KODMAN: Please present the juror.

18 THE CLERK: The Defense?

19 MR. GARDNER: Swear the juror, Your Honor.

20 THE CLERK: Please have a seat in the jury
21 box.

22 Number 318, Willie Ross.

23 What say the State?

24 MR. KODMAN: Please present the juror.

25 THE CLERK: The Defense?

1 **MR. GARDNER:** Please excuse this juror, Your
2 Honor.

3 **THE CLERK:** You're excused from the trial of
4 this case.

5 Number 151, Orian Graham.

6 What say the State?

7 **MR. KODMAN:** Please present the juror.

8 **THE CLERK:** The Defense?

9 **MR. GARDNER:** Swear the juror, Your Honor.

10 **THE CLERK:** Please have a seat in the jury
11 box.

12 How many alternates?

13 **THE COURT:** One.

14 **THE CLERK:** Number 56, Paul Bullard.

15 What say the State?

16 **MR. KODMAN:** Please present the juror.

17 **THE CLERK:** The Defense?

18 **MR. GARDNER:** Swear the juror, Your Honor.

19 **THE CLERK:** Please have a seat in the
20 alternate chair.

21 **THE COURT:** Any motions by the State
22 relating to the selection and constitution of the
23 jury?

24 **MR. KODMAN:** No, Your Honor.

25 **THE COURT:** By the Defense?

REMARKS BY THE COURT

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1 MR. GARDNER: No, Your Honor.

2 THE COURT: Thank you very much.

3 Ladies and gentlemen, those of you who have
4 not been selected as members of this jury panel, I am
5 going to release you at this time. My request once
6 again is that you call back after six o'clock tonight.
7 There will be a message on the answering machine for
8 you.

9 That message may tell you to call back
10 tomorrow after six or it may tell you to call back
11 some earlier time, so please listen to what the
12 message is rather than assuming that the message is
13 going to be something.

14 I also want to caution you, if you call
15 tonight and there is a message on there that says that
16 the jury has been released for the week, don't accept
17 that as the gospel.

18 Sometimes we make mistakes and these messages
19 get picked up from last week when the jury has been
20 released and the message doesn't get cleared and a new
21 one put on, so if by chance that message actually said
22 tonight we wouldn't need you any further, please call
23 the Clerk's Office tomorrow because I think that would
24 obviously be a mistake, so I just bring that to your
25 attention.

1 The reason I had said that, I'm trying to
2 think -- I was somewhere and they told me that that
3 had happened, and I can't remember where it was, so
4 all of a sudden they got ready to draw a jury the next
5 day and there was no jury to be found because that had
6 happened. The prior week's message was left on there,
7 so just -- if there's no message or it says that
8 you're no longer needed, please call the Clerk's
9 Office tomorrow to get a verification on that. I
10 expect the message would be "Please call back tomorrow
11 after six o'clock."

12 Thank you. I'll excuse you now. If you will,
13 if you will give your button back to the Deputy as you
14 leave, we will appreciate that. It will save the
15 county some money in the event we inadvertently lose
16 those buttons.

17 Thank you. Y'all have a good afternoon and
18 I'll look to see you later in the week.

19 (Whereupon, the jury panel is excused for the
20 day.)

21 **THE COURT:** Ladies and gentlemen, the trial of
22 a case is divided with respect to all cases into
23 several parts. After you have been selected and
24 brought together as a jury, the State and the
25 defendant each have a chance to address you about what

1 they believe the evidence is going to show you.

2 That is not evidence. It is their thought
3 process of what they believe the evidence will
4 establish. The evidence will, of course, come from
5 the witnesses who are placed under oath and take the
6 witness stand and give you testimony.

7 The evidence also comes from the exhibits, the
8 documents, that type evidence that is introduced in
9 the trial of the case, that evidence which I actually
10 allow to be admitted as an exhibit. That constitutes
11 evidence.

12 Objections by the attorneys, that is not
13 evidence. My ruling on it is not evidence. If I give
14 you an instruction about something telling you to
15 disregard it or you may accept it type instruction,
16 then, of course, you would follow that instruction,
17 but what you base your decision on is the testimony
18 from the witnesses and the exhibits that are marked
19 and become a part of the trial record.

20 You are here for the sole purpose of being
21 fair and impartial to both sides, to listen to the
22 testimony that actually is presented to you and to
23 then determine, following that, as to whether or not
24 the State has established that the defendant is guilty
25 beyond a reasonable doubt.

1 Now, as a part of the process that I want us
2 to undertake before we actually get much further is
3 the selection of someone to serve as your foreperson.
4 The foreperson has certain responsibilities that they
5 are obligated to undertake. They do not get any extra
6 votes, but they do have certain responsibilities.

7 The foreperson is responsible to ensure that
8 back in the jury room that there is no premature
9 discussion of the case, no early deliberations because
10 it is never proper to begin discussing a witness's
11 testimony or the lack of evidence or what does this
12 evidence mean until the case has been concluded and I
13 have given you your legal instructions because the
14 case, in a way, flows and evidence is provided to you
15 about what took place on this event, so it would be
16 improper to begin analyzing what evidence might mean
17 until you had all of the evidence in the record so
18 that foreperson ensures that you do not inadvertently
19 begin discussing the testimony.

20 On the other hand, the foreperson has the
21 responsibility to ensure at such time that it is
22 proper to discuss the testimony after I've given you
23 your legal instructions, after all the evidence has
24 been put in and the documents have been sent to you
25 and you've got the verdict form in there, then you'll

1 know that it's time to discuss it.

2 The foreperson ensures that everybody has an
3 equal opportunity, a full opportunity, to offer such
4 view as they have as to the case, so the foreperson
5 ensures that there is no premature airing of the
6 issues and also ensures that there is a full airing of
7 the issues that everybody that wants to participate
8 and have input.

9 The foreperson has the responsibility of
10 communicating with us. If there's a problem with
11 hearing what's going on, if you're burning up, if
12 you're freezing to death, if the coffee is stale or
13 the cookies are flat, you let us know and we'll make
14 arrangements to get that fresh coffee and that fresh
15 soft drink to you.

16 The foreperson also has the responsibility for
17 signing the verdict form, after the jury has reached a
18 unanimous verdict, all twelve agree on what that
19 verdict is, then the foreperson has the responsibility
20 of signing that verdict on behalf of the entire jury
21 and presenting it on their behalf to the Clerk who
22 will bring it to me for my review prior to announcing
23 it.

24 You have been back for some hour, hour and
25 fifteen minutes right now, and I am going to ask that

1 you step to your jury room, the bailiff will show you
2 where to go, and ask that after you have a chance to
3 powder your noses, that you select one from among your
4 number to be your foreperson.

5 Now, the only one who would not be entitled to
6 be the foreperson would be Mr. Bullard. He is the
7 alternate in connection with this case and, therefore,
8 he has the job of coming on board in the event that
9 some health or other problem would have to cause one
10 of the first twelve to be dismissed, but he also is
11 just as responsible as y'all are for listening to all
12 of the testimony and keeping up with everything
13 because you don't ever know when something may
14 inadvertently happen to a member of the jury, to one
15 of the first twelve, and the alternate have to step in
16 and take over that spot.

17 Generally, the foreperson occupies this first
18 seat here, so that's the alternates seat at all times,
19 and the foreperson will be the first row seat where
20 the gentleman in the striped shirt is located. That
21 would be Mr. Graham.

22 I have held Court in this Courthouse before.
23 This is my first time in this Courtroom. I have on
24 previous occasions been next door in that Courtroom.
25 It is certainly a nice facility and one of my favorite

1 to come to. However, we're so early in the game since
2 it just opened up in June, that I have not gotten used
3 yet to which of the seats are for the foreman and the
4 alternate, so that is the reason I've got to ask the
5 question.

6 If you would, if you'd step back to your jury
7 room for just a moment, get a chance to step to the
8 restroom, and then when you have selected your
9 foreperson, please write that down on a piece of paper
10 and knock on the door and let the bailiff know about
11 it so he can bring us that information.

12 THE ALTERNATE JUROR: Can I vote on the
13 foreman as well?

14 THE COURT: You would not be participating in
15 any votes unless you actually get picked to be one of
16 the twelve that sit on a trial, but that's a good
17 question.

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE
19 PRESENCE OF THE JURY.)

20 THE COURT: Anything from the State?

21 MR. KODMAN: If we could just approach for
22 some scheduling matters?

23 THE COURT: Absolutely.

24 (A Bench conference was held in the presence,
25 but out of the hearing, of the Court Reporter.)

1 **THE COURT:** All right, we'll be on break for
2 about five minutes.

3 (OFF THE RECORD)

4 **ON THE RECORD**

5 **THE COURT:** All right, any objection if we
6 bring the jury in?

7 **MR. KODMAN:** No, Your Honor.

8 **THE COURT:** And how about the Defense?

9 **MR. GARDNER:** No, Your Honor. I -- I guess
10 I'll put on the record what -- those four witnesses I
11 added on there, two of them are members of the Horry
12 County Police Department. One, I believe, is already
13 gone, Todd Leath, and I'll try to get word to them
14 to -- that they're sequestered and they're potential
15 witnesses.

16 **THE COURT:** All right.

17 It is my understanding that it's Mr. Graham
18 who is the foreperson?

19 **BAILIFF GORE:** Yes, sir.

20 **THE COURT:** Mr. Graham, the gentleman in the
21 striped shirt who was in the foreperson's seat will
22 remain in that capacity.

23 All right, if you'll bring us the jury.

24 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF**
25 **THE JURY.)**

1 **THE COURT:** Mr. Graham, I am advised that you
2 did not get to move, that you have been selected as
3 the members of your jury to serve as the foreman and
4 we appreciate that.

5 Ladies and gentlemen, as I had indicated to
6 you, the case is going to proceed through the
7 introduction of the testimony of witnesses after the
8 attorneys have had a chance to talk with you in their
9 opening remarks about their view of the case and what
10 they believe the evidence will establish, and that
11 their discussion with you is not evidence in the case,
12 but the evidence upon which you will reach your
13 decision is the testimony and the exhibits that are
14 marked as a part of the trial.

15 In connection with the presentation of this
16 case, the State bears the burden of proving the
17 defendant guilty as to each charge, as to each
18 indictment, by proof that convinces you beyond a
19 reasonable doubt of that defendant's guilt.

20 The defendant is never required to prove their
21 innocence. There is a presumption of innocence that
22 remains with a defendant from the time that they have
23 been charged throughout the trial of the case, and
24 that presumption of innocence stays with each and
25 every defendant until such time as you, the jury, have

1 been convinced beyond -- by evidence that convinces
2 you beyond a reasonable doubt that the defendant is,
3 in fact, guilty.

4 The defendant doesn't have to prove guilt
5 (sic). The burden is on the State to prove the
6 necessary elements of the charges contained in the
7 indictments. In this particular case, the State has
8 charged the defendant with the crime of murder. They
9 have charged that this defendant did while here in
10 Horry County on or about May 23 in the year 2000
11 wilfully, feloniously, and intentionally with malice
12 aforethought kill one Eva Marie Martin by cutting her
13 throat with a knife and that she did die as a
14 proximate result of these injuries that she received
15 here in Horry County on or about that date.

16 I will give you much more detailed
17 instructions following the presentation of the
18 evidence, but in general, I want to let you know that
19 murder is defined as the killing of any person with
20 malice aforethought. In order for the State to prove
21 the defendant guilty of murder, it must be proved
22 beyond a reasonable doubt that the defendant did kill
23 a person and that the killing was done with malice
24 aforethought. The State is not required to prove any
25 motive for the killing. The State must prove that the

1 defendant did kill another person with malice
2 aforethought.

3 Now, malice is the intentional doing of a
4 wrongful act without just cause or excuse and with the
5 intent to inflict injury. Malice aforethought is the
6 deliberate and well-informed purpose to do the
7 unlawful act. Malice is also defined as being hatred
8 or ill will. It's wrongful intent to injure another
9 person. It indicates a wicked or a depraved spirit
10 intent on doing wrong. It's a legal term implying
11 wickedness and excluding a just cause or excuse.

12 The term "malice" indicates a formed purpose
13 and a design to do a wrongful act under the
14 circumstances that exclude any legal right to do it.

15 Aforethought means that the intention to do
16 the unlawful act was conceived or planned sometime
17 before the actual commission of the unlawful act. The
18 malice need not exist for any particular length of
19 time prior to the killing.

20 In addition to being charged with murder, the
21 defendant is charged with armed robbery. The
22 defendant is charged with violating Section 16-11-
23 330(a). It is alleged that here in Horry County on or
24 about the 23rd day of May 2000 while armed with a
25 deadly weapon, that being a knife, that the defendant

1 did take and carry away personal property from or in
2 the immediate presence of Eva Marie Martin with the
3 intent to deprive her of possession by use of force,
4 threats, or intimidation in violation of that Code
5 Section.

6 Now, Section 16-11-330(a) of our Code of Laws
7 states that any per- -- states that a person who
8 commits robbery while armed with a pistol, a dirk, a
9 slingshot, metal knuckles, razor, or other deadly
10 weapon, or while alleging either by action or words,
11 that they are armed while using a representation of a
12 deadly weapon or any object which a person present
13 during the commission of the robbery reasonably
14 believed to be a deadly weapon is guilty of a felony.

15 The State has the burden of proving the
16 defendant's guilt beyond a reasonable doubt as to
17 these two charges. It will be done by -- in part by
18 the testimony of witnesses and part by exhibits.

19 Now, as the witnesses come forward and
20 testify, you, as members of the jury, you have the
21 obligation and the responsibility to analyze and to
22 determine the credibility or the believability of the
23 witnesses who will testify to you.

24 You can believe part of what a witness
25 testifies to and disbelieve part of what a witness

1 testifies to. You can believe a witness's testimony
2 in full or reject it in full if you have a sufficient
3 reason to do so.

4 You may consider whether or not any witness
5 has exhibited to you any bias or any prejudice or any
6 other improper motive in the case that may cause them
7 to testify the way that they did.

8 You may consider whether or not a witness's
9 testimony is strengthened or weakened by other
10 testimony and evidence that is introduced during the
11 trial of the case.

12 You may consider the demeanor, the appearance,
13 of the witness as they testify on the witness stand,
14 and you, of course, may consider the opportunity for
15 the witness to have the knowledge about which they are
16 actually testifying to, what was their position in
17 connection with the testimony that they're going to
18 offer, such as if a witness were testifying in a case
19 about who ran a red light, were they in a position to
20 even see what color the light was. You have to
21 consider these types of things when you are evaluating
22 the credibility or the believe of the witnesses.

23 That job is solely up to you, so of necessity,
24 ladies and gentlemen, you may pay close attention to
25 these witnesses who are testifying, so if you find

1 yourself becoming somewhat drowsy, if your ability to
2 follow what is going on is being affected and you need
3 to stand up or stretch, or go back to the jury room
4 for a minute, please let me know that because it is
5 most important to both the State and to the defendant
6 that you listen attentively and closely and with your
7 ears, and your eyes, and your mind wide open to hear
8 and evaluate the testimony that is going to come in
9 through the trial of this case, so if you're having
10 any difficulty hearing anyone or if you need to take a
11 break, please let me know because it is most important
12 that you listen to all of the testimony and evaluate
13 all of the testimony that is presented to you.

14 After the testimony comes in, the attorneys
15 will have a chance to address you in their closing
16 remarks or their closing arguments. That, again, is
17 not evidence in the case. That is their summation of
18 what they believe has been established by the
19 testimony that has come in during the trial of the
20 case, and then finally, ladies and gentlemen, I will
21 instruct you as to the law that you are to apply to
22 the facts as you find them, because you, ladies and
23 gentlemen, you alone are the fact-finders in this
24 case.

25 You must determine what happened on this

1 occasion, and as you make that determination, you will
2 apply the law as I give it to you to those facts and
3 then you will reach your verdict.

4 Your verdict is designed to speak the truth as
5 to the issue that is going to be presented to you
6 during the trial of this case. You have no friends to
7 reward. You have no enemies to punish. You are
8 simply to evaluate this testimony and speak the truth
9 with the verdict that you render as to the guilt or
10 the innocence of this defendant who has been charged.

11 The State has, again, the obligation to prove
12 guilt beyond a reasonable doubt to the satisfaction of
13 each and every member of a jury before the defendant
14 can be found guilty.

15 Now, ladies and gentlemen, every time a
16 witness comes forward to testify, they are going to be
17 placed under oath, and while there was a general oath
18 that you took prior to my questioning you this morning
19 as to your qualifications, there is a specific oath
20 that you undertake and an obligation that you
21 undertake with respect to your serving as actual
22 jurors in this case, and I'm now going to ask the
23 Clerk if she'll administer your oath to you.

24 **THE CLERK:** Please stand and raise your right
25 hand.

1 (Whereupon, the jurors are placed under oath
2 by the Clerk.)

3 **THE COURT:** Thank you very much.

4 Mr. Kodman.

5 **MR. KODMAN:** May it please the Court, Your
6 Honor.

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

8 **MR. KODMAN:** Good afternoon, ladies and
9 gentlemen of the jury. My name is Steve Kodman. I
10 know I met you earlier this morning. I work for the
11 Solicitor's Office here in Horry County, and I've been
12 assigned to prosecute a case of State versus Gary
13 Bennett.

14 Mr. Bennett is charged with two crimes. He's
15 charged with the crime of murder and with the crime of
16 armed robbery. Now, on May 23rd of 2000, the victim
17 in this case, Eva Marie Martin, her day started out
18 much like most of her days probably started out. She
19 got up in the morning. She went to go to work. She
20 let the defendant, his then girlfriend, and their
21 daughter borrow her car that morning. She worked at
22 Taco Bell down in Surfside, and then late at the end
23 of the day when she got off work, she gave the
24 defendant a ride home.

25 After that point is where her day was not so

1 normal any more because later that evening, the
2 defendant, along with a co-defendant, Andrew Lindsay,
3 paid the victim a visit at her house. You're going to
4 hear testimony from Andrew Lindsay, who is also
5 charged with murder in this case, he's going to tell
6 you about what happened when he and the defendant went
7 to the victim's house. He's going to tell you how the
8 defendant acted prior to going there. He's going to
9 tell you about the defendant's actions while they were
10 there, and he will tell you about the defendant's
11 actions after he left there.

12 Now, I'm going to be up front with you. What
13 are you not going to hear? We don't have any physical
14 evidence in this case. You're not going to have any.
15 Does that mean the police didn't do their job in this
16 case? No, it doesn't. Was physical evidence
17 gathered? Yes, it was, but not in every case does
18 physical evidence lead to suspects.

19 What we do have in this case is an eye
20 witness, the co-defendant, Andrew Lindsay, and I'll
21 also tell you up front that Andrew Lindsay is no model
22 citizen. You and I probably would not invite Andrew
23 Lindsay over for dinner at our house tonight.

24 It's your job, as the Judge is going to tell
25 you, to judge the credibility and believability of

1 witnesses. When Mr. Lindsay testifies, you'll have a
2 chance to listen to his testimony, and I ask that you
3 listen very carefully to what he says, and you all
4 judge what to believe and what not to believe.

5 This case is not going to be a long case. The
6 charges are very serious. The case is very important
7 to the defendant, to the victim's family, and to the
8 State of South Carolina, so I want to tell you up
9 front just because the case is not going to be a long
10 case, please don't let that diminish the importance of
11 how the case is going to be.

12 Now, the Judge told you you all are the judges
13 of the facts. When someone testifies, you have to
14 determine what happened in this case. That's your
15 role.

16 The Judge is the judge of the law. From time
17 to time throughout the trial, he may make a legal
18 ruling when one of the lawyers gets up and says
19 something and that's his job, and at the end of the
20 case, he's going to give you what's known as a charge
21 where he's going to say, "Ladies and gentlemen of the
22 jury, here's what the law says. Take this and apply
23 it to what you found to be the evidence in this case
24 and come back with a verdict," and at the end of this
25 case, we're going to ask that you return a verdict

1 that speaks the truth. Thank you.

2 THE COURT: Mr. Gardner.

3 MR. GARDNER: May Your Honor please.

4 Mr. Foreman and ladies and gentlemen of the
5 jury, number one, let me get this out in the open.
6 Gary Bennett is not guilty of these two charges.

7 Now, the Solicitor, I agree with almost
8 everything that he said, the way the day started out,
9 right up to him being taken home, and he sympathizes
10 with the death, this horrible death, but he disagrees
11 with the Solicitor he had anything to do with it.

12 From there on out, we disagree with the way
13 the night unfolded. In fact, his position is that he
14 never went there until he ---

15 MR. KODMAN: Objection, Your Honor, as to what
16 -- unless he's going to say the defendant is planning
17 on taking the stand.

18 THE COURT: Sustained.

19 MR. GARDNER: Very well. I agree with
20 everything he said up until he started talking about
21 the knife, and then that's where we disagree. I
22 believe that's what he pointed out, so I agree that we
23 disagree there.

24 I agree with what he said about the law, and I
25 agree that this is going to be a short, but very

1 serious case, and I agree that it's going to hinge on
2 the credibility of the witnesses.

3 The Judge gave us a good overview of the law
4 and he addressed credibility and believability, and
5 that's the people that are going to get on the witness
6 stand.

7 I don't know what kind of exhibits we are
8 going to see, but that will be evidence as well, and
9 the most crucial evidence, that will be the people
10 that get on the witness stand and what they see.

11 Now, the way you evaluate that is the way you
12 evaluate everything in your everyday life. You look
13 at them and you judge them; does it make sense what
14 they're saying, have they got anything to gain from
15 what they're saying? Do I believe what they're
16 saying?

17 And the Judge said you can believe something
18 that somebody said, all of something that somebody
19 said, or none of something somebody said.

20 I know the Judge covered this this morning. I
21 know he covered it a while ago, but I think it's very
22 important and I want to touch on a little bit of a
23 different aspect of it.

24 There's two different types of Court. There's
25 Civil Court and Criminal Court. It's so important to

1 keep that in mind because not only are the rules
2 different with what we do, the burden of proof is
3 different. The Judge alluded to it this morning,
4 tilting the scales. I couldn't see what he was doing
5 because I was around in the corner over there, but I
6 have heard some Judges and some of the older lawyers
7 refer to the civil cases because of the burden of
8 proof is what they call the preponderance of the
9 evidence, and if everybody has seen the scales on T.V.
10 and what that means, if you put all of one side's on
11 and all of the other side's on and tilt it just ever
12 so slightly, that side would win.

13 Well, in a criminal case, the burden of proof
14 is much, much, much higher than that. It's beyond a
15 reasonable doubt, and the Judge told you what that
16 meant earlier today and he'll tell you again at the
17 end of the case.

18 I'm going to sit down now, but I'm going to
19 ask you to look at the character, the credibility, and
20 the believability of some of the witnesses the State
21 puts up. We don't have to prove anything, as the
22 Judge told you, and you can imagine, if you thought
23 about it, there may be a case where a defendant was
24 absolutely innocent, but could not for whatever reason
25 prove that he was innocent.

1 That's why in the United States we don't have
2 that you have to prove that you're innocent, prove
3 that you're not guilty. The State has that high
4 burden of proof and in this case, they're not going to
5 do it. Thank you for your attention.

6 **THE COURT:** Thank you, Mr. Gardner.
7 Mr. Kodman.

8 **MR. KODMAN:** If I may have the Court's
9 indulgence.

10 **THE COURT:** Mr. Foreman and members of the
11 jury, as you can tell, there were twenty names I think
12 I went over with you as possible witnesses, and I have
13 made a decision to sequester the witnesses, which
14 means that those witnesses stay outside of the
15 Courtroom and they only come in for purposes of
16 offering testimony at such time as they are called,
17 and, therefore, they are being held somewhere, so
18 there will be a short time lag between getting one
19 witness up and down and getting the next witness out
20 of the room in which the witnesses have been kept for
21 purposes of trial, so don't think we don't totally
22 know what we're doing because we've got this little
23 delay. It's just of necessity that we house the
24 witnesses in that fashion and that there be some
25 little bit of time taken to get the witnesses back and

1 forth.

2 **MR. KODMAN:** Thank you, Your Honor.

3 Sharon Davis.

4 (Whereupon, State's Exhibit 1 [Diagram of
5 mobile home] is marked for identification.)

6 **SHARON DAVIS**, being first
7 duly sworn by the Clerk, testifies as follows:

8 **THE CLERK:** Please state your name and spell
9 your last for the record.

10 **MS. DAVIS:** Sharon Davis, D A V I S.

11 **DIRECT EXAMINATION**

12 **BY MR. KODMAN:**

13 **Q.** Ms. Davis, where are you employed at?

14 **A.** Verizon.

15 **Q.** And what is your job at Verizon?

16 **A.** Investigator.

17 **Q.** And is part of your duties with investigator
18 to act as custodian of records?

19 **A.** Yes.

20 **Q.** And were you subpoenaed to come here to Court
21 today?

22 **A.** Yes, I was.

23 **Q.** And as part of that subpoena, were you asked
24 to bring some documents from Verizon with you?

25 **A.** Yes.

1 Q. And do you have those with you?

2 A. Yes.

3 Q. And referring to those documents from Verizon,
4 does part of those documents contain a phone
5 call from May 23rd of 2000?

6 A. Yes.

7 Q. And from what phone number was that call made?

8 A. 843-445-9013.

9 Q. And to what residence was that call made?

10 A. 843-365-6633.

11 Q. What time did that call start?

12 A. 20:39.

13 Q. And for those of us who aren't maybe ---

14 A. 8:39 P. M.

15 Q. Thank you, and how long did the call last?

16 A. 83 seconds.

17 Q. And from what address was that -- did that
18 call originate from?

19 A. 3915 Little River Road, Lot 9, in Myrtle
20 Beach, South Carolina.

21 Q. Now, this record that you brought, it only has
22 one call from the 23rd of 2000?

23 A. Right, correct.

24 Q. Does that mean there weren't other local calls
25 placed that day from that phone?

1 A. No.

2 Q. What does that mean?

3 A. It means that at this particular time in 2000
4 when the records were pulled, that was the
5 only call that showed on the records that we
6 keep for ninety days.

7 Q. So is there any way to go back now to look and
8 see if there were other calls placed from that
9 residence that particular day?

10 A. No. Those records are only kept for ninety
11 days.

12 MR. KODMAN: Thank you. Please answer any
13 questions Mr. Gardner may have.

14 THE COURT: Mr. Gardner.

15 MR. GARDNER: Thank you, Your Honor.

16 CROSS EXAMINATION:

17 BY MR. GARDNER:

18 Q. I was with you until that last part and I
19 apologize. What does that mean -- please tell
20 me about the ninety days.

21 A. They're kept in the normal course of business
22 for ninety days, these calls.

23 Q. Okay.

24 A. After that ninety day period, they're no
25 longer available.

1 Q. But you got this one, though?

2 A. Yes. They were pulled in 2000.

3 Q. So they were pulled ---

4 A. They were pulled in 2000, not 2002.

5 Q. Okay, so this one that you just testified was
6 pulled in 2000?

7 A. Yes. They were available.

8 Q. Okay. Maybe I didn't understand what
9 happened. Did -- that was the only one that
10 was pulled in 2000?

11 A. This is the only call that was shown for May
12 23rd, 2000.

13 Q. Okay, so does that mean that it was the only
14 call made for that day?

15 A. No.

16 Q. Okay. What does it mean, then?

17 A. That's the only -- I can't say that's the only
18 call that was made on that day. That's the
19 only call that pulled -- on this call detail
20 record on the day that it was pulled in 2000.

21 Q. Okay. Walk me through this. I don't know how
22 this works. You requested calls from this
23 phone number, is that how it worked?

24 A. Someone requested that Verizon pull records
25 for May 23rd, 2000.

1 Q. Okay.

2 A. It looks like the record was pulled shortly
3 after -- shortly around the first part of
4 June, 2000, ---

5 Q. Okay.

6 A. --- which would have been within the ninety
7 day period the call -- calls would have been
8 available. This is the only call that was --
9 was found.

10 Q. Okay. I'm -- and this is not a trick
11 question. I'm not trying to trick you. I
12 just want to understand. Does that mean --
13 did y'all -- somebody requested the number,
14 and I think you said 445-9013?

15 A. Yes.

16 Q. To pull the calls from that phone number?

17 A. For May 23rd.

18 Q. For that day, May 23rd, and that was done?

19 A. Yes.

20 Q. And there was only one call that came out?

21 A. Right.

22 Q. So back to my original question. Does that
23 mean that there was only one call made that
24 day from that phone number?

25 A. At that particular time that the record was

1 pulled, that's the only call that was shown.

2 Q. Okay. When you say at that particular time,
3 are you talking about 20:39 hours that
4 evening?

5 A. I'm talking about within a ninety day period
6 that the calls are available.

7 Q. Okay, and again, I go back -- if you tried to
8 get the phone calls made from the phone
9 number, 445-9013, within a ninety day period,
10 and I assume that's what you did ---

11 A. Yes.

12 Q. --- and this is what you have?

13 A. Right, this one call.

14 Q. This one call, so I assume that there was only
15 one call made on that day?

16 A. That's all the record shows.

17 Q. Okay. I mean, would it be safe or fair to
18 rely on the records?

19 A. I think so.

20 Q. Okay. I must have been confused all along. I
21 apologize to you.

22 Now, you've said that the phone -- there
23 was a number it was called to, and who was
24 that number to?

25 A. That -- that number is not a Verizon telephone

1 number. It belongs to Horry Telephone
2 Company. We do not have those records.

3 Q. You just have the actual phone number, right?

4 A. Right.

5 Q. You just don't know who it is?

6 A. Right.

7 Q. Okay, and you don't have any information as
8 part of your investigation that Gary Bennett,
9 the fellow sitting over here, he made this
10 call or received this call, or anything like
11 that, right?

12 A. No, we don't know who made the phone call.

13 MR. GARDNER: Okay. Thank you, ma'am.

14 THE COURT: Anything further?

15 REDIRECT EXAMINATION

16 BY MR. KODMAN:

17 Q. Ms. Davis, you didn't pull that back in 2000,
18 did you?

19 A. I didn't. My -- my department pulled it
20 within the time that the calls would have been
21 available.

22 Q. Right, but what I'm asking you is, are you
23 aware of the specific request that was pulled
24 to generate this?

25 A. Calls on May 23rd, 2000?

1 Q. Right. Are you familiar with the request that
2 was made to generate this -- this form?

3 A. I'm not sure what you're asking, sir.

4 Q. You weren't the person who pulled the records?

5 A. No, I was not the person. I'm just bringing
6 them here to Court today.

7 Q. And the record clearly shows a phone call?

8 A. Yes.

9 Q. Does that mean that there were no other calls
10 made from that phone that day?

11 A. No.

12 Q. Would we be able to check and -- check on that
13 now?

14 A. No.

15 Q. Why?

16 A. These calls are only available for ninety
17 days.

18 Q. It's obviously ninety days past May of
19 2000?

20 A. Yes.

21 MR. KODMAN: Thank you.

22 MR. GARDNER: Your Honor, may I have a moment,
23 please? I may have one follow-up redirect -- or
24 recross.

25 (PAUSE)

RECROSS EXAMINATION:

BY MR. GARDNER:

Q. I'm sorry. Either I didn't understand the way that he asked the question, or I didn't understand the answer.

Are we saying that this is the only call that was made from that residence for that day of May 23rd?

A. I can't say if there were other calls. At that time that the record was pulled for that phone number, this is the only call that was shown, on May 23rd, 2000. We can't go back because those records are no longer available.

Q. But when it was available, when it was pulled by whoever that does the records ---

A. Right.

Q. --- and does that stuff, this is the only phone call ---

A. Yes.

Q. --- made for that day of May 23rd?

A. This is the only phone call on that record. I can't say there were other phone calls or not, but for the time period requested for May 23rd, this is the only call that's on our record.

1 Q. Okay. Well, the time period that was
2 requested, was it one day, the time period
3 that was ---

4 A. I don't know.

5 Q. Would that be in your record?

6 A. It would be in my record. I don't have those
7 records.

8 Q. But you have access to those as records
9 custodian, is that correct?

10 A. Yes.

11 Q. And as records custodian, is it your testimony
12 that you would not know what time period it
13 would be -- that be -- would it be for a day,
14 or less than a one day period?

15 A. I do not have the original request here with
16 me.

17 Q. Well, what is the commonplace for these
18 requests for records? Would it be a one day
19 period or a period less than one day?

20 A. It could vary.

21 Q. All right, and even though this was pulled
22 within ninety days, and even though it only
23 has one phone number, is it still your
24 testimony that that does not necessarily mean
25 that there was only one call made?

1 **A.** Correct.

2 **Q.** Okay. Does that necessarily follow it could
3 mean that there was only one call made?

4 **A.** Possible.

5 **MR. GARDNER:** All right, thank you.

6 **THE COURT:** Anything further?

7 **MR. KODMAN:** No, sir, Your Honor, no more
8 questions.

9 **THE COURT:** Thank you. You may step ---

10 **MR. KODMAN:** With the Court's permission and
11 Defense permission, she did come from North Carolina.
12 We would ask that she be excused.

13 **THE COURT:** Any objection?

14 **MR. GARDNER:** No, sir, Your Honor.

15 **THE COURT:** Thank you.

16 Drive safely, Ms. Davis.

17 You may call your next witness.

18 **MR. KODMAN:** They're retrieving her right now,
19 Your Honor.

20 **NATASHA ADAMS HERRICK,**
21 being first duly sworn by the Court, testifies as
22 follows:

23 **THE CLERK:** Would you state your name and
24 spell your last for the record.

25 **MS. HERRICK:** Natasha Adams Herrick,

1 H E R R I C K.

2 DIRECT EXAMINATION:

3 BY MR. KODMAN:

4 Q. Ms. Herrick, what did you go by back in May of
5 2000?

6 A. Natasha Adams.

7 Q. And did you know the victim in this case?

8 A. Yes, I did.

9 Q. How did you know her?

10 A. She was my roommate.

11 Q. And where did you all live?

12 A. On Little River Road.

13 Q. Where on Little River Road?

14 A. In a trailer park.

15 Q. Do you know what lot number or anything?

16 A. C, B; it's fuzzy. I don't recall.

17 Q. Okay, and were you working back in May of
18 2000?

19 A. Yes, I was.

20 Q. Where were you working at?

21 A. At the Pavilion Amusement Park.

22 Q. And your roommate, the victim, where was she
23 working at the time?

24 A. She was the manager at Taco Bell in Surfside.

25 Q. Let's go to May 23rd of 2000. Do you remember

1 seeing the victim that morning?

2 A. No, I did not.

3 Q. What do you remember about that morning?

4 A. I know she was opening the store, and got up
5 earlier. I could hear her getting ready for
6 work, but I was still in bed.

7 Q. Did you work that day?

8 A. Yes, I did.

9 Q. And what hours did you work?

10 A. From six to approximately nine-thirty.

11 Q. And what happened when you got off work?

12 A. I got off of work and went to wait for her to
13 get me. I sat at the Forties Restaurant over
14 across from the Pavilion, and she didn't show,
15 so I tried to call collect quite a few times
16 and got no answer.

17 Q. And what did you do?

18 A. I started to walk, and walked for a little
19 while, and flagged a cab and was picked up,
20 and he took me home.

21 Q. About what time did you get home?

22 A. The best I can recall, about 10:15, 10:30.

23 Q. And what happened when you got to your house?

24 A. Well, I noticed that Marie's car was in the
25 driveway, so I thought she might have been

1 asleep, and when I tried to open the front
2 door, the door itself was unlocked, but
3 there -- it was bolted shut, which was really
4 unusual because we never locked the door
5 except while we're sleeping.

6 Q. What happened next?

7 A. I called out her name several times, and she
8 never came to the door, so I went around to
9 the back and it was unlocked, so I just walked
10 in. I turned left and went down to the hall,
11 and her light was off, so I turned the light
12 on and walked into her room, and I saw her in
13 a kneeling position over beside the bed and
14 the wall, with her head down.

15 Q. What else did you notice?

16 A. That her room was destroyed. There were
17 papers and her stuff scattered all over.

18 Q. What else did you notice about her?

19 A. She wasn't moving, and that her head was bent,
20 like -- she was like in a praying position.
21 Her pants were draped over her -- off of her
22 rear.

23 Q. What did you do?

24 A. Right -- rather simultaneously as I saw her,
25 the phone was ringing, so I went and grabbed

1 the phone, told whoever it was that I had to
2 go, and I ran up to my next door neighbors and
3 knocked on the door. When I couldn't get him
4 to the door, I just kept running until I saw
5 the first neighbor with a light on where I
6 called 911 from.

7 Q. Do you know the defendant, Gary Bennett?

8 A. Yes, I do.

9 Q. How do you know the defendant?

10 A. He was a friend of Marie's.

11 Q. Had the defendant, Gary Bennett, had he ever
12 been over to y'all's trailer that you know of?

13 A. Yes; yes, he had.

14 Q. Had you ever seen him over there?

15 A. Yes, I had.

16 Q. Do you know Andrew Lindsay?

17 A. Only by the name.

18 Q. Have you ever met Andrew Lindsay?

19 A. No, I have not.

20 Q. To your knowledge, has he ever been over to
21 your house?

22 A. Not that I know of.

23 Q. I want to show you what's been marked for
24 identification purposes as State's Exhibit 1,
25 and ask if you can identify this?

1 A. That's the trailer. That's a sketching of the
2 trailer that we lived in.

3 Q. And does this sketching fairly and accurately
4 depict your trailer at the time back in May
5 23rd of 2000?

6 A. Yes, it does.

7 MR. KODMAN: Your Honor, at this time, just
8 for demonstrative purposes, I'd like to be able to
9 have the witness describe on the ---

10 THE COURT: Any objection?

11 MR. GARDNER: No, Your Honor.

12 THE COURT: Without objection.

13 MR. KODMAN:

14 Q. If you could, now, obviously on here, it's
15 showing the body as laying down, but where --
16 where did you say you saw the body at when
17 you ---

18 A. Kneeled beside the bed, up against this wall
19 here.

20 Q. Obviously with the back turned to you?

21 A. Right, the back turned.

22 MR. KODMAN: Please answer any questions Mr.
23 Gardner has for you.

24 MR. GARDNER: Your Honor, if I may.

25 THE COURT: You may.

1 MR. GARDNER: Thank you.

2 CROSS EXAMINATION:

3 BY MR. GARDNER:

4 Q. How are you, ma'am?

5 A. Good, thank you.

6 Q. I know you said this was fair and accurate.
7 Can you walk me through it because I don't
8 know anything about it, and I don't know how
9 we're going to do this.

10 THE COURT: The witness may step down, if
11 necessary.

12 MR. GARDNER: Thank you, Judge.

13 Would you mind stepping down over here.

14 MR. GARDNER:

15 Q. Where is the front and the back?

16 A. This is the front door, and this is the back.

17 Q. Is there two doors to the back, is that what
18 that is?

19 A. There's just one door.

20 Q. How many doors total?

21 A. One in the back and one in the front.

22 Q. What is -- what is that supposed to be?

23 A. The back door. That's where I entered the
24 house from.

25 Q. Okay, and what is that supposed to be?

1 A. I'm sorry, there is a third door. It's in the
2 kitchen. We never used it. It stayed locked.

3 Q. So again, that would be two back doors?

4 A. Right.

5 Q. All right. If this is not -- if you don't
6 think this looks like it's supposed to be
7 like, you just tell me, okay?

8 A. It does.

9 Q. Okay, and that's, again, the front door?

10 A. Yes, sir.

11 Q. All right, so you came up and where did you
12 park?

13 THE COURT: Mr. Gardner, to the extent that
14 you can, if you can kind of move behind that because
15 you were blocking it.

16 MR. GARDNER: Okay.

17 A. I don't park -- I don't drive. I was dropped
18 off by a cab.

19 Q. Okay. Well, that's all right. Tell me where
20 you dropped off at.

21 A. On the side, probably up in here. He never
22 pulled right in because there was a car
23 sitting ---

24 Q. And that's in the back?

25 A. Yes, because ---

1 **THE REPORTER:** He never pulled in because of
2 what?

3 **A.** Because Marie's car was already parked into
4 the driveway.

5 **Q.** And the driveway, I guess, is down here?

6 **A.** Uh-huh (Affirmative response), yeah. It kind
7 of comes along the side.

8 **THE COURT:** Ms. Herrick, one thing you've got
9 to do is because when you're testifying and the jury
10 is able to hear you that way, which is what you need
11 to do, it's harder for us to hear back this way, so if
12 you will, if you'll just lift your voice so that we
13 can all hear you.

14 **MS. HERRICK:** Okay.

15 **THE COURT:** Thank you, ma'am.

16 **MR. GARDNER:** Judge, if I may, may I just have
17 one moment, please.

18 **MR. GARDNER:**

19 **Q.** So basically, there's three doors, and you
20 tried to get in one of the doors and it was
21 locked?

22 **A.** The front door.

23 **Q.** And it's not normally locked, is that right?

24 **A.** No, sir, it's not normally locked except while
25 we're sleeping.

1 Q. And you banged on the door, is that right?

2 A. I tried to push it open, and it was bolt-
3 locked; it was chain-locked at the top.

4 Q. And you called out for your friend to open the
5 door?

6 A. Yes, I did.

7 Q. And you were there for approximately five
8 minutes, is that correct?

9 A. Approximately, yes.

10 Q. Okay, so you knocked on the door for about
11 five minutes, the door being locked, and then
12 you went around to the back?

13 A. Yes, I did.

14 Q. And there was a locked door, is that right?

15 A. It was unlocked. I walked in.

16 Q. Okay, so you didn't have to try all three
17 doors?

18 A. No, I didn't.

19 Q. All right, okay, and that door was unlocked or
20 open?

21 A. It was unlocked.

22 Q. Unlocked. All right, and then you walked into
23 the -- what room would it be?

24 A. Her bedroom.

25 Q. Okay. Does that walk directly into her

1 bedroom?

2 A. No, it does not.

3 Q. Okay. What room did you walk directly into?

4 A. The hallway.

5 Q. The hallway. Okay. What lighting was on in
6 this house?

7 A. As the best I can recall, the only lighting on
8 in the house was in the living room.

9 Q. Was in the living room, okay, and you -- did
10 you stay in the living room for a while, or
11 did you go immediately to her bedroom?

12 A. The door I walked into opens up into the
13 hallway, you turn left, and her bedroom is on
14 the right before the living room.

15 Q. So did you go directly into her bedroom?

16 A. Yes, I did.

17 Q. Okay, and the light was out in her bedroom?

18 A. Yes, it was.

19 Q. Okay, so did you turn the light on before you
20 went into her bedroom?

21 A. I turned the light on. I stepped my foot in
22 the door and turned the light on around the
23 same time.

24 Q. Okay, and can you tell us what you were
25 thinking and why -- why you did that?

1 A. Why I ---

2 Q. Went into somebody's bedroom and turned the
3 light on?

4 A. Because I assumed that my roommate was asleep
5 because her car was there and she wasn't
6 answering my phone; she wasn't answering the
7 door.

8 Q. All right, and this is when you discovered her
9 body, is that correct?

10 A. That's correct.

11 Q. And you went out and got the phone, is that
12 right?

13 A. Yes, I did.

14 Q. And you left the home, is that right?

15 A. Yes, I did.

16 Q. With the phone in your hand?

17 A. Yes, sir.

18 Q. Okay, and it would be fair to say that from
19 the time that you noticed the body, you
20 retreated from that bedroom, picked up that
21 telephone, retreated from that home, you never
22 went back into where the body was?

23 A. No, I did not.

24 Q. Okay. To your knowledge, and you may or may
25 not know this, but to your knowledge, did the

1 police find blood on that phone?

2 A. On the ---

3 MR. KODMAN: Objection.

4 THE COURT: If she knows, I think -- anything
5 she knows as to what the police did would have to be
6 hearsay, but she can testify as to whether she noticed
7 any blood.

8 MR. GARDNER: Okay.

9 MR. GARDNER:

10 Q. Do you know -- do you know if there was any
11 blood on that phone?

12 A. Yes, I know, but ---

13 Q. You know that from your direct evidence? You
14 saw it?

15 A. It was blood from my own face.

16 Q. Okay, and without violating any hearsay rules,
17 do you know how that you knew it was blood
18 from your own face?

19 A. Because I had a zit right here at the time.
20 When I get nervous, I pick at my sores.

21 Q. Okay. All right, and do you know how long it
22 took from you going outside with the phone --
23 you never called anybody with that phone, did
24 you?

25 A. Yes, I did.

1 Q. Where were you when you called?

2 A. I didn't call anybody until after the police
3 arrived.

4 Q. Okay. All right, but so you didn't call
5 anybody with that phone until after the cops
6 got there?

7 A. Correct.

8 Q. And how long did it take the cops to get
9 there?

10 A. I don't recall. It was fast.

11 Q. Fast, all right.

12 MR. GARDNER: Okay, thank you very much.

13 THE COURT: Anything further?

14 MR. KODMAN: No, sir, Your Honor, and we would
15 also ask that this witness be excused.

16 THE COURT: Any objection to excusing this
17 witness?

18 MR. GARDNER: May I have one moment, Your
19 Honor.

20 No objection, Your Honor.

21 THE COURT: Thank you.

22 Thank you, ma'am. You may be excused.

23 GREGORY BARKALOW, being
24 first duly sworn by the Clerk, testifies as follows:

25 THE CLERK: Please state your name and spell

1 your last for the record.

2 MR. BARKALOW: My name is Gregory Barkalow,
3 B A R K A L O W.

4 DIRECT EXAMINATION:

5 BY MR. KODMAN:

6 Q. Mr. Barkalow, where are you employed at?

7 A. The City of Myrtle Beach Fire Department.

8 Q. And what are your responsibilities there at
9 the Fire Department?

10 A. I'm a paramedic. I'm assigned to ride -- we
11 have a medic unit, an ambulance there. I'm
12 not permanently assigned to it. We rotate
13 paramedics off of it, and I was working the
14 night of the incident.

15 Q. And did you have occasion on May 23rd of 2000
16 to respond to Little River Road in reference
17 to a possible assault?

18 A. Yes, sir.

19 Q. Please tell the jury what happened when you
20 got there.

21 A. We got turned out for a possible assault
22 stage for the Police Department, which we have
23 to do for protocol, pulled up on the scene,
24 and the Police Department was like immediately
25 there or maybe ten, twenty seconds right

1 behind us, and they went inside, made sure the
2 scene was safe, called us to come inside
3 quickly, and went inside and found the victim
4 in the middle bedroom.

5 Q. What position was the victim when you -- when
6 you got there?

7 A. When -- it was the middle bedroom inside the
8 single-wide mobile home, so there wasn't much
9 room. She was lying -- sitting on the floor
10 in kind of a kneeling position. Her back was
11 to me, to the door, and she was basically
12 kneeling, leaning forward, propping up against
13 the wall and the edge of the bed.

14 Q. If you could, point on the diagram to where
15 the victim was in the room when you came in.

16 A. Okay. This was the doorway, and she was right
17 here in this corner like in a kneeling,
18 praying position. Her head -- she was sort of
19 slumped forward.

20 All we seen when I first entered the room
21 was her back, which her clothes were partially
22 tore off of her, so all I seen was her back,
23 which was free of any marks, and then at that
24 time, I secured the head and leaned her back
25 down to where we could assess her in the

1 middle of the room, the middle of the floor,
2 and that's when I noticed the injury.

3 Q. If I could, on that diagram, there's kind of a
4 marking of a body. Does that fairly and
5 accurately depict the ---

6 A. Once I leaned her back and straightened her
7 legs out to get her completely supine, laying
8 flat, I would say that was -- that would be
9 completely accurate, yes, sir.

10 MR. KODMAN: Your Honor, at this time, based
11 on the testimony of Natasha Adams and the testimony of
12 the EMS person relative to the position of the body in
13 this exhibit, we're going to move to introduce that as
14 State's 1.

15 THE COURT: Any objection?

16 MR. GARDNER: Well, she thought it only had
17 two doors, but we don't have an objection, Your Honor.
18 We don't have an objection.

19 THE COURT: Without objection.

20 (Whereupon, State's Exhibit 1 (Diagram of
21 mobile home) is introduced into evidence and
22 appropriately marked.)

23 MR. KODMAN:

24 Q And what determinations did you make regarding
25 the victim?

1 **A.** Once I placed her supine where we could -- me
2 and my partner could assess the patient,
3 obviously there was a noticeable amount of
4 blood loss, couldn't really notice a whole lot
5 when she was sitting like what she was, but
6 once we pulled her back and put her face up
7 straightened out, you could see a lot --
8 obviously, a lot of blood loss, very pale, and
9 then noticed the obvious injury to her neck.

10 She had been cut rather deeply,
11 injuries definitely incompatible with life.
12 She didn't have a pulse or -- or wasn't
13 breathing.

14 **MR. KODMAN:** Please answer any questions Mr.
15 Gardner may have for you.

16 **MR. GARDNER:** We don't have any questions,
17 Your Honor.

18 **THE COURT:** Thank you. You may step down.

19 **MR. KODMAN:** As with the other witnesses, Your
20 Honor, we would ask that Mr. Barkalow be excused.

21 **THE COURT:** Any objection?

22 **MR. GARDNER:** No, Your Honor, no objection.

23 **THE COURT:** Thank you.

24 You may be excused.

25 **MR. KODMAN:** Judge, can we approach?

1 **THE COURT:** Yes, you may.

2 **MARK BONNER,** being first
3 duly sworn by the Clerk, testifies as follows:

4 **THE CLERK:** Please state your name and spell
5 your last for the record.

6 **MR. BONNER:** Mark Bonner, B O N N E R.

7 **DIRECT EXAMINATION:**

8 **BY MR. KODMAN:**

9 **Q.** Officer Bonner, where are you employed at?

10 **A.** Horry County Police Department.

11 **Q.** And what's your title at Horry County Police
12 Department?

13 **A.** Patrolman First Class.

14 **Q.** And were you so employed back on May 23rd of
15 2000?

16 **A.** Yes, sir.

17 **Q.** And on that date, did you have occasion to
18 respond to a potential homicide at 3915 Little
19 River Road, Lot 9?

20 **A.** Yes, sir.

21 **Q.** Now, is that in Horry County?

22 **A.** Yes, sir.

23 **Q.** Please tell the jury what happened when you
24 responded to that call.

25 **A.** Upon arriving to the call, I met the

1 complainant, Ms. Adams, out in the yard. I
2 noticed that there was a Myrtle Beach officer,
3 also. His patrol car was out in front.

4 When I got there, I asked Ms. Adams where
5 the other patrolman was, and she said he was
6 in the house, so I went into the house, the
7 open door.

8 Upon arriving, I asked the officer, you
9 know, what was going on, and he said, "She's
10 dead. Get EMS in here."

11 I asked him at that point in time whether
12 or not he had cleared the residence to look
13 for any suspects. He said he had not, so I
14 checked the two rooms that I was closest to,
15 and he had taken the other half of the
16 trailer, searched the residence, didn't find
17 any other people inside the house.

18 At that point in time, as I was exiting
19 the house, I was met by another Myrtle Beach
20 Sergeant and told him that we had a crime
21 scene, to keep everybody out, and go ahead and
22 get EMS in there.

23 Q. What happened when EMS got there?

24 A. When EMS got there, the two workers came in
25 and said that they were going to have to move

1 the body to check to see whether or not she
2 was dead, so I watched them move the body, and
3 they declared her dead at that point in time.

4 Q. At that point, what else did you do?

5 A. At that point in time, we notified our
6 sergeant, Sergeant Duke, that we had a crime
7 scene, there was a dead subject at the house.

8 He then advised our Criminal
9 Investigations Division and crime scene
10 personnel to respond.

11 Q. And did you go around and talk to some of the
12 neighbors?

13 A. Yeah. At the -- the detectives told me to try
14 to get some of the neighbors to see if they
15 had witnessed anything.

16 I checked some of the trailers around
17 there and spoke with several individuals in
18 the trailer park, whether or not they had
19 heard anything unusual, seen any unusual
20 people in the neighborhood.

21 Q. Were you able to gain any evidence from those
22 conversations?

23 A. No, sir.

24 MR. KODMAN: Please answer any questions Mr.
25 Gardner may have.

CROSS EXAMINATION:

BY MR. GARDNER:

Q. Who -- I didn't hear the other officer you said that helped you clear the house.

A. The original officer, Officer Donnelly, from Myrtle Beach Police Department.

Q. And y'all cleared the house; y'all didn't find any evidence of who had committed the crime or anything, did you?

A. Well, we weren't looking for evidence. We were looking for other suspects that might be in the house, other people.

Q. To make sure there was no more people or bad guys in the house?

A. Yes, sir.

Q. Okay. No evidence that anybody was still in the house?

A. Not that we could see, no, sir.

Q. And you conducted some type of investigation or interviews in the surrounding area, is that what I heard you say?

A. Yes, sir.

Q. Okay. No evidence about who did it from that?

A. No one had any knowledge of anything that had gone on that evening.

1 MR. GARDNER: Thank you, sir.

2 MR. KODMAN: That's all for this witness, Your
3 Honor.

4 THE COURT: You may step down.

5 Any objection to excusing this witness?

6 MR. GARDNER: No, Your Honor.

7 THE COURT: Mr. Foreman and members of the
8 jury, it appears that we have reached an appropriate
9 point in time to stop for the afternoon.

10 The other witnesses involved may be longer
11 than those that we have now, so -- have heard at this
12 point, so I hesitate to call another witness now to
13 the stand.

14 I'm going to excuse you at this time and ask,
15 if you would, if you would be in your jury room at
16 9:45. I've got some matters that I'll need to take up
17 in the morning before we bring you back out, so if
18 you'll be in your jury room at 9:45 in the morning.

19 Do not discuss the case with anyone. Do not
20 allow anyone to discuss the case with you. I'm going
21 to also ask that if you would, please, do not read the
22 newspaper in the morning before coming up here.

23 It's possible that local coverage may or may
24 not have something in connection with this case, and
25 so rather than your in some way possibly being

1 influenced by something that's in a newspaper article,
2 if you will, just forego reading the newspaper
3 tomorrow before coming to the Courtroom. Have a very
4 restful evening.

5 I don't think there'll be any television
6 coverage, but if there is something -- you're watching
7 T.V. and it comes up that may in any way be related to
8 this case, please turn that off, because the only
9 thing you have about which you are concerned in your
10 determination in this matter is what is provided to
11 you in the way of evidence in this Courtroom, and
12 that's it, so anything outside of this Courtroom would
13 be inappropriate for your consideration. It's not
14 subject to examination and cross-examination, or any
15 rulings by the Court as to its relevancy or
16 admissibility, so that's the reason I tell you just to
17 stay away from it so that you don't by chance
18 inadvertently become biased or prejudiced in one way
19 or another by something that's heard outside of this
20 Courtroom.

21 Have a very pleasant evening with your family
22 and friends and we'll look to see you back at 9:45 in
23 the morning. Thank you.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 **THE COURT:** Counsel, if y'all will approach
2 from a scheduling standpoint.

3 (A Bench conference was held in the presence,
4 but out of the hearing, of the Court Reporter.)

5 **THE COURT:** Thank you very much.

6 We'll be in recess until about ten minutes
7 after nine in the morning.

8 **MR. KODMAN:** Thank you.

9 **MR. GARDNER:** Thank you, Your Honor.

10 (Whereupon, Court is in recess at 5:50 P.M.)

11 * * * * *

12 TUESDAY, AUGUST 13, 2002

13 **(THE FOLLOWING TAKES PLACE OUTSIDE THE**
14 **PRESENCE OF THE JURY.)**

15 **THE COURT:** Mr. Kodman.

16 **MR. KODMAN:** Your Honor, the State is going to
17 call Amber Vrooman to the stand for purposes of this
18 hearing.

19 **THE COURT:** All right. This is a hearing for
20 me to hear and pass upon the admissibility of certain
21 testimony.

22 **AMBER VROOMAN,** being first
23 duly sworn by the Clerk, testifies as follows:

24 **THE CLERK:** Please state your name and spell
25 your last for the record.

1 MS. VROOMAN: Amber Vrooman, V R O O M A N.

2 DIRECT EXAMINATION:

3 BY MR. KODMAN:

4 Q. And, Amber, how do you know the defendant?

5 A. We were together for five years.

6 Q. Okay, and were you together back in 1999 and
7 2000?

8 A. Yes.

9 Q. Where were you living at?

10 A. Enterprise Road.

11 Q. Okay. For purposes of this hearing, we're
12 just going to talk about kind of a central
13 issue. We're not going to get into your full
14 testimony, so where were you employed back in
15 '99 and 2000?

16 A. At Taco Bell.

17 Q. And what was your job there?

18 A. Cashier.

19 Q. And did the victim in this case, Ms. Martin, -
20 - where did she work at?

21 A. Taco Bell.

22 Q. And did there come a point in time where the
23 defendant became a little more interested in
24 Taco Bell other than the fact that you all
25 worked there?

IN CAMERA - AMBER VROOMAN - DIRECT EXAMINATION
BY MR. KODMAN

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- 1 A. Yes.
- 2 Q. And describe to the Court what that interest
3 was in.
- 4 A. Robbing Taco Bell.
- 5 Q. Okay. When did he first start talking to you
6 about that?
- 7 A. About eight months prior to the murder.
- 8 Q. And how was this -- how was it brought up to
9 you?
- 10 A. He would ask questions about the safe, who
11 closes, where the deposits go, who does the
12 deposits.
- 13 Q. And how often would the defendant have these
14 kind of conversations with you?
- 15 A. Couple times a week, twice a week.
- 16 Q. And to your knowledge, did he ever approach
17 the victim regarding his idea to rob Taco
18 Bell?
- 19 A. He would joke around with her, talk about
20 robbing it, splitting the money, just joke-
21 wise.
- 22 Q. And what kind of stuff would he ask you to do
23 for him?
- 24 A. Get the safe combination, look at the keys,
25 what keys went to which door, you know, if the

1 safe could come out, how heavy it was, how big
2 it was.

3 Q. Did he do anything in addition to just talking
4 to you about it in furtherance of trying to do
5 this?

6 A. By himself? Did he ---

7 Q. What else did he talk to you about as far as
8 robbing Taco Bell? Did he bring up an
9 employee there named Michelle one time?

10 A. Michelle, yes. She ---

11 Q. What did he tell you about Michelle?

12 A. That she was really ditzy, that he could get
13 away with it with her because she was kind of
14 ditzy.

15 Q. And when you say "Get away with it," did he
16 explain a plan to you regarding how he was
17 going to do that?

18 A. He said he had planned to wait outside until
19 after closing time. When we walked out to the
20 car, because usually I rode home with her, he
21 would just hit her in the head and take the
22 deposit.

23 Q. And was there an occasion a couple of weeks
24 prior to the murder of Ms. Martin in which the
25 defendant did some other things in furtherance

1 of this plan of his?

2 A. A couple weeks before, he had taken a key off
3 her key ring, and we went back after closing
4 time to Taco Bell.

5 Q. Where were you at when the keys were taken?

6 A. In a -- oh, I was in the shower.

7 Q. Okay. How do you know he took the keys?

8 A. Because he brought them into the bathroom and
9 asked me which key it was.

10 Q. And did you know those weren't your keys?

11 A. I didn't have store keys.

12 Q. And did you know whose keys those were?

13 A. Yes.

14 Q. And where was Ms. Martin at this time?

15 A. She was in the other shower.

16 Q. What happened next?

17 A. We all went out for about three, three hours,
18 three or four hours.

19 Q. When you -- okay, you need to slow down
20 because unfortunately, the Judge doesn't have
21 the benefit of your prior written statements.
22 This is the first time he's hearing these
23 things.

24 If you could, let's just take it step by
25 step. Did you leave by yourself?

1 A. No. Marie and I left together.

2 Q. And what did the defendant do?

3 A. Gary left with Drew Lindsay and his wife.

4 Q. And his wife's name was?

5 A. Tara Lindsay.

6 Q. And to your knowledge, did he have the keys at
7 that time?

8 A. Yes.

9 Q. And what happened next when you got to the
10 club?

11 A. They hadn't arrived yet. It was just Marie
12 and I there for a half hour, forty-five
13 minutes. They then came back. There was
14 video games, and just poker machines, that's
15 what they were, and Gary and Drew sat and
16 played that, and Tara, Marie and I just stayed
17 out on the dance floor, and -- next to the
18 bar.

19 Drew came over and asked for our purses.
20 He said it wasn't a good idea to leave them
21 underneath the table because we were out on
22 the dance floor, so they took the keys and
23 the purses back with them to the poker
24 machines.

25 Q. Now, initially on that evening, did the victim

1 want to go out with you all?

2 A. No, not really because she didn't have enough
3 money to go out. She had other bills that had
4 to be paid. Gary gave us extra money, gave me
5 extra money so that I could buy her drinks.

6 Q. How did Gary initially react when he learned
7 that the victim may not be going out with
8 y'all that night?

9 A. He was a little upset about it. He really
10 wanted her to go.

11 Q. So what happened next at the club?

12 A. Marie had a headache. She wasn't feeling very
13 well after like two drinks, so she went over
14 to the poker machine, she got her purse, and
15 she went home.

16 Q. What did you all do?

17 A. We stayed for about two hours after that. It
18 was about closing time, and we drove back to
19 Surfside, at the Taco Bell. He drove through
20 the parking lot. Then we drove down -- I
21 don't even remember what parking lot it was,
22 but Tara and I stayed in the car, and Drew and
23 Gary went back to Taco Bell.

24 Q. And did you see him with the keys at any point
25 after that?

1 A. No.

2 Q. Did you go in Taco Bell?

3 A. No.

4 Q. Did Gary make any statements to you when he --
5 when they came back from the Taco Bell
6 regarding what had just happened?

7 A. Not that I recall, no.

8 Q. Okay. After that incident, but prior to Ms.
9 Martin's death, did he talk to you any more
10 about Taco Bell and -- and trying to rob Taco
11 Bell?

12 A. He asked me to get the combination a couple of
13 times, but it wasn't any of my business, so
14 you know, it wasn't my job to get in the safe.
15 I didn't know the code, and I wasn't going to
16 stand over her and get it for him, so I just
17 told him I couldn't get it.

18 Q. How did he react?

19 A. He was a little upset, said that I didn't help
20 him, you know, make these plans, get it done,
21 or -- but I told him I didn't want him to rob
22 Taco Bell.

23 Q. Now, as an employee of Taco Bell, are you
24 aware of any, perhaps, disciplinary issues
25 that came up with the victim regarding these

1 keys?

2 A. No.

3 Q. Did the victim realize at some point that she
4 didn't have the keys?

5 MR. GARDNER: Your Honor, I know we're in
6 camera, but he's been leading her pretty much the
7 whole time, so I'm going to object to the leading.

8 MR. KODMAN: It's a yes or no -- I didn't
9 suggest an answer. A yes or no question is not -- is
10 still a direct question. I didn't -- I didn't suggest
11 to her the answer, so I'd say it's not a leading
12 question.

13 THE COURT: Who would have suggested to her
14 the answer that is going to be subject to cross
15 examination? I mean, how is she going to know other
16 than through hearsay what the story is with respect to
17 any discipline?

18 MR. KODMAN: Okay. I think that's all the
19 questions I have, then, of this witness.

20 THE COURT: Mr. Gardner.

21 MR. GARDNER: Yes, Your Honor. If I may have
22 just one moment, Your Honor.

23 CROSS EXAMINATION:

24 BY MR. GARDNER:

25 Q. Ma'am, how -- you said Gary had mentioned that

1 Michelle was ditzy. How did he know Michelle?

2 A. I actually baby-sat Michelle's son during the
3 day, and we had went out on a couple of
4 occasions.

5 Q. So you introduced him to Michelle?

6 A. Yeah.

7 Q. And, in fact, all the people from Taco Bell,
8 you had introduced him to, is that correct?

9 A. Not all of them, but most of them, yes.

10 Q. I probably didn't ask that right. Not -- not
11 everybody that works at Taco Bell, but the
12 people that are going to be talked about
13 during this trial that worked at Taco
14 Bell, ---

15 A. Yes.

16 Q. --- you brought those into his life?

17 A. Yes.

18 MR. GARDNER: That's all I have.

19 MR. KODMAN: No further questions of this
20 witness regarding this issue, Your Honor.

21 THE COURT: I'll be glad to hear from you, Mr.
22 Gardner, as to the testimony that you object to that's
23 been presented by Ms. Vrooman.

24 MR. GARDNER: And Judge, may I say up front,
25 though, too, I do have another witness that I -- if

1 Your Honor feels it necessary that I could proffer
2 some testimony regarding this issue, the co-defendant,
3 if Your Honor wants to get into that. If not ---

4 THE COURT: Let me deal with the co-
5 defendant's testimony as a separate issue as to what
6 his testimony is ---

7 MR. KODMAN: All right.

8 THE COURT: --- and just deal with hers right
9 now.

10 MR. GARDNER: I don't believe, Your Honor --
11 I'm afraid that the jury is going to be confused about
12 this if they're allowed to say that he went to Taco
13 Bell to get this key, or whatever the testimony was
14 and may be in front of the jury, and as a result of
15 that, that's why the victim was killed.

16 The only fathomable reason I could even
17 foresee that it would be introduced would be for
18 motive, and certainly, I don't think that the
19 motivation for this lady's unfortunate death was
20 because somebody wanted to rob a Taco Bell.

21 THE COURT: Well, he is accused in indictment
22 2002-GS-26-2765 with the offense of robbing Eva Marie
23 Martin.

24 I have not, at this point in time, heard any
25 testimony relative to the issue of whether this is an

1 alleged armed robbery taking place at Taco Bell, or
2 whether it's an alleged armed robbery taking place at
3 the residence on Little River Road, so where is it
4 that the -- the robbery is alleged to have taken
5 place?

6 **MR. KODMAN:** At the murder scene, Your Honor,
7 at Little River Road.

8 **THE COURT:** All right, and what is the --
9 then, he is objecting that this testimony relative to
10 going and robbing the Taco Bell is not relevant to
11 the robbery that took place at the victim's home, so
12 what is the relevancy of the Taco Bell robbery
13 discussions?

14 **MR. KODMAN:** I think it will be a lot clearer
15 after the co-defendant testifies, but I would like
16 to -- because I think this will help the Court, and,
17 Your Honor, a case, State v. Owens, and I'll refer
18 Your Honor to Page, I believe, 19, which talks about
19 the relevant inquiry we're trying to make in this
20 case.

21 The -- certainly I think that the testimony
22 regarding the defendant wanting to rob the Taco Bell,
23 always talking about the Taco Bell, inquiring about
24 the Taco Bell is certainly relevant in this case.

25 The issue about whether on this specific

1 instance, where they went into the Taco Bell with the
2 keys is admissible, Your Honor, I think comes in under
3 two theories, and the most important one is under the
4 res gestae theory. I'm just going to read from the
5 case.

6 **THE COURT:** And which page do you say?

7 **MR. KODMAN:** Page 19, Your Honor. It says,
8 "In any event, the res gestae theory recognizes
9 evidence of other bad acts, may be an integral part of
10 the crime with which the defendant is charged or may
11 be needed to aid the fact-finder in understanding the
12 context of the crime occurred," and then if you just
13 skip down, "When such evidence furnishes part of the
14 context of the crime or is necessary for a full
15 presentation of the case, or shall eminently connect
16 with an explanation of the crime against the
17 defendant, and is so much a part of the setting of the
18 case and its environment that its proof is appropriate
19 to complete the story of the crime on trial by proving
20 it's immediate context or the res gestae of the
21 uncharged offense," and Your Honor, part of the
22 State's theory in this case is this man was obsessed
23 with robbing Taco Bell, that he talked to Ms. Vrooman
24 about it, that he talked with people -- even with the
25 co-defendant about it, that on this particular

1 occasion they went to the Taco Bell.

2 He actually obtained the keys from the victim
3 in this case, but was unable to complete the act, and
4 that -- and I would further argue that the other
5 grounds that I think it would come in under would be
6 under motive, and I'll point to the Court that in the
7 case that I handed up that dealt with an armed robbery
8 and murder case, and where the Court let in evidence
9 regarding two prior armed robberies under these two
10 theories, and I think for the jury, it's important
11 that they understand, because the co-defendant's going
12 to talk about some of what the defendant's motives
13 were when he went to the victim's house on the day of
14 the murder and -- and the conversations he had with
15 the defendant regarding Taco Bell up and to that
16 point, so I think adding the part about where they
17 actually went in on one particular day provides a full
18 context and it makes sense to the jury. They went in;
19 he didn't have everything he needed. He had to get it
20 from the victim.

21 THE COURT: All right. Well, let me then hear
22 from the co-defendant because quite frankly, this
23 testimony in isolation I do not find relevant. I
24 would find that it's more on the lines of the errors
25 made by the Court in the State v. Russell Nelson King,

1 which I don't have the citation on, but it's Opinion
2 Number 24916 of March 8, 1999, a Supreme Court
3 Opinion.

4 MR. KODMAN: Would you give me that cite
5 again, Your Honor?

6 THE COURT: It is Opinion 24916. It's a March
7 8, 1999, Opinion where it talked about evidence of
8 prior criminal activity that was not closely enough
9 related to the crime charged as being inappropriate,
10 but let's -- you may step down, and we'll ---

11 Now, Ms. Vrooman, I want to caution you that
12 we have had witnesses sequestered, and you will be
13 placed back with the other witnesses, but you're not
14 to discuss with them in any way what we have discussed
15 here in the Courtroom this morning.

16 MR. KODMAN: Andrew Lindsay.

17 ANDREW LINDSAY, being
18 first duly sworn by the Clerk, testifies as follows:

19 THE CLERK: Please state your name and spell
20 your last for the record.

21 MR. LINDSAY: Andrew Lindsay, L I N D S A Y.

22 DIRECT EXAMINATION:

23 BY MR. KODMAN:

24 Q. How do you know the defendant, Gary Bennett?

25 A. I worked with him at -- at Lane's Pest

1 Control.

2 Q. Is that how you first met him?

3 A. Yes.

4 Q. And did you become friends with him?

5 A. Yes.

6 Q. And at some point during your friendship, did
7 the discussion of possibly the two of you
8 robbing the Taco Bell come up?

9 A. Yes, it did.

10 Q. Do you remember about when that discussion
11 first started happening?

12 A. February or March.

13 Q. Of what year?

14 A. 2000.

15 Q. And how did it initially come up?

16 A. Initially came up that his wife or -- his wife
17 or girlfriend worked there at the Taco Bell,
18 and they -- and they always left the -- his
19 wife was always telling him that they always
20 left the safe open, or they left the money on
21 the counter, and it'd be easy money to get.

22 Q. Who initially brought up the idea of robbing
23 Taco Bell? Was it you or was it the
24 defendant?

25 A. Gary.

1 Q. And what kind of -- how often would he talk to
2 you about it?

3 A. Pretty much every -- every time I went down
4 and talked to him.

5 Q. And how frequently was that?

6 A. I talked to Gary about four or five times a
7 week.

8 Q. What kind of things would he talk to you
9 about, about Taco Bell?

10 A. Just telling me that basically that the --
11 that the safe was never locked, it'd be easy
12 to just go in and get the money.

13 Q. And did you all do some things in furtherance
14 of trying to rob the Taco Bell?

15 A. Yes.

16 Q. What did you do?

17 A. We -- one of the ladies that worked there --
18 one of Amber's friends is the manager there,
19 and we used to -- and she used to come with us
20 when we used to go out at a bar, and we --
21 Gary got -- Gary got some keys from her, the
22 master keys that went to the store from her,
23 and we made copies of the keys.

24 Q. Okay. Let's go back to that -- that
25 particular day. Do you remember when in

1 relation to the victim's death did that
2 happen?

3 A. I don't recall. It was before.

4 Q. Was it a couple weeks before, a couple months
5 before?

6 A. A couple weeks.

7 Q. Okay, and how do you know Gary had the keys?

8 A. He -- he told me -- he showed me the keys.

9 Q. Where were you at when he first showed them to
10 you?

11 A. At his house.

12 Q. Did you see him actually get the keys?

13 A. No.

14 Q. And what happened after you -- after he told
15 you he had the keys at the house, what did
16 y'all do next?

17 A. We -- Gary, myself and my wife proceeded up to
18 WalMart to make copies of them.

19 Q. Okay. What happened when you got to WalMart?

20 A. We couldn't make no copies at WalMart. We
21 went over to the Home Depot there and made a
22 couple copies, and one of the keys we couldn't
23 make a copy of, and then we went to a place
24 where my wife worked, at a K-Mart in Conway,
25 and made a copy of the key.

1 Q. How many keys did you have?

2 A. Three, maybe four.

3 Q. Were you holding the keys?

4 A. No.

5 Q. Who was holding the keys?

6 A. Oh, well, me and Gary, yes.

7 Q. What did you do after you made the copies of
8 the keys?

9 A. Well, we proceeded back to Warren's, where his
10 wife and -- and Marie was waiting for us that
11 night, and then we tried to get the originals
12 back to Marie.

13 Q. Did you get them all back to her?

14 A. I believe so. We -- I'm not sure.

15 Q. What happened next?

16 A. We -- we was at Warren's, and we tried to get
17 the keys back on, and I don't believe -- I
18 think we -- Gary couldn't get one of the keys
19 back on because she had keys missing. Then
20 later on that night, after Marie went home and
21 everything, we proceeded to -- after we left
22 Warren's, myself, my wife -- me and my wife,
23 and Gary and Amber, we proceeded back down to
24 Surfside, to Taco Bell, to try out the keys,
25 and got into Taco Bell.

- 1 Q. Okay. Where did you park at?
- 2 A. Behind a warehouse that's a couple of stores
- 3 down.
- 4 Q. And who went to the Taco Bell?
- 5 A. Me and Gary.
- 6 Q. What did the girls do?
- 7 A. They stayed in the car.
- 8 Q. What happened when you got to Taco Bell?
- 9 A. We -- we went into Taco Bell.
- 10 Q. You had a key obviously to get in the door?
- 11 A. Yes.
- 12 Q. What happened when you got into the Taco Bell?
- 13 A. We got inside, and the safe was locked, and we
- 14 didn't have a key to the safe or -- or a
- 15 combination.
- 16 Q. So what did you do?
- 17 A. We left from the back door.
- 18 Q. And obviously, if the safe had been open, what
- 19 would you have done?
- 20 A. Taken the money.
- 21 Q. Now, after that incident happened, but prior
- 22 to the victim's death in this case, did the
- 23 defendant have further discussions with you
- 24 about Taco Bell?
- 25 A. Yes.

1 Q. What kind of stuff would he talk to you about?

2 A. We talked about maybe waiting 'til at night
3 time when they closed because they took the
4 money from there -- a lot of times they -- a
5 lot of times they left the money there at the
6 safe. Other times they took the money down to
7 the bank for -- for a night -- a night
8 deposit.

9 Q. How do you know this?

10 A. I was with Gary when we -- when we discussed
11 this.

12 Q. When you're talking about these deposits and
13 stuff, where did you get that information
14 from?

15 A. From Gary and Amber.

16 Q. And did you and Gary actually go down ever and
17 scope out the Taco Bell?

18 A. Yes.

19 Q. How many occasions did you do that?

20 A. Three, three or four times.

21 Q. Let me fast forward to the day of the victim's
22 death.

23 The day of the victim's death, did you
24 have some conversations with the defendant on
25 that day?

1 A. Yes, I did.

2 Q. And what were those discussions about?

3 A. About -- he apparently that day has talked
4 to -- has talked to Marie about giving us the
5 keys and the combination to get into the Taco
6 Bell.

7 Q. And when you and the defendant were going to
8 the victim's house that particular evening,
9 did he have any further discussions with you
10 about Taco Bell on the ride over there?

11 A. Well, he just said that him and Marie had
12 everything worked out.

13 Q. What did you take that to mean?

14 A. That -- that -- that we was going to get the
15 keys and the combination to Taco Bell.

16 MR. KODMAN: Beg the Court's indulgence, Your
17 Honor.

18 MR. KODMAN:

19 Q. After -- after the murder occurred, tell us
20 what happened from the point where you got
21 into the car to leave.

22 A. When we left, we -- Gary wanted to go down to
23 a convenience store so he could get cleaned
24 up.

25 Q. Did he -- did he bring anything out of the

1 house with him at that point?

2 A. Yes. It was a bag with -- with the knife -- a
3 bag (sic) was in the knife (sic), a purse
4 (sic) was in the knife (sic), a towel.

5 Q. What else did he have with him?

6 A. A little stuffed animal.

7 Q. Where did y'all go first?

8 A. To the convenience store.

9 Q. What happened at the convenience store?

10 A. Gary went inside and washed up. I waited out
11 in the car with Mallory for a couple of
12 minutes, then I went inside and got something
13 for Mallory and myself, and came back outside
14 and waited in the car for Gary.

15 Q. And where did you go next?

16 A. To a dumpster, and we dropped the knife and
17 the purse in the garbage, in the dumpster.

18 Q. And what all did you keep?

19 A. He kept the combination -- he found the
20 combination to the safe. He kept some money
21 and the keys.

22 Q. Did he tell you where he got the money from?

23 A. He said from the purse.

24 Q. And the purse obviously coming from where?

25 A. From Marie's.

1 Q. After that evening, or later that evening and
2 in subsequent days, did the defendant have
3 more conversations with you about wanting to
4 go back to the Taco Bell?

5 A. Yes.

6 Q. Tell us about those?

7 A. I -- I was against going back to Taco Bell
8 because of -- because of what happened to
9 Marie. It'd be -- it's be too risky to go
10 back there.

11 Q. And what happened to the combination?

12 A. The combination, that -- that night when I
13 dropped him off, I don't know if it was when
14 he was in a rush to get out of the car or --
15 he left the combination in the car. He asked
16 -- he asked about it days later. I just said
17 I didn't have it. I kept it.

18 Q. And did you ever agree to go back to Taco Bell
19 with him?

20 A. No.

21 MR. KODMAN: Beg the Court's indulgence, Your
22 Honor.

23 MR. KODMAN:

24 Q. When you first got to the victim's house on
25 the night of the murder, do you remember the

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1 defendant having a conversation with the
2 victim once you got inside?

3 A. Yes.

4 Q. What were they talking about?

5 A. They was talking about the combination and --
6 and about our getting the keys, and mainly the
7 combination.

8 MR. KODMAN: Please answer any questions Mr.
9 Gardner may have.

10 CROSS EXAMINATION:

11 BY MR. GARDNER:

12 Q. On the day of the death, I believe you
13 testified that you talked with Mr. Bennett
14 about going over to Marie's house. did I get
15 that right?

16 A. Yes.

17 Q. Do you know where Mr. Bennett was?

18 A. Excuse me?

19 Q. When you had this conversation with Mr.
20 Bennett, do you know where he was?

21 A. He was at his house.

22 Q. He was at his house. What time of day was
23 that?

24 A. It was after I got off work in the afternoon.

25 Q. Okay. What time do you get off work in the

1 afternoon?

2 A. At about three o'clock.

3 Q. About three o'clock in the afternoon?

4 A. Between three and four.

5 Q. On the 23rd?

6 A. Uh-huh (Affirmative response), on a Tuesday,
7 yes.

8 Q. Do you have any personal knowledge or any
9 knowledge you've learned from conversation
10 with Mr. Bennett about where he was that day,
11 that Tuesday, during the daytime?

12 A. He was -- he had Marie's car that day, and he
13 was -- he had his girl -- took his girl to the
14 doctor or something that day.

15 Q. So when you talked to him at three or four
16 that Tuesday, how did you talk to him?

17 A. It was after three or four. I got off at
18 three, between three and four, and I went
19 home, and then I called him.

20 Q. So the answer to the question would be you
21 talked to him on the telephone?

22 A. Yes.

23 Q. Okay. All right. Did you talk to him on the
24 phone any after that?

25 A. No.

1 Q. Did you get up with him any time after that?

2 A. Yes.

3 Q. And how did that come about?

4 A. He asked me to come down to his house and pick
5 him up.

6 Q. When did he ask you to come to the house and
7 pick him up?

8 A. After I got off the phone with him.

9 Q. Okay. That one time ---

10 A. As soon as I got done eating, and come down.

11 Q. What time did you come down?

12 A. I don't recall the exact time.

13 Q. Okay. All right, so it was just one telephone
14 call, and at that phone call -- this phone
15 call occurred sometime after three or four, is
16 that right?

17 A. As I recall, there was only one phone call,
18 yes.

19 Q. Okay, and would it be -- and I'm not trying to
20 change your testimony. I just want to make
21 sure I understand it. It occurred sometime
22 after three or four?

23 A. Yes.

24 Q. Okay, and then you did some things before you
25 left?

1 A. Uh-huh (Affirmative response).

2 Q. How long did it take you to do those things?

3 MR. KODMAN: Your Honor, I'm going to object.

4 What Mr. Gardner's trying to do, I think he's going on
5 a fishing expedition regarding his timeline. This is
6 the purposes of the hearing regarding the
7 admissability of the specific evidence relating to the
8 defendant's prior bad acts regarding Taco Bell.

9 He is going on a fishing expedition with this
10 witness prior to that time.

11 THE COURT: I'll allow him to ask these
12 questions as they may relate to evidence as to what
13 the plan was with respect to going to Taco Bell.

14 MR. KODMAN: Thank you, Your Honor.

15 MR. GARDNER: I'll tell you exactly where I'm
16 going. I'm going to cut straight to it right now.

17 MR. GARDNER:

18 Q. Do you know how he got home that day?

19 A. Excuse me?

20 Q. This is Gary Bennett.

21 A. Yes.

22 Q. Do you know how he got to his house on that
23 Tuesday?

24 THE COURT: At what time?

25 Q. At any time. You said that he had a car, and

1 that he'd got home at sometime, because you
2 had mentioned something about he went to the
3 doctor?

4 A. Yes.

5 Q. Okay. At some point in time, he got home
6 because you talked to him on the phone at his
7 home, is that right?

8 A. Yes.

9 Q. Okay. Do you know how he got home?

10 A. He told me that Marie dropped him off.

11 Q. Okay. All right. That's where we're at, ---

12 A. Uh-huh (Affirmative response).

13 Q. --- and you testified to the Solicitor -- I
14 believe you said that Gary said that he and
15 Marie had everything worked out?

16 A. Yes.

17 Q. And that he -- she was going to give him the
18 key, is that right?

19 A. Mainly the combination.

20 Q. Okay. My question is simply this: If they
21 were all together and they had everything
22 worked out before you ever called or before
23 y'all ever went anywhere, why didn't she give
24 him the key and the combination then?

25 A. I have no idea.

1 Q. Okay. Fair enough, and your testimony is that
2 the two of y'all went to Marie's house
3 sometime that evening?

4 A. Yes.

5 Q. Okay, and did y'all talk about robbing her on
6 the way up there?

7 A. No.

8 Q. Did y'all talk about killing her on the way up
9 there?

10 A. No.

11 Q. That was never a plan?

12 A. No.

13 Q. All right. Did y'all ever discuss robbing
14 Taco Bell that night?

15 A. Yes.

16 Q. When that night did you discuss robbing Taco
17 Bell?

18 A. It was on the way up. It was always in our
19 discussions about how we'd do it, or when we'd
20 do it.

21 Q. Okay. When did y'all discuss that you would
22 do it? Did you set a date?

23 A. No.

24 Q. Were you going to do it that night?

25 A. No.

1 Q. No doubt in your mind you were not going to do
2 it that night, is that correct?

3 A. We didn't really know at the time. We didn't
4 know if we was actually going to get the
5 combination and the keys. It was my
6 understanding that him and Marie already had
7 an understanding about us getting the
8 combination and the -- and the key, but we
9 still didn't have them, so we didn't -- we
10 didn't know exactly when we was going to go --
11 go down there.

12 We always wanted to wait until Taco Bell
13 had a good day, to when they had a big
14 enough -- when they had a really good day so
15 there'd be more money in the safe.

16 Q. All right, so it would be fair to say that
17 y'all were not planning on robbing Taco Bell
18 that Tuesday night?

19 A. We weren't planning on it, no.

20 Q. And had had no discussion, in fact, about
21 robbing it that night?

22 A. Not that night, no.

23 MR. GARDNER: All right. Thank you, sir.

24 MR. KODMAN: That's all of this witness at
25 this time, Your Honor.

1 **THE COURT:** All right.

2 **MR. KODMAN:** Beg the Court's indulgence.

3 **THE COURT:** All right.

4 **MR. KODMAN:** That's all we have, Your Honor.

5 **THE COURT:** All right, Mr. Gardner, I'll be
6 glad to hear from you on the issue of the
7 admissability of this evidence and as to whether or
8 not you have objection to it.

9 **MR. GARDNER:** Thank you, Your Honor.

10 We would still offer that it is evidence of a
11 prior bad act and that we don't think it's relevant to
12 this case, and I think if it comes in it's going to
13 overly prejudice the jury, and I think it's going to
14 confuse them.

15 I mean, the defendant -- the last couple of
16 things he said, there was no plan to rob Taco Bell
17 that night, no plan to rob the decedent that night, no
18 plan to kill her that night.

19 They may or may not have gone into Taco Bell
20 at some point in time previously, and if that's true
21 or not true, that is evidence of a prior bad act, and
22 I don't think that we should allow that in to -- to
23 interject that into the testimony in this case when
24 this case is about a homicide. Thank you, Judge.

25 **MR. KODMAN:** Judge, I pulled the case that

1 Your Honor cited. It -- the law in the case I passed
2 up is still about the same as far as what it -- what
3 the law is regarding this issue, and I would say to
4 Your Honor, you know, one of the things he testified
5 about was the fact that one of the last conversations
6 that he overheard the victim having with the defendant
7 was this conversation regarding -- about the
8 combination and the Taco Bell statements.

9 Obviously from the testimony -- you know, the
10 jury's going to be sitting here and they'll be the
11 ones, obviously, to decide the weight of what it's
12 worth, whether he's a believable witness or not a
13 believable witness, but it's clear this defendant had
14 numerous conversations with him about robbing the Taco
15 Bell.

16 They had planned on robbing the Taco Bell.
17 They had scoped out the Taco Bell. They had gone to
18 Taco Bell on a previous occasion. They thought they
19 were going to get the keys and the combination to the
20 safe on this particular -- on this particular evening,
21 and it's -- and it's -- I think it's a reasonable
22 inference from the facts that the actions of the
23 defendant were as a result of not being able to obtain
24 what he obtained based on virtue of the fact that
25 after the murder happened, he brought the combination

1 to the safe with him out of the victim's house.

2 I think it's important for the jury to be able
3 to understand the context of the crime and how it
4 happened, the events leading up to it.

5 **THE COURT:** All right. I'm going to allow
6 evidence in with respect to the discussions of the
7 robbing of the Taco Bell. I find under 404(b) of the
8 South Carolina Rules of Evidence that this could be
9 evidence showing motive as to why the defendant was
10 at the home of the victim on this occasion, that it
11 was an effort to obtain information relative to
12 taking -- or relative to getting a combination and
13 keys so that the robbery that had been planned could
14 be completed.

15 I further find that it would be part of the
16 res gestae relating to the events surrounding the
17 victim's death in this matter, Ms. Martin, that the
18 discussions and purpose for going to the residence,
19 according to the testimony of Mr. Lindsay, was because
20 they were going there to get the combo and -- for the
21 safe, the keys, from Ms. Martin, and that's why there
22 was no specific discussion that, "When we get them,
23 we're going to have the robbery tonight."

24 That may not have been a specific discussion
25 on the way down, but it was a part of the general

1 discussion of "We're getting -- we're making this trip
2 to get other pieces necessary in order to complete the
3 robbery," and whether or not all the pieces had been
4 together to do it later that night, it's possible they
5 may have completed the robbery that night, or they may
6 have done it at a later point in time, so I am going
7 to allow the evidence to come in.

8 For record preservation, Mr. Gardner, do not
9 fail to object at the time it comes in so that it will
10 be preserved since this is basically an in camera
11 limine type motion.

12 MR. GARDNER: Yes, Your Honor.

13 THE COURT: All right, very good.

14 Let's take about a five minute recess, and
15 then we'll come back in and start with the testimony.

16 (OFF THE RECORD)

17 ON THE RECORD

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE
19 PRESENCE OF THE JURY.)

20 MR. GARDNER: Are we going to poll the jury,
21 Your Honor?

22 THE COURT: If you want, I will.

23 MR. GARDNER: I think we all recognize that
24 nobody sent their brother in.

25 THE COURT: Beg your pardon?

1 **MR. GARDNER:** I think we can recognize that
2 nobody's sent their brother in or anything. We'll
3 waive it.

4 **THE COURT:** All right, thank you.
5 You can bring the jury in.

6 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF**
7 **THE JURY.)**

8 **THE COURT:** Good morning, Mr. Foreman, and
9 members of the jury. I want to welcome you back and
10 apologize to you a little bit to you for your having
11 to wait as long as you did.

12 We have been working, but it took us a little
13 bit longer than I thought or when I was scheduling
14 things for me to dispose of the motions, and in
15 addition to that, my computer is not working properly
16 this morning and we're going to have to address it in
17 a longer time frame. We couldn't take ten or fifteen
18 minutes and get it straight, so we'll finish with it
19 at lunch time.

20 Solicitor, you may call your next witness.

21 **MR. KODMAN:** The State calls Amber Vrooman.

22 **AMBER VROOMAN,** being first
23 duly sworn by the Clerk, testifies as follows:

24 **THE CLERK:** Please state your name.

25 **MS. VROOMAN:** Amber Vrooman.

DIRECT EXAMINATION:BY MR. KODMAN:

Q. And Ms. Vrooman, how do you know the defendant?

A. We were a couple for five years.

Q. When did you first start seeing the defendant?

A. 1995.

Q. And how old are you now?

A. Twenty-three.

Q. So how old were you when you first started seeing him?

A. Had just turned seventeen

Q. And how old -- how old was he back then?

A. Thirty-one.

Q. And when you first started seeing him, were you living here in South Carolina?

A. No.

Q. Where were you living at?

A. New York.

Q. And when did you come to South Carolina?

A. 1999, May of 1999.

Q. And where in South Carolina did you move to?

A. Surfside Beach.

Q. And where did you start working when you moved down here?

1 **A.** Taco Bell in Surfside.

2 **Q.** And what did you do at Taco Bell?

3 **A.** I was a cashier.

4 **Q.** Now, you knew the victim in this case, Ms.
5 Martin?

6 **A.** Yes.

7 **Q.** How did you know her?

8 **A.** She was my manager and my friend.

9 **Q.** Did the defendant know the victim in this
10 case?

11 **A.** Yes.

12 **Q.** At some point prior to the victim's death in
13 this case, did the defendant start talking to
14 you about having an interest greater than just
15 maybe eating tacos at Taco Bell?

16 **MR. GARDNER:** Objection, Your Honor.

17 **THE COURT:** I will allow the question.

18 **A.** Yes. He had an interest in robbing Taco Bell.

19 **MR. GARDNER:** Again, I would object, Your
20 Honor, and I know that -- I just want to make sure
21 that the record is clear on this for -- in the event
22 it becomes necessary. I understand I have to put this
23 on the record. I don't know how you prefer I do it.

24 **THE COURT:** Your objection from the pre-trial
25 hearings is noted, and the grounds for the same are

1 adopted at this time.

2 MR. GARDNER: Thank you, Your Honor.

3 MR. KODMAN:

4 Q. What kind of discussions would he have with
5 you?

6 A. He would ask me procedures on how you close
7 the store, what do you do with the deposits,
8 who's in the office, who does the safe, how
9 big is the safe, you know, codes to get into
10 the safe, keys, just things about the store in
11 general, when you close, like the doors,
12 things like that.

13 Q. Did you have the combination to the safe?

14 A. No.

15 Q. What about locks to the store, did you have
16 those?

17 A. No.

18 Q. Now, how frequently would the defendant talk
19 to you about this?

20 A. Couple times a week, two, three maybe.

21 Q. And was the co-defendant, Andrew Lindsay, was
22 he ever around when the defendant had these
23 discussions with you?

24 A. No.

25 Q. Do you ever remember Andrew Lindsay talking to

1 you about wanting to rob Taco Bell?

2 A. No.

3 Q. And who is Andrew Lindsay?

4 A. He was an employee of Gary's and a friend.

5 Q. When you say a friend ---

6 A. They were employees first, and became friends.

7 Q. And would you and Gary do things with Andrew
8 and his wife?

9 A. Yes.

10 Q. What kind of things would y'all do together?

11 A. We'd go to the beach. We went out to eat a
12 couple times. We'd go out to a bar a couple
13 times.

14 Q. And prior to the victim's death, was there an
15 incident involving the keys to the Taco Bell,
16 involving the defendant?

17 A. A couple weeks prior to her death, Gary had
18 gotten the keys from her from our home. We
19 had decided to go out one night. She came to
20 my house to get ready, and he had gotten her
21 keys out of her purse.

22 Q. How do you know he had her keys?

23 A. Because he brought them into the bathroom
24 where I was getting ready and asked me which
25 key it was.

1 Q. Did you ever see him ask the victim for the
2 keys?

3 A. No.

4 Q. Were you ever around the defendant -- did he
5 ever have discussions with the victim
6 regarding robbing Taco Bell?

7 A. On a couple of occasions, they had joked about
8 it. It was -- you know, "Oh, I'll split the
9 money with you," type of joke-wise, but other
10 than that, nothing serious.

11 Q. On any of those occasions, did the victim ever
12 indicate a willingness to give the defendant
13 any information?

14 A. No.

15 Q. Going back to this evening with the keys, what
16 happened next once you saw that he had the
17 victim's keys?

18 A. Marie and I -- we still hadn't gotten ready to
19 go yet, so Drew Lindsay, his wife, and Gary
20 decided to go without us and meet us there.

21 We finished getting ready. We left. We
22 had stopped at a gas station, got something to
23 eat, and then went to the bar, and when we
24 arrived at the bar, he still wasn't -- no one
25 was there yet. It was just us two, so we just

1 stayed and listened to the music and waited
2 for them to get there. They arrived about a
3 half-hour, forty-five minutes after we
4 arrived.

5 Q. What happened once they got there?

6 A. They -- Gary and Drew started playing poker
7 machines. Tara came and sat down with us. We
8 started talking. We started going out to
9 dance and leaving our purses underneath the
10 table.

11 Drew came over, asked us -- asked if he
12 could take the purses; that way, you know,
13 they wouldn't get stolen, so he took them back
14 to the poker machines with them where they sat
15 until Marie decided that she wasn't feeling
16 real good, she had to open in the morning, she
17 was going home, so she went and got her purse
18 and she left. We stayed ---

19 Q. What did y'all do next?

20 A. We stayed for about two more hours until it
21 was closing time. We then drove to Surfside,
22 where we parked and -- we went through Taco
23 Bell parking lot, but parked at about three
24 parking lots away from the store.

25 Tara and I stayed in the car, and Drew

1 and Gary went to Taco Bell.

2 Q. Did the defendant tell you why they were going
3 in there?

4 A. They were -- well, they had the key. They
5 just wanted to see what the safe looked like
6 and what they needed to get into the safe.

7 Q. What happened next?

8 A. They came back. It was about twenty minutes
9 later. Tara -- we were riding with Tara and
10 Drew, so they took us home.

11 I went home and went to bed, and Tara and
12 Drew went home. I'm not really sure if Gary
13 watched T.V. I'm not sure what he did.

14 Q. To your knowledge, has the defendant ever been
15 to the victim's house?

16 A. Yes.

17 Q. Do you remember how many occasions that you
18 know of?

19 A. Maybe three.

20 Q. To your knowledge -- do you have any knowledge
21 of the co-defendant ever being at the victim's
22 house?

23 A. No.

24 Q. Let me take you to -- let me ask you this:

25 After that incident, but prior to May 23rd of

1 2000, did Gary have more discussions with you
2 regarding the Taco Bell?

3 **A.** He had asked me on many occasions to get the
4 combination for him, but it was none of my
5 business. I told him, "You know, you can't.
6 No one's allowed in the office when they open
7 and close the safe."

8 Our deposits -- he asked me how much they
9 were, but again, it was none of my business. I
10 didn't know how much they were.

11 **Q.** Fast forwarding to May 23rd of 2000, tell us
12 how your day started that day?

13 **A.** I have a daughter who had a dentist
14 appointment. We borrowed Marie's car. Before
15 she opened Taco Bell in the morning, she came
16 to pick Gary and myself and my daughter up.
17 We dropped Marie off at work, then went to the
18 dentist appointment, and I came back to work.
19 I believe it was around about ten-thirty or
20 eleven o'clock.

21 I worked all day. They were short-
22 handed, so I decided to stay, and Marie was
23 going to go home, and she left. I'm really
24 not sure about the time that Gary had to come
25 back and pick her up. He picked her up,

1 himself, my daughter ---

2 Q. Let me interrupt you a second. Whose -- whose
3 car was Gary driving?

4 A. We borrowed Marie's car.

5 Q. And approximately what time do you remember it
6 was that Gary -- or that Gary came and picked
7 Marie up?

8 A. Around six-thirty, seven.

9 Q. And you stayed at work?

10 A. I stayed at work because they needed one more
11 cashier.

12 Q. What happened later that night?

13 A. Marie was going to come back and pick me up
14 from work, which she usually did. She was
15 about forty-five minutes late, which was a
16 little unusual, so I decided to call her home,
17 which her roommate had answered the phone.

18 She was panicky, upset -- she hung up the
19 phone. She said she had to call 911. I then
20 called back again and got no answer. I made
21 another employee drive me to Marie's home to
22 see what had happened.

23 Q. And after the victim's death, did you notice
24 in the weeks subsequent to that any change in
25 the defendant's behavior?

1 **A.** Well, Drew didn't come around any more after
2 that. It was just -- usually he stayed at
3 home because I worked and he didn't work, so
4 he stayed home with our daughter. He was a
5 little moody, get angry a lot quicker.

6 **Q.** Did he make any comments regarding the
7 investigation to you?

8 **A.** He would ask me questions, if they had anybody
9 -- if they had anybody that knew anything
10 about it, said they were grasping at straws,
11 they'd never find anybody, whoever did it was
12 still walking around, would never be caught,
13 just never wanted to believe that anybody
14 would be caught.

15 **MR. KODMAN:** Thank you. Please answer any
16 questions Mr. Gardner may have for you.

17 **MR. GARDNER:** Thank you, Your Honor, if I may
18 have one moment.

19 **THE COURT:** You may.

20 **CROSS EXAMINATION:**

21 **BY MR. GARDNER:**

22 **Q.** Ms. Vrooman, you keep mentioning -- or you've
23 mentioned a couple of times a daughter. I'm
24 -- that is y'all's daughter, right?

25 **A.** Correct.

1 Q. Okay, and on the 23rd, he took y'all's
2 daughter to the dentist, is that right?

3 A. We took our daughter to the dentist.

4 Q. Y'all did, both ---

5 A. Uh-huh (Affirmative response).

6 Q. All right, and at some point in time, you went
7 back to work?

8 A. Yeah, right after the dentist appointment, I
9 believe around ten-thirty or eleven A.M.

10 Q. Okay. All right. You've mentioned the Taco
11 Bell, and I believe not only you worked there,
12 but also Marie worked there, is that right?

13 A. Yes. She was the manager.

14 Q. All right. You introduced the people from
15 Taco Bell to Gary, is that right?

16 A. Correct.

17 Q. Okay, and, in fact, you did give him some
18 information about the safe, the keys, and
19 whatnot at the Taco Bell, is that right?

20 A. Not -- I told him the safe was large, that he
21 couldn't get it out, that it was cemented into
22 the ground, so it wasn't anything that he
23 could remove himself.

24 Q. Okay. Did you tell him about how y'all
25 dropped the money, and different times, and

1 stuff like that?

2 A. Each shift did. I didn't want to lead him to
3 believe that all the money was sitting inside
4 the safe at the end of each day.

5 Q. So at the end of each shift, y'all dropped --
6 or all the money was put in the bank?

7 A. At the end of each shift, it was taken to the
8 bank.

9 Q. Have you got any idea, average, how much money
10 that would have been in May?

11 A. I have no idea.

12 Q. At this time, your transportation, would it be
13 fair to say basically you relied on Marie for
14 transportation?

15 A. Yeah.

16 Q. She'd come and get you and take you to
17 work ---

18 A. Uh-huh (Affirmative response).

19 Q. --- and pick you up from work and take you
20 home?

21 A. Correct.

22 Q. Take your child -- or let you borrow the car
23 to take your child to the doctor and whatnot?

24 A. Yes.

25 Q. Okay, and that day, of the 23rd, the doctor --

1 did the doctor schedule another appointment on
2 the 26th? That would have been three days
3 later?

4 A. Not to my knowledge that I remember.

5 Q. All right. You went to the doctor, though,
6 right?

7 A. I went to the doctor's that morning.

8 Q. And you don't recall the next appointment that
9 was scheduled?

10 A. I didn't make a schedul- -- an appointment
11 that day because she did have to have her two
12 front teeth removed, but I didn't know what my
13 schedule was, and the schedule's already made
14 weekly, so they told me she needed another
15 appointment, but I didn't make one that day.

16 Q. Okay. Did y'all ask -- at some point in time
17 after that first appointment, did y'all ask
18 Marie could y'all use the -- or use her car to
19 go back for an appointment later that week?

20 A. No.

21 Q. Do you have any knowledge of Gary asking?

22 A. No.

23 Q. All right. Okay. Do you remember visiting
24 with Gary at J. Reuben Long after he got
25 arrested?

1 A. Yes.

2 Q. Do you recall at any time a letter that was
3 written to him from Andrew Lindsay, your
4 viewing it?

5 A. I recall him holding something up in there. I
6 didn't really read it. I just looked at the
7 name to see who it was from. He showed me.

8 Q. Okay. Was it from Andrew Lindsay?

9 A. It said from Andrew Lindsay, but I don't know
10 his handwriting.

11 Q. Okay.

12 MR. GARDNER: Your Honor, if I may just have a
13 moment, please.

14 THE COURT: All right.

15 MR. GARDNER:

16 Q. You -- obviously, you and Gary are not
17 together any longer, is that right?

18 A. Correct.

19 Q. In fact, y'all had a marital dispute or a
20 domestic dispute back in the year 2000?

21 A. Correct.

22 Q. Was that -- did that involve a co-worker, one
23 of your co-workers? Do you think that was
24 the ---

25 A. No.

1 Q. Okay. Did Gary -- Gary never told you that,
2 "I'm upset with you because of one of your co-
3 workers," a guy named Frank Rogers?

4 A. He was upset with me for a lot of co-workers,
5 and a lot of other people, not just one.

6 Q. Okay, but no doubt about it, at some point in
7 time, based on that and other co-workers and
8 whatever that you might want to throw into
9 that mixture, y'all basically went your
10 separate ways?

11 A. Correct.

12 Q. All right, and it'd be fair to say that you
13 may have some animosity towards him?

14 A. Correct.

15 MR. GARDNER: Thank you. That's all we have.

16 THE COURT: Any redirect?

17 MR. KODMAN: Beg the Court's indulgence, Your
18 Honor.

19 No further questions, Your Honor.

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

21 Does she need to be kept, or can she be
22 released? Any objection from the Defense as to ---

23 MR. GARDNER: No, Your Honor.

24 MR. KODMAN: We'd just like to keep her under
25 subpoena, Your Honor, just in case I might need her as

1 a rebuttal witness.

2 THE COURT: All right.

3 Thank you, ma'am. You're still under your
4 subpoena.

5 MR. KODMAN: The State calls Andrew Lindsay.

6 ANDREW LINDSAY, being
7 first duly sworn by the Clerk, testifies as follows:

8 THE CLERK: Please state your name.

9 MR. LINDSAY: Andrew Lindsay.

10 DIRECT EXAMINATION:

11 BY MR. KODMAN:

12 Q. And Mr. Lindsay, where are you currently
13 living at?

14 A. Department of Corrections.

15 Q. And what are you serving time for right now?

16 A. Second degree burglary.

17 Q. How many counts?

18 A. Seven.

19 Q. And what's your sentence on those?

20 A. Ten years.

21 Q. And when were you sentenced?

22 A. 2000, 2001.

23 Q. Last year?

24 A. Yes.

25 Q. Isn't it true in 1991 you were convicted of a

1 felony from the state of Illinois for which
2 you received a sentence of fifteen years?

3 A. Yes.

4 Q. And isn't it also true, Mr. Lindsay, that you
5 signed an agreement, a plea agreement, in this
6 case to testify?

7 A. Yes.

8 Q. And what is it in that plea agreement that
9 you've agreed to plead guilty to in exchange
10 for your testimony?

11 A. To plead guilty to accessory after the fact
12 for a term of fifteen years.

13 Q. And is that fifteen years to run concurrent or
14 consecutive to the current time you're
15 serving?

16 A. Consecutively.

17 Q. Let me ask you this, Mr. Lindsay: Do you know
18 the defendant, Gary Bennett?

19 A. Yes.

20 Q. And when did you first meet the defendant?

21 A. I met him when I worked for Lane's Pest
22 Control in December of 1999.

23 Q. Was he also working there?

24 A. Yes.

25 Q. And is it safe to say y'all became friends?

1 A. Yes.

2 Q. And who was your wife at the time?

3 A. Tara.

4 Q. And were you and Tara friends with Gary and
5 his wife?

6 A. Yes, we were.

7 Q. And would y'all do things together?

8 A. Yes.

9 Q. Where did Gary's wife work at?

10 A. She worked at a Taco Bell in Surfside.

11 Q. And at some point during your friendship in
12 between, I guess, when you first became
13 friends in December whatever of 1999, and
14 between the date of the murder, was there some
15 point in there where the defendant started
16 having some discussions with you about the
17 Taco Bell?

18 A. Yes.

19 Q. Now, what kind of discussions would he have
20 with you?

21 A. We were discussing about robbing Taco Bell.

22 MR. GARDNER: Your Honor, same objection for
23 the record.

24 THE COURT: I will allow this testimony and
25 incorporate your prior objections.

1 MR. KODMAN:

2 Q. Who first brought the issue up?

3 A. Gary did.

4 Q. How did he present it to you?

5 A. He would just tell me about how easy -- how
6 easy it'd be to get into Taco Bell and to get
7 the money out of the safe.

8 Q. How often would you see Gary during the
9 average week?

10 A. Four or five times.

11 Q. And how often when you would see him would
12 y'all have this discussion about Taco Bell?

13 A. Pretty much all the time.

14 Q. Did he tell you where he was getting his
15 information about Taco Bell?

16 A. Yes, from -- from his wife, Amber.

17 Q. And was there an occasion where you and the
18 defendant actually made an attempt to go into
19 the Taco Bell?

20 A. Yes.

21 Q. Tell us about how that night started.

22 A. We -- we was going to go to Warren's and get
23 the keys -- well, Gary -- Gary and Amber -- we
24 was going to meet Gary and Amber over -- over
25 at Warren's, but then, see, Marie -- they

1 convinced Marie to go to Warren's with us, so
2 Marie, after work, went over and met at Gary's
3 house, and took a shower over there, and Gary
4 got the keys from -- Gary and Amber got the
5 keys from Marie while she was taking a shower.

6 Q. Did you go over to the house as well?

7 A. Me and my wife went -- went down after, I
8 guess, when they called to come pick -- to
9 come down and pick up Gary, and Marie and
10 Amber took Mallory to the babysitter, and Gary
11 came with me and my wife, and we went to make
12 copies of the keys.

13 Q. And let me ask you, you're referring to Marie.
14 Did you know Marie, the victim?

15 A. Yes.

16 Q. And how did you know her?

17 A. I knew her through Gary and Amber. She came
18 to -- she came to Warren's with us a few
19 times.

20 Q. And other than the night of the murder, had
21 you ever been over to her house before?

22 A. No.

23 Q. So what happened next after you picked up
24 Gary?

25 A. Me, Gary, and my wife, we went -- we proceeded

1 to go up to WalMart to make copies of the
2 keys, and then we couldn't make no copies
3 there.

4 We went over to Home Depot, made a
5 couple copies there, and then they couldn't
6 make a copy of one of the keys, so we
7 proceeded to where my wife worked, a K-Mart in
8 Conway, and made additional keys.

9 Q. What did y'all do next?

10 A. Then we went to -- we met Amber and Marie at
11 Warren's. That's a karaoke bar in Myrtle
12 Beach, and we tried to get the keys back into
13 Marie's purse.

14 Q. And what happened next?

15 A. After -- after that evening, after -- Marie
16 went home. She had her own car. Me -- me and
17 my wife and Gary and Amber went down to
18 Surfside. It was about -- after about one in
19 the morning, and we went and got into Taco
20 Bell.

21 Q. Now, describe that -- where did -- where did
22 you drive to?

23 A. We -- we drove down to Surfside and parked
24 behind a warehouse a couple of buildings away,
25 and me and -- my wife and Amber -- or Amber

1 and my wife stayed in the car. Me and Gary
2 went and went in the side door of Taco Bell.

3 Q. What happened when you got inside Taco Bell?

4 A. The safe was locked. There was -- there --
5 couldn't find no money. We didn't have the
6 combination of the safe. The safe was
7 supposed to have been opened, and there was
8 nothing there for us, so we -- so we left.

9 Q. About when did this event happen in relation
10 to the victim's death?

11 A. A few weeks before.

12 Q. And in between the victim's death and that
13 incident, were there further discussions with
14 Gary regarding Taco Bell?

15 A. Yes.

16 Q. What kind of discussions were those?

17 A. Oh, we was trying to get the -- the
18 combination. Gary was -- Gary was trying to -
19 - was trying to -- was always telling his
20 wife, Amber, to watch for the combination, to
21 look around for the combination, and a few
22 times we discussed about just going down --
23 going down at nighttime and waiting for after
24 everybody closes, when they leave, to just --
25 to rob the manager -- whatever manager coming

1 out.

2 Q. Let me take you to May the 23rd of 2000. How
3 did that day start for you?

4 A. I went to work that day at seven in the
5 morning, got off around three or four.

6 Q. Where were you working at?

7 A. Myrtle Beach National Golf Course.

8 Q. And where did you go from work?

9 A. I went home.

10 Q. And when you got home, did you make some phone
11 calls?

12 A. Yes. I called Gary.

13 Q. And what did y'all talk about?

14 A. We talked about his day. He said he was -- he
15 had Marie's car that day. He took his little
16 girl to the doctor or something. I was trying
17 to get Gary at the time a job at the golf
18 course because at the time he wasn't working.

19 Q. Did y'all have some discussion about Taco
20 Bell?

21 A. Yes.

22 Q. What was that discussion?

23 A. He said he had -- he pretty much had
24 everything worked out with Marie about getting
25 the combination and the keys.

1 Q. Did he ask you to do anything?

2 A. He asked me to come down and pick him up.

3 He -- Marie dropped him off, and Mallory left
4 a little stuffed animal in her car, and he
5 wanted to go up and pick it up.

6 Q. Where were you living at at the time?

7 A. Conway, on Old Reaves Ferry Road.

8 Q. Do you remember the address?

9 A. 4926 Old Reaves Ferry Road.

10 Q. And that wasn't your place, was it?

11 A. No. That was my mother and father-in-law.

12 Q. And what are their names?

13 A. Terry and Francisco Santos.

14 Q. Did you go over to Gary's house?

15 A. Yes.

16 Q. Do you remember what time it was when you got
17 there?

18 A. No, I don't.

19 Q. Was it still daylight?

20 A. It -- it was still light out.

21 Q. And what happened when you got to Gary's
22 house?

23 A. I got to Gary's house. I went inside, and we
24 got -- we got Mallory's car seat and put it in
25 my car, and we proceeded up to Marie's house.

1 Q. And when you say Mallory, that's who?

2 A. That's Gary's daughter.

3 Q. Do you know how old she was back then?

4 A. Between two and three.

5 Q. And where did y'all drive to?

6 A. Up to Marie's house, up 17 to -- Gary gave me
7 directions over to Marie's house.

8 Q. Had you ever been there before?

9 A. No.

10 Q. Did y'all have any discussions about Taco Bell
11 on the ride over there?

12 A. Yes.

13 Q. What were those discussions?

14 A. Just he thought he had everything worked out
15 with Marie about getting the combination to
16 the safe.

17 Q. What happened when you got to Marie's house?

18 A. Marie wasn't there.

19 Q. And what did you do?

20 A. We backed out of there. I have an old car, an
21 old '65 Buick, and it was too big to fit down
22 in there, so we pulled up out of there, and we
23 went up the street about a block.

24 There's like an old church there, and I
25 was having trouble with my car, so we parked

1 up there and I fixed my car while we waited
2 for Marie to get home.

3 Q. What was wrong with your car?

4 A. It -- the brake cyl- -- the master brake
5 cylinder leaks real bad, so every -- you know,
6 every -- twice, three times a day, I have to
7 fill it up with brake fluid, bad brakes.

8 Q. What happened while you were -- after you
9 got -- while you were doing that?

10 A. I got done fixing -- all it was -- fixing my
11 car -- Marie came by. Gary was talking to
12 Marie, and Gary turned to me and told me to
13 come down and pick him up at Marie's house
14 after I got done fixing my car.

15 Q. About how long did it take you to mess around
16 with the car?

17 A. Two or three minutes.

18 Q. And then what did you do?

19 A. I got in my car and I went down to Marie's
20 house.

21 Q. What happened when you got down to Marie's
22 house?

23 A. I got down in there. I didn't know if I
24 really wanted to pull down in there because it
25 was real tight. I figured Gary would be right

1 back out. I waited just a minute, and then I
2 went down in there. '

3 I got down to Marie's house. I stopped
4 the car, waited a minute or two, and then I
5 went inside.

6 Q. Can you show us on this diagram where you
7 parked your car?

8 A. Get up?

9 Q. Sure.

10 A. Over there. (Witness indicating.)

11 Q. And what happened when you went inside the
12 house?

13 A. Gary -- I went inside. Gary and Marie were
14 discussing about getting the combination.
15 They was discussing about Taco Bell.

16 Q. Where was everybody standing at?

17 A. They was standing in the living room.

18 Q. That would be this area here?

19 A. Yes.

20 Q. What did you do when you walked in?

21 A. I asked Gary if everything was -- if
22 everything was going all right, and he said --
23 he was talking to Marie. I mean, they just --
24 they was having that discussion right then. I
25 asked Marie if I could use the phone. I went

1 in the kitchen to use the phone.

2 Q. Was the phone in the kitchen?

3 A. No. It was stretched out there in the living
4 room. There's a little -- it was a small
5 phone that had a long cord on it I could
6 stretch.

7 Q. And you went into the kitchen to call who?

8 A. I went in to talk to my wife, to call my wife.

9 Q. Where was she at the time?

10 A. I thought she was at home, but I believe she
11 was at work.

12 Q. And where was she working at the time?

13 A. K-Mart.

14 Q. Did you try to call K-Mart?

15 A. Yes, I did.

16 Q. Did you -- let me ask you this: Did you talk
17 to your wife that evening?

18 A. No, I did not.

19 Q. Do you remember who you talked to that
20 evening?

21 A. No.

22 Q. What do you remember while you were on the
23 phone?

24 A. I -- I remember a lot of arguing. I didn't
25 really understand what was going on. Marie

1 didn't -- was -- Marie and Gary was having a
2 conversation about giving up the combination,
3 and Marie was worried that they would find out
4 that she -- that we got the combination from
5 her, and she would get in trouble, and then --
6 they was arguing about that for a minute or
7 two, and then they -- it switched to about
8 Amber.

9 Gary was having problems with Amber.
10 Marie was trying to get Amber to leave Gary,
11 and it was just -- got down into a heated
12 discussion about -- Gary was telling Marie
13 just to stay out of him and Amber's business.

14 Q. So what did the defendant do?

15 A. After a few minutes, she -- she told Gary for
16 him and me to leave, you know, and so we -- so
17 Gary came in the kitchen, and he was just
18 upset. I was still trying to make a phone
19 call. He said -- he said, "I'll take care of
20 this," and he left out of the kitchen.

21 Q. What did he do when he came -- what area of
22 the kitchen did he come into?

23 A. I was -- I was over -- I was over by the sink.
24 He came in and got something by the sink out
25 of a drawer. I didn't really know what it was

1 at the time. I glimpsed him when he was going
2 back in the living room. I didn't really know
3 what it was at the time.

4 Q. What do you remember happening next?

5 A. Everything got quiet in the trailer. I looked
6 into the living room. I didn't see no one in
7 the living room, so I figured they were
8 somewhere back in the trailer. I heard the --
9 it was like a mobile home. You can tell when
10 someone's like wrestling around or -- I didn't
11 hear no talking, no noth- -- no argument or
12 nothing.

13 I proceeded -- after I hung up the phone,
14 I couldn't get through, I went back and that
15 first -- that first bedroom around the thing,
16 and I looked in there, and Gary was on top of
17 Marie on the bed.

18 Q. What happened when you got to the doorway?

19 A. I asked Gary what was going on, and he said,
20 "Don't worry about it." He got off the bed.
21 He was tearing up the bedroom looking for
22 something -- looking for something.

23 Q. Do you ever remember seeing something in his
24 hand?

25 A. Yes. He had a knife in his hand. It was a

1 long kitchen knife.

2 Q. And where was the victim at this time?

3 A. She was on the bed.

4 Q. And when I refer to the victim, who are we
5 referring to?

6 A. Marie.

7 Q. And what position was she on the bed?

8 A. She was face down on the bed.

9 Q. Did you go over to her?

10 A. Yes, I did.

11 Q. What did you notice about her?

12 A. That there was a lot of blood on the bed. I -
13 - I was kind of asking Gary what -- what was
14 going on, I mean, you know, and I was checking
15 Marie to see if she was okay. I seen -- when
16 I went to see if Marie was okay, there was a
17 lot of blood right there on the bed, and when
18 I rolled her over, there was blood everywhere.

19 Q. Did you notice anything about the way she was
20 dressed?

21 A. Just she -- she had pants on and a shirt on.

22 Q. Did you see the defendant do anything with the
23 body?

24 A. No.

25 Q. What did you do?

1 A. I -- I kind of backed up off the bed, and I
2 just looked at Gary, and I said, "You know, it
3 didn't have to come to this, you know," and he
4 was just -- he was acting enraged, and he
5 said, "Just get out of here. Go back out to
6 the car."

7 Q. So what did you do?

8 A. I tried to back out of there. There was boxes
9 and everything behind me. I got out in the
10 hallway, and I just proceeded to leave the
11 trailer.

12 Q. And where did you go?

13 A. I went down the back hallway and went out the
14 back door.

15 Q. And you went to where?

16 A. I went -- I went and got in the car. I
17 started the car, and it took me about three or
18 four minutes to back up out of there. At that
19 time it was getting dark.

20 Q. Let me ask you this: Mallory, what was she
21 doing this whole time?

22 A. She was sleeping in the car, in her car seat.

23 Q. When did she fall asleep in the car, do you
24 remember?

25 A. After I got done fixing my car, on the way up,

1 when I was up by that -- by that church or
2 somewhere, when I was fixing my brakes. When
3 I got back in the car, she was already asleep.

4 Q. So where did you pull the car to

5 A. I backed -- I got the car finally backed up
6 out of the trailer court. It was a narrow
7 trailer court, and I don't got backing lights
8 on my car, so it took -- it was getting dark
9 and it was hard to see, and I got the car
10 backed out of the trailer court, and I waited
11 there a couple minutes, and then Gary came out
12 and got in.

13 Q. What did you notice that he had with him?

14 A. He had a bag with him. It was like a shopping
15 bag, and it looked like there was -- he had
16 something in the garbage bag, or it wasn't a
17 garbage bag. It was a WalMart bag or -- a
18 bag.

19 Q. Did you see the knife at that time?

20 A. No, I did not.

21 Q. Did he say anything to you?

22 A. No. He said, "Let's go down to a convenience
23 store. I need to get cleaned up."

24 Q. So where did you go to?

25 A. We left -- we left the trailer court. We

1 drove down to Kings Highway, to the first
2 convenience store I could find, and we stopped
3 there and he went in.

4 He took a shirt in with him, a shirt I
5 had in the back of the car. It was a button-
6 down shirt, and he went to the bathroom to get
7 cleaned up.

8 Q. What did you do?

9 A. I waited out in the car for a few minutes.
10 Mallory started getting up, or started waking
11 up, and I thought Mallory would like something
12 to drink. She seemed like she wanted
13 something to drink, so I went in and got
14 Mallory something to drink, and got me a Dr.
15 Pepper, and then I came back out and waited in
16 the car.

17 Q. How long did he stay in the store?

18 A. Three or four minutes, five minutes.

19 Q. What happened when he came out of the store?

20 A. He -- he bought a pack of cigarettes, came and
21 got in, and he said, "Let's go find a
22 dumpster. I need to get rid of some stuff."

23 We proceeded from the convenience store
24 around the block, and he said, "Stop at" -- we
25 seen a big dumpster, and he said, "Stop over

1 at that dumpster," and we stopped over there,
2 and he went through Marie's purse, got some
3 things out of it, and threw the purse and the
4 knife -- or that bag and everything into the
5 trash can.

6 Q. What happened next?

7 A. We left there, and Gary said, "Let's head for
8 home," so I took him home.

9 Q. What happened when you got to his house?

10 A. I dropped Gary off. I told him I needed to go
11 pick up my wife. She was getting off work
12 pretty soon. He -- he wanted to know if we
13 was going to Warren's that night, because we
14 usually go to Warren's on Tuesday nights, and
15 I had to ask my wife if we wanted to go, and I
16 told him I would call him around eleven
17 o'clock and let him know when my wife got off.

18 Q. Describe what happened when you got to -- how
19 you unloaded the car when you got to his
20 house.

21 A. We took the baby -- took the car seat out.

22 Q. Who took the car seat out?

23 A. I unbuckled it and pulled it out, and he
24 carried it in, and he got everything he
25 thought he left in the car and went in the

1 house.

2 Q. Was there anything left in the car after you
3 dropped Gary off?

4 A. Yes. I realized on the way up -- he left some
5 of the money that he found in Marie's purse on
6 the car seat. He also left the combination --
7 the combination.

8 Q. What did you do with that stuff?

9 A. I kept the money. I put the combination in my
10 pocket, and just went home.

11 Q. Did you have some further discussions with
12 Gary that night or the next day regarding
13 robbing the Taco Bell?

14 A. Yes. He wanted to go -- since he had the
15 combination, he wanted to go -- to go get in
16 the safe at Taco Bell, and I thought it would
17 be a bad idea since, you know, this close to
18 being Marie -- that happening to Marie. I
19 didn't think it would be a good idea to go
20 anywhere around Taco Bell.

21 Q. Did you ever give him the combination?

22 A. No. He asked me about the combination, if
23 he -- he thought he left it in the car. He
24 thought for sure he left it in the car, and I
25 told him I looked, I didn't see it in the car.

1 Q. After Marie's death, for about the next month
2 and a half, did you and Gary do a lot of
3 things together?

4 A. No. It slacked off quite a bit.

5 MR. KODMAN: Beg the Court's indulgence, Your
6 Honor.

7 (Pause)

8 MR. KODMAN:

9 Q. Mr. Lindsay, let me ask you this: Were you at
10 Eva Marie Martin's house on May 23rd, 2000,
11 when she was killed?

12 A. Yes.

13 Q. Did you kill Eva Marie Martin?

14 A. No.

15 MR. KODMAN: Please answer any questions Mr.
16 Gardner may have.

17 CROSS EXAMINATION:

18 BY MR. GARDNER:

19 Q. It slacked off because you went to Arizona,
20 isn't that correct, sir?

21 A. Excuse me?

22 Q. You said it slacked off, your visits with Gary
23 slacked off after the death of Marie?

24 A. Yes.

25 Q. And the reason it slacked off because you

1 moved to Arizona, isn't that correct?

2 A. No.

3 Q. You didn't go to Arizona?

4 A. I went to Arizona, yes.

5 Q. And you were arrested for this murder in
6 Arizona, is that correct?

7 A. I wasn't arrested for the murder, no.

8 Q. Okay. At some point in time, you were
9 arrested for this murder, is that correct?

10 A. Yes.

11 Q. And when you were taken into custody in
12 Arizona, what did you have in your pocket?

13 A. In my pocket?

14 Q. In your possession.

15 A. The combination was in a wallet ---

16 Q. The combination to the Taco Bell, isn't that
17 correct, sir?

18 A. Yes.

19 Q. What was it written on?

20 A. A piece of scrap paper.

21 Q. A piece of scrap paper, and you're telling me
22 that this fellow who is possessed with the
23 idea of robbing Taco Bell has just killed
24 somebody, and he's going to just leave this
25 piece of paper in your car?

1 A. I think he forgot it. I think he thought he
2 had it, and he didn't.

3 Q. Okay, so something that has driven him crazy,
4 he's going to get this combination no matter
5 what it takes, and then he just says, "Here,
6 you can have it," is that right?

7 A. I didn't think he -- I don't think he meant to
8 give it to me. I think when he left he
9 thought he had it. He thought he left it in
10 my car, and he wanted me to look for it. I
11 looked for it and I said I didn't have it.

12 Q. Okay, so you lied?

13 A. Yes.

14 Q. And let's start at the beginning. The
15 Solicitor asked you if you were serving time,
16 and I believe you said seven counts of
17 burglary?

18 A. Yes.

19 Q. All right. Is that a result of a plea
20 bargain?

21 A. I pled guilty to burglaries.

22 Q. Do you know what I mean when I say plea
23 bargain?

24 A. No.

25 Q. Okay. Well, would it surprise you if it meant

1 something like you plead guilty in exchange
2 for a bargain?

3 A. They said if I plead guilty, anywhere between
4 seven and -- I had to go in front of the Judge
5 for seven to ten years.

6 Q. Okay. You've done that before, haven't you?

7 A. No.

8 Q. You've never pled guilty before?

9 A. No, I have not.

10 Q. You've been found guilty before, haven't you?

11 A. Yes.

12 Q. You're a convicted felon, received a sentence
13 of fifteen years, isn't that correct?

14 A. Yes.

15 Q. To a charge that has nothing to do with the
16 burglary charges you're serving your time for
17 now, isn't that right?

18 A. Yes.

19 Q. All right, and the story that you have just
20 told this jury, is that the first time you
21 told that story?

22 A. No.

23 Q. Is that the first story you've told about the
24 incident?

25 A. No.

- 1 Q. Okay. This is about the third or fourth story
2 you've told?
- 3 A. Yes.
- 4 Q. All right. Let's start with the first story
5 you told. Do you remember that?
- 6 A. Yes.
- 7 Q. Do you remember George Merritt? Do you know
8 him?
- 9 A. Yes.
- 10 Q. Okay. Do you remember Bill Knowles?
- 11 A. Yes.
- 12 Q. They talked to you in Arizona?
- 13 A. Yes.
- 14 Q. And then at some point in time shortly
15 thereafter, you came back to Horry County, is
16 that right?
- 17 A. Yes.
- 18 Q. And you spent about twenty hours with
19 Detective Merritt, approximately?
- 20 A. Yes.
- 21 Q. How many different statements did you give?
- 22 A. Three, three or four statements.
- 23 Q. Three or four, and the first one, I'm
24 paraphrasing, but basically you denied going
25 in the house or anything like that, is that

1 right?

2 A. Yes.

3 Q. Denied knowing anything about Marie's death?

4 A. Yes.

5 Q. Denied knowing that Gary had anything to do
6 with it?

7 A. Excuse me?

8 Q. Denied knowing that Gary had anything to do
9 with it, to your knowledge?

10 A. My first -- I don't recall.

11 Q. You don't recall. Maybe I can give you
12 something that will help refresh your
13 memory.

14 A. Yes.

15 Q. I'm going to show you -- this is your
16 statement that you signed out in Arizona. I'm
17 going to show it to you and ask if you
18 recognize it. If you can look at the bottom
19 and see your signature, do you recognize that?

20 A. Yes.

21 Q. Can you tell me when that's dated?

22 A. 7/22/00.

23 Q. If you read that last paragraph, tell me
24 whether or not it refreshes your memory about
25 the question I just asked.

- 1 **A.** It says I have no prior knowledge of what Gary
2 was up to at Marie's house. I had no prior
3 knowledge that Gary was going to -- to kill
4 Marie, no.
- 5 **Q.** Okay. That was the question I asked you, and
6 you said you didn't recall, so the first time,
7 you said you had no prior knowledge of
8 anything that Gary did, right?
- 9 **A.** I had no prior knowledge that -- that he was
10 going to harm Marie, no.
- 11 **Q.** Okay, and you have no prior knowledge of
12 anything that happened after Marie was harmed?
- 13 **A.** No.
- 14 **Q.** That would be you had no knowledge of anything
15 that happened?
- 16 **A.** I had no knowledge of -- can you -- can you
17 repeat the question? You're confusing me
18 here.
- 19 **Q.** I'm going to read you your sentence, and -- or
20 I'll let you read it again. If you're having
21 trouble reading it, let me know because this
22 is the same document I showed you earlier, and
23 you can verify that by seeing it's got your
24 signature and today's date. Is that the same
25 paragraph that I asked you to read a while

1 ago?

2 A. Yes.

3 Q. All right. Read this -- just read the whole
4 thing and tell me if that's consistent with
5 what you just answered to me.

6 A. The last paragraph?

7 Q. Right.

8 A. I, Andrew J. Lindsay, did -- did not have any
9 prior knowledge of what Gary was up to at
10 Marie's home, or afterward. I had no
11 knowledge later that -- and then it goes on to
12 the next page.

13 Q. Okay, so you had no knowledge then or
14 afterwards, right?

15 A. Yes.

16 Q. Okay, so that would be a lie, too, right?

17 A. Yes, it was.

18 Q. All right, and that was in July back in
19 Arizona?

20 A. Yes.

21 Q. All right, and then ultimately, you get
22 arrested for the murder, is that correct?

23 A. Yes.

24 Q. Okay, and your story changes a good bit,
25 doesn't it?

1 A. My -- it changed well before that.

2 Q. It changed a good bit, though, didn't it, sir?

3 A. Yes.

4 Q. From no knowledge at all when it happened or
5 thereafter ---

6 A. I was going through a time of when I didn't
7 know how much involvement I wanted to really
8 get into, and at one point, I had discussions
9 with my wife, and it came down to a breaking
10 point to where I needed to tell the truth and
11 get the whole truth out, and I did.

12 I made a final statement, and I told the
13 detectives exactly what happened that night.

14 Q. I imagine the first part of what you just said
15 was that you didn't want to have anything to
16 do with this, and I could see why human nature
17 would tell somebody that, but the rest of what
18 you just said, isn't it true it had more to do
19 with the type of plea bargain that you're
20 getting for this vicious murder?

21 A. No. At the -- at the time I made this
22 statement, I wasn't charged with murder
23 whatsoever. I -- I never believed I was ever
24 going to be charged with murder.

25 Q. All right, so are you trying to tell this jury

1 that your sentence for this murder has nothing
2 to do with you up there testifying today?

3 A. I -- I -- my statement back then had nothing
4 -- I wasn't even charged with murder at that
5 time, my statement back then, but I'm
6 testifying today -- I'm pleading guilty to
7 accessory after the fact.

8 Q. Which would be a lot better than the murder,
9 right?

10 A. I suppose, yes.

11 Q. Well, you do the math. What are you going to
12 get for this?

13 A. Fifteen years.

14 Q. That's better than life, right?

15 MR. KODMAN: Objection. That's not a fair and
16 accurate statement as to what murder carries.

17 THE COURT: Sustained.

18 MR. GARDNER:

19 Q. Accessory after the fact is a better deal for
20 you, isn't it, sir?

21 A. I -- I don't believe I was ever guilty of
22 murder.

23 Q. It's a better deal than a murder conviction,
24 though, is it not?

25 A. Yes.

1 Q. Okay, and your sentence and your charge, your
2 guilty plea, is all contingent -- I mean, it's
3 all based upon what you testify to today,
4 isn't that right?

5 A. To tell the truth, yes.

6 Q. It's based on what you testify to?

7 A. Yes.

8 Q. That's correct. All right. Move back along.
9 Do you remember telling Amber that whoever did
10 this would never -- would get away with it,
11 would never get caught, words to that effect?

12 A. No.

13 Q. Okay, and you weren't here earlier when she
14 testified, so -- all right.

15 You said back on the day, I believe it
16 was a Tuesday, the 23rd, that you called Gary
17 at some point in time. You don't recall what
18 time it was, is that still correct?

19 A. Yes.

20 Q. And do you recall how many times you called
21 him?

22 A. I remember calling him a few times after work
23 because that day he was supposed to come by
24 and interview for a job at the place I worked
25 at, and he -- I couldn't get a hold of him

1 from my workplace.

2 I called him later on that night, or
3 later on in the eveningtime when I got home
4 and I got through and talked to him.

5 Q. I guess that would be a no, you don't remember
6 what time, or ---

7 A. I don't -- no, I don't remember what time that
8 was.

9 Q. Okay. You make a lot of phone calls, don't
10 you, sir?

11 A. Yes.

12 Q. Made a lot that day?

13 A. Not really.

14 Q. All right, and now today, your story is that
15 you went to Marie's house, went inside the
16 house, and I believe you said that you heard
17 Gary and Marie arguing, is that right?

18 A. Yes.

19 Q. All right, and you go, what, make a phone
20 call?

21 A. They were discussing about the Taco Bell,
22 about the combination. I needed to make a
23 phone call to my wife -- I thought I would
24 talk to my wife. I didn't want to be part of
25 that conversation.

1 Q. So you called home?

2 A. Uh-huh (Affirmative response) -- I tried -- I
3 attempted to call home. I hung up, and I
4 remembered that my wife was work- -- working
5 that evening, and I didn't really know the
6 number to K-Mart.

7 Q. You figured out what my next question was, so
8 then you called K-Mart, right?

9 A. I attempted to call K-Mart. I couldn't really
10 remember the phone number.

11 Q. Okay. Let's -- let's cut to the chase. You
12 either did something or you attempted to do
13 something, and I don't want to put words in
14 your mouth. What was it? Did you make a
15 phone call or did you attempt to make a phone
16 call?

17 A. I attempted to make a phone call.

18 Q. Did you attempt to make one phone call or did
19 you attempt to make two phone calls?

20 A. I started to make the one, but I hung up and
21 made another one.

22 Q. All right. In your own words, tell me,
23 please, sir, how many phone calls you made.

24 A. Two -- the one -- or one was not really a
25 phone call. I hung up and I called -- I tried

1 calling my wife at work.

2 I realized my wife wasn't at home at the
3 time, so I hung up there and tried calling my
4 wife's place of work.

5 Q. Okay. Let me just ask you this: You hear
6 arguing and you know that y'all have got this
7 plan to rob this place and it's all based upon
8 getting this key and getting this combination,
9 and you hear arguing going back and forth.
10 You pick up the phone and call your wife?

11 A. I -- I needed to talk to my wife ---

12 Q. What were you going to tell her, "We're fixing
13 to kill Marie"?

14 A. No.

15 Q. What were you going to tell her, sir?

16 A. We were -- earlier in the evening, we was
17 talking about going out to Warren's that
18 night. My wife was at work. I needed to find
19 out what time she was going to get off, or the
20 -- for her to look on her schedule to see if
21 she worked the next day.

22 Q. All right, so you and your wife, and Marie,
23 and Gary, Amber, and other people probably
24 from Taco Bell were friends and went out from
25 time to time to drink at, I believe, it's

1 Warren's, is that right?

2 A. Yes.

3 Q. All right, so she was one of your drinking
4 buddies, is that fair to say?

5 A. She -- I've been out once or twice when Marie
6 was there, yes.

7 Q. Okay, and all these -- and y'all do this just
8 about every Tuesday, right?

9 A. No, we've done -- about twice before that
10 we've done it, you know. It's usually been on
11 a Tuesday night.

12 Q. Okay. Because that's what, they have
13 karaoke ---

14 A. It's karaoke. I don't really recall why it's
15 always been on a Tuesday, but that's when it
16 was.

17 Q. All right, so you go out with this small group
18 of people, and go out to the bar from time to
19 time. Y'all get along well, and so on and so
20 forth, but you've never been to her house
21 before and don't know where she lives?

22 A. No, I don't.

23 Q. Okay. All right, but no doubt now, this night
24 you did go to her house?

25 A. Yes, we did.

1 Q. And you go inside the house, right?

2 A. Yes.

3 Q. All right, and you hear the arguing, and you
4 try to make your two phone calls, and at some
5 point in time, you go into the bedroom, is
6 that right?

7 A. Yes.

8 Q. Okay, and you see Marie's dead body?

9 A. I see Marie lying on the bed.

10 Q. Okay. Did she -- she obviously didn't look
11 normal? I mean, you could tell something was
12 wrong?

13 A. I -- when Gary got down -- got up off from --
14 Gary was holding a knife. It was a -- there
15 was blood on it. I went to see if Marie was
16 okay. I -- I didn't really know -- I was
17 freaked out. I didn't know what -- what was
18 going on.

19 Q. You were freaked out?

20 A. Yeah. I -- I was in shock that -- I didn't
21 know what was going on at the time.

22 Q. You made it out the back door, is that right?

23 A. Yes, I did.

24 Q. Made it to your car, is that right?

25 A. Yes, I did.

- 1 Q. Checked on this minor child, is that right?
- 2 A. She was still asleep, yes.
- 3 Q. And you must have checked on her to know she
- 4 was asleep, is that right?
- 5 A. Yes.
- 6 Q. Well, you did pretty good for somebody in
- 7 shock, didn't you?
- 8 A. I got -- I got out there -- got out in the
- 9 car, and proceeded to back out, yes.
- 10 Q. Okay, but you waited, though, right?
- 11 A. A couple minutes, yes, I did.
- 12 Q. If we're going to -- if this story you're
- 13 telling us today is that you did all this
- 14 stuff, and then you waited, and then Gary came
- 15 out and got in the car with you, is that
- 16 right?
- 17 A. Yes.
- 18 Q. Okay, and then you went to a convenience
- 19 store?
- 20 A. Yes, I did.
- 21 Q. Your story. All right. What is the name of
- 22 the convenience store?
- 23 A. I don't recall the name of the convenience
- 24 store.
- 25 Q. Do you make it a practice to keep an extra

1 shirt in your car?

2 A. Yes, I do.

3 Q. You do?

4 A. Yes, I do.

5 Q. Why is that?

6 A. Because I work at a golf course. A lot of
7 times, after I get done working at the golf
8 course, I go and play golf. I always keep
9 extra clothes in my car.

10 Q. Okay, so while you're at the convenience
11 store, your story today is that you still
12 wait, right?

13 A. Yes.

14 Q. And you were waiting on somebody that, if we
15 believe you, has just committed a just vicious
16 murder, and you're just waiting on him, is
17 that right?

18 A. Yes.

19 Q. And if we believe your story today, then you
20 took him home, is that right?

21 A. Yes, I did.

22 Q. Okay, and at some point in time later that
23 night, y'all had a telephone conversation, is
24 that right?

25 A. Yes, we did.

1 Q. Okay, and that was based on somebody
2 discovering Marie's body?

3 A. Yes.

4 Q. And, in fact, did y'all discuss going over to
5 the house to see exactly what had happened?

6 A. I called Gary at about eleven o'clock that
7 night to tell him that I talked to my wife,
8 and to tell him we didn't want to go out to
9 Warren's that night.

10 He said someone was at his door to talk
11 to him or something, and he said he'd call me
12 back in a little while. He called me back
13 about eleven-thirty, about a half hour after
14 that. He said, "Something's happened to
15 Marie. Someone's attacked Marie." He says he
16 needs to get up there. He was talking to
17 someone else at the trailer at the time.

18 I thought he wanted me to come down, you
19 know, to pick him up to take him up there.
20 His wife was gone up to Marie's, and he said
21 Bobby was going to take him up or something,
22 and he said he'd call and tell me what's going
23 on later on in the evening, ---

24 Q. Okay.

25 A. --- in the morning.

1 Q. And do you know who Bobby is?

2 A. Bobby is a friend that was -- that lived in
3 the trailer court with Gary.

4 Q. A next door neighbor?

5 A. Yeah. He lives in the same trailer park.

6 Q. So it would be -- tell me if you think this
7 makes sense. If your next door neighbor can
8 take you right now to Myrtle Beach from
9 Socastee, you'd get there quicker than if you
10 had to wait for somebody at your house to come
11 to Socastee to take you to Myrtle Beach,
12 right?

13 A. Yes.

14 Q. Okay, and when he was telling you all this
15 stuff, did you say, "Hey, wait minute. What
16 are you talking about? Don't you know we were
17 just over there. We're the ones that killed
18 her? You don't need to go see her"?

19 A. When I talked to him, I think someone else was
20 at the house. I mean, he said, "Someone's
21 attacked Marie," and, you know, he says he
22 needs -- he needs to get up to Marie's house
23 as soon as he can.

24 I thought he was wanting me to come down
25 and pick him up. I told him, "It's late.

1 We're -- me and Tara's in bed," and then I
2 asked him, "Did you want to us to come on
3 down?" and he said, "No, Bobby's here. Bobby
4 said he's going to take me up."

5 Q. Okay, and I think you agreed with me earlier
6 that you could get there if your neighbor was
7 ready to take you up, right?

8 A. At the time, yes; yes. At the time, yes.

9 Q. Now, did you ever -- you've made all these
10 phone calls. You made them that afternoon.
11 You made them at the crime scene. You made
12 them when you got back home. Did you ever
13 pick up the phone and call the police and say,
14 "My friend just killed somebody"?

15 A. No.

16 Q. In fact, when the police arrested you, or at
17 least investigated you leading up to your
18 arrest, you denied having any knowledge of it
19 at all, is that correct?

20 A. No.

21 Q. You didn't deny it?

22 A. I -- no. I made a statement in Arizona to the
23 effect.

24 Q. And that was a denial, right?

25 A. That was a deni- -- yes.

1 Q. You denied having any knowledge of it?

2 A. Yes.

3 Q. All right. If we believe your story today,
4 Marie was face down on her bed, is that right?

5 A. Yes.

6 Q. Okay, and I imagine there was a lot of blood?

7 A. Yes, there was.

8 Q. Okay. Who was the blood on other than Marie?

9 A. Gary had blood on his hands.

10 Q. On his hands?

11 A. Yes, on his hand. It was on the knife.

12 Q. On the knife. Anywhere else on him?

13 A. It was just on -- it was just on his hand. He
14 had some on his shirt.

15 Q. Okay, some on his shirt. Anywhere else?

16 A. No.

17 Q. How much on his shirt?

18 A. A little bit from where his hands brushed up
19 against his shirt.

20 Q. Just a little bit?

21 A. Yes.

22 MR. GARDNER: With your indulgence, Your
23 Honor, if I may.

24 THE COURT: You may.

25 MR. GARDNER:

1 Q. Okay. All right. Just to make -- just to
2 make sure I'm aware of this, and this should
3 be it.

4 If we believe what you're saying today,
5 you've at least witnessed a murder, if not
6 participated in one, and you just remained
7 calm, cool and collected, and just carry on
8 with the rest of your activities, is that
9 right?

10 A. I witnessed -- I told everything -- I told the
11 truth of what I -- what happened that night.

12 Q. Okay. I'm talking about that night when
13 Marie was killed. You at least witnessed it,
14 right, ---

15 A. Yes.

16 Q. --- if not participated in it?

17 A. I did -- I did not participate in it, no.

18 Q. Okay. Whatever you say today, no doubt,
19 though, you're saying today that after this
20 happened, you went on about doing what you
21 would have normally done that night. In
22 other words, you went to the store, you
23 drove somebody home, you got a baby out of
24 your car, you went to your house, you called
25 your wife?

1 A. Yes.

2 Q. All right.

3 MR. GARDNER: That's all I have, Your Honor.

4 THE COURT: Any redirect?

5 MR. KODMAN: Beg the Court's indulgence.

6 No further questions, Your Honor.

7 THE COURT: You may step down.

8 MR. KODMAN: Judge, can I request five minutes
9 before my next witness, please?

10 THE COURT: Yes.

11 We're going to take about a five minute break,
12 ladies and gentlemen. If you'll step back to your
13 jury room, and remember, do not discuss the case at
14 this time.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE
16 PRESENCE OF THE JURY.)

17 THE COURT: All right, we'll be in recess.
18 (OFF THE RECORD)

19 ON THE RECORD

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE
21 PRESENCE OF THE JURY.)

22 THE COURT: Solicitor, is the State ready to
23 go forward?

24 MR. KODMAN: Yes, Your Honor.

25 THE COURT: Very good, and is the Defense, Mr.

1 Gardner, ready to go forward?

2 MR. GARDNER: We are, Your Honor.

3 THE COURT: If you'll bring us the jury.

4 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF
5 THE JURY.)

6 THE COURT: All right, Solicitor, you may call
7 your next witness.

8 MR. KODMAN: Your Honor, the State calls
9 Russell Jordan.

10 RUSSELL JORDAN, being
11 first duly sworn by the Clerk, testifies as follows:

12 THE CLERK: Please state your name for the
13 record and spell your last.

14 MR. JORDAN: Russell Jordan, J O R D A N.

15 DIRECT EXAMINATION:

16 BY MR. KODMAN:

17 Q. Mr. Jordan, where are you employed at?

18 A. Horry Telephone Cooperative.

19 Q. And what's your title there?

20 A. Corporate Security Manager.

21 Q. And as Corporate Security Manager, do you have
22 some responsibilities regarding records?

23 A. Yes, sir, I do.

24 Q. And are you the custodian of records for
25 them?

1 A. Yes, sir. I am.

2 Q. And were you subpoenaed here to Court today?

3 A. Yes.

4 Q. And did you bring some documents with you,
5 some records of Horry Telephone Company?

6 A. Yes, sir, I did.

7 Q. And are those records that you have records
8 kept in the ordinary course of business?

9 A. Yes, they are.

10 Q. And for what two locations did we request
11 information from?

12 A. The two locations are 4926 Old Reaves Ferry
13 Road in Conway, and 6350 Enterprise Road,
14 Lot R, Myrtle Beach.

15 Q. And who are each of those -- what's the name
16 on each one of those residence?

17 A. The Conway residence on Old Reaves Ferry Road
18 is Francisco and Terry Santos, and the
19 Enterprise Road is Amber Vrooman.

20 Q. And if you could, do you have records of May
21 23rd of 2000, of phone calls made between
22 those two numbers?

23 A. Yes, sir. I do.

24 Q. If you could, if we could just go through, and
25 if you could, relay to the jury each phone

1 call that was made between each of those two
2 residences on that particular day?

3 A. It appears that the first call was made from
4 the Santos residence to the Vrooman residence
5 at 5:05 P.M. That was a sixty-five minute,
6 twelve second call.

7 Q. What about the next one?

8 A. The next call was at 6:11, made from Santos to
9 Vrooman. At 6:11, a twelve minute, thirty-six
10 second call. The next call was made at 11:02.
11 It was made from Santos to Vrooman. It was a
12 twelve minute, sixteen second call, and there
13 was one more. The next call was made at 11:27
14 made from Vrooman to Santos, and it was a
15 three minute, fifty-one second call.

16 Q. Is that the only -- is that the last call you
17 see noted between those two residences on that
18 day?

19 A. For that date, yes, sir.

20 MR. GARDNER: Your Honor, we have no objection
21 if he wants to admit these into evidence.

22 THE COURT: Solicitor, is that what you're
23 moving to do?

24 MR. KODMAN: No, sir, Your Honor.

25 THE COURT: Very good.

1 He's not going to enter the records.

2 MR. GARDNER: Yes, sir.

3 THE COURT: Fine.

4 MR. KODMAN: Please answer any questions Mr.
5 Gardner may have.

6 THE COURT: You may cross.

7 MR. GARDNER: Thank you, Your Honor.

8 I'm -- I'm going to need to say -- I apologize
9 to the Court. I thought that he was going to put
10 these in.

11 CROSS EXAMINATION:

12 BY MR. GARDNER:

13 Q. Lieutenant Jordan, on ---

14 MR. KODMAN: No objection if Defense wants to
15 put them in, obviously, Your Honor.

16 MR. GARDNER: No, Your Honor.

17 MR. GARDNER:

18 Q. Lieutenant Jordan, on the last page of the
19 365-9069 sheet, at 17:56 answer time, that
20 number was called to 238-3546 from Drew
21 Lindsay's house. Are you aware that 238-3546
22 is the Taco Bell?

23 A. I'm -- I'm trying to find where you're talking
24 about.

25 Q. It's actually numbered page four.

1 A. Okay.

2 Q. And it's the second item down. It's from
3 365-9069, which as I understand the testimony,
4 is Drew Lindsay, Andrew Lindsay, and it's from
5 his house to 238-3546. My question is, do you
6 know that that's the number to Taco Bell?

7 A. No, sir, I do not.

8 Q. Okay. All right.

9 MR. KODMAN: I just object to the phrase of
10 the question. There is no evidence as to what that
11 number is.

12 MR. GARDNER: I'll rephrase the question.

13 MR. GARDNER:

14 Q. Do you know what that number is?

15 A. No, sir.

16 Q. Okay.

17 MR. GARDNER: Your Honor, may I have just a
18 short couple of seconds here?

19 THE COURT: Yes, you may.

20 MR. GARDNER:

21 Q. Lieutenant Jordan, when you were on direct
22 examination, the last number that you
23 testified to, do you recall what that was
24 because I didn't hear it.

25 MR. GARDNER: And again, I apologize to the

1 Court. I thought these were going to be evidence.

2 A. The last call that I testified to?

3 Q. Yes, sir.

4 A. Was the May 23rd call at 11:27 from 650-6954
5 to 365-9069.

6 Q. Basically, in a nutshell, if I -- if I
7 understood, you testified to some phone
8 numbers from what ultimately is Drew Lindsay
9 to what ultimately is the Vrooman phone
10 number, was that ---

11 A. I have a Santos and Vrooman.

12 Q. Oh, okay; okay, and did you testify to the
13 reverse of that, the Vrooman-Santos to the
14 Lindsay phone number?

15 A. I testified to both. There were some -- there
16 was at least -- there was calls from Santos to
17 Vrooman, and calls from Vrooman to Santos.

18 Q. And you testified about all the ones made on
19 the 23rd?

20 A. The 23rd of May, yes, sir.

21 Q. Okay. They continued -- generally speaking,
22 they continued up on the 24th, is that right?

23 A. Yes, I do see some on the 24th.

24 Q. And that's from Lindsay to Vrooman-Santos on
25 the 24th?

1 **A.** I see one from Santos to Vrooman on the
2 24th.

3 **Q.** What time was that?

4 **A.** I see several -- this first one that I see is
5 at 17 minutes after midnight.

6 **Q.** Okay. All right.

7 **A.** And then it appears that there's several more
8 on the 24th also from Santos to Vrooman.

9 **Q.** Santos would be the one that we've been
10 referring to as Drew Lindsay, that phone
11 number, 365-9069, is that right?

12 **A.** That's correct, yes, sir.

13 **Q.** I think I may have had it backwards a while
14 ago. Okay, so now we have in the record
15 evidence of phone calls from the Lindsay
16 number to the Vrooman-Bennett number going on
17 through the morning of the 24th, is that a
18 fair statement, sir?

19 **A.** Yes, sir.

20 **MR. GARDNER:** Thank you.

21 **THE COURT:** Any redirect?

22 **MR. KODMAN:** No, sir, Your Honor.

23 **THE COURT:** Thank you, Mr. Jordan. You may
24 step down.

25 **MR. KODMAN:** We would ask permission that Mr.

1 Jordan be excused from his subpoena, Your Honor.

2 MR. GARDNER: No objection, Your Honor.

3 THE COURT: Very good. You're excused from
4 your subpoena, Mr. Jordan.

5 MR. KODMAN: Mary Young.

6 MARY YOUNG, being first
7 duly sworn by the Clerk, testifies as follows:

8 THE CLERK: Please state your name and spell
9 your last for the record.

10 MS. YOUNG: Mary Young, Y O U N G.

11 DIRECT EXAMINATION:

12 BY MR. KODMAN:

13 Q. And Ms. Young, where are you employed at?

14 A. Taco Bell in Surfside.

15 Q. And what's your title there?

16 A. General Manager.

17 Q. Where were you employed back in 2000?

18 A. Taco Bell in Surfside. I'm sorry.

19 Q. And what was your title back then?

20 A. General Manager.

21 Q. And you're aware of the day that Ms. Martin
22 was killed, is that correct?

23 A. Yes.

24 Q. Prior to that day, was there a situation that
25 came up involving the victim in this case and

1 some keys to the store?

2 **A.** Yeah. She didn't have her store key.

3 **Q.** Explain to the jury how you found out about
4 it, and what the store's actions were.

5 **A.** I had already gone home for the day, and she
6 called about the time she was supposed to
7 close because the door had to be locked, and
8 she didn't have that key on her ring. It was
9 gone, and she thought maybe some of the kids
10 were pulling pranks, but couldn't find the key
11 anywhere, so I had to come back to the store
12 and lock the doors.

13 **Q.** And what was Taco Bell going to do to Ms.
14 Martin as a result of losing that key?

15 **A.** She was going to have to pay to have all the
16 keys replaced and the combination to the safe
17 changed and the locks changed.

18 **Q.** Fast forwarding to the day that Ms. Martin was
19 killed, do you remember that day?

20 **A.** Yes.

21 **Q.** Tell us about that day.

22 **A.** I was on the night shift. She had the day
23 shift, and it was somewhere right after shift
24 change, Gary and Amber and their daughter,
25 Mallory, came to the store.

1 They had taken her to the dentist, and
2 they had borrowed Marie's car that day, and
3 Marie's shift was almost over, and she left to
4 take Gary home and another employee back to
5 Myrtle Beach.

6 Q. Approximately what time was it when they left
7 the store?

8 A. I'm thinking it was somewhere around six or
9 later. I know she had a phone call around six
10 o'clock, so it was somewhere around there.

11 Q. Now, you do remember giving the police a
12 statement regarding this?

13 A. Yes.

14 Q. And if I could just show you your statement
15 that you gave to the police. Is that your
16 statement?

17 A. Yes, it's my statement.

18 Q. In regards to the time that the victim left
19 with the defendant, what time did you put on
20 your statement?

21 A. I put between seven and seven-thirty.

22 Q. Was that an exact time?

23 A. No.

24 Q. Do you recall looking at your watch when they
25 were driving out to see exactly ---

1 A. No. I just know that she was scheduled to
2 work 'til seven that day, but she -- I also
3 remember she left shortly after the phone
4 call, and I guess because she had to take
5 everybody home, she left a little early. We
6 weren't busy, so we do that sometimes.

7 Q. And did you see the victim or the defendant
8 again that evening?

9 A. No, I did not.

10 MR. KODMAN: Please answer any questions Mr.
11 Gardner may have.

12 CROSS EXAMINATION:

13 BY MR. GARDNER:

14 Q. Thank you, ma'am. First of all, what's the
15 number to Taco Bell?

16 A. The store -- the phone number or the store
17 number?

18 Q. The phone number.

19 A. Phone number, okay. It's 293 -- I'm sorry.
20 238-3546.

21 Q. 238-3546?

22 A. Yes.

23 Q. Okay. Thank you. In your statement, I think,
24 and the Solicitor reminded you of it, that
25 they all left the store that day sometime --

1 you said it was -- in your statement it says
2 7:15 to 7:30, but you're saying now it was
3 sometime between 7:00 and 7:30?

4 A. Yeah. I'm not -- I'm not sure exactly what
5 time. I know, like I said, she got the phone
6 call and talked and then left shortly after
7 that, and I really am not exactly sure what
8 time it was.

9 Q. Her shift ended at 7:00, though, isn't that
10 right, ma'am?

11 A. It was supposed to end at 7:00, but I think
12 she did leave early that night because she had
13 another employee to take home.

14 Q. Well, we heard some testimony earlier about at
15 end of shifts there are deposits made. Are
16 you familiar with that in your capacity as the
17 manager?

18 A. Yes.

19 Q. Okay, and that's basically your policy, is
20 that correct?

21 A. Yes.

22 Q. Okay. She made her deposit that night, isn't
23 that correct?

24 A. I'm pretty sure she did. I can't say for
25 sure.

- 1 Q. Okay. Well, if she made her deposit, that
2 would probably mean that she worked her shift,
3 which would probably mean that she left
4 sometime shortly after 7:00?
- 5 A. Well, we do shift change at 5:00.
- 6 Q. I thought her shift ended at 7:00?
- 7 A. It does, but that's not when we do our
8 deposit.
- 9 Q. Oh, okay.
- 10 A. We do our deposit, and then we stay through
11 the dinner rush.
- 12 Q. Okay. Are you familiar with a fellow by the
13 name of William, and I don't know if I'm going
14 to pronounce this right; do you know who I'm
15 talking about?
- 16 A. Yes, sir.
- 17 Q. Do you know how to pronounce it?
- 18 A. I think it's Devoe, or something like that.
- 19 Q. G I L L I P P E.
- 20 A. Okay.
- 21 Q. Is that -- is that the fellow that left with
22 them?
- 23 A. Yeah. He -- he worked at the Myrtle Beach
24 store, and he worked with us that day because
25 we were short of help. We do that sometimes,

- 1 too, change -- share employees.
- 2 Q. Share employees, okay, so they left your
- 3 store, and do you know where they were
- 4 planning on going then?
- 5 A. My understanding was that she was taking Gary
- 6 and Mallory home, and then dropping William
- 7 off at the Myrtle Beach store.
- 8 Q. Okay, and in your capacity as the manager, do
- 9 you know whether or not William Gillippe
- 10 worked the rest of the -- or some of the rest
- 11 of that night at the Myrtle Beach store?
- 12 A. From what I know, his family was at the store
- 13 and picked him up when Marie dropped him off.
- 14 Q. And do you know Mr. Lu- ---
- 15 A. Luiz?
- 16 Q. There you go. You're better at this than me.
- 17 Luiz. Is he here today, do you know?
- 18 A. No, he's working. He couldn't come today.
- 19 Q. He couldn't come today?
- 20 A. Huh-uh (Negative response).
- 21 Q. All right. He's the manager now at the Myrtle
- 22 Beach ---
- 23 A. He's our District Manager.
- 24 Q. Okay. All right. Do you recall having a
- 25 conversation with Natasha?

1 A. Natasha?

2 Q. Did I say that one wrong, too? I'm three for
3 three, and did she tell you ---

4 MR. KODMAN: Objection. Calls for hearsay.

5 MR. GARDNER: The witness is testifying.

6 MR. KODMAN: Exactly, and he could have cross
7 examined Natasha on what Natasha said.

8 THE COURT: I'll sustain the objection.

9 MR. GARDNER: Okay.

10 That's all I have. Thank you, ma'am.

11 MR. KODMAN: We'd ask permission that Ms.
12 Young be excused as well, Your Honor.

13 MR. GARDNER: No objection, Your Honor.

14 THE COURT: Very good.

15 You may be excused and released from your
16 subpoena.

17 MR. KODMAN: Beg the Court's indulgence.

18 THE COURT: Yes.

19 MR. GARDNER: Your Honor, may we approach?

20 THE COURT: Yes.

21 (A Bench conference was held in the presence,
22 but out of the hearing, of the Court Reporter and the
23 jury.)

24 MR. KODMAN: The State calls Detective George
25 Merritt.

1 GEORGE MERRITT, being
2 first duly sworn by the Clerk, testifies as follows:

3 **THE CLERK:** Please state your name and spell
4 your last for the record.

5 **DETECTIVE MERRITT:** George Merritt,
6 M E R R I T T.

7 **DIRECT EXAMINATION:**

8 **BY MR. KODMAN:**

9 **Q.** Detective Merritt, where are you employed at?

10 **A.** The Horry County Police Department.

11 **Q.** And what's your title at the Horry County
12 Police Department?

13 **A.** I'm a detective.

14 **Q.** And did you have occasion to respond to a
15 crime scene back on May 23rd of 2000?

16 **A.** Yes, sir.

17 **Q.** Where was that at?

18 **A.** It was in Myrtle Beach, on Little River Road,
19 in a mobile home park.

20 **Q.** Whose residence was that?

21 **A.** Eva Marie Martin.

22 **Q.** And were you assigned as the chief
23 investigator on this case?

24 **A.** Yes, sir, I was.

25 **Q.** And what were your responsibilities when you

1 arrived on the crime scene?

2 A. Secure, assist SLED in their evidence
3 collection, interview witnesses, take
4 statements, general investigative work.

5 Q. What kind of physical evidence was collected
6 from the crime scene?

7 A. Hair samples, fingerprints.

8 Q. And to your knowledge, those things were sent
9 off for testing?

10 A. Yes, sir. They were sent to SLED.

11 Q. And as a result of those tests, were you able
12 to gain any information regarding any suspects
13 in this case?

14 A. No, sir.

15 Q. Why not?

16 A. Most of the fingerprints came back
17 insufficient ridge detail or belonging to the
18 victim.

19 Q. What about the hair?

20 A. Came back similar to the victim.

21 Q. Did you solve this murder on the night of the
22 23rd of May?

23 A. No, sir, we did not.

24 Q. And when was it when you got your first break
25 in this case?

1 A. About three months later, I believe. July, I
2 believe it was. Yes, sir, it was in July.

3 Q. And what was that break?

4 A. I received a call from Tara Lindsay, and she
5 stated that her husband was involved in some
6 crimes ---

7 MR. GARDNER: Objection. Hearsay, Your Honor.

8 THE COURT: Sustained.

9 MR. KODMAN:

10 Q. As a result of your conversation with Tara
11 Lindsay, what did you do?

12 A. SLED Agent Bill Knowles and I flew to Arizona
13 to bring back Drew Lindsay.

14 Q. In Arizona, did you take a statement from Drew
15 Lindsay?

16 A. Yes, sir, I did.

17 Q. Did you charge him with murder right away?

18 A. No, sir.

19 Q. What happened when you got back from Arizona?

20 A. We got back. We conducted other interviews
21 with Drew Lindsay, and charged him with
22 murder.

23 Q. At some point, did Drew Lindsay -- Drew
24 Lindsay gave you a statement in Arizona?

25 A. Correct.

1 Q. At some point after you came back to Horry
2 County, he changed his story somewhat, didn't
3 he?

4 A. Yes, sir.

5 Q. As a result of that second story, or the
6 changed story, did you also charge someone
7 else in this case?

8 A. Yes, sir. We charged Mr. Bennett with murder.

9 Q. Now, going back to the 23rd of 2000, based on
10 your interviews on that particular day, were
11 you able to gather any substantial evidence to
12 link anyone to the crime that night?

13 A. No, sir, not at all.

14 Q. And what did you retrieve from Andrew Lindsay
15 in Arizona?

16 A. We retrieved the combination to the safe at
17 Taco Bell.

18 MR. KODMAN: Please answer any questions Mr.
19 Gardner may have.

20 CROSS EXAMINATION:

21 BY MR. GARDNER:

22 Q. Detective Merritt, you took hair samples and
23 fingerprints and sent them off as you would
24 normally do to ---

25 A. I did not take them. We had two SLED agents

1 that collected all the evidence, and they took
2 it to SLED to be analyzed.

3 Q. And it didn't point out to any suspects, is
4 that what -- did I understand that correctly?

5 A. That's correct.

6 Q. And it's not a result because of the lab did
7 an error or something? It was just because
8 that's the way the evidence was?

9 A. Yes, sir.

10 Q. Okay. All right. Who -- you had a suspect,
11 despite the lack of evidence, in the
12 beginning, didn't you?

13 A. We had -- yes, sir, we did.

14 Q. Would that be Natasha?

15 A. Yes.

16 Q. Okay, and, in fact, y'all did a lot of
17 investigating around her as a suspect, is that
18 correct?

19 A. Yes, sir.

20 Q. And then at some point in time, I believe you
21 received a phone call, and based on that phone
22 call, you went to Arizona?

23 A. Correct.

24 Q. All right, and you took a statement from
25 Lindsay out there, and that statement turned

1 out to be not -- not correct? Is that -- is
2 that a fair way to say that?

3 A. At the time, we didn't know, but it -- we took
4 his statement.

5 Q. Yeah, and a fair way to characterize that
6 would be it's not a correct statement?

7 A. No, sir; he changed it.

8 Q. Okay, and he changed -- how many times did he
9 change it?

10 A. Twice.

11 Q. Twice. How many written statements did he
12 make?

13 A. Two, I believe. I'm not positive how many
14 written -- we had written and taped
15 statements.

16 Q. Okay. I'm kind of curious about that, and I
17 notice you have your file with you. I don't
18 have -- if there's anything you could look
19 through that might help you remember if it was
20 one or two or three or none, or if you don't
21 think that you can get the information by
22 looking in your file, just let me know.

23 A. We took a written statement in Arizona due to
24 the situation. We were in a very, very small
25 office. It was very hot, and more or less, we

1 just wanted to get that done so we could move
2 on, so we took a brief, written statement in
3 Arizona.

4 When we came back to South Carolina, I
5 believe it was on a weekend. That Monday, we
6 brought him to the J. Reuben Long Detention
7 Center, and we took a more formal, more
8 relaxed statement.

9 Q. Okay, but it wasn't in writing, though, was
10 it?

11 A. I believe that one was taped.

12 Q. Taped, okay. All right, so to the best of
13 your knowledge, you got one written statement,
14 and then one taped statement, maybe?

15 A. I believe two taped, ---

16 Q. Okay.

17 A. --- one or two.

18 Q. All right. You think those two are different?

19 A. Sir?

20 Q. Do you think those two are perfectly identical
21 or you ---

22 A. Which two?

23 Q. The two taped statements. Maybe I didn't --
24 maybe I heard you wrong.

25 A. They were different, yes, sir.

1 Q. Okay, so we got three different statements,
2 one written, two recorded or two taped?

3 A. The written statement and the first taped
4 statement were different, and then I believe
5 the third one would possibly be the truth.

6 Q. Okay. All right. Well, we've got --
7 fortunately, we've got some people that are
8 going to tell us what the truth is, but the
9 question and the answer would be -- how many
10 statements do we have, and the answer would be
11 three, is that right?

12 A. Three, I believe, yes, sir. To the best of my
13 knowledge, three.

14 Q. All right, and how much time, if you recall,
15 did you spend with Lindsay before he changed
16 his statement? Was it approximately twenty
17 hours?

18 A. We left Arizona, went to Yuma to pick up
19 another prisoner, came back to Arizona. I
20 would say probably two days.

21 Q. Two days?

22 A. Yes, sir.

23 Q. All right, so you had some good -- would it be
24 fair to say you had substantial contact with
25 him?

- 1 A. Yes, sir. He was in my custody most of the
2 time on the plane and the trip to Yuma and
3 back.
- 4 Q. Okay, and when you did these interviews with
5 him, you had some help, is that correct?
- 6 A. Help what, sir?
- 7 Q. You had some help with your people with you,
8 Detective or Special Agent Knowles, for
9 example?
- 10 A. Yes, sir.
- 11 Q. Bill Knowles ---
- 12 A. Was with me, yes, sir.
- 13 Q. Okay, and some other people?
- 14 A. No, no other people.
- 15 Q. Just the two of y'all?
- 16 A. Yes, sir.
- 17 Q. Okay. All right. At some point in J. Reuben
18 Long, was there somebody else with you?
- 19 A. Now you're confusing me.
- 20 Q. I'm sorry.
- 21 A. When we were in Arizona, it was Detective
22 Knowles and myself.
- 23 Q. Just the two of you?
- 24 A. Yes, sir.
- 25 Q. And then you spent a substantial -- you, or

1 you and Detective Knowles, spent a substantial
2 period of time with him?

3 A. About two days.

4 Q. Okay, and then at some point in time, took
5 another statement from him here in Horry
6 County?

7 A. Yes, sir.

8 Q. Okay, and at that time, there was you and some
9 other people?

10 A. Some other detectives from our department,
11 yes, sir.

12 Q. Okay. I wasn't trying -- I apologize. I
13 wasn't trying to confuse you. I'm just trying
14 to make sure that we've got an accurate
15 picture of what happened.

16 Okay. Now, as a result of these
17 interviews and these statements, I believe you
18 testified that you ultimately arrested or had
19 Bennett arrested, Gary was, right?

20 A. We arrested Gary Bennett, yes, sir.

21 Q. And that's based solely on -- correct me if I
22 say this wrong, but that would be based solely
23 on the testimony or the statement of Lindsay?

24 A. Correct.

25 Q. Okay, which gave three statements?

1 A. Correct.

2 Q. All right. Detective, Gary Lindsay is right-
3 handed, is that correct?

4 A. I have no idea.

5 Q. Okay. Well, do you remember having coffee
6 with him? He was sitting across from you.
7 Maybe that will refresh your memory.

8 A. Where?

9 Q. When y'all you were in the M. L. Brown -- I
10 think it's M. L. Brown, you were doing an
11 interview with him?

12 A. Yes, sir.

13 Q. Okay. Y'all were sitting at a table. You
14 were sitting across from him. He was sitting
15 across from you. He was drinking coffee. You
16 were drinking coffee. Do you remember that?

17 A. I didn't pay attention to which hand he
18 used, ---

19 Q. Okay.

20 A. --- and that really wouldn't tell whether he
21 was left-handed. That would just tell you
22 which hand he picked it up with.

23 Q. Okay. Most people -- most people pick it up
24 with the hand they're -- unless they're
25 ambidextrous. Okay.

22 Q. Okay. All right. Can you tell from that
23 signature -- I mean, you may or may not be
24 able to. Can you tell from that signature if
25 that's -- what hand it was signed with?

1 A. No, sir. No, I cannot.

2 Q. Okay. All right, and what -- or how long do
3 you think it took for you to conclude your
4 interviews with Andrew Lindsay?

5 I know it took you a while to get back
6 from Arizona, and you had other things to do.
7 When did -- and then -- what I'm getting at is
8 ultimately, as a result of interviewing him,
9 y'all went and arrested Mr. Bennett?

10 A. They were both served with murder warrants on
11 the same day.

12 Q. And that was August 4th?

13 A. Yes, sir, 8/4 of 2000.

14 Q. Okay.

15 MR. GARDNER: Thank you, sir.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION:

18 BY MR. KODMAN:

19 Q. Detective Merritt, when you responded to the
20 crime scene on the night of the murder, what
21 did you notice about the victim's room?

22 A. The victim's room was made to look like it was
23 a burglary. Everything was thrown on the bed,
24 on the floor ---

25 MR. GARDNER: Excuse me, sir. I'm going to

1 object to this as improper redirect.

2 THE COURT: I sustain. No questions were
3 asked of the detective about the condition of the room
4 on cross.

5 MR. KODMAN: Thank you, Your Honor. No
6 further questions.

7 THE COURT: Very good.

8 Thank you, Detective. You may step down.
9 Anything further from the State at this time?

10 MR. KODMAN: Judge, might we approach?

11 THE COURT: Yes.

12 (A Bench conference was held in the presence,
13 but out of the hearing, of the Court Reporter and the
14 jury.)

15 THE COURT: Mr. Foreman and members of the
16 jury, we have a witness who might be a little more
17 lengthy. It's a -- I'm not sure really whether he
18 will or he will not, but I understand that the State
19 has as its next witness Dr. Edward Proctor, and that
20 under the schedule that has been arranged, that he
21 will be coming at 2:30.

22 I also have some other matters that I need to
23 deal with, so I am going to release you for lunch at
24 this time and ask that you be back in your jury room
25 by 2:30.

1 Again, do not discuss the case among
2 yourselves or allow anyone to discuss the case with
3 you. Simply go and have a good lunch, and I will see
4 you back at 2:30. Thank you.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE
6 PRESENCE OF THE JURY.)

7 THE COURT: We'll be in recess as far as this
8 case is concerned, and then we'll go forward with that
9 guilty plea that we needed to do.

10 (OFF THE RECORD)

11 ON THE RECORD

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE
13 PRESENCE OF THE JURY.)

14 THE COURT: All right, bring us the jury.

15 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF
16 THE JURY.)

17 THE COURT: Mr. Kodman, you may proceed.

18 MR. KODMAN: The State calls Dr. Edward
19 Proctor to the stand, Your Honor.

20 EDWARD PROCTOR, JR., M.D.,
21 being first duly sworn by the Clerk, testifies as
22 follows:

23 THE CLERK: Please state your name and spell
24 your last for the record.

25 DR. PROCTOR: Yes, ma'am. I'm Edward Proctor,

1 Jr., and that's P R O C T O R.

2 DIRECT EXAMINATION:

3 BY MR. KODMAN:

4 Q. And Dr. Proctor, where are you employed at?

5 A. I'm self-employed.

6 Q. And what do you do for a living?

7 A. I am a medical doctor engaged in the practice
8 of pathology and forensic pathology.

9 MR. KODMAN: Now, it's my understanding,
10 having talked to Defense Counsel, they're going to
11 stipulate that Dr. Proctor is an expert in forensic
12 pathology.

13 MR. GARDNER: That's correct, Your Honor.

14 THE COURT: Mr. Foreman and members of the
15 jury, there are certain individuals who, by virtue of
16 their education, their training, and their background,
17 are authorized and entitled to offer their opinion as
18 to ultimate facts in the case.

19 When they have been qualified as experts, then
20 they can offer an expert opinion on a particular area
21 that is under review by you, the jury.

22 Now, the purpose of allowing a doctor to offer
23 their opinion, or an expert to offer their opinion, is
24 not for the purposes of controlling your decision-
25 making process in your fact finding processes, but it

1 is to provide you with assistance in your fact-finding
2 process.

3 You are not in any way to be controlled by the
4 opinions of those who testify as experts. You can
5 either accept or reject the opinions of an expert,
6 just as you can accept or reject the testimony of any
7 witness who appears before you. Thank you very much.

8 You may continue.

9 MR. KODMAN: Thank you, Your Honor.

10 MR. KODMAN:

11 Q. Dr. Proctor, on May 24th, 2000, did you have
12 occasion to perform an autopsy on that day?

13 A. Yes, sir, I did.

14 Q. And who did you perform an autopsy on?

15 A. I performed an autopsy on an individual
16 identified as Eva Marie Martin.

17 Q. How old was Ms. Martin?

18 A. At the time of autopsy, I was told that she
19 was forty-two years of age.

20 THE COURT: Solicitor, I apologize. What was
21 the date of the autopsy?

22 MR. KODMAN: May 24th, Your Honor.

23 THE COURT: May 24th. Thank you very much.

24 MR. KODMAN:

25 Q. Where did -- where did this autopsy take place?

1 **A.** This examination was performed in the morgue
2 at Grand Strand Regional Medical Center in
3 Myrtle Beach, South Carolina.

4 **Q.** And was this the first time you ever saw the
5 victim in this case?

6 **A.** Yes, sir -- no, sir, it is not. I was
7 actually at the scene at the request of the
8 Coroner and the Horry County Police
9 Department.

10 **Q.** Based on that particular autopsy, within the
11 bounds of reasonable medical certainty, did
12 you form an opinion, an expert opinion,
13 concerning the cause of death?

14 **A.** Yes, sir, I did.

15 **Q.** And what was that opinion?

16 **A.** My examination revealed two distinct incised
17 wounds in the neck.

18 Now, an incised wound is a wound made
19 with a very sharp object as opposed to a
20 laceration, which is a wound made with a blunt
21 object.

22 There were two incised wounds, one
23 superficial, I think, in the lower neck above
24 the clavicle, and the second, a deeper incised
25 wound in the upper part of the neck.

1 The second, or just for keeping the
2 wounds straight, the second wound, which is
3 the upper wound, was a very deep wound in the
4 neck. It actually severed the left jugular
5 vein, the left carotid artery, the tracheal
6 cartilage, and the esophagus underlying the
7 trachea in the anterior neck.

8 Q. Did you notice any -- so how would you
9 characterize the cause of death?

10 A. The cause of death is as stated in my autopsy,
11 is incised wounds to the neck with massive
12 hemorrhage. Once these wounds transected the
13 blood vessels in the neck, there was very
14 rapid bleeding.

15 Q. Were there any defense wounds on the victim?

16 A. No, sir, there were not.

17 Q. And did you see any signs of any type of
18 sexual assault?

19 A. We performed a sexual assault examination, and
20 all of the examination materials were
21 transferred under chain of custody to State
22 Law Enforcement Division, but as a result of
23 my observation and gross examination, I did
24 not see any evidence of any trauma in that
25 area.

1 **MR. KODMAN:** Thank you, Doctor. Please answer
2 any questions Mr. Gardner has.

3 **MR. GARDNER:** Dr. Proctor, always a pleasure.
4 We have no questions.

5 **THE COURT:** Very good.

6 Thank you, Doctor.

7 Do you need Dr. Proctor any longer?

8 **MR. KODMAN:** No, Your Honor.

9 **THE COURT:** Thank you, Doctor. You're
10 excused.

11 **MR. KODMAN:** The State rests its case, Your
12 Honor.

13 **THE COURT:** Ladies and gentlemen of the jury,
14 while I have only recently invited you to come back
15 into the Courtroom, we have now reached the point
16 where the State has concluded its testimony.

17 I'm going to ask you to step back to your jury
18 room. It is not proper at this time to discuss the
19 case in any way, but I do have some matters that I
20 must discuss with the attorneys prior to bringing you
21 back out, so please, if you'll step to your jury room
22 for a moment, and then we will invite you back out as
23 soon as I have a chance to address the attorneys.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE**
25 **PRESENCE OF THE JURY.)**

MOTIONS
EXAMINATION OF GARY BENNETT BY THE COURT

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1 **THE COURT:** Motions by the Defense?

2 **MR. GARDNER:** Yes, Your Honor. Respectfully,
3 we would move for a directed verdict in favor of the
4 defendant.

5 **THE COURT:** All right. Thank you. I'm going
6 to deny your motion. There is evidence to be
7 believed from, I think it was Andrew Lindsay, that
8 would establish that the defendant was the one who
9 was holding the knife that was over the victim, Ms.
10 Martin, and was the one who had committed the murder,
11 as well as the robbery that had taken place, the
12 armed robbery, and so I will respectfully deny your
13 motions.

14 **MR. GARDNER:** Thank you, Your Honor.

15 **THE COURT:** Has the defendant decided as to
16 whether or not he is going to testify?

17 **MR. GARDNER:** We have reached that decision a
18 few moments ago after spending a great deal of time
19 discussing all the good and bad of that, and at this
20 time, we would offer no defense.

21 **THE COURT:** All right. If you will, Mr.
22 Bennett, if you will raise your right hand and let me
23 place you under oath for this portion of our case.

24 **GARY BENNETT,** being first
25 duly sworn by the Clerk, testifies as follows:

EXAMINATION BY THE COURT:

1
2 Q. Mr. Bennett, I need to go over certain rights
3 which you have with respect to the trial of
4 this case, and please, if there is anything
5 that you and I are not discussing -- or that
6 you and I are discussing that you do not
7 understand, if you've got any questions about
8 what we're getting ready to go over at any
9 point during my discussions with you, if you
10 would, would you please stop me so that we can
11 be sure that you fully understand what we're
12 getting ready to discuss?

13 A. Yes, sir.

14 Q. All right, sir. Now, the State has rested.
15 It has put up all of the evidence that it is
16 going to put up, and so we have reached the
17 stage where you have the right to present your
18 defense.

19 You have the right to testify in your
20 own behalf. However, no one can make you
21 testify, and in the event that you have a
22 record, or -- I have been told you do have a
23 record, any conviction involving dishonesty or
24 false statements or for a crime where you
25 would be punished for more than a year, you

1 could be asked about that when you took the
2 stand for purposes of your impeachment or to
3 question whether or not you're telling the
4 truth. Do you understand that?

5 A. Yes, sir.

6 Q. Of course, I would have to make a
7 determination that admitting evidence of your
8 prior record outweighed any prejudicial effect
9 to you. Do you understand that as well?

10 A. Yes, sir.

11 Q. But if we went forward, and if I made such a
12 determination negatively to you, then the
13 Solicitor would be entitled to ask you about
14 your prior record for purposes of impeachment
15 for attacking your credibility. Do you
16 understand that?

17 A. Yes, sir.

18 Q. Now, if you elect not to take the stand, you
19 understand I will charge the jury that they
20 are not to give that fact any consideration
21 whatsoever in making a determination as to
22 your guilt or innocence. Do you understand
23 that?

24 A. I understand that, sir.

25 Q. And I'll advise them that you are not to be

1 prejudiced in any way because you did not
2 testify because you are not required to prove
3 your innocence. They must -- the State must
4 prove your guilt beyond a reasonable doubt.
5 Do you understand that?

6 A. Yes, sir, I do.

7 Q. This decision to testify or not to testify is
8 solely a decision that no one can make other
9 than yourself. Do you understand that?

10 A. Yes, sir.

11 Q. I am advised by your attorney, Mr. Gardner,
12 that you have decided that you will not
13 testify in connection with the trial of this
14 case. Is that correct?

15 A. That's correct.

16 Q. Has anybody threatened you, harassed you,
17 intimidated you or coerced you in any way to
18 get you to give up your right to present
19 evidence?

20 A. No, sir.

21 Q. All right, sir. Has anybody promised you
22 anything, offered you any type of hope or
23 reward or any inducement to make you make this
24 decision to not testify?

25 A. No, sir.

1 Q. So you understand fully your decision, your
2 right that you have to not offer any testimony
3 in connection with the trial of this case, and
4 that is a decision that you, yourself, have
5 made freely and voluntarily and knowingly and
6 intelligently?

7 A. Yes, sir.

8 Q. Have you got any questions whatsoever that you
9 want to ask the Court or ask Mr. Gardner with
10 respect to this procedure?

11 A. I do not, sir.

12 THE COURT: All right.

13 Mr. Gardner, is there any testimony whatsoever
14 that the Defense will put up?

15 MR. GARDNER: No, Your Honor. We had
16 discussed, I know, that we probably, the Solicitor,
17 you and I, and I certainly have with my client, a
18 potential -- a couple of potential witnesses. We will
19 offer no defense.

20 THE COURT: All right, so you will choose to
21 have the final argument?

22 MR. GARDNER: Yes, Your Honor.

23 THE COURT: All right, very good. Thank you.

24 How much time would the State like to have to
25 prepare to go into closing, how much, and after I hear

1 from you, I'll hear from you, Mr. Gardner.

2 MR. GARDNER: Thank you, Your Honor.

3 MR. KODMAN: About fifteen.

4 THE COURT: About fifteen minutes or so to get
5 ready?

6 MR. KODMAN: Yes, sir, Your Honor.

7 THE COURT: And about how much time do you
8 think that you will need for your closing?

9 MR. KODMAN: No more than ten minutes.

10 THE COURT: All right.

11 Mr. Gardner, will fifteen minutes give you a
12 sufficient opportunity ---

13 MR. GARDNER: I think we'll play by the same
14 rules, Judge.

15 THE COURT: All right, sir. I am not going to
16 call time on you. These are serious charges. If you
17 need more than ten or fifteen minutes in which to make
18 your closing remarks, I will certainly afford you that
19 opportunity.

20 MR. GARDNER: Thank you, Your Honor.

21 MR. KODMAN: Thank you, Your Honor.

22 THE COURT: All right, very good. We'll be in
23 recess, then, for about ten or fifteen minutes.

24 Counsel, if y'all would just let Dan know,
25 then I'll come back out, and we'll have the jury come

1 back out.

2 (OFF THE RECORD)

3 ON THE RECORD

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE
5 PRESENCE OF THE JURY.)

6 THE COURT: I'm not going to charge that. I
7 am going to charge felony murder. It may have some
8 application, depending upon the view of the jury as to
9 whether the robbery occurred first or whether the
10 murder occurred first.

11 MR. KODMAN: Because obviously, Your Honor, I
12 recited to Your Honor in Chambers the version of
13 felony murder that I had written down, and would Your
14 Honor be opposed to providing me a copy of just how
15 you're going to read it because ---

16 THE COURT: The felony murder that I am going
17 to use will in essence say, "If one intentionally
18 kills another during the commission of a felony, the
19 inference of malice may arise.

20 If facts are proved beyond a reasonable doubt
21 sufficient to raise an inference of malice to your
22 satisfaction, this inference would simply be an
23 evidentiary fact to be taken into consideration by
24 you, the jury, along with other evidence in the case,
25 and you may give it such weight as you determine it

1 should receive," so I think it is an inference of
2 malice that they can consider or not consider as
3 they depend is appropriate, and I will charge them
4 as with all inferences, they are free to accept or
5 reject -- reject them as they deem appropriate.

6 MR. KODMAN: Thank you, Your Honor.

7 MR. GARDNER: For the record, Your Honor, ---

8 THE COURT: Yes, sir?

9 MR. GARDNER: --- I would object to that
10 charge.

11 THE COURT: Yes, sir, but you feel I am
12 brilliant in not charging the hand of one is the hand
13 of all?

14 MR. GARDNER: Yes, sir. Thank you.

15 THE COURT: And let's see, Solicitor, you
16 asked me about my charge on reasonable doubt. Let me
17 take a look at it again.

18 Solicitor, in the case of State v. Needs,
19 which is 508 S.E.2d. 857, a 1998 case, there is a
20 discussion in an Opinion written by Justice Waller
21 that talks about the State v. Manning charge, that
22 talks about a reasonable doubt as the kind of doubt
23 that would cause a reasonable person to hesitate to
24 act.

25 It says the Trial Court may also use the

1 following language or combine it with the Manning
2 Charge, and then it talks in terms of firmly convinced
3 of the defendant's guilt, so I may -- I may well use
4 it as a combination charge and use part of that
5 language that is contained in that footnote, but I
6 will likewise be telling the jury that it is also
7 defined as the type of doubt which would make a
8 reasonable person hesitate to act.

9 MR. KODMAN: Thank you, Your Honor.

10 THE COURT: Are there any specific charges
11 that the -- any specific charges the defendant would
12 like to have charged?

13 MR. GARDNER: My understanding is that you
14 will not charge the hand of one is the hand of all.
15 You will charge the felony murder rule.

16 You will do your general other charges that
17 you may combine the doubt that would cause a
18 reasonable person to hesitate to act with the footnote
19 charge, and I don't believe we have any specific
20 charges to request at this time.

21 THE COURT: All right, very good.

22 MR. GARDNER: Thank you, Judge.

23 THE COURT: Thank you. Very good.

24 If you will bring me the jury.

25 Gentlemen, I sometimes find that my proposed

1 charges will change depending on how Counsel makes
2 their closing argument, and should that happen, I'll
3 call y'all forward before I go into the charge and let
4 you know what changes, if any, I make.

5 MR. GARDNER: Very well, Your Honor.

6 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF
7 THE JURY.)

8 THE COURT: Thank you, Mr. Foreman, and
9 members of the jury.

10 Ladies and gentlemen, I have been discussing
11 various matters, as I indicated to you I would be,
12 with the attorneys.

13 As I told you prior to your going out, the
14 State had completed all of the evidence in the case,
15 and as I have told you all along, the State has the
16 burden of proving the defendant's guilt beyond a
17 reasonable doubt as to each and every element of
18 the crimes that they have charged that defendant
19 with.

20 The defendant does not have to prove their
21 innocence. The State has to prove guilt and prove it
22 beyond a reasonable doubt to each and every member of
23 a jury.

24 Under our methods of handling a case in which
25 criminal charges are pending, because the State has

1 the burden of proof, the defendant does not have to
2 place any evidence before you because he does not have
3 to prove his guilt -- I mean his innocence. The State
4 has to prove his guilt beyond a reasonable doubt, and
5 there is, as I told the entire panel, a presumption of
6 innocence, and I will talk with you further about that
7 in my charge, that each and every individual who is
8 charged with a crime is presumed to be innocent unless
9 and until such time as each member of your jury finds
10 that the State has proven that guilt beyond a
11 reasonable doubt.

12 If the defendant chooses not to offer any
13 testimony, and chooses not to testify themselves, they
14 are in essence saying, "I do not believe the State has
15 met their burden of proof."

16 They are not to be prejudiced in any way in
17 your minds by the fact that they do not offer
18 testimony and by the fact that they do not testify.
19 That is not to be considered by you at any particular
20 point in your discussions of this case, and it does
21 not in any way lessen the obligation of the State when
22 it comes to their burden of proof.

23 When a defendant chooses not to offer any
24 evidence in the case, the defendant then has the
25 opportunity for the final argument or the final

1 summation.

2 Normally, the State would have an opening
3 argument and final summation. The defendant would put
4 up his final argument, and then the State would have a
5 chance to come back and address you one final time.

6 When the defendant chooses not to present any
7 evidence in the case, then the defendant has the
8 opportunity to address you last, has the final chance
9 to appear before you rather than the State having that
10 opportunity.

11 In the case that we are being presented with
12 today, the defendant has in essence said, "I am not
13 going to offer any testimony. I am not going to
14 present any evidence. I am going to rely on my
15 presumption of innocence and the charge that the Court
16 is going to give to the jury, and with regard to that,
17 I do not think the State has met its burden of proof,
18 and I am going to take advantage of the final
19 argument."

20 Therefore, there will be no further testimony
21 that is going to be presented to you in connection
22 with the trial of this case.

23 The State is now going to have the opportunity
24 to address you in its closing remarks. Mr. Kodman
25 will have a chance to -- it's called argument, but it

1 in essence is a summation where he will summarize for
2 you and urge you as to certain points that he believes
3 have been made by the evidence.

4 Then Mr. Gardner will have a chance to address
5 you and argue or summarize to you why he feels that
6 the evidence has not established that his client is
7 guilty and guilty beyond a reasonable doubt.

8 As the opening statements to you were not
9 evidence in the case, these closing statements to you
10 are not evidence in the case either.

11 The attorneys never intentionally mis-state
12 some testimony that has come in through a witness, but
13 they may have heard that witness different from you,
14 and so if you, the twelve of you collectively,
15 remember testimony as being different than either side
16 remembers it, then, of course, as I have told you, you
17 are the fact-finders. You collectively remember that
18 testimony because this is not evidence that the
19 attorneys are giving you.

20 The evidence came from the witness stand, and
21 you make your findings about it, so if there is any
22 disagreement between your memories and the attorneys'
23 memories about what the evidence was as to a
24 particular point, then you, of course, rely on your
25 own memory.

1 The attorneys have the right to talk with you
2 about what law they believe I will instruct you that
3 you should apply to whatever factual findings you
4 make, and they have the right to do that, but just as
5 you are the sole judges of the facts, I am the sole
6 judge of the law, so listen carefully after all the
7 closing remarks are concluded because you must apply
8 the law as I give it to you.

9 Therefore, if there is any difference between
10 what I tell you the law is and what the attorneys tell
11 you that they think I'm going to charge you to the
12 extent that it disagrees with what the attorneys say,
13 then you are, of course, obligated to accept the law
14 and to apply the law as I give it to you this
15 afternoon.

16 You have been most attentive to both sides
17 during the examinations and cross examinations, and I
18 ask now, if you will, please listen attentively as the
19 attorneys have a chance to address you now.

20 Mr. Kodman.

21 **MR. KODMAN:** May it please the Court, Your
22 Honor.

23 I do want to reiterate what Judge Milling told
24 you. You have been an attentive jury. At the
25 beginning of the case, I told you that this would not

1 be a long case. It was not a long case, but I also
2 told you at the beginning that that does not mean that
3 this is not an important case, because it is an
4 important case, a very important case, obviously to
5 the State of South Carolina, to the defendant, and
6 obviously to the victim's family as well.

7 The defendant in this case is charged with two
8 crimes. He's charged with murder, and he's charged
9 with armed robbery. There's no question that, in this
10 case, the victim was robbed.

11 There's no question in this case that the
12 victim was murdered, and that she died a very horrific
13 and terrible death, and your determination will hinge
14 a lot on Andrew Lindsay because as I told you in the
15 beginning, the police attempted through fingerprints
16 and hair samples to link someone to this crime, but
17 were unable to do so.

18 We do have a statement from Andrew Lindsay,
19 and we do have his testimony in the record, and as the
20 Judge told you at the beginning of the case, and as
21 he'll tell you in his charge, you all are the fact-
22 finders of the case.

23 When someone testifies, you can say, "I
24 believe everything that person says." You can say,
25 "You know what, I believe that part, but I don't

1 believe that part," and that's y'all's job as fact-
2 finders is to determine what happened, what the facts
3 are in the case.

4 Is Andrew Lindsay a good person? No, he's not
5 a good person. Is he a convicted felon? Yes, he's a
6 convicted felon. Now, the Defense is going to get up
7 and try to tell you, "Well, you know, he's testifying
8 today because he's getting a deal. He's getting a
9 deal and so that's why he's saying what he's doing."
10 Well, let's talk about that deal for a minute.

11 Last year, Andrew Lindsay pled guilty to seven
12 counts of burglary and got ten years. In exchange for
13 his testimony, he's going to plead guilty to accessory
14 after the fact of murder, and what sentence is he
15 getting? He's getting fifteen years on top of the ten
16 years. My math tells me that's twenty-five years. I
17 would tell you that twenty-five years is not that
18 great of a deal, and that the deal is not that great
19 of a motivation for Andrew Lindsay to lie.

20 I want to also point out, ladies and gentlemen
21 of the jury, that Andrew Lindsay is a key witness. He
22 testified, and obviously, his credibility and
23 believability is in your hands, but Andrew Lindsay's
24 not on trial here today.

25 That man right there, Gary Bennett, is on

1 trial, and you keep that in mind when you're back in
2 your jury room deliberating, and what do we know about
3 Gary Bennett?

4 Well, we know that Gary Bennett and his
5 girlfriend at the time, Amber, were good friends with
6 Andrew and his wife. They did things together. They
7 went out to Warren's.

8 What else do we know about Gary Bennett? We
9 know that Gary Bennett, for lack of a better term, was
10 obsessed with robbing this Taco Bell, that he
11 repeatedly would talk to Andrew Lindsay all the time
12 about robbing the Taco Bell, how to get in, how it
13 would be an easy hit, talked to his wife about it.
14 "Find the information, get the combination to the
15 safe." How often would he talk about this? A lot.
16 Weekly.

17 What else do we know about Gary Bennett and
18 the Taco Bell? Well, we know that he also made
19 advances towards the victim regarding trying to rob
20 the Taco Bell, and as Amber testified to you, the
21 victim wouldn't give him any information.

22 We know that on one particular evening at
23 Warren's, the defendant got the key, some keys off of
24 the victim's key ring. Why did he do that? Because
25 he wanted to rob Taco Bell.

1 What happened that evening? They went and
2 made copies of the keys. What do we know about that?
3 Well, we know that something happened with the
4 victim's keys.

5 Andrew Lindsay testified that the defendant
6 got the keys from the victim. They went and tried to
7 make copies. Amber testified that the defendant got
8 the keys. Mary Young testified that the victim
9 apparently didn't get a key back and was going to have
10 to get fined, so we know something happened with the
11 keys, and that something was that this man tried to
12 get the keys so he could go rob Taco Bell.

13 Let's fast-forward to the day of the murder.
14 What do we know that day that happened between Andrew
15 Lindsay and Gary Bennett prior to that evening? We
16 know that after Andrew Lindsay got off from work, that
17 he had two phone calls with the defendant, but when
18 you add up the time together on those two phone calls,
19 it took over seventy-five minutes.

20 Well, gosh, what could Gary Bennett and Andrew
21 Lindsay be talking about for seventy-five minutes?
22 One call, sixty-five minutes, and one call, I believe,
23 twelve something minutes. I tell you what they were
24 talking about, what they always talk about, what he
25 always talks about, going to rob Taco Bell, going

1 over to Ms. Martin's house trying to get the
2 combination to the safe, because if you remember the
3 night they went in when they got the keys, they
4 couldn't get anything. Why? Because they didn't
5 have that combination.

6 Now, the Defense may say to you, "Well, gosh,
7 you know, Andrew Lindsay testified that the
8 defendant seemed like he had this thing all worked
9 out already with the victim. Why would he have to
10 go over there to get the keys?" Well, maybe the
11 defendant thought he had it worked out with the
12 victim, but it's clear the victim had no intentions
13 of giving him the combination to that safe. She
14 never had before, and she wasn't going to do it the
15 night of the murder.

16 Andrew Lindsay goes and he picks up the
17 defendant, Gary Bennett, and they go to the victim's
18 house. Well, what do we know about that? There is
19 zero evidence in the record that Andrew Lindsay had
20 ever been to the victim's house.

21 Natasha Adams said she never met Andrew
22 Lindsay. Andrew Lindsay said he'd never been to the
23 victim's house. Amber Vrooman said to her knowledge,
24 Andrew Lindsay had never been to the victim's house.
25 Why is that important? Well, we know Gary Bennett

1 sure was at the victim's house.

2 What happens when they get there? Well, after
3 Andrew goes in, they're having a conversation.
4 They're having a conversation about the combination.
5 He goes in the room to make a phone call. Why is that
6 important? Why did we put the record in showing that
7 a phone call was made from that house, and why would
8 Andrew Lindsay tell the police and come testify that a
9 phone call was made?

10 Well, ask yourself this. If Andrew Lindsay is
11 going over there to murder the victim, or Andrew
12 Lindsay is going over there to try to get the
13 combination to the safe, why would he make a phone
14 call from the victim's house that put himself there?
15 That doesn't make any sense, and the reason it
16 doesn't make any sense is because he had no
17 knowledge that this man right here, what he was going
18 to be up to when he didn't get what he wanted from the
19 victim.

20 Andrew said they started arguing. Gary comes
21 in, grabs something, goes to the room, he says the
22 trailer. He could hear a struggle. What does he see
23 when he goes in the room? He sees the defendant
24 getting off the victim, blood. We know later that
25 obviously the victim died a very horrific death, and

1 he sees the knife in Gary Bennett's hand.

2 What did they do from there? Andrew says he's
3 a little shook up. He goes out and gets in the car.
4 Gary comes out, take him to a convenience store. Gary
5 cleans up. They go dump the knife and the purse, go
6 back, take Gary home, and he says Gary Bennett still
7 wants to go out that night.

8 What do we know about Gary Bennett after the
9 night of the murder? What did Amber testify to you
10 about how Gary acted after the murder? Well, she
11 said he seemed a little different. He acted
12 agitated.

13 The police would come over, and he'd always
14 ask questions about what the police were asking
15 about, and what was it the one thing that Gary
16 Bennett kept telling Amber about the police? "They
17 haven't caught the person who did it yet. They'll
18 never catch him."

19 Well, I tell you, ladies and gentlemen of the
20 jury, we did catch him, and I'm going to ask you to
21 send a message to Gary Bennett that we did catch him.
22 Thank you.

23 THE COURT: Thank you.

24 Mr. Gardner.

25 MR. GARDNER: May Your Honor please.

1 Mr. Foreman, ladies and gentlemen of the jury,
2 citizens of this great State, we're glad to have you
3 here.

4 It's a good thing about the jury system in
5 this country, and I think the Judge alluded to it
6 briefly earlier, it's better to have twenty-four sets
7 of eyes than two, and with twelve people, usually
8 y'all pick up everything.

9 Let me first start off and say that this is
10 obviously a big tragedy, and I believe everybody in
11 this room regrets being here today and feels nothing
12 but remorse and sorrow for that family over there, but
13 y'all took an oath.

14 The Solicitor and I picked y'all to carry out
15 that oath, and we know that we picked y'all because
16 y'all will do that, and if you follow that oath,
17 you're going to have to hold the State accountable,
18 and what I mean by hold the State accountable, y'all
19 heard the Judge when we were downstairs. Y'all heard
20 the Judge earlier this week, seems like we've been
21 here a week, talk about the State's responsibility
22 with the burden of proof, presumption of innocence and
23 that kind of stuff, so -- and we'll talk some more
24 about that, and the Judge will, as he said earlier,
25 will charge y'all on the law.

1 Let's talk about the State's case. Their
2 whole case is nothing but Andrew Lindsay, and let's
3 talk about Andrew Lindsay.

4 He's currently serving time now, ten years I
5 believe it is, for seven counts of burglary unrelated
6 to this crime. Prior to that burglary, he got a
7 sentence of fifteen years for an unrelated felony, and
8 as with his testimony today, he's going to get a
9 sentence of fifteen years for another unrelated
10 felony.

11 You could take all that into consideration
12 when you judge the credibility, the believability of
13 what he said today. You could take those three
14 things into consideration, his motivation for his
15 stories, and we'll talk about his stories in a little
16 bit. His motivation today was to get a fifteen year
17 sentence.

18 His story has changed at least three times
19 according to the lead detective on the case, and I
20 noticed today that they may have changed again today
21 based on what he said.

22 I would submit to you that he would have said
23 anything to get that deal, and again, you can take all
24 that into consideration when you're judging his
25 credibility.

1 Let's talk about his story briefly, and y'all
2 heard it. Y'all probably heard it better than me. It
3 didn't make any sense. It didn't make any sense
4 whatsoever.

5 I mean, the phone calls and everything else,
6 none of it made any sense, and y'all -- y'all are the
7 sole judges of the facts. Y'all judge the facts, and
8 you know, we do the best we can to follow the law and
9 present the stuff. The Judge does the best he can to
10 make sure that we're following the law and that he
11 charges y'all the right laws, but y'all are the sole
12 judges of the facts.

13 Y'all can choose to believe every word that he
14 said today, and nobody here will fault you, or you
15 could act like -- or y'all can choose to believe
16 nothing, and nobody will fault you, or something in
17 between.

18 That's the beautiful thing about the jury
19 system. We've got twelve of y'all, twenty-four eyes,
20 and each one will have observed something maybe that
21 the others didn't, and that's why it's called
22 deliberations, and that's why we know that y'all will
23 deliberate on it, and at some point in time, may or
24 may not reach a unanimous verdict, but the verdict
25 must be unanimous.

1 Each of you have an opinion, and you're
2 entitled to that opinion, and if y'all reach a
3 verdict, it will have to be a unanimous verdict,
4 and I submit to you that we're going to ask -- well,
5 you know we're going to ask because that was the
6 first thing I said when I got up here. "Ladies and
7 gentlemen of the jury, Gary Bennett is not guilty."

8 We still maintain that. The State hasn't done
9 anything to prove me -- or to persuade me otherwise,
10 so we're going to ask that you come back with the
11 verdict of not guilty on both charges.

12 There's -- and I'll go over them. I hate --
13 this is the part where we're supposed to tell you what
14 you heard and what you saw. Well, that doesn't make
15 any sense. I mean, you heard it and you saw it, but I
16 want to go over a few things just to make sure that
17 we've touched on.

18 There's evidence in the record that Lindsay
19 drove a 1965 LeSabre down into this trailer court.
20 There's nothing wrong with that, but there's evidence
21 from the detective that nobody in this trailer court
22 saw or heard anything.

23 I've never been in a '65 LeSabre. I don't
24 know if anybody knows what they are. I imagine it's a
25 bigger car. I think he testified something about he

1 had to do some work on it and park it somewhere before
2 he could move it down and stuff like that, so I think
3 we can -- I think we can assume from that that it was
4 a big car and because he was working on it and stuff
5 like that. If that's, in fact, true, I would submit
6 to you why is that nobody saw or heard anything, and
7 while we're on that track, let me just go one more
8 step further.

9 There was testimony that the house deadbolt or
10 lock or something was messed up, or was locked, and it
11 was never locked before, something along those lines.

12 There's testimony that Gary is a friend of
13 these people; that means Gary, his former common-law
14 wife, and Marie, and had been over there. There'd be
15 no need -- if it, in fact, was him, there'd be no need
16 for him to damage the lock or lock a bolt or do
17 anything like that.

18 It'd be more realistic that somebody went
19 over there that either wasn't as friendly with them,
20 or had an ulterior motive from the very beginning. I
21 think that's a reasonable interpretation of the
22 evidence.

23 Here's some stuff that y'all -- this was some
24 stuff that -- Dr. Proctor, the guy that we agreed is
25 qualified in pathology, testified that there would be

1 a good amount of blood, and I don't know anything
2 about biology, but I've heard of the carotid artery,
3 and I know that that can kill you off real quick, and
4 I believe he said that starting from the left of the
5 neck, it cut several things -- there was two cuts, but
6 the big one that cut all the stuff that resulted in a
7 lot of bleeding out.

8 I believe there's testimony that she was on
9 the bed. Whoever did that, I would submit to you, and
10 you can form your own opinion, but I would submit to
11 you that that would have been somebody who was right-
12 handed.

13 MR. KODMAN: Objection. There has been zero
14 testimony in the record regarding who's right-handed,
15 who's left-handed.

16 THE COURT: I will sustain it from the
17 standpoint of the fact that there is no testimony as
18 to what any of the witnesses who testified being one-
19 handed or the other hand.

20 There is evidence that it took -- that the
21 injuries were to the upper left area of the neck.

22 MR. KODMAN: Correct, and I would also state
23 that there was no testimony from Dr. Proctor of what
24 direction the cut was. It was just simply that it was
25 on the left side of the neck.

1 **THE COURT:** But I would also allow him as
2 reasonable -- as the opportunity to argue a reasonable
3 inference of the testimony is it would have been done
4 by somebody using a knife in their right hand.

5 **MR. KODMAN:** Thank you, Your Honor.

6 **MR. GARDNER:** He testified from this
7 document -- I just -- maybe -- I want to make sure I
8 didn't say anything wrong -- large incised wound neck
9 with transect to the left jugular vein.

10 **MR. KODMAN:** Objection. This document's not
11 in evidence.

12 **MR. GARDNER:** I'm arguing -- he's saying
13 that ---

14 **THE COURT:** You're trying to read from the
15 document. I'm saying that is the basis. It's not in
16 evidence.

17 **MR. GARDNER:** It's not in evidence.

18 **THE COURT:** You can make a reasonable argument
19 -- that you can argue to the jury that it is a
20 reasonable inference that if it's to the left-hand
21 side of the neck, it's by someone who's holding a
22 knife in their right hand.

23 **MR. GARDNER:** I heard the doctor testify
24 starting at the left. I may be wrong. My apologies
25 if I am. To me, that kind of wound, injury, I would

1 submit that you could make a reasonable inference
2 that it started at the left and went to the right,
3 and if that be the case, I think you can infer that
4 it would be somebody holding a knife in their right
5 hand.

6 With all that blood on there, now, and I'm
7 going back and forth because I think it's important
8 because even the lead detective, George Merritt, on
9 this case had said that their sole reason for
10 arresting Gary Bennett was the story of Lindsay.

11 We know that -- and that's it, period.
12 There's no forensic evidence. There's no physical
13 evidence. There's no evidence whatsoever that tied
14 Gary Bennett to this horrible crime other than the
15 word of a convicted felon who got a deal to testify,
16 so let's talk about that blood.

17 This convicted felon, Lindsay, testified that
18 he saw blood on Gary's hand, and that Gary had blood
19 on his shirt. I think a reasonable person could infer
20 that based on the doctor's testimony of the type of
21 injuries, whoever did that had more than blood on
22 their hand and more than blood on their shirt.

23 The State's main witness testified that after
24 he saw this dead body -- I can't remember his words.
25 I think he said he was in shock, but he left, went to

1 his car, checked on the baby. The baby was asleep,
2 his words, I believe, waited for Gary to come out,
3 then gave him a shirt, took him to a convenience
4 store, let him wash up for three, four, or five
5 minutes.

6 I would submit to you that if -- that doesn't
7 make any sense either, and a reasonable person could
8 -- should come to the conclusion that it would be
9 hard-pressed that if you had committed that type of
10 injury, based on the doctor's testimony of the
11 blood-letting, that you could stroll into a
12 convenience store and get cleaned up in three to four
13 to five minutes.

14 There was great emphasis by the State placed
15 on the telephone call from Marie's house the night of
16 the murder, and there's some testimony from the
17 convicted felon, Lindsay, that he made the call.
18 Well, I'm still troubled by that.

19 I asked him, and I'm not sure what the answer
20 was; he made two calls, he made one call, he tried to
21 make two calls, he tried to make one call. I'm not
22 putting words in his mouth. I just don't understand
23 what his answer was, but other than that testimony,
24 there is no competent testimony that phone call was
25 made by any particular person, and I don't know -- we

1 certainly don't know who it was made to.

2 I'll talk briefly about the law and what the
3 Judge will charge you on, and you guys have already
4 got a good handle off of what he's talked about
5 earlier, but again, I think it's important to touch on
6 briefly.

7 This is not civil court. This is criminal
8 court. The burden of proof is much higher. It's
9 beyond a reasonable doubt. The Judge will tell you
10 what's a reasonable doubt, and y'all may know that;
11 you may not. The Judge will tell you what the law on
12 it is. He's going to say words to the effect if
13 it's -- it's a doubt that would give or cause to give
14 a reasonable person hesitation to act, cause a
15 reasonable person to hesitate to act.

16 In other words, I would interpret that as I'm
17 getting ready to do something, and I say, "Whoa. I
18 am going to hesitate just for a second here." I
19 would submit to you that the only testimony that the
20 State has produced with regard to the murder, -- and
21 that's what we've got to consider here, two criminal
22 charges.

23 The State has charged him with armed robbery.
24 The State has charged him with murder. The only
25 evidence they've brought to the table to show y'all is

1 the word of the convicted felon. I would argue to
2 you, submit to you, that that is more than enough
3 reason to hesitate to act.

4 I agree with the Solicitor on a lot of things
5 he said in his closing. I also told you in the
6 opening I agree with a lot of things he said.
7 Obviously, y'all know the things I disagree with.

8 My client is -- maintains that he's innocent.
9 That's why he's pled not guilty. That's why we're
10 having a trial.

11 I agree with the Solicitor that the -- his
12 star witness is not a good person, and I would think
13 that one thing that somebody might ask themselves is,
14 "Would I loan money to that fellow?"

15 Well, I certainly, based on his word and based
16 on his history, that would give me a cause to hesitate
17 to act. Not only would I hesitate to act, I would
18 submit to you that a logical, reasonable person would
19 not act in favor of that person, and I certainly would
20 ask would a logical, reasonable person based on the
21 testimony of Lindsay alone send somebody to the
22 penitentiary or in other words, find him guilty of a
23 murder and an armed robbery.

24 That's all the evidence we've got. The State
25 concedes that point. They try to tie in some other

1 stuff about discussions of armed robbery, or a
2 robbery. I don't necessarily think it's a armed
3 robbery. I think, in fact, it wasn't an armed
4 robbery, or plans to talk about it, or people talking
5 about it, and I believe they said that Amber talked
6 about it, didn't want to do it. They've alleged that
7 Gary talked about it. They've alleged that he talked
8 with Lindsay about it. They've alleged that they
9 talked with Marie about doing it. Marie didn't want
10 to do it. Marie -- that whole thing is preposterous,
11 y'all.

12 I would submit to you that a logical and
13 reasonable person would say nobody is going to be that
14 obsessed with the thought of robbing a Taco Bell in
15 Surfside or Myrtle Beach.

16 I believe that one of the witnesses from the
17 Taco Bell testified at the conclusion of each shift,
18 they take all their money and deposit it. I would
19 submit that a reasonable person could infer that if
20 you, in fact, robbed that Taco Bell, you wouldn't walk
21 away with much money, so to say that somebody would go
22 kill somebody so they could get the key or the combo
23 to a safe, to do that, I would submit to you, does not
24 make any sense.

25 Let's talk about the combination. I think

1 that's real important. You know, the only thing that
2 we've got that goes about the combination that was
3 taken is the word of Lindsay. Where was the
4 combination recovered? Arizona. Who was in Arizona?
5 Lindsay. Lindsay fled after the police started
6 investigating this case, and he fled to Arizona, and
7 he took the combination with him.

8 I would submit to you that a reasonable person
9 could infer that if anybody stole, committed armed
10 robbery, whatever you want to call it, of a
11 combination in that home that night, I think it would
12 be reasonable to infer that it was Lindsay. He's the
13 one that got it. He's in -- I don't how far away
14 Arizona is. It's probably a good ways away.

15 There is mention of the telephone calls, and I-
16 believe the Solicitor argued, and I believe there was
17 actually some testimony to that effect, that Lindsay
18 didn't know the Taco Bell people that well, or he
19 didn't know them or something like that.

20 I thought there was some testimony that all
21 these people knew each other. I thought that there
22 was testimony that Amber said that she introduced some
23 of these people to Lindsay.

24 You heard mention of a telephone record. You
25 heard Lieutenant Russell Jordan talk about it. You

1 heard me ask the following day, and there's evidence
2 in the record from him in his phone records that
3 Lindsay continued to call the following day, early
4 morning hours, and the next day, several calls to Gary
5 Bennett's house, to that phone number.

6 You heard testimony from Russell Long -- or
7 Russell Jordan that two days after the murder, there
8 were three phone calls to a number. He didn't know
9 what -- where that number was.

10 The next witness was from Pizza Hut (sic), and
11 the first question I asked her was, "What's the number
12 to Pizza Hut (sic)," and it was the same number.

13 Well, I think that would give somebody cause
14 to at least consider if, in fact, this guy doesn't
15 know these people, why would he continue to call --
16 why would he, in fact, call Pizza Hut (sic)? I would
17 submit that you could reasonably infer that he was
18 calling to find out how much do they know, how much do
19 they know, to a point that it gave rise to him
20 deciding to flee, flee from prosecution of a murder.

21 The Solicitor mentioned his deal. There's no
22 secret about that. We all know that he took a deal to
23 do this. I asked him about plea bargains. We all
24 know what a plea bargain is.

25 The Solicitor mentioned twenty-five years.

1 Well, I would argue to you that that is not a really
2 accurate picture because for this violent murder, he
3 is getting fifteen years. That other ten years is
4 unrelated, a different type charge, a different
5 everything. This is a very serious case, and he's
6 getting fifteen years. I think that's a real good
7 deal for somebody involved in a murder.

8 There was some mention, I believe, that Amber
9 testified that she and Gary used -- or at least Gary
10 used Marie's car to get around. In fact, I believe
11 they both took their child to the dentist the day of
12 the murder, I believe it was.

13 I believe a reasonable person could infer if
14 you're my sole transportation -- I think a reasonable
15 person could infer that somebody that that's his sole
16 transportation to getting around for groceries, or
17 take the children to the hospital or whatever, I
18 would submit that that person would not kill that
19 person.

20 You know, and the Judge hit it right on the
21 nail; we don't think the State laid a glove on us,
22 and y'all know that's why we're taking the position we
23 did from the beginning, the opening bill, until right
24 now. He's presumed innocent. The Judge will tell you
25 that.

1 We walk in here, and he's presumed innocent
2 until and unless y'all think the State has proven
3 beyond a reasonable doubt each and every element of
4 the crime, and I'm not even going to address the
5 elements of the crimes, the Judge will, certain
6 elements for armed robbery, certain elements for
7 murder, and that would be something that in a case you
8 may want to touch on. We're not touching on that
9 because our position is that he did not commit these
10 crimes.

11 Reasonable doubt, I'll address briefly with
12 you. That is very important. Anything that would
13 give you cause to act, you've got to come back with
14 not guilty. We want -- I mean, you guys saw what you
15 saw.

16 We want to help you debate, if necessary. We
17 want whatever it takes for y'all to come back with a
18 unanimous verdict, but if you get in there and you
19 have a reasonable doubt, or a doubt that would make
20 you -- make a reasonable person hesitate to act,
21 then you've got to come back and say not guilty, and
22 that's -- that's why we do what we do with our
23 closing argument, and I think I've taken more time
24 than I should have, but it's very important for
25 everybody.

1 I can see it's important to the State. I can
2 see that it's very important to the victims. We all
3 are remorseful for that, but we all took an oath here.
4 We've got to hold the State accountable, and the
5 State has not proven, and -- they have not done what
6 they were supposed to do or what they said they would
7 do.

8 All they've done is given a convicted felon a
9 good deal for what happened that night. Thank you
10 very much.

11 **THE COURT:** Thank you, Mr. Gardner.

12 Mr. Foreman and ladies and gentlemen of the
13 jury, I'm going to ask that, if you would, if you'll
14 just stand up for a moment. You have been very
15 patient, and I'm going to let you just kind of stretch
16 a minute before I begin addressing you with the
17 closing arguments.

18 I learned a long time ago in school that my
19 ability to pay attention to what was being said to me
20 was often dependent upon how comfortable I was
21 sitting, so I want you to be comfortable as I begin to
22 address you at this time. You may be seated.

23 Ladies and gentlemen, we each have certain
24 responsibilities in connection with the trial of a
25 case, and as the Trial Judge, it's my responsibility

1 to preside over the trial of the case, to rule upon
2 the admissibility of the evidence that has been
3 offered to you during the trial of the case.

4 Ladies and gentlemen, you are to consider only
5 the competent evidence that has come in through the
6 trial of this case, and to the extent that evidence
7 has been objected to and I have sustained that and
8 stricken it from the record, then you would not
9 consider that evidence which has not been properly
10 admitted.

11 Again, you are to consider only the evidence
12 that has been properly allowed to come in through the
13 witnesses who have testified during the trial of the
14 case, as well as the exhibit that has been admitted
15 into this case, and in addition, ladies and
16 gentlemen, to presiding over the trial of the case,
17 it is my responsibility, as I have talked with you
18 about previously, to charge you the law of the case.

19 I am the sole Judge of the law of the case,
20 and it is your duty as jurors to accept the law as I
21 give it to you and to apply it to the facts as you
22 find them.

23 Now, ladies and gentlemen, if you have some
24 preconceived idea as to what the law is or as to what
25 the law should be and it does not coincide with what I

1 instruct you this afternoon is the law to be applied
2 by you to this case, then you are obligated in your --
3 under your oath to disregard any preconceptions that
4 you may have as to what the law is, set aside any
5 ideas as to what you have as to what the law should
6 be, and to accept exactly as I give it to you the law
7 this afternoon and apply it to the facts that you find
8 in your consideration of the evidence. As a part of
9 your oath, you have obligated yourself to accept the
10 law and apply it precisely as I give it to you.

11 Now, ladies and gentlemen, just as I have
12 discussed with you that I am the sole Judge of the
13 law, as I have told you previously, you and you alone
14 are the sole and the exclusive judge of the facts in
15 this case.

16 The Constitution of our State has declared
17 that as the Trial Judge, that I shall not intimate to
18 you, state, comment upon, or make any statement to
19 you, the trial jury, to make you think that I have any
20 opinion about the facts in this case.

21 That, ladies and gentlemen of the jury, is
22 because you and you alone are the sole judge of the
23 facts in the case, so please, if there is anything
24 that I have done during the trial of the case or there
25 is anything that I do during my instructions to you

1 upon the law to infer to you or imply to you that I
2 have some opinion about what are the facts in this
3 case, then please totally disregard that.

4 I am not entitled to have any opinions about
5 this case and what the facts are because that is
6 solely up to you, the jury. You and you alone are the
7 sole judges of the facts.

8 The law does not permit me to have any opinion
9 whatsoever about the facts in this case. That's your
10 job, and ladies and gentlemen, then, it is your duty
11 as I have instructed you to determine the effect, the
12 value, the weight, and the truth of the evidence that
13 has been presented to you during this trial.

14 Of necessity, you must assess the credibility
15 of the witnesses who have testified in this case, and
16 credibility is simply a legalistic term which means
17 believability.

18 It therefore becomes your duties as jurors to
19 analyze and to evaluate the evidence, and to determine
20 that evidence which convinces you of its truth.

21 Now, ladies and gentlemen, we have had various
22 witnesses testify, and normally, the rules of evidence
23 do not permit a witness to testify as to opinions or
24 conclusions. An exception to this rule exists as to
25 those whom we call expert witnesses, witnesses who by

1 education and experience have become expert in some
2 art or science, profession or calling.

3 They may state an opinion as to the relevant
4 and material matters about which they profess to be an
5 expert and may also state their reasons for having an
6 opinion.

7 You should consider any expert opinion
8 received in this case and give it such weight as you
9 may think that it deserves. It has not been offered
10 to you for the purpose of controlling your conclusions
11 in this matter. It has been offered to provide such
12 assistance as you feel it provides to you.

13 An expert's testimony is to be given no
14 greater weight than that of other witnesses simply
15 because they are an expert. You are not required to
16 accept a purported expert's opinion about something
17 even though it is uncontradicted.

18 You are to evaluate that testimony given by an
19 expert just as you evaluate all testimony in this case
20 and give it such weight as you believe it is
21 determined to receive under all of the facts and
22 circumstances that you find.

23 So, ladies and gentlemen, I instruct you that
24 in determining the question of the credibility or the
25 believability of witnesses who have testified in this

1 case, you may believe one witness as against several
2 witnesses, or several witnesses as against one
3 witness. You may believe a part of the witness's
4 testimony and reject the remaining part of the
5 testimony of that same witness, and if you have a
6 good and a sound reason, you may reject the testimony
7 or believe the testimony of a witness in its
8 entirety.

9 You may consider whether any witness who has
10 testified has exhibited to you any interest, any bias,
11 any prejudice or other motive in the case.

12 You may consider whether the testimony of a
13 witness has been strengthened by other testimony or
14 evidence in the case, or has it been weakened or
15 impeached by other testimony or evidence in the
16 case.

17 You likewise may consider the demeanor of a
18 witness, that is the appearance and manner of a
19 witness as they have testified from the witness
20 stand.

21 Ladies and gentlemen, our South Carolina Rules
22 of Evidence Rule 609 provides that the testimony of a
23 witness may be discredited or it may be impeached by
24 showing that the witness has been convicted of a crime
25 for which they could have been imprisoned for more

1 than one year, or a crime that involves dishonesty.
2 This evidence is offered to you solely as to the
3 question and issue of that particular witness's
4 credibility.

5 Of course, while you are considering various
6 testimony of a witness, you may, of course, consider
7 the opportunity for the knowledge concerning those
8 things about which a witness has testified, as well as
9 the reasonableness of that witness's testimony.

10 All of these considerations, however, you do
11 not exercise arbitrarily, but if in your good
12 judgment there's a sound reason in the record of this
13 case for the consideration of these factors, you may
14 do so.

15 Ladies and gentlemen, your objective is to
16 find the truth, and in exercising your mental
17 processes and in determining what you consider to be
18 true, the law simply requires that you exercise your
19 good judgment, your common sense, your sense of logic
20 and reason, and your experiences in life.

21 You then apply these attributes to the
22 evidence and you determine what you consider to be
23 truthful evidence, and to these true statements of
24 fact which you, the jury, alone determine, you then
25 apply the law as I am stating it to you and thus, you

1 arrive at a true verdict in the case.

2 Your verdict should not be the result of
3 passion or prejudice or sympathy by or for anyone
4 involved in the case. By your verdict, you have no
5 friends to reward and you have no enemies to punish.
6 It should simply speak the truth.

7 The word "verdict" comes from the Latin phrase
8 "Veras Dictum," veras meaning true and dictum meaning
9 to speak, and so by your verdict, you are speaking the
10 truth as to the evidence that has been presented to
11 you in the trial of this case.

12 Now, ladies and gentlemen, there are generally
13 -- or there are two types of evidence which are
14 generally presented during the trial of a case. That
15 is direct evidence and circumstantial evidence.

16 Direct evidence is the testimony of a person
17 who asserts or claims to have actual knowledge of a
18 fact, such as an eyewitness. Circumstantial evidence
19 is proof of a chain of facts and circumstances that
20 indicate the existence of another fact.

21 In summers past, I've been able to use the
22 illustration of how we can go to a movie in South
23 Carolina at seven o'clock and it will still be light,
24 and while we're in the movie house, we can hear some
25 noise like thunder, and depending on the movie

1 theater, perhaps something sounding like it's coming
2 down on the roof, and we go back out after the movie
3 is over at nine o'clock and it's still bright sunshiny
4 sky, but we now see that there are raindrops on our
5 cars and puddles in the parking lot, and that set of
6 circumstances leads us to the conclusion that a fast-
7 moving South Carolina thunderstorm has come up and has
8 happened while we were in that movie theater based
9 upon what we see from the evidence of the puddles and
10 the rain drops.

11 Of course, that illustration is not
12 necessarily applicable to the drought that we've been
13 going through, but it's the type of thing that you can
14 -- where you can determine the existence of one fact
15 based upon facts and circumstances that lead to that
16 conclusion.

17 The law makes absolutely no distinction
18 between the weight or the value to be given to either
19 direct evidence or circumstantial evidence, nor is a
20 greater degree of certainty required of circumstantial
21 evidence than of direct evidence.

22 You, ladies and gentlemen, should weigh all of
23 the evidence in the case, and after weighing all the
24 evidence, if you are not convinced of the guilt of the
25 defendant beyond a reasonable doubt, you must find the

1 defendant not guilty. Now, conjecture, speculation,
2 suspicion or probabilities, they do not constitute
3 circumstantial evidence.

4 Now, ladies and gentlemen, I talked to you at
5 the beginning of the trial, and I stress to you once
6 again, the fact that the defendant has been arrested
7 and charged and indicted in this case is not evidence
8 in the case of the defendant's guilt and cannot be
9 considered by you as evidence of the guilt of the
10 defendant in this case. It does not create any
11 presumption or any inference whatsoever of the
12 defendant's guilt.

13 These two indictments, ladies and gentlemen,
14 are simply the formal written instruments which
15 contain the charge or charges that have been made
16 against this defendant. It serves as a formal
17 document by which this case is processed and is
18 brought into Court. It gives the defendant notice as
19 to what they have been charged with.

20 Now, ladies and gentlemen, I further instruct
21 you that you're not to take into account whatsoever
22 the fact that the accused has been made -- has been
23 charged in more than one indictment. The reason for
24 this is that the accused is entitled to a fair and a
25 impartial determination on each indictment based upon

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1 your determination of the evidence on each separate
2 indictment.

3 The accused is not to be prejudiced by the
4 fact that there is more than one pending charge
5 against him. Therefore, ladies and gentlemen, when
6 you are considering the charges against this
7 defendant, you must separately consider the charge
8 against the defendant arising under Indictment 2002-
9 GS-26-2765, which charges this defendant with armed
10 robbery. You must determine whether or not the State
11 has, in fact, met its burden of proof as to that
12 charge.

13 Likewise, and separate, you must consider the
14 State's charge of murder contained in Indictment 2002-
15 GS-26-772, and has the State met its burden of proof
16 in convincing you of the defendant's guilt beyond a
17 reasonable doubt as to each and every element of that
18 charge.

19 You must consider these matters separately and
20 individually so that you can -- because you will be
21 required to make a determination. You will be
22 required to write a verdict as to each one of those
23 separate indictments.

24 Now, ladies and gentlemen, the defendant has
25 pled not guilty to each of these indictments against

1 him, and that plea by the defendant of not guilty
2 placed the burden of proof on the State. The State
3 must prove the defendant guilty because a person
4 charged with committing a criminal offense in South
5 Carolina is never required to prove their innocence.

6 I charge you, Mr. Foreman and ladies and
7 gentlemen of the jury, that it is a cardinal and it is
8 an important rule of the law of evidence that the
9 defendant in a criminal trial, no matter how serious
10 the charge may be that is made against him, will
11 always be presumed to be innocent of the crime for
12 which they are indicted unless that person's guilt has
13 been proven by evidence that satisfies you and each of
14 you of that defendant's guilt beyond a reasonable
15 doubt.

16 This presumption of innocence does not cease
17 when you go back into your jury room, but it goes with
18 the defendant from the time that they have been
19 charged, throughout the trial of the case, and until
20 such time as you, the jury, reach a verdict of guilt
21 based upon evidence that satisfies each of you of that
22 guilt beyond a reasonable doubt.

23 Our Supreme Court has said that the
24 presumption of innocence is like a robe of
25 righteousness that has been placed about the shoulders

1 of the defendant, and it remains with the defendant
2 and assigns him to that class known as the innocent
3 until that presumptive robe of righteousness has been
4 stripped from his person by evidence that satisfies
5 you and each of you of that guilt beyond a reasonable
6 doubt.

7 Ladies and gentlemen, the presumption of
8 innocence is not mere legal theory. It's not just a
9 legal phrase. It is a substantial right to which
10 every defendant is entitled unless you, the jury, are
11 satisfied from the evidence of his guilt beyond a
12 reasonable doubt.

13 Now, what is a reasonable doubt? A reasonable
14 doubt is a doubt which makes an honest, sincere,
15 conscientious juror in search of the truth in the case
16 to hesitate to act. Proof beyond a reasonable doubt
17 must therefore be proof of such a convincing character
18 that a reasonable person would not hesitate to rely
19 and act upon it in the most important of his or her
20 own affairs.

21 Reasonable doubt may arise from evidence which
22 is in the case or from the lack or absence of evidence
23 in the case. You, the jury, must determine whether or
24 not reasonable doubt exists as to the guilt of this
25 defendant.

1 Ladies and gentlemen, proof beyond a
2 reasonable doubt is proof that leaves you firmly
3 convinced of the defendant's guilt. There are very
4 few things in this world that we know with absolute
5 certainty, and in criminal cases, the law does not
6 require proof that overcomes every possible doubt.
7 The law doesn't require that.

8 If based on your consideration of the evidence
9 you are confirmed -- are firmly convinced that the
10 defendant is guilty of the crime charged, you must
11 find him guilty. If on the other hand, you think
12 there is a real possibility that he is not guilty, you
13 must give him the benefit of that doubt and find him
14 not guilty.

15 The State has the burden of proving each and
16 every element of a crime beyond a reasonable doubt,
17 and any reasonable doubt that you may have in your
18 deliberations should be resolved in favor of the
19 defendant. If you have a reasonable doubt as to the
20 guilt of the defendant, he is entitled to that doubt
21 and would be entitled to an acquittal.

22 Now, ladies and gentlemen, the defendant is
23 charged with two crimes. Under Indictment 2002-GS-26-
24 2765, the defendant is charged with the crime of armed
25 robbery.

1 The offense known as armed robbery is set
2 forth in Section 16-11-330 of our South Carolina Code
3 of Laws. The defendant is charged under the "A"
4 Section of that statute, which reads as follows:

5 "A person who commits robbery while armed
6 with a pistol, dirk, slingshot, metal
7 knuckles, razor, or other deadly weapon, or
8 while engaging, either by action or words
9 -- or while alleging, either by action or
10 words, he was armed while using a
11 representation of a deadly weapon or any
12 object which a person present during the
13 commission of the robbery reasonably
14 believed to be a deadly weapon is guilty
15 of a felony."

16 Ladies and gentlemen, in addition to those
17 particular definitions of a deadly weapon that are
18 contained in this statute, when the statute says -- it
19 identifies armed with a pistol, dirk, slingshot, metal
20 knuckles, razor or other deadly weapon.

21 I want to define for you deadly weapon in
22 addition to those that the statute has said are deadly
23 weapons. A deadly weapon is defined as any article,
24 instrument, or substance which is likely to produce
25 death or great bodily harm.

1 Now, ladies and gentlemen, in connection with
2 defining for you the defense of armed robbery, or the
3 defense of robbery while armed with a deadly weapon, I
4 need to discuss with you other elements of that crime
5 and crimes to which it is related, so in order for you
6 to understand what's meant by armed robbery, I am
7 going to first define for you the crime of larceny,
8 and then robbery, and then what constitutes armed
9 robbery, because larceny is embraced; it is a part of
10 the crime of robbery, and then armed robbery is the
11 aggravation of the crime of robbery.

12 Larceny is defined as the felonious taking and
13 carrying away by any person of the goods or the
14 personal property of another with the felonious intent
15 to permanently deprive the owner of their property and
16 to convert it to the taker's own use.

17 The essential elements of the crime of
18 larceny, which is ordinarily called stealing, are one,
19 the felonious intent -- I'm sorry, the felonious
20 taking into possession the personal property of
21 another. Two, the carrying away and the removal of
22 the personal property, and three, the felonious
23 intent, the intent to steal on the part of the taker,
24 to permanently deprive the owner of the personal
25 property and to convert the property to the taker's

1 own use.

2 Now, ladies and gentlemen, robbery is the
3 felonious taking and carrying away of the personal
4 property of any value of another from their person or
5 in their presence by violence or putting him or her in
6 fear of violence.

7 Robbery includes larceny and all of the
8 elements which are necessary to constitute larceny are
9 also necessary to constitute robbery.

10 The elements of robbery are, first, the
11 property must be the subject of larceny, that it must
12 be personal property, and I charge you that lawful
13 coin and currency of the United States of America are
14 personal property, along with other items that have
15 some value to them.

16 Second, there must be a felonious taking and
17 carrying away of the personal property. That is,
18 there must be a trespass to and a taking away of the
19 personal property with the intent to steal it. The
20 complete possession of the personal property by the
21 taker even for a instant is sufficient, and the
22 carrying away, or even the slightest removal of the
23 personal property is sufficient in law.

24 Third, the taking and carrying away of the
25 personal property must be with a felonious intent,

1 that is with the intent to steal on the part of the
2 taker, to permanently deprive the owner of the
3 personal property, and to convert that personal
4 property to the taker's own use.

5 Fourth, the aggravated circumstances necessary
6 to constitute robbery as distinguished from larceny
7 are these: One, the property must be taken from the
8 person of another, but if it is taken in his or her
9 presence, it is taken constructively from their
10 person, and the taking must not only be without his or
11 her consent, but it must be accomplished with violence
12 or by putting him or her in fear of violence.

13 Now, in order for one to be guilty of robbery
14 while armed with a deadly weapon or armed robbery, the
15 law requires that one must have used a deadly weapon
16 to accomplish the purpose of the robbery as I have
17 defined that for you.

18 I charge you, ladies and gentlemen, that the
19 State of South Carolina is required to prove all of
20 the material and essential allegations of the charge
21 of armed robbery that have been made out in the
22 indictment beyond a reasonable doubt before you can
23 find the defendant guilty of the charge of armed
24 robbery.

25 In addition, the State of South Carolina has

1 charged the defendant under Indictment 2002-GS-26-772
2 with the crime of murder. Murder is the killing of
3 any person with malice aforethought.

4 In order for the State to prove the defendant
5 is guilty of murder, the State must prove beyond a
6 reasonable doubt that this defendant did kill a
7 person, and that the killing was done with malice
8 aforethought.

9 The State is not required to prove any motive
10 for the killing. The State must prove that the
11 defendant did kill another person with malice
12 aforethought.

13 Now, ladies and gentlemen, malice is the
14 intentional doing of a wrongful act without any just
15 cause or excuse, and with an intent to inflict injury.
16 Malice is also defined as being hatred or ill will.
17 Malice is wrongful intent to injure another person.
18 It indicates a wicked or a depraved spirit intent on
19 doing wrong.

20 Malice is a legal term that implies wickedness
21 and excludes a just cause or excuse. The term
22 "malice" indicates a formed purpose and desire to do a
23 wrongful act under the circumstances that exclude any
24 legal right to do it.

25 Aforethought means that the intention to do

1 the unlawful act was conceived or planned sometime
2 before the actual commission of the unlawful act, and
3 the malice need not exist for any particular length of
4 time prior to the killing.

5 Malice is a word, as I said, that suggests a
6 wickedness or a hatred or a determination to do what
7 one knows to be wrong without just cause or excuse or
8 any legal provocation. Malice need not be in the mind
9 of the one doing the killing any particular length of
10 time before the act of killing in order to render that
11 act of killing murder.

12 If it is present in the mind of the one doing
13 the killing any length of time before the act, then
14 its presence would be sufficient to render the killing
15 murder.

16 Now, ladies and gentlemen, malice may be
17 express malice or it may be inferred malice. The
18 words express or inferred do not mean different kinds
19 of malice, but merely the manner in which the only
20 kind known to the law may be shown to exist.

21 Malice is said to be express malice where
22 there is manifested a violent, deliberate intention
23 to unlawfully take away the life of another human
24 being.

25 Malice may be inferred, where one

1 intentionally and deliberately does an unlawful act
2 which he or she knows to be wrong and in violation of
3 his duty or her duty to another. Malice may be
4 inferred where no excuse or legal provocation for the
5 killing appears and when circumstances attending a
6 killing show an abandoned heart or a malignant heart
7 that is fatally bent upon mischief.

8 Ladies and gentlemen, one who unlawfully
9 inflicts an injury upon another person is deemed by
10 the law to be criminally responsible for that person's
11 death if the injury that is inflicted contributed
12 mediately or immediately to the death of that person.
13 The fact that other causes contribute to the death
14 does not relieve the actor of his or her
15 responsibility.

16 In other words, the act of the defendant must
17 be only a proximate cause of the victim's death. A
18 person's act or injury inflicted may be regarded as
19 the proximate cause of death if it was a contributing
20 cause of the death, that is if it was a real or an
21 efficient cause, a cause which brought about an injury
22 or death, and without which, the same would not have
23 occurred.

24 A defendant's act need not be the sole cause
25 of death provided that it is a proximate cause

1 actually contributing to the death of the deceased.

2 Further, the law says if one intentionally
3 kills another with a deadly weapon, the inference of
4 malice may arise. As I have indicated to you, a
5 deadly weapon is defined as any article, instrument,
6 or substance which is likely to produce death or cause
7 great bodily harm.

8 Malice may be inferred from the use of a
9 deadly weapon. You, the jury, are permitted to infer
10 malice from the conduct of the defendant in the use or
11 handling of a deadly weapon if such conduct results
12 directly in the death of another, and if such conduct
13 was so inexcusable, so aggravated and so grossly
14 reckless as to show an actual, intentional disregard
15 of the consequences to human life, a conduct
16 sufficient to show a deliberate, intentional design to
17 use, employ or handle a deadly weapon as to endanger
18 the life of another, or of others without just cause
19 or excuse is sufficient to raise an inference of
20 malice.

21 Further, ladies and gentlemen, if one
22 intentionally kills another during the commission of a
23 felony, the inference of malice may arise. If facts
24 are proved beyond a reasonable doubt sufficient to
25 raise an inference of malice to your satisfaction,

1 this inference would simply be an evidentiary fact to
2 be taken into consideration by you, the jury, along
3 with all of the other evidence in the case, and you
4 may give it such weight as you determine it should
5 receive. As with all inferences, ladies and
6 gentlemen, you are free to accept or reject them if
7 you deem -- as you deem appropriate.

8 If facts are proved beyond a reasonable doubt
9 sufficient to raise an inference of malice, if any,
10 from the use of a deadly weapon to your satisfaction,
11 as I have said, this inference would be simply an
12 evidentiary fact to be taken into consideration by you
13 along with all of the other evidence in the case
14 bearing on the issue of malice. You may give it such
15 weight as you determine it should receive.

16 A defendant is not required to prove the
17 absence of malice, and you may accept or reject any
18 inferences that exist as you find them with respect to
19 malice.

20 If you find that the State has not proven
21 beyond a reasonable doubt that this defendant did kill
22 the victim in this matter with malice aforethought,
23 then the defendant would be entitled to a finding of
24 not guilty or to an acquittal.

25 Now, ladies and gentlemen, I want to instruct

1 you once again as I have emphasized to you during the
2 trial of this case, for the fact that the defendant in
3 the trial of a criminal case did not testify in their
4 own behalf is not a factor to be considered by you,
5 the jury, in any way in your deliberations and in your
6 considerations on the question of the guilt or the
7 innocence of the accused.

8 It must not be considered by you in any manner
9 whatsoever against this defendant or mitigate against
10 him in any respect whatsoever. A defendant, each and
11 every defendant in this country, has the
12 Constitutional right to remain silent, and the
13 assertion of such Constitutional right cannot and must
14 not be considered by you in your deliberations.

15 Therefore, I repeat, under your oath, you are
16 to reach no inference and draw no conclusions
17 whatsoever from the fact that the defendant in this
18 case did not himself testify. The fact this defendant
19 did not testify should not even be discussed by you in
20 the jury room.

21 I repeat to you once again, the burden of
22 proof is upon the State. It is not upon the --
23 incumbent upon the defendant to prove their innocence.
24 The burden of proof remains upon the State to prove
25 guilt beyond a reasonable doubt, and the fact that the

1 defendant did not testify is not a factor to be
2 considered by you in determining the guilt or the
3 innocence of this defendant.

4 Now, ladies and gentlemen, you have been
5 selected by both sides as fair and impartial jurors.
6 You have taken an oath to impartially try this case
7 and to determine the facts in this case, and when
8 you comply with your oath to do so, then no one will
9 have a right to criticize your verdict, and you will
10 fully have discharged your duties as jurors in this
11 case.

12 Do not be influenced or consider anything that
13 you may know about this case, if anything there is,
14 from outside of the walls of this Courtroom. You make
15 your determination as to the guilt or the innocence of
16 this defendant based solely upon the testimony and the
17 evidence that has been provided to you during the
18 trial of this
19 case.

20 As I have said, ladies and gentlemen, your
21 verdict is not to be the result of any passion or any
22 prejudice or any caprice on your part. It is not to
23 -- to speak anything but the truth.

24 You have no friends to reward. You have no
25 enemies to punish in connection with the trial of this

1 case. You are the fair, unbiased, impartial fact-
2 finders. You make your determination as to what the
3 facts are in this case, and then you apply the law
4 that I have given to you to those facts, and you reach
5 your verdict in each of these cases.

6 Now, ladies and gentlemen, I have prepared a
7 verdict form as to each charge, and Mr. Foreman, when
8 the Exhibit comes back, these verdict forms will come
9 back as well.

10 There is a verdict form for the charge of
11 armed robbery. There is a verdict form for the charge
12 of murder. You are to carefully consider the evidence
13 that has been given to you by the State as to each of
14 these charges, make your determination as to the guilt
15 or the innocence of the defendant as to each of these
16 charges.

17 Now, the verdict form reads simply, "As to
18 Indictment 2002-GS-26-2765," it reads, "We, the jury,
19 by unanimous consent," because ladies and gentlemen,
20 it must be a unanimous verdict, "find the defendant,
21 Gary Wayne Bennett, on the charge of armed robbery,"
22 and then you have but two choices.

23 Now, I have listed one of your choices before
24 the other, but I, of necessity, have got to list one
25 before the other, so do not imply in any way that I am

1 suggesting to you what your choice should be by the
2 order in which I have listed them. I simply have to
3 list something first and something second, but as to
4 the charge of armed robbery, you have but two choices
5 in this matter. You may find the defendant guilty or
6 you may find the defendant not guilty.

7 Likewise as to the charge of murder, 2002-GS-
8 26-772, "We, the jury, by unanimous consent find the
9 defendant, Gary Wayne Bennett, on the charge of
10 murder." You may find the defendant not guilty or
11 guilty, just as you are to do on the charge of armed
12 robbery.

13 Once you have reached your unanimous verdict
14 as to each one of these charges, Mr. Foreman, you
15 would then sign down here at the bottom on behalf of
16 your jury and you would date this form. You would
17 date and sign each one of the forms because there must
18 be a finding by you on each one, unless you are unable
19 to reach a verdict, and then you would notify me of
20 that as well, but once you have reached your verdict,
21 you would knock on the door, and the Bailiff would
22 bring you back in and we would receive your verdict
23 from you, but there are other occasions that you have
24 the right to come back into the Courtroom for.

25 Ms. Gum has been taking faithfully down all of

1 the testimony, so if you have some question as to what
2 a particular witness testified to and you needed to
3 hear a portion of that witness's testimony, write us a
4 note saying what you need to hear, date it and sign
5 it, Mr. Foreman.

6 I then mark it as a Court's Exhibit. I
7 review it with the attorneys. Then we locate that
8 portion of the testimony and we set the tape where it
9 is, and we bring you back in and we let you hear that
10 testimony.

11 I don't tell you what somebody's testimony was
12 because I would be invading your province as the fact-
13 finders, so I let you hear, and you make your own
14 determination as to the meaning and the effect of the
15 testimony that came from a particular witness.

16 The only way that we might vary from that
17 would be is if the attorneys stipulate it as to the
18 response that they wanted me to give to you, and then
19 I would write it down and we could handle it in that
20 fashion.

21 Likewise, if you have some question as to what
22 my legal instruction was as to a particular issue and
23 you would like to have me re-charge you, then write me
24 a note to that effect, sign it and date it, and knock
25 on the door, give it to the Bailiff.

1 The Bailiff will bring it to me, and I will
2 discuss it with the attorneys, mark it as a Court's
3 Exhibit, and we will bring you back in and I will re-
4 instruct you as to that particular aspect of the law
5 that you would like to have the instruction repeated
6 or would like to receive further instruction on.

7 At this particular time, I'm going to ask you
8 to go back to your jury room, but I'm going to
9 instruct you once again, do not begin your
10 deliberations. I need to talk with the attorneys
11 about my instructions.

12 At the time it is proper for you to begin your
13 deliberations, you will be brought that big exhibit,
14 and you will be brought these two verdict forms, and
15 then we will invite, Mr. Bullard, you to come out as
16 the thirteenth juror, and then you will know that it
17 is time for you to begin your deliberation, but if all
18 thirteen of you would step back to your jury room at
19 this particular moment.

20 (WHEREUPON, AT 4:55 P.M., THE JURY RETIRES TO
21 THE JURY ROOM AND THE FOLLOWING TAKES PLACE OUTSIDE
22 THE PRESENCE OF THE JURY.)

23 THE COURT: From the State, any exceptions?

24 MR. KODMAN: No, sir, Your Honor.

25 THE COURT: From the Defense?

1 MR. GARDNER: No, Your Honor.

2 THE COURT: Very good. Gentlemen, I don't --
3 did each of you get a chance to take a look at the
4 verdict form when we were in Chambers?

5 MR. GARDNER: Yes, sir, in Chambers.

6 MR. KODMAN: Yes, sir, Your Honor.

7 THE COURT: Very good, and am I correct that
8 that's the only Exhibit we've got?

9 MR. KODMAN: Yes, sir, Your Honor.

10 THE COURT: All right, very good.

11 Well, Dan, when you take them the verdict form
12 and the exhibit, if you'll ask Mr. Bullard to step
13 out.

14 (WHEREUPON, AT 4:57 P.M., THE VERDICT FORMS
15 AND EXHIBIT ARE TAKEN TO THE JURY.)

16 THE COURT: Mr. Bullard, I'm going to ask you
17 to simply have a seat back where you were. There's
18 one more thing I'm going to sua sponte do on criminal
19 intent to be sure I covered criminal intent fully
20 enough with the jury since I'm not sure whether I did
21 or I did not.

22 If you'll bring the other twelve back with me.

23 (AT 5:00 P.M., THE FOLLOWING TAKES PLACE IN
24 THE PRESENCE OF THE JURY.)

25 THE COURT: Mr. Foreman and members of the

1 jury, I invited you out for a very brief further
2 instruction that I intended to give you and recognized
3 on my own that I had left out.

4 I clearly want you to understand that criminal
5 intent is a necessary element of each crime that has
6 been charged. Therefore, as well as an element of the
7 crime scene that have been charged against the
8 defendant, the State must prove criminal intent as a
9 necessary element of both armed robbery and murder.
10 The State must prove that criminal intent beyond a
11 reasonable doubt.

12 Now, criminal intent on the part of the
13 defendant is always a matter that must be determined
14 by the jury from the circumstances that surround the
15 events that took place. There is no way to prove
16 intent to a mathematical certainty because there is no
17 way that medical science can dissect a person's brain
18 and determine what they had in their mind, so the law
19 says that criminal intent may be inferred from the
20 circumstances that are shown to have existed in
21 connection with a crime. This is how you, the jury,
22 make a determination of whether or not the element
23 requiring intent was present.

24 Thank you very much, and I'm going to ask you
25 twelve to step back to your jury room, and in just a

1 moment, I will send the Bailiff to you to let you know
2 that it is time for you to begin your deliberations.

3 (WHEREUPON, AT 5:02 P.M., THE JURY RETIRES TO
4 THE JURY ROOM AND THE FOLLOWING TAKES PLACE OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: Any exceptions now from the
7 State?

8 MR. KODMAN: No, sir, Your Honor.

9 THE COURT: Defense?

10 MR. GARDNER: No, Your Honor.

11 THE COURT: Mr. Bullard, thank you for your
12 service. It appears that you, as well as the other
13 twelve, are in good tact and good shape at this
14 particular point in time. Thank you for your service
15 today.

16 The message that is on the machine is for the
17 jury, the entire panel, to report back at eleven
18 o'clock tomorrow to the jury assembly room. Before
19 you arrive, the Clerk is going to go through that same
20 process of selecting forty of you randomly and we'll
21 have those names on a list, so after everybody gets
22 seated, if you are not one of the lucky forty, you may
23 leave at that time.

24 If you are one of the lucky forty, then we
25 will have you come up here and we will go through the

1 selection of a jury for the next case tomorrow
2 morning, but have a good evening and we'll -- we'll
3 look to see you later in the week.

4 All right, gentlemen, we'll be in recess while
5 the jury deliberates. You may tell them to begin.

6 (OFF THE RECORD - 5:03 P.M.)

7 ON THE RECORD - 6:18 P.M.

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE
9 PRESENCE OF THE JURY.)

10 THE COURT: Gentleman, the jury has not been
11 deliberating long. I think they maybe have had the
12 case an hour, an hour and ten minutes, somewhere along
13 there, but it's getting to be probably about 6:20. It
14 will take some forty or forty-five minutes to get
15 something in for the jury to eat.

16 What I am contemplating is asking the Clerk to
17 go back and just ask the jury whether they would like
18 to go ahead and make an order or if you have no
19 objection, ask them if they feel like rather than
20 trying to continue deliberations tonight, because
21 they've been here working all day, if they would
22 prefer to simply receive their instructions not to
23 talk to anybody about the case and then gather back at
24 9:30 in the morning and resume their deliberations
25 there.

1 MR. GARDNER: We have no objection to either
2 one, Your Honor.

3 THE COURT: All right.

4 The State's position?

5 MR. KODMAN: No objection, Your Honor.

6 THE COURT: All right.

7 Miss Aneta, how about going and just check
8 with them and see which way they feel, as to whether
9 they would prefer to work some more tonight and let us
10 get dinner for them or whether they would prefer to
11 come back tomorrow since they're coming back one way
12 or the other anyhow.

13 THE CLERK: Okay.

14 THE COURT: All right, we will be relaxed and
15 in recess while they're checking on that.

16 (OFF THE RECORD)

17 ON THE RECORD

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE
19 PRESENCE OF THE JURY.)

20 THE COURT: Gentlemen, it appears that the
21 jury is requesting the opportunity to hear again the
22 testimony of Dr. Proctor. I guess it's Greg Barkalow;
23 they identify EMS as the individual, and that's the
24 one I have marked who was in that capacity; Verizon,
25 which was the lady who first came in, I think, and

1 then H.T.C., which would have been Mr. Jordan.

2 They've also, in essence, asked for all of the
3 testimony of Drew Lindsay, so it will take us about
4 how long to -- well, whatever point in time we can get
5 the testimony started, we will begin playing it, and
6 I'll let Ms. Gum determine if there is some order in
7 which she can best play it, and I'll also ask the jury
8 have they specifically listed these individuals in the
9 order in which they would like to hear it, whether
10 that makes any difference to them.

11 I'm going to ask, Aneta, if you will, if
12 you'll simply step back to the jury room and just ask
13 the Foreman do they want to hear the testimony from
14 these individuals in the order in which they have been
15 listed or whether any order is appropriate.

16 (OFF THE RECORD)

17 ON THE RECORD

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE
19 PRESENCE OF THE JURY.)

20 THE COURT: I am advised that the jury is not
21 bothered by any particular order so that we can
22 provide the testimony to them in which these witnesses
23 appeared on the stand.

24 Some jurors have asked as to whether or not
25 they can take notes. I will allow the jurors to take

1 notes, but I will not allow jurors to compare notes in
2 the jury room or allow other jurors to read their
3 notes, or for a juror to say, "Well, I'm right because
4 I wrote it down."

5 I will talk with them about the problems that
6 can exist with note-taking, but I do not prohibit
7 jurors from taking notes.

8 Any objections about how we're going to
9 proceed, from the State?

10 MR. KODMAN: No, sir, Your Honor.

11 THE COURT: From the Defense?

12 MR. GARDNER: No, Your Honor.

13 THE COURT: Very good.

14 (Whereupon, Court's Exhibit 1 [Note from the
15 Jury] is marked for purposes of the record.)

16 THE COURT: Bring us the jury.

17 (WHEREUPON, AT 8:07 P.M., THE FOLLOWING TAKES
18 PLACE IN THE PRESENCE OF THE JURY.)

19 THE COURT: Mr. Foreman and members of the
20 jury, pursuant to your request, which has been marked
21 as Court's Exhibit Number 1, we will play the portions
22 of the testimony of the individuals that you indicated
23 that you would like to hear again.

24 It is my understanding that it is not
25 necessary that they be played back in the order shown

1 on the note, but that we can simply play them in the
2 same order in which they appeared as witnesses in the
3 case. Is that correct?

4 THE FOREMAN: That is correct.

5 THE COURT: All right. It was my
6 understanding, also, and I see some of you with pen
7 and paper, that you wanted to take some notes, and I
8 do not have any objection to any member of the jury
9 taking notes, and if there are some of you who do not
10 have pen and paper and would like to have some pen
11 and paper, let me know and I'll make that available
12 for you before we begin the re-playing of the
13 testimony.

14 However, I do have restrictions on your note-
15 taking. These notes are, in fact, your notes. They
16 are what you heard as you wrote something down, and
17 they may not be what your neighbor heard and wrote
18 down, so use them to refresh your own memories, but do
19 not share them in the jury room with other jurors
20 because as a practical matter, you may end up writing
21 down something and while you're writing that miss what
22 comes in next that may be a modifier or explain
23 somewhat the part that you were writing down, and so
24 sometimes when you're writing, you lose track of what
25 happened next which may be just as important, so

1 that's the reason I tell jurors, "Use your notes to
2 refresh your own memories, but don't share them.
3 Don't spread them out in the jury room and try to see
4 if three people wrote this down in their notes and two
5 people wrote that down in their notes, so that must be
6 right because three people had it this way and two
7 people had it some other way."

8 Just use them for your own memories because
9 even though we're doing our best, and I'm sure you are
10 to take notes, there can be some problems that arise
11 in your notes, and your note-taking is for you. It
12 doesn't mean that somebody who doesn't take notes is
13 not picking it up just as well as you are and
14 remembering it just as well as you are, so take such
15 notes as you would like to, but do not use them for
16 sharing in the jury room. Simply use them to refresh
17 your own memory as to a particular aspect of the
18 testimony.

19 Is there anyone -- if you need note paper,
20 don't have it, and a pen or something, if you'll raise
21 your hand now and I'll provide it to anybody who
22 doesn't have it.

23 All right, I see that no one has any
24 additional need for it, so we will begin now with the
25 re-playing of the testimony.

1 (WHEREUPON, AT 8:12 P.M., IN OPEN COURT, THE
2 TESTIMONY OF THE FOLLOWING WITNESSES IS PLAYED FOR THE
3 JURY:

4 SHARON DAVIS; GREGORY BARKALOW; ANDREW
5 LINDSAY; RUSSELL JORDAN; AND DR. EDWARD PROCTOR, JR.
6 PLAYING OF THE TESTIMONY IS ENDED AT 9:25 P.M.)

7 THE COURT: All right, Mr. Foreman and members
8 of the jury, I'll be glad to allow you at this time to
9 go back to your jury room and continue with your
10 deliberations.

11 I also recognize that the hour is getting
12 late, so at such point in time as you and the jury
13 feel like you are reaching a point of diminishing
14 return, should that occur, simply let us know. We'll
15 make provisions for you to go home and come back at
16 ten o'clock in the morning and continue with your
17 deliberations.

18 Thank you very much. We'll wait to hear back
19 from you.

20 (WHEREUPON, AT 9:26 P.M., THE JURY RETIRES TO
21 THE JURY ROOM AND THE FOLLOWING TAKES PLACE OUTSIDE
22 THE PRESENCE OF THE JURY.)

23 THE COURT: Anything from the State?

24 MR. KODMAN: No, sir, Your Honor.

25 THE COURT: Anything from the Defense?

1 MR. GARDNER: No, Your Honor.

2 THE COURT: Thank you. We'll be in recess.

3 (OFF THE RECORD)

4 ON THE RECORD - 9:47 P.M.

5 THE COURT: Mr. Foreman, I have been advised
6 that the jury would like to retire home for the
7 evening and come back tomorrow, which makes absolute
8 sense to me. You have, in essence, been working
9 almost a day since you received the case, and I think
10 that would be a better use of the time that the jury
11 spends when you get the chance to get home, get
12 rested, and come back in the morning.

13 I'm going to ask you and instruct you again do
14 not discuss the case with family, friends, spouse, or
15 anyone else, and do not allow anyone to discuss the
16 case with you. Just if you go home tonight and
17 somebody says, "Why did you take so long?" Just say,
18 "It's a complicated case and I can't discuss it any
19 further than that. We're going back tomorrow."

20 Please be back in your jury room at ten
21 o'clock in the morning. I will let you sleep in a
22 little bit, and we'll have coffee, donuts, ham
23 biscuits, some refreshments like that for you, and
24 just continue your deliberations. We'll all be here,
25 and if other questions come up during the course of

1 your deliberations, just let us know, but we'll excuse
2 you at this time and wish you a comfortable evening,
3 or what's left of it.

4 I am advised by the Court Reporter that
5 someone mentioned to her that the matter was on the
6 radio this morning, so again my admonition is don't
7 listen to the radio, the T.V., or look at the
8 newspaper before you come in so that you'll be sure
9 that you are not in any way adversely affected by any
10 outside influences that may be out there, so I look to
11 see you in the morning.

12 (WHEREUPON, AT 9:50 P.M., THE JURY IS EXCUSED
13 FOR THE DAY AND THE FOLLOWING TAKES PLACE OUTSIDE THE
14 PRESENCE OF THE JURY.)

15 THE COURT: Anything from the State?

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

17 THE COURT: From the Defense?

18 MR. GARDNER: No, Your Honor.

19 THE COURT: Thank you, gentlemen. We'll see
20 you in the morning. We are in recess until ten
21 o'clock.

22 (WHEREUPON, COURT IS IN RECESS AT 9:53 P.M.)

23 * * * * *

24 WEDNESDAY, AUGUST 14, 2002

25 (Reporter's Note: At 10:00 A.M., the jury

1 continues deliberation.)

2 (OFF THE RECORD)

3 ON THE RECORD at 1:10 P.M.

4 **THE COURT:** Of course, the death of a child or
5 loved one, a family member, is always a tragic event.
6 There is no disputing that, but the issue that has
7 been presented to this jury is as to whether or not it
8 was, in fact, Mr. Bennett who is guilty as being the
9 one who wrongfully brought about her death.

10 The jury has listened to testimony and has
11 worked very hard with this issue. It's not an easy
12 decision for them. They've had to deal with matters
13 such as what is the source of the information that
14 connects this defendant to that crime and the
15 allegations that were made by his co-defendant, and
16 the credibility issues that are always relative to a
17 trial.

18 I do not know whether when the jury verdict is
19 announced as to whether this jury, after its
20 considerable deliberations, is going to make a finding
21 that this defendant is guilty or that this defendant
22 is not guilty. Whatever the verdict is, it is the
23 verdict of a jury that has worked hard at this case,
24 and I would ask and instruct you that there will not
25 be any outbursts or any carrying on whatever the --

1 the verdict may be, whether it is one with which you
2 are pleased or one with which you are disappointed,
3 because this jury has worked hard on these matters.

4 If you will bring us the jury.

5 (WHEREUPON, AT 1:15 P.M., THE JURY RETURNS TO
6 THE COURTROOM WITH A VERDICT.)

7 THE COURT: Thank you.

8 Mr. Foreman, I understand the jury has reached
9 a verdict?

10 THE FOREMAN: We have.

11 THE COURT: And it is a verdict as to each of
12 the charges?

13 THE FOREMAN: Yes, sir.

14 THE COURT: All right, very good. If you will
15 give the verdict form to the Clerk, please.

16 (The Clerk hands the verdict form to the Court.)

17 THE COURT: If you will publish the verdict.

18 THE CLERK: State of South Carolina versus
19 Gary Wayne Bennett, Indictment 2002-GS-26-2765. "We,
20 the jury, by unanimous consent, find the defendant,
21 Gary Wayne Bennett, on the charge of armed robbery,
22 guilty." Signed, Foreperson, Orian Graham, August the
23 14th, 2002.

24 Indictment 2002-GS-26-772. "We, the jury, by
25 unanimous consent, find the defendant, Gary Wayne

1 Bennett, on the charge of murder, guilty." Signed by
2 the Foreperson, Orian Graham, August the 14th, 2002.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 if this is still your verdict, please signify by the
5 raising of your right hand.

6 (All jurors raise their right hand.)

7 THE CLERK: Thank you.

8 THE COURT: Thank you, ma'am.

9 Does the defendant request polling?

10 MR. GARDNER: We do, Your Honor.

11 THE COURT: Thank you.

12 Ladies and gentlemen of the jury, this is a
13 procedure where your name will be called and you will
14 be asked a question by the Clerk relative as to
15 whether this was your verdict and as to whether it
16 still is your verdict. If you will listen to the
17 Clerk and respond appropriately.

18 THE CLERK: Orian Graham, please stand.
19 Was this your verdict in the jury room and is it still
20 your verdict?

21 ORIAN GRAHAM: Yes.

22 THE CLERK: Thank you.

23 Melodie Fowler. Was this your verdict in the
24 jury room and is it still your verdict?

25 MELODIE FOWLER: Yes.

1 **THE CLERK:** Thank you.

2 Emily Perritt. Was this your verdict in the
3 jury room and is it still your verdict?

4 **EMILY PERRITT:** Yes.

5 **THE CLERK:** Thank you.

6 Kim Shimonis. Was this your verdict in the
7 jury room and is it still your verdict?

8 **KIM SHIMONIS:** Yes.

9 **THE CLERK:** Thank you.

10 Rosetta Leonard. Was this your verdict in the
11 jury room and is it still your verdict?

12 **ROSETTA LEONARD:** Yes.

13 **THE CLERK:** Thank you.

14 Frank Goodwin. Was this your verdict in the
15 jury room and is it still your verdict?

16 **FRANK GOODWIN:** Yes.

17 **THE CLERK:** Thank you.

18 Stacey Willette. Was this your verdict in the
19 jury room and is it still your verdict?

20 **STACEY WILLETTE:** Yes.

21 **THE CLERK:** Thank you.

22 Cecila Avila. Was this your verdict in the
23 jury room and is it still your verdict?

24 **CECILA AVILA:** Yes.

25 **THE CLERK:** Thank you.

1 Savirini Johnson. Was this your verdict in
2 the jury room and is it still your verdict?

3 SAVIRINI JOHNSON: Yes.

4 THE CLERK: Thank you.

5 Christine Brown. Was this your verdict in the
6 jury room and is it still your verdict?

7 CHRISTINE BROWN: Yes.

8 THE CLERK: Thank you.

9 Margaret Bredekamp. Was this your verdict in
10 the jury room and is it still your verdict?

11 MARGARET BREDEKAMP: Yes.

12 THE CLERK: Thank you.

13 Wendy Jordan. Was this your verdict in the
14 jury room and is it still your verdict?

15 WENDY JORDAN: Yes.

16 THE CLERK: Thank you.

17 THE COURT: Thank you very much.

18 Mr. Foreman and members of the jury, I want to
19 thank you for your service on this case. You have,
20 through your deliberations, obviously taken a great
21 deal of time. You listened carefully to the
22 testimony. When you had questions about testimony,
23 you asked to hear the testimony again.

24 You have worked diligently last night. You
25 have reached the point where you recognized you were

1 becoming fatigued and did not want to do something
2 without being fully refreshed and thoughtful in your
3 processes and you have come back and worked an
4 additional three hours this morning.

5 I thank you very much for your concern, your
6 consideration of all the facts that have been
7 presented to you in connection with this case. You
8 have exemplified the highest and best attributes of
9 jurors.

10 Your jury process you went through in reaching
11 your verdict is, of course, your process, your
12 discussions, your deliberations. You are not required
13 at all to talk with anybody about how it was you
14 reached your verdict. If you choose to say something,
15 then you may say so, but if you choose not to, that is
16 equally as well.

17 If you choose to discuss the case with someone
18 and they are pressuring you and you do not any longer
19 want to discuss it with them, then, of course, tell
20 them you do not want to talk any further about it, and
21 if they insist to talk further with you, then please
22 get their name and let me know and I will deal with
23 their intrusions.

24 You will probably find that the attorneys
25 won't come up and talk with you because our Supreme

1 Court has indicated that the attorneys don't get
2 involved in approaching jurors about their decision-
3 making process, so at least if you are contacted by an
4 attorney, it would not be immediately in connection
5 with your services today.

6 Again, thank you very much. You worked long
7 and hard and I am removing your names from any further
8 consideration for service this week. Thank you for
9 having been with us today.

10 The Clerk will get you a check mailed to you
11 after this week is concluded, and I will excuse you at
12 this time. If you will, turn your buttons back in.
13 You will not need them any longer this week.

14 (THE JURY IS DISMISSED, AND THE FOLLOWING
15 TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

16 THE COURT: I'll be glad to hear Defense
17 motions.

18 MR. GARDNER: The obvious post-trial motions,
19 Your Honor, to set aside the verdict or in the
20 alternative for a new trial.

21 THE COURT: I am going to deny your motion for
22 a new trial and to set aside the verdict. The jury
23 had evidence that was sufficient upon which they could
24 make a finding of guilt on behalf of Mr. Bennett so
25 that there is evidence in the record that would

1 support their conclusions.

2 I do not find that it is a decision that is
3 not supported by the testimony and I will not set it
4 aside and grant the defendant a new trial.

5 MR. GARDNER: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Is the State ready to proceed with sentencing?

8 MR. KODMAN: If I could maybe have five
9 minutes, Your Honor.

10 THE COURT: All right.

11 Why don't we do this: If I stay for
12 sentencing, it's going to take a great deal of the
13 Court's personnel time and I apologize for needing the
14 family to come back, but in case the family wants to
15 speak to me, I want to give them the opportunity to do
16 so.

17 Solicitor, take a few minutes and you and Mr.
18 Gardner talk and you and the family talk. I've got
19 this other jury coming back at 2:30. I can begin the
20 case with them and run until around 4:30 or something
21 like that. If the family would like to do the
22 sentencing at 4:30, or I can have you come back at,
23 say, 2:30 and I can do the sentencing at 2:30 and just
24 explain to that other jury what's causing the delay.

25 If you'll just let me know, I will step back

1 to Chambers.

2 (OFF THE RECORD)

3 ON THE RECORD

4 THE COURT: Yes, sir.

5 MR. KODMAN: Judge, I think only two members
6 of the family are going to want to address Your Honor,
7 I think, just briefly, and I think 2:30 we'd request,
8 Your Honor.

9 THE COURT: All right, very good. We'll be in
10 recess until 2:30.

11 (OFF THE RECORD)

12 ON THE RECORD

13 THE COURT: Solicitor, are you prepared to go
14 forward with sentencing?

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

16 THE COURT: Mr. Gardner?

17 MR. GARDNER: Yes, sir, Your Honor.

18 THE COURT: All right, very good.

19 Solicitor, I'll be glad to hear from you.

20 MR. KODMAN: Your Honor, before you started, I
21 would like to put on the record that on March 14th of
22 last year -- I mean this year, 2002, the defendant and
23 his then attorney, Tom Floyd, were served with written
24 notice before Judge John Breeden of the fact that this
25 is the second strike, a potential second strike under

1 the two strikes law, that written notice was provided
2 to the defendant and his then-lawyer on the record
3 before Judge Breeden on March 14th.

4 Subsequent to that, Your Honor, on June 26th,
5 2002, -- and that was in regards to the murder
6 indictment, Your Honor. On June 26th, 2002, the
7 defendant was placed on written notice. Written
8 notice was sent to Mr. Gardner relating to the fact
9 that the armed robbery charge likewise would be a
10 second strike under the two strike law.

11 The defendant was personally served at the
12 Department of Corrections with that letter where he
13 signed saying that he did receive a copy of that
14 letter and that notice, and I would like to hand up
15 all three of those letters, as well as a certified
16 conviction of his prior conviction for burglary in the
17 first degree, a sentence date of July 19th, 2001, and
18 ask that the Court make these all Court's Exhibits,
19 Your Honor.

20 THE COURT: Very good.

21 Any issues, Mr. Gardner, related to any notice
22 provisions?

23 MR. GARDNER: No, Your Honor.

24 THE COURT: The Court accepts the documents
25 provided by the State and will have them marked as a

1 single exhibit which would probably be Court's Number
2 2, because I think the note from the jury is Court's
3 Number 1.

4 (Whereupon, Court's Exhibit 2 [Notice to
5 Defense concerning previous convictions] is marked for
6 purposes of the record.)

7 THE COURT: Solicitor, any matters that you'd
8 like to bring to my attention by way of statements or
9 family members?

10 MR. KODMAN: Your Honor, there are two family
11 members that would like to address the Court.

12 THE COURT: All right. I'll be glad to hear
13 from them.

14 HEATHER TOMLINSON: My name is Heather
15 Tomlinson, the victim's daughter, and I came here
16 today, I really don't know what I can say. There's
17 nothing I can really say that's actually going to
18 bring my mom back, but my grandmother brought some
19 pictures here to me today and as the saying goes, a
20 picture is worth a thousand words.

21 I will never get this back. It affects my
22 life every day. This man has took something from me I
23 will never, ever get back. I'm in nursing school. My
24 mom made me promise when I got married that I would
25 finish. I finished in eight months. I passed my

1 exams this semester.

2 My friends, we were all in the car together.
3 One friend got on the phone, called her mom, the other
4 on hers. I can't call my mom. I can't tell her. She
5 can't tell me how proud she is of me, and I just want
6 you to take into consideration that today. That's
7 all. Thank you.

8 **KELLY MARTIN:** My name is Kelly Martin and
9 Marie was my mom, and I won't be able to see my mom
10 any more for Christmas or birthdays or any kind of
11 family function that we have, and like my sister said,
12 a picture says a thousand words, and the picture that
13 was painted today in this Courtroom was that justice
14 will prevail, and I feel like it has been.

15 My family, along with myself, is greatly
16 sorrowed by my mom's death, and I feel like I owe the
17 Court a debt of gratitude, and that's all.

18 **THE COURT:** Thank you, sir.

19 Anything further, Solicitor?

20 **MR. KODMAN:** No, sir, Your Honor.

21 **THE COURT:** Thank you.

22 Mr. Gardner, I'll be glad to hear from you.

23 **MR. GARDNER:** May I have a moment, Your Honor.

24 **THE COURT:** Yes.

25 (Pause)

1 **MR. GARDNER:** Your Honor, my client would like
2 to be heard.

3 **THE COURT:** I'll be glad to hear from you, Mr.
4 Bennett.

5 **GARY BENNETT:** Your Honor, I don't mean any --
6 I'm not going to disrespect your Courtroom. You've
7 been nothing but professional the whole court.

8 I just want to address this to Kelly and
9 Heather. I did not kill Marie Martin. Marie Martin
10 was my friend, and if she could walk through that door
11 right now, those two men right over there has got a
12 lot of explaining to do.

13 George Merritt knows I didn't kill Marie
14 Martin. Marie Martin was my friend. They saw the
15 killer sitting on that stand right there. They saw
16 Drew Lindsay, and he's going to kill again. He's
17 killed twice. He's going to kill again.

18 I did not kill Marie. Marie was my
19 girlfriend's best friend. She was my friend, and I'm
20 coming back to Court. You can sentence me what you
21 want to sentence me, but I'm coming back to Court
22 because I -- I can live with myself because I know I
23 didn't do this crime.

24 I never gave anybody even a bloody nose, let
25 alone cut somebody's throat. I've got three

1 beautiful kids. I didn't kill Marie Martin, and boy,
2 I just -- if I had one wish -- I don't want Johnny
3 Cochran. I don't want Johnny Gardner. I don't want
4 -- I don't want a million dollars. I want Marie
5 Martin to walk through that door right there is what
6 I want.

7 THE COURT: Thank you, sir.

8 Anything further, Mr. Gardner?

9 MR. GARDNER: No, Your Honor.

10 THE COURT: Mr. Bennett, as you are aware,
11 the State has presented me with the evidence contained
12 in Court's Exhibit Number 2. This is evidence
13 relative to what sentencing will be required of the
14 Court.

15 As may have been explained to you already,
16 when an individual is found guilty of their second
17 most serious crime and especially when notice has been
18 given by the State, there's some question as to
19 whether or not on a second most serious that the State
20 has to give notice, but the State gave you notice that
21 they were going to be seeking a sentence of life in
22 prison without the possibility of parole, which is, in
23 fact, a -- sometimes known as a pine box life
24 sentence, so I, under the mandates laid down by the
25 General Assembly, am required to sentence you

1 according with that provision.

2 That applies both to the murder charge, which
3 would carry normally thirty years to life, and it
4 applies to the armed robbery, which would carry
5 normally up to thirty years, but under the
6 circumstances in which we find ourselves, I am
7 mandated according to 17-25-45 to sentence you to a
8 life sentence without parole.

9 To the members of Ms. Martin's family, this,
10 of course, does not provide any ability to restore
11 the relationships that you have. That is going to be
12 something that you will have to deal with through
13 time and through family support and there will
14 always be occasions where your loss is more
15 poignant than at other times. I wish I had some way
16 of doing something to provide assistance to you, but
17 I cannot.

18 Mr. Bennett, from a conviction by a jury, any
19 appeal from the trial needs to be filed within ten
20 days. Normally the process is the attorney who has
21 represented you at this level, if you request, will
22 file an appeal on your behalf and then it will be
23 sent, since you are indigent, to the South Carolina
24 Appellate Defense and they will handle any appeals
25 from this Trial Court's rulings and make a decision

1 based upon the record in this case.

2 So that there isn't any question about whether
3 or not you desire appeal or don't desire appeal, out
4 of an abundance of precaution, Mr. Gardner, I'm going
5 to ask that you perfect a notice of intent to appeal
6 in this matter.

7 It can always be dropped if that's deemed to
8 be appropriate, but so that that issue does not come
9 up at some point in the future, if you would go ahead
10 and do that.

11 **MR. GARDNER:** Yes, Your Honor. We have
12 discussed that, and it will be done before the week is
13 out.

14 **THE COURT:** Very good.

15 Mr. Bennett, on the Indictment 02-GS-26-772,
16 the indictment charging you with murder, the sentence
17 of the Court is that you be committed to the State
18 Department of Corrections for a determinate term of
19 life without parole, and as to Indictment 02-GS-26-
20 2765, charging you with armed robbery, the sentence of
21 the Court is that you be committed to the State
22 Department of Corrections for a determinate term of
23 life without parole.

24 I will have these sentences run concurrent. I
25 see no reason not to mark them in that fashion.

1 Thank you very much.

2 MR. KODMAN: Thank you, Your Honor.

3 CONCLUSION OF TRANSCRIPT OF RECORD

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CERTIFICATE OF REPORTER

333

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3

4 I, the undersigned Bettye S. Gum, Official
5 Court Reporter for South Carolina Court

6 Administration, do hereby certify that the foregoing
7 is a true, accurate and complete Transcript of Record
8 of all the proceedings had and evidence introduced in
9 the trial of the captioned case, relative to appeal,
10 in the Court of General Sessions for Horry County,
11 South Carolina.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

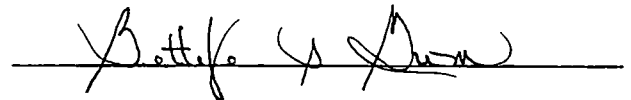
15

16

October 25, 2002

17

18



19

BETTYE S. GUM, CCR-CVR-CM

20

Official Reporter

21

22

23

24

25

MERRITT/HCPD
WITNESSES

DOCKET NO. 2002-GS-26-772

THE STATE OF SOUTH CAROLINA

COUNTY OF Horry
62949-2 SPK

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2002

THE STATE

VS.

GARY WAYNE BENNETT W/M
6350 ENTERPRISE ROAD
MYRTLE BEACH SC 29527
DOB: 07/15/63
SSN: 071-60-1773

ARREST WARRANT NO. ~~G-515571~~

CDR: 0116 16-03-0010, 0020

CDR:

DOA: 08/04/2000

ACTION OF GRAND JURY

TRUE BILL

FEB 26 2002

Foreman of Grand Jury

VERDICT

ATTY: W. THOMAS FLOYD

INDICTMENT FOR:

MURDER

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

INDICTMENT FOR

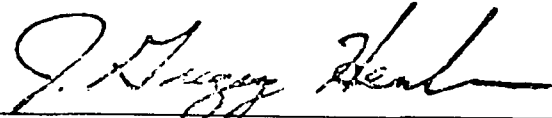
MURDER

At a Court of General Sessions, convened on February 26, 2002,
the Grand Jurors of Horry County present upon their oath:

MURDER
CDR: 0116 16-03-0010,0020

That GARY WAYNE BENNETT along with ANDREW LINDSEY did in Horry County on or about May 23, 2000, wilfully, feloniously, and intentionally, with malice aforethought, kill Eva Marie Martin by cutting her throat with a knife, and Eva Marie Martin did die as a proximate result thereof in Horry County on or about May 23, 2000, in violation of Section 16-3-10, 0020 Code of Laws of South Carolina, 1976, as amended, and the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

336

STATE OF SOUTH CAROLINA

COUNTY OF HORRY
STATE VS.

AKA:

Race: W Sex: M Age: _____DOB: 7/15/63 SS#: 071-60-1773

Address: _____

DL# _____

SID#: SCD1326839IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:02 -GS- 26 - 772A/W#: 6-515571Date of Offense: 5/23/00S.C. Code §: 16-3-10, 20CDR Code #: 0 / 1 / 1 / 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: MURDERin violation of § 16-3-10, 20 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 / 6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life without Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)\$ _____

§14-1-211(A)(1) (Surcharge)\$ _____

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment)\$ _____

3% to County (if paid in installments) ...\$ _____

TOTAL\$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]Judge Code: 01111119Sentence Date: 8/14/02Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/2001)

MERRITT/HPCD

WITNESSES

DOCKET NO. 2002-GS-26-2765

THE STATE OF SOUTH CAROLINA

COUNTY OF Horry

62949-2 SPK

COURT OF GENERAL SESSIONS

JULY TERM 2002

THE STATE

vs.

GARY WAYNE BENNETT W/M
6350 ENTERPRISE ROAD
MYRTLE BEACH SC 29577
DOB: 07/15/63
SSN: 071-60-1773

ARREST WARRANT NO.

CAW200206027

CDR: 0049 16-17-0410

CDR:

DOA: 08/04/2000

ACTION OF GRAND JURY

TRUE BILL

JUL 11 2002

Foreman of Grand Jury

VERDICT

INDICTMENT FOR:
ARMED ROBBERY

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

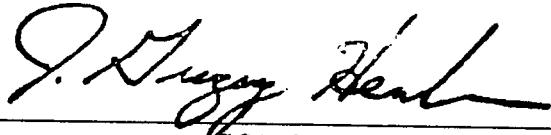
**INDICTMENT FOR:
ARMED ROBBERY**

At a Court of General Sessions, convened on July 11, 2002, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY
(CDR: 0139 16-11-0330(A))

That GARY WAYNE BENNETT did in Horry County on or about the 23rd day of May, 2000, while armed with a deadly weapon, to wit: a knife, take and carry away personal property from or in the immediate presence of Eva Marie Martin with intent to deprive her of possession by use of force, threats or intimidation, in violation of Section 16-11-330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

HURRY

VS.

GARY WAYNE BENNETT

AKA:

Race: W

Sex: M

Age:

DOB: 7/15/63 SS#: 071-60-1773

Address:

DL#

SID#: SC01326839

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

02-GS-26-2765

A/W#: CAW200206027

Date of Offense: 5/23/02

S.C. Code §: 16-11-330(A)

CDR Code #: 011319

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARNOLD RUBBERY

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☒ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 02-6526-772

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 100%)... \$ §14-1-211(A)(1) (Surcharge) ... \$ §14-1-211(A)(2) (Surcharge) ... \$ §56-5-2995 (DUI Assessment) ... \$ 3% to County (if paid in installments) ... \$ TOTAL ... \$ PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund.Other: PRESIDING JUDGE

Judge Code: 011119

Sentence Date: 8/14/02

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA)
County of Horry)

In the Court of Common Pleas

Gary Wayne Bennett #276951
Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

County of Horry)

APPLICATION FOR

POST-CONVICTION RELIEF

HORRY COUNTY
CLERK OF COURT
08 JUN 26 AM 10:52
JENNIFER J. JAGGINS

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Institution, SA-57
P.O. Box 205, Ridgeville, SC 29472

2. Name and location of Court which imposed sentence Horry County, Conway,
South Carolina 29528

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2002-GS-26-772

(b) 2002-GS-26-2765

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 24 August 2002, Life without parole

(b) 24 August 2002, Life without parole

(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty **XXX** _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. **S.C. Court of Appeals** _____
- ii. **S.C. Supreme Court** _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. **Affirmed** _____
- ii. **Affirmed** _____
- iii. _____

(c) the date of each such result:

- i. **August 13, 2004** _____
- ii. **June 25, 2007** _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. **Unpublished Opinion No. 2004-UP-439** _____
- ii. **Memorandum Opinion No. 2007-MO-040** _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) **Ineffective assistance of counsel** _____
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) ~~Will be filing a Memorandum of Law in support of facts~~
~~pertaining to applicant's application for Post Conviction~~

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
 already specified in (7) **No**

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **No**

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? **Yes**
- (c) your sentencing? **Yes**
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Thomas Floyd, Public Defender's Office, Conway, SC 29526

ii. Johany Gardner, P.O. Box 1001, Conway, SC 29528

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Arraignment and bond hearing, 09/13/00 until 3/15/02

ii. Court appointed on 03/15/02 until trial 08/12/02

iii. _____

18. State clearly the relief you seek in filing this application.

Relief from conviction and a new trial be ordered

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

VERIFICATION

I, Gary W. Bennett, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gary Bennett

HORRY COUNTY
08 JUN 26 AM 10:52
CLERK OF COURT

Sworn to and subscribed before me

This 25th day of June, 2008

Debra J. Walker S.
Notary Public for South Carolina

My Commission Expires 4/4/2011

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Gary W. Bennett, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Gary Bennett
Applicant

Sworn to and subscribed before me

This 25 day of June, 2008

Debra J. Walker S.
Notary Public for South Carolina

My Commission Expires: 4/4/2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gary Wayne Bennett, 276951

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2008-CP-26-5031

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed June 26, 2008, would respectfully show this Court:

I.

Respondent did not receive this Application from the Clerk's office until September 19, 2012. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the February 2002 term of the Horry County Grand Jury for murder (2002-GS-26-772). Thomas Floyd, Esquire and Johnny Gardner, Esquire, represented Applicant.

On August 14, 2002, Applicant was tried and convicted before the Honorable John M. Milling, who sentenced Applicant to life imprisonment. Applicant appealed the conviction and sentence. The South Carolina Court of Appeals affirmed the conviction and sentence, and upon Petition for Certiorari, the South Carolina Supreme Court also affirmed the conviction and sentence. The remittitur was sent July 16, 2007.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript if available. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "will be filing a Memorandum of Law in support of facts pertaining to applicant's application for Post Conviction"

Respondent is not in possession of any further filings from Applicant in this present matter, and it is not know whether Applicant filed a subsequent memorandum of law.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

11/30, 2012.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2008-CP-26-5031

Gary Wayne Bennett,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	PCR Hearing
	)	
State of South Carolina,	)	June 19, 2014
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Charles T. Brooks, III, Esquire
Attorney for Plaintiff

Joshua L. Thomas, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

I N D E X

1	(June 19, 2014.)	
2	Gary Wayne Bennett	
3	Direct Examination by Mr. Brooks.	6
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11	Certificate	62

13

14 (There were no exhibits marked during the hearing.)

15

16

17

18

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23

24

25

1 (On the record, June 19, 2014.)

2 THE COURT: All right. This is case number 2008-CP-26-
3 5031, Gary Wayne Bennett versus State of South Carolina. The
4 matter's before the Court on an application for post-
5 conviction relief. Please give the court reporter your names
6 and who you represent.

7 MR. BROOKS: Charles Brooks, representing the Applicant.

8 THE COURT: All right.

9 MR. THOMAS: Josh Thomas representing Respondent, State
10 of South Carolina.

11 THE COURT: All right. Now, as I understand, the
12 Applicant was indicted on the charge of murder, was convicted
13 by a jury trial and received a life sentence; is that correct?

14 MR. BROOKS: That is correct.

15 THE COURT: All right.

16 MR. THOMAS: Correct, Your Honor.

17 THE COURT: Were there any other charges against him?

18 MR. THOMAS: He also -- I believe he was convicted of an
19 armed robbery accompanying that murder.

20 THE COURT: Okay. But that's not before the Court. I
21 guess my question is is if the -- if relief is granted, then
22 he just goes back and faces the murder charge again or is
23 there anything else that --

24 MR. THOMAS: I believe he's facing the murder and the
25 armed robbery, Your Honor. Those are what my records are

1 reflecting. I don't --

2 THE COURT: Is that --

3 MR. BROOKS: That's out of the entire incident.

4 MR. THOMAS: That's correct.

5 THE COURT: Oh, okay. All right. So he's appealing his
6 sentence and convictions for armed robbery and murder?

7 MR. BROOKS: Right.

8 THE COURT: Okay. But there were no other charge that
9 were dismissed or dropped or anything as a result of going --

10 MR. BROOKS: Not to my knowledge.

11 THE COURT: Okay. All right. Let's place Mr. Bennett
12 under oath.

13 (Defendant is sworn by clerk.)

14 THE COURT: All right. Sir, your name is Gary Wayne
15 Bennett?

16 MR. BENNETT: Yes, sir.

17 THE COURT: All right. Mr. Bennett, you filed a petition
18 seeking post-conviction relief from your conviction and/or
19 sentence for murder and armed robbery. Is that correct?

20 MR. BENNETT: Yes, sir.

21 THE COURT: All right. Before we go forward, I must go
22 over some questions with you to be sure that you understand
23 these proceedings and what's happening here today. Number
24 one, are you under the influence of any alcohol, drugs or any
25 other undue influence that might affect your ability to know

1 why you're here?

2 MR. BENNETT: No, sir.

3 THE COURT: All right. You understand why you're here
4 today?

5 MR. BENNETT: Yes, sir.

6 THE COURT: Is there anything about this hearing that you
7 want to ask your lawyer or ask me before we proceed?

8 MR. BENNETT: No, sir.

9 THE COURT: Okay. All right. Now, two things can happen
10 as a result of this hearing. Number one is if I deny your
11 request for post-conviction relief, then you'll simply return
12 to the Department of Corrections to serve out your sentence.
13 You understand that?

14 MR. BENNETT: Yes, sir.

15 THE COURT: If I grant your request for post-conviction
16 relief, then what will happen is this case will go back to
17 square one. The indictments will still be issued against you,
18 and you'll just go back for another trial on these charges.
19 Do you understand that?

20 MR. BENNETT: Yes, sir.

21 THE COURT: All right. The life sentence and the armed
22 robbery, they -- what kind of sentence did you get for those?
23 I know you got life for murder.

24 MR. BENNETT: Life without parole.

25 THE COURT: What did you get for the armed robbery?

Gary Wayne Bennett - Direct by Mr. Brooks

6

1 MR. BENNETT: The same thing.

2 THE COURT: Okay. All right. Anything further you want
3 placed on the record Mr. Brooks?

4 MR. BROOKS: Beg the Court's indulgence?

5 (Mr. Brooks and Mr. Bennett confer.)

6 THE COURT: Okay. Anything further you want put on the
7 record?

8 MR. BROOKS: No, sir. Other than -- well, I -- no. No.
9 We're, we're good.

10 THE COURT: Okay. Anything further the State wants
11 placed on the record?

12 MR. THOMAS: Nothing, Your Honor.

13 THE COURT: All right. Mr. Brooks, you can call your
14 first witness.

15 MR. BROOKS: Call Mr. Gary Wayne Bennett to the stand.

16 THE COURT: All right.

17 MR. BROOKS: Your Honor, if I could be allowed to break
18 -- take my client his stuff?

19 THE COURT: All right. That'll be fine.

20 Whereupon, Gary Wayne Bennett is called to the stand,
21 duly sworn by the clerk and testified as follows:

22 MR. BENNETT: Oh, yeah. Thank you. Thank you. Thank
23 you. Thank you. Yeah. Thanks.

24 MR. BROOKS: You ready, Judge?

25 THE COURT: Yes.

1

DIRECT EXAMINATION

2

BY MR. BROOKS:

3

Q All right. Mr. Bennett, take a deep breath.

4

A I'm ready, sir. I'm ready.

5

Q Okay. All right. Now, as Judge Culbertson has asked,

6

you understand what this proceeding is about?

7

A Yes, sir.

8

Q Okay. Now, in your case, you had Johnny Gardener as your

9

lawyer?

10

A That's correct, sir.

11

Q He was court appointed?

12

A Correct, sir.

13

Q Okay. And you all went to trial, and the State's case or

14

the crux of the case was Mr. Lindsay?

15

A That's correct, sir.

16

Q What -- do you remember his full name?

17

A Andrew Lindsay.

18

Q Okay. And you've raised several allegations in regards

19

to Mr. Gardner's representation. Do you recall that?

20

A Yes, sir.

21

Q Okay. And one of those was failed to cross-examine the

22

witnesses.

23

A Yes, sir.

24

Q Can you elaborate on that?

25

A On State witnesses or Defense witnesses?

1 Q One at a time.

2 A Okay. Well, I just --

3 Q Nobody -- and let me, and let me tell you this. This is
4 your day.

5 A Right.

6 Q And nobody knows your case better than you.

7 A That's correct, sir.

8 Q You're serving a life sentence on it.

9 A That's correct, sir. That's correct.

10 Q Okay. I want to make sure I don't miss out on anything.

11 A I got you. I'm with you.

12 Q So we'll start with the Verizon telephone worker.

13 A Okay. That was -- she was the first witness that the
14 State put up in my case, which I did not know her or what,
15 what relevancy of her testimony would be. She was a black
16 woman. I knew there was nobody that was black involved in my
17 case. She testified she was a Verizon telephone
18 representative, and she was there -- she was subpoenaed to
19 testify to a record, of a phone record. Now, my motion of
20 discovery and the acknowledgment of the receipts of those
21 documents only listed like my phone record, my neighbor's
22 phone record, which was several pages long, Andrew Lindsay's
23 phone records that were several pages long. She was
24 testifying to a one-page phone record, and she said that this
25 phone record belonged to the victim, Marie Martin. I was not

1 aware of this particular phone record. It wasn't listed.

2 Q Prior?

3 A Right. Prior to my trial I've never -- it wasn't in the
4 discovery documents. It's not listed in the discovery
5 documents that it was presented by the State to, to the
6 Defense back on April 1st in, in 2001. So, I didn't know the
7 relevancy of it, and she said that there was a phone record
8 that was called from Marie Martin's home at 8:39 p.m.

9 Q And just to be clear, Marie Martin?

10 A Is the victim, that's correct.

11 Q Okay.

12 A So I still don't understand the relevancy that there was
13 a phone call made from Marie Martin's residence at 8:39 p.m.
14 and that the State put her on the stand to testify to this
15 record. I've never seen the record. Mr. Gardner never showed
16 me any record. It's not in my discovery or anything. So, I
17 did not know what this relevancy was until Andrew Lindsay took
18 the stand, and when he was telling his fabricated story that
19 he came to my house --

20 COURT REPORTER: You need to back up just a little bit
21 from the mike.

22 A Oh, excuse me. Okay. And that he had come to my home
23 and picked me up and took me to Marie Martin's home, and --

24 THE COURT: Excuse me, Mr. Bennett. Just sit back a
25 little bit.

1 A Oh, okay. I -- all right.

2 THE COURT: There you go. That's good. Okay.

3 Q You're talking loud enough.

4 A I, I just want to make sure you --

5 Q I think she's not going to have a problem hearing you.

6 A Okay. Okay. So he testifies that he comes, picks me up,
7 takes me to Marie's home and me and him are in the home and
8 I'm having an argument with this woman and he goes and makes
9 this phone call. So now I see the relevancy of the phone
10 call. It's to corroborate his story that he was at Marie
11 Martin's home, and he's saying I was with him, which I was
12 not, but this makes it more believable, but then it helped me
13 out because there's no way I could have been in Marie Martin's
14 home at 8:39, and I did not have this information to, to go
15 along with the, the alibi witnesses that were not called in my
16 trial. So, that was one witness that my -- Mr. Gardner did
17 not object to any of the, to the evidence being presented of
18 the phone record. He didn't, he didn't --

19 Q You, now, let me -- you felt that that bolstered Mr.
20 Lindsay's story to the jury?

21 A Exactly, exactly, exactly.

22 Q Okay.

23 A Right, but like I said, I wasn't aware of the record
24 because it's not in the discovery documents. So I was never
25 aware of the record. I didn't know the relevancy of that

1 record until Drew Lindsay took the stand and told his story
2 that he made that phone call, and what was beneficial to me is
3 documented at 8:39 p.m. I could not have been at Marie
4 Martin's home at 8:39, which would make his story
5 unbelievable.

6 Q Okay. Now, that would bring us to one other -- another
7 issue you have with Mr. Gardner was about some alibi
8 witnesses?

9 A That's correct.

10 Q These particular people would have put you at another
11 place at the exact time?

12 A At 8:39, correct.

13 Q Now, who are these alibi witnesses?

14 A Okay. The first one would be -- I do not -- I don't know
15 if it's an alibi witness, but it would be coworkers of Marie
16 Martin because I went to the Surfside Taco Bell to pick her up
17 that evening at 7:00 o'clock. I was supposed to pick up my
18 daughter's mom. She made a statement. Her name was Amber
19 Vrooman. She'd made a statement that I left that Taco Bell at
20 7:10 p.m. with a black male named William Gallipie [spelled
21 phonetically], which I did not know him, but Marie was going
22 to drop him off in Myrtle Beach after she dropped me and my
23 daughter off. So and then there was another witness statement
24 from Mary Young, who was the manager at the Taco Bell. She
25 was there that evening when I went there to pick up Marie, and

Gary Wayne Bennett - Direct by Mr. Brooks

12

1 she made a statement that's in the discovery material that I
2 left between 7:15 and 7:30 at the Taco Bell. Marie took me
3 home. I was dropped off by her, and William Gallipie, who was
4 the black male, he was a 19 year old employee that worked at
5 the Surfside Taco Bell, and they had borrowed -- or the Myrtle
6 Beach Taco Bell. Surfside had borrowed him that day. So this
7 was the first day he kind of worked there, and Marie lives in
8 Myrtle Beach. She was going to drop him off. So he could
9 have testified at my trial as to what time I was dropped off
10 because he was confirmed by Detective McKenzie's report, it's
11 in the discovery material, that he was confirmed at being
12 dropped off at the Myrtle Beach Taco Bell at 8:20 p.m., and,
13 and he further states, Detective McKenzie does, that I was
14 dropped off prior to that, and I was confirmed as being
15 dropped off through their investigation. So I was confirmed
16 at being dropped off. William Gallipie can come to my trial
17 and testify to what time I was dropped off and what time he
18 was dropped off. He was not called.

19 Q Did you tell Mr. Gardner this before the trial?

20 A Yes. If you look at page 31 of the transcript, those two
21 witnesses are listed as potential witnesses, and when, and
22 when it was the Defense's turn to, to present their case, he
23 told the Judge that we're, we're -- we, we have two potential
24 witnesses, but at this time we're not going to offer in a
25 defense, and that's exactly what he said and in, in, in the

1 transcript.

2 Q Okay. Now --

3 A The other witness that you were referring to was the
4 police took him. Well, it's in the discovery material. It's
5 not in a formal statement, but it's, it's written by the
6 detectives, and it's from Diane Walker, who was my neighbor.
7 She states that when Marie dropped me off, she witnessed Marie
8 drop me off and that I came to her porch for 15 to 20 minutes
9 and talked with her, with me and my daughter and her grandson,
10 little Bobby, and I walked to my mailbox and then I walked
11 home.

12 Q Okay.

13 A Now, she could be called also as a witness because she
14 witnessed Marie dropping me off and witnessed me being on her
15 porch. I didn't take the statement from her. The police took
16 that statement. I got it right here in the discovery
17 material.

18 Q She was listed as a potential witness?

19 A That's correct, and none of that -- Mr. Gardner presented
20 none of that. He did not present the witnesses, the actual
21 statements that were taken by the police, by the detectives.

22 Q These people were not, these people were not called?

23 A That's correct.

24 Q Okay.

25 A He told me they were not, not able to be located is what

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1 he told me when it came -- see, I was under the impression he
2 was going to present these witnesses because they were listed
3 in the, in the page 31 on the voir dire of my transcript here.
4 I knew they were supposed to be subpoenaed to be called as
5 witnesses, but as the trial went, suddenly he --

6 Q When the State rested --

7 A Right. He, he just said, yeah, right when the, when the
8 State rested, he's like, "Okay, well, we're going to, we're
9 going to, we're going to present our" -- and then he, and then
10 he says, "We have two potential witness but at this time we're
11 not going to offer a defense," and he, he just kind of looked
12 at me. I, I, you know, I'm trying to be respectful. I'm not
13 trying to, you know, cause any problems, but I just kind of
14 was confused at why he had done that. I was under the
15 impression he was calling these witnesses and they were going
16 to be available to us, and they were not.

17 Q One of the other things you raise is about the
18 pathologist and the report about how the victim was cut?

19 A That's correct.

20 Q Can you elaborate on that?

21 A Okay. If you look at the transcript, Mr. Gardner does
22 mention the left to right, the left-handed or right-handed
23 theory. Okay. Of course, the State---

24 Q And what does he mean by -- he's basically saying --

25 A Right. That based on the autopsy report --

1 Q Okay.

2 A -- which the doctor testified for the State, but the
3 State did not present the document into evidence and they did
4 not --

5 Q Right. But what, what did the doctor testify to as far
6 as --

7 A He testified that she died from two incised wounds to the
8 neck.

9 Q Okay.

10 A I think he said to the left side of the neck, but I
11 don't, I don't think he stated pattern of the wounds,
12 beginning in the left upper neck area becoming more
13 superficial to the right, which he stated in his case summary,
14 which, you know, on his autopsy the day after she or the day
15 he had done the autopsy, but I had mentioned it to Mr. Gardner
16 about she had no defense wounds, she had two incised wounds to
17 the neck. Wouldn't it -- well, I mean, if you put an expert
18 on the stand, could they determine if this person's throat was
19 cut from the back or the front?

20 Q And whether or not --

21 A And, and whether it would be a left-handed person or
22 right-handed person. So Mr. Gardner told me that's, that's --
23 we can do that. That's a, that's a -- we can do that at
24 trial, and as if you note in the, in the transcript on the --
25 under cross examination of the detective, he mentions about

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1 the left -- he's, he's asking the detective did he notice if I
2 was left-handed or if Drew Lindsay was right handed, and of
3 course, the detective says, "I don't know who's who and who's
4 right-handed, who's left-handed," but the State put Mr.
5 Procter on the stand. He testified to the, the manner of the
6 -- the way the woman died.

7 Q Okay.

8 A But he didn't elaborate on specifics as far as left or
9 right like he did in the autopsy. So now under cross --

10 Q But in his report he did?

11 A In his -- that's correct. Now, under cross examination,
12 I'm expecting Mr. Gardner to present the autopsy report into
13 evidence and, and, and --

14 Q Oh, if he's cross examining --

15 A Right, and well, I mean, just he -- because the, the, the
16 -- my trial judge he, he instructed the jury that based on a
17 person's expertise and their, their, their manner of, of
18 education and everything, they, they can be classified as an
19 expert witness because he's a doctor and he's done thousands
20 of autopsies. So he can form an expert opinion on, on the
21 wounds and pattern of wounds or whatever. So, I'm expecting
22 Mr. Gardner to cross examine him and bring these points up and
23 ask him his expert opinion. He says, "Good morning, Dr.
24 Proctor. It's always a pleasure. We have no questions." He
25 does no cross-examination of him, doesn't -- but yet, in his

1 closing argument, as you can see in the transcript, he, he, he
2 mentions -- he believes that the person who cut Marie Martin's
3 throat was a right-handed person, and, and of course, the
4 State objects to the, to the testimony because there's no
5 testimony in the record at who's left-handed, who's right-
6 handed, the pattern of the wounds and --

7 Q Because the pathologist didn't testify to that?

8 A That's correct.

9 Q Although things of that nature are in the report?

10 A Right. And, and my -- see, my -- I, I would suggest that
11 Mr. Gardner couldn't, couldn't state that that was not
12 available or he couldn't have done that because I wrote Dr.
13 Sexton, who's the leading pathologist in the state, and I've
14 got the letter where he states that he could do that with the
15 correct evidence, you know, the autopsy photographs, the crime
16 scene photographs, the, the -- I've got the letter where I've
17 wrote him and he wrote me back in 2008 --

18 Q Let me, let me ask you --

19 A -- where he -- that would be possible.

20 Q Okay. Let me -- so, basically, what you're saying is
21 that Mr. Gardner could have elicited testimony on cross-
22 examination --

23 A Exactly. Exactly. That's correct.

24 Q -- of the pathologist to try to determine whether the
25 person who did the cutting was right or left-handed?

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1 A Right-handed or left-handed because I'm left-handed and I
2 got proof I can -- I'm left-handed and Drew Lindsay is right-
3 handed.

4 Q Okay. And you feel that that would have been critical in
5 the trial of your case?

6 A Well, I mean, I'm being taken to trial based on a
7 fabricated story of a convicted murderer. So I would -- any,
8 any expert, expert testimony to prove my innocence I think
9 that would be very relevant, and Mr. Gardner did not provide
10 any of that.

11 Q Okay. Now, one other -- one thing that you also talked
12 about is the combination.

13 A Right.

14 Q Okay. The combination, the State talked about
15 combination.

16 A Correct.

17 Q Their theory was that this person was killed --

18 A Right.

19 Q -- in order to get the combination to the safe at the
20 Taco Bell.

21 A Exactly.

22 Q And that he talked about that. You had an issue with
23 that that you wanted to raise on PCR.

24 A Right.

25 Q What, what was that issue, the combination?

1 A This is a -- they, they, obviously -- on, on 19 occasions
2 throughout my transcript they talked about, the State talked
3 about it in their opening arguments, they talked about it
4 under direct, direct testimony from the detective, from Drew
5 Lindsay, and then he talked about it again in closing
6 arguments. They had into evidence a piece of paper that they
7 said they, they took from Drew Lindsay when he fled to
8 Arizona, and they, they went out and got him and arrested him,
9 and they said -- the detective stated that they took this
10 piece of paper that had these three numbers on it, 45, 90, 55
11 I believe is what the number was, and it's in, and it's in, in
12 evidence that this was -- he stated that this was the
13 combination to the Taco Bell. So this was the reason to
14 murder Marie Martin was this piece of paper --

15 Q Right.

16 A -- and these three numbers.

17 Q Right.

18 A So that was their theory. So, if that's their theory,
19 they put Mary Young on the stand, who is the Taco Bell manager
20 --

21 Q Okay.

22 A -- who can tell the jury and tell everybody in the world
23 what this combination was.

24 Q Right.

25 A And they don't even ask her. They don't ask her. They

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1 do not present any evidence whatsoever that this piece of
2 paper was, in fact, the combination.

3 Q So, all right. Let me, let me help you here. So what
4 you're saying is the State said, "Hey, we got this piece of
5 paper with the combination from Drew Lindsay."

6 A Yes, sir.

7 Q Drew Lindsay says this is why Gary Bennett killed this
8 woman.

9 A Yes, sir.

10 Q Okay. And what you're saying is Marie Young was on the
11 stand, that's the Taco manager, the Taco Bell manager --

12 A Mary, Mary Young, sir. Yeah.

13 Q Mary Young, I'm sorry.

14 A Right. Right.

15 Q That your lawyer could have said, "Hey," this -- hold up
16 the sheet of paper, and said, "Ma'am, is this the combination
17 to the safe?"

18 A That's correct, sir.

19 Q The State didn't, didn't talk about that.

20 A That's correct.

21 Q Didn't ask her that.

22 A That's correct.

23 Q And you feel that your lawyer could have taken the paper
24 and cross-examined her about that?

25 A Exactly.

1 Q And you felt that, obviously, that that was not --
2 couldn't have been that?

3 A Exactly.

4 Q And if it was shown that it wasn't, that that would have
5 helped you in your trial?

6 A Exactly.

7 Q Okay.

8 A I mean, that's just -- that's evidence that, that
9 wouldn't support their theory. That, that --

10 Q That Mr. Lindsay -- that would -- that Mr. Lindsay would
11 have been lying about the combination?

12 A Exactly right, and the whole case is about his
13 credibility and believability and, and, and, and he didn't --
14 and that was a particular instance that he could have brought
15 that forward to the jury and then shown he was lying, that
16 that's not the combination to the safe.

17 Q Okay. And you felt it might have been a combination to
18 his locker at work? I see.

19 A Exactly. They know -- the State knows that's what it was
20 --

21 Q Okay.

22 A -- but I mean, they're not going to say that.

23 Q But obviously, your lawyer didn't try to bring that out.

24 A That's correct.

25 Q Okay. All right. Now, you also -- we put in our

1 amendment, we talked about your lawyer failing to get some
2 independent DNA testing.

3 A Right.

4 Q Clothing, blood, blood evidence, hairs, basically you
5 felt like your lawyer didn't investigate?

6 A Exactly, sir.

7 Q Okay. Was there an investigator in your case?

8 A Absolutely not.

9 Q At the criminal trial level?

10 A No, sir. None.

11 Q Okay. And this was a murder case?

12 A Yes, sir.

13 Q Okay. Do you recall how long you had Mr. Gardner on your
14 case prior to going to trial?

15 A He was assigned to me five months prior to. I went to
16 trial in August of 2002, and I've got documentation that shows
17 when he was -- because I had originally been appointed William
18 or Thomas Floyd, and I had him removed, and, and they assigned
19 me, I had to go to court and I've got that. I think I
20 presented that to you, the document that states the day I went
21 and they assigned me Johnny Gardner.

22 Q Okay. Now, do you recall how many times you met with Mr.
23 Gardner?

24 A I met him the first time like I met you today in that, in
25 that room right over there.

1 Q Okay.

2 A Before, the day, the day I went to trial.

3 Q Now, before that time, were you out, out of jail on bond
4 or were you in jail?

5 A No, sir. I was at, I was at Evans Correctional, and I
6 had been brought back in May of 2001 with the understanding I
7 was going to trial. I didn't go to trial. I was sent back.
8 I didn't meet Mr. Gardner when I came back in May. They sent
9 me back to Evans. I came back, I think, the very next month,
10 June they brought me back the next month with the assumption I
11 was going to trial, never met Mr. Gardner. They sent me back.
12 Then in August of 2001, they brought me back from Evans, and
13 you've got all the documentation on that.

14 Q Right.

15 A That -- and I never -- I met him the day I went to trial.

16 Q All right. Now, let me ask you this, Mr. Bennett. So
17 you weren't sitting in detention here at the local detention
18 facility?

19 A No, sir.

20 Q You were --

21 A Evans Correctional Institute in Bennettsville, South
22 Carolina.

23 Q -- in SCDC because of the burglary conviction?

24 A That's correct.

25 Q Okay. All right. So that's why you weren't, you weren't

1 at a local jail where he could just --

2 A Exactly.

3 Q Okay. All right.

4 A Now, you stated about the -- I didn't answer about -- you
5 were talking about the DNA evidence and the blood evidence.

6 Q That's part of your failure to investigate.

7 A Right. And I'm just saying as far as the, the blood
8 evidence at trial, there was blood found on the phone that was
9 turned in by the roommate. She testified at my trial. Under
10 cross-examination by Mr. Gardner, he elicits testimony about
11 the blood they found on the phone.

12 Q Okay.

13 A Her name was Natasha Adams. She's the one that
14 testified. She was the roommate. She said she had gave the
15 phone to the police when they arrived at the scene, and the
16 phone had blood on it. So he elicits testimony. The State
17 didn't, but he does, my lawyer, and asks her about this blood
18 on the phone, and he asks her, "Do you know how this blood got
19 there?" And she's like, "Yeah. I had a zit on my face and it
20 was my own blood." So he elicits this testimony and she --
21 and gets this into evidence as blood being on the phone
22 belonging to her. I thought that's why they have a state
23 crime lab to test that kind of stuff to tell us whose blood it
24 is. I was -- if, if that's not Natasha Adams' blood and it
25 belonged to Marie Martin, how did it get there based on the

1 story that Drew Lindsay was telling, because Drew Lindsay's
2 the one that said he used this phone so.

3 Q Basically, and, and your complaint here is that your
4 lawyer didn't --

5 A Right. He did not --

6 Q -- properly investigate.

7 A Well, he, like I said, he elicited that testimony and
8 allowed her to testify to blood evidence as being her blood.

9 Q All right. Now, one of the other things that you had an
10 issue with Mr. Gardner was basically in his opening that you
11 told me about.

12 A Uh-huh.

13 Q Can you tell the Judge why you had an issue with that?

14 A He opened -- in my trial transcript it clearly states
15 where the State did their opening argument and stated that on
16 the night of May 23rd Andrew Lindsay went to Gary Bennett's
17 home, picked him up, took him and his daughter over there, and
18 they killed Marie Martin, and my lawyer does his opening
19 arguments. He says, "I agree with everything that the
20 Solicitor said up until he starts talking about the knife."
21 The Solicitor never said anything about a knife in his opening
22 argument. So he was -- that was improper right there, but
23 then he further states that, "I believe, I, I believe
24 everything that -- I agree with everything the Solicitor said
25 up until he talked about the knife and that's where I

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1 disagree." So now he just told the jury, but then what --
2 excuse me. Let me back up for a second.

3 Q Okay.

4 A Prior to this statement, he stated, "My client says he
5 wasn't there," and, and the State objected, and said, "Your
6 Honor, that's -- he's, that's hearsay unless Mr. Bennett's
7 going to take the stand." My lawyer can't state that. Okay.
8 He can't state that I'm saying I wasn't there, but that was
9 his, that was my lawyer's contention that I wasn't there. So
10 he knows that was my contention, and that's his contention
11 that I wasn't there at Marie Martin's home like Drew Lindsay
12 says I was. So then he -- when he further states that, "I
13 agree with everything the Solicitor said up until he talked
14 about the knife," he just told the jury that he agrees with
15 the State that I was there at Marie Martin's home, and I was
16 not.

17 Q And you felt that undermined your case?

18 A Oh, that I was prejudiced immediate -- from the -- right
19 from the first words out of his mouth. The jury believes now
20 that I was at Marie Martin's home based on what my lawyer just
21 told them.

22 Q Your assertion has always been that you never went in
23 there.

24 A I never -- I didn't go to Marie Martin's on that night.

25 Q Okay.

1 A And he, he knew that. That's what I said. He stated
2 that when -- in his very first words of his opening he tried
3 to tell the jury that, "My client's contention is he was not
4 there," and of course, the State objects and said -- and then
5 he, then he, he went right off of that and, and went and said,
6 "Well, I agree with everything the Solicitor said up until the
7 -- he talking about the knife."

8 Q Now, Gary, another issue you raised is about some video
9 and audiotapes, I believe audio videotapes of Mr. Lindsay?

10 A That's correct. They were in, they were into evidence.

11 Q Okay.

12 A Interviews with Mr. Lindsay, they got specific dates like
13 I think it was July 20th, July 24th, July 26th. There's
14 evidence records in there where, where they interviewed him
15 and he was -- they audiotaped him and videotaped him,
16 statements.

17 Q Okay. And, and what did Mr. Gardner do with those?

18 A Absolutely nothing. I've never seen them. He's -- I
19 don't even know if he saw them to be honest with you.

20 Q Were they used in your trial?

21 A Absolutely not, and they were available to the Defense,
22 and, and, and, and like I said, the State's theory is based on
23 the believability and the credibility of a convicted murderer,
24 Andrew Lindsay. So, if you have these tapes available, which
25 he testifies under oath that he made several statements, three

1 or four different statements, and the Detective Merritt says
2 he made --

3 Q Mr. Lindsay says that?

4 A Mr. Lindsay says, "I, I lied. I made three or four
5 different statements." Detective Merritt under, under
6 examination states that he knows that Mr. Lindsay made three
7 or four different, different statements, not statements,
8 different statements. So now the jury is informed through
9 this testimony, but what are the statements? We, we have the
10 opportunity to, to present these tapes to the jury, and I
11 mean, I never even heard them, and I'm on, I'm on trial for
12 murder I had nothing to do with. I never heard them --

13 Q But --

14 A And the jury never heard them.

15 Q But Mr. Lindsay has admitted to giving several different
16 versions?

17 A Right. He did admit that under -- he did admit that to
18 the jury, but I would just, I would -- and you know, if, if
19 you look, the, the jury came back after they took the, the
20 case to deliberate. They came back and wanted to hear
21 testimony over again from Dr. Proctor, from Sharon Davis, the
22 Verizon telephone. So I believe this testimony is very
23 critical to the jury because they wanted to hear this
24 testimony all over again.

25 Q Right.

1 A And as you know, my trial lasted what two days I think it
2 was.

3 Q Right.

4 A So it wasn't a lot to look at, and the -- you know, and
5 they stated they wanted to hear that testimony over about Drew
6 Lindsay. They wanted to hear it all over again. So I think
7 it was very viable that this, these tapes, and we can hear
8 what he says and how he changes his story from day to day, and
9 they never heard the tapes.

10 Q And as we know that Drew Lindsay was basically the entire
11 case for the State.

12 A That's correct.

13 Q Okay.

14 A And these tapes were available. They were available to
15 Mr. Gardner to present at my case and present them into
16 evidence and he didn't -- he presented absolutely nothing into
17 evidence.

18 Q And basically used to impeach him.

19 A Exactly.

20 Q Okay. All right. Is there anything that we've missed?

21 A My girlfriend Amber testified at my, at my trial, and she
22 testified basically about prior conversations about robbing
23 Taco Bell because she was an employee at Taco Bell. She used
24 to steal money from there, and Marie stole money, they --
25 everybody was doing it; right? But that, that was the general

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1 conversation, but she testified at my trial, I guess that kind
2 of bolsters their theory of that, that I would go murder a
3 friend of mine because of a combination to a Taco Bell safe
4 that might have had \$300 in it, you know.

5 Q Right.

6 A I mean, but anyways, so she was charged with that same
7 burglary that I was -- pled guilty to back in 2001 in Horry
8 County because I was charged in 2000 originally with the
9 burglary. Then the murder came -- they had come talking to me
10 about Marie's death while I was charged with this burglary.
11 So and they had charged my girlfriend Amber, my daughter's
12 mom, and they -- she was put in jail here, and I think she
13 bonded out, but at testimony, at her testimony he could have
14 cross-examined her and brought up her prior criminal record
15 and the fact that what kind of plea deal was she accepting for
16 this testimony that she was giving at my trial, and he failed
17 to do that, nothing.

18 Q Never, never impeached her along those lines?

19 A Never impeached her.

20 Q Right.

21 A Another issue that I wanted to talk about was Drew
22 Lindsay's murder conviction.

23 Q Okay.

24 A Okay. Now, the State put in a motion to the Judge that
25 they not hear that his conviction was a second degree murder

1 in the State of Illinois in 1991. The Judge ruled, and it's
2 been ruled by the Court of Appeals and the State Supreme Court
3 that he made the correct ruling, but we can only identify his
4 felony conviction as a felony and not a second degree murder,
5 and I was trying to get the specifics of this murder because
6 nobody knew what the specifics of the murder were. So --

7 Q Now, and let me ask you this. Why do you think the
8 specifics of that murder would have --

9 A Well, I think it would have been relevant because I, I
10 had a friend of mine out in Seattle, Washington, hire an
11 investigator from it was called Eye for You Investigations
12 back in 2010. A woman named Jennifer, she was going to
13 investigate this murder. Something fell through. I don't
14 know if he didn't pay her all the money he was supposed to pay
15 her or whatever, but I got, I got the understanding, but not
16 in documented, but that he murdered a prostitute and he blamed
17 another man, which would have been relevant. If that's the
18 case, if that's the facts, to me it would have been relevant
19 to present this to, to my trial Judge and say, "Well, wait a
20 minute, Your Honor, let's, let's take a look at this. He
21 killed a woman and he's blamed another man."

22 Q Okay. So what you're saying is, I want to make sure I
23 understand this, this incident involving Mr. Lindsay occurred
24 well before he came to court in the trial of this case?

25 A Exactly. It was in 1991.

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1 Q And if that had been presented to the Court during that
2 motion about whether or not they could talk about the murder
3 when he was under cross-examination, --

4 A Exactly.

5 Q -- you think that the ruling may have changed?

6 A Exactly. I think it would have been very relevant if
7 that's the case. Now, and Mr. Gardner did not investigate the
8 surroundings of that murder conviction. It just, it just
9 stood as a second degree murder conviction, and I felt, if it
10 is true, that he did kill a woman and blamed another man, that
11 it would have been relevant at my trial, and we could have
12 argued it with the Judge during our motion when the, when the,
13 when the State was filing the motion to, to suppress that.

14 Q And if the jury had heard that you felt that that would
15 have changed the outcome?

16 A I, I believe a hundred percent that would have changed
17 it.

18 Q Okay. All right. Is there -- going back through these
19 amendments, is there anything else that we need to tell Judge
20 Culbertson here?

21 A Let's check. Now, you, you did mention the hair and the
22 DNA? I mean those, those particular --

23 Q That goes with the failure to investigate because --

24 A Okay.

25 Q -- you say Mr. Gardner didn't investigate --

1 A Oh, okay, I see what you're saying. I see what you're
2 saying.

3 Q -- and those would have been things that --

4 A Could have been tested.

5 Q -- could have been and should have been investigated.

6 A Investigated and tested, okay.

7 Q Okay.

8 A Okay.

9 Q Is there anything else?

10 A I do not see anything else, sir.

11 Q Okay. All right. Go ahead and answer any questions of
12 the Attorney General.

13 MR. THOMAS: May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q Mr. Bennett, how many meetings did you have with Mr.
18 Gardner or let me rephrase that because you've already -- you
19 didn't have any actual face-to-face meetings with him until
20 the day of the trial?

21 A No, sir. No, sir.

22 Q How many letters did you write him?

23 A Boy, I probably, I don't know, maybe three or four. I'm,
24 I'm -- see, I'd be speculating. I don't want to lie on this,
25 you know, under oath or anything, but I'm not sure because I

1 don't remember. All I -- the reason I remember is because I
2 had his letters. So I knew when he had wrote me.

3 Q So you did communicate via correspondence?

4 A That's correct.

5 Q Okay. Did you ever have a chance to discuss the State's
6 discovery with him?

7 A Absolutely not.

8 Q In your letters did you basically give him your version
9 of the events for that day?

10 A Yes. Yes.

11 Q And basically your defense and everything was that you
12 were not there when the murder happened?

13 A That's correct.

14 Q You communicated that to him?

15 A Yes, sir.

16 Q Did you give him a list of potential alibi witnesses?

17 A Yes, sir. Diane Walker and William Gallipie. Like I
18 said, they were, they were, they were noted in my transcript
19 of potential witnesses.

20 Q Were there any plea offers in this case?

21 A Absolutely not, sir. I wouldn't have taken a plea. I
22 didn't kill Marie Martin.

23 Q So it was your decision to go to trial on this case?

24 A Yes, sir.

25 Q Regarding -- so the only thing that basically links you

1 to this was the Co-Defendant's testimony?

2 A Yes, sir.

3 Q And we talked about these alibi witnesses, but the Co-
4 Defendant's testimony was that he picked you up from your
5 home?

6 A That's correct, sir.

7 Q And your attorney argued to the jury that there was no
8 forensic evidence to link you to it?

9 A That, well the State's -- the State said that right from
10 the get go, that there was no physical, forensic, any evidence
11 in the case. All they had was an eyewitness.

12 Q And Mr. Gardner crossed Mr. Lindsay on the
13 inconsistencies in all of his statements?

14 A Yes, sir.

15 Q He just didn't introduce the statements themselves?

16 A Exactly. There was a lot, there was a lot of things Mr.
17 Gardner could have asked Mr. Lindsay that would have, would
18 have proven he was lying as far as, you know, the timeframes.
19 I had phone records of my home and Drew Lindsay's home. Drew
20 Lindsay stated under oath that he called me after Marie
21 dropped me off. My phone records do not show any phone call
22 after Marie dropped me off or his phone records do not show
23 any phone call, and at that time, I don't, I don't even think
24 they had cell phones back in 2000, but there's just things Mr.
25 Gardner could have -- to -- could have discredited his, his

1 testimony, but, but failed to do that.

2 Q Regarding that piece of paper Mr. Lindsay was found with,
3 that was never introduced into evidence in this trial?

4 A No. It was not.

5 Q How do you know that, and you've said that it wasn't the
6 combination to the safe, but how do you know it wasn't a
7 combination?

8 A I do not know if it is, to be honest. I don't know if
9 that's the combination to the safe, but there -- the, the --
10 like I said, they stated over 20 times in my trial transcript
11 throughout testimony and closing and opening arguments that
12 that would, would be a motive that I murdered Marie Martin was
13 over this combination, and they're telling the jury that this
14 combination exists, but there was no evidence ever presented
15 that it exists, and they had this, Mr. Thomas, they had this
16 piece of paper, and they, they had the person who manages the
17 Taco Bell, Mary Young. They put her on the stand. Why would
18 the State not, and I can't determine what the State does, but
19 then under cross-examination by my lawyer, why wouldn't my
20 lawyer elicit that testimony what that combination was because
21 Mary Young can testify to what it was.

22 Q No one, no one ever alleged you actually robbed the Taco
23 Bell though?

24 A No.

25 Q And your attorney, and Mr. Gardner did argue to the jury

1 that the person who would have made that knife cut to the
2 victim's neck, he argued that that was a right-handed person?

3 A That's correct.

4 MR. THOMAS: Beg the Court's indulgence one moment.

5 THE COURT: All right.

6 MR. THOMAS: No further questions. Thank you.

7 THE COURT: All right. Redirect?

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Gary, the State's theory was that you killed Ms. Martin
11 to get the combination?

12 A Well, the State's theory, that was, that was the
13 testimony that the State provided that eyewitness.

14 Q No, no, no. Listen to what I'm saying. It's your
15 understanding that the State's theory that you killed her in
16 order to get the combination to the safe?

17 A That's correct. That's correct.

18 Q So that's -- that was their theory that they built their
19 case on.

20 A That's correct. Well, I mean, if you look at the
21 transcript, that they state it throughout the whole transcript
22 about killing Marie Martin for a combination to a Taco Bell
23 safe.

24 Q Okay. And that's why the issue about the combination you
25 feel is important?

1 A Exactly.

2 Q Okay.

3 MR. BROOKS: No other questions.

4 THE COURT: All right. You may step down. All right.

5 Mr. Brooks, call your next witness.

6 MR. BROOKS: We'll call Johnny Gardner to the stand.

7 THE COURT: All right.

8 Whereupon, Johnny Gardner is called to the stand, duly
9 sworn by the clerk and testified as follows:

10 MR. BROOKS: Are you ready, Judge?

11 THE COURT: Yes. Go ahead.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Mr. Gardner.

15 A Yes, sir.

16 Q How are you today?

17 A Good, sir.

18 Q You represented Mr. Bennett in this matter?

19 A Correct.

20 Q Now, it's been quite a while.

21 A Yes, sir.

22 Q I want to say this trial was like in 2003?

23 A Two or three, somewhere around there.

24 Q 2002 or 3?

25 A Yes, sir.

1 Q Okay. And Mr. -- you'd only been on the case for about
2 five months; is that correct?

3 A That, that sounds about right.

4 THE COURT: We need to take a break?

5 MR. BROOKS: You okay?

6 MR. BENNETT: That man cost me 14 years of my life.

7 THE COURT: All right, sir. You're going to need --
8 you've got to follow -- let's take about a ten-minute break.
9 If he can't control his emotions, we'll have to exclude him.
10 Okay? All right. So let's take a ten-minute break. Let him
11 control his emotions. Otherwise, we're just going to have to
12 let him out --

13 MR. BROOKS: Go ahead and use the restroom.

14 THE COURT: -- so there's no more disruption. All right?
15 All right.

16 ***** OFF THE RECORD *****

17 (On the record.)

18 THE COURT: Thank you very much. Please be seated. All
19 right. You can be seated. Now, Mr. Bennett, I understand
20 this is an emotional time, and I don't have any problems with
21 that, but I can't tolerate the way you yelled out at the
22 witness before we took the break. Okay?

23 MR. BENNETT: Apologize, sir.

24 THE COURT: We still have to maintain some decorum here
25 in the courtroom. You cannot blurt out like that. I

Johnny Gardner - Direct by Mr. Brooks

40

1 understand if you have trouble controlling your emotions,
2 that's one thing. The Court can deal with that. However, the
3 Court cannot tolerate outbursts. Do you understand that?

4 MR. BENNETT: Yes, sir.

5 THE COURT: All right. All right. Anything else we need
6 to address before we resume?

7 MR. THOMAS: I guess we'll just put on the record, Your
8 Honor, right when we, right when you left the bench Mr.
9 Gardner did walk over here and start chatting with us, but we
10 didn't discuss any of the testimony or anything, and then Mr.
11 Johnson alerted us that he had already been sworn so he
12 immediately --

13 THE COURT: Okay. All right. And to be honest with you,
14 we did put him under oath? Is that?

15 THE CLERK: Yes, sir.

16 THE COURT: Okay. How I -- I couldn't remember whether
17 we had, but I know we had not started any testimony. Okay.

18 MR. BROOKS: I think, I think I asked him if he
19 represented him.

20 THE COURT: Maybe so.

21 MR. BROOKS: That would -- I think that was the extent of
22 it.

23 THE COURT: Okay. That's fine. All right. Let's go
24 ahead.

25 MR. BROOKS: Okay.

1 THE COURT: All right. Mr. Brooks.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q Mr. Gardner, you represented Mr. Bennett?

5 A Yes, sir.

6 Q And you got appointed to him maybe about five months
7 before this trial?

8 A I think so. That sounds about right.

9 Q And do you recall how many times you met with him before
10 going to trial?

11 A I do not. It wasn't very many though. He's right about
12 that.

13 Q So is it fair to say that your testimony would be
14 consistent with what he talked about?

15 A I think so. Yeah.

16 Q Now, of course, the case is relatively old, and being a
17 lawyer we get a lot of things and a lot of cases come through.
18 So if there's anything you don't remember, is it fair to say
19 you would rely on the record?

20 A Yeah. That's fair enough.

21 Q Okay. Now, do you remember trying to track down any of
22 these witnesses that were listed as potential witnesses in the
23 trial?

24 A I do not recall that in particular. Maybe if I could
25 tell you a little bit about what I do remember maybe that

1 might help. I don't know if that would be okay?

2 Q That's fine.

3 A I think you all alluded to it earlier, but this case
4 basically was nothing more than a Co-Defendant testifying that
5 your client did this, and that was pretty much all the
6 evidence there was if I remember correctly, and the Co-
7 Defendant had an unrelated murder conviction, and I have
8 never, ever had a trial where a witness, not a Defendant, a
9 witness testified, and I could not go into his prior record,
10 and that caught us, to be perfectly frank with you, off guard
11 because we thought this is a credibility, the client is
12 correct, this was nothing but a credibility contest, and I
13 thought that once the people heard, the jury heard that the
14 one witness who was originally charged with the crime,
15 miraculously was not charged with it anymore or whatever
16 happened with it, I'm not sure, had a prior unrelated murder
17 conviction and was now part of a murder, that that would
18 destroy the State's case, and that's what we did.

19 Q Okay. And so in your review of the case, is it fair to
20 say that you saw there was no forensics, no blood, no DNA --

21 A Correct.

22 Q --- and based on these, the list of witnesses that they
23 gave you, that the crux of the case, the State's case being
24 the lynch pin was Andrew Lindsay?

25 A Yes, sir.

1 Q And Lindsay had given multiple stories, but you were
2 basically relying on the fact that he had a murder conviction
3 from another state?

4 A Right.

5 Q To basically, soon as he takes the stand, "I'm going to
6 shotgun this through them, till the jury hear that and boom,
7 it's over."

8 A That is my recollection of the, of the case. Yes, sir.

9 Q So then when you got into the trial and then the State
10 makes the motion about, "Nah, you can't really, you know, use
11 that to impeach him."

12 A I thought he was kidding.

13 Q Okay. And that's, that's what really undermined Mr.
14 Bennett's case?

15 A Absolutely.

16 Q Okay. And in looking at the transcript, the Judge said,
17 "You can say felony," but you couldn't talk about, "Hey, he
18 had a murder conviction?"

19 A Right.

20 Q And so is it fair to say that that -- if you had known
21 that that was going to happen, that you wouldn't have been
22 able to talk about murder, you would have only been relegated
23 to a felony, is it fair to say that you would have approached
24 this case differently?

25 A I think so. Yes, sir. I can't go back, but I think so.

1 It makes sense that I would.

2 Q Okay. That perhaps you -- like in this case, did you
3 have an investigator to help you?

4 A No. We didn't.

5 Q Is it fair to say that in hindsight having an
6 investigator to maybe make sure that these two other people
7 who rode home as Mr. Bennett talked about would have been
8 critical to the case?

9 A I think so.

10 Q That would at least establish a time of when this call or
11 when this event would have taken place?

12 A I think so. I think -- the way -- I was here when he
13 testified, and the way he, and I listened to him, and the way
14 he laid it out, it made it sound like it would have been.
15 Okay? So.

16 Q Okay.

17 A But I didn't do that, so we don't have that.

18 Q Is it fair, basically, it's fair to say you didn't, you
19 didn't -- your preparation for the case and presentation of
20 the case would have been totally different?

21 A I think so. Now, I don't know, while we're talking about
22 that, if I could follow up, if that's all right with you.

23 Q Sure.

24 A I don't know what would change the Judge's mind, what the
25 Applicant when he testified earlier that if we'd have gone

1 into the, the former murder, the unrelated murder, if we'd
2 said the facts of that murder were identical to this one, if
3 the Judge -- if that would have changed the Judge's mind. I
4 don't know because I never anticipated for a minute, and I'm
5 not disagreeing with the Judge, that's been ruled on. I'm
6 just saying my state of mind, what was going on with it.

7 Q It would have obviously changed --

8 A Yeah. And I think that --

9 Q -- your preparation in the case?

10 A Yes, sir. And I think the client and I talked about
11 that, too. I think that we were both -- because he was, the
12 client was aware of that, that prior record, and I think he
13 was surprised, too. I certainly was.

14 Q Had you ever had that before?

15 A And not only have I never had that, I had never heard of
16 that. I haven't heard of everything, but I had never heard of
17 that before, to my -- to the best of my knowledge.

18 Q Because like you said, you thought when the Prosecutor
19 said that you thought he was just joking?

20 A I did, and I, I mean that. I thought -- we were sitting
21 around, getting ready to start, hadn't sworn the jury, hadn't
22 done anything yet, and he said, "I'm going to" -- I don't know
23 what his exact words were, but we started talking about that,
24 and I thought he was joking.

25 Q Okay. So now, before then he had never given you any

1 indication that he was going to do that prior to getting
2 together for trial?

3 A Absolutely not.

4 Q Okay.

5 A And if this was a civil case, he'd probably had to give
6 me ten days notice that he was going to make a motion about
7 some evidentiary issues. I mean, I don't know, but I think
8 so.

9 Q Do you think that that obviously prejudiced Mr. Bennett?

10 A I think so.

11 Q Okay. And if you, like you said, if you would have known
12 that this ruling was going to be that way, that you would have
13 only been able to talk about felony versus murder and the
14 facts of that murder conviction, that you obviously would have
15 maybe had those other two people that Mr. Bennett talked
16 about?

17 A We definitely would have changed our -- we would have
18 done different. Yeah.

19 Q The whole dynamics would have changed as far as
20 preparation for the case?

21 A Yes, sir.

22 Q And the presentation?

23 A Yes, sir.

24 Q And you didn't try to do anything with any of the blood
25 evidence or DNA evidence to have it independently tested?

1 A No. We didn't, and in, and in hindsight, maybe I messed
2 up on that. I'm not saying I did, I'm not saying I didn't,
3 but I --

4 Q But if you, here again, if you'd known that the Judge --

5 A If I'd, if I'd known, you know, that's back -- back in
6 2002, I think that's when this was, I don't think we did that
7 in cases. I don't know if we hired private DNA labs or
8 private forensic people. I don't recall it, us doing that,
9 but remember, this case is nothing but a lying contest, not a
10 forensic contest because that part of it worked to our favor.

11 Q Because you relied on being able to talk about the murder
12 conviction when he testified?

13 A And in addition to say about this forensic stuff is that
14 we could say, look, not only did Gary Bennett plead not
15 guilty, the State -- we don't know who did it, but we know
16 that they can't say that he did it. They can't say his blood
17 was there. They can't say his hair was there.

18 Q Right.

19 A They can't say his fingerprints were there.

20 Q So basically, your presentation was, "Hey, you don't have
21 any other evidence. Andrew Lindsay says my guy did it, but
22 guess what, he got a murder conviction, you know, so he got
23 every reason in the world to come in and lie."

24 A Yes, sir.

25 Q Is that pretty much your presentation going into the

1 case?

2 A Yes, sir.

3 Q Now, when you get this, for lack of a better word, monkey
4 wrench saying you can only say felony, you wish you could have
5 gone back and done some of these things like bring -- make
6 sure these two witnesses were there.

7 A Yeah. Based on his presentation, the way he said, he,
8 the client, said it a while ago. I mean, it made it sound
9 like, you know, made it sound like I didn't do anything, and I
10 can't get him, I can't let him get away with that.

11 Q Right.

12 A I can help him all I can.

13 Q But basically what you were doing is, and, and, and I've
14 heard this phrase before, doing nothing and being still are
15 two different things.

16 A Right.

17 Q And basically, the burden of proof is on the State.

18 A Right.

19 Q So your, going into the case, you were prepared to
20 present it, "Hey, they ain't got no evidence, they ain't got
21 no evidence, can't be my guy."

22 A Right.

23 Q "The only evidence they got is this guy, he's lying, look
24 at him, he's got a murder conviction."

25 A Yeah.

1 Q Then when the Court ruled in favor of them on the motion,
2 and you had no indication that this was going to be done
3 beforehand, you were basically left holding the bag, so to
4 speak, in the sense that now your ability to impeach him was
5 undermined.

6 A Severely.

7 Q And you, you did not go and do all these things that you
8 would have done if you would have known that this ruling would
9 have been that way on the impeachment issue. Is that fair to
10 say?

11 A I think that's fair to say.

12 Q Because everything from that point on prejudiced him.

13 A Yeah. And I will tell you, leading up to this case and
14 during this case and, quite frankly, maybe right up to the
15 verdict, I will tell you that nobody thought, and I can't say
16 everybody in the world, the people that were players in this
17 case, I don't think any one of them thought for a minute that
18 this was going to be a verdict the way it turned out.

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

20 THE COURT: All right.

21 MR. BROOKS: No other questions, Judge.

22 THE COURT: All right. Cross-examination?

23 MR. THOMAS: May it please the Court?

24 THE COURT: All right.

25 CROSS EXAMINATION

1 BY MR. THOMAS:

2 Q Mr. Gardner, I know hindsight's always a fickle thing,
3 but I want to kind to take us back to 2002 when you actually
4 tried this case. At that point in time, how long had you been
5 practicing law?

6 A Ten years.

7 Q How many -- or had you tried a lot of murder cases at
8 that point?

9 A I think so. I think I tried a few at least.

10 Q As far as, I guess, any case goes, at the time of trial
11 did you feel like you were prepared to go forward at that
12 time?

13 A Absolutely.

14 Q And I guess you had reviewed discovery up to that point?

15 A Yes, sir.

16 Q And you had communicated with Mr. Bennett sufficiently
17 that you were aware of sort of his version of what had gone
18 on?

19 A I think some -- I think so.

20 Q And had you explained to him sort of the elements and
21 what you were -- what he was facing at trial?

22 A Yeah. I think so because, unfortunately for him, most of
23 the murder -- when I -- my first murder trial I did, I think
24 that they had just changed the law. It was '95 or somewhere
25 around there when they changed the law where it went from 20

1 years to 30 to life, something around there, but I've tried
2 murder cases where the client got 30 years, and I've tried
3 murder cases where the client got life. Unfortunately for
4 Gary, the Judge didn't have a choice in this case. So we, so
5 Gary and I definitely talked about the ramifications of this
6 trial. You know what I mean by that, that it was going to be
7 -- if he was found guilty, it was going to be a mandatory,
8 Judge had no discretion. The Judge could only sentence him to
9 life.

10 Q And so he was aware of that when he made the decision to
11 go to trial?

12 A Yes, sir.

13 Q As far as the -- there's been some talk about the Verizon
14 expert, the, I guess, document custodian from Verizon. Were
15 you -- was that an unexpected testimony for you?

16 A You know, that's so long ago, I don't want to mislead the
17 Court, but I, I think my mindset back then would have been it
18 was not much of an issue to me, but the way the client
19 testified about it today, it sounded like it was a pretty,
20 pretty big deal.

21 Q But basically, her testimony just was that a phone call
22 was made from the victim's house?

23 A I think that's what he said. Yeah.

24 Q At the time of the trial, you didn't know any of the
25 details of the victim's prior murder charge?

1 A No, sir.

2 Q And I guess as far as these alibi witnesses go, everyone
3 he's named as an alibi witness, you're familiar with them from
4 this trial?

5 A I think so. I mean, we went over the discovery. We went
6 page by page of everything that the government gave us, and I
7 have not read a copy of the transcript of the trial. So I
8 don't remember a lot of what people said during the trial from
9 memory, but everything I've heard today sounds like it was
10 probably what happened.

11 Q So is it safe to say that the Co-Defendant's testimony is
12 basically that he picked up Mr. Bennett from Mr. Bennett's
13 home and then drove to the victim's home?

14 A I think that's what it was, but I also have to be honest
15 with you. His testimony to me, it didn't matter what he said.
16 I want to get that out there. His testimony, it didn't -- we
17 knew that he was -- what generally he was going to say when he
18 took the stand because we knew that he -- we thought he was
19 the killer. We knew he had killed before, and we knew that he
20 was going to get up there and say that our guy did it, and the
21 details of it it really didn't matter because it didn't make
22 any sense in our opinion.

23 Q So it's -- I mean, so, I mean, that's clearly what your
24 trial strategy was --

25 A Yes, sir.

1 Q -- was to convince the jury that the Co-Defendant was
2 lying and that Mr. Bennett was actually innocent?

3 A Yes, sir.

4 Q Why did -- why didn't you have Mr. Bennett testify at
5 trial?

6 A Well, we talked about that. I don't know -- I -- like, I
7 don't have -- usually in a big case, and maybe that's the case
8 that this wasn't a big case to the -- I don't know. I'm not
9 downplaying any murder case. Please don't think that I'm
10 saying that, but I didn't get a copy of the transcript on this
11 one to the best of my knowledge. So I don't, I don't want to
12 say something that's not accurate in there. I do remember two
13 things about the, the case like it happened this morning. One
14 was this was a relatively new courthouse. It may have been
15 the very first murder tried in there. I'm not sure. It may
16 have been the first trial done there. I'm not sure, but I do
17 know this courtroom had some, some kinks in it, and it wasn't
18 this courtroom. It was one over there. It was a smaller one
19 like this, to the best of my memory, but it was on this floor,
20 third floor in this courtroom -- this courthouse. Two things,
21 one, we took a break so I could go in the little lockup room
22 with Gary and talk to him about the pros and cons of
23 testifying -- okay -- because he had a significant record,
24 which is why it put him into the mandatory life without parole
25 if he got convicted. I think he was, in fact, serving time at

1 the time, which is not a big deal, it doesn't have anything to
2 do with the case, but I mean, it was something that would come
3 out at trial. If I had anything to do over again, that's the
4 one thing that I've struggled with for the last ten years or
5 12 years or however long it's been is I may have spent some
6 more time in trying to talk to him about testifying, but at
7 the time, we had two things in our favor. One, I thought we
8 were winning the trial despite the fact that we had had our
9 whole case obliterated. I still thought we were winning the
10 trial. Two, we'd have a chance to go last, and three, the
11 jury wouldn't hear about an 18-year sentence on a burglary.

12 Q Was it -- and so I'm assuming it was important for you to
13 have the last closing argument in this case?

14 A I thought so. I mean, I know that, you know, nowadays, I
15 don't know if that's so important as it was in the past. You
16 know, that's probably a conversation that many people would
17 disagree with each other on, but at that time, in my mind, I
18 thought it was important.

19 Q And talking about your closing a little bit, basically,
20 you argued to the jury A, Mr. -- the Co-Defendant had a record
21 and was the most likely suspect for this case. You argued
22 that to the jury?

23 A If that's what's in the record, that would be -- that was
24 what my plan was, and I hope that that's what I did.

25 Q And that there was no forensic evidence tying?

1 A Yes, sir.

2 Q And that -- you argued to the jury that the perpetrator
3 was right-handed based upon the pathologist's testimony?

4 A I, I heard Mr. Bennett testify that that's what we did.
5 I don't remember exactly what I said to the jury or what. I
6 had a particular reason for not following up with the, with
7 the doctor on the stand. I thought we had enough that we
8 could make a legitimate argument to the jury. Likewise, with
9 the person about the combination, you know, if you ask the
10 question and you don't get the right answer, you're done,
11 you're sunk. Okay? But if you -- if the question is out
12 there and there's enough evidence that permissibly, legally,
13 and ethically you can argue to the jury, then you're in a much
14 better position. I thought that we pretty much established
15 that this --and I keep saying Co-Defendant, I'm not sure if
16 that's the proper terminology or not, the guy that we thought
17 did the killing, the guy that had a prior murder conviction,
18 we thought that it was pretty clear that he was there, that he
19 knew the players, that he pretty much did the killing. He was
20 right-handed. I remember distinctly talking with Gary, was
21 making some notes, and that, you know, write some more notes,
22 you know. There's, there's 12 of them. They might not 12 all
23 be looking at you at the same time, but one of them is looking
24 at you all the time, and there's no doubt in my mind that they
25 knew he was left-handed. I don't remember the Solicitor

1 objecting to my left-handed argument.

2 Q And you also crossed Mr. Lindsay on all the, I apologize,
3 all of the inconsistencies in his prior statements. You
4 crossed him on all those?

5 A I crossed him. I, I don't know if we crossed him on
6 every little thing. Sometimes that's counterproductive I
7 think. I think we got, you know, with the exception of not
8 having what we wanted to have with the big picture, I think
9 we, we did a good job establishing that he's a typical
10 criminal. He gets caught by the police. He's absconded the
11 area. He has to get extradited or whatever it was they did
12 for him. He gives a bunch of statements trying to talk
13 himself out of it, and finally, he becomes the State's
14 witness. That's classic.

15 Q And you tried to explain that to the Judge that part of
16 your case was that you needed to cross him on his murder
17 convictions?

18 A I think I did.

19 Q But you weren't aware of any of the details of the murder
20 conviction as far as --

21 A No, sir. I just knew it was an unrelated murder and that
22 he was a witness, not a Defendant.

23 Q And you said you were here and you heard what Mr. Bennett
24 has said these alibi witnesses could have testified to if
25 you'd called them. In your opinion, did, did that testimony

1 create an alibi for him or was it merely consistent with the
2 Co-Defendant's statements?

3 A Well, if he said it, I was sitting on the back, one of
4 the rows back there, and it sounded like he said that there
5 was some time problems with the timeline, and if we didn't go
6 into that, and if that timeline proves that it couldn't have
7 happened that way, then that certainly would, would lead
8 somebody to believe or it could lead somebody to believe that,
9 that there was more evidence there for a not guilty verdict.

10 MR. THOMAS: Beg the Court's indulgence one moment.

11 THE COURT: All right.

12 MR. THOMAS: Thank you, Mr. Gardner. That's all the
13 questions I have.

14 A Yes, sir. Thank you.

15 THE COURT: All right. Redirect?

16 MR. BROOKS: I saw him leave, Judge.

17 THE COURT: That's all right.

18 MR. BROOK: I didn't know.

19 REDIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Gardner, basically, just encapsulating it in a
22 nutshell, that impeachment ruling --

23 A Yes, sir.

24 Q -- changed the whole dynamics of your presentation in
25 this case?

1 A Yes, sir.

2 Q And your entire preparation?

3 A Yes, sir. I think that's fair to say.

4 Q Okay. And obviously the witnesses, the Verizon lady with
5 the establishing the timeline, you would have approached that
6 totally different if you knew you could only talk about the
7 man having a felony conviction as opposed to a murder?

8 A I think so.

9 Q And just to be clear, felony, that can range from
10 shoplifting second and third or third offense all the way up
11 into a murder. It's just a wide gamete.

12 A It could be anything, I mean, I mean, within the
13 parameters. Yeah. It could have been anything unrelated to.
14 Now --

15 Q But murder, knowing, and the jury knowing that this man
16 had committed murder, makes a huge difference as opposed to a
17 felony conviction?

18 A Let me just answer it this way. If I'd got, after the
19 verdict was over, if you'd brought those 12 people in here and
20 said, "Now that the dust has settled, let me tell you
21 something about Lindsay. Lindsay killed a woman or killed
22 somebody in Arizona or wherever it was. Would that change
23 your verdict?" I think it absolutely would.

24 MR. BROOKS: No other questions, Your Honor.

25 THE COURT: All right.

1

EXAMINATION

2

BY THE COURT:

3

Q Let me ask you this, Mr. Gardner.

4

A Yes, sir.

5

Q All right. Now, Mr. Bennett said that he did not meet
6 face to face with you until the day of trial. Is that
7 correct?

8

A I don't -- that doesn't -- that may be correct, Judge. I
9 don't want to mislead the Court.

10

Q Because I know you said --

11

A But that doesn't sound correct.

12

Q All right. You said you went over the discovery with
13 him. When would you have done that?

14

A That would have, normally, that's out at J. Reuben Long,
15 Your Honor. What I do is I take the -- every big case that
16 I've ever done, kind of like doing a will, I don't remember
17 particularly doing it with Defendant so and so, but I remember
18 I've done it with everyone. I take the file --

19

Q But I mean, if he was not housed at J. Reuben Long until
20 --

21

A It might have been --

22

Q -- the day before trial or the day of trial, would that
23 have been when you would have gone over it with him?

24

A That would have been if that was it.

25

Q Okay. Do you ever recall going to the department of

1 corrections to meet with him?

2 A No, sir. I did not.

3 Q Okay. He gave you the name of some alibi witnesses?

4 A I don't think so. I think he was talking about the --
5 some witnesses that were in the discovery already is my
6 understanding of what he said. I thought they were --

7 Q Okay.

8 A In fact, one thing that the State does is they'll list,
9 they may only call three or four witnesses, but they'll list
10 10 or 20 as potential witnesses, and I think these people that
11 he's talking about were on the State's potential witness list.

12 Q Okay. Did you conduct any investigation to see, to
13 follow up on any alibi testimony?

14 A No, sir.

15 Q Okay.

16 THE COURT: All right. Any questions in response to the
17 Court's questions?

18 MR. BROOKS: No, sir, Judge.

19 THE COURT: Any questions from the State in response to
20 the Court's questions?

21 MR. THOMAS: Nothing, Your Honor.

22 THE COURT: All right. You may step down.

23 A Thank you, Your Honor.

24 THE COURT: All right. The State can call your next
25 witness.

1 MR. THOMAS: We're -- I think we're still --

2 MR. BROOKS: That was, that was my witness, but --

3 THE COURT: Oh, I'm sorry, that's true. I apologize.

4 MR. BROOKS: Judge, that is the Applicant's case.

5 THE COURT: All right. Okay. I apologize. All right.

6 Anything from the State?

7 MR. THOMAS: The State would rest on the record, Your
8 Honor.

9 THE COURT: All right. All right. Anything further from
10 the Applicant?

11 MR. BROOKS: Judge, other than we're requesting a new
12 trial.

13 THE COURT: Okay. All right. Let me take it under
14 advisement.

15 MR. BROOKS: E-mail?

16 THE COURT: Look at the, look at the record. I'll, I'll
17 be in touch with you as to my decision.

18 MR. BROOKS: Okay.

19 THE COURT: Okay?

20 MR. BROOKS: Thank you, Judge.

21 MR. THOMAS: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 (Adjourned.)

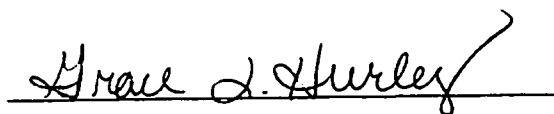
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR hearing held in the case of Gary Wayne Bennett versus the State, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 19, 2014.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

November 20, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-26-5031

Gary Wayne Bennett, #276951
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

August 14, 2014
Date

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Charles T. Brooks, III

Joshua L. Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Grace Hurley

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2008-CP-26-5031

Gary Wayne Bennett, #276951)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

ORDER GRANTING
POST-CONVICTION RELIEF

14 AUG 19 AM 8:45
CLERK OF COURT

HEARING DATE June 19, 2014
PRESIDING JUDGE Benjamin H. Culbertson
APPLICANT'S ATTORNEY Charles T. Brooks, III, Esq.
RESPONDENT'S ATTORNEY Joshua L. Thomas, Esq.
COURT REPORTER Grace Hurley

In this case, the applicant ("Bennett") seeks post-conviction relief ("PCR") from his convictions for murder and armed robbery. Bennett alleges that he is entitled to relief due to ineffective assistance of counsel.

Based upon a preponderance of the evidence presented at the PCR hearing, I do hereby find the following salient facts:

FINDINGS OF FACT

1. On August 14, 2002, Bennett was convicted of murder and armed robbery. He was convicted by a jury trial and received two concurrent sentences of life without parole. Both crimes occurred in 2000.

2. Attorney Thomas Floyd was Bennett's original criminal attorney. However, approximately five months prior to trial, attorney Johnny Gardner ("Attorney Gardner") substituted attorney Thomas Floyd as Bennett's criminal trial attorney.

3. Attorney Gardner corresponded with Bennett on several occasions prior to trial but never met with Bennett personally until the day of trial. He never showed Bennett any of the discovery produced by the State and never discussed that discovery with Bennett. Attorney Gardner never conducted any investigation into the case and did not try to locate or talk to any alibi witnesses that Bennett provided to him.

4. Attorney Gardner's entire trial strategy was that the crimes were not committed by Bennett but, rather, by the State's key witness, Andrew Lindsay ("Lindsay"). Lindsay was originally charged with the murder in this case but, entered into a plea bargain with the State wherein he pled guilty to accessory after the fact in exchange for testifying against Bennett. Lindsay had a prior conviction for second degree murder and Attorney Gardner sought to impeach Lindsay's testimony with that prior conviction. However, at trial, the court limited Attorney Gardner's cross examination of Lindsay and would not allow the introduction of Lindsay's conviction for second degree murder except for being convicted of "a felony."

Even though Attorney Gardner's sole trial strategy was to impeach Lindsay's testimony, he did not object to the State's introduction of the victim's phone records into evidence even though the State had failed to produce the phone records during pre-trial discovery. These records corroborated Lindsay's testimony.

5. At this PCR hearing, Attorney Gardner testified that he was shocked by the criminal trial judge's ruling that he could not introduce Lindsay's conviction for second degree murder into evidence at Bennett's criminal trial.¹ Because his entire trial strategy had been to shift the blame for these crimes from Bennett to the State's key witness, Attorney Gardner never conducted any investigation into the case, never contacted any of Bennett's alibi witnesses and

¹ The criminal trial judge's ruling was affirmed by unpublished opinion of the South Carolina Supreme Court in *State v. Bennett*, Memorandum Opinion No. 2007-MO-040 (Filed June 25, 2007).

never prepared a defense. Consequently, at the criminal trial, Attorney Gardner did not present a defense for Bennett.

LAW AND DISCUSSION

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Butler, id.*

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland, supra*. The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

In PCR cases, the reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorneys' performance by its "reasonableness under professional norms." *Cherry, supra*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry, supra*.

In the case at hand, Attorney Gardner never met with Bennett personally until the day of trial. He never conducted any investigations into the case, never contacted any alibi witnesses provided to him by Bennett, and never reviewed pre-trial discovery with Bennett. Further, he

never sought suppression of the phone records introduced into evidence by the State even though the State failed to produce the records in pre-trial discovery. Attorney Gardner's entire strategy was to impeach the State's key witness with the witness' prior criminal record. This performance as Bennett's attorney fell well below the "professional norms." Attorneys have a duty to make reasonable investigations or make reasonable decisions that make particular investigations unnecessary. *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014), citing *Strickland, supra*. One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. *Walker, id.* Therefore, I find as a matter of law that Attorney Gardner was deficient in his representation of Bennett.

The more difficult question before the court is whether a reasonable probability exists that the results of Bennett's criminal trial would be different but for Attorney Gardner's deficient performance. At the PCR hearing, Attorney Gardner testified that he did not object to the introduction of the victim's phone records because he felt they were admissible, thus rendering any objection futile. He further testified that he corresponded with Bennett several times prior to trial and never felt the need to meet with Bennett personally until the day of trial. He also testified that he did not conduct any investigations or present any defenses because the State's key witness was not credible. Even though he was shocked that the court limited his cross examination of Lindsay, he still felt that a jury would not convict Bennett. As to the potential alibi witnesses, none testified at this PCR hearing.² However, Bennett's uncontested testimony at the PCR hearing was that the alibi witnesses would verify that he was somewhere else when the crimes were committed. Attorney Gardner testified that he did not know whether or not the

² The court notes that the crimes giving rise to this case occurred twelve years prior to this PCR hearing. In fact, this PCR case has been pending for six years. Locating alibi witnesses to events occurring over a decade ago may be difficult if not impossible.

alibi witnesses would have been beneficial because he never contacted them. Be that as it may, this court is convinced that Attorney Gardner's performance as Bennett's criminal trial attorney so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the application of Gary Wayne Bennett for post-conviction relief in this case is GRANTED; it is further

ORDERED, that the Applicant's convictions for murder³ and armed robbery⁴ are set aside and these cases are remanded for a new trial.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Presiding Judge

August 14, 2014
Georgetown, SC

³ Indictment No. 2002-GS-26-772.

⁴ Indictment No. 2002-GS-26-2765.