

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
Thomas A. Russo, Circuit Court Judge

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Opinion No. 5110 (S.C. Ct. App. filed 4/3/2013)
10-GS-21-0254

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

PETITIONER

APPELLATE CASE NO. 2011-197635

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Roger Bruce, Appellant.

Appellate Case No. 2011-197635

Appeal From Florence County
Thomas A. Russo, Circuit Court Judge

Opinion No. 5110
Heard January 9, 2013 – Filed April 3, 2013

REMANDED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General Brendan J. McDonald, all of Columbia,
for Respondent.

FEW, C.J.: Roger Bruce was convicted of murdering his girlfriend Laura Creel. On appeal, he argues the trial court erred in admitting evidence of the discovery of Creel's body, which police found in the trunk of her car, because he claims the search violated his Fourth Amendment rights. In ruling on the issue at trial, the court did not make adequate factual findings or legal conclusions. Rather, the court summarily stated, "I'm going to overrule the objection and allow it." We

hold the trial court's findings are inadequate for appellate review. We remand to the trial court to determine (1) whether Bruce had a legitimate expectation of privacy in the trunk of Creel's car, (2) whether Bruce consented to the search, and (3) if the police violated Bruce's Fourth Amendment rights, whether the exclusionary rule applies.

I. Facts and Procedural History

Late in the evening on October 12, 2009, Creel's son contacted the Florence police department, requesting the police check on Creel at the apartment she shared with Bruce. He told the police he had not heard from her or seen her in "a couple of days." He also informed them that Creel's "goldish" 1997 Chrysler Concord was parked at the apartment and that Bruce had called him from Creel's cell phone.

As officers Gary Beckett, Charles Hobgood, and Steven Starling approached the apartment on foot, they saw Bruce looking out of the apartment's screen door. The officers explained to Bruce they were there to check on Creel and asked if she was home. When Bruce answered no, the officers asked if they could "take a quick look and make sure that she wasn't inside," and he consented. After briefly scanning the residence, the officers observed a cell phone and keys on a table. The keys were consistent with the vehicle parked outside the apartment, and the vehicle was consistent with the description given by Creel's son. Bruce stated the keys and cell phone belonged to Creel, which prompted Hobgood to pick up the keys and walk toward her car, along with the other officers and Bruce.

Hobgood looked through the car windows with his flashlight, searching for "maybe a pocketbook" or "something that may give us an idea where she may be." Hobgood then attempted to open the trunk but was unsuccessful. Hobgood testified Bruce asked, "well, you want me to show you what key[?]"¹ At that point, Bruce "walked towards" Hobgood "with his arm out like he was going to grab the keys," causing Hobgood to instruct Bruce to tell him which key opened the trunk rather than show him. Hobgood testified he was not sure what Bruce's intent was when he walked toward him. However, both Beckett and Starling testified it appeared Bruce walked toward Hobgood with the intent to help him find the correct key. During Hobgood's exchange with Bruce, Starling "got the keys from Hobgood" and pushed the trunk release button, which opened the trunk and revealed a female body, later identified to be Creel.

¹ There is conflicting testimony as to whether Hobgood asked Bruce which key opened the trunk or whether Bruce volunteered his help.

At trial, Bruce moved to suppress the discovery of the body, arguing the search violated his Fourth Amendment rights because the officers had no search warrant and he had not consented to the search of the car. The court asked, "What standing would he have to object to a search of a vehicle that was not his?" Counsel responded Bruce could make the challenge based on the fact that the car was on his property and the keys were found inside his apartment. The State argued that Bruce had no expectation of privacy in Creel's car, and that he consented to the search and even offered to help the officers open the trunk.

After the court heard counsels' arguments, it stated,

It appears that this is inevitable discovery; but for hitting the trunk release button and opening the trunk according to the earlier testimony Mr. Bruce was gonna open the trunk for them, or at least was providing the keys to do so.

The court then ruled, "I'm going to overrule the objection and allow it." The jury found Bruce guilty and the court imposed a life sentence.

II. The Sufficiency of the Court's Fourth Amendment Ruling

When a criminal defendant moves to suppress evidence on Fourth Amendment grounds, the trial court must first determine whether the defendant has a legitimate expectation of privacy in the searched premises. *See State v. Crane*, 296 S.C. 336, 341, 372 S.E.2d 587, 589 (1988) ("Because appellant cannot make the threshold demonstration of a legitimate expectation of privacy in connection with the searched premises, he is not entitled to launch the constitutional challenge to the search."); *State v. McKnight*, 291 S.C. 110, 114-15, 352 S.E.2d 471, 473 (1987) (stating a defendant who seeks to have evidence suppressed on Fourth Amendment grounds "must establish that his own Fourth Amendment rights were violated" by "demonstrat[ing] a legitimate expectation of privacy in connection with the searched premises"). If the trial court finds the defendant had a legitimate expectation of privacy, it must then determine whether the police violated his Fourth Amendment rights. *See, e.g., State v. Missouri*, 361 S.C. 107, 115, 603 S.E.2d 594, 598 (2004) (holding defendant had a legitimate expectation of privacy, which entitled him to challenge the search under the Fourth Amendment); *State v. Rivera*, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009) ("Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment

when conducted under the authority of voluntary consent." (quoting *Palacio v. State*, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999)). If the trial court finds the police violated the defendant's own Fourth Amendment rights, it must then determine whether the evidence should be excluded pursuant to the exclusionary rule. See *State v. Weston*, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (stating "[s]uppression is appropriate in only a few situations"); *State v. Sachs*, 264 S.C. 541, 566, 216 S.E.2d 501, 514 (1975) (stating "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where [the purpose of] deterrence is clearly subserved").

Whether a defendant may challenge a search, whether the police violated a defendant's Fourth Amendment rights, and whether to apply the exclusionary rule are mixed questions of law and fact. See *United States v. Gray*, 491 F.3d 138, 145 (4th Cir. 2007) (stating "the expectation [of privacy] must be one which the law recognizes as legitimate," meaning it "must be objectively reasonable . . . by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society" (internal quotations and citation omitted)); *State v. Austin*, 306 S.C. 9, 17, 19, 409 S.E.2d 811, 816, 817 (Ct. App. 1991) (stating whether a legitimate expectation of privacy exists, "depends on a factual determination" and "is a question of fact"); *State v. Tindall*, 388 S.C. 518, 523 n.5, 698 S.E.2d 203, 206 n.5 (2010) (stating that when addressing a challenge under the Fourth Amendment, an appellate court "must ask first, whether the record supports the trial court's [factual] findings . . . and second, whether these facts support a finding that the officer" did not violate the defendant's Fourth Amendment rights); *United States v. Allen*, 159 F.3d 832, 838 (4th Cir. 1998) (explaining "mixed questions of law and fact are involved" in an inevitable discovery ruling). Unless the trial court makes sufficiently specific factual findings on the record, this court has no basis on which to review those findings or the trial court's legal conclusions. See generally *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) (holding because the trial court failed to make specific findings of fact to support its ruling, "there was nothing for the Court of Appeals to review").

In admitting the evidence of the discovery of Creel's body, the trial court stated, "It appears that this is inevitable discovery." The court's statement suggests it admitted the evidence under the inevitable discovery doctrine, which is an exception to the exclusionary rule. *State v. Jenkins*, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App. 2012). However, a trial court has no need to consider whether the exclusionary rule applies until it has first determined the police violated the defendant's Fourth Amendment rights. The record does not indicate the trial court ever made that determination.

Moreover, this does not appear to be a situation in which the inevitable discovery doctrine is properly applied. See *State v. Spears*, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (stating evidence may be admitted despite a violation of the Fourth Amendment "if the government can prove that the evidence would have been obtained *inevitably*" (emphasis added) (quoting *Nix v. Williams*, 467 U.S. 431, 447, 104 S.Ct. 2501, 2511, 81 L.Ed.2d 377, 389 (1984))). In this case, the State presented no evidence that it would have inevitably discovered Creel's body by some other means had the officers not searched the trunk of her car as they did. Therefore, because the record contains no evidence to support the trial court's statement regarding inevitable discovery and inadequate findings as to the requirements of the doctrine, we may not affirm on that basis. See *Jenkins*, 398 S.C. at 230, 727 S.E.2d at 769 (remanding issue of whether inevitable discovery doctrine applied because State did not present evidence in support of the doctrine and the determination "should not be made by this court on a blank record").

We remand with instructions that the trial court make findings consistent with this opinion. See *Austin*, 306 S.C. at 19, 409 S.E.2d at 817 (remanding for determination of whether the defendant "had a reasonable expectation of privacy" because trial court failed to make that determination when it admitted evidence pursuant to an exception to the exclusionary rule); *State v. Richburg*, 250 S.C. 451, 461, 158 S.E.2d 769, 773 (1968) (emphasizing the need for specific findings of fact when the legality of a search or seizure is raised); *Jenkins*, 398 S.C. at 230-31, 727 S.E.2d at 769 (remanding issue of whether inevitable discovery doctrine applied). If the court determines Bruce had a legitimate expectation of privacy in the trunk of Creel's car, the police violated Bruce's Fourth Amendment rights by exceeding the scope of his consent, and the evidence should have been suppressed pursuant to the exclusionary rule, the court shall consider whether the error in admitting the evidence was harmless. If the court determines it erred and the error was not harmless, it shall grant a new trial. If the court determines it did not err in admitting the evidence, or the error was harmless, Bruce's conviction must be affirmed.

REMANDED.

WILLIAMS and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Opinion No. 5110

Appellate Case No. 2011-197635

PETITION FOR REHEARING

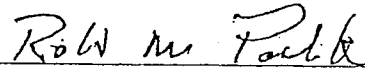
Pursuant to Rule 221(a), petitioner petitions this Court for rehearing concerning the following points that may have been overlooked or misapprehended. The opinion of the Court asks the lower court to determine if petitioner "had a legitimate expectation of privacy in the trunk of Creel's car..." The Fourth Amendment violation, however, occurred at the moment the police seized the car keys in petitioner's apartment without his consent and without a search warrant. Everything that followed after that was the fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1981). The lower court is then asked to determine if the error is harmless. But a trial judge is not to sit in judgment of his own decision. State v. Floyd, 303 S.C.

298, 400 S.E.2d 145 (1991). It is the job of the reviewing court to determine if an error is harmless. State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012); State v. Salley, 398 S.C. 160, 727 S.E.2d 740 (2012); Ex parte Crymes, 630 So.2d 125 (Ala. 1993); Driven v. Com., 361 S.W.3d 877 (Ky. 2012).

The lower court is also asked to make additional findings, but the State should not be allowed to introduce any new evidence as the solicitor had his chance to make the record he did make. Any further attempts to introduce additional facts raises the question of double jeopardy and collateral estoppel. Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141 (1978); Williams v. State, 314 Ga. App. 840, 846, 726 S.E. 2d 66, 71 (Ga. App. 2012). The record in this case is insufficient to support the admissibility of any evidence seized from petitioner's residence in violation of the Fourth Amendment and any evidence that was the fruit of the poisonous tree is also inadmissible.

The petition for rehearing should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

This 18th day of April, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

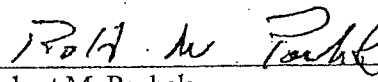
V.

ROGER BRUCE,

APPELLANT

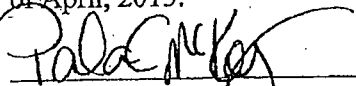
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of April, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 18th day
of April, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2011-197635

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

PETITION FOR REHEARING

Comes now Respondent, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court for rehearing.

INTRODUCTION

On October 12, 2009, Florence authorities, while performing a welfare check at a residence occupied by Laura Creel ("Victim") and her boyfriend, Roger Bruce ("Appellant"), discovered Victim's body stuffed in the trunk of her car. (R. 109-10, 116-17, 127). The ensuing investigation culminated in the trial and conviction of Appellant. (R. 459).

STATEMENT OF THE CASE

Appellant was indicted by the Florence County grand jury for murder (#2010-GS-21-0254). (R. 465-66). Following his indictment, Appellant was tried before the Honorable

Thomas A. Russo and a jury on August 8-11, 2011 in Florence. (R. 1). At trial, Appellant was represented by chief public defender, Jack Lawson and assistant public defender Scott P. Floyd, while the State was represented by solicitor E.L. Clements, III. (R. 1). At the conclusion of trial, Appellant was found guilty and received a life sentence. (R. 459-60, 464). Thereafter, Appellant filed a timely notice of appeal and, on May 23, 2012, filed his final brief arguing, "the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant." Br. of App. at 3. In the conclusion of his brief, Appellant requested only that his conviction be reversed. Br. of App. at 9. In response, the State, via its' final brief maintained the trial court's factual finding, that the victim's body would have discovered pursuant to the inevitable discovery doctrine, was not clearly erroneous and furthermore, even if it was, reversal was not the appropriate remedy in light of a variety of evidence supporting the trial court's judgment. Br. of Resp. at 1. Accordingly, the State asked this Court to affirm the trial court's judgment below. Br. of Resp. at 16.

On April 3, 2012, this Court issued a published opinion remanding the case back to the trial court, stating "the court did not make adequate factual findings or legal conclusions." State v. Bruce, No. 5110 (Ct. App. filed April 3, 2013). In particular, this Court determined, the trial court's findings, that suppression was not the appropriate remedy under the inevitable discovery doctrine, were "inadequate for appellate review." Id. Accordingly, this Court instructed the trial court to evaluate (1) whether Appellant had a legitimate expectation of privacy in the trunk of the victim's car; (2) whether Appellant consented to the search; and (3) if Appellant's Fourth Amendment rights were violated, whether the exclusionary rule applies. Id. The State now seeks rehearing as it believes this Court overlooked or misapprehended the evidence supporting

the trial court's ruling as well as the evidence in the record supporting the additional sustaining grounds advanced by the State.

STANDARD OF REVIEW

"[A] petition for rehearing must 'state with particularity the points supposed to have been overlooked or misapprehended by the court.' " Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (quoting Rule 221(a), SCACR). Similarly, "[t]he purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, *Appellate Practice in South Carolina* 309 (1999)).

BACKGROUND

Prior to trial, defense counsel informed the trial court they intended to suppress "evidence obtained in relation to the body itself" based upon their belief the evidence was obtained in violation of Appellant's Fourth Amendment rights. (R. 5). However, defense counsel further informed the court that it would seek to suppress such evidence at the time the State sought to introduce it. (R. 5). Accordingly, while Beckett, one of the first officers on the scene, was testifying regarding his and others officers attempt to open the trunk, defense counsel objected and the jury was sent to the jury room. (R. 119). Defense counsel then explained "[w]e're getting to the point where the trunk is about to be open, and I understand—the Defense would object to the discovery of the body in that fashion, basis that there was no search warrant obtained and no—does not appear any consent by my client given at that time to search the vehicle. I know that he allowed them to come in and look when they asked, but there's no indication that he consented[.]" (R. 120).

In response to defense counsel's objection, the trial court questioned whether Appellant had standing to object to the search of a vehicle that was not his. (R. 120). Replying to the trial court's question, defense counsel argued Appellant had standing to challenge the search because the car was on his property and the keys were found in the house. (R. 120). The State then argued Appellant did not have standing to challenge the search since the officers knew the keys and car belonged to Victim and Appellant had given the officers permission to enter the residence. (R. 120). Continuing, the State noted Appellant simply did not have a reasonable expectation of privacy in a car that was not his. (R. 120-21). Defense counsel then argued Appellant and Victim were essentially in a common law marriage and the officers only knew the vehicle in the driveway looked like Victim's car. (R. 121). Based upon this, defense counsel further argued that the officers needed Appellant's permission to take the keys, which defense counsel claimed, they never attempted to do. (R. 121). In response, the State explained:

Your Honor, I think Corporal Hobgood yesterday testified that [Appellant] said, here, and went to the keys and said, I'll show you which key to open it with and they hit the trunk release button and opened the trunk and so [Appellant] didn't have to. I think that was the testimony of Corporal Hobgood yesterday, and I'm pretty sure that that would have been testimony we'd gotten from him as well, but I don't think—I don't think there's any evidence; I don't think no one has ever said, yeah we're husband and wife. Just the fact that people live together, that doesn't establish in and of itself common law marriage. I just don't think he had any standing or any expectation of privacy in that vehicle and he also had offered to open the trunk for him before they hit the trunk release button.

(R. 122). Thereafter, the trial court noted, "[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Appellant] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122). Continuing, the trial court determined, "I'm gonna overrule the objection and allow it." (R. 122). Defense counsel then argued "I understand it may inevitably have been discovered at a later point and what I'm saying is that any evidence gathered in the time between when it was

discovered and when it would have been discovered would be appropriately suppressed in spite of the fact that they may have inevitably discovered it with a proper search warrant.” (R. 122-23).

ARGUMENTS

I. Contrary to this Court’s determination, the trial court made adequate legal and factual findings supporting its’ ruling that the victim’s body would have been discovered pursuant to the inevitable discovery doctrine

On appeal, Appellant claimed the trial court erroneously determined the victim’s body would have been inevitably discovered explaining the trial court’s ruling was based upon the solicitor’s incorrect recollection of the facts as testified to by the State’s witnesses during a Jackson v. Denno hearing conducted the previous day. As a result, Appellant maintained the State failed to meet its burden of showing, by a preponderance of the evidence, that Victim’s body would have been discovered lawfully.¹ The State disagreed with Appellant’s contention arguing that even assuming the solicitor’s recollection of the factual testimony from the Jackson v. Denno hearing was incorrect, the evidence at trial supported the trial court’s ruling on inevitable discovery meaning the ruling should be affirmed. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (“When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court’s ruling and will

¹ Notably, Appellant *never* argued the trial court erroneously applied the inevitable discovery doctrine. Rather, Appellant’s only argument on appeal was that the State failed to prove, by a preponderance of the evidence, that the victim’s body would have been discovered through lawful means. See Br. of App. at 6-7 (“The prosecution bears the burden of showing by a preponderance of the evidence that the items seized would ultimately have been discovered lawfully even though it was obtained by an illegal seizure. The prosecution has not met that burden.”) (internal citation omitted). In other words, Appellant only argued the trial court made a *factual error* rather than a *legal error*. Thus, because Appellant only alleged that the trial court made a *factual error* in his inevitable discovery ruling, this Court by finding “this does not appear to be a situation in which the inevitable discovery doctrine is properly applied,” has answered a question which was never asked of it. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 396 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 n.4 (2012) (“If a question is not presented for our review, we should not answer it no matter how much we may want to do so. For as former Chief Judge Alex Sanders famously wrote, ‘appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.’”) (quoting Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), quashed on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985)).

reverse only where there is clear error.”). Ruling on the issue, this Court opined there was “no evidence” to support the trial court’s inevitable discovery ruling. In so finding, the State submits this Court misapprehended the trial court’s application of the inevitable discovery doctrine and further overlooked evidence which clearly supported the trial court’s ruling and as such, asks this Court to reconsider its’ previous ruling.

Applicable Law

The inevitable discovery doctrine is an exception to the exclusionary rule which states that illegally obtained evidence should not be suppressed where the prosecution can establish, by a preponderance of the evidence, that such evidence would have been discovered by lawful means. Nix v. Williams, 467 U.S. 431, 444 (1984). Thus, “[w]hen the State has met its burden of proving it inevitably would have discovered the evidence, the ‘deterrence’ purpose of the exclusionary rule is not ‘clearly subverted,’ and there is no rational basis to keep that evidence from the jury to ensure the fairness of the trial proceedings.” State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix 467 U.S. at 447).

Subsequent case law from the Fourth Circuit Court of Appeals regarding the application of Nix illustrates at least three circumstances in which inevitable discovery may apply. Specifically, in United States v. Allen, 159 F.3d 832 (1998), a case cited by Appellant and relied upon by undersigned counsel throughout the oral argument, the Fourth Circuit found, “[t]he inevitable discovery doctrine may apply where additional routine or factually established investigative steps would inevitably lead to discovery of the evidence without undertaking any search.” Id. at 841. Similarly, the Allen Court said, “*the doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an exception to the warrant requirement.*” Id.

(emphasis added). Continuing, the Allen Court explained, “[t]he doctrine may even apply where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so, *if* the government produces evidence that the police would have obtained the necessary warrant absent the illegal search.” Id. (emphasis in original).

Analysis

As detailed above, this Court determined there was no evidence supporting the trial court’s ruling on inevitable discovery. In response, the State submits this Court misapprehended the basis for the trial court’s inevitable discovery ruling and as a result, overlooked evidence supporting the trial court’s application of inevitable discovery. Specifically, a review of the record shows the trial court’s ruling was *not* based upon a factual determination that authorities would have sought and obtained a search warrant as contemplated under the first circumstance in the Allen case. Indeed, the State agrees there was nothing supporting this assertion in the record. Rather, as explained by undersigned counsel during the oral argument, the factual basis supporting the trial court’s inevitable discovery ruling was that if Starling had not hit the trunk release button, police would have still lawfully opened the trunk because it was clear Appellant, through his words and actions, consented to the trunk being opened. (R. 126-27, 145, 156-58, 168-69). Thus, consistent with the second example in Allen, because authorities had implicitly received consent from Appellant to open the trunk and consent is a warrantless search exception, the record shows police would have discovered the victim through lawful means absent Starling’s intervening action of hitting the trunk release button. See Allen, 159 F.3d at 841 (“The doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an

exception to the warrant requirement.”). Indeed, the record reflects this was clearly the trial court’s line of thinking when he stated, “[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Appellant] was gonna open the trunk for them, or at least was providing the keys to do so.” (R. 122).

Keeping in mind the trial court’s rationale in admitting the evidence, the State submits there is a variety of evidence supporting the trial court’s ruling. First, the State notes that almost immediately after the trial court denied defense counsel’s motion to suppress, the solicitor elicited testimony from Officer Beckett indicating Appellant was reaching for the keys to show Hobgood which key would open the trunk. (R. 126-27). Specifically, Beckett testified Appellant was attempting to show Corporal Hobgood which key opened the trunk of Victim’s car immediately before Officer Starling hit the trunk release button on Victim’s key ring. (R. 126-27). Hobgood later corroborated this, adding that Appellant actually offered to show him which key opened the trunk right before Starling hit the trunk release button. (R. 145). This was confirmed on cross-examination and again during Starling’s direct examination. (R. 156-58, 168-69). Understanding this, the State submits there is evidence supporting the trial court’s inevitable discovery ruling and as such, asks this Court to reconsider its previous ruling. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 (“When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court’s ruling and will reverse only where there is clear error.”).

- II. Even if the trial court’s inevitable discovery doctrine was not supported by the evidence, the record requires the trial court’s judgment be affirmed since: (A) the keys to the victim’s car were obtained as a result of authorities receiving consent from Appellant to search the residence; (B) Appellant informed authorities the keys found in the residence were the victim’s car keys, a car in

which he had no possessory interest, and (C) Appellant never expressly limited or revoked his consent to the scope of the search

On appeal, the State asserted three additional sustaining grounds, explaining that even if the trial court's factual finding was determined to be incorrect, the judgment should still be affirmed as the record reflects: (A) Victim's keys were obtained as a result of a consent search; (B) the keys were not Appellant's and Appellant had no possessory interest in Victim's car meaning Appellant had no standing to challenge the search of the car; and (C) even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search, but instead, through his actions, implicitly consented to the search of the car. See Rule 220(c), SCACR (explaining the appellate court may affirm any ruling, order or judgment for any ground appearing in the record on appeal). In its decision, this Court failed to rule on the State's additional sustaining grounds, instead remanding the case to the trial court and requesting a ruling on these questions. Accordingly, the State submits this Court overlooked the State's additional sustaining grounds in failing to address, or even explain, its' rationale in failing to address the additional sustaining grounds advanced by the State. Therefore, the State asks this Court to substitute an opinion determining, whether the additional sustaining grounds it has submitted may obviate the need for a remand.

Applicable Law

In P'On, L.L.C v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) our Supreme Court explained the purpose served by the submission of additional sustaining grounds opining:

[A] respondent—the “winner” in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate

review. *It also could violate the principle that a court usually should refrain from deciding unnecessary questions.*

338 S.C. at 419, 526 S.E.2d at 723 (emphasis added); Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 327, 734 S.E.2d 177, 181 (Ct. App. 2012). Explaining other requirements of additional sustaining grounds the I'On Court said, "additional sustaining grounds must appear in the record on appeal" Id. at 419-20, 526 S.E.2d at 723 and further stated:

The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case. It is within the appellate court's discretion whether to address any additional sustaining grounds.

Id. Here, the State submits there is evidence in the record supporting its' assertion that even if the trial court's ruling on inevitable discovery is incorrect, Appellant's conviction and sentence should be affirmed. Specifically, because (A) Appellant consented to the search of the residence at which time he identified the keys found in plain view within the residence as being (B) the victim's car keys, a car in which he had no possessory interest, and (C) Appellant never expressly revoked his consent, but instead implicitly consented to the search of the car, his conviction and sentence should be affirmed.

A. The Officers had Consent to Search the House and Seize the Keys

As detailed in the State's brief, the record conclusively shows Appellant voluntarily gave the officers permission to search the residence he shared with the victim. Therefore, even if the trial court's ruling on inevitable discovery is clearly erroneous, reversal would not be required because Appellant consented to allowing the officers to search his home.

"The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . ." State v.

Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011). “Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent.” State v. Provet, 391 S.C. 494, 507, 706 S.E.2d 513, 520 (Ct. App. 2011). “Undoubtedly, a law enforcement officer may request permission to search at any time.” Id. Nevertheless, the State “bears the burden of establishing the voluntariness of the consent.” Id. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances. Id.

Here, the State submits Appellant voluntarily consented to allowing the officers to search the residence and therefore, cannot object to the seizure of Victim’s keys which were found in plain view inside the residence. Specifically, the record demonstrates that while Appellant may have been intoxicated, *he clearly understood the officers were at the residence to check on Victim and understanding this to be the case, agreed to let the officers search the premises and question him regarding Victim’s whereabouts without qualification.* (R. 117-19, 141-42, 158, 164-65, 166). In fact, Appellant consistently demonstrated his ability to respond to questions posed to him by the officers volunteering that the *car keys and cell phone found in the residence were not his, but Victim’s.* (R. 117, 49-50, 50-51, 167, 168). Accordingly, as Appellant voluntarily consented to allowing the officers to search and question him regarding Victim’s whereabouts, it logically follows that the keys, which were in plain view and were obtained as a result of this consent search, were lawfully obtained and therefore, the seizure was not unreasonable and did not violate Appellant’s Fourth Amendment rights.

B. Appellant had no Standing to Challenge the Search of the Car

Additionally, Appellant did not have standing to challenge the search of *Victim’s car* where the record reflects Appellant did not have a possessory interest in the car. While defense

counsel argued Appellant had standing based upon the fact the car was located in the yard of the residence he occupied, the State submits this fact simply does not matter, as the car, which was the property that was actually searched, was not Appellant's.

For purposes of Fourth Amendment analysis, "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." State v. Moore, 377 S.C. 299, 307, 659 S.E.2d 256, 260 (Ct. App. 2008) (quoting U.S. v. Jacobsen, 466 U.S. 109, 113 (1984)). Further, in Rakas v. Illinois, 439 U.S. 128 (1978) the Supreme Court of the United States addressed whether evidence seized in an automobile in which defendants had been passengers should have been suppressed. In doing so, the Court held that:

Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. There is no reason to think that a party whose rights have been infringed will not, if evidence is used against him, have ample motivation to move to suppress it. Even if such a person is not a defendant in the action, he may be able to recover damages for the violation of his Fourth Amendment rights, or seek redress under state law for invasion of privacy or trespass.

Rakas, 439 U.S. at 133-34 (internal citations omitted).

Here, the record clearly reflects *Appellant did not have a possessory interest in Victim's vehicle*. Specifically, there was a wealth of testimony indicating Victim owned the car and drove the car exclusively. (R. 90, 101-102, 218-219, 236, 345). Additionally, an inventory of the car revealed the victim's driver's license was in the car and further indicated the car was registered and insured in Victim's name. (R. 305-306). In fact, Appellant did not have a driver's license meaning he could not lawfully operate the vehicle. (R. 223). Furthermore, there is no evidence

showing Appellant had permissive use of the vehicle at the time the car was searched. Accordingly, the State submits Appellant did not have standing to contest the search of Victim's car and therefore could not seek exclusion of the evidence seized pursuant to the search of the car. See Rakas, 439 U.S. at 133 ("Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.").

C. Appellant Never Expressly Revoked or Limited his Consent to the Search

Finally, even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search once the officers removed the keys from the residence and began to use them to open Victim's car. In fact, rather than expressly revoke or limit his consent, Appellant instead, by way of his actions, implicitly consented to the search of Victim's car.

In State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) the Supreme Court of South Carolina explained that pursuant to the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent." 343 S.C. at 648, 541 S.E.2d at 843. Continuing, the Forrester Court stated, "[w]hen relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." Id. "The scope of the consent is measured by a test of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" State v. Mattison, 352 S.C. 577, 585–86, 575 S.E.2d 852, 856 (Ct.App.2003) (citation omitted).

Here, the State submits the facts and circumstances surrounding the search clearly informed Petitioner of the scope of the search. Furthermore, even if one were to assume that Appellant did not consent to a search of Victim's car when he granted consent, the facts surrounding his questioning and the subsequent actions of the officers and Appellant clearly demonstrate Appellant, despite having the opportunity to limit the search or revoke his consent, declined to do so, instead deciding to aid the officers in the search of Victim's vehicle.

Indeed, Appellant was clearly aware, based upon the statements and actions of the officers that they intended to use the keys to search Appellant's car. Specifically, Appellant was asked who owned the keys they found in the residence, and after he explained the keys were Victim's, observed the officers as they proceeded to Victim's car in an attempt to unlock the vehicle. (R. 118, 119, 49-50, 50-51, 144, 167, 168). Nevertheless, Appellant, rather than revoking or limiting consent, chose to aid the officers in their search by attempting to show them which key opened the trunk in Victim's car. (R. 126, 145, 156-57, 168).

Understanding these circumstances, the State submits an objectively reasonable person would have understood that when the officers asked whose keys were in the apartment, picked the keys up, headed outside and began using the keys, the scope of consent may have changed. However, despite these facts, the State submits that an objectively reasonable person would have interpreted Appellant's additional actions of attempting to aid the officers in their search, as implicitly consenting to the expanded search rather than seeking to limit or revoke his consent. Accordingly, the State submits Appellant's Fourth Amendment Rights were not violated and therefore, the evidence obtained from the search of the car should not be excluded.

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court grant rehearing or, in the alternative, substitute an opinion addressing the concerns advanced by the State in this petition and affirm the judgment imposed by the trial court.

Respectfully Submitted,

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April 18, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2011-197635

THE STATE,

RESPONDENT,

v.

ROGER BRUCE,

APPELLANT

PROOF OF SERVICE

I, Brendan McDonald, counsel for the Respondent, certify that I have served the within *Petition for Rehearing*, on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

Robert M. Pachak, Esq., SCCID/Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.

This 18th day of April, 2013.



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April 18, 2013.

The South Carolina Court of Appeals

The State, Respondent,

v.

Roger Bruce, Appellant.

Appellate Case No. 2011-197635

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SC OFFICE OF
APPELLATE LITIGATION

ORDER

After careful consideration of the Appellant's and Respondent's petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

John C. Cannon, Jr. C.J.
A. B. Wes J.
Daniel G. Pieper J.

Columbia, South Carolina

cc:

Robert M. Pachak

Brendan Jackson McDonald

Thomas A. Russo

FILED

May 6, 2013

STATE OF SOUTH CAROLINA

RECEIVED

In The Court of Appeals

JUN - 1 2015

APPEAL FROM FLORENCE COUNTY

S.C. Supreme Court

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

ROGER BRUCE,)

DEFENDANT.)

TRANSCRIPT OF RECORD

10-GS-21-0254

August 8, 2011

Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

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Solicitor

JACK W. LAWSON, ESQ.
Chief Public Defender

SCOTT P. FLOYD, ESQ.
Assistant public defender

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

1 **THE COURT:** All right. Ladies and gentlemen, and
2 we are ready to proceed in handling our first case.

3 Solicitor, you may call the first case, sir.

4 **MR. CLEMENTS:** Thank you, Your Honor, if it please
5 the Court. The State would call indictment number
6 2010-GS-21-254, the State versus Roger Bruce.

7 **THE COURT:** All right. Thank you, sir.

8 Ladies and gentlemen, you heard Solicitor Clements
9 call for trial the case of the State of South Carolina
10 versus Roger Bruce under indictment 2010-GS-21-254. Now
11 I'm going to go over with you the allegations that are
12 contained in this indictment; but before I do that, what I
13 need you to understand is this, that the State has called
14 this indictment to trial. An indictment, ladies and
15 gentlemen, is simply a piece of paper that has on it the
16 allegations or the charge against the person in this case,
17 Mr. Bruce. It is just that. They are allegations at this
18 point. To these allegations Mr. Bruce has pled not
19 guilty, and that plea of not guilty places upon the State
20 the burden to prove each and every element of this crime
21 beyond a reasonable doubt.

22 Now in this case or in this indictment Mr. Bruce is
23 charged with the offense of murder. And as I indicated,
24 I'm gonna read to you or go over with you the allegations
25 that are contained in this indictment. These allegations

1 are in no way evidence against Mr. Bruce and the
2 information contained in this indictment is in no way
3 evidence toward any of the allegations that are contained
4 in it. These are merely the charges that the State has
5 brought.

6 This indictment charges that Roger Bruce did in
7 Florence County on or about October the 12th of 2009,
8 feloniously, willfully, and with malice aforethought kill
9 one Laura B. Creel by means of shooting her in the head
10 with a gun and then hiding her body in the trunk of her
11 car, and that the said Laura B. Creel did die as a
12 proximate result thereof all in violation of
13 Section 16-3-10, -20, and -60 of the South Carolina --
14 excuse me, 16-1-60 of the South Carolina Code of Laws 1976
15 as amended. Now as I've indicated, ladies and gentlemen,
16 to these allegations Mr. Bruce has pled not guilty. Is
17 there any member of the jury panel who knows anything
18 about this these facts or this case as I have just
19 conveyed to you, if so, please stand.

20 (There was no response.)

21 THE COURT: Thank you. There are none.

22 Solicitor Clements is prosecuting this case on
23 behalf of the State. Solicitor, if you would introduce
24 yourself please, sir.

25 MR. CLEMENTS: Thank you, Your Honor, may it please

1 MR. CLEMENTS: Your Honor, I think Mr. Lawson said
2 he had a couple of motions.

3 THE COURT: Now let me -- you've premarked all your
4 exhibits for identification purposes at this time; is that
5 correct?

6 MR. CLEMENTS: That is correct, Your Honor.

7 THE COURT: And Mr. Lawson, you've had an
8 opportunity to at least peruse through those that they
9 marked, which is simply at this point just for
10 identification purposes?

11 MR. LAWSON: I have, Your Honor.

12 THE COURT: Okay. Any motions that we need to take
13 up?

14 MR. LAWSON: Yes, sir. Your Honor, Defense would
15 move to suppress any statements or alleged statement made
16 by the defendant Roger Bruce for basically two reasons.
17 Number one, any statements made prior to Miranda and then
18 any statements at all before or after due to the fact that
19 my client was under the influence of alcohol and was
20 intoxicated at the time that he talked with the police.

21 THE COURT: All right. Solicitor.

22 MR. CLEMENTS: Your Honor, I would just ask to be
23 heard through witnesses on that situation, Your Honor.

24 THE COURT: Sure, all right. And obviously there
25 are some statements. We'll go ahead and let the State put

1 up any witnesses regarding that.

2 MR. CLEMENTS: Yes, sir. Just out of a question of
3 courtroom economy, is there any other motion Mr. Lawson
4 has he thinks might be beneficial for us to take up before
5 we do that?

6 THE COURT: Other than these statements,
7 Mr. Lawson?

8 MR. LAWSON: Your Honor, I intend to move to
9 suppress evidence that was obtained in relation to the
10 body itself based on what I feel that prior to -- at some
11 point the State obtained a search warrant. Prior to the
12 obtaining of that search warrant any evidence obtained I
13 believe was unlawfully obtained in violation of my
14 client's rights under the Fourth Amendment. So that, I
15 mean, that can be taken up at the time ---

16 THE COURT: That they attempt to introduce anything
17 of that nature.

18 MR. LAWSON: Yes, sir.

19 THE COURT: Okay, but for pretrial purposes 'cause
20 I'm gonna let the Solicitor begin to go through the
21 witnesses regarding the statements. Is there anything,
22 any matter of a shorter nature that you want to take up
23 before we do that?

24 MR. LAWSON: No, Your Honor.

25 THE COURT: Okay, all right. Solicitor.

SW - T. Carraway - Proffer

1

2

MR. CLEMENTS: Your Honor, first Your Honor we call
Investigator Terrance Carraway.

4

THE COURT: All right. Investigator Carraway, if
you'd come around to be sworn, sir.

6

CLERK OF COURT: If you will, sir, place your left
hand on the Bible, raise your right hand.

8

WHEREUPON,

9

TERRANCE CARRAWAY,

10

having been duly sworn by the Clerk of Court, testified as
follows:

11

12

CLERK OF COURT: Please be seated. State your full
name for the record.

13

14

THE WITNESS: Terrance Carraway.

15

DIRECT EXAMINATION

16

BY MR. CLEMENTS:

17

Q Investigator Carraway, can you please tell the Court
where you work, in what capacity, and how long you worked
there.

19

20

A I work for the Florence City Police Department. I've
been working there for the past 23 years.

21

22

Q And what is your job title?

23

A I'm a criminal investigator.

24

Q On the 12th of October 2009 did you have opportunity to
become involved in an investigation on Avenue?

25

SW - T. Carraway - Proffer

1 A Yes, I did.

2 Q Can you tell the Court briefly how you came to be
3 involved in that investigation.

4 A I was the on-call duty investigator. I was called over
5 to Avenue, in the city of Florence.
6 I was called in reference to a body being discovered in
7 the trunk of a vehicle.

8 Q Okay. And when you got there did you encounter
9 anybody?

10 A Yes, I did.

11 Q Who did you encounter?

12 A I encountered Mr. Roger Bruce.

13 Q All right. And did you have — did you take
14 opportunity at that time on the scene to talk to
15 Mr. Bruce?

16 A No, I didn't.

17 Q And did you talk to him?

18 A Yes, I did, once he was transported up to the police
19 department.

20 Q Okay. And why was he transported to the police
21 department?

22 A Because he was the person of interest. He was the
23 person there at the scene. He was the last one in contact
24 with Ms. Creel as far as we knew and we needed to talk to
25 him and find out what he knew about the incident.

SW - T. Carraway - Proffer

1 Q Okay. And why didn't you talk to him there at the
2 scene?

3 A Just protocol. We wanted to take him away from the
4 scene so he could get his head together and talk to us
5 directly.

6 Q What kind of condition was he in physically?

7 A He was intoxicated.

8 Q Okay. Now people say intoxicated, there's intoxicated
9 and then there's intoxicated. Would you say that's true?

10 A Yes, sir.

11 Q Okay. Did he -- when you were talking to him how did
12 he appear in regards to understanding what you were saying
13 and responding back?

14 A He understood -- he appeared to understand what we were
15 saying, but he was intoxicated.

16 Q All right.

17 A And he was just -- he was talking to us, I mean. He
18 appeared to be okay.

19 Q Okay, all right. Now if I was to give you a scale and
20 say at one end of the scale you got intoxicated being
21 under the influence, and the other end of the scale is
22 like knee-walking drunk.

23 A Uh-huh.

24 Q You know, which end of the scale would he be closer to?

25 A Walking drunk.

SW - T. Carraway - Proffer

1 Q Really?

2 A Yeah, he was drunk, right.

3 Q All right. Who took him to the city-county complex?

4 A One of the patrol officers. I can't recall which one.

5 Q Was he under arrest at that time?

6 A No, he wasn't.

7 Q Okay. Was he under suspicion at that time?

8 A He was a person of interest. I mean, we needed to talk
9 to him.

10 Q Yeah.

11 A And we, because he, like I stated, he was the last
12 person seen with Ms. Creel and we needed to know what he
13 knew to tell us about the case.

14 Q Okay. All right, when you got to the city-county
15 complex where did you talk to him?

16 A We went to the second floor in the conference room.

17 Q And is that a locked facility with bars or is it ---

18 A No, it's not. It's a conference room. As any other
19 conference room around, it has a big table with chairs
20 around it and we all sat down. It's a more comfortable
21 setting where we can sit down and just freely discuss what
22 was going on.

23 Q Okay. Where do you take witnesses to when you talk to
24 them on cases?

25 A We take them to the conference room.

SW - T. Carraway - Proffer

1 Q Okay, all right. And when you say we, who were you
2 talking about?

3 A It was Investigator Drayton, Rogers, and myself.

4 Q Okay. Lieutenant Rogers?

5 A Lieutenant Rogers, Sergeant Drayton and myself.

6 Q And who was actually the investigator on the case?

7 A I was the lead investigator.

8 Q Okay. And what part did Sergeant Drayton play?

9 A He was assisting me.

10 Q Okay. And how about Lieutenant Rogers?

11 A He was assisting me as well.

12 Q Okay. When you talked to Mr. Bruce in the conference
13 room who was talking to him?

14 A Actually Sergeant Drayton was talking.

15 Q Okay. And did you mirandize him at that time?

16 A Not at that time. I was just taking notes basically at
17 that time.

18 Q Okay. And why didn't you mirandize him at this time?

19 A Because he was not under arrest.

20 Q And were you treating him as what?

21 A Treating him -- actually we were treating him as a
22 possible witness, person of interest. We just didn't know
23 at the time how to treat him. We were just talking to
24 him.

25 Q Okay, all right. And was he free to go if he wanted to

SW - T. Carraway - Proffer

1 go?

2 A Yes, he was, at that time.

3 Q Okay. And did y'all have him in handcuffs or
4 restrained ---

5 A No.

6 Q ---in any kind of way?

7 A No, he was not handcuffed while we were talking to him.

8 Q When he got up here to the complex was he able to walk
9 in on his own accord?

10 A Yes, he did walk in.

11 Q Nobody had to assist him?

12 A No, he -- he walked in on his own.

13 Q So he wasn't falling down drunk?

14 A No, he wasn't falling down drunk. He walked in on his
15 own.

16 Q Okay. And when you sat there how did you sit in the
17 room?

18 A He sat across from Sergeant Drayton. Lieutenant Rogers
19 sat kind of like to the side as well, and I sat at the
20 head of the table.

21 Q Okay. Lieutenant Rogers take any active participation
22 in it or was he just observing?

23 A He was actually an observer.

24 Q Okay, all right. Did he take any notes?

25 A I don't recall.

SW - T. Carraway - Proffer

1 Q Okay, all right. And can you recall or tell us what
2 did you do to document or memorialize the information that
3 Mr. Bruce was giving you.

4 A I had a yellow pad. I was just writing down everything
5 he was saying because, I mean, when we're talking to all
6 witnesses or anybody involved in the case we document
7 everything.

8 Q Okay.

9 A So as he was talking, and he was freely talking, I just
10 wrote down what he was saying.

11 Q Okay, all right. And what was he saying?

12 A He was saying -- first of all, he was saying that he
13 didn't know what happened and he wouldn't have did
14 anything like that. And he then made the statement, I
15 wouldn't have shot Laura. He made that statement.

16 Q At this time what, if anything, had you said to him
17 about --

18 A We hadn't said anything about that because we hadn't
19 been -- we didn't even know what was the cause of death at
20 that time.

21 Q Okay.

22 A We never got a good look at her because the way her
23 body was positioned in the trunk of the car.

24 Q All right. And what did you ask him about when he last
25 saw her and what they were last doing?

SW - T. Carraway - Proffer

1 A He said he saw her a couple of days ago and they got in
2 an argument over sex.

3 Q All right, what did he say the argument was about?

4 A About sex.

5 Q Specifically, about sex?

6 A I'm trying to remember. I know he said they were -- he
7 wanted sex and she didn't. I think that's what he was
8 saying.

9 Q Okay. Could it have been the other way around?

10 A That is the way it was, I'm sorry. I'm sorry. She
11 wanted sex and he didn't.

12 Q Okay.

13 A And they got in an argument over that and she left.
14 That was a couple of days prior to us talking with her.

15 Q Okay. And that was all he said about it?

16 A That was it about---

17 Q He say he hadn't seen her since then?

18 A He said he hadn't seen her since then. She obviously
19 -- she left her vehicle -- her vehicle was there with, at
20 the home, and her cell phone but she left like that.

21 Q So you found out her vehicle was there and her cell
22 phone was there and he just said she had left?

23 A She left.

24 Q Okay. Did he tell you anything else about where she
25 was or who she might have been with ---

SW - T. Carraway - Proffer

1 A No.

2 Q ---or anything else?

3 A No.

4 Q Okay. And this was when Sergeant Drayton was asking
5 questions?

6 A Actually, when he wasn't really -- he was talking to
7 him.

8 Q Okay.

9 A And Mr. Bruce was making -- he was there making
10 spontaneous statements. He was just blurting out things.

11 Q Okay.

12 A And that's when he was saying that he didn't know what
13 happened. He didn't know, you know, he wouldn't have did
14 anything like that. He asked us a question. I remember
15 him asking us, you think I did something like that, I
16 wouldn't have did anything like that, just freely
17 speaking. I had to tell him I didn't know him well enough
18 to know what he would do.

19 Q And what time, if any, did the situation change?

20 A The situation changed once he said, I wouldn't have
21 shot Laura, I wouldn't have did anything like that. And
22 when he was confronted as to how he know she got shot, he
23 was saying he knew what a bullet hole looked like. But
24 that's when I was to start to read him his Miranda because
25 we didn't --

SW - T. Carraway - Proffer

1 Q Who instructed you to read his Miranda?

2 A Sergeant Drayton. He was -- her body was positioned in
3 a way that we couldn't tell what had happened.

4 Q Okay.

5 A So he -- we didn't know what the cause of death was.

6 Q So y'all didn't move the body or anything like that --

7 A No.

8 Q --while you were there, ---

9 A No.

10 Q --investigators, or patrol officers?

11 A No, no, not --

12 Q Why would y'all not move the body?

13 A Because it was a crime scene and it had to be
14 protected, and we had to wait on crime scene to actually
15 arrive and process the scene.

16 Q Well, had crime scene arrived and begun processing the
17 scene prior to you leaving for the complex?

18 A I walked around talking to neighbors, Sergeant Drayton
19 and myself, so they arrived and they began to process.

20 But as to how much they did, I wasn't aware of it 'cause

21 --

22 Q Was Mr. Bruce still there when they did that?

23 A No, he was -- he was away from the scene in a police
24 car, sitting in a police car.

25 Q Okay.

SW - T. Carraway - Proffer

- 1 A He was nowhere near where the car was. He couldn't
2 have seen it.
- 3 Q All right. So Sergeant Drayton told you to read him
4 his Miranda rights?
- 5 A That's correct.
- 6 Q And how did you read his Miranda rights?
- 7 A I pulled out my card. As a matter of fact, I still got
8 the same card and read him his rights ---
- 9 Q Okay.
- 10 A ---off the card.
- 11 Q And after reading him his rights did you take the
12 statement from him?
- 13 A No, he refused. He understood his rights, but he
14 refused to tell us anything, refused to talk about it. He
15 didn't say anything else. He just said he didn't do it.
- 16 Q Was that the end of your conversations with him?
- 17 A That was it.
- 18 Q Did he ever say anything else to you?
- 19 A No, he didn't.
- 20 Q Did y'all ever coerce him or threaten him or fool him
21 or trick him ---
- 22 A No, we didn't.
- 23 Q ---to get him to say anything?
- 24 A No, we didn't.
- 25 Q Okay. Did he appear, when you were talking to him to

SW - T. Carraway - Proffer

1 -- you said he was intoxicated. Did he appear, though, to
2 understand enough about what was going on?

3 A He understood what was going on.

4 Q He know you were police officers?

5 A He knew we were police officers. He knew where he was.
6 He knew he was at police headquarters, and he knew well
7 enough to know to say that he didn't do anything.

8 Q Okay, all right. Beg the Court's indulgence.

9 Investigator Carraway, that's all the questions I have at
10 this time. Please answer any questions Mr. Lawson may
11 have.

12 THE COURT: Mr. Lawson.

13 MR. LAWSON: May it please the Court.

14 THE COURT: Yes, sir.

15 **CROSS-EXAMINATION**

16 BY MR. LAWSON:

17 Q Officer Carraway, were you the first responding
18 officer?

19 A No, I wasn't.

20 Q What time did you arrive on scene?

21 A I arrived -- I'm not sure about the exact time. As I
22 said, when I got the call I was at home and I live over in
23 Darlington and I had to drive from Darlington back on
24 Avenue and so I probably got there about 20 minutes after
25 the, after the discovery was made. Probably about 20, 25

SW - T. Carraway - Proffer

1 minutes.

2 Q Where was Mr. Bruce when you arrived?

3 A Mr. Bruce was sitting in a police car when I arrived.

4 Q Was he handcuffed?

5 A I think he was, yes, sir.

6 Q So he was handcuffed and placed in a police car? At

7 what point was he told he was free to go if he so chose?

8 A We took the handcuffs off once he came upstairs on the

9 second floor and we just started talking to him.

10 Q And at what point did you tell him he was free to go if

11 he so chose?

12 A I never told him he was free to go.

13 Q So at the scene -- at what point was he handcuffed at

14 the scene?

15 A He was handcuffed once the body was discovered. There

16 was another officer that put the handcuffs on him because

17 they didn't know what they had, and he was there and they

18 handcuffed him. I mean, he was a person of interest at

19 that time.

20 Q He was handcuffed --

21 A He was being-- he was detained at that time and then he

22 was told he was being detained.

23 Q He was told he was being detained and he was handcuffed

24 and placed in a police car?

25 A That's correct.

SW - T. Carraway - Proffer

1 Q And you didn't think it was necessary at that point to
2 advise him of his rights?

3 A I wasn't there at that time.

4 Q When you arrived there did you ask if he had been
5 advised of his rights?

6 A No, I didn't even talk to him then. I waited till we
7 got upstairs before I talked to him.

8 Q Did you go into the apartment there on Avenue when
9 you arrived at all?

10 A Yes, I did.

11 Q Did you observe a liquor bottle?

12 A I observed -- yeah, I'm pretty sure there was a liquor
13 bottle on the table if I'm not mistaken.

14 MR. LAWSON: Bear with me one moment, Your Honor.

15 THE COURT: Yes, sir.

16 MR. LAWSON: I don't have any other questions, Your
17 Honor.

18 THE COURT: All right. Solicitor, anything further
19 for this witness?

20 MR. CLEMENTS: Nothing further from this witness,
21 Your Honor.

22 THE COURT: Thank you very much, sir. You may step
23 down.

24 MR. CLEMENTS: Sergeant Drayton, if you'd step
25 forward.

SW - L. DRAYTON - PROFFER

1 **THE COURT:** Sergeant Drayton, if you'd come around
2 to be sworn, sir.

3 **WHEREUPON,**

4 **LARRY DRAYTON,**
5 having been duly affirmed by the Clerk of Court, testified
6 as follows:

7 **CLERK OF COURT:** Please be seated, state your full
8 name for the record.

9 **THE WITNESS:** Larry Drayton.

10 **DIRECT EXAMINATION**

11 **BY MR. CLEMENTS:**

12 **Q** Sergeant, where do you work and how long have worked
13 there?

14 **A** I'm employed with the city of Florence Police
15 Department. I've been employed with the police department
16 since September 29th, 1980.

17 **Q** All right. And you supervise personnel?

18 **A** I do.

19 **Q** And what type of personnel do you supervise?

20 **A** Assigned currently to criminal investigation division.
21 I supervise individuals in criminal investigation
22 division.

23 **Q** All right. On October 12th, 2009, did you have
24 occasion to become involved in investigation on
25 Avenue?

SW - L. DRAYTON - PROFFER

1 A Yes, sir, I did.

2 Q Who was the lead investigator?

3 A Investigator Carraway.

4 Q Is he an officer that you supervise?

5 A That's correct. He's one of the two individuals.

6 Q All right. Officer Drayton, do you know what an
7 interview is?

8 A Yes, sir.

9 Q Do you know what an interrogation is?

10 A Yes, sir.

11 Q Are they two separate and distinct things?

12 A Absolutely.

13 Q Did you have the opportunity or the chance to talk with
14 Mr. Roger Bruce that evening?

15 A Yes, sir, I did.

16 Q What type -- how would you characterize your
17 conversation with him?

18 A The conversation with Mr. Bruce was of the interview
19 techniques, interview status only.

20 Q All right. Now when did you first see Mr. Bruce that
21 night and where was he?

22 A If I recall correctly it was when we met Mr. Bruce here
23 at the complex.

24 Q And where was he at that time? Was he inside the
25 building, was he in the car?

SW - L. DRAYTON - PROFFER

1 A Inside -- excuse me, inside the building.

2 Q And was he restrained in any way?

3 A He -- hand, restraint handcuffs was on him.

4 Q And when you saw that what did you do in regards to his
5 handcuffs?

6 A I immediately requested that the handcuffs be taken off
7 of him because at that point we were going to conduct an
8 interview with Mr. Bruce.

9 Q Has anyone ever handcuffed for a reason other than an
10 arrest?

11 A Yes, sir, sure.

12 Q What would be another reason why a officer may put
13 handcuffs on someone?

14 A The initial officer ---

15 MR. LAWSON: Objection, Your Honor, speculation. I
16 don't see ---

17 THE COURT: He can ask him why he would.

18 BY MR. CLEMENTS:

19 Q In your capacity as a law enforcement officer, what
20 reason would you have other than an arrest to put
21 handcuffs on someone?

22 A From past experience, numerous occasions, I can't
23 recall how many but numerous occasions, I arrived on a
24 scene and was several individuals at a crime scene. Not
25 knowing who was participant, who was witnesses, who were

SW - L. DRAYTON - PROFFER

1 suspect, who was -- who may have been a possible suspect
2 in the case, as far as investigative detention it's
3 protocol to place handcuffs on the individual at that time
4 and then you can sort out later exactly who you have or
5 who you're dealing with. At that point you ---

6 Q And that's called what?

7 A Investigative detention.

8 Q Okay, all right. And from your experience what was Mr.
9 Bruce in at that time?

10 A Investigative detention.

11 Q And y'all began to interview him you say?

12 A That's correct.

13 Q Where?

14 A This building, City-county Complex, the second floor in
15 investigative conference room.

16 Q Okay. And has that got -- what kind of furniture is in
17 there?

18 A It's a primary one conference room table with several
19 chairs.

20 Q Comfortable chairs?

21 A They're comfortable chairs.

22 Q Okay, all right. Who was in that room with you and
23 Mr. Bruce?

24 A Investigator Carraway, Lieutenant Rogers, and myself.

25 Q Okay. And at that time before interviewing Mr. Bruce

SW - L. DRAYTON - PROFFER

1 did you or anyone in your presence Mirandize Mr. Bruce?

2 A No, sir, we did not.

3 Q Okay. Did you instruct anybody to Mirandize him or not
4 Mirandize him?

5 A Initially or during the conversation?

6 Q Initially?

7 A Initially, no, sir. There was no reason to Mirandize
8 because it was basic interviewing.

9 Q And what did you ask him interviewing him?

10 A Interviews which, if I recall correctly, would have
11 start out just basic questions about how was he related to
12 the victim. It's just basic questions, who he was, trying
13 to get to know him, who this individual was and stuff,
14 different stuff like that. Then also I was advised that
15 he would have been the last person that we knew at that
16 time that would have seen her so I started asking
17 questions about that, what the circumstance involving at,
18 where did you see her, different things like that.

19 Q Okay.

20 A Family members, questions that we would need to assist
21 with investigation.

22 Q And what time, in your mind what changed your mind as
23 to think that it's time to stop interview and do something
24 different?

25 A I can't recall the exact verbiage that he used, but it

SW - L. DRAYTON - PROFFER

1 was at the point when he was -- was admitting to taking
2 part in the crime in the incident.

3 Q All right. Were you making notes --

4 A Or at least have knowledge of it.

5 Q --there or were you just talking to him?

6 A At the point I was -- the way we conduct investigations
7 in an interview one person will take lead as far as asking
8 basic questions; and one of the other investigators,
9 usually the lead investigator, will take notes.

10 Q Okay, all right. And in this case that was
11 Investigator Carraway?

12 A That's correct.

13 Q All right. So once that kind of changed in your mind
14 what did you then do?

15 A I advised Investigator Carraway to Mirandize Mr. Bruce.

16 Q Okay. And did Investigator Carraway Mirandize him?

17 A He did.

18 Q How did he do that?

19 A He read verbatim from his Miranda card.

20 Q He didn't use a form?

21 A No, sir.

22 Q Well why, according to your protocol, why would he have
23 not used a form at that time?

24 A We, typically normal protocol when we use a form is
25 whenever -- when we first interview someone, just basic

SW - L. DRAYTON - PROFFER

1 interviewing just talking with the person, we don't use a
2 form as far as Mirandizing. Once we -- the interview
3 changes and starts on the fine line of start going to
4 interrogation mode or implicate himself as being part in
5 the crime itself, then we advise the individual of his
6 rights per policy with the Miranda form, have him to sign
7 it and we go from there.

8 Q So when someone gives a statement y'all use that form?

9 A Yes.

10 Q Okay. After Mr. Bruce was read his Miranda rights by
11 Investigator Carraway did he appear to you to understand
12 what Investigator Carraway was telling him?

13 A Yes, he did.

14 Q Prior to that when y'all were talking in the interview
15 process, what kind of mental state did Mr. Bruce appear to
16 be in to you?

17 A To me, I'm not saying -- well, it's hard for me to --
18 he was in a relaxed state. He wasn't upset, wasn't
19 jovial, was in just relaxed state. Mental state, he was
20 answering our questions every question that we asked. And
21 sometime on purpose I'll ask questions that have nothing
22 to do with a crime just to check individual's response and
23 just to check and see if they're honest on different
24 response. At no time he indicated he didn't understand
25 anything we were asking.

SW - L. DRAYTON - PROFFER

1 Q So he was able to discuss intelligently with you?

2 A Yes, he was.

3 Q And carry on a conversation?

4 A Yes, he did.

5 Q All right. After Investigator Carraway read his rights
6 you said he appeared to understand them.

7 A Yes, sir.

8 Q Did you then do an interrogation or take a statement
9 from him?

10 A Negative, just ---

11 Q Why not?

12 A After that point Mr. Bruce just stated he didn't want
13 to talk anymore about the incident.

14 Q Okay. And then once he said that did you attempt to
15 try to talk to him anymore?

16 A No, sir.

17 Q And what did you then do with Mr. Bruce at that time?

18 A Once he decided, once he made a statement he didn't
19 want to make any statements based on the -- based on our
20 investigation at that time Mr. Bruce had been placed under
21 arrest.

22 Q Now during that time period were y'all having any kind
23 of communication with other law enforcement officers back
24 and forth as to what they found or what was going on or
25 anything like that?

SW - L. DRAYTON - PROFFER

1 A I can't recall. Crime scene may have called or may
2 have came back during the time -- I'm not sure -- but
3 primary, just the three of us and Mr. Bruce that was in
4 the room.

5 Q Why did you decide that, you know, this is beyond
6 interview status now, it's time to read him his Miranda
7 rights, this is something different? Why did you decide
8 that?

9 A I can't, like I said earlier, I can't recall exactly
10 what verbiage was used, but Mr. Bruce implicated himself
11 as being, as being a person that would have been involved
12 with this incident.

13 Q So in your mind he became a suspect, would that be fair
14 to say?

15 A At that time, yes, sir.

16 Q Okay, all right. Beg the Court's indulgence. Please
17 answer any questions Mr. Lawson has.

18 MR. LAWSON: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS - EXAMINATION

21 BY MR. LAWSON:

22 Q Sergeant Drayton, if I understand it then you didn't go
23 to the scene; is that correct?

24 A Yes, sir, I did.

25 Q You did go to the scene.

SW - L. DRAYTON - PROFFER

1 A Yes, sir.

2 Q Where was Mr. Bruce when you arrived at the scene?

3 A I can't recall. I never spoke to Mr. Bruce at the
4 scene.

5 Q Do you recall him being handcuffed at the scene?

6 A I didn't -- can't -- didn't see handcuffed at the
7 scene. When I arrived at the police department here he
8 was handcuffed.

9 Q He was handcuffed here?

10 A Yes, sir.

11 Q And as far as you understand he had been handcuffed
12 prior to that?

13 A Yes, sir, he was handcuffed.

14 Q At what point did you advise him that he was free to go
15 prior to his interview?

16 A I never did.

17 Q You didn't tell him he could go?

18 A No, sir.

19 Q The interview room that you're talking about, isn't
20 that the same room you use for interrogation?

21 A It's one and the same, yes.

22 Q Same room, I mean, ---

23 A Yes, sir.

24 Q ---it's just multi-purpose?

25 A Absolutely. Same room we use our morning briefings in

SW - L. DRAYTON - PROFFER

1 and different meetings in.

2 Q How many times did Mr. Bruce throw up while you were
3 interviewing him?

4 A If I recall correctly, I don't know if he threw up or
5 not, but I know it was like maybe dry heaves or something
6 like that.

7 Q How many times?

8 A I don't recall.

9 Q So then you weren't taking any notes?

10 A No, sir.

11 Q When did you find out that he was the last person that
12 saw her?

13 A When I was briefed by Investigator Carraway.

14 Q And how did he find that out?

15 A How did he find out?

16 Q Yeah.

17 A Well, I'm only speculating. I mean, I can't speak for
18 my -- I imagine the patrol officers, first responders,
19 would have told him with reference to their conversation
20 with the patrol officers when Investigator Carraway
21 arrived.

22 Q So one of the patrol officers then had determined that
23 Mr. Bruce was the last person that had seen her?

24 A Patrol officers and first responders arrived before
25 Investigator Carraway. Then they spoke with Mr. Bruce.

SW - L. DRAYTON - PROFFER

1 And based on their conversation they advised Investigator
2 Carraway of their findings upon his arrival.

3 Q And what was it that Mr. Bruce said that made you ask
4 Officer Carraway to advise him of his rights?

5 A Like I stated earlier, I don't recall exactly what the
6 verbiage was, but he stated something to implicate himself
7 as to which warned us to believe that he was a suspect at
8 that time for self-incriminating statements.

9 Q What was the statement?

10 A I can't recall exactly what was said; but the statement
11 to my recollection, Investigator Carraway, from his notes,
12 would have been when he made his statements in reference
13 to the gunshot. I don't recall exactly the word that was
14 used.

15 MR. LAWSON: Bear with me one moment, Your
16 Honor.

17 THE COURT: Yes, sir.

18 MR. LAWSON: I don't have any further questions.

19 THE COURT: Anything further of this witness?

20 MR. CLEMENTS: Beg the Court's indulgence a moment.

21 THE COURT: Yes, sir.

22 **REDIRECT EXAMINATION**

23 BY MR. CLEMENTS:

24 Q Mr. Lawson was asking you something, and I was a little
25 confused. Were y'all saying that Mr. Bruce was the last

SW - L. DRAYTON - PROFFER

1 person to see Ms. Creel alive, or he's the last person
2 y'all knew that had seen her?

3 A We were told, I was told, that Mr. Bruce was reporting
4 to law enforcement that the victim after being engaged in
5 an argument with him, had left his residence. Law
6 enforcement had not spoken to anyone else at that time
7 that stated they would have seen her after Mr. Bruce did,
8 so therefore, we were assuming which is -- we were
9 assuming. At that time that's all we had, that he was the
10 last person.

11 Q That y'all knew had seen him?

12 A We're not assuming not -- we're not assuming. The last
13 person that we knew at that time was Mr. Bruce that had
14 spoke to the victim.

15 Q Okay, all right. Thank you for clearing that up.

16 MR. CLEMENTS: That's all the questions I have of
17 Sergeant Drayton.

18 THE COURT: All right, sir. You may step down.

19 MR. CLEMENTS: Your Honor, I call Corporal Charles
20 Hobgood.

21 THE COURT: Sir, if you'd come around and be
22 sworn.

23 WHEREUPON,

24 **CHARLES HOBGOOD, II,**
25 having been duly sworn by the Clerk of Court, testified as

SW - L. DRAYTON - PROFFER

1 follows:

2 **CLERK OF COURT:** Please be seated. State your
3 full name for the record.

4 **THE WITNESS:** Charles Hobgood, II.

5 **DIRECT EXAMINATION**

6 **BY MR. CLEMENTS:**

7 **Q** Can you please tell us where you work and in what
8 capacity?

9 **A** I work for Florence Police Department. I'm a corporal
10 currently assigned to north region.

11 **Q** Okay. And so you have officers working under your
12 command as a corporal?

13 **A** That's correct, sir.

14 **Q** And then you have a sergeant shift over you?

15 **A** That's correct.

16 **Q** Were you working on the 10th of October 2009 and get
17 called to Avenue?

18 **A** Yes, sir.

19 **Q** And at the residence there who did you find there?

20 **A** Originally when I arrived I talked with Officer
21 Beckett, and I think Officer Starling pulled up at the
22 same time I did. He explained to me what he was -- what
23 he had going on, and that we had this subject reporting
24 someone missing. And that it was reported from the
25 conversations he had with the person calling from out of

SW - C. HOBGOOD - PROFFER

1 town that someone was at that residence because they had
2 called. The complainant, I think, is his son of the lady,
3 and told them he hadn't seen her in a couple of days. So
4 Officer Beckett advised me he had been to that apartment,
5 the single car -- well, it was a garage apartment is
6 basically what it was behind the house. And then knocked
7 on the door several times or for approximately about ten
8 minutes and nobody came to the door.

9 Q Who ultimately ended up coming to the door?

10 A In the end Mr. Bruce did.

11 Q And did you have opportunity to look in a car?

12 A Yes, I did.

13 Q And did you have opportunity to open the trunk?

14 A Yes, sir.

15 Q What did you find when you opened the trunk?

16 A Once the remote was activated and the trunk popped open
17 we discovered that there was a body in the trunk of the
18 car.

19 Q Okay. And when you discovered that what, if anything,
20 did you advise officers under your command to do with
21 Mr. Bruce at that point in time?

22 A At that point in time Officer Beckett was standing
23 closest to Mr. Bruce. Once the trunk popped open I
24 observed what was in there. I asked him to detain
25 Mr. Bruce pending further investigation.

SW - C. HOBGOOD - PROFFER

1 Q Okay. Did you ever tell anybody to arrest him?

2 A No, sir.

3 Q Okay. Did you ever tell Mr. Bruce he was under arrest?

4 A No, sir.

5 Q Okay. What is your protocol when you put someone in
6 investigative detention?

7 A At that point we handcuffed him, did a pat-down search
8 to make sure there was no weapons on him. Then at that
9 point I advised one of the officers to get his vehicle and
10 have him placed into that vehicle until the investigator
11 and whoever else needed to respond got there.

12 Q Okay. Do y'all Mirandize him?

13 A We did not Mirandize him.

14 Q And why do you not Mirandize individuals like that?

15 A We at our point -- on this particular occasion. We did
16 not question him after discovery. We did not say anything
17 to him so therefore we did not Mirandize him. We simply
18 detained him pending further investigations with the
19 investigators.

20 Q Okay. And once they're turned over to investigators on
21 investigative detention, according to your protocol what
22 happens then as far as you're concerned?

23 A Once they leave the scene, I mean, we're not involved
24 in that after that.

25 Q Okay. And they're not arrested at that point in time?

SW - C. HOBGOOD - PROFFER

1 A He was not at that point that I'm aware of, no.

2 Q Okay, all right. Beg the Court's indulgence. Do you
3 know who transported Mr. Bruce to the City-county Complex?

4 A I believe it was -- I'm not a hundred percent sure
5 whose car he got put in 'cause I was inside the crime
6 scene there so I'm not exactly sure who transported him up
7 there.

8 Q Okay, all right. Well let me ask you this, you say you
9 went into the apartment?

10 A Yes, sir.

11 Q And why and how did you get into the apartment?

12 A Once we -- when we were approaching to the door it was
13 dark in there and one of the officers shined the
14 flashlight. That's how we saw Mr. Bruce sticking his head
15 out of the door so we asked him to hold up there. So we
16 approached the door, communicated with him, told him why
17 we were there and asked him ---

18 Q What did you tell him you were there for?

19 A We were asking if he had seen Ms. Creel, and then we
20 asked him if it was all right for us to come in because
21 the son of hers was trying to report him [sic] missing and
22 we were trying to follow up on it. And he granted us
23 permission to go into the house.

24 Q So he granted you permission to go into the house?

25 A Yes.

SW - C. HOBGOOD - PROFFER

1 Q Okay, all right. I don't have any further questions at
2 this time. Please answer any questions Mr. Lawson may
3 have.

CROSS-EXAMINATION

4
5 BY MR. LAWSON:

6 Q Corporal, at what point after you placed the handcuffs
7 on Mr. Bruce could he have asked you to take them off and
8 left the scene?

9 A At what point?

10 Q Yeah. When would you have taken the cuffs off and let
11 him go?

12 A At that point we were detaining him pending further
13 investigation and that meant until investigators got
14 there, and we explained to them what was going on.

15 Q So he wasn't free to go?

16 A Not at that particular moment, no.

17 Q What was his condition of sobriety?

18 A You could tell he had been drinking but he understood
19 everything that we were asking, and so I mean, it wouldn't
20 appear that he was grossly intoxicated by any means.

21 Q If you stopped him driving would you have arrested him
22 for DUI?

23 A It's hard to say without giving him field sobriety
24 tests and things such as that.

25 Q Did anyone take notes at the scene?

SW - C. HOBGOOD - PROFFER

1 A Not, not up to the point where we were at, no.

2 Q None of y'all took any notes?

3 A Not that I'm aware of. I did not. I can only answer
4 for me. I did not.

5 Q Do you have available consent forms, consent to search,
6 consent to -- consent forms that you ask people to sign?

7 A Yes, we do.

8 Q Did you use one on this particular situation?

9 A No, sir, we were not conducting a search. We were
10 merely trying to gather information on possibly where a
11 missing person would have been.

12 Q Did you not ask to come into the house?

13 A We did.

14 Q And for the purpose of looking for something--

15 A Uh-huh.

16 Q --or someone? But you didn't think it was necessary
17 to ask that he sign a consent to search?

18 A Not at that point.

19 Q Did you have digital voice recorders available?

20 A I believe we did. I did not have one on. I'm not sure
21 about the other officers.

22 Q Did you have one with you?

23 A I believe I did have one at that point, yeah.

24 Q But you did not use it?

25 A I did not use mine, sir.

SW - C. HOBGOOD - PROFFER

1 Q Do you know if any officers did?

2 A No, sir, I do not know.

3 Q I don't have any other questions.

4 MR. CLEMENTS: Your Honor, I don't have any other
5 questions for the corporal.

6 THE COURT: Have a seat. You may step down.

7 MR. CLEMENTS: Your Honor, that's what we
8 have in regards to that, this issue.

9 THE COURT: All right, Mr. Lawson, anything -- the
10 State, that's what they've put up regarding this
11 statement. I'll hear from you on that.

12 MR. LAWSON: Can you bear with me one
13 moment, Your Honor?

14 THE COURT: Yeah, uh-huh.

15 MR. LAWSON: May it please the Court. Your Honor,
16 the Defense would just move to suppress based on any
17 statement made by the defendant on the basis of the fact
18 that he was for all practical purposes detained, which as
19 far as any individual would be concerned, he was as the
20 Corporal Hobgood just testified he was not free to go at
21 the point that they placed handcuffs on him and placed him
22 in a police car. And we would move to suppress any
23 statement made, and I don't think any statements were made
24 after Miranda warnings were given based on what the
25 officers testified is my understanding.

1 THE COURT: All right.

2 All right, sir. Solicitor.

3 MR. CLEMENTS: Your Honor, Mr. Bruce was
4 not under arrest. He was under investigative detention.
5 They took the handcuffs off of him. It's certainly
6 understandable protocol in a situation. As Sergeant
7 Drayton explained, you know, you don't know what you have.
8 You put somebody in investigative detention until you can
9 sort it out. They asked him not anything other than just
10 some general questions and having general conversation and
11 then based on information he provided them, then they
12 immediately stopped and said, no, we need to Mirandize
13 him. He's moved from a person of interest as a witness to
14 a potential suspect and they Mirandized him at that time
15 and didn't take any further statements. But the
16 statements he made before that, Your Honor, I would say
17 are admissible. He made those during an investigation,
18 during interview, but not during an interrogation and not
19 subject to arrest.

20 THE COURT: Well, according to the one officer he
21 was close to knee-walking drunk. He was placed in cuffs,
22 put in a patrol car, was not free to go, wasn't questioned
23 there at the scene or talked to without any consent from
24 him. They take him down to the police station, take him
25 into a room still handcuffed.

1 MR. CLEMENTS: I think he was un-handcuffed before
2 they ---

3 THE COURT: From what I understand they
4 un-handcuffed him when Sergeant Drayton came in and said
5 take the cuffs off of him. So they take him to the room
6 handcuffed. Sergeant Drayton comes in and says take them
7 off. He's never informed, he's never told, now we're just
8 talking with you, you know, you're free to go. And then
9 during that conversation they get a statement that
10 implicates him possibly in this crime. I'm not -- I don't
11 know that I think that may be beyond a simple
12 investigative detention.

13 MR. CLEMENTS: Well, Your Honor, my
14 understanding -- and I could be wrong. My understanding
15 was they were downstairs when they came in through the
16 sally port, took the handcuffs off him, and then took him
17 up to second floor to the conference room, began to talk
18 with him. And I think the statement was where he talked
19 about he wouldn't have shot her, and then they wondered
20 how in the world he know she was shot.

21 THE COURT: Right, right.

22 MR. CLEMENTS: And before that, you know, there
23 wasn't any -- it wasn't an interrogation. And you got
24 different people that encountered him and they got
25 different views of how they thought he was drunk or not,

1 how they characterize his sobriety; but yet, every one of
2 them consistently said he knew exactly what was going on
3 and was able to converse with them, understood what they
4 were saying. And nobody said that, you know, he was drunk
5 out of his mind. And the only one that said that he was
6 closer to the knee-walking drunk in the spectrum was
7 Investigator Carraway. And Investigator Carraway said he
8 walked up there on his own accord, walked around with his
9 own power, nobody had to support him or do anything like
10 that. And Corporal Hobgood, who talked to him on the
11 scene, said he was -- he had been drinking but he
12 wasn't -- he understood exactly what they were talking
13 about.

14 And Your Honor, I believe that what the testimony
15 was, the substance of the questions were, when did you
16 last see her, those type of things and not anything about
17 did you do it. I think they said he spontaneously said,
18 you think I'd do something like that, I wouldn't do that,
19 I wouldn't shoot. And that was they said kind of a
20 spontaneous question, spontaneous response not in response
21 to any question.

22 THE COURT: All right, let me -- anything further?

23 MR. CLEMENTS: No, Your Honor.

24 THE COURT: I just want to look at this case that I
25 pulled up here.

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(Pause.)

THE COURT: I'm looking at this State versus Corley and the Court talks about investigative detentions. It says the police may briefly detain and question a person upon reasonable suspicion short of probable cause for an arrest and that the scope the duration of a terry detention must be strictly tied to and justified by the circumstances that render its initiation proper. And then it quotes the Bertmer case and it says that typically this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. However, the detainee is not obligated to respond. And I think that's what you're saying happened here. Here the concern I've got is this, why that did not occur at the scene, why it was necessary to put him in detention, stick him in a car handcuffed, take him down to the police station. Didn't ask him will you come down to the station; that was against his will. Took him down to the police station, then put him in a room, and then start asking him these questions. I agree with you that the questions were not of an interrogation type, that it was just an information gathering thing at that point. What I'm wrestling with is, is did this investigative detention go beyond the law and scope and

1 duration. And the fact that it didn't occur at the scene,
2 that they took him put him in the car, handcuffed him,
3 took him down to the police station, didn't ask him to
4 come to the police station. I mean that's, and I realize
5 there's some case law that talks about you can take
6 someone down to the police station for an investigative
7 detention.

8 MR. CLEMENTS: May I ---

9 THE COURT: Yes, sir.

10 MR. CLEMENTS: ---make a comment, Your
11 Honor. Your Honor, I think it'll become clear once if you
12 looked at the pictures and looked at there's a little
13 small garage apartment, little small backyard. It's where
14 the victim's body was in the trunk of the car. There was
15 nowhere they could get away from any, all that was going
16 on, the commission with the forensic crime scene unit
17 coming and the crime scene tape up, neighbors coming out
18 seeing what was going on. There was no place to
19 comfortably get away and talk. It wasn't right there in
20 the middle of all that hubbub going on. And I don't know
21 any other place that they could have thought of to go
22 where they could go and be quiet and not be right in the
23 middle of everything else that was going on.

24 THE COURT: All right. I'm gonna allow the
25 statement.

1 MR. LAWSON: Your Honor.

2 THE COURT: As I said — I'm sorry, Mr. Lawson, go
3 ahead, sir.

4 MR. LAWSON: May I point out just one thing.

5 THE COURT: Yes, sir.

6 MR. LAWSON: This detention apparently took place
7 over a four-and-a-half hour period. We're not talking
8 about 15, 20 minutes come downtown and answer a question.
9 It's four-and-a-half hours before he was placed under
10 arrest.

11 MR. CLEMENTS: I'm not sure where they get that.
12 It might have been four-and-a-half hours by the time he
13 was taken down to Effingham, but once — but it was
14 certainly not four-and-a-half hours by the time they
15 decide to read him his Miranda rights. That was in a
16 short period of time. Your Honor, people are sitting in
17 the booking area sometimes in Effingham for hours before
18 they actually get booked in.

19 THE COURT: I'm looking at U.S. versus Sharp where
20 it talks about the brevity of an investigative detention
21 is an important factor in determining whether the
22 detention is unreasonable. The courts must also consider
23 the purposes to be served by the stop and everything.

24 My understanding from the testimony is they took
25 him down to the station. They were talking to him and

1 asking him those general questions. And once the
2 information was, I would not have shot her -- I think it
3 was something to that effect -- is what then triggered it
4 going from reasonable suspicion to probable cause to the
5 point of then invoking Miranda. And then, and law
6 enforcement decided to take it from a investigative
7 detention into an interrogation based on probable cause.
8 And again, there wasn't really any testimony as to time on
9 that. The way it was testified to it seemed that it
10 flowed consistently through. I'm gonna allow the
11 statement. I think -- I think it was reasonable under the
12 circumstances to take him from the scene to conduct the
13 inter -- the interview. The questions that were asked
14 according to testimony that I heard, were generalized
15 questions as far as information gathering. They did not
16 seem to be of an interrogating type, and I think it, I
17 think it fits under the law.

18 MR. LAWSON: Your Honor, may I inquire as to what
19 is the statement that's gonna be allowed? What is it?

20 THE COURT: And I shouldn't -- you're right; I
21 should not -- I'm assuming the statement is, I had no
22 reason to shoot her but that's what I thought you were.

23 MR. CLEMENTS: Your Honor, it is. I wouldn't have
24 shot her; I wouldn't have done that. I would not shoot
25 Laura.

1 THE COURT: That's the statement that you're -- all
2 right.

3 MR. CLEMENTS: Yeah. Yeah. Your Honor,
4 and also he responded that I know what a bullet hole looks
5 like. When they said, what do you mean you wouldn't have
6 shot her.

7 THE COURT: All right. Anything else?

8 MR. CLEMENTS: Your Honor, we have one
9 other brief statement that was made to Officer Beckett.
10 We just got one witness on this. It will be real quick,
11 Your Honor.

12 THE COURT: All right, sir.

13 MR. CLEMENTS: I call Officer Beckett to the stand.

14 CLERK OF COURT: If you will, sir, place your left
15 hand on the Bible, raise your right hand.

16 WHEREUPON,

17 **GARY BECKETT,**

18 having been duly sworn by the Clerk of Court, testified as
19 follows:

20 CLERK OF COURT: Please be seated, state your full
21 name for the record.

22 THE WITNESS: Gary Beckett.

23 **DIRECT EXAMINATION**

24 BY MR. CLEMENTS:

25 Q Where do you work?

SW - G. BECKETT - PROFFER

- 1 A Florence Police Department.
- 2 Q In what capacity?
- 3 A At the time I was a patrol officer.
- 4 Q What are you now?
- 5 A I'm assigned to the narcotics unit.
- 6 Q You were a patrol officer on October 12th, 2009?
- 7 A Yes.
- 8 Q And did you go to Avenue where Laura Creel lived?
- 9 A Yes.
- 10 Q Okay. And did you ask anyone if you could be invited
- 11 in?
- 12 A I asked Mr. Bruce.
- 13 Q And what was the purpose for you going in?
- 14 A To look inside the apartment to make sure Ms. Creel
- 15 wasn't inside.
- 16 Q Okay. What, if anything, did you see about her cell
- 17 phone or car keys when you went inside?
- 18 A They were laying on the table that would be in the
- 19 living room.
- 20 Q What did Mr. Bruce tell you when you asked him when was
- 21 the last time he had contact with or saw Ms. Creel?
- 22 A He said it was two, three days.
- 23 Q But he could not give you a time?
- 24 A No, he couldn't narrow the time down.
- 25 Q What did he advise you happened and then she left?

SW - G. BECKETT - PROFFER

1 A He just told me they had a argument and she left.

2 Q Okay, and that's it?

3 A That was what he said.

4 Q Okay. Please answer any questions Mr. Lawson has.

5 Well, I got one other question. This is prior to
6 investigation, crime scene, anybody else coming on the
7 scene; is that correct?

8 A Yes. That was when we first made contact with him at
9 the apartment.

10 Q This is prior to having any contact with the car?

11 A Yes.

12 Q Okay. Thank you.

13 **CROSS-EXAMINATION**

14 BY MR. LAWSON:

15 Q Officer Beckett, how do you know it was her cell phone?

16 A I spoke to the son and he said that she never went
17 anywhere without her cell phone or the car; and Mr. Bruce,
18 I believe he told us it was her cell phone and asked whose
19 cell phone it was.

20 Q When did you ask him that?

21 A When we were in the apartment in the living room.

22 Q And would your report reflect that you asked that?

23 A I'm not sure if it's stated in the report.

24 Q How do you know those were her keys?

25 A 'Cause we asked whose car keys they were and I think

SW - G. BECKETT - PROFFER

- 1 Mr. Bruce said that it was her keys.
- 2 Q So you asked quite a few questions?
- 3 A Asked him a few, yeah.
- 4 Q But you didn't indicate that in your report, did you?
- 5 A I'm not sure if it's stated as a question; but it's
- 6 stated, you know, that the keys and the phone belonged to
- 7 Ms. Creel I believe is what it says.
- 8 Q Belonged to her?
- 9 A I believe this is what you're asking.
- 10 Q Is what you're saying your report stated they belong to
- 11 her?
- 12 A Yes.
- 13 Q And period, the end. No statement as to how you
- 14 discovered that?
- 15 A I don't believe so.
- 16 Q I don't have any other questions.
- 17 THE COURT: Anything further, Solicitor?
- 18 MR. CLEMENTS: No, Your Honor.
- 19 THE COURT: Thank you, sir. You may step down.
- 20 MR. CLEMENTS: That's it on that, Your Honor.
- 21 THE COURT: Mr. Lawson, anything else on that?
- 22 MR. LAWSON: No further argument.
- 23 THE COURT: All right. Based on testimony, and I
- 24 don't know what report reflects or anything of that
- 25 nature, the officer did testify that Mr. Bruce told him

SW - G. BECKETT - PROFFER

1 that the keys and the cell phone were -- those are the
2 victim. I don't see any issue with that statement, will
3 allow it.

4 MR. CLEMENTS: And Your Honor, specifically what
5 we're interested in was that he advised that he saw him
6 two or three days ago, couldn't give a time, they had an
7 argument, she left.

8 THE COURT: Right.

9 MR. CLEMENTS: Thank you.

10 THE COURT: Okay. Anything further?

11 MR. CLEMENTS: Not at this time, Your Honor.

12 THE COURT: Mr. Lawson, anything further?

13 MR. LAWSON: Not on this issue, no.

14 THE COURT: Let me, is there anything else we need
15 to take up 'cause I hate that they've sat back there, but
16 I'm kind of thinking of letting them go. I mean, y'all
17 are the ones trying the cases and I like to let the
18 lawyers try their case. I know when I was doing what you
19 do I didn't really like to split up my opening remarks
20 with a night away and then start testimony. I kind of
21 like to do it all at one time. So I'm inclined to let the
22 jury go home and start this case in the morning, but I'll
23 listen to you guys.

24 MR. CLEMENTS: Your Honor, I got one issue that
25 Mr. Lawson and I might can resolve if we speak to you.

1 THE COURT: Okay.

2 (WHEREUPON, counsel approached the Bench for
3 an off-the-record discussion.)

4 THE COURT: Solicitor, I'm going to let you proffer
5 the testimony of Officer Moreau.

6 MR. CLEMENTS: Corporal Moreau, if you will please
7 take the stand. Step up to be sworn.

8 CLERK OF COURT: If you will, sir, place your left
9 hand on the Bible, raise your right hand.

10 WHEREUPON,

11 CHRISTOPHER MOREAU,
12 having been duly sworn by the Clerk of Court, testified as
13 follows:

14 CLERK OF COURT: Please be seated. State your full
15 name for the record.

16 THE WITNESS: Christopher Moreau.

17 DIRECT EXAMINATION.

18 BY MR. CLEMENTS:

19 Q Good afternoon, Corporal Moreau.

20 A Good afternoon, sir.

21 Q I'm gonna be quick. You work for the crime scene unit
22 for the Florence Police Department; is that correct?

23 A Yes, I do.

24 Q Crime scene technician?

25 A Yes, sir.

SW - C. MOREAU - PROFFER

1 Q You're like one of those guys on TV on CSI.

2 A Not exactly.

3 Q Not exactly, okay. You didn't participate in
4 collection of a processing the crime scene in this case of
5 State versus Roger Bruce, did you?

6 A No, sir, I did not.

7 Q But you did participate in the case; did you not?

8 A Only in delivering evidence.

9 Q Okay. Tell the Court exactly what you did.

10 A All right. On the date of November 23rd, 2009, at one
11 in the afternoon I signed out -- let me see, item one
12 which was swabs from the scene; item two, which was a
13 spent .22 caliber cartridge casing; item number three
14 which was a GSR kit taken from the victim; item four,
15 which was prints that were taken at autopsy; item number
16 five, which was two latent print cards; item number six,
17 which was a Marlin 22 rifle; item number 7, which was an
18 autopsy kit removed from the victim at autopsy; also item
19 number 8 which was a spent projectile from the victim. I
20 signed those out from lieutenant, Lieutenant Harold in the
21 evidence room, secured them in the crime lab safe which
22 only four people had access to at the time.

23 Q Are you one of those people?

24 A Six foot tall safe, four foot wide, you're not going to
25 move it. I'm one of the four. The very next morning at

SW - C. MOREAU - PROFFER

1 7:00 left the evidence room, took them directly to SLED
2 lab log in where we turn them, everything over to SLED,
3 for future processing.

4 Q All right. May I hold that what you refer to there.
5 And did you do anything else in regards to this case?

6 A No, sir.

7 Q Were all these items that you took, were they in sealed
8 containers?

9 A Yes, sir.

10 Q Okay. Now Officer Moreau, when you go make a trip to
11 SLED to take evidence do you do one case at a time or do
12 you take items from several cases at a time?

13 A We take multiple cases at one time, however many we
14 have. We generally try to go every two weeks. It depends
15 on what's going on and how many cases we have to go.

16 Q Now these highlighted items on this document here which
17 I'd like to have marked for identification, Your Honor, at
18 this time. I think it's item 101.

19 (WHEREUPON, State Exhibit No. 101 was marked
20 for identification only.)

21 BY MR. CLEMENTS:

22 Q These highlighted items, are they the pertinent items
23 on the case of State versus Roger Bruce?

24 A These items I highlighted myself on this form just
25 showing where I had taken them out and signed them out

SW - C. MOREAU - PROFFER

1 from evidence and the date and time I signed them out.

2 Q Now the non-highlighted items, do they have anything to
3 do with this case?

4 A Everything on this form, I believe, is part of this
5 case; but some other items, it wasn't necessary to send to
6 SLED. If we could send a swab as opposed to an entire
7 item when all we need analyzed is what was on that item,
8 we would just send that swab.

9 Q Is it because of manpower and manhours and economic
10 considerations, is there some limitation on how many
11 pieces of evidence SLED will actually receive?

12 A Absolutely. They take pretty much the bare minimum.
13 This case, the only reason they took as much as they did
14 was because of the severity of the case. Most other cases
15 they wouldn't have taken most of this from us.

16 Q So if he had a grand larceny or burglary third they
17 wouldn't have accepted these many--

18 A No, no, sir.

19 Q ---items? Okay.

20 A No, sir.

21 Q Please answer any questions Mr. Lawson may have.

22 MR. LAWSON: May it please the Court.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 ///

SW - C. MOREAU - PROFFER

1 BY MR. LAWSON:

2 Q Officer Moreau, you didn't alter any of this evidence
3 between here and Columbia?

4 A No, sir.

5 Q Was it the same -- what condition was it in when you
6 received it?

7 A I receive it in sealed packages. When we arrive in
8 Columbia SLED puts additional evidence seals, puts it in
9 additional packaging where we also date and initial. So
10 our original sealed packages a lot of times go into a
11 second sealed package at SLED where we also sign and date.

12 Q And that's what happened in this case?

13 A Yes, sir.

14 Q And to your recollection none of the packages were
15 tampered with at any time prior to your delivery to SLED?

16 A No, sir.

17 MR. LAWSON: I don't have any other questions.

18 THE COURT: Anything further, Solicitor?

19 MR. CLEMENTS: That's all for Corporal Moreau, Your
20 Honor. We'd ask that he be released from his subpoena.
21 He's got a training this week he needs to be at.

22 THE COURT: Any objection, Mr. Lawson?

23 MR. LAWSON: No, Your Honor.

24 THE COURT: Thank you very much, sir. You're free
25 to go. Thank you.

SW - C. MOREAU - PROFFER

1 MR. CLEMENTS: Your Honor, that's all we have other
2 than ready to start the trial unless Mr. Lawson has
3 anymore motions pretrial we need to do.

4 THE COURT: Well, let me do this, let me get the
5 jury out of here. If there is anything we need to take
6 up, Mr. Lawson, we'll do that after I excuse them but I
7 want to go ahead and get them gone.

8 Ask the jury to join us please.

9 (WHEREUPON, the jury was returned to the
10 courtroom at 4:16 p.m., and the following proceedings
11 commenced in open court.)

12 THE COURT: All right, ladies and gentlemen, I
13 know, or I can imagine one of the difficult things of
14 being a juror is being in a room and not knowing what's
15 going on outside the door and wondering why are we in this
16 room and not out there. There were several matters that I
17 needed to take up pretrial that will make the trial flow
18 quicker and flow more smoothly. There's a lot of exhibits
19 and things that we're able to pre-mark and get that out of
20 the way without having to take up that time during the
21 trial to have that done. So we've gotten a lot of work
22 done that's gonna shorten things up and make it a little
23 bit more, flow a little bit more easy and we've completed
24 that. But it's about a quarter after four and typically
25 I'm gonna give you an opening, some opening remarks about

1 the trial, and kind of fill you in on how things are gonna
2 flow and then turn it over to the attorneys for their
3 opening remarks. And in all candor, it would take us
4 beyond 5:00 to get all that in before we even get to
5 hearing a witness. So I've decided instead of doing that
6 to you I'm gonna excuse you for this afternoon, and we're
7 gonna get started first thing in the morning. And we'll
8 start with my opening remarks to you and take it straight
9 through, we'll go right into the trial.

10 So I apologize. Sometimes things take longer than
11 we anticipate, but you know, there's no way to guess on
12 certain things like that. But I'm gonna excuse you to be
13 back here tomorrow morning at 9:30. I'm gonna ask you --
14 now when you went on your lunch break it was probably
15 fairly easy to not talk about the case with anybody 'cause
16 I don't know what you did for lunch, but this evening
17 you're gonna be returning to your respective homes and to
18 your lives, and they're probably going to be folks in your
19 life, your -- either family, friends, or loved ones who
20 are gonna be curious as to whether or not you've been
21 selected to be on a jury. And you can certainly tell them
22 that you were selected and that you are serving on a jury.
23 Obviously they're going to be curious as to what kind of
24 case it is, who does it involve, and all those things.
25 It's really important that you don't tell them anything

1 about this case other than you've been selected to be on a
2 trial. Saying something as innocent as, well, it's a
3 fellow who's accused of murder or it involves Mr. So and
4 so, or anything innocent like that, could possibly elicit
5 a response that might affect your ability to be fair and
6 impartial. And so that's what you need to protect this
7 evening as you go home and as you return tomorrow, and
8 that is, your ability to remain fair and impartial. I
9 would caution you, and I don't think you'd find anything
10 anyway; but the law requires, and I'm instructing you as
11 the presiding judge of this trial, that you are not to do
12 any independent investigation. You will be presented with
13 evidence during the course of this trial, and it will be
14 your job to determine the believability and the
15 credibility of that evidence. You are not to do any
16 independent investigation. You're not to do any computer
17 searches or internet searches or anything. In other
18 words, when you return tomorrow you shouldn't know any
19 more about this case than you know right now. And so it's
20 really important that you protect that ability to be fair
21 and impartial. You would want that if you were someone
22 who was on trial and had a jury to decide your case. You
23 would want their ability to be fair and impartial to be
24 pristine and to be protected. So you can let your friends
25 or family know that you are on a case and you're gonna

1 have to be back in the morning but you -- and at that
2 point you're gonna have to tell them, I can't tell you
3 anything else, I can't even tell you what the person's
4 charged with, I can't tell you whether the person is a man
5 or a woman. All I can tell you is I'm on a case and I
6 have to be back tomorrow. You can tell them that when the
7 trial is over that you'll tell them everything that they
8 want to know. You can let them know that once the trial
9 is ended that you're not restricted in any way. You can
10 tell them every bit of testimony you heard or whatever it
11 is you want to tell them. But they need to be patient and
12 they need to respect the fact that you're not allowed to
13 talk about it.

14 Try, if you can, to get a good night's rest. Jury
15 service is not -- it's not taxing from a physical
16 standpoint as far as muscular, but it is a mental exercise
17 and so you need to be well rested so that you can listen
18 to the evidence, listen to the attorneys as the case
19 unfolds. If you would, when you come back in the morning
20 have your stickers there. Come straight up to the
21 elevator to this floor and we'll bring you back into the
22 jury room. And as soon as we have all of you assembled
23 we'll get started. Okay?

24 So if everyone else will remain seated, ladies and
25 gentlemen, I'm gonna excuse you. We'll see you back here

1 tomorrow morning at 9:30.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 4:30 p.m., and the following proceedings
4 commenced in open court.)

5 THE COURT: All right. Now is there anything else
6 we need to take up this afternoon? I think, Solicitor,
7 you said y'all were good.

8 MR. CLEMENTS: We're good, Your Honor, just
9 I know there's some pieces of evidence I know that
10 Mr. Lawson will be finding objectionable. I don't know if
11 there's any pieces of evidence that he wishes to stipulate
12 to, and we can go ahead and take care of that or not. He
13 may not want to take that issue up at this time, but I
14 just raise it just to try to economize time.

15 MR. LAWSON: I will consider it overnight and be
16 prepared at 9:15 in the morning to tell the Court which
17 pieces I can stipulate to. I know it's up to doc-- the
18 two drawings I have no problem with those drawings, Your
19 Honor.

20 THE COURT: We can deal with that at that time. Is
21 there anything else that we need to deal with today,
22 Mr. Lawson?

23 MR. LAWSON: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, we'll
25 be in recess until 9:30. If y'all, as far as personnel

1 and everything, if y'all need me, of course I'll be here
2 early. Y'all can come see me if you need to but we'll
3 start at 9:30 then.

4 MR. LAWSON: Thank you, Your Honor.

5 MR. CLEMENTS: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded
7 for the day to be reconvened on August
8 9th, 2011.)

9 THE COURT: All right. Anything we need to take up
10 before we get started?

11 MR. LAWSON: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. LAWSON: Your Honor, it appears that there were
14 articles both on South Carolina Now. com and the Florence
15 Morning News on the front page in relation to the hearings
16 that were held outside of the presence of the jury
17 yesterday. I would request that Your Honor question the
18 jury in relation to those stories and determine whether or
19 not they've been read or not.

20 THE COURT: All right, sir.

21 MR. LAWSON: Your Honor, one other thing, yesterday
22 during testimony there was testimony about notes that were
23 taken during an interview with my client. I have not been
24 provided copies of those notes, and I would ask that I be
25 provided those copies under discovery.

1 MR. CLEMENTS: Your Honor, that was Investigator
2 Carraway's notes. We got his report he typed up from his
3 notes, but I'll get his notes and copy them and get those
4 to Mr. Lawson.

5 THE COURT: All right, sir. Anything —

6 MR. CLEMENTS: And Your Honor, we would also join
7 in Mr. Lawson's request that the jury be asked about that.
8 I know you instructed them not to do that, Your Honor, and
9 we want to be sure everything is done fairly and that
10 Mr. Bruce's rights are protected so we join in that
11 request.

12 THE COURT: All right, sir, and I certainly will do
13 that. There has also been some question from a couple of
14 the jurors to madam clerk regarding whether or not they
15 can take notes during the course of the trial. Unless
16 there's a position to the contrary from either side I'm
17 going to decline to allow them to do that. I don't think
18 this is going to be a lengthy trial. If this was going to
19 be a three or four week trial then I'd probably have a
20 different position on it. I think they'd be better served
21 to listen closely to the testimony and then allow their
22 collective recollection of the facts during their
23 deliberations rule rather than having allow them to take
24 notes. I'm not going to let them take notes.

25 All right. Ms. Joe, if you would ask the members

1 of the jury to join us please.

2 Have you talked about any stipulations about
3 anything or ---

4 MR. CLEMENTS: We haven't yet, Your Honor.

5 THE COURT: Okay.

6 MR. CLEMENTS: We have time to do it right now. I
7 don't know how lengthy that will be.

8 THE COURT: I don't know 'cause I don't know how
9 much, how in depth you had an opportunity to look at
10 everything to determine what, if anything, you can
11 stipulate to. I think you mentioned something about the
12 ---

13 MR. LAWSON: The drawings.

14 THE COURT: The two poster boards there?

15 MR. LAWSON: Yes, sir.

16 THE COURT: What are the numbers on those?

17 MR. CLEMENTS: 99 and 100.

18 THE COURT REPORTER: No, 98 and 99.

19 MR. CLEMENTS: 98 and 99.

20 THE COURT: All right. So 98 and 99 are stipulated
21 or agreed to be in evidence without objection.

22 (WHEREUPON, State Exhibits Nos. 98 and 99 were
23 were received into evidence.)

24 THE COURT: Ready for the jury?

25 MR. LAWSON: Yeah. All right. Bring them in

1 please.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 9:55 a.m., and the
4 following proceedings commenced in open court.)

5 THE COURT: All right. Good morning, ladies and
6 gentlemen. Hope everyone had a good evening. A couple of
7 things before we get started. Let me -- and I think
8 you've already -- I don't think everybody's back in their
9 exact same seats, you might be but. Just so you'll know,
10 as you come in and out of the courtroom there is no
11 assigned seating in the jury box except for three seats,
12 and that is the two alternates and the foreperson. Other
13 than that, the rest of you may sit wherever you're
14 comfortable; and if it's easier for you to just file in
15 and go, you know, as you come out. I'm not gonna tell
16 somebody if they really like the seat where you're at
17 right now I'm not going to tell you you can't sit there,
18 but don't feel like you have to sit in the seat you're in
19 right now. Just feel free to flow and sit wherever you
20 want to sit.

21 Another thing that it's been -- there's been the
22 question as to whether or not, as members of the jury,
23 that if you're allowed to take notes during the course of
24 the trial. And I typically, and most judges in South
25 Carolina, we typically do not allow note taking on a case,

1 any case. That is not -- occasionally we'll have cases
2 that will go a couple of weeks long, and in those cases
3 sometimes we -- I do allow note taking. But I don't
4 anticipate that this case will be beyond this week, and so
5 I'm not gonna allow you to take notes. Let me explain
6 that if I may. It's not that I don't want anyone to try
7 to deprive anyone from that. It's just that sometimes
8 when people are taking notes, when they're writing things
9 down, part of when you, as a juror, when you're observing
10 and you're listening to testimony, it's not just listening
11 to what's being said. Part of evaluating, because as
12 jurors, and I'm gonna tell you this in just a moment, as
13 jurors it is your job not only to listen to the testimony
14 but to evaluate and to determine credibility and the
15 believability of the witnesses. And part of that,
16 obviously listening is one thing but another part of it is
17 observing and watching the witness testify, watching the
18 attorneys as they ask questions, and observing the
19 process. Oftentimes when you're writing you're not able
20 to observe because you're too busy writing. Sometimes
21 when people are taking notes they're so intent on trying
22 to take down something they've just heard that they miss
23 the next thing that's being said. And so even though your
24 purpose for taking notes is to be real accurate,
25 oftentimes notes tend to not be very accurate because you

1 -- it's accurate as to what you wrote down that you
2 thought was important, but then you miss something else
3 that's said. So I have found that in trials that are not
4 terribly lengthy that it's probably better for -- and I
5 would encourage you as the witnesses testify, that you
6 listen carefully and observe the witnesses and watch the
7 witnesses and listen carefully. When you retire to your
8 jury room and it's time for you to deliberate, the way the
9 system works and I think is very effective, is that the
10 collective recollection of all the jurors tends to
11 remember the facts pretty well. So for that reason I'm
12 not gonna allow there to be note taking during the trial,
13 but I would ask that you please listen very carefully to
14 all the testimony as it's presented and the evidence.

15 Another thing before I turn it over and get you to
16 give Ms. O'Hara your attention, she's gonna place you
17 under your oath for your role as jurors in this case.
18 Before I do that though I need to ask, is there any member
19 of the jury panel who either heard anything about this
20 case since the last time you were here, whether it be
21 through television or radio or whether you've read
22 anything about this case? Is there any member of the jury
23 panel who has heard or read or seen anything about this
24 case since you left here yesterday, if so, please raise
25 your right hand.

1 THE JUROR: And TV this morning.

2 THE COURT: All right. Let me, if I may -- and
3 sir, just let me get your name please.

4 THE JUROR: Richard Schirippa.

5 THE COURT: Mr. Schirippa, I'm gonna get you to
6 come up here and get the lawyers to approach.

7 (WHEREUPON, juror and counsel approached the
8 Bench for an on-the-record discussion.)

9 THE COURT: What was it you heard?

10 THE JUROR: Just for a minute it came on channel
11 13. It just said that it was gonna have a trial today.

12 That's all.

13 THE COURT: It didn't give any information, just

14 ---

15 THE JUROR: No.

16 THE COURT: ---that the trial was going to be
17 today?

18 THE POTENTIAL JUROR: Right. That's all it had
19 just for 30 seconds, you know, that was it.

20 THE COURT: Any information at all about the trial?

21 THE POTENTIAL JUROR: No, no.

22 THE COURT: All right. Thank you very much, sir.
23 And ma'am, your name?

24 THE POTENTIAL JUROR: Sandra Welch.

25 THE COURT: Ms. Welch, come on up please.

1 (WHEREUPON, juror and counsel approached the
2 Bench for an on-the-record discussion.)

3 THE COURT: Was it TV or?

4 THE POTENTIAL JUROR: Just on channel 13. I was
5 getting ready and I just sort of glanced through. I
6 didn't hear anything other than, you know, they were
7 having a trial today. That's all it was.

8 THE COURT: It didn't give any information about
9 anything?

10 THE JUROR: No, sir, no, sir.

11 THE COURT: All right. Thank you.

12 THE POTENTIAL JUROR: Thank you.

13 (WHEREUPON counsel approached the Bench for
14 an off-the-record discussion.)

15 THE COURT: All right. Thank you, ladies and
16 gentlemen. And listen, I realize that you can't — some
17 of y'all are probably old enough to remember, you know, as
18 horses used to draw carriages and wagons and stuff they
19 put what they call blinders on them so that they can only
20 see what's ahead and not to the side. You can't go
21 through your life with blinders on obviously so, but it is
22 important. I want to thank y'all for protecting your
23 ability to be fair and impartial. And as we go through
24 this case that instruction will remain with you throughout
25 the case. You're not to read anything about the case,

1 listen to anything whether it be the radio or TV. And if
2 something comes on, obviously as soon as you realize if
3 there's anything about the case, make sure you turn that
4 off, if it's TV or radio. And of course don't read
5 anything about the case. As I said yesterday, you're
6 going to decide this case based solely on the evidence
7 that is presented during this trial.

8 Now ladies and gentlemen, before I address you with
9 my opening remarks I'm gonna ask, if you would, to give
10 Ms. O'Hara your attention and she's gonna place you under
11 your oath for your role as jurors in this case.

12 CLERK OF COURT: If you will please stand and raise
13 your right hand to be sworn.

14 (WHEREUPON, the jury was sworn.)

15 CLERK OF COURT: You may be seated.

16 THE COURT: Now ladies and gentlemen, we are about
17 to begin the trial of the case of State of South Carolina
18 versus Roger Bruce. Before I begin or before we begin
19 this case, what I want to share with you is that this case
20 is probably going to be very different than you might
21 expect. Most people who come into the courtroom have not
22 had the experience that you're about to have, and that is,
23 most people have not sat in on an actual jury trial.
24 Their only experience with regards to jury trials has been
25 what they've read in books or what they've seen in

1 television or what they've seen at the movies. And of
2 course, we all know that those trials are always full of
3 high drama, intense action, and rivetting circumstances
4 because that's Hollywood and that whole purpose for that
5 is to entertain you. Now during the course of this trial,
6 while any number of those things may occur, what you need
7 to understand and what you need to keep in mind is that
8 this trial is not for your entertainment. It is a
9 fundamental part of our democracy. It is a search for the
10 truth in an effort to make sure justice is done between
11 the parties that are before the Court. And ladies and
12 gentlemen, searching for the truth and to make sure that
13 justice is done oftentimes can be slow. It can be very
14 deliberate, sometimes it can be repetitive. In other
15 words, very different from what you may have seen in
16 movies or read in books or seen on television. This
17 courtroom is a place of honor that is dedicated to the
18 protection and preservation of citizen's rights through
19 what many people have called the greatest justice system
20 ever created. The attorneys that appear before you are
21 advocates for the parties that they represent. But first
22 and foremost, they are officers of the Court sworn to
23 uphold the integrity and the fairness of our judicial
24 system and to help you in your search for the truth. You
25 should expect them to be professional, competent, and

1 ethical in the representation of their client's interest.

2 Now remember that you have just taken an oath to
3 try this case and to reach a fair and just verdict and so
4 you are also expected to be professional, reasonable, and
5 ethical in the performance of your duties. I have
6 absolutely no doubt you will do just that. And I again
7 want to take this opportunity to thank you for your role
8 and for your contribution to our system of justice here in
9 Florence County and in South Carolina.

10 Now what I'm telling you now and what I'm going to
11 tell you over the next few minutes is intended to serve as
12 a introduction to the trial of the case. These remarks
13 are not a charge on the law. I will charge you on the law
14 that is applicable to this case at the end of the case
15 before you retire to consider your verdict. What I'm
16 going to share with you now is merely an explanation of
17 the procedures that we're going to follow as we go through
18 the case so that you may better understand what is going
19 on and what's happening.

20 Now the defendant in this case, Mr. Bruce, is
21 charged by an indictment which I've shared with you
22 before, yesterday, that has been filed in this court and
23 he is charged with the offense of murder. The elements of
24 that offense will be explained to you later when I charge
25 you on the law. Now the indictment, as I told you

1 earlier, is simply the charge by which the case is brought
2 into this court and it is not in any sense evidence of any
3 of the allegations that it contains. The defendant has
4 pled not guilty to that charge or that indictment, and the
5 State therefore, has the burden of proving each of the
6 elements of the indictment beyond a reasonable doubt. It
7 will be your duty, ladies and gentlemen, to decide whether
8 or not the State has met that burden. Your purpose as
9 jurors is to find and to determine the facts in this case.
10 You are the sole judge of the facts in this case. If at
11 any time I make any comment regarding the facts you must
12 disregard those comments because no one other than you,
13 the jury, is allowed to determine what the facts are in
14 this case. You are to determine the facts from the
15 testimony that you hear and any other evidence that may be
16 introduced during the course of the trial. It is up to
17 you to determine the inferences which you feel may be
18 properly drawn from that evidence. It is especially
19 important that you perform your duty of determining the
20 facts diligently and conscientiously because ordinarily
21 there is no way to correct an erroneous determination of
22 facts by a jury.

23 Now on the other hand, but with equal emphasis, the
24 same law that makes you the judges of the facts makes me
25 the judge of the law. The law as given by the Court is

1 the only law that you may consider. You must accept and
2 follow it even though you may disagree with it. I'm not
3 allowed to tell you about the facts or what I think about
4 the facts. And you, on the other hand, are not allowed to
5 disagree me about what the law is or what you think the
6 law should be. Your job is to take the law as I give it
7 to you and apply it to the facts as you determine the
8 facts to be from the evidence through witness testimony
9 and any other things that may come in during the course of
10 the trial. And after doing that you will then be in a
11 position to render a verdict in this case.

12 Now until I tell you and I advise you to begin your
13 deliberations you must not discuss this case with anyone
14 and that includes amongst your fellow jurors. Sometimes
15 juries look at me a little funny when I say that because
16 most people think, well, I thought as a jury we're
17 supposed to get together and deliberate and talk about it,
18 and you are, but not until you have all the evidence and
19 everything is completed. Until that point you're to have
20 no conversation with anyone about the case. And once the
21 case is, however, submitted to you for your deliberations,
22 you must then only discuss the case within the confines of
23 your jury room.

24 Now during this trial it is important that you do
25 not read, listen to, or watch any news reports, or any

1 television reports or anything about this case. This
2 includes internet, newspapers, television, I don't know,
3 Twitter accounts. I don't have a Twitter account; I know
4 what they are but. The bottom line is, you just shield
5 yourself from anything outside this courtroom that may
6 reference this trial. It is important, ladies and
7 gentlemen, that you keep an open mind and that you not
8 decide any issue in this case until all of the evidence
9 has been presented, the parties have had the opportunity
10 to address you with their closing remarks, and then I have
11 instructed you on the law. It is your solemn
12 responsibility to determine the guilt or innocence of the
13 defendant, and your verdict must be based solely on the
14 evidence as it is presented to you during this trial and
15 on the law as I instruct you at the close of this trial.

16 Now in just a moment Mr. Clements will have an
17 opportunity to address you with what we call an opening
18 statement in which he will explain to you the issues, what
19 the issues are in this case or what he believes, or his
20 position on what the issues are in this case. Once he's
21 concluded his opening remarks then Mr. Lawson will have an
22 opportunity to address you with any opening remarks he may
23 have although he's not required to do so. What is
24 important for you to understand, ladies and gentlemen, is
25 this, what the lawyers tell you in their opening

1 statements is not evidence. It is merely their contention
2 as to what they believe the issues in this case are. The
3 evidence in this case, what you will base your decision
4 on, will be presented to you by the way of testimony from
5 witnesses who are placed under oath and take the stand and
6 then any other exhibits that may come in during the course
7 of the trial.

8 Now from time to time during this trial you may
9 hear one of the attorneys say something like this: Judge,
10 we have a matter of law we need to take up with the court;
11 Or, Your Honor, may we approach the Bench. During those
12 times I might find it necessary to ask you to step back
13 into your jury room so that I can take up a matter of law
14 with the attorneys. Now if I do ask you to do that, let
15 me explain to you why I would do that. It's not that I'm
16 trying to hide anything from you. It's just that whenever
17 I have to take up matters of law with the attorneys,
18 sometimes in connection with a ruling that I'm required to
19 make it may be necessary for me to make some comment about
20 the facts or the evidence that was presented. As I told
21 you earlier, I'm not to have any influence over you with
22 regards to the facts in this case. So to protect you from
23 that, to shield you from that, I may ask you to step back
24 into your jury room so that I can take up that matter of
25 law and in no way infringe upon your role as the fact

1 finders. In determining what the true facts are in this
2 case you must decide whether or not the testimony of a
3 witness is believable or not. It's going to be my job to
4 rule as a matter of law whether certain testimony is
5 admitted into this trial at all or not. But once
6 testimony is admitted into this trial, whether or not you
7 believe it is solely up for you to decide. In deciding
8 whether to believe a witness you have the right to
9 consider the interest of a witness, the bias of any
10 witness, the opportunity for the witness to have seen the
11 matters and the things about which that witness testifies,
12 and the way a witness acts on the witness stand. You have
13 the right, ladies and gentlemen, to consider anything that
14 is in this record that will help you in evaluating the
15 believability and the credibility of a witness. That
16 means that it is your duty to pay close attention to the
17 witnesses, observe them, listen carefully to the witnesses
18 and pay close attention to the attorneys and to the Court.
19 Please do not let your thoughts wander but give strict
20 attention to all the testimony and the evidence in this
21 case so that at the end of the testimony after the
22 attorneys have had an opportunity to address you with
23 their closing remarks and that I have given you the law,
24 you will then be in a position to go back into your jury
25 room, deliberate, discuss the case, apply the law to the

1 facts and the evidence as you found them to be during the
2 course of this trial and arrive at a verdict.

3 Now before I turn it over to the attorneys to
4 address you with their opening remarks let me first
5 inquire, are there any objections or exceptions from the
6 State as to the Court's opening remarks?

7 MR. CLEMENTS: No, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. LAWSON: No, Your Honor.

10 THE COURT: Thank you very much, gentlemen.

11 Ladies and gentlemen, if you would please now give
12 the attorneys your close and your undivided attention.

13 Solicitor.

14 MR. CLEMENTS: Thank you, Your Honor. Mr. Lawson.

15 Good morning. On October 12th, 2009, the evidence you
16 will hear in this courtroom will show you that the

17 Florence Police Department got a request from out of town

18 from two sons to do a welfare check on their mother Laura

19 Creel, who they had not heard from, and that Laura Creel

20 lived at Avenue, which I believe is

21 on the corner of and . And it's a garage

22 apartment she lived in back behind the house there on

23 Avenue. And you're going to hear from the officers that

24 went to that welfare check and then they knocked on the

25 door. First they didn't get an answer. Then they noticed

1 someone there and they went back and encountered a person
2 there that lived there at the residence that was
3 Ms. Creel's boyfriend. And the testimony is going to be
4 that that is Mr. Roger Bruce sitting here between his
5 attorneys Mr. Floyd and Mr. Lawson, and that they told him
6 what they were there for and looking for potential missing
7 person. And he said that she was gone, she -- they got in
8 an argument, and she had left, and wasn't sure who she was
9 with. They asked if they could come in and look, and they
10 did. Mr. Bruce, you'll hear, gave them consent to come in
11 and look in the apartment, a little small apartment. They
12 looked around to see if they could find any signs of where
13 she might be and who she might be with. Noticed car keys
14 that looked like went to her car and knew that was her car
15 that was outside. And you're going to hear from the
16 officers they got the keys and went and looked in the car.
17 And you're going to hear that Mr. Bruce's demeanor changed
18 a little bit when they began to look at the car. And
19 you're going to hear from Corporal Hobgood who went to
20 open the trunk and how Mr. Bruce responded then. And then
21 when they got the trunk open and there was a dead body in
22 the vehicle in the trunk, and that was the body of Laura
23 Creel. You're gonna hear they called in forensics, the
24 crime scene unit. Mike Brandt and Shannon Hill of the
25 Florence Police Department went and processed the crime

1 scene. Terrance Carraway came as investigator, and Larry
2 Drayton. They talked to Mr. Bruce about where she might
3 be, when did he last see her, you know, what happened,
4 what did he know. And then after talking with him they
5 decided, you know, maybe they needed to arrest him and
6 they did. And they continued on and examined what
7 happened and processed that crime scene. And at that
8 crime scene they found a 22 rifle and at that crime scene
9 they found a spent 22 cartridge casing; and that they
10 submitted Ms. Creel's body for autopsy and that she was
11 shot in the head one time. And then the bullet was
12 retrieved from her body, and that that bullet was a 22.
13 And you're going to hear that these things that were
14 gathered were submitted to SLED and that SLED lab examined
15 them, and you're going to hear from the SLED experts in
16 the field of ballistics that that 22 shell casing, empty
17 shell casing, in that apartment was fired by that 22
18 Marlin. And you're going to hear that that bullet that
19 was retrieved from Ms. Creel's body was consistent with
20 being fired by that weapon, cannot be determined that it
21 absolutely was fired by that weapon, but it was consistent
22 with being fired by that weapon. You're going to hear
23 from SLED expert what all that means. And you're going to
24 hear from the crime scene processor of the Florence Police
25 Department they noticed blood and they took swabs. They

1 did other things and submitted those for tests. And
2 you're going to find out that the conclusions of those
3 tests were that blood on the carpet in the living room on
4 that carpet matches the DNA of Laura Creel. And you're
5 going to find the swabs from the trigger and the stock of
6 that 22 matched the DNA of Roger Bruce. And you're going
7 to weigh all the evidence and weigh all the facts that you
8 hear on sworn testimony from that witness stand, and then
9 you're going to hear the law that Judge Russo gives you
10 and you're going to go back in that jury room and you're
11 gonna apply that law to the facts that you hear and that
12 you as a group weigh.

13 Now my job is to represent the State of South
14 Carolina. My job is to meet the burden of proof. You
15 might have heard that term before; you might not. You
16 might say, well, what exactly does that mean. Well Judge
17 Russo, when he charges you with the law he's going to tell
18 you what that means. He's going to tell you that my job
19 is to make sure that I'll reach that burden of proof and
20 that burden of proof is guilt beyond a reasonable doubt.
21 And he's going to tell you that Mr. Bruce is clothed with
22 a presumption of innocence, that anyone accused in our
23 state, in our country, is clothed with presumption of
24 innocence. And my job is pretty much to take that cloak
25 of innocence off by the presentation of evidence. And

1 that's what we're going to do in this trial as you'll hear
2 from all these witnesses. And after you hear from all
3 these witnesses and you get the law from Judge Russo and
4 you go back in that jury room, you're going to ask, did Ed
5 Clements meet his burden of proof, did he prove beyond a
6 reasonable doubt that Roger Bruce killed Laura Creel. And
7 you're going to find that we, the State, do meet our
8 burden of proof, that Roger Bruce did shot and kill Laura
9 Creel. That's what the evidence is going to show you
10 beyond a reasonable doubt. As reasonable people with
11 common sense and common experience you're gonna judge each
12 witness on that witness stand, and you're going to take
13 those facts and those pieces of evidence that we present
14 to you and look at the pictures and hear from the
15 witnesses and you won't have any other conclusion you can
16 make other than the person responsible for this terrible
17 crime and this horrible thing to happen with Roger Bruce.
18 I appreciate your attention. I appreciate your
19 consideration of what every witness has to say. I
20 appreciate you viewing Roger Bruce with that presumption
21 of innocence 'cause that's what our law requires, and I
22 appreciate you listening to us as we meet our burden of
23 proof. And I appreciate you doing your sworn duty to
24 apply the law to the facts and to find Roger Bruce guilty
25 beyond a reasonable doubt of murder.

1 What is murder? The judge is going to tell you
2 what murder is when he tells you the law. Murder is when
3 you take the life of another human being with malice
4 aforethought. And I submit to you, that if you shoot
5 someone in the head with a 22 rifle without any
6 provocation, not with any self-defense, not with any of
7 those other things, that that is killing somebody with
8 malice aforethought and it meets our definition of murder.
9 Thank you for your attention.

10 THE COURT: Thank you, Mr. Clements.

11 Mr. Lawson.

12 MR. LAWSON: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. LAWSON: Mr. Solicitor. Ladies and gentlemen
15 of the jury, as I told you yesterday my name is Jack
16 Lawson. My job here is to represent Roger Bruce in this
17 case. Our job is somewhat different than the solicitor's
18 job. The solicitor's job is bring to you evidence that
19 proves guilt beyond a reasonable doubt. My job, on the
20 other hand, is to defend Roger Bruce with no obligation of
21 proving anything. I don't have any burden to bear. I
22 have no proof, no presumption, no inferences that I must
23 withhold during this trial. It is the State's obligation
24 during this trial to bring to you evidence beyond a
25 reasonable doubt that proves the guilt of Roger Bruce in

1 this trial. I want to take this opportunity to thank you
2 because it's only by people like yourself that are willing
3 to give of their time and effort that makes our system
4 probably the best that's ever been conceived in human
5 kind. Before any person in our country can be adjudged
6 guilty of a crime, unless they plead to that crime, a jury
7 must be impaneled and the evidence must be tested by that
8 jury. You as judges of the facts are the exclusive and
9 sole judge of the facts. If I make an error in the law or
10 if the judge when giving you the law makes some error,
11 there are ways to correct that through appeal. Very
12 seldom is there a way to correct what a jury determination
13 of the facts are. Once you decide the facts they are the
14 facts from now forever. That is your burden.

15 It is the burden, however, of the State to bring
16 evidence to you that is clearly, absolutely proved beyond
17 a reasonable doubt. The judge will define that to you at
18 the conclusion of the case. A lot of times you hear
19 reasonable doubt is a doubt for which you can give a
20 reason. Well, that doesn't really make a whole lot of
21 sense, still say what is it. But we will try to determine
22 that at the conclusion of the trial before you go and
23 deliberate the case.

24 Now there's two kinds of evidence that are
25 presented in court, direct evidence and circumstantial

1 evidence. Direct evidence is like an eyewitness or
2 someone who saw an event or heard something or something
3 to that effect. Circumstantial evidence is evidence that
4 you derive from the circumstance. I submit to you that
5 the evidence in this case that would be presented will
6 primarily and almost exclusively be circumstantial
7 evidence. There is no difference whatsoever between
8 direct and circumstantial evidence as it relates to proof
9 of a certain circumstance. However, you have to judge
10 circumstantial evidence by the same standard that you
11 would judge direct evidence and hold it to the burden of
12 proof beyond a reasonable doubt. There will be evidence
13 that Roger Bruce and Ms. Laura Creel had lived together
14 for some 15 years and had been there at Avenue for
15 about five years. There will be very little else in the
16 way of any evidence as it relates to any hostility between
17 the two in any kind or of any circumstance, no domestic
18 violence reports and those kind of things between the two.

19 So at the conclusion of the case when all the
20 evidence is here, it will be your duty to go into your
21 room right back there and determine whether or not the
22 State has brought forth evidence to your satisfaction
23 beyond a reasonable doubt to prove my client Roger Bruce
24 killed with malice aforethought Ms. Laura Creel. I
25 believe to the con-- in contrast to the solicitor that

1 there will be reasonable doubt, that there will be
2 substantial reasonable doubt. And that reasonable doubt
3 will be developed as the trial proceeds and you will have
4 the same reasonable doubt that I have in relation to
5 whether or not Roger Bruce is guilty of this crime. I ask
6 you to honestly and deliberately deliberate this case
7 based on the evidence that you will hear in this
8 courtroom, nothing else, the evidence that comes from that
9 witness stand and based on that to render a verdict. If
10 you do that, then you will have fulfilled your obligation
11 and none of us can criticize anyone in that circumstance.
12 It is a awesome responsibility that you have, and I want
13 to thank you once again for taking that responsibility and
14 for being willing to sit here in Florence County and judge
15 the evidence in this case between the State of South
16 Carolina and Roger Bruce. Thank you very much.

17 THE COURT: Thank you, Mr. Lawson.

18 Mr. Clements, you may call your first witness, sir.

19 MR. CLEMENTS: Thank you, Your Honor. Your Honor,
20 we'd call Shane Ritch.

21 THE COURT: Mr. Ritch, if you'd come around please
22 to be sworn.

23 CLERK OF COURT: If you will, sir, place your left
24 hand on the Bible, raise your right hand.

25 WHEREUPON,

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SHANE RITCH,

having been duly sworn by the Clerk of Court, testified as follows:

CLERK OF COURT: Please be seated. State your full name for the record.

THE WITNESS: Shane Ritch.

DIRECT EXAMINATION

BY MR. CLEMENTS:

Q Mr. Ritch, how are you doing this morning?

A All right.

Q I'm gonna ask you, if you will, to kind scoot up close that microphone. Pull that microphone close to you. I'm gonna stand back over here so I know if I can hear you I probably all the jurors can hear you. Okay?

A Yes, sir.

Q If you don't quite understand what I'm asking you or need me to rephrase or re-ask the question please do that. Okay?

A Yes, sir.

Q Mr. Ritch, how old are you?

A I'm 26.

Q Where do you live?

A Hemingway, South Carolina.

Q And how long have you lived in Hemingway?

A Going on four years.

SW - S. RITCH - DIRECT

- 1 Q All right. You got any siblings?
- 2 A I got three kids and a wife.
- 3 Q All right. Do you have any brothers and sisters?
- 4 A I got a older brother and a younger sister.
- 5 Q Okay, all right. What's your brother's name?
- 6 A Michael Ritch.
- 7 Q Okay. Where does he live?
- 8 A He lives in Greenville.
- 9 Q All right. Who is your mother?
- 10 A Laura Creel.
- 11 Q All right. Do you know Roger Bruce?
- 12 A Yes, I do.
- 13 Q How long have you known Roger Bruce?
- 14 A Since I was 14.
- 15 Q Okay. Now do you recall what was going on back in
- 16 October of 2009?
- 17 A Yes, sir.
- 18 Q Can you tell this jury, about how often would you see
- 19 your mother or how often would you talk to your mother?
- 20 A I talked to her every day, seen her maybe once a week.
- 21 Q All right. Did you always talk to her every day?
- 22 A Almost. It was very, very unlikely if I didn't talk to
- 23 her. If it was maybe a day, but it was almost every day.
- 24 Q Okay. And how would you talk with her?
- 25 A I'd call her. She would call me.

SW - S. RITCH - DIRECT

- 1 Q Okay. And home phone, cell phone, how ---
- 2 A Cell phone.
- 3 Q ---would y'all communicate?
- 4 A On the cell phone.
- 5 Q All right. Can you tell this jury, do you know when is
- 6 the last time you talked to your mother?
- 7 A Thursday.
- 8 Q Thursday?
- 9 A Yeah, it was October, what, 9th.
- 10 Q Okay.
- 11 A October 8th.
- 12 Q October 8th?
- 13 A Yes, sir.
- 14 Q Okay. And when -- what part of day did you talk with
- 15 her?
- 16 A It was after I got off work. It was after 5:00.
- 17 Q Okay, all right. How did you talk with her?
- 18 A She called me on my cell phone.
- 19 Q Okay, all right. And did you ever talk to her any time
- 20 after that?
- 21 A No, sir.
- 22 Q Okay. Do you recall what happened on October 12th?
- 23 A Roger called me at about 11:00 at night. I was in bed.
- 24 He called me and asked me what I was doing. I told him I
- 25 was going to bed, had to get up for work, and he stated

SW - S. RITCH - DIRECT

- 1 that he didn't see my mom in a couple of days and was
2 wondering if I talked to her, if I knew what was going on.
3 And I asked him why did he call me from her phone and he
4 said she left it. I said are you playing with me; and he
5 said, no, I'm not playing. I said, where's her car. He
6 said it's in the garage. And I said, well, I said, you
7 know, she don't go nowhere without her car. I said, stop
8 playing. He said he wasn't playing. So I told him I was
9 on my way down there, you know, we' figure it out. He
10 said he'd be waiting. So I hung up and called my brother.
11 Q Okay. Now how did he call you?
12 A From my mama's cell phone.
13 Q How do you know it was your mama's cell phone?
14 A 'Cause her number is programmed into my phone. It says
15 mama when she calls.
16 Q And what kind of car did she have?
17 A She had a Chrysler Concord LXI, fully loaded.
18 Q Have you ever driven that car?
19 A I drove it one time. Nobody drives that car, nobody.
20 Q All right.
21 A She don't go nowhere without that car.
22 Q She don't go anywhere without the car?
23 A No, sir.
24 Q How about her cell phone?
25 A She did not leave the house without her cell phone.

SW - S. RITCH - DIRECT

1 Q Now she have a pet?

2 A She had a dog named Amy that she didn't leave the house
3 unless she was going to work. That dog was with her
4 everywhere.

5 Q Unless she was going to work?

6 A Unless she was going to work. She goes to the store,
7 that dog went to the store with her.

8 Q Okay. And where did she work?

9 A She worked at Hardees.

10 Q Okay. Now after you hung up from Roger you said you
11 called your brother?

12 A Yes, sir.

13 Q What did you tell your brother?

14 A I told him that Roger called and said he ain't seen mom
15 in a couple of days, and Michael called -- then I called
16 Michael and he told me that we need to handle it, you
17 know, so I hung up with him and I called the law.

18 Q All right. When you called the law how did you call
19 the law?

20 A I called them and told them I haven't talked to my mom
21 and that, you know, her boyfriend said she hadn't been in
22 for a little while, a couple of days, and that they could
23 do a wellness check just to go check on her, and they told
24 me they'd send somebody out.

25 Q Okay. What did you do after you called them?

SW - S. RITCH - DIRECT

1 A I waited to hear. I called my brother back and let him
2 know that I called the law, and we just -- we waited to
3 hear. The dispatch lady said she would let us know
4 something as soon as they know something. So as we were
5 waiting I got kind of impatient and I called back, and
6 they told me that nobody was answering the door. So I
7 called my mom's cell phone back and he answered it, and I
8 told him I was outside and a little while later they said
9 they talked to him. And about 3:45 in the morning that's
10 when we found out that she was dead.

11 Q Okay. And while you were talking with him you were
12 talking with him on the cell phone, were you talking to
13 dispatch too?

14 A Yeah, when I talked to my brother I was on the phone
15 with dispatch.

16 Q Okay. So you were on more than one phone at a time?

17 A I was on my wife's phone and my phone.

18 Q Okay. At the same time?

19 A Yes, sir.

20 Q Okay. And what information, if any, did you give law
21 enforcement through dispatch?

22 A I told him that my mama drove a '97 Chrysler Concord,
23 it's kind of a goldish color. I told them that he called
24 from her phone. She never went to work without her phone.
25 You know, she had the dog. It's a Pomeranian. She never

SW - S. RITCH - DIRECT

1 went nowhere without it, and that he said that she's not
2 been there for a couple of days.

3 Q Okay, all right. Beg the Court's indulgence a moment.

4 THE COURT: Yes, sir.

5 BY MR. CLEMENTS:

6 Q So, and you said you were talking to dispatch and they
7 said no one would answer?

8 A Yes, sir. The -- they said nobody'd answer the door.
9 They went to the wrong house first.

10 Q They went to the wrong house first?

11 A Yes, sir. There's a house here and then there's a
12 fence around the whole area and then the apartment's in
13 the same yard as the house.

14 Q Okay.

15 A So they went to the wrong house to begin with.

16 Q Okay.

17 A They knocked on the wrong door.

18 Q Okay. And when you told them where the right door was
19 did they get a answer, do you know?

20 A Yes, sir. Yes, sir, they got an answer.

21 Q Okay. And did you call Roger back?

22 A I called. He never answered the phone.

23 Q All right. So you were on the phone with dispatch and
24 with your brother?

25 A Yes, sir.

SW - S. RITCH - DIRECT

1 Q Okay. Mr. Ritch, you have a conviction for grand
2 larceny?

3 A Yes, sir.

4 Q Okay. And that was in 2004?

5 A Yes, sir.

6 Q And at the same time did you have a malicious injury to
7 personal property conviction?

8 A Yes, sir.

9 Q Okay. And in 2004 also did you have a resisting
10 arrest?

11 A Yes, sir.

12 Q Okay. You got any convictions or anything since then?

13 A No, sir.

14 Q Okay, all right. Please answer any questions
15 Mr. Lawson may have.

16 **CROSS-EXAMINATION**

17 BY MR. LAWSON:

18 Q Mr. Ritch, I am so sorry for your loss. Just a few
19 questions I just want to clarify. Now you spoke with your
20 mother on October 9th on -- or 8th on a Thursday?

21 A It was on a Thursday, yes, sir.

22 Q So whatever day that was ---

23 A That was October 8th.

24 Q October the 8th?

25 A Yes, sir.

SW - S. RITCH -CROSS

1 Q You didn't talk with her on Friday?

2 A No, sir.

3 Q You didn't talk with her on Saturday?

4 A No, sir.

5 Q And then on Sunday you did not speak with her?

6 A No, sir, I didn't.

7 Q And then on Monday the 12th is when Roger called you?

8 A Yes, sir.

9 Q And what time of day was that?

10 A 11:00 at night.

11 Q What time?

12 A 11 at night.

13 Q 11 at night?

14 A Yes, sir.

15 Q And then you called the police and -- or you called
16 your brother?

17 A I called my brother.

18 Q And then you called police?

19 A Yes, sir.

20 Q And then, did I understand that when the police told
21 you that no one came to the door that you called Roger
22 back and told him you were outside?

23 A Yes, I did.

24 Q So he answered the phone when you called that time?

25 A That time he did. I called more than once. While I

SW - S. RITCH -CROSS

1 was on the phone I called more than once.

2 Q Okay. So he ---

3 A But he did answer the phone.

4 Q And then did you call after that?

5 A I called after they made contact, nobody answered, as I
6 just told Solicitor Clements.

7 Q You don't know what his situation was at that point?

8 A No, I do not.

9 Q I don't have any further questions. Thank you.

10 THE COURT: Anything further, Mr. Clements?

11 **REDIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q Mr. Ritch?

14 A Yes, sir.

15 Q Mr. Lawson asked you about you calling Roger back.

16 When you called him back did he answer the phone
17 immediately or not answer the phone immediately, did he
18 answer quickly? How long did it take to answer?

19 A I don't know if I was outside the time I called back or
20 after that?

21 Q After that. When you called him the second time how
22 long did it take to answer the phone?

23 A About 10 rings, 15 rings.

24 Q 10 or 15 rings?

25 A Yes, sir.

SW - S. RITCH - REDIRECT

1 Q Okay.

2 A Any more than that it went to voice mail, you know.

3 Any more rings than that it'll go to voice mail, you know.

4 It'd ring for about 12 seconds I could say.

5 Q All right. So he didn't answer immediately?

6 A No, sir.

7 Q Okay, all right. Thank you. That's all the questions

8 I have.

9 MR. LAWSON: May I, Your Honor?

10 THE COURT: I'm sorry?

11 MR. LAWSON: May I?

12 THE COURT: Yes, sir.

13 **RE CROSS - EXAMINATION**

14 BY MR. LAWSON:

15 Q Mr. Ritch, it was a cell phone --

16 A Yes, sir, it was.

17 Q --that you were calling on?

18 A Yes, sir.

19 Q And you were calling to a cell phone?

20 A It was a Virgin mobile cell phone.

21 Q Okay. And once you advised the solicitor when he asked
22 you if it rings a certain number of times it goes to --

23 A It'll go -- that's any cell phone. If it rings more
24 than a couple, you know, it goes to the voice mail.

25 Q Voice mail. So it wasn't -- it didn't go to voice mail

SW - S. RITCH - RECROSS

1 on that. He answered before it went to voice mail?

2 A About the second time I called. Like I told you
3 before, I called multiple times.

4 Q All right. Thank you.

5 A Thank you.

6 THE COURT: Thank you very much, sir. You may step
7 down.

8 MR. CLEMENTS: Your Honor, we call Michael Ritch.

9 CLERK OF COURT: If you will, sir, place your left
10 hand on the Bible.

11 WHEREUPON,

12 MICHAEL RITCH,

13 having been duly sworn by the Clerk of Court, testified as
14 follows:

15 CLERK OF COURT: Please be seated. State your full
16 name for the record.

17 THE WITNESS: Michael Ritch.

18 DIRECT EXAMINATION

19 BY MR. CLEMENTS:

20 Q Mr. Ritch, where do you live?

21 A Greenville, South Carolina.

22 Q Okay. And do you know -- well, first, your mother is
23 Laura Creel; is that correct?

24 A Yes, sir.

25 Q And your brother is Shane Ritch?

SW - M. RITCH - DIRECT

1 A Yes, sir.

2 Q All right. You know Roger Bruce?

3 A Yes, sir.

4 Q How long have you known Roger?

5 A 13, 14 years probably.

6 Q Okay. And were you pretty close with your mom?

7 A Yes.

8 Q Pretty close with your brother?

9 A Yes.

10 Q Were you close with Roger?

11 A No.

12 Q Okay. And how often would you talk to your mom?

13 A Every night, every other night around 9:00.

14 Q Every night or every other night?

15 A That's when our minutes were free, after 9:00.

16 Q Okay. So she had free minutes after 9:00 and that'd be
17 when y'all talked?

18 A Yes, sir.

19 Q Now were you close enough to her that you knew about
20 her and Roger's relationship?

21 A Yes.

22 Q How would you characterize their relationship?

23 A Rollercoaster.

24 Q Rollercoaster?

25 A Uh-huh.

SW - M. RITCH - DIRECT

- 1 Q Okay. So what do you mean by rollercoaster?
- 2 A One day they're fine, the next day they're arguing.
- 3 Q Okay. And how many years has it been that way?
- 4 A Pretty much the whole time.
- 5 Q Okay, all right. So would it be fair or not be fair to
- 6 say that they've had problems?
- 7 A They've had problems, yes, sir.
- 8 Q Do you recall when the last time you spoke with your
- 9 mom?
- 10 A I believe it would be Wednesday night I think the 7th,
- 11 the 7th.
- 12 Q Wednesday night, October the 7th?
- 13 A I believe it was the 7th, yes.
- 14 Q And that's the last time you talked to her?
- 15 A Yes, sir.
- 16 Q How was she when you talked to her that night?
- 17 A She was fine, said she was sleepy. I talked to her
- 18 about 15 minutes. About the same every time I talked to
- 19 her so.
- 20 Q And who would usually call? Did she usually call you
- 21 or you usually call you?
- 22 A No, most of the time she called me.
- 23 Q Now October 12th you recall that day, ---
- 24 A Yes.
- 25 Q ---that evening? Can you please tell this jury what

SW - M. RITCH - DIRECT

1 happened that day in regards to your mom?

2 A It was about, I don't know, 12:30, 11:00 at night I got
3 a phone call from my brother saying that Roger had called
4 and said that he hadn't seen mom in a couple of days.
5 Said he got concerned and asked for — no, where her car
6 was, where her dog was, you know, said everything was
7 there, she just up and left. So he called me and I called
8 my mom's cell phone and he answered.

9 Q "He" being who?

10 A Roger.

11 Q Okay. Now was that like your mom?

12 A No, no.

13 Q Why was that not like your mom?

14 A Nobody drove her car. Everywhere she went, she went
15 walking, her dog was with her. She never left her cell
16 phone.

17 Q Had you ever driven that car?

18 A One time I changed the fuel filter on it.

19 Q Changed the fuel filter?

20 A One time.

21 Q And that's the only time you drove it?

22 A That's it.

23 Q To your knowledge did Roger ever drive that car?

24 A No.

25 Q Never?

SW - M. RITCH - DIRECT

1 A No.

2 Q Okay. To your knowledge was your mom in the habit of
3 leaving her cell phone or going anywhere without her cell
4 phone?

5 A No, no.

6 Q To your knowledge was she into having to go anywhere
7 without her car?

8 A No, never.

9 Q Okay, all right. So after you got a phone call from
10 your brother how did you feel, were you concerned or ---

11 A I was very concerned.

12 Q And as a result of your concern what did you do?

13 A I called mom's cell phone and Roger answered. And then
14 I asked him, I said, you know, have you talked to mom,
15 you know, where's she at? And he said, I don't know, she
16 left. You know, he was acting funny and stuttering,
17 hardly answering my questions. I was like, you know,
18 where's Amy. He said, she's laying here on the floor.
19 Where's her car keys? He said right here on the coffee
20 table. I was like, you sure you don't know where she's
21 at. He's like, no. So I hung up with him. I called my
22 brother back and I said ---

23 Q Why did you hang up with him?

24 A I just -- I got a bad feeling. So I told my brother, I
25 sent him to get the police, something ain't right.

SW - M. RITCH - DIRECT

1 Q All right. Did you ever talk to the police that night
2 yourself?

3 A No.

4 Q Did you ever talk to Roger anymore that night?

5 A No, just that one time.

6 Q Did you talk to Shane anymore that night?

7 A Pretty much the whole time.

8 Q So y'all stayed on the phone?

9 A Stayed on the phone.

10 Q Okay. And was he keeping you on the phone so he could
11 relay information to you?

12 A Yes, sir.

13 Q What was your purpose for staying on the phone with
14 him?

15 A So I'd know what was going on. I lived so far away.

16 Q Okay. Were you or were you not able to monitor kind of
17 what was going on through staying on the phone with Shane?

18 A Yes, sir.

19 Q Okay. When did you find out that the police made
20 contact with Roger?

21 A I don't remember exact time. Had to be about an hour
22 after, after Shane called me and told me she was missing.

23 Q Okay. And when did you find out that your mother was
24 dead?

25 A 2:30, 3:00 in the morning.

SW - M. RITCH - DIRECT

1 Q Okay. What did you do after you found that out?

2 A I was upset. After about two hours I was able to drive
3 so I come straight down.

4 Q So it took you a couple of hours to get ---

5 A Yeah.

6 Q ---where you could drive?

7 A Pretty much.

8 Q All right. Beg the Court's indulgence a moment.

9 THE COURT: Yes, sir.

10 BY MR. CLEMENTS:

11 Q Mr. Ritch, you talked about the relationship being like
12 a rollercoaster. Did you ever hear any disputes or
13 anything between them?

14 A There's been a couple of times she called me, and I'd
15 hear him hollering in the background.

16 Q Okay.

17 A So...

18 Q How recent to October?

19 A Probably a couple of weeks before that.

20 Q A couple of weeks before that? And you say you'd hear
21 him hollering in the background. What would you hear him
22 say?

23 A I don't really recall, I mean, arguing. He'd all the
24 time want to go somewhere and she wouldn't take him 'cause
25 he don't have a license. He couldn't drive. So most of

SW - M. RITCH - DIRECT

1 the time it was about that or just cooking, stuff like
2 that.

3 Q Okay. Were you ever privy or do you have any.
4 knowledge or not there was ever any kind of violence or
5 disputes or abuse like that?

6 A Not that I know of. I mean, I don't -- I don't
7 remember ever telling me anything. I've noticed, you
8 know, pretty bad arguments but.

9 Q Okay, all right. Do you have any knowledge as to what
10 your mother's and Roger's habits might have been as far as
11 drinking or consuming alcohol?

12 A My mom drank mixed drinks every evening so.

13 Q How about Roger? Do you have any knowledge of him?

14 A Yeah, he was a heavy alcoholic. Every time I was
15 around, you know, he was drinking or, if he was there I
16 was there, you know, he was drinking so.

17 Q Okay, all right. Mr. Ritch, have you ever been in
18 trouble with the law ---

19 A No, sir.

20 Q ---at all? All right. Please answer any questions
21 Mr. Lawson may have.

22 **CROSS-EXAMINATION**

23 BY MR. LAWSON:

24 Q Mr. Ritch, you said you talked to your mother how
25 often?

SW - M. RITCH - CROSS

- 1 A Every night, every other night.
- 2 Q Okay. But the last time you spoke with her was
- 3 Wednesday; is that correct?
- 4 A Wednesday night, yes.
- 5 Q And then you got a call from your mother on Monday?
- 6 A On Monday.
- 7 Q So that's almost a week?
- 8 A Almost, yes.
- 9 Q Would it go that long from time to time ---
- 10 A No.
- 11 Q ---before you talked with your mother?
- 12 A Never, never.
- 13 Q So this was the only time that that happened?
- 14 A That's the only time I ever went that long without
- 15 taking to her.
- 16 Q So you didn't get a call on Thursday?
- 17 A No.
- 18 Q On Friday?
- 19 A No, sir.
- 20 Q Or Saturday?
- 21 A No, sir.
- 22 Q And were you becoming concerned at that time?
- 23 A Yeah, me and my brother actually talked about that over
- 24 the weekend.
- 25 Q How long have you lived in Greenville?

SW - M. RITCH - REDIRECT

1 A I moved December of 2004 to Greenville.

2 Q So that's, what, seven ---

3 A Almost seven years.

4 Q ---seven years?

5 A Yes, sir.

6 Q Where did you live before that?

7 A Florence.

8 Q In Florence?

9 A Yes, sir.

10 Q Did you live with your mother ---

11 A No, sir.

12 Q ---while you were here in Florence?

13 A No, sir.

14 Q I don't have any other questions.

15 THE COURT: Anything further, Solicitor?

16 MR. CLEMENTS: Briefly.

17 **REDIRECT EXAMINATION**

18 BY MR. CLEMENTS:

19 Q Mr. Lawson asked you were you concerned because it was
20 that many days before and you hadn't heard from your
21 mother. What did you say you and your brother talked
22 about ---

23 A We had actually talked about over the weekend, have you
24 heard from mom. He said no. We said she's probably just
25 tired from working.

SW - M. RITCH - REDIRECT

1 Q If not hearing from her had been a regular situation
2 would y'all -- would y'all have not called the police?

3 A I probably wouldn't have been as concerned ---

4 MR. LAWSON: Objection, Your Honor, speculative.

5 THE COURT: Sustained.

6 BY MR. CLEMENTS:

7 Q Okay, all right. What -- let me ask this and don't
8 answer yet, make sure I'm asking a proper question, okay?
9 What was it that made you decide to tell your brother call
10 the police?

11 A When I asked Roger ---

12 Q Go ahead.

13 A Okay. When I asked Roger where my mom was he was
14 stuttering, you know, he was stuttering. He wasn't
15 answering the phone and it just didn't act like him so I
16 got kind of scared.

17 Q Okay, all right. Nothing else. Thank you.

18 THE COURT: Anything, Mr. Lawson?

19 MR. LAWSON: Nothing.

20 THE COURT: Thank you very much, sir, you may step
21 down.

22 MR. CLEMENTS: Your Honor, we call Officer Gary
23 Beckett.

24 THE COURT: Officer Beckett, if you'd please come
25 around, sir.

SW - M. RITCH - REDIRECT

1 WHEREUPON,

2 **GARY BECKETT,**

3 having been duly sworn by the Clerk of Court, testified as
4 follows:

5 **CLERK OF COURT:** Please be seated. State your full
6 name for the record.

7 **THE WITNESS:** Gary Beckett.

8 **DIRECT EXAMINATION**

9 **BY MR. CLEMENTS:**

10 **Q** Officer Beckett, where do you work and in what capacity
11 are you working now?

12 **A** I work with the Florence Police Department. I'm
13 currently assigned to narcotics.

14 **Q** And how long have you been with narcotics?

15 **A** Almost two years.

16 **Q** And back in 2009 were you working with the Florence
17 Police Department then?

18 **A** Yes.

19 **Q** And in what capacity were you working in October 2009?

20 **A** As a patrol officer.

21 **Q** Okay. How long have you been with the Florence Police
22 Department?

23 **A** A little over 12 years.

24 **Q** Okay. Did you have the opportunity to respond to a
25 dispatch sometime around 11:00 on October 12th, 2009?

SW - G. BECKETT - DIRECT

- 1 A Yes.
- 2 Q What type of call was that you were dispatched on?
- 3 A It was a welfare check on a female.
- 4 Q Okay. And where did you respond to?
- 5 A Avenue.
- 6 Q Okay. And when you first got there at Avenue
- 7 what did you do?
- 8 A I went to the residence at and knocked on the door
- 9 and made contact with a female who lived there.
- 10 Q Okay. What was her name?
- 11 A I'm not sure the lady's name at the house, but she told
- 12 me I was at the wrong one, that I needed to be at the rear
- 13 of the residence.
- 14 Q Okay, all right. And so after she told you that what
- 15 did you do?
- 16 A I walked around to the back of the residence, and at
- 17 that time I assumed there was like a duplex so I knocked
- 18 on the back door which was the same female I'd just spoken
- 19 to.
- 20 Q Okay, all right.
- 21 A That's when she sent me to the garage out back.
- 22 Q Okay, all right. When you knocked on that door was
- 23 there a response?
- 24 A No. I knocked on that door for about ten minutes.
- 25 Q Ten minutes? How big was that building?

SW - G. BECKETT - DIRECT

1 A It was -- wasn't too big. It'd be about the size of a
2 double car garage maybe.

3 Q So would it fit inside this area here pretty much?

4 A Yes.

5 Q Okay. And you knocked on that door how long?

6 A Approximately ten minutes.

7 Q All right. How loudly did you knock?

8 A Pretty loud 'cause at first I was doing like a normal
9 knock but I wasn't getting a response so I started
10 knocking harder.

11 Q Okay, all right. Beg the Court's indulgence a moment.

12 (Pictures were shown to Mr. Lawson.)

13 BY MR. CLEMENTS:

14 Q Officer Beckett, I want to show you some photos that
15 have been marked for identification at this time. It's
16 State's exhibits 6, 7, 8, 11, 12, and 15. Now the first
17 thing I'd ask you to do, take a look at those and just
18 tell me yes or no. Can you identify all those pictures?

19 A Yes on this one.

20 Q Yes on number 6?

21 A Yes. And number 7 as well. This would be yes on 8.
22 This is 11; it'd be a yes. 12 also, and 15 yes.

23 Q So you can identify all of these?

24 A Yes.

25 Q Okay.

SW - G. BECKETT - DIRECT

1 MR. CLEMENTS: Your Honor, at this time we would
2 move State's exhibits 6, 7, 8, 11, 12, and 15 into
3 evidence.

4 MR. LAWSON: Without objection.

5 THE COURT: Without objection.

6 (WHEREUPON, State Exhibits Nos. 6, 7, 8, 11,
7 12, 15 were marked for identification and
8 received into evidence.)

9 MR. CLEMENTS: All right. If I can ask permission,
10 Your Honor, for Officer Beckett to step down.

11 THE COURT: You may step down. If you would stand
12 on the other side of the solicitor facing Ms. Ray and keep
13 your voice up loudly as you speak, okay? Thank you, sir.

14 BY MR. CLEMENTS:

15 Q I'm real loud so she can hear me with my back turned so
16 but I want to ask you, you're kind of soft spoken, if you
17 would speak up please. State's Exhibit 6, can you please
18 tell the jury what that depicts.

19 A This is the residence at that faces Avenue
20 which is the residence I went to upon my arrival.

21 Q Is that the first door you knocked on?

22 A Yes.

23 Q Okay. I'm gonna show you State's Exhibit 7. Identify
24 that please and explain what that is to the jury.

25 A This would be the same residence at that faces

SW - G. BECKETT - DIRECT

1 Avenue. This would be the back door that I went to
2 and made contact with the same female.

3 Q Now I'm gonna show you State's Exhibit 8. Can you
4 explain to us what that is in that photograph there?

5 A This would be a side shot of the residence as you can
6 see a piece of it here, and this would be the apartment
7 where Ms. Creel was staying behind the house.

8 Q Now is that on the corner of and ?

9 A yes, sir, this view ---

10 Q This view would be coming from where?

11 A side.

12 Q Okay. Is that your vehicle, or do you know?

13 A It wouldn't be mine because I was parked in the front
14 of the house on Avenue.

15 Q Okay. Can you please explain to us what State Exhibit
16 11 is and tell the jury what that depicts?

17 A This is a side shot of the garage or apartment where
18 Ms. Creel was staying in. This would be the door that I
19 was knocking on trying to make contact.

20 Q And you knocked on that door how long?

21 A Approximately ten minutes.

22 Q Okay. And whose vehicle is that right there?

23 A That's Ms. Creel's vehicle.

24 Q Okay, all right. This is State's Exhibit 12. Can you
25 explain to the jury what that is and put that in context

SW - G. BECKETT - DIRECT

1 with the geography there?

2 A This is the apartment where Ms. Creel would be staying.

3 This is her car that you can kind of see in the corner and

4 it would just be the actual residence would kind of be

5 just in front of it so that would kind of be like a front

6 shot from.

7 Q Kind of right here was the back door?

8 A Yeah.

9 Q Okay.

10 A The house would just kind of sit just in front of it.

11 Q All right, thank you. State's Exhibit 15. Can you
12 explain to the jury what that is.

13 A It is the door to the apartment of Ms. Creel. It's

14 kind of just under the carport. That was the door that I

15 would have been knocking on.

16 Q All right, thank you. You can take your seat.

17 A (Witness complies.)

18 Q Officer Beckett, you knocked on the door about ten
19 minutes, nobody answered?

20 A No.

21 Q What happened next? Was there further information from
22 dispatch, somebody else come up, tell us what happened
23 next.

24 A After I knocked on the door and didn't get a response I
25 went back to my patrol car which was parked in front of

SW - G. BECKETT - DIRECT

- 1 the residence on Avenue.
- 2 Q All the way around the house?
- 3 A All the way back around to the front.
- 4 Q Okay, all right. Now let me ask you, was that back
- 5 yard was it fenced in?
- 6 A Yes, it had a chain link fence.
- 7 Q Completely around it?
- 8 A Yes.
- 9 Q Except for the back driveway?
- 10 A Yeah, just where the gate would have been where you
- 11 could drive in the yard.
- 12 Q Okay. But everything else was fenced?
- 13 A Yes.
- 14 Q So you had to go out the fence and walk around?
- 15 A Yeah, I had to go out on the side and walk back
- 16 around to King.
- 17 Q Okay, all right. I just want to be sure I got the
- 18 picture in my mind. You went back to your vehicle and
- 19 what happened then?
- 20 A I was going to call dispatch to get connected with the
- 21 complainant, which was Ms. Creel's son, to see if he could
- 22 provide me with anymore information.
- 23 Q Did you do that?
- 24 A Yes.
- 25 Q And what happened as a result of that?

SW - G. BECKETT - DIRECT

1 A I spoke with him and he was telling me, you know it'd
2 been about three days since they had seen or spoke to the
3 mother; and he was concerned because of Mr. Bruce having a
4 kind of a drug and alcohol problem and due to I guess them
5 being arguing and that it was unlikely for her to just
6 walk away and not take her phone or her car.

7 Q Okay, all right. After you got that information what
8 did you do to act on that?

9 A At that time Corporal Hobgood and Officer Starling
10 arrived on the scene and I -- which Hobgood is the
11 supervisor so I briefed him on the information that I had.
12 And at that time we decided to go back to the apartment
13 and try to make contact again.

14 Q Okay, all right. And did you stay in contact with
15 dispatch or stay in contact with Mr. Ritch, or did you
16 just leave that and go back around?

17 A At that point I ended the phone conversation and walked
18 back to the apartment.

19 Q So you had to walk back around : come in the back
20 gate?

21 A Yes, sir.

22 Q All right. Who was with you?

23 A Corporal Hobgood and Officer Starling.

24 Q So tell the jury what happened, what did y'all do?

25 A We began to walk back to the apartment and try to make

SW - G. BECKETT - DIRECT

1 contact again because I just had a feeling that somebody
2 was inside. So as we were walking around to the
3 side to go into the gate of the backyard, that's when I
4 noticed someone had the screen door open looking out the
5 door, and I shined a flashlight over there and observed
6 Mr. Bruce looking out the screen door of the apartment.

7 Q Okay. And then what happened after that?

8 A We made contact with Mr. Bruce and began talking to him
9 and explained why we were there, that we were just doing a
10 welfare check on Ms. Creel and I asked him if she may have
11 been inside.

12 Q Okay. And what did y'all do next?

13 A He said she wasn't inside so we just asked him if we
14 could come in and take a quick look and make sure that she
15 wasn't inside, and he gave us permission to come in and
16 take a look.

17 Q Okay. And when you went in can you tell us how many
18 rooms or about the inside of the apartment?

19 A It was fairly small 'cause when you walked in the door
20 it was like a living area with the kitchen towards the
21 back. It had, I believe, one bathroom and one bedroom,
22 pretty much all it was.

23 Q Okay. And was anybody else there besides Mr. Bruce?

24 A No.

25 Q Okay. You notice any animals there?

SW - G. BECKETT - DIRECT

1 A I didn't notice one unless -- I mean, there was a lot
2 of stuff inside the house so, I mean, if it was a small
3 dog or something probably could have been hiding. But I
4 didn't hear any animals or anything back when I was
5 knocking on the door.

6 Q All right. Did you go in the bedroom and look?

7 A Yes. We pretty much went to every room and just looked
8 to make sure no one was in there.

9 Q Well, did you take a long time or was this a quick scan
10 or how would you characterize?

11 A I say more or less a quick scan because, I mean, we
12 wasn't going through dresser drawers and stuff. We were
13 just looking for a person.

14 Q Okay. And after that, after you looked and saw there
15 wasn't any other persons there what did y'all do then?

16 A We just began to ask Mr. Bruce, you know, when the last
17 time he may have talked to her or seen her or maybe where
18 she went because at that point it was more less of a
19 missing person.

20 Q Yeah. And what information did you get?

21 A He pretty much told us that they had an argument a few
22 days ago and that she just left him, didn't know where she
23 went.

24 Q Okay, all right. Where else, if any, where else did
25 you look?

SW - G. BECKETT - DIRECT

1 A After -- while we were standing there talking with Mr.
2 Bruce that's when we noticed a cell phone and some keys on
3 the table which keys would have been consistent to the
4 vehicle outside. And the cell phone, we just asked whose
5 phone and he told us it was Laura's phone. And at that
6 point is when Corporal Hobgood picked up the car keys and
7 went out to the vehicle.

8 Q All right. Did you go out there with him?

9 A After he walked outside all of us then kind of followed
10 behind him.

11 Q Okay, all right. And did you look in the car?

12 A Yes.

13 Q How did y'all look in the car?

14 A Corporal Hobgood shined his flashlight through the
15 windows of the vehicle at first and everything appeared to
16 be fine inside. And then he attempted to open the trunk
17 with the key of the vehicle and it wouldn't open --

18 MR. LAWSON: Your Honor, at this point I object and
19 ask that we take up a matter outside the presence of the
20 jury.

21 THE COURT: All right, sir. Ladies and gentlemen,
22 I'm gonna get you to step into your jury room. Ask that
23 you please have no conversation about the case and I'll
24 handle this matter and then bring you back out. Okay?

25 (WHEREUPON, the jury was removed from the

SW - G. BECKETT - DIRECT

1 courtroom at 11:11 a.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: Yes, sir, Mr. Lawson.

4 MR. LAWSON: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. LAWSON: We're getting to the point where the
7 trunk is about to be open, and I understand -- the Defense
8 would object to the discovery of the body in that fashion,
9 basis that there was no search warrant obtained and no --
10 does not appear any consent by my client given at that
11 time to search the vehicle. I know that he allowed them
12 to come in and look when they asked, but there's no
13 indication that he consented --

14 THE COURT: What standing would he have to object
15 to a search of a vehicle that was not his.

16 MR. LAWSON: It's on his property, and the keys are
17 in his house.

18 THE COURT: Solicitor.

19 MR. CLEMENTS: Your Honor, I would say that he has
20 no standing whatsoever. He didn't object to them doing it
21 anyway from the testimony. They knew that that was
22 Ms. Creel's car. They had information from her son and
23 told him it was the car. They knew it was her car. They
24 were looking for her. That was her residence. Inside
25 where he lived he asked him to come in. Once they're

1 outside and that car was there it's not his car. I don't
2 think he has any standing to object to it, or you know,
3 have any expectation of privacy in the car. It's not his
4 car.

5 THE COURT: Where was the car?

6 MR. CLEMENTS: The car was parked on the driveway.
7 there —

8 THE COURT: Driveway.

9 MR. CLEMENTS: —at the back of the house but they
10 knew it was her car.

11 THE COURT: Anything further?

12 MR. LAWSON: Your Honor, I just, well I mean, the
13 -- basically a common law marriage in this situation, Your
14 Honor, and the people been together for at least 14 years.
15 And at that point they knew the car looked like hers.
16 They didn't know, I mean, they had not -- they took the
17 keys out of the house. I don't remember them stating that
18 they asked permission to take the keys. The keys were in
19 the house with him, and they were just picked up by the
20 police, whisked outside, and the car attempted to be
21 opened at that point.

22 MR. CLEMENTS: Your Honor, I think Corporal
23 Hobgood yesterday testified that Mr. Bruce said, here, and
24 went to the keys and said, I'll show you which key to open
25 it with and they hit the trunk release button and opened

1 the trunk and so Mr. Bruce didn't have to. I think that
2 was the testimony of Corporal Hobgood yesterday, and I'm
3 pretty sure that that would have been testimony we'd
4 gotten from him as well, but I don't think -- I don't
5 think there's any evidence; I don't think no one has ever
6 said, yeah, we're husband and wife. Just the fact that
7 people live together, that doesn't establish in and of
8 itself common law marriage. I just don't think he had any
9 standing or any expectation of privacy in that vehicle and
10 he also had offered to open the trunk for him before they
11 hit the trunk release button.

12 THE COURT: All right. It appears that this is
13 inevitable discovery; but/for hitting the trunk release
14 button and opening the trunk according to the earlier
15 testimony Mr. Bruce was gonna open the trunk for them, or
16 at least was providing the keys to do so.

17 MR. CLEMENTS: At least that's what he said he
18 would.

19 THE COURT: Correct. I'm gonna overrule the
20 objection and allow it.

21 MR. LAWSON: Your Honor, may I, just one point.
22 Inevitable discovery, I understand, it may inevitably have
23 been discovered at a later point and what I'm saying is
24 that any evidence gathered in the time between when it was
25 discovered and when it would have been discovered would be

1 appropriately suppressed in spite of the fact that they
2 may have inevitably discovered it with a proper search
3 warrant. But I understand your ruling.

4 THE COURT: All right, sir.

5 MR. LAWSON: Could we take a short break, Your
6 Honor.

7 THE COURT: Yeah. Let's -- I've got about 18
8 after. Why don't we take till about 11:30. We'll take
9 about 12, 13 minutes.

10 MR. CLEMENTS: Your Honor, may Officer Beckett step
11 down from the witness stand if he needs to, but I know
12 that he can't speak to anyone.

13 THE COURT: Sure. Yeah. Officer Beckett, feel
14 free to take a break and just don't speak with anyone
15 about your testimony, sir. Okay? Thank you.

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: State ready to start back?

19 MR. CLEMENTS: Your Honor, we are, if the court
20 reporter maybe can tell us what our last question was.

21 (Court reporter reads back last question.)

22 THE COURT: Mr. Lawson, have you had an opportunity
23 to review those, the information you got?

24 MR. LAWSON: Yes, sir.

25 THE COURT: Okay. You ready to proceed then?

1 MR. CLEMENTS: Your Honor, I would like to put that
2 on the record that Mr. Lawson had asked for investigator's
3 notes that were referred to yesterday on Jackson v. Denno
4 hearing, and we have provided him with those notes, Your
5 Honor. I don't think -- I don't think there's anything
6 exculpatory in there under Brady; and I think it's in
7 addition to what we're required to disclose under Rule 5
8 so, but we disclosed it, don't have any problem with it,
9 just want to put on the record we have given him that.

10 THE COURT: All right. Ms. Joe, if you would ask
11 the members of the jury to join us please.

12 (WHEREUPON, the jury was returned to the
13 courtroom at approximately 11:14 a.m., and the
14 following proceedings commenced in
15 open court.)

16 THE COURT: All right. Ladies and gentlemen, thank
17 you for your patience and I took up that matter of law.
18 We are ready to proceed.

19 Mr. Clements, you may resume your examination.

20 BY MR. CLEMENTS:

21 Q Officer, I think we were at the point where y'all
22 looked in the car?

23 A Yes, sir.

24 Q Can you please tell this jury how y'all looked in the
25 car, what y'all did?

SW - G. BECKETT - DIRECT

- 1 A We took, or Corporal Hobgood, took the car keys from
2 the house and we walked out to the vehicle. Everyone kind
3 of followed Corporal Hobgood and ---
- 4 Q When you say everyone who was everyone?
- 5 A Myself, Officer Starling, and Mr. Bruce.
- 6 Q Okay. Now let me ask you this, up to this point what
7 was Mr. Bruce's demeanor like?
- 8 A He was pretty calm.
- 9 Q He understand what y'all were telling him?
- 10 A Yeah, he appeared to.
- 11 Q Carry on conversation with you fine?
- 12 A Yeah.
- 13 Q Okay. Did he seem or appear to be impaired at all?
- 14 A He was -- obviously he'd been drinking.
- 15 Q He'd been drinking, but how about, was he impaired, not
16 knowing what was going on, having difficult walking,
17 anything like that?
- 18 A No.
- 19 Q Okay. So you knew -- what questions did you have, if
20 any, about his ability to understand what y'all were
21 saying to him and what he was saying to y'all?
- 22 A I felt that he understood everything that was going on.
- 23 Q Okay, all right. And so you, Mr. Bruce, Officer
24 Starling, y'all all followed Corporal Hobgood out to the
25 car?

SW - G. BECKETT - DIRECT

1 A Yes.

2 Q All right. And what happened next?

3 A Corporal Hobgood shined his flashlight, you know, in
4 the windows of the car to look inside. Everything
5 appeared to be fine. Then when he went towards the trunk,
6 attempted to use the key to open the trunk but the key
7 wouldn't open it, so he asked Mr. Bruce which key opened
8 the trunk of the car. And at that time Mr. Bruce wanted
9 to hold the keys to show Corporal Hobgood which key it
10 was, which Corporal Hobgood didn't want Mr. Bruce to get
11 the keys because obviously, you know, we wasn't sure what
12 he would do with them so.

13 Q There wasn't any struggle or anything, was there?

14 A No, he just kind of like walked towards him with his
15 arm out like he was going to grab the keys.

16 Q Okay. And what did Corporal Hobgood do? He just kind
17 of held the keys?

18 A Yeah, he just kind of took the keys back and told him
19 just to tell him which one it was that opened it.

20 Q Okay. Where were you standing? Do you remember
21 exactly where you were standing?

22 A I was standing beside Mr. Bruce and we were on the
23 passenger side of the car.

24 Q On the passenger side of the car?

25 A About where the mirror would be on the door.

SW - G. BECKETT - DIRECT

1 Q So not at the back of the car?

2 A No.

3 Q Okay, all right. How did the trunk eventually get
4 open?

5 A Officer Starling pushed the trunk button on the key
6 fob.

7 Q So on the key fob is the trunk release button?

8 A Yes.

9 Q And he punched that?

10 A And the trunk popped open.

11 Q And what did y'all notice at that point in time?

12 A Well, Officer Starling and Corporal Hobgood were at the
13 trunk of the car, and like I said, I was up by the
14 passenger door about where the mirror would be with
15 Mr. Bruce.

16 Q Okay.

17 A And at that time the trunk opened. Obviously there was
18 a female body inside and Corporal Hobgood told me to
19 detain Mr. Bruce, and at that time that's what I did. I
20 placed handcuffs on Mr. Bruce.

21 Q Okay. And what did you do with him from that point
22 forward?

23 A From that point I believe we walked him to Officer
24 Starling's car and just let him have a seat in the back
25 seat.

SW - G. BECKETT - DIRECT

1 Q And what was the purpose for that?

2 A Just in investigative detention because at that point
3 we weren't sure what we really had or what was going on
4 other than to discovery of the body in the trunk.

5 Q Okay. Did y'all go look at the body?

6 A I didn't 'cause I was with Mr. Bruce but ---

7 Q And Mr. Bruce go look at the body?

8 A He wouldn't have been able to seen it from where we
9 were at.

10 Q Okay, all right. Did y'all begin any investigation at
11 that time?

12 A Well, after we walked Mr. Bruce to the patrol car
13 that's when I believe Corporal Hobgood made some phone
14 calls to like the command staff and to get investigations
15 and crime scene and stuff to respond.

16 Q Okay. Was it y'all's job -- well, let me ask you, what
17 was y'all's job at that point?

18 A Pretty ---

19 Q Was it to do any kind of investigation or not?

20 A Pretty much at that point we would secure the crime
21 scene, and you know, like I said, we detained Mr. Bruce
22 because at that time we weren't sure what we had so we
23 detained him since he was the one that was with her.

24 Q Okay.

25 A And secured the crime scene and notified, you know,

SW - G. BECKETT - DIRECT

1 like investigations and crime scene.

2 Q When you say you secured the crime scene, tell the jury
3 exactly that that means?

4 A Pretty much the yard was fenced in so obviously three
5 sides would pretty much be secure unless somebody jumped
6 the fence, but we would take crime scene tape and rope off
7 any open areas that would be remaining so no one could get
8 entry.

9 Q And then what would y'all do, wait?

10 A We would wait to, you know, command staff
11 investigators, crime scene, EMS, or whoever else would
12 respond.

13 Q Okay. And other than stay there and maintain the
14 crime, the security of the crime scene, did you do
15 anything else in this case?

16 A Not that I can recall at this point.

17 Q Okay.

18 A 'Cause it's pretty much at that time we would wait for
19 everybody to get there and then it would be turned over to
20 the investigators so probably -- the only thing that I
21 would do from there would be just brief the investigator
22 on what we had up until that point.

23 Q Okay. Did you do that?

24 A Yes.

25 Q Okay. And that was basically it?

SW - G. BECKETT - DIRECT

1 A Yes, sir.

2 Q Okay. Please answer any questions Mr. Lawson may have.

3 MR. LAWSON: May it please the Court.

4 THE COURT: Yes, sir.

5 CROSS - EXAMINATION

6 BY MR. LAWSON:

7 Q Did you actually place handcuffs on Mr. Bruce?

8 A Yes, I did.

9 Q What did he say when you put the handcuffs on him?

10 A When I first placed the handcuffs on him he made the
11 one statement of what did I do.

12 Q And what did you tell him?

13 A I didn't tell him anything.

14 Q You just put him in the police car?

15 A We just detained him and set him in the police car
16 until like the investigator could get there.

17 Q At the point you put him in the police car was he free
18 to go if he so decided?

19 A At that point he wouldn't have been because he would be
20 like detained for investigative detention.

21 Q All right. Now you -- when the Solicitor asked you if
22 this was all that you did you said, not that I can recall
23 at this point. Are you going to recall something later?

24 A No.

25 Q Well then is this everything?

SW - G. BECKETT - CROSS

1 A Should be.

2 Q Okay. Well then, is it what -- is it all you can
3 recall at this point?

4 A Pretty much all that I did on the scene.

5 Q Did you go in the house?

6 A When I first got there and made contact with Mr. Bruce
7 after he was spotted at the door I went in after he give
8 consent.

9 Q Okay. Did you go through the whole house?

10 A The rooms that were there, yes.

11 Q Well, I wouldn't expect you to go through rooms that
12 weren't there, that would be kind of difficult. But you
13 went through the whole area?

14 A Yes.

15 Q You see any evidence of drugs?

16 A At that point I wasn't looking for drugs. I was just
17 looking for Ms. Creel.

18 Q You see any evidence of alcohol?

19 A I can't recall any alcohol because like I said, I was
20 looking for Ms. Creel. So I mean, I wasn't like looking
21 for drugs or alcohol.

22 Q You don't remember seeing any alcohol containers
23 anywhere?

24 A If there were any there I didn't pay much attention to
25 them.

SW - G. BECKETT - CROSS

1 Q All right. You said it was obvious Mr. Bruce had been
2 drinking?

3 A Yes.

4 Q At that point in time -- I understand now you're in
5 narcotics, correct?

6 A Uh-huh, yes.

7 Q I guess now you would look for drugs?

8 A If we do a search warrant or anything on a house that's
9 what we look for.

10 Q But at that time you were a patrol officer?

11 A Yes.

12 Q Okay. Did you -- when you were on normal patrol did
13 you arrest people for DUI?

14 A From time to time.

15 Q Okay. I mean, you were familiar with people that would
16 drink and drive then?

17 A Yes.

18 Q Okay. And so you were aware of the fact that Mr. Bruce
19 had been drinking?

20 A Yes.

21 Q How much of conversation did you have actually with
22 Mr. Bruce?

23 A It wasn't much, I mean, just a few basic questions on
24 if he knew Laura Creel, which he stated he did, and then
25 just general conversation on when was the last time he saw

SW - G. BECKETT - CROSS

1 her and where she may have went.

2 Q How did you -- did you take notes on this particular
3 evening?

4 A The only -- not when I was talking to him because at
5 that point it was just speaking with him to find out where
6 she may have went.

7 Q All right. At some point in the future did you make
8 notes?

9 A Only just getting his information and the victim's
10 information which would have been Ms. Creels'.

11 Q All right, did you do a report in this case?

12 A Yes.

13 Q And how did you do the report?

14 A Are you talking about how did I write it?

15 Q Yeah, I mean, did you do it from all from memory or did
16 you use, what -- did you use certain information that you
17 had obtained during the evening?

18 A Well, most of it was from memory because I was still on
19 the scene.

20 Q You were still on the scene? When did you do the
21 report?

22 A Probably shortly, shortly after I left the scene.

23 Q How did you do? Did you dictate it, did you write it
24 out, what did you do?

25 A If you're asking how I did the report I typed it on the

SW - G. BECKETT - CROSS

1 computer.

2 Q You typed it in the computer?

3 A Uh-huh.

4 Q All right. Did Mr. Bruce ever in any way offer you any
5 resistance or any problem?

6 A The only thing that I noticed that he did was when
7 Corporal Hobgood opened the trunk he might have taken like
8 one step back.

9 Q Taken a step back like shock?

10 A If you want to call it shock. It was just -- it wasn't
11 much emotion, but it was a little, 'cause he was calm,
12 until the trunk opened and then he kind of stepped back.

13 Q Back. I mean, could have been shock?

14 MR. CLEMENTS: Calls for speculation, Your Honor,
15 we object.

16 THE COURT: Sustained.

17 BY MR. LAWSON:

18 Q I'll withdraw, whatever. So you had nothing to do with
19 secure-- did you secure the scene or did someone else?

20 A I know there was crime scene tape put up, but I can't
21 recall exactly who put the crime scene tape up.

22 Q You don't recall if you did that or not?

23 A I don't believe -- I didn't do it.

24 Q You didn't do it.

25 A Not that I can recall.

SW - G. BECKETT - CROSS

1 Q All right. And would that have been done before or
2 after Mr. Bruce was put in the police car?

3 A After.

4 Q After? And at that point did you have any duty to --
5 did you go in and check out the house or do any search of
6 the car or anything else?

7 A After the body was discovered, no.

8 Q All right. And of course, before the body was
9 discovered you didn't have access to the trunk, correct?

10 A Give me the question again.

11 Q Before the body was discovered you didn't have access
12 to the trunk.

13 A No.

14 Q And you -- did you actually look in the car or did
15 Corporal Hobgood?

16 A It was Corporal Hobgood and Starling was at the trunk
17 of the car when the trunk was opened.

18 Q Well, didn't somebody look inside the car proper, the
19 passenger, the back seat, and front seat that ---

20 A Prior to the trunk being opened Corporal Hobgood did.

21 Q That wasn't you? You didn't look there either?

22 A No, sir.

23 Q All right. So the only thing you did basically was
24 walk through the house to see if Laura Creel was in there?

25 A Yes, when we made contact with Mr. Bruce.

SW - G. BECKETT - CROSS

1 Q Okay. Now you placed Mr. Bruce in the police car,
2 correct?

3 A Myself and Officer Starling walked Mr. Bruce to the
4 patrol car.

5 Q All right. How long was he in the police car before
6 the investigators got there?

7 A I couldn't give you an exact time because I'm not sure
8 how long it took the investigator to get there.

9 Q Can you estimate?

10 A Thirty minutes or so maybe.

11 Q All right. And he was in the car that entire time?

12 A Yes.

13 Q How long did you stay after the body was discovered?

14 A I believe I was there until roughly 4 a.m.

15 Q So what did you do after you put Mr. Bruce in the car?

16 A Pretty much would -- what I would have done would be
17 after, you know, the investigator crime scene got on the
18 scene to do what they needed to do we would just kind of
19 stand outside the perimeter to make sure nobody entered
20 the crime scene.

21 Q But you had nothing to do with the investigation or
22 questioning of witnesses or anything of that sort?

23 A No, sir.

24 Q All right. I don't have any other questions.

25 **REDIRECT EXAMINATION**

SW - G. BECKETT - REDIRECT

1 BY MR. CLEMENTS:

2 Q Officer Beckett, do you have a computer in your patrol
3 car?

4 A Yes.

5 Q And that's where you did your report?

6 A Yes, sir.

7 Q Right there that evening?

8 A Uh-huh, yes.

9 Q In your patrol car?

10 A Yes, sir.

11 Q That was why you were maintaining the perimeter of the
12 scene?

13 A Yes.

14 Q Okay.

15 MR. CLEMENTS: I don't have any further questions,
16 Your Honor. I ask Officer Beckett be released from his
17 subpoena.

18 MR. LAWSON: No objection.

19 THE COURT: Thank you very much, sir. You're free
20 to go.

21 MR. CLEMENTS: Your Honor, we call Corporal
22 Charles Hobgood.

23 THE COURT: Corporal Hobgood, if you'd come
24 around to be sworn.

25 WHEREUPON,

SW - C. HOBGOOD - DIRECT

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CHARLES HOBGOOD, II,

having been duly sworn by the Clerk of Court, testified as follows:

CLERK OF COURT: Please be seated and state your full name for the record.

THE WITNESS: Charles Hobgood, II.

DIRECT EXAMINATION

BY MR. CLEMENTS:

Q Corporal, I'm gonna ask you to be sure you speak into that microphone for me.

A All right.

Q How long have you been in law enforcement?

A I started originally working in Hemingway, South Carolina in April of 1990.

Q Okay. And so you've been more than 20 years in law enforcement?

A Yes, sir.

Q Okay. How long have you been with the Florence Police Department?

A Started in Florence January of '91.

Q Okay. And what is your current job duty?

A I'm currently a corporal assigned to north region of Florence as a supervisor. There's also a sergeant above me and a lieutenant above him. Supervise anywhere from three to maybe six officers depending on the time frame of

SW - C. HOBGOOD - DIRECT

1 the day.

2 Q Okay. And were you working as a corporal and as a
3 shift supervisor over officers on the evening of
4 October 12th, 2009?

5 A Yes, sir.

6 Q All right. Did you have occasion to get called to
7 Avenue?

8 A Yes, sir.

9 Q And can you please tell this jury how you came to be
10 called to that scene and what you did when you got there
11 and what you found?

12 A Okay. I was observing and had heard radio transmission
13 from central dispatch dispatching Officer Beckett to a
14 call at Avenue in the city of Florence. And
15 it was a welfare check originally from my ---

16 Q All right, let me stop you right there. Can you please
17 explain to this jury what the difference is between a
18 welfare check and being actually called to a crime scene,
19 if there's a difference what is it?

20 A Well, usually a welfare check someone is called in
21 reference to them having concerns about a family member or
22 we even get where calls are made for someone who thinks a
23 child is left at home alone, things such as that. They
24 just want us to go and try to make contact and verify
25 whether everything is okay or something else needs to

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1 happen as far as us getting in touch with say, for
2 instance, a child or something and we have to call DSS
3 with no parents there or something to that. So basically
4 this was a welfare check called in by a person from
5 Hemingway who is concerned about their mother not being
6 seen for several days because they had received a call
7 from the mother's boyfriend that he hadn't seen her in a
8 couple of days. So in circumstances like that and with
9 the possibility of not knowing what was going on and it
10 could turn into a missing persons case, our protocol with
11 the city of Florence is that any time there's a missing
12 person then the supervisor has to be called and on-duty
13 investigator has to be notified of circumstances around it
14 so he can make a determination if it's something that
15 needs to -- if they need to come out with to start a
16 search or figure out exactly how they're gonna handle the
17 situation.

18 Q Okay.

19 A So I had responded there and once I got there Officer
20 Beckett filled me in on what he had, what he had done,
21 which was he advised me he had been on the phone, had
22 spoke to the complainant that was calling in. He
23 originally stated that he had been there, he went and
24 knocked on obviously the wrong door to begin with, and
25 then had gone around to the right apartment garage there

SW - C. HOBGOOD - DIRECT

1 and knocked on the door for several minutes and nobody
2 came to it. But it was my understanding that he was being
3 told that the boyfriend should be at that apartment
4 because the boyfriend was making calls to the complainant
5 and him away from that location. So I said, well, you
6 know, let's walk back around there and knock some more and
7 see if anybody come to the door. We began to walk around
8 up to the opening in the gate. And we turned the
9 corner, and somebody mentioned that the door might be open
10 so I believe Officer Beckett shined his flashlight first
11 and I cut mine on. We were able to see somebody peeping
12 out the door. We called to him. And then we walked up to
13 the door and spoke with him.

14 Q Who was that individual?

15 A That was Mr. Bruce.

16 Q Did you explain to him why you were there and what you
17 were looking for?

18 A Officer Beckett explained what was going on, and at
19 that time we requested to see if we were able -- we could
20 walk in there to see if, basically what I was looking for
21 was any type of item that may belong to her such as a
22 pocketbook, any kind of book that may have numbers, phone
23 numbers in it, because I believe we were under the
24 impression that she -- that Mr. Bruce was trying to say
25 that she'd gone to -- she may be with somebody but we

SW - C. HOBGOOD - DIRECT

1 really couldn't, wasn't provided any name. So I was
2 basically looking for information such as that.

3 Q And he ---

4 A He granted, he granted permission. I stood at the door
5 while Officer Beckett and Starling went in to look around.
6 Obviously it's a small apartment. The common area was
7 right there at the door. Then you could see the little
8 kitchen area they had and there was a bedroom to your
9 left.

10 Q Did it take them long to look through?

11 A It didn't. And they went in and looked around the
12 room. They came back out, said they didn't see anything.
13 So I decided that I would leave the door area and walk in
14 and check the bedroom also, just look around, see if I saw
15 anything different they may not have seen.

16 Q Now in your mind was this a crime scene at that time?

17 A No, sir, no, sir. Not a crime scene now at that point,
18 no, because we were basically just trying to -- I'm just
19 trying to find anything that may lead me to some phone
20 numbers, maybe some of the friends or anything that she
21 may be with, not exactly knowing, you know, why she's not
22 there.

23 Q Okay. What kind of car was there?

24 A It was a -- it was a silver car, four door car outside.

25 Q What information did you have about the car?

SW - C. HOBGOOD - DIRECT

1 A We had received information that that car belonged to
2 Ms. Creel and that she never goes anywhere without her
3 vehicle.

4 Q Okay. What did you notice about any keys to that car?

5 A As I'm standing at the door while the other two
6 officers were checking the bedroom I was just mainly
7 looking around; and I could see that there was some keys
8 on the table, some eye glasses, but you couldn't tell if
9 it was, you know, any particular. It could have been just
10 some reading glasses bought at the store; I couldn't tell
11 any difference. And I was scanning and I -- in the room
12 -- and I saw that there was a carpet cleaner by stepping
13 over to the left side, not in a closet or anything. But
14 once I looked at the apartment it was so cluttered and
15 whatnot that didn't really, you know, there was no room in
16 any of the closets that I could see that I looked at that
17 it would fit in so I thought nothing else of it. So after
18 I walked into the bedroom and looked around it was a
19 cluttered area. The only thing that really got my
20 attention was I think there was just a knife laying on the
21 bed there which, you know, is not uncommon for some people
22 to have on the bed.

23 Q What type of knife?

24 A I think it was just a kitchen knife if I remember
25 correct so, I mean, that really didn't -- there was

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1 nothing else that I saw ---

2 Q No blood or anything like that?

3 A Not that I could see. The lighting was dim. I have a
4 flashlight but that was about it in that room. Shined the
5 flashlight some more. Could see part of a rifle or
6 something sticking out from under the bed just making note
7 of it because at that point we had no idea what was going
8 on. Then I left out of there. Officer still really
9 wasn't getting any information from him as to who she may
10 be with so I pick up the car keys. I go out trying to
11 find maybe pocketbook, still something that may give us an
12 idea where she may be.

13 Q Did you look in the car?

14 A I shined a flashlight into the front and back seat of
15 the car, and it was clean. I mean, there was absolutely
16 nothing in there that I could see, you know, using a
17 flashlight that I thought would help me out. So ---

18 Q Again, was this a crime scene at this time?

19 A No, sir.

20 Q Okay.

21 A So I went around to the trunk of the car. Officer
22 Starling was beside me. I tried a couple of keys; but for
23 whatever reason it wouldn't work, whether 'cause I was
24 jittery or something, for some reason, I don't know, I
25 just couldn't get them to work.

SW - C. HOBGOOD - DIRECT

1 Q Could have been the wrong key?

2 A Could have been the wrong key, exactly. So I believe
3 at that point Mr. Bruce made the statement, well, you want
4 me to show you what key. I said sure. So he starts
5 walking back toward me and I hold him to ask him which key
6 it was, and he goes to grab them. Well, I didn't know
7 exactly what was going on at that point so I just pulled
8 them back, asked him to go stand back at the front of the
9 car where Officer Beckett was. And Officer Starling then
10 asked to see the key ring so I gave it to him.

11 Q What was Mr. Bruce's demeanor at this point?

12 A It wasn't really aggressive to me, but to me it was
13 more of concern about getting into the trunk to a certain
14 extent but then again ---

15 Q Concern with helping you or?

16 A It's kind of hard to tell exactly what the intent was
17 there, but you know, it wasn't the laid back type that we
18 had seen earlier.

19 Q So his demeanor changed?

20 A I think it was a slight change in his demeanor, yes.

21 Q So what did you do? How did you end up getting in the
22 trunk?

23 A Officer Starling asked to see the key ring so I handed
24 it to him; he was standing right beside me. And Mr. Bruce
25 was already back at the front with Officer Beckett. All

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- 1 of sudden he hits, I guess, the right button on there and
2 the trunk pops open. And at that point there's a body
3 inside.
- 4 Q What was the first thing to hit you when the trunk lid
5 popped open?
- 6 A First thing it did was there was a slight smell, okay.
7 And once it all came in about the same time as far as the
8 trunk lid popped up, seeing the body, and the smell
9 itself. I was able to see that the victim was laying, or
10 the person in the trunk, was laying on her left side.
11 Head, her head was on like the driver's side. Of course
12 her feet would have been towards the passenger side.
- 13 Q Okay, all right. Well, let's say this is the bumper.
14 You're standing, this is about where you would be
15 standing?
- 16 A Yes, sir.
- 17 Q And the trunk opened, and I'm the body in the trunk, my
18 head would be towards this end?
- 19 A That's correct.
- 20 Q And I'd be laying with my back facing you?
- 21 A That's correct.
- 22 Q Did you lean over, look in, do any examination
23 whatsoever?
- 24 A No, sir. I didn't have to.
- 25 Q Why not?

SW - C. HOBGOOD - DIRECT

1 A Because, I mean, there was -- obviously the skin was
2 discolored. There was a puddle of blood in the ear.

3 Q In the ear?

4 A Right.

5 Q So that would have been in this ear right here?

6 A Correct. It would have been the right ear.

7 Q Could you see her face?

8 A I could only see a slight bit of her ---

9 Q Side?

10 A ---right side, yeah.

11 Q Could you see the front?

12 A No.

13 Q Could you see her forehead?

14 A No, not in the way she was.

15 Q And who else was standing there at the back of the
16 vehicle with you?

17 A Officer Starling.

18 Q And the trunk lid went up; is that correct?

19 A Correct.

20 Q Now where was Officer Beckett, if this is the trunk
21 lid, where was Officer Beckett and where was Mr. Bruce?

22 A They were still at the front passenger side.

23 Q So they'd been about here?

24 A Yes, sir.

25 Q Okay. From that vantage point could they have seen

SW - C. HOBGOOD - DIRECT

1 into the trunk?

2 MR. LAWSON: Objection, Your Honor, calls for
3 speculation from this witness or he doesn't know what they
4 can see from there.

5 THE COURT: He can testify to what he saw. I don't
6 think he can testify to what somebody else saw.

7 BY MR. CLEMENTS:

8 Q Was the trunk lid up?

9 A Yes, sir, at that point.

10 Q Was the trunk lid between you and them?

11 A Yes, sir.

12 Q Okay. Let me ask this question and don't answer yet. I
13 want to be sure it's not objectionable.

14 A Okay.

15 Q From that vantage point from what you saw what was the
16 possibility that people standing where Officer Beckett and
17 Mr. Bruce was for them to see into the trunk?

18 MR. LAWSON: Objection, Your Honor. Again, I mean,
19 he doesn't know what other people can see. He can't --

20 THE COURT: Sustained. He can't testify as to what
21 someone else may have seen. He can testify to the
22 conditions and what he observed and what he saw.

23 BY MR. CLEMENTS:

24 Q Okay, all right. But my understanding was there was a
25 trunk lid between y'all up?

SW - C. HOBGOOD - DIRECT

1 A Yes, sir.

2 Q Okay, all right. That's good enough. Now you said you
3 didn't make any examination, right?

4 A No, sir.

5 Q You didn't go into the trunk?

6 A No, sir.

7 Q What, if anything, did you do in regard to touching the
8 body, moving the body, moving anything in that trunk?

9 A Nothing was touched at all. EMS responded to confirm
10 death. Once EMS personnel came in the crime scene, placed
11 I think it was just one lead where he didn't have to move
12 her, just to confirm and run their strip. But other than
13 that nothing was done to the body until crime scene
14 arrived, and I don't know what they did after that.

15 Q Okay, all right. What did you do with the trunk lid
16 after you looked in and saw what you saw?

17 A Once the trunk lid was open and there was a body in
18 there, there's the window to the house, to the original
19 house we knocked on the door right between ---

20 Q To your right?

21 A Yeah. There's people looking to see what we're doing
22 so I don't know if there's kids or anything in there so I
23 just lowered it down some to make sure that nobody from
24 that window could have seen in it, and you know, held it
25 there. Well, I didn't have to hold it, it would just

SW - C. HOBGOOD - DIRECT

1 stay. It wasn't shut or anything like that, but it was
2 down where you almost had to be in there to be able to see
3 what was in the trunk.

4 Q Okay. At this point in time had y'all ever patted down
5 Mr. Bruce?

6 A Not up until the point when the body was discovered and
7 I advised Officer Beckett to detain him then search for --
8 I mean, not search, but a pat-down, for anything he might
9 have had on him for our safety, and it's protocol to do
10 that before we put him in our police units anyway.

11 Q Did you -- at this point did you know what you had?

12 A No, sir.

13 Q Okay, all right. And why was Mr. Bruce taken into
14 custody at this time?

15 A Because we didn't -- he was taken in custody pending
16 investigation with our on-call investigator. Not knowing
17 what had taken place and the circumstance that he had
18 called and advised he hadn't seen her in a couple of days,
19 her keys obviously to her car was there and we know she,
20 from what we're being told, she doesn't go anywhere
21 without it, it was just the whole circumstances there. We
22 just detained and we did no further questioning. It was
23 just detained for investigator to followup with.

24 Q So y'all just held on to him so that the investigator
25 could talk to him?

SW - C. HOBGOOD - DIRECT

1 A That's correct.

2 Q All right. What, if any, questions or anything did you
3 ask Mr. Bruce ---

4 A I don't ---

5 Q ---at that point?

6 A None at that point.

7 Q Did you Mirandize him at that point?

8 A No, sir.

9 Q Why not?

10 A Because we ceased on everything we did and were waiting
11 on it to be turned over to the investigator.

12 Q Well, was he under arrest?

13 A No, he was not.

14 Q Okay, all right. What else did you do from that point
15 forward? Who did you contact?

16 A At that point I advised central dispatch that I needed
17 an EMS unit to respond. I gave them the code of what I
18 thought we may have, and they got EMS to respond. And
19 then I notified the lieutenant, Lieutenant Mack, on cell
20 phone to advise him of what I had.

21 Q Did he come out to the scene?

22 A He came out but he never came into the crime scene.

23 Q Okay.

24 A And also notified Investigator Carraway.

25 Q Okay. So you notified Investigator Carraway, notified

SW - C. HOBGOOD - DIRECT

1 your patrol superiors?

2 A Correct.

3 Q Notified crime scene?

4 A I don't -- investigator does that.

5 Q Investigator do that?

6 A Yeah.

7 Q Notified dispatch to get EMS?

8 A Right.

9 Q Anybody else?

10 A That as far as I can recall that's it.

11 Q All right. So please tell this jury what y'all did in
12 order to maintain that crime scene for the crime scene
13 unit and for the investigators. What did y'all do then?

14 A Okay. Once the body was discovered and Mr. Bruce
15 placed in the back of the patrol car, we didn't exactly
16 know what crime, what the, where the crime scene was other
17 than in a possibly part of it in that car at that time.

18 So being as the yard is fenced in all the way around and
19 the only place that's not secured is the gate that the car
20 could drive into to that apartment garage, we applied the
21 crime scene yellow tape from one side of the gate to the
22 other side of the gate and then I was pretty much standing
23 there the whole time and crime scene log was started by
24 the one of the officers that also responded.

25 Q Okay.

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1 A And nobody was allowed in except those who needed to be
2 as far as investigator and EMS and crime scene.

3 Q Now so if anybody came into the yard at all they'd have
4 to come past that crime scene tape?

5 A Right, unless they jump the fence. And obviously we
6 would have seen that.

7 Q And so y'all didn't, like, rope off the car, rope off
8 the apartment, y'all roped off the whole yard?

9 A Right. And a little bit later on we expanded it a
10 little bit further to the block because some bystanders
11 were coming by but that was just putting up crime scene
12 tape so that they couldn't come in. But our original
13 crime scene itself was in that yard and it was maintained
14 that way.

15 Q All right. How long did y'all maintain that?

16 A It was maintained until the crime scene was through
17 with the scene; but I mean, I don't know exactly how long
18 that was.

19 Q That'd take them a little while?

20 A Yes, sir.

21 Q Okay, all right. Did you transport Mr. Bruce up to the
22 complex to talk to the investigators?

23 A No, sir.

24 Q Who did?

25 A I believe Officer Starling did.

SW - C. HOBGOOD - DIRECT

- 1 Q Okay. And was that prior to you leaving?
- 2 A Yes, sir.
- 3 Q Well prior to you leaving?
- 4 A Yes, sir.
- 5 Q All right. And what time did you leave the crime
- 6 scene?
- 7 A I really -- I don't recall what time. I mean, I was
- 8 there for a while.
- 9 Q Was it minutes, hours?
- 10 A No, it was probably a good hour-and-a-half or better.
- 11 Q Good hour-and-a-half before you left?
- 12 A Probably before I left, yeah.
- 13 Q From the time you got there until the time you left?
- 14 A We had other calls coming in so I, I mean. Once they
- 15 were there and they didn't need anymore assistance then I
- 16 could leave and go assist my other guys that are going
- 17 from call to call.
- 18 Q So crime scene, investigation, they're present on the
- 19 scene, then it was secured, and you handed it over to
- 20 them, your duties were done?
- 21 A That's correct.
- 22 Q Okay, all right. Beg the Court's indulgence, Your
- 23 Honor. Corporal Hobgood, please answer any questions Mr.
- 24 Lawson may have.
- 25 A Yes, sir.

SW - C. HOBGOOD - CROSS

CROSS-EXAMINATION

1

2 BY MR. LAWSON:

3 Q You did a report, an incident report on this situation?

4 A I did a supplemental report.

5 Q And when did you do that?

6 A I don't believe it was done that night but without -- I
7 can't recall exactly when it -- what date maybe on there
8 that I did it without looking at it.

9 Q 10/13 be accurate?

10 A It's quite, yeah, possibly, yes, sir.

11 Q And this would have been 10/12?

12 A Right, but it was ---

13 Q When you arrived into 10/13?

14 A That's correct.

15 Q Went into 10/13 while you were there?

16 A Yes, sir.

17 Q You left on 10/13?

18 A That's correct, sir.

19 Q When you opened the trunk or when the trunk opened, did
20 you do anything to determine whether or not the person in
21 the trunk was alive or dead? Did you make any physical
22 attempt to determine?23 A No, sir, other than the smell that was coming. The
24 body was different. It started to discolor. I mean, it
25 then notified EMS for them to confirm it; but no, I did

SW - C. HOBGOOD - CROSS

1 not touch the body in any way.

2 Q Now when you told Officer Beckett who placed him -- was
3 it you that told Officer Beckett to place Mr. Bruce in the
4 police car?

5 A Yeah, I believe it was. I believe we told him to take
6 him, put him, seat him in one of the police cars.

7 Q Was Roger Bruce free to go at that time?

8 A Not at that point, no.

9 Q All right, he -- you had him in detention?

10 A Right, investigative detention, yes, sir.

11 Q And that was to wait for the investigators or was that
12 for something y'all were gonna do?

13 A Investigators.

14 Q Now when you had the key and you attempted to open the
15 trunk, the trunk wouldn't open, correct?

16 A That's correct.

17 Q You couldn't get it open?

18 A That's correct.

19 Q And you asked Mr. Bruce to help you open the trunk?

20 A Uh-huh.

21 Q Or to show you which key operated?

22 A Which key, yes, sir.

23 Q And he came to get the key?

24 A Uh-huh, yes, sir.

25 Q All right. And you said that was -- that alerted you

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1 in some way?

2 A Well, it was just that he was reaching for them and I
3 already had them, and I just wanted him to point to the
4 key so I didn't need him to grab them.

5 Q So I mean, reaching for them when you had asked him to
6 show him, show you which key worked, what's so unusual
7 about that?

8 A Well, showing could be like pointing to which one and
9 not grabbing it. To grab it they had to hand it to me.

10 Q Well, it could be grabbing it to show you and open it
11 since you're having trouble; couldn't it?

12 A That's a difference in opinion, sir.

13 MR. CLEMENTS: Object, argumentative, Your Honor.
14 He needs to ask the question and let him answer.

15 THE COURT: Overruled. Let him ask his question.

16 BY MR. LAWSON:

17 Q Now there were three officers there at that time,
18 correct?

19 A Including myself, yes, sir.

20 Q And y'all had guns on you?

21 A We have guns on?

22 Q Yeah.

23 A Yes, sir.

24 Q You had your side arms?

25 A Yes, sir.

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1 Q You had tazers too?

2 A Yes, sir.

3 Q Did he apparently have anything on, I mean, other than
4 his clothes?

5 A That's all that appeared.

6 Q What was he going to do with the keys at that point,
7 grab them and run off with them?

8 A That's quite possible.

9 Q Do you really thought that was possible that he was
10 going to grab them and run?

11 A Answer?

12 THE COURT: Yeah, you can answer.

13 THE WITNESS: It's a possibility. Like I said,
14 anything -- we don't know what we have here.

15 BY MR. LAWSON:

16 Q All right. But you had asked him to show him how to
17 open the trunk, right?

18 A He said he would show which key it was to the trunk,
19 yes.

20 Q Okay. What was his physical condition?

21 A He appeared that he had been drinking; but he was, you
22 know, walking fine and vaguely answering the questions,
23 but I mean, that was not anything uncommon.

24 Q All right. He was drinking.

25 A Apparently at some point he had been.

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1 Q You could smell that or?

2 A I did not get close enough. It was just the fact he
3 was slurring somewhat and, but you know, I didn't get
4 close enough to him to actually smell it.

5 Q So he was -- demeanor was such that you could tell he'd
6 been drinking?

7 A It was quite possible, yes.

8 Q Did you see any evidence of alcohol on the inside of
9 the house?

10 A I was not looking for any; but no, I did not see any.

11 Q You didn't see any bottles or anything?

12 A Like I said, that wasn't what I was looking for so I
13 didn't pay any attention to it.

14 Q You didn't pay any attention?

15 A That's correct.

16 Q But you saw a steak knife in the bed?

17 A I did.

18 Q You did see that?

19 A Yes, sir.

20 Q Okay. Corporal Hobgood, did you have a digital voice
21 recorder at that time?

22 A I may have had one with me. At that point it was not
23 mandatory that we carry them and use them. It's quite
24 possible I had one in my pocket but it was not being used.

25 Q I don't have any other questions.

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1 THE COURT: Anything further?

2 REDIRECT EXAMINATION

3 BY MR. CLEMENTS:

4 Q Corporal Hobgood, when you were trying to open up the
5 trunk what, if anything, did Mr. Bruce tell you about,
6 hey, just hit the trunk release button on the key fob?

7 A He didn't say anything about it.

8 Q He didn't say anything about that. And what, if
9 anything, were you looking for other than something to
10 show where Ms. Creel might be or phone numbers or anything
11 like that?

12 A I wasn't looking for anything. I was just basically
13 looking for pocketbook. And some women have calendars
14 that have things written in it, phone numbers and stuff
15 such as that. Basically only type items I was looking for
16 at that time.

17 Q What, if anything, gave you any indication that this
18 was a crime scene?

19 A Nothing.

20 Q Nothing. What, if anything, would liquor bottles or
21 beer can or anything have done to aid you in what you were
22 looking for?

23 A To my knowledge none. I mean, I can't think of any
24 reason that it would.

25 Q Is that why those things weren't important to you at

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1 that time?

2 A Exactly.

3 Q No further questions.

4 MR. LAWSON: May it please the Court.

5 THE COURT: Yes, sir.

6 **RECROSS-EXAMINATION**

7 BY MR. LAWSON:

8 Q Officer, was there something unusual about these keys
9 or key ring?

10 A Not that I recall, why?

11 Q Was it a standard?

12 A I believe it was just a key ring with a remote on it
13 with some keys, yeah.

14 Q A standard remote?

15 A Correct.

16 Q With a hood -- a trunk release?

17 A I believe that was on there. I hadn't paid any
18 attention at this time until Officer Starling hit the
19 button. I was trying to use the keys.

20 Q I don't have any other questions.

21 THE COURT: All right.

22 MR. CLEMENTS: Your Honor, we ask that Corporal
23 Hobgood be released from his subpoena.

24 THE COURT: Any objection?

25 MR. LAWSON: No, Your Honor.

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1 **THE COURT:** Thank you very much, sir. You're free
2 to go.

3 **MR. CLEMENTS:** Your Honor, we call Officer Steven.
4 Starling.

5 **THE COURT:** Officer Starling, please come around to
6 be sworn, sir.

7 **WHEREUPON,**

8 **STEVEN STARLING,**
9 having been duly sworn by the Clerk of Court, testified as
10 follows:

11 **CLERK OF COURT:** Please be seated and state your
12 full name for the record.

13 **THE WITNESS:** Steven Starling.

14 **DIRECT EXAMINATION**

15 **BY MR. CLEMENTS:**

16 **Q** Officer Starling, can you please tell this jury where
17 you work and how long you've been in law enforcement.

18 **A** I work in the Florence Police Department. I started
19 here in March of '09.

20 **Q** Okay. And so in October of '09 you'd only been on the
21 force, what, six months?

22 **A** Approximately.

23 **Q** Were you working on patrol the evening of October 12th?

24 **A** Yes, sir, I was.

25 **Q** Tell me how you came to be a Avenue.

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1 A I, as well as Corporal Hobgood said, kind of listening
2 to radio traffic, what was going on. I kind of caught
3 some conversation that he wasn't able -- Officer Beckett
4 wasn't able to get in touch with anyone. Normally on
5 those type situations, like I said, you're not really sure
6 what you have. I basically just went over to the scene to
7 see if I could assist in any way. When Corporal Hobgood
8 arrived I arrived about the same time he did.

9 Q When you got there what was the first thing y'all did?

10 A Me, myself, and Corporal Hobgood spoke with Officer
11 Beckett who filled us in on what was going, how he'd
12 spoken to the sons or the one complainant that he had got
13 him with. He said he talked with or knocked on the door
14 for approximately ten minutes and couldn't get in touch
15 with anybody at the scene, and that's when Corporal
16 Hobgood, you know, advised me we should probably try
17 again, go check just one more time.

18 Q All right. And while y'all were going to check what
19 did you notice and what happened?

20 A As we approached the residence again from the
21 side we walked around the fence. We all observed what
22 appeared to be someone looking out the storm door to their
23 garage apartment, and you know, as if shining their
24 flashlights at the door. That's when Mr. Bruce's head,
25 you know, poked out. He was kind of looking at what was

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1 going on. At that point, you know, we called out to him,
2 let him know who we were, approached, and began speaking
3 with him about the matter.

4 Q What did you tell him about what you were looking for?

5 A We basically let him know that the complainant had said
6 they were, you know, hadn't heard from their mother. They
7 had received a call from him stating that he hadn't seen
8 her and that he had called them reporting that she had
9 been missing and that we were just kind of looking any
10 whereabouts where she might be and see if he had any
11 information on who she might be with or why she might have
12 left.

13 Q All right. And what information were you able to
14 obtain?

15 A Nothing really. When we asked him, you know, if he'd
16 seen her he said not for a couple of days. She had left.
17 She was just mad and upset, just left for no reason. He
18 didn't know where she was. And that's basically all the
19 information he would give.

20 Q Okay. What did y'all do in regards to looking around
21 for her?

22 A We asked Mr. Bruce if we could come in just to check,
23 make sure she wasn't there and see if there was anything
24 that might lead us into a direction where she would be and
25 said information regarding who she might be with or where

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1 she would be to which he gave consent and invited us in to
2 look around for her.

3 Q Did you go in and look around?

4 A Yes, sir. I followed the other officers in, and we
5 entered. Mr. Bruce sat on the couch which was directly to
6 the left when we entered, which is the living room I
7 believe. A kitchen area is directly behind that and there
8 was a one bedroom I believe right to the left off the
9 living room. The house was appeared to be in disarray and
10 not as if a struggle had occurred maybe, but just wasn't
11 very kept up.

12 Q So he was kind of jumpy?

13 A Kind of jumpy.

14 Q Well, let me ask you this so we can answer Mr. Lawson's
15 question here. What did you see about liquor bottles or
16 anything like?

17 A While waiting, when he first entered the door I did
18 observe liquor bottles. There weren't several I'd say,
19 but I did notice one on the counter and in the kitchen off
20 towards the wall. And I don't know who had been drinking
21 out of it or anything, but it did appear after we had
22 spoke with -- after Mr. Bruce that he had drank at some
23 point in time during that night. He wasn't grossly
24 intoxicated by any means but he appeared to have been
25 drinking.

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1 Q Well, now can you say he appeared to be drinking? What
2 was it about him that gave you that conclusion?

3 A He had a slight haze and sort of gloss to his eyes,
4 just the look from out of his eyes that you get after, you
5 know, having a little bit of alcohol in you as well as his
6 slurred speech that he did have. Again, it wasn't a
7 strong, just intoxication he had. It did just appear that
8 he had had something to drink.

9 Q Well, what indication did he give you that he
10 understood what y'all were talking about?

11 A He answered all of our questions. He wasn't very
12 forthcoming with answers. He didn't want to seem like he
13 didn't want to tell us much. He just kind of answered
14 them as easily as he could, gave us simple answers that
15 were just not going anywhere. They basically, I don't
16 know where she's at, hadn't seen her, she left. And I
17 asked, you know, they had argument and he said -- or what
18 they argued about. And he said well she was mad, we had
19 argument, she left. He was just really quick about it,
20 but he -- he'd seemed to be very stable mental state
21 everything, condition, physical condition that he was able
22 to answer all the questions we had at least completely.

23 Q All right. Well, you looked around in the apartment,
24 didn't see any signs of her, where she might be?

25 A No, sir. Again, as Officer Beckett stated we weren't

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1 really looking through drawers looking, you know, under
2 beds and nothing really for anything particular, just kind
3 of quick scan to see if she was in there, any belongings
4 that looked like may belong to her so that we could see,
5 again, while in the bedroom did also notice what appeared
6 to be a rifle or some gun under the bed. It's a house.
7 The safety issues, people have guns. So it didn't really,
8 you know, seem a shock to me at that moment that somebody
9 would have a gun so it wasn't really something we stayed
10 on very long.

11 Q Was this a crime scene at this time?

12 A No, sir.

13 Q Okay. So what did y'all do next?

14 A At that point myself and Officer Beckett were checking
15 the room together. We exited the room, and we stood with
16 Mr. Bruce while Corporal Hobgood went and did his second
17 search to make sure we didn't overlook anything. And
18 that's when Officer Beckett, you know, asked about the
19 keys, whose they were. Mr. Bruce stated they were the
20 victim's keys and that the phone also belonged to her
21 which Officer Beckett noticed on the table. Once Corporal
22 Hobgood had came back out of the room that's when he had
23 the keys and we exited the house.

24 Q And Officer Beckett, he was the one that had been
25 speaking with Shane Ritch, right?

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1 A Yes, sir, he had more information, at least more close
2 information regarding the case. I basically knew just
3 what he had explained to us briefly before we went to the
4 residence.

5 Q And he's the one that asked about the keys?

6 A Yes. I believe he just asked -- saw the keys, and you
7 know, basically stated whose keys were these, you know.
8 There was one vehicle outside. We just assumed that they
9 belonged to that vehicle which with all the information we
10 had gathered would belong to Ms. Creel.

11 Q Okay, all right. And so what did y'all do next?

12 A As Corporal Hobgood exited I followed behind him. At
13 that point I believe Mr. Bruce followed behind me and then
14 Officer Beckett came up behind him. We walked towards the
15 car and Corporal Hobgood shined his flashlight in
16 obviously checking out as he said. I also peeked in with
17 him when he was walking by. It was a very clean car,
18 nothing inside, no trash, or anything like that. And then
19 we approached to the rear of the vehicle and, you know,
20 Mr. Bruce and Officer Beckett kind of stayed toward the
21 front of the vehicle as we walked back to the back and
22 then it wasn't until we started fumbling with the keys
23 that he seemed to be more interested in why we would want
24 to search the trunk as well.

25 Q Has his demeanor changed a little?

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1 A To me it appeared to change from the whole time it was
2 kind of like he was sitting on the couch, he didn't really
3 mind, just kind of wanted to talk to us just to answer
4 what we had to say. He just didn't seem to care really
5 much about what was going on until that point it seemed
6 that he kind of became once interested and why we would
7 want to search the trunk of the vehicle.

8 Q Okay. So how did you get in the trunk?

9 A Corporal Hobgood tried several keys, one or two,
10 however many was on there, I can't remember. And when
11 they didn't work he asked Mr. Bruce, you know, which key
12 it was. That's when Mr. Bruce approached with his hand
13 out and said well, you know, I'll show you what key, let
14 me hold them, you know. We told him, you know, if he can
15 just tell us which one it is it would be helpful; but if
16 you know, he didn't mind waiting in front of the vehicle
17 with Officer Beckett while we looked. And that's when I
18 noticed the key had a fob. On the opposite side I noticed
19 it was a remote control. And again, at this point we are
20 only going on the assumption and Mr. Bruce's information
21 that the keys belonged to the vehicle. They did appear to
22 go to the vehicle so I got the keys from Corporal Hobgood
23 and I pushed the bottom, the trunk release button, and at
24 that point the trunk came open.

25 Q What was the first thing you noticed?

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1 A There was a female body inside appeared to be deceased.
2 Again, discoloration, there was a slight odor. Nothing,
3 just no breathing, anything like that.

4 Q And where were you standing at this time?

5 A I was to Corporal Hobgood's right around the passenger
6 side of the rear of the vehicle.

7 Q Okay. So if this was the bumper of the car right here
8 okay. It'd be a little wider than that?

9 A Yeah, a little bit.

10 Q Okay. And where would Corporal Hobgood be standing?

11 A He was more to the driver's side of the rear of the
12 vehicle and I was---

13 Q And you was ---

14 A ---on the passenger side.

15 Q All right. And so, like this is the side of the car
16 right here, tell me about when I get to about where
17 Officer Beckett was.

18 A Probably close to that.

19 Q Close to here?

20 A Yeah, it was a four door sedan, I guess, say normal
21 length, ain't no longer than that.

22 Q And where was Mr. Bruce?

23 A He was standing against the vehicle.

24 Q So between the ---

25 A Between the vehicle.

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1 Q And Officer Beckett?

2 A And Officer Beckett.

3 Q And Officer Beckett, okay. All right, and the trunk
4 lid was up?

5 A Yes, sir.

6 Q About how big a trunk was it?

7 A Again, going as a Chrysler vehicle. I'm not sure. It
8 was a standard size trunk for that vehicle. I really
9 don't know. Approximately 4 feet across maybe on it I
10 would say, maybe.

11 Q About how deep?

12 A From the trunk to the back seat in there approximately
13 three-and-a-half, four feet again maybe.

14 Q All right, can I ask you to stand up a second.

15 A Yes, sir.

16 Q If you're standing in that, standing on where the
17 ground where you would have been standing, can you please
18 put your hands up and show me about where the top of the
19 trunk lid was when the trunk was up?

20 A It would probably be somewhere in here, maybe a little
21 higher.

22 Q Okay.

23 A So, and you got about that much space here where you're
24 standing up so then that meant if this was the ground
25 level I'm standing on it would be about right here.

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1 Q Okay, put your hand up. And this is where Officer
2 Beckett and Mr. Bruce were standing?

3 A Around there.

4 Q Okay, all right. Did you -- other than just look in
5 the trunk when it opened up, did you bend over or did you
6 go through there, did you do anything ---

7 A No, sir.

8 Q ---did you examine the body in any way?

9 A No, sir.

10 Q Did you touch the body in any way?

11 A No, sir.

12 Q Did Corporal Hobgood?

13 A No, sir.

14 Q What did y'all do next?

15 A At that point when we realized that we had that female
16 and the body in the trunk Corporal Hobgood advised Officer
17 Beckett to detain the suspect. It appeared to me that he
18 had taken a step back. Mr. Bruce took a step back, you
19 know, being that what we just had discovered. I wasn't
20 sure if he, you know, felt some kind of emotion and he was
21 trying to go anywhere. Being that he did take that step I
22 drew my weapon and advised him he needed to stay there,
23 he'd have to put his hands up, whatever. Officer Beckett
24 detained the subject, and then at that point me and
25 Officer Beckett walked into my vehicle.

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1 Q Okay, all right. And what was the point in detaining
2 Mr. Bruce at that point in time?

3 A At that point we were not sure what we had obviously.
4 We just wanted to put him in investigative detention until
5 an investigator could arrive to speak to him and maybe
6 figure out any information he might know in regarding
7 that.

8 Q Okay. So y'all held him for an investigator?

9 A Yes, sir.

10 Q Were you worried about -- or did you know or have any
11 knowledge about whether he had any weapons or not or could
12 have?

13 A Not at that point. Again, we did not pat him down
14 until after he was detained. If anything was on him it
15 would have been concealed. It didn't appear he had
16 anything on him.

17 Q Okay. And you didn't have any need to even worry about
18 that to begin with, did you?

19 A No, sir, we were just trying to find out where Ms.
20 Creel was. It really had nothing to do with that.

21 Q Okay. After that Mr. Bruce was in your car?

22 A Yes, sir.

23 Q Who transported him to the complex?

24 A I did.

25 Q Okay. And was that, you know, a long time down the

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1 road or a little bit down the road or?

2 A No, sir. I'm not exactly sure of the time that
3 Investigator Carraway or the other investigator had
4 arrived. But it couldn't have been more than maybe five
5 or ten minutes after they arrived they advised me to bring
6 him down to the complex so they could speak with him.

7 Q Was there a place to speak with him there where y'all
8 were in that area with all that was going on?

9 A No, sir. As Corporal Hobgood stated we had to expand
10 the area that we were watching because bystanders and
11 people driving by or walk down the street were trying to
12 kind of look at what was going on, and there was really no
13 where with the commotion going on to speak with Mr. Bruce
14 there.

15 Q Did you have lights and everything and this is in the
16 middle of the night?

17 A In the middle of the night, yes, sir.

18 Q Okay. Did you say anything to Mr. Bruce?

19 A No, sir.

20 Q Ask him any questions?

21 A No, sir.

22 Q Did you have anything to do with this after you took
23 him to the complex?

24 A No, sir. Once I dropped him off at the complex and
25 waited with him until an investigator arrived, turned him

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1 over to their custody and then they took care of it from
2 there.

3 Q All right. Where did you wait at for the investigator?

4 A I believe we waited downstairs in the -- we have a
5 holding area. It's a waiting area right outside of our
6 headquarters downstairs, and there's some chairs down
7 there. I believe we just waited right down there.

8 Q And when Mr. Sergeant Drayton got there and
9 Investigator Carraway, what did you do with regards to
10 handcuffs?

11 A I took my handcuffs off and they walked him up the
12 stairs and handcuffed him.

13 Q So they went upstairs to talk?

14 A Yes, sir.

15 Q Do you know where?

16 A I believe they went to second floor. They have a
17 conference room they usually go to just for any random,
18 you know, meetings, anything they use, a place they can
19 talk. I assume they went up to that room.

20 Q Okay, but you don't know?

21 A I was not up there; I do not know.

22 Q All right.

23 MR. CLEMENTS: Beg the Court's indulgence.

24 BY MR. CLEMENTS:

25 Q While you were in transport taking Mr. Bruce to the

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1 complex, you didn't ask him any questions?

2 A No, sir, I talked ---

3 Q You didn't talk to him?

4 A No, sir.

5 Q Did he say anything to you?

6 A Yes, sir. While we were traveling he continuously
7 stated that the handcuffs were agitating him, and they
8 were too tight. And at one point he also just
9 sporadically stated that he didn't know what Laura was
10 doing in the trunk.

11 Q Okay.

12 A And again, assumed he just stated it for no reason. I
13 was not asking him anything, never mentioned it and did
14 not say anything after he said that.

15 Q Now is that the end of your duties in this case, or did
16 you go back to the scene?

17 A No, sir. I -- after Mr. Bruce was released to their
18 custody I did not return to the scene.

19 Q And did you do a report or supplemental on this case?

20 A Yes, sir.

21 Q And when did you do that?

22 A It was the same night. That happened to be the next
23 day after midnight so it was 10:13 of the night.

24 Q So you did it that day?

25 A Yes, sir, it was the same night as the accident. It

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1 just happened to be after 12:00.

2 Q And why would you do it that quickly, I mean, a lot of
3 people don't do paperwork that quick?

4 A Because again, with kind of as quick as the
5 circumstance of all, there wasn't a lot of note taking
6 going on and most of it was on memory so I wanted to make
7 sure that everything was done while a lot of the
8 circumstances and all of the stuff happened was still in
9 my memory fresh and didn't want to wait around till I
10 forgot about it or didn't think about it.

11 Q And when you do that what instrument do you use to do
12 that?

13 A We have a computer. I have a computer in my car at
14 that time that was assigned to me that I type it on.

15 Q So you went back to your car?

16 A Yes, sir.

17 Q And typed up your report?

18 A Yes, sir.

19 Q Thank you. Please answer Mr. Lawson's questions.

20 MR. LAWSON: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS - EXAMINATION

23 BY MR. LAWSON:

24 Q Where would you have typed that up?

25 A I believe I went back to Avenue but not at the

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1 scene. I didn't go inside the crime scene or anywhere
2 we'd roped off. And I sat in my vehicle and parked it and
3 typed up the report.

4 Q What did you call Mr. Bruce in that report? You call
5 him Roger, you call him Mr. Bruce, you call him suspect?

6 A I normally refer to them by their last name in my
7 reports. I assume I typed Mr. Bruce or Bruce, however, I
8 do not recall.

9 MR. LAWSON: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. LAWSON:

12 Q Does this appear to be your report?

13 A I don't know this is my report. It appears to be a
14 copy of the same report, supplemental.

15 Q Well, is it or is it not the report that you did?

16 A I cannot say because I don't have my report. I type my
17 report and do it. I don't know that this is the report.
18 It appears to be the same, a copy or printout of the same
19 report I typed.

20 Q What did you call Mr. Bruce?

21 A It says Bruce, Bruce, and Bruce, I'm assuming you're
22 meaning your underlined areas here.

23 Q No, no, not the underlined areas. I'm not --

24 A You want me to read through the whole thing, check it
25 off?

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1 Q Just tell me if you referred to him as suspect.

2 A I just see Bruce in here. I don't see anywhere I
3 stated him as a suspect.

4 Q How did you determine that there was no breathing on
5 the body in the trunk?

6 A Normally when someone breathes you can see chest move,
7 you know, some type of inhalation or exhale going on; and
8 from looking at the body it did not appear there was any
9 breathing.

10 Q But at the point that the trunk was open shortly
11 thereafter you pulled your weapon?

12 A Yes, sir.

13 Q And you pointed it at Mr. Bruce?

14 A Yes, sir.

15 Q Okay. And then who placed handcuffs on him?

16 A Officer Beckett.

17 Q And that was while you had your gun on him?

18 A Yes, sir.

19 Q All right. Well then, what time did you put, holster
20 your weapon?

21 A Once I saw the subject was detained.

22 Q You went into the house; is that correct?

23 A Initially, when we first spoke with Mr. Bruce.

24 Q And what was your main duty at this time?

25 A Just to try and find any kind of information regarding

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1 Ms. Creel and her whereabouts.

2 Q No, I mean with the police department. You worked with
3 the police department.

4 A I was on patrol. I worked for patrol division.

5 Q Okay. And you said Mr. Bruce did appear to be, to have
6 drank something?

7 A It appeared he had been drinking.

8 Q Would you consider him to be under the influence for
9 the purpose of driving a vehicle?

10 A I wouldn't know without, you know, having some other
11 sobriety test or other method to go on.

12 Q So as a patrol officer if you pull someone who was
13 acting the way Mr. Bruce was with slurred speech and I
14 guess some odor of alcohol about his person, you wouldn't
15 have assumed that they may have been under the influence
16 for driving purposes?

17 A Not without further investigation as far as sobriety or
18 anything.

19 Q Would you have because of the condition of that
20 individual have done further investigative ---

21 A I would have had an officer that is trained in that
22 sobriety test or any kind alcohol detention meet with me
23 because at that time I was not trained in that.

24 Q All right. But you would have further investigated
25 someone had they been driving?

SW - S. STARLING - REDIRECT

1 A In a situation of driving I would; but however, this
2 wasn't what that case regarding at that time. I was not
3 worried about that.

4 Q I understand. I understand. In your opinion was Mr.
5 Bruce free to go at the point that you put the handcuffs
6 on him?

7 A I did not place handcuffs on him, but at the time he
8 was detained. He was not free to go.

9 Q No further questions.

10 **REDIRECT EXAMINATION**

11 BY MR. CLEMENTS:

12 Q Was Mr. Bruce under arrest at that time?

13 A No, sir.

14 Q Thank you.

15 MR. CLEMENTS: Your Honor, we ask that Officer
16 Starling be released from his subpoena.

17 THE COURT: Any objection?

18 MR. LAWSON: Without objection, Your Honor.

19 THE COURT: All right, sir. Thank you. You're
20 free to go.

21 THE WITNESS: Thank you.

22 MR. LAWSON: Your Honor, may --

23 THE COURT: Yes, sir.

24 MR. LAWSON: --we approach.

25 (WHEREUPON, counsel approached the Bench for

1 WHEREUPON,

2 **LARRY DRAYTON,**

3 having been duly affirmed by the Clerk of Court, testified
4 as follows:

5 **CLERK OF COURT:** Please be seated and state your
6 full name for the record.

7 **THE WITNESS:** Larry Drayton.

8 **DIRECT EXAMINATION**

9 **BY MR. CLEMENTS:**

10 **Q** Can you please tell this jury where you work and in
11 what capacity?

12 **A** I'm employed with the City of Florence Police
13 Department in criminal investigation division.

14 **Q** And what's your rank?

15 **A** Sergeant, supervise criminal investigation division.

16 **Q** I'm gonna ask you, if you will, to get that microphone
17 a little bit closer to you to make sure we can all hear
18 you.

19 **A** How's that?

20 **Q** I'm gonna stand back over here to make sure I can hear
21 you, okay?

22 **A** Yes, sir.

23 **Q** Sergeant Drayton, can you please tell this jury how
24 many years of experience you've had in law enforcement?

25 **A** I began my career at the Florence Police Department

SW - L. DRAYTON - DIRECT

1 September 29th, 1980. I currently -- initially was
2 assigned to the uniform patrol division 1980 to 1983.
3 1983 to 1986 I worked the special investigation unit which
4 consists of narcotic vice and special operations. 1986 to
5 1990 I was reassigned back to uniform patrol division.
6 1990, took a break to be deployed military. After
7 deployment returned back to the department back to patrol
8 for about three or four months, then was assigned to
9 criminal investigation division where I'm currently at.

10 Q All right. And got any idea how many murder
11 investigations you've been involved in?

12 A Numerous.

13 Q More than you --

14 A Too many.

15 Q --care to count?

16 A Yes.

17 Q Sergeant Drayton, you come to be involved in an
18 investigation of a death on Avenue on October 12th,
19 2009?

20 A Yes, sir, I did.

21 Q Can you please tell this jury what you first heard
22 about it as far as calling you out, how you got called
23 out, and how you became involved?

24 A Protocol for investigations is we have an on-call duty
25 investigator that's on-call 24 hours a day 7 days a week.

SW - L. DRAYTON - DIRECT

1 On the day in question Investigator Carraway was the duty
2 investigator. He was investigator on-call after hours if
3 anything happened where you would need an investigator.
4 When Investigator Carraway got called it's also our
5 protocol he would notify his supervisor, and at the time I
6 was Investigator Carraway's supervisor. So whenever he
7 got his initial phone call he made a phone call to myself,
8 Lieutenant Rogers, and to Major Raines. Upon receiving
9 the photo call from Investigator Carraway I responded to
10 the scene.

11 Q All right. And you responded to that scene pretty
12 quickly?

13 A I live about 30 minutes away so length of time it took
14 me to get up, get dressed, and drive.

15 Q And when you responded to that scene tell this jury
16 what you found, what was going on at the scene at that
17 time?

18 A Upon my arrival I met with Investigator Carraway. He
19 briefed me basically on what he had learned at that time.
20 He spoke with patrol officer that was on the scene.
21 Investigator Carraway told me that patrol responded to the
22 location regards to initially a welfare check reference to
23 an individual that may possibly be missing. And shortly
24 thereafter, sometime thereafter, a body was found in a
25 trunk and they had an individual of interest that was

SW - L. DRAYTON - DIRECT

1 being detained upon my arrival.

2 Q And upon your arrival did you go look in the trunk, did
3 you go look at the body or do anything like that?

4 A I did not.

5 Q Okay. What did you do? What was the first thing y'all
6 did?

7 A We, after talking with Investigator Carraway, we spoke
8 about, Lieutenant Rogers, we requested that the individual
9 be transported to the -- to this com--to this building,
10 the police department, and await our arrival so we could
11 come down and interview.

12 Q What was going on out at the scene? Why didn't you
13 question him at the scene?

14 A Well, crime scene, crime scene was there. Sergeant
15 Brandt, Investigator Hill was already there upon my
16 arrival and they were doing their thing as far as securing
17 the scene. Typically, as far as conducting interviews we
18 try to conduct interviews not in the streets, and it's
19 like in the middle in the night so we try not to conduct
20 interviews in the street. If there's a business
21 someplace, if there's a room that we can go talk to people
22 we'll do that. But at this time of night, the location,
23 there was no room inside the house at the time which the
24 residence was already declared a crime scene so we cannot
25 go back in the residence to interview him. So the nearest

SW - L. DRAYTON - DIRECT

1 place would be to bring him to the complex which we
2 normally do all the time. So we was asked he be brought
3 to the complex to the second floor. We end up going to
4 second floor in this building which is our conference room
5 for investigation where we conduct interviews, meetings
6 some sort.

7 Q Okay. Now did y'all transport Mr. Bruce?

8 A No, sir, that was Officer Starling if I'm not mistaken.

9 Q And when you got to the complex where was Mr. Bruce and
10 Officer Starling?

11 A Down in the basement, in the basement area. If you're
12 familiar with the sallyport, where police vehicles are
13 parked at the sallyport that go down to the police
14 department. That's where our desks is at. Usually
15 officers just meet us there and we met Officer Starling
16 there. We met with Mr. Bruce and we escorted him up to
17 second floor of this building.

18 Q When you met Officer Starling there and Mr. Bruce what,
19 if anything, did you tell Starling to do?

20 A We met him he had handcuffs still on him when we got
21 there so I advised Officer Starling to take the handcuffs
22 off of him, and Investigator Carraway and myself would
23 take him upstairs. From that point on we would have
24 control of him.

25 Q Okay. Now what is investigative detention?

SW - L. DRAYTON - DIRECT

1 A Investigative detention would be, if I could give an
2 example, for instance if you would, you arrive at a crime
3 scene -- excuse me, you arrive at a scene you have several
4 inc--several subjects, there's chaos going on, lot of
5 disturbance going on, you're not sure exactly what's going
6 on. You arrive at a scene where there's something unusual
7 took place. You're not sure whether this person may have
8 had something to do with it or individual may have
9 something to do with it or not. Investigative detention
10 would be you would place an individual or individuals in
11 custody normally typically by placing handcuffs on them
12 until you're able to sort out what's going on. It's, if I
13 could relate to you, it's something like a, if you go
14 someplace there's a hostage situation, where the police
15 are directed to everyone at that time is treated as the
16 enemy or negative until you can find out what's going on
17 and that way just being on the safe side till you can find
18 out what's going on.

19 Q So that's for safety purposes?

20 A It's for safety purposes and also for investigative
21 purposes, so you can find out who is who and what's going
22 on.

23 Q Okay, all right. So Mr. Bruce was investigative
24 detention?

25 A That's correct.

SW - L. DRAYTON - DIRECT

1 Q Y'all got there, took the handcuffs off of him, y'all
2 brought him up to the second floor?

3 A That's correct.

4 Q Okay. And at that point in time what were your
5 intentions and what did you do?

6 A Our intentions at the time was initially that I was
7 informed by Investigator Carraway that Mr. Bruce lived at
8 the residence where the person was reported to have been
9 missing, a welfare check, individual Ms. Creel was living
10 at, so. And my understanding she had -- he had spoke to
11 officers and stated that he may have been one of the last
12 individuals to see her. So the initial conversation was
13 just to talk with him to gather information based on
14 trying to locate, not trying to locate but try to
15 determine what may have happened to her. At that time
16 just to talk with him in reference to that, that was
17 initial.

18 Q And who carried on the conversation with him?

19 A Protocol would be with investigations, investigations.
20 If you have more than one investigator one investigator
21 always take lead as far as asking questions, and the other
22 investigators -- one of the investigators will take notes.
23 Normally the lead investigator of the case with take
24 notes. One of the other investigators will take lead as
25 far as asking questions. In this case I took lead as far

SW - L. DRAYTON - DIRECT

1 as asking questions. Investigator Carraway took notes
2 since he was going to be the assigned investigator to the
3 case.

4 Q Okay. And the assigned -- who does the investigative
5 report?

6 A The investigative report, initial report, would be the
7 assigned investigator.

8 Q Okay. That'd been Officer Carraway?

9 A Yes.

10 Q And he was the one taking notes?

11 A That's correct.

12 Q You're talking to Mr. Bruce?

13 A That's correct.

14 Q What were y'all talking about?

15 A Just start out talking ---

16 MR. LAWSON: Your Honor, I would renew my
17 objection previously noted --

18 THE COURT: All right, sir.

19 MR. LAWSON: ---to relation to this matter.

20 THE COURT: That is noted for the record.

21 BY MR. CLEMENTS:

22 Q What were y'all talking about?

23 A The initial conversation just started out, can you tell
24 me your name, your date of birth, basic information trying
25 to get a history of who am I talking with. That's basic

SW - L. DRAYTON - DIRECT

1 information. That's one of the last time -- what was his
2 relationship with Ms. Creel, just talk about just general
3 topic, whatever, just normal. Just when you're talking to
4 someone just try to make the person feel relaxed,
5 comfortable. You're just talking, that's all. Just
6 talking basic interview. What the circumstances, when the
7 last time he saw her and ---

8 Q When was the last time he had seen her from that day
9 that he told you?

10 A If I remember correctly he said it was maybe like two
11 days, maybe two days prior to that. This is on Monday so
12 that may have been like Monday night, Saturday, Saturday
13 or Sunday.

14 Q Okay. And so he hadn't seen her for a couple of days?

15 A That's correct.

16 Q Did you ask him or -- what did you ask him in regards
17 to what he had been doing in those couple of days he
18 hadn't seen her?

19 A He stated that he didn't work -- let me correct. He
20 didn't work and he was sitting around the house and he did
21 on one or two days. I know on one day, I think that
22 Monday, maybe that Sunday. That Monday that he rode and
23 met with some family members and a friend and rode around.
24 They were drinking. He drove her car. They were drinking
25 and some point he came back home.

SW - L. DRAYTON - DIRECT

1 Q Did he tell you who he was with, if you recall?

2 A Two individuals. I recall at least two individuals
3 that he said. One would have been a -- and I may have the
4 name wrong, Willie Holloman who is deceased now, and a
5 Earl Bruce, I think is a family member.

6 Q Earl Bruce is a family member?

7 A Yes.

8 Q Okay. And did you Mirandize him before you started
9 talking to him?

10 A No, sir, we did not. The reason he was not Mirandized
11 'cause it was basically a interview --

12 MR. LAWSON: Objection, Your Honor, the reason for
13 it would be the reason the jury could decide whether it
14 was appropriate to Mirandize or not after proper
15 introduction.

16 THE COURT: All right, overruled. He can explain
17 why he did not.

18 BY MR. CLEMENTS:

19 Q Go ahead.

20 A The reason he was not Mirandized is just basically
21 generally just talking to an individual not asking any
22 questions about specific crime or anything of that nature.
23 It was just talking to him like I said earlier, just
24 general conversation just talking to him, that's all.

25 Q All right. Did you ever Mirandize him?

SW - L. DRAYTON - DIRECT

1 A At some point in the conversation I directed
2 Investigator Carraway to Mirandize Mr. Bruce in which he
3 did.

4 Q And why did you stop then and decide to Mirandize him?

5 A During the conversation Mr. Bruce made a statement ---

6 MR. LAWSON: Your Honor, again, I note my previous
7 objection.

8 THE COURT: All right. Certainly your objection is
9 noted, yes, sir.

10 THE WITNESS: During the conversation Mr. Bruce
11 made a statement that Ms. Creel was shot, and in that time
12 or shortly thereafter, I advised Investigator Carraway to
13 Mirandize Mr. Bruce.

14 BY MR. CLEMENTS:

15 Q Okay. And how did Investigator Carraway Mirandize
16 Mr. Bruce?

17 A He carries, in which we all carry, carried and had in
18 his possession a Miranda card and presented that card and
19 read verbatim from that card his Miranda rights.

20 Q Do he also use a Miranda form?

21 A No, sir, he didn't.

22 Q Do you ever use a Miranda form?

23 A Yes, sir. Procedure would be -- conducting an
24 interview, if I may try to explain to you. When you're
25 conducting an interview the procedure initially is just to

SW - L. DRAYTON - DIRECT

1 talk to individuals, just to talk, just talk, that's all.
2 If there comes to a point where we feel like we need to
3 Mirandize an individual then at that time we will
4 Mirandize him as far as reading them their rights. We
5 will continue to talk with the individual. If it deemed
6 necessary to obtain a statement that is written or
7 recorded, then at that time we have a form that we -- a
8 written form we'll have them to sign a waiver of rights
9 form and we'll read them their rights again and then take
10 a statement from them.

11 Q Did you ever take a statement from Mr. Bruce?

12 A No, we didn't.

13 Q Okay. After Mirandizing him did y'all stop talking at
14 that point in time?

15 A Yes. we did. Mr. Bruce indicated shortly after he
16 didn't want to talk anymore.

17 Q Okay, all right. And so you didn't ask him any further
18 questions or talk to him anymore?

19 A No, sir, we did not.

20 Q Okay. At that point in time what did you determine
21 about probable cause for getting an arrest warrant?

22 A At that time based on information that the
23 conversations -- based on the conversation that we had
24 with Mr. Bruce, based on what we had at the scene, it was
25 determined at that time that Mr. Bruce would be charged

SW - L. DRAYTON - DIRECT

1 with the murder.

2 Q Okay. Now let me ask you this, Sergeant Drayton, what
3 communication did you have while y'all were interviewing
4 and talking with Mr. Bruce, if any, did y'all have with
5 any other law enforcement, the forensic crime scene
6 people, or anybody at that scene?

7 A I met with Investigator Carraway at the scene. I think
8 I may have talked to patrol officers briefly once we -- at
9 the complex. I didn't talk to crime scene individual till
10 late afterwards.

11 Q After all this?

12 A When I met and talked with crime scene investigators
13 afterwards.

14 Q What knowledge, if any, did you have about any wounds
15 Ms. Creel had?

16 A I didn't know. I never -- like I said, I never saw
17 her. I didn't know the cause of death. I did know we had
18 a body in the trunk. That was all I had.

19 Q So what knowledge did you have about her cause of
20 death?

21 A Did I have at that time?

22 Q Yeah, at that time what knowledge did you have?

23 A None.

24 Q Nothing?

25 A Nothing. I had no knowledge how she died.

SW - L. DRAYTON - DIRECT

1 Q All right. Now after this did you assist Investigator
2 Carraway with anything else?

3 A Yes, I assisted him with continuing with, like I said,
4 since I'm supervisor continue to assist him with
5 investigation as far as interviewing individual and just
6 going over the case file with him.

7 Q So y'all -- you actually went and interviewed some
8 other individuals?

9 A We did.

10 Q Did you participate in interviewing Mr. Earl Bruce?

11 A I did not.

12 Q Did you assist in participating interviewing Mr. Willie
13 Holloman?

14 A I did.

15 Q And he's now deceased?

16 A He is.

17 Q Okay, all right. Did you review the case file with
18 Investigator Carraway when he put together his reports?

19 A Yes, sir, I did.

20 Q Okay. Is there anything else you did in regards to
21 this other than what you've already talked about?

22 A Other than what I've talked about is just basically my
23 job as far as tracking and at what stage the case was as
24 far as different stages of the investigation.

25 Q Okay. Please answer any questions Mr. Lawson may have.

SW - L. DRAYTON - CROSS

1 MR. LAWSON: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS - EXAMINATION

4 BY MR. LAWSON:

5 Q Sergeant Drayton, when -- is it my understanding when
6 Officer Carraway was called then he would have immediately
7 called you as his supervisor?

8 A He would have called -- I'm not sure which order it
9 would have been, but he called myself, Lieutenant Rogers,
10 and Major Raines is the progression as far as supervisors
11 is concerned. Lieutenant Rogers, I'm Investigator's
12 Carraway immediate supervisor. Lieutenant Jones is my
13 immediate supervisor, and Major Raines is the bureau
14 commander. So anything that was a major crime that
15 happens all individuals have to be notified.

16 Q So the investigator, the on-call investigator, is in
17 charge of notifying all those people in the chain of
18 command?

19 A In investigations, yes, sir.

20 Q It wouldn't have been him calling you and then you
21 calling your supervisor and etc., up the chain?

22 A On something like this it would have not been because
23 there was nothing I can -- what we normally do is the
24 on-scene investigator, he can answer the questions the
25 next person may have so that on-scene investigator, which

SW - L. DRAYTON - CROSS

1 would have been Investigator Carraway, he would call the
2 individual person.

3 Q All right now, who was actually the investigator on
4 this case?

5 A The assigned investigator, Investigator Carraway.

6 Q So your job then was simply as his supervisor; is that
7 correct?

8 A Well, it's dual. Supervisor, because we're
9 unfortunately not a big, large agency, is also to assist.
10 I work cases also so also to assist with working cases.
11 It could have easily been the other way around, but if I
12 would have been the lead investigator he would have been
13 assisting me.

14 Q All right. Then is it my understanding that you did
15 absolutely no report in this case?

16 A That's correct.

17 Q And why would that be?

18 A Like I said, as being the assisting investigator at the
19 time, everything that I would have written, everything I
20 would have done would have been redundant with
21 Investigator Carraway would have written.

22 Q So then in an investigation when there's two people
23 investigating you don't think it's possible that one can
24 observe something the other one doesn't, and that it might
25 be important to compare notes at some point in the future?

SW - L. DRAYTON - CROSS

1 A If we're not -- if I'm talking to one individual and
2 he's talking to a separate individual, if I talk to one
3 individual initially, then Investigator Carraway, another
4 second investigator come in, absolutely. But everything
5 that I did Investigator Carraway was present with me
6 everything that I did and everyone I -- everyone I spoke
7 with he was there.

8 Q When you spoke with Willie Holloman did you record that
9 interview?

10 A Yes, sir, it was recorded.

11 Q When you spoke with Roger Bruce did you record that
12 interview?

13 A I'm pretty sure it was recorded, yes, sir.

14 Q Roger Bruce?

15 A Excuse me, no, sir, I'm sorry. Roger Bruce, no, sir.

16 Q That night?

17 A No, sir.

18 Q Did you digital recorders available in the police
19 department?

20 A We did.

21 Q And you chose not to record this interview?

22 A If I may explain, Mr. Bruce as far as statements
23 concerned, we normally record and it's protocol to record
24 statements. When we talked to Mr. Bruce it was just an
25 interview, just to basic talking interview. As far as

SW - L. DRAYTON - CROSS

1 statements concerning as far as recording, if we record
2 just the basic interview it could go on for hours just
3 talking about general talk that's not relevant, there may
4 not be any relevances to the case itself. So the protocol
5 is when we record something, a statement, it's more or
6 less down to the facts of the case when we're more direct
7 in what we're talking about so we never had opportunity to
8 record a statement.

9 Q So at the time that you talked with Mr. Bruce, you had
10 him at his house with a body in a car at that house, did
11 you know there was a gun in the house?

12 A I did not.

13 Q Do you know whether Officer Carraway knew that or not?

14 A I don't know that.

15 Q But you chose not to record it because it may go on for
16 hours.

17 A Like I said, the protocol is at some point in time we
18 will record the statement; but then the first step is just
19 to interview the person initially and that's what we did
20 do, just to interview the person. And then before we had
21 an opportunity to even request that a statement be
22 recorded, go even further to the conversation, Mr. Bruce
23 said he didn't want to talk anymore so we didn't have
24 opportunity to record. Had he continued to talk and sign
25 a waiver of rights form most definitely we would have

SW - L. DRAYTON - CROSS

1 recorded his statement.

2 Q Now let me ask you, what independent recollection do
3 you have of what Mr. Bruce said on that particular
4 evening?

5 A Mr. Bruce made statement indicating that the victim was
6 shot but did not have any knowledge of how she was shot.

7 Q Exactly what did he say, do you recall?

8 A The exact verbiage, the exact words, I don't recall
9 exact words but was statements made relating to the victim
10 was shot.

11 Q Well, let me ask you, have you used any information to
12 refresh your recollection for this testimony?

13 A Yes, sir.

14 Q What did you use?

15 A The -- all of the reports.

16 Q So you used Officer Carraway's report to refresh your
17 memory?

18 A Used Officer Carraway's reports and initial -- it's --
19 procedure would be before any case that all the officers
20 involved, you would go back over and you would read the
21 reports in its entirety for everyone involved to go back
22 over and review it. In reference to refreshing, not only
23 refreshing your memory, but to make sure that you're just
24 protocol before you go to trial on a case.

25 Q So what you're testifying today primarily is what was

SW - L. DRAYTON - CROSS

1 recorded in the notes as opposed to your individual
2 recollection?

3 A I am with notes and what I recall. Investigator
4 Carraway wrote the detailed notes out.

5 Q And what do you recall specifically, exactly what was
6 said?

7 A Like I said earlier, I can't remember the exact
8 verbiage but it was something in essence to the victim
9 being shot.

10 Q Now where was Roger when you got to the scene?

11 A Seated in a patrol car.

12 Q In a patrol car? How long had he been there?

13 A I can't give you exact time but it would have been a
14 while.

15 Q How many officers were on the scene at that time?

16 A I can't tell you exactly how many. I know I was there,
17 Investigator Carraway was there, Investigator Hill,
18 Sergeant Brandt. I'm not sure who all, what all patrol
19 officers was there. And there may have been some other
20 individuals as far as supervisors from patrol or Major
21 Acosta or some other folks in the chain of command from
22 patrol which is customary.

23 Q Did you say Lieutenant Rogers was there?

24 A Yes, sir.

25 Q And Major?

SW - L. DRAYTON - CROSS

1 A Like I said, I'm not saying, I think Major Acosta. I'm
2 not sure because she was patrol division commander.
3 Normally something of this nature happen she would come
4 out.

5 Q What about Raines?

6 A He was not there.

7 Q Do you remember approximately how many patrol officers
8 may have been there?

9 A No, sir, I don't.

10 Q Four, five, more?

11 A At least three.

12 Q At least three?

13 A Yes, sir.

14 Q And during the process of an investigation there's
15 radio transmission going on the entire time; is that
16 correct?

17 A That's correct.

18 Q And Roger Bruce would have been in a police car where
19 they radio in that car, correct?

20 A That's correct.

21 Q And you don't know what he may have heard on that radio
22 being broadcast back and forth, do you?

23 A I would not have any idea.

24 Q Do you recall Roger talking about going to Earl Bruce?

25 A Yes, sir.

SW - L. DRAYTON - CROSS

1 Q And to see Junebug?

2 A Yeah, I think his nickname was Junebug or something.

3 Q Junebug?

4 A Yeah, he said Junebug at the time. He did later on his
5 name was -- I'm trying to think. His name be Willie
6 Holloman. He called him Junebug.

7 Q And did you determine that that was that day, that
8 Monday the 12th, that they had been seen?

9 A It was either that Sunday or that Monday. I think it
10 may have been early that Monday like in the afternoon of
11 that Monday.

12 Q Well now, let me -- when you talked with Mr. Bruce,
13 this Roger Bruce, when you talked with Roger it would have
14 actually been Tuesday morning; would it not been? It
15 would have been after midnight?

16 A That's correct. The police responded on Monday night
17 before 12:00, and then it led into Tuesday morning after
18 12, early morning, early hours of Tuesday.

19 Q All right. So the Monday we're talking about is the
20 12th which was the day that the call came in, that the
21 call to you came in on Monday before midnight?

22 A Before midnight, yes, sir.

23 Q And the -- when Roger went to see Earl and Junebug
24 would have been on that very same day the 12th?

25 A Earlier on that, yes, on the 12th.

SW - L. DRAYTON - CROSS

1 Q Earlier on?

2 A Yes, sir.

3 Q Now at -- who decides in a particular investigation the
4 protocol that will be followed in relation to who
5 interviews, who take notes, who does this, who does that?

6 A The protocol would be the lead investigator would take
7 notes, and either one of the other investigators assisting
8 would normally ask the questions. So it's just something
9 that's -- it's not that we walk in, okay, you do this, you
10 do this. Normally if you're the lead investigator you'll
11 be taking notes and someone else asking questions.

12 Q So the lead investigator doesn't ever do the
13 questioning, he's the note taker. And the secondary or
14 standby people are the ones that do the actual
15 questioning?

16 A No. The lead investigator can assist, if I understand
17 what you're asking. Lead investigator can also assist
18 with asking questions, but his primary job is to take
19 notes. He can still -- he still will from time to time
20 still ask questions but his primary job is to take notes.
21 Since he is the lead investigator he is responsible for
22 the documentation and reporting what happened.

23 Q Who's responsible for following up on information that
24 may be derived from a particular interview?

25 A The lead investigator ultimately responsible.

SW - L. DRAYTON - CROSS

1 Q In that subject -- is that particular protocol
2 contained in a policy manual or is that just something
3 that the investigators division goes by?

4 A I'm not sure if it's in the policy manual. It's a
5 matter of protocol that we've been doing since I've been
6 in investigation.

7 Q Now when you refer to cause of death, do you mean in
8 relation to the official cause of death that you will
9 obtain when the autopsy is done?

10 A Right, that's -- the cause of death is, it's always
11 speculation until you have an official report from the
12 autopsy. The autopsy report gives you the official cause
13 of death.

14 Q So during an investigation there are occasions where
15 you will assume for, you know, for lack of a better word,
16 what the cause of death is until you get the autopsy
17 report that confirms or may be contrary to your initial
18 assumption; is that correct?

19 A We will take the facts that's presented, the facts that
20 we see at the scene, and we will include that with our
21 determination of the cause of death.

22 Q And you don't stop your investigation until you find
23 out what the official cause of death is as determined by
24 the prosector at the autopsy, do you?

25 A No, sir. You still continue after that.

SW - L. DRAYTON - CROSS

1 Q It may redirect the investigation but it will not -- it
2 does not stop the investigation not having that official
3 cause of death, does it?

4 A Like I stated earlier, no, sir. Once you get the
5 official cause of death that will kind of -- what it
6 will -- that gives investigators some lead way, some
7 guidance now what we are, we should be focusing on in
8 reference to a potential weapon that was used to cause the
9 injuries. But you don't stop the investigation,
10 investigation still continues. It's not a length of time
11 on a pending investigation.

12 Q I wasn't talking about time. I was just talking about
13 the investigation itself. Just don't go forward
14 immediately regardless of whether you have an official
15 cause of death; is that correct?

16 A That's correct.

17 MR. LAWSON: One moment, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. LAWSON:

20 Q Do you know how long Roger was at the -- in the second
21 floor interview room?

22 A No, sir, I don't.

23 Q Would 3 hours and 23 minutes be about right?

24 A I don't -- yeah, no I wouldn't agree with that.

25 Q Let me ask you this, during the time Roger was in the

SW - L. DRAYTON - CROSS

1 interview room did he become ill?

2 A He showed signs of if someone, say, was trying to throw
3 up.

4 Q Did he, in fact, throw up?

5 A I don't remember if he threw up or not. I know there
6 was a lot of, say, maybe attempts. He may have thrown up,
7 I know attempts to try to throw up.

8 Q You mean dry heaves?

9 A Dry heaves.

10 Q Was he drinking? I mean, not with you obviously not.
11 I mean, prior, could you determine whether or not he had
12 been drinking?

13 A It was obvious that he was under the influence of
14 something. I'm not sure what it was, appeared to be, to
15 place a more accurate statement. Appeared to be he was
16 under the influence of something.

17 Q Something. What do you mean something?

18 A Like I said, I can't say whether it was drinking or
19 what it was but the dry heaves just from my experience,
20 not necessarily personal, but from my experience as far as
21 dry heaves concerned would come from someone maybe
22 drinking or just sick because of drugs.

23 Q Is there any reason that you have to believe that he
24 was on drugs?

25 A No, sir.

SW - L. DRAYTON - REDIRECT

1 Q No information that you obtained from any investigator
2 or any of the crime scene people at that time or
3 thereafter that there were ever drugs involved in this
4 case; is that correct?

5 A I am not privy to it. I don't have any knowledge on
6 that.

7 Q You have no information about that, do you?

8 A I have no information about him being on any drugs.

9 Q All right, I don't have any other questions.

10 THE COURT: Anything further, Solicitor?

11 **REDIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q Now what did Mr. Bruce tell you about drinking all
14 during that day of the 12th?

15 A On the 10th he stated, as a matter of fact, when he --
16 if my memory serves me right. He went to his cousin
17 first, and then they went to Junebug, Mr. Holloman house,
18 and the reason for that was to drink. And they
19 subsequently went to the liquor store and they got some
20 liquor and they drank.

21 Q Okay. So he had been drinking that day of the 12th?

22 A Yes.

23 Q Okay. What indication, if any, did you have that he
24 understood what was going on when y'all were talking to
25 him?

SW - L. DRAYTON - REDIRECT

1 A There was no doubt that he understood what was being
2 said. He was responding back. Like I said, initially the
3 interview part, but that's stuff in that we do just to
4 check individual's response to see if they understand
5 what's going on, if they can just hold a conversation
6 which his conversation was fine. He understood and
7 answered, answered questions properly, correctly, what I
8 determined to be correct at the time.

9 Q And when you interview people, you ever interview
10 people that are upset?

11 A Yes, all the time.

12 Q Ever interview people that are emotional?

13 A Yes.

14 Q What do you do to calm them down or to put them at ease
15 before you take a statement from them?

16 A Well, that's part of just getting to know the person as
17 far as talking to the person also. That's part of --
18 that's the reason why you talk to a person just to have a
19 person very relaxed, try to make them comfortable as
20 possible. Some things we do is several things you can do.
21 One, if a person smokes for instance, you can offer them a
22 cigarette. A person that smokes, if they're a little
23 nervous and upset you give them a cigarette and they'll
24 calm down or something to drink as far as a soft drink or
25 something, either something like.

SW - L. DRAYTON - REDIRECT

1 Q And all that takes a little bit of time; doesn't it?

2 A Yes.

3 Q What purpose would there be in recording all that part
4 of it?

5 A Like I stated earlier, that's the reason why we don't
6 record when we first walk, when we first begin our
7 interview. That's the reason why we don't do that because
8 that can take a lengthy time, just have nothing to do with
9 the case itself.

10 Q Have you ever interviewed anybody that didn't know
11 anything pertinent to what you're investigating?

12 A Absolutely.

13 Q What would be the purpose in recording all that?

14 A There would be no purpose. Like I stated earlier, just
15 the reason why you conduct your initial interview because
16 there's nothing significant to the crime itself that's
17 going to lead to document. You just document that you
18 interviewed that person or talked to him and not record
19 anything.

20 Q Now you said Mr. Holloman, his statement was recorded?

21 A That's correct.

22 Q And did y'all interview him and talk with him first and
23 develop a rapport before y'all took his statement?

24 A Yes, sir. We talked with him, interviewed him, and
25 after we finished talking with him then we asked -- at

SW - L. DRAYTON - REDIRECT

1 that time we would ask him now what we would like to do
2 now is to record your statement if you do not have any
3 objections. And at that time the person will say yes or
4 no. Then we will take a recorder out and record it,
5 usually record it.

6 Q Do you have any knowledge of whether Terrance Carraway
7 did that with Earl Bruce or not?

8 A He did.

9 Q Okay. But you didn't participate in that?

10 A I did not.

11 Q Okay. Beg the Court's indulgence. I want to ask you a
12 couple more questions regards to something Mr. Lawson
13 asked you. What, if any, protocol is there about securing
14 a radio when you've got a person secured in the car?

15 A There's no protocol on that. There's -- the police
16 car, the radios are on obviously for a reason, for a
17 reason so you place the person in a car and you continue.
18 The traffic is still going on. Whatever come across the
19 radio is there and that person may or may not hear. It
20 all depends if he's listening to whatever is going on or
21 not. And because the radio is not on I'm -- I can speak
22 from personal experience. Because the radio is on it
23 doesn't mean that you understand what was going on. I can
24 recall when I first joined the police department it was --
25 it took me, like most officers, trying to figure what's

SW - L. DRAYTON - REDIRECT

1 being said all the time.

2 Q That's because y'all do all that 10-20 and 10-40
3 and ---

4 A A lot of it is in code. It's just understanding what's
5 going on. Actually we kind of laugh at the new officer
6 when he come here because they always listen to try to
7 figure out what's going on. After a while it comes second
8 nature to you. Just because the radio is on does not mean
9 you understand what's being said.

10 Q And if there was -- you and Investigator Carraway would
11 have been monitoring all that stuff in regards to this
12 when you were in route; is that correct?

13 A While I'm in route I would be in the police car when
14 I'm in route. There would be radio traffic going on, but
15 however, when once we arrive at the complex and there's no
16 radios. We don't take a radio into the interview room
17 when we are interviewing someone.

18 Q Well, but you were listening to a radio instead of
19 before that, right?

20 A Yes. From the time I got to my car till I got to the
21 scene, from the scene to hear whatever radio traffic was
22 on the radio.

23 Q And I want to be sure you understand my question. Now
24 I'm not asking you about cause of death from the
25 pathologist, okay. I'm asking about any information you

SW - L. DRAYTON - REDIRECT

1 might have to have a suspicion or presumption of what the
2 cause of death might be, is what I'm asking about. So let
3 me ask you my question. What information, if any, did you
4 have from radio traffic you were monitoring or anything
5 else in regards to a cause of death on Ms. Laura Creel?

6 A None. I did not have any information that I heard from
7 the radio or over the radio about the cause of death.

8 Q Or anything or any other source?

9 A Only information I had with reference to cause of death
10 came from pathology.

11 Q All right. So you didn't talk to forensics prior to
12 this interview?

13 A Prior to interviewing Mr. Bruce?

14 Q Yes.

15 A No, sir.

16 Q Okay, all right. No further questions.

17 MR. LAWSON: May it please the Court, just a
18 couple.

19 **RECROSS-EXAMINATION**

20 BY MR. LAWSON:

21 Q But officer, or Sergeant Drayton, now just because you
22 didn't know something don't mean nobody knew anything,
23 does it?

24 A That's correct. I can only speak for me.

25 Q I mean, you're not the all knowing guru at the crime

SW - L. DRAYTON - RECROSS

1 scene, are you?

2 A No, sir, I'm not.

3 Q I mean, especially at this one where you didn't even
4 try to find out anything. You didn't walk up there and
5 ask the patrol officer what's going on, did you?

6 A I didn't, but if I can explain why. That's not
7 protocol, like I stated earlier. Once I arrived on the
8 scene my position is go to the investigator. The
9 investigator already spoke with the patrol officer. They
10 briefed him; he briefed me.

11 Q Okay. So you get it second hand, right?

12 A I received my information from Investigator Carraway.

13 Q Who's got it from the patrol officer?

14 A That's correct.

15 Q And who got it from you don't know where?

16 A Well, they were there so they're the ones that ---

17 Q But you don't know that at the time?

18 A My information was based on the information I received
19 from Investigator Carraway once I arrived, which is the
20 protocol. It's not for me to go to patrol officer because
21 investigator on the scene would have already talked to
22 patrol officer.

23 Q This protocol you keep referring to, who sets protocol?

24 A Who sets the protocols?

25 Q Yeah.

SW - L. DRAYTON - RECROSS

1 A The protocol can be either written or unwritten.

2 Q Well, what is all this you've been talking about,
3 written or unwritten?

4 A That's unwritten.

5 Q Unwritten protocol?

6 A Yes.

7 Q So that means you do basically what you want to and
8 call it protocol?

9 A No, sir.

10 MR. CLEMENTS: I object, Your Honor. That's
11 argumentative, not a question.

12 THE COURT: Sustained.

13 MR. LAWSON: That's fine, Your Honor, I'll move on.

14 BY MR. LAWSON:

15 Q Now when you're interviewing somebody or when you get
16 to know them, you ever holler at them?

17 A No, sir.

18 Q Never cuss at them?

19 A No, sir.

20 Q Never?

21 A It's not in the interview. Interview station that's
22 not an interview. That will be more if raising your voice
23 or using different investigative techniques, that's called
24 interrogation.

25 Q Okay. So during interrogation do you do those things?

SW - L. DRAYTON - FURTHER DIRECT

1 A Do I ever raise my voice or yell at people?

2 Q Yeah.

3 A Yes, sir, that's part of interrogation.

4 Q But it's not part of the interview?

5 A No, sir. Part of the interview is just to -- there's
6 no reason to get a person upset. Part of the interview is
7 try to make the person feel comfortable as possible.
8 You're trying to solicit information so being negative on
9 my part would be, that wouldn't be a smart, wise thing to
10 do as far as investigation is concerned.

11 Q All right. I don't have any more questions.

12 MR. CLEMENTS: Just one last question.

13 **FURTHER DIRECT EXAMINATION**

14 BY MR. CLEMENTS:

15 Q Mr. Bruce knew Ms. Creel had been shot; didn't he?

16 A Yes, sir.

17 Q All right.

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

19 MR. LAWSON: Your Honor -- never mind.

20 THE COURT: You may step down. Thank you.

21 MR. CLEMENTS: Your Honor, we ask Sergeant Drayton
22 be relieved from his subpoena.

23 THE COURT: Any objection?

24 MR. LAWSON: No objection.

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

SW - E. BRUCE - DIRECT

1 MR. CLEMENTS: Your Honor, our next witness would
2 call would be Mr. Earl Bruce.

3 THE COURT: Mr. Bruce.

4 CLERK OF COURT: If you will, sir, go to the
5 witness stand. Stop right there. Place your left hand on
6 the Bible, raise your right hand.

7 WHEREUPON,

8 EARL BRUCE,
9 having been duly sworn by the Clerk of Court, testified as
10 follows:

11 CLERK OF COURT: Please be seated in the witness
12 chair and state your full name for the record.

13 THE WITNESS: Earl Bruce.

14 DIRECT EXAMINATION

15 BY MR. CLEMENTS:

16 Q Mr. Bruce, good morning.

17 A Good morning.

18 Q Can you please tell me your date of the birth?

19 A .

20 Q ?

21 A Yes, sir.

22 Q And can you please tell me your social security number.

23 A .

24 Q Say that again for me slowly.

25 A .

SW - E. BRUCE - DIRECT

- 1 Q Okay, all right. Now Mr. Bruce, where are you from?
- 2 A Lamar, South Carolina. That's where I born at.
- 3 Q Where you were born?
- 4 A Yes.
- 5 Q Where did you grow up?
- 6 A Between Lamar. It's right here in Florence.
- 7 Q Okay. You know Roger Bruce?
- 8 A First cousin.
- 9 Q You see him here in the courtroom?
- 10 A Yes.
- 11 Q Where is he sitting?
- 12 A Right there.
- 13 Q Got a red tie on sitting by Mr. Lawson?
- 14 A Well, he got that black coat on.
- 15 Q Okay, all right. Now how long you known Roger Bruce?
- 16 A All my life.
- 17 Q All right. And were you living or staying in Florence
- 18 on October 2009?
- 19 A Yes, sir.
- 20 Q Okay. Do you know Laura Creel?
- 21 A Yes, sir.
- 22 Q And how did you know Laura Creel?
- 23 A Through by Roger.
- 24 Q Through Roger, okay. Are you familiar with what kind
- 25 of car Laura Creel had?

SW - E. BRUCE - DIRECT

1 A Intrepid.

2 Q Okay. And what kind of -- what -- was that a General
3 Motors, Ford, Chrysler product or?

4 A Chrysler.

5 Q Chrysler product? Okay. What color was it?

6 A Tannish brown like.

7 Q Okay. And did Roger Bruce normally drive that car?

8 A Not normally, not unless she send him somewhere,
9 something for her to do, something for her he'll drive it.

10 Q But normally, would she do that normally in your
11 experience?

12 A No, he don't normally drive.

13 Q All right. Now do you recall what you were doing
14 October 12th, 2009?

15 A Well, got up that morning. I always go for a morning
16 walk, you know. Most of the time when I go for that walk
17 I was living on Maryland Street then. This is that Monday
18 morning it was raining so I couldn't get out there. And
19 when I go for it I always go by my cousin Roger on my way
20 back before I go home, you know.

21 Q Where was he staying at that time?

22 A He was staying on the corner of t and .

23 Q t and ?

24 A Yes.

25 Q And who did he live there with?

SW - E. BRUCE - DIRECT

1 A Laura.

2 Q Continue on.

3 A Well, it was raining so I couldn't go for my walk. As

4 I ate breakfast I walked to the door, stand there a while,

5 it still raining. So I come right here in the house where

6 I live with my cousin Maxine. We talked a little bit.

7 Then she was just talking about this DVD, getting a

8 certain movie. I sit on the back, it gonna start raining.

9 So it was happening I was just standing to the door.

10 Roger passed, car passed by, and I seen Roger driving. It

11 still was raining so I walked ---

12 Q What did you say to yourself then? What did you say to
13 yourself then when you saw him drive by?

14 A I was like what, that's Roger, you know, to myself. So

15 I walked out to the road and he passed by the house. It

16 was raining. He stopped up the street, was talking to a

17 friend of mine. And I seen my friends point back, say,

18 there he is. He must have asked him where I were, hadn't

19 seen me. So I went walking down, and you know, I got to

20 the car. I told him to carry me on up the street I wanted

21 to get this movie for my cousin. And we got -- I got in

22 the car and we rode up the street to ---

23 Q What kind of condition was Roger in at that time?

24 A He was drinking. And we went up the street. Knock --

25 I got out, knocked on the door. She must have had -- old

SW - E. BRUCE - DIRECT

1 man came to the door said she was sleeping. So I got
2 ready to get back in the car. Roger asked me to drive
3 'cause he was pretty high so I start driving. Went back,
4 I stopped by the house and told her she was sleep, then we
5 went on, you know. Went to Rogers. Went to the store,
6 got a little whiskey.

7 Q Which store did y'all go to?

8 A Mickey Finns right up the street from Rogers.

9 Q All right.

10 A And went back to Roger house. Sat there a little bit,
11 took a couple of drinks. It started raining and raining
12 and then I was nervous 'cause I know Roger don't normally
13 be having that car. He said, well, I was, Roger where you
14 get this car. He said Laura out of town. He told me she
15 was going, said ---

16 Q Well, did he tell you where she went, who she went
17 with?

18 A Not then. As we carried on, you know, I asked him for
19 an umbrella and, you know, I said shoot, it ain't going to
20 stop raining, let me use your umbrella. I said, you high,
21 I might as well walk home. He said, well, she won't be
22 back today, she'll be back tomorrow. He told me like
23 that. So he said, he said he had done talked with her.
24 So I felt relief, you know.

25 Q Did he tell you where she had gone to?

SW - E. BRUCE - DIRECT

1 A Well, he said she went to see her aunt, one of her
2 aunts was in mountains and she had some kind of pacemaker.
3 She wasn't doing good and they went to visit her.

4 Q Did he tell you who she went with?

5 A He say her son, her oldest son Mike.

6 Q Do you see Mike in this courtroom? Do you know Mike?

7 A I don't really know him that well. It's him right
8 there.

9 Q In the ---

10 A Bald head.

11 Q Which color shirt?

12 A The bald headed one.

13 Q Bald headed one? All right. You know his brother?

14 A I know Shane.

15 Q Okay, all right. Now so Roger told you that Laura had
16 gone up to see her aunt in the mountains with Mike, right?

17 A That what he told me.

18 Q And he tell you what she -- what she went in, what kind
19 of car?

20 A Well, he told me Mike driving a Mustang, a Mustang
21 like, you know, and they pile up in that and they went.

22 Q Okay. And but he told you, don't worry, she wasn't
23 going to be back that day, right?

24 A He say she -- they would be back late the next day so I
25 felt relief.

SW - E. BRUCE - DIRECT

1 Q All right. So what did y'all do the rest of the day?

2 A We sat for a while, talk a little bit. Roger was
3 pretty high. He laid down and took him a nap for a little
4 while. Well, I thought he was sleeping, next thing I knew
5 Roger was up. We sat in there. We talk a little bit
6 more, took another drink, talked. Then we decide we'll
7 ride out to my uncle house, my uncle Junebug. He died
8 back in November, last November.

9 Q Uncle Junebug, what's his real name?

10 A His name Willie, Willie Holloman.

11 Q Okay. Now who was driving when y'all went out to
12 Junebug's house?

13 A I was driving.

14 Q Okay. Why were you driving?

15 A Roger was high well -- mostly, you know, I drive anyhow
16 and so I did the driving.

17 Q All right. And did Laura ever let you drive her car?

18 A No.

19 Q No?

20 A One time I went to pick that car up for her, you know,
21 and she sent me at it. I went to get it. You know,
22 that's the only time I ever drove it.

23 Q Okay. Did Roger have a license?

24 A Not as I know of.

25 Q Okay. But you had one?

SW - E. BRUCE - DIRECT

1 A Not then.

2 Q Not then?

3 A No.

4 Q So you're taking a chance driving?

5 A I taking a chance driving too.

6 Q Okay. Both of y'all were?

7 A Yeah.

8 Q All right. Y'all went to Junebug's. Tell us what
9 happened next.

10 A Well, we went -- I went out to my uncle, me and Roger.

11 Came out, we sat there and talk a while. We went to --

12 what we did then? I'm trying to figure we went to get

13 more whiskey first or we went to his son house. I think

14 we went to his son house. Went to his son house. His son

15 wasn't there; we came back. Then we went and got out on

16 Cashua, got another bottle of liquor. His son came out;

17 that's how it really went. We sat there, you know, drunk

18 a little whiskey, talking, shooting it, you know. Then we

19 left. We went, came back over to Florence where my uncle

20 and I get one of his friend's house is on the corner of

21 Heron (ph) and Maryland (ph). We stayed there talking,

22 sipping a little bit, you know, and talking. It was

23 getting late. It rained all day that day.

24 Q Drank all day?

25 A It was raining all day.

SW - E. BRUCE - DIRECT

1 Q Raining all day?

2 A Yeah, it was raining all day. So Roger, he left. It
3 was getting late; he left. Ain't nobody know how we was
4 going to get back. I know I was going to get home 'cause
5 I was right up the street where I live at, but my uncle
6 had to go way back and his son had to go way out in that
7 country, in Timmons ville. So I walked up the street where
8 I lived and to call Roger. He say, you coming back? So I
9 walked back down, you know, where we were sitting there.
10 And just talking. Roger showed back up after a while.
11 We -- I think we -- it was me, my uncle, his son, and my
12 uncle's friend, we got in the car, we went somewhere
13 elses. I think we went to the liquor store again. I went
14 up the street to get that movie or something and carry
15 that to my cousin, to my cousin. Then we came back. We
16 stayed there for a while and I got -- got together and
17 carry my uncle, my uncle and son, carry -- his son home in
18 the country of Timmons ville, and I came back, dropped my
19 uncle off, and I came home and gave Roger the car. And
20 Roger left. You know, my cousin gave him a plate of food.
21 He left and he went home.

22 Q Okay. And that was the last you saw of him that day?

23 A That the last I seen of him.

24 Q Okay. And you don't have any doubts about what you
25 remember here today as to what happened that day?

SW - E. BRUCE - DIRECT

1 A That mostly what happened.

2 Q Okay. Now did you have an occasion to talk to anybody
3 in law enforcement very soon after that day?

4 A Well, that next morning I got up, you know, and me and
5 my cousin, we sitting around talking, just finished eating
6 breakfast. My brother knocked on and showed up. I was
7 getting ready to go for walk again. See, I always go for
8 my morning walk, you know. My brother-in-law and them
9 showed up. He said, you heard what happened to Roger. He
10 say Jennie Mae called him that night and say that Roger
11 was in jail. They locked Roger up for, you know, killing
12 Laura, said they found Laura dead. I said, what, Larry,
13 that ain't nothing but a lie. You know how Jennie Mae is,
14 she don't do nothing but run her mouth, Florence Morning
15 News. That's what I call her, you know. Roger been with
16 me all -- me and Roger been together all day yesterday
17 till last, first dark. So he said, yeah, that's what I
18 heard. Anyhow, when my brother left I went for my walk.
19 I walked from Maryland Street. I either go by Roger, what
20 I do, I check and see if Laura car home 'cause if she
21 there I don't stop; I just goes on, you know, take my
22 walk, she might be -- ain't working that day. Didn't seen
23 the car, I went in. But I didn't never pay nothing no
24 attention that much, you know. I wouldn't care, thinking
25 about what my brother had said. The door was open and the

SW - E. BRUCE - DIRECT

1 little dog was out and little tape was across or nothing.

2 And then when I came through it ---

3 Q Tape was across, what kind of tape was it?

4 A The yellow tape. I seen that yellow tape although it
5 wasn't no long piece. So I went ahead on took my walk,
6 walked up King, probably went through by Schofield, went
7 on through Kmart yard, walked out all the way up just
8 before you get to the pen-- what you call that road? You
9 cross and go over to the little Florence Mall. I turned
10 around at the back walking back through. Got into Kmart
11 yard and guy jumped out the car, went two cars with a jeep
12 behind it and a car in the front coming at me. I said,
13 what's going on. It kind of freaked me out. I thought it
14 was a cop. And I paid attention it was Shane. You know,
15 Shane came up to me and asked me when the last I seen
16 Roger. I said, me and Roger was together yesterday. As a
17 matter of fact, we was together all day, we was driving
18 Laura car. He said Laura was gone. Told him, he said,
19 Laura was supposed to be with Mike, that's what I say.
20 You know, here, Mike was right there. He said, Roger lied
21 to you. He said Roger called me last night about 11:00
22 and told me he seen ---

23 MR. LAWSON: Your Honor, I'm gonna stop -- this is
24 all hearsay and I'm going to object at this point.

25 THE COURT: All right, sustained.

SW - E. BRUCE - DIRECT

1 BY MR. CLEMENTS:

2 Q Mr. Bruce, don't tell us what anybody else said. But
3 tell me what conclusion did you come to about whether
4 Laura was alive or not.

5 A He called the cop.

6 Q Okay. And did you talk to the cops later?

7 A The cops kept me down, brought me down to the detention
8 center and questioned me.

9 Q Okay. And who did you talk with?

10 A Which one it was? I done talk to that one back there.
11 He came in the office; it was two of them.

12 Q Was it this gentleman right here?

13 A It had to be that one. He was the next one that
14 questioned me. It had to be that one there. Came in the
15 office and they questioned me. It was two of them.

16 Q Okay. And did you give them a statement?

17 A I gave them a statement.

18 Q Same thing you're telling here today?

19 A I just told him what happened, what I did, what was me
20 and Roger did that day, you know.

21 Q Okay. And you told him what Roger told you?

22 A I told them what Roger told me.

23 Q Okay. And is that what you're telling this jury here
24 today?

25 A That's what I'm telling the jury.

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1 Q Okay, all right. Now let me ask you this, when they
2 brought you down here did they bring you to this building?

3 A They brought me to this building, yeah.

4 Q To this building, okay. They didn't take you to
5 Effingham?

6 A No.

7 Q Where did they talk to you at? What kind of room was
8 it?

9 A It was in a room. We was on -- we was on the fourth
10 floor, third floor, one of those floors. What we went in
11 a room it was a -- one of it was a lieutenant and another
12 one.

13 Q Okay. And did you talk to them freely and voluntarily?

14 A Yes, I answered their questions, what they asked me.

15 Q All right. Now Mr. Bruce, just I want to ask you this
16 just so we're not hiding anything from anybody. You've
17 been in trouble with the law in the past; haven't you?

18 A Yes.

19 Q Okay. And you've had a drinking problem in the past;
20 haven't you?

21 A Yes.

22 Q Now what are you trying to do about your drinking
23 problem now?

24 A I'm in a rehab.

25 Q Okay. Where at?

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1 A Greenville, South Carolina.

2 Q Okay. You doing okay now?

3 A I'm all right.

4 Q Okay. And the last ten years, have you had any
5 problems with the law in the last ten years?

6 A Yeah, I been to jail for, you know, yes.

7 Q In 2002 did you have a driving under the influence
8 conviction?

9 A Yes.

10 Q And did you have a driving under suspension conviction
11 in 2002?

12 A Yes.

13 Q And did you have a trespassing in 2005?

14 A Yes.

15 Q And a entering premises after warning in 2005?

16 A Yes.

17 Q A shoplifting in 2006?

18 A Yes.

19 Q And let's see, you have a burglary third conviction
20 2008?

21 A 2008?

22 Q Excuse me, 2007?

23 A Yes.

24 Q In 2008 did you have a shoplifting?

25 A Yes.

SW - E. BRUCE - DIRECT

1 Q And you hadn't had any convictions since then, right?

2 A No, sir.

3 Q That's all you had in the last ten years?

4 A Yes, sir.

5 Q Okay.

6 MR. CLEMENTS: Beg the Court's indulgence a moment.

7 THE COURT: Yes, sir.

8 BY MR. CLEMENTS:

9 Q You know about Laura and her dog much?

10 A I know she love her little dog.

11 Q She -- was it her habit to leave that dog?

12 A They leave the dog all the time. They don't -- she
13 don't carry the dog with her.

14 Q When she goes to work and stuff she leaves it behind.

15 A It either be there with Roger or the dog be outside on,
16 you know, on the hitch.

17 Q Okay, all right. And when the car is there you said
18 you normally wouldn't stop?

19 A No, not most of the time.

20 Q Okay.

21 A Sometimes I would, sometime I wouldn't. Not most of
22 the time I don't stop.

23 Q But if the car wasn't there --

24 A I'd go there and see if Roger home.

25 Q Okay, all right. Please answer any questions

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1 Mr. Lawson may have.

2 MR. LAWSON: May it please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. LAWSON:

6 Q Earl, I believe that you had told the police that Roger
7 was dog drunk?

8 A Yes.

9 Q You remember telling them that?

10 A Yes.

11 Q And would that be when he first got there when you
12 first saw him that day?

13 A Yes.

14 Q About what time of day was that?

15 A I seen Roger, it was raining that morning. It had to
16 be around, I don't know, 9, 10, something like that, you
17 know. It was early.

18 Q Okay, early. About ten at the latest you'd say?

19 A It was ten.

20 Q Okay. And then how long were y'all together that day?

21 And did you -- did I hear you say on direct that you -- it
22 was till first dark?

23 A We was together all day.

24 Q All day ---

25 A Mostly till he left. For about an hour one time.

SW - E. BRUCE - CROSS

1 Q What's that?

2 A Until he left about a hour one time I left. We was
3 together all day.

4 Q And what time was it when y'all split up finally in the
5 evening?

6 A It was breaking dark, just getting ready to turn dark.

7 Q Okay. And that was in October?

8 A Yes.

9 Q So it's a little earlier than breaking dark would be
10 now; wouldn't it?

11 A Yeah.

12 Q Wouldn't you say around 7, something like that?

13 A Something like that. It been raining, you know, it get
14 dark earlier, quicker, you know, if the weather bad like
15 that.

16 Q Could it have been 5?

17 A It might have.

18 Q And basically what did y'all do all day from the time
19 you first saw Roger until he left around whatever time
20 first dark?

21 A Well we, like I said, I went to his house. When I got
22 there he carry me up to get the DVD and I dropped, you
23 know, the lady wasn't -- she was upstairs asleep. I went
24 on. Me and him went to his house. We went and got some
25 whiskey and went to his house. Took a couple of drinks.

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1 Roger laid down for a while. Got up, took a couple more
2 drinks and then rode out to my uncle. That's basically
3 how it was going, you know. We were hanging around, talk
4 you know, shoot it, then stuff like that. We would have
5 did a whole lot of riding. Then we got to Florence and
6 this where we start at.

7 Q And had a few more drinks?

8 A Yeah.

9 Q So you drank all day basically?

10 A Basically off and on.

11 Q All right. So Roger wasn't sobering up during the day?

12 A He was high up. You know, he really wasn't sobering up
13 like that.

14 Q Okay. Now you said you've known Roger all your life?

15 A Mostly all of my life.

16 Q And how long had you known Laura?

17 A Well, I met Laura -- I was living with Roger. Me and
18 Roger were staying together. This is about, I guess 12,
19 that be 12 years. Maybe longer, I don't know.

20 Q Okay.

21 A It was in the 90 -- I mean, in the late.

22 Q And did -- what kind of relationship did Laura and
23 Roger have?

24 A Good relationship.

25 Q Did you ever know Roger to hurt her in any way?

SW - E. BRUCE - CROSS

- 1 A No.
- 2 Q Do you know if Roger -- did Roger work at all?
- 3 A Yes.
- 4 Q What kind of work did he do?
- 5 A Brick work.
- 6 Q Brick mason?
- 7 A Yes, sir.
- 8 Q How long had he done that?
- 9 A He doing that for a long time.
- 10 Q And would -- did he have a regular job or would he --
- 11 A That his job.
- 12 Q --work with a regular crew?
- 13 A Yes.
- 14 Q Now did Ms. Laura drink as well?
- 15 A Yeah, she drank.
- 16 Q What kind of -- what was Roger's drinking habit, do you
- 17 know?
- 18 A Roger would drink and quit. He might quit for a year
- 19 or so along. Then he'll go back maybe start back to drink
- 20 and stuff like that. He never did stay on alcohol.
- 21 Q So he'd drink and then--
- 22 A He'll stop.
- 23 Q --he'd quit?
- 24 A Yes.
- 25 Q And when he was drinking how would he drink?

SW - E. BRUCE - REDIRECT

1 A He'll drink. When he drinking he'll drink.

2 Q Drinking all the time?

3 A When he ain't working he gonna drink.

4 Q Okay. Now did I understand you to to say that he would
5 drive the car time to time for her when she would send him
6 places?

7 A Maybe to the store, something like that for her, you
8 know.

9 Q But that did happen on occasion?

10 A Yes.

11 Q I don't have any further questions. Thank you, Mr.
12 Bruce.

13 MR. CLEMENTS: Just a couple more questions, Your
14 Honor.

15 **REDIRECT EXAMINATION**

16 BY MR. CLEMENTS:

17 Q So the only time you knew Roger to drive that car is
18 when Laura would send him to do something?

19 A Mostly. He don't drive that car.

20 Q Okay. Now you said when he'd drink he would drink.

21 A Most time now if he -- Roger on his drinking spree he
22 gonna drink, you know. I know because I been drinking
23 with him.

24 Q If something was on his mind would that be times he'd
25 drink or when would be the times he'd drink? You say he'd

SW - E. BRUCE - REDIRECT

1 quit sometimes.

2 A He get make up his mind, say he tired, he start talking
3 about quit drinking he gonna quit drinking sooner or
4 later. That's how he do it.

5 Q Well, what would make him start drinking?

6 A I don't know. Roger just drink. That run in our
7 family.

8 Q Okay.

9 A The whole family is drinkers.

10 Q All right. Well, when you got something on your mind
11 when you were drinking, you got something on your mind
12 bothering you would you drink --

13 MR. LAWSON: Objection, Your Honor, leading.

14 THE COURT: Leading and relevance, sustained.

15 MR. CLEMENTS: All right, I'll withdraw that
16 question.

17 Mr. Bruce, thank you for coming and good luck with
18 your rehab.

19 Your Honor, may he be released from his subpoena?

20 THE COURT: Any objection, Mr. Lawson?

21 MR. LAWSON: No, Your Honor.

22 THE COURT: Thank you, sir. You're free to go.

23 MR. CLEMENTS: Your Honor, our next witness is
24 going to be a little lengthy.

25 THE COURT: We're going to take a short break at

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1 full name for the record.

2 THE WITNESS: Cynthia Anna Schandl, S-C-H-A-N-D-L.

3 **DIRECT EXAMINATION**

4 BY MR. CLEMENTS:

5 Q Doctor Schandl, could you please tell this jury where
6 you work, what you do?

7 A Yes, sir. I work at the Medical University of South
8 Carolina in Charleston, South Carolina, in the Department
9 of Pathology and Laboratory Medicine and in the medical
10 and forensic autopsy section. In that section I am a
11 forensic pathologist and associate professor so my main
12 job as a forensic pathologist is the performance of
13 autopsies.

14 Q Doctor Schandl, could you please tell this jury about
15 your educational experience and your degrees?

16 A Yes, sir. In order to become a forensic pathologist
17 one must first complete college. I have my bachelor's
18 degree from University of California. One must then
19 complete medical school, which I did complete medical
20 school at the Medical University of South Carolina in
21 Charleston. And during that time I also completed a
22 doctoral degree, a Ph.D. degree, in the field of
23 pathology. And after completing medical school one then
24 must do a residency which is further training in a special
25 field of medicine. I chose pathology. That's a four year

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1 additional training after medical school. And after that
2 training if one chooses to subspecialize in the field of
3 pathology on one may continue in what is called a
4 fellowship, and I did another one year fellowship in the
5 field of forensic pathology. Following the trainings
6 there are Board certifications by the American Board of
7 Pathology in three fields which I am boarded, the anatomic
8 pathology, clinical pathology, and forensic pathology. I
9 hold Board certification in those three fields.

10 Q So you got four years and undergraduate?

11 A Yes, sir.

12 Q Four years of medical school?

13 A Yes, sir.

14 Q Four years ---

15 A Residency.

16 Q ---residency. And one year in forensic pathology
17 fellowship?

18 A Fellowship, yes, sir.

19 Q So 13 years total?

20 A Yes, sir.

21 Q Okay.

22 A Not counting doctorate.

23 Q All right. And now since that time have you gotten any
24 additional training or attended additional seminars, any
25 other specialized training?

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1 A Yes. So on an ongoing basis as a physician, as a
2 doctor, I'm required in order to keep my medical license
3 to have continuing medical education credits. I do at
4 least 50 hours of continuing medical education every year.
5 In addition, there are subspecialty meetings that I
6 attend, and I receive subspecialty journals which I do my
7 best to keep up with. And in addition to that, I also
8 write for some of the journals and some of the
9 subspecialty societies in the field of forensic pathology.

10 Q And you also say that you teach at the Medical
11 University of South Carolina?

12 A Yes, sir.

13 Q And what subjects do you teach there?

14 A Well, I teach a number of specialties, but
15 specifically, I direct the forensic pathology fellowship
16 program. So as the new individual coming into train for
17 forensic pathology comes into our program, I'm the
18 director of that so I'm directly responsible for that new
19 forensic pathology fellows education.

20 Q As far as experience how many years have you been
21 serving there at the Medical University?

22 A Well, I've been doing autopsies at the Medical
23 University since about 1999 or 2000, and I've been on
24 faculty there since 2004.

25 Q And can you tell us an approximate number of autopsies

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1 you've performed?

2 A I've performed over 2000 autopsies.

3 Q Have you been qualified to testify as an expert in the
4 field of forensic pathology in state or federal court?

5 A Yes, sir, both.

6 Q And can you tell us approximately how many times you've
7 been qualified to testify as an expert?

8 A More than 50.

9 MR. CLEMENTS: Your Honor, at this time we would
10 present Doctor Schandl as an expert in the field of
11 forensic pathology.

12 THE COURT: All right, any objections or any voir
13 dire you wish to ask?

14 MR. LAWSON: No, Your Honor.

15 THE COURT: Ladies and gentlemen, I'm gonna explain
16 to you in more detail when I charge you on the law; but
17 just briefly at this point, a person who is qualified as
18 an expert witness is someone who has certain areas of
19 specialty through education and training that allows them
20 to testify as to their opinions based on their findings
21 within that specialty. Typically a witness, a lay
22 witness, is not permitted to testify as to their opinions
23 about things. They are to only testify as to facts,
24 things in which they've seen or heard. However, an
25 expert because of their education and their training, is

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1 allowed to testify as to their opinions regarding their
2 opinions as to their findings based within that specialty.
3 Now I will tell you this now and tell you later, a person
4 who is qualified as an expert, that individual is, their
5 testimony is to be given no greater weight or value simply
6 because they are an expert witness. You give all the
7 testimony in this case whatever weight and value you think
8 it should hold so you're not to give any added weight or
9 importance to a person's testimony solely because they are
10 an expert witness. You judge the credibility and the
11 believability of witnesses just as you do with all the
12 other witnesses.

13 Solicitor.

14 MR. CLEMENTS: Thank you, Your Honor.

15 BY MR. CLEMENTS:

16 Q Doctor Schandl, would you explain to this jury what
17 pathology is and what forensic pathology is and how what
18 you do differs from what they might see on television or
19 in the movies?

20 A I can talk, so pathology is quite simple. When you
21 break down the word it just means the study of disease.
22 So it's a very wide field that encompasses all states that
23 are not normal and natural. So forensic pathology is more
24 specific to those fields of disease or injury or states
25 that are not normal when they're coinciding with legal

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1 circumstances. So often we will get cases for autopsy,
2 which is one of our main forms of investigation, where
3 violence is involved, where an accident may be suspected
4 or homicide or suicide, or perhaps somebody who died
5 unexpectedly and without a medical history where it's not
6 clear what the cause of death is. So forensic pathology
7 is sort of where medicine and the law coincide in order to
8 make some sense of death in our society from all different
9 places whether they're from accidents, homicides,
10 suicides, or from natural causes. So forensic pathology
11 is that subspecialty.

12 Again, the way that we reach our, many of our
13 conclusions, is through the autopsy which is a medical
14 procedure during which has many different stages.
15 Firstly, when we receive the body the body is referred to
16 to us, in this case, in our state of South Carolina from
17 the coroners office. So the coroner will refer a case to
18 us. Then if they have details about the case they will
19 provide them at that time. The body comes up to the
20 autopsy suite, and we will generally take photographs of
21 that person as they arrive so when they're clothed or not
22 clothed. And so that is the first documentation that's
23 exactly how they come to us. The autopsy continues with
24 removal of clothing if it is removable if there's clothing
25 worn. Documentation of the clothing, whether the clothing

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1 has any bearing on the pathology investigation. In some
2 cases the clothing may be photographed as well. Following
3 that part of the procedure we do examine the external
4 surface of the body and what we call the external
5 examination. Again, photographs can be taken. We
6 document those things that show identity of the victim
7 whether it's eye color, height, weight, any scars, those
8 sorts of things, as well as any pathology for things that
9 are not normal on the body such as injuries, abrasions,
10 which are scrapes, bruises, gunshot wounds, whatever there
11 might be. So the external part of the examination is --
12 can actually be a very large component.

13 Following the external examination and the
14 documentation of that, which we do both diagrams and
15 photographs, we move to what's commonly considered the
16 autopsy which is the internal examination where we do the
17 line incision, and we look into the body cavities and we
18 look at each individually, again, for any signs of disease
19 or an injury. And during this process we're also taking
20 body fluids that may be used for analyses where taking
21 section of pieces of the organs, whether it's heart or
22 lung or kidney, to look at under a microscope if we
23 suspect that there may be disease or injury or other
24 precesses going on so we're taking sections to look at
25 later. So all of those things are part of the autopsy.

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1 Following our investigation of the body itself
2 we then will receive any ancillary testing information
3 back, whether that's toxicology or chemistry analysis, or
4 whatever it may be for that particular case. We're
5 looking at our glass slides for any pathology or
6 abnormalities in those organs, so again, injuries and
7 diseases. And then finally, we put together a
8 comprehensive report that encompasses all of those
9 findings and in which we try to come to a conclusion about
10 the cause of death and the manner of death.

11 Q Now did you have an occasion to conduct the autopsy on
12 a Laura Creel?

13 A Yes.

14 Q From Florence County?

15 A Yes, sir.

16 Q In October 2009?

17 A Yes, sir.

18 Q All right. Could you please tell this jury how you
19 came to have Ms. Creel and ask to be -- to conduct an
20 autopsy on her.

21 A Yes. So again, we're contacted by the coroner of the
22 county so the Florence County coroner or one of his
23 deputies regarding simple facts of the case, the identity
24 of the victim if it's known and so forth. And then the
25 county officials, your Florence County officials,

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1 transport the body to Charleston to the Medical University
2 of South Carolina. So that's how we're notified is
3 actually through the coroner system.

4 Q And when you got Laura Creel were you able to examine
5 and find any wounds on her?

6 A Yes, sir. There were wounds on a Laura Creel,
7 including a gunshot wound to the left side of the forehead
8 and then several bruises and scrapes to her nose, to the
9 side of her face, bruises to her right leg, her right
10 hand. So she had bruises and scrapes and a gunshot wound
11 to the left side of the forehead.

12 Q Okay. Is there any way of determining whether those
13 bruises and scrapes occurred before or after the gunshot
14 wound?

15 A There is. If you are still living when you're injured,
16 if the injury is significant enough to cause a bruise
17 you'll have blood go into that area if your heart is
18 beating. So a bruise, that is what we might call
19 pre-mortem or antemortem before the time of death, is
20 going to be a different color so it's going to have a
21 bloody appearance, a red bloody appearance or hemorrhagic
22 appearance. It's gonna look like a bruise. Whereas,
23 those scrapes that occur after death when the heart is no
24 longer beating you're not going to have the blood being
25 pumped into those areas so you're not going to have a

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1 bloody appearance to those wounds. You may have scrapes
2 that rather than being red based might be what we would
3 describe as yellow based so not having any blood entering
4 those areas.

5 Q Did Ms. Creel suffer any antemortem or pre-death
6 bruises and scrapes?

7 A She did. She had several scrapes and bruises that were
8 before she died including those that I mentioned to the
9 bridge of her nose, the side of her face, her right hand,
10 her right leg around the knee.

11 Q All right. Did she have any post-mortem or after death
12 scrapes and bruises?

13 A Yes. There were also some yellow based abrasions in
14 different areas such as the elbow and other places on the
15 body that looked like scrapes that occurred after she was
16 dead, so again, yellow based without any blood entering
17 those tissues.

18 Q And would that have occurred if a body was moved?

19 A It occurs if a body is moved or damaged in some way
20 after death. It can occur simply from pressure, so if
21 someone is dead on the floor perhaps on their elbow, on
22 their elbow, they might have a pressure abrasion that has
23 a yellow base just from being in that position. So it can
24 be from damage or it can also be from the position of the
25 body.

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1 Q Do you have an opinion to a reasonable degree of
2 medical certainty of those type of post-mortem scrapes and
3 bruises could occur from a body being transported around
4 in the trunk of a car?

5 A That is certainly possible. Again, any time you're
6 damaging tissues where someone is no longer alive you may
7 see a mark on the body, and it should not be associated
8 with any bleeding .

9 Q Now you have talked about a gunshot wound. Can you
10 tell us in detail about the gunshot wound and if you have
11 a opinion to a reasonable degree of medical certainty as
12 to what type of wound it was, how it was caused, and any
13 other details in regards to the wound?

14 A Yes, sir. So she has an entrance gunshot wound to the
15 left side of her forehead, entrance meaning that's where
16 the bullet went in. She -- we did retrieve a bullet from
17 her brain so there is no exit wound. So if you have an
18 entrance wound and no exit wound we call that a
19 penetrating gunshot wound as opposed to perforating
20 gunshot wound. So she has a penetrating gunshot wound to
21 the left side of her forehead. It's quite characteristic
22 for an entrance gunshot wound; it's circular. There is
23 actually some blackish material that can be rubbed off
24 around the wound that we call soot, which is the material
25 that exits the muzzle or the end of the gun. This

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1 information tells us that the muzzle end of the gun was up
2 against or very close to the target, in this case
3 Ms. Creel's forehead, so we call it contact. So those are
4 the different things that we know about the entrance
5 gunshot wound. The other thing that suggests that it was
6 contact or very, very close to the skin if not directly on
7 the skin, is that there are some skin splits radiating
8 around the central circle of the wound and those skin
9 splits suggest that the gases that were exiting the end of
10 the muzzle of the gun actually went underneath the skin
11 and blew back out a little bit. So we have all of those
12 characteristics that are consistent with a contact
13 entrance penetrating gunshot wound.

14 Q Do you have any opinion to a reasonable degree of
15 certainty in your field or are you able to answer question
16 about the type of caliber weapon that might have been
17 used?

18 A The caliber is best determined by the forensic
19 scientists, the ballistics experts. The way that we look
20 at caliber anatomically when we're looking at a person is
21 that we are measuring the hole where it enters; and we're
22 also measuring, in this case, the projectile or bullet
23 that we retrieved from her head. So, both of those cases
24 suggest a small caliber weapon. For example, the
25 measurements of the base of the projectile, the bullet

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1 that was removed, are about .21 or .22-inch which suggests
2 a caliber because many calibers in -- many calibers are
3 measured in inches so if you take .21 or .22 that suggests
4 a caliber. So those are the -- that is the data that I
5 can get anatomically. However, I do not -- I cannot
6 provide you with a specific caliber. I defer to the
7 ballistics experts.

8 Q Do you -- can you tell us what the size of the entrance
9 wound was?

10 A Yes, sir. If I may, I have a copy of the report that
11 is generated from this case. I'm going to refer to that.
12 The defect in the skin of the left lower head is .14 by
13 .15-inch so we're talking -- so point means -- so it's a
14 little bit bigger than a tenth of an inch but smaller than
15 two-tenths of an inch, so quite small.

16 Q And this also would suggest what type of caliber
17 weapon?

18 A It suggests a smaller caliber weapon.

19 Q All right. Well first let me ask you this before I
20 show you this. Did you notice or able to locate or detect
21 any type of wounds on Ms. Creel that could be classified
22 as a defensive wound?

23 A Well, I mean, the short answer is yes. Those wounds
24 that are on the backs of surfaces or the arms and the
25 hands can be classified as defense wounds. That simply

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1 means that they're consistent with one offering a defense
2 to an attack. It doesn't mean that that's what actually
3 happened; but yes, there are some wounds that are
4 consistent with that.

5 Q Okay. I'm gonna show you what's been marked as State's
6 Exhibit 103 for identification. Can you tell me yes or no
7 if you recognize that and know what that is?

8 A Yes, sir.

9 Q Okay.

10 A This ---

11 Q I don't want you to tell me about it yet, okay. But
12 you can recognize that?

13 A Yes, sir.

14 Q And where did that come from? Who made those
15 photographs?

16 A Our radiology department actually comes to the autopsy
17 suite to take these.

18 Q And is that what you use as part of your process of
19 conducting the autopsy?

20 A Yes, sir. When we suspect a gunshot wound we will take
21 x-rays routinely in order to try to identify whether there
22 is a projectile or bullet in the individual and where that
23 projectile is so that we can best retrieve it.

24 Q Okay, all right.

25 MR. CLEMENTS: Your Honor, at this time I move

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1 State's Exhibit 103 into evidence.

2 MR. LAWSON: Objection and previously noted, Your
3 Honor.

4 THE COURT: All right, sir. Overrule the
5 objection. I'll gonna allow it.

6 (WHEREUPON, State Exhibit No. 103 was admitted
7 into
8 evidence.)

9 MR. CLEMENTS: Your Honor, I ask permission for
10 Doctor Schandl to step down.

11 THE COURT: If you would, when you do step down if
12 you would face the Bench so the court reporter can hear
13 you better. Thank you, Ma'am.

14 BY MR. CLEMENTS:

15 Q Doctor Schandl, I'm gonna ask if you can stand right
16 here, and if you can show this and explain what this is to
17 the jury. And I'm gonna stand over here 'cause I'm loud
18 enough I know she can hear me with my back turned to her.

19 A All right. So this is a photo copy of a printout of
20 the x-rays that were taken towards the beginning of
21 Ms. Laura Creel's autopsy. So as I mentioned previously,
22 if we suspect a gunshot wound we will ask our radiology
23 department to bring their portable x-ray machine down to
24 the autopsy suite and take x-rays where we expect the
25 projectile to be. We see two images here and that is also

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1 routine. When we're trying to locate an object we want to
2 see it in two different planes so that we know where it is
3 in space when we're actually looking for it. So the image
4 on the top is a lateral image so the x-ray is going this
5 way through the head, and the image below is what's called
6 anterior/posterior. Basically, the x-ray is going this
7 way through the skull. So we have two different views of
8 Ms. Creel's skull by x-ray in these two pictures that are
9 adjoining. In the lateral x-ray, if you can see a darker
10 white or brighter white area right here, that is the
11 projectile in Ms. Creel's head. And when you look at it
12 from anterior/posterior, front to back, you can see
13 perhaps a brighter white area here and that is that same
14 projectile in that plane. So from that information we can
15 determine how far back the bullet is and that it's on the
16 right side. So when we're open -- when we later open the
17 head will be better equipped to locate that projectile
18 more quickly.

19 Q Okay. And where did this projectile stop and come to
20 rest in her anatomy?

21 A It came to rest in her brain. The way that the bullet
22 went was into her forehead across the midline. It struck
23 the inside of the skull on the other side where we saw a
24 small, a small fracture, and then it ricocheted off back
25 into her brain.

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1 Q So it came in from the left side, hit the skull on this
2 side, and then ricocheted back towards the back?

3 A That's correct.

4 Q Okay, all right. Thank you. Have a seat.

5 A (Witness complies.)

6 Q Doctor Schandl, do you have an opinion to a reasonable
7 degree of medical certainty as to how long Ms. Creel had
8 been dead approximately, or can you be very specific in
9 that type answer?

10 A I cannot be specific in how long an individual is dead,
11 but there are a great number of variables that I do not
12 have in front of me, including the temperature, the
13 humidity. According to sources there was more than one
14 place that the body may have been so I would need
15 information from both of those places, how long was one --
16 was she in one place versus the other place. So quite
17 frankly, I cannot tell you within a small range of how
18 long she was dead.

19 Q Can you tell us within the general range?

20 A Yes. It is my opinion that from the physical findings
21 and the chemical findings that she was probably dead for
22 at least a day, probably not more than about four days.

23 Q Okay. So anywhere from one to four days?

24 A That's about right.

25 Q Okay. So when we see on movie or television where they

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1 say the body's been dead for 27 hours and 32 minutes,
2 that's just kind of Hollywood fancy stuff?

3 A Unless somebody saw it happen.

4 Q Okay. Now do you have an opinion to a reasonable
5 degree of medical certainty as to the cause of death?

6 A Yes, sir. Her cause of death -- and I will read it
7 from the report and then explain it -- is cerebral
8 laceration due to contact penetrating gunshot wound to the
9 head, forehead. So cerebral laceration. Cerebral, that's
10 just of the brain so and laceration just means it's mashed
11 up essentially. So cerebral laceration is mashing of the
12 brain. So as the bullet passes through the brain it's
13 tautly (ph) damaged so that's what that line refers to.
14 And then we already talked a little bit about contact
15 penetrating gunshot wound to the head. Contact because we
16 have some evidence that the muzzle of the gun was at or
17 very near the skin with the soot and the skin splits
18 penetrating, as opposed to perforating again, because we
19 did recover projectile, there was no exit wound.

20 Q Now do you have an opinion to a reasonable degree of
21 medical certainty as to the manner of death?

22 A Yes, sir. The manner of death is given to us as a
23 choice of five things. We can choose between
24 undetermined, suicide, homicide, natural, and accidents.
25 And in this case my opinion as to the manner of death is

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1 homicide.

2 Q And what's a layperson's way of stating homicide?

3 A Well, simply put that's defining that would mean that
4 someone died by the actions or inactions of another
5 person.

6 Q Okay. So another way of saying that might be death by
7 the hands of another?

8 A Yes, sir.

9 Q Correct me, and I want to make sure I understand,
10 summarize what you've told us, correct me if I'm wrong,
11 that she died at the hands of another by being shot with a
12 small caliber weapon either by contact or very close to
13 the head?

14 A Yes, sir.

15 Q Okay. And that's a correct summary?

16 A That is correct.

17 Q Okay. Please answer any questions that -- well, let me
18 ask you this first. Were there any other contributing
19 factors to the death?

20 A No. As far as natural disease processes there was
21 nothing to suggest that she was ill.

22 Q Okay. Please answer any questions Mr. Lawson may have.

23 A Yes, sir.

24 MR. LAWSON: May it please the Court.

25 THE COURT: Yes, sir, Mr. Lawson.

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CROSS-EXAMINATION

1

2 BY MR. LAWSON:

3 Q Doctor, the one to four days in relation to time of
4 death, that would be determined from the time you were
5 doing the autopsy?

6 A Yes, sir.

7 Q Okay. Not from the time that the body was found?

8 A That's correct.

9 Q Okay. So, and you did the autopsy on what day?

10 A I did the autopsy on October 13th, 2009.

11 Q So it would be one to four days from that day?

12 A That's correct.

13 Q Did you also do toxicology?

14 A Yes, sir. Routinely on our forensic cases we will do
15 toxicologic analysis when we take what body fluids
16 available. Let me see what was sent. In this case it was
17 cardiac or central blood, and the samples were sent to the
18 South Carolina Law Enforcement Division for analysis.

19 Q Did you receive an analysis?

20 A Yes, sir.

21 Q What was that?

22 A The analysis was positive for alcohol or ethanol at a
23 level of 0.144 percent blood alcohol concentration.

24 Q Anything else?

25 A There was nothing else that was verified, no, sir.

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1 Q No other drugs?

2 A That is correct.

3 Q Okay, thank you. I don't have any further questions.

4 THE COURT: Anything further, Solicitor?

5 MR. CLEMENTS: Just would like to thank Doctor
6 Schandl for coming and ask she be excused from her
7 subpoena.

8 MR. LAWSON: No objection, Your Honor.

9 THE COURT: Thank you very much.

10 MR. CLEMENTS: May we approach the Bench, Your
11 Honor.

12 THE COURT: Yes, sir.

13 (WHEREUPON, counsel approached the Bench for
14 an off-the-record discussion.)

15 THE COURT: Ladies and gentlemen, in talking to the
16 attorneys, if -- no one can gauge 'cause examinations and
17 cross-examinations flow based on, you know, information
18 that's given so they anticipate that the next witness may
19 be a fairly lengthy witness, and it's already 12. We
20 usually break for lunch sometime between 12:30 and 1, but
21 we're gonna go ahead and break now and take the lunch
22 break so when we return we'll then proceed with the
23 State's case. Please continue to adhere to your
24 introductions. Do not read anything, not listen to
25 anything about the case, don't talk with anyone about the

1 case, don't allow anyone to talk with you about it. Just
2 enjoy your time while you're on your lunch break. It's
3 12:00. It's about two minutes after. We'll start back at
4 1:30. So everyone else remain seated in the courtroom,
5 and ladies and gentlemen, ask you to please be back in the
6 jury room at 1:30.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 12:03 p.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: All right. We'll recess at this point
11 and we'll start back at 1:30. Court will be in recess
12 until that time.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: All right. Anything we need to go over
15 before we proceed?

16 MR. CLEMENTS: Nothing from the State, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. LAWSON: No, not that I know of, Your Honor.

19 THE COURT: Ms. Joe, if you'd ask members of the
20 jury to join us please.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 1:41 p.m., and the
23 following proceedings commenced in
24 open court.)

25 THE COURT: Hope you had a good lunch break.

1 During that time you were gone did anyone have any
2 conversation or see anything about the case?

3 (There was no response.)

4 THE COURT: Anyone try to talk to you?

5 (There was no response.)

6 THE COURT: All right. Ladies and gentlemen, if
7 you recall we are still on the State's case. I would
8 recognize Solicitor Clements for his next witness.

9 MR. CLEMENTS: If it please the Court, Your Honor,
10 we'd call Investigator Shannon Hill.

11 THE COURT: All right, Investigator Hill.

12 WHEREUPON,

13 SHANNON HILL,

14 having been duly sworn by the Clerk of Court, testified as
15 follows:

16 CLERK OF COURT: Please be seated and state your
17 full name for the record.

18 THE WITNESS: Shannon Hill.

19 **DIRECT EXAMINATION**

20 BY MR. CLEMENTS:

21 Q Can you please tell this jury what your job title and
22 duties are and who you work for?

23 A I am employed with the City of Florence Police
24 Department. My current duties right now are crime scene
25 unit.

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1 Q And what is that like being with the crime scene unit?

2 Is it like CSI on television?

3 A No, sir, I'm afraid not.

4 Q Okay. Well, tell us exactly what you do as a part of
5 the crime scene unit.

6 A Any type of quote/unquote crime scene that might
7 develop, and that would be up to -- left up to the
8 investigator whether we're called to the scene or not.

9 When we get there what we do is we collect -- we, first
10 off, try to preserve the scene as it is once we get there.
11 Then we walk through and analyze everything that we have,
12 and then we try to collect whatever evidence that happens
13 to be on the scene that we feel might be pertinent.

14 Q All right. How long have you been with the crime scene
15 unit?

16 A I've been employed with the City for about 19 years.
17 I've been in the crime scene four years.

18 Q And the other 15 years what did you do for the City?

19 A I worked the street as a patrol officer for about
20 two-and-a-half years, and then I spent the remaining time
21 before I came to crime scene in the traffic unit as a
22 motorcycle officer.

23 Q Okay. As part of the crime scene unit do you get any
24 kind of specialized training or?

25 A Whenever arises and we have the opportunity we try to

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1 attend as much training as possible.

2 Q Okay. Who is your direct supervisor in the crime scene
3 unit?

4 A That would be Sergeant Mike Brandt.

5 Q And how many people do you have in the crime scene unit
6 for the City?

7 A Counting Sergeant Brandt there will be about five of us
8 I believe.

9 Q Okay.

10 A We just had a new person so...

11 Q All right. Now on October 12th, 2009, you were working
12 with the crime scene unit?

13 A That's correct.

14 Q Can you tell us you got called out that evening and
15 where you got called to?

16 A I get off at 11:00. I was duty crime scene tech that
17 night. And about 11:45 that night is when I received the
18 call about the incident on Avenue, and .

19 Q Now you said you were the duty crime scene tech that
20 night. What exactly does that mean?

21 A I -- when you are the duty crime scene technician, what
22 your normal hours of operation are from 3 in the afternoon
23 to 11:00 at night, and then you're on-call from 11:00 at
24 night till 8:30 the next morning. So if anything happens
25 where they need a crime scene technician during the time I

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1 will be the one to respond.

2 Q So you're actually up here at the complex from 3 ---

3 A From 3:00 to 11:00 and then we can go home or we're
4 on-call until 8:30 the next morning.

5 Q Y'all have your own set of offices here in the
6 building?

7 A Yes, sir, we do on the second floor.

8 Q Okay. And just like Terrance Carraway was the on-call
9 investigator you were on-call crime scene guy?

10 A That's correct.

11 Q Okay. Now on the second floor what all y'all have on
12 the second floor there?

13 A On the second floor most -- or just our office is where
14 we go in and do reports, paperwork, and things like that.
15 We do have an office that we keep down in the basement in
16 the sallyport area which is underneath the building. Our
17 room is just dedicated to us. We're -- only the people in
18 the crime scene have access to that room, and it's where
19 we go and do any kind of processing of evidence or
20 anything like that.

21 Q Okay. Now down in the basement y'all have this big
22 laboratory like they have on television with CSI?

23 A We keep asking for one, but we haven't received one
24 like that yet.

25 Q Okay. What do y'all have to do in regards to lab work?

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1 A Basically, the heavy lab work, everything is going to
2 be sent to the South Carolina Law Enforcement Division in
3 Columbia. If we develop any kind of evidence such as
4 latent prints or DNA evidence we don't analyze that here.
5 We send that off to SLED in Columbia.

6 Q Okay. And that's where their lab is located?

7 A That's correct.

8 Q Are they pretty much the crime lab for the whole state?

9 A They have a heavy workload. They handle everything
10 from every department in the whole state.

11 Q Okay. Except for those units that have enough money to
12 have their own labs?

13 A That's correct.

14 Q And Florence City Police is not one of those?

15 A That's correct, yes, sir.

16 Q When you got to the scene you said you received a call.
17 Is that by phone or dispatch? How do y'all get alerted?

18 A After 11:00 any calls we receive where they might need
19 our presence will usually be received by headquarters on
20 either by on-call investigator.

21 Q You remember how you received the call that evening?

22 A I believe Investigator Carraway gave me a call on my
23 cell phone.

24 Q Okay. And when you got that call on your cell phone
25 what -- how did you respond?

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1 A I got in my vehicle from my house and drove and then on
2 way to the scene I notified Sergeant Brandt of the
3 situation, of the call that I had received, and then I
4 continued on to the scene.

5 Q What did you find when you got to the scene?

6 A There were three patrol officers on scene upon my
7 arrival. They had already secured the scene with a yellow
8 crime scene tape, and they were just waiting on us to get
9 there.

10 Q All right. And were those Officers Beckett, Starling,
11 and Hobgood?

12 A Yes, sir, that's correct.

13 Q How much time past from the time you got there to the
14 time Sergeant Brandt got there?

15 A We actually arrived at the same time, about the same
16 time.

17 Q How did you enter the crime scene and what was the
18 first thing y'all did?

19 A First thing I did when I got there I walked to the back
20 of Avenue, which is where the apartment is,
21 , which is the garage apartment that's been
22 talked about. As I walked through the opening there was a
23 chain link fence. I could see a vehicle, the trunk
24 partially open. And as I approached that vehicle I met
25 with the officers on scene, and they briefed me basically

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1 on what happened or that the information which they had at
2 the time.

3 Q Okay. And what did you do from that point forward?
4 Was Sergeant Brandt with you at that time?

5 A Yes, sir. We arrived at the same time, and from that
6 point all we did -- we didn't do anything. He advised
7 that he was going to secure a search warrant, and so we
8 just held everything off until that search warrant was
9 obtained.

10 Q Okay. So you didn't go into the apartment?

11 A That's correct. We did not go inside the apartment.

12 Q Didn't go in the car?

13 A No, sir, only from what we could see by standing there
14 is all, the only thing we did.

15 Q And you said Sergeant Brandt got the search warrant?

16 A That's correct.

17 Q Okay. And what did you do while he went to obtain a
18 search warrant?

19 A I just took general photographs, nothing specific, just
20 general photographs of the house, the outside of the
21 house, and the apartment on all four sides, as well as the
22 vehicle on all four sides, and that was the extent of it.

23 Q And you could do that without entering the vehicle or
24 the premises?

25 A Yes, sir. That's correct.

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1 Q Now tell me about this photography. When y'all go
2 there what kind of equipment you use now?

3 A We are issued a Nikon D200 digital SLR camera.

4 Q Y'all take a few pictures, a lot of pictures, how many
5 pictures y'all take?

6 A We can take up to about 440 pictures per memory card,
7 and we have two other memory cards we can switch to if by
8 chance we fill that one up.

9 Q And why you take so many pictures?

10 A You can never take too many pictures. That's kind of
11 our motto at crime scene. So we'll shoot as many as we
12 can or feel necessary.

13 Q What else do you do to document the scene?

14 A On major scenes such as a homicide or a violent rape or
15 assault of that sort, before we get into the detailed
16 photographs what we'll do is one of the technicians that's
17 there will actually film the scene as it is on a video
18 camera.

19 Q Was that done on this scene?

20 A Yes, sir, it was.

21 Q Did you do that?

22 A No, sir, Sergeant Brandt completed that task.

23 Q Okay. You know what kind of video camera he uses?

24 A I couldn't tell you the model number. I just know the
25 brand is a Cannon.

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1 Q Okay. Was this done prior to or after getting the
2 search warrant?

3 A The video began after a search warrant was obtained.

4 Q Okay. I'm gonna show you several items here now, and
5 I'm just asking right now, the only thing I'm asking is
6 whether you can identify them. And I'm gonna show them to
7 you, tell you a number, and you tell me yes or no if you
8 can identify them I think will be the quickest way to do
9 this.

10 A All right.

11 Q All right. State's Exhibit number 10?

12 A Yes, sir, I can identify that.

13 Q Did you take that picture?

14 A Yes, sir.

15 Q Same two questions for State's Exhibit number 9?

16 A Yes, sir, I can identify the photo and I'm the one who
17 took it.

18 Q Same question for all of these. State's Exhibit 13?

19 A Yes, sir.

20 Q State's Exhibit 14?

21 A Yes, sir.

22 Q State's Exhibit 16?

23 A Yes, sir.

24 Q State's Exhibit 17?

25 A Yes, sir.

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- 1 Q And in those yes, sirs ---
- 2 A That I took the photos and that I can identify them.
- 3 Q Okay. Just to make sure we make the record complete if
- 4 you'll say yes on both or yes or no, whichever the case
- 5 may be.
- 6 A Okay.
- 7 Q Thank you. State's Exhibit 18?
- 8 A That will be yes on both.
- 9 Q 19?
- 10 A That would also be yes on both.
- 11 Q 20?
- 12 A Yes on both.
- 13 Q 21?
- 14 A Yes on both.
- 15 Q 22?
- 16 A Yes on both.
- 17 Q 23?
- 18 A Yes on both.
- 19 Q 24?
- 20 A Yes on both.
- 21 Q 25?
- 22 A Yes on both.
- 23 Q 26?
- 24 A Yes on both.
- 25 Q 27?

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1 A Yes on both.

2 Q 28?

3 A Yes on both.

4 Q 29?

5 A Yes on both.

6 Q 30?

7 A Yes on both.

8 Q 31?

9 A Yes on both.

10 Q 32?

11 A Yes on both.

12 Q 33?

13 A Yes on both.

14 THE COURT: Solicitor, are you going all the way to
15 96 on this?

16 MR. CLEMENTS: Well, Your Honor, what probably the
17 quickest thing now is let him look through all of them and
18 tell me yes on each thing instead of each number.

19 THE COURT: I'm assuming he's reviewed these before
20 coming in here?

21 MR. CLEMENTS: Yes, sir.

22 THE COURT: Can you have him flip through and just
23 say whether or not -- I mean, we're going to be here till
24 tomorrow going through that whole stack.

25 MR. CLEMENTS: Well, I just want to be sure I make

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1 the record complete, Your Honor.

2 BY MR. CLEMENTS:

3 Q Look through these please, officer, and tell me ---

4 THE COURT: Just flip through, and then when you're
5 finished let us know if there's anything on there that you
6 did not recognize.

7 Mr. Lawson, these are the photos all the way
8 through number 96 I guess.

9 (Whereupon, attorneys approached the Bench for an
10 on-the-record discussion.)

11 MR. LAWSON: I have looked through. There were a
12 number that I had objected to but ---

13 THE COURT: Sure, and I'm certainly gonna give you
14 that opportunity. I just was gonna get him at least go
15 through to identify if he can those photos.

16 MR. CLEMENTS: I just want to lay the foundation
17 for all of them.

18 (End of on-the-record Bench conference.)

19 (Pause while witness reviews photographs.)

20 BY MR. CLEMENTS:

21 Q With the exception of State's Exhibits for I.D. 89, 90,
22 91 and 92, did you take all these pictures?

23 A Yes, sir, I took them and I'm familiar with them.

24 Q All right. I'm gonna show you State's Exhibit 6, 7, 8,
25 9 -- excuse me, 6, 7, 8, 11, 12, and 15 that are already

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1 in evidence. Did you take these and can you identify
2 these?

3 A Yes, sir, I took these pictures and I'm familiar with
4 them.

5 Q All right. So Officer, State's Exhibits 33 through 96,
6 are you familiar with those photographs and took all
7 those photographs?

8 A Yes, sir, I did.

9 MR. CLEMENTS: Your Honor, we would move State's
10 Exhibits, 17, 16, 14, 13, 9, 10, 33, 32, 31, 30, 29, 28,
11 27, 26, 25, 24, 23, 22, 21, 20, 19 and 18 into evidence at
12 this time, I believe, without objection.

13 THE COURT: Is that correct, Mr. Lawson?

14 MR. LAWSON: That's correct, Your Honor.

15 THE COURT: Those exhibits are in without
16 objection.

17 (WHEREUPON, State Exhibits Nos. 9, 10, 13, 14,
18 16, 17, 19, 20 through 33 were received into
19 evidence.)

20 MR. CLEMENTS: Your Honor, also I'd move into
21 evidence at this time State's Exhibit 42, 43, 44, 41, 40,
22 39, 38, 37, 36, 35, 34, 87, and 88 into evidence, I
23 believe, without objection, Your Honor.

24 MR. LAWSON: Correct, Your Honor.

25 THE COURT: All right. Without objection those

1 items are in evidence.

2 (WHEREUPON, State Exhibits Nos. 34 through 44,
3 87, 88 were admitted into evidence.)

4 MR. CLEMENTS: Your Honor, at this time we move
5 into evidence State's Exhibit 45, 46, 47 --

6 THE COURT: Do they go in order all the way up to a
7 certain amount?

8 MR. CLEMENTS: No, sir, we've shuffled them in the
9 process. 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59,
10 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,
11 74, 93, 94, 95, 96, 85, and 86, we move into evidence at
12 this time we believe without objection.

13 MR. LAWSON: That's correct, Your Honor.

14 THE COURT: All right. Those items are in without
15 objection.

16 (WHEREUPON, State Exhibits Nos. 45 through 74,
17 85, 86, 93 through 96 were received into
18 evidence.)

19 MR. CLEMENTS: Your Honor, State's Exhibits 102,
20 75, 76, 77, 78, 79, 80, 81, 82, 83, and 84, we would move
21 to have admitted into evidence.

22 MR. LAWSON: Objection, Your Honor.

23 THE COURT: All right. We're gonna need to go over
24 those.

25 MR. CLEMENTS: Yes, sir.

1 THE COURT: Ladies and gentlemen. I'm gonna get
2 you to step back in your jury room if I could please.
3 Please have no conversation about the case and I'll bring
4 you back out shortly.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 2:05 p.m., and the following proceedings
7 commenced in open court.)

8 THE COURT: All right, now before we get started on
9 the record with this, Solicitor, let me get you to -- I
10 don't know which, I mean, I know you moved them all in. I
11 can tell you, I'm not gonna let in seven pictures of the
12 body in the trunk so. Let's look through these and move
13 in the ones you honestly believe the State needs to
14 prosecute the case, I mean, 'cause as I went through, I
15 mean ---

16 MR. CLEMENTS: Well, Your Honor, I can pull ---

17 THE COURT: ---enormous pictures of the body in the
18 trunk.

19 MR. CLEMENTS: I can pull a couple out. Your
20 Honor, State's Exhibit 102, 79, 84, and 83, Your Honor,
21 those four in particular we feel would be a need to submit
22 those to the jury. We've got other from different angles.
23 As far as number 102, let me take that specifically tell
24 Your Honor, Mr. Lawson, what my contention is so
25 Mr. Lawson can respond to this specifically. State's

1 THE COURT: Okay. I just didn't get my sheet
2 marked. Is the State ready? Defense ready?

3 MR. LAWSON: Yes, Your Honor.

4 THE COURT: Ms. Joe.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 2:29 p.m., and the
7 following proceedings commenced in open court.)

8 MR. LAWSON: Your Honor, one thing, I guess this
9 would be subject...

10 THE COURT: Yeah.

11 (WHEREUPON, counsel approached the Bench for
12 an off-the-record discussion.)

13 THE COURT: All right. Ladies and gentlemen, thank
14 you for your accommodating us with that.

15 And Solicitor, would recognize you to continue with
16 your examination.

17 MR. CLEMENTS: Thank you, Your Honor.

18 BY MR. CLEMENTS:

19 Q Investigator Hill, what did you say was y'all's motto
20 on crime scene?

21 A We can never take too many photographs or pictures.

22 Q Let's me go on record and say I don't necessarily agree
23 with that when I have to deal with all of them, but I
24 understand what you're doing there. And what is your
25 attempt to try to be as what as possible?

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1 A We want to try be as thorough as we can as far as
2 documenting the scene as we find it.

3 Q Okay. Now what you do, is that something you can do
4 quickly or is it tedious, or is it easy what you do at a
5 crime scene? Explain exactly what you do to to this jury?

6 A Every crime scene obviously is different, you know,
7 different levels of severity. Obviously a homicide I
8 think is probably the most severe as you can get. You
9 have a lot of people involved. You have family members.
10 You have a victim obviously and their family. You have
11 suspect and their families. So what you want to do is
12 slow down and take your time. You don't want to rush this
13 just because you don't want to get anything wrong. You
14 want to always make sure you do the best job you can, put
15 in your ability to try to ascertain, you know, what
16 evidence is at the scene, is it pertinent to what you know
17 about the case because, you know, it's very important that
18 you get the right information the first time because a lot
19 of people's lives possibly are at stake. So it's
20 definitely something you don't want to slow down, I mean,
21 speed up and do. You want to take your time and do --
22 usually a scene like that may take numerous hours,
23 sometimes a whole day or more.

24 Q And do you normally gather a lot of things?

25 A We try to -- yes, sir, we do.

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1 Q Are all those things always relevant or important or
2 not?

3 A Not all the time but you just don't know so better than
4 having to go back to a scene to try to find something at
5 least you'll have it.

6 Q So you do as much as possible?

7 A Yes, sir.

8 Q Make sure?

9 A Yes, sir, that's correct.

10 Q Okay. Is every piece of material you gather at a scene
11 always wind up to be evidence or not?

12 A Everything we get is evidence. Whether it becomes
13 pertinent to a case or not is a different story.
14 Sometimes it's not.

15 Q Okay, all right. And you took a lot of pictures. I'm
16 going to get you to deal with a few of these pictures in a
17 little bit. But what I want you to explain to the jury
18 right now is what you did with Sergeant Brandt after you
19 took pictures, he came back with a search warrant, tell
20 this jury exactly how y'all executed the search warrant?

21 A Once we gained a legal search warrant from the judge
22 and we started then getting into the scene, we did a --
23 first thing we did, we actually entered the apartment.

24 Did a general walk through to see what we had, you know,
25 what kind of evidence might be there, what kind of scene

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1 basically it was. Once we did that and completed that
2 then we set back up for some more detailed photographs
3 which I took. And these photographs we would -- I would
4 use yellow evidence markers to go through and place
5 throughout the scene items of evidence that we thought
6 were important. And then with those evidence markers in
7 place we would take detailed and closeup photographs of
8 those items. Then once the photographs are taken then you
9 start getting in and actually looking at things, being
10 very thorough in your searches, you know, looking under
11 cushions, pulling back furniture, you know, just a whole
12 gamut of things.

13 Q Did y'all do this?

14 A Yes, sir, we did.

15 Q Okay. Did you collect some items and take them back
16 with you?

17 A Yes, sir.

18 Q And with those items that are collected, what do you
19 normally have to do with those items if they have required
20 laboratory testing?

21 A Something that we're not able to do, we seal and
22 package them correctly as far as evidence procedures
23 dictate that we should and then they're sent to SLED for
24 processing, further processing.

25 Q All right. And I would like to show you some items to

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1 see if you can identify those. I show you what's been
2 marked State's Exhibit number 1 and ask if you can tell me
3 if you're familiar with this, recognize this, and can
4 identify this.

5 A Yes, sir, it's going to be a Marlin .22 caliber lever
6 action rifle that I collected from the scene and placed in
7 this box to be sent to SLED.

8 Q You sure that's what's in that box?

9 A Yes, sir.

10 Q Why?

11 A Because when I put it in there we put evidence tape,
12 the heat-sealed ends we put it, and we don't just put it
13 one place, we put it on several ends. We initial it and
14 we date and time and we sign it. Now once it goes to SLED
15 the technician at SLED will again open it up and he's the
16 only one. And then they go and place their stickers on it
17 as well which is the gentleman's initials that you see.

18 Q And can you open that for us and show us what that is
19 you collected.

20 A Okay. (State's Exhibit Number 1 was opened.)

21 Q All right. And what is that with the little ziplock
22 bag there that's attached to the stock?

23 A This is what we call a gun, an evidence gun box. And
24 as you can see on the bottom they have all kind of little
25 holes. And what those are for, depending on what kind of

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1 weapon or item that you have in the box, you can take zip
2 ties and run it through it to secure to make sure, you
3 know, it doesn't bang around too much while it's inside
4 the box. So that's what those holes are for and that's
5 what those end ties are for.

6 Q And what's the ziplock bag there attached to it?

7 A This ziplock bag here contains a unfired .22 caliber
8 rifle round that was removed from the gun itself once it
9 arrived at SLED.

10 Q Okay. And that was in the gun when y'all collected it?

11 A It was. It was jammed in there. We could not remove
12 it.

13 Q I'd like to show you State's Exhibit 39, 40, 41 and 42,
14 ask if you could show these to the jury and explain those,
15 what those pictures depict as to where you found this
16 rifle.

17 A (Witness steps down.) As we entered, or as I entered
18 inside the bedroom, it's a one bedroom garage apartment.
19 And I went to the right side of the bed, immediately what
20 I could see was this long arm rifle laying on the floor as
21 you see it now with the lever action on the bottom out as
22 you see it and the slide action to the right which was
23 sticking out. This picture here is the same picture of
24 the same item which is a little bit closer up as I was
25 getting closer to the rifle. And then as I got even

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1 closer to the rifle, from this picture right here you can
2 see another long arm firearm which turned out be a shotgun
3 also up underneath the bed. And it was -- the handle on
4 it was secured with gray duct tape so that's what you see
5 right there. And that's a better shot of the shotgun once
6 I saw it and then pulled it out to get a better photograph
7 of it. You can see the pump action, and then you can see
8 the gray duct tape around the handle where it was supposed
9 to be joined to the rest of the shotgun.

10 Q All right. I'm going to show you what's been marked
11 State's Exhibit 43. Can you explain to the jury what that
12 picture depicts and what that means.

13 A This photo was taken by me in our processing room that
14 I talked to you about earlier down in the basement of this
15 building. After we had cleared the scene that morning I
16 brought this rifle, this .22 caliber rifle back with me,
17 and in that gun box. As I was taking more detailed
18 photographs of it I noticed what appeared to me some red
19 stains on the wood stock. So what I wanted to do then was
20 to find out is this blood or is this some other red stain
21 that I just don't know what it is. And what we have to
22 determine if something is blood we have a presumptive
23 blood test. It's a three to four part chemical reaction
24 test that we use. It comes in a little kit. You can buy
25 it any kind of forensic supply store. And what you would

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1 do is you take a sterile tip cotton swab out of a package.
2 You would make sure it's moistened putting a little bit of
3 water. You have a little tip of water that comes with the
4 kit. So you moisten that. Then you take a Q tip and rub
5 it on the red stain. Once you rub it on the red stain
6 then you take a little bottle that comes with the kit of
7 alcohol and you drop a couple of drops on top of it. Then
8 you take a second bottle, a third bottle that's in there,
9 and it's hydrogen peroxide, which I'm sure you're all
10 familiar. And all you do with this is drop a couple of
11 drops on it; and if it is any type of blood immediately it
12 will turn a hot pink or red, as you see in the picture
13 right there. Then what we will do is take another set of
14 swabs, clean sterile swabs of that same tested area, and
15 then send that to SLED for a further analysis so they can
16 determine whether it's, you know, any kind of DNA in it
17 that might be found.

18 Q All right, thank you. Now I want to show you another
19 item here. It's been marked State's Exhibit Number 4.
20 Can you look at that and see if you know what that is and
21 identify that for us?

22 A The labeling on the package indicates it is a spent
23 .22 caliber cartridge.

24 Q Do you recognize that at all or know anything about
25 that?

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1 A This was -- this was the .22 caliber cartridge that --
2 spent cartridge that we recovered on the scene inside the
3 garage apartment.

4 Q All right. And can you tell us what y'all did with
5 this spent cartridge?

6 A What we did with this cartridge along with the .22
7 caliber rifle, is we send that to SLED as well for further
8 processing and what we asked them to do is determine if
9 that shell casing happened to have been fired out of that
10 .22 caliber rifle that we sent.

11 Q All right. And I'm going to open this up here. I'm
12 going to ask you if you can retrieve what's in this
13 envelope so you can see exactly what you're talking about.

14 A This is the .22 caliber rifle cartridge that we
15 recovered from the scene. It's already been spent, and
16 that means it's already been fired. This envelope that
17 you see here is the envelope that I put it in when I sent
18 it to SLED. Is what they do they just return the same
19 envelope to us.

20 Q And what -- reason why y'all send that?

21 A Well, we had -- we wanted to make sure or ascertain,
22 like I said, a few minutes ago, if that spent cartridge
23 was fired by that rifle that we found by the bed.

24 Q Now where exactly was that cartridge found?

25 A On the right side of the couch right beside the leg of

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1 a little stool that was sitting on the right side of the
2 couch, right as you make entrance into the bedroom, it was
3 on the floor.

4 Q All right. I'm gonna show you, if you will, I'm gonna
5 ask you step down again, I apologize. But State's Exhibit
6 33 and 34, if you can show these to this jury and tell
7 them, stand up here where they can all see. Tell them
8 what that depicts.

9 A This green piece of fabric that you see right here,
10 that's the right side of the couch that was inside the
11 living room just as you make entry into the apartment.
12 This door that you -- and this is a little stool with the
13 green covering that's on it. Just behind this green
14 stool, this sort of opening you see in the doorway, is the
15 entrance to the bedroom and it's only a one bedroom
16 apartment so that was the only bedroom they had. You
17 can't see it probably from where you're sitting at, but
18 right at the bottom of this leg of this stool there's a
19 little green, a little gold speck about where my finger is
20 at. You probably can't see it from sitting there. But
21 that is the actual spent shell casing that we just showed
22 you and that's where it was found out and that's where it
23 was photographed at. This picture here is a closeup
24 picture of that same spent casing at the foot of the
25 stool.

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1 Q Okay. I'm gonna show you what's been marked State's
2 Exhibit 88 and 87. Do you know what these are?

3 A This is gonna be a closeup photograph that I took of
4 the actual 22 cartridge rifle casing that I just showed
5 you. As you can see from this picture right here, the
6 brand name on top of it is Remington. And that little
7 indentation you see on the top is just where the pin from
8 the gun strikes it and makes it discharge. That's a
9 closeup photo at the top of it as you can see. And this
10 will just be a closeup photo of it laying on its side.

11 Q And again, why you take so many photos of it?

12 A Because we want to document as much as we can, you
13 know, for later on down the road because you never know.

14 Q Now what are some of the things you look for in
15 addition to weapons and shell casings and that kind of
16 thing? What are other things y'all look for?

17 A Any type of possible DNA evidence that might be
18 visible.

19 Q Where do you get some DNA evidence from?

20 A Clothing, something the person's wore, cell phone,
21 anything that someone might hold in their hand. We also
22 want to look at the scene. We want to look for latent
23 prints, you know, possibly maybe some fingerprints on
24 something.

25 Q What kind of fluids, if anything, do you look for?

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1 A Bodily fluids, if we find any, if it's that type of
2 scene obviously.

3 Q Did you find any evidence of bodily fluids or anything
4 here?

5 A At this scene there were several different locations
6 where we saw red stains that we believed might be blood
7 and then we tested those stains with the same presumptive
8 blood test I explained to you a few minutes ago. And then
9 all the tested areas that we did indicated positive for
10 blood.

11 Q I'm gonna ask you to step down if you would again, and
12 we have here what's been marked as State's Exhibit 2. I
13 don't believe it's necessary right now to pull this out,
14 but if you would, please explain to the jury what this is,
15 where you found it, and why you grabbed it.

16 A This is a, as it says on the label that I put on the
17 front, this is a cut piece of rug with a red stain. We
18 tested that red stain with that presumptive blood test and
19 indicated positive result for blood. But just as you
20 make, just as you come into the front door of the
21 apartment there was a large area rug on the floor. It
22 was -- there was some green and some burgundy and some
23 light colors; it was a plaid pattern. So what we did, we
24 didn't bring the whole rug because it was a rather large
25 rug. But we just cut a portion of it out, maybe four

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1 by — or 5 by 5 or 5 by 4, something like that and that's
2 what's inside this package here. And on the rug, on the
3 portion of rug, you can see a stain on the face of it that
4 appeared to us to have been blood stain. It was probably
5 maybe about this big around on the top side of the rug.
6 And then we pulled it back to look at it and it was a
7 larger stain probably about that big around.

8 Q So underneath, underneath the rug what did you find?

9 A A larger stain. I mean, the stain on top of the rug
10 was probably a circumference maybe like this, somewhere in
11 this area. But on the backside of the rug it was red as
12 well, and but it is spread out and made a larger diameter
13 circle.

14 Q All right. I want to show you, if I can, State's
15 Exhibit 25, 26 and 27. If you will step here, keep your
16 voice up, and show this to the jury and tell them what
17 those pictures depict.

18 A This is the view that you will see just as you come
19 inside the front door to the apartment. You step into a
20 living room area. The rug that you see in the photo here
21 is the large area rug.

22 Q Is that the plaid pattern, the different colors?

23 A Yes, sir. That's the plaid pattern. Right about here
24 on this picture where my finger is pointed is a stain that
25 we saw. This is a closer up picture of it so you can get

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1 kind of a better idea and you can see it right here. I'll
2 put this one behind it so it can be clearer. Which you
3 can kind of see it right here, and you can see the little
4 tint of redness in it. And that was a stain that was on
5 top of the carpet. When we pulled the carpet back after
6 we cut a portion of it off, that was what was on the
7 backside. And as you can see it's still a darker red but
8 it has grown in size, the circumference of the stain.

9 Q Would blood like that soak through the carpet be more
10 visible on the bottom than on the top?

11 A I believe so. It's gonna soak through and just kind of
12 spread out.

13 Q I show you State's Exhibit Number 30 and if you can
14 explain to the jury what that is and why you took that
15 picture.

16 A This was found actually not 2 feet from where the red
17 stain was on the carpet in the corner. As you come in the
18 front door and you make a left into the corner that's
19 where it was sitting at. You can see partially the front
20 door right here where my finger is at. It is a carpet
21 cleaner. That kind of caught our eye as maybe might have
22 been used to maybe clean something up, a stain, or
23 something like that. We didn't know at the time, but
24 that's why we thought it was important just to take a
25 picture of it.

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1 Q And did y'all submit that for any testing or anything?

2 A I took a visual observation of the underside of it and
3 didn't see anything that indicated to me there might have
4 been any type of red stains that indicated any type of
5 blood.

6 Q And was the carpet at all, was it wet or damp or
7 anything?

8 A It was -- it was somewhat dry.

9 Q Okay. Investigator Hill, what would be how you would
10 describe the interior of the general interior of this
11 house, this apartment?

12 A It's a small space so it may attributed so make it look
13 a little more unkept than normal.

14 Q All right. So was there a lot of material there to
15 look at?

16 A Yes, there was a lot of little things.

17 Q Now what else did y'all gather?

18 A We collected the rifle, the shotgun, swabs from red
19 stains that we found on the floor, swabs from some other
20 locations, the piece of carpet that you see there. From
21 the actual apartment itself, another towel that had a pink
22 stain on it, pink stained towel, we collected that. And
23 some swabs from different locations.

24 Q I'm gonna show you a couple of other pictures and ask
25 if you can identify those for us and tell us what

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1 significance there may have been to these pictures. You
2 testified earlier about you take picture and then you go
3 back and take pictures again with you said yellow markers?

4 A The first photographs we take are going to be what we
5 call general photographs. Like if I was to set up in this
6 room here and take photographs I'm just going to kind of,
7 you know, walk around and take general photographs. And
8 once we have done that we get into more detailed
9 photographs. In other words, then we will start marking
10 our items of evidence that we find taking progressive
11 photos of that and in more detail.

12 Q All right. I'm gonna show you State's Exhibit 53 and
13 that was -- tell us what similarity that has with another
14 picture you've already shown the jury.

15 A This is the same picture I showed you a few minutes ago
16 of the rifle and of the shotgun that were by the right
17 side of the bed. The only difference in this picture is
18 the fact that I have them now just marked with yellow
19 evidence markers that you can see. The rifle is going to
20 be item number 7 and evidence number 7, and of course, the
21 shotgun.

22 Q Okay. And those numbers, what do those numbers go on?

23 A They're -- we use those to signify parts of evidence,
24 pieces of evidence. We start at one and work our way up.

25 Q Y'all ever compile a list or drawing or anything like

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1 that of a crime scene?

2 A Well, marking evidence like that with markers helps us
3 a great deal when we're writing our report. When we want
4 to write a report and then state in the report where
5 things are located we'll indicate it by evidence marker
6 number one or it was located by evidence marker number
7 two, and then we can look at our photographs and kind of
8 correlate those together and help us remember where things
9 are at. And if we're doing a scale diagram on something
10 like that -- well, not scale diagram but a sketch of the
11 scene -- we'll also can use those markers like one, two,
12 three, four, on the actual photograph. Then we'll know,
13 hey, number one is right here, we know what number one
14 was. So it just helps us, you know, visualize and process
15 the scene a little better.

16 Q I'm going to show you State's Exhibit 48. Can you tell
17 the jury what that is, what that depicts.

18 A This is a red stain that we found in front of the car.
19 The car was parked. It's a one bedroom apartment. It has
20 a little garage that comes off the front, and it's got
21 concrete underneath it. The car was parked right in front
22 of it. Right on the concrete underneath the number two
23 there's a little red dot, a little red stain. And we
24 conducted a presumptive blood test on that stain to see if
25 it was blood or not and it indicated a positive result for

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1 blood.

2 Q That's number two. Where was number one?

3 A Number one was the actual trunk of the vehicle where
4 the body was located.

5 Q And so you went from the car into the apartment?

6 A That's correct.

7 Q So the car would be number one. Those drops
8 presumptively blood is number two, and I'm gonna show you
9 State's Exhibit 49. Tell us what that is.

10 A If you walk past, if you keep walking like you're going
11 to the front door of the apartment past where marker
12 number two was you'll get the marker, what we indicated as
13 evidence marker number three. And this is the door seal
14 just as you walk into the apartment. As you can see on
15 one side is the carpet. That's as you walk into the
16 apartment. They got some duct tape along the bottom, I
17 guess, to help seal maybe a draft or whatever that comes
18 through. But you can see is a red stain just like blood,
19 the number three, on the marker.

20 Q Did you do a presumptive test on that?

21 A We did. I did. The presumptive test indicated another
22 positive result for blood.

23 Q Was number four, was that the carpet, stain on the
24 carpet?

25 A Yes, sir.

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1 Q And number five, was that the shell casing?

2 A Yes, sir.

3 Q And number six is depicted here on State's Exhibit 52.

4 Can you tell the jury what that is?

5 A This is a wooden handle. If you're familiar with the
6 wooden handle of a kitchen steak knife. And just as you
7 walk into the bedroom, it was laying on the bed kind of in
8 the middle little more to the left side of the bed with
9 marker evidence, marker number six.

10 Q Was there any indication of any blood or anything on
11 that?

12 A I visually looked at it up close; and on it I didn't
13 see any, what appeared to me, residue of any type of red
14 stain or blood. The only thing I saw was some little tiny
15 specks of what appeared to be rust.

16 Q How can you tell the difference between rust and blood
17 by looking at it?

18 A I've seen enough of it to know the difference.

19 Q Okay. And 7 and 8 were the guns under the bed or by
20 the bed?

21 A Yes, sir.

22 Q Have a seat back here.

23 A (Witness complies.)

24 Q Now the other items that you collected there on the
25 scene, what were they in regards to?

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1 A We took also several clothing items that we found at
2 the scene, well, took swabs of several clothing items. We
3 took a pink stained towel, took the knife that you just
4 saw, and there were several items taken from the car later
5 on once it was processed.

6 Q Now did -- do you submit all items to SLED?

7 A No. SLED, the DNA department SLED has an acceptance
8 policy where they'll only take maybe three to five DNA
9 samples, even on a homicide because, like we said before
10 earlier, they have -- they have the whole state that they
11 have to try to work with so they get a little overwhelmed
12 at times so they have to set a mandate. We did get
13 permission, however, to send an additional two swabs. But
14 they have acceptance policy. They will only accept a
15 certain amount of DNA evidence.

16 Q Okay. Is that because other agencies across the state
17 may just send a hundred things on a shoplifting or
18 something?

19 A I would assume that's probably what brought about the
20 change, the policy on it.

21 Q But everything that was pertinent y'all were able to
22 send; is that correct?

23 A What we do, and we did on this scene, is myself and
24 Sergeant Brandt got together and looked over the evidence
25 that we had and we decided amongst, between ourselves,

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1 what we thought were the most important items that we
2 could send and that's how we came to the conclusion of
3 sending what we did.

4 Q And what exactly did you send to SLED?

5 A Seven DNA swabs were sent for DNA analysis.

6 Q Where were those seven swabs taken from?

7 A They were taken from the actual barrel of the
8 .22 caliber rifle, from the trigger and lever action of
9 the .22 caliber rifle, from the red stain that we talked
10 about earlier on the wood stock of that .22 caliber rifle.
11 There was a swab sent from a red stain that was obtained
12 off of a piece of clothing item that Mr. Bruce had on at
13 the time of his arrest, and a pinkish stained towel was
14 sent and those ---

15 Q Where was that towel found?

16 A This towel was found behind the dryer and in the little
17 washroom area, washer/dryer area.

18 Q Anything sent from the car?

19 A Once it was processed there were two latent lifts that
20 were sent to SLED for latent print processing, but no DNA
21 evidence was sent from the vehicle.

22 Q And those -- you say latent lifts, is that
23 fingerprints?

24 A Yes, sir, that would be fingerprints.

25 Q And what did that come off of, a CD?

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1 A One fingerprint came of a music CD that I found above
2 the visor above the driver, the driver's side.

3 Q Did that turn out to be Ms. Creel's?

4 A Yes, sir, that came back to Ms. Creel. And then one
5 came -- a stain came of a soda can that was in the center
6 console, the back seat, and it didn't come back to
7 anything or anybody.

8 Q All right. Now what else did y'all do at that scene
9 after you gathered everything, photographed everything,
10 made all your notes, then what did you prepare?

11 A The search warrant that was executed is what we did
12 then is have to sign or fill out what they call a return.
13 And that is when you serve a search warrant, whatever you
14 take from the house you have to fill out on the form and
15 then the people that own the house, whatever, who search
16 warrant was executed to, they get a copy of what was taken
17 as well as the courses.

18 Q And---

19 A And we also, usually the last thing we do is we'll do a
20 sketch of the property and crime scene.

21 Q Okay. Now those sketches to scale?

22 A No, sir, they're not.

23 Q Okay. But are they a reasonable facsimile of what you
24 found there?

25 A Yes, sir.

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1 Q Other than not being to scale?

2 A Yes, sir.

3 Q All right. I'm gonna present here what's been marked
4 State's Exhibit 99 and ask if you can step down please and
5 explain to the jury what you found and -- I wish I had
6 something a little longer, but use this pen maybe, or
7 yardstick right there. Investigator Hill, I'm gonna ask
8 you to stand on this side so the court reporter and all
9 the jurors can hear. If you can just go through this
10 sketch and explain using this sketch to depict what you've
11 already testified to and tell us about what you found.

12 A This is what I would call a rough sketch. In other
13 words, this is what I did that was while I was there on
14 the scene. And this is the type of graph paper that we
15 have that we use to sketch out our scenes while we're
16 there.

17 Q That's not the actual paper y'all had, is it?

18 A No.

19 Q It's blown up?

20 A Yes, yes, sir.

21 Q Okay.

22 A This right here indicates that this is , the
23 street of . This end up here which indicates north
24 with an arrow pointing this way means this was north
25 bound. So Avenue would run right along here if I had

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- 1 it on the diagram. This is . The main house,
Avenue, sit rights about here and this right here is
3 the actual scene. This is the garage apartment ,
4 which is right behind it. You come down
5 , this is all chain link fence around the property
6 as you can see right here. That's what that line is for.
7 And then this is the brake and the chain link fence which
8 this is the driveway to the apartment. This diagram right
9 here is the vehicle is a Chrysler product, four door
10 sedan. I believe it was goldish in color, kind of a
11 champagnish. This is where it was sitting at. It was
12 actually 42 feet from the roadway. And this number one
13 you see right here at the tail of the trunk of the car, I
14 have a little graph over here that tells what each number
15 means. These are my evidence markers that we talked about
16 a few minutes ago. And this is another example how it
17 comes in handy by using evidence markers. Number one,
18 which is a red stain, it was indicated that it was found
19 on the trunk, the trunk bumper area of this car right
20 here.
- 21 Q And did you test that with a presumptive test?
- 22 A I did and it indicated a positive result for blood as
23 well.
- 24 Q Okay.
- 25 A Number two that you see right here is in the carport

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1 area. We talked about that a few minutes ago and that was
2 also a red stain that was tested. This opening right here
3 in the apartment which you see in number three, that's the
4 red stain that we showed you pictures of a few minutes ago
5 that was on the door seal. Once you come into this room,
6 step inside the doorway you're in the living room, which
7 is a small room here. And then this break right here is
8 like a kitchen counter. This is your kitchen. This is
9 all one big room; it's all open. It's only divided by
10 this long cabinet area. This is your stove here, your two
11 sinks. You had a refrigerator in this corner. The W and
12 the D stands for a washer and dryer. That's where they
13 were at just off the kitchen. This opening right here is
14 the doorway that goes into the bedroom, and it's just a
15 one bedroom apartment. This is it right here. This
16 opening right here is the bathroom. It's a one bedroom,
17 one bath. That's your toilet right here. That's your tub
18 with a shower and that's your sink.

19 This right here is going to be the bed in the
20 bedroom. These little blocks right here that you see with
21 nothing in them, those are just indicating like
22 nightstands and closed dressers and stuff like that.

23 Q Did you later take this hand drawn sketch and prepare
24 anything else from that?

25 A I cleaned it up a little bit and made a little bit more

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1 detailed diagram of the same scene.

2 Q What did you use to make that diagram?

3 A A computer.

4 Q Okay. I show you State's Exhibit 98. Please tell us
5 what that is and show everything to them.

6 A This is the one bedroom apartment right here. This is
7 the vehicle that was in front of the carport.

8 Q Was it at an angle like that?

9 A Pretty much. It was kind of hard -- I would say I
10 angled it that way on purpose because that's how I was
11 parked in the driveway.

12 Q Okay.

13 A You have a red stain that's on the mat down here, and
14 that's the red stain that was evidence marker number one
15 that we talked about. That's the red stain that was on
16 the carport that we talked. That's the red stain found
17 inside door seal that we talked about. And this red stain
18 here, which is a little bit larger is the one that was on
19 the piece of carpet, and it's right -- the stain was found
20 right in front of the couch, in between the couch and the
21 coffee table that was in front of the couch. This little
22 dot right here that has a circle around it, as you can see
23 the way it's spelled out is the .22 caliber shell casing
24 that we talked about earlier that was found and that's the
25 little, that little square is the -- indicates the stool

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1 that it was found by. Once you enter into the bedroom
2 you'll see on top of the bed you'll see a circle with a
3 little line through it. Actually what that is, it's a
4 knife; and if you were able to get up close you can see
5 it's a knife. But that's the knife that was found and
6 recovered off the top of the bed. And then over here on
7 the -- if you're facing the bed, from right here would be
8 the right side, you have the rifle and shotgun that were
9 found at the scene.

10 Q What kind of rifle was that?

11 A A Marlin .22 caliber.

12 Q Okay. And what was the size of this building?

13 A It was 34 feet long in the front, in the back, and
14 25 feet wide on the ends.

15 Q Bear with me right there one more minute. State's
16 Exhibit 6, you recognize that?

17 A Yes, sir, I do.

18 Q What is that?

19 A This is going to be, if you were standing on
20 Avenue itself looking towards, looking at the house -- the
21 house you're looking at is house at Avenue.

22 Q And State's Exhibit Number 9, who made that picture?

23 A This is my photograph. This will be if you were
24 standing on looking back towards the garage
25 apartment Avenue, that's the break in the

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1 fence that I mentioned and that yellow thing you see
2 across there is the crime scene tape.

3 Q State's Exhibit 10?

4 A Once you enter inside the fence area by that apartment
5 looking back towards the main house, that's what that is
6 right there.

7 Q And tell us about the video.

8 A The vehicle that you see right here in the corner of
9 the photograph, has the white sheet, that's the victim's
10 vehicle and that's where she was found.

11 Q And that white sheet wasn't there?

12 A That was not there when we got there. That was put up
13 probably by -- I'm not sure who put it up, probably after
14 the coroner arrived.

15 Q Okay. And State's Exhibit Number 11?

16 A This is facing towards the front door of the actual
17 apartment. You can also see the front of the car 'cause
18 it's in the photo as well.

19 Q In the little carport area?

20 A That's correct.

21 Q State's Exhibit 14?

22 A This is my photo, or I took this photo. And this is
23 just a side view looking at the driver's side of the
24 vehicle.

25 Q What's in the background there?

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1 A In the background you have the main house
2 Avenue, and also towards the front of the car you can see
3 the actual garage apartment.

4 Q And is that how close it was or did you move it up?

5 A No, we never move the car until after we were done.

6 Q Now your sketch and your diagram, are either one of
7 those made to-scale?

8 A No, they're not to-scale so compared to the pictures
9 something might look closer or farther away because
10 they're not to-scale.

11 Q State's Exhibit 18, what is that another picture of, a
12 closer view?

13 A Evidence marker number two with a red stain that we --
14 that I mentioned that was on the carport, the concrete
15 area in front of the car, that's a photo of it.

16 Q State's Exhibit 20?

17 A This is a closer up picture of the red stain that was
18 on the door seal, bottom of the door seal, just as you
19 make entry into the apartment.

20 Q State's Exhibit 22?

21 A And this is a view of inside the apartment if I was
22 standing at the doorway, which I was, looking into the
23 apartment.

24 Q This is State's Exhibit 24.

25 A This picture is taken with me standing halfway in the

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1 living room area and just looking towards the kitchen.

2 Q You can have a seat, Investigator Hill.

3 A (Witness complies.)

4 Q Investigator Hill, you talked about things you did
5 presumptive blood tests on and got positive results.

6 What, if any, items did you test for presumptive test for
7 blood and get negative results?

8 A There was only one, well two areas that we that I did
9 presumptive blood test on and didn't get a positive
10 response and that was the drain to the bath tub. And once
11 I was processing the vehicle on the inside there were
12 several areas that I tested for possibility of blood that
13 came back negative, but these are the only two.

14 Q Would there have been any items that Sergeant Brandt
15 might have tested while you were testing? Did y'all do
16 things hand in hand together?

17 A I did -- we -- I did all the DNA testing on scene.

18 Q Okay, all right. Now we talked about the inside.
19 Let's talk about the car a little bit. And before we get
20 to that did you go to the autopsy?

21 A No, sir, I did not.

22 Q Do you know who went to the autopsy?

23 A Sergeant Brandt.

24 Q What was the purpose of, for y'all to go to the
25 autopsy?

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1 A To collect whatever evidence that might be found from
2 the pathologist and to maybe hear from the pathologist
3 pertinent information that might aid the investigation.

4 Q All right. Tell us what you did as far as examining
5 the car.

6 A Later on that morning which would have been the 13th by
7 this time, I took more photographs, general photographs,
8 of the exterior or outside of the vehicle. That was done
9 down in our -- in the sallyport area in the basement of
10 this building, where we drove the car from the scene there
11 so it would be processed in a controlled environment. But
12 on two photographs processed the outside of the vehicle
13 from latent prints using multipurpose latent fingerprint
14 powder.

15 Q Were you able to find anything that you could test or
16 sufficient ridge detail?

17 A No identifiable prints were found on the outside of the
18 vehicle.

19 Q Now they always had fingerprints on television. Are
20 fingerprints something you always find?

21 A Not all the time, no, sir.

22 Q Okay. State's Exhibit 93, you take that picture?

23 A Yes, sir.

24 Q And that's the interior of the vehicle?

25 A That would be again from the driver's side of the

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1 vehicle, interior photograph.

2 Q State's Exhibit 94?

3 A That will be from the front passenger seat area of the
4 same.

5 Q Okay. And what's in that seat?

6 A That is a driver's license and a registration card and
7 an insurance card with the name Laura Creel.

8 Q And why did you take the photographs of that?

9 A To identify the owner of the car.

10 Q All right.

11 A To document who the owner was of the vehicle.

12 Q State's Exhibit 95?

13 A That's just a clearer, closeup photograph of the same
14 items.

15 Q And State's Exhibit 96?

16 A Photograph of Ms. Creel's driver's license that was
17 found in the glove box of the car.

18 Q So those documents were all in the glove box of her
19 car?

20 A They were in the glove box. I removed them and placed
21 them on the passenger seat to take photographs of them.

22 Q All right. Now in regards to the trunk, when y'all got
23 there what did you do in regards to looking in the trunk,
24 documenting what was in the trunk? Explain that to us.

25 A Basically when we first arrived on the scene we just

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1 looked, didn't touch or move the body until after -- until
2 after the search warrant was obtained. Once the search
3 warrant was obtained then we were able to take, make a
4 closer examination of the body and move it around in the
5 vehicle.

6 Q Now did you take a picture of the body in the trunk
7 prior to moving the body?

8 A Yes, sir, a general photograph which would be the same
9 thing I would see if I was just standing at the truck and
10 looking in.

11 Q Standing at the trunk looking in?

12 A Yes, sir.

13 Q I'm gonna show you State's Exhibit 102. You recognize
14 that?

15 A Yes, sir.

16 Q Who took that photograph?

17 A I did.

18 Q Can you tell us -- I'm gonna ask you to step down one
19 more time. Can you tell us what this picture depicts and
20 was there any difference, what difference if any. Let me
21 ask it this way. What difference, if any, was there with
22 where the body was before y'all touched it in this
23 photograph?

24 A All right.

25 Q Is there any difference?

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1 A From -- I'm sorry, say that again. From after we moved
2 it?

3 Q Yeah. Was there any difference from this, what this
4 photograph depicts, than when you saw the body prior to
5 touching it?

6 A No, that's how it was as we looked upon it, looked down
7 on the trunk area.

8 Q So this is before moving the body whatsoever?

9 A That is correct, yes, sir.

10 Q Please explain the position of the body and as it
11 relates to the wheel well and the trunk and explain that
12 to the jury.

13 A From this photograph, this angle, I would probably -- I
14 was standing if you're looking at the back of the car, the
15 right tail light, that's where I was standing taking the
16 photograph like this. And that's, you know, we didn't
17 move her. That's just how she was found. Her legs were
18 on the right side of the car. Her torso was partially
19 covered by the inside area of the trunk as you can see
20 right here where the glass comes down and meets the actual
21 body of the car. And then her head was turned towards the
22 inside of the car up and it was up against the wheel well.

23 Q Could you see her face?

24 A I could not even see her face from where I was standing
25 there with the camera.

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1 Q Right at the foot of the car?

2 A Correct.

3 Q Where was her forehead?

4 A Her head, her whole head was turned as you can see in
5 the photograph and her forehead was up against rear wheel
6 well, whatever you want to call it.

7 Q On the driver's side?

8 A Yes, sir, on the driver's side.

9 Q All right.

10 MR. CLEMENTS: Permission to publish this to the
11 jury, Your Honor.

12 THE COURT: Yes, sir.

13 MR. CLEMENTS: Beg the Court's indulgence one
14 moment.

15 BY MR. CLEMENTS:

16 Q Investigator Shannon, so I can be as thorough as you
17 are with taking your pictures, I asked you about the car I
18 asked you about the apartment. You went back, processed
19 the inside of the car back here at the sallyport?

20 A That's correct, yes, sir.

21 Q After you finished processing the car what else, if
22 anything, did you do in regards to the forensic
23 investigation on this case?

24 A After we left the scene, after I processed the outside
25 and inside of the car and all the evidence was packaged --

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1 Well, the evidence wasn't packaged yet 'cause we didn't
2 have all of it due to Sergeant Brandt going to the
3 autopsy. I took more photos inside the lab area or
4 processing room of the clothes that the suspect was
5 wearing at the time he was arrested. Had some gray
6 slippers he was wearing, slip-on shoes, a pair of blue
7 jeans, white T-shirt or tank top of some sort. And they
8 all had red stains on those as well so what I did, like I
9 did in the other red stains I found, I conducted
10 additional presumptive blood tests on those stains and
11 indicated positive results from blood.

12 Q And that was his -- wound up to be his blood; didn't
13 it?

14 A That's correct. That's the clothes that was taken off
15 him or brought back from Effingham when he was arrested.

16 Q All right. Is there anything else you did in the
17 investigation of this case?

18 A Not that I can recall offhand.

19 Q How about in regards to sealing up and packaging items
20 to be sent to SLED?

21 A All items was sealed, properly sealed according to
22 evidence standards, and then the evidence that went to
23 SLED was placed in our crime scene evidence safe and then
24 it was locked into the Florence Police Department evidence
25 room. And from there it was logged in -- it was checked

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1 out by whoever was going to SLED that day on what we call
2 an evidence trip.

3 Q And were you the one that made that evidence trip?

4 A No, sir, I did not.

5 Q All right. You know who did?

6 A Corporal Chris Moreau.

7 Q Okay. Please answer any questions Mr. Lawson may have.

8 MR. LAWSON: May it please the Court.

9 THE COURT: I just want to make sure it won't
10 disrupt Mr. Lawson's cross-examination. We're gonna take
11 a short break and give you an opportunity to get something
12 to drink and stretch a little bit if you need to use the
13 restroom, whatever. So please have no conversation and
14 we'll just take a short break and get started back in a
15 little bit.

16 (WHEREUPON, the jury was removed from the
17 courtroom at 3:26 p.m., and a recess was taken from the
18 proceedings.)

19 THE COURT: Yes, sir.

20 MR. CLEMENTS: Your Honor, I misspoke earlier, I
21 got one question I need to ask Mr. Hill, if I may.

22 THE COURT: Okay. Is it regarding the exhibits
23 that we ---

24 MR. CLEMENTS: It's regarding one exhibit and then
25 I need to make a motion.

1 THE COURT: What's the motion?

2 MR. CLEMENTS: To move into evidence.

3 THE COURT: You're talking about one through five?

4 MR. CLEMENTS: Yes, sir, but I need to ask him
5 about, I think, five is the number.

6 THE COURT: Okay. Have you talked to, Mr. Lawson,
7 about ---

8 MR. CLEMENTS: No, that's why I'm asking y'all to
9 see if he's got an objection.

10 THE COURT: I mean, he may have. I don't know if
11 he has an objection or not.

12 MR. LAWSON: What is number five?

13 THE COURT: I think it's number five. It says
14 autopsy kit from victim. It's one through five. One is
15 22 rifle. Two is the rug. Three is the spent bullet from
16 victim. Four is the spent cartridge. Five is the autopsy
17 kit from victim.

18 MR. CLEMENTS: Actually it's State's 97, Your
19 Honor, I'm sorry.

20 THE COURT: The swabs.

21 MR. CLEMENTS: State's 97 is blood drawn from
22 suspect.

23 THE COURT: Seven swabs from scene?

24 MR. CLEMENTS: No, sir, it's blood drawn from
25 suspect. No, this is swabs, yeah.

1 THE WITNESS: Swabs. SLED keeps the blood drawn.

2 THE COURT: Show them to Jack and maybe if he's
3 going to testify that's what it was and there's no
4 objection. Either that or I'll just let you ask him, you
5 know, if you need to.

6 (Attorneys confer.)

7 THE COURT: All right, we ready?

8 MR. CLEMENTS: Yes, sir.

9 THE COURT: Ms. Joe, if you would ask the jury to
10 join us please.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 3:53 p.m., and the
13 following proceedings commenced in
14 open court.)

15 THE COURT: All right, Solicitor.

16 MR. CLEMENTS: Thank you.

17 Your Honor, I just have one more question.

18 BY MR. CLEMENTS:

19 Q Investigator Hill, I'm sorry, I forgot to ask you this,
20 what did you do on November 16th, '09, in regards to this
21 case with Mr. Bruce?

22 A I received a court order for a blood draw from
23 Mr. Bruce. I took that court order down to the Florence
24 County Detention Center and met Mr. Bruce there in the
25 health department there at the law enforcement center and

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1 nurse Nagy. After I read the warrant, the court order to
2 him, I asked if he had any questions, he said he didn't.
3 I gave him a copy of the court order, and then the nurse
4 down there, Nurse Nagy completed the blood draw.

5 Q And you submitted that sample to SLED?

6 A I did.

7 Q All right. That's all I have. Please answer any
8 questions Mr. Lawson may have.

9 MR. CLEMENTS: But before I do that I need to make
10 a motion, Your Honor, and I think -- thought we'd already
11 done this, we discussed it, but State's Exhibits 1, 2, 3,
12 4 and 5, we move them into evidence.

13 THE COURT: All right. And I think those are
14 without objection, is that correct, Mr. Lawson?

15 MR. LAWSON: That's correct, Your Honor.

16 THE COURT: All right. 1 through 5, they're in
17 evidence.

18 (WHEREUPON, State Exhibits Nos. 1 through 5
19 were received into evidence.)

20 CROSS - EXAMINATION

21 BY MR. LAWSON:

22 Q Officer Hill, my understanding is you've been with the
23 crime scene unit for four years now?

24 A That's correct.

25 Q So at the time that this occurred you had been with

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1 them for two years?

2 A Yes, sir, that's correct.

3 Q So you were fairly new in that position at that time.
4 would that be correct?

5 A I had two years experience at the time.

6 Q Okay. Now you took a number of swabs and did
7 presumptive tests on them; is that correct?

8 A Yes, sir.

9 Q Did you say two of them were negative for blood or one?

10 A Two.

11 Q Two? What -- and that was the drain?

12 A The one from the drain and the tub that was in the
13 apartment and from the location on the interior of the
14 vehicle.

15 Q Okay. Now it's my understanding you took seven of
16 those to SLED?

17 A That's correct.

18 Q Which seven were they?

19 A Swabs that I took from the gun barrel of the 22 rifle,
20 from the stock, the red stain, that we found on the stock
21 of the 22 rifle. From a small towel that we found behind
22 the dryer inside of the apartment. An autopsy kit for
23 Ms. Creel was sent, the blood standard of Mr. Bruce was
24 sent, and swabs from the rug were sent.

25 Q Okay. And all of the other swabs that were done, none

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- 1 of them were sent to SLED for positive testing?
- 2 A That's correct, yes, sir.
- 3 Q Okay. So all you know in relation to the other swabs
- 4 is that they were positive for blood?
- 5 A Yes, sir.
- 6 Q Could have been anybody's blood?
- 7 A They tested positive, yes, sir.
- 8 Q Anybody that bleeds?
- 9 A That's correct.
- 10 Q What about an animal?
- 11 A The presumptive blood test id not going to determine
- 12 whether it's human or animal. That is why we sent them to
- 13 SLED for further analysis.
- 14 Q Okay. So all the ones that weren't sent to SLED are
- 15 just positive for blood of some sort?
- 16 A Yes, sir.
- 17 Q Now you say that you did not do a swab on the knife; is
- 18 that correct?
- 19 A Yes, sir, that's correct.
- 20 Q That there were spots on the knife that you determined
- 21 them to be rust I believe?
- 22 A Yes, sir, that was my opinion after visually observing
- 23 it.
- 24 Q Would it have hurt to swab them for a test? I mean...
- 25 A It wouldn't have hurt, but I was satisfied with my

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1 visual observation.

2 Q Was the knife fingerprinted?

3 A No, sir.

4 Q So no -- nothing was done with the knife other than
5 looking at it?

6 A And collected and brought back as possible evidence.
7 yes, sir.

8 Q When you went through the apartment did you notice any
9 drugs there in or any evidence of drugs?

10 A No, sir.

11 Q None whatsoever?

12 A No drugs, no, sir.

13 Q And what about alcohol?

14 A Yes, sir, I observed some evidence of alcohol.

15 Q Was there a alcohol bottle in the bedroom?

16 A Yes, sir.

17 Q Right where the gun was?

18 A Yes, sir.

19 Q Now when you first got the call did I understand you to
20 say on your way that you made a phone call?

21 A Yes, sir, to Sergeant Brandt.

22 Q You called Sergeant Brandt?

23 A Yes, sir.

24 Q And is that because he's your supervisor?

25 A Yes, sir.

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1 Q Okay. And he was your supervisor at that time?

2 A Yes, sir.

3 Q And did he -- he also came to the scene?

4 A Yes, sir, that's correct.

5 Q Okay. Who was the lead crime scene person in this
6 case?

7 A I handled the report, but we work in tandem as a team.
8 once we're there.

9 Q Okay. I don't have any other questions.

10 THE COURT: Anything further, Solicitor?

11 **REDIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q I just want to be sure I clarify something in my mind.
14 What were done -- what was done with the swabs for the
15 spot that was found that you notated as evidence cone
16 number two in the carport?

17 A We kept that as evidence.

18 Q Okay. Didn't submit those swabs or did you?

19 A Not number two, no, sir.

20 Q Okay, all right.

21 MR. CLEMENTS: No further questions. Your Honor, I
22 ask have him released from his subpoena.

23 MR. LAWSON: No objection.

24 THE COURT: All right. Thank you very much, sir.
25 You're free to go.

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1 MR. CLEMENTS: Your Honor, at this time we call
2 special agent Ken Whitler from the State Law Enforcement
3 Division.

4 THE COURT: Sir, if you'd please come around to be
5 sworn.

6 WHEREUPON,

7 **KENNETH H. WHITLER,**
8 having been duly sworn by the Clerk of Court, testified as
9 follows:

10 CLERK OF COURT: Please be seated and state your
11 full name for the record.

12 THE WITNESS: My name is Kenneth H. Whitler, last
13 name is spelled W-H-I-T-L-E-R.

14 BY MR. CLEMENTS:

15 Q Would you please tell these ladies and gentlemen where
16 you work?

17 A I work for the South Carolina Law Enforcement Division
18 that's also known as SLED. I'm in the forensic services
19 division which is the laboratory, and I'm in the firearms
20 department.

21 Q And how long have you worked in that capacity at SLED?

22 A Since 1997.

23 Q And prior to 1997 would you tell this jury where you
24 worked?

25 A For the FBI. I was in the FBI laboratory from 1989

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1 till I retired in 1997. And prior to that from 1976 I was
2 an agent for the FBI.

3 Q All right. And when you worked in the FBI lab what
4 capacity did you work there?

5 A I was a firearms examiner. I basically when I retired
6 from FBI went to SLED to do the same job.

7 Q All right. Can you please tell us, if you can, how
8 many times you've been qualified to testify as an expert
9 in firearms and ballistics in state and federal court?

10 A Last time I counted it was a little over 235 in various
11 state, federal, and territorial courts.

12 Q And when was the last time you counted?

13 A A few months ago.

14 Q Okay. Can you tell this jury what type of specialized
15 training or experience you had in the area of firearms
16 examination and ballistics?

17 A There is no school that you go to to get a degree in
18 firearms identification which is what I do. You have to
19 learn it from other qualified examiners. And I was
20 trained in the FBI laboratory. Their period, training
21 period takes about two years. You work with all the
22 qualified examiners in that unit. And during that period
23 you do a lot of independent study. You shoot a lot of
24 guns. You look at a lot of bullets and cartridge cases.
25 You're given tests, cases that are, say, go shoot this or

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1 do this, along -- as well as you work on actual cases with
2 real examiners. And as you start off you do a lot of
3 looking and the examiner does most of the work, but as you
4 get more and more experienced you do more of the work and
5 he does more of the watching. When they feel that you
6 have reached the point where you have become competent
7 then you are given a series of three, call them final
8 exams. You have to successfully complete all three of
9 them; and when you do then, you're certified to be a
10 firearms examiner for FBI lab. I successfully completed
11 that training period and was certified in 1991 to conduct
12 exams for the FBI laboratory.

13 Q And ever since you've been a firearms examiner?

14 A Yes, I have.

15 Q Okay.

16 MR. CLEMENTS: Your Honor, we would submit Agent
17 Whitler as an expert in the field of firearms examination
18 and ballistics.

19 MR. LAWSON: No objection.

20 THE COURT: All right, without objection.

21 BY MR. CLEMENTS:

22 Q Agent Whitler, did you get asked to examine pieces of
23 evidence by the Florence Police Department on the case
24 where Laura Creel was the victim and Roger Bruce was the
25 defendant?

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1 A Yes, I was.

2 Q Can you please tell the jury what items were submitted
3 to you for examination?

4 A I received a one fired 22 -- it was either a long, a
5 long rifle cartridge case, one Marlin 22 rifle, and with
6 one unfired 22 long rifle cartridge, one fired bullet --
7 excuse me, and one fired bullet which was consistent with
8 being a 22 Rem fired bullet.

9 Q Now the unfired bullet, where was that actually when
10 you got it?

11 A It was actually in the action of the rifle. It was
12 stuck in there. I had to remove it in order to operate
13 the gun.

14 Q Okay. Now once that was removed did you find the gun
15 to be in working order?

16 A Yes, it was.

17 Q Okay. I'm gonna show you what's been marked State's
18 Exhibit Number 1. Is this familiar to you?

19 A Yes. And also this bag I -- is also where I -- the
20 cartridge I took out of the action I put in a heat sealed
21 bag and stuck it to the gun.

22 Q Can you please tell this jury what type of examinations
23 or tests you conducted on this weapon?

24 A When you receive a bullet or a cartridge case, or in
25 this instance when I receive both, what you're trying to

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1 do is determine if that bullet and cartridge case was
2 fired by that particular rifle. In order to do that I
3 have to test fire the rifle so that I get known standard
4 bullets and cartridge cases to compare to the submitted
5 bullet and cartridge case. By me test firing the rifle
6 then I know that gun fired that bullet or that cartridge
7 case. After I get the test fired bullets and cartridge
8 cases then I take them to a comparison microscope, which
9 is a microscope that actually has what are called two
10 stages. You can put two objects on it at the same time
11 and microscopically make them look like they're side by
12 side. I put the test bullet or cartridge case on one
13 side, stage, put the submitted bullet or questioned bullet
14 or cartridge case on the other and then tried to optically
15 make them, the lines or striated marks on the bullets or
16 cartridge cases line up that on one cartridge case or
17 bullet to the other bullet or cartridge case. If you get
18 the lines that match up then you can say that bullet or
19 cartridge case was fired by that rifle. If they don't
20 match up then you are -- can't say that. You are left
21 with the possibility that it could have been fired by that
22 rifle, or if there's -- if the class characteristics are
23 wrong or there's something drastically different in the
24 marking then you can say they weren't fired by.

25 In this case the cartridge case was examined at

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1 sufficient agreement of the marks, and I was able to say
2 the cartridge case was fired by the rifle. However, the
3 bullet didn't have sufficient agreement in while the
4 bullet could have before fired by this rifle or another
5 rifle with similar rifling, I can't say it was to the
6 exclusion of all other rifles.

7 Q Now you talk about a casing and you talk about bullet
8 and can you kind of in layman's terms -- and I'm handing
9 you State's Exhibit Number 4. if you will, first, if
10 you'll look at that and see if that's familiar to you.

11 A Yes, it is.

12 Q What is that?

13 A It's a fired cartridge case.

14 Q And is that one you examined?

15 A Yes, it is.

16 Q Now can you use that and demonstrate, maybe explain to
17 this jury, if a bullet has different parts and what are
18 the different parts?

19 A Well, the complete object would be -- if you could open
20 that box for me and hand me that envelope, the heat
21 sealed. I'll make this -- what you're looking at --

22 MR. CLEMENTS: And Your Honor, if he can step down
23 perhaps maybe.

24 THE COURT: Sure. Just keep your voice up if you
25 would please.

SW - K. WHITLER - DIRECT

1 THE WITNESS: This is the complete what we would
2 call a cartridge. And you'll notice it has a brass
3 portion a lead portion. The cartridge, I mean, the brass
4 portion is the cartridge case. The lead portion would be
5 the bullet. Now the cartridge case also has gun powder
6 inside, and when the fire firearm is discharged the gun
7 powder ignites and pushes the bullet down the barrel. So
8 when you shoot a cartridge, what you end up with is a
9 fired cartridge case and also a bullet. So this will be
10 separate. In this case here is the fired cartridge case
11 after it's been fired and the bullet has gone so this is
12 what is left either in the gun or it's ejected from the
13 gun. This is what -- this happens when you fire the
14 cartridge and the bullet's been discharged. If you can
15 imagine this bullet part by itself is what goes down the
16 barrel. So what we end up with in many cases are bullets
17 and fired bullets and fired cartridge cases and that's
18 what we're trying to determine if they would fired by that
19 particular gun. And each has individual marks or has the
20 possibility of having marks. Sometimes through damage or
21 the firearm just doesn't mark well, you don't get enough
22 marks to be able to say they were fired by that particular
23 gun. You may be able to say they could have been fired by
24 the gun. Then in some cases the marks are so drastically
25 different we call those class characteristics, you're able

SW - K. WHITLER - DIRECT

1 to say it wasn't fired by that gun.

2 But in this case I was able to identify this
3 cartridge case as being fired by that rifle, and the
4 bullet that was submitted could have before fired by but
5 it just didn't have enough agreement for me to identify it
6 as such.

7 Q Now would a bullet striking bone or hitting something
8 that would cause it to deform in some way, would that be a
9 process that would prevent identification as opposed to
10 being consistent?

11 A It's -- it doesn't help it if you tear your bullet up.
12 When it hits something it deforms, and of course, what
13 we're relying on are the marks agreeing. If you deform it
14 then they can't agree because it would be like spreading
15 your fingers. If these are the normal spacing and I open
16 it up like this, this is never gonna match. The
17 possibility exists that could at one time been the same,
18 but due to damage I'll never be able to say that kind of
19 spacing is correct. Again though, in some cases bullets
20 that aren't damaged don't have enough marks on it. It
21 just depends on how well the gun marks and what kind of
22 damage it gets once it gets apart.

23 Q Thank you, sit back down. Agent Whitler, would you
24 mind explaining to us, and I guess this is where rifles
25 get their name from, what rifling is in a barrel and how

SW - K. WHITLER - DIRECT

1 that works.

2 A Rifling is there are series of grooves cut in the
3 barrel and there's no magic number for the number of
4 grooves. It's just up to what the manufacturer wants to
5 put in them. And what they do with the grooves as they're
6 cutting them, they twist either to the right or to the
7 left. Again, there's no magic to whether right twist
8 gives you better than left twist. It's up to what the
9 manufacturer wants to use. And the purpose of the
10 twisting is so that when the bullet goes down the barrel
11 it is -- starts to spin, and it makes it more stable. If
12 you just shoot a bullet with a smooth barrel it doesn't
13 rotate and it's not as stable so at longer distances it's
14 not as accurate. If you can get the bullet to spin, then
15 it is more stable and it's more accurate at longer
16 distances. These are the marks as these grooves are put
17 in the barrel and imperfections in the barrel or wearing
18 of the barrel will in many cases leave marks on the bullet
19 as it travels down the barrel. And these are the marks
20 we're looking for when we're looking microscopically to
21 compare those marks against the marks on the submitted
22 bullet.

23 Q Okay. Now I guess that bullet twisting spinning in
24 that barrel makes it more accurate?

25 A Yes.

SW - K. WHITLER - DIRECT

1 Q Is that kind of like when you throw a baseball and you
2 put spin on it as opposed to throwing a knuckle ball and a
3 knuckle ball as it goes all over the place?

4 A I guess so. I was never really good at throwing
5 baseballs. If I could have I guess I would have tried
6 that trick.

7 Q Now you received a bullet that came from Laura Creel's
8 autopsy; is that correct?

9 A Yes, I received a bullet. I'm assuming it came from
10 the autopsy.

11 Q Yes, sir. And that was consistent but you couldn't
12 match it?

13 A That's correct.

14 Q But the spent shell casing you matched to the gun?

15 A Yes, I did.

16 Q Okay. And you explained, I understand, about the
17 bullet making the marks going through the barrel and
18 that's how you can compare that. How do you compare the
19 cartridge to see if it was fired by the gun?

20 A The cartridge case has several areas. One is the back
21 portion. We call that the head area. When the cartridge
22 goes off the gas pressure pushes the cartridge, actually
23 slams it back against what's called the breech face. This
24 is what holds the cartridge in the chamber. And if
25 there's machine marks or manufactured marks on the breech

SW - K. WHITLER - DIRECT

1 face of that bolt or whatever, it's holding it in the bolt
2 or slide, those are the marks that are impressed into the
3 softer metal and those are the marks that we're looking
4 for to see if they agree. Also in the firing pin
5 impression, because it's a hard — it's a hard metal
6 striking the softer brass, in many cases it leaves marks
7 in there as well and those are the primary marks that
8 we're looking for to see that 'cause these are marks that
9 are imparted to the cartridge case during the firing
10 process and you're able to say if these marks agree that
11 that object was fired by that gun.

12 Q I'm gonna show you what's been marked here as State's
13 Exhibit 87 and ask you to look at that and tell me does
14 that depict what you're talking about?

15 A Yes, it does. It appears to be a cartridge case with a
16 firing pin impression in it.

17 Q And this is what you look at and examine to compare?

18 A Yes.

19 Q Okay. Agent Whitler, thank you for explaining all that
20 to us and please answer any questions Mr. Lawson has.

21 THE COURT: Mr. Lawson.

22 MR. LAWSON: May it please the Court. May I have
23 one moment, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

SW - K. WHITLER - CROSS

1 BY MR. LAWSON:

2 Q As I understand it, Agent Whitler, when you received
3 this weapon there was a cartridge or a bullet -- well, it
4 --

5 A Cartridge.

6 Q Cartridge in the weapon; is that correct?

7 A That's correct.

8 Q How -- was it jammed ---

9 A Yes.

10 Q ---what you would say? What would you do to get it
11 out?

12 A Actually just wiggled the cartridge a little bit and
13 manipulated the action at the same time and it would
14 loosen it up to the point where it came out.

15 Q What would cause that?

16 A Just it could have been a problem with the rifle. it
17 could have been a shooter induced problem. You know, if
18 it's a lever action rifle, if you don't function the lever
19 fully or incorrectly you might not let it operate as it's
20 intended and it may jam up. It could have just been
21 caused by dirt or just, you know, just sometimes there's
22 just some rifles have problems sometimes.

23 Q How many times did you fire this weapon?

24 A Well, we fired -- let's see. I shot this one four
25 times.

SW - K. WHITLER - CROSS

1 Q Did it jam any with you?

2 A No, sir.

3 Q I don't have any other questions.

4 THE COURT: Anything further?

5 MR. CLEMENTS: That's all Your Honor. We ask Agent
6 Whitler be released from his subpoena.

7 THE COURT: Any objection?

8 MR. LAWSON: Without objection.

9 THE COURT: Thank you very much, Agent Whitler.
10 You're free to go, sir.

11 MR. CLEMENTS: Your Honor, our next witness will be
12 Agent Katherine Leisy with SLED.

13 THE COURT: All right, ma'am, if you'd come around
14 to be sworn.

15 WHEREUPON,

16 **KATHERINE LEISY,**

17 having been duly sworn by the Court, testified as follows:

18 THE COURT: If you would have a seat and then state
19 your full name and spell your last name for the record
20 please.

21 THE WITNESS: Katherine Leisy, L-E-I-S-Y.

22 **DIRECT EXAMINATION**

23 BY MR. CLEMENTS:

24 Q And can you please tell this jury where you work and
25 what your job duties are?

SW - K. LEISY - DIRECT

1 A I work for the South Carolina Law Enforcement Division.
2 I'm a forensic scientist assigned to the DNA and serology
3 unit.

4 Q And can you please explain to the jury what the DNA and
5 serology unit deal with?

6 A My responsibilities include processing forensic cases,
7 generating the reports -- excuse me, generating reports
8 based on the results and conclusions drawn. Essentially
9 we're trying to determine whether or not an unknown
10 biological stain left at a crime scene on a piece of
11 evidence could or could not have been contributed by a
12 known individual whose standard has been submitted for
13 comparison.

14 Q Okay. And do you sometimes get unknown standards and
15 compare them against data bases or some other fashion to
16 make a determination?

17 A We do have the ability to enter unidentified profiles
18 into a national data base to search to see if we can find
19 a match that way, yes, sir.

20 Q Now can you tell this jury about your education?

21 A I have a bachelor of science degree in genetic
22 engineering from Cedar Crest College in Allentown,
23 Pennsylvania.

24 Q And do you have any kind of post graduate work?

25 A No, I don't.

SW - K. LEISY - DIRECT

1 Q Okay. And do you have to have that type of scientific
2 background to be an analyst of DNA in serology?

3 A You do. You have to have a certain type of at least
4 undergraduate education. You have to have taken certain
5 classes in biochemistry, statistics, and organic
6 chemistry. I'm also required to perform annual education
7 classes or training in the different types of
8 instrumentation and analysis using DNA testing.

9 Q And how long have you worked in this job?

10 A I've been at SLED for five years.

11 Q And have you had any kind of seminars or any kind of
12 additional training in relation to your undergraduate
13 degree?

14 A In addition to the training that I've received at SLED
15 I do attend either annual seminars or training sessions on
16 either broad topics in forensics or the specific type of
17 testing and instrumentation that we use at SLED.

18 Q And you do that every year?

19 A Yes.

20 Q Do you have any prior experience working in a lab prior
21 to working with SLED?

22 A Before I came to SLED I spent four years as a forensic
23 DNA analyst at a private testing facility known as Orchid
24 Stonework (ph) in Germantown, Maryland. I ran the same
25 types of analyses and tests that I do here at SLED.

SW - K. LEISY - DIRECT

1 Q Have you ever been before qualified to testify as an
2 expert in state or federal court?

3 A Yes, I have on approximately 30 occasions in various
4 states as well as the District of Columbia and federal
5 court.

6 MR. CLEMENTS: Your Honor, we would submit Agent
7 Leisy as a expert in the field of DNA and serology.

8 THE COURT: Any questioning or any objection?

9 MR. LAWSON: No objection, Your Honor.

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

11 BY MR. CLEMENTS:

12 Q Agent Leisy, did you get enlisted to perform any
13 laboratory tests for the Florence Police Department on the
14 murder of Laura Creel?

15 A Yes, I did.

16 Q Can you please tell this jury what items were submitted
17 to you for your expertise?

18 A I received four set of swabs that were labeled as from
19 a Marlin 22 caliber rifle/those swabs were from the inside
20 of the barrel. There's a set of swabs from the end and
21 inside of the barrel, a sets of swabs from the wood stock,
22 and a set of swabs from the barrel and lever action
23 trigger area. I also received swabs from a carpet from a
24 living room, swabs from a towel that was found behind the
25 clothes dryer. I also received swabs from a white tank

SW - K. LEISY - DIRECT

1 top that was identified as having been removed from
2 Mr. Bruce, in addition to DNA standards collected from
3 Laura Creel and Roger Bruce.

4 Q Now the swabs that are submitted, are those what's
5 referred to as unknown standards?

6 A Unknown or evidence items collected from the gun and
7 from inside the house.

8 Q Okay. And but unknown as far as who contributed to
9 DNA?

10 A That's correct.

11 Q Okay. And you compare them against a known standard?

12 A Yes, we do.

13 Q And where do you get your known standards from?

14 A Typically a known standard would be either a tube of
15 blood collected from a known individual or buccal or cheek
16 swabs. In this instance there was a blood standard
17 submitted for Laura Creel and a blood standard submitted
18 for Roger Bruce.

19 Q And can you please tell this jury what comparison you
20 made on the swabs from the gun. Let's deal with the gun
21 first. And tell this jury what comparisons you made, how
22 you made those comparisons, and what your findings were?

23 A I was able to develop a DNA profile from several of the
24 items from the gun, the swabs from inside the barrel, the
25 swabs from a wood stock, and the swabs from the barrel and

SW - K. LEISY - DIRECT

1 lever action trigger area matched the DNA profile
2 developed from Roger Bruce.

3 Q All right. And do you have an opinion to a reasonable
4 degree of certainty in your field of expertise that those
5 samples coming from that gun were the gun of Roger Bruce?

6 A I would say that within a reasonable degree of
7 scientific certainty he was the contributor of DNA from
8 those items. I was able to generate statistic to that
9 effect. The probability of randomly selecting an
10 unrelated individual could have contributed a DNA profile
11 matching the swabs is approximately one in 21 quadrillion.

12 Q Now I don't know if I know exactly how many zeros that
13 is. Would you mind if you would write on the chalk board
14 that behind you one in 21 quadrillion, is that what you
15 said?

16 A (Writes number on chalk board.) One quadrillion would
17 be a one with 15 zeros behind it.

18 Q So this is one in 21 quadrillion?

19 A Yes, sir.

20 Q Hold it right there a second. Now is there about six
21 billion people on the planet earth?

22 A Six to seven billion is current population.

23 Q Well, let's say 7 billion. Would you write 7 billion
24 under that where the decimal point would be in the same
25 place.

SW - K. LEISY - DIRECT

1 A (Complies.)

2 Q All right. You can have a seat. Thank you. So the
3 probability that it was someone other than Roger Bruce is
4 one in 21?

5 A The stat reflects how likely an individual is to have
6 that profile if they would randomly be selected. So if
7 you just pick someone off the street and develop their
8 profile, the odds this would be their profile is
9 approximately one in 21 quadrillion. It's just basically
10 to give weight to the statement to show how common or rare
11 a profile would be in the population.

12 Q Okay, all right. Now how about the swab from the wood
13 stock of the Marlin 22?

14 A The swab from the wood stock, the DNA profile from that
15 swab also matched the DNA profile of Roger Bruce.

16 Q And what was that substance on the wood stock?

17 A I ran an initial presumptive test and it did show
18 positive indicating possible presence of blood.

19 Q All right. And that matched his DNA?

20 A That's correct.

21 Q Okay. Now you also were submitted a small towel, is
22 that correct, swab from the small towel?

23 A Yes.

24 Q And did you test that to see if blood was indicated?

25 A Yes, I did.

SW - K. LEISY - DIRECT

1 Q And what type of blood was it?

2 A Well, the initial presumptive test is not specific for
3 human so the presumptive test that I ran did come up
4 positive for the possible presence of blood. The
5 proceeding steps include a quantitative test which
6 measures a -- relatively measures how many DNA is present.
7 That specific test is specific to higher primates or
8 humans, large orangutans, things like that, but that
9 particular test came back negative. So while I did have a
10 positive for blood, I didn't have anything indicating that
11 it was human blood so I didn't go further with testing on
12 that.

13 Q So it could have been dog or anything ---

14 A That's correct. It also could have been human blood
15 but damaged graded to the point that the test wouldn't
16 register.

17 Q Okay, all right. And you also analyzed swabs were
18 taken from a carpet located in the living room; is that
19 correct?

20 A Yes, it was.

21 Q Okay. Can you tell me what your findings were in
22 regards to whether that was blood or not?

23 A The initial presumptive test on that item tested
24 positive indicating possible presence of blood.

25 Q And further analysis revealed what?

SW - K. LEISY - DIRECT

1 A I was able to develop a DNA profile from swabs from the
2 carpet. That DNA profile matched the DNA profile of Laura
3 Creel.

4 Q All right. And do you have a opinion to a reasonable
5 degree of certainty in your field as to whether that blood
6 on that carpet was Laura Creel's?

7 A I do. And within a reasonable degree of scientific
8 certainty I can say that the DNA developed from this item
9 was contributed by Laura Creel. The probability of
10 randomly selecting unrelated individual having a DNA
11 profile matching this item is approximately one in
12 74 quadrillion.

13 Q One in 74 quadrillion?

14 A Yes.

15 Q Okay. So that would just be where that's 21 it's be a
16 74 over there?

17 A That's correct.

18 Q Okay. Now did you examine some swabs taken from a
19 white tank top?

20 A Yes, I did.

21 Q And what did your analysis reveal on that?

22 A The initial presumptive test was positive indicating
23 possible presence of blood, and a DNA profile developed
24 from that item matches the DNA profile of Roger Bruce.

25 Q Okay, all right. Were there any other swabs from any

SW - K. LEISY - DIRECT

1 other place that you took, or any other items tested?

2 A No, I believe that's it. Four swabs from the rifle as
3 well as carpet, towel, and the white tank top from
4 Mr. Bruce.

5 Q Okay. So let me be sure I understand and summarize,
6 and correct me if I'm wrong. The swabs from the gun
7 tested positive as a match with the DNA of Roger Bruce to
8 a reasonable degree of scientific certainty?

9 A There are three sets of swabs I was able to develop DNA
10 profile from, that's correct.

11 Q And the swab from the carpet matched with Laura Creel?

12 A That's correct.

13 Q And the swab from the white tank top matched with Roger
14 Bruce?

15 A That's correct.

16 Q And the swabs from the towel didn't match with anyone
17 human, wasn't sufficient to say it was human or it wasn't
18 human?

19 A Correct. I was not able to develop a DNA profile from
20 that particular item.

21 Q And that's the summation of what you examined in this
22 case?

23 A Yes, sir.

24 Q Okay. Beg the Court's indulgence one moment. Agent
25 Leisy, thank you so much. Please answer any questions Mr.

SW - K. LEISY - CROSS

1 Lawson has.

2 A Yes, sir.

3 MR. LAWSON: May it please the Court.

4 **CROSS-EXAMINATION**

5 BY MR. LAWSON:

6 Q Agent, what DNA profile was developed out of the barrel
7 of the gun?

8 A The DNA developed from a set of swabs from inside the
9 gun matched the DNA profile of Roger Bruce.

10 Q Did you test -- was that blood?

11 A The set of swabs that I was able to develop DNA profile
12 from was positive for my test presumptively indicating
13 possible presence of blood. No, excuse me, there was
14 no -- the positive presumptive from the rifle was from the
15 wood stock. The swabs from inside the barrel no blood was
16 indicated.

17 Q Okay. So the barrel did not reveal any DNA; is that
18 correct?

19 A It was not positive for blood. I ran the test on the
20 swabs from the inside of the barrel. The request was for
21 touch DNA, DNA that could have been transferred when the
22 item was held. So even though there was no indication of
23 blood there is indication there was DNA present inside the
24 barrel.

25 Q But there was -- but it was not tested, I mean, did it

SW - K. LEISY - CROSS

1 not test to Roger Bruce?

2 A The DNA profile that developed from inside the barrel
3 was not positive for blood, but it did match DNA profile
4 of Roger Bruce.

5 Q What possible scenario could generate DNA inside of a
6 barrel?

7 A It could just be how the barrel was handled when it
8 was cleaned. At some point it just indicates that there
9 was transfer of cellular material to the barrel of the
10 gun.

11 Q Okay. Now the tests that you run do not tell you the
12 age of any of the items that you're testing, does it?

13 A No, we can't tell when a stain may have been deposited
14 based on the testing we perform.

15 Q And as someone lives in a house you would fully expect
16 to find their DNA in that house?

17 A Yes, I would.

18 Q I don't have any other questions.

19 THE COURT: Anything further?

20 MR. CLEMENTS: Just briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MR. CLEMENTS:

23 Q What would be the possibility, Agent Leisy, of skin
24 cells or DNA being transferred somebody loading, handling
25 a bullet, loading it into the barrel of a gun and then

SW - K. LEISY - REDIRECT

1 ultimately shooting it?

2 A You would expect some level of transfer when an item
3 like that is held and loaded into the guilty. Whether or
4 not there's enough transfer to be detected with this type
5 of testing depends on numerous factors: How tightly it
6 was held, how long it was held, was the individual
7 sweating. But you would expect some level of transfer.

8 Q Okay. And when you developed analysis from the trigger
9 were there any other documents for any other possible DNA
10 or any other contributors revealed at all?

11 A No, the DNA profile developed from the trigger was
12 single source, meaning that it was consistent with being
13 contributed by just one individual.

14 Q And that individual was Roger Bruce?

15 A That profile did match Mr. Bruce, yes.

16 Q Thank you. No further questions.

17 THE COURT: Anything further, Mr. Lawson?

18 MR. LAWSON: No, Your Honor.

19 THE COURT: Thank you very much, ma'am. You may
20 step down.

21 MR. CLEMENTS: Your Honor, at this time we call
22 Ms. Laurie Ford.

23 THE COURT: All right, ms Ford.

24 CLERK OF COURT: If you will please go around,
25 place your left hand on the Bible, raise your right hand.

SW - L. FORD - DIRECT

1 WHEREUPON,

2 **LORI ANNE ROSE FORD,**

3 having been duly sworn by the Clerk of Court, testified as
4 follows:

5 **CLERK OF COURT:** Please be seated and state your
6 full name for the record.

7 **THE WITNESS:** Lori Anne Rose Ford.

8 **DIRECT EXAMINATION**

9 **BY MR. CLEMENTS:**

10 Q Good afternoon, Ms. Ford, how are you today?

11 A I'm fine.

12 Q Ms. Ford, would you tell this jury where you live.

13 A Avenue.

14 Q And how long have you lived there?

15 A Now about three-and-a-half years now.

16 Q Okay. Were you living there in October of 2009?

17 A Yes.

18 Q Do you remember getting a knock on your door in the
19 evening of October 12th, 2009?

20 A Yes, sir.

21 Q Who was that knocking at your door?

22 A It was some policeman. They were looking for Laura,
23 but I told them I was Lori, but they said Laura Creel.
24 I'm Lori Ford.

25 Q Yes, ma'am. And do you have neighbors live in your

SW - L. FORD - DIRECT

1 backyard?

2 A I do.

3 Q Who were those neighbors at that time?

4 A Laura Creel and Roger Bruce?

5 Q How long had you known them?

6 A I guess about a year-and-a-half maybe, something like
7 that, year-and-a-half, two years.

8 Q What did you notice about vehicles they had or used?

9 A She had, I guess, a tan/brownish color car. I don't
10 know cars, but she had maybe a four door mostly.

11 Q And who would you normally observe driving that car?

12 A She would drive it. I think it was her car so she
13 would drive it.

14 Q Was it normal or usual to see Roger Bruce driving that
15 car?

16 A No, he didn't drive the car.

17 Q Now you remember that weekend before the 12th. You
18 remember that weekend?

19 A Yes, uh-huh.

20 Q You remember what you observed about that car, if
21 anything?

22 A I saw the car in the driveway that day 'cause I was
23 coming from a yard sale earlier that morning, and I saw
24 the car in the driveway most of that evening.

25 Q Okay. Did you ever see anyone sitting in that car?

SW - L. FORD - DIRECT

1 A Yes, sir.

2 Q Who did you see sitting in that car?

3 A I saw Roger sitting in the car.

4 Q Okay. And did you ever notice that car moving or
5 leaving at all during that time period?

6 A When I was in the kitchen I saw it leave out maybe one
7 time if I paid attention. It was about one time?

8 Q And that was on the 12th?

9 A It was that weekend. I don't know whether it was that
10 Saturday or Sunday. It was that weekend 'cause I was off.

11 Q All right. And did you ever talk to Roger ---

12 A That weekend ---

13 Q ---while he was sitting in the car or thinking about
14 talking to him?

15 A I think I kind of waved. I didn't go over there.

16 Q Okay, all right. And did you recall seeing Ms. Creel
17 at all that weekend?

18 A I did. Well, I heard her that Saturday morning. I
19 was -- 'cause I was coming from a yard sale and she was
20 talking to somebody who came to see him, but she was
21 telling the person he was asleep. So I was taking my
22 stuff in the house; I didn't pay attention.

23 Q And that was Saturday morning?

24 A That was Saturday morning 'cause I go to yard sales on
25 Saturday morning when I'm off.

SW - L. FORD - DIRECT

- 1 Q And that'd been the 10th of October?
- 2 A I'm guessing it was that weekend.
- 3 Q Okay, all right. Did you ever hear any noises or
- 4 anything else of that nature out of the ordinary?
- 5 A No, I didn't hear anything.
- 6 Q Okay. And that's the last time you saw Ms. Creel?
- 7 A That was the last time I saw her.
- 8 Q And did you see Mr. Bruce after that?
- 9 A I saw him after that.
- 10 Q Where did you see him?
- 11 A They was just sitting in the car.
- 12 Q Was he sitting in the passenger side, in the driver's
- 13 side, or where was he sitting?
- 14 A The driver's side under the steering wheel.
- 15 Q Was the the car parked where it was normally parked?
- 16 A Yes, uh-huh.
- 17 Q All right. Beg the Court's indulgence.
- 18 THE COURT: Yes, sir.
- 19 BY MR. CLEMENTS: -----
- 20 Q Ms. Ford, I appreciate you being here. Please answer
- 21 any questions Mr. Lawson may have.
- 22 A Okay.
- 23 MR. LAWSON: May it please the Court.
- 24 THE COURT: Yes, sir.
- 25 CROSS-EXAMINATION

SW - L. FORD - CROSS

1 BY MR. LAWSON:

2 Q Ms. Ford, had Roger and Ms. Creel, had they been living
3 there the whole time you lived there?

4 A They was living there before me in the little apartment
5 house before me.

6 Q They were living there before you moved into the house?

7 A Uh-huh.

8 Q Okay. So is it fair to say they were there the whole
9 time you were there?

10 A Yes, uh-huh.

11 Q I don't think I have any other questions. Thank you,
12 Ma'am.

13 A Okay.

14 THE COURT: Any other questions?

15 MR. CLEMENTS: Your Honor, I ask Ms. Ford be
16 released from her subpoena.

17 THE COURT: Any objection?

18 MR. LAWSON: No objection.

19 THE COURT: Thank you very much, ma'am. You're
20 free to go.

21 MR. CLEMENTS: Your Honor, beg the Court's
22 indulgence one moment.

23 THE COURT: Yes, sir.

24 MR. CLEMENTS: Thank you, Your Honor. Your Honor,
25 the next witness we call will be Sergeant Mike Brandt.

SW - M. BRANDT - DIRECT

1 THE COURT: All right, Sergeant Brandt.

2 CLERK OF COURT: If you will place your left hand
3 on the Bible, raise your right hand.

4 WHEREUPON,

5 MICHAEL CHRISTOPHER BRANDT,

6 having been duly sworn by the Clerk of Court, testified as
7 follows:

8 CLERK OF COURT: Please be seated. State your full
9 name for the record.

10 THE WITNESS: My name is Sergeant Michael
11 Christopher Brandt. I'm a police officer with the City of
12 Florence Police Department.

13 DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q And can you please tell this jury how long have you
16 been in law enforcement?

17 A I've been in law enforcement for approximately 13
18 years. I've been serving in the crime scene unit since
19 2003. I've been the supervisor of the unit since February
20 of 2008.

21 Q And prior to working with the crime scene unit what did
22 you do with law enforcement?

23 A I had several brief -- I'm sorry, let me start over. I
24 started in the patrol division, uniform patrol division.
25 I worked in the street for about four-and-a-half years. I

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1 briefly was promoted to investigator in white collar and
2 then again promoted to corporal and moved to the uniform
3 patrol division again. Served there for approximately a
4 month-and-a-half before returning to the crime seen unit
5 as an assistant supervisor.

6 Q All right. And so is your entire law enforcement
7 career been spent serving the citizens of Florence?

8 A Yes, sir. Yes, sir.

9 Q You originally from here?

10 A Since 1984. My parents moved here from Georgetown.
11 All of my cognizant life I've been in Florence.

12 Q All right. Now you were supervisor on the night of
13 October 12th, 2009?

14 A Yes, sir, I'd been supervisor for about 18 months at
15 that point.

16 Q And who are the officers under your supervision?

17 A Investigator Shannon Hill who has already testified
18 before you, Corporal Bo Meyers, and Corporal Chris Moreau
19 at the time this was going on. I have recently been able
20 expand the unit to one other officer, Scott Williamson.

21 Q Now you recall how you received the call about this
22 incident on October 12th?

23 A Yes, sir. I received a call from Investigator Hill via
24 cell phone. He advised me that there -- he was responding
25 to a death scene, and as part of the unwritten protocol

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1 for our unit I responded as well to assist.

2 Q Who got there first?

3 A I believe we arrived at the same time. Investigator
4 Hill lives out in the county, and I live in the center of
5 town. And being in the unit for so long I have a little
6 habit of having a uniform and boots ready so I'm out the
7 door within just a few minutes. So it took me probably
8 about ten minutes to arrive on the scene because it was
9 only a few blocks away.

10 Q Okay. Now when you got there who did you find there of
11 law enforcement personnel, and did you find anybody else
12 there other than law enforcement personnel?

13 A On my arrival, as I recall, I first spoke with
14 Investigator Hill and I believe it was Corporal Hobgood
15 but there were also other uniformed officers there that
16 already had the yellow barrier tape securing the open
17 section of the fence line that was on

18 Q Did you beat the investigators there or were they there
19 too?

20 A I don't recall. I believe Investigator Carraway may
21 have been there. Initially, my initial response to the
22 scene was brief. I determined -- I wanted to find out
23 exactly an overview of what we had so I could respond with
24 the proper equipment. I was informed that the deceased
25 was in the trunk inside the vehicle, and there was no

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1 obvious additional equipment that we would need other than
2 a video recorder. So I responded to the police
3 department, obtained the video camera, and the mobile
4 command vehicle that I'm responsible for and returned to
5 the scene.

6 Q All right. Did you need to have -- did you think there
7 was any need to get any additional paperwork?

8 A Yes, I did. Having so many questions unknown as to who
9 the residence belonged to, who the vehicle belonged to, I
10 believe by the time I returned we established that it was
11 the victim's vehicle but I did not have a good bit of
12 information regarding the crime scene itself and who had
13 access to it, who it belonged to. I decided it was in our
14 best interest to obtain a search warrant to enter that
15 property and collect evidence.

16 Q Did you obtain that search warrant?

17 A Yes, sir.

18 Q How did you obtain that search warrant that time of
19 night?

20 A I made contact with the city judge, Judge Jackson. I
21 typed it, typed the search warrant in the mobile home
22 command vehicle. Printed it approximately 1:50 on the
23 morning of the 13th and responded to Judge Jackson's
24 residence where she -- I signed and swore to the affidavit
25 in front of her.

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1 Q All right. Now did you do any walk-around looking
2 around before you went and got the search warrant outside
3 on the exterior?

4 A Yes. As part of obtaining a search warrant you have to
5 provide certain information about the location. So prior
6 to leaving and that would account for some of the time to
7 1:50 in the morning. Walked around the location, got the
8 physical description of the address, the layout, a
9 description of the house including color and things like
10 that, it's physical to the roadway, to include that in the
11 search warrant so there would be -- it could be adequately
12 identified in the court system later on.

13 Q Now during this time when you were in route going to
14 get your command vehicle, command unit vehicle, getting
15 the search warrant, all during that time period, what were
16 you doing as far as, if anything, as far as monitoring
17 radio transmissions, or monitoring what was going on
18 through the radios?

19 A We always have a kind of passive ear for the radio, but
20 I can't say that I recall everything that was going on on
21 the radio.

22 Q Do you recall hearing anything in regards to cause of
23 death or injuries or anything regarding Ms. Creel?

24 A No, sir. No, sir.

25 Q What knowledge, if any, did you have regarding a

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1 suspicion of a cause of death?

2 A I had no knowledge and I had no assumptions even based
3 on the visual that I had prior to obtaining the search
4 warrant. I had no way of even having a gut instinct of
5 how Ms. Creel was injured or subsequently killed ---

6 Q Why not?

7 A ---prior to ---

8 Q You looked in the trunk; didn't you?

9 A Yes, sir.

10 Q Why didn't you have any?

11 A It was not -- the injuries were not apparent, not
12 visible when I viewed the body inside the trunk prior to
13 obtaining the search warrant. It was subsequently when we
14 moved the body after obtaining the search warrant when we
15 conducted our photographs and our video of the scene is
16 when I was able to observe the injuries.

17 Q I'm gonna show you what's been marked State's Exhibit
18 102. Can you explain to us what that is and is that --
19 you recall anything about that?

20 A State's Exhibit 102 is a photograph previously
21 identified by Investigator Hill. This photograph was
22 taken by Investigator Hill, but this is -- I remember this
23 being an accurate depiction of the view that I received
24 ---

25 Q Were you present while that photograph was being made?

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1 A Yes, sir, I was actually videotaping at the same time
2 he was taking these -- correction, I was not. This
3 photograph was -- this was taken on the -- this photograph
4 was taken by Investigator Hill prior to me videotaping. I
5 was not right there with him when this photograph was
6 taken, but it was -- it is an accurate depiction of what

7 --

8 Q What you saw?

9 A ---what I saw that night?

10 Q Okay, all right. And again, can you tell us what you
11 initially saw, what knowledge do you have whether that
12 body was moved or touched before you went and observed it?

13 A To my knowledge the only -- the only person that
14 touched the body prior to our arrival and processing the
15 crime scene would be EMS placing the lead on the arm to
16 check for electrical activity in the body indicating life.

17 Q But no other movement of the body?

18 A No other movement of the body that I'm aware of prior
19 to obtaining the search warrant.

20 Q And what could you see about her face and her forehead
21 prior to moving her?

22 A You could not. It -- at this -- this picture is an
23 accurate representation, and the forehead appeared to be
24 pressed up against the wheel well of the vehicle inside
25 the trunk area.

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1 Q Okay. What did you do to assist Investigator Hill as
2 y'all began processing that crime scene?

3 A Although as supervisor when we work these types of
4 scenes we work as a team effort. He is typically the
5 driver. I would be the assistant and giving guidance. In
6 this case while he was taking a lot of the photographs,
7 the initial raw photographs untouched and before we move
8 anything, I would also be taking the scene video with the
9 Cannon HF20 digital camcorder. As we would progress
10 through the scene I would assist him in by holding objects
11 making sure he had the right equipment such as the
12 phenolphthalein presumptive blood test kits that he
13 referred to earlier, and assisting in the search, the
14 physical search of the premises which actually took the
15 most amount of time that we need.

16 Q Now I notice on some of the photographs there's look
17 like blue gloved fingers on some of the photographs. What
18 would those be?

19 A Most of those fingers would probably be fingers holding
20 the swabs for Investigator Hill.

21 Q While he took pictures?

22 A Yes, sir.

23 Q Okay. I'm gonna show you something that's been marked
24 for ID. I'm gonna ask you if you recognize this, yes or
25 no.

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1 A Yes.

2 Q Okay. And how do you recognize this?

3 A It's my handwriting and my initials at the bottom of
4 the disk.

5 Q Okay, all right. What is this?

6 A That is a DVD movie formatted disk that I generated
7 after completing the video walk-through of the scene.
8 It's using the -- using the standard consumer grade video
9 production that came with the camera. It's that program
10 that came with the camera that I use to generate that
11 disk.

12 Q Now after y'all went and took the what you call the raw
13 photos, did you walk through, document what all you saw
14 before things moved, after that's completed what's your
15 next step?

16 A We go through, and the next step is to examine for and
17 collect, do the testing and collection of DNA, and blood
18 and trace evidence because that is so fragile you want to
19 obtain that first so nobody trips over it. Nobody, you
20 know, nobody destroys it inadvertently or whatnot.

21 Q Is there anything you gathered or collected that
22 Officer Hill has not testified to already, at that scene?

23 A That I can recall, I believe, that he has testified to
24 everything that we collected.

25 Q He covered everything y'all collected?

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1 A Yeah. We collected numerous pieces of clothing,
2 articles of clothing that had presumptive positive
3 reactions for blood from that kit from testing.

4 Q And did you -- let me ask you this. What did you
5 notice, if anything, about the presence of any alcohol or
6 empty alcohol containers?

7 A I did observe bottles of alcohol in the bedroom, in the
8 trash can in the kitchen.

9 Q And how would you describe -- what did the interior
10 look like?

11 A It was a small building. It would probably fit in this
12 space that we're sitting in now. And it was cluttered.
13 They have a lot of items in there, especially in the
14 bedroom, the clothing in Rubbermaid containers. It was
15 stacked on each other. You know, there were piles of
16 clothes on the floor. Lamp shape as soon as you come into
17 the room was broken and pulled down over the lamp. The
18 lamp was still standing but it was kind of crumbled down.

19 Q So there wasn't really any room of storage?

20 A No, sir. No, sir, would not appear to be.

21 Q Now after y'all thoroughly processed the house what did
22 you do next that you participated in?

23 A After we completely processed the scene, prior to me
24 leaving we conducted a followup search of the residence
25 just. We're human, and it's late at night or early in the

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1 morning as it were, and we wanted to make sure that we
2 didn't miss anything. After we conducted the search,
3 while Investigator Hill was sketching the scene I left to
4 prepare -- to obtain a copy of the incident report that
5 was being generated by patrol officers and obtained some
6 equipment and copies of the photographs that were
7 transferred to CD in the mobile command vehicle or to a
8 disk in the mobile command vehicle to transport those down
9 to MUSC for the autopsy.

10 Q Now who went to the autopsy?

11 A I did. I responded down -- I went down to MUSC to
12 attend the autopsy.

13 Q When you attend the autopsy what do you do?

14 A At that time we were allowed to enter into the autopsy
15 suite. We could observe the autopsy as the prosecutor went
16 through the procedures that they did. We would also
17 photograph things that appeared to be of importance.

18 Q And after the autopsy is finished what, if anything, do
19 you do?

20 A I collect evidence from MUSC personnel as they have
21 collected it. Autopsy patent typically includes blood and
22 toxicology standards from the deceased and any other
23 evidence collected pertinent to the injuries or manner of
24 death. In this case it was the spent projectile from the
25 deceased's head.

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1 Q And that's the bullet?

2 A Yes, sir.

3 Q Was there a GSR kit collected?

4 A Yes, sir. Another part of our unwritten protocols are
5 to collect latent print -- I'm sorry, ink prints from the
6 deceased if possible, gunshot residue kit, and the
7 clothing as well.

8 Q And what was checked on Ms. Creel for gunshot residue?

9 A I collected gunshot residue kits from her hands.
10 Typically the protocol that we'd been given from the State
11 Law Enforcement Division's trace evidence collection unit
12 is that gunshot residue kits can be collected from the
13 deceased at any point but only from living subjects up to
14 six hours.

15 Q Now did that gunshot residue test come back positive or
16 negative on Ms. Creel?

17 A As I recall, I would need to refer to the SLED report,
18 the analyst's report, but I believe that she tested
19 negative for gunshot residue from her hands.

20 Q Okay. Now what did you do with items you collected
21 from the autopsy? What did you do with those?

22 A I transported them back to our crime scene lab, met
23 with Investigator Hill, and turned those items over to him
24 for proper packaging.

25 Q And after they were properly packaged what is done with

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1 them?

2 A When they're properly packaged we complete SLED
3 analysis request forms and log them into our evidence room
4 where they're held securely until we make a bulk evidence
5 transfer to SLED, bulk meaning we take numerous cases at
6 one time just to be responsible for our fuel cost and
7 personnel man hours.

8 Q And who made this evidence trip containing these items
9 to SLED?

10 A Corporal Moreau, Chris Moreau.

11 Q Okay, all right.

12 MR. CLEMENTS: Ask permission for the witness to
13 step down, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. CLEMENTS:

16 Q Now I'm gonna show you State's Exhibit 46. I think you
17 referred to that little earlier in your testimony.

18 A Yes, sir.

19 Q I'm gonna ask you to stand right here so the court
20 reporter can hear you, as well as the jury. Can you
21 explain to the jury what that is depicting and what
22 significance there is to that.

23 A Well, as you enter into, say, this is the front door of
24 the apartment. If you enter through the front door and
25 come around the doorway, the doorway to the bedroom would

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1 be right about here. The stool would be here. The
2 projectile would be here but just inside of this door ---

3 Q You say projectile, is that the shell casing?

4 A I mean the shell casing, excuse me. The shell casing
5 would be right about there. As soon as you come to that
6 doorway there's an end table right at the entrance of that
7 doorway, and you can see that doorjamb here and the light
8 fixture poking through the lamp shade that was damaged.

9 Q All right. So the lamp shade was damaged and knocked
10 down. Was there anything else in that area that was
11 damaged or anything else broken that you noticed?

12 A It was just -- it was just another thing that was
13 indicative of the disheveledness or messiness of the
14 apartment and the bed right behind it. You can see the
15 bed in the background of this photograph that was unmade.
16 All the covers were piled up on top of it.

17 Q Thank you. You can have a seat.

18 A Yes, sir.

19 Q And it was on the other side of the bed from the lamp
20 where the guns were laying on the floor?

21 A Yes, sir.

22 Q Now when you went to the autopsy did you take any
23 photographs?

24 A Yes, sir.

25 Q Now I'm gonna show you what's been marked as State's

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1 Exhibit 90 and 92 -- excuse me, 90 and 89, I apologize.

2 First show you number 89. Do you know what that is, can
3 you identify that?

4 A Yes, I can identify this. I took this photograph.

5 Q Where did you take that photograph at?

6 A Took this in the autopsy suite of the Medical
7 University of South Carolina in Charleston.

8 MR. CLEMENTS: Your Honor, at this point we move 89
9 into evidence if we haven't done it.

10 THE COURT: 89 is in evidence. Those are without
11 objection, 89 and 90. Yes.

12 MR. CLEMENTS: No objection.

13 BY MR. CLEMENTS:

14 Q That's in evidence without objection now. If you would
15 please tell the jury what that depicts and what it is.

16 A This depicts the deformed projectile or bullet that was
17 recovered from Laura Creel's brain.

18 Q And it was what type of bullet, what caliber?

19 A It appeared to be a .22-caliber bullet. The
20 measurements were approximately .21 inches which is
21 consistent, as we've heard testimony, with a .22-caliber.

22 Q And you took this picture?

23 A Yes, I did.

24 Q And is this the same bullet that you took and submitted
25 to SLED for Agent Whitler?

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1 A Yes, sir, I turned that over in the sealed autopsy kit
2 to Corporal Hill -- I'm sorry, Investigator Hill, who
3 submitted it into evidence and Corporal Moreau took that
4 to SLED.

5 Q I'm gonna show you State Exhibit Number 90. I believe
6 it is in evidence without objection. Did you take that
7 photograph?

8 A Yes, I did. That is a general photograph of the same
9 projectile. It appears to be -- there is biological
10 material stuck to, or body material stuck in the deformed
11 projectile.

12 Q So that was right after it was retrieved and put in
13 that --

14 A Yes, sir.

15 Q --container?

16 A Yes, sir.

17 Q Okay. Is this a same item as depicted in State's
18 Exhibit 89?

19 A Yes, sir, it's one and the same. I took both of those
20 photographs right after it was retrieved from the body.

21 Q I'm gonna show you what's been marked State's Exhibit
22 91 and just tell me yes or no if you can identify this and
23 if you know who made this picture.

24 A Yes, I can identify that and I was the photographer of
25 this particular photograph.

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1 Q And where was this photograph made?

2 A This photograph was made in the autopsy suite of the
3 Medical University of South Carolina in Charleston.

4 Q Okay.

5 MR. CLEMENTS: Your Honor ---

6 MR. LAWSON: Defense objects to that.

7 MR. CLEMENTS: We have an objection and we are
8 moving to have this admitted, Your Honor.

9 THE COURT: All right. I'm gonna note the
10 Defense's objection to State's Number 91. I'm going to
11 overrule the objection.

12 (WHEREUPON, State Exhibit No. 91 was received
13 into evidence.)

14 BY MR. CLEMENTS:

15 Q Can you please, if you would step down, Sergeant
16 Brandt, tell this jury why you this in picture and what is
17 depicted here in this picture?

18 A This photograph is a picture of Laura Creel at her
19 autopsy. This is the wound that I observed after her face
20 was cleaned by autopsy staff. You see it's a round shape
21 and it has the splits that ---

22 MR. LAWSON: Your Honor, I think the jury can see
23 the picture. There's no sense in editorializing from the
24 witness.

25 THE COURT: He can describe what's in the

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1 photographs, but just what's there. Don't embellish on
2 anything.

3 THE WITNESS: Yes, sir.

4 THE COURT: Overruled.

5 THE WITNESS: But the previous testimony of the
6 injury is visible in this picture that was testified to by
7 the pathologist.

8 BY MR. CLEMENTS:

9 Q And would that be the splits?

10 A Yes, sir, the star shaped around the -- around the
11 circular wound.

12 Q Okay. Sergeant Brandt, did you and Investigator Hill,
13 did y'all execute a return on the search warrant?

14 A Yes, sir.

15 Q And what did you do with the return?

16 A Returned it to Judge Jackson in City Court with the
17 items that we took from the scene.

18 Q With the actual items or inventory?

19 A No, excuse me, I misspoke. The -- a list of the items
20 that we removed from the scene.

21 Q Beg the Court's indulgence a moment. Sergeant Brandt,
22 was there a lead forensic investigator? If there was, who
23 was it?

24 A We work as a team because we are not -- we are human;
25 we're not perfect. The lead -- the lead technician would

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1 have been Investigator Hill. He would be responsible for
2 the primary documentation to include photography and any
3 written documentation that would occur.

4 Q So as far as making a report who did that?

5 A The primary report was completed by Investigator Hill.

6 Q As a supervisor do you do any review of that report?

7 A Yes, I do.

8 Q As somebody participating, even though you're a
9 supervisor Office would you do any supplemental on
10 anything that you did not in tandem with him?

11 A When I conduct something that's apart from him I will
12 document that in a supplemental. One of the things that I
13 recall doing is during the processing of the scene when we
14 had completed the DNA testing and collection I took
15 Ms. Creel's car to the police department and secured it in
16 the crime -- outside of the crime lab in the police
17 department sallyport, secured it to be processed later
18 when we had better lights and more of an opportunity to
19 process the vehicle.

20 Q Okay. Sergeant Brandt, thank you. Would you please
21 answer any of Mr. Lawson's questions.

22 A Glad to.

23 MR. LAWSON: May it please the Court.

24 THE COURT: Yes, sir.

25 **CROSS-EXAMINATION**

SW - M. BRANDT - CROSS

1 BY MR. LAWSON:

2 Q Sergeant Brandt, it's my understanding then you did do
3 a report?

4 A Yes, sir, I did.

5 Q You did a report?

6 A Yes, sir.

7 Q Even though the other officer never did a report as
8 well?

9 A Yes, sir, because -- I did a report because we handled
10 physical evidence. I handled the vehicle. I obtained the
11 search warrant so I felt that it was necessary for me to
12 document that because that was separate and apart from
13 what Investigator Hill had accomplished.

14 Q You have protocol in relation to that?

15 A None written, sir.

16 Q Do you have written protocol at all in the police
17 department?

18 A We have a policy and procedures manual, but to document
19 every little nuance of what we do as investigative team
20 would take volumes. To ---

21 Q Well, I think my question was do you have a written
22 policy. I don't think I asked you about how long it had
23 to be.

24 A No, sir.

25 Q Do you have one?

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1 A We have a policy and procedures manual that is a
2 general guideline for police conduct.

3 Q And then I assume you have a lot of non-written
4 protocol?

5 A Yes, sir.

6 Q Fair to say?

7 A That would be fair.

8 MR. LAWSON: Your Honor, I don't have any other
9 questions.

10 MR. CLEMENTS: May we approach, Your Honor.

11 THE COURT: Yes, sir.

12 (WHEREUPON, counsel approached the Bench for
13 an off-the-record discussion.)

14 THE COURT: No further questions for this witness
15 then, Solicitor?

16 MR. CLEMENTS: Your Honor, we ask he be released
17 from his subpoena.

18 THE COURT: Any objection, Mr. Lawson, to this
19 witness being released under subpoena?

20 MR. LAWSON: Yes, sir, without objection.

21 THE COURT: All right. Thank you very much, sir.
22 You're free to go.

23 Ladies and gentlemen, we're going to adjourn court
24 for the evening. It is about almost a quarter after five,
25 and so we're going to take it back up starting in the

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1 morning. I'm gonna ask you, if you would, tomorrow
2 morning if you would be here at 10:00, okay. I got some
3 matters I need to take care of prior to us getting
4 started, and I want to minimize your time just sitting
5 back there so if you'll come at 10:00 we'll be ready to
6 start once everyone is assembled. Again, avoid any
7 newspapers, written articles, internet, TV, anything.
8 Continue to protect your ability to be fair and impartial.
9 Please let your loved ones know and your friends or
10 curious folks that, again, just remind them when the case
11 over you'll share everything they want to hear. But at
12 that -- up till that point you're not able to talk about
13 the case, okay.

14 If everyone will remain seated, ladies and
15 gentlemen, we'll see you back here 10:00 in the morning,
16 okay.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 5:16 p.m., and the following proceedings
19 commenced in open court.)

20 THE COURT: All right. We're gonna start back in
21 the morning at 10. Anything we need to take up before we
22 adjourn for the evening?

23 MR. LAWSON: Nothing from Defense?

24 THE COURT: Anything we need to take up before?

25 MR. CLEMENTS: I'm sorry, Your Honor.

1 appreciate your taking that matter seriously. Ladies and
2 gentlemen, we are gonna proceed, as you recall from
3 yesterday that we are still on the State's case and so I
4 would recognize Solicitor Clements for your next witness,
5 sir.

6 MR. CLEMENTS: Thank you, Your Honor. If it please
7 the Court, we call Investigator Terrance Carraway.

8 THE COURT: All right, Investigator Carraway, if
9 you would come up please.

10 CLERK OF COURT: If you will, sir, place your left
11 hand on the Bible, raise your right hand.

12 WHEREUPON,

13 **TERRANCE CARRAWAY,**
14 having been duly sworn by the Clerk of Court, testified as
15 follows:

16 CLERK OF COURT: Please be seated and state your
17 full name for the record.

18 THE WITNESS: Terrance Carraway.

19 **DIRECT EXAMINATION**

20 BY MR. CLEMENTS:

21 Q Can you please tell this jury where you work and how
22 long you've been so employed?

23 A I work for the City of Florence Police Department.
24 I've been employed with the City for about 23, almost 24
25 years. During that time I served as a patrol officer,

SW - T. CARRAWAY - DIRECT

1 narcotics agent, DARE officer, public relations. I've
2 done a host of different duties and also employed with the
3 military on a couple of different occasions.

4 Q All right. Now is your entire year law enforcement,
5 has it all been served in Florence Police Department?

6 A That's correct.

7 Q And what capacity are you working now?

8 A Presently I'm serving as a criminal investigator with
9 our investigation division.

10 Q And how long have you been in investigations division?

11 A Since I came in from the war, which was right about
12 2004.

13 Q Okay. So were you in on calls as an investigator in
14 October 2009?

15 A Yes.

16 Q On the 12th?

17 A Yes, I was.

18 Q Can you please tell the jury here how you came to be
19 called to the scene and tell this jury what you did?

20 A As Mr. Clements stated, I was working on scene on-call
21 duty investigator. I was called to respond to

Avenue here in the city of Florence. I
23 was told that a body was discovered in the trunk of a
24 vehicle. Once I got there -- actually I arrived around
25 the same time crime scene arrived. And ---

SW - T. CARRAWAY - DIRECT

1 Q What did you find there as far as law enforcement
2 personnel? Who was there?

3 A It should have been, if I remember correctly, Officer
4 Starling, Beckett, Hobgood, and as I said, crime scene
5 tech Brandt and Hill.

6 Q Okay. And were there any other officers there that you
7 noticed or took note of?

8 A I want to say I noticed Officer Thibodeau was there.
9 He had arrived the same time. He started a check sheet of
10 everyone going on the crime scene.

11 Q Okay. Now when you got there describe to us what you
12 saw and what you found?

13 A When I spoke with the officers and they told me that
14 they went to do a welfare check, and by doing so they
15 discovered the body in the vehicle. The trunk was
16 partially closed and another officer standing around.
17 There were vehicles passing by driving real slow, and so
18 they were standing there trying to block the scene. I
19 glanced in the vehicle and I saw what appeared to be a
20 lifeless body laying in the back in the trunk with the
21 head faced -- the head was on the driver's side faced
22 toward the front of the vehicle, and the body was twisted
23 in a way that usually face up which you couldn't see the
24 face or anything.

25 Q Did you notice whether the crime scene was secured or

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1 not?

2 A Yes, the crime scene was secured at that time.

3 Q Okay. When you got the call and you were in route, did
4 you make any attempts to contact any other people?

5 A Yes, I did. I called Sergeant Drayton and I called
6 Lieutenant Rogers.

7 Q All right. And who are Sergeant Drayton and Lieutenant
8 Rogers to ---

9 A They're my immediate supervisors.

10 Q Do you call them in route or did you call them when you
11 got there?

12 A In route.

13 Q Okay, all right. And did they respond?

14 A Yes, they did.

15 Q Okay. When you got there and you talked to the
16 officers, did you notice anyone there other than the
17 officers?

18 A Yeah. I was told that Mr. Bruce was in the back seat
19 of one of the patrol vehicles and that he was the person
20 at the house when they went there, that he was a person of
21 interest at that time.

22 Q Okay.

23 A And that was all I noticed at the house. I went to the
24 door. We didn't have a search warrant at the time. I
25 glanced in the door of the residence. And when I walked

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1 up to the vehicle, the vehicle was parked right there. I
2 walked up to the door as well and looked in the door and I
3 walked away from it.

4 Q Did you enter in?

5 A I didn't enter at that time.

6 Q Okay, all right. And did you -- did you do anything
7 else there at that scene other than what you've described
8 so far?

9 A Yeah, like I said, we -- upon Sergeant Drayton's
10 arrival --

11 Q About how long did it take him to get there?

12 A After I got there it didn't take him long to get there.
13 I really don't remember. I want to say ten minutes at the
14 most. After I got there, might not have been that long.
15 We spoke to a couple of neighbors who were actually
16 standing outside, you know. They were people, they were a
17 couple of them were standing around, Lori Ford and her
18 daughter. We spoke to them briefly. And there was
19 another subject across the street. We spoke with them
20 briefly. While we --

21 Q Then what did you do?

22 A Then we -- actually while we were speaking to them we
23 instructed the patrol unit to take Mr. Bruce down to the
24 City-County Complex so we could talk to him.

25 Q Why didn't you talk to him right there?

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1 A There was so -- as I just said, there were so many
2 people around, just like neighbors looking in cars driving
3 by, that area as you all seen it wasn't very well
4 protected from the street. It was close to the street.
5 Anybody could just drive by and see. We didn't have any
6 privacy. There was no place to actually conduct a
7 interview.

8 Q Okay, all right. And so patrol was taking Mr. Bruce

9 ---

10 A Patrol took Mr. Bruce.

11 Q ---up to the complex?

12 A Right.

13 Q Y'all briefly spoke to the neighbors ---

14 A We briefly spoke to them.

15 Q ---that were standing outside?

16 A That's correct.

17 Q And then what did you do?

18 A Myself, Sergeant Drayton, and Lieutenant Rogers, we all
19 went to the -- came to the City-County Complex.

20 Q Did y'all come together or separate?

21 A Separate.

22 Q Okay. When you got to the City-County Complex what did
23 you do?

24 A We met with Officer Starling. Sergeant Drayton
25 instructed sergeant, I mean, instructed Officer Starling

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1 to remove the cuffs and we escorted Mr. Bruce up to the
2 second floor conference room.

3 Q All right. Now when you got to the second floor
4 conference room what did you do?

5 A We sat -- we all sat down at different spots at the
6 table. We asked Mr. Bruce if he wanted some water. We
7 gave him some water.

8 Q What kind of condition was Mr. Bruce in?

9 A Mr. Bruce was intoxicated.

10 Q How could you tell?

11 A Because it was obvious. I mean, I've been around long
12 enough to see a lot of drunk people in my life, and he was
13 drunk but he was a functional drunk. You know, he knew
14 what was going on. He was talking to us and understood
15 what was going.

16 Q Okay. Did y'all have to assist him when you said y'all
17 escorted him up to?

18 A No, huh-uh. I mean that we just -- he just followed us
19 to where we needed to go.

20 Q Didn't have any problem getting there?

21 A No, sir.

22 Q Okay. And you got there y'all sat down, you gave him
23 some water, what did you do then?

24 A It was then that Sergeant Drayton then just talked with
25 him. While he was doing that I started writing.

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1 Lieutenant Rogers actually just sat back and observed the
2 whole time.

3 Q Did Lieutenant Rogers, did he participate actively in
4 any way?

5 A No, he didn't. He was just there to just watching,
6 just observing.

7 Q Okay. Was Mr. Bruce, was he handcuffed, restrained in
8 any way at that time?

9 A No, no, no, he wasn't. No, he wasn't.

10 Q Okay. Had y'all placed him under arrest?

11 A No, we hadn't.

12 Q Had y'all Mirandised him at that time?

13 A No, we hadn't.

14 Q So y'all were just talking to him?

15 A We were just talking to him. Like I said, it was an
16 interview; it wasn't interrogation. It was an interview.
17 We were talking with him. He was talking back and that
18 was it. Sergeant Drayton was just asking him basic
19 questions. And even then he was, you know, we needed to
20 talk with him on that level because he actually from what
21 all we had gathered, was the last person that had been
22 around or seen Ms. Creel.

23 Q That y'all knew of?

24 A That we knew of.

25 Q Yeah. Okay, now where did Mr. Bruce said he had been

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1 that day?

2 A Mr. Bruce---

3 MR. LAWSON: Your Honor, may it please the Court,
4 as to any statements made by Mr. Bruce I renew the
5 objection previously made.

6 THE COURT: All right, sir, and certainly noted.

7 BY MR. CLEMENTS:

8 Q Where did Mr. Bruce tell you he'd been that day?

9 A Mr. Bruce told us he got with his cousin Earl and that
10 they rode around a little bit, then went to Junebug's
11 house, who was Mr. Holloman. He said that they had been
12 -- they got together earlier that day and had a drink.

13 Q Did you ever talk to Mr. Earl Bruce?

14 A Yes, I did.

15 Q Did you ever talk to Mr. Willie Holloman?

16 A Yes, I did.

17 Q And how did Mr. Roger Bruce say he was traveling?

18 A He said he was in Ms. Creel's vehicle, that he was
19 driving and then he let Earl drive.

20 Q Where did he say Ms. Creel was?

21 A Said he didn't know. He said he hadn't seen her in
22 about two or three days.

23 Q And what did he say happened the last time he had seen
24 her?

25 A He said the last time that they were together there was

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1 an argument and they were arguing over sex.

2 Q And did he say anything else other than they were
3 arguing over sex?

4 A He said that the argument was that she wanted sex and
5 he didn't.

6 Q Okay. And so what happened as a result of that
7 argument, that he said?

8 A He said that -- basically he said that was the last
9 time he saw her, she just left.

10 Q Didn't take -- didn't go in her car?

11 A Didn't take her car and none of her personal belongings
12 with her, just left.

13 Q Okay. And what else did he say?

14 A Okay, well, while Sergeant Drayton was sitting there
15 just talking with her, Mr. Bruce asked for another cup of
16 water. I want to say I got up. We got him another cup of
17 water, and he was -- Sergeant Drayton started talking to
18 him again. And again, you know, spontaneously he just
19 suddenly, he said, I didn't do anything to Laura. Like
20 that. I didn't do anything to her; I wouldn't shoot
21 Laura. That kind of hit us kind of strange because at the
22 time none of us knew what had happened to Ms. Creel. As I
23 indicated, we went to the scene and her head and her body
24 was turned in a way we really couldn't tell what had
25 happened to her. I noticed what appeared to be blood on

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- 1 her forehead and a little bit of blood coming out the ear,
2 but that still didn't tell us what had happened. He just
3 spontaneously said he wouldn't shoot Laura. We confronted
4 him about that and—
- 5 Q When you say you confronted him about, what do you
6 mean?
- 7 A We asked him what he was talking about.
- 8 Q Yeah.
- 9 A Okay. Just to put it simple we asked him what he was
10 talking about, and he said, I know what a bullet hole look
11 like.
- 12 Q And what happened then after he said that?
- 13 A It was then that Sergeant Drayton just stopped with his
14 questions, talking with him, and informed -- and
15 instructed me to give Mr. Bruce his rights, Miranda
16 rights.
- 17 Q And did you read him his Miranda rights?
- 18 A Yes, I did.
- 19 Q After you read him his Miranda rights did y'all have
20 any further conversations?
- 21 A We asked him if he understood. Mr. Bruce said yes. We
22 asked him if he wanted to talk to us any further. He said
23 no, and that was the end of it.
- 24 Q Okay. Y'all didn't try to talk to him anymore?
- 25 A No, we didn't.

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1 Q At that point in time -- let me ask you this. Before
2 you got there and you sat down and you were first talking
3 to him, what if anything, did y'all have in regards to
4 probable cause to arrest him or anyone?

5 A We didn't have probable cause at that time. That's why
6 we just really wanted to talk with him. He was a person
7 of interest. We were gonna continue to talk with anyone
8 else and everyone else that may have had contact with
9 Ms. Creel. We were actually starting our investigation.
10 We were just talking with him.

11 Q And what would have happened if nothing had come out
12 that would have given you the probable cause?

13 A If nothing would have come out of that interview we
14 would have released Mr. Bruce. Actually, we would have
15 took him to where he wanted to go. We would have given
16 him a ride back. He couldn't went inside his home at that
17 time because there was a search going on with our crime
18 scene unit, but we would have gave him a ride wherever he
19 needed to go.

20 Q Okay. But what caused that to change?

21 A When he said that he wouldn't shoot Laura, and he knew
22 what a bullet hole look like.

23 Q Okay. And what did y'all do and after that, you
24 stopped talking to him, what did y'all do next?

25 A We stopped talking to him. We placed him under arrest

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1 after we read him his rights. He understood his rights.
2 He didn't have anything else to say to us so we placed him
3 under arrest. Patrol unit came and took him to Effingham.
4 We went back to the scene and continued investigation,
5 "we" being Sergeant Drayton and myself. We were looking
6 for any other possible people that may have come in
7 contact with her at the time. As you understand, it was
8 pretty laid or early morning and there was no one else
9 out. No one -- we didn't come in contact at that time.

10 Q But you followed up with Mr. Earl Bruce?

11 A Right. We followed up with Mr. Earl Bruce and
12 Mr. Holloman the next morning. As I said, we were up all
13 night that night. We didn't have any sleep that night.

14 Q Who got the arrest warrant?

15 A I did.

16 Q And when were you able to procure the arrest warrant?

17 A That next morning.

18 Q Okay, all right. There wasn't anybody to sign an
19 arrest warrant at that point in time?

20 A No, no, not 2:00, 3:00 in the morning, 2:00, no.

21 Q Now what else did you do in regards to -- let me ask
22 you this, what communications, if any, did you have with
23 forensics or anything on the radio or anything you might
24 have heard?

25 A There was -- there was nothing on the radio. As

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1 indicated earlier by Sergeant Drayton, we talk in codes.
2 But knowing through the calls and stuff I knew what
3 happened to Ms. Creel. When we found out actually was I
4 received a phone call from the crime scene unit indicating
5 that Ms. Creel had been shot. This was after, after
6 Mr. Bruce was placed under arrest.

7 Q Okay. How much after, if you recall?

8 A If I recall, not too long after. We were still in the
9 building.

10 Q Was Mr. Bruce still in the building?

11 A I want to say he was already gone by that time, but we
12 were still in the building sitting there talking. And we
13 received a call indicating that she had been shot.

14 Q Okay, all right. And what next actions did you take?
15 You said you began to followup on anybody else. What if
16 anything, did you find about anybody else that was there
17 at Ms. Creel and Mr. Bruce's house?

18 A No one else. We couldn't find anyone else.

19 Q Okay. What, if anything, did you find out about any
20 visitors they might have had?

21 A We didn't find out about any visitors. There were no
22 visitors at all that we were aware of.

23 Q Okay. And you talked to all the neighbors?

24 A We talked to the neighbors and the neighbors, they said
25 they didn't see anyone over at the residence other than

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1 Mr. Bruce sitting in the vehicle acting strange.

2 Q So no other leads were developed?

3 A None.

4 Q Okay. Now did y'all stop when y'all decided after
5 talking with Mr. Bruce that y'all needed to mirandize him
6 and then place him under arrest, did y'all stop looking in
7 any other direction or do y'all continue looking?

8 A No, we continued our investigation. We followed any
9 leads, any. We looked for other people that may have had
10 any information or any involvement. That the reason why
11 we went to Mr. Bruce, Earl Bruce, and Mr. Holloman. As
12 indicated earlier they both were riding in the vehicle
13 with Mr. Roger Bruce so we wanted to hear their stories as
14 well.

15 Q And where is Mr. Holloman now?

16 A Mr. Holloman is deceased.

17 Q Okay, all right. Beg the Court's indulgence.

18 Investigator Carraway, did you follow up with forensics?

19 A Yes, we did.

20 Q Did you followup to make sure physical evidence was
21 sent and —

22 A That's correct.

23 Q —tested?

24 A That's correct.

25 Q And got results back?

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- 1 A Yes, sir.
- 2 Q Is that your job as the assigned investigator ---
- 3 A Yes, sir.
- 4 Q ---on this case?
- 5 A Yes, it is.
- 6 Q Okay. And did you write a report on this?
- 7 A Yes, I did.
- 8 Q Did Sergeant Drayton write a report on this?
- 9 A No, he didn't.
- 10 Q Other than assisting you, did Sergeant Drayton do
- 11 anything on his own?
- 12 A No, everything that he did was with me.
- 13 Q Okay.
- 14 A There was one time that we spoke with Earl Bruce, as I
- 15 indicated earlier. Sergeant Drayton wasn't with me.
- 16 Q He wasn't with you?
- 17 A He wasn't with me at all so he had no knowledge of
- 18 that.
- 19 Q Okay. But everything he did was with you?
- 20 A Everything he did was with me.
- 21 Q All right. How about the forensic people? They did
- 22 things separate from you?
- 23 A They did things separate from me. They did their own
- 24 reports.
- 25 Q How about patrol officers?

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1 A They did their own reports.

2 Q Investigator Carraway, that's all I have for you at
3 this time. Please answer any questions Mr. Lawson may
4 have.

5 A Okay.

6 MR. LAWSON: May it please the Court.

7 THE COURT: Yes, sir.

8 **CROSS-EXAMINATION**

9 BY MR. LAWSON:

10 Q Officer Carraway, as I understand it you are the lead
11 investigator in this case, correct?

12 A That's correct, sir.

13 Q That means that you are in charge of the investigation;
14 is that correct?

15 A You can say that, yes, sir.

16 Q That is correct?

17 A That's correct.

18 Q Okay. And so at that point Sergeant Drayton and
19 Lieutenant Rogers are assisting you; is that correct?

20 A You can say that, sir.

21 Q Well, is it correct?

22 A I guess so, yes, sir.

23 Q So when you go to talk with Roger y'all don't record
24 that, do you?

25 A No, sir, there was no need to record an issue of

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1 conversation with Mr. Bruce.

2 Q Are you familiar with police forces that record each
3 and every and all interviews with individuals?

4 A No, sir, I'm not aware of any that do that.

5 Q You're not aware of any?

6 A I'm telling you what we do, sir. We speak with people
7 first; and then if there's a statement that they want to
8 give, especially in what I do, then we record the
9 interview.

10 Q So the things that you are telling me in relation to
11 what Roger said during his interview are things you
12 recall?

13 A I recall that and I took notes, yes, sir, memory and
14 notes.

15 Q And what did you write down in your notes as to what he
16 said?

17 A I said that -- I didn't put in my notes that he said he
18 wouldn't shoot Laura because that was something that just
19 stood out. That was from memory; I knew what he said. I
20 said -- I put a little asterisk beside what he said about
21 I knew what a bullet hole looked like. I put an asterisk
22 beside that in my notes.

23 Q So you didn't write down anything about, I wouldn't
24 shoot Laura?

25 A No, I didn't write that down. That's just -- that was

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1 something that I just couldn't get.

2 Q That's, in your opinion that's a statement against
3 interest, I wouldn't shoot Laura?

4 A Sir, we didn't ask him that. He spontaneously stated
5 that -- just he blurted it out of the blue. We were
6 asking him something else, and he just suddenly said, I
7 wouldn't do anything like that, I wouldn't shoot Laura.

8 Q Well, you know what the first thing he said when they
9 put handcuffs on him was?

10 A No, I don't.

11 Q You didn't check that out with the patrol officer?

12 A I -- I talked with them, but they didn't tell me the
13 first thing he said.

14 Q Okay. So you didn't ask?

15 A Excuse me?

16 Q You didn't ask what he may have said to the patrol
17 officer?

18 A Yeah, I asked whether he -- he said. I asked them did
19 he say anything, did he admit to anything, and they told
20 me, no, he didn't admit to anything. And they didn't
21 really ask him anything.

22 Q And is, I wouldn't shoot Laura, is that an admission?
23 That's admitting to something?

24 A You can say that, yes.

25 Q It's admitting that you didn't do something, but it's

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1 not admitting that you did something?

2 A Right, but how would he know she was shot?

3 Q Well, he was there. You weren't there, were you?

4 A No, I wasn't.

5 Q You weren't there when the trunk was opened?

6 A No, I wasn't.

7 Q You don't know what was said by all the officers. You

8 don't know what he may have seen or what he didn't see.

9 But all you were doing is basing it on what you saw.

10 A Sir, when I arrived on the scene her body was turned in

11 a way that you couldn't see she had been shot.

12 Q And you couldn't see if you looked in the trunk?

13 A You really couldn't see. Her head was turned toward

14 the wheel well. And as indicated yesterday by the reports

15 the bullet hole was on the left side of her forehead which

16 was down toward the bottom of the trunk.

17 Q Did you look to see if you could see anything?

18 A I looked at her body. As I said earlier to Mr.

19 Clements I had glanced at her body and all I saw was a

20 little blood on her forehead and blood coming out her

21 right ear.

22 Q But you didn't look into the trunk itself?

23 A No, I didn't want to -- I didn't want to get near it

24 because my job at that time was just to make sure I looked

25 for any other clues. Crime scene was on the scene, and I

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- 1 didn't want to get in the way of their job.
- 2 Q Okay. Well, let me ask you this, when you took Roger
- 3 to the complex who told ---
- 4 A I didn't take Roger to the complex.
- 5 Q When Roger was taken to the complex by a patrol officer
- 6 ---
- 7 A Yes, sir.
- 8 Q --- Starling, I believe.
- 9 A Yes, sir.
- 10 Q Who told Starling to do that?
- 11 A I want to say Sergeant Drayton instructed him to do
- 12 that.
- 13 Q So you didn't do that as the lead investigator?
- 14 A No, I didn't.
- 15 Q All right. When Roger was taken to the complex what
- 16 did you know at that time?
- 17 A That we were going to talk to Mr. Bruce at City-county
- 18 Complex.
- 19 Q Well, you knew there was something dead in the trunk.
- 20 A Right, I knew that.
- 21 Q All right. And from what y'all assumed at that time
- 22 Roger was the last person that had seen her. Were you
- 23 assuming that?
- 24 A Yes, because that's what I was told by the officers on
- 25 scene that he was last one in contact with her.

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1 Q And at that point he was not a suspect?

2 A No, he wasn't.

3 Q Why did you write in your notes suspect?

4 A Because a person of interest is kind of long and
5 lengthy and ---

6 Q POI.

7 A Well ---

8 Q Don't y'all use -- y'all use a lot ---

9 A Sometimes I don't ---

10 THE COURT: Excuse me.

11 MR. CLEMENTS: Your Honor, I would object.

12 He's ---

13 THE COURT: Excuse me.

14 MR. LAWSON: Your Honor, I would object.

15 THE COURT: Excuse me.

16 MR. LAWSON: Yes, sir.

17 THE COURT: I don't want two people talking at one
18 time.

19 MR. LAWSON: Yes, sir, Your Honor.

20 THE COURT: You got to let him finish his answer
21 and then you can speak.

22 Let him finish his question, sir, and then you can
23 respond. Okay. Go ahead.

24 MR. LAWSON: Whose turn?

25 THE COURT: Yours.

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1 MR. LAWSON: I can't remember.

2 THE COURT: Your turn.

3 BY MR. LAWSON:

4 Q Y'all said that on the radio nobody could understand
5 what you're talking about because y'all use all these
6 codes, right.

7 A Yes, sir.

8 Q How hard is it to write POI, person of interest?

9 A That wasn't hard but I didn't write it. I just wrote
10 suspect, sir. I was writing in my notes. I mean, I was
11 just -- it was my notes. I was --

12 Q Is that what you thought he was?

13 A No, I just wrote in my notes suspect. I write that for
14 a lot of different things. Sometimes when people are not
15 suspect, but when I'm talking to them I just use the word
16 suspect sometimes.

17 Q So suspect is easier to write than POI?

18 A To me it is at the time, yes.

19 Q So he was not a suspect?

20 A He was not a suspect at the time, sir.

21 Q As soon as he said I wouldn't shoot Laura he became a
22 suspect?

23 A That's correct.

24 Q Okay. And what did you do after that to investigate
25 any other possible leads?

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- 1 A Meaning when, sir? Like as I indicated to
2 Mr. Clements, we went and talked to Mr. Earl Bruce, asked
3 was anybody else around the house. Mr. Bruce advised us
4 that he went to the house, he didn't see anyone. We spoke
5 with neighbors as I indicated to Mr. Clements. We spoke
6 with Ms. Lori Ford and her daughter. And we also spoke
7 with Mr. George Phillips and his wife. They didn't see
8 anyone else around. We went and spoke to Mr. Willie
9 Holloman. They call him Junebug. We tried our best to
10 find out everything. We didn't just stop with him saying
11 that because we really didn't know what had happened.
- 12 Q All right. So when you went back to the house what did
13 you do? You talked with neighbors or whoever was standing
14 around at that time?
- 15 A Yes, sir.
- 16 Q Okay. Did you talk to at some point a Mr., I think,
17 didn't you talk with Herbert Burgess?
- 18 A Yes, sir.
- 19 Q And did Mr. Burgess actually see Roger and Laura on
20 Saturday?
- 21 A He -- I don't have my notes here in front of me, but he
22 did indicate that he saw them together.
- 23 Q Do you know what day that was on?
- 24 A As I said, I don't have my notes in front of me. He
25 did say he saw them together.

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- 1 Q Did you take a statement from him?
- 2 A Yes, I did.
- 3 Q A recorded statement?
- 4 A I'm pretty sure I did.
- 5 Q Would it be in your report when you spoke with him?
- 6 A Yes, sir. Should be around the last page I want to
- 7 say.
- 8 Q Is this your report?
- 9 A Yes, it is. And I spoke with him on the 23rd of
- 10 October.
- 11 Q And when did he say he saw?
- 12 A He said he saw at the intersection of Marion and
- 13 Alexander. It didn't say when he saw them. He just told
- 14 me that he saw them.
- 15 Q Do you recall taking his statement?
- 16 A I want to say I did. If I did, I did take a statement
- 17 from him, it should be in my notes.
- 18 Q Have you reviewed this information for your testimony?
- 19 A Yes, I have.
- 20 Q Did you review his statement?
- 21 A I don't recall reviewing his statement.
- 22 Q Did you review all the other statements?
- 23 A I'm pretty sure I have, sir. I just don't remember
- 24 his.
- 25 Q Does this indicate Mr. Burgess' statement?

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1 A Yes, sir.

2 Q Indicate who took that statement?

3 A I did.

4 Q Yes, sir.

5 A I did. Yeah, I took his statement.

6 Q Did he indicate that he had seen her on seen them on
7 Saturday?

8 A Yeah, it says Saturday afternoon about 7.

9 MR. CLEMENTS: Your Honor, I would object to any
10 hearsay to this; but if he wants to put the whole
11 statement in evidence I don't object to that. But bits
12 and pieces of it that are hearsay that can't be
13 cross-examined I object to.

14 MR. LAWSON: He's listed as a State's witness, Your
15 Honor.

16 THE COURT: Now who is that?

17 MR. LAWSON: Mr. Burgess.

18 MR. CLEMENTS: If Mr. Lawson wants to put the
19 statement, the whole statement into evidence, I don't
20 object.

21 THE COURT: I'm gonna sustain unless he takes the
22 stand.

23 MR. LAWSON: I'm not going to put the statement in.

24 THE COURT: All right.

25 ///

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1 BY MR. LAWSON:

2 Q All right. Now my understanding you followed each and
3 every lead that you may have had?

4 A That's correct.

5 Q You recall talking to one of Ms. Creel's sons about
6 this situation?

7 A Yes, sir, I spoke with both of them.

8 Q All right. And do you recall one of them telling you

9 ---

10 MR. CLEMENTS: Your Honor, I object to any hearsay.
11 They were on the witness stand. He was able to
12 cross-examine them as to what they might have said, but to
13 ask him about hearsay information.

14 MR. LAWSON: Your Honor, this officer has testified
15 that he followed each and every lead. It is my position
16 that there are things in his notes which I believe are
17 leads, and I want to be able to ask him if he followed
18 those leads.

19 THE COURT: You can ask him that, but you're asking
20 him what did someone else tell you.

21 MR. LAWSON: I'll ask him if he followed the lead.

22 THE COURT: Sure.

23 BY MR. LAWSON:

24 Q In relation to an individual named Kenny.

25 A Uh-huh.

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1 Q What did you find out about Kenny?

2 A I found out that Kenny was an old associate of
3 Ms. Creel's, that she hadn't had any communication with
4 him in quite a while. That was all I could find out about
5 Kenny.

6 Q What did -- what information did you gather from
7 Mr. Shane Ritch about Kenny?

8 A As far as he was old boyfriend that she had deal with,
9 but she hadn't seen him in a while. That's -- if you want
10 me to get my notes I can. I ...

11 Q Yes, sir, that will be fine.

12 A Okay. All right.

13 Q As a matter of fact, I -- well, you can use the
14 originals.

15 (Notes tendered to witness by Mr. Clements.)

16 THE WITNESS: I found out that this is from --

17 MR. CLEMENTS: Your Honor, I would -- again, I
18 would object to any hearsay if --

19 THE COURT: He can use his notes to reflect his
20 memory.

21 MR. CLEMENTS: Yes, sir, but I just don't want --

22 THE COURT: Or to recollect his memory.

23 MR. CLEMENTS: Yes, sir, but if he's going -- I
24 don't want him testifying to any hearsay. He can put
25 Mr. Ritch back up on the stand to see what he said and ask

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1 him about that.

2 THE COURT: I'm going to sustain as to hearsay, but
3 he can use the notes to refresh and to recollect his
4 memory as to what his leads were.

5 MR. CLEMENTS: Yes, sir.

6 THE WITNESS: Okay. Shane indicated that she had
7 another friend named Kenny with red hair, and he
8 threatened to kill the victim about two months prior.
9 Well, he threatened to kill the victim two months ago and
10 that he was seen walking by the residence about two months
11 prior to this incident happening.

12 BY MR. LAWSON:

13 Q And who was Kenny?

14 A Kenny was an old boyfriend that she had.

15 Q And what's his name?

16 A Kenny. That was all I got. That was all I could find.

17 Q Did you ever investigate further to find out?

18 A Yes. I even went by the job to find out who Kenny was.

19 I could never find out who Kenny was.

20 Q And so you don't know that his name may have been Kenny
21 Averette?

22 A I sure didn't.

23 Q You couldn't find that out?

24 A No, I didn't find that out.

25 Q But do you know whether or not he may have been on the

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1 sexually violent predator act, registration?

2 A There was no way of me knowing that if I didn't know
3 his last name, sir.

4 Q So what did you do to find out his last name?

5 A I spoke with different people who no one could tell me
6 his last name, and---

7 Q No one could tell you --

8 A No one could tell me his last name, and everyone I
9 spoke with stated she hadn't been around him in a while, a
10 long time.

11 Q You said a couple of months, right?

12 A Long time.

13 Q Did you have occasion to check incident reports
14 involving anything that may have occurred at that location
15 on Avenue?

16 A Well, I looked through it briefly. I really couldn't
17 find anything.

18 Q You -- did you check all CAD reports or reports of
19 incidents that occurred at that location?

20 A I checked, but I couldn't find anything.

21 Q Would you be interested to know whether or not there
22 was a history of violence between Roger and Laura?

23 A Yes, I would.

24 Q And that's -- and so would you then pull up incident
25 reports?

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1 A Yes, I would.

2 Q Did you pull up an incident report involving Kenny?

3 A No, I didn't.

4 Q Would you be surprised to know that there is one?

5 A I really wouldn't be surprised, sir.

6 Q If you had pulled that up what do you think it would
7 have revealed?

8 A It may have revealed his name.

9 Q May have. Now let's go back to when Roger was taken
10 here to the complex. You say that I think Sergeant
11 Drayton told officers, patrol officer Starling, to take
12 the cuffs off of him?

13 A Yes.

14 Q And at what point did y'all tell him that he was free
15 to go if he so chose?

16 A We didn't tell him that. We were conducting our
17 investigation. We went upstairs with him to talk with
18 him. We didn't come out and just say you're free to go.
19 We needed to speak with him. And as I indicated to Mr.
20 Clements earlier, had we not discovered anything during
21 our conversation we would have took him back to wherever
22 he needed to go.

23 Q And do you remember Roger getting sick during the
24 interview?

25 A I remember him, like I said yesterday, he was dry

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1 heaves, look like dry heaves except he was trying to throw
2 up. He wasn't sick sick, but it was like he was trying to
3 throw up.

4 Q And did you take him to the bathroom?

5 A I didn't take him to the bathroom. I don't recall he
6 went to the bathroom or not. I know I got him some water.

7 Q Is that in your notes that he went to the bathroom or
8 didn't go?

9 A I don't think it is.

10 Q Is it in your notes that he had dry heaves or that he
11 was throwing up?

12 A No, some things you just remember, sir.

13 Q Some things you just remember. Well, when you get to
14 my age you won't. You got to write everything down,
15 believe me.

16 A If I get there.

17 Q It's too late. Okay, so you don't have any of that in
18 your notes?

19 A No, sir.

20 Q How is somebody supposed to know when they're under an
21 obligation to remain with you or when they're free to go
22 if you don't tell them?

23 A A lot of times while speaking with different
24 individuals, I mean, it's pretty obvious we would -- we
25 would advise them, I mean, the way the conversation will

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1 be going. I mean, it just -- we would let them know,
2 okay, we'll get back with you a little later. I mean,
3 most of the time we speak with people they're freely
4 speaking with us. As I indicated he was under arrest. We
5 were just talking with them.

6 Q So was he freely speaking with you?

7 A Not with me but Sergeant Drayton, with us rather.

8 Yeah, he was just talking.

9 Q Officer Carraway, if you didn't know or have some
10 reason to think that Laura had been shot --

11 A Uh-huh.

12 Q --why would it mean anything to you for somebody to
13 say, I wouldn't shoot Laura?

14 A Because that -- I mean, we didn't have any clue as to
15 what happened to the lady in the car. But for him to come
16 out and say that we knew that if someone was to shoot
17 someone that would be a -- that would be a clear indicator
18 that, okay, this person is dead and that may be a result
19 of why this person is dead. I mean, that was -- that was
20 what we went on.

21 Q Well, I mean the fact that you don't know how she may
22 have died, it didn't, I mean, that doesn't weigh into that
23 calculation? Because it seems to me the reason you get
24 probable cause when someone says I didn't shoot somebody
25 is because you know they were shot?

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1 A Well, at the moment, sir, as I indicated earlier, we
2 did not know she was -- she was actually shot. Her head
3 was turned away from us, and there was no way of telling
4 that she had been shot unless he got there, put her there
5 or moved her around, and we didn't do any of that.

6 MR. LAWSON: Your Honor, I don't have any further
7 questions for this witness.

8 THE COURT: Anything?

9 **REDIRECT EXAMINATION**

10 BY MR. CLEMENTS:

11 Q And what did Mr. Bruce say after he said he wouldn't
12 shoot Laura and y'all asked him what he was talking about?

13 A He said, I know what a bullet hole looks like.

14 Q Now you know what these are?

15 A That's the CAD report, incident reports.

16 Q Incident reports, multiple incident reports?

17 A Yes, it is.

18 Q And from what address?

19 A

20 Q Those incident reports you pulled to check on this
21 residence?

22 A These incident reports were pulled and ---

23 Q Well, let me ask you this, and I'm gonna give you time
24 to look at each one of them. Where on any of those
25 incident reports do you ever see the name Kenny Averette?

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1 A On none of these.

2 Q What, if anything, on any of those incident reports has
3 anything to do with this incident?

4 A Nothing to do with this incident.

5 Q Nothing?

6 A Oh well, I see a domestic here. I see a harassing
7 threatening complaint on this one, another domestic and
8 another domestic. Four domestics.

9 Q But nothing to do with this incident?

10 A Well --

11 Q Right?

12 A Right, nothing.

13 Q There's nothing on a Kenny Averette?

14 A Nothing on a Kenny Averette.

15 Q And you pulled these incident reports, right?

16 A Yes.

17 Q And as late as October 23rd you told Mr. Lawson, was
18 that the last -- was that the date you talked to
19 Mr. Burgess?

20 A Yes, it was, of 2009.

21 MR. CLEMENTS: Beg the Court's indulgence one
22 minute.

23 THE COURT: Yes, sir.

24 MR. CLEMENTS: That's all the questions I have.

25 Hold on one second. That's all the questions I have at

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1 this time.

2 THE COURT: Anything further, Mr. Lawson?

3 MR. LAWSON: May it please the Court.

4 THE COURT: Yes, sir.

5 **RECROSS-EXAMINATION**

6 BY MR. LAWSON:

7 Q Officer Carraway, what is that?

8 A This does have his name Kenneth Averette and the victim
9 was Roger Bruce, and this is verbal threats at King
10 Avenue.

11 Q Is that an incident report?

12 A Yes, it is. Let me see it again.

13 Q From the city of Florence?

14 A From 2007, yes, sir.

15 Q From the city of Florence?

16 A Yes, sir.

17 Q I don't have any other questions.

18 THE COURT: All right.

19 **FURTHER DIRECT EXAMINATION**

20 BY MR. CLEMENTS:

21 Q Was Ms. Creel's name on that incident report?

22 A No, it wasn't.

23 Q Okay.

24 THE COURT: All right. Thank you very much. You
25 may step down.

1 MR. LAWSON: Excuse me, Your Honor. I mean, I hate
2 to say that but it is, and you let him look at it.

3 MR. CLEMENTS: Your Honor, may we approach.

4 THE COURT: Yeah.

5 (WHEREUPON, counsel approached the Bench for
6 an off-the-record discussion.)

7 THE COURT: You may call your next witness.

8 MR. CLEMENTS: Your Honor, at this time the State
9 rests.

10 THE COURT: All right. Ladies and gentlemen, the
11 State has rested its case, and at this time I have some
12 matters of law to take up with the attorneys. So while I
13 do that I'm gonna get you to step back into your jury
14 room. If you need anything please let the bailiffs know.
15 Please have no conversation about the case and we'll get
16 you back out here shortly.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 11:12 a.m., and the following proceedings
19 commenced in open court.)

20 THE COURT: All right. At this time we'll take up
21 motions at the close of the State's case.

22 MR. LAWSON: May it please the Court.

23 THE COURT: Yes, sir.

24 MR. LAWSON: Defense would move for directed
25 verdict acquittal in relation to the charge of murder.

1 The State failed to produce evidence.

2 THE COURT: All right. I'm gonna respectfully deny
3 the motion at this stage. I think that it's a question of
4 fact for the jury to decide. I think there is evidence in
5 the record depending on how the jury views it.

6 MR. LAWSON: And Your Honor, I would renew all
7 motions.

8 THE COURT: And let me for the record, I failed to
9 do this yesterday, I told you I was going to do this,
10 certainly gonna renew all your motions that you've made up
11 to this point. Also, that when the Solicitor, which there
12 were photographs that were in evidence but when they were
13 showing those photographs of the car and the body and in
14 the car I told you that I would note that your continuing
15 motion on your motion to suppress anything prior to the
16 search warrant.

17 MR. LAWSON: Yes, sir.

18 THE COURT: That those objections would apply at
19 that point as well.

20 MR. LAWSON: Thank you, Your Honor.

21 THE COURT: So it's noted that those were also made
22 with regards to the photographs.

23 MR. LAWSON: As well as the general objections to
24 the photographs themselves.

25 THE COURT: Correct. Correct.

1 MR. LAWSON: Thank you, Your Honor.

2 THE COURT: Okay. Now Mr. Lawson, have you
3 discussed with Mr. Bruce the Defense's position? You need
4 some time to do that as far as whether or not he is gonna
5 testify or whether or not you're going to put up any
6 witnesses or?

7 MR. LAWSON: If we could have about five minutes,
8 Your Honor. We've talked about it endlessly, Roger and I.
9 I mean, at this point I told him that it was his decision
10 as to whether he would testify or not, but that I would
11 give him my opinion as to what I thought whether he should
12 or not and I'd like the opportunity to do that at this
13 point, Your Honor.

14 THE COURT: All right. You take the time and while
15 he's doing that, we'll just remain at ease and if anyone
16 needs to take a break you can do that.

17 MR. LAWSON: Thank you, Your Honor.

18 (WHEREUPON, a recess was taken from the
19 proceedings.)

20 (WHEREUPON, counsel approached the Bench for
21 an off-the-record discussion.)

22 THE COURT: Mr. Lawson, you've had a opportunity to
23 discuss with Mr. Bruce the Defense's position and your
24 case?

25 MR. LAWSON: Yes, Your Honor.

1 THE COURT: And his -- whether or not he will be
2 testifying or not?

3 MR. LAWSON: Yes, Your Honor.

4 THE COURT: Yes, sir, Mr. Lawson.

5 MR. LAWSON: May it please the Court, Mr. Bruce has
6 decided that he will not testify, Your Honor, and the
7 Defense will not put up a case.

8 THE COURT: All right. Mr. Bruce, let me ask you,
9 sir, please, you've talked with Mr. Lawson about your
10 right to testify; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now you understand that you certainly
13 have the right to testify if you choose to and that but if
14 you did choose to do that, you would be -- obviously you
15 would answer Mr. Lawson's questions, but you would also be
16 required to answer any questions from Mr. Clements as
17 well. You understand that?

18 (Defendant shakes head.)

19 THE COURT: Okay, sir. And I don't know,
20 Mr. Bruce, if you have any prior criminal history that
21 would be admissible or not, but you understand that if you
22 did take the stand it may be that the Solicitor or
23 Mr. Lawson either one, could possibly ask you about that
24 criminal history. You understand that?

25 THE DEFENDANT: Yes, sir.

1 MR. LAWSON: He has none,, Your Honor.

2 THE COURT: And again, I didn't know whether you
3 did or not. But you do understand that you would have to
4 answer questions from both sides?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now Mr. Lawson has indicated to me that
7 you have indicated that you are not going to testify. You
8 understand, obviously, you have that right. We all have
9 the right to remain silent. You understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now the fact that you made this
12 decision, what that means is that when I charge the jury
13 on the law, I will instruct the jury and I will tell them
14 that the fact that you have chosen to remain silent cannot
15 in any way be used against you. I would instruc— I will
16 instruct the jury that the State has the burden of proof
17 and that you don't have to prove anything and that they
18 have to carry their burden and that the fact that you
19 chose to remain silent or to exercise your constitutional
20 right, I will instruct them that they cannot even discuss
21 that in the jury room. You understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now it's important however, though,
24 Mr. Bruce, that often times and in a lot of ways trial
25 strategy is up to the attorneys to decide how they want to

1 present the case, but whether or not a person -- in this
2 case you -- decides to waive or to give up a
3 constitutional right it is important that that, that that
4 comes from you. In other words, you have the right to
5 testify but you're gonna give that up, and you're gonna
6 exercise another right you have and that is the right to
7 remain silent. But it's important that you talk with your
8 attorneys and listen to what they have to say, get their
9 opinions, but you understand that the final decision
10 always has to be yours. You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now you've discussed this with
13 Mr. Lawson and with Mr. Floyd?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Now the decision to remain
16 silent, the decision to exercise that right to remain
17 silent, has that been your decision, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anyone talked you into that or
20 coerced you into making that decision?

21 THE DEFENDANT: No, sir.

22 THE COURT: Anybody force you in any way to make
23 that decision?

24 THE DEFENDANT: No, sir.

25 THE COURT: It's been your decision all the way?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Well, I certainly will
3 respect and I will charge the jury, as I told you, that
4 the burden is on the State and that you don't have to
5 prove anything. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Thank you, sir. You may have a seat.
8 Now Mr. Lawson, have you had an opportunity to
9 review the charge, the proposed charge?

10 MR. LAWSON: I have, Your Honor.

11 THE COURT: Anything we need to do about that, or
12 has it got everything in it that you need?

13 MR. LAWSON: Yes, Your Honor, I have no additions
14 or objections.

15 THE COURT: Okay. Well, at this time let me, if
16 it's okay with y'all, I propose that I take up any motions
17 at the close of all the evidence; and then when the jury
18 comes out, would recognize you to close on the record and
19 then we'll begin with closing arguments.

20 MR. LAWSON: I would at this point renew all
21 motions previously made.

22 THE COURT: All right.

23 MR. LAWSON: Throughout the trial and at the close
24 of all the evidence.

25 THE COURT: All right, sir. I'm going to

1 respectfully deny that motion. As I said earlier, I think
2 it's a question of fact for the jury to make a decision on
3 so.

4 Ms. Joe, if you would ask the members of the jury
5 to join us please.

6 Ladies and gentlemen, those of you out in the
7 audience, we're going to bring the jury back in and we're
8 gonna proceed with the closing arguments of the attorneys
9 and then I'm gonna charge the jury on the law that is
10 applicable in this case. During that time when the
11 attorneys are addressing the jury and the Court is giving
12 the charge, no one is gonna be allowed to come into the
13 courtroom or to leave the courtroom. So I want to tell
14 you that now because, and I don't know how long it's gonna
15 take. It's probably gonna take a little bit of time, but
16 you need to understand that no one will be coming in or
17 out so this is your opportunity if you don't want to be
18 stuck in here for the next couple of hours that you need
19 to leave now. Once we start, once the jury comes out,
20 we're gonna lock the doors, okay? Just thought I'd let
21 you know.

22 All right, Ms. Joe, bring them out.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 12:00 p.m., and the
25 following proceedings commenced in open court.)

1 THE COURT: All right, ladies and gentlemen, if you
2 recall, when we broke earlier the State had rested their
3 case. I took up some matters of law from the attorneys
4 and now we're ready to proceed and would recognize
5 Mr. Lawson on behalf of Defense.

6 MR. LAWSON: May it please the Court, the Defense
7 would rest, Your Honor.

8 THE COURT: All right. Thank you, sir. Ladies and
9 gentlemen, the Defense has rested their case. And during
10 that time when I was taking up matter of laws with the
11 attorneys Mr. Lawson informed the Court of that, of the
12 Defense's decision regarding their case. And so typically
13 what happens is, once the Defense rests, I then have
14 another series of motions that I take up. And so since
15 Mr. Lawson informed me of that during that earlier break,
16 we went ahead and took up those motions so that we
17 wouldn't have to bring you out and then turn right around
18 and send you back in and take up those motions. So we've
19 exhausted all those and done that during that time you
20 were out. Again, we're not out here playing around while
21 you're in there; we're actually working. So we've done
22 that. So we've reached the portion of the trial now,
23 ladies and gentlemen, where all the evidence is in.
24 Whatever evidence that you have to decide this case is in.
25 It's the testimony of the witnesses as well as any

1 exhibits that were admitted during the course of the
2 trial, and you'll have these exhibits back in your jury
3 room when you retire to deliberate. But we now reach the
4 portion of the trial where you and -- you are going to
5 hear from the attorneys with their closing remarks or
6 their closing arguments. This is their opportunity to
7 discuss and talk to you about what they believe the
8 evidence in this case has shown or has not shown. And
9 it's important that you listen very carefully to what they
10 have to say. I will tell you this, as I told you with
11 regards to their opening statements, what the lawyers tell
12 you in their closing arguments is not evidence. The
13 evidence is closed. So it is important, however, that you
14 give them your attention as they argue to you what they
15 believe that evidence has revealed. Once they have
16 concluded their remarks to you I will then give you the
17 charge on the law. I will tell you the law that is
18 applicable to this case, and once you receive that you
19 will then be in a position to argue -- excuse me, to go
20 into the jury room and to deliberate and discuss and reach
21 a verdict in this case. Okay? So if you would, please
22 give the lawyers your undivided attention as they address
23 you with their closing arguments.

24 Solicitor.

25 MR. CLEMENTS: Thank you, Your Honor. If it please

1 the Court.

2 THE COURT: Yes, sir.

3 MR. CLEMENTS: Good afternoon. I want to thank you
4 on behalf of the State of South Carolina for listening so
5 attentively and paying close attention to everything you
6 heard from that witness stand because as the judge is
7 going to tell you when he charges you on the law in a
8 little bit, you're the sole judge of the facts in this
9 case. The facts are what you heard from that witness
10 stand and what has been presented into evidence that you
11 will be allowed to take back in the jury room with you and
12 look at. Those are the facts. It's your job to weigh
13 those facts out and determine whether you're going to find
14 a verdict of guilty of murder or not guilty. As I told
15 you at the beginning of this trial, the burden of proof
16 lays on me, and I represent the State of South Carolina.
17 That burden of proof is to prove somebody guilty beyond a
18 reasonable doubt, to prove beyond a reasonable doubt that
19 Roger Bruce killed Laura Creel, put her in that trunk, and
20 then, I suggest, couldn't figure out what to do next. The
21 judge is going to tell you about reasonable doubt. You
22 take reasonable doubt the way he tells you it is, not me.
23 He's going to tell you, I believe, that a reasonable doubt
24 is a doubt that is where you're not firmly convinced of
25 something. And if you're not firmly convinced of it then

1 you got a reasonable doubt. He's also going to tell you
2 reasonable doubt is not any doubt, and that the State's
3 not required to prove it beyond every possible doubt.
4 What you got to do basically is bring your common sense
5 and your collective knowledge and wisdom together and say
6 what makes sense in this case.

7 Well, there's only three possibilities, and two of
8 them don't make any sense based on the evidence that you
9 have. The first possibility is that Laura Creel did this
10 to herself. Well, you know that didn't happen. The
11 pathologist Doctor Schandl got up and said it was a
12 homicide. That was her opinion to a reasonable degree of
13 medical certainty that it was homicide, which is death at
14 the hands of another. Well, you know, Laura Creel is not
15 going to be able to shoot herself, put the gun back under
16 the bed where it belongs, and then go put herself in the
17 trunk of the car and lock herself in the trunk so that's
18 possibility number one. Makes no sense whatsoever.

19 Possibility number two is somebody other than Roger
20 Bruce did it. I submit to you that doesn't make any sense
21 either, and we're going to talk about that in a little
22 bit. Possibility three, is what the State is charged is
23 that Roger Bruce did this, killed Laura Creel with malice
24 aforethought. Now what we have to do here, we have to
25 look at the evidence. And it's pretty clear there are

1 certain things we know, and you're gonna be able to take
2 that evidence and look at. And number one is that Laura
3 Creel was shot in the forehead. And as the experts
4 testified to, you look at that wound, small caliber wound
5 .21, .22, .22 caliber, and that there was splitting there
6 around the skin, kind of a star type thing indicating it
7 is a close contact wound, that she was shot either right
8 point blank or very close and this is somebody that got
9 very close to her. And where she shot, where she fell,
10 was in the living room of her apartment she lived at, she
11 and Roger Bruce lived. She fell here. The reason I say
12 she fell here is because common sense, this is where most
13 of the blood was, the puddle of blood. And you have the
14 ability to take this rug back; it's in evidence. If you
15 want to open it up and roll it out and look at it, you
16 can. But Florence Police Department did a great job of
17 documenting everything, and they documented where that
18 blood seeped through the bottom of that rug. And there's
19 other pictures. There's tons of pictures that you get to
20 look at if you want to, and I encourage you to do that.
21 They're all in evidence. And it shows the other side of
22 this rug, and it will show if you look at some of those
23 seams on that rug where it looks like things were moved
24 around and perhaps an attempt to doing some cleaning was
25 done. There's a carpet cleaner there. But here is where

1 she was shot and where she lay. But we know she didn't
2 stay there 'cause she was found in the trunk of her car.
3 And there was blood observed here that was tested and it
4 was presumptive blood. Blood here was tested, presumptive
5 blood. And I believe we heard that her car is usually
6 backed in here, and there was blood on the bumper of this
7 car and then her body was in the trunk.

8 So what makes sense is she was shot here. She was
9 moved where nobody could see. You have to get rid of that
10 body. If you're going to get rid of that body you got to
11 do it and hope nobody sees you. So the car is going to be
12 backed in here. Trunk open up and you're going to move
13 that body and put it in that trunk and shut that trunk,
14 get it in there as quick as you can. She was shot with a
15 22. We know she was shot with a 22 because the bullet was
16 retrieved; here it is. State's exhibit 90. It's in the
17 little sink area where the autopsy was done. Sergeant
18 Brandt testified he was there watching it done. Doctor
19 Schandl talked about she did it, took that bullet out, put
20 it in, and then it went to SLED. Went to SLED and Agent
21 Whitler tested that bullet. And what did he test it for?
22 To see if it was fired by this gun. And what did he
23 testify to? That it was consistent with being fired by
24 this gun, but he couldn't tell you for sure it was fired
25 by this gun because as you'll look at it that bullet is

1 pretty deformed. When it goes in, and we only know it
2 went through her skull. As the doctor said, it hit on the
3 side of the skull, it ricocheted, it's pretty deformed.
4 So some of those markings are going to be distorted so he
5 can't tell for sure it was fired by this gun, but it's
6 consistent with it being fired by that gun. Or he said it
7 could have been that the gun just didn't mark that well.
8 Well, the bullets in her, we know she was shot or at least
9 at some point in time after she was shot her body lay
10 right there and we know this gun was in there, and we know
11 there was a shell casing in there, empty shell casing.
12 What's common sense tell you? The shell casing was also
13 tested by Agent Whitler. And what did Agent Whitler say
14 about the shell casing? Here's a picture of it where it
15 was found. State's Exhibit 34. The shell casing
16 absolutely was fired and ejected from that gun. And where
17 was that shell casing found? The shell casing was found
18 right here, right here. The body was right here at some
19 point in time. And where was the gun? The gun was around
20 here. You take that gun you can look at it. But here's a
21 picture where it was found under the bed. And I would
22 submit to you that's normally close to where that gun was.
23 That gun was normally under that bed. Why'd I say that
24 gun was normally under that bed? Look at the other
25 pictures. You'll see that this is a old 22, not very good

1 shape. There's an old shotgun too. Where was that
2 shotgun found? Underneath that bed. So I would submit to
3 you whoever used that gun put it back where it normally
4 was, put it back where they got it.

5 Now who used the gun? We know one person to handle
6 that gun and that's Roger Bruce. The stock was swabbed
7 for blood, and it turned out to be blood. And that blood
8 was submitted to SLED, those standards, the swabs. And
9 they were tested by Special Agent Leisy. What did she
10 say? Said it matched one in 21 and I don't know how many
11 numbers that is. That's way beyond my pay grade. But
12 it's a whole lot more than 7 billion people on earth, but
13 that matched up to Roger Bruce right there. And also, not
14 only was the stock tested but there was DNA gathered from
15 here from the trigger and DNA from the barrel. And whose
16 DNA was that? Roger Bruce's. And Mr. Lawson, if I was
17 him, I'd get up and say, well of course you'd expect to
18 find Roger Bruce's DNA, it was in his house, it was where
19 he slept, it was his gun, that's not that unusual, that
20 doesn't mean he's the one who shot him, somebody else did
21 it. Well, guess what, I asked Agent Leisy, is there any
22 other contributors of DNA here? And there wasn't. There
23 was no other contributors known or unknown. The only DNA
24 was Roger Bruce. If somebody else could have used the gun
25 their DNA would have been on that trigger. There isn't

1 any. And his DNA is on the barrel. Why was the DNA on
2 the barrel? Well, you know, if the shot was at point
3 blank range right here, contact wound like the pathologist
4 said, might be worried about, you know, might have some
5 blow back blood in here, I better clean this off, I better
6 clean this. So whose DNA is going to be here? The person
7 cleaning this. It doesn't look like this gun was
8 regularly cleaned or maintained, does it? Not at all.
9 But if it was used and you worried about somebody blood
10 being on there you'd be trying to clean that, wipe that
11 off. Or I asked her, how about it's loaded it and you got
12 transfer of DNA from the bullet and you loaded it in and
13 it's going -- and on the barrel 'cause I'm not sure
14 exactly where it came from on the barrel but somewhere on
15 the barrel. It might have just been on the outside of the
16 barrel. But it was Roger Bruce's DNA. No other
17 contributors, no other DNA but Roger Bruce's. And I
18 submit to you beyond a reasonable doubt I would say this
19 is the weapon that killed Laura Creel.

20 And we all know one thing, and that is, guns and
21 alcohol don't mix. They do not mix. And you can look in
22 the pictures and you can see Mr. Lawson kept asking the
23 officers that responded there for the welfare check, well,
24 did you see any evidence of alcohol. Well, you know, they
25 weren't looking for that. They were just looking to see

1 if Ms. Creel was there. But you can go back and look at
2 the pictures and you can see the answer to Mr. Lawson's
3 question is, yeah, there's a lot of empty liquor bottles
4 and some beer bottles. Guns and alcohol don't mix, don't
5 mix.

6 Now one thing I'm gonna ask you to notice when the
7 judge charges you on the law he's not gonna charge you
8 that the State has to prove motive. It's not necessary to
9 prove motive. We don't know what the motive was. All we
10 knew is guess. Don't want you to guess. We want you to
11 go on facts. The only facts we do have is that something
12 happened to this lamp shade. I don't know if it was
13 regularly the way it was or if there was an argument.
14 Don't know what happened. We know that Mr. Bruce told law
15 enforcement that there was an argument. He told them
16 there was an argument over sex, that he didn't want to
17 have sex and Ms. Creel wanted to have sex and so she got
18 mad and left. I don't know if they are argued so much
19 that, you know, that the lamp shade was a victim of that
20 argument. Perhaps it was. But Laura Creel was a victim
21 of that argument whatever it was about. Blood was found
22 here. Blood was found here. Blood was found here. You
23 can see the pictures. The trail ended up here in this
24 trunk. And remember, the officers came on the scene for
25 the welfare check, Beckett, Starling, Hobgood. They said

1 that Mr. Bruce, he was kind of laid back sort of when they
2 were talking to him. He didn't know where she went,
3 thought she might be with some friends, you know. Or
4 might be with somebody, don't tell who. Never mentioned
5 any names, didn't mention Kenny Averette's name, didn't
6 mention any other names, just that she'd gone somewhere.
7 So they began to look to see where she might be. Saw
8 keys. There was only one vehicle there and only one set
9 of car keys. So it doesn't take a rocket scientist to
10 figure out, well, these must be the keys to that. And
11 then Mr. Bruce says, yeah, well those are her keys so they
12 go to look in the car. And he's fine, he follows them out
13 there, didn't see anything. But you remember, all the
14 officers said he acted a little bit, his demeanor changed
15 when they went to look in that trunk. He didn't want them
16 to look in that trunk. And he wanted the keys, I'll take
17 the keys. No, no, just tell me. Officer Starling seized
18 the fob, gets it, opens it up. And what did they say?
19 Officer Beckett said he kind of moved, I'm not sure, kind
20 of stepped back. Well, whatever he did it was enough so
21 that Starling was alarmed enough that he pulled his gun
22 and said, hold it, stay right there. You know, got a body
23 in the trunk, don't know how the body got there, don't
24 know Mr. Bruce, don't know if he's armed, don't know
25 anything. So what do they do? They put him in

1 investigative detention. That makes perfect sense doesn't
2 it? That's for everybody's sake including his, you know.
3 They don't know what they've got. They got to figure it
4 out, you know. Mr. Lawson certainly asking a lot of
5 questions about that. I don't want to make that a big
6 deal. He's put in investigative detention so
7 investigators talk to him. Other officers, they didn't
8 talk to him; that wasn't their job. They just secured the
9 scene and waited. But what they did tell us was this, and
10 you remember, I asked the witness to stand up, you know,
11 and tell us about how he was standing -- Starling was
12 standing at the back of the car. Hobgood was standing at
13 the back of the car right here and he talked about the
14 hood -- I mean, not the hood, I'm on the wrong end of the
15 car. The trunk lid being up high. And I said, well, I'm
16 down here a little lower so bring it down some. But that
17 trunk lid popped up. They lifted it up and they saw
18 Ms. Creel's dead body. And where did Beckett say he was
19 standing? Here, about here, you know, on the passenger
20 side of the car. And where was Mr. Bruce? In between
21 Beckett and the car. So he didn't even have angle to see
22 around the side of the trunk lid. The trunk lid is up.
23 He can't see. But he moves. He does something. Startled
24 Starling so he pulls his gun. All the officers said when
25 they were there Beckett said he couldn't see anything

1 where he was. He couldn't see. He couldn't see, I submit
2 to you, Roger Bruce couldn't see. And they immediately
3 detained him with investigative purposes, put him in a
4 patrol car till the investigators got there.

5 Now what did Corporal Hobgood tell you about what
6 he saw on wounds, 'cause of death, any manner of death?
7 Nothing. He saw some blood in the ear. He couldn't see
8 the face. What did Starling tell you? Same thing, he
9 couldn't see her face. What did Brandt and Hill,
10 Carraway, and everybody look at the truck tell you about
11 the cause of death and wounds? They had no idea. They
12 had no idea. They couldn't see the face. And State's 102
13 illustrates it, and Brandt said that was exactly how she
14 was. Hill said that's exactly how she was. Nobody
15 touched her but the EMS came and put that lead right there
16 and ain't nobody moved her. And you look and you see and
17 you can't see her face. And this is from the passenger
18 side. And you see that trunk lid there, there's the part
19 of it, that trunk lid is up and this is the passenger side
20 which means Beckett and Roger Bruce would have been
21 standing back here. Is there any way to see her face? Is
22 there any way to see how she is wounded? Is there any way
23 to see a bullet hole? Absolutely not. Anyway...

24 So how does Roger Bruce know there's a bullet hole?
25 They were talking, they were interviewing him, you know,

1 talking. He'd been drinking but he knew what was going
2 on. He can talk to them. He answered their questions.
3 They were asking, well, where you been, who you been with,
4 when did you last see Laura? Well, you know, saw her, she
5 went off, don't know who she was with, she got mad, we
6 argued about sex, she wanted sex, I didn't. And so she
7 got mad and left. Left without her car keys, left without
8 her cell phone, left without her car. None of that makes
9 any sense. You heard she never leaves her cell phone.
10 She doesn't leave her car, you know. She might send Roger
11 to the store or something, take a chance on that 'cause he
12 didn't have a license. But normally he didn't drive that
13 car. Heard Bruce say that, heard her sons say that, heard
14 the neighbors say that. He, normally he didn't drive that
15 car; that was a rare occurrence. She just left with
16 nothing. You know, that's what he was telling law
17 enforcement. A lie. Then all of a sudden he just says,
18 well, y'all think I'd do this, I wouldn't have shot Laura.
19 Now why did he say I wouldn't have shot Laura. Why
20 didn't he say, I wouldn't have killed Laura, I wouldn't
21 have stabbed Laura, I wouldn't have strangled Laura, I
22 wouldn't have hit Laura in the head with a two by four.
23 Why didn't he say any of those things if he was just
24 picking something out the air. Because he knew. I
25 wouldn't have shot Laura. What do you mean you wouldn't

1 have shot Laura? Well, I know what a bullet hole looks
2 like. He knew what a bullet hole looked like because he
3 saw her face and saw this bullet hole in her forehead and
4 it wasn't because he saw it when he was standing at the
5 side of the car with Beckett when the trunk lid popped
6 open. It's because he held that gun to her head and shot
7 her and then tried to figure out, oh my God, what do I do
8 now, and he put her in the trunk and he couldn't figure
9 out what to do with it so when they came for the welfare
10 check and they started to go to the trunk to look, that's
11 when he began to get agitated but he didn't have anywhere
12 to go. When that trunk lid popped open, you know, there's
13 a fence all around that yard. They're standing here at
14 the back of this and the only exit unless he jumped the
15 fence is run past them and run out. Got nowhere to go.
16 And plus he startled Starling enough that Starling had to
17 draw down on him. He said, whoa, whoa, hold right there.
18 He knows what a bullet hole looks like. He knew where the
19 gun was. He knew where to put the gun back. You know,
20 but yet he'd been drinking a whole bunch. He was drinking
21 when Earl saw him, or had been drinking. He continued to
22 drink and drunk and drink. I imagine he was having to do
23 that to deal with, couldn't figure out what to do with the
24 body. Didn't know what to do so he drank.

25 The other possibility is that somebody else did it.

1 How much sense does that make? He's there. Somebody else
2 is going to come in and shoot her with the gun that
3 belonged there and put the gun back and then pick up Laura
4 and put her in the car and put her in the trunk and leave
5 the car keys so Roger can drive around with Earl and
6 Junebug and somehow not get their DNA on the gun and it be
7 Roger's DNA. That don't make any sense whatsoever, you
8 know. Now Mr. Lawson may suggest to you Roger was so
9 drunk he didn't know what was going on, somebody came in
10 there and killed Laura and left, put her in the trunk, and
11 he never knew it. Then he wakes up, he doesn't know
12 what's going on so he gets the car and drives around. But
13 if they're going to kill Laura and do that, number one
14 they wouldn't have put her in the trunk in the car and
15 left her and gone. If they were going to kill Laura they
16 might have been worried about Roger. He'd be more of a
17 threat. He's a grown man that a lady. So they'd probably
18 kill Roger first if somebody else was going to do it, and
19 then kill Laura. Or at least kill him second, not leave
20 him there, with the possibility of, well, maybe he isn't
21 as drunk as I think he is, maybe he can identify me. If
22 somebody else did it, absolutely not, that doesn't make
23 any sense. Because if somebody else did it why would
24 Roger have to lie to Earl. When Earl says, man, what you
25 doing with Laura's car. Oh, she's gone to the mountains,

1 she got an aunt real bad. She went with her son Mike,
2 picked her up in the mustang and they went up to the
3 mountains. Why would he make that story up to Earl. That
4 makes no sense. Why didn't he just say, I don't know
5 where she is, she gone somewhere, she mad, but I got the
6 car keys, let's ride. 'Cause he was lying to Earl. Then
7 later he said, well, don't worry, she ain't coming back, I
8 know she ain't coming back today. And then Earl, he
9 testified, you know, he saw -- he was walking back to
10 Kmart the guys jumped out and it was Shane and Mike. He
11 says, well, there's Mike right there. And he thought,
12 when they told him Laura was dead, no, no, that ain't so,
13 I was with Roger all day yesterday. And then he saw him,
14 there's Mike right there. He knew he had been had.
15 Riding around in the car with a dead lady in the trunk.

16 Mr. Lawson asked Terrance Carraway about Herbert
17 Burgess seeing them on the 10th, Saturday, you know. And
18 Herbert Burgess saw them on Saturday. On the 12th they
19 ride around and Roger says to Earl, she's gone, she's in
20 the mountains. On Sunday the neighbor sees Roger sitting
21 in the car acting kind of funny. The pathologist said
22 Ms. Creel was dead between 1 and 4 days, can't say
23 exactly. Between 1 and 4, days. You know. The 12th is
24 when she found. The 13th is when she does the autopsy.
25 One day would have been 12th. Two days would have been

1 the 11th. Three days would have been the 10th. We know
2 Herbert says he saw them on the 10th. Sometime between
3 the 10th and 12th she gets killed. And there's Roger on
4 Sunday sitting in the car acting funny. Don't see Laura
5 anywhere, hadn't seen her, didn't know what happened to
6 her. I submit to you he's sitting in that car trying to
7 figure out, oh my God, what am I going to do. Don't know
8 why he killed Laura, but that's not even an issue. The
9 fact is that he did. He killed Laura. He held that gun
10 to her head and he did an act that he didn't have any
11 cause or excuse to do. And and judge is going to talk to
12 you about murder, and he's going talk to you about malice.
13 He's going to tell you it's hatred or ill will or
14 hostility towards another person. It's the intentional
15 doing of a wrongful act without just cause or excuse and
16 with the intent to inflict an injury or under
17 circumstances of the law will infer an evil intent. It is
18 a wrongful act to hold a 22 up to somebody's forehead and
19 put a bullet in their skull without cause or
20 justification. That's malice. And I submit to you no one
21 else could have done that. No one else was seen. No one
22 else was heard. No one else was mentioned.

23 And Terrance Carraway, Larry Drayton, and Mike
24 Brandt, Shannon Hill, and Charles Hobgood, they did
25 everything they could do from the point of checking on her

1 welfare to discovery of the body, to looking at every
2 lead, and pulling incident reports, and talking to
3 somebody, you know, it wasn't like, well, we got Roger
4 Bruce, put him in jail, our job is done. No. That was on
5 the 13th. On the 23rd Terrance Carraway was talking to
6 Herbert Burgess. They were still running down leads. He
7 went to doors; he talked to people. All he heard about
8 was some Kenny with red hair she ain't seen in months.
9 And that's the only other name ever came up. Never had
10 his last name. Nobody could give him his last name. When
11 law enforcement asked Roger Bruce who could she be with.
12 If she's going with somebody where did she go? He didn't
13 say, well, I think she might have gone with Kenny
14 Averette. He didn't say that. He didn't come up with any
15 names who she could have been with because he knew exactly
16 where she was. She was in that trunk where he put her
17 where when you first look in you can't see how she died.
18 You can't see a bullet hole but she knew -- he knew she
19 had a bullet hole and he knew what a bullet looks like
20 because he put it there. You know, he claims I would have
21 never shot Laura. How in the world did he know she was
22 shot. The only way, ladies and gentlemen, the only way is
23 because he did it. Wasn't anybody else there with them.
24 Wasn't anybody else's DNA present. No other contributors
25 on the DNA. The only DNA on that weapon was Roger

1 Bruce's.

2 I'm gonna ask you, if you will, please give
3 Mr. Lawson your attention. He is a good lawyer. He is
4 one of the best. And he is my friend. And he does an
5 honorable job, and he does a great job of what my law
6 professors told me in trial advocacy. He told me, he
7 said, Ed, when you got the facts -- and I got the facts --
8 argue the facts. When you got the law argue the law. And
9 I said, Prof, what if you don't have either one. He said
10 blow as much smoke as you can, that's all you can do.
11 When you get to the conclusion of our summations and Judge
12 Russo's charge on the law, take that law that he gives you
13 and apply it to these facts that you've heard under oath
14 on the witness stand and use your common sense. And use
15 your good judgment and your wisdom collectively and
16 individually and say, Mr. Lawson, we hear what you're
17 saying, we looked at it, we tested it, we examined it, but
18 we have no reasonable doubt. We're firmly convinced
19 there's only one of three things happened, Laura Creel did
20 this to herself, that doesn't make any sense. Somebody
21 else came and did it, that doesn't make any sense. The
22 evidence points beyond a reasonable doubt through lies
23 told by the defendant, circumstantial evidence, physical
24 evidence, forensic evidence, that Roger Bruce killed Laura
25 Creel with malice aforethought with a 22 caliber rifle and

1 put her in her trunk and then couldn't figure out what to
2 do next and drank till it was discovered by the Florence
3 Police Department.

4 And those are the facts and that is the truth. And
5 your verdict will speak the truth. Veredicto, Latin, to
6 speak the truth. Your verdict will speak the truth when
7 you come back and say, we find Roger Bruce guilty of
8 murder of Laura Creel. Thank you for your attention.

9 MR. LAWSON: May it please the Court, may we
10 approach one moment, Your Honor.

11 THE COURT: Yes, sir.

12 (WHEREUPON, counsel approached the Bench for
13 an off-the-record discussion.)

14 MR. LAWSON: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. LAWSON: Solicitor, Madam Forelady, ladies and
17 gentlemen of the jury. I really appreciate the
18 Solicitor's compliments to me, though I'm not sure I
19 really appreciate them 'cause I think he basically called
20 me one who was going to come up here and try to blow smoke
21 at you people as opposed to asking you to judge the
22 evidence in this case and render a verdict based on that
23 evidence. That is my desire, is that you judge this
24 evidence, but that you judge it in a critical sense and
25 your own common sense and as a collective body from all

1 that you've known in your experience throughout the years
2 in life and to come back with a verdict that speaks the
3 truth, which I believe in this case is that Roger Bruce is
4 not guilty; that the State has not carried their burden of
5 proof beyond a reasonable doubt.

6 You know, I did ask the DNA lady one thing that I
7 think is critical that we all keep in mind as we look at
8 this evidence as it relates to DNA, how unlikely is it to
9 find your DNA in your house. Not very, she said. It is
10 extremely likely that your DNA will be in your house. How
11 hard is it for me not to be a contributor to DNA on any
12 object? It's a matter of plastic gloves and rubber
13 gloves. That's why we wear them when we handle items in
14 court, is to keep from contaminating ourself and to keep
15 from transferring to the object, the DNA that we have on
16 us. It's a very simple thing.

17 Now the judge is going to charge you the law, and
18 he will tell you that it's the State's duty to prove guilt
19 beyond all reasonable doubt. He'll tell you the Defense
20 has no burden; we don't have to prove anything. But we
21 did. We tried to show some things throughout questioning
22 and evidence, the name Kenny Averette. You know, what
23 difference does it make? Well, it makes a difference
24 because when I think of someone who threatened to kill
25 somebody within two months of that person dying I really

1 want to talk to them face to face if I'm investigating the
2 case. And to not do it is a critical, critical error, and
3 an error that does not protect Roger Bruce from a rush to
4 judgment, which I submit is exactly what happened in this
5 case. Roger Bruce had every opportunity to dump a body if
6 that was the case. If he put that body in the trunk, if
7 he killed her, why was the gun still in the house and the
8 body still in the trunk? He had at least a day according
9 to the pathologist to get rid of the body, and the State's
10 theory that he's riding around with his buddy Earl and
11 Junebug. Why not instead of going to Earl, go out in the
12 swamp. It ain't that far in any direction to get to water
13 in Florence County. I mention, Pee Dee, big Pee Dee,
14 little Pee Dee. It just ain't hard. And it makes no
15 sense that Roger would not do that if he's the one that
16 did it. Now you know, the State in argument, the
17 Solicitor said she was here, here, this was a pool of
18 blood, this is where she was killed and then she was
19 carried here. Well, you know, that's all speculation and
20 that's fine and dandy and maybe it happened that way and
21 maybe it didn't. What I remember from that blood is it
22 was basically dry is what Shannon Hill said. The spot was
23 dry. Well, Laura Creel had lived there for over five
24 years as well as Roger. We know they lived there for over
25 two, over two years when that — Ms. Ford came and moved

1 into the big house. They were already living there at
2 that time. We know that they had a good relationship.
3 There were never any domestic calls that related from
4 hostility between the two, no violence. Never any. She
5 never had bruises, cuts, black eyes, bloody lip that would
6 appear that she and Roger been in a fight. Everything
7 said they had a good relationship and that there was never
8 any violence.

9 Also said they drank a little, said that Roger now
10 -- and remember this, I want you to understand this. He
11 described how Roger drank. Roger would go for a year
12 without drinking, but when Roger drank he drank. And I
13 submit to you there was absolutely no reason for him to be
14 questioned on that evening when he had been -- now that's
15 the same day that he was out riding around with Earl and
16 Junebug. He had been drinking all day long and was drunk,
17 according to Earl, when Earl saw him, dog drunk he said.
18 So by the time the police get there I guess he's in great
19 shape. He understands everything we say. He understands
20 everything he's saying. He understands everything he's
21 doing. He could not possibly be acting as a result of
22 someone who was under the influence of intoxicants. We
23 know what he did that day because Earl testified. He
24 drank all day. And by the time the police got there I
25 guess he had already sobered up, but that is in direct

1 contradiction to how Earl says Roger drinks. When he
2 drinks he drinks. And then he may not drink for a year.
3 I don't understand it but apparently that's the way it is.

4 Now the problem that we have in this case is a
5 failure to investigate. I mean, the police never ever
6 determined the last name of the person that Ms. Laura
7 Creel's son told her had threatened to kill her less than
8 two months prior to the incident. Never even found his
9 last name, and it was on an incident report filed in their
10 office under with the name Roger Bruce on it and the
11 address. And that, ladies and gentlemen, is inexcusable.
12 You cannot investigate a murder and have someone who has
13 threatened to kill the victim and not even interview them,
14 not even determine what or how they – what they may be or
15 where they may be or who they may be. That is an
16 inexcusable neglect and a rush to judgment. Hell, why
17 not? Go ahead, Roger is there, the body is there, the
18 gun's there, this is easy. This is easy. We got our
19 arrest within two hours, or within four hours. Of course,
20 the warrant wasn't signed till the next morning, but they
21 decided to arrest when? When Roger says, I didn't shoot
22 Laura, I didn't shoot Laura. That to the police is a
23 statement against interest. What did he say when they
24 handcuffed him, what did I do? Stick 'em up. What did I
25 do? What did I do? I didn't hurt Laura, I wouldn't hurt

1 Laura, I didn't shoot Laura. They want you to believe
2 that that somehow is a statement against his interest as
3 opposed to being a proclamation of innocence, and it is a
4 proclamation of innocence. And I want to tell you, ladies
5 and gentlemen, that I respect the police in this city as
6 much as anybody and I respect their investigation of cases
7 and I respect the way they investigate, but I will not
8 stand here and tell you that I believe not one of those
9 officers looked in that trunk to see what that lady was
10 laying there from. It is asking me too much to believe
11 that they all just stood back, whoa, we can't touch that
12 body, we can't, whoa, we can't look in there and see,
13 whoa, did you see that bullet hole, did you see that hole.
14 Not one of them did that, no. The police wouldn't do
15 that. Why would they? Because they're human beings is
16 why they would. Because they're out there and they're
17 investigating and here's a body in the trunk and they're
18 not gonna look to see why? Please. Ask me to believe the
19 believable but don't ask me to believed the unbelievable.
20 Somebody looked in that trunk at that body. And it ain't
21 that hard to stand at this end of the -- if she's laying
22 this way, to stand this flashlight in and look and see the
23 blood and the hole. The hole is obvious. Not that hard.
24 And anybody could have said that and anybody probably did.
25 But to ask me to believe that no one looked to see what

1 was the cause of death or apparent cause of death on that
2 lady is beyond to believe. To ask me to believe that I
3 didn't shoot her is a statement that causes you to have
4 immediate probable cause to arrest when you don't know how
5 she died. Suppose she had been stabbed and Roger said, I
6 didn't shoot her. What would they have done, turn him
7 loose? It only makes sense that that was a statement that
8 caused them some concern if they knew she was shot, not if
9 they didn't know. It doesn't make sense. It didn't make
10 sense that Roger would ride around all day long with a
11 body in a car that he had killed. It doesn't make sense.
12 There are too many questions left unanswered in this case.
13 Why? Oh, I didn't say anything about the fact that, of
14 course, they did DNA test on blood that was on Roger's
15 shirt. It was his blood on that shirt. I don't remember
16 them saying anything about scratches or bruises or
17 anything on Roger that would appear to be wounds inflicted
18 in a conflict. And you remember the pathologist said she
19 had what appeared to be defensive wounds on her, which
20 means that the pathologist thinks there was some struggle.
21 If there was a struggle there was a mark on the assailant,
22 none on Roger, not based on the police. None of them told
23 us, oh, I saw marks on him, I saw scratches on him. I saw
24 something that would indicate he had been in a fight.
25 None of that. None of that. And yet, she had defensive

1 wounds.

2 The knife in the bed, I mean, maybe that's usual at
3 your house, ain't usual at my house. How hard would it
4 have been for the officer to take and swab that knife for
5 heaven's sake. No, it didn't appear there were any cut
6 marks or stab wounds to Roger or to Laura, but what about
7 someone else? Suppose, just suppose that knife was used
8 in a defensive struggle with the true assailant and their
9 DNA was on that knife or their fingerprint was on that
10 knife, or something that would indicate someone other than
11 Roger. But no, we're just gonna do the easy thing. We're
12 not even going to interview anybody else. We're just
13 gonna stick with Roger. They interviewed other people as
14 witnesses, not as suspects, not as suspects. The only
15 suspect ever in this case is my client Roger.

16 They've been together for over 12 years. Never any
17 evidence of any violence between the two. Yet, the State
18 in its investigation wants you to believe that for some
19 reason Roger Bruce killed Laura Creel without reason, just
20 with malice, being mean and hateful and just to do it I
21 guess because they had an argument, which one of the boys
22 said they argued. It was a rollercoaster. They'd argue
23 one day and fine the next. But never any physical
24 violence, never any physical violence. What did I do?
25 What did I do? That was the question. Why am I placed

1 under arrest? They never told him by the way, didn't tell
2 him why you're being handcuffed here, just put him in the
3 car. I wouldn't hurt Laura, that's an admission of
4 interest according to police, I wouldn't hurt Laura; I
5 didn't shoot Laura. That's his statement to the police.
6 They want you to believe that those are admissions against
7 his interest. I submit to you that those are
8 proclamations of innocence, of things by an individual who
9 is not guilty of this horrible, horrendous crime of
10 murder. He had never struck her based on the evidence.
11 But the State wants you to believe that despite that, he
12 shot her and then rode around with her body in the car for
13 over a day because he couldn't figure out what to do with
14 the body. How hard is that.

15 Ladies and gentlemen, weigh the evidence, look at
16 all the evidence, look at all the evidence. If you
17 believe the State has proved guilt beyond a reasonable
18 doubt, so be it. But please don't. Give Roger the
19 benefit of the doubt. The facts of the case scream for us
20 to have one more person to determine whether or not they
21 were involved in this case, and that's Mr. Kenny Averette.
22 Where is he? Where's the investigation? That in and of
23 itself makes the State's case untenable, and I ask you to
24 render your verdict in accordance with and to find Roger
25 not guilty. Thank you.

1 **THE COURT:** I'm in between law clerks and my
2 secretary sent me a message saying, is it all right if I
3 go to lunch. I said, sure, go ahead, I don't need you, go
4 ahead and go. Little did I know, I did need her. Ladies
5 and gentlemen, I come down here to give you the charge on
6 the law because when we started this case, as I told you,
7 you are the judges of the facts in this case, and I'm not
8 to have any influence of you regarding those facts. So
9 during the course of this trial it's been appropriate for
10 me to be up on the bench out of the way while the
11 attorneys deal with the evidence. But we have reached a
12 portion of this trial where you and I are in this
13 together, you as the judges of the facts and me as the
14 judge of the law. So I come down here now to give you the
15 charge on the law. I ask that you please listen carefully
16 as I charge you on the law that is applicable to this
17 case.

18 Madam Forelady and members of the jury, you have
19 heard all of the evidence and you've heard arguments of
20 both parties. I will now explain to you the law which
21 applies to this action. The indictment charges the
22 defendant Roger Bruce with the charge of murder. I remind
23 you that the fact that the defendant was arrested,
24 charged, and indicted in this case is not evidence in this
25 case, and it cannot be considered by you as evidence of

1 guilt in the case. Nor does it create any presumption or
2 inference of guilt. The indictment is simply the formal
3 written instrument which contains the charge made against
4 the defendant. It is the formal document by which this
5 case is brought into court. Now I will give you a copy of
6 these instructions in written form to have with you in the
7 jury room. During your deliberations you may refer to
8 these instructions to guide you in your decision making.
9 You must consider the instructions as a whole and not
10 follow some and ignore others.

11 Now the defendant has pled not guilty to the
12 indictment and this -- and the charge that is contained.
13 And that plea puts the burden on the State to prove the
14 defendant guilty. A person charged with committing a
15 criminal offense in South Carolina is never required to
16 prove him or herself innocent. I charge you that it is an
17 important rule of law that the defendant in a criminal
18 trial, no matter what the seriousness of the charge may
19 be, will always be presumed to be innocent of the crime
20 for which the indictment was issued unless guilt has been
21 proven by evidence satisfying you of that guilt beyond a
22 reasonable doubt. This presumption of innocence does not
23 end when you begin your deliberations, but it accompanies
24 the defendant throughout the trial until you reach a
25 verdict of guilt based on evidence satisfying you of that

1 guilt beyond a reasonable doubt. The presumption of
2 innocence is not a mere legal theory. It is not just a
3 legal phrase, but it is a substantial right to which every
4 defendant is entitled unless you, the jury, are satisfied
5 from the evidence of the defendant's guilt beyond a
6 reasonable doubt.

7 Now the State has the burden of proving the
8 defendant guilty beyond a reasonable doubt. Some of you
9 may have served as jurors in civil cases where you were
10 told that it is only necessary to prove that a fact is
11 more likely true than not true, such as by the greater
12 weight or the preponderance of the evidence. In criminal
13 cases the State's proof must be more powerful than that.
14 It must be beyond a reasonable doubt. Proof beyond a
15 reasonable doubt is proof that leaves you firmly convinced
16 of the defendant's guilt. There are very few things in
17 this world that we know with absolute certainty. And in
18 criminal cases the law does not require proof that
19 overcomes every possible doubt. If based on your
20 consideration of the evidence you are firmly convinced
21 that the defendant is guilty of the crime charged, you
22 must find the defendant guilty. If on the other hand, you
23 think there's a real possibility that the defendant is not
24 guilty, then you must give the defendant the benefit of
25 the doubt and find him not guilty.

1 I remind you that during this trial you and I have
2 certain duties to perform. As the trial judge it is my
3 responsibility to preside over the trial of this case, and
4 I also have the duty to rule on the admissibility of
5 evidence that is offered during this trial. You are to
6 consider only the competent evidence that is before you.
7 You are to consider only the testimony which has been
8 presented from the witness stand, any exhibits which may
9 have been a part of the record in this case, and any
10 stipulations or agreements of counsel. I have the
11 additional duty to charge you the law that is applicable
12 to this case. As the presiding judge I am the sole judge
13 of the law in this case, and it is your duty as jurors to
14 accept and to apply the law as I now state it to you. If
15 you already have an idea as to what the law is or what the
16 law ought to be and it does not agree what I now tell you
17 the law is, you must abandon your idea because you are to
18 apply the law exactly as I state it to you.

19 In every case tried in this court before a jury the
20 jury becomes the sole and the exclusive judge of the facts
21 in a case. A trial judge cannot intimate, state, comment
22 on, or make any statement to a trial jury about the facts
23 in a case. Since you, the jury, are the sole judge of the
24 facts in this case, you are not to infer from what I have
25 said during the progress of this trial in ruling upon the

1 admissibility of evidence or otherwise, or anything that I
2 say now during the course of this instruction to you, that
3 I have any opinion about the facts in this case. The law
4 does not allow me to have an opinion about the facts in
5 this case. This is a matter solely for you, the jury, to
6 determine. As jurors it is your duty to determine the
7 effect, value, weight, and truth of the evidence presented
8 during this trial.

9 Now there are two types of evidence which are
10 generally presented in a trial. There's direct evidence
11 and there's circumstantial evidence. Direct evidence is
12 the testimony of a person who claims to have actual
13 knowledge of a fact, such as an eyewitness. It is
14 evidence which immediately establishes the main fact to be
15 proven. Circumstantial evidence is proof of a chain of
16 facts and circumstances which indicate the existence of a
17 fact. It is evidence which immediately establishes
18 collateral facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inference and not on
20 personal knowledge or observation. Now the law makes
21 absolutely no distinction between the weight or value to
22 be given to either direct or circumstantial evidence, nor
23 is there a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You
25 should weigh all of the evidence in this case.

1 After weighing all of the evidence, you are not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, you would find the defendant not guilty.
4 However, if after weighing all of the evidence you are
5 convinced of the defendant's guilt beyond a reasonable
6 doubt, you would then find the defendant guilty.
7 Necessarily, you must determine the credibility of the
8 witnesses who have testified in this case. Credibility
9 simply means believability. It becomes your duty as
10 jurors to analyze and to evaluate the evidence and
11 determine which evidence convinces you of its truth. In
12 evaluating eyewitness testimony you should remember that
13 the State must prove the identity of the defendant as the
14 person who committed the crime beyond a reasonable doubt.

15 In determining the believability of witnesses who
16 have testified in this trial you may believe one witness
17 over several witnesses or several witnesses over one. You
18 may believe a part of the testimony of one witness and
19 reject the remaining part of that testimony. You may
20 believe the testimony of a witness in its entirety or
21 reject it in its entirety. That is solely a matter for
22 you to decide. You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice, or other
24 motive in this case. You may also consider the appearance
25 and manner of a witness while on the witness stand.

1 A person who has a past criminal record is
2 competent to testify during a trial. A past record does
3 not affect the ability of that person to testify. The
4 past record may only be considered by you, if at all, in
5 determining the witness' believability. Remember, you are
6 the sole judges of the facts in this case and of the
7 believability of any and all of the witnesses. Now the
8 rules of evidence ordinarily do not permit witnesses to
9 testify as to opinion or conclusions. There's an
10 exception to this rule that exists for witnesses which we
11 call expert witnesses. A witness who by education and
12 experience has become an expert in some art, science,
13 profession, or calling, may state an opinion as to
14 relevant and material matter in which the witness claims
15 to be an expert and may also state the reasons for that
16 opinion. You should consider any expert opinion received
17 into evidence in this case, and like any other evidence
18 give it the weight that you think it deserves. If you
19 decide that the opinion of an expert witness is not based
20 on sufficient education and experience or if you conclude
21 that the reasons given in support of the opinion are not
22 sound or that the opinion is outweighed by other evidence,
23 you may disregard the opinion in its entirety. On the
24 other hand, if you decide that the experts witness, if
25 that opinion is based on sufficient education and

1 experience or if you conclude that the reasons given in
2 support of the opinion are sound, then you may accept that
3 opinion as in its entirety. An expert witness' testimony
4 is to be given no greater weight than that of any other
5 witness simply because the witness is an expert. And
6 furthermore, you are not required to accept an expert's
7 opinion even though it's not contradicted.

8 Now a statement alleged to have been made by the
9 defendant has been admitted into this case as evidence.
10 While the Court has determined that the statement is
11 admissible, I instruct you that you make the ultimate
12 decision of whether or not the defendant made the
13 statement. If the defendant did make the statement you
14 must determine whether the statement was made by the
15 defendant voluntarily and of his own free will. This
16 means that the statement was not caused by pressure,
17 force, fear, threats, coercion, or intimidation, or by
18 hope or promise of leniency or a reward of any kind. In
19 determining whether the statement was voluntary you should
20 consider both the characteristics of the defendant and the
21 details of the questioning. Some of the factors that you
22 may consider are the age of the defendant, the defendant's
23 education or lack of education, the defendant's mental
24 ability or capacity, the defendant's IQ or intelligence,
25 the defendant's background and the environment, the place

1 and the length of the detention, the nature of the
2 questioning, and the advice or lack thereof to the
3 defendant of his or her constitutional rights. You must
4 carefully consider all of the surrounding circumstances
5 before you give any weight to an alleged statement.

6 The State has the burden of proving beyond a
7 reasonable doubt that the alleged statement was voluntary.
8 If you determine that it was you may give the statement
9 any further consideration that you deem proper. You must
10 decide what weight, if any, should be given to the alleged
11 statement. If you determine that the alleged statement
12 was not the free and voluntary statement of the defendant,
13 you should not consider the statement at all. Now I
14 instruct you and I emphasize that the fact that the
15 defendant in this case did not testify is not a factor for
16 you, to be considered by you in any way, in your
17 determination of the guilt or innocence of the defendant.
18 It must not be considered by you in any manner whatsoever.
19 A defendant has the constitutional right to remain silent,
20 and the assertion of this right must not be considered by
21 you in your deliberations. I repeat, under your oath you
22 are to draw no conclusion whatsoever from the fact that
23 the defendant in this case did not testify. The fact that
24 this defendant did not testify should not even be
25 discussed in the jury room. The burden of proof, as I

1 have stated to you, is on the State. The defendant is not
2 required to prove his innocence. The burden of proof
3 remains on the State to prove guilt beyond a reasonable
4 doubt.

5 Now Mr. Bruce is charged with the crime of murder.
6 The State must prove beyond a reasonable doubt that the
7 defendant killed another person with malice aforethought.
8 Malice is hatred, ill will, or hostility toward another
9 person. It is the intentional doing of a wrongful act
10 without just cause or excuse and with the intent to
11 inflict an injury or under circumstances that the law will
12 infer an evil intent. Malice aforethought does not
13 require that malice exist for any particular time before
14 the act is committed, but malice must exist in the mind of
15 the defendant just before and at the time that the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act.

18 Malice aforethought may be expressed or implied.
19 These terms expressed and implied do not mean different
20 kinds of malice, but merely the manner in which malice may
21 be shown to exist. That is either by direct evidence or
22 by inference from the facts and circumstances which are
23 proved. Expressed malice is shown when a person speaks
24 words which express hatred or ill will for another or when
25 the person prepared beforehand to do the act which was

1 later accomplished. For example, if you lie in wait for a
2 person or any other act of preparation going to show that
3 the deed was within the defendant's mind would be
4 expressed malice. Implied malice may be found to exist
5 when circumstances demonstrate a wanton or a reckless
6 disregard for human life or when a reasonably prudent
7 person would have known that according to common
8 experience there was a plain and strong likelihood that
9 death would follow the contemplated act.

10 Now Madam Forelady and ladies and gentlemen of the
11 jury, as you retire to begin your deliberations I wish to
12 express to you the hope that each of you will be mindful
13 of the importance of your responsibility. You're not
14 called upon to serve as jurors very often and the proper
15 performance of the duty requires each of you to reach the
16 height of freeing your mind of all improper influences.
17 You and I are acting for the community, and that's why we
18 must see to it that this trial is fair and that the
19 verdict is just. You observe that the presiding officer
20 of this court is always addressed as Your Honor. Well,
21 the reason is not because of the person wearing this robe,
22 but that this Court is entrusted with the honor of this
23 community, the honor of this state, and the honor of this
24 country in seeking that every case tried here receives
25 fair and impartial justice. Now do not get the idea I'm

1 trying to intimate to you how I think you should decide
2 this case. As I've told you before, you the jury, and the
3 laws of the State of South Carolina state that you are the
4 sole judges of all questions of fact in this case. It
5 would be highly improper for me to influence you in the
6 performance of that duty. But as the presiding officer of
7 this court I am vitally concerned that whatever verdict
8 you find will be the result of your going into the jury
9 room, confining your considerations to the evidence and to
10 the law that you heard in this courtroom, weighing it
11 fairly and impartially as I have every confidence you will
12 do. Your verdict in the case cannot be based on sympathy,
13 compassion, prejudice or other emotion, or some other
14 consideration that's not found in the evidence. The Court
15 is of the confirmed opinion that whatever verdict you
16 reach will represent truth and justice for all parties
17 involved in this case.

18 Now ladies and gentlemen, your verdict in this case
19 must be unanimous. You must all agree on the verdict.
20 Ms. McLeod, when you go back into the jury room you'll
21 have this notebook with the charge in it, and in the front
22 cover of this note book is the verdict form. And on that
23 form is the caption of the case and then the two options
24 that you have, either not guilty or guilty. Whatever the
25 verdict of the jury is you'll mark the appropriate

1 selection and then sign as the forelady. Once you've
2 reached a unanimous verdict and you've completed the
3 verdict form, if you'll knock on the door we'll bring you
4 back out to receive your verdict.

5 Now, a couple of things. I'm gonna -- let me tell
6 you. I'm gonna go -- I'm gonna send you back into your
7 jury room and until I tell you to begin your
8 deliberations -- do not start them yet. I'm gonna have
9 the attorneys go over and make sure that all the exhibits
10 are in place because you will have these exhibits. Now
11 the only exhibit that you will not have in the jury room
12 is the rifle. I don't send weapons back into the jury
13 room. If you feel that it's necessary for you to observe
14 that or to inspect it in reaching your verdict, then you
15 let me know and I'll bring you back out and I'll let you
16 look at it here in the courtroom but everything else will
17 be back in the jury room with you and you'll have that.

18 But what I need to do before you begin your
19 deliberations I need to confer with the attorneys to make
20 sure I haven't left anything out. If there's anything
21 that I need to change on the charge or add to the charge
22 I'll bring you back out and I'll do that. If the charge
23 is fine, then we'll gather these items. And when you
24 receive the exhibits and this notebook that will be your
25 queue to begin your deliberations. Now we ordered lunch

1 for you. I'm gonna let y'all handle how you want to do
2 that. You can either cease the deliberations and eat your
3 lunch, or you can deliberate while you eat. I'm gonna
4 leave that up to y'all, but y'all can make that call. So
5 if you would, please go back into the jury room and await
6 the exhibits before you begin your deliberation.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 1:20 p.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: Any exceptions or objections to the
11 charge from the State?

12 MR. CLEMENTS: No, Your Honor.

13 THE COURT: Anything from the Defense?

14 MR. LAWSON: No, Your Honor.

15 THE COURT: All right. Scott, if you would just go
16 over this with Frances to make sure we have everything.

17 (Mr. Floyd and Mr. Clements review exhibits.)

18 THE COURT: Guys, I want to thank y'all for your
19 service. As the alternates it's important that you be
20 here and you hear everything and because if there was any
21 reason that someone had to be excused we would have needed
22 your help on the main panel so obviously you need to hear
23 everything they hear. And but I think everybody is
24 healthy and able to go forward so I'm gonna excuse you.

25 All right, we'll remain at ease while the jury

1 deliberates.

2 (WHEREUPON, a lunch break was taken, and the
3 jury began deliberations at 2:15 p.m.)

4 THE COURT: Ladies and gentlemen, my understanding
5 is that the jury has reached a verdict so we're going to
6 bring them out to receive that. I sit here as you do; I
7 don't know what their decision is. However, I do know
8 that whatever it is it needs to be received in a
9 professional manner and in an appropriate manner; and so I
10 tell folks all the time, I don't expect anyone to agree
11 with a jury's verdict. Whatever the verdict is, I'm not
12 saying that you have to agree with it. But what I am
13 saying is that it's to be received appropriately and
14 respectfully so, and I realize that this case and this
15 type of case always involves sides and emotions are high.
16 So if you feel like you're not gonna be able to control
17 your emotions then I would ask you to step out of the
18 courtroom while I receive the verdict because I'm not
19 gonna tolerate any outbursts or any comments or anything
20 that would show the jury anything but respect for their
21 verdict. Again, you don't have to agree with it, but it
22 must be received respectfully. If you feel like you can
23 can't do that, I would ask if you would step out because I
24 have in the past, and I will again, hold you in contempt
25 and lock you up 'cause I'm very serious about that. So I

1 say that to you now to give you an opportunity to step out
2 of the courtroom if you don't think you can control your
3 emotions. If you think you can, then you're certainly
4 welcome to remain while we receive the verdict.

5 Is the State ready to receive the jury's verdict?

6 MR. CLEMENTS: We are, Your Honor.

7 THE COURT: Is Defense ready?

8 MR. LAWSON: Yes, Your Honor.

9 THE COURT: Ms. Joe, if you would please ask the
10 members of the jury to join us please.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 3:06 p.m., and the
13 following proceedings commenced in open court.)

14 THE COURT: Ms. McLeod, has the jury reached a
15 unanimous version, ma'am?

16 THE FOREPERSON: We have.

17 THE COURT: Would you please pass that to
18 Ms. O'Hara for me please.

19 (Verdict tendered to the Court.)

20 THE COURT: Ms. O'Hara, if you would please publish
21 the jury's verdict.

22 CLERK OF COURT: State of South Carolina versus
23 Roger Bruce, indictment 2010-GS-21-254, count one, murder:
24 We, the jury, find the defendant Roger Bruce guilty of
25 murder. Dated August 11th, 2011, signed Lorena McLeod,

1 forelady. Members of the jury, if this is your verdict
2 please raise your right hand.

3 (All jurors complied by raising their hand.)

4 THE COURT: All right. Thank you, ladies and
5 gentlemen. Anything further from the jury before we
6 excuse them?

7 MR. CLEMENTS: Not from the State, Your Honor.

8 THE COURT: Anything from Defense?

9 MR. LAWSON: No, Your Honor.

10 THE COURT: Ladies and gentlemen, I want to thank
11 you for your service this week. I really appreciate your
12 work. We had little some odd things that went on, like we
13 broke early on Tuesday and started a little bit later this
14 morning. And you've all at least outwardly you have been
15 very accommodating and have really worked well with the
16 Court, and I want to thank you. I also want to thank you
17 for the way you went about protecting your ability to be
18 fair and impartial and to shield yourself from any outside
19 influences. I will tell you now we've reached the end of
20 the trial and your verdict has been received. You can now
21 tell family or friends or loved ones, whoever, who may be
22 interested, you can tell them about your experience this
23 week and anything about the case if they're interested.
24 There's no restrictions on you from talking to folks. Now
25 I will tell you this -- the lawyers know this; they're all

1 very experienced attorneys – I always tell the jury
2 sometimes the attorneys want to speak to you afterwards,
3 not to question you but just to sometimes they like to
4 say, you know, did I come across well, or you know, trying
5 to help them become better lawyers. These are very
6 experienced lawyers. You probably won't get that from
7 them but you know. And I always tell jurors this, you can
8 talk to anyone you want to talk to but you can also
9 respectfully decline to talk to folks. So if anyone wants
10 to speak to you about your verdict and you don't want to
11 talk about it, just let them know that and that'll end it.
12 If it doesn't, you let me know and I'll make sure that
13 that ends it, okay. So please, please feel free to either
14 speak or not speak to whoever you like to speak to.

15 This will conclude your service for this week. I
16 know it's Thursday afternoon. We do have more work for
17 tomorrow but it's nonjury work. It doesn't involve the
18 jury, the need of the jury.

19 I don't have anything further. If you have any
20 questions I will, I'll be in my office the remainder of
21 the day and tomorrow. I'll be happy to if you want to
22 come by and have questions, and if I can answer those for
23 you I'll do it. Thank you again for your service. I want
24 everyone to remain in the courtroom. Ladies and
25 gentlemen, you're free to go.

1 All right. At this time if there are any motions
2 after the receiving of the verdict I'll be happy to
3 entertain those.

4 MR. CLEMENTS: Nothing from the State.

5 MR. LAWSON: The Defense will renew all motions
6 previously made, Your Honor.

7 THE COURT: All right. That is certainly noted
8 that the Defense has renewed the motions made throughout
9 the trial and Court will note that for the record. Is the
10 State ready to proceed?

11 MR. CLEMENTS: We are, Your Honor.

12 THE COURT: Defense ready?

13 MR. LAWSON: Yes, Your Honor.

14 THE COURT: All right. Come around please.

15 All right, Solicitor.

16 MR. CLEMENTS: Your Honor, I think you heard from
17 me as well as the jury for the entire trial. I don't have
18 anything to add to in regards to facts, Your Honor. We do
19 have family members. I would ask that, Your Honor, hear
20 from them at the appropriate time. And in regards to
21 Mr. Bruce's prior criminal history, I don't show any
22 convictions, Your Honor.

23 THE COURT: All right. If any members of the
24 family would like to address the Court I'll be happy to
25 hear from them regarding sentencing.

1 MR. CLEMENTS: Your Honor, they're shaking their
2 heads no. Shane and Michael Ritch, her sons are here.
3 Her sister Ms. Ard and Ms. Broyhill's grandmother, the
4 mother. Ms. Creel's mother Shane and Michael's
5 grandmother.

6 VICTIM ADVOCATE MEETZE: And Shane's wife.

7 MR. CLEMENTS: And Shane's wife is here, Your
8 Honor. I don't believe anyone wishes to speak, Your
9 Honor. It's been a terrible ordeal for all of them since
10 the 12th of October, 2009, and we're glad justice was
11 done, Your Honor. I just ask you to take into
12 consideration all the facts you heard during the trial.

13 THE COURT: All right, sir. Thank you, sir.
14 Mr. Lawson.

15 MR. LAWSON: May it please the Court, Your Honor,
16 Roger is 54 years old. As indicated he's never been in
17 trouble before. He has diabetes. He's also had two heart
18 attacks. Any sentence over 30 years, 30 years is life for
19 Roger. Your Honor, I would ask that you consider a 30
20 year sentence in this case. He has absolutely no
21 recollection of what happened, Your Honor. He is -- and
22 I've talked with some alcohol experts -- and he's a binge
23 drinker. He can go a year, like Earl Bruce testified,
24 without drinking, but when he starts drinking he drinks
25 constantly, day and night until he passes out. And during

1 those blackouts he has absolutely no recollection and
2 that's what we've dealt with in this case, is a client
3 with absolutely no recollection of what transpired. And I
4 think it should be quite evident from some of the facts,
5 is that should be obvious.

6 THE COURT: All right, sir.

7 MR. LAWSON: I would point out that his family has
8 been here the entire week.

9 THE COURT: I know that several folks have been
10 here all week long, and if anyone would like to address
11 the Court I will be happy to hear from them. If --
12 Mr. Bruce, if you'd like to address the Court I will be
13 happy to hear from you, sir. You're not required to but
14 if you'd like to I will be more than happy to listen.

15 THE DEFENDANT: I just want the family to know that
16 I'm-- I didn't do this; I'm innocent. Can you show mercy?

17 THE COURT: All right. Sentence of the Court on
18 indictment 2010-GS-21-254 on the charge of murder, the
19 sentence of the Court is that you be committed to the
20 State Department of Corrections for the remainder of your
21 life. Good luck to you, sir.

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

WITNESSES

Terrence Carraway

Florence Police Department

E. L CLEMENTS, III

ARREST WARRANT NUMBER

M375442

ACTION OF GRAND JURY

TRUE BILL

Dennis Banks
Foreperson of Grand Jury

Date: 4/1/10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-21-0254

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL

TERM

2010

THE STATE

vs.

ROGER BRUCE

Indictment for

MURDER

CERTIFIED: A TRUE COPY
Christa K. Spain
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

2010 APR - 1 PM 1:04
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on APRIL 01, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010,0020, 16-01-0060

That ROGER BRUCE did in Florence County on or about October 12, 2009, feloniously, willfully and with malice aforethought kill one Laura B. Creel, by means of shooting her in the head with a gun and then hiding her body in the trunk of her car, and that the said Laura B. Creel did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



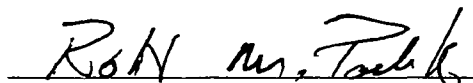
E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

FLORENCE COUNTY, SC
CLERK OF COURT
JULY 14, 2010
RECEIVED BY JUNE COY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 23rd, 2012

A handwritten signature in black ink, appearing to read "Rob M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant?

STATEMENT OF THE CASE

Appellant was convicted of murder after a jury trial held before the Honorable Thomas A. Russo on August 8, 2011, in Florence County. A life sentence was imposed. Jack W. Lawson, Esquire was trial counsel. E. L. Clements, III, Esquire was the solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant.

On October 12, 2009, around 11:00 Officer Gary Beckett with the Florence Police Department was dispatched to 1450 King Avenue for a welfare check on the victim, Laura Creel. (ROA p. 112, line 16 – p. 113, line 5). The victim's son had called the police and told them he had not seen or spoken to the victim in about three days. (ROA p. 115, line 20 – p. 116, line 3). The victim lived in a garage apartment with appellant. The apartment was behind the main house on 1450 King Avenue. Her vehicle was there. (ROA p. 113, lines 3-23). Officer Beckett walked to the apartment with Cpl. Hobgood and Officer Starling. Beckett said he saw someone looking out a screened door. He shined a flashlight and it was appellant. The police explained they were doing a welfare check on the victim and asked if she may be inside. Appellant told them she was not inside and they asked if they could come in and take a quick look. Appellant gave them permission to come inside. Beckett said he did not notice anybody else inside. (ROA p. 116, line 19 – p. 117, line 24). They asked appellant when was the last time he may have talked to the victim or seen her. Appellant said he and the victim had an argument a few days earlier and then she left. He didn't know where she went. (ROA p. 118, lines 14-23).

Officer Beckett then said they noticed a cell phone and some keys which were consistent with the vehicle outside. They asked whose phone and appellant said it was the victim's. Then Cpl. Hobgood picked up the keys and went outside to the vehicle. He shined a flashlight through the windows and everything appeared fine inside. He attempted

to open the trunk. At this point defense counsel objected and the jury was sent out. (ROA p. 119, lines 1-25). Defense counsel objected to the evidence concerning police opening the trunk and finding the victim's body. The police had no search warrant and did not get consent from appellant to search the vehicle. The trial court questioned about appellant's standing to raise the issue, but defense counsel noted that the car was on his property parked on the driveway at the back of his house and the keys were in his house. The police did not ask permission to take the keys. (ROA p. 120, line 6 – p. 121, line 21).

The solicitor then tried to argue that previously Cpl. Hobgood had testified that appellant went for the keys to show them which key to open the trunk with before the police used the trunk release button. (ROA p. 121, line 22 – p. 122, line 11). Contrary to the solicitor's assertion, a review of Cpl. Habgood's testimony from the day before does not show that appellant went for the keys to show them how to open the trunk. (ROA p. 33, line 7 – p. 38, line 2). Later in the trial, Cpl. Habgood did testify that appellant tried to grab the keys and Habgood did not know what appellant's intentions were so he pulled the keys back. (ROA p. 144, line 10 – p. 181, line 18).

Even though the trial court did not have the correct information before it, it held the issue was one of inevitable discovery: "but/for hitting the trunk release button and opening the trunk according to the earlier testimony Mr. Bruce was going to open the trunk for them, or at least was providing the keys to do so." (ROA p. 122, lines 12-16).

The trial court's ruling on this matter was in error. The prosecution bears the burden of showing by a preponderance of the evidence that the items seized would ultimately have been discovered lawfully even though it was obtained by an illegal seizure. Nix v. Williams, 467 U. S. 431, 444, 104 S. Ct. 2501 (1984). The prosecution has not met that

burden. See, State v. Brown, 389 S.C. 473, 698 S.E.2d 811, 817 (Ct. App. 2010). The prosecution has also not shown why they could not have obtained a search warrant for the car keys or why they could not have asked for consent in accordance with the Fourth Amendment to the United States Constitution. The trial court did not even address the fact that the initial seizure of the keys was in violation of the Fourth Amendment.

In the United States v. Allen, 159 F. 3d 832 (4th Cir 1998) the court dealt with the question of whether the existence of probable cause triggers the inevitable discovery doctrine. It wrote:

The existence of probable cause for a warrant in and of itself and without any evidence that the police would have acted to obtain a warrant, does not trigger the inevitable discovery doctrine any more than probable cause, in and of itself, renders a warrantless search valid. The inevitable discovery doctrine applies to alleviate “formalistic” and “pointless” applications of the exclusionary rule, Nix, 467 U.S. at 445, 104 S. Ct. 2501, but it does not and cannot eliminate Fourth Amendment protections.

159 F. 3d at 841.¹

Where “no exception to the warrant requirement applies, and no warrant has been obtained, and nothing demonstrates that the police would have obtained a warrant absent the illegal search, the inevitable discovery doctrine has no place.” *Id* at 841 (emphasis in original).

Finally:

To permit the presence of evidence establishing probable cause to whitewash the unlawful search would eviscerate the warrant requirement. As Judge Posner has noted, “a warrant is a condition precedent to a lawful search or seizure, other

¹ See, also United States v. Cabassa, 62 F. 3d 470, 472 – 474 (2d Cir. 1995) and United States v. Cherry, 759 F.2d 1196, 1206 (5th Cir. 1985) where there was no warrant the inevitable discovery doctrine did not apply.

than in exceptional circumstances of which superfluity is not one.” United States v. Cardona-Rivera, 904 F. 2d 1149, 1155 (7th Cir. 1990).

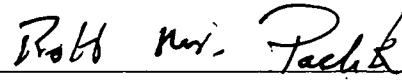
Id at 843.

All of the evidence obtained as a result of the illegal seizure of the car keys was the fruit of the poisonous tree and should not have been admitted. Wong Sun v. U.S., 371 U. S. 471, 83 S. Ct. 407 (1963); State v. Brown, 389 U.S. 473, 698 S.E. 2d 811 (Ct. App. 2010); Commonwealth v. Benoit, 382 Mass. 210, 415 N.E. 2d 818 (1981).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,

A handwritten signature in black ink, reading "Robt M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

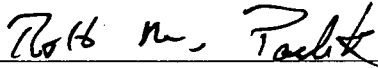
ATTORNEY FOR APPELLANT

This 23rd day of May, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 23rd, 2012



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

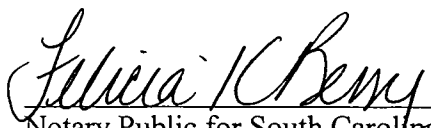
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of May, 2012.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

FINAL BRIEF OF RESPONDENTS

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APPELLANT'S QUESTION PRESENTED

- I. Whether the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant?

RESPONDENT'S COUNTER-QUESTION PRESENTED

- I. Whether the trial court's factual finding supporting its ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine is clearly erroneous.
- II. If in fact the trial court's factual finding supporting its ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine is clearly erroneous, whether reversal is appropriate where the record clearly demonstrates the keys to the victim's car were obtained as a result of authorities receiving consent from appellant to search the residence, appellant informed authorities the keys found in the residence were the victim's car keys, a car in which he had no possessory interest, and appellant never expressly limited or revoked his consent to the search.

INTRODUCTION

On October 12, 2009, Florence authorities, while performing a welfare check at a residence occupied by Laura Creel ("Victim") and her boyfriend, Roger Bruce ("Appellant"), discovered Victim's body stuffed in the trunk of her car. (R. 109-10, 116-17, 127). The ensuing investigation culminated in the trial and conviction of Appellant. (R. 459).

STATEMENT OF THE CASE

Appellant was indicted by the Florence County grand jury for murder (#2010-GS-21-0254). (R. 465-66). Following his indictment, Appellant was tried before the Honorable Thomas A. Russo and a jury on August 8-11, 2011 in Florence. (R. 1). At trial, Appellant was represented by chief public defender, Jack Lawson and assistant public defender Scott P. Floyd, while the State was represented by solicitor E.L. Clements, III. (R. 1). At the conclusion of trial, Appellant was found guilty and received a life sentence. (R. 459-60, 464).

STATEMENT OF THE FACTS

On Monday, October 12, 2009, at approximately 11:00 PM, Appellant called Victim's son, Shane Ritch ("Shane"), from Victim's cell phone. (R. 88-89). During the course of the conversation, Appellant informed Shane that while Victim's car was at the residence he shared with Victim, he had not seen or heard from Victim "in a couple of days" and was curious whether Shane had heard from Victim. (R. 90). After telling Appellant he had not heard from Victim, Shane became concerned and called his brother Michael Ritch ("Michael") who in turn called Appellant. (R. 91). Thereafter, Michael, who described his conversation with Appellant as "funny," called Shane to express his concern over the situation. (R. 91). As a result of their conversation, Shane called Florence authorities requesting that they perform a welfare check at the residence occupied by Victim and Appellant. (R. 91).

Pursuant to this request, Officer Gary Beckett was dispatched to Victim and Appellant's residence, a one bedroom garage apartment. (R. 109, 110-11). After knocking on the door for approximately ten minutes and receiving no response, Beckett returned to his patrol car and had dispatch connect him with Shane. (R. 110-11, 113-14, 115). During Shane and Beckett's conversation, Shane informed Beckett that Appellant was inside as Shane had called and spoken to Appellant from a different line while he was on the line with dispatch. (R. 92). Shane further informed Beckett that both he and his brother spoke with Victim almost daily, but neither of them had heard from Victim in three days. (R. 116). Additionally, Beckett learned Appellant had a substance abuse problem, the couple had recently been in an argument and that it was unusual for Victim to leave the residence without her cell phone or car. (R. 116, 92-93).

In the midst of Shane and Beckett's conversation, Beckett was joined by his supervisor, Charles Hobgood and an additional patrol officer, Steven Starling, prompting Beckett to end the telephone conversation with Shane in order to brief them on the situation. (R. 116). After briefing Hobgood and Starling, the three returned to the residence where they saw Appellant who was looking out of the apartment's screen door. (R. 117). At that time, the officers explained to Appellant that they were there to check on Victim and asked Appellant if she was inside. (R. 117). In response, Appellant informed the officers that Victim was not inside, but gave the officers permission to "come in and take a look." (R. 117). After scanning the residence, the officers asked Appellant when he last saw Victim and if he had any idea where she may be. (R. 118). Answering the officers, Appellant explained Victim had left him following an argument a few days ago and he did not know where she was. (R. 118).

Over the course of their conversation, the officers observed a cell phone and keys which were consistent with the vehicle parked outside of the residence prompting them to ask Appellant

who owned the cell phone and keys. (R. 119). Appellant then explained the cell phone and keys belonged to Victim. (R. 119, 49-50, 50-51, 167,168).

At that time, Hobgood picked up the car keys and proceeded out to the vehicle in an effort to find “maybe a pocketbook” or “something that may give us an idea where she may be.” (R. 118, 144). Appellant and the remaining officers followed and after Hobgood scanned the interior of the vehicle and unsuccessfully attempted to open the trunk, he asked Appellant which key opened the trunk. (R. 126, 145, 156-57, 168). Responding to Hobgood’s question, Appellant, who was positioned towards the front of the car, “walked towards” Hobgood “with his arm out like he was going to grab the keys” prompting Hobgood to instruct Appellant to tell him which key opened the trunk rather than show him which key opened the trunk. (R. 126, 145, 156-57, 168). During this exchange, Starling, who was positioned next to Hobgood behind the trunk, hit the trunk release button on the key fob, opening the trunk. (R. 90-91, 146, 169). When the trunk opened, Starling and Hobgood observed a female body, later identified as Victim’s, in the trunk. (R. 127-28, 146, 169). At that time, Appellant was handcuffed and later transported for questioning. (R. 128-29, 151-52, 153-54). He was subsequently arrested after telling investigators, who were unaware of what caused Victim’s death, “he wouldn’t shoot Laura.” (R. 381).

At trial, forensic pathologist, Dr. Cynthia Schandl testified Victim died as a result of a single, small caliber gunshot wound to the head fired at point blank range. (R. 241, 256). Further, SLED firearms and ballistics expert Kenneth Whitler explained that a spent cartridge recovered from the residence was fired by a Marlin .22 caliber rifle, which was found under Appellant’s bed. (R. 321, 283, 323-24, 278-79, 167). Whitler further testified that while he could not conclusively state the bullet recovered from Victim’s head was fired by Appellant’s

rifle due to deformities in the bullet, the bullet was consistent with having been fired by the rifle. (R. 326-28). Additionally, SLED DNA and serology expert Katherine Leisy testified Appellant's DNA was found on the rifle's trigger, stock and barrel. (R. 334, 335-36). Leisy also determined a portion of blood soaked carpet found inside the residence contained Victim's DNA. (R. 339).

PRESENTATION OF ISSUE AT TRIAL

Prior to trial, defense counsel informed the trial court they intended to suppress "evidence obtained in relation to the body itself" based upon their belief the evidence was obtained in violation of Appellant's Fourth Amendment rights. (R. 5). However, defense counsel further informed the court that it would seek to suppress such evidence at the time the State sought to introduce it. (R. 5). Accordingly, while Becket was testifying regarding the officers attempt to open the trunk, defense counsel objected and the jury was sent to the jury room. (R. 119). Defense counsel then explained "[w]e're getting to the point where the trunk is about to be open, and I understand—the Defense would object to the discovery of the body in that fashion, basis that there was no search warrant obtained and no—does not appear any consent by my client given at that time to search the vehicle. I know that he allowed them to come in and look when they asked, but there's no indication that he consented[.]" (R. 120).

In response to defense counsel's objection, the trial court questioned whether Appellant had standing to object to the search of a vehicle that was not his. (R. 120). Replying to the trial court's question, defense counsel argued Appellant had standing to challenge the search because the car was on his property and the keys were found in the house. (R. 120). The State then argued Appellant did not have standing to challenge the search since the officers knew the keys and car belonged to Victim and Appellant had given the officers permission to enter the

residence. (R. 120). Continuing, the State noted Appellant simply did not have a reasonable expectation of privacy in a car that was not his. (R. 120-21). Defense counsel then argued Appellant and Victim were essentially in a common law marriage and the officers only knew the vehicle in the driveway looked like Victim's car. (R. 121). Based upon this, defense counsel further argued that the officers needed Appellant's permission to take the keys, which defense counsel claimed, they never attempted to do. (R. 121). In response, the State explained:

Your Honor, I think Corporal Hobgood yesterday testified that [Appellant] said, here, and went to the keys and said, I'll show you which key to open it with and they hit the trunk release button and opened the trunk and so [Appellant] didn't have to. I think that was the testimony of Corporal Hobgood yesterday, and I'm pretty sure that that would have been testimony we'd gotten from him as well, but I don't think—I don't think there's any evidence; I don't think no one has ever said, yeah we're husband and wife. Just the fact that people live together, that doesn't establish in and of itself common law marriage. I just don't think he had any standing or any expectation of privacy in that vehicle and he also had offered to open the trunk for him before they hit the trunk release button.

(R. 122). Thereafter, the trial court noted, "[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Appellant] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122). Continuing, the trial court determined, "I'm gonna overrule the objection and allow it." (R. 122). Defense counsel then argued "I understand it may inevitably have been discovered at a later point and what I'm saying is that any evidence gathered in the time between when it was discovered and when it would have been discovered would be appropriately suppressed in spite of the fact that they may have inevitably discovered it with a proper search warrant." (R. 122-23).

STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review errors of law and are bound by the factual findings of the trial court unless they are found to be clearly erroneous. State v.

Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010). With respect to reviewing a Fourth Amendment search and seizure issue, the court must affirm “if there is any evidence to support the trial court’s ruling and will reverse only where there is clear error.” State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011); State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

ARGUMENT

- I. The trial court’s factual finding supporting its ruling that the victim’s body would have been discovered pursuant to the inevitable discovery doctrine is supported by the evidence in the record and is not clearly erroneous

Appellant first argues the trial court erroneously determined the victim’s body would have been inevitably discovered.¹ Specifically, Appellant contends the trial court’s ruling was based upon the solicitor’s incorrect recollection of the facts as testified to by the State’s witnesses during a Jackson v. Denno hearing conducted the previous day. Accordingly, Appellant concludes the State failed to show Victim’s body would have been discovered lawfully. See Nix v. Williams, 467 U.S. 431, 444 (1984) (holding the government must establish, by a preponderance of the evidence, that the evidence seized unlawfully would ultimately have been discovered through lawful means). The State disagrees because even assuming the solicitor’s recollection of the factual testimony from the Jackson v. Denno hearing was incorrect, the evidence at trial supported the trial court’s ruling on inevitable discovery meaning the trial court’s ruling does not amount to clear error. See State v. Wright, 391 S.C.

¹ Initially, the State notes the trial court did not rule on whether Appellant had standing to challenge the search of the car, and if he did, whether Appellant had consented to such a search. Thus, while Appellant argues the State has “not shown why they could not have obtained a search warrant for the car keys or why they could not have asked for consent in accordance with the Fourth Amendment” neither of these questions are before this Court as the trial court declined to rule on both of these issues. In fact, Appellant concedes this writing, the trial court “did not even address the fact that the initial seizure of the keys was in violation of the Fourth Amendment.” (Br. of App. at 7). Accordingly, these issues are not preserved for appellate review. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (requiring an issue be raised to and ruled upon by the trial court in order to be preserved for appellate review).

436, 442, 706 S.E.2d 324, 326 (2011) (“When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court’s ruling and will reverse only where there is clear error.”).

The inevitable discovery doctrine is an exception to the exclusionary rule which states that evidence which is illegally obtained will still be admissible where the prosecution can establish, by a preponderance of the evidence, that such evidence would have been discovered by lawful means. Nix, 467 U.S. at 444. Thus, “[w]hen the State has met its burden of proving it inevitably would have discovered the evidence, the ‘deterrence’ purpose of the exclusionary rule is not ‘clearly subverted,’ and there is no rational basis to keep that evidence from the jury to ensure the fairness of the trial proceedings.” State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix 467 U.S. at 447).

As noted above, Petitioner maintains the State failed to prove inevitable discovery by a preponderance of the evidence because the solicitor incorrectly informed the trial court regarding the substance of Hobgood’s testimony in the Jackson v. Denno hearing. In response, the State notes that while Appellant is correct insofar as Hobgood’s testimony from the Jackson v. Denno hearing did not establish that Appellant was reaching for the keys, the record conclusively supports the trial court’s inevitable discovery ruling—that but for Starling’s actions, Appellant, who was aiding the officers in their search, would have shown Hobgood the key to the trunk resulting in a lawful discovery of the evidence.

In fact, almost immediately after the trial court denied defense counsel’s motion to suppress, the solicitor elicited testimony from Officer Beckett indicating Appellant was reaching for the keys to show Hobgood which key would open the trunk. (R. 126-27). Specifically, Beckett testified Appellant was attempting to show Corporal Hobgood which key opened the

trunk of Victim's car immediately before Officer Starling hit the trunk release button on Victim's key ring. (R. 126-27). Likewise, Hobgood testified to essentially the same, adding that Appellant actually offered to show him which key opened the trunk right before Starling hit the trunk release button. (R. 145). This was confirmed on cross-examination and again during Starling's direct examination. (R. 156-58, 168-69). Accordingly, the State submits Appellant cannot demonstrate the trial court's ruling on inevitable discovery amounted to clear error as there was evidence to support the trial court's ruling. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will reverse only where there is clear error.").

- II. Even if the trial court's factual finding supporting its ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine is clearly erroneous, the record clearly demonstrates the keys to the victim's car were obtained as a result of authorities receiving consent from appellant to search the residence, appellant informed authorities the keys found in the residence were the victim's car keys, a car in which he had no possessory interest, and appellant never expressly limited or revoked his consent to the search

The State further asserts, as additional sustaining grounds, that even if the trial court's factual finding is determined to be clearly erroneous, the judgment should still be affirmed as the record reflects: (A) Victim's keys were obtained as a result of a consent search; (B) the keys were not Appellant's and Appellant had no possessory interest in Victim's car meaning Appellant had no standing to challenge the search of the car; and (C) even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search, but instead, through his actions, implicitly consented to the search of the car. See Rule 220(c), SCACR (explaining the appellate court may affirm any ruling, order or judgment for any ground appearing in the record on appeal).

A. The Officers had Consent to Search the House and Seize the Keys

As noted in the statement of facts, the record conclusively shows Appellant voluntarily gave the officers permission to search his house. Therefore, even if the trial court's ruling on inevitable discovery is clearly erroneous, reversal would not be required because Appellant consented to allowing the officers to search his home.

"The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . ." State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011). "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." State v. Provet, 391 S.C. 494, 507, 706 S.E.2d 513, 520 (Ct. App. 2011). "Undoubtedly, a law enforcement officer may request permission to search at any time." Id. Nevertheless, the State "bears the burden of establishing the voluntariness of the consent." Id. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances. Id.

Here, the State submits Appellant voluntarily consented to allowing the officers to search the residence and therefore, cannot object to the seizure of Victim's keys which were found in plain view inside the residence. Specifically, the record demonstrates that while Appellant may have been intoxicated, he clearly understood the officers were at the residence to check on Victim and understanding this to be the case, agreed to let the officers search the premises and question him regarding Victim's whereabouts without qualification. (Tr. 117-19, 141-42, 158, 164-65, 166). In fact, Appellant consistently demonstrated his ability to respond to questions posed to him by the officers volunteering that the keys and cell phone found in the residence were not his, but Victim's. (Tr. 117, 49-50, 50-51, 167, 168). Accordingly, as Appellant

voluntarily consented to allowing the officers to search and question him regarding Victim's whereabouts, it logically follows that the keys, which were obtained as a result of this consent search were lawfully obtained and therefore the seizure was not unreasonable and did not violate Appellant's Fourth Amendment rights.

B. Appellant had no Standing to Challenge the Search of the Car

Additionally, Appellant did not have standing to challenge the search of Victim's car where the record reflects Appellant did not have a possessory interest in the car. While defense counsel argued Appellant had standing based upon the fact the car was located in the yard of the residence he occupied, the State submits this fact simply does not matter, as the car, which was the property that was actually searched, was not Appellant's.

For purposes of Fourth Amendment analysis, "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." State v. Moore, 377 S.C. 299, 307, 659 S.E.2d 256, 260 (Ct. App. 2008) (quoting U.S. v. Jacobsen, 466 U.S. 109, 113 (1984)). Further, in Rakas v. Illinois, 439 U.S. 128 (1978) the Supreme Court of the United States addressed whether evidence seized in an automobile in which defendants had been passengers should have been suppressed. In doing so, the Court held that:

Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. There is no reason to think that a party whose rights have been infringed will not, if evidence is used against him, have ample motivation to move to suppress it. Even if such a person is not a defendant in the action, he may be able to recover damages for the violation of his Fourth Amendment rights, or seek redress under state law for invasion of privacy or trespass.

Rakas, 439 U.S. at 133–34 (internal citations omitted).

Here, the record clearly reflects Appellant did not have a possessory interest in Victim's vehicle. Specifically, there was a wealth of testimony indicating Victim owned the car and drove the car exclusively. (R. 90, 101-102, 218-219). Additionally, an inventory of the car indicated the car was registered in Victim's name and was insured in Victim's name. (R. 305-306). Furthermore, there is no evidence showing Appellant had permissive use of the vehicle at the time the car was searched. Accordingly, the State submits Appellant did not have standing to contest the search of Victim's car and therefore could not seek exclusion of the evidence seized pursuant to the search of the car. See Rakas, 439 U.S. at 133 ("Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.").

C. Appellant Never Expressly Revoked or Limited his Consent to the Search

Finally, even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search once the officers removed the keys from the residence and began to use them to open Victim's car. In fact, rather than expressly revoke or limit his consent, Appellant instead, by way of his actions, implicitly consented to the search of Victim's car.

In State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) the Supreme Court of South Carolina explained that pursuant to the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent." 343 S.C. at 648, 541 S.E.2d at 843. Continuing, the Forrester Court stated, "[w]hen relying on the consent of a suspect, a police

officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." Id. "The scope of the consent is measured by a test of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" State v. Mattison, 352 S.C. 577, 585–86, 575 S.E.2d 852, 856 (Ct.App.2003) (citation omitted).

Here, the State submits the facts and circumstances surrounding the search clearly informed Petitioner of the scope of the search. Furthermore, even if one were to assume that Appellant did not consent to a search of Victim's car when he granted consent, the facts surrounding his questioning and the subsequent actions of the officers and Appellant clearly demonstrate Appellant, despite having the opportunity to limit the search or revoke his consent, declined to do so, instead deciding to aid the officers in the search of Victim's vehicle.

Indeed, Appellant was clearly aware, based upon the statements and actions of the officers that they intended to use the keys to search Appellant's car. Specifically, Appellant was asked who owned the keys they found in the residence, and after he explained the keys were Victim's, observed the officers as they proceeded to Victim's car in an attempt to unlock the vehicle. (R. 118, 119, 49-50, 50-51, 144, 167, 168). Nevertheless, Appellant, rather than revoking or limiting consent, chose to aid the officers in their search by attempting to show them which key opened the trunk in Victim's car. (R. 126, 145, 156-57, 168).

Understanding these circumstances, the State submits an objectively reasonable person would have understood that when the officers asked whose keys were in the apartment, picked the keys up, headed outside and began using the keys, the scope of consent may have changed. However, despite these facts, the State submits that an objectively reasonable person would have interpreted Appellant's additional actions of attempting to aid the officers in their search, as

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Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ROGER BRUCE,

APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

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implicitly consenting to the expanded search rather than seeking to limit or revoke his consent. Accordingly, the State submits Appellant's Fourth Amendment Rights were not violated and therefore, the evidence obtained from the search of the car should not be excluded.

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court affirm the judgment imposed by the trial court.

Respectfully Submitted,

ALAN WILSON
Attorney General

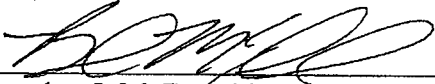
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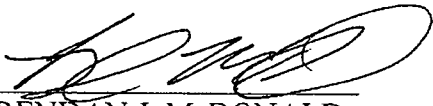
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STATE OF SOUTH CAROLINA

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Thomas A. Russo, Circuit Court Judge

THE STATE,

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PROOF OF SERVICE

I, Brendan J. McDonald, Counsel for Respondent, certify that I have served the Final Brief of Respondent and Designation of Matter, dated June 12, 2012, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

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