

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

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S.C. Supreme Court

MARK MCCOY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO.2014-001253

SUPPLEMENTAL APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (SEPTEMBER 22- 23, 2008).....	1

1

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

CASE NO.05-GS-43-33

VS.

MARK A. MCKOY,
DEFENDANT

SEPTEMBER 22-23, 2008
SUMTER, S.C.

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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

MS. CATHERINE FANT,
ASSISTANT SOLICITOR

MR. I.S. LEVY JOHNSON,
ATTORNEY FOR DEFENDANT

MR. GEORGE JOHNSON,
ATTORNEY FOR DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

1	<u>INDEX</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	QUALIFIED	4			
	IMPANELED	41			
4	MOTIONS BY JOHNSON	46			
5	PRELIMINARY REMARKS	91			
	OPENING STATEMENTS				
6	BY MS. FANT		101		
	BY MR. JOHNSON		105		
7	GWENDOLYN WELLS				
	BY MS. FANT		112		
8	IVAN SANDERS				
	BY MS. FANT		120	137	
9	BY MR. JOHNSON		133		
	JOSEPH SUMPTER				
10	BY MS. FANT		153	178	
	BY MR. JOHNSON		171		
11	OPRADELA LYONS				
	BY MS. FANT		180	200	
12	BY MR. JOHNSON		191		
	LATIMORE HOLMES				
13	BY MS. FANT		205	238	
	BY MR. JOHNSON		219		
14	ALLEN MCCONICO				
	BY MS. FANT		239		
15	BY MR. JOHNSON		243		
	VERA MARSHALL				
16	BY MS. FANT		250		
	BY MR. JOHNSON		259		
17	KIMBERLY DELAY				
	BY MS. FANT		307	321	
18	BY MR. JOHNSON		317		
19	<u>EXHIBITS</u>				
	<u>NO.</u>		<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
20	S1-3		PHOTOS OF AUTOPSY	66	
	S-4-5		PHOTOCOPIES	66, 114	
21	S-6	STATEMENT OF MR. JOSEPH SUMPTER	158		
	S-7	PLEA AGREEMENT	216, 217		
22	S-8-10	PHOTOGRAPHS	252	253	
	S-9	PHOTOGRAPH		254	
23	S-10	PHOTOGRAPH		255	
	S-11-14	NOTES	314	315	
24	C-1	SUBPOENA	85		
25					

1 THE COURT: Let the record reflect that we are
2 on the record and Mr. Mark A. McKoy, who is seated in the
3 courtroom with his counsel. There is no -- the jurors are
4 not present at this time, but they're in the other
5 courtroom. Is there anything from the state before we
6 proceed with the jury selection, Ms. Fant?

7 MS. FANT: No, your honor.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: Nothing, Your Honor.

10 THE COURT: Please bring the jurors in
11 from the other courtroom.

12 MR. JOHNSON: We need our witness list..

13 THE COURT: Yes, sir. You need a State
14 witness list?

15 Mr johnson: Yes, sir.

16 (Whereupon, the following takes place
17 within the presence of the jury panel.)

18 THE COURT: Madam Solicitor, you may call
19 your first case.

20 MS. FANT: May it please the court, your
21 Honor, this is State of South Carolina versus
22 Mark A. "Wise" McKoy. Indictment no.
23 2005-GS-43-033. Mr. McKoy has been indicted
24 by the grand jury of Sumter County on Count 1,
25 for murder. And Count No. 2, possession of a

1 firearm during the commission of a violent
2 crime.

3 THE COURT: Ladies and Gentlemen of the
4 jury panel, what I am going to tell you now is
5 what are the allegations in the Indictment. I
6 will tell you that what I am telling you and
7 the Indictment's Allegations are not evidence
8 of anything. They are simply the charges that
9 have been made by the State against the
10 Defendant. But I tell you what these are and
11 what the Indictment contains so that you can
12 determine if you know anything about this case,
13 or you have anything that would cause you to
14 have a conflict in serving as a juror. But the
15 State does charge in Count 1, that Mark A.
16 "Wise," McKoy did in Sumter County on or about
17 June 8th of 2004, feloniously, willfully and
18 with malice aforethought either expressly or
19 implied, kill one Donald Tyrone Pettis, Jr. by
20 means of shooting him in the back with a
21 handgun, and that said, Donald Tyrone Pettis,
22 Jr., did die as a proximate result thereof.
23 And the charge for Count 1, is one of Murder.

24 Count 2, charges that Mr. McKoy did at the
25 same time, June 8th 2004, that he was in

1 possession of and did visibly display a
2 firearm; specifically, a handgun, during the
3 commission of a violent crime, specifically,
4 murder. And the charge is one of possession of
5 a firearm during the commission of a violent
6 crime.

7 Now if you will give me, as I say, give me
8 your attention and we are ready to go forward
9 with the selection of the jury in this case.
10 The defendant Mr. McKoy, is represented by
11 Mr. I.S. Levy Johnson. Mr. Johnson, would you
12 stand and introduce yourself to the jury? and
13 introduce any lawyers with whom you will be
14 working. And also have your client stand and
15 face the jury.

16 MR. JOHNSON: Thank you, Your Honor. My
17 name is I.S. Levy Johnson. I am accompanied by
18 my son, George Johnson. We represent Mark
19 McKoy. The members of our firm William Toal,
20 Luther Baptiste, Kelly Seabrook, Byron Gipson,
21 Fran Marshall.

22 THE COURT: You may be seated. The State
23 of South Carolina is represented Solicitor, C.
24 Kelly Jackson and Assistant Solicitor,
25 Catherine Fant. This is Mr. Jackson and

1 Ms. Fant. Thank you.

2 THE COURT: Before we select a jury, I
3 need to ask you some questions in connection
4 with this matter. Please give your attention
5 to my questions, and respond if any of them
6 apply to you. Is any member of the jury panel
7 related by blood or connected by marriage to
8 the defendant Mark A. McKoy? If so, please
9 stand.

10 (Whereupon, no response.)

11 THE COURT: The following individuals may
12 appear as witnesses in this case. And I will
13 tell you that the witness list is quite
14 extensive. and I will ask if the witnesses are
15 present, that they stand when their name is
16 called and face the jury. Angela Rabon with
17 the Sumter Police Department. Alvin Holston of
18 the Sumter Police Department. Gene Williams of
19 the Sumter Police Department. Irene Culick of
20 the Sumter Police Department. Paul Gay, Sumter
21 Police Department. Truman Duggan, Sumter
22 Police Department. Hugh Tang, from the State
23 Law Enforcement Division. Dustin Smith of the
24 State Law Enforcement Division. Mike Morris,
25 Richard Brown, Jean Shull, Teresa Ray Lee,

1 Linda Collins Cummings, Opradela Lyons, Joseph
2 Sumpter, Franklin Wright, Robin Dukes, Allen
3 McConico, Angela Allen, Ivan Sanders, Marie
4 Brewer, Kevin Johnson, Jeffrey Burgess, Cabrall
5 Archie, Autumn Coleman, James Pleasant, Vera
6 Marshall, Jimmy Abraham, Gwendolyn Wells, Velma
7 Holmes, John Boney, Erin Lucas, Tonya Lesane,
8 Latimore Holmes, Stacy Brunson, Jamie Heyward,
9 Kimberly Delay, Jeffrey Burgess, Franklin
10 Nelson. In addition to of course the Defendant
11 in this case may also be a witness, Mark McKoy.
12 Or is that Marcus McKoy? Is that the same?

13 MR. JOHNSON: Yes, Your Honor.

14 THE COURT: Is any member of the jury
15 panel related by blood or connected by marriage
16 to any of the proposed witnesses? If so,
17 please stand.

18 (Whereupon, no response.)

19 THE COURT: Is any member of the jury
20 panel close personal friends of any of the
21 parties, their lawyers, or any of the witnesses
22 whom I have read off to you? If so, please
23 stand. Yes, ma'am, tell me your name.

24 THE JUROR: Tracy Williams.

25 THE COURT: Ms. Williams. Okay. Juror

1 No. 153. Ms. Williams, tell me who you know or
2 are related to and what the relationship is.

3 THE JUROR: Gwendolyn Wells, my employee.

4 THE COURT: Your employee.

5 THE JUROR: Yes.

6 THE COURT: Have you had any conversation
7 with Ms. Wells regarding this matter?

8 THE JUROR: yes.

9 THE COURT: Thank you, ma'am. Yes, sir,
10 your name.

11 THE JUROR: Sandy Peoples 104.

12 THE COURT: Peoples, 104. Mr. Peoples,
13 which one of those witnesses do have some
14 contact with?

15 THE JUROR: Ms. Allen.

16 THE COURT: Ms. Allen, Angela Allen?

17 THE JUROR: Yes, sir.

18 THE COURT: How do you know her?

19 THE JUROR: Cousin.

20 THE COURT: Cousin?

21 THE JUROR: Yes, sir.

22 THE COURT: Do you see her on a regular
23 basis? I mean just periodically, or what is
24 the relationship? How close a cousin is she?

25 THE JUROR: I believe I see her riding

1 around.

2 THE COURT: So you talk to her from time
3 to time?

4 THE JUROR: Yes, sir. Have you had any
5 discussions with her about this case?

6 THE JUROR: No, sir.

7 THE COURT: Thank you. You have heard the
8 defense is represented by I.S. Levy Johnson of
9 the law firm of Johnson, Toal and Battiste. Is
10 any member of the jury panel been represented
11 in the last 10 years by Mr. Johnson or any
12 member of his law firm? If so, please stand.
13 Yes, ma'am.

14 THE JUROR: Ms. Fant used to work for my
15 father on the Court of Appeals.

16 THE COURT: Okay. But you know her
17 through that contact?

18 THE JUROR: Yes.

19 THE COURT: The State of South Carolina,
20 as I just said, is represented by Ms. Fant and
21 Mr. Jackson. Has any member of the jury panel
22 been represented by either Ms. Fant or
23 Mr. Jackson or anybody in the Third Circuit
24 Solicitor's Office within the last 10 years?
25 If so, please stand. Yes, ma'am, your name.

1 THE JUROR: Rebecca Davis.

2 THE COURT: Ms. Davis, tell me what
3 situation was. Let me get your name and
4 number.

5 THE JUROR: Rebecca Davis, 156.

6 THE COURT: 156.

7 THE JUROR: I had a gentleman break into
8 our home. He was tried in the courtroom.

9 THE COURT: That case was prosecuted by
10 the Third Circuit Solicitor's Office?

11 THE JUROR: Yes.

12 THE COURT: Was it the two solicitor's
13 that are involved in this case, or someone
14 else?

15 THE JUROR: I believe it was somebody
16 else.

17 THE COURT: Has that case been concluded?

18 THE JUROR: Yes, sir.

19 THE COURT: How long ago was that?

20 THE JUROR: Four years ago.

21 THE COURT: Four years. Would that fact
22 prevent you from giving both the state and the
23 defendant a fair and impartial trial based on
24 the evidence?

25 THE JUROR: Yes, sir.

1 THE COURT: It would prevent you from?

2 THE JUROR: No.

3 THE COURT: Would you be able to put that
4 fact aside and decide this case based upon the
5 evidence that you hear in this courtroom?

6 THE JUROR: Yes.

7 THE COURT: And the fact that you have
8 previously had some contact with the
9 Solicitor's Office in another case would not
10 influence your decision?

11 THE JUROR: No, sir.

12 THE COURT: Thank you, ma'am.

13 MR. JOHNSON: Your Honor.

14 THE COURT: Yes.

15 MR. JOHNSON: May I respectfully ask that
16 members of the Solicitor's staff be identified
17 by the name so the jurors have an ample
18 opportunity to decide whether or not they have
19 had any contact or been represented by any of
20 those individuals?

21 THE COURT: I respectfully deny that
22 Motion. I believe they know the people in the
23 Solicitor's Office with whom that had any
24 dealings if they had any dealings. They may
25 not know them if they didn't have any dealings,

1 but I think they would know them if they had.

2 Yes, ma'am.

3 THE JUROR: No. 144. My son was shot, and
4 they never found out who did it. And I think
5 the county never found out who did it.

6 THE COURT: I understand, Ms. Kennedy.
7 You are juror 144?

8 THE JUROR: Yes, sir.

9 THE COURT: Come up please. Counsel.
10 (Whereupon, attorneys and the juror
11 approach bench and confer with judge.)

12 THE COURT: You say your son was shot.

13 THE JUROR: About 3 years ago my son was
14 shot in Mayesville and they never found out who
15 did it. And the case was never resolved or
16 anything. So I believe I would have a problem.

17 THE COURT: So you think that would
18 prevent you from being a fair and impartial
19 juror in the trial based on the evidence?

20 THE JUROR: Yes.

21 THE COURT: Thank you for your candor.

22 In the past, ladies and gentlemen, there
23 may have been some publicity in the newspaper
24 regarding this particular case. And my
25 question is, is there any member of the jury

1 panel who has read any news stories, or
2 listened to any broadcast media reports
3 regarding the facts surrounding this case, that
4 would prevent you from giving both the state
5 and the defendant a fair and impartial trial?
6 If so, please stand. Your name.

7 THE JUROR: Ella Busbey. no. 28.

8 THE COURT: Wait just a minute. All
9 right, Ms. Busbey, please come up. yes, ma'am.

10 (Whereupon, the following takes place
11 outside the hearing of the jury panel at the
12 bench.)

13 THE JUROR: I am a pastor, and I am privy
14 to some information about family members that
15 would prevent me from giving a fair trial.

16 THE COURT: So what you are saying as a
17 pastor that certain people have talked with you
18 about this matter?

19 THE JUROR: Uh-huh. (Affirmative.)

20 THE COURT: Would that be family members
21 of either? I am not asking you any names, but
22 just if they were family members of either the
23 victim's family or the defendant's family?

24 THE JUROR: Both.

25 THE COURT: You think that is the

1 information that really would prevent from
2 giving both sides a fair trial?

3 THE JUROR: I really believe so.

4 THE COURT: Thank you, ma'am. Is any
5 member of the jury panel, and I define
6 immediate family as a parent, brother, sister,
7 spouses or child. Any member of the jury panel
8 or member of your immediate family employed now
9 or been employed within the last 10 years with
10 any law enforcement agency, be It Sumter County
11 Sheriff's Office, Police Department or State
12 Law Enforcement Division? FBI? Any Law
13 Enforcement Agency? Any member of the jury
14 panel or member of your immediate family
15 employed within the last 10 years in any
16 military agency? Yes, ma'am, your name?

17 THE JUROR: 156 Rebecca Davis.

18 THE COURT: Ms. Davis, tell me who, and
19 when and where.

20 THE JUROR: My husband works with the
21 Sumter Police Department.

22 THE COURT: Currently?

23 THE JUROR: Currently.

24 THE COURT: What is his capacity?

25 THE JUROR: Patrol officer.

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

3 THE JUROR: Maxine Blakely.

4 THE COURT: Blakely?

5 THE JUROR: Yes.

6 THE COURT: Just a moment.

7 THE BAILIFF: No. 14, Your Honor.

8 THE COURT: Ms. Blakely, what is your
9 situation?

10 THE JUROR: I have brothers.

11 THE COURT: What about them?

12 THE JUROR: That works as a Sumter County
13 Law Enforcement Officer.

14 THE COURT: They are currently a Law
15 Enforcement Officer or in the past?

16 THE JUROR: Right now.

17 THE COURT: They work for them now? What
18 agency do they work for? Sheriff's Department?

19 THE JUROR: Yes.

20 THE COURT: In what capacity? Deputies or
21 what?

22 THE JUROR: One is deputy and one is a
23 senior corporal.

24 THE COURT: One is what?

25 THE JUROR: Senior Corporal.

1 THE OFFICER: They are both deputies.

2 THE COURT: Both brothers?

3 THE JUROR: Yes.

4 THE COURT: Okay. Is there any member of
5 the jury panel or member of your immediate
6 family as I have defined that term, ever been a
7 victim of, okay, yes, ma'am. Give me your
8 name.

9 THE JUROR: Virginia Frierson.

10 THE COURT: No. 90. Yes, Ms. Frierson.

11 THE JUROR: My daughter. She works for
12 the state and rides the prisoners around.

13 THE COURT: She's not a Law Enforcement
14 Officer. She just works on a grant writing
15 program for the prison system? Is that it?

16 THE JUROR: Yes, sir.

17 THE COURT: Would that fact prevent you
18 from giving both the state and the defendant a
19 fair and impartial trial based on the evidence?

20 THE JUROR: Yes.

21 THE COURT: It would?

22 THE JUROR: No.

23 THE COURT: It would not. You could put
24 that aside and decide this case based on the
25 evidence you hear in this courtroom, is that

1 right?

2 THE JUROR: Yes.

3 THE COURT: Thank you, ma'am. Has any
4 member of the jury panel or a member of your
5 immediate family as I have defined that term,
6 ever been the victim of a violent crime? If
7 so, please stand.

8 (Whereupon, no response.)

9 THE COURT: Thank you. Has any member of
10 the jury panel ever been a member of or
11 contributed to any organization whose primary
12 purpose is the advocacy of strict law
13 enforcement and focuses its attention
14 curtailng and punishment of crimes? Examples
15 would be CAVE, CADRE, MADD, SADD, any of those
16 organizations? Any member of the jury panel a
17 member or if you have contributed money to any
18 of those organizations? If so, please stand.

19 (Whereupon, no response.)

20 THE COURT: All right, yes, sir. And your
21 name.

22

23 THE JUROR: David Nether, no. 100.

24 THE COURT: Mr. Nether, tell me what
25 organization you have been involved in?

1 THE JUROR: I have donated money to MADD.

2 THE COURT: Would that prevent you from
3 giving to both the state and the defendant a
4 fair and impartial trial in this case?

5 THE JUROR: I believe that there are
6 beliefs, you know, regarding---

7 THE COURT: MADD?

8 THE JUROR: Yes.

9 THE COURT: Counsel, come up just a
10 moment, please.

11 (Whereupon, the attorneys approach the
12 bench and confer with judge.)

13 THE COURT: Mr. Nether, this case does not
14 involve the operation of a motor vehicle while
15 allegedly under the influence of any kind of
16 drugs or alcohol. And that being the case,
17 would that prevent you from giving the to both
18 the State and the Defendant a fair and
19 impartial trial in this matter?

20 THE JUROR: no, sir.

21 THE COURT: Thank you, sir. Yes, sir.
22 First.

23 THE JUROR: 133.

24 THE COURT: Yes, sir.

25 THE JUROR: Going back to your previous

1 question. Over the weekend I did have a nephew
2 shot and killed.

3 THE COURT: We will have you come up in
4 just a minute, thank you. Yes, sir.

5 THE JUROR: Juror 85. I contribute to the
6 trooper's association and to MADD.

7 THE COURT: That being the case, would the
8 fact that you contribute to these two
9 organizations prevent you from giving to both
10 the State and the Defendant a fair and
11 impartial trial based on the evidence?

12 THE JUROR: No, it would not.

13 THE COURT: You would be able to put that
14 aside and decide this case based on the
15 evidence you hear in this courtroom.

16 THE JUROR: Yes, sir.

17 THE COURT: And would you do that?

18 THE JUROR: Yes, sir, I would.

19 THE COURT: Thank you. Has any member of
20 the jury panel or member of your immediate
21 family, as I have defined that term, ever been
22 convicted of a crime? If so, please stand.
23 Come up please, ma'am.

24 THE JUROR: No 75. Ann Mack.

25 THE COURT: No 75.

1 THE CLERK: 75, Ms. Mack.

2 THE JUROR: My older son a few years ago
3 was in to drugs.

4 THE COURT: And was he arrested and
5 convicted?

6 THE JUROR: Yes, sir.

7 THE COURT: Would that fact prevent you
8 from giving to both the State and the Defendant
9 a fair and impartial trial in this case?

10 THE JUROR: No.

11 THE COURT: And could you put that fact
12 aside and decide this case based on the
13 evidence?

14 THE JUROR: Yes, sir.

15 THE COURT: Yes, ma'am.

16 THE JUROR: I have been convicted of and
17 my case is pending.

18 THE COURT: Against you or some family
19 member?

20 THE JUROR: Against me.

21 THE COURT: For what?

22 THE JUROR: Exposure by an adult.

23 THE COURT: Your name.

24 THE JUROR: Patricia Lowery.

25 THE COURT: Ms. Lowery.

1 THE JUROR: Uh-huh. (affirmative.)

2 THE COURT: And would that fact prevent
3 you from giving both the State and the
4 Defendant a fair and impartial trial in the
5 case?

6 THE JUROR: No, sir.

7 THE COURT: You could put that fact aside
8 and base it on the evidence you hear?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you. Come on up,
11 please.

12 THE JUROR: Juror No. 113.

13 THE COURT: Yes, ma'am.

14 THE JUROR: I have a son that is charged
15 with burglary.

16 THE COURT: Is he on pretrial?

17 THE JUROR: His jury is still there.

18 THE COURT: He's never been tried for
19 anything at this point?

20 THE JUROR: No.

21 THE COURT: And what were the charges?

22 THE JUROR: Burglary.

23 THE COURT: There was?

24 THE JUROR: Two people.

25 THE COURT: Would all THAT prevent you

1 from giving both the State and the Defendant a
2 fair and impartial trial?

3 THE JUROR: No.

4 THE COURT: Could you put that aside and
5 base it on the evidence you hear in this
6 courtroom?

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you.

9 MR. JOHNSON: Your Honor, Can we approach
10 the bench?

11 THE COURT: Yes, sir. Ladies and
12 Gentlemen, I am going to have to ask you to
13 leave for just a few minutes. We have got to
14 do this on the record and outside of your
15 presence. And if you would, take about a 10
16 minute break. Leave the courtroom, and be back
17 at 12:30. Thank you.

18 (Whereupon, the jury panel leaves the
19 courtroom.)

20 THE COURT: Let's to back on the record.
21 Mr. Johnson, you have got to place something on
22 the record.

23 MR. JOHNSON: Yes, sir, Your Honor. As we
24 discussed in chambers, my serious concern about
25 the evidence of security in the courtroom.

1 And I was under the impression, Your Honor,
2 that there would be two officers in the back of
3 the room, and that they would be seated. They
4 have formed a perimeter around the back of the
5 courtroom.

6 THE COURT: No, sir, they haven't. They
7 have three officers back there. Two of them
8 are bailiffs. One by each door.

9 MR. JOHNSON: No, sir. While the jurors
10 are there, not all of them are back there right
11 now. Just three of them back there now.

12 THE COURT: Three back there now and two
13 bailiffs.

14 MR. JOHNSON: Your Honor, there were other
15 officers back when the jury was here.

16 THE COURT: Go ahead.

17 MR. JOHNSON: And again, Your Honor, the
18 implication is, that it imputes that he is a
19 danger to the jurors. They can easily infer
20 from the presence of these officers that he is
21 a threat. And any time that is communicated to
22 perspective jurors, he is denied a fair trial.

23 And I would ask that if they are going to
24 be present, that they be inconspicuous. That's
25 all I am asking. I know security is required,

1 but I ask that they be inconspicuous in
2 performing their duties.

3 THE COURT: Ms. Fant.

4 MS. FANT: Your Honor, I indicated
5 earlier, I mean we will abide by your decision
6 on that. Obviously law enforcement has some
7 concerns.

8 THE COURT: Well during the course of the
9 jury selection here, we really don't have a
10 place for them, because the jury is on this
11 side. I will at some point at the beginning if
12 it appears that they are conspicuous. But they
13 could be here for a lot of reasons, other than
14 the fact that your client has general court
15 security. And at this time, I will deny the
16 Motion but I will wait and see what happens
17 once we get the jury selected.

18 MR. JOHNSON: Thank you, sir.

19 THE COURT: I don't think that necessarily
20 implies or imputes anything to your client.
21 But while we are waiting, counsel, let's talk
22 about some of these jurors before we get
23 started back. Juror No. 153, Ms. Williams.
24 She indicated That one of the witnesses was an
25 employee of hers. And that she had spoken with

1 that witness about this matter. What is the
2 state's position?

3 MS. FANT: Your Honor, I guess without
4 knowing exactly what she would talk about, it
5 is hard to know. I will tell you Ms. Wells is
6 in fact the mother of the victim in this case.

7 THE COURT: She's the mother of the
8 victim?

9 MS. FANT: Yes, my witness.

10 THE COURT: Well that certainly makes it
11 easy. She will be excused. Mr. Peoples
12 indicated that he was a cousin of one of the
13 witnesses. What is the State's position in
14 regard to Mr. Peoples?

15 MR. JOHNSON: What number, Your Honor?

16 THE COURT: 104.

17 MR. JOHNSON: Thank you.

18 THE COURT: Ms. Fant, what is your
19 position as far as Mr. Peoples is concerned?

20 MS. FANT: Your Honor, again, I will leave
21 that in your discretion. He is a fact witness.
22 His cousin obviously indicated he saw her
23 around. I am not sure how close they are based
24 on that.

25 THE COURT: The defendant's position,

1 counsel?

2 MR. JOHNSON: No objection, Your Honor.

3 THE COURT: Being excused?

4 MR. JOHNSON: No objection to her serving.

5 THE COURT: It's a him.

6 MR. JOHNSON: No objection to him serving,
7 Your Honor.

8 THE COURT: I want to press him a little
9 bit more. I want to find out what the -- 54,
10 Ms. Griffin. Ms. Fant, what is your position
11 in regard to Judge Shuler's daughter?

12 MS. FANT: Your Honor, I do know Liza. I
13 think the fact that she is married to Keith
14 Griffin and is the daughter of Mr., well now
15 Mr. Shuler. Formerly Judge Shuler. She said
16 she could be fair and impartial. I think she
17 is entitled to serve.

18 THE COURT: What is your position,
19 Mr. Johnson?

20 MR. JOHNSON: We would object to her, Your
21 Honor.

22 THE COURT: She is excused. She indicated
23 that she knew Ms. Fant from her father's
24 service on the Court of Appeals when Ms. Fant
25 was employed there. I think that would be too

1 close. We will excuse her.

2 Ms. Davis. Ms. Fant, she stood up twice.
3 She first indicated she had been represented by
4 the Solicitor's Office four years ago. That
5 would not cause her a problem. And then she
6 identified her cousin as a member of the City
7 Police Patrol Division.

8 MR. JOHNSON: Her spouse, Your Honor.

9 THE COURT: Her spouse. Wasn't that what
10 she said?

11 MR. JOHNSON: Yes, sir.

12 MS. FANT: Your Honor, I would just
13 indicate that he is in no way involved in this
14 case. He is not a witness. And did not work
15 on this case.

16 THE COURT: It is a City Police case, is
17 it not?

18 MS. FANT: Yes it is, Your Honor.

19 THE COURT: Mr. Johnson, what is your
20 position?

21 MR. JOHNSON: We would object to it, your
22 Honor.

23 THE COURT: I believe that evidently it is
24 a city police case. And the fact that it is
25 the same agency, that that makes it, she ought

1 to be excused. I will excuse her.

2 Juror No. 144 Ms. Kennedy indicated that
3 her son had been the victim of -- had been
4 shot. And that she could not put that aside
5 and could not give a fair and impartial
6 verdict. So I think that she would be excused
7 as well. Any objection, Ms. Fant, to 144?

8 MS. FANT: No, your honor.

9 THE COURT: Mr. Johnson.

10 MR. JOHNSON: None, your honor.

11 THE COURT: The same thing with regard to
12 Juror No. 128. She indicated as a pastor
13 certain information had been imparted to her
14 from either the defendant's family or the
15 victim's without identifying them. And I did
16 not require her to disclose that; that
17 information would prevent her from giving a
18 fair and impartial trial. Any objection to
19 excusing her, Ms. Fant?

20 MS. FANT: No, Your Honor.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: No, your honor.

23 THE CLERK: 128.

24 THE COURT: I see 128. Ms. Blakely. Her
25 brother is a deputy. What is your position

1 with regard to her, Ms. Fant?

2 MS. FANT: Your Honor, I mean I guess the
3 only difference is they do work for the
4 Sheriff's Office.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: What is her number, Your
7 Honor?

8 THE COURT: 14.

9 MR. JOHNSON: Yes, sir, Your Honor, we
10 would object to her.

11 THE COURT: I will think about that one
12 for a short while. No. 50, Ms. Frierson.

13 THE CLERK: That's correct.

14 THE COURT: Her daughter works for the
15 prison system. Any objection to her, Ms. Fant?

16 MS. FANT: No, Your Honor.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: None, Your Honor.

19 THE COURT: Okay, she's okay. No. 100,
20 Mr. Nether. He donates money to MADD. But I
21 did quiz him. Any objection to him, Ms. Fant?

22 MS. FANT: No, your honor.

23 THE COURT: Mr. Johnson?

24 MR. JOHNSON: Yes, Sir, Your Honor. We
25 object to him.

1 THE COURT: On what basis?

2 MR. JOHNSON: On the basis, Your Honor, as
3 you have asked. MADD is any organization that
4 is in line with law enforcement. They're
5 pro-law enforcement. They favor law
6 enforcement. The fact that this is not
7 involving an automobile is not the issue. The
8 fact that they are supporting and contribute
9 financially to MADD, that should disqualify
10 him. It would be impossible to fair and
11 impartial to a case where it is so aligned with
12 law enforcement.

13 THE COURT: I would respectfully deny that
14 Motion. I specifically asked him the question.
15 I asked whether involving that particular
16 agency would prevent him from being fair and
17 impartial in this case. And he indicated that
18 it would not. He said he supported the purpose
19 of that organization was the statement that he
20 made. And that far removed from the facts in
21 that case. So I would respectfully deny that
22 Motion. 133, I indicated I was going to come
23 back and ask that individual some more
24 questions. I didn't want to speak to him in
25 the presence of the fellow jurors. And No. 85

1 any objections to No. 85 Mr. McClendon?

2 MS. FANT: No.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: Yes, sir, Your Honor. We
5 vigorously object to her. Your Honor, she is
6 another member of, not only does she
7 contribute to MADD. She also contributes to
8 the South Carolina Trooper's Association. That
9 indicates, Your Honor, that she has a bias and
10 prejudice that favors law enforcement. It's
11 impossible for her disabuse her attitude and
12 her mind toward my client.

13 And the fact that she is financially a
14 contributor to these organizations, and the
15 fact that she supports these organizations
16 indicates that she favors law enforcement. And
17 necessarily in this case, that she would be a
18 fair and impartial juror. And under those
19 circumstances, Your Honor, She just can't
20 remove that attitude from her mind and be fair
21 and impartial in this case.

22 THE COURT: I would respectfully deny the
23 motion. I asked her those very questions, and
24 she answered the question that she would be
25 able to put them aside and decide the case

1 based on the facts in this case. And put aside
2 those two matters, I think you would be
3 entitled to know that for informational
4 purposes, but she has indicated that she can
5 give a fair and impartial decision on this
6 case. And she has so indicated. So I would
7 respectfully deny the motion. I would qualify
8 her. No. 75 is Ann Mack. She is the one
9 indicated that she has a son who has been
10 convicted of drugs.

11 MS. FANT: No objection, Your Honor.

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Okay. And No. 74, Ms. Lowery.
14 Is the last one we got to.

15 MS. FANT: Yes, Your Honor. I am
16 prosecuting her. I know her. I've discussed
17 her case with her before she obtained counsel.
18 And I feel like there is close knowledge there.

19 THE COURT: So she has a pending case
20 being prosecuted by the Solicitor's Office?

21 MS. FANT: She has been indicted and was
22 prosecuted by me personally.

23 THE COURT: Any objection to excusing her
24 on the state's motion, Mr. Johnson?

25 MR. JOHNSON: Your Honor, is the case

1 still pending? I don't see any objection to
2 her serving.

3 THE COURT: All right, she will be excused
4 over the objection of the defendant. She is
5 being prosecuted -- currently being prosecuted
6 by the Solicitor's Office. The case is still
7 pending. And that has not been disposed of,
8 And it would be improper for her to serve.
9 Bring the jury back in, and let's finish the
10 qualifications.

11 MR. JOHNSON: Your Honor.

12 THE COURT: Yes, sir.

13 MR. JOHNSON: As to Ms. Ann Mack, she is a
14 911 dispatcher for Florence County. Does that
15 imply that she works for law enforcement?

16 THE COURT: It implies she works for
17 Florence County.

18 (Whereupon, the following takes place
19 within the presence of the jury.)

20 THE COURT: Thank you, ladies and
21 gentlemen. Thank you for your patience. We
22 have resolved those matters; and we are now
23 ready to go forward. And let me ask you a few
24 more questions in connection with this.

25 In a trial, the jury is the judge of the

1 facts. The court, me, is the judge of the law.
2 Is there any member of the jury panel who feels
3 that they will not be able to follow the law as
4 I instruct it to you, regardless of whether you
5 agree with the law or not? In other words, you
6 must accept the law as I give it to you. Is
7 there any member of the jury panel who feels
8 that they could not follow my instructions even
9 if they don't agree with what you think the law
10 is or ought to be? If so, please stand.

11 (Whereupon, no response.)

12 THE COURT: Is there any member of the
13 jury panel who feels that the testimony of a
14 law enforcement officer should be given more
15 weight or be considered more truthful simply
16 because that person is a law enforcement
17 officer? In other words, would you be able to
18 evaluate the testimony of a law enforcement
19 officer, as you would any other witness in this
20 case, and decide the credibility of the
21 witness, the law enforcement witness, the same
22 as you would any other witness? If there is
23 any member of the jury panel that thinks that
24 any more weight should be given to a law
25 enforcement officer's testimony than that of

1 another witness simply because they are a law
2 enforcement officer please stand.

3 (Whereupon, no response.)

4 THE COURT: has any member of the jury
5 panel formed or expressed an opinion as to the
6 guilt or innocence of the defendant in this
7 case? Other than what has already been
8 displayed today now, has any member of the jury
9 panel formed or expressed an opinion as to the
10 guilt or innocence of the defendant, Mark A.
11 McKoy? If so, please stand. Other than what
12 has already been disclosed today now.

13 (Whereupon, no response.)

14 THE COURT: Is any member of the jury
15 panel aware of any interest, any bias or any
16 prejudice for or against the defendant, Mark A.
17 McKoy? If so, please stand.

18 (Whereupon, no response.)

19 THE COURT: Other than what has been
20 disclosed to me, can each member of the jury
21 panel give to the State and the Defendant a
22 fair and impartial trial? If not, please
23 stand.

24 (Whereupon, No response.)

25 THE COURT: Let me ask the following

1 jurors to come up one at a time, please. And,
2 counsel, come forward.

3 (Whereupon, the attorneys approach the
4 bench and confer with the judge out of the
5 hearing of the jury.)

6 THE COURT: Mr. Peoples, Juror 104. You
7 indicated one of witnesses is your cousin. one
8 of witnesses. Which one?

9 THE JUROR: Angela Allen.

10 THE COURT: And you saw her around. And
11 would the fact that she is a witness in this
12 case prevent you from giving a fair and
13 impartial trial to both sides?

14 THE JUROR: No, sir.

15 THE COURT: Would the fact that she is a
16 witness, would you choose or believe her
17 testimony over other testimony in this case or
18 would you credit or discredit her testimony as
19 you deem proper?

20 THE JUROR: I would be fair.

21 THE COURT: You could be fair to both the
22 State and the Defendant?

23 THE JUROR: Right.

24 THE COURT: And you would be able to put
25 that fact aside that she is your cousin and

1 decide this case objectively for both the State
2 and the Defendant?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you, sir.

5 THE COURT: All right, Ms. Blakely No. 14.

6 You had two brothers who are county deputies?

7 Are they twins?

8 THE JUROR: They look like they're twins.

9 THE COURT: And they work for the
10 Sheriff's Office.

11 THE JUROR: That is correct.

12 THE COURT: And the fact that you have two
13 brothers who are law enforcement officers,
14 prevent you from giving both the State and the
15 Defendant a fair and impartial trial based on
16 the evidence in this case?

17 THE JUROR: No, sir.

18 THE COURT: Could you put that aside and
19 decide this case based on the evidence you hear
20 in this courtroom?

21 THE JUROR: Yes.

22 THE COURT: And would you do that?

23 THE JUROR: Yes, sir.

24 THE COURT: Thank you, ma'am. No. 133,
25 Mr. Smallwood. Mr. Smallwood, when you stood

1 up, I didn't get a chance to ask you what you
2 wanted to tell me. What was it you wanted to
3 tell me?

4 THE JUROR: You asked about a violent
5 crime.

6 THE COURT: Yes.

7 THE JUROR: I had a brother-in-law that --
8 this transpired last Thursday, that died.

9 THE COURT: He was killed?

10 THE JUROR: Yes, sir.

11 THE COURT: And that was your
12 brother-in-law.

13 THE JUROR: a nephew.

14 THE COURT: Your wife's side?

15 THE JUROR: My side.

16 THE COURT: And would that fact that you
17 have recently had an experience with a violent
18 crime, and don't know exactly what the results
19 are, would that prevent you from giving both
20 the Defendant and the State a fair trial in
21 this case?

22 THE JUROR: No, sir, it would not.

23 THE COURT: Would you put that aside?

24 THE JUROR: Absolutely.

25 THE COURT: Would you do that?

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you, sir.

3 Mr. Smallwood, where did this happen?

4 THE JUROR: Sumter County. Last Thursday.

5 THE COURT: One more question. In the
6 county in the investigation, I assume it's
7 being investigated by the Sheriff's Office, or
8 City Police?

9 THE JUROR: I think.

10 THE COURT: Is it outside the city?

11 THE JUROR: No, inside the City.

12 THE COURT: Inside the City. Do you know
13 anything about the officers or anyone who has
14 done any investigation on this matter?

15 THE JUROR: No, nothing.

16 THE COURT: Thank you, sir. Ms. Mack.
17 No. 75. I know what you told us about your son
18 that was convicted on drugs. And was that, I
19 want to ask you one other question. You gave
20 us your position as a 911 operator in Florence.
21 Is that right?

22 THE JUROR: Yes, sir.

23 THE COURT: Do you work for the county,
24 city, who do you work for?

25 THE JUROR: County.

1 THE COURT: County of Florence. Would the
2 fact that you are a 911 operator prevent you
3 from giving both the State and the Defendant a
4 fair trial?

5 THE JUROR: No, sir.

6 THE COURT: You think you could put that
7 aside and decide this case based on the
8 evidence you hear in this courtroom?

9 THE JUROR: Yes, sir.

10 THE COURT: You would do that?

11 THE JUROR: Yes, sir.

12 THE COURT: Thank you. Okay. Any further
13 motions? 153, I have excused 54, 156, 144, 28,
14 174. Any additional voir dire questions on
15 behalf of the State, Ms. Fant?

16 MS. FANT: No, your honor.

17 THE COURT: On behalf of the defendant?

18 MR. JOHNSON: No, Your Honor.

19 THE COURT: Counsel, come up for one
20 minute please. Let's talk about the strike
21 situation.

22 (Attorneys approach and confer with the
23 judge out of the hearing of the jury panel.)

24 THE COURT: All right, give us a jury,
25 please. Mr. Clerk, if you will give us a jury.

1 Ladies and Gentlemen of the jury panel, when
2 your name is called, please come through the
3 double swinging doors up here at the front. Or
4 the swinging doors over here whichever is most
5 convenient for you. Bring your personal
6 belongings when you come. Come up to the rail.
7 Turn around and face the back of the courtroom.
8 I mean, face the back of the courtroom with
9 your back toward me. If you are acceptable by
10 the state, the state will so indicate by saying
11 present the juror. IF you are you acceptable
12 to the defendant, the defendant will indicate
13 by saying present the juror or accept the
14 juror. And then you would have a seat in the
15 jury box to my left.

16 if either side excuses you, have a seat
17 back out with the remainder of the jury panel
18 All right, Mr. Clerk.

19 THE CLERK: Juror no. 152 Felicia Williams
20 (f-b) accepted. Juror no. 127 James Shrift.
21 (m-w) accepted. Juror No. 106 Johnnie Porcher
22 (m-b) State struck. Juror No. 100 David
23 Nether, defense struck. Juror No. 27 Samuel
24 Burrows (m-w) accepted. Juror No. 75 Ann Mack
25 accepted. Juror No. 89 Katrina Miller (f-b)

1 accepted. Juror No. 70 Thomas Kemp (m-w)
2 accepted. Juror No. 34 Donna Choice (f-w)
3 accepted. Juror No. 14 Maxine Blakely (f-b)
4 state struck. Juror No. 44 Dwayne Elder (m-b)
5 accepted. Juror No. 113 Barbara Richburg (f-w)
6 defense struck. Juror No. 84 Juanita McGee
7 (f-b) accepted. Juror No. 97 Lori Myers (f-w)
8 accepted. Juror no. 20 Carole Brown (f-w)
9 state struck. Juror No. 47 Robert Field (m-w)
10 accepted. Juror No. 26 Judy Burchell (f-w)
11 defense struck. Juror No. 35 Joe Clavon.

12 MR. JOHNSON: Your Honor, may we approach
13 the bench?

14 THE COURT: Yes.

15 (Whereupon, the Attorneys approach the
16 bench and confer with the judge.)

17 THE COURT: Thank you, Mr. Clavon. You
18 may be seated. The court has excused.

19 THE CLERK: 73 William Lindler. (m-w)
20 defense struck. Juror no. 96 Roger Moschetti
21 (m-w) accepted.

22 THE COURT: Counsel, two alternates. One
23 and two on each one.

24 THE CLERK: Alternate 50 Cynthia Frierson
25 (f-b) state struck. Juror no. 7 Sena Baldwin

1 (f-w) defense struck. Juror No. 76 Kenneth
2 Coker (m-w) accepted.

3 THE COURT: Next alternate.

4 THE JUROR: 142 Darin Timmons Davis (m-w)
5 defense struck. Juror No. 133 David Smallwood
6 (m-b) accepted.

7 THE COURT: Anything on that by the state,
8 Ms. Fant?

9 MS. FANT: No, sir, Your Honor.

10 THE COURT: On behalf of the defense?

11 MR. JOHNSON: No, your honor.

12 THE COURT: Counsel, come up and let's
13 talk about scheduling just a moment.

14 (Whereupon, attorneys approach and confer with
15 the judge.)

16 THE COURT: Ladies and gentlemen of the
17 jury selected in the trial of this case, what
18 we are trying to do is coordinate two courts
19 here. We've got another jury we are going to
20 have to pick with Judge Hill. And we have got
21 some pretrial matters that we've got to do
22 before we can go forward with this matter. So
23 I am going to excuse you now, allow you to go
24 and get your lunch. And ask you to be back in
25 your jury room, please, at let's say 3:30.

1 That will give us plenty of time to get
2 everything done that we need to get done. and
3 I will allow you to go and get your lunch.
4 And the bailiff will show you where your jury
5 room is and show you how to get back into the
6 back of the courtroom back here. But please be
7 in your jury room at 3:30. Just two or three
8 admonitions that I need to caution you about
9 before we go forward. First of all, do not
10 discuss this case with anyone over the lunch
11 recess. Do not let anyone discuss it with you.
12 If anyone should you approach you and try to
13 talk with you about this matter, you get their
14 name and description and report it to me, and I
15 will deal with them when we come back. Also
16 when you are reassembling in the jury room, do
17 not discuss the case among yourselves.

18 I know you do not know anything about this
19 case yet, except what I have told basically it
20 is about. But it would be improper for you to
21 discuss this matter among yourselves when you
22 are reassembling in the jury room. And of
23 course, this admonition will apply throughout
24 the trial of this case. You do not approach or
25 discuss this matter among yourselves at all

1 until I tell you it is appropriate to do so.
2 And that will be after all the evidence is in,
3 and after the arguments of counsel and the
4 instructions on the law by the court.

5 So when you are gathering there in the
6 jury room, you can talk about anything that you
7 want to talk about, weather, sports, children
8 grandchildren, anything at all, but don't
9 about this case until I tell you it is
10 appropriate for you to do so.. Also while you
11 are away from the courthouse, do not discuss
12 the case with your family or your friends. And
13 again, this admonition will apply throughout
14 the trial of this case. It would improper for
15 you to discuss this case with anyone while you
16 are away from the courthouse. And the reason
17 for that is pretty apparent. You have got to
18 decide this case based on what you hear in this
19 courtroom and not on the basis of what anyone
20 else might say.

21 So with those admonitions, I am going to
22 excuse you now. Forget about this matter until
23 3:30 and be back in the jury room at 3:30. And
24 we will have accomplished our purpose of
25 selecting another jury and taking care of those

1 pretrial matters by that time and we will be
2 ready to go forward. Thank you, I will see you
3 this afternoon.

4 (Whereupon, the jurors are dismissed until
5 3:30 p.m.)

6 THE COURT: so we will go ahead and set
7 aside, and that includes Ms. Sullivan. Ms.
8 Richardson is going to come in and do the
9 selection of the jury. And this will take
10 about 15 minutes. And then we will be in a
11 position where we can break for lunch. So on
12 this case then we will be in recess, Mr.
13 Johnson, until 3:30 this afternoon. Jurors
14 please remain in place while the lawyers come
15 forward on the next matter.

16 (Whereupon, the following takes place outside
17 the presence of the jury.)

18 THE COURT: Present in court is the defendant
19 with his counsel, Mr. Johnson. The State is present
20 represented by Ms. Fant. The matters that we need to
21 consider now are the Motions in limine by the defense
22 counsel. I will be glad to hear from you, Mr. Johnson.

23 MR. JOHNSON: May it please the Court, Your
24 Honor. The first Motion I would like to address is a
25 Motion to Exclude the burglary reports. We have been

1 informed by Ms. Fant that she intends to introduce into
2 evidence two burglary reports, Incident Reports that have
3 been prepared by the City Police of the City of Sumter.
4 Involving burglaries at [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The
5 burglaries occurred on May 18th 2004, and May 25th 2004.

6 Your Honor, I would be happy to hand those up to you.

7 THE COURT: Let me hear from Ms. Fant
8 first. And apparently I have the written
9 motions. I know the grounds for it. For
10 excluding South Carolina Rules of Evidence 401
11 and 403. What is the relevance of these
12 charges, Ms. Fant?

13 MS. FANT: First of all, we don't intend
14 to offer the report. Those are obviously
15 hearsay under the rules. We do however, intend
16 to offer testimony based on the reports, which
17 is why I provided them to Mr. Johnson regarding
18 the break in that occurred at the Cal-Sans
19 business over on Liberty Street that belonged
20 to Ivan Sanders. That was the motive for the
21 killing in this case, Your Honor.

22 Mr. Sanders' store, Mr. Sanders is an
23 associate of Mr. McKoy. His store was broken
24 into. On the day in question, Mr. McKoy called
25 Ivan Sanders and said: "I got the guy that

1 broke into your store. What do you want me to
2 do with him." after that when the victim left
3 the house where they were, Mr. McKoy tracked
4 him down. They engaged in a physical fight.
5 He shot him in the back as the victim was
6 running away.

7 It provides the motive for a killing.
8 Otherwise it sounds like, you know, somebody
9 just walked up on the street and shot this guy
10 in the back.

11 THE COURT: You're not planning on
12 offering the incident reports themselves. Is
13 that right?

14 MS. FANT: Correct. Just Mr. Sander's
15 testimony.

16 THE COURT: Well that's what apparently
17 Mr. Johnson's motion is directed to is the
18 Incident Reports. Isn't that right, Mr.
19 Johnson?

20 MR. JOHNSON: That's correct, Your Honor.

21 THE COURT: But just to anticipate, what
22 would be your position on the proffered
23 testimony, Mr. Johnson? I agree, and she
24 agrees and I agree that the Incident Reports
25 are not admissible. All right now the

1 proffered testimony she says under I guess
2 60 -- let me look at it. And I'll have her --
3 no matter what the testimony, because I am not
4 sure exactly. She says that she wants to offer
5 the fact that the burglaries took place as
6 evidence of the motive for the shooting. What
7 do you say?

8 MR. JOHNSON: We are going to object to
9 that, Your Honor. Obviously motive is not an
10 essential element of the murder, Number 1.
11 Number 2, Your Honor, once we get to that
12 point, we would ask that we have -- that the
13 testimony be proffered outside the presence of
14 the jury so it won't prejudice anybody.

15 THE COURT: Who is the witness that will
16 present, do you anticipate presenting the
17 evidence of the burglary through, Ms. Fant?

18 MS. FANT: Ivan Sanders.

19 THE COURT: Ivan?

20 MS. FANT: Sanders.

21 THE COURT: You don't anticipate calling
22 him this afternoon, do you?

23 MS. FANT: Yes, Your Honor. I mean,
24 depending, I would probably have four or five
25 witnesses at the most for today. Most of them

1 fairly short. We would like to get to him
2 today, if possible. Again, the relevance is
3 not only to show the motive, but In fact
4 immediately prior to this killing, he received
5 a phone call from the defendant, and said, "I
6 got the guy here, what do you want me to do
7 with him." It's certainly part of the res
8 gestae phone call. And the only way that that
9 can make sense is the context of, he had been
10 looking for whoever burglarized his store.

11 THE COURT: Well here's what I am saying,
12 I may have to hear the testimony outside the
13 presence of the jury before I can rule on it.
14 So because you call that witness, you tell me
15 and I will excuse the jury. And we will bring
16 him in, and the testimony will be proffered in
17 camera and I can take it from there. So don't
18 call that witness to prove this point until I
19 have had a chance to hear what his testimony is
20 going to be, not what you say his testimony is
21 going to be, so then I can determine whether it
22 would be admissible.

23 But with regard to the Motions, the
24 reports are not admissible, Mr. Johnson. And I
25 will hear the witness' testimony in camera

1 before ruling on the admissibility.

2 MR. JOHNSON: Thank you, Your honor.

3 MS. FANT: Your Honor, if I may, my only
4 concern would be obviously I would not be
5 permitted to mention it in opening statement.
6 And this is a complicated case, in a sense of,
7 to understand what happened, you kind of have
8 to have all the facts together. It's not a one
9 scenario type of thing. It's this led to this
10 led to this. And I really think it would
11 hamstring us in terms of setting the stage for
12 the case without being able to say that.

13 THE COURT: Well, we may have to do it
14 before we start. But again, that's one reason
15 I didn't know whether we ought to be prepared
16 to try to take testimony this afternoon or not.
17 But for now we will see where we are, and I'll
18 let you know when we get through the rest of
19 these motions.

20 MS. FANT: Okay.

21 THE COURT: The next motion, Mr. Johnson,
22 has to do with testimony regarding the
23 participation of the defendant in the sale of
24 illegal narcotics.

25 MR. JOHNSON: Your Honor, my son will

1 offer that motion.

2 THE COURT: Mr. Johnson.

3 MR. GEORGE JOHNSON: Thank you, Your
4 Honor. May it Please the Court.

5 THE COURT: Yes, sir.

6 MR. GEORGE JOHNSON: One or two of the
7 statements that we did receive from the
8 Solicitor's Office mentioned witnesses stating
9 that my client sold drugs to the witnesses
10 prior to the alleged killing. That would
11 put -- that testimony would put my client's
12 character in to evidence, which I would submit
13 to the Court would be improper. I would ask
14 the court to exclude any testimony regarding
15 drug sells or giving drugs to any witnesses or
16 anything regarding my client being involved
17 drugs.

18 THE COURT: what do you say about the drug
19 testimony, Ms. Fant?

20 MS. FANT: Your Honor, that is part of the
21 res gestae of this crime. As Your Honor knows,
22 the prior bad acts are admissible as part of
23 the res gestae when the other crime is so
24 intimately connected with the crime charged,
25 that one cannot be shown without proving the

1 other. The situation we have is that the
2 victim comes to a drug house, that is owned by
3 Mr. McKoy that he operates. He was there to
4 buy drugs. And that's going to be out there.
5 We're not trying to hide that. He was a
6 cocaine base addict.

7 He goes inside. He was only there for 10
8 to 15 minutes. He bought dope. He smoked it
9 there. He found out about the conversation.
10 He got scared. He left.

11 THE COURT: What conversation?

12 MS. FANT: The conversation between
13 Mr. McKoy and Mr. Sanders. Ivan Sanders. On
14 the phone. Which is what set this all in
15 motion. Is McKoy when he sees Mr., the victim,
16 somebody says hey, that's the guy who broke in
17 this store.

18 He gets on his phone, his Nextel, calls
19 Mr. Sanders and said, "Hey, I got the boy that
20 broke in to your store right here. What do you
21 want me to do." they have a conversation. The
22 victim obviously at that point,---

23 THE COURT: You're going to have to slow
24 down.

25 MS. FANT: Okay.

1 THE COURT: I know you and Mr. Johnson
2 have been working on this case. And y'all are
3 familiar with it, and you know it off the back
4 of your hand. But I don't. This is the first
5 time I am hearing this. Tell me what the
6 state's theory is of how this case went down.

7 MS. FANT: The victim in this case is a
8 known drug user. He had been seen allegedly by
9 somebody selling some clothes at Boney's Liquor
10 Store and some other places. Just selling them
11 to people on the street. He along with another
12 witness went to Mr. McKoy's drug house on
13 Blanding Street in Sumter to buy crack cocaine.
14 They went inside. Once inside, somebody told
15 Mr. McKoy who was there, there were about 6 or
16 7 people. Some of them working in the drug
17 house, some of them smoking in the drug house.

18 The victim went there to buy crack
19 cocaine. He did buy crack cocaine. He
20 mentioned something to Mr. McKoy about, hey,
21 don't you remember me. I tried to sell you
22 some clothes the other night. Apparently at
23 that point the light bulb goes off in Mr.
24 McKoy's head. He then gets on his phone and
25 calls Mr. Sanders. Ivan Sanders and says,

1 "hey, I get the boy that broke in to your store
2 right here. What do you want me to do with
3 him."

4 THE COURT: This is the defendant saying
5 that?

6 MS. FANT: Yes.

7 THE COURT: Okay.

8 MS. FANT: And Mr. Sanders tells him that
9 he is cool. Not to worry about it; that he can
10 tell in Mr. McKoy's voice that he is very
11 agitated. Everyone in the house that is going
12 to testify is going to say that things started
13 to get nervous in the house. And we're talking
14 a matter of minutes from the time the victim
15 walked in to the house until the time he left.
16 Maybe 15 minutes at the most. They warned him
17 and said, you know, you probably should get out
18 of here or something is going to happen. You
19 need to leave. He left. Shortly---

20 THE COURT: He who?

21 MS. FANT: I'm sorry, the victim.

22 THE COURT: Okay.

23 MS. FANT: The victim left. Shortly
24 thereafter, Mr. McKoy left. Went across the
25 street, changed clothes. And within 10 minutes

1 the victim was dead. So we're talking about a
2 series of events that may be a half an hour
3 from start to finish between the victim going
4 there. The reason it is crucial is because our
5 witnesses were there smoking dope. It's kind
6 of hard to say what were you doing there,
7 without the context of what happened.

8 We think that it's clearly res gestae.
9 and admissible under several of the cases. I
10 can hand them up, if you would like.

11 THE COURT: Go ahead.

12 MS. FANT: State v. Bross, 361, S.C. 534.
13 State v. Kremm, 327, S.C. 254. State v. Adams,
14 322, S.C. 114. And State v. Wood, 362 S.C.
15 520.

16 Under that line of cases when the prior
17 bad act is so intimately connected. And here
18 if he hadn't sold him that -- gone there and
19 sold him that cocaine and him gone to his drug
20 house, there never would have been a murder.
21 Because it was only when he was there buying
22 those drugs, that he made the statement, "Hey,
23 don't you recognize me." And we have a witness
24 who says that the reason that they -- he went
25 with him was to say, "Hey let me vouch for the

1 victim." Because McKoy didn't sell drugs to
2 just anybody.

3 So somebody kind of vouched for him. He
4 said okay, since you know him, I will sell
5 them. He sold it to him. Finds out about the
6 clothes. Gets on the phone. And as the victim
7 leaves shortly thereafter, Mr. McKoy is right
8 after him.

9 THE COURT: So your contention is that
10 it's admissible. The drugs are admissible
11 under two theories. Or two specific rules, 404
12 (b) that is admissible to show motive,
13 identity, existence of common scheme or plan,
14 the absence, and mistake or absence or intent.
15 It's first and secondly, that it is admissible
16 under 803(2) as an excited utterance.

17 MS. FANT: Yes, Your Honor. And also
18 under the res gestae.

19 THE COURT: There is no res gestae
20 anymore.

21 MS. FANT: My understanding is as an
22 exception under Lyles that under this case law
23 it is.

24 THE COURT: Well that was before the rules
25 of evidence. The rules of evidence basically

1 that's why they changed 803 the hearsay
2 exception of res gestae.

3 MS. FANT: It's separate from that. There
4 are two separate things, Your Honor. that's
5 why I wanted to point out the case law which is
6 from 2000, 2004, and 2006, which would
7 obviously be after the rules were changed.
8 It's not an exception to hearsay. It is
9 essentially a 6th, 404 (b) exception; that when
10 it is res gestae as part of the crime, you are
11 able to get that in as a prior bad act. So
12 it's essentially in addition to motive, intent,
13 absence of mistake, or absence of common scheme
14 or plan and identity. We have the 6th
15 exception of res gestae and that is through the
16 case law that I mentioned.

17 I do have one other case that I wanted to
18 point out and that is State v. Dickerson, 341
19 S.C. 391. That is a 2000 case. And then there
20 is one from 2006, State v. Fletcher.

21 THE COURT: Do you have those cases?

22 MS. FANT: Yes, sir.

23 THE COURT: Mr. Johnson, let me hear from
24 you with regard to the drug sells. We know
25 what her position with regard to that. And I

1 will be glad to hear from you anything in
2 reply.

3 MR. GEORGE JOHNSON: Your Honor, the
4 excited utterance...

5 THE COURT: An exception to the hearsay
6 rule. That's one reason. But she's also
7 saying it is res gestae under Lyle and 404 (b).
8 And the case law that says it is all part the
9 of same transaction; therefore, it would be
10 admissible.

11 MR. GEORGE JOHNSON: I am not sure who
12 made the excited utterance. That's what I was
13 trying to establish, So I can address that.

14 THE COURT: Ms. Fant, who are you
15 referring to as making the statement that he is
16 making? Your objection apparently is not based
17 on hearsay though, it is based upon, she's
18 saying that Mr. Sanders heard this, I believe.
19 And he was the one who was testifying to it,
20 Ms. Fant?

21 MS. FANT: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. GEORGE JOHNSON: Mr. Sanders was not
24 at the house, and wasn't involved---

25 THE COURT: He was at the house when the

1 call was made.

2 MR. JOHNSON: But the conversation was not
3 about drugs.

4 MS. FANT: I apologize, Your Honor.
5 Mr. Sanders was not at the house. He was on
6 the other end of the telephone. That's why---

7 THE COURT: Okay. Who is the witness with
8 regard to the drug transactions?

9 MS. FANT: Opradela Lyons and Joseph
10 Sumpter.

11 THE COURT: And why is that admissible?

12 MS. FANT: Because as part of the res
13 gestae under the theory of the cases that I
14 just gave you, that when it is so closely
15 connected, and that's the whole reason that the
16 victim even showed up there. We would not have
17 had the crime if the victim in this case had
18 not showed up to the drug house to buy drugs.
19 And from the time he showed up there until the
20 time he was dead, it was less than a half an
21 hour.

22 THE COURT: Mr. Johnson.

23 MR. JOHNSON: Your Honor, initially, even
24 if it was admissible, it would be unduly
25 prejudicial to my client for him to be cast as

1 a drug dealer in a case about murder when he is
2 not charged with any drug offenses initially.
3 But as you have been told, the motive provided
4 by the state has nothing to do with drugs. The
5 motive behind this was solely the clothes.

6 If the victim had gone to the house to
7 watch football, and my client discovered he was
8 the one who stole the clothes from shopping,
9 the drugs wouldn't be an issue. If my client
10 had seen him on the side of the road selling
11 these clothes, and it was determined that this
12 is the guy who stole the clothes from the
13 witness, the drugs would not be an issue. They
14 don't need the drugs to establish that the
15 victim was at his house; that is, the drugs
16 aren't needed. There are a number of witnesses
17 to establish that the victim was at Mr. McKoy's
18 house. What he was doing there is irrelevant.
19 By bringing in the drugs, all it does is cast a
20 negative light on my client. Which is unduly
21 prejudicial, your Honor.

22 They can establish that he was at the
23 house. They can establish that he was on the
24 phone. They can then establish that there was
25 a shooting. So what the drugs were doing

1 there, and who was using the drugs really has
2 nothing to do with the element of the crime of
3 murder.

4 THE COURT: I understand your position. I
5 am going to review the matters and I will give
6 you a ruling on that. Let me hear from you
7 with regard to the matter of the item seized
8 pursuant the Search Warrant.

9 MS. FANT: Your Honor, we do not intend to
10 offer any evidence that was seized pursuant to
11 that Search Warrant.

12 THE COURT: That resolves that. Motion in
13 Limine Number 4, to exclude the pictures of the
14 liquor store.

15 MR. GEORGE JOHNSON: Your honor, it's my
16 understanding is, there is a picture of the
17 victim earlier in the day in the liquor store.
18 My client is not in the picture. There is no
19 connection between the liquor store and the
20 crime. So I submit to the court it is not
21 relevant.

22 THE COURT: How about that, Ms. Fant?

23 MS. FANT: Your Honor, the purpose of the
24 photo, and I have several. Although we would
25 be fine just offering one, is for time frame

1 purposes. None of the witnesses in this case
2 could be exactly specific about certain times.
3 It does in fact show the last time the victim
4 was seen alive by anyone prior to entering
5 Mr. McKoy's house.

6 THE COURT: How does the picture show
7 that?

8 MS. FANT: Because there is a clock on the
9 wall in the back room. It's a video from
10 Mr. Boney's Liquor Store.

11 THE COURT: Who is depicted in that
12 photograph?

13 MS. FANT: The victim. So we know that on
14 this day at this time through this photo, and
15 Mr. Boney's testimony that the victim was
16 alive at 4:25 p.m.

17 THE COURT: Would you all stipulate to
18 that fact?

19 MR. JOHNSON: We would stipulate to it.

20 THE COURT: No. 5, the interview form.
21 What is that an interview form of?

22 MR. JOHNSON: Your Honor, the Interview
23 Form is a form that is used by the Sumter
24 Police Department. It's really an Advice of
25 Rights and Waiver of Rights. And on the form

1 someone has written: "Refused to sign." As
2 we cite in our Motion, Your Honor, that my
3 client has a 5th Amendment Right to remain
4 silent.

5 And under the Doyle case that we cited in
6 our motion, and under the Payne vs. State, Your
7 Honor, the Payne case says the state may not
8 directly or indirectly comment on the
9 defendant's right to remain silent.

10 THE COURT: No question about that. But
11 does he thereafter make a statement?

12 MR. GEORGE JOHNSON: Beg your pardon?

13 THE COURT: Does he thereafter make a
14 statement?

15 MR. GEORGE JOHNSON: No, sir.

16 THE COURT: Well then if he doesn't make a
17 statement then the Miranda Form is not
18 admissible. Do you contend that it's
19 admissible for any reason?

20 MS. FANT: No, your honor.

21 THE COURT: Okay. If he doesn't make a
22 statement then miranda doesn't mean anything.

23 MR. GEORGE JOHNSON: So understand she's
24 not---

25 THE COURT: It is not admissible. She

1 agrees it is not admissible.

2 MR. GEORGE JOHNSON: All right.

3 THE COURT: State agrees. That's one of
4 the things I find amusing and amazing about
5 television usually thinks that if you don't
6 advise a defendant of their rights, that there
7 is something wrong with the case. And of
8 course the only time Miranda even comes in to
9 affect is if a statement is made at all. So if
10 there is no statement made, then Miranda
11 Warnings mean nothing, and the form would not
12 be admissible.

13 How about the autopsy photos, Mr. Johnson?
14 Do you object to those as being too graphic and
15 don't prove any -- or any particular point
16 proved by those? Is that what it is, 401 and
17 403?

18 MR. GEORGE JOHNSON: Yes, Your Honor.
19 What does she intend to?

20 THE COURT: Yeah, what do you intend to
21 offer in the way of autopsy photos?

22 MS. FANT: Your Honor, probably just a
23 couple. One or two from the hospital and then
24 one or two from the autopsy to show the
25 vehicle -- the vehicle, I'm sorry. The

1 victim's clothing, and the gunshot wound
2 itself.

3 THE COURT: Show the defense counsel the
4 exact photos that you plan to introduce and I
5 can find out whether he objects to them.

6 MR. JOHNSON: We do object to four
7 pictures.

8 THE COURT: Let me see. So I can identify
9 them and publish them into the record. Let's
10 go ahead and have them marked state's 1 through
11 4 for identification at this point. State's 1
12 through 4 for identification only.

13 (Autopsy photos marked State's exhibit
14 nos. 1 through 4 for id only.)

15 THE COURT: Looking then at State's
16 Exhibit No. 1 for identification, Ms. Fant,
17 what is that offered for?

18 MS. FANT: Your Honor, that is a picture
19 of the gunshot wound to the victim's back. For
20 purposes that it directly will corroborate our
21 evidence which shows that this victim first of
22 all, was shot in the back. But that two, from
23 a limited bit of a distance, such there were no
24 powder burns or stippling, and that can clearly
25 be seen that that does not appear on the wound.

1 THE COURT: Wait just a minute. The
2 purpose of that was to show, corroborate
3 evidence that he was shot in the back, and at
4 least a certain distance to not have powder or
5 gunshot residue on the back.

6 MS. FANT: Correct, your Honor. Or powder
7 burns.

8 THE COURT: Or powder burns. No. 2,
9 state's exhibit No. 2.

10 MS. FANT: That is just a closer shot of
11 the wound in the back that you can tell more
12 clearly that there are no powder burns or
13 stipplings about the wound.

14 THE COURT: No 3.

15 MS. FANT: I believe that's the one that
16 just shows the exit wound in the front. The
17 purpose of that is to corroborate testimony
18 that this was a through and through. And
19 despite efforts of law enforcement they were
20 unable to find a bullet to attempt to match to
21 anything.

22 THE COURT: No 4.

23 MS. FANT: Is to show the abrasion on the
24 knee. Evidence will show that he was pushed
25 off a bicycle by the co-defendant or was in a

1 scuffle prior to being shot. And the abrasion
2 on the knee is corroborative evidence of that.
3 And that is mentioned in the autopsy report
4 that he had an abrasion on his knee.

5 THE COURT: Mr. Johnson?

6 MR. GEORGE JOHNSON: Your honor, as you
7 can plainly see they are extremely graphic
8 pictures that the state wants to present to the
9 jury; blood coming from the wounds. He is
10 naked in some of the pictures. They're
11 obviously inflammatory. Everything that
12 Ms. Fant told the court that she wants to
13 establish from pictures can be established with
14 the testimony that he was shot in the back.

15 THE COURT: But isn't the law, that if the
16 pictures are corroborative of other testimony,
17 or tends to prove and support testimony of a
18 fact in issue; that they are admissible even
19 though they may be somewhat inflammatory.

20 MR. JOHNSON: Your Honor, we would
21 stipulate that the Autopsy Report establishes
22 what the pictures show. So you have the
23 Autopsy Report and his testimony to prove that
24 he was shot in the back and there was no
25 stippling.

1 So there are two pieces of evidence right
2 there that the state would have at it's
3 disposal. Neither of which would be
4 inflammatory as the bloody pictures that she
5 wants to show to the jury. All the case law I
6 have seen, Your Honor, that allows the pictures
7 are in the sentencing phase of a death penalty
8 case. The ones I can recall. I am sure the
9 court can probably tell me of some other. This
10 will be presented to a jury to establish that
11 he was shot in the back. From the autopsy
12 report says that there is no stippling or
13 gunpowder seems minor compared to the numbering
14 of the victim.

15 There is blood coming from him, Your
16 Honor. There is a big incision across in one
17 of the pictures. And....

18 THE COURT: In my view, 1 through 3, do
19 corroborate or I would assume they will
20 corroborate testimony based upon what Ms. Fant
21 told you. They do in fact corroborate evidence
22 that he was shot in the back; that there were
23 no burn marks on the back. And that is indeed
24 they are corroborative of testimony to that
25 effect. And also No. 3, corroborative of the

1 fact that there, I assume, there is going to be
2 testimony that the bullet went all the way
3 through. And that no bullet found that shows
4 the exit wound.

5 I do not feel that the pictures -- I do
6 think the pictures are relevant. I do not
7 think the prejudicial effect outweighs the
8 probative value of those photographs; that they
9 are offered to corroborate testimony that is or
10 will be in the record before they are shown to
11 the jury. And for that reason, I would admit 1
12 through 3. I do have a problem with No. 4. I
13 think if the state's only purpose is to show
14 the scrap mark on his knee that that can be
15 shown without the depiction of genitalia.
16 Which I don't think is not necessary.

17 MS. FANT: That's the only photo that we
18 have that shows.

19 THE COURT: That photograph would be
20 excluded.

21 THE COURT: So that leaves us at this
22 point a determination of the evidence of the
23 burglary, evidence of the drug sells. The rest
24 of it has been resolved. The Motion to
25 Suppress pursuant to the Search Warrant has

1 been agreed by the state as being inadmissible
2 and will not offer any. The motion to exclude
3 the pictures of the liquor store, I will admit
4 the photographs for the purpose of showing the
5 time.

6 I think it is relevant to an issue in the
7 case that is the time of death. It is not
8 prejudicial. And the prejudicial value is, the
9 probative value outweighs any prejudicial
10 effect. I really don't think there is any
11 prejudicial effect. Even if there was, the
12 probative value does outweigh that. And the
13 photo would be admissible for showing that a
14 relevant issue; that is, that prior -- the
15 issue that it is relevant to is the time of
16 death and when he was still alive. And that is
17 shown by that photograph. I will admit that.

18 The defendant -- the state has indicated
19 and agreed that the Interview Form is not
20 admissible. And I have ruled 3 of the 4
21 photographs, 1, 2 and 3 is admissible. but
22 excluding 4. Now I need to make a
23 determination regarding the burglary reports
24 and the drug sales. And I need to take about 5
25 minutes to look at these cases, and then I will

1 be ready to go forward.

2 MS. FANT: Your Honor, the state didn't
3 have any motion on those.

4 THE COURT: All right.

5 MS. FANT: Actually one of them is taken
6 care in his motion as well. And that was to
7 admit res gestae evidence that it was in fact a
8 drug house. And that's what he was doing
9 there. I think his motion will actually take
10 care of that. The second is, the co-defendant
11 in this case is currently in custody in North
12 Carolina. He has been brought here for trial
13 as a witness. And he has not been convicted.
14 He is a pretrial detainee in North Carolina.
15 We would ask that absolutely no mention be made
16 of Robin Dukes' custody status, because he has
17 not been convicted of the crime for which he is
18 currently being detained.

19 THE COURT: Mr. Johnson?

20 MR. JOHNSON: Your Honor, we would ask
21 that we be permitted No. 1, he has been under
22 their exclusive control. I asked them, I asked
23 Ms. Fant and his lawyer to allow me to
24 interview him. They wouldn't allow it. They
25 have been responsible for transporting him

1 here. They have had in custody, provided him
2 with food. And I think it is relevant to show
3 his bias.

4 Your Honor, there is a series of favors
5 that have been afforded to him, that have not
6 been afforded to my client.

7 THE COURT: What is he being detained for?

8 MR. JOHNSON: I don't know. They wouldn't
9 tell me.

10 THE COURT: What is he being detained for?

11 MS. FANT: He's actually being detained up
12 there on a separate homicide charge. Totally
13 irrelevant to this case.

14 THE COURT: That's what she objects to; is
15 what is being detained, in North Carolina
16 detained for a homicide charge. What is the
17 relevance of that to this case? I mean, it
18 would not be admissible under the rules as a
19 conviction that a witness would have. So what
20 is the relevance?

21 MR. JOHNSON: Your Honor, I am not going
22 to ask him about the particular offense.

23 THE COURT: Okay.

24 MR. JOHNSON: But the fact that he is in
25 custody. And, your Honor, to that, Your Honor,

1 we might as well address this now. I have
2 discovered in the Clerk's Office of the Sumter
3 County Courthouse where this same fellow on
4 July 8TH 2007, wrote to the clerk: "Would you
5 file enclosed motion with the court. Clock it,
6 stamp and return a copy to me. Thank you for
7 your time and attention to this matter."

8 And in the motion that he prepared pro se,
9 is addressed, Ms. Catherine Fant, a motion for
10 a bond where he was charged with burglary first
11 offense, and Criminal Domestic Violence here in
12 Sumter County.

13 Your Honor, I think it is imperative that
14 we are allowed to explore the series of events
15 he has been charged with, and has never been
16 convicted. And we cite that in State vs.
17 Gillian, to expose the deal, going to the deal
18 that he's made with the state. Your Honor,
19 that's a case where Judge Westbrook had over in
20 Lexington County.

21 THE COURT: Court of Appeals, or Supreme
22 Court?

23 MR. JOHNSON: it went to the Supreme
24 Court.

25 THE COURT: Hand it up, i will glad to

1 look at it.

2 MR. JOHNSON: I don't have it in regard,
3 in my possession right now, Your Honor. But
4 Your honor, I am sure that we can go in to his
5 bias and discuss with him what deal he has
6 made.

7 THE COURT: No question about that. I
8 don't think there is any question about that.
9 I think her objection to it is to inquire in
10 regarding and if he -- what is the witness'
11 name?

12 MS. FANT: Robin Dukes.

13 THE COURT: Is he charged with anything in
14 connection with this case?

15 MS. FANT: Yes, Your Honor.

16 THE COURT: Then he can certainly go in to
17 what he is charged with in connection with this
18 case. Now what she objects to is whether or
19 not his pretrial detainment in North Carolina
20 on unrelated charges is admissible here.

21 MS. FANT: And in addition the burglary
22 that he is referring to which has nothing to do
23 with this. That was a case from last year.

24 THE COURT: She doesn't contend. And you
25 can't ask him about any of his involvement in

1 this case and any deals that he may have made
2 with the Solicitor's Office regarding his
3 involvement in the facts of this matter.

4 MR. JOHNSON: But, Your honor, how about
5 the burglary charges pending in Sumter County?

6 THE COURT: Wait a minute. Go ahead.

7 MR. JOHNSON: Why can't I explore that?

8 THE COURT: That's I want you to tell me
9 why.

10 MR. JOHNSON: Why because, Your Honor, we
11 need to know the full extent of how he is being
12 rewarded for his testimony. Whether he was
13 advised or not.

14 THE COURT: That is under the control of
15 the Solicitor's Office. And I may agree with
16 you on that, and I will think about it. What
17 do the charges in North Carolina have to do
18 with his involvement in this case whatsoever?

19 MR. JOHNSON: How do I know until we ask
20 him, because we haven't been allowed to
21 interview him.

22 THE COURT: I can take care of that. But
23 my question how, I don't see what his
24 detainment in North Carolina on separate and
25 unrelated charges has to do here. I don't see

1 the relevance of that with the facts of this
2 case.

3 MR. JOHNSON: Well, Your Honor, we don't
4 know, because no one has exposed us or informed
5 us what it is. We do not know the relationship
6 between that case and this case until we ask
7 it.

8 THE COURT: Is he here?

9 MS. FANT: Not today. He'll be here
10 tomorrow.

11 THE COURT: I will allow Mr. Johnson to
12 talk to him before I make a ruling on the
13 matter. But my first hand impression is, and I
14 don't mind telling you, My off hand impression,
15 is that he is entitled to ask him about
16 anything that this witness is involved with the
17 facts in this case. Very possibly he may be
18 asked about anything that may have been offered
19 to him as a result of other charges arising in
20 South Carolina out of the same Solicitor's
21 Office. But that the issue of whether or not
22 what his involvement is in a case unrelated to
23 this, and in North Carolina is inadmissible.
24 That's my first hand impression.

25 MS. FANT: Your honor, I would just like

1 to add on the burglary. There was no deal on
2 that. And I don't think he should be allowed
3 to mention that either. That was a domestic
4 dispute between---

5 THE COURT: I am going to let Mr. Johnson
6 talk to him, and we'll decide. And I'll make
7 that determination. If I have to hear the
8 testimony In limine, I will do so.

9 MS. FANT: Okay.

10 THE COURT: All right.

11 MS. FANT: But in opening there would be
12 no mention of that.

13 THE COURT: That's right.

14 THE COURT: What else have you got, Ms.
15 Fant?

16 MS. FANT: That concludes my two motions,
17 Your Honor.

18 MR. JOHNSON: Your Honor, I have one more.

19 THE COURT: Yes, sir.

20 MR. JOHNSON: We would respectfully move
21 that the witnesses be sequestered; that the
22 state has given you notice of.

23 THE COURT: That motion would be granted.
24 It's reciprocal. It requires that the defense
25 sequester any witnesses that you may call as

1 well. And regardless of whose witness list
2 they're on, they will be sequestered. And must
3 be reciprocal. The state has the right to keep
4 a victim's representative present, and also
5 your primary officer.

6 MS. FANT: Thank you, Your Honor.

7 THE COURT: I am going to take about 5
8 minutes and look at these matters and make a
9 determination on the burglary reports. If you
10 are anticipating, make sure I understand you
11 right, Ms. Fant. You anticipate getting to the
12 witnesses, not the burglary report, but the
13 actual burglary and the drug sales this
14 afternoon. It's not something you can wait
15 until tomorrow.

16 MS. FANT: Well that would be up to Your
17 Honor.

18 THE COURT: Well you are calling the
19 witnesses.

20 MS. FANT: I know that. But I mean to do
21 it in the order that makes any sense, to set
22 the stage, it would be Mr. Boney's testimony.
23 That's the photograph that we talked about.

24 THE COURT: You also need to know the
25 ruling for the purposes of opening statements.

1 Let me take about 5 minutes and look at that.

2 MS. FANT: Thank you, Your Honor.

3 (Whereupon, the court takes a short
4 recess.)

5 THE COURT: On the matter of the State
6 versus Mark McKoy 05-GS-43-33, the court still
7 has two matters which need to be ruled on in
8 connection with the motion to exclude testimony
9 regarding this matter made by the defense. Two
10 motions in limine. The first is to exclude the
11 burglary report. The court has already ruled
12 that the burglary reports are inadmissible.
13 However under 404 (b), which provides that
14 "evidence of other crimes or acts is not
15 admissible to prove the evidence of the person
16 in order to show action conforming therewith.
17 It may however be admissible to show motive,
18 identify, the existence of common scheme or
19 plan or the absence or mistake or actions or
20 intent."

21 In my view the testimony regarding the
22 burglary itself is admissible under the 404 (b)
23 to show motive, identity, existence of common
24 scheme or plan, the absence or mistake or
25 absence or intent. Furthermore, I think that

1 it is admissible as a part of the res gestae
2 that was going on at that time. But that
3 becomes more important with regard to the
4 testimony regarding the drug sales. And I will
5 come back to that. But the court's ruling is
6 that the evidence of the burglary is admissible
7 under 404 (b).

8 Now with regard to the drug sales, that is
9 more problematic. And I have studied the cases
10 in connection with this. Particularly, the
11 case of State vs. Dickerson, and the State vs.
12 Woods. The State vs. Dickerson, being 341,
13 S.C. 391, 535, S.E. 2d. 119 where the Court of
14 Appeals, I am sorry, the Supreme Court held
15 that prior bad acts or evidence of Defendant's
16 drug use during the period of murder was
17 admissible under Lyle and under the res gestae
18 theory.

19 Furthermore, in State vs. Woods, the Court
20 held that evidence that the defendant killed
21 the state trooper was admissible as part of res
22 gestae of later crimes for which the defendant
23 was on trial. Killing provided the context and
24 motivation for later crimes and was relevant to
25 show complete, whole unfragmented story

1 regarding defendant's crime. Killing was
2 claimed while the police pursued the defendant.
3 And reason the defendant shot at, harmed and
4 threatened the officers who attempted to
5 apprehend him. Crimes were temporally related.
6 Killing took place only two hours before the
7 later crimes. And two crimes comprised of the
8 same episode.

9 Going on in Woods, and I think this is the
10 key language here. one of the accepted basis
11 for the admissibility of evidence of other
12 crimes arises when such evidence furnishes part
13 of the context of the crime. Or is necessary
14 to a full presentation of the case. Or is so
15 evidently connected with and explanatory to the
16 crime charged against the defendant than so
17 much that part of setting of case and its
18 environment. That the proof is appropriate in
19 order to complete the story of the crime by
20 proving its immediate context or the res
21 gestae. Or the uncharged offense is so linked
22 together in point of time and circumstances
23 that the crime charged that one cannot be fully
24 shown without proving the other.

25 And where evidence is admissible to prove

1 the full presentation of the offense, there is
2 no reason to fragmentize the event under
3 inquiry by suppressing parts of the res gestae.
4 That being the case, it is my duty that under
5 both State vs. Dickerson that the evidence is
6 admissible. I think that the evidence is --
7 assuming the evidence is clear and convincing.
8 Which is what the requirement is. It is
9 admissible under Lyle and under 404. And I
10 will admit the testimony regarding the drug
11 participation at the drug house under Woods and
12 under Dickerson. Those are the cases that I
13 Believe are controlling.

14 Now, Ms. Fant, you did have one other
15 matter, I believe that I had not dealt with.
16 And what is that? Make sure we have got
17 testifying covered.

18 MS. FANT: My -- well in addition to,
19 there is no mention of any priors.

20 THE COURT: Well the matter of the -- well
21 that we are going to hold off on until we get
22 the witness here and Mr. Johnson has a chance
23 to interview that witness and I take it up
24 before it is sent to the jury. So there will
25 be no mention of that to the jury in opening

1 statements.

2 MS. FANT: Okay.

3 THE COURT: Yes, sir.

4 MR. GEORGE JOHNSON: Your Honor, would you
5 allow me to readdress one issue regarding the
6 drug sale? I did not bring this up during my
7 argument, because I did not have this evidence
8 at that time. We have been given a witness
9 statement from Opradela Lyons. In her
10 statement she stated that the victim came in
11 and bought a dime rock from this short, brown
12 headed guy that was there. I call that guy
13 Evil because of the way he looked at me while
14 our client Dukes -- Evil and Tyrone were in the
15 hallway. So it's her statement that the victim
16 did not buy drugs from my client but from
17 somebody else.

18 But the implication earlier was that my
19 client sold drugs to the victim. But she is
20 stating that she got drugs from somebody else.
21 So this was my client involved in the drug
22 sales makes it even more prejudicial for him
23 now being lumped in to it.

24 THE COURT: I understand the argument is
25 the prejudicial effect outweighs the probative

1 value, and I will overrule on that. But I of
2 course, will allow impeachment on prior
3 inconsistent statements if that develops.

4 MR. JOHNSON: Thank you Your Honor.

5 THE COURT: All right.

6 MS. FANT: Your Honor, we have one
7 additional issue that just came up. In getting
8 our witnesses ready to testify, I am told that
9 Mr. Joseph Sumpter who is under subpoena, who I
10 talked to over the weekend and told him to be
11 here has not shown up today, is not answering
12 his phone. And he is not at his home. He is a
13 material witness who was in the house at the
14 time. We would ask the Court's assistance in
15 bringing him to Court.

16 THE COURT: Do you have a -- have you got
17 a copy of the subpoena?

18 MS. FANT: Yes, your honor.

19 THE COURT: Let the record reflect that
20 the state has been given a copy of a subpoena
21 for 9:00 o'clock this morning for Joseph L.
22 Sumpter, S-U-M-P-T-E-R, [REDACTED],
23 Sumter, South Carolina. I have been advised
24 that this subpoena was served on 9/13/08. I am
25 going to make the subpoena a part of the record.

1 as Court's Exhibit No. 1. I am going to issue
2 a -- direct that a Bench Warrant be issued for
3 Mr. Sumpter, and that he be brought to Court in
4 response to this subpoena. And shown to show
5 cause why he should not be held in contempt for
6 Failure To Appear at the time he was directed
7 to appear.

8 This will be marked -- given to the
9 reporter, and marked as Court's Exhibit No. 1.
10 A Bench Warrant will be issued for his arrest.

11 (subpoena marked Court's Exhibit No. 1 for
12 id.)

13 THE COURT: Have we dealt with all the
14 matters that we need at this time, Ms. Fant, on
15 behalf of the state?

16 MS. FANT: Yes, Your Honor. I guess the
17 only remaining thing would be in invoking the
18 Sequestration Order. I noticed that at least
19 one witness, and I believe more than one, is
20 out in the gallery. We would ask all the
21 witnesses on the state's witness list to be
22 excluded from the courtroom.

23 THE COURT: If you will identify the ones
24 that are here.

25 MS. FANT: Cabrall Archie, Tonya Lesane.

1 Erin Lucas.

2 THE COURT: The witnesses have been
3 sequestered. That means that anybody who is
4 going to be -- if you're on the state's witness
5 list, you will have to remain in the building,
6 but outside the courtroom during the course of
7 this trial until you are called by one side or
8 the other to testify in this matter.

9 THE BAILIFF: Your Honor, there are two
10 rooms right outside. On the right. There are
11 a table and chairs.

12 THE COURT: Go right outside to the right.
13 There will be a room out there. Mr. Bailiff,
14 if you will show them where they may stay.

15 MS. FANT: Yes, Your Honor. I believe Ms.
16 Thelma Dukes is out there, and Mr. Allen
17 McConico.

18 THE COURT: I am going to read over the
19 witness list. If any of the witnesses are
20 present, I want you to stand up. I want to
21 make sure we don't have any witnesses in the
22 courtroom. Ms. Rabon is your officer in
23 charge, is that correct?

24 MS. FANT: Yes, Your Honor.

25 THE COURT: Alvin Holston, James Williams,

1 Irene Culick, Paul Gay, Truman Duggan, Que
2 Tang, Dustin Smith, Mike Morris, Richard Brown,
3 Jan Shull, Teresa Ray Lee, Linda Collins,
4 Opradela Lyons, Joseph Sumpter, Franklin
5 Wright, Robin Dukes, Erin McConico, Angela
6 Allen, Ivan Sanders, Maurice Brewer, Kevin
7 Johnson, Jeffrey Burgess, Cabrall Archie,
8 Autumn Coleman, James Pleasant, Vera Marshall,
9 Jimmy Abraham, Gwendolyn Wells, Thelma Holmes,
10 John Boney, Erin Lucas, Tonya Lesane, Latimore
11 Holmes, Stacy Brunson, James Heyward, Kimberly
12 Delay. I think you said, Robin Dukes, Jeffrey
13 Burgess and Frank Nelson.

14 If any of those persons are in the
15 courtroom, they will have to wait in one of the
16 holding rooms outside until you are called as a
17 witness.

18 MS. FANT: Your Honor, We would like to
19 remove Ms. Culick from the witness list. We
20 don't intend to call her, and she is in fact
21 kind of serving as a runner for us in and out
22 of the courtroom. But she will not be a
23 witness in this case.

24 THE COURT: She's not as a witness in this
25 case. And she cannot be called as a witness,

1 but she will be removed from the Sequestration
2 Order.

3 MR. JOHNSON: Which witness, Your Honor?

4 THE COURT: Ms. Culick is she on the
5 witness list No. 4? Anything further?

6 MS. FANT: Your Honor, you did indicate
7 Ms. Gwendloyn Wells. But she is the mother of
8 the victim, Tyrone Pettis.

9 THE COURT: She has the right to remain.

10 MS. FANT: The only thing I would state,
11 Your Honor, is that we do have just two
12 witnesses prior to Mr. Sanders. I don't know
13 if he is going to come up fairly quick. One of
14 them is a very quick witness, who is Ms. Wells,
15 to identify her son in the photo. And then
16 Ms. Lyons. I just wanted to make you aware of
17 that.

18 THE COURT: Run that by me again. Now
19 what?

20 MS. FANT: Okay, because some of our
21 witnesses are not here.

22 THE COURT: Right.

23 MS. FANT: At this point, the state would
24 have just two witnesses before calling
25 Mr. Sanders. And that's the one that you

1 wanted to take his testimony proffer.

2 THE COURT: Is that the one that
3 Mr. Johnson talked to beforehand?

4 MS. FANT: No, that's Mr. Dukes. That's
5 Robin Dukes who is in custody. Ivan Sanders is
6 the one who was called on the phone call and
7 whom indicated would proffer his testimony
8 about whether or not the phone call, the
9 evidence about the burglary. I guess if you've
10 already---

11 THE COURT: I've already ruled on that.

12 MS. FANT: Okay.

13 THE COURT: Yes, that's -- I have ruled on
14 is admissible under 404 (b). Clear and
15 convincing evidence that 404 (b) showed motive.
16 And the evidence about the burglary is
17 admissible.

18 MS. FANT: Okay, thank you. Sorry about
19 that, Your Honor.

20 THE COURT: Mr. Johnson, anything before
21 we bring the jury in, and before the jury is
22 sworn?

23 MR. JOHNSON: Nothing. Thank you very
24 kindly.

25 THE COURT: Thank you. Bring the jury in.

1 (Whereupon, the following takes place
2 within the presence of the jury.)

3 THE COURT: Ladies and gentlemen, I
4 apologize for keeping you waiting. I try to
5 make it a practice never to keep jurors waiting
6 more than is absolutely necessary. And I do
7 apologize. I don't think it was unnecessary to
8 keep you waiting in this case. We have been
9 working since 3:00 o'clock to resolve the
10 issues we had to resolve. And we just now
11 finished resolving those. And we are now ready
12 to go toward. I am going ask, Mr. Clerk, if
13 you will swear the jury for me please.

14 (Whereupon, the jury is sworn.)

15 THE COURT: Ladies and gentlemen, before
16 we begin the actual trial of this case, I
17 thought it might to be helpful if I explain to
18 you basically how a trial proceeds. I know all
19 of you have seen trials on television, but I
20 think you will find that it is a great deal
21 different in real life.

22 First of all, the state will make an
23 opening statement. An opening statement is not
24 evidence. It is simply an outline to help you
25 understand what the state expects the evidence

1 will show. The defendant may, if he wishes to,
2 present an opening statement, but he doesn't
3 have to for reasons I will explain later.

4 Following the opening statement you will hear
5 the testimony and evidence of this case. This
6 will consist of testimony from the state's
7 witnesses as well as any physical exhibits,
8 which may be introduced into evidence.

9 Following a completion of the testimony,
10 the attorneys will again have an opportunity to
11 make a closing statement or summation to you.
12 This is an opportunity for the attorneys to
13 summarize the case from their perspective
14 points of view. Again, these arguments are not
15 evidence. Following the closing statements by
16 the attorneys, I will instruct you on the law
17 of South Carolina as it pertains to the issues
18 that have arisen in this case. And when I have
19 completed my instructions to you, you will be
20 permitted to begin your deliberations in order
21 to reach a verdict.

22 Now, Ladies and Gentlemen, you are now the
23 jury in this case. And I want to take a few
24 minutes to tell you something about your duty
25 as jurors, and to give you some basic

1 instructions. At the end of this trial, I will
2 give you more detailed instructions and those
3 instructions will control your deliberations.
4 It will be your duty to decide from the
5 evidence what the facts are. You and you alone
6 are the judges of the facts. You will hear the
7 evidence, decide what the facts are, and then
8 apply those facts to the law which I will give
9 to you. That is how you reach a verdict. In
10 doing so, you must follow the law whether you
11 agree with it or not.

12 The evidence will consist of the testimony
13 of witnesses, documents, and other things
14 received in to evidence as exhibits and any
15 facts on which the lawyers agree or which I may
16 instruct you to accept. Now you should not
17 take anything that I may say or do during this
18 trial as indicating what I think of the
19 evidence, or what your verdict should be. That
20 is a matter that is solely up to you.

21 The same law that makes you the judge of
22 the facts, makes me the judge of the law. You
23 must take the law as I give it to you
24 regardless of what you think the law is or what
25 the law ought to be. If i am wrong on the law,

1 there is another time and place for that error
2 to be corrected. But for this case, you must
3 accept the law as I charge it to you. Now this
4 is a criminal case brought by the State of
5 South Carolina. The State charges the
6 defendant with the offense of murder and with
7 the offense of possession of a weapon during
8 the commission of a violent crime.

9 The charge against the defendant is
10 contained in the Indictment. The indictment
11 which I hold in my hand is not evidence of
12 anything. It is simply a description of the
13 charges made by the state against the
14 defendant. The defendant has pled not guilty
15 to these charges, and is presumed innocent,
16 unless and until proven guilty beyond a
17 reasonable doubt. A reasonable doubt is the
18 kind of doubt that would cause a reasonable
19 person to hesitate to act.

20 A defendant has a right not to testify and
21 never has to prove innocence or present any
22 evidence. The burden of proof is always on the
23 State of South Carolina. Now there are certain
24 things that are not evidence, and you must not
25 consider them as evidence in deciding the facts

1 of this case. Statements and arguments of the
2 attorneys are not evidence. Questions and
3 objections of the attorneys are not evidence.
4 And testimony that I instruct you to disregard
5 is not evidence.

6 The evidence may be direct or
7 circumstantial. Direct evidence is testimony
8 by a witness about what that witness personally
9 saw, heard or did. Circumstantial evidence is
10 indirect evidence. The law permits you to give
11 equal weight to both. But it is for you to
12 decide how much weight to give to any of the
13 evidence. There are rules of evidence which
14 control what can be received into the
15 courtroom. When a lawyer asks a question or
16 offers an exhibit into evidence and a lawyer on
17 the other side thinks it is not permitted by
18 the rules, that lawyer may object. If I
19 overrule the objection the question may be
20 answered or the exhibit may be received.

21 If I sustain the objection, the question
22 cannot be answered or the exhibit cannot be
23 received. Whenever I sustain an objection to a
24 question or deny a motion to admit an exhibit
25 into evidence, you must ignore the question or

1 the existence of the exhibit. And you must not
2 guess what the answer would have been, or what
3 the exhibit would have shown. Sometimes it may
4 be necessary for me to request that you leave
5 the courtroom while I discuss with the
6 attorneys, legal questions that come up during
7 the trial. If this occurs, you should not
8 speculate about our discussions or the reasons
9 you were asked to leave the courtroom. This is
10 simply a procedure that the law requires when
11 certain legal issues arise.

12 There also may be occasions when I ask the
13 attorneys to approach the bench so I can
14 discuss a legal issue with them privately. I
15 will do this as often as possible so that you
16 will not be required to leave the courtroom
17 more than is absolutely necessary. Again, If I
18 ask the attorneys to step up to the bench or if
19 I ask you to leave the courtroom, please don't
20 think that anybody is trying to hide anything
21 from you, or keep any evidence from you. This
22 is simply a procedure used by all lawyers and
23 by all courts to determine and decide legal
24 questions.

25 In deciding the facts of this case, you

1 may have to decide which witnesses to believe,
2 and which witnesses not to believe. This is
3 called credibility. You may believe everything
4 a witness says or only part of it, or none of
5 It. In deciding what to believe, you may
6 consider a number of factors including the
7 witnesses ability to see or hear or know the
8 things the witness testified to. The quality
9 of the witness' memory. The witness' manner or
10 demeanor while testifying. Whether the witness
11 has any interest in the outcome of the case or
12 any motive, bias or prejudice. Whether the
13 witness was contradicted by anything the
14 witness said before the trial or any other
15 evidence. And how reasonable was the witness'
16 testimony when considered in the light of other
17 evidence which you believe.

18 Now just a few words to you about your
19 conduct as jurors. Some of which I have argued
20 to you, but they are important enough that they
21 bear repeating. First of all, do not talk to
22 each other about this case until the end of the
23 case when you go to your jury room to decide on
24 your verdict. Do not talk with anyone else
25 about the case until the trial is ended

1 following your verdict and you been discharged
2 as jurors. This means do not discuss the case
3 with members of your family or friends or with
4 anyone else. You may tell them that you are a
5 juror, but don't tell them anything about the
6 case until you have been discharged by me. And
7 as I said before lunch, the reason for that is
8 pretty apparent. You have got to decide this
9 case based on what you hear in this courtroom,
10 and not on the basis of what anyone else might
11 say.

12 Third, do not let anyone talk to you about
13 the case. if anyone should try to approach you
14 or talk to you about this matter, get their
15 name and their description and report it to me
16 or the bailiff. And the bailiff will report it
17 to me and I will deal with them. Do not read
18 any news stories or articles, or listen to any
19 radio or television reports about the case. If
20 there are any news stories about this matter in
21 the local papers or any papers for that matter,
22 or there are any radio or television reports,
23 simply turn those reports off, and do not
24 listen to them, or do not read the radio or
25 television reports.

1 In due deference to all my friends in the
2 media, some of the things that they report are
3 not accurate in regard to what actually goes on
4 in the courtroom. And you have got to decide
5 the case based upon what goes on in this
6 courtroom, and not what you might see or hear
7 in the news media. You are not to consider as
8 evidence anything that you may see or hear when
9 court is not in session. Even if what you see
10 or hear is done by or said by one of the
11 parties or one of the witnesses. Do not do any
12 research; such as, consulting dictionaries or
13 other reference materials or the internet. And
14 do not make any investigation about the case on
15 your own. If you need to communicate with me,
16 give a signed note to the bailiff, and he will
17 give it to me. And I will try to resolve your
18 problem.

19 And finally, and probably most important,
20 do not make up your mind about what your
21 verdict should be until you have heard all the
22 testimony and evidence in this case, and the
23 instructions on the law by the court. You will
24 be instructed when to begin your deliberations
25 by either me or the bailiff. Now later on in

1 this case, I will name one of the 12 members of
2 the principal jury as the foreperson of the
3 jury. When I do that, the foreperson should
4 always sit in the first seat here on the front
5 row.

6 The alternate should always sit in the
7 seats where there is one here, and one back in
8 the corner. The rest of the seats in the jury
9 box are not reserved. And it does not matter
10 what order you come and go from the courtroom.
11 And it does not matter what seats you take in
12 the jury box. I would simply ask that you go
13 all the way down so it wouldn't be a situation
14 of crawling over one another. Reserving the
15 two alternate seats for them. And the first
16 seat on the front row is for the foreperson
17 when I name that foreperson.

18 Are there any objections to my opening
19 remarks to the jury on behalf of the state, Ms.
20 Fant?

21 MS. FANT: No, your honor.

22 THE COURT: On behalf of the defense, Mr.
23 Johnson?

24 MR. JOHNSON: None, Your honor.

25 THE COURT: Ladies and gentlemen, the

1 first order of business will be the opening
2 remarks or opening statements. And for that
3 purpose I will recognize Ms. Fant on behalf of
4 the State.

5 MS. FANT: May it Please the Court.

6 THE COURT: Yes, ma'am.

7 MS. FANT: Your Honor, Mr. Johnson, Ladies
8 and Gentlemen of the Jury, on June 8th of 2004,
9 the defendant in this case Mark McKoy, also
10 known as Wise, shot and killed Tyrone Pettis.
11 The last words out of Tyrone's mouth were,
12 "Somebody please help me."

13 You are going to find out in this case
14 that Tyrone Pettis was a drug addict. We're
15 not going to try to hide that. His own mother
16 will tell you that. And you are going to hear
17 on this particular day on June 8th 2004, he
18 went to what is the known as the "church," at
19 105 Blanding Street. And that was a house
20 rented by the defendant Mark McKoy; and that
21 drugs were sold there and that drugs were
22 smoked there.

23 And Tyrone went there for the purpose of
24 buying drugs and getting high. And the
25 evidence in this case is going to show you that

1 when he went in there; that he made the
2 comment, and that Mr. McKoy, realized, huh, I
3 think I know who this guy is. Because a couple
4 of weeks beforehand, the store known as
5 Cal-Sans, I don't believe it's open anymore.
6 It's a little African shop over on Liberty
7 Street had been broken into. And thousands of
8 dollars worth of clothing items and some oils
9 and other things had been taken from the store.

10 And Mr. McKoy was under the impression
11 that Mr. Pettis was the person who had taken
12 those. So when he came in and said something
13 about clothes, Mr. McKoy realized, "oh, man,
14 this is him. This is him." And he called. He
15 picked up the phone and he called Ivan Sanders.
16 And you are going to hear from Mr. Sanders.
17 And Mr. Sanders will tell you that that day he
18 was in Columbia. He wasn't in Sumter. But
19 does in fact or did in fact run that little
20 African Shop over on Liberty Street. And that
21 it had been broken into. And that he had put
22 the word out on the street, the people better
23 bring his stuff back, or there was going to be
24 some consequences to it.

25 But he will also tell you that he actually

1 found the person who did that. And he had
2 gotten some of that stuff back. And that that
3 person who had taken and broken into his store
4 was not the victim, Tyrone Pettis in this case.
5 But he will tell you about the conversation he
6 had with Mr. McKoy on the phone. And he will
7 tell you what happened afterwards. He said
8 that the defendant was nervous and he kind of
9 knew something was up. And he was worried
10 about it. So he will tell you what he did
11 afterwards.

12 But we're also going to present witnesses
13 who were in the house at the time. And they're
14 going to admit to you that they were there
15 either selling or smoking dope. That's what
16 kind of house this was. And that Tyrone came
17 there; that he bought some dope and that
18 Mr. McKoy recognized him. And that after
19 Tyrone left walking down the street, that
20 Mr. McKoy left.

21 Shortly thereafter, he came back in
22 camouflaged clothing and locked a couple of
23 people up in the house and said, "Don't move.
24 You wait until I get back." And the evidence
25 is going to show that within minutes there was

1 an altercation that occurred on Edwards Street,
2 which is one block over from Blanding. And
3 that at that time, two people, Mr. McKoy and a
4 co-defendant of his, Robin Dukes, got into a
5 fight with the victim in this case, Tyrone
6 Pettis, assaulted him. And as he ran away,
7 yelling, "I didn't do anything. I didn't do
8 anything," the defendant pulled out a gun and
9 shot him in the back.

10 And that resulted in the death of Mr.
11 Pettis. And we will present the witnesses to
12 you who observed different things along the
13 way. No one person saw it all. So in some
14 sense it's going to be a little bit like a
15 jigsaw puzzle, and you are just going to have
16 to connect the dots. But they're there. This
17 is not a case with missing evidence.

18 We can put the things in chronological
19 order and show you what happened. And that's
20 what our witnesses will do. You will also find
21 out that afterwards there were things that
22 Mr. McKoy did that an innocent person would not
23 do.

24 And I submit you will hear from several
25 witnesses that will tell you about some of the

1 things that happened afterward. The bottom
2 line in this case, is that you are the fact
3 finders. And you are to decide, and we welcome
4 the burden of reasonable doubt in the case,
5 which is your burden. Because we think we can
6 meet that burden and go beyond it in this case.
7 All of the evidence that you will hear from the
8 witness stand in this case points to one person
9 and one person only as being the killer of
10 Tyrone Pettis. And that is the defendant, Mark
11 McKoy. Thank you.

12 THE COURT: Mr. Johnson.

13 MR. JOHNSON: Ladies and Gentlemen of the
14 jury, it is very important that you understand
15 that just because a person is accused of a
16 crime, that it does not mean that they are
17 guilty of that crime. Judge King, Ms. Fant, my
18 name is I. S. Levy Johnson, along with my son,
19 George Johnson. We represent Mark McKoy.

20 As you have observed, we went through a
21 careful procedure to select you as jurors.
22 Because we wanted to find a group of people in
23 this county, who will be fair and impartial. I
24 don't know if you recall the exact question
25 that Judge King asked you. It was an important

1 question. But that was the question of whether
2 or not you would believe a police officer over
3 any other witness.

4 In a criminal trial, it's a little
5 different in how you make your decisions. All
6 of you make decisions on a regular basis. You
7 make decisions regarding your family, your job,
8 and other matters. In a criminal trial there
9 are three basic rules that govern how you go
10 about making your decision. The first one is
11 that anybody accused of a crime is presumed to
12 be innocent regardless of the enormity of the
13 crime. And murder is a very serious crime.
14 Regardless of how serious the crime, everybody
15 accused of a crime is presumed to be innocent.

16 And sometimes it is difficult for jurors
17 and lay persons to understand that. But that
18 is a basic and fundamental right that all of us
19 have. It is not a concept that I just brought
20 here today in this courtroom. Or judge King
21 thought up today, or some law professor thought
22 up in the law school. That is a constitutional
23 right that everybody is presumed to be
24 innocent.

25 So as you listen to these witnesses, you

1 are under an obligation to try to resolve that
2 testimony with a presumption of innocence. Is
3 this another possibility that points to
4 innocence? As Judge King just told you, the
5 Indictment, the accusation is not evidence.
6 What Ms. Fant said to you is not evidence. So
7 any criminal trial that you make your decision
8 ultimately regarding, whether my client is
9 guilty or not guilty, because you must be
10 guided by this basic and fundamental principles
11 that he is presumed to be innocent.

12 The second fundamental principle is that
13 the burden of proof is upon the State of South
14 Carolina. That does not give them a
15 disadvantage and give us an unfair advantage.
16 They are ones who elected to bring these
17 charges. It is their responsibility to come in
18 the courtroom only for the believable, credible
19 evidence that my client is guilty as charged.
20 And no one else committed this crime.

21 When you do that, an important principle
22 that you must follow; is that, you must judge
23 the credibility of the witnesses. And I submit
24 to you that there are going to be people that
25 come in to this courtroom, and they are going

1 to put their hand on this bible to tell the
2 truth. And you are going to recognize that
3 they are lying.

4 Normally in a criminal case, there is a
5 conflict between the prosecution and the
6 defense; that the prosecution has one version
7 and the defense has one version. But what you
8 are going to learn in this case, is that the
9 state's own witnesses contradict themselves.
10 You will hear different versions of what they
11 claim happened on the June 8th 2004.
12 Contradiction between the state's own
13 witnesses. And as Judge King told you when you
14 started evaluating the credibility of these
15 witnesses, there are a number of things that
16 you can take up in consideration. Their
17 interest in the outcome is major. If someone
18 is coming on this witness stand and testifying
19 with an expectation, and more than likely not
20 going to tell you, I am going to get something
21 out of it. But you will recognize that some of
22 these witness have an expectation of some
23 reward. And we will prove to you how some of
24 these witnesses have been rewarded.

25 I am not talking about money, giving

1 money, but benefits for their testimony,
2 because they have an interest in the outcome
3 and they will benefit from their testimony. In
4 addition to that, you will see the timing of
5 these inconsistent statements. And when these
6 statements were given, whether they were given
7 on June 8th, June 9th, or they were given years
8 afterwards. They are claiming to you that this
9 murder took place on June 8th 2004. And here
10 it is, September 22nd, 4 years after they claim
11 this murder took place and we find ourselves in
12 this courtroom. And we will show to you and
13 the evidence will prove at the time of this
14 murder, one person, one person, one person,
15 initially was arrested. And charged with
16 murder. His name is Robin Dukes. And he will
17 come in here as a state's witness. Robin
18 Dukes was arrested on June 8th 2004. In
19 addition to that, the evidence will show that
20 when this case was first charged and indicted,
21 my client and Robin Dukes were charged.

22 You will have a copy of the Indictment.
23 And on that Indictment it will show on
24 September 11th, 11 days ago, Robin Dukes' name
25 was eliminated and only Mark McKoy was charged.

1 What has transpired to make the difference?
2 And so as you listen to these witnesses, you
3 will find contradictions, inconsistency,
4 favoritism in order to do what? The third
5 characteristic that I want to call to your
6 attention is that they must convince you beyond
7 a reasonable doubt that my client is guilty. A
8 reasonable doubt is not a fanciful doubt. You
9 sort of pause and say to yourself, there's
10 something rotten in the cotton about this case.
11 Something just don't smell right.

12 As you listen to these witnesses, what you
13 are doing to discover is not so much what you
14 hear, but what it is you don't hear. You will
15 not find any physical evidence. No gun, no
16 bullet. The witness will talk about somebody
17 with a camouflage jacket. No camouflage
18 jacket. No mask. No bicycle that they have
19 that is tied to Mark McKoy. None of the
20 physical things that they talk about that is
21 present will they bring to your -- in here to
22 show you.

23 Ladies and Gentlemen, I realize that all
24 of you have got more important things to do.
25 And you didn't elect to come here and sit on a

1 jury. As Judge King told you, the role that
2 you are playing is an important one. During
3 the course of this trial, if there is a dispute
4 between Ms. Fant and me regarding the law,
5 Judge King will resolve that dispute. But what
6 is at stake in this case is there is a standing
7 dispute between Ms. Fant and the defense
8 regarding the facts of this case. And it your
9 responsibility and your obligation to resolve
10 that dispute.

11 As I said at the outset, you witness how
12 careful we were in selecting you all to sit on
13 this jury. I never dreamed that in South
14 Carolina one day we would have hockey teams. I
15 mean that is something you expect up in South
16 Dakota and North Dakota and Minnesota. And
17 there is a hockey team in Columbia. There is
18 one in Charleston and Florence. And one night
19 I decided to go see a hockey game. And I got
20 there early.

21 When I got there and sitting sort of by
22 myself I noticed this guy came out, and he got
23 on this machine. I think there is a name for
24 it. I don't know the name for it. Gizmo or
25 something. And that guy got on that machine

1 and went all over that ice. Over that ice.
2 And every little corner he would go in and
3 smooth that ice out. He would load up and
4 smooth that ice out. He went all over that ice
5 and smoothed that ice out. Do you know what he
6 was doing? Although he worked for the team in
7 Columbia, he got paid by the team in Columbia.
8 He was smoothing that ice so both sides, both
9 teams, would have a fair opportunity to win.
10 We have selected you all, because you made a
11 covenant that you would be fair; that you
12 wouldn't be influenced by the fact that the law
13 enforcement officers brought these charges;
14 that the state of South Carolina is prosecuting
15 this case. That you would be fair. And to be
16 fair, that you will follow the principles that
17 I have outlined to you. After this case is
18 concluded, you will find the only fair and
19 reasonable verdict based on what you don't hear
20 in this case and based on the lack of the
21 credibility of witnesses, is a verdict of not
22 guilty.

23 THE COURT: Ms. Fant, you may call your
24 first witness.

25 MS. FANT: Your Honor, the state calls Ms.

1 Gwendolyn Wells.

2 THE BAILIFF: State your full name and
3 spell your last name.

4 A Gwendolyn wells. W-E-L-L-S.

5 DIRECT EXAMINATION BY MS. FANT:

6 Q Ms. Wells, can you tell us where you live,
7 please?

8 A [REDACTED], Sumter County.

9 Q Where do you work?

10 A Willy's Residential Care Facility.

11 Q Are you related to the victim in this
12 case?

13 A No, ma'am.

14 Q To the victim?

15 A Oh, yes. Donald Pettis is my son.

16 Q Did you call him Donald or Tyrone?

17 A We called him Tyrone.

18 Q You called him Tyrone?

19 A Uh-huh. (Affirmative.)

20 Q And he is the person that was actually
21 killed?

22 A Yes.

23 Q And that was on June 8th of 2004?

24 A Yes, sir.

25 Q And did you see Tyrone that day?

1 A I saw him about 10 minutes after four that
2 evening. My mother and myself. Because I went to
3 Boney's to get some cigarettes. And he was standing
4 out there. And my mother told him, say: "Tyrone
5 you need to---

6 MR. JOHNSON: Objection.

7 A "---come home."

8 MR. JOHNSON: That would be hearsay.

9 THE COURT: Are you offering that as an
10 exception to the hearsay rule? Or do you
11 contend that it is hearsay? Or is not hearsay,
12 Ms. Fant?

13 MS. FANT: No, Your Honor, that's fine.

14 THE COURT: Ms. Welch, you wouldn't have
15 any way of knowing this, but under our law,
16 normally you cannot testify as to what anybody
17 told you---

18 A No, nobody told me.

19 THE COURT: Wait just a minute. Listen to
20 me, please. Normally anything that anybody
21 says, anything to you, that is normally
22 considered hearsay. So you can testify as to
23 what you told someone else. But you can't tell
24 what someone else told you. So just listen to
25 her questions and answer them accordingly.

1 Q Without saying what your mom said, you
2 both saw Tyrone that day?

3 A Yes.

4 Q And where did you see him?

5 A In John Boney's parking lot.

6 MR. JOHNSON: I am going to continuing
7 objection.

8 THE COURT: Subject to prior objections.
9 Go ahead, Ms. Fant.

10 (Photocopy marked State's Exhibit No. 5
11 for Id. only.)

12 Q Ms. Welch, I will show you what's been
13 marked for identification as State's Exhibit No. 5,
14 do you recognize that photograph?

15 A This is my son standing right there.

16 Q And where was that photo taken?

17 A At John Boney's.

18 THE COURT: She can identify it. She has
19 identified it, but she can't testify to it
20 until it has been admitted in to evidence.

21 MS. FANT: That's fine. Thank you.

22 Q Your son, Tyrone, did he have a drug
23 problem?

24 A Yes, he had a bad crack cocaine problem.

25 Q Could you tell us a little bit about that?

1 A I had problems with him taking things.
2 And he would stay gone, 2 and 3, and 4 days at the
3 time. And, you know, I just worried about him
4 because I didn't know, you know, where he was or if
5 he was okay. But then he had got into a treatment
6 program. And he was supposed to went for treatment
7 that day, but he didn't.

8 Q About how long was he -- did he have a
9 drug problem?

10 A Oh, for about the past -- well it was
11 about 10 years. It started when he was about 26, 27
12 years old.

13 Q And, as far as you know, did Tyrone have
14 any problems with anybody? Was he having an
15 altercation or currently in any type of beef with
16 anyone?

17 A No, because down at the South side, around
18 John Boney's we used to live down there on Williams
19 Street and he basically knew everybody around there.
20 So I mean, he was a well liked guy. You know, it
21 wasn't no problem.

22 MS. FANT: Please answer any
23 questions that Mr. Johnson may have for you.

24 THE COURT: Cross examination.

25 MR. JOHNSON: Thank you so much for

1 coming.

2 THE COURT: No questions. The witness is
3 excused. Thank you, you may step down.
4 Ms. Fant, call you next witness.

5 MS. FANT: Your honor, at this time the
6 state calls Ivan Sanders. I believe that my
7 law enforcement officer went downstairs to
8 retrieve him.

9 THE COURT: All right.

10 MS. FANT: Your Honor, actually, I believe
11 we may have an issue to take up outside of the
12 jury.

13 THE COURT: Ladies and Gentlemen, let me
14 ask you to go to your jury room for just a
15 minute while I take up this matter of law that
16 the attorney's have advised me of. Do not
17 discuss the case among yourselves. We'll send
18 for you when we're ready to go forward.

19 (Thereupon, the following takes place
20 outside of the presence of the jury.)

21 THE COURT: Yes, ma'am.

22 MS. FANT: Your Honor, Mr. Sanders does
23 have a prior criminal history. It is the
24 state's contention that the only impeachable
25 offense would be the burglary second, for which

1 he was sentenced in 1999. And I believe he did
2 some time and got out after that. Prior to
3 that he has a rather lengthy arrest record.
4 Not all convictions, but all of those are way
5 outside the 10-year rule. I believe that it is
6 only burglary from 1999 conviction that would
7 be impeachable.

8 THE COURT: Show Mr. Johnson his criminal
9 record, and let him see it.

10 MS. FANT: He has a copy.

11 THE COURT: What's your position? She
12 takes the position that there is one offense
13 that falls within the purview of Rule 609 (A)
14 1, as being the only thing that is admissible
15 as far as impeachment. Do you contend there is
16 anything else on there, Mr. Johnson?

17 MR. JOHNSON: If you will indulge me for a
18 moment. We just got this.

19 THE COURT: That's all right, I will.
20 Mr. Johnson, anything other than the one
21 conviction?

22 MR. JOHNSON: Yes, she is inquiring.

23 THE COURT: Okay.

24 MS. FANT: Your Honor, I think we have
25 agreed that in 1999, he went to prison for a

1 burglary second, which was actually a
2 nonviolent. It says violent on the NCIC, but
3 it was a nonviolent charge since he got out.
4 And also possession of burglary tools and
5 unlawful pistol and possession of cocaine.
6 They were all at the same time. That would be
7 within the rules.

8 THE COURT: In 99. Do you agree with
9 that, Mr. Johnson?

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

11 THE COURT: Those would be the matters
12 that would impeachable. Anything else, Ms.
13 Fant, before we bring the jury back?

14 MS. FANT: No, your honor.

15 THE COURT: Bring the jury in, please.

16 (Whereupon, the following takes place
17 within the presence of the jury.)

18 THE COURT: Thank you very much, ladies
19 and gentlemen. We have resolved those legal
20 issues and are ready to go forward. You may
21 call your next witness.

22 MS. FANT: Mr. Sanders, please.

23 THE COURT: Mr. Sanders, come around.

24 Ivan Sanders, being first
25 duly sworn, testified as follows:

1 THE BAILIFF: State your full name and
2 spell your last name please.

3 A Ivan Thomas Sanders. S-A-N-D-E-R-S.

4 Q Mr. Sanders, do you live in Sumter?

5 A Yes, ma'am.

6 Q How long have you lived here?

7 A All my life.

8 Q Where do you work?

9 A Salvation Army Boys and Girls Club.

10 Q Are you in school?

11 A Yes, ma'am.

12 Q Where do you go to school?

13 A Morris College.

14 Q Did you also own a business or were part
15 of a business named Cal-Sans?

16 A Yes, sir.

17 Q Tell us a little bit about that business.

18 A It's a retail business. We sell incense,
19 oil, African clothing, and, you know, other things.
20 Other small earrings and things of that nature.

21 Q Where is Cal-Sans located?

22 A Liberty Street. 402 West Liberty.

23 Q Is that store still open?

24 A Yes, ma'am.

25 Q And back in 2004, June of 2004, were you

Ivan Sanders-Direct by Fant

1 also operating the store at that time?

2 A yes, the store was operating, ma'am.

3 Q Do you recall a time in late May of 2004,
4 or early June when there was a break in at the
5 store?

6 A Yes, I do.

7 Q Tell us about that.

8 A Actually I wasn't working at the store.
9 Velma Holmes was working at the store, and we had a
10 break in one day, and there were a lot of items
11 taken.

12 Q What types of things were taken?

13 A African dresses, I think a couple of
14 sweatsuits, things of that nature.

15 Q About how much merchandise do you think
16 you lost?

17 A I think it was close to \$3,000 roughly.
18 There were some checks that were taken out of the
19 register. Probably about \$157. 150 -- I think it
20 was \$157 total.

21 Q Did you report this to the police?

22 A Yes, it was reported to the police.

23 Q And what else did you do in addition to
24 notifying the police about the break-in?

25 A I went around in the neighborhood to the

Ivan Sanders-Direct by Fant

1 local businesses. And, you know, in the
2 neighborhood which I was very familiar with, because
3 that's where I grew up. And I asked different
4 people, you know, if they hear anything to please
5 let me know.

6 Q And did you also indicate that there might
7 be consequences to that?

8 A I said that, ma'am. I was very upset at
9 the time.

10 Q Tell us what you might have said to the
11 people about it.

12 A I might have said whenever I, you know,
13 find out who did it I was going to, you know,
14 without cursing, I was going to probably rough them
15 up, ma'am.

16 Q And were you able to find out who had
17 broken into the store?

18 A Actually, I did find out. The guy's name
19 was scientific knowledge. I wasn't able to meet
20 with him, but I met with I think it was Joe Sumpter.
21 And he led me to where some of the materials were.

22 Q And so did you get some of those items
23 back?

24 A Yes, I did quite a bit. I guess I didn't
25 get really the oils and stuff that they were

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1 probably able to easily sell, but I got most of the
2 African dresses back.

3 Q And do you recall where they were
4 recovered from? Where did you get them from?

5 A It was a house on Bartlet Street.
6 Probably two houses off of Purdy Street.

7 Q And where were the items that you
8 recovered?

9 A Where?

10 Q Where did you locate them?

11 A At the home.

12 Q At the house?

13 A Yes, ma'am.

14 Q Were they inside? Outside? How did you
15 find these items?

16 A I think it was one guy there. I don't
17 think he really knew what was going on. But
18 Mr. Sumpter give me, told me That these were the
19 bags. And they were in the trash bags.

20 Q And that's Joseph Sumpter?

21 A Yes.

22 Q So after you had gotten those bags, did
23 you talk to scientific knowledge? Or actually I
24 think he goes by knowledge scientific. But
25 whichever. Did you have a conversation with him?

Ivan Sanders-Direct by Fant

1 A It was a while after that. Maybe 3 or 4
2 weeks.

3 Q And what did you to tell him?

4 A As I recall the incident, he had come back
5 in the store, and was harassing the girl that worked
6 in the store. And when I say harassing, he was
7 just, you know, being annoying. And she called me,
8 and I came down to the store. And he wasn't
9 actually in the store at the time, but he was across
10 the street from the store on Salem Street. And we
11 talked back and forth across the street.

12 Q And did you indicate to him that you knew
13 he had broken into the store?

14 A Yes.

15 Q What did you tell him?

16 A I told him to stay away from the store,
17 and if he had come back over there, you know, he was
18 going to have some problems.

19 Q Now following that on the June 8th 2004,
20 did you become aware of the incident that occurred
21 on Edwards Street in which somebody was shot?

22 A Yes, ma'am, I heard about it.

23 Q What happened on that day? First of all,
24 where were you?

25 A I was in Columbia.

Ivan Sanders-Direct by Fant

1 Q And do you live in Sumter?

2 A Yes, ma'am. My son's mother was living in
3 Columbia at the time.

4 Q And what happened that involved you in
5 this case?

6 A It was a phone call in question, ma'am.

7 Q Okay. Tell us about that phone call.

8 A I received a phone call from Mr. McKoy
9 stating that they had knowledge, and they were close
10 to the guy that had broken in the store.

11 Q Okay.

12 A And um---

13 Q Now when you say Mr. McKoy, do you also
14 know him by another name?

15 A Yes.

16 Q What is that?

17 A Wise.

18 Q And where was Mr. McKoy or Wise's normal
19 place of business?

20 A Blanding Street. I don't know the street
21 address.

22 Q But he called you on the phone, is that
23 what you're saying?

24 A That's correct.

25 Q And what did he say to you?

Ivan Sanders-Direct by Fant

1 A He said that the guy that broke in the
2 store was close.

3 Q What else did he say?

4 A He asked me what did I want done, so to
5 speak.

6 Q Did he know that you were concerned about
7 the store?

8 A Sure. Everybody. Everybody in the
9 neighborhood knew.

10 Q Did you talk with him at length about
11 that? Was this a long conversation?

12 A Oh no, ma'am. It was real short, because
13 I was with my son's mother and I couldn't really
14 talk.

15 Q And after he told you that, and asked you
16 what you wanted him to do, what did you say? What
17 was your response to that?

18 A Well since I recovered most of the stuff,
19 and we had already filed a claim with the insurance
20 I told him, you know, that it was over for me. You
21 know, I was done with it.

22 Q Did you know the victim in this case,
23 Tyrone Pettis?

24 A No, ma'am.

25 Q Did you have any suspicions that he was

Ivan Sanders-Direct by Fant

1 the one who broke in the store?

2 A No, ma'am. The only person that I had
3 knowledge of was scientific knowledge, and that's
4 it.

5 Q What was Mr. -- or the defendant's tone on
6 the telephone? What did you perceive just from
7 hearing his voice?

8 A He seemed like he was excited, you know.

9 Q And could you describe what you mean by
10 that a little further?

11 A Anxious. You know, just we had the guy
12 that broke in your store.

13 Q Was the voice raised? Made louder than
14 normal or just?

15 MR. JOHNSON: Object to leading, Your
16 honor.

17 THE COURT: Sustained.

18 Q What did he say when you told him you were
19 done with that?

20 A I don't recall his exact words, because I
21 was trying to get off the phone. But I am sure, you
22 know, it was something to the effect of---

23 MR. JOHNSON: Object, Your Honor, that's
24 speculation. He said he doesn't remember.

25 THE COURT: If he recalls, he can testify

Ivan Sanders-Direct by Fant

1 to it. If he doesn't recall then he can't
2 testify to it. If you recall, testify to it.
3 If you don't recall then just say you don't
4 recall.

5 A I don't recall the exact wording of it.
6 I'm sorry, ma'am. I don't recall the exact wording
7 of it. But it was something that allowed me -- I
8 wanted to get off the phone. I didn't want to keep
9 carrying on the conversation, because of my son's
10 mother being there. And it always caused me
11 problems when I talked about things that I had no
12 business talking about. So that's why I just tried
13 to get off the phone.

14 Q So even though you don't remember the
15 exact words, it was something that you knew you
16 didn't want to---

17 A Keep conversing about it, because I said
18 it was over.

19 Q Now after that, did you make any other
20 phone calls? Did you go anywhere after that? What
21 did you do after that phone call?

22 A Took her home, and I made my way back to
23 Sumter.

24 Q I'm sorry. Go ahead.

25 A On the way back, I called a friend of

Ivan Sanders-Direct by Fant

1 mine.

2 Q And who was that?

3 A Dante McFadden.

4 Q And what did you call Dante for?

5 A I asked him if there was anything going on
6 in the neighborhood down the street.

7 Q And why did you ask him that?

8 A Um, I guess, because I felt uneasy about
9 the phone call.

10 MR. JOHNSON: Objection, Your Honor.

11 THE COURT: What is your objection?

12 MR. JOHNSON: Just feeling. It doesn't
13 have anything to do with the case, what he
14 felt.

15 THE COURT: I understand what the
16 testimony is. What is the legal objection?

17 MR. JOHNSON: That the legal objection,
18 Your Honor, his feelings.

19 THE COURT: Overruled.

20 MR. JOHNSON: It's not relevant.

21 Q I am sorry, you called him why? Why did
22 you call Mr. McFadden?

23 A Oh, because I kind of felt uneasy about
24 the phone call.

25 Q And what did you think that Mr. McFadden

Ivan Sanders-Direct by Fant

1 could do that might---

2 A Nothing, I just---

3 MR. JOHNSON: Objection, your honor.

4 THE COURT: What is your objection?

5 MR. JOHNSON: Again, Your Honor, what he
6 thought Mr. McKoy. He is not an eye witness.
7 Wasn't even present with Mr. McKoy. What he is
8 thinking is not relevant to this case.

9 THE COURT: Overruled. 803 subparagraph
10 3, existence of emotion or physical condition.
11 proceed.

12 Q Do you remember the question? What did
13 you think? Why did you make a phone call and think
14 that Mr. McFadden might be able to tell you
15 something?

16 A I didn't feel that Mr. McFadden would be
17 able to do nothing. I was just wondering if there
18 was anything strange happening in the neighborhood
19 after that phone call.

20 Q Where did he live?

21 A Who?

22 Q Mr. McFadden?

23 A On Blanding Street.

24 Q Would that have been near the place where
25 Wise did his business?

Ivan Sanders-Direct by Fant

1 MR. JOHNSON: Objection, Your Honor. He
2 has not testified that that's his business.
3 Object.

4 MS. FANT: Your Honor, I believe he can
5 say on Blanding Street.

6 THE COURT: He did say Blanding Street.
7 Overruled.

8 Q Just -- how close in the neighborhood is
9 it?

10 A Probably 100 yards.

11 Q So fairly close you would say?

12 A Yes.

13 Q Did you ever talk to wise again that
14 night?

15 A No.

16 Q When did you next talk with him?

17 A Maybe a day or two later.

18 Q And tell us about that conversation.

19 A Well we were hearing in the neighborhood
20 that, you know, it wasn't---

21 MR. JOHNSON: Object, Your Honor, to what
22 he's hearing in the neighborhood.

23 THE COURT: You can't testify as to what
24 you were hearing in the neighborhood. You can
25 testify to what the conversation you had with

Ivan Sanders-Direct by Fant

1 Mr. Wise. Objection is sustained.

2 Q Without saying what you heard, based on
3 what you heard, what did you do?

4 A I asked him about what happened.

5 Q And what did he say?

6 A He said he had no knowledge of what
7 happened. Simple and plain. And, you know, that
8 was that.

9 Q And what did you think about that?

10 MR. JOHNSON: Objection.

11 THE COURT: Sustained.

12 Q How did he appear when you told him that?

13 A As if he didn't want me to ask him about
14 that.

15 Q And why did you not ask him about it
16 anymore?

17 A Because I felt he wouldn't say anything to
18 me. And, you know, I just felt that you know it
19 wasn't going to get any further. And anything else
20 it would have probably, It would have been a
21 problem. So I just left it alone.

22 THE COURT: Please answer any questions

23 Mr. Johnson has.

24 THE COURT: Cross examination, Mr.

25 Johnson.

Ivan Sanders-Direct by Fant

1 CROSS EXAMINATION BY MR. JOHNSON:

2 Q Mr. Sanders, do you remember being
3 interviewed in November of 2007?

4 A By who, sir?

5 Q Captain Holston and Detective Williams?

6 A Yes, sir.

7 Q And this took place at the Sumter Law
8 Enforcement Center?

9 A Yes, sir.

10 Q It what around 11:35 in the morning?

11 A Yes, sir.

12 Q November of 2007?

13 A Yes.

14 Q And you agreed to talk with him in
15 November of 2007, is that correct?

16 A Yes, sir.

17 Q Before 2007, they had not contacted you,
18 is that true?

19 A That's correct, sir.

20 Q And around June 8th, 9th, 10th
21 11th, 12th, 13th, 14th, you were not interviewed,
22 is that right? By anybody at law enforcement, is
23 that true?

24 A The only interview that I had with law
25 enforcement was the time you stated.

Ivan Sanders-Cross by Johnson

1 Q Mr. Sanders, do you recall a second
2 interview on January 16th, 2008?

3 A I was brought in twice, sir. I was asked
4 to come in twice.

5 Q So you there were two interviews. Twice.

6 A After the -- yes, after the first one.

7 Q And so, and on the November interview
8 2007, I believe, you told Captain Holston and
9 Detective Williams that you knew of him, but you're
10 not a friend of his. Isn't that right?

11 A That might be possible, sir.

12 Q That might be possible?

13 A Yes, sir.

14 Q Are you a friend of his?

15 A I'm an acquaintance of his, sir.

16 Q You're an acquaintance of his.

17 A Right.

18 Q But not a friend.

19 A What are you -- what is the definition of
20 friend? I mean?

21 Q I don't know. I am just going on this
22 statement that you gave.

23 A We've talked. we, you know, I have been
24 in his company. Sure I have.

25 Q I beg your pardon.

Ivan Sanders-Cross by Johnson

1 A Go ahead, sir.

2 Q I think your definition would include a
3 friend, an acquaintance. You said, "I knew him from
4 the streets."

5 MS. FANT: Objection.

6 THE COURT: What is your objection?

7 MS. FANT: Your Honor, that's not his
8 statement from the defendant. Those are the
9 detective's interview notes which I turned
10 over.

11 THE COURT: Ask him the questions. The
12 statements he made. And ask him about the
13 statement he had the right to receive any
14 statement. Rephrase your question,
15 Mr. Johnson.

16 Q Did you tell the officer that you knew
17 Mr. McKoy from the streets?

18 A Yes.

19 Q And you went on to say that you did not,
20 know anything about any wrongdoing on the part of
21 Mark McKoy. Didn't you tell them that on November
22 of 2007?

23 A I don't remember that, sir.

24 Q Well is it true that you did not know
25 anything -- anything of any wrongdoing about Mark

Ivan Sanders-Cross by Johnson

1 McKoy?

2 A No, not personally.

3 Q You don't know anything. You didn't know
4 anything.

5 A Not personally, no, sir.

6 Q They also asked you if y'all talked that
7 day on June 8th 2004. And do you recall the things
8 that y'all did?

9 A Yes, sir.

10 Q And isn't it true that Mark McKoy, isn't
11 it true that you did not tell Mark McKoy to harm
12 Tyrone Pettis?

13 A That's correct, sir.

14 Q And isn't it also true that during that
15 conversation Mark McKoy did not tell you that he was
16 going to harm Tyrone Pettis?

17 A That's correct, sir.

18 Q And so there was no conversation between
19 you and Mark McKoy about attacking, shooting,
20 cutting or doing any harm to Tyrone Pettis. Isn't
21 that true, Mr. Sanders?

22 A None whatsoever, sir.

23 MR. JOHNSON: Thank you very kindly, sir.

24 THE COURT: Redirect?

25 MS. FANT: Yes, Your Honor.

Ivan Sanders-Cross by Johnson

1 REDIRECT EXAMINATION BY MS. FANT:

2 Q When Wise called you that night and asked
3 you and said, we've got him here, the guy that broke
4 in to your store, what do you want me to do. What
5 was your perception of what that meant? Why do you
6 think---

7 MR. JOHNSON: Objection, Your Honor.

8 THE COURT: Sustained.

9 Q Do you know why Mr. McKoy called you that
10 day?

11 A Yes, ma'am.

12 Q Why is that?

13 A Because he knew that I was looking for the
14 guy that broke in the store.

15 Q And again, what did he ask you? Or what
16 did he tell you?

17 A He asked me what did I want him to do.

18 Q And what did you tell Him?

19 A I told Him nothing, that was done with.

20 MS. FANT: Thank you.

21 THE COURT: Recross?

22 MR. JOHNSON: No.

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

25 MS. FANT: Your Honor, may this witness be

Ivan Sanders-redirect by Fant

1 excused?

2 THE COURT: Any objection, Mr. Johnson?

3 MR. JOHNSON: No objection, Your Honor.

4 But could he remain under subpoena in case I
5 have to recall him?

6 THE COURT: Do you want him to remain in
7 the building or do you?

8 MR. JOHNSON: Oh, no, sir.

9 THE COURT: Just available by telephone?

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

11 THE COURT: Yes, sir. He will be excused.
12 But you are still subject to being recalled if
13 you are called by telephone. Do You
14 understand?

15 A Yes, sir.

16 THE COURT: You may step down. Counsel,
17 step up please.

18 (Whereupon, judge and attorneys confer at
19 the bench.)

20 THE COURT: Ladies and Gentlemen, we
21 have -- it's about 5:20, and I think it's a
22 good stopping point in the afternoon. And I Am
23 going to adjourn in the afternoon. I am going
24 to ask you -- I am going to allow you to go to
25 your homes and your families. And will tell

1 you the same admonition that you should not
2 discuss this case with anyone or allow anyone
3 to discuss it with you. Nor should you discuss
4 it among yourselves when you are reassembling
5 in the jury room tomorrow morning. Simply
6 forget about this matter over the evening
7 recess and be back in your jury room tomorrow
8 morning please at 9:30. And we will be ready
9 to resume at that time.

10 I am going to do everything I can to start
11 promptly tomorrow morning at 9:30. So if you
12 would be back in your jury room at 9:30. Thank
13 you. You are excused for the evening.

14 (Whereupon, the jury is excused and the
15 following takes place outside the presence of
16 the jury.)

17 THE COURT: At the side bar Ms. Fant
18 indicated that she had matters that needed to
19 be taken up with the court. I will be glad to
20 hear from you, Ms. Fant.

21 MS. FANT: Yes, Your Honor, after the jury
22 was seated, Ms. Lachelle Dukes, who is the
23 wife of the Robin Dukes, the co-defendant,
24 indicated juror no. 152, I believe Ms. Felicia
25 Williams is her cousin. If that is in fact the

1 case.

2 THE COURT: Is her what?

3 MS. FANT: Ms. Dukes, who is the wife of
4 the co-defendant in this case, indicated that
5 Juror No. 152 is her cousin. And we would ask
6 for the court to inquire about that; if she in
7 fact is related to co-defendant in this case;
8 that she be excused and we seat one of the
9 alternates.

10 THE COURT: Mr. Johnson.

11 MR. JOHNSON: What is the number, Your
12 Honor?

13 THE COURT: 152. The first juror drawn.

14 MR. JOHNSON: Certainly we can, you know,
15 we will need to inquire about it and, Your
16 Honor, as I understand Ms. Fant's statement,
17 Mr. Duke's wife's name is Lachelle Dukes?

18 THE COURT: So the information is that the
19 juror ms. Felicia T. Williams is a cousin to
20 whom?

21 MS. FANT: Lachelle Dukes.

22 THE COURT: And who is Michelle Dukes?

23 MS. FANT: It's LA, with an L, Your Honor.
24 Lachelle dukes.

25 THE COURT: Lachelle?

1 MS. FANT: Yes, Your Honor.

2 THE COURT: Who is she?

3 MS. FANT: She is the wife of Robin Dukes,
4 who is the co-defendant and named in count 3 in
5 the indictment. Count 3 in this.

6 THE COURT: All right, I really don't
7 think there is anything I can do unless it's
8 early in the morning. We can make an inquiry
9 to determine what the situation is. Do you
10 agree with that, Mr. Johnson?

11 MR. JOHNSON: Yes, sir, I agree to that.

12 THE COURT: We'll -- as soon as she comes
13 in tomorrow morning, I will personally
14 interview her and find out what the situation
15 is. And then we will go from there.

16 MS. FANT: Thank you, Your Honor.

17 THE COURT: Anything else before we recess
18 this matter before the afternoon?

19 MS. FANT: No, Your Honor. Not from the
20 state.

21 THE COURT: Mr. Johnson, anything on
22 behalf of the defense before we recess for the
23 afternoon?

24 MR. JOHNSON: If you will indulge me.
25 Nothing, Your Honor.

1 THE COURT: We will be in recess in this
2 matter for the afternoon. We will start back
3 tomorrow morning at 9:30.

4 (Whereupon, the trial commences at 9:30 a.m. on
5 Tuesday, September 23, 2008.)

6 THE COURT: All right, counsel, yesterday
7 afternoon, we're back on the record with
8 regard to the State versus Mark McKoy.
9 Mr. McKoy is not present in the court at this
10 time. Present in the courtroom, I would like
11 to go ahead and resolve this juror issue
12 without his presence. Is there any objection
13 to that Mr. Johnson?

14 MR. JOHNSON: No, sir, Your honor.

15 THE COURT: Yesterday afternoon, I was
16 advised that it had come to the attention of
17 the Solicitor's Office that one of the jurors,
18 Juror No. 152, I believe that was the number,
19 Ms. Williams. Yeah. Felicia T. Williams Juror
20 No. 152, might be related to the wife of one of
21 the witnesses in this case. The report that I
22 got was that she was a cousin of Lachelle Dukes
23 who is the wife of Robin Dukes, who is one of
24 the main witnesses in this case.

25 After conferring with counsel, counsel

1 agreed that if that was in fact the case; that
2 she was related to the wife of one of the --
3 actually more than just a witness in this case,
4 the co-defendant in this case. That both sides
5 have requested that she be excused and the
6 alternate substituted. I conferred with her,
7 and did confirm that she is the first cousin of
8 Lachelle Dukes. And with that information,
9 both sides have agreed to, I have excused her
10 from any further service in this case, and will
11 substitute an alternate in her place. Is that
12 procedure agreeable with the state, Ms. Fant?

13 MS. FANT: Yes, Your honor.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Yes, sir.

16 THE COURT: That being the case and under
17 the rules, there are two alternates in this
18 case. Ms. Frierson is one. And mr. Smallwood
19 is the other.

20 THE BAILIFF: No, sir. Kenneth Coker is
21 one.

22 THE COURT: I'm sorry, you're right.
23 Coker is one and Smallwood is one. Under the
24 rules the alternate is not substituted
25 according to the order of selection, but

1 randomly. Or as the statute says by lot. So
2 that being the case, both names will be placed
3 into a bin. And one name will be drawn,
4 Mr. Clerk. If you will put both names in the
5 bin. And draw one name as the alternate
6 replacing the other. Let the record reflect
7 that both names are in the bin. The court
8 would draw one of the names out. Any
9 objection?

10 MR. JOHNSON: None, your honor.

11 THE COURT: Okay. Mr. Smallwood has
12 been selected as the alternate to take the
13 place of Ms. Williams, and I will so advise
14 him. Check and see how long it's going to be,
15 whether we need a break, or how long it's going
16 to be. Mr. Johnson, he's dressed and ready
17 but wants to speak with you before he comes
18 out. So I will allow you to go back there and
19 speak with Him.

20 (Whereupon, the court takes a short
21 recess.)

22 THE COURT: Back on the record with the
23 State versus Mark McKoy, 05-GS-43-33, let the
24 record reflect that Mr. McKoy is present with
25 his counsel, Mr. I.S. Levy Johnson and Mr.

1 George Johnson. The state is also present
2 through Ms. Fant. And we are ready to proceed.
3 As soon as we bring the jury in, I will
4 substitute Mr. Smallwood for the juror that was
5 excused.

6 Mr. Johnson, have you explained to Mr.
7 McKoy, that situation on the jury?

8 MR. JOHNSON: I will, Your Honor.

9 THE COURT: Go ahead, and tell him what we
10 did in that regard and why it was done.
11 Anything before we bring the jury, Ms. Fant?

12 MS. FANT: Your Honor, I just wanted to go
13 over the criminal history and impeachment for
14 the witness.

15 THE COURT: Wait just a minute. Let's go
16 ahead, maybe go ahead -- it's probably better
17 and we'll take them in order. Let's go ahead
18 and take care of the juror situation, Mr.
19 Johnson. Go ahead and explain that to him.
20 Go ahead, Mr. Johnson. 152, Ms. Williams.

21 MR. JOHNSON: I have explained it to him,
22 Your Honor.

23 THE COURT: Thank you, sir. Let the
24 record reflect for a few minutes Mr. Johnson
25 talked with Mr. McKoy regarding substitution of

1 Mr. Smallwood as the alternate juror for Ms.
2 Williams. That was agreed by both the State
3 and the Defendant. Ms. Fant, what have you
4 got? Have you got some?

5 MS. FANT: I just want to go over the
6 witnesses that we are getting ready to present
7 this morning. The criminal history and what
8 may be admissible for impeachment purposes.

9 THE COURT: Yes, ma'am.

10 MS. FANT: Latimore Holmes is currently in
11 the Federal Correctional Facility. Based on
12 his NCIC, I believe that the only thing that he
13 is subject to impeachment on is a current
14 conviction. Which I don't know the exact
15 nature. He can tell you. It's either
16 conspiracy to traffic in drugs or drug
17 trafficking. All of his other things are
18 outside the 10 year requirement for
19 impeachment. Do you want to address each one
20 at a time?

21 THE COURT: Let's do, Mr. Johnson, do you
22 have a copy of his NCIC?

23 MR. JOHNSON: We were given it about 20
24 minutes ago, Your Honor.

25 MS. FANT: I gave those to you yesterday.

1 MR. JOHNSON: Which ones?

2 THE COURT: Latimore Holmes.

3 MS. FANT: Latimore Holmes.

4 THE COURT: When was the drug Case? What
5 was the date?

6 MS. FANT: Your Honor, I believe he was
7 convicted in 2005.

8 THE COURT: What was the charge?

9 MS. FANT: Conspiracy to PWID cocaine.

10 THE COURT: Mr. Johnson, do you see
11 anything else that would be impeachable?

12 MR. JOHNSON: No, sir, your honor.

13 THE COURT: That will take care of
14 Mr. Holmes. He is impeachable for the drug
15 charge.

16 THE COURT: What else, Ms. Fant?

17 MS. FANT: Just on Angela Allen; that we
18 had no record. WE wanted to make sure that
19 they had seen that NCIC.

20 THE COURT: She's indicated she knows of
21 no impeachable offenses on Angela Allen.

22 THE COURT: Who else?

23 MR. JOHNSON: Joseph Sumpter it looks like
24 he had some remote convictions. But in 2003, a
25 conviction for burglary third and possession of

1 a stolen vehicle.

2 THE COURT: Do you know of anything else
3 against Mr. Sumpter that you think would be
4 impeachable, Mr. Johnson? Either Mr. Johnson?

5 MR. JOHNSON: No, sir, your honor.

6 MS. FANT: Opradela Lyons, excuse me, from
7 2001 possession of a stolen vehicle, and from
8 2004, possession of cocaine base. Her other
9 priors are either remote or either in
10 Magistrate Court; such as, possession of drug
11 paraphernalia.

12 THE COURT: 01, possession of a stolen
13 vehicle, and 04 possession of cocaine base.
14 Mr. Johnson, do you see anything else that you
15 believe is impeachable?

16 MR. JOHNSON: No, your honor.

17 THE COURT: Those two. Okay. Possession
18 of a stolen vehicle and possession of cocaine
19 base. All right.

20 MS. FANT: And Allen McConico, Your Honor,
21 we would submit that anything on his prior
22 record is remote, and he is not subject to
23 impeachment.

24 THE COURT: What about Mr. McConico
25 Mr. Johnson?

1 MR. JOHNSON: Your Honor, do they have a
2 mental evaluation on him?

3 MS. FANT: No, there is no need.

4 THE COURT: No. She said no. From a
5 criminal standpoint do you know of anything on
6 Mr. McConico's record that you intend to use
7 for impeachable purposes, Mr. Johnson?

8 MR. JOHNSON: Sir?

9 THE COURT: Do you know of anything on
10 Mr. McConico---

11 MR. JOHNSON: No, sir.

12 THE COURT: ---that you intend to use for
13 impeachment?

14 MR. JOHNSON: No, sir. We reviewed his
15 records and they are 10 years old, Your Honor.

16 THE COURT: Thank you.

17 MS. FANT: Your Honor, based on
18 Mr. Johnson's comment, I would move that any
19 indication of his knowledge of some mental
20 condition be excluded. We have no evidence of
21 that. And Mr. McConico, I believe if you want
22 to qualify him, is qualified. And certainly if
23 he does have a prior mental health history, it
24 would not bear on his credibility as a witness.

25 THE COURT: Well you may be able to ask

1 him something on it. But my question, I guess,
2 Mr. Johnson, do you challenge Mr. McConico's
3 competency to testify?

4 MR. JOHNSON: I don't know, Your Honor,
5 about additional information. I have never
6 spoken to him.

7 THE COURT: Okay. Apparently not. So we
8 will go forward.

9 MS. FANT: One last thing, Your Honor.
10 Detective Rabon just notified me, and there
11 were numerous witnesses who were excluded from
12 the courtroom, are sitting back there now. I
13 would ask that they be excluded and not come
14 back in the courtroom until called.

15 THE COURT: Yesterday I made a ruling that
16 all potential witnesses whose names were called
17 yesterday morning, must be excluded from the
18 courtroom during the -- I am sequestering the
19 witnesses. And that goes not just for
20 yesterday, but throughout this trial. I don't
21 want to read the whole witness list again. But
22 if you were sequestered yesterday, that means
23 you are sequestered today and will be
24 sequestered throughout the trial of this case.
25 You will have to stand by until you are called

1 as a witness in this case.

2 So anyone who is a potential witness in
3 this case by either the state or the defense
4 and is present in the courtroom must leave at
5 this time. Anything else before we bring the
6 jury in?

7 MS. FANT: Nothing from the state, Your
8 Honor.

9 THE COURT: Mr. Johnson?

10 MR. JOHNSON: Nothing from the defense,
11 Your Honor.

12 THE COURT: Bring the jury in please.

13 (Whereupon, the following takes place
14 within the presence of the jury.)

15 THE COURT: Thank your. Mr. Smallwood, if
16 you will have a seat right here. You are one
17 of the principal members of the jury.

18 Ladies and Gentlemen, let me tell you what
19 the situation is. T has come to our attention.
20 And this is why we draw alternates. They was a
21 potential conflict with one of your fellow
22 jurors that came to the attention of the court.
23 T was not her fault. T was not anything that
24 she would have realized as a result of the
25 questions that were asked. But t did come to

1 the attention of the court, and after
2 conferring with counsel it was decided that
3 because of this potential conflict, that it
4 would be better that she be excused from this
5 jury. And this is the reason -- one of the
6 reasons, we draw alternates. So she has been
7 excused.

8 And the other matter is that under our law
9 the way that an alternate is substituted, they
10 are not substituted in the order that they are
11 drawn, but are substituted by lots when we have
12 more than one alternate. So what happened in
13 this case, there are two alternates. And both
14 of your names were placed in the box. And one
15 name was drawn. And mr. Smallwood, you were
16 selected to become the juror to replace the
17 juror, Ms. Williams, who was excused. So you
18 will now be one of the principal jurors in this
19 case. And you will remain as the alternate in
20 this case. So you will always sit in that
21 seat. And then of course, you will sit as a
22 principal juror here. And we have done away
23 with the extra alternate seat back there. We
24 are now ready to go forward.

25 Ms. Fant, you may call your next witness.

1 MS. FANT: Your Honor, at this time, the
2 state calls Joseph Sumpter.

3 JOSEPH SUMPTER, being
4 first duly sworn, testified as follows:

5 THE COURT: Come up please, Mr. Sumpter.
6 Raise your right hand.

7 THE BAILIFF: State your full name.

8 A Joseph Sumpter. Sumpter.

9 DIRECT EXAMINATION BY MS. FANT:

10 Q Mr. Sumpter, could you tell us where
11 you're from please?

12 A Sumter, South Carolina.

13 Q And how long have you lived here?

14 A 57 years.

15 Q Where do you live?

16 A [REDACTED].

17 Q Prince?

18 A Brent.

19 Q Do you know Tyrone Pettis, the victim in
20 this case?

21 A Yes, I did.

22 Q How did you know him?

23 A By being out.

24 Q What do you mean by being out?

25 A Well we used to go to different -- I used

Joseph Sumpter-direct by Fant

1 to see him at different places, that's how I got to
2 know Him.

3 Q About how long would you say you knew Him?

4 A 15/20 years.

5 Q A long time then. Now on the day this
6 incident occurred, the day Tyrone was killed June
7 8th 2004, were you with Tyrone that day?

8 A Yes, I was.

9 Q Tell us about that.

10 A Well I met Tyrone on the corner of Oakland
11 and Blanding. He was getting out of the car. Which
12 I think he said it was a preacher. Right. So we
13 went down the street. Said he wanted to get
14 something, so he asked me to go with him. So we
15 went on down there together.

16 Q Where did you go?

17 A We went to his house on Blanding.

18 Q Whose house was that?

19 A I think it was Wise's house.

20 Q You think it was Wise's house, or you know
21 it was wise's house?

22 MR. JOHNSON: Objection, Your Honor.

23 THE COURT: What is the objection?

24 MR. JOHNSON: Your Honor, she cannot
25 regurgitate what he said. He said he thought

Joseph Sumpter-direct by Fant

1 it was wise's house.

2 THE COURT: Rephrase the question. I

3 sustain it as asked.

4 Q Whose house was it?

5 A Well quite a few people be there, right?

6 So I don't know exactly whose name was on the lease.

7 So I think it was his house.

8 Q Who was staying there at the time?

9 A Quite a few people.

10 Q What was the purpose of going to the house

11 on Blanding Street?

12 A We went there to get something to get high

13 on.

14 Q Okay. By that what do you mean? What

15 were you going to buy?

16 A Some crack.

17 Q Crack cocaine?

18 A Right.

19 Q And what happened when you got to the

20 house?

21 A We went in. I went around in the room.

22 Tyrone, he talked, I don't remember who he talked

23 to, right? But I went around in the room and sit

24 down. Then he came on around and we got high.

25 Q Let's start with going into the house.

Joseph Sumpster-direct by Fant

1 How did you all get into the house? Did you knock
2 on the door or did you just walk on in?

3 A Just walk on in.

4 Q And what -- how could you do that?

5 A T was unlocked. I mean the screen door,
6 right? And the door was open.

7 Q Well are you normally in the habit of
8 walking in to people's houses? Just walking in
9 without knocking?

10 A No, not if I don't know them.

11 Q Okay. So why did you not knock that day?

12 A Because everybody else was standing
13 around. You know, I could see people in the house
14 from the door when I went in, right? I opened the
15 screen door. Then I can look in the house and I can
16 see a lot of people in the house, right? So I just
17 walked on in.

18 Q Okay. And who were those people that you
19 saw at the house?

20 A Well I saw -- I seen wise. I seen his
21 girl, Opradela. I think it was diamond. There was
22 quite a few people in there. I can't remember
23 exactly who all was there.

24 Q Was Robbie Dukes there?

25 MR. JOHNSON: Leading, Your Honor.

Joseph Sumpter-direct by Fant

1 THE COURT: Overruled. Not every yes or
2 no question is leading.

3 Q Was Robbie Dukes there?

4 A Yeah.

5 Q And what about Demo?

6 A Yeah, I think he was there too.

7 Q Do so know Demo's real name?

8 A I think it was Demont.

9 Q But what is his full real name? Do you
10 know that?

11 A Demont Johnson, I believe.

12 Q So what happened after y'all walked in the
13 house?

14 A Well I went around in the room, right?
15 And sit down and I was talking to a couple of the
16 girls. And Tyrone came on around, and we started
17 to get high.

18 Q Who purchased the crack cocaine?

19 A Tyrone.

20 MR. JOHNSON: Objection, Your Honor.

21 Nobody has said that. She is assuming facts
22 that are not in evidence.

23 MS. FANT: He already testified to that.

24 THE COURT: I'll sustain the objection as
25 asked. You can lay the foundation.

Joseph Sumpter-direct by Fant

1 Q Did someone purchase crack cocaine at the
2 house?

3 A Evidently Tyrone must have purchased it,
4 because he had it.

5 Q What did he do with it?

6 A He gave me some of it. And I think he
7 give Robbie some. And we got high.

8 Q So he gave you some. He gave Robin Dukes
9 some.

10 A I think he -- I can't remember exactly
11 what happened.

12 Q Okay. who sold him the drugs?

13 A I don't know. I went around in the room.

14 Q And do you recall giving a statement to
15 law enforcement in this case, on excuse me, August
16 16th 2004?

17 A Yeah, I do.

18 Q And do you recall in there indicating to
19 them who had sold the crack cocaine?

20 A I might have said something. I don't
21 remember exactly what I said.

22 (statement of Joseph Sumpter marked
23 State's exhibit no. 6 for id only.)

24 MR. JOHNSON: Your Honor, we filed many
25 motions about the crack. We would ask that it

Joseph Sumpter-direct by Fant

1 be preserved.

2 THE COURT: Yes, sir. Those objections
3 are noted on the record. I don't think the
4 rule requires, But they will be noted.

5 Q Mr. Sumpter, let me show you what has been
6 marked for identification purposes as state's
7 exhibit 6. Do you recognize that?

8 A That's just my initials.

9 Q Okay. Did you write that statement, or
10 are those your words?

11 A Yeah. Some of these are my words; yes.

12 Q Let me ask you, could you read through it
13 and see if that refreshes your memory? Okay. Does
14 that refresh your memory---

15 A Yes, Ma'am.

16 Q ---about who sold the drugs? And who was
17 that?

18 A Well during the time that I gave that
19 statement, I was---

20 Q That was not the question.

21 MR. JOHNSON: Objection, Your Honor.

22 THE COURT: She's right, That was not the
23 question. Answer the question, and you have
24 the right to explain it. Ask the question
25 again.

Joseph Sumpter-direct by Fant

1 A What was the question now?

2 Q Who sold Tyrone the drugs?

3 A Right at this present, I don't remember.

4 Q Here is your statement back again. Can
5 you read that sentence that's in the brackets right
6 there?

7 A Yes, I read t.

8 Q Okay. I would like you to read it out
9 loud, please.

10 A Tyrone told -- Tyrone---

11 Q T begins with wise..

12 A Wise went ahead and said Tyrone -- sold
13 Tyrone some crack.

14 Q Could you read it again, please?

15 MR. JOHNSON: Objection, Your Honor.

16 A Wise went ahead and sold---

17 THE COURT: Wait a minute.

18 A ---Tyrone some crack.

19 THE COURT: When there is an objection, I
20 want to hear the objection. What's your
21 objection?

22 MR. JOHNSON: He's already answered the
23 question.

24 THE COURT: Overruled. Proceed. Under
25 607, she has the right to attack the

Joseph Sumpter-direct by Fant

1 credibility of the witness even though she
2 called him.

3 Q Read that sentence again please.

4 A Wise went ahead and sold Tyrone some
5 crack.

6 Q Thank you. Now at some point did you
7 observe wise make a phone call?

8 A No, I didn't.

9 Q Did you see him with the telephone at all?

10 A Well he might have had one. I mean, I
11 can't remember exactly what went back during then.

12 Q Okay. You just read your statement---

13 A Right.

14 Q ---and you don't recall writing there
15 about that?

16 A Can I explain this to you?

17 Q Go ahead.

18 A During the time that I gave those
19 statements, right, the detective, he coached me
20 through those statements.

21 Q Okay. Who was that?

22 MR. JOHNSON: Your Honor, let him finish
23 his answer please.

24 THE COURT: He did. He finished it. And
25 I think she just asked him who it was.

Joseph Sumpter-direct by Fant

1 A Detective Brannon.

2 Q Brannon?

3 A Yes.

4 Q Okay.

5 A The day I gave those statements, right, we
6 was in a high speed chase. And the guy who was
7 driving, he had a stolen vehicle. I didn't know
8 nothing about it. Right. So when he caught us, he
9 told me, "Sumpter, you are going to give me
10 something today."

11 Q He did.

12 A Yeah.

13 Q But you have been convicted yourself of
14 possession of a stolen vehicle, haven't you?

15 A Yes, I have.

16 Q So you were with somebody on that day and
17 you didn't know the vehicle was stolen?

18 A No, I didn't.

19 Q Tell us how he forced you. explain that
20 for me.

21 A Well he gave the statement, right. And he
22 took me through it. And at the time I was tried.
23 So I went along with what he said.

24 Q Is this your name, your signature on
25 there?

Joseph Sumpter-direct by Fant

1 A Yeah, this is my signature.

2 Q Did you read the statement?

3 A I don't remember whether I read it or not.

4 Q Okay. Who else was there?

5 A Who else was where?

6 Q With you when this statement was taken?

7 A Another defective.

8 Q Who was that?

9 A I can't remember who he was.

10 Q But what I want to know exactly is how
11 this came about. Did he write it up and then force
12 you to sign it? I want to know exactly how he did
13 this to you.

14 A He talked to me, right? And he said, he
15 coached me along, asking me what happened.

16 Q Okay.

17 A And he wrote the statements up, right?

18 Q Based on what you told him.

19 MR. JOHNSON: Objection, Your Honor.

20 THE COURT: Don't lead him.

21 MR. JOHNSON: That's not a question.

22 That's a commentary.

23 THE COURT: I'll take care of it, Mr.

24 Johnson. Just make your objections and I'll
25 take care of it.

Joseph Sumpter-direct by Fant

1 THE COURT: Don't make comments. Just ask
2 him questions, please, Ms. Fant. And you do
3 have the right to ask him -- impeach him under
4 607.

5 Q Did Detective Brannon ask you any
6 questions?

7 A Yes, he did.

8 Q Did you answer them?

9 A Yes, ma'am. I answered a lot of
10 questions.

11 Q And did he write that down?

12 A Yeah, he was writing while I was talking.

13 Q And in fact that was a statement that you
14 signed right here.

15 A Ms. Fant, I am going to tell you the
16 truth. the day I signed that, right, and the day
17 that happened, I was trying to just get up on out of
18 there.

19 Q So in other words, you are saying this is
20 a lie?

21 A I don't -- listen, it might not be no lie,
22 and it might be. But from right now, I don't even
23 remember.

24 Q Okay. Well you just read it over. That
25 didn't refresh your memory?

Joseph Sumpter-direct by Fant

1 A I read it over, right.

2 Q Okay..

3 A But right now, I don't even remember.

4 Q Okay. Well let me help you. Please read
5 that sentence that is starred right there.

6 A Where the star is?

7 Q Uh-huh. (affirmative.)

8 A I stayed up front in the doorway. And I
9 saw wise on the phone, but I couldn't hear what was
10 being said.

11 Q Okay. So in fact you did see wise on the
12 phone.

13 A I might have did.

14 Q What happened after that? What happened
15 to Tyrone after that?

16 A Me and Tyrone left.

17 Q Why did y'all leave?

18 A He said he wanted a beer.

19 Q Okay. Was he seeming nervous at the time?

20 A Yeah, he was paranoid.

21 Q Why was he paranoid?

22 A Well a lot of people are---

23 MR. JOHNSON: Objection, Your Honor. He
24 can't speak for the defendant Tyrone.

25 THE COURT: You can't give us a

Joseph Sumpter-direct by Fant

1 subjective -- an opinion of that. If he has
2 got objective facts then he can testify to
3 those. But he cannot give a subjective opinion
4 as to why he was paranoid.

5 Q How was he acting that made you think
6 that?

7 A To think that he was paranoid? I mean,
8 nervous. I mean, that's how I do it.

9 Q I sorry, I couldn't understand your last.

10 A That's how I being, how you do, being
11 nervous, jittery.

12 Q You don't know why he was nervous?

13 A No, I don't.

14 Q How long would you say you were at the
15 house?

16 A Maybe about 15 minutes, 20 minutes.

17 Q And what happened after that?

18 A We left.

19 Q Okay. And where did you go?

20 A Me and Tyrone got as far as the corner of
21 Blanding and Bartlet, right? And he seen Robbie.
22 He said Robbie I think you should ride with your
23 cousin or some kin. And he said get Robbie with me
24 to go get a beer, and I left.

25 Q Who did he see Robbie with?

Joseph Sumpter-direct by Fant

1 A Really I don't know. I don't know whether
2 he seen Robbie was with somebody or Robbie was by
3 his self. But when we got to the corner, right.

4 Q Uh-huh. (affirmative.)

5 A He seen -- he said he would get Robbie to
6 go with him.

7 Q And when you're talking about Robbie, are
8 you referring to Robbie Dukes?

9 A That's right.

10 Q Okay. So you don't recall who Robbie was
11 talking to?

12 A No, I don't.

13 Q Please read the bracketed parts beginning
14 right there.

15 A "Tyrone and me left walking. And when we
16 got to the corner of Blanding and Bartlet Street,
17 Tyrone looked back at Wise's house. And he saw
18 Robbie Dukes and Wise standing on the outside of
19 Wise's house and they were talking. Tyrone said"---

20 Q That's it. So who was Robbie talking to?

21 A He must have been talking. -- if I put that
22 down there and if I said it, he must have been
23 talking to wise.

24 Q What happened after Robbie and Tyrone met
25 up?

Joseph Sumpster-direct by Fant

1 A I really don't know, because I left.

2 Q Okay. where did you go?

3 A I went on to Samson Street.

4 Q Did you ever hear a gunshot?

5 A Yes, I did.

6 Q What did you do after you heard a gunshot?

7 A I started back down to where I heard the
8 gunshot.

9 Q Where did you hear it come from?

10 A It came from down from where I just left.

11 Q Okay. And that was the Edwards Street
12 area?

13 MR. JOHNSON: Objection, Your Honor,
14 that's leading. He has not mentioned Edwards
15 Street.

16 THE COURT: Objection is sustained.
17 Rephrase it.

18 Q Do you recall whether it was Edwards
19 Street or not?

20 A Well from what I heard, right? Gunshots,
21 it could have been Edwards Street. T could have
22 been Purdy Street. T could have been any one of
23 them streets.

24 Q Okay. Please read the last sentence in
25 the brackets there.

Joseph Sumpter-direct by Fant

1 A "When I got to the corner of Bartlet and
2 Samson that's when I heard the shot come from this
3 area on Edwards Street and Sam's is."

4 Q So you heard it come from Edwards Street.
5 At least according to this statement.

6 MR. JOHNSON: Objection, Your Honor. That
7 is not what that says.

8 THE COURT: You will have a chance to
9 clear it up on cross examination. The question
10 was proper. Please answer -- you are entitled
11 to ask it, Ms. Fant.

12 Q And you indicated that's where Sam's is.

13 A Uh-huh. (affirmative.) Well the detective
14 he brought all that into it, right? when he was
15 writing those statements, right? He knew all this.

16 Q How did he know where the gunshot came
17 from?

18 A Because I reckon he got the word from
19 somebody who done told him, I don't know. But he
20 was telling me more about it than I knew.

21 Q Okay. SO your testimony here is that the
22 the detectives told you that you heard a gunshot
23 coming from Edwards Street.

24 A This is what he said. He said now when
25 you heard the gunshot was in the area of Sam's

Joseph Sumpter-direct by Fant

1 house and Edwards Street. I told him yeah. That's
2 how he wrote it out.

3 Q But you signed it, right?

4 A Yeah, I signed it.

5 Q Did you actually go to the scene?

6 A No, I didn't.

7 Q Why not?

8 A Too many policemen.

9 Q Now after this incident occurred, did
10 anyone ever come to talk to you about this case and
11 your testimony?

12 A I don't quite follow.

13 Q Since June 8, 2004, has anyone approached
14 you about your testimony in this case?

15 A No.

16 Q So no one came to you and asked you what
17 you were going to say?

18 A No.

19 Q And if you were going to be good with it?

20 A No.

21 Q Kim Delay didn't ask you anything?

22 MR. JOHNSON: Objection, that is not
23 relevant unless my client. Absolutely
24 objection. that's prejudicial, Your Honor. T
25 has nothing to do with this case.

Joseph Sumpter-direct by Fant

1 THE COURT: Come up.

2 (Whereupon, the attorneys approach the
3 bench and confer with judge.)

4 THE COURT: Objection is sustained.

5 MS. FANT: Answer any questions
6 Mr. Johnson has.

7 THE COURT: Cross examination, Mr.
8 Johnson?

9 CROSS EXAMINATION BY MR. JOHNSON

10 Q Mr. Sumpter, my name is I.S. Levy Johnson,
11 and I represent Mr. McKoy. How are you this
12 morning?

13 A How are you doing?

14 Q Fine, sir. Who asked you to come here
15 this morning?

16 A To be in court here this morning?

17 Q Yes, sir.

18 A I call her Ms. Detective Irene.

19 Q Ms. Detective Irene.

20 A She told me I had to be here this morning.

21 Q Did they subpoena you to be here this
22 morning?

23 A Yes, sir.

24 Q So it was their idea to bring you in to
25 court today?

Joseph Sumpter-cross by Johnson

1 A Yeah, under subpoena.

2 Q And did you want to come to Court today?

3 A No, not really.

4 Q Not really. And Ms. Fant has asked you
5 extensively about this statement that you made on
6 the -- that was made on August 16th 2004. Do you
7 remember meeting with Mr. Brannon?

8 A Who?

9 Q Detective Brannon?

10 A Yes.

11 Q And as I understand your testimony, the
12 meeting took place after you had been arrested and
13 suspected on stealing a car, is that right?

14 A No, I wasn't arrested. He put me in the
15 car, right?

16 Q He put you in what car?

17 A Sir?

18 Q He put you in what car?

19 A The police car.

20 Q Okay. What did he with you?

21 A He took me downtown.

22 Q He took you downtown?

23 A Yeah, to the police station.

24 Q And at that time were they investigating a
25 stolen vehicle?

Joseph Sumpter-cross by Johnson

1 A No, not as I know of.

2 Q Why did he pick you up?

3 A Okay, the guy who was driving the stolen
4 vehicle, right? Me and him was together. And we
5 was over in the drug area, and the police put the
6 blue light on, and he shot off.

7 Q And what were you doing at that time?

8 A I was riding with him.

9 Q You were riding with him?

10 A Yes.

11 Q And I am confused. Were you a passenger
12 in the car?

13 A I was a passenger, yes.

14 Q And so when the car was stopped, that's
15 when both of you were taken in to custody?

16 A Yes.

17 Q And you were taken down to the police
18 station.

19 A Right.

20 Q And when you got down to the police
21 station they started asking you not about the stolen
22 vehicle, they started to ask you about the murder of
23 Tyrone Pettis, is that not correct?

24 A Yeah.

25 Q And when they started asking you about

Joseph Sumpter-cross by Johnson

1 Tyrone Pettis, they had a recorder there, did they
2 not? Do you remember seeing a tape recorder?

3 A I can't remember.

4 Q There wasn't any tape recorder there,
5 isn't that right? You didn't see a tape recorder,
6 did you?

7 A I don't remember.

8 Q You don't remember.

9 A Right.

10 Q Is this the statement that you typed up?

11 A No, I didn't type it up.

12 Q Who typed it up?

13 A The detective typed it up.

14 Q Now you said that he coached you. Now I
15 noticed this statement doesn't have the questions on
16 it. Did he write down his questions?

17 A I don't quite understand.

18 Q What I am saying, as I understand your
19 testimony, there were questions and there were
20 answers. Is that not correct?

21 A Right.

22 Q And notice absent from this statement
23 there were no questions. There's just a narrative
24 of what they claim you said.

25 A Right.

Joseph Sumpter-cross by Johnson

1 Q And you're telling us today that you were
2 coached in to saying the things that are in this
3 statement. Isn't that true?

4 A Well I was leading in to a lot it. But...

5 Q A lot of it.

6 A Right.

7 Q They were supplying the information---

8 A Right.

9 Q ---to you?

10 A Right. Right.

11 Q And you were adopting it?

12 A That's right.

13 Q And that's the technician they commonly
14 employee with people when they get in that type of
15 setting. Isn't that right, Mr. Sumpter. You know
16 that from your experience, isn't that right?

17 A True.

18 MS. FANT: Objection, Your Honor.

19 THE COURT: She's objecting to that.

20 What's your objection, Ms. Fant?

21 MS. FANT: He would have no idea what the
22 normal police procedures---

23 THE COURT: All right.

24 MS. FANT: ---are.

25 THE COURT: Objection is sustained as

Joseph Sumpter-cross by Johnson

1 asked. You can lay the foundation if you would
2 like to.

3 Q Based on your personal experience, you
4 have been interviewed and interrogated in the past
5 by police officers, is that right?

6 THE COURT: Overrule that objection.
7 Proceed.

8 A Yes, I have.

9 Q And based on your personal experience, is
10 it not true, that the technique that is employed
11 that they ask leading questions and supply the
12 answers, isn't that true?

13 MS. FANT: Your Honor, I object.

14 THE COURT: Wait and let him finish his
15 question, Ms. Fant. Go ahead, Mr. Johnson.

16 Q Isn't that true?

17 THE COURT: Wait just a minute. Now
18 what's your objection?

19 MS. FANT: Your Honor, he can testify
20 about a specific time if that's what they did
21 to him. But he is still talking about
22 incidents---

23 THE COURT: Overruled. Cross examination.
24 He asked him about personal experience.

25 Q Isn't that the way it worked, Mr. Sumpter?

Joseph Sumpter-cross by Johnson

1 A Yes.

2 Q And normally it is never recorded so
3 someone later on can accurately hear---

4 MS. FANT: Objection, Your Honor.

5 THE COURT: Let him finish his question,
6 Ms. Fant. Go ahead.

7 Q Normally there is never a tape recorder
8 there, so the questions and the answers can be
9 accurately preserved as to what was asked and what
10 was said. Isn't that true, Mr. Sumpter?

11 THE COURT: That objection is sustained.

12 Q Mr. Sumpter, isn't it true on the day of
13 June 8, 2004, the last time you saw Tyrone Pettis,
14 he was alive?

15 A Last time I saw him, he was alive.

16 Q And isn't it true on June 8, 2004, you did
17 not see Mark McKoy shoot Tyrone Pettis?

18 A No, I didn't.

19 Q Isn't it true at the time of the shooting
20 you were not on Edwards Street?

21 A No, I wasn't.

22 Q Isn't that right?

23 A That's right.

24 MR. JOHNSON: No further questions, sir.

25 THE COURT: Redirect?

Joseph Sumpter-cross by Johnson

1 MS. FANT: Yes, sir, your honor.

2 MR. JOHNSON: Indulge me just one moment,

3 Your Honor.

4 THE COURT: All right.

5 MR. JOHNSON: No further questions, Your

6 Honor.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION BY MS. FANT:

9 Q Did you request that this statement be
10 tape recorded?

11 A No, I didn't.

12 Q Were you concerned that they might be
13 directing your statement?

14 A No, I wasn't.

15 Q And you indicated that you came to Court
16 the day of the subpoena and that you didn't want to
17 come to court today, is that true?

18 A That's true. I didn't -- I mean if I had
19 someplace else to be other than here, yeah, I would
20 like to be there.

21 Q Okay. Why didn't you want to come to
22 court today?

23 A Because really I have no involvement in
24 this.

25 Q Well you do not consider being with the

Joseph Sumpter--redirect by Fant

1 victim, 20 or 30 minutes before they're killed to be
2 somewhat involved?

3 THE COURT: Sustained.

4 MR. JOHNSON: Objection.

5 THE COURT: You can't cross examine. You
6 can lead, but you can't cross examine them.

7 Q You admit -- do you admit that you were
8 with the victim shortly before he was killed?

9 A About 15 or 20 minutes, yes.

10 Q And you don't think it would be important
11 to tell the jury about that?

12 A I mean, yeah.

13 Q Okay. So why didn't you want to come to
14 court today?

15 A Well I already told the jury on that. I
16 mean I already gave a statement on that.

17 Q Well so this is your statement in fact?

18 A What I'm saying, I already told what I
19 know.

20 Q Okay. And that's what's contained in that
21 statement. Who did you tell it to then?

22 A I talked to Detective Irene.

23 Q Okay. For the record he has pointed to
24 detective Rabon. But Detective Culick is involved
25 in this case. Are you afraid of Wise?

Joseph Sumpter--redirect by Fant

1 MR. JOHNSON: Objection, your honor.

2 THE COURT: Not in response to cross
3 examination. Objection sustained.

4 MS. FANT: Nothing further.

5 THE COURT: Recross?

6 MR. JOHNSON: No, your honor.

7 THE COURT: Thank you, sir. You may step
8 down. You may call your next witness.

9 MS. FANT: Your Honor, at this time the
10 state would call Opradela Lyons.

11 MS. FANT: Your Honor, may I approach?

12 THE COURT: Yes.

13 (Whereupon, attorneys approach and confer
14 with judge.)

15 Opradela Lyons, being
16 first duly sworn, testified as follows:

17 THE BAILIFF: State your full name and
18 spell your last name.

19 A Opradela Lyons. L-Y-O-N-S.

20 DIRECT EXAMINATION BY MS. FANT:

21 Q Ms. Lyons, can you tell us where are you
22 from?

23 A Sumter, South Carolina.

24 Q How long have you lived here?

25 A Off and on, well all my life actually.

Opradela Lyons-direct by Fant.

1 But for the past few years off and on.

2 Q Did you know the victim in this case

3 Tyrone Pettis?

4 A Yes, ma'am.

5 Q How did you know Him?

6 A We drugged together.

7 Q Okay. And I guess could you explain what
8 you mean by?

9 A We used crack cocaine together.

10 Q So would you admit that you have a drug
11 problem?

12 A Yes, ma'am.

13 Q Now did you see Tyrone on the day that he
14 was killed?

15 A Yes, Ma'am.

16 Q Tell us about that. Where did you see
17 him?

18 A On Blanding Street.

19 Q And whose house was that?

20 A Wise.

21 Q And what was the purpose of you being at
22 that house?

23 A We were using drugs.

24 Q Okay. Who did Tyrone come to the house
25 with? Do you know?

Opradela Lyons-direct by Fant

1 A I didn't see who he was, but I knew he
2 came inside.

3 Q Did you actually have a chance to talk to
4 him?

5 A Yes, ma'am.

6 Q Who else was at the house that day?

7 A Linda Cummings was there. Wise was there.
8 Robbie Dukes was there, and myself. And I am not
9 really sure, I think somebody else was there, but I
10 can't really remember who it was.

11 Q Was Joseph Sumpter there?

12 A I didn't see Joseph Sumpter.

13 Q Excuse me. What about Cabrall Archie?

14 A Yes, ma'am.

15 Q He was there?

16 A Uh-huh. (Affirmative.)

17 Q And what about Tonya Lesane, was she
18 there?

19 A I really don't remember.

20 Q Tell us what happened when Ti came there
21 that day.

22 A Tyrone came in, and he purchased a dime
23 rock from Demont.

24 Q Who is that?

25 A Archie Cabrall to my understanding.

Opradela Lyons-direct by Fant

1 Q Okay.

2 A He came into the room where we were
3 smoking it. He asked me to use my pipe. I passed
4 it to him. He used it. He then went into a
5 conversation about some clothing.

6 Q Okay. Without telling us what he said,
7 did anyone come in the room?

8 A Yes, ma'am.

9 Q Okay. Who else came in to the room?

10 A Wise.

11 Q Did wise ask him anything or talk to him?

12 A He made a statement, "what clothes."

13 Q And did Tyrone respond?

14 A He wasn't given a chance to answer it.

15 Q Okay. What happened after that?

16 A Tyrone finished his rock. And he
17 returned my pipe to me and he walked out.

18 Q How was Tyrone acting at that point?

19 A I think he was a little bit nervous.

20 Q Did you think that was because of the
21 drugs?

22 A Oh, yes.

23 Q Why did you think he was nervous?

24 A Because of---

25 MR. JOHNSON: Object. That's speculation.

Opradela Lyons-direct by Fant

1 Object, Your Honor.

2 MS. FANT: Your Honor, it's her perception
3 of why she believes he was nervous.

4 THE COURT: Well she can give a factual
5 perception, but she can't give a subjective
6 opinion. But I think she can under 803, give a
7 statement and declare existence of mind,
8 emotions, physical condition, but I don't
9 believe she can give a subjective opinion.
10 Objection sustained.

11 Q How did Wise appear that day when you were
12 talking to Tyrone?

13 A Pissed off.

14 Q And what happened after Tyrone left?

15 A I can't say what happened after Tyrone
16 left out of the house. But I know minutes later
17 there was someone shot.

18 Q Well did -- who left after Tyrone?

19 A Wise, Dukes and Cabrall Archie.

20 Q And did Wise actually come back at some
21 point and tell you something?

22 A Yes, ma'am.

23 Q And what was that?

24 A He told me to stay put until he returned.

25 Q And how was he dressed?

Opradela Lyons-direct by Fant

1 A He had on camouflage.

2 Q And in -- at that time, did he also do
3 something to the house when he told you to stay
4 there?

5 A He locked me and Linda Cummings inside the
6 house.

7 Q Now after -- did you actually hear a
8 gunshot?

9 A No, ma'am, I didn't.

10 Q When Wise came back, what happened?

11 A He told us he had to close down for a
12 while, and was to come back later.

13 Q And how did he appear to you at that time?

14 A Kind of nervous like, like something had
15 happened.

16 Q Did he come in the front door?

17 A No, ma'am.

18 Q How did he come in?

19 A Through the back.

20 Q Did he just walk right in, or did he
21 appear like he was concerned about something?

22 A Like he was concerned.

23 Q Was he with anyone?

24 A No, ma'am, he was alone.

25 Q Now after he indicated that he was closing

Opradela Lyons-direct by Fant

1 the house down, in general what did that mean?

2 A That business or whatever was stopped.

3 Q That would be the selling of drugs?

4 A Yes, ma'am.

5 Q What did you do?

6 A I left. I proceeded down the street to go
7 home. I was stopped by one of my friends and was
8 told someone had been shot. I didn't pay it any
9 attention.

10 MR. JOHNSON: Object, Your Honor.

11 THE COURT: Do you perceive that to be an
12 exception to the hearsay, or if not hearsay,
13 Ms. Fant? And if so, why?

14 MS. FANT: Your Honor, I do think it would
15 be would be an excited utterance. Although
16 it's not relevant to what my question was so---

17 THE COURT: All right.

18 MS. FANT: ---I would withdraw that part
19 of it.

20 THE COURT: That question is withdrawn.

21 Q Did you go home or did you go somewhere
22 else?

23 A I went home.

24 THE COURT: The question is withdrawn.
25 The answer would be disregarded as well.

Opradela Lyons-direct by Fant

- 1 Q Okay, where did you go?
- 2 A I went home.
- 3 Q And what did you do later on that day?
- 4 A I went back to Wise's.
- 5 Q Back where?
- 6 A To Blanding Street.
- 7 Q Okay. And where was that on Blanding that
- 8 you went?
- 9 A To Wise's house.
- 10 Q Did you notice anything unusual about Wise
- 11 at that point?
- 12 A Just that he had asked me a couple of
- 13 weird questions.
- 14 Q What kind of questions was he asking you?
- 15 A He asked me would Mr. Pettis be a missed
- 16 person. And how he got along with others on south
- 17 side.
- 18 Q So he was asking you about the victim?
- 19 A Yes, ma'am.
- 20 Q And whether or not anybody would miss him?
- 21 A Yes, ma'am.
- 22 Q Did he ask you just a couple of questions
- 23 or did he ask you a lot of questions?
- 24 A Just a couple of questions.
- 25 Q And what clothes did he have on at that

Opradela Lyons-direct by Fant

1 point?

2 A He had changed. I think he had on some

3 shorts.

4 Q But it wasn't camouflage anymore?

5 A No, ma'am.

6 Q Now at some point after this occurred,
7 did -- well first of all, let me ask you. DO you
8 know who Kim Delay is?

9 A Yes, ma'am.

10 Q Who is Kim Delay?

11 A Wise's girlfriend.

12 Q And at some point after this happened did
13 she approach you?

14 MR. JOHNSON: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. JOHNSON: Kim Delay is just leading in
17 to hearsay.

18 THE COURT: T may be, but the question is
19 not hearsay yet. Overruled. All the question
20 was, "Did she approach you." I don't know
21 where she is going. Objection is overruled.

22 Q Without saying what she said, did she talk
23 to you?

24 A Yes, ma'am.

25 Q And did she have something with her?

Opradela Lyons-direct by Fant

1 A Yes, ma'am.

2 Q What was that?

3 A A letter.

4 Q Okay. Did she give you a letter?

5 A No, ma'am.

6 Q And was there a point after this that you
7 also saw Wise at your aunt's house?

8 A Yes. T was after he was released from
9 prison.

10 Q Just tell us what happened.

11 A Word on the streets that---

12 MR. JOHNSON: Objection, Your Honor.

13 THE COURT: You can't testify as to what
14 word on the street was. She's asking you what
15 happened. That means what did you do?

16 A I'm Sorry, Your Honor. I was asked did I
17 write a statement on him and I said no.

18 Q Now who asked you?

19 A Wise.

20 Q And you told Him no?

21 A Yes, ma'am.

22 Q Had you in fact given a statement?

23 A Yes, sir.

24 Q Why did you tell him no?

25 A Afraid.

Opradela Lyons-direct by Fant

1 Q Why were you afraid?

2 MR. JOHNSON: Objection, Your Honor.

3 THE COURT: Overruled.

4 A Because of the situation that was going
5 on.

6 Q With you personally?

7 A I was afraid for my family and stuff.

8 Q Now when you told him that you did give a
9 statement, what did he reply? What did he say?

10 A I didn't think you would do that.

11 Q And after this happened, I guess give us a
12 sense of how he treated you before this incident,
13 and how he treated you after it. Could you tell us
14 about that?

15 MR. JOHNSON: Relevance, Your Honor.

16 THE COURT: He being the defendant.

17 MS. FANT: Yes, your honor.

18 THE COURT: Overruled.

19 A I would ask him for a few dollars and he
20 would give it to me. Which normally wasn't done
21 before this incident happened.

22 Q Did you notice a change in how he treated
23 you in general?

24 A Yes, ma'am.

25 Q Did he ever offer you anything?

Opradela Lyons-direct by Fant

1 A No, ma'am.

2 Q Before this incident, had he ever given
3 you money or?

4 A No.

5 MS. FANT: Please answer any questions
6 Mr. Johnson may have.

7 CROSS EXAMINATION BY MR. JOHNSON:

8 Q Ms. Lyons, how many different versions of
9 what you claim happened have you given?

10 A The same statement. I wrote the same
11 statement I am saying today.

12 Q Did you write this statement?

13 A Yes, sir.

14 Q This is your handwriting?

15 MS. FANT: Your Honor, I would ask that he
16 show t to her, please.

17 THE COURT: Show it to her.

18 A That is not my handwriting.

19 Q This statement, did you type this
20 statement?

21 A No, sir. My statement was handwritten.

22 Q Well where is your handwritten statement?

23 A I have no idea.

24 Q Did you get a copy of it?

25 A No, sir.

Opradela Lyons-cross by Johnson

1 Q When you wrote out your handwritten
2 statement, who did you give it to?

3 A I don't remember.

4 Q Who did you talk to?

5 A A law enforcement officer. I don't
6 remember exactly who.

7 Q And you don't remember the law enforcement
8 officer?

9 A It's been 4 years since it happened.

10 Q It's been 4 years ago?

11 A Yes, sir.

12 Q So four years ago on a typed statement
13 doesn't have a date on it. Do you remember the date
14 that you gave this statement?

15 A No, sir.

16 Q So four years ago you wrote out a
17 statement, is that correct?

18 A Yes, sir.

19 Q In your own handwriting?

20 A Yes, sir.

21 Q And you gave it to a law enforcement
22 officer?

23 A Yes, sir.

24 Q And there is no question that the
25 statement I just showed, is typed, isn't that true?

Opradela Lyons-cross by Johnson

1 A Yes, sir.

2 Q And the day on the June 8th 2004, you went
3 to this house on Blanding street to use drugs.
4 Isn't that right?

5 A Yes, sir.

6 Q And when you went to the house to use
7 drugs, Tyrone Pettis came there after you did.
8 Isn't that right?

9 A Yes, sir.

10 Q And do you remember a guy that you didn't
11 know his name, but you called him evil?

12 A Yes, sir.

13 Q And evil was in the house, isn't that
14 right?

15 A Yes, sir.

16 Q What is evil's name?

17 A Cabrall.

18 Q Cabrall.

19 A Cabrall Archie.

20 Q Cabrage what?

21 A Excuse me?

22 Q What is his last name? Is that two names
23 Cabrage, or that his first name?

24 A I guess that's his first name.

25 Q That's his first name. And Cabrage was in

Opradela Lyons-cross by Johnson

1 the house. And isn't it true, Ms. Lyons, that you
2 said back in 2008, that: "Evil" Cabrall sold Tyrone
3 a rock?

4 A Yes, ma'am. I mean, yes, sir.

5 Q Now what is a rock?

6 A Crack cocaine.

7 Q And how much crack cocaine is that?

8 A The dollar amount is \$10.

9 Q The dollar amount is \$10?

10 A Yes, sir.

11 Q So you did not see Mark McKoy sell Tyrone
12 Pettis any drugs on June 8, 2004, isn't that true?

13 A I never said that he did.

14 Q I didn't say that you did. But I am
15 asking you, isn't that true?

16 A Yes, sir.

17 Q That you never saw it?

18 A Yes, sir.

19 Q Because it was evil who sold Tyrone the
20 rock on that day. Isn't that right?

21 A Yes, sir.

22 Q Okay. According to your statement and
23 your testimony today you and Linda Cummings were in
24 what you all call the smoke room, isn't that right?

25 A Yes, sir.

Opradela Lyons-cross by Johnson

1 Q The smoke room is where you go in to a
2 room with your crack cocaine and smoke it, isn't
3 that true?

4 A Yes, sir.

5 Q And you had -- Tyrone didn't have a stem.
6 Tell the jury what a stem is.

7 A It's a crack pipe.

8 Q It's a crack pipe. Now what is a crack
9 pipe?

10 A It's a pipe that you use to smoke crack
11 on.

12 Q And how do you do that?

13 A With a lighter and a pipe.

14 Q A lighter and pipe. When you take the
15 crack cocaine and put it in a pipe and then you use
16 some flames to light it?

17 A Yes, sir.

18 Q And then you smoke it?

19 A Yes, sir.

20 Q After you smoke the crack cocaine, how
21 does it affect your mental capacity?

22 A T affects everyone differently.

23 Q And how did it affect you?

24 A I was high, but I was still observing
25 where I was at.

Opradela Lyons-cross by Johnson

1 Q You were high and observing where you were
2 at?

3 A Uh-huh. (Affirmative.)

4 Q And when you get high, what is the
5 feeling? Do you get nervous?

6 A No, I don't.

7 Q Do you get jittery?

8 A No, sir.

9 Q Do some people get high and jittery?

10 A Yes, sir.

11 Q Okay. But it doesn't affect you that way?

12 A No, sir.

13 Q Now and so while you were in the smoke
14 room, you said Wise came in the room at one point,
15 isn't that right?

16 A Yes, sir.

17 Q And Wise is Mark McKoy?

18 A Yes, sir.

19 Q Mark McKoy did not come in that room to
20 smoke crack cocaine, did he?

21 A No, he did not.

22 Q But you and Tyrone did.

23 A Yes, sir.

24 Q And you and Linda Cummings did?

25 A Yes, sir.

Opradela Lyons-cross by Johnson

1 Q So after Mark McKoy according to your
2 testimony left out, you did not see him when Tyrone
3 left, isn't that true? Because you were still in
4 the smoke room?

5 A Yes, sir.

6 Q And when Tyrone left, you don't know who
7 he left with. Isn't that true?

8 A True, yeah.

9 Q Okay. Because you were still in the smoke
10 room.

11 A Yes, sir.

12 Q Now you are telling this jury today that
13 you saw Mr. McKoy later. Is that true?

14 A Yes.

15 Q And when you saw him later that day
16 according to your testimony, let me ask you this
17 first. How many times have you met with Ms. Fant
18 and the police department? Some officers from the
19 police department?

20 A Just yesterday and today.

21 Q Just yesterday and today?

22 A Uh-huh. (Affirmative.)

23 Q And where did y'all meet yesterday?

24 A At the law enforcement.

25 Q At the law enforcement. What caused you

Opradela Lyons-cross by Johnson

1 to go to law enforcement yesterday?

2 A Excuse me?

3 Q Why did you go? What caused you to go
4 there?

5 MS. FANT: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Whereupon, the attorneys approach and
8 confer with judge.)

9 THE COURT: Question is withdrawn by
10 Mr. Johnson.

11 Q So yesterday you met with Ms. Fant and a
12 detective? Do you remember the detective's name?

13 A Ms. Culick.

14 Q Is she in the courtroom?

15 A No, she is not.

16 Q Okay. And so you met with this officer
17 yesterday, is that correct?

18 A Uh-huh. (Affirmative.)

19 Q Now did you write out a statement
20 yesterday?

21 A No, sir.

22 Q Did you go over the statement that you,
23 that had been typed up some years ago?

24 A Yes, sir.

25 Q Now how many years ago did you give that

Opradela Lyons-cross by Johnson

1 statement?

2 A Four years ago.

3 Q Four years ago? And that's when things
4 were fresh on your mind?

5 A Yes, sir.

6 Q Okay. Now I want to ask you if you can
7 identify this signature.

8 A It's my signature.

9 Q It's your signature. Take your time, Ms.
10 Lyons, read to the jury where you said two years ago
11 in 2004, that you saw Mark McKoy come back to that
12 house with the camouflage on.

13 A T is not in there.

14 Q I didn't hear you, I am sorry.

15 A T is not in there.

16 Q It's not on there.

17 A No, sir.

18 Q In 2004, you didn't say that, isn't that
19 true?

20 A I don't remember.

21 Q It's right there in front of you. Is that
22 an accurate statement? They can't help you. Don't
23 look at them. They can't help you. Is that an
24 accurate statement?

25 A Yes, sir.

Opradela Lyons-cross by Johnson

1 Q And that statement doesn't say anything
2 about camouflage, does it?

3 A No, sir.

4 Q You're just making that up, aren't you?

5 A I don't know.

6 Q You don't know? You don't know if you're
7 making it up?

8 A I don't remember, sir.

9 Q You don't remember what?

10 A What he was wearing, I don't remember.

11 Q I beg your pardon?

12 A I don't remember what he was wearing.

13 MR. JOHNSON: Thank you, Ms. Lyons.

14 THE COURT: Redirect?

15 MS. FANT: Yes, Your Honor.

16 REDIRECT EXAMINATION BY MS. FANT:

17 Q Opradela, did you tell Detective Culick
18 yesterday that the defendant was wearing camouflage?

19 A Yes, ma'am, I did.

20 Q And why did you tell her that?

21 A Because I remember, thinking back, I
22 remember that he did have a camouflage.

23 Q Did anyone in that room tell you to say
24 that?

25 A No, ma'am.

Opradela Lyons-redirect by Fant

1 Q Excuse me. And how would you even have
2 known that he had a camouflage if he hadn't come
3 there that day? Would you have known that?

4 A No, ma'am.

5 Q Did anyone ever discuss this case with you
6 and tell you any details about it?

7 A No, ma'am.

8 Q When they talked to you yesterday, was the
9 focus on your statement or everybody's statement?

10 A On my statement.

11 Q And even though it has been four years,
12 why do you remember those events? Do remember them
13 still pretty clearly?

14 A Yes, ma'am.

15 Q And why do you remember them so clearly?

16 A Because of the way Mr. McKoy acted on that
17 day, and I remember that.

18 MS. FANT: Thank you.

19 THE COURT: Recross, Mr. Johnson?

20 MR. JOHNSON: Nothing further.

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

22 MS. FANT: Your Honor, we would ask that

23 Ms. Lyons be excused.

24 THE COURT: Any objection?

25 MR. JOHNSON: Subject to recall, Your

Opradela Lyons-redirect by Fant

1 Honor.

2 THE COURT: Come up, counsel.

3 (Whereupon, the attorneys approach the
4 bench and confer with the judge out of the
5 hearing of the jury.)

6 THE COURT: Ladies and gentlemen, you have
7 been in the courtroom for about an hour and 15
8 minutes. And the court personnel have been
9 here for longer than that. So we have been
10 here about an hour and a half. I think it is
11 appropriate to take our mid-morning break at
12 this time. We are going to do that for about
13 10 minutes. We will be ready to start back in
14 about 10 minutes. I am going to send you to
15 your jury room and allow you to relax for a few
16 minutes. Do not discuss the case among
17 yourselves. It's still inappropriate for you
18 to begin any discussion about this case
19 whatsoever. As I said before, you can talk
20 about anything you want to talk about, but
21 don't talk about the case. I will call you
22 very shortly. Thank you, you may go with the
23 bailiff.

24 THE COURT: Counsel, we will be in recess.
25 Start back at 11:25.

1 (Whereupon, the Court takes a short
2 recess.)

3 THE COURT: Mr. McKoy is present in the
4 courtroom with his attorney. The state is
5 represented by Ms. Fant. Anything before we
6 bring the jury in, Ms. Fant?

7 MS. FANT: Your Honor, just one matter.
8 The State intends to introduce the plea
9 agreement of Latimore Holmes. As I indicated,
10 he is in federal custody. And Mr. Johnson has
11 indicated that he would object. And I just
12 wanted to take care of that so we wouldn't have
13 to do it later.

14 THE COURT: I'll be glad to hear from you.
15 Tell me first of all, Ms. Fant, what is the
16 purpose of it?

17 MS. FANT: Because I assume that he is
18 going to be attacked for being in custody;
19 you're trying to help yourself and that sort of
20 thing. And in the agreement it's very specific
21 about if he lies. And also he has no agreement
22 in this case. And this proves that no -- what
23 happens is, he has already been sentenced. Is
24 that he can apply for the---

25 THE COURT: But isn't that the only issue

1 if he attacks his testimony on the basis that
2 he makes some agreement with the state to
3 testify in this case? Isn't that right?

4 MS. FANT: Okay. I guess. I just assumed
5 he was going to do it.

6 THE COURT: It's not admissible unless you
7 make that sort of attack, Mr. Johnson. Do you
8 intend to do that in part of your cross
9 examination?

10 MR. JOHNSON: No, sir.

11 THE COURT: Otherwise it is not
12 admissible.

13 MS. FANT: All right.

14 THE COURT: Bring the jury in.

15 (Whereupon, the following takes place
16 within the presence of the jury.)

17 THE COURT: Mr. Smallwood, I am appointing
18 you as the foreman of this jury. So you will
19 throughout the rest of this trial continue to
20 sit in that seat. And the alternate will sit
21 in the seat where he is seated. And the rest
22 of the seats in the jury box, of course, are
23 not reserved. And you can sit anywhere or
24 reserve any seat on the front for the foreman.
25 You may proceed.

1 MS. FANT: Your Honor, at this time, the
2 state calls Latimore Holmes.

3 Latimore Holmes, being
4 first duly, testified as follows:

5 THE BAILIFF: State your full name and
6 spell your last name, please.

7 A Latimore Holmes. H-O-L-M-E-S.

8 DIRECT EXAMINATION by MS. FANT:

9 Q Mr. Holmes, could you tell us where you're
10 from?

11 A Sumter, South Carolina.

12 Q Do you know the defendant?

13 A Yes, I do.

14 Q How do know him?

15 A Just back in the day. Certain dealings
16 and stuff.

17 Q Would you say you know him pretty well?

18 A I know him pretty well.

19 Q Do you have personal knowledge about this
20 killing of Tyrone Pettis?

21 A Yes, ma'am, I do.

22 Q How did you become involved as a witness
23 in this case?

24 A I happened to be at my house, standing by
25 the fence.

Latimore Holmes-direct by Fant

1 Q Excuse me. Now did you, before you, I
2 guess, Where were you when you say my house, where
3 were you?

4 A [REDACTED], Sumter, South
5 Carolina.

6 Q Where were you immediately prior to that?

7 A Before where I was at? With a cousin of
8 mine.

9 Q Okay. And who is your cousin?

10 A Dante.

11 Q And that would be Dante McFadden?

12 A Yes, ma'am.

13 Q And was there something that happened at
14 Dante's house that caused you to go over to the
15 house on Blanding?

16 A Yes, ma'am.

17 Q What was that?

18 A I had been intending to make a call to him
19 about a guy breaking in the store and did he know
20 where the guy was at. And I end up over there.

21 Q So based on that phone call you went over
22 to 40 South Blanding?

23 A Yes, ma'am.

24 Q What did you do when you got there?

25 A Went in the back yard and stood up to the

Latimore Holmes-direct by Fant

1 fence on the back row, and I was just looking.

2 Q And what could you see in the back yard of
3 that house?

4 A I could see somebody in a mask, which I
5 already knew was Mark McKoy, and the guy and Robbie
6 Dukes.

7 Q Let's back up just a little bit. When you
8 were standing in the back yard just on a regular
9 day, what can you see from the back yard?

10 A The field, the houses, everything out on
11 the Edwards Street.

12 Q Okay. And so is Edwards the next street
13 over from Blanding?

14 A Yes, ma'am.

15 Q And when you say the fields, what are you
16 talking about?

17 A An empty lot.

18 Q And does that back up to your house?

19 A Yes, ma'am.

20 Q And on this particular day, what did you
21 observe as you were standing there? What is the
22 first thing you saw?

23 A Like I said, Robbie Dukes. And which I
24 seen Mark McKoy myself. And I seen an altercation.

25 Q Where was the defendant Wise coming from?

Latimore Holmes-direct by Fant

1 A Up Bartlet Street when I saw him.

2 MR. JOHNSON: I am sorry.

3 A Bartlet Street when I saw him.

4 Q And what was he wearing?

5 A Like some dark clothes. Like camouflage
6 like clothing.

7 Q And was it a one piece, two pieces, how
8 did it look?

9 A T was like pants. Like pants and a shirt
10 from what I seen.

11 Q Now when you say dark, did you know the
12 difference between army camouflage and desert
13 camouflage?

14 A Well I call it all camouflage, because it
15 has got some big pockets. That's why I call it
16 camouflage.

17 Q But you did indicate it was dark.

18 A Yes, ma'am.

19 Q Dark camouflage. Now what did you also --
20 did he have anything covering his head or face area?

21 A A mask.

22 Q When you first saw him, did he have the
23 mask on?

24 A No, ma'am.

25 Q And who were you able to see that was

Latimore Holmes-direct by Fant

1 dressed like that?

2 A Mark McKoy.

3 Q Is the defendant Mr. McKoy also known as
4 Wise?

5 A Yes, ma'am.

6 Q And what did you see him do with that
7 mask?

8 A Put it over his face.

9 Q What kind of mask was it?

10 A I couldn't really see exactly what kind it
11 was. At the time I just know it was at mouth -- I
12 mean the eyes and the little mouth thing.

13 Q Once he put on the mask, could you see his
14 face after the mask was on it?

15 A No, ma'am.

16 Q Now how long have you known Wise?

17 A Since the 90's.

18 Q And once he put on that mask, where did
19 you see him go?

20 A Through that field going next to Edwards
21 Street.

22 Q And what happened when he got through to
23 the other end of the field?

24 A That's where him and Robbie -- where
25 Robbie Dukes was at and then the little altercation

Latimore Holmes-direct by Fant

1 went down.

2 Q Okay. And when you indicated an
3 altercation, did he and Robbie Dukes get into it?

4 A Not, him and whoever the third party was.

5 Q Did you know the victim in this case---

6 A No, ma'am.

7 Q ---Tyrone Pettis?

8 A No, ma'am.

9 Q What did you see that happened when they
10 got in this altercation?

11 A The guy swung and the gun fired. Coming
12 from the dark colored clothes, which was Mark McKoy.

13 Q Did you hear any conversation? Could you
14 hear anything?

15 A Nah, I remember the guy saying, "Please
16 don't let me die."

17 Q When the altercation started, did you see
18 who hit who first?

19 A No, all I seen was the swinging, and that
20 was it.

21 Q Okay.

22 A Then he shot.

23 Q Who did you see with the gun?

24 A Mark. Well the guy in dark colored
25 clothing, which like I said, Mark McKoy.

Latimore Holmes-direct by Fant

1 Q And what kind of gun did he have, could
2 you tell?

3 A No, I couldn't tell what kind of gun.

4 Q Could you tell what color it was?

5 A It looked like a sliver from the distance
6 I was at.

7 Q And what did he do when he pulled out the
8 gun?

9 A Fired.

10 Q What did you see happen to the victim
11 after the gunshot?

12 A He was running away. After he went and
13 fell, I left.

14 Q After he went to what?

15 A Falling, I left.

16 Q So you actually saw somebody fall down?

17 A Yes, ma'am, I left.

18 Q How far away would you say the person that
19 got shot was from the defendant Wise When he got
20 shot?

21 A Give or take, probably about from here to
22 that table there. Something like that. Probably a
23 little further.

24 Q So it wasn't up real close to him.

25 A Not that far.

Latimore Holmes-direct by Fant

1 MR. JOHNSON: I object, Your Honor.

2 THE COURT: Sustained. That's a leading
3 question. Let Him give the estimate.

4 Q Do you know Robbie Dukes?

5 A Yes, ma'am.

6 Q And you did see him that day, didn't you?

7 A Yes, ma'am.

8 Q What was he wearing?

9 A I can't exactly remember what he was
10 wearing, because I was focused on the dark colors.

11 Q Do you recall whether he had on any
12 camouflage?

13 A No, I don't think it was camouflage. I
14 just couldn't remember what he was wearing. But it
15 wasn't dark like McKoy's.

16 Q And did you see Robbie with a gun?

17 A No, ma'am.

18 Q Did you see any other people out on the
19 street who witnessed this incident?

20 A No, ma'am. When I seen that, I left.

21 Q What point did you leave?

22 A When the shots were fired and the guy was
23 going down.

24 Q Where did you go after that?

25 A To the store on the corner. The Family

Latimore Holmes-direct by Fant

1 Store.

2 Q What store is that?

3 A A Family Store. LDT's One Stop Shop.

4 Q How far was that from where you were?

5 A Up the street. A block. Right up the

6 block. At the corner of Liberty and Blanding.

7 Q And did you run in to Linda Cummings

8 there?

9 A Well I call her Linda Brown. Yes. yes,
10 ma'am.

11 Q What happened when you saw her?

12 A She said everybody was getting put out of
13 the house because they said Mark McKoy just,
14 Wise---

15 MR. JOHNSON: Objection, Your Honor.

16 THE COURT: Objection. He wouldn't have
17 any way of knowing that. But you can't testify
18 as to hearsay until I've heard from the lawyers
19 as to reasons they think it is admissible. So
20 that objection will be sustained unless you
21 have some reason you think it is admissible.

22 MS. FANT: I do, Your Honor. I will lay a
23 foundation.

24 THE COURT: All right.

25 Q How did she appear? Was she walking down

Latimore Holmes-direct by Fant

1 the street?

2 A She was running. Hysterical. She was
3 getting high she said.

4 Q And so you said she was hysterical. How
5 long had it been since the shooting incident?

6 A Give or take, I would say about, probably
7 about 15 minutes. Something like that.

8 Q And what did she tell you when she ran in
9 to you?

10 A Like I said---

11 MR. JOHNSON: Objection, Your Honor.

12 THE COURT: Overruled by 803 subparagraph
13 2. I believe that-- wait just a minute. I
14 understand the time frame, but I have got to
15 get the curve ball in this a little bit further
16 before I can make that ruling, Ms. Fant. That
17 motion is not sufficient at this time.

18 Q Do you know where Linda Brown Cummings was
19 coming from? Where did she come from?

20 A Yeah. She said---

21 THE COURT: No, don't say what she said.

22 A Mark McKoy's house on [REDACTED] Street.

23 Q And did she indicate that she had seen --
24 without saying exactly what she said; that she had
25 seen things at the house that caused her to run?

Latimore Holmes-direct by Fant

1 A She said that---

2 MR. JOHNSON: Objection, Your Honor.

3 THE COURT: Don't testify as to what she
4 said. Just testify as to what you observed and
5 noticed about her.

6 A She was just hysterical. Screaming and
7 saying---

8 Q Not what she said yet.

9 A All right.

10 THE COURT: I think it's admissible under
11 803 subparagraph 2. Objection is overruled.

12 Q When she ran up to you, what did she say?

13 A Mark McKoy shot somebody. And he made
14 them stay -- get out of the house.

15 MS. FANT: Okay. thank you. Please
16 answer any questions Mr. Johnson has.

17 MR. JOHNSON: Your Honor.

18 THE COURT: Yes, sir.

19 MR. JOHNSON: We previously objected to an
20 agreement and we do want to ask him about it.

21 THE COURT: If that's the case, then you
22 have the right to -- I am going to let her
23 reopen on direct. Go ahead. Ms. Fant, do you
24 have any questions regarding that matter?

25 MS. FANT: Yes, Your Honor.

Latimore Holmes-direct by Fant

1 Q Mr. Holmes, where are you currently?

2 Where are you staying?

3 A You mean right now?

4 Q Right now.

5 A In Lexington.

6 Q Okay. Let's make it more clear than that.

7 Are you currently in Federal custody?

8 A Yes, ma'am.

9 Q Are you serving a sentence for a federal
10 drug conviction?

11 A Yes, ma'am.

12 Q Okay. Tell us when you got convicted?

13 A When I got sentenced you mean? ✓

14 Q Pardon?

15 A When I got sentenced?

16 Q Yes.

17 A March 2006.

18 Q And as part of your, I guess, did you go
19 to trial or did you agree to plead guilty?

20 A Plead guilty.

21 Q And as part of that, did you sign a plea
22 agreement with the government about your
23 cooperation, and what you might say and how that
24 would be used?

25 A On this?

Latimore Holmes-direct by Fant

1 Q No, no, no. On your drug case.

2 A All pleas consist of that. Yes, ma'am, I
3 think I was.

4 (Plea Agreement marked State's Exhibit No.
5 7 for ID only.

6 Q Mr. Holmes, let me show you what has been
7 marked as state's exhibit 7. Can you just flip
8 through that and tell me if you recognize that?
9 Does your signature appear on that?

10 A Yes, ma'am. My attorney and my signature
11 right there.

12 MS. FANT: Your Honor, I would offer
13 State's Exhibit No. 7 into evidence at this
14 time.

15 THE COURT: Any objection.

16 MR. JOHNSON: No objection, your honor.

17 THE COURT: Admitted into evidence as
18 State's Exhibit No. 7 without objection. If
19 there is any marking on it, Ms. Sullivan, it
20 needs to be taken off. Give it back to her and
21 let her take the ID marking off. .

22 Q Could you just tell us what that is? In
23 general, do you know?

24 A It's a plea agreement that you sign when
25 you plead guilty.

Latimore Holmes-direct by Fant

1 Q Okay. And this is the agreement that you
2 made with the Federal Government?

3 A Yes, ma'am.

4 Q And as part of that plea agreement, what
5 were you required to do?

6 A Tell everything I did, or what I knew. Or
7 what I had done.

8 Q Were you also supposed to tell on other
9 people, what you knew other people had done?

10 A Yes, ma'am.

11 Q And is that what you did?

12 A Yes, ma'am.

13 Q Now were you promised anything in this
14 case as far as testifying here today?

15 A No, ma'am.

16 Q And what would happen to you if in fact
17 you did testify today and that was found to be
18 untruthful, or if you came in here and told a lie?

19 A That would be perjury, I guess.

20 Q Do you know whether or not your plea
21 agreement has a provision for perjury?

22 A I never really read it. I had an
23 attorney, and he said sign this and sign that.

24 Q You must have trusted him.

25 A My mistake.

Latimore Holmes-direct by Fant

1 Q Could you just read though this section
2 beginning right there, and ending right there? Out
3 loud, please. I am sorry.

4 A "The defendant must also testify fully and
5 truthfully before any grand jury at any trial, or
6 proceeding if called upon to do so by an attorney
7 for the government, subject to prosecution. Perjury
8 for not testifying truthfully. The Failure of the
9 defendant to be fulfilled truthfully and forthright
10 at any stage will at the sole election of the
11 attorneys for the government, causes obligations of
12 the attorneys for the government then this agreement
13 to become null and void."

14 MS. FANT: Thank you. Please answer any
15 questions Mr. Johnson has.

16 THE COURT: Cross examination,
17 Mr. Johnson?

18 CROSS EXAMINATION BY MR. JOHNSON

19 Q Mr. Holmes, my name is I.S. Levy Johnson
20 along with my son, George Johnson. We represent
21 Mark McKoy. And as I understand it, you signed a
22 Plea Agreement according to Exhibit No 7. On
23 December 28th 2005, admitting that you had
24 distributed drugs, isn't that true?

25 A That I had distributed drugs?

Latimore Holmes-cross by Johnson

1 Q Yes, sir.

2 A Possession with intent to distribute
3 drugs.

4 Q Possession with intent to distribute
5 drugs.

6 A Yes, ma'am. Yes, sir.

7 Q And what that means that you had a large
8 amount of drugs that was your intent to distribute
9 them?

10 A Yes, sir.

11 Q And you were in fact distributing drugs,
12 weren't you?

13 A Yes, sir.

14 Q All right, sir. And according to your
15 testimony in March of 2006, you were sentenced,
16 isn't that true?

17 A Yes, sir.

18 Q And prior to before you were sentenced,
19 you entered into this Plea Agreement, isn't that
20 right?

21 A Yes, sir.

22 Q And the Plea Agreement as Ms. Fant has
23 indicated, and I direct your attention to the parts
24 you just read, it says that if you lie, the
25 government, referring to the United States of

Latimore Holmes-cross by Johnson

1 America, not Ms. Fant, and not the Solicitor's
2 Office in Sumter County, can prosecute you, isn't
3 that true?

4 A Yes, sir.

5 Q So the consequences of you lying has
6 nothing to do with if you lie here in this court,
7 isn't that right? Under that Plea Agreement?

8 A Yes, sir.

9 Q Now in addition to that, what she didn't
10 point out to you, there is a provision in here.
11 Have you ever heard of the expression, of a 35(b)
12 Motion?

13 A 35(b).

14 Q Yeah. It's in there. Are you telling us
15 that you signed this Plea Agreement, and didn't read
16 it?

17 A I signed it and didn't read.

18 Q And didn't read it?

19 A Didn't read it.

20 Q So you don't know the contents of this
21 Plea Agreement?

22 A No. My contents of it was, I get the 5
23 years. My lawyer told me to sign it, and I signed
24 it.

25 Q Okay. Now on June 8th 2008, you were

Latimore Holmes-cross by Johnson

1 where?

2 A I was in Jesup, Georgia.

3 Q You were in Jesup, Georgia on June 8th
4 2008. Where were you on June 8, 2004?

5 A June 8, 2004, I was out on the street.

6 Q What street were you on on June 8, 2004?

7 A I don't know what street on June 8, 2004.

8 Q You don't know what street you were on?

9 How about 4 or 5 o'clock, or 6:00 o'clock or 7

10 o'clock that day, where were you?

11 A Are you referring to the date of the
12 homicide?

13 Q Is that when it happened?

14 A I don't remember the date, sir. I don't
15 know, it was a long time. And I don't remember the
16 exact date it happened.

17 Q Let's say it happened on June 4th, June
18 8th 2004, okay?

19 A June 8th, 2004?

20 Q Right. Where were you?

21 A It if happened then?

22 Q Uh-huh. (affirmative.)

23 A I was in my back yard.

24 Q Where is your back yard?

25 A [REDACTED] Street.

Latimore Holmes-cross by Johnson

1 Q [REDACTED].

2 A Sumter, South Carolina.

3 Q Okay. And where -- what street did the
4 shooting take place on?

5 A [REDACTED]s Street.

6 Q [REDACTED] Street. Isn't it true that
7 [REDACTED] Street and [REDACTED] Street run parallel in
8 the same direction?

9 A Yes, sir.

10 Q Isn't it also true that [REDACTED] Street
11 and [REDACTED] Street are a block apart?

12 A Yes, sir.

13 Q And you are telling this jury that you
14 were on [REDACTED] Street a block away?

15 A Yes, sir.

16 Q Okay. So a block away from where the
17 shooting took place, where on [REDACTED] Street exactly
18 did the shooting take place? Was it in front of [REDACTED]
19 [REDACTED]? [REDACTED]? [REDACTED]? What house was
20 it in front of?

21 A I don't -- well right in front of my
22 uncle's house.

23 Q And what is your uncle's number?

24 A I don't know his house number.

25 Q Who is your uncle?

Latimore Holmes-cross by Johnson

1 A Sammy Lee Holmes.

2 Q Sammy Lee Holmes. Do you know if Sammy
3 Lee Holmes was home that day?

4 A No, I don't know if he was home that day.

5 Q What color is his house.

6 A When I was out there it was green.

7 Q T was green? Do you know where the field
8 is on Edwards Street?

9 A Yes, sir. Right behind the back yard of
10 my house.

11 Q The field is on the back of your house, is
12 that correct?

13 A Yes, sir.

14 Q And so you are in the back of your house.
15 Did you see anybody over on Edwards Street sitting
16 on the porch?

17 A No, I didn't see nobody on the porch.

18 Q Do you know James Clement?

19 A No, sir. Not without pictures.

20 Q Not without a picture. And according to
21 your testimony was Robin Dukes riding a bicycle?

22 A I didn't see Robbie Dukes on a bike.

23 Q Was Tyrone Pettis on a bike?

24 A I didn't see him on a bike.

25 Q Was Mark McKoy on a bicycle?

Latimore Holmes-cross by Johnson

1 A I didn't see him on a bike.

2 Q Was Tyrone Pettis the deceased, and Mark
3 McKoy walking together?

4 A No, I didn't see them walking together.

5 Q Was Robin Dukes and Mark McKoy walking
6 together?

7 A I didn't see them walking together.

8 Q Is it true that, do you know where Kelly
9 Street is?

10 A What Kelly Street?

11 Q Kelly Street is the connecting street
12 between---

13 A Oh, the little street.

14 Q The little street that connects Edwards
15 Street and Samson, isn't that right?

16 A Yes, sir.

17 Q Did you see anyone come down Kelly Street
18 on to Edwards Street?

19 A No, sir.

20 Q Nobody -- you saw no one coming in that
21 direction. And isn't it true from your back yard,
22 that you can see Kelly Street from your back yard
23 right across the field, isn't that true?

24 A You can't really see Kelly Street that
25 good.

Latimore Holmes-cross by Johnson

1 Q Okay. So you can't see Kelly Street.

2 Well did you see anyone coming in the direction from
3 Kelly Street?

4 A No, sir.

5 Q Is it your testimony that, Tyrone Pettis,
6 Robin Dukes and Mark McKoy were walking in the same
7 direction together?

8 A My testimony? No, I didn't say -- that's
9 not my testimony that they were walking in the same
10 direction.

11 Q They were or were not?

12 A No, I didn't say they were walking. You
13 said is that my testimony.

14 Q Yup, I am asking you.

15 A No, I didn't never say they were walking
16 in the same direction.

17 Q Which direction was Tyrone Pettis walking
18 in?

19 A Him and Robin Dukes were walking in the
20 same direction.

21 Q All right.

22 A Mark McKoy was not with them at the time.

23 Q So Robin Dukes and Tyrone Pettis the
24 deceased, were walking together. Where were they
25 walking toward Bartlet?

Latimore Holmes-cross by Johnson

1 A Going toward...

2 Q They were going toward Kelly?

3 A That's it. Kelly Street.

4 Q They were going toward Kelly?

5 A Yes.

6 Q And so Robin And Tyrone were going toward

7 Kelly, is that correct?

8 A Yes, sir.

9 THE COURT: Verbal response.

10 A Yes, sir.

11 Q So that means that Mark McKoy according to

12 your testimony, was coming in the opposite

13 direction?

14 A From behind them.

15 Q Oh, Mark McKoy came up behind Tyrone

16 Pettis and Robin Dukes, is that not correct?

17 A Yes.

18 Q And he walked up on them?

19 A Yes.

20 Q Okay, so he came -- so Mark McKoy came off

21 of Bartlett and turned right on Edwards---

22 A I didn't say that.

23 Q What did you say?

24 A Through the field. We got a field right

25 there.

Latimore Holmes-cross by Johnson

1 Q There's a field?

2 A Uh-huh. (Affirmative.)

3 Q And so your testimony is that Mark McKoy
4 came off of Bartlet, came through to where those two
5 houses are, and then came through the field. And
6 then he came up from behind up on Tyrone Pettis and
7 Robin Dukes, right?

8 A Yes, sir.

9 Q And he was walking?

10 A When I seen him, yes, sir.

11 Q Okay. Did anyone have a bicycle? Did any
12 of the three of them?

13 A I didn't see no bicycle.

14 Q Now tell the jury when Mark McKoy came up
15 according to your testimony, you said there was an
16 altercation?

17 A Yes, sir.

18 Q Did Robin Dukes hit Tyrone Pettis? Did
19 Pettis hit McKoy? What happened?

20 A I seen Pettis trying to get away.

21 Q You saw Pettis trying to get away from
22 whom?

23 A From Mark McKoy.

24 Q Mark McKoy.

25 A Yes, sir.

Latimore Holmes-cross by Johnson

1 Q Did you see Mark McKoy hit Tyrone Pettis?

2 A No, sir. I saw him pull the gun out.

3 Q Did you see Mark McKoy knock Tyrone Pettis
4 off a bicycle?

5 A No, sir.

6 Q Okay. And it's your testimony that you
7 saw Mark McKoy's face, and then he put a mask on?

8 A Yes, sir.

9 Q And it is your testimony that Mark McKoy
10 had on what? What was he wearing?

11 A Dark clothes.

12 Q Dark clothing. And what was Tyrone Pettis
13 wearing?

14 A I don't know.

15 Q You don't know what he was wearing? You
16 didn't earlier say he had on dark clothing?

17 A Did I say Tyrone Pettis had on dark
18 clothing?

19 Q Yes.

20 A No, I said, I believe they asked me about
21 Robin Dukes.

22 Q What, Robin Dukes had on dark clothing?

23 A I said his clothes might have been dark.
24 I didn't say Tyrone Pettis. I don't even -- I've
25 never seen that guy before.

Latimore Holmes-cross by Johnson

1 Q Okay. But you don't remember what he had
2 on?

3 A No, sir.

4 Q But you remember he and Robin Dukes were
5 walking up Edwards Street toward Kelly. And that
6 Mark McKoy came up behind them on Bartlet Street.
7 You do remember that?

8 A Yes, sir.

9 Q And you're testifying today that Mark
10 McKoy had a gun, is that right?

11 A Oh, yes, sir.

12 Q Did you see the color of the gun?

13 A I said it looked like it was silver
14 chrome.

15 Q T looked like silver chrome. And so
16 immediately after you witnessed all of this you ran
17 and told the police?

18 A Say that again?

19 Q Immediately after you witnessed what you
20 claim you saw that day, you went and told the police
21 what you had seen?

22 A No, sir.

23 Q Were you here on June 9th? Did you do it
24 on June 9th?

25 A June 9th of what?

Latimore Holmes-cross by Johnson

- 1 Q 2004.
- 2 A No, sir.
- 3 Q June 10th?
- 4 A No, sir.
- 5 Q June 11th?
- 6 A No, sir.
- 7 Q 12th?
- 8 A No, sir.
- 9 Q 13th?
- 10 A No, sir.
- 11 Q 14th?
- 12 A No, sir.
- 13 Q 15th?
- 14 A No, sir.
- 15 Q 16th?
- 16 A No, sir.
- 17 Q Would you show me a copy of your statement
- 18 where you told the police what you are telling us
- 19 here today?
- 20 A I don't have a copy of the statement.
- 21 Q You don't have a copy of the statement?
- 22 A No.
- 23 Q You didn't write out a statement?
- 24 A Me?
- 25 Q Yeah.

Latimore Holmes-cross by Johnson

- 1 A I didn't write out a statement.
- 2 Q You didn't? Well all this stuff you are
- 3 telling us today---
- 4 A They wrote the statement.
- 5 Q Oh, they wrote the statement?
- 6 A They wrote t. I didn't write it.
- 7 Q And you signed it?
- 8 A Never signed a statement. I talked with
- 9 them about it.
- 10 Q When did you did that?
- 11 A January.
- 12 Q January when?
- 13 A Of this year.
- 14 Q January of 2008, you did that? Are you
- 15 serious?
- 16 A Yes, sir.
- 17 Q 2004 you didn't tell them, 2005, 2006,
- 18 2007. 2008 in January. And you said you wrote out
- 19 the statement.
- 20 A I never said I wrote the statement; that
- 21 they wrote the statement.
- 22 Q They wrote the statement.
- 23 A They wrote the statement.
- 24 Q Did you tell them what to put in the
- 25 statement?

Latimore Holmes-cross by Johnson

1 A They asked me about it, and I told them
2 about it. That was it. I didn't sign the
3 statement.

4 Q How did it come about? They just came out
5 of the blue? You called them or they called you?

6 A Somebody else wrote them and told them
7 about me.

8 Q Somebody else wrote them. Who wrote them
9 and told them about you?

10 A Somebody was talking to them about it and
11 they wrote and told them.

12 Q Well who did you tell about it you didn't
13 tell the police?

14 A Another inmate at the prison.

15 Q So another inmate at the prison, you told
16 an inmate, but you didn't tell the police?

17 A No, sir.

18 Q Isn't that a bit strange?

19 A Right.

20 THE COURT: You don't -- ask the question,
21 please.

22 Q Isn't that a bit strange that you would
23 tell an inmate what you claim happened, but you
24 didn't tell the police?

25 A When they came I told them.

Latimore Holmes-cross by Johnson

1 Q But it was not until they came in 2008,
2 that's when you told them, and you they wrote out
3 your statement.

4 A Yes, sir.

5 Q Did you see a copy of your statement?

6 MS. FANT: Your Honor, I object. There is
7 no statement. He keeps saying---

8 MR. JOHNSON: Objection. Goodness
9 gracious.

10 MS. FANT: He indicated---

11 THE COURT: It's cross examination. I'm
12 going to allow it. Clear it up on cross
13 examination. Objection overruled. I will
14 allow it, Mr. Johnson.

15 Q Who did you talk with in January of 2008?

16 A Detective Williams and ATF agent Mr.
17 Richard Brown.

18 Q And who did Detective Williams work for?

19 A And Mr. Ardis. Mr. Phil Ardis also.

20 Q And who did they work for?

21 A Mr. Brown said he worked for ATF.

22 Q How about Mr. Williams?

23 A Sumter County Police Department.

24 Q And you repeatedly said that you gave them
25 a statement, isn't that true?

Latimore Holmes-cross by Johnson

- 1 A Yes, sir.
- 2 Q And they wrote the statement out, isn't
- 3 that true?
- 4 A They wrote it.
- 5 Q Okay. Was Ms. Fant there?
- 6 A Who?
- 7 Q This lady here, was she there?
- 8 A No, sir.
- 9 Q Okay, so she doesn't know what happened
- 10 when you talked with them, does she? She wasn't
- 11 there was she?
- 12 A No, she wasn't there.
- 13 Q Now, Mr. Holmes, you said you've known
- 14 Mark McKoy for some time? Have you all ever had a
- 15 fight?
- 16 A Yes, sir.
- 17 Q What was the fight about?
- 18 A Hearsay.
- 19 Q Hearsay?
- 20 A Hearsay.
- 21 Q And the hearsay, y'all did have a fight?
- 22 A Yes, sir.
- 23 Q And do you recognize the name Pookey?
- 24 A Yeah.
- 25 Q Who is Pookey?

Latimore Holmes-cross by Johnson

1 A Her real name is Regina Bostic. That's
2 my fiancée.

3 Q Your fiancée? What was the relationship
4 between Mark McKoy and Pookey?

5 A None that I know of.

6 Q Huh?

7 A None that I know of.

8 Q But you suspected a relationship, didn't
9 you?

10 A What?

11 Q Suspected them?

12 THE COURT: Answer the question.

13 A No, sir.

14 Q You didn't accuse Mark McKoy of going with
15 your girlfriend?

16 A Never.

17 Q That wasn't what the fight was about?

18 A No, sir.

19 Q What was the fight about?

20 A When he was serving my cousin, someone
21 shot in his house. And my cousin said, who do you
22 think might have done it. And I said, "Well, you
23 owe Mark McKoy money. Why don't you think he might
24 have done it."

25 Q So you fought with your cousin?

Latimore Holmes-cross by Johnson

1 A No, he went and told Mr. McKoy that I told
2 the police, which I never did. And He shot his
3 house. Then next day I came out of school,
4 Mr. McKoy called me and made an allegation. That's
5 what it was about. Never about a woman.

6 Q And y'all have not been friends, have you?

7 A No, sir.

8 Q Isn't that true?

9 A That's true.

10 Q You all dislike each other, don't you?

11 A I don't dislike him.

12 Q But you don't love him.

13 A He's just like me for reasons unknown.

14 Q T has nothing to do with your girlfriend?

15 A No.

16 Q So I can make sure that I understand this,
17 between 2004 and January of 2008, you never told the
18 police what you're telling the jury today, is that
19 correct?

20 A That's correct.

21 MR. JOHNSON: Thank you, sir.

22 A You're welcome.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION BY MS. FANT:

25 Q Could you explain about the back yard and

Latimore Holmes-redirect by Fant

1 the field? Were you standing next to a fence or
2 were you standing up near the house?

3 A Up to the fence.

4 Q And is that a block away from Edwards
5 Street?

6 A It's right there basically. Edwards,
7 Blanding/Edwards. Just like, it's a block.

8 Q And you indicated that Mark McKoy came
9 through the field?

10 A Yes, ma'am.

11 Q And again what was he wearing?

12 A Dark colored clothing. What I called
13 camouflage. I call camouflage.

14 Q And regarding this statement he was asking
15 you about, were you writing anything down?

16 A No, ma'am.

17 Q Who was now writing stuff down?

18 A ATF Mr. Brown and Phil Ardis.

19 Q And did you read what they wrote down?

20 A No, ma'am.

21 Q Did you sign anything that indicated this
22 is my statement?

23 A No, ma'am.

24 MS. FANT: Thank you.

25 THE COURT: Recross?

Latimore Holmes-redirect by Fant

1 MR. JOHNSON: No, sir.

2 THE COURT: Thank you, sir. You may step
3 down.

4 MS. FANT: Your honor, at this time the
5 state would call Allen McConico.

6 Allen McConico, being first duly
7 sworn, testified as follows:

8 THE BAILIFF: State your full name and
9 spell your last name for the record.

10 A Allen McConico. M-C-C-O-N-I-C-O.

11 DIRECT EXAMINATION BY MS. FANT:

12 Q Mr. McConico, hi. Can you tell us where
13 you live?

14 A Garden Circle.

15 Q And how long have you lived in Sumter?

16 A I moved to Sumter in 75.

17 Q Did you used to live on [REDACTED] Street?

18 A Yes.

19 Q Where did you live on [REDACTED]?

20 A [REDACTED].

21 Q And who lived with you there?

22 A Me and my wife, and Erin Lucas.

23 Q Who is Erin Lucas?

24 A That's my stepson.

25 Q So that would be your wife's son?

Allen McConico-direct by Fant

1 A Yeah.

2 Q I apologize for having to ask you, but
3 where is your wife?

4 A Oh, she is deceased.

5 Q Was she alive in 2004?

6 A Yes.

7 Q And what was her name?

8 A Laura McConico.

9 Q In June of 2008, did you witness an
10 incident that occurred in front of your house, or
11 near your house?

12 A Yes.

13 Q Can you tell us about what you saw?

14 A What I saw was a gentleman coming running
15 down Kelly Lane. And he began to turn on Edwards
16 Street, and two gentlemen come running from next to
17 Bartlet Street coming on Edwards Street to meet him.

18 Q Okay. And what happened when they meet up
19 with Him?

20 A They both grabbed each one on one arm.
21 And been shaking him. And they turn him loose. And
22 must have tell him he's got to run for his life,
23 because he said, "Don't kill me." And he took off
24 and went running. This person reach in his left
25 coat pocket and pulled out a revolver. And put in

Allen McConico-direct by Fant

1 his left hand and shot two times.

2 Q Okay. Now did you recognize any of these
3 people? Do you know any of them?

4 A I know Robbie. I think his name is Robbie
5 Dukes. I know Robbie Dukes.

6 Q How long have you know Robbie?

7 A I would say about 2 years.

8 Q Do you remember what Robbie was wearing
9 that day?

10 A A blue shirt.

11 Q And excuse me, what was the person that
12 was with him wearing?

13 A A camouflage jacket.

14 Q And do you know that person?

15 A No, not at the time. Not at the time
16 until Lucas told me who he was.

17 Q Was his face covered? Could you see the
18 person?

19 A No, I couldn't see his face too good.

20 Q Okay. And what, do you remember what kind
21 of camouflage it was? What color it was?

22 A It looked more like a green camouflage
23 jacket.

24 Q Okay. And now who was -- which one of the
25 people was the one that pulled out the gun and shot

Allen McConico-direct by Fant

1 the---

2 A The guy with the camouflage jacket on.

3 Q Okay. And was that guy Robbie Dukes?

4 A No, it wasn't Robbie Dukes.

5 Q And who was with you that saw what
6 happened that day at your house?

7 A Me and my wife and Erin Lucas was sitting
8 on the front porch.

9 Q And after the shooting what happened?
10 Where did the other people go?

11 A They went back towards Bartlet Street.

12 Q So were they walking or running?

13 A Running.

14 Q Did you see the victim fall down?

15 A Yes.

16 Q Where did he fall?

17 A Down by this big oak tree on the side of
18 the road.

19 Q Is that near your house?

20 A Yes. The leaves sometimes off that tree
21 blow in my yard and I have to rake it.

22 Q Did someone in your house call the police?

23 A I called the police.

24 Q And did you talk to the police when they
25 came?

Allen McConico-direct by Fant

1 A Yeah.

2 MS. FANT: Please answer any questions

3 Mr. Johnson may have.

4 A All right.

5 THE COURT: Cross examination, Mr.

6 Johnson.

7 CROSS EXAMINATION BY MR. JOHNSON:

8 Q Mr. McConico.

9 A Uh-huh. (Affirmative.)

10 Q Thank you for coming here today.

11 A All right.

12 Q I need to ask you a few questions.

13 A Okay.

14 Q I was presented with a typed statement,

15 and it says on June 8th 2004, the date of the

16 incident.

17 A Uh-huh. (Affirmative.)

18 Q That you talked with one of the

19 detective's and gave a statement about what had

20 happened?

21 A Uh-huh. (affirmative.)

22 Q And I understand your testimony, you live

23 on Edwards Street, isn't that right?

24 A Yeah.

25 Q I think you live about ■---

Allen McConico-cross by Johnson

1 A [REDACTED].

2 Q ---on [REDACTED] [REDACTED] is across the
3 street, is that right?

4 A Yes, sir.

5 Q Uneven numbers on one side and even
6 numbers on the other side.

7 A Yeah.

8 Q Isn't that right? If you turn off of
9 Bartlet Street, you know Bartlet Street
10 intersects -- Edwards intersects with Bartlet, isn't
11 that correct? Do you know?

12 A No, Kelly Lane would come out to Bartlet
13 Street not Edwards Street.

14 Q But Kelly Lane is sort of a block up. You
15 know, Bartlet Street runs---

16 A Yeah, it runs straight across Edwards
17 Street.

18 Q Well using this wall right here, because I
19 don't have a map.

20 A Uh-huh. (affirmative.)

21 Q Bartlet Street sort of runs east and west,
22 doesn't it?

23 A Yeah, uh-huh. (affirmative.)

24 Q And Edwards Street, the street you live
25 on, runs in to Bartlet.

Allen McConico-cross by Johnson

- 1 A There you go. There you go.
- 2 Q And do you live on the right or the left
- 3 hand side?
- 4 A Right.
- 5 Q On the right hand side?
- 6 A Uh-huh. (Affirmative.)
- 7 Q And on the right hand side, there is a
- 8 field on that side, is that right?
- 9 A Yeah.
- 10 Q Is that right?
- 11 A That's right, an empty lot.
- 12 Q Do you stay next to the empty lot?
- 13 A Uh-huh. (affirmative.)
- 14 Q Do you know a guy named Latimore Holmes?
- 15 A No.
- 16 Q Do you know if he lives in your
- 17 neighborhood?
- 18 A He could be, but I don't know him.
- 19 Q Do know who lives behind you? Who lived
- 20 behind you back in 2004?
- 21 A I seen the gentleman, he drives a bus.
- 22 Q He drives a bus?
- 23 A Yeah, a school bus.
- 24 Q About how old is that gentleman?
- 25 A He looks to be in his 50's.

Allen McConico-cross by Johnson

1 Q He looks to be in his 50's?

2 A Uh-huh. (affirmative.)

3 Q And on this day, you and your deceased
4 wife, your stepson; I think his name is Erin Lucas.

5 A Yeah.

6 Q Y'all were out on the porch?

7 A Uh-huh. (affirmative.)

8 Q And your house faces Edwards Street.
9 Isn't that true?

10 A Yes.

11 Q And you saw that two guys came off of
12 Bartlet Street, isn't that right?

13 A Yes.

14 Q Two guys came off of Barlet Street.

15 A And turned on Edwards Street.

16 Q And then they turned on Edwards.

17 A Uh-huh. (Affirmative.)

18 Q Isn't it true that you never saw a guy
19 come off of Bartlet Street and come through the
20 field that day?

21 A No, I didn't see nobody come through the
22 field now.

23 Q The two guys you saw that came off of
24 Barlet Street.

25 A And turned on Edwards Street.

Allen McConico-cross by Johnson

1 Q One of them was a Robin Dukes.

2 A Yeah, there you go.

3 Q And when you say there I go, that means I
4 am correct, isn't that right?

5 A Yes, that means you're correct.

6 Q And so Robin Dukes, the other guy, came
7 off Bartlet on to Edwards, is that true?

8 A Uh-huh. (affirmative.)

9 Q Now the guy who got shot, if you came up
10 there on Kelly Street, Kelly Street is on up that
11 way, isn't t?

12 A You can turn in the front of my house and
13 go on to Kelly Street.

14 Q On Kelly Street?

15 A Yes.

16 Q And so the guy who got shot, he came in
17 the opposite direction. He came on to Kelly Street.
18 Isn't that right?

19 A Yeah.

20 Q Isn't that right?

21 A Yes.

22 Q Okay. And so you recognize Robbie Dukes.

23 A Yes.

24 Q Isn't it true that you could not see the
25 face of the other person with Robbie Dukes?

Allen McConico-cross by Johnson

1 A No, I couldn't see the face.

2 Q You couldn't see the face of that person.

3 A No.

4 Q And that's what you told the police the
5 same day of this incident, isn't that right?

6 A Yeah.

7 Q And what color shirt was the person
8 wearing who came off of Kelly Street?

9 A A white shirt.

10 Q And some dark pants, isn't that right?

11 A Black slacks.

12 Q And he was heading in the direction of the
13 two guys that came off of Bartlet Street. Isn't
14 that what you told the police?

15 A That's right.

16 Q Okay. As soon as they got up together,
17 sort of confronting each other, the two guys jumped
18 on the guy that was by himself?

19 A Uh-huh. (affirmative.)

20 Q And that's when you went to the house to
21 use the telephone.

22 A No, I ran in the house to get the
23 telephone after the guy got shot.

24 Q After the guy got shot?

25 A After he got shot.

Allen McConico-cross by Johnson

1 Q Uh-huh. (Affirmative.) And so, "I went
2 inside to get the phone so I could call the police.
3 When I came back outside I saw the guy in a
4 camouflage jacket. So you went and got the
5 telephone after the guy got shot, is that right?

6 A That's right.

7 Q Okay. And did you see the color of the
8 gun?

9 A T looked more like a nickel plate
10 revolver.

11 Q How many shots were fired?

12 A Two.

13 Q At any time did you see the person who
14 was in the camouflage hit the deceased person, who
15 was Tyrone Pettis, up beside the head with a gun?

16 A No, he didn't hit him by his head.

17 Q Okay. Did you ever see the person with a
18 camouflage riding a bicycle?

19 A No, I didn't see him riding a bicycle.

20 Q Did you see Robin Dukes riding a bicycle?

21 A I didn't see Robbie Dukes riding a
22 bicycle.

23 Q Did you see the deceased, Tyrone Pettis,
24 riding a bicycle?

25 A He came down Kelly street by himself. He

Allen McConico-cross by Johnson

1 didn't have a bicycle.

2 MR. JOHNSON: Thank you very much.

3 A All right.

4 THE COURT: Redirect, Ms. Fant?

5 MS. FANT: No, your Honor.

6 THE COURT: Mr. McConico, thank you for
7 coming. You are excused.

8 MS. FANT: At this time the state calls
9 Vera Marshall.

10 Vera Marshall, Being first
11 duly sworn, testified as follows:

12 THE BAILIFF: State your full name.

13 A Vera Marshall. M-A-R-S-H-A-L-L.

14 DIRECT EXAMINATION BY MS. FANT:

15 Q Could you tell us where you live, please?

16 A [REDACTED].

17 Q [REDACTED]?

18 A Cecil.

19 Q Is that in Sumter?

20 A Yes, ma'am.

21 Q How long have you lived in Sumter?

22 A I was born in Sumter. I came back when I
23 graduated.

24 Q What kind of work do you do?

25 A Housekeeping.

Vera Marshall-direct by Fant

1 Q And do you know who lives at 32 Edwards
2 Street?

3 A Uh-huh. (Affirmative.)

4 Q Who is that?

5 A My aunt.

6 Q And what is her name?

7 A Willie Mae Wilson.

8 Q And were you -- where were you on the date
9 the incident occurred on June 8, 2004?

10 A Sitting up in her yard on the bricks.

11 Q Okay. How did that come about?

12 A Well....

13 Q Did you live at her house?

14 A Uh-uh, (negative.) I just went over
15 there.

16 Q And who was with you?

17 A Me and my ex-boyfriend.

18 Q Who is that?

19 A James Pleasant.

20 Q And were you all inside or outside the
21 house?

22 A Outside.

23 Q And where were you sitting?

24 A On the bricks in front of my aunt's yard.

25 Q That's in front of the yard at [REDACTED]?

Vera Marshall-direct by Fant

1 A Uh-huh. (affirmative.)

2 Q And what happened, what did you see that
3 happened that day?

4 A Well me and him was sitting in the front
5 yard and we was arguing. And we noticed three dudes
6 standing like down the road in a field. And one of
7 them one was on a bike, and two of them wasn't. But
8 one of them pushed the dude off the bicycle. And
9 one of them had on camouflage -- the one who had on
10 camouflage pulled out a gun. But the dude on the
11 bike, he was trying to get away because they pulled
12 him off the bike. But when he got up and run, the
13 dude who had on camouflage pulled out a gun. So I
14 ran, because, you know, because I saw a gun. And
15 the dude who had on camouflage shot the dude -- shot
16 the man who was on the bicycle. And then when he
17 shot him, you know, he was looking at us like
18 somebody please help, help. Like that. But the
19 phone wasn't working that day. t wouldn't work so
20 we couldn't really do nothing.

21 Q Okay. when you saw them over by the field
22 where is the field located?

23 A On Edwards.

24 Q Is it near the house near [REDACTED]?

25 A It's not too far.

Vera Marshall-direct by Fant

1 (Photographs marked State's Exhibit
2 Nos. 8 through 10 for ID only.)

3 Q Ms. Marshall, I'll show you what has been
4 marked for identification as State's Exhibit 8. Do
5 you recognize that?

6 A Yes.

7 Q And does this photograph fairly and
8 accurately depict what it purports to be; the house
9 as it was that day?

10 A Uh-huh. (Affirmative.)

11 THE COURT: Yes. You have to have a
12 verbal---

13 A Yes.

14 MS. FANT: Your Honor, I would offer
15 state's exhibit No. 8 into evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No objection, Your Honor.

18 THE COURT: State's No. 8 admitted in to
19 evidence without objection.

20 (Photograph marked State's Exhibit No. 8
21 into evidence.)

22 Q Can you tell us what does that depict?
23 What does that show a picture of?

24 A My aunt's house.

25 Q And in addition, does it show the blocks

Vera Marshall-direct by Fant

1 where you were sitting?

2 A Yes, ma'am.

3 Q Can you see on the photograph where it was
4 that the victim fell down?

5 A In the area right there. On that side of
6 the big tree.

7 Q Where I can show the jury, what area was
8 it now?

9 A Over here.

10 MS. FANT: Permission to publish, Your
11 Honor?

12 THE COURT: Yes. Ladies and gentlemen,
13 let me tell you what that means. Whatever a
14 lawyer asks permission to publish an exhibit to
15 the jury, that's just a legalistic way to be
16 able to show the jury what that exhibit is.
17 And if they do -- they have to ask permission
18 then, the exhibit can be passed around to you
19 while you are sitting there in the jury box.
20 Do not be concerned if you do not have a long
21 look at it while you are sitting there in the
22 jury box, as you would like. Everything that
23 has been admitted in to evidence will go with
24 you to the jury room once you retire to reach a
25 verdict in this case. So you will have ample

Vera Marshall-direct by Fant

1 opportunity to sit and look at it for as long
2 as you would like at that time.

3 Q I show you next State's Exhibit No. 9 for
4 identification. Do you recognize that?

5 A Yes.

6 Q Does this fairly and accurately depict the
7 things as you saw it that day?

8 A Yes, ma'am.

9 MS. FANT: Your Honor, I would offer
10 State's Exhibit No. 9.

11 THE COURT: Any objection?

12 MR. JOHNSON: No objection, Your Honor.

13 THE COURT: Admitted in to evidence as
14 State's No. 9 without objection.

15 Q And could you just describe what that
16 photograph shows?

17 A This is just about the same as the last
18 one you showed me.

19 Q Is that your still your aunt's house?

20 A Yes, ma'am.

21 MS. FANT: May I publish, Your Honor?

22 THE COURT: Yes.

23 Q And finally, I'll show you what has been
24 marked for identification as State's Exhibit No. 10.
25 Do you recognize that photograph?

Vera Marshall-direct by Fant

1 A Yes.

2 Q Does that fairly and accurately depict
3 your house that day?

4 A Yes, ma'am.

5 MS. FANT: Your Honor, at this time, I
6 would offer State's 10 into evidence.

7 THE COURT: Any objection?

8 MR. JOHNSON: No objection, your Honor.

9 THE COURT: Admitted without objection.

10 State's Exhibit No. 10.

11 (photograph marked as State's Exhibit No.
12 10 into evidence.)

13 Q Can you describe what that shows in that
14 photograph?

15 A That's the bricks that me and my boyfriend
16 was sitting on. And that's where it started at.
17 And this is the big tree that the man fell beside.

18 Q Okay. And you pointed at an area that
19 said that's where it started at.

20 A The field right here.

21 Q Okay. And that's also depicted in this
22 photograph?

23 A Uh-huh. (affirmative.)

24 Q Do you know Robin Dukes?

25 A I how know him from the neighborhood. Not

Vera Marshall-direct by Fant

1 like that.

2 Q You know who he is?

3 A Yes.

4 Q Had you seen him before?

5 A Uh-huh. (affirmative.)

6 Q Excuse me. And on that day, do you recall
7 how he was dressed?

8 A Yeah, if I am not mistaken, I think he
9 had on a white shirt. A white shirt and some blue
10 jeans.

11 Q And you indicated that he and another
12 person---

13 A Were walking.

14 Q And got involved in an altercation with
15 the victim?

16 A Yes, ma'am.

17 Q And what was the other person wearing?

18 A A camouflage jacket. And a camouflage
19 hat. And he had something up under his hat, but you
20 couldn't see him.

21 Q Could you see that person's face?

22 A Uh-uh. (Negative.)

23 Q And the camouflage was it light colored or
24 dark colored?

25 A Uh, I am not sure.

Vera Marshall-direct by Fant

1 Q Did you hear any argument between them or
2 did you hear anything that was going on?

3 A Uh-uh. (Negative.)

4 Q Did you hear the victim say anything?

5 A No, he was trying to get away like I
6 didn't do anything or what not.

7 Q And how far did he get before he was shot?
8 You don't have to know exactly. But I guess, short
9 distance, long distance?

10 A It wasn't that far. He wasn't that far
11 before he got shot.

12 Q And was he running away from the other two
13 people?

14 A Uh-huh. (affirmative.)

15 Q And which of the people was it that shot
16 the victim?

17 A The one who had on the camouflage.

18 Q Did the victim say anything after he was
19 shot?

20 A Somebody help. And that's when we tried
21 to use the phone, but the phone wasn't working that
22 day.

23 Q And did you see what happened to Robbie
24 Dukes and the guy in the camouflage after the
25 shooting?

Vera Marshall-direct by Fant

1 A I can't remember.

2 Q Do you recall seeing him after you tried
3 to make a phone call?

4 A I am not -- I can't remember.

5 MS. FANT: Please answer, just a
6 moment please. Please answer any questions Mr.
7 Johnson may have.

8 THE COURT: Cross examination, Mr.
9 Johnson?

10 CROSS EXAMINATION BY MR. JOHNSON:

11 Q Ms. Marshall, I am I.S. Levy Johnson along
12 with my son, we represent Mark McKoy. I need to ask
13 you a few questions if you don't mind.

14 A Okay.

15 Q It's my understanding that on June 8,
16 2004, you reported what you had seen to the police
17 that day and talked with them, is that correct?

18 A Yes, sir.

19 Q And you told them on that day that you and
20 your boyfriend, James Pleasant, was outside. Isn't
21 that right?

22 A Yes, sir.

23 Q And that you all were sitting on what is
24 shown on State's Exhibit No. 10, these brick walls,
25 is that right?

Vera Marshall-cross by Johnson

1 A Yes, sir.

2 Q Right next to referring to State's Exhibit
3 No. 10, may I approach the witness, Your Honor?

4 THE COURT: Yes, sir.

5 Q I see the pavement running beside that
6 house. What street is that?

7 A I don't know the name of the street,
8 because they don't have a sign up.

9 Q They don't have a sign up?

10 A Uh-uh. (Negative.)

11 Q Well what street is in front?

12 A Edwards.

13 Q That's Edwards Street?

14 A Uh-huh. (Affirmative.) Yes, sir.

15 Q Okay. And I see a police car over here.
16 And if you went down in that direction towards the
17 police car, what street would you run in to?

18 A Bartlet.

19 Q Okay. And if you went the other way,
20 which street would it go to?

21 A Liberty.

22 Q Liberty. Your Honor, may she stand in the
23 front of the jury and---

24 THE COURT: Yes,---

25 Q ---publish them?

Vera Marshall-cross by Johnson

1 THE COURT: ---you may step down. I would
2 remind you you will be away from the
3 microphone. Keep your voice up. Be sure the
4 Court Reporter can hear everything that is
5 said.

6 Q Stand over next to me. It's a little
7 awkward.

8 THE COURT: Stand on this side of her, Mr.
9 Johnson.

10 MR. JOHNSON: On this side?

11 THE COURT: Yeah, so the jury can see.
12 There you go.

13 MR. JOHNSON: Okay. Thank you, Your
14 Honor.

15 Q So these are the brick walls shown over
16 here, Is that correct?

17 A Yes.

18 Q And the street that runs in front of the
19 house, is what street?

20 A Edwards Street.

21 Q Edwards Street. And there is a police car
22 that is down the street on this photograph. And the
23 direction of that police car, what street would be
24 down there?

25 A Barlet.

Vera Marshall-cross by Johnson

1 Q Barlet.

2 THE COURT: Keep your voice up.

3 Q That's Barlet street?

4 A Yes.

5 Q And you say you saw two guys who got in a
6 fight, right?

7 A Uh-huh. (affirmative.)

8 Q And what street were they on? Which
9 direction were they coming from? Do you know?

10 A Well when I saw the two guys, they was on
11 that road. But then the dude on the bicycle, all I
12 know is, he came off of Edwards.

13 Q Okay. The street right next to your
14 aunt's house that's the one that didn't have a sign
15 to it?

16 A Uh-uh. (Negative.)

17 Q And you don't know the name of that
18 street?

19 A Uh-uh. (Negative.)

20 Q The dude on the bicycle was he by himself
21 or with somebody?

22 A He was by himself.

23 Q The dude on the bicycle he was the one who
24 got shot, or did he shoot? Or was he with someone
25 else?

Vera Marshall-cross by Johnson

1 A The dude on the bicycle is the one who got
2 shot.

3 Q Okay. So the dude on the bicycle, from
4 which direction did he come?

5 A I am not sure.

6 Q You are not sure?

7 A No, Sir. I know they were all up in that
8 area.

9 Q They're all up in that area.

10 A Uh-huh. (Affirmative.)

11 Q Now the area, point to it again, the area
12 you are talking about?

13 A Right up here. That's where the field.

14 Q That's where the field?

15 A Uh-huh. (affirmative.)

16 Q And so the shooting took place up by
17 field?

18 A No. Well the dude on the bicycle, he got
19 pulled off the bike. And then when he got up, he
20 was trying to run. We were sitting here. And he
21 was running towards us. And the dude with the
22 camouflage pulled out the gun. And he pulled out
23 the gun, and he shot him. And that's when we
24 ran -- that's when I ran in the house. What not.

25 Q Okay. And so you don't know which

Vera Marshall-cross by Johnson

1 direction the dude on the bicycle was coming from?

2 A Uh-uh. (Negative.)

3 Q You don't know that. But you're sure in
4 your mind that he was on bicycle?

5 A Uh-huh. (affirmative.)

6 Q Okay. And that's the guy who got shot was
7 on a bicycle?

8 A Uh-huh. (affirmative.)

9 THE COURT: YES.

10 A YES.

11 MR. JOHNSON: And We were referring to
12 State's Exhibit No. 10.

13 (Whereupon, the witness resumes the
14 witness stand.)

15 Q Now you know Robin Dukes. And you've seen
16 him before, haven't you?

17 A Yes, sir.

18 Q And you recognize his face, didn't you?

19 A Yes.

20 A Sir.

21 Q And you've told the police on June 8,
22 2004, that Robin Dukes had attacked the guy on the
23 bicycle, isn't that right?

24 A Yes, sir.

25 Q And I think you told him that Dukes

Vera Marshall-cross by Johnson

1 knocked the guy who got shot off of his bicycle,
2 isn't that true?

3 A Yes.

4 Q You also told the police on that day that
5 you did not recognize any face of the person who was
6 in the camouflage jacket, isn't that right?

7 A Yes, sir.

8 Q And I think you also told the police that
9 day that, and like you told us today, that the gun
10 was black, isn't that true?

11 A Yes, sir.

12 Q And so what you told them on June 8th, is
13 what you are telling us today.

14 A Yes, sir.

15 Q That you don't know who did the shooting,
16 isn't that right?

17 A Yes, sir. I just know what they had on.

18 Q What they had on.

19 A Yes.

20 MR. JOHNSON: Thank you very much.

21 THE COURT: Redirect?

22 MS. FANT: No, sir, your honor.

23 THE COURT: Thank you, you may step down.

24 Counsel, step up please.

25 (Whereupon, the attorneys approach the bench and

Vera Marshall-cross by Johnson

1 confer with judge.)

2 THE COURT: Ladies and gentlemen, we have
3 reached the lunch hour. And it's appropriate
4 that we break for lunch at this time, and I am
5 going of do so. And allow you to go and get
6 your lunch. I will ask you to be back in your
7 jury room please at 2:30. We will be ready to
8 resume at that time. Again, I would tell you
9 that over the lunch recess do not discuss the
10 case with anybody. Do not allow anyone to
11 discuss it with you. And do not discuss it
12 among yourselves when you are reassembling in
13 the jury room. T is still premature for you to
14 begin any deliberations about this matter.

15 Also I will remind you, I don't know
16 whether there is going to be anything in the
17 newspaper or broadcast media, but if there is,
18 do not read those stories, nor listen to
19 broadcast media. You have got to decide this
20 case based upon on what you hear in this
21 courtroom and not on the basis of what you
22 might hear from any other source. So with
23 those admonitions, I am going to excuse you
24 now, allow you to go about your business for
25 about an hour and a half. And be back in the

Vera Marshall-cross by Johnson

1 jury room please at 2:30, and I will see you
2 at that time. Thank you have a pleasant lunch.

3 (Whereupon, the jury is dismissed for
4 lunch at 12:57 p.m.)

5 THE COURT: Jury only at this time. No
6 one is excused except the jury. I am going to
7 wait a couple of minutes, Ms. Fant, and
8 Mr. Johnson, to allow the jury to clear the
9 area.

10 (Whereupon, the following takes place
11 outside the presence of the jury.)

12 MS. FANT: Your Honor, I do have an issue
13 that I wanted to take up.

14 THE COURT: Let's go ahead and do that.

15 MS. FANT: There is a reported telephone
16 conversation from the defendant who was being
17 housed at the Richland County Detention Center.
18 I have provided those to Mr. Johnson. However
19 they are not lengthy, but they are 10 minute
20 phone calls. And within the 10 minute phone
21 calls, are the evidence that we intend to
22 introduce. So we had made another CD last
23 night of just what we intend to introduce. I
24 have that for him. I wanted to give a copy for
25 him. If he wanted the whole thing in -- you

Vera Marshall-cross by Johnson

1 know, it's one of those where if he wants the
2 whole conversation in.

3 THE COURT: How many conversations are
4 there?

5 MS. FANT: I believe its' 10 separate
6 phone calls.

7 THE COURT: Pardon?

8 MS. FANT: 10 separate phone calls. And
9 they would be roughly 10 minutes each. Some of
10 them less. Some of it may be not admissible in
11 terms of what it says. Some of it frankly is
12 sex talk.

13 THE COURT: You have condensed what you
14 wish to introduce into a CD. Has Mr. Johnson
15 see or heard that yet?

16 MR. JOHNSON: No, sir.

17 MS. FANT: Not the condensed one. We just
18 got it. I just got it from her. They had to
19 bring it over this morning.

20 THE COURT: All right.

21 MS. FANT: But he has the complete one.

22 THE COURT: Let's go back to the basics,
23 first of all, as far as the actual telephone
24 conversations. You say, 10 phone calls. And
25 10 minutes roughly each. Are you talking about

Vera Marshall-cross by Johnson

1 100 minutes if all of them are played roughly,
2 is that correct?

3 MS. FANT: Correct.

4 THE COURT: And those were furnished to
5 defense counsel, ahead of time?

6 MS. FANT: Yes, Your Honor.

7 THE COURT: Is that correct? Mr. Johnson,
8 do you object to those?

9 MR. JOHNSON: Yes, sir, Your Honor.

10 MR. JOHNSON: They were furnished to us
11 and we faxed them on a DVD at that time and you
12 couldn't hear them.

13 THE COURT: When were they given to you?

14 MR. JOHNSON: Yesterday afternoon.

15 MS. FANT: I indicated to him over the
16 weekend when we were getting these. There were
17 frankly hundreds of these that we were able to
18 condense down.

19 THE COURT: Tell me what your objection,
20 Mr. Johnson, and let me deal with it.

21 MR. JOHNSON: Your Honor, we haven't
22 listened to them in totality because it's our
23 impression it would be tomorrow. And we
24 haven't see the condensed version at all.

25 THE COURT: I understand that. But I

Vera Marshall-cross by Johnson

1 thought what I asked her was, have you been
2 furnished the full versions and the indication
3 was that you had.

4 MR. JOHNSON: That's true.

5 THE COURT: Okay. But what you are saying
6 is, you haven't been able to for lack of
7 equipment or whatever, you have not been able
8 to listen to those?

9 MR. JOHNSON: That's correct, sir.

10 THE COURT: When do you plan to introduce
11 those?

12 MS. FANT: Your Honor, It would be our
13 witness this afternoon. And it's a witness
14 from out of town. I mean that I guess we could
15 have them back in the morning.

16 THE COURT: Well I think he is entitled to
17 listen to them. If you want to---

18 MS. FANT: If I give him the short version
19 now which is not nearly so long. Is that
20 something---

21 THE COURT: Well I think he needs to be
22 able to compare both of them. You need to --
23 Mr. George Johnson if you can find out why they
24 can't play them. What are they just regular
25 audio CD's that can be played on any CD player?

Vera Marshall-cross by Johnson

1 MS. FANT: Oh, no, they're the kind from
2 the computer. Because they were provided on a
3 digital media. They're recorded on to a CD on
4 a disk. Isn't that's correct? It's a weight
5 file, whatever that is. But he didn't mention
6 to me that he couldn't understand them. Had he
7 told me that, he could have borrowed my lap top
8 last night and listened to them. I didn't know
9 that was an issue.

10 I don't know a lot about digital stuff.

11 THE COURT: Well I want you to cooperate
12 with him, and give him whatever he needs to
13 listen to them. They will not have been done
14 until in the morning. And we will deal with
15 them first thing in the morning.

16 MS. FANT: I guess my only question would
17 be, Your Honor---

18 THE COURT: The full hundred minutes if
19 that's what it is and the condensed form. Make
20 sure they're in a format that the defense
21 counsel can listen to them. And have the
22 equipment to listen of them.

23 MS. FANT: I just wanted to let Your Honor
24 know the witness that we have this afternoon
25 may not run until the end of the day. And the

Vera Marshall-cross by Johnson

1 other witnesses are out of town. And they are
2 scheduled to be transported tomorrow. I don't
3 expect to see that many. So I don't think
4 there will be a problem finishing our case.

5 THE COURT: Keep the other witness here
6 with regard to the CD's in case Mr. Johnson is
7 able to listen to enough of the CD to enable us
8 to go forward with that this afternoon, if
9 possible.

10 MS. FANT: Okay, thank you.

11 THE COURT: We will be in recess. Does
12 anybody anticipate anything -- oh, how about
13 the witness that Mr. Johnson wanted to talk to,
14 Ms. Fant? He will be here at 2 o'clock?

15 MS. FANT: Yes, Your Honor.

16 THE COURT: And that is who?

17 MS. FANT: Robin Dukes.

18 THE COURT: Mr. Johnson, if you will get
19 your lunch and be back at 2:00 o'clock. I will
20 give you a half hour, two to 2:30, to talk to
21 Mr. Dukes. We will be in recess until 2:30.
22 (Whereupon, the court takes a lunch recess.)

23 THE COURT: We are back on the record in
24 regard to the State versus Mark McKoy.
25 05-GS-43-33. Mr. McKoy is present with his

Vera Marshall-cross by Johnson

1 counsel Mr. Johnson. And the state is present
2 with Ms. Fant. Anything before we bring the
3 jury in on behalf of the state, Ms. Fant?

4 MS. FANT: Just one of the witness'
5 records. And the same issue that came up with
6 the last witness about a -- actually let me
7 think for a minute. Well we have a little bit
8 of a different situation. We have one witness
9 and then the witness after is going to be
10 someone in federal custody. They have not been
11 convicted. However they have another proffer
12 letter, a proffer agreement, which is not a
13 promise of anything but just, you know, for
14 them to cooperate.

15 THE COURT: First of all, who is the
16 witness?

17 MS. FANT: Kim Delay.

18 THE COURT: And let me find that witness'
19 name on your list. Kimberly Delay. And she is
20 in federal custody, is that correct?

21 MS. FANT: Yes, sir, Your Honor.

22 THE COURT: But has not been convicted.
23 But has, what is the status of her case in
24 federal custody?

25 MS. FANT: She has signed a proffer

Vera Marshall-cross by Johnson

1 agreement. Which is essentially it differs
2 from a plea agreement; in that, there is no
3 deal on the table. What it does it is
4 basically an agreement between her and and the
5 federal government to tell everything she knows
6 and they will take that into consideration.

7 THE COURT: Has Mr. Johnson been given a
8 copy of that?

9 MS. FANT: Yes, sir, Your Honor.

10 THE COURT: And, Mr. Johnson, would feel
11 that that falls within the same category that
12 unless you intend to ask her about that, I
13 won't let her go into the proffer agreement.

14 MR. JOHNSON: You will not what?

15 THE COURT: Unless you intend to ask her
16 about whether she has been promised anything,
17 we won't go in to the proffer agreement. But
18 if she has, then I think the proffer agreement
19 becomes relevant.

20 MR. JOHNSON: But, Your Honor, a proffer
21 agreement is different from a plea agreement.
22 The witness we had before Mr. Holmes, he
23 entered into a plea agreement. And this is a
24 proffer agreement. There is no plea involved.

25 THE COURT: Let me see, I don't know.

Vera Marshall-cross by Johnson

1 MS. FANT: Well if he doesn't intend to
2 bring it up, Your Honor, we're fine.

3 MR. JOHNSON: They promised that based on
4 past conduct.....

5 THE COURT: Well again, I can't anticipate
6 what the questions are going to be. But if you
7 cross examine her on what she may or may not
8 have been promised in the federal case, I think
9 they are entitled to introduce this to show
10 that the U.S. Government represents that no
11 promises have been made. Why wouldn't that be
12 relevant?

13 MR. JOHNSON: Your Honor, that is between
14 the United States Government and Kim Delay.
15 Not between the State of South Carolina.

16 THE COURT: As long as you make -- it
17 says: "Proffer will provide the government an
18 opportunity to access the value." You can ask
19 her about promises from the State of South
20 Carolina. Again, you can ask her about
21 promises from the State of South Carolina.
22 But, you know, it is going to be a think line,
23 Mr. Johnson. I will leave it up to you. But I
24 agree that as far as what she has, or does not
25 have as a result of the United States

Vera Marshall-cross by Johnson

1 Department of Justice is concerned, and what
2 the agreements are with them, are not relevant
3 here unless you open that door. So I am going
4 to be listening very carefully for that.

5 MR. JOHNSON: I understand that.

6 MS. FANT: So I guess, is it my
7 understanding that if he does not go into that
8 then her custody status does not come in to
9 play at all? Because she has not been
10 convicted. The only reason it would come in to
11 play is if in fact....

12 THE COURT: Do you intend to go in to the
13 custody status, Mr. Johnson?

14 MR. JOHNSON: Your Honor, I think that is
15 appropriate if they are in jail, the jury needs
16 to know that. They are incarcerated.

17 THE COURT: Well do you want me to tell
18 part of the story and not all of the story,
19 Mr. Johnson? If she is in jail then, you know,
20 why not go in to -- I mean, she's in jail not
21 as a result of anything the State of South
22 Carolina has put her there for.

23 MR. JOHNSON: Why hide the fact? Your
24 Honor, they're bringing them in here. And
25 they're portraying these people as innocent

Vera Marshall-cross by Johnson

1 people with these haloos. And if they're---

2 THE COURT: No, sir, I don't agree with
3 that. They're bringing them in here because
4 they are incarcerated. But at the same time,
5 they have the right to show that the State of
6 South Carolina has not promised them anything.
7 So, you know, why can we not -- why can you
8 show the custody status in federal custody, but
9 not show the -- what the federal authorities
10 are willing to do?

11 MR. JOHNSON: I don't want to show that
12 she is in federal custody, just that's she's in
13 custody.

14 THE COURT: What's the difference?

15 MR. JOHNSON: It's a major difference.

16 THE COURT: She wouldn't be in custody if
17 it wasn't for the federal status.

18 MR. JOHNSON: Your honor, but the jury
19 doesn't have to know that. The fact that she
20 is incarcerated goes to her credibility, her
21 believability.

22 THE COURT: But so does that proffer go to
23 her credibility or believability.

24 MR. JOHNSON: No, sir, your Honor. This
25 is a contract between the Government of the

Vera Marshall-cross by Johnson

1 United States of America and not the State of
2 South Carolina.

3 THE COURT: The ruling is, Mr. Johnson,
4 that if you go into the custody status, and
5 her being in custody, solely as a result of her
6 federal custody, then the proffer agreement is
7 relevant. If you don't go in to her custody
8 status then the proffer agreement is not
9 relevant.

10 MR. JOHNSON: I understand, sir.

11 THE COURT: All right.

12 MS. FANT: Also, Your Honor, I want to
13 address prior record. The only thing I see on
14 here, and I believe Mr. Johnson has a copy. Is
15 some worthless checks in 2005.

16 THE COURT: Who is the witness?

17 MS. FANT: This is for Kim Delay.

18 THE COURT: Okay.

19 MS. FANT: Our other witness doesn't have
20 a record, your Honor.

21 THE COURT: Okay.

22 MS. FANT: And she does have...

23 THE COURT: Kim delay.

24 MS. FANT: Ms. Shull, she is a sergeant at
25 the Alvin S. Glenn Detention Center.

Vera Marshall-cross by Johnson

1 THE COURT: We'll get to that in just a
2 minute. Let's talk about Ms. Delay first. One
3 at a time. Ms. Delay, has a criminal record
4 for what?

5 MS. FANT: Worthless check from 2005. And
6 one -- actually one conviction for fraudulent
7 check under \$500 first. I take that back, 2
8 counts. And then she has several arrests and
9 that is related to this case. And a pending
10 drug case unrelated to this case in the State
11 of South Carolina. She hasn't been convicted
12 of anything besides the worthless check.

13 MR. JOHNSON: Your Honor, that involves
14 dishonesty.

15 THE COURT: That's my question. It's
16 outside, depending on what the sentence would
17 normally be outside the 10 years. But what was
18 her sentence?

19 MS. FANT: T was an \$832 fine.

20 THE COURT: What could she have gotten for
21 it?

22 MS. FANT: 30 days.

23 THE COURT: 30 days and 13 years ago on a
24 bad check?

25 MS. FANT: Oh, no, your honor. That was

Vera Marshall-cross by Johnson

1 the date is 2005.

2 THE COURT: 2005.

3 MS. FANT: Yes, Your Honor. It's not
4 related.

5 MR. JOHNSON: Your honor, would you please
6 look at 609(2)?

7 THE COURT: I am looking at it now.

8 MR. JOHNSON: All right, sir.

9 THE COURT: 609(A) subparagraph 2,
10 provides that evidence that a witness has been
11 convicted of crime shall be admitted if it
12 involves dishonesty or false statement
13 regardless of the punishment. Why wouldn't
14 that be admissible under that statute,
15 Ms. Fant?

16 MS. FANT: Oh, I don't disagree, Your
17 Honor. I think it is a crime of dishonesty.

18 THE COURT: Okay. T is an impeachable
19 offense.

20 THE COURT: Anything else, Ms. Fant?

21 MS. FANT: Just one thing, Your Honor.
22 And that involves the reported conversation.

23 THE COURT: Yes.

24 MS. FANT: The first witness is just going
25 to be the custodian of those. We do not intend

Vera Marshall-cross by Johnson

1 to introduce them or play them. I have had it
2 where I was going to kind of play them during
3 Ms. Delay's testimony. Obviously we can't do
4 that now. At the end of Ms. Delay's testimony,
5 I guess the question is would we break to see
6 if they have listened to them so we can
7 continue? Or would we just break to come back
8 tomorrow?

9 THE COURT: Well first of all, do you plan
10 to call the custodian to establish
11 authenticity?

12 MS. FANT: Yes, just that they're records.

13 THE COURT: Do you contest authenticity?
14 Is it necessary to call the custodian of the
15 records for that purpose, Mr. Johnson?

16 MR. JOHNSON: No, sir, Your Honor.

17 MS. FANT: Well actually she does have
18 one other thing unless he is not going to
19 contest that either. There was some writing of
20 Mr. McKoy's that was seized when he was here
21 for a bond hearing. And she can testify to the
22 department policy or the jail policy that they
23 are not allowed to have those. It is
24 contraband. And we did in fact seize them, and
25 that was appropriate.

Vera Marshall-cross by Johnson

1 THE COURT: What kind of writings?

2 MS. FANT: They were writings that he was
3 trying to give to somebody that indicate a
4 false alibi that affected this case. T says:
5 "These are the points she is to remember." And
6 it talks about, "Tell her this is what we did."
7 And so it is a statement of the defendant, a
8 writing that he wrote; that was seized because
9 they were contraband when he brought them to
10 court.

11 THE COURT: What do you say, Mr. Johnson?
12 I am not sure I know what you are talking about
13 here but---

14 MR. JOHNSON: I certainly object to it,
15 Your Honor. Number one, if they want to
16 object, Your Honor, we will have a Motion to
17 Suppress on it. Because it's my understanding
18 that my client was here in the Sumter County
19 Courthouse. In the possession of
20 attorney/client material. And they had no
21 probable cause whatsoever to seize these items.
22 They were in envelopes. And they absconded
23 those items out of his possession. And I was
24 right here in the courtroom, waiting after a
25 hearing before Judge Newman.

Vera Marshall-cross by Johnson

1 And there is no sign, contrary to what
2 they told me, there is no sign out there that
3 says that it was contraband. That happened
4 right here in this courthouse.

5 MS. FANT: Your Honor, may I add something
6 to that? He knows the departmental policy. He
7 is being housed at Alvin S. Glenn Detention
8 Center in Columbia. Their policy, which he is
9 well aware of, and he is given a copy of, is
10 that, no writing other than court related
11 matters are to come out with you when you come
12 to court.

13 In this case, there were some things that
14 are attorney/client privilege. Special agent
15 Richard Brown, with the ATF seized those and
16 put them in a sealed envelope for the federal
17 case. And apparently under federal law, the
18 magistrate judge can review them and determine
19 whether they really are attorney/client
20 privilege. We didn't take any of those. We
21 didn't see any of those, we didn't touch them.
22 What we took are things that have absolutely
23 nothing to do with attorney/client privilege
24 that he had on him. We believe intending to
25 give someone else.

Vera Marshall-cross by Johnson

1 THE COURT: Well let me ask you this.
2 Where is it -- well I won't say. Go ahead, Mr.
3 Johnson.

4 MR. JOHNSON: Where is it relevant, Your
5 Honor? And how can they come in here and say
6 they did not see the items, and yet They made a
7 determination that some of it was
8 attorney/client privilege? They had to see
9 them. They had to see them.

10 MS. FANT: I didn't mean that. I didn't
11 see the attorney/client privilege ones is what
12 I meant. If it said attorney on it,
13 confidential, anything, can I just hand up what
14 it is we took, Your Honor?

15 THE COURT: Well....

16 MS. FANT: This is just a copy.

17 THE COURT: Well I think the more
18 appropriate thing to do rather than hand it up
19 is let's have an in camera hearing, and proffer
20 and we'll go from there. I'll rule on it. I
21 am not interested in the contents at this
22 point. I am interested in the legality of the
23 seizure.

24 MS. FANT: Okay, we would need to do that
25 in the morning. Richard Brown is in Columbia.

Vera Marshall-cross by Johnson

1 He cannot be here today. I guess if the search
2 is legal, the only issue would be was the
3 contraband in violation of the policy of the
4 Richland County jail which may pertain to that.
5 And I guess what I need is Ms. Shull to come
6 back tomorrow to testify to that. Or can she
7 go ahead and testify to that policy while she
8 is here today?

9 THE COURT: That's up to you. But before
10 that is admissible, you are going to have to
11 make a proffer of all the testimony in the
12 absence of the jury of whatever testimony you
13 want. Whether it's from the evidence
14 custodian, or from the officer who seized it or
15 both.

16 MS. FANT: Okay.

17 THE COURT: You are going to have to make
18 a proffer. And you will have to do it in
19 camera outside the presence of the jury. And I
20 will determine the legality of whether or not
21 it was seized based upon that evidence.

22 MS. FANT: Okay.

23 THE COURT: I can't really make a ruling
24 on that based upon what either you or
25 Mr. Johnson have represented it to be. And

Vera Marshall-cross by Johnson

1 content is not really the issue as I see it.
2 It's whether or not it was legally seized. And
3 I understand that your motion would be on the
4 basis that to suppress it on the grounds that
5 it was not legally seized.

6 MR. JOHNSON: That's correct, Your Honor.

7 THE COURT: So I think I have to have a
8 hearing on that.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: I don't think there is any
11 other way to handle it.

12 MS. FANT: And could we do that in the
13 morning? Is that okay?

14 THE COURT: Sure.

15 MS. FANT: He's not here today.

16 THE COURT: Yes.

17 MS. FANT: And Ms. Shull can come back.
18 So as far as the ruling whether there is a
19 disagreement regarding---

20 THE COURT: He is stipulating to the
21 authenticity of the recordings.

22 MR. JOHNSON: As to the Authenticity, Your
23 Honor.

24 THE COURT: Right.

25 MR. JOHNSON: But I think, Your Honor,

Vera Marshall-cross by Johnson

1 that's going to require an in camera hearing
2 too for you to listen to those tapes. Because
3 what we have heard has some extraneous material
4 in it. It's not relevant to this case.

5 THE COURT: Well that's what I want to
6 talk about. And we will come to that in just a
7 minute, and I was going to come to that in just
8 a minute; is whether or not you have had a
9 chance to listen to those tapes. And if so, do
10 you object to them or can the full tapes be --
11 what is your position with regard to those
12 tapes? And with the regard to the summary of
13 those tapes or the CD that was put together
14 from those tapes? What is your position?

15 MR. JOHNSON: A couple of things, Your
16 Honor. Number one, we will not contest there
17 are authentic tapes from Alvin Glenn Detention
18 Center.

19 THE COURT: Right.

20 MR. JOHNSON: Number two, we object to the
21 subject matter on the tape. No. 3, and No. 3,
22 we have not had the opportunity to listen to
23 all of them in their entirety. And we do not
24 know whether they were taken out of context or
25 not.

Vera Marshall-cross by Johnson

1 THE COURT: What is the subject matter of
2 the tapes?

3 MR. JOHNSON: George can tell you. T is
4 gu-gob to us.

5 THE COURT: It's what?

6 MR. JOHNSON: I just made up a word.

7 THE COURT: Okay.

8 MR. GEORGE JOHNSON: Your Honor, we were
9 presented with three disks. The first disc has
10 10 separate recordings. The second disk has
11 one recording on it. And the third disk is a
12 compilation of the 10 different recordings. We
13 took bits and pieces of. We have not had an
14 opportunity to listen to the first disk. We
15 had all 10 of them. We haven't had---

16 THE COURT: Let's talk about this just a
17 minute. First place, at this point,
18 Mr. Johnson, Mr. George Johnson, since he seems
19 to be the overall technology guru.
20 Mr. Johnson, do you have the capability of
21 playing those tapes now?

22 MR. GEORGE JOHNSON: They have explained
23 to us what kind of format it's in; so, yes,
24 sir, we can figure that out.

25 THE COURT: Second question. Why are we

Vera Marshall-cross by Johnson

1 in the middle of the trial and we are just now
2 getting to this?

3 MS. FANT: Your Honor, the problem we had
4 is that, we have had a severe problem with
5 witness intimidation in this case. And so they
6 are things that we did not want the defendant
7 to know about certain witnesses.

8 THE COURT: Well if these are tapes of his
9 conversations, why is that a problem?

10 MS. FANT: Because other people are
11 involved. Obviously it's a two way
12 conversation. It's not just him talking. And
13 it involves other people. Frankly the whole of
14 it is probably 10 to 15 minutes. And I guess
15 my suggestion would be after Ms. Delay
16 testifies---

17 THE COURT: Well but, Ms. Fant, that is
18 not in compliance with the discovery.
19 Mr. Johnson made a request for discovery in
20 this matter. And the issue came up with regard
21 to the statements. I got those statements in
22 advance. I studied those statements. And I
23 agreed with you that there was nothing that was
24 Brady material, that made them exculpatory.
25 And I did not require you to give those

Vera Marshall-cross by Johnson

1 statements to the defendant.

2 But this is the first time I have heard
3 anything about any telephone conversation
4 tapes, that normally would be subject to rule 5
5 and Brady. And here we are half way through
6 the trial and we want to stop and give them an
7 opportunity to review these, and they should
8 have had the opportunity to review them before
9 trial.

10 MS. FANT: There are two issues, Your
11 Honor. One is that, Ms. Delay did not start
12 cooperating until this weekend. She was
13 refusing to talk to law enforcement.
14 Absolutely refused to---

15 THE COURT: What has that got to do with
16 the tapes?

17 MS. FANT: She's on the conversation, and
18 she has to decipher. A lot of it is in code.
19 Use street names, using coded language for what
20 this was meant to do. He knew that they were
21 recorded. And frankly, these are subject
22 Mr. Johnson's subpoena. He knows that Alvin S.
23 Glenn regularly records conversations of all
24 defendants that are there. And in fact, I told
25 him before that we were listening in on

Vera Marshall-cross by Johnson

1 conversations. And because we could not show
2 what we -- and we had them. And they were
3 overwhelming. But they also involved an
4 ongoing federal investigation and could not be
5 exposed to other people in that.

6 So we narrowed it down to what Ms. Delay
7 could testify to once we were informed that She
8 wanted to cooperate.

9 MR. JOHNSON: Your Honor.

10 THE COURT: Yes, sir.

11 MR. JOHNSON: This is a substantial
12 violation of Rule 5. The first time I received
13 communication about these tapes was Sunday
14 evening, the day before this trial began.
15 That's the first time I got notice that they
16 had some tapes. The fact that it was the
17 policy of the Alvin Glenn to record
18 conversations is not relevant and is
19 immaterial. The fact that these tapes were in
20 their exclusive possession, that they had
21 intentions to use, and they should have been
22 disclosed to me earlier. This was not
23 something that happened extemporaneously.

24 And at this time it does not afford my
25 client effective assistance of counsel for us

Vera Marshall-cross by Johnson

1 to have to try to analyze. And as Ms. Fant has
2 admitted, some of these tapes are in code. And
3 it's -- we don't have any glossary for the
4 codes that were used. And so it hamstrings us
5 to try to defend our client. And we would
6 respectfully ask that the tapes be suppressed
7 or they not be admitted into evidence because
8 of violation of Rule 5.

9 THE COURT: I will hear from you, Ms.
10 Fant.

11 MS. FANT: Your Honor, I don't think it's
12 a violation of Rule 5. Certainly in the
13 technical sense. And as you know, we have an
14 ongoing duty to provide discovery. They were
15 not relevant until we were able to talk to Ms.
16 Delay and find out who he was talking about
17 when he called certain people's names that were
18 absolutely not even essential to this case. I
19 did when we---

20 THE COURT: That's not what you are
21 supposed to disclose. You are not supposed to
22 make a determination of whether it is something
23 you are going to use and then disclose it. T
24 might be relevant to the defense side. If you
25 have conversations with the defendant recorded,

Vera Marshall-cross by Johnson

1 it seems like to me that clearly falls under
2 Rule 5.

3 MS. FANT: Well I guess I don't
4 understand why he couldn't subpoena them
5 himself.

6 THE COURT: Woe. Now Rule 5 doesn't
7 require them to subpoena them himself. T
8 requires the prosecution to disclose that
9 information.

10 MS. FANT: This is true. The reason he
11 was talking in code is because he knew they
12 were recorded. That put us at a disadvantage
13 of trying to figure out what they meant. Now
14 you're right, I guess, I could have turned them
15 over and that would have damaged the federal
16 case. And that was the decision that I made.

17 THE COURT: Ms. Fant, this case has been
18 going on since June of 2004. I don't know when
19 the Motion to Suppress with regard to the
20 statement, but it has been in the last couple
21 of months. But it was at least over a month
22 ago when I had a chance to---

23 MS. FANT: But those were witness
24 statements. We didn't---

25 THE COURT: ---rule on those. I am just

Vera Marshall-cross by Johnson

1 saying the, you know, the defense moved for
2 those to be produced and I ruled that they
3 didn't have to be produced under the rules.
4 But this is the other side of it where the
5 State has information in the form of
6 statements, whatever those statements may be,
7 from the defendant that they did not disclose
8 to the defense until the eve of trial.

9 MS. FANT: Your Honor, that is true. I
10 guess my request would be that since Ms. Delay
11 will be finished with testimony today. I don't
12 expect her to take until the end of the day.
13 But after that, we have a hearing and allow you
14 to listen to them and for him to listen to them
15 at the same time. And as I say, we redacted t
16 to the essential stuff. Because there is a lot
17 of things in there.

18 THE COURT: Well that's your opinion as to
19 what is essential.

20 MS. FANT: I agree. But he does have
21 copies, and we can -- he has had the whole
22 thing and he has had that. I asked him did he
23 want me to bring it up Sunday. I was going to
24 send my sister to his home if necessary. He
25 said, no, Monday would be okay. The first time

Vera Marshall-cross by Johnson

1 I heard him say anything about suppressing
2 these and having it be a violation of Rule 5,
3 is 5 minutes ago, Your Honor. And frankly, if
4 that's the case, he should have said something
5 earlier. I would have addressed this Monday
6 and maybe we could have worked it out.

7 I agree that we were not timely. I was
8 trying to protect the federal case. And I
9 would just like the opportunity to have those
10 listened to this afternoon.

11 THE COURT: What witnesses do you propose
12 to call this afternoon now that it is not
13 necessary that we have the custodian of the
14 records for the purpose of authenticating the
15 tapes? What other witnesses did you have
16 scheduled for this afternoon?

17 MS. FANT: Kimberly Delay.

18 THE COURT: She's the only one?

19 MS. FANT: Yes, your honor.

20 THE COURT: Counsel, this is a serious
21 matter, and I want to think about it. And I
22 want to think about it in the easiest and the
23 correct way to handle. And I really was just
24 discussing with my law check what is the
25 correct way to the handle this. I think I

Vera Marshall-cross by Johnson

1 want to be fair to the State and I want to be
2 fair to the defendant. I am very much
3 concerned and I don't mind telling the State, I
4 am very concerned that this information was not
5 disclosed to the State until the eve of trial.
6 Whether or not they -- if it was going to be
7 used, or if it wasn't going to be used, whether
8 it was in code or wasn't in code. The fact of
9 the matter it was evidence that was in the
10 State's possession. It was not disclosed for
11 whatever reason. And that concerns me. And I
12 want to think about this matter for about 10
13 minutes. We will take a recess and we will
14 come back in.

15 (Whereupon, the court takes a short
16 recess.

17 THE COURT: Thank you. Please be seated.
18 All right, the issue, well, back on the record
19 with regard to the State versus Mark McKoy. In
20 05-GS-43-033. Mr. McKoy is present with his
21 counsel. The issue before the court concerns
22 the matter of some tapes of telephone
23 conversations from the Alvin Glenn Detention
24 Center between the defendant in this case, mr.
25 Mark McKoy, and an individual by the name of

Vera Marshall-cross by Johnson

1 Kimberly Delay.

2 The State proposes to call Ms. Delay and
3 to introduce those tapes through her. The
4 defendant has agreed to the authenticity of the
5 tapes. But objects to their use on the grounds
6 that they were not disclosed in accordance with
7 Rule 5. And has moved to suppress those tapes
8 as a result of the failure of the State to
9 disclose those tapes in accordance with Rule 5.

10 Rule 5(a)1(c) provides that upon request
11 of the defendant, the prosecution shall permit
12 the defendant to inspect and copy books,
13 papers, documents, photographs, tangible
14 objects, buildings or places or copies of
15 portions thereof which are in the possession,
16 custody or control of the prosecution. And
17 which are material to the preparation of his
18 defense. Or are intended for use by the
19 prosecution as evidence in chief of the trial,
20 or were obtained from or belonged to the
21 defendant.

22 And the State's position, of course, is
23 that it was only this weekend. And that it
24 made the determination that they were intended
25 for use by the prosecution in evidence in chief

Vera Marshall-cross by Johnson

1 of the trial. And as soon as that made that
2 determination they did disclose them to the
3 defendant. However that argument ignores the
4 first part of the rule which says, which are
5 material to the preparation of the defense, or
6 which are material in the preparation of the
7 defense. I do not see any way that it would be
8 possibly conceived that tapes of conversations
9 with the defendant would not be material to the
10 preparation of the defense. Rule 5(a)3
11 provides the prosecution shall respond to the
12 defendant's request for disclosure no later
13 than 30 days after the request is made. Or
14 with such other time as may be directed by the
15 court. And Rule 5(c) provides that if prior to
16 or during the trial, the party discovers
17 additional evidence or material previously
18 requested or ordered which is subject to
19 discovery or discussion under this rule, he
20 shall properly notify the other party or his
21 attorney of court of the existence of the
22 initial evidence or material.

23 The thing that really troubles me about
24 this is that the State made knowing that they
25 had these materials, made a conscious decision

Vera Marshall-cross by Johnson

1 for whatever reason. And reasons that the
2 State thought or does think or still thinks
3 were completely justified. That is because of
4 the protection of potential witnesses or the
5 possible desire not to compromise a Federal
6 investigation.

7 The problem that I have with that is that
8 that determination was made by the State. And
9 that is not the State's determination. This
10 matter could have been handled exactly in the
11 same way that the witness statements were
12 handled; that is, disclosure of the existence
13 of the tapes. And even if the State had
14 decided that they didn't think for those
15 reasons that the defendant should get the
16 tapes, that they could have refused to turn
17 them over on the grounds that they thought that
18 the witnesses were possibly being compromised
19 or intimidated or it might compromise the
20 Federal investigation and could have disclosed
21 the existence of the tape and refused to turn
22 them over. In which case the defense then
23 would have had an opportunity to move to
24 require them to be disclosed. And in which
25 case the court could have conducted a hearing

Vera Marshall-cross by Johnson

1 and handled them very much the same way the
2 witness statements were heard or were handled;
3 that is, they could have been given to me and I
4 could have made a determination as to whether
5 or not they were discoverable. Because the
6 case -- that is the court's determination and
7 not the State's determination.

8 The Fact of the matter is very clear, that
9 Rule 5 has not been complied with. And this
10 troubles me. And for that reason the tapes of
11 the telephone conversations are excluded.

12 Ms. Fant, what do you want to do from
13 here?

14 MS. FANT: Your Honor, I guess just one
15 other question and this relates to the
16 contraband stuff we were talking about earlier.
17 The writing in these, Ms. Delay can verify is
18 the defendant's handwriting. Once she is done
19 today we do not intend to transport her back.
20 She is from Georgia actually. We had to travel
21 6 hours to get her; 6 hours to take her back.
22 And do not plan to have her here as a witness
23 tomorrow after that hearing. What I would
24 anticipate is just having these marked and
25 showing them to her.

Vera Marshall-cross by Johnson

() 1 THE COURT: Can we have the hearing this
2 afternoon to determine the admissibility of
3 those matters as far as her testimony is
4 concerned? I know you have got the testimony
5 of the other individual. I am trying to do
6 something to save some time.

7 MS. FANT: I agree, Your Honor. The
8 only -- she wouldn't have anything to do with
9 the seizure of them or anything like that. Her
10 testimony would just be that this is in fact
11 his handwriting. If they would stipulate that
12 if they come in tomorrow after your ruling that
13 this is his handwriting, it's not an issue. If
14 not,---

15 THE COURT: Do you have, other than those,
16 and in view of the Court's ruling regarding the
17 tape, do you plan to call her for anything
18 else?

19 MS. FANT: No, Your Honor.

20 THE COURT: So in view of the Court's
21 ruling regarding the tapes, she is not
22 necessary. But now the only thing is regard to
23 those matters there.

24 MS. FANT: And what I was going to suggest
25 doing is to just have this marked for

Vera Marshall-cross by Johnson

1 identification only. And just ask her if she
2 could identify the handwriting as his. You can
3 you identify the handwriting. Yes, it is his.
4 And leave it until tomorrow. And they get
5 introduced or they don't after you...

6 THE COURT: Did you say you do not intend
7 to send her back, or you do intend to send her
8 back?

9 MS. FANT: We, yeah, we were intending.
10 Obviously we were running short of officers.
11 And we have made arrangements to transport her
12 back.

13 THE COURT: Today?

14 MS. FANT: Yeah.

15 THE COURT: Mr. Johnson, without the Court
16 making a decision until the State has made the
17 full proffer they may wish to make with regard
18 to the seized items, can you establish
19 authenticity through this witness without
20 having to require her to be here tomorrow in
21 the presence of the jury?

22 MR. JOHNSON: May I see those, Judge?

23 THE COURT: Sure. And I'll put her on the
24 stand if you want to. And I'll give you a
25 chance to ask her some questions about it if

Vera Marshall-cross by Johnson

1 the only issue is authenticity. But if you can
2 stipulate after hearing her testimony in
3 camera, to the authenticity of it, we could
4 avoid keeping her here.

5 MR. JOHNSON: Your Honor, we do not
6 contest or stipulate that it is his
7 handwriting. But these are not all the papers.
8 As you can see on one it says page 2, one
9 missing. One page is missing. And we don't
10 know what things go together. We would
11 stipulate that it's his handwriting. That's
12 the issue before the court right now.

13 THE COURT: Right. But it would need to
14 be authenticated by Ms. Delay. But you would
15 stipulate that they were his handwriting.
16 Concerning the handwriting you might have other
17 objections, is that correct?

18 MR. JOHNSON: That's correct, Your Honor.

19 THE COURT: That would satisfy you as far
20 as Ms. Delay is concerned?

21 MS. FANT: Yes, Your Honor.

22 THE COURT: If you will give them back
23 then to Ms. Fant. And we'll go in to the
24 matter of whether they are admissible through
25 the officer tomorrow or whether they are

Vera Marshall-cross by Johnson

1 contraband or whatever the situation may be.
2 But it will not be necessary that you keep Ms.
3 Delay here for the purposes of authenticating
4 that that is his handwriting.

5 MS. FANT: Thank you. One other thing and
6 I guess and this would be whether or not he
7 intends to go into the proffer letter and her
8 status. Because if he does, I would like to
9 bring that up myself rather than waiting.

10 THE COURT: I understood you weren't going
11 to call her at this point.

12 MS. FANT: No. Ms. Delay?

13 THE COURT: Yeah.

14 MS. FANT: No, that's our witness for this
15 afternoon. We were going to call her and this
16 will be done -- that's our only witness for
17 this afternoon.

18 THE COURT: Okay. I understood that, but
19 I thought the testimony that you wanted by
20 Ms. Delay had to do with the tapes. And you've
21 got other testimony you want from Ms. Delay, is
22 that correct?

23 MS. FANT: Yes, Your Honor. And She can
24 in the fact testify to what you told her.
25 Yes/no, we have plenty of other testimony. The

Vera Marshall-cross by Johnson

1 question was just whether or not he was going
2 to go in to the proffer rather than have us do
3 like we did last time. I would like to bring
4 that out myself.

5 THE COURT: What is your position on that
6 Mr. Johnson? I think I have ruled on that.
7 But it is my view that custody is not an issue
8 unless you -- I mean if you raise the custody
9 issue, then she will have the right to go in to
10 the proffer letter. And her point is if you
11 are going to raise the custody issue she wants
12 to bring out the matter herself.

13 MR. JOHNSON: That is my understanding of
14 your ruling, Your Honor.

15 THE COURT: Yeah, but I mean what is your
16 intentions with regard to this matter?

17 MR. JOHNSON: I don't have any intentions
18 right now, Your Honor, unless something
19 transpires.

20 THE COURT: So you don't have any
21 intention of going into it with her regarding
22 her custody status.

23 MR. JOHNSON: That is correct, sir.

24 THE COURT: That answers that question.

25 All right, that being the case, we are ready to

Vera Marshall-cross by Johnson

1 go forward with Ms. Delay?

2 MS. FANT: Yes, Your Honor.

3 THE COURT: Bring the jury.

4 (Whereupon, the following takes place
5 within the presence of the jury.)

6 THE COURT: Thank you very much, ladies
7 and gentlemen. Again, I find myself
8 apologizing to you for keeping you waiting in
9 the jury room. But I will tell you that this
10 case has a lot of very complex and important
11 legal issues that we have to deal with. And
12 it's not been a situation where we have been
13 sitting around chatting and drinking coffee.
14 We have been working on these matters, and have
15 spent a good bit of time this afternoon doing
16 that. And I have resolved I think, the legal
17 issues that would have prevented us from going
18 forward; to the point that we are ready to go
19 forward at this point. Again, though, I do
20 apologize for keeping you waiting in your jury
21 room. But we are ready to go forward. Ms.
22 Fant, you may call your next witness.

23 MS. FANT: Your Honor, the state calls
24 Kimberly Delay.

25 THE COURT: Ms. Delay.

Vera Marshall-cross by Johnson

1 Kimberly Delay, being first duly
2 sworn, testified as follows:

3 THE BAILIFF: State your full name
4 and spell your last name please.

5 A Kimberly Renee D-E-L-A-Y.

6 DIRECT EXAMINATION BY MS. FANT:

7 Q Ms. Delay, can you tell us how long -- or
8 do you live in Sumter?

9 A Yes, ma'am.

10 Q How long have you lived here?

11 A All my life.

12 Q Do you know the defendant in this case?

13 A Yes, ma'am.

14 Q How do you know him?

15 A My boyfriend.

16 Q How long have y'all been together?

17 A Since 2001.

18 Q Do you know whether or not Mr. McKoy is
19 also referred to as Wise? Do you know him as Wise
20 as well?

21 A Yes, ma'am.

22 Q Is he left or right handed?

23 A Left handed.

24 Q Can you tell us where you were living on
25 June 8th 2004?

Kimberly Delay-direct by Fant

1 A [REDACTED].

2 Q Did the defendant live there also?

3 A No, ma'am.

4 Q Where did he stay?

5 A At across the street, I believe.

6 Q And what was the house across the street?

7 Did he own that house?

8 A No, ma'am.

9 Q And what was the house used for?

10 A Drugs.

11 Q And did he keep any clothes at your house?

12 A Yes.

13 Q And did Mr. McKoy have a vehicle at the
14 time back in June of 04?

15 A Yes.

16 Q What kind of vehicle was that?

17 A A truck.

18 Q What color was it?

19 A Red.

20 Q Now once the incident occurred over on
21 Edwards Street involving the killing of Tyrone
22 Pettis, do you know where wise was on that day?

23 A Across the street.

24 Q And are you referring to the drug house or
25 the house where drugs were sold?

Kimberly Delay-direct by Fant

1 A Yes, ma'am.

2 Q And do you remember, if he came to your
3 house at some point and changed clothes?

4 A Yes.

5 Q Do you recall what time that was?

6 A No, ma'am.

7 Q When he came in, what was he wearing?

8 A Blue jeans and a tee shirt.

9 Q And what did he change in to?

10 A Camouflage.

11 MS. FANT: Your Honor, we would have a
12 matter we need to take up with you.

13 THE COURT: Let's go to the side bar just
14 a minute.

15 (Whereupon, the attorneys approach the bench and
16 confer with judge.)

17 Q Now after Wise changed in to the
18 camouflage clothes, what did he do?

19 A He left.

20 Q Was he by himself at that time?

21 A Yes, ma'am.

22 Q When did he come back?

23 A About 3 to 5 minutes later.

24 Q And what did you notice about him when he
25 got back?

Kimberly Delay-direct by Fant

1 A He was out of breath.

2 Q And what did he do when he got back?

3 A He changed and said "Come on, baby, let's
4 go."

5 Q Now do you know Robin Dukes, otherwise
6 known as Robbie Dukes?

7 A Yes, ma'am.

8 Q And did you see Robin that day?

9 A Yes.

10 Q Do you remember what he was wearing?

11 A No, ma'am.

12 Q Do you remember whether or not it was
13 camouflage?

14 A No.

15 Q Where did you see him, Robbie Dukes?

16 A At the white house across the street.

17 Q And how did you know Him?

18 A Robbie? He is guy from the hood.

19 Q Was he a friend or an associate of Wise's?

20 A Yes.

21 Q Did he ever in fact sell drugs for Wise?

22 MR. JOHNSON: Objection, Your Honor. This
23 is not a drug case.

24 THE COURT: What is your objection?

25 MR. JOHNSON: Relevance, Your Honor.

Kimberly Delay-direct by Fant

1 THE COURT: What is the relevance?

2 MS. FANT: Just she was saying how she
3 knew him and that he was close to the
4 defendant.

5 THE COURT: I'll sustain it. She said
6 that she knew him. And he knew him and they
7 were acquaintances. And to that particular
8 question, the objection is sustained.

9 Q Do you know Tonya Lesane?

10 A Yes.

11 Q And who is she?

12 A A friend.

13 Q Pardon?

14 A A friend.

15 Q A friend of who?

16 A Me and Wise.

17 Q And did she work for Wise?

18 A Yes.

19 Q And was she working that day for Wise on
20 June 8, 2004?

21 A Yes.

22 Q And where was she working?

23 A At the white house.

24 Q And did she at some point come over to
25 your house?

Kimberly Delay-direct by Fant

1 A Yes.

2 Q What did she do there?

3 A She came and got more drugs.

4 Q Now who is Teddy?

5 A Tonya.

6 Q That's also Tonya Lesane?

7 A Yes.

8 Q Who calls her that?

9 A He does.

10 Q When you say he, who do you mean?

11 A Wise.

12 Q And at some point did the defendant talk
13 to you about Tonya providing an alibi for Him?

14 A Yes.

15 Q What did he tell you about that?

16 A That I was supposed to be braiding her
17 hair that day.

18 Q Excuse me. Did you agree to provide that
19 alibi?

20 A Yes.

21 Q And did he later tell you that the alibi
22 had to change about that?

23 A I don't remember.

24 Q Did you have a conversation with him about
25 what type of hair braiding you were doing?

Kimberly Delay-direct by Fant

1 A Yes.

2 Q Did he indicate to you how long the hair
3 braiding needed to take?

4 A Yes.

5 Q And how long was that?

6 A 8 or 9 hours.

7 Q Did he talk to you about what type of hair
8 braiding would take that long?

9 A Yes.

10 Q And did he talk to you about what type of
11 hair braiding was popular back in 2004?

12 A Yes.

13 Q At some point, did he tell you to get a
14 copy of the reminders for Teddy, and give them Tonya
15 Lesane?

16 A Yes.

17 Q Now after this incident occurred, did Wise
18 ask you to talk to some of the witnesses in this
19 case?

20 A Yes.

21 Q Who did he ask you to talk to?

22 A Opradela, Linda Cummings, Joe Sumpter.

23 Q And that is Opredele Lyons?

24 A I don't know her last name.

25 Q And why did he want you to talk to them?

Kimberly Delay-direct by Fant

- 1 A To see if he had to worry about them.
- 2 Q And excuse me, what did he mean by that?
- 3 A If they made any statements against him.
- 4 Q Did he send you to go see them?
- 5 A They would walk buy and I would see them.
- 6 Q And did he have something that you were
- 7 supposed to read to them?
- 8 A A letter.
- 9 Q And what were you supposed to do with that
- 10 letter?
- 11 A Just read it to them and get rid of it.
- 12 Q What did you do with it?
- 13 A I bound it and ripped it up.
- 14 Q Did you ever in your 7 years with wise see
- 15 him with a gun?
- 16 A Yes.
- 17 Q Can you tell us what type of gun it was?
- 18 A It was different types. I don't know,
- 19 different types.
- 20 Q Could you describe any of them that you
- 21 remember?
- 22 A One with the clips. One with the circle
- 23 things.
- 24 Q Do you remember what color that one was?
- 25 The one with the circle things?

Kimberly Delay-direct by Fant

1 A No.

2 (Notes marked State's Exhibit Nos. 11 through 14
3 for id. only.).

4 Q Ms. Delay, I will show you what has been
5 marked for identification as State's Exhibit 11
6 through 14. Do you recognize what that is?

7 A A phone book.

8 Q And is that in the same condition as you
9 had it when you kept it with you?

10 A Yes.

11 MS. FANT: Your Honor, I would offer
12 State's Exhibit Nos. 11 through 14 into
13 evidence.

14 THE COURT: Any objection, Mr Johnson?

15 MR. JOHNSON: No, sir.

16 THE COURT: To be admitted into evidence
17 as State's Exhibit Nos. 11, 12, 13 and 14
18 without objection.

19 (Notes marked State's Exhibit Nos. 11
20 through 14 into evidence.)

21 Q State's Exhibit 11, excuse me, on the
22 right hand side, could you tell us who SC is and
23 whose name is written by that?

24 A Ivan Sanders.

25 Q And are those his telephone numbers on

Kimberly Delay-direct by Fant

1 there?

2 A Old numbers.

3 Q On State's Exhibit No. 12, on the left

4 hand side of the top, whose numbers are listed

5 there?

6 A Ivan Sanders.

7 Q On State's No. 13, on the right hand side,

8 beginning about the middle, does it indicate that

9 there is a number for someone called Deno?

10 A Yes.

11 Q And who is Deno?

12 A Cabrall Archie.

13 Q And there is also one below that for

14 Tonya?

15 A Tonya Lesane.

16 Q And finally on State's Exhibit No. 14,

17 the bottom page on the right hand side, there are

18 two numbers for someone named Stacy. Who is that?

19 A Stacy Brunson.

20 Q Who is Stacy Brunson?

21 A A guy on the South Side.

22 Q Was he someone that Wise knew?

23 A Yes.

24 MS. FANT: Please answer any questions Mr.

25 Johnson may have for you.

Kimberly Delay-direct by Fant

1 THE COURT: Cross examination, Mr.

2 Johnson?

3 CROSS EXAMINATION BY MR. JOHNSON:

4 Q Hi, Kim.

5 A Hi.

6 Q How are you doing?

7 A Not too good.

8 Q I understand. Do you remember me?

9 A Uh-huh. (affirmative.)

10 Q How do you know me?

11 A I came to speak to you about Mark's case.

12 Q Why did you come to speak to Me about

13 Mark's case?

14 A He referred me to you.

15 Q He referred you to me.

16 MS. FANT: Your Honor, may I ask Mr.

17 Johnson to speak up. I can't hear the

18 question.

19 THE COURT: I need for you to speak up to

20 a little bit, Ms. Delay. Go ahead.

21 Q And what was the reason he referred you to

22 me?

23 A For his case.

24 Q What specifically were you supposed to

25 help me with?

Kimberly Delay-cross by Johnson

1 A Witnesses.

2 Q With his witnesses. Because you knew I
3 didn't live in Sumter County, isn't that right?

4 A Yes, sir.

5 Q And you knew this incident happened in
6 Sumter County, isn't that right?

7 A Yes, sir.

8 Q And you knew that I wasn't familiar with
9 Sumter County, so Mark asked you to help me contact
10 potential witnesses, isn't that true?

11 A Correct.

12 Q And as a result of your agreement to try
13 to contact potential witnesses, you attempted to do
14 that, didn't you?

15 A Yes.

16 Q And is it also true, Kim, that at no time
17 did I tell you to intimidate or ask anybody to
18 change their testimony, isn't that true?

19 A That's correct.

20 Q It's also correct, Kim, that Mark never
21 told you to intimidate or ask anybody to change
22 their testimony, isn't that true?

23 A Correct.

24 Q And so the names that you have on the
25 Exhibits 11 through 14, you compelled those names

Kimberly Delay-cross by Johnson

1 and those phone numbers when you were trying to
2 assist him to get in touch with defense witnesses,
3 isn't that right?

4 A Correct.

5 Q Now, Kimberly, on June 8, 2004, and
6 thereafter, what you testified here today you never
7 told anybody that before, did you?

8 A No, sir.

9 Q When did you tell somebody what you told
10 this jury today for the first time?

11 A Sunday night.

12 Q Sunday night, a couple of days ago?

13 A Yes, sir.

14 Q Where did that conversation take place?

15 A When I was brought back down here.

16 Q Brought back down here?

17 A Uh-huh. (Affirmative.)

18 Q And where -- who did you talk with?

19 A Ms. Fant and a defective.

20 Q You were talking with Ms. Fant and the
21 detective Sunday night?

22 A Yes, sir.

23 Q Do you know the name of the detectives?

24 A Detective Culick and that Detective.

25 Q Who is that? Point them out to me.

Kimberly Delay-cross by Johnson

1 A Those two.

2 Q These two here?

3 A Yes, sir.

4 Q And you talked to them on Sunday?

5 A Yes, sir.

6 Q When you talked to them, was your
7 statement recorded? Did they have a tape recorder
8 there so they could -- so you could accurately
9 preserve the questions and the answers?

10 A No, sir.

11 Q When you talked to them Sunday, did you
12 write out a statement?

13 A No, sir.

14 Q When you talked to them Sunday, did you
15 sign a statement?

16 A No, sir.

17 Q Isn't it true, Kim, that you did not see
18 Mark McKoy shoot Tyrone Pettis?

19 A That's true.

20 Q Isn't it true, Kim, that Mark McKoy never
21 told you that he shot Tyrone Pettis, isn't that
22 true?

23 A That's true.

24 Q And isn't it true that you have no
25 evidence that Mr. McKoy shot Tyrone Pettis?

Kimberly Delay-cross by Johnson

1 A That's true.

2 Q I notice, Kim, you are a little timid
3 today. Are you scared?

4 A No.

5 Q Are you all right?

6 A Yes.

7 Q Okay. And, Kim, it's also true that as
8 part of my request and Mark's request to help me to
9 get in touch with these witnesses, at no time did I
10 come over here and meet with you and go see a
11 witness, isn't that true?

12 A That's true.

13 Q At no time did you go and try to threaten
14 a witness, isn't that true?

15 A That's true.

16 Q At no time did you try to tell any witness
17 what they should say if they ever came to court,
18 isn't that true?

19 A That's true.

20 MR. JOHNSON: I have no further questions,
21 Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION BY MS. FANT:

24 Q Kim, regarding the letter that Wise gave
25 you to read to the witnesses, did Mr. Johnson tell

Kimberly Delay-redirect by Fant

1 you to read that to them?

2 A No, ma'am.

3 Q Who told you to read that to them?

4 A Mark.

5 Q And who told you to destroy that letter
6 afterwards?

7 A Mark.

8 Q Did Mr. Johnson ever tell you to destroy
9 them?

10 A No, ma'am.

11 Q Do you still love Wise?

12 A Yes.

13 MS. FANT: Thank you.

14 THE COURT: Recross?

15 MR. JOHNSON: No, Your Honor. Thank you
16 so much.

17 THE COURT: Thank you, Ms. Delay, you may
18 step down. Counsel, approach just a moment,
19 please.

20 (Whereupon, the attorneys approach the
21 bench and confer with the judge.)

22 THE COURT: Ladies and Gentlemen, through
23 no fault of the attorneys, because of certain
24 rulings from the court, we are at our stopping
25 place for this afternoon. And I realize that

1 you haven't heard a whole lot of testimony this
2 afternoon, but as I told you, we had some very
3 serious and important legal issues we had to
4 get resolved. And needed to get resolved. And
5 so we are going to adjourn at this time, and be
6 ready to go forward tomorrow. Let me ask
7 counsel, because you have to come from
8 Columbia, Mr. Johnson, would it cause you any
9 particular problem to start at 9 o'clock in the
10 morning?

11 MR. JOHNSON: No, sir.

12 THE COURT: Let me ask you, Ladies and
13 Gentlemen of the jury, would it cause anybody
14 any particular problems to come to start at
15 nine? If so, let me know. Let's plan to do
16 that then.

17 MS. FANT: I guess my only concern would
18 be about the hearing that we need to have. Do
19 I need to approach?

20 THE COURT: Yeah.

21 (Whereupon, the attorneys approach and
22 confer with the judge.)

23 THE COURT: There is another legal issue
24 that we are going to have to deal with in the
25 morning. And rather than try to keep you

1 waiting in the jury room, let's plan and you
2 plan to come back at 9:30. We'll plan to start
3 at Nine. So we'll be here at 9 o'clock ready
4 to go. Y'all plan to be here at 9:30, and I
5 will do my very best to try to start on time.
6 Over the evening recess then, don't discuss the
7 case with anyone. Don't allow anyone to
8 discuss it with you. And when you are
9 reassembling in the jury room don't discuss it
10 among yourselves. It's still premature for you
11 to begin discussion of this matter among
12 yourselves.

13 Also, do not read any news stories or
14 listen to any broadcast media. Again, I told
15 you the reasons for that. If there is anything
16 in the paper or anything on the broadcast
17 media, simply put the paper aside, or turn the
18 TV or radio off. Because you've got to decide
19 the case based upon what you hear in this
20 courtroom. So with those admonitions then, I
21 am going to excuse you for the rest of the day
22 and ask you to be back in the jury room
23 tomorrow morning at 9:30. Thank you. Have a
24 pleasant evening.

25 (Whereupon, at 4:14 p.m. jury is

1 dismissed.)

2 (Whereupon, the following takes place
3 outside the presence of the jury.)

4 THE COURT: Is there anything, Ms. Fant,
5 that we need to do tomorrow morning? Tomorrow
6 morning we need to consider, and you are going
7 to have what witness here with regard to the
8 confiscated items? Who is going to be the
9 witness?

10 MS. FANT: Your Honor, Richard Brown from
11 the ATF, and Freddie Bradshaw from the police
12 department. We had not put him on the witness
13 list, because we didn't know about the
14 Supression Motion. So he is a potential
15 witness depending on whether or not Mr. Brown
16 can satisfy the court.

17 THE COURT: I am just trying to think,
18 Mr. Johnson, is there anything we can do to
19 help shorten that matter? Can you give me any
20 idea of what your objection to the suppressed
21 item, or to the confiscated items are?

22 MR. JOHNSON: Yes, sir. They were
23 personal items. They had no probable cause to
24 seize the items. As I relayed to Your Honor,
25 we were here on a motion. I was here in the

1 courtroom and my client was leaving out of
2 lock-up. And he was accosted by these two
3 officers. He had attorney/client material in
4 an envelope like this. And they seized the
5 envelope and went through the envelope.

6 THE COURT: And the items that they
7 propose to introduce were in that envelope.

8 MR. JOHNSON: That's correct, sir.

9 THE COURT: We will hear the testimony in
10 the morning. And I will make a determination
11 as to whether the items were properly seized.
12 Again, Mr. Johnson, I am not trying to pin you
13 down to anything in particular or make any
14 commitment that you are not willing to make at
15 this time, but just so that I can kind of
16 prepare and know what I have got to do,
17 depending on my ruling. I will assure you I
18 have not made any determination at this time as
19 to whether or not they were properly seized.
20 If I were to rule that they were properly
21 seized, do you have an objection to the content
22 coming in to evidence? If I rule the procedure
23 was proper?

24 MR. JOHNSON: Your Honor, I need to take a
25 minute and read over it again.

1 THE COURT: Well I am not holding you to
2 that, I was just trying to get some idea.

3 MS. FANT: Actually, Your Honor, I need
4 just a second. Mr. Kolb just walked in and
5 said he needs to discuss a matter regarding
6 Robin Dukes that I might need to address with
7 you before we adjourn. So if I can have a
8 second to talk to him.

9 THE COURT: Talk to him.

10 (Whereupon, attorneys confer.)

11 THE COURT: Anything, Ms. Fant?

12 MS. FANT: I guess,---

13 THE COURT: Wait on Mr. Johnson and the
14 defendant to come back.

15 MS. FANT: Oh, he's not in here.

16 (Whereupon, Mr. Johnson and Mr. McKoy
17 re-enter the courtroom.)

18 THE COURT: Ms. Fant, anything further?

19 MS. FANT: What Mr. Kolb, mentioned to me,
20 that apparently when Mr. Johnson introduced
21 Robin Dukes during the 2:30 or 2:00 o'clock
22 time today, he tape recorded him. And Mr. --
23 he asked him if he had any pending charges in
24 North Carolina where he was living. At that
25 point, Mr. Kolb, stopped the interview and

1 said, Robin, there is a difference -- because I
2 had told them that they could not inquire about
3 any pending charges because of the fact that
4 you had ruled that, you know, they did not
5 convict him, that cannot come in.

6 And so he was thinking that that's what he
7 was going for. So when he said that, he was
8 not lying, he was saying that he didn't think
9 it was coming in to court. It was my opinion I
10 do not think that that tape should be
11 admissible. He obviously asked him that
12 question with the intent of probably eliciting
13 some kind of answer, and I don't think it's
14 appropriate.

15 THE COURT: What's your position, Mr.
16 Johnson?

17 MR. JOHNSON: What her opinion is on what
18 he was thinking, has nothing to do with it.
19 That's why we recorded it, so we wouldn't have
20 this dispute. He lied, Your Honor. His lawyer
21 told him, you've got to tell the truth. His
22 lawyer immediately recognized that he was lying
23 about. And it's right here on the tape. And
24 the court can listen to it.

25 THE COURT: I will listen to it and rule

1 in the morning.

2 MR. JOHNSON: And George will tell you how
3 to operate it.

4 THE COURT: I will listen to it and rule
5 in the morning. Anything else?

6 MS. FANT: Nothing from the state, Your
7 Honor.

8 THE COURT: Anything, Mr. Johnson?

9 MR. JOHNSON: Nothing, sir.

10 THE COURT: We will be in recess until 9
11 o'clock tomorrow morning. Let's please try to
12 be prompt. I want to start at nine with these
13 matters that we want to resolve outside the
14 presence of the jury because I want to be
15 through with them at 9:30 and start with the
16 jury at 9:30. I'm tired of keeping this jury
17 waiting in the jury room. Mr. Johnson, bring
18 that recorder to me whenever you get at chance.

19 (Whereupon, At 4:21 p.m. the court
20 breaks.)

21 ----END OF RECORDED TRANSCRIPT OF RECORD.

22

23

24

25

CERTIFICATE

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER,

I, Margaret T. Sullivan, Official Court Reporter for the third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in THE above captioned case, relative to appeal, in General Sessions Court on September 22nd-23rd, 2008, in Sumter County, Sumter, South Carolina.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

12-31-08
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires October 3, 2011