

VOLUME THREE OF TEN
[PP 1001-1500]

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 14 2011

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
(Capital PCR 2006-CP-23-7719)
The Honorable D Garrison Hill, Circuit Court Judge

S C Supreme Court

Kamell Delshawn Evans, #6016,

Respondent/Petitioner,

v

State of South Carolina,

Petitioner/Respondent

APPENDIX

ALAN WILSON
Attorney General

WILLIAM H EHLIES, II, ESQ
310 Mills Ave , Ste 201
Greenville, SC 29605

JOHN W MCINTOSH
Deputy Attorney General

Christopher Seeds, *Pro Hac Vice*
Cornell Death Penalty Project
112 Myron Taylor Hall
Ithaca NY 14853

DONALD J ZELENKA
Assistant Deputy Attorney General

MELODY J BROWN
Senior Assistant Attorney General

ATTORNEYS FOR
RESPONDENT/PETITIONER

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR
PETITIONER/RESPONDENT

INDEX

{DIRECT APPEAL RECORDS}

RECORD ON APPEAL

INDEX	1
TRIAL TRANSCRIPT	1
COURT REPORTER'S INDEX	2
JURY QUALIFICATION	23
JURY SELECTION	966
MOTIONS	985

GUILT PHASE

{IN CAMERA} TESTIMONY

JEFFREY KINDLEY	1014

MOTIONS	1043

JURY SWORN	1050

OPENING STATEMENTS	1058

TESTIMONY

JORGE CRUMPTON	1079

DAMON HUBBER	1088

ARNOLD TAYLOR	1093

MARCUS A. CANNON	1103

TONY LEE	1112

ANDREW SOULE	1135

DAVID WILLIAMS	1158

JOHN ELDRIDGE	1180

RONALD RICHARDSON, JR	1194

PAUL ANDREW SILVAGGIO	1206

JEFFREY KINDLEY	1256

GENE DONAHUE	1266

DONNIE HENRY	1273

MICHAEL ALLEN PETERSON	1279

DARWIN SHAW	1313

JOSEPH HORNSBY	1332

ROBERT RANDY SUTTLES	1340

JAMES WILLIAM ARMSTRONG	1344

MICHAEL MCNAMARA	1368

MANWELL JOHN ORTUNO	1373

DR. MICHAEL EUGENE WARD	1383

KAMELL DESHAWN EVANS	1414

REQUESTS TO CHARGE	1446

CLOSING ARGUMENTS	1451

JURY CHARGE	1474

VERDICTS	1502
SENTENCING PHASE	1516
OPENING STATEMENTS	1528
TESTIMONY	
STEPHEN DALE LOFTIS	1528
MARCIA SAPINOSO	1535
CHERI JONES	1555
GEORGE CATHLEEN TRIPP	1568
JOSEPH HORNSBY	1576
JAMES CHRISTOPHER WILSON	1578
LEWIS EDWARD O'CAIN	1582
JOHN MERKLE	1615
GEORGE M MARTIN	1624
STEVE WATSON	1642
JEFF NEELY	1645
SCOTT PARKER	1648
STUART HOLCOMBE	1651
TERRY E PEDEN	1653
RONALD PATRICK PLATT	1659
BENJAMIN YOUNG	1664
BARRY EVANS	1665
SHATIMA EVANS	1671
DR JAMES R EVANS	1678
DR ELIN BERG	1711
CLOSING ARGUMENTS	1743
JURY CHARGE	1776
VERDICT	1793
SENTENCING	1798
INDICTMENTS	1802
NOTICE OF INTENT TO SEEK THE DEATH PENALTY	1814
STATE'S NOTICE OF EVIDENCE IN AGGRAVATION	1815
STATUTORY INSTRUCTIONS	1816
RECOMMENDATION OF A SENTENCE OF DEATH	1817
AFFIRMATION OF DEATH SENTENCE	1818
SENTENCE	1819
CERTIFICATE OF APPELLANT	1820
FINAL BRIEF OF APPELLANT	1821
FINAL BRIEF OF RESPONDENT	1836
STATE VS EVAN, OPINION NO 26220	1858

REMITTITUR	1864

{POST CONVICTION RELIEF ACTION RECORDS}

ORDER APPOINTING JUDGE	1865

POST CONVICTION RELIEF APPLICATION	1866

RETURN TO APPLICATION, MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR STATUS HEARING	1879

AMENDED APPLICATION, DATED NOVEMBER 16, 2007	1896

AMENDED APPLICATION, DATED JANUARY 28, 2009	1903

ORDER APPOINTING COUNSEL	1912

NOTICE, MOTION AND MEMORANDUM FOR PROTECTIVE ORDER	1916

RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER	1928

RESPONDENT'S MOTION FOR COURT ORDER FOR THE MEDICAL RECORDS OF THE APPELLANT	1943

MOTION TO EXCLUDE EVIDENCE RELATING TO THE PUBLIC SAFETY OFFICER'S BENEFITS ACT	1946

ORDER (MEDICAL RECORDS)	1969

PCR HEARING TRANSCRIPT (JUNE) TESTIMONY	1971

DENNIS BUNKLEY

DIRECT	1973

CROSS	2019

REDIRECT	2028

RECROSS	2029

RODNEY RICHEY

DIRECT	2031

CROSS	2042

REDIRECT	2047

RECROSS	2050

KIMBERLY TRAMELL

DIRECT	2050

CROSS	2061

REDIRECT	2066
RECROSS	2067
BRUCE COFFEE	
DIRECT	2069
CROSS	2079
REDIRECT	2083
BOB NANCE	
DIRECT	2084
CROSS	2092
REDIRECT	2096
RECROSS	2097
JOHNATHAN LANDINGHAM	
DIRECT	2098
CROSS	2103
REDIRECT	2106
RECROSS	2106
VIRGINIA GOLDEN	
DIRECT	2107
CROSS	2122
TYRONE JOHNSON	
DIRECT	2132
CROSS	2141
REDIRECT	2144
RECROSS	2146
JOHN MAULDIN	
DIRECT	2147
CROSS	2156
REDIRECT	2160
JAMES GOLDSMITH	
DIRECT	2166
CROSS	2212
REDIRECT	2228
RECROSS	2231
STEVE W SUMNER	
DIRECT	2232
CROSS	2369
REDIRECT	2459
RECROSS	2485
DALE DAVIS	
DIRECT	2496
CROSS	2518
REDIRECT	2532
LENORA TOPP	
DIRECT	2533
CROSS	2556

REDIRECT	2571
RE CROSS	2574
NICHOLAS WIDEMAN	
DIRECT	2579
CROSS	2592
REDIRECT	2598
RE CROSS	2599
SARAH ENGLISH	
DIRECT	2599
CROSS	2604
BARRY EVANS	
DIRECT	2604
CROSS	2611
RUBIN GUR	
DIRECT	2632
CROSS	2683
JOSEPH SAVITZ	
DIRECT	2704
CROSS	2716
JUSTIN McKEE	
DIRECT	2726
CROSS	2730
JOHNATHAN ARDEN	
DIRECT	2734
CROSS	2751
REDIRECT	2778
RE CROSS	2781
RICHARD CANFIELD	
DIRECT	2793
CROSS	2816
REDIRECT	2828
RE CROSS	2831
RENEE EVANS	
DIRECT	2834
CROSS	2849
REDIRECT	2858
RE CROSS	2860
ROBYN EVANS	
DIRECT	2861
CROSS	2887
REDIRECT	2899
RE CROSS	2901

LETTER REQUESTING <i>DE BENE ESSE</i> DEPOSITION OF DR. DAVID L BACHMAN, M D	2907

RESPONDENT'S LETTER ADDRESSING APPELLANT'S MOTION TO TAKE <i>DE BENE ESSE</i> DEPOSITION OF DR DAVID L BACHMAN, M D	2911
ORDER DENYING MOTION TO TAKE <i>DE BENE ESSE</i> DEPOSITION OF DR DAVID L BACHMAN, M D	2914
NOTICE AND MOTION TO AMEND	2915
AMENDED APPLICATION, AUGUST 28, 2009	2916
PCR HEARING TRANSCRIPT (OCTOBER)	2927
TESTIMONY	
SHATIMA MARTIN	
DIRECT	2933
CROSS	2989
REDIRECT	3004
RECROSS	3010
NICHOLAS COOPER-LEWTER	
DIRECT	3012
CROSS	3043
REDIRECT	3063
RECROSS	3066
DAVID BACHMAN, M D	
DIRECT	3069
CROSS	3105
REDIRECT	3140
RECROSS	3144
RE-REDIRECT	3145
RE-RECROSS	3152
MOTIONS	3154
JAROD TOWE	
DIRECT	3188
CROSS	3192
REDIRECT	3194
CHRISTOPHER LONG	
DIRECT	3195
CROSS	3199
REDIRECT	3200
KENNETH SPICER, M D	
DIRECT	3204
CROSS	3229
REDIRECT	3244
RECROSS	3249
RE-REDIRECT	3256
STEVEN SUMNER	

DIRECT	3257
CROSS	3261
REDIRECT	3268
JAMES GOLDSMITH	
DIRECT	3270
CROSS	3273
REDIRECT	3279

PCR HEARING EXHIBITS

APPLICANT'S EXHIBITS

1-SCHOOL DISTRICT RECORDS	3287
2-7 9 2004 RODNEY RICHEY LETTER	3374
3-MOTION FOR DISCOVERY AND INSPECTION	3375
4-FOURTH GRADE SCHOOL RECORDS	3394
5-PHOTOGRAPH	3405
6-PHOTOGRAPH	3406
7-PHOTOGRAPH	3407
8-NEWSPAPER ARTICLE	3408
9-MOTION FOR SUBSTITUTION OF COURT APPOINTED COUNSEL	3410
10-STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBSTITUTION OF COURT APPOINTED COUNSEL	3414
11-8 31 2004 DALE DAVIS EMAIL	3418
12-8 31 2004 JOHN MAULDIN EMAIL	3420
13-7 9 2004 RODNEY RICHEY LETTER	3421
14-CONSENT ORDER	3422
15-7 21 2004 DALE DAVIS LETTER	3424
16-7 28 2004 DALE DAVIS EMAIL	3425
17-7 31 2004 DALE DAVIS EMAIL	3427
18-7 30 2004 LENORA TOPP LETTER	3429
19 A -RON PLATT INTERVIEW	3430
19 B -SCOTT PARKER INTERVIEW	3432
20-TERRY PEDEN INTERVIEW	3433
20 A-8 3 2004 GEORGE MARTIN MEMORANDUM	3436
21-8 25 2004 LENORA TOPP MEMORANDUM	3440
22-8 26 2004 GEORGE MARTIN EMAIL	3442
23-8 27 2004 LENORA TOPP EMAIL	3443
24-BENJAMIN YOUNG INTERVIEW	3444
25-BARRY EVANS INTERVIEW	3446
26-SHATIMA EVANS INTERVIEW	3450
27-9 10 2004 MEMORANDUM	3454
28-9 12 2004 LENORA TOPP EMAIL	3456
29-9 15 2004 LENORA TOPP EMAIL	3457
30-GEORGIA MAE CARGILE INTERVIEW	3458
31-8 4 2004 BETTY STROM LETTER	3460

32-GREENVILLE COUNTY DETENTION CENTER INMATE VISITOR LOG PRINTOUT	3485
33-LEAD POISONING REPORT	3488
34-4 2 2003 INTERVIEW WITH CHRISTINA RODRIGUEZ	3505
35-DIVORCE DECREE	3548
36-PHOTOGRAPH	3556
37-PHOTOGRAPH	3557
38-PHOTOGRAPH	3558
39-INVESTIGATIVE SUPPLEMENTAL REPORT	3559
40-8 3 2004 DALE DAVIS LETTER	3561
41-8 4 2004 DALE DAVIS LETTER	3562
42-8 3 2004 MEMORANDUM	3563
43-8 9 2004 STEVE SUMNER EMAIL	3564
44-DALE DAVIS RESUME	3565
45-2 14 2005 STEVE SUMNER EMAIL	3567
46-DALE DAVIS AFFIDAVIT	3568
47-LEAD POISONING DOCUMENT	3570
48-MEDICAL RECORDS	3571
49-LEAD EXPOSURE ARTICLE	3665
50-LEAD EXPOSURE ARTICLE	3673
51-BRAIN DIAGRAM	3683
52-DR GUR'S REPORT	3687
53-10 1 2004 DALE DAVIS LETTER	3689
54-PHOTOGRAPH	3690
55-PHOTOGRAPH	3691
56-PHOTOGRAPH	3692
57-PHOTOGRAPH	3693
58-PHOTOGRAPH	3694
59-PHOTOGRAPH	3695
60-PHOTOGRAPH	3696
61-PHOTOGRAPH	3697
62-PHOTOGRAPH	3698
63-CHART	3699
64-DIAGRAM	3700
65-DIAGRAM	3701
66-SLIDES	3702
67-RENEE L EVANS PAPER	3709
68-VARIOUS PHOTOGRAPHS	3711
69-5 27 2004 KAMELL EVANS LETTER	3734
70-JOANN BRUGGER AFFIDAVIT	3736
71-VARIOUS AFFIDAVITS	3739
RESPONDENT'S EXHIBITS	
1-7 9 2004 FILE NOTES	3752
2-7 12 2004 FILE NOTES	3759
3-7 13 2004 FILE MEMORANDUM	3762

4-7 14 2004 FILE NOTES	3764
5-7 23 2004 FILE NOTES	3766
6-7 30 2004 FILE NOTES	3767
7-7 30 2004 FILE NOTES	3769
8-7 22 2004 STEVE SUMNER LETTER	3771
9-7 22 2004 STEVE SUMNER LETTER	3772
10-8 12 2004 GEORGE MARTIN EMAIL	3775
11-7 9 2004 FILE NOTES	3776
12-OFFICE OF INDIGENT DEFENSE VOUCHER, STEVE W SUMNER	3777
13-OFFICE OF INDIGENT DEFENSE VOUCHER, JAMES GOLDSMITH	3782
14-GEORGE MARTIN INVOICE	3792
15-DALE DAVIS INVOICE	3794
16-LENORA TOPP INVOICE	3796
17-JAMES R EVANS INVOICE	3799
18-7 23 2004 FILE NOTES	3800
19-EVANS FAMILY TREE	3801
20-9 9 2004 STEVE SUMNER LETTER	3802
21-NOTES ON SCDC POLICY	3803
22-SIGNED RELEASE	3804
23-9 2 2004 FILE NOTES	3806
23 A-4 2 2003 PROPERTY REPORT	3810
24-9 1 2004 FILE NOTES	3814
25-8 10 2004 FILE NOTES	3821
26-7 24 2004 FILE NOTES	3822
27-8 26 2004 LENORA TOPP EMAIL	3825
28-UNDATED FILE NOTES	3826
29-8 3 2004 FILE NOTES	3828
30-8 5 2004 STEVE SUMNER LETTER	3834
31-8 30 2004 FILE NOTES	3836
32-9 16 2004 FILE NOTES	3838
33-9 6 2004 FILE NOTES	3839
34-8 30 2004 FILE NOTES	3840
35-UNDATED FILE NOTES	3841
36-8 26 2004 LENORA TOPP EMAIL	3842
37-AUTOPSY PHOTOGRAPH	3843
38-AUTOPSY PHOTOGRAPH	3845
39-AUTOPSY PHOTOGRAPH	3847
40-AUTOPSY PHOTOGRAPH	3849
41-AUTOPSY PHOTOGRAPH	3851
42-AUTOPSY PHOTOGRAPH	3853
43-DIAGRAM	3855
44-DIAGRAM	3856
45-DEMONSTRATIVE AID	3857

46-8 11 2004 DALE DAVIS LETTER	3872
47-RADIOLOGY REPORT	3973
48-MRI REPORT, 11 24 2006	3874
49-STATE'S MOTION FOR THE PRODUCTION OF MEDICAL RECORDS	3875
50-MRI REPORT, 11 24 2008	3883
COURT'S EXHIBITS	
1-8 1 1998 MEDICAL RECORDS	3885
2-LIEUTENANT SHEA SMITH AFFIDAVIT	3900
3-SHERIFF STEVE LOFTIS AFFIDAVIT	3902
4-PHOTOGRAPH	3904
5-PHOTOGRAPH	3904
APPLICANT'S POST HEARING BRIEF	3906
RESPONDENT'S POST HEARING BRIEF	4104
APPLICANT'S POST HEARING BRIEF-REPLY	4217
RESPONDENT'S SECOND POST HEARING BRIEF	4238
APPLICANT'S SECOND POST HEARING BRIEF	4245
APPLICANT'S PROPOSED ORDER FOR POST CONVICTION RELIEF	4254
RESPONDENT'S PROPOSED ORDER FOR POST CONVICTION RELIEF	4274
ORDER GRANTING NEW SENTENCING	4384
MOTION TO ALTER OR AMEND	4501
ORDER DENYING MOTION TO ALTER OR AMEND	4515

Motions

III

1 THE COURT We will provide you with an opportunity to
2 address that issue

3 MR SUMNER Thank you

4 For the guilt phase it's simply the P W I D
5 conviction, Betty, is that right?

6 MS STROM We don't have a right to put that in
7 unless the defendant testifies at that time We could use
8 it for impeachment

9 THE COURT Sure

10 MR SUMNER I was just trying to see what all -- I
11 was trying to just ask them about what impeachment stuff is
12 out there to make sure

13 THE COURT Well, now, I assume that the state has
14 provided you with an accurate copy of the criminal history
15 of the defendant which would reflect any convictions

16 MR SUMNER Yes, sir, I do have that

17 Your Honor, defendant's motion number 17 is in the
18 same vain of other motions filed regarding admission of
19 victim impact evidence I don't need to really supplement
20 that any more

21 THE COURT We will address that issue later

22 MR SUMNER I think defendant's motion 18 would
23 probably fall within the same ambit there, Your Honor
24 Again, it deals with victim impact evidence

25 THE COURT All right, sir

Motions

1 MR SUMNER And I don't need to add anything else to
2 that

3 Your Honor, defendant's motions 19, also deals with
4 victim impact evidence I think we can hold that for right
5 now

6 Your Honor, there is no defendant's motion 15, there
7 is no defendant's motion 20 It was a misnumbering by my
8 office

9 THE COURT All right

10 MR SUMNER Your Honor, I apologize to everybody for
11 that

12 Defendant's motion 21 is moot in that I do have a
13 notice of evidence in aggravation It does comply with the
14 statute in my opinion So I withdraw that motion, Your
15 Honor

16 THE COURT All right, sir

17 MR SUMNER Your Honor, defendant's motion number 22
18 deals with sequestration, if I can have one moment, please,
19 sir

20 THE COURT Yes, sir

21 MR SUMNER Can I have it?

22 (Pause)

23 MR SUMNER Your Honor, I withdraw motion number 22
24 The defendant will withdraw that We are not requesting
25 sequestration

Motions

1 THE COURT All right, sir

2 MR SUMNER Your Honor, I'm going to put number 23
3 off to the side for a second

4 I think we are going to need to probably have a
5 hearing on that That deals with the defendant's
6 statement I am going to ask for a Denno hearing at the
7 conclusion of the motions' hearing, Your Honor

8 THE COURT All right, sir

9 MR SUMNER Your Honor, defendant's motion 24 is a
10 motion to exclude pictures and video tape, I guess, of the
11 scene or of the victims

12 I don't believe there is going to be any video tape

13 Is that right, Ms Strom? Is that correct? Did you
14 and I talk about the video?

15 MS STROM Not of the scene of the crime, no There
16 won't be

17 MR SUMNER This is a motion to exclude photographs
18 I have seen the photographs I believe that the state
19 intends to offer

20 Is that right, Ms Strom?

21 We did go over those at her office last week They
22 are graphic, Your Honor, in nature Just for the reasons
23 stated in the body of the motion, we would ask that the
24 Court consider suppressing or not allowing those
25 photographs as -- that they are more prejudicial than

Motions

1 probative

2 THE COURT Are we talking about photographs of the
3 victims in the case?

4 MR SUMNER Yes, sir

5 THE COURT Are those photographs intending to be
6 introduced in both phases or only in the sentencing phase
7 of the trial should we get to that point?

8 MR ARIAIL We don't intend to introduce any
9 photographs of any victims in the guilt phase And the
10 only photographs we intend to introduce in the penalty
11 phase would be those family portraits or similar type of
12 photographs, not anything related to the nature of the
13 crime, of the scene itself, or autopsy

14 THE COURT Let me be sure I understand it

15 The state does not intend to offer any photographs of
16 either victim at any stage of the trial? When I say
17 photographs, I am not -- I'm talking about photographs
18 after they are dead

19 MR ARIAIL None

20 THE COURT Okay They don't intend to offer any
21 photographs after the death of the victims

22 MR SUMNER Could I just speak one second?

23 THE COURT Yes, sir Photographs taken after the
24 deaths of the victims

25 (Pause)

Motions

1 MR SUMNER Your Honor, I think there might have been
2 some misunderstanding between the solicitor and I about the
3 objection I had to the photographs

4 We are going to approach now and show you the pictures
5 themselves There are about four or five pictures that the
6 solicitor has in his possession And I think for the
7 record if I could articulate this, we only, the defense
8 would object to the photographs -- and I believe Mr Ariail
9 knows the ones I am referring to -- that have essentially
10 brain matter mixed with blood taken from the scene that
11 night And we would object to those as more prejudicial
12 than probative And I believe the solicitor knows the ones
13 I am speaking about, and he can refer you to those

14 MR ARIAIL Just to show you these photographs, and
15 they have already been premarked so I can refer to them by
16 exhibit for the record

17 MR SUMNER That would be great

18 MR ARIAIL They refer to casings that were found and
19 collected at the scene, which are going to relate to
20 ballistic testing And the first one is State's Exhibit
21 BB, State's Exhibit CC Each one of these will have a
22 case State's Exhibit EE State's Exhibit JJ reflects a
23 projectile, State's Exhibit KK reflects a projectile, and
24 Exhibit LL reflects a projectile collected at the scene
25 And that would be the extent of that

Motions

1 THE COURT But the sole purpose of the offering of
2 the photographs is to show the collection of casings or
3 cartridges?

4 MR ARIAIL That's it And projectiles

5 THE COURT And projectiles Well, I notice those are
6 colored photographs Is there any reason why they can't be
7 made black and white?

8 MR ARIAIL We could certainly try that

9 THE COURT How about that, Mr Sumner?

10 I believe you will find if they are changed from color
11 to black and white, it's not likely the jury will know what
12 that is when they are pointing out the casings or
13 projectiles

14 MR SUMNER Let me just speak to Mr Goldsmith

15 THE COURT He may need to look at them first but --

16 MR SUMNER Your Honor, I would imagine that we would
17 not have an objection if they are black and white

18 THE COURT Well, I just suggest we make them black
19 and white Look at them We will address it

20 MR SUMNER Okay All right The ones that
21 Mr Ariail read into the record, the only objection that we
22 have -- there are a lot of those photographs that are just
23 measurements and various things We certainly don't object
24 to those

25 MR ARIAIL Your Honor, we are going to check on

Motions

1 whether or not that capability is still available We have
2 sort of moved past black-and-white photographs, and they
3 may not have kept it We are calling right now We don't
4 have it in our office

5 THE COURT Don't have what?

6 MR ARIAIL The ability to make a black-and-white
7 photograph in our office And all of these are printed
8 from a computer in our office

9 THE COURT Y'all don't have a digital camera? Even I
10 have got one of those and I don't even know how to work it
11 It will take a black-and-white photograph

12 MR ARIAIL We could make a photocopy of this

13 THE COURT We'll look at it We will see if it can
14 be done And if it can't be, we will address it

15 MR SUMNER Your Honor, that would bring us to --
16 really there are about three or four other motions that
17 make take a little time

18 Motions 23 and 25, I would like to come back to those
19 in a second Just for numeric sake, those deal with a
20 Denno hearing, Your Honor, the defendant's statement I am
21 informed that a written statement was taken from the
22 defendant that evening

23 MS STROM I have your motion 23 I don't have a 25

24 THE COURT Okay It was filed on August the 5th

25 MR SUMNER I will hand it to you Twenty-three just

Motions

1 addressed the sentencing phase, 25 just addressed it for
2 the guilt phase as well

3 Your Honor, I would like to go to motion 26, and,
4 again I apologize There are two motion 26's I don't
5 know how that happened, but it did Twenty-six -- I will
6 call it 26-A, which is a motion for a change of venue or
7 alternatively for extensive jury voir dire, Your Honor

8 THE COURT Excuse me just a minute Let me locate
9 that now

10 MR SUMNER That's a pretty hefty motion with the
11 news articles behind it

12 THE COURT When was that filed?

13 MR SUMNER That was filed on September the 3rd, Your
14 Honor I can hand up --

15 THE COURT I have it, but these motions are filed
16 chronologically, and I am just looking through the book
17 All right I have it

18 MR SUMNER You do have it, Your Honor?

19 THE COURT Yes Well, I have both 26 One is a
20 motion to suppress results of a search warrant

21 MR SUMNER Right I will address that in a second
22 I thought I would just go ahead and address the motion
23 for change of venue or alternatively more extensive voir
24 dire

25 Your Honor, there has been extensive voir dire of the

Motions

1 panel members regarding pretrial publicity This motion
2 also was filed, again, in advance of this proceeding,
3 obviously This was a case that was covered extensively.
4 And I've got the attachments to the motion that were
5 covered extensively by Channel Four, covered through the
6 Greenville News, covered, I would imagine, through the
7 Spartanburg Herald Journal, and I think Channel Seven also
8 as well

9 And I am familiar with the case law here And I
10 couched that motion in terms of extensive voir dire You
11 heard a fair number of jurors, did talk about remembering
12 something in the paper I will address this to your
13 discretion, Your Honor Extensive voir dire has occurred
14 For the record, I will go forward and ask the Court to rule
15 on a change-of-venue motion

16 THE COURT And the basis for the motion is simply
17 that there appears to have been extensive coverage of this
18 case by the news media in the past?

19 MR SUMNER That would be the primary basis, Your
20 Honor, and some jurors did refer to having heard about the
21 case

22 Now, of course, the Court then conducted its own voir
23 dire and maybe to the satisfaction of the court felt that
24 these jurors could go forward But I would like the Court
25 to rule on motion number 26

Motions

1 THE COURT All right Does the state want to be
2 heard?

3 MS STROM Your Honor, during the voir dire,
4 individual voir dire, of the potential jurors I kept track
5 of the numbers who mentioned that they had been exposed to
6 media coverage

7 We questioned 66 jurors And out of those 24 had
8 mentioned some type of media coverage But only one of
9 those had any specific details

10 THE COURT That was Mr Gibson

11 MS STROM That was Mr Gibson, Your Honor

12 Also out of that 24, one of them got all of his
13 information, I believe, from the family It was Mr Handal
14 (sic) who was very close friends with the victim's family
15 So his information, I believe, came from them

16 And all of the other jurors who said they had any
17 media exposure told this court that it was nothing more
18 than what you had told them at the beginning of the trial
19 of this case, at the beginning of jury selection

20 THE COURT Well, what I do recall -- I don't have
21 those numbers right before me, but I believe of the 40
22 jurors that we had initially qualified, ten of those jurors
23 had heard or believed they had heard something about the
24 case

25 There were only two, as have been stated, Mr Handog

Motions

1 and Mr Gibson, that had any extensive knowledge or had any
2 vivid recollection of the information they had previously
3 heard Neither of those jurors are serving in the case

4 All of the other jurors that indicated they had been
5 exposed to information indicated that they did not remember
6 anything specific but that the information they had
7 received was no more extensive than the information they
8 received by the Court after they reported for jury service

9 So as we are all aware, the fact of extensive pretrial
10 publicity does not in and of itself disqualify citizens of
11 that county to participate as jurors in the case

12 And under the facts and circumstances of this case and
13 after considering the individual voir dire, as well as the
14 collective voir dire, of the jury panel, I do find that the
15 defendant's motion should be denied, that there was not
16 extensive pretrial publicity -- at least that has not been
17 established -- nor has the jury venire been substantially
18 affected by any pretrial publicity that may have existed,
19 and all have indicated that they could put that information
20 aside under any circumstances and base a verdict solely
21 upon evidence to be presented in the case

22 And of those jurors who are now serving in the case,
23 quite frankly, I don't believe any of the jurors serving in
24 the case had indicated any exposure to pretrial information
25 regarding the case In any event, the motion for change of

Motions

1 venue is denied

2 MR SUMNER Thank you, Your Honor

3 Your Honor, that would bring us really to two, the
4 last two, remaining motions

5 One is a motion -- defendant's motion 23 and
6 defendant's motion 25 are really intertwined That is a
7 motion to bar the admission of the defendant's either
8 written or verbal statements, any statements attributable
9 to my client, Mr Evans

10 I have been furnished through the discovery a copy of
11 a written statement from the solicitor's office purportedly
12 taken from Mr Evans

13 I would now ask at this time that a Jackson vs Denno
14 hearing be undertaken to determine not only whether or not
15 he was advised of his constitutional rights in an
16 acceptable manner but also whether or not his statement was
17 a product of any duress or coercion or was knowingly,
18 freely and voluntarily made

19 I believe that those are two separate inquiries I
20 think we can combine them into one Thank you

21 THE COURT Let's take ten minutes before we begin
22 with that taking of testimony

23 (Whereupon, a recess was taken)

24 MS STROM Judge, may I approach?

25 THE COURT Yes, ma'am

Motions

1 (Bench conference held off the record)

2 THE COURT All right Let me ask you this

3 How many statements does the state intend to offer?

4 MS STROM There is one written statement, Your
5 Honor, which I have provided the Court

6 THE COURT Right

7 MS STROM And also during the giving of that
8 statement the SLED agent received a telephone call from
9 someone out at the scene, and as part of that telephone
10 conversation he turned to the defendant and asked him
11 specifically about a hat that was seen at the crime scene
12 The defendant responded, yes, that's his hat, but that was
13 not in the written statement

14 THE COURT But it was a statement made during the
15 course of the taking of the written statement?

16 MS STROM That is correct

17 THE COURT And what date was that?

18 MS STROM That statement was given on April the
19 2nd of 2003

20 THE COURT Are we ready to proceed?

21 MR SUMNER Yes, sir I just for the record want to
22 say one thing

23 We want to hold defendant's motion 26 in abeyance
24 regarding the search warrant, Your Honor That really is
25 more geared toward the sentencing phase of the trial MS

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Strom and I agreed we would just wait and take that up at
2 the appropriate point

3 THE COURT All right

4 MS STROM Just so the record is clear, I informed
5 Mr Sumner that immediately after the defendant gave this
6 written statement a search warrant was served upon the
7 defendant to obtain his clothes and that we do intend to
8 introduce evidence taken off those clothes So that is the
9 result of that search warrant that was issued

10 I just want to make sure it is clear But as far as
11 the search warrant, that would be the only search-warrant
12 issue we would have in the guilt phase

13 MR SUMNER We don't object to that, Your Honor
14 There is certainly legal basis for that, the clothes taken
15 from the defendant

16 THE COURT All right Are you ready to proceed?

17 MS STROM The state is ready to proceed, Your Honor
18 The state calls Agent Jeff Kindley

19 JEFF KINDLEY, having been
20 first duly sworn, testified as follows

21 THE CLERK State your name for the record, please

22 THE WITNESS Jeffrey Kindley It's K-I-N-D-L-E-Y

23 DIRECT EXAMINATION BY MS STROM

24 Q Agent Kindley, if you would, please, state your full
25 name for the record

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 A It's Jeffery Kindley, K-I-N-D-L-E-Y

2 Q And by whom are you employed?

3 A I'm an agent with the South Carolina Law Enforcement
4 Division, or SLED

5 Q And in what capacity are you employed with SLED?

6 A I am assigned to -- I'm a regional investigator SLED
7 split the state into four regions, and we conduct
8 investigations in the 12 upstate counties

9 Q What other law enforcement experience do you have
10 other than SLED?

11 A I've worked for SLED for about the past five years
12 Prior to that for a little over 11 years I worked for the
13 Greenville Sheriff's Office

14 Q On April the 2nd of 2003 were you called to respond to
15 the law enforcement center in reference to a homicide?

16 A Yes, ma'am

17 Q And what was the purpose of your responding there?

18 A I was contacted and told that there had been an
19 officer-involved shooting, that there was a fatality I
20 was not given a lot of details, but I was directed to go to
21 the law enforcement center to make contact with the suspect
22 in that case and to remain with him until I was advised
23 otherwise

24 I was also instructed that if the suspect wanted to
25 provide a statement to allow him an opportunity to do that

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q And when you responded to the law enforcement center
2 here in Greenville did you come in contact with the
3 defendant, Kamell Evans?

4 A Yes, ma'am

5 Q And where was that?

6 A He -- when I arrived he was in the central
7 investigations division, an area in the sheriff's office,
8 specifically in some offices in the back, the violent crime
9 section He was seated there at the desk of Investigator
10 Silvaggio

11 Q Was anyone with him?

12 A Yes, ma'am Investigator Silvaggio was with him

13 Q Did you interview him or talk to him in that room or
14 did you take him to another room?

15 A We went to another room

16 Q Where did y'all go?

17 A We wanted an area where -- there was a lot of activity
18 going on, a lot of foot traffic We wanted to get to
19 another area where things were a little quieter So I
20 asked for the use of the captain's office, which is on,
21 basically on, the other side of the section And it's just
22 an office, a basic office, up there

23 Q Could you give us a brief description of that office?

24 A It has exterior windows It has some -- it's got
25 glass on one side that you can look out into the other area

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 with mini blinds, desks, chairs, just a typical office

2 Q Who went with you to this office?

3 A Investigator Silvaggio asked if he could be present
4 when I spoke with the defendant I asked the defendant if
5 he was comfortable with Investigator Silvaggio being with
6 us, and he said that he was, that he had been nice to him
7 during the whole contact that they had had So we all
8 three went into the captain's office

9 Q Was anyone else in there with y'all?

10 A No, ma'am

11 Q So it was you, Investigator Silvaggio and the
12 defendant, Kamell Evans

13 A Yes, ma'am

14 Q Please tell this court what you did when you first got
15 Mr Evans in the room, in Captain Brooks' office

16 A I introduced myself I told him that I was a SLED
17 agent and that I would be staying with him probably for the
18 most part for the rest of the day

19 I told him that if he was interested in providing a
20 statement that I would be glad to take a statement from him
21 as long as he could swear to me that the contents of the
22 statement was true

23 I told him he could write it, we could, you know, put
24 it on paper, however he wanted to do it as long as he told
25 me it was the truth

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q And did Mr Evans indicate to you any desire to make a
2 statement?

3 A Yes, ma'am

4 Q Did y'all talk about the facts of the case in any way
5 prior -- first of all, let me back up At any time did you
6 advise him of his rights?

7 A Yes, ma'am

8 Q Was that before or after you asked him if he wanted to
9 make a statement?

10 A That was before

11 Q It was before

12 A Yes, ma'am

13 Q When you take him into Captain Brooks' office, you
14 introduce yourself

15 A Yes, ma'am

16 Q Do you get certain information from him such as his
17 name and date of birth, or do you automatically go into the
18 advice of rights?

19 A I told him that if he wanted to provide a statement we
20 could take one but that I needed to go over after a
21 departmental form with him and advise him of his rights.

22 I did ask him certain questions like his name, his
23 date of birth and things like that, but I didn't talk about
24 any of the facts of the case until we actually went over
25 the waiver of rights

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q When you asked him about his name and date of birth
2 did he respond to you appropriately?

3 A Yes, ma'am

4 Q Subsequently to getting that information did you
5 advise Mr Evans of his rights?

6 A Yes, ma'am

7 Q I show you what has been previously marked as State's
8 Exhibit Number Forty-two, and ask I ask you do you
9 recognize that

10 A Yes, ma'am I do

11 Q Is this the advice of rights form you used to advise
12 Mr Evans of his rights?

13 A Yes, ma'am

14 Q If you would, please, tell the Court what is in the
15 upper left-hand corner

16 A In the upper left-hand corner of this form is the
17 notations that I made with his full name, his age, his
18 nickname, address, telephone numbers, his education, date
19 of birth, social security number and where he went to high
20 school and also his initials

21 Q The information you have in the upper left-hand
22 corner, that was given to you by the defendant, Kamell
23 Evans --

24 A Yes, ma'am

25 Q -- in response to questions from you

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 A Yes, ma'am

2 Q At that time did you advise the defendant of his
3 rights?

4 A Yes, ma'am

5 Q And when did you do that?

6 A Immediately following getting this information

7 Q At approximately what time did the advice of rights
8 begin?

9 A 8 11 a m

10 Q And on what date?

11 A On April the 2nd of 2003

12 Q Please describe to this Court how you advised the
13 defendant of his rights specifically

14 A I was seated beside Mr Evans He was seated just to
15 my right

16 I placed the form in front of us, and then I read each
17 one of these lines on the form, and we also had him read
18 some of the lines himself

19 Q Let's look at the first line Did you read the first
20 line to him?

21 A Yes, ma'am

22 Q After you read him that first line -- well, just go
23 through it if you don't mind on exactly how you did it.

24 A Okay What I would do is the first line, I would read
25 it "Before we ask you any questions you must understand

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 your rights " And what I would ask him is if he understood
2 what it was and to read along with me

3 Then I would have him initial on that line indicating
4 that he understood that line And we would go to the next
5 line

6 Q So you would read one line, ask him if he understood
7 it

8 A Yes, ma'am

9 Q Did he respond to you as to whether he understood it?

10 A Yes, ma'am

11 Q And how did he respond?

12 A He responded that he did

13 Q That he did understand

14 A Yes, ma'am

15 Q What did you do? What did you have him to do to
16 indicate that he understood those rights?

17 A That's when I had him place his initials beside the
18 line

19 Q Did you do the same process with the second line which
20 is, "You have the right to remain silent"?

21 A Yes, ma'am

22 Q Did you ask him if he understood that?

23 A Yes, ma'am

24 Q Did he respond?

25 A He did And he initialed it also

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q He initialed that he understood that

2 A Yes, ma'am

3 Q Did you also read to him that anything you say can be
4 used against you in court?

5 A Yes, ma'am

6 Q Did you ask him if he understood it?

7 A I did

8 Q And how did he respond?

9 A That he understood

10 Q And did you have him initial that line?

11 A Yes, ma'am

12 Q Did you also read to him, "You have the right to talk
13 to a lawyer for advice before we ask you any questions and
14 to have him with you during questioning"?

15 A No, ma'am That's a line that we asked him to read to
16 us

17 Q You asked him to read that one?

18 A Yes, ma'am

19 Q And why did you do that?

20 A To verify that he could read and that he was
21 understanding what he was reading

22 After he read it, I read it again and asked him if
23 there was any questions there He said that there wasn't
24 He initialed it, and we also had him sign behind that line

25 Q So as far as that line, you had him read it

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

- 1 A Yes, ma'am
- 2 Q But you also read it to him
- 3 A Yes, ma'am
- 4 Q Asked him if he understood
- 5 A Yes, ma'am
- 6 Q And he indicated he did
- 7 A He did
- 8 Q And you had him initial it
- 9 A Initial and sign
- 10 Q And the signing was so you would know which line you
- 11 had asked him to read?
- 12 A Yes, ma'am
- 13 Q Did you also read to him, "If you have no money to pay
- 14 a lawyer's fee the court will appoint one to represent you
- 15 without cost if you wish"?
- 16 A Yes, ma'am
- 17 Q Did you ask him if he understood that?
- 18 A I did
- 19 Q And did he indicate he understood?
- 20 A He did
- 21 Q Did you have him initial that line?
- 22 A Yes, ma'am
- 23 Q Did you also read to him, "If you decide to answer
- 24 questions now without a lawyer present you will still have
- 25 the right to stop answering at any time, you also have the

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 right to stop answering at any time until you talk to a
2 lawyer"?

3 A Yes, ma'am

4 Q And did you ask him if he understood that?

5 A Yes, ma'am

6 Q How did he indicate? Did he indicate he understood or
7 did not understand?

8 A He understood

9 Q Did he initial that line?

10 A Yes, ma'am

11 Q Further in the form is what is called the waiver of
12 rights What did you do in connection with the waiver of
13 rights paragraph?

14 A What I told Mr Evans was, the first part was,
15 basically a statement of what his rights are And I
16 explained to him that the waiver of rights -- before I
17 could take a statement from him, he had to agree to, that
18 he understood and was willing to make a statement and waive
19 those rights And then I read this little paragraph to him
20 and asked him if he had any questions about it

21 Q After reading that paragraph to him did you ask him if
22 he understood it?

23 A Yes, ma'am

24 Q Did you have him initial it?

25 A I did

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q Did he indicate by initialing that -- did he
2 ultimately sign the waiver of rights?

3 A Yes, ma'am He did

4 Q And in signing these waiver of rights was indicating
5 to you that he wished to give you a statement

6 A Yes, ma'am

7 Q I notice on the waiver of rights you have a word
8 circled The word is coercion

9 A Yes, ma'am

10 Q How did that come about that that was circled?

11 A I asked Mr Evans on the last line there if he could
12 tell me exactly a good definition for the word coercion
13 just to make sure he understood that He said he had an
14 idea but he didn't know

15 So at that point I circled the word I told him that
16 it meant that we weren't going to force him and we weren't
17 trying to entice him to do anything that he didn't want to
18 do or coerce him and if he agreed with that to just go
19 ahead and initial that I had explained to him what that
20 word meant He initialed it there

21 Q He so initialed

22 A Yes, ma'am

23 Q You also asked him to sign his waiver of rights,
24 correct?

25 A Yes, ma'am

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

- 1 Q And he did so
- 2 A He did
- 3 Q Who witnessed the signature of Mr Kamell Evans on the
- 4 advice of rights and waiver of rights form?
- 5 A I did and Investigator Silvaggio did
- 6 Q The top signature is your signature
- 7 A Yes, ma'am
- 8 Q The second signature is that of Investigator
- 9 Silvaggio
- 10 A Yes, ma'am
- 11 Q And what time did the advice of rights end?
- 12 A 8 24
- 13 Q A M or p m?
- 14 A It was a m
- 15 Q On the same day, the 4/2/03
- 16 A Yes, ma'am
- 17 Q Agent Kindley, at any time during your advising the
- 18 defendant of his rights did you ever threaten him in any
- 19 way?
- 20 A No, ma'am
- 21 Q Did Investigator Silvaggio threaten him in any way?
- 22 A No, ma'am
- 23 Q Did either you or Investigator Silvaggio promise, make
- 24 any promises, to the defendant in order to get him to waive
- 25 his rights?

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 A No, ma'am

2 Q Did either you or Investigator Silvaggio hold out any
3 hope of reward or promise of leniency in order to get him
4 to waive his rights?

5 A No, ma'am

6 Q Were any weapons or items used against or on Mr Evans
7 in any type of forceful manner?

8 A No, ma'am

9 Q After Mr Evans signed his advice of rights form,
10 what, if anything, did you and Investigator Silvaggio do?

11 A After he signed this form, then we told him that we
12 could go ahead and let him write the statement if he wanted
13 to do that or we could put it on paper by typing it
14 Investigator -- he said that he would rather us take it
15 down So Investigator Silvaggio got a laptop computer and
16 typed it as we went along

17 Q Investigator Kindley, I want to go back

18 I had you describe the room in which the interview was
19 taking place What were you wearing and what was
20 Investigator Silvaggio wearing? Do you recall?

21 A I know that I was wearing what we call call-out
22 clothes It's a black pullover or polo kind of shirt with
23 a badge on it And it's green, solid green And B D U
24 type pants And then I have a belt, a gun belt

25 I believe Investigator Silvaggio had on the same kind

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 of shirt, I think, with a sheriff's star on it and blue
2 jeans or some kind of trousers, and he also had his pistol
3 and badge on his belt

4 Q So you had your weapons with you at the time you were
5 interviewing the defendant

6 A Yes, ma'am

7 Q Were they ever taken out of the holster?

8 A No, ma'am

9 Q Did you ever refer to them in any way or threaten him
10 with a gun in any way?

11 A No, ma'am

12 Q During the advice of rights form and during the taking
13 of the statement from Mr Evans did anyone else enter the
14 room? Did anyone else come in and participate in the
15 taking of the statement?

16 A No, ma'am

17 Q So throughout this process it was you, Investigator
18 Silvaggio and the defendant

19 A Yes, ma'am

20 Q Please describe to the Court the process for taking
21 the statement from Mr Evans

22 A Well, basically, we would ask him to explain to us
23 what went on, start at the beginning and tell us And he
24 told us that he wanted to start back as far as the
25 relationship with a female And he would go along for a

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 little while, and we would have to stop him and catch up,
2 and then we would go forward again

3 Q So as he is speaking someone is actually typing the
4 statement?

5 A Yes, ma'am Investigator Silvaggio is

6 Q Investigator Silvaggio was typing it as he is
7 speaking

8 A Yes, ma'am

9 Q And at some point during the defendant giving you this
10 statement did you receive a phone call from Investigator
11 Donohue?

12 A I did

13 Q Do you recall when that was exactly?

14 A No, ma'am Just at some point during the interview
15 I couldn't give you an exact time

16 Q And what transpired during that phone conversation?

17 A Agent Donohue was with the crime scene technicians out
18 at the incident location, and they were in the process of
19 collecting or identifying what could or could not be
20 evidence there

21 He called and said while you're doing your interview
22 if the guy wants to talk to you, would you ask him about a
23 hat, we found a ball cap nearby and if y'all ask him about
24 that to see if I need to collect it or have it collected.

25 Q And did you ask the defendant, Kamell Evans, about the

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 hat?

2 A Yes, ma'am

3 Q And what did you ask him and what did he respond?

4 A I asked him do you know anything about a ball cap at a
5 house nearby, and I think it was a black ball cap I am
6 not positive But I asked him could that be your ball cap,
7 and told me that, yes, it was his hat

8 Q And did you relay that information to Investigator
9 Donohue?

10 A Yes, ma'am

11 Q After you had that phone conversation with
12 Investigator Donohue did you continue taking the statement,
13 the written statement, from the defendant, Kamell Evans?

14 A Yes, ma'am

15 Q At any point -- well, after the defendant gave you his
16 statement regarding the incident did you at that time or at
17 the end of that ask him some additional questions that you
18 then put the answers in the statement?

19 A Yes, ma'am

20 Q Okay Because if you look at State's Exhibit
21 Forty-three, I ask you to look at that and see if you can
22 identify that

23 A Yes, ma'am I can

24 Q Is that the final product, the final written
25 statement, of the defendant, Kamell Evans?

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

- 1 A Yes, ma'am
- 2 Q Does it bear your signature?
- 3 A It does
- 4 Q As well as Investigator Silvaggio's?
- 5 A Yes, ma'am
- 6 Q And as well as the defendant, Kamell Evans?
- 7 A Yes, ma'am
- 8 Q How many pages are to that statement?
- 9 A There are three typed pages
- 10 Q Three typed pages?
- 11 A Yes, ma'am
- 12 Q At any time during the giving of the statement did you
- 13 ask Kamell Evans to draw you a diagram?
- 14 A Yes, ma'am, I did
- 15 Q I show you what's been marked as State's Exhibit
- 16 Forty-three-A and ask you do you recognize it
- 17 A Yes, ma'am
- 18 Q How is it that State's Exhibit Forty-three-A
- 19 transpired? How did that come about?
- 20 A The drawing?
- 21 Q Yes, sir
- 22 A As we were speaking with the defendant he was
- 23 describing a layout of the house and where people were
- 24 positioned And I was not familiar with the house, hadn't
- 25 been there and didn't know where he was talking about So

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 I asked him just to do me a little sketch so that I could
2 see where he was talking about as he was telling me these
3 things And that's where This is his drawing

4 Q That is his drawing?

5 A Yes, ma'am

6 Q Does it also bear his signature?

7 A It does

8 Q And does it also bear your signature and the signature
9 of Investigator Silvaggio?

10 A Yes, ma'am

11 Q And you incorporated as a part of his statement,
12 correct?

13 A Yes, ma'am

14 Q Investigator Kindley, at any time during the giving of
15 the statement, including the drawing, did you or
16 Investigator Silvaggio ever threaten the defendant in order
17 to get him to give you that statement?

18 A No, ma'am

19 Q Did you or Investigator Silvaggio ever promise
20 anything to the defendant or hold out any hope of reward to
21 the defendant to get him to give you this statement?

22 A No, ma'am

23 Q At any time during the process from when you were with
24 the defendant did he ask for food or water or any type of
25 sustenance?

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 A At the very beginning when we went into the office I
2 asked him if he needed to use the restroom, if he was
3 hungry, if he was thirsty He asked for a cup of water I
4 always ask the person are you under the influence of any
5 drugs or alcohol before I do the rights waiver just to
6 clarify in my mind that they can understand what I am
7 talking about And the only thing that he asked for was a
8 cup of water and said that he was not under the influence
9 of drugs or alcohol

10 Q When he asked for a cup of water, what did you do?

11 A We got him a small styrofoam cup of water

12 Q Did he ever during the process of giving the statement
13 say to you that he did not wish to talk to you?

14 A No, ma'am

15 Q At any time during the process of the advice of rights
16 or the giving of the statement did he indicate to you that
17 he wanted a lawyer?

18 A No, ma'am

19 Q Did he ever make that indication to Investigator
20 Silvaggio?

21 A No, ma'am

22 Q At any time during the advice of rights and/or taking
23 of the statement did he ever advise you that he did not
24 want to give a statement and he wanted to stop talking?

25 A No, ma'am

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 Q Investigator Kindley, what was the defendant's
2 demeanor during this process?

3 A He was very calm, he was cooperative, he didn't appear
4 agitated, and he was willing to give his side of the story

5 Q Did he ever become agitated with you?

6 A No, ma'am

7 Q Upset with you in any way?

8 A No, ma'am, not at all

9 Q Did he appear to you to understand the questions you
10 were asking him?

11 A Yes, ma'am

12 Q Did he appear to you to waive his rights and give his
13 statement freely and voluntarily?

14 A Yes, ma'am

15 Q At the conclusion of taking the statement from the
16 defendant, Kamell Evans, did you give him an opportunity to
17 read that statement?

18 A Yes, ma'am

19 Q How did that transpire?

20 A Investigator Silvaggio printed this 3-page statement
21 up and brought it in, and then we asked the defendant to
22 read it carefully and since it was his statement and in his
23 words to make sure that there were no corrections,
24 additions or deletions that we needed to do and if it was
25 the way he wanted we could sign it and if not we would

Jeffrey Kindley (In-camera)
Direct examination by Ms Strom

1 change it

2 Q And are you aware if Mr Evans made any corrections?

3 A Yes, ma'am He made several

4 Q Do you know approximately how many he made? Can you
5 look at the statement and let me know?

6 A I can

7 (Pause)

8 A I see six I'm sorry Seven

9 Q On page one of the statement, how many corrections do
10 you see on page one?

11 A Two on page one

12 Q On page two?

13 A Let's see, three on page two

14 Q And page three?

15 A Oh, there are three on page three, so that would be
16 eight total

17 Q Each time a correction was made on the statement did
18 you ask the defendant to initial those corrections?

19 A Yes, ma'am

20 Q Did he so initial those corrections?

21 A Yes, ma'am, he did

22 Q After the defendant made these corrections did you ask
23 him if he was willing to sign this as his statement?

24 A Yes, ma'am

25 Q And did he so sign as his statement?

Jeffrey Kindley (In-camera)
Cross-examination by Mr Sumner

1 A Yes, ma'am, he did

2 Q Did you provide a copy, or you or Mr Silvaggio
3 provide the defendant with a copy, of his statement?

4 A Yes, ma'am

5 Q Did Mr Evans also sign as having received a copy of
6 his statement?

7 A Yes, ma'am

8 Q Did Mr Evans also receive a copy of the drawing that
9 was included with the statement?

10 A Yes, ma'am

11 MS STROM Court's indulgence, Your Honor

12 (Pause)

13 Q And again, Agent Kindley, at any time during the
14 process did you or Investigator Silvaggio lay any hands on
15 him, hit him, coerce him, threaten him or in any way get
16 him to waive his rights and give you a statement?

17 A No, ma'am

18 Q Thank you Please answer any questions the defense
19 may have

20 CROSS-EXAMINATION

21 BY MR SUMNER

22 MR SUMNER May it please the Court

23 Q Agent Kindley, I am Steve Sumner I know that we've
24 met before

25 A Yes, sir

Jeffrey Kindley (In-camera)
Cross-examination by Mr Sumner

1 Q Did you read the defendant his rights off the
2 advisement form, Agent? Did you give him the form and let
3 him read the rights?

4 A I actually read it to him

5 Q You did?

6 A Yes, sir

7 Q You mentioned earlier that you felt that his demeanor,
8 you would describe it as calm and cooperative

9 A Yes, sir

10 Q And I think you said he was willing to give his side
11 of the story, is that correct?

12 A Yes, sir

13 Q Did he ever cry in your presence?

14 A Not that I remember

15 Q Do you recall him becoming emotional at all at any
16 time that you dealt with him?

17 A Emotional as to?

18 Q Fits of crying or just breaking down

19 A No, sir He was, he was what I would call very calm
20 and very cooperative with me But as being emotional, no,
21 sir, crying fits, no, sir

22 Q You didn't witness that at all?

23 A No, sir I can't recall that

24 Q And how long was he approximately in your presence
25 while you were taking the statement before and after -- a

Jeffrey Kindley (In-camera)
Cross-examination by Mr Sumner

1 ballpark?

2 A During the statement-taking process or during the day?

3 Q During the day and then the statement process as well

4 A Several hours during the day We started the waiver

5 of rights at 8 11 I don't have a time on the, the

6 statement form I can't recall off the top of my head

7 Well, in fact, the drawing is, has a date and a time on it

8 of 10 30 So at least a couple of hours

9 Q A good amount of time I mean, you were with him more
10 than 30 or 45 minutes

11 A Yes, sir

12 Q Now, he initialed the advisement form, is that
13 correct?

14 A Yes, sir

15 Q Several times, is that right?

16 A Yes, sir

17 Q Could I see it, please, for a second? And these are
18 his initials every time this form bears the letters K E.

19 These are his initials, is that right?

20 A Yes, sir That's correct

21 Q And that's his signature, is that correct?

22 A Yes, sir

23 Q And he also signed the statement, is that right?

24 A Yes, sir

25 Q Now, did he ever hesitate to your recollection in

Jeffrey Kindley (In-camera)
Cross-examination by Mr Sumner

1 executing the advisement of rights form to your
2 satisfaction?

3 A As far as the signatures?

4 Q Right Did he ever hesitate in initialing the
5 signature? Did he ever appear to waiver about whether or
6 not he wanted to speak with you?

7 A No, sir He was -- no, sir, not at all

8 Q I am assuming he appeared mentally stable to you based
9 on your earlier testimony

10 A Yes, sir

11 Q Was he handcuffed during this process?

12 A No, sir

13 Q He was not?

14 A No, sir

15 When I initially arrived, he was handcuffed When he
16 was taken into the office with Investigator Silvaggio and
17 I, he was not handcuffed

18 Q Did he have on leg shackles?

19 A No, sir

20 Q So his movement was not restricted in any way, is that
21 right?

22 A That's correct

23 Q Was he already under arrest at that point?

24 A I am not sure if he had been formally arrested He
25 was not free to leave, but I hadn't placed him under

Jeffrey Kindley (In-camera)
Cross-examination by Mr Sumner

1 arrest

2 Q But he was Mirandized as if he had been arrested

3 A Yes, sir, before the questioning

4 Q Do you recall if there were any other officers around
5 other than yourself and Detective Silvaggio?

6 A During?

7 Q During the statement-taking process

8 A No, sir There was no one else present

9 Q Just y'all two

10 A Yes, sir, in that office Now, in the other areas of
11 the investigation division there were officers there But
12 that's why we went to the private office

13 Q And it would just be the defendant, yourself and
14 Detective Silvaggio in the private office

15 A Yes, sir

16 Q Was there any video tape or audio tape created of
17 Mr Evans' statement at all?

18 A No, sir

19 Q Other than the ball-hat comment that you testified to
20 is there -- does the typed statement fully comprise the
21 statement that he made to you, that evening to you, and the
22 detective?

23 A Yes, sir

24 Q So you know what I'm asking Other than the ball
25 comment that's not there --

Jeffrey Kindley (In-camera)
Redirect examination by Ms Strom

1 A Right

2 Q -- everything else he said is contained in that
3 statement

4 A It's there, yes, sir

5 Q Is there any reason that the ball comment was not made
6 a part of the report or the statement?

7 A Because at that point I briefly interrupted them I
8 was on the telephone and wanted to find out for Agent
9 Donohue if it needed to be collected or not, and then we
10 continued on So we just inadvertently forgot to add that
11 back in there

12 Q And I am not sure if I heard you testify to this or
13 not Was the defendant, was Mr Evans, given a copy of
14 that statement that evening?

15 A Yes, sir

16 Q He was?

17 A Yes, sir

18 Q One second, please, Your Honor

19 (Pause)

20 Q Thank you I don't have any other questions

21 MS STROM Redirect very briefly, Your Honor

22 REDIRECT EXAMINATION

23 BY MS STROM

24 Q Agent Kindley, my failure The person who gave you
25 that statement on April the 2nd of 2003, is it the

Jeffrey Kindley (In-camera)
Redirect examination by Ms Strom

1 defendant seated at counsel table?

2 A Yes, ma'am, it is

3 Q And the time, you noticed a time signed on the drawing
4 as 4/2/03 at 10 30 Is that 10 30 a m or 10 30 p m?

5 A That's a m

6 Q That's a m So the whole process started at
7 approximately 8 11 a m

8 A Yes, ma'am

9 Q And went through his advice of rights, he gave you the
10 statement, you allowed him to review the statement, he made
11 changes, and then he signed the statement and the drawing,
12 is that correct?

13 A Yes, ma'am

14 MS STROM Thank you, Your Honor

15 MR SUMNER No recross

16 THE COURT You may step down

17 MS STROM Your Honor, we are prepared to call
18 Investigator Silvaggio, but he would testify essentially
19 the same as Investigator Kindley regarding the advice of
20 rights and the statement given We are prepared at this
21 time to call him or present the statement and advice of
22 rights at this time

23 THE COURT Are you asking for my suggestion?

24 MS STROM No, sir I will call Investigator
25 Silvaggio

Motion

1 THE COURT Well, that's up to you if you would like
2 to

3 MS STROM The Court's indulgence
4 (Pause)

5 MS STROM Your Honor, I don't intend to call
6 Investigator Silvaggio

7 We have presented our evidence on the statement We
8 would submit the, we would offer State's Exhibit Forty-two,
9 Forty-three, and Forty-three-A

10 (Defendant's waiver marked State's Suppression Exhibit
11 Number Forty-two, defendant's statement marked State's
12 Suppression Exhibit Number Forty-three, defendant's drawing
13 marked State's Suppression Exhibit Number Forty-three-A)

14 THE COURT They are admitted for the purpose of this
15 hearing

16 Mr Sumner

17 MR SUMNER Your Honor, we would stand by the motion
18 to -- that the statement not be admissible

19 THE COURT Well, would you like to offer any evidence
20 or testimony on the issue?

21 MR SUMNER No, sir, I would not

22 THE COURT Have you discussed with Mr Evans his
23 right to testify at this hearing?

24 MR SUMNER I will do that right now

25 (Pause)

Motion

1 MR SUMNER Your Honor, Mr Goldsmith and I have
2 advised Mr Evans that he does have the right to testify
3 regarding this particular issue today before the Court, and
4 he declines that right And we will not present any
5 evidence or testimony on the admissibility of the
6 statement

7 THE COURT All right Mr Evans, you heard what your
8 lawyer told me

9 THE DEFENDANT Yes, Your Honor, I have

10 THE COURT Do you agree with his statement?

11 THE DEFENDANT Yes, Your Honor

12 THE COURT Do you understand the purpose of this
13 hearing?

14 THE DEFENDANT Yes, Your Honor

15 THE COURT Your lawyer has asked that the statement
16 be suppressed, and he's asking for me as the Court to
17 determine the voluntariness of the statement before it is
18 to be submitted to the jury for their consideration

19 And the purpose of this hearing is for me to determine
20 whether or not that statement ought to be admitted And
21 before it can be admitted I would have to determine that
22 the statement was voluntarily made And therefore any
23 evidence received during this hearing is submitted for that
24 limited purpose for me to determine whether or not the
25 statement ought to be allowed to be provided to the jury

Motion

1 Now, the state has completed their presentation You
2 would also have the right to testify or call witnesses if
3 you wanted to to present any relevant testimony or evidence
4 relating to that issue, that is the voluntariness of the
5 statement

6 Your lawyer indicates that he's explained that to you
7 and that you have made the decision that you did not wish
8 to testify at this hearing and you do not wish to offer any
9 other evidence Is that your decision?

10 THE DEFENDANT That is my decision, Your Honor

11 THE COURT And you understand the consequences of
12 that decision?

13 THE DEFENDANT Yes, I do, Your Honor

14 THE COURT All right Thank you Be seated
15 Anything further?

16 MR SUMNER Nothing from the defense, Your Honor

17 MS STROM Nothing from state, Your Honor

18 THE COURT All right Having considered all of the
19 testimony and the evidence received during the hearing, I
20 do find that by a preponderance of the evidence that the
21 statement alleged to have been made by the defendant was
22 made freely, knowingly and intelligently and that the
23 defendant was properly advised of and did understand and
24 voluntarily waived his constitutional rights as provided
25 for under the Miranda decision

Motion

1 And I further find that the statement alleged to have
2 been made by the defendant was not the result of any
3 promises, pressure or coercion, and that considering the
4 totality of the circumstances surrounding the making of
5 that statement that the statement was voluntarily made by
6 the defendant and therefore is admissible

7 MS STROM Thank you, Your Honor

8 THE COURT What other motions do we have?

9 MR SUMNER Your Honor, as I mentioned earlier, the
10 motion to suppress the search warrant, the results of the
11 search warrant, we would like to hold that pending whether
12 or not there is a penalty phase of the trial that deals --
13 the purpose of the motion was geared toward that, not
14 toward the guilt phase

15 THE COURT Okay Any other pretrial motions we need
16 to address?

17 MR SUMNER No, sir

18 MS STROM None from the state, Your Honor

19 THE COURT All right Court is in recess until
20 9 30 in the morning, 9 30 in the morning

21 END OF PROCEEDINGS SEPTEMBER 16, 2004

22

23

24

25

1 (Proceedings September 17, 2004)

2 (The following takes place outside the presence of the
3 jury)

4 THE COURT Any matters to be addressed before the
5 jury is sworn?

6 MR SUMNER Your Honor, may it please the Court

7 I just want to put on the record that Mr Evans has
8 been examined by a licensed neuropsychologist and by a
9 license psychiatrist in the State of South Carolina, that
10 both of those individuals have reported to me that he is
11 competent to stand trial, that he is competent to assist in
12 his defense, that he was not legally insane at the time
13 that this incident occurred, nor was he mentally ill in the
14 definition of guilty-but-mentally-ill standard

15 So I want to put that on the record -- and also that I
16 had no trouble conversing with him He met with me and Mr
17 Goldsmith numerous times, and I don't see any issue about
18 competency to stand trial

19 THE COURT All right, sir Let me see the lawyers
20 just a minute, please

21 (Bench conference held off the record)

22 THE COURT All right Bring the jury in, please, and
23 ask Ms Kirby to take the foreperson's seat -- Ms Kirby

24 (Pause)

25 THE COURT All right I am going to ask Mr Colling

1 to serve as the foreperson

2 (The following takes place in the presence of the
3 jury)

4 THE COURT Good afternoon, ladies and gentlemen

5 We are ready now to begin with the trial of the case
6 for which you have been selected

7 And, Mr Colling, I am going to ask you if you will
8 please serve as the foreperson of this jury

9 Now, as the foreperson of the jury you will have three
10 specific duties that none of the other jurors will have
11 Number one, you are asked to serve as the spokesperson for
12 the jury And that simply means that if something occurs
13 during the course of the trial that needs to be brought to
14 my attention, that is you or one of your fellow jurors has
15 any difficulty or problem or question, if you will let the
16 bailiff know, they will let me know, and I will try to
17 assist you in resolving any difficulty or answering any
18 question that you may have

19 Secondly, you are going to be asked to preside over
20 the jury deliberations when the time comes for those
21 deliberations That, of course, will not be until the end
22 of the trial after all of the evidence has been received
23 and the jury has been instructed on the law that's
24 applicable But when that time comes for jury
25 deliberations, you will be asked to preside over that

1 process in the jury room simply to ensure that it is
2 carried out in some orderly fashion

3 But, of course, all of the jurors should participate
4 in those deliberations, because any decision the jury makes
5 is intended to be the unanimous consensus opinion of all 12
6 jurors And so all of you are going to have an equal say
7 in the ultimate decision

8 And, thirdly, Mr Colling, you will be asked to
9 actually write the verdicts or the decisions of the jury,
10 whatever those decisions might be And you will indicate
11 those on a verdict form that I will provide you at the
12 trial's conclusion on which you will indicate the jury's
13 unanimous decision

14 As I say, all of you will have an equal say and an
15 equal voice and an equal vote in what the ultimate
16 decisions will be in this case, because the verdict of the
17 jury must be unanimous All 12 of you must be in
18 agreement

19 Now, we have got three alternate jurors -- Mr Freeman
20 and Mr Sullivan and Mr Hawkins Now, each of you will be
21 serving throughout the trial, but you will not be able to
22 participate in deliberations unless during the course of
23 the trial one of the original 12 jurors is unable to
24 participate further

25 The function of an alternate is to take the place of

Jury sworn

1 one of the original 12 jurors in the event one of the
2 original 12 cannot continue to serve for some reason during
3 the course of the trial And if one or more original
4 jurors are unable to continue to participate in the trial
5 of the case, then one or more of you alternates will be
6 called upon to participate as the twelfth juror

7 So it is important that you pay just as careful
8 attention as we ask of all of the jurors in the case
9 because it does occur from time to time for one reason or
10 another one or more of the original jurors may be called
11 away And in that event one or more of you alternates
12 would be called upon to take those jurors' places

13 So we do appreciate the participation of the alternate
14 jurors just as we appreciate the participation of all of
15 you jurors who have been selected for the purpose of
16 deciding the verdict in this particular case

17 You may swear the panel

18 (Whereupon, the jury was duly sworn)

19 THE COURT All right Ladies and gentlemen, as you
20 are well aware, you have been selected to decide the
21 verdicts in the case of the State vs Kamell Delshawn
22 Evans

23 These, as you know, are criminal cases Mr Evans has
24 been accused by the state of various criminal offenses
25 The allegations setting forth those particular offenses are

1 contained in indictments And the indictments are those
2 documents that I referred to prior to your selection in the
3 case

4 As the clerk has told you again, Mr Evans is charged
5 by the state with the crimes of murder, two separate
6 counts, kidnapping, two separate counts, one count of
7 burglary in the first degree, and two counts of possession
8 of a firearm during the commission of a violent crime, that
9 violent crime alleged to be murder

10 The allegations setting forth those offenses are
11 contained in the indictments, but the indictments are not
12 evidence in the case You are not to consider the
13 indictments as being any evidence against this defendant

14 The indictments are simply the formal means by which a
15 person is brought into this court and is formally accused
16 of a crime And, of course, the indictments also serve to
17 put the defendant on notice as to what crimes the state
18 alleges that he has committed But the indictments are not
19 evidence in the case and you are not to consider those
20 indictments as being any evidence against the defendant

21 Now, as to each of the charges that are set forth in
22 each of the indictments the defendant as entered a plea of
23 not guilty And that plea of not guilty therefore has
24 placed upon the state the burden of proving all of the
25 allegations that are set forth in each indictment, the

1 burden of proving each of the essential elements that
2 constitute the crimes that are alleged against this
3 defendant, and therefore the burden is upon the state to
4 establish the defendant's guilt to the satisfaction of you
5 12 jurors beyond a reasonable doubt before a verdict of
6 guilty could be returned as to any charge alleged against
7 him by the state

8 Under the constitution and the laws of this state
9 every defendant in a criminal trial, no matter how great or
10 how serious might be the offense for which that person
11 stands charged, that person shall always be presumed
12 innocent of that charge

13 And that presumption of innocence remains with every
14 defendant, as it does with this defendant, from the moment
15 of his arrest and throughout the course of the criminal
16 process and even throughout the course of the actual trial
17 in the case

18 And that presumption of innocence will be with
19 Mr Evans even at the time that you go back into your jury
20 room to begin with your deliberations in this case And
21 that presumption of innocence will be with him there, and
22 it will remain with him forever, unless you 12 jurors
23 determine that he's no longer entitled to that presumption
24 of innocence

25 That is after you have carefully considered all of the

1 evidence in the case and decided the facts and applied the
2 law as I will have provided it to you for your benefit, if
3 you determine that his guilt has been proven beyond a
4 reasonable doubt as to some particular criminal charge,
5 then the defendant would no longer be entitled to the
6 presumption of innocence as it relates to that particular
7 charge

8 But the defendant would be always entitled to the
9 presumption of innocence unless and until the state has
10 proven his guilt to your satisfaction beyond a reasonable
11 doubt

12 As jurors in the case it's simply your obligation and
13 duty to listen attentively to the evidence in this case and
14 to make a determination of what you believe to be the true
15 facts as they relate to these particular charges And once
16 you decide those facts, then you are simply asked to apply
17 the law that I will provide you and determine whether or
18 not the defendant has been proven guilty beyond a
19 reasonable doubt

20 Now, the way the trial will proceed is that in a
21 moment the lawyers are going to address you in opening
22 statements

23 There are two occasions in the trial of a case where
24 lawyers are permitted to address the jury, and that is at
25 the beginning of the trial before any evidence has been

1 introduced or received and then again at the conclusion of
2 the trial after all of the evidence has been presented and
3 received

4 Keep in mind however that the lawyers' statements are
5 not evidence in this case The lawyers aren't witnesses to
6 anything They will not be telling you anything that they
7 know of their own personal knowledge

8 They are not placed under oath They don't testify
9 from the witness stand as witnesses will They are not
10 subject to cross-examination or direct examination

11 So what they tell you is not evidence in the case
12 You should, however, listen to what they have to say
13 because their statements do serve a purpose

14 The opening statements will serve to provide with you
15 a basic understanding as to what this case is about so that
16 you will have some context in which to place the evidence
17 that we will be receiving shortly thereafter

18 The closing statements of the lawyers occur after all
19 of the evidence has been received And while they are not
20 evidence, it provides the lawyers with an opportunity to
21 discuss with you the evidence that you have seen and heard
22 during the trial of the case And through that discussion
23 each will have an opportunity to try to persuade you or to
24 convince you that that evidence does or does not support a
25 particular decision

1 Now, it's in between the statements of the lawyers,
2 the opening statements and the closing statements, that we
3 actually receive the evidence in the case on which you will
4 decide the facts and base your verdict

5 As you are aware, the state has the burden of proof
6 The state has to prove the defendant guilty beyond a
7 reasonable doubt So the state will go forward first in
8 its presentation of evidence.

9 Once the state has conclude in that presentation of
10 evidence the defendant has the same opportunity to present
11 evidence by way of testimony or otherwise

12 But, as I told you previously, the defendant is not
13 obligated to testify and is not obligated to present
14 evidence, because the burden is not upon the defendant to
15 prove that he is not guilty The burden is upon the state
16 to prove that he is guilty However, both sides are
17 afforded an opportunity to present evidence should they
18 wish to do so

19 After all the evidence has been received and after you
20 have heard from the lawyers in their final summations, I
21 will then instruct you in detail on the law that is
22 applicable in cases of this nature Then you'll be asked
23 to go back into your jury room and to begin your
24 deliberations in the case

25 Through that process you 12 jurors are simply called

1 upon through the exercise of good judgment and common sense
2 conscientiously applied to the testimony and evidence in
3 this case to decide what you believe to be the true facts
4 as they relate to these allegations

5 Once you decide those facts, you will then apply the
6 law that I will have provided you, and you will determine
7 whether or not the defendant has been proven guilty of any
8 crime alleged against him by the state

9 If he has been proven guilty beyond a reasonable
10 doubt, your verdict would be guilty, if he has not been
11 proven guilty beyond a reasonable doubt as to a particular
12 crime, then your verdict would be not guilty

13 Now, all that we ask for you to do throughout the
14 course of the trial is to pay careful attention You have
15 been selected to perform a very important duty and
16 function

17 It is important that you give every degree of
18 attention to every witness as they testify and be
19 completely focused to the task at hand

20 During the course of this trial and during your
21 deliberations you might be required to assess a witness'
22 credibility There might be contradictions in testimony
23 Some of those contradictions, if there are any, might be
24 material to a resolution of the case

25 So you might be called upon to assess the credibility

1 of a witness' testimony, and so therefore it's important
2 that you give every witness the same degree of attention as
3 they testify so that at the trial's conclusion you will be
4 in a position to be able to judge each witness' testimony
5 in light of not only that witness' testimony but in light
6 of all of the testimony and all of the evidence received
7 during the trial of the case

8 It's also important that you keep an open mind
9 throughout the course of the trial And by that I simply
10 mean that you are not to begin making up your minds or
11 formulating your opinions as to what you think the ultimate
12 decisions ought to be in this case until all of the
13 evidence has been received, until you have heard the
14 summations of the lawyers, until I have instructed you on
15 the law and until you have been asked to begin with your
16 deliberations at the trial's conclusion

17 That is the process that is designed for you 12 jurors
18 to arrive at a fair and just decision in this case

19 So I do want to thank you in advance for your
20 participation in the case, as well as for your careful
21 attention

22 I would ask that you please give the lawyers your
23 attention now as they give you their opening statements

24 Solicitor

25 MR AIRIAIL Thank you, Your Honor

Opening statements

1 Mr Foreman and ladies and gentlemen of the jury, I
2 will reintroduce myself I think I met about all of y'all
3 during the initial examination But I am Bob Ariail, the
4 solicitor for the Thirteenth Circuit

5 The solicitor is responsible in this state for
6 handling any criminal prosecutions, and, in particular, the
7 solicitor in this case is handling the case against Kamell
8 Evans

9 Assisting me in this case will be my deputy,
10 Ms Strom, in the brown and Ms Hodge who is one of my
11 assistants in the black

12 You have met various other people The bailiffs will
13 assist you during the course of the trial The court
14 reporter will take down everything that is said during the
15 course of this trial and keep track of various exhibits and
16 things The clerk seated will take care of the documents
17 that are introduced that are official documents And the
18 judge, of course, has already instructed you regarding the
19 law, and he is the final determiner of what the law is in
20 this case

21 Your role however is to determine the facts that are
22 to be discussed in this case, and we will talk about that a
23 little bit later

24 I know we've made you nervous over the last several
25 days bringing you into an environment that is totally

Opening statements

1 foreign to what you normally do And last night when I
2 went home, and when I went home I was sitting and having
3 dinner with my family and I started thinking about you 15
4 sitting in a motel somewhere and coming in here yesterday
5 afternoon from your shopping or at work or your jobs or
6 family or wherever, and all of a sudden you were in this
7 box And the box was being covered by six SLED agents who
8 were your custodians And all of a sudden you were marched
9 out and you went home to a motel and not to your families
10 and your jobs

11 We realize that is an unsettling sort of event, and it
12 is something that we are aware of But a case of this
13 nature is very difficult, and jury service is difficult.

14 And our system requires, however, an orderly system
15 requires, that we have conscientious jurors willing to
16 sacrifice and come to deal with jury service, or otherwise
17 our system will fail

18 So this is a very serious case and I know you will
19 give it very serious consideration And we are aware of
20 the interruption in your time

21 And I can assure you that the state has organized its
22 presentation It will be extremely efficient, to the point
23 and as short as possible to prove various elements that we
24 need to prove

25 The purpose of the opening statement, that is the

Opening statements

1 lawyers getting up here and talking to you as I am talking
2 to you now, is to give you a road map of where we are going
3 so that you can in advance kind of know what to be looking
4 for, what's going to be important and what decisions you're
5 going to have to make

6 You have heard a lot about two phases of this trial
7 during the course of the voir dire We were talking about
8 the sentencing phase and the guilt phase and all of that
9 sort of thing

10 We are in the guilt phase The only issue we are
11 going to talk about for the next couple of days is to,
12 relates to the guilt of the defendant of these various
13 charges

14 His Honor has read to you the various charges -- two
15 counts of murder, there are two counts of kidnapping, there
16 is two counts of commission of a crime, along with a deadly
17 weapon and at least one count of burglary I am going to
18 explain to you those in some detail The judge, however,
19 will give you the total law at the end of the case

20 Your role, as we stated earlier, was to, is to listen
21 to evidence and figure out what happened, what happened in
22 this case according to the testimony That's what you are
23 to do

24 I will give you a simple example When I graduated
25 from law school somebody told me the jury is supposed to

Opening statements

1 decide what the facts are I didn't quite grasp that But
2 to put it in simple context, when there is a crash of two
3 cars at an intersection and both drivers get out and they
4 testify the light was green for both of them and somebody
5 then testifies, well, the light mechanically was wrong or
6 it had been messing up, and they all come into court and
7 they render their various testimony, the jury is the group
8 who determines what the facts were, what light was green
9 for what person and how properly was it working That's a
10 factual connotation that the jury must undertake

11 And that's what we are talking about We are going to
12 talk about facts You are to determine what actually
13 happened in this case, and then you are going to apply it
14 to the law

15 Now, before you can really understand what you are
16 supposed to do and which facts are important, you know, if
17 you are sitting on a speeding case, the facts that you are
18 interested in would be vastly different from if you were on
19 a possession of drugs case

20 So what you have got to know in advance is what are we
21 really talking about here And the judge has told you he
22 is charged with seven criminal offenses They are
23 duplicate in three instances

24 The judge has read the indictments to you They have
25 been published They will be part of your deliberation

Opening statements

1 They are not evidence, but you can read them specifically.
2 But I want to give you a little brush across the top of
3 what each one is, because each crime has elements, that is
4 building blocks that make it up. It's components that the
5 state must prove various elements. There are various parts
6 of the crime that we will need to show you.

7 Burglary is the entering of the dwelling house of
8 another without consent or by force, either entered in the
9 nighttime or entered while armed with a deadly weapon.

10 We are talking about entering someone's house armed
11 with a deadly weapon, or in the nighttime, with the intent
12 to commit a crime therein, and/or causing physical injury
13 to someone while in the residence. All right. That's
14 burglary.

15 Kidnapping. You have all heard about kidnapping.
16 Kidnapping is not maybe exactly what you think it is.
17 Kidnapping as defined by our Section 16-3-20, it's unlawful
18 to seize, confine, kidnap or carry away any other person by
19 any means whatsoever without authority of law.

20 So you don't have to carry someone away and put them
21 in a car and drive them off and demand a ransom to commit
22 kidnapping. Kidnapping can be done by not even moving
23 anyone from a location. But if you confine them against
24 their will without authority of law, particularly using
25 deadly force, then that becomes the crime of kidnapping.

Opening statements

1 The third offense that has been charged is murder.
2 Murder is the killing of a human being with malice
3 aforethought. And the key words there are malice and
4 aforethought.

5 Malice is wickedness, maliciousness, evilness,
6 meanness. You kill someone with malice, then you are mean
7 and wicked.

8 It can be inferred from the nature of the act. It is
9 not something that must be testified to that a defendant
10 said I'm going to kill you with malice. Malice is inferred
11 from the circumstances, the nature of the crime and the --
12 it is a state of mind, so it's inferred from activities
13 that a person takes from committing a crime.

14 Aforethought. Aforethought means not what a lot of
15 people think. Aforethought is not planning, not advance
16 planning of any degree. It is simply at the time the fatal
17 blow is struck the person who strikes the fatal blow must
18 intend to commit and strike the fatal blow.

19 It doesn't have to be for any appreciable period of
20 time. It can be for as short as a second just as long as
21 at the time of the fatal blow the person intended to strike
22 the fatal blow. And that's what aforethought is about,
23 when the defendant intends, he intends, at the time he
24 pulled the trigger to pull the trigger. It was his intent
25 to pull the trigger and fire another bullet into another

Opening statements

1 man's body He intended that act That is aforethought
2 That's all the law requires that the state prove

3 Lastly, the state is never required, never required,
4 to prove motive Motive is not a part of any crime As
5 you can well understand, a lot of these crimes you could
6 never understand why they would be committed So the state
7 does not have to prove motive The law doesn't require it

8 The last two crimes before us are the use of a deadly
9 weapon during the commission of a violent crime That's
10 self-explanatory if there's a deadly weapon present -- a
11 gun or a knife This case will show the gun -- the crime,
12 the commission of deadly weapon -- the commission of a
13 crime accompanied by a deadly weapon will be established by
14 that

15 So what are the issues that you will be asked to
16 decide in this case? The first issue will be was there a
17 burglary at the home of Antonio and Marcia Sapinoso on
18 April the 1st of 2003 Did someone enter their house in
19 the nighttime by force and commit a crime therein?

20 Were Mr Sapinoso and his son, Joe, kidnapped on April
21 the 1st of 2003 and held against their will at gunpoint in
22 that residence?

23 Your third issue is were Mr Sapinoso and his son Joe
24 murdered, as we have discussed the elements of murder

25 Four, were the crimes of burglary, kidnapping and the

Opening statements

1 two murders and the -- committed while the defendant was in
2 the possession of a deadly weapon? Those are the four
3 things you are to decide

4 The fifth, did the defendant commit these crimes?

5 Now, based on the evidence we will present to you
6 there will be a resounding and unquestionable answer of yes
7 to all of those issues

8 So what evidence is the state going to present to you?
9 We are going to present to you a lot more evidence than I
10 am going to tell you about But I am going to give you a
11 summary of what this case -- of what we are going to prove

12 On the night of April the 1st of 2003 Joe Sapinoso who
13 was a Greenville County deputy sheriff worked late at a
14 Greenville County Council meeting The county council was
15 at that time discussing the holiday, the Martin Luther King
16 holiday, and additional security was needed in the council
17 chambers He was working late providing that after having
18 worked his regular job as a deputy sheriff, as an
19 investigator

20 He lived at the home of his parents at 312 Chetsworth
21 Lane in Mauldin, South Carolina After his security job
22 was over at county council, he came home

23 On his way home, sometime arriving around 10 30, the
24 defendant, Mr Evans, was hiding behind a next-door house
25 that was under construction awaiting for Mr Sapinoso, Joe,

Opening statements

1 to arrive

2 Mr Evans had parked his truck many blocks away and
3 had walked to his hiding place When he arrived at his
4 hiding place behind the house next door he was armed with
5 two guns, a nine-millimeter, a 380 caliber weapon with
6 over a hundred rounds of ammunition and a buck knife,
7 carrying all of those with him to the proximity of the
8 Sapinoso residence

9 When Joe Sapinoso exited his car he was accosted by
10 Mr Evans at gunpoint His weapon, duty weapon issued by
11 the sheriff's office, was removed from his person, taken by
12 the defendant

13 Joe was startled at that time and left beside his
14 car -- and we will show you photographs of this -- his
15 sheriff's duty bag and also his lunch bag and also his cell
16 phone They were setting beside the car This is eleven
17 o'clock, 10 30 or eleven o'clock at night

18 The two were then -- the two marched into the house at
19 gunpoint and inside encountered Joe's father, Mr Sapinoso
20 I will refer to Joe as Joe because I knew Joe I will
21 refer to Mr Sapinoso as his father, Mr Sapinoso And
22 they both were held inside at gunpoint

23 The defendant at that time called Joe Sapinoso's
24 sister, Christina Rodriguez, on her cell phone and told her
25 to come home, that he was holding her family hostage, that

Opening statements

1 he had two guns and he would kill her if she didn't come
2 home

3 Christina was Joe's sister and had recently broke a
4 relationship off with Mr Evans on the Tuesday before this
5 took place

6 And then the group sat and waited in the house,
7 waiting on Christina, for her to come home Unbeknownst,
8 upstairs Ms Sapinoso was in the house with their
9 seven-year-old grandchild Sergio And Sergio and the
10 grandmother hid in the back of the closet, hearing what was
11 going on downstairs to some extent

12 Christina, after receiving the call, called the
13 police, something she had been told not to do, to call the
14 police

15 The Greenville County Sheriff's Office, Mauldin police
16 and others arrived in sort of a clandestine operation not
17 to upset the situation

18 The SWAT team was called out Snippers were stationed
19 in appropriate positions, and officers were placed around
20 the home at a far distance except for two small groups of
21 officer who were next to the outside walls of the house in
22 the event it was necessary to storm the house if something
23 occurred

24 Tony Lee, a trained hostage investigator, will testify
25 that he was called to the scene to begin hostage

Opening statements

1 negotiations with Mr Evans over the telephone These
2 negotiations were established, and they went on for four
3 hours

4 The defendant's family -- his mother, his father, his
5 sister, his football coach, Christina -- all talked to the
6 defendant during that 4-hour period and urged him and
7 begged him to come out They will fully describe it It
8 will all be described to you by Tony Lee

9 At four o'clock all indications were that the
10 defendant was coming out This is now April the 2nd All
11 the indications were that the situation had resolved itself
12 and was calm and that the defendant was going to come out
13 and surrender

14 Unfortunately, at 4 00 a m seven shots were fired
15 from inside the house in a period of less than ten seconds

16 The SWAT team immediately knocked the doors down and
17 came through The defendant was found in the house
18 standing over the two guns that I told you about, the
19 Lorcin nine-millimeter and the 380 caliber weapon, along
20 with a third gun which was Joe Sapinoso's duty-issued
21 sheriff's office weapon

22 He was arrested Mr Sapinoso and Joe were found in
23 the den next to the hall dead of multiple gunshot wounds to
24 the head Ms Sapinoso and Sergio were still after the
25 four hours of negotiations found hiding in the upstairs

Opening statements

1 bedroom closet, and they were taken from the house

2 The defendant was arrested and taken to the law
3 enforcement center by SLED agents and interviewed at that
4 point by SLED Agent Jeff Kindley Mr Kindley will give a
5 full testimony of what occurred At that time the
6 defendant gave a full and complete statement admitting his
7 involvement and admitting his killing of Mr Sapinoso, Joe,
8 acknowledging the burglary and recognizing and admitting
9 the kidnapping

10 That evidence along with Mr Evans' statement, the
11 evidence that I summarized to you, will establish not
12 beyond a reasonable doubt but beyond any doubt, any doubt,
13 that, the defendant committed these crimes Kamell Evans
14 committed these crimes

15 In addition, on the issue of after the proof of when
16 it says malice aforethought, on the issue of aforethought,
17 we will point out to you the meaning to certain facts that
18 apply to that to make it more meaningful

19 First, we will establish the defendant came to the
20 house with over a hundred rounds of ammunition, two guns
21 and a buck knife

22 He parked his truck so far away that his purpose was
23 to conceal his entry to the home and his access to the
24 home He did, and laid in wait for some period of time
25 knowing that Joe Sapinoso was an armed deputy and a member

Opening statements

1 of the SWAT team himself and that he needed to catch him by
2 surprise He hid and laid in wait

3 He resisted the negotiators' efforts over a period of
4 four hours, and his family's efforts and everyone's
5 efforts, and then shot two men in the head and killed them

6 Joe was shot four times at close range in the back of
7 the head, his father was shot three times in the head while
8 he attempted to evade the imminent death that he was about
9 to suffer All of this occurred in less than ten seconds

10 As I told you, this case is going to be precise and
11 organized and will be presented to you in a straightforward
12 manner, because that is what we have to prove That is
13 what we will prove, that Joe Sapinoso and his father were
14 killed by Kamell Evans

15 This case is about Kamell Evans killing Joe Sapinoso
16 and his father, and that's all it's about He planned this
17 and he carried it out That's what this case is about
18 It's not about anything else

19 I don't have any idea what the defense will suggest to
20 you or what evidence they may produce If an effort is
21 made to direct your attention away from the essential fact
22 that Kamell Evans killed Joe Sapinoso and his father for no
23 reason, I remind you of the statement of our most quotable
24 individual in my generation, Yogi Berra Yogi always said
25 if you're going to hit the ball, you better keep your eye

Opening statements

1 on it

2 So if you're not focused on the overwhelming evidence
3 of guilt, of Mr Kamell Evans' guilt, of murder of Joe
4 Sapinoso, then your eye is not on the ball in this case
5 So do not be distracted, because there is no doubt the
6 defendant is guilty of these crimes Thank you

7 THE COURT Mr Goldsmith

8 MR GOLDSMITH May it please the Court, Your Honor.

9 THE COURT Yes, sir

10 MR GOLDSMITH Good morning, ladies and gentlemen

11 I feel like after our voir dire we all know each
12 other, but I will reintroduce myself again I am Skip
13 Goldsmith I'm an attorney that practices part of the time
14 here in Greenville, South Carolina, and part of the time in
15 Hendersonville, North Carolina

16 My co-counsel is Steve Sumner, and we represent Kamell
17 Evans, the gentleman seated next to us at counsel table

18 Christina Rodriguez is not on any witness list in the
19 trial of this case Her name does not appear on any list
20 And yet she is a central character to this tragedy that we
21 are going to discuss for the next couple of days, and I
22 emphasize that it is a tragedy She is a person that is
23 crucial to your understanding of what happened back in
24 April of 2003

25 Now, the evidence is going to show that Christina

Opening statements

1 Rodriguez was the daughter of Mr Sapinoso She was the
2 sister, is the sister, of Joe Sapinoso, and she was the
3 former girlfriend of my client, Kamell Evans

4 Evidence is going to show that Kamell and Christina
5 met sometime in February of the year 2000 They began
6 dating, they began a relationship

7 It was a good relationship in the beginning Kamell
8 loved Christina He loved her very much, and he wanted to
9 spend the rest of his life with her

10 The evidence is going to show that he said to her at
11 some point I would like to have a family of my own, I would
12 like to have a house of my own, I would like to settle
13 down And Christina was the woman that Kamell wanted to
14 settle down with

15 They eventually moved in and began living together
16 with each other, first, the evidence will show, with
17 Kamell's sister Later they were able to move out and have
18 an apartment of their own After that Kamell was able to
19 realize part of what he wanted to do and get a house of his
20 own that he and Christina lived in together

21 As I said, the relationship was a good relationship in
22 the beginning Kamell, the evidence will show, is a hard
23 worker, was a hard worker, was a high school athlete at
24 Greer High School, played football, played football and was
25 a star in the 1997 state championship team at Greer High

Opening statements

1 School A football player Some note that he got a
2 scholarship to North Greenville College and he played
3 football at North Greenville for two years and went to
4 school there

5 After his two years at North Greenville he
6 discontinued his college and went to work, and it was about
7 this time that he met Christina And he would go to work
8 in the morning about four o'clock at U P S loading
9 trucks, get off about ten o'clock and then go to his
10 regular 8-hour-a-day job He worked 50 and 60 hours a
11 week

12 The evidence is going to show, I believe, that they
13 were happy in their relationship early on, but problems
14 began to develop Kamell would give Christina money to pay
15 bills, and the bills would never get paid She would take
16 the money and use on other things

17 Christina would take money from the house The
18 evidence is going to show she would take jewelry and pawn
19 it to use it and spend it, and that she would go for weeks
20 at a time, days at a time, and Kamell would not know where
21 she was at or what she was doing or who she was with And
22 it disturbed him greatly, and they argued about it, and
23 they had fights about it And this progressed as their
24 relationship slowly over the next year or so went down
25 hill

Opening statements

1 Finally in March, the last week of March of the year
2 2003, Christina said to Kamell, the evidence will show,
3 that she was breaking up with him She didn't want to have
4 anything more to do with him She packed up her stuff and
5 left their house

6 And Kamell was devastated by that He was absolutely
7 devastated Three years of investing in this relationship
8 with this woman he loved with the financial sacrifices he
9 had made, he felt betrayed He felt she had betrayed his
10 trust and had used him, and he slowly but surely began to
11 descend into anger and depression And he will tell you
12 about that

13 This fellow who had worked hard all of his life called
14 in sick on Wednesday, didn't work either one of his jobs .
15 He didn't work on Thursday, didn't work on Friday

16 The weekend came and went He didn't work on Monday
17 He began to isolate himself He began to drink, sometimes
18 heavily at times, grieving and mourning the loss of this
19 woman who had done him wrong But he loved her and he
20 didn't want her to go

21 And he tried calling people in his family, his circle
22 of friends And he would talk to them, but he could never
23 get it off his chest like we need to get things off our
24 chest sometimes and vent and get it over with and heal and
25 get beyond it He could never do that during this period

Opening statements

1 He isolated himself He continued to drink And he
2 grew more and more angry and more and more depressed until
3 at some point he decided that he would go to the Sapinoso
4 house and talk to Mr Sapinoso, the father, and Joe
5 Sapinoso, the son

6 And so he resolved to go there to Chetsworth Lane in
7 Mauldin and speak with the Sapinosos And he wanted to
8 tell them I've been done wrong, I love this woman, I love
9 your daughter, I love your sister, she's done me wrong,
10 she's left me, I want somebody to listen to me, I'm not the
11 bad guy in this relationship

12 So he goes over there and he makes what he will tell
13 you is an awful mistake He took the guns with him and he
14 took the ammunition with him

15 He will tell you his intention was to talk, to get
16 them to listen But he took the guns with him And he
17 parked up the street and he walked down to the Sapinoso
18 house

19 Now, it is at this point where there may be a
20 divergence in the evidence from what the solicitor has told
21 you

22 Kamell will testify that it was his intention to go
23 over there and talk and that when Joe got off work that
24 evening he came to the house, that Kamell stepped out of
25 the shadows and called to Joe and said we need to talk

Opening statements

1 And Kamell's evidence is going to show that they
2 talked on the front steps for a while And at Joe's
3 suggestion, they went in the house to continue the
4 conversation there And they go into the house to talk

5 Mr Sapinoso is in there, and he joins the
6 conversation Ms Sapinoso and the grandson Sergio are
7 upstairs, and there is evidence to suggest at some point
8 Ms Sapinoso asked Sergio who is downstairs talking to
9 grandpa and Joe And eight-year-old Sergio goes to the
10 head of the steps and comes back and reports to his
11 grandmother, it's Kamell, Kamell is down there talking to
12 them

13 At some point they try to call Christina This is all
14 about 10 30 or eleven o'clock that evening They try to
15 call Christina They get her answering machine They
16 called a little bit later They get her answering machine

17 Finally the third time, Joe has tried and Kamell has
18 tried Kamell tries and calls and gets Christina He
19 tells her I'm here at your mother and father's house, you
20 need to come over here, we're talking about you and I and
21 our relationship and you need to come over here

22 Christina never comes over Instead she calls the
23 Mauldin police department indicating that it is a hostage
24 situation The Mauldin police department responded first,
25 the Greenville County Sheriff's Department responded

Opening statements

1 second The SWAT team surrounds the house And Officer
2 Tony Lee, the fine officer that you are going to hear from,
3 calls and begins approximately a 4-hour conversation with
4 Kamell about this situation

5 Now, I do agree with the solicitor on one point This
6 whole episode lasted about four hours, four and a half,
7 maybe five hours

8 At about four o'clock in the morning, as Solicitor
9 Ariail said, the negotiations had been going on Everybody
10 thought Kamell was coming out His family was there The
11 situation was calm

12 And then suddenly without warning horribly, terribly
13 gunshots rang out Mr Sapinoso is shot, Joe is shot The
14 police rush in Kamell Evans is standing with his hands in
15 the air He is taken into custody, and he gives a
16 statement to the law enforcement

17 Now, Kamell is going to tell you on the stand that he
18 pulled the trigger and shot Mr Sapinoso and his son Joe.
19 But what we will not do is offer any excuses There will
20 be no excuses offered by the defense in this case, for
21 indeed there can be no excuse for the tragedy that is going
22 to unfold before you for the next two days

23 What we do endeavor to offer to you are reasons why
24 this happened, horrible as it is, why it happened, what the
25 process was that was going on in Kamell's mind, what he was

Opening statements

1 thinking, what was transpiring in his life at this time,
2 this crucial time in his life We will offer reasons but
3 no excuses Ladies and gentlemen, indeed, there are no
4 excuses

5 Now, I want to conclude my remarks by telling you that
6 one thing I believe very deeply in, and that is service on
7 a jury in Greenville County is an honorable service

8 I like what Judge Cole said earlier in the week It
9 is akin to military service You may not want to be here
10 You didn't really volunteer for it, so it's unlike military
11 service in that duty, that respect But it is an honor
12 You are doing honorable duty to your community and to us in
13 the criminal justice system

14 On behalf of Mr Sumner and Mr Evans and I, we thank
15 you for your service Along with the solicitor, we too
16 will pledge not to waste your time, not to drag this out
17 beyond what is necessary

18 We have evidence that we intend to produce, just as
19 the state has evidence they intend to produce But we will
20 do it efficiently and in a manner that you can hopefully
21 understand

22 We also promise to speak up so you can hear us If
23 you cannot hear me, please raise your hand, and I will
24 speak up even louder if I have to So we thank you for
25 your service

Jorge Crumptom
Direct examination by Mr Ariail

1 You have all promised, each individually, to try this
2 case fairly and impartially We talked about that going on
3 two or three days You promised to keep an open mind

4 Yes, the state goes first in the presentation of their
5 evidence Keeping an open mind means keeping an open mind
6 until it is the defense's turn You promised me that you
7 could do that

8 I have faith in every one of you that you can do that
9 I have faith that you will be rendering your service as
10 jurors honorably and professionally, and I look forward to
11 trying this case before you over the next two or three
12 days Thank you

13 THE COURT Solicitor

14 MR AIRIAIL Call Officer Crumptom

15 JORGE CRUMPTON, having been
16 first duly sworn, testified as follows

17 THE CLERK State your name for the record, please,
18 sir

19 THE WITNESS Jorge Crumptom

20 DIRECT EXAMINATION BY MR ARIAIL

21 Q Would you state your name for the record, please, sir?

22 A George Crumptom

23 Q Mr Crumptom, if you would, keep your voice up loud so
24 these last two jurors here on the end can hear That way
25 we will know that everybody hears you

Jorge Crumptom
Direct examination by Mr Ariail

- 1 A Yes, sir
- 2 Q Give me that again
- 3 A Jorge Crumptom
- 4 Q And by whom are you employed?
- 5 A Mauldin City Police Department
- 6 Q And how long have you been employed with the Mauldin
- 7 City Police Department?
- 8 A Three years
- 9 Q And what is your position with the Mauldin City Police
- 10 Department?
- 11 A I am a patrolman
- 12 Q I want to direct your attention back to April the
- 13 1st of 2003 and ask you if you had occasion to respond to a
- 14 call on Chetsworth Lane in the city of Mauldin
- 15 A Yes, sir, I did
- 16 Q And do you remember that particular day and night?
- 17 A Yes, sir, I do
- 18 Q What time did you originally respond?
- 19 A Approximately 10 45
- 20 Q And is Chetsworth located within the city of Mauldin?
- 21 A Yes, sir, it is
- 22 Q And it's also located within the county of Greenville?
- 23 A Yes, sir
- 24 Q Let me show you a map if I could
- 25 All right Just for purposes of giving the jury an

Jorge Crumptom
Direct examination by Mr Ariail

1 orientation about where Chetsworth Lane is located within
2 Greenville County, take a look at this map which has been
3 marked as State's Exhibit Number Forty

4 Starting over on the right, Laurens Road, which way is
5 Mauldin and which way is Greenville?

6 A Yes, sir Looking at where Laurens Road is, north of
7 that is heading towards Greenville, straight up That's
8 probably easier

9 Q Let me Here is a little pointer, a little laser
10 things You can make a red mark Just show us which way
11 the road is running

12 A This is Laurens Road here Knollwood runs off Laurens
13 Road Chetsworth Lane runs off Knollwood, which would be
14 your first left off Knollwood

15 Q So Chetsworth is the lane that comes all the way down,
16 and then down at the bottom highlighted in yellow is where
17 the Sapinoso residence is

18 A Yes, sir, it is

19 Q When you came, which way did you come?

20 A I was coming from Greenville into Mauldin to turn onto
21 Knollwood I was coming south on Laurens Road just by this
22 map

23 Q And when you arrived, where did you -- how far did you
24 proceed before you stopped?

25 A I was about two to three houses right in through here

Jorge Crumptom
Direct examination by Mr Arlail

1 from the location

2 Q Before

3 A Yes, sir

4 Q Before you get to the Sapinoso residence

5 A Yes, sir

6 Q All right And what did, what did you do at that
7 time?

8 A At that point I exited my vehicle and I spoke with the
9 other officers who advised me of the exact house where the
10 incident location was

11 Q And did they give you that information?

12 A Yes, sir, they did

13 Q And following receipt of that information, what did
14 you do?

15 A I went to the rear of the house, which is -- let me
16 use the pointer again -- which is right, excuse me, right
17 here There is a house under construction

18 Q To the right of the Sapinoso residence?

19 A Yes, sir

20 Q Okay All right Let me show you Let me show you a
21 few photographs and we will -- show you what's been marked
22 as state's Exhibits A and B and C and D and ask you if you
23 are familiar with these, and E

24 A Yes, sir

25 Q And do those accurately represent the scene on

Jorge Crumptom
Direct examination by Mr Ariail

1 Chetsworth the night that you arrived on April the 1st?

2 A Yes, sir, they do

3 MR AIRIAIL Your Honor, we would like to offer A
4 through E

5 MR SUMNER No objection

6 THE COURT They are admitted

7 (Photographs marked State's Exhibits A through E)

8 MR AIRIAIL Your Honor, by stipulation we have also
9 agreed that State's Exhibit Forty-A, which is marked, is a
10 blowup of State's Exhibit Forty, which is the picture on
11 the presenter We will use this on the easel by way of
12 stipulation

13 MR SUMNER That's correct, Your Honor

14 THE COURT It's admitted

15 (Overview map marked State's Exhibit Number Forty,
16 enlarged overview map marked State's Exhibit Number
17 Forty-A)

18 Q Ms Crumptom, I am going to take down this picture and
19 I am going to talk to you about these other photographs
20 which we have talked about, State's Exhibits A, B and C
21 Let me show you this and ask you to get, have the jury --
22 can you tell the jury what that is?

23 A That is the incident location that was located on
24 Chetsworth

25 Q That's the Sapinoso residence?

Jorge Crumptom
Direct examination by Mr Ariail

1 A Yes, sir, it is

2 Q And you said that you came in from the side of the
3 house next door

4 A Yes, sir

5 Q Let me show you what's marked as State's Exhibit D and
6 ask you if that reflects the house under construction

7 A Yes, sir, it does

8 Q Where would the Sapinoso residence be?

9 A It is off to the left-hand side, which is right here

10 Q Okay And when you came to this house under
11 construction from where you had stopped up the street, did
12 you come in front of this house or behind this house?

13 A I went to the side of this house, which is over here,
14 and around the back

15 Q All right Let me show you what is marked as State's
16 Exhibit Number E and ask you if that is the rear of the
17 house that you are talking about

18 A Yes, sir, it is

19 Q And the Sapinoso residence would be where?

20 A That would be off to the right-hand side over here

21 Q Okay Now, from that location did you proceed any
22 closer to the Sapinoso residence?

23 A Yes, sir, I did

24 Q Let me show you -- well, exactly how close did you
25 proceed?

Jorge Crumptom
Direct examination by Mr Ariail

1 A I went up, right up, to the rear window There was a
2 light on with a shade drawn

3 Q Let me show you this State's Exhibit B Now, where to
4 orient the jury, where is the house under construction?
5 Which way would it be?

6 A That is off to the left on this side over here

7 Q You came from the left to the right?

8 A Yes, sir, I did

9 Q And where was the light on in the kitchen?

10 A Right at this window right here

11 Q And how close did you approach that window?

12 A I got right up to the window, right up to the window,
13 yes, sir, less than probably a foot away

14 Q And were you able to observe anything when you got up
15 to the window?

16 A Yes, sir The shade -- like I said, the light was on
17 and the shade was drawn The left-hand side of the shade
18 had appeared to be spread open as if someone had been
19 looking out

20 Q These are like Venetian blinds or metal blinds or --

21 A Metal -- metal, plastic blinds I couldn't -- real
22 thin

23 Q All right Like somebody pushed one down?

24 A Yes, sir And it got hung up on the left-hand side

25 Q And you were looking through this hole?

Jorge Crumpton
Direct examination by Mr Ariail

1 A Yes, sir

2 Q And what did you observe?

3 A I observed a black male suspect that was standing with
4 his back to me I got a quick clothing description, which
5 appeared to be some type of pullover, dark jeans, sneakers
6 He was holding a black in color handgun that appeared to be
7 a semiautomatic

8 Q Black in color handgun appeared to be a semiautomatic

9 A Yes, sir

10 Q At that point after you made that observation, what
11 did you do?

12 A I then backed out from that window, backed away from
13 that window, due to the fact that dogs started barking

14 Q How long do you estimate that you stayed in that
15 position before the dogs started barking?

16 A A few seconds

17 Q When the dogs started barking, where did you go?

18 A I went back to the vacant residence, which is over
19 here, right to the rear of that vacant residence, the house
20 under construction

21 Q The house under construction from where you had come

22 A Yes, sir

23 Q And how long did you remain in that location?

24 A I stayed there until Greenville County arrived on the
25 scene

Jorge Crumpton
Direct examination by Mr Ariail

1 Q Okay And give us an idea how long that was

2 A Approximately ten or 15 minutes

3 Q And did, at that time did, you leave that location?

4 A Yes, sir, I did

5 Q Where did you go then?

6 A I went to the other side of the house under
7 construction There is a garage area That's where we
8 stayed

9 Q And you were out of sight to this particular
10 residence, the Sapinoso, at that time?

11 A Yes, sir, I was

12 Q Now, other than the observations that you have
13 reported when you went to the front window, what other
14 observations did you make while you were out on the scene
15 after you moved back to the house next door?

16 A I observed a black male subject inside look out this
17 window here a couple of times

18 Q All right And did you report that to your superiors
19 as you were observing these?

20 A Yes, sir, I did

21 MR AIRIAIL Your Honor, I am going to hand up to the
22 clerk, I assume, the stipulation regarding the
23 admissibility that both parties have signed regarding that
24 diagram

25 THE COURT All right, sir

Damon Hubber
Direct examination by Mr Ariail

1 Q Mr Crumpton, that's all I have Answer any questions
2 that counsel for the defendant may have

3 A Yes, sir

4 MR SUMNER No questions, Your Honor Thank you

5 THE COURT You may step down

6 MR AIRIAIL Your Honor, can he be excused and return
7 to work?

8 MR SUMNER Without objection

9 (Whereupon, the witness was excused)

10 MR AIRIAIL Call Deputy Hubber

11 DAMON HUBBER, having been
12 first duly sworn, testified as follows

13 THE CLERK State your name for the record please,
14 sir

15 THE WITNESS Damon Hubber

16 DIRECT EXAMINATION BY MR ARIAIL

17 Q State your name for the record, please, sir

18 A Damon Hubber

19 Q And keep your voice up just like that so these last
20 jurors down here can hear you

21 By whom are you employed?

22 A The Greenville County Sheriff's Office

23 Q How long have you been with the Greenville County
24 Sheriff's Office?

25 A Twelve years

Damon Hubber
Direct examination by Mr Ariall

1 Q What is your position with the Greenville County
2 Sheriff's Office?

3 A I'm a sergeant in the uniform patrol

4 Q And you're assigned to what platoon?

5 A Bravo

6 Q I'm sorry?

7 A Bravo platoon

8 Q Bravo platoon

9 All right I want to direct your attention back to
10 April the 1st of 2003 Were you employed with the
11 sheriff's office on that date and working bravo platoon?

12 A Yes, sir, I was

13 Q And what shift were you working that day?

14 A The night shift from 7 00 a m , or correction,
15 7 00 p m until 7 00 a m

16 Q And the sheriff's office works, uniform patrol works,
17 a 12-hour shift

18 A 12-hour shift

19 Q 7 00 to 7 00, and 7 00 to 7 00

20 A Correct

21 Q Around 10 30 on that night did you receive any
22 information from dispatch that caused you to take any
23 action?

24 A Yes, sir I received a call from dispatch that
25 Investigator Joe Sapinoso was being held hostage at his

Damon Hubber

Direct examination by Mr. Ariall

1 residence at Chetsworth Lane in Mauldin, South Carolina

2 Q And did you respond?

3 A Yes, sir, I did

4 Q Do you remember -- and let me show you There's a map
5 beside you, but we will put this State's Exhibit Forty back
6 up And let me -- if you don't mind, there is a pointer
7 right there that's got a laser on it

8 If you'll show me, where, where did you, which way did
9 you come to Chetsworth Lane, and exactly where did you stop
10 when you entered?

11 A I came in to Chetsworth Lane off of Laurens Road onto
12 Knollwood Drive And I then pulled onto Chetsworth Lane.
13 As I was driving down Chetsworth Lane, I met a vehicle here
14 at Mary Knob Court And there was a young lady standing
15 outside the vehicle

16 Q And did you stop at that point?

17 A Yes, sir, I did

18 Q And did you have a conversation with that female?

19 A Yes, sir I got out of my vehicle and spoke with her
20 and found that she was Investigator Sapinoso's sister

21 Q Christina Rodriguez?

22 A Christina Rodriguez, yes, sir

23 Q And what was, what was her condition or state of mind
24 that you observed at that time?

25 A She was excited and started giving me information

Damon Hubber
Direct examination by Mr Ariail

1 immediately as soon as I determined who she was She
2 started giving me information that Joe was being held
3 hostage, along with her father and mother, and also her
4 son

5 Q And did she tell you, did she have any information as
6 to who the hostage holder was?

7 A Yes, sir She said it was her exboyfriend, the
8 defendant

9 Q And did she relate to you the contents of a
10 conversation that she had had with Mr Evans?

11 A Yes, sir She said she received a call from the
12 defendant on her cell phone who advised her that he was in
13 her parents' home at Chetsworth Lane holding her family
14 hostage and she needed to come there immediately without
15 law enforcement or the family would be killed

16 Q And she related that to you

17 A Yes, sir

18 Q And after she related that to you, what did you do
19 with that information?

20 A I had all the units available respond to that
21 location I also advised them to shut down We respond to
22 calls like this with emergency equipment on, of course,
23 lights and siren, and I had all of the units shut their
24 equipment down about two miles out because I didn't want
25 the defendant to know that we were responding to that

Damon Hubber
Direct examination by Mr Ariail

1 location

2 Q And did those units comply?

3 A Yes, sir

4 Q And where did you remain during the course of these
5 other units arriving?

6 A I remained at Mary Knob Court and Chetsworth Lane

7 Q And did any of those units that responded pass your
8 position?

9 A Yes, sir I directed units as they responded where I
10 wanted them to go

11 Q And did any of those units go so far as the Sapinoso
12 residence?

13 A Yes, sir

14 Q Did you stay, did you stay at your position?

15 A Yes, sir I maintained my position throughout the
16 ordeal

17 Q Where was Ms Rodriguez?

18 A She stayed there with me

19 Q Did you relate the information she gave you to your
20 supervisor?

21 A Yes, sir, I did

22 Q And who was your supervisor at that time?

23 A Lieutenant Griffith

24 Q And as a result of that, what did Lieutenant Griffith
25 do?

Arnold Taylor
Direct examination by Mr Ariail

1 A After I gave him all of the information that I had
2 received from Ms Rodriguez, he immediately activated the
3 SWAT team

4 Q And did the SWAT team, in fact, respond?

5 A Yes, sir

6 Q Did you remain on the scene for the rest of the
7 evening or did you go back to other duties?

8 A No, sir I stayed on the scene until it was over

9 Q In that approximate location?

10 A Yes, sir

11 Q Thank you Answer any questions that defense counsel

12 MR SUMNER No questions from the defense, Your

13 Honor, and no opposition to Deputy Hubber being excused

14 (Whereupon, the witness was excused)

15 MR AIRIAIL Call Deputy Taylor

16 ARNOLD TAYLOR, having been
17 first duly sworn, testified as follows

18 THE CLERK State your name for the record, please,

19 sir

20 THE WITNESS Arnold Taylor

21 DIRECT EXAMINATION BY MR ARIAIL

22 Q State your name, please, sir

23 A Arnold Taylor

24 Q And, Mr Taylor, if you would, keep your voice up just
25 loud enough so these two jurors can hear you down there on

Arnold Taylor

Direct examination by Mr Ariail

1 that end That microphone is not the best at picking up

2 Give me -- by whom are you employed?

3 A Greenville County Sheriff's Office

4 Q And how long have you been employed with the

5 Greenville County Sheriff's Office?

6 A Twenty-six years

7 Q What is your position or positions that you hold with

8 the Greenville County Sheriff's Office?

9 A I'm the lieutenant over selective enforcement

10 Q And what is the division known as selective

11 enforcement? What do they do?

12 A Traffic and directed patrol units

13 Q And also are you a member and participant in the SWAT

14 team?

15 A I was at the time of this incident

16 Q Back on -- I direct your attention back to April the

17 1st of 2003 and ask you if on that date you were employed

18 with the sheriff's office and a member of the SWAT team

19 A Yes, sir, I was

20 Q And what capacity did you hold a position with the

21 SWAT team at that time?

22 A I was the tactical commander at that time

23 Q What is a tactical commander? What does that mean?

24 A You're in charge of the SWAT team

25 Q You are in charge of it?

Arnold Taylor
Direct examination by Mr Ariall

1 A Yes, sir

2 Q And are there more than one tactical commander?

3 A No, sir I had an assistant tactical commander and
4 two team leaders

5 Q So the chain of command, you were at the top --

6 A Yes, sir

7 Q -- for the SWAT team

8 A Yes, sir

9 Q All right As a member and tactical commander of the
10 SWAT team did you have occasion on April the 1st of 2003 to
11 respond to 312 Chetsworth Lane in Mauldin within the county
12 of Greenville?

13 A Yes, sir, I did

14 Q Tell us what the SWAT team is

15 A It stands for special weapons and tactics It's a
16 group of individual officers who are selected by their
17 qualities who are better trained, better equipped to handle
18 high-risk situations

19 Q And is the SWAT team called out on a regular basis?

20 A Only on high-risk encounters

21 Q And an average year, how many times would you say they
22 are out?

23 A We have been called out as many as, I think, around 45
24 times in one year and as little as three or four in some
25 years

Arnold Taylor
Direct examination by Mr Ariail

- 1 Q Depends on the nature of the business?
- 2 A Yes, sir
- 3 Q Was the situation that you were aware of on 312
- 4 Chetsworth Lane, a hostage-taking, is that an appropriate
- 5 situation in which the SWAT team is called out?
- 6 A Yes, it is
- 7 Q And that's under policy of the sheriff's office, that
- 8 would be a normal routine call-out
- 9 A Yes, sir That's a high-risk encounter
- 10 Q Now, who makes up the SWAT team?
- 11 A There are individual officers throughout the sheriff's
- 12 office
- 13 Q And are they dedicated to that or do they also hold
- 14 other jobs?
- 15 A They hold other jobs
- 16 Q And this is an extra duty that they perform
- 17 A Yes, sir, it is
- 18 Q They receive special training for that
- 19 A Yes, sir, they do
- 20 Q How do -- if they are out on other jobs or they are
- 21 off or they are, you know, not working that night, how do
- 22 you get them there? How does the SWAT team mobilize and
- 23 assemble?
- 24 A They are all assigned pagers And the dispatchers
- 25 will page, and we get them paged that way It's an

Arnold Taylor
Direct examination by Mr Ariail

1 alphanumeric pager They can even put in a short message
2 in the pagers, and that's how we get it

3 Q And then the SWAT team responds

4 A Yes, sir

5 Q Sometimes there are more responding than others

6 A Right

7 Q And on this particular night how many members of the
8 SWAT team were present at 312 Chetsworth Lane?

9 A I am not sure From my notes there were around ten or
10 15 that responded

11 Q Now, when they arrived, where do they go?

12 A They go to a staging area

13 Q Is this something that's predetermined or do you make
14 it on each situation?

15 A It's usually made on each situation, an area where
16 they go where it's safe and they can stage and get ready

17 Q And this is a place away from the incident location.

18 A Yes, sir, it is

19 Q And then they have special equipment and special dress
20 and special activities that they go through before they
21 deploy

22 A Yes, sir

23 Q Does the team have a plan of action in each case?

24 A Yes, sir, we do

25 Q And is it the same in every case or is it -- all

Arnold Taylor
Direct examination by Mr Ariail

1 right

2 A No, sir It changes Every situation is different.

3 Q And in this case did the team formulate a plan of
4 action?

5 A Yes, sir, we did

6 Q And is that under your responsibility that it's formed
7 or do other members participate in that?

8 A It's my responsibility but with input from other
9 members

10 Q What information did you have in this case that was
11 used to formulate the particular plan of action here?

12 A Information was that Officer Sapinoso was being held
13 hostage in his home, and then other information was that
14 his father was there and his mother and nephew were in the
15 house also

16 Q All right Now, using that information, what plan of
17 action was taken? First, I will ask you did you deploy or
18 SWAT team deploy snippers

19 A Yes, we did

20 Q Explain to us about the snippers What is their
21 purpose and who are they?

22 A Okay We have four snippers on the team at the time.
23 And they will get out around the house or the situation
24 They gather evidence, get it back to us And if have to,
25 they are called upon to be used But they were there to

Arnold Taylor
Direct examination by Mr Ariail

1 gather evidence and be like a set of eyes for us that
2 night

3 Q And the reason they can be an eye and gather evidence
4 better than others is why?

5 A Because they can get back at a greater distance and
6 gather that evidence

7 Q Through the use of the scopes on their rifle?

8 A Yes, sir

9 Q How many snippers were deployed?

10 A Oh, we had two that night

11 Q How about fire department or E M S? Were they
12 involved?

13 A Yes, sir I called both of them and had them respond

14 Q And negotiators?

15 A Yes, sir They responded also

16 Q And were there more than one negotiator?

17 A Yes, sir

18 Q And did the negotiator make contact with the defendant
19 while you were present?

20 A Yes, sir, they did

21 Q Did you also attempt to install listening devices on
22 the house?

23 A Yes, sir We-trying that also

24 Q And was that success or unsuccessful?

25 A It was unsuccessful

Arnold Taylor
Direct examination by Mr Ariail

1 Q You could not hear through the walls

2 A No, sir

3 Q And did negotiations then begin to take place when

4 Mr Tony Lee arrived as a negotiator?

5 A Yes, sir, they did

6 Q And were you present during that period of time?

7 A Yes, sir

8 Q Were you receiving information from other sources

9 while the negotiations were going on?

10 A Yes, we were

11 Q And who were you receiving that information from?

12 A Well, we were getting information from family members,
13 friends, coach, things like that

14 Q Any information from any of the snipers?

15 A Yes, sir

16 Q And what were they reporting?

17 A Just movement back and forth from the windows

18 Q Inside the house?

19 A Yes, sir

20 Q What was your understanding as the head tactical

21 commander of the SWAT team? What was your understanding of
22 what was happening?

23 A The negotiations were going on and at the time they
24 seemed very positive

25 Q And is this based on your experience of being in other

Arnold Taylor
Direct examination by Mr Arlall

1 similar situations?

2 A Yes, sir

3 Q At the time were the snippers authorized to shoot?

4 A No, sir

5 Q And the reason for that was?

6 A Because the negotiations were going quite well and
7 there was no need to

8 Q And what other types of risks do you take into account
9 when authorizing snippers to shoot?

10 A Well, particularly that night -- there is always a
11 possibility with the shadows they could miss You have got
12 innocent people in there and things like that

13 Q All right So the plan of action that was going
14 forward was to continue the negotiations to attempt to
15 resolve the situation

16 A Yes, sir

17 Q How long did those negotiations continue?

18 A About four hours

19 Q And did your understanding of their progress change at
20 any time?

21 A No, sir, not at all

22 Q All right And what ultimately transpired?

23 A The negotiations were going great The information
24 was that Mr Evans was going to give up and come out, and
25 then we started hearing gunfire inside the house

Arnold Taylor

Direct examination by Mr Ariail

1 Q And immediately upon gunfire being heard in the house,
2 where were the closest members of the SWAT team?

3 A They were at the front and the rear door

4 Q All right Pressed against the wall of the house --

5 A Yes, sir

6 Q -- where they couldn't be seen

7 A Right

8 Q What did they do immediately upon hearing gunshot?

9 A They immediately made an entry into the house

10 Q This is a forced entry?

11 A Yes, sir

12 Q How long was it from the time that you heard the first
13 shots until the time that entry was made?

14 A Just a matter of seconds

15 Q A few seconds

16 A Yes, sir

17 Q And did you enter the house?

18 A No, sir, I did not

19 Q That's all I have Answer any questions that Mr.
20 Sumner or Mr Goldsmith may have

21 MR SUMNER Thank you No questions of this witness,
22 Your Honor

23 THE COURT You may step down

24 MR AIRIAIL May he also be excused, Your Honor?

25 MR SUMNER Without objection

Arnold Taylor
Direct examination by Mr Ariail

1 THE COURT He may be

2 (Whereupon, the witness was excused)

3 MR AIRIAIL Deputy Cannon

4 MARCUS A CANNON, having been
5 first duly sworn, testified as follows

6 THE CLERK State your name for the record, please.

7 THE WITNESS Marcus Cannon

8 DIRECT EXAMINATION BY MR ARIAIL

9 Q State your name for the record, please, sir

10 A Marcus A Cannon

11 Q And, Mr Cannon, by whom are you employed?

12 A Greenville County Sheriff's Office

13 Q How long have you been with the sheriff's office?

14 A Seven years

15 Q What is your position with the sheriff's office?

16 A My current position is a master deputy, uniform patrol
17 on the echo division

18 Q Echo?

19 A Yes

20 Q Are you also a member of the SWAT team?

21 A Yes, I am

22 Q And I want to direct your attention to April the
23 1st of 2003 Do you remember that night?

24 A Yes, sir

25 Q Did you have occasion as a member of the SWAT team to

Marcus A Cannon
Direct examination by Mr Ariail

1 respond to a call on Chetsworth Lane in Mauldin?

2 A Yes, sir It was about 11 40 p m I received a page,
3 a SWAT call, and I responded to the location at the staging
4 area

5 Q When you responded to the location, you arrived in
6 your vehicle

7 A Yes, sir

8 Q And responded Where did you stop? Where was your
9 staging area?

10 A When I turned onto Knollwood, I turned onto Chetsworth
11 Lane And just a few blocks from Knollwood where some
12 other patrol cars were parked, I parked there, and that's
13 where I stayed

14 Q You did not go down in your car to the incident
15 location

16 A No, sir No vehicles were visible from the incident
17 location, or patrol vehicles

18 Q All right What did you do at the time? When you
19 arrived were you briefed on what the situation was?

20 A Yes, sir When I arrived I was briefed by Lieutenant
21 Taylor and Lieutenant Beaver of the situation that we had

22 Q And what was your role on the SWAT team that night?

23 A My role, I'm a sharpshooter-sniper My role was to --
24 I went to the front side of the house across the street
25 just to provide cover and eyes at the residence

Marcus A Cannon
Direct examination by Mr Ariail

1 Q All right When you say provide cover, what does that
2 mean?

3 A I'm a distance away I'm not usually seen by the
4 suspects or the defendants, kind of in the shadows At
5 this scenario I was about 80 yards away on the side of a
6 house I looked through a scope on my rifle It's a
7 high-powered scope where I can see far distances It looks
8 real close from my scope And I am able to look in windows
9 and see movement in the house and just -- and, you know, if
10 necessary take a shot to end the situation

11 Q All right Now, when you are seeing this movement and
12 what you are observing through your scope, do you report
13 that to anyone?

14 A Yes, sir I have a radio We have a SWAT channel
15 that when the SWAT team is called, we all go to a certain
16 channel on the radio We all have radios Each individual
17 SWAT member has a radio We have headsets And we can
18 listen and transmit what's going on to each team member

19 Q So the team members are all hearing what's going on
20 together

21 A Yeah If I speak, then everybody on that channel
22 hears All team members hear

23 Q And what position did you take up?

24 A I took up facing Joe's residence I was across the
25 street, across the cul-de-sac, beside the house that was

Marcus A Cannon
Direct examination by Mr Ariail

1 directly across from Joe's house

2 Q Let me show you what has been marked as State's
3 Exhibit A, a photograph, and ask you if that is a -- ask
4 you if that is a -- if that is an accurate representation
5 of what you were looking at

6 A It was except for the guys on the porch and the door
7 open At this time there was nobody on the porch and the
8 door was closed

9 Q All right And it appears to the right and left of
10 the door that the -- there was a side light on the door

11 A Yes

12 Q Let me show you another photograph which has been
13 marked as State's Exhibit ZZ and ask if that is a better
14 representation of what you saw

15 A Yes, except for the door was closed and not open like
16 in this picture

17 Q All right Now, from your point and with your scope
18 were you able to see into and see activity with the side
19 lights beside the door?

20 A Yes The side lights helped illuminate the windows on
21 the side of the door I was actually at the angle that
22 this photo was taken, I was actually to the left at a more
23 direct angle to the door

24 Q More straight on

25 A Yes

Marcus A Cannon
Direct examination by Mr Ariail

1 Q Okay And how long did you stay there?

2 A Probably the time I got the page and deployed there
3 was probably a little after 12 00 midnight and stayed there
4 until four o'clock in the morning, until it was over

5 Q While you were in that location, tell us what you
6 observed

7 A While I was there the window to the right, I saw a
8 subject

9 Q Window to the right of the door?

10 A Yeah, the window to the right of the door facing the
11 door

12 I was looking through my scope at that window and I
13 seen a subject or a shadow come to the window And all I
14 seen was a right hand that was holding a black semiauto
15 pistol kind of -- you have the curtain in the window from
16 the inside -- put his hand in and kind of pull the curtain
17 back And the gun was pointed up towards Knollwood, which
18 would have been up in this direction, up the road

19 Q All right On the map or the diagram to your left,
20 which way would the gun have been pointed, up Chetsworth,
21 back up?

22 A It would have been pointed up towards the top, back
23 towards Knollwood Drive from the Sapinoso residence

24 Q Now, how long did the individual stay in that
25 position?

Marcus A Cannon
Direct examination by Mr Ariail

1 A It was approximately two to three seconds

2 Q And how many times, or did you observe that on more
3 than one occasion?

4 A Yeah During the duration time I was tthere, he
5 probably came to the window between ten to 12 times It
6 was approximately about every ten minutes he came to the
7 window

8 Q And did anything different happen on each occasion or
9 were they pretty much the same?

10 A Pretty much the same Always every time the right
11 hand came up to the window and pulled the curtain back, and
12 the gun was in the window pointed up towards Knollwood On
13 a few occasions he bent into the window and I could see a
14 partial view of a forehead in the window

15 Q Could you identify this person as a male?

16 A Yeah I could identify the person as a black male

17 Q Were you being kept abreast of the progress of the
18 negotiations?

19 A Yes, sir, I was

20 Q And what was your understanding of how they were
21 going?

22 A My understanding that the negotiations were going well
23 and the subject was talking about coming out

24 Q When is the last time you saw the suspect at the
25 window?

Marcus A Cannon
Direct examination by Mr Ariail

1 A It was probably approximately around 3 50 in the
2 morning It was about ten minutes before the gunshots were
3 heard

4 Q All right And at that time, the 3 50 in the morning,
5 when he came to the window, did you also see the pistol
6 just like you had seen before?

7 A Yes, sir He still had the pistol in his right hand

8 Q And after that time, the 3 50, did you see him any
9 more?

10 A No, sir, I did not

11 Q And what happened at four o'clock?

12 A Around four o'clock gunshots were heard from the
13 residence And the entry team that was on the front, I
14 observed them go in the front door, and they made contact
15 inside I didn't go into the residence

16 Q You did not go in the residence?

17 A No, sir I did not

18 Q During the course of all of the time you were out
19 there did you at any time have a chance to take a shot at
20 the suspect?

21 A I would have had a chance to take a shot and hit the
22 suspect, but it's not a preferred shot And under the
23 circumstances it would not have been a shot that I would
24 have taken

25 Q And under the circumstances being the negotiations

Marcus A Cannon
Direct examination by Mr Ariail

1 moving positively?

2 A That, and also that it would have been a shot that
3 wouldn't have rendered all of the suspect's movement He
4 would still have been able to maybe shoot a firearm inside
5 the residence by the shot I had So it wasn't a preferred
6 shot

7 Q Thank you, sir Answer any questions that defense
8 counsel may have

9 MR SUMNER No questions of this witness, Your Honor

10 THE COURT You may step down

11 MS STROM Your Honor, the next witness may be
12 lengthy I don't know if you want to take a break now or
13 keep going

14 THE COURT All right Would the jury panel like to
15 take a break before we continue?

16 Okay We'll take a break Please go to your jury
17 room

18 Now, remember the caution I have given you previously
19 You still cannot discuss the case in any fashion whatsoever
20 at the time we take a break The only time you can talk
21 about the case is when you are involved in deliberations at
22 the trial's conclusion So no talking about the case
23 during your break

24 Please go to your jury room We will bring you back
25 shortly

Marcus A Cannon
Direct examination by Mr Airail

1 (The following takes place outside the presence of the
2 jury)

3 THE COURT Court is in recess for 15 minutes

4 (Whereupon, a recess was taken)

5 THE COURT All right Are we ready for the jury?

6 MS STROM The state is ready

7 MR SUMNER The defense is ready

8 THE COURT Who is the next witness?

9 MS STROM Tony Lee

10 THE COURT Bring the jury in, please We are
11 actually going down this list?

12 MR AIRIAIL Yes, sir Well, I'm assuming you've got
13 the short version

14 THE COURT Well, 33

15 MR AIRIAIL Do you want me to get you an accurate
16 one?

17 THE COURT That's all right I just want -- but we
18 are following the list

19 MR AIRIAIL Yes, sir

20 THE COURT Okay

21 (The following takes place in the presence of the
22 jury)

23 THE COURT All right Solicitor

24 MS STROM The state calls Tony Lee

25 TONY LEE, having been first

Tony Lee

Direct examination by Ms Strom

1 duly sworn, testified as follows

2 THE CLERK State your name for the record, please,

3 sir

4 THE WITNESS Tony Lee

5 DIRECT EXAMINATION BY MS STROM

6 Q Mr Lee, if you would, please state your full for the
7 record

8 A Tony Lee

9 Q And I know you are very soft-spoken So when you
10 answer my questions or any question, please lean into the
11 microphone so all of these jurors can hear you

12 THE COURT You can adjust that microphone if you need
13 to

14 Q By whom are you employed?

15 A The Greenville County Sheriff's Office

16 Q And how long have you been with the Greenville County
17 Sheriff's Office?

18 A I've been there for 26 years and seven months

19 Q Presently what are your duties with the Greenville
20 County Sheriff's Office?

21 A I have several duties My primary duty is I am the
22 coordinator for our crime stoppers program in Greenville
23 I assist in the public-information duties dealing with the
24 media on a back-up basis I have a case load also I work
25 cases I'm an investigator And I'm also a negotiator

Tony Lee

Direct examination by Ms Strom

1 assigned to our SWAT team

2 Q Briefly describe to this jury what a negotiator as
3 part of the SWAT team does

4 A We are called almost each time that the SWAT team is
5 activated We go to the scene

6 I normally meet with the SWAT team commander He will
7 tell me if we are needed at that time, if it is a suicidal
8 or barricade or a hostage situation We will be involved
9 Sometimes there are cases where they are serving a
10 high-service, high-risk warrants, and we do not get
11 involved

12 But what we do is actually try to make contact with a
13 person inside whether they are a barricaded subject or
14 they're a person who may be holding hostages inside

15 We try to get a rapport with those people inside We
16 try to make the situation as calm as we can We basically
17 stall for time hoping that the person inside will become
18 more rational, their emotions will go down And we are
19 there to try to persuade the person inside to come out in a
20 peaceful means if they're holding hostages or if they're
21 just inside by themselves if they will come out peacefully

22 Q How long have you been a negotiator with the SWAT
23 team?

24 A I started in 1987

25 Q On the late evening hours of April the 1st of 2003

Tony Lee

Direct examination by Ms Strom

1 were you called as part of the SWAT team to respond to
2 Chetsworth Lane in Mauldin?

3 A Yes, ma'am, I was

4 Q What was the purpose of your being called?

5 A Each of the negotiators were paged that evening
6 because it was a hostage situation They knew or felt that
7 we would be needed on the scene that night

8 Q Approximately what time did you arrive on the scene?

9 A I got the call or the page We were all paged I
10 received mine about 11 45 I had to leave my residence and
11 go by the law enforcement center and pick up our equipment
12 that we use and then drive to Mauldin So it was
13 approximately 12 30 a m

14 Q Beside you is what is marked as State's Exhibit
15 Forty-A, and we also have it State's Exhibit Forty There
16 should be a laser pointer up there in front of you Do you
17 see it?

18 A Uh-uh

19 Q When you arrived at the area of Chetsworth Lane, where
20 did you initially go?

21 A Okay I would have been on Chetsworth Lane in our
22 staging area, come down in here, excuse me, would have been
23 right in this area I think right in here was our staging
24 area It did change a little bit from the negotiators, but
25 that was where we started

Tony Lee

Direct examination by Ms Strom

1 Q When you started and then changed areas, did you go to
2 the cul-de-sac behind the house on Mary Knob?

3 A Yes, ma'am, we did

4 Q When you arrived at your staging area, what did you
5 do?

6 A I was directed by one of the deputies that was on the
7 scene I don't remember which one it was that evening
8 But they told me that Christina Rodriguez or Christina
9 Sapinoso, as I was introduced to her, was there on the
10 scene They told me this was Joe's sister

11 And it's normal when we get to a scene like that, we
12 try to talk to as many family members and friends, anybody,
13 witnesses that may be on the scene So that was my first
14 thing was to try to talk to her and see what information I
15 could gather from her

16 Q You first spoke with Christina Rodriguez

17 A Yes, ma'am That was my first person I talked with.

18 Q Other than other officers who were obviously there

19 A Right After I talked with her, I moved down a little
20 bit farther to the staging area, and I met with Lieutenant
21 Taylor who is our SWAT team commander, and also Captain
22 Wilbanks who was also on the scene

23 Q As a result of talking with Joe's sister, Christina
24 Rodriguez, were you able to learn who was actually in the
25 home, in the Sapinoso home?

Tony Lee
Direct examination by Ms Strom

1 A Yes, ma'am, I was I was told that her boyfriend or
2 exboyfriend, Kamell Evans, was inside the residence, along
3 with Joe Sapinoso His father, mother and Christina's son
4 also were inside

5 Q Did you have an occasion to talk with the defendant's
6 sister?

7 A I did

8 About the same time It was just right after I talked
9 with Christina when I moved down to the staging area, I did
10 meet with Tina Evans She was there We were questioning
11 her trying to find out as much information as we could from
12 her, of course, about her brother, about the situation and
13 what she thought may have led to that that evening

14 Q What is the overall purpose of gathering all of this
15 information? What are you looking to find?

16 A Well, we are trying to get as much information and be
17 as prepared as we can before we start talking with the
18 person inside, whether that person is a hostage-taker or
19 just barricaded person or a suicidal person

20 We, of course, want as much information as we can get
21 That could be from family history to medical history, just
22 anything we can find, phone numbers to get in touch with
23 them, stuff that we should stay away from, people they
24 don't particularly like, people they do like, just any
25 information that we can get just like we would do in a

Tony Lee
Direct examination by Ms Strom

1 normal investigation

2 Q As part of the talking with the defendant's sister did
3 you learn that they had a close relationship?

4 A Yes I gathered that him and Tina did have a good
5 relationship She felt that, you know, she was one in the
6 family among several that he would listen to

7 Q Did you have an occasion to talk with the defendant at
8 any time during the negotiations?

9 A Yes, ma'am, I did

10 Q How did that begin? What was your first contact with
11 him and how were you able to make contact with him?

12 A The first contact we had with him was actually by
13 chance He actually contacted He had a phone, several
14 phones, inside the residence He actually contacted Tina
15 Evans, his sister, while she was sitting in a car close to
16 where I was standing

17 I was interviewing somebody else and I was notified
18 that Mr Evans was on the phone with his sister So I
19 asked him after they had talked a little bit -- asked her
20 if he would allow me to talk with him, and he said okay

21 Q And at that time you began talking with the defendant
22 himself, Kamell Evans?

23 A Yes, ma'am, I did

24 Q Do you know approximately what time that was?

25 A That would have been about 1 50 a m on the 2nd of

Tony Lee
Direct examination by Ms Strom

1 April

2 Q Please tell us a little bit about your first
3 conversation with Mr Evans

4 A We normally any time we start a conversation with a
5 person inside a location, a car, wherever, we will start
6 off by identifying ourselves

7 I told him who I was, the department I was with, with
8 the sheriff's office, asked him if he was okay We always
9 try to establish that they are okay

10 Then I asked about the people inside, was Joe okay,
11 his father, Joe's mother and then the nephew, Joe's nephew

12 He stated everything was okay I told him that we
13 were out there, we weren't out there to hurt him

14 We always like to put in a person's mind that any time
15 if they want to come out of the residence, they are more
16 than free to do that and we are not going to hurt them

17 We find that a lot of people don't ever get the chance
18 or are not told they can actually come out So that's one
19 of the first things that we do

20 So I told him that he was able to come out any time he
21 wanted to He would not be harmed

22 I was also trying to find out his reason for being in
23 there, you know, the reason why he showed up that evening
24 That was some of the stuff that we talked about

25 Q You said he had several phones or he had phones in the

Tony Lee

Direct examination by Ms Strom

1 residence Were those the land lines to the residence or
2 did he have access to other phones?

3 A There was one land line that we knew of inside the
4 Sapinoso residence and there is also at least one cell
5 phone that we were told about that he had access to

6 Q During the negotiations with the defendant are you
7 aware, are you aware if he was able to talk to other people
8 other than you?

9 A He was He talked to, like we said earlier, he talked
10 to Tina, his sister He talked to his mother or
11 step-mother I am not exactly sure which one, but I know
12 it was one of them because I talked to her later He also
13 talked to his father and talked to a friend that was there
14 on the scene, and also I think he talked to a former coach
15 of his, I had heard later

16 Q Were all of these people with whom he spoke, were they
17 there at the scene or were they away from the scene and he
18 had other access to them? How did that transpire?

19 A The mother or step-mother, I know that he called her
20 at her residence, because she had called me later and we
21 talked while we were still at the scene, while this was
22 going on

23 I understand the father was on the scene I never
24 seen him Tina was there close to me The friend and the
25 coach were kind of outside our staging area, so they were

Tony Lee

Direct examination by Ms Strom

1 on the scene also

2 Q What is the purpose of -- well, let me back up When
3 you were talking with the defendant, what was his demeanor
4 from the first time you talked with him?

5 A He was nice, he was, he was calm He didn't appear to
6 be agitated to me, treated me pretty much the whole time
7 very decently Doing what I do, I get a lot of negative
8 people, that we get a lot of profanity, get threatened a
9 lot But he was not like that He was cordial and nice to
10 talk to, no problem at all

11 Q How long do you approximate that you spoke with the
12 defendant, Kamell Evans?

13 A Our first contact was approximately 1 50 a m on the
14 2nd and our last conversation was, I think, right around
15 five minutes or ten minutes till 4 00 in the morning on the
16 2nd of April

17 Q Would he have been on the phone with you this entire
18 time or were there times that he hung up or you hung up?

19 A There were times He hung up several times, or he
20 would have other calls he wanted to make, so we were not
21 talking that whole time He would make other calls

22 Usually when he would make a call to somebody, if I
23 knew about it, I would call him and make sure everything
24 was still okay and see how he felt after he talked to that
25 person

Tony Lee
Direct examination by Ms Strom

1 Q And after he had made a call to someone else and you
2 talked to him, how was his demeanor at that time?

3 A He seemed to be fine He was talking with people that
4 I felt like that he trusted, with his mother, father, his
5 sister, his friends And they were all positive people
6 Most of them I had talked with there at the scene and had
7 tried to coach them on what to say and what to stay away
8 from So we kind of knew what they were going to say over
9 the telephone And he seemed to be fine after he talked
10 with each one of them

11 Q Did the conversations you observed between the
12 defendant and other individuals such as his sister or
13 someone like that, did they appear to go well?

14 A They did Each one of them were basically telling him
15 the same thing They were asking him, you know, to come
16 out of the residence They didn't want anybody to get
17 hurt, obviously didn't want him to get hurt, and they
18 didn't want anybody in the residence to get hurt So it
19 was kind of a repeating of everything that we told him
20 These people were also backing up the friends and family he
21 had So everything seemed positive to us

22 Q So he had family members and friends there at the
23 scene

24 A He did They were out Actually, some of them would
25 have been sitting in some of our vehicles and some of them

Tony Lee

Direct examination by Ms Strom

1 would actually just have been standing around, some of the
2 residents there

3 Q Earlier you stated you had learned that the people
4 inside the home were Kamell Evans, the defendant, Joe
5 Sapinoso, the deputy, and his father, Antonio Sapinoso, and
6 his mother, and Christina's son, is that correct?

7 A That's correct, yes, ma'am

8 Q Were you aware of the location of Ms Sapinoso and
9 Christina's son?

10 A Yes, I was They were upstairs It was my
11 understanding they were either in a closet or the upstairs
12 bathroom of the residence

13 Q Did you have occasion at any time to talk with them,
14 with the mother and-or Ms Sapinoso?

15 A No I was actually just talking with Kamell there at
16 the residence You know, while I was there at the scene, I
17 didn't get to talk to anyone besides him or Joe

18 Q You said you had an opportunity to talk to Joe How
19 did that transpire?

20 A As we were talking about different stuff, you know, me
21 and Kamell, I asked him on one occasion if I could talk to
22 Joe, and he got a little bit upset So I kind of shyed
23 away from it a little bit I come back to it a little bit
24 later

25 Q When you say he kind of got a little upset, what did

Tony Lee
Direct examination by Ms Strom

1 he do or what did he say?

2 A He cursed a little bit I don't remember the exact
3 words, but he was kinda irritated that, you know, I wanted
4 to talk to someone else, is what I gathered

5 So normally when someone does that we will kinda back
6 off and maybe come to it a little bit later That's what I
7 tried to do

8 Q After your first request to talk to Joe, I take it you
9 continued to talk with Kamell Evans

10 A We did We continued to talk off and on And later I
11 brought it back up, could I speak with Joe, and he said,
12 yes, I could

13 Q So, again, what was his demeanor at that time? What
14 was Kamell Evans' demeanor at that time?

15 A He was kind, he was calm, he was nice to me Even,
16 you know, every once in a while that I would chuckle a
17 little laugh that he was -- to me what I am used to talking
18 with people on the other end, and I thought he was being
19 very pleasant

20 Q What occurred when you were able to talk with Joe
21 Sapinoso?

22 A When I got to Joe on the line I asked him, of course,
23 if he was okay and everybody in the residence was okay
24 Joe said he was fine, you know, doing okay

25 I told him what we were trying to work out, that we

Tony Lee
Direct examination by Ms Strom

1 were trying to get him and his family and Kamell,
2 everybody, out safely Joe said he understood

3 I asked him if he would, if he had a chance, to talk
4 to Kamell and tell him what we were trying to do, trying to
5 get each of them out safely

6 I even brought up the idea to Joe if we could get Tina
7 and myself to come down the road when he come out we would
8 do that We were just trying to reinforce what each person
9 had told Kamell earlier in our conversations

10 Q And when you refer to Tina, that's Tina Evans, his
11 sister?

12 A Tina Evans, yes, ma'am

13 Q How would you classify Joe's demeanor when you were
14 talking with him?

15 A Just the way I seen him each day at work I mean, he
16 was always calm He was calm that night He wasn't upset,
17 just laid back like he always was when I run into him in
18 the hall or something

19 Q At some point did the defendant or at any point did
20 the defendant, Kamell Evans, ask to speak with Christina
21 Rodriguez?

22 A Yes, ma'am He made that request on a couple of
23 different occasions

24 Q Do you recall when it began that he wanted to talk
25 with Christina Rodriguez?

Tony Lee

Direct examination by Ms Strom

1 A Probably toward, let's see, I would say between
2 3 00 to 3 30, in that ballpark, in the a m that morning.

3 Q Tell us how that transpired

4 A Okay We had been talking Obviously, he had talked
5 to several people, as I said earlier, the different family
6 members

7 He made the point that he would like to talk to
8 Christina He felt like after he talked with her he would
9 feel better and things would be better He told me that
10 everything would be all right

11 I brought up the fact that I would like to if possible
12 get some of the people out of the residence, and did let
13 him speak to Christina He got a little bit irritated for
14 a moment at me for asking that and made the statement that
15 he felt like we were now setting the rules up

16 It didn't last but just a minute We got by that He
17 went on And in just a little while I told him we needed
18 to talk to Christina and make sure it was okay if she
19 wanted to talk to him I talked to her I talked to the
20 commanding officers there at the scene And we decided to
21 let Christina speak to him

22 Q Were you present when Christina was talking with the
23 defendant, Kamell Evans?

24 A Yes, ma'am I was standing right beside her when she
25 had a conversation with him

Tony Lee

Direct examination by Ms Strom

1 Q Did that also appear to be a calm conversation?

2 A It did I mean, we were a little bit nervous about
3 him obviously talking to her, and her talking to him But
4 it went real well

5 We had coached her on what we kind of wanted her to
6 say or what not to say, what to stay away from We didn't
7 want her to get on the phone and, you know, be upset with
8 him or make him upset But it, we felt, went real smooth

9 Q After he spoke with Christina Rodriguez did you have
10 an opportunity to talk with him again?

11 A I did I talked with him a couple of more times

12 We -- after she had hung up, I asked him if he was
13 okay He said, yeah, everything was fine, he was all right
14 with everything

15 I told him, well, now I would like to go ahead and see
16 about resolving this thing and him coming out or either
17 letting the hostages out

18 He said he needed to, I think he said he needed to,
19 think about it or he needed to discuss it with Joe He was
20 still acting fine, even joked with me a little bit, told me
21 that -- he even said, you know, you're cool And I think
22 that was the last words that we actually spoke

23 And he hung up after saying he was going to call back
24 I think it was five minutes later

25 Q And did he call back?

Tony Lee

Direct examination by Ms Strom

1 A No, ma'am

2 Q What happened next?

3 A I was actually sitting in my car with the telephone
4 with the other negotiators We kinda watched the clock
5 And if somebody hasn't called back in that timeframe, we
6 try to call them back It was about that time that we
7 heard gunshots going off

8 Q Did you have any further contact with Kamell Evans
9 after you heard the gunshots?

10 A No, ma'am, no

11 Q Investigator Lee, if you would, briefly summarize what
12 efforts y'all made, you made as a negotiator and the whole
13 SWAT team made, to get Mr Evans to come out peacefully

14 A We tried everything that we do on each case like this
15 We, you know, first thing, we were honest with him
16 We didn't lie to him at any time during these negotiations
17 We allowed him to do a lot actually, to talk to his
18 family members, to friends

19 We offered, I even offered myself to go down to the
20 end of the driveway, the end of the street when we would
21 come out, when we would come out, along with Tina, his
22 sister, and meet with him

23 We tried to reinforce each of that with each of our
24 conversations Each of the people that talked to him, we
25 tried to coach them and let them know what to say and

Tony Lee
Direct examination by Ms Strom

1 reinforce it

2 All we wanted for him to do was to come out He would
3 not be harmed, and we didn't want him to harm anyone inside
4 the residence

5 MS STROM Court's indulgence

6 (Pause)

7 Q You have earlier testified Mr Evans was calm and not
8 aggravated

9 Was there any time during your negotiations or during
10 your contact with the defendant that his demeanor changed
11 drastically?

12 A No I mean, like I said earlier, he would get a
13 little bit upset from time to time and may use a profane
14 word or two, but it was, to me it was very calm I mean, I
15 was surprised that he was as calm as he was during the
16 negotiations

17 Q At the time that he used profanity, was that at times
18 when you as a negotiator were trying to initiate more
19 control over the situation?

20 A Exactly When we would tell him that, you know, we
21 wanted something for letting him talk with someone or try
22 to rate him one or the other, that's when he got a little
23 bit, you know, irritated at us, you know, a little bit
24 irate, but it wasn't -- it was actually very calm for what
25 I am normally dealing with

Tony Lee
Direct examination by Ms Strom

1 Q He was not someone who was breaking down or sobbing or
2 acting very wildly and uncontrollable?

3 A Oh, no, ma'am, no He was, he was just like pretty
4 much carrying on a normal conversation with someone

5 Q Do you recall approximately what time the shots were
6 fired?

7 A I think it was right around 4 00 a m on the 2nd of
8 April

9 Q Thank you Please answer any questions the defense
10 may have

11 MR SUMNER Thank you Your Honor, may it please the
12 Court

13 CROSS-EXAMINATION

14 BY MR SUMNER

15 Q Mr Lee, during the course of the event or the
16 conversations that you had with Mr Evans, do you recall
17 asking him about the fact that he had been having problems
18 with Christina and that that is what had brought him over
19 to the residence?

20 A I think I did ask him that, because that's something
21 we try to do, is find out what the root of the problem is

22 Q And the root of the problem, as he told you, was his
23 relationship with Christina and how it had not gone the way
24 he wanted it to or something along those lines

25 A Along those lines, yes, sir

Tony Lee
Cross-examination by Mr Sumner

1 Q And he, I guess, at all times in the conversations
2 that you had with him indicated that that was what
3 initially brought him over to the residence, right?

4 A Yes, sir, it was

5 Q Didn't have anything to do with Deputy Sapinoso or the
6 father or anybody else

7 A No He didn't indicate that to me

8 Q And I believe at some point you also told him that the
9 relationship with Christina must have gotten to a very bad
10 state for him to have gone to this residence and for this
11 to be happening

12 A Yes, sir I think I did say that to him

13 Q Now, you referenced a few people that were on the
14 scene that night I want to ask you about that just for a
15 second

16 There were, in fact, several people on the scene that
17 came to Mr Evans', I guess, aid to try to end the
18 situation that night, is that correct?

19 A Yes, sir, it is

20 Q Okay And at this time it's -- I believe you
21 testified for Ms Strom that it was somewhere between 2:00
22 and 4 00 a m

23 A Exactly

24 Q In the nighttime?

25 A That's right

Tony Lee
Cross-examination by Mr Sumner

1 Q His sister, Tina, came to the scene, is that correct?

2 A Yes, sir She was there

3 Q And I believe she worked with you and tried to help
4 you, would that be a correct statement, and talked to him
5 several times?

6 A Yes, she did She was very cooperative on the scene

7 Q And did she do everything that you asked her to do to
8 try to end this?

9 A Yes, she did We coached her along and she did
10 everything we asked

11 Q Do you recognize her in the court today if you look
12 out?

13 A No, sir, I can't To be honest with you, I cannot

14 Q Now, you also spoke with Christina Rodriguez

15 A Yes, sir, I did

16 Q Is that correct?

17 A That's true

18 Q Do you see her in court today?

19 A No, sir I don't know that I would recognize her
20 either

21 Q Was Mr Evans' father also on the scene that night?

22 A I was told by other people on the scene that they
23 thought he was there, but I never had any contact with him

24 Q But you were told that he was there somewhere

25 A Yes, sir

Tony Lee
Cross-examination by Mr Sumner

1 Q I mean, when I say the scene, I know it's several
2 blocks away from where the home was But somewhere in this
3 vicinity he was there and he had responded

4 A That's what I was told, yes, sir

5 Q And I believe you also mentioned a former coach of the
6 defendant as well

7 A Yes, sir I was also told I didn't get to meet him
8 too, but I was told he was on the scene

9 Q And I believe you also testified a friend as well

10 A Yes, sir

11 Q So to your knowledge there were at least four people
12 that had come out between two and four o'clock that morning
13 to try to help end this

14 A Yes, sir That's true

15 Q And did anybody else from his family -- his sister or
16 anybody else that you dealt with from his side of the
17 street that night -- were they anything but cooperative?
18 Was anybody disruptive? Did everybody try to help you?

19 A No Everybody was real receptive of what we asked
20 them to do There were no problems with any of the family
21 members at all that evening

22 Q Okay I believe you testified that toward the end of
23 this situation that Mr Evans had a long discussion with
24 Christina, is that right?

25 A He did have a conversation with her by telephone I

Tony Lee
Cross-examination by Mr Sumner

1 can't remember exactly how long it lasted He did have a
2 conversation

3 Q Of some length

4 A Yes, sir

5 Q And I believe you testified to the jury that it went
6 fairly smoothly

7 A Yes, sir It did It went real smooth, we thought

8 Q And did they discuss, did those two, meaning Mr Evans
9 and Christina, did they discuss some rough spots that they
10 had had in their relationship over the last year or so? Do
11 you recall that?

12 A I don't recall everything that went on with that
13 conversation, but I know just by hearing, but I could only
14 hear Christina's part, her side of the conversation, that
15 apparently they were talking about some problems that they
16 had had

17 Q After Christina and Mr Evans end their conversation,
18 you then get back on the phone with him sometime toward --
19 now we are approaching 4 00 a m And you talked with him,
20 I believe, also about the relationship that he had been
21 having with Christina and tried to talk to him about that,
22 is that correct?

23 A Yes, sir, I did

24 Q I assume from your testimony today, Mr Lee, that you
25 were surprised at the way this ended

Tony Lee
Redirect examination by Ms Strom

1 A Yes, sir I was shocked, is the word

2 MR SUMNER One second, please, Your Honor

3 (Pause)

4 Q Thank you I don't have any other questions

5 MS STROM Very briefly, Your Honor

6 REDIRECT EXAMINATION

7 BY MS STROM

8 Q Mr Lee, you were asked by defense counsel about the
9 fact that the defendant was telling you during the part of
10 the negotiations about his relationship with Christina
11 Rodriguez

12 A Yes, ma'am

13 Q Did he at any time tell you that it was bigger than
14 that?

15 A Yes, ma'am That was one of the words he used that we
16 could never quite figure out what he was talking about, but
17 he did say it was bigger than that But we never got to
18 that point where we could determine what bigger was

19 Q Did you at any time during the negotiations ask him
20 what his relationship was with Joe Sapinoso and his father?

21 A Yes, ma'am, I did

22 Q And what was his response?

23 A He said they were fine, they were cool and he liked
24 Joe and there was no problem there with them at all

25 Q So he never mentioned any prior disagreement or

Andrew Soule
Direct examination by Ms Hodge

1 all-will towards Mr Sapinoso and Joe

2 A No, ma'am, none at all

3 Q They were good to him

4 A Yes, ma'am As far as I know

5 Q Thank you

6 MS STROM I have no further questions

7 THE COURT You may step down

8 MS STROM Your Honor, we would ask he be excused

9 MR SUMNER Without objection

10 THE COURT He may be

11 (Whereupon, the witness was excused)

12 MS HODGE The state would call Deputy Soule

13 ANDREW SOULE, having been

14 first duly sworn, testified as follows

15 THE CLERK State your name for the record

16 THE WITNESS Andrew Soule

17 DIRECT EXAMINATION BY MS HODGE

18 Q Deputy Soule, are you employed with the Greenville

19 County Sheriff's Office?

20 A Yes, ma'am

21 Q How long have you been with them?

22 A I have been with the sheriff's office a little over

23 eight years

24 Q What are your duties at this time with the sheriff's

25 office?

Andrew Soule

Direct examination by Ms Hodge

1 A I am a patrol officer assigned to uniform patrol

2 Q And back on April the 1st of 2003 were you also a
3 uniform patrol officer?

4 A Yes, ma'am I was assigned to echo platoon at the
5 time

6 Q And in addition to that were you part of the SWAT
7 team?

8 A I was

9 Q How long had you been on the SWAT team at that time?

10 A I think about four years, four or five years

11 Q And what were your general duties as a SWAT team
12 member? Did you have an assigned thing every time?

13 A I was assigned to the entry element or the entry team
14 I typically would be assigned the job of breaching
15 structures, doors And basically I was just, just assigned
16 the duty to -- well, I was an entry person

17 Q To make entry?

18 A Yeah

19 Q When you say breaching, can I say busting open or
20 busting down or through or --

21 A Yeah

22 Q -- making entry by whatever means?

23 A Whatever was required

24 Q Did you have special training to be a member of the
25 SWAT team?

Andrew Soule
Direct examination by Ms Hodge

1 A Yes, ma'am

2 Q Now, the night of April the 1st of 2003, do you recall
3 working in your regular duty?

4 A Yes, ma'am I came in that night Echo platoon had
5 been assigned as extra security for county council
6 chambers, and I was at county council chambers during the
7 Martin Luther King, Jr debates And then I believe after
8 we broke from that I was going back to work regular patrol
9 duties

10 Q And working the county council meeting that night, did
11 you also see Deputy Joe Sapinoso?

12 A I did, I did

13 Q And was he also working extra time?

14 A He was working extra security there I guess it had
15 pretty much broken up, and Joe was leaving And I was
16 standing outside And, you know, we just kind of hey, you
17 know, hey, exchanged pleasantries

18 Q So then you were going back on the road to continue
19 working

20 A Yes, ma'am

21 Q Let me back up one second

22 When you're working at county council as security,
23 you're working in uniform?

24 A Yes, ma'am Nattily attired as I am now

25 Q Okay And you carry your weapons and everything that

Andrew Soule
Direct examination by Ms Hodge

1 you need, might need

2 A Yes, ma'am That's correct

3 Q I assume that was in anticipation of possible trouble
4 down there

5 A Well, we were just there to make sure that things
6 didn't get out of hand

7 Q All right Once you leave there, do you have any idea
8 what time this was?

9 A I guess I left there at about 10 00 or 10 30 And I
10 went, went, got in the patrol car, and I think I went and
11 got something to eat and was on Wade Hampton Boulevard

12 Q And what happened when you were on Wade Hampton?

13 A I heard the call go out on the radio One of the
14 units, another echo unit, was down there in Mauldin and
15 indicated that they were there on the scene of this
16 incident and told -- I believe they are speaking to one of
17 the sergeants over the radio that they, in fact, did have a
18 deputy being held hostage in a residence

19 Q Did they give you an address or did you find out the
20 address?

21 A I can't remember if I called dispatch or not I think
22 they may have given the address I was on the SWAT team at
23 the time and I figured that, well, you know, this sounds
24 pretty hot and I'm going to start heading that way So I
25 was driving down that way once I heard it go out on the

Andrew Soule
Direct examination by Ms Hodge

1 radio

2 Q You didn't actually respond because your pager went
3 off You heard it

4 A No, ma'am I was working and I heard it and I figured
5 I'd better get on down that way

6 Q You knew you were going to be called

7 A Yes, ma'am

8 Q And so you figured out where you needed to go,
9 Chetsworth Lane

10 A Yes, ma'am That's correct

11 Q Do you have any idea what time it was when you got
12 there?

13 A I was, I was probably one of the first responding SWAT
14 team members I think some of the command personnel were
15 already there, but by the time I got on the scene, I guess
16 it was 11 30 maybe

17 Q What did you do when you got there?

18 A I pulled up to -- they had the road blocked off there
19 at Chetsworth and Holly Knob or Mary Knob

20 Q Okay If you want, you can point There is a map
21 beside you, State's Number Forty or Forty-A If you want
22 to step down and point, that's fine Just keep your voice
23 up

24 (Whereupon, the witness left the stand)

25 A Okay Well, I was actually, I drove, came in off

Andrew Soule

Direct examination by Ms Hodge

1 Laurens Road and came down Chetsworth, and they had the
2 road blocked right here at Mary Knob and Chetsworth And I
3 was directed down Mary Knob I came down into a driveway
4 here and turned around and pulled back out, so I was
5 pointed back out At that time I dressed out in my SWAT
6 uniform and got my SWAT equipment

7 Q What did that consist of different from what you've
8 got on today?

9 A Yes, ma'am It's just a, it's a green B D U
10 uniform kinda like a military-looking uniform Green B D
11 U 's, the tactical vest, the heavier tactical vest, my
12 entry weapon, just general equipment, head gear, radio

13 Q Do you have a different radio than what you were
14 responding as a deputy?

15 A Yes, ma'am, yes, ma'am

16 Q Is it secure?

17 A Well, it's a different radio It has a hookup for a
18 headset so that we can listen and not give away our
19 positions

20 Q Once you secured your equipment and got all of that in
21 place, did you immediately respond over to the house or was
22 someone directing you?

23 A I don't remember if somebody said link up with
24 Sergeant McConnell or not I went around It may have
25 been Sergeant McConnell was there at the time I don't

Andrew Soule
Direct examination by Ms Hodge

1 really remember exactly what the decision-making process
2 was to go where we went

3 I went around to the one-two corner of the house,
4 which would be facing the house, the left-hand corner

5 Q Okay Let's explain that a little bit

6 A Certainly

7 Q I am going to put State's A on the overhead for you.
8 If you are numbering, I'm assuming you are numbering the
9 sides of the house and then all of the --

10 A Yes, ma'am That's correct Basically, it's a
11 numbering system just to make it easy for us to understand
12 exactly what we are talking about

13 Typically, the front of the house will be side one
14 It's not necessarily going to be that, but typically that's
15 how we do it It's easier to do it that way This would
16 be, would have been facing the street So this was side
17 one Side two would be on the left-hand side going in a
18 clockwise, clockwise direction

19 Q Let me stop you right there and show you what has been
20 marked State's QQ for identification Would this be what
21 you are referring to?

22 A Yes, ma'am That's the corner of side one, the face
23 of the house, and side two That's the corner right there

24 Q And is this picture a true and accurate representation
25 of the home on the night you responded?

Andrew Soule

Direct examination by Ms Hodge

1 A Yes, ma'am, it is

2 Q And then if we continue on around, I am going to show
3 you what's been marked State's RR for identification

4 A Okay That would be side two and three -- three being
5 the back of the house and two right there where the chimney
6 protrudes

7 Q And is this picture also a true and accurate depiction
8 of the house at the time of this incident?

9 A Yes, ma'am

10 MS HODGE At this time, Your Honor, the state would
11 move to admit QQ and RR

12 THE COURT Any objection to photographs QQ and RR
13 being admitted?

14 MR SUMNER No, sir

15 THE COURT They are

16 (Photographs marked State's Exhibits QQ and RR)

17 Q You said you took up your position on the one-two
18 corner

19 A Yes, ma'am

20 Q Is that what's shown here?

21 A Yes, ma'am That's correct

22 Q All right And what were you to be doing while you
23 are the one-two corner?

24 A Well, we were standing by there in case -- initially
25 the plan was, was that we were going to stand by and let

Andrew Soule
Direct examination by Ms Hodge

1 the negotiations go on

2 We were there in case of an emergency breakout type
3 situation, if the defendant came out and tried to flee We
4 were there to take him down, take him into custody

5 Q Is that something that you call -- correct me if I am
6 wrong -- a deliberate-action plan?

7 A Well, that's not, that's not necessarily part of the
8 action plan We had an emergency action plan that the team
9 stated at the two-three corner was going to go ahead and
10 make entry in an emergency situation And we were going to
11 be covering the front That was the emergency plan They
12 were developing a deliberate plan at the command post

13 Q And who was in charge of the SWAT team?

14 A Lieutenant Taylor

15 Q And so you say your main duty at this time was to let
16 the negotiations go

17 A Yes, ma'am That's correct

18 Q And if the defendant didn't come out you would
19 apprehend?

20 A That's correct We were going to apprehend

21 Q Were you briefed about situations inside the house?

22 A I was I was given the information that Joe's
23 sister's exboyfriend, the defendant, was in the house
24 holding Joe and his father at gunpoint

25 Q Did you know if there were other people in the house

Andrew Soule
Direct examination by Ms Hodge

1 also?

2 A I think once I -- initially I didn't But I think
3 once we got up to the one-two corner there was some
4 discussion about try to get Ms Sapinoso and the child out
5 via a ladder, but that was deemed as too noisy We
6 determined they were in the upstairs, somewhere in upstairs
7 of the residence

8 Q All right Now, are you, because you have this
9 headset on are you, able to hear how the negotiations are
10 going?

11 A Well, I can't hear the negotiations directly because
12 those are conducted by telephone What I did hear would be
13 what the command post was giving back to us that, you know,
14 stand by, negotiations are going on, everything is sounding
15 okay right now, that type of information

16 Q Did you also or were you also able to hear Deputy
17 Cannon when he came over the radio?

18 A Yes, ma'am We were all on the same channel, and I
19 believe Deputy Cannon came over once or twice and indicated
20 that the defendant had come to the front window

21 Q And Deputy Cannon, what was his role at this time?

22 A A sharpshooter, marksman, sniper

23 Q And so he told you he saw some movement a few times

24 A Well, like I said, he told the command post He
25 didn't tell me directly Certainly

Andrew Soule
Direct examination by Ms Hodge

1 Q While you are at the one-two corner are you -- how
2 close are you to the house?

3 A I was right up against the brick wall As a matter of
4 fact, the little ledge right there, you can't really see it
5 in that picture, but the little ledge there, by this point
6 the negotiations had been going on for a little while

7 Q You can push that laser button if you need to

8 A The little ledge, I was actually sitting right there
9 where that, where the dot was

10 Q Okay At some point during the negotiation process
11 and while you are in your position were you attempting or
12 did you attempt to place a listening device?

13 A Yes, ma'am We had secured some listening devices
14 used by our vice and narcotics team And we had, myself
15 and I believe it was Sergeant McConnell, provided cover
16 We moved up to one of the windows there I cut the screen
17 and put the listening device directly on a glass And then
18 we trailed the wire back to where we were at and tried to
19 listen in and see if we could hear anything

20 Q Were you ever able to hear anything?

21 A No, ma'am It proved ineffective All we heard was
22 static

23 Q How long do you think you maintained your position
24 during this incident?

25 A I was there from 11 45 to four o'clock at least, so

Andrew Soule
Direct examination by Ms Hodge

1 four hours

2 Q And during this time you said that the command post
3 was advising you about negotiations that appeared to be
4 going well

5 A Yes, ma'am That's correct

6 Q All right At any point were you advised the
7 defendant was definitely coming out?

8 A No, ma'am

9 I seem to remember they told us that the defendant had
10 made indications he would be coming out in ten minutes, and
11 then that would be pushed back, and then he would be coming
12 out in five minutes, and that would be pushed back So we
13 were -- the negotiations were going well, so we were
14 anticipating him to come out

15 Q Did he, in fact, ever come out peacefully?

16 A No, ma'am He did not

17 Q What happened?

18 A Well, we were at the, like I said, we were staged up
19 there at the corner We tried our listening devices

20 They had indicated that Mr Evans was going to be
21 coming out within the next few minutes We were standing
22 up We were prepared to meet him at the front door, the
23 front porch actually

24 About that time I heard several gunshots in the house
25 It kinda caught me by surprise, so I may have hesitated for

Andrew Soule

Direct examination by Ms Hodge

1 a second

2 And then Sergeant McConnell and I went to the front
3 door I kicked the front door twice It wouldn't, it
4 wouldn't come open So I just finally shouldered through
5 it and went in the residence

6 Q And what part of the house did you enter?

7 A It would have been directly Through that front door
8 is directly into a hallway There is a stairwell that goes
9 up to the left, another room off to the left A kitchen,
10 and then a kitchen to the right, and to the left would be a
11 den or living room

12 Q Did you enter on the first floor?

13 A Yes, ma'am That's correct

14 Q I want to show you what's been marked State's Exhibit
15 Thirty-seven for identification

16 MR SUMNER Your Honor, we don't object to it

17 MS HODGE Then we move to admit it

18 MR SUMNER Sure

19 (Diagram marked State's Exhibit Number Thirty-seven.)

20 Q Is this diagram a fair assessment of the house as you
21 just described it?

22 A Yes, ma'am

23 Q The front?

24 A That's coming in the front door, yes, ma'am

25 Q Okay If you wouldn't mind using your laser, just

Andrew Soule
Direct examination by Ms Hodge

1 walk us through what you just described

2 A Okay You have to pardon me I am a little shaky I
3 drank too much coffee

4 I came in this front door right here and moved down
5 this hallway As I came in that front door, I kicked the
6 door

7 I remember looking down the hallway, and I remember
8 seeing two firearms laying on the ground right here

9 I remember briefly glancing right I glanced left and
10 looked up the stairwell and glanced to the right again into
11 the kitchen and turned left, and the defendant was standing
12 about right there

13 Q And when you glanced in these other areas did you see
14 anyone?

15 A No, ma'am There was no one else in the residence

16 Q What was the first thing that caught your eye when you
17 entered the residence?

18 A The two weapons laying on the floor I could clearly
19 see There was one like right there and one right there.
20 So they were like they had been dropped right there on the
21 floor

22 Q And this is State's Thirty-seven-A, a blowup of
23 State's Thirty-seven And I am going to place this up here
24 if you need to refer to it, because I am going to take down
25 that and place some photos up So if you need to come off

Andrew Soule
Direct examination by Ms Hodge

1 to explain anything --

2 A Yes, ma'am

3 Q Show you what has been marked State's M for
4 identification Would this be the front door that you
5 enter?

6 A Yes, ma'am, it is

7 Q Okay And I notice down here there is some stuff
8 What would that be?

9 A That's part of the trim from the door when I kicked it
10 in

11 Q Okay And as you, I think, describe on the diagram,
12 these go up?

13 A The stairs, that go up Yeah That goes to the
14 upstairs There's a little, I guess it's a, dining room or
15 some type of formal room to the right, and then the kitchen
16 and the hallway It kind of T's down there, and then it
17 goes to the left into the living area or the den

18 Q All right And does this accurately depict how the
19 house looked when you entered from that front-door angle?

20 A Yes, ma'am

21 Q Show you State's N Is this another view of the same
22 thing?

23 A Yes, ma'am, it is It is actually inside the front
24 door We stepped inside from the vantage of this picture

25 Q If you could, use your laser pointer and maybe show us

Andrew Soule

Direct examination by Ms Hodge

1 where you said you saw weapons Where would those be?

2 A There was one like right there and one right there

3 Q I'm going to show you State's P What would this be?

4 A That's the, that's the -- right there at the T in that
5 hallway, again like I say the T's to the left and goes into
6 the den To the right it goes into the kitchen

7 That's the, like a throw rug or something right there
8 in the floor And I remember distinctly seeing the
9 silver-slided weapon right there It really stuck in my
10 mind for some reason

11 Q And is that how they look on the night when you made
12 entry, their places and everything?

13 A That's correct Yes, ma'am

14 Q Show you one more as far as this goes, State's O And
15 I think you stated that the kitchen was off to the
16 right-hand side of this

17 A Yes, ma'am Actually the --

18 Q Would now be the bottom

19 A Yes, ma'am When this photograph was taken, it
20 appears that the individual was standing in the kitchen

21 Q All right And what would be at the top end of this
22 picture?

23 A That's the, that's the den area, I guess, where Joe
24 and his father were

25 Q All right Let's talk about where you left off that

Andrew Soule

Direct examination by Ms Hodge

1 you said you actually encountered the defendant And if
2 you need to go to the large diagram, we will go there too

3 A Okay

4 Q What did you do when you found the defendant?

5 A Well, I came in and looked right

6 Like I say, I looked left and saw the defendant He
7 was facing kind of the back I think he was looking where
8 the other team was trying to make entry into the back I
9 distinctly remember some pounding and what not on the door

10 When I came around the corner, he turned to me and
11 kind of looked surprise and put hands up I could see his
12 hands were empty, and he said don't hurt me So I ran up
13 with my subgun and grabbed him And Sergeant McConnell
14 came up and grabbed him and took him to the ground

15 I stood over him covering him, and Sergeant McConnell
16 got him handcuffed

17 Q Were you the first SWAT team member to actually make
18 entry --

19 A Yes, ma'am

20 Q -- and make contact with the defendant?

21 A Yes, ma'am

22 Q Let me ask you this What else did you see once you
23 had the defendant apprehended?

24 A Well, once we got him, once we got him down on the
25 floor and I was covering him, you know, I kind of looked

Andrew Soule
Direct examination by Ms Hodge

1 up, and I could see Joe laying on the ground And I was
2 standing in Joe's blood and his brains right there on the
3 ground

4 And Mr Sapinoso was, was kind of sprawled back over a
5 sofa, back, you know, kind of laid back with his hands
6 slinging kind of back Neither one of them were moving

7 Q I'm going to show you State's SS Where would this be
8 and what would this be?

9 A That is the den area The large spot right here is
10 where Joe's head was I was standing probably right there
11 Mr Sapinoso was back over here

12 Q Does this picture, aside from I think there is some
13 trash and things down there --

14 A That's the stuff the E M S guys were using

15 Q Does it accurately depict what you saw that night?

16 A Yes, ma'am.

17 Q Obviously, except Joe and his father are not in the
18 picture

19 A That's correct

20 Q And let me go back to the diagram that shows one more
21 placement That picture didn't cover it, State's
22 Thirty-seven And, again, can you describe in a little bit
23 more detail about Joe? You said he was there Was he --
24 how was he positioned?

25 A Well, like I say, we were, I was standing about right

Andrew Soule

Direct examination by Ms Hodge

1 here, and Joe was laying on the floor I seem to remember
2 he was kinda -- his arms were kind of folded up under him
3 and his head was down, kinda face down Like I say, I was
4 standing right there I could see multiple gunshot wounds
5 to the back of his head, and he wasn't moving

6 Q What about Mr Sapinoso, the father? Where was he?

7 A I didn't, I didn't -- he was kind of sprawled back
8 across this sofa here And I did not see his wounds, but
9 neither one of them were moving It was obvious

10 Q Would it be fair to say that that is not your primary
11 focus and responsibility, is tending to the victims?

12 A No, ma'am. It is not Once we got the defendant in
13 custody and under control, I believe I called for the
14 medics, but they were already on their way in

15 Q What did you do, if anything, after this, after you
16 had the defendant down?

17 A We were directed to go ahead and continue clearing the
18 residence, to clear the rest of the house I came
19 through -- well, if you don't mind

20 Q That's fine

21 (Whereupon, the witness left the stand)

22 A I came through from this position We went through, I
23 guess, this is the formal some type of gaming room or
24 something I came through here Other team members had
25 cleared this area

Andrew Soule
Direct examination by Ms Hodge

1 I went upstairs The master bedroom would have been
2 up here, up above this where the actual shooting took
3 place The door was locked, so I forced that door and came
4 through and cleared that room We were looking for
5 Ms Sapinoso and the child

6 Q Did you eventually find Ms Sapinoso and the child?

7 A Yes, ma'am, we did

8 Q And where were they?

9 A They were in the upstairs I guess it really would
10 have been right here above this They were in the upstairs
11 walk-in closet, the master closet

12 Q And did you participate in escorting them out?

13 A Yes, ma'am, I did

14 Q I'm assuming -- and how did you take them out, the
15 front door or the back door?

16 A The front door She asked how Joe was, and I told her
17 the medics were working on him

18 Q In clearing the house and in your immediate entry did
19 you ever see any other black male suspects inside the
20 house?

21 A No, ma'am There was no one else in the house other
22 than the hostages and the defendant

23 Q And once you left the home, what did you do? What did
24 you have to do?

25 A We left the residence and went back to the law

Andrew Soule
Direct examination by Ms Hodge

1 enforcement center for a quick debrief and to write up a
2 statement or a supplemental report as to what happened at
3 the incident location

4 Q Did that end your involvement in this case basically?

5 A Yes, ma'am

6 Q And one last question, Deputy Soule

7 The person that you saw standing at the end of the
8 hallway there, the black male inside the house, is that the
9 defendant in court today?

10 A That's that gentleman right there sitting at the
11 defense table

12 Q Thank you Please answer Excuse me one second I
13 believe I need to move into evidence the photos SS, O and P
14 and M

15 MR SUMNER Without objection

16 THE COURT They are admitted

17 (Photographs marked State's Exhibits SS, O, P and M.)

18 MS HODGE And if not, both diagrams, Thirty-seven
19 and Thirty-seven-A

20 THE COURT They are admit

21 (Diagram marked State's Exhibit Number Thirty-seven-A

22 Q Please answer any defense questions

23 A Yes, ma'am

24 MR SUMNER We don't have any questions of this
25 witness

1 THE COURT You may step down

2 MS HODGE May he be excused, Your Honor?

3 THE COURT He may

4 (Whereupon, the witness was excused)

5 THE COURT Let's check on lunch It should be here

6 now

7 (Pause)

8 THE COURT All right Ladies and gentlemen, at this
9 time we are going to recess for lunch

10 During the lunch recess remember my caution You
11 can't talk about the case You can talk about anything
12 else you would like to, but do not discuss the case in any
13 fashion

14 After we have had time for you to have your lunch, we
15 will come back and continue with the trial

16 So please retire to your jury room

17 (The following takes place outside the presence of the
18 jury)

19 THE COURT Court is in recess until 1 45, 1 45

20 (Whereupon, a recess was taken)

21 THE COURT Are we ready for the jury?

22 MS STROM Yes, sir

23 THE COURT Bring them in

24 (The following takes place in the presence of the
25 jury)

1 THE COURT Good afternoon, ladies and gentlemen

2 I know that some of you have requested to have a pad
3 so you can take notes, and we are going to permit that to
4 be done

5 But please understand that if you are a person that
6 likes to take notes that that notetaking is for the
7 personal use of the notetaker

8 No other juror can review or rely upon another juror's
9 notetaking as your recollection of what the testimony or
10 the evidence is in the case

11 Now, one of your duties, as I told you, is to assess
12 the credibility of witnesses, and so it's important that
13 you observe the witnesses as they testify, because
14 oftentimes you can tell as much about the truth of a
15 witness' testimony by watching them testify as you can by
16 listening to what they have to say

17 So don't get so engrossed in your note-taking that you
18 don't have an opportunity to observe the witnesses as they
19 testify

20 But, as I say, if you choose to take notes, they are
21 for your own personal use, and no other juror can review
22 those notes or rely upon the notetaker's notes as your
23 recollection of the testimony and the evidence in the case

24 All right Next witness

25 MS HODGE Thank you, Your Honor The state calls

David Williams
Direct examination by Ms Hodge

1 Sergeant David Williams

2 DAVID WILLIAMS, having been
3 first duly sworn, testified as follows

4 THE CLERK State your name for the record, please

5 THE WITNESS David Williams

6 DIRECT EXAMINATION BY MS HODGE

7 Q Sergeant Williams, do you work for the Greenville
8 County Sheriff's Office?

9 A Yes, ma'am, I do

10 Q Presently what are your duties with the sheriff's
11 office?

12 A I work in the sheriff's administration I am over
13 personnel and recruitment

14 Q How long have you been with the sheriff's office
15 total?

16 A I have been with Greenville County for 17 years

17 Q Did you have law enforcement experience prior to that?

18 A Yes, ma'am, about a year and a half, Greenwood city

19 Q Are you also a member of the SWAT team?

20 A Yes, ma'am, I am

21 Q And what are your duties in relation to the SWAT team?

22 A My duties currently?

23 Q Yes, sir

24 A Currently I am a sharpshooter-sniper

25 Q Now, back on April the 1st of last year were you also

David Williams
Direct examination by Ms Hodge

1 a member of the SWAT team?

2 A Yes, ma'am

3 Q Were your duties different? You said currently So
4 were they different then?

5 A Yes, ma'am I was assistant team leader in the entry
6 team

7 Q Do you recall having to respond to Chetsworth Lane on
8 April the 1st of 2003?

9 A Yes, ma'am

10 Q And why did you respond there?

11 A I received a call about a SWAT activation, a SWAT
12 call

13 Q And did that come from your pager, or how did you hear
14 about that?

15 A Usually it comes from a pager, sometimes from a phone
16 But I really can't recall

17 Q Do you have any idea what time this was that you were
18 notified?

19 A It was around midnight I was asleep

20 Q So you were not working that night already

21 A No, ma'am

22 Q In your job with the sheriff's office, your normal
23 duties, are those 9 00 to 5 00 type duties?

24 A Yes, ma'am, they are

25 Q What did you do once you got the call to respond to

David Williams
Direct examination by Ms Hodge

1 Chetsworth Lane?

2 A I put my uniform on and grabbed my car keys and left
3 for the location I went emergency-run, lights and sirens

4 Q Did you do that the entire way to the location?

5 A Yes, ma'am

6 Q Was there -- at some point did you have to shut those
7 off?

8 A About a mile or two miles out, I sure did

9 Q And why did you do that?

10 A Well, we didn't want to alert anybody to our presence
11 there

12 Q And how long do you think it took you once you got
13 that call around midnight to actually get over to
14 Chetsworth Lane?

15 A Twenty to 30 minutes

16 Q Were other SWAT team members there when you arrived?

17 A Yes, ma'am

18 Q Did you guys have an opportunity to get together and
19 decide what to do, or was it beyond that?

20 A Most of the team was already there They were already
21 on the scene

22 I got my equipment on and was directed by other units
23 to -- Sergeant Hubber was there Sergeant Hubber told me
24 that there was two people inside One was a Greenville
25 County deputy, Deputy Joe Sapinoso And a black male armed

David Williams

Direct examination by Ms Hodge

1 with a handgun had forced his way inside the home And
2 there was one other person being held hostage

3 Q Once you were briefed with that information, at this
4 time did you know if the suspect was armed? I am not sure
5 if you said that

6 A Yes, ma'am I believe I did He said he was armed
7 with a handgun

8 Q And what did you do once you got the information?

9 A I got close to the location We came up on the -- the
10 staging area was a street directly behind the residence

11 When I got close to it I radioed to other team members
12 to see where they would best use me at I found that they
13 were on side two, and that's where I made myself available
14 at

15 Q I am going to show you State's QQ and RR that are
16 already into evidence Do you know what this is?

17 A That's the front of the residence at 312 Chetsworth
18 Lane

19 Q All right And what, I know you just numbered, when
20 you said you were supposed to be on the side two of the
21 house. Does this picture show side two?

22 A Yeah It does show side two just to the left side of
23 the house The front of the residence would be considered
24 side one and the left side would be considered side two

25 Q Now, I am going to show you RR What is that?

David Williams
Direct examination by Ms Hodge

1 A That would be -- that is side two

2 Q Okay And this back here?

3 A Would be side three

4 Q And were you positioned on the side actually, or
5 where?

6 A Actually my station was at the two-three corner

7 Q And I think you have a pointer in front of you It
8 has got a laser

9 A I was stationed right in this area right here

10 Q Okay Now, on that two-three corner were you by
11 yourself or was some other SWAT team member with you?

12 A Yeah There were other team members there

13 Lieutenant John Eldridge, Master Deputy Ron Richardson,

14 Lieutenant Beaver -- they were there with me on the corner

15 Q What was your role on the two-three corner? What was
16 y'all's purpose, the greatest purpose?

17 A Immediately, when I got there the purpose was just to
18 be prepared for any kind of contingencies that might occur
19 in case there was some kind of emergency, in case he tried
20 to break out or anything of this nature, just to make sure
21 that if he did come out he wouldn't go back inside

22 Q In the event that he did not come out were you also to
23 be an entry team?

24 A Yes, ma'am

25 Q Did that develop later?

David Williams
Direct examination by Ms Hodge

1 A We had plans in place just in case if something
2 happened to go inside

3 Q What was the plan?

4 A Well, the plan was to go through the back door Our
5 team would go through the back door and make entry inside
6 the home and try to find the subject inside and separate
7 him from any of the hostages

8 Q When you say the back door, if you'll continue to look
9 on this photograph, where would that be?

10 A It's where there are some gentlemen standing right
11 over here That would be the back door we are talking
12 about

13 Q Could you or did you ever move beyond two-three corner
14 actually to the back side of the house just in your
15 positioning?

16 A Yes, ma'am

17 At times we would trade off being right on the corner
18 on point and keeping an eye on the back door or the back
19 area

20 At one time when I was out on point on that corner we
21 made a decision to try to move toward the window and look
22 inside the window to see if we could see anything

23 I did move to that location I looked inside There
24 were some blinds there I could see just barely through
25 the blinds, and the lights were on inside

David Williams
Direct examination by Ms Hodge

1 I could not see deep into the room I couldn't make
2 out any necessary -- I couldn't identify anything
3 necessarily But as I did that I saw movement I saw
4 somebody sit down on a couch or some kind of seat area
5 right in front of the window

6 Q The window you are referring to, is the window on this
7 picture?

8 A Yes, ma'am

9 Q If you would, point to it

10 A Okay Where I came to is the corner of this window
11 right here, and the subject was at this first window
12 sitting down right here

13 Q Do you know who that subject was at that time?

14 A I couldn't tell you, no, ma'am

15 Q Now, when you say your point position, how close to
16 that corner were you?

17 A Well, I was right on that corner There probably
18 wasn't two feet that separated me and this person

19 Q You are pressed up almost to the house or on the
20 house

21 A Right

22 Q Now, while you are in your positions, what are you and
23 the other members doing?

24 A At this point when I first got there, we are actually
25 just waiting to hear updates on the situation and how

David Williams
Direct examination by Ms Hodge

1 things are unfolding

2 Q Did a negotiator become involved in the case?

3 A Yes, ma'am, he did

4 Q Were you aware of the negotiations?

5 A Yes, ma'am We would get reports from time to time
6 from Lieutenant Cotton Taylor

7 Q Did you end up learning more information about the
8 situation inside the house as the night went on?

9 A Yeah

10 When I got to the side I learned that there was
11 actually four people inside rather than two and that all of
12 them were Joe's family members -- his mom, his father and
13 his nephew

14 I think we also found out that his mother and the
15 nephew were upstairs hidden in a closet We didn't know at
16 that time whether he knew that they were there or not

17 Q Did you know who the suspect was that was holding them
18 hostage?

19 A Yeah We got word that that was Joe's sister's
20 exboyfriend

21 Q Were you also provided information that the
22 sharpshooter at the time, Deputy Cannon, had gotten?

23 A Yes, ma'am

24 We got -- our snippers, sharpshooters would get
25 information from time to time they would relay They are

David Williams

Direct examination by Ms Hodge

1 looking through a scope They're trying to observe any of
2 his movements, give us any kind of intelligence on the
3 front of the structure or the back of the structure They
4 can do this from a safe location where -- we couldn't move
5 around to the back of the house and get very far

6 There was a floodlight that had a motion sensor on it
7 So it would detect if we moved around very far The
8 floodlight would come on

9 But they can back off from a ways and they can get
10 information, and he did give us some information that
11 night

12 Q What was that information?

13 A He told us at one point that he could see somebody
14 looking out the windows He could see a piece of them He
15 said that he saw a gun He could see it being moved by --
16 the gun moving the curtain area and somebody peeking out.

17 Q When you were being updated, I guess about the
18 negotiations, were you told they were going well?

19 A Yes, ma'am They were going very well It wasn't far
20 into the negotiations I think there was some talk or some
21 hope that he was going to be coming out

22 Q Did this continue on for some length of time?

23 A Yes, ma'am This is right at three-and-a-half or four
24 hours while I was there

25 Q Did you ever or were you ever advised that this

David Williams
Direct examination by Ms Hodge

1 suspect inside was going to actually come out peacefully?

2 A Yes, ma'am

3 Later on in the night we got some more definite word
4 that he was going to surrender, that he was going to be
5 coming outside through the front door

6 Q What were you to do if that was the case?

7 A We were to stay right there We were covering the
8 back just in case this was a ruse and he was going to try
9 to break out the back side We had other team members
10 stationed on the other side of the house They were going
11 to control him or give him commands to come to them, and
12 they would take him into custody

13 Q Did the person inside ever come out peacefully?

14 A No, ma'am

15 Q What happened?

16 A We were standing there, and I remember two shots
17 ringing out There was several shots fired, but there was
18 two shots that happened before I could even move or think

19 It was at that point we were yelling go, go, go on the
20 corner of the house We were initiating an emergency
21 action plan

22 Q Continue

23 A Okay We ran just a few feet, and we could hear
24 somebody on the inside screaming no, no, no very loudly

25 Q And where did you actually run to?

David Williams
Direct examination by Ms Hodge

1 A I ran toward the back door We were trying to make
2 entry into the back door

3 Q I believe you testified you were here

4 A Yes, ma'am

5 Q Is that where you were when you heard the first shots?

6 A That's exactly where I was at, yes, ma'am

7 Q And where did you go? And if you want to pick up the
8 laser, that would help

9 A We began to run back in this area back towards where
10 these gentleman are standing right here

11 As I passed this window, I could hear the screams
12 coming from inside, someone yelling no, no, no This is
13 after the first series of shots

14 Q Did you hear any other shots after you heard someone
15 screaming no?

16 A Yes, ma'am Immediately after I heard another series
17 of shots

18 It's about this time that we were also at the door I
19 mean, this is all within seconds Lieutenant Eldridge and
20 Deputy Ron Richardson began to try to kick the door open
21 where we see the gentleman standing over there, but they
22 were having a difficult time of it

23 I was the third person behind them And Lieutenant
24 Beaver was behind me He diverted his attention and looked
25 around the corner and found a door that we did not know

David Williams
Direct examination by Ms Hodge

1 existed at that time

2 He moved something out of the way I am not sure what
3 it was, a chair or something else And he began to kick
4 the door, and I began to help him

5 Q Let me stop you there You can sort of reference it
6 here, I imagine Where was that other door?

7 A Well, as you can see, there was a little cut-through
8 You could see this gentleman You can see part of this
9 gentleman So there's a little cut right around this
10 corner about where this gentleman is at which would go into
11 this room here

12 Q Was this the door that initial entry was attempted on?

13 A That was the initial door, yes

14 Q I am going to show you what's been marked State's B
15 that's already into evidence Does this show a better view
16 of the door you were trying to explain?

17 A Yes, ma'am The door that we were kicking here was
18 the door that I'm talking about at this point

19 Q When you say this was just a matter of seconds, would
20 you give any generalization as to how many?

21 A As far as it would take me to run to the solicitor
22 That would take just probably just two or three seconds
23 maybe that all of this is occurring, maybe four or five
24 seconds

25 Q I'm going to show you what's been marked as State's TT

David Williams
Direct examination by Ms Hodge

1 for identification

2 A Yes, ma'am

3 Q What is that a picture of?

4 A That's the picture of the door that we were able to
5 breach

6 Q Is that a true and accurate representation of how it
7 looked that night?

8 A Yes, ma'am

9 MS HODGE At this time we would move to admit TT

10 MR SUMNER No objection

11 THE COURT It is admitted

12 (Photograph marked State's Exhibit TT)

13 Q Where did that door lead to?

14 A It led to a den and living room type area

15 Q And were you the first person in that door?

16 A No, ma'am Lieutenant James Beaver was the first
17 person in the door, and I was right behind him

18 Q What did you do once you got in that door?

19 A My job on entry if I am the second person inside the
20 door -- the first person makes any kind of turn I am
21 going to make an opposite turn to cover his back side He
22 took an immediate, when he walked in the door an immediate,
23 left I fled straight across to the opposite side of the
24 building I was scanning for the subject that was inside

25 Q What did you see once you entered?

David Williams
Direct examination by Ms Hodge

1 A I saw an older male laying across a couch on his back
2 where he had fallen, appeared to have fallen

3 Q I am sorry You have to speak up just a little bit
4 I know it is difficult

5 A I saw an older gentleman that looked like he had
6 fallen backwards He was kind of laid across the couch

7 Q I am going to show you what's marked State's UU and VV
8 for identification Do you know what those are pictures
9 of?

10 A Yes This is the den area that I was referring to
11 inside this area This is the door that we made entry in

12 Q Okay And then on VV

13 A Yes This is the same den area This is a picture of
14 the other corner and the couch that I saw the gentleman
15 laying across

16 Q Are these true and accurate representations of what
17 you saw that night?

18 A Yes

19 There wasn't actually some of the things that are on
20 the floor at the time that we came in the room, but, yes,
21 it's the same room, the same furniture

22 MS HODGE At this time we would move to admit UU and
23 VV

24 MR SUMNER No objection

25 THE COURT They are admitted

David Williams

Direct examination by Ms Hodge

1 (Photographs marked State's Exhibits UU and VV)

2 Q Showing you UU So that's now just a flip side

3 standing on the inside looking out the door

4 A That's right That's correct

5 Q And on VV?

6 A This is where I saw an older gentleman laying across,

7 kind of fell backwards across, that little chair, couch

8 Q Was that gentleman making any movements or noises or

9 anything?

10 A No, ma'am He appeared to have a gunshot wound to the

11 head

12 Q What else, if anything, did you see when you went into

13 it?

14 A Well, as I came around the room I also saw Joe on the

15 floor And as I just caught a picture of him laying there

16 or in the position that he was in, and looked like he had a

17 hole, bloody bullet hole, in the back of his head, I

18 couldn't tell where it was

19 Q You say you caught a picture Do you mean in your

20 mind?

21 A Yes, ma'am

22 Q As a member of the SWAT team, it's not your duty to

23 tend to the victims initially, is it?

24 A No, ma'am

25 The sole purpose of me going inside is to find this

David Williams
Direct examination by Ms Hodge

1 person that is a threat to others inside and stop that
2 threat So that's what I'm looking for I'm looking for
3 that person

4 Q So when we go back to Joe and what you saw of Joe,
5 where do you recall him to be, and in what position do you
6 recall him to be in?

7 A He wasn't in this, wouldn't be where this photograph
8 is

9 Q Let me show you State's WW and XX First, just tell
10 me what those are pictures of and if they are accurate
11 representations of what you saw this night

12 A Yes, they are

13 It's a picture of the other side of the room that
14 can't be seen by the first two photographs And one of the
15 photographs leads into the hall which is where the
16 kitchen -- goes toward the kitchen area

17 MS HODGE At this time we would move to admit WW and
18 XX

19 MR SUMNER Without objection

20 THE COURT They are admitted

21 (Photographs marked State's Exhibits WW and XX)

22 Q Putting up State's WW, where was this in reference to
23 you entering the house?

24 A When we came in we would be -- this is from the back
25 door where we gained entry at

David Williams
Direct examination by Ms Hodge

1 Q That would be to your left?

2 A Yes This is immediately to my left as you walk into
3 the door

4 Q And where was Joe Sapinoso in relation to that?

5 A Joe was down by this area right here

6 Q Which direction would his head have been and his feet
7 have been?

8 A His head would have been in this direction, his feet
9 would have been over here, well, probably right here

10 Q Do you recall what position he was in?

11 A Yes, ma'am

12 His feet were together, his knees were together It
13 was almost as if he were sitting on his heels His chest
14 was against his knees, so he is lying in a position on the
15 floor His head is turned slightly away from me and his
16 arms are pointed behind him

17 Q Do you recall what he was wearing?

18 A It was dark clothes, what I remember, but I didn't get
19 a great look at it

20 Q Did you look for any length of time?

21 A No, ma'am I really didn't want to see it to be quite
22 honest with you

23 Q So once you made these two observations, what did you
24 do or what did you see?

25 A As soon as I went just past that -- this room was

David Williams

Direct examination by Ms Hodge

1 clear We saw no threats in this room So as we got to
2 about the point where Joe is at, there was a corner, a
3 hallway, yeah, immediately right here

4 My main focus is to continue looking for any threats
5 As I came to about this position right here I could see I
6 saw the defendant standing in the hallway

7 Q Was he in custody already?

8 A I remember him being with his hands up, and they were
9 challenging from in front of him I don't even know if he
10 was aware that I was there They came up right directly
11 after that and took custody of him

12 Q Did you ever lay any hands on the defendant?

13 A No, ma'am

14 Q What was your primary role during this time?

15 A Well, he was standing over three pistols When they
16 took him into custody, I realized this is a crime scene
17 now And so I stood over those pistols so that they would
18 not be moved

19 Q Was the defendant or the suspect at this time saying
20 anything to anyone?

21 A No, ma'am I never heard him say anything

22 Q Was he armed at this time still?

23 A We did not know

24 Q Did you ever attempt to speak to him during any of
25 this?

David Williams
Direct examination by Ms Hodge

1 A No, ma'am

2 Q Now, you say that you noticed guns in the hallway

3 A Yes, ma'am

4 Q I show you State's YY

5 A Yes

6 Q What is that a picture of?

7 A I can see at least two of the pistols in the hallway
8 at that location

9 Q And is this a fair and accurate representation of how
10 it was when you entered the house?

11 A Yes, ma'am

12 MS HODGE At this time we would move to admit YY

13 MR SUMNER Without objection

14 THE COURT It is admitted

15 (Photograph marked State's Exhibit YY)

16 Q It might be a little bit difficult to see on here, but
17 if you could with the laser pointer maybe show where you
18 saw the pistols It might be hard to see

19 A Yeah I can't see it I saw a pistol around this
20 location about right here, and then there's one -- you
21 can't see by this wall, that would be in this area over
22 here

23 Q Did you ever move beyond this hallway area to any
24 other part of the residence?

25 A No I stayed right there to protect that part of the

David Williams
Direct examination by Ms Hodge

1 crime scene

2 Q Once you were standing near the pistols, where was the
3 defendant?

4 A The defendant was just to my right, and they had moved
5 him from this point, moved him back across, away from the
6 front of me over into the kitchen area where he was
7 handcuffed

8 They had him on the ground at that point They began
9 to do a more thorough search of him to make sure that he
10 had no more, no further weapons on him

11 Lieutenant Eldridge was conducting a search of his
12 person I remember seeing him pull out an ASP baton, a can
13 of pepper spray and some money, I believe

14 Q Was the suspect in handcuff when he was in there?

15 A He was handcuffed at some point I know that he was
16 handcuffed in the kitchen area

17 Q Did you observe the defendant doing anything in the
18 kitchen area that gave you cause for concern?

19 A Yeah

20 After they finished searching his person and removing
21 those items from him, they stood him back up They leaned
22 him over with his head rested on the counter in the
23 kitchen

24 They were putting some pressure on the back of his
25 shoulders and neck to keep him down, to keep him where he

David Williams

Direct examination by Ms Hodge

1 could not move, and this is a position where it would be
2 very difficult for him to do anything else, yet he was
3 trying to fight to get his head around where he could see
4 Joe

5 Q So if you will with the pointer, his head initially
6 looking --

7 A I cannot see the counter area that he was at, but he
8 would have been in this direction I would have been
9 standing here, and he would have been leaned over in this
10 direction There is a kitchen counter right over in this
11 area, but this is not a good photograph to be able to show
12 it

13 Q And he was trying to work his head toward the
14 direction where you and --

15 A Yeah And this bothered me because I did not want to
16 see Joe I was purposefully -- Joe was just to my right,
17 and I was purposely not looking at that I didn't want to
18 remember that any more than I had to And it bothered me
19 greatly that he was trying to fight to get his head around
20 to where he could see what was going on and that interested
21 in it

22 Q Did you ever go back into the area where Joe and
23 Mr Sapinoso were?

24 A No, ma'am

25 Q Was there medical attention being --

David Williams
Direct examination by Ms Hodge

1 A Yes, ma'am I saw the medics come in and go toward
2 that direction

3 Q Did you ever collect or move the guns that you were
4 standing over?

5 A No, ma'am

6 Q Was the defendant eventually removed from the house?

7 A Yes, ma'am He was taken outside, I believe And I
8 am sure he was turned over to uniform patrol

9 Q Did you have any part in that?

10 A No, ma'am

11 Q And did someone come and take your place in watching
12 over the handguns?

13 A Lieutenant Creedhash (sic) came inside the home and
14 took over the crime scene At that point I relinquished
15 that to him

16 Q As a member of the SWAT team are you guys pretty much
17 in and out? You don't stick around for the investigative
18 portion or anything?

19 A No, ma'am There is no need for us to stick around
20 for that, no

21 Q So what did you do then?

22 A After this was over we returned to the law enforcement
23 center for debriefing

24 Q Is that when you write your reports also?

25 A Yes, ma'am

John Eldridge
Direct examination by Ms Hodge

1 Q Now, in the portions of the home where you actually
2 entered and viewed did you ever find any other black male
3 subject in that house?

4 A No, ma'am The only places that I searched would have
5 been that den/living room area, and I came to the hallway
6 I didn't search any other portions of that residence

7 Q Were you ever advised that there was any other black
8 male suspect inside the house?

9 A Team members went all throughout the house, and there
10 was none reported inside

11 Q Thank you

12 MS HODGE Just one moment, please

13 (Pause)

14 Q Thank you Answer any defense questions

15 MR SUMNER No questions, Your Honor Thank you

16 THE COURT You may step down

17 MS HODGE The state would call Lieutenant Eldridge
18 May this witness be excused, Your Honor?

19 THE COURT He may be

20 (Whereupon, the witness was excused)

21 JOHN ELDRIDGE, having been
22 first duly sworn, testified as follows

23 THE CLERK State your name for the record, please,
24 sir

25 THE WITNESS John Eldridge

John Eldridge
Direct examination by Ms Hodge

1 DIRECT EXAMINATION BY MS HODGE

2 Q Lieutenant Eldridge, are you employed with the
3 Greenville County Sheriff's Office?

4 A Yes, I am

5 Q How long have you been employed?

6 A Fourteen years

7 Q What presently are your duties and responsibilities
8 with the sheriff's office?

9 A I'm currently a lieutenant I'm assigned to the
10 uniform patrol division, and I command echo platoon, which
11 is a nighttime platoon

12 Q And are you also a part of the SWAT team?

13 A Yes, I am

14 Q How long have you been on the SWAT team?

15 A About ten years

16 Q What are your duties as a member of the SWAT team?

17 A I am the assistant commander of the team at this time
18 I am second in command of the team, and I essentially
19 supervise entry operations up on the front line

20 Q Do you recall the night of April the 1st and early
21 morning hours of April the 2nd of last year?

22 A Yes, I do

23 Q Were you part of the SWAT team on that night?

24 A Yes, I was

25 Q And did you have occasion to respond to 312 Chetsworth

John Eldridge
Direct examination by Ms Hodge

1 Lane?

2 A I did

3 Q And do you know why you had to respond there?

4 A Yes

5 I was on duty that night anyway and had not long
6 cleared from the county council meeting We had been
7 providing additional security over there Heard the radio
8 call come out that described that one of our deputies had
9 been taken hostage there at 312 Chetsworth Lane And I was
10 one of the two lieutenants working the road that night, so
11 I responded anyway right from the start

12 Q You didn't need to wait to be paged?

13 A No

14 Q Do you have any idea what time it was when you got
15 there?

16 A It was somewhere around eleven o'clock, 11 15 when I
17 first responded

18 Q Were there many SWAT team members there by the time
19 you got there?

20 A No, ma'am I believe I was the first one to get
21 there

22 Q And did you go to a certain location to wait for the
23 other people to get there, or what did you do?

24 A Initially I went directly down to 312 Chetsworth Lane
25 Mauldin police officers had been the initial first

John Eldridge
Direct examination by Ms Hodge

1 responders that went So I went directly to the location
2 and tried to get up with one of the police officers who had
3 been on the scene and tried to get some more details about
4 what was happening

5 Q Did you get some more details?

6 A I did They had indicated that Joe Sapinoso was
7 inside with some other family members and that they were
8 being held hostage inside

9 Q Did you know who they were being held hostage by at
10 this point?

11 A At that particular time I don't remember if he had
12 been identified yet I don't know if it was then or a
13 little bit later once the SWAT operation unfolded

14 Q And once it unfolded, who was the person that was
15 holding them hostage?

16 A It was Kamell Evans, the defendant

17 Q So once you got your information from the Mauldin
18 police, what was the next thing you did?

19 A There is a process that we go by to set up for the
20 response of SWAT teams It's a setup procedure

21 I made sure that we had containment on the locations
22 which essentially is a two-part process, one containing the
23 house itself and essentially surrounding the house, and,
24 secondly, to make sure traffic was held back We want to
25 ensure that neighbors are evacuated from their houses to

John Eldridge
Direct examination by Ms Hodge

1 eliminate them from any danger, begin an assessment of the
2 situation and begin some response planning

3 Right off the bat I began to try to set up an
4 emergency response plan in case something unfolded inside
5 where people were being injured, that we had to respond
6 immediately

7 Q And what was your emergency response plan to be?

8 A Initially, we were going to enter should something
9 like that become necessary around the back side of the
10 house, or side three as we designate it

11 I had also sat in place where other team members on
12 the front side of the house would deploy -- noise-flash
13 diversion devices to try to create a diversion on the front
14 of the house while we entered the back of the house

15 Q And maybe explain a little more about what that
16 means -- noise

17 A The noise flash?

18 Q The noise-flash diversion

19 A Yes It's a little canister, and essentially it
20 creates a brilliant flash and a booming sound And it's,
21 was intended in this situation to try to, again, as I
22 explained, draw attention to the front of the house while
23 we tried to make entry around the back of the house

24 Q So this was the plan that if you needed to execute

25 A Right That was our emergency rescue plan should it

John Eldridge
Direct examination by Ms Hodge

1 become necessary

2 Q And until that point you must have another plan in
3 place until that becomes necessary Were there duties
4 given to people they were supposed to be doing?

5 A At that point we were kind of in a holding pattern
6 The SWAT team had arrived and assembled In situations
7 like this we don't wait for any kind of briefing at a
8 staging area We go directly up to the location in case
9 there is any immediate intervention that's needed

10 Negotiations were ongoing And the information that
11 we were getting over the radio is that they were proceeding
12 fairly well So we were kind just kind of in a holding
13 pattern at that time

14 Q I apologize if you said this Where were you
15 positioned during this?

16 A I was stationed on what we refer to as side two, which
17 is the left side of the house if you're facing the front
18 door

19 Q I put up RR And tell me if that's correct, your
20 position on this house

21 A Yes, ma'am Where the tree is is on side two, what we
22 refer to as side two, of the house

23 Q So who else were you with on side two?

24 A There were a number of other team members over there.
25 I was there with Master Deputy Richardson, Sergeant

John Eldridge
Direct examination by Ms Hodge

1 Williams, Lieutenant Beaver, Sergeant McConnell, Deputy
2 Soule If I remember correctly there may have been one or
3 two medics that are assigned to our team from E M S that
4 were there with us also

5 Q And you were able to see a door for your emergency
6 action plan entry in the back?

7 A Yes, ma'am

8 Looking from the corner there, we refer to as the
9 two-three corner, it's where the side and the back of the
10 house meet, is the corner that I am referring to

11 We could see where those two officers are standing in
12 the picture We could see that door that's visible there
13 and we knew that that door entered the back side of the
14 house That was intended to be our entry point in our
15 planning

16 Q And so as negotiations are going on you are being
17 briefed, I assume

18 A We are We were kept up to date All indications
19 were that things were unfolding okay There wasn't any
20 real need at that point for us to make any advances because
21 it appeared we were going to be able to negotiate a
22 surrender

23 Q Did you learn that there were other people in the
24 house as well?

25 A I did

John Eldridge
Direct examination by Ms Hodge

1 We were told that in addition to Joe and Mr Sapinoso,
2 that also Joe's mother and nephew were inside the house
3 upstairs

4 Q Were you advised if the defendant was armed while he
5 was inside the house?

6 A Yes, ma'am We were informed that he was armed with a
7 pistol I did learn that fairly early on in my response

8 Q Now, at some point during this evening were you
9 advised of the defendant's actions to come out of the
10 residence and peacefully give up?

11 A We were That occurred a couple of times right
12 towards the end of the standoff, especially at the very
13 end We were informed that he was going to surrender, and
14 at that point we were just waiting for him to walk out the
15 front door

16 Q Did that, in fact, happen?

17 A No, it did not

18 Q What happened?

19 A Well, like I said, we were waiting on him to walk out
20 the front door, and all of a sudden we heard some gunshots
21 go off I heard several shots

22 I had spent a good portion of the incident there on
23 the point position or in front of the rest of the team
24 members In our emergency action plan, I was to be the
25 first through the door There were a couple of instances

John Eldridge
Direct examination by Ms Hodge

1 where I would step back and be relieved on that duty to
2 discuss some of our planning with other team leaders

3 At the time that the shots went off I had stepped back
4 just for a moment to shore up a couple of details on the
5 surrender plan

6 We heard the shots Pretty much everybody over there
7 started yelling go, go, go Master Deputy Richardson at
8 that point was in front of me on the point position

9 I think I put my hand on his shoulder, and we started
10 running together towards the back door We crossed the
11 back window that you can see in the picture And as I was
12 crossing the window, I heard a screaming, just no, no, no,
13 just very probably the most awful blood curdling scream
14 that I've ever heard in my life No, no, no

15 And we proceeded past the window to the back door
16 Master Deputy Richardson and myself started kicking the
17 door We had some trouble getting it open

18 After two or three kicks I turned around to make sure
19 that the other team members had seen what was happening and
20 were looking for an alternate entry point, which they had
21 There was another door on that back patio that we were not
22 aware at first that was there

23 Lieutenant Beaver and Sergeant Williams had started
24 kicking that door They were able to get it open after
25 several kicks, so we made entry through that door

John Eldridge
Direct examination by Ms Hodge

1 Q If I can find the picture for that -- showing you
2 State's TT Is this the door you actually were able to
3 make entry through?

4 A Yes, it is

5 Q Okay And once you made entry through that door, I'm
6 going to show you State's VV Is that door in this picture
7 of a different angle?

8 A I believe it's that door on the right-hand side of the
9 frame there

10 Q Once you made entry through the door, what did you
11 see?

12 A As I came through the door I saw that Lieutenant
13 Beaver had made a sharp left-hand turn into the room
14 Sergeant Williams had kind of peeled off of him and
15 was checking the right-hand side of the room, so I shot up
16 through the middle of the room and kinda began to angle
17 toward the left side

18 Some of the first things I saw were Sergeant McConnell
19 and Deputy Soule had made entry through the front side of
20 the house and were in the process of taking the defendant
21 down onto the floor to control him

22 I saw Joe laying on the floor I knew there were
23 other team members that were coming in behind me, and we
24 were kind of getting to the point of bottlenecking there.
25 We had a number of people in the room

John Eldridge
Direct examination by Ms Hodge

1 So I moved out of the way and stepped up onto the
2 couch and essentially kind of covered Soule and McConnell's
3 backs, covered beyond them into the hall and the
4 kitchen-way and tried to get out of the way of the other
5 team members that were moving that direction to continue
6 clearing the house

7 Q You say you got up on a couch It's not this couch,
8 is that correct?

9 A No, ma'am It's on the other side of the room

10 Q Do you recall seeing anything or anyone on this couch?

11 A I don't remember seeing anyone on that couch there

12 I didn't really take a look into that corner because
13 Sergeant Williams was in front of me and he had already
14 directed towards that area So essentially my job was to
15 find a different uncovered area to start moving towards and
16 begin to clear

17 Q Show you WW Would that be the couch?

18 A Yeah That's the direction I moved, and that's the
19 couch that I got up on top of to get out of everybody's way
20 and cover beyond McConnell and Soule

21 Q Was the defendant anywhere in this area when you came
22 in?

23 A Yes, ma'am

24 At the time I got sight of him, McConnell and Soule
25 were pushing him down to the floor They had him up

John Eldridge
Direct examination by Ms Hodge

1 against the left side of the couch there and were in the
2 process of handcuffing him

3 Q Did you see Joe Sapinoso at that time?

4 A I did He was laying down on the floor there below
5 the couch kind of in a balled-up position His knees were
6 drawn to his chest and he was face down on the floor

7 Q Was he moving or making any sounds at this time?

8 A No, he wasn't

9 Q At the time that you came in contact with the
10 defendant was he armed at this point that you know of?

11 A I don't believe he was armed with any firearms

12 At that point I took custody of him shortly after he
13 was handcuffed He was moved into the kitchen to get him
14 away from the immediate crime scene, and I began to search
15 him I found a police collapsable baton in the cargo
16 pocket of his sweatshirt, along with pepper spray So he
17 was armed with those

18 Q I show you State's V for identification Do you know
19 what that is a picture of?

20 A Yes, ma'am

21 That appears to be the baton and pepper spray that I
22 removed from his pocket

23 There is some money, a roll of money, laying there I
24 took that out of his pants pocket, his front pants pocket
25 There appears to be a bandana on the floor

John Eldridge
Direct examination by Ms Hodge

1 Q Is this picture an accurate representation of where
2 you put those things and how they looked on the night of
3 the incident?

4 A Yes, ma'am It is

5 MS HODGE At this time we move to admit V

6 MR GOLDSMITH No objection

7 MR SUMNER No objection

8 THE COURT It is admitted

9 (Photograph marked State's Exhibit V)

10 Q Showing you State's V And you do have a laser
11 pointer on the remote control right there Can you point
12 out what's on this? It is not --

13 A Yes, ma'am

14 Right here is a bandana I don't really recall what
15 that is That's an amount of folded-up money that I took
16 out of the defendant's pants pocket

17 This long thin item here is what we call an ASP
18 baton -- A-S-P That's an acronym for the company, but
19 it's a collapsable police baton And next to it, to the
20 left, there is a can a pepper spray

21 Q These all came off the defendant?

22 A Yes, they did

23 Q And are those, the paper spray and the ASP baton, are
24 those county-issued items that you keep on your duty belt?

25 A Yes, ma'am That's our equipment

John Eldridge
Direct examination by Ms Hodge

1 Q Did you just leave these items here on the kitchen
2 floor once you had taken them off the defendant?

3 A I did

4 Q Did you at any time ever see the firearms?

5 A At some point I did, laying on the floor of the
6 hallway I don't remember how early it was, but, yes, at
7 some point I saw those pistols laying there

8 Q Now, at this time what was your main role once you had
9 searched the defendant?

10 A I stood him back up after I finished searching him I
11 leaned him over a kitchen counter just to secure him, take
12 his movement away from him

13 We had called for a uniform patrol car to be pulled up
14 to the front of the house to transport him Once it
15 arrived, I walked him outside and turned him over to
16 uniform patrol deputies

17 Q Did you ever go back inside the residence after that?

18 A No, I did not

19 Q Did you ever collect any items of evidence from the
20 house?

21 A No, I did not

22 Q Once you left the residence, what did you do?

23 A The SWAT team gathered back up outside We stood down
24 and went back to our cars and then went to the law
25 enforcement center store for a debriefing

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 Q Did you have to write a report at that time also?

2 A I did

3 Q And did that end your involvement in this case?

4 A Yes, it did

5 MS HODGE One moment, please

6 (Pause)

7 Q Thank you Please answer the defense questions

8 MR SUMNER No questions

9 THE COURT You may step down

10 MS HODGE May the witness be excused, Your Honor?

11 THE COURT He may be

12 (Whereupon, the witness was excused)

13 MS HODGE The state would call Deputy Ron

14 Richardson

15 MR SUMNER Your Honor, for ease of objection, we
16 don't have any objection to any witness being excused

17 THE COURT All right

18 RONALD RICHARDSON, JR , having
19 been first duly sworn, testified as follows

20 THE CLERK State your name for the record, please

21 THE WITNESS Ronald Richardson, Jr

22 DIRECT EXAMINATION BY MS HODGE

23 Q Deputy Richardson, are you employed with the
24 Greenville County Sheriff's Office?

25 A Yes, ma'am, I am

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 Q How long have you been with them?

2 A I have been with the Greenville County Sheriff's
3 Office for five years

4 Q What are your duties and responsibilities for the
5 sheriff's office?

6 A I am assigned to the uniform patrol division, delta
7 platoon, as a master deputy

8 Q And are you also a member of the SWAT team?

9 A Yes, ma'am, I am

10 Q How long have you been on the SWAT team?

11 A Four years, ma'am

12 Q What are your duties on the SWAT team?

13 A Presently I'm an assistant team leader on the SWAT
14 team

15 Q And what does that mean?

16 A That means that Lieutenant Eldridge who was just up
17 here before me, he is my team leader If, in fact, he is
18 not present or is out somewhere, I take his place and
19 command our entry

20 Q And back on April the 1st of last year were you an
21 assistant team leader then?

22 A No, ma'am, I was not

23 Q And what were your duties?

24 A My prior duty at that point, Lieutenant Eldridge,
25 again, is my team leader, and also he was the primary point

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 man on our team

2 My responsibility was to be second in the door behind
3 him That was my responsibility

4 Q So did you -- you obviously recall being called out to
5 Chetsworth Lane on that night, April the 1st, last year.

6 A Yes, ma'am

7 Q Were you working that night?

8 A No, ma'am, I was not I was in an off-duty status at
9 home

10 Q So you got paged to come out there?

11 A Yes, ma'am, I did

12 Q Do you remember about what time you got to the
13 residence of Chetsworth Lane?

14 A I received the digital page at approximately 2340 or
15 11 40 p m that night, and I probably got on the scene,
16 probably around midnight or a little after

17 Q And did you immediately respond to the house at that
18 time to set up position?

19 A No, ma'am

20 I was probably the third or fourth SWAT team member on
21 the scene As I got on the scene, I met with Lieutenant
22 Taylor who was the SWAT team commander then, and Lieutenant
23 Eldridge

24 Him, myself, Lieutenant Eldridge, Deputy Soule and
25 Deputy Massey then were directed by Lieutenant Taylor to

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 proceed to the residence to establish an emergency action
2 plan or emergency response plan

3 Q And did you do that?

4 A Yes, ma'am, we did

5 Lieutenant Eldridge was in charge of the entry element
6 once we got on the scene We placed certain things,
7 designated different things to everybody there And we
8 went in a holding pattern until everybody else got on the
9 scene

10 Q And I assume you were briefed of the situation inside
11 the residence before you had established your positions

12 A Yes, ma'am

13 When I initially received the page, I read it, and it
14 said an officer was being held hostage in Mauldin

15 So initially my thought process was that was a Mauldin
16 city police officer being held hostage

17 So I called communications before leaving the house.
18 They confirmed that it was a Greenville County deputy, and
19 they told me it was Investigator Sapinoso

20 So prior to getting on the scene I had some type of
21 knowledge of what was going on

22 Q And during this time were you advised who was holding
23 him hostage in his house?

24 A I am not sure, ma'am I don't think I found that
25 information out until once I was actually at the residence

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 and more information started coming in

2 Q And what was the information that started coming in at
3 that point?

4 A At this point initially it was Investigator Sapinoso
5 and his father were being held hostage by Investigator
6 Sapinoso's sister's former boyfriend And then at that
7 point more information came in that Investigator Sapinoso's
8 mother and his nephew were upstairs in a closet talking on
9 the telephone

10 Q Do you know who they were talking to?

11 A I'm not sure But if I was -- I would presume it was
12 probably dispatch or someone that they had communication
13 with to let them know where they were at and what was going
14 on inside

15 Q Where did you take up position once you got to the
16 house?

17 A Along with Lieutenant Eldridge and Deputy Soule I --
18 if you were looking at the front of the house, which we
19 designated as side one, I was on the left-hand side of the
20 residence on side two right behind Lieutenant Eldridge

21 Q Placing State's RR back up on here again, is that the
22 location you were taking position on?

23 A Yes, ma'am

24 Q And during this time were you advised that the
25 negotiator, Tony Lee, was speaking with the suspect inside

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 the residence?

2 A Yes, ma'am

3 Negotiations are continuous And just like with
4 Master Deputy Cannon giving us information Intell on what's
5 going on in and around the residence, we are communicating
6 between each other

7 Lieutenant Eldridge and Sergeant Williams and Sergeant
8 McConnell are giving out some more detail plans about what
9 it is that we're going to do in case of different type of
10 contingencies that may come out if, in fact, you know, the
11 defendant tries to break out, if he walks out, some type of
12 surrender appears imminent

13 Each of us are designated some type of job to do in
14 those situations if something happens

15 Q Did the defendant ever come out and surrender?

16 A No, ma'am, he did not

17 Q What happened?

18 A Like I said, negotiations was continuous And we were
19 hearing that everything was going well, that he would say
20 that I'm -- you know, he's going to come out

21 And then it would be ten more minutes, and then, you
22 know, he wanted to talk to somebody else So this
23 continued to go on for a while

24 And then it got to the point that he wanted to give
25 his sister a jacket for some reason and that he was going

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 to come outside the front door And we just, we just stood
2 there waiting on him to come out, but it never happened

3 Q What did happen?

4 A Myself and Lieutenant Eldridge, we kind of alternate
5 positions, especially during a long duration operation
6 because we don't -- we try not to get tunnel vision, not
7 try to get wear-down so that we can stay as fresh as
8 possible

9 So he had just rotated back to go over some other
10 stuff with some of the other team leaders back there So I
11 was a pointer up front as, I guess, layman's terminology,
12 in case we had go

13 And it was probably right at that time as we
14 interchanged and I was standing there when I heard a
15 gunshot, and this is when Lieutenant Eldridge is telling me
16 to go

17 So I come around the corner on the back side of the
18 residence where those two gentlemen are standing right
19 there At that point the only knowledge that we had was
20 that was the only door back there

21 So as I come around a corner, I continued to hear
22 gunshots And I tear into the door with everything I have,
23 and it is not budging

24 Then me and Lieutenant Eldridge tried to kick it, and
25 it's still not budging We kick it again

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 Then at this point Sergeant Wilson who is also on our
2 rifle platoon, a sharpshooter, he deployed a noise-flash
3 distraction device, because we got bottlenecked up in that
4 door That's something that we use to try to get the
5 attention off of us in case something like that happens

6 So at this point I turned my attention and saw
7 Sergeant Williams and Lieutenant Beaver making entry into
8 the secondary door And at this point I followed
9 Lieutenant Eldridge inside the residence

10 Q Let me show you State's Forty-one, a diagram Do you
11 know what this is?

12 A Yes, ma'am

13 Q Okay What is this?

14 A This is the room that we entered after we, after
15 Lieutenant Beaver and Sergeant Williams breached the door
16 to get inside

17 Q And is this diagram fairly accurate? It may not be to
18 scale, but is it fairly accurate of how the room was laid
19 out that night that you entered Chetsworth?

20 A Yes, ma'am, it is

21 MS HODGE At this time we would move to admit
22 State's Forty-one into evidence

23 MR SUMNER No objection

24 THE COURT It is admitted

25 (Diagram marked State's Exhibit Number Forty-one)

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 Q So it is my understanding this would be the door that
2 you were referring to from the photograph

3 A Yes, ma'am

4 Q State's RR And then what would this be?

5 A That would be the secondary entry point where
6 Lieutenant Beaver and Sergeant Williams made entry

7 Q Did you eventually enter through that door also?

8 A Yes, ma'am I did right behind Lieutenant Eldridge
9 Again, it is my responsibility to watch his back and to
10 cover anything that he can't cover once he goes inside the
11 residence

12 Q And what did you see and what did you do once you made
13 entry into that room?

14 A Once we made entry I came in behind Lieutenant
15 Eldridge He kind of fanned out into the middle of the, of
16 that room

17 At the point I came in I'm, I'm taking an overview of
18 everything inside the room At this point I see an older
19 gentleman leaning up against that back sofa up there

20 I continued to scan the room again looking for the
21 suspect or looking for what we consider a job, something to
22 do while I am inside there, to cover something that
23 somebody else hasn't seen

24 At this pint I continue to come through, and this
25 point I see Deputy Sapinoso laying face down on the floor

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 And at this point I continued to move past him because I
2 saw it covered And as I come around I make eye contact
3 with Sergeant McConnell and he gives me instruction, he
4 said, "Ron, I need to you to go upstairs and find those
5 other two hostages upstairs "

6 So at that point myself and Deputy Taylor, we go
7 upstairs and start doing a protective sweep of the upstairs
8 area to locate Ms Sapinoso and the nephew

9 Q All right And there is a laser button on that If
10 you would, just point to where you saw Mr Sapinoso, where
11 you saw him

12 A Right here is where I saw the older Sapinoso, right
13 here, kind of laying back on the chair, just kind of
14 glimpsed him some as I came in

15 I come in right here As I come around here, I'm
16 finding, looking at this open area right here where
17 Lieutenant Eldridge is on this couch right there

18 I pass and see Deputy Sapinoso right here and continue
19 through this way to the upstairs area

20 Q Did you ever locate Ms Sapinoso and the child that
21 was with her?

22 A No, ma'am

23 Initially, and I guess that's where some despair kind
24 of set in, because when I first went upstairs, I mean, I
25 went into every room, checked every door, any locked door

Ronald Richardson, Jr
Direct examination by Ms Hodge

1 And initially I couldn't find her

2 So I went back And at this time Deputy Soule and
3 Sergeant McConnell is back upstairs And we conduct
4 another search And at this point, this is where Sergeant
5 McConnell finds them, you know, way back of this closet,
6 and they escort them outside the residence

7 Q Were they unharmed physically?

8 A Yes, ma'am, as far as I can tell

9 Q So what did you do once they were escorted out of the
10 residence?

11 A Once they were escorted outside the residence, my job
12 was done there And I left outside the front door and went
13 back to the staging area and got in my patrol car and went
14 to the law enforcement center where we had a rebriefing and
15 documented the incident on the incident report

16 Q And at any time while you were making entry into the
17 house, scanning the upstairs, did you ever come across any
18 other black male suspect in that residence?

19 A No, ma'am There was no one else inside that
20 residence other than Ms Sapinoso and her grandchild

21 Q Just one moment, please

22 (Pause)

23 Q Thank you Answer any defense questions, please

24 MR SUMNER No questions of Officer Richardson

25 THE COURT You may step down

1 MS STROM Your Honor, may counsel approach?

2 THE COURT Yes, ma'am

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury)

5 THE COURT Ladies and gentlemen, we are going to take
6 a short break before we continue

7 So please go to your jury room Don't talk about the
8 case We will bring you back after the break

9 (The following takes place outside the presence of the
10 jury)

11 THE COURT Court's in recess for 15 minutes

12 (Whereupon, a recess was taken)

13 MS STROM The state is ready, Your Honor

14 During the break -- this is the witness who will
15 testify as to the statement of the defendant, and we will
16 have him after it is admitted into evidence publish the
17 statement

18 We had enlarged that statement I have shown it to
19 defense counsel The enlargement will not go to the jury,
20 only the original statement But I do have the enlargement
21 to aid the jury as he is publishing it

22 THE COURT Okay Bring the jury in, please

23 (The following takes place in the presence of the
24 jury)

25 THE COURT All right Ms Strom

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 MS STROM The state calls Investigator Paul
2 Silvaggio

3 PAUL ANDREW SILVAGGIO, having
4 been first duly sworn, testified as follows

5 THE CLERK State your name for the record

6 THE WITNESS Paul Andrew Silvaggio,
7 S-I-L-V-A-G-G-I-O

8 DIRECT EXAMINATION BY MS STROM

9 Q Investigator Silvaggio, again, would you please state
10 your full name for the record so I can make sure everyone
11 can hear you?

12 A Paul Andrew Silvaggio

13 Q Keep your voice up so the last jurors can hear you

14 A Yes, ma'am

15 Q By whom are you employed?

16 A I'm employed with the Greenville County Sheriff's
17 Office

18 Q How long have you been with the Greenville County
19 Sheriff's Office?

20 A Eighteen years

21 Q In what capacity?

22 A I'm an investigator in the homicide unit

23 Q Do you have any prior law enforcement experience other
24 than with the Greenville County Sheriff's Office?

25 A Yes I was three years in the United States Army as

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 an investigator in the criminal investigation division

2 Q Did you have an occasion on April the 2nd of last
3 year, 2003, to respond to the law enforcement center in
4 reference to a homicide?

5 A Yes, I did

6 Q What was the purpose of your responding? Were you on
7 call? What was the situation?

8 A I was notified at home by Sergeant Larry Blakely of a
9 shooting investigation underway by the Greenville County
10 Sheriff's Office involving one of the deputies of the
11 sheriff's office, Joseph Sapinoso, and his father

12 Sergeant Blakely advised at five o'clock that morning
13 of the 2nd of April of 2003 for me to respond to the law
14 enforcement center for my assignment

15 At that time I prepared myself for the response and
16 then left my home and responded to my office at the
17 Greenville Law Enforcement Center

18 Q So you responded to the law enforcement center on
19 McGee Street

20 A Yes, I did

21 Q What did you do when you arrived?

22 A When I arrived at the law enforcement center I made
23 contact with Sergeant Larry Blakely who is one of the
24 violent crime supervisors

25 He then directed me that Mr Kamell Evans, the

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 defendant in this case, was seated back in the violent
2 crimes unit and asked that I go and accompany Mr Evans in
3 the office and wait for the arrival of Special Agent Jeff
4 Kindley with the South Carolina Law Enforcement Division to
5 further process the suspect

6 Q Did you go back to the criminal investigation division
7 where the defendant was?

8 A Yes, I did

9 Q Were there deputies with him at that time?

10 A Yes, there were

11 Q Did you take over the security of the defendant at
12 that time?

13 A Yes, I did

14 Q Did you have any conversation with the defendant,
15 Kamell Evans, at that time?

16 A Yes, I did

17 Q What did you do?

18 A Our conversation, I introduced myself to Mr Evans I
19 identified myself as being an investigator with the
20 Greenville Sheriff's Office

21 I had him unhandcuffed and unshackled and offered
22 him -- just we had general conversation not related to the
23 case but just general conversation as he was -- I was
24 accompanying him in this process of awaiting SLED to
25 arrive

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 So our conversation was neutral in its base, very
2 pleasant He was very polite, and of no real substance

3 Q When you were talking with him at that time, what was
4 his demeanor?

5 A He was very polite, very calm, seated upright, and his
6 posture was firm and distinct, sitting next to my desk He
7 wasn't distressed and very pleasant, if you will, in
8 speaking with me and being, having contact with me there at
9 my office

10 Q Shortly thereafter did Agent Kindley arrive?

11 A Yes, he did

12 Q Did Agent Kindley identify himself to the defendant,
13 Kamell Evans, at that time?

14 A Yes, he did

15 He showed Kamell Evans his credentials, identified
16 himself as being an agent with the South Carolina Law
17 Enforcement Division and was dressed accordingly that
18 readily identified himself as being an agent with SLED

19 Q And how were you dressed?

20 A I was dressed in blue jeans, a call-out shirt, which
21 is a, like a, golf pullover shirt with a sheriff's office
22 badge and the unit we're assigned to, homicide, on one
23 side

24 I had my gun on the left side holstered and secured
25 and my badge on the front portion of my belt with two

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 pagers on and one Nextel telephone

2 Q How was Agent Kindley dressed?

3 A Agent Kindley was dressed in green khakis, black
4 combat-type boots, a utility belt with his law enforcement
5 equipment, his firearm and such as that on his belt,
6 pagers, Nextel He was dressed in a black golf type shirt
7 with the South Carolina Law Enforcement Division emblem on
8 the shirt And that was about it

9 Q After Agent Kindley identified himself to the
10 defendant, Kamell Evans, what, if anything, did y'all do
11 with Kamell Evans?

12 A At that time we escorted Mr Evans to our commander's
13 office in the criminal investigation division -- Captain
14 Brooks We utilized his office for purpose to further the
15 process with Kamell Evans and to conduct an interview with
16 him should Kamell Evans choose to do that with us

17 Q Did that office give you more privacy than the office
18 back in the criminal investigation division?

19 A Yes, very much so

20 The office has two doors on the office, one leading
21 into the secretarial area and one leading into the main
22 foyer of the criminal investigation division And it
23 enables -- the walls are very strong and sense of sound,
24 and it eliminates anybody from coming into the office so
25 that we can conduct a conducive interview with the

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 individual that we are talking with, this being Kamell
2 Evans

3 Q So it was you, Agent Kindley and Kamell Evans who went
4 to your commander's office

5 A That is correct

6 Q Did anyone else go with you?

7 A No, ma'am

8 Q When the three of y'all got to the commander's office,
9 what, if anything, did y'all do with Kamell Evans?

10 A The positioning of the office, I sat at the desk, at
11 my commander's desk We seated Kamell Evans at the desk,
12 excuse me, at the chair just to the left of the desk, which
13 would be, he would be, within a close proximity of myself
14 And Special Agent Kindley then sat at the front of the desk
15 and slightly to the right of the defendant

16 At that time we offered, asked him if he needed
17 anything to eat, because it was now approximately eight
18 o'clock in the morning, and we knew that this had carried
19 on some time So we offered him breakfast He didn't want
20 breakfast He wanted something to drink So we did offer
21 him and provide him some water

22 Q Was the defendant, Kamell Evans, handcuffed or
23 shackled at this time?

24 A No, he was not

25 Q You had taken off the handcuffs and shackles in the

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 investigation division

2 A That is correct

3 Q Please advise this jury -- well, after you offered
4 Mr Evans some water or something to drink and you got it
5 for him, what was the essence of y'all's conversation at
6 that time?

7 A At that time Special Agent Kindley advised the
8 defendant that we were there for the purpose of conducting
9 an interview with him to get his side of the story

10 At that time he asked him if he wanted to speak with
11 us, that he didn't have to talk with us, but that if he
12 wanted to give his side of the story that we would reduce
13 that to writing if he wished to write it or we would type
14 it on a statement form for him He would proof read it and
15 then sign it should he desire to do that

16 Q Did Agent Kindley specifically ask the defendant if it
17 were permissible for him if you were present?

18 A Yes, he did

19 Q And what was Mr Evans' response?

20 A Mr Evans had no objection to my presence in the room,
21 in fact, appreciated the fact of me being kind and nice to
22 him -- well, in our office in the violent crimes unit, and
23 did wish for me to remain in the room with him

24 Q Prior to conducting an interview of the defendant did
25 you or Agent Kindley request of him certain vital

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 information such as his name and date of birth and social
2 security number and that sort of thing?

3 A Yes, we did

4 Special Agent Kindley requested of him to verbalize
5 his full name, his birthdate, his social security number,
6 his home address, his level of education, and should he
7 have any additional education outside of college and the
8 high school for which he attended

9 Q What's the purpose of asking that type of information?

10 A What we do is we reduce that to writing on the initial
11 process on the rights waiver form And we handwrite that
12 on the form so that we know later on that that's the form
13 of this particular individual It gives us a basis for
14 identification of the individual and it allows us to
15 further our investigation with those vital statistics
16 common to everyone

17 Q I show you what's been marked as State's Exhibit
18 Number Forty-two I ask you to look at that Do you
19 recognize State's Exhibit Forty-two?

20 A Yes, I do

21 Q Does State's Exhibit Forty-two reflect the information
22 Agent Kindley gathered regarding the defendant's name, date
23 of birth, social security number and level of education?

24 A Yes, it does

25 Q What is State's Exhibit Number Forty-two?

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 A This is a rights waiver form, Miranda of rights,
2 enabling the defendant to waive his right or exercise his
3 right not to speak to law enforcement for further
4 questioning It is an advisement of his rights and his
5 right to a lawyer

6 Q Did you and Agent Kindley go over that advice of
7 rights form with the defendant?

8 A Yes, we did

9 Q If you would, Investigator Silvaggio, please describe
10 to this jury how you went about the advisement of the
11 rights to the defendant, Kamell Evans

12 A Well, I was seated at the, behind the desk, and Kamell
13 Evans was to my right He scooted his chair up closer to
14 the desk

15 Special Agent Kindley placed this form after filling
16 in his vital statistics at the top left-hand corner He
17 presented him with the form, laid it in front of him

18 At that time Special Agent Kindley in my presence then
19 read to the defendant each one of his rights, and at which
20 time asking him if he understood each one of his rights as
21 he read the right to him

22 Q Investigator Silvaggio, I am going to show you an
23 enlargement of those rights

24 MS STROM Counsel, you have previously seen this

25 MR SUMNER I'm sorry?

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 MS STROM You have previously seen this

2 MR SUMNER Yeah I have sign it Both enlargements
3 are fine, Your Honor

4 Q And this is an enlargement of the advice of rights
5 form

6 A Yes, it is, ma'am

7 MS STROM Your Honor, I am going to use the
8 enlargement to aid the jury in the understanding of the
9 going over the advice of rights form

10 THE COURT Do you want to move for the admission of
11 Exhibit Forty-two?

12 MS STROM Move State's Exhibit Forty-two into
13 evidence at this time

14 MR SUMNER Without objection

15 THE COURT It's admitted

16 (Defendant's waiver marked State's Exhibit Number
17 Forty-two)

18 Q Investigator Silvaggio, you said that Agent Kindley
19 advised the defendant of each of his rights

20 Would you please describe to the jury in detail what
21 happened during that advice of rights? What exactly did
22 y'all do?

23 A Yes, ma'am

24 As we, we filled in the vital statistics, Special
25 Agent Kindley filled in the vital statistics of the

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 individual Kamell Delshawn Evans --

2 Q That's in the upper left-hand corner?

3 A Yes, it is

4 Q And what is contained therein? If you would, read it
5 to us

6 A "Kamell Delshawn Evans, 26 Y O A ," referring to
7 years of age And in abbreviation, quotation, "Mel,"
8 M-E-L, is his nickname 110 Camera Avenue, Greenville
9 His cell phone number of 420-0340-C -- C referring to cell
10 And 420-0648 H referring to his home

11 He has two years of college College, North
12 Greenville His birthdate is 12/15/76 Social security
13 number is 287-88-9517 And was a graduate of Greer High
14 School

15 It was presented then to Mr Kamell Evans, asked him
16 if this was correct information He verified, acknowledged
17 verbally, that it was correct

18 Special Agent Kindley then directed him to place his
19 initials at the top left-hand corner and the bottom
20 right-hand corner of that information and vital statistics
21 affirming that it was correct for identification of him

22 We then proceeded with the date and the time that all
23 of this originated as far as the rights waiver form, the
24 date being 4/2 of '03 and the time being 8 11 a m We
25 then --

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 Q Did you also have the defendant initial the date and
2 time that the advice of rights began?

3 A Yes, we did

4 Q Then where did y'all proceed? What did you do?

5 A At that time Special Agent Kindley then advised him of
6 his legal rights, advising him, "Before we ask you any
7 question you must understand your rights "

8 He would then look to Mr Evans and ask him do you
9 understand He would acknowledge verbally that he did He
10 was then directed to affix his initials to that phase of
11 his rights, initialling K E for Kamell Evans

12 Q So Agent Kindley would actually read aloud that
13 sentence, correct?

14 A Yes, ma'am

15 Q And then ask the defendant, Kamell Evans, if he
16 understood that right

17 A Yes, ma'am

18 Q And Mr Evans indicated that he did

19 A That is correct

20 Q Mr Evans then initialed beside that line

21 A Yes, he did

22 Q Please continue

23 Did that happen with every line?

24 A Yes, it did

25 Q Continue as you did with -- you and Agent Kindley did

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 with the defendant Evans

2 A Special Agent Kindley then proceeded to advise him,
3 "You have the right to remain silent," asking him if he
4 understood He acknowledged verbally, yes, I do And then
5 he would affix his initials K E to the end of that phase

6 "Anything you say can be used against you in court "
7 Agent Kindley would, in turn, ask him if he understood He
8 acknowledged verbally yes He would then have him initial
9 at the end of that phase, K E

10 "You have the right to talk to a lawyer for advice
11 before we ask you any questions and to have him present
12 with you during questioning " Again, he would ask him if
13 he understood He acknowledged yes verbally and initialed
14 K E

15 We would then continue on to, "If you have no money to
16 pay for a lawyer's fee the Court will appoint one without
17 cost if you wish," acknowledging that he understood by
18 saying yes, and then initialing K E

19 "If you decide to answer questions now without a
20 lawyer present you will still have the right to stop
21 answering at any time You also have the right stop
22 answering until you talk to a lawyer," acknowledging
23 verbally, yes, I do understand, initialing K E for Kamell
24 Evans

25 We would then stop for a moment, move back up the

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 waiver form to the center where it says, "You have the
2 right to talk to a lawyer for advice before we ask you any
3 questions and to have him with you during questioning "

4 We would ask Kamell Evans to read that back to us He
5 intelligently read that back to us verifying that for later
6 viewing of the rights waiver form We then had him affix
7 his signatures, his payroll signature, to that portion
8 right at the end of that phase of his rights waiver

9 Q What's the purpose of having him read that back to
10 you?

11 A It enable us to be able to verify that he is able to
12 read and understand his rights and that he did have a right
13 and does have a right to a lawyer at the time of the
14 interview process

15 Q At any time during, when Agent Kindley was advising
16 him of each of these rights, were you present during the
17 entire time?

18 A Yes, I was

19 Q Did you ever leave the room during the advice of
20 rights?

21 A No, I did not

22 Q At any time did the defendant indicate to you or to
23 Agent Kindley that he did not understand those rights?

24 A No, he did not

25 Q Were his responses always in the affirmative that he

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 did understand the rights?

2 A Yes, they were

3 Q After advising the defendant of his rights, what was
4 your next step?

5 A We then went to the waiver of rights, and Special
6 Agent Kindley read aloud to Mr Evans, "I have read this
7 statement of my rights and I understand what my rights are
8 I am willing to make a statement and answer questions I
9 do not want a lawyer at this time I understand and know
10 what I am doing No promises or threats have been made to
11 me and no pressure or coercion of any kind has been used
12 against me "

13 He would then, Special Agent Kindley would then, ask
14 him if he understood the word coercion, that being a very
15 uncommon terminology in our language, the English language
16 Special Agent Kindley had him circle the word coercion and
17 then explained to him what coercion was

18 Q What did he explain to him?

19 A He told him that coercion was that he wasn't -- that
20 he was not being forced or threatened by anyone for him to
21 waive his rights and talk to us and that no threat or
22 promise of any kind was being used against him for him to
23 waive his rights

24 Mr Evans acknowledged that he then understood what
25 coercion meant, and he initialed in the affirmative with K

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 E for Kamell Evans

2 We then asked him if he understood his waiver of his
3 rights, and he acknowledged yes in the verbal and initialed
4 at the beginning and the end with K E for Kamell Evans,
5 and then subsequently signed the waiver Kamell Evans

6 Q So not only did he initial each one of his rights, he
7 initialed the waiver-of-rights paragraph and he also signed
8 this waiving his rights

9 A Yes, he did

10 Q And did you and Agent Kindley witness this event by
11 affixing your signatures to the waiver of rights form?

12 A Yes, we did

13 Q I believe Agent Kindley's signature is on the first
14 witness line and your signature is on the second witness
15 line

16 A Yes

17 And that's for two reasons, primarily with his
18 signature being on the first line, it indicates to us that
19 Special Agent Kindley was the one that read the rights to
20 the individual and I subsequently was present and witnessed
21 that

22 And then we ended it with the date, excuse me, with
23 the time of 8 24 a m He acknowledged by viewing a clock
24 that it was 8 24 a m and then initialed K E for Kamell
25 Evans

Paul Andrew Silvaggio
Direct examination by Ms Strom

- 1 Q So the advisement of the defendant of his rights began
2 at 8 11 a m
- 3 A Yes, ma'am
- 4 Q On 4/2/03
- 5 A Yes It did
- 6 Q It concluded at 8 24 a m
- 7 A Yes, it did
- 8 Q And I take it that was also on 4/2/03
- 9 A Yes, ma'am
- 10 Q After the defendant signed the waiver of rights form
11 did he indicate to you that he wished to give a statement?
- 12 A Yes, he did
- 13 Q Let me ask you this
- 14 Did you or Agent Kindley ever force the defendant in
15 any way to get him to waive his rights?
- 16 A No, we did not
- 17 Q Did you threaten him in any way to get him to waive
18 his rights?
- 19 A No, we did not
- 20 Q Did you make him any promises or hold out any hopes of
21 reward for him in order to get him to waive his rights?
- 22 A No, we did not
- 23 Q You said that you and Agent Kindley were both wearing
24 weapons Did you ever at any time brandish those weapons?
- 25 A No, we did not

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 Q At any time during the advice of rights and the waiver
2 of rights did you lay hands on the defendant in any
3 forceful manner to get him to waive his rights?

4 A No, we did not

5 Q Did you lay hands on him in any manner?

6 A No, not at all

7 Q Did the defendant, Kamell Evans, indicate to you he
8 wished to give a statement?

9 A Yes, he did

10 Q How did he do that?

11 A He then after the advisement of his rights advised us
12 that he wished to speak with us about the matter to tell
13 his side of what took place

14 I then advised him that we could either type it on the
15 laptop computer, print for his viewing, signature and then
16 receive a copy of it or he could handwrite it on our
17 statement form if he so desired

18 He advised me that he wished for me to type the
19 statement for him as he conveyed what took place on
20 April the 1st through and into April the 2nd of 2003 in the
21 presence of Special Agent Kindley

22 Q I show you what's been marked as State's Exhibits
23 Forty-three and Forty-three-A and ask you do you recognize
24 that

25 A Yes, I do

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 Q What is State's Exhibits Forty-three and
2 Forty-three-A?

3 A This is the statement, the sworn statement, of Kamell
4 Delshawn Evans that was taken subsequent to the rights
5 waiver form and a diagram authored and designed by Kamell
6 Evans during the same interview

7 MS STROM Your Honor, we would offer State's
8 Exhibits Forty-three and Forty-three-A into evidence

9 MR SUMNER Without objection

10 THE COUPT They are admitted

11 (Defendant's statement marked State's Exhibit Number
12 Forty-three, defendant's drawing marked State's Exhibit
13 Number Forty-three-A)

14 MS STROM Again, Your Honor, we have enlargements.

15 Q Investigator Silvaggio, how did this statement come
16 about? Were you asking the defendant questions, was he
17 reciting to you his side of the story? How did this whole
18 statement come about?

19 A Originally and initially during the interview process
20 the first paragraph is vital statistics of the person you
21 are interviewing, in this case Kamell Evans, where I would
22 ask him his birthdate, social security number, his level of
23 education

24 I asked him if he could read and write, if he was
25 under the influence of any drugs or alcohol, did he know

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 what he was doing

2 I would then ask him permission if I could type this
3 statement for him while he conveyed to me what took place
4 during the events indicated That's the first paragraph,
5 so that's a dialogue back and forth with the defendant and
6 myself in the presence of Special Agent Kindley

7 Once that paragraph is complete and we are confident
8 that the individual is not under the influence of any drugs
9 or alcohol and has his conscience about him where we know
10 that he's -- enables himself to either waive his right or
11 speak to us or ask for a lawyer, and we feel confident that
12 he's comfortable in his setting and not under any duress,
13 then we proceed with the interview process

14 Q Did Mr Evans indicate if he were under the influence
15 of any alcohol or drugs?

16 A He advised that he was not

17 Q He was not

18 A That's correct

19 Q Did you have any indication that he was?

20 A No, we did not

21 Q He was answering your questions coherently?

22 A Very intelligently, very direct and polite

23 Q The -- you were talking about the top paragraph on
24 page one of his statement Please publish to the jury that
25 paragraph

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 A The reference paragraph, additional particulars on
2 statement E?

3 Q Yes

4 A D O B 12/15/76, S S N 287-88-9517 "I can read
5 and write " Graduated from Greer High School, and North
6 Greenville College for two and a half years "I am not
7 under the influence of any drugs nor alcohol, and I know
8 what I am doing

9 "I have given you, Investigator Silvaggio, my
10 permission to type my statement for me as I tell you and
11 Special Agent Kindley my account of what happened
12 throughout my relationship with Christina Rodriquez and
13 what happened last night into and including today

14 "I fully understand that you -- you nor Kindley or
15 anyone else has promised me anything in exchange for my
16 statement I further understand that you have not -- that
17 you have made it clear, made it very clear, to me that you
18 cannot make any deals with me And at this time I am not
19 asking for any deals "

20 Initialed K E at the beginning and end,
21 acknowledging Kamell Evans

22 Q And at that time did the defendant begin to tell you
23 his side of the story?

24 A Yes

25 Q First off, let me ask you, Investigator Silvaggio,

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 prior to responding to the law enforcement center did you
2 at any time go to Chetsworth Lane?

3 A No, I did not

4 Q So you were not aware of the physical evidence or
5 anything else being collected out at Chetsworth Lane or
6 what had actually occurred at Chetsworth Lane

7 A No, I wasn't

8 Q Again, after Kamell Evans initialed that paragraph as
9 being accurate and true, what occurred?

10 A At that time I advised Mr Evans to go ahead and tell
11 his side of the story and as he was telling it I would be
12 typing And he then began with the relationship and then
13 proceeded on And as he was talking I would be typing at
14 the same time

15 Q And I take it that at times you would have to ask him
16 to stop or slow down, or are you that quick of a typist?

17 A He -- I did ask him on several occasions to slow down
18 I type with two fingers, one on each hand So I never
19 mastered the skills \ So I did have to ask him on several
20 occasions to go ahead and slow down, and then I would pick
21 up with him, and then we would proceed on together And
22 then we would have to stop and then continue on

23 Q Was this statement taken as a result of a
24 question-answer type situation or did he just start talking
25 and you start typing?

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 A He began to talk, I would type

2 When we got towards the end of the statement, then we
3 would again have dialogue and interact with a question, and
4 then he would respond And we would then type in his
5 response That is more on -- that is, in fact, the last
6 page of his statement, but the first two pages and a half
7 were his continually speaking about the events

8 Q If you would, please, publish to the jury his
9 statement

10 A "I began a relationship with Christina Rodriguez about
11 three years and some change It was all good Everything
12 was good I used to spend time with her She had got in
13 some trouble with her parents because she ran up some
14 credit cards, and I had a house with my sister in Greer and
15 Christina asked me to help her out -- to help her

16 "I got her and I -- I got her and I an apartment at
17 Fairway Club off of Villa Road Her credit was bad and she
18 was young trying to do things right We got the apartment

19 "I told her that I wanted a family and she said that
20 she did too She would tell me little lies and stuff For
21 example, I would give her money to pay the bills I worked
22 at N B Handy and worked at U P S , working two jobs
23 wanted to make it happen I worked at U P S first shift
24 and then went straight to my other jobs

25 "I would check the mail and find that she would not

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 pay the bills as she told me that she had

2 "I then got a house at 110 Camera Street for us

3 Everything is in my name It's all good She got in more
4 trouble with her pants, and I gave her the money to get the
5 bills paid and she promised she would pay me back

6 "She loved to shop and didn't know how to control the
7 money She would go to her parents and then go back home
8 and then go to her parents and then come back

9 This time she went to her parents and she didn't come
10 back I told her on the telephone that we got the house
11 together and I wanted someone to talk to because I was
12 stuck with the bills

13 "I became more and more angry I drove over to her
14 parents' house and parked my truck up the street and walked
15 to the house Her brother, Joe, was getting out of his car
16 in the driveway

17 "I pulled out a nine-millimeter I pulled out my nine
18 M M ," which is nine-millimeter, "and a 380 and pointed
19 the nine-millimeter at Joe and told him, quote, hey, Joe,
20 all I want to do is talk to you, unquote

21 "As we walked in the house I noticed that Joe had his
22 gun on his side, which he was in a blue policeman's
23 uniform I told him to give me his gun, which he did, and
24 we walked inside

25 "I told Joe to call his dad downstairs We all three

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 talked I told, I told him to call Christina, and I wanted
2 to let them know that she had -- what she had been doing
3 His father told me that he'd, he had been helping
4 Christina, and I told, told them, no, that I had been
5 helping her

6 "My intention was to express to them what Christina
7 had been doing to me financially and then leave Joe and
8 his dad said she tells him," excuse me, "Joe and his dad
9 said that they would let me go Joe called Christina on
10 her cell phone from their home phone, and she tells him
11 that she is at work She doesn't even work

12 "They believe that Christina was with me I then
13 called her and said, and she said, that she was work at
14 Vorizon I told her to tell the truth about everything.
15 She told me that she doesn't work at Vorizon She said she
16 was getting money "

17 Q Excuse me just a second Okay

18 A "She said she was getting money from her parents I
19 asked Christina to come home and I told her that I was over
20 there talking to her parents

21 "Joe told her that I had a gun I got the phone back
22 and told her to come home because I wanted to talk to her
23 family and I wanted to let her family know how she used me
24 and get it off my chest

25 "In the past Christina told me that her father was

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 going to give me a job in a warehouse, and that never
2 happened

3 "Christina never came I was going to leave and then
4 saw two cop cars outside and I got scared I wanted for
5 someone to call and no one called I checked my cell phone
6 messages and found that my family had called I then spoke
7 to Nick Wideman who is a friend of mine, and he works at
8 Sprint on Heywood Road

9 "I talked to my sister, Shatima Evans, 989-0885 Then
10 I talked to my semipro coach, Antonio Galloway, who lives
11 in Florida, which Nick would have his telephone number --
12 have his phone number

13 "I talked to my stepmother, Robin Evans, 848-4180 "

14 Q I want to stop you right there

15 Is the defendant at that time just saying my father,
16 Barry Evans, and then he gives a phone number, or are you
17 asking him for the phone number?

18 A When he names an individual, we'll ask, I asked him
19 what the phone number to that individual was and then
20 incorporate that into his statement

21 Q Okay Please continue

22 A "I talked to my step-mother, Robin Evans, 848-4180,
23 and I talked to my father, Barry Evans, 848-4180 They all
24 told me that I needed to come out of the house and that
25 nothing was going to happen to me

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 "My plans was to talk to her parents and let them know
2 what their daughter was doing and put everything on the
3 table

4 "I asked her dad if Christina told him about our
5 terrible financial situation, about us getting a house
6 rather than the apartment for more space She told me that
7 her dad was going to help us out financially And her
8 father said that they didn't know anything about that

9 "Joe and his father both told me the police -- Joe and
10 his father both told me in the house that she has burned
11 them before as well

12 "Then I saw the cop cars, and nobody called from the
13 police, and I didn't know how to come outside and didn't
14 know what to do I thought everybody would be happy if I
15 took myself out, and I then called my stepmom and I talked
16 to my two little sisters and then decided that I was
17 coming -- I was going outside

18 "I had handcuffed Joe in the front, in front of him,
19 right when I first went in the house with Joe I told Joe
20 that I had to go outside, and Joe said that he would walk
21 outside with me

22 "His dad said that he wasn't going to do anything, and
23 I left Joe's gun, which I had on the coffee table, in the
24 living room of where his dad was sitting

25 "Joe told me to leave the guns inside before I walked

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 outside -- before I walked out I put the nine-millimeter
2 and the 380 in the front pouch of my sweatshirt jacket

3 "Joe sitting on the couch, and he turned to the side,
4 and I thought he was going for the gun and I shot him first
5 and then shot him two or three more times

6 "I had the nine-millimeter in my right hand and the
7 380 in my left hand

8 "I then turned to his father who was sitting on the
9 other couch in the small living room and shot him with the
10 380 three or four times

11 "I shot Joe first with the nine-millimeter and then
12 shot his father with the 380 Joe was still in his
13 uniform when I shot him I took the handcuffs off of Joe
14 about an hour before I shot him because he was talking the
15 whole time and I didn't think he was going to do anything

16 "I thought about killing myself, but then I decided to
17 let the police come in and shoot me Everything was under
18 control if I just kept all the guns on me

19 "I put the gun on the table, which was about four or
20 five feet from Joe, because it was Joe's gun

21 "Right before the police got through the door or right
22 at the same time they came through the door I put the guns
23 on the floor I put my hands up, and I dropped down to the
24 floor as they were coming in, and I was arrested

25 "Before I shot Joe I was talking to a negotiator named

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 John, I think, for a while, a little while I asked my
2 sister or father come through so that I could see them, but
3 the police wouldn't allow that "

4 Q Just one moment, please

5 (Pause)

6 Q Okay

7 A "The negotiator let me talk to my family and was
8 respectful on the floor -- on the phone The negotiated
9 could have called earlier than he did He didn't even call
10 Nick He didn't even call Nick was outside, and he
11 called my cell phone, and I talked to him the whole time
12 Nick clicked over and got my sister on the phone and
13 then -- and then comes out sister, is asking that she could
14 see me so that she could talk to me, and then the man
15 negotiated, got on the phone

16 "I am righthanded I would like to say that I am not
17 blaming anyone for what I did It's true that I did it I
18 am sorry for what I did Sometimes I don't think straight

19 "The nine-millimeter and 380 were purchased at the
20 same time at a pawn shop off of Wade Hampton Boulevard
21 going towards Spartanburg by the flea market and the bingo
22 place I had the guns for about three years

23 "Christina and I walked in the pawn shop together as a
24 couple I knew that I wouldn't buy, that I couldn't buy
25 more than one gun in a month Christina said that she

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 wanted a gun too She filled out her registration form and
2 I filled out mine

3 "Christina got the nine-millimeter, and the 380 must
4 be in my name I kept both the guns all the time with me

5 "After I parked my truck up the street from Joe's
6 house and walked to the house, I stayed outside waiting
7 about 30 minutes to an hour I waited next to the house
8 that was being built next to Joe's house I was waiting
9 for anyone to come, to come home I was going to wait
10 until morning when they all were going to work, but it was
11 8 00 or 9 00 p m last night

12 "I did not park at the house because -- I did not park
13 at the house because they would have heard my truck and not
14 come to the door

15 "When Joe pulled up in his green or gray Cherokee, I
16 decided not to wait, and I just hold them, hold them with
17 guns and talked to them all, all in the house about what
18 was happening

19 "I used to get along really well with Joe and
20 Christina's parents until her and I started having
21 problems Christina was playing her family and I against
22 each other They never treated me bad I wouldn't ever
23 talk to her family, but all in all they treated me with
24 respect during the relationship I had with Christina End
25 of statement " Signed Kamell Evans

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 Q And it was witnessed by you and Agent Kindley?

2 A Yes, it was

3 Q Investigator Silvaggio, on this last page, these
4 paragraphs don't flow as the earlier statement Why is
5 that?

6 A That is correct

7 As we finished the statement portion or the part where
8 he paused, after negotiated, got on the phone, first
9 paragraph, I then asked him what hand he wrote with He
10 then acknowledged I am righthanded

11 Then he just spontaneously stated, "I would like to
12 say that I am not blaming anyone for what I did, it's true
13 that I did it and I'm sorry for what I did Sometimes I
14 don't think straight "

15 Then we asked him where he purchased the firearms, and
16 that's where the next paragraph comes in with his
17 acknowledgement

18 And then we asked him regarding where he parked his
19 truck, and he then acknowledged with that paragraph, the
20 second to the last

21 And then he on his own in speaking with the
22 relationship of Christina's family to him, he then provided
23 his response on the last paragraph of page three and three

24 Q And at some point during your interview of the
25 defendant, Kamell Evans, did you or Agent Kindley ask him

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 to draw a diagram of some sort?

2 A Yes

3 Special Agent Kindley asked Kamell Evans at the
4 conclusion of his statement if he would draw a diagram of
5 the inside of the house as he nor I had been to the scene
6 and it would give us a better understanding of what had
7 taken place

8 He then was presented with a loose-leaf sheet of paper
9 and a pen and asked to draw a diagram as to the interior of
10 the residence and how he reflected it in his statement

11 Q Just a moment

12 MS STROM I will put that enlargement up

13 (Pause)

14 Q If you need to step down, Investigator Silvaggio,
15 please feel free to do so I ask that you keep your voice
16 up

17 A Yes, ma'am

18 Q If you would, please, describe to this jury what is on
19 State's Exhibit Forty-three-A

20 A And would you like me to step down?

21 Q Yes Please

22 (Whereupon, the witness left the stand)

23 A This is the diagram, a copy of the diagram, that
24 Kamell Evans drew for us to give us a better understanding
25 of the interior of the residence as to where this matter

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 took place

2 He began drawing a diagram of the inside of the
3 residence, being the living room, and drawing where the
4 furniture was at and then acknowledged, he said, no, that's
5 not right, and then scribbled through it and then came down
6 here and drew the diagram of the inside of the living room
7 as he was conveying it to us, providing a wall here, a
8 couch here to the left, Joe Sapinoso's position, Joe
9 Sapinoso's gun position on the coffee table, Joe Sapinoso's
10 father's position on a love seat, and Kamell, his position,
11 while standing in the living room

12 He then drew a line pointing where he was standing at
13 the time that he fired the shots at Joe Sapinoso and at the
14 time he fired the gun at Mr Sapinoso, Joe's father

15 He then with that diagram, he then signed the diagram,
16 spelled his name underneath, printed his name underneath
17 the diagram

18 I then signed the diagram, printed my last name for
19 identification Special Agent Kindley then signed the
20 diagram printing his last name for -- I printed Kindley's
21 last name for identification And then we have the date
22 and time that this diagram took place, being 4/2 of 2003 at
23 10 30 And that would be the morning hours Initialed by
24 K E , acknowledging Kamell Evans, where he scribbled again
25 his initials on each of the corners of the scribble, K E ,

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 acknowledging Kamell Evans, that he made originated on that
2 and authenticated that entire position here and he
3 authenticated this here acknowledging that was his
4 signature, and printed his name

5 We then had had that, along with the statement,
6 notarized by a South Carolina notary, Allison Revis, who
7 was a notary for the State of South Carolina, then current,
8 and notary commission

9 Q Would you please indicate on that diagram where Kamell
10 Evans -- I know you pointed out where he was Where was
11 that in relationship to the fireplace in the residence?

12 A The fireplace was directly behind Kamell Evans right
13 on this wall right here, if you will

14 Q You may retake the stand

15 (Whereupon, the witness returned to the stand)

16 Q Investigator Silvaggio, after the defendant gave you
17 this statement -- well, first of all, let me ask you this

18 The statement that is printed there in State's Exhibit
19 Forty-three and on the drawing Forty-three-A, those were
20 the words from Kamell Evans, correct?

21 A That is correct

22 Q The defendant sitting here

23 A Yes, the defendant

24 Q The positioning of the placement of Kamell Evans is by
25 Kamell Evans, correct?

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 A Yes, it is

2 Q You don't know where he was inside that house

3 A No, I do not

4 Q I believe you testified earlier that you did not go to
5 the scene prior to taking this statement

6 A That is correct

7 Q After the defendant gave you this statement and you
8 typed this statement, what process did you go through to
9 verify with the defendant that it was, in fact, his
10 statement?

11 A Once we completed typing the statement and asked him
12 if he had anything further, he advises us no Then we type
13 in, "end of statement "

14 We then print the statement form, hand it to Kamell
15 Evans, and then he reads He sits to himself and reads the
16 statement in its entirety

17 Once he's finished reading the statement, he tells us,
18 okay, I'm finished, and we then present him with a pen and
19 have him initial at the beginning and end of each paragraph
20 and sign the statement and then subsequently have it
21 notarized, and we, in turn, signed it as well

22 Q Did you request of the defendant if he had any
23 corrections or changes he wanted to make in the statement?

24 A Yes, we did And, in fact, he did make his
25 corrections

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 Q How many corrections did he make in the statement?

2 A A total of eight corrections

3 Q Eight corrections

4 We don't have to go through each and every correction,
5 because the jury will have that statement with them in the
6 jury room But for demonstrative purposes could you show
7 the jury on page two of the statement the examples of the
8 corrections made by the defendant, Kamell Evans?

9 A Yes May I step down?

10 Q Yes Please

11 (Whereupon, the witness left the stand)

12 A On page two and three of the statement, as we proceed
13 down the statement he makes a correction here where it says
14 the coffee table, and he typed in front of where his father
15 was sitting and crossed through that from the living room,
16 initialed indicating that then is correct

17 He then comes down, and shot him first, I scratched
18 through the word that was presented there initially and had
19 him initial

20 We then proceed down here, came through the door, and
21 I had T-R-H-E, and he initialed there as well with K E
22 And then he acknowledged that that is true and correct and
23 that is his statement He acknowledged with his initials,
24 beginning and end, and signs

25 Q And he signs each and every page of the statement,

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 correct?

2 A That is correct

3 Q He signs each and every page of the statement
4 acknowledging that that is his statement and that he
5 received a copy of that statement, is that correct?

6 A Yes, ma'am

7 Q Thank you You may retake the stand

8 (Whereupon, the witness returned to the stand)

9 Q You showed these three examples of corrections, but I
10 believe you testified there were a total of eight
11 corrections

12 A That is correct

13 Q And he initialed each one of those

14 A Yes He did

15 Q Investigator Silvaggio, what was the defendant's
16 demeanor while he was giving you this statement?

17 A He was very pleasant, very polite He was very
18 forthcoming and appeared to be very forthcoming on his
19 feelings of what took place, and he truly gave me the
20 impression as an investigator for 20 years that he truly
21 wanted to get it out and let people know really and truly
22 what took place inside that house and what was going on
23 inside his life

24 He was very respectful to myself and Agent Kindley and
25 was very, very much nonconfrontational and truly very

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 pleasant to be in his presence at the time during this
2 interview

3 Q Were y'all confrontational with him --

4 A No, we were not

5 Q -- at any time?

6 A No, ma'am

7 Q At any time during the giving of this statement did
8 the defendant ask to speak to a lawyer?

9 A No, he did not

10 Q Did he at any time ask to stop questioning, that he
11 wanted to stop?

12 A No, he did not

13 Q Did he at any time ask you to stop questioning him and
14 that he didn't want to continue?

15 A No, he did not

16 Q At any time during the giving of the statement did you
17 or Agent Kindley put any pressure or force or coercion on
18 the defendant in order to get him to give you this
19 statement?

20 A No, we did not

21 Q Did you or Agent Kindley hold out any hope of reward
22 or promise of leniency or anything such as that in order to
23 obtain this statement from the defendant?

24 A No, we did not

25 Q Throughout this advice of rights and giving of this

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 statement, I believe you testified that the defendant was
2 cooperative

3 A Yes He was

4 Q Did he also consent to your having his blood taking,
5 taken for evidentiary purposes?

6 A Yes, he did

7 Q I show you what's been marked as State's Exhibit
8 Number Forty-four and ask you do you recognize that

9 A Yes, I do

10 Q What is State's Exhibit Forty-four?

11 A This is the original document where Kamell Evans gave
12 us authorization to take him for a known -- blood samples
13 from him

14 Q And that reflects his signature as well as your
15 signature and Agent Kindley's signature?

16 A Yes, it does

17 MS STROM Your Honor, we offer State's Exhibit
18 Forty-four into evidence

19 MR SUMNER Without objection

20 THE COURT It is admitted

21 (Consent for blood form marked State's Exhibit Number
22 Forty-four)

23 Q Investigator Silvaggio, you previously testified that
24 you began the process of advising the defendant of his
25 rights at approximately 8 11 a m , is that correct?

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 A That is correct

2 Q What time approximately did y'all finish with the
3 advice of rights, taking the statement, letting him review
4 the statement?

5 A It would have been right approximately, around
6 10 30 a m that same morning

7 Q Around 10 30?

8 A Approximately two hours and 20 minutes of duration
9 time

10 Q And is that the time written on the diagram that was
11 drawn by Kamell Evans?

12 A Yes, 10 30 is the time on the diagram of Kamell Evans

13 Q And the consent to obtain the blood of the defendant,
14 Kamell Evans, when was that signed?

15 A That was signed, the consent was signed, in between
16 the statement and the actual diagram

17 And as we finished the statement, we then asked him
18 for consent for his blood And then it really wasn't clear
19 to us what the house looked like and what the immediate
20 area of the shooting appeared to be and what was around it
21 So we then asked him to draw us a diagram, and it was the
22 diagram that I testified to moments ago We asked him to
23 then do the diagram, and then he did submit to us a diagram
24 of the inside

25 Q And the consent to take the defendant's blood was

Paul Andrew Silvaggio
Direct examination by Ms Strom

1 signed or advised of him at 9 55 a m

2 A Yes, it was

3 Q And he signed it at 10 06 a m

4 A Yes, he did

5 Q Did you and Agent Kindley after the signatures on the
6 statement, signature on the diagram and the consent form,
7 subsequently take the defendant, Kamell Evans, over to the
8 hospital to obtain samples of his blood?

9 A Yes, we did

10 Q And I believe Agent Kindley is the one who actually
11 took possession of that blood at that time, is that
12 correct?

13 A Yes, he did, sole possession

14 MS STROM Court's indulgence, Your Honor

15 (Pause)

16 Q Investigator Silvaggio, at any time during the taking
17 of the statement or advice of rights or taking the
18 defendant to the hospital to obtain samples of his blood,
19 did he ever break down and sob in front of you?

20 A No, he did not

21 Q At any time?

22 A No, he did not

23 Q Remained very calm and cooperative the whole time

24 A Yes He was

25 Q Thank you Please answer any questions the defense

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 may have

2 CROSS-EXAMINATION

3 BY MR SUMNER

4 Q Hello, Detective

5 A How are you, sir?

6 Q Doing great Just a few questions

7 You still have the statement, is that right, the
8 original? I am not going to refer to the exhibits

9 A Yes, I do

10 Q The large books You still have that I am going to
11 ask just a few questions about that

12 Would it be correct that the very first thing of
13 substance that the defendant mentions in the written
14 statement, the statement that he gave to you and Agent
15 Kindley, was his relationship with Christina?

16 A Yes, sir

17 Q All right And he goes through, again, page one of
18 the statement, and he details his relationship with her, is
19 that right?

20 A Yes, he does

21 Q And he does this really before he talks about the
22 shooting of the people that occurred just hours earlier.

23 A That is correct

24 Q And he talks about her past credit and money problems

25 A Yes, sir

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 Q Okay You can feel free to look at that, Detective,
2 if you need to -- how he got them both an apartment, is
3 that right?

4 A Originally an apartment and then a house

5 Q And then a house?

6 A Yes, sir

7 Q And he talked to you about how he tried to help her
8 with her credit

9 A Yes, sir

10 Q And rehabilitative credit He told you about how he
11 had told her that he wanted to have a family with her, is
12 that correct?

13 A That is correct, sir

14 Q All right He also began to tell you about how she
15 would lie to him about money

16 A That is correct, yes

17 Q I think he mentions that a couple of times on page
18 one, is that correct?

19 A Yes, sir

20 Q And he also -- by her about paying bills and he was
21 giving her money and she would say she was going to pay
22 bills and then she didn't

23 A Yes, sir

24 Q And they would tell him and he would go get the mail
25 and see what the bills were

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 A That's correct, sir

2 Q He told you that during the majority of this time that
3 he was working two jobs And he would go, I believe, from
4 U P S to the other job, whichever one he was working at
5 that time, is that correct?

6 A That is correct

7 Q And this was during the same timeframe that she is
8 apparently not being truthful with him about money and
9 managing the money and what she was doing, is that true,
10 sir?

11 A That is correct, sir

12 Q And then he told you, I believe, about how that
13 Christina had had to go and borrow money or had gotten into
14 some kind of money problem with her family, with
15 Mr Sapinoso and Joe, as well And he had had, he had
16 bailed her out of that He had given her money, I believe,
17 to square that debt, is that right, with her family?

18 A I would have to reflect on the statement regarding
19 that

20 Q You can look back if you want to at page one

21 A The substance of that is correct

22 Q Okay You don't have to quote it verbatim

23 A Okay, sir

24 Q But he told you about that

25 I believe he also told you about how she kinda went

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 back and forth between their house and her parents' house
2 and would come back and go back

3 A Yes, sir

4 Q He did, is that right?

5 A Yes, he did, sir

6 Q And then he told you that, I guess, from his
7 perspective that all of the lying that had occurred from
8 her to him began to really upset him

9 A Yes, sir

10 Q And then ultimately he talked to you about that
11 afternoon and early evening when this happened And I
12 believe he said that he became more and more angry when he
13 reflected on and thought about what had been going on the
14 last, I guess, six months or so with Christina

15 A That is correct, sir

16 Q Thank you

17 I believe that he told you in his statement that even
18 on the phone that night -- and I realize that you were not
19 out at the scene at any point in time, is that right?

20 A Not up to and through and including this process, I
21 was not

22 Q Thank you

23 I believe he even told you in the statement that when
24 he first went into the Sapinoso home that they had gotten
25 Christina on the telephone, on the cell phone, and she had

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 lied to him about where she was, is that right, and maybe
2 lied to her brother and said she was at work and that maybe
3 he got back on the phone and said you don't even work, why
4 don't you tell them you don't work?

5 A Right

6 Q I believe she, I guess, comes clean and tells her
7 brother I am not at work, and then I believe maybe she
8 mentions to the brother, well, Kamell is with me or some
9 reference He says no, you are lying, I am right here, or
10 some words to that effect I believe she told several
11 lies

12 In his statement to you he talks about the several
13 lies that she even told while they were all together in the
14 house, is that right?

15 A Very much, yes

16 Q He told you that also Mr Sapinoso and Joe during the
17 course of the situation where he was in the residence had
18 told him that she had lied to them numerous times or burned
19 them for money or something along those lines as well

20 A That is correct

21 Q Thank you

22 Now, and he goes, I guess, to tell you this, Detective
23 Silvaggio, and he really talks about that before he talks
24 to you about what happened in the home that night at the
25 shootings, is that right?

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 A That is correct

2 Q But I guess when it came time to tell you about the
3 shootings he -- and why don't you go to page three now if
4 you would, please, sir, just to refresh yourself if you
5 need to?

6 I believe that he said, and let me just hold yours I
7 am not sure which one of these --

8 A Sure

9 Q You and I can look at this together if we need to
10 Ultimately, he says to you, "I would like to say that
11 I'm not blaming anyone for what I did It's true that I
12 did it, and I am sorry for what I did Sometimes I don't
13 think straight "

14 And those were his words to you that morning, weren't
15 they?

16 A Yes, they were

17 Q I mean, he is telling you, number one, I'm not going
18 to blame We might look at that He said, number one, I
19 am not going to try to blame anybody else for what happened
20 in that house, is that right?

21 A That is correct

22 Q He told you it's true that I did it He acknowledges
23 that he fired the weapon, is that right?

24 A Yes, sir

25 Q And he says to you I'm sorry for what I did, is that

Paul Andrew Silvaggio
Cross-examination by Mr Sumner

1 right?

2 A That is correct

3 Q And he said to you again sometimes I don't think
4 straight

5 And then at the conclusion of the statement, and I
6 know that you've already read this I will try to be
7 belief here He says that Christina was playing her family
8 and I against each other

9 A That is correct

10 Q And he told you that he always got along really well
11 with the Sapinoso family, is that right?

12 A Yes, sir

13 Q That they had treated him with respect and he really
14 didn't have any problems with them

15 A That is correct

16 Q And last, these are my last few questions on this
17 point

18 He was, I guess, at all times, and you certainly
19 testified to Ms Strom, he was cooperative with you

20 A Yes He was

21 Q Did he ever resist giving you a statement?

22 A No, he did not

23 Q I mean, you had advised him of rights You had told
24 him you don't even have to speak to me, you can stop
25 talking to me any time you want to You didn't coerce him

Paul Andrew Silvaggio
Redirect examination by Ms Strom

1 at all You didn't threaten him, did you?

2 A No, we did not

3 Q I mean, he just basically was really cooperative with
4 you and told you everything that happened

5 A Yes He did

6 Q And he also told you a lot of what led up to it, is
7 that correct?

8 A Yes, he did

9 MR SUMNER One second, please, Your Honor
10 (Pause)

11 Q One last question Was it your opinion that he
12 appeared, that Mr Evans appeared, to you to be credible?

13 A In respect to his account of the incident, yes

14 Q Did you feel like he was being honest with you in what
15 led up to the event?

16 A On what led up to the event, yes

17 Q Thank you

18 MR SUMNER I don't have any other questions, Your
19 Honor

20 REDIRECT EXAMINATION

21 BY MS STROM

22 Q Investigator Silvaggio, the events that were relayed
23 to you by Kamell Evans that led up to this event, the
24 situation with Christina Rodriguez and his relationship,
25 you have no personal knowledge as to that relationship,

Paul Andrew Silvaggio
Redirect examination by Ms Strom

1 correct?

2 A No, I do not

3 Q So you don't know if, in fact, that is correct or
4 incorrect

5 A That is correct That is just what he conveyed to us
6 during the interview process and what was documented on his
7 statement form

8 Q You don't know if, in fact, the situation as he
9 described it was, in fact, truthful

10 A That is true I didn't know any of the defendant nor
11 Christina Rodriguez prior to this incident

12 Q And at the time that you took this statement from the
13 defendant you did not have any knowledge about the
14 evidentiary matters that were being conducted and collected
15 out at the scene

16 A That is correct I had absolutely no knowledge of the
17 scene nor its content

18 Q So you were not challenging him on any of his accounts
19 of what had happened

20 A No We were not

21 Q You simply allowed him to tell you what he wanted to
22 tell you

23 A And that's solely what he told us took place and
24 without any interjection from us being that of his
25 statement

Jeffery Kindley
Direct examination by Ms Strom

1 Q Thank you

2 MS STROM I have no further questions

3 THE COURT You may step down

4 MS STROM We would ask he be excused, Your Honor

5 THE COURT He may be

6 (Whereupon, the witness was excused)

7 THE COURT Any juror need to take a break? No?

8 Okay

9 MS STROM Keep going? State calls Agent Jeff

10 Kindley

11 JEFFERY KINDLEY, having been
12 first duly sworn, testified as follows

13 THE CLERK State your name for the record, please

14 THE WITNESS Jeffery Kindley, K-I-N-D-L-E-Y

15 DIRECT EXAMINATION BY MS STROM

16 Q Agent Kindley, please state your full name for the
17 record

18 A Jeffery Kindley

19 Q I need for you to speak up and, if necessary, speak
20 into that microphone so all of these jurors can hear you
21 and so I can hear you

22 A Okay Is that better?

23 Q Say it again, please

24 A Jeffery Kindley

25 Q Get up a little closer, please

Jeffery Kindley
Direct examination by Ms Strom

1 A Jerry Kindley

2 Q That's better Thank you

3 By whom are you employed?

4 A I'm a special agent with the South Carolina Law
5 Enforcement Division, or SLED

6 Q What is your role? What is your position with SLED?

7 A I'm a regional investigator assigned to the Piedmont
8 Region, which encompasses the 12 upstate counties of South
9 Carolina

10 Q As part of your duties as an investigator with SLED
11 are you sometimes called to assist local agencies with
12 investigations?

13 A Yes, ma'am

14 Q Were you so called on April the 2nd of 2003 to assist
15 Greenville County in the incident that happened at
16 Chetsworth Lane?

17 A Yes, ma'am, I was

18 Q Did you have occasion on that day to respond to the
19 law enforcement center on McGee Street?

20 A Yes, ma'am

21 Q What was the purpose of your responding to McGee
22 Street, the law enforcement center?

23 A I was contacted at home and directed to go to the law
24 enforcement center

25 I was given a very quick briefing that an officer, a

Jeffery Kindley
Direct examination by Ms Strom

1 deputy, had been killed and that the suspect was being held
2 there

3 I was instructed to go stand by with the suspect until
4 I was told to do otherwise and to -- while I was with him
5 to offer him the opportunity to make a statement if he so
6 chose to do

7 Q When you arrived at the law enforcement center, where
8 did you find that the defendant was?

9 A He was in the central investigation division, which is
10 up on the second floor of the law enforcement center,
11 specifically back in the homicide unit seated with
12 Investigator Silvaggio

13 Q The homicide unit, is that also known as -- I believe
14 you said earlier the criminal investigative division

15 A Yes, ma'am

16 Q Sometimes call it C I D

17 A Yes, ma'am

18 Q And was investigator -- when you saw the defendant
19 there with Investigator Silvaggio, what did y'all do with
20 him, if anything?

21 A When I came in I identified myself to the defendant
22 and told him that I was there to remain with him until I
23 was relieved by someone else

24 At that point I told him that we would also offer him
25 an opportunity to give a statement, verbal or written

Jeffery Kindley
Direct examination by Ms Strom

1 statement, if he so -- if he wanted to do so And then we
2 escorted him to a more private area where we could talk.

3 Q When you were in -- I think the more private area was
4 the commander's office, is that correct?

5 A Yes, ma'am

6 Q And during that time you advised the defendant of his
7 rights, correct?

8 A Yes, ma'am

9 Q And you were seated in here when Investigator
10 Silvaggio testified, correct?

11 A Yes, ma'am

12 Q So you heard his testimony

13 A I did

14 Q The, some of the questions are going to be a little
15 bit redundant, but did you -- were you the person who
16 actually read him these rights?

17 A Yes, I was

18 Q Were you the person who asked him if he understood
19 these rights?

20 A Yes, ma'am

21 Q Did he always answer affirmatively?

22 A Yes, ma'am, he did

23 Q Was there ever an indication to you that he did not
24 understand what you were telling him or have any trouble
25 understanding you?

Jeffery Kindley
Direct examination by Ms Strom

1 A No, ma'am

2 Q I am not going to ask you to go over the advice of
3 rights again as Investigator Silvaggio has previously gone
4 through, but, in essence, is that what happened while you
5 were present there in the commander's office?

6 A Yes, ma'am, it is

7 Q Did you ever leave the commander's office while the
8 rights were being read or the statement was being given?

9 A No, ma'am I remained with him the entire time

10 Q Did you at any time force him or coerce him in any way
11 to get him to waive his rights?

12 A No, ma'am, I didn't

13 Q Did you promise him anything or hold out any hope of
14 reward for him to get him to waive his rights?

15 A No, ma'am, I didn't

16 Q You were also present during the actual giving of the
17 statement by the defendant

18 A Yes, ma'am

19 Q And, essentially, that was given in a narrative form,
20 but sometime later on y'all were asking him specific
21 questions

22 A Yes, ma'am

23 Q At some time during the giving of the statement by the
24 defendant did you have an occasion to receive a call from
25 another investigator?

Jeffery Kindley
Direct examination by Ms Strom

1 A I did

2 Q What transpired?

3 A While we were taking the statement, I had never been
4 to the scene either, and I got a very quick briefing on
5 what had occurred

6 Special Agent Donohue who also works in the Piedmont
7 Region was out at the crime scene and was coordinating with
8 the identification and collection of evidence

9 At some point during the taking of the statement I was
10 contacted by Investigator Donohue through our cell phones,
11 and he was asking me about a specific item there nearby

12 Q And what was that item?

13 A He said that at a location near the house where this
14 occurred he had located in the area what looked like
15 someone had been there for some time, that there was a ball
16 cap there

17 I am not positive about the color, but I think it was
18 a black ball cap He asked me if the defendant was, in
19 fact, cooperating and telling us things, and I told him
20 that he was And he said, well, could you ask him if this
21 could possibly be his ball cap

22 At that point I stopped Mr Evans and asked him, asked
23 him about a ball cap nearby the incident location, and he
24 said that it was his hat

25 Q Did you relay that information to Agent Donohue?

Jeffery Kindley
Direct examination by Ms Strom

1 A Yes, ma'am

2 Q Did you put that conversation that you had with the
3 defendant in his written statement?

4 A No, ma'am

5 Q And why not?

6 A At that point the question, me asking him the question
7 about the ball cap, was to basically identify whether this
8 was relevant to the investigation or not, or a piece of
9 evidence or not So I didn't include that in the
10 statement We just resumed where we were going in the
11 statement

12 Q You just took up where y'all had left off

13 A Yes, ma'am

14 Q You heard the publishing of the defendant's statement
15 by Investigator Silvaggio, and you were present during the
16 entire time that statement was given, correct?

17 A Yes, ma'am

18 Q Did you at any time force the defendant in any way or
19 lay hands on him in any way in order to get him to give
20 that statement?

21 A No, ma'am

22 Q Did you promise the defendant anything or hold out any
23 hope of reward to him in order to get him to give you that
24 statement?

25 A No, ma'am

Jeffery Kindley
Direct examination by Ms Strom

1 Q His demeanor during the time of his giving this
2 statement was what?

3 A He was very cooperative with us He was calm He did
4 not -- he never got agitated In fact, he was very willing
5 to give us his side of the story

6 Q At the conclusion of the giving of the statement the
7 defendant also signed a consent form so that you could get
8 a sample of his blood, is that correct?

9 A Yes, ma'am, it is

10 Q And after he had signed the statement and the diagram
11 and the consent form, did y'all then take him to the
12 hospital in order to obtain the blood?

13 A Yes, ma'am

14 Q And was that done in your presence?

15 A Yes, ma'am, it was

16 Q What occurred? You actually take him to the hospital
17 to a trauma bay, I take it

18 A Yes, ma'am

19 Q And a nurse comes in and draws his blood

20 A Yes, ma'am We -- Investigator Silvaggio, myself and
21 the defendant -- got into my car

22 We went to the Greenville Memorial Hospital
23 Investigator Silvaggio made a call and made arrangements
24 for a trauma bay to be ready for us

25 We went straight in the hospital A nurse was there

Jeffery Kindley
Direct examination by Ms Strom

1 ready to draw the vials of blood She did that right
2 there, turned those vials over to me, and I took custody of
3 them right there

4 Q And immediately upon the blood coming out of the
5 defendant's arm, being placed in the vials, the vials were
6 identified by the nurse, correct?

7 A Yes, ma'am

8 Q She placed a label on them of some form

9 A Yes, ma'am

10 Q And handed those directly to you

11 A They went into a, like a, zip-lock type bag with the
12 biohazard seal on it, and I took that from her

13 Q You did not open that biohazard bag in any way

14 A No, ma'am

15 Q What did you do with that bag containing three vials
16 of blood?

17 A I maintained custody of that They put a bandage on
18 his arm

19 We went back to the law enforcement center, and I took
20 it and placed it into the property and evidence storage
21 section at the law enforcement center so it could be
22 refrigerated

23 Q And subsequently analyzed?

24 A Yes, ma'am

25 I wanted to get it in the refrigerator so that at some

Jeffery Kindley
Direct examination by Ms Strom

1 point I knew it would probably go to our headquarters and
2 be tested in our laboratory So I had it put in our
3 refrigeration to maintain its integrity

4 MS STROM The Court's indulgence, Your Honor
5 (Pause)

6 MS STROM I have no further questions

7 Q Please answer any questions the defense may have

8 MR SUMNER No questions of this witness, Your Honor

9 THE COURT You may step down

10 THE WITNESS Thank you

11 MS STROM Your Honor, we would ask he be allowed to
12 be excused to return to work

13 THE COURT He may be

14 (Whereupon, the witness was excused)

15 THE COURT We are going to take a short break

16 Let me ask the jury to please go to your jury room

17 Remember don't talk about the case We will bring you back
18 in a few minutes

19 (The following takes place outside the presence of the
20 jury)

21 THE COURT Court is in recess for 15 minutes

22 Let me see the lawyers just a minute about scheduling,
23 please

24 (Bench conference held off the record)

25 (Whereupon, a recess was taken)

Gene Donohue
Direct examination by Mr Ariail

1 THE COURT Are we ready for the jury?

2 MR AIRIAIL Yes, sir

3 MR SUMNER Yes, sir

4 THE COURT Okay Bring them in

5 (The following takes place in the presence of the
6 jury)

7 THE COURT All right Solicitor

8 MR AIRIAIL Call Agent Gene Donohue

9 GENE DONOHUE, having been
10 first duly sworn, testified as follows

11 THE CLERK State your name for the record

12 THE WITNESS Gene Donohue

13 DIRECT EXAMINATION BY MR ARIAIL

14 Q Agent Donohue, would you state your name for the
15 record, please, sir?

16 A Gene Donohue

17 Q Keep your voice up so these last two jurors -- if you
18 have to, slide up to that microphone so they can hear you

19 By whom are you employed?

20 A The South Carolina Law Enforcement

21 Q Better known as SLED?

22 A SLED, yes, sir

23 Q How long have you been employed with SLED?

24 A Been with SLED five years

25 Q And prior to that you were employed with the

Gene Donohue
Direct examination by Mr Ariail

1 Greenville Sheriff's Office?

2 A Yes, sir, 15 years

3 Q How many years?

4 A Fifteen

5 Q And what capacity were you last employed with the
6 sheriff's office

7 A I was an investigator in the violent crimes/homicide
8 unit

9 Q Homicide/violent crimes

10 Now, as an agent with the South Carolina Law
11 Enforcement, I want to ask you to direct your attention
12 back to April the 2nd, that is the early morning hours of
13 April the 2nd, and of 2003, and ask you if you became
14 involved in the investigation of the death of Deputy Joe
15 Sapinoso and his father

16 A Yes, sir I was notified by our headquarters

17 Q In Columbia?

18 A Yes, sir, by telephone They advised me that there
19 had been a police-involved shooting and an officer had been
20 shot down in the Mauldin area and gave me the address and
21 asked me to respond

22 Q All right And is that standard operating procedure
23 in the State of South Carolina for SLED to become involved
24 in any kind of officer-involved death?

25 A Yes, sir, it is

Gene Donohue
Direct examination by Mr Ariail

1 Q What was your role?

2 A My initial role was just to respond When we got
3 there Captain Stephens who is our regional commander was on
4 the scene, and he assigned people certain responsibilities

5 My responsibility was to stay at the scene and assist
6 the sheriff's office with anything they needed at the
7 scene, any kind of investigative help or anything they
8 needed to do at the scene

9 Q And as a normal part of your activities, and in
10 particular in this case, do you prepare a report that you
11 file with your agency?

12 A Yes, sir

13 Q I've read your report, and I want to provide it to
14 counsel for the defendant But I want to just talk about
15 one aspect of that report if you would, and that is related
16 to a black baseball cap Do you remember that item?

17 A Yes, sir, I do

18 Q Tell us about that and how you came in contact with
19 it

20 A When I arrived at the scene at Chetsworth it was still
21 dark outside It was between about 4 30 and five o'clock
22 in the morning

23 When I got to the scene I spoke with Sheriff Loftis
24 and a couple of investigators from the sheriff's office
25 They explained to me what had transpired earlier

Gene Donohue
Direct examination by Mr Ariall

1 At that time the evidence technicians were collecting
2 evidence inside the residence We waited for them to
3 complete that task When they completed that task the
4 investigators and myself walked through just to look at the
5 scene after everything had been collected

6 When we had completed that the sun had come up, so I
7 advised them that I was going to go outside and look around
8 the residence to see if there was anything out there that
9 might be of evidentiary value

10 I proceeded around the Sapinoso residence and didn't
11 see anything unusual except Deputy Sapinoso's vehicle was
12 out there and his bag, duty bag, that he carried stuff in
13 was still outside I noted that

14 There was a residence under construction or some work
15 being done next door I just walked around that residence
16 The only thing I noticed unusual, there was a little
17 recessed area near the back porch and fireplace On the
18 ground was a black baseball cap At the time I didn't know
19 if it had any relation to the event or not

20 Q All right Let me ask you to look at these
21 photographs which have been marked State's Exhibit K, PP
22 and L and ask if you are familiar with those

23 A Yes, sir

24 These would represent the baseball cap that I saw
25 there that night

Gene Donohue
Direct examination by Mr Ariail

1 Q All right And are those an accurate representation
2 of the area in which the baseball cap was located, and the
3 cap itself --

4 A Yes, sir

5 Q -- as it existed that night?

6 A Yes, sir

7 MR AIRIAIL Your Honor, we would like to offer these
8 as State's Exhibits L, K and PP

9 MR SUMNER No objection

10 MR GOLDSMITH No objection

11 THE COURT They are admitted

12 (Photographs marked State's Exhibits L, K and PP)

13 Q Agent Donohue, I am also going to show you two other
14 photographs that have already been admitted State's
15 Exhibits D and E and ask if you are familiar with those
16 photographs also

17 A Yes, sir D would be the front of the residence
18 that's under construction and E would be the rear of the
19 residence, and also shows the far-off view of where the hat
20 is located

21 Q And do those also accurately reflect what you saw on
22 the early morning hours of April the 2nd?

23 A Yes, sir, they do

24 Q Thank you

25 Let me, let's look, and I'll run through these Let's

Gene Donohue
Direct examination by Mr Ariail

1 go with Number D which the jury has already seen Is that
2 the house next door you are talking about?

3 A Yes, sir

4 The Sapinoso residence would be where that vehicle is
5 to the left You can see That would be up right beside
6 of their house

7 Q And let's look at E This is the back of the
8 residence?

9 A Yes, sir This is the rear of that same residence

10 Q And if you would, point out Use that laser pointer
11 up there as to the location of the ball cap in the
12 indentation area you are talking about

13 A That's the ball cap right there, right there on the
14 ground

15 Q And this is the back of the house under construction?

16 A Yes, sir

17 Q And we will do, show you State's Exhibit K

18 A That's a closer view of the same area

19 Q Same house?

20 A Yes, sir

21 Q All right And just to overdo the whole matter, I
22 will show you State's PP exhibit

23 A Yes, sir That's a picture of the house

24 Q Same house?

25 A Yes, sir

Gene Donohue

Direct examination by Mr Ariall

1 Q Now, what is State's Exhibit L?

2 A That's the same hat as it was being processed by the
3 forensic people That's after they removed it and sat it
4 up to photograph the top of it to show what it looked like
5 from the top also

6 Q And when it has been removed, is that photograph taken
7 still on the same location as the house under construction?

8 A Yes, sir

9 If you noted in those earlier pictures, there's some
10 scaffolding laying just to the left where they were working
11 on the house It was just set up on top of that
12 scaffolding and the picture taken in the same area

13 Q Do you know what wording is on that house?

14 A Yes, sir I believe it's Rocawear, R-O-C-A-W-E-A-R

15 Q Rocawear

16 A Rocawear, yes, sir

17 Q Now, once you located that cap -- and you said you
18 weren't aware of whether or not it might be related to the
19 case -- what did you do?

20 A Well, I called I knew that Special Agent Kindley was
21 at the law enforcement center with the defendant I placed
22 a telephone call to him to ask him if that might possibly
23 belong to the defendant and asked him if the defendant was
24 cooperating with them and if he would answer them if he
25 asked if that was his hat or not

Donnie Henry
Direct examination by Mr Ariall

1 voice up so the last two down here can hear you

2 By whom are you employed?

3 A Elgin Enterprises

4 Q And what does Elgin Enterprises do?

5 A They have a towing service and a collision repair
6 center

7 Q Towing service like towing vehicles and repairing
8 vehicles?

9 A Yes, sir

10 Q And were you employed with Elgin Enterprises back on
11 April the 2nd of 2003?

12 A Yes, sir, I was

13 Q And on that date were you asked, or asked to respond,
14 to Chetsworth Lane or the area of Chetsworth Lane and
15 Knollwood Drive in the Mauldin area?

16 A Yes, sir, I was

17 Q What time did you go down there?

18 A Probably, approximately around 1 00 or 2 00 a m in
19 the morning

20 Q Early in the morning

21 A Yes, sir

22 Q And what was your reason for going there?

23 A To pick up a vehicle that was going to be seized by
24 the sheriff's department

25 Q And is that something that you normally do as part of

Donnie Henry
Direct examination by Mr Ariail

1 your towing service and work with the sheriff's office on
2 towing vehicles?

3 A Yes, sir

4 Q This wasn't something new then

5 A No, sir

6 Q All right And did you, in fact, pick up a vehicle in
7 the area of Knollwood Lane and -- Knollwood Drive and
8 Chetsworth Lane?

9 A Yes, sir, I did

10 Q Let me show you I'm going to put this up There is
11 also a diagram there On the presenter, I am going to show
12 you State's Exhibit Number Forty And are you familiar
13 with that?

14 A Yes, sir

15 Q Are you familiar with Knollwood and Laurens Road and
16 Chetsworth and those streets?

17 A Yes, sir, I am

18 Q Where did you actually go to pick up the truck? Where
19 was the truck located?

20 A The truck was actually on Knollwood Drive in Mauldin

21 Q All right And on that diagram as well as on this one
22 down here, if you want to which one ever is easier for you
23 to point to, there is a little laser pointer right there
24 Let me show you how that works

25 THE COURT Don't point that on the court reporter

Donnie Henry
Direct examination by Mr Ariail

1 Q Right there where it says laser You can either point
2 it up and show us the location of the truck when you went
3 to pick it up

4 A It is right there

5 Q Okay And I want to show you a couple of documents
6 which are marked as State's Exhibit Thirty-four and State's
7 Exhibit Thirty-five I want you to look at Thirty-five
8 Are you familiar with that document?

9 A Yes, sir, I am

10 Q And are you familiar with State's Exhibit Thirty-five?

11 A Yes, sir, I am

12 Q And are these two documents as marked, these two here,
13 related to your pickup of the truck on Knollwood Drive?

14 A Yes, sir, they are

15 Q Okay

16 MR AIRIAIL Your Honor, we would like to offer these
17 as State's Thirty-four and Thirty-five

18 MR SUMNER No objection, Your Honor

19 THE COURT They are admitted

20 (Vehicle impoundment and inventory record marked
21 State's Exhibit Number Thirty-four, Elgin Williamson
22 receipt marked State's Exhibit Number Thirty-five)

23 Q What's State's Exhibit Thirty-four?

24 A It's a Greenville County Sheriff's Department's, one
25 of their tow forms

Donnie Henry
Direct examination by Mr Ariail

1 Q And who -- do you receive that document?

2 A Yes, sir, I do, at the time of the vehicle

3 Q Who gives you that document?

4 A The officer that's on the scene

5 Q And that document was given to you for the purpose of
6 authorizing you to tow the vehicle?

7 A Yes, sir, it was

8 Q And then I want to show you State's Exhibit Number
9 Thirty-five and ask you what is that document

10 A That is one of our towing bills that we have to use
11 for our office records and that we get paid if the owner
12 reclaims the vehicle

13 Q All right So that's the receipt that you fill out
14 representing that you have towed the vehicle

15 A Yes, sir

16 Q And it sets forth on the bottom what the charge is

17 A Yes, sir

18 Q And that's how you're compensated

19 A Yes, sir Then in the remarks box, this is where I
20 put, you know, who I towed the vehicle for and if it is
21 hold or whatever for I D

22 Q And it also sets forth the vehicle identification and
23 serial number on it

24 A Yes, sir, it does

25 Q Is that correct?

Donnie Henry
Direct examination by Mr Airiail

1 A Yes, sir

2 Q And in this particular case it is a Dodge Ram 2500
3 blue truck, South Carolina tag 1994, with the serial number
4 of IB7KC26CC, I mean, C6RS586878

5 A Yes, sir

6 Q All right And that's the vehicle you picked up on
7 Knollwood Drive

8 A Yes, sir, it was

9 Q And are you familiar or did you at any time go down
10 Chetsworth Drive?

11 A No, sir, I did not

12 Q Why not?

13 A I just proceeded to pick the vehicle up The
14 officer -- the road was blocked They let me pick the
15 vehicle up, and I went back up Knollwood to Laurens Road.

16 MR AIRIAIL All right Your Honor, that is all I
17 have of this witness

18 MR SUMNER No questions from the defense, Your
19 Honor

20 THE COURT You may step down

21 MR AIRIAIL Your Honor, in addition at this time
22 what we would like to do is offer into evidence a certified
23 copy from the South Carolina Department of Motor Vehicles
24 as State's Exhibit Number Thirty-six representing the
25 current license plate and serial number for the same truck

Michael Allen Peterson
Direct examination by Mr Airail

1 identified on State's Exhibit Thirty-five as being issued
2 to or being the vehicle of Kamell Evans, and it also being
3 a 1994 Dodge pickup truck

4 THE COURT Any objection?

5 MR SUMNER No, sir

6 THE COURT Exhibit Thirty-six is admitted

7 (Certificate of title marked State's Exhibit Number
8 Thirty-six)

9 MR AIRIAIL In addition to that there is a
10 stipulation between counsel that we would like to also
11 submit to the Court that the vehicle was so confiscated by
12 the police or by the sheriff's office on Knollwood and was,
13 in fact, the vehicle of Mr Evans

14 MR SUMNER I have executed the stipulation and it is
15 correct, Your Honor

16 THE COURT All right, sir

17 MR AIRIAIL I will hand the stipulation to the court
18 report It is not an exhibit I can make it an exhibit

19 THE COURT Well, okay Put a number

20 (Stipulation marked State's Exhibit Number
21 Forty-nine)

22 MR AIRIAIL Call Mike Peterson

23 MIKE ALLEN PETERSON, having
24 been first duly sworn, testified as follows

25 THE CLERK State your name for the record, please.

Michael Allen Peterson
Direct examination by Mr ARIAIL

1 THE WITNESS Michael Allen Peterson

2 DIRECT EXAMINATION BY MR ARIAIL

3 Q Mr Peterson, if you would, state your name again

4 A Michael Allen Peterson

5 Q And keep your voice up or pull that microphone a
6 little closer, or you pull closer to it, so these last
7 jurors can hear you

8 By whom are you employed?

9 A I am employed by the Greenville Department of Public
10 Safety Forensic Division

11 Q And what is the Greenville County Department of Public
12 Safety Forensics Division? What is it and what do they do?

13 A We are an independent agency that provides forensic
14 services to all law enforcement agencies within Greenville
15 County, that is we respond to crime scenes, we take
16 documentation of that crime scene, be it photographs,
17 video, sketches, diagrams

18 We then try to identify and locate items of
19 evidentiary value based on what we've been told by
20 investigators, responding officers

21 We then proceed to process and collect that evidence
22 for items such as fingerprints, for -- we collect samples
23 for testing in blood analysis, hairs, fibers, paint,
24 gunshot residue

25 After processing a scene we prepare our reports which

Michael Allen Peterson
Direct examination by Mr Ariall

1 document our activities and our findings and submit that

2 Q Also do ballistics?

3 A Ballistics also, yes, sir

4 Q The forensics division is then the real life C S I
5 of this world

6 A Yes, sir

7 Q Be appropriate description of that favorite T V
8 program?

9 A It would

10 Q Now, what is your position with that particular
11 agency?

12 A I am the lieutenant over the crime scene unit

13 Q All right And are you a supervisor?

14 A Yes, sir

15 Q Did you have occasion to respond to 312 Chetsworth
16 Lane in Mauldin on April the 2nd in the early morning hours
17 as part of your duties with the forensics division?

18 A Yes, sir, I did

19 Q And did other forensic technicians go with you to the
20 scene?

21 A Yes, sir

22 I had two technicians who were already on the scene
23 They had called me And while in route I called my second
24 in command, Sergeant Dar Shaw, to also meet with me

25 Q And did Mr Shaw go with you?

Michael Allen Peterson
Direct examination by Mr Ariail

1 A Yes We took one of our vehicles over to the scene
2 together

3 Q And when you say took one of your vehicles, is that
4 from the law enforcement center?

5 A That's right We met at the law enforcement center to
6 make sure we had all of your items necessary and proceeded
7 over to the scene

8 Q And when you arrived at the scene at the Sapinoso
9 residence on Chetsworth Lane, what was the first thing that
10 you did?

11 A Well, upon arriving there we tried to locate our
12 officers who were already on the scene and get a briefing
13 from those officers as well as the investigators from the
14 sheriff's office

15 Q Why do you need a briefing?

16 A We wanted to know the nature of what we were dealing
17 with and so that we could plan our activities as to how we
18 were going to process the scene

19 Q And did you do a walk-through of the scene?

20 A Yes, sir, I did

21 Q Based on the information you received and your
22 inspection, what was the nature of the crime scene that you
23 were getting ready to process?

24 A Well, we had a double homicide in that Deputy Sapinoso
25 and his father had been shot And upon those shots,

Michael Allen Peterson
Direct examination by Mr Ariall

1 hearing those shots, the Greenville County SWAT Team made
2 forced entry into the house through the front door of the
3 residence as well as a back door to the residence which
4 happened to lead into the living room-den area and took a
5 suspect into custody

6 Once he was secured, E M S was allowed to come in
7 and render assistance to Deputy Sapinoso and his dad They
8 were evacuated from the scene, sent to Greenville Memorial
9 where I understand they were pronounced dead That was
10 pretty much it

11 Q And are you aware that medics had been inside the
12 home?

13 A Oh, yes, sir

14 Q And the SWAT team had also been inside the home

15 A Correct

16 Q As a result of your work do you prepare a report of
17 all of your activities?

18 A Absolutely, yes, sir

19 Q And if you need to, you feel free to refer to your
20 report if you need during the course of this examination.

21 Tell us first how you began to process the scene that
22 night, the first things y'all did

23 A Well, upon being briefed we wanted to ensure that we
24 had complete photographic documentation of the scene to
25 include the exterior and the interior just as we found it

Michael Allen Peterson
Direct examination by Mr Airiaail

1 Q Did you document that? What type of camera did y'all
2 use to document?

3 A We are using digital cameras

4 Q Let me show you these photographs here and ask you to
5 review those as a group And are those the photographs or
6 some, excuse me, some of the photographs that were taken
7 that evening --

8 A Yes, sir

9 Q -- of the interior of the residence?

10 A Yes, it is

11 Q And do those photographs accurately represent the
12 scene in the limited photographs, not the whole scene but
13 the limited parts, of an accurate representation of what
14 you saw that evening?

15 A Yes, sir, it does

16 MR AIRIAIL Your Honor, we would like to offer these
17 at this time

18 THE COURT Tell me what the numbers or letters are.

19 MR AIRIAIL They are photograph, they are
20 photographs Q, R, S, T, U, W, X, Y, Z, Double A, Double B,
21 Double C, Double D, Double E, Double F, Double G, Double H,
22 Double I, Double J, Double K, Double L, Triple A, Triple B
23 and Triple C

24 THE COURT Any objection?

25 MR SUMNER No, sir

Michael Allen Peterson
Direct examination by Mr Arlaal

1 THE COURT They are admitted

2 MR SUMNER No objection, Your Honor I have
3 reviewed them No objection to any of the photographs.

4 (Photographs marked Q, R, S, T, U, W, X, Y, Z, AA, BB,
5 CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, AAA, BBB and CCC)

6 Q I want to show you three diagrams One, State's
7 Exhibit Thirty-seven, has already been admitted into
8 evidence, two additional ones, State's Exhibit Thirty-eight
9 and State's Exhibit Number Thirty-nine

10 I will ask you as a part of your crime-scene
11 processing do you normally prepare drawings and diagrams

12 A Yes, sir

13 Q All right And at my request did you take those
14 drawings and eliminate some of the items that had been
15 marked on them to focus on just certain diagrams?

16 A Yes, sir, that's right

17 Q Now, the diagrams on Numbers Thirty-eight and
18 Thirty-nine, are those accurate representations of the
19 crime scene as you saw it absent some of the items that you
20 had listed earlier?

21 A Yes, it is

22 Q And did you prepare these two, all three of these
23 drawings --

24 A I prepared all three

25 Q -- at my request --

Michael Allen Peterson
Direct examination by Mr Ariail

1 A Right

2 Q -- for court presentation?

3 A Yes, sir

4 MR AIRIAIL Your Honor, we would like to offer
5 State's Exhibits Thirty-eight and Thirty-nine

6 MR SUMNER The diagrams? No objection to
7 Thirty-eight and Thirty-nine

8 THE COURT They are admitted

9 (Diagrams marked State's Exhibits Numbers
10 Thirty-eight, Thirty-nine and Thirty-nine-A)

11 Q All right Looking at -- let me start off with
12 State's Exhibit Thirty-seven I am going to put it up here
13 for you to -- if you would, walk the jury through what we
14 are looking at

15 There is a laser pointer right there And just tell
16 us the area of the house you are looking at and each of the
17 rooms that we are focusing on using Exhibit Thirty-seven.

18 A Okay Right here is the front-entrance door It
19 leads into a central hallway And to the left side of that
20 hallway is a staircase which goes to the second level

21 To the immediate left as you enter the front door of
22 the residence there's a formal living room/game room/music
23 room area And to the immediate right is a more formal
24 dining room area

25 As you proceed on through the central hallway, to the

Michael Allen Peterson
Direct examination by Mr Ariail

1 left is the living room-den area where we focused a lot of
2 our efforts, and to the immediate right is the kitchen
3 area

4 Q All right Let me ask you if this item here, which is
5 marked Thirty-seven-A, is an accurate blowup of the item on
6 the screen now, which is item Thirty-seven, Exhibit
7 Thirty-seven

8 A Yes, sir

9 MR AIRIAIL Your Honor, we would like to offer this
10 also for demonstrative purposes

11 MR SUMNER No objection

12 THE COURT It is admitted

13 Q All right Now, when you say you came in the front
14 door -- I think we have already seen a couple of
15 photographs of how you entered the front door and the
16 staircase

17 I wanted to show one other When you were talking
18 about the room on the left as you enter being a music room
19 or some sort of formal room, is that the room, photograph
20 of a part of that room?

21 A Yes, sir

22 Q All right Now, looking at what is marked as State's
23 Exhibit Thirty-eight, the same essential diagram, but I've
24 asked you, I believe, to put on that diagram some
25 additional information All right What are the lettering

Michael Allen Peterson
Direct examination by Mr Ariail

1 A, B, C and S?

2 A Those are marked items of evidence Item A located in
3 the central hallway was a Lorcin nine-millimeter handgun
4 Item B was a Lorcin 380 caliber handgun Item C was a 40
5 caliber Glock which was the standard sheriff's office
6 issue

7 All of those weapons -- Item A was unloaded There
8 was no ammunition whatsoever in it Item B, the 380, we
9 had one round in the chamber and there were four rounds in
10 the magazine In the Glock 40 there was one round in the
11 chamber and 14 rounds in the magazine

12 Q All right And what I want to do if you would while
13 that one is still there so the jury can follow along with
14 us, show you a blowup marked Thirty-eight-A Is that an
15 accurate enlargement of Exhibit Thirty-eight?

16 A Yes, sir

17 MR AIRIAIL I would also like to offer this, Your
18 Honor

19 MR SUMNER No objection

20 THE COURT It is admitted

21 (Blowup diagram marked State's Exhibit Number
22 Thirty-eight-A)

23 Q All right Looking specifically at items A, B, C and
24 S, I want to show you what is marked State's Exhibit P, is
25 already into evidence, and ask you if you can locate that

Michael Allen Peterson
Direct examination by Mr Ariall

1 on the diagram for us

2 A Yes, sir The A, B and C are the three weapons that
3 are reflected on the floor there

4 Q All right And one of those weapons is hard to see in
5 that photograph Can you point the third one out? Can you
6 see the one at the bottom and the one at the top? Where is
7 the third one?

8 A Right here

9 Q Those would be items A, B and C as shown on exhibit
10 Thirty-eight-A

11 A Yes, sir That's correct

12 Q All right I'm showing you exhibit, State's Exhibit
13 Number O which is a little bit different angle looking
14 into, looking out from the kitchen into the den area

15 A Correct

16 Q And those are the -- point us out the one that's hard
17 to see on that one.

18 A Again, right here

19 Q Okay The other two All right You said the first
20 one was an Item A Show you State's Exhibit A, I mean,
21 State's Exhibit Number R which has a placard What is the
22 significance of the placard?

23 A The placard is an identification, means that it was
24 collected as Item A for our purposes That's the way we
25 document those items

Michael Allen Peterson
Direct examination by Mr Ariail

- 1 Q All right And what is that item?
- 2 A That is the Lorcin nine-millimeter
- 3 Q And it was, had what type of ammunition in it?
- 4 A That, it's nine-millimeter, but that particular weapon
- 5 was unloaded
- 6 Q That was empty, had no projectiles or bullets
- 7 A Yes, sir
- 8 Q Let me show you B, placard B
- 9 A B was the Lorcin 380 caliber handgun which had one
- 10 round in the magazine, excuse me, one round in the chamber
- 11 and four rounds in the magazine
- 12 Q One round in the chamber and four in the magazine
- 13 A Correct
- 14 Q And I'm sorry The B and the A that I am pointing at
- 15 on here correspond with the same letters on the diagram
- 16 A Yes, sir
- 17 Q Thirty-eight-A And C, this is the one that we have
- 18 had some difficulty in seeing
- 19 A And that is the 40 caliber Glock which had one round
- 20 in the magazine and 14, excuse me, one round in the chamber
- 21 and 14 rounds in the magazine
- 22 Q And did that particular weapon, is it standard issue
- 23 for the Greenville County Sheriff's Office?
- 24 A Yes, sir I believe so
- 25 Q All right Let me go back to one other photograph

Michael Allen Peterson
Direct examination by Mr Ariail

1 which is Item O

2 Once again, we have looked at Item O And would you
3 point out for us on Item O the item that you have marked on
4 the exhibit as Item S? Where is it located?

5 A Item S is a black nylon bag which was located very
6 close to the entranceway of the living room-den area which
7 contained a quantity of ammunition, a fixed-blade knife I
8 believe it was about an 8-inch knife blade on it, as well
9 as two magazines which fit the 40 caliber Glock, and both
10 of those contained 14 rounds in each magazine

11 Q Now, the bag itself had ammunition in it

12 A Yes, sir

13 Q Let me show you State's Exhibit Number U and see if
14 that -- that's item S

15 A Yes, sir That's correct

16 Q Did you count the amount of ammunition inside the bag?

17 A Yes, sir

18 Q How much ammunition was inside the bag, and what type?

19 A There were a total of 140 rounds of ammunition in the
20 bag Seventy of those rounds were nine-millimeter, and the
21 remaining 70 were 380 caliber

22 Q And the nine-millimeter would have fit the Lorcin
23 nine-millimeter

24 A Right The nine-millimeter would have fit the Lorcin
25 nine-millimeter weapon

Michael Allen Peterson
Direct examination by Mr Arlail

1 Q And 380 would have fit the Lorcin 380

2 A That's correct

3 Q And a total of 140 rounds

4 A Yes, sir

5 Q Let me show you what's been marked Sixteen I want to
6 show you what's been marked, premarked, as State's Exhibits
7 Sixteen, Seventeen and Eighteen and ask you if you can
8 identify those as the weapons which have been previously
9 marked as State's Exhibit Thirty-eight-A as the guns found
10 in the hallway Items A, B and C

11 A Yes, sir That's my initials and my writing on the
12 outside of these

13 Q All right And did you collect that evidence from the
14 scene?

15 A Yes, sir

16 Q And what do you do with it when it's collected?

17 A Those items would be brought back to our office where
18 they would be processed for latent prints and ultimately
19 placed into the Department of Public Safety's property and
20 evidence division

21 Q And property and evidence division is a secured area
22 in which all property and evidence from the crime scene is
23 secured?

24 A Yes, sir

25 Q And that's also run by the Department of Public

Michael Allen Peterson
Direct examination by Mr Airail

1 Safety?

2 A That's correct

3 Q Have you participated with me in the examination of
4 those weapons prior to bringing them or their being
5 presented in court today?

6 A Yes, sir

7 Q And have those weapons that are inside those boxes
8 been totally disabled?

9 A Yes, sir, they have

10 Q They are not operable at this time

11 A No, sir

12 MR AIRIAIL Your Honor, I am going to offer these
13 into evidence without opening the boxes They are
14 certainly available if the jury wishes to open them at a
15 later time They have photographs, and I didn't see the
16 need to open them

17 THE COURT What are the numbers?

18 MR AIRIAIL Sixteen, Seventeen and Eighteen

19 Q Well, I tell you what Have you got a knife?

20 A No, not today

21 Q You can't get in the courthouse with one, can you?

22 And this is the --

23 A That's the Lorcin nine-millimeter

24 Q And it is labeled on the outside of the box

25 A Yes, sir

Michael Allen Peterson
Direct examination by Mr Airail

1 THE COURT Any objections to Sixteen and Seventeen
2 and Eighteen being admitted?

3 MR SUMNER No, sir

4 (Lorcin nine-millimeter marked State's Exhibit Number
5 Sixteen, Lorcin 380 handgun marked State's Exhibit Number
6 Seventeen, Glock nine-millimeter marked State's Exhibit
7 Number Eighteen)

8 Q All right And this is the --

9 A That is the Lorcin 380 caliber

10 Q 380 caliber And the inside of these two are two
11 packages marked Seventeen-A and Seventeen-B Are you
12 familiar with those?

13 A Yes, sir, I am

14 Q What are those?

15 A This one represents the one round that was found in
16 the chamber of the weapon This represents the four rounds
17 of ammunition that were found in the magazine of the
18 weapon

19 Q And these are subparts of Exhibit Seventeen

20 A Yes, sir

21 MR AIRIAIL Your Honor, we would also like to offer
22 these

23 MR SUMNER No objection

24 THE COURT They are admitted

25 (One projectile in chamber marked State's Exhibit

Michael Allen Peterson
Direct examination by Mr Airail

1 Number Seventeen-A, four projectiles in magazine marked
2 State's Exhibit Number Seventeen-B)

3 Q At the time the gun was confiscated the projectiles in
4 Seventeen-A and Seventeen-B were part of that weapon or
5 inside the weapon

6 A Yes, sir They were inside

7 Q And the last one which I will not open, Eighteen, is a
8 40 caliber Glock sheriff's office issued weapon

9 A Right

10 Q And as a part of Eighteen there also is an Eighteen-A
11 inside of this that contains the rounds of ammunition taken
12 from the gun

13 A Right

14 MR AIRIAIL Your Honor, we would like to enter the
15 subpart also

16 MR SUMNER That's fine No objection

17 THE COURT Eighteen and Eighteen-A and Eighteen-B?

18 MR AIRIAIL Yes, sir

19 THE COURT They are admitted

20 (One projectile in chamber marked State's Exhibit
21 Number Eighteen-A, 14 projectiles in magazine marked
22 State's Exhibit Number Eighteen-B)

23 Q We talked earlier about the bag with the -- found in
24 the hallway, Item S

25 I want to show you what's been marked as State's

Michael Allen Peterson
Direct examination by Mr Ariail

1 Exhibit Fifteen and ask if you can -- would open that for
2 us? And can you identify it from the exterior of the bag?

3 A Yes, sir

4 It has my initials on the exterior of the bag as well
5 as my label and is marked as Item S

6 Q All right And Item S has been previously identified
7 as the bag in the hallway

8 A Yes, sir

9 Q If you don't mind opening that up and pulling that bag
10 out -- all right

11 What are the contents? If you would, open that bag up
12 and tell us Go through the contents These last two
13 items are what?

14 A Those are two magazines labeled as Glock, and they fit
15 the 40 caliber Glock we retrieved from the scene

16 Q All right Put those back in

17 These three boxes labeled nine-millimeter Luger
18 Federal, what are those?

19 A Those are the nine-millimeter rounds that would fit
20 Item A, which was the nine-millimeter And there are 20 in
21 each one of these boxes

22 Q These are real bullets --

23 A Yes, sir

24 Q -- capable of being fired

25 A Yes, sir

Michael Allen Peterson
Direct examination by Mr Ariail

1 Q And these three boxes here labeled Corebond 380 auto
2 nine G R H P , what are those?

3 A Those are the 380 rounds that would fit the Lorcin
4 380 caliber handgun which I believe was Item B

5 Q Those are also live rounds

6 A Yes, sir, live rounds

7 Q And this item here?

8 A That item was found in the bag That is a knife with
9 a fixed blade We measured it to be about eight inches
10 long

11 Q And the little baggies containing loose projectiles .

12 A Yes, sir We had two bags with loose rounds Ten
13 rounds were nine-millimeter and the other ten rounds were
14 the 380 caliber

15 Q Can you tell this one is 380 off the top?

16 A This is, this would be our nine-millimeter

17 Q All right And this would be the 380

18 A Yes, sir

19 Q Okay And all of that is contained as part of Exhibit
20 Fifteen

21 All right Moving on from Exhibit Fifteen

22 THE COURT Are you offering that, Solicitor? Are you
23 offering that Item Fifteen?

24 MR AIRIAIL Yes I'm sorry I thought I had
25 already offered it

Michael Allen Peterson
Direct examination by Mr Ariall

1 THE COURT Any objection?

2 MR SUMNER No, sir

3 THE COURT It is admitted

4 (Black bag marked State's Exhibit Number Fifteen)

5 Q We had previously looked at a photograph in the
6 kitchen of an ASP baton and -- which is State's Exhibit V
7 Are you familiar with that photograph?

8 A Yes, sir

9 Q And what are those items?

10 A There is a bandana, there is a, looks to be a, pager
11 case, there is an ASP baton next to the refrigerator here,
12 and there seems to be a money clip with a South Carolina
13 identification card right there

14 Q And I'm going to show you a closeup of that item, the
15 money clip, which you had marked as state's exhibit or you
16 had labeled as your Item L Is that the same?

17 A Yes, sir

18 Q Let me show you what has been premarked as State's
19 Exhibit Number Twenty-nine and ask you if that corresponds
20 with your item Number L

21 A Yes, sir This is the South Carolina identification
22 card from Item L

23 Q All right And did you collect that?

24 A Yes, sir

25 Q And did you secure it in evidence, property and

Michael Allen Peterson
Direct examination by Mr Ariail

1 evidence?

2 A Yes, sir It was placed in property and evidence

3 Q And placed it in that bag

4 A Correct

5 MR AIRIAIL Your Honor, we would like to offer it

6 MR SUMNER No objection

7 THE COURT Twenty-nine is admitted

8 (Identification card marked State's Exhibit Number

9 Twenty-nine)

10 Q That's State's Exhibit Number Twenty-nine And, if
11 you would, tell us whose state identification that is

12 A That is Kamell Delshawn Evans

13 Q All right Now, leaving the kitchen area and going to
14 the, I guess the, room best called the den or living room
15 area, are you familiar with that one?

16 A Yes, sir

17 Q All right Let me show you a series of photographs
18 First, let me give you this drawing you have previously
19 identified I will put it up here, State's Exhibit Number
20 Thirty-nine That's in the den area

21 A Yes, sir

22 Q And I also asked you to compare that with the labeling
23 that's on there identifying certain items that you
24 collected

25 A Yes, you did

Michael Allen Peterson
Direct examination by Mr Ariail

1 Q And what are the items, particularly the items that
2 are labeled with squares around them?

3 A The items that have the squares around them are shell
4 casings that were collected from the living room

5 Q Now, tell the jury what a shell casing is

6 A A shell casing is the part of the ammunition which
7 contains the powder which is either extracted from the gun
8 or stays in the gun once the projectile is fired

9 Q And the ones that are marked with the circle

10 A The items marked with the circle AA, BB and D were
11 projectiles that were located in the living room

12 Q I'm sorry Located where?

13 A In the living room

14 Q All right And what is the difference between a
15 casing and a projectile?

16 A The casing, as you said, holds, as I said, holds the
17 powder The projectile is what's fired from the weapon

18 Q And how many casings or what number of casings did you
19 locate in the living room area?

20 A We collected seven shell casings in the living
21 room-den area

22 Q And how many of those were nine-millimeter casings and
23 how many were 380 casings?

24 A Six were nine-millimeter shell casings and one
25 highlighted by a P, it's a slightly different color, was a

Michael Allen Peterson
Direct examination by Mr Airail

1 380 caliber shell casing

2 Q Point out with the pointer this P you are talking
3 which is the 380 That's the location of the sole 380
4 casing found in the living room

5 A Yes, sir

6 Q The rest of the square boxes are casings of a
7 nine-millimeter

8 A That's correct

9 Q How many projectiles did you locate in the living
10 room?

11 A Three projectiles were located in front of the couch

12 Q All right I'm going to show you what is marked as
13 Exhibit Thirty-nine-A which is a blowup of Exhibit
14 Thirty-nine Is that an accurate blowup or enlargement of
15 Exhibit Thirty-nine?

16 A Yes, sir

17 MR AIRIAIL Your Honor, at this time we would like
18 to offer this also for demonstrative purposes

19 MR SUMNER Without objection

20 THE COURT That's already in That's Thirty-nine-A?

21 MR AIRIAIL Thirty-nine-A

22 THE COURT That's already in

23 MR SUMNER Your Honor, could we approach for one
24 second, please?

25 THE COURT Sure

Michael Allen Peterson
Direct examination by Mr Ariail

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury)

3 Q I want to walk through I am going to take the
4 diagram off of the screen and do a walk-through of what you
5 observed, and we will move through these fairly rapidly as
6 they are diagrams on the screen

7 I show you State's Exhibit X What does that
8 represent or angle that's taken from?

9 A That is taken from the west side of the room towards
10 the television entertainment center

11 Q Looking across there would be into the kitchen

12 A Yes, sir

13 Q And I show you Y What is Exhibit Y?

14 A That is blood spatter that was documented on the wall
15 I am not sure which wall that is

16 Q All right Let me take you back to Y I will show
17 you this Go back to X And ask you if you recognize the
18 wall behind the T V

19 A Yes, sir The wall behind the T V has a quantity of
20 blood spatter on it, as well as the T V itself

21 Q All right And blood spatter is defined as what?

22 A Blood spatter is the blood that is emitted and falls
23 on an object We look at that spatter, and by looking at
24 its size, direction we are able to determine certain things
25 from it

Michael Allen Peterson
Direct examination by Mr Ariall

1 Q Let me show you State's Exhibit Z which is the love
2 seat

3 A Yes, sir That is the love seat that is in the
4 northwest corner of the room Setting just to the right of
5 it is a window blind and then a solid wall behind it

6 Q All right And focusing on the sofa in the bottom
7 right corner or the back right corner of the sofa, what is
8 that?

9 A There was blood spatter on the back of the sofa, as
10 well as the surrounding area

11 Q And tucked in that corner under the arm and the back
12 is what?

13 A I don't see it

14 Q All right Let me show you this right here That's
15 all right Are you familiar with that item?

16 A I am not, sir

17 Q All right And behind the love seat were a set of
18 blinds also on the window

19 A That's correct

20 Q And they had, you said, in that photograph there,
21 which is State's Exhibit Double A -- what does that
22 reflect?

23 A That is a documentation of the blood spatter that we
24 observed on the north wall of the residence, which without
25 reflecting on my report, I couldn't tell you the dimensions

Michael Allen Peterson
Direct examination by Mr Ariail

1 of it But it reflects blood spatter that was on the north
2 wall going to a height of probably three foot

3 Q All right And the north wall, using your diagram
4 there, is behind -- is that the wall behind the love seat?

5 A Yes, sir It's the one at the top with the window
6 indication at the top

7 Q And these are the blinds on that window

8 A Yes, sir

9 Q And your measurement tape is on or marked on the wall
10 in these darker markings, four, three

11 A Yes, sir

12 It extends up to about four and a half foot, and I
13 think as low as about two foot

14 Q All right And you said you collected casings, and I
15 want to show you Item E And these may be a little bit
16 difficult, but you can just point to the casing that you --

17 A Right here That's Item E

18 Q Item E And that's marked on your diagram also

19 A Yes, sir

20 Q Which is a casing, a nine-millimeter casing

21 A Correct

22 Q Item F, also a nine-millimeter casing

23 A Yes, sir, also nine-millimeter

24 Q Labeled on the diagram

25 A Yes, sir

Michael Allen Peterson
Direct examination by Mr Ariail

1 Q Let me show you State's Exhibit Number Double D What
2 does it reflect?

3 A That reflects the, a duty belt which is a belt that
4 contains all of the tools that a police officer may wear.

5 Q That's a police officer's duty belt

6 A Yes, sir

7 Q And Item G is?

8 A That is also a shell casing

9 Q And Item H behind it

10 A Also a shell casing

11 Q Let me show you closeups for that item or State's
12 Exhibit Double E showing G shell casing

13 A Yes, sir

14 Q Also a nine

15 A Nine-millimeter, correct

16 Q And then Item H which is reflected on State's Exhibit
17 Double F, also a shell casing

18 A Yes, sir, also nine-millimeter

19 Q And then Item J

20 A Shell casing, also a nine-millimeter

21 Q And then the single 380 casing labeled P shown on
22 State's Exhibit HH

23 A And that was our 380 shell casing

24 Q All right And the last casing being number Y

25 A Yes, sir Nine-millimeter

Michael Allen Peterson
Direct examination by Mr Ariall

1 Q And that's it in the white edging of the roof

2 A Yes, sir Right there, sir

3 Q And the diagram Thirty-nine-A and also Thirty-nine
4 accurately represent the location of those shell casings as
5 they were found by you

6 A Yes, sir Each was measured before we collected it

7 Q Now, the projectiles, let's start with Number D I'm
8 going to come in a little bit on that one, D, that being
9 the projectile Where was that located?

10 A That was located on the top of the carpet

11 Q On top of the carpet

12 A Yes, sir

13 Q And what was the location of the three projectiles in
14 regard to each other?

15 A They were in close proximity to one another They
16 were all towards the front end of the large sofa in the
17 room

18 Q Okay And then I want to show you what's marked
19 State's Exhibit KK which is also a projectile All right
20 What are we looking at there?

21 A That is a projectile which was discovered beneath the
22 carpet There is a concrete floor beneath the carpet, and
23 it was caught between the floor and the carpet

24 Q Between the floor and the carpet

25 A Right

Michael Allen Peterson
Direct examination by Mr Ariail

1 Q And what kind of floor was underneath of this
2 particular room?

3 A It was a concrete floor

4 Q A concrete slab

5 A Yes

6 Q And I want to show you one other exhibit, photograph
7 LL, and ask you what that represents What is represented
8 there?

9 A That is another projectile that was located also under
10 the carpet on top of the concrete floor

11 Q All right And that one was actually underneath the
12 carpet and the padding

13 A Yes, sir

14 Q Okay Let me show you what -- well, ask you if you
15 are familiar with this And, if you will, open it up

16 A Yes, sir It's my packaging

17 Q And what is contained in that packaging?

18 A This is three projectiles and seven shell casings that
19 were collected from the living room-den area

20 Q And those are the same items that we have been talking
21 about

22 A Yes, sir

23 Q If you would, open those up or open that bag up We
24 will move to admit Inside of this are Exhibits
25 Twenty-two, Twenty-three, Twenty-four, and those are,

Michael Allen Peterson
Direct examination by Mr Ariail

1 excuse me, Twenty-five, Twenty-six All right And
2 Twenty-seven and Twenty-eight So Exhibits Twenty-two
3 through Twenty-eight are the seven shell casings?

4 A That is correct

5 Q And State's Exhibits Twenty-one, Twenty and Nineteen
6 are the three projectiles you previously testified to

7 A Yes, sir

8 Q And did you collect these and package these?

9 A Yes, sir, I did

10 Q And did you put them into property and evidence?

11 A They were placed in property and evidence

12 Q By you?

13 A Yes

14 MR AIRIAIL Your Honor, we would like to offer these
15 Nineteen through Twenty-eight

16 THE COURT Nineteen through Twenty-eight are admitted
17 without objection

18 (Projectile marked State's Exhibit Number Nineteen,
19 projectile marked State's Exhibit Number Twenty, projectile
20 marked State's Exhibit Number Twenty-one, shell casing
21 marked State's Exhibit Number Twenty-two, shell casing
22 marked State's Exhibit Number Twenty-three, shell casing
23 marked State's Exhibit Number Twenty-four, shell casing
24 marked State's Exhibit Number Twenty-five, shell casing
25 marked State's Exhibit Number Twenty-six, shell casing

Michael Allen Peterson
Direct examination by Mr Ariail

1 marked State's Exhibit Number Twenty-seven, shell casing
2 marked State's Exhibit Number Twenty-eight)

3 Q We will place them in one bag

4 All right Let me show you three final photographs.

5 After you finished your processing inside collecting all

6 the evidence that we had talked about, shell casings, the

7 guns, bag of bullets and the knife and all of that, did you

8 have occasion to go outside?

9 A Yes, sir We also checked the exterior of the
10 residence

11 Q And when you went outside -- let me show you what you
12 have previously identified as your drawing, State's Exhibit
13 Thirty-three And, particularly, I am focusing on the
14 right Did you prepare that drawing?

15 A Yes, sir, I did

16 Q Is that an accurate representation --

17 A It is

18 Q -- of the scene as you found it outside?

19 A Yes, it is

20 Q And focusing on the Jeep to the right, and Item R
21 beside it, are you familiar with that?

22 A Yes, sir

23 Q What was Item R or what is Item R?

24 A Item R was a small insulated bag that someone may use
25 for packing a lunch, and also a Nextel phone was with it.

Michael Allen Peterson
Direct examination by Mr Ariail

1 Q Let me show you photographs we have previously
2 identified Triple A, is that the Jeep and the bag you
3 were talking about?

4 A Yes, sir

5 Q And those are out to the right-hand side of the
6 Sapinoso residence?

7 A Yes, sir

8 Q Triple B, State's Exhibit

9 A Yes, sir

10 Q Bag was setting on the ground, the bags were?

11 A That's correct

12 Q And Triple C labeled R out beside it

13 A Yes, sir

14 Q Same closeup shot of the same thing

15 A They are the same thing

16 MR AIRIAIL Your Honor, we would move to place item
17 Thirty-three, Exhibit Thirty-three, into evidence, that
18 being the drawing that he has testified about

19 MR SUMNER No objection

20 THE COURT It is admitted

21 (Diagram marked State's Exhibit Number Thirty-three)

22 Q Answer any questions that the defense counsel may
23 have

24 MR SUMNER No questions of this witness, Your Honor

25 THE COURT You may step down

Michael Allen Peterson
Direct examination by Mr Ariail

1 Can y'all get these exhibits? Can y'all get those
2 exhibits so the jury can get out?

3 All right Ladies and gentlemen, we are going to
4 recess for the evening, so you will be going back to the
5 motel Of course supper will be provided

6 Keep in mind my caution previously given You still
7 are not permitted to discuss this case in any fashion
8 whatsoever So keep that in mind during the overnight
9 recess

10 Have a good evening We will see you first thing in
11 the morning at which time we will resume with the trial of
12 the case Have a good evening

13 (The following takes place outside the presence of the
14 jury)

15 THE COURT Any matters to address before we recess?
16 Court's in recess until 9 30 in the morning, 9 30

17 END OF PROCEEDINGS SEPTEMBER 17, 2004
18
19
20
21
22
23
24
25

1 (Proceedings September 18, 2004)

2 (The following takes place outside the presence of the
3 jury)

4 THE COURT Good morning Any matters to be addressed
5 before the jury is brought in?

6 MR AIRIAIL None from the state

7 MR SUMNER None from the defense

8 THE COURT Okay Bring them in

9 (The following takes place in the presence of the
10 jury)

11 THE COURT Good morning, ladies and gentlemen I
12 hope you had a good evening

13 As you know, when we recessed yesterday the state had
14 begun with their presentation, so we are going to continue
15 with that presentation this morning

16 Solicitor

17 MR AIRIAIL Your Honor, before I call the next
18 witness I would like to publish a couple of stipulations
19 that related to Mike Peterson's testimony

20 The first one, which is State's Exhibit Fifty-four, is
21 that the parties stipulate that the Glock 40 caliber
22 pistol found in the hallway which is marked State's Exhibit
23 Eighteen was the service weapon of Deputy Antonio Sapinoso
24 issued to him by the Greenville County Sheriff's Office

25 In addition, State's Exhibit Fifty-three, stipulation

Darwin Shaw
Direct examination by Mr Ariail

1 is that the Jeep Cherokee located beside the victim's home
2 was a Greenville County Sheriff's Office vehicle issued to
3 Deputy Antonio J Sapinoso for his use

4 THE COURT Is that right, Mr Sumner?

5 MR SUMNER Yes, sir We have agreed to that
6 stipulation

7 (Stipulation marked State's Exhibit Number
8 Fifty-three)

9 MR AIRIAIL Call Dar Shaw

10 DARWIN SHAW, having been first
11 duly sworn, testified as follows

12 THE CLERK State your name for the record

13 THE WITNESS Darwin Shaw

14 DIRECT EXAMINATION BY MR ARIAIL

15 Q State your name for the record, please, sir

16 A Darwin Shaw, S-H-A-W

17 Q I am going to need you to talk a little louder Try
18 that microphone

19 A How is that? How about now?

20 THE COURT You have got to talk louder Talk like
21 you are speaking to Mr Ariail out at a football game

22 Q By whom are you employed?

23 A The Department of Public Safety Forensic Division

24 Q And that's the same department in which Lieutenant
25 Peterson is employed who previously testified

Darwin Shaw

Direct examination by Mr Ariall

1 A That's correct

2 Q And the forensics division that you are a part of,
3 what is its primary purpose and function?

4 A To assist other law enforcement agencies as far as
5 working crime scenes, collection of evidence, preservation
6 of evidence, photography, ballistics, things as far as
7 evidentiary value that's collected at a scene

8 Q And in what capacity are you employed with the
9 forensics division?

10 A I am a sergeant

11 Q How long have you been in law enforcement?

12 A Twenty-seven years

13 Q And with the Department of Public Safety Forensic
14 Division, how long have you been there?

15 A It will be six years in December

16 Q I want to direct your attention back to the early
17 morning hours of April the 2nd of 2003 And were you so
18 employed as a -- with the forensics division on that date?

19 A Yes, sir, I was

20 Q Did you have occasion on that day to respond to 312
21 Chetsworth Lane in Mauldin?

22 A Yes, sir

23 Q And as a part of your response did you also make a
24 report of what activities you engaged in at 312 Chetsworth?

25 A Yes, sir, I did

Darwin Shaw
Direct examination by Mr Ariail

1 Q And if you need to, feel free to consult that report
2 during your examination or cross-examination

3 Who did you go with?

4 A I went with Lieutenant Peterson

5 Q And y'all left from the law enforcement center?

6 A That's correct

7 Q What time of the day was it you left the L E C?

8 A It was early morning It was still dark yet

9 Q When you went to Chetsworth and you were present with
10 Lieutenant Peterson, what role did you perform in terms of
11 collecting and processing the crime scene, collecting
12 evidence?

13 A Actually, we assessed the scene first to see what we
14 had and looked for any evidentiary-value items

15 Lieutenant Peterson was actually the collection
16 officer, but the lieutenant and I went through each room
17 deciding where to focus our attention And I took
18 photographs and assisted with the locating of evidence and
19 disseminating that to Lieutenant Peterson

20 Q Lieutenant Peterson has already testified previously,
21 so we are not going to go over any of that at this time
22 But after you finished your responsibilities at Chetsworth,
23 where did you go next in regard to that investigation?

24 A I went to the Greenville Memorial Hospital to the
25 morgue

Darwin Shaw

Direct examination by Mr Ariall

1 Q What was the purpose of going there?

2 A There were autopsies to be performed on Mr Sapinoso
3 and also Joe Sapinoso

4 Q And did you attend those autopsies?

5 A Yes, sir, I did

6 Q Who performed those autopsies?

7 A Dr Michael Ward

8 Q When you arrived how was Deputy Sapinoso clothed?

9 A Was wearing boots, had uniform pants on with an inner
10 belt, a belt keeper, also had a t-shirt that had sheriff's
11 office logo on the shirt He had an outer blue shirt that
12 was a long-sleeve with a Greenville County Sheriff's Office
13 patch on each arm

14 Q So, in essence, he was in a Greenville County
15 Sheriff's Office uniform

16 A That's correct

17 Q Did you remain throughout the autopsy?

18 A Yes, sir, I did

19 Q And while there and at the conclusion did you collect
20 certain evidence from Dr Ward?

21 A Yes, sir, I did

22 Q Let me show you what has been marked as State's
23 Exhibit Nine or premarked as State's Exhibit Nine and ask
24 you what -- if you collected that item from Dr Ward And
25 did you package it and label it?

Darwin Shaw
Direct examination by Mr Airail

1 A Yes, sir

2 The -- I was present during the collection of the
3 projectile

4 What I typically do as far as Dr Ward and myself, I
5 fill out a property and evidence form I labeled Item A as
6 being a projectile that was collected from Joe Sapinoso.

7 Dr Ward packaged, put it in this vial, sealed it and
8 handed it to me He then looked at my property and
9 evidence form and saw what I had written as far as the
10 generic location of where it was collected from

11 Dr Ward signed my property and evidence form and
12 retained a copy for his records

13 Q And is that the item you are referring to as Item A,
14 is that State's Exhibit Number Nine?

15 A Yes, sir It came from this vial

16 Q All right And when you say it came from this vial,
17 meaning that the projectile that is now in the plastic
18 baggy was inside this container

19 A That's correct

20 MR AIRIAIL Your Honor, we would offer this as
21 State's Exhibit Number Nine

22 MR SUMNER No objection

23 THE COURT It is admitted

24 (Projectile marked State's Exhibit Number Nine)

25 Q All right And if you would, tell the jury where the,

Darwin Shaw
Direct examination by Mr Ariail

1 that particular projectile was collected during the autopsy
2 of Deputy Joe Sapinoso

3 A It was collected from his jaw

4 Q Jawbone

5 A Yes, sir

6 Q Let me ask you if you would to look at what's been
7 marked as Exhibits Six, Seven and Eight, and ask if you are
8 familiar with those and did you collect them

9 A Yes, sir

10 Q All right And from what source did you receive those
11 items?

12 A These items were the same as the other These
13 projectiles were collected by Dr Ward from Mr Sapinoso.

14 Those items, they were put, the projectiles were put,
15 into the vials They were sealed

16 I labeled the property and evidence form, items AA, BB
17 and CC, corresponded with Dr Ward as far as where those
18 projectiles came from He signed the form and kept a copy
19 for himself

20 Q And these came from the separate autopsy of
21 Mr Sapinoso

22 A That's correct

23 Q Antonio L Sapinoso

24 A Yes, sir

25 Q Let me ask you if you would --

Darwin Shaw
Direct examination by Mr Ariail

1 MR AIRIAIL Before we do that, Your Honor, we would
2 offer State's Exhibits Six, Seven and Eight into evidence
3 at this time

4 MR GOLDSMITH No objection

5 MR SUMNER No objection

6 THE COURT They are admitted

7 (Projectiles marked State's Exhibits Numbers Six,
8 Seven and Eight)

9 Q I'm going to open this package and ask you if you
10 would to take each one of these, State's Exhibits Six --
11 Six, Seven and Eight, and tell us where those items were
12 collected from the body of Mr Sapinoso

13 A The item labeled AA was collected from just under the
14 scalp in Mr Sapinoso's head Items BB was --

15 Q Wait a minute AA is labeled what state's exhibit?

16 A It is Exhibit Number Six

17 Q All right

18 A Was collected from under the scalp of Mr Sapinoso

19 Q All right How about Seven?

20 A Seven is labeled Item BB which was -- the projectile
21 was collected from the left side in the skull of
22 Mr Sapinoso

23 Q State's Exhibit Number Eight

24 A This item, Number Eight, is labeled CC, which was a
25 projectile that was collected from the right arm, inside

Darwin Shaw
Direct examination by Mr Ariall

1 the right arm, of Mr Sapinoso

2 Q And, likewise, as you testified previously, the
3 projectiles were originally inside the containers, not in
4 the baggies

5 A That's correct

6 Q I want to direct your attention -- well, let me go
7 just a step further

8 Once you collected those items from Dr Ward and you
9 packaged and labeled, what did you do with them?

10 A The evidence that I collected from the autopsies --
11 because there was bloody clothing involved, we can't put
12 them into property and evidence in that condition We have
13 to wait until the clothing dries We have a drying room
14 that when I brought the clothing back I placed them into
15 the drying room until such time as they were dried And
16 then they were packaged and put into property and evidence

17 Q And the same with the projectiles?

18 A That's correct

19 Q And so eventually after the drying process you placed
20 them in property and evidence and filled out the
21 appropriate paperwork

22 A Yes, sir

23 Q I want to take you to the next day, April the 3rd, and
24 ask you if you had occasion to process any items for latent
25 fingerprints

Darwin Shaw
Direct examination by Mr Ariail

1 A Yes, sir, I did

2 Q And is that something within your expertise as a
3 forensic department technician?

4 A Yes, sir

5 Q And what items did you process for fingerprints?

6 A We had collected a -- I think it was a Super Mario
7 Nintendo Telephone and also a set of handcuffs That is
8 what I processed originally Those were the first two
9 items I processed

10 Q And tell us how you go about processing fingerprints

11 A We use a --

12 Q In this case particularly how did you go about
13 processing these items?

14 A These two items, I placed them in a fuming chamber,
15 used super glue and fumed those items to try to bring the
16 fingerprints up They are more visible

17 And then I used black powder and a brush and applied
18 the powder to the areas that I observed that appeared to
19 have ridge detail

20 I then lift them off on a lift tape and place those
21 latents onto a lift card

22 Q And did you have any success in lifting any latent
23 prints from these items on the phone?

24 A Excuse me I sent nine latents up to our latent
25 section with positive results, which means that I felt

Darwin Shaw
Direct examination by Mr Ariail

1 there was enough information as far as ridge detail to
2 allow our analyst to examine to see if they could compare
3 to anybody

4 Q And following comparison, were they able actually to
5 make any comparison to the known prints of any of the
6 victims or the defendant?

7 A No, sir They did not

8 Q Could not make a comparison

9 A That's correct

10 Q And the reason for that was what?

11 A Just not enough information, not enough ridge detail
12 to positively say that it was any of the individuals that
13 they had compared them to

14 Q All right Did you do any other processing for
15 fingerprints?

16 A Yes, sir, I did

17 Q What other items did you process?

18 A I processed a Glock nine-millimeter, correction, a .40
19 caliber

20 I had processed a collapsable baton that had been
21 collected, a pepper spray canister There was also a bag,
22 a black bag, containing numerous boxes of ammunition or
23 boxes of ammunition, as well as plastic bags containing
24 ammunition, a knife, an eight-inch-blade knife that was in
25 that bag All of the contents of the bag I processed for

Darwin Shaw
Direct examination by Mr Ariail

1 prints

2 Q How about the Lorcin nine-millimeter and the Lorcin
3 380 caliber handgun?

4 A They were processed but at a later time

5 Q All right Out of all of the processings of those
6 items were you able to lift any usable prints?

7 A No, sir, I was not

8 Q None

9 All right On the afternoon of April the 3rd did you
10 have occasion to return to the crime scene at 312
11 Chetsworth Lane?

12 A Yes, sir, I did

13 Q What was your -- who requested you go there?

14 A Investigator McNamara

15 Q Of the sheriff's office?

16 A Yes, sir

17 Q And what was your purpose in going there?

18 A To collect the, a piece of carpet where Joe Sapinoso
19 had been, had been found There was an area of blood on
20 the carpet, as well as projectile holes And we were
21 requested to collect that carpet and the pad that was
22 underneath

23 Q Let me show you three photographs marked MM, NN and OO
24 and ask you if you are familiar with those photographs

25 A Yes, sir, I am

Darwin Shaw

Direct examination by Mr Ariail

1 Q All right Are those accurate representations of the
2 scene where you removed the carpet and the padding on the
3 3rd of April of 2003 at 312 Chetsworth Lane?

4 A Yes, sir, it is

5 MR AIRIAIL Your Honor, we would offer these as
6 exhibits

7 MR SUMNER No objection

8 THE COURT They are admitted

9 (Photographs marked State's Exhibits MM, NN and OO)

10 Q If we can show the jury what we are talking about, in
11 looking at what is marked, the big diagram over here on the
12 easel marked as State's Thirty-nine-A, what is the area in
13 this room that we are looking at on these pictures?

14 A Are you asking me dimensions?

15 Q No I'm saying when we're looking at these pictures,
16 where is that area located within this room?

17 A We're looking at this area right here, is where the
18 carpet was removed from

19 Q All right Underneath this blood stain

20 A That's correct

21 Q Okay Now, tell us what that photograph that is
22 labeled State's Exhibit MM, what are we looking at there?

23 A That's a photograph of the carpet pulled back After
24 I had cut the carpet, I peeled the carpet back and wanted
25 to look for any projectile holes in the carpet and also in

Darwin Shaw
Direct examination by Mr Ariall

1 the pad

2 There is also a tape-measuring device there just
3 basically to indicate a general area as far as the distance
4 from the doorway into where the projectiles and the
5 suspected blood was at

6 Q Now, you were there the early morning hours of April
7 the 2nd when the projectiles were collected

8 A Yes, sir

9 Q Where in relation to this piece of carpet that's being
10 cut, where were the projectiles located?

11 A One projectile, if you laid the carpet back down, one
12 projectile was found approximately in this area on top of
13 the carpet

14 Q On top of the carpet or on top of the pad?

15 A On top of the carpet

16 When we peeled the carpet back and also peeled the pad
17 back, one projectile was actually stuck and attached to the
18 under side of the pad approximately in this area, and then
19 there was also another projectile approximately in this
20 area on top of the cement

21 Q All right The little white sticks that are standing
22 up, what are those?

23 A Those are Q-tips, sir

24 Q And what do those three Q-tips demonstrate?

25 A When I pulled the carpet back I could see holes on the

Darwin Shaw

Direct examination by Mr Arlail

1 under side of the carpet, and because of the saturated
2 blood on the pad, I couldn't, couldn't find holes in the
3 pad to correspond with the holes in the carpet So I
4 placed Q-tips I laid the carpet down and found where the
5 holes were in the pad and put Q-tips in the holes so that
6 they could be visible for photographing

7 Q Q-tips mark the holes in the pad

8 A That's correct

9 Q Show you State's Exhibit NN, and show us what we are
10 looking at Tell us what we are looking at there

11 A This is just a closeup of the Q-tips as they were
12 placed in the holes and wanting to correspond This Q-tip
13 to the hole in the back of the carpet, in the under side of
14 the carpet, this hole to correspond with the hole in the
15 under side of the carpet here, and this Q-tip to correspond
16 with the hole in the under side of the carpet there

17 Q And did you subsequently peel up the padding?

18 A Yes, sir

19 Q What was the purpose in peeling up the padding that
20 was underneath the carpet?

21 A Well, originally we pulled the pad back, and that's
22 where the two projectiles were found, or at least two
23 projectiles were found

24 Q And then afterwards did you reexamine that area for
25 any further purpose?

Darwin Shaw
Direct examination by Mr Ariail

1 A Yes, sir

2 Q What did you do?

3 A After I believe it was the next day on the 3rd, we
4 went back We were going to collect the carpet

5 I cleaned the blood from the cement floor which was
6 under the pad in the carpeting and examined the floor to
7 try to find out if there were any marks or indentations in
8 the cement that may have been left by the projectile

9 Q I show you what is marked as State's Exhibit 00 Tell
10 us what you are looking at or what we are looking at there

11 A What I have done is I've taken a scale and laid it
12 next to two areas on the cement that were -- had a circular
13 pattern Those circular patterns coincided with the holes
14 in the under side of the carpet and the padding

15 Because of the discoloration of the cement, the
16 different areas, I used a permanent marker to circle the
17 two circles that corresponded with the holes on the under
18 side of the pad

19 Q And can you identify those? Point those out for the
20 jury

21 A There is one in this area and there is also one in
22 this area

23 Q And the marking up there with the arrow, what does
24 that signify?

25 A That's a north arrow I wanted to be able to later on

Darwin Shaw
Direct examination by Mr Ariail

1 if I needed to, to be able to place the carpet in the pad
2 and also in relationship to the cement floor so if I could
3 lay them all back down, I put a north arrow on each, the
4 carpet, the pad and on the floor

5 Q And that's not anything but an orientation marking

6 A That's correct

7 Q Did you collect the pad and the carpeting?

8 A Yes, sir

9 Q Let me show you what's been marked as State's Exhibit
10 Ten and ask you if you will open this and take a look at
11 it

12 (Pause)

13 Q All right And the Q-tips are no longer in this

14 A That's correct

15 Q Are you able to remark it, the Q-tips?

16 A Yes, sir, I can

17 Q Okay Do you have something? Have you got something
18 with you?

19 (Pause)

20 Q Go ahead And that's the way you marked it at the
21 time of the -- that you secured it

22 A That's correct

23 Q All right How about the carpet also?

24 THE COURT Are you offering that into evidence?

25 MR AIRIAIL Yes, sir

Darwin Shaw
Direct examination by Mr Arlaail

1 MR SUMNER Without objection

2 THE COURT It is admitted

3 (Carpet and padding marked State's Exhibit Number
4 Ten)

5 Q I am sorry I thought I had already done that All
6 right

7 A We did, I did not use Q-tips in this area We just
8 took photographs The Q-tips only went into the pad

9 Q And on the back would be the areas here, would
10 indicate where the bullet holes had gone through

11 A That's correct Those are the exit marks

12 Q After you had processed and secured the carpet on the
13 3rd of April did you return to the law enforcement center?

14 A Yes, sir

15 Q And what was -- and I want to direct your attention
16 to, in particular to, the Items 16 and 17 that are state's
17 exhibits in evidence, which are the Lorcin nine-millimeter
18 and the 380 caliber Lorcin Did you process them for any
19 particular purposes?

20 A Yes, sir, I did

21 Q What did you do?

22 A Originally the intent was to process them for
23 fingerprints

24 Prior to processing I wanted to look at the weapons to
25 see if there was any type of physical evidence that I might

Darwin Shaw
Direct examination by Mr Airiaill

1 be able to collect prior to processing

2 So I examined the, both weapons using a flashlight and
3 magnifying glass And on both weapons I found what
4 appeared to be blood So I took samples of those areas on
5 each weapon

6 Q All right And how do you go about taking what you
7 suspect to be blood? How do you collect that?

8 A Use a Q-tip and distilled water and just take a swab
9 from the area, let the swab try and then package it

10 Q I want to show you what's been marked as State's
11 Exhibits Eleven, Twelve, Thirteen and Fourteen and ask you
12 if you are familiar with those

13 A These are coin envelopes that I prepared as far as
14 indicating where the swabs were taken from on each weapon,
15 and from which weapon And they were then placed into the
16 corresponding coin envelopes

17 Q Let's look at State's -- you looked at all four of
18 them Are you familiar with all four of them?

19 A Yes, sir

20 Q And did you so collect those?

21 A Yes, I did

22 MR AIRIAIL Your Honor, we would offer those into
23 evidence at this time

24 MR SUMNER No objection

25 (Swabbings marked State's Exhibits Numbers Eleven

Darwin Shaw
Direct examination by Mr Ariail

1 through Fourteen)

2 Q State's Exhibit Eleven, Twelve, Thirteen and Fourteen
3 are in evidence

4 Where did Item Number 11, state's exhibit, where did
5 you collect it from?

6 A Item 11 was labeled D L S one and it was a swabbing
7 of suspected blood from on top of the 380 caliber Lorcin
8 behind the front sight

9 Q And Number Twelve

10 A Was labeled D L S two It was a swabbing of
11 suspected blood from the Lorcin nine-millimeter and it was
12 on the right side of the slide under the model number and
13 the caliber nine-millimeter auto

14 Q And Thirteen

15 A It was labeled D L S three, and that was a swabbing
16 of suspected blood from the frame of the nine-millimeter
17 Lorcin in front of the trigger guard

18 Q And Fourteen

19 A That was labeled as D L S four, and that was a
20 swabbing of suspected blood from the slide on the left side
21 of the Lorcin logo, the nine-millimeter It was between
22 the frame and the slide between the Lorcin logo

23 Q And these swabbings that you took, what did you do
24 with them after you collected them?

25 A I allowed them to dry, and then they were placed into

Joseph Hornsby
Direct examination by Mr Ariail

1 the coin envelopes and subsequently placed into property
2 and evidence

3 Q And I believe I asked you further or earlier if you
4 processed those weapons, the 380 and the nine-millimeter,
5 for fingerprints

6 A Yes, sir

7 After I collected the swabbings of the suspected blood
8 I did process both weapons, and, again, I fumed them with
9 super glue and examined them for any latent ridge detail
10 that might be there However, there were no prints

11 MR AIRIAIL That's all I have of this witness

12 Q Answer any questions that defense counsel may have

13 MR SUMNER No questions of this witness, Your Honor

14 THE COURT You may step down

15 MR AIRIAIL Your Honor, could he be excused?

16 THE COURT He may be

17 (Whereupon, the witness was excused)

18 MR AIRIAIL Call Officer Hornsby

19 JOSEPH HORNSBY, having been
20 first duly sworn, testified as follows

21 THE CLERK State your name for the record, please

22 THE WITNESS Joseph Hornsby

23 DIRECT EXAMINATION BY MR ARIAIL

24 Q State your name for the record, please, sir

25 A Joseph Hornsby

Joseph Hornsby
Direct examination by Mr Ariail

1 Q And, Mr Hornsby, keep your voice up just like that so
2 the jurors can hear you

3 By whom are you employed?

4 A Department of Public Safety Forensics Division

5 Q And how long have you been employed with the forensic
6 division?

7 A Four years

8 Q And --

9 THE COURT Don't get too close to that microphone
10 You are distorting the sound

11 THE WITNESS Okay

12 Q You don't have to get that close You are doing fine
13 without it

14 In what capacity are you employed with the forensics
15 division?

16 A I'm a forensics technician

17 Q Lieutenant Peterson is your supervisor?

18 A Yes, sir

19 Q On April the 2nd of 2003 did you have occasion to meet
20 the defendant in this case, Mr Kamell Evans?

21 A Yes, sir

22 Q What was the location or where did y'all meet?

23 A I responded to the criminal investigation division
24 with the sheriff's office

25 Q And that's located where?

Joseph Hornsby
Direct examination by Mr Ariail

1 A At the law enforcement center

2 Q And what time of day was this approximately?

3 A 10 45 a m

4 Q And what was your purpose in going there? Why were
5 you there?

6 A To secure photographic documentation of Mr Evans, the
7 clothing, and to collect clothing items from Mr Evans

8 Q And to take photographs of the evidence

9 A Yes, sir

10 Q Now, prior to collecting the clothing did you examine
11 it?

12 A Yes, sir

13 Q And while you were examining it did you observe
14 anything of interest?

15 A Suspected bloodstains on the pants and on the tennis
16 shoes

17 Q Let me show you State's Exhibit Number Four and ask if
18 you would open this Open this and tell me if you are
19 familiar with that and if you collected it

20 (Pause)

21 Q All right Are you familiar with that item?

22 A Yes, sir

23 Q And did you collect that from the defendant?

24 A Yes, sir

25 MR AIRIAIL Your Honor, we would like to offer

Joseph Hornsby
Direct examination by Mr Ariail

1 State's Exhibit Number Four

2 MR GOLDSMITH No objection

3 THE COURT It is admitted

4 (Tennis shoes marked State's Exhibit Number Four)

5 Q What is State's Exhibit Number Four, Mr Hornsby?

6 A It's a pair of white tennis shoes, Casewish (sic)
7 tennis shoes, size ten

8 Q Let me show you State's Exhibit Number Five and ask
9 you if you will open it and tell us Likewise, are you
10 familiar with that and did you collect it from the
11 defendant at the law enforcement center?

12 A Yes, sir

13 Q All right And what is State's Exhibit Number Five?

14 A That's a fair of black Lockerwear (sic) pants They
15 were a size extra large

16 Q All right

17 MR GOLDSMITH We have no objection

18 MR AIRIAIL State's Exhibit Number Five is offered.

19 THE COURT It is admitted

20 (Pants marked State's Exhibit Number Five)

21 Q Now, these two items you collected because you said
22 you had -- thought there was suspected blood stain

23 A Yes, sir

24 Q Did you process those items to determine if there
25 was -- to remove the suspected blood stain?

Joseph Hornsby
Direct examination by Mr Ariail

1 A Yes, sir

2 Q And how do you do that?

3 A A cotton swabbing, in this case a Q-tip, distilled
4 water, and the portion of the pants and the tennis shoes
5 that had the appearance of suspected blood stains, were
6 collected from both the swabbings, was collected there, and
7 then it was placed into an envelope

8 Q All right Let me show you State's Exhibits One, Two
9 and Three and ask if you are familiar with those

10 A Yes, sir

11 Q All right And what are those?

12 A These are swabbings of suspected blood, one each from
13 the pair of shoes, one from the left shoe and one from the
14 right shoe and one from the pair of pants

15 Q And those are the swabbings you previously mentioned
16 as being taken from the defendant's clothes at the law
17 enforcement

18 A Yes, sir

19 MR AIRAIL Your Honor, we would like to offer
20 those

21 MR SUMNER Without objection

22 THE COURT They are admitted

23 (Swabbings marked State's Exhibits Numbers One, Two
24 and Three)

25 Q State's Exhibit Number One is labeled blood swabbing

Joseph Hornsby
Direct examination by Mr Airail

1 from left tennis shoe Is this your writing, your
2 labeling?

3 A Yes, sir

4 Q And State's Exhibit Number Two is a swabbing of blood
5 from the right tennis shoe, and State's Exhibit Three is a
6 blood swabbing from the black pants

7 Once you collected these, what did you do with them?

8 A I allowed the swabbings to dry, and then they were
9 sealed into the envelope and placed into the property and
10 evidence room

11 Q Secured them in property and evidence

12 A Yes, sir

13 Q Did you also at that time take some photographs of the
14 defendant?

15 A Yes, sir

16 Q Let me show you what has been marked as items F, G, H,
17 I and J and ask you if you recognize those photographs
18 Are you familiar with them?

19 A Yes, sir

20 Q All right And did you take those photographs?

21 A Yes, sir

22 MR AIRIAIL Your Honor, we would offer F through J.

23 MR SUMNER No objection

24 THE COURT They are admitted

25 (Photographs marked State's Exhibits F through J)

Joseph Hornsby
Direct examination by Mr Ariail

- 1 Q Now, I just want to run through these briefly, and you
2 tell us what they are This is item F
- 3 A That's the pair of tennis shoes
- 4 Q Which is in evidence?
- 5 A Yes, sir
- 6 Q And State's Exhibit G
- 7 A That's the Afro (sic) pants that he was wearing
- 8 Q The black pants you testified about previously?
- 9 A Yes, sir
- 10 Q And on the left side there, what is that
11 discoloration? What does that appear to be?
- 12 A It appeared to be ether dirt or maybe some mud It
13 looks like dirt
- 14 Q I show you State's Exhibit H
- 15 A That's Mr Evans and the clothing that he was wearing
16 at the time of the photographic documentation
- 17 Q All right And that, the labeling on there, is
18 Roperwear or Rockerwear
- 19 A Yes, sir
- 20 Q State's Exhibit I
- 21 A That's a sweater or the outer garment that he was
22 wearing
- 23 Q The same one, just a closeup shot?
- 24 A Yes, sir
- 25 Q And then J showing what?

Joseph Hornsby
Direct examination by Mr Ariail

1 A That's the back side of the pants, and, again, on the
2 right pocket it seems to have the appearance of dirt or
3 some mud

4 Q And the labeling on that is also Rockerwear?

5 A Yes, sir

6 Q And what is that that's hanging out of the pocket?

7 A That was a blue bandana

8 Q A blue bandana

9 Thank you, Mr Hornsby That's all the questions I
10 have Answer any defense counsel has

11 MR SUMNER No questions of this witness, Your Honor

12 THE COURT You may step down

13 MR AIRIAIL Can he likewise be excused, Your Honor?

14 THE COURT He may be

15 (Whereupon, the witness was excused)

16 MR AIRIAIL At this time, Your Honor, we would like
17 to publish a stipulation between counsel for the parties,
18 State's Exhibit Number Fifty, which is a stipulation that
19 the clothes taken from the defendant at the law enforcement
20 center were the same clothes that he was wearing at the
21 time of the incident on 312 Chetsworth earlier that
22 evening

23 THE COURT Defense is in agreement?

24 MR SUMNER Yes, sir, we are

25 (Stipulation marked State's Exhibit Number Fifty)

Robert Randy Suttles
Direct examination by Ms Strom

1 THE COURT All right

2 MS STROM The state calls Randy Suttles

3 ROBERT RANDY SUTTLES, having
4 been first duly sworn, testified as follows

5 THE CLERK State your name for the record, please

6 THE WITNESS Robert Randy Suttles

7 DIRECT EXAMINATION BY MS STROM

8 Q Good morning, Mr Suttles

9 A Good morning

10 Q If you would, please state your full name for the
11 record so I can make sure everybody can hear you

12 A Robert Randy Suttles

13 Q Speak up just a little bit All the jurors need to
14 hear you

15 All right Where do you work?

16 A Best Deal Pawn Shop

17 Q In what capacity do you work at Best Deal Pawn Shop?

18 A I'm the owner

19 Q You're the owner And where is that located?

20 A It's on Highway 29 in Greer, Country Plaza in Greer.

21 Q As part of your business with the pawn shop do you
22 sell weapons, handguns?

23 A Yes, ma'am

24 Q And do you have a license to do so?

25 A Yes, ma'am

Robert Randy Suttles
Direct examination by Ms Strom

1 Q I show you what's been marked as State's Exhibit
2 Number Forty-five and ask you to take a look at that and
3 tell me if you recognize State's Exhibit Number Forty-five

4 A Yes, ma'am

5 Q And is that a document that is normally kept in your
6 business?

7 A Yes, ma'am

8 Q And that is kept in the normal course of business and
9 retained by you

10 A Yes, ma'am

11 Q And previously when you and I met, you turned over
12 that document to me

13 A Yes, ma'am

14 MS STROM Your Honor, at this time we would offer
15 State's Exhibit Forty-five

16 MR SUMNER Without objection

17 THE COURT It is admitted

18 (Documents from Best Deal Pawn Shop marked State's
19 Exhibit Number Forty-five)

20 Q Mr Suttles, if you would, please advise as to what
21 State's Exhibit Forty-five is

22 A This is a form that has to be filled out on each
23 handgun that is sold It is a 3-part copy which we fill
24 out We keep a copy, we mail a copy to SLED, and the
25 purchaser gets a copy

Robert Randy Suttles
Direct examination by Ms Strom

1 Q Does State's Exhibit Forty-five indicate who purchased
2 the weapon?

3 A Yes, ma'am

4 Q Who purchased the weapon on State's Exhibit
5 Forty-five?

6 A Kamell Delshawn Evans

7 Q What weapon did he purchase?

8 A It's a Lorcin 380 semiautomatic

9 Q A Lorcin 380?

10 A Yes, ma'am

11 Q Thank you

12 I show you what's been marked as State's Exhibit
13 Number Forty-six and ask you do you recognize that
14 document

15 A Yes, ma'am

16 Q Is that a similar document to State's Exhibit
17 Forty-five?

18 A Same document

19 Q Kept in the normal course of business by you?

20 A Yes, ma'am

21 MS STROM Your Honor, we would offer State's Exhibit
22 Number Forty-six

23 MR SUMNER No objection

24 THE COURT It's admitted

25 (Documents from Best Deal Pawn Shop marked State's

Robert Randy Suttles
Direct examination by Ms Strom

1 Exhibit Number Forty-six)

2 Q Please tell this jury what State's Exhibit Forty-six
3 reflects

4 A This is the purchase of a Lorcin nine-millimeter
5 handgun

6 Q And who purchased the Lorcin?

7 A Chrissanta M Rodriguez It's hard to read some of
8 the writing

9 Q Does it look like Christina Rodringa -- Rodriguez?
10 Excuse me

11 A Christina, yes, ma'am There is Christina, yes,
12 ma'am

13 Q And on this form it identifies the serial number a
14 L130211

15 A Yes, ma'am

16 Q And that's for the nine-millimeter

17 A Yes, ma'am

18 Q I failed to ask you the serial number on the Lorcin
19 380, but is that LH04909?

20 A Yes, ma'am

21 Q And these weapons were purchased at your pawn shop

22 A Yes, ma'am

23 MS STROM Court's indulgence

24 (Pause)

25 Q The date of the purchase of these two weapons was when

James William Armstrong
Direct examination by Ms Strom

1 approximately?

2 A This one was purchased on --

3 Q Which one are you speaking of first?

4 A This is Kamell Delshawn Evans

5 Q All right

6 A It was purchased on 8/20/99

7 Q 8/20/99 And as to Christina Rodriguez, when was her
8 weapon purchased?

9 A 8/24/99

10 Q Thank you Please answer any questions the defense
11 may have

12 MR SUMNER No questions, Your Honor

13 THE COURT You may step down Thank you

14 MS STROM Your Honor, we would ask he be excused

15 THE COURT You may be

16 (Whereupon, the witness was excused)

17 MS STROM Continue, Judge, or does anybody need a
18 break

19 THE COURT Anybody need a break? No Keep going

20 MS STROM The state calls James Armstrong

21 JAMES WILLIAM ARMSTRONG,

22 having been first duly sworn, testified as follows

23 THE CLERK State your name for the record please,

24 sir

25 THE WITNESS James William Armstrong

James William Armstrong
Direct examination by Ms Strom

1 DIRECT EXAMINATION BY MS STROM

2 Q Mr Armstrong, if you would, please state your full
3 name

4 A James William Armstrong

5 Q Great I need for you to keep your voice up so all of
6 the jurors can hear you

7 By whom are you employed?

8 A For the Greenville County Department of Public Safety
9 and Forensics Division Crime Laboratory

10 Q How long have you been employed there?

11 A Employed a little over eight and a half years

12 Q Prior to being employed with the forensics division,
13 do you have any other law enforcement background or
14 employment?

15 A Yes, ma'am For -- I was employed by the Laurens
16 County Sheriff's Office as a patrol deputy from 1994 to
17 '95, in the middle of '95 And I was also a probation and
18 parole agent for the State of South Carolina for nine
19 months

20 Q What are your responsibilities with the forensic
21 division?

22 A I'm a forensic chemist and firearms examiner

23 Q What do they do?

24 A The forensic chemist aspect is I analyze dangerous and
25 suspected controlled substances to tell an officer that he

James William Armstrong
Direct examination by Ms Strom

1 may or may not have a physical quantity of drugs or just to
2 state what he may or may not have as a white powder or
3 plant material

4 The firearms examiner, I analyze and examine fired
5 evidence such as fired projectiles, fired cartridge
6 casings I look at firearms, identify whether they are
7 operable or what not and make comparisons to fired
8 projectiles and casings to fired -- to actually firearms

9 Q What educational or professional background do you
10 have or continued courses do you have in regards to
11 training for firearms examination?

12 A To start, I have a bachelor's of science degree in
13 chemistry from Erskine College I've attended the South
14 Carolina Criminal Justice Academy where I received training
15 in the Remington 870 and Mossberg 500 police shotguns, as
16 well as a Glock Model 22 semiautomatic pistol

17 I also received training from the South Carolina
18 Probation, Parole and Pardon Service Academy in
19 double-action revolvers

20 I received the outstanding marksman award in 1995 from
21 the South Carolina Probation, Parole and Pardon Services
22 I received 224 hours of lecture and instruction with lab
23 exercises in forensic trace evidence analysis with
24 polarized light microscopy

25 I've attended and completed the Greenville County

James William Armstrong
Direct examination by Ms Strom

1 Sheriff's Office Block Transition Course

2 I began my basic training in firearm and toolmark
3 identification in August of 1999 where I began reading and
4 watching videos and doing general observation through scope
5 work trying to make comparisons of fired projectiles to
6 each other

7 And then in March of 2000 I began an apprenticeship
8 training under the guidance of a retired firearms examiner
9 from the Philadelphia police department

10 I received Glock and SIG-Sauer Armour School training
11 in '99 as well

12 I received factory training with a microscope that I
13 used to make my examinations with

14 I completed a SWAT training course with the Greenville
15 County Sheriff's Office concerning all the weapons that are
16 used by the Greenville County Sheriff's Office

17 I have attended -- I visited an ammunition assembly
18 plant in Georgia I have visited ten different firearms
19 and firearm component manufacturers where I actually
20 watched the process of making firearms and firearm
21 components from raw material to the finished product

22 I have attended a gunshot residue detection course
23 It was a week-long course in Florida

24 I have been through the Springfield Army Museum with
25 the guidance of some of the historians there going through

James William Armstrong
Direct examination by Ms Strom

1 history, design, manufacture of U. S firearms both
2 experimental and current-issue

3 I received the Bureau of Alcohol, Tobacco and Firearm
4 Training Seminar dealing with firearms I D , tracking and
5 tracing, as well as federal law with firearms

6 In April of 2004 I went through the Remington Armour
7 School in Ilion, New York, where I received training in
8 doing, being an armour for police shotguns and rifles

9 In May of 2000 --

10 Q Let me ask you this, Mr Armstrong Excuse me Have
11 you been qualified as an expert in firearms examination and
12 toolmarkings?

13 A Yes, ma'am, I have three times in state court

14 Q Three times in state court?

15 A Yes, ma'am

16 Q And those were the -- all of the times that you have
17 been offered as an expert in that area?

18 A That's correct

19 MS STROM Your Honor, we would offer James Armstrong
20 as an expert in firearms examination and toolmark
21 identification

22 THE COURT Any objection?

23 MR SUMNER No, sir

24 THE COURT He is so qualified

25 MS STROM Thank you

James William Armstrong
Direct examination by Ms Strom

1 Q Mr Armstrong, if you would, you briefly told us what
2 you did with the forensics department But in layman's
3 terms, do you look at bullets and shell casings and
4 projectiles and try to match them up to a gun?

5 A Yes, ma'am, I do

6 Q Okay I am going to show you several pieces of
7 evidence

8 Well, let me ask you this Were you called upon to
9 make such examinations in the investigation into the deaths
10 of Mr Joe Sapinoso and his father?

11 A Yes, ma'am, I was

12 Q And you prepared a report as to your findings,
13 correct?

14 A Yes, ma'am, I did

15 Q Let me show you several items First, I show you
16 what's been marked as State's Exhibit Sixteen Do you
17 recognize State's Exhibit Sixteen?

18 A Yes, ma'am, I do

19 Q What is State's Exhibit Sixteen?

20 A This was described as Item A, which was collected by
21 Lieutenant Mike Peterson It's a Lorcin Model L Nine MM
22 single-action semiautomatic pistol with serial number
23 L130211

24 Q And where did you receive that weapon? Where did you
25 get it?

James William Armstrong
Direct examination by Ms Strom

1 A Received it from our property and evidence room

2 Q So after it's placed in the property and evidence room
3 by the technician who collected it, you then go down and
4 get it

5 A Yes, ma'am

6 Q Did you conduct any testing on that firearm?

7 A Yes, ma'am, I did

8 Q What type of testing did you conduct on the Lorcin
9 nine-millimeter?

10 A Did an overview to make sure there are no broken
11 components I looked down the bore and checked out the
12 condition of it and then I test fired and found it to be
13 operable

14 Q So it was in working order

15 A Working order, yes, ma'am

16 Q No problems with the weapon

17 A No problems

18 Q I show you what's been marked as State's Exhibit
19 Seventeen and ask you do you recognize it

20 A Yes, ma'am, I do

21 Q What is State's Exhibit Seventeen?

22 A It was described as Item B or I described as Item B-1
23 It was item B collected by Lieutenant Mike Peterson It's
24 a Lorcin Model LH380 single-action semiautomatic pistol
25 with the serial number LH04909

James William Armstrong
Direct examination by Ms Strom

1 Q Did you conduct any testing on this item?

2 A Yes, ma'am, I did

3 Q Was it the same testing that you conducted on the
4 previous item, the nine-millimeter?

5 A Yes, ma'am, it was the same

6 Q And what did you find about the Lorcin 380?

7 A I found -- it was test fired and found to be operable
8 with no abnormal components

9 Q In proper working order

10 A In proper working condition, yes, ma'am

11 Q Did you also obtain State's Exhibit Seventeen, the
12 Lorcin 380, from property and evidence as you did with the
13 prior weapon?

14 A Yes, ma'am

15 Q Excuse me for just a second I don't know we have
16 actually shown these weapons to the jury They have seen
17 the boxes And these guns have been disabled They cannot
18 be fired with the -- or they are in a safe mode

19 A They are in a safe condition, yes, ma'am

20 Q Also in State's Exhibit Seventeen is Seventeen-A and

21 B What is Seventeen-A and B?

22 A Seventeen-A and B was described as Item B-2 by myself
23 They were collected by Mike Peterson They are five
24 cartridges marked as by Cor-Bon They are caliber 380
25 auto They're constructed of brass cases with copper

James William Armstrong
Direct examination by Ms Strom

1 jacketed hollow point projectiles They are the correct
2 caliber for use in the Lorcin 380 Model LH380

3 Q So what's in these little coin envelopes and
4 previously identified by Peterson as being one round from
5 the chamber and, I believe it was, four rounds from the
6 magazine is appropriate ammunition for this weapon

7 A That is correct ammunition

8 Q Lorcin 380

9 I'm going to leave these up here with you because we
10 are going to be talking about them quite extensively, and
11 the Lorcin nine-millimeter which is State's Exhibit
12 Sixteen

13 A Yes, ma'am

14 Q Did you also have an occasion to examine State's
15 Exhibit Eighteen? I do not believe that's been opened yet
16 If you would, open that Do you recognize State's Exhibit
17 Eighteen?

18 A Yes, ma'am, I do

19 Q What is State's Exhibit Eighteen?

20 A State's Exhibit Eighteen was described as Item C-1 by
21 myself It is a Glock Model 22 double-action only
22 semiautomatic pistol with serial number CCP880, U S ,
23 caliber 40, Smith and Wesson, with -- constructed of
24 polymer frame with black, and it's a ferrimagnetic slide

25 Q Let me ask you this This one is not secured to the

James William Armstrong
Direct examination by Ms Strom

1 box as the other prior weapons were Is this one also in a
2 safe mode?

3 A Yes, ma'am, it is

4 Q It is obviously unloaded but also in a safe mode

5 A Yes, ma'am

6 Q All right That has previously been testified to by
7 stipulation that that was the service weapon of Joe
8 Sapinoso Is that consistent with your information?

9 A Yes, ma'am, it is

10 Q Did you conduct any testing on the service weapon of
11 Joe Sapinoso?

12 A Yes, ma'am, I did I inspected it to make sure that
13 it was in proper working order and test fired it and found
14 it to be operable

15 Q It was in proper working order

16 A Yes, ma'am, it was

17 Q I'm going to show you what's been introduced as
18 State's Exhibit Twenty-five

19 Excuse me Let me get them in order It will make it
20 easier Twenty-two, Twenty-three, Twenty-four,
21 Twenty-five, Twenty-six and Twenty-seven and Twenty-eight

22 I ask you to look at these Tell me if you recognize them

23 A I do recognize the envelopes They have my initials
24 and the date I opened the seal

25 Excuse me for a moment

James William Armstrong
Direct examination by Ms Strom

1 State's Exhibit Number Twenty-two is a fired cartridge
2 case marketed by Federal, nine-millimeter, and is marked by
3 myself as Item Y

4 Q I need for you to speak up You have inscribed
5 something?

6 A I inscribed on the inside of the mouth of the casing
7 that it was Item Y That's what it's designated by the
8 submitting officer

9 Q Did you do the same process for State's Exhibit
10 Twenty-three, Twenty-four, Twenty-five, Twenty-six and
11 Twenty-seven regarding the nine-millimeter casings?

12 A Yes, ma'am, I would have done the same thing

13 Q For each of those Did you get those from property
14 and evidence?

15 A Yes, ma'am, I did

16 Q Did you conduct -- these have previously been
17 testified to as being recovered from the living room floor
18 of the Sapinoso home State's Exhibit Twenty-two through
19 Twenty-seven, what type of casings are they?

20 A These are the nine-millimeter fired cartridge casings

21 Q Did you conduct any testing or examination of State's
22 Exhibit Twenty-two through Twenty-seven, the
23 nine-millimeter casings?

24 A I did examine them I checked the condition, looked
25 at the firing pin impression And then once, after I had

James William Armstrong
Direct examination by Ms Strom

1 test fired it, my evidence firearms, I then compared the
2 fired cartridge casings as evidence to the, my known test
3 fires to the firearms

4 Q Again, in layman's terms, you will take the Lorcin
5 nine-millimeter and test fire it using some of your
6 ammunition

7 A That's correct

8 Q The same type make and model as ammunition you have
9 there

10 A I would use reference ammunition that was factory new
11 that did not have any markings that come from a firearm
12 already on those, and then had fresh comparison parts and
13 put them under a microscope

14 My microscope was a comparison microscope It has two
15 microscopes, one on each side And it's bridged together
16 with what is called an optical bridge This optical bridge
17 combines the image to when you look through the eye piece
18 you have an image of two side by side

19 You can then move what are called center lines It's
20 a dividing line inside the bridge I can actually compare
21 both of those samples, like putting your hands together,
22 and move them aside and look at each one of them

23 Q So the known sample that you were speaking of is the
24 one you test fire in the laboratory

25 A That is correct

James William Armstrong
Direct examination by Ms Strom

1 Q And you're comparing that to the evidence that is
2 recovered from the scene of the crime

3 A Yes, ma'am

4 Q And did you make such a comparison in this case or
5 such an examination?

6 A I did do the examination

7 Q What were the results?

8 A They are items E, F, G, H, J and Y of the -- were
9 nine-millimeter fired cartridge casings

10 Q Just for reference, is State's Exhibit Twenty-two
11 through Twenty-seven?

12 A Twenty-two through Twenty-seven

13 I found them to have similar but insufficient
14 microscopic marks to permit identification to the Item A
15 nine-millimeter Lorcin pistol and to each other And they
16 were not fired from the Items B Lorcin 380 or the Item C
17 Glock 40 Smith and Wesson Model 22

18 Q Bear with me a little bit I am more of a visual
19 person The six nine-millimeter casings had insufficient
20 ridge detail to make an absolute comparison, an absolute
21 match, correct?

22 A Yes They were similar They had similar markings on
23 the fired cartridge case as to this Item A pistol

24 Q The nine-millimeter?

25 A The nine-millimeter

James William Armstrong
Direct examination by Ms Strom

1 Q Were you able to determine definitely whether they
2 were fired by the Lorcin 380?

3 A They were not fired in the 380

4 Q They were not

5 A Were not

6 Q Were they fired by the Glock?

7 A No, ma'am

8 Q You also have State's Exhibit Twenty-eight What is
9 State's Exhibit Twenty-eight?

10 A State's Exhibit Twenty-eight is described as Item P
11 It is a fired cartridge case, caliber 380 auto, marketed
12 by Cor-Bon with a hemispherical firing pin impression

13 Q That has earlier been testified to as a 380 shell
14 casing collected from the living room area of the Sapinoso
15 home

16 A Yes, ma'am

17 Q You conducted examinations on that casing

18 A Yes, ma'am

19 Q What were your results?

20 A The Item P fired 380 auto cartridge case as similar
21 but insufficient microscopic marks to permit identification
22 to the Item B, the 380 Lorcin pistol, and was not fired in
23 the Item A Lorcin nine-millimeter or the Item C Glock 40
24 Smith and Wesson Model 22

25 Q Again, the 380 casing you can say definitely was not

James William Armstrong
Direct examination by Ms Strom

- 1 fired by the Lorcin nine-millimeter
- 2 A That is correct
- 3 Q It was definitely not fired by the Glock 40
- 4 A That is correct
- 5 Q But it could have been fired by the Lorcin 380
- 6 A Yes, ma'am
- 7 Q And I don't know if I asked you, but the
- 8 nine-millimeter casings could have been fired by the Lorcin
- 9 nine-millimeter
- 10 A Yes, ma'am
- 11 Q They had similar characteristics but just not enough
- 12 for you to make a definite match
- 13 A That's correct
- 14 Q I show you what's been marked as State's Exhibits
- 15 Nineteen, Twenty and Twenty-one previously identified as
- 16 projectiles recovered from the home of the Sapinosos
- 17 A Yes, ma'am I can identify them
- 18 Q Did you make any examinations or conduct any testing
- 19 on these items?
- 20 A Yes, ma'am, I did
- 21 Q And what were your results?
- 22 A The items --
- 23 Q If you would, refer to the state's exhibit numbers
- 24 A State's Exhibit Number Nineteen, described also as
- 25 Item D, and State's Exhibit Twenty, described as Item AA, I

James William Armstrong
Direct examination by Ms Strom

1 found those to have insufficient microscopic marks to
2 permit identification to the Item A Lorcin pistol or each
3 other

4 Q The Lorcin pistol being the nine-millimeter?

5 A Being the nine-millimeter, because these items -- bear
6 with me just a moment State's Exhibit Nineteen is a fired
7 bullet specimen caliber nine-millimeter It's a copper
8 jacketed hydroshock type hollow point design with the
9 weight of 120 7 grams with a general rifling
10 characteristics of eight lands and grooves with a
11 right-hand direction of twist

12 The base is flat, and it was marked as item -- marked
13 by myself as -- with a D over my initials of J W A for
14 identification

15 Number Twenty, State's Exhibit Twenty, is a fired
16 bullet specimen, caliber 38, slash, nine-millimeter The
17 general rifling characteristics is consistent with eight
18 lands and grooves with a right-hand direction of twist It
19 is a copper jacketed hydroshock type design The base was
20 flattened It was marked AA over J W A by myself for
21 identification

22 State's Exhibit Twenty-one is described as Item AB
23 which is a fired bullet specimen, caliber 38, 9-millimeter
24 copper jacketed hollow point type design consistent with
25 being a hydroshock General rifling characteristics is

James William Armstrong
Direct examination by Ms Strom

1 eight lands and grooves, a right-hand direction of twist

2 And it was marked AB over J W A for identification

3 Q So State's Exhibits Eighteen, Nineteen and Twenty and

4 Twenty-one were fired projectiles, consisted of

5 nine-millimeter ammunition

6 A Yes, ma'am

7 Q Were you able to make a comparison back to any

8 particular weapon?

9 A I was not able to make a conclusive examination on
10 these

11 The item, State's Exhibit Nineteen and Twenty, had
12 insufficient microscopic marks to permit identification to
13 Item A pistol or each other

14 The State's Exhibit Twenty-one has similar but
15 insufficient microscopic marks to prevent identification to
16 the nine-millimeter pistol

17 Q Were you able to determine if State's Exhibit
18 Nineteen, Twenty and Twenty-one, the projectiles collected
19 from the home, were fired by the Lorcin 380 or the Glock
20 40?

21 A They were not

22 Q They were not fired by the Lorcin 380 or the Glock
23 40

24 A No, ma'am

25 Q Was there anything in the projectiles collected at the

James William Armstrong
Direct examination by Ms Strom

1 home that was inconsistent with them having been fired by
2 the Lorcin nine-millimeter?

3 A The Item D, which is State's Exhibit Nineteen and
4 Twenty, there are insufficient marks I cannot tell from
5 that one, but the Item AB, which is State's Exhibit
6 Twenty-one, does have similar markings to the Item A
7 nine-millimeter pistol

8 Q So it could have been fired by the nine-millimeter
9 pistol

10 A Yes, ma'am

11 Q I'm going to show you State's Exhibits Nine, Eight,
12 Seven and Six -- I went backwards this time -- and ask if
13 you would identify those

14 A Yes, ma'am, I can

15 Q What are those items?

16 A State's Exhibit Number Nine is identified as Item A on
17 the property and evidence report It is described as being
18 a missile from the jaw This is a fired bullet specimen,
19 copper jacketed, hollow point type, consistent with being
20 hydroshock which is marketed by Federal The Caliber 38,
21 slash nine-millimeter, has general rifling characteristics
22 of eight lands and grooves and right-hand direction of
23 twist It is marked Item A over J W A for
24 identification

25 Q So you specifically scribed each of these items for

James William Armstrong
Direct examination by Ms Strom

1 identification later on

2 A Yes, ma'am I do

3 Q Just as you do the casings --

4 A Yes, ma'am

5 Q -- and the other projectiles

6 A That's correct

7 Q State's Exhibit Number Nine, which has been testified
8 to as having been retrieved from the jaw of Joe Sapinoso at
9 the time of autopsy, were you able to make any comparisons
10 as to a particular weapon which fired that projectile?

11 A State's Exhibit Number Nine has similar but
12 insufficient microscopic marks to permit identification to
13 the Item A nine-millimeter Lorcin pistol

14 Q So the projectile retrieved from Joe Sapinoso's jaw
15 has similar characteristics and could have been fired by
16 the Lorcin nine-millimeter

17 A Yes, ma'am

18 Q Were you able to positively exclude the Lorcin 380
19 and the Glock 40?

20 A Yes, ma'am

21 Q So it was not fired by either of those

22 A It was not fired by either of those

23 Q If you would look at the other exhibits that were
24 recovered, the projectiles recovered from Mr Sapinoso's
25 body at the time of autopsy

James William Armstrong
Direct examination by Ms Strom

1 A State's Exhibit Number Eight was identified as Item CC
2 on the property reports When I received it the item
3 actually come into two pieces I described it as Item CC-1
4 and CC-2 Item CC-2 is a fired bullet jacket It's
5 consistent with caliber 38 nine-millimeter constructed of
6 copper It had general rifling characteristics of six
7 lands and grooves with a right-hand direction of twist, and
8 it was marked by myself for identification

9 And Item CC-2 is a fired bullet core which is
10 constructed of lead, and it is not suitable for microscopic
11 comparison for the core

12 The jacket in State's Exhibit Number Eight has similar
13 insufficient microscopic marks to prevent identification to
14 the Item B Lorcin 380 pistol, but it was not fired from
15 the Item A or the Item C, the Item A Lorcin nine-millimeter
16 or the Item C 40 Glock

17 Q If I may see that state's exhibit, please State's
18 Exhibit Number Eight which was previously identified as
19 having come from the arm of Mr Sapinoso could have been
20 fired by the Lorcin 380

21 A Yes

22 Q But was not fired by the Lorcin nine-millimeter or the
23 Glock 40

24 A That's correct

25 Q And as to State's Exhibits Six and Seven recovered

James William Armstrong
Direct examination by Ms Strom

1 from the scalp and skull of Mr Sapinoso

2 A These have similar but insufficient microscopic marks
3 to prevent an identification to the Item A nine-millimeter
4 Lorcin pistol, but they were not fired from the Item B 380
5 or the Item C 40 Glock Smith and Wesson

6 Q Could have been fired by the Lorcin nine-millimeter
7 but definitely not fired by the Glock 40 or the Lorcin
8 380

9 A That's correct

10 Q All of these items, the projectiles and the casings,
11 you also obtained from the property and evidence room

12 A Yes, ma'am

13 Q I'm going to also show you what's been marked as
14 State's Exhibit Fifteen, previously been identified as a
15 nylon bag collected at the scene of the Sapinoso home Did
16 you have an occasion to examine that bag and its contents?

17 A Yes, ma'am, I did

18 Q What did you find in that bag?

19 A I found the bag to contain a knife, which is not
20 firearms related

21 I found three Federal ammunition boxes containing a
22 total of 60 cartridges In these boxes there were 54
23 cartridges marketed by Federal and six marketed by
24 Remington They were nine-millimeter

25 There were also three Cor-Bon ammunition boxes

James William Armstrong
Direct examination by Ms Strom

1 containing a total of 60 cartridges marketed by Cor-Bon
2 There was a bag containing ten nine-millimeter cartridges
3 which nine of those were marketed by Remington and one
4 marketed by El dorado P M C

5 There was another bag which contained ten cartridges
6 marketed by Cor-Bon They were caliber 380 auto Also,
7 found two Glock pistol magazines containing a total of 28
8 cartridges marketed by Winchester, caliber 40 Smith and
9 Wesson which are consistent with the issue of the
10 Greenville Sheriff's Office

11 Q Again, to put it in layman's terms, you found boxes of
12 ammunition and baggies, small baggies of ammunition

13 A Yes, ma'am

14 Q That's already previously been show shown to the jury
15 You also found two magazines

16 A Yes, ma'am

17 Q The two magazines are consistent with
18 law-enforcement-issued magazines?

19 A Yes, ma'am, they are

20 Q Is there any marking or indication on that magazine
21 that would assist in your determining that?

22 A The magazine is marked at the top of it, marked 40
23 over restricted, over law enforcement, slash, government
24 only

25 Q And that indicates to you it is law-enforcement issue?

James William Armstrong
Direct examination by Ms Strom

1 A It is definitely consistent with law-enforcement
2 issue

3 Q The other ammunition that was found in the boxes and
4 in the baggies, could all of that ammunition been -- could
5 all of that have been fired by either the Lorcin
6 nine-millimeter and/or the Lorcin 380?

7 A Yes, ma'am

8 MS STROM Court's indulgence, Your Honor

9 (Pause)

10 Q Thank you Please answer any questions the defense
11 may have

12 MR SUMNER No questions of this witness, Your Honor

13 THE COURT You may step down

14 MS STROM Thank you We would ask that he be
15 excused

16 THE COURT He may be

17 (Whereupon, the witness was excused)

18 THE COURT Ladies and gentlemen, we are going to take
19 a break, so please go to your jury room

20 Don't talk about the case We will bring you back
21 shortly to continue

22 (The following takes place outside the presence of the
23 jury)

24 THE COURT Court is in recess for 15 minutes

25 (Whereupon, a recess was taken)

James William Armstrong
Direct examination by Ms Strom

1 THE COURT Are we ready for the jury?

2 MS STROM The state is ready, Your Honor

3 THE COURT Bring them in, please

4 (The following takes place in the presence of the
5 jury)

6 THE COURT All right Solicitor

7 MS STROM The state calls Investigator McNamara

8 MICHAEL McNAMARA, having been
9 first duly sworn, testified as follows

10 THE CLERK State your name for the record

11 THE WITNESS Michael McNamara

12 DIRECT EXAMINATION BY MS STROM

13 Q Investigator, please state your full name for the
14 record

15 A Michael McNamara

16 Q By whom are you employed?

17 A The Greenville County Sheriff's Office, ma'am

18 Q How long have you been with the Greenville County
19 Sheriff's Office?

20 A Nine years

21 Q At this time you are an investigator-detective?

22 A Yes, ma'am, I am

23 Q Were you previously a road patrol officer or a road
24 deputy with the Greenville County Sheriff's Office?

25 A Yes, ma'am, I was

Michael McNamara
Direct examination by Ms Strom

1 Q And how long were you in the patrol unit?

2 A In the patrol division for about five years

3 Q As an investigator were you the chief investigator
4 with regard to the homicide of Antonio L Sapinoso and
5 Deputy Antonio J Sapinoso back on April the 2nd of 2003?

6 A Yes, ma'am, I was

7 Q What were your duties as a chief investigating
8 officer?

9 A As the lead officer I'm assigned to oversee the
10 initial investigation out at the crime scene that day I'm
11 to arrange and coordinate any other assignments that we
12 have for other investigators in the case I make sure
13 arrangements are made for evidence to be taken to either
14 our crime lab here in Greenville or the crime lab at SLED
15 in Columbia I compile all of the information and evidence
16 we've obtained in the case in a completed case file for the
17 solicitor's office

18 Q I show you State's Exhibit Thirty and Thirty-one, and
19 I have already opened the bag for you so you can get to the
20 coin envelopes I ask you do you recognize State's
21 Exhibits Thirty and Thirty-one

22 A Yes, ma'am, I do

23 Q What are State's Exhibits Thirty and Thirty-one?

24 A They are envelopes containing blood spots obtained at
25 autopsy from both of the Sapinoso victims

Michael McNamara
Direct examination by Ms Strom

1 Q So Dr Ward who performed the autopsies made these
2 blood spots or samples of the victim's blood?

3 A Yes, ma'am, he did

4 Q You collected from his office

5 A Yes, ma'am, I did

6 Q Did you subsequently put those in the property and
7 evidence room at the law enforcement center?

8 A Yes, ma'am, on the same day that they were collected

9 MS STROM Your Honor, at this time I would offer
10 State's Exhibit Thirty and Thirty-one into evidence

11 MR SUMNER Without objection

12 THE COURT They are admitted

13 (Blood spots marked State's Exhibits Number Thirty and
14 Thirty-one)

15 Q Investigator McNamara, you said one of your primary
16 responsibilities was to take certain evidence to SLED and
17 arrange for the transportation of that evidence, correct?

18 A Yes, ma'am

19 Q I show you what is State's Exhibit One, Two and Three
20 which are the blood swabbings from the defendant's clothes
21 Did you obtain those from property and evidence and deliver
22 those to SLED headquarters in Columbia for the purpose of
23 examination?

24 A Yes, ma'am, I did

25 Q I also show you State's Exhibit Eleven which is a

Michael McNamara
Direct examination by Ms Strom

1 swabbing of suspected blood from the 380 Lorcin, State's
2 Exhibit Twelve which is a swabbing of suspected blood from
3 the Lorcin nine-millimeter, State's Exhibit Thirteen which
4 is a swabbing of suspected blood from the Lorcin
5 nine-millimeter and State's Exhibit Fourteen which is a
6 swabbing of suspected blood from the Lorcin
7 nine-millimeter

8 Did you also obtain these items from the property and
9 evidence room at the law enforcement center and deliver
10 them to the SLED headquarters in Columbia for testing?

11 A Yes, ma'am, I did

12 Q Were these all delivered on the same day?

13 A Yes, they were

14 Q Did you also on that date deliver three vials of blood
15 that had been placed in property and evidence as the
16 defendant's blood?

17 A Yes, ma'am

18 Q Did you in any way manipulate or open the packaging in
19 any way before delivering it to SLED?

20 A No, ma'am

21 Q So when you delivered it to SLED all of these items,
22 they were in the same condition as when you received them
23 from the property and evidence room

24 A That's correct

25 Q Investigator McNamara, are you familiar as having been

Michael McNamara
Direct examination by Ms Strom

1 an officer in the patrol unit, familiar with what is
2 normally carried on a duty belt of an officer?

3 A Yes, I am

4 Q And is it normal for an officer to carry what has been
5 commonly referred to as a collapsable or ASP baton?

6 A Yes, ma'am

7 Q And a can of pepper spray, is that normally carried on
8 a duty belt?

9 A Yes, it is

10 Q Obviously handcuffs An officer would have handcuffs
11 on his duty belt

12 A Yes, ma'am

13 Q And is it normal for an officer to carry extra
14 magazines for a service weapon?

15 A Yes, ma'am

16 MS STROM Court's indulgence

17 (Pause)

18 Q Thank you Please answer any questions the defense
19 may have

20 MR SUMNER No questions of this witness

21 THE COURT You may step down

22 MS STROM Your Honor, at this time I would like to
23 publish the stipulations by the parties that the state does
24 not have to call each and every person on the internal
25 chain on each of these pieces of evidence before it got

Michael McNamara
Direct examination by Ms Strom

1 into the hands of the D N A analyst

2 We do not have to produce the testimony of Ann Master
3 Burdy who is actually the technician in Dr Ward's office
4 who handed the blood spots of the victims to Investigator
5 McNamara

6 THE COURT The defense is in agreement?

7 MR SUMNER Yes, sir That's our stipulation
8 That's correct

9 MS STROM Those are stipulations, State's Exhibits
10 Fifty-one and Fifty-two

11 (Stipulations marked State's Exhibits Numbers
12 Fifty-one and Fifty-two)

13 The state calls John Ortuno

14 JOHN ORTUNO, having been first
15 duly sworn, testified as follows

16 THE CLERK State your name for the record please,
17 sir

18 THE WITNESS Manwell John Ortuno, O-R-T-U-N-O

19 DIRECT EXAMINATION BY MS STROM

20 Q Mr Ortuno, if you would, please state your full name
21 so I can make sure everybody can hear you

22 A Manwell John Ortuno

23 Q By whom are you employed?

24 A The South Carolina Law Enforcement Division, commonly
25 referred to as SLED

Manwell John Ortuno
Direct examination by Ms Strom

1 Q How long have you been so employed with SLED?

2 A A little over 14 years

3 Q And in what capacity? What are your duties with SLED?

4 A I am presently in the D N A analysis department and
5 I am forensic a D N A analyst

6 Q What is your educational and professional background
7 and/or training which you have received to conduct D N A
8 analysis?

9 A I graduated with honors from the American University
10 in Washington, D C , with a bachelor's of science degree
11 majoring in chemistry

12 I have a master's degree, also majoring in chemistry,
13 from the University of South Carolina at Columbia

14 I was hired as a researcher where I performed
15 experiments in the D N A laboratory This led to
16 coauthorship on two publications in peer review journals.

17 I'm a graduate of the South Carolina Criminal Justice
18 Academy I've completed my in-house training program at
19 SLED in the field of forensic serology and D N A
20 analysis

21 I have taken the advanced D N A training course at
22 the F B I Academy in Quantico, Virginia I trained
23 under the Armed Forces Human Identification Division
24 Applied Biosystems which is the maker of the instrument
25 that we use And I have attended numerous conferences and

Manwell John Ortuno
Direct examination by Ms Strom

1 seminars within my field

2 MR SUMNER Your Honor, we will stipulate I believe
3 he is being offered as a D N A expert, Is that right?

4 MS STROM That's right Expert in D N A
5 analysis

6 MR SUMNER We will agree that he is an expert in
7 that field, D N A analysis, and all associated D N A
8 fields

9 THE COURT All right He is so qualified

10 Q Mr Ortuno, briefly explain to this jury in layman's
11 terms, what is D N A evidence and what you do?

12 A D N A stands for deoxyribonucleic acid It's a
13 very large, complex molecule It's found in essentially
14 every cell of the human body It's found packaged within
15 the nucleus in what are called chromosomes

16 Now, we each have 23 pairs of chromosomes, each pair
17 being an equal contribution from our mother and our father

18 Now, most of our D N A is the same That's because
19 we all need arms and legs and kidney cells and liver cells
20 and all of the thousands of proteins and enzymes that make
21 us human But all you need to do is look around this
22 courtroom and just as you'll see differences in the colors
23 of our hair or the shapes of our noses or our ears, it's
24 apparent that all of our D N A can't be the same, and it
25 isn't

Manwell John Ortuno
Direct examination by Ms Strom

1 The region along this D N C molecule that we look
2 at in forensics that we focus on is called, are called S.
3 T R regions S T R stands for short tandem repeat

4 When you go to an S T R region what you discover is
5 that different people have different sizes at those
6 locations An analogy of this would be shoe sizes I wear
7 a size 11 men's shoes Other men in this courtroom may
8 have a size nine or a ten or a 12 But unlike a shoe size
9 where our right foot and our left foot has the same size,
10 in an S T R region, because we have a contribution from
11 our mother and our father, they may be the same, they may
12 be different And this adds to the variability that each
13 of us might have

14 We don't look at just one location along the D N A
15 molecule We look at nine locations When you look at the
16 nine locations, each one having these contributions from
17 our mother and our father, we arrive at what's called a D
18 N A profile, which is a combination of all of these
19 different sizes that we have

20 What we do then is take the evidence in a case,
21 develop a D N A profile -- it's combinations of sizes
22 along the D N A molecule -- and compare them to the D
23 N A profile of the standards that are submitted, the
24 standards being the people that are believed to have been
25 involved in the incident And either they match or they

Manwell John Ortuno
Direct examination by Ms Strom

1 don't match

2 Q I show you what's been marked as State's Exhibit
3 Number Thirty-two and ask you did you have an occasion to
4 receive a standard, as you refer to it, a standard of blood
5 from the defendant, Kamell Evans

6 A Yes There is a State's Exhibit Thirty-two, is a coin
7 envelope containing my initials and writing from a tube of
8 blood that is listed as Kamell Evans

9 Q So when you actually received it, it was in a tube or
10 a vial

11 A That's correct

12 Q And what do you do with it when you receive that tube
13 or vial?

14 A As long as the blood is in liquid form it can be
15 broken down So what we immediately do is that we place it
16 on cloth to dry Dried blood can be stable for years, and
17 that's what we do

18 Q And that's what you did in this case

19 A That's what I did in this case

20 Q And that's what State's Exhibit Thirty-two is

21 A That's correct

22 MS STROM Your Honor, we would over State's Exhibit
23 Thirty-two into evidence

24 MR SUMNER No objection

25 THE COURT It's admitted

Manwell John Ortuno
Direct examination by Ms Strom

1 (Number of vials marked State's Exhibit Number
2 Thirty-two)

3 Q I also show you what's been previously admitted into
4 evidence as State's Exhibit Thirty and Thirty-one, which
5 are the known blood samples -- and the bag is open if you
6 need to get into it -- of the victims in this case, Deputy
7 Joe Sapinoso and Mr Antonio L Sapinoso

8 A Yes I recognize these as well They have my
9 initials as well as the SLED lab number

10 Q So you received those as well

11 A Those were already dried They were received as they
12 are here, yes

13 Q Did you develop a D N A profile for each of the
14 victims and for the defendant, Kamell Evans?

15 A Yes, I did

16 Q Then did you also receive what have been identified as
17 suspected swabbings from the clothes of the defendant,
18 specifically State's Exhibits One, Two and Three?

19 A State's Exhibits One, Two and Three contain both the
20 SLED lab number as well as the initials and the item number
21 listed on the SLED report

22 Q So you received those as well

23 A Yes, I did

24 Q Also State's Exhibits Eleven, Twelve, Thirteen and
25 Fourteen which have been testified to as swabbings of

Manwell John Ortuno
Direct examination by Ms Strom

1 suspected blood off the Lorcin 380 and the Lorcin
2 nine-millimeter

3 A Yes They also contain both my initials, as well as
4 the lab number and the SLED number

5 Q Did you develop a D N A profile?

6 First of all, let me back up You developed a D N
7 A profile off the defendant's blood and off of each of the
8 victim's blood

9 A That's correct

10 Q Specifically, as to the swabbings on the defendant's
11 clothing, State's Exhibits One, Two and Three, did you
12 develop a D N A profile off of any or all of those
13 items?

14 A You are referring to the tennis shoes and the black
15 pants?

16 Q Yes, sir

17 A Yes, I did develop identified human blood first And
18 once the body fluid was identified, then it went on to the
19 P C R process to develop a profile

20 Q So the first step you do is to determine, number one,
21 if it is, in fact, human blood

22 A That's correct What we have to find out first is if,
23 in fact, there's, there are any human body fluids on the
24 evidence Once human body fluids are identified, we then
25 develop a D N A profile if there's sufficient for

Manwell John Ortuno
Direct examination by Ms Strom

1 developing the D N A profile

2 Q Specifically, as to State's Exhibit Number One, which
3 is the swabbing off the left tennis shoe, what were the
4 results of your examination? -

5 A There was a D N A profile developed from the left
6 tennis shoe and this profile matched Antonio J Sapinoso

7 Q And the probability of that?

8 A The likelihood of someone having the combination of
9 all of these fragments that I mentioned earlier in unison
10 is one in 56 billion

11 Q Specifically, as to State's Exhibit Number Two, the
12 swabbing off of the right tennis shoe

13 A There was a D N A profile developed from the right
14 tennis shoe, and this profile is a mixture By that I mean
15 there's more than one person in that profile

16 Q And what were the results of your examination?

17 A Although it is a mixture, I could determine a major
18 contributor, primary contributor and a lesser contributor
19 The major contributor was identified as that of Antonio J
20 Sapinoso The minor contributor did not match What
21 little was there was identified to not belong to either
22 Antonio L Sapinoso or Kamell Evans

23 Q So the blood that was on the right tennis shoe of the
24 defendant is the blood of Antonio J Sapinoso

25 A On the right tennis shoe? ,

Manwell John Ortuno
Direct examination by Ms Strom

1 Q Yes

2 A The major contributor is Antonio J Sapinoso

3 Q And the minor contributor, are you able to even say if
4 the minor contributor is blood or cells or --

5 A That becomes difficult because I know there is blood
6 there Blood was identified And that main stain was
7 identified to Antonio J Sapinoso, however, it is
8 impossible to tell whether that secondary minor profile has
9 to be blood It might be blood It's more probable that
10 it would be something such as skin cells They are simply
11 on the shoe Sweat contains cells that may deposit on the
12 shoe Shoes are not regularly washed, so they could be
13 there for months, but that's just a hypothetical

14 Q I want to go back to State's Exhibit Number One You
15 said that the -- which is the swabbing off the left tennis
16 shoe You said that D N A profile matched Antonio J
17 Sapinoso as well

18 A That's correct

19 Q Was that a mixture?

20 A That was not a mixture

21 Q That was not a mixture at all

22 A There was only one profile and it matched the victim

23 Q As to State's Exhibit Number Three which is the
24 swabbing off of the pants worn by the defendant, were you
25 able to develop a D N A profile?

Manwell John Ortuno
Direct examination by Ms Strom

1 A Yes I developed a D N A profile from the pants
2 which are item number five under SLED's listing And that
3 profile also matched Antonio J Sapinoso

4 Q So the blood on each of the tennis shoes and on the
5 pants came back as a match to Antonio J Sapinoso

6 A That's correct

7 Q As to the swabbings you have in front of you from the
8 weapons, let's first go to the swabbings off of the
9 nine-millimeter

10 A The swabbing off the nine-millimeter was tested for
11 the presence of human blood and there was no blood
12 detected So at that point the analysis of that item
13 ceased There was no further analysis

14 Q No further analysis once you determined it was not
15 human blood on the Lorcin nine-millimeter

16 A There was no blood whatsoever, no

17 Q The swabbing from the Lorcin 380, did you conduct a
18 D N A profile?

19 A The swabbing from the Lorcin 380 did contain human
20 blood, and a D N A profile was developed from that human
21 blood and that profile matched Antonio L Sapinoso

22 Q So it's Antonio L Sapinoso's blood that is on the
23 gun, the Lorcin 380

24 A That's correct

25 Q It is Antonio J Sapinoso's blood that is on the pants

Manwell John Ortuno
Direct examination by Ms Strom

1 and the two tennis shoes

2 A That's correct

3 Q The blood that is on the Lorcín 380, is that D N A
4 profile a mixture?

5 A The Lorcín 380, it is not

6 MS STROM Court's indulgence

7 (Pause)

8 Q Thank you Please answer any questions the defense
9 may have

10 MR SUMNER No questions of this witness, Your Honor

11 THE COURT You may step down

12 MS STROM Your Honor, we ask he be excused to return
13 to Columbia

14 THE COURT He may be

15 THE WITNESS Thank you, Your Honor

16 (Whereupon, the witness was excused)

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury)

19 MR AIRIAIL Call Dr Michael Ward

20 DR MICHAEL EUGENE WARD,
21 having been first duly sworn, testified as follows

22 THE CLERK State your name for the record please,
23 sir

24 THE WITNESS Michael Eugene Ward

25 DIRECT EXAMINATION BY MR ARIAIL

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 Q Would you state your name, please, sir?

2 A Michael Eugene Ward

3 Q Keep your voice up just like that so these last jurors
4 can hear you

5 What is your profession and present position?

6 A My profession is I'm a physician licensed in the State
7 of South Carolina I am also a forensic pathologist My
8 position is I am employed by Pathology Associates of
9 Greenville, which is a pathology group here in Greenville
10 County And I'm also employed as the Greenville County
11 Chief Medical Examiner

12 Q What are the duties and responsibilities of the
13 position you hold as the chief medical examiner?

14 A My responsibilities are to investigate deaths that
15 occur in Greenville County, to determine cause and manner
16 of death

17 Q What's your educational training for that?

18 A I received my bachelor's degree in biology from the
19 University of Alabama I received a master's degree in
20 forensic science from the University of Alabama in
21 Birmingham

22 I received my medical degree from the University of
23 South Alabama in Mobile I did a 4-year anatomic pathology
24 residency at the Medical University of South Carolina in
25 Charleston and a 1-year fellowship in forensic pathology at

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 the University of New Mexico in Albuquerque

2 Q And what type of additional training have you had
3 since your graduation?

4 MR SUMNER Your Honor, if I could, I may stipulate
5 to whatever you are offering him for, Solicitor

6 MR AIRIAIL We are offering him as an expert --

7 THE COURT Forensic pathology

8 MR SUMNER We will stipulate that he is an expert in
9 that field

10 MR AIRIAIL Forensic pathology

11 MR SUMNER Yes, sir We will

12 THE COURT The defense agrees He is so qualified.

13 Q Dr Ward, how long have you been the medical examiner
14 here in Greenville?

15 A For nine years

16 Q If you would, explain to us or to the jury the
17 significance between pathology and forensic pathology

18 A Pathology is the study of disease and how disease
19 processes affect man

20 Forensic pathology takes that one step further and
21 looks at how this disease process, and that may be natural
22 disease or it may be trauma, results in injuries and death,
23 determination of why people die and how they die, and then
24 the presentation of that information in the judicial
25 process as we are today

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 Q And you've previously testified in this court as an
2 expert on numerous occasions

3 A That's correct

4 Q Did you have occasion to visit the scene of the crime
5 which is the subject of this case at 312 Chetsworth Lane in
6 Mauldin?

7 A Yes, I did

8 Q And did you do so visit within a day or two following
9 the incident?

10 A I did

11 Q Did you also perform an autopsy on both the victims in
12 this case, Joe Sapinoso and his father, Antonio L
13 Sapinoso?

14 A Yes, I did

15 Q When did you do those autopsies?

16 A The autopsies were performed on April 2nd of 2003, the
17 first autopsy on Antonio Joe Sapinoso beginning at 1 30
18 p m and the second autopsy beginning at 3 30 p m

19 Q As a result of visiting the scene and conducting the
20 autopsies were you able to determine the cause of death of
21 each of these men?

22 A Yes, I was

23 Q What was the cause of death for Joseph Sapinoso?

24 A Joseph Sapinoso died as a result of multiple gunshot
25 wounds of the head

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 Q And as to Antonio L Sapinoso?

2 A Mr Sapinoso also died as a result of multiple gunshot
3 wounds of the head

4 Q And during the course of the autopsy did you observe
5 evidence of injuries to their bodies?

6 A Yes, I did

7 Q Did you record these findings in a report that you
8 made?

9 A Yes, I did

10 Q And as a part of that report do you also prepare
11 drawings?

12 A Yes, I do

13 Q At my request have you used these drawings to prepare
14 a 3-D enhancement of your original drawings to assist in
15 the presentation of your testimony to the jury?

16 A Yes, I have

17 Q I'm going to show you what is marked as State's
18 Exhibit Forty-eight and ask if you have assisted and
19 directed the presentation of this document which is marked
20 as State's Exhibit Forty-eight

21 A Yes, I have

22 Q And you have reviewed this with me and we have gone
23 over each one of the frames in it

24 A That's correct, I have

25 Q And does this accurately reflect the findings that you

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 made at autopsy on both Mr Sapinoso and Joe Sapinoso?

2 A Yes, it does

3 MR AIRIAIL Your Honor, we would offer State's
4 Exhibit Forty-eight at this time

5 MR SUMNER Without objection

6 THE COURT It is admitted

7 (3-D enhancement marked State's Exhibit Number
8 Forty-eight, drawings marked State's Exhibits Forty-eight A
9 Forty-eight-O)

10 Q All right First, let's talk just a moment about the
11 general information starting with Antonio L Sapinoso
12 Could you give us information such as height and weight and
13 stated age?

14 A Antonio L Sapinoso, or Mr Sapinoso, had a weight of
15 143 pounds He was five feet and seven inches in length
16 and appeared compatible with his stated age of 62 years

17 Q Now, going to the specific injuries of, that you found
18 on the body, let me show you frame Forty-eight-A of State's
19 Exhibit Forty-eight And if you would, tell us what those
20 are

21 A This is a view of the right side of the head, in this
22 case representing Mr Sapinoso or Antonio L Sapinoso,
23 showing the entrance wounds of two gunshot wounds to the
24 head, this one arbitrarily numbered as gunshot wound number
25 one and this one numbered as gunshot wound number two

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 Q Talking about gunshot wound number one, what was the
2 significant points about it including its trajectory, point
3 of entry, point of exit?

4 A Gunshot wound number one enters in the, what we call
5 the, right temporal parietal scalp, whereas, you can see
6 just above and in front of the right ear It goes through
7 the skin and bone on the right side of the head, perforates
8 or passes all the way through the right and left lobes of
9 the brain and impacts but does not go through the bone on
10 the left side of the head Beneath this bone on the left
11 side of the head was recovered a missile that was received
12 as evidence

13 Q All right Gunshot wound number two

14 A Gunshot wound number two, as you can see, enters just
15 behind the right ear in what's called the occipital region
16 or the back portion of the head

17 It also goes through or penetrates through the skin
18 and bone of Mr Sapinoso's skull passing through the right
19 and left cerebral hemispheres or right-left lobes of the
20 brain, but it also goes through the region of the brain
21 stem which controls our breathing and respirations and
22 major bodily functions perforating or damaging this part of
23 his brain as well, also impacting and coming to rest
24 against the bone on the left side of the head, again,
25 impacting that bone but not exiting the head

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 Q As to gunshots number one and two, were either or both
2 of these fatal wounds?

3 A Both of these wounds would be expected to be fatal
4 gunshot wounds

5 Q And in the area of entry did you notice any gunpowder
6 or unburned gunpowder or soot or stippling?

7 A I did not

8 Q What is the significance of those materials and their
9 presence or absence?

10 A When we discharge a weapon not only does the bullet
11 come out the muzzle of the gun, but there are also other
12 components that come out the muzzle as well These are hot
13 gasses from the burned gunpowder This gas is actually
14 what pushes the bullet out There are burned gunpowder
15 which deposits itself as soot and then there are also
16 fragments of unburned gunpowder that never ignited and also
17 travel out the muzzle of the gun

18 If the muzzle of the gun is close enough to the
19 target, in this case Mr Sapinoso's head, then they may
20 deposit themselves on the skin's surface as either burns
21 caused by the hot gas, a fine soot-like material from the
22 soot, from the burned gunpowder, or flakes of unburned
23 gunpowder that may be deposited on the skin or small
24 abrasions caused by the impacting unburned gun powder And
25 that's called the gunpowder stippling And these were not

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 present, indicating that the range of fire or the distance
2 from the muzzle of the gun to Mr Sapinoso's head was
3 greater than approximately two to three feet

4 Q So he was shot from a distance of further than two to
5 three feet away

6 A That's correct

7 Q Let me show you what is frame Number Forty-eight-C
8 And you previously testified about the retrieval of the
9 projectiles from wounds one and two and that they did not
10 exit the scalp or the skull What does Exhibit
11 Forty-eight-C reflect?

12 A Forty-eight-C reflects the left side of Mr Sapinoso's
13 head, again, indicating the recovery of the general area
14 that these missiles were recovered from beneath the bone
15 So there is, there is no wound on the skin on the left side
16 of Mr Sapinoso's head But during the time of autopsy a
17 missile was recovered from this region here, from gunshot
18 wound number one, and from this region here, from gunshot
19 wound number two

20 Q Those were recovered by you on autopsy?

21 A That's correct

22 Q Let me show you what's been marked as State's Exhibits
23 Six and Seven and ask you if those are the projectiles
24 recovered at autopsy from Mr Sapinoso

25 A Yes, they are They are labeled with the unique

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 autopsy number for Mr Sapinoso and have my initials and
2 the number of gunshot wound one, and one is labeled gunshot
3 wound number two

4 Q Now, going to Exhibit Forty-eight-D, what does this
5 represent?

6 A This represents the right back of Mr Sapinoso
7 indicating a gunshot wound which was labeled as number
8 three entering the back right of Mr Sapinoso's arm It
9 went through the skin and muscle of the outside of the arm,
10 impacted or hit the midportion of the humerus, which is the
11 upper arm bone, fracturing that bone

12 It was from adjacent to the right humerus where a
13 jacket and lead core labeled as gunshot wound number three
14 was recovered

15 Q Was that wound fatal?

16 A No, sir, it would not have been fatal

17 Q And how about the presence of soot or unburned
18 gunpowder or stippling?

19 A No gunshot residue was identified on the skin
20 surrounding this entrance wound

21 Q Indicating the same distance?

22 A Indicating a distance greater than two to three feet

23 Q Let me show you what's been marked as State's Exhibit
24 Number eight and ask you if this is the projectile that you
25 collected from the arm of Mr Antonio L Sapinoso

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 A Yes, it is

2 Q Now, let's talk a little bit specifically about Joe
3 Sapinoso and his autopsy

4 First, let's talk in general again about general
5 information as to height, weight, age and that sort of
6 thing

7 A Joe Sapinoso weighed 175 pounds He was five feet,
8 six inches in length and appeared his reported age of 34
9 years

10 Q And you also observed injuries on his body

11 A Yes, I did

12 Q Recorded those

13 A I did

14 Q Let me show you then We will start with Exhibit
15 Forty-eight-F What does this reflect?

16 A This reflects the back side of Joe Sapinoso's head
17 with the first gunshot wound that was numbered, and it's
18 present in the region we call the left posterior parietal
19 or basically the back of the left side of the head

20 It's an entrance gunshot wound, and present on the
21 skin surrounding this wound are these pinpoint like
22 abrasions or scratches of the skin that are caused by
23 impacting unburned gunpowder We call that gunpowder
24 stippling Gunpowder itself and soot were not identified
25 on the skin surrounding this wound

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 Q But stippling was identified on the skin

2 A That's correct

3 Q What does that indicate to you?

4 A The presence of gunshot residue In this case
5 gunpowder stippling indicates a distance of less than two
6 to three feet from the muzzle of the gun to Joe Sapinoso's
7 head

8 Q And it could be anywhere in that range from zero to
9 two or three feet

10 A Well, I don't think it's in the range of zero to about
11 six inches, because in that region we would have burning
12 from the hot gas and soot, but anywhere from ten inches to
13 two to three feet would be what I would estimate the range
14 of fire to be

15 Q And was this wound fatal?

16 A Yes, it would be

17 Q And what was its trajectory?

18 A Gunshot wound number one went through the left side of
19 Mr Joe Sapinoso's head It perforated or went through
20 both the left and right cerebral hemispheres or the left
21 and right sides of the brain and exited on the right side
22 of Joe Sapinoso's head

23 Q Did you recover a projectile from that entrance wound
24 during autopsy?

25 A I did not It had exited the head

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 Q If we look at State's Exhibit Forty-eight-G, what does
2 Forty-eight-G represent?

3 A Again, this frame represents the back side of Joe
4 Sapinoso's head with an entrance wound designated as
5 gunshot wound number two Again, a circular gunshot wound
6 of entrance with, again with, gunpowder stippling present
7 on the skin surrounding this wound

8 Q The gunpowder stippling indicating a distance of less
9 than two to three feet --

10 A That's correct

11 Q -- from the muzzle of the gun What was the
12 trajectory of this wound's direction?

13 A Gunshot wound number two goes from the back side of
14 Mr Sapinoso's head, again, through the left and right
15 sides of the brain to exit the right face of Joe Sapinoso
16 just in front of his ear, again, passing through both left
17 and right sides of his brain and causing hemorrhage within
18 the brain as well as fracture of the bones of the skull

19 Q This also exited?

20 A Yes, sir, it did

21 Q And so you retrieved no projectile

22 A That's correct

23 Q Let me show you State's Exhibit Forty-eight-H What
24 does that represent?

25 A Forty-eight-H is a representation of the back left

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 side of Joe Sapinoso with an entrance wound designated as
2 number three just above the left ear Again, this was a
3 circular gunshot wound of entry with gunpowder stippling
4 present around the wound on the skin indicating an
5 intermediate range of fire which would be less than two to
6 three feet

7 Q Was this wound fatal?

8 A Yes, it would have been

9 Q And also what was its trajectory?

10 A This trajectory is from Joe Sapinoso's left to his
11 right passing through the left and right lobes of brain to
12 exit the right side of the head

13 Q And it likewise exited the head?

14 A It exited the head and no missile was covered

15 Q Take you to Forty-eight-I What does this represent?

16 A Forty-eight-I is a representation of -- this is
17 gunshot wound number three This is gunshot wound number
18 four Again, a circular gunshot wound that enters just
19 behind the left ear, again, with gunpowder stippling
20 present on the skin surrounding this wound In actuality
21 there was gunpowder stippling present in front of the ear,
22 on the ear, as well as actually behind the ear itself, so
23 indicating that the gunpowder that struck the skin had to
24 be coming from the back towards the front to get behind the
25 ear and not be shielded by the ear itself

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 This wound went from Mr Sapinoso or from Joe
2 Sapinoso's back to his front, crossing across the bones of
3 his, I'm sorry, across the brain, across the bones of the
4 base of the skull and impacting the lower jaw just behind
5 the teeth

6 A missile was recovered from Joe Sapinoso's -- inside
7 his mouth, just the bone of the mandible This is the
8 lower jaw It impacted the lower jaw and was recovered
9 from the soft tissue adjacent to that bone

10 Q And was this wound fatal?

11 A It most likely would have been, yes

12 Q Now to go to the next, Forty-eight-J I want to talk
13 about exit wounds And what do these represent on
14 Forty-eight-J?

15 A This is a diagram from the right side representing Joe
16 Sapinoso's head indicating the location of gunshot wounds
17 of exit on the right side of Mr -- of Joe Sapinoso

18 The paths of gunshot wounds one and three became very
19 close and actually merged during the substance of their
20 course through Mr Sapinoso's brain So designation of --
21 actually that this being one or three was not possible So
22 I arbitrarily indicated this to be number one, this one to
23 be number three This one is indeed the exit from gunshot
24 wound number two

25 But, in any case, you can see they create a roughly

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 triangular shape on the right side of the head
2 Interestingly, these gunshot wounds from this one here
3 designated as number one and from this one here which is
4 gunshot wound number two have a look to them that is
5 characteristic that we call a shored gunshot wound of exit

6 They had abrasion of the skin surrounding the exit
7 wound, and generally when a missile exits the skin it
8 causes a tear in the skin and does not leave this abrasion
9 or scratching of the skin surface around the wound

10 When the skin, or in this case the head, is up against
11 a firm object and the missile exits, it pushes the skin
12 outward from the skull causing the skin to strike whatever
13 object is supporting it And when it strikes that skin it
14 causes this abrasion or this scratching of the skin around
15 the wound called a shored exit wound indicating that in
16 this case Joe Sapinoso's head was against a firm substance
17 or a firm object when the missile exited his head

18 Q All right And we are going to, I am going to come
19 back to that in a little bit and talk more about shored
20 exit But let's take a look at Forty-eight-K And what
21 does Forty-eight-K represent? It is a little light on
22 there, but you have previously talked about the missile
23 that was recovered from Joe Sapinoso's jaw

24 A That's correct

25 This is, again, representing the right front side of

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 Joe Sapinoso's head with the three exit wounds here

2 The missile that was recovered was from the region of
3 the right mandible approximately in this region here

4 Q And that light blue streak on the drawing up there is
5 indicating the trajectory of that bullet

6 A That's correct

7 Q All right Let me show you what is marked as State's
8 Exhibit Number Nine and ask you if this is the projectile
9 recovered from Joe Sapinoso's jaw

10 A Yes, it is

11 Q Now, are you familiar -- you say you went to the
12 scene Are you familiar with the drawing or diagram of the
13 living room area or den area at the Sapinoso residence?

14 A Yes, I am

15 Q And when you visited, what was your purpose or what
16 prompted your visiting the scene?

17 A During the autopsy we noticed that the exit wounds, at
18 least two of the exit wounds, had shoring around them that
19 Joe Sapinoso's head had to have been against a firm object
20 at the time that he was shot

21 So I went to the scene in an effort to see if I could
22 determine just what Mr Sapinoso's head was against when he
23 was shot

24 Q And did you accompany the forensic technicians to the
25 scene?

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 A Yes, I did

2 Q And were you present when the carpet and padding which
3 has been introduced as State's Exhibit Number Ten were
4 peeled back and removed?

5 A Yes, I was

6 Q And were you able to see underneath the carpet and
7 padding?

8 A Yes, I was

9 Q I also show you State's Exhibits Double M, Double N
10 and Double O and ask if you were present when those
11 photographs were taken, or do those photographs accurately
12 represent the scene as you saw it when you visited when the
13 padding was pulled back?

14 A They do I don't believe I was present when they were
15 taken, but they represent what I saw

16 Q And these photographs as previously introduced are the
17 ones with the Q-tips marking the holes in the carpet and in
18 the padding and the concrete indentation

19 A That's correct

20 Q So you are familiar with those

21 A Yes, I am

22 Q Now, let's walk through again the drawing that we went
23 through earlier with a little bit of additional

24 We are going to go to Forty-eight-L because I want to
25 talk about some trajectory This is gunshot number one,

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 again, that we talked about earlier What does the red
2 arrow indicate?

3 A The red arrow is present to indicate the trajectory or
4 the path of gunshot wound number one through Joe Sapinoso's
5 head with the entrance in the left back passing from his
6 left to his right and forward to exit the right side of his
7 head just above the ear in this manner here

8 Q Forty-eight-M This his entrance wound two

9 A M, Forty-eight-M, demonstrates the path and the
10 trajectory of gunshot wound number two as it enters the
11 left back of Joe Sapinoso's head passing from his left to
12 his right and forward to exit his right face

13 Q Forty-eight-O, I mean N, excuse me

14 A N demonstrates the path and trajectory of gunshot
15 wound number three as it enters above the left ear passing
16 from his left to his right forward and slightly upward to
17 exit the right side of the head

18 Q And O

19 A O is the left side of head of Mr Joe Sapinoso
20 indicating the path and trajectory of gunshot wound number
21 four as it enters behind the left ear passing forward,
22 downward and to the right to impact the bone of the jaw
23 just to the right of the midline on his mandible, so in
24 this region here in his mouth

25 Q And then back to the exit wounds which are here, we

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 have seen those before

2 A That's correct Exit wounds designated as one, two
3 and three on the right side of Jay Sapinoso's head

4 Q And assuming the following facts, if you would, I want
5 to ask you if you reached certain opinions based on this
6 evidence

7 Assuming that Joe Sapinoso was on his knees as
8 previously testified by Deputy Eldridge and Williams,
9 assume further that all shots were fired within ten
10 seconds, that the three exit wounds are in the right-hand
11 side of Joe's head, the four entrance wounds are to the
12 left and rear of Joe's head, there are three holes in the
13 carpeting and padding, and you have seen their
14 configuration, there are indentation marks in the concrete,
15 and you have seen their locations, three projectiles were
16 found on or under the carpet padding at the location of
17 Joe's body, stippling was found on Joe's skin and scalp at
18 the entrance wounds, and also assume with measurements that
19 you've made as to the entrance and exit wounds and their
20 relative triangular positions to each other, also taking
21 into account your inspection of the scene -- are you able
22 to form an opinion as to the following issues The
23 location of Joe's head in relation to the floor at the time
24 he was shot?

25 A Yes, I am

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 Q And what is your opinion?

2 A Based on the shoring of the exit wounds number one and
3 number two on Joe Sapinoso's head, the arrangement, the
4 triangular arrangement, of the exits on the right side of
5 his head and the impact points in the concrete underneath
6 the carpet indicate to me that Joe Sapinoso's head was
7 right side down and against the floor at the time he
8 received these three gunshot wounds

9 Q All right And can you determine as to the other two
10 as to the probability that his head was on the concrete
11 floor at the time of the other two shots that did not have
12 shored exits?

13 A Gunshot wound number three, which does not have a
14 shored exit but does have a similar impact point in the
15 carpet and underlying padding, most certainly occurred at
16 the same time with Mr Sapinoso's head being right side
17 down onto the floor

18 Gunshot wound number four, which did not exit, almost
19 certainly occurred at the same time as gunshot wound number
20 three in that they are almost in essentially the same
21 location with the same sort of stippling pattern present
22 around the left ear indicating that they occurred very
23 nearly the same time

24 Q So in your opinion all four shots were fired while
25 Mr Sapinoso, Joe Sapinoso's head was down on the concrete

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 A From both the autopsy findings and the historical
2 information given, that would be correct

3 Q Were you able to also form an opinion as to the
4 location of the gun in terms of its distance from Joe's
5 head when he was shot?

6 A Yes, I was

7 Q What is that opinion?

8 A That the location of the gun would be less than two to
9 three feet The muzzle of the gun would be less than two
10 to three feet from Joe Sapinoso's head

11 It would on the left side of his head so that the
12 missiles can travel from his left to his right and that at
13 least for gunshot wounds three and four, were behind the
14 region of the left ear, so pointing slightly forward

15 Q If you would assist me, I am going to ask you to step
16 down and place this styrofoam head in the position that
17 your opinion indicates Joe Sapinoso's head was at the time
18 of the shooting And then I'm going to ask you if you
19 would to assist me in locating the distance that the gun
20 was from the back of his head

21 (Whereupon, the witness left the stand)

22 A Do you want this on the floor?

23 Q I think so Let's move back this way

24 THE COURT I think if you will use that table as the
25 floor the jury will be more likely to see it

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 Q Let's adjust the height

2 A So Joe Sapinosa's head would very likely be right side
3 down in this fashion here such that the boney prominences
4 of his face and skull in the region of gunshot wound exit
5 number one here, with the boney prominence here and of the
6 right side of the face where this part sort of sticks out,
7 these two are against the hard surface of the floor And
8 when you do that the exit to gunshot wound number three,
9 which is, doesn't protrude as much, so it's not sticking
10 out It's not actually going to be against the floor

11 So this part if you lay a bone -- if you lay a flat
12 surface up against your head, not your entire head touches
13 that flat surface because of the concavity of this part of
14 your face

15 So the area of gunshot wound number -- exit numbers
16 one and three, excuse me, I am sorry, one and two are
17 against the floor, and number three, because of the
18 concavity of the head, are not actually against the floor
19 So his head would be in a fashion similar to this

20 Q So we get the gun, can we turn it this way? And then
21 the shots would have been fired from an angle or a distance
22 of how far away?

23 A Less than two to three feet

24 Q All right So is that --

25 A That would be the maximum distance there It is quite

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 likely closer

2 Q This close?

3 A Yes

4 Q All right

5 A And did you want the location in relation to the head?

6 Q Yes

7 A Would be from -- the entrances are coming from behind,
8 at least for gunshot wounds number three and four, with the
9 stipple pattern behind the left ear indicating that the
10 muzzle of the gun was located behind the left ear passing
11 forward

12 So the gunshot wound number three, I am sorry, gunshot
13 wound number four is up toward the jaw, and gunshot wound
14 number three is over here on the right side of the face and
15 forward

16 Q And this a relative distance

17 A Yes

18 Q Thank you

19 (Whereupon, the witness returned to the stand)

20 Q And the relative position of the shooter in relation
21 to Joe Sapinoso's head, I think you've already discussed
22 this Did you reach an opinion as to that?

23 A Yes, I did

24 Q And what would that opinion be?

25 A With Joe Sapinoso being on the floor, he is certainly

Dr Michael Eugene Ward
Direct examination by Mr Ariall

1 above He's in a position that he can fire from Because
2 of Joe Sapinoso's position, he's firing from his left to
3 his right, and he's in such a position that he can fire
4 from the back towards the front

5 Q And in such a position that the weapon is within two
6 to three feet

7 A That's correct

8 Q Let me ask you to assume a couple of other facts in
9 regard to Mr Sapinoso

10 Assuming that he was sitting on the love seat in the
11 corner, which is on Diagram Number Thirty-nine-A, assume
12 that all the shots, all seven shots, were fired within ten
13 seconds or less, assume further he has no stippling of gun
14 powder residue on any of his wounds, and that your opinion
15 that the shooter of Joe Sapinoso was within two to three
16 feet and standing immediately adjacent to him in the room,
17 and also assume the entry wounds that you found on
18 Mr Sapinoso, the two to the right side of the head and the
19 one to the right back arm -- would it be consistent that
20 Mr Sapinoso assumed a defensive posture before he was
21 shot?

22 A The presence of gunshot wound number three to the
23 right back of Mr Sapinoso's arm could certainly be placed
24 in such position that it was raised in this fashion here
25 since that gunshot wounds one and two strike the head and

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 three strike the arm, but not necessarily in that order
2 certainly

3 Q And could it have been struck the arm first or struck
4 the arm second or struck the arm third

5 A That's correct

6 Q But in any event, two struck the head, and it's
7 consistent that his arm would have been raised in a
8 defensive posture

9 A It's consistent with that, yes

10 Q And in your experience is there anything significant
11 to you in regard to the proximity or closeness of these
12 wounds to Joe Sapinoso's head?

13 A I think practicality and experience indicate that
14 these very likely occurred at a time when neither the
15 shooter nor Mr Joe Sapinoso were moving and occurred in a
16 very rapid sequence to each other They are all basically
17 in the same part of Joe Sapinoso's head at very nearly the
18 same distance

19 Q That's all the questions I have Thank you Answer
20 any questions defense counsel may have

21 MR SUMNER No questions of this witness, Your Honor

22 THE COURT You may step down

23 MR AIRIAIL That's the state's case, Your Honor

24 THE COURT All right Ladies and gentlemen, that is
25 all of the testimony or other evidence to be offered by the

Dr Michael Eugene Ward
Direct examination by Mr Ariail

1 state, at least in their case in chief

2 Before we go any further we are going to break for
3 lunch

4 So you are reminded that you are still not to discuss
5 the case in any fashion After we have our lunch recess we
6 will resume with the trial

7 So please go to the jury room Do not discuss the
8 case in any way

9 (The following takes place outside the presence of the
10 jury)

11 THE COURT Any motions or other matters to address
12 before we recess?

13 MR SUMNER Your Honor, as for the defense and for
14 the record we would certainly make the directed verdict
15 motions that are typical at this stage of the case And if
16 you need me to articulate those further, I will
17 Otherwise, I will just make the motions

18 THE COURT Well, do you have any specific ground
19 where you believe the state is lacking in their
20 presentation to support each of the necessary elements of
21 each of the offenses that have been alleged?

22 Would you like to address these after lunch?

23 MR SUMNER I would

24 THE COURT Okay Also, during the lunch recess
25 discuss with Mr Evans his right to testify or not testify

1 during the defense's presentation

2 MR SUMNER I have already discussed that with him in
3 detail If you want to proceed with that examination now,
4 you can, or if you'd rather wait and do it all at one
5 time --

6 THE COURT I will talk with him about that after
7 lunch

8 Mr Evans, Mr Sumner's indicated that he has
9 discussed with you your right to testify or not testify

10 THE DEFENDANT Yes He has, Your Honor

11 THE COURT And have you had those discussions with
12 him?

13 THE DEFENDANT Yes, I have, Your Honor

14 THE COURT After lunch I am going to ask you some
15 questions regarding your decision with respect to whether
16 or not you will testify So reflect upon that decision
17 during lunch, and I will discuss that with you afterwards

18 THE DEFENDANT Yes, Your Honor

19 MR SUMNER One other matter, Your Honor Also, Mr
20 Goldsmith and I have discussed his right to address the
21 jury in a summation fashion at the conclusion of the guilt
22 phase So if you could question him about that as well, we
23 have also discussed that

24 THE COURT I will discuss that at the appropriate
25 time after the evidence has been received

1 MR SUMNER I just wanted to let you know we
2 discussed that with him as well

3 THE COURT All right Let me see the lawyers just a
4 minute before we break for lunch

5 (Bench conference held off the record)

6 THE COURT All right Court is in recess until two
7 o'clock

8 (Whereupon, a recess was taken)

9 THE COURT Mr Evans, during the lunch recess have
10 you had time to discuss with your lawyers your right to
11 testify as well as your right not to testify at this
12 particular stage of the trial?

13 THE DEFENDANT Yes, I did, Your Honor

14 THE COURT And during the lunch recess have you
15 arrived at a decision as to whether or not you will
16 testify?

17 THE DEFENDANT Yes, I did, Your Honor

18 THE COURT Do you understand that you have an
19 absolutely constitutional right to remain silent? And what
20 I mean by that is no one can make you take the witness
21 stand, no one can make you testify during the trial of this
22 case That's a decision that you get to make, and it's
23 your decision to make

24 You also, at the same time, have the right to testify
25 if you wish to

1 But, now, you understand that nobody can make that
2 decision for you

3 THE DEFENDANT Yes, I do, Your Honor

4 THE COURT Have you and your lawyers discussed the
5 advantages and the disadvantages of your testifying as well
6 as of your not testifying?

7 THE DEFENDANT Yes, Your Honor

8 THE COURT And do you understand what those
9 advantages and disadvantages are?

10 THE DEFENDANT Yes, Your Honor

11 THE COURT Now, do you understand that if you elect
12 to take the witness stand and testify during the trial of
13 this case that not only will you have to answer questions
14 that are asked of you by your own lawyers, you will also
15 have to answer any questions that are asked of you by the
16 prosecutor so long as those questions are relevant even if
17 the answers to those questions might tend to incriminate
18 you or prejudice you in some fashion?

19 THE DEFENDANT Yes, Your Honor

20 THE COURT Do you also understand that if you chose
21 not to take the witness stand that I would instruct the
22 jury that they may not consider that fact in any fashion
23 whatsoever during their deliberations or in their
24 determination as to whether or not your guilt has been
25 proven beyond a reasonable doubt?

1 THE DEFENDANT Yes, Your Honor

2 THE COURT And have you had time to reflect upon your
3 decision?

4 THE DEFENDANT Yes, Your Honor

5 THE COURT And has anybody forced you or pressured
6 you into a decision?

7 THE DEFENDANT No, Your Honor

8 THE COURT Now, I recognize fully that you may have
9 discussed with your lawyers their opinions as to whether or
10 not you ought to testify But, now, you understand that
11 whatever their opinion is, that's not an opinion that you
12 have to accept

13 THE DEFENDANT Yes, Your Honor

14 THE COURT In other words, you may accept their
15 opinion, you may reject it But even if you were to accept
16 their opinion or to agree with it, it's still your
17 decision It's not their decision as to whether or not you
18 will testify

19 THE DEFENDANT Yes, Your Honor

20 THE COURT Now, have you made up your mind as to
21 whether or not you will testify?

22 THE DEFENDANT Yes, Your Honor

23 THE COURT And what is your decision?

24 THE DEFENDANT I want to testify, Your Honor

25 THE COURT You will testify?

1 THE DEFENDANT Yes, I will

2 THE COURT And that's a decision that you made of
3 your own will and accord

4 THE DEFENDANT Yes, Your Honor

5 THE COURT Nobody's forced you into it

6 THE DEFENDANT No, Your Honor

7 THE COURT Nobody's pressured you into it

8 THE DEFENDANT No, sir

9 THE COURT And you fully understand the consequences
10 of that decision

11 THE DEFENDANT Yes, Your Honor

12 THE COURT Okay Thank you Be seated

13 Anything further before the jury is brought in?

14 MR SUMNER Maybe just a question regarding his
15 addressing the jury as an individual at the conclusion of
16 the guilt phase

17 THE COURT Well, we will address that after all of
18 the evidence has been received in the case

19 MR SUMNER Okay

20 THE COURT Mr Sumner and Mr Goldsmith, did y'all
21 have any motions you would like to make before we go
22 further?

23 MR SUMNER No, sir

24 THE COURT All right Are we ready for the jury?

25 MR SUMNER Yes, sir The defense is

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 MR GOLDSMITH Yes, sir

2 THE COURT Okay Bring them in

3 While the jury is coming in, let me see the lawyers
4 for just a minute

5 (Bench conference held off the record)

6 (The following takes place in the presence of the
7 jury)

8 THE COURT Good afternoon, ladies and gentlemen

9 As you know, when we recessed for lunch the state had
10 concluded with their presentation of evidence, so we are
11 going to now proceed with that to be offered by the
12 defense

13 Mr Sumner

14 MR SUMNER Thank you, Your Honor May it please the
15 Court

16 The defense could call Kamell Evans to the stand

17 KAMELL DELSHAWN EVANS, having
18 been first duly sworn, testified as follows

19 THE CLERK State your name for the record please,
20 sir

21 THE WITNESS My name is Kamell Evans

22 DIRECT EXAMINATION BY MR SUMNER

23 Q Would you please look to the jury? And I'm going to
24 ask you

25 You have been here, Kamell, during the course of the

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 trial and you've heard the solicitor remind witnesses to
2 speak up We want to make sure that everybody in the jury
3 box can hear your answers Okay?

4 A Yes, sir

5 Q Now, let us have your full name, please

6 A My name is Kamell Delshawn Evans

7 THE COURT You don't lean that close

8 Q Move back just a little bit

9 And how old are you, Kamell?

10 A I am 27 years old

11 Q Now, you have been incarcerated since early April of
12 2003, is that right?

13 A Yes, I have

14 Q Now, I'm just going to cut right to the chase and ask
15 you to tell the jury how you feel about what happened and
16 the incident that occurred and the shootings that occurred

17 MR AIRIAIL Your Honor, I would object to the
18 testimony about how he feels

19 THE COURT Sustained

20 Q We will get to that down the line

21 Let me ask you Let's go ahead and go through your
22 history

23 Tell the ladies and gentlemen of the jury where you
24 were born and where you spent your early years

25 A I was born in Cleveland, Ohio

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 Q And tell us, how long did you live in Cleveland?

2 A I lived in Cleveland until after the age of 12

3 Q And tell the ladies and gentlemen of the jury a little
4 bit about who you lived with

5 Did you have any brothers and sisters, or did you live
6 with your mom and your dad?

7 A Yes First I lived with my father and my mom I had
8 one older sister

9 My father moved to South Carolina, and it was just me
10 and my mother and my sister

11 Q And tell us about your mom Was she working while you
12 were living in Cleveland or --

13 A Yes, my mom worked And my sister, she went to
14 college

15 Q Now, how old were you when left Cleveland?

16 A I was 12 years old when I left Cleveland

17 Q Now, when you left Cleveland, where did you move to?

18 A I moved to South Carolina

19 Q Did you move to Greer?

20 A Yes, I did

21 Q And tell us why you moved to Greer and who you took up
22 residence with

23 A I came to Greer to be with my father We talked on
24 the phone Even in the summertime we talked about me
25 coming down and playing football, playing sports with them

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 And so I moved down with my father

2 Q And did you -- who all was living in the house with
3 you at that time?

4 A It was my father, my stepmom and my little sister

5 Q Now, did you go to Greer Middle School?

6 A Yes, I went to Greer Middle School

7 Q What do you recall about your experience at Greer
8 Middle School?

9 A Greer Middle School was pretty fun I had a lot of
10 friends I enjoyed it

11 Q You did?

12 A Yes, sir

13 Q Were you involved in sports at that time?

14 A Yes, I was involved in sports at the time

15 Q Football, baseball, basketball, track? What were you
16 doing?

17 A I played football, basketball and baseball

18 Q During middle school

19 A Yes, sir

20 Q Did you go on to attend Greer High School?

21 A Yes, I did

22 Q Did you develop friendships and enjoy your time at
23 Greer High School?

24 A Yes, I enjoyed my time at Greer I won a state
25 championship I still played football, baseball and

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 basketball I had a lot of associates

2 Q Now, after -- did you graduate from Greer High School?

3 A Yes, I did

4 Q And then you went on to attend North Greenville, is
5 that correct?

6 A Yes, sir

7 Q Tell us about North Greenville Did you play ball at
8 North Greenville?

9 A Yes, I played ball at North Greenville I was the
10 first team, all-American, excuse me, all conference I had
11 a lot of friends I enjoyed my college experience

12 Q Now, how long did you attend North Greenville?

13 A I attended North Greenville two and a half years

14 Q And afterwards you left North Greenville, is that
15 correct?

16 A Yes, sir

17 Q And then you began to work, is that right?

18 A Yes, sir

19 Q Tell the jury a little bit about, briefly about, where
20 you worked, you know, for the next three or four years
21 after you got out of North Greenville

22 A I began to work at a metal cutting supplier They
23 slit metal I worked there eight hours and I worked with
24 U P S , and worked the U P S in the morning

25 Then M B Handy was another job I had after I worked

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 at R Metals, which was the slitting company

2 So I kept my U P S job in the mornings and worked
3 four hours in the mornings and then went straight to U P
4 S , well, straight to N B Handy, which a roofing supply
5 store, and I worked there during the daytime

6 Q Now, several years ago, or I guess around three years
7 prior to when the shooting happened, you met Christina
8 Rodriguez, is that right?

9 A Yes, I did

10 Q Tell the jury how you met her

11 A I was going to get some lunch one day through a
12 McDonald's drive-through and was in the car in front of me
13 I beeped my horn and asked them to pull over, and she
14 pulled over and we began to talk And we exchanged
15 numbers, and that's how we met

16 Q Now, y'all then began a relationship, is that correct?

17 A Yes, sir

18 Q Tell the ladies and gentlemen of the jury about the
19 first year to year and a half of the relationship, whether
20 or not it was good and what you recall about it

21 A Yes The first year or year and a half of the
22 relationship was good We enjoyed each other's company
23 We did a lot of things We took trips out of town We
24 just enjoyed each another's company The relationship was
25 really good

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 Q Did y'all ultimately get an apartment together?

2 A Yes, we did get an apartment together

3 Q Did she live with you some during this time?

4 A Yes, she did live with me

5 Q After the apartment did y'all ultimately rent a home
6 together?

7 A Yes, we did rent a home together

8 Q Now, did you ever tell her what your plans were for
9 you and she? Did you want a family with her?

10 A Yes

11 After the relationship went on, even when I had the
12 apartment, I always told her how, you know, I wanted a
13 family

14 And at the time that I got the apartment she was going
15 through financial problems herself She ran up credit card
16 bills She did She took money from her family She had
17 a lot of problems that I was willing to help her out on
18 because, for one, I did love her, and, number two, we was
19 going to start a family together, so I just wanted to help
20 her out So I began like to give her money and help her
21 out

22 So the first thing we got together as a couple was an
23 apartment From the apartment standpoint everything was
24 still going good

25 Christina still had problems with the financial end of

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 her relationship, so I just wanted to help her out, just
2 wanted to start a new family, give her a new chance to pull
3 her out of her debt and start all over with me

4 Q Did problems develop between you and Christina,
5 Kamell?

6 A Yes, problems developed between me and Christina

7 Q Tell the jury I know that you mentioned some of them
8 in your statement to Detective Silvaggio, but tell the jury
9 a little bit about the several months leading up to the
10 shooting and what was going on with you and Christina

11 A All right The main purpose in our relationship was,
12 like I say, the financial end

13 I was giving Christina money for her car payment, for
14 her son's school And the bills that we had together as
15 far as the apartment, I would find out the bills wasn't
16 getting paid The money I was giving her for the school or
17 the car was not going to where it was supposed to go to

18 Things began to get missing around the house My dogs
19 began to get missing, jewelry A lot of things began to
20 get missing, and it all boils around a financial situation

21 Q Did you confront her about this? Did y'all talk about
22 what she was saying to you or about your perceiving misuse
23 of money?

24 A Yes, we talked about it We talked about it many
25 times

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 I was trying to figure out exactly what was going on,
2 what was going on in her head, what was she thinking about,
3 what was her plans

4 The more I talked to her about it the more lies I
5 would receive And that's how it went on for a while The
6 more I tried to figure out the problem me and her had, the
7 more, the lies I received as far as why was bills not
8 getting paid or why when I give you a certain amount of
9 money would it would come up short on our bill side, where
10 is this missing from the house and where is that missing
11 from the house

12 That went on for a while The more I tried to talk to
13 her and resolve this situation, just the more lies I
14 received

15 Q I want to move your attention to about three or four
16 days before this happened

17 Why don't you take the jury through three or four days
18 prior to the evening that you went over to the Sapinoso
19 residence, and tell the jury what you were doing and tell
20 the jury what was going through your mind

21 A It was about three or four days I always went to
22 work I didn't feel like getting up to go to work I
23 didn't feel like being around anybody I was angry, sad,
24 mad, depressed

25 It all boiled to one, relating back to the problems

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 that me and Christina had And it was, it was not the
2 problem that we was not together, because we always
3 separated and always got back together, but it was the
4 point at this time when we separated Christina still had my
5 house keys and my car keys and she would come back and take
6 things out of the house, take money that I had set aside
7 for something else, take that She would come back and
8 take jewelry She had come back, and the dogs be missing

9 It was just a lot of games because in the plan I
10 couldn't figure out why because I had tried to help this
11 certain person out of situations So now that we are not
12 together she's trying to bring me down And it just, it
13 just played a lot of emotional parts on me So, so I
14 had -- I was in the house

15 Q You can take a minute and compose yourself if you need
16 to

17 A So the last four days I was in the house, and I said I
18 didn't want to be around anybody I just felt real bad and
19 down because I tried to help somebody And it boiled down
20 to I didn't understand why the person was trying to hurt me
21 now

22 So I am in the house I am drinking and sitting
23 around and just thinking about how come all of the
24 problems I just wanted answers That's all I wanted, was
25 answers to how I felt inside, and basically that's how I

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 felt inside

2 I just wanted to put an end to the problems that me
3 and Christina had And the best place that I felt that,
4 you know, the last three days, just secluded myself from
5 everybody and just tried to figure out a way that I could
6 resolve this problem that me and Christina was having

7 Q You may have already answered this, Kamell, but did
8 you call in or did you go to work those days?

9 A No, I didn't go to work those days I stayed at home
10 by myself for those, for those days Exactly, it was
11 Thursday, Friday, Saturday, Sunday, Monday, and then
12 Tuesday the incident happened

13 Q I'm going to ask to take you to the afternoon of that
14 Tuesday Will you talk with the jury a little bit? Were
15 you at your home?

16 A Yes, I was at my home

17 Q Did you try to speak to anybody or talk with anybody
18 about how you were feeling at that point?

19 A Yes It's very hard for me to talk to somebody about
20 my problems I usually keep them all boiled up inside

21 But I called a friend of mine His name is Terry
22 And he was a truck driver He was on the road And I just
23 opened up to him and I just told him I needed to talk to
24 him about something

25 He asked me did he want me to turn around -- did he

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 want him to turn around, because he knew something was
2 really wrong with me I told him no So he just kept
3 going That's the only person I called that day

4 Q At some point that afternoon you got in your truck and
5 you drove over to Mauldin, is that correct?

6 A Yes As I sat there and tried to figure out the
7 problem, tried to figure out how to handle the problem by
8 myself, I say I was just -- there was a lot of emotions I
9 was angry, I was sad, I was depressed just trying to figure
10 out how I could solve the problem by myself

11 That's when I made one of my bad decisions that day,
12 and that was to go talk to the Sapinosos The reason why I
13 made the decision, it didn't seem like a bad decision at
14 the time, because just going to talk to somebody didn't
15 seem bad to me

16 At the time I felt like those were the only people
17 that could answer my questions about their daughter -- not
18 my sister, not my -- not Terry, and anyone else Those
19 were the only people who knew, could feel what I was going
20 through because basically she did the same things to them
21 as she did to me Now she's just doing it to me And
22 that's why she would go back and forth, because the same
23 thing she was doing to me at this time, money situation,
24 things missing from the house, she had done with her
25 parents before

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 So those, I felt like that those are the only people
2 that could understand what I was saying and that can put an
3 end and with all of my frustrations out on the table with
4 Christina, and they could put an end to everything

5 Q Kamell, at this time I am going to hand you what's
6 been previously marked as State's Exhibit Forty-three, and
7 I'm going to ask you to look at it and see if you recognize
8 that Take your time I am going to pull the paper clip
9 off

10 A Yes, I recognize it

11 Q You do? Is that the statement that you gave to
12 Detective Silvaggio and Detective Kindley?

13 A Yes, this is the statement I gave to Silvaggio and
14 Detective Kindley

15 Q Okay Is that drawing on the back, is that, is that
16 your drawing?

17 A Yes, it is

18 Q Okay Kamell, the jury has already heard Detective
19 Silvaggio read that statement I'm going to ask you to
20 take a look at that statement for a few minutes, and then
21 talk about anything that you might wish to add to that
22 statement in terms of the events that it describes

23 Take your time and just read There is no rush
24 There is no clock here Just take your time and look
25 through it, and let me know when you have completed looking

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 through it

2 (Pause)

3 A Yes I want to add some more stuff

4 Q Have you had a chance to look through it?

5 A Yes

6 Q Now, you gave that statement to those two detectives
7 early the next morning, is that right?

8 A Yes

9 Q Is it the truth about what happened?

10 A Yes, it is the truth

11 Q Did you accept responsibility for what happened to
12 those two detectives?

13 A I respected -- I accepted the responsibility

14 Q Do you accept it today?

15 A Yes, I do

16 Q Is there anything that you would like to expound on to
17 this jury that was contained in that statement?

18 A Yes

19 I would just like to say, like I said before, when I
20 went to go talk to Sapinosos, I was going to talk to them
21 about a problem that me and Christina had

22 I say that night I had so much frustration and anger
23 built up that those are the only people that can relieve
24 all of that

25 So what I did is I got in my truck and drove to the

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 Sapinosos' house On the way there I was thinking about
2 just resolving the situation

3 Yes, I parked my truck up the street, and I walked
4 down to the Sapinosos' house And the reason I parked my
5 truck up the street was because I didn't think they would
6 come to the door if I had parked the truck in the driveway

7 I came down I ended up in the back yard Joe had
8 pulled up, and I had came up to Joe with my gun I said,
9 "Joe, all I want to do is talk to you " I wanted to talk
10 Joe agreed

11 Me and Joe went to the front porch We sat there and
12 talked As we talked Joe had his gun on his side I asked
13 Joe for his gun, because at this time there was a lot of
14 animosity between me and the Sapinosos' family coming from
15 me and Christina

16 So I asked Joe for his gun We sat on the front
17 porch We talked We talked about the situation that me
18 and Christina was having He agreed that she has problems
19 with money and everything

20 Me and him talked, and as we talked the same way I got
21 here, I got, I got a bit emotional It was nighttime He
22 said why don't you go in the house -- why don't we both go
23 in the house so the neighbors wouldn't hear us, hear our
24 conversation or just see me out there crying

25 So Joe rung the doorbell His father came

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 Mr Sapinoso came down the stairs and opened the door We
2 went inside We sat at the living room table

3 As we sat there, we talked about the same situation
4 that me and Joe had talked about outside, basically just
5 how Christina was lying and how things were missing from
6 the house, how things were missing from their house

7 And we all agreed on the same situation We decided
8 to call Christina on the phone As we called Christina on
9 the phone, we didn't get an answer Joe called first He
10 didn't get an answer

11 Five minutes later when we're at the table we started
12 talking again about the same situation I go and call
13 Christina We get no answer

14 About two or three minutes later Christina calls back
15 and Joe -- I pick up the phone, and I told Christina, I
16 said, "Christina, just tell your parents and tell your
17 brother how you have been using me and how the lies are
18 about to come to light now You need to come home "

19 Joe gets on the phone And she tells Joe that she was
20 at work And then she changed the story and say she was
21 with me earlier But Joe was like, no, he is here now and
22 he's been here all night, what I'm saying, talking to us.

23 So she finally admits that she lied about a couple of
24 things and that she was on her way home

25 As me, as myself, and Mr Joe and Mr Sapinoso was at

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 the front door waiting for Christina to come home, that's
2 when we seen two police cars About the same time, that's
3 when my two-way was ringing

4 So me and Joe and Mr Sapinoso went to the living room
5 of the house That's when I picked up the phone and called
6 my two-way, and that's the associate of mine named Nick was
7 telling me that Christina had called the police and she had
8 called him and my sister and said that it was a hostage
9 negotiation when basically all we was doing was talking
10 That's it

11 As I talked to my sister, she was outside Detective
12 Tony Lee, the negotiator, was outside Me and Tony Lee
13 began to talk I was basically telling him the situation
14 about me and Christina

15 From that point on, at one point in time I sent the
16 father upstairs to get Ms Sapinoso and the grandson to
17 come downstairs so they can go outside Mr Sapinoso went
18 upstairs and knocked on the door several times and asked
19 Ms Sapinoso -- while he was upstairs I heard them say, ask
20 Ms Sapinoso if she wanted to come out, she can come out
21 Ms Sapinoso never came to the door

22 So he comes back downstairs while me and Joe are
23 downstairs talking about how we can resolve this situation
24 as far as everybody leaving the house

25 I didn't feel comfortable going outside I was scared

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 and I was confused I didn't feel comfortable going
2 outside

3 Myself and Joe and his father is back downstairs now,
4 because the mom and the grandson didn't come to the door to
5 answer when he was knocking

6 So I came to the conclusion that I was not comfortable
7 going outside As me and Joe were talking, I was like in
8 my statement, I felt real bad and depressed, so I thought
9 about taking myself out I told Joe that and I told his
10 father that

11 So I told Joe, I said I didn't feel, I didn't feel
12 good going outside I said I am going to let you and Joe
13 go outside and that will be the end of this, you know what
14 I'm saying, y'all say the cops are going to come and get
15 me I made that statement

16 That's when the cops had came in That's when Joe and
17 his father, they didn't want to leave the house They
18 didn't want to leave the grandmother and the son upstairs

19 I told them that I did not, I didn't feel comfortable
20 going outside I tried, I had tried It's just it was not
21 easy for me to go outside I wanted the police to come in
22 and get me

23 Mr Joe and Mr Sapinoso still didn't want to leave
24 the grandmother and the grandson upstairs So I told Joe,
25 I said, y'all are going to have to leave to resolve this

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 problem

2 So I put Joe's, Joe Sapinoso's pistol on the coffee
3 table I go use the phone, because the negotiator, Tony
4 Lee, said if I go outside, if anybody come outside, make
5 sure you call me because this was going to let everybody
6 outside relax

7 So when I went to go call Tony Lee, that's when I
8 perceived Joe going for the gun And at the same time his
9 father stands up, and that's when I made the worst mistake
10 of my life, and that was, that was when I started shooting
11 And that's when I started shooting, when I perceived Joe
12 was going for his gun, and his father standing up at the
13 same time

14 Q You talked a couple of times to the jury today about
15 some mistakes that you made that night, is that right?

16 A Yes, sir

17 Q Did you make any mistakes that night?

18 A I made several mistakes that's not only just going to
19 change my life, but it's going to change the life -- it
20 changed the life of Ms Sapinoso, and I'm sorry for that.
21 I wish I could take that day back I honestly wish I could
22 take that day back

23 All of the problems I had, I mean, did it, all the
24 problems that me and Christina had, it didn't amount to two
25 men dying It didn't amount to that I wish I could take

Kamell Delshawn Evans
Direct examination by Mr Sumner

1 it back

2 I just, I just wanted answers I just wanted to talk,
3 and it just ended up that two men died, and I'm sorry for
4 that

5 I am sorry everybody is here today I am sorry to the
6 jury and the judge and my family and most of all I'm sorry
7 for Ms Sapinoso -- Ms Sapinoso's family because of the
8 pain I caused them That's what I'm sorry for There's no
9 excuse I'm just, just sorry

10 MR SUMNER One second, please, Your Honor

11 (Pause)

12 Q Please answer any questions that the prosecutor might
13 have of you

14 CROSS-EXAMINATION

15 BY MR ARIAIL

16 Q Mr Evans, is it a fair statement that the story you
17 just gave us or version of events is substantially
18 different than what you gave to Detective Silvaggio?

19 A No Basically it's the same statement

20 Q Same statement?

21 A Yes

22 Q You told him about just going in and talking, and you
23 told him about sitting on the front porch and talking to
24 Joe and that Joe invited you in the house and somebody let
25 you in the front door I believe you said Mr Sapinoso let

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 you in the front door Did you tell him all of those
2 things?

3 A No, I didn't, sir

4 Q You didn't tell him that Why are you just now
5 telling that version of events?

6 A This statement right here, like I said, yes, it is
7 true, but it's not all of the facts, is not in this
8 statement

9 Q I understand My question is why

10 A This is -- because this is the short version

11 Q Short version?

12 A This is something that happened, like I say, right
13 after the situation

14 Q When everything was fresh in your mind

15 A Not fresh in my mind

16 Q Well, you heard Detective Silvaggio testify that you
17 were there for some two and a half hours giving him a
18 statement and that you were calm and polite and sitting in
19 a room and y'all talked and you made seven or eight changes
20 to your statement And now we have all of these other
21 facts that are versions of that event

22 My question is why didn't you tell this version at
23 that time

24 A It's basically the same version

25 Q All right Two or one area in particular, as I

Kamell Delshawn Evans
Cross-examination by Mr Ariall

1 understand what you're telling us today, is that Joe and
2 you and his daddy were all buddy-buddy and sitting around
3 talking in the living room or the dining room or somewhere
4 about how you are going to resolve all of this stuff

5 You are telling them what your problems are and they
6 are listening to you, and y'all are just all sitting
7 around

8 A Yes

9 Q No hostility

10 A No hostility

11 Q None at all

12 A None at all

13 Q And then, in fact, y'all just, you say that Joe calls
14 up his sister and tries to talk to her about coming home
15 and can't get her, and you called and wanted her to come
16 home and talked to her on the telephone and told her to
17 come home

18 A Yes

19 Q And then the next thing you know the police are
20 outside

21 A Yes, sir

22 Q And there's no problem here There's no problem at
23 all

24 A No, there is not

25 Q Then why does Joe Sapinoso not have his gun? Why have

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 you taken his gun from him if you are all buddies?

2 A Like I said before in my statement, before I went over
3 there, there was a lot of animosity built between what
4 Christina was telling them about me, so that's why I took
5 his gun

6 Q So there was animosity

7 A That Christina had built up, not between me and Joe or
8 me and the Sapinosos

9 Q Well, were you mad at Joe?

10 A No, I wasn't

11 Q Was Joe mad at you?

12 A I didn't know that

13 Q Didn't know that?

14 A No, I didn't

15 Q So did you take his gun at gunpoint?

16 A No, I did not take it at gunpoint Yes, I have my
17 guns out, and, yes, I asked him for his gun

18 Q Didn't you tell Detective Silvaggio that you pointed,
19 "I pointed the nine-millimeter at Joe and told him, hey,
20 Joe, all I want to do is talk, and I told him to give me
21 his gun"?

22 A Yes, I did tell him that

23 Q So your nine-millimeter was out when you took the gun
24 from him

25 A Yes, I did, yes, it was

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 Q Well, let's go back inside The nine-millimeter you
2 have taken him off him, and you sat there and talked and,
3 according to your version, everybody, everything is fine
4 and dandy and there are no problems and you know Joe is not
5 mad at you because he's talking to you about the problems
6 and trying to work things out, and everything is going
7 along good, is that right?

8 A Yes

9 Q Okay And then you look outside and the police are
10 there, and then y'all get into this discussion of who is
11 going to go out Isn't that what y'all were talking about?

12 A No We was not talking about that We just -- when
13 the police was outside we didn't just pop the discussion of
14 who was going out When the police was outside, that's
15 when the phone started ringing

16 Q Well, the police were out there for four hours Do
17 you remember that?

18 A Yes

19 Q All right Do you remember talking to your coach?

20 A Yes

21 Q Remember talking to your sister?

22 A Yes

23 Q She begged you to come out

24 A Yes

25 Q Told you you got to think about your nephews, you have

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 got to be thinking about things that are important, come
2 out, right?

3 A Yes

4 Q You talked to your mama

5 A Yes

6 Q You talked to your daddy

7 A Yes, sir

8 Q Talked to your friend

9 A Yes, sir

10 Q And what did they all tell you, to come out?

11 A Yes, sir

12 Q Nothing's going to happen to you, come on out

13 A Yes, sir

14 Q Why didn't you come out?

15 A That was one bad decision I made that night

16 Q I understand it's a bad decision We all agree it's a
17 bad decision But the question is why didn't you come out

18 A There is not an answer for that

19 Q Not an answer

20 A There is not an answer for that

21 Q You cannot answer that question

22 A No, I cannot

23 Q But you didn't come out for four hours even though all
24 of those people begged you to come out But everything
25 inside is fine Joe's happy, his daddy's happy, they are

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 going to help you out with the problems, right?

2 A Yes

3 Q No animosity

4 A None

5 Q Well, then if there wasn't any animosity, why would
6 you be concerned if you thought Joe was reaching for his
7 gun?

8 A Like I said, at that time, that's when I was telling
9 them I was going to make them leave, and they did not want
10 to leave the grandmother and the grandson upstairs

11 Q I am sorry I didn't understand that

12 A I said at that time, that's when I was going to make
13 Joe and the father leave, and they did not want to leave
14 the mother and the grandson upstairs with me in the house

15 Q Well, my question is if everything is okay and you are
16 on good terms with Joe, and Joe is on good terms with you,
17 and the only reason you took his gun to start with was
18 because you thought Christina might have turned him against
19 you, and you have been sitting in there for four hours
20 talking with Mr Sapinoso and Joe, and your sister and your
21 mama and your daddy and everybody is telling you to come on
22 out, everything is going to be all right, why, why would
23 you worry or why would you care about Joe reaching for his
24 gun?

25 A That's another bad decision I made

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 Q I know it's a bad decision I'm just saying why did
2 you do that

3 A Because, like I said, I was scared and confused

4 Q You were scared and confused?

5 A Yes, I was

6 Q I thought you said everything was fine and they were
7 working with you

8 A I am not talking about -- I am talking about the whole
9 situation

10 Q What whole situation? You are talking about the whole
11 situation when you told Negotiator Lee this is bigger than
12 Christina? That situation?

13 A No

14 Q What situation are we talking about?

15 A The situation with myself

16 Q All right Well, let's go back Let's go back to
17 this situation a little bit

18 Tell me exactly what it is that Christina did that had
19 you so, as you say, angry and frustrated What had the
20 girl done that had you in such a state of mind, such anger
21 at somebody? What had she done? She spent too much money?

22 A No It was just the point that she came back to the
23 house and was taking the money and taking the jewelry

24 Q She came back to y'all's house on Camera Avenue and
25 took some money?

Kamell Delshawn Evans
Cross-examination by Mr Arlaal

1 A Yes

2 Q Okay How much money?

3 A It was different, it was different amount of times
4 them three days that she was doing this

5 Q Over the three days how much money did she take? How
6 much are we talking about?

7 A Just couple of hundred

8 Q A couple of hundred dollars So Christina has taken a
9 couple of hundred dollars according to your version and
10 you're angry and frustrated What else did she do?

11 A She came back and got jewelry

12 Q Got what?

13 A She came back and stole the jewelry

14 Q Jewelry Whose jewelry was it?

15 A It was my jewelry

16 Q All right And how much jewelry did she take? How
17 much was it worth?

18 A A couple of thousand

19 Q A couple of thousand

20 All right What else did she do?

21 A My dogs She took my dogs

22 Q She took your dogs?

23 A Yes, dogs I had breeding dogs

24 Q Where did she take them? She didn't take them to her
25 house, I assume, her parents' house

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 A You'd have to ask Christina that

2 Q Okay Did you ask her?

3 A No, I didn't

4 Q Well, it must not have been too big of a deal if you
5 didn't ask her

6 A I couldn't ask her

7 Q Why? You talked to her on the telephone You called
8 her up from the house and talked to her and told her to
9 come over there You called her on the telephone She was
10 outside, and you talked to her Why couldn't you ask her
11 where's my dogs?

12 A Because we was, wanting to talk about coming home and
13 solving all the problems

14 Q All right We have got a dog taken, two thousand in
15 jewelry and \$200 in cash What other problems?

16 A That's basically about it

17 Q That's about it All right That's the situation
18 you're talking about that had you in such a state of mind
19 that you decided to pack two guns in your coat, 140 rounds
20 of ammunition, a knife and go over to the Sapinosos' house
21 and park your car six blocks away in the dark of night,
22 walk down to behind a vacant house under construction and
23 hide out and wait on Joe Sapinoso That's what set all
24 that off

25 A No, it wasn't It was more It was the whole

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 relationship, our whole relationship

2 Q With Christina

3 A Yes

4 Q What did Joe and Mr Sapinoso have to do with any of
5 that?

6 A They didn't have anything to do with that, besides,
7 you know, saying they just knew how I felt because
8 Christina did the same thing to them

9 Q Well, when you shot them, when you shot them did you
10 say, no, they didn't have anything to do with this, why am
11 I shooting them?

12 A Repeat the question

13 Q My question is when you shot them, when you shot Joe
14 Sapinoso four times in the back of the head, did you think
15 or say why am I doing this, Joe hasn't ever done anything
16 to me?

17 I mean, I assume, Mr Evans, that there is some
18 emotional reaction to shooting a uniformed deputy sheriff
19 in the back of the head four times while he is kneeling on
20 the floor Is there?

21 A You have got to repeat the question

22 Q I'm just trying to find out if you can tell us why you
23 shot Joe Sapinoso and his father because you were upset
24 about Joe's sister taking jewelry and money from you and
25 possibly your dogs

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 A I didn't shoot them because of that

2 Q Why did you shoot them?

3 A I didn't shoot them because of that

4 Q Why did you shoot them?

5 A I said Joe -- I perceived Joe was going for his gun,
6 and that's why I shot them

7 Q And then tell me why if that's the reason, then why
8 did you shoot Mr Sapinoso?

9 A At the same time Joe was going for the gun, Mr
10 Sapinoso stood up And, like I said, I overreacted
11 That's a bad decision that I made that I'm going to live
12 with for the rest of my life

13 Q And you admit that the first thing that Tony Lee told
14 you was you could come out and nobody would get hurt And
15 if you had come out like Mr Lee had asked you, then nobody
16 would have been hurt

17 A I agree with that Yes I agree with that

18 Q And had you come out during that time or any time
19 within the four hours nobody would have gotten hurt

20 A Yes I agree with that

21 Q And what's the reason you stayed in there for four
22 hours resisting those people, your close family and
23 friends, begging you to come out?

24 A I was just confused, very confused

25 Q Confused That's all I have Thank you

Kamell Delshawn Evans
Cross-examination by Mr Ariail

1 MR SUMNER Nothing on redirect, Your Honor

2 THE COURT You may step down

3 MR SUMNER That would conclude the defense at this
4 point

5 THE COURT Any reply?

6 MR AIRIAIL No, Your Honor

7 THE COURT All right Ladies and gentlemen, that's
8 all the testimony or evidence to be offered in the trial of
9 the case

10 What remains to be done therefore are the lawyers'
11 final summations after which I will instruct you on the law
12 and then you will begin with your deliberations

13 I have got some matters I need to address with the
14 lawyers So I will ask you to please go to your jury room
15 Do not yet discuss the case I will bring you back shortly
16 to conclude

17 (The following takes place outside the presence of the
18 jury)

19 THE COURT Any motions or other matters to address
20 before we conclude?

21 MR SUMNER None from the defense, Your Honor

22 MR AIRIAIL None from the state

23 THE COURT Any requests for instructions?

24 MR AIRIAIL None from the state

25 MR GOLDSMITH May it please the Court, Your Honor

Requests to charge

1 Our client has requested that we respectfully ask the Court
2 to charge voluntary manslaughter

3 I have discussed that with him, Mr Sumner has
4 discussed it with him to the extent an attorney can explain
5 that sort of thing to a layperson We would ask
6 respectfully that the Court charge voluntary manslaughter
7 in this case

8 THE COURT All right And based upon the evidence
9 that has been presented, how would you believe that that
10 would be justified under the facts of the case?

11 MR GOLDSMITH As I said, Your Honor, recognizing
12 that it is a request of my client and I feel somewhat honor
13 bound to give him the benefit of the doubt when working the
14 court -- the case through the Court -- I would tell the
15 Court in my professional opinion there may be evidence
16 which a jury could find heat of passion, the jury can
17 believe whatever they want to, as much or as little as a
18 witness testifies to And there is some evidence perhaps
19 where they could see that

20 In my opinion I do not think there is any evidence,
21 quite frankly, given my duty of candor to the Court, where
22 there is a sufficient legal provocation

23 If we are talking strictly in legal terms, I do not
24 think in my opinion that both prongs are met However, I
25 would say after discussion with my client, he has asked me

Requests to charge

1 to respectfully request that charge from the court, and I
2 make it on that basis

3 THE COURT All right Does the state wish to be
4 heard?

5 MR AIRIAIL Your Honor, there is simply no grounds
6 for the charge on voluntary manslaughter There is no --
7 this is a situation he is in a home, no legal provocation
8 There is no -- he is in there in violation of their right
9 to occupy their home, and there is just no, no basis for
10 it

11 THE COURT All right Mr Goldsmith, having, of
12 course, heard all the testimony and considered all the
13 evidence presented in the trial of this case, I don't think
14 there is any evidence from which a jury could reasonably
15 infer that the defendant acted in sudden heat of passion

16 I don't think there is any evidence from which anyone
17 could find that the defendant acted in sudden heat of
18 passion But even if the defendant was given an extreme
19 benefit of the doubt and you somehow could surmise or
20 believe that he had acted in sudden heat of passion in this
21 case, there is clearly no evidence, not a scintilla of
22 evidence There is no evidence at all that would support
23 any sufficient legal provocation for his acting even if he
24 was acting in the sudden heat of passion

25 In order for a charge of voluntary manslaughter to be

Requests to charge

1 applicable the defendant would have had to have acted in
2 sudden heat of passion and it would have had to have been
3 based upon some sufficient legal provocation I don't find
4 that there's evidence of either of those elements, but
5 there clearly is absolutely no evidence of any sufficient
6 legal provocation

7 So based upon there being a lack of evidence, I do not
8 feel that the defendant is entitled to an instruction on
9 voluntary manslaughter, and that request is declined

10 Any other requests for instruction?

11 MR GOLDSMITH No other request for instruction, Your
12 Honor

13 THE COURT All right Are you all ready to argue or
14 do you need a few minutes?

15 MR GOLDSMITH Judge, can we have a few minutes, no
16 more than five?

17 THE COURT All right Well, we'll take ten minutes
18 and conclude

19 Does the state -- oh, well, one thing

20 Mr Evans, I need to address with you your right to
21 make a final statement or final argument in the case

22 In a case such as this both you and your lawyers have
23 the right to make a final argument You don't have to It
24 is not required of you to do so But you have the right to
25 make a final statement if you wish to Of course that

1 statement must be confined to argument

2 Have you discussed with your lawyers your right to
3 make a final statement and the proper conduct and
4 perimeters of that statement?

5 THE DEFENDANT Yes, Your Honor

6 THE COURT And have you made a decision about whether
7 or not you would like to address the jury in final
8 argument?

9 THE DEFENDANT No, Your Honor

10 THE COURT You have not made that decision yet?

11 THE DEFENDANT Not yet, Your Honor

12 THE COURT All right We are going to take ten
13 minutes, and I will ask you to discuss it with your lawyers
14 and reflect upon your decision And I will ask you what
15 your decision is when we come back

16 Court is in recess for ten minutes

17 (Whereupon, a recess was taken)

18 THE COURT All right Mr Evans, have you had time
19 to think about your decision as to whether or not you will
20 make a final statement to the jury?

21 THE DEFENDANT Yes, I did, Your Honor

22 THE COURT And what's your decision?

23 THE DEFENDANT Yes, I want to make a final statement

24 THE COURT You would like to make one?

25 THE DEFENDANT Yes, sir

1 MR SUMNER Your Honor, for the record, I have gone
2 over with Mr Evans about the basic rules and done the best
3 I can there I don't anticipate any problems

4 Do you understand that you and I have talked about you
5 can't start testifying? You have to talk about what the
6 evidence has shown and what the testimony has been

7 THE DEFENDANT Uh-huh

8 MR SUMNER I just wanted to put that on the record

9 THE COURT All right Are we ready for the jury?

10 MS STROM The state is ready, Your Honor

11 THE COURT All right Bring them in, please

12 (The following takes place in the presence of the
13 jury)

14 THE COURT All right Ladies and gentlemen, as you
15 know, all of the testimony and evidence has been received

16 What remains to be done are the statements to be
17 accomplished or final arguments of lawyers

18 The defendant is also permitted to make a final
19 statement also if he wishes to at the time that his lawyers
20 make the final statement to you

21 And then I will instruct you on the law and then you
22 will go back and begin with your deliberations in the case
23 and determine whether or not the evidence in the case has
24 established the defendant's guilt beyond a reasonable
25 doubt

Closing arguments

1 So please give the lawyers your attention now as they
2 give you their final summations

3 MS STROM May it please the Court, Your Honor

4 THE COURT Ms Strom

5 MS STROM Good afternoon

6 As the judge told you, we are now at that stage of the
7 trial where the attorneys are allowed to get up to you and
8 argue their respective sides of the evidence, and,
9 obviously, I'm going to ask you to return verdicts of
10 guilty on all charges

11 The judge told you at the end of argument he will
12 charge you what the law is in the case, and you must accept
13 the law as he gives it to you And your job in the
14 deliberation room is to determine what the facts are and
15 apply the law as the judge gives it to you to the facts as
16 you find them and come back with a verdict

17 We have all noticed that even though it has been a
18 relatively short trial, there has been a lot of evidence
19 that has been introduced here

20 Each and every one of you have paid very close
21 attention Some of you have taken notes, but we've noticed
22 each and every one of you paying very close attention to
23 all of the evidence, and we appreciate that, especially
24 considering the fact that some of the evidence admittedly
25 is difficult to accept, to see photographs that have blood

Closing arguments

1 in them, to see a carpet padding that has blood on it

2 We realize that's difficult for you to see and to
3 view, but there is no pretty way to bring this case to you
4 That is the evidence that this defendant left us with

5 So we appreciate your service, we appreciate your
6 attention that you have given to us and will continue to
7 give in this case

8 As His Honor told you, the state argues first Then
9 the defendant and his counsel will have an opportunity to
10 argue to you

11 The reason I tell you that is because when the defense
12 is finished with their argument, and if the defendant
13 chooses to get up to you and make a closing statement, I
14 won't have the opportunity to get back up and argue against
15 anything that they might say

16 So I have to try to anticipate what they will say and
17 argue against it ahead of time And if I fail to
18 anticipate one thing or two things that they may argue to
19 you, I ask you to do this one thing

20 If I fail to anticipate and they give you an argument
21 that I haven't addressed, I want you to go to the physical
22 evidence in this case and find your answer there, because I
23 won't have the opportunity, like I said, to get back up
24 But your answer is in the physical evidence and the
25 testimony that came from that witness stand

Closing arguments

1 At the end of the case, the place where we are now
2 where all of the evidence is in, some of you may be
3 thinking, well, why did the state put in that piece of
4 evidence or did it seem sort of overdone, they put in a
5 statement, they put in D N A showing that Joe's blood
6 was on the defendant's shoes and showing that
7 Mr Sapinoso's blood was on the Lorcin 380 and they gave
8 ballistics testimony, they gave all kind of testimony

9 Why was that necessary when he was taken out of the
10 house? He was found there in the house with the guns You
11 might be thinking why did they put up all of this

12 Keep in mind what the judge will tell you at the end
13 of the case The state has the burden of proof We have
14 to prove the defendant guilty of each and every crime We
15 must prove each and every element of each and every crime
16 beyond a reasonable doubt

17 And at the time that we are presenting our evidence we
18 don't know if the defendant is going to present any
19 evidence We don't know what evidence he will challenge
20 and what evidence he will not challenge

21 We have to bring all of the evidence that we possibly
22 can to you within the rules of court to assist you in
23 coming to your conclusion, coming to your verdict

24 And what may be important to one juror may not be as
25 important to another juror So I ask for your indulgence

Closing arguments

1 when we were repetitive if you thought so or overdoing it
2 if you thought so We were simply trying to show you how
3 thorough these investigators were

4 It would have been quite simple for the investigators,
5 the technicians and all of the people involved to go in and
6 say, well, we found him in the house and the guns were in
7 the house, he must have done it and let's go home

8 They don't do that, because they take this seriously
9 because we are talking about the lives of Joe Sapinoso and
10 Antonio Sapinoso And we are talking about the life of
11 Kamell Evans Did he commit this crime?

12 So it's a very serious matter as we all know These
13 detectives and these investigators and technicians took it
14 that way to the point that they go back and cut up a piece
15 of carpet and padding and look under carpets and paddings
16 for projectiles, that Dr Ward, the pathologist, goes back
17 to the scene to try to figure out why he has these shard
18 exit wounds on the head

19 Why is that? Why were they on the -- why did he
20 have -- I called them shards He called them shored --
21 exit wounds He wanted to know why What was his head up
22 against?

23 So everyone did everything possible to make sure that
24 all of the evidence that we could possibly have would be
25 brought to you

Closing arguments

1 One of the things you may be asking yourself at this
2 stage is, well, why did he do it, why did Kamell Evans
3 commit this offense, these offenses, why did he kidnap
4 Mr Sapinoso and his son, why did he burglarize their home,
5 why did he execute them in their own home

6 And as the solicitor told you in opening statement and
7 His Honor will tell you in his charge, the state does not
8 have to prove motive, because when you think about it, the
9 motive was in that person's head that commits the act, why
10 he did it And even today after the defendant testified we
11 still don't know why he did it All we know is that it was
12 a bad decision, it was a bad decision Well, I think we
13 can all agree it was a bad decision

14 As the solicitor told you in opening, this is not a
15 case of, quote, who done it It is not a Matlock
16 situation I think everyone is going to be pretty
17 comfortable with the evidence that we have here So I
18 don't think there is going to be any question to you as to
19 who committed these crimes

20 One of the things that I feel that the defense may try
21 to tell you is who is responsible for these crimes And I
22 submit to you that Kamell Evans not only is responsible for
23 committing these crimes, he is solely, only, completely
24 responsible for the crimes

25 What did you hear in opening statements? This was all

Closing arguments

1 about Christina You even heard it from the defendant on
2 the witness stand, it is the way Christina had treated him

3 Defense counsel even made a point of pointing out that
4 Christina was not in the courtroom so that Tony Lee could
5 identify her It was a big deal about Christina

6 Oh, but we are not going to make excuses for why he
7 did what he did You heard that earlier Doesn't that
8 sound exactly like that? It's Christina's fault because
9 she had him so angry and frustrated Over what? \$200,
10 \$2,000 worth of jewelry, and some dogs You are going to
11 get so frustrated and angry over two thousand, \$200 and
12 some dogs that you are going to go to a man's home and
13 shoot him in the back of the head four times and then shoot
14 his father?

15 Kamell Evans is making excuses He is blaming
16 Christina , And I want to point out a couple of other
17 people that he is blaming

18 In his statement, and you will have all of the
19 statements You will have all of the photographs,
20 everything back in the jury room with you that you can look
21 at

22 Pay close attention to his statement in a couple of
23 areas The police didn't call soon enough Do you
24 remember that? The police didn't call soon enough Then
25 he made a point of saying, well, they wouldn't let his

Closing arguments

1 family come down the street

2 Look at what he's trying to do in his statement He
3 is trying to minimize his responsibility, not his
4 involvement but his responsibility He knows he can't get
5 out of being involved in it But how is it going to look?
6 What's the best way to make it look for me? And that's
7 really where we get the only evidence of this relationship
8 with Christina, is from the defendant

9 In his statement in this attempt to minimize his
10 responsibility, and on the stand, he said that as they're
11 in the room, in the living room, and there was some
12 discussion about who was going to go out that Joe reaches
13 for his gun, goes for his gun

14 I want to take you back to what the SWAT members told
15 you As soon as they heard a firearm, everybody was
16 yelling go, go, go, go in the house Some were coming in
17 the front door, some were coming in the back door

18 In less than ten seconds they were in and had the
19 defendant under control So in ten seconds he has shot Joe
20 who is lying on the floor, in the back of the head four
21 times, turns and shoots the father with two separate
22 weapons as he is on the couch

23 And yet according to him, he's going to go back to the
24 coffee table, pick up the gun that he's placed on the
25 coffee table and then go throw it in the hallway, because,

Closing arguments

1 ladies and gentlemen, all three guns were found together in
2 the hallway There was not a gun found on the coffee
3 table

4 Is he really going to go back to a coffee table and
5 take a gun off when he's already shot the man? There's no
6 need What is the evidence more consistent with? What
7 makes sense to you? He had all three guns There is no
8 other way to look at that He had all three guns Joe
9 never went for a gun because the gun was never there It
10 was always in Kamell Evans' possession

11 In his statement and in an attempt to minimize his
12 responsibility he gives this diagram to Investigators
13 Silvaggio and Kindley and places himself, and you will have
14 it there in the jury room, back against the fireplace And
15 he puts Joe here and Mr Sapinoso here, and he is standing
16 behind the coffee table shooting towards Joe and his
17 father On this diagram that would place him back here,
18 with Joe Sapinoso being here and Mr Sapinoso being over
19 here

20 Recall the testimony That's where he is placing
21 himself Why? To minimize what he has done, because,
22 according to Dr Ward, he had to be within two to three
23 feet of Joe Sapinoso for there to be the stippling on the
24 wounds Had to be within two to three feet The muzzle of
25 the gun had to be two to three feet of Joe's head He

Closing arguments

1 wasn't standing over there by the fireplace

2 Look at where these shell casings are Look at all of
3 these shell casings -- nine-millimeter, nine-millimeter,
4 nine-millimeter, nine-millimeter Four of them How many
5 times is Joe shot in the back of the head? Four With
6 what? Nine-millimeter

7 Nine-millimeter, 380, nine-millimeter, as you are
8 going towards where Mr Sapinoso was What was
9 Mr Sapinoso shot with? A nine-millimeter and a 380

10 Is the defendant standing over here firing across or
11 is he standing over Joe firing into the back of his head
12 and then turning and firing at Mr Sapinoso with both
13 weapons? What fits with the physical evidence?

14 The defendant may try to say to you either himself or
15 through his counsel that this was a spontaneous type
16 shooting, this was an apparition Recall the testimony of
17 Tony Lee, the fact that the defendant was calm throughout
18 the entire negotiations He was not agitated, he was not
19 jumpy, he was not excited He even laughed a couple of
20 times He told Tony Lee, yeah, man, you are cool

21 Does that sound like somebody agitated or just
22 spontaneously doing something? No It is a man who thinks
23 he's in control of the situation, and he is determined to
24 be in control of that situation

25 And when was the only time that he got upset with Tony

Closing arguments

1 Lee? It is when he wanted to talk to Christina and Tony
2 Lee said let's see about getting somebody else, let's see
3 if we can get some people out And what was his comment?
4 Oh, so you're making the rules now, you're in control now
5 He's in control of the situation because he is in there
6 with all of the weapons

7 His demeanor continued not only through the
8 negotiations as being calm but when he talked with
9 Investigator Silvaggio and Investigator Kindley His
10 demeanor throughout the whole thing was calm He was not
11 agitated, not jumpy, not excited He was calm and
12 cooperative

13 So I submit to you, ladies and gentlemen, when they
14 get up here and try to tell you this was some spontaneous
15 reaction on his part, I again ask you to look to the
16 evidence because it does not support it

17 You are talking about a man who fired his weapon seven
18 times He hit his targets seven times, four in the back of
19 the head Think about how small that area is And he hits
20 it four times and then turns and as he's going towards the
21 other side of the room, hits another target three times
22 He fires at that target three times and hits him every
23 time

24 We don't have one single stray bullet going anywhere,
25 any wild shot going anywhere This man is a marksman He

Closing arguments

1 had his targets, he fired at his targets and he killed his
2 targets, and that was his intention all along

3 And they may try to tell you that, oh, well, this must
4 have been a spontaneous reaction on the part of Kamell
5 Evans because even Tony Lee said he was shocked when he
6 heard the shots fired, so it must have been spontaneous

7 Think about all of the facts of the case and ask
8 yourself doesn't it make more sense that during all of that
9 time when he is talking to his family and they are begging
10 him to come out and he won't come out and he is being told
11 all you got to do is come out and nobody is going to hurt
12 you and he doesn't come out, but he keeps asking to talk to
13 Christina, and finally he does talk to Christina And
14 after he talks to Christina he again talks to Tony Lee who
15 again says his demeanor is still calm, not agitated, not
16 upset, did not think he had changed at all And after he
17 hung up with him, the shots rang out

18 Is that some spontaneous act or is that planned? Is
19 he buying time just so he can talk with Christina, because
20 when you think about it he doesn't go over there to talk to
21 Joe, get Joe's gun and then happens to shoot them with
22 Joe's gun That may make more sense spontaneously

23 But what do we have here? What do we have here? We
24 have someone who goes over there loaded for bear And
25 there is no other way to put it So this was not

Closing arguments

1 spontaneous It is thought out, it's planned out, and
2 ultimately it is carried out

3 As I told you earlier, we are asking for verdicts of
4 guilty on all charges And the judge read to you the
5 indictments, and I will briefly go over the elements of the
6 charges because that's what you have to decide

7 Did the state meet its burden of proof in each element
8 of the charges?

9 Burglary first degree Did the defendant enter the
10 victim's home without consent and with the intent to commit
11 a crime therein? That's the definition of burglary

12 The defendant got on the stand today and tried to tell
13 you or did tell you that he goes over and at gunpoint takes
14 Joe's gun, but then they go and sit on the porch and talk
15 about things and cry And then Joe rings the doorbell to
16 go in, and Mr Sapinoso comes down and lets them in I
17 guess that's some attempt to say he had consent to go in
18 the house

19 But when you pull a gun on a man, you take his gun,
20 his ASP baton, his pepper spray, his handcuffs, you
21 handcuff him, as he said in his statement, and you march
22 him inside the residence, that can be nothing but without
23 consent And he'll say, well, I didn't intend to commit a
24 crime, I just intended to talk

25 Ladies and gentlemen, if you go over to talk to

Closing arguments

1 somebody, you go over there armed with two weapons, two
2 weapons, and all you are going to do is talk?

3 Oh, but that's not all he had He had a knife I
4 guess just for good measure And he had all of this
5 ammunition But I didn't intend to commit a crime I just
6 wanted to talk When you go talk you leave this at home.
7 You intend to kill somebody, you intend to commit a crime,
8 you take this with you There's no other way to see that

9 The elements that are required to make it first degree
10 have to be he entered in the nighttime Is there any
11 question it is the nighttime? It happened sometime after
12 ten o'clock The negotiations went on into the early
13 morning hours The shots rang out about four o'clock in
14 the morning No question that was in nighttime Or he
15 could be armed with a deadly weapon We have been over
16 that He has got three Or causes physical injury to
17 someone inside the house There is no doubt that he caused
18 physical injury to Joe Sapinoso and his father inside that
19 house

20 So I submit to you that there is no issue as to the
21 burglary first degree, as there will be no issue as to any
22 of these charges

23 The kidnapping of Mr Sapinoso and Joe, the judge will
24 give you the legal terms, but it's confining someone
25 against their will It doesn't require ransom, it doesn't

Closing arguments

1 require moving them from one place to the other Simply
2 handcuffing Joe is kidnapping Keeping them in their own
3 home at gunpoint for over four hours is kidnapping I
4 submit to you there is no question as to the kidnapping

5 Possession of a weapon during the commission of a
6 violent crime, as the solicitor told you in opening, that's
7 self-explanatory There is no doubt he possessed a deadly
8 weapon The two guns, the knives, Joe's gun He possessed
9 deadly weapons during the commission of his crimes

10 What this case is about is murder And murder is the
11 unlawful killing of another human being with malice
12 aforethought

13 Briefly, to go through elements, the unlawful killing
14 means there is no legal justification for the killing
15 What possible legal justification could there be for going
16 into a man's home and killing him and his father? There is
17 none, especially not in this case

18 With malice aforethought That's what this case boils
19 down to Did the defendant act with malice aforethought?

20 Malice aforethought The solicitor explained to you
21 in opening that malice was meanness, wickedness The judge
22 will have a legal definition for you which will include
23 terms such as it's a depraved heart, it's a heart fatally
24 bent on mischief

25 What that boils down to is wickedness and evilness and

Closing arguments

1 meanness And aforethought, does that mean premeditation?

2 No What that means is that at the moment that the fatal
3 shot was fired the defendant intended his act It could be
4 formed in an instant

5 But I submit to you, ladies and gentlemen, that malice
6 was formed not in an instance but in several hours prior to
7 the shootings Malice was formed when the defendant packs
8 this bag with all of this ammunition and this knife, and he
9 gets in his truck armed with these two weapons, and he
10 drives over to Mauldin, and he parks his truck streets away
11 from the Sapinoso home He doesn't even pull down for fear
12 that someone might see him He doesn't come anywhere
13 close

14 Malice was formed prior to him getting to Knollwood
15 Drive, and it continued every step, every block he had to
16 walk to get to the Sapinoso home And malice was formed,
17 and it was in his heart every minute that he stayed behind
18 that house under construction waiting on Joe to come home
19 And malice was formed, and it was in his heart during the
20 entire time of these negotiations There is no doubt that
21 the defendant formed his intent His malice was definitely
22 an aforethought

23 The defendant will again, I think, try to tell you
24 that he didn't act with malice, he didn't mean for this to
25 happen All he wanted to do was talk

Closing arguments

1 And I keep asking myself, well, if he didn't act with
2 malice, then what? How much meanness, how much evil does
3 it take to shoot a man? How much meanness does it take to
4 shoot a man for no reason? Not a man who is attacking you,
5 not a man who has hurt your family, not a man who has done
6 anything to you. How much meanness does it take to shoot a
7 man?

8 And then you add to that how much meanness did this
9 defendant have in his heart when he took that gun and he
10 put it to the back of Joe Sapinoso's head as he was lying
11 on that ground and pulled that trigger four times. How
12 much malice does it take to do that?

13 And then to turn from having shot this man on the
14 floor, to turn and hear his father in a blood curdling
15 scream no, no, no, and begin firing at him with both
16 weapons? How much malice does that take?

17 Ladies and gentlemen, I submit to you that they get up
18 here and say he did not act with malice, you ask how much
19 malice does it take. Could there be any more malicious
20 activity? Could there be more evil?

21 We have always been taught and we have always been
22 told and we have always grown up with the understanding of
23 your home is your castle. And I'd always heard that and I
24 never really gave it much thought.

25 I never owned a home until a couple of years ago. I

Closing arguments

1 finally bought one And it wasn't until last night when I
2 was gathering my thoughts for closing that I started
3 thinking your home is your castle It's where you feel
4 safe It's where you go to feel safe When you feel
5 threatened, you go home

6 But in this case the Sapinosos were not safe Kamell
7 Evans forever destroyed for the Sapinosos that feeling of
8 being safe in your own home Thank you

9 Thank you, Your Honor

10 MR GOLDSMITH May it please the Court, Your Honor

11 THE COURT Mr Goldsmith

12 MR GOLDSMITH Thank you, sir

13 Good afternoon, ladies and gentlemen of the jury

14 In my opening statement I told you that this case was
15 a tragedy, and I do not believe that anything that you have
16 seen or heard in the past two days diminishes my analysis
17 of this case This is a tragedy of gigantic proportions.

18 It is a tragedy that no human being should have to
19 endure It is a tragedy that I pray by the grace of God
20 none of us will have to endure

21 My sympathy goes to Ms Sapinoso, the Sapinoso family
22 and friends, and especially to these officers who were
23 there that night and who served with Joe Sapinoso

24 I told you initially that Christina Rodriguez would be
25 a central character in this tragedy She is not present in

Closing arguments

1 the courtroom She was not called as a witness And I
2 will leave it to your good judgment and the collective
3 consideration of this jury to determine the importance of
4 her actions in this case

5 Kamell Evans did testify, and you heard from him And
6 I would submit that you know a lot more about him today
7 than you did 48 hours ago

8 You've heard the evidence about Kamell Evans You
9 know that he graduated from high school at Greer High
10 School, that he was an outstanding athlete He played on
11 the state championship team He played basketball and
12 played baseball He was a good enough athlete to get a
13 scholarship to North Greenville College He played
14 football He went to school there for two years

15 We know that on the night this happened his semipro
16 coach was out there on the scene trying to talk with him
17 He was still playing football even when he wasn't in
18 college He was a man who loved athletes, athletic

19 We know he was a hard worker He testified that he
20 went to work at 4 00 in the morning and worked at U P S
21 loading the trucks and then went to his regular job, first
22 with a sheet metal working operation and second by N B
23 Handy Roofing Operation

24 We know from the evidence that he had a desire to have
25 a family, to have a home of his home, to settle down He

Closing arguments

1 told you that he loved Christina and that they had had some
2 problems and how those problems affected him, how they
3 angered him, made him sad

4 We know that he has a good family We know that
5 because most of them were out there on Chetsworth Drive
6 between the hours of 2 00 and 4 00 in the morning I
7 submit to you that's a good family

8 We know from Officer Tony Lee, and let me say this I
9 told you in my opening that Tony Lee, that you would hear
10 from him, the hostage negotiator, one of the finest
11 officers I've had the opportunity to know I know that's
12 outside the evidence, but I'm telling you it's one of the
13 finest officers I know

14 We know from Tony Lee that Kamell was polite, nice,
15 and respectful, pretty much the same way he was when he
16 took the stand And you judge his demeanor

17 We know from Paul Silvaggio who took his statement
18 that Detective Silvaggio says he was credible I believe
19 him

20 We know that the week before this tragedy happened
21 Kamell was depressed He told you he was angry, he told
22 you he was sad I submit to you this is a man who does not
23 have control of his emotions, whose emotions rule him and
24 make him do things that he should not do

25 He said in his statement sometimes I do not think

Closing arguments

1 clearly And he told you he was scared at the moment that
2 this happened, that he panicked I would suggest to you
3 that the evidence shows that he just snapped

4 We know that he surrendered to the police without
5 incident He didn't run and he didn't fight

6 We know that he gave a statement to Detective
7 Silvaggio that Detective Silvaggio said was credible and
8 that he believed Kamell

9 And we know from his own words that he does not blame
10 anyone else, that he would do many things different that
11 night if he could and that he is sorry, deeply sorry, for
12 his actions April the 1st and April the 2nd We know this
13 from the evidence

14 Now, ladies and gentlemen, there's one thing about
15 this case that frankly is haunting to me It's the kind of
16 thing that I think about when I wake up at 2 00 or 3 00 in
17 the morning, and it is this

18 We know that Kamell was at the Silvaggio house,
19 Sapinoso house, excuse me, from about eleven o'clock until
20 four o'clock, almost five hours

21 And we have a lot of conflicting evidence as to what
22 went on there It was described by most of the officers as
23 calm, that negotiations were going forward Everything
24 seemed okay

25 There is some evidence that Joe Sapinoso got on the

Closing arguments

1 phone and was described as being his usual self, laid back
2 and easygoing

3 We know from Officer Lee that the situation was calm
4 We know from Officer Lee that he thought this was an
5 unusual situation because most of the hostage type
6 negotiations that he had undergone, the person that they
7 were talking to was full of profanity and vulgarity and
8 anger and cynicism and whatnot

9 And Kamell was calm and he was respectful and he was
10 polite And the negotiations went on with no apparent
11 indication that the situation in the twinkling of an eye
12 was about to change But it did change without notice,
13 without warning The situation erupted, and gunshots were
14 fired Two men, two good men, lay dead

15 That haunts me, ladies and gentlemen How could it go
16 from a situation under control to a situation where in a
17 millisecond people are shot and the SWAT rushes in? I
18 leave that for your determination as to how significant
19 that is, but I find it very significant when I try to
20 understand the reasons that this happened and why someone
21 behaves in the manner that they do

22 Now, ladies and gentlemen, the state has provided you
23 with an impressive array of evidence We have physical
24 evidence and we have testimony, we have spent shell casings
25 and we have bullet fragments, we have diagrams of the

Closing arguments

1 house, we have pictures from inside the house, we have guns
2 in boxes and out of boxes, we have testimony of SWAT team
3 members and what they did and what happened

4 But we don't have the one thing that y'all will need
5 to determine this case, to render a fair verdict I submit
6 to you that this physical evidence, while impressive and
7 all good evidence and the testimony while impressive and
8 all good evidence, does not give you what you need to
9 determine this case

10 I submit to you that you need a ticket, a ticket, if
11 you will, into the mind and the heart of Kamell Evans,
12 because the state must prove intentions, what did he
13 intend They must prove it beyond a reasonable doubt

14 They must prove malice They must prove malice
15 aforethought, what was in his heart, what was in his mind
16 That is where the evidence lies that you must examine to
17 determine the verdict in this case You must look into his
18 mind and in his heart and say what he intended to do that
19 night

20 That is what we are asking you to do, and we are
21 asking you to do it by putting aside your anger And it's
22 all right to be angry It's okay to be angry in this case
23 We are asking you to put aside sympathy It is okay to be
24 sympathetic, but we are asking you to put it aside

25 We are not asking you to reward anyone or punish

Closing arguments

1 anyone We are asking you in your oath and in your duty as
2 jurors to calmly and rationally and thoroughly examine the
3 evidence, to look at the physical evidence, but look at one
4 place where the true answer lies in the mind and in the
5 heart of Kamell Evans

6 Thank you for your service I don't know if this case
7 will go on past today or not That's up to you folks But
8 I thank you for your service, and I remind you of one other
9 thing that I told you Your service is an honor and you
10 have done it honorably You have paid attention Some of
11 you have taken notes I appreciate that

12 On behalf of Mr Sumner and Mr Evans, thank you for
13 your service to us and to the people of Greenville County
14 Thank you

15 THE DEFENDANT Thanks everybody

16 Today the evidence shows that I did shoot Joe
17 Sapinoso I never denied that I didn't deny it to
18 Detective Silvaggio and didn't deny it in my statement, and
19 today on the stand I didn't deny that

20 The evidence also shows that I cooperated with all of
21 the detectives on this case The evidence also shows that
22 I went over there to the Sapinoso house to talk

23 I just want to say to the jury and everybody here that
24 I'm sorry for what I did Thank you

25 THE COURT Mr Foreman and ladies and gentlemen of

Jury charge

1 the jury panel, you, of course, have heard and see all of
2 the evidence in the case, as well as heard the final
3 summations of the lawyers and the defendant

4 It now becomes my duty to instruct you on the law
5 that's applicable in a case of this nature, and then you'll
6 be asked to go back into your jury room and to begin with
7 your deliberations in the case And through that process
8 you 12 jurors are simply called upon to carefully examine
9 the evidence in the case, decide the facts, apply the law
10 and arrive at a fair and just decision

11 It is your exclusive duty to determine what the facts
12 are, and you do that through your own common sense
13 examination and evaluation of all of the testimony and
14 other evidence received during the trial of this case

15 You 12 jurors alone will decide what weight, value and
16 effect to give to any particular witness' testimony or
17 other evidence in the case Your sole objective is to
18 simply reach the truth in the matter And by doing that
19 you will have fulfilled your obligations as jurors, and
20 that is to simply give both the state and the defendant a
21 fair and impartial trial

22 Now, in this case, as you are aware, the defendant has
23 been accused by the state of various offenses Those
24 offenses are set forth in the indictments that you were
25 previously read and explained

Jury charge

1 Those offenses are the offense of burglary in the
2 first degree There are two separate counts of kidnapping,
3 one involving each of the Sapinosos There are also two
4 counts of murder, one involving each of the Sapinosos, or
5 one of each involving the Sapinosos And there are also
6 two counts of possession of a firearm during the commission
7 of a violent crime That is set forth in count two of each
8 of the murder indictments

9 Now, as to each of those charges the defendant has
10 entered a plea of not guilty And as I told you, that plea
11 of not guilty has therefore placed upon the state the
12 burden of proving all of the allegations that are set forth
13 in each of the indictments, the burden of proving each of
14 the essential elements that constitute those crimes that
15 are alleged and set forth in each of those indictments, and
16 therefore the burden is upon the state to establish the
17 defendant's guilt to the satisfaction of you 12 jurors
18 beyond a reasonable doubt before a verdict of guilty could
19 be returned

20 The burden is never upon a defendant or a person
21 accused of a crime to prove that they are not guilty
22 because in many cases that might not be possible

23 You are instructed that it is a vital, important and
24 cardinal rule of law that every defendant in a criminal
25 trial, no matter how great or how serious might be the

Jury charge

1 offense for which that person stands charged, that person
2 shall always be presumed innocent of that charge And that
3 presumption of innocence remains with every defendant, as
4 it does with this defendant, from the moment of his arrest
5 and throughout the course of the criminal process and even
6 throughout the course of the actual trial in the case

7 And, as I told you, that presumption of innocence will
8 be with Mr Evans even at the time that you go back into
9 your jury room to begin with your deliberations in this
10 case And that presumption of innocence will be with him
11 there, and it will remain with him forever, unless you 12
12 jurors determine that he's longer entitled to that
13 presumption of innocence

14 That is if you 12 jurors after considering all of the
15 evidence in the case, deciding the facts and applying the
16 law as I will have given it to you, if you determine that
17 his guilt has been proven beyond a reasonable doubt as to
18 some criminal offense alleged against him, then he would no
19 longer be entitled to that presumption of innocence But
20 it's only if, unless and until you are satisfied the
21 defendant's guilt has been proven beyond a reasonable doubt
22 that he would no longer be entitled to that presumption of
23 innocence

24 Now, while the state does have the burden of proving a
25 defendant's guilt beyond a reasonable doubt, this does not

Jury charge

1 mean that the state has to prove a defendant's guilt beyond
2 all doubt or beyond all possible doubt But the state does
3 bear the burden of proving a defendant's guilt to your
4 satisfaction beyond a reasonable doubt

5 And the term reasonable doubt should be given its
6 plain and ordinary meaning A reasonable doubt is the kind
7 of doubt that would cause a reasonable person to hesitate
8 to act upon the information provided

9 A defendant is entitled to any reasonable doubt that
10 arises from the evidence or lack of evidence in a case
11 And if, upon any factual issue essential to a finding of a
12 verdict of guilty, you have some reasonable doubt as to how
13 that issue you should be resolved, it would be your duty to
14 resolve that reasonable doubt in favor of the defendant

15 And therefore if, upon your consideration of the whole
16 case, you have a reasonable doubt as to the defendant's
17 guilt, it would be your duty to resolve that reasonable
18 doubt in favor of the defendant and to return a verdict of
19 not guilty as to that particular charge

20 And, on the other hand, after you have carefully
21 considered all of the evidence in the case if you have no
22 reasonable doubt as to the defendant's guilt, then, of
23 course, it would be your corresponding duty to convict the
24 defendant or to find him guilty of any crime that you find
25 has been proven beyond a reasonable doubt

Jury charge

1 Now, as I told you, you are the sole judges of the
2 facts in this case, and you are therefore necessarily the
3 sole judges of the credibility or the believability of each
4 witness that has testified during the trial of this case

5 You 12 jurors alone will decide what weight, value and
6 effect to give to any particular witness' testimony or even
7 a portion of testimony. And therefore there are a number
8 of factors which you should consider in arriving at your
9 assessment as to a witness' credibility or believability,
10 and I'm going to list those factors for you

11 You may consider the demeanor of the witness, that is
12 how the witness appeared to you as the witness testified
13 from the witness stand. Was the witness straightforward in
14 responding to questions or was the witness hesitant or
15 evasive in responding to questions that were asked of that
16 witness? Simply put, did the witness appear to you to be
17 telling the truth and to have knowledge of the facts to
18 which that witness has testified?

19 You may also consider whether or not the testimony of
20 a witness is consistent or inconsistent with that witness'
21 own testimony, whether that be testimony or statements
22 given in court or out of court. And you may also consider
23 whether or not the testimony of a witness is consistent or
24 inconsistent with other testimony from other witnesses or
25 other evidence received during the trial of the case

Jury charge

1 You may also consider how the witness came to know the
2 facts to which that witness has testified That is what
3 was that particular witness' opportunity and ability to
4 perceive the existence of those facts to which they have
5 testified by means of using their senses and then be able
6 to come into court and to accurately recollect to you as to
7 what they have previously seen or heard, or felt for that
8 matter

9 You may also consider any bias or prejudice that you
10 find a witness might have And by that I simply mean do
11 you find some reason that a particular witness would come
12 into court and would testify one way or another to help or
13 to hurt one side or the other

14 You may also consider any interest that a witness
15 might have in the outcome of the case if you determine that
16 a witness does have an interest in the outcome and that
17 that interest would bear upon that particular witness'
18 credibility or believability

19 You may also consider whether or not the testimony of
20 a witness is strengthened, or is it weakened by other
21 testimony or other evidence received during the trial of
22 the case?

23 Now, you as the finders of the facts and you as the
24 judges of the credibility of each witness that has
25 testified during the trial of this case are permitted to

Jury charge

1 believe as much or as little of what a witness has
2 testified to as you deem is appropriate

3 And therefore you may believe everything that a
4 witness testified to, you may choose to believe none of it
5 You may believe some portion of a witness' testimony and
6 reject some other portion of that same witness' testimony

7 You may believe one witness as opposed to several, or
8 several as opposed to one Whatever your good judgment and
9 common sense tells you is the most believable and credible
10 testimony is the testimony that you should accept, and you
11 should reject any testimony or evidence that you find not
12 to be credible or believable

13 Your sole objective is to simply reach the truth in
14 the matter, and by doing that you will have fulfilled your
15 obligations as jurors in the case

16 Now, the same law that provides that you are the
17 judges of the facts also provides that I am the judge of
18 the law That simply means that no one is going to tell
19 you how to arrive at your determination of fact in this
20 case

21 You do that, as I have stated, through the exercise of
22 good judgment and common sense conscientiously applied to
23 the testimony and evidence in this case You must,
24 however, under our oath as a juror accept the law as I give
25 it to you as being the law that is applicable in this

Jury charge

1 particular case

2 You're not to concern yourself with what you thought
3 the law was before you came to serve as a juror in this
4 case You must not concern yourself with what you think
5 the law ought to be

6 You must simply accept the law as I give it to you as
7 being the law that is applicable in this particular case,
8 and then you simply take that law and you apply it to the
9 facts as you 12 jurors determine those facts to be based
10 upon your common sense examination of the testimony and
11 evidence in this case

12 Now, while there are various forms of evidence such as
13 testimony, photographs, documents, charts and other types
14 of physical exhibits, there are really only two types of
15 evidence And either or both of those types of evidence
16 may be used to prove a fact in issue And the two types of
17 evidence are direct evidence and circumstantial evidence.

18 Now, direct evidence is the testimony of a person who
19 testifies from actual knowledge of the fact It is
20 testimony by a person who has perceived the existence of a
21 fact by means of his or her senses, and then that person
22 comes into court and testifies as to what that witness has
23 previously seen or heard or felt as where a person views
24 the commission of some act and then they come into court
25 and they testify as to what they have previously seen

Jury charge

1 Circumstantial evidence, on the other hand, is the
2 proof of some other fact or set of facts which taken either
3 singly or collectively may prove the existence of a fact in
4 question as a necessary consequence, that is through an
5 inference And an inference is simply a deduction of fact
6 which may logically and reasonably be drawn from the proof
7 of some other fact or set of facts

8 It's not a fact proven by direct testimony of a
9 witness based upon personal perception, but it is a
10 conclusion which might reasonably be drawn from the proof
11 of other facts that have been established in the case

12 In other words, you may infer that a particular event
13 occurred or that a particular fact exists based upon the
14 proof of sufficient factual circumstances that reasonably
15 warrant your arriving at such a conclusion

16 Now, where the state relies upon evidence which is
17 wholly circumstantial in nature in order to prove the guilt
18 of a defendant, every circumstance relied upon by the state
19 must be proven beyond a reasonable doubt, and all of the
20 circumstances so proven must be consistent with each other
21 and taken together point conclusively to the guilt of the
22 accused to the exclusion of every other reasonable
23 explanation

24 It is not sufficient that such circumstances create a
25 probability of guilt, even though it may be a strong

Jury charge

1 probability And if, assuming each of the circumstances
2 proven to be true, if those circumstances may establish any
3 reasonable explanation which does not include the guilt of
4 the accused, then proof by circumstantial evidence would
5 have failed

6 The law, however, makes absolutely no distinction
7 between the weight or the value to be given to direct
8 evidence as opposed to circumstantial evidence, nor is a
9 greater degree of certainty required of circumstantial
10 evidence as opposed to direct evidence

11 Whatever the type of evidence used to prove any fact
12 in issue, you should consider all of the evidence
13 introduced and presented during the trial of this case
14 And after carefully considering all of that evidence and
15 weighing it carefully in your minds if you are not
16 convinced of the guilt of the defendant beyond a reasonable
17 doubt, then you must resolve that doubt in his favor and
18 return a verdict of not guilty

19 Now, in this case, as you know, the defendant is
20 charged with several and distinct criminal offenses even
21 though they are alleged to have arisen out of one
22 particular event or occurrence

23 And the indictments are going to be the jury room
24 because it will be on the back of those indictments, Mr
25 Foreman, that you will be asked to indicate the jury's

Jury charge

1 unanimous decision as to that particular charge

2 The charges are burglary, kidnapping, murder and
3 possession of a firearm during the commission of a violent
4 crime I am going to now instruct you on the law as it
5 relates to those individual criminal offenses And I will
6 begin with the criminal offense known as burglary in the
7 first degree, which is set forth in Indictment 2003-4087

8 South Carolina Code Section 16-11-311 provides in its
9 pertinent parts that a person is guilty of burglary in the
10 first degree if the person enters a dwelling without
11 consent and with the intent to commit a crime therein and
12 either one or more of the following circumstances are
13 present When in effecting entry or while in the dwelling
14 or in immediate flight therefrom he is armed with a deadly
15 weapon or he causes physical injury to a person who is not
16 a participant in the crime or the entering or the remaining
17 occurs in the nighttime

18 Now, based upon the foregoing statute before you could
19 return a verdict of guilty as to the crime of burglary in
20 the first degree it would be necessary that the evidence in
21 the case has proven to your satisfaction beyond a
22 reasonable doubt the following four elements

23 Number one, it must be proven that the defendant
24 entered a dwelling Entry is an indispensable element in
25 the crime of burglary And entry, of course, is the act of

Jury charge

1 going into the dwelling As stated, the entry must also be
2 into a dwelling

3 A dwelling is defined as a building or structure which
4 is used or normally used for sleeping, living or lodging by
5 any person and would include any structures or rooms
6 pertinent thereto

7 Secondly, there must also be an entry of a dwelling
8 without consent Entering without consent means to enter a
9 dwelling without the voluntary consent of the person in
10 lawful possession or otherwise authorized to give consent
11 to an entry of the dwelling

12 Thirdly, there must be an entry without consent and
13 with the intent to commit a crime therein There must be
14 an intent to commit a crime, whether or not the crime is
15 actually committed, accomplished or completed

16 The mere entering of a dwelling without an intent to
17 commit a crime does not constitute burglary under the law
18 It is only when there is an entering accompanied by an
19 intent to commit a crime that the crime of burglary is
20 complete And a crime of any greater severity is
21 sufficient to satisfy this particular element of the crime
22 of burglary

23 It is essential that the intent to commit a crime
24 exist at the time of the entry into the dwelling It is
25 not sufficient that the intent is formed after the entry

Jury charge

1 has been accomplished

2 On the other hand, where the intent to commit a crime
3 exists at the time of the entering of the dwelling it is no
4 defense to a charge of burglary that the intent was
5 abandoned after the entry was accomplished

6 Intent means the state of a person's mind which
7 directs his actions towards a specific object or goal The
8 entry of a dwelling without consent and with the intent to
9 commit a crime therein completes the crime of burglary

10 And the fourth element that must be established before
11 the defendant could be found guilty of burglary in the
12 first degree is that when in effecting entry or while in
13 the dwelling or in immediate flight therefrom the defendant
14 is armed with a deadly weapon -- and the term deadly weapon
15 would include all types of firearms -- or that the
16 defendant did cause physical injury to a person who was not
17 a participant in the crime, that is was not a confederate
18 or an accomplice, or, thirdly, that the entry or remaining
19 in the dwelling occurred in the nighttime

20 And nighttime is defined as that period between sunset
21 and sunrise during which the face of a person cannot be
22 discerned by the light of the sun which is generally
23 shortly after sundown until shortly before sunrise Those
24 constitute the elements of burglary in the first degree

25 The second charge which I will address and instruct

Jury charge

1 you on the law that relates to it is the crime of
2 kidnapping The offense commonly known as kidnapping is
3 described in Section 16-3-910 of the Code of Laws of South
4 Carolina, which does provide in its pertinent parts as
5 follows Whosoever shall unlawfully seize, confine,
6 inveigle, decoy, kidnap, abduct or carry any other person
7 by any means whatsoever without authority of law is guilty
8 of the crime of kidnapping

9 Now, in order for the defendant to be found guilty of
10 a violation of this particular statute it would be
11 necessary that the state has proven to your satisfaction
12 beyond a reasonable doubt each of the essential elements
13 constituting the crime of kidnapping

14 And the essential elements of kidnapping as provided
15 for by the statute are, number one, that it must be proven
16 beyond a reasonable doubt that the defendant did seize or
17 confine or inveigle or decoy or kidnap or abduct or carry
18 away another person by some means or method, and, secondly,
19 that one or more of the above acts was done without the
20 authority of law

21 Now, in this particular case the state is alleging
22 that the defendant is guilty of the crime of kidnapping and
23 a violation of this statute by seizing or confining a
24 person without authority of law

25 The term seize means to take hold of suddenly and

Jury charge

1 forcibly, and the term confine means to imprison or to
2 restrain or to restrict a person's freedom in some
3 significant way

4 The term without authority of law simply means that
5 the conduct engaged in was not permitted, sanctioned,
6 condoned, allowed or justified under the law

7 So in order for the defendant to be found guilty of a
8 violation of this statute the state need not prove each of
9 the terms that I have explained to you as contained in the
10 statute Proof of any one or more of these prohibited acts
11 is sufficient so long as that act was done without
12 authority of law and without the consent of the person who
13 is alleged to have been kidnapped

14 Now, while the state must prove a kidnapping as I have
15 defined that term for you beyond a reasonable doubt, it is
16 not necessary that the state prove any motive for the
17 conduct, nor is it necessary that any demand for money or
18 other ransom be made

19 The third offense which I will define for you is that
20 of the crime of murder Murder is defined in South
21 Carolina Code Section 16-3-10 as the killing of any person
22 with malice aforethought either expressed or implied

23 Now, in order for you to find that the defendant is
24 guilty of the crime of murder it would be necessary that
25 the evidence in this case has established to your

Jury charge

1 satisfaction beyond a reasonable doubt that the defendant
2 did commit some act or acts which proximately caused the
3 death of the decedent and that the killing was done with
4 malice aforethought

5 Malice aforethought is an essential element of the
6 crime of murder Malice is a term connoting an ill-will
7 and an intent to do harm It is a technical term importing
8 wickedness and excluding just cause or legal excuse It is
9 something which springs from depravity from a heart devoid
10 of social duty and fatally bent on mischief

11 Malice may be likewise defined as a state of mind
12 which indicates a formed purpose and design to do a
13 wrongful act under circumstances that exclude any legal
14 justification or right to do it

15 Now, the words expressed or implied malice do not mean
16 different kinds of malice but merely the manner in which
17 malice may be shown to have existed, that is to say either
18 by direct evidence or by circumstantial evidence wherein
19 you may imply or infer the existence of malice And as
20 I've stated, an inference is simply a deduction of fact
21 which may logically and reasonably be drawn from the proof
22 of some other fact or set of facts

23 Now, malice may be expressed as where there is an
24 expressed threat to kill or a lying in wait or where the
25 circumstances show directly that an intent to kill was

Jury charge

1 entertained by the killer

2 Malice may be inferred, though no expressed intent to
3 kill is proven by direct evidence, where the facts and the
4 circumstances which have been proven by the evidence in the
5 case satisfy you beyond a reasonable doubt that malice was
6 present in the mind of the defendant at the time any
7 killing took place

8 The existence of malice may be inferred from the
9 circumstances shown to have existed at the time of the
10 killing, and you are permitted to infer the existence of
11 malice from proof of an unlawful and an intentional killing
12 of another person without justification or legal excuse

13 You may infer malice from the proof of a wrongful
14 intent to injure another person through the infliction of
15 serious bodily harm which is indicative of a wicked or
16 depraved spirit

17 You may infer malice from the intentional use of a
18 deadly weapon You may infer malice from proof of the
19 intentional commission of an act which is inherently
20 dangerous to human life You may infer the existence of
21 malice from proof of the intentional killing of another or
22 the intentional commission of criminal acts resulting in
23 the death of another person during the commission of a
24 felony which is dangerous to human life or where the
25 circumstances of the crime create a substantial foreseeable

Jury charge

1 risk to human life And you are instructed that the crimes
2 of burglary in the first degree and the crime of kidnapping
3 are felonies under the law of this state

4 You may also infer the existence of malice from proof
5 of the commission of a reckless act which is inherently
6 dangerous to human life and which is done so recklessly as
7 to manifest a depravity of mind signifying an extreme
8 disregard for or extreme indifference to human life

9 Now, malice as an essential element of murder does not
10 necessarily import an ill will or a hatred toward the
11 particular individual who is actually killed, nor does it
12 necessarily mean an actual or a specific intent to take
13 human life But rather it's a state of mind signifying a
14 general malignant recklessness and extreme disregard for or
15 indifference to human life

16 Now, even if the facts proven are sufficient to raise
17 an inference of malice such an inference would simply be an
18 evidentiary fact to be taken into consideration by you 12
19 jurors along with all of the other evidence in the case,
20 and you shall give such inferences such weight, if any,
21 that you determine they should receive, if any

22 Simply stated, you are permitted to infer the
23 existence of malice from the proof of any one or more of
24 the circumstances that I have described to you, as well as
25 from any other evidence presented during the trial of the

Jury charge

1 case tending to prove that fact But you are in no way
2 required to do so

3 The state is simply required to prove malice, just as
4 it must prove any other essential element of the crime of
5 murder, and it is for you 12 jurors to determine whether or
6 not the evidence in this case establishes malice beyond a
7 reasonable doubt

8 You must determine whether or not malice existed based
9 upon your consideration of all of the evidence introduce in
10 the case, as well as any reasonable inferences that might
11 be drawn from that evidence

12 It is also essential that there exist not only malice
13 but malice aforethought The law does not require that
14 malice must exist for any appreciable length of time before
15 the commission of an act which proximately causes a fatal
16 result

17 Indeed, it may conceived at the very moment that the
18 fatal act is committed It is sufficient in the law so
19 long as the state proves beyond a reasonable doubt both the
20 existence of malice and the commission of an act or acts by
21 the defendant which proximately caused the death of the
22 decedent

23 Now, while the state must prove beyond a reasonable
24 doubt that a killing did occur accompanied by the element
25 of malice aforethought in order to establish the crime of

Jury charge

1 murder, it is not necessary that the state prove any motive
2 for such a killing, although there may be some evidence
3 relating to that fact introduced during the trial of the
4 case

5 Now, in each of the murder indictments there is also a
6 count two of that indictment, and each of those count twos
7 allege possession of a firearm during the commission of a
8 violent crime

9 The defendant is charged with a violation of Section
10 16-23-490 of the Code of Laws of South Carolina And that
11 code section provides that it shall be an additional
12 criminal offense for any person to possess a firearm or to
13 visibly display what appears to be a firearm during the
14 commission of a violent crime and where that person is
15 subsequently found guilty of the commission of that violent
16 crime

17 Section 16-1-60 of the Code of Laws of South Carolina
18 specifically defines violent crimes, and murder is included
19 under that definition, and therefore is classified as a
20 violent crime under the law

21 So in order for the defendant to be found guilty of a
22 violation of this particular section of law it would be
23 necessary that the evidence in this case established to
24 your satisfaction beyond a reasonable doubt that the
25 defendant is guilty of the crime of murder and that during

Jury charge

1 the commission of that offense he did possess a firearm or
2 visibly display what appeared to be a firearm

3 Now, Mr Foreman and ladies and gentlemen of the jury,
4 while we discussed the issue of potential punishment prior
5 to your selection as jurors in the case, you shall not
6 consider the issue of punishment during this part of the
7 trial nor allow any such consideration to enter into your
8 deliberations or in your decision as to whether or not the
9 defendant is guilty of any crime which has been alleged
10 against him by the state

11 Your sole duty, function and obligation as you are
12 excused to begin your deliberations in this case is to
13 carefully consider all the evidence presented during the
14 trial of this case, decide the facts from that evidence as
15 you believe the facts to be, then apply the law as I have
16 instructed you and determine whether or not the defendant
17 is guilty or has been proven guilty beyond a reasonable
18 doubt as to the crimes set forth in each indictment

19 Now, Mr Foreman and ladies and gentlemen of the jury,
20 I am not in any way concerned with what your decision is,
21 but I do tell you that any verdict that you render, any
22 decision that you make, must be unanimous That is all 12
23 of you must be in agreement

24 So, Mr Foreman, after you and your fellow jurors have
25 sufficiently deliberated the case, after you have decided

Jury charge

1 the facts, after you have applied the law and after you
2 have reached your unanimous decision, I would simply ask
3 that you please indicate that unanimous decision on the
4 back of the appropriate indictment

5 You will be rendering separate and distinct verdicts
6 as they relate to the separate and distinct charges Your
7 verdicts may be the same, they may be different That will
8 depend upon your determination of fact from the evidence
9 and then your application of the law to the facts as you
10 determine them to be

11 With respect to the indictment alleging burglary in
12 the first degree, you have two possible verdict forms
13 Those verdict forms are guilty or not guilty Whatever
14 that decision is, indicate it on the back of that
15 particular indictment

16 You have two indictments charging kidnapping One of
17 those indictments relates to Antonio J Sapinoso, the other
18 indictment relates to Antonio L Sapinoso You will be
19 rendering separate verdicts as to those separate
20 indictments

21 Again, the two possible verdict forms as they relate
22 to each of those separate indictments are guilty or not
23 guilty Whatever that decision is, indicate it on the back
24 of the appropriate indictment

25 The two final indictments are the indictments for

Jury charge

1 murder in count one of each indictment and for possession
2 of a firearm during the commission of a violent crime in
3 count two of each indictment

4 As to each of those separate indictments you will have
5 two possible verdict forms for each count of those
6 indictments With respect to count one in each indictment,
7 which is the crime charging murder, you have two possible
8 verdict forms Those verdict forms are guilty or not
9 guilty Whatever that verdict form is, place it in the
10 space provided

11 Count two of the indictment alleges possession of a
12 firearm during the commission of a violent crime Again,
13 you have two possible verdict forms as to each of those
14 indictments Those two potential verdict forms are guilty
15 and not guilty Whichever that decision is, indicate it in
16 the space provided

17 Of course with respect to count two of the indictment
18 charging murder and possession of a firearm during the
19 commission of a violent crime, if the defendant is found
20 not guilty of murder, then he must be found not guilty of
21 possession of a firearm during the commission of a violent
22 crime because count two of the indictment, a guilty verdict
23 would necessarily require that the defendant has been found
24 guilty of count one of the indictment, which is murder,
25 because that is the violent crime that is alleged to have

Jury charge

1 been committed for which he is also alleged to have
2 possessed a firearm during the commission of

3 Now, again, as I've stated, with respect to the
4 indictments for murder and possession of a firearm during
5 the commission of a violent crime, there are two separate
6 indictments One of those relates to Antonio J Sapinoso,
7 the other relates to Antonio L Sapinoso So you will be
8 called upon to render separate verdicts as to each of those
9 separate indictments

10 After you and your fellow jurors have decided the
11 case, Mr Foreman, and after you have reached your
12 decisions, I will ask that you indicate the proper verdict
13 form on the back of each indictment in the space provided
14 Also, sign your name as the foreperson and place the
15 applicable date on the verdict form

16 Now, during deliberations you permitted to smoke if
17 you wish to If you want to smoke, as you know, you've got
18 to go outside

19 Deliberations may not take place unless all 12 jurors
20 are present in the jury room So if at any time a juror is
21 absent for some authorized reason the deliberations will
22 have to cease, and they may only resume when all 12 jurors
23 are present so that all 12 jurors may participate in those
24 discussions in arriving at the verdicts

25 At the present time I'll ask you to please retire to

Jury charge

1 your jury room, but do not, do not yet begin your
2 deliberations I have got some matters I'll need to
3 address with the lawyers

4 If I do not need to bring you back for any reason,
5 I'll simply send word by way of the bailiff that you may
6 begin with your deliberations In that event the bailiff
7 will also bring to the jury room all of the exhibits which
8 have been introduced during the trial of the case

9 And to you, Mr Foreman, he will also bring the
10 indictments which will serve as the verdict forms

11 Let me caution you, however, that as these exhibits go
12 back there will be firearms obviously in the jury room
13 There will be live ammunition also in the jury room Do not
14 under any circumstances place any ammunition in any
15 firearm And if for some reason the firearm needs to be
16 altered in some way for your benefit or examination, please
17 let us know so that we can accomplish that safely Do not
18 attempt to fire the weapon or to place any ammunition into
19 any way

20 So please retire to your jury room but await my
21 instruction as to when to begin with your deliberations

22 Let me ask the three alternate jurors, if you will,
23 just stay with me for the moment

24 (Whereupon, the jury retired to deliberate at

25 4 35 p m)

Jury charge

1 THE COURT All right Now, for the three alternate
2 jurors, as you three know, you're not permitted to
3 participate in deliberations if the original 12 are able to
4 do so, and they apparently are But that does not,
5 however, conclude your service in the case because there
6 still might come a time where one of the original 12 jurors
7 cannot continue to serve for some reason And if that is
8 the case, then one or more of you would be called upon to
9 take that juror or those jurors' place

10 So you are still to be sequestered You are still not
11 to have any discussions about the case You can talk about
12 anything else that you would like, but do not discuss the
13 case in any fashion And, of course, you will be provided
14 a location separate from the other jurors, and you will
15 remain there until the original 12 jurors have concluded
16 with their deliberations

17 So if you will please go with the bailiff, they will
18 take you to a separate location And we will bring you
19 back when the jury has concluded their deliberations and
20 decided the case

21 (Whereupon, the alternate jurors were excused from the
22 courtroom)

23 THE COURT Are there any exceptions taken to the
24 instruction or requests for additions to the instruction by
25 the state?

Jury charge

1 MR AIRIAIL None

2 THE COURT By the defendant?

3 MR SUMNER None

4 THE COURT You except to the Court not instructing
5 the jury on voluntary manslaughter?

6 MR SUMNER Yes, sir I think our objection to that,
7 or request, is noted on the record If we need to
8 reiterate it, we will, but otherwise it's noted

9 THE COURT Okay Let me ask the lawyers to please
10 verify the exhibits before they are sent back

11 (Pause)

12 THE COURT All right Have all of the exhibits been
13 accounted for?

14 MR AIRIAIL Yes, sir

15 MR SUMNER Yes, sir

16 THE COURT The jury will be instructed --

17 MR AIRIAIL There is one on the board

18 THE COURT Sir?

19 MR AIRIAIL There is one on the board that did not
20 go That is Thirty-nine-A

21 MS STROM Thirty-nine-A?

22 THE COURT They will take that back

23 We have one other exhibit that needs to go back? Once
24 that is taken back tell the jury they can begin with their
25 deliberations We will be at ease while the jury is