VOLUME ONE OF FOUR

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

JOHN B. FRAZIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002774

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 99-GS-26-2249
COUNTY OF HORRY)

State of South Carolina,)
)
Plaintiff,) Transcript of Record
)
versus)
) May 16-20, 2005
John Boyd Frazier,)
)
Defendant.) VOLUME I
)

B E F O R E :

Honorable Paula H. Thomas
Horry County Courthouse
Conway, South Carolina

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Circuit Court Reporter

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104	already excused				
39	Myrna Smith	WF	✓	X	
240	June Lee Tarangelo	WF	✓	✓	
• 255	Sean Torrens	WM	✓	X	
261	Robert Genitsky	WM	X		
93	Michael Arnold	WM	✓	X	
7	Joseph Nappi	WM	✓	✓	
• 179	Beverly Webb	WF	✓	X	
277	Jaymeh Singleton	BM	✓	✓	
• 235	Calhoun Babon	WM	✓	X	
205	already excused				
276	" "				
11					
• 166	Nora McDowell	WF	✓	✓	
196	already excused				
228	James Landers	WM	✓	X	
• 195	Michael Peter	WM	✓	✓	
306	Jennie Clayton	WF	✓	X	
• 201	Francis Provencher	WM	✓	✓	
• 208	James Randall	BM	✓	✓	
232	Larry Sherman	WM	✓	X	
135	already excused				
• 207	Stephen Rainey	WM	✓	✓	
271	already excused				
81	Meredith Exum	WF	X		
• 123	Crystal Hoback	WF	✓	✓	
150	Erbl Cale	WM	✓	X	
• 245	Clayton Sperry	WM	✓	✓	
• 18	Laura Barry	WF	✓	✓	
3	already excused				
• 108	Tracy Hammons	WF	✓	✓	

			St	Def	Ct
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x	already excused				
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44-	John Canapari	WM	✓	X	
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(On the record, Monday, May 16, 2005.)

THE COURT: Mr. Solicitor, if you'd call your first case, please.

MR. HEMBREE: Thank you, Your Honor. May it please the Court, the State calls the case of State of South Carolina versus John Boyd Frazier, indictment 99-GS-26-2249. This indictment was presented to the Horry County Grand Jury on August 26th, 1999, and true-billed by the foreman of the Grand Jury. There are three counts to this indictment, Your Honor: count one, murder; count two, armed robbery; and count three, criminal conspiracy. Your Honor, let the record reflect that I am passing the indictment to the Court.

THE COURT: Ladies and gentlemen of the jury, please give me your attention. You have heard the State call the case of The State versus John Boyd Frazier, who has been charged with murder, armed robbery and criminal conspiracy. It is alleged that John Boyd Frazier on or about June 9th of 1998 did kill William Brent Poole. At that time, again, June 9th of '98, it was alleged that he was armed with a deadly weapon. These are the allegations. Ladies and gentlemen of the jury, I tell you this, give you this information to ask you this question, is there any member of the jury panel who has any information whatsoever about these alleged crimes, that is of murder, armed robbery, and criminal conspiracy occurring on or about June 9th of 1998? If you have any

information whatsoever, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has seen or heard anything by way of the media regarding this alleged incident? If so, please stand.

All right, I'm going to ask you to come forward just one by one and we will speak with you briefly.

All right, let me have you come forward, please.

OFFICER: 196.

(Whereupon, an on-the-record bench conference was held with Juror Number 196, Joey L. Phillips, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

MR. PHILLIPS: Yes, ma'am, 196.

THE COURT: Okay, and if you would speak as if you're speaking to the court reporter we're going to be listening, too, so. What I want to know is what did you hear or see?

MR. PHILLLIPS: I just remember the case when it first happened. I was working on the beach, up in Myrtle Beach when it all took place at a motel down there near the area. Also, even last night it was on the news before I went to bed they were retrying him.

THE COURT: Okay, all right, so, you've received information from talk at the beach?

MR. PHILLIPS: Yes, uh-huh (affirmative response).
THE COURT: And then by way of the media; is that correct?
MR. PHILLIPS: That's correct.
THE COURT: Okay, now, have you formed an opinion?
MR. PHLILIPS: Yes.
THE COURT: Okay, and sir, can you set any opinion you formed aside and base your decision solely on the evidence and testimony presented here?
MR. PHILLIPS: No.
THE COURT: Okay, I appreciate your honesty. I'm going to excuse you from serving in this particular case.
MR. PHILLIPS: Okay.
THE COURT: Thank you.
MR. PHILLIPS: You're welcome.
THE COURT: You remain with us though if you would, please.
MR. PHILLIPS: All right.
THE COURT: One more thing and I apologize. Please don't discuss anything that you may have heard or seen ---
MR. PHILLIPS: No, ma'am.
THE COURT: --- about the case with any other juror.
MR. PHILLIPS: No, ma'am.

THE COURT: Thank you.

MR. PHILLIPS: Okay.

(Whereupon, the following takes place in open court.)

OFFICER: 219.

(Whereupon, an on-the-record bench conference was held with Juror Number 219, Rodney L. Rogers, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, sir, first of all if you'd share with us what you might have heard or seen.

MR. ROGERS: The only thing that I've heard or -- I actually haven't seen anything other than the local news coverage. I remember the incident when it happened and the coverage that happened at that point and I remember some of the first trial. The coverage then and just yesterday or the day before I heard that it was overturned on the technicality of the judge's instructions or something. I don't remember now but that's really all that I know.

THE COURT: Now, have you -- since you've heard this stuff and you've heard about a trial and that type of thing, have you formed an opinion in this case?

MR. ROGERS: You want the truth?

THE COURT: Oh, yes; oh, yes.

MR. ROGERS: Yes, I think I did, you know.

THE COURT: I'm going to excuse you then, sir. Thank

you.

MR. ROGERS: Okay.

THE COURT: Thank you for your honesty.

MR. ROGERS: That's okay.

(Whereupon, the following takes place in open court.)

THE COURT: Yes, sir.

OFFICER: 305.

THE COURT: 305?

MR. HICKS: 305.

THE COURT: Okay.

(Whereupon, an On-the-record bench conference was held with Juror Number 305, Kenneth E. Hicks, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: If you would share with us, sir, what you may have heard or seen about this case.

MR. HICKS: One of the witnesses in the case would be Carolyn Murphy and she's a very good, close friend of our family. She was the babysitter for the kid's mother when the supposed murder took place.

THE COURT: Okay, so, you're ---

MR. HICKS: I know Carolyn very well and talked to her, and she knows a lot of stuff, so, that's all I know.

THE COURT: I'm going to, I'm going to excuse you then from serving in this particular case.

MR. HICKS: Okay.

THE COURT: Remain with us but don't discuss anything that you may have heard about this case with any other jurors.

MR. HICKS: Okay, so, where do I go now?

THE COURT: You just stay put until I give you further instructions.

MR. HICKS: Okay.

THE COURT: Thank you.

(Whereupon, the following takes place in open court.)

OFFICER: 271.

(Whereupon, an on-the-record bench conference was held with Juror Number 271, Jewell E. Wagner, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, ma'am, hi. Would you share with us what you may have heard or seen?

MS. WAGNER: Well, I just read it in the paper, they put it previous in the paper when the first trial was going on.

THE COURT: Okay.

MS. WAGNER: In the State, TV.

THE COURT: All right.

MS. WAGNER: And then I read in the paper where it was going to be tried again this week and I'd already got my

summons and I thought, "Oh, God, please tell me."

THE COURT: So, you, you thought it might be you.

MS. WAGNER: Yes, I did.

THE COURT: Okay, let me ask you this, have you formed any opinions as a result of what you've read?

MS. WAGNER: Yeah.

THE COURT: And I'll ask you but I think I know the answer to this, could that opinion that you've formed be -- can you set it aside and base your decision solely on the evidence and testimony presented in this courtroom?

MS. WAGNER: I don't think so. I'm sorry.

THE COURT: Thank you for your honesty.

MS. WAGNER: You're welcome.

THE COURT: You're excused.

MS. WAGNER: Thank you.

(Whereupon, the following takes place in open court.)

OFFICER: 276.

THE COURT: 276?

(Whereupon, an on-the-record bench conference was held with Juror Number 276, Sherry S. Weatherly, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, ma'am, would you share with us what you may have seen or heard?

MS. WEATHERLY: I was actually in the first jury pool for

this.

THE COURT: Were you?

MS. WEATHERLY: Yes, I was.

THE COURT: Well, that's interesting.

MS. WEATHERLY: Yes, it was, and actually I had dinner with retired Myrtle Beach lieutenant last night that, that not knowing that this was the trial, but we actually discussed it and he gave me his views and what he saw and that sort of thing.

THE COURT: Okay, so, have you formed an opinion as a result?

MS. WEATHERLY: Yes.

THE COURT: And could you set that opinion aside and base your decision solely on the evidence and testimony presented in this courtroom?

MS. WEATHERLY: Not at this point.

THE COURT: I appreciate your honesty. Thank you. You're excused from this particular case. Remain with us.

MS. WEATHERLY: Thank you.

THE COURT: Ma'am, I apologize. Please don't discuss anything that you may have heard about this case with any other juror.

MS. WEATHERLY: Absolutely.

THE COURT: Thank you.

(Whereupon, the following takes place in open court.)
OFFICER: 309.
(Whereupon, an on-the-record bench conference was held with Juror Number 309, Gwen J. Futch, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)
MS. FUTCH: I lived in the Dunes Club at the time which is close to the murder, and I followed it in the media and heard the talk in the neighborhood.
THE COURT: All right, now, have you formed an opinion as a result of what you've heard?
MS. FUTCH: Probably.
THE COURT: Can you set aside any opinion you may have formed and everything that you may have heard ---
MS. FUTCH: Yeah.
THE COURT: --- and base your decision solely on the evidence and testimony presented in this courtroom?
MS. FUTCH: Uh-huh (affirmative response).
THE COURT: Okay, any question about that?
MS. FUTCH: Huh-uh (negative response).
THE COURT: If you'd remain with us.
MS. FUTCH: Uh-huh (affirmative response).
THE COURT: Thank you.
(Whereupon, the following takes place in open court.)
OFFICER: 39.

(Whereupon, an on-the-record bench conference was held with Juror Number 39, Angelo F. Buchiere, Jr., counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, sir, if you would share with us what you may have heard or seen.

MR. BUCHIERE: Well, if this is the case I'm thinking about read about in the papers what was going on, heard on the news where the wife and her boyfriend had shot her husband on the beach.

THE COURT: Okay, now, can you set aside anything that you might have heard and base your decision solely on the evidence and testimony presented in this courtroom?

MR. BUCHIERE: Could I set it aside? I would probably say no.

THE COURT: Okay, have you formed an opinion in this matter?

MR. BUCHIERE: I think I would have.

THE COURT: Okay, all right, I'm going to excuse you from this particular case. Remain with us. Don't discuss anything about the case with any of your fellow jurors.

MR. BUCHIERE: Okay.

THE COURT: Thank you.

MR. BUCHIERE: Thank you.

(Whereupon, the following takes place in open court.)

OFFICER: 76.

(Whereupon, an on-the-record bench conference was held with Juror Number 76, Michael D. Edge, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

MR. EDGE: Good morning, Your Honor.

THE COURT: Good morning.

MR. EDGE: I do heating and cooling for a living.

THE COURT: Yes.

MR. EDGE: I don't read the paper but I watch the news, 13 and 15 every day during the week because my business depends on the weather, and I remember when it first happened it was alleged that him and her were, I guess, lovers, and he killed him to be with her. So, I remember from the, from the media, from the news.

THE COURT: Okay, have you formed an opinion as a result of what you've heard?

MR. EDGE: Well, I don't know about that, but I'm just -- that's all I've heard.

THE COURT: I understand.

MR. EDGE: The way it looks he's already guilty.

THE COURT: Can you -- now, what were you saying? I missed.

MR. EDGE: From the way the media portrays it to me he's already guilty.

THE COURT: Okay.

MR. EDGE: That's the way ---

THE COURT: Now ---

MR. EDGE: --- I mean, because I see these guys on there about once or twice a week.

THE COURT: Do you understand that under the law he's presumed innocent until the State ---

MR. EDGE: Until proven guilty, yes, ma'am.

THE COURT: --- proves his guilt beyond a reasonable doubt.

MR. EDGE: Yes, ma'am.

THE COURT: You understand that?

Could you apply that?

MR. EDGE: Yeah.

THE COURT: Okay, can you set aside everything that you may have seen or heard about the case and base your decision solely on the evidence and testimony presented in this courtroom?

MR. EDGE: To the best of my abilities.

THE COURT: That's all we can ask. You think you can do that?

MR. EDGE: I'll try.

THE COURT: All right, now, I need to know for sure. Is there any doubt in your mind that you can do that?

MR. EDGE: There's a doubt because like I say I watch the news everyday and I remember it was on for two weeks at a time.

THE COURT: I appreciate your honesty. I'm going to excuse you from this case. Don't discuss anything you may have heard.

MR. EDGE: I won't. So, what do I need to do now?

THE COURT: Stay with us and I'll give you further instructions.

MR. EDGE: Okay, okay.

THE COURT: Thank you, sir.

(Whereupon, the following takes place in open court.)

OFFICER: 29.

(Whereupon, an on-the-record bench conference was held with Juror Number 29, Denise D. Braswell, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

MS. BRASWELL: I'm assuming this is the woman with her husband on the beach. Yes?

THE COURT: Well ---

MS. BRASWELL: I don't know names. I'm sorry. I can't remember that. It's too far along.

THE COURT: That's all right, but that's what you heard?

MS. BRASWELL: It was in the paper and it's a retrial.

THE COURT: Okay.

MS. BRASWELL: And it was something that the judge said to bring it back to trial.

THE COURT: Let me ask you, have you formed an opinion as a result of what you may have heard or read about this case?

MS. BRASWELL: No.

THE COURT: Could you set aside anything that you may have heard or read and base your decision solely on the evidence and testimony presented in this courtroom?

MS. BRASWELL: Yes.

THE COURT: Thank you, you'd remain with us. Please don't discuss anything you may have read or heard.

(Whereupon, the following takes place in open court.)

OFFICER: 83.

(Whereupon, an on-the-record bench conference was held with Juror Number 83, Cynthia B. Finney, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, ma'am.

MS. FINNEY: I just remember it from being on TV.

THE COURT: Okay.

MS. FINNEY: Not, not any details.

THE COURT: Have you formed an opinion ---

MS. FINNEY: No, ma'am.

THE COURT: --- in this case based on what you've heard?

MS. BRASEWLL: They were from out of town or something. It was on the beach.

THE COURT: Okay, have you formed an opinion about the guilt or innocence of the Defendant ---

MS. FINNEY: Huh-uh (negative response).

THE COURT: --- based on what you've heard?

MS. BRASWELL: I barely remember it.

THE COURT: Okay, have you -- can you set aside anything that you may have heard or seen, and base your decision solely on the evidence presented in this courtroom?

MS. FINNEY: Uh-huh (affirmative response).

THE COURT: You can do that?

MS. FINNEY: Uh-huh (affirmative response).

THE COURT: Any question about that?

COURT REPORTER: Is that a yes?

MS. FINNEY: It is a yes.

THE COURT: Okay.

MS. FINNEY: Yes, yes and yes.

THE COURT: Okay, all right, any question about your ability to do that?

MS. FINNEY: No question.

THE COURT: Okay, you remain with us. Thank you, thank you, ma'am, don't discuss anything you may have heard.

(Whereupon, the following takes place in open court.)

OFFICER: 221.

(Whereupon, an on-the-record bench conference was held with Juror Number 221, Judith A. Rowe, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

MS. ROWE: Hi.

THE COURT: Would you just share with us what you may have heard or seen about this?

MS. ROWE: Just general broadcast on the radio, news.

THE COURT: Have you formed an opinion as a result of what you've heard or seen?

MS. ROWE: No.

THE COURT: Can you set aside any of the information that you may have heard and base your decision solely on the evidence presented in this courtroom?

MS. ROWE: Uh-huh (affirmative response).

THE COURT: Thank you, ma'am. Please don't discuss what you may have heard.

(Whereupon, the following takes place in open court.)

OFFICER: 126.

(Whereupon, an on-the-record bench conference was held with Juror Number 126, Cheryl M. Hodges, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, ma'am, would you share with us what you may have seen or heard?

MS. HODGES: Just newspaper, television and radio, just things and just you want whenever -- when it first happened and they were talking about he and his wife were on vacation and a man ---

THE COURT: Okay.

MS. HODGES: --- came out on the beach and murdered him and then they found it was her boyfriend ---

THE COURT: Okay.

MS. HODGES: --- and then they were like involved in his murder, like they planned it. It was just horrible.

THE COURT: All right, now, those are all things that you've heard.

MS. HODGES: Right.

THE COURT: Have you formed an opinion as a result of what you heard?

MS. HODGES: No, no. Really, I mean, I wasn't there.

THE COURT: And can you set aside all of that and base your decision solely on the evidence and testimony presented

in this courtroom? Are you saying yes you can?

MS. HODGES: Well, I feel I can.

THE COURT: Okay, now, I need to know for sure.

MS. HODGES: Yes.

THE COURT: All right, thank you, ma'am, don't discuss anything you may have heard with any other juror. Thank you. You can remain with us.

(Whereupon, the following takes place in open court.)

OFFICER: 87.

(Whereupon, an on-the-record bench conference was held with Juror Number 87, Debra Gossett Foley, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: If you would share with us what you may have seen or heard.

MS. FOLEY: This was just from what I've seen in the newspaper and on radio. It was a murder on the beach, husband and wife, and the husband was killed. It was up in 82nd Avenue area, someplace like that.

THE COURT: Have you formed an opinion as a result of what you've heard?

MS. FOLEY: No, not really.

THE COURT: Okay, can you set aside all that you've heard and base your decision solely on the evidence and testimony presented in this courtroom?

MS. FOLEY: Yes, considering what I heard was just newspaper related information I believe I can.

THE COURT: All right, I need to know for sure. Can you set that aside?

MS. FOLEY: Yes.

THE COURT: All right, you can remain with us. Thank you, ma'am. Don't discuss anything you may have heard with any fellow juror.

MS. FOLEY: Okay.

THE COURT: Thank you.

(Whereupon, the following takes place in open court.)

OFFICER: Number 3.

(Whereupon, an on-the-record bench conference was held with Juror Number 3, Darrell K. Allman, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Hi.

MR. ALLMAN: I just remember the name. I mean, the case specifically I don't remember any details, but I just remember the name, it being on the news and the newspapers and all with the case, something about some out of town people, a connection with the lady there had someone kill the person who she was with or something, I'm thinking.

THE COURT: All right, let me, let me ask you this.

MR. ALLMAN: Okay.

THE COURT: Have you formed an opinion in this matter?

MR. ALLMAN: I don't remember nothing about it, no, ma'am, I don't have an opinion.

THE COURT: Okay, can you set aside all of that information that you've heard and received? Can you set that all aside ---

MR. ALLMAN: Yes, ma'am.

THE COURT: --- base your decision solely on the evidence presented in this courtroom?

MR. ALLMAN: Yes.

THE COURT: Thank you, sir. You'll remain with us.

(Whereupon, the following takes place in open court.)

OFFICER: 205.

(Whereupon, an on-the-record bench conference was held with Juror Number 205, Calhoun Rabon, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Hello, would you share with us what you may have heard or seen?

MR. RABON: What I heard was on the news, radio. I don't -- and the facts I know nothing about.

THE COURT: Have you formed an opinion as a result of

what you've heard or seen?

MR. RABON: I don't know enough about it to form an opinion.

THE COURT: Okay, all right, can you set aside anything you may have heard or seen and base your decision solely on the evidence presented in this courtroom?

MR. RABON: Certainly.

THE COURT: Thank you, you may remain with us.

MR. RABON: Thank you.

(Whereupon, an on-the-record bench conference was held with counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Now, are there any additional requests desired of these individuals who I have indicated could remain because I'll be glad to call them forward?

MR. MARTIN: Well, yes, well, here's what I'd like to do at least, I'd like for you to ask again now, let me ask the panel one more time is there any besides those who have come forward ---

THE COURT: Okay.

MR. MARTIN: --- who have upon reflection heard or know something about the case, so see if there's any more.

THE COURT: Okay.

MR. MARTIN: Then ---

THE COURT: About these individuals?

MR. MARTIN: Well, well, I mean, besides those who didn't come forward. I wouldn't think so because they kept coming. I guess they're -- my question is ---

THE COURT: I'll ask again, that's fine.

MR. MARTIN: Then as to these, I would -- well, I may ---

THE COURT: I'm going to ask them all if they can be fair and impartial in the case. That was the only other question that I would have asked but I realize I'm asking all of them as a group, too.

MR. MARTIN: I think what I would ask to do is we're going to leave these on the panel, have very limited individual voir dire of those.

THE COURT: They've all indicated. If you have a specific question you'd like the Court to ask I'll be glad to do that, but they have all indicated they could set aside anything they may have heard and base their decision solely on the evidence and testimony and they all indicated that they had not formed an opinion in the case.

MR. MARTIN: They did. I agree with that.

THE COURT: Give it some thought, if there's something else.

MR. MARTIN: Yeah, yeah, let me give it some thought and see.

THE COURT: Okay, all right.

(Whereupon, the following takes place in open court.)

THE COURT: Let me ask you all one more time, upon reflection is there any member of the jury panel who has not already come forward who may have seen or read or heard anything regarding this case, if you would come forward at this time, you may do so.

(No response.)

THE COURT: Ladies and gentlemen of the jury, one of the rules of law in the State f South Carolina and in this nation is that a Defendant is presumed innocent until his guilt has been proven beyond a reasonable doubt. That is the burden of proof. Is there any member of the jury panel who feels that they could not apply that law, it will be charged by the Court and you'll be under oath to do so, who feels that they could not follow that, that law, if so, please stand.

(No response.)

THE COURT: At this time I'm going to have the attorneys introduce themselves. We'll begin with the attorneys for the State and then we'll go to the attorneys for the Defendant. We'll begin at this time. Yes, sir.

MR. HEMBREE: Thank you, Your Honor.

I'm Greg Hembree. I'm the Solicitor for the Fifteenth Judicial Circuit, which includes both Horry and Georgetown

Counties. I'll be trying this case with Deputy Solicitor Fran Humphries. I'll introduce him at this time.

THE COURT: All right, thank you. Yes, sir.

MR. MARTIN: My name is Morgan Martin. I practice law here in Horry County. My law partner, Tommy Brittain ---

MR. BRITTAIN: Good morning.

MR. MARTIN: ---- is here with me and another law partner, Tasha Hanna.

THE COURT: Is there any member of the jury panel who is related by blood or marriage or friends or business acquaintances with any of these attorneys or who has been represented by any of these attorneys or who has been on the other side of a case in which one of the attorneys represented the opposing party? If so, please stand.

All right, your juror?

MR. ALLMAN: Number 3.

THE COURT: You know, rather than have you holler out I'll have you come forward once again. I should just stay down there.

(Whereupon, an on-the-record bench conference was held with Juror Number 3, Darrell K. Allman, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: Yes, sir.

MR. ALLMAN: Friends with Greg Hembree.
THE COURT: Okay, your juror number again?
MR. ALLMAN: Number 3.
THE COURT: Okay, all right, is that going to effect your ability to be fair and impartial to both the Defendant and the State in this case?
MR. ALLMAN: No, ma'am; no, ma'am.
THE COURT: When you say you're friends with the Solicitor ---
MR. ALLMAN: Yes, ma'am.
THE COURT: --- in this in the matter do you socialize with him? Are you ---
MR. ALLMAN: Very rarely, but I do see him on a ---
THE COURT: But you do socialize?
MR. ALLMAN: Yes, ma'am.
THE COURT: Okay, I'm going to excuse you then from serving in this particular case.
MR. ALLMAN: Okay.
THE COURT: Okay.
MR. ALLMAN: All right.
(Whereupon, the following takes place in open court.)
OFFICER: 135.
(Whereupon, an on-the-record bench conference was held with Juror Number 135, Kathy C. Jenkins, counsel for the State and counsel for the Defendant in the presence but out of the

hearing of the jury venire.)

THE COURT: Yes, ma'am.

MS. JENKINS: I know Mr. Brittain from church.

THE COURT: Okay, and let me ask you, you all go to the same church. Do you socialize? Are you in the same Sunday school class, that type of thing?

MS. JENKINS: He's -- he was my Sunday school teacher until I started teaching kids.

THE COURT: Okay, I'm going to excuse you from this particular case. Just remain with us and I'll give you further instructions.

(Whereupon, the following takes place in open court.)

THE COURT: All right, at this time I will ask you to listen very carefully. There is going to be a list of potential witnesses. These are witnesses who may be called in the trial of the case. Listen carefully. I'll be asking you about these individuals.

Yes, sir.

MR. HEMBREE: You want me to call them out?

THE COURT: Just go ahead and call them out if you would, please. Listen carefully, ladies and gentlemen.

MR. HEMBREE: Calvin Harris; Kahle Schettler; Detective Mike Rowe, with the Winston-Salem Police Department; Special Agent Kent Robey; Mark Hobbs; Donna Hobbs; Todd Fain; Kimberly Black; Special Agent David Collins with the Richland County

Sheriff's Office; Crystal Pedersen; Thomas Pedersen; Bruce Wolford; Jim Bollow; Scott Brown; Captain Bill Frontz with the Myrtle Beach Police Department; Officer Darrell Mills, Winston-Salem Police Department; Special Agent James Bowman, North Carolina Bureau of Investigation; Special Agent H.G. Pendergrass, North Carolina Bureau of Investigation; Kimberly Poole; Dawn Abdulmani; Carolyn Murphy; Sergeant John King, Conway Police Department; Dr. Edward L. Proctor, Jr.; Officer David Blubaugh; Howard Sirles; Detective David Grazioso, Myrtle Beach Police Department; Karole Jensen; and Officer L.D. Aiossa, Myrtle Beach Police Department.

THE COURT: Is there any member of the jury panel who is related by blood or marriage or business or personal acquaintance with any of these potential witnesses? If so, please stand.

All right, yes, sir, your juror number?

MR. HICKS: 305.

THE COURT: All right, let me have you come forward, please.

Have you been excused in this matter?

MR. HICKS: Uh-huh (affirmative response).

All right, that's fine.

You're excused in this particular case.

Anyone else?

(No response.)

THE COURT: Let me turn to the Defense now. I have not introduced the Defendant, Mr. John Boyd Frazier. Mr. Frazier, if you would please stand, face the jury panel.

(Complies with request.)

THE COURT: This is Mr. John Boyd Frazier. Is there any member of the jury panel who is related by blood or marriage or friends or business acquaintances with Mr. Frazier; if so, please stand. Mr. Frazier, you may be seated.

Anyone in addition to list at this time?

MR. MARTIN: We have a potential jury list if you would like for us to call it out.

THE COURT: Yes, please.

MR. MARTIN: Our list is in the other courtroom, but I believe that I know the majority.

THE COURT: All right, listen, ladies and gentlemen of the jury, to this. These are the potential witnesses, the individuals who may be called in the trial of this matter.

Yes, sir.

MR. MARTIN: Christine Michelotti from Winston-Salem, North Carolina; Scott Michelotti from Winston-Salem ---

MR. BRITTAIN: Elizabeth Loftus.

MR. MARTIN: --- North Carolina, Elizabeth Loftus, who is from the State of Washington; Brian Cutler, who is from Charlotte, North Carolina; Sharon Haymaker from Richmond, Virginia; Terry Altman of the Myrtle Beach Police Department;

Richard Beaty, Myrtle Beach Police Department; Vince Sloan, Myrtle Beach Police Department; I believe ---

MR. BRITTAIN: And that's your video man.

MR. MARTIN: Donald Smith, Conway, South Carolina.

THE COURT: Is there any member of the jury panel who is related by blood or marriage or friends or business acquaintances with any of these potential witnesses; if so, please stand.

Okay. Yes, ma'am, your juror number?

MS. BARRY: 18.

THE COURT: All right, you may come forward.

(Whereupon, an on-the-record bench conference was held with Juror Number 18, Laura M. Barry, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

MS. BARRY: Okay, I knew one of the ones he just mentioned.

THE COURT: Who was that?

MS. BARRY: Terry Altman, I mean, I went to school with him. It's been a very long time. It was back in high school. So, I don't know if that would be ---

THE COURT: Is that in any way going to affect your ability to be fair and impartial to both the State and the Defendant in this case?

MS. BARRY: No.

THE COURT: Okay, she's indicated that she knows or she knew Terry Altman back, from back in school but it would not affect her ability to be fair and impartial. Your juror number again?

MS. BARRY: 18.

THE COURT: Number 18, thank you, ma'am.

MS. BARRY: Okay.

THE COURT: You'll remain with us.

(Whereupon, the following takes place in open court.)

THE COURT: Is there any member of the jury panel who is related by blood or marriage or close personal friends with any law enforcement personnel in South Carolina or in North Carolina? If you are related by blood or marriage or close personal friend with law enforcement in South Carolina or North Carolina, please stand.

All right, your juror number, ma'am?

MS. CLAYTON: 306.

THE COURT: And is it South Carolina or North Carolina?

MS. CLAYTON: South Carolina.

THE COURT: All right, and the relationship?

MS. CLAYTON: My son.

THE COURT: Your son is in law enforcement?

MS. CLAYTON: Yes.

THE COURT: All right, is that in any way going to

affect your ability to be fair and impartial to both the Defendant and the State in this case?

MS. CLAYTON: No.

THE COURT: All right, thank you, ma'am. Juror Number 306, yes, ma'am.

MS. BROWN: My grandson serves with the Myrtle Beach Police Department.

THE COURT: Your grandson, and your juror number?

MS. BROWN: 35.

THE COURT: 35, and is that in any way going to affect your ability to be fair and impartial to both the State and the Defendant in this case?

MS. BROWN: No, ma'am.

THE COURT: Thank you, ma'am. Is there anyone else? Yes, sir, your juror number?

MR. EDGE: 76.

THE COURT: All right, and the relationship?

MR. HUMPHRIES: He's been excused.

MR. BRITTAIN: Been excused.

THE CLERK: He's already been excused.

THE COURT: He's excused, okay.

THE CLERK: From this case.

THE COURT: If you've been excused on this case you needn't answer any of the other questions that I ask. Thank you.

Is there any member of the jury panel who is related by blood or marriage or close personal friend with anyone in the Solicitor's Office? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has either themselves or a close family member been a victim of a crime, a violent crime. If you have been a victim of a violent crime, either personally or a family member, please stand.

All right, and your Juror Number?

MR. SHERMAN: 232.

THE COURT: And your Juror Number?

MR. LALE: 150.

THE COURT: All right, to Juror Number 232, was it yourself or a family member?

MR. SHERMAN: My son.

THE COURT: Okay, and 150, was it yourself or a family member?

MR. LALE: Myself and my wife.

THE COURT: Okay, now, if that is going to affect your ability to be fair and impartial in this case remain standing.

(Both jurors are seated.)

THE COURT: Okay, the indication is that they can be fair and impartial.

Is there any member of the jury panel who has served in a

criminal case, on a criminal jury in the past? If you have served in General Sessions or a criminal jury in the past please stand.

All right, and yes, sir, your juror number?

MR. SANDERS: 228.

THE COURT: All right, all right, and sir, is that going to affect your ability to be fair and impartial in the trial of this case?

MR. SANDERS: No.

THE COURT: Thank you. If you'd remain with us and, yes, sir.

MR. HARDWICK: 114.

THE COURT: 114?

All right, and will that in any way effect your ability to be fair and impartial?

MR. HARDWICK: No.

THE COURT: Thank you. If you'd remain with us.

Is there any member of the jury panel who has formed or expressed an opinion as to the guilt or innocence of this Defendant? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is aware or conscious of any bias or prejudice for or against the State or for or against the Defendant? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who for any reason whatsoever feels that they could not be fair and impartial to both the Defendant and the State? If so, please stand.

(No response.)

THE COURT: Are there any additional requests, anything from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: No, Your Honor, there was one other witness that a statement by stipulation has been agreed on and his name would be Jerry Webster, the State Bureau of Investigation in North Carolina.

THE COURT: Is there any member of the jury panel who is related by blood or marriage or close personal friends with this witness: if so, please stand.

(No response.)

THE COURT: All right, very good.

Once again, any further requests?

MR. HEMBREE: None from the State, Your Honor.

MR. MARTIN: None from the Defense, Your Honor.

THE COURT: Very good. As you hear your name and number called, ladies and gentlemen of the jury, if you would please bring your personal belongings with you and come over here and have -- just stand right here. Your back will be to

me. You'll be standing between the table for the State and the table for the Defendant. Remain standing here until we have you either have a seat in the jury box or ask you to return to your seat. We'll call you one by one. As you hear your name and number, once again bring your personal belongings with you. We'll begin the process.

Madam Clerk.

THE CLERK: Thank you.

104, Lory Griffin. Please stand right in ---

THE COURT: Come over more towards the middle. You're going to show us all how to do it. Very good, standing right there just remain standing until we give you further instructions.

THE CLERK: What says the State?

MR. HEMBREE: Please excuse Mr. Griffin from this trial.

THE CLERK: You're excused on this case.

This is Number 39 who was excused from this case already.

THE COURT: All right.

THE CLERK: 240, Myrna Smith.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury venire.)

THE COURT: Ma'am, Juror Number 240, may I speak to you just one second, please?

MS. SMITH: Yes.

(Whereupon, an on-the-record bench conference was held

with Juror Number 240, Myrna Smith, counsel for the State and counsel for the Defendant in the presence but out of the hearing of the jury venire.)

THE COURT: There's an indication that you know Natasha.

MS. SMITH: I met her on a trip once. I don't know her personally.

THE COURT: Okay, let me ask you, she just felt obligated to reveal that.

MS. SMITH: Right.

THE COURT: I think that your husbands knew each other.

MS. SMITH: Right.

THE COURT: Okay, is that in any way going to affect your ability to be fair and impartial to both the State and to the Defendant?

MS. SMITH: No.

THE COURT: Okay, thank you, ma'am.

(The following takes place in open court.)

THE COURT: The juror has been questioned. If you would go stand where you were we will continue in the process.

MS. SMITH: Okay.

THE CLERK: Would you like for me to continue?

THE COURT: Yes.

THE CLERK: Thank you. What says ---

THE COURT: That's right. Go ahead.
THE CLERK: Okay. What says the State?
MR. HEMBREE: Please present Ms. Smith.
THE CLERK: The Defense?
MR. MARTIN: Excuse the juror on this particular case.
THE CLERK: You're excused on this case.
255, June Lee Tarangelo. What says the State?
MR. HEMBREE: Please present Ms. Tarangelo.
THE CLERK: The Defense?
MR. MARTIN: Swear Ms. Tarangelo.
THE CLERK: Please have a seat in the jury box.
261, Sean Torrens.
MR. MARTIN: Number again?
THE CLERK: 261.
What says the State?
MR. HEMBREE: Please present Mr. Torrens.
THE CLERK: The Defense?
MR. MARTIN: We'd excuse Mr. Torrens on this particular case.
THE CLERK: You're excused on this case.
93, Robert Genitsky.
What says the State?
MR. HEMBREE: Please excuse Mr. Genitsky on this trial.
THE CLERK: You're excused on this case.
7, Michael Arnold.

MR. BRITTAIN: What was the number there?
THE CLERK: 7.
What says the State?
MR. HEMBREE: Please present Mr. Arnold.
THE CLERK: The Defense?
MR. MARTIN: We'd excuse Mr. Arnold on this particular trial.
THE CLERK: You're excused on this case.
179, Joseph Nappi.
What says the State?
MR. HEMBREE: Please present Mr. Nappi.
THE CLERK: The Defense?
MR. MARTIN: Swear Mr. Nappi.
THE CLERK: Have a seat in the jury box, please.
277, Beverly Webb.
What says the State?
MR. HEMBREE: Please present Ms. Webb.
THE CLERK: The Defense?
MR. MARTIN: We'd excuse Ms. Webb on this particular case.
THE CLERK: You're excused on this case.
235, Jaymen Singleton.
What says the State?
MR. HEMBREE: Please present Mr. Singleton.
THE CLERK: The Defense?

MR. MARTIN: Swear Mr. Singleton.
THE CLERK: Please have a seat in the jury box.
205, Calhoun Rabon.
What says the State?
MR. HEMBREE: Please present Mr. Rabon.
THE CLERK: Defense?
MR. MARTIN: We'd excuse Mr. Rabon on this particular trial.
THE CLERK: You're excused on this case.
This is 276 that was excused by the Court on this case.
This was 11 that you excused, a juror you excused, transferred to later after we had already put them in the box.
166, Nora McDowell.
What says the State?
MR. HEMBREE: Please present Mrs. McDowell.
THE CLERK: The Defense?
MR. MARTIN: Swear Ms. McDowell.
THE CLERK: Please have a seat in the jury box.
This is 196 that the Court had excused on this case.
228, James Sanders.
What says the State?
MR. HEMBREE: Please present Mr. Sanders.
THE CLERK: The Defense?
MR. MARTIN: Excuse Mr. Sanders on this particular trial.

THE CLERK: You're excused on this case.
195, Michael Peter.
What says the State?
MR. HEMBREE: Please present Mr. Peter.
THE CLERK: The Defense?
MR. MARTIN: Swear Mr. Peter.
THE CLERK: Please have a seat in the jury box.
306, Jennie Clayton.
What says the State?
MR. HEMBREE: Please present Ms. Clayton.
THE CLERK: The Defense?
MR. MARTIN: We'd excuse Ms. Clayton on this particular trial.
THE CLERK: You're excused on this case.
201, Francis Provencher.
What says the State?
MR. HEMBREE: Please present Mr. Provencher.
THE CLERK: The Defense?
MR. MARTIN: Swear Mr. Provencher.
THE CLERK: Have a seat in the jury box, please.
208, James Randall.
What says the State?
MR. HEMBREE: Please present Mr. Randall.
THE CLERK: The Defense?
MR. MARTIN: Swear Mr. Randall.

THE CLERK: Have a seat in the jury box, please.
232, Larry Sherman.
What says the State?
MR. HEMBREE: Please present Mr. Sherman.
THE CLERK: Defense?
MR. BRITTAIN: Could you give me that number again, please, Madam Clerk?
THE CLERK: 232.
MR. MARTIN: Excuse the juror on this particular case.
THE CLERK: You're excused on this case.
135, excused by the Court on this case.
207, Stephen Rainey.
What says the State?
MR. HEMBREE: Please present Mr. Rainey.
THE CLERK: Defense?
MR. MARTIN: Swear him.
THE CLERK: Have a seat in the jury box, please.
This is 271 excused by the Court on this case.
81, Meredith Exum.
What says the State?
MR. HEMBREE: Please excuse Ms. Exum from the trial of this case.
THE CLERK: You're excused on this case.
123, Crystal Hoback.
What says the State?

MR. HEMBREE: Please present Ms. Hoback.
THE CLERK: Defense?
MR. MARTIN: Swear Ms. Hoback.
THE CLERK: Have a seat in the jury box, please.
150, Erol Lale.
What says the State?
MR. HEMBREE: Please present Dr. Lale.
THE CLERK: The Defense?
THE COURT: What say the Defense?
MR. MARTIN: We'll excuse the good doctor.
THE CLERK: You're excused on this case.
245, Clayton Sperry.
What says the State?
MR. HEMBREE: Please present Mr. Sperry.
THE CLERK: The Defense?
MR. MARTIN: Swear Mr. Sperry.
THE CLERK: Have a seat in the jury box, please.
18, Laura Barry.
What says the State?
MR. HEMBREE: Please present Ms. Barry.
THE CLERK: The Defense?
MR. MARTIN: Swear Ms. Barry.
THE CLERK: Have a seat in the jury box, please.
Number 3 that the Court excused on this case.
108, Tracy Hammond.

What says the State?

MR. HEMBREE: Please present Ms. Hammond.

THE CLERK: The Defense?

MR. MARTIN: Swear Ms. Hammond.

THE CLERK: Have a seat in the jury box, please.

THE COURT: Is that 12?

THE CLERK: Ready for your alternates?

THE COURT: As to the alternate.

THE CLERK: Alternate One, 309, Gwen Futch.

What says the State?

MR. HEMBREE: Please present Ms. Futch.

THE CLERK: The Defense?

MR. MARTIN: We'd excuse her on this particular trial.

THE CLERK: You're excused on this case.

This is 76 the Court excused on this case.

THE COURT: All right.

THE CLERK: 114, Billy Hardwick.

What says the State?

MR. HEMBREE: Please present Mr. Hardwick.

THE CLERK: The Defense?

MR. MARTIN: Swear Mr. Hardwick.

THE CLERK: Have a seat in the jury box, please.

THE COURT: Alternate Two.

THE CLERK: 44, John Canapari.

Help me with your last name a little bit.

MR. CANAPARI: Canapari.
THE CLERK: Canapari, thank you very much.
THE COURT: What was the number again, Madam Clerk?
THE CLERK: 44.
THE COURT: Thank you.
THE CLERK: What says the State?
MR. HEMBREE: Please present Mr. Canapari.
THE CLERK: The Defense?
MR. MARTIN: We'd excuse the juror on this particular trial.
THE CLERK: You're excused on this case.
265, Teisha Tuftee.
What says the State?
MR. HEMBREE: Please present Ms. Tuftee.
THE CLERK: Defense?
MR. MARTIN: Swear Ms. Tuftee.
THE CLERK: Have a seat in the jury box, please.
THE COURT: Are there any motions in regard to this jury? Anything from the State?
MR. HEMBREE: No motions from the State, Your Honor.
THE COURT: Anything from the Defense?
MR. MARTIN: None from the Defense.
THE COURT: All right, very well. We have our jury in

place.

(Jury panel given instructions by Court and excused.)

THE COURT: For scheduling could I have you approach for just a moment, please?

(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)

THE COURT: Ladies and gentlemen, we understand that it is lunchtime. I want to give you some instructions before I release you to go to lunch, but counsel, I need to have you approach just to put something on the record very quickly before I release this jury for lunch.

(Whereupon, an on-the-record Bench conference was held in the presence, but out of the hearing, of the jury.)

THE COURT: That is there had been a motion to sequester the jury, all right, and I wanted to insure before I release this jury that that motion was being withdrawn. What's the status of that sequestration motion?

MR. MARTIN: I just as soon you just rule against me.

THE COURT: All right, under the circumstances sequestration was first even brought to the Court's attention last week on Monday. There was an indication at that time that sequestration might be sought. There have been no plans made under the circumstances to sequester this jury nor has SLED been called in as this is a murder, not a death penalty

case. There's no indication from this jury that they're not going to be able to follow the instructions; and so, what the Court is choosing to do under the circumstances is to admonish this jury very strictly about what they can and cannot do when they're out of the courthouse and out of our sight. That's the way it'll be handled. So, I have ruled against your sequestration.

(Whereupon, the following takes place in open court.)

THE COURT: All right, now, let me go ahead to the jury and tell you. There are some matters of law that we'll need to address. So, we're going to give you a longer lunch break. Trust me, we are not taking that long lunch break as well. We will be handling some matters of law. We don't need you back here until three o'clock and I'll in just a moment have the bailiff show you where it is that you're to arrive at three o'clock. In the meantime I need for you to understand some very important, these are very important instructions that you must follow. That is that you cannot read or listen to or watch anything that remotely resembles this case. Don't do any independent investigation. Don't talk with anyone about this case. Now, I have no reason to believe that it will be in the media but it could very well be in the media which means that you have to stay away from newspapers, the computer, the radio, all forms of that type of information and the reason for that is very simple, everything you need in

order to decide this case you're going to get in this courtroom under our rules of law and evidence and that's most important. Many times jurors are sequestered, meaning that they are put in hotel rooms for the evenings and those types of things to be sure that these rules are followed. I'm telling each one of you and will be asking you every time that I see you that we have parted, whether you have followed those instructions. It's going to be a difficult job for you to do but you can do it. That means staying away from the media. That means that tonight when you go home if you have a spouse or loved one, someone who can screen the paper for you or just don't even read the paper tomorrow, that means cutting off the TV tonight and staying away from any type of news or information in the media. Again, the reason for that is because everything that you'll need to decide in this case will come in this courtroom under our rules of law and evidence. The individuals here, you see the attorneys, they are normally very friendly, sociable people and would gladly carry on a conversation with you. They are directed at this point that they cannot. So, please don't misinterpret if you speak to anyone here if they are curt and just say hello, they are short with you, don't misinterpret that as being unfriendly. They are very friendly people, but they've been instructed by the Court not to have any discussions with the jurors. Any time that you are out about in the community, and

I hope you all have your buttons, I want you to wear your juror button and the reason for that is it puts everyone on notice that you're a juror and they won't be inadvertently discussing anything remotely resembling this case in your presence. It also puts the waitresses and wait staff and that type of thing on notice, too, anyone that may be out there not to discuss the case. They'll understand, too, that you may need quicker service. So, that juror button can be helpful in that way. It also allows the bailiffs to recognize you when you come up. They'll see that juror button and they'll bring you promptly into, back to that jury room.

Now, it's incumbent upon you that you follow these instructions very carefully. Are you going to be able to do that? Have I made myself clear on those instructions? All right, are there any additional requests, anything from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: Nothing further, Your Honor.

THE COURT: All right, very good. Have a good lunch. We will see you back. We're going to take you back to the jury room and that is where you are to arrive promptly at three o'clock and we'll see you then.

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

THE COURT: Let me go ahead and note for the record in regard to sequestration I will admonish the jury every time that they leave and then question every time that they return. I've gotten no indication from the answers that I received by way of voir dire today that we have a problem in that regard that would require sequestration. Anything from the State at this time?

MR. HEMBREE: And really going back to that issue, Your Honor, I think it's -- I just think it's important to note that unlike the first time this case was tried, in that instance there was a great deal of media attention. There had been another trial that had been just a few months held before this trial. So, it was fresh on the minds of a lot of folks in the community and I think that at that point in time there may have been more of a basis for sequestration, but that's just not been the case here. I think there's only been -- I've only seen one newspaper article that was just sort of a, not even a lengthy article leading up to this case basically just saying the case was going to be tried this week. It's just not been the same atmosphere out there in the media, so, the less likelihood that the jurors could be in any way tainted.

THE COURT: Yes, sir; yes, sir.

MR. MARTIN: Well, the fear that I have, Your Honor, from publicity is from what will come from this day forward.

I agree there hasn't been near the publicity this time there was the last time preceding the trial, but the publicity does come and the quality and content of that publicity could be extremely, extremely prejudicial. So, that was my concern. That was my worry, therefore, my request for the sequestration. Obviously it remains to be seen if the jury can follow the Court's orders, but it is, and again the publicity to come remains to be seen exactly what it would be. That was the basis for the motion.

THE COURT: That's understood and we can't anticipate in this case, but we will see, we will see what happens. Anything, anything that is in the paper, anything that you hear you can bring to the Court's attention, and once again I'll be questioning the jury very thoroughly every time we meet. Let's break for lunch.

MR. HUMPHRIES: Let me ask this.

THE COURT: One other matter? Certainly.

MR. HUMPHRIES: By way of planning so we can maximize our time once we get back.

THE COURT: Yes, sir.

MR. HUMPHRIES: How, how we intend to take up the issues and what issues we intend to take up so we can be prepared to provide you with what you need.

THE COURT: All right.

MR. HUMPHRIES: As I understand it -- well, I will tell

you that the State's first witness, from that witness we intend to elicit a statement of the co-conspirator, and we will need to address that issue prior to the arguments, opening arguments and the presentation of witnesses.

THE COURT: Well, I would also need to have a hearing in regard to availability, which I understand can't happen until in the morning.

MR. MARTIN: Well, let me say ---

MR. HUMPHRIES: Go ahead.

MR. MARTIN: Well ---

MR. HUMPHRIES: Let me say this, I am, I am confident -- we have been advised by Ms. Poole's attorney that she will not -- she will assert her Fifth Amendment privilege and will not testify. That, I believe, has been communicated to the Defense as well. What I propose is that we stipulate to that knowledge at this time, but we will have Ms. Poole here to place on the record Tuesday morning her assertion of that privilege. I believe that allows us at least to address the issues in argument.

THE COURT: I'm comfortable with you addressing the issues in argument. I am not comfortable with going ahead and taking the testimony until after we have made that determination that she is unavailable.

MR. MARTIN: And I would -- and let me say this, Judge. One of the motions that we've got to take up has to do with

the order. I have an objection as to Officer Brown the first witness irregardless of your ruling as to whether or not he can testify to the statements made to him based on the need to establish the conspiracy prior to putting in statements. I think -- I don't want to argue the motion now. I'm just saying that that is to be considered as well in terms of who they call as their first witness in the presentation or getting the witnesses ready that he would like to do. I will say this, it may be relevant to it, as to the motion to sequester witnesses, except for the Hobbses, they are the only two that I would request be sequestered. The rest of them they can bring them in the courtroom.

MR. HUMPHRIES: Thank you.

THE COURT: You stipulate to that? Is that ---

MR. HUMPHRIES: Yes.

THE COURT: You agree to that?

MR. HUMPHRIES: I've got no problem with that.

THE COURT: Okay, very good.

MR. HUMPHRIES: Then for the purposes of the hearing at 1:30 we will be prepared not only to proffer the evidence which would support conspiracy separate and apart from the statement but then would also be prepared to argue about whether or not it should be allowed prior to the establishment before the jury, and then we'll be prepared to argue the Crawford issue regarding the two statements both of Brown,

Officer Brown, and John King, and I believe that will at least get us to the point that we can start the trial of the case and take up -- well, we can -- I think we can -- we have stipulated although not on the record yet. There is a witness, Harold Sirles, who testified in the last case, the last John Frazier case who was subject to cross examination at that time. Mr. Sirles just by way of explanation is an elderly man who has a vacation home here at the beach. He is the gentleman who found the wallet of the victim in this case in his yard some two weeks after the incident, and he testified. He has just recently had a stroke and we have been advised and I don't know if we have the records yet but we're going to be supplied with the records from his doctor indicating that he is not well enough to travel. We advised the defense of that and they've indicated they aren't going to have any objection to his being determined unavailable for those purposes and that his prior testimony would be admitted.

THE COURT: Is that correct?

MR. MARTIN: That is correct. I would like to make his records a part ---

MR. HUMPHRIES: Sure.

MR. MARTIN: --- the medical records a part of this record at some time prior ---

MR. HUMPHRIES: Sure.

MR. MARTIN: --- to the closure of the trial but we have no objection and agree that he appears to be unavailable.

THE COURT: All right.

MR. HUMPHRIES: And the only other outstanding issue is that we probably need to get back a few minutes early with the court reporter. We have all of the exhibits already in courtroom number 3 or E, I guess it's letter E.

MR. MARTIN: E.

MR. HUMPHRIES: In any event it's 3E, and we've got a list of exhibits already prepared for the court reporter so she doesn't have to create her own. We just need to actually put the stickers on those exhibits and by and large we are stipulating to the introduction of exhibits both for the State and the Defense. So, there shouldn't be any great uproar over that.

THE COURT: All right.

MR. HUMPHRIES: We just need a few minutes to do that before we get started.

THE COURT: That's fine. What would be helpful to the Court is if I could have the statement.

MR. HUMPHRIES: No, no problem.

THE COURT: If that could be provided.

MR. MARTIN: We can get, we can get that for you.

THE COURT: All right, very good, well, we'll see you back at 1:30.

MR. HUMPHRIES: I'll have the statement delivered to your chambers.

THE COURT: Thank you.

*****OFF THE RECORD*****

(On the record.)

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

THE COURT: All right, yes.

MR. HUMPHRIES: We as a housekeeping matter can we go through the exhibits. I believe there are only -- I believe there's only one exhibit that there is an objection to and I'm referring to State's 26 and it may not matter as an end result but in any event just for the record, State's 26 is, of course, now for identification purposes and I understand there is an objection by the Defense regarding its admission. This is an interview tape of Kimberly Renee Poole by John King.

THE COURT: All right.

MR. HUMPHRIES: And as to all the other items, that is State's One through State's 43 that there is no objection to their introduction.

THE COURT: Is that correct?

MR. MARTIN: That's correct. I'm assuming it's the

same thing we went over the other day.

MR. MARTIN: Yes.

THE COURT: All right.

MR. HUMPHRIES: In regard to the -- have you all got you all's?

MR. MARTIN: Yes, Defendant's exhibits, what are the numbers? 1 through what, 1 through 25.

MR. HUMPHRIES: And I think -- what are we fussing about?

This is as to Defendant's Exhibit 19B that is now for identification purposes, there is an objection from the State as to 19B, and as to Defendant's Four, Three and Four there will be no objection as to those exhibits, but there will be an additional stipulation which we've not yet entered into regarding the number of choices or options that the identification witnesses would have had in attempting to complete the composite photograph, and we'll have that written stipulation for the Court ---

THE COURT: All right.

MR. HUMPHRIES: --- but beyond that there is no objection from the State regarding evidence submitted by the Defense.

THE COURT: All right, now I will be glad to hear motions.

MR. MARTIN: Judge, do you have an order that you want

to take the motions up in?

THE COURT: No, no preference.

MR. MARTIN: Okay.

THE COURT: You had indicated that there were two motions that you specifically wanted to address, at least the State did at this time, those being the statements of Ms. Poole, one being to the officer at the scene and one being interview some three hours later.

MR. HEMBREE: Your Honor, what the -- and even though Mr. Martin is the moving party as to the statements he has raised a Crawford issue, and I think we may be able to -- we may or may not be able to resolve this whole thing on the Crawford issue but I believe that it warrants argument first before we, you know, go to the next stage and kind of slug it out about what's a statement in furtherance of a conspiracy and when it can go in and those kind of details because the issue I think is -- I'm just going to kind of cut to the chase. I think under Crawford there's no question that the statement that Renee Poole gave to John King was given in a law enforcement setting. It was in response to his questions. I think that under Crawford and although -- well, and under just about any case that has interpreted Crawford a statement to law-enforcement in that setting would be ccnsidered testimony.

THE COURT: I agree.

MR. HEMBREE: Now, that being said, the Brown statement may be a little bit different because it's not quite as formal.

THE COURT: I'll be glad to hear argument on that. I've had a chance to look at the statement and I frankly read the information that has been provided but I'll be glad to hear argument and deal with that at this point.

MR. MARTIN: Well, let me, let me say then, Judge, since I am the moving party that I would, certainly the motion is that the statement made to Brown on the beach is also excluded by the Crawford case and the cases which have interpreted that. I would like to hand up to the Court and I will get a copy to the Solicitor of an analysis which I think is relevant to the Court's determination of Crawford on this case, on this particular statement as to Brown. Crawford requires, Judge, that any statement that is testimonial in nature not be admitted unless, number one, the declarant is unavailable. That may be the situation here, and number two, of prime importance in this instance that there was a proper opportunity for cross-examination. There is no question about what Crawford does there. The question then becomes how do you define testimonial in nature.

Crawford said we're not going to exactly -- we're not going to do that in every instance here today. They lay out four categories in which they say under anybody's theory of

what could be testimonial they would include prior testimony at a preliminary hearing, testimony before a grand jury, testimony before a former trial and police interrogations.

In the body of that case they went on to say, ``Testimonial is defined as a solemn declaration or affirmation made for the purposes of establishing some or proving some fact, that they are statements made to agents of the state or the government, an accuser who makes a formal statement to the government officer bears testimony, in a sense that a person who makes a casual remark to an acquaintance does not.'' They go on to say that statements that were made under circumstances that would lead an objective witness to reasonably believe that the statement would be available for use at a later trial is testimonial in nature. They go on to say, and these are quotes directly out of Crawford, ``Involvement of government officers in the production of testimony with an eye towards trial presents unique potential for prosecutorial abuse, a fact borne out time and again throughout history with which the framers were keenly aware. This consideration does not evaporate when testimony happens to fall within some broad modern hearsay exception, even if that exception might be justifiable in other circumstances.''

They went on to say in Crawford that there is three

formulations of this core of testimonial statements. They include, number one, ex parte in-court testimony or its functional equivalent, material such as affidavits, custodial examinations, prior testimony -- I don't think that applies here, but then they go on to say extra-judicial statements contained in formalized materials, contained in formalized testimonial materials such as affidavits, depositions, prior testimony, confessions, and I would submit in this instance incident reports. They go on to say again that statements that were made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

In this case with regards to the statements of Brown or of Ms. Poole to Officer Brown, I believe there's no doubt that under the reasoning of Crawford it is testimonial in nature. Specifically, this was a statement given to a police officer, a government agent. It was in response to questioning. It was during an investigatory state with an eye towards trial testimony. It was used to establish facts. That's the reason we're having this motion today. It was not a casual remark made to an acquaintance. It was an extra-judicial statement contained in an incident report, thus formalized testimonial material. Lopez versus State is a case from Florida which was decided in the State versus Davis litany of cases, but it's very much on point with where we are here, as are other cases,

Lopez states that, ``A startled person who identifies a suspect in a statement made to a police officer at the scene of a crime surely knows that the statement is in the form of an accusation that will be used against the suspect. In this situation the statement does not lose its character as testimonial in nature merely because the declarant was excited at the time it was made.`` Now pull up Officers Brown's testimony from the last trial if you can find that. I believe, Judge, is that on your screen up there?

THE COURT: Yes, I have that as well.

MR. MARTIN: All right, just to lay the background, what happened in this case according to the prior testimony, and we do have the privilege of having prior testimony, is that Officer Brown was patrolling the beach. He's driving down the beach. He runs into Ms. Poole, and his testimony is that he slows down, rolls down his window, asks her what happened. She says her husband had been shot. He says, ``That wasn't really what I was expecting to hear, so I asked her again, and she said her husband had shot,'' and condensing it somewhat, ``Where.'' She points here. He gets out. They go over. He confirms that there has been a shooting, that there's a victim on the beach. He observes the situation. He then takes Ms. Poole and goes back to his patrol vehicle, and according to him has her sit in there. He gets on the radio and radios the police department to tell them what he's got

and to send someone to him. He then says that he asked her and I think this should be on the page that we have before you. It says, ``I immediately asked her what the suspect looked like.'' That's down at line 15. ``I asked her'', it was a questioning, ``and then she says that suspect had on all black and a ski mask and I am relaying this on the radio as I am getting it, and then she keeps on talking and gives more details about what happened, `We've been robbed.' She made a gesture with both hands,'' and of course, you can read it from there, but Judge, the relevant part of that is the fact that this was a police questioning.

Now, in Crawford they said, you know, they -- that they again had left open to some degree interrogations. Under Rhode Island versus Innis, of course, interrogations is anything that elicits a response. In this instance, in this instance I think that the core credentials required in Crawford are present. This was an investigation going on. He had observed the crime scene. He had called it in. He had her sitting there, and he begins to ask those most relative probative questions which you could not expect to end up anywhere other than in a courtroom one day. ``What did the shooter look like,'' and she responded in a fashion that the State says is true, true, at the very time the shooter would have been in Myrtle Beach apparently trying to make his escape. She knows there's an investigation going on. She's

sitting in the police car. He's calling in information to the station, and she's asking -- answering questions in a truthful manner other than they say, you know, that he didn't -- she didn't identify Frazier and that she knew who it was, they're assuming that at least, but she's given testimony just as they are attempting to enter it as testimony in this courtroom today. So, police interrogation, does it fit under that category as defined in Crawford, yes. There's no question about it. I would agree with my Solicitor that the later statement to John King, as he has so ably stated, that there's no question about that, but if you read the cases, if you read Crawford and the language in it, the evils that it intended to prevent and that was the conviction of a person on un-confronted, unquestioned, un-cross-examined testimony on the most critical issue, that is describe the shooter. There's no question then that that is an evil that the Court would attempt or would intend to be protected by the confrontation clause of the constitution.

In this instance, again, I went down those lists but it is clear that this case, that those statements, as well as the one to King are testimonial in nature, thus they'd be excluded regardless of any state court rules of evidence that otherwise may be exceptions and thus make it admissible, and we would ask that the Court exclude those statements at this time.

THE COURT: Yes, sir.

MR. HEMBREE: May it please the Court, Your Honor. There are certain aspects of Mr. Martin's argument that I would agree with, but there is one point that he made that I think is, I would strongly disagree with and that would be this, that the State offers this testimony as the truth because that is the very aspect of this testimony that makes it admissible and makes it non-testimonial. In the line of cases that has developed interpreting Crawford and I think we can all agree that Crawford is new law and we're all kind of groping in the dark a little bit trying to figure out what is going to be testimony and what's not going to be testimony and the United States Supreme Court sort of threw that out there and said, ``Good luck, boys and girls, figure this one out,'' but one of the things that consistently comes up in the cases that interpret what is testimonial and non-testimonial is that the witness giving the statement intends or has reason to believe or should believe that this is going to be a statement that will be introduced at a trial later. Otherwise, it's not testimonial. The comment made to the friend as you're walking down the street, the -- those kinds of statements and the only case we have in South Carolina interpreting that is Davis. Davis was found to be non-testimonial because it was a statement by one person about a Defendant to another person. It was not in a police setting. So, that -- it wasn't reasonable to believe that that person was going to have to

offer testimony at some later point. However, here is the key about Renee Poole. It's the State's contention that Renee Poole was involved in a conspiracy. She began the conspiracy with the planning. She continued the conspiracy with the execution of that plan on that night, on June the 9th, and that conspiracy continued still as she gave false information, knowingly false information to law-enforcement to take them off the scent, to take them off the trail. She didn't identify John Boyd Frazier right away. She did later, quite a bit later, but initially she didn't identify that person. She didn't want to identify that person. She gave them false information in an effort to take them a different direction. She never intended, she never believed or intended that this information would be used as testimony because she didn't believe or intend that anybody would get caught, that she and John Boyd Frazier would ever be apprehended because she gave them false information about this other person, this mystery person. So, in her mind it was not reasonable for her to believe that that was going to be called on for testimonial purposes. It was actually not intended to initiate police action, well, or the police action it was intended to initiate was false action, was the wrong action instead of the correct action, and we would submit, Your Honor, that because of that, because of the, because it was a false statement that she can -- that it was not intended as -- well, it cannot be

reasonably believed that it was going to be testimonial because it was not intended to give information to law enforcement. It was intended to give misinformation to law-enforcement.

The other point I'd raise about this and it's noted in Davis, and I know that -- I know Defense counsel has provided you with a copy of Davis, but on page eight of Davis, and of course Ralph King Anderson, Justice Anderson is just so good at teaching us all, you know kind of exhaustively going through all the cases that have interpreted Crawford and trying to instruct everybody else about what it means, but he goes back to a Law Review article that was done by Professor Richard Friedman back in 1998 where the, where the commentators are already -- they're anticipating this issue and they're struggling with this issue and he goes to Friedman's definition of what should be considered testimonial, and he points out and I would cite from page eight, ``A statement made knowingly to the authorities that describes criminal activity is almost always testimonial.'' So, if that's a statement of a citizen on what they saw, the Hobbses in this case, who saw something, described it to law-enforcement, no question that's testimonial or almost always testimonial. ``A statement made by a person claiming to be the victim of a crime in describing the crime is usually testimonial, whether made to the authorities or not.''

Then jump down, ``A statement made by one participant in a criminal enterprise to another intended to further the enterprise is not testimonial,'' and I would submit, Your Honor, that Professor Friedman saw it was -- forseeing this very problem where you had co-conspirators that were lying in an effort to cover the crime; and so, in order to -- based on the same theory that Co-Defendant, or excuse me, co-conspirator testimony is admissible by -- against the other co-conspirator, any statements made in furtherance of that conspiracy makes it admissible as a hearsay exception, I think he sees that same public policy reason to make it admissible under the confrontation clause; and therefore, it's in his judgment that it should not be, because it's a co-conspirator statement it should not be subject to -- it's non-testimonial, not considered testimonial.

The bad news is, Your Honor, that in the cases that have been interpreted, there has not been that set of facts presented to any of these courts. I've been through every one of these cases that Davis cites and a few others, and have -- I have not been able to find a case where you had one co-conspirator giving a statement against another co-conspirator and a Crawford analysis apply. So, it's an area where we don't have any authority but that's not uncommon in Crawford right now. Almost, you know, all of these cases or many of these cases do not have.

THE COURT: You don't think that means it says in a criminal enterprise, a statement made by one participant in a criminal enterprise to another intended to further the enterprise, you're saying to any other individual not to another participant.

MR. HEMBREE: To anybody, to anybody because the same, because the, because the key, the fundamental issue that makes it testimonial is would someone in that same situation expect it to be introduced in court later, someone with, expect that it would come up in a testimonial context at some point in the future and that's the difference between co-conspirator statements, whatever they are, in furtherance of that conspiracy to anybody if they're not -- because in this case that statement was never intended to see the light of day of a courtroom because the co-conspirators never intended to be caught, that was their plan, that was their effort.

THE COURT: Yes.

MR. MARTIN: Judge, there are a couple of things that are just so striking. Number one is, you're right, if you go back to the very page eight language that the Solicitor relies on.

THE COURT: Was it striking that I was right?

MR. MARTIN: It's striking that he would point out one of the many paragraphs which prove my argument. If you go back and read that it says a statement made knowingly to the

authorities that describes criminal activity is almost always testimonial. That's exactly what this is, a statement made knowingly to authorities. Then it says a statement made by a person claiming to be the victim of a crime, I believe that's exactly what we got, and describing the crime is usually testimonial. That's two for us, and then if you go on down it says, and as you say, if you go down into his statement that he quoted a statement made by one participant in a criminal enterprise to another. Well, there's only one logical conclusion and that is one co-conspirator to another, intended to further the enterprise is not testimonial. Well, that's the very nature, that's one co-conspirator to another furthering the enterprise.

That is not what you've got here. You've got what they, number one, allege to be a co-conspirator giving a statement to a policeman, and I beg to differ with the Solicitor. His reasoning about what she intended is all speculation and assumption as to whether or not this statement was in furtherance of some conspiracy and I would beg to differ with him when he says that what she told was not true. I don't think there's a statement that she made that they don't -- wouldn't have to stand up and tell you as an officer of the court that they believed to be the truth. For example, ``I asked her what the suspect looked like.'' Now, he doesn't say, number one, if you want to get really technical, he

doesn't say, ``Who was it?'' He said, ``I asked her what the suspect looked like,'' and she advised that the suspect had on all black with a ski mask. Now, I don't -- I think they believe that. They're going to argue to the jury that the killer had on all black. They did at the last trial. That isn't a statement that she is saying that they think is untrue.

Then you go on down. She says, ``We were the victims of an armed robbery.'' They're going to say that was true. He's indicted for armed robbery. They're going to -- ``took jewelry, fled that way.'' All of those statements they contend and will argue to this jury before the trial is over are true and should be used to convict John Frazier. So, that, you know, that does go then, you know, that argument, ``Well, if it's not testimonial, well then maybe it's made in furtherance of a conspiracy,'' but I would think that the logic has got to be that testimonial does not equal conspiratorial, and in this case you've got all the earmarks of a statement that is not in furtherance of a conspiracy. It's made to a police officer in response to questioning. It is used to arrest and attempt to convict John Frazier. It is -- it in no way, one of the -- and if we ever get that far, one of the cases in South Carolina that deals with conspiracy says, you know, ``How you -- when does the conspiracy end.'' There's a question about that which is murky if you have to get into it. Then there's

a question about what statements were made in furtherance of the conspiracy during the pendency and in the furtherance. One of the cases says it has to advance the conspiracy. Well, this statement didn't advance the conspiracy if ever there existed one, which is the other point that they need to prove that before they bootstrap the case with these statements which are testimonial in nature, un-cross-examined, but the -- in no way would it and as you go on into that, they say, ``Well, how do you determine what's in furtherance of conspiracy?'' Number one, does it advance it? Well this did not advance the conspiracy. This led to the arrest of John Frazier. Number two, another definition is spilling the beans, does not advance the conspiracy. That's what this is. Now, they want to say, ``Oh, she was lying, she was lying when she said that.'' They have no evidence of that. They believe that. They believe though that those -- but even if you go there that ain't what he asked her. That's not what he asked her there, and then if you go back yet another definition of in furtherance of a conspiracy or a test for was it, under the South Carolina cases is was it -- it's under the agency theory is would the co-conspirator have endorsed that statement being made. So, if the killer was dressed in black would he have endorsed her statement to a policeman on the spot at the time while he was trying to make a getaway that the killer was dressed in long black clothes? It defies logic that we would

be having that conversation, and I just can't stress enough that the State can't have it both ways. They can't say that these statements they don't take as the truth because they do take these statements as the truth or at least they have argued them to be the truth and the basis of a conviction of an individual. I think it's clear the statement is testimonial in nature and should be excluded.

THE COURT: Anything further?

MR. HEMBREE: Your Honor, I just, you know, disagree. I don't, I don't believe it's clear. I think it's -- I would submit it's non-testimonial when taking, and of course, Mr. Martin picked out bits and pieces, kind of parched the statement apart, but this statement was made all at one time, and it's like every other statement, many statements that we see from Defendants or those that are concerned about being prosecuted they mix truth with fiction, they mix pieces of it that may be obvious, they add something to it to give it some credibility, yet then when it comes to the most important part of it, that Renee Poole knew, knew and later said she knew who did the killing, later said it was John Boyd Frazier, she leaves that out, some stranger, a mystery man which was meant specifically, specifically. The only reason to say it like that is to take the focus off of John Boyd Frazier, to put it on some unknown person out there. So, this -- there's clearly a statement made in furtherance of the conspiracy. Did the

statement contain pieces of truth in it? Yes, it did, no question about it, but the essence of it, the intention of it, what was in her mind was that they're not going to catch him, they're not going to catch me, this is going to be the end of it. They're going to buy my story and that's going to be it and nobody will ever be caught and we'll be done and I won't be testifying and she had no idea, no idea that that statement might come up as testimony at a later trial.

THE COURT: All right, the Court finds that the statement is non-testimonial, and primarily for these reasons, that it's much like a field investigation. She initiated. She sought out the police officer and sought out the help and gave the information and the police officer was not giving any, there wasn't a structured police questioning. It wasn't like the more formal questioning that happened three hours later. This was simply information that she provided after she, after she flagged him down and sought his help. When she said crying and upset, ``Someone has just shot my husband,'' after that he's trying to secure her in the car because he doesn't know if a shooter is still there is the Court's understanding and in trying to get a description for the safety of the public. Still I think this lacks that requisite formality that would make it testimonial and it's more like a field investigation, and again, I don't think our courts have made it real clear where South Carolina courts are going to

stand on this, whether field investigation is going to end up being considered under South Carolina testimonial or non-testimonial. This Court finds based on the information provided that it has that it is non-testimonial. I am considering the nature of the circumstances of the statement. I'm considering the fact that it was initiated, even though it's law-enforcement, it was, this was initiated by the declarant in this case, considering also the declarant's primary purpose in making the statement which is it appears and we will see as this continues, but it appears that it was in the purpose of conspiracy, that was the purpose of the statement in this particular case, that's the Court's ruling under the circumstances and it will remain to be seen how South Carolina will come down on these types of initial investigations.

Again, we've neglected to address this, but even if it's non-testimonial there still needs to be the determination that this witness is not available, which I understand is being stipulated to, but the Court requests that the witness be brought here and be questioned to see if in fact she is willing to testify, whether we have a witness who is available or not available, but that remains to be seen, but based on the fact that what I'm hearing is that she will not be available there would be an exception, hearsay exception in this case, one of two, excited utterance or conspiracy.

MR. HUMPHRIES: And Your Honor, in regard to the time at which we take the actual assertion of the Fifth Amendment privilege, is it the Court's position if Defense counsel and the State can stipulate at least based on acknowledgment by her counsel that she would intend to reassert her Fifth Amendment privilege that we could elicit the statement and then tomorrow morning place upon the record when she is transported from the Department of Corrections the actual assertion of the Fifth Amendment privilege.

THE COURT: I'll do that by stipulation only.

MR. MARTIN: What I'd like to do before we make that decision is to complete these motions because it still isn't admissible even with that ruling; and so, I don't want to, I don't want to stipulate before I believe I make what is a correct and forceful argument that these statements aren't made in furtherance of the conspiracy. So, I mean, that's ---

THE COURT: She will be here tomorrow?

MR. HUMPHRIES: Yes, yes, ma'am.

THE COURT: All right.

MR. HUMPHRIES: I'm sorry. She will be here tomorrow morning, but I don't think anything prohibits us from taking up those arguments at this time.

MR. MARTIN: No.

THE COURT: No?

MR. MARTIN: Well, I think he's right. We can go ahead

and make the argument so we know where we are going. Number one, Judge, the Defense would take the position that they can't lead out with statements of the conspiracy, that under the South Carolina case law there has to be evidence of an independent conspiracy. I have given the Court, I believe, the case of State versus Gilcrest which is a 2000 ruling of the State Supreme Court, let me see, yeah, State Supreme Court which I believe stands for the proposition that there has to be independent evidence of a conspiracy before the statements are admissible. There then does raise the issue of how does the Court make that determination number one, and then number two, the order that it is taken up in, but I think certainly there has to be, the Court has to make a determination and the best way to do that is let them put up that independent evidence of a conspiracy because this thing gets all tangled up any other way you look at it in terms of the legalities of it and that that would be a requirement to be made to see if there is independent evidence of a conspiracy before any of these statements are introduced that are supposed to have been made in furtherance of it.

THE COURT: Is it your position it should be done, it can be proffered to the Court or it should be done in the presence of the jury?

MR. MARTIN: Well, I think that -- well, my reading is it would have to be done in testimony to the Court. Now, I

think in all fairness that the cases which stand for it's within the trial court's discretion always leaves that question open as to what you do, but I think that the reason they don't say that you do it every time is that there's different factors to weigh into in what order it's done and in this case the statements that they're attempting to introduce, I believe, are the primary -- well, I don't -- I just -- I don't know where the other evidence of the conspiracy comes from, and I believe that since it may be marginal, questionable that they should be promulgated or put forth before the Court makes a determination as to whether or not the statements were in furtherance of that conspiracy. So, that would be my first motion.

THE COURT: All right.

MR. MARTIN: And then as to whether or not the statements are in furtherance of the conspiracy I'll make that argument anytime the Court would like.

THE COURT: All right.

MR. HUMPHRIES: Well, first of all we need to cross this bridge and that is this, in regard to the statement provided to Officer Brown the Court has already ruled as a sustaining basis for the introduction of that particular statement that it was non-testimonial and came in under the excited utterance hearsay exception.

THE COURT: And I said ---

MR. HUMPHRIES: So, as to that there is no issue regarding whether it's in the furtherance of the conspiracy.

THE COURT: No, there is no issue in regards to that statement as to whether it's in furtherance of the conspiracy.

MR. HUMPHRIES: And that is the only statement that we intend to elicit in connection or from Renee Poole in this case.

THE COURT: Oh, all right.

MR. HUMPHRIES: So, having said that I don't know that we ---

MR. MARTIN: He may be right. If they're not and I believe they did -- I don't know whether they said they weren't going to offer King or not, but I think that probably if they're not ---

MR. HUMPHRIES: We are not.

MR. MARTIN: --- Crawford would exclude it anyway but.

THE COURT: That is the only statement?

MR. HUMPHRIES: Yes.

THE COURT: Okay.

MR. MARTIN: Well, let me say because I didn't realize that the Court had found as a matter of record that it was an excited utterance.

THE COURT: I did. I found excited utterance.

MR. MARTIN: Well, could I ---

THE COURT: It was within minutes of the event and

that was the hearsay exception under the test that it's non-testimonial, that she's not available and there's this hearsay exception.

MR. MARTIN: Well, what I would like to do if the Court would allow me is to go back and argue that point.

THE COURT: All, right.

MR. MARTIN: Realizing that the Court is leaning in a certain direction at this time.

THE COURT: All, right, yes, sir.

MR. MARTIN: But again going back to what the Solicitor says they believe the statement to be and that is a statement made in furtherance of the conspiracy to elude detection, then if that be the case it can't be a startled expression made as an excited utterance because timing is good for them, I agree, it's within minutes, but the hallmark of that exception is the startledness of it, the unplanned character of the statement, but once again, I just hate for the State to get by working both sides of the arguments and succeeding on both because they just argued to you that it was not an excited utterance. It was a planned statement to deceive, conceal and avoid, and that it's part of the conspiracy and all that. Well, it cannot, it cannot be both. It cannot be both and that -- and going back that's the whole reason that the Supreme Court decided Crawford, is to quit playing these mind games without putting a witness up the Defendants could

cross-examine. Otherwise, it allows them to very astutely and they are that take both sides of that issue, argue it on one side this time and then the next the other; and so, if in fact as officers of the court as they have stated that they believe it's a statement made to conceal, to avoid detection, that it was preplanned as part of the conspiracy, then it cannot be a startled event, a startled statement, which is the hallmark, the linchpin, whatever Judge Anderson might want to call it, of the excited utterance exception, and I would ask that the Court not admit it as evidence under that theory.

THE COURT: All right, yes, sir.

MR. HUMPHRIES: In response, number one, there is -- the exception regarding excited utterance doesn't require that the declarant didn't have some prior knowledge of it. The fact -- whether it was planned or not and we submit that it's planned, there's no question about that and I don't want to mince words with the Court about that. We believe it was planned from the very beginning. It is still a startling event to see your husband shot in front of you even if you intended for it to happen, and second, there is the other exception which does not require the startling event, and that is the present sense impression which this also falls under, quite clearly, because it is immediately thereafter. Again, that doesn't require a startling event or condition, and we're talking about the stress of the excitement of the event, and clearly, there is a

stress even if she`s complicit in the shooting.

THE COURT: It sounds to me like what you are saying was the conspiracy was the lack of the information, the lack of the information of, ``Oh, and by the way I happen to know who the individual was.'' It -- I still believe that it can be -- the excited utterance in light of the situation that it happened, in light of the time and in light of the fact that she rattled on about what her description and that type of thing, which I'm getting mixed feelings here, some of you saying it was an accurate description and others saying that she was lying but ---

MR. HUMPHRIES: No, no, well, let me, let me, let me clarify just so you understand the State's position in regard to the description. We believe that she was accurate in terms of the dark clothing. We do not believe that she is ---

THE COURT: The Defense believes it, too.

MR. HUMPHRIES: --- that she is accurate when she describes a ski mask. We base that based on her statement, her subsequent statement which identifies John Boyd Frazier as the shooter. We believe that he shot Brent Poole and he ran off in a certain direction. We don't believe that she was placed on the sand in such a manner that her back was on the sand because there`s physical evidence which would not support that which would then impeach or take away from her statement. So, yeah, we believe he's dressed in black. We do. We

believe that's accurate and there is evidence that corroborates that because we have eyewitnesses that are just south of the incident scene which identify John Boyd Frazier dressed in all black moments before the shooting occurred.

MR. MARTIN: Well, let me just say, Judge, again his statement to you is one reason I go back and say they ought to have to prove that before any of these statements come in under the conspiracy rule because all of that is their version of what happened. Again, tagging in, tying in what they believe to be statements from Renee Poole that could be cross examined from now until the cows come home and the manner in which the statements were elicited and what was said as to whether or not he's correct or incorrect in his assumptions about she knew or didn't know or whether there was a mask or not.

THE COURT: All right, let's deal with this. I want to go ahead and deal with the conspiracy issue. Let me let you know when I ruled if you will recall and the record will reflect that I said that it was the excited utterance and I said or conspiracy. I was waiting to hear this evidence and I need to hear it now. I really need to hear that.

MR. HUMPHRIES: The State will then proffer the evidence regarding the conspiracy.

THE COURT: Very good.

MR. HUMPHRIES: Okay, we'll start with this. There are

-- there is the -- first of all, Brent Poole was shot by a nine millimeter handgun. At the crime scene there were located four live nine millimeter cartridges and two spent nine millimeter cartridges. There is evidence from two witnesses, Todd Fain and Kahle Schettler, that at a point in time prior to the killing that John Boyd Frazier owned an Italian made TZ75 which is a semi-automatic nine millimeter handgun. The fired cartridge casings and the ejected or misfired live cartridge casings collected at the scene were transported to SLED. They were microscopically examined by tool mark identifiers and they were able to determine that a TZ75 could have, among many other brands, but could have been the weapon that had discharged the round and had ejected the live cartridge casings.

There is additional evidence from SLED that says that it, that the presence of the misfired and ejected live cartridge casings is consistent with that handgun having jammed or malfunctioned during the shooting. Remember you've got four live cartridge casings which were either misfired or ejected and two fired cartridge casings. There is evidence from both Kahle Schettler and Todd Fain, who were friends of the Defendant, who will testify and who have testified previously that on the two occasions and each were with the Defendant at separate times. You've got two separate occasions, two separate witnesses and they said that when that weapon was

fired it malfunctioned at least at some point in time during that firing session.

We have evidence of the relationship between John Boyd Frazier and Kimberly Renee Poole, both independent evidence by virtue of the Defendant's day timer, which is very explicit stating not only that he's dating Renee but he's having sex with Renee contemporaneous or just before this event. We have other witnesses, Tom Pedersen, who was, at least testified that he was a close or the closest friend of John Boyd Frazier at the time of the incident, who testified that Kimberly Renee Poole moved in with John Boyd Frazier the middle of March, March, no, it was May.

MR. MARTIN: May.

MR. HUMPHRIES: In May.

MR. MARTIN: That's right.

MR. HUMPHRIES: Moved in with May -- moved in with John Boyd Frazier during May, stayed for approximately two weeks, moved back out, but that the relationship -- well, he testified she moved in, lived with him for a period of time and moved back in with her husband, Brent.

There are other witnesses, Bruce Wolford in particular who will testify that their relationship, even after she moved back in with her husband, that they continued their relationship. In addition the next-door-neighbor of Renee Poole, Jim Bollow, will testify that in the week preceding

this vacation between Brent and Renee, their anniversary vacation to Myrtle Beach that when Brent went to work on second shift John Boyd Frazier pulled up at her house on consecutive evenings. This is after John Boyd Frazier has already told law enforcement that after she moved back in with her husband he had contact with her only one time, only saw her one time and that was for her to pay him some $75 for some debt, but that they didn't have any face-to-face contact beyond that, which based on Jim Bollow and Bruce Wolford's account was a lie. We have John Boyd Frazier taking off on June, on June 2nd. On June 2nd or sometime about that time John Boyd Frazier is at Bruce Wolford's house with Bruce Wolford's wife, Bruce Wolford's roommate and Kimberly Renee Poole, and at that time they are together and John Boyd Frazier and Kimberly Renee Poole are talking about the vacation that she and Brent are going to take on the 9th. That's in the afternoon. That evening John Boyd Frazier requests of his employer, his supervisor Calvin Harris, to have four days off including the day when Kimberly Renee Poole and her husband Brent were to be at Myrtle Beach.

On the 8th of June, right, the 8th of June he drops by his friend Kahle Schettler's place of business who is a mechanic and he says, ``Kahle, I got this noise in my front end. I want you to take a look at it. I want to borrow your car. I want to borrow your car for four days.''

Kahle Schettler will testify that he has worked on John Frazier's car, cars numerous times. He will say that he had complained a month or two before that there was a noise in his front end, but he will testify that John Boyd Frazier has never asked to borrow, nor has he ever borrowed his car overnight and certainly not for four days. So, he's taking vacation at that time. He's borrowing someone else's car.

John Boyd Frazier on the early morning hours of June 9th about 5:40 is approached by a Winston-Salem police officer on an attempt-to-locate call, and he is at home. There is also testimony that from the time of the incident, which was about midnight, just before midnight, the next time he is seen is at his residence at 5:40 and there is testimony, there will be testimony in the record that the trip from Myrtle Beach to his residence is at the most three and a half hours, and most likely three hours. So, it's within the timeframe.

He testifies or he tells Officer Mills, who is the Winston-Salem police officer that -- the officer asked him about his vehicle, ``Where is your vehicle?'' ``A guy named Kahle is working on it.'' ``Do you know where Kahle lives or how to get in touch with him?'' ``No, I don't.'' Kahle Schettler is probably his best friend, and there is testimony that he has been to his house numerous times and that Kahle has been to his house numerous times. They have been friends since high school.

He tells, as John Boyd Frazier tells Kahle Schettler at some point on that day that Brent has been shot and killed, and it is not clear from the evidence -- well, perhaps -- let me withdraw that. Perhaps it is clear. In any event, he calls Tom Pedersen that day ---

THE COURT: He, he being who?

MR. HUMPHRIES: That'd be John Boyd Frazier.

THE COURT: Okay.

MR. HUMPHRIES: Calls his other best friend or closest friend, Pedersen, and they discuss what he was doing, you know, whether they could establish an alibi, and Frazier had told law enforcement in the past, I believe he told Bowman and Pendergrass, SBI agents, that he in trying to say where he was the day of the incident that he had talked to Tom Pedersen. Tom Pedersen says that's not so. Now albeit that was -- he said he talked to him earlier in the day, but Tom Pedersen said he received no such call on the incident date.

Let me get back to Kahle Schettler just one moment about the car. After the Winston-Salem police officer showed up that following morning at 5:40 of the day after the incident or some five hours after the incident, five and a half hours and he told him he didn't know where Kahle was or how he could get in touch with him, he called Kahle Schettler, that is John Boyd Frazier called Kahle Schettler 7:30, 7:45 in the morning and he said, ``I need to get my car back before something

happens.'' He then within 15 minutes gets to Kahle's house, exchanges cars, takes bags out of Kahle's car that he had in there, and he's only had it for a couple of days, transfers them to his Blazer and leaves. He never asks, never inquires about whether or not Kahle has looked at his car, driven his car, fixed his car, never any mention of it.

In terms of Kimberly Renee Poole's involvement in this case again there is this meeting on or about June 2nd, which is some five, seven days before the anniversary trip, she makes a -- she, she contacts this particular hotel. She is told and/or learns that this is the last hotel on the beach before the undeveloped area. She is told that it is quiet, it is secluded. She inquires about babysitting for the purpose of their young child. She is given a name and she contacts Carolyn Murphy. Carolyn Murphy is the lady who will testify about the babysitting service. Kimberly Renee Poole requests babysitting services from 10 till 2 in the morning. She's told that she can't do that. She brings her back to nine o'clock. Ultimately, Ms. Murphy does come over to baby-sit their child and Ms. Murphy will testify that Renee was in a big hurry to get Brent out of the hotel room, rushing him out of the hotel room as if she had a schedule to keep or a place to be.

They go to a restaurant called Dick's Last Resort. Now, in and of itself it doesn't seem to matter a great deal but

Dick's Last Resort is, in fact, a restaurant where John Boyd Frazier's cousin Michael Frazier either works or worked and he was familiar with that restaurant. Kimberly Renee Poole ultimately takes her husband down on the beach, walks away from the lights and that's where the murder takes place. The Defendant in talking to Pedersen, his friend Tom Pedersen after he is arrested he tells -- and Pedersen asks him, you know, because Pedersen has already told him, ``You need to turn your other gun, a Glock over to law enforcement.'' Frazier tells him, ``I'll do whatever my lawyer tells me to do.'' Pedersen asks him, ``What have you done with her stuff?'' He said, ``Well, I've moved everything related to Kimberly Renee Poole out of my house and put it someplace safe.'' ``Can you tell me where it is?'' ``No, I can't.'' You know, that basically is the basis of our criminal conspiracy argument in this case. It is substantial.

THE COURT: Yes, sir.

MR. MARTIN: Well, two things, number one, substantial in the eye of the beholder is the key.

MR. HUMPHRIES: I don't mean to interrupt and this has nothing to do with what -- I just remembered something and in terms of the relationship between Brent Poole and John Boyd Frazier some two weeks, three weeks before the incident date, that is the murder, Brent Poole was at Kimberly Renee Poole's place of employment, which was the Silver Fox. She was an

exotic dancer, but wasn't working that night. John Boyd Frazier came into the bar after they were there, that is Brent and Renee, delivered a videotape in the view of Brent and Renee to his friend Bruce Wolford who happened to be the bartender, asked him to put it behind the bar, took a pair of Renee's panties which he had in his back pocket, wiped his brow, went up to tip a girl, flashed them around and ultimately confronted Brent and tried to draw him into a fight in the parking lot on that night. Bruce Wolford will also testify that John Boyd Frazier hated Brent Poole and had stated so many times. So, you have the animosity between the two parties and I just felt like you needed to know that in consideration of all the evidence.

THE COURT: All right.

MR. MARTIN: And Judge, what I'd say to you take everything he just said and show me the overt acts of a conspiracy that are required to prove that before the Court. The case law in the State of South Carolina is pretty explicit. The agreement which is the essence of the conspiracy is proven by various overt acts and that you cannot get there by piling inference upon inference, and I would suggest that's exactly what the State is doing in this case. Now, you know, we could -- of course, I could go down every point that he made and I will and establish how that is an inference which doesn't rise to the level of circumstantial evidence, but my

whole point is that's what the case ought to be tried about. Those ought to be introduced instead of by proffering through the Court before that determination is made to determine if there is an independent basis for the conspiracy.

For example, let me just say for example, the TZ75 gun, the first thing he mentioned, there, there will be evidence from the SLED guy that one of 40 different makes of guns which could have fired the projectile that killed Brent Poole was a TZ75, that's 40 different makes, and then ever how many of each one of those makes is out there in the world would make up the pool from which the murder weapon could have come, which narrows it down to nowhere, basically, still big as the ocean. For example, my friend Mr. Humphries says there's testimony about malfunction. Well, what the testimony is or has been was that this gun on the beach that night misfired. By that I mean that the firing pin hit the bullet and it didn't go off, and there is an indentation in that cartridge; and so, it was jacked out and left lying on the sand unfired. The testimony from Fain and from Schettler was that the gun that Frazier had didn't misfire, it jammed, which means it fired the shot but it wouldn't -- but you had to eject the automatic weapon to flip the fired, spent cartridge out. So, if you combine it with the artful term malfunction, maybe there's some evidence there, but if you really look into it and determine misfire, jam then what it does is tends to

establish that this wasn't the gun, further establish it wasn't the gun, not that it was the gun, and again, Judge, you could go right on down.

Relationship, that they were dating and had had sex, again, it's not evidence of a conspiracy. The fact that they had talked about they were coming to the beach, evidence of a conspiracy, no. All of this is inference upon inference and attempting to pile it up and bundle it up and make it look like more than it is, and that specifically is what the state courts of South Carolina has said you can't do to establish a conspiracy. You know, these aren't facts. These aren't circumstantial evidence that this gun, this other stuff, because circumstantial evidence is defined as a secondary set of facts from which a principle fact can be inferred. In other words he had a relationship with Renee Poole, therefore, you can rationally infer he murdered Brent Poole. It don't, it don't jump that way. That's just a fact, you know. Now, this business about the clothes, black clothes down on the beach, black clothes here, maybe that rises to the level, but these other facts don't even rise to the level of circumstantial evidence. So, it's for those reasons that I would say that that should be established independently before any statements are let in.

MR. HUMPHRIES: Your Honor, and just briefly what we're talking about is a prima fascia case in establishing a

conspiracy. There is one overwhelming overt act in support of this conspiracy and that is the placement of John Boyd Frazier in dark clothing on the beach just south moving north to the incident location within minutes of the shooting. That, I mean, that is one unavoidable, that's the elephant in the room. Okay, all the rest of it, they're overt acts, too, no matter how you characterize them, the exchanging of the vehicle, the taking of vacation on the same day or about the same time as they learn or discuss the beach trip, I mean, you go on and on. That is a prima fascia case of criminal conspiracy and that's the Court's standard, that's the threshold at this point, and we would submit it's within your discretion having heard that, having been proffered that evidence, that the case law allows you, and there are any number of cases which say it, that it's in your discretion and that you can conditionally admit the statements and I will be glad to cite those cases to you. I believe you've got them but if you don't State versus Rutledge which is a 1973 case. In any event that's 261 S.C. 44. This is a point that they actually ordered on appeal. They said that it was error to admit the statement in the furtherance of conspiracy prior to establishing the conspiracy. Do you have that case, Judge?

THE COURT: I'm looking at State versus Gilcrest, which stands for the same proposition.

MR. HUMPHRIES: Yes, and in this case they said, you

know, they said the error assigned relates merely to the order of proof not that the error was found but the error assigned and there -- here they said the trial judge necessarily has broad latitude in the conduct of a trial and the ruling complained of was particularly within his discretion and we find no error, certainly none to the prejudice of the appellant because there is no doubt that the evidence offered by the State before its closing was sufficient to establish conspiracy. There is the case of State versus Sullivan, which talks about conditionally admitting the statement, 277 S.C. 35, in anticipation of the evidence and here we've done more than that. We've proffered the evidence and, of course, everything is subject to cross-examination. There's no question about that, but there are -- I mean, in terms of the inferences to be derived from them but the facts remain the same. I don't think we're going to fuss too much about factually what was said and what was done. The inferences I'm certain there'll be a lot of fussing about but those are overt acts and they were done in this case.

THE COURT: All right, anything further?

MR. MARTIN: No.

THE COURT: All right, I am satisfied that a prima fascia case has been made, proffered of evidence of a conspiracy that would be required before we would allow any statement by -- of the alleged co-conspirator in the case.

MR. HUMPHRIES: I'm sorry, okay. Now, let's see where we are now. Now, having ruled in that fashion where are we in terms of being able to elicit the statement through the first witness and then taking up the assertion of the Fifth Amendment privilege tomorrow morning with the understanding ---

MR. MARTIN: Judge, I don't think you need her because under your rulings, under the excited utterance exception is that unavailability is not a requirement. So ---

MR. HUMPHRIES: I agree.

MR. MARTIN: --- she's not needed at all if it -- and if they're not going to put King's statement in ---

MR. HUMPHRIES: We're not.

MR. MARTIN: --- she's not needed; and so, there's no need to wait for her. It's admissible now, and there's actually no need to have her.

THE COURT: The Roberts test would require that she be unavailable and the statement fall within a firmly rooted hearsay and hearsay exception in this case can also be in furtherance of a conspiracy but we need her.

MR. HUMPHRIES: Okay.

THE COURT: I think we absolutely do need her.

MR. HUMPHRIES: So, then the question then becomes how do we, how do we address this?

THE COURT: By stipulation that will be the only way

that I'll go forward and allow the testimony.

MR. MARTIN: Let me talk, let me talk with my client and Tommy just a minute here.

Judge, give us just a second here.

THE COURT: Certainly.

MR. MARTIN: Judge, let me ask you this. I think I understood you, but my co-counsel keeps asking me. It is your position that regardless of our stipulation that you would want the Co-Defendant Ms. Poole brought?

THE COURT: No, if you stipulate that she is unavailable -- it'd have to be clear stipulation from the Defendant that she is unavailable.

MR. MARTIN: All right, well, I misunderstood. I thought you said you wanted a clear stipulation that it was okay to go ahead with the testimony today.

MR. HUMPHRIES: No, no.

MR. MARTIN: All right, well, then, let me talk just a minute here, and we would stipulate that she is unavailable. It's not necessary to bring her to establish that fact. That is every indication that we've got and I again believe under the excited utterance exception that's not a requirement.

THE COURT: Well, I'll go ahead and state this as clearly as I can on the record. I have ruled under excited utterance and I have ruled under conspiracy as well because I do believe that some of the statements such as, ``My husband

has been shot,'' and those were as a result of excited utterance, we were five minutes past the event, but I also believe if in fact the evidence goes forward that some of the omissions as well as some of the statement may have been in furtherance of a conspiracy. So, I know it's unique and it's very unusual but I have ruled that both exist in this.

MR. MARTIN: We would stipulate she's unavailable. Let me just say that period.

THE COURT: All right, that means that we can go forward. Is there anything else that we can do at this time?

MR. MARTIN: Yes, there's a couple of things. I mean, number one, I had made a motion to get me the criminal history of any potential witnesses and I haven't -- I don't know where we are on that.

MR. HUMPHRIES: Let me just say the witnesses that will be testifying today there shouldn't be any real concern about their criminal history. We have Officer Scott Brown, Officer Aiossa, Karole Jensen, you might want to check that, Officer Grazioso, Howard Sirles, he's testifying by deposition, Officer Blubaugh and Dr. Proctor, so.

MR. MARTIN: I'm fine with that.

MR. HUMPHRIES: I thought you might be.

MR. MARTIN: You can get the others tomorrow.

MR. HUMPHRIES: And we'll get the rest of them.

MR. MARTIN: That's good. The -- I'd also made a

motion concerning, Your Honor, in connection with the TZ75 pistol to prohibit any discussion about that. I don't ---

MR. HUMPHRIES: We won't reach that today.

MR. MARTIN: We won't reach that today that's the case, and I had also made a motion concerning whether or not any payment of reward monies had been paid in this case.

MR. HUMPHRIES: And I need to -- and I previously -- I had received that motion. I was unaware of any reward having been paid until last night at 6:30 when I spoke with the Pooles. I then told Mr. Martin this morning the circumstances under which that reward was paid and let me put that on the record.

THE COURT: All, right.

MR. HUMPHRIES: Just for background purposes the trial of Kimberly Renee Poole preceded the trial of John Boyd Frazier, but primarily the same witnesses testified both in the Kimberly Renee Poole trial, in the John Boyd Frazier trial. The Pooles, that is Brent Poole's mother and father, had a life insurance policy on Brent in the amount of approximately $40,000. After his death and burial that policy was claimed and the monies were given to the Pooles and they used approximately $20,000 for the purposes of the burial and other things attendant to Brent's funeral. There was $20,000 left.

Now, at this point the Hobbses had already testified twice under oath and their testimony was consistent at least

in terms of the identification of John Boyd Frazier. Brent's parents, his brother and his sister with no notice to the Hobbses, the Hobbses had absolutely no idea that any reward was forthcoming or even offered, they called the Hobbses and said, ``We would like to take you to dinner.'' Prior to having done that they stated they contacted our office some five years ago to talk about the ability to pay a reward because they had always intended to pay some reward at some point with that money. They went to see the Hobbses. They took them to dinner. They offered the money to them. They initially declined the money but ultimately they were imposed upon to the point that they took it, 10,000 each. They did that obviously because the Pooles believed and -- that it would not ever impact the case again because the two Co-Defendants had been tried, had been convicted and hopefully that would be the end of it, and so, those are the circumstances under which the reward was paid, and again, I was unaware of it until last night and I told Morgan this morning. We're still sort of trying to work out how we're going to deal with that, both he and I are because we've both got some issues with that, but having said that, I now comply with his request regarding reward. I am unaware of any other reward paid to any other person in connection with the case.

THE COURT: All right. I'll be booking to hear what you -- how you agree to deal with that.

MR. HUMPHRIES: And we may not agree. We just may -- we just may have to ---

THE COURT: I understand.

MR. MARTIN: Well, I think certainly, Judge, that if there's any doubt in anybody's mind I would think certainly I would put the Court on notice I believe it's relevant when the Hobbses testify. Just how we deal with it, Mr. Humphries is right. I don't know yet. I need to -- I did just learn about it this morning. So, I haven't given it much thought. I might want to know some more details about how it was paid and that kind of thing, but now I do take it that there was no other reward money paid to anybody.

MR. HUMPHRIES: I've asked the Pooles and none was paid by them and they're unaware of any other rewards having been paid and Myrtle Beach was unaware of any rewards having been paid to any others.

MR. MARTIN: And let me ask the State this, would there be -- would we be able to stipulate as to the fact that the reward had been offered and as of what date it had been offered?

MR. HUMPHRIES: I don't know what that date is. I can try and find out.

MR. MARTIN: Okay.

MR. HUMPHRIES: Yeah, we can talk about that.

MR. MARTIN: Whether or not the production of witnesses

and all.

MR. HUMPHRIES: Right.

THE COURT: Let me know.

MR. HUMPHRIES: Okay.

MR. MARTIN: Okay.

That's all that I can think of right now, Judge.

MR. HEMBREE: Your Honor, just one kind of a housekeeping matter, this technology that Mr. Brittain and Mr. Martin have brought in it's kind of new for us. We use something similar to it but not anything to this degree. I guess I would ask that when they're finished with it they would shut it off. I think it might be a bit distracting to the jury and I would hate to be jumping up every time they finish with a piece of evidence or with a, with a, you know, a statement or whatever they want to show on there and then I have to hop up and say, ``Cut if off again, fellows. Let's cut it off again, fellows.'' If they'd just kind of be mindful that -- to turn it off when they're done.

THE COURT: You agree to that?

MR. MARTIN: We'll, we'll try to be mindful.

MR. BRITTAIN: We're kind of new with it, too. We might mess up a time or two.

THE COURT: All right.

MR. MARTIN: There`s no telling what we'll show before it's over.

MR. HUMPHRIES: Yeah, we're going to take care of the exhibits.

THE COURT: We need to, we need to clean that up before we bring the jury out. Also, there's a motion to prohibit Penderson [sic] testimony. Is that -- we're going, we're going to deal with that later.

MR. HUMPHRIES: Prohibit whose testimony?

MR. MARTIN: Pedersen, Thomas Pedersen.

THE COURT: Oh, it's Pedersen.

MR. MARTIN: That's about his, his hearsay statements.

THE COURT: Pedersen testimony.

MR. MARTIN: But he's not calling him today; are you?

MR. HUMPHRIES: No, he's not -- we're not calling him till tomorrow.

THE COURT: All right, take it up in the morning?

MR. HUMPHRIES: Either this afternoon or in the morning ---

THE COURT: Okay, that's fine.

MR. HUMPHRIES: --- depending on how far we get.

And Judge, I know that we've got the jury ready, but if we could have about ten or 15 minutes just to clean up the exhibits and make sure our witnesses are in line and ready to go we could get started.

THE COURT: Okay, can we hold it to ten?

MR. HUMPHRIES: Yes, ma'am.

THE COURT: All right.

*****OFF THE RECORD*****

(On the record.)

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

THE COURT: Any matters that need to be addressed outside of the presence of the jury? Anything from the State?

MR. HEMBREE: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. HUMPHRIES: No, Your Honor.

THE COURT: All right, we are ready for them.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Welcome back, ladies and gentlemen of the jury. First of all let me ask you, were you able to refrain from discussing this case with anyone? If you were unable to refrain from it, if you have discussed this case, raise your hand. Did you come across anything, read anything, see anything, overhear anything about this case? If so, raise your hand.

(No response.)

THE COURT: All right, thank you very much for following those instructions so carefully. I'll ask you to stand at this time as we go ahead and get you sworn in as jurors, Madam Clerk.

(Jury sworn by clerk.)

THE COURT: Ladies and gentlemen of the jury, your duty as jurors lies essentially in that oath that you just took, that is to well and truly try the facts of the case. Because you, ladies and gentlemen of the jury, will be the sole and exclusive judge of the facts of the case. No one else in this courtroom will have a right to pass upon the facts except you. Now, you will work hand in hand with me, I as the judge of the law and you as the judge of the facts and what you will do is you will make a determination of what the facts are in this case and you will apply those facts to the law as I give it to you at the close of this case and in that way you will reach a verdict, and any verdict that you reach in this case must be a unanimous one, you all must agree. Now, because you are the judge of the facts of the case it's very important that you understand what it is that you're to base your findings of fact upon and that is upon the competent evidence that's presented during the trial. Now, evidence can take several forms and the one you're probably most familiar with will be a witness live on the witness stand before you, and you'll be able to see them testify and you'll be able to gauge and weigh their credibility and believability and you should do that. But that's just one form of evidence. Evidence can also come in the form of documents, photographs, those types of things that will be entered into evidence that

you'll be able to take back to the jury room with you when you do begin deliberations in the case, and then finally there is a form of evidence called a stipulation, and what a stipulation is is simply an agreement between the State and the Defendant. If evidence should come in the form of a stipulation I as the Court will make it very clear to you that that matter is in evidence for your consideration. So, remember the evidence is the testimony that's presented in this courtroom, it's exhibits that are entered into evidence and any stipulations between the parties.

Let me tell you what is not evidence in this case and what is not for your consideration. Anything that you may have seen or heard outside of this courtroom is certainly not evidence. What the attorneys say in this courtroom to you in the opening statements and in their closing arguments is not evidence for your consideration. Now, in regards to what the attorneys have to say don't misunderstand me. What they have to say is important. It will assist you in sifting through the evidence, but you are to recall that evidence as you heard it from the witness stand or as or you see it in the documents that you'll be able to take back with you when you begin deliberations in the case.

Now, let me give you an idea of how this case will proceed. I'm giving you just the preliminary instructions now. You will then be hearing the opening statements of the

attorneys. After you hear the opening statements the State will present its evidence and testimony, after which the Defendant is afforded that same opportunity. After you hear all of the evidence and testimony in the case, you'll then hear the closing arguments, sometimes called the summations of the attorneys, then I will charge you as to the law and that's the law that you're sworn to apply to the facts as you find them. You will go back and reach a unanimous verdict in this case.

Now, as you know this case is The State versus John Boyd Frazier. He has been charged with murder, armed robbery and criminal conspiracy. Now, to this indictment and let me tell you that this indictment is simply a charging paper, it's the paper that brought him here. To this indictment the Defendant has pled not guilty. This places upon the State the burden of proving the Defendant guilty beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is a vital and important rule of law of evidence that a Defendant in a criminal trial no matter how great or serious may be the offenses for which he's charged must always be presumed innocent until his guilt has been proven beyond a reasonable doubt. This presumption of innocence remains with the Defendant at all times from the moment he's first charged throughout the trial and until you

the jury have upon the evidence and testimony reached a verdict. It is the solemn duty of you the jury if not convinced of his guilt beyond a reasonable doubt to find the Defendant not guilty. On the other hand if the State has proven to your satisfaction the guilt of the Defendant beyond a reasonable doubt it would be your solemn duty to find the Defendant guilty. Now, please understand this term reasonable doubt in its plain and ordinary meaning, a doubt which would cause a reasonable person to hesitate to act. So, as I have indicated the burden of proof remains upon the State to establish evidence to your satisfaction the guilt beyond a reasonable doubt of this Defendant here on trial for the crimes of murder, armed robbery and criminal conspiracy.

Now, ladies and gentlemen, cases such as this couldn't go forward without you being here ready and willing to hear this case. On behalf of both the State and the Defendant we wish to thank you for that service. Let me also give you a couple of hand signals that may be helpful during the course of the trial. We have a tendency sometimes to plow on in here. If you need take a break for any reason if you will raise your hand and spread five fingers this means to me, ``Judge, I need a five-minute break.'' I'll acknowledge you. I promise you I won't single you out or embarrass you in any way and at the next convenient time we'll break. Let me stress to you we will not break immediately. So, don't wait too long to ask

for that break if you think you need one. Another equally important hand signal because you are the judge of the facts of the case it's very important that you're able to hear the testimony being presented or see a document that's being displayed. If you cannot hear or you cannot see, if you will raise one figure I'll figure out which one it is and I'll make sure that that witness speaks up or that that document is better displayed. So, remember those hand signals. They'll be helpful during the course of the trial.

Also, there's something that I need for you to be doing and that is getting to know one another during any breaks that we have. Many times a Judge will choose a foreperson of the jury for a jury. I would rather not do that. I would rather you have that, you make that selection. That will be your first decision you need to make in this case. Now, the foreperson is no more important than any other member. You're all important. Any verdict that you reach in this case must be a unanimous one, but the foreperson has some additional duties and that is to see to it that each and every member of the jury has an opportunity to be heard when you do begin your deliberations and the foreperson will be the spokesperson for the jury. It might be it's too hot or too cold in the jury room to a more complicated matter of law when you do begin deliberations. The foreperson is also the one who will sign and date the verdict form. Now, any of you are eligible to be

the foreperson except the alternates. My alternates are not eligible to serve as foreperson but any of the remainder of you are. So, during any breaks you cannot be discussing this case but you can be getting to know one another and decide who it is that you would like to have serve in that capacity. Now, I thank you for the attention that you've paid the Court. I ask that you give that same attention to the attorneys as they begin with these their opening statements. We'll begin at this time, yes, sir.

MR. HUMPHRIES: May it please the Court, Mr. Martin, Mr. Brittain.

THE COURT: Yes, sir.

MR. HUMPHRIES: My name is Fran Humphries. I'm the Deputy Solicitor in the Fifteenth Judicial Circuit that serves Horry and Georgetown Counties. It's in that capacity that I appear before you today and it's my privilege. There are chemical compounds which in and of themselves when properly contained, while they may be vile or caustic or offensive when coming into contact with humans, are not deadly, but when that container, when that receptacle is violated, when it is compromised and that chemical compound comes into contact with something as common as water or air it can become the deadliest of gases that impacts and effects any and everyone around it and it kills, the union of a compound and a common element. In this case we have such a union, the union of

Kimberly Renee Poole and the Defendant, John Boyd Frazier.

I realize that you know very little if anything at all about the case at this point. Let me give you a little background. Kimberly Renee Poole was married to the victim in this case, Brent Poole. They had been married for a period of time. They had a two year-old daughter, but very on in that -- very early on in that relationship Kimberly Renee Poole became disenchanted and their marriage began to fall apart. The dissolution of a marriage is almost always a sad thing. It is often a very angry thing. It is sometimes a volatile thing and it is in the rarest of circumstances a violent thing. This is one of those times.

Kimberly Renee Poole, who was employed as you will hear as an exotic dancer in a club in Winston-Salem, North Carolina, began a relationship, a sexual relationship with John Boyd Frazier while married to Brent Poole. She continued this relationship while living in the home with her husband. At one point in time in the middle of the night Brent Poole was at his job on second shift. She packed up the furniture, packed up the baby, took off and moved in with John Boyd Frazier, and for a period of time stayed with him and then almost inexplicably moves back home, weeks, mere weeks, before Brent Poole's death.

Ostensibly she moved back come to reconcile with her husband, but you'll hear testimony that from the time she

moved back in with her husband until the very week before Brent Poole was killed she was seen or speaking with John Boyd Frazier on almost a daily basis.

Renee says to Brent, ``Let's go to Myrtle Beach. Let's celebrate our anniversary,'' and folks, June 9th was their anniversary. She took her husband to a hotel. They went out to eat dinner, then went for some recreation and then went to the beach very late, very late and on their anniversary evening instead of walking arm in arm back to their room, she walks him into the arms, the deadly arms of John Boyd Frazier, and on the beach in Myrtle Beach, South Carolina, and that evening John Boyd Frazier shoots and kills Brent Poole and from that point on, from that point on they began to cover it. She misidentifies or fails to identify John Boyd Frazier. She tells law enforcement she doesn't, but what she didn't know, what she didn't know that there was another couple, Mark and Donna Hobbs. They were there celebrating their anniversary, too.

This is not going to be a long trial. It will be done this week. There's no question. There is a great deal to say about the relationship of John Boyd Frazier and Kimberly Renee Poole. There is a great deal to say about the manner in which they planned and executed the plan to kill Brent Poole. There is even some room for explanation, but I submit to you, folks, under no circumstances is there any justification. Renee

Poole wanted to be away from Brent Poole. John Frazier wanted Renee Poole. Renee Poole wanted her child. John Frazier wanted Renee Poole. In that compound, that vile, offensive and caustic compound, Kimberly Renee Poole came into contact with that common element, John Frazier, and the union was formed it was deadly. It was deadly.

This is a murder case folks, unlawful killing of one human being by another with malice aforethought. Malice aforethought is wickedness, depravity of heart. It's the intentionally doing of a wrongful act. I submit to you at this point there is no doubt and you'll hear no evidence to the contrary that Brent Poole was not murdered on June 9th, 1998. On that we'll be able to agree.

This is an armed robbery case, the unlawful taking and carrying away of the goods of another by force or intimidation while armed with a deadly weapon. I submit to you there will be no issue about that. No, no, here's what you will hear all the fuss about. This is a conspiracy case. You will hear a lot of fussing about conspiracy in this case. You will hear a lot of fussing about direct evidence versus circumstantial evidence and let me tell you, folks, nobody is going to require you to define those terms for yourself. It is the Court's obligation and Her Honor to tell you what those terms are, but I do want to tell you this one thing regarding direct and circumstantial evidence, direct being the things you sense

with your five senses, taste, touch, smell, feel, and circumstantial evidence that is evidence when you take it you may then infer the existence of some other fact. This is a circumstantial case by and large with the exception of some very pertinent direct evidence. So, what that requires you to do, quite frankly, what it requires the attorneys in this case to do is to not only present it in a clear, concise and logical fashion, but that you do listen very closely. Let me say this one final thing about circumstantial evidence, regardless of what you may have heard or perceived in television the Court will tell you that while there are two types of evidence, direct and circumstantial, neither is better than the other, but they stand on equal footing provided they meet certain tests.

This is an opening statement, not a time for me to argue, but let me say this, the State appreciates your service in this matter. What you will hear, what you will learn, I submit, will not be something that you have any common experience with. This case will take you well outside the parameters of your existence, and in that respect it will challenge you. There will be things about this case that you will say surely not, surely not, but that's your job, and we take you there bravely. We take you there respectfully and what we'll ask you to do at the end of the case, quite simply, is this, do justice, to do justice to Brent Poole, to do

justice to his family and to do justice to John Boyd Frazier. We've chosen you because you can do the job. There's no question about that. Thank you.

THE COURT: Thank you, sir. Yes, sir.

MR. MARTIN: May it please the Court.

THE COURT: Yes, sir.

MR. MARTIN: I usually at this point in a trial, like Mr. Humphries, tell you who I am, but it doesn't really matter who I am. It doesn't matter who these folks are. It doesn't matter who anybody in this courtroom is. It really doesn't matter who you are, what kind of work you do, how you came to be here today. What matters is that we have a fair trial in this case, whether or not, it's hard to argue with that; isn't it? You've taken an oath, which you said you will well and truly try the facts of this case and a just verdict and fair verdict in there render based on the testimony and the evidence that comes from the witness stand in this case. There's a covenant between the jury and the Court that that's what will happen. The only place, the only place that you can get evidence is from the courtroom here.

Will Rogers once said that all he knew he read in the newspaper. He probably didn't really know very much that he could depend on. In this case, everybody is looking for the same thing, quite frankly. That's a fair trial. Everybody in this courtroom would want the same thing. Everybody in this

courtroom would deserve the same thing.

Mr. Humphries's statements to you was his version, his version of what the evidence come forth will be. It probably wouldn't surprise you I've got a different version. They tell me at the seminars that jurors don't have a very long attention span this day and time, that in the modern world nobody wants to hear anybody talk for too long, that the attention span is short, probably true. Television, remote control, I find myself guilty of the same, same things. So, I'm going to fast forward a little bit talking about the case and try to distill for you what this case is about. It's about eyewitness identification testimony. Eyewitness identification testimony is the leading cause of wrongful convictions in the United States of America. That's been established by DNA, and that's what this case boils down to in terms of evidence.

Mark and Donna Hobbs are eyewitnesses who say they saw John Frazier on the beach that night. Now, there's two things that have to be determined in this case. One of them is a given and that is that Brent Poole was murdered. There's no argument about that and that it was a dastardly act and it was a tragedy and there's no getting around that. The question in the case is who did it, is who did it. So, let's talk about the evidence for a few minutes.

What is -- you know, we talk about evidence. Everybody

has got their own idea of what evidence in a certain case is. Direct evidence, circumstantial evidence, what does all those terms mean? You folks are brought in here today, probably the most of you the first time you sat on a jury. We lawyers are using a bunch of legal phrases that it's difficult to discern exactly what they are or what they mean, but they are important if you're going to get to where you need to get, and that is a comfortable place to make a decision because you'll never render a more important decision effecting another person's life in your lifetime. Now, you'll make more important decisions to you, I'm sure, but not as to what effect a fellow citizen or as will effect the system. So, what are talking about if we talk about evidence in the case.

Now, there's no question that many of the facts Mr. Humphries related to you in his version of what happened the setting, the people are correct, but he told you that under his version it was John Boyd Frazier who killed Brent Poole. There's where we come into a grave difference and as to the facts in the case and what they mean in this instance. The evidence that they're going to present to you and I'll talk to you in just a minute about whether it's direct or circumstantial, but it essentially boils down in this instance they're going to say that John Frazier knew Renee Poole. He had an affair with Renee Poole, and all that is true. Does that equal murder will be a question for you to determine as

we go along. Is that evidence of, worthy of, establishing the fact of murder? What you're going to have to see in this case is that this is, is a different world from what most of us live in. Renee Poole was a dancer at the Silver Fox Nightclub in Winston-Salem. She didn't meet John Frazier there but she met him in March, in March before the June when this event occurred, and she had an affair with him, but now, what they don't tell you is she had an affair with many different men during her three-year marriage, many multiples affairs. Now, they want to say that John Frazier is there, but this is a culture of people, I would submit to you, in the underworld there for lack of a better word of Winston-Salem, North Carolina, where there are a lot of players involved and you will hear that the relationship that John Frazier had with Renee was not out of the ordinary for him in terms of knowing her, having an affair with her, her moving into his home. She certainly wasn't the only lady that that had ever occurred with. He was a 27 year old bachelor living in a home by himself, and all of these are important facts as we get down to where we're going, 27 year old bachelor living in a home by himself.

When you look at the case in the totality, every point that's made by the State can be argued both ways. For example, they're going to say that John Frazier at one time at least and they would suppose, to submit to you that on June

the 9th owned a TZ75 pistol and that that pistol had the -- that a TZ75, that make of pistol just like a Remington 1100 shotgun is a make of shotgun, that that pistol was one of 40 different pistols which could have been used to kill Brent Poole, that there are no telling how many different individual pistols of those 40 makes out there. The evidence will further show that John Frazier didn't own that gun on June the 9th, 1998. They will contend otherwise, but you listen to the evidence in the case.

Now, my point to you on that is everything that you hear you have to weigh the point and the counterpoint to determine what is evidence. What is evidence that would allow you to rationally determine whether or not it's evidence worthy of conviction in a given case. That's what your job is and that's what we would ask that you do. For every point that comes up, but I can tell you in the long run this case, this case is a tale of twos because John Boyd Frazier is not guilty. The evidence with which they will give you and the only evidence worthy of a conviction is this eyewitness identification testimony.

Now, there's two things we know in this case and you will see as the evidence comes out is, number one, Brent Poole was murdered, and number two, this evidence of the eyewitnesses is contaminated. It's unreliable, and we're going to show you step by step by step by step how two good, honest, well-

meaning, well-intended, honest people like Mark and Donna Hobbs can come into the courtroom and tell you that the man they saw was John Frazier and be wrong and be wrong. They're going to believe what they tell you and they're going to be so certain frankly it's scary how certain they are. So, I want you to ask yourselves, ``How are they so certain,'' and we're going to walk through this case into that journey of eyewitness identification evidence and the reliability of it and you will see that they've tested that evidence. You see you've got DNA, you've got blood, sometimes you've got hairs, you've got fibers. Now, they don't have any of that evidence in this case linking John Frazier to the crime. They've got the memory of the Hobbses, not a video-recorder that you can pull out of their brain, plug into a recorder and you can see what they saw. That would be good, don't work that way. What you've got is the memory, the memory. It has to be tested before it's anything, just like the blood has to be tested before it's anything, and the testing of the Hobbses's memory was suggestive, contaminated, and I'm going to show you exactly. It was the equivalent of giving these folks, they actually gave them two tests, and you think about it as we try this case. They gave him two tests. One was a fill in the blank. Composite drawing, they failed it. They gave them a second test, photographic lineup. It was a very suggestive, subtly so, but we'll walk you step by step through that. It

was like a multiple-choice test. You ever been in school, you take multiple-choice tests when you were in school. This was a multiple-choice test with the answer highlighted. It was a forced choice when you look at it in a global situation, and then when they make the selection that the police want them to make they are told, ``That's our suspect.'' They're confirmed. Again, you remember that multiple-choice test. You remember you got them, A, B, C, D, all of the above, a couple of them don't look just right, a couple of them close, ain't sure when you hand your paper in which one it was, could have been this one, could have been that one.

Now, when you ask the teacher the next day, ``What was the answer to the first question you asked me,'' if they confirm your choice what do you say? ``I knew I had it all along.'' It's easy then; isn't it? It's kind of like that guy on Jeopardy, Ken, that answers all those questions. You know, I'll sit there and watch that thing, and as soon as he spits out the answer I know it, too. There's somebody suggesting to me what the answer is.

In this case, the State and I hesitate to talk about this stuff because I think it just turns jurors off. I've been doing this a long time, a long time. I know what you say and what you don't say and what people want to hear. The people have their minds made up when you start talking to them. Are you really playing with a fair deck and I certainly hope so

because this case bears airing out, but the State has the burden and I'm trying to say this in a way that it resonates to you to mean something other than gobbledygook out of a lawyer. The State has the burden of proving the Defendant guilty beyond a reasonable doubt. John Frazier and this is John. John cannot prove that he's not guilty. Most of the people who sit where he sits cannot prove they're not guilty. Does that mean that he's guilty? Well, then does that mean that everybody who ever sit in that chair was guilty? Does it mean if the police arrest you you're guilty?

Three old baseball umpires talking. They remind me of where I think the jury sits. One of them says, ``I call them like I see them.'' The next one says, ``I call them like they are,'' and the third one says, ``It ain't nothing till we -- till I call it,'' and that's what this is. This case ain't nothing until you call it; and so, the evidence that the State produces has to be sufficient for you to call it beyond every reasonable doubt. I don't know what that means. They've got all kind of definitions for you. You'll just have to determine in your mind. Most say it's a reason that will cause you to hesitate, to believe the testimony is sufficient to convict beyond every doubt, is the evidence reliable.

What is circumstantial evidence? Circumstantial evidence we hear about it all the time. CSI, all those shows they've got it all worked out there. Circumstantial evidence is a --

I'm going to try to do this so I make sense, it's a secondary fact from which you can infer the real fact in question. You know a funny way of saying it is if you see a turtle sitting on the fence post that's the secondary thing. The real fact is you'll know he had some help getting up there because he didn't crawl up there by hisself. If you see where a rabbit, you see a set of tracks through the snow and you determine that they are, in fact, rabbit tracks that's a secondary fact that will allow you to infer that a rabbit had been through there. John Frazier, for example, had an affair with Renee Poole. That's a secondary fact. Can you infer from that fact that he murdered Brent Poole? Those are the kind of questions that you've got to say and they've got to do more than tell you that poetic story that he walked, she walked him into the arms of her lover and he killed him. That's -- you'd put once upon a time in front of it to be a fairy tale but there must be evidence. There must be evidence of that conspiracy of which they speak, not inferences of it, but there must be evidence of it, the existence of it beyond a reasonable doubt. There has to be evidence of who committed murder that convinces you of its reliability and its trustworthiness beyond a reasonable doubt.

I don't know if any of you have been able to serve on a jury before or not, but the one good thing about it this time you've got a somewhat interesting case to sit and listen to.

It's not a land condemnation about the DOT taking somebody's property and you trying to figure out whether it's worth $82,000 or 61,000. It's a real live murder case. It is a real live mystery. You get to solve it. They've got the obligation of proving it beyond each and every reasonable doubt when John Frazier says as he has sitting where he has and demanding this trial, ``I'm not guilty of what they've accused me of.''

Mr. Reuben Long was a lawyer that used to practice law here in Horry County. I don't know if any of you remember him or not, remember the name, he's passed away now, but he used to say one thing which I think has held true through the time and that is if you want to know which way the wind is blowing you don't look at the trunk of the tree. You look at the leaves and the twigs and the branches, and with the only evidence in this case worthy of a conviction of John Frazier that is the testimony of the Hobbses, don't look at the trunk of the tree. ``That's him, I'll never forget that face. I'm certain.'' That's the trunk. Look at the little things which go into getting there. Look at the leaves and look at the description they gave after the arrest, look at the composite, look at the conversations they had before they got the identification, look at what they were told afterwards, look at the way the identification was made, ``That's him,'' or was it done another way. Look at what they may have to effect the

reliability, was the evidence, that is the memory of Mark and Donna Hobbs contaminated or was it as pure as blood taken from a crime scene, sealed in a vacuum tube and kept for an FBI investigation.

All I beg you to do is look at this case with an open mind, look at the evidence that comes before you. Don't have your mind made up. You promised to give him a fair trial. I don't care what else has been said, and then everybody, including yourself, can be comfortable with your verdict, but when you test the evidence that the State presents by well-meaning people, not saying anybody is a crook, but you will see a subtle seduction of the Hobbses to a forced choice to pick nobody but John Frazier out of that lineup because that at the end of the day is the only choice they had. It is unreliable. It is unworthy of a conviction. Thank you.

THE COURT: Thank you, sir.

Call your first witness, please.

MR. HEMBREE: Thank you, Your Honor. The State calls Officer Scott Brown to the witness stand.

AT THIS TIME GREGORY SCOTT BROWN WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated and please talk right into this microphone. State your full name, spell your last for the Court.

MR. BROWN: Gregory Scott Brown, B-R-O-W-N.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Officer Brown, I'm not certain that I'm using your appropriate title nowadays. What is your current title?

A: Actually I'm attached to the U.S. Coast Guard Special Missions Training Center as an E6.

Q: An E6, and so, you've been -- you were activated and put on duty with the Coast Guard when?

A: The day the September 11th attacks happened.

Q: Now, I want to take you back prior to September 11th, 2001, take you to June the 9th, June the 9th of 1998. At that time frame who was your employer?

A: City of, City of Myrtle Beach.

Q: And City of Myrtle Beach employed you as what?

A: A police officer.

Q: What was your assignment back in June of `98 with the Myrtle Beach Police Department?

A: I was attached to the beach patrol division of the department.

Q: The beach patrol division, and I know, I mean, it`s pretty obvious, I think, just from that short description what that involves, but if you would enlighten the jury as to what your responsibilities were as a beach patrol officer?

A: The same responsibilities a normal police officer would have working the street. It's just a section that we work,

was physically on the beach itself. We patrol it just as a normal officer would patrol the streets.

Q: And was your vehicle any different than what the -- some of the other, the officers that were assigned to patrol the streets?

A: Yes, sir, we instead of using normal cars we have four-wheel drive pickup trucks and sometimes we used ATVs, all terrain vehicles or four wheelers.

Q: Four wheelers and you used -- your uniforms are different?

A: Yes, sir, instead of a typical police uniform you would see, due to the circumstances under which we work we wear -- normally we wear shorts and a white golf shirt but clearly marked that we're law-enforcement and police officers.

Q: On that particular night, June the 6th [sic], I want to take you to between 11 and 12, were you on patrol at that time of night?

A: Yes, I was.

Q: And when you're on patrol what do you typically do? Just -- what were you doing? Let me stop it. What were you doing that night?

A: A typical patrol on the beach.

Q: You would drive your truck, kind of take your truck up and down the beach?

A: Yes, sir.

Q: And kind of check things out?
A: Backs of the motels, backs of the houses, you know, occasionally get out, you know, look around, you know, certain areas where there has been suspicious activity, but again just patrolling like a normal police officer would.
Q: Make contact with citizens that are there on the beach?
A: Yes, sir.
Q: Did you do that frequently?
A: Yes, I do or yes, I did.
Q: And did you have occasion to come into contact with Kimberly Renee Poole that night?
A: Yes, I did.
Q: If you would please describe to this jury the circumstances of your initial contact with Kimberly Renee Poole.
A: I was in my full drive truck which is also is clearly marked law-enforcement and have light bar just like a regular police, a police car would. I'm driving northbound through the northern section of the beach in the city limits just past the last -- to be honest with you I couldn't tell you what it looks like now. Then the residential section started around 77th Avenue North and from probably 69th Avenue to 77th Avenue it's all high-rise motels. So, it's clearly lit. I had just gotten out of that location, heading just past 81st Avenue which is where the housing development starts, and I noticed

out of the top of my headlights a woman, young woman, white female came walking to me, towards me out of the top of my headlights. It gets very dark in that area, and I caught something out the top of my headlights, and noticed it was a woman walking down the beach. She had her hands cuffed over her face.

Q: Up to this point did that strike you as odd or surprising or unusual?

A: No, it did not. She was just walking towards the truck. She made a -- she took her hands away from her face just enough to catch, to catch my eye, just like a little quick wave, caught my eye and she started walking towards the truck. I kind of, you know, steered towards her a little bit. I don't run very fast. I run probably around 10 miles an hour or less on the beach and rolled my window down. I thought I was going to get a normal question like I normally do.

Q: Well, what would you consider normal questions?

A: We get everything from, you know, what do you do, you know, are you a real police officer, you know, are you like lifeguards, just people want to know what we're doing. You don't -- you know, a lot of people that come on vacation aren't used to seeing, you know, seeing guys that operate like we do.

Q: Okay.

A: And she came up to the window. I rolled the window down

expecting a normal question and that's whenever she had, you know, told me that her husband had been shot.

Q: What was her general appearance to you at that point?

A: She was extremely upset, shaking a lot. She kept her hands cupped over her mouth. As a matter of a fact when she first said, ``My husband has been shot,'' that, that, that threw me for a loop. That was the last thing I was expecting to hear.

Q: What did you say in response?

A: I asked her again. I said, ``What?'' You know, it really took me back, and again she said, ``My husband had been shot.''

Q: What tone of voice did she use when she was making this statement to you?

A: Just again extremely upset, almost hard to hear what she was saying. She kept her ---

Q: Her voice was low or high?

A: I would -- medium high, again, just, you know, really, really upset. I didn't even really clearly understand what she said the first time or I didn't think I did because her hands were over her face, but, you know, she was trembling a lot and it was clearly, you know, emotionally upset about something.

Q: What speed did she approach your vehicle?

A: She just walked, walked at a normal pace towards me.

Q: Did she do anything other with her -- you mentioned that she kind of waved to you to get your attention, anything else with her arms?
A: No, sir, no, she immediately put them back, you know, over, over her mouth and nose and started walking over towards my truck.
Q: Show -- demonstrate to this jury how she had her hands on her face?
A: Just like that and when she was talking to me she was -- talked like that.
Q: Made it hard to understand her?
A: Uh-huh (affirmative response).
Q: Got you. Tell this jury about the general conditions on the beach that night.
A: It was probably a little darker than normal. We had a lot of cloud cover. I would say the beach was at half tide, halfway in halfway out, and it was an outgoing tide if I can remember correctly, lots of cloud cover and it was fairly dark.
Q: Wind?
A: The wind was blowing, yes, sir, it was enough -- it was blowing enough just to where I wanted to run with my windows rolled up instead of rolled down.
Q: That whistled through the car or what ---
A: Oh, yeah, yes, sir.

Q: After she made the statement that her husband had been shot and you, ``What'', and she said it again what did you do?
A: I asked her where.
MR. MARTIN: Your Honor, can we approach the bench just a second.
THE COURT: Yes, you may.
(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)
(Whereupon, the following was placed on the record in the presence but out of the hearing of the jury.)
THE COURT: Will note an objection to any statements that were made by Ms. Poole at this time and the Court has ruled previously, but it's been objected for the record to protect it for the record.
BY MR. HEMBREE:
Q: Officer Brown, we were to the point where Kimberly Renee Poole had approached your vehicle, made these statements to you. Tell us what did you do next?
A: After I asked, you know, where was he at she pointed across the hood of my car probably three-quarters of the way down the beach towards the ocean. I turned my vehicle slightly. I run with my high beams on and I have takedown lights which are like floodlights on the top of the, on top of the truck, spanned my lights out through there and I could see something but it wasn't clear to me what it was. It was

something on the beach and that`s when I got out of the truck and proceeded to walk over in that direction with her.

Q: With her?

A: Yes, sir.

Q: And what did you find?

A: I found a white male that had obviously been shot in the head.

Q: How long did you stay on the scene?

A: Just long enough for me to recognize what I had in front of me and immediately took her back to my truck.

Q: What was going through your head at that point? What was in your mind at that point?

A: He had obviously just been shot and I'm wearing a white shirt. The lady that was with me was with a -- she had a white shirt on, Ms. Poole and we're sitting there getting, I mean, we're just lit up like a Christmas tree. I thought the shooter was still immediately in the area. So, my first thought was to get her to safety, get her back to my truck.

Q: You said you thought the shooter was still in the area. What made you think that?

A: Just because of how fresh the situation was.

Q: You weren't -- you didn't know, you were just, just in case.

MR. MARTIN: Objection.

MR. HEMBREE: I'm sorry. I withdraw the question Your

Honor.

THE COURT: Sustained, withdrawn.

MR. HEMBREE: Thank you, Your Honor.

BY MR. HEMBREE:

Q: Now, what was your next act?

A: I got her back to the pickup truck and then the whole time as I'm even walking over to the body I'm trying to get air time on our radios. It was extremely busy. So, actually, as soon as I was walking to the -- walking over to what was now a body I was on the radio trying to get dispatch and I was just trying to get some air time and it took me walking to the body, scene of the body and getting back to the truck by the time I got some airtime, but it was still, it was just -- it was only a few seconds, and at which time I put her in the front seat of the car, and I stayed in the apex and I cut some of the lights off so we weren't, we weren't illuminated and I stayed in the apex and kept her in the, kept her inside the car or in the truck rather.

Q: You say, you say you got air time. What were your -- what did you communicate over the air?

A: I immediately called that I had someone down and I had a shooting and I was requesting backup.

Q: And did backup arrive?

A: Yes, it did.

Q: How long did it take for backup to arrive?

A: It wasn't very long at all. I believe Aiossa got -- Officer Aiossa probably got to me within two, two minutes. It was very quick, quick response.

Q: Officer Brown, I'm going to ask you to step down off the witness stand if you would and if you'll come over here and stand in this position right here so the court reporter can hear you as you testify, ask you to keep your voice up since we don't have the benefit of a microphone, and I want to show you a few exhibits and have you testify about those exhibits. If the pointer will help you, please use it. I'm going to show you what's State's Exhibit Number Two, I believe that's in evidence.

MR. HUMPHRIES: Yes.

Q: In evidence and ask you if you recognize some of this diagram?

A: Yes, I do.

Q: All right, just generally describe what you see here, this area to the jury?

A: This is the residential section of the beach. Here it's 77th Avenue North, this is beach access. This is where I actually drive on or one of the places I can drive on and off the beach. From here down it says, you can see the Days Inn and Carolina Winds Motel. This area is extremely lit up. It's, it's -- at nighttime it's day there because of all the floodlights. From here north are all houses and the only

illumination that you have throughout here is the back of some of the houses when they do have their lights turned on and here is 82nd. Here's 81st. I was in this area right here whenever I was approached by Renee Poole.

Q: And you're in the area just -- you said, you indicated just north of 81st Avenue?

A: That's correct.

Q: The 81st Avenue crossover there or access way?

A: Yes, sir.

Q: And how far down the beach were you if you can indicate on this diagram? How far from the houses to the ocean were you?

A: I drive probably 20, 25 feet off of -- there was beach -- sand fences for beach renourishment. I drive about 20, 25 feet off of that, which is probably three quarters of the way up. That night, like I said, the tide was half in, half out. So, you had a lot of room that you could walk around in this area.

Q: Okay, so, if these are the houses here, were you up on the beach drive or were you down on the sand?

A: I was on the sand.

Q: Okay, and you indicated that you were about 25 feet away from the houses or from the water?

A: From the houses. Let me clarify that, you have, you have the houses and then after you walk out the back of the houses

to where the beach is at then you have that sand fence. So, I'm actually on, physically on the beach about 25 feet down.
Q: From the sand fence.
A: From the sand fence.
Q: That's behind the houses.
A: That's correct.
Q: Got you, and it is roughly this area where I've indicated 82nd, excuse me, 81st Avenue North just north of that beach access way?
A: Yes, sir, I was probably this, right in this general area here.
Q: And where roughly, where did you locate the body of William Brent Poole?
A: Probably right about, about here. I turned my vehicle slightly to the right because she pointed across the, across the hood of my truck and that`s when I slightly turned and illuminated him in this area here.
Q: Now, describe for this jury the general topography at that time back in 1998 of the area north of 82nd Avenue North.
A: There is absolutely nothing there except for beach and just and trees all the way up till the north end swash, which is the separation between the city and the county.
Q: And that was it -- where it says wooded area, dunes, that's this area here? That would be ---
A: Correct.

Q: --- a fair characterization of that section of the beach at that -- back in -- on June 9th of 1998?
A: That's correct. I don't even think there was -- there was not even -- there was no roads or anything. It was completely a secluded, wooded area.
Q: Now when you found -- I want you to describe for this jury the position of the body of William Brent Poole when you found him.
A: He was lying face up with his head towards the water with his right leg, I would say, facing towards 81st and then his left towards, I mean, toward 82nd and his left leg kind of towards 81st at a slight angle down towards, with his head toward the beach.
Q: Now, when you say a slight angle, was it sort of catty -- kind of diagonal, in that fashion or was he facing more toward the ocean or more ---
A: No, his head was, his head was definitely towards the, towards the water and his feet were definitely towards, towards ---
Q: Got it.
A: --- the sand dunes.
Q: Got it, got it. So, I'll show you State`s Exhibit Number Three in evidence and ask you if that drawing, kind of -- as you see this is the ocean, this reflect going up is the dunes, 81st Avenue, 82nd Avenue?

A: That's correct.
Q: Does that orientation look accurate to you?
A: Yes, it does.
Q: And does the orientation of this drawing of the body look accurate to you as well?
A: Yes, it does.
Q: Did -- when you arrived at the scene with Ms. Poole, when I say the scene, the actual spot where her husband was on the sand, what did she do?
A: As I was trying to talk on the radio I was standing at the foot. She, she walked around and fell down to her knees, picked up his hand and was rubbing his hand and only for a few seconds. As soon as I realized what I had and she had dropped to her knees, I reached down, touched her on the -- on her shoulder, I said, ``We've got to go, we've got to go,'' and at which time she stood up, and we went back to my truck. Only a few seconds were we there.
Q: She -- what direction was she facing when she went to her knees next to her ---
A: Towards, towards him, her knees here facing this way.
Q: And how long was she on the ground?
A: Just, just a few seconds. I didn't, I didn't stay there very long.
Q: Thank you, Officer. Please go ahead and take the stand.
As you began to go back, you're at -- there was the body

of Brent Poole and you tell her you've got to go, ``We have to go,'' what if anything did you do to Renee Poole to insure your safety?

A: Well, whenever I touched her on her shoulder and said, ``We've got to go.'' it`s, it's, it's a common practice that we're taught you never know what you have. She had a white T-shirt on, I've got this guy in front of me. I don't know who this lady is. She stood up, and as I spun her around to get back to the truck I ran my hands around her waistband. I don't even think she realized that I had done it, to make sure that she didn't have a gun, you know, tucked inside of her jeans.

Q: So, you just sort of gently ---

A: Just inadvertently when she stood up just kind of -- I just kind of spun her around to get back to the truck.

Q: And you're taught to do that?

A: Yes, sir.

Q: And did you locate anything that gave you any suspicions at that point?

A: No, sir.

Q: Tell me about the condition of her shirt.

A: A regular white t-shirt.

Q: Was it in any way soiled?

A: Not that I could see.

Q: Anything on the front?

A: No, sir.
Q: Anything on the back?
A: No, sir.
Q: Indicated that you went directly back to your vehicle?
A: That's correct.
Q: When you got back to your vehicle what did you do?
A: I left the door open. I helped ---
Q: Which door?
A: It was, it was the -- my side, the driver`s side door.
Q: Okay.
A: She hopped up into the seat and I told her to stay there and I stayed right beside her focused out the left-hand what we call the apex of the door when you open the door where it comes, where the door actually comes together with the car, and I'm focused looking out of the apex in case the shooter or whoever did it was still in the immediate area.
Q: Could you see the sand dunes?
A: Barely, it was, it was, it was fairly dark.
Q: As you -- as she's sitting there did you have a conversation with her?
A: I was trying to get information as far as suspect information to get it out over the air so I could get the guys to start setting up a perimeter, you know, to try to catch whoever, whoever had done this.
Q: And how much time had passed from the time you first saw

her till the time that you had her back in your vehicle and you're talking to her?

A: Just a few minutes maybe. It was not very long at all. It happened, it happened very quick.

Q: And tell this jury about the content of your conversation with Ms. Poole as you're waiting on the backup to arrive.

A: I asked her, you know, what was the guy wearing now that I had air time and she said that it was a man wearing all black and a ski mask, and I was putting that out over the airs as she relayed it to me.

Q: Did you ask her if he was white or black?

A: Actually I did and she said, ``I don't know. He had a ski mask on.''

Q: Did you ask -- did she indicate anything about a robbery?

A: Yes, yes, she was continually touching herself on the chest saying that, ``We were robbed. We were robbed.''

Q: And what if anything -- did she tell you about anything that she was robbed of?

A: Just jewelry.

MR. MARTIN: I object to his leading of the witness.

THE COURT: All right, sustained.

Q: Now, the -- did -- what if any did she relate to

you about instructions that she was given by the assailant?

A: She said that ---

MR. MARTIN: I again object to the leading of the witness.

THE COURT: I'm going to allow the question.

MR. HEMBREE: Thank you, Your Honor.

BY MR. HEMBREE:

Q: Please go ahead.

A: Can you repeat the question please?

Q: What if anything did she relay to you about instructions given by the assailant?

A: She said that the individual had told them to lay down on the beach, face down on the beach, and which she said that they did.

Q: Did she indicate that she heard anything or what if anything did she indicate she heard?

A: Yes, she did. She said shortly, I mean, right when they laid down she heard two gunshots.

Q: And did she -- what direction if any did she indicate the assailant took when he left?

A: She pointed up towards the sand dunes between the 81st and 82nd Avenue where the houses are at.

Q: Do you recall any other statements she made to you regarding the assailant or the robbery and assault?

A: No, sir.
Q: After Aiossa arrived and other officers arrived did Kimberly Renee Poole stay with you or did she go with somebody else?
A: No, as soon as the -- the scene had been secured, at that time my supervisor came over to me and took me away from, from the area, put me in a car, told me to calm down, just relax and then start writing down everything that you remember as it happened and that was, that was the last time whenever I was taken away that I actually saw her.
Q: While you were on patrol that night did you hear any gunshots?
A: No, I did not.
Q: See anything like that?
A: No, I did not.
Q: The -- once you got back to your vehicle did you notice anything unusual in your seat?
A: When, when she got out of the -- after everything had calmed down, they took her or we took her out of the vehicle, the front of my truck was covered in sand.
Q: What part of your front seat?
A: The part that you sit on, not the backrest but the part that you actually sit on.
Q: Please answer any questions Defense counsel might have for you.

MR. MARTIN: One moment, Your Honor.

THE COURT: Yes, sir.

MR. MARTIN: At this time I don't have any questions. I would like to reserve the right to recall this witness for cross examination.

THE COURT: Very well, you may step down, sir. Call your next witness.

MR. HUMPHRIES: Thank you, Your Honor, the State calls Louise.

AT THIS TIME LOUISE PETER AIOSSA WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Please be seated. Please talk right into that microphone. Spell your full name, spell your first name, spell your last name.

MR. AIOSSA: Okay, my name is Louise Peter Aiossa, A-I-O-S-S-A.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q And Officer Aiossa, with whom are you employed now?

A: The City of Albany Police Department in Albany, New York.

Q: In what capacity?

A: As a patrol officer.

Q: And in June of 1998 with whom were you employed?

A: The City of Myrtle Beach.

Q: And in what capacity at that time?

A: As a patrol officer.
Q: Let me ask you, consistent with your duties as patrol officer in June of 1998 with Myrtle Beach did you have an occasion to receive a call for backup from Officer Brown?
A: I did.
Q: Tell the jury if you will approximately what time you received that call and the nature of that call.
A: The time was approximately 11:51 and it was what sounded like a distress call from Officer Brown. He was requesting backup and by the tone of his voice and what he was telling us on the air he needed it as soon as possible.
Q: Where were you when you received the call approximately?
A: I was approximately between 70th and 75th Avenue North.
Q: Okay, now, were you also on beach patrol or were you on the streets?
A: I was on the street.
Q: And approximately how long did it take you to respond to Officer Brown's location?
A: Initially Officer Brown called out or used as a point of reference 82nd Avenue North, beach access. I arrived there approximately a minute after his initial call for backup and then arrived at his exact location probably 30 seconds after that.
Q: And let me ask you this, when you, when you pulled into 82nd Avenue access there are parking spaces there; are there

not?
A: Yes, sir.
Q: Okay, and were there vehicles in those parking spaces at the time that you arrived?
A: Yes, sir, there were.
Q: And in terms of the way you positioned your vehicle, were the vehicles in those parking spaces able to leave that area?
A: No, they were not, sir.
Q: Your vehicle blocked them in?
A: Yes, sir.
Q: Tell the jury what you did immediately after exiting the vehicle at that time.
A: I exited my patrol car, headed over the little wooden access to the beach that drops you right down to the sand. I got to the sand and was looking for Officer Brown. He wasn't right there at 82nd Avenue North. He was actually south of there. I could see the lights of his beach patrol truck and I proceeded to his location.
Q: Let me show you State`s Two which is in evidence. I'm going to stand around here, which we've called the beach diagram. Take a look at State`s Two. Is that familiar to you?
A: Yes, sir.
Q: If you will, if you will point to the jury or point to the area in which you made access to the beach first of all.

A: Access is right here at 82nd Avenue. There was a cut then or there was a cut in for cars to park there. I parked directly behind those cars right over the B-E-A of beach is where that wooden like decking is to get out to the sand and that's where I crossed the sand and entered the beach.
Q: And upon arriving on the beach where then did you locate Officer Brown?
A: Officer Brown was right in this area here on the sand.
Q: Okay, basically where the holiday notation is on the beach diagram or between the Jensen and Holiday notation; is that correct?
A: That's correct, yes, sir.
Q: Now, when you got there what was your first -- what were your first actions when you first got there to Officer Brown?
A: To locate Officer Brown and insure his safety.
Q: And did you do that?
A: I did.
Q: What did you observe Officer Brown doing at the time initially when you got there?
A: He was talking to a white female.
Q: Okay, what else did you observe in that immediate area?
A: Almost directly in front of his truck the victim on the beach with two obvious gunshot wounds to his head.
Q: What then was your response, what did you do next upon confirming Officer Brown`s safety and observing the victim

there on the beach? What was your next duty?
A: We immediately called for EMS.
Q: Did you do anything else in addition to calling EMS? Did you call for any other assistance?
A: Yes, we called for more units, we called -- the protocol at the time in Myrtle Beach was also to call for a supervisor, which is what we did.
Q: And you did that?
A: Yes, sir.
Q: Now, did you at some point have any more contact with the bystanders there at 82nd access?
A: I did.
Q: And what was the nature of that contact with them?
MR. MARTIN: I don't know exactly what he means by that question, what was the nature of that contact, but if it calls for hearsay ---
MR. HUMPHRIES: I'm not going to ask him what he said. I just want to know what he told them.
THE COURT: All right, I'll allow that.
BY MR. HUMPHRIES:
Q: In terms of their ability to leave is my question?
A: I informed them that they wouldn't be able to leave until we had an opportunity to speak with them.
Q: And without saying what they said, were all those people ultimately talked to in connection with this case?

A: Yes, they were.
Q: Now, let me ask you this, in connection with speaking to those people, as a result of those conversations with those bystanders, are you aware of any relevant information that was derived from speaking with them?
MR. MARTIN: Objection.
THE COURT: Sustained.
Q: Now, did you have any duties in regard to securing the crime scene area?
A: Yes, I did.
Q: Tell me what those were?
A: Once EMS or once I arrived there we got EMS in to assist the victim. We secured the scene by placing -- we used -- there were garbage cans on the beach. Where we were on the beaches it`s very dark. It's almost -- it's almost desolate at that time of night. So, we had to use garbage cans to kind of erect a makeshift perimeter around where the victim`s body had been. Then we had posted officers approximately a hundred yards in each direction north and south on the beach to keep any onlookers or the media or anyone basically off the beach.
Q: Okay, so, you created or secured an immediate crime scene area ---
A: That's correct, sir.
Q: --- by virtue of the barrels.
A: Yes, sir.

Q: And you expanded that secure area with officers on either end of the beach about a hundred yards on either end; is that correct?
A: That's correct, yes, sir.
Q: Okay, now, you spoke about EMS coming into the immediate crime scene area for the purposes of attending to the victims.
A: Yes, sir.
Q: Tell the jury a little bit about that.
A: The, like I said, the victim had obvious gunshot wounds to his head. Not knowing his condition, not being involved in any sort of medical training really, I didn't know what the extent of his condition was. We immediately brought EMS from the 82nd beach access, which was basically our point of reference for this entire incident from there out to where the victim was laying. The victim was rendered aid by a number of EMS personnel, firemen, paramedics and then was taken off the beach.
Q: Well, let me ask you this, in terms of priority what was the priority in terms of preserving the crime scene versus providing medical attention to the victim?
A: Providing medical attention to the victim was our first priority.
Q: And did you act consistent with that priority?
A: I did.
Q: Now, did you have any other responsibilities in regard to

the crime scene?
A: I did.
Q: What was that?
A: At the time in Myrtle Beach there was a protocol that was to keep a crime scene log. Basically what that is is a recording, a written recording of anyone that comes and goes from the crime scene, including supervisors, crime scene people, anyone that would have reason to come to the scene was recorded, their time of entry and the time of their exit.
Q: And let me ask you this, in terms of preserving the crime scene, did you, in fact, do that consistent with Myrtle Beach's protocol at that time?
A: I did.
Q: And just for the record the location of this murder, in what county is it?
A: Horry County, sir.
Q: Answer any questions the Defense may have of you, please.
A: Yes, sir.
THE COURT: Cross.

CROSS EXAMINATION

BY MR. MARTIN:
Q: Officer, you testified that your priority was to get medical help to Mr. Poole?
A: Yes, sir.
Q: You also took precautions to preserve the crime scene I

would assume?
A: After medical aid was rendered to the victim, yes, sir.
Q: All right, and I guess what I'm trying to say it's not impossible to render aid to the victim as well as to preserve the crime scene for footprints and evidence; is it?
A: Difficult not impossible.
Q: Well, you're trained in how to do both; aren't you?
A: Yes, sir.
Q: And so, you acted in accordance with your training I would assume to make sure that the crime scene was not just trampled all over so that all the evidence was lost. Would I be correct in that statement?
A: Yes, sir.
Q: That's all I have.
MR. HUMPHRIES: Nothing further. I ask that this witness be able to be excused, Your Honor.
THE COURT: Any objection?
MR. MARTIN: None.
THE COURT: All right, you may step down and you're free to leave, sir.
A: Thank you, Your Honor.
THE COURT: Call your next witness, please.
MR. HEMBREE: Thank you, Your Honor. The State calls Karole Jensen to the stand.

AT THIS TIME KAROLE K. JENSEN WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Talk right into this microphone and state your full name, spell your last name for the Court.

MS. JENSEN: My name is Karole K. Jensen, J-E-N-S-E-N.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Mrs. Jensen, where do you live?

A: Currently I live at in Conway.

Q: And in June of 1998, June the 9th of 1998 where did you live?

A: Lived at in Myrtle Beach.

Q: And I want to take you back to that date at approximately let's say 10:30 that night. Were you at home that night?

A: Yes, I was.

Q: Was anyone there with you?

A: No, my husband was at the office working.

Q: And about what time did you go to bed?

A: Probably around 10:30, 11 and just sat up and watched TV for a while.

Q: Was there something in particular you were watching on television?

A: Yes, I was watching the election results.

Q: On the 11 o'clock news?

A: Yes.
Q: About what time if you could you say did you turn off the television and settled down for a night's rest?
A: Right at 11:30 when the news went off.
Q: Now, did you go right to sleep?
A: Just drifted off to sleep, uh-huh (affirmative response).
Q: At some point were you awakened?
A: Yes.
Q: Could you describe to this jury what awakened you?
A: I heard what I thought was firecrackers out on the beach and looked at the digital clock at the TV and the little digital box that goes with the TV and it was 11:45.
Q: How many of these firecracker sounds, popping sounds?
A: Yes, popping.
Q: How many popping sounds did you hear?
A: I heard two and then a pause and then a third one.
Q: And about how long was the pause?
A: They were two rapid, and about that time I looked at the clock. I don't know maybe -- it's hard to say maybe 20, 20 seconds.
Q: And then one more?
A: Then one more.
Q: Did you get up?
A: No.
Q: Do you sometimes get up when you hear these poppings that

you heard, popping? Have you ever heard popping sounds before?
A: Oh, yes, over on the beach there's kids and firecrackers and what have you. So, it woke me up initially because I concern myself with, you know, if there`s going to be more there could be fire and they could be coming over in our yard, and it's not many neighbors around there. So, I'm kind of cautious of fire, but after it settled down, you know, after there was just a few then I drifted on back to sleep.
Q: Did you, did you get up later -- at any point did you get -- when, when did you awaken?
A: The next morning.
Q: Okay, and there had been a lot of activity out there that night.
A: That`s what I found when I went out my front door.
Q: Let me show you State`s 27 in evidence and ask if you can identify which house is yours shown in that aerial photograph.
A: Yes, my house is the first house right there on the beach right next to all those woods. It`s got a green circle around it.
Q: It's got a green circle around it, and at that point in time, that area just north of your house was in what kind of condition? What was the topography of that land?
A: It was heavily wooded, had a couple of little paths, but

it was pretty thick there at the ocean.
Q: And likewise, I'm going to show you State's Five for identification purposes and have you point to where your house is located if you could so the jury can see.
A: My house is right here, the very end and then that's woods north of there, so, right there.
Q: The last house in the -- on the beach at that point in time?
A: That`s right.
Q: And just for identification purposes let me show you State`s Number Two in evidence, the beach diagram.
A: Yes, our house is the most northern house just before the beach access and then the Holiday house is just south of us immediately next door.
Q: Mrs. Jensen, other than the popping sounds, did you hear anything else that night that drew your attention?
A: Yes, I heard a male voice, but I didn't understand a word. It was just a male sound. It was a deeper, you know, deeper than a lady`s voice and that was it. It was just before the third pop.
Q: In between during the pause ---
A: Yes.
Q: --- timeframe?
A: Uh-huh (affirmative response).
Q: What direction did the popping sounds come from?

A: All of it came just a little bit -- it sounded to me like in front of the Holidays's house, which is right next door, and it came a little bit from the south, you know, you can't quite tell, but it was my window is on that end, my bedroom window. So, I could hear it come in. The window was open.

Q: And that`s the window that faces the beach?

A: Our bedroom is like a huge patio door. It's like a double patio door. We had, have small windows up top that`s backed up against the Holiday house. It's the side of the house. It`s those windows that I had actually slid open. So I was really not hearing from the ocean because all that's glass. I was hearing through those, through those doors at the back of the bedroom or the side of the bedroom.

Q: Were the sounds coming more from the beach side or from the yard side?

A: Oh, from the beach side.

Q: Okay, please answer any questions Defense counsel might have for you.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. BRITTAIN:

Q: Mrs. Jensen, you didn't call anybody or anything; did you?

A: Oh, I didn't do anything. I just looked at the clock,

heard the noises. When I didn't hear any more and decided no more firecrackers or whatever was going off, I went on back to sleep. I didn't do anything.

Q: You assumed probably they were firecrackers?

A: Oh, that's what I thought it was.

Q: Thank you, no further questions.

MR. HEMBREE: Nothing further from this witness. We would ask that she be excused.

THE COURT: Any objection?

MR. BRITTAIN: No, ma'am.

THE COURT: You may step down and you're free to go. Are you prepared to call another witness?

MR. HUMPHRIES: Yes, Your Honor.

THE COURT: Very good, call your next witness.

MR. HUMPHRIES: Officer Grazioso.

AT THIS TIME DAVID GRAZIOSO WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Please be seated. Please state your full name, spell your last name for the Court.

MR. GRAZIOSO: My name is David Grazioso, last name is spelled G-R-A-Z-I-O-S-O.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: With whom are you employed?

A: City of Myrtle Beach Police Department.

Q: How long have you been so employed?
A: Nineteen years and eight months.
Q: You're not counting the days; are you?
A: No, sir.
Q: And in what capacity are you employed with the Myrtle Beach Police Department now?
A: Right now I'm assigned to the detective division, investigative division.
Q: And in June of 1998 in what capacity did you serve?
A: I was a crime scene specialist.
Q: Tell the jury just briefly what a crime scene specialist is and what the attendant duties are.
A: We're called out to crime scenes to process crime scenes for evidence and to take photographs of the incident scenes.
Q: And let me ask you, consistent with your responsibilities as a crime scene specialist did you have an occasion to process such a scene on June 9th, 1998, in the area between 81st and 82nd North on the beach?
A: Yes, sir, I did.
Q: Let me ask you, do you recall when you received your call out?
A: Yes, sir.
Q: Tell the jury when that was.
A: I was called out approximately midnight June 9th, June 10th of 1998. I was the on-call crime scene specialist.

Q: And upon being called out what then did you do?
A: I responded to the area where I was called out to that was between 81st and 82nd Avenues North on the beach.
Q: And what did you observe when you first arrived?
A: When I first arrived the area was lit by a beach patrol truck and I saw a section of the beach had been cordoned off with two plastic garbage cans and some crime scene tape.
Q: That's the yellow tape?
A: Yes, sir.
Q: What is really your first responsibility upon arriving at a crime scene? Do you immediately begin to process the scene or do you try and get some background information?
A: Try to get some background information and start taking some overall photographs of the scene.
Q: And is that what you did in this case?
A: Yes, sir.
Q: Let me show you State's Six and Seven and tell me if you can identify these photographs.
A: Yes, sir, these are representations of photographs that I took that morning on the beach.
Q: And again, these are -- have been introduced into evidence, but do they fairly and accurately represent the scene as you saw it on that evening?
A: Yes, sir, they do.
Q: What I would like you to do, now, I'm going to have you

down a little bit, okay, but Detective, I'll need you to keep your voice up.

A: Yes, sir.

Q: But let's show some of these items to the jury if you will.

A: Yes, sir.

THE COURT: Be sure and get in front of the microphone if you would, please.

MR. HUMPHRIES: Very good.

BY MR. HUMPHRIES:

Q: Let`s orient the jury to State`s Six. First of all let's start with State's Six. You can tell where ---

MR. MARTIN: Fran, could I look at those?

MR. HUMPHRIES: Sure.

MR. MARTIN: I'm sorry, to just make sure I know what they are.

MR. HUMPHRIES: Sure you can.

MR. MARTIN: What`s the other one? Okay.

BY MR. HUMPHRIES:

Q: If you will, go head.

A: Okay.

Q: And keep your voice up.

A: This photograph is facing diagonally.

THE COURT: Speak up please, sir.

A: This photograph is taken diagonally facing -- I'm sorry

-- north away from the surf on the beach, and ---
Q: Referring to State`s Seven in evidence.
A: State's Seven and this is the opposite view photographed down towards the surf.
Q: If you'll show this side of the jury as well?
Now, what I'd like you to do referring again to State`s Six and Seven and let me bring your attention to State's Three which is in evidence, regarding State's Six and Seven, relate those photographs to this crime scene diagram and remember you've got somebody behind you.
A: Okay, State`s Six I was standing approximately here.
THE COURT: You'll need to speak up.
A: I was standing approximately here taking the photograph in this direction. State`s Seven I was in this direction taking the photograph towards this way.
Q: Thank you.
Now, let me show you what`s been marked State's Eight which is in evidence. First of all take a look at that photograph and tell me if you can identify it.
A: Yes, sir, I can.
Q: Okay, and will you tell the jury what it depicts?
A: It depicts the beach, surf and houses along the area of 82nd Avenue beach access and between 81st and 82nd Avenues beach access.
Q: 82nd?

A: Yes, sir.
Q: And 81st?
A: Yes, sir.
Q: Now, in connection with your duties as a crime scene specialist, after you take the photographs what then is your responsibility regarding the collection of items of evidence?
A: To collect items or evidence from the scene.
Q: And let me ask you, in regard to that duty -- well, let me ask you this first of all. When we're talking about collection of items of evidence, did you also have an occasion to collect certain samples, if you will, or I believe you called it a Triple A kit?
A: Atomic absorption analysis kit, yes, sir, I did.
Q: And ---
THE COURT: Is there any way we can put him back?
MR. HUMPHRIES: Yeah, we can. We can.
THE COURT: All right, we'll allow him to get back down but the microphone is so beneficial.
Q: Yeah, go ahead and have a, go ahead and have a seat, Officer.
Tell the jury what a triple A kit is.
A: An atomic absorption analysis kit is a kit that's used to collect a sample from hands of individuals. It's a gunshot residue collection kit.
Q: Okay, now, did you have an occasion to take such samples

from Kimberly Renee Poole on the scene that evening?
A: Yes, sir.
Q: Okay, tell the jury just a little bit about how that sample is collected if you will.
A: The samples are collected by swab. They swab the hands, the thumb, the web between the thumbs and the forefingers, the back of the hands and the palms.
Q: Okay, and that was done to Kimberly Renee Poole; is that correct?
A: Yes, sir, it was.
Q: And upon collecting that evidence did you subsequently transfer it to another location, another secure location?
A: Yes, sir, the property and evidence division.
Q: Okay, and while in your custody and control did you change or alter it as to form or content?
A: No, sir.
Q: Did you maintain the integrity of the evidence?
A: Yes, sir, I did.
Q: Okay, let`s do this, in collecting items of evidence, I'm going to show you several items of evidence, ask you if you recognize them and ask if they are depicted here on State`s Number Three and I'm thinking the best way to do that is to bring it over to you. Let me get you, you may have to lean up a little bit but I want you to keep your voice up; okay?
A: Yes, sir.

Q: Now, showing you State's Nine which is in evidence if you'll take a look inside that package, tell me what's contained within there and tell this jury where you located it in regard to the crime scene, specifically State`s Number Three?
A: Number Nine is a live cartridge.
Q: Okay, now, these are numbers -- we're going to refer to them all as a group?
A: Okay.
Q: Okay, those are SLED's numbers and they will refer to those later but let`s refer to them as -- let's just identify what they are in terms of their character.
A: There are three live nine millimeter cartridges and two spent nine millimeter casings. I'm sorry there`s a fourth one, a fourth one right here, oh, four.
Q: I'm sorry.
A: Four live nine millimeter cartridges and two spent nine millimeter cartridge casings.
Q: Okay, now, referring then to State's Three if you'll point out to the jury, and of course, they'll have this in the jury room later, but if you'll point out on State`s Three where you would have located those items of evidence.
A: The live cartridges are depicted here and the empty cartridge casings are depicted here down from the stain on the beach.

Q: Okay, and they are noted ---
A: Yes, sir.
Q: --- on State`s Three; is that correct?
A: Yes, sir, these ---
Q: Keep your voice up.
A: These three are the live cartridges depicted here. This is the fourth live cartridge here. These are the two empty cartridge casings here.
Q: And let me ask you this, in regard to the fourth live cartridge was that obvious to you upon your initial processing of the scene or did you have to use some other instrument in order to determine the location?
A: No, sir, it wasn't initially obvious to us. We had use of a metal detector and that the fourth live cartridge was found with the use of the metal detector.
Q: Okay, I'm showing you State`s 10. Tell me if you can identify this item.
A: Yes, sir, it`s a silver in color Swiss Army knife.
Q: And did you also locate that and collect it on the scene?
A: Yes, sir, I recovered the Swiss Army knife here and when I found it the blades were closed.
Q: Showing you State`s -- I'm sorry, State's 11 which is in evidence, can you identify that item?
A: Yes, sir, that is a package of Marlboro Lights cigarettes and they were found by me at this location.

Q: And is there a corresponding photograph?
A: Yes, sir, there is.
Q: Showing you now State`s 12 and feel free to look in the container if you will.
A: Yes, sir, it`s a clothing button which I recovered from the scene in this location.
Q: And again, is there a corresponding photograph of the button?
A: Yes, sir, there is right here.
Q: Showing you now State`s 13 which is in evidence, do you recognize the contents of that packet, and if so, did you locate them on the crime scene?
A: Yes, sir, it is 39 cents, one quarter, one dime and four pennies. In my initial collection of the evidence I recovered the dime, the quarter and three pennies in this location, and then when we had the use of the metal detector I recovered the last penny.
Q: Showing you State`s 14?
A: Yes, sir, it`s a gold in color wedding ring.
Q: And was this located at the crime scene as well?
A: Yes, sir, it`s denoted right here. This wedding ring was found also with the use of a metal detector. It was under the sand at the time. The way that we had recovered it was use of the metal detector.
Q: And based on your investigation were you able or was the

investigation able to generate or determine whose ring it was? If you know, fine. If you don't, that`s fine.
A: No, sir, I don't know.
Q: In any event it was collected at the immediate crime scene?
A: Yes, sir, right there.
Q: And finally State`s 15?
A: Yes, sir, it's a multi-colored beach towel which I recovered here and it's depicted in this picture here next to the cigarette case, cigarette package.
Q: Now, in regard specifically to the, to these projectiles -- I'm sorry, these fired casings and the live cartridge casings did you secure them in evidence?
A: Yes, sir, I did.
Q: Did you ultimately transfer them to the Myrtle Beach property and evidence room?
A: Yes, sir, I did.
Q: After having collected those items of evidence which you preceded by photographing the scene?
A: Yes, sir.
Q: What else did you do or did you do anything else in connection with this particular investigation?
A: Yes, sir, I was directed to respond to Grand Strand Regional Medical Center and upon arrival I met with then Detective Altman and I was asked to photograph the deceased`s

wounds and also to perform an atomic absorption analysis kit on the deceased.

Q: And you did that as well?

A: Yes, sir, I did.

Q: Let me ask you this, you indicated that the victim at that time was at Grand Strand Regional Hospital?

A: Yes, sir.

Q: And did you know his condition at that time?

A: I was told that he was deceased.

Q: Okay.

MR. HUMPHRIES: Beg the Court's indulgence just one moment.

THE COURT: Certainly.

MR. HUMPHRIES: Your Honor, at this time regarding State's 25 the State has a stipulation, the State and the Defense would enter a stipulation of fact that I would like to publish to the jury ---

THE COURT: All right.

MR. HUMPHRIES: --- which is contained on State`s 43.

MR. MARTIN: That`s correct, no objection.

THE COURT: All right, it would be published at this time and remember, ladies and gentlemen of the jury, a stipulation is evidence for your consideration.

MR. HUMPHRIES: And the stipulation is as follows: collected from the pant pockets of William Brent Poole by

evidence technician Jane Bryson at the South Carolina Law Enforcement Division Forensic Services was $50.73 in U.S. currency and a Fast Eddie's sales receipt for the evening of June 9, 1998, and Your Honor, introduced without objection is State's 25, which are the contents of the pants pocket and that`s all we have of this witness at this time. I would ask that he answer any questions Defense may have.

THE COURT: Cross.

MR. MARTIN: Just a few questions.

CROSS EXAMINATION

BY MR. MARTIN:

Q: Officer, did you examine the live cartridges that you picked up on the beach? Did you examine them to see if there was a firing pin imprint?

A: No, sir, I did not.

Q: You did not?

A: No, sir.

Q: How -- this what you've got shown here, the towel, is that to be taken as blood on the towel or is that just -- or do you recall?

A: I believe that is just a rendering from this picture here.

THE COURT: Can't, can't hear.

A: I believe that's just a rendering from the picture, possibly a shadow or some dirt, sand.

Q: Did you prepare this document?
A: No, sir, I did not.
Q: You took an atomic absorption kit from Renee Poole so that you could attempt to see if she had fired a gun; is that correct?
A: No, sir, I was directed to perform the kit on her.
Q: All right, all right, and one of those -- the reason that you perform a kit would be what?
A: That I was directed to.
Q: Because you were directed to.
A: Yes, sir.
Q: Do you have any training that would -- so you could tell the jury why somebody would have instructed you to do that?
A: No, sir, I was just directed to take the kit as evidence.
Q: All right, all right, and so, you don't know anything about what it will show or won't show or how those kits work?
A: The kits would upon examination by someone other than myself that examines those kits could determine whether or not there was gunshot residue on the person that the kit was taken of.
Q: Do you know whether or not that residue that you were checking for can be washed off in the ocean, for example, or do you know that much about the test?
A: I don't know that much about the test.

Q: All right, and this scene where Mr. Poole`s body was found was where in relationship to 82nd Avenue and 81st Avenue?
A: It was between the two beach accesses.
Q: All right, and the two accesses depicted on State`s Exhibit Number Two that get you down to the beach are at 82nd and then 81st?
A: Yes, sir.
Q: Okay, and this was between the two, did you say closer to 81st or not?
A: Closer to 82nd, sir.
Q: Closer to 82nd?
A: Yes, sir.
Q: But between the two?
A: Yes, sir.
Q: All right, did you take any footprints from the crime scene?
A: No, sir.
Q: Nobody instructed you to do that?
A: No, sir.
Q: There were footprints there at the crime scene I would assume on the beach?
A: Yes, sir, I would assume.
Q: Well, you were there. Wouldn't you agree with me they were there?

A: Yes, sir.
Q: But you all didn't take any footprint samples or pictures or casts for later use; did you?
A: No, sir; no, sir, I did not.
Q: And it is my understanding that you did use a metal detector out there?
A: Yes, sir.
Q: And at the end of the day you only found two fired cartridge casings?
A: Yes, sir.
Q: Not three but two?
A: That's correct.
Q: Thank you. That`s all I have.
THE COURT: You may step down, sir. We'll get that out of your way.
A: Thank you, ma'am. Thank you, ma'am.
MR. HUMPHRIES: And ask this witness be excused. He's been up for quite a while.
THE COURT: Any objection?
MR. MARTIN: No objection.
THE COURT: All right, you're free to leave. You want to come forward for scheduling?
(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)
THE COURT: Call your next witness, please.

MR. HEMBREE: Thank you, Your Honor. The State calls Dr. Edward L. Proctor to the stand, please.

THE COURT: Ladies and gentlemen of the jury, this will be the last witness for the evening and then I'll be giving you instructions.

AT THIS TIME DR. EDWARD LEROY PROCTOR, JR., WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.

MR. PROCTOR: Yes, ma'am. I'm Edward Leroy Proctor, Jr., and that's P-R-O-C-T-O-R.

MR. HEMBREE: And Your Honor, previously the Defense had stipulated to Dr. Proctor's qualifications as a forensic pathologist.

THE COURT: Is that correct?

MR. BRITTAIN: Yes, and we so stipulate to that.

THE COURT: All right, every well.

MR. HEMBREE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Dr. Proctor, I've already mentioned that you're a forensic pathologist, but please tell us where do you work?

A: I am self-employed physician practicing pathology, anatomic, clinical and forensic, and I have my offices at Grand Strand Regional Medical Center.

Q: And Dr. Proctor, if you would explain to the jury briefly what the field of forensic pathology is?
A: Forensic pathology is the field of medicine involved in the medical legal investigation of death. As a forensic pathologist we work closely with law-enforcement and work from the standpoint of receiving the remains of a deceased and try to formulate an opinion as to the cause of the death as well as the manner of death based upon the information we have from the authorities and what we do at the time of autopsy.
Q: And you mentioned the determination that you make at the time of autopsy. I think most everybody knows what an autopsy is but please describe to this jury briefly what is involved with an autopsy?
A: Sure, yes, sir, an autopsy for forensic purposes we do an external exam, which is basically an external description of the body, also noting any wounds, any deformities or anything like that. Then we do an internal examination in which we remove the organs, examine the internal aspect of the head. We also take samples for toxicologic evaluation. After we do that we then perform a microscopic examination on the items that we feel are necessary to make our determination of the cause and manner of death. We take those findings combined with the history and information from investigative authorities that we have and formulate an opinion as to the cause and manner of death.

Q: And Dr. Proctor, were you called upon to conduct an autopsy on Brent Poole back on June the 10th, I believe, of 1998?
A: Yes, sir, I was.
Q: And could you please share with this jury your significant findings during the course of that autopsy?
A: Yes, sir, in my examination of Mr. Poole there were two significant wounds. The first of these was a gunshot wound to the submental area which is below the chin. This wound was a contact wound, which means the weapon was placed directly against the skin and this was fired up, straight up. The second wound ---
Q: Doctor, how can you say that this was a direct contact wound?
A: This was a direct contact wound in that there was an imprint of the muzzle of the weapon or the end of the gun on the skin surrounding the entrance site. There was no powder or anything around this entrance meaning that it was actually inside the wound. The second wound was a gunshot wound in the area of the left ear just around the entrance to the ear and this was what we call a close contact or very loose contact wound in that there was powder around the entrance site.
Q: And when you ---
A: These ---
Q: Sorry.

A: Okay, these were the, these were the two significant findings at the time of autopsy.
Q: When you say a close contact wound or a loose contact wound can you estimate based on the powder that you found or the outside of the wound could you estimate a range how far the gun was away from the victim at the time of the shooting?
A: In this case with there being powder around the wound site it was certainly within 24 inches.
Q: But not a close -- it wasn't actually up to the ---
A: This was not a direct contact wound, no, sir.
Q: Not a direct contact wound, I understand. Doctor, I'd like you to step down from the stand for one minute, and if you would demonstrate on me using this pointer the tracks or the angles of those bullet wounds and let me have you stand to this side so the court reporter can hear your testimony and I will face this way.
A: Okay, the wounds, the first wound that I described was what we call sub-mental which was under the chin and it was pretty much in this direction from inferior to superior straight up through. The other one was on the left side, I think it was left side, just almost right through the opening in the ear, close contact, left to right and slightly superior, probably about 10 to 15 degrees left to right and superior.
Q: Thank you, Dr. Proctor. Both of these wounds or either

-- do you -- can you say which one was first and which one -- I know you've referred to them as first and second, but is there something in your, in your investigation that can indicate to this jury which shot was actually fired first or second?

A: No, sir, I'm referring to the submental one as the first wound and this one as the second wound specifically for descriptive purposes. I do not know which one was first.

Q: And what affect would either one of these wounds have, the shots have as far as incapacitating the victim?

A: Either, either one of these wounds would have been a fatal injury, either one would have caused a rapid, almost immediate loss of consciousness.

Q: Did you recover any bullets as a result of your -- in the course of your autopsy?

A: Yes, sir.

Q: Let me have you look at State`s 24 that's in evidence. We have two vials or two bottles and I ask you to inspect the contents of those bottles if you would.

A: These are -- this first is a vial in my handwriting and dated June 10th, 1998. It says sub-Q which was the submental round which traversed inferior to superior and it penetrated the brain and was removed from the subcutaneous, the parietal tissue subcutaneously up in the posterior area where it entered the calvarial tissues.

Q: And the calvarial tissues are ---
A: The bone.
Q: In the bone.
A: In the bone of the skull.
Q: Very good, and this is in bottle number one?
A: Bottle number one.
Q: And what is the -- if you'll just tell us what that is in there?
A: That is a flattened projectile with a copper jacket.
Q: Thank you.
A: This also was dated June 10, 1998. It also contains a jacketed projectile, stated intracranial which was the projectile moved, removed from the right parietal area, intracranially which would have been the left to right projectile from the ear.
Q: And that's in -- and this bottle is not numbered; is that correct?
A: That is not numbered. It just has my initials and the date.
Q: Understood.
A: Yes, sir.
Q: And Doctor, at the time of the autopsy I believe that you turned these items over to specialist R.K. Laile with the Myrtle Beach Police Department; is that correct?
A: There were several police offices there and I think

these were transferred -- let's see. I have it in my report to Officers Laile and King who were at the autopsy at that time, yes, sir.

MR. HEMBREE: And, Your Honor, at this time we would like to publish a stipulation that was entered into with Defense Counsel on State's Exhibit Number 43, paragraph two of the stipulation.

MR. BRITTAIN: Yes, no objection.

THE COURT: All right. Yes, sir.

MR. HEMBREE: Thank you, Your Honor. I will publish the stipulation at this time that crime scene specialist R.K. Laile collected from the body of William Brent Poole at autopsy two fired projectiles and transported these items of evidence to the Myrtle Beach Police Department evidence section, a secure holding facility, and while in his custody and control these items of evidence were not changed substantially as to form or content.

THE COURT: Thank you, sir.

MR. HEMBREE: Thank you, Your Honor.

BY MR. HEMBREE:

Q: Let me ask you, Dr. Proctor, there's a term that's often -- what's referred to as defensive wounds.

A: Yes, sir.

Q: Would you describe to the jury what defensive wounds are?

A: Defensive wounds are wounds that are noted on a victim or

someone involved in an altercation whereby they are defending themselves against an attack or an assault or whatever, usually seen about the hands, forearms fending off an attack.

Q: Very good, and did you find any defensive wounds on the body during the autopsy of Brent Poole?

A: No sir.

Q: Any other wounds, any other wounds or other significant findings at all other than the two gunshot wounds?

A: No, sir.

Q: Now, I would ask if you would to describe for this jury within a reasonable degree of medical certainty the cause of death?

A: Mr. Poole died as a result of the gunshot wounds to the head which caused significant injury to the brain matter and his death.

Q: And could you please characterize again within a reasonable degree of medical certainty the manner of death?

A: The manner of death based upon my examination would be homicide, which in forensic terms means death at the hands of another.

Q: Thank you, Dr. Proctor. Please answer any questions that Mr. Brittain has for you.

THE COURT: Cross?

MR. BRITTAIN: No questions.

THE COURT: All right, you may step down, sir.

MR. HEMBREE: We would ask that Dr. Proctor be excused.

THE COURT: Any objection?

MR. BRITTAIN: No objection.

THE COURT: All right, you're free to leave as well. We have come to a good breaking point for the evening. Ladies and gentlemen of the jury, I need to remind you and this is going to be most difficult and I caution you to be very, very careful about this. You are to stay away from any media about this at all, that may be TV, could be the computer these days, it may be radio, newspaper, anything. I don't know whether anything will be there or not but I'm telling you that you are to stay away from it and that's most important. You also cannot discuss the case with anyone. When you get home a spouse, loved one, neighbor, friend, someone may ask you what's the case about, are you a juror on this case. You cannot discuss it with them. Tell them that when the case is complete you can tell them all about it, but until then you have indicated to the Judge that you would not discuss the case. Do you have any questions about the instructions that I have given you? It's very important that you follow those instructions very carefully. Is there anything from the State in regard to any further instructions of this jury?

MR. HEMBREE: No further instructions from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: Nothing, Your Honor.

THE COURT: All right, I'll ask that you be back here -- what time did you intend to start? Do we have any matters of law that we might need to address?

MR. HEMBREE: It`s entirely likely that we will, Your Honor. I don't know. I'm sure we'll have something.

THE COURT: I'm going to ask the jury to be here at 10 then so that we can handle any matters prior to the jury coming. Therefore, I need for you to be here promptly at 10 o'clock. It`s our intention that we will be bringing you out promptly. So, be here at ten o'clock and have a good evening. Remember that you cannot listen to, watch, read anything about the case, nor discuss it. We'll see you in the morning

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

THE COURT: Thank you, please be seated. Anything that we can address at this time outside of the presence of the jury? Anything from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: Not that I can think of at the moment, Judge.

OFFICER: One of the jurors need to speak with you for some reason, Judge.

THE COURT: All right, they can come out on the record

if they want to speak. Any objection? I'll just let them come out and put on the record whatever they want to say. I don't intend to meet privately with any juror.

(Whereupon, Juror Number 245, Clayton Sperry, enters courtroom.)

OFFICER: Juror Number 245, Judge.

THE COURT: Yes, sir, I need for you -- we'll -- to speak publicly so that both the State and the Defense can hear you. Yes, sir, but I'm listening.

MR. SPERRY: This morning when I answered your questions about had I known anything about the case I did not recognize the names, and as the case unfolded I realized that I had read it in the paper. Also with that, a few years ago I had -- I used to transport a local attorney to Columbia and he did give me some facts about the case just in idle chitchat. This was after -- during the trial. I don't think this is going to affect my position as a juror unless you think it will.

THE COURT: All right, let me -- if you don't mind would you step out for just a moment and let me speak with the attorneys in this matter and we'll bring you back in in just a moment.

(Whereupon, Juror Number 245, Clayton Sperry, exits courtroom.)

THE COURT: He anticipated my next question which was

whether it would affect his ability to be fair and impartial.

MR. HUMPHRIES: Yeah, I believe if we ask him what local attorney he transported to Columbia that would end up being Bill Digg`s son who represented Renee the Co-Defendant and I can only imagine what he has heard. I would object to his continuing to serve under the circumstances.

MR. HEMBREE: We just want a fair trial.

MR. HUMPHRIES: That's all we want is a fair trial.

MR. HEMBREE: We just want a fair trial.

THE COURT: Let me hear from the Defense.

MR. MARTIN: That's all I want, too, Judge, just trying to determine how we get there.

THE COURT: We do have two alternates.

MR. MARTIN: Could I confer with my client just a minute, Judge?

THE COURT: Certainly, oh, yeah.

MR. HUMPHRIES: Let me just say in the event that, I don't know what position they're going to take, but if they do object I do think we need to make further inquiry.

THE COURT: Oh, certainly.

MR. MARTIN: We think he should probably be excluded.

THE COURT: Very well. The Court agrees. I have some concerns about him talking to an attorney who had knowledge of a prior case, all right.

(Whereupon, Juror Number 245, Clayton Sperry, enters

courtroom.)

THE COURT: So, thank you for bringing this matter to the Court's attention. That was proper. You did the right thing as soon as you realized that and we are dismissing you though from this case.

MR. SPERRY: Okay.

THE COURT: But thank you very much for bringing it to the Court`s attention. We have an alternate who will be taking your place. You need not be here -- well, actually you need to be here tomorrow but you'll be part of the jury panel now rather than this jury.

MR. SPERRY: Okay.

THE COURT: Thank you again.

MR. SPERRY: Thank you.

(Whereupon, Juror Number 245, Clayton Sperry, exits courtroom.)

THE COURT: Anything from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: All right, anything from the Defense?

MR. MARTIN: Well, nothing other than I would ask the Court to do what I'm sure it will do and that is -- well, I don't know whether you will or not but in the morning in addition to finding out who knew what, it might be appropriate to ask the question now this far into the trial, are there those who know, as this gentleman did, more than they did when

they answered your questions at the beginning.

THE COURT: I'll be glad to do that in light of this. Although, I would think that they will speak up as well. I will be glad to ask. I don't think any harm can come from asking them one more time.

MR. HUMPHRIES: In terms of logistics tomorrow if we could get together just a few minutes early we still have to take up the matter of Defendant Frazier's statements and the way we've talked about doing that, and obviously you will correct me if I'm wrong, the State will proffer to the Court the conditions under which those statements were given. If there's any, if there`s any discrepancy with the Defense's view obviously or the manner in which they were given they'll respond to that and then I think the Court then can determine whether or not they were voluntary and whether or not it was custodial. Obviously, the State`s position was that it was voluntary and was not custodial, but I think we can do that with a proffer as opposed to going through a full-blown Jackson versus Denno hearing.

THE COURT: You agree?

MR. MARTIN: I agree.

THE COURT: All right, that's fine. I'll be glad to do that.

MR. HUMPHRIES: The second thing is, what have we got -- oh, well, we have to decide at some point when we're going to

launch into the Biggers's analysis with the ID witnesses and they come up ---

THE COURT: Before you bring that, when are, when will they be coming up? We could do that in the morning.

MR. HUMPHRIES: Well, they come up pretty quick. You think we could do it at lunchtime?

THE COURT: In regard to scheduling, let me -- could I see you in chambers for just one moment please?

MR. HUMPHRIES: Yes, I think lunchtime. I think we can do it over the lunch break and bring them back a little late.

THE COURT: Is there anything further that needs to be put on the record?

MR. HUMPHRIES: Nothing from the State.

MR. MARTIN: Not at this time, Your Honor.

THE COURT: All right, very well, thank you, I'll see you back in just a minute.

*****OFF THE RECORD*****

(On the record, Tuesday, May 17, 2005.)

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

THE COURT: All right, I know we have some matters of law that need to be addressed. One thing that's been on my mind is what I had discussed in chambers with you yesterday about allowing in some testimony that -- on what I would consider a novel issue in this case. Has there been any

decision made in that regard?

MR. MARTIN: Judge, I have -- yes, we have. We would ask that the Court give a curative instruction excluding that part of the statement of Brown. We need to be -- I want to be clear that I know on what's being excluded, but as I understand it, it would be that part of the discussion anything that occurred back in the vehicle as opposed to her first statements to him about, ``My husband has been shot,'' or whatever.

THE COURT: The way that I think it might be better to do it rather than to repeat what I'm asking them to ignore ---

MR. MARTIN: I understand, I understand that but I mean so that we in this room are clear.

THE COURT: Very good. What I thought I would do is any statement that was made by Ms. Poole to the officer would be excluded except the initial statement when she said, ``My husband's been shot.'' That's all of the other statements when he said, ``She told me this. She told me this.'' My memory of that was, ``She told me he went in that direction. She told me what he was wearing. She told me they went on the -- they laid on the ground.'' Those would be the statements that would be excluded, but what I'd like to tell the jury is everything that the officer testified that she said to him is excluded other than with the exception of, ``My husband has

been shot,'' the initial contact that they had, rather than to repeat it all. Would that be acceptable?

MR. MARTIN: That`s acceptable.

MR. HEMBREE: Your Honor, the State would join in the request for a curative instruction and that proposed method of addressing the issue we feel like is the absolute best way to approach it.

THE COURT: I will let them know that this is -- that the Court had made this ruling. I'm going to say that the Court had made a ruling to allow the testimony in, and upon its own reconsideration decided that it needed to be stricken; and therefore, I need for them to listen very carefully. This would not be considered. I will tell them whose testimony it was and what is stricken from the record and what is not evidence in the case and what remains. Will that be acceptable?

MR. HEMBREE: Yes, Your Honor, thank you, appreciate that.

MR. MARTIN: Again, I want to make sure I'm clear on what you are going to do.

THE COURT: Okay.

MR. MARTIN: I initially understood you to say, ``I'm going to tell them everything except this is excluded.''

THE COURT: I'm going to tell them all of the statements that Ms. Poole made to Officer Brown are excluded

except the initial statement when she says, ``My husband has been shot.''

MR. MARTIN: All right, without going into what the others were.

THE COURT: Right, will not, will not say what the others were, no point in repeating that.

MR. MARTIN: All right.

THE COURT: I just wanted you to know also that I am going to take responsibility for having made the ruling and then having corrected my own ruling, not that it's State or the Defense.

MR. MARTIN: The Defendant is not in the courtroom, Your Honor. I just thought of that. We can -- obviously he will be here.

THE COURT: We'll get him, we'll get him here and then we'll -- I'll be glad to repeat what was just put on the record in his presence. I'm sorry I didn't notice that.

MR. MARTIN: While we are on the issue I wanted to bring -- to discuss I haven't -- I don't know when the Hobbses's testimony will be in connection, probably this afternoon from what I can gather. At some point in time though I would like to be able to get some information from the Solicitor's Office about the money that was paid to the Hobbses. I have the general outline about what occurred, but I'd like to get a little more detail about that. I don't

know. We can do that outside the ---

MR. HUMPHRIES: We can.

MR. MARTIN: --- without the Court or ---

MR. HUMPHRIES: And we need to address that anyway, and I guess we need to wait until the Defendant gets here.

THE COURT: Yeah, let`s go ahead if we're going to address another issue, let`s get the Defendant in unless you just want to talk privately to see if you can come to an agreement in the meantime.

(Mr. Martin and Mr. Humphries confer.)

THE COURT: I have a possible solution to that issue, too, when you all are ready to talk about it that might resolve both. I can understand the dilemmas on each side and I thought about it. I don't know. I'm just going to throw this out and see if you can agree to it. I know that you don't want the fact that there was prior testimony or prior trials in, that you don't want that. You don't want it to sound like this happened before they testified as if it were the reason for their testimony. So, I understand that dilemma. I think the way it could be dealt with is that you can bring out in fact that they have been paid and they have received a reward and I do think that that's relevant. I think also it needs to be brought out that they had -- their story had never changed, that their testimony did not change as a result of this, that they had said the same thing prior

to any reward ever being known. Is that acceptable?

MR. HUMPHRIES: I don't think so.

THE COURT: Okay.

MR. HUMPHRIES: And in all due respect because there have been some changes, okay, not as it relates to the identification, but there will be substantial examination of these witnesses regarding changes in their testimony as it relates to the position of the Defendant at the point in time they viewed him, and that's based on the exhibits that were used and whether or not they gave good vantage points but the fact remains and it's in the -- it was in the record at the last trial and it will be in the record of this trial.

THE COURT: We -- yeah, go ahead and bring him out. All right.

MR. HUMPHRIES: And quite frankly I had thought about that to try to reach some agreement so we could enter some kind of stipulation about it, but the problem is that there is going to be testimony, not necessarily attacking but drawing attention to these changes, and quite frankly, in regard to the changes from Renee Poole's trial to John Frazier`s trial I'm -- certainly it`s going to be the Defense's position because it's true to a certain extent that the testimony regarding the positions in which they saw the Defendant changed in such a way that the reliability of their identification at least in the State`s estimation is stronger

from the Renee Poole case to the John Boyd Frazier case. Now, they'll explain that by saying, you know, we're looking at these exhibits, they don't give us good vantage points. We went back out there. We looked at it. That`s when we came to a clear understanding about our relative positions when we saw them. You see my dilemma there. I don't think that we can say -- well, I think we can say their testimony hasn't changed but we're going to say that and then it's going to be established that to a certain extent their testimony has changed.

MR. MARTIN: Let me say this, it would seem to me that what you proposed could work, Fran, if it was done in this way. You're right, the Hobbses's testimony regarding position has changed from one statement to another or one testimony to another, but now, as I recall their last sworn statement in the case would have been at Frazier`s trial. I don't know or wouldn't expect that their testimony would change today from what they eventually said in the actual trial the last time because by then they had got their position straightened out, so to speak.

MR. HUMPHRIES: Right.

MR. MARTIN: They never -- I mean, in those testimonies I don't think that from the last trial that it changed. So, it would seem to me that they could, the Hobbses and the State could say obviously there was some -- Judge,

just be sure you understand the way this went. The statements that were taken from the Hobbses there was no written or recorded statement taken while they're in Myrtle Beach when they first talk to the police. Then on September the 3rd of `98 ---

THE COURT: So, from June there's an unrecorded statement.

MR. MARTIN: All right, June 9th, June 9th is when the event occurred. At least there`s -- there hadn't been produced to me any written, recorded statement of the Hobbses`s prior to the lineup identification which was on June 28th.

THE COURT: Okay.

MR. MARTIN: The first recorded written statement from them was on September 3rd of `98 taken by Mr. Long and Mr. Altman at their home up in Virginia or somewhere up in Virginia. Then the next statement that you would have in connection would be the statement they made at the Poole trial. Then they also testified in an in-camera hearing at the last trial and then they testified in the trial itself. Now, their testimony has changed some, and you know, you can attach what significance you want to it. They never said anything as substantially as, ``Well, we were wrong about what we saw,'' but to distances and places they were standing and all that has changed from September 3rd statement up until they testified at this trial the last time. So, you know, I

am going to ask them about that. I think I have to. I don't think it`s anything that they considering earth shattering to the validity of their testimony, but there's some changes in there, but as from the trial their testimony on the -- at the last time I can't imagine they'd want to change it much; and so, it seems to me that they could say, I could question, they could question in whatever fashion and that is that, yes, they received the money, but they received the money after their last sworn statement. It in no way impacted what they said and they haven't changed their testimony since that time.

THE COURT: It seems that that would ---

MR. HUMPHRIES: It doesn't for this reason, it is absolutely material that the jury understands that not only do the Hobbses believe that this matter has been concluded but the Pooles prior to offering the reward thought that this matter was fully concluded, two trials, two convictions, they're done. They, in fact, consulted with Mr. Hembree many years ago about the propriety of giving this reward before they ever mentioned it to the Hobbses. It's been concluded. There have been two trials, there have been two convictions. It can't hurt the case, ``You can give the reward if that's what you want to do.'' That is material as to the intent both of the Hobbses and the Pooles and I don't think you can say in prior sworn testimony, ``You haven't changed your testimony the last time,'' because that doesn't indicate the true

character of the situation in paying the reward. They pay the reward because it was done. They didn't approach the Hobbses until it was done. The Hobbses didn't know there was a reward and they're prepared to say that. They had no idea. This came completely out of the blue, didn't seek a reward and turned it down until they imposed on them to take it, and in fact, Mr. Hobbs says it is still in the bank. He hasn't touched it yet and didn't want it when they gave it to him. What I'm -- but understand that truly gives you the character or the context in which the reward was given. It was done. Two convictions, it was done. It was something that the Pooles did for their son, the only thing they could do.

MR. MARTIN: Judge, there's no way and I asked you and I asked the Solicitor before we started this trial if I decided I wanted to was there any way I could tell that jury that this was a retrial, that there had been a trial and that I wanted to -- them to really understand what the deal was and I was told absolutely not. Now, this predicament we've got here wasn't of our doing. I don't think anybody had any malicious or bad intent in what they did, but it's -- but, but it is a dilemma that they created, and to the extent that they thought it was over they were wrong, and I don't see, I mean, I do think that there is a dilemma, but I think for them to be able to come in and say what the Solicitor here just said would be reversible error before you could close the door back to your

chambers, and I mean, we have to live with the dilemma of that jury over there knowing that it's a retrial and read all about it and reversed on a technicality and all that stuff. I think they're going to have to live with this predicament they've got and clean it up as best they can but not go back and explain it the way he wants to.

MR. HUMPHRIES: Well, now, let's be clear. I don't know that we've got anybody on the jury, on this jury that has said in pretrial that they know this is a retrial, he was convicted and it was reversed on a technicality. We don't have any such person on this jury, number one, and number two, I'm not saying that we have to say that the last trial resulted in a conviction, although obviously the assumption is that it did. I'm just saying this is important evidence. There's no question about it. Mr. Martin knows it's important evidence. We know it`s important evidence and to be able to inject that kind of impeachment when it`s not the true character of the transaction is patently unfair. I'm sorry. I had -- you know, I didn't know, Greg had entirely forgotten. I mean, it`d been some five years because I asked him and he searched his memory, didn't remember, and we didn't know until Sunday afternoon or Sunday evening at 6:30.

THE COURT: What you want that you're not getting and what's being proposed is you want the jury to have knowledge that this was presented to them after they thought the

testimony would no longer even be necessary. It was done. It was over; right?

MR. HUMPHRIES: That there would -- that based on the prior proceedings that they would never be called on again to testify in connection with this identification, that the matters were concluded, resolved and then and only then did the Pooles approach the Hobbses regarding a reward, never before, only after they were concluded because that is the character of this transaction, and anything less is open impeachment and unfair impeachment of the Hobbses in a very critical piece of evidence and I'm not saying that Mr. Martin would take unfair advantage. I'm just saying in any way you say it it is an unfair and inaccurate impeachment, regardless of how you say it.

MR. MARTIN: Well, Judge, I don't know. I mean, it is -- it`s an interesting question, but I think you're -- I think we're bound by certain guidelines and one is for them to be able to say it the way they want to say it and that is there was already a trial, there had been a conviction or there was a trial and they thought this was over, that this was a done deal, that`s just blatantly, obviously, you know, that`s the best of all situations for them, get to sneak that into the jury through the back door, all the time holding the pretense that there wasn't a trial the first time, you know, that's just, that`s -- the way you solve this dilemma is not to

punish John Frazier because he had nothing to do with this. I don't know. We can find out now. I don't know what day the money was paid, but I bet there was an appeal filed at the time the money was paid if it happened after the trial; and so, if you're going to err on either side and anybody has got to bear the brunt of a problem coming from this, should -- certainly it shouldn't be the Defendant.

THE COURT: I think probably the only way to handle this is to say that it hasn't changed, the essence of their testimony, that their testimony -- they have testified -- the essence of their testimony has been consistent throughout and there may be a way to stipulate with saying the ID, their ID has been consistent throughout or however you can handle that that, that this hasn't changed that, that there has been prior statements and prior testimony that's been, that's been unchanged.

MR. HUMPHRIES: Well, let's look at it this way if we can. I don't think, truthfully, I don't think Defense counsel believes that the payment of the reward in any way has materially impacted either what they've done in the past, because it couldn't, or what they will do in the future. I don't believe that. Now, is it a question they can ask, yeah, but you've got to have a good faith basis for your questions, too. Now, I don't believe that's the case. So, what are we arguing about? What we're arguing about is taking unfair

advantage of a witness when there really -- the fact that it's paid after two trials is as pristine as it gets except ---

THE COURT: But isn't that the same as saying their testimony has been the same, the essence of their testimony, their ID was ---

MR. HUMPHRIES: I understand.

THE COURT: --- long prior to ever receiving it.

MR. HUMPHRIES: I understand but here's the thing and we said before their ID is the same but there has been a change in terms of their relative positions, which is absolutely materiel. It's explained. It's explained but it's material and you compound that with this assertion that there is some reward money and leaving the jury to infer that as a result of the reward money, you know, their position may change or may improve to the benefit of the Pooles and the State is unfair. Now, is there a way we can do it? Yeah, there's a way we can do it. We don't have to say trial. We can say the proceedings in this matter were concluded and neither the Pooles nor the Hobbses believed that the Hobbses's testimony would ever be required.

MR. MARTIN: And I would object to that. It's just -- it's not true. Now, what I'll ---

MR. HUMPHRIES: Well, now, that's what they believe. That's what I'm telling you.

MR. MARTIN: That may be what they believe, yes, I agree

with that, that may be what they believe, but now, what -- I mean, I just think there's a different way to skin that cat and I will sit down with you and talk about the manner in which I will ask the questions because I do believe your premise or I say I've got some questions. I want to know what the facts are number one. I want to know when the Hobbses contacted the Pooles, whether it was before or after. I want to know what kind of contact they've had before and since then. I want to know when -- how all that was conveyed. I want to know the details about it, but assuming what you're telling me is correct if the money was, there was no contact before and the money was paid after, that's a fact that stands by itself. What effect it has on the credibility of their testimony it's just like everything else in this trial a jury can -- the Solicitor here can argue obviously had no effect on it because they had already given a prior statement, two prior statements or whatever it is, in which they identified John Frazier as the man they say they saw on the beach, and I will, I mean, I want to be careful what I say here, but he's right. I will, I will do my -- I will not abuse the truth in the situation any more than any of us are abusing it by ignoring the fact that there was a prior trial in this case.

THE COURT: Isn't it a fact though that there were four prior statements.

MR. MARTIN: One, two, three, four, would be my guess,

yes.

THE COURT: So, couldn't that be -- couldn't, couldn't that be said, too, that there were actually four prior statements where the ID was this way before a reward was ever even thought of or mentioned; is that correct? I don't know that for sure.

MR. MARTIN: Well, I mean I assume it's correct. Apparently it was before any money was paid from what I've been told.

THE COURT: Then I think that that's something that could come out.

MR. MARTIN: Now, the other thing -- now, just so the Court will know and they can help me with this where I'm wrong. I need this information as well, but I found the newspaper article where the reward was in the local newspaper on Friday June the 12th. Now, I want that fact into evidence but unless they tell me I have no way of proving that the Hobbses knew anything about the reward money or did anything for reward money, but it's like every other fact in this case. I can't just ignore that fact in this process.

THE COURT: I think that's what we're going to have to do is say that there were four prior statements. That encompasses the two at the trial, the prior trial but we won't say it was the prior trial, that there have been four prior statements, several under oath, maybe all under oath, but four

prior statements where the ID has been consistent, they have not changed that.

MR. MARTIN: We need to check that as for being four. I think that`s true.

THE COURT: From what I put down there was the June 9th or around that time, the June 28th.

MR. MARTIN: No, there was no statement on those dates, Judge.

THE COURT: No -- there was June 9th but nothing was taken down. They gave a oral ---

MR. MARTIN: Right, there`s no statement to talk about them having given a statement that was recorded ---

THE COURT: Okay.

MR. MARTIN: --- in any way until September the 3rd.

THE COURT: Okay, September, then it may just be three, September 3rd and two at the trial.

MR. MARTIN: Well, you've got three, frankly.

MR. HUMPHRIES: Well, it's three in trial. You've got ---

MR. MARTIN: You've got three in trial.

THE COURT: Okay.

MR. MARTIN: You've got the Renee Poole trial, you've got the in-camera hearing at Frazier's trial and you've got the statement in Frazier's trial.

MR. HUMPHRIES: Then you've ---

THE COURT: Okay, you may want to double-check that.

MR. MARTIN: Which their ID is consistent.

MR. HUMPHRIES: Well, now, here's what -- then that leaves us in this position. We're going to have to then call the Hobbses, one or more of the Hobbses or the Pooles and ask them, ``In the paying of this reward did you believe that these matters were concluded,'' because the intention of the Hobbses and the intention of the Pooles is absolutely critical, separate and apart from what happened because here we are. I mean, reality is this, we're back in a retrial, ain't no question about it. I'm not pretending we're not but the intention was particularly by the Pooles that they not pay this reward until the matter was fully concluded. That was their intention and would not have paid it and they would testify they would not have paid it unless they firmly believed that. Now, where does that get us? I don't know, but I think I'm entitled to ask those questions because it goes to the intent, and I can tell them, ``We can't talk about a retrial. We can't talk about a prior conviction,'' but I think I should be able to say, ``Under what circumstances did you pay this reward?'' ``We believed in our hearts that these matters regarding my son's death were fully concluded and then and only then did we approach the Hobbses with this reward.''

MR. MARTIN: Why couldn't we do it this way? If you call them, let me say, couldn't they say that, ``We believed

that the payment of this money would have no effect whatsoever on the, on these cases, on this case.'' If you get into exactly what Fran says you're once again slipping in that back door the part of that, but there ought to be some way. I understand and they ought to be able to let the Pooles say that there was no ill-will, no intent, " No way did we ever think that the money would effect,'' but they've just got to be careful how they say that, and maybe we could agree on something.

THE COURT: Let me give it some thought. I need to think to see if -- think about it and see if we can agree on some language that could deal with this without shouting to this jury that there's been a prior trial. Let`s think about it. You're bringing them up this afternoon?

MR. HUMPHRIES: We will address the pretrial matters either before or after the lunch break as I look at the witness list.

THE COURT: Okay.

MR. HEMBREE: Your Honor, the only other matter that we might be able to take up in the 20 minutes or so that we have regarding the statements of the Defendant that the State seeks to introduce. We have four witnesses that we will call in relation to these statements. One is Officer Darrell Mills. Officer Mills responded to, one of the things we had talked about before I launch into this, one of the things we had

mentioned to you yesterday and I had talked to Defense counsel about was to proffer the circumstances of how these statements were obtained and maybe resolve those issues without a full-blown hearing on those matters. The first statement to give you the circumstances was ---

THE COURT: Well, let me and I hate to interrupt but I had received a message that a Miss Laura Barry, Juror Number 18 needs to speak with us. So, I think we can bring her in and just see how long that takes and then we can go right into this.

MR. HEMBREE: Sure, be glad to, Your Honor.

THE COURT: I just have a concern whenever a juror needs to speak with us.

MR. HEMBREE: I do, too.

THE COURT: Let`s bring Miss Laura Barry in, please, Juror Number 18.

(Whereupon, Juror Number 18, Laura Barry, enters courtroom.)

THE COURT: Ms. Barry, I received a message that you needed to speak with me.

MS. BARRY: Yes.

THE COURT: We're going to make it public so that the parties, the State and the Defense, can hear what you have to say.

MS. BARRY: Okay.

THE COURT: Yes, ma'am.

MS. BARRY: Basically when we first were selecting the jury I didn't know anything about the case. They were talking among us sitting in the benches before you told them not to say anything; and so, I overheard some of the other ones talking, talking about a retrial and that sort of stuff but I didn't know anything about it. I thought the Defendant looked a little familiar from possibly news but then after yesterday's proceeding when all this happened I was a resident of Winston-Salem and I remember -- I remembered the case and not too many details about it, but basically remembered the case and also the initial outcome; and so, I wanted to be up front and say that and didn't know if that -- I mean, I would still be very objective but just having that in the back of my head isn't something I would share with the other jurors, but I do know more about ---

THE COURT: That there has been a trial. What else -- other than realizing that this is a retrial what else do you know? What else have you heard?

MS. BARRY: I know the result of the initial trial, what ---

THE COURT: Okay, that there was a trial.

MS. BARRY: Uh-huh (affirmative response.).

THE COURT: You've heard there was a trial and there was a conviction.

MS. BARRY: Uh-huh (affirmative response).

THE COURT: Anything else?

MS. BARRY: No, no, I just know like the events leading up. I knew that there was, you know, the murder. Like I said, I lived in Winston-Salem and I had family here. So, it was even, it was even a discussion back then between the families, that, you know, oh, I, you know, who was being tried there and, you know, and -- but like I say I don't remember still a lot of the details but I just know those key points. So, like I said, I can be objective, but at the same time I just felt like I should disclose that because I know yesterday you disclosed people who knew anything about it, and at that point I didn't, but then driving home yesterday and after more of the proceeding I was like, "Oh, my goodness, I lived in Winston-Salem. I remember all this." So, I wanted to let you make the decision with that.

THE COURT: Okay.

MS. BARRY: Or I didn't know if that would make me -- you know, prefer to make me an alternate or however you wanted to handle it, but I just felt better disclosing it right up front.

THE COURT: Okay, you've done the right thing, Ms. Barry. I'm going to ask you to step out for just a moment and let me speak to the attorneys in the case and we will bring you back in.

MS. BARRY: Okay, thank you.

THE COURT: Thank you.

(Whereupon, Juror Number 18, Laura Barry, exits courtroom.)

THE COURT: And that reminds me, I will question the jury again this morning.

MR. MARTIN: Judge, what I would ask you to do before we do anything with this juror, I'd like to question the other jurors. If you excuse this juror, we're down to our last alternate. I don't, I don't want to get in the position we can't finish this trial unless that's absolutely necessary.

THE COURT: All right, what say the State?

MR. HEMBREE: Well, we just as well get it over with, Your Honor, if it's -- I mean, we just as well deal with that issue now, and if we have that problem then we have that problem, and if we don't we can move on.

THE COURT: All right, as far as this juror I can remind her not to discuss anything that she may have heard or may have heard or read about this case to the other jurors who are fellow jurors. Do you want me to put her back into that jury pool?

MR. HUMPHRIES: I wouldn't.

THE COURT: Need to keep her separate?

MR. HUMPHRIES: Not at this point.

MR. MARTIN: Not until we decide what we're going to

do.

THE COURT: All right, what I'd prefer to do is this, you're asking me to bring her out with the group and then ask a question where we know we're going to single her out. Why don't I go ahead and finish any questioning with this particular juror and then bring the rest of the group in and we'll just hold her aside. In other words I know when we ask this question you know she's going to respond and it may be that we're just singling her out.

MR. HEMBREE: I think your plans to go, Judge, if I can make sure I understand it, that we can bring her out and deal with her first initially because she brought it to us and then tell her, maybe instruct her when she comes in with the rest of the jurors, with the entire group that she doesn't need to stand, that she can just keep her seat. That way everybody else doesn't know what created the problem, you know, that they're all looking at her and she can hear the general discussion, too. Does that sound like a ---

THE COURT: That is fine with me, but we're keeping her separate until she comes in.

MR. HUMPHRIES: And I misunderstood. I thought you were going to bring them in one at a time. That was my ---

THE COURT: Is that what you want to do?

MR. HUMPHRIES: No, no, no, that's not -- no, I just said I wouldn't put her back in the panel if you're going to bring

them in one at a time. I didn't know you were intending on bringing the whole panel.

THE COURT: Okay.

MR. HUMPHRIES: If you're bringing the whole panel I think she needs to be with them.

MR. HEMBREE: Yeah, she can sit with them and not feel -- I know they're going to be looking around like who caused this trouble?

THE COURT: Let me finish questioning her and then ask her not to discuss this with the remainder of the jurors, put her back into the jury panel and then question them all.

MR. MARTIN: Well, I think if you do that, if you question them just like we talked yesterday before we left now again, ``Does anybody know any'' -- first of all, have you read or heard anything about it and then does anybody know anything that previously caused you to be ---

THE COURT: Did anything that you heard trigger your memory or your recollection ---

MR. MARTIN: Yeah.

THE COURT: --- do you now believe that you have heard anything about it? We can handle that. All right, let's bring her back out.

(Whereupon, Juror Number 18, Laura Barry, enters courtroom.)

THE COURT: Ms. Barry, let me ask you this, can you

set aside -- well, as a result of what you may have heard or read, and again, I don't know what you've heard or read, how accurate that is or not, but can you -- as a result of what you've heard or read have you formed an opinion in this case?

MS. BARRY: No, I haven't. I'm still like I said neutral and willing to be fair, but at the same time I know that's in the back of my mind and I would be as objective as possible, but I do know what was found out.

THE COURT: Okay, so, okay, you have not formed an opinion is that what you're saying? Have you formed an opinion in this case yes or no? Can you answer that?

MS. BARRY: Not quite, I'm still confused. Yesterday, I was -- I thought my, immediately after yesterday but I was just thinking, just driving home and just kind of thinking and then I had -- kind of got the knots in the stomach.

THE COURT: Okay, now, this is probably not a question that you've thought about and let me ask you to think about it ---

MS. BARRY: Yeah.

THE COURT: --- because it's very important. As a result of what you've heard or seen have you formed an opinion in this matter?

MS. BARRY: I honestly I don't know for sure. I mean, I know what I've heard, and we'll see if that, you know, would change.

THE COURT: Let me, let me ask this.

MR. BARRY: It was like, it was almost like, I think like the Defense and you been saying about the witness and how it's almost tainted information, just like I know what I've heard, so, now it's still in my mind innocent until proven, but then I did hear prior to ---

THE COURT: Let me ask you this ---

MS. BARRY: Uh-huh (affirmative response.)

THE COURT: --- can you set aside anything that you may have heard or read, any discussions you may have had with your family, can you set all that aside and resolve to decide this case based solely on the evidence and testimony presented in this courtroom?

MS. BARRY: Probably, I mean, I ---

THE COURT: Okay, now, that's real important.

MS. BARRY: I know, I know probably is. I don't even watch lawyer shows and all this stuff.

THE COURT: I need for you to soul search and really give this thought. Can you set that aside and decide, resolve that you are going to decide this case solely on the evidence and testimony presented in this courtroom? You want to think about it and come back out or can you think about it now and answer?

MS. BARRY: I would be willing to have a very open mind.

THE COURT: Okay, now, that's not answering my

question though, and I appreciate that, and I know you're struggling to answer it. It's a difficult question that I'm asking you and that is I need to know that you can set that aside and base your decision on what's presented here in this courtroom. That`s, that's what the State wants, that`s what the Defense wants.

MS. BARRY: Right, I ---

THE COURT: Can you do that?

MS. BARRY: I believe I would be able to just even based on -- like I said before, I heard, I heard talk before we were even selected, and I had cleared my mind of that ---

THE COURT: Okay.

MS. BARRY: --- and that I needed to form my own opinion and it wasn't until we had the proceedings yesterday that ---

THE COURT: So, you think you ---

MS. BARRY: --- it was more familiar to me but the majority of the facts and everything are sketchy. It was a long time ago.

THE COURT: So, you can knock those out and just forget those and decide it based on what`s here?

MS. BARRY: Uh-huh (affirmative response.)

THE COURT: Yes?

MS. BARRY: Yes.

THE COURT: Okay, all right, very well. I'm going to

send you back to the jury room.

MS. BARRY: Okay.

THE COURT: Please don't discuss what we've just discussed here.

MS. BARRY: Okay.

THE COURT: I'm also going to bring the jury out, and I'm going to ask them whether they have read or heard anything about the case. Now, I'm going to go ahead and ask you that now. Since yesterday have you read or heard, discussed this case with anyone?

MS. BARRY: No, no.

THE COURT: Seen anything about it?

MS. BARRY: No.

THE COURT: Okay, when I bring the jury back out I'm going to be asking them that question, whether they've heard anything or read anything or discussed the case with anybody and then I'm going to also ask them if anything that they've heard in the trial thus far has triggered their memory and now do they recall that maybe they knew something or had read or heard something about this case previously. You need not answer that question because we have already -- we've already had this discussion. So, you don't need to respond to that. We know that you have and we've questioned you about that, okay?

MS. BARRY: Okay, and the lady who brought me in she

had talked with me in the hallway. So, she won't say anything. She was asking me about coming forward. So, she, she knows what's going on, but she won't say anything.

THE COURT: We'll make sure that she knows not to discuss it with any other jurors, which you're talking about the bailiff?

MS. BARRY: Yes.

THE COURT: She wouldn't, she wouldn't. She, she knows. She understands that.

MS. BARRY: I just wanted to let you know that's the only one I had talked to a little bit.

THE COURT: Good, well, thank you, Ms. Barry. Thank you for being so forthright.

MS. BARRY: Okay, thank you.

(Whereupon, Juror Number 18, Laura Barry, exits courtroom.)

THE COURT: Anything from the State?

MR. HEMBREE: Your Honor, she says, I mean, she answered the questions. She finally gets there, but she's, I mean, she's flopping around. I've got a -- I would be dishonest to say I don't have a real concern about her. I've got a concern about her.

THE COURT: Anything from the Defense?

MR. MARTIN: I want to see what everybody else has to say before I ask you to do anything with or without her.

MR. HUMPHRIES: This situation is not unprecedented. We tried Raymond Patterson in Lexington County for the death penalty three times, and on the, on the third time two of the people who knew that he had been tried twice, convicted and given the death penalty were qualified as jurors because they answered about the same way. Now, this isn't a capital case and this didn't have the kind of publicity that Raymond Patterson did. There's some -- there is support in the law for it, but my concern along, if we get down to 12, I'm real concerned we're wasting our efforts, but it may just be that's where we are.

THE COURT: All right, let`s see what we have. Let's see what the jury -- ultimately this juror did indicate and she`s struggled with it but she thought about the questions I was asking her. I'm asking her very difficult questions. I'm -- you think about it, if we were requested to set aside information that we know I would have to give it much thought to know that I would have the ability to do that, could I do that. I'm impressed that she did give it that kind of thought before she answered affirmatively that she believed she could. Let`s see if we have any more jurors who may have information as well, oh, all right, and let me also let you know that the juror has sent in a message wanting to know if they can take notes and let me just hear from each on that.

MR. MARTIN: I have no objection to them taking notes.

THE COURT: We would need to have note pads for all of them and of course they'd take their notes and then they'd leave them in their seat until they deliberate and I can give them the instructions about how we'd handle it. Any objections to their taking notes?

MR. HEMBREE: I don't have any objections to them taking notes. It's my understanding they will not be allowed to take their notes back into the jury room during deliberations.

THE COURT: That's right.

MR. HEMBREE: No, no objection at all, Your Honor.

MR. MARTIN: Probably ought to tell them that up front because they'll be counting on taking them back to the jury room with them.

THE COURT: I can ask them if they still want to take notes if they understand they're taking notes that will be left and that our concern -- my concern about them taking notes is they get down one bit of information and miss the next equally important bit of information. My preference is for them to sit back and listen to all the evidence and testimony but if they are taking notes some people just recall things better by writing them down. That's helpful.

MR. HUMPHRIES: And this is a three-day trial, this is not, you know.

THE COURT: All right, we'll see what we can do with

that. I don't know that all the jurors are here yet. We have them all. Okay, do you want to handle the proffer at another time or you want to go ahead with that at this time.

MR. HEMBREE: We can do that at another time. I think the jury issue is paramount at this stage.

THE COURT: All right.

OFFICER: They're not all here yet, Judge.

MR. MARTIN: They're not all here.

THE COURT: No, okay, let me take the opportunity to tell you my curative charge verbatim to see if you have any concerns about it. I wrote it down so that we would have it. It's, ``Ladies and gentlemen of the jury, the Court has made a determination to allow in statements that were allegedly made by Ms. Poole to Officer Brown. Upon this Court's own reconsideration of that decision it has been determined that the statement should be excluded with the exception of the initial statement when she, Ms. Poole, told Officer Brown, `My husband has been shot.' Listen carefully, you are not to consider as evidence any testimony of Officer Brown regarding Poole`s statements to him. They are not in evidence for your consideration. The only statement to Officer Brown by Ms. Poole that is in evidence is, `My husband has been shot.''' Does that take care of it?

MR. HEMBREE: Satisfactory with the State, Your Honor.

MR. MARTIN: Satisfactory.

MR. HEMBREE: Your Honor, we can do the proffer now ---

THE COURT: All right.

MR. HEMBREE: --- as far as we can while we're waiting on the jury. I will go through the -- there are actually three different statements, mention the four witnesses. The first statement was a statement that was made by the Defendant to Officer Darrell Mills of the Winston-Salem Police Department. He went by Mr. Frazier`s home the early morning hours of June the 10th approximately 5:40, 5:45 in the morning. He had just -- he had very little information about the case. He was just kind of checking to see if he was there. He did not, did not have a warrant, did not take Mr. Frazier into custody, identified himself as a police officer and actually indicated that when Mr. Frazier asked him about what the reasons he was there for was that there had been a missing persons report in Myrtle Beach regarding John Frazier, that he was a missing person in Myrtle Beach and they were just checking it out, and you know, ``Sorry for the confusion, sir.'' That was basically the extent of that statement. Mr. Frazier was not in custody. It was a very brief statement.

The second statement was later that afternoon, a statement given to James Bowman and H. G. Pendergrass. These are agents with North Carolina SBI. Once again, they stopped by Mr. Frazier's home to speak with him about the

circumstances of the murder. At this point Mr. Frazier was more of a -- I would say a person of interest to law enforcement. They were, they were still, you know, it was early in the investigation, still on June the 10th. They were checking out a lot of leads, knocked on the door. Mr. Frazier came outside. He spoke with them in the driveway for a few minutes. Once again he was not in custody. He was not placed under arrest and he was -- the officers left after they took their statement and he was free to go back to his home and the end of it.

The final statement was to Captain Bill Frontz. Mr. Frazier had been contacted or had been left the name of Terry Altman at the Myrtle Beach Police Department that Myrtle Beach Police did want to speak with him. Mr. Frazier actually initiated that contact. He returned the call to Terry Altman presumably from his home. He was still in Winston-Salem. Once again, he was not in custody. He was not under arrest, initiated a call to the Myrtle Beach Police. Terry Altman was not available, neither was a sergeant, a sergeant named John King. He was given that name. So, he just basically sent him up the ladder to Lieutenant Frontz and he gave a -- there was a telephone discussion. Lieutenant Frontz, now Captain Frontz, indicated to Mr. Frazier that he was going to record the statement, which he did. Once again, as I mentioned, Mr. Frazier was not in custody in any way. They concluded the

telephone conversation and that was the end of it. Your Honor, we would submit that these were all free, voluntarily given. Mr. Frazier was willing to talk to law enforcement on each occasion. On the third occasion he actually initiated the contact. He was always free to leave. He was always free to go. He was never placed into custody, never mirandized because again it was early in the investigation, and they were more at the gathering information stage than they were really focused on a suspect at that point.

THE COURT: All right, yes, sir.

MR. HEMBREE: Your Honor, one fact that Mr. Humphries was kind enough to correct me on, the Bowman and Pendergrass interviews were actually on the 11th, not on the 10th. I misstated that to the Court. It was the following day I believe in the afternoon when they stopped by his house and spoke to him. Other than that, I believe the circumstances that I have reported to the Court are accurate.

MR. MARTIN: Judge, the only thing while the Solicitor was giving that proffer to the Court Mr. Frazier was telling me the only -- obviously the telephone call Frazier initiated, well, I don't think there's an issue about that. He was in custody in none of these situations. He does say that the rendition of how the second statement on the 11th to Pendergrass and Bowman occurred was a little different in that they came to his house. He told them he didn't want to talk

to them, that he had an attorney, but that they persisted in questioning. He did answer their questions; and so, out of an abundance of caution as his attorney I want to make those facts relative or present to the Court. He still wasn't in custody.

THE COURT: Yeah, we'd have to -- would need to have a hearing, I believe, on that because I need to determine that there was no coercion, it was voluntary, freely and voluntarily given.

MR. HUMPHRIES: And we went through that the last time, too. There was that assertion.

THE COURT: Okay, these were all volunteered statements. The -- there's no -- the Officer Mills statement and then the last statement where he initiated the contact, there's -- you can see that they were voluntary.

MR. MARTIN: I don't think there`s any, I don't think there's any issue at all that it was all voluntary statements.

THE COURT: All right, and I'll note for the record, too, that volunteered statements that are not made in response to custodial interrogation don't require Miranda and I do find based on what's been proffered that they were freely and voluntary given. That deals with the statement to Officer Mills and then that to, is it Frontz?

MR. HEMBREE: Frontz.

THE COURT: Frontz.

MR. HEMBREE: F-R-O-N-T-Z.

THE COURT: Okay, all right, we'll have a hearing then on that one to Bowman and Pendergrass. Are you prepared to go forward at this time?

MR. HUMPHRIES: Yes.

MR. MARTIN: Well, go ahead, you're right. You need to go first. I'm sorry. I shouldn't jump ahead of you.

MR. HUMHPRIES: The State calls Special Agent Bowman to the stand. Come around and be sworn.

AT THIS TIME JAMES BOWMAN WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please have a seat and state your name and spell your last for the record.

MR. BOWMAN: My name is James Bowman, B-O-W-M-A-N.

EXAMINATION

BY MR. HUMPHRIES:

Q: With whom are you employed?

A: I'm employed with the North Carolina State Bureau of Investigation.

Q: How long have you been so employed?

A: Approximately 19 years.

Q: And in what capacity are you now employed with SBI?

A: I am assistant special agent in charge of the Northern Piedmont District.

Q: And let me ask you, were you similarly employed in June of 1998?
A: Yes, I was.
Q: And specifically on June 11th, 1998, did you receive a request from another agency regarding making contact with the Defendant John Boyd Frazier?
A: Yes, I did.
Q: Tell the Court the circumstances briefly of that referral if you would?
A: We were contacted by Myrtle Beach Police Department and advised that they had had a homicide and that they had some information that there had been a prior relationship with the victim's wife and Mr. Frazier and they asked us to make contact with him in Winston-Salem.
Q: Tell me how you accomplished that.
A: We approximately 5:30 that afternoon Special Agent Pendergrass and I went to his residence on in Winston-Salem. Initially we went to the door. No one was at home. We left. Approximately 30 minutes later I called the residence by cell phone. Mr. Frazier answered. We told him we were in route to his residence and asked to speak with him and he agreed.
Q: And upon arrival did you have an opportunity to talk with Mr. Frazier?
A: Yes, we did.

Q: And relevant to this hearing tell the Court the facts and circumstances surrounding your contact and your questioning of Mr. Frazier at that time.
A: He came outside of his residence into the driveway and spoke with us. We, of course, had limited information about the circumstances of the case, but we talked to him. I made some notes regarding the meeting. He did acknowledge that he had had a prior relationship with the victim's wife.
Q: And let me ask you this, but at this time it's probably not necessary to go into the substance of the statements, but first of all, did Mr. Frazier, the Defendant -- what was his affect or demeanor in speaking with you? You understand my question?
A: He was cooperative in speaking with us. I did notice that he was nervous. I noticed that there was some profuse sweating, but throughout our contact with him he was, he was cooperative.
Q: Let me ask you this, in regard to his mental or emotional state, did he respond appropriately and rationally to your questions?
A: Yes, he did.
Q: Did you have any concern regarding his ability to voluntarily talk with you?
A: No.
Q: Now, did there come a time at any point during your

speaking with Mr. Frazier that he asserted his right to counsel?

A: No, he did not.

Q: Was there any time that he indicated to you that he no longer wished to speak with you?

A: Did not.

Q: Was there any discussion at all regarding an attorney?

A: He did mention that he had an attorney or had talked to an attorney, and as I recall it was in reference to -- he volunteered that he owned a Glock nine millimeter pistol and that he may make that available for ballistic testing.

Q: And is that the context with which the mention of the attorney came out?

A: There was no request for an attorney.

Q: So, it's your testimony that he not only never asserted his right to have an attorney and stop talking with you but he never mentioned that he had an attorney and -- was there any kind of equivocal assertion of that right?

A: I think he mentioned that he had an attorney. In fact, of course, it's been a lengthy period of time, I think he, you know, he may have even, you know, said that he was as, you know, as far as releasing the gun that he, you know, was going to talk to an attorney prior to doing that and that was the extent of it. There was no -- there was nothing in terms of wanting to talk to an attorney.

Q: That was in the context of delivering a handgun to law-enforcement for forensic testing?
A: That's correct.
Q: That's all I have of this witness at this time.
THE COURT: Cross.

EXAMINATION

BY MR. MARTIN:
Q: Where did the, where did the questioning or conversation take place, Mr. Bowman?
A: It took place in Mr. Frazier`s driveway.
Q: In his driveway?
A: Yes, sir.
Q: All right, and you, Pendergrass and he were in the driveway?
A: That's correct.
Q: Was that where the and if you turned into his house at that time was there a fence there or do you recall?
A: I don't recall a fence.
Q: The drive was one of those driveway drive up to the house or beside the house?
A: It drives up, as I recall it went beside the house and the -- there was, I believe, there was a side door or a back door, but it was -- we were toward the back of the house in the driveway.
Q: Towards the back of the house?

A: Yes.
Q: All right, that's all the questions I have.
MR. HUMPHRIES: No further questions.
THE COURT: You may step down.
MR. HUMPHRIES: The State calls Agent Pendergrass to the stand.
AT THIS TIME H. G. PENDERGRASS WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:
THE CLERK: Please be seated. Please state your name and spell the last for the record.
MR. PENDERGRASS: H.G. Pendergrass, P-E-N-D-E-R-G-R-A-S-S.

EXAMINATION

BY MR. HUMPHRIES:
Q: How are you presently employed?
A: I'm retired.
Q: And from what position or agency did you retire?
A: From the North Carolina State Bureau of Investigation.
Q: How long ago?
A: Three years.
Q: In June of 1998 how were you employed?
A: I was a special agent with the North Carolina State Bureau of Investigation in Greensboro, stationed in Greensboro, North Carolina.
Q: And did you have an occasion to accompany agent Bowman

to the residence of John Boyd Frazier for the purpose of interviewing him?

A: Yes, I did.

Q: And was that on June 11th at about 5:30 in the afternoon?

A: Yes, sir, it was.

Q: And if you will relay to the Court the facts and circumstances surrounding your contact with John Boyd Frazier on that afternoon?

A: On the afternoon of June the 11th myself and Agent Bowman traveled to Winston-Salem, North Carolina, to interview Mr. Frazier upon a request from the Myrtle Beach, South Carolina, Police Department. We left Greensboro at about 5:30 and drove over to Winston-Salem and attempted to contact, well, we went to Mr. Frazier's residence. He was not there initially. We left, and subsequent to that, about 30 minutes later we called him on the phone and he answered the phone. We requested to come down there to speak with him and he allowed us to come down. He told us to come on down there and talk to him.

Q: And let me ask you, upon arriving there obviously you had the opportunity to speak with Mr. Frazier?

A: That's correct.

Q: In speaking with Mr. Frazier did he ever indicate to you that he neither wanted to speak with you or that he had an attorney and he did not want to speak with you?

A: He never refused to speak to us. He indicated he had an

attorney but he never invoked his willingness to or request that he have the attorney present before he spoke to us.
Q: Now, let me ask you this, in speaking with Mr. Frazier did you impose on him in any way, threaten, coerce, offer any hope of leniency or promise of reward or anything in order to get him to speak with you?
A: No, sir.
Q: And in fact what was his general demeanor as it relates to your questioning him? Was he cooperative or uncooperative?
A: He was cooperative, forthright in answering all the questions we asked him.
Q: Okay, and in connection with the advisement that he had an attorney, in what context did that come up, I mean, what was he speaking about when he indicated that he had an attorney if you recall?
A: It was with regarding the weapon that he had and that we -- I inquired what type of weapons he had and he indicated he would have to speak to his attorney, would like to speak to his attorney before handing over any type of a weapon.
Q: And at that point did he attempt to end the interview?
A: No, sir.
Q: Not in connection with the mention of the attorney?
A: No, sir.
Q: And did you have any concern about his emotional or mental state as it relates to being able to voluntarily speak

with you?
A: No, sir.
Q: And were his responses to your questions rational and logical?
A: Yes, sir.
Q: That's all I have.
MR. MARTIN: No questions.
THE COURT: You may step down.
Any further witnesses from the State?
MR. HUMPHRIES: Nothing from the State.
THE COURT: All right.
MR. MARTIN: Mr. Frazier, come around.
AT THIS TIME JOHN BOYD FRAZIER WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:
THE CLERK: Please be seated. State your name and spell the last for the record.
MR. FRAZIER: My name is John Frazier, F-R-A-Z-I-E-R.

EXAMINATION

BY MR. MARTIN:
Q: John, do you recall the conversation that you had with the SBI agents there they just talked about?
A: I do, sir, yes.
Q: And that was where?
A: It was in my driveway at my house.
Q: All right, did they call you as they said and tell you

they were coming?
A: When I got to the house my phone was ringing. I heard it from the driveway. As soon as I opened the back door I picked up the cordless phone and it was -- I don't remember which one. It was one of the officers and identified himself and said they would like to come by for questioning, and I told him at that time, I said, ``Well, I have an attorney. You might want to speak with him,'' and as I'm saying this they're pulling into my driveway. I see this. I step out on the back porch. Well, I'm standing at the doorway. So, I step on the back porch and look around and they're in my driveway.
Q: Did they get out of their cars and come to the back door?
A: They did, sir.
Q: Where did this conversation take place?
A: Right in front, right in my driveway right at the fence to my backyard, right in front of my truck.
Q: And it is my understanding that they asked you some questions and you did answer them?
A: I did. After I called my house, I called my mom`s house and talked to my sister to have somebody come over.
Q: Here's the question I want to ask you about.
A: Okay, I'm sorry.
Q: Did you tell them that you didn't want to talk to them because you had a lawyer?
A: I told them that I had an attorney and that I would be

more comfortable if we went through that route but I've always been taught to be respectful to the police. So, I answered as quickly as possible what they were asking. I mean, I wasn't trying to hide anything. I was just ---

Q: That's all the questions I have for Mr. Frazier.

EXAMINATION

BY MR. HUMPHRIES:

Q: Mr. Frazier, you never said, ``I have an attorney and I want to invoke my right to an attorney. I do not want to talk to you,'' you never said that?

A: I told them that I had an attorney and that it would probably be best to take it up with them.

Q: My question is you never said, ``I've got an attorney and I don't want to speak with you, to you without my attorney present.'' You never said it in that fashion; did you?

A: Those exact words, no, sir, I did not.

Q: Okay, and upon your arrest when law enforcement approached you for a statement you asserted your Sixth Amendment privilege at that point and your privilege not to incriminate yourself by not providing a statement at that time; didn't you?

A: When was that?

Q: When you were arrested.

A: Yes, sir.

Q: Okay, and that was how many days after, two?

A: Yes, sir, the 13th, yes, sir.
Q: And?
A: I was arrested, yes.
Q: Right, sure, okay, thanks.
MR. MARTIN: Come down, Mr. Frazier. That would be the showing for the Defense, Your Honor.
THE COURT: All right, I'll glad to hear from you, from the State.
MR. HUMPHRIES: The testimony of the officers is that the only mention of an attorney was in connection with this Glock 19 handgun which occurred sometime in the interview and the only reference was that, ``I'll talk with my attorney and see whether, see not -- whether I'll turn it over to law enforcement for analysis,'' nothing relating to whether or not he`s willing to speak with them, and even the Defendant when asked, ``Did you unequivocally assert your right not to speak with them and assert your right to an attorney,'' even if you take his statements as true, that, ``I would feel more comfortable,'' and then acquiescing and talking is not an unequivocal assertion of his Sixth Amendment privilege and I would submit even under the Defendant's version the statements are admissible.
THE COURT: All right, yes, sir.
MR. MARTIN: I would agree.
THE COURT: All right, and I do find that the

statements were given freely and voluntarily without any hope of reward or promise of leniency, there were no threats or coercion. It was the -- and he was not in custody. It was a voluntary statement. All right, we have a foreperson. I'll go ahead and note that for the record. It's Juror Number 179. It's Joseph, I think it's Nappi, N-A-P-P-I. He is the foreperson of the jury. Are we ready for the jury at this time? Anything from the State at this time?

MR. MARTIN: I need to get to the restroom, but I'll be back by the time you get them.

THE COURT: Why don't we all take a break at this time? We will take about a five-minute break, maybe ten at the most. See you back here.

*****OFF THE RECORD*****

(On the record.)

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

THE COURT: Thank you, please be seated. We'll get everybody back in place and make sure our jurors are ready to come out. All right, anything from the State at this time?

MR. HEMBREE No, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: No, sir -- no, ma'am.

THE COURT: All right, we're ready.

(Whereupon, the following takes place in the presence of

the jury.)

THE COURT: Welcome back, ladies and gentlemen, please come in and have a seat.

All right, let me welcome you back, and first of all, ask you is there any member of the jury panel who has read or heard or discussed anything about this case? If so, please raise your hand. All right, now since you have -- we have begun the trial of this case, and since the beginning of this case has anything that you've heard or seen triggered your memory about that you might have read or heard anything previously about the case? Okay, anyone else? All right, very well, I'm going to send you back to the jury room just very briefly, and sir, if you would remain we're just going to question you further, and ladies and gentlemen, it will be very brief. We'll bring you back out in the near future.

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

THE COURT: And sir, your Juror Number?

MR. PROVENCHER: 201.

THE COURT: All right, and I'm sorry to have you singled out here. I appreciate the fact that you're answering the questions openly and honestly and I've got some more questions for you. You have indicated that something has triggered your recollection since the beginning of this trial; is that correct?

MR. PROVENCHER: Yes, ma'am.

THE COURT: Okay, what do you recall then about this?

MR. PROVENCHER: I just remember -- I just -- when the Prosecutor went over his opening statement I just remembered that the events that happened, when it happened back in '98, but I don't remember any of the facts of it. I just remember, you know, what happened.

THE COURT: Okay, all right, anything else that you know or you might have heard about it?

MR. PROVENCHER: No, ma'am.

THE COURT: Okay, as a result of what you've heard have you formed an opinion in this case?

MR. PROVENCHER: No, ma'am.

THE COURT: Okay, and can you set aside everything that you may have heard about this case and decide it solely on the evidence and testimony presented in this courtroom?

MR. PROVENCHER: Yes, ma'am.

THE COURT: Okay, all right, I'm going to send you back. Please don't discuss this with any of your fellow jurors. I'm going to send you back for just a moment and we will probably have you all back out in the very near future. You may go back at this time.

(Whereupon, Juror Number 201, Francis Provencher, exits courtroom.)

THE COURT: Juror Number 201. Anything from the State

at this time, dealing with, I guess, both of our jurors, Juror Number 18 and Juror Number 201?

MR. HEMBREE: Your Honor, in both instances, certainly with this juror 201, you know, there's no reason for concern at all. He -- it sounds like his recollection is vague. He has some knowledge of when it happened and he indicated, clearly indicated that he could set that aside and decide this case based on the facts and evidence that would be presented to him in court today. As to the other juror, Your Honor, the -- she likewise has made that, you know, ultimately gave it a great deal of thought, made that same indication. When it got right down to it at the bottom line, she did answer that she could, she could decide, she could set her opinions aside, whatever she had been exposed to, and could decide this case based on the evidence, and she kept saying, "I can be objective. I can be objective." She kind of volunteered that a number of times. So, based on that, Your Honor, we would submit that both of the jurors are still qualified to sit.

THE COURT: All right.

MR. BRITTAIN: Give us just one minute, Your Honor.

THE COURT: Certainly.

MR. BRITTAIN: Checking one thing here.

MR. MARTIN: I think at this point in time there is no cause to excuse either juror. If anything else develops we

will have to take it up if it comes.

THE COURT: And I'll be questioning every morning. I'll be questioning after lunch, you know, I'll ---

MR. MARTIN: And I assume, Judge, and along the lines that and I think you would do this anyway but if when this case does go to the jury that there would be strong instructions from the jury that anybody who knows anything that they can't discuss those outside facts in the jury room.

THE COURT: All right, we can find some language that is satisfactory to both the State and the Defense to admonish that jury about anything other than the evidence and testimony presented in the courtroom. All right, anything further?

MR. HEMBREE: Nothing from the State, Your Honor.

THE COURT: All right, we're ready for them.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Welcome back, ladies and gentlemen of the jury, and let me let you know our first alternate, who is our first alternate chosen? You are now part of our regular jury. Were you aware of that?

MR. HARDWICK: I've heard rumors.

THE COURT: Okay, so, what I'll basically do is ask you to move out of an alternate seat and go ahead and fill in gaps, and I understand we also have a foreperson of the jury,

Juror Number 179. Is that you, sir? All right, very good, well, you've made your first decision in this case.

I have received your note that you would like to take notes during the trial of the case. Now, let me ask you and I'll give you an opportunity to discuss this during our next break, but let me tell you one of the concerns that the Court has about taking notes is sometime you may be busy writing down one bit of information and miss that next equally important bit of information. When you take notes what you would basically do and we can allow that if that's what you collectively want to do. You will each have a notepad, but you will be leaving it in your seat whenever you exit and it will be gathered together. So, it wouldn't be anything that you'd be taking back with you. I want you to discuss that further and if it`s still your desire after discussion of what those rules would be, the parameters, to have, to be able to take notes we'll certainly allow you to do that and I will give you further instructions in regard to that. In the meantime, I ask you to sit back and listen to all of the evidence and testimony.

Now, there`s a matter that I need to address and I need your attention at this time. This Court made the determination to allow in statements that were allegedly made by Ms. Poole to Officer Brown. If you will recall, Officer Brown testified yesterday about some statements that were

made. Now upon this Court`s own reconsideration of that decision it`s been determined that the statements should be excluded, with the exception of that initial statement that is Ms. Poole`s statement to Officer Brown that, ``My husband has been shot.'' Now, listen carefully, you are not to consider as evidence any testimony of Officer -- by Officer Brown of Poole's statements to him, that they are not in evidence for your consideration. The only statement to Officer Brown by Ms. Poole that is in evidence is, ``My husband has been shot.'' Those are instructions that you are required to follow. All other statements have been stricken.

All right, now, we have come to a point in time we're still in the phase of the case where the State is presenting evidence and testimony. If you would, call your next witness, please.

MR. HUMPHRIES: Thank you, Your Honor, the State calls Harold Sirles to the witness stand, and Your Honor, as we have taken up with Defense counsel and with the Court previously, Mr. Sirles is an unavailable witness due to a medical condition. He is in a rehabilitation facility in the State of Virginia. He had a stroke. However, we under Rule 804 intend to offer his prior testimony before this jury and the method that we will use is we will call Dale Long an investigator with our office to the witness stand and I will simply read my questions to Mr. Sirles from prior testimony and Mr. Long will

respond as if he were Mr. Sirles. I am going to even call on him to identify pieces of evidence in the same manner as Mr. Sirles did.

THE COURT: All right, and understand, ladies and gentlemen of the jury, it's been stipulated between the parties that this witness is not available for medical reason, and what's happening is we'll have an officer who will be playing this witness or playing the role of this witness in answering as he had answered at prior testimony. Very well.

MR. HEMBREE: Thank you, Your Honor.

WHEREUPON, DALE LONG WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND READ THE TESTIMONY OF HAROLD SIRLES AS FOLLOWS:

THE CLERK: Please be seated, state your name and spell your last for the record.

MR. LNOG: My name is Dale Long, L-O-N-G.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: And Mr. Long, I'm going to take you to line 23 of page 489 of the transcript, and if you would begin there where it says ``the witness''.

A: ``Harold A. Sirles, S-I-R-L-E-S."

Q: ``Mr. Sirles, where do you live, sir?''

A: ``Richmond or here?''

Q: ``Well, where is your permanent residence?''

A: ``Richmond, Virginia.''

Q: ``Is that your home, sir?''
A: ``Permanent.''
Q: ``That's your permanent home?''
A: ``Yeah.''
Q: ``Is that where you grew up?''
A: ``Yeah.''
Q: ``And'' ---
A: ``And it's where I pay taxes.''
Q: ``Very good, and how long, what type of work do you do at this time, Mr. Sirles?''
A: ``I don't do anything.''
Q: ``You don't do anything? You're retired?''
A: ``Yeah.''
Q: ``And what are you retired from, sir?''
A: ``I was in the manufacturing business and I sold it in 1981. So, I haven't done anything since.''
Q: ``You indicated when I asked you where you live you wanted to know if I was asking about where you lived in Richmond or here. Do you have property in Horry County, sir?''
A: ``Yes.''
Q: ``Where, where is it located?''
A: ``
Q: ``That's ?''
A: ``That's right.''

Q: ``That's in -- is in -- is that in Myrtle Beach?''
A: ``Yes.''
Q: ``Is it -- what is it -- that's not your permanent home? That's a vacation home?''
A: ``Yeah, for my kids, vacation for my kids.''
Q: ``And do you spend time there as well, sir?''
A: ``Yes.''
Q: ``Did you have occasion to be at your, be at your beach house, your vacation home here in Myrtle Beach back in July of 1998?''
A: ``Yes.''
Q: ``Could you tell this jury what you were doing, what brought you to that house?''
A: ``What brought me to the house?''
Q: ``Yes, sir.''
A: ``Well, I came down for -- well, to spend time with my wife and her bridge group.''
Q: ``And what day did you arrive at the house?''
A: ``July 5th.''
Q: ``How long had it been, Mr. Sirles, since you had been to your vacation home here in Myrtle Beach?''
A: ``I think it was February, but I had done traveling and had some health problems, a hand, table saw.''
Q: ``I understand; and so, you had not been, you hadn't been there in quite a few months.''

A: ``That's right.''
Q: ``Prior to July 5th of 1998.''
A: ``That's right.''
Q: ``Now, I'm going to ask you to take a look and I'm not going to even ask you to get down. I'm just going to sort of bring this around to you, show you State's Exhibit Number Two. Can you point out for the jury where your house is located on this diagram? For the record, Your Honor, this is State's Number Two. Can you point out for the jury where your house is located on this diagram?''
A: ``Right there.''
Q: ``Do you know here Karole Jensen's home is?''
A: ``Yeah.''
Q: ``Where is it in relation to your house, Mr. Sirles?''
A: ``80, 80th, one, I think it's three streets up on the opposite side of the street.''
Q: ``Okay, she's across the street on the beach side?''
A: ``Beach side.''
Q: ``And she's down or north of you?''
A: ``North, yeah, the last house on ''
Q: ``All right, so, you would sort of be across and down the street, across and down from her.''
A: ``That's right.''
Q: ``Across . Now, when you got home July 5th or got to the beach house July 5th, 1998, about what time did you

arrive, Mr. Sirles?''

A: ``Oh, 2:30 or 3.''

Q: ``And how''---

A: ``And how I know I drive so many times it takes me six hours to drive eating and whatever, and I normally leave in -- or, well, allow me to get here at roughly that time.''

Q: ``So, you got there, your best guess you got there about 2:30 or 3.''

A: ``Yeah, I would say so.''

Q: ``And what did you do after you got home, got to the beach house?''

A: ``Well, everything was in operation because my son left on the 4th and I got there on the 5th. So, I went out in the yard as I do to see how things were growing. As you know, in Myrtle Beach, if you turn your back the grass grows. So, I had to go out and pull up some weeds.''

Q: ``You were going to go out and weed the yard just a little bit?''

A: ``A little bit, yeah, and the flowers.''

Q: ``I'm going to show you State's Exhibit 27 and have you take a look at that photograph, sir. Do you see where your house is located, Mr. Sirles?''

A: ``Up here.''

Q: ``Where I had you previously circle it with a red pen.''

A: ``Yes.''

Q: ``Your Honor, I'd like to go ahead and publish this photograph to the jury.''

THE COURT: Any objection?

MR. MARTIN: Without objection.

BY MR. HEMBREE:

Q: ``When you went out to weed the yard did you find anything unusual?''

A: ``Yes. I found a wallet.''

Q: ``You found a wallet, and could you describe to the jury the condition of that wallet?''

A: ``Well, the wallet was lying open with the leather part facing up and everything else facing down.''

Q: ``Let me show you State's Exhibit 17. It's already been admitted, Mr. Sirles. Take a look in that bag and see if you can identify the item that has been admitted into evidence.''

A: ``You want me to take it out?''

Q: ``Please do, take it out.''

A: ``Yeah, when I found it it was lying like this.''

Q: ``And that's the wallet that you found in the yard.''

A: ``I think so.''

Q: ``Do you want to look at it, take a look at it a little bit?''

A: ``Yeah, it had a picture of a pretty little girl and people that I don't know.''

Q: ``And you say the wallet was lying face down like this?''
A: ``That's right.''
Q: ``Mr. Sirles, I'm going to show you what's been marked as State's, what's been admitted as State's Number 16 and ask you to describe the scene to the jury.''
A: ``This is the front of my yard here and this is the alley running down with the fence, and I also have a hedge about so high in the front so the house is sort of halfway blocked off from the street.''
Q: ``All right, sir, and is this the general area? This is your front yard. Is this the general area where you found the wallet?''
A: ``Yeah.''
Q: ``Could you show us? Could you point to the area where you located the wallet?''
A: ``In the red circle.''
Q: ``Where you'd circled. I asked you to do this previously.''
A: ``Yes.''
Q: ``And you circled the area in red?''
A: ``Uh-huh (affirmative response), I might add this thing was soaking wet.''
Q: ``This was soaking wet?''
A: ``Soaking wet.''
Q: ``Had you had the sprinkler system on or anything during

this time period?''

A: ``I don't have a sprinkler system.''

Q: ``I noticed the hose out there and so forth.''

A: ``Yeah, but it had not been run.''

Q: ``But the wallet was soaking wet?''

A: ``Soaking wet, everything in it.''

Q: ``All right, do you know if it had been raining or -- raining that day or the day previous?''

A: ``I don't think so.``

Q: ``Your Honor, I'd like to go ahead and publish number 16 into evidence to the jury.''

THE COURT: Any objection?

MR. MARTIN: No, no objection.

BY MR. HEMBREE:

Q: ``The last photograph I'll show you, Mr. Sirles, I believe is State's Number 19 and just ask you to describe that to the jury, also.''

A: ``This is the front of my house.''

Q: ``And that's ?''

A: ``Yes.''

Q: ``It's the view if you're looking, if you're standing in north.''

A: ``That's right. This is 80th here, and my number is .''

Q: ``That's your mailbox and we can see your hedge, your

shrubs that you mentioned over, right over in this area.''
A: ``Well, that's not it as much as it is coming this way. Very good.''
Q: ``Very good. Your Honor, I'd like to go ahead and publish number 19 as well.''
THE COURT: Any objection?
MR. MARTIN: Just let me see what it is. No objection.
BY MR. HEMBREE:
Q: ``You found the wallet in the yard, Mr. Sirles, soaking wet, lying flat like you demonstrated here. What did you do? Well, let me ask you this, what time was it when you found it?''
A: ``Oh, close to four o'clock.''
Q: ``What did you do when you found the wallet?''
A: ``I picked it up.''
Q: ``And did you check the contents?''
A: ``Well, I picked it up. It's the -- it's sort of halfway opened up showing the name of the person and the pictures and what surprised me in that in -- well, in that I have a hedge, a solid hedge across the front. I have a brick thing down the side and in the back I have never known anyone to walk through my yard. They don't ask me, but it's just not easy to get in, and people normally don't go the hard way.''
Q: ``So, the access is restricted between the hedge and the brick wall.''

A: ``Right.''
Q: ``Okay, so, you said when you found it you thought it was strange that the wallet was there at all.''
A: ``Yeah, that's right.''
Q: ``About how far from the road was it? Can you estimate the distance for us, Mr. Sirles?''
A: ``Where the wallet was?''
Q: ``Yes, sir.''
A: ``Oh, I would say it was probably 20 feet, maybe.''
Q: ``Now, you've taken a look at the wallet.''
A: ``I opened it up at that point.''
Q: ``Yes, sir.''
A: ``I picked it up and looked at it, and I realized there was money in it. I don't think the money was as visible then as it seems to be now, and I looked at it, and I thought to myself, well, if it was a robbery I don't know of many robbers,''
Q: And then Mr. Brittain says, ``Excuse me,'' and the witness says.
A: ``That leave money.''
Q: Mr. Brittain says, ``Excuse me, sir, excuse me, sir, Your Honor, I don't know that he, he should be giving his opinion about what he was determining from what he observed from the wallet about whether there was a robbery or not. I object,'' and the Court, ``Note his objection, I'm going to allow it.''

``Thank you, Your Honor. Please continue, Mr. Sirles.''
A: ``I couldn't figure out why money would be in a wallet if it had been part of a robbery. So, I don't know that I counted it so much. I called Myrtle Beach Police. At that point I guess I took the money out of the wallet and I realized there were nine $1, I believe, nine $1 bills. So, there wasn't any fives -- was there -- I think it was just nine ones, and I thought to myself I'm glad it wasn't a whole lot more. I might have been tempted to take a little.''
Q: ``Well, I'm glad you didn't succumb to temptation, Mr. Sirles. You called the police and reported found property.''
A: ``Yeah, that's right.''
Q: ``And the police responded several hours later.''
A: ``Yes, uh-huh (affirmative response.)''
Q: ``At that time what did you do?''
A: ``I turned it over to Officer Blubaugh, what's it, I have the name.''
Q: ``Officer Blubaugh?''
A: ``Blubaugh, yeah, he solicited the information from me. I guess he got what he wanted and he was getting ready to go and I said, `Look, you know, I'm a suspicious person. Don't you wonder if there's something'?''
Q: Where Mr. Brittain said, ``Excuse me, Your Honor, excuse me one second, sir. Your Honor, what he told,'' and the Court responds, ``You know the relevance. I don't know what he's

about to say, you know, it's not relevant or pertinent.''
``We'll move on Mr. Sirles,'' and the Court says, ``Please, thank you, young man.''
``Mr. Sirles, you turned the wallet over to Officer Blubaugh and officers at the Myrtle Beach Police Department.''
A: ``Yes, yes.''
Q: ``You were not in, you were not in town June the 9th of 1998; were you, sir?''
A: ``No.''
Q: ``Do you know if anybody was staying at your house during that time period?''
A: ``Do not. I knew nothing about anything.''
Q: ``You didn't know about -- you didn't know anything about Brent Poole's ---''
A: ``No.''
Q: ``--- death or anything at all?''
A: ``It wasn't in the Richmond paper.''
Q: ``It wasn't in the Richmond paper, don't know anything about this individual, John Boyd Frazier; do you?''
A: ``Never heard of him.''
Q: ``I appreciate you coming, Mr. Sirles. Please answer any questions that Mr. Brittain might have for you.''
MR. BRITTAIN: No questions.
MR. HEMBREE: And Your Honor, that would conclude Mr. Sirles's testimony.

THE COURT: Very good, thank you. Call your next witness.

MR. HEMBREE: Thank you Your Honor. The State calls Officer David Blubaugh to the witness stand.

AT THIS TIME DAVID EDWARD BLUBAUGH WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Please have a seat. Please state your name and spell your last for the record.

MR. BLUBAUGH: David Edward Blubaugh, B-L-U-B-A-U-G-H.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Officer Blubaugh, tell me where you're employed?

A: Ohio State Highway Patrol.

Q: And how long have you been working with the Ohio State Highway Patrol?

A: It'll be five years September.

Q: And back on July the 5th, July the 5th of 1998 who were you working with?

A: Myrtle Beach Police Department.

Q: In what capacity?

A: A police officer assigned to the traffic division.

Q: Did you have occasion to come into contact that day with an individual by the name of Howard Sirles?

A: Yes.

Q: And could you please describe to this jury the

circumstances that led you to the Sirles's residence?
A: The Myrtle Beach Police Department received a call of a residence that he had found property and they dispatched me to that address.
Q: Now, in your responsibilities as a patrol officer was that a common occurrence?
A: It occurs all the time.
Q: Calls for found property?
A: Yes.
Q: And what do you specifically do?
A: Just go to the scene and whatever it is take possession of it.
Q: Fill out a report?
A: Yes.
Q: And in the hopes that maybe somebody will claim it?
A: Correct.
Q: Now, about what time was it if you recall when you got to the Sirles's residence?
A: I don't recall that.
Q: Afternoon or morning?
A: It was probably evening hours.
Q: When you arrived at the Sirles's residence what did you find?
A: Mr. Sirles was actually out front. Actually he met me in the sidewalk and gave me the wallet that he had found.

Q: Let me show you State`s Exhibit Number 17 in evidence and ask you to take a look at that and if you can identify that wallet for the jury.

A: It`s a black leather wallet with a driver`s license, photos, money, ATM card inside of it.

Q: What was the condition of that wallet when Mr. Sirles turned it over to you?

A: It was very wet, very damp.

Q: And what did you do after you got possession of the wallet?

A: Well, Mr. Sirles and I were talking about the homicide that had taken place.

MR. MARTIN: Objection, objection to any hearsay statements.

THE COURT: Caution you about any hearsay statement. Go ahead.

Q: Based on your discussion with Mr. Sirles -- let me ask you this, when you arrived at the Sirles's residence what suspicions, if any, did you have regarding this wallet in connection to this case?

A: None.

Q: It was a routine call?

A: Just a routine call, found wallet, that was it.

Q: Did you have knowledge of whose wallet -- who it belonged to, who owned the wallet when you arrived?

A: No, I did not.
Q: After you had this discussion with Mr. Sirles what did you do?
A: I asked him if I could use his telephone so I could call the on-duty patrol supervisor, Chuck Dunn, at the time and asked him what the gentleman's name was that was shot and killed on the beach and I was told William Poole.
Q: Right, now, had you examined the contents of the wallet prior to that?
A: Yes.
Q: And had you determined who this wallet apparently belonged to?
A: William Brent Poole, yes.
Q: How did you determine that?
A: By looking through it and finding the driver`s license right there.
Q: Did you attempt to fingerprint this wallet?
A: No.
Q: Were the contents of this wallet memorialized, photographed?
A: Yes.
Q: Let me show you State's Exhibit Number 18 that's in evidence and describe to us what that photograph reflects?
A: It's a leather wallet with photographs in it, $9, four ones and one five, a AAA card, a Blockbuster card, two keys,

ATM, actually two ATM cards, one's a Visa, one's a NationsBank. The other one is a red card that I have no idea what it is and a driver`s license and another card that I have no idea what it is, that right there, that.

MR. HEMBREE: Your Honor, we'd like to go ahead and publish State`s 18 to the jury at this time.

THE COURT: Any objection?

MR. MARTIN: No objection.

BY MR. HEMBREE:

Q: And once you made this connection, contacted your sergeant and he informed you of this -- the name of the victim in this case what did you then do with it?

A: Asked Mr. Sirles if I can have a plastic bag so I can put the wallet into and they sent a crime scene officer to Mr. Sirles's house so they could take possession of it from me.

Q: Was the wallet ever handled in your presence?

A: By somebody else?

Q: Yes.

A: No, I had it the entire time once it was given to me.

Q: All right, was it -- did you observe Mr. Sirles with the wallet?

A: Once I got there he handed it to me.

Q: Did he have it secured in any way or was it wrapped up in anything?

A: No.

Q: Just ---
A: Just handed it to me.
Q: Like that?
A: Yes.
Q: And you turned that wallet over to whom?
A: Officer Grazioso from crime scene.
Q: Where was Mr. Sirles's house in or are you familiar with the crime scene that involves this case?
A: No, I'm not.
Q: Okay. Please answer any questions the Defense counsel may have for you.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. BRITTAIN:

Q: Did you -- you mentioned it being wet, no rain, no sprinklers.
A: Correct.
Q: Did you ever figure out why it was wet?
A: No.
Q: Nothing further.

THE COURT: All right, you may step down, sir.

MR. HEMBREE: We'd ask that Officer Blubaugh be excused.

THE COURT: Any objection?

MR. MARTIN: No objection.

THE COURT: All right, you're free to leave, sir. Call your next witness.

MR. HUMPHRIES: Thank you, Your Honor, the State calls Dawn Abdulmani.

AT THIS TIME DAWN ABDULMANI WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Please be seated and state your name and spell your last for the record.

MS. ABDULMANI: My name is Dawn Abdulmani. It's A-B-D-U-L-M-A-N-I.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Good morning.

A: Good morning.

Q: Let me ask you, how are you employed now, Ms. Abdulmani?

A: I'm self employed as a painter.

Q: As a painter?

A: Yeah.

Q: Back in May and June of 1998 how were you employed?

A: I was the night office manager at Carolina Winds.

Q: And consistent with your duties as a night office manager did you take calls from potential guests ---

A: Uh-huh (affirmative response.)

Q: --- at the hotel specifically in regard to taking reservations and that type of thing?

A: Correct, uh-huh (affirmative response).
Q: Let`s do this. Let me show you State`s 35 which is, I believe in evidence without objection, and tell me if you can identify what's contained in this photograph?
A: That is the Carolina Winds.
Q: Carolina Winds Motel.
A: Yes.
Q: And that`s where you were employed?
A: Uh-huh (affirmative response).
Q: Okay, now, taking you back to May 30th, 1998, did you have an occasion to receive a call from Kimberly Renee Poole?
A: Yes.
Q: Tell the jury if you will the approximate time of the call and the conversation that you had with Ms. Poole.
A: It was in the evening hours probably after dinnertime and she was calling to inquire about rates and availability for some specific dates in June. She was planning a trip for her anniversary.
Q: Now, let me ask you, did she have any special requests -- first of all did she have a specific question about the hotel, its surroundings, its location?
A: Yes, she did. She was -- indicated she was bringing her daughter and that it was her anniversary and that she was looking for a nice family oriented place to come to the beach. I explained to her the location of Carolina Winds, it was in a

fairly secluded area, it being one of the last hotels on a little stretch of beach in Myrtle Beach. It was just a small, it was a Days Inn or something right next to it and then it's the rest of the row is residential homes and then there was a big wooded area. So it`s fairly secluded down there. There's not a lot around it.

Q: Let me stop you there just a moment.

A: Uh-huh (affirmative response.)

Q: Showing you State`s Five, which is also in evidence without objection, showing the beach front, can you point out for the jury where the Carolina Winds might be pictured on this photograph?

A: Right up there, that tower right there is Carolina Winds.

Q: On the, on the, on the very far left as you look at the photograph?

A: Yeah, and I believe that was the Days Inn. I don't know if it`s still Days Inn, but that was Days Inn and then this whole row is residential homes.

Q: And let me ask you, is that one of the, the calling card, if you will, or one of the perks of staying at the Carolina Winds?

A: It was a bonus point that they liked for us to push, you know, and using as a sales technique to sell rooms at the hotel, you know, that it is located in a secluded area because Myrtle Beach is pretty populated and that was one thing that

we did pride ourselves on is, you know, being fairly secluded and it was very quiet down there.

Q: Let me ask you this, did Ms. Poole have -- make any other requests regarding services?

MR. MARTIN: Objection. Can we approach the bench just a second?

THE COURT: You may.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

BY MR. HUMPHRIES:

Q: Ms. Abdulmani, if you'll answer the question. Was there any request from Kimberly Renee Poole regarding additional services while at the hotel?

A: In our conversation, I don't know how it came about, but I, you know, we were talking about their anniversary night.

MR. MARTIN: I object. Wait a minute. I object again to be sure. If she don't know how it came about I don't know if that infers she don't know what was said or not but I want to be specific rather than probably.

THE COURT: Okay, let's see if we can, let's see if we can get that clear.

Q: Do you recall the substance of your conversation regarding these services?

A: Yes, I do.

Q: Please tell the jury what.

A: That she was planning to have some time alone with her husband and because they were bringing a small child was interested in babysitting. So, I was able to give her any information on locating a babysitter in Myrtle Beach at which time I did refer her to a service, resort babysitting service.
Q: Now, let me ask you, at that telephone call did Ms. Poole make a reservation?
A: No, she called me back.
Q: Approximately how much longer?
A: Probably a few hours, but it was that same night she called me back and we did get her a reservation booked that evening.
Q: That`s May 30th?
A: Yes.
Q: And let me ask you if this is an accurate summary of your testimony before this jury today. On May 30th hotel reservation made by Renee Poole?
A: Correct.
MR. HUMPHRIES: Your Honor, at this time I would affix this to State's Four on May 30th.
THE COURT: Any objection?
MR. MARTIN: Well, I don't have any objection to him affixing it to that, but I have an objection at this point in time to a summarization being entered if it`s to be entered before the jury.

MR. HUMPHRIES: It is to be entered before the jury.

MR. MARTIN: Then I have an objection to it being done in a summary fashion. Her testimony stands for itself.

THE COURT: Let me.

MR. HUMPHRIES: Then we need to take it up.

THE COURT: Yes. Let me just see you up here very briefly.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

THE COURT: Let me allow you to go back to the jury room at this time very briefly. We're going to -- we just have some matters of law that we need to put on the record. We'll have you back out in the near future. Okay, I need to make sure that -- don't take any exhibits out with you. I believe they've all been passed down. Just leave them in place and we'll gather them and let me remind you please do not discuss the case.

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

THE COURT: All right, outside the presence of the jury there has been an objection. The exhibits have been stipulated to, but what's desired by the State at this time is to put a timeline on based on the testimony of the witnesses that are presented and the Defense has objected to that. Yes, sir.

MR. MARTIN: Well, I would object to the summarizing, and of course, they're going to do this for other times as well. So, we need to get it figured out. I just think that it's inappropriate and objectionable to attempt to summarize testimony that will go back with the jury when the Court won't let notes go in. That is a note that the, if you will, one objection to it at least, that it is going back in in a summary fashion which is not the testimony in total.

Secondly, again, I want to make myself clear. There's two objections. One is I think it's in the form of a note. Secondly, it's just improper to summarize the testimony, therefore, giving added significance. Argument I understand. Submit to the jury, I would object to.

THE COURT: All right, yes, sir.

MR. HUMPHRIES: It is a summary. It is the testimony. It assists the trier of fact in keeping what will be uncontested -- please understand. If it is a contested fact, we're talking about bullet statements which come straight from the witness's mouth. These are not uncontested facts, okay. That's the first thing. It provides the jury a timeline summary. These charts have been introduced in the courts of record for numbers of years, primarily initially in the civil context as a summary to assist the trier of fact in keeping dates, times and other documents, a summary just to help them with their analysis. This is not an attempt to mislead the

jury. It doesn't confuse the jury. To the contrary it clarifies to the jury the testimony that they've heard but we're not adding facts. These are statements that come from the witness stand and they are uncontroverted statements by and large. If we're fussing about one, if there're some that are not -- if we're talking about something that is contraverted then we talk about it, but there is no issue regarding whether or not this witness received a reservation for Renee Poole on May 30th.

THE COURT: All right, what about that, that it's basically a time line and that the facts that are going up there are not ---

MR. MARTIN: Well, I agree to that fact and I assume that most of them would not be contested so to speak. That much is correct. It's just again, and I don't have a case to cite for you, Judge. It just seems to me that a summary in that fashion would be objectionable and maybe highlight portions of the testimony. I don't mind if the Court considers this matter as we go along and they put them on.

THE COURT: As to whether it would go back to the jury.

MR. MARTIN: Yeah, as to whether it goes back to the jury.

THE COURT: All right, and it doesn't seem to me to be a summary of the entire testimony. It is simply a bullet

of the timeline.

MR. HUMPHRIES: Timeline, that's exactly what we're attempting to establish because the timeline is relevant and we're dealing with a number of dates over a period of a series of weeks and without this information what we're doing is asking the jury to recall specific dates which they otherwise wouldn't be able to do unless we provided them such a timeline. It is opposed to confusing the jury, assisting the trier of fact and it`s a timeline.

THE COURT: All right, I'm going to ask them again when they come back out what they've decided about taking notes. We may want to reconsider on that as well if that`s been a request. I want to go ahead and get those notebooks in their hand.

All right, I'm going to allow it at this time. I will look into it and then make a decision as to whether or not that will be allowed to go back to the jury.

MR. HUMPHRIES: And Your Honor, I can provide you with cases, criminal cases in which case this has been done.

THE COURT: Be glad, be glad to take that, thank you. All right.

MR. MARTIN: Would there be an objection if we were to put such things on that calendar of uncontested facts?

THE COURT: The timeline as well.

MR. MARTIN: Same guidelines they're doing it under.

THE COURT: Indicating that there would not be.

MR. HUMPHRIES: If there`s, if they are uncontested facts.

THE COURT: All right.

MR. MARTIN: Okay.

THE COURT: Okay.

MR. MARTIN: Judge, if we could while the jury is out, do you want to put that the objection about the hearsay evidence on the record.

THE COURT: Yes, anytime we have a break go ahead and ---

MR. MARTIN: Just that Ms. Abdulmani was testifying about statements made to her by Renee Poole and that consistent with our pre-court request we object to those statements made by her until there is at least a independent establishing of the conspiracy of which they portend to be during the pendency of and in furtherance of.

THE COURT: All right.

MR. MARTIN: I don't, you know, once that's established I think that certainly the argument could be made that this particular statement was in furtherance of it but my objection is it hasn't been established.

THE COURT: Understood, yes, sir.

MR. HUMPHRIES: Your Honor, pursuant to Rule 801(D)(2)(E) statements made by co-conspirator in the furtherance of a

conspiracy are admissible. This Court has already heard a proffer of the State's evidence regarding the conspiracy and has found prima fascia existence of a conspiracy and we would submit that they are admissible at this point.

THE COURT: That's correct, yes, sir.

MR. MARTIN: Very well.

THE COURT: We're ready for them. While they're coming in let me voice a concern about note-taking this late. They missed an entire day or at least half a day of testimony where notes were not taken and that's a concern that the Court has as well. I'm going to see whether it's even a desire. I think it may be have been discouraged by the last statement to the jury.

MR. MARTIN: Very well.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Welcome back. Ladies and gentlemen of the jury, there will be times when there are matters of law that just need to be addressed at that time. Some time the attorneys will come here and we'll handle it at bench, we'll put the matter of the law on the record at another time, at a better break time. Other times the Court chooses to go ahead and allow you to have a break and tend to those matters of law. Please don't hold any objections that the attorneys make against them or hold it against the client. They're doing

their job. They're bringing a matter of law to the Court's attention and don't think that any ruling I make is preferring one side or the other. That's not the case. You are the sole and exclusive judge of the facts. I'm ruling just exclusively on a matter of law. I want to make that clear. Now you had a break since the request this morning for note-taking. Is that still a desire of the jury? I'm getting, I'm getting nos. Okay, very well, I wanted to be sure of that.

All right, we will continue in direct examination of the witness. Yes, sir.

BY MR. HUMPHRIES:

Q: Ms. Abdulmani, did Ms. Poole make any request regarding the type of room that she would like to be in?

A: Yes, we had a really lengthy discussion about the different types of rooms that the hotel offered. I was trying because they were bringing a small child to get her in a specific type of room because we only had a certain type like I call it a 04, an 04 room type.

Q: What is that type please?

A: It`s a one-bedroom suite and it`s actually the first suite located on the end of the hall. You can bring that picture I can probably show you a bit easier.

Q: Sure, again State`s 35?

A: All the rooms are stacked in a row and it would be this right here. It's this very, very first row is where an 04

would be. The reason I wanted to get her in that type of room when you walk in you actually walk into the living room area. All of the rooms that run back here you actually walk into the bedrooms. So, that would give them the ability to put the child to bed at night and enjoy the kitchen, the living room, the bathroom without disturbing the child if she were asleep and because of its views. It's closest view to the ocean in a one bedroom, and you could also see down the other end of the beach from the back end of the room. So, it had a view of both sides of the hotel even though it was angled out at the ocean. So, and it was their anniversary so I was trying to get them a nice room.

MR. HUMPHRIES: I don't have any further questions of you, Ms. Abdulmani.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. MARTIN:

Q: You worked the night shift?

A: Correct.

Q: And what hours did you work?

A: Three to eleven.

Q: And these calls were made to you during the evening hours ---

A: Uh-huh (affirmative response).

Q: --- of May 30th.

A: Uh-huh (affirmative response.)
Q: By evening you mean nighttime?
A: Yeah, well, the first time she called me I would say it was probably five or six-ish. I'm not exactly sure. It's been a while, but it was I think dinnertime because I had already eaten dinner when I talked to her.
Q: Already eaten dinner?
A: Yeah.
Q: Thank you, ma'am.

MR. HUMPHRIES: Nothing further.

THE COURT: You may step down. Call your next witness.

MR. HUMPHRIES: The State calls Carolyn Murphy to the stand.

AT THIS TIME CAROLYN MURPHY WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Please be seated and state your name and spell your last for the record.

MS. MURPHY: My name is Carolyn Murphy, M-U-R-P-H-Y.

MR. MARTIN: May we approach just one second, Your Honor?

THE COURT: Yes.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Good morning Ms. Murphy.

A: Good morning.

Q: How are you?

A: Fine.

Q: Ms. Murphy, tell this jury how you're employed.

A: Pardon?

Q: How you're employed.

A: Right now I'm employed with the Arcadian Risk Managers, an insurance company.

Q: And let me ask you, back in May and June of 1998 were you employed there as well?

A: I was.

Q: Did you have a sideline?

A: Yes, I had a, I had a babysitting service.

Q: Okay, and tell the jury if you will what clientele you typically served in that babysitting service. Was it a babysitting service that dealt primarily with people who were residents of Myrtle Beach or people who were guests of Myrtle Beach?

A: No, it was just -- it was primarily for the tourists.

Q: Okay, let me ask you, how did you get referrals for your service?

A: Well, it was in the phone book and I had fliers out and from the hotels and the motels they would refer.

Q: And that's my question, was it uncommon for you to be referred by a hotel or motel at the beach for your services?
A: Yes.
Q: Was it uncommon or common?
A: It was common.
Q: Let me ask you, on June 3rd, 1998, did you receive a call from Renee Poole regarding your services?
A: Yes, I did.
Q: And if you will tell the jury about that.
A: Okay, when she called she wanted to know about the service and she wanted to know -- she wanted a sitter for June 9th from 10 till 2 in the morning, and I told her that the sitters won't go out that late, they won't take a child after 8:30 and I told her that the only one that would would probably be me, but I would try -- she asked if I would try and get somebody and I said I would and she called me back. In the mean ---
Q: Let`s do this. Let's do this. Regarding June the 3rd let me ask you State`s 31 which has been admitted into evidence, do you recognize that?
A: Yes.
Q: And what is it?
A: It`s a message I took from Renee. I was at work at the time at my day job and I picked up the message from my answering machine, and she -- like I said, she wanted someone

between the hours of 10 to 2 and that`s when I, when I returned her call this is when I told her we couldn't do that.

MR. MARTIN: May I see it for just a second, Mr. Humphries? I have no objection.

BY MR. MARTIN:

Q: And at this point let me ask you, is this an accurate summary of your testimony on June the 3rd, 1998, Renee Poole calls Murphy about babysitting, asks for 10 p.m. to 2 a.m.?

A: That's correct.

BY MR. HUMPHRIES: And we would move to affix at this time, Your Honor.

THE COURT: All right, allow it.

BY MR. HUMPHRIES:

Q: Now, did you have an occasion to talk with Renee Poole subsequent or after June 3rd, 1998?

A: Well, she called me again on June 5th ---

Q: Okay.

A: --- to see if I had gotten anyone and that`s when I told her no, that nobody would do it, that I would do it but I couldn't do it between those hours because I have a day job. I get up at 5 o'clock in the morning. So she was kind of disappointed; and so, she said she'd get back with me and she did and she ---

Q: Let me ask you this. Let me show you State`s 32 which is in evidence without objection. Tell me if you can identify

that.
A: Right, right, this is when I took her call at home with the business, the babysitting business, and I told her that I could do it at 9 o'clock, from 9 to 12 would be the minimum because, like I said, I get up early in the morning and that would be it; and so, she said she would get back with me again and I told her at that time, you know, when, you know, I needed the room number. I wrote down 510 at this time. Evidently they had given her a room number at this point.
Q: Okay, let me ask you if this is an accurate summary of your testimony regarding June 5th, Renee Poole calls Murphy with room number?
A: Right.
Q: Again, Ms. Murphy, what day or evening did she request the services for?
A: June 9th.
Q: Okay, and did you have a conversation with Renee Poole on June 9th?
A: Yes.
Q: Telephone conversation?
A: Okay, she called earlier in the day and she seemed a little upset and I asked her why and she said well ---
MR. MARTIN: Objection, the conversations I'm not objecting to at the time. The seemed part I would like to be specific in terms of -- if you're going to get beyond

conversation, it's telephone conversation, I want it to be specific.

THE COURT: All right, see if you can get her to testify very specifically how she sounded.

Q: Tell me, tell me how she sounded. Instead of upset what about her, the way she said it indicated to you that she was upset?

A: Well ---

MR. MARTIN: The Court will note my previous objection at this time.

THE COURT: It`s so noted.

A: She said -- she changed the time to 8:30 but she said something about, you know, that she -- on the way down she was up in the room and she was calling insurance companies and everything and I asked her why, did they have an accident. She said no that something had hit her windshield and I thought that strange but because her husband and the little girl were on the beach and she was up in the room and then that's when she asked me for -- to change the time to 8:30.

Q: I'm showing you State's 33 which is in evidence without objection. Tell me if you can identify that.

A: Right, this is when I picked up another message and she had changed the room number. She said she was in room 604.

Q: And regarding the time?

A: 8:30.

Q: Let me ask you if this again is an accurate summary of your testimony. June 9th, Renee Poole calls Murphy with new room number.
A: Correct.
Q: Now, let's go to the evening of June 9th. Did you ultimately arrive to perform this service?
A: I did. After a little -- I arrived a little late because I got lost.
Q: Okay.
A: I thought the Carolina Winds was on Ocean Boulevard but it was a street further on Beach Drive. I had been there lots of times but I don't know why, but so, I finally went around in circles and I finally went to the K&W Cafeteria up on Kings Highway there and called and Brent answered and I said, ``I'm here but I don't know where I'm going,'' and he told me to come ---
MR. MARTIN: Objection.
Q: Yeah, without saying what Brent told you what then did you do as a result of your conversation with Brent Poole?
A: Okay, he told me where it was and I just went, went down the street to the Carolina Winds, yes.
Q: Okay, and upon arrival then what did you do?
A: Okay, Renee opened the door and Brent was sitting on the couch with K.P. and she was crying, and ---
Q: Who was crying?

A: The little baby.
Q: K.P. ?
A: The baby, K.P. .
Q: Do you know about how old she was?
A: She was about two, two and a half, something like that.
Q: Okay.
A: And she had a bottle I think in her hand and she was crying after Brent and Renee was -- Renee went and, I mean, she was in Brent`s lap. Renee answered the door and she was sitting on the couch in Brent`s lap and Renee was trying to get Brent to leave. So, she went over and took the baby and sat there and the baby kept crying after Brent and he turned around and he came back and he said, ``Daddy'll'' ---
MR. MARTIN: Objection.
THE COURT: Sustained.
Q: Without saying what Brent said.
A: Okay.
Q: And I didn't explain that to you.
A: Okay.
Q: You can't say what Brent said. You can say what you did and what you observed as a result of what Brent said. You can't say what he said.
A: Okay.
Q: You can say what Renee said.
A: Okay, Renee told me, told Brent to leave; and so, then

she told me that there was a beanbag chair there and that K.P. liked to sleep on the beanbag chair. So, that's where I should put her to sleep; and so, she left, but they didn't leave together. He had already gone when she left.

Q: And approximately what time was this? Do you recall?

A: Pardon?

Q: That they left, what approximately what time was that?

A: About what time?

Q: Uh-huh (affirmative response).

A: Probably about, now, I arrived there about 20 minutes to nine and they -- were there probably five to 10 minutes.

Q: Now, let me be as specific as I can be. Did you remain that, that evening through the time period that you had promised with K.P.?

A: Yes, I did.

Q: And did there come a point in time when you became aware that something was terribly wrong?

A: Right, well, at 9:30 I got a call from Renee.

Q: Okay.

A: And she said she'd be back in -- they'd be there in a couple of hours.

Q: In a couple of hours and that was about 9:30?

A: That was 9:30 and then about midnight I start walking the floor because she -- they weren't there and about one o'clock in the morning I got a call from a man and he started

questioning me, okay, if I was the babysitter for the Pooles, and I said yes, but I said, ``Who am I talking to,'' and he said this is detective, I forget the name, from the Myrtle Beach Police Department and he told me there had been an accident and I was upset. I thought, ``Oh, that's a shame,'' you know, I mean, they came here. I said, ``Are they okay,'' and he explained that she was but he isn't or he wasn't and that I would have to stay there for a while, you know, and I said, of course, you know.

Q: And you did?

A: And I did ---

Q: And ---

A: --- but he gave me, he gave me a number for me to call him directly to his -- where I could reach him directly.

Q: And ultimately who relieved you?

A: Pardon?

Q: Who came to take over the care of K.P. ?

A: Renee`s parents at 7:30 the next morning, that morning.

Q: Thank you. Answer any questions the Defense may have for you.

A: Okay.

CROSS EXAMINATION

BY MR. MARTIN:

Q: Ms. Murphy, would it be an accurate summary of your testimony that Renee called you about 9:30 and said they would

be back in a couple of hours?
A: Correct.
Q: That's all have.
MR. HUMPHRIES: Nothing further.
THE COURT: You may step down, ma'am.
A: Okay.
THE COURT: You want this witness released?
MR. HUMPHRIES: She is free to leave or remain as far as the State's concerned.
MR. MARTIN: No objection.
THE COURT: You're free to go, ma'am.
Call your next witness.
MR. HUMPHRIES: The State calls Darrell Mills to the stand.
AT THIS TIME DARRELL WILLIE MILLS WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:
THE CLERK: Please be seated and state your name and spell your last for the record.
MR. MILLS: Darrell Willie Mills, M-I-L-L-S.

DIRECT EXAMINATION

BY MR. HUMPHRIES:
Q: And Officer Mills, with whom are you employed?
A: With the Winston-Salem Police Department in North Carolina.
Q: How long have you been so employed?

A: A little over 12 years now.
Q: And on June 10th, 1998, with whom were you employed?
A: The Winston-Salem Police Department.
Q: And at that time in what capacity?
A: I was a patrol officer.
Q: Let me ask you in the early morning hours of June 10th, 1998, did you receive a request from your dispatch regarding a certain task or assignment?
A: Yes, I did.
Q: Okay, and what was the nature of that task or assignment?
A: I received a request via our in-car computer to attempt to locate Mr. John Frazier at his residence from the Myrtle Beach Police Department.
Q: You were provided with that address; were you not?
A: Yes, I was.
Q: Okay, and approximately what time would you have received that particular directive or request?
A: As I recall it was approximately 5:00 a.m., 5:05 a.m.
Q: Now, let me ask you this, in connection to this request to attempt to locate is that a common request often made of patrol officers to attempt to locate individuals?
A: Yes, sir, it's very common.
Q: And did anything about that initial request cause you any concern or heighten your degree of awareness if you will?
A: No, it did not.

Q: Okay, and was the request -- was there any request for timely action in connection with that request?
A: No, there was not.
Q: After having received that request, first of all where were you when you received it?
A: I was on the downtown area as I recall in the proximity of our police department.
Q: Okay, and what did you do upon receiving the request?
A: I started to proceed to the address.
Q: And let me ask you this, approximately how far or driving time wise how long would it have taken you, if you were able to drive straight from your location at the time of the request to John Boyd Frazier`s residence?
A: It`s approximately 15 to 20 minutes.
Q: Now, did you proceed directly to John Boyd Frazier`s residence?
A: No, I did not.
Q: Tell the jury the circumstances under which you found yourself that evening in going to Mr. Frazier's residence?
A: After I received the dispatch I proceeded or attempted to proceed to Mr. Frazier`s residence but on my way to the residence I was almost involved in a traffic crash. I had a car run a red light in front of me.
Q: And as a result of that did you take any action?
A: Yes, I did.

Q: And what did you do?
A: I felt that I needed to stop the car and see what the circumstances were behind why the driver, you know, failed to heed the red light.
Q: Did you issue a traffic citation?
A: Yes, I did.
Q: After having done that and do you know approximately how long that took?
A: I estimated maybe 20 minutes.
Q: Okay, now, after having done that did you then proceed to John Boyd Frazier`s residence?
A: Yes, I did.
Q: Okay, now, was there a point in time in your traveling to John Boyd Frazier`s residence that you made any additional inquiries regarding this request, attempt to locate?
A: Yes, I did.
Q: What did you do?
A: Due to the fact that I was -- that I had received a call and I was out on a traffic stop I contacted our communications center to let them know that I was delayed and I asked them a little bit more about the information concerning the attempt to locate.
Q: Okay, and based on what you learned from the dispatch or the communications center, was then your -- was there a heightened sense of awareness regarding your safety as a

result of the additional information you received?
A: Yes, there was.
Q: Why is that?
A: They advised me that my request to attempt to locate Mr. Frazier was in reference to he was a suspect in a shooting which occurred in Myrtle Beach, South Carolina.
Q: Okay, now, did you possess that information prior to the traffic stop?
A: No, I did not.
Q: Okay, upon receiving that information did you then go directly to John Boyd Frazier`s residence?
A: Yes, I did.
Q: And approximately what time did you arrive at John Boyd Frazier`s residence?
A: Estimated approximately 5:40, 5:45 a.m.
Q: Tell the jury the circumstances surrounding your contact with Mr. Frazier that morning.
A: When I arrived at Mr. Frazier`s home I believe I parked in front of the residence, looked, and once I exited my car I looked around, looked in, around the front of the residence prior -- it was still dark, just to make sure everything was safe and then I approached the residence.
Q: Now, what did you observe in looking around the residence?
A: Just made an observation of how the houses was built,

the driveway and any vehicles in the area, any vehicles in the, on the property.

Q: Did you note a vehicle on the property at that time?

A: Yes, I did.

Q: And can you briefly describe that vehicle to the jury?

A: I noted it was a dark or it was dark and I believe I said it was a silver small car.

Q: Okay, I'm going to come back to that in just a moment. How did you get Mr. Frazier`s attention there at his door? Do you recall?

A: I don't recall if I rang the bell or knocked on the door.

Q: And did he ultimately come to the door?

A: Yes, sir, he did.

Q: And can you tell the jury a little bit about the condition in which you observed him as he came to the door?

A: In my opinion he appeared a little bit nervous, appeared nervous.

Q: And of course, we would have to concede that having a police officer knocking on your door at 5:40 in the morning might make one appear nervous? Fair enough?

A: That's fair, that's correct.

Q: What else did you observe if anything about his condition or demeanor at that time?

A: I believe I -- he appeared -- that I may have woken him

or a little bit, well, that I may have woken him.
Q: Okay, do you recall how he was dressed?
A: I don't recall.
Q: And let me ask you this, if you know, did you drive down here?
A: Yes, I did.
Q: Okay, and from Winston-Salem?
A: Yes.
Q: Okay, and approximately how long did it take you to drive from Winston-Salem to Myrtle Beach, South Carolina?
A: I'd say a little over four hours, maybe four, four and a half hours.
Q: Okay, and where did you come from?
A: From Winston-Salem.
Q: Okay, now, when you spoke with Mr. Frazier what did you tell him your purpose was for being here?
A: In the light of what I later found out that I was at the request of the Myrtle Beach Police Department conducting a follow-up examination in reference to a missing person report filed here in Myrtle Beach.
Q: And was that, in fact, the reason you were there?
A: No, it's not.
Q: And what was the reason for that particular scenario? Why did you provide that as the reason?
A: One like I say for safety reasons and once I found out

what the request was not to I guess trample on or any of the investigative information that could later be discovered.
Q: Okay, now, were there any conversations that you had or tell the jury the substance of your conversation with John Boyd Frazier on that morning?
A: Like I say, I had advised him that I was -- had responded to his residence at the request of Myrtle Beach PD in an attempt to locate him in reference to the missing person report and ask him if he had been in the Myrtle Beach area.
Q: And what did he respond in regard to whether not he had been in the Myrtle Beach area or when was he last in the Myrtle Beach area?
A: I believe he advised me he had not been to Myrtle Beach in approximately four years.
Q: Okay, was that the sum total of your conversations with Mr. Frazier at that time?
A: I believe so, it was.
Q: Now, let me ask you this, did you subsequently make contact again with Mr. Frazier in connection with his vehicle?
A: Yes, I did.
Q: Tell the jury about that.
A: I was also requested to attempt to locate a Chevrolet Blazer by our operator.
Q: And was that Blazer on the premises when you arrived there?

A: No, it wasn't.
Q: Okay, and did you ask Mr. Frazier about the location or the whereabouts of his black Chevy Blazer?
A: Yes, I did.
Q: And what did he respond?
A: That he had loaned it to a friend of his, a Mr. Kahle Schettler.
Q: Okay, now, did you ask him if he knew how to get in touch with or knew where Kahle Schettler lived?
A: Yes, I did.
Q: What did he say?
A: That he did not.
Q: He did not. Did you ultimately learn where Kahle Schettler lived by virtue of some investigative technique?
A: Yes, I did.
Q: And in fact, were you able to determine his address?
A: Yes, I did.
Q: Did you then respond to that address?
A: Yes, I did.
Q: Okay, and what type of housing was it?
A: It's an apartment complex.
Q: Were you able to locate the vehicle of John Boyd Frazier at that apartment complex?
A: Yes, I did.
Q: And what if anything did you do to determine whether or

not the vehicle, that is the black Chevy Blazer, had been recently in operation?

A: I touched the hood of the vehicle.

Q: And when you touched the hood of the vehicle was it warm to the touch or cold to the touch?

A: It was cold.

Q: And based on your experience and training what did that indicate to you?

A: That it had not been operated.

Q: Now, we talked just a moment about the silver in color car that was parked at John Boyd Frazier`s residence. Tell the jury was there any container or fence around a portion of John Boyd Frazier's property or residence?

A: Yes, there's a -- it's a -- the -- the back portion of the house is fenced in.

Q: Okay, and regarding this silver car where was it?

A: It was closer to the rear of the house behind that fenced and gated area.

Q: And was the fence closed?

A: Yes, it was.

Q: Now, did you attempt to enter that fence or gated area and feel the hood of that car?

A: No, I did not.

Q: And based on your training and experience would that have been a legal or proper thing for you to do?

MR. BRITTAIN: Objection, objection. This is a very fine police officer, but I don't believe he can make a determination whether it was legal or not for him to have touched that car.

MR. HUMPHRIES: I disagree.

THE COURT: Let me have you rephrase, just his training.

BY MR. HUMPHRIES:

Q: Based on your experience and training were you under the impression that you had the right to go into that gated area and feel the hood of that car?

A: Not without ---

MR. BRITTAIN: Same objection.

THE COURT: All right, I'm going to allow it.

MR. HUMPHRIES: Thank you.

BY MR. HUMPHRIES:

Q: Please answer the question.

A: No, I did not, not without the permission of the owner.

Q: Let me ask you if this is an accurate summary of your testimony. On June 10th Officer Mills locates the Defendant at his residence at 5:40 a.m.?

A: Yes, sir.

Q: That's all I have of this witness at this time.

THE COURT: Cross.

MR. BRITTAIN: May it please the Court.

CROSS EXAMINATION

BY MR. BRITTAIN:

Q: Officer Mills, this was big stuff you were over there doing; wasn't it?

A: Yes, sir.

Q: I mean, we're talking about something here that could change the whole fabric of this case; aren't we?

MR. HUMPHRIES: I object to the form of the question. I object to the form of the question.

THE COURT: Sustained, rephrase.

MR. HUMPHRIES: Thank you.

Q: You're over there somewhere, the police ain't going to send you out to a murder suspect without telling you that; are they? They're your fellow officers. They going to send you over there on a missing person report and they think somebody shot somebody? You knew before you went to that house or at least while you were there this was a murder suspect; didn't you? You just testified you were told that; didn't you?

A: Yes, sir.

Q: Because they're not going to send you into harm's way without letting you know that; are they? You wouldn't do that as a police officer; would you?

A: No, I wouldn't.

Q: You'd say, ``Look, we think this fellow might have shot somebody down in Myrtle Beach. Be careful.'' Wouldn't you

say that?
A: Yes, sir.
Q: In fact you finally got that information; didn't you?
A: Yes, sir.
Q: Now, you said that it was four and a half hours. You're there, you get the call at 5. Earlier you said you may have been there as early as 5:20. Have you said that in your report?
A: Yes.
Q: Okay, so, we're talking, assuming 12 o'clock around Myrtle Beach p.m., and assuming five or 5:20 and assuming four and a half hours, we're getting pretty close; right?
A: Yes, sir.
Q: You woke him up? You woke him up? Somebody got to drive there, four and a half hours, get in bed, go to sleep and then you wake them up; right?
A: Yes, sir.
Q: You were surprised to find him there; weren't you? Tell them.
A: I don't think I was surprised to find him there.
Q: Well, let me put it to you like this, when you asked him about the car in his driveway, he told you whose it was. There's no other way that you could find that out that morning; was there, except for Frazier to tell you that was Kahle Schettler's car. He told you; didn't he? He told you

it was Kahle Schettler's car.

THE COURT: Answer the question if you can.

A: I believe so. I don't ---

Q: Well, I mean, you had to go check and you ended up going over there and finding Kahle Schettler; didn't you?

A: Right.

Q: Now, really you asked him -- this is 5 o'clock in the morning, 5:20, 5:40. You asked him for an address. There wasn't any question but what John Frazier knew where Kahle Schettler lived. He just couldn't give you the apartment number, etcetera; isn't that true?

A: I believe.

Q: Because you ended up, you ended up going over there to that place; didn't you?

A: Yes, sir.

Q: All right, and listen, you went to put your hand on the car, the Blazer of Frazier. That's what you went to do; isn't it?

A: Yes, sir.

Q: Because you knew when you went to put your hand on it that if it was cool to the touch and that was the car that was down here and he had driven it he was innocent. That's what you're going over there to check; isn't it?

A: Yes, sir.

Q: Okay, now, here's the thing, the car that is in his

driveway, you wake him up, the car that is in his driveway you pass within ten feet of that; didn't you? How close did you come to that car?

A: I don't -- I think it was along -- greater than ten feet.

Q: But you saw the car?

A: Yes, sir.

Q: Now, you've already asked Frazier, by this time you know he's a murder suspect, you ask him about his car and he answers Kahle Schettler, which turned out to be true.

A: Right.

Q: Don't you as a policeman every time you make a stop if you want to and you don't have a warrant can't you ask the person if they will let you search their car?

A: Yes, I can.

Q: You could have asked John Frazier if you could have gone over there and put your hand on the hood of that car; couldn't you?

A: Yes, sir.

Q: You wouldn't need a warrant to do that if he would let you do it; would you?

A: No, sir.

Q: And if he didn't want you to find out where his car was he just wouldn't have told you anything about Kahle Schettler; would he?

A: I believe that's correct.
Q: Oh, my gosh, if you go by there and put your hand on that car and it's cool ---
MR. HUMPHRIES: Now, Your Honor, I object to the form of the question.
MR. BRITTAIN: It's a question.
MR. HUMPHRIES: I object to the form of the question. It's an argument. It's not a question.
THE COURT: Okay, ask a question, please.
MR. HUMPHRIES: Thank you.
BY MR. BRITTAIN:
Q: If you go by the car at Frazier's house and put your hand on it and it's cool, he's clear; isn't he? Isn't he clear?
A: I'm sorry. Could you rephrase?
Q: No, no, now, see, see, you going over, you go over and hunt Frazier's car where Schettler is.
A: Right.
Q: And go put your hand on it; right? So, it still matters whether that car is hot or not. So, while you're at Frazier`s house if you go put his hand, your hand on that car and we find out later on that's the one that he's supposed to have and it`s cool he`s home free; isn't he?
A: I'd say you're correct.

STATE OF SOUTH CAROLINA COUNTY OF HORRY	) IN THE COURT OF GENERAL SESSIONS))	99-GS-26-2249
State of South Carolina, Plaintiff, versus John Boyd Frazier, Defendant.	)	Transcript of Record May 16-20, 2005 VOLUME II

B E F O R E :

Honorable Paula H. Thomas
Horry County Courthouse
Conway, South Carolina

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

Gregory Hembree, Esquire
Fran Humphries, Esquire
Attorneys for Plaintiff

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Natasha Hanna, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

Q: Well, you'd say I'm right because I'm right. Thank you.

THE COURT: Anything? Redirect?

MR. HUMPHRIES: Just briefly.

REDIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Let`s be clear, okay, which vehicle were you advised you needed to check by virtue of your communication center?

A: The Chevrolet Blazer.

Q: And what question did you ask John Boyd Frazier in regard to his Blazer?

A: If he knew where he could locate Mr. Schettler.

Q: What was his response?

A: That he did not know.

Q: Did not know where Kahle Schettler was or how to get in touch with him?

A: That's correct.

Q: And at the point that you were at the residence did you have any information regarding the silver car you saw in his yard?

A: No, I did not.

Q: Or any reason to check it?

A: No, I did not.

Q: And let me ask you, about the time 5:40 how did you come

about that time, 5:40?
A: Looking at how long it takes to -- I'd say approximately how long it takes to drive from downtown to Mr. Frazier's residence and the time period that I was out writing a citation.
Q: If you received the call as you indicated from your communications center and that's a set time; is it not pretty much?
A: Yes, sir.
Q: Okay, and you were engaged in a traffic stop in which you issued a citation and then drove the remainder of the way to John Boyd Frazier's house, could you have possibly been there at 5:20 in the morning?
A: No, sir.
Q: 5:40?
A: Approximately 5:40.
Q: Thank you.

RECROSS EXAMINATION

BY MR. BRITTAIN:
Q: You put 5:20 in your report to start with; didn't you?
A: Yes, sir.
Q: All right, no problem with that. You're at his house at five something in the morning. You put in your report and told this jury you thought you woke him up. Any question ---
MR. HUMPHRIES: Your Honor, I object because it's not

proper recross, didn't go into it on redirect and I object.

THE COURT: We are limiting the scope.

MR. HUMPHRIES: Thank you.

Q: When you're there at those hours doesn't it, sir, make sense to concern yourself with the automobile or truck or vehicle that is on those premises?

A: Yes, sir.

Q: Thank you.

THE COURT: All right, you may step down, sir.

Call your next witness, please.

MR. HUMPHRIES: The State calls Agent Bowman to the stand.

AT THIS TIME JAMES BOWMAN WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last for the Court.

MR. BOWMAN: James Bowman, B-O-W-M-A-N.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Agent Bowman, with whom are you employed?

A: I'm employed with the North Carolina State Bureau of Investigation.

Q: And how long have you been so employed?

A: Approximately 19 years.

Q: What is your position or capacity, what capacity do you

serve the SBI at this time?
A: I am assistant special agent in charge for the Northern Piedmont District.
Q: Okay, and in June of 1998 what position did you hold with the SBI?
A: A special agent.
Q: Now, let me ask you this, in connection with your duties as a special agent of the SBI, do you often assist other agencies in connection with your duties?
A: Yes, we do.
Q: And in June of 1998 did you receive such a request from the Myrtle Beach Police Department in connection with this case?
A: Yes, I did.
Q: Tell the jury the facts and circumstances surrounding that request if you will.
A: Okay, we were contacted by Myrtle Beach Police Department concerning the fact that they had had a homicide and that in the course of their preliminary investigation they had determined that the wife of the victim had had a relationship with John Frazier who resided in Winston-Salem and they asked us to make contact with Mr. Frazier.
Q: Okay, ultimately who was us?
A: The State Bureau of Investigation.
Q: Okay, and in fact did you do that?

A: Yes, I did.
Q: Tell the jury how that came about.
A: On Thursday, June 11th, Special Agent Harold Pendergrass and I traveled to Winston-Salem. We went to Mr. Frazier's residence which was located on [redacted]. We attempted to make contact with him by knocking on the door. No one responded, didn't appear anyone was home. We left the residence and drove a distance away and parked and approximately 30 minutes later we called the residence by cell phone. Mr. Frazier answered the phone, identified myself over the phone and told him that we had been requested to make contact with him and I asked if we could come by and speak to him.
Q: And what was his response to you?
A: He agreed to speak with us.
Q: And as a result of his acquiescence what did you do?
A: We traveled to -- down the street to his residence. He came outside into the driveway and we talked with him in the driveway of his residence.
Q: Now, let me ask you this, what was his general demeanor in speaking with you?
A: He was, he was nervous. He was cooperative, but nervous.
Q: Okay, and what if anything about him, as in any physiological reactions, anything, his speech pattern, what

about him indicated to you that he was nervous?
A: He progressively began sweating more and more during the interview.
Q: Now, when was this? What date?
A: It was on June 12th -- June 11th, approximately 6:10 p.m. in the afternoon.
Q: 6:10 p.m.
A: Yes, sir.
Q: That's June, that's warm.
A: Warm, yes.
Q: Let me ask, how were you and your partner attired on that day?
A: We were wearing clothing as we are now, sport coat, tie.
Q: And in terms of your comfort level how would you characterize it on that evening in June?
A: I was comfortable.
Q: And this sweating, did it stay the same or did it increase as the interview went on?
A: It increased, it was profuse.
Q: Tell the jury just how it was.
A: It was to the point that he -- he has a high forehead and that I could just -- sweat was literally dripping down his face and to the point that he mentioned and it was obvious that he was aware of it and then he made contact to me that, ``Man, it's hot out here,'' and of course, I responded that I

didn't feel that hot.
Q: Let me ask you, what, what did you talk about?
A: I talked to -- we explained to him the purpose of our visit, that we had been asked to make contact by Myrtle Beach, and that we didn't know a lot of details of what had happened but that we needed to get some background information, and he explained that he did know Renee Poole, and we talked to him about the circumstances of their relationship.
Q: And tell me what he told you about that.
A: May I refer to my notes?
Q: Please and tell the jury the notes that you have before you today did you make those contemporaneous with the interview?
A: Yes, this is a transcribed report from the notes that I made on that date.
Q: Okay.
A: He was interviewed on Thursday June 11th at 6:10 p.m. in the driveway of his residence. He stated that he met Renee Poole through a mutual friend approximately six to seven weeks ago. They were romantically involved with each other for approximately one month. At the time the romantic relationship ended they parted as friends. Frazier stated that Renee went back with her husband Brent Poole. Frazier stated he was aware that Renee was married and that she had affairs with other men prior to her relationship with him.

At the time they met she was employed as a dancer at the Silver Fox Nightclub in Winston-Salem.

Q: And let me ask you, what type of establishment is that?

A: Adult entertainment. Frazier stated he does not know the names of any of the other men Renee has been involved with. Frazier stated he does not know the names of any male or female friends of Renee who might be able to offer assistance to this investigation. Frazier stated he had spoken with Renee's husband, Brent Poole, via telephone on a couple of occasions during his relationship with Renee. Her husband was aware that she was living with him, Frazier, and in one phone conversation Brent told him that he had a shotgun. Frazier is not aware of Renee owning any weapons. When asked if he was threatened by Poole during the telephone conversation Frazier said, "You could say that." Frazier stated he met Brent Poole at the Silver Fox Nightclub approximately two weeks ago. He described the situation as uncomfortable. However, he stated they did not get into a fight. He stated he has never been in a fight or physical confrontation with Brent Poole. Frazier stated he has not seen Renee in the past two weeks. He stated he talked with her by telephone one day last week. However, he does not recall which day it was. When they talked by phone Renee told him she and her husband were going to the beach for their anniversary. She did not tell him where they were staying at

the beach. Frazier stated he has been sick since Sunday, June 7th, 1998. Frazier further stated that due to working several days straight at Champion Products he had built up excessive work hours and he did not work on Thursday, June 9th. He stated he stayed home alone all day on Tuesday, correction, that was on Tuesday, June 9th. He stated he was on the Internet off and on Tuesday till approximately 3 p.m. Frazier stated during the day of Tuesday, June 9th, and night of June 9th his Chevy Blazer was with a friend, Kahle Schettle, S-C-H-E-T-T-L-E, who is a mechanic at Cloverdale Shell Station in Winston-Salem. Schettle was trying to fix a rattle in the Blazer and he, Frazier was driving Schettle's gray 1990 Acura.

Frazier stated he owns a Glock model 19 nine millimeter pistol which he does not have at his residence at the time of the interview. He stated he will consider making his pistol available for a ballistics examination if necessary.

Frazier stated he previously owned an Italian made TZ75 nine millimeter pistol which he sold to someone at a gun show. He does not recall who he sold the TZ75 to and I noted that the interview concluded at 6:35 p.m.

Q: Let me ask you this, referring to State's Four your interview took place on Thursday the 11th.

A: That's correct.

Q: Correct?

And according to your testimony, Frazier indicated that he had not seen Renee Poole in the two weeks prior, one week, two weeks, May 28th.

A: That's correct.

Q: Now, regarding the TZ75, was that information volunteered by John Boyd Frazier or was it elicited in a specific manner by you?

A: It was elicited in a specific manner by me.

Q: And how so?

A: He was very forthright in offering the information about the Glock, and at the conclusion of that I specifically asked him, ``What other weapons have you owned in the past?''

Q: And in telling you that he had sold the TZ75 at a gun show, again he indicated to whom he sold it?

A: He stated he did not know the identity of the purchaser.

Q: And did he say when he sold it?

A: No, he did not.

Q: And do you recall having asked him?

A: I don't recall asking him.

Q: What if anything else did you note about the way John Boyd Frazier was dressed?

A: As I stated earlier when I observed the dripping perspiration as I looked down at the drive ---

MR. MARTIN: Objection, objection. Can we approach the bench?

THE COURT: Yes, you may.

(Whereupon, a bench conference was held in the presence but out of the hearing of the jury.)

Q: Please continue.

A: And as I was, as I looked down toward his feet.

Q: And let me ask you this, just for the purposes of clarity, describe to the jury the condition of his footwear as you observed it that day.

A: Noticed that he, he had on what appeared to be brand new tennis shoes.

Q: And how did you come to that conclusion?

A: Based on my life experience looking at new tennis shoes, they just appeared to be very, very clean. They looked just like they were out of the box.

Q: Let me ask you was that consistent with the rest of the way he was attired?

A: I just recall that he was wearing causal clothing and the other clothing didn't appear to be brand new as the shoes did.

Q: And let me ask you this, you had the occasion to drive from Winston-Salem to Myrtle Beach.

A: Yes.

Q: How many occasions?

A: Many.

Q: Many, and how long does it take you to drive from

Winston-Salem to Myrtle Beach?
A: It can range from four to four and a half hours.
Q: Thank you. I don't have any further questions of this witness at this time.
THE COURT: Cross.

CROSS EXAMINATION

BY MR. MARTIN:
Q: Let me ask you, Officer Bowman, now you just testified that John Frazier when you went to talk to him that day had on what appeared to be new tennis shoes; right?
A: That's correct.
Q: All right, now, you're not telling that jury that they were new tennis shoes; are you?
A: No, sir.
Q: You don't know how old those tennis shoes were; do you?
A: I know they weren't real old. They appeared to be new.
Q: Well, I understand the word appeared but I'm going to ask you specifically, and if it's a fair question I want you to answer it. Do you know how old those tennis shoes John Frazier had on were?
A: No, sir.
Q: You know they were clean.
A: Yes, sir.
Q: You don't know whether they were one week old, one month old or six months old; do you?

A: No, sir.
Q: So, you're not trying to tell this jury by any stretch of the imagination that you could put forth evidence that John Frazier had had to get a new pair of tennis shoes since June the 9th; are you?
A: No, sir.
Q: Okay, now, let me ask you this, you called him and said, ``Can we come talk to you''; right?
A: That's correct.
Q: And of course, you weren't the first policeman to have gone to John Frazier's house to talk what about what had happened to Brent Poole; were you?
A: I wasn't aware of it at the time.
Q: All right, well, you know now you weren't.
A: That's correct.
Q: All right, sir, but he agreed to talk to you and was cooperative while you talked to him; right?
A: Yes, he was.
Q: And you talked to him according from 6:10 to 6:35. You talked to him for 25 minutes.
A: That's correct.
Q: And you got to ask him every question that you wanted to ask him; didn't you?
A: Yes, sir.
Q: And he answered those questions for you; didn't he?

A: Yes, he did.
Q: He was cooperative with you; wasn't he?
A: Yes, he was.
Q: Did his sister come over while you were there?
A: Yes, she did.
Q: And when you were there that afternoon were you dressed in a coat and tie?
A: Yes.
Q: Did you ask permission to remove your coat as it was warm that afternoon?
A: No, sir.
Q: You didn't?
A: No, sir.
Q: Do you usually ask permission of people when you're around them to remove your coat in that situation since you're an agent?
A: No, sir.
Q: And you didn't in this instance?
A: No, sir.
Q: Did you have an occasion to examine the automobile of a Kahle Schettler?
A: I don't recall examining it, no, sir.
Q: You don't recall that. That's all the questions I have for Mr. Bowman.
THE COURT: Redirect?

MR. HUMPHRIES: Nothing further.

THE COURT: All right, you may step down.

MR. HUMPHRIES: The State calls retired Agent Pendergrass.

AT THIS TIME H.G. PENDERGRASS WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.

MR. PENDERGRASS: Thank you. It's Harold G. Pendergrass, P-E-N-D-E-R-G-R-A-S-S.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Is it still appropriate to call you Special Agent Pendergrass?

A: Yes, sir.

Q: Tell this jury where you were employed until your retirement.

A: With the North Carolina State Bureau of Investigation.

Q: And how long were you with the State Bureau?

A: Twenty-six years.

Q: And when did you retire?

A: 2001.

Q: Let me ask you this, back in June of 1998 in what capacity did you serve the State Bureau of Investigation?

A: I was a special agent assigned to the Greensboro, North

Carolina, office.
Q: And in connection with your duties as a special agent with SBI did you receive a request from another agency, that is Myrtle Beach Police Department, to speak with the Defendant John Boyd Frazier?
A: Yes, sir, I think that Agent Bowman initially received the request and he requested me -- that I assist him over to Winston-Salem to locate Mr. Frazier and to subsequently conduct an interview with him pursuant to a request from the Myrtle Beach Police Department.
Q: And did you do that?
A: Yes, sir, we did.
Q: Let me ask you this, tell the jury, if you will, the facts and circumstances surrounding your contact with John Boyd Frazier on that afternoon.
A: It was a request to contact Mr. Frazier regarding an ongoing homicide investigation that the Myrtle Beach Police Department was conducting.
Q: All right, and when you arrived there tell the jury first of all how you observed John Boyd Frazier if you recall, how he was attired, his demeanor, his -- in speaking with him.
A: When we -- myself and Agent Bowman first arrived in the area where Mr. Frazier resided we went to the residence and didn't locate anyone at home at the time. We left and went to a location where we sat for a period of time and then we made

a subsequent call back to Mr. Frazier's residence and he was there and he spoke to Agent Bowman and Agent Bowman requested that we be allowed to come down and speak to him with regards to a request from the Myrtle Beach, South Carolina, Police Department and he agreed that -- to meet us and allowed us to come down to his house.

Q: Now, let me ask you this, specifically about John Boyd Frazier and his, for lack of a better term, his physiological state, the way his demeanor, the way his body reacted to the situation, can you tell the jury a little bit about that?

A: Yes, sir, we got to the residence and he met us and we conducted the interview in the driveway area there at his home. During the course of the interview he began to -- well, he appeared nervous and began sweating.

Q: And to what degree?

A: Somewhat profusely.

Q: And how did you find the conditions in regard to the heat that day?

A: It was warm.

Q: For instance, did you find yourself sweating in the same fashion that Mr. Frazier did?

A: No, sir, and I recall myself, if I can recall I was wearing a jacket.

Q: During this interview and let me ask you a little bit how it went. You all asked questions and he responded;

correct?
A: That's correct.
Q: And in answering your questions did he answer your questions directly or did he answer your questions and then expound on them? Do you understand what I'm asking?
A: Right, he answered them directly and did somewhat expound on some of his answers.
Q: Did you find it necessary to ask follow-up questions about certain things?
A: Yes, Agent Bowman was doing the initial interview and he did ask some follow-up questions I think.
Q: But in any event Mr. Frazier did answer your questions?
A: Yes, sir, he -- he did.
Q: And he did voluntarily do that; is that correct?
A: Yes, sir.
Q: Agent Pendergrass, answer any questions the Defense has, Please, sir.
A: Yes, sir.

CROSS EXAMINATION

BY MR. MARTIN:
Q: Agent Pendergrass ---
A: Yes, sir.
Q: --- it was a warm June afternoon; right?
A: Yes, sir.
Q: You seem to want to talk about him sweating profusely.

Is that the word we used?
A: Yes, sir.
Q: Were you sweating at all?
A: I may have been. I was wearing a coat and tie.
Q: All right, normal for people to sweat if they're wearing a coat and tie on a hot June afternoon; isn't it?
A: It would be. I don't recall myself sweating profusely on that, on that occasion.
Q: I understand. Would you agree with me that some people tend to perspire more than others?
A: I'm sure they do.
Q: Well, I'm asking you now. You're an agent of many years. Wouldn't you agree with me that some folks perspire more than others?
A: Yes, sir.
Q: All right, and on this particular day it is a warm afternoon; right?
A: Yes, sir.
Q: And of course, you're the one asking the questions and he's having to answer the questions; isn't he?
A: Yes, sir.
Q: And so, can you think of anything any more remarkable about what he said that day other than he was sweating profusely?
A: Anything remarkable about what he may have said? I

mean, he ---
Q: Well, I mean, you talked with, you talked with who was a suspect at that time for basically 30 minutes on a June afternoon in front of his black Blazer which he had just drove in and the most that I can get out of they want to ask you is didn't he sweat a lot. So, do you know of anything any more remarkable than that to tell this jury to convince them John Frazier is guilty from your conversation with him that afternoon?
A: He answered the questions that we put forth to him and during the course of his responses to us he was sweating.
Q: Okay, I got you. Well, let me ask you this, is it a fair summary of your testimony that on June the 11th Frazier cooperated fully and answers all questions?
A: Yes, sir.
Q: All right, that's all I have.
THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. HUMPHRIES:
Q: Based on your vast experience and in response to Mr. Morgan's question about some people sweating more than others has it been your experience that people who are very nervous sweat more?
A: Yes, sir.
Q: Thank you, sir. That's it.

THE COURT: You may step down, sir.

As far as scheduling goes, do you need to approach?

(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, we've come to a good breaking point for lunch and I need to give you some instructions and I want you to be very cautious about following these instructions. When you're out during lunch I want you to wear your juror buttons. I want you to avoid anything, any media, anything, any, anything that has -- even remotely resembles this case and stay away from the newspaper, stay away from the radio, the computers, the TV, and I caution you about that, anything that you may hear, see or read about it. Try to stay away from -- don't discuss it even amongst yourselves. I'm going to have you reconvene back in that jury room at two o'clock and the reason I'm giving you a bit of a longer lunch is we have some matters of law that need to be addressed and we're going to try to fit a lunch in as well. So, we won't need you back here until two o'clock.

Now, I apologize for this morning. I am the one who sets the schedule. Don't hold it against the State or the Defense when I miscalculate and it was my miscalculation this morning that had you out about 30 minutes later than I had intended. It is my intention once again to have you out at two o'clock sharp and I believe that I have calculated that correctly.

So, please be here because we intend to bring you out at two o'clock.

Now, ladies and gentlemen, remember the cautions I have given you about hearing anything, speaking about this with anyone, watching anything, reading anything about this case. Remember not to discuss the case even amongst yourselves when you reconvene at two. Any questions about the instructions I've given you? Any additional instructions desired by the State or the Defense?

MR. HEMBREE: None from the State, Your Honor.

MR. MARTIN: None.

THE COURT: Have a good lunch. We'll see you back there at two o'clock.

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

THE COURT: All right, we can do one of two things. We can go ahead with the Biggers hearing now, the identification hearing at this time or we can do that after lunch. What's your preference?

MR. HUMPHRIES: Let's do it after. We've still got, we've still got that other issue we need to resolve.

THE COURT: Okay, and I'm sorry, what is that?

MR. HUMPHRIES: In regard to the reward money because these witnesses will be coming up very shortly.

THE COURT: Oh, in regard to what, I'm sorry?

MR. HUMPHRIES: The reward money.

THE COURT: Okay.

MR. HUMPHRIES: The reward.

THE COURT: Are you going to find out more information over lunch to deal with that?

MR. HUMPHRIES: Uh-huh (affirmative response).

THE COURT: All right, I'll see you back here then at 1:30.

MR. HUMPHRIES: Very good.

THE COURT: Have a good lunch.

***** OFF THE RECORD *****

(On the record.)

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

THE COURT: All right, we have several issues to deal with, one of which is dealing with the reward, the other being the Biggers hearing that we need to have. Anything other than that that I'm missing?

MR. HEMBREE: I've got one very, very minor issue, Judge.

THE COURT: All right.

MR. HEMBREE: I can knock this out and take care of it quickly.

THE COURT: Okay.

MR. HEMBREE: Defense counsel had requested criminal

histories or ask that we run criminal histories on some of the citizen witnesses that were involved in this case. I've got those current histories that have been run on Crystal Pedersen, Thomas Pedersen, Bruce Wolford, Mark Hobbs and Donna Hobbs and those records indicate that they have no criminal convictions.

THE COURT: All right, very well. Any other requests?

MR. MARTIN: No, ma'am.

THE COURT: All right.

Channel 15, could I have you here for just one moment?

***** OFF THE RECORD *****

(On the record.)

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

THE COURT: All right, let's ---

MR. HUMPHRIES: If we could, what I'd like to do initially before we get into the identification hearing, I've talked about it with Defense counsel. I think just for the purposes of the record if we could take a brief proffer of testimony regarding the reward from at least three of the witnesses. It wouldn't take very long, but I think that ---

THE COURT: That's fine if that's ---

MR. HUMPHRIES: --- if we were in the position that Mr. Morgan asked -- Mr. Martin asked me a series of questions, Mr. Morgan and Mr. Tommy, that's what you call them when you get

old, asked me a series of questions and instead of my trying to ferret out what they really wanted from those questions I think it's just best that I ask the Pooles and the Hobbses some questions about it and then they get the opportunity to do that and that way we can create a full record, may assist you as well in your ruling if that's okay.

THE COURT: That's fine.

MR. HUMPHRIES: Let me call Bill Poole to the stand at this time.

THE COURT: Mr. Poole, we'll put you under oath now. If you are called in the presence of the jury we'll put you under oath again ---

MR. POOLE: Thank you.

THE COURT: --- just to let you know for the jury's sake.

AT THIS TIME WILLIAM POOLE WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated.

Please state your full name and spell your last name for the Court.

MR. POOLE: William Poole, P, double O, L-E.

EXAMINATION

BY MR. HUMPHRIES:

Q: Mr. Poole, you are the father of Brent Poole.

A: That's correct.

Q: Let me ask you, in connection with the murder of your son, did you offer a reward, publicized offering of a reward in connection with the solving of your son's murder?
A: Yes, sir, we did.
Q: Okay, and by what means did you do that?
A: We informed the media in Winston-Salem that we had put up a $30,000 -- the family had put up a $30,000 reward, yes, sir.
Q: Okay, and very briefly, what would have been the source of funds for the $30,000 reward?
A: Those funds would be coming from a life insurance policy on Brent, $40,000 policy.
Q: Now, was there a point in time at which you paid a reward ---
A: Yes, there was.
Q: --- to certain individuals.
A: Yes.
Q: Tell the jury very briefly to whom you paid it and the circumstances under which you paid it.
A: Okay, after the, after the second trial, John Frazier's trial, the family and I discussed what we should do with this reward money and we decided some of it should go to the Hobbses. So, I called Mr. Hembree's office and talked to Greg and told him what we wanted to do and was there any problem with that, and basically he came back and said he didn't see

any problem with it. We discussed a possible amount, hadn't determined exactly what that would be at that time and didn't think there should be a problem with it.

Q: As a result of that conversation what then did you do?

A: Well, at some point later, I mean, we decided and I talked to several different people about how to do it, you know, from a financial standpoint. We decided that we would give them a reward.

We called the Hobbses to make a dinner appointment. They live in Lynchburg, Virginia. We live in Winston-Salem. My son, my daughter and my wife wanted to drive up, you know, and present this reward to them. So, we called and made an appointment with them to have dinner at a place of their choice, seems like it was on a Friday afternoon and we drove up and had dinner and my wife had wrote them a note in a card and told them in that card we were presenting them $20,000 of the reward money.

Q: Let me ask you, do you know approximately when that meeting would have taken place?

A: Now, we can get the canceled checks. It -- the trial was in February of 2000. I'm going to say this was somewhere in the late summer of 2000, maybe early fall. I just don't recollect the exact time.

Q: Okay, and let me ask you this, when you advised the Hobbses that you intended to give them this reward did they

indicate to you at that time that they knew that any reward had been offered?

A: I asked them if they was aware, which we gave them the card they actually refused to take it, and I asked them if they was aware that there was a reward out there and they said no. I said, "You hadn't read about it or anything?" They said no.

Q: Regarding your contact with the Hobbses, that's Mark and Donna Hobbs, do you recall whether or not with the exception of passing in the courthouse between Renee Poole's case and John Frazier's case if you contacted the Hobbses directly.

A: You know, I can't remember whether we did or not. It's a possibility we might have just as a visit, but I can't, I honestly can't remember.

Q: And it is fair to say that even had such a contact or conversation occurred you would not have mentioned a reward at that time.

A: Never have we mentioned the reward to them in any contact, format whatsoever, no.

Q: And regarding the manner in which the reward was paid, was it in cash or check?

A: We wrote a check, $10,000 to each one of them.

Q: Each one.

A: Uh-huh (affirmative response).

Q: Now, specifically what was your intention as it relates

to paying the reward to the Hobbses? What was it your intention to do and your intention not to do?

A: You know, contacting Greg's office I didn't want to do anything that might harm any future trials if they occurred. I didn't want to do anything that would contaminate anybody's, anything about, you know, the trial and the Hobbses. So, I wanted to be sure it was okay. That's the first thing and if it had not been we would have never paid them.

Q: And what was your belief as to whether or not it would ever impact any future proceedings when you gave that to them?

A: We thought it -- we had no reason to think they would be any future proceedings.

Q: Were you aware that John Boyd Frazier had taken an appeal from his trial?

A: Yes, uh-huh (affirmative response).

Q: And for the record, and I don't know the specific date, but the opinion from the Supreme Court in this case came back -- I'm not -- I know it's within the latter part of 2004 I believe, some four years. I think we can agree on that.

MR. MARTIN: We can get the date.

MR. HEMBREE: January the 5th, 2004.

MR. HUMPHRIES: January the 5th, 2004, was when the appeal came back?

A: Uh-huh (affirmative response.)

THE COURT: Yeah, it was decided January 5th.

MR. HUMPHRIES: Filed on January, okay, very good.
THE COURT: I have it was heard on January 22nd, yeah, April 22nd, 2003, was when it was actually heard.
MR. HUMPHRIES: Right.
THE COURT: And decided January 5th, 2004, okay.
MR. HUMPHRIES: That's all I have of this witness at this time.

EXAMINATION

BY MR. MARTIN:
Q: Mr. Poole, did you have any contact with Mark or Donna Hobbs prior to the trial of Renee Poole?
A: I can't say. We've talked a couple of times, you know, during the past years. I called them at some point to introduce ourselves to them and also thank them for going forward and doing what they did, but I don't remember the exact time frame of that.
Q: And you specifically don't remember whether it was before or after Renee Poole's trial?
A: It could have been before, Mr. Martin, Morgan. I don't know.
Q: And how would the contact have been made on the occasions that you made them?
A: They were all phone contacts.
Q: From your home phone to their home phone?
A: The best I can recollect, yes.

Q: Do you know on how many occasions you would have contacted them approximately?
A: In the whole time period up till now maybe three or four.
Q: Three or four?
A: Maybe, uh-huh (affirmative response.)
Q: When was the last time you have spoken to the Hobbses prior to -- well, maybe since they came down for this trial?
A: I've spoken to them at the hotel.
Q: This ---
A: Yes, uh-huh (affirmative response.)
Q: --- I mean on this visit down.
A: Yes, uh-huh (affirmative response.)
Q: But prior to that I guess is what I'm asking, prior to everybody assembling here do you remember when the last time was?
A: I have no clue when it was but it seems like I talked on the phone one time to them since we gave them the reward money. So, it was sometime in that window.
Q: Okay, all right, have you kept in touch with them by card or letter to your knowledge?
A: No, no, huh-uh (negative response.)
Q: All right, and when the contact has been made other than the trip that you made down where everybody went did you make the contact or your wife or do you recall?

A: I think my wife made the phone contact, arranged. I'm not sure. I could have done it, but I think she did.
Q: Okay, how long a drive is it from Winston-Salem to Lynchburg?
A: Probably two and a half, three hours.
Q: Okay, and the reward money that we're talking about was first offered through who?
A: One of the news medias, is that -- how it was distributed, how it was notified?
Q: Right.
A: How we publicized it.
Q: Yes.
A: Through, I believe it was Channel 12 there in Winston-Salem.
Q: In Winston-Salem?
A: Uh-huh (affirmative response).
Q: Now, it was in the Myrtle Beach newspaper on Friday, June the 12th. Did you specifically contact Myrtle Beach ---
A: No, sir; no, sir.
Q: --- or that just got out through the media outlets?
A: No, sir, no, sir, I guess out through the media. I didn't contact Myrtle Beach.
Q: But you never had any contact with the media in this area about reward money?
A: I don't recollect any, no.

Q: How about with the officers, the Myrtle Beach Police Department?
A: Yes, I did talk to ---
Q: Who did you talk with?
A: Sam Hendrix.
Q: Sam Hendrix?
A: Uh-huh (affirmative response), to let him know that we had posted an award, reward.
Q: Anybody else ---
A: I don't ---
Q: --- that you recall?
A: I don't recall, no, sir.
Q: Do you remember when you would have contacted Sam Hendrix?
A: It would have probably been in the first week of the, you know, after Brent's death, yeah.
Q: Whenever you ---
A: Shortly after we ---
Q: --- shortly after ---
A: Yeah, uh-huh (affirmative response).
Q: Was anybody else paid any reward money?
A: No, there was not.
Q: Did anybody else contact you asking for reward money?
A: They didn't -- they did not contact me, no.
Q: Did they contact any members of your family?

A: No.
Q: Are you aware of any contacting the police department in Connection with it?
A: You know, I may have heard a conversation about one witness who asked about the reward, but I have no details, I don't have no recollection of names or anything like that.
Q: Okay, you don't have a recollection of the name.
A: No.
Q: In the conversations that you had with the Hobbses over the time period, did you have any direct conversations with them about their eyewitness testimony of what they saw or how they know what they saw or the details of that?
A: Not really.
Q: Did you discuss that area in any way?
A: I don't recall discussing that in detail in any way. I really don't, but something may have come up but it was no focused discussion on it.
Q: Those checks you've mentioned they were cancelled checks that -- you did pay in check and the checks have been cashed?
A: We have the cancelled checks, that's correct.
Q: But you don't have them with you I don't think.
A: No, I sure don't.
Q: The reward that is offered in the Myrtle Beach paper on June 12th is $50,000, and I believe you mentioned the number $30,000.

A: The family put up 30,000. That's what I said. The family put up 30,000.
Q: Okay.
A: Then a co-worker of mine contributed another 20,000. That was some days, a day or two after that.
Q: Okay, Mr. Poole, the -- you knew that the notice of intent to appeal the case had been filed, and of course, I assume you knew that that meant it could result in a reversal. You just didn't really think beyond that when you paid the Hobbses the money?
A: Yes, I did. That's why I made contact with the Solicitor's Office.
Q: Oh, okay, do you recall whether or not you've had any contact with Mark or Donna Hobbs after the appellate decision came out in January of 2004?
A: I have not talked to them except at the motel. No, I have made no calls to them.
Q: All right.
A: I had not talked to them on the telephone.
Q: You and they are staying at the same motel now?
A: That's correct.
Q: And when did you come down, Mr. Poole?
A: We came down on Sunday.
Q: Sunday, do you know when the Hobbses came down?
A: I think they came down on Friday or Saturday. I'm not

sure.

Q: Which motel is that?

A: It's the Staybridge Motel down at Fantasy Harbor.

Q: That's all I have.

MR. HUMPHRIES: Nothing further on this issue.

THE COURT: You may step down.

MR. HUMPHRIES: The State calls Mark Hobbs.

THE COURT: Come forward, sir. Once again, we'll swear you in for purposes of this testimony. If you're called in the presence of the jury we'll be swearing you in again.

AT THIS TIME MARK HOBBS WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name and spell your last name for the Court.

MR. HOBBS: Mark Hobbs, H-O-B-B-S.

EXAMINATION

BY MR. HUMPHRIES:

Q: Mr. Hobbs, you, of course, know the Pooles ---

A: Yes, sir.

Q: --- Bill and Agnes. Let's start at this point. Do you recall having had any conversations other than in passing, you know, greeting, prior to the trial of Kimberly Renee Poole?

A: No, sir.

Q: Between the trial of Kimberly Renee Poole and John Boyd Frazier do you recall having any conversations or contact with

the Pooles other than greeting while in passing?
A: I don't recall any, no, sir.
Q: Now, after the trial of John Boyd Frazier and his conviction was there a point in time when you were contacted by the Poole family regarding a dinner?
A: Yes, sir.
Q: And tell us about that.
A: Well, they -- I guess they called my wife. Then they set up a, asked where we'd like to go out to eat, and then we just picked out a nice restaurant and went to a steakhouse and we -- they took us out to eat and said they'd like to take us out for dinner. So, we went out and we enjoyed and we just had a -- we just kind of visited, you know, just to -- nothing really about the case or anything. We just was visiting, talking, asking how everybody was doing and we talked about the, you know, then they -- at the -- after the -- at the end of the dinner when we were through they presented the card to us and they said that this was something they'd like to give us and it was -- there was two checks in it and I told them I didn't really want it. We didn't, didn't need it, don't want it and but they insisted; and so, we took it.
Q: Let me ask you this, prior to actually being handed that envelope and opening it up and reading it did you have any knowledge of a reward ever having been offered in connection with this case?

A: No, sir.
Q: Did you at any time ever inquire about or solicit a reward for your involvement in this case?
A: No, sir.
Q: Well, you've testified that at the point the money was given you didn't, you didn't need it. You still got the money?
A: Yes, sir, I mean, I could give it right back right now. It's still in the bank, the same place when I cashed the checks, put them in the bank it's still right there.
Q: Okay, thank you.
A: Yes, sir.
THE COURT: Cross.

EXAMINATION

BY MR. MARTIN:
Q: Mr. Hobbs, on how many occasions have you talked to any members of the Poole family since June the 9th, '98, whenever you were at Myrtle Beach?
A: Very few. I mean ---
Q: I understand that ---
A: Two or three.
Q: Two or three?
A: Yes, sir.
Q: And when would those times have been?
A: I have no idea.

Q: Now, did you talk to them prior to the Poole or Frazier trial?
A: I don't think so, no, sir.
Q: Well, I understand now you don't think so.
A: I don't recall it at all, no, sir.
Q: You don't know. Let me ask you this way then. Can you deny that you talked with them prior to either of those trials?
A: I don't think I did, yes, sir.
Q: You can deny that?
A: I can deny that.
Q: Now, I assume you don't know when your wife talked to them.
A: No, sir.
Q: In what manner did you talk with them on the times that you did?
A: What manner, you mean on the phone?
Q: By telephone.
A: Telephone.
Q: Or in person or what?
A: Yes, sir.
Q: And where were you when you talked to them?
A: At home.
Q: Did you call them or did they call you?
A: I think they called.

Q: Now, you ever call them?
A: I don't recall, no, sir, I don't think I have, no, sir. I don't think so.
Q: But they had called you on two or three occasions.
A: Yes, sir; yes, sir.
Q: Did you discuss with them the eyewitness identification you had made?
A: No, sir.
Q: Never?
A: No, sir.
Q: At any time?
A: I don't think so, no, sir.
Q: Did they ever during these conversations tell you that they appreciated your coming forward and your help with the case?
A: Yes, sir.
Q: Did your conversations with them confirm in your mind you had done the right thing in identifying the number one picture in the lineup, John Frazier?
A: Would you repeat that, please?
Q: Did your conversations with them confirm -- that's help to confirm I guess. Did your conversations with them help confirm in your mind that you had done the right thing in picking John Frazier out of the lineup?
A: I guess it, you know, it just -- it made you, it made

you feel better to see a family there that you had helped out.
Q: Did it make you feel more confident about the identification you had made?
A: Oh, no, sir.
Q: Just made you feel good to want to help; is that what you're saying?
A: Yes, sir; yes, sir. I mean, glad to, you know, because I really didn't want to get involved anyhow, but ---
Q: We've been over that, haven't we?
A: Yes, sir.
Q: Do you know and you certainly may not, do you know what times your wife may have spoken to the Hobbses, excuse me, to the Pooles other than when you were present?
A: I don't know, no, sir.
Q: Did you and she have conversations about the contact with the Hobbses, or excuse me, contact that the Pooles have made with you? I mean, like did you come home from work one day and they say, ``Well, you know, the Pooles called today?''
A: Could have, but you know, I'm sure she would have, you know, if they would have called she would have told me, but.
Q: And they paid you with a check made one to you and one to your wife?
A: Yes, sir.
Q: And you in turn deposited them into the bank.
A: Yes, sir.

Q: Do you remember when that was?
A: I really don't, no, sir.
Q: Now, you say that you were not aware that a reward was being offered.
A: No, sir.
Q: It was on the news and in the newspaper in Myrtle Beach. Did you watch any newscasts?
A: Very little.
Q: Well, help me define very little. Did you watch any or not and then we'll talk about ---
A: I mean, very, I could have, yes, sir, but I -- on the most part I don't watch a lot of television.
Q: Well, let me help you with one. You did watch one air about the murder having occurred.
A: I didn't watch it at the time. I was called in to see it.
Q: You were called in to see it?
A: Yes, sir, yes, sir.
Q: Who was watching it?
A: My mother-in-law and my wife.
Q: And did they continue to follow that ---
A: I don't really think so. I don't ---
Q: --- while you were in Myrtle Beach?
A: They could have. You know, I really -- didn't really think it was a -- I didn't think we -- what we had was very

much.
Q: Now, when you went down to talk to the police on these different occasions did you have any discussion with them about reward money?
A: No, sir.
Q: You agree with me now that it is a fact that reward money was offered?
A: Sir?
Q: You agree with me now it is a fact -- you know now that the reward money was offered?
A: Yes, sir; yes, sir.
Q: And not only did you get money but it was offered early on.
A: I realize it now, yes, sir.
Q: One moment, Your Honor.
That's all the questions. I have.
THE COURT: All right.
MR. HUMPHRIES: Nothing further. Would call Donna Hobbs.
THE COURT: You may step down, sir.
AT THIS TIME DONNA ANN HOBBS WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:
THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.
MS. HOBBS: Okay, Donna Ann Hobbs, H-O-B-B-S.

EXAMINATION

BY MR. HUMPHRIES:
Q: Ms. Hobbs, you of course, as well know the Pooles.
A: Yes, sir.
Q: Bill and Agnes.
A: Yes, sir.
Q: Let's, let's first start off by trying to establish the number of times you may have had direct contact with anyone in the Poole family separate and apart from passing through South Carolina.
A: You mean by telephone?
Q: By telephone or by direct means.
A: Okay, yeah, I think I ran into them first in one of the trials. Waiting in the bathroom line, I met Agnes or then, and then there were some conversations on the phone and I think I even called one time and I can't remember they had called maybe once or twice, something like that.
Q: Do you recall -- you believe that you may have called them?
A: I may have yeah, I, yeah, I know I did at least one time.
Q: And was that in response to their having called you or was that ---
A: No, I think I just called her one day to see how she was doing.
Q: Okay, do you recall when those calls may have taken place?

A: No.
Q: Let me, let me do this. Do you recall if there were any calls to the best of your knowledge before the trial of Kimberly Renee Poole?
A: If there was I don't remember them at all.
Q: And between the trial of Kimberly Renee Poole and John Boyd Frazier do you recall any telephone calls?
A: There may have been. So, I won't say there wasn't. I just can't remember.
Q: Okay, and let me ask you this, in regard to those conversations was the topic of conversation or was there a discussion regarding your identification of John Boyd Frazier and the circumstances surrounding your identification of John Boyd Frazier? You understand my question?
A: No, I don't think so. I'm sorry.
Q: Well, here's what I'm, here's what I'm getting at ---
A: Uh-huh (affirmative response.)
Q: Did you talk about how you identified John Boyd Frazier?
A: Oh, no.
Q: Where you saw him, how you picked him out of the lineup, the procedure used?
A: No, as a matter of a fact they -- whenever I had conversations with them I mentioned to my own mother how that I was just surprised how they don't say anything and they never said anything negative about him or his family just in

conversations. I was just surprised at how they, they seemed like a really, a couple that has taken it really well in they've never said anything negative about him or to us, anything.

A: Now, prior to this dinner meeting and do you recall about when that might have been?

Q: No, it would have been sometime after both of the trials and I think it was a while because we had pretty much forgotten about it and I remember they called and I was surprised to hear them because it seemed like it had been a long time. I would say I would guess summertime, seems like it was warm.

Q: Okay, at the point in which they gave you the card ---

A: Uh-huh (affirmative response.)

Q: --- which notified you of the reward ---

A: Right.

Q: --- prior to that time had you had any knowledge regarding the offering of a reward in connection with this case?

A: No, sir.

Q: Never?

A: No.

Q: Not from the Pooles?

A: No.

Q: None from the media?

A: No.
Q: Not from law enforcement?
A: No.
Q: And did you ever at any time solicit a reward for your involvement in this case, that is have you ever inquired about, asked for a reward for your involvement in the case?
A: No.
Q: Okay, and upon being presented this reward what was your response, your initial response to the Pooles?
A: We were really taken back. I thought they were taking us to dinner and that was all. We were surprised and we didn't want to accept it and we told them, you know, that I just felt like they had been through enough and we didn't deserve that, but they had us take it. So, we did.
Q: And let me ask you this, having had those conversations with members of the Poole family or having received the reward in connection with this case, did any of that serve to increase your confidence regarding your identification of John Boyd Frazier as the person you saw on the beach on June 9th, 1998?
A: No, no.
Q: In any degree?
A: No.
Q: Okay, thank you.
THE COURT: Cross.

EXAMINATION

BY MR. MARTIN:

Q: Ms. Hobbs, I couldn't hear you very well, when you first started talking because you were speaking kind of low.

A: I'm sorry.

Q: But when you were trying to tell the different times that there was contact between you and the Poole family could you repeat that for me?

A: I'm not sure how many times it was. I remember they may have called once or twice and I did call them I know at least once.

Q: All right, so, you would say three or four times?

A: Maybe, maybe.

Q: And on one occasion you called them.

A: Yes, sir.

Q: Just to check on them?

A: Well, just calling Agnes, yeah, we would talk about my kids and that kind of thing.

Q: Would you say that through this process you have become friends with the Poole family.

A: Well, probably yeah.

Q: The call that you made that you were talking about here do you recall when that was?

A: No, sir.

Q: Was that before or after the earlier trial?

A: I would say after if I had to guess.
Q: Are you sure?
A: No.
Q: And you -- and they, you think, have called you and your husband a couple of times?
A: Maybe.
Q: And then the one meeting is the only meeting that you had?
A: Yes, sir.
Q: And where was that in Lynchburg?
A: It was at a restaurant in Lynchburg.
Q: Do you recall the last conversation you had with the Pooles before you came down for this trial?
A: No, I don't recall it. It's been a while.
Q: Have you had any contact with them by card or letter?
A: No.
Q: Other than the card they gave you.
A: No, that's all.
Q: And I believe your testimony was that there may have been contact before the trial of Renee Poole?
A: There may have been. I just don't remember it.
Q: You don't know for sure?
A: No.
Q: And likewise it may have been between the two trials, you just aren't sure.

A: Yeah, I just don't know.
Q: Ms. Hobbs, did you appreciate the generosity of the Pooles?
A: Yes, it was nice.
Q: And did you write them a thank you note of any kind in connection with it?
A: You know, if I didn't I'm ashamed of myself, sorry. I can't remember.
Q: All right, you don't know whether you did or not?
A: I don't.
Q: All right, and they've appreciated your role -- the role that you've played in this case from the conversations you've had with them?
A: Well, I know they said they appreciate us coming forward.
Q: Do you feel any kind of responsibility now to go forward and to not let them down?
A: No.
Q: Has the $20,000 that you received had any influence whatsoever on you?
A: No.
Q: That's all I have of Ms. Hobbs.
A: Thank you.
MR. HUMPHRIES: That's all.
THE COURT: You may step down.

Anything further?

MR. HUMPHRIES: Nothing by way of proffer.

THE COURT: Be glad to hear anything to be proffered by the Defense in this matter.

MR. MARTIN: No, Your Honor. Well, let me say this, I would like to proffer the newspaper articles detailing at least in the Myrtle Beach, ``Sun News'', and I believe one is in the Winston-Salem newspaper, notice of the reward that was published consistent with the events that we're talking about here today.

THE COURT: All right, we'll mark them as Court's Exhibits if you want them for the record, and I've heard no testimony that they had seen those or ---

MR. HUMPHRIES: No, none.

MR. MARTIN: Right.

THE COURT: Okay.

All right, but for Court's Exhibit, the Court's.

MR. MARTIN: One is a Friday, June 12th, ``Sun News'' article and one is Thursday, June 11th, Winston-Salem. Now wait a minute. No, this is a ``Sun News'', this is the ``Sun News'' as well.

(Whereupon, Court's Exhibit Number One and Two [Newspaper Articles] appropriately marked.)

MR. MARTIN: That would be the only proffer we have, Your Honor.

THE COURT: All right, be glad to hear argument being mindful of the time as well.

MR. HUMPHRIES: Yes, I understand.

I do think it's a critical point though, and I appreciate your indulgence. The State's position is and clearly based on the proffer there was a serious concern from the Pooles particularly regarding whether or not the payment of a reward would in any way impact any future proceedings and that was clearly their intention to resolve that issue before they paid them because it was certainly above anybody else they've got a vested interest in this case and the case of Renee Poole. The State's position is that we have to address their intention in some form or fashion, not just the Hobbses because the Hobbses were the receivers, the receptors of that, of that money, but that the Pooles's intention I think is critical in order to give the jury the full character of this transaction. I think it is absolutely relevant. Now, I don't mind and I understand and Mr. Martin and I have talked about it. This is not a comfortable position for either one of us to be in, but we've got to somehow come up with some parameters which not only places it in terms of time in relation to prior proceedings, but we also have to elicit in some form or fashion the intentions of the Pooles without disclosing at least in a direct or a strongly indirect manner the fact that this is a retrial of a prior conviction.

THE COURT: Well, first of all let me say this, this testimony would be coming in that the relevance is that it could bear on their credibility.

MR. HUMPHRIES: Correct.

THE COURT: So, why is the intention of the Pooles relevant to the credibility of the Hobbses?

MR. HUMPHRIES: Because that intention -- well, clearly it does because the intention is conveyed to the Hobbses.

THE COURT: Even if, even if the Pooles had an evil intent, which I'm not saying, but even if they had an evil intent, they were saying, ``We're going to pay this money over in hopes this is going to change their testimony and they're going to testify firmer and harder and it's going to be'' -- if the Hobbses did not do that and it didn't bear on them and they say it had no influence on them that's, that's the issue, not really the issue of what their intent was and I will assume that they believed and I believe under these facts and this scenario they believed this case was over and they were giving this because they were a couple out there who decided to step up when so many other people might have walked away. I believe that was the intent behind that, but I don't think that that is relevant for purposes of why this is coming in. It would be coming in on the issue of whether it effected and what you need in order to say that it didn't I'm going to allow you to do, which is that there were prior testimonies, I

think we had counted up three or four in which they had testified solidly about this ID prior to knowing anything about any reward or receiving any reward, that this has not changed their ID.

MR. HUMPHRIES: I understand your point, but my point is but for the Pooles being proactive in delivering the reward, this is not a case where the Hobbses elicited the reward or sought after the reward clearly.

THE COURT: And that will come out.

MR. HUMPHRIES: But for the Pooles doing that there would be no issue in this regard, and I don't think in terms of res gestae you can, you can separate the two, the one from the other. I think we're entitled to put in the entire context of it in some form or fashion.

THE COURT: All right.

MR. HUMPHRIES: Now, I don't have any problem with parameters.

THE COURT: I'll be glad to take a suggestion. Let me, let me hear from the State -- I mean, let me hear from the Defense and then I'll see whether there's any and I'll allow you to respond.

MR. MARTIN: Well, Judge, I believe that I agree with you that the relevance is what impact if any did it have on the Hobbses. They will be testifying and they can testify that one way or the other.

I think it begs issue that from the time there was a reward offered in this case, which was a day or so after the event itself, that proposition is out there. As to the way you tie it up, the way you prove it, you know, is up in the courtroom but there's always once an offer of reward is put out there there's always the possibility that people see that or that it may impact who wants to testify and what they want to testify about.

Now, what happens here is what we've had is actual payment of the money, and again, I would -- it doesn't matter and I don't think that the Pooles gave it with the intent to make the Hobbses say something they wouldn't say otherwise, but the fact that the reward was there, that they took it, that they have it, and now they're going to testify today is relevant, but I mean, I would agree with you, I don't think that it's relevant what the wholesome intent of the Poole family was because what matters is not what they intended but what it did for or as to the Hobbs.

THE COURT: All right, maybe there is a way this can be handled by way of a charge to the jury, that rewards are quite often given in cases or rewards are quite often offered in cases, sometimes they're paid in cases. The relevance of the testimony regarding any reward received is whether or not the jury believes it had any impact on their -- on the, on the receiver's testimony, something along those lines. That would

be -- that is the only relevance of it so that they don't believe just by virtue of a reward that there is a taint, that one follows the other, that there's something innately wrong about a reward. They're out there and they're part of our system and the issue for that jury is whether they believe that that has in any way tainted their testimony.

MR. HUMPHRIES: I understand and I don't want to belabor this, but if you get right down to the basis of this issue that is that the reward was offered only after two prior convictions and there is absolutely no evidence, nor is there a good faith basis to believe -- to put that in front of a jury that there is now this reward paid with the jury not knowing about the two convictions, okay, that there is this reward and then they can infer no matter what Mr. Martin says about it, he can be as innocent as a lamb in presenting it to them but that inference, which is an unfair one, is out there. Mr. Martin concedes there's no ill-will, that their prior testimony has been unaffected by a reward based on the timing. Where is the good faith basis ---

MR. MARTIN: Well, let me ---

MR. HUMPHRIES: --- well, I -- just let me finish and I understand you've got a position on it, but where is the good faith basis to question these witnesses about the timing of a reward when they've already testified and there's already been two convictions.

THE COURT: All right.

MR. HUMPHRIES: And there's no assertion that their testimony is going to change as a result of it.

THE COURT: Let me ask you about this, we are protecting as closely as we possibly can the fact that there was a prior Frazier trial. I don't know and it may be necessary, but let me throw this out, that we have to protect that there was a prior Poole trial. You -- why not indicate that they had testified at the Poole trial and this was all subsequent to that and that was all behind. Why can't we at least reveal that ---

MR. MARTIN: Well ---

THE COURT: --- or the Defense has a concern about it.

MR. MARTIN: Yes.

THE COURT: Okay.

MR. MARTIN: Absolutely.

THE COURT: All right.

MR. MARTIN: I mean, it mean it's a conspiracy trial we're in here now.

THE COURT: I understand, and ---

MR. MARTIN: The argument is A and B.

THE COURT: And that's alleged to be the co-conspirator. I understand that, but the defense was that this is the same defense I heard earlier today saying that you want

to come in and just lay it all out there saying there had been a prior trial and a prior conviction, which is why I threw that out. That's a solution.

MR. MARTIN: Well, I asked about that.

THE COURT: If you, if you can, if you can agree that we're going to reveal there was a prior trial we have no problem here. If you cannot agree to reveal that there was a prior trial in this case then I'm going to protect that and what we're going to do in this case is we are going to allow the admission of the reward but we're also going to indicate very clearly and I'm going to give you some leeway with this that there was prior testimony on numerous occasions with the ID with these individuals who had no idea of a reward at that time and were testifying truthfully then as they're testifying truthfully today, which is what you will be eliciting; is that, is that the case?

MR. HUMPHRIES: If, if and the thing that comes to mind is if after the, after the close of the evidence in this case if it bears true, if in fact the testimony of these witnesses in this trial is consistent as to the identification of John Boyd Frazier at the conclusion of this trial and such a charge is given, such a stipulation is entered into ---

THE COURT: It's ---

MR. HUMPHRIES: --- that you understand my point.

MR. MARTIN: I do.

THE COURT: No, what I'm saying is that I'm going to allow you to question about that. I'm going to allow you to -- as soon as you go into the reward money then I'm going to allow you to respond with the testimony, prior testimony without any knowledge of a reward money with the same ID and basically the same testimony. I've got to allow you to do that if he's going to attempt to impeach or ---

MR. MARTIN: I agree with that. What I want to be sure that the Court understands and that the Solicitor understands as well is that I'm not going to stipulate or agree that the payment of the money has no effect on this testimony. I mean, I'm going to lay the inferences out there. I can't argue that it does or it don't other than I can argue the facts and the facts are a reward was offered, A, it was received, B. They gave sworn statements in between. They say it never has effected those statements or this testimony, but it will be up for a jury to determine and I would probably argue that money floating out there and money received certainly can be considered by the jury in determining whether or not they believe the identification is accurate or reliable. I just want to make that clear because that, I mean ---

MR. HUMPHRIES: If we go without that ---

MR. MARTIN: --- otherwise there's no need to put it in, you know.

MR. HEMBREE: Your position, I mean is that your

position? Is that your belief? I'm sorry.

MR. HUMPHRIES: And if that ---

MR. MARTIN: I don't know. Let me be sure you understand. I don't know what I believe altogether because you don't know and I don't know exactly what went on. Now, we know what people testified to but I'm not in a position when I'm representing John Frazier to not put the facts out there and let the jury make a determination. Do I think that Mr. Poole over here wanted to corrupt the Hobbses? No, I don't necessarily believe that, but I'm not going to hide the fact that he gave them money and let the jury determine what they want to from that. I don't think I can do it any other way.

THE COURT: All right, and if ---

MR. HUMPHRIES: And if we do that then the intentions of the Pooles are relevant. If we do that the intentions of the Pooles are relevant because it is a reflection, it is a direct reflection on the Pooles in attempting to manipulate or direct the testimony of the Hobbses, and if that's their position then their intention is absolutely relevant.

MR. MARTIN: No, my ---

THE COURT: Well, I'll see if it becomes relevant. I'll see.

MR. MARTIN: --- my -- let me say this. This might clear it up. My intention is that the Pooles put out reward

money early on. So, it's not their intent that worries me. Their intent was to put out money to try to help solve the case and they did that. That's their intent, period. That's all I would ever say, not that there was a corrupting force behind their actions, but that they did that. The only question is what effect if any did it have on the Hobbses. There's nothing wrong with what they did because they made the offer, they're trying to live up to it, the question is the effect on the Hobbses.

THE COURT: I'll reserve my ruling on anything in regard to their intent based on the examination and see where we go with that and I'll hear more argument at that time.

MR. MARTIN: One other thing before we go is before we get into the testimony of the Hobbses before the jury we need to be sure that we have a clear understanding that we're talking about prior statements as opposed to prior trials and testimony.

MR. HUMPHRIES: Prior sworn statements.

MR. MARTIN: Prior sworn statements, that's right.

THE COURT: All right, that's fine.

We also need to do the ID hearing at this time if we're going right into the Hobbses' testimony. Is that's what's happening now?

MR. HUMPHRIES: We're not going right into it but we are going into it within ---

THE COURT: Let's do this then. If we're not going right into it if we can take any witnesses, let me get this jury out and let's take a couple of witnesses if we can ---

MR. HUMPHRIES: We've got four witnesses.

THE COURT: --- and then we'll give them a break.

Very good, all right, thank you for that. Anything further from the State?

MR. HUMPHRIES: Not at this time.

THE COURT: Anything from the Defense?

MR. MARTIN: Nothing other than I would like that the Hobbses be sequestered.

MR. HUMPHRIES: That's right. That was my intention. They were in because they were going to go through the pretrial hearing.

THE COURT: Right. We'll make sure that that happens. Also, I want to go ahead and put on the record once again and put the State on notice that I need Mrs. Poole to testify even though we have, I still think under Roberts that it's required.

MR. HUMPHRIES: She, and let me tell you this, she's here and it is my fault. Bill Diggs is selecting or was selecting a jury this morning in Columbia in a federal case. He will be here within the hour at the very least. He'll speak with her at that time and he'll advise us her position as to whether or not she'll testify.

THE COURT: Even though there's a determination that one statement being non-testimonial ---

MR. HUMPHRIES: We fully intend to do that.

THE COURT: --- we still need to.

MR. HUMPHRIES: Fully intend to do that.

THE COURT: Okay, very good, all right.

We're ready for the jury. Next time I'm going to add another 30 minutes to our time line.

MR. MARTIN: Can we approach the bench, Judge, while we're waiting on the jury?

THE COURT: Yes.

(Whereupon, a bench conference was held.)

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: As you come in I'll again apologize to you. I am the one who is the -- well, I am responsible for the time. I am the one who sets the time and I misjudged once again. I will improve. I assure you.

Let me ask you all if you would please let the Court know and inform the Court whether you came across anything, overheard anything, read, saw anything regarding this case. If you did please raise your hand. (No response.)

I thank you for following those instructions so carefully. We continue in the phase of the case where the State is presenting evidence and testimony. Call your next

witness, please.

MR. HEMBREE: Thank you, Your Honor. The State calls Captain Bill Frontz to the witness stand.

AT THIS TIME WILLIAM EDWARD FRONTZ WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.

MR. FRONTZ: William Edward Frontz, F-R-O-N-T-Z.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Captain Frontz, with whom are you employed?

A: The City of Myrtle Beach Police Department.

Q: And how long you been working with the Myrtle Beach PD?

A: A little over 18 years.

Q: You were employed by Myrtle Beach Police Department back on June the 9th of 1998, June the 10th of 1998?

A: Yes, sir, I was.

Q: And I believe at that time you were not a captain.

A: No, sir, I was a lieutenant at the time.

Q: Very good, and what division in the Myrtle Beach Police were you assigned?

A: The investigative division. At that time I was in the detective section of the division as a section commander. I am presently the division commander now.

Q: Very good. I want to take you back to June the 10th.

Now, do you recall that time frame in general?
A: Yes, sir.
Q: And was your department involved in the investigation of the death or homicide of Brent Poole?
A: Very much so, sir.
Q: Were there any persons of interest that Myrtle Beach Police Department wanted to talk with?
A: Yes, sir.
Q: Okay, one of those persons of interest was John Boyd Frazier?
A: He was and I believe that's a good characterization, a person of interest on that day, yes, sir.
Q: Now, the detective, did anyone from your department make -- to your knowledge, make contact or attempt to make contact with Mr. Frazier on the day of June the 10th, 1998?
A: Yes, sir, it's my understanding Detective Terry Altman, now Sergeant Terry Altman had placed a call for Mr. Frazier earlier that morning.
Q: And did you, in fact, have occasion to speak to Mr. Frazier later on that day on June the 10th?
A: Yes, sir, I did.
Q: Tell us the circumstances under which that call came to you.
A: Well, the call was actually the secretary of the section called and informed me that a caller, didn't have the name but

a call for Detective Terry Altman who was out of the office and when she informed him of that, they then asked for the sergeant which was John King and he was also out of the office and because I was the lieutenant next in command she asked me if I would take the phone call, which I did.

Q: And did you know who was calling when you took the call?

A: No, sir.

Q: When did you find out?

A: I did take the call and the caller did identify himself as John Frazier.

Q: Did you recognize who that person was? Did you know John Boyd Frazier before that?

A: No, sir. That would have been the first time I ever talked to him.

Q: But on the 10th were you familiar with that name at that point in time?

A: Yes, sir, yes I was.

Q: And what did you then do?

A: When I -- after realizing that this was a person of interest in this case I advised Mr. Frazier that I was in the detective section and that we had an investigation that we were working; and therefore, as he was a person that we needed to talk with I was going to tape record this phone conversation.

Q: I'd like to have you take a look at State's Exhibit 42

in evidence without objection and ask if you can identify that item.

A: This should be a tape of the -- that phone conversation we discussed.

Q: And have you had an opportunity to review this tape?

A: Yes, sir. The written transcript from it, yes, sir.

Q: Does it accurately reflect the conversation you had with John Boyd Frazier back on June the 10th?

A: Yes, sir, it does.

Q: Your Honor, at this time in evidence we'd like to go ahead and publish this tape to the jury.

THE COURT: All right, any objection at this time?

MR. MARTIN: No objection.

MR. HEMBREE: Your Honor, while we're getting the tape set up we have and it is, you know, the quality is fair but in an effort to clearly communicate the contents of that tape to this jury we've taken the typed transcript of that tape and made copies for the jury and copies for the Court.

THE COURT: Have you shared those with counsel?

MR. HEMBREE: Yes, we have, Your Honor. They've got -- they've also got these copies. What we'd like to do is hand them out for purposes of listening to the tape and then, of course, take them back up. They would not be put into evidence and we'd take them back up after the tape had been concluded.

THE COURT: All right, yes, sir.

MR. MARTIN: Well, I'm assuming, I don't have those copies and we do have a copy of this tape that was given to us. I don't know about this particular transcript.

THE COURT: Not a copy of the transcript of the tape?

MR. MARTIN: I think I got the transcript.

MR. HEMBREE: Yes, Your Honor.

THE COURT: All right.

MR. MARTIN: I haven't seen this. I assume it is the same as what we've got. I just don't know that for -- you know, I haven't read it.

MR. HEMBREE: And I didn't make that clear.

THE COURT: Let me have you come forward. Just let me ask you a couple of questions.

(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)

THE COURT: Bear with us just a moment, please.

MR. MARTIN: Judge, this certainly appears to look like the same transcript that was provided to me. I obviously can't vouch for the accuracy of all of it, but the tape stands for itself and I have no objection to the transcript being used to assist.

THE COURT: And I'll just go ahead and let you know if there's any discrepancy between the tape and what you're reading in the transcript the tape is what you would follow.

All right, if you hear anything that's any discrepancy and then, of course, I'll look to the Defense to bring anything to the Court's attention if they hear a discrepancy as well, and I ask that you listen to the tape and read along. That's just so that you understand the tape more clearly. Don't read ahead because, once again, the focus is and the testimony is that tape. Thank you.

All right.

(Whereupon, State's Exhibit Number 42 played in open court.)

THE COURT: Let's go ahead and take those up if you don't mind. You can just pass them down this way and we'll get those out of your hands.

BY MR. HEMBREE:

Q: Captain Frontz, approximately what time of the day was this call received?

A: I believe right around noon hour.

Q: And on the noon hour on June the 10th?

A: 1998.

Q: Let me ask you about a subsequent search warrant that was executed on the residence of the Defendant, John Boyd Frazier, on February 17th of 1999.

A: Yes, sir.

Q: Were you present when that search warrant was executed?

A: Yes, I was.

Q: And in the course of that search warrant were -- was a day planner recovered that -- was a day planner recovered?
A: It was copies of a day planner, wasn't the hard bound day planner but rather looked like somebody had Xeroxed the pages out of it.
Q: Let me show you State's Exhibit Number 41 that I believe is in evidence without objection.
MR. MARTIN: I believe so, yes.
Q: And ask if you would to please identify that document for us.
A: This would be the -- again, I will refer to it as a day planner.
Q: That was recovered from the home of John Boyd Frazier?
A: Yes, sir, each page I have here represents one month of the year starting with December 1997 going forward.
Q: And that was February 17th.
A: Yes, sir.
Q: That it was recovered February 17th of 1999.
A: Yes, sir.
Q: I want to go through that day planner with you, some of the significant dates. Have you had an opportunity to review that, Agent Frontz?
A: Yes, sir, I have.
Q: Let me, if I may, start with December 1997 and I believe you testified goes through December 1998?

A: Yes, sir.
Q: Let me take you first to March 13th. Do you see a notation on March the 13th?
A: Yes, sir, written on that part I make it out to be Kyoto's, Renee, and those two words underlined.
Q: And we have blown up several of these pages. This one is State's Exhibit Number 38 in evidence. Let's see, I'm just going to have you testify about it instead of going through and this is available to the jury. Let me take you to May the 1st. Do you see a notation there?
A: Yes, sir, and what I read from that is Renee has a W/, which I take to mean with, and followed by John, and then that also is underlined.
Q: John is underlined.
A: Yes, sir, I think also in part because that's from our taped interview when Mr. Frazier said he believed that Renee moved in with him, that's also the basis for that, why I believe that's what that reads.
Q: Let me take you to May the 12th. Do you see a notation there?
A: Yes, sir, and the point I think is relevant is where it says Renee back and again it has a W/Brent. So, I take that to mean Renee back with Brent, and there again, that would correspond to the tape we just heard.
Q: Let me take you back to March once again and take you to

March the 24th. Do you see a notation on March the 24th?
A: Yes, sir, I do and I take that to read Renee and John sex and all that's underlined.
Q: And then take you to May the 30th. You see an indication on May the 30th, a notation on May the 30th?
A: Yes, sir, I do and I can read it says, "Renee gone," and gone is underlined several times, and that's got the W slash which I think with and Brent and forever and that's underlined with exclamation points behind it.
Q: And then take you to May the 31st a notation there.
A: With the Courts' indulgence and the jury's indulgence I'll read verbatim, I read this to say, ``fuck you, Renee.''
Q: And let me take you to June the 9th, 1998, is there a notation on June the 9th on this Defendant's day planner June the 9th, 1998?
A: Yes, sir, I can read that. It says Renee and Brent.
Q: Is there anything else, any other mark on that particular date?
A: Yes, sir, there's above that entry there was apparently another entry and that's been completely blacked out and makes it impossible for us to determine what's -- what that said.
Q: Did you attempt to find out what it said?
A: Yes, sir, to the best we could and there's no -- this being a photocopy there's no way we could do anything to bring

that out what's underneath there.
Q: Let me take you to December 1998, December the 1st. Is there a notation there?
A: Yes, sir, that says K.P. then has the number three beside it.
Q: Captain Frontz, as part of your investigation did you or other officers of the Myrtle Beach Police Department measure the time and distance it takes to drive from Myrtle Beach to Winston-Salem?
A: Yes, sir, we during the investigation a number of our officers from the department made the trip and we all kind of made mental notes and we figured. Of course, during the day time it would take a little bit longer, you know, nighttime, you know, less traffic take a little bit less time, but averaged anywhere from three hours and 45 minutes to four hours and this was going completely at speed limit or below.
Q: You never, you never -- now you didn't turn on the lights and ---
A: No, sir.
Q: --- tear it down the road ---
A: No, sir.
Q: --- going the speed limit. Let me ask you -- I'm going to ask you about a few things. These are fair characterizations of your testimony here today. First, May the 1st, Renee Poole leaves victim, moves in with Defendant.

A: Yes, sir.

MR. HEMBREE: Your Honor, the record will reflect that I'm taking the sticky with that note on it with that characterization and placing it on State's Exhibit Number Four on May the 1st.

BY MR. HEMBREE:

Q: May the 12th Renee Poole moves back in with victim.

A: Yes, sir.

MR. HEMBREE: And Your Honor, once again, I'm placing that sticker that indicates that language on State's Exhibit Four on May the 12th.

BY MR. HEMBREE:

Q: May the 30th Defendant confronts victim at Silver Fox.

A: Yes, sir, that's correct.

MR. HEMBREE: Your Honor, let the record reflect that I'm placing the sticker that was -- that indicates that statement on State's Exhibit Four on May the 30th, and on June the 10th, Defendant tells Myrtle Beach Police Department Mr. Pedersen called me yesterday afternoon.

A: That's correct, sir.

MR. HEMBREE: And finally, Your Honor, placing that sticker on State's Exhibit Number Four on June the 9th. Bear with me, Your Honor.

THE COURT: Let me get that back for just one moment. I apologize. Bring it forward; would you?

MR. HEMBERE: Thank you.

THE COURT: Do you need to approach?

(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)

THE COURT: Okay, thank you. Take a look at it. All right.

MR. HEMBREE: Thank you, Your Honor.

THE COURT: We can publish it at this time.

MR. HEMBREE: Thank you.

BY MR. HEMBREE:

Q: Captain Frontz, please answer any questions that the Defense counsel may have for you at this time.

A: Yes, sir.

CROSS EXAMINATION

BY MR. MARTIN:

Q: Captain Frontz, this telephone conversation that the statement John Frazier made to you on June the 10th he called you at the Myrtle Beach Police Department, you said he called looking for somebody and wound up talking to you; is that right?

A: Yes, sir.

Q: There's no question he called the Police Department; didn't he?

A: Not in my mind, no, sir.

Q: And ---

THE COURT: I'm sorry to interrupt. I'm afraid that that exhibit -- let's go ahead and just put it on the rail and we'll pass it around in just a moment.

Very good. Go right ahead.

Q: And there's no question, first of all, that there was some conversation between the two of you before you turned that recorder on; wasn't there?

A: Yes, sir.

Q: And in that period of time you told him, ``I'm calling you about this incident but I can't give you any details of what happened''; didn't you?

A: I can't remember that part. I do remember explaining how I hadn't been asleep the night before, the day before. I remember that part specifically. What you asked I wouldn't be surprised if something like that was said.

Q: Well, let me ask you.

A: But I can't remember directly.

Q: Hand me that interview. Let me ask you, turn to page 34. You still got it?

A: Yes, sir.

Q: Turn to page 34 there and refresh your memory. It must not be 34. It don't have 34 pages. Let me see what 24 is. 21, page 21, there about the middle of the page, just if you would take a look at that, let me -- where I'm talking about. I know sometime it's hard to find, right in here.

A: Yes, sir.
Q: Let's take a look at that and let me ask you a question. All right, do you not -- you tell him there for example at that time, ``Like I said, I can't really give you any details as to what happened. I mean, I can't.'' Isn't that what you told him at page 21?
A: That's what I read, yes, sir.
Q: All right, and wouldn't it be fair to assume that you were referring to like I said that you had told him at the very beginning of the statement, ``I can't give you any details. I just got to gather some information.''
A: Well, I would think I would say something to that effect. What exact words I use, of course, I can't recall, but yeah, I believe so, sir.
Q: All right, and you told him at that time that or I believe you said Mr. Hembree that he was a person of interest at that time.
A: There again, I can't use exact words, but I believe in the tape said that because of his relationship with Renee it was.
Q: Right, the Pooles had give you his name as having a recent relationship with Renee. So, that's what got him on the board; wasn't it?
A: Well, and that and I can't say at that time it was the Pooles where I got that from, but that's the information I had

at the time, yes, sir.
Q: Well, as a matter of a fact that is where you got it from; isn't tit?
A: I probably got it from a detective, but ---
Q: You know because that was where it came from; don't you?
A: That's, yes, sir, that's my understanding, yes, sir.
Q: All right, now, and at that time because there was a relationship, anybody who had had an adulterous relationship with her or a physical or sexual relationship with her or any kind of sex at least that kind of relationship would have been somebody you would have been interested in looking at.
A: Affirmative, yes, sir.
Q: All right, and as a matter of a fact now you learned about other relationships she had during her three-year marriage to Brent Poole; did you not?
A: Yes, sir.
Q: And there were how many of those did you learn about?
A: Zero then that proceeded Mr. Frazier or came -- I'm sorry -- three, none of them, Mr. Frazier was the last one that I know of.
Q: That's right.
A: Yes, sir.
Q: But I'm talking about how many before Mr. Frazier?
A: I believe the investigation there were more than one that I wouldn't feel comfortable giving a number but there

were other relationships outside the marriage.
Q: Would it be fair to say three, four, five or six?
A: Two, three, four, five, yes, sir.
Q: And she had only been married for three years; is that not correct?
A: Maybe not quite that long.
Q: So, all of these relationships were fairly recent in the scheme of time; were they not?
A: By my definition that's a lot in a few, yes, sir.
Q: All right, now, I believe you would agree with me that in the conversation that you had with him that he was cooperative with you.
A: He answered the questions, yes, sir.
Q: All right, and I believe you would say -- well, let me ask you this, he was coughing from time to time in the interview; wasn't he, Mr. Frontz?
A: I heard a cough in there, yes, sir.
Q: All right, and he never throughout that interview with you attempted to give you an alibi for 11:45 to midnight on June the 9th; did he?
A: He said he was at home, sir.
Q: And he never offered to have that confirmed in any way at that time; did he? Well, he told you he was home. That's an alibi. He offered you no conformation for that particular time; did he?

A: For the 11:45 that night?
Q: Yes.
A: No, he did not, sir. He said he was at home.
Q: All right, now, as we move forward in this, were you, were you the lead investigator in the case?
A: No, sir, I was not.
Q: Who was?
A: What we would call the lead detective, there were a number of us actually working on this case but the lead detective it's a term we use that would be Detective Terry Altman.
Q: Detective Terry Altman, is he back here in the courtroom somewhere?
A: And he is now Sergeant Terry Altman, and he is.
Q: Now he's sergeant?
A: Yes, sir.
Q: And he was the lead investigator; right?
A: Yes, sir.
Q: Now, but you participated in the search of John Frazier's house both in Winston-Salem and an apartment here in Myrtle Beach; didn't you?
A: I was present at both, yes, sir.
Q: All right, and you never found any physical evidence of any kind linking him to this crime; did you?
A: Might need help. The day planner wouldn't be physical

evidence?
Q: Well, all right, if you want to say the day planner, I'm talking about other items that, bloody things, anything that was found, clothing, anything that linked physically directly to the crime. You never found any of that; did you?
A: I'm tempted to say no, but I'm not sure. Like I say, the day planner may be physical evidence.
Q: All right, I hear you.
A: There were some ---
Q: Okay.
A: --- if you want me to continue, there were some clothing in his home and that could be consistent with what ---
Q: Did you seize any clothing? Now, you want to talk about clothes now. Did you seize any clothes to bring to this jury to connect him with that crime?
A: We do not have any clothes, no, sir.
Q: All right, and certainly had you found anything to connect him to the crime where would you have brought it?
A: We'd taken it as evidence.
Q: All right, now, did you or to your knowledge did anyone, Altman, you, whoever, ask the South Carolina and North Carolina Department of Motor Vehicles to check for that night to see if they had any reports of either Frazier's black Blazer or Kahle Schettler's gray Acura being stopped anywhere between Winston-Salem and Myrtle Beach?

A: I am pretty sure we did.
Q: And did you find that either had been stopped by anybody or that that there was any evidence of that trip having been made?
A: I'm pretty sure we did not find anything such as that.
Q: Now, John Frazier was arrested on Saturday, June the 13th; wasn't he?
A: Sounds, sounds correct, sir, yes.
Q: Okay, and you and Terry Altman were at the Winston-Salem Police Department when that happened; were you not?
A: Yes, sir, we were.
Q: All right, and both of you saw and got a look at John Frazier; did you not?
A: Yes, sir, we did.
Q: And now, do you know Kent Robey?
A: Yes, sir, I do.
Q: All right, and Kent Robey is, in fact, a -- was at the time a deputy sheriff in Virginia.
A: That's affirmative, yes, sir.
Q: All right, is he somebody that you knew?
A: No, sir, not at that time, never met, never met the gentleman before then.
Q: All right, but you had some contact with him in this case; did you not?
A: Yes, sir, I did.

Q: And you did that in connection with a lineup that was going to be sent up to Virginia.
A: That's correct.
Q: Is that not right?
A: Yes, sir.
Q: Did you tell him at that time that Detective Altman will have talked to the Hobbses prior to your going to show them the lineup?
A: I can't recall that, sir.
Q: Well, let me hand you a copy of a document for you examine to refresh your memory.
A: Yes, sir, that does say that and I do believe that to be correct.
Q: All right, I just handed you for identification Defense Exhibit 26. All right, it says you told them that Detective Terry Altman was going to be contacting the Hobbses.
A: Yes, sir.
Q: As a matter of a fact Mr. Altman did contact the Hobbses; didn't he?
A: Reasonably sure he did, yes, sir.
Q: All right, as a matter of a fact he contacted them on the 24th of June and on the 26th of June; did he not?
A: I can't tell you the date, sir.
Q: You wouldn't deny that he called and talked to the two eyewitnesses those two days.

MR. HEMBREE: Your Honor, I'm going to object. He's answered the question he doesn't know. He doesn't know that's the answer to the question. It's a back door way of trying to ---

THE COURT: I'll sustain if he doesn't know.

MR. HEMBREE: Thank you, Your Honor.

Q: And certainly that contact would have come before this photo lineup was shown to the Hobbses; wouldn't it?

A: Yes, sir, that was, that was my intent obviously from that memorandum.

Q: Did you take a recorded description from the Hobbses at any time prior to June 28th of the person they say they saw on the beach?

A: I'm sorry. Are you asking me did I take a taped ---

Q: Did you.

A: --- statement to the Hobbses?

Q: Okay, let me ask you again so you'll be sure. Did you, I'm asking you, did you take a statement that was recorded, audio, video or documented from the Hobbses in their words of the person they say they saw on the beach that night?

A: No, sir, from my memory I wasn't -- wouldn't have been involved personally in that.

Q: Are you aware of any Myrtle Beach police officer who took such a statement from the Hobbses prior to Altman`s conversations and the photo lineup showing June 24th, 26th and

28th in Virginia?
A: Yes, sir, there were officers from Myrtle Beach who would have interviewed the Hobbses before then, yes.
Q: All right, I'm asking you this now. I'm not talking about interview. Did anybody have them put down in their own words or writing, on paper or on tape the description of the person they say they saw to your knowledge?
A: To my knowledge that would have been taped. We conduct all of our interviews tape. So, I feel confident in saying that it would have been a taped interview.
Q: They certainly ---
A: But I'm not certain, sir, because I wasn't involved in that.
Q: Well, wouldn't you agree with me that you would be certain that they should have so documented this all important description in the own words of the Hobbses?
A: I'm real confident that that was done, yes, sir.
Q: You're real confident.
A: But not positive.
Q: All right, but -- well, when you get off the witness stand will you check with your fellow officers and come back and tell me which one took that recorded statement from the Hobbses?
A: Again, sir, I'm not positive it was done, I thought it was done.

Q: Well, I understand that, and I understand you're not positive. So, I'm just asking you. Just so we can make sure that either it exists or it don't exist, will you check with your fellow officer, Lead Investigator Altman, whoever and find out if that document exists for me?

MR. HEMBREE: Your Honor, if Mr. Martin wants to glean this information he's got these officers under subpoena. He can ask them this very question. I don't know -- I really don't understand -- it seems like more of a kind of a parlor game than really trying to get at the truth. If he wants to call Mr. Frontz back or wants to call one of the other officers he can do that.

THE COURT: Why don't you ask him who would have that information.

Q: Well, who would have that information, Mr. Frontz? I'm not playing a parlor game.

A: And I'm not, and I'm not sure which detective would have that. I'm -- to my knowledge the Hobbses were interviewed while here in Myrtle Beach and as general protocol for our section we generally almost always tape those interviews and we taped all of them. There are some people who refuse to be taped that we don't have those taped, but -- and to my knowledge I thought, I thought we had a taped statement, and if we don't it's another mistake I've made in my life.

Q: Well, and would you agree with -- okay, but would you

agree with me that it should have been taped?
A: Under most conditions, yes, sir.
Q: Okay, all right, Mr. Frontz, did you interview a fellow by the name of Bruce Wolford?
A: I don't believe so, but I'm not sure on that one either, sir.
Q: All right, sir, let me allow you to refresh your memory and look at Defense Exhibit 27.
MR. HUMPHRIES: Could I see that?
MR. HEMBREE: Look at that, Your Honor?
THE COURT: That's for ID; right?
MR. MARTIN: Right, that's for ID.
MR. HEMBREE: Your Honor, I'm concerned this may be -- may be ---
THE COURT: Let me have you come.
MR. HEMBREE: Well, let's approach the bench.
(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)
Q: Detective, again, let me show you. This is just to refresh your memory, Mr. Frontz, and let me direct you to a ---
THE COURT: Well, I think we were at the question of whether or not he had taken the statement. Let him ---
Q: Yeah, let's do this, did you, in fact, take a statement from a fellow named Bruce Wolford?

A: May I have second to read this?
Q: Sure.
A: I will say that I recognize the name, but I don't -- didn't remember interviewing him but this may. Sir, I can, I can tell from glancing through that that I had a conversation with Mr. Wolford, and it'd probably take me some time to really, to really digest what all this means but I do remember, I remember a conversation, but a lot of specifics, no, I can't. It's ---
Q: Well, right now I'm just asking -- right, right now I'm just trying to confirm if you did have a conversation with him.
A: Yes, sir.
Q: All right, and now, I want to -- well, let me just ask you first of all, did you tell him that there was the reward money that could be paid in this case?
A: You know what page that that's on?
Q: All right, I do. I'm going to ask you a question first.
THE COURT: Are you indicating you don't recall?
A: No, ma'am, I don't recall.
THE COURT: Okay, all right, we'll allow him to refresh his recollection.
A: Yeah, I read those paragraphs, Mr. Martin.
Q: All right, now, don't tell me what Bruce said, but did you discuss with him the fact that there was reward money that

could be paid in this case?
A: To my -- yes, to some extent, yes, sir.
Q: All right, and did you not tell Bruce that that money would be held until the trial and it was determined who might be helpful at the trial before a decision was made on who to pay?
A: I'm reading where I said some things like I think. I don't see anything where I knew that -- the police we're not involved in the reward. We weren't involved in it. So, I didn't really know the details of it, you know, so.
Q: I understand that, and I'll ask you again as specifically as I know how. Did you not tell him that there was reward money, yes or no?
A: In this he brings up the topic of reward.
Q: And I again, don't, don't -- they don't want you to talk about what he said.
A: Well, I ---
Q: I'm trying not to ask you that.
A: I guess I can acknowledge that we talked about the reward and ---
Q: Right, that's what I asked you. You had a discussion with him about it; didn't you?
A: Yes, sir.
Q: Okay, all right, and in that discussion did you not tell him that what they are holding the money for is what is going

to be helpful in the courtroom proceeding, in the trial and that kind of thing? Is that not what you told him?
A: No, I didn't say I know. I said I think.
Q: Okay, I think, I'm satisfied with that.
A: Okay.
Q: Did you not say I think.
A: To me that's just to be clear because I didn't know the details. I didn't know how the reward was going to be paid, if it would be paid, what the terms were. I wasn't concerned with that. That wasn't, that wasn't part of our investigation.
Q: All right, did you also not tell him, look on the top of page 15, that, ``I just wanted to tell you that they are, you know, somebody else, and they might ask our input on whose helped, but I think that is all going be saved for the trial to see how much that actually, you know, what goes on and what's going to be useful at the trial.''
A: Yes, sir.
Q: Isn't that what you told Bruce Wolford when you were trying to gather evidence from him?
A: Well, I believe that's what I said, yes, sir.
Q: Now, let me ask, where's the calendar exhibit? Now, you have gone over, Mr. Frontz, some details, and you may not know the answers to these questions but if so you just help me with that. They -- you went over some dates on these calendars.

A: Yes, sir.
Q: That you were asked about and one of them had to do with Renee and Brent's anniversary; is that not correct? It was noted on there June 9th?
A: Just said Renee with Brent, yeah.
Q: Renee and Brent.
A: Yes, sir.
Q: All right, did you examine this calendar for other items of interest in terms of and be more specific, was there other names that appeared to denote anniversaries on the -- or birthdays on the calendar?
A: The one about K.P. being three.
Q: All right, and you remember that one because K.P. was the daughter of Brent and Renee Poole; right?
A: Yes, sir.
Q: All right, did you check to see for example if there were any other children's birthdays noted on that calendar?
A: None of them that I related to, no, sir.
Q: Well, let me ask you this for example. On] , the you see a name down here?
A: It appears to be a name, sir.
Q: Well, and can you read it for us?
A: I would say it's M. , M. .
Q: M. .
A: Yes, sir.

Q: Do you know who that is?
A: No, sir.
Q: Did you explore to see who that is?
A: No, sir.
Q: Would you be surprised to learn that that was the child of another girlfriend of John Frazier's that had once lived with him?
A: Actually maybe not, maybe not that surprised, no, sir.
Q: All right, how about the there. Do you see a name at the bottom there?
A: I believe that says Phil, P-H-I-L.
Q: No, sir,
A: Oh, I'm sorry, sir.
Q: I'm sorry, right there.
A: I'm not really sure I can make that out what that says.
Q: Right here. Don't you see the name Thomas ---
A: Something posted away, pasted away or ---
Q: Well, look, look.
A: Past the -- maybe supposed to be past, but passed it away or ---
Q: All right, let me ask you this.
A: Yes, sir.
Q: I'm talking about the name down there.
A: This name down here?
Q: Yes.

A: I would say that to be Thomas.
Q: That is on the ; isn't it?
A: Of .
Q: Would that surprise you to know that that's Thomas Pedersen, his friend?
Q: Wouldn't be a great surprise, no, sir.
MR. HEMBREE: Your Honor, I'm going to object to the improper foundation. There's no evidence when he asked this follow-up question, "Would that surprise you," there's no evidence to lay a foundation for that type of a question. We'd object to it.
MR. MARTIN: And I would say ---
THE COURT: If we need to hear argument let me bring you over here for just a moment.
(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)
THE COURT: All right, you need a break. All right, let me see if we've come -- have we come to a good breaking point? You're going to continue with or you want to complete your ---
MR. MARTIN: Well, this won't take much longer.
THE COURT: All right, we could ---
MR. MARTIN: It won't take much longer.
THE COURT: Very good.
BY MR. MARTIN:

Q: Let me ask you this way to look at State's Exhibit Number 39, Mr. Frontz. Did you -- well, let's say here on May 7th where it says Mom and Ed, did you check into that to see who -- what that meant?

A: No, sir.

Q: All right. How about here on June 15th where it says Sabrina, did you check into that to see what that meant?

A: No, sir. I only picked out the ones that made -- I could make some sense of, sorry.

Q: All right, well, July 11th, Donald and Christie.

A: Didn't mean anything to me, sir.

Q: Did you check into that?

A: Didn't mean anything to me, sir, no.

Q: How about November 9th Renee and Don. Did you check into that?

A: No, sir.

Q: Well, that's Renee's name. That didn't mean nothing to you?

A: Yes, sir, that's -- I can't figure that one out. Can you help me with that one, sir?

Q: How about November 16th, John and Christie?

A: No, sir.

Q: That's all I have for Detective Frontz -- not Detective, but Captain, Captain ---

MR. HUMPHRIES: Captain.

Q: I'm not sure what the -- of Mr. Frontz at this time.

THE COURT: All right, yes, sir.

MR. HEMBREE: Your Honor, briefly just a few matters on redirect.

REDIRECT EXAMINATION

BY MR. HEMBREE:

Q: Mr. Martin asked you a few questions about your explanation of a possible reward to Bruce Wolford.

A: Yes, sir.

Q: Now, you gave him, you gave Mr. Wolford this information, provided to him, what was the source -- where had you heard or where did you learn about how this money was going to be paid out?

A: Well, at the beginning I had heard from, I believe, the Pooles and some of their family or some of the people in Winston-Salem had offered a reward for information leading to an arrest and a conviction but this reward is nothing that's administrated -- administrated by or in any way comes through the Police Department. So, that's just not -- you know, if that, if that brought forth information we would be very glad to have but that's not something that the police decided who would, who would be paid or who would not be paid or that kind of thing. We didn't have anything to do with that.

Q: I follow you, but my question is you talked to him about how it was going to be paid. You're actually giving him some,

you know, conditions or, you know, some attaching, ``Well, this may be well, you know, I think it may be, this is so.''
A: Right, I was -- yes, sir, giving what I thought it had worked out ---
Q: Okay.
A: --- without really knowing how it would work, but how I thought it might work, yes, sir.
Q: And that's the essence of my question. Where did you get this information? Was this an assumption on your part or had somebody sat you down and told you how the plan was going to work on this?
A: Yeah, and from experience in the past. I mean, we deal with the investigations. We have crime stoppers and we have a number of awards that -- that's part of investigating crimes, but that's never been anything I've personally been involved in but just, just have some layman experience in that if you will.
Q: What conversations if any, specific conversations if any did you have with anybody about the reward in this case and as to how it would be paid out? Had you had any such conversations?
A: Not about any details, no, sir.
Q: So, whatever details you offered Mr. Wolford was based upon your what?
A: Just common sense, life experience, past experience in

that sort of thing, so.
Q: Okay, kind of general knowledge that ---
A: General knowledge, yes, sir.
Q: --- and sort of general experience.
A: Yes, sir.
Q: Now, I want to talk, just clarify with you these -- the search warrants that were executed on the Defendant's home, one in Winston-Salem, one in North Myrtle Beach.
A: Yes, sir.
Q: The one in Winston-Salem executed after he was arrested?
A: Yes, sir.
Q: And the one in North Myrtle Beach was executed when?
A: Being February 17th of the following year, 1999.
Q: 1999, so, some, the arrest was, I believe, you testified that the arrest was June the 13th of 1998?
A: That's, yes, sir, I believe that's ---
Q: It was some eight months later.
A: Yes, sir.
Q: To your knowledge had -- to your knowledge was this new residence in North Myrtle Beach something new for Mr. Frazier?
A: Well, yes, sir, his residence in Winston-Salem at the time of the incident we established that was his, certainly his primary and only residence that we could find and he had since, after his arrest and I believe in terms of his bond agreement, he was, he had to live in South Carolina, and

that's, that's where he resided.
Q: So, he relocated here ---
A: Yes, sir.
Q: --- for those purposes. I understand.
A: Yes, sir.
Q: But that -- he didn't have, he didn't have two houses?
A: No, not at the time of the incident, no, sir, that was.
Q: Got you. Now, the last thing I want to ask you about, Mr. Martin asked you about an alibi and the Defendant's alibi or did he offer you an alibi, and I'd like you to review your statement. I'm just going to show you the transcript of it instead of bringing it out here and replaying it for you. I'd ask you to just look at this bottom page, the bottom of page five, review that for us, just read it a few seconds.
A: Yes, sir, I said, ``I guess and you were home last night, Mr. Frazier,'' that was a question. He responded, "Yes, sir." I said, "Okay, and you were there by yourself?" Responds, "Yes, sir." I asked, "Did you call anybody or would anybody else be able to establish that you were home?" And Mr. Frazier answered, "Mr. Pedersen called me yesterday afternoon."
Q: So, he really didn't offer, you sort of offered it to him. Wouldn't that be fair to say?
A: Well, yes, sir; yes, sir.
Q: And he took it.

A: Yes, sir.

MR. MARTIN: I couldn't understand the last question. What was it?

THE COURT: He said and he took it.

MR. HEMBREE: And he took it.

MR. MARTIN: And he took what?

MR. HEMBREE: The opportunity of the alibi to explain where he was.

MR. MARTIN: Okay, okay.

THE COURT: Anything further?

MR. HEMBREE: Nothing further, Your Honor.

MR. MARTIN: One question.

RECROSS EXAMINATION

BY MR. MARTIN:

Q: What you'd asked him though in that same statement was were you at home last night, Mr. Frazier. Is that right? Here you go.

A: I got it, sir. Yes, ``I guess and you were home last night, Mr. Frazier.'' ``Yes, sir.''

Q: That's all.

THE COURT: All right, you may step down, sir.

Mr. Foreman and ladies and gentlemen of the jury, I'm going to allow you to go back to the jury room with a reminder do not discuss the case. You may go back at this time.

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

THE COURT: We're going to take a break. See you back in here in about ten minutes.

***** OFF THE RECORD *****

(On the record.)

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

THE COURT: Thank you. Please be seated.

MR. HUMPHRIES: Judge.

THE COURT: Yes, sir.

MR. HUMPHRIES: In deference to the Hobbses who have their children with them, they've been here the better part of the day, and based on the hour I went ahead and released them today because they haven't -- because their 16 year old was watching the boys.

THE COURT: Oh.

MR. HUMPHRIES: And they've been a little anxious about that.

THE COURT: Yes.

MR. HUMPHRIES: So, if we could take up those matters first thing in the morning as opposed to this afternoon.

THE COURT: No problem, be glad to do that. Nine o'clock.

MR. HUMPHRIES: That's what -- we told them, actually,

8:45.

THE COURT: Okay.

MR. HUMPHRIES: So, they'll be here.

THE COURT: Good, all right, we'll have that hearing in the morning.

Anything further?

MR. HUMPHRIES: No, we're ready.

THE COURT: Anything from the Defense?

MR. MARTIN: No, Your Honor. We're ready.

THE COURT: All right, we're ready for them.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right, welcome back ladies and gentlemen of the jury. We'll continue in the phase of the case where the State is presenting evidence and testimony. If you would call your next witness, please.

MR. HUMPHRIES: The State calls Thomas Pedersen to the stand.

AT THIS TIME THOMAS A. PEDERSEN, JR., WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name and spell your last name for the Court.

MR. PEDERSEN: Thomas A. Pedersen, Jr., P-E-D-E-R-S-E-N.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q: Good afternoon, Mr. Pedersen. How are you, sir?

A: Hey, good, good.

Q: Tell the jury if you will in what community you reside.

A: I live in Charleston, West Virginia.

Q: And what line of business are you in at this time?

A: I'm a senior general manager for a restaurant.

Q: And I'm going to ask you to keep your voice up just a bit.

A: Okay.

Q: And you don't have to speak directly into that microphone, but if you got a little closer it might be helpful.

A: Oh, okay.

Q: Okay, thank you. Let me ask you this, Mr. Pedersen, do you know the Defendant John Boyd Frazier?

A: Yes.

Q: How so?

A: We were friends for some period of time.

Q: Tell the jury how long ago you met John Frazier and the circumstances under which you met him.

A: I'm not sure how long ago. It's been some time now.

Q: So, let me ask you this, in connection or in

relation to June 9th, 1998, you know the significance of that day.
A: Yes.
Q: How long before that had you met and known John Boyd Frazier?
A: Well, a couple of years.
Q: And how did you come to meet Mr. Frazier?
A: Through my wife, Crystal.
Q: Okay, and let's tell the jury just a bit about that if you will.
A: Well, where she was employed, she worked at the Silver Fox in Winston-Salem, and I met John through Crystal. They were friends or he was a customer or what have you and I met him that way.
Q: Okay, now, you consider John Frazier a friend?
A: Yes, sir.
Q: And at that time how would you characterize your friendship? Was it an acquaintance? Was it a closer friend? How would you characterize it?
A: I thought we were pretty good friends.
Q: Okay, and, in fact, did you visit with each other?
A: Sure.
Q: In his house?
A: His house, my house, uh-huh (affirmative response).
Q: Okay, and did you engage in activities together,

recreation for instance?
A: Sure, we played some video games, pool, I think we went out fishing once or twice, things of that nature.
Q: Okay, let me ask you this, did you have an occasion to meet Kimberly Renee Poole?
A: Yes.
Q: And tell the jury under what circumstances and in whose company you met Kimberly Renee Poole.
A: I'm not sure whose company the first time I ever met her, but it would have probably have been there at the Silver Fox would be the first time I would have ever met her.
Q: Now, did there come a time when you spent time with Renee Poole and John Frazier when they were a couple?
A: Yes.
Q: Okay, and do you have an estimate in terms of time for this jury about when that might have been?
A: No, I sure don't.
Q: Well, let me ask you this, what was the occasion or what were the activities that you were engaged in at the time that -- the first time you saw them together as a couple?
A: We had dinner at Kyoto's Restaurant in Winston-Salem.
Q: And let me ask you, referring to State's 38 which is -- has been identified as the Defendant's day timer marked on the date March 13th, 1998, says Kyoto's Renee, does that, does that seem consistent with your memory in terms

of when you might have gone to Kyoto's with John Boyd Frazier and Kimberly Renee Poole?
A: Yes.
Q: Okay, now, did you have occasion to talk to John Frazier about his relationship with Renee Poole?
A: We spoke a few times about it, yes.
Q: And let's do this in segments, if you will.
A: Okay.
Q: What if any conversations did you have with John Frazier about their relationship, that is Renee and his relationship prior to May 1st of 1998, that being the date that has been established when she moved in with Mr. Frazier?
A: You're saying what kind of conversation did we have before that.
Q: Uh-huh (affirmative response) between March say the 13th and May 1st when she moved in with Mr. Frazier.
A: There's, there's probably many conversations during that time about it. Can you be a little more specific what you're looking for?
Q: Well, I'm not looking for anything in particular, but did you have conversations during that time or do you know what his feelings were, if he told you, for Renee Poole during that period of time?
A: Yeah, he liked her.

Q: Okay, and did you know that there was a time that Renee Poole moved in with John Frazier?
A: Yes.
Q: And is the date May 1st consistent with your recollection as to when they may have moved in together?
A: Yes.
Q: Now, during that period of time did you have an occasion to see or speak with John Frazier?
A: After she had moved in?
Q: After she moved in and before she moved out?
A: Yeah, probably once or twice.
Q: Prior to her moving in did you have conversation with John Frazier about her moving in and her marital status?
A: Yes.
Q: And tell the jury about that if you will.
A: She wasn't very happy and I know that they were talking about trying to get some sort of counseling or help or attorney or some form for her to be able to get a divorce.
Q: Renee was looking for a divorce.
A: Yeah, or something along those lines.
Q: Okay, and John Boyd Frazier was a part of these conversations?
A: Yes.

Q: And based -- and let me ask you this in terms of John Frazier's -- well, let me ask it this way, based on your observations and conversations with John Boyd Frazier was he in favor of her getting a divorce or was he attempting to counsel her against getting a divorce?
A: I can't really go either way on it. I mean, the conversation -- that's a tough one to answer I guess you could say.
Q: That would have been prior to her moving in?
A: Yes.
Q: Okay, now, let me ask you, did you actually see John Frazier and Kimberly Renee Poole together during the period of time in which they lived together?
A: I may have, but we didn't see very much of each other when they were together.
Q: Okay, now, were you aware of the point in time that she moved out?
A: Yes.
Q: And did you have conversations with John Boyd Frazier concerning that event?
A: Yes.
Q: And what was his attitude regarding her moving out of his house and back in with her husband?
A: He wasn't very happy about it.
Q: And I appreciate that answer. Let's try and be a

little more specific and I'll try and direct my questions a little more specifically.

A: Okay.

Q: What was his demeanor when talking about her moving out?

A: He was upset.

Q: And in fact was he upset to the point of being tearful?

MR. MARTIN: Objection to his leading the witness.

THE COURT: I'm going to allow the question.

A: Can you repeat the question?

Q: Yes, was he upset to the point of being tearful about that event?

A: Yeah, he could have been.

Q: Could have been or do you recall?

A: It's hard to recall.

Q: Now, after that time, and that would have been again the calendar shows us May 12th, did you have an occasion to see John Frazier and Kimberly Renee Poole together after that time?

A: After they moved out?

Q: Correct.

A: Yes.

Q: Okay, and what were the circumstances?

A: My wife had an operation, some sort of a -- I'm not

quite -- I can't remember exactly what it was.
Q: And let me ask you this.
A: Yeah.
Q: Just generally to be polite, tell me the name of your wife.
A: Crystal.
Q: And is she here in the courtroom with you?
A: Yeah, she sure is.
Q: Okay.
A: Okay, anyways, they were -- she had had an operation and John, and I was working. So, John and Renee had stopped by to check on her and see if she needed anything, just being nice. At that point in time they weren't together, but they were just friends.
Q: Now, after that time what did John Boyd Frazier say about Renee's feelings for him?
A: You know, we had ---
MR. MARTIN: Objection.
THE COURT: Let me have you come forward. I'm going to have to hear this.
(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)
Q: Did John Frazier ever express to you, say to you what his observations were about Renee's feelings for him?
MR. MARTIN: I object to that on the same basis, Judge.

It's hearsay within hearsay.

MR. HUMPHRIES: It's not hearsay within hearsay.

THE COURT: I'm going to allow. Listen carefully to the question. It's just about what he -- what he's expressed to you that he observed.

BY MR. HUMPHRIES:

Q: Can you answer that question?

A: You'll have to hit me with it one more time, I'm sorry.

Q: And sometimes we lawyers repeat a question so much that we couldn't even answer it.

A: Right.

Q: What if anything did John Boyd Frazier say to you about his observations of Kimberly Renee Poole regarding how she felt about him after she moved out?

A: You know, it's tough to recall any conversation in that kind of detail. I can't really answer that one very well.

Q: Okay, that's fine. That was a lot of work about nothing; wasn't it?

A: Sorry.

Q: It's not your fault. Let me ask you this, did John Boyd Frazier indicate to you whether or not he continued to see Kimberly Renee Poole after they moved out?

A: Yeah, they saw each other, but to my knowledge it was

friendship as opposed to anything else romantic.
Q: Okay, and you base that observation or that, that conclusion on what?
A: Well, the things that I saw like whenever visiting with Crystal and you know just general conversations.
Q: With?
A: With John.
Q: Now, let's talk about that last time, just briefly the last time that you saw the two of them together.
A: Okay.
Q: Okay, in terms of the incident date, that is June 9th, 1998 ---
A: Uh-huh (affirmative response).
Q: --- how soon before that would that meeting at your home have taken place?
A: Maybe a couple of weeks. I'm not sure exactly.
Q: But it was within two weeks.
A: Possibly.
MR. MARTIN: Objection, he's leading the witness. He said maybe a couple of weeks.
THE COURT: All right, sustained.
MR. HUMPHRIES: Very good. Thank you.
BY MR. HUMPHRIES:
Q: Now, let's talk about the weekend of May the 30th, which would be a Saturday, and May 31st, which is a Sunday.

That would be the weekend before -- I'm sorry, go back. Saturday the 6th and 7th of June.

A: Okay.

Q: Okay, the weekend before Brent Poole's murder.

A: Okay.

Q: Do you know whether or not John Boyd Frazier was working that weekend?

A: My understanding he was working that weekend.

Q: Okay.

MR. MARTIN: And Judge, again, and I know this is hard, but the ``my understanding'' part troubles me. I mean Mr. Pedersen can testify as to what he knows but understand is not his testimony.

THE COURT: All right, see if we can at least lay some foundation for his understanding or ---

MR. HUMPHRIES: I will.

THE COURT: --- testify as to your knowledge.

BY MR. HUMPHRIES:

Q: What is the basis of your understanding?

A: Phone conversations with John.

Q: Okay, thank you. That clears that up. Did you see him over the weekend?

A: No.

Q: Now, let's talk specifically about June 9th, okay, June 9th, did you either call or did you receive a call

from John Boyd Frazier on June the 9th?
A: No.
Q: Did you receive a call from John Boyd Frazier on Wednesday the 10th?
A: I called him.
Q: Tell me the circumstances under which you talked to him.
A: On the 10th?
Q: Yes.
A: I had received a phone call from my wife, Crystal, earlier that afternoon and I can't remember the time. It seems like it was before lunch.
Q: Okay, and without saying what she said ---
A: Uh-huh (affirmative response).
Q: --- tell me what you did in response to what she told you.
A: I made a phone call to the Myrtle Beach Police Department.
Q: Okay, and as a result of that phone call what then did you do?
A: I called John.
Q: Okay, and tell me about that conversation.
A: I talked to John about, I think it was an armed robbery -- his name had come up in connection with an armed robbery in Myrtle Beach and he had told me also that

sometime that morning, it must have been very early, five, five, 5:30, something like that in the morning an officer stopped by his residence and asked or inquired about a missing person's report. It was all just weird, you know, the whole entire thing speaking to him about it.

Q: That would have been approximately what time?

A: Around lunchtime whenever I made the phone call.

Q: Okay, and what was your advice to John Frazier at that time?

A: For him to call the Myrtle Beach Police Department.

Q: And to your knowledge, let me clear this up, did you later learn from John Frazier that at your behest he did call the Myrtle Beach Police Department?

A: Yes, he called.

Q: Okay, on that same day did you become concerned about your friend, John Frazier?

A: Oh, yeah.

Q: And as a result of your concern what request did you make of him?

A: He'd called me back after he had spoken to the police department and we'd spoke about a few things and I asked him to come over to my apartment later that evening, we could talk about it.

Q: Okay, now, were you able to leave work and come or did you wait until the end of your work day?

A: I waited till the end of my shift.
Q: Okay, and what time would that have approximately have been?
A: Seven, right around seven.
Q: Okay, and at that time how far away or in terms of drive time ---
A: Uh-huh (affirmative response).
Q: --- how long would it have taken you to leave your place of work and get to your home.
A: Right at an hour, one hour.
Q: Okay, and when you arrived at your house who did you find there?
A: John and Crystal.
Q: All right, and when you saw John Frazier at your house what was he doing?
A: He was asleep.
Q: He was asleep.
A: Uh-huh (affirmative response).
Q: And this is about eight.
A: Eight-ish, uh-huh (affirmative response).
Q: Eight-ish.
A: Yeah.
Q: On the 10th. What -- I assume at some point he woke up.
A: Oh, yeah, yeah, we woke him up.

A: And tell this jury about the conversations that you had with John Frazier after he woke up after you arrived home.
Q: Well, we talked about quite a few things, mostly about, you know, where he could place himself because, you know, earlier in the day we had found and I had found out it was a homicide; and so, of course we discussed, you know, where were you and all those kinds of things and he had told me that he was sick, had been sick out of work and we spoke about it over and over throughout the evening about, you know, where, you know, could anybody place you anywhere, did you make any phone calls, things of that nature.
Q: And what did he say about his ability to establish, if you will, an alibi for the relevant time period?
A: He couldn't recollect, you know, he, he -- no.
Q: No.
A: No, he couldn't -- he didn't have anything.
Q: What, what if anything did he tell you regarding his vehicle?
A: I don't think he told me much of anything at that point in time.
Q: Okay, was there another time that he mentioned something about his vehicle in connection with this case?
A: Yes, we talked about it, I want to say, I guess it would be the 11th, right, was that the day after that, the 11th

possibly, SBI agents had stopped by and he spoke to them out in the yard and they inquired about his Blazer and he told me that he didn't have his Blazer. He had a -- I want to say it was a white Acura of a friend of his.

Q: Did he indicate to you why he had switched out vehicles?

A: It may have been he got his cars worked on a lot. I couldn't remember exactly why.

Q: Okay, what if anything did you advise him or what did you give him in terms of advice regarding his present situation?

A: Well, if anything I told him to contact an attorney and turn over anything that he had like his weapon, things of that nature so they can, you know, compare it to whatever it was that the police department had to exonerate him.

Q: About how long did he stay at your house after you arrived?

A: A few hours.

Q: And was he awake the entire time after you arrived?

A: He was kind of in and out.

Q: In and out in what way if you could be just a touch more descriptive?

A: Well, he seemed tired and congested; and so, he was just kind of a, you know, he just looked, you know, kind of sickly, I guess, to me.

Q: Okay, and as a result did you encourage him to go on

home?
A: Yeah, towards the end of the evening.
Q: Okay, now, did there come a time and specifically on the date he was arrested, which has been established is June 13th ---
A: Okay.
Q: --- did you receive a call from John Boyd Frazier?
A: Yes.
MR. MARTIN: Your Honor, may we approach the bench, please?
THE COURT: Yes, you may.
(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)
Q: Now, let's do this this way and, again, this is one of those things we have to be very specific about.
A: Okay.
Q: Without mentioning any other person's or individual's advice to John ---
A: Okay.
Q: --- okay, tell the jury what if anything John Boyd Frazier said about items that were contained in his house that were related to Kimberly Renee Poole?
A: Yeah.
Q: What if any action did he take.
A: Because of conversations that he had?

Q: Yes, but let's not talk about who those conversations were with.
A: Okay, just what he did.
Q: What he did, what did he do with the items ---
THE COURT: More specifically what did he tell you?
Q: What did he tell you he did with items connected to Kimberly Renee Poole that had been located in his home in Winston-Salem?
A: Removed them.
Q: He removed them. Did he tell you where he removed them to?
A: No.
Q: Did he indicate what kind of place it was that he removed them?
A: No.
MR. HUMPHRIES: Beg the Court's indulgence just one moment.
THE COURT: Yes, sir.
BY MR. HUMPHRIES:
Q: Did you ask him the place that he removed them to?
A: Yes.
Q: And what did he say about telling you the place that he removed them to?
A: He couldn't tell you.
Q: He could not tell you?

A: Correct.
Q: Let me ask you if this is an accurate representation of your testimony before this jury today. June 10th, Defendant tells Pedersen he has no alibi.
A: Sure.
Q: And on June -- yes.
MR. MARTIN: Can we approach the bench one second?
(Whereupon, a Bench conference was held in the presence, but out of the hearing, of the jury.)
Q: And on June 13th Defendant tells Pedersen items related to Renee Poole were removed from the house, couldn't say where.
A: Yes.
Q: Mr. Pedersen, please answer any questions the Defense may have of you.
THE COURT: Cross.

CROSS EXAMINATION

BY MR. MARTIN:
Q: Mr. Pedersen.
A: Yes, sir.
Q: Again, you've known -- you had known John for two or three years; right?
A: Yes, sir.
Q: You were friends; right?
A: Yes, sir.

Q: And you -- and he came over and -- to your house as you said ---
A: Yes, sir, well, apartment.
Q: --- and gave you -- apartment ---
A: Yes, sir.
Q: --- and gave you an opportunity to talk to him about what had transpired on the 9th; is that right?
A: Yes, yes, sir.
Q: All right, now, let's -- let me be clear with you on this, John Frazier told you he had nothing to do with the death of Brent Poole; did he not?
A: Correct.
Q: He told you he was at home on the night of June the 9th sick; did he not?
A: Correct.
Q: That was his alibi; right?
A: Yes.
Q: All right, now, John lived alone; did he not?
A: Correct.
Q: You ever lived alone, Thomas?
A: Yes.
Q: All right, had there been nights or occasions in your life when you were at home but didn't have anybody to prove it?
A: Yes.

Q: All right, so, if John lived there by himself -- well, let me ask you this way, John was there. Did John exhibit physical signs of sickness?
A: Yes.
Q: What?
A: He was congested. He was tired, things like that, you know, coughing a little bit.
Q: He was coughing?
A: Oh, yeah, sure.
Q: All right, so ---
A: They had to give him some Kleenex, things like that.
Q: --- and I guess what I'm trying to get at here is this, you know, was it obvious to you that he was or had been sick or was that just a game?
A: I don't understand that question.
Q: Well, sick, you know, say, ``Well I was at home. I was sick.'' Was it obvious to you ---
A: He seemed sick.
Q: --- that John Frazier was sick or do you think that was just an excuse?
A: He seemed sick to me.
Q: He seemed sick to you. All right, and you are in fact the friend who told him instead of him saying, ``I might go talk to a lawyer,'' you said, "Thomas you might,'' I mean, ``John, you might ought to consider going to talk to a

lawyer''; didn't you?
A: That's correct.
Q: All right, not because he was guilty but to help him, as I believe you said, turn over what he needed to or exonerate himself.
A: Right.
Q: All right, as a result of that he went and talked to a lawyer; didn't he?
A: Yes.
Q: All right, and then this conversation about him having taken things out of a house was as a result of his conversation with his lawyer; was it not?
A: That's correct.
Q: He didn't go secret something or tell you he was hiding something that was evidence of guilt; did he?
A: No.
Q: He, in fact, did this, the Glock pistol that was removed from his house, you all talked about turning that over to police; did you not?
A: Yes.
Q: And as far as you know it was turned over to the police; did you not?
A: I don't know.
Q: All right, so, now, you -- did you know any of John's prior girlfriends?

A: Yes.
Q: All right, did you know Tanya Atwood for example?
A: Yes.
Q: All right, do you know whether Tanya had a daughter?
A: Say it again.
Q: Do you know whether Tanya had a daughter?
A: I can't recall.
Q: Tanya Sapp I believe was her name.
A: I can't recall. I remember it was Tanya.
Q: Do you remember -- did she live with John for a while?
A: Yes.
Q: All right, do you remember any other girls that might have moved in and stayed with John for a while?
A: He had two, two or three.
Q: How many?
A: Two or three. I can't remember exactly, more than two.
Q: Was one or more of these girls to your knowledge girls that he would run into there at the Silver Fox?
A: Yes, sir.
Q: All right, so, was it unusual for girls to move in and stay with John for a while as a girlfriend and then move back out?
A: No.
Q: All right, was it unusual for John to record a lots of

things on his calendar?
A: I've never read his calendar but I know he had a day timer he carried around a lot.
Q: You knew he had a day timer; right?
A: Uh-huh (affirmative response).
Q: When is your birthday, Thomas?
A: The .
Q: Let me hand you what is marked as State's Exhibit 41 and ask you if you see your birthday near there.
A: It's right on top of it there.
Q: On top of it. Actually on the bottom of the top of the day.
A: Yes, sir, uh-huh (affirmative response).
Q: All right, that is your birthday, the .
A: Yes, sir.
Q: This same, same day here February, look there on and see if you can tell me whether his girlfriend Tanya's name appears on the calendar there.
A: It says Tanya, uh-huh (affirmative response).
Q: All right, and it has the date by it of 11-3, the time by it of 11:30, 5:30 something like that?
A: Yes, sir.
Q: All right, let me go back. So, on January the 5th do you see the name -- a name there on January the 5th?

A: It looks like it says Bob maybe Propts.
Q: Do you know who that is?
A: I can't recall. The name sounds familiar though.
Q: How about January 29th do you see reference to his girlfriend Tanya there?
A: Yes, it says Tanya court DUI Danberry.
Q: Tanya court what?
A: DUI Danberry.
Q: Danberry.
A: Uh-huh (affirmative response).
Q: How about on January 23rd?
A: Tanya court 3:30.
Q: And of course I'm saying this is January the 23rd '98; correct.
A: It says '98, yes.
Q: Were you and Crystal married at the time?
A: That's a good question. Thanks a lot.
Q: Oh, well, my fault. Well, I don't want to ask you when your anniversary was then. Let's move on. Do you know Scott and Brian? Do you know who Scott and Brian are in John's life?
A: Scott and Brian, I can't recall off the top of my head, no.
Q: If I told you they were his nephews would that refresh your memory any?

A: It may a little bit.
Q: But you still don't know for sure who they are.
A: No, sir.
Q: All right, now, Thomas, you did know Renee Poole somewhat.
A: Somewhat.
Q: All right, and she had -- met her through your wife there at the Silver Fox?
A: Yes.
Q: All right, do you have any knowledge of Renee's past affairs?
A: No.
Q: You don't know anything about that?
A: Not really. If I -- you know, I may have heard some, but you know, not firsthand knowledge or anything. She never told me anything about it.
Q: Now, let me ask you this, do you think it's a fair summary of your testimony to say that the Defendant tells Pedersen, Thomas, the Defendant tells Pedersen he has no alibi?
A: I don't understand the question.
Q: Well, I mean, is that -- that's a summary of your testimony. Do you think that is a fair summary of your testimony that all they put down on this little calendar here is Defendant tells Pedersen he has no alibi.

A: I guess. I'm not, I'm not ---
Q: Well, here's my question to you. An alibi is saying you were somewhere else at the time the event occurred. Would you agree with me on that?
A: Yeah, he was at home.
Q: He told you he was at home.
A: Right.
Q: All right, so, he did, in fact, have an alibi.
A: I guess.
Q: All right, the problem was or the problem we've got is he doesn't have anybody to independently confirm that.
A: Right.
Q: But he told you he had an alibi, that was he was at home; right?
A: Right.
Q: All right, and then to say that the Defendant tells Pedersen the item related to Renee Poole removed from the house, couldn't say where, that sounds like he's hiding something. Do you think that's the way that it came across to you at the time ---
A: I didn't ---
Q: --- or was he acting as his lawyer instructed him?
A: The latter.
Q: What, which one?
A: What his lawyer had instructed him to do.

Q: So, therefore, you think that that's a fair summary to say, just say the Defendant tells Pedersen items related to Renee Poole moved from the house, couldn't say where? Does that strike as fair of your whole testimony concerning those items?

A: I guess. I'm not qualified for fairness or anything.

Q: Okay, but there was much more to your conversation than that; isn't there, Thomas?

A: Well, yes, sir.

Q: All right, that's all I have of this witness.

MR. HUMPHRIES: I don't have anything further.

THE COURT: You may step down.

MR. HUMPHRIES: Ask that the witness be excused.

THE COURT: Any objection?

MR. MARTIN: No objection.

THE COURT: All right, you're free to leave.

A: Thank you.

THE COURT: Call your next witness, please.

MR. HEMBREE: Thank you, Your Honor. The State calls Jim Bollow to the witness stand.

AT THIS TIME BLAIR JAMES BOLLOW, II, WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.

MR. BOLLOW: Blair James Bollow, II, B-O-L-L-O-W.

DIRECT EXAMINATION

BY MR. HEMBREE:

Q: Good afternoon, Mr. Bollow.

A: Hi.

Q: Where do you live, sir?

A: Lancaster, Pennsylvania.

Q: And where were you living back on -- back in June or let me say the first half of 1998, from January through July of 1998?

A: Mocksvile, North Carolina.

Q: In Mocksville, North Carolina, what was your address at that time if you recall?

A:

Q: And were you acquainted with Brent and Renee Poole?

A: Yes, we lived next door.

Q: Now, if you would, describe for this jury the nature of your relationship with the Pooles.

A: Neighbors. We had four children. They had K.P. . I spent most of my time speaking with Brent. I spoke very little to Renee. I understand that my wife was more friends with Renee. I was not, and he would come over. We would talk. I assisted him with computer work. That's what I do for a living. He wanted to learn what he could on a computer. I would assist him. When there would be problems with his computer he would ask me to come over

and assist him in diagnosing it and taking care of it for him.

Q: Would you say that you were close friends with Brent Poole or more like neighborly acquaintances?

A: Well, I would have to say neighborly acquaintance due to my work schedule, and at that time I was -- I had a very long commute to and from work.

Q: And how long did you live next door to the Pooles? How much time -- in all total how long did you live next door to the Pooles?

A: We moved in September '96.

Q: Now, you mentioned your work schedule was pretty hectic.

A: Yes, it was.

Q: Pretty, pretty full work.

A: It was very demanding.

Q: Taking you back to the time frame of say February to June who were you working for at the time, what company?

A: 360 Communications.

Q: And had you been working for that -- how long did you work for 360?

A: I've been with them since -- well, originally it was Sprint Cellular since '90 -- '94.

Q: Do you still work with them?

A: No, no.

Q: And where were you working? What town were you working in during this time frame?
A: Cary, Cary, North Carolina, approximately two and a half hours each way was my commute.
Q: Got you. When would you typically return home on the days that you worked?
A: On the average 7:30 p.m., a lot of times on Fridays maybe 8, 8:30 p.m. Then there were days I was able to leave early, which would put me home between 6 and 6:30 p.m.
Q: Now, were you -- did you become acquainted with Brent Poole's comings and going or work schedule just as a neighbor would?
A: Yes.
Q: And what were -- where did he -- do you know where he worked?
A: Charlotte, he was working at Charlotte Mack Truck.
Q: What type of work did he do?
A: He was a Class A diesel mechanic.
Q: And how far away was that for him?
A: Approximately an hour. We used to joke about it. He used to complain a lot about it.
Q: He complained about it and then you would of course take his hour ---
A: Right.
Q: --- and you would raise it an hour and a half.

A: Right.
Q: I got you. Now, he's going to Charlotte. What shift did he work or when did you see his car leaving and coming?
A: Second shift.
Q: Which would be what time would he ---
A: There was a time where I believe it was 3 to 11 but he on a -- he normally would put in overtime when needed, and then I believe through a promotion when he had told me about his certification and he had been promoted at work I believe it had changed to 4 to 12, I believe, but generally he -- I would see him anywhere from coming in anywhere from sometimes 12:30, 1:30 in the morning.
Q: And you're talking, when you say that his shift was from 3 to 11 or 4 to 12, you're talking p.m.
A: That is correct.
Q: Got it. Now, would you typically -- I guess normally would you be -- you'd already be at work when he would leave for work; is that ---
A: That is correct.
Q: Is it my -- that a correct understanding?
A: Uh-huh (affirmative response).
Q: And then but you would see him come home at night.
A: Sometimes, yes, I would.
Q: Now, you must be -- are you -- tell me a little bit

about that. You worked a long day it sounds like.
A: Right.
Q: And you had a long drive.
A: Right, my position was southeast regional operation trainer for 360 Communications based out of Cary, and I would have to develop the training material, to presenting of the training material to new hires and to existing staff members, which was approximately 1850 employees. Then on top of that when I would go home I was teaching myself computer programming and web-based programming in development. So, I would spend a lot of time at the computer, and on the average I would sleep approximately three to four hours a day.
Q: Is that still your custom?
A: Pretty close to it, uh-huh (affirmative response).
Q: You just don't require a lot of sleep.
A: Huh-uh (negative response).
Q: Now, did there come a point in time when you began to see a black Chevrolet Blazer in the driveway at the Poole home?
A: Yes.
Q: Approximately what time in the year 1998 did you begin to see this vehicle?
A: Approximately the end of February is what I recall.
Q: Now, let me make this clear, too, you weren't working

as a private detective ---
A: No.
Q: --- for Brent Poole in any way.
A: No.
Q: Did you keep track every single night, did you make notations, keep notes in any way of when you would see this vehicle and when you would not?
A: No.
Q: Now, when would you typically see it?
A: Basically ---
MR. MARTIN: I object, let me say, I object to the question as being too general, ``when would you typically'', and the response that was coming, well, ``basically''.
THE COURT: Ask him about his recollection, what is his recollection.
A: I recall ---
THE COURT: Well, let him ask you the questions rather than me. Go ahead.
MR. HEMBREE: Thank you, Your Honor.
BY MR. HEMBREE:
Q: Mr. Bollow, do you recall when you would see the black Blazer?
A: Yes, I recall seeing it nightly when Brent was at work and I would return home. It became very irritating for me as I'd pull into my driveway and see the black Blazer

parked behind Renee Poole's car.

Q: When you first began seeing this, did you know who the black Blazer belonged to?

A: No.

Q: Did you see the driver of the black Blazer?

A: No, I did not.

Q: Did you ever see the driver of the black Blazer to the point that you could identify that driver?

A: No, I could not.

Q: Now, did you keep an eye on the car the whole time?

A: No.

Q: Now, if you recall, if you recall, how frequently did you see the black Blazer, let's say between the end of February up through the -- through May the 1st. I'm going to take you to that time frame, end of February through May the 1st how frequently would you see the black Blazer at the Brent Poole home?

MR. MARTIN: Again, I would object to that as being asked and answered. He said he saw it there nightly.

THE COURT: I think he's talking about now a specific time frame; is that correct?

MR. HEMBREE: That's correct, Your Honor.

THE COURT: All right.

MR. MARTIN: Well, then I'm not clear on when it was he saw the car there nightly.

THE COURT: I think we're going to get that clarification.

MR. HEMBREE: Thank you.

BY MR. HEMBREE:

Q: Please continue, Mr. Bollow. What was the frequency?

A: More times than not. I would say minimum three times a week, minimum. So, to me and when I, when I'm thinking about it I would say three to five days a week when Brent was at work.

Q: Now, I want to take you to May 1st, 1998, do you remember that particular evening?

A: Yes, I do.

Q: What were you doing that evening?

A: I was sitting at my kitchen table working at my computer and I had just started teaching myself java programming, and I went out the front to my front porch to have a cigarette. I'm a smoker and I don't smoke in the home because of our children.

Q: Let me ask you, from your vantage point where did you typically do your work, your late night work on the computer at home?

A: Normally I would do it in my office in our, in our home, but if the home was empty without the children, they were — visiting their grandparents, I worked at the kitchen table. That way I wouldn't disrupt anybody. So, generally I was

in my office up on the second floor.
Q: And what was your vantage point of the Pooles's driveway from your office?
A: My office is facing the back of the home and our driveways are in the front of the home.
Q: So, you ---
A: I never saw.
Q: From -- what about from the kitchen, what sort of vantage point did you have from the kitchen?
A: From the kitchen sitting here at the head of the table facing the patio door or our patio and then Brent's and Renee's kitchen window over their kitchen sink and then their patio to the right hand side of it.
Q: What about their -- what about their driveway?
A: I don't recall much of the driveway sitting there when I would look out. Generally speaking was at night when I was sitting there and there was a time that I remember I saw a motorcycle, Brent had a motorcycle when I first moved in, but I believe he sold it and then some other material working on a vehicle or something that had been there, but that was about it.
Q: You mentioned that you had to take smoke breaks sometimes when you're working. How often would you say that -- how often do you take a smoke break?
A: As often as I can, probably at least once an hour.

Q: Now, where would you typically take -- where would you take these smoke breaks?
A: Either on our front porch or on our patio.
Q: And did you have a vantage point where you could observe the Pooles's driveway from either one of these locations?
A: Yes, from the front porch.
Q: Now, let me take you to May the 1st again. Tell us did something -- was something unusual or something that attracted your attention going on at the Poole home the evening of May the 1st?
A: Yes. I went outside to have a cigarette.
Q: Approximately what time was it when you went to have a cigarette?
A: Approximately 10:30 p.m.
Q: And what did you observe?
A: I had walked to the right-hand side of our front porch which was closer to their driveway. I realized that there was Renee's pickup truck full of furniture and boxes; and so, it kind of pulled me over to the corner of the front porch where I was having a cigarette and I lit it and then started smoking the cigarette and I actually saw some commotion and it was Renee putting some things into the back. If the vehicle's facing this way, the left rear corner of the pickup truck and she put something in and I remember

seeing a whitish object, a shirt that was moving back and forth, but I couldn't see anything about it, and at first I thought it was Brent.

Q: Now, where was it -- where was this whitish shirt located and from your vantage point?

A: Well, there was Renee's pickup truck and then directly behind that was a black Chevy Blazer.

Q: Now, let me ask you about that. Did you recognize that black Chevy Blazer?

A: Yeah, it was the one that was there every night.

Q: Okay, please continue.

A: And I saw the movement, and because of concentrating on the programming and what have you, I just saw Renee, had no idea what she was doing, thought what I saw was Brent and then this -- what I thought was Brent was just kind of pacing back and forth behind the Blazer and then it moved away from the Blazer more towards the yard, and I'm looking at Renee and she's kind of straightening things and then she turns around, walks up the little sidewalk up the front steps and goes into the front door.

Q: Did you make eye contact with her?

A: Not that I recall, no, and then I realized it couldn't be Brent that he was much too big, this figure, dark and it looked like a coat or a jacket or something and then just bounced up, skipped the steps, landed on the

front porch and then walked right in through the front door. I finished my cigarette and turned around and went back in.

Q: Did you see the vehicles leave?

A: No, I did not.

Q: At some point did you go back outside for another cigarette break?

A: Yes.

Q: And were the vehicles still there?

A: No, no.

Q: And do you have a -- can you give an approximate time when you came out this second time and the vehicles were gone?

A: I want to say it was after midnight. From what I can recall I believe it was after midnight.

Q: Anything significant happen after that?

A: Yes. I was sitting there working on my computer and I saw movement in Brent's kitchen. So, I looked up and I saw Brent was on the telephone and he was walking back and forth looking out the window and then walking around the front area of the kitchen sink and then I went back to working and the next thing I knew there was a knock on our patio door. So, I looked up and saw it was Brent. He had a phone in his hand and I went over and opened it up. I opened up the sliding glass door and he asked me if I had seen anything that evening and I said, "No, no," and he was talking.

MR. MARTIN: Objection, it's hearsay.
THE COURT: Sustained.
MR. HEMBREE: Thank you, Your Honor.
BY MR. HEMBREE:
Q: Mr. Bollow, don't tell -- if you will, I ask you not to testify about anything that Mr. Poole might have said to you. You can testify about what you said to him.
A: Okay.
Q: So, you had indicated you told him you hadn't seen anything unusual.
A: Right.
Q: Then what did he do?
A: He left.
Q: What did you do?
A: I went and sat back down and then realized, ``Well, what about the truck.'' So, I quick jumped, shot over to the patio door. I opened the door and called Brent back, and he came up onto the patio, and I said, "You didn't happen to load up Renee's pickup truck and a black Bronco with your household items," and he said no.
MR. MARTIN: Objection.
Q: No, you can't -- okay.
A: Oh, sorry, sorry, sorry.
Q: Fair enough, just he didn't -- don't talk about what he might have said to you. Did you relate to him what you

had observed?
A: Yes. I told him that I saw Renee's pickup truck loaded with a bunch of boxes and what looked like chairs, furniture, pieces of furniture and a black Bronco behind Renee's pickup truck.
Q: And thereafter, where did Mr. Poole go?
A: After I said that?
Q: After you had had this discussion with him about ---
A: I saw him go back into his home.
Q: Now, let me take you to the time period between May the 1st and May the 12th, and I didn't even -- I wasn't listening for it. I believe you testified it was a Bronco, was it a Bronco or a ---
A: Well, a Blazer.
Q: Okay, you had said Blazer.
A: Sorry.
Q: I believe you just now said Bronco, but it was ---
A: I'm trying to think of not saying what Brent talked to me about.
Q: I understand. Fair enough, now, let me take you to the time period from May the 1st to May the 12th, in that time frame did you see the black Blazer, excuse me -- now, you got me doing it. Did you see the black Blazer at any time at the Pooles's residence during that time frame?
A: No, I did not.

Q: Did you have occasion to learn that Renee Poole moved back into the marital home?
A: Yes, I did.
Q: Do you remember the date that they moved, that she moved back in?
A: I remember it was the second weekend of May.
Q: Okay, let me take you to -- now, after Kimberly Renee Poole moved back into the residence did you begin to see the black Blazer again?
A: Not for about, I'd say, a week or so, and then I started seeing it arriving again or showing up in the driveway again when I would come home.
Q: And in relation to June the 9th can you say how much time before that that you began to see the black Blazer at the house?
A: Almost on a nightly basis. Near, near the end of May I remember that I started to see when I would come home the vehicle parked behind Renee's truck when Brent was at work.
Q: And let me take you to the week of June the 1st, Monday being the 1st, Tuesday the 2nd, 3rd, 4th, 5th, 6th is Saturday, the week prior to the killing of Brent Poole. Do you specifically recall seeing the black Blazer at the Poole home during that week?
A: Yes, I do.
Q: Could you tell this jury on which occasions and under

what circumstances you saw that vehicle?
A: Well, I recall Saturday prior to the murder it was early in the morning, approximately nine a.m., and I heard a truck start up. Brent had driven a truck home, an 18 wheeler home that evening and had parked in the cul-de-sac out front.
Q: Now, did he bring the whole 18 wheeler ---
A: No.
Q: --- or just the cab.
A: Just the cab.
Q: Just the -- okay.
A: He just brought the cab.
Q: Understood.
A: And he, for K.P. , he pulled the horn, and it drew me outside because of the noise, and then I stood outside, thought it's a great time to have a cigarette and I lit a cigarette and I was standing there smoking and it was not more than minutes where the truck had left our street and I saw the black Blazer coming down the street and then pulled in behind Renee's pickup truck.
Q: And you testified that was on the 6th, the Saturday before.
A: Yes, and I walked into the house, as I saw it coming down I walked into the home.
Q: Do you know how long -- can you estimate how long the

black Blazer was at the Poole home on the 6th?
A: I'd say approximately two hours because just prior to finishing the cigarette outside and going inside to start making lunch I realized that it was gone, that it wasn't there.
Q: Got you. Now, after you noticed it was gone was Mr. Poole's, was Ms. Poole's vehicle there when you went outside and noticed that the black Blazer was gone?
A: No, I don't remember, no, I don't. His car, I, I can't recall right now.
Q: Let me ask you about -- were there any other specific dates during the course of that week that you recall seeing the black Blazer at the Poole home?
A: Towards the end of the week I want to say Wednesday, Thursday and Friday it was there and ---
Q: Approximately what time, approximately what time did you observe it there on each night?
A: I'd say around 7:30 p.m.
Q: The time you got home from work.
A: Yes.
Q: Do you know exactly what time it left?
A: No, I don't, but never did I go outside and have a cigarette and see Brent's vehicle in the driveway and the black Chevy Blazer was there. I never saw that. So, it was one, one hour I'd go out, I'd have a cigarette, I'd see

the black Chevy Blazer there. Then later on in the evening, I should say morning really, midnight, 12:30 when Brent would come home then I'd see his vehicle there.

Q: If you would describe to this jury the last time you saw Brent Poole alive.

A: The day he left for the beach. I was -- actually had the opportunity of going into work late. So, they had actually assigned me to a special project in Greensboro which allowed me only an hour commute rather than a two and a half hours. So, as I was pulling out of the driveway I saw Brent pulling his vehicle out. Then he got out, put it in the front, pulled out Renee's pickup, put his vehicle back in and then pulled the pickup back in, and as he got out I pulled up to his driveway and stopped and got out and wished him a good trip. He asked me to take care of the house, if I notice anything call the police and please pick up the mail.

Q: Did you do that for him?

A: Yes, I did.

Q: Let me ask you if these three statements accurately characterize your testimony for the purpose of this time line. First as to June the 6th, 1998, Saturday, black Chevrolet Blazer seen parked at Poole home approximately nine to 11 a.m. Is that accurate?

A: Yes.

Q: I'm placing a sticker on the State's Exhibit Number Four on June 6th. As to June the 3rd, Wednesday, June the 3rd, 1998, black Chevrolet Blazer seen parked at the Poole home in the evening hours; is that accurate?
A: Yes.
Q: I'm placing that on June the 3rd, State's Exhibit Four. I'll just -- these last two, one for June the 4th and one for June the 5th, they read exactly the same, black Chevrolet Blazer seen parked at Poole home in the evening hours for June the 4th and for June the 5th; is that accurate?
A: Yes.
Q: Your Honor, I'm placing those on June the 4th and June the 5th. Mr. Bollow, please answer any questions the Defense counsel may have for you.
THE COURT: Cross.

CROSS EXAMINATION

BY MR. MARTIN:
Q: Mr. Bollow, let me be sure I understand. Let me be sure I understand your testimony, that is that you would see a black Blazer at the Poole home.
A: Yes.
Q: From the end of February.
A: Yes.
Q: How do you define the end of February?
A: When I think about it my birthday is in and I

would recall when my wife and I would talk about it and when I think back on it I recall near the end of February.

Q: All right, and so, I guess again my question to you because you seem to be a pretty precise fellow, end of February does that mean to you from February 15th on or from February 20th on or what in your mind what is that, when, what are you saying?

A: In my mind the last week of February.

Q: So, say from February 24th on?

A: (Indicates affirmatively.)

Q: All right, and it is your testimony then that you would see a black Blazer, that you don't know who it belonged to?

A: That is correct, sir.

Q: And you don't know who the individual in the black Blazer was.

A: That is correct.

Q: And you don't know the license tag of the Blazer.

A: That is correct.

Q: Was there anything distinguishing about the black Blazer?

A: No, not that I can recall.

Q: But in all of these comings and goings, all of these comings and goings nightly from say February the 24th on, say May 1st through the 12th, maybe, you ever got a look at the license tag on that black Blazer?

A: No, sir.
Q: Well, didn't you kind of drive right by it driving right up into your garage?
A: I never bothered to look.
Q: Well, you're an observant fellow, though, I mean, you knew a lot about who was coming and going into the Poole house. You never, you never during -- well, let's look at it this way, you figured, I guess, that this was a fellow coming to see Renee Poole.
A: In my -- based on something that was said to me or my own recollection or ---
Q: No, no, I'm just asking you. I mean, you know, kind of like if the husband goes to work and there's a car over there as soon as he leaves, there's a car coming in and staying till right before he pulls up to go home and this goes on from the end of February for March, April, May, three and a half months, don't you figure that that must be a boyfriend over there visiting the wife while the husband's gone to work?
A: Yes.
Q: All right, and you're telling me that you wasn't curious enough to try to get a look at that license tag during that period of time just, just to see what it might say?
A: No.

Q: All right, and you didn't even have a chance by accident to figure that out.
A: Figure what out?
Q: What the license tag said.
A: No.
Q: And in addition to that you never saw the individual that was coming and going.
A: That is correct.
Q: So, you saw the car there almost nightly for over two months.
A: Uh-huh (affirmative response).
Q: How many doors in and out of the Poole house?
A: One front door, basically same style as our home, one front door and then the rear patio door, so two.
Q: All right, and from what you're saying this Blazer was parked in the front door, I mean, in the front, excuse me, in the driveway, drive right up.
A: That is correct.
Q: All right, just like anybody would visiting.
A: That is correct.
Q: Get out.
A: Right.
Q: But you never saw the person.
A: No, no, I didn't, never.
Q: Now, are you -- when -- you told the Solicitor you

didn't ever make any notes of all of this?
A: No.
Q: Well, you would agree with me if you didn't make any notes you can't say that the car was there nightly all of those nights; could you?
A: It became a topic of conversation between my wife and I. It became a fixture.
Q: That the car was there nightly, and from -- that was from the end ---
THE COURT: And you need to speak, have a verbal response rather than just nodding or shaking the head.
A: Oh, I'm sorry.
THE COURT: Okay.
A: I'm sorry, Your Honor.
THE COURT: And you were nodding your head yes; is that correct?
A: What?
THE COURT: Were you answering? Ask the question again, please.
Q: Let me ask another question then. From, I believe that it's your testimony from what I understood that from the end of February until May 1st that the car was there nightly.
A: Yes, sir.
Q: And you realize how many nights that is? Now, you

aren't serious about saying the car was there nightly, February 24th, 25th, 26th, 27th, 28th, 29th, 30th -- no, there's only 28 days in February; isn't there? 28th, March 1st, 2nd, 3rd, 4th, 5th, are you willing to tell that jury under oath that that black Blazer was there every night that I just named off?

A: No.

Q: Well, now, why do you say the car is there nightly?

A: Because it was there more times than not.

Q: But you aren't very specific then. If you're under oath telling these folks who are deciding his fate you used the word nightly.

A: Yes.

Q: So, that's not true; is it? It's not true that the black Blazer was there nightly; is it?

A: Yes.

Q: It is?

A: No.

Q: No, well, is it yes or is it no?

A: What, what ---

MR. HEMBREE: Well, maybe we could object to the form of the question and perhaps get a little bit of a clarification on that.

THE COURT: Yeah, let's see if we can clarify it.

MR. MARTIN: I thought it was a pretty clear

question.

THE COURT: All right, try again.

BY MR. MARTIN:

Q: But I'm going to ask you again and I don't want to belabor this. I just want you to get you an answer and stick with it; okay?

A: Yes, sir.

Q: All right, you testified that the car was there nightly.

A: Yes.

Q: From the end of February, which you have now defined as February 24th, until at least May 1st as I understand it.

A: Yes.

Q: Now, are you telling this jury that that car was there every night from February 24th to May 1st?

A: No.

Q: Okay, so, when you told the jury that it was there nightly that was an untrue statement; wasn't it?

A: No, it was a generalization.

Q: Oh, it was a generalization, okay, but now you didn't say it was a generalization. You said the car was there nightly.

A: That is correct.

Q: All right, now, did you make any notes? At any point in time did you make any notes to help you with the

testimony you're giving today?
A: No. What do you mean notes? Did I take any notes?
Q: Well, I mean like -- I mean, you were doing a lot of checking on the Pooles and the coming and goings over there.
A: No, I didn't make any notes.
Q: So, did you ever when you were at your computer ---
A: No.
Q: --- go in and type in some notes, Renee gone, the black Blazer at the house again tonight?
A: No, I did not.
Q: Is there any paper documentation that you have to substantiates ---
A: No.
Q: --- these dates you're talking about?
A: No, there is not.
Q: All right, all right, and now we've determined that it wasn't nightly. The truth of the matter is, Mr. Bollow, you just saw that Blazer over there occasionally; didn't you?
A: No, that's not true.
Q: All right, and you decided when this event -- well, let me ask you this, if it wasn't there nightly, how about that last week of February? How many nights would you say that it was there that week?
A: I can't.
Q: You can't?

A: I, I would say that on the average I recall seeing that vehicle in the driveway three to five times a week when Brent was working. For the majority of my remembering it was constant.

Q: Well, I'm -- now, that's a generalization.

A: Yes, sir, that is correct.

Q: All right, now, but you -- I'm going to ask you again and I, again I don't want to belabor this but this is important, okay. Now, I'm asking you now, you've gone -- you've gone back in details and certain dates. I'm asking you the last week in February of the seven nights in the week how many would you say ---

MR. HEMBREE: Your Honor, I've got to object. He's answered this question. He asked it already and he answered it.

MR. MARTIN: No, he hasn't.

MR. HEMBREE: Well, he did.

MR. MARTIN: No, he didn't.

THE COURT: All right, out of an abundance of caution I'm going to allow him to ask a question and answer it. Go ahead.

BY MR. MARTIN:

Q: How many nights the week of February 24th did you see the black Blazer at the Poole residence?

A: I can't say for sure.

Q: Did you see it there any? Are you sure about that?
A: Am I sure about seeing the Blazer there ---
Q: I'm asking you you say you don't know for sure.
A: --- during that period of time?
Q: Right.
A: No, I can't recall. I can't tell you for sure that I saw it on a Wednesday or a Thursday night.
Q: All right, I understand that, but for the last week of February did you see it there any night during the last week of February?
MR. HEMBREE: Your Honor ---
A: I can't specifically recall, no.
Q: How about the first week of March?
A: No, I can't recall.
Q: How about the second week of March?
A: No.
Q: Then why would you say that from the end of February until May 1st that you saw it there on a nightly basis as a generalization?
A: Because of the conversations between my wife and I, and as I was coming home and then I would see it, get out, go in the home.
Q: But you can't say it was there any of those nights specifically.
A: That is correct.

Q: And you can't say it was there on any one of the seven nights during any of those weeks.
A: That is correct.
Q: Okay, how about the following week?
A: What week are you talking about now?
Q: I don't know, the second week in March.
A: No, I can't give you a specific night.
Q: Can you assure us it was there at all?
A: No.
Q: Well, I'm going to ask you about the next week, the last week in March, can you tell us which night it was there?
A: I would say the last week of March, I would say most of the week from what I can recall.
Q: And why does that week stick out in your mind now? What's the difference between the third week of March and the first week in April?
A: We had my wife's best friend with her children come down, and ---
Q: All right, so, you recall that.
A: Yes, sir.
Q: How about the next week?
A: To break it down weekly ---
Q: Just can't do it.
A: --- no.

Q: Well, let me go on and ask you this, on -- you do say that on the Saturday of June 6th that you know a black Blazer was there from approximately nine o'clock in the morning till 11 o'clock that morning.
A: Uh-huh (affirmative response).
Q: Are you sure about that?
A: I had spoken to my wife about it. I was concerned about this Blazer popping up again in the driveway after what had transpired.
Q: So, you're sure about that?
A: Yes.
Q: And then I believe you say you walked outside because the horn blew.
A: Yes, sir.
Q: And you happened to walk back out again after 11 and it was gone?
A: Now, we -- my, my wife and I -- one of the main reasons why I went outside because of the horn blowing was our youngest was asleep still, and I wanted to go out, find out, you know, where the noise was coming from and basically see if I could ask Brent to stop it, that I was afraid he was going to wake up our youngest, our son, and then my wife and I were talking, and I recall just prior to lunch going outside and having a cigarette, and the vehicle was there and then I went out just as she was serving our children

lunch and I went outside and I remember it was around 11 a.m. and the Blazer was gone.

Q: Is that what time you eat lunch around 11 a.m.?

A: Well, with the children, yes, and because of my ---

Q: And you don't, and then you don't recall whether Renee's vehicle was there or not after that?

A: Yeah, it was.

Q: It was there.

A: After?

Q: Well, I mean, yeah, yeah, both times was it, was it there?

A: Yeah, she would park it right in the front of the driveway.

Q: All right, and it was there while the black Blazer was there and after the black Blazer was there?

A: Yes.

Q: You sure about that?

A: Yes.

Q: Do you know what time Renee left that day?

A: No, I do not.

Q: But her vehicle was there most of the morning.

A: Uh-huh (affirmative response).

Q: All -- well, it was there well after the other vehicle had left.

A: Uh-huh (affirmative response).

Q: Now, what time under your testimony did you understand that Brent would get home the week of June 4th or the nights, you've talked about the nights of June 4th, 5th and 6th, what time did you understand he would get home?
A: Anywhere between 12 and 1:30.
Q: Between 12 and 1:30?
A: Yes.
Q: All right, and is it your testimony that the black Blazer was there on the nights of June 4th, 5th and 6th until midnight?
A: I would say so. I would say up until, yeah.
Q: Well, I'm going to ask you again now, are you sure what you're testifying about or you just generalizing about all this?
A: No, I believe it, yes.
Q: Okay, all right, so, on the nights of June 4th, 5th and 6th that Blazer was there, it was there till midnight.
A: I would say so, close to it, uh-huh (affirmative response).
Q: Well, you're bugging on me now. I'm trying to figure out, midnight?
A: Yes.
Q: Now, let me ask you this, before you saw the black Blazer you saw other vehicles that you thought were boyfriends coming over to the Poole house; didn't you?

A: Yes.
Q: Can you give us one of those vehicles?
A: A red Mustang.
Q: How long did it come over there?
A: A few months, a few months, not more than three.
Q: Did you ever determine who that was?
A: I didn't know who it was, but I saw them.
Q: Now, you say it was there two or three months or nine or ten months?
A: Yeah, no, two or three months.
Q: It wouldn't have been nine or ten months?
A: Not that I recall, no.
Q: Do you remember giving a statement to the police department on June the 17th in which you said that that car was there nine or ten months?
A: No, I don't. I remember talking about the first car that I saw.
Q: What was that?
A: Right now I don't recall what that was. That was a longer period of time. I recall the Mustang a shorter period of time.
Q: What color was the Mustang?
A: Red.
Q: Just so I'm clear, let me hand you a copy -- let me mark this.

(Whereupon, Defense Exhibit Number 28 [Statement of James Bollow] marked for identification.)

Q: And I know it's been a long day. So, let me be clear with you now. The red Mustang was an automobile that you would see visit or frequent the Poole house when Brent was gone sometime prior to when you would see the black Blazer.

A: Yes.

Q: Is that correct?

A: Yes, from what I remember. That was what eight years ago?

Q: And you gave a statement to the Myrtle Beach Police Department back on June the 17th ---

A: Okay.

Q: --- I believe, Mr. Bollow, is that -- what does that say?

A: June 17th, 1998.

Q: Okay, let me ask you now -- let me ask you about the second here. Does that refresh your memory in any way? Maybe I don't understand.

A: I don't know. What are you asking?

Q: I'm just asking you, as you look at that, and then I'll just ask you. Do you remember how long it was or for a period of time that you would see that red Mustang over there?

A: No, I just remember it was -- it wasn't a very long time compared to the other one. That's all I remember.

Q: All right, and the other one you're talking about now was what?
A: Sir?
Q: I'm sorry. The other one that -- when you say the other one now which one are you talking about?
A: It was, it was a car that had been going over -- no, no, actually the first car that I recall was there probably two or three months.
Q: I, I ---
A: The Mustang I -- I do recall seeing two of the individuals, the one in the first vehicle and the one in the second. Length of time I don't know. Like I said that's eight years ago, nine years ago.
Q: Well, I realize that, and of course, this testimony you're giving about when you saw the black Blazer there was eight or nine years ago, too; it wasn't?
A: Well, it was what seven years ago.
Q: Sir? All right, seven years ago, okay, but again, and I don't -- again, I want to get it and then I want to move on. Now, the cars before, now, how many cars before the black Blazer did you see over there?
A: I recall two.
Q: All right, and they were a red Mustang and what else?
A: Another one that it was like a Toyota, like a bluish gray Toyota.

Q: Now, these vehicles were there at least in a fashion that would give you the impression they might have been boyfriends visiting Renee Poole.

A: Yes.

MR. MARTIN: That's all I have for Mr. Bollow.

REDIRECT EXAMINATION

BY MR. HEMBREE:

Q: Very briefly, Mr. Bollow. The, the issue of when you would see the black Blazer, let's talk about the black Blazer, let's talk about the black Blazer on the 3rd, 4th and 5th of June, 1998, did you on any one of those nights actually see the black Blazer leave?

A: On Wednesday, Thursday or Friday, no.

Q: And do you -- how can you say what time it left if you didn't see it leave?

MR. MARTIN: I object. Judge, he's cross examining his own -- he answered the question. I think he's cross examining his own witness.

MR. HEMBREE: No, I'm asking him the source of his, I'm asking the source of his information.

THE COURT: I'm going to allow it.

MR. MARTIN: Okay.

A: Generally when Brent would get home or when I would go out and I'd have a cigarette and the vehicle would be gone and generally through my routine.

Q: So, you really don't know what time it left.
A: Huh-uh (negative response), no, no, not at all.
Q: Okay, all right, thanks.
MR. HEMBREE: No further questions, Your Honor.
THE COURT: You may step down, sir.
MR. HEMBREE: We'd ask that Mr. Bollow be excused.
THE COURT: Any objection?
MR. MARTIN: No objection.
THE COURT: All right, you're free to go.
We have come to a good breaking point for the evening and I'm once again going to remind you and this is most difficult but it's extremely important that you stay away from any media about this, do not read the paper, do not watch the news, do not get on the computer for news or the radio, stay away from anything regarding this case and do not discuss this case with anybody and, of course, do not do any independent investigation. I know I stress this, but it's most important that you follow those instructions. We don't anticipate that this trial will be too very much longer, and at some point you'll be able to discuss this trial and tell your spouse or loved ones, neighbor or friend all about it, but not until it is complete. So, I want to make that very clear.
Any questions about those instructions for the evening?
(No response.)
THE COURT: Very good. I'm going to ask you to be here

at 10 o'clock tomorrow morning. Now, we're going to be here at nine o'clock tomorrow morning. I'm giving even more time to be sure that at ten o'clock my hope is to bring you out promptly at ten. I'm going to get this right soon. So, please be here at 10 o'clock. We will be here much earlier. We will see you then.

Before I have you leave let me see if there's any further instruction desired by either the State or the Defendant. Anything further?

MR. HEMBREE: Nothing from the State, Your Honor.

MR. MARTIN: Nothing.

THE COURT: All right, have a good evening. We'll see you in the morning at 10 o'clock.

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

THE COURT: All right, I would like to get Ms. Poole's testimony on the record this evening if that's possible.

MR. HUMPHRIES: Let me say.

THE COURT: Is -- has she gone?

MR. HUMPHRIES: No, she -- well, she probably has gone, but I did speak with her attorney who, quoting Mr. Diggs, he was exhausted, drained. He will be here first thing in the morning.

THE COURT: All right.

MR. HUMPHRIES: And asked that we do it in the morning.

THE COURT: That's fine with me. Frankly, I'm exhausted and drained myself, but I want to be sure that we've got enough time. So, I've got us coming here at nine o'clock. We've got the identification issue to deal with and we've got Ms. Poole's testimony. Anything else?

MR. HUMPHRIES: And I can assure you based on Mr. Diggs's representation there won't be any testimony from Ms. Poole, but we can take her ---

MR. MARTIN: I still say, Judge, and they didn't bring it, but under the rule of excited utterance or hearsay declaration, get the rule book out and look, she doesn't -- unavailability is not a requirement.

MR. HUMPHRIES: No, see, this is -- when we're talking about the statements in the furtherance of conspiracy it's a -- it's not hearsay ---

MR. MARTIN: Right.

MR. HUMPHRIES: --- under the rule.

MR. MARTIN: Well, you can look at the rules and these -- both of them will tell you that unavailability is not a requirement. I'm just saying I don't know that we should worry so much about something that I believe, now, we need to look at it, but I believe it's clear it says under rule ---

THE COURT: Well, I think because I made the analysis of whether it was testimony or non-testimonial that I want

to seal it.

MR. HUMPHRIES: She's here.

MR. MARTIN: Okay, well, that's fine.

MR. HUMPHRIES: She's here.

MR. MARTIN: I just -- we seem to be having a lot of trouble getting around to it.

THE COURT: It does seem, but we went through that analysis on this particular one. Of course, I did amend my ruling and strike some testimony, but I still did allow that statement in and I'd rather err on the side of caution and go ahead and get her.

MR. MARTIN: I understand, Judge. I understand.

THE COURT: All right.

And I'll show you where I'm getting that information. I'm not trying to add more work to us.

All right, very good. Anything further that we can address tonight?

Nothing from the State?

MR. HEMBREE: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. MARTIN: Not at this time.

THE COURT: Very good. We'll see you in the morning at nine o'clock. Have a good evening.

***** OFF THE RECORD *****

(On the record, Wednesday, May 18, 2005.)

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

THE COURT: Good morning. We have some matters that need to be addressed this morning. I understand we've got the hearings on identification.

MR. HUMPHRIES: We do.

THE COURT: Are you prepared to begin at this time or would you prefer once again we still have the matter of non-availability of Ms. Poole.

MR. HUMPHRIES: Mr. Diggs arrived yet?

MR. HEMBREE: I don't believe he has.

THE COURT: All right, well, then we know what order we'll take it in. We'll do the ID first.

MR. HUMPHRIES: The State calls Mike Rowe.

AT THIS TIME MIKE ROWE WAS CALLED TO THE STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

THE CLERK: Thank you. Please be seated. Please state your full name, spell your last name for the Court.

MR. ROWE: Detective Mike Rowe, R-O-W-E.

EXAMINATION

BY MR. HUMPHRIES:

Q: And Detective Rowe, with whom are you employed?

A: I'm employed by the City of Winston-Salem Police Department.

Q: How long have you been so employed?

A: Twenty-four years.
Q: And in connection with your employment did you have an occasion to compile a photo lineup packet which included the photograph of John Boyd Frazier for the purposes of showing it to the Hobbses?
A: The first part of that, correct. I had no idea who was going to be, who it was going to be shown to.
Q: I understand.
A: I was asked to prepare a photo lineup for the Myrtle Beach Police Department.
Q: Okay, and will you tell the Court very briefly the procedure you used, the contacts that you had to make in order to obtain proper photographs and that kind of thing.
A: Yes, sir. The photograph of John Boyd Frazier was in our computer system as of the date I was asked to do that, which was on June 16th of 1998. His photograph was put into the computer system that we have and which generates the photographic lineup process. I completed a form called a photographic lineup request form. In that form I fill out the top half of the form and his name is on there. Once that happens it's turned over to the identification section personnel. They then take his photograph and add five fillers into the photographic lineup, which makes a total of six photographs. Once that photographic lineup is made the technician approves it, I looked at it. It was satisfactory

to me. The original photographic lineup was made in color. Copies were made of that as well, as well as another sheet that told who each of the six people were that were in the photographic lineup, as well as an admonition section which is a paragraph that is read to whoever is going to view the photographic lineup to explain to them what they're about to view.

Q: And let me ask you this, in regard to this -- is this a computer compilation, if you will, in terms of the compilation of the photographs, the order of the photographs?

A: Yes, sir.

Q: And in that it's a computer compilation is the selection position of the individuals in the photo lineup done manually or is it done random by the computer?

A: The selection of where the person is is done at random by the computer.

Q: Let me show you a series of documents which are State's 20, State's 21, State's 22 and State's 23. Tell me if you can identify these documents.

A: Yes, I can.

Q: And what are those documents?

A: State's Exhibit Number 20 is the original color photograph that was generated at my request. One of the photographs includes a photograph of John Boyd Frazier. State's Exhibit 21 and 22 are color copies of the same

photographic lineup. The photographs are turned sideways with a number on the top. That number corresponds to who that person is so we can get biographical data about that person, and State's Exhibit 23 is the admonition section form that I mentioned earlier.

Q: Let me ask you this, after compiling this packet who then or to what agency then did you transfer it?

A: Myrtle Beach Police Department.

MR. HUMPHRIES: Your Honor, at this time I hand up to the Court for your review State's 20, 21, 22, and 23.

THE COURT: Thank you.

MR. HUMPHRIES: That's all we have of this witness at this time.

THE COURT: Thank you, cross.

EXAMINATION

BY MR. MARTIN:

Q: Mr. Rowe ---

A: Yes, sir.

Q: --- are you trained in any particular way in eyewitness lineup to do what you did here?

A: Yes, sir.

Q: All right, and where do you get your training?

A: As far as how to fill out paperwork?

Q: No, no, you got to have schooling, I guess. I'm talking about in terms of putting together a photographic lineup.

A: Well, sir, I fill out the request form. The identification section personnel put the lineup together.
Q: Okay, and you've got a pool of photographs there.
A: Yes, sir.
Q: And I think somewhere in the discovery it was given to me there was 4563 photographs in that computer pool.
A: At that time, yes, sir.
Q: At that time.
A: Yes, sir.
Q: All right, and do you have guidelines that you go by in putting together a photographic lineup?
A: Yes, sir.
Q: All right, and did you go by those guidelines in doing this one?
A: Yes, sir.
Q: And those guidelines require you to do what, Officer Rowe?
A: Well, they put in the photograph of the person that you want the photographic lineup made of as well as the fillers. The fillers are selected of people approximately the same age, height, weight, facial description, hair color, eye color.
Q: All right, now, do you use any other qualifications in selecting your fillers? Let me be more specific with you.
A: Okay.

Q: Isn't it -- well, first of all, do you not try to put together a photographic lineup that all of the individuals then including the fillers have the distinctive features that have been given by the eyewitnesses in a statement?
A: Well, that is one way to put a photographic lineup. This one was constructed based on the photograph of John Boyd Frazier.
Q: Okay.
A: So, his photograph was put in and then the technician compares other subjects to that photograph to look for similar photographs as the fillers.
Q: All right, all right, now, going back to your, do you receive any training, specific training in putting together photographic lineups, Mr. Rowe?
A: I have had training as an investigator in advanced investigations about photographic lineups. I don't put them together myself. My purpose of that training would be to view the photographic lineup and pass on its appropriateness.
Q: All right, so, okay, then your role was to pass on the appropriateness of this one.
A: Yes, sir.
Q: All right, and you did that and you -- so, but you are trained in what it takes, I guess, to make an appropriate photographic lineup.

A: Yes, sir.
Q: All right, and I go back to you again and say in that training do they not tell you that in order that it not be suggestive in nature that you use fillers with the distinctive features that were used in the description given of the individual seen?
A: That is one way to put a photographic lineup together.
Q: Well, I know you say it's one way, but is that not necessary to avoid suggestiveness?
A: This photographic lineup was constructed by five filler photographs that are similar to John Boyd Frazier. So, it wasn't based on descriptives ---
Q: And I understand that, and ---
A: --- from witnesses.
Q: --- I'm not arguing that with you, but I guess I'm pointing out maybe that's a flaw in the lineup. At the time you did this you didn't have any physical description to go by.
A: Correct.
Q: I wouldn't think.
A: A general description but no specifics.
Q: All right, what was the general description that you had?
A: Heavy set black male -- heavy set white male with dark clothing.

Q: All right, okay, but you didn't have any distinctive features such as eyes or forehead; did you?
A: Correct.
Q: All right, and so, when you put the photographic lineup together you didn't take into consideration that the fillers ought to have those distinctive features of white round eyes and a large forehead; did you?
A: I did not have the information, no, sir.
Q: All right, okay, how about the number of fillers? You had five fillers in this case. Do they not require you or is not -- let me rephrase that question. Are you not trained that it is a better practice to have at least seven fillers?
A: No, sir.
Q: It's not?
A: No, sir.
Q: You familiar with the North Carolina Actual Innocence Commission?
A: I am very familiar with that organization which began about 18 months ago, that now has our photographic lineup procedures under review and there is suggestions of changes. However, the suggested changes is actually eight photographs, not seven.
Q: Including the suspect.
A: Correct.

Q: So, that's seven fillers and the one suspect.
A: Correct.
Q: And the North Carolina Actual Innocence Commission has released a set of recommendations, lineup procedure recommendations and has asked various police departments in the State of North Carolina to adopt them; have they not?
A: As I said that organization has made suggestions and they're all under review, yes, sir.
Q: Well, I'm asking you specifically. Now, has not the Winston-Salem Police Department itself through its chief, Pat Norris, decided or published in the newspaper that they are going to adopt these procedures recommended by the North Carolina Actual Innocence Commission?
A: I'm not familiar with the newspaper. I don't read the paper a whole lot. I know that she has made suggestions that we look at the changes and I know that we're in the process of doing that. I know that nothing has changed in our department policy as of today.
Q: What's the difference between a sequential and a simultaneous lineup?
A: Well, a sequential lineup is where you hand photographs one at a time. Simultaneous is when you hand a series of photographs such as what's used in this photographic display today we're talking about.
Q: All right, and in this case we've got a simultaneous

lineup; right?
A: Yes, sir.
Q: Did you consider a sequential lineup?
A: Funny you should bring that point up. Twenty-four years ago when I started law enforcement that's how we did business. We handed photographs one at a time, and as the evolution of law enforcement and technology has come across we've changed over to the photographic lineup system which we have today. Now groups such as North Carolina Innocence Commission has pushed to change it. So, we're kind of going back to where we did things 20 years ago.
Q: Never should have changed to start with; should you?
A: Personally I don't see a problem with either way.
Q: Well, you would agree that the, that the research and the recommendations of the North Carolina Actual Innocence Commission are that a sequential lineup rather than a simultaneous lineup should be used. Would you agree with that?
A: I'm not sure if that's their procedures or suggestions or not.
Q: Well, let mark this for identification.
(Whereupon, Defense Exhibit Number 29 [North Carolina Actual Innocence Commission Recommendation] marked for identification.)
Q: And what I'll do I'm going to -- this is Defense

Exhibit Number 29 for identification. Let me direct you down to the bottom of the page where Section 2A ---

A: Uh-huh (affirmative response).

Q: --- if you would read that into the record.

MR. HUMPHRIES: And I'm not objecting to that.

THE COURT: It's -- is he a -- I mean, first of all let me ask him, is he familiar with the document?

MR. MARTIN: He's familiar with it.

THE COURT: Would you ask him? Let's get it on the record.

MR. MARTIN: I thought I had.

THE COURT: Have you?

MR. HUMPHRIES: Well, he testified that he wasn't familiar with that particular suggestion. I don't have any problem in the purposes of this hearing. I certainly would object before the jury under these circumstances.

THE COURT: All right, I'd like to know if he's familiar with that now that he's looked at it.

A: Your Honor, I have read various versions of the recommendations not only written by our department and suggestions and some other research. I have not read this particular document that I'm aware of.

Q: Well, and I don't want to belabor this but all I want

to establish is that that document you have in your hand is a report from the North Carolina Actual Innocence Commission, right or wrong?

A: It appears to be.

Q: And it has recommendations for eyewitness identification procedures that they recommend to be used to improve the reliability thereof.

A: It appears to be that. Like I said this is a recommendation.

Q: All right, and number one in there states that you ought to use sequential as opposed to simultaneous lineup presentation.

MR. HUMPHRIES: And I am going to object at this time. He's clearly unfamiliar with the document and to cross examine him and basically to publish that information which ultimately there will be an attempt to publish it to the jury through this witness is inappropriate and I would object, even for the purposes of this hearing at this time.

THE COURT: All right, he's indicated -- maybe without asking about that particular document he's indicated he's familiar with their studies. Let's ask him if he's familiar with that. I thought he had testified that he did understand they were going to sequential or that was something that ---

MR. MARTIN: Well, I did, too.

THE COURT: Okay, let's go there without the use of that particular document.
BY MR. MARTIN:
Q: Are you not aware that the recommendations of the Innocence Commission is to use sequential as opposed to simultaneous lineup presentation?
A: I'm aware that's their recommendation, yes, sir.
Q: All right, and also their recommendation that a double blind procedure be used, which was used apparently in this case.
A: A what?
Q: A double blind procedure, in other words ---
A: If you want me to review something there I can do that.
Q: Well, now, I'm not asking that. I'm just asking you if you know.
A: No, sir.
Q: You don't know that?
A: No, sir.
Q: You do know that they recommend a minimum of eight photographs be used in the photo lineup identification.
A: Yes, sir.
Q: That they recommend that witnesses should not Receive any feedback during or after the identification

process.

A: I'm not familiar with that statement.

MR. HUMPHRIES: Judge, I'm going to object to him cross examining him on that document.

THE COURT: Sustained.

MR. MARTIN: That's all the questions I have.

MR. HUMPHRIES: I don't have anything further. I do move at this time in limine to prevent Defense counsel and before this jury cross examining this witness with that particular document given the pretrial hearings he said he is not familiar with the document.

THE COURT: Anything from the Defense on that?

MR. MARTIN: Well, yes, ma'am.

Well, Judge, what I would think that I should be able to ask this witness about because this case is about, first of all, let me lay what I believe, I believe to be the premise. This case is about eyewitness identification. That is, that's it in a nutshell.

THE COURT: Uh-huh (affirmative response).

MR. MARTIN: Now, so, anything which touches on that I believe that the reliability of the Hobbses's identification to be relevant. The Winston-Salem Police Department prepared this photo lineup that was being used. He has testified, number one, that their protocol for that is under

study for change.

THE COURT: He's aware of that, yes.

MR. MARTIN: Yeah, he's aware of that, you know, yes, and I -- and the fact of the matter is, the fact of the matter is, that at least the Winston-Salem Police Department Chief Norris has made public statements to the media, the Winston-Salem Journal, that they are going to adopt these recommendations. Now, he don't know that. I'm not saying he knows that.

THE COURT: He doesn't know that.

MR. MARTIN: I'm not going to ask him about that.

THE COURT: Okay.

MR. MARTIN: Okay. I'm just wanting you to understand ---

THE COURT: Because you can call her if that's the case.

MR. MARTIN: Yeah, I don't want to call her, but it's a fact I want you to understand ---

THE COURT: Okay.

MR. MARTIN: --- the underlying premise of where I'm coming from.

THE COURT: Yes, sir.

MR. MARTIN: And I -- so, I think, number one, that it's relevant to ask him in front of the jury if the protocol with which they develop a photographic lineup is not under study