STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable J. Michelle Childs, Circuit Court Judge

ISRAEL WILDS, 274010,

RESPONDENT-APPELLANT,

v.

STATE OF SOUTH CAROLINA,

APPELLANT-PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) No. 99 GS 40 40142
99 GS 40 45289

STATE OF SOUTH CAROLINA)
)
)
)
versus) TRANSCRIPT OF RECORD
)
)
)
ISRAEL WILDS,)
)
Defendant.)

Columbia, South Carolina
March 26-29, 2001

B E F O R E :

HONORABLE MARC H. WESTBROOK, Judge, and a Jury

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

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(The within matter came before the Court on March 26, 2001)

THE COURT: Madam Solicitor, what's next?

MS. CAMPBELL: May it please the Court, Your Honor? The State calls The State versus Israel Wilds.

Indictments GS 40 45289 and 99 GS 40 40142. He's charged with the offenses of murder and armed robbery, and we're ready to go forward.

THE COURT: Mr. Strickler, is the Defendant ready to go forward?

MR. STRICKLER: Yes.

THE COURT: First, are there any pre-trial motions, Mr. Strickler?

MR. STRICKLER: Your Honor, nothing we have to take up prior to selecting a jury.

There are a few issues we need to talk about, but if we need to pick a jury we can go ahead with that.

THE COURT: Are there any motions related to picking a jury or any requested voir dire?

MR. STRICKLER: Coming to you, Judge. I've got the original to give to Madam Clerk and ask if she'd file it.

THE COURT: Madam Court Reporter, I'd ask you to mark that as a Court's Exhibit for purposes of the record.

MR. STRICKLER: Additionally, I have a potential witness list for the Defense, and I have supplied copies to the

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State.

MS. CAMPBELL: Thank you.

THE COURT: Does the State have any objections to the voir dire requests?

MS. CAMPBELL: I need a minute, Your Honor, since I just got them.

THE COURT: Sure.

MS. CAMPBELL: Your Honor, we have no problem with question number one as long as it's expanded to include they've been charged with a crime.

THE COURT: If they've been a victim or charged with a crime. All right.

MS. CAMPBELL: And on number two, we have no problem as long as we make it reciprocal in the Public Defender's Office.

THE COURT: I always do.

MS. CAMPBELL: I know you do, and I have no problems with number three, four -- testifying for the State in any criminal prosecution. I'd object to that one.

THE COURT: All right, I usually ask that, if they've testified in any way, for State or for Defense.

MS. CAMPBELL: That's fine, Your Honor, and also the next question, . .

THE COURT: What I normally do is ask if they have any feelings about guns that would cause them any problem giving both sides a fair trial.

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And I indicate pro or con -- for or against.

Okay, let's bring the jury.

(Jury panel brought into the Courtroom)

THE COURT: The State brings charges against Mr. Wilds by virtue of these indictments. The indictments are not evidentiary. They don't mean the Defendant has done anything wrong but they simply mean these are designed to give notice to the Defendant of the offenses with which he is charged.

As I told you, it's up to the State to prove the charges against the Defendant.

I will very briefly read to you from the indictments so you'll have an idea of the nature of the charges.

First is Indictment 99 GS 40 40142. It charges Mr. Wilds with armed robbery. It alleges that Israel Wilds did in Richland County on or about March 29, 1999, commit robbery by feloniously taking from the person or presence of Anthony Rumph, by means of force or intimidation, goods or moneys of Anthony Rumph, such goods or moneys described as U. S. currency, and that with the intent to deprive the owner permanently of such property, and doing so while armed with pistol, dirk, slingshot, metal knuckles, razor or other deadly weapon or by alleging by words or actions that he was armed, using a representation of a deadly weapon or any object which a perso might reasonably believe to be a deadly weapon.

Now, the other Indictment is 99 GS 40 45289. It charges

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the Defendant with murder. It alleges that Israel Wilds did in Richland County on or about March 29, 1999, feloniously, wilfully and with malice aforethought, kill one Anthony Rumph, by means of gunshot, and that the victim died as a proximate result thereof.

Now, again, I have some questions I'm going to ask you, and if any of these apply, please stand and we'll take care of your response at that point.

First of all, the State in this matter is represented by the Fifth Circuit Solicitor's Office. Has any member of the jury venire or your family ever had any relationship or any dealings with the Fifth Circuit Solicitor's Office, and that could be by working for them, working as a witness in a case, working as a victim, or in any fashion whatsoever?

Yes, what is your name, please?

JUROR: Rhett Anders.

THE COURT: All right, Mr. Anders. How have you dealt with the Solicitor's Office?

JUROR: My uncle was Fifth Circuit Solicitor for many, many years.

THE COURT: Is that Jim Anders?

JUROR: Yes, sir.

THE COURT: And I gather you dealt with him, but have you dealt with the Solicitor's Office since that time?

JUROR: No, sir.

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THE COURT: Okay. Would that affect your ability to give both sides a fair trial?

JUROR: No.

THE COURT: All right. Thank you, sir. Anyone else? Yes, sir?

JUROR: Billy Chestnut. A witness.

THE COURT: Currently or in the past?

JUROR: Currently.

THE COURT: For Defense or the State?

JUROR: The State.

THE COURT: All right. Would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

THE COURT: Anyone else?

Yes, maam? Go ahead and stand, whoever. You don't have to do it one at a time. Anyone else with an answer, go ahead and stand.

Your name, please, maam?

JUROR: Ivery Jackson. I'm a victim in a case.

THE COURT: In this circuit here in Columbia?

JUROR: It is.

THE COURT: Would that affect your ability to give both sides a fair trial in this case?

JUROR: No.

THE COURT: Thank you. Yes, maam?

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JUROR: Marion Cannon, and I was a victim.

THE COURT: And would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

THE COURT: Thank you, maam. Anyone else?

(No response)

For the Fifth Circuit Solicitor's Office, trying the case, will be Assistant Solicitors Luck Campbell and Knox McMahon. Both of you stand.

Does any member of the jury venire know or know of Ms. Campbell or Mr. McMahon?

(No response)

Now, the Defendant is Mr. Wilds. This is Mr. WIlds right here. Let me ask you to stand.

Does anyone know or know of Mr. Wilds?

(No response)

Thank you. Mr. Wilds is represented by Mr. Doug Strickle Does anyone know or know of Mr. Strickler?

(No response)

Mr. Strickler is with the Richland County Public Defender's Office. Has any member of the jury venire or any member of your family ever had any dealings in any way with the Richland County Public Defender's Office, and that could be as a witness, working for them or working with them -- any way or any fashion?

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Yes, maam, what is your name?

JUROR: My name is Deann Reed. I work for Pat Geola, walking her dog.

THE COURT: Okay, would that affect your ability to give both sides a fair trial?

JUROR: No.

THE COURT: Anyone else?

Yes, maam, what is your name?

JUROR: Mary Joanne Cavanaugh. I'm personal friends with Jeff Bloom who previously worked with the Public Defender's Office.

THE COURT: Okay, and would that affect your ability to give both sides a fair trial?

JUROR: No, it wouldn't.

THE COURT: All right, thank you. Anyone else?

(No response)

All right. Now, did any member of the jury venire know or know of Mr. Anthony Rumph -- spelled R U M P H? Did anyone know or know of Mr. Anthony Rumph?

(No response)

Ladies and gentlemen, the following people may be witnesses in this case. I have a number of names to call, and I'll call them one at a time.

As I call the names, if you recognize the name or know or know of the person, let me ask you if you would stand and

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so indicate.

If any of these are in the Courtroom, let them stand, and if the witness is not in the Courtroom at this time don't be concerned. They don't have to be.

For your convenience, we'll have them stand and face you if they are here.

First of all, Ms. Carisa Bryant, spelled C A R I S A. Carisa Bryant.

Anyone know of know of Ms. Bryant?

(No response)

Joseph Dante Dungee, spelled D U N G E E.

Nate English.

All right. Ricky Gainey, G A I N E Y.

Jonathan Green.

Larry Grooms.

Charity Holland.

Ivan Holly, spelled H O L L Y.

Marcus Jacobs.

David Johnson.

Shelly Johnson.

Timothy Myers.

Theta Odom -- Theta spelled T H E T A. Theta Odom.

Shonda Rumph. This is Ms. Rumph here. Does anyone know or know of Ms. Rumph?

(No response)

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Spmua Rumph, spelled S P M U A.

Isom Simmons. Isom spelled I S O M.

Kaye Thomas.

Ms. Tina Scott, who is custodian of records for Wendy's.

All right. Also testifying, members of the Columbia Police Department will be Investigator Gertrude Burns. This is Investigator Burns. Anyone know or know of Investigator Burns?

(No response)

Sergeant D. R. Catoe.

Officer Jon Hunley. This is Officer Hunley.

Joanne Lewis.

Investigator Paul Mead, spelled M E A D.

Reginald Stephens.

Detra Turner. Detra spelled D E T R A.

Mark Vinson. V I N S O N.

Investigator Mitch Wilkerson.

Yes, sir, your name, please?

JUROR: I've been retired for about six years, but for 31 years I worked in communications so I know most all the police officers and investigators.

THE COURT: What is your name?

JUROR: Mayo Sarvis.

THE COURT: All right, Mr. Sarvis. Would that affect your ability to give both sides a fair trial in this case?

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JUROR: No, it wouldn't.

THE COURT: Thank you, sir. Does anyone recognize any of the names we've called?

(No response)

THE COURT: All right. Phil Young, also with the Columbia Police Department.

To this point, anyone recognize any of these names in any way?

(No response)

All right, from the Palmetto Richland Memorial Hospital, Dr. Peter Zvejnicks -- I don't know how -- it's spelled Z V E J N I C K S.

Yes, maam? Do you know if that's the right pronunciation?

JUROR: No, I don't know really the right one.

THE COURT: What's your name?

JUROR: I'm Jackie Sterling. He's a client of mine.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No.

THE COURT: Does anyone else know the Doctor?

(No response)

Also, from the South Carolina Law Enforcement Division, sometimes referred to as SLED, Agent Gray Amick.

If you know any of these just stand as you hear the name

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please.

Agent John Barron.

Lori Corley.

Agent Steve Derrick.

Dana Fowler.

Agent Lisa Kizer.

Denise Merritt.

Kristen Montgomery.

H. J. Ritter, spelled R I T T E R.

Betty Walker.

Again, does anyone feel like he may know or know of any of these persons or recognize any of these names?

(No response)

Also Linda Frederick.

Herbert Davis.

Antonio Terrell Frederick.

Valencia Williams of Sumter.

Ron Domlick, spelled D O M L I C K, of Orangeburg.

Anthony Pepper.

Antoinette Sutton, spelled S U T T O N.

Nicole Perry.

Reverend Julius Sistrunk.

Those are all the potential witnesses. Again, that doesn't mean all of these witnesses will testify -- potential

Anyone again who thinks you may know or know of any of

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any of these persons or recognize the names?

(No response)

Now, any member of the jury venire or member of your family ever been a victim or a witness to a crime of violence or to an incident in which a weapon was involved?

What's your name?

JUROR: Stepro. As a first sergeant in the Air Force, I have been around violence.

THE COURT: Would that affect your ability to give both sides a fair trial in this case?

JUROR: No, sir.

THE COURT: Yes, sir?

JUROR: My name is Benny Newton. My father and mother were shot in Georgia.

THE COURT: How long ago was that?

JUROR: It's been a good many years.

THE COURT: Would that affect your ability to give both sides a fair trial in this case?

JUROR: No, sir.

THE COURT: Yes, sir?

JUROR: Billy Chestnut. I was a witness.

THE COURT: Would that affect your ability to give the State and Defense a fair trial?

JUROR: No, I don't think so.

THE COURT: Thank you. Yes, sir?

JUROR: Marion Cannon. My husband was a violence victi
years ago.

THE COURT: All right, and would that affect your abilit
to give both sides a fair trial?

JUROR: No.

THE COURT: Anyone else?

(No response)

THE COURT: Has any member of the jury venire or any
member of your family ever been a Defendant or charged with
a crime of violence or incident in which a weapon was involv
All right, your name, sir?

JUROR: Benton Brown. My cousin was charged with rob-
bery.

THE COURT: How long ago was that?

JUROR: I believe the case is pending on him.

THE COURT: Okay, is he being prosecuted here in Columb

JUROR: I'm not sure.

THE COURT: You're not sure what city it was in?

JUROR: It was in Columbia, but it is in Magis-
trate's Court, I believe.

THE COURT: Would that affect your ability to give both
sides a fair trial in this case?

JUROR: No, sir.

THE COURT: Thank you. Anyone else -- either you or a
family member ever been charged with a violent crime or a

crime involving a weapon?

(No response)

All right, is there any member of the jury venire or a member of your family ever been employed by any local, state or federal prosecutor's office, and, of course, that could be the Solicitor's Office, the Attorney General, the United States Attorney, or any prosecutor's office in any way?

What is your name, sir?

JUROR: Daniel Davis. I'm second cousin to Dan McIntosh, an Attorney General.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No.

THE COURT: Yes, maam?

JUROR: I'm Angela Barden, and I worked for the Attorney General's Library for a short while.

THE COURT: Would that affect your ability to give both side a fair trial?

JUROR: No.

THE COURT: Thank you, maam. Anyone else?

(No response)

ALl right, has any member of the jury venire or member of your family ever been employed by any Public Defender Office?

(No response)

Has any member of the jury venire or any member of your family ever been employed by any law enforcement agency?

Mr. Brown?

JUROR: Yes, sir. I worked in law enforcement.

THE COURT: You do now?

JUROR: No, this past summer.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

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

JUROR: My name is Carol Meyer, and my husband is a sergeant in investigations with the Columbia Police Department.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

THE COURT: Thank you. Mr. Anders?

JUROR: Rhett Anders, and my uncle is an investigator at SLED.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

THE COURT: Yes, sir.

JUROR: Esterline. My sister and brother in law are

both in law enforcement.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No, it wouldn't.

THE COURT: Thank you. Yes, maam?

JUROR: I'm Jacquelyn Shuler. I have an uncle who worked for the County Police Department, and a cousin who worked for the Barnwell Police Department.

THE COURT: All right, maam. Would that affect your ability to give both sides a fair trial?

JUROR: No, it would not.

THE COURT: Thank you. Yes, maam?

JUROR: Marion Cannon. My son and daughter are County Sheriff's Deputies.

THE COURT: Would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

** SEE ATTACHMENT

THE COURT: Thank you. Any member of the jury venire ever testified for the State or Defense in a criminal trial? Ever testified in a criminal trial, whether it was for the State or Defense?

All right. What's your name, please?

JUROR: Carol Meyer. I was a nurse in the emergency room, and I've testified in rape cases, child abuse cases.

THE COURT: You work for who now?

** NOTE: Reporter log lists power failure and the following portion of voir dire by the Court left off her tape:

THE COURT: Thank you. Yes, sir?

JUROR: Jerry McLeod. I have several cousins involved in law enforcement in Richland County.

THE COURT: Again, would that affect your ability to give both sides a fair trial?

JUROR: No, sir.

THE COURT: Thank you, sir.

Again, anyone else? Either you or a family member ever been employed by a law enforcement agency?

(No response)

Now, has any member of the jury venire or any member of your family been a member of or contributed to any organization which has as its primary purpose the support of law enforcement or victim's rights,and this would be a group -- as an example of these groups, Mothers Against Drunk Drivers, MAD Students Against Drunk Drivers, SADD, or CAVE, Citizens Agains Violent Crimes, or any such group?

Been a member of or contributed to such group?

(No response)

JUROR: Right now I work for the South Carolina Heart Association.

THE COURT: You did . .

JUROR: That was several years ago.

THE COURT: What organization were you with?

JUROR: Spartanburg Hospital.

THE COURT: And would that affect your ability to give both sides a fair trial in this case?

JUROR: No, sir.

THE COURT: Thank you. Yes, maam?

JUROR: Marion Cannon. My truck was stolen and I had to testify in that case.

THE COURT: And would that affect your ability to give both side a fair trial?

JUROR: No, sir.

THE COURT: Thank you. Anyone else?

(No response)

All right. Now, does any member of the jury venire have such strong feelings about guns or the use or possession of guns, whether for or against them, that it would affect your ability to give both sides a fair trial?

(No response)

All right, does any member of the jury venire know of any -- let me mention this. I read to you a moment ago a description of the charges in this case, again alleging an

alleged armed robbery and murder on March 29, 1999.

Has any member of the jury panel heard anything about this case or do you know anything about the case?

(No response)

All right, does any member of the jury venire know of any other reason why you could not give both sides a fair trial?

(No response)

All right, any further requests from the State?

MS. CAMPBELL: No, Your Honor.

THE COURT: From the Defense?

MR. McMAHON: No, Your Honor.

THE COURT: Ladies and gentlemen at this time, we will proceed with drawing a jury. The Clerk will go through the process with you, and she will treat you kindly and gently and tell you what you need to do.

Madam Clerk?

CLERK: Ladies and gentlemen, as I call your names, please approach the microphone at the center of the Courtroom.

(Whereupon, a jury was selected and struck as follows:

Number 65, Terri Carree, seated.

Number 242, Arvil Mitchell, seated.

Number 63, Marion Cannon, struck by Defense.

Number 87, Daniel Davis, struck by State.

Number 51, Benton Brown, struck by Defense.

Number 106, Bobby Duggan, seated.

Number 239, Joyce Miller, seated.

Number 196, Alva Kelly, seated.

Number 358, Andrew Todd, seated.

Number 114, Holly Easterline, struck by Defense.

Number 235, Carol Meyer, struck by Defense.

Number 190, Juanita Jones, seated.

Number 322, Jacquelyn Shuler, excused by Defense.

Number 5, Elizabeth Akers, seated.

Number 285, Deann Reed, seated.

Number 231, Jerome McLeod, struck by Defense.

Number 80, Michael Corbin, struck by State.

Number 352, Anechia Taste, seated.

Number 175, Ivery Jackson, struck by Defense.

Number 23, Angela Barden, seated.

Number 256, Benny Newton, struck by Defense.

Number 170, Katishea Hutto, struck by State.

Number 14, Rhett Anders, struck by Defense.

Number 82, Ronnie Corn, seated.

(Alternates were seated, Anne Wells and R. C. Davies. See reporter's strike sheet attached.)

THE COURT: Ladies and gentlemen of the jury panel, I'm going to let you go ahead and take a lunch break at this time. I'll ask you to be back at three o'clock, which is a couple of hours.

The reason is, I have some matters to take up with the

Jury Panel (1)

		S	D	
65	B/F -	P	P	✓
242	B/F -	P	P	✓
63	B/F -	P	E	
81	W/m -	E		
51	B/m -	P	E	
106	W/m -	P	P	✓
259	W/F -	P	P	✓
196	W/m -	P	P	✓
358	W/m -	P	P	✓
114	W/m -	P	E	
235	W/F -	P	E	
196	B/F -	P	P	✓
322	B/F -	P	E	
5	W/F -	P	P	✓
285	W/F -	P	P	✓
231	W/m -	P	E	✓
80	B/m -	~~E~~	~~E~~	
352	B/F -	P	P	✓
175	B/F -	P	E	
23	W/F -	P	P	✓
256	W/m -	P	E	
170	B/F -	E		

		S	D	
14	w/m -	P	E	
82	w/m -	P	P	✓

Alternates

312	w/F -	P	P	✓
321	B/F -	P	E	
70	w/F -	E		
339	w/m -	P	E	
86	w/m -	P	P	✓

attorneys that will take a little while, and we'll do that during your lunch break. I don't want you to have to be back earlier and be sitting in there waiting for us.

I'll ask you to be back at three o'clock. The bailiffs will take you back in the jury room to show you where it is, and that's where you'll report when you come back.

Now, it's very, very important that you not talk about this case with anybody and don't let anybody talk about the case with you.

I don't anticipate that will happen, but if you want to go to lunch with each other you can, or if you have someone to go to lunch with, that's fine. Certainly it's all right to tell them what you're doing, but don't go into any details about this case or any case even similar to it.

It's very important that you not do that.

With that in mind, step to the jury room and the bailiff will show you where it. You can go on to lunch from there and be back at three

(Jury excused from Courtroom at 1:08 P.M.)

(Balance of panel excused)

THE COURT: Counsel, you want to come back at two thirty and take up your motions?

MR. McMAHON: Yes, sir.

THE COURT: I'll see you back here.

(Court stood in recess until 2:49 P.M.)

THE COURT: All right, let's take up the motions.

MR. McMAHON: Your Honor, I don't believe we have any motions, but there is a Jackson v. Denno, I assume.

MR. STRICKLER: That's the only thing I have noted or one of the things I have noted.

Well, I see -- if you don't have anything, I'll go ahead.

MR. McMAHON: Sure.

MR. STRICKLER: I see a photographic lineup in the discovery material which I received.

MR. McMAHON: That was not shown to anybody.

MR. STRICKLER: The next thing I have is that I filed for discovery in this case and received discovery obviously in this case.

I have responded with a notice of alibi in this case, and just want to go ahead and renew my discovery motions at this point.

All parties involved realize it's an ongoing process.

THE COURT: Mr. Solicitor, is there anything else that has come in since you have given the last information to the defense counsel?

MR. McMAHON: No, Your Honor. I discussed one matter briefly with him, that I don't think is relevant. I think he also concluded it was not relevant.

So we have turned over all items, with the exception

that I have not shown Mr. Strickler yet the wallet because it was still in the safe. There was money involved.

He's seen photographs of it. As soon as it gets here, and obviously before we offer it into evidence, we will show that to Mr. Strickler.

THE COURT: Okay.

MR. STRICKLER: That's fine. Thank you. My understanding is that Mr. Isom Simmons and Mr. Joseph Dungee are Co-defendants in this matter. It's my understanding the State intends to go ahead and offer their testimony.

I just ask whether there has been -- one, what they are charged with at this point, and, two, whether there has been any discussion with them, any deals offered, any under the table deals offered, anything of that nature that I can go into on cross examination of them.

THE COURT: All right, Solicitor.

MR. McMAHON: Your Honor, both of the individuals were charged with, and still are charged with, murder and armed robbery.

Both of them are juveniles, Mr. Dungee and Mr. Simmons, and there have not been any plea agreements or deals whatsoever. Mr. Dungee was waived up from Family Court.

Obviously, they are testifying on behalf of the State. Mr. Simmons -- we attempted to waive Simmons up but he was not waived up.

We have told them when testifying on behalf of the State to testify to the truth, and they have given a prior statement during the course of the investigation. I think one of them on July 7th -- April 7th and April 8th of 1999.

Their testimony generally would be substantially consistent with the statements given. As I say, at this time, there has been no deal whatsoever made.

Mr. Simmons is represented by Catherine Hudgins, and Mr. Dungee is represented by Jimmy Rogers.

All right, anything else on that?

MR. STRICKLER: No, sir. Again, in that same regard, however -- we have had discussions informally with the Solicitor, and if they have any knowledge as to any prior record on the part of either of these individuals, we would request it for purposes of impeachment.

MS. CAMPBELL: Your Honor, Mr. Simmons has absolutely no prior record. As far as Mr. Dungee goes, I know he's got a failure to stop on police command and a simple assault and battery.

Your Honor, both of these would be in municipal court, and this would be for impeachment purposes.

I believe he's got a copy of the entire criminal history or criminal record of Mr. Dungee.

That's the extent of his prior record that I know of.

THE COURT: Any other motions?

MR. STRICKLER: No, sir. I think we have the alleged statements and that's it.

THE COURT: Anything else from the State?

MR. McMAHON: No, Your Honor.

THE COURT: Counsel, we've got ten minutes before the jury is supposed to be here. Do you want to go ahead and try to get started?

MR. STRICKLER: What are you going to do about the statements?

THE COURT: You want a Jackson-Denno hearing?

MR. STRICKLER: Yes, sir.

THE COURT: Let's convene the Jackson v. Denno hearing then.

MR. McMAHON: Yes, Your Honor. Detective Burns.

GERTRUDE BURNS, being duly sworn, testified as follows, out of the presence of the jury:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Maam, by whom are you employed?

A. City of Columbia.

Q. In what capacity?

A. Columbia Police Department.

Q. Have long have you been with the Columbia Police Department?

A. About 20 years.

Q. Now, as part of your duties and responsibilities, did you respond to a location in the 5000 block of Rhett Street on March 29, 1999?
A. Yes, I did.
Q. And did you determine at that location that there had been a victim of an assault or shooting and an armed robbery?
A. Yes, I did.
Q. Did you identify the victim as Mr. Anthony Rumph?
A. Yes, sir.
Q. Did you, Detective Burns, remain involved as chief investigating officer on this incident on into the 30th or 31st or March and into the first week or two of April of 1999?
A. Yes, I did.
Q. As part of your follow-up investigation, did you interview an individual, one Timothy Myers?
A. Yes, sir, I did.
Q. And do you recall when Mr. Myers resided?
A. He lived at 4916 Forest Avenue.
Q. And would that be within a block or two of the 5000 block of Rhett Avenue?
A. Yes, it is.
Q. And why did you interview Mr. Myers?
A. During my investigation, there was two stores that were close to that area of the robbery, and we at that time obtained a videotape off the stores.

During the investigation, while viewing the videotape, we observed the victim on that videotape, along with Timothy Myers and several other individuals at the time, at C.J.'s.

Q. And so they were in the particular store during the same period of time as Mr. Myers and the victim?

A. Correct.

Q. Now, as a result of interviewing Mr. Myers, did he point out to you or identify for you another individual who lived in that particular area?

A. Yes, he did.

Q. And who was that?

A. Isom Simmons.

Q. And do you recall where Mr. Simmons lived?

A. Yes, sir. He lived at 1315 Clarendon Street, Columbia, South Carolina.

Q. And Clarendon Street runs directly off the 5000 block of Main Street, right at C.J.'s?

A. Correct.

Q. Clarendon Avenue would be the road directly behind C.J.'s that runs parallel to Main Street?

A. Right.

Q. On April 7th of 1999, did you have an opportunity to be in the presence of Mr. Simmons?

A. I did.

Q. And did you advise Mr. Simmons of his constitutional

rights?
A. Yes, I did.
Q. And did he appear to understand his rights, and did he waive those rights?
A. He did.
Q. Mr. Simmons is or was a juvenile at the time?
A. Correct.
Q. And is he a Co-defendant in this particular case?
A. He is.
Q. What is he charged with?
A. He's charged with murder and armed robbery.
Q. Now, did he give you a statement after being advised of his rights and after waiving his rights as to his involvement in the incident concerning Mr. Rumph?
A. Yes, he did.
Q. And at the time of April 7, 1999, had Mr. Rumph expired or was he still living?
A. He was still living at the time.
Q. As a matter of fact, do you recall approximately when it was that Mr. Rumph expired as a result of these injuries?
A. I believe it was July 6.
Q. Of '99?
A. Correct.
Q. So he lived from April, May, June, the first of July, is that correct?

A. That's correct.

Q. Now, as a result of Mr. Simmons giving you a statement, concerning his involvement, did he indicate whether or not others were involved along with him?

A. Yes, he did.

Q. And what others were involved along with him, according to Mr. Simmons?

A. He gave the name of an individual by the name of Antwan and also an individual by the name of Joseph Dungee.

Q. Did he agree to show you where either Antwan lived and Joseph Dungee lived?

A. Yes, he told us where Antwan lived at.

Q. And that would be 1101 Carella Avenue?

A. Correct.

Q. And, again, would that be approximately a block from C.J.'s?

A. Yes, about a block.

Q. As a result of this statement given to you by Mr. Simmons, what, if anything, did you procure concerning that 1101 Carella Avenue address?

A. We obtained a searched warranted based on information obtained from Isom Simmons.

Q. I want to show you a document and ask if you can identify it for us, please?

A. Yes, this is a copy of the search warrant that we

obtained?

Q. Is that the search warrant you did for Israel Antwan Wilds' address a 1101 Carella Avenue?

A. Correct.

Q. And what is the date of that?

A. April 7, 1999.

MR. McMAHON: Your Honor, I would offer this as a Court's exhibit.

MR. STRICKLER: Without objection, Your Honor.

(Search warrant marked Court's Exhibit 2 for identification)

BY MR. McMAHON:

Q. I'm going to hand you up a copy of Court's Exhibit Number 2 and ask you several questions about that. You secured that on 4 7 99?

A. Correct.

Q. Would that have been after the statement that was given to you by Isom Simmons?

A. Correct.

Q. And did you also execute that search warrant on 4 7 99?

A. Yes, I did.

Q. At approximately what time?

A. At approximately 7:20 P.M.

Q. And you were present during the execution of that search warrant?

A. Yes, I was.

Q. And were there any items taken as a result of the execution of the search warrant?

A. Yes.

Q. What were those items?

A. One pair of Air Force tennis shoes, one brown jacket and one beige sweater and one identification card in the name of Israel Antwan Wildman.

Q. Now, was Mr. Wilds present during the execution of that search warrant?

Mr. Wilds, the Defendant in this case.

A. Yes, he was.

Q. And was he placed under arrest for any charges at that time?

A. Yes, he was. After speaking with Johnny Gaston, he was arrested at that time.

Q. And how did you have a conversation with Deputy Solicitor Gaston?

A. I had a phone in my car, and I called him and told him about the statements that we had obtained and told him about the search warrant we had obtained.

Q. And as a result of that phone conversation, you placed Antwan Wilds, the Defendant, under arrest for assault and battery with intent to kill?

A. That's correct, and armed robbery.

Q. And from there where was he brought to?
A. He was transported to our headquarters.
Q. And that's at 1409 Lincoln Street?
A. Correct.
Q. Where specifically was he taken to at 1409 Lincoln Street?
A. He was taken to investigations.
Q. What, if anything, did you advise him of?
A. I at that time advised him of his Miranda Rights.
Q. What type of setting was this taking place in?
A. An office that we interview people in, when posible.
Q. Were there any other officer or officers present during this time?
A. Outside of the room, but I was the only one inside.
Q. I want to show you a document and ask if you can identify for it for us?
A. Yes.
Q. What is that?
A. A copy of the advisement of rights form.
Q. And that's the advisement of rights you read to him on 4 7 99?
A. Right.
Q. Approximately what time?
A. Approximately 8:40 P.M.
MR. McMAHON: Your Honor, I'd offer this as a Court's Exhibit.

(Advisement of rights form marked Court's Exhibit 3)

BY MR. McMAHON:

Q. What specifically did you advise him of, Detective Burns?

A. I read him his rights from this sheet of paper.

Q. Specifically, would you read that to the Court in the manner in which you read it to the Defendant that evening?

A. Yes, sir. Before we ask you any questions, you must understand your rights.

You have the right to remain silent. Anything you say can be used against you in a Court of Law.

You have the right to a lawyer for advice before we ask you any questions and to have him with you during questions. If you cannot afford a lawyer, one will be appointed for you. before any questions if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.

You also have the right to stop answering at any time and talk to a lawyer.

And then, I have read this statement of my rights, and I understand what my rights are.

I am willing to make a statement or answer questions. I do not want a lawyer at this time. I understand and know what I am doing.

No promises or threats have been made to me, and no

pressure or coercion of any kind.

Q. On each and every one of those rights that you read, did you read those to the Defendant on that evening of 4 7 of 99?

A. Yes, I did.

Q. What was his demeanor. Describe that for us, please.

A. He was calm, relaxed. I told him I had to advise him of his rights, and he said that was okay, and I also told him -- he at that time stated that he was not going to sign anything but he was willing to talk to me.

I explained to him at that time that I would have to witness or put my name beside the right and I signed it, but he refused to.

Q. Did he appear to understand his rights?

A. Yes, he did.

Q. Did he ever tell you, I don't want to answer any questions; I want to remain silent?

A. No, he did not.

Q. Did he ask for an attorney?

A. No, he didn't.

Q. Did he at any time ask you any questions or tell you, I want you to stop questioning me; I don't want to talk to you further?

A. No, sir.

Q. Did he understand -- from your observations of him that

evening, Detective Burns, did he appear to know and understand what his rights were?

A. Yes, he did.

Q. Did he have any questions about them?

A. No.

Q. Now, as far as his waiver of rights, did his waiver of rights appear to be knowing and intelligently given?

A. Yes, it was.

Q. Did it appear to be a product of his free will to waive his rights and agree to talk with you?

A. Yes.

Q. Matter of fact, did you tell him he had to sign his waiver of rights?

A. No, I didn't.

Q. Explain that for us again where it says signing refused?

A. I explained his rights and let him know as I explained the rights to him that I would sign my name and he said he would not sign his rights. I said I would write he refused.

Q. So he had no objection to talking with you. He just wasn't going to put his name down in writing?

A. Yes. He was willing to talk to me but he said he would not sign anything.

Q. Whatever statements he gave, Detective Burns, were they given by him freely and voluntarily?

A. Yes, they were.

Q. Were they given in return for any promises you made to him for leniency or hope of reward?

A. No, sir.

Q. Did you threaten or coerce him or abuse him in any manner?

A. No, I did not.

Q. Not at all?

A. Not at all.

Q. Thereafter, you witnessed his verbal waiver of rights?

A. That's right.

Q. That was his decision?

A. Correct.

Q. He didn't want to remain silent. He did agree to talk with you, but didn't want to sign his name?

A. Right.

Q. Thereafter, what was the conversation that you had with the Defendant?

A. I told him what he was being charged with, and I asked him did he know anybody named Isom Simmons. He at that time said he didn't know anybody by that name.

Q. Isom Simmons was the individual you had taken a statement from earlier on August 7, 1999, prior to getting a search warrant for the Defendant's residence?

A. That's correct.

Q. Now, as part of your investigation, you understood that

Isom knew Antwan?

A. That's correct.

Q. And vice versa? Antwan knew Isom?

A. Correct.

Q. Now, after that, did you all have any further conversation?

A. I asked him did he own any gun, and he replied that he didn't own any gun. Then he changed and said that he did own a gun, a shotgun, a 38 and a nine milimeter.

Q. And what other statements, if any, did he make?

A. I also asked him if he didn't know Isom, and he replied that he did know Isom; that he calls me Cousin.

Q. Additionally, the writing on the lower right hand side of Court's Exhibit Number 3, it was signed and refused -- it looks like six lines.

That would be your writing, Detective Burns?

A. That's correct.

Q. And also, I want to show you one further document and ask if you can identify this document for us, please?

A. Yes, sir.

Q. And that appears to be a copy of my case file.

Q. And that appears to be a copy of page ten of your case notes?

A. That's right.

Q. Additionally, was that concerning the advisement of

rights you gave to the Defendant, on 4 7 99, and as well whatever statements he made to you?

A. Correct.

Q. Would you read that for the Court, please?

A. Okay. After advisement of rights, he stated he didn't know anyone named Isom. Then stated he knows him.

States he never owned a gun, and then he bragged about having a shotgun, a 38 and a nine milimeter.

Also states that Isom calls him Cousin.

Q. And that's your notes as concerning the same conversation in addition to what you put on the rights form, is that correct?

A. That's correct.

Q. That's all I have.

THE COURT: Mr. Strickler?

CROSS EXAMINATION, out of the presence of the jury

BY MR. STRICKLER:

Q. Good afternoon, Investigator Burns.

A. Good afternoon.

Q. How long did you speak with Mr. Wilds prior to him making these verbal statements to you?

A. Probably fifteen or twenty minutes.

Q. Prior to arresting Mr. Wilds, who had identified him as the individual that was involved in this?

A. Isom Simmons.

Q. Did Isom Simmons ID him?

A. He told us where he lived at and we went to the house and asked for Antwan, and they told us there's Antwan. The people inside the house.

Q. Had Mr. Simmons been shown a photographic lineup of Mr. Wilds ?

A. No, sir.

Q. Mr. Simmons had not been present at the time you searched for the Defendant?

A. No.

Q. So he did not make any type of show-up of Mr. Wilds as being the person that he called Antwan?

A. No.

Q. And at that point in time-- you said this was on the 7th, is that correct?

A. Right.

Q. Mr. Simmons had Id'd the other Co-defendant?

A. Right.

Q. Had he been arrested at that time?

A. No.

Q. Now, what precisely are you alleging that Mr. Wilds said?

A. I asked him about knowing Isom Simmons, and he stated he didn't know Isom.

Q. Okay.

A. I asked him if Isom called him Cousin, and he said that he did know Isom; that Isom does call him Cousin.

I asked him about owning a gun, and he first stated he didn't own a gun, and then he said he owned a shotgun, a 38 and a nine milimeter.

Q. I take it at the time you conducted the search of Mr. Wilds' residence that you didn't discover a shotgun or 38 or nine milimeter?

A. No, sir.

Q. Indeed, if I remember the language of the search warrant, the search warrant was specifically for a 22 caliber weapon. Is that correct?

A. That's correct.

Q. And you didn't recover a 22 caliber weapon?

A. No.

Q. All right. You indicated it was 8:40 in the evening, 2040, is that correct? Twenty forty at night?

A. The search warrant?

Q. No, the time of the statement, 8:40 in the evening?

A. Correct.

Q. Okay, and that's the number you wrote down when you stopped doing the advice of rights?

A. Correct.

Q. When did you terminate the interview with Mr. Wilds?

A. Probably fifteen or twenty minutes after that.

Q. And how did the interview end? What brought about there being no further questioning?

A. He didn't want to talk to us.

Q. He didn't want to talk to you?

A. No.

Q. What did he tell you to indicate he didn't want to talk to you?

A. He had nothing else to say.

Q. At any point during the process of conducting this interrogation of Mr. Wilds, did any other officers come into the room during the process?

A. I think Sergeant Wilkerson walked in, but I know the shoes he was wearing I had Young and Investigator Mead come in and look at the shoes.

They had looked at the shoes that Isom had been wearing.

Q. You remember at what point in the interview process that occurred?

A. The interview was over then.

Q. So from the time you started the advisement of rights until the interview itself was ended, no one came in the room during that time? No other officer came in?

A. No, sir.

Q. Thank you.

THE COURT: Anything else?

MR. McMAHON: No, Your Honor.

THE COURT: Step down. Thank you, maam.

(Witness excused from stand)

MR. McMAHON: We have no other witnesses on this issue, Your Honor.

THE COURT: Anything from the Defense?

MR. STRICKLER: Yes, sir. Mr. Wilds would like to testify, Your Honor.

THE COURT: All right.

ISRAEL WILDS, being duly sworn, testified as follows, out of the presence of the jury:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q. Do you remember the events that you just heard her testify about, surrounding your arrest on this charge?

A. I remember the arrest.

Q. Subsequent to your arrest on this charge, where were you taken?

A. To the police station.

Q. Did you ever have occasion to speak with Investigator Burns?

A. Yes, I did.

Q. Where was that?

A. At the police station in the room.

Q. Was there anyone else in the room at that time other than her and you?

A. Another guy came in. A white gentleman.

Q. Was he there all the time you were there or did he just drop in and go back out?

A. He was there for about -- I would say the majority of the time.

Q. Did Investigator Burns advise you of your rights?

A. No, she didn't.

Q. Did she question you at all?

A. Yes, she did.

Q. Okay. Do you remember what the questions involved?

A. She asked me did I know Isom Simmons, and I replied I do. She asked me had I ever shot a pistol before, and I said, no, I haven't. I have shot a shotgun before when I went to Boy Scout camp.

Q. All right.

A. And she asked me, did Isom call me Cousin, and I said no.

Q. You replied no?

A. Yes, sir.

Q. Were there any other questions?

A. No, sir.

Q. Were you ever advised of your rights by Ms. Burns?

A. No, sir.

Q. About how long were you in that room with Investigator Burns?

A. Fifteen to 25 minutes.
Q. Do you remember any other questions being asked of you?
A. She asked me did I want to write a statement, and I told her I did not need to write a statement.
Q. Yes, sir.
A. I told her I didn't need to write a statement.
Q. While you were in there, did Ms. Burns make any promises to you?
A. No, sir.
Q. Did she make any threats to you?
A. No, sir.
Q. Did she physically abuse you at all?
A. No, sir.
Q. But she did not advise you of your rights?
A. Exactly.
Q. Thank you.

THE COURT: Any questions?

CROSS EXAMINATION, out of the presence of the jury

BY MR. McMAHON:

Q. From what I understand, what you gave to Detective Burns was voluntary?
A. Would you repeat that? I didn't hear the first part of the question.
Q. Whatever statements you gave to Detective Burns, you gave them voluntarily

A. Yes, sir.
Q. She did not coerce any comments or statements out of you?
A. No, sir.
Q. All of the statements you made, whatever they were, about Isom and about a gun, were stated by you to Detective Burns freely and voluntarily?
A. Yes, sir.
Q. All right. She did not threaten you in any way?
A. No, sir.
Q. She did not make any promises to you in any way in return for statements you made?
A. No, sir.
Q. That particular form, Court's Exhibit Number 3, did you ever see a form like this?
A. No, sir.
Q. You have never seen this or a similar form?
A. No, sir.
Q. Now, at that time, it was about 8:40 in the evening?
A. Yes, sir.
Q. And I believe you said you were in her presence for about 15 to 25 minutes?
A. Yes, sir.
Q. You say she didn't tell you your rights?
A. Yes, sir.

Q. Is that right?
A. Yes, sir.
Q. No further questions.
THE COURT: Any further questions?
MR. STRICKLER: No, sir.
THE COURT: Step down.
(Witness excused from stand)
THE COURT: Any other witnesses, Mr. Strickler?
MR. STRICKLER: No, sir.
THE COURT: Anything else from the State?
MR. McMAHON: Who goes first?
THE COURT: I think you go first.
MR. McMAHON: Well, Your Honor, I think from the preponderance of the evidence at this time, and weighing the credibility of the witnesses, it's clear that voluntariness would never be an issue either in the State's case in chief or if we were to use this for impeachment purposes.

It's clear from the Detective's testimony and the Defendant's testimony that whatever statements that were given were freely and voluntarily given.

The other issue goes to the credibility of the detective. She indicated she used that form and advised the Defendant of each and every one of those rights; that he waived his rights, but would not sign, and she in fact put down refused.

That bolsters her credibility, that she prepared that

document and wrote down the exact actions of the Defendant that evening, which might not be beneficial to the State that he failed to sign it, but that's exactly what occurred.

So I think under that is more than sufficient for the statements to come in in the State's case in chief, if the State so chooses to offer the statements, and then it would be an issue for the jury.

THE COURT: Yes, sir.

MR. STRICKLER: May it please the Court? First off, the statement is inadmissible because it is a product of an unlawful arrest.

At the point in time that the arrest was affected in this case, there was no arrest warrant or warrant for his arrest.

There had been no identification of Mr. Wilds as Antwan by his Co-defendant. The second Co-defendant had not been arrested at that point.

They had not recovered a weapon, and there was not probable cause to affect an arrest of Mr. Wilds, and anything that flows from that arrest is fruit of the poisonous tree under Wongsun, and this alleged statement flows from the arrest, is tainted by the arrest, and it should be suppressed on that basis.

MR. McMAHON: Judge, I certainly understand -- I thought the motion we were addressing was voluntariness or Miranda and voluntariness.

Quite frankly, I did not understand that Jackson versus Denno went beyond that to a probable cause hearing. I thought Jackson versus Denno went to Miranda, and I apologize for my misunderstanding if I did misunderstand.

THE COURT: Mr. Strickler, do you want to respond?

MR. STRICKLER: No, sir. I apologize for maybe getting a little ahead of the game, but this is certainly related to the statements we have to deal with.

Strictly speaking, voluntariness and Miranda -- I submit Your Honor has the testimony before you, and the testimony is in direct contradiction on one significant point, and that is the existence or non-existence of the advice of rights on the part of Ms. Burns.

The State has the burden of proof in that regard, and it's a tie, and I submit that we win as to advice of Miranda Rights. That's my argument as far as Jackson versus Denno.

THE COURT: Based on the record in the Jackson v. Denno hearing, I find that the statement would be admissible. The State has shown by the preponderance of the evidence that the Defendant was advised of his rights and made the statements after having been advised of his rights.

Obviously, counsel, I would at the appropriate time give an instruction to the jury concerning whether it has been proven to them by proof beyond a reasonable doubt.

At this time I find it is admissible.

I will take this as a separate motion to dismiss, based on an unlawful arrest. Anything else you want to say about that?

MR. STRICKLER: No, sir. I apologize for the confusion I may have interjected on that.

THE COURT: I would deny the motion on that.

MR. STRICKLER: I have a separate matter regarding the substance of the alleged statements.

THE COURT: Yes, sir.

MR. STRICKLER: In order for the statements to be admissible, it needs to be more than just a statement on the part of the Mr. Wilds.

There is the exception to the hearsay rule. It's the Defendant's admission against interests, and whatever.

To reference specifically the portion of the statement where the State alleges Mr. Wilds bragged about having a shotgun, 38 and nine milimeter, I object on the basis of relevancy.

None of these weapons were used in this incident, Your Honor.

THE COURT: Solicitor, you want to respond to that?

MR. McMAHON: Your Honor, I think it goes to the issue obviously of credibility. I'm not sure there has been any testimony yet as to what type of weapon was used to inflict the injuries on Mr. Rumph.

Given the fact that he owned a weapon, and he says, oh, yes, I owned a shotgun, a 38 and a nine milimeter -- the fact that he stays away from a 22, the weapon used to inflict the harm, I think it goes to whatever weight and value the jury wants to give to it.

And it kind of goes hand in hand in denying knowing Isom, and not only denying knowing him but then coming back later and saying, well, yes, Isom calls me his cousin.

We will have testimony that Isom did call the Defendant his cousin, and taking the totality of the two statements together, I think it would make it relevant.

THE COURT: Anything else?

MR. McMAHON: No, sir.

MR. STRICKLER: Yes, Your Honor. I don't think Mr. Wilds' credibility is an issue here. He hasn't taken the stand prior to any alleged statement on his part being introduced during the State's case in chief. I can assure you he will not take the stand, so as to any attack on his credibility, that's a non-issue. He hasn't testified.

I submit again the relevance of the statement or alleged statement regarding the three guns that definitely were not involved -- there is no relevance.

THE COURT: I'm going to allow it in. Whatever was in the statement, as indicated by the officer, I will allow in.

Any other motions?

MR. STRICKLER: No, sir.

THE COURT: Anything else from the State?

MR. McMAHON: The State has one very quick issue of an administrative matter. We left a subpoena on the door of a person named Timothy Myers. We just left it on the door a couple of weeks ago.

In response to that, Mr. Myers called Ms. Campbell and made an appointment to come down here and talk with her the first part of last week. I'm not exactly sure of the date.

Therefore, we know he got actual service of the subpoena. When Mr. Myers left, we told him we'd be in contact with him -- this was week before last when we talked with him, and when we contacted him last week to interview him, we have since that time been unable to contact Mr. Myers.

I told Mr. Myers in regard to this subpoena that he would have to be here and he has not appeared. I've given the name to the Court Crier, and he is not here. I have a motion for a bench warrant as far as Mr. Myers is concerned.

We've been out to his house about six times and he does not answer the door, does not respond. We've left notes and business cards, but he has not called us.

We would move for a bench warrant for Timothy Myers.

THE COURT: Mr. Strickler, do you want to comment?

MR. STRICKLER: No, sir. It's the first I've heard of it.

THE COURT: It would be appropriate to issue the bench warrant.

Let's bring the jury in.

(Jury returned to Courtroom at 3:37 P.M.)

THE COURT: All parties and attorneys are in the Courtroom, and the jurors have returned.

Madam Clerk, put the jury under oath, please.

(Whereupon, the jury was sworn by the Clerk)

THE COURT: Thank you, maam. Ladies and gentlemen of the jury, I have notes from a couple of jurors indicating you have to be places, one at 5:40 and one at six. We will certainly try to work with you on that to see that you get out on time.

Now, in this case, by virtue of the indictments I showed you a few minutes ago, the State has charged the Defendant, Mr. Wilds, with the offenses of murder and armed robbery.

Now, the burden of proof in this is always with the State, and to these charges the Defendant has pled not guilty, and that means he thereby requires the State to prove him guilty beyond a reasonable doubt.

A Defendant in South Carolina is never required to prove his innocence. It is always the burden of the State to prove him guilty beyond a reasonable doubt.

Now, your role in this case will be to sit as the finders of the facts. Nobody can tell you what the facts are, not

even I. That the role that is strictly reserved for you, and you have very wide discretion in that role.

As the finders of facts, you are also the judges of the credibility or, in other words, the believability of the witnesses.

You may believe everything a witness says or nothing, or everything that a witness says, or any part in between. That again is within the discretion that is according to you as jurors.

You must consider only the evidence that comes in in this case. That means that you must put aside anything you may have heard outside of the Courtroom about this case or any case like it.

I will also tell you what evidence is and what evidence is not. Evidence basically is the testimony of the witnesses who take the stand, plus any exhibits that come in through those witnesses.

That's what evidence is, very simply. Evidence is not anything you might have heard outside of this Courtroom. Evidence is not anything that the lawyers say.

The lawyers will ask questions from time to time. They will have opening and closing statements, and they will be obviously actively involved, but anything they say is not evidence.

What is actually evidence is what comes from the sworn

witnesses, from the mouths of sworn witnesses, along with any exhibits that come from the witnesses.

Evidence is not anything that I say. My duty is to instruct you as to the law, and you must accept the law as I give it to you.

If I'm wrong for any reason at any time, there is another time and place for it to be corrected, but for today's purposes you must accept it as correct.

Now, from time to time the attorneys may object to various things. Don't be concerned when attorneys do that. They have a job to do, and there are certain times they have to do that.

So don't let that bother you. On occasion, we'll ask you to step out of the Courtroom while we take up certain matters. Again, don't be concerned about that.

It's very important not to discuss this case with each other or with anyone else, and don't let anyone discuss the case with you in any way.

The only time to discuss the case is at the very end when we turn the case over to you for your deliberations, so be sure not to do that.

Now, our procedure here will be that following my instructions to you the State will make their opening statement, and then the attorney for the Defense will do the sme.

We will then get into the evidence in the case, and once

the evidence is completed the parties will make a closing statement. I will give you final instructions, and at that point it will be your case.

We will move along and do that as quickly as we can.

At this time, we'll have opening statements and I will ask you to give the attorneys your undivided attention.

Exception to the charge from the State?

MS. CAMPBELL: No, Your Honor.

THE COURT: Defense?

MR. STRICKLER: No, sir.

THE COURT: Please give the attorneys your undivided attention. Solicitor?

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, maam. Nobody in or out while the attorneys make their opening statements.

MS. CAMPBELL: On March 29, 1999, Anthony Rumph was walking down the street as three young men walked past him.

One of those men turned to him and they got into a conversation, and then that same man pulled out a gun and pointed it and demanded his money.

The other two came in and hit him in the head, went through his pockets, and Anthony Rumph was able to grab his wallet with his money before they could, and he clutched it to his chest.

The man with the gun pointed the gun at his stomach,

demanded the money, and when Anthony Rumph wouldn't give up his wallet he shot him.

Then the man was able to get his wallet and run away. The man that shot and robbed Anthony Rumph is Israel Antwan Wilds.

The man that caused the death of Anthony Rumph is Israel Antwan Wilds, and, ladies and gentlemen, this is Israel Antwan Wilds.

My name is Luck Campbell, and I'm an Assistant Solicitor in the Fifth Judicial Circuit which is made up of Richland County and Kershaw County. Along with Mr. Knox McMahon, I will be presenting evidence on behalf of the State in this case.

The first thing I want to talk to you about is the two indictments that are going to come before you in this case. As the Judge told you, these indictments are not evidence. They are in no way to be considered evidence by you, but they do serve a very important purpose.

That purpose is two-fold. One thing it's got to do is tell exactly what we must prove beyond a reasonable doubt to prove the guilt of the Defendant, and, secondly, to give notice to the Defendant of exactly what the State will prove that it alleges he has done.

I want to talk to you a little bit about what the charges are in this case and a little bit about the law.

The first of these two charges, as you have heard, is 68
Indictment 99 GS 40 45289. (Reading indictment to jury)

Very simply, ladies and gentlemen, the elements of murder in this State are fairly straight forward. We must prove this Defendant did on the date alleged, March 29, here in Richland County, feloniously, wilfully and with malice aforethought, kill another person, in this case Anthony Rumph.

I said that rather quickly, but what does it mean, to say with malice aforethought?

The State must prove that at the time of the fatal blow or the fatal shot that the Defendant had in his heart some kind of malice, and it can be express or implied.

Very simply, ladies and gentlemen, a person may walk up to another and say, I'm going to kill you, but what you must look at as a juror in this case is whether or not by his actions that day, Israel Wilds was acting with malice.

And what does the word malice mean? Malicious -- malice comes from the word malicious. A malignant heart, a heart filled with evil, bent on mischief.

There are several definitions that the Judge will give you, but, very simply, ladies and gentlemen, he was acting without just cause, in an illegal manner, with a malignant heart.

The second indictment in this case happened at the same time, the armed robbery. Israel Wilds committed a

murder, and the charge is armed robbery, and that Indictment reads as follows. (Sdicitor reading indictment to the jury)

In this case, those goods or moneys were U.S. currency. They were contained in the wallet that he clutched to his chest and that while doing this he was armed, and in fact so there's no dispute there is a bullet wound to his gut. No dispute that Israel Wilds was armed.

So armed robbery, ladies and gentlemen, is as follows. That this Defendant did in Richland County on that date rob or steal through force or intimidation -- those are the elements the State has to prove.

And in every case, ladies and gentlemen, and with every citizen of the United States, the State must prove each of these allegations beyond a reasonable doubt.

The burden is on the State of South Carolina, as it should be, in criminal cases, to prove the guilt of the Defendant beyond a reasonable doubt.

I submit, ladies and gentlemen, that that is a burden the State welcomes.

Talking to you briefly about what happened, on March 29, 1999, at 9:15 or 9:30 in the evening, the police received a nine one one call from the Columbia College area, North Main Street, a convenience store owner, relaying information that a man had been shot and was down.

The police responded and several officers got there,

and when they got there they were able to develop evidence that three young men had participated in an assault on a man that was down, there on Rhett Street, near Columbia College.

EMS was brought in, and there was an attempt to save Mr. Rumph's life. He was rushed to the hospital that evening, and the investigation continued.

They started canvassing the area around, looking for evidence. The police processed the scene. After EMS was able to get the victim out from the road and when they processed the area around where he had fallen, what they found were a package of cigarette and some of his clothing that had been removed by EMS personnel, as they were working on this gunshot wound, and a bullet, a unfired bullet, a 22 caliber unfired bullet, there at the scene, right next to where the body was found.

They also found a cup filled with beer and some other items further up the road. As they canvassed further and further out, looking for any possible evidence because they didn't have any information to know what was relevant, just up the street fifty or maybe a hundred yards away, right on North Main, toward Columbia College, within sight of where Mr. Rumph had falled, they found a wallet and inside was ID belonging to the victim the case, and also secretly pocketed inside was Eighty Dollars still in that wallet.

At this point, police had enough information to be on

the lookout for three young men who -- the three young men who were involved in the armed robbery and the assault.

They continued to try to develop clues over the next several days, and as part of their investigation they were able to go to convenience stores right there within a hundred to two hundred yards of where the shooting had actually occurred.

They got the videotapes from the convenience store just to see if they could see anyone resembling the description of the victim.

Luckily for the police in this case, they were able to determine that on the night in question before the shooting Anthony Rumph was indeed inside one of the convenience stores. They were able to identify Anthony Rumph, as as part of the investigation they tried to ID other people in the store at around the same time as Mr. Rumph, to see if there was any possible connection.

Based on their identification of people in that, they were able to get a search warrant for a certain young man's house, and that man's name was Timothy Myers.

The police were able to question him, and during their questioning of Timothy Myers he wasn't there the night of the shooting. However, he did have information about two young men coming to his house that night around nine thirty.

One of the young men, Isom Simmons, was upset. He was a young boy, 15 years old, and he went immediately to Timothy Myers, and he told him, man, my cousin, he shot somebody; he shot somebody.

At that point, the police knew they had a suspect, and they had Mr. Myers show them where Isom Simmons lived, which was about three or four block away, around the corner.

Based on the information given by Mr. Myers, they had Isom Simmons come in for questioning. He was advised of his rights, as he should be, and he decided to talk to the police.

You will hear Isom Simmons tell about what happened on July 29th, as he told the police what happened to him and his friend who is known as Dante Dungee, and his friend who he referred to as his cousin, Israel Antwan Wilds, as they were walking around the neighborhood.

This was his neighborhood, and they were walking around, visiting friends, going to play Nintendo. One of the three of them walked past the man and noticed that he kind of smelled like alcohol. He had a beer in his hand, and at that point the conversation was initiated between Antwan and a man walking down the street.

Dungee -- Dante Dungee and Isom Simmons were kind of over to the side, when the next thing they knew they saw that their friend, Antwan, had pulled a gun and was pointing it at

the victim and demanding the money, and at that point he motioned them over.

When they came over to him, they coopered in the robbery, held him, hit him in the head, went through his pockets. Isom Simmons got cigarette. Danta Dungee got a lighter or maybe a key chain, but in the meantime Anthony Rumph was still fighting because he wanted to keep his money.

He gets his wallet in his hand and holds it close to his chest, and he won't give it up, and the last words he heard before he got shot in the gut were when Antwan Israel Wilds stuck the gun up to him and said, man, don't make me shoot you, and then he shot him.

Then as he went down, Antwan Israel Wilds got his wallet, got his money, and then took off up the street after his two young friends.

Then the three of them not a hundred yards away, and within sight of where Anthony Rumph was laying, stopped so they could split up the money.

And how much did Dante Dungee and Isom Simmons get? It was somewhere between Ten and Twenty Dollars, for their participation, and then they ran off across the street and the last they saw Israel Wilds was when he was running toward his house.

And Isom Simmons described to the police what Antwan Israel was wearing, the clothing he wore. I think the description to some degree is mixed up, but he was specific about the

color of the jacket and about the color of the pants and the type of shoes Israel Wilds was wearing that night, and he described them to the police as grey suede Air Force One Nike Shoes -- Air Force One shoes.

He was able to give them information after giving them a statement about what happened and giving them a description of the clothing. He walked the police by the house where Antwan lived.

Based on that information they were able to get a search warrant, even though it was almost a week later. They wanted to see if any possible relevant evidence might be in that house.

They went in and when they got there, Israel Antwan Wilds was inside. They arrested him and did a search of the house; found some items that vaguely resembled the description but not really.

They took those anyway and then took Mr. Wilds down to the police station, where they advised him of his rights. He didn't want to sign anything but he was able to tell the Investigator, Gertrude Burns, of the Columbia Police Department, answers to some specific questions.

He first denied knowing who Isom, his cousin, was, and he first told her he never had a gun, didn't own a gun, and then as the conversation progressed he might know -- oh,yeah, he knew who Isom was; that was his cousin; and yeah, oh, yeah,

he had shot a gun once but he only had shot a shotgun.

The next day they were also able to pick up the third of the Co-defendants. They already had 15 year old Isom Simmons, and 19 year old Israel Antwan Wilds, and the next day they came in contact with Dante Dungee, who was 16 years old.

When they brought in Dante Dungee, they advised him of his rights, as they should, and what did he tell them? He told them the same thing about the events of the night and what occurred, who participated and in what manner as Isom Simmons had before independently.

He told them about the shooting. What was remarkable was that as Investigator Burns of the police department was sitting right there interviewing Mr. Wilds, suddenly she recalled the description of the shoes that had been given by Isom Simmons.

The grey suede Air Force One shoes, and when she then looked down at the Defendant's feet the Defendant, who didn't even know they were coming to house that day -- she noticed that he had them on, the shoes matching that description.

Luckily, she took those shoes into evidence to see if they could be processed for any possible evidence, such as blood.

All three young men -- two initially in Juvenile Court because they were juveniles -- were initially charged with

assault and battery with intent to kill and armed robbery. Under the hand of one is the hand of all, they are all guilty of the same crime, no matter who participated in what manner.

But as all this investigation was going on, Anthony Rumph was still in the hospital fighting for his life. He had a severe injury to his abdominal area, to the internal organs in that area.

He fought hard and ten weeks later, on July 8, 1999, Anthony Rumph died as a result of that gunshot wound, and the charge was then upgraded to murder and armed robbery, on all three Defendants.

The investigation was incomplete. There were still things to be done. Some of the clothing items taken in the search warrant had to be tested, as well as the shoes taken from the feet of Mr. Wilds on the day he was interviewed, April 7th.

They were looking for the presence of any blood because there at the scene were tiny drops of blood. The grey suede tennis shoes, on the outer rubber part, and the bottom, tested positive for the presence of human blood.

So further testing was initiated. At the SLED laboratory they only are set up for certain kinds of DNA testing. Those kinds were not able to detect, because of the amount of blood on the shoe being small, so they sent it off to

another laboratory, a laboratory in Virginia, to do testing for DNA.

And when they sent it off for this minute amount testing they also sent off a sample of the victim's blood. The victim, Anthony Rumph's, blood. When those two samples were compared, the mitrochondrial DNA testing was done, the DNA profile for blood from the shoe and the DNA profile from the blood of Anthony Rumph matched.

Once you have heard all the evidence, the Judge will instruct you on the law and you will go back in the jury room to begin to deliberate to reach your verdict.

Ladies and gentlemen, the word verdict comes from the Latin vere dicto, meaning to speak the truth, a truthful saying, and all the State asks of you in that once you hear all of the evidence in this case, that you hold Israel Antwan Wilds responsible for what he did back on March 29, 1999, and find him guilty of murder and armed robbery.

Thank you.

THE COURT: Mr. Strickler.

MR. STRICKLER: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. STRICKLER: Ladies and gentlemen of the jury, you heard the opening statement of Ms. Campbell. This case is about the testimony of two people who were definitely involved with killing Anthony Rumph.

This is about their intentions -- that's what it's about, two kids who definitely did become involved with the robbery of Mr. Rumph.

You will hear a bunch of other stuff, but that is the evidence in this case.

Now, to the allegations -- to the allegations, Mr. Wilds will tell you, I wasn't there. It's called the defense of alibi, and you will hear evidence about where he was.

You will hear that after the State finishes putting up their evidence. They have the burden of proof, and you've been told that several times already. The State does have to prove something beyond a reasonable doubt.

It's something that is required. If they can't prove their case beyond a reasonable doubt, you know, you can't find Mr. Wilds guilty. That's the law here. The State has the burden of proof.

The proof you're going to get to try to prove the case beyond a reasonable doubt is going to come from two people and a pair of shoes. We'll talk about the pair of shoes in the course of examining the witnesses for the State.

You will have to sit there and listen to everything that is presented. You will listen to what is asked by the prosecution and the responses of the witnesses. Then you will hear what is put up by the Defense.

When the State is done putting up their evidence, you

will hear from three people where Israel Wilds was the night of March 29, 1999, and you're going to hear how they met, how they can remember it, and it will make a perfect defense. That's what you'll hear.

Then you're going to be charged on the law and then you will be required to return a verdict. Okay? You will be required to return a verdict that says guilty or not guilty.

You'll be required to return a verdict either of guilty, which says there is no doubt in my mind, no reasonable doubt whatsoever, that Israel Wilds was present at the scene when this happened.

In other words, that he was not someplace else when this happened, but let's get straight from the start that Israel doesn't have to prove that he wasn't there.

We're going to put up witnesses to that effect. He doesn't have to prove he wasn't there. The State must prove he was there. That's the burden of proof. They must remove each and every reasonable doubt you had as to whether he was present or not.

If they don't, then you just have to return a verdict of not guilty. That is your duty.

I submit to you that if you keep your eyes open and keep your ears open, listen to all the evidence in the case -- don't stop at some point, but listen to all the evidence -- this is a case that screams with reasonable doubts, and

it is a case that demands of you, and what I would ask of you, is that you return a verdict that speaks the truth, a verdict of not guilty.

Thank you.

THE COURT: Counsel, why don't we take about ten minutes before we continue.

Ladies and gentlemen, go back to your jury room for a few minutes. Don't talk about the case.

Thank you.

(Jury excused from Courtroom. Court stood in recess from 4:09 to 4:35 P.M.)

(Jury brought back to Courtroom)

THE COURT: All parties are present, and the jury has returned. Solicitor, call your first witness.

MS. CAMPBELL: The State would call John Hunley.

JOHN HUNLEY, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Officer Hunley, where are you employed?

A. City of Columbia Police Department.

Q. How long have you worked for the Columbia Police Department?

A. Three years.

Q. What are your duties there?

A. Patrol duties. On the street.
Q. And as a patrol officer, are you the kind of guy that responds when I call nine one one? You might come out to my house?
A. Yes, maam.
Q. Or respond to a crime scene where a shooting occurred?
A. Yes, maam.
Q. Back in March of 1999, what area were you assigned to?
A. The 132 area, which is . .
Q. I can barely hear you. The accoustics are horrible in here. Can you get closer to the microphone?
A. The Fairfield and Main Street area.
Q. Is that the area near Columbia College?
A. Yes, maam.
Q. Turning your attention specifically to the night of March 29, 1999, what shift were you working on that day?
A. Evening shift.
Q. And on the evening shift, what hours do you work?
A. Three to eleven thirty.
Q. And around nine or nine thirty that night, did you have an opportunity to respond to a call to the Rhett Street area?
A. Yes, maam.
Q. What kind of call was that?
A. A nine one one call, subject down, possible shooting

had occurred.

Q. You say subject down, possible shooting -- does that mean a person was shot?

A. Yes.

Q. And how far were you from Rhett Street when you received that call?

A. I believe I was right around the corner.

Q. Do you know about what time you got the call that night?

A. Nine thirty approximately.

Q. How long did it actually take to get to where the victim of the shooting was?

A. Less than a minute.

Q. When you got there, tell the jury what you found.

A. I came down Rhett Street, and when I got there I parked my vehicle toward Craven and Rhett, in the road, where there was a victim down, a black man.

Q. A black man was down?

A. Yes.

Q. Did he appear to be injured?

A. Yes, maam.

Q. What, if anything, did you do at the scene? Did you disturb it in any way?

A. No, maam.

Q. And did you call to make sure EMS was on the way?

A. Yes, maam.

Q. How long after you got there did EMS arrive?

A. I believe in a couple of minutes.

Q. Once EMS got there, what did they do?

A. They went immediately to the individual that was down on the street and gave him care.

Q. They tried to treat him?

A. Treat him, yes.

Q. Did you determine there at the scene with kind of wound it was?

A. When I got there and looked at him, it looked like it might have been a puncture wound. I wasn't really sure.

Q. What area of the body was wounded?

A. It looked like the chest area?

Q. The chest or abdomen area?

A. Yes, maam.

Q. Did you do anything to secure the scene?

A. I positioned my patrol vehicle at Craven or Craven and Rhett, and another officer drove down the street on Rhett to block off the area and contain the area.

Q. That was done promptly?

A. Yes, maam.

Q. And once you blocked off the area where this occurred, were other investigators and detectives called in?

A. Yes, maam. I notified our supervisor what the situation was at the time, and they notified major crime who sent the

detectives and investigators to the scene.

Q. In between the time you found the victim and EMS responded to the scene and treated him, were you able to talk to him?

A. I tried to, but he didn't respond in any way. It appeared to me that he was on his last breath.

Q. Once EMS got there, did you have an opportunity to attempt to talk to him?

A. No, maam.

Q. Was he removed from the scene?

A. Yes, maam.

Q. By whom?

A. By EMS technicians.

Q. Were there citizens there at the scene that you felt might be potential witnesses?

A. Yes, maam.

Q. And did you detain them until investigators arrived?

A. Yes, maam.

Q. I want to show you these two items. Do you recognize them?

A. Yes, maam. That would be the main street, Fairfield Road, and the Craven and Rhett area.

Q. And this diagram -- have you reviewed that at my request?

A. Yes, maam.

Q. And does it fairly and accurately depict, not to scale,

of course, the scene that night?

A. Yes, maam, it does.

MS. CAMPBELL: I'd ask that these be admitted into evidence.

MR. STRICKLER: No objection.

THE COURT: All right.

(Street diagrams admitted in evidence without objection as State's Exhibits 1 and 2)

BY MS. CAMPBELL:

Q. Officer Hunley, I'd ask you to review these two photographs first.

Do you recognize the area they depict?

A. Yes, maam, I do. This picture here is Albright Street, facing north. The other direction is toward Craven.

This picture here is on Craven, facing south toward Main Street.

Q. And do they fairly and accurately depict the area?

A. Yes, maam.

Q. And other than these being taken in daylight, do they fairly and accurately depict the area?

A. Yes, maam.

Q. And then these items -- these photos taken that night, I'd ask you to review those. Do they fairly and accurately depict the scene as you found it that night?

A. Yes, maam, I do.

Q. All right.

A. This picture has myself and a patrol car -- the patrol car on Craven. This is another patrol car on Rhett.

The victim's clothing in front of the mailbox on Albright Avenue. Another picture of the clothing and it appears to be a frontal shot on Rhett.

MS. CAMPBELL: We'd offer these at this time, Your Honor.

THE COURT: Any objection?

MR. STRICKLER: Yes, sir. Why don't you have them marked?

MS. CAMPBELL: Your Honor, I think he wishes me to have them marked so he can object to them.

THE COURT: All right, what is the objection?

MR. STRICKLER: I would object to 3 and 4, and the basis of the objection is that they are taken in daylight so they don't fairly and accurately depict the scene as it appeared that evening.

THE COURT: I'm going to overrule the objection. They do depict the scene, and the jury can make the distinction.

MR. STRICKLER: I have no objection to what's marked as State's 5 and 6 for ID, but as for State's 7, 8, 9, I object as cumulative.

They're all the same thing.

THE COURT: Numbers 7 and 8 do appear to be the same.

MS. CAMPBELL: We'd withdraw 8.

THE COURT: Then 7 and 9 will be admitted over objection.

MS. CAMPBELL: Thank you.

(Photographs entered in evidence as State's Exhibits 3, 4, 5, 6, 7 and 9 over objections)

BY MS. CAMPBELL:

MS. CAMPBELL: May the witness step down?

THE COURT: He may.

(Witness leaving stand and approaching jury box)

Q. Come down here. This is State's Exhibit 1, and I hand you a pointer to point out the areas. You mentioned earlier that you patrol the northeast section?

A. Yes.

Q. And does this depict a portion of that area?

A. Yes, maam.

Q. And does this map depict the Fairfield and North Main Street area?

A. Yes, maam.

Q. Are you aware of Fairfield Road on this map?

A. Yes, this is Fairfield. (Indicating on map)

Q. And the area of Rhett Street, would you show the jury where Rhett Street is?

A. Rhett Street is right here.

Q. Approximately where on State's Exhibit 1 did you find

the body lying when you went onto Rhett Street?

A. Approximately right here. (Gesturing on diagram)

Q. Use the pointer.

A. Right here.

Q. Near Craven and Rhett?

A. Yes, maam.

Q. Turning your attention to State's Exhibit Number 2, is that a diagram of Rhett and Craven Street?

A. Yes.

Q. Does it fairly and accurately depict the scene as you found it that night?

A. Yes, maam.

Q. You talked about where the body was. Where did you park your car?

A. I positioned my patrol car right in this area.

Q. And there was another patrol car positioned at the other end of the street, or further down?

A. Yes, maam. Further down.

Q. And here is a place called Avon's Hair Salon. How was that positioned -- where was the body positioned in regards to that building?

A. In front of this mailbox right here. He laying in the street with his head up --with his head facing toward the mail box.

Q. So his head would have been up here toward the mailbox?

A. Yes.
Q. Was his stomach exposed or his back?
A. His stomach. He was on his back.
Q. So he would have been on his back with his head toward the mailbox?
A. Yes, maam.
Q. How were his arms placed? Do you recall?
A. I don't recall at this time.
Q. And in this diagram, State's Exhibit 2, there is some clothing right there where you indicate the body would have been?
A. Yes, maam.
Q. How did the clothing get there that night?
A. It was clothing that EMS had cut off his body to take care of him, give him treatment.
Q. Also here at the scene as noted on here sunglasses were found a few feet from the body?
A. Yes, maam.
Q. Also a styrofoam cup, is that correct?
A. Yes, maam.
Q. And, finally, there is a 22 caliber cartridge that was found near the body?
A. Yes, maam.
Q. Did you collect any of that evidence?
A. No, maam. Basically our job was to rope off the entire

crime scene and not let anyone in or out until other officers came in to do the crime scene, crime scene technicians.

Q. These pictures have already been identified. In State's Exhibit 3, was this taken in the late hours?

A. Yes, maam.

Q. How was it out there that night?

A. Dark.

Q. What does this depict and at what angle was this taken from in relation to the scene you went to that night?

A. That was taken from this angle, facing south, on Rhett to Main.

Q. You would be looking down the street?

A. Yes, maam.

Q. And on what side of the street would Avon Hair Salon be depicted?

A. It would be the right side. That's the hair salon right there, the left side.

Q. And the mailbox would be in front of that building?

A. Yes, maam.

Q. And in fact, if I can use another -- do you recognize that?

A. Yes, maam.

Q. Is this the mailbox?

A. Yes, the mailbox where the body would have been.

A. Yes, maam.
Q. Was the body actually on the ground or in the street?
A. In the street, on the roadway.
Q. Turning your attention to State's Exhibit 4, do you recognize that?
A. Yes, maam.
Q. What does this depict?
A. Rhett Avenue facing north toward Craven Street.
Q. And is the mailbox in this picture?
A. Yes, maam. Right here.
Q. Have I put my finger in the right place?
A. Yes, maam.
Q. This would be looking from the other direction?
A. Yes, maam.
Q. Showing you State's Exhibit 5, do you recognize that picture?
A. Yes, maam.
Q. What does that depict?
A. That is on Rhett Avenue southbound. That's my patrol car.
Q. That's your patrol car right here?
A. Yes, maam.
Q. And is that how it appeared that night when you secured the scene with your car?
A. Yes, maam.

Q. Finally, I show you what's been introduced as State's Exhibit Number 6. What does that depict?

A. Rhett Avenue at a southbound angle.

Q. And down this way another officer's car has been positioned?

A. Yes.

Q. And that's how the scene appeared that night?

A. Yes, maam.

Q. I show you State's Exhibit 7. Do you recognize that?

A. Yes, maam.

Q. What does that show?

A. I'm looking southbound on Rhett Avenue, where the clothing has been cut out by the EMT technicians.

Q. So these would have been the clothes, and the body would have been where?

A. The body was right there on the roadway in front of the mailbox.

Q. Right in front of the mailbox?

A. Yes, maam.

Q. And that is the actual clothing that was cut from his body that night?

A. Yes, maam.

Q. And State's Exhibit 9, is that from another angle?

A. Yes, maam.

Q. Officer, were you there when the investigators arrived?

A. Yes.
Q. Which investigator was that?
A. Investigator Burns.
Q. Once she got there, were you able to brief her on your findings out there?
A. Yes, maam.
Q. And once the investigator arrived, would you have turned the scene over to her?
A. Yes, maam.
Q. Did you do that?
A. Yes, maam.
Q. Officer, the area where this happened, is that in Richland County?
A. Yes, maam.
Q. And you earlier said that initially you thought it was a puncture wound. Did you later get information about what kind of wound it was that the victim sustained that night?
A. From the investigator, I learned it was a gunshot wound.
Q. Thank you. Nothing further.
THE COURT: Cross examination.

CROSS EXAMINATION
BY MR. STRICKLER:
Q. Good afternoon, Officer.
A. Good afternoon.
Q. Of course, you described in essence you got a call of a

person down, and you just happened to be in the area?

A. Yes, sir.

Q. And you were on the scene within minutes?

A. Less than minutes.

Q. Okay, and what you first described was upon arriving on the scene you saw there was indeed a person down there in the street?

A. Yes, sir.

Q. And you assured yourself EMS had already been called?

A. Yes, sir.

Q. And then you proceeded to secure the scene?

A. Yes, sir.

Q. To use your vehicle and your person?

A. Yes.

Q. And another officer and that officer's vehicle?

A. Yes, sir.

Q. And what you did then is very standard procedure, is that correct?

A. Yes, sir.

Q. You're the individual who -- you were the patrol officer who first responded to the person on the scene?

A. Yes, sir.

Q. You dealt with the emergency you found there until an investigation could be done, which is for someone else to do. Correct?

A. Yes.

Q. You attempt to preserve the integrity of the crime scene by positioning your vehicle and yourself, and you got assistance with that, and that's standard procedure. Right?

A. Yes, sir.

Q. Okay. You may be asked at some time by investigators on the case to assist in talking with witnesses or locating people, but that's a decision they would make rather than necessarily one that you would make?

A. That's correct.

Q. So you are on the scene to deal with the immediate crisis, and then get the necessary people on the scene in a case such as this?

A. Yes, sir.

Q. And the clothing you testified to as depicted in some of these photographs, at the time you arrived the clothing was still on the body of Mr. Rumph. Correct?

A. Yes, sir.

Q. Okay. During the course of the time you were there, EMS arrived and initiated emergency procedures insofar as on contact removing some of the victim's clothing. Is that right?

A. Yes, sir.

Q. Now, where are the street lights located?

A. On Rhett Street, and I believe there is one right by the

garage and another across the street.
Q. Let's refer to the State's Exhibits. You said you believe . .
A. I believe there's one here on the corner and another in front of the garage.
Q. This is the garage?
A. Yes.
Q. So one at the top?
A. Yes, sir, I believe so.
Q. Now, showing you what's marked State's 5, a photograph. Does that depict the stop sign, and I believe you indicated that's your car?
A. Right.
Q. And this glare on the stop sign is glare from the headlights of another car?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. Now, when you got on the scene, you indicated on direct that there was some citizens at the scene, and you assisted in keeping them there until the investigators arrived?
A. Yes, sir.
Q. None of the citizens you kept on the scene until the investigators arrived was Israel Wilds? Right?
A. . .

Q. He wasn't there?

A. I don't know.

Q. You don't have any notes or any independent recollection of him being there?

A. There were several officers there. Actually everybody had a job to do at the scene.

Q. Right.

A. I had another officer ask people to stay, but as far as personal knowledge,no.

Q. Okay. Thank you.

THE COURT: Any redirect?

MS. CAMPBELL: No, sir.

THE COURT: All right. Step down, Officer. Thank you.

(Witness excused from stand)

MR. McMAHON: State calls D. R. Catoe.

D. R. CATOE, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Sir, are you employed with the Columbia Police Department?

A. Yes.

Q. How long have you been employed by the Columbia Police Department?

A. Approximately eighteen years.

Q. And what is your present position, Officer Catoe?

A. I'm a crime scene investigator.

Q. How long have you been assigned as a crime scene investigator?

A. Approximately ten years.

Q. Would you tell us, please, what your duties are generally as a crime scene investigator?

A. Process crime scenes, collect evidence, and to take photographs.

Q. Have some of these photographs that have already been introduced into evidence, State's Exhibits 7, 9, 6, 5 -- are these photographs you would have taken, Officer Catoe?

A. Yes, they are.

Q. Among others you also took at that particular crime scene?

A. That's correct.

Q. And you would have been among those within the police department that would have been notified when uniform officers responded initially to a call?

A. Correct.

Q. What other division or divisions also would be notified . .

A. I'm sorry. I can't hear you.

Q. What other division or divisions within the department would also be notified on a major crime scene such as this?

A. The major crime investigators, the crime scene unit, and usually the shift commanders.

Q. Now, did you respond to the 5000 block of Rhett Street on the night of March 29, 1999?

A. Yes, I did.

Q. And, Officer Catoe, could you tell us approximately what time -- approximately what time you arrived?

A. Approximately ten o'clock. Ten P.M.

Q. Now, when you get to a scene such as this, what is the first thing you want to do at the crime scene upon your arrival?

A. Assess the scene, see where the evidence is, make sure it's not disturbed.

Q. Did you determine in this case whether or not the scene was secured upon your arrival?

A. The scene at the time I arrived appeared to be secured.

Q. And would you tell us how it was secured?

A. It had officers at both ends of the street blocking any traffic. No traffic was allowed in and no foot traffic.

Q. And that would have been from the end of Rhett Street and Craven Street, and further down the 5000 block of Rhett Street?

A. That's correct.

Q. Are you familiar with this general area of Rhett Street and Craven Street?

A. Yes, I am.

Q. And also the north Main Street area?

A. Correct, yes.

Q. And are you familiar with what has been introduced as State's Exhibit 1?

A. Yes, I am.

MR. McMAHON: Your Honor, may I have Officer Catoe step down?

THE COURT: Certainly.

BY MR. McMAHON:

Q. Come around here.

A. (Witness leaving stand and approaching jury box)

Q. Keep your voice up for us, if you will.

A. Okay.

Q. What I want you to do, as you walk down Main Street, what direction would you turn to go to the 5000 block of Rhett Street?

A. Turn north here.

Q. And is Main Street, or any part of Main Street, depicted on State's 1?

A. This would be North Main.

Q. So what is marked 21 or 321, at this point here, and then on 21 is North Main Street?

A. Correct.

Q. Can you point out the end of -- for exmaple, where

would Columbia College be in relation to this diagram?

A. In this area.

Q. And this would be Columbia College Drive right in here?

A. Correct.

Q. And if you continued on north, what major intersection is right here?

A. Fairfield.

Q. So if you turned left at 321, that's Fairfield Road?

A. Fairfield Road.

Q. And that goes where?

A. Winnsboro.

Q. Okay, and then North Main Street, is toward I 20?

A. Correct.

Q. Now, where is Rhett Street depicted on this particular document?

A. Rhett Street starts right here, and goes to a dead end.

Q. So it's only two and a half or three blocks long?

A. Correct.

Q. And it appears like a little dot here, next to the yellow line? A line of dots?

A. Yes.

Q. Does that dot line -- does that depict Rhett Street?

A. Correct.

Q. Is there a -- for example, is there a Magistrate's Office located on Rhett Street?

A. Yes, there is.
Q. And where is that located?
A. Right in this area.
Q. And is there any business located right here at the fork of 21 and 321?
A. It's a filling station called Nickel Pump.
Q. A Shell station?
A. I'm not sure.
Q. Okay, and then across the street is a part of the Columbi College campus?
A. I believe several buildings in the area are part of Columbia College.
Q. As you come off Rhett Street here, at this intersection, what road would this be?
A. Albemarle.
Q. It stops over here and picks back up, and that would be Albemarle Street?
A. Yes.
Q. Are there any businesses located at the intersection of Rhett and Albemarle Street?
A. Several buildings in this area I believe may be businesses. A garage and towing service.
Q. If you travel further north on Rhett, the towing service would be approximately where?
A. Approximately in this area.

Q. Now, specifically where is the intersection of Rhett Street and Craven Street?
A. Right there.
Q. And, for example, when we look at this photograph here, is there a stop sign located on Rhett where it intersects with Craven?
A. I believe so.
Q. Is that the stop sign depicted here on State's Exhibit Number 5?
A. Yes, sir.
Q. So this photograph would be taken somewhere down here, looking back in this direction?
A. Correct.
Q. And can you point out to us on State's Exhibit Number 1, the diagram you have in front of you, approximately where this mailbox would be right here?
A. It would be about right there.
Q. So if we go to another diagram of that general area, to be more specific, here on State's Exhibit 2, this stop sign on 5 would be the same stop sign as depicted on State's Exhibit 2?
A. Yes.
Q. And then where is the mailbox, if it is depicted?
A. Right there.
Q. And I believe there is an address associated with that

mailbox?

A. Yes.

Q. What is that?

A. It's 5027 Rhett.

Q. I mispelled it on here.

A. Yes, it should be R H E T T.

Q. Now, when you did your walk through, is that really the general area you were focusing on from Rhett on down toward the towing service?

A. Yes.

Q. You did a further search on down at a later time, is that correct?

A. Yes, I did.

Q. Now, again, as I look at State's Exhibit 7, the mailbox depicted in State's 7, point that out if you see it?

A. (Indicating on photograph)

Q. That's the same mailbox?

A. The same, yes.

Q. And can you see -- what is this right here?

A. Alpine Towing Service.

Q. And that would be on down where these cars are parked?

A. Right.

Q. And you can see this patrol car at Rhett and Craven, is that correct?

A. Yes.

Q. And I believe you indicated there was a patrol car further down Rhett Street. Let's look at Exhibit 6 for a moment. That appears as you are looking down that street?

A. That's correct. Looking south on Rhett Street.

Q. So approximately where would this patrol car be positioned on this side?

A. Out of the diagram.

Q. On down this direction?

A. In this area here.

Q. And if you look on down the street, is there a stop sign here?

A. Yes.

Q. That would be at Rhett and Albemarle, correct?

A. Yes, it would.

Q. Now, let's talk about the items that you observed in this immediate area. First off, you photographed certain items there?

A. Yes, sir.

Q. And after photographing those items, did you take them into your possession or your custody?

A. Yes, that's correct.

Q. And on some of those items did you do a processing on them for fingerprints?

A. Yes, I did.

Q. And were there some items that you forwarded to the Stat

Law Enforcement Division for additional forensic testing?

A. Yes.

Q. Now, this area right in here, in front of the mailbox, what items are those?

A. Those were items of clothing, three shirts, I believe, and a pair of pants.

Q. And is that what is depicted here?

A. Yes.

Q. I want to show you some other photographs.

A. . .

MR. McMAHON: Your Honor, I have shown Mr. Strickler a number of items, including photographs. Items collected by the officer at the scene. Some were the victim's clothing and some were other items, styrofoam cup and such, and I understand he has no objection to marking them now.

If he does have an objection, as they come up, I will certainly stop.

MR. STRICKLER: I have no objection to them.

(Photographs marked in evidence without objection as State's Exhibits 10, 11, 12, 13, 14, 15. Sweater marked in evidence without objection as State's Exhibit 16. T-shirt marked in evidence without objection as State's Exhibit 17. White shirt marked in evidence without objection as State's Exhibit 18.)

(Also, 22 bullet marked in evidence without objection

as State's Exhibit 19; cigarettes marked in evidence without objection as State's Exhibit 20; sunglasses marked in evidence as State's Exhibit 21; styrofoam cups marked in evidence without objection as State's Exhibits 22 and 23)

(Also, street diagram marked in evidence without objection as State's Exhibit 24; photographs marked in evidence without objection as State's Exhibits 25 and 26; wallet and contents marked in evidence without objection as State's Exhibit 27)

MR. McMAHON: Your Honor, I have marked State's 10 through 27, I understand without objection. If Mr. Strickler wants to make an objection, I will be glad to stop and let him take that up.

THE COURT: We'll let you do that as we go, Mr. Strickler.

BY MR. McMAHON:

MR. STRICKLER: Thank you.

BY MR. McMAHON:

Q. Now, let's refer back to State's Exhibit Number 9, and I believe you pointed out the clothing in that particular photograph?

A. Right here.

Q. And I'm now going to State's 10 and 11. What do these photographs depict?

A. Clothing and cigarettes and cigarette pack.

Q. And what was the condition of the clothing?

A. Bloodstained and it had also been cut off by the EMT.
Q. And, Mr. Rumph, to your knowledge -- well, the victim had been taken to the hospital by the time you arrived?
A. Correct.
Q. You did not see him at the scene?
A. No, I did not.
Q. And to your knowledge, was he still alive upon his removal from the scene?
A. Yes, he was alive.
Q. You may not know it, but he lived some number of months. Were you aware of that?
A. Yes.
Q. Now, you took these particular items of clothing depicted in 8, 9 and 10, and the cigarettes, and such into your custody that night. Correct?
A. Yes.
Q. Handing you now State's Exhibit 16, what is this item, and was it taken into your custody at the scene?
A. That's a sweater, and I took it in custody.
Q. You have examined this item closely before today, correct?
A. Yes.
Q. And the condition of it, as far as being cut and such, it was caused by EMS?
A. That's correct.
Q. Did you see -- after you took these items into your

custody, did you see areas of blood in and around where these items had been?

A. Yes, sir.

Q. Now, additionally to the sweater, was there an area of blood primarily concentrated around the area where you saw the cutting?

A. Yes.

Q. In addition to the Clemson sweater, State's Exhibit 17, can you identify this item and tell me whether or not you took it into your custody?

A. That's the t-shirt, and I took that into my custody.

Q. It was cut in this manner by EMS?

A. Yes.

Q. Now, there appear to be some substances on it in certain areas. What does that appear to be?

A. Appears to be bloodstains.

Q. And was that fresh?

A. It appeared to be at the time, yes.

Q. Well, what steps did you take as far as these items were concerned before you actually turned them in to evidence?

A. We have a drying cabinet to dry the blood so you don't put wet blood in the evidence room.

Q. And you did that in this case?

A. It was placed in the drying cabinet.

Q. And also State's Exhibit 18 -- this was not the original

bag you placed them in?

A. Yes, I believe it was placed in this bag after it was dried and they were all boxed and turned in to the evidence room.

Q. That was my question. They wouldn't have been transported in this bag from the scene to the drying location?

A. No.

Q. And there appears on here, from Catoe to -- it looks like J. Lewis, 4 1 99.

What does that represent? Explain that for me, please.

A. That's the date they were taken into the evidence room.

Q. You had them in the drying location two days?

A. Yes.

Q. And is that a secure location that you would have access to?

A. A locked cabinet that we have a key to.

Q. And thereafter, you turned them in to Ms. Lewis, is that correct?

A. Correct.

Q. What is her job with the Columbia Police Department?

A. She's the evidence custodian.

Q. You didn't change or alter them in any manner except for putting them in the cabinet?

A. No.

Q. Which is the necessary and appropriate procedure?

A. Yes, it's standard procedure.
Q. And then finally this last appears to be -- what does it appear to be?
A. A shirt that also was cut or apparently cut from the victim.
Q. And does it also appear to have blood on it?
A. It does have bloodstains on it.
Q. Matter of fact, it has bloodstains on the sleeves, is that correct?
A. It does.
Q. Now, at a later time, and I want to say on April 14, 2000 did you take these items and transport them to the State Law Enforcement Division, here in Columbia?
A. Yes, I did.
Q. And you filled out the appropriate forms for that?
A. Yes.
Q. And that would have been the victim's cloths that you collected?
A. That's correct.
Q. Now, when you collected those items from the scene initially, did you -- State's 19, what is this item, and do you recall where you observed the item?
A. Yes. An unfired 22 caliber bullet, and it was collected right in this area here.
Q. In an area close to where the victim's clothing were

found?

A. Yes, that's correct.

Q. And was this particular bullet -- I believe you said it was unfired?

A. Unfired.

Q. And did you place it in this vial?

A. Yes, I did.

Q. And it has remained in the custody of the Columbia Police Department since that time?

A. Yes, it has.

Q. State's Exhibit Number 20, what are these items?

A. That's the cigarettes and cigarette pack.

Q. And also I see -- that is depicted in State's Exhibit 11. Correct?

A. That's correct. Also the pen and the bus pass.

Q. And in this area, what is this right here?

A. The clothing.

Q. So those again were right in that area where the clothing was found?

A. That's correct.

Q. Do you know if any forensic testing was done on these items?

A. I don't believe any was done on these particular items, no.

Q. Now, Detective Catoe, I want to ask you -- State's

Exhibit 13, what is that a photograph of?
A. A pair of sunglasses.
Q. And where were these observed? Where were they taken from?
A. They were approximately in this area.
Q. At the time, did you know if these sunglasses had anything to do with this particular incident?
A. No, I did not.
Q. Did you take them into your custody?
A. Yes, I collected them.
Q. And is that what's in State's Exhibit 21, those sunglasses?
A. Yes.
Q. I've already shown you State's Exhibit Number 19, the bullet, and I show you State's Exhibits 14 and 15. What are those photographs of?
A. Photographs of the bullet.
Q. Did you take those photographs, both scaled and unscaled, prior to taking the bullet into your custody?
A. Yes, I did.
Q. And that's the bullet that is depicted in State's Exhibit 19, is that right?
A. It is.
Q. In this photograph right here, where you're looking down Rhett Street, State's Exhibit 6, what is this item I'm pointing

to there?

A. A styofoam cup.

Q. Is that the condition you observed that item in upon your arrival that night?

A. That's the position actually on the scene. The exact position on the scene.

Q. The position it's in there?

A. Yes.

Q. Do you know whether or not this had anything to do with the incident?

A. No, I do not.

Q. Did you take it into your custody?

A. Yes, I did.

Q. Point out on State's Exhibit 2 where this item was located.

A. Right here.

Q. And is that the item -- State's Exhibit 20?

A. No, it is not. There's another cup.

Q. Oh, State's Exhibit 22. I wasn't trying to trick you.

A. That's it right here.

Q. That's the one that was up here?

A. That's right.

Q. Now, were there any other items you took into your custody from this area around the 5000 block specifically of Rhett Street?

A. I don't believe so, no.
Q. Now, I want to move a little bit further down the street. Again, moving down toward this area here, and then on further down south of Rhett and Craven.
A. Yes, sir.
Q. Did you have an opportunity to observe certain items in this area and further down the street?
A. Yes, I did.
Q. I want to show you what's been marked State's Exhibit Number 24, and ask if you can identify this diagram for us, please?
A. Yes.
Q. Is this the area of the 5000 block of Rhett Street where the various items you've already identified to the jury that you had taken into your custody?
A. Yes. They are depicted in this diagram there.
Q. In this area here in this diagram, correct?
A. Yes.
Q. Now, going back to this direction, back toward Main Street, did you observe certain items in the area of Rhett and Albemarle and take them into your custody?
A. Yes, sir.
Q. What were those items?
A. A styrofoam cup, cigarette papers.
Q. Now I hand you State's Exhibit 23.

A. These would be the same items.
Q. This is the styrofoam cup and cigarette papers . .
A. Yes, it is.
Q. . . that you collected at Rhett and Albemarle?
A. Correct.
Q. Did you know whether or not they had anything to do with this?
A. No, I didn't.
Q. And why did you take those into your custody?
A. I wasn't sure whether they had any bearing on the case or not.
Q. And did you have an opportunity, or were you notified to come look in this area down here?
A. Yes.
Q. And does Rhett Street angle into Main Street in this angle?
A. Approximately, yes. It actually angles off, not a straight angle like that.
Q. And in this area right here, what is this?
A. That's a clear area. Nothing there other than a sign.
Q. Is that a median between Rhett and Main Street?
A. Yes, it is.
Q. Did you have an opportunity to examine or were you notified to look in this area here?
A. Yes, sir.

Q. I want to show you State's Exhibit Numbers 25 and 26. Can you identify those photographs for us, please?
A. Yes, photographs I took in that area.
Q. And, for example, this sign -- where would this sign be depicted on State's Exhibit 24?
A. Right in this area.
Q. And what is this item here?
A. A wallet.
Q. Did you take that item into your custody?
A. Yes, I did.
Q. This is approximately two blocks from where the victim's clothes were?
A. That's correct, yes.
Q. From up here?
A. Correct.
Q. And State's 26, is that a close-up?
A. That's a close-up of the wallet.
Q. You took that wallet into your custody, and that would be State's Exhibit Number 27?
A. . .

MR. STRICKLER: Your Honor, as to State's Exhibit 27, I have yet to have an opportunity to examine this object.

The wallet was not available until last week to look at, and I didn't want to break the evidence seal on it.

MR. McMAHON: I was not going to open it myself now

either, but I was going to give him time at the appropriate time to examine it.

MR. STRICKLER: Just for the record, the wallet itself I have no objection to. As to what's inside, I have no idea what's there.

THE COURT: We can make a determination on that at a later time. You may continue.

MR. McMAHON: Thank you,sir.

BY MR. McMAHON:

Q. Does this appear to be the wallet you took into custody on that night, is that correct?

A. Yes, it does.

Q. And do you recall if you observed any of the contents of the wallet?

A. Yes, I did.

Q. Were those self-identifying as the victim's, Anthony Rumph's?

A. Yes, they were.

Q. All right.

A. They identified him as the owner.

Q. And as a matter of fact, there was some money in it, is that correct, some Eighty Dollars?

A. That's correct.

Q. And was that money in a sealed part of the wallet?

A. If I recall correctly.

Q. You couldn't see it just to open it?
A. No.
Q. You can retake the stand for me.
A. (Witness resuming witness stand)
Q. I have a few more questions. Did you do personally any forensic testing on any of these items?
A. Yes, sir.
Q. What testing did you do?
A. I used the black powder on several items and magnetic powder on several.
Q. What type of testing-- what type of evidence are you looking for in using the black powder?
A. Fingerprints.
Q. And are you an expert in the field of fingerprints?
A. Yes, sir, I am.
Q. Have you testified as an expert in that field in cases in the past?
A. Yes, sir.
Q. Were you able to identify any prints, sufficient for you to compare them and say they were a particular individual's?
A. No.
Q. On any of the items you examined?
A. None of the items had sufficient prints for identification purposes.
Q. And you said black powder -- for example, State's Exhibit

23, the styrofoam cup appears to have black . .

A. That would be the magnetic powder that was used on it.

Q. And that's the type of processing you did on some of the items?

A. Yes, it is.

Q. Did you do it on all the items?

A. I did it on the styrofoam cups, the wallet and the contents, sunglasses, and the cigarette wrapper or cigarette paper rather.

Q. And as far as those items you referred to -- I believe you said the wallet, styrofoam cup, the cigarette . .

A. The wallet . .

Q. Wallet, styrofoam cup, sunglasses . .

A. And the cigarette wrappers.

Q. The cigarette wrappers.

A. The papers . .

Q. You were not able to identify any print sufficient to detect?

A. No.

Q. And the items you could not perform tests on; for example, for DNA -- you don't test for DNA?

A. No.

Q. And that would be part of the reason you sent the victim's clothing, State's 16, 17 and 18 -- you delivered them to the State Law Enforcement Division for forensic DNA

testing?

A. Yes.

Q. No further questions. Thank you.

Answer any questions Mr. Strickler has for you.

THE COURT: Mr. Strickler, we've got some jurors who need to get away, so I'm going to stop at this point.

Ladies and gentlemen, we'll go ahead and recess for the day. I'll ask you to be back in the morning around nine and we'll be prepared to go ahead and get started then.

If you would, go right to the jury room.

Remember, we don't talk about the case.

(Jury excused from Courtroom at 5:39 P.M.)

THE COURT: All right, counsel. Anything before we recess?

Let's go ahead and come back at nine in the morning.

Officer, be sure not to talk to anyone about your testimony.

(Court stood in recess until March 27, 2001)

(Other business taken up by the Court until 10:30 A.M.)

(Jury returned to the Courtroom)

THE COURT: All right, all parties are present in the Courtroom, and the jury has returned.

Ladies and gentlemen, I apologize for being so late getting started. I promise you we were not sitting around doing nothing.

We had something that we had committed to do, and it took a little longer than we realized it would, but we will correct that so it will not happen again.

All right, I believe Mr. Catoe was on the stand. Mr. Catoe, you are still under oath.

(Witness Catoe resumed witness stand)

All right, Mr. Strickler.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. There are just a few things I want to go over with you. You processed the scene on Rhett Street?

A. Pardon me?

Q. You processed the scene on Rhett Street, as I understand it?

A. That's correct.

Q. Including, as we look at what's marked State's Exhibit 1, processing down to an area -- I don't have the photographs -- State's 24 -- the area where Rhett runs into . .

A. Correct.

Q. And I believe that's where you indicated you found the wallet?

A. Yes.

Q. And did you locate those yourself, or was your attention directed to those by somebody else?

A. It was directed.

Q. You weren't the only person on the scene at that point in time?
A. No.
Q. And as you were processing the scene, through his or her work, found something they thought was of significance, so they would bring that to your attention?
A. Correct.
Q. And that's what happens more or less as far as getting the items . .
A. Yes.
Q. Now, I believe you said at the time you arrived Mr. Rumph had already been transported by EMS. Is that correct?
A. Yes, it is.
Q. He was not on the scene when you arrived?
A. No.
Q. You indicated that you collected the clothing that we have in evidence here, and you took it to a room at the City of Columbia Police Department, where it was air dried.

Is that correct?
A. Yes.
Q. And what was it placed in prior to transporting it to the air dryer?
A. I'm sorry. Repeat the question.
Q. When you first collected it at the scene, what did you put it in?

A. A paper bag.

Q. A paper bag?

A. Paper evidence bag that we use for collecting items of evidence.

Q. How long was it air dried for?

A. Approximately three years.

Q. Do you have any documentation related to how long it was air dried?

A. I have the documentation when I collected it and when I put it into the evidence room.

Q. And between those points in time, it was air dired?

A. Correct.

Q. Now, did you ever have -- well, you testified about placing a 22 caliber bullet in evidence?

A. Yes.

Q. This is an unfired bullet?

A. Yes, it is.

Q. Did you ever have the opportunity to -- well, first of all, are you qualified to do what is termed ballistics testing?

A. No.

Q. You're familiar with the term?

A. Yes.

Q. That's the study of firearms, characteristics of fired bullets, etcetera?

A. Correct.
Q. You're not really qualified to do that type of forensics work?
A. No.
Q. So you would never have the opportunity to develop any tests between the unfired 22 caliber bullet and any bullet which ultimately caused the death of Mr. Rumph?
A. No.
Q. Now, you indicated that you processed a styrofoam cup, the wallet, the contents of the wallet, sunglasses, the cigarette papers.
Those were processed by you for fingerprints?
A. Yes, they were.
Q. Using black powder or magnetic powder?
A. Yes, sir.
Q. There are a number of different ways you can process something for fingerprints, depending on the surface of the item and the condition it's in?
A. Yes.
Q. You indicated there were no prints which were suitable for identification. Is that correct?
A. Yes.
Q. That is not to say there were no prints whatever on the items?
A. There were smudges but not useable for identification

purposes.
Q. That's not unusual?
A. No, it's not. Every kind of surface might not take a fingerprints.
Q. Let me ask you this. That 22 caliber bullet, did you process that for prints?
A. No.
Q. Now, while you might touch a surface, you might not leave a useable fingerprint, and you don't know if one has been left unless you take a look at it. Right?
A. Correct.
Q. And the surface of the shell casing of a 22 caliber bullet is what? Copper?
A. Brass.
Q. And that is a surface which could -- could have held a fingerprint?
A. A 22 caliber bullet is very small and probably you would not have sufficient area to have an identifiable print.
Q. Is brass or is brass not a surface upon which a fingerprint could be deposited?
A. It could be, yes.
Q. Okay, did you ever receive -- in your capacity as a forensics technician, did you ever receive a pair of tennis shoes in this case that were recovered in a search of Mr. Wilds' residence?

A. No.
Q. Did you ever see a pair of tennis shoes recovered off Mr. Wilds' person?
A. No.
Q. Did you ever receive any item from any search of that houses of the individual named Isom Simmons . .
A. No.
Q. . . or an individual named Joseph Dungee?
A. No.
Q. You never got any items -- never got those items?
A. No, sir.
Q. Can you tell us, please -- you took photos of the scene. Correct?
A. Yes.
Q. For example, referring to State's 15 and State's 14.
A. Yes.
Q. These are pictures of the same thing, the 22 caliber bullet. Correct?
A. Yes, that's correct.
Q. State's 15 is a 22 caliber bullet, I assume, as you found it on the ground?
A. Yes.
Q. Okay, and you document it as it was in place?
A. Correct.
Q. And then 14 is the same photograph but you put a

measuring device in there?

A. That's right.

Q. To show how large it is, correct?

A. Correct.

Q. Okay, so I take it that in preserving evidence, that is one of the things you do. Right?

A. Yes.

Q. It is important to document the appearance of an item as you first see it?

A. Right.

Q. And certainly photography is a very important way to make that kind of documentation. Correct?

A. Yes.

Q. And then if you later, for example, have to test a bullet you have a picture of how it appeared prior to testing?

A. Yes.

Q. And if for some reason it looks different later on, you'd be able to say, well, it looked this way prior to testing, and whatever happened was a result of testing. Right?

A. Yes.

Q. So it's important to document the appearance of items when you first get them?

A. Yes.

Q. Is that a fairly common procedure that anyone in forensics would follow?

A. It's standard procedure.
Q. Okay. Procedure as far as police practice?
A. Correct.
Q. As far as your participation in this case, you talked about collecting various items at the scene that evening?
A. Yes.
Q. I'm talking about the processing you did on a few of the items that you testified to, and I believe later on you transported some evidence from CPD -- a couple of days later you took the clothing evidence that was there and put it into secured evidence?
A. Correct.
Q. And then at some later point in time, about a year ago, you transported some clothing items from the City of Columbia Police Department to the State Law Enforcement Division?
A. Yes, I did.
Q. Does that accurately summarize what you've done in this case?
A. Yes.
Q. Thank you very much. That's all.

THE COURT: Anything on redirect?

MR. McMAHON: Nothing on redirect.

THE COURT: You can step down.

(Witness excused from stand)

MR. McMAHON: State calls Detective Burns to the stand.

GERTRUDE BURNS, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Maam, by whom are you employed?

A. Columbia Police Department.

Q. And how long have you been with the Columbia Police Department?

A. About twenty years.

Q. What various positions have you held with the Columbia Police Department during that twenty year period of time?

A. I did approximately three years on the street as a patrolman. I did approximately a year and a half in charge of the cadet program, which was writing parking tickets, and the remaining time with the major crime division.

Q. So about fifteen or fifteen and a half years you have been in major crimes?

A. Yes, sir.

Q. As a major crimes investigator?

A. Correct.

Q. How is the major crimes division set up within the Columbia Police Department, Detective Burns?

A. We have two separate units and two assigned sergeants, or five on one and five on the other.

Q. And you would be assigned to one of the units?

A. Correct.
Q. And then there is a separate major crimes unit, is that correct?
A. That's correct.
Q. Just very generally, and briefly, what type of duties and responsibilities do you have, what type of crimes do you get called on?
A. We usually handle what are deemed major cases, such as murder, rape cases, robbery, any kind of assault, any kind of crime dealing with a weapon.
Q. Would just one of the officers on a particular major crime unit respond to a particular scene, or would it be fair to say most if not all of the officers on a major crime unit would respond to the scene?
A. Depending on the type of crime it is, but on a major case most all the major crime people respond.
Q. In this particular case, do you recall the number of major crime officers that responded?
A. Yes, I think it was one sergeant and four detectives that responded.
Q. And your sergeant is Sergeant . .
A. Sergeant Wilkerson.
Q. And then the other major crime detectives on your unit, who are they?
A. Investigator Lee, Investigator Vinson, and Investigator

Gray.

Q. Is a particular officer assigned as the chief investigating officer?

A. Correct.

Q. And in this case, that would be you?

A. That's correct.

Q. Now, Detective Burns, did you respond to the actual scene of this incident on the night of March 29, 1999?

A. Yes, I did.

Q. And we're talking about in the City of Columbia, in Richland County. Correct?

A. Correct.

Q. Approximately how were you notified, and tell us approximately what time you were notified?

A. This incident went down approximately nine thirty. Usually the officer will get to the scene and tell us what they have, and then dispatch notifies us.

Q. Now, can you describe the scene for the jury upon your arrival?

A. I got there and was briefed by Officer Hunley. The victim at that time had already been transported to Richland Memorial Hospital.

Q. What was the actual major call you were responding to?

A. I initially got the call of a gunshot victim, possibly down, and also to be on the lookout for three black males.

Q. When you say be on the lookout for, is that termed sometimes as a BOLO?
A. Correct.
Q. And is that what that term refers to, be on the lookout?
A. Yes.
Q. So in responding to this particular call, you were given certain information to be on the lookout for . .
A. Three black males.
Q. Three black males?
A. Correct.
Q. Was there any description associated with that BOLO?
A. No.
Q. Now, Detective Burns, when you arrived at the scene, was it secured?
A. Yes, it was.
Q. And can you tell the jury from your observations how the scene was secured?
A. When I got there, Officer Hunley was at the scene and he had already placed his car at one end of the crime scene area, and another officer had as well. They had put up crime scene rope to keep people out.
Q. In addition to the scene being secured, were there any citizens that had remained at the scene at the request of the police?
A. Yes. Officer Hunley had the gentlemen who had initially

called it in when I got there.

Q. And was he within the area of the crime scene or outside of the area?

A. Outside the area.

Q. Now, Detective Burns, when you arrive at a scene such as this, how do you get up to speed, so to speak? How do you find out the lay of the land, so to speak, when you arrived?

A. I talked with the officer and he filled me in.

Q. And who were you briefed by?

A. Officer Hunley.

Q. And that was the Officer who testified -- the first witness, I believe, on yesterday. Is that correct?

A. Yes.

Q. And he showed you certain areas that were later photographed Sergeant Catoe, the crime scene officer, is that correct?

A. Correct.

Q. And I believe you said -- I'm not sure whether the victim was or was not still at the scene upon your arrival?

A. He had been transported to Richland Memorial.

Q. And after you were briefed by Officer Hunley, what is the next step you do as far as your investigation is concerned?

A. Well, usually we are there on the scene until the ID technician arrives, at which point we explain to him what is

related to us by the officer, and then we located and interview the witnesses.

Q. Did you interview any particular witnesses that were at the scene that evening?

A. Yes, I did.

Q. Who was that?

A. I first interviewed Mr. David Johnson.

Q. And -- I'm sorry. Did I cut you off?

A. No, sir.

Q. Now, Mr. Johnson -- what was his involvement or how did you come to interview him?

A. When I arrived at the scene, Officer Hunley stated to me that Mr. Johnson had seen the victim laying down and he had called for help.

Q. Now, did you do any additional follow-up either immediately there at the scene or in the area surrounding the scene?

A. Yes, I did.

Q. And what was that on that particular evening?

A. After talking to Mr. Johnson, I went to -- I think it's the Nickel Pump or -- also known as the Shell Station, and I talked to the clerk.

Q. Now, that would be the business located at the fork of Main Street and Fairfield?

A. Right.

Q. Or Highway 21 and 321?

A. Right.

Q. Just to back up a moment. State's Exhibit 25 -- are you familiar with this photograph?

A. Yes.

Q. Is that the position Officer Hunley's car was in when you arrived?

A. Correct.

Q. Matter of fact, this individual -- who is that?

A. That's me.

Q. And the individuals in this photograph -- there are several others that are not in uniform. Are any of those citizens or are they all of those officers on the major crime?

A. They're on major crime.

Q. So there are no citizens in this particular photograph?

A. No.

Q. Now, how did you come to go down to the -- I believe you call it the Shell Station that's in the photograph, State's Exhibit 25?

A. . .

Q. This being Rhett Street and this being Main Street. If you look down here, would that be the station?

A. Yes.

Q. The station in the fork of the road?

A. Yes.

Q. How did you come to go down to the Shell Station, Detective Burns?

A. We received a call from the dispatch that a call had come in from the Shell Station.

Q. And as a result of that, you went down there?

A. Yes.

Q. And what did you do as far as that Shell Station was concerned?

A. Being the crime scene was approximately a block away from the Shell Station, we at that time talked to the Clerk, who just told us what had happened, about somebody running in and saying someone was down and had been shot.

And we also obtained a video of that store that night.

Q. And so that was the video taken in the normal course of business in that Shell Statoin?

A. Right.

Q. And did you receive it into your custody that night?

A. I did.

Q. Is that -- has that become part of major crime's follow-up or standard procedure, if you will, to check around at business to see if they have video cameras?

A. Yes. We've done that for the last several years.

Q. And do you recall the Clerk's name?

A. Yes, Ms. Theta -- T H E T A.

Q. She was at the Shell Station?

A. Yes, she was.

Q. Now, by the time you went to the Shell Station -- let me back up a minute.

There on the scene in the 5000 block of Rhett initially, where the victim had been removed from, had you all been able to identify the victim at that point?

A. I don't know if it was right then or when we got back and walked the incident location.

Q. My question was somewhat inartful. Where the clothes had been cut off the victim -- right in that area, were you all able to identify the victim?

A. No.

Q. And as you all continued throughout the evening with the investigation, were you able to find a certain item that was associated with the victim?

A. Yes, we did.

Q. And again, State's 25 -- this item here?

A. That's right.

Q. And what was the item?

A. The wallet.

Q. And that wallet had certain self-identifying . .

MR. STRICKLER: I would object to the leading, Your Honor.

THE COURT: Just rephrase it.

BY MR. McMAHON:

Q. Were you all able to look at the contents of the wallet?

A. Yes, we opened it.

Q. And as a result of that, were you able to determine the identity of the victim?

A. Yes.

Q. Who was it? Who was the victim?

A. Anthony Rumph.

Q. Did you all attempt to make contact with his family members after that?

A. Yes, I did.

Q. As a result of that, who did you contact?

A. I talked to Anthony Rumph's father and he told me about a girlfriend Anthony had.

Q. Do you recall the address you were given?

A. Yes, it was 823 Oakland.

Q. Oakland Avenue?

A. Oakland Avenue.

Q. Where is Oakland Avenue in relationship to Rhett Street and Craven Street?

A. . .

Q. Was it within a block?

A. It was several blocks from the incident location.

Q. Were you able to make contact with the victim's girlfriend that night?

A. No.

Q. Now, did you all attempt to check any of that area for video tapes that night?

A. Yes, we did.

Q. Where was that?

A. Right across from the Shell Station, another store, CJ's.

Q. Is that on Fairfield Road or Main Street?

A. That would be the one on Main Street.

Q. Generally in this area here?

A. Correct.

Q. Now, we know the Shell Station is a convenience store, is that correct?

A. Correct.

Q. What type business is CJ's?

A. It's the same thing. A convenience store also.

Q. Was it open at the time the call came in?

A. Yes, it was.

Q. Did it have videotape equipment?

A. Yes it did.

Q. What did you all try to do in regards to the video at CJ's on that night -- the night of the 29th on over into the hours of the 30th?

A. Well, we went inside the store and talked to the Clerk and asked did they have a video, and they did, but she would not be able to retrieve it until the next morning.

Q. So you were not able to get that video that night?
A. Not that night.
Q. Did you get it at a later time?
A. Correct.
Q. Did you check on the condition of the victim on the night of the 29th or the morning of the 30th?
A. Yes, I did.
Q. What was his condition?
A. His condition at that time was critical.
Q. Do you know what his injuries were?
A. A gunshot wound.
Q. Now, going over --did you do any additional follow-up on the night of the 29th to the early morning hours of the 30th?
A. Yes, I did. I got in touch with Anthony Rumph's sister.
Q. And did you inform her what had occurred?
A. I did.
Q. And going on to the next day, the 30th, did you continue to be involved in the investigation into March 30th?
A. Yes, sir.
Q. And what initially did you do that next morning?
A. Myself and Investigator Smith went back to the crime scene to see if we could locate some other evidence.
Q. Did you all walk that area?
A. Yes, we did.

Q. Did you locate any other items that you felt were relevant to the case?

A. No, we didn't.

Q. Did you do any additional follow-up on a particular item that you had seized the night before?

A. Yes.

Q. What item was that?

A. The glasses.

Q. Referring now to State's Exhibit 21, are you referring to this item here?

A. Correct.

Q. And this particular item, when and where had it been taken into custody?

A. It was recovered the night of the incident, the 29th.

Q. What type of follow-up were you doing on that item?

A. I went to check and see if those glasses belonged to Anthony Rumph and talked to his sister and asked her about the glasses.

Q. That's the glasses that appear in this photograph?

A. Yes.

Q. State's Exhibit 23?

A. Correct.

Q. Were you able to identify those through his sister?

A. No.

Q. But at a later time, you did additional follow-up on

the glasses?
A. I did.
Q. What other steps did you take on the search?
A. . .
Q. Did you have an opportunity to talk to anyone?
A. I talked to Anthony Rumph's girlfriend.
Q. That's the girlfriend you had attempted to contact the night before?
A. Yes.
Q. Were you able to determine whether he was or was not at her residence on the 29th?
A. She stated he was not at the residence on that day.
Q. Now, did you have an opportunity to interview any citizens that lived in or around the area on the 30th?
A. Yes, I did.
Q. Who was that?
A. Ms. Kay Thomas.
Q. And Ms. Thomas -- did you determine what area she was in on the night in question?
A. She was in the area of the incident when it happened.
Q. And did you talk with her and try to take a statement from her?
A. Yes, I did.
Q. Detective Burns, continuing on into the 30th, did you remain involved in the investigation throughout?

A. Yes, I did.

Q. And had you all yet gotten the video from CJ's?

A. I think we picked up the video on the 31st.

Q. That was taken into police custody on the 31st?

A. Yes, it was.

Q. Had you all gotten the opportunity to check the video at the Shell Station?

A. Yes, we did.

Q. And as a result of checking the video at the Shell Station, did you see the victim?

A. No.

Q. Or the Defendant or any of the Co-defendants?

A. No, they were not on the video.

Q. Did you see some individuals you identified, a Mr. Johnson?

A. Yes, sir.

Q. And another young lady, a Ms. Bryant?

A. Yes, I did.

Q. In the Shell Station video?

A. Yes.

Q. And did you continue to monitor the condition of Mr. Rumph?

A. Yes, I did.

Q. And do you know whether or not in this period of time his condition stablized or worsened?

A. It was getting worse at that time.

Q. I want to talk with you now about April first. On April first, did you have a opportunity to view the video from CJ's?

A. Yes, I did.

Q. And as a result of viewing the video from CJ's, did you see Anthony Rumph in that video?

A. Yes. Mr. Rumph was in the video.

Q. And do you recall the approximate time?

A. Somewhere between eight and eight forty.

Q. And that is imprinted on the video, correct?

A. Yes.

Q. Now, as as result of that, did you -- was he a customer at CJ's?

A. Yes, he was.

Q. Was there any other individual in there at the time that appeared to be customers?

A. Yes.

Q. What did you do as far as the other individuals that were in there the same time Mr. Rumph was in CJ's?

A. We attempted to locate those people.

Q. Did you know them by name?

A. No.

Q. But you see them?

A. Yes.

Q. And what steps did you all take to attempt to locate these individuals who were in the video at CJ's the same

time Anthony Rumph was?

A. We showed the video to officers that worked in the area. One particular officer is in the area a lot. He looked at a copy of the video, and he at that time saw an individual he thought he knew. That was Officer Fuller.

Q. Now, which video was this?

A. The one from CJ's.

Q. So you showed it to Office Fuller and he worked the area a lot?

A. Yes, sir.

Q. Was he able to identify one of these individuals?

A. Yes.

Q. As a result of that, what happened later on that same day, April first?

A. . .

Q. What happened as far as the video and Officer Fuller that same day?

A. He was on patrol that day and he observed one of the individuals in that video, and he at that time phoned us.

Q. What was his name?

A. Ronald Martin.

Q. What steps did you take as far as Mr. Martin was concerned when Officer Fuller called you?

A. . .

MR. STRICKLER: Objection. Hearsay.

BY MR. McMAHON:

Q. All right. As a result of that, what steps were taken as far as Mr. Martin was concerned and yourself and any of the other major crimes investigators?

A. Myself and Investigator Mead went out to the scene to talk with Mr. Martin.

Q. When you say went out to the scene, where was he at?

A. His residence.

Q. Who was there with him?

A. Officer Fuller and myself and Investigator Mead.

Q. Officer Fuller?

A. Yes, sir.

Q. Did you and Investigator Mead interview Mr. Martin?

A. Yes, we did.

Q. You show him the video?

A. Yes, we did.

Q. Was that him on the video?

A. Yes, it was.

Q. And there were still other individuals on the video?

A. Correct.

Q. As a result of that interview with Mr. Martin, where did you and Investigator Mead go then?

A. We at that time found another guy in the interview, or Mr. Martin did, Timothy Myers.

Q. Detective Burns, do you remember where his residence was?

A. I want to say 4915 Burk Avenue.

Q. Mr. Myers' residence?

A. Yes, sir.

Q. Burk Avenue?

A. Burk Avenue.

Q. And do you remember Mr. Martin's?

A. I know it was right off Main Street, approximately a block away from the incident.

Q. Same area?

A. Yes, and Mr. Myers lived right behind CJ's.

Q. And as a matter of fact, after Mr. Martin identified -- after you all identified Mr. Myers, was anybody else on the video found?

A. Another individual called Russell.

Q. Martin identified both Myers and Russell?

A. Correct.

Q. What steps did you all take as far as Mr. Myers was concerned?

A. We began looking for Myers.

Q. And what steps did you all take as far as the video was concerned?

A. We identified the people on the video and also Mr. Rumph. Mr. Rumph was on the video when an individual named Timothy Myers was inside the store.

Q. And did you all make any still photographs from the

video?
A. Yes, we did.
Q. Now, on up into the first week of April -- by April 6, I believe it was, had you all located Mr. Myers?
A. No. We had located his residence.
Q. And that's 4916 --I believe you said -- Burk Avenue?
A. Correct.
Q. What steps, if any, did you all take as far as 4916 Burk Avenue on April 6, 1999?
A. We were able to obtain a search warrant.
Q. And that search warrant was for what? For Burk Avenue?
A. That's correct.
Q. And what is a search warrant? What does it authorize you to do?
A. Exactly what it says. Search for evidence relating to a crime.
Q. And did you all serve that search warrant?
A. Yes, we did.
Q. On what date and time?
A. On April 7th, 1999.
Q. Now, when you all served the search warrant on April 7, 1999, was Mr. Myers there?
A. Not at the time.
Q. Did he come to the residence during the course of the search?

A. That's correct.

Q. When you all do a search, are there both uniform and non-uniformed officers there?

A. Correct.

Q. In other words, if you all search my house and I'm coming up from the outside, can I pretty much tell the police are there?

A. Yes.

Q. And while you were conducting the search, Mr. Myers arrived?

A. Yes, he did.

Q. Now, as a result of that search, did you all take the opportunity to interview Mr. Myers?

A. Yes, we did.

Q. And where was that interview conducted?

A. He was transported to the investigative division.

Q. And did you all interview him in regards to March 29th of 1999?

A. Yes, we did.

Q. As a result of the interview with Mr. Myers, did he point out a particular location?

A. Yes, he did.

Q. What location was that?

A. At 1315 Clarendon Street.

Q. And who lived at that location:

A. Isom Simmons.
Q. Isom is his first name?
A. Yes, sir.
Q. I S O M?
A. I S O M Simmons.
Q. How far is 1315 Clarendon Street from 4916 Burk Avenue?
A. I want to say approximately two blocks over.
Q. Mr. Simmons -- I want to show you a photograph and ask if you can identify the photograph?
A. Yes, sir.
Q. Who is that a photograph of?
A. Isom Simmons.
Q. And did he live at 1315 Clarendon?
A. Yes, he did.
Q. What is his date of birth?
A. December 7, 1983.
Q. On March 29 of 1999, he was fifteen?
A. Fifteen.
Q. This is Mr. Simmons?
A. Yes.
Q. Was Mr. Simmons in the video?
A. No, sir.
Q. Any of these individuals we've mentioned, Mr. Myers, Mr. Martin, Mr. Simmons, were they in the video at the Shell St
A. No, sir.

Q. What other steps did you and other officers take as far as Mr. Simmons was concerned on April 7th?

A. After an interview with Timothy Myers, he showed us where Isom Simmons lived. Myself and Investigator Mead went to Isom Simmons' house and asked him if he would come in and talk to us at investigations.

Then he was transported to investigations.

Q. Did he voluntarily accompany you all?

A. Yes, he did.

Q. And after you all got to investigations with Mr. Simmons, what, if anything, did you do?

A. He was advised of his rights.

Q. And is that standard procedure?

A. Yes, it is.

Q. And did you do that with a form?

A. Yes, I did.

Q. After advising him of his rights, did Mr. Simmons give you a statement?

A. Yes, he did.

Q. Now, as a result of that statement, was he charged?

A. Yes, he was.

Q. What was he charged with?

A. At that time, he was charged with assault and battery with intent to kill and armed robbery.

Q. Mr. Rumph, Anthony Rumph, was still alive?

A. Yes, he was.
Q. In fact, he lived until July 8 of 1999?
A. That's right.
Q. So he was charged with assault and battery with intent to kill and armed robbery?
A. That's right.
Q. Did he agree to show you all any other location?
A. Yes, he did.
Q. And what other locations were you all shown?
A. He took us to 1101 Carola Street.
Q. Whose residence is that?
A. The residence of Israel Antwan Wilds.
Q. And did he name another individual at that present time?
A. Antwan?
Q. Did Mr. Simmons name another individual?
A. Joseph Dungee.
Q. So you say 1101 Carola?
A. Correct.
Q. And that would be Israel Antwan Wilds' residence?
A. Yes.
Q. And do you recall the other address?
A. Yes. Joseph Dungee lived at 1006 Napa Street.
Q. Did he also show you where his mother stays, Dungee's?
A. Yes, he did.
Q. Where was that?

A. . .

Q. I show you a document and ask if this refreshes your memory?

A. Yes. His mother lives at 22-4 Latimore Manor.

Q. Isom Simmons gave you these addresses?

A. Yes.

Q. And the names of these individuals?

A. Yes.

Q. Now, Latimore and Carola -- going back to State's Exhibit 1, this appears to be Carola?

A. Correct.

Q. And that's the street he referred you to?

A. Yes.

Q. And this map, does it go far enough south to have Latimore Manor on it?

A. Yes.

Q. Where is Latimore Manor?

A. It would be further up the street.

Q. Further south?

A. Coming back toward town.

Q. Coming back toward town?

A. Yes.

Q. Houk Street is not located in that area?

A. No.

Q. Where is Houk Street?

A. It would be on the east end.
Q. Up near Millwood?
A. Yes.
Q. Now, after the interview with Isom Simmons and his pointing out the two individual locations, and naming the two individuals, what steps did you all take as far as 1101 Carola, the residence of Antwan Wilds?
A. We obtained a search warrant for that residence.
Q. What day was this?
A. April 7, 1999.
Q. Was that the same day you all interviewed Isom?
A. Correct.
Q. And did that search warrant for Carola authorize you and other officers to search the residence of Antwan Wilds?
A. Yes, it did.
Q. What items were you all searching for?
A. From the interview, items of clothing and the gun, the things he said Antwan was wearing.
Q. What type of clothing were you searching for?
A. A jacket, sweater, tennis shoes.
Q. Were they particularly described to you, the tennis shoes?
A. Yes.
Q. How were they described?
A. Nike Air Force tennis shoes.
Q. When did you all execute the search warrant at 1101

Carola?

A. On April 7, 1999, at approximately seven twenty P.M.

Q. Seven twenty P.M.?

A. That's right.

Q. And what officers executed that search warrant?

A. Myself, Investigator Mead, Vinson, Wilkerson and Officer Hunley.

Q. When you all executed the search warrant, did you all take particular items from this residence?

A. Yes, we did.

Q. Was Mr. Wilds, Antwan Wilds, present at the time?

A. Yes, he was.

Q. Were there any other individuals present?

A. Mr. Herbert Davis, his wife, and a cousin of Antwan.

Q. Do you recall the cousin's name?

A. I think it was Terrell.

Q. Terrell?

A. Yes.

Q. Now, what areas particularly of 1101 Carola did you all search?

A. We went to a bedroom that was pointed us to us by Mr. Davis that Antwan shared with his cousin.

Q. Did you all seize several items?

A. Yes, we did.

Q. When you all seize items with a search warrant, do you

all leave any type of documentation with the individual at the house?

A. Yes. Always on the execution of a search warrant, there are two copies, one for the officer and one for the resident. Even if no one is there, we always leave a copy of the search warrant inside the residence.

Q. And do you -- when you seize certain items, do you inventory those items?

A. Yes, we do.

Q. On the return?

A. Yes, we do.

Q. I want to show you several items.

A. . .

MR. McMAHON: I understand without objection, Your Honor.

MR. STRICKLER: Correct.

(Conference at the bench off the record between counsel and the Court)

BY MR. McMAHON:

Q. Now, Detective Burns, you all noted on the return the items you seized from 1101 Carola?

A. Yes, we did.

Q. And were they seized from the room identified as the room of the Defendant, Antwan Wilds?

A. Correct.

Q. I want to show you these items beginning with State's

Exhibit 28, and ask if you can identify this for us.

A. Yes, sir.

Q. Was this one of the three items appearing on the return?

A. Yes.

Q. And when you take these items in custody, is it noted the location, the date, time, in which the item was seized?

A. Yes, sir.

Q. On this particular item, did you give the location of the seizure?

A. Yes.

Q. What is that?

A. At 1101 Carola Street.

Q. Does it give the time of seizure?

A. Yes, on April 7, 1999, at approximately nineteen twenty.

Q. That's military time?

A. Yes, seven twenty.

Q. These other marks, were they placed on there at a later time for forensic testing?

A. Yes.

Q. And State's Exhibit 29, was this item seized from the residence?

A. Yes, it was.

Q. And does it have the same date and time, 1101 Carola?

A. Yes, sir.

Q. On April 7, 1999, at seven twenty?

A. Yes.
Q. And State's Exhibit 30, were these items seized?
A. Yes.
Q. Same location, same date, same time?
A. Right.
Q. Now, these are -- what are these items here?
A. Nike Air Force tennis shoes.
Q. I see the Nike emblem and they are tennis shoes, and on the tongue . .
A. Air Force.
Q. Did you all take those into your custody from the room identified as the Defendant's?
A. Yes, sir.
Q. Now, these don't appear to be suede?
A. No.
Q. They are more leather?
A. Yes.
Q. Were you actually looking for suede?
A. Yes.
Q. But you took those into custody?
A. Yes.

(Items admitted without objection as follows: State's Exhibit 28, sweater; 28, coat; 30, tennis shoes)

BY MR. McMAHON:

Q. Detective Burns, what was done with the Defendant that

evening?

A. After talking to the Solicitor, he was also arrested on that date.

Q. And what was he charged with?

A. He was charged with assault and battery with intent to kill and armed robbery.

MR. McMAHON: May we approach the bench, Your Honor?

THE COURT: Yes, sir.

(Conference at the bench off the record between counsel and the Court)

Q. Detective Burns, after an individual is arrested, is a photograph taken of him?

A. Yes.

Q. Was a photograph taken of Mr. Wilds with the appearance he had on the night he was arrested?

A. Yes.

Q. And I show you a photograph and ask if you recognize the photograph?

A. Yes, I do.

Q. Is that a photograph of Mr. Wilds on the night of April 7, 1999?

A. Yes, it is.

Q. Does that appear to be the manner in which he looked that evening?

A. Yes, it does.

Q. And does it have his name and date of birth on the side?

A. Yes. His birth date is August 15, 1979.

MR. McMAHON: I'd like to introduce this in evidence.

MR. STRICKLER: That can come in without objection.

(Photograph of Defendant entered in evidence without objection as State's Exhibit 31)

BY MR. McMAHON:

Q. So 8 15 79 -- what age would that put him?

A. He would have been 19.

Q. Now, what was he charged with?

A. Assault and battery with intent to kill and armed robbery.

Q. The same thing as Mr. Simmons had been arrested for?

A. Correct.

Q. And where was he taken to?

A. Investigations.

Q. Who took responsibility for Mr. Wilds at the police department in investigations?

A. I did.

Q. Who took responsibility for these items at the police department?

A. Investigator Vinson.

Q. And Investigator Vinson, I believe you mentioned him earlier . .

A. Yes.

Q. . . as one of the officers on your unit?

A. Correct.

Q. Now, would you tell the jury where you took the Defendant upon your arrival at the police department?

A. To investigations.

Q. What type of setting is that? Is it like a jail?

A. No, it's the office we work out of.

Q. What, if anything, did you advise him of?

A. He was advised of his rights at that time.

Q. The same type of procedure that you used in advising Isom Simmons of his rights?

A. Correct.

Q. Did you do that on a form and in writing?

A. Correct.

Q. I want to show you an item marked as a Court's Exhibit, Court's 3. Do you recognize this item?

A. Yes, I do.

Q. And is that a copy of the rights form you used on the evening of the 7th with Antwan Wilds?

A. Yes, it is.

Q. And is this an enlargement of it?

A. Yes.

MR. McMAHON: Your Honor, I would offer Court's 3 now as State's Exhibit 32.

MR. STRICKLER: I'm sorry. I thought he was wanting the enlargement as a demonstrative aid.

MR. McMAHON: That's fine.

MR. STRICKLER: I have no problem with that. I would object to the introduction of the advice forms as it contains items beyond the advice form, and at this point I might as well go ahead and note for the record my previously stated objections as to what's coming in, on both grounds.

THE COURT: All right, I would note that, and would affirm the ruling made before.

(Advise of rights form admitted as State's Exhibit 32 over objection)

THE COURT: Ladies and gentlemen, let me instruct you as to what's about to happen. At this point the State will introduce a statement which is alleged to have been made by the Defendant.

Now, while it is my duty to determine whether such a statement will be admitted, it is your duty to determine the existence, the voluntariness and any weight to be given to the statement by the Defendant.

Of course, the State must prove the voluntariness beyond a reasonable doubt.

So you must make the ultimate determination of whether or not the Defendant in fact made the alleged statement. If you determine that he made the statement, then you must

determine it was voluntary, and if you determine it was voluntary you should then decide what weight, if any, should be given to any statement given by the Defendant.

You must carefully scrutinize all the surrounding circumstances before giving any weight to an alleged statement. You must be satisfied beyond a reasonable doubt that the statement was made by the Defendant, uninfluenced by promise of reward or threat of harm.

If you find beyond a reasonable doubt that any alleged statement was made voluntarily, again you must decide how much weight to give to it.

Of course, if you find the statement was not voluntary, then in that event you must not consider it for any purpose.

Any objection to the charge by the State?

MR. McMAHON: No, sir.

THE COURT: From the Defense?

MR. STRICKLER: No, Your Honor.

THE COURT: All right. You may continue, and State's 32 is admitted.

MR. McMAHON: And I may use the enlargement.

THE COURT: Yes.

BY MR. McMAHON:

Q. Referring now to State's Exhibit Number 32, is this the advice of rights form?

A. Yes, it is.

Q. The same type of form you used with Mr. Simmons?
A. Correct.
Q. This is an enlargement of the form you used with Mr. Wilds on the night of April 7, 1999?
A. Correct.
Q. Now, whose writing is this at the top?
A. Mine.
Q. Israel A. Wilds.
A. Yes.
Q. And then do you indicate on there the place this procedure is taking place?
A. Yes.
Q. And what is that?
A. Police department.
Q. That is your writing?
A. Yes.
Q. And then the date?
A. April 7, 1999.
Q. And the time?
A. Twenty forty P.M., or eight forty P.M.
Q. Now, what specifically did you advise Mr. Wilds of that evening?
A. I advised him of that rights shown on that chart.
Q. And would you read them for the jury in the manner in which you read them on the night of the 7th?

A. Yes. Before we ask you any questions, you must understand your rights.

You've got the right to remain silent. Anything you say can be used against you in Court.

You have the right to talk to a lawyer for advice before answering questions and have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you would have the right to stop answering at any time.

You also have the right to stop answering at any time and talk to a lawyer.

Q. Did you read each and every one of those rights to the Defendant on the night of the 7th?

A. Yes, I did.

Q. Describe for the jury what his demeanor was during this procedure, please? What did his mental state appear to be?

A. He was calm and relaxed.

Q. Did he appear alert during questioning?

A. Yes.

Q. Did he ask you any questions?

A. No.

Q. Did he indicate to you that he understood?

A. Yes.
Q. Did he indicate to you that he wanted to remain silent?
A. No, he didn't.
Q. Did he indicate to you that he wanted an attorney?
A. No, he didn't.
Q. Now, after you advised him of his rights, what is the next thing that you advised him of, Detective Burns?
A. He was advised of the waiver of rights on the form, I have read the statement of my rights and understand what my rights are, and I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing.

No promises or threats have been made to me. No pressure or coercion of any kind have been used against me.

Q. Now, did you read that waiver of rights to him?
A. Yes, I did.
Q. What was his response, his verbal response, to that waiver of rights?
A. That he would not sign anything.
Q. Did he object to talking with you?
A. No, he didn't.
Q. What did he say?
A. He said he would talk to me but he would not sign anything.
Q. So in the place to sign, what did you indicate?

A. Refused.

Q. Did he refuse to sign?

A. Correct.

Q. Did he refuse to talk to you?

A. No, he did not.

Q. Did he tell you, I don't want to talk to you?

A. No, he didn't.

Q. He said he would talk to you but he wouldn't sign anything?

A. Correct.

Q. And that's when you wrote on there, refused, and you witnessed that?

A. Yes.

Q. This is your signature here?

A. Yes, it is.

Q. Now, did he appear to understand his rights?

A. Yes, he did.

Q. And knowing his rights, did he appear to waive his rights knowingly?

A. Yes, he did.

Q. Who all was in this room?

A. Just him at that time.

Q. Did you promise him anything in return for his statement?

A. No.

Q. Did you threaten him in any manner?
A. No.
Q. Did you coerce him in any manner?
A. No.
Q. Any statements he gave to you, were they a product of your will or a product of his free will?
A. His free will.
Q. Did you use any type of pressure against him in any manner in return for these statements?
A. No, I did not.
Q. Now, after he waived his rights, did you and the Defendant, Antwan Wilds, have a conversation?
A. We did.
Q. And what did you tell him? What was that conversation?
A. I told him at that time that he was charged with assault and battery with intent to kill and armed robbery, and I asked him at that time if he knew Isom Simmons.
Q. Why would you ask him if he knew Isom Simmons?
A. Because of the statement I had retrieved from Isom Simmons.
Q. What was his response to you?
A. At that time, he stated he didn't know anyone named Isom Simmons.
Q. Didn't know anyone by that name?
A. Correct.

Q. Now, did you and he continue to talk?
A. Yes, we did.
Q. And he continued to talk voluntarily?
A. Yes, he did.
Q. What did you all next talk about?
A. I talked to him about a gun. He at that time stated he had never owned a gun, and then he bragged about having a shotgun, a 38 and a nine milimeter.
Q. So initially what did he say about guns?
A. He didn't own any guns.
Q. And thereafter did you all continue to talk?
A. Yes.
Q. What did he then say?
A. That he owned a shotgun, a 38 and a nine milimeter.
Q. Did you all have any other conversation at that time?
A. Yes. I also asked him about Isom calling him cousin.
Q. Why did you ask him about Isom calling him cousin?
A. Because Isom made the statement to me about Antwan was his cousin.
Q. And what was his response at that time about Isom calling him cousin?
A. He stated to me at that time that Isom called him cousin.
Q. Now, if you can see on the form the lower right hand side, where I'm pointing?
A. Yes.

Q. Whose writing is that?
A. That's my writing.
Q. Could you just read that for us?
A. Yes. Said he didn't know Isom; said he never owned a gun, and then said he owned several guns, a shotgun, and then stated Isom called him cousin.
Q. Now, when you were testifying to the jury just now about his talking about a shotgun and a 38 and a nine milimeter, I believe . .
A. Right.
Q. . . where did that information come from?
A. From my case management file.
Q. So there are notes about this same conversation in addition to what you wrote on here?
A. Correct.
Q. Besides that, the caliber of those guns, was there any other note about this conversation?
A. Just in my case notes.
Q. Now, did you continue to talk with him?
A. No.
Q. Why not?
A. He didn't have anything else to say.
Q. And how did you learn that he didn't have anything else to say?
A. He said he didn't want to talk any more.

Q. So when he said he didn't want to talk any more, did you then go back and take that as wanting to remain silent?

A. That's correct.

Q. And you did not discuss it with him any further?

A. No.

Q. All of those statements you have related to the jury were made by who?

A. Israel Antwan Wilds.

Q. Freely and voluntarily?

A. Correct.

Q. Now, Detective Burns, about how long do you think you were in his presence in that office that evening?

A. Fifteen, twenty, twenty-five minutes.

Q. And that was starting at about eight forty that evening, I believe?

A. Yes.

Q. As you remained there until you came to the end of the conversation you had with Mr. Wilds, what, if anything, did you notice?

A. I noticed that he was wearing a pair of Nike grey suede tennis shoes. I at that time had Sergeant Wilkerson come in and look at his shoes.

At that time I informed Vinson to retrieve his shoes.

MR. McMAHON: I'm going to have these marked, Your Honor. I understand without objection.

MR. STRICKLER: Correct.

THE COURT: All right.

(Tennis shoes marked in evidence as State's Exhibit 33 without objection)

BY MR. McMAHON:

Q. Now I want to show you an item marked State's Exhibit Number 33, and ask if you can identify this item for us, please?

A. Yes.

Q. Okay. What are these?

A. The shoes that Mr. Wilds was wearing at the time of his arrest.

Q. These shoes were on his feet?

A. Correct.

Q. Did you -- were they taken into custody at the police department?

A. Yes, they were.

Q. And who did you notified about these shoes being on his feet?

A. Investigator Mead and Wilkerson. I had them come in to look at the shoes.

Q. What brand shoes are these?

A. Nike Eagles.

Q. Do these appear to be leather?

A. Suede.

Q. Again, looking on the tongue, what does that say?
A. Nike Air Force.
Q. And I hand you the bag with State's Exhibit 33. Does it show the location where these suede grey Nike Air Force shoes were taken into custody?
A. Yes. Taken into custody at the address of the Columbia Police Department.
Q. Now, were these items, the sweater, shoes, jacket, suede shoes -- were these forwarded to the State Law Enforcement Division?
A. Yes, they were.
Q. Now, Detective Burns, did you continue to remain involved in this investigation?
A. Yes, I did.
Q. And what -- on 4 8 99 what, if anything, was done as far as the investigation was concerned?
A. Also done -- Isom Simmons had also mentioned the name of Joseph Dungee, and Mr. Dungee was picked up the next day.
Q. I want to show you -- where was Mr. Dungee picked up the next day?
A. At his residence.
Q. I show you State's Exhibit 34. Who is that a photograph of?
A. That's a picture of Joseph Dungee.
Q. And does his date of birth appear on the back?

A. Yes, sir.
Q. And what is that date of birth?
A. It's June 21st, 1983.
Q. Which would make him how old at that time?
A. Fifteen.
Q. And where was it he was taken in custody?
A. At his residence, 1106 Houk Street.
Q. Do you know what relation the person was at 1106 Houk Street to Mr. Dungee?
A. . .
Q. Was there a kinship?
A. Yes.
Q. And after you took Mr. Dungee into custody, was he questioned?
A. He was advised of his rights also.
Q. And thereafter, did he give you a statement?
A. He did.
Q. A statement consistent with Mr. Simmons?
A. Yes.
MR. STRICKLER: Objection to characterization, Your Honor.
THE COURT: Sustained.
BY MR. McMAHON:
Q. Now, I just have a couple more questions. On the 7th, after Simmons had given you his statement, was he ever back

out on the street?

A. No, sir.

Q. On the night of the 7th or day of the 8th?

A. No. He was arrested at that time.

Q. He was taken into custody on the 8th?

A. Correct.

Q. After he was taken into custody and gave you a statement, what, if anything, was he charged with?

A. He was charged with assault and battery with intent to kill and armed robbery.

Q. Was there a time that Simmons was out on the street where he would have had an opportunity to Dungee on the 7th or 8th?

A. No.

Q. All three of them are now charged with the same things?

A. Correct.

Q. The two fifteen year olds, would they have been charged initially as adults, or would that have to start in Family Court?

A. To start in Family Court.

Q. You got to look at the video, and I asked you earlier if you saw Myers and Martin together at CJ's?

A. Yes.

Q. Did you have the opportunity to see these -- or identify these glasses?

A. Yes, sir. He had those glasses on top of his head at

CJ's.

Q. He who?

A. Anthony Rumph.

Q. The victim?

A. Yes, sir.

Q. You can see that in the video?

A. Yes, sir.

Q. Now I want to ask you about several of these items of evidence.

The grey suede tennis shoes, State's Exhibit 33, I believe, did you receive them from the Detra Turner of the Columbia Police Department's evidence room on May 18, 1999?

A. Yes, I picked them up from her on May 18, 1999, to be transported to SLED. At that time, I transported that evidence to Investigator Mead, who took it to SLED.

Q. On May 18, you got them from the evidence room and gave them to Detective Mead for him to take them to SLED, is that correct?

A. That's correct.

Q. Also, going back to the victim's white shirt, which has been previously marked as State's Exhibit Number 18, did you have an opportunity to have this in your custody on November 16, 2000?

A. Yes, sir, I picked this up from the property room from Joanne Lewis and resubmitted it back to SLED.

Q. And was there also -- what area of SLED did you submit it to?
A. DNA.
Q. Was there also a resubmission on the -- that was the only resubmission on the white shirt?
A. Right.
Q. As far as the white shirt is concerned that I showed you, the victim's white shirt, it's indicated as item 4.0 by SLED?
A. That's right.
Q. A cutting from the shirt to be tested for DNA?
A. That's right.
Q. Item 4.1.
A. Just the cutting. That's correct.
Q. Now, let's talk just a moment about the victim. We're on into April. Is the victim still living?
A. Yes, sir.
Q. When did the victim die?
A. July 8th.
Q. Was there ever a time that he was in such a condition that you were able to interview him?
A. No, sir.
Q. Was his condition always so critical that you were never able to get any information from him?
A. Correct.
Q. As a result of him dying, were each of these individuals

that had been charged with assault and battery with intent to kill -- were his charges updated to murder?

A. That's correct.

Q. All right. I have nothing further.

THE COURT: Let's take a short break. Ladies and gentlemen, I apologize for going so long. I was going by that clock up there and it's wrong. I understand it's clsoe to noon.

We'll take a short break, and you can go to your jury room. Do not talk about the case.

Which juror is Ms. Miller? Let me ask you to serve as Forelady of the jury, please, maam.

(Jury excused from Courtroom. Court stood in recess from 11:56 to 12:30 P.M., when jury returned.)

THE COURT: All parties and attorneys are in the Courtroom. All jurors have returned.

Mr. Strickler?

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good afternoon, Investigator Burns.

A. Good afternoon.

Q. Let's see. You've got a videotape from the Shell station and a videotape from a place called CJ's?

A. Right.

Q. The Shell station is located on what street?

A. I want to say Main.

Q. Let's look at State's Exhibit 1. The Shell station is located there?

A. Yes. To the side of CJ's.

Q. Beside CJ's?

A. Yes.

Q. Where is CJ's located?

A. Right here.

Q. What street?

A. I would say Main Street.

Q. Now, you responded to the scene on the evening of the incident, and you start doing what you can to develop leads in the case?

A. Correct.

Q. That's what you're supposed to do?

A. Correct.

Q. And as I understand it from the chart we had when you testified, the video from CJ's led you to a fellow named Martin?

A. Correct.

Q. And you talked to him?

A. That's correct.

Q. And it also led you to a fellow by the name of Myers, is that right?

A. Right.

Q. Tim Myers?

A. Timothy Myers.

Q. Those people, Mr. Martin and Mr. Myers, were on the video at CJ's at the same point in time as Mr. Rumph, is that correct?

A. That's correct.

Q. Okay. And at that point in time, I believe it was roughly eight forty at night?

A. Somewhere between eight and eight forty.

Q. You have a copy of the video?

A. Yes.

Q. And you have still frames that show them in there together?

A. Yes.

Q. Can we take a look at that? Look at the still shots and see if you recognize those?

A. Yes, sir.

Q. Those are stills from the video at CJ's?

A. Correct.

Q. And do they show the individuals you talked about, Mr. Martin, Mr. Myers, Mr. Rumph?

A. Yes.

Q. Do they have times on them, the videos?

A. They do.

Q. What time frame would that show those individuals were there?

A. Eighty forty.

Q. All three of them there with Mr. Rumph at eight forty?

A. Yes, sir.

Q. And we assume that the clock was set correctly on the video machine at CJ's, and that would put them there at eight forty in the evening?

A. Correct.

Q. Now, those are still shots from CJ's?

A. Correct.

Q. You actually took a look at the entire videotape?

A. Yes.

Q. As well as the video from the Shell station?

A. Yes.

Q. Okay. Now, as I understand the testimony, on neither of those tapes did you see Israel Wilds?

A. That's correct.

Q. I believe you also said you couldn't see Mr. Simmons or Mr. Dungee?

A. Right.

Q. I mentioned Mr. Wilds?

A. Yes, sir. He wasn't on there.

Q. You did not see him on the videotape. Now, after identifying Mr. Myers on the videotape, it put him in close proximity to Mr. Rumph sometime before he was short?

A. Correct.

Q. And you put together a search warrant?
A. Yes.
Q. And searched Mr. Myers' house?
A. Correct.
Q. And your testimony is that at some point in time during the search Mr. Myers actually arrived home?
A. Right.
Q. Now, Mr. Myers' house is located at 4516 Burk Avenue?
A. Correct.
Q. And I take it that would be -- looking at State's 1 again, that is somewhere in this area?
A. Correct.
Q. I believe you said behind CJ's, and that's behind CJ's?
A. Yes.
Q. Clarendon is behind CJ's also? Clarendon Street?
A. Yes, it is.
Q. Would that be this street immediately behind CJ's?
A. Yes.
Q. So it's Clarendon and then Burk?
A. That's correct.
Q. So 4516 Burk Avenue -- at that point in time, you had to focus on Mr. Isom Simmons?
A. Correct.
Q. So at that point in time, what were you searching for?
A. Clothes, blood -- anything related to that crime.

Q. Specifically -- do you have a copy of the search warrant?

A. Yes.

Q. Specifically when you apply for a search warrant, you have to supply the reason you think you'll find something there, right?

A. That's correct.

Q. You have to tell them what you want to search?

A. Right.

Q. You are not allowed to search willy-nilly as opposed to going in to search for some items. Right?

A. Correct.

Q. All right. So when you prepared the search warrant for 4516 Burk Street -- excuse me, Burk Avenue -- the description of property you were searching for was a 22 caliber handgun. Correct?

A. Correct.

Q. And 22 ammunition and anything pertaining to a 22 caliber handgun and ammunition?

A. Correct.

Q. And any papers, personal items belonging to Mr. Rumph?

A. Correct.

Q. Him, his family or acquaintances?

A. Right.

Q. A brown knit cap. Correct?

A. . .

Q. A dark scarf, dark coat with light colored stripes on both arms, . .

A. Correct.

Q. And any items that might pertain to Mr. Rumph, blood, hair, fibers -- correct? Trace evidence.

A. Yes.

Q. Any items or papers that may lead to the identity of subject number two. Right?

A. Correct.

Q. Now, from that search, you took items into evidence there?

A. Yes.

Q. And there is the last page, something called a return. Right?

A. Yes.

Q. A return to a search warrant is a document filled out by the officer who executed the search warrant, and it lists what you took?

A. That's right.

Q. And that's part of the process, so that persons at that place that's searched will -- the individuals at that place will know what has been taken. Right?

A. Correct.

Q. It also serves as a check list for your records as to what you confiscated in the search?

A. That's right.

Q. From Mr. Myers' house, you took the coat with stripes, correct?

A. . .

MR. McMAHON: May we approach the bench?

(Conference at the bench off the record between counsel and the Court)

BY MR. STRICKLER:

Q. Mr. Myers showed up in the course of your search, is that correct?

A. Yes.

Q. And Mr. Myers pointed out Mr. Isom's residence to you, is that right?

A. Correct.

Q. Now, you indicated Isom Simmons named Antwan when you spoke with him. Did he name Antwan Wilds?

A. Yes, sir. Antwan.

Q. That's my point. He didn't name Antwan Wilds. He named Antwan.

A. His cousin, Antwan.

Q. He never used the last name of Wilds, correct?

A. . .

Q. And he's not Mr. Wilds' cousin, is he?

A. I don't know.

Q. Now, after speaking with Mr. Simmons, you then put

together a search warrant for 1101 Carola Avenue?

A. That's correct.

Q. And back to State's Exhibit 1, this would be Carola. Is that right?

A. Correct.

Q. And if I read your search warrant right, 1101 Carola is at the intersection of Carola and Anderson.

Is that right?

A. Right.

Q. So that's the location. Now, at that point in time the search warrant for this address -- do you have it available?

A. Yes, I do.

Q. You looked for a beige jacket?

A. Yes.

Q. A beige jacket, Air Force tennis shoes?

A. Yes, sir.

Q. Blue jeans?

A. Yes, sir.

Q. A 22 caliber handgun?

A. Correct.

Q. And 22 caliber handgun ammo. Correct?

A. Yes.

Q. And papers relating to a 22 caliber handgun, and personal items belonging to Mr. Rumph, his family or acquaintances. Right?

A. Correct.
Q. And documents relating to the identity of Antwan?
A. Correct.
Q. Because at that point in time, no one had told you the name Antwan was Antwan Wilds?
A. That's correct.
Q. Mr. Simmons evidently didn't know Mr. Wilds well enough to know his last name?
A. . .
Q. Apparently not. Right?
A. I don't know. He didn't give a last name for him.
Q. Okay. (Mr. Strickler reading from search warrant) And that is what you were authorized to search for?
A. Yes.
Q. Now, this I take it is marked as State's 28. This is a beige jacket?
A. Right.
Q. And this is a beige jacket or sweater?
A. Yes, sir.
Q. This is a beige jacket that is marked -- this brown jacket, item 29?
A. Yes, sir. Beige or brown.
Q. Okay. Well, then, what's the -- this item is beige and this item is beige.
A. Brown.

Q. You would agree this item 29 is a sweater, not a jacket. Where in those items is there any reference to a sweater?

A. It belonged to Antwan. We were collecting items that could possibly have blood on them.

Q. And you had received a description from Mr. Simmons of what Mr. Wilds was wearing, a beige or brown jacket?

A. Yes, sir.

Q. Brown jacket?

A. Brown jacket.

Q. Didn't find 22 caliber ammunition?

A. No.

Q. A 22 caliber handgun -- didn't find it?

A. No.

Q. Papers pertaining to a 22 caliber handgun or 22 caliber ammunition -- didn't find any?

A. No, sir.

Q. Papers or items belonging to Anthony Rumph, his family or acquaintances -- didn't find any?

A. Not on April 7, 1999.

Q. Not when you searched 1101 Carola Avenue?

A. No, sir.

Q. The return lists your recovering from Mr. Wilds' house when you searched it a pair of tennis shoes, a brown jacket and a beige sweater?

A. Yes.

Q. Subsequent to the arrest of Isom Simmons, when did you search his residence?

A. Isom?

Q. Right.

A. We didn't. He admitted his part in the crime.

Q. So you assumed there would be no possibility of finding a 22 caliber handgun at his residence?

A. Not based on his statement and not based on the statement from Dungee.

Q. That was going to be my next question.

Subsequent to your arrest of Mr. Dungee, when did you search his residence?

A. We didn't. He also admitted his part in the crime.

Q. And so he consequently would not have possession of any evidence related to this crime?

A. . .

Q. He wouldn't have any evidence relating to the crime?

A. Correct. He admitted to having cigarettes and a cigarette lighter, and they were both taken from him. They both stated Antwan is the one who had the gun.

Q. And you didn't search either of their places to see if perhaps they were not telling the truth about that minor detail?

A. No search was done.

Q. You didn't search. Now, subsequent to the search of

Israel's place, you took him in custody and indicated he made remarks to you that you noted at the bottom of this advice of rights?

A. That's right.

Q. Plus a little bit more you noted in your case notes. Right?

A. Yes.

Q. Now, you said he -- I think your term was bragged about shooting a shotgun and have a 38 and nine milimeter. Let's forget about the 22 caliber handgun, but did you recover from Israel Wild's residence on Carola any 38 or nine milimeter?

A. No, sir. Not on April 7, 1999 we didn't.

Q. When was the next search you conducted on 1101 Carola Avenue?

A. We didn't. Of course, we didn't do one on the night Mr. Rumph was killed. It was done at a later time.

Q. Yes, maam. I understand. I'm just trying to get the gist of what you're saying by we didn't recover any gun on Carola Avenue on the 7th. I take it . .

A. Because it was several days after the shooting.

Q. I understand that, but just to make it clear, you never have recovered it?

A. No, sir.

Q. From Israel Wilds or from his friends?

A. No.

Q. Or any 22 caliber ammunition?
A. No, sir.
Q. Any 38 caliber ammunition?
A. No.
Q. Any nine milimeter ammunition?
A. No.
Q. Any shotgun shells?
A. No.
Q. You have never recovered from Mr. Wilds or his residence a nine milimeter handgun, correct? A 38 caliber, correct?
A. Right.
Q. A 22 caliber handgun?
A. Right.
Q. And you haven't recovered a shotgun from his residence. Right?
A. Right.
Q. And let me see. You didn't recover a 22 and you say because it was on the 7th and the incident was the 29th, so there was plenty of time to get rid of it?
A. That's correct, if he wanted to get rid of it.
Q. And if indeed he ever had it, and when you arrested Isom Simmons, that would be just as long after the incident as the search of Mr. Wilds' house?
A. Right.
Q. But you didn't look to see if Isom Simmons had the

foresight to get rid of the 22 pistol, because he told you his involvement?

A. That's correct.

Q. Now, you get -- let's go back to the police station, to investigations. You testified that you interviewed him at that point in time?

A. Yes, sir.

Q. I believe that took --that began at 2040 P.M. on the 7th?

A. Yes, sir.

Q. Eighty forty P.M.?

A. Yes.

Q. And how long did you speak with Mr. Wilks, twenty to twenty-five minutes?

A. Somewhere in between.

Q. And before you started talking with him, you went through his advice of rights?

A. Yes.

Q. Court's Exhibit 3?

A. That's right.

Q. You sit down and write down the date and time, and you go right into, before we ask any questions, you must understand your rights?

A. Yes.

Q. How long did it take you to read it to him?

A. Three minutes.

Q. And then I believe your testimony is that Israel told you he wasn't going to sign anything?

A. Correct.

Q. But he didn't mind talking?

A. Yes, sir.

Q. Now, at the beginning of the time you started this interview, where is the VCR camera you have situated to go ahead and record this interview?

A. We don't have a video recorder.

Q. You don't have videos to record people making statements regarding a murder?

A. No.

Q. Okay. Too expensive?

A. You'd have to check with the Columbia Police Department on that.

Q. All right. So at the time you started the advice of rights, you could have slapped a little cassette -- how much does a cassette deck cost at a K-mart?

A. . .

Q. Fifty bucks?

A. I'll take your word for it.

Q. You could have started taping it, just an audio taping?

A. We don't do that.

Q. So what you do is put you in a room with Israel Wilds, by

yourself, and have your recollection and notes be the only evidence as to what went on in that room?

A. Just me and him in that room.

Q. Just you and him in that room, and you described at one point in time Israel bragging about having shot a shotgun, so a video or an audio tape would record facial features and tone of voice, so these people could decide whether he was bragging or not; could come to their own conclusion about whether or not he was bragging.

We don't have that.

A. No, we don't have that. That's right.

Q. You've got your opinion as an investigator in this case who didn't search Isom Simmons' house or Joseph Dungee's house, as to whether or not he was bragging about that. Right? That's what we have?

A. That's what he said.

Q. He said he was bragging?

A. He was bragging about having it.

Q. He didn't brag about shooting Anthony Rumph, did he?

A. No, sir.

Q. Now, the twenty or twenty-five minutes you spoke with him, it took a couple of minutes to go through the advice of rights and his waiver. That's your testimony?

A. Yes.

Q. What else did you talk about for twenty or twenty-five

minutes?

A. What I've said, and that was it.

Q. It took him twenty or twenty-five minutes to say he didn't know Isom Simmons; then stated he never owned a gun; then stated he owned several guns and a shotgun; then stated Isom called him cousin.

Did that take you twenty to twenty-five minutes?

A. I said I was in the room with him that long. I didn't say we talked for twenty-five minutes.

Q. You just say you were in the room?

A. I don't know how long it took him to make those statements, but I was in the room with him twenty or twenty-five minutes.

Q. Now, does the City of Columbia Police Department have a policy regarding videotaping and/or audiotaping someone you are interrogating?

A. I don't do it.

Q. So some of the investigators at CPD do videotape and audiotape an interview, do they not?

A. No, they don't. You asked me do they have a policy.

Q. So your testimony is that the City of Columbia Police Department does not have a policy regarding videotaping or audiotaping individuals who are being interrogated so all the investigators just happened to arrive at the same conclusion, we won't videotape or audiotape?

A. We don't have the equipment to do that.
Q. You don't have that equipment so you -- now, haven't you had that big renovation last summer or last fall?
A. Somewhere along there.
Q. And couldn't come up with whatever it would take to buy a recorder?
A. We don't have one.
Q. Now, did you notice the other pair of shoes -- these were taken from Israel Wilds?
A. That's right.
Q. And something drew those to your attention, and you remembered the description that was given?
A. Correct.
Q. And you had Investigators Vinson and Mead and Sergeant Wilson look at them?
A. Correct.
Q. Okay, and they took those shoes from him to put into evidence?
A. That's correct.
Q. When did you photograph those shoes prior to taking them into evidence, to preserve and document the condition they were in when you testify they were taken?
A. They were preserved and documented, but they wasn't photographed.
Q. Who took the shoes from him?

A. Investigator Vinson.

Q. Vinson took the shoes. Were you present when he took the shoes?

A. Yes, sir.

Q. What did he do when he took the shoes off?

A. He put them in that bag.

Q. Did he have to physically remove the shoes from him, or did he remove the shoes -- Mr. Wilds?

A. He asked him to take his shoes off.

Q. Okay, and what -- he picked them up and put them in the bag?

A. Packed them in that bag, and tagged it.

Q. Didn't photograph them?

A. No.

Q. Now, let's see. Mr. Simmons was arrested on April 7th. Right?

A. Correct.

Q. And Mr. Dungee was arrested the next day. Right?

A. Yes, sir.

Q. And I believe you testified that there was no opportunity for the two of them to speak with each other from the time you got the statement from Mr. Simmons until you got the statement from Mr. Dungee?

A. That's right.

Q. Okay. Now, you would admit, I take it, that between

nine thirty on the evening of March 29th until April 7th when you arrested Mr. Simmons, he and Mr. Dungee had in excess of a week to talk about whatever they wanted to talk about?

A. Yes, sir. All three of them.

Q. Thank you.

THE COURT: Any redirect?

MR. McMAHON: Briefly.

REDIRECT EXAMINATION

BY MR. McMAHON:

Q. Sergeant Burns, to begin with, I show you what's been marked -- the photograph of Mr. Simmons . .

MR. McMAHON: Your Honor, I failed to enter this, State's Exhibit 35, a photograph of Isom Simmons.

MR. STRICKLER: No objection.

(Photograph of Mr. Simmons admitted in evidence without objection as State's Exhibit 35)

Q. I apologize if I mis-spoke, but he gave you the name of Antwan?

A. Correct.

Q. Not Israel Antwan Wilds?

A. Correct.

Q. Just the name Antwan?

A. That's right.

Q. Pointed out an address?

A. Right.

Q. That address was . .
A. It was 1101 Carola.
Q. How many Antwans did you find at 1101 Carola?
A. One.
Q. What was that Antwan's complete name?
A. Israel Antwan Wilds.
Q. And, as a matter of fact, after they were arrested, did they go through a booking procedure?
A. Yes, sir.
Q. And this document here, is that the booking report?
A. Yes.
Q. On Mr. Wilds?
A. Yes, it is.
Q. And does that indicate what his full and complete name is?
A. Israel Antwan Wilds.
Q. And is there a place for a nickname?
A. Yes, sir.
Q. What name does he go by?
A. Antwan.
Q. There wasn't any other Antwans there?
A. No.
Q. He asked you about the description of property you took from 1101 Carola?
A. Yes, sir.

Q. And I believe you went through the property. The search warrant at 4516 Burke Avenue, the Myers residence, was that before or after you talked with Isom Simmons?

A. That was before.

Q. After you talked to Isom Simmons, is that when you got the search warrant for 1101 Carola?

A. Correct.

Q. And were there certain descriptions of property given to you by Isom Simmons that were part of property sought from 1101 Carola?

A. That's correct.

Q. I want to refer you to a document. Mr. Strickler asked you numerous questions about videotaping?

A. Yes, sir.

Q. Audiotaping?

A. Yes, sir.

Q. Does the Highway Patrol have videos?

A. Yes, sir.

Q. And all such as that?

A. Yes, sir.

Q. You didn't videotape?

A. No, sir.

Q. You didn't audiotape?

A. No.

Q. You weren't after him for speeding, were you?

A. No, sir.
Q. After you take a statement from someone, after you advise them of their rights and they waive their rights, what is the next procedure you will take to formalize that statement you take from them?
A. Have them sign it.
Q. When you say have them sign it, have them sign what?
A. That they waive their rights.
Q. After they have been advised, after they waive their rights, do they give you an oral statement?
A. Yes, sir.
Q. What do you then do?
A. Reduce it to writing.
Q. And what do you mean?
A. Write down what was said.
Q. And after you have reduced it to writing, what do you then allow the individual to do that has given you a statement?
A. Read it.
Q. And after they read it?
A. They sign it.
Q. If it's one page, they sign one page?
A. Yes, sir.
Q. If it's ten page, do they sign each and every page?
A. Yes, sir.

Q. You took the statement from Isom Simmons?
A. Yes, I did.
Q. Did you advise him of his rights?
A. Yes, I did.
Q. In the same manner you did Mr. Wilds?
A. Yes, sir.
Q. Did he sign he understood and signed the waiver?
A. Yes, sir.
Q. Did you talk with him?
Q. Yes, sir.
A. Take a verbal statement?
A. Yes.
Q. He agreed to talk with you?
A. Yes.
Q. After that what did you do?
A. I reduced to writing the statement he had made to me.
Q. How many pages was the statement Isom Simmons gave to you?
A. Just the statement on the front page that I wrote down that he said.
Q. I apologize. Isom Simmons . .
A. Oh, I'm sorry.
Q. Did Isom Simmons give you a written statement?
A. He did.
Q. How many pages?

A. Three.
Q. Did he sign each and every one of those pages?
A. Yes, he did.
Q. If a person says, I don't want to sign anything, what do you do?
A. They don't sign it.
Q. Did you force them to sign it?
A. No, sir.
Q. Is that what you did in this case?
A. Correct.
Q. Joseph Dungee on the 8th -- did you advise him of his rights?
A. Yes, I did.
Q. Using the same form?
A. Yes, sir.
Q. Did he say he understood his rights and waive his rights?
A. Yes, sir.
Q. Did he talk to you and give you an oral statement?
A. Yes, he did.
Q. After he gave an oral statement, was it reduced to writing?
A. Yes, it was.
Q. How many pages?
A. Two

Q. Did he sign each and every one of those pages?
A. Yes, he did.
Q. None of these individuals had to talk to you, did they?
A. No.
Q. If Mr. Wilds would have said I want to sign something; I want you to write out the statement, would you have written out the statement?
A. Yes.
Q. For him to sign?
A. Yes, sir.
Q. He didn't want to sign it?
A. No.
Q. That's the procedure you used?
A. Yes, sir.
Q. By the way, all the renovations he talked about down there, that was a jail built about 1910 that was renovated, wasn't it?
A. Yes, sir.
Q. On page two of Mr. Simmons' statement, part of the reason for the search warrant is a description -- I believe it was page two -- you asked him what was Antwan wearing?
A. Yes, sir.
Q. What was his response?
A. Beige jacket, Air Force One shoes, grey suede.
Q. Isom Simmons admitted being part of the thing?

A. Yes, sir.
Q. And Joseph Dante Dungee admitted being part of the crime?
A. Yes, he did.
Q. And they were consistent as to who had the gun?
A. Yes, they were.
Q. Who was that?
A. Israel Antwan Wilds.
Q. Thank you. I don't have any other questions.

THE COURT: Any recross?

MR. STRICKLER: No, sir.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: All right, let's take a lunch break at this time. Ladies and gentlemen, I think it's about one fifteen. I would ask you to be back at two thirty. Be back in the jury room at that time.

Remember not to talk about the case. Everyone else remain seated while the jury leaves.

(Jury excused from Courtroom at 1:15 P.M.)

THE COURT: Counsel, anything before we recess for lunch?

MR. McMAHON: No, sir.

THE COURT: From the Defense?

MR. STRICKLER: No, sir.

THE COURT: Let me note one thing. There was an objection during Mr. Strickler's cross examination related to the

items in a search of one of the residences, I believe Mr. Myers.

MR. McMAHON: Yes,sir.

THE COURT: Basically Mr. Strickler was detailing what they found in the search, and I ruled there were some matters that were not relevant to the case.

Do you want to put anything on the record concerning that?

MR. STRICKLER: Your Honor, probably what I was attempting to or wanted to elicit was a recitation of the return of the search warrant, which would include a coat with stripes, stocking cap, head scarf, and it looks like a gun case, nine milimeter shell casing.

Next was a plastic bag of material I did not intend to go into with the officer. An ID card.

(Mr. Strickler reading rapidly from search warrant return, some of which was not audible)

That's what I was trying to elicit from the officer at the time Mr. McMahon objected.

THE COURT: All right, thank you. Be back at two fifteen -- no, two thirty.

(Court stood in recess from 1:19 P.M. until 2:55 P.M.)

THE COURT: All parties and attorneys are in the Courtroom. There are a couple of things we need to put on the record.

I think there was an issue regarding a current pending

charge of one of the witnesses. Was it Mr. Myers?

MR. McMAHON: Yes, sir, Timothy Myers.

THE COURT: Okay, and my understanding was that it's a charge not related to this particular case.

MR. McMAHON: Right.

THE COURT: I believe, based on a recent ruling in State versus Jeffrey Lewis Jones, that while the Supreme Court didn't specifically say it, but I get the impression that the intention is that if someone has a pending charge with the particular Solicitor who is trying that case that they can be asked about that, in terms of how it will affect credibility.

MR. McMAHON: Your Honor, I would make the convictions a part of the record, none of which would be impeachable. We inventoried that record in chambers, and the only one that would be admissible would be the pending possession with intent to distribute marijuana.

THE COURT: Yes, sir.

MR. McMAHON: Thank you.

THE COURT: Anything else?

MR. STRICKLER: No, sir.

THE COURT: Okay. I believe there was also the issue of being able to cross examine -- is this the same witness?

MR. STRICKLER: No, that would be the Co-defendant.

THE COURT: The Co-defendant -- As to what they may have gotten, and, as I indicated, certainly you can go into that

then and ask, but you can't get into any details about the potential sentences and that sort of thing.

MR. STRICKLER: Yes, sir.

THE COURT: Anything else on that?

MR. STRICKLER: With regard to the pending charges as against Mr. Simmons and Mr. Dungee, they are currently, according to the Solicitor, both charged with murder and armed robbery.

We would submit to the Court that I should be able to question them not merely about the existence of the charges but what they hope to get as a result of their testimony.

Their understanding of the penalties they're facing now and specifics of the fact that they are looking at life in prison on the murder charge, and their hopes in regard to a reduction in sentencing.

I understand Your Honor's ruling that I cannot go into that.

THE COURT: Yes, sir. It's appropriate to ask if they think they're going to get their sentence reduced or if they think they're going to get the charges reduced, but I think you can do that without going into details.

MR. STRICKLER: I understand.

THE COURT: All right, is the State ready to bring the jury in?

MS. CAMPBELL: State's ready.

THE COURT: Defense?

MR. STRICKLER: Ready.

THE COURT: Bring the jury.

(Jury returned to Courtroom)

THE COURT: All right, all parties and attorneys are in the Courtroom, and all jurors have returned.

Let me note one thing. Ladies and gentlemen of the jury, this evening we may go a little bit later than normal. During the next break, I'll give you a chance to make any phone calls or make arrangements if you need to.

We'll try not go too late, but we need to push on.

With that in mind, are you ready to call your next witness?

MS. CAMPBELL: May it please the Court? The State calls Isom Simmons.

ISOM SIMMONS, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

THE COURT: Counsel, let me do something before we start. Ladies and gentlemen, I'd ask you to step in the jury room. I have a matter to take up with the attorneys.

While you're there, be sure not to talk about the case, please.

(Jury excused from Courtroom at 2:58 P.M.)

THE COURT: Let me -- I believe Mr. Simmons is a Co-Defendant. Is that correct?

MS. CAMPBELL: Yes, sir.

THE COURT: Mr. Simmons, how old are you?

WITNESS: Sixteen.

THE COURT: All right. Do you have a lawyer?

WITNESS: Yes, sir.

THE COURT: Who is your lawyer?

WITNESS: Ms. Katherine Hudgins.

THE COURT: I saw Ms. Hudgins here earlier.

MS. CAMPBELL: She was here earlier. We've been in constant contact.

THE COURT: Okay. Did you want to have Ms. Hudgins here while you're testifying?

WITNESS: I see no reason to.

THE COURT: Okay. Now, do you understand -- it's my understanding that you were also -- you also have charges against you in this case, is that correct?

WITNESS: Yes, sir.

THE COURT: Do you understand that while the State is calling you to testify, that under the Fifth Amendment you are not required to testify?

I understand his case is not over, is that correct?

MS. CAMPBELL: No, the case is pending.

THE COURT: Do you understand, Mr. Simmons, that you are

not required to testify; that you don't have to. Do you understand that?

WITNESS: Yes, sir.

THE COURT: Do you understand that you can refuse to testify on the grounds of the Fifth Amendment, if you want to? Do you understand that?

WITNESS: Yes, sir.

THE COURT: All right. Now, you understand that if you do choose to testify today that anything that you say could be used against you later on if you have a trial?

Do you understand that?

WITNESS: Yes, I do.

THE COURT: In other words, you could be admitting some details about the crime, things the State may not know about. Do you understand?

WITNESS: Yes, sir.

THE COURT: And anything that comes out could be used against you later on. Do you understand?

WITNESS: I understand.

THE COURT: What grade are you in in school?

WITNESS: I've got my GED.

THE COURT: Okay. Do you feel like you are -- let me tell you another thing too. If you decide to testify, then that means you give up your Fifth Amendment -- you give up all of your Fifth Amendment.

In other words, if something comes up later and things get uncomfortable, you can't change your mind and decide not to. Do you understand?

WITNESS: Yes, sir.

THE COURT: Once you start testifying, you've got to answer all the appropriate questions from then on. You understand that?

WITNESS: Yes, sir.

THE COURT: Okay. Understanding that, you still wish to testify at this time?

WITNESS: Yes, sir.

THE COURT: All right. Now, have you -- I know this may sound like a stupid question, but I have to ask you. Have you had any kind of medicine, medication, drugs, alcohol or anything that would influence you in any way?

WITNESS: No, sir.

THE COURT: Do you have any sort of emotional or mental condition that influences you at all?

WITNESS: No, sir.

THE COURT: All right, and have you talked with your lawyer about what you're going to do today?

WITNESS: Yes, sir.

THE COURT: Have you had her advice on that?

WITNESS: Yes, sir.

THE COURT: Do you feel like you need to talk with her

any further?

WITNESS: No, sir.

THE COURT: Do you feel like you've understood everything we've talked about today?

WITNESS: Yes, sir.

THE COURT: All right. Based on that, you still wish to go forward?

WITNESS: Yes, sir.

THE COURT: All right. Counsel, let me note for the record that I find that Mr. Simmons has been advised of his Fifth Amendment Rights -- by the way, you say you have a lawyer. Are you satisfied with your lawyer?

WITNESS: Yes, sir.

THE COURT: You feel like she's done everything for you she could do?

WITNESS: Yes, sir.

THE COURT: All right, that being the case, he's satisfied with his lawyer and has had her advice in this matter, and he is in all ways capable of making the decision to testify, particularly with the understanding that once he gives up his Fifth Amendment Rights he cannot again reclaim them -- with that, I find that he is capable of making the decision as to whether to testify or not.

Anything else?

MS. CAMPBELL: No, sir.

THE COURT: Defense?

MR. STRICKLER: No, sir.

THE COURT: All right, bring the jury.

(Jury returned to Courtroom)

THE COURT: All parties and attorneys are in the Court-room, and all jurors have returned.

Go ahead, Solicitor.

BY MS. CAMPBELL:

Q. Isom, how old are you?

A. Seventeen.

Q. What's your date of birth?

A. It's 12 7 83.

Q. And back in March of 1999, you were fifteen?

A. Yes, sir.

MR. STRICKLER: Object to leading.

THE COURT: Go ahead.

Q. Where do you live?

A. At 1315 Clarendon Street.

Q. How long have you been living at 1315 Clarendon Street?

A. For about seven years.

Q. Who do you live there with?

A. My grandmother.

Q. Do you have any brothers and sisters?

A. Yes, maam.

Q. What do you have?

A. A sister.
Q. How old is she?
A. Nineteen.
Q. She lives with you on Clarendon Street?
A. No, maam.
Q. Where does she live?
A. The campus on Benedict College.
Q. Does she attend college there?
A. Yes, maam.
Q. The house that you live in with your grandmother on Clarendon Street, what part of town is it located in?
A. In North Columbia.
Q. Is it near a college out in North Columbia?
A. Right by Columbia College.
Q. Do you know somebody named Dante Dungee or Joseph Dante Dungee?
A. Yes, maam.
Q. How do you know Joseph Dante Dungee?
A. We've been friends since middle school.
Q. Since middle school?
A. Yes.
Q. And how did you get to be friends? Were you in school together or what?
A. We went to school together.
Q. Does Dante live in your neighborhood?

A. Up the street from where I live.
Q. Do you also know a man named Antwan Wilds?
A. Yes, maam.
Q. How do you know Antwan Wilds?
A. A friend of the family.
Q. What do you mean?
A. Well, his aunt was like a friend to the family as long as I can remember.
Q. Friends with who in your family?
A. My aunt.
Q. You say his aunt was a friend. What's her name? Do you know?
A. Linda Frederick.
Q. How long have you known Antwan Wilds?
A. For about six months, six or seven months, before the incident.
Q. Is he not originally from Columbia?
A. I'm not sure.
Q. But in the six or seven months you had known him before the shooting happened, you all became pretty close friends?
A. . .
MR. STRICKLER: Objection to the leading.
THE COURT: All right, rephrase your question.
BY MS. CAMPBELL:

Q. How would you characterize your relationship with him?
A. We weren't good friends, but we hung out sometimes.
Q. You hung out sometimes?
A. Yes.
Q. Did you have a special name you called him?
A. I used to call him my cousin.
Q. Cousin?
A. Yes, maam.
Q. Was he your real cousin?
A. No, maam.
Q. Why did you call him your cousin?
A. Just for the reason of him being a friend of the family.
Q. Are you currently in school?
A. Maam?
Q. Are you currently in school?
A. Yes, maam.
Q. Where are you attending school?
A. Technical college.
Q. Did you graduate from high school?
A. No, maam. I got my GED.
Q. Turning your attention back to March 29, 1999, do you remember that day?
A. Yes, maam.
Q. That afternoon, what were you doing?

A. Maam?
Q. That afternoon of March 29th, what were you doing?
A. I don't understand the question.
Q. Where were you?
A. Where were I?
Q. Uh hm, on March 29th?
A. With Antwan and Dante Dungee.
Q. Tell the jury how you all got together that afternoon or that evening?
A. . .
Q. Was it light when you first got together or dark?
A. Dark.
Q. Tell the jury how you first met Antwan and Dante that evening.
A. Well, I was going down the street to meet Dante, and I met up with Antwan.
Q. Do you remember the street you were going down?
A. I believe it was Burk.
Q. Burk?
A. Burk Avenue.
Q. And is that near your house on Clarendon?
A. Yes, maam. Right around the corner.
Q. And when you met up with Antwan, you were on Burk Avenue?
A. Yes, maam.

Q. What happened when you met up with Antwan?
A. Me and him continued to walk down Burk until we met up with Joseph.
Q. That's Dante? Joseph Dante Dungee?
A. Yes, Joseph Dante.
Q. When you all three met up, what was your plan, or did you have one?
A. Well, me and Dante was on our way to Ashley Apartments to a friend of mine's house.
Q. And who all accompanied you to the Ashley Apartments?
A. Well, it was the three of us. We walked up to Spaulding Street, and then me and Dante went down to Ashley Apartments.
Q. Specifically can you tell the jury how you got to Ashley Apartments from where you met up with Antwan and Dante?
A. Specifically?
Q. Uh hm.
A. Well, we went down Craven Street and on to Spaulding Street, and proceeded straight to the Ashley Apartments.
Q. And is Craven Street -- does that intersect with Rhett Street?
A. Yes, maam.
Q. And Spaulding, is that -- how far away from Rhett Street is that?
A. Not far -- right down the street.
Q. And the Ashley Apartments, how far is that from Rhett

Street?
A. Probably a block and a half.
Q. You mentioned you were with -- all three of you were together, but then Antwan split off?
A. Yes, maam.
Q. And what street was that on?
A. Spaulding.
Q. And do you know where he went?
A. No, maam.
Q. And the two of you who were left, what did you do?
A. We went down to a friend of mine's house at Ashley Apartments.
Q. Whose house did you go to?
A. Abram Brown.
Q. And what were you going over there to do?
A. Just hang out and play video games.
Q. At Abram's house, Abram Brown?
A. Yes, maam.
Q. And who all was to play video games?
A. It was me and Dante, Abram Brown and his little brother, Steven.
Q. But Antwan wasn't with you?
A. No, maam.
Q. How long did you all stay there? Do you know?
A. Thirty minutes to an hour.

Q. Once you finished playing video games, who all left with you from that apartment at the Ashley Apartments?

A. Me and Dante.

Q. Where did you go?

A. First we went up to Junie's, a little corner store, and then we came back to Spaulding Street.

Q. Back to Spaulding Street?

A. Yes, maam.

Q. The same street you had been before?

A. Yes.

Q. When you were walking down Spaulding Street, what happened?

A. We were walking down Spaulding Street, and we met back up with Antwan, and we just continued to walk up the street toward Rhett.

Q. What was you all's plan at that point? Where were you all going?

A. Well, I had a curfew so I was on my way home, and Dante was on his way home as well.

Q. You had a curfew?

A. Yes, maam.

Q. You were walking in the direction on Spaulding Street of your home on Clarendon?

A. Yes, maam.

Q. And what street did you turn off Spaulding onto?

A. After we turned off Spaulding, we turned down Rhett Street.
Q. What did you notice as you turned down Rhett Street?
A. We saw the victim, Mr. Anthony Rumph, come down the road.
Q. Then what happened?
A. Well, he was walking up the street, and as we were walking past him he asked us if we had anything for him, and me and Dante, we kept walking, and Antwan stopped and talked to him.
So me and Dante was waiting on him, and the next thing I know Antwan had pulled out a gun.
Q. So you were walking on Rhett Street when you first approached the victim?
A. Yes, maam.
Q. And did you notice if he had anything in his hand?
A. I'm not sure.
Q. And he asked you all what?
A. Did we have anything for him.
Q. And you and Dante kept walking is what you're saying?
A. Yes, maam.
Q. What did Antwan do?
A. He had stopped to talk to the dude.
Q. They were having a conversation?
A. Yes, maam.

Q. Do you know exactly what was said in the conversation?
A. No, maam.
Q. How far away were you and Dante from where Mr. Rumph and Antwan were talking?
A. We were like right behind them off to the side.
Q. Off to the side?
A. Yes, maam.
Q. At what part of Rhett Street were you all walking?
A. Like the top of -- up there at the top, by the beauty parlor.
Q. By the beauty parlor?
A. Yes, maam.
Q. And what did you say Antwan did?
A. Then Antwan -- after they talked for a while, he pulled out a gun.
Q. Where did he point the gun?
A. Around the chest area.
Q. Around whose chest area?
A. Mr. Rumph.
Q. What was Mr. Rumph doing while Antwan was pointing a gun at him?
A. He grabbed for his back pocket.
Q. He grabbed for his back pocket?
A. Yes, maam.
Q. What were you and Dante doing during this time?

A. Looking.
Q. What happened then?
A. Then after he grabbed for his back pocket, Antwan was struggling with him. He was holding Antwan's hand with his other hand.
Q. Who was holding Antwan's hand?
A. Mr. Rumph.
Q. Which hand was he holding?
A. The one with the gun.
Q. The one with the gun?
A. Yes, maam.
Q. Could you tell what Mr. Rumph was trying to do by grabbing the hand with the gun? Antwan's hand with the gun?
A. I'm not sure.
Q. Then what happened?
A. Then he pulled his wallet out his back pocket.
Q. Who pulled whose wallet out of his back pocket?
A. Mr. Rumph pulled his wallet out of his back pocket.
Q. Did you know his name at that point?
A. No, maam.
Q. But you've learned it since then?
A. Yes, maam.
Q. So he pulled his wallet out of his back pocket, and where is the gun at this point?
A. Antwan had it in his hand.

Q. Then what happened?
A. Then Antwan, he ordered me and Dante to hit him.
Q. To what?
A. To hit the dude.
Q. Did you hit the dude?
A. Yes, maam.
Q. How far away were you at that point before you went over to hit the dude?
A. Right behind them, in the same position.
Q. And what did you do?
A. I went and hit him.
Q. What happened when you hit him?
A. Nothing really. I went in his back pocket and got the cigarettes out.
Q. What was the purpose of you hitting him?
A. I guess to keep him from struggling.
Q. Where did you hit him?
A. Like in the back of the head.
Q. What was Dante doing at that point?
A. He was looking.
Q. And where was the gun?
A. Antwan still had it.
Q. Where was he pointing the gun?
A. He was like kind of waving it around.
Q. Then what happened?

A. Then Dante came and he hit him, and he took like a key chain out of his pocket, and then Antwan -- the dude, Mr. Rumph, he still wasn't letting go of the wallet, so Antwan put the gun to his chest and he goes, my man, you going to make me shoot you, and the next thing you know he shot the dude.

Q. Let me get this straight. Dante came over and he went through his pockets again?

A. Yes, maam.

Q. And he hit -- Dante hit him?

A. Yes, maam.

Q. Where did he hit Mr. Rumph?

A. I'm not sure. I think it was like on his other side.

Q. And then you heard Antwan say something to the victim?

A. Yes, maam.

Q. What did he say?

A. He told him, are you going to make me shoot.

Q. Where was the wallet when he was saying that?

A. . .

Q. Who had the wallet?

A. Mr. Rumph.

Q. How was he holding the wallet?

A. He was holding it to his chest.

Q. Where was the gun being pointed when Mr. Rumph had the wallet?

A. Right to his chest.

Q. How close was Antwan to Mr. Rumph when he shot him?
A. Point blank range.
Q. What did you do when you heard the shot?
A. Ran.
Q. Did you know he was going to shoot him?
A. No, maam.
Q. Which direction did you run in?
A. Down the Shell station.
Q. Was anybody running with you at that point?
A. Yes, maam.
Q. Who was running with you?
A. At first me and Dante were running, and Antwan caught up to us.
Q. Were you aware that Antwan was able to get the wallet from the victim after he shot him?
A. I didn't take time to look and see.
Q. Did you see the wallet at a later time when you were running?
A. Yes, maam.
Q. Tell the jury about that.
A. Well, we got up by the Shell station, and he kept on going -- after we got by the Shell station, I seen Antwan go through the wallet and then he threw it down. Then he handed me some money and Dante some money and told us not to say nothing, and that's when me and Dante left.

Q. You and Dante left?
A. Yes.
Q. Where did you and Dante go?
A. We went to Mr. Myers' house.
Q. Did Antwan come with you?
A. No, maam.
Q. In order to get to this house you're talking about, which direction did you go in?
A. Went across the street and through a cut.
Q. What street would that be?
A. North Main.
Q. And what direction did you see Antwan heading in?
A. North Main toward the Shell station.
Q. Where was the gun the last time you saw it?
A. The last time I saw the gun was when he shot the dude.
Q. Did you give him any advice about what he needed to do wit the gun?
A. Yes.
Q. What did you tell him?
A. I told him he should get rid of it.
Q. What did Antwan tell you?
A. He said that it was already gone.
Q. The gun that you point out that Antwan had, had you seen it before?
A. Yes, maam.

Q. Who had it on that occasion?
A. Antwan.
Q. What kind of gun was it?
A. I'm not sure what caliber, but I know it was like a little small gun with a red beam.
Q. It had a red beam?
A. Yes, maam.
Q. A little gun?
A. Yes, maam.
Q. You mentioned that you pulled cigarettes out of his pocket. Do you know what happened to those cigarettes?
A. No, maam. I remember dropping them as I was running.
Q. You dropped them on the side of the road?
A. Yes, maam.
Q. How much money did you get?
A. Ten Dollars.
Q. You know how much money total was taken?
A. No, maam, I'm not sure.
Q. Did Dante get some money too?
A. Yes, maam.
Q. You said Antwan ran on North Main Street. In what direction?
A. Toward the Shell station.
Q. And would that be -- are you aware of where Antwan lived?
A. Yes, maam.

Q. The direction he ran, was that in a direction toward his house?
A. Yes, maam.
Q. Where is his house?
A. I'm not sure of the name of the street.
Q. But you could find it if someone asked you to?
A. Yes, maam.
Q. You said you went across the street through a cut?
A. Yes.
Q. Whose house did you go to?
A. Timothy Myers.
Q. Timothy Myers?
A. Yes.
Q. Why were you going there?
A. Well, we went there because me and Tim, we were real close, and if anything went wrong he told me to let him know, and that's what I was going there for, and we also got some marijuana.
Q. So you go over there to talk to Tim and to get some marijuana?
A. Yes, maam.
Q. And when you got to the house, what were you feeling?
A. Nervous.
Q. And did you meet Tim at his house -- where is Tim's house?

A. Right there on Burk Street.

Q. Did you meet Tim? Was he there when you got there?

A. Yes, maam.

Q. What happened when you first saw him?

A. Well, he was in the yard with some of his friends. I just walked up to him and was talking to him about what happened.

Q. What did you tell him happened?

A. I told him that my cousin had just shot somebody.

Q. You told him your cousin shot somebody?

A. Yes.

Q. Did you tell anybody else at the house that night?

A. Maam?

Q. Did you tell anybody else at the house there that night that your cousin had shot somebody?

A. No, maam.

Q. Why did you tell Tim about what had happened?

A. Because of the relationship we had had.

Q. Were you upset?

A. Yes, maam.

Q. While you were there, you mentioned you got some marijuana?

A. Yes, maam.

Q. And who all participated in getting the marijuana?

A. Me and Dante.

Q. You and Dante?

A. Yes, maam.
Q. Was Antwan with you at this point?
A. No, maam.
Q. Did either one of you all have a gun at this point?
A. No, maam.
Q. How long did you all stay at Tim's house?
A. No more than five minutes.
Q. Once you left Tim's house, where did you go?
A. We went to the store.
Q. What store?
A. CJ's.
Q. How far is that from Tim's house?
A. Right around the corner.
Q. How far is that from where the shooting occurred?
A. Like right up the street.
Q. Why were you going to CJ's?
A. To get Bull Durhams.
Q. To get what?
A. Cigars.
Q. Why did you need cigars?
A. To smoke the marijuana.
Q. Were you able to get cigars at CJ's?
A. Yes, maam.
Q. Once you left CJ's, where did you go?
A. Back to a friend's house.

Q. To a friend's house?
A. Yes, maam.
Q. On what road?
A. On Burk.
Q. Why did you go there?
A. To smoke the marijuana.
Q. Where did you all smoke the marijuana?
A. In my friend's backyard.
Q. Was your friend with you?
A. No, maam.
Q. Was Dante with you?
A. Yes, maam.
Q. Was Antwan there?
A. No, maam.
Q. During the next week did you have occasion to see Antwan and Dante?
A. Yes, maam.
Q. Did you all talk about what happened?
A. Yes, maam.
Q. Do you remember the day the police came to your house?
A. Yes, maam.
Q. April 7th of 1999?
A. Yes, maam.
Q. When they came to the house, what did they want?
A. They personally asked for me.

Q. They asked for you?

A. Yes, maam.

Q. They wanted to talk to you?

A. Yes, maam.

Q. Where did you go?

A. Down to the police station.

Q. Did you speak with Investigator Burns who is sitting here?

A. Yes, maam.

Q. Once you got down to the police station, did she advise you of your rights?

A. Yes, maam.

Q. I show you this sheet of paper. Are those the rights she advised you of?

A. Yes, maam.

Q. And whose signature is that on the paper?

A. That's my signature.

Q. And was that your acknowledgment of your rights?

A. Yes, maam.

MS. CAMPBELL: Your Honor, at this time I'd offer this into evidence.

THE COURT: Any objection?

MR. STRICKLER: No objection.

(Advisement of rights entered in evidence without objection as State's Exhibit 36)

BY MS. CAMPBELL:

Q. I show you State's Exhibit 36, your rights form. There's a name on the back?

A. Yes, maam.

Q. Whose name?

A. My grandmother.

Q. Was your grandmother with you that day at the police station?

A. No, maam.

Q. Did Investigator Burns advise you of your rights and then you agree to talk with her?

A. Yes, maam.

Q. Did she ask you about the shooting?

A. Yes, maam.

Q. Did you tell her what happened?

A. Yes, maam.

Q. I show you a copy of a statement. Is this your three page statement?

A. Yes, maam.

Q. And this contains what you told her that day, is that right?

A. Yes, maam.

Q. Also in this statement, she asked you to give a description, and you had identified who had done the shooting, is that correct?

A. Yes, maam.
Q. Who did you tell her had done the shooting?
A. Antwan.
Q. Did you give a description of clothing he had on that night?
A. Yes, maam.
Q. What did you tell her about his clothing on the night of the shooting?
A. I told her that he had on a beige jacket and some grey Air Force Ones.
Q. Grey Air Force Ones -- what do you mean by that?
A. They were suede, grey. Nikes.
Q. That's a brand of shoe, a Nike shoe?
A. Yes, maam.
Q. After you told the police about what you did, you also told them what Dante did?
A. Yes, maam.
Q. And you told them what Antwan did?
A. Yes, maam.
Q. What were you charged with initially, at first?
A. Armed robbery and assault and battery with intent to kill.
Q. And then later they changed the charge to murder when Mr. Rumph died?
A. Yes, maam.

Q. Those charges are still pending against you, is that right?

A. Yes, maam.

Q. And has the State or anyone involved with it offered you any deals on your sentence to get you to testify here today?

A. No, maam.

Q. Since you told the police what had happened, what you had done, you have been incarcerated?

A. Yes, maam.

Q. You remain incarcerated at the Richland County Detention Center until December of last year, three months ago?

A. Yes, maam.

Q. During that period of time, what have you done about school?

A. I took the opportunity to get my GED.

Q. Since getting out, you are enrolled in Midlands Tech?

A. Yes, maam.

Q. I'm going to ask you to look at some pictures. This is State's Exhibit 4. Do you recognize that?

A. Yes, maam.

Q. State's Exhibit 5, do you recognize that?

A. Yes, maam.

Q. What do those depict?

A. Rhett Street.

Q. State's Exhibit 7, do you recognize that?

A. I recognize it.
Q. And, finally, State's Exhibit 25. Do you recognize that?
A. Yes, maam.
Q. What is that in the background?
A. A Shell station.
Q. Does this depict the area where you all made the exchange of the money that night?
A. Yes, maam.
Q. Where you saw Antwan threw down the wallet?
A. Yes, maam.
Q. State's Exhibit 7 depicts a certain portion of Rhett Street, does it not?
A. Yes, maam.
Q. Would you point out for me where the victim was when he was shot that night?
A. I'm not sure.
Q. Was it in the street?
A. . .
MR. STRICKLER: Objection, Your Honor. His answer was he's not sure.
THE COURT: Rephrase your question.
BY MS. CAMPBELL:
Q. Do you remember if it was on the road or on the side of the road?
A. . .

MR. STRICKLER: Object to the leading. Where was it, Your Honor, does not suggest an answer.

THE COURT: Overruled.

BY MS. CAMPBELL:

Q. I show you State's Exhibit 3. What does that depict?

A. Rhett Street.

Q. And where is the Shell station?

A. Up this way.

Q. So you were walking down toward the end of that street?

A. Yes, maam.

Q. And which way was the victim walking?

A. Up Rhett Street.

Q. He was walking toward you?

A. Yes, maam.

Q. I show you State's Exhibit 4. Does that represent generally the area where the robbery took place?

A. Yes, maam.

Q. You described the shoes Antwan was wearing that night. I show you State's Exhibit 33. Do you recognize those?

A. Yes, maam.

Q. What are those?

A. Those are the shoes Antwan had on.

Q. Did you describe those to Investigator Burns?

A. Yes, maam.

Q. What are these shoes made of?

A. Suede.

Q. After you gave a statement to the police officers, did they ask you to show them where Antwan and Dante lived?

A. Yes, maam.

Q. Did you take them to the houses where they lived?

A. Yes, maam.

Q. And pointed them out?

A. Yes, maam.

Q. And the man with the gun that did the shooting, is he in the Courtroom?

A. Yes, maam.

Q. The same person you call Cousin?

A. Yes, maam.

Q. Would you point him out for the jury?

A. (Indicating the Defendant)

Q. One of these men here?

A. Yes, maam.

Q. Which one?

A. The one with the black tie on.

Q. Right here?

A. Yes, maam.

MS. CAMPBELL: Let the record reflect he identified the Defendant.

THE COURT: All right.

MS. CAMPBELL: No further questions.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Mr. Simmons, when was it that you first met Mr. Wilds?

A. On that night or . .

Q. No, when you first met him.

A. Approximately about six months before the incident.

Q. About six months?

A. Yes, sir.

Q. Is that six months give or take a month or give or take two months?

A. Give or take.

Q. Give or take how long?

A. A month or two.

Q. And where was it you first met Mr. Wilds?

A. At the Frederick house.

Q. Frederick house?

A. Yes, sir.

Q. And how many times over the roughly six months since the time you met Israel Wilds -- how many times did you have the occasion to see him?

A. I'm not sure.

Q. You're not sure?

A. No.

Q. Many times or a few times?

A. Many.

Q. Many times?
A. Yes, sir.
Q. How many times?
A. I told you I wasn't sure.
Q. In the many times you've seen Israel Wilds, where did you see him?
A. Different places.
Q. Different places -- where?
A. I saw him at my house occasionally. I saw him at the store. Places like that.
Q. Okay. Now, how long prior to March 29, 1999 -- how long before then was it that you had a fight with Israel Wilds?
A. . .
Q. A couple of weeks?
A. Had a fight with him?
Q. Yes, sir.
A. I never had a fight with him.
Q. Never had a fight with him?
A. Uhuh.
Q. Right there at his aunt's house?
A. No, sir.
Q. The night of the 29th when this thing happened, what were you wearing that night?
A. I believe I had on blue jeans and a pair of boots and a green sweater.

Q. And when was the last time before the 29th -- okay -- the last time before the 29th that you had seen Israel Wilds?

A. I'm not sure.

Q. Not sure when the last time before the 29th was?

A. No, sir.

Q. Was it a few days or many days?

A. A few days.

Q. You sure of that?

A. Quite sure.

Q. You're quite sure of that?

A. Yes, sir.

Q. What was he wearing then?

A. I can't remember.

Q. You indicated you got your GED -- you got that while you were housed down at the county jail, is that right?

A. Yes, sir.

Q. And at the time of the incident on the 29th, what school were you attending then?

A. Eau Claire High School.

Q. And you had a curfew that night, you said. What time were you supposed to be home?

A. At nine thirty.

Q. Nine thirty. Okay. That was what? Your mother's curfew?

A. My grandmother's.

Q. Grandmother's curfew. And how long have you known Mr. Myers?

A. For about a year.

Q. Perhaps I'm not clear with that. At the time of the incident on the 29th of March, 1999, how long had you known Mr. Myers at that time?

A. Maybe a year or more. I'm not exactly sure.

Q. Not exactly sure. How old a man is Mr. Tim Myers?

A. He's in his twenties, but I'm not sure exactly how old he is.

Q. Do you have a special relationship with Mr. Myers?

A. Yes, sir.

Q. What was the nature of the relationship you had with Mr. Myers?

A. Just we're close, I mean. He tried to keep me out of trouble.

Q. He tried to keep you out of trouble?

A. Yes, sir.

Q. You got some marijuana from Mr. Myers the night of the 29th?

A. Yes.

Q. Did you pay for that or was it given to you?

A. I believe I paid for it.

Q. Okay, and how often during the -- you're not sure of how

long -- a year or two years you'd known Mr. Myers -- how many occasions have you purchased drugs from him?

A. Not many.

Q. Is there any possibility you can be more precise than that, sir?

A. Maybe three or four times.

Q. Maybe three or four times?

A. Yes.

Q. Now, as I understand your description of the incident, after you all had run back into Mr. Wilds, was that on Spaulding?

A. Yes, sir.

Q. Spaulding and Craven?

A. Yes, sir.

Q. The corner?

A. On Spaulding Street.

Q. On Spaulding itself?

A. Yes.

Q. Hadn't got to Craven yet?

A. No, sir.

Q. After you all met back up, you all just walked down the street?

A. Yes, sir.

Q. Where were you headed?

A. Home.

Q. Home?

A. Yes, sir.

Q. And on Rhett Street you encountered Mr. Rumph?

A. Yes, sir.

Q. Coming in the opposite direction from you all on Rhett. Correct?

A. Yes, sir.

Q. And as I understand it, Mr. Rumph spoke to you all first?

A. Yes, sir.

Q. Said what you got for me?

A. Yes, sir.

Q. Now, at that point in time, you and Mr. Dungee kept on walking?

A. Yes, sir. Well, we stepped behind him.

Q. Stepped behind him?

A. Yes, sir.

Q. You didn't keep walking?

A. Beg pardon?

Q. You didn't keep walking?

A. No, sir, not far.

Q. Okay, and then Mr. Rumph and Israel had a conversation then?

A. Yes, sir.

Q. And as I understand it, you had stepped behind Mr. Rumph

so were you facing -- was your back to Mr. Rumph or were you facing away from him?

A. Facing the back of Mr. Wilds.

Q. Facing the back of Mr. Wilds?

A. Yes, sir.

Q. Okay. The three of you all coming this way and Mr. Rumph coming this way?

A. Yes.

Q. And you encounter each other?

A. Yes, sir.

Q. He speaks?

A. Yes, sir. We walked kind of past the person.

Q. All three of you?

A. Yes, sir.

Q. He speaks, and Mr. Rumph is here, and the three of you are here. He speaks, and Israel has a conversation with him?

A. Yes, sir.

Q. The three of you come this direction; Mr. Rumph comes in this direction; and you all pass each other. That's your testimony. Right?

A. . .

Q. That puts Mr. Rumph here . .

A. But he wasn't going in that direction.

Q. You all are walking in opposite directions down Rhett Street, is that right?

A. We're coming in this direction, and Mr. Rumphis coming in this direction. He walked past the three of us, and as we passed Mr. Rumph was off on this side.

And then Antwan turned around to him to have a conversation, leaving me and Dante behind him.

Q. I thought you said you were behind Mr. Rumph.

A. I didn't say that.

Q. You didn't say that? This was a conversation that wen on that you could not hear. Right?

A. That's right.

Q. How far behind Israel were you?

A. Not far. Like off to the side a little bit.

Q. You see how far apart the two of us are at this point?

A. Yes, sir.

Q. Were you that far behind him?

A. Yes, sir, about the same distance.

Q. About the same distance behind him. Okay, and how far in front of him was Mr. Rumph?

A. Directly in front of him.

Q. At arms length?

A. Yes, sir.

Q. You didn't overhear any conversation they had?

A. No, sir.

Q. Now, Mr. Wilds pulled a gun on Mr. Rumph?

A. Yes, sir.

Q. And you and Mr. Dungee are still standing behind?
A. Yes, sir.
Q. And he pulled a gun?
A. Yes, sir.
Q. And Mr. Rumph goes for his wallet in his back pocket?
A. He was going for his pocket.
Q. I believe you said the other hand he grabbed . .
A. Grabbed Antwan's hand.
Q. The hand holding the gun?
A. Yes, sir.
Q. At that point in time, your testimony here today is that Israel told you all to hit him?
A. Yes, sir.
Q. So you went around to the rear of Mr. Rumph to hit him in the head?
A. Yes, sir.
Q. And Mr. Dungee struck him from the front?
A. I'm not sure.
Q. Hit him in the face, didn't he?
A. Yes, sir.
Q. You sure about that?
A. I was in back of him. I'm not sure.
Q. You gave this three page statement that Ms. Campbell asked you about, and you had an opportunity to review that statement in the past?

A. Yes, sir.
Q. You hit him, Mr. Dungee hit him, and who took what from Mr. Rumph?
A. I got some cigarettes out of the pocket, and I took out the lighter and a pocket knife. Antwan took the wallet.
Q. Okay. Then what? He shot him?
A. Sir?
Q. And then Israel shot him?
A. Before he got the wallet he shot him.
Q. And you were standing where when he shot him?
A. Like on the side of Antwan.
Q. I thought you had gone to the back.
A. Yes, sir. Then I moved back around to the side.
Q. And where was Mr. Dungee at the time?
A. I think he was standing to the back.
Q. Well, thinking -- do you know or do you not know?
A. I'm not sure.
Q. And that's what happened?
A. Yes, sir.
Q. Now, do you have a copy of your statement? Do you have one with you?
A. No, sir.
Q. When was the last time you had an opportunity to review your statement?
A. About two days ago.

Q. The police gave you a copy of your statement when you gave it to them, didn't they?

A. No, sir.

Q. They didn't give you a copy of your statement?

A. No, sir.

Q. All right. I'll let you look at this and ask if you recognize it?

A. Yes, sir.

Q. That's the first page of your statement. Right?

A. Yes, sir.

Q. Let's talk about your statement. In your statement you indicated you and Antwan were walking when you saw Mr. Rumph?

A. Yes, sir.

Q. Where was Dante at that point in time?

A. He was with us, with me and Antwan.

Q. What does your statement say?

A. I'm not saying his name at first because I thought that I could get around getting anyone else involved.

Q. You would agree that your statement makes no mention of Dante walking down the sidewalk?

A. Yes, sir, not at first.

Q. Now, your statement indicates you saw him -- your statement says Antwan said something to him?

A. Excuse me?

Q. Doesn't your statement say Antwan said something to him?

A. Yes, sir.
Q. What does your statement say?
A. He said I bet this dude has some money.
Q. We haven't heard testimony about that. Did he say that or not, sir?
A. Yes, he said that.
Q. He said that, huh?
A. Yes, sir.
Q. Okay. Did you forget about him saying that when you got up here to testify?
A. No, sir.
Q. Now, five lines down -- see where my finger it -- it says the man says what you all got for me?
A. Yes, sir.
Q. All right, and Antwan says what?
A. Let me hollar at you for a minute.
Q. All right, I'm going to hollar at you for a minute, and what's after that?
A. So they stepped behind me.
Q. Stop for a second. So they stepped behind me?
A. Yes, sir.
Q. Okay, and my understanding of your testimony here today i that you were standing behind Mr. Wilds as he was talking to Mr. Rumph?
A. Yes, sir.

Q. And your statement says what?
A. They stepped behind me.
Q. Where were you?
A. Standing behind them.
Q. Which was it?
A. I was behind them.
Q. And on the 7th of April of 1999, they were standing behind you?
A. I may have got my words mixed up, but you have to understand that I didn't write that.
Q. You were certainly given a chance to read it?
A. Yes, sir.
Q. They made any corrections you wanted to make. Right?
A. . .
Q. The officer right over there gave you the opportunity -- this is a sworn statement?
A. Yes, sir.
Q. They were standing behind you or you were behind them?
A. I was behind them.
Q. Okay, so the statement said what you wanted to say?
A. Yes, sir, the statement is the truth.
Q. Yes, sir. Now, take a look anywhere in this statement, please, sir, and find the part where on April 7, 1999, you indicated that Israel Wilds or Antwan told you to hit the man?
A. I don't think that's anywhere in the statement.

Q. I want to give you a chance to review all three pages of that statement that you say is the truth and you swore to on April 7, 1999.

Take your time, please, sir, and look through there and find where in that statement you contend that Israel Wilds who you refer to there as Antwan told you to assault the man?

A. It isn't in the statement.

Q. Okay. You have taken the time to satisfy yourself it's not in there?

A. Yes, sir.

Q. Okay, so did he tell you to hit him or did he not?

A. Yes, sir.

Q. Yes, he told you or, yes, he didn't tell you?

A. Yes, he told me.

Q. He told you, so does your statement read like you just went ahead and did it?

A. Yes, sir.

Q. Today you did it because you were operating under the evi influence of Israel Antwan Wilds?

A. No, I don't see it like that.

Q. You did it because he told you?

A. Yes, sir.

Q. Okay. Now, tell me this. In your statement is it correct that you indicate that Antwan hit the man in the head wit the gun?

A. . .

Q. Is that what you told the police?

A. Yes, sir.

Q. Did you tell us about that here today?

A. No one asked me about it.

Q. No one asked you about it?

A. No, sir.

Q. Okay, I thought Ms. Campbell was going through with you what happened in the course of this incident?

A. But no one asked me that. She didn't ask me about who hit who or what.

Q. What I heard you testify to both on direct and on cross examination, thus far, was that Antwan had the gun on him and told you all to hit him, and you hit him from behind and you are not sure where Dante hit him, and the guy was standing there with the wallet in his hand, and the other hand holding the hand that had the gun in it?

A. And then Antwan got hit hand free -- the gun hand free from the man.

Q. Okay. He got his hand free? Is that what you're saying?

A. Yes, sir.

Q. It's true too, sir, that you don't say anything in your statement given April 7th about the man grabbing the gun that you say Antwan was holding?

A. . .

Q. You don't say anything about that in your statement?
A. I don't think so.
Q. Well, look and see. I don't want to put words in your mouth.
See if it's in your statement.
A. No, sir.
Q. You're satisfied that's not in the statement?
A. Yes, sir.
Q. So the truth is what you're telling today?
A. Yes, sir.
Q. When you put your hand on the Bible and swore to tell the truth, that's the truth?
A. Yes, sir.
Q. When you signed this sworn statement, that wasn't the truth?
A. Yes, sir, it was.
Q. Except when you forgot to say something then. Right?
A. Yes, that was my first time ever being in trouble.
Q. So what you told them was the truth back then except for what you forgot?
A. Yes.
Q. And what you told is the truth here today except the part nobody asked you about?
A. . .
Q. Is that right?

A. Yes, sir.
Q. Now, you are currently charged with murder and armed robbery. Correct?
A. Yes, sir.
Q. Are you charged as an adult or as a juvenile?
A. As a juvenile.
Q. Charged as a juvenile. Okay. Now, you've talked with your lawyer about the charges against you?
A. Yes, sir.
Q. I heard you testify to the prosecutor that no one has offered you any deals?
A. That's right. There are no deals.
Q. You don't expect or hope for anything in return for your testimony here today? That's your testimony -- what you're saying?
A. Well, I'm hoping for but I'm not expecting it.
Q. You're hoping for it, because you're not going to come to Court and go to trial charged with murder and armed robbery, are you?
A. . .
Q. You're not hoping for that?
A. No, sir.
Q. Okay, and you're not hoping to come to Court and plead guilty to murder, are you?
A. No, sir.

Q. And armed robbery, are you?
A. No, sir.
Q. And the same Solicitor's Office that is prosecuting this case will be prosecuting you on the charges you have. Right?
A. As far as I know.
Q. Right here in Columbia?
A. Right. Yes, sir.
Q. The only Solicitor's Office in town -- but you hope as I understand your testimony -- you hope that appearing here today, someone will just graciously decide to do something for you in the future?
A. Yes, sir.
Q. That's your hope, but with no promise?
A. No, sir.
Q. No one has promised anything?
A. No, sir.
Q. No one has promised?
A. No, sir.
Q. Your lawyer has not told you, go ahead and trust them and take a chance; it's going to work out?
A. My lawyer told me to do the right thing and tell the truth.
Q. Okay, so our understanding is that you're testifying because it's the right thing?
A. Yes, sir.

Q. And while you haven't been promised anything by anyone in this case for your testimony, you certainly hope you will get something in exchange for it. Right?

A. Yes, sir.

Q. Now, just a couple more questions. These shoes you say are the shoes that Israel had on that night?

A. Yes.

Q. Do you agree with me or not that Nike Air makes more than one pair of grey tennis shoes?

A. Yes, sir.

Q. Okay. In reality, you have no idea whether these two shoes were the ones that Israel had on that night, do you?

A. No, sir. But the shoes he had on that night were like that.

Q. So your response would be they appear to be the same shoes, right?

A. Yes, sir.

Q. The beige jacket . .

A. Yes, sir.

Q. . . beige jacket?

A. Yes, sir.

Q. Is this a beige jacket?

A. That's not a jacket.

Q. Is this a beige jacket here?

A. No, sir.

Q. And after this incident on March 29th, when was the next time after that day or after that night -- when is the next time you saw Israel Wilds?

A. Maybe the day after.

Q. As I understand it, you have known Joseph Dante since middle school?

A. Yes.

Q. When is the next occasion you had to see Dante Dungee?

A. I believe I seen Dante the next day.

Q. Nothing further.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. He asked you about the statement you gave?

A. Yes.

Q. You came into Court today and told the jury what happened?

A. Yes, maam.

Q. And I apologize for being inartful in some of my questioning, but who all hit the victim that night?

A. Me and Dante and Antwan.

Q. And he also asked you that you didn't -- he kept saying you didn't mention Dante was with you, is that correct?

A. Yes, maam.

Q. And when you were questioned by the officers and they

asked you who all was there with you during this incident beside Antwan, who did you tell them was with you?

A. Dante.

Q. So you admitted to them that night that it was you and Dante and Antwan?

A. Yes, maam.

Q. And without quibbling over some other points he asked, the crux of it is, is this a true statement?

A. Yes.

MR. STRICKLER: I object.

THE COURT: What's the objection?

MR. STRICKLER: Bolstering his own testimony.

MS. CAMPBELL: Your Honor, the State would offer the statement in evidence and let the jury decide.

MR. STRICKLER: You can put the statement into evidence. I have no problem with that whatsoever.

(Simmons' statement admitted in evidence without objection as State's Exhibit 37)

MS. CAMPBELL: That's all I have.

THE COURT: Anything else?

MR. STRICKLER: No, sir.

THE COURT: Step down.

(Witness excused from stand)

THE COURT: Why don't we take a short break at this time? Ladies and gentlemen, we'll take a short break. I'll ask you

to step to the jury room for a few minutes.

While you're there, be sure not to talk about the case. If you need to make calls to anyone to let them know you may be a little later this evening, now is a good time to do it.

(Jury excused from Courtroom)

(Court stood in recess from 4:12 until 4:35 P.M., when the case resumed)

MR. McMAHON: Your Honor, one issue that may come up in the testimony of Timothy Myers -- during the cross examination of the last witness, Mr. Simmons, there was some question by Mr. Strickler concerning a prior drug transaction between Isom Simmons and Timothy Myers.

I think that is a collateral matter, and I don't think he should go into that with Mr. Myers. He can go into any transaction that occurred on the night of March 29th of 1999. I think he can go into the pending possession of marijuana with intent to distribute, but if there have in fact been other drug transactions between those two parties, I think it is a collateral issue and would not be admissible or relevant in this case.

THE COURT: Mr. Strickler?

MR. STRICKLER: I think, Your Honor, if the State calls the witness on direct, I can pretty much go into anything I want to if they open the door.

He is the role model for Mr. Simmons, according to the

testimony and that's why he went to his house.

THE COURT: I think Mr. McMahon is correct. It's not a relevant issue to this case. It would really be more character testimony than anything and gets outside of what we're dealing with here.

MR. STRICKLER: I understand your ruling, Your Honor, and would request an exception.

THE COURT: All right. So noted.

Anything else?

MR. McMAHON: Nothing from the State.

THE COURT: Defense?

MR. STRICKLER: No, sir.

THE COURT: Bring the jury.

(Jury returned to Courtroom)

THE COURT: All right. All parties and attorneys are in the Courtroom, and all jurors have returned.

Solicitor, call your next witness.

MR. McMAHON: State calls Timothy Myers.

TIMOTHY MYERS, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Mr. Myers, where do you live?

A. At 4516 Burk Avenue.

Q. How long have you lived at 4516 Burk Avenue?

A. Twenty-four years.
Q. How old are you?
A. Twenty-four.
Q. What is your date of birth?
A. May 9, 1978.
Q. Who all do you live there with, Mr. Myers?
A. My mother, four brothers.
Q. And you've lived there all your life?
A. That's correct.
Q. Now, what is your mother's name?
A. Janie May Myers.
Q. And is she employed?
A. Yes, sir. She's presently employed at Greenview Elementary School.
Q. What does she do there?
A. She goes and she has like young kids in the afternoon for a few hours a day.
Q. Now, Mr. Myers, I am going to ask you about a couple of individuals and whether you know them.
A. Yes, sir.
Q. Isom Simmons -- do you know Isom Simmons?
A. Yes, sir, I know him.
Q. Do you know where he lives?
A. He lives up like a block -- a block up.
Q. You go up . .

A. Up Burk Avenue.
Q. South on Burk Avenue?
A. Toward Columbia College.
Q. And do you know the name of the road, Tim? Do you mind if I call you Tim?
A. Yes, sir. I mean, no, sir, I don't mind.
Q. Do you know the name of the road that Isom lives on?
A. If I'm not mistaken it's Columbia Drive.
Q. Now, are you familiar with CJ's?
A. Yes, sir.
Q. Where is CJ's located at in relation to your house?
A. It sits on North Main, the street that in front of m;y house.
Q. And . .
A. I mean, the street in front of the street that I live on.
Q. North Main runs parallel to Burk Avenue? Runs side by side, a block apart?
A. Yes, sir.
Q. How far is CJ's from your house?
A. About a block and a half.
Q. About how far would CJ's be from Isom's house?
A. Right down the block.
Q. Right down the block?
A. That's right.
Q. The road that Isom lives on, does it intersect with Main

Street?
A. Yes, sir.
Q. Does it intersect with Main Street near CJ's?
A. Yes, sir.
Q. Now, Tim, before I get into this particular matter of March 29, 1999, you presently have a charge pending against you. Is that correct?
A. Yes.
Q. And that charge is possession of marijuana with intent to distribute?
A. Yes, sir.
Q. I believe that charge is from the incident that occurred in May of 2000?
A. Yes, sir.
Q. Now, have I talked to you at all about that charge?
A. No, sir.
Q. Do you have an attorney on that charge?
A. Not yet.
Q. In fact, I told you I don't want to talk to you about that charge, is that right?
A. Yes, sir.
Q. Do you know whether or not I or Ms. Campbell are the prosecutors on that particular case?
A. I don't think so.
Q. You don't think so, but you don't know?

A. No, sir.
Q. We've had no discussions whatsoever about that other charge?
A. No, sir.
Q. Now, Tim, would you go to CJ's from time to time?
A. Yes, sir.
Q. Did you have an occasion to go to CJ's on the evening of 3 29 99?
A. Yes, sir.
Q. On more than one occasion that evening?
A. Yes, sir.
Q. And have you seen both the video and still photos of you and other individuals in CJ's on the night of 3 29 of 99?
A. Yes, sir.

MR. McMAHON: No objection.

MR. STRICKLER: No.

MR. McMAHON: Your Honor, I have three photographs that are without objection.

THE COURT: Without objection?

MR. STRICKLER: Correct.

THE COURT: All right.

(Still photos entered in evidence without objection as State's Exhibits 38, 39 and 40)

BY MR. McMAHON:
Q. Beginning with what is now marked State's Exhibit Number 265

38, have you seen this photo before?
A. Yes, sir.
Q. Did you recognize the background area of this particular photograph?
A. Yes, sir.
Q. Where is that background area located at?
A. It's located at the beer cooler.
Q. In what business?
A. CJ's.
Q. Did you ever notice or know there's a video camera in CJ's?
A. I never knew there was a video camera in there.
Q. But you are familiar with it now?
A. Yes, sir.
Q. Now, Tim, there appear to be some numbers down here and what looks like the time and all. What date does that appear to be?
A. Three 29 99.
Q. And the time?
A. Six o'clock -- six forty-seven P.M.
Q. Now, to your knowledge, would that have been the first time you were in CJ's on the evening of the 29th?
A. To my knowledge, yes, sir.
Q. And did you recognize any of the individuals in the photo graph?

A. Yes, sir.

Q. Do you recognize all the individuals in the photograph?

A. Yes, sir.

Q. This individual I'm pointing to now, who is that?

A. That's me.

Q. You?

A. Yes, sir.

Q. How had you gotten down to CJ's that night?

A. I walked.

Q. Would that be the normal method you getting from your house to CJ's?

A. Yes, sir.

Q. This individual, do you recognize him?

A. Yes, sir. That's Darrell Martin.

Q. Is he a friend of yours?

A. Yes, sir.

Q. Last name is Martin?

A. Yes, sir.

Q. So that is you with the dark scarf?

A. Yes, sir.

Q. And Mr. Martin with a white hat on his head?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. How about the fellow in the middle? You recognize him?

A. Yes, sir.
Q. What's his name?
A. Robert Hill.
Q. Do you all have a nickname for Robert?
A. Bubba.
Q. Bubba?
A. Yes, sir.
Q. What were you all doing in there?
A. Just buying some beer.
Q. And again, Tim, let me show you a couple of other photographs. State's Exhibit 39, do you recognize that photograph?
A. Yes, sir.
Q. What business is that?
A. That is also CJ's.
Q. What area of the business is that?
A. The front of the store, by the register.
Q. This right here would be the register?
A. Yes, sir.
Q. And the young lady at the register, that would be the clerk at CJ's?
A. Yes, sir.
Q. And before I go to this other one, again there appears to be a date of 3 29 99?
A. Yes, sir.

Q. And the time?

A. Eight forty-two P.M.

Q. Now, on this side where I'm pointing, would that be the customer side?

A. Yes, sir.

Q. Of the counter?

A. Yes, sir, as you come in the door.

Q. And do you recognize anybody on this side?

A. The only person I recognize on this side is myself.

Q. Point to yourself?

A. Right here.

Q. Here?

A. Yes, sir.

Q. And had you gone back up to CJ's with anyone at eight forty-two P.M.?

A. Uh, I can't recall at this moment, but if I do go with anyone it was Bubba.

Q. With Bubba?

A. Yes.

Q. Not with Mr. Martin?

A. No, sir.

Q. With Bubba?

A. Yes, sir.

Q. Let me show you a photograph, State's Exhibit Number 40. Number 39 was at eight forty-two and this one was just

seconds after that. Do you see that?

A. Yes, sir.

Q. And State's 40, do you recognize this?

A. Yes, sir.

Q. And how many seconds does this photograph appear to be taken after State's 39?

A. Six seconds.

Q. So this is 0 six and 39 is 0 three?

A. Yes, sir. It's three seconds apart.

Q. Who do you see in the bottom and top?

A. Me.

Q. That's you, and does there appear to be someone -- if I use the term trailing you or behind ycu -- who is that?

A. Bubba.

Q. So you and Bubba had gone back to CJ's about eight forty, if that clock is correct?

A. Yes, sir.

Q. Do you recall that to be about the time you went back to CJ's?

A. Yes, sir.

Q. Now, Tim, when you and Bubba left CJ's about eight forty that evening, what were you all purchasing?

A. We purchased some beer, and I think Bubba purchased some cigarettes.

Q. And then when you all left CJ's, where were you all going

to?

A. My house.

Q. Back to Burk Avenue?

A. Yes.

Q. When you all got back to Burk Avenue, specifically where did you all go?

A. . .

Q. Did you go inside or stay outside?

A. On the front porch.

Q. And what were you all doing outside?

A. We drank some beer.

Q. Was it more than just the two of you there?

A. Me and Bubba.

Q. You and Bubba?

A. Yes, sir.

Q. Now, did you hear anything while you were standing on the porch?

A. Yes, sir, I heard a couple of gunshots.

Q. And could you tell when you were standing on your porch what direction those were coming from?

A. Yes, sir.

Q. What direction?

A. As you stand on my porch, it was coming from -- like Rhett, going toward Main -- toward that area.

Q. How many shots did you hear?

A. Two.
Q. Did you do anything as a result of hearing those shots?
A. No, after we heard the shots we didn't know exactly where it was coming from, and then a little after that the police was coming. The police was shooting down the street.
Q. Now, how did you get notice the police were going down the street?
A. Because you could see the road from my house.
Q. Main Street?
A. Yes, sir. They were shooting through Main Street.
Q. When you say shooting through, you're talking about the cars?
A. Yes, sir.
Q. You could see the cars?
A. Yes, sir.
Q. And were there lights and such going on?
A. Yes, sir.
Q. How about sirens?
A. Yes, sir.
Q. Now, did anyone show up at your house?
A. . .
Q. About this time?
A. Yes, sir. Shortly after that, Isom and another young fellow came, and Isom was kind of nervous, and he asked to speak to me.

He called me out to the fence, and I said, what's up, and he said, my cousin just shot somebody, and according to what I heard and saw I put everything together and told him to leave at that time because I didn't want something that serious around my house.

Q. When you say Isom and another young fellow, you're referring to Isom Simmons?

A. Yes, sir.

Q. Who is that a photograph of?

A. That's a photograph of Isom.

Q. State's Exhibit 35 I'm referring to -- is that Isom Simmons?

A. Yes, sir.

Q. And describe again for the jury what was his demeanor, his appearance to you, when he arrived?

A. When he arrived, when he came, he was like nervous and all in a dither.

Q. How many people was with him when he arrived at your house?

A. One.

Q. And did you know the other fellow?

A. I know of him. I didn't know him. I had seen him around the neighborhood with Isom.

Q. And you had pretty much seen the other fellow with Isom?

A. With Isom.

Q. And what was it Isom told you?

A. . .

MR. STRICKLER: Objection. Asked and answered.

THE COURT: I believe he's answered the question.

BY MR. McMAHON:

Q. Now, did Isom describe the individual he identified as his cousin?

A. No, he didn't describe him because I never gave him a chance.

Q. What, if anything, did Isom ask you for? What else occurred at your house?

A. . .

Q. Between you, Isom and this other young fellow?

A. Nothing that I recall. That's about it. I think I gave him a little of my marijuana to calm him down, calm his nerves down.

Something I had for my own personal use.

Q. And you might have gave that to Isom?

A. Yes, sir.

Q. About how long was Isom and this young fellow at your house?

A. It wasn't too long. Maybe about -- at the most, ten seconds.

Q. And in ten seconds, no doubt you were able to identify Isom Simmons? You knew him by name and sight?

A. Yes.
Q. And had some conversation with him about the shooting?
A. Well, it wasn't much of a conversation. He told me what he told me.
Q. But you had that conversation?
A. Yes, sir.
Q. And then you might have given him some marijuana?
A. Yes, sir.
Q. Now, I want to show you a photograph, State's Exhibit Number 34, . .
A. Uh hm.
Q. . . do you recognize that individual?
A. Yeah, I recognize him.
Q. And who was that individual and when had you seen him?
A. I saw him that night but I ..
Q. Is that the individual with Isom that night?
A. Yes, sir. He never had any gun. Isom never had any gun.
Q. Do you see him in the Courtroom today?
A. Right there.
Q. Did you know his name?
A. I didn't know his name at the time but I learned his name afterward.
Q. Did Isom get some marijuana from you?
A. Yes, he did because I gave it to him, but it was more or

less a little small amount.

Q. And after he did, they left your house?

A. Yes, sir.

Q. And do you recall what direction they went in?

A. I can't recall.

Q. Now, I want to go forward to a date in April, April 7, 1999. Did you have an occasion to come to your residence on the 7th of April and find the police were there?

A. Yes, sir. I come home from work.

Q. Were they there before you got home?

A. Yes, sir.

Q. And what were they doing at your house?

A. When I got there, they were just searching through the house.

Q. Could you tell from the outside of the house that they were police officers at your house?

A. No, because when I first came up I didn't see them until I got past the house. I came up one way and came down, and it didn't look like police cars, so when I walked in the house it was police.

Q. Was there a car on the outside?

A. Yes, sir.

Q. And you went on in the house?

A. Yes, sir.

Q. It didn't look like a friend's car?

A. No, sir.
Q. And did you talk with the officers that day?
A. I talked with them after I got back down to the police station from the house.
Q. You left from the house and went to the police station?
A. Yes, sir.
Q. And did they advise you of your rights?
A. Yes, sir.
Q. Did you sign a form indicating you understood your rights and waived your rights?
A. Yes, I did.
Q. And thereafter did you give the officers a statement?
A. Yes.
Q. Was it essentially what you've talked about today?
A. Yes, sir.
Q. Did they ask you anything about marijuana on the night -- on the 7th of April of 1999?
A. No.
Q. Did they ask you anything about a marijuana transaction of March 29th of 1999?
A. No, they didn't.
Q. Did you give them a statement and then agree to show them a certain location?
A. Yes, sir.
Q. And what location was that?

A. Isom's house.
Q. Isom Simmons' house?
A. Yes, sir.
Q. And you pointed it out to them?
A. Yes, sir.
Q. And you cooperated with the officers, correct?
A. Yes, sir, as much as I could.
Q. Have you been promised anything in return for your testimony?
A. Naw, they didn't promise me anything.
Q. Thank you. No further questions.
THE COURT: Cross.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Mr. Myers, good afternoon.
A. Good afternoon.
Q. I represent Israel Wilds. Okay? When was the first time anyone asked you any questions about whether you gave or sold or whatever marijuana to Isom Simmons?
A. I don't recall anyone asking me that.
Q. Is this the first time you've heard that question when you testified here today?
A. Yes.
Q. Now, you just testified regarding giving a statement to the police on April 7, 1999?

A. Right.
Q. Have you had an opportunity to review that statement?
A. I have not. They gave me a copy of it.
Q. Have you had a chance to look at it?
A. No, I didn't.
Q. Now, let me show you this and see if you recognize it. Do you recognize that?
A. Yes, sir.
Q. Is that a copy of the statement you gave them?
A. Yes, sir.
Q. Okay. In the statement, the investigators and so forth asked you if you remembered what Isom was wearing on the night of the 29th?
A. Uh hm.
Q. You told them plaid shirt and shorts?
A. That's right.
Q. Thank you, so on April 7th, 1999, when asked what Mr. Isom was wearing, you said plaid shirt and shorts. Right?
A. Yes, sir.
Q. You haven't changed your mind about that?
A. No, sir.
Q. And you identified the gentleman back here as the person you saw with Isom, Mr. Simmons, when he came to your house Right?
A. Yes, sir.

Q. And you didn't see the fellow right here, Israel Wilds? You didn't see him. Right?
A. No, sir.
Q. You haven't the slightest idea what happened on Rhett that night?
A. No. I wasn't there.
Q. You didn't see it and you have no idea about it?
A. No.
Q. How long had you known Mr. Simmons in March of 1999?
A. Isom?
Q. Yeah.
A. I can't tell you how long I've known him, but I been knowing him quite a while.
Q. Had you known him months at that point in time or years at that point in time?
A. Not years.
Q. Not years?
A. No.
Q. You are now 24, so at that point in time you were what? You were 22?
A. Yes.
Q. How did you first meet Mr. Simmons?
A. I met him -- there's another group of kids who live down the street, and I know their oldest brother, and their two youngest brothers grew up there and I used to see Isom with them.

That's how I knew Isom.

Q. Got you. That's all I have. Thank you.

THE COURT: Anything?

MR. McMAHON: No, Your Honor.

THE COURT: Step down.

(Witness excused from stand)

MR. MYERS: State calls Joseph Dante Dungee.

JOSEPH DANTE DUNGEE, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Mr. Dungee, I want you to speak up so the Judge and all the members of the jury can hear you. Okay?

A. Yes, sir.

Q. Your full name again is what?

A. Joseph Dante Lamar Dungee.

Q. And of those names, what name do you go by?

A. Mostly Dante.

Q. Mostly Dante?

A. Yes, sir.

Q. And do you mind if I call you Dante?

A. No, sir.

Q. How old are you?

A. Seventeen years old.

Q. What is your date of birth?

A. It's 6 21 83.
Q. That's your correct date of birth there, 6 21 83?
A. Yes, sir.
Q. And you turned 17 this past June 21st?
A. Yes, sir.
Q. Back on March 29, 1999, when this happened. how old were you?
A. Fifteen years old.
Q. Now, who is your mother?
A. Cynthia Dungee.
Q. And what does Ms. Dungee live?
A. I don't know right now. She's moved . .
Q. Let me back up. You don't know right now. Where do you live right now?
A. Where I live?
Q. Yes, sir.
A. Richland County Detention Center.
Q. And as a matter of fact, you've been in the Richland County Detention Center since April 8, 1999?
A. Yes, sir.
Q. Either in the juvenile side or the adult side, is that right?
A. Both. Yes, sir.
Q. Which side are you on now?
A. The adult side.

Q. Adult side?
A. Yes, sir.
Q. Back in March of 1999, where did your mother live?
A. (Inaudible)
Q. You remember the number?
A. Apartment 22-4.
Q. Who lived there with her?
A. My mom, my two little brothers, and myself.
Q. You have two younger brothers?
A. Yes, sir.
Q. What are their names and how old are they?
A. Christopher Dungee and Wright Dungee, 13 years and 15 years
Q. Are you the oldest of the Dungee children?
A. Yes, sir.
Q. And to your knowledge do your two brothers still live with your mother?
A. Yes, sir.
Q. You're just not sure of her address now since you've been in jail?
A. Yes, sir.
Q. Were you staying at 22-4 Lattimore Manor in March of 1999?
A. No, sir.
Q. Do you have any other brothers who live in the Columbia area?

A. Yes, sir.
Q. Who were they?
A. Right now I have three cousin . .
Q. You're going to have to speak up.
A. Right now it's me, my aunt and my uncle, my cousin, and I got another cousin who just moved down here from Philadelphia.
Q. And was there a particular cousin you were staying with some back in March of '99?
A. Yes.
Q. Who was that?
A. Missy Kinlaw.
Q. Where did Ms. Kinlaw live?
A. Houk Street.
Q. Do you remember the number?
A. Not right off hand.
Q. Is Houk Street in the same part of Columbia as Lattimore Manor?
A. No,sir.
Q. Now, Dante, just a couple of questions about your background.
Your father, does he live in Columbia?
A. No, sir. He stays in Greensboro, North Carolina.
Q. And you have not lived with your father or your mother for quite some period of time?

A. No, sir.

Q. Now, I want to go back to -- well, maybe a little further back than March of 1999 to begin with, to Isom Simmons. Do you know Isom Simmons?

A. No, sir.

Q. How did you know him?

A. I met him when I first moved down from Greensboro. We were in school together.

Q. In what grade?

A. Seventh.

Q. How old were you in the seventh grade?

A. Thirteen.

Q. So you met Isom when you were thirteen years old in the seventh grade?

A. Yes, sir.

Q. And if this incident happened when you were fifteen, you had known him a couple of years?

A. Right.

Q. And as far as education, how much education do you have?

A. I got my GED in the detention center.

Q. You got your GED since you've been in jail?

A. That's right.

Q. What grade were you in education-wise?

A. Ninth.

Q. So since April 8th, 1999, you have since got your GED?
A. Yes, sir.
Q. When did you get that?
A. I can't remember the date.
Q. Did you then undertake any other educational courses since then?
A. No, sir.
Q. Why not?
A. I signed up to take some at Midlands as a juvenile, but when I turned 17 they wouldn't let me transfer it as an adult. So I had to stop.
Q. If you were a juvenile, you could take courses at Midlands Tech from the jail?
A. Yes, sir.
Q. But you can't as an adult?
A. No, sir.
Q. On March 29, 1999 -- you remember that day?
A. Yes, sir.
Q. Where were you living on March 29, 1999?
A. On Houk Street.
Q. Where did you go on the afternoon or evening of March 29, 1999?
A. Isom's house.
Q. How did you get from Houk Street to Isom's house?
A. My brother took me.

Q. Where did that brother drop you off at?
A. Off North Main.
Q. Is there any particular business where he dropped you off at?
A. Yes, sir, there's a Shell station and CJ's.
Q. The Shell station is what they call the Nickle Pump?
A. Yes, sir.
Q. And what's across the street from the gas station?
A. CJ's.
Q. How far is it from where you were dropped off at to Isom's house?
A. About a three minute walk.
Q. And you were by yourself?
A. Yes, sir.
Q. When you got to Isom's, tell the jury what happened?
A. When I got to Isom's house, he wasn't at home. I talked to his grandmother and she said he wasn't there. So I left and started to walk around the corner, and I saw Isom and someone else on the street.
Q. Who was the somebody else?
A. Israel Wilds.
Q. Now, did you know him as Israel Wilds?
A. No, sir.
Q. What did you know him as?
A. Twan.

Q. Twan?
A. Yes, sir.
Q. When you saw you left Isom's house and went around the corner, do you know what street that would be?
A. Burk Avenue.
Q. Do you know where the college is at?
A. Yes, sir.
Q. Were you going toward the college or away from the college?
A. Away from the college.
Q. And you saw Isom and he was with another person?
A. Yes, sir.
Q. Did you go over to where they were?
A. Yes, sir.
Q. And who was that other person?
A. Israel Wilds.
Q. You see him in the Courtroom?
A. Yes, sir.
Q. Point him out for the jury.
A. Right there.
Q. How is he addressed?
A. White shirt.
Q. Is that the only person that you saw with Isom when you first saw Isom on the street?
A. Yes, sir.

Q. Now, I believe you said you know him by the name of Twan. Correct?

A. Yes, sir.

Q. Do you know what name Isom calls him by?

A. Twan.

Q. Did he call him by any other name?

A. Not that I recall.

Q. Did he refer to him as any level of kinship?

A. He said cousin.

Q. Who said cousin?

A. Isom said that he was his cousin.

Q. Do you know whether or not they were?

A. No, sir.

Q. That's what Isom said?

A. Yes, sir.

Q. Was that the first time you had ever seen Twan?

A. No, sir. I had seen him a couple of times before that.

Q. And each and every time you had seen him, who were you with when you saw Twan?

A. Isom.

Q. Isom?

A. Yes, sir.

Q. Did you have a conversation with Twan -- Isom or Twan?

A. Yes, sir. I walked over to them, and I gave them a hand-shake, how you doing, and I asked them what they were up to,

and they said something about robbing somebody.

Q. Who said that?

A. Twan did.

Q. Twan did?

A. Yes, sir.

Q. What did Twan say?

A. Something about I'm going to stick somebody or jack somebody -- something like that.

Q. Stick somebody or jack somebody?

A. Yes, sir. I can't remember the exact words.

Q. And when he said that, was he making any motions or movement?

A. Like this.

Q. Stand up and show the jury the movement you just made.

A. (Witness complying) That's how he did. Something like this here.

Q. Sit back down. When he was making that motion, what, if anything, did you say?

A. I seen he had a pistol.

Q. Who had a pistol?

A. Israel Wilds.

Q. Was that your plan for the night?

A. No, sir.

Q. Was it Isom's plan for the night?

A. I guess. I just had caught up with him.

Q. Who said it was the plan?
A. Twan did. Israel Wilds.
Q. And I believe you said you were on Burk Avenue. Where did you all go?
A. Well, we walked around the neighborhood. I can't remember the exact names of the streets, but we walked the rest of the way down Burk Avenue, and when we get to the corner we went around the corner and around on North Main, and when we got on North Main we walked down toward -- going toward Ashley Apartments, and we split up from there.
Q. Who split up from there at Ashley Apartments?
A. Me and Isom, and Twan.
Q. Who went to Ashley Apartments?
A. Me and Isom.
Q. You and Isom?
A. Yes, sir.
Q. And where did you all go at Ashley Apartments?
A. To find another associate of mine name of Stephan.
Q. Do you know his last name?
A. Brown.
Q. Stephan Brown.
A. Yeah. April and Stephan Brown.
Q. April and Stephan Brown?
A. Yes, sir.
Q. Did he live in Ashley Apartments?

A. Yes, sir.
Q. Why were you all going there?
A. To chill out.
Q. And as part of chilling out, what would you all do?
A. Played video games.
Q. Did Antwan go there with you all?
A. No, sir.
Q. Now, when you all left Ashley Apartments, who left together?
A. Me an Isom.
Q. And what were your plans as far as where you all were going?
A. We walked from Ashley and walked to ..
Q. You can't remember the name of the street?
A. No, sir, but we walked and ended up at Junior's Store.
Q. Where? Junior's Store?
A. Yes.
Q. That's not on Main Street, is it?
A. No, sir.
Q. Where is it -- about how far is it from Ashley Apartments?
A. A block.
Q. And had you all walked from Ashley Apartments to Junior's Store, you and Isom, together?

A. Yes, we did.
Q. And when you left Junior's Store, were you all still walking together?
A. Yes, sir.
Q. What street or streets were you walking down?
A. Spaulding Avenue.
Q. Tell the jury why you remember Spaulding Avenue?
A. Because I used to stay on Spaulding Avenue.
Q. You used to stay on that street?
A. Yes, sir.
Q. So you know the name of that street?
A. Yes, sir.
Q. And as you and Isom were walking on Spaulding Avenue, did you run into anybody?
A. Yes, sir.
Q. Who was that?
A. Israel Wilds.
Q. Israel Wilds?
A. Yes, sir.
Q. Twan?
A. Yes.
Q. After you all ran into him, were the three of you, you, Isom and Twan, walking together?
A. Yes, sir.
Q. Now, as you go down Spaulding away from Ashley Apartments,

was there a road down there at the end?
A. Yes, sir.
Q. When you got down to the end -- do you know the name of that road?
A. No, sir.
Q. You turned left or right?
A. Turned left. It's a dead end on the right side.
Q. When you turned left on that road, could you describe for the jury, please, if it's going uphill or downhill?
A. Up the hill.
Q. Would that have gone toward Main Street?
A. That's right.
Q. Before you get to Main Street, is there a road you can cut off?
A. Yes, sir.
Q. Do you know the name of that street?
A. No, sir.
Q. Do you know any business or businesses on that road?
A. A funeral home, I think, and a barber shop.
Q. Did the route you all took take you on that road you just described?
A. Yes, sir.
Q. I want to show you a photograph, State's Exhibit Number 3. Do you recognize that?
A. Yes, sir.

Q. What is that a photograph of?
A. That's the road.
Q. You say that's the road. Is that the road where these events happened?
A. Yes, sir.
Q. And do you know what kind of businesses are here?
A. I think there's a place that tow cars or repairs cars.
Q. But you don't know the name of that road?
A. No, sir.
Q. Can you point out on this picture -- do you see the road you would have been coming up?
A. Yes, sir.
Q. Where is it?
A. . .
Q. Right here?
A. Yes.
Q. So the college would be in this direction?
A. Yes, sir.
Q. And when you all got up here, would you all have to turn right to get on this road?
A. Yes, sir.
Q. The three of you all were together?
A. Yes, sir.
Q. Now, after you all turned right on this road shown in State's 3, would you all have then gone downhill?

A. Yes, sir.

Q. Did you see anyone coming in your direction?

A. Yes, sir.

Q. Could you describe to the jury, please, whether the person you saw was male or female?

A. Male.

Q. A white male or African-American?

A. African-American male.

Q. Would you describe for the jury, please, whether or not you observed anything in his hands?

A. He had a cup in his hand.

Q. And where was he walking in relation to the roadway, Dante?

A. Walking toward us.

Q. Was he by himself?

A. Yes, sir.

Q. And was there anyone else you saw on the roadway besides this person walking toward you all with the cup in his hand?

A. No, sir.

Q. And you and Isom and Antwan?

A. No, sir.

Q. Did you all continue to walk toward each other?

A. Yes, sir.

Q. Did there come a time that you all got closer and closer?

A. Yes, sir.

Q. And did this individual with the cup in his hand say anything to any of you all initially?
A. At first he asked me did I know something about the bus schedule.
Q. Asked you?
A. Yes, sir.
Q. Now, I want you to describe for the jury, please, the formation. In other words, were you and Isom in front, in back, beside, single file?
A. I was in front of both of them.
Q. So you would have been further down the hill than Isom and Twan?
A. Yes, sir.
Q. As he looked up at you all, could he still tell you all were together?
A. Yes, sir.
Q. Of the three of you, who of you would have been the closest to this individual with the cup in his hand?
A. I was.
Q. What, if anything, did he say to you?
A. He asked me if I knew the bus scheduled.
Q. And what was your response?
A. I don't know.
Q. You don't know your response?
A. I don't know is what I said.

Q. What you said is I don't know?
A. Yes, sir.
Q. After that, Dante, what happened next?
A. He walked past me and he was by Mr. Wilds, Israel Wilds, and they were talking like they were about to make a transaction about buying some crack cocaine, and . .
Q. So he, the man with the cup, walked past you?
A. He kept on walking and . .
Q. Kept on going up the hill?
A. . . walked by Isom and stopped by Israel.
Q. Walked past Isom?
A. Yes, sir.
Q. And then he stopped and was there a conversation or statements made between the man with the cup and Antwan?
A. Yes, sir.
Q. Did you hear any of that?
A. No. I mean, I knew what he was saying but I couldn't recall the exact words.
Q. Who was saying them?
A. Antwan.
Q. What was he saying?
A. He asked him was he straight.
Q. Straight?
A. Yes, sir.
Q. And that comment, are you straight, what does that comment

mean?

A. He was asking if he was straight because he wanted to buy some crack.

Q. If I was out in the neighborhood and I asked you were you straight, . . .

A. You would be asking me did I want to buy crack.

Q. I would be the seller?

A. Yes, sir.

Q. And asking if you wanted to purchase?

A. Yes, sir.

Q. And so who was making the statement, are you straight?

A. Israel Wilds.

Q. Did you continue on walking?

A. No.

Q. What did you do?

A. I stopped.

Q. Did Isom continue on walking?

A. No, sir.

Q. What did he do?

A. Stopped.

Q. Now, would you all still have been facing downhill?

A. Facing each other.

Q. Where was the man with the cup and Antwan in relation now to you?

A. A few feet away.

Q. Who was closest to the man with the cup then?
A. Antwan.
Q. Antwan?
A. Yes, sir.
Q. What happened next?
A. Antwan pulled -- he had pulled the gun out and it looked like he was robbing the man. He had pulled the gun out on the man, and when he pulled the gun on him me and Isom, you know, we grabbed the man and he started trying to jerk away from us.

I -- well, Isom hit him and then I hit him, and Antwan hit him in the back of the head with the gun, and then he was holding the gun and it was like, go in his pockets, go in his pockets, so we went in his pockets.

And when we went in his pockets, we got everything out of his pockets and then we let the man go, and when we let the man go, the man pulled out his wallet, and he was like yelling -- Israel was like yelling, get the money, and he put his hand on the wallet and grabbed the wallet, and he said, you're going to give me this wallet before I blast you, and the man didn't want to give him the wallet, and he shot, and when I heard the gun go off I ran.

Q. Okay, let's break that down. Did you hit the man?
A. Yes, sir.
Q. Did Isom hit the man?

A. Yes, sir.
Q. Did you hit the man before or after Antwan pulled the gun?
A. After.
Q. Did Isom hit the man before or after Antwan pulled the gun?
A. After.
Q. And Antwan pulled the gun, and what did you do?
A. I went and grabbed him.
Q. You hit him?
A. Yes, sir.
Q. Where did you hit him?
A. In his face.
Q. What did you hit him with?
A. My fist.
Q. Isom hit the man?
A. Yes, sir.
Q. Did you see where he hit the man?
A. Yes, sir. In the back of his head.
Q. What did he hit him with?
A. Fist.
Q. Antwan had the gun?
A. Yes, sir.
Q. Describe that gun or the things you remember about the gun in particular?
A. I really didn't see the gun all that well, but I do

remember it had a red beam on it.
Q. Red beam?
A. Yes, sir.
Q. Did you see a beam of light?
A. Yes, sir.
Q. And did Antwan hit the man?
A. Yes, sir. He hit him in the back of the head with the pistol.
Q. With what?
A. Hit him in the back of the head with the handle of the pistol.
Q. All three of you hit the man?
A. Yes, sir.
Q. Did you go into the man's pocket or pockets?
A. Yes, sir.
Q. Did Isom?
A. Yes, sir.
Q. Why did you do that? Why did you go in his pockets?
A. Cause we was robbing the man.
Q. Robbing him?
A. Yes, sir.
Q. And Isom?
A. Yes, sir.
Q. And Antwan?
A. Yes, sir.

Q. Do you remember what pocket you went into?
A. No, sir.
Q. Was this after you hit him?
A. Yes, sir.
Q. Tell the jury what you got out of his pants pocket?
A. The lighter, some change.
Q. Coin change?
A. Yes, sir.
Q. A cigarette lighter?
A. Yes, sir.
Q. Like a nice lighter or a throw-away lighter?
A. Throw-away lighter. And a key chain.
Q. Do you know whether Isom went in the man's pockets?
A. Yes, sir.
Q. What, if anything, did he get?
A. A pack of cigarettes.
Q. Was the man saying anything?
A. He was, because I can't give you exactly what he was saying.
Q. Now, what, if anything, did the man do about the wallet?
A. He pulled his wallet out.
Q. Who was trying to get his wallet?
A. Twan.
Q. And what, if anything, did Antwan say about the wallet or his money?

A. If you don't give me the wallet, I'm going to blast you.

Q. Were those the words he was using?

A. Yes, sir.

Q. Was he using any curse words?

A. I'm not real sure.

Q. If you don't give me the wallet, I'm going to what?

A. Blast you.

Q. Did the man give him the wallet?

A. No, sir.

Q. What happened?

A. He shot him.

Q. Who shot the man?

A. Antwan shot the man.

Q. Did you?

A. No, sir.

Q. Did Isom?

A. No, sir.

Q. Could you tell where the shots struck?

A. In his mid-section.

Q. Up in this area?

A. Yes, sir.

Q. How many shots did you hear?

A. I heard one.

Q. Then what did you do?

A. I ran.
Q. What did you do after that? Ran in which direction?
A. Toward Main.
Q. Point out in State's 3 what direction you ran.
A. Going that way.
Q. This way?
A. Yes, sir.
Q. Of the three of you, you and Isom and Antwan, who ran first?
A. I did.
Q. Do you know what Isom did?
A. He ran. Well, at first they was arguing back and forth and Isom said, well, why you shoot him, or something like that. I can't remember every detail. I was already up the street.

I can't remember everything they did because I was already gone.

Q. Did you see them again?
A. Did I see them arguing?
Q. After they argued, did you see them again?
A. Yes, sir.
Q. And what were they doing?
A. They was doing a transaction over money.
Q. And where was that taking place, the transaction over the money?

A. Across the street from the incident. I don't know the name of the street but across the street from where the incident took place.

Q. Are you familiar with there being a median there, a little grass median?

A. Where we was at or in the middle of the street?

Q. In the middle of the street.

A. No, sir. Oh, yes, sir. Yes, sir.

Q. Are you familiar with this median area up here?

A. Yes, sir.

Q. And who was doing the transaction with the money there, according to State's 25? Who was doing the transaction?

A. Isom and Israel.

Q. Isom and who?

A. Antwan.

Q. Who did you see with the wallet?

A. Antwan.

Q. What was he doing with it?

A. Going through it.

Q. And did you see him get any money out of it?

A. Yes, sir.

Q. What did he do with the money?

A. Give money to Isom.

Q. Did you end up getting some of the money?

A. Yes, sir.

Q. Who gave you the money?
A. Isom gave me the money.
Q. When did that transaction take place?
A. Right before we went over across the street.
Q. Now, you all crossed Main Street?
A. Yes, sir.
Q. When I say you all cross Main Street, who am I talking about?
A. Isom and myself.
Q. And what about Antwan?
A. He was going on down Main.
Q. On down Main?
A. Yes, sir.
Q. And that would have been going in this direction?
A. Yes, sir.
Q. Toward Columbia College?
A. Yes, sir.
Q. Now, you all go through a cut and on North Main Street. Where is the cut you referred to in relation to CJ's?
A. Right beside CJ's.
Q. CJ's is on Main Street?
A. On Main Street.
Q. And is there a house next to CJ's?
A. CJ's and a house, like a little cut.
Q. You can cut through there to . .

A. Burk Avenue.
Q. Burk Avenue?
A. Yes, sir.
Q. And was it in the cut that Isom gave you some money?
A. Yes, sir.
Q. You remember how much?
A. About Three Dollars?
Q. How much?
A. Three Dollars.
Q. From there, where did you go?
A. To Tim's house.
Q. Tim Myers?
A. Yes, sir.
Q. The person who testified right before you did?
A. Yes, sir.
Q. What happened at Tim's house?
A. Isom and Tim talked for a minute, and the reason we went up there was to go get some marijuana.
Q. Did you all get some?
A. Yes, sir.
Q. You say Isom and Tim had a conversation?
A. Yes, sir.
Q. In your presence, or could you hear?
A. I couldn't hear.
Q. After that conversation, did Isom say anything to you

about it?

A. He told me that had just told Tim what happened.

Q. What did you tell Isom?

A. I told him I was not going to tell nobody.

Q. You had how much marijuana?

A. A dime bag.

Q. A dime bag?

A. Ten Dollars worth.

Q. And from there where did you go?

A. To CJ's.

Q. What did you get at CJ's?

A. We got some cigars.

Q. And that was to assist you in smoking marijuana?

A. Yes, sir.

Q. Now, after you went to CJ's and got the cigars, where did you go?

A. We went to another associate of ours named Box Fro but I don't know his real name.

Q. Box Fro?

A. Yes.

Q. Where did he live?

A. On Burk Avenue.

Q. Why did you go to his house?

A. To go in his back yard and smoke.

Q. Did you all smoke the marijuana?

A. Yes, sir.
Q. After that, where did you go?
A. I went home.
Q. How did you get home?
A. Walked.
Q. So you walked from Burk Street back to Lattimore Manor?
A. Yes, sir.
Q. That's a pretty good walk, isn't it?
A. Yes, sir.
Q. That's what happened that night?
A. Yes, sir.
Q. Did you have a gun that night?
A. No, sir.
Q. Did Isom have a gun that night?
A. No, sir.
Q. Was Antwan with you all?
A. Yes, sir.
Q. Did Antwan have a gun?
A. Yes, sir.
Q. Who shot the man?
A. Antwan shot the man.
Q. On April 8th of 1999, were you taken into custody?
A. Yes, sir.
Q. By the Columbia Police Department?
A. Yes, sir.

Q. And among other officers, did you deal with Investigator Burns?
A. Yes, sir.
Q. And she advised you of your rights?
A. Yes, sir.
Q. You gave her a statement?
A. Yes, sir.
Q. And in that statement did you say the three of you all were together?
A. Yes, sir.
Q. You've been in jail ever since?
A. Yes, sir.
Q. One moment, please. Dante, why are you testifying?
A. Why am I testifying?
Q. Yes.
A. Because it's the right thing to do.
Q. Has anybody given you a deal?
A. No, sir.
Q. When is the first time we met?
A. A couple of weeks ago.
Q. How about Ms. Campbell?
A. I'd seen her the same time.
Q. Couple of weeks ago.
A. Yes, sir. When I couldn't get no bond.
Q. Have we offered you any reward or leniency for testifying?

A. No, sir.

Q. Do you think about this?

A. All the time.

Q. You have plenty of time to think about it?

A. Yes, sir.

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

THE COURT: Cross.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good afternoon, Mr. Dungee, or good evening. You think about it all the time, is that right?

A. Yes, sir.

Q. And until roughly the summer of last year, you were in the juvenile section?

A. Yes.

Q. Of the Richland County Detention Center?

A. Yes, sir.

Q. And you were housed then in the same section where Mr. Simmons was housed?

A. No, sir. He was in A Wing and I was in D Wing.

Q. Both juvenile?

A. Yes, sir.

Q. So you all were housed there together until -- he would have left there first?

A. Yes, sir.

Q. So from March -- April of 1999, until . .

A. June 2000.

Q. . . June of 2000. You described Mr. Simmons as a good friend?

A. Right.

Q. And I understand the last thing you said was you are testifying here because it's the right thing to do?

A. Yes, sir.

Q. Now, you've been represented by an attorney. Correct?

A. Yes, sir.

Q. Your lawyer is a guy named Jim Wright?

A. Yes, sir.

Q. And you've discussed whether or not you would testify in this case?

A. Yes, sir.

Q. And you are currently charged as an adult?

A. Yes, sir.

Q. With murder and armed robbery. Right?

A. Yes, sir.

Q. You're not charged as a juvenile?

A. No, sir.

Q. Now, you are testifying because it's the right thing to do, and you don't hope to gain anything for your testimony, if I understand you correctly?

A. Yes, sir.

Q. Yes, you don't hope to gain anything?
A. I don't hope to gain anything.
Q. Don't hope to gain anything?
A. No.
Q. You're hoping to come into Court and go to trial for murder and be convicted?
A. I'm not going to go to trial.
Q. You hope to come to Court and pled guilty to murder and armed robbery?
A. Those are the charges I still have but I didn't murder anybody. Accessory to murder.
Q. Well, I understand that. Are you charged with accessory to murder or charged with murder?
A. I'm charged with murder.
Q. So you are hoping that your charge will be changed somehow from a charge of murder?
A. Yes, sir.
Q. You can't take that, can you, a charge of murder?
A. No, sir.
Q. And the people who will be prosecuting you are this Solicitor's Office over there. Right?
A. Yes, sir.
Q. Of course, they haven't promised you anything for your testimony?
A. No, sir.

Q. All they want to do and all you want to do is come down here and tell the truth?

A. Yes, sir.

Q. You want to do that because it's the right thing to do?

A. Yes, sir.

Q. And you might get your murder charge reduced?

A. I mean, I guess -- I guess you could say that.

I can't tell you what they will do because I really don't know. I'm going to plead guilty but I'm not the one bringing the charges.

Q. You're going to plead guilty to murder?

A. Yes, sir.

Q. A minute ago you said you wanted it broken down?

A. I want it but that's not what I'm charged with so I can't say.

Q. Who knows what a month or two will bring. Right?

A. Who knows.

Q. Let's talk about the past. Okay? You gave a statement on April 8, 1999. You talked to Mr. McMahon about that. Is that right?

A. Yes, sir.

Q. Do you have a copy of that statement of April 8, 1999?

A. Yes, sir.

Q. When did you have a chance to look at it?

A. Last night.

Q. Last night?

A. Yes, sir.

Q. I want to ask you some questions about it. If at any point you don't remember, I'll be happy to let you take a look at it. Right?

A. . .

Q. Now, your testimony today was that you ran into Isom and Israel Wilds earlier in the evening?

A. Yes, sir.

Q. That in your statement?

A. I don't know. I think so.

Q. Where is it?

A. (Witness reading from statement in an inaudible voice)

Q. Let me read it to you and ask you the questions.

A. Uh hm.

Q. Starting at the very beginning. We were walking down the street and we saw the dude.

A. Uh hm.

Q. When you refer the dude or man that would be Mr. Rumph, the gentleman who was killed?

A. That's right.

Q. Now, we were walking down the street and we saw the dude, Mr. Rumph?

A. Yes.

Q. My question to you is, your testimony here today was that

you had run into Mr. Simmons and Israel walking down the street earlier?

A. That's right.

Q. My next question to you is that's no where in the statement you gave on April 8, 1999, is it?

A. No, sir.

Q. Okay. Now, you further testified today that you asked Mr. Simmons and Israel what's up, and Israel said they were going to rob somebody. Right?

A. Yes, sir.

Q. That is when you were talking about earlier?

A. Yes, sir.

Q. And at one time you stood up and demonstrated something like this, that Israel said he had a gun?

A. Yes, sir.

Q. Okay. None of that is in this statement?

A. The reason why it's not in the statement is because she asked me questions to get straight to the point.

Q. Okay, get straight to the point. The answer to my question, to get straight to the point, is that none of that is in the statement, is it?

A. No, sir.

Q. All right. Then you indicated you all split up and you and Mr. Simmons went to Ashley Apartments and saw this guy at Ashley Apartments.

A. Yes, sir.
Q. That's not in the statement either?
A. No, it's not.
Q. Prior to -- it's not in Isom Simmons' statement either, is it?
A. I haven't read his statement.
Q. For the year or year and a half you all were in the juvenile wing, of course, in the county jail, you didn't have a chance to sit down and talk together at all about your story?
A. Not really.
Q. Yes, sir. Now, you did talk about Israel boasting he had a gun. You remember saying this in your statement, so I hit the dude in the face and Antwan hit the man in the back of the head with the gun.

I didn't know he had a gun, and then you got the cigarette lighter in the man's pocket.

You remember saying that?
A. Yes, I do.
Q. So, sir, I mean, did you know he had a gun as you testified here today; that you noticed him with a gun earlier in the day? Or did you not know he had a gun?
A. I did know he had a gun.
Q. So when you said you didn't know he had a gun in your statement, that would be a lie?
A. A lie.

Q. So you were consciously lying to the police when you get the statement?

A. Yes, I was.

Q. But you're consciously telling the truth here today because that's the right thing to do?

A. Yes, sir.

Q. Your testimony today is that you encountered the dude or the man, Mr. Rumph, and you were the first person to come on him, and he asked you about a bus schedule and you said you didn't know?

A. Yes, sir.

Q. This was after you and Mr. Simmons had met back up with Mr. Wilds and were walking down the road.

A. Yes, sir.

Q. Tell me if this is what you statement says, we were walking down -- the very start of the statement -- and we saw the dude. Antwan walked up to the dude and they were talking.

Did you leave out the part about you talking to the dude?

A. Yes.

Q. Just left that out?

A. Yes, I did.

Q. You didn't just make that up?

A. No, I didn't.

Q. Because it was the right thing to do, your testimony here

today is that you actually were the first person to have a conversation with Mr. Rumph?

A. That's right.

Q. You were the first person to talk with him?

A. Yes, sir.

Q. And after that, you did say Antwan went back and had a conversation but you couldn't fully hear, something about are you straight, something Israel Wilds was asking. Right?

A. Yes, sir.

Q. Your statement says Antwan walked up to the dude and they were talking. Right?

A. Yes, sir.

Q. Nothing about a drug deal?

A. No, sir. I didn't say nothing about it.

Q. But you're saying something about a drug deal today?

A. Yes, sir.

Q. Because that's the right thing to do?

A. Yes, sir.

Q. Right for you, isn't it?

A. . .

MR. McMAHON: Is that a question? If it's an editorial comment, I want it struck. It's improper.

MR. STRICKLER: It was a question.

MR. McMAHON: If it's a question, allow him to answer. I object to that.

THE COURT: Mr. Strickler, was it intended as a question?

MR. STRICKLER: Yes, sir, it was.

THE COURT: Rephrase it. Ladies and gentlemen, if you took that as a comment by the attorney, certainly do not take it as such.

Remember that anything the attorneys say is not considered as evidence.

Please rephase the question.

BY MR. STRICKLER:

Q. That testimony was very relevant to you . .

MR. McMAHON: No, sir, that's different. That's not the question. That's not the question he previously asked. He's changed it up now.

I don't want him to change the question now.

THE COURT: I understand. I'll let him ask the question.

MR. STRICKLER: I'll move on to something else.

Q. Let me ask you this, Mr. Dungee. Let me ask you this. When was it in the sequence of events that Mr. Rumph grabbed Mr. Wilds' hand and struggled with him? When did that happen?

A. I don't remember when it happened.

Q. You don't remember that happened?

A. I do remember them tussling over the wallet.

Q. You don't remember them struggling over the gun?

A. No.

Q. That's not in your statement, is it?
A. No.
Q. You didn't testify to that on direct, did you?
A. No.
Q. You have no memory of that happening whatsoever?
A. No.
Q. Now, let me ask you this, Mr. Dungee. When was it in the sequence of events that Israel Wilds told you and Isom Simmons, go ahead and jump the guy?
A. He didn't tell us to go ahead and jump the guy.
Q. He didn't tell you to jump the guy?
A. He told us to go in his pockets and grab the guy.
Q. Let's say. (Reading from Dungee statement)

Antwan walked up to the dude and they were talking. Then Isom walked up to them -- right?
A. Uh hm.
Q. Then I went up to help Isom because he's my best friend?
A. Uh hm.
Q. So I hit the dude in the fact and Antwan hit the man in the back of the head with a gun -- didn't know he had a gun -- got the cigarette lighter.

Then the man started holding onto his wallet and Antwan shot him. (Counsel reading rapidly) You all started running.

Where in there does it say Antwan told you all to do it?

A. It's not in there.
Q. Not in there because it didn't happen?
A. It's not in there because I didn't say it when they questioned me.
Q. You didn't say it during your questioning?
A. No.
Q. You didn't say it during your direct testimony here, did you?
A. Yes, I did.
Q. Oh, you did?
A. I did.
Q. But you got around to saying it during my cross examination of you, and you're now saying Antwan told you . .
A. He told us to go in his pockets.
Q. Again, Antwan walked up to the dude and they were talking. Then Isom walked up to them. You went to help.
Where in that is that he told you to go in the pockets?
A. That's not really what happened.
Q. The statement is not really what happened?
A. That they started fighting and I didn't know he had a gun and all that junk is not what happened.
Q. But what you've testified to here today about it is what really happened?
A. Yes, sir.
Q. You mentioned going by -- let's see. (Reading from Dunge

statement) You mention going by Tim Myers' house?

A. Yes, sir.

Q. You all started running, and me and Isom run together, and Isom told Tim what happened. Nothing in here about getting any marijuana from Tim Myers?

A. No.

Q. But you were here in Court for Tim Myers' testimony?

A. Yes, sir.

Q. Thank you very much.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. McMAHON:

Q. Some of the questions Mr. Strickler just ask you -- that is Mr. Strickler who was asking you questions -- about running into Isom and Antwan on Burk and conversation about a robbery and a gun -- were you asked those questions when you gave the statement on April 8, 1999?

A. No, sir.

Q. Is it fair to say that myself and Ms. Campbell had you give us more detail in our interview than you obviously did on 4 8 99?

A. Yes, sir.

Q. I think you said they told you to get on to the point?

A. Yes, sir.

Q. The point where the incident happened?

A. Yes, sir.

Q. And is this a copy of the statement -- both the advice of rights form and the statement you gave on April 8, 1999?

A. Yes, sir.

Q. That Mr. Strickler questioned you about?

A. Yes, sir.

MR. McMAHON: Your Honor, I'd offer the statement.

MR. STRICKLER: Without objection.

(Dungee statement entered in evidence without objection as State's Exhibit 41)

MR. McMAHON: Your Honor, I would move to publish the statement to the jury, without going back over the advice of rights form.

THE COURT: Yes, sir.

(Statement portion of State's Exhibit 41 published to the jury)

BY MR. McMAHON:

Q. When you and Isom were in the juvenile section at the jail, were you all together or separated?

A. Separated.

Q. Did you make this story up?

A. No, sir, I didn't.

Q. Did you make the story up today?

A. No, sir.

Q. I don't have anything further.

MR. STRICKLER: Nothing further.

THE COURT: All right, step down.

(Witness excused from stand)

(Conference at the bench off the record between counsel and the Court)

THE COURT: Ladies and gentlemen, we'll stop for the day, and I'll ask you to be back in the morning at nine o'clock. Be back in the jury room, and let me promise you we will not start at ten in the morning.

I had something scheduled this morning that unfortunately took longer than I realized, but we don't have anything scheduled for tomorrow morning, so we can start right away.

Remember, don't let anybody talk about the case with you and don't talk about it with anyone.

(Jury excused from Courtroom at 6:10 P.M.)

THE COURT: Counsel, anything before we recess for the day?

MS. CAMPBELL: No, sir.

THE COURT: Defense?

MR. STRICKLER: No, sir.

(Court stood in recess until March 28, 2001, at 9:30 A.M. Jury returned to the Courtroom)

THE COURT: You may proceed.

MS. CAMPBELL: Dr. Zvejnicks.

PETER ZVEJNICKS, being duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Doctor, where are you employed?

A. Richland Hospital. Palmetto Richland Hospital.

Q. What do you do there?

A. I'm a staff pathologist.

Q. Tell the jury a little bit about your education and training as a medical doctor as well as a pathologist.

Q. I attended Tulane University for my undergrad training and received a Bachelor of Science Degree. I subsequently attended the Georgia Institute of Technology and received a Master of Science Degree.

Then I went to the Medical College of Georgia, where I received my Medical Doctor's Degree. I did a five year pathology training in Colorado, and subsequently did a fellowship in Philadelphia.

I've been employed at Palmetto Richland Hospital since July of 1991.

Q. And your appointment is as as pathologist?

A. As a pathologist, yes. Staff pathologist.

MS. CAMPBELL: Your Honor, at this time I'd offer him as an expert in the field of pathology.

THE COURT: Any objection?

MR. STRICKLER: I'd like to voir dire him.

THE COURT: Okay

BY MR. STRICKLER:

Q. Good morning, Doctor. Would you tell us, please, are you board certified in any particular areas?

A. Yes, I'm board certified in anatomic and clinical pathology and in dermatopathology.

Q. What was the last area?

A. Dermatopathology.

Q. Okay. Are you aware of a subspeciality in pathology known as forensic pathology?

A. Yes, I am.

Q. Okay, you are not board certified in forensic pathology?

A. No, I'm not.

Q. Have you had occasion to testify in Courts in this State in the area of pathology?

A. No, I have not.

Q. The Courts of any other State?

A. No.

Q. Thank you very much.

THE COURT: All right.

MR. STRICKLER: He has qualification certainly in the area of pathology, and I have no problem with it. So I have no objection.

THE COURT: All right. Ladies and gentlemen, this witness will be qualified as an expert in the area of pathology.

Let me tell you what that means.

I told you earlier that you are the Judges of the credibility of the witnesses, and you decide how much weight to give to the testimony.

An expert witness is a person who is allowed to testify in a particular area because of his training, background, education, qualifications and expertise in that particular area.

This witness has been qualified to testify as an expert, and he is allowed to give an opinion in those areas in which he is qualified.

As with all experts, you are not bound by the opinion of an expert, but it is provided to guide you in your deliberations.

You decide how much weight to give to it. As always, it is up to you to determine the weight and credibility of the testimony given by an expert witness, the same as with any other witness.

Any exception to that charge from the State?

MS. CAMPBELL: No exception.

THE COURT: From Defense?

MR. STRICKLER: No, Your Honor.

THE COURT: All right.

BY MS. CAMPBELL:

Q. Doctor, as a pathologist what do you do?

A. As a pathologist, I specialize in the diagnosis of the

various diseases of organs and so forth, such as cancers. As a dermatopathologist, I specialize in diagnosis of inflammatory disease of the skin and various tumors of the skin.

Also, as a pathologist, I perform autopsies on a regular basis.

Q. And you perform those autopsies in Columbia here at Palmetto Richland Hospital?

A. Yes.

Q. Turning your attention to July 8 of 1999, did you have an opportunity that day to perform an autopsy on Anthony Rumph?

A. Yes, I did.

Q. Prior to performing the autopsy, were you aware that he had had a rather extensive hospitalization at Richland Memorial?

A. Yes. He had been at Richland for approximately three months, I believe.

Q. He had been there since March 29, 1999?

A. Yes.

Q. Were you aware of the reason he was admitted to the hospital on March 29, 1999?

A. He had sustained a gunshot wound to the abdomen.

Q. Had he had any other gunshot wounds?

A. There was a gunshot wound transversing his right arm and his left upper extremity.

Q. After his admission and from a review of the record, are

you aware of whether or not any operations were performed on Mr. Rumph?

A. Yes. Extensive procedures were performed, including opening up the abdomen to explore the abdomen, to look for injuries and repair those injuries.

Q. After his initial operation, did he have additional procedures performed on him?

A. Yes. He required mechanical ventilation secondary to respiratory distress syndrome, which is a common affliction of the lungs when you are hospitalized for a long period of time.

He also required massive antibiotic treatments to reduce the chances of bacterial infection, or him becoming septic.

Q. Are you aware that a tracheotomy was put in place?

A. Yes, that was to assist with the mechanical ventilation.

Q. Over the course of his stay in the hospital, what, if any, problems did Mr. Rumph have?

A. He developed acute respiratory distress syndrome more than once, which is a life threatening lung disorder.

He also became septic more than once.

Q. When you say he became septic more than once, explain that to the jury. What does that mean?

A. That means he had a bacterial infection of the blood.

Q. What would the tracheotomy do to his ability to communicate or speak?

A. You can't speak when you have a tracheotomy.

Q. Are you also familiar with the term abdominal comparta syndrome?

A. Yes, the abdominal comparta syndrome necessitated the wound left at the laparotomy site be left open. There was so much swelling that the wound had to be left open. It was kept clean and dressed but they weren't able to close it and that was very dangerous as far as sepsis.

Q. At some time prior to his death, did they attempt to close the wound?

A. Yes. The skin was flapped to close the opening with a skin graft, but that was only partially successful.

Q. And he eventually died from renal failure basically?

A. Yes, renal failure and adult respiratory distress syndrome.

Q. That was on July 8 at eight thirty that morning?

A. . .

MR. STRICKLER: I would object to leading.

THE COURT: Overruled.

A. Yes.

BY MS. CAMPBELL:

Q. When did you have an opportunity to perform your autopsy?

A. The following day, July 9.

Q. What were the findings in the external examination you performed?

A. He had a large abdominal defect which was the partial skin

graft. The defect was inflammed and filled with granulation tissue, which is the body's attempt to close an open wound.

He had well healed wounds in his arms from a gunshot wound. The bullet had passed through his arms and into his abdomen. The abdominal wound wwas fairly well healed.

Those were my external findings for the most part.

Q. Did he still have the tracheotomy in place when you examined him?

A. Yes, he did.

Q. Once you did your external examination, did you do an internal examination?

A. Yes.

Q. Tell the jury briefly what your findings were when you did your external examination of the organs of his body?

A. Briefly, as I said, he was in the hospital for more than three months. Many of his injuries were well healed. However his right kidney was atrophied, and the renal vessels had failed. His liver was very congested. His bowels were filled with gas, and his lungs were very congested.

Q. You said his bowels were filled with gas. What had that done to his appearance?

A. He appeared very bloated.

Q. His stomach was distended?

A. Yes.

Q. And then there was the hole in the chest?

A. Yes.
Q. Where the graft was not successful?
A. Yes.
Q. You mentioned the various organs had been injured, and that included the liver?
A. Yes. The liver had been lacerated and the pancreas was bruised as a result of the gunshot injury. Some of his arteries were severed and some renal veins appeared to be severed, but some of these injuries were fairly well healed by the time I examined him.
Q. Did you also have an opportunity to examine his brain and other organs?
A. Yes.
Q. Were there any life-threatening injuries you noted other than what you just told the jury?
A. No.
Q. You also mentioned, Doctor, that you noted what appeared to be well healed gunshot wounds?
A. Yes.
Q. And where were the gunshot wounds? I believe you mentioned both arms?
A. Yes.
Q. Would you point out on me where those injuries would have been?
A. Yes. The well healed injuries were on the right forearm,

to the anterior -- passing from front to back.
Q. From front to back?
A. Yes. And the distal forearm and wrist of the left hand, so that would be here.
Q. So it would be right here?
A. Yes.
Q. And right through here?
A. Yes.
Q. So about where my watch is and then . .
A. Yes.
Q. . . through the other arm?
A. Yes.
Q. And then the entry wound into the body?
A. Eleven point five centimeters below the right ventricle.
Q. Tell me in inches.
A. About eight inches.
Q. Within the abdomen?
A. Yes.
Q. And your findings were consistent with someone having crossed their arms in a defensive pose?
A. Yes.
Q. In your examination, did you remove any metal or foreign objects?
A. I did not but the medical records stated that during the

initial laparoscopy procedure, the exploratory procedure, a bullet had been removed.

Q. That had lodged in the abdomen?

A. Yes.

Q. Doctor, in reviewing the medical records from the stay in the hospital, and also in performing your autopsy, did you come up with a final diagnosis of the cause of death of Mr. Rumph?

A. Yes. Complications secondary to a gunshot wound of the abdomen.

Q. The gunshot wound of March 29th that caused him to go to the hospital?

A. Yes.

Q. Thank you, Doctor. Please answer any questions the Defense might have.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Just a couple of things. Good morning, Doctor.

As part of conducting the autopsy in this case, did you review the medical records associated with . .

A. Yes, I did.

Q. The medical records associated with the individual reveal gunshot wounds, fresh gunshot wounds, to the arms as you have described?

A. Yes.

Q. They were healed at the time you saw him?
A. Correct.
Q. You indicated the wound to the abdomen was eleven point five centimeters below the right nipple?
A. Yes.
Q. Were you able to observe that wound yourself at the time of autopsy, or is that an indication gleaned from the records you examined?
A. I would say that I observed the scarring left by that wound.
Q. And eleven point five centimeters below the right nipple would actually be about four inches below the right nipple?
A. It would be closer to seven inches below the right nipple
Q. (Beginning of question inaudible) So about four and a half inches below the right nipple?
A. Yes.
Q. Thank you. That's all I have.
MS. CAMPBELL: One question.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Doctor, you mentioned you wounds you saw were consistent with a single entry gunshot wound to the arm and passing inside?
A. Yes.
Q. Could there have been more than one shot?

A. It could have been more than one.
Q. Or one?
A. Or one.
Q. Thank you.
THE COURT: Recross.
MR. STRICKLER: No, sir.
THE COURT: Step down. Thank you.
(Witness excused from stand)
MR. McMAHON: May it please the Court, the State calls Joann Lewis.

JOANN LEWIS, being duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. McMAHON:
Q. Ms. Lewis, by whom are you employed?
A. City Police Department.
Q. How long have you been employed with the City Police Department?
A. Approximately thirteen years.
Q. What is your current position with the Police Department?
A. Evidence room supervisor.
Q. How long have you been in that position?
A. Approximately twelve years.
Q. What are your duties and responsibilities as far as being

evidence room supervisor?
A. My responsibilities as evidence room supervisor -- let me make a correction before I answer. I was made supervisor six years ago, but I've been in charge of the evidence room for approximately twelve years.
Q. So half of the time you've been in the evidence room, you have been acting as supervisor?
A. That's right.
Q. Very briefly and generally, what are your duties and responsibilities as evidence room supervisor?
A. As evidence room supervisor, my duties and responsibilities are to make sure that all evidence received in our evidence room is secured, that chain of custody is maintained, that the integrity of evidence is maintained, and to make sure it is ready and available for court procedures.
Q. Now, this type of evidence we're talking about would be evidence turned in by uniformed officers, crime scene officers, is that correct?
A. That's correct.
Q. And would you just tell the jury again very briefly how the evidence room is set up for security purposes and security of the evidence?
A. For security of the evidence, we have one entrance to the evidence room. There is a dead bolt lock, as well as a number security code.

The only persons allowed to enter that room are the evidence personnel, as well as myself.

We do have a drug room that is secured by locks as well as a large metal door that's lock. No one can enter that but me and the evidence personnel.

Q. When evidence is turned in to the evidence room, does it necessarily remain in the police department evidence room the entire time once it's turned in until it comes to Court?

A. Occasionally an officer will come by and retrieve it and transport it to SLED or for proceedings in Court.

Q. So evidence would be turned in to the evidence room?

A. Yes.

Q. And if it is needed to be tested by the State Law Enforcement Division, how is that accomplished?

A. The evidence -- the investigator assigned to that case or the case officer will stop by the property room and fill out a chain of custody form, and the evidence will be released to that officer to transport it at that time.

Q. And from time to time, that evidence is transported to SLED for any testing and then returned to the Columbia Police Department evidence room prior to presentation in Court?

A. On most cases that happens.

Q. And I want to ask you specifically about three items of evidence in this particular case. I'll begin with what's previously been marked as State's Exhibit Number 33. Can you

identify these items as having come into your possession?

A. Yes, I can.

Q. How do you go about identifying this particular item?

A. Evidence is received in the property room and it is stamp-dated, and the person who receives it will initial it, and this says I received it in the evidence locker on April 8th, 1999.

Q. And did you then maintain custody of this item, a pair of grey suede tennis shoes, for a period of time?

A. Correct.

Q. And I want to ask you if on November 15, 2000, did you have occasion to turn these items over to the custody of another officer?

A. Yes, I did.

Q. And what officer and for what purposes?

A. On November 15, 2000, the item was turned over to Investigator Burns.

Q. And for what purpose were they turned over?

A. To transport to SLED.

Q. For forensic testing?

A. Yes.

Q. Now, again, just one other item and really a sub item to that. I'm going to show you another item that has previously been marked as State's Exhibit 18, and ask if you can identify this item for us, please?

A. Yes, I can.

Q. And can you tell is this item was received into your custody?

A. This item is a white blood-stained shirt that was received on -- from Detective Catoe by myself, in the property room on April first, 1999.

Q. Now, would this have been maintained in the custody of the evidence room for a particular time?

A. Yes, that's correct.

Q. And I want to ask you if on April 14th of 2000 if you had occasion to turn this item over to another officer -- excuse me a moment.

A. Yes, I did.

Q. What officer?

A. It was released to ID Tech Catoe to take to SLED.

Q. Mr. Catoe turned it in to you on April first of '99?

A. Correct.

Q. And you maintained custody until April 14th of 2000 and turned it back over to him?

A. Yes.

Q. And that was for him to transport it to SLED?

A. Yes.

Q. For purposes of forensic testing -- now, it was returned to the custody of the police department evidence room at a later time?

A. That's correct.

Q. And did you have an opportunity to again relinquish custody of this item to particular officer?

A. Correct.

Q. And what date and what officer?

A. On May 2nd of 2000, ID Tech Phil Young transported these items from SLED back to me in the property room.

Q. Now, ID Tech Phil Young works at the same location as ID Tech Catoe?

A. Correct.

Q. When SLED processes a particular item -- I believe this number 4.0 LGK -- that's a SLED number?

A. That's correct.

Q. And did you have occasion to turn over a particular item 4.0 again in regard to this case?

A. Yes.

Q. What was -- when was that?

A. That was November 16 of 2000. I released the item to Investigator Burns.

Q. So you would have had the shirt back in your evidence room correct?

A. Yes.

Q. And cuttings from this shirt?

A. Yes.

Q. And to your knowledge, those cuttings would have been made by SLED?

A. Correct.
Q. Agent Burns -- it was turned over to Investigator Burns?
A. Yes.
Q. And when was that?
A. November 16, 2000.
Q. If SLED takes a sample from a particular item, like item four, does it become like 4.1?
In other words, will you get part of it back also?
A. I'll get part of it.
Q. And you turned over a particular item from 4.0 in regards to this case?
A. Yes.
Q. And that was on November 16 when you turned it over to Investigator Burns?
A. I released cuttings from the shirt on November 16, 2000, to Investigator Burns.
Q. You don't change or alter the evidence in any manner. Correct?
A. Correct.
Q. You just maintain custody and security of it during the period of time it is in your possession?
A. Correct.
Q. Are items turned in -- if they are bloody in nature, are they dried before they come in the evidence room?
A. Yes, they are.

Q. And is that done by an ID Tech? For example, Mr. Catoe?
A. Correct.
Q. And that would be the normal procedure?
A. Yes, sir.
Q. Thank you, no further questions.
THE COURT: Cross?
MR. STRICKLER: No, sir.
THE COURT: You can step down.
(Witness excused from stand)
THE COURT: Call your next witness.
MS. CAMPBELL: Detra Turner.

DETRA TURNER, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Ms. Turner, where are you employed?
A. Columbia Police Department.
Q. What do you do there now?
A. I'm a victim's assistance advocate.
Q. And back in April -- March and April of 1999, where were you working?
A. I was in the evidence section of the police department.
Q. Did you work with Ms. Lewis, who just testified?
A. Yes.
Q. And as an evidence clerk, what were your duties?

A. To maintain chain of custody and secure evidence, mark the evidence and log it in when it comes to the property room.

Q. So your job is to keep the evidence and maintain the security of the evidence intact?

A. Yes.

Q. And in this case specifically, your involvement was with regard to a pair of grey suede tennis shoes?

A. Yes, it was.

Q. And when did you come in contact with those grey suede tennis shoes and release them?

A. May 18, 1999.

Q. I show you this bag. Was this the item that was released by you on May 18, 1999?

A. Yes.

Q. Who did you release those shoes to? Into whose custody did you turn them over?

A. Investigator Burns.

Q. Sitting right there at the table?

A. Yes.

Q. And during the time period they were kept in the evidence room, were these shoes altered or tampered with in any way?

A. No.

Q. And the proper procedures were followed in this case?

A. Yes.

Q. No further questions.

THE COURT: Cross?

MR. STRICKLER: No, sir.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: Call your next witness.

MS. CAMPBELL: Investigator Vinson.

MARK VINSON, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Investigator Vinson, where are you employed?

A. Columbia Police Department.

Q. What do you do there?

A. I'm an investigator.

Q. Describe your duties as an investigator.

A. Follow-up on crime and things like that, take statements, assisting other investigators.

Q. Are you assigned to a certain team?

A. Yes, the major crimes unit.

Q. And do you work Investigator Burns?

A. Yes.

Q. Turning your attention to this case of Israel Wilds, did you assist in the investigation of this case?

A. I did.

Q. Specifically, were you present on April 7, 1999, when Mr.

Israel Antwan Wilds was interviewed?

A. Yes.

Q. You were present in the department?

A. Yes.

Q. But were you in the interview room?

A. No, I was not.

Q. And at some point subsequent to Ms. Burns' interview, did you have an opportunity to observe him?

A. Yes, I did.

Q. Specifically his feet.

A. Yes.

Q. Tell the jury what you saw.

A. He was wearing a pair of grey suede tennis shoes.

Q. And were they significant to your investigation based on information you had already secured?

A. Yes, maam.

Q. I show you this, State's Exhibit 33. Do you recognize those shoes?

A. Yes, these are the shoes that were taken from Mr. Wilds on April 7 at the Columbia Police Department.

Q. Where were they?

A. On his feet.

Q. There at the police department?

A. Yes.

Q. Who actually took the shoes from Mr. Wilds?

A. I was directed to take the shoes off him and placed them in the bag.

Q. The bag you're referring to has writing on the outside?

A. Yes, it has.

Q. What does it say?

A. That the shoes were taken from Mr. Wilds on April 7, 1999, at twenty-one hundred hours, nine P.M., at 1409 Lincoln Street, which is the Columbia Police Department.

Q. Okay.

A. With reference to this case.

Q. And you filled out this form?

A. Yes.

Q. That's your writing?

A. It is.

Q. The shoes were placed in the paper sack?

A. Yes.

Q. And was it sealed?

A. Yes.

Q. And you all also got a search warrant?

A. Correct.

Q. And you collected three items of clothing from the Defendant's house?

A. Correct.

Q. Were all the items you took that day from the search warrant, as well as these shoes, State's Exhibit 33 -- what did you

do with them?

A. They were all placed in property lockers, which at that time were near the front desk at the police department, and a padlock was placed on them to secure them.

Q. During the period of time you had State's Exhibit 33 in your possession, did you alter or tamper with it in any way?

A. No, I did not.

Q. That's all I have.

THE COURT: Cross examine.

MR. STRICKLER: No, sir.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: Call your next witness.

MS. CAMPBELL: State calls Phil Young.

PHIL YOUNG, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Officer Young, where are you employed?

A. Columbia Police Department.

Q. How long have you been employed with the police department?

A. Eleven years.

Q. What do your duties include at the Columbia Police Department?

A. My duties are as a crime scene investigator, to respond to crime scenes, photograph them and collect various items of physical evidence.

Q. And as part of your duties, do you also do transportation of property to and from SLED?

A. Correct.

Q. Tell the jury why evidence is sometimes taken to SLED?

A. To conduct various types of analysis in terms of physical evidence from a particular case.

Q. And in this case, you did not actually process the crime scene?

A. That's correct.

Q. But you did participate in transportation of evidence?

A. Yes, I did.

Q. Turning your attention to SLED Item 4.1, a white shirt, did you have an opportunity to transport that?

A. Yes, I did.

Q. When did that occur?

A. That occurred on May 2nd of 2000.

Q. And what about the cuttings from the white shirt?

A. That was transported back to SLED on November 16, 2000.

Q. And when you received SLED item 4.1, you took it from SLED and returned it to the property room?

A. Give me a minute to look over it.

Q. Is it all documented on that form?

A. Yes, it is. On May 2nd I transported it back to the police department along with some other evidence that I brought back.

Q. You would have turned it over to personnel in the evidence room?

A. Correct.

Q. Turning your attention to a swab from grey tennis shoes, item 1.3.1, did you have an opportunity to transport that on November 16 to them?

A. Yes, I did.

Q. And who did you take that from?

A. Those items were taken from Investigator Burns.

Q. And that was transported where?

A. Transported to SLED to be logged in. It was logged in there at SLED for processing.

Q. Can you explain to the jury what the procedure is at SLED with regard to taking in evidence?

A. There are several people there who are responsible for making sure the items are secured in a box or bag, and they log information into a computer, after being sealed and secured.

Then the agent who will actually conduct the process gets the items from them.

Q. No further questions.

THE COURT: Cross examination?

MR. STRICKLER: No questions.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: Call your next witness.

MR. McMAHON: State would call Detective Paul Meade.

PAUL J. MEADE, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Sir, by whom are you employed?

A. The City of Columbia Police Department.

Q. How long have you been so employed?

A. Fifteen years.

Q. What various positions have you held during that 15 year period of time?

A. I started out as a road officer or street officer, and I was promoted to Corporal, and to investigations in major crime.

Q. How long have you been assigned to investigations?

A. Seven years.

Q. And for a part of that period of time in major crimes?

A. Correct.

Q. Now, you were part of the major crimes unit along with Detective Burns?

A. Yes.

Q. And you were involved in follow-up investigation of this particular case from the night of March 29th on throughout the

investigation?
A. Yes, I was.
Q. And you would assist Investigator Burns?
A. Correct.
Q. I want to ask you specifically if you had occasion to be at the Columbia Police Department with regards to this case on April 7, 1999?
A. I was, sir.
Q. And had you attended the search warrant execution at a residence at 1101 Carola Avenue?
A. Yes. I executed that search warrant.
Q. And was the Defendant, Antwan Wilds, taken into custody at that time?
A. Yes, he was.
Q. Where was he taken?
A. Police headquarters.
Q. Now, did you deal specifically with the Defendant, Mr. Wilds, or did another officer or officers?
A. Investigator Burns dealt with Mr. Wilds.
Q. Did you have an occasion at about nine o'clock that evening to be notified to come into the area where Detective Burns was at, along with the Defendant?
A. Yes.
Q. And point out to the jury what, if anything, you observed at that time?

A. One of the items we were looking for in the search warrant was a pair of NIKE Air Force suede shoes. Investigator Burns was conducting an interview with Mr. Wilds. She came out of the interview room and stated that Mr. Wilds was wearing the shoes we had been looking for in the search warrant.

Q. Did you see those shoes?

A. Yes, I did.

Q. And did you see them on his feet?

A. Yes, sir.

Q. I show you what's been marked as State's Exhibit 33. Do you recognize those items?

A. Yes, sir. Those are the shoes.

Q. Those are the shoes?

A. Yes, sir.

Q. When you first saw these shoes, where were they, on April 7, 1999?

A. They were on the feet of Mr. Wilds.

Q. Now, they were removed from the feet by Detective Vinson, is that correct?

A. Correct.

Q. And Detective Meade, did you have occasion on May 18 of 1999 to receive those shoes into your custody?

A. Yes, I did.

Q. And where did you take them into your custody? Who did you receive them from?

A. I received the shoes from Investigator Burns and transported them to SLED.

Q. And did you receive them in your custody at the Columbia Police Department?

A. Yes.

Q. So you took them from the Columbia Police Department to the State Law Enforcement Division?

A. Yes, I did.

Q. That would have been for forensic testing?

A. Yes.

Q. Did you change or alter the shoes in any manner during the period of time they were in your custody?

A. No, sir.

Q. In fact, the bag was stapled shut during that period of time?

A. Correct.

Q. The way you received them and transported them and turned them over to SLED?

A. Correct.

Q. One other thing, the bullet recovered from the body of the victim, can you ballistically compare that if you don't have a weapon?

A. No, sir.

MR. STRICKLER: I would object. He's not qualified.

MR. McMAHON: I can go into his qualifications. I'm not

asking him as an expert.

THE COURT: You can ask him if he knows. If he does, all right. If he doesn't, he can say he doesn't.

BY MR. McMAHON:

Q. Do you know the answer to my question?

A. Yes, sir.

Q. Do you know of your own knowledge?

A. Yes.

Q. Not as an expert?

A. No, just in my experience as an investigator.

Q. As an investigator for seven years?

A. Right, sir.

Q. Seven years with the major crime unit?

A. Yes, sir.

Q. You can't compare something if you don't have anything to compare it with?

A. No, sir.

Q. Thank you. No further questions.

THE COURT: Cross.

MR. STRICKLER: A couple of questions.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good morning, Mr. Meade.

A. Good morning, sir.

Q. First of all, at the time that the shoes were taken from

Israel, did you photograph them?

A. No, sir, I did not.

Q. Okay, did you see Investigator Vinson, who I understand actually took custody of the shoes -- did you see him photograph them?

A. No, sir.

Q. To you knowledge, prior to them being placed into the evidence bag, the shoes were not photographed. Correct?

A. That's correct, sir.

Q. Now, to your knowledge, when you do comparison on bullets you are looking for the presence of bands and grooves on the fired projectile?

A. That's correct.

Q. You can also do comparison of the composition of the bullets?

A. Yes.

Q. There are, as I understand it, there are different compositions of bullets. Some are full metal jacket, and some are lead, some have cores of various varieties. Right?

A. That's correct, sir.

Q. And so bullets themselves can exhibit various characteristics, correct?

A. They may, yes, sir.

Q. Different characteristics independent of lands and grooves?

A. The characteristics of bullets may be different.
Q. And lands and grooves -- you could test fire a weapon to make comparison of lands and grooves?
A. Correct. To compare the bullet itself, you'd need another bullet to compare it to.
Q. For the comparison of lands and grooves?
A. That's right.
Q. You don't need that with this one?
A. The bullet in evidence?
Q. Right.
Q. No, you'd need another bullet to compare it to.
Q. Such as an unfired bullet?
A. That's a possibility.
Q. All right, and contingent upon the condition of the fired bullet, independent of doing test-firing, you may be able to go ahead and determine the caliber of the fired bullet. Right?
A. Depending on the condition, I think they can do that.
Q. So while you don't have a weapon to do test-firing with, that one can do in comparisons for lands and grooving on the elevated portion -- can't do that -- there are a number of other tests, your understanding is, that can be done on a fired projectile?
A. There are tests that can be done to place a bullet in the same lot, the same case of bullets, or something like that.

Q. That may be contingent upon the condition of the fired projectile?

A. Yes.

Q. There was a projectile recovered in this case?

A. I understand there was one retrieved at the hospital.

Q. Thank you.

THE COURT: Anything further?

MR. McMAHON: No, sir.

THE COURT: Step down, sir.

(Witness excused from stand)

THE COURT: Call your next witness.

MR. McMAHON: May it please the Court, the State calls Lisa Kiser.

LISA KISER, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McMAHON:

Q. Maam, by whom are you employed?

A. I work for SLED, the South Carolina Law Enforcement Division.

Q. And how long have you been employed with SLED?

A. Approximately ten years.

Q. What is your current position with the State Law Enforcement?

A. I'm an evidence technician in the evidence processing

department.

Q. Tell the jury generally and briefly your educational background and training and experience in your particular field of expertise.

A. Yes. I have an Associate's Degree from Anderson College. I've had extensive training with Court-qualified experts at SLED in the area of serology and trace.

I've also trained with the F.B.I. Crime Lab in Washington, D.C. in 1995. I've attended several seminars on blood spatters; also crime scene reconstruction with Dr. Henry Lee, and also we have a Court-qualified expert class at SLED that we also take.

As well, they conduct annual proficiency tests at SLED.

Q. How long have you been doing evidence processing?

A. Approximately seven years.

Q. And you do that full time? Aside from appearing in Court, you would be in the lab processing various objects of evidence?

A. Correct.

Q. What majority or percentage of your time would be conducting your laboratory duties?

A. Approximately sixty percent is actually processing cases. We also talk to other agencies in working a case, and then we send out preliminary findings.

Q. Okay. Have you testified in the past in Courts of record

in South Carolina as an expert in the field of evidence processing?

A. Yes, I have.

Q. On approximately how many occasions have you done it?

A. Approximately thirty-two times.

Q. And have you also been offered as an expert in that field and been accepted by Courts of record as an expert in the field of evidence processing?

A. Yes.

MR. McMAHON: Your Honor, I would offer Ms. Kiser as an expert in the field of evidence processing.

MR. STRICKLER: I have no voir dire for her, Your Honor.

THE COURT: Without objection, this witness will be qualified as an expert in the area of evidence processing, and will be allowed to give an opinion as such.

Ladies and gentlemen, as I told you a few moments ago, this witness is allowed to testify as an expert because of her qualifications, education, training and background in a particular area, and as such can give an opinion.

You're not bound by the opinion. You decide how much weight and credibility you give to it.

Any exception from the State?

MR. McMAHON: No, sir.

THE COURT: From Defendant?

MR. STRICKLER: No, sir.

THE COURT: You may continue.

BY MR. McMAHON:

Q. Agent Kiser, how does SLED become involved in a local investigation such as this?

A. First of all, any evidence in a case is logged in at SLED. At that point, once it is logged in, it goes to a refrigerated area, a locked refrigerator, where all evidence that we process is kept.

At that time, we have a log-in sheet that has the request on each item as far as what I need to do to the evidence. I take that evidence into my custody and then I process it according to the requests that are made.

We do presumptive testing for blood, semen, and then we send it on to DNA for further analysis.

Q. Now, when you all receive various items of evidence from law enforcement agencies, it's from throughout South Carolina?

A. Yes.

Q. So you all would be kind of forensic support?

A. Correct.

Q. For various agencies throughout South Carolina?

A. Correct.

Q. Now, you also mentioned that you may talk to the officers from time to time during the course of the investigation. What does that involve, generally?

A. We get log in sheets and sometimes there is a generic

description of the item. We want to make sure we're doing everything possible and doing the right thing.

I will just call the investigator and ask him if there is any other request possibly on that item, and in this particular case the request was for blood.

So I did have a conversation with Investigator Burns concerning the case, and then process it for the presence of blood.

Q. When an item is logged in by an officer from a particular agency, they would make a particular request; for example, blood?

A. Correct.

Q. Or ballistics?

A. Correct.

Q. Or fingerprints?

A. Correct.

Q. Or what have you, the various sections you all have in the lab?

A. Yes.

Q. And you wouldn't do the fingerprints?

A. No.

Q. You would just do the processing for what type of substances?

A. We also collect hair, fiber, blood. Those are different tests we do.

Q. When items come to SLED from the various agencies, where do they first come to, generally, Ms. Kiser?
A. They always come to us first.
Q. If it's an evidence processing type situation?
A. Correct.
Q. And did you receive certain items of evidence in regards to this particular case?
A. Yes.
Q. And did you conduct certain forensic testing on them?
A. Yes.
Q. In addition to that, did you forward items of evidence in regard to this particular case to other departments within SLED?
A. Yes, I did. I did make collections on certain items and send my collections to the DNA department for further analysis.
Q. Now, I'm going to ask you, to begin with, about State's Exhibit Number 33. State's Exhibit Number 33. I ask you if you can identify these items for me?
A. Yes, I can. These are tennis shoes that I examined, grey suede tennis shoes, and on the back you can see I put SLED's lab number -- excuse me -- SLED's item number on it so I could identify these items.
Q. Lab numbers are different from . .
A. Item numbers.

Q. . . items numbers?
A. Correct.
Q. Matter of fact, looking here, is that the SLED lab number?
A. Correct.
Q. L 99 57 25?
A. Right.
Q. And here are the initials LGK. Whose initials are those?
A. My initials.
Q. You would write that on there?
A. Correct.
Q. Tell us when these came in to your custody?
A. Can I refer to my notes? Suspect's clothing came into my custody on March 22nd.
Q. Of . .
A. Of 2000.
Q. And were they in a sealed condition?
A. Yes, sir, they were.
Q. And where would you have received them from?
A. It's what we call D16, our walk-in refrigerator.
Q. Now, is that where items would be stored securely if there was going to be blood testing on them?
A. Correct.
Q. So 1.3 -- do you number each item you examine with a particular number?

A. Yes, I assign numbers. The item that came in was already assigned item 1.0 but there were several items in that container, so I assigned each one a sub item also to item one, because this is the item we first received.

Q. How does it work if you take a sample from this item. Now you've numbered this item 1.3. Correct?

A. Correct.

Q. So how does it then work if you take a sample from this particular item?

A. On this shoe here, you can see where I circled the area. I took a swab from that. That would be a sub-item from this item. It would be 1.3.1.

This swab was put in an envelope and sealed to sent to DNA for further analysis.

Q. Now, did you do any testing on this particular item?

A. What I do is a presumptive test and it will determine if blood is not there, but it does not confirm that it is blood. That's why we send it to DNA to confirm that.

So I did get a presumptive positive off my swab, and I sent it up to DNA for further analysis.

Q. Is that a presumptive test for blood -- does it determine whether it's human blood or not?

A. No.

Q. If you get a positive from that, what do you then do with that?

A. I put it in a gold-colored envelope and send it on to DNA which has another refrigerated area. I would put the evidence I collected there for DNA to pick up.

Q. That would be labeled 1.3.1?

A. Correct.

Q. Did it go to the DNA box in a sealed condition?

A. That's correct.

Q. Agent Kiser, in addition to -- there are various writings on this item or markings. Are those your markings?

A. Yes, they are.

Q. On both the left shoe and right shoe, is that correct?

A. Correct.

Q. And in addition to that, would you do diagrams or notations with regard to those particular items?

A. Yes, I do.

Q. I want to show you an enlargement and ask you if this is an enlargement of both the left and right shoe of item 1.3?

A. Yes, sir.

MR. McMAHON: Your Honor, I would offer this in evidence, I understand without objection.

MR. STRICKLER: That's correct.

THE COURT: All right, without objection.

(Enlarged diagram entered in evidence without objection as State's Exhibit 42)

BY MR. McMAHON:

MR. McMAHON: Your Honor, may Agent Kizer step down?

THE COURT: Yes, sir.

Q. Step down, please.

A. (Witness leaving stand and approaching jury box)

Q. Step on this side, Agent Kiser, and just keep your voice up.

Would you explain again to the jury how this relates specifically to the grey suede tennis shoes?

A. Okay. This would be a diagram of the shoes that are contained here.

This is the area where I took the swab, 1.3.1, and you may see the small dot I put there. That would be an example of what it looked like. There were six or eight dots there.

Q. And what happened to those dots?

A. I collected those with saline swabs which I preserved. What I did was swab the whole area because as you can see there wasn't much there to begin with.

But I collected that swab, and it is a very sensitive test so if anything was there I would go back with a second swab and test it.

If it's positive, I send to my initial swab to DNA, so that all the evidence that was there would be preserved.

Q. Now I want to -- on up here on the diagram, the tip of the left shoe is a circled area. What does that indicate?

A. That's just a control to show that there was nothing in

the dye on the item that would mess up the testing.

Q. That would give a false positive?

A. Yes.

Q. Now, as far as the -- I guess that would be the other panel.

What does this area represent?

A. All of these areas where I've got negative circled, it means it was a negative tested area -- a negative testing in that area. Here, here, here, here and here.

Q. So this -- when you say negative that's a lab mark?

A. Right.

Q. What looks like equal to a lay person is negative to you?

A. Yes, so that if anyone were to go back and put a line through it to make it look positive -- that's why we do that.

Q. So this area is negative and this area is negative on the left shoe?

A. Correct.

Q. And as far as the right shoe?

A. There were no positives on the right shoe. The diagram shows here it was negative and here.

Q. And these were -- describe to the jury, please, on that left shoe, the 1.3.1, your observations of the shape of the objects?

A. They were very, very small, like a spatter type of object.

When blood spatters . .

MR. STRICKLER: Objection. She's not qualified in that area.

MR. McMAHON: She testified to training in blood spatters.

MR. STRICKLER: She was qualified as an evidence process technician. There are people at SLED who are blood spatter experts.

I object to that testimony.

THE COURT: Overruled. I'll let her testify to it.

BY MR. McMAHON:

Q. Describe your observations of the area.

A. The area here would be small dots of a substance that could possibly have been sprayed onto that area. It was very small.

Q. And that substance tested positively presumptively for blood?

A. Correct.

Q. You swabbed this area, and that then became 1.3.1?

A. Correct.

Q. And what did you do with swab 1.3.1?

A. I put it in an envelope and then put it in another pouch and sent it to the DNA department refrigerator.

Q. Thank you, Agent Kiser. I believe you can take your stand.

A. (Witness resuming witness stand)

Q. You also reviewed several other items. Correct?

A. Yes, sir, I did.

Q. And by the way, I'm not going through all the other items, but just to bring it out, Defendant's clothing -- you list a brown sweater, another pair of grey tennis shoes, a brown coat, and they were negative for blood?

A. Yes. The brown sweater -- there were no stains present. On visual examination, there was nothing there that needed to be tested.

There were tests done on item 1.2, the tennis shoes -- the other pair of grey tennis shoes, and no blood was detected on those. Then there was also a brown hooded coat, item 1.4, but there were no stains present there.

Q. And I believe you testified, Agent Kiser, just moments ago about receiving those shoes on 3 27 2000?

A. Yes, sir.

Q. What date did you do the testing or do the swab, the 1.3.1, and place it in the DNA box?

A. I did that all on the same test.

Q. The same day?

A. Yes, sir.

Q. Now, going to another item I'd like to show you, State's Exhibit Number 18, I believe -- the seal has been broken as result of bringing it to Court, but can you identify this item for us in any manner?

A. Yes, I can. Here I put my initials, the number I assigned, 4.0, the date I processed it and SLED's item number on here.

Q. Would that also be on the item itself?

A. Yes.

Q. Tell us when you received these items, this item and what condition?

A. Sealed condition -- I received that on May 17, 2000, and it was put back into B16 on May 18.

Q. And what was the request in your examination?

A. That a standard be taken.

Q. Explain that, please.

A. If there is a victim in that case who bleeds on an item of clothing, and sometimes it is requested if the blood is not taken at the hospital, a standard.

So there was an area that was saturated and we did a standard.

Q. And this was indicated to you as being the victim's blood?

A. Yes.

Q. What item of the victim's clothing did you receive?

A. I received four items, I think -- let's see. Actually it was three items of clothing, but only one standard was requested, so we took a standard off that.

Q. And this was in May?

A. May 17.
Q. Of 2000?
A. Yes.
Q. This was received March 27?
A. Yes, of 2000.
Q. Did you take cuttings from this item?
A. Yes.
Q. You did a presumptive test in that particualr case?
A. Yes.
Q. And what were the results of the presumptive test?
A. Presumptive for blood.
Q. And how many cuttings did you take from your item number 4 on the 18th?
A. One.
Q. And what did you do with that item, if anything?
A. I also sent item 4.1 to DNA -- placed it in the DNA box.
Q. And on what date did you do that?
A. On 5 18 2000.
Q. The day after you received the item?
A. Yes.
Q. Was it in a sealed condition when you placed it in the DNA box?
A. Yes, sir.
Q. Thank you. I don't have any further questions.
THE COURT: Cross?

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good morning, Agent Kiser.

A. Good morning.

Q. On the drawing -- what photographs did you take of the shoes to reflect the precise location of what you indicate is presumptively positive for blood?

A. The diagram is all I have. I did not take any photographs.

Q. No photograph to reflect the location, correct?

A. Just the diagram.

Q. And you have no photograph to reflect the number or the location of these marks you saw on the shoes. Correct?

A. I don't have any photographs.

Q. Okay, and you don't have photographs to reflect the color of the marks?

A. That's correct.

Q. Or size of the marks on the shoes. Correct?

A. Correct.

Q. What was the color of the marks?

A. The color I normally see. I can't tell you exactly what -- it looked like dried blood.

Q. I believe you said red.

A. Okay, red.

Q. Did you or didn't you . .

A. Blood is red.

Q. Maam, did you or did you not say red spots on direct testimony?

A. Yes.

Q. Was it bright red or what color?

A. I have no documentation as far as the exact color.

Q. How old were the bloodstains or the dots you saw on the shoes?

A. I cannot tell you that.

Q. Referring to the areas where you have equal signs on your chart, . .

A. Yes, sir.

Q. . . we understand it is -- that equal on there means negative?

A. Yes.

Q. Equal certainly means negative. Did you see anything in those areas on the shoes that caused you to apply saline to it?

A. Yes, there was something there. Nothing that looked like the dots I show in my diagram, but a lot of times the stains are very small on shoes and in several areas. I swabbed those areas to make sure we didn't miss anything.

Q. You don't have any indication of any stains, if you will, in the areas that were negative, so how did they appear?

A. I don't recall.

Q. You got the clothes, including shoes, and that came into your custody on March 27,2000?

A. Correct.

Q. You did the work on that date?

A. Correct.

Q. And the shirt, Mr. Rumph's shirt, that you got the standard from, that was received on May 17th,2000?

A. Correct.

Q. Okay, just so I'm sure. The shoes in this case with the various items, 1.3 . .

A. That's correct.

Q. . . and the swabs you took from the areas you described to the jury, that is SLED Number 1.3.1?

A. Correct.

Q. Okay, and as to the shirt, it has SLED item number what?

A. Number 4.

Q. And the cutting you took from the shirt for comparison, that is item 4.1?

A. Right.

Q. All right, thank you.

THE COURT: Redirect?

MR. McMAHON: Nothing on redirect.

THE COURT: All right, you can step down.

(Witness excused by the Court without objection)

THE COURT: This would be a good time to take a break.

Ladies and gentlemen, let's take a short break, and I'll ask you to step into the jury room. Remember to be sure not to talk about the case.

If you need refreshments or anything, let me know.

(Jury excused from Courtroom at 10:45 A.M.)

THE COURT: All right, we'll be in recess.

(Court stood in recess until 11:05 A.M.)

THE COURT: Counsel, let me put on the record, as I indicated to you in Chambers, we're going to have to take a break at this point because of a subpoena that I am receiving to testify in a grievance hearing.

As you know, grievance matters take precedence over anything else, so what I need to do is -- let's do this. Let's break until 1:30.

Hopefully, I can get back by one or 1:30. I just hope it won't take too long.

Bring the jury in.

(Jury returned to Courtroom)

THE COURT: All the parties and attorneys are in the Courtroom and all jurors have returned.

Ladies and gentlemen, let me tell you that I have been requested to -- we're going to have to stop for a little while here. I've got to take part in a grievance proceeding downtown. I don't have any choice as it takes priority over what we're doing.

I have to be a witness in a matter, and I need to be there between 11:30 and twelve. I apologize to you. I didn't know it was coming up but there's nothing we can do about it.

Let's take a lunch break at this point and come back at one o'clock. I hope I can be through by then and be able to get back. I will get back as soon as I can.

Be sure not to talk about the case in any way and don't let anyone talk to you about the case. We'll see you back at one o'clock.

(Court stood in recess from 11:07 to 1:35 P.M.)

(Jury returned to Courtroom)

THE COURT: All parties are present in the Courtroom and the jurors have returned.

Ladies and gentlemen, thank you for your patience. I got back as quick as I could.

Call your next witness.

MS. CAMPBELL: State calls John Barron.

JOHN BARRON, being duly sworn testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Agent Barron, where are you employed?

A. South Carolina Law Enforcement Division.

Q. And what do you do with the South Carolina Law Enforcement Division?

A. At present, I'm assigned to the serology and DNA lab.
Q. And is the South Carolina Law Enforcement division commonly referred to as SLED?
A. Yes.
Q. What kind of operation is SLED?
A. SLED is basically the State Police, but I'm involved in the unit that is involved with analysis of evidence that is brought in from law enforcement agencies throughout the State of South Carolina.
Q. You mentioned you are currently assigned to the serology and DNA lab or department?
A. Correct.
Q. How long have you been working at SLED in serology and/or DNA analysis?
A. I've been working at SLED for twenty-five years. I've worked in the serology department for thirteen years, and in the trace evidence department, and I have recently been assigned to the DNA lab.
Q. Tell the jury a little bit about your education and training.
A. I have a Bachelor of Science Degree in micro-biology. I have been trained by Court-qualified serologists, and during that training period I attended the Federal Bureau of Investigation's training unit in serology.

Upon returning from that, I began doing case work, and

in basic serology, and I've had the opportunity to testify in the State of South Carolina probably a couple of hundred times as a serologist.

When I returned to the serology/DNA department, I completed the competency examination in serology, and I've been doing serology testing for that department since.

Q. And do you have on the job training as well as professional training?

A. Yes.

MS. CAMPBELL: Your Honor, at this time I'd offer him as an expert in forensic serology.

THE COURT: Any objection?

MR. STRICKLER: No, sir.

THE COURT: Ladies and gentlemen, this witness will be qualified as an expert in the area of forensic serology.

Remember, as I told you earlier, that he is allowed to testify and give an opinion because of his training, background, qualifications, education or experience in this area.

You decide how much weight you wish to give to his opinions.

Any objection from the State to that charge?

MS. CAMPBELL: No, Your Honor.

THE COURT: Defense?

MR. STRICKLER: No, sir.

THE COURT: All right.

BY MS. CAMPBELL:

Q. Agent Barron, turning your attention to SLED Number L99 5725, was that case initially assigned to you?

A. Yes, it was.

Q. And prior to the evidence being forwarded to you, had it been through evidence processing?

A. Yes.

Q. Who actually did the initial testing in this case?

A. Agent Kiser.

Q. And that's who testified before you?

A. Yes.

Q. When did you initially receive the evidence in this case?

A. I first received evidence in the case on March 31st, the year 2000, in the form of a heat sealed pouch that contained a manilla envelope which contained a swab.

Q. Had that been assigned a SLED lab number?

A. Yes. L 99 5725.

Q. And was it further -- for purposes of keeping your inventory, did it have a numbed assigned to it as far as evidence in this case?

A. Yes, item 1.3.1, a swab from the left shoe.

Q. The evidence forwarded to you reflects the number 1.3.1?

A. Correct. The item number, along with the SLED file number.

Q. After Ms. Kiser, Agent Kiser, finished with her evidence

collection, she has nothing more to do with it?

A. No.

Q. The item 1.3.1 is reflected here on this sheet?

A. It is so marked on that sheet.

Q. And the actual evidence is reported as a swab from that shoe?

A. . .

MR. STRICKLER: Objection to leading.

BY MS. CAMPBELL:

Q. What was the item reported to you?

A. A heat sealed pouch which contained a small envelope which upon opening it contained a swab that contained a blood sample.

Q. Upon receiving that heat sealed envelope with the swab inside with the blood sample, was there any evidence it had been tampered with or altered in any way?

A. No.

Q. And if there had been in evidence of tampering, would you have done any testing?

A. No.

Q. Once you received the evidence, what testing,if any, did you do on that, the 1.3.1 swab?

A. Well, initially I ran a screening test for blood.

Q. Why did you run another test?

A. To confirm her result.

Q. And what were your results?

A. The results of the screening test were positive, and I then further peformed a human blood test, and that was positive as well, confirming there was human blood on the swab from the shoe.

Q. You say human blood, and that's obviously not animal blood?

A. Correct.

Q. So at this point in your initial testing, you were able to determine at least that the swab, 1.3.1, from the shoe, was human blood?

A. That's correct.

Q. And at that point what happened?

A. At that point then, an attempt was made to extract DNA for analysis. I performed the extraction and turned that extraction over to Agent Gray Amick for his DNA analysis, as I was training under him for DNA analysis at the time.

Q. So from the swab, 1.3.1, you extracted or attempted to extract DNA for further testing by Agent Amick?

A. Correct.

Q. And is that standard procedure?

A. That's standard procedure to test it for -- do a presumptive test for blood to see if it was human blood, and extract DNA, and then type it for DNA, if that's possible.

Q. And in order to do a DNA test, run a DNA test, do you have to have a standard for comparison?

A. Yes, you have to have a known standard for comparison.
Q. And in this case, did you receive a known standard from the victim?
A. I did not receive vial containing a known blood sample from the victim. What I did receive was a cutting from the shirt that came from the victim in this case.
I received that in a sealed container from the evidence log-in department, and I put it in a sealed isolated area where we deposit our evidence, and it was still in a sealed condition.
Q. That would be item 4.1, a cutting from the shirt?
A. Correct.
Q. And was there any other evidence which you received?
A. No.
Q. Once you had the two items to be compared -- excuse me. Once you had received the 4.1, the cutting from the victim's shirt, what did you do with it then?
A. I extracted a DNA sample from it, and Agent Amick started the DNA analysis, or the DNA profile from that.
Q. And Agent Amick did the further testing at the SLED laboratory after you extracted the DNA?
A. At that point he would be the one who would actually run the test.
Q. Once you had made sure DNA was extracted from both the swab from the shoe and the cutting from the victim's shirt,

what, if anything, did you do with the evidence still remaining?

A. The DNA that was extracted would be put into a small tube, and that would given to Agent Amick for his DNA typing.

Q. And those were forwarded to Agent Amick?

A. Correct.

Q. And were those altered or tampered with in any way?

A. No. He and I were working together as trainer/trainee. The actual evidence itself was packaged and forwarded to our DNA evidence log-in for return.

Q. When you say you packaged the evidence, that would be the swab, the 1.3.1, and the 4.1, the cutting from the shirt, and they were returned to the DNA room?

A. Yes, in a sealed fashion. Initially they were returned to the DNA room.

Q. What date did you return those two items?

A. August 3rd of 2000.

Q. Again, while these items were in your possession, 1.3.1 and 4.1, did anyone have an opportunity to change or alter or tamper with them?

A. No.

Q. Those are all the questions I have. Please answer any questions of the Defense.

THE COURT: Cross?

MR. STRICKLER: Yes, sir. May it please the Court?

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good afternoon, Mr. Barron.

A. Good afternoon.

Q. Now, you never yourself physically looked at those marks on the tennis shoe?

A. No, sir.

Q. What's marked item 1.3?

A. No, sir. That's the first time I've seen them.

Q. My understanding is that you did a couple of tests to confirm the initial screening for the presence of blood and a second test for the presence of human blood.

Is that correct?

A. That's correct.

Q. And you extracted the DNA from the swab derived from the shoe, and also from the cutting from the shirt?

A. That's correct.

Q. What's the procedure you used to extract the DNA?

A. It's a simple organic procedure that basically removes all of the debris in the material from the DNA and isolates it from the nuclear DNA. It isolates it from the material that is of no use to us.

Once the DNA is isolated, then at this particular point in my training I was not able to go further with it, and I would turn it over to Agent Amick.

Q. Okay. Now, you were involved in attempting to isolate DNA in the samples?

A. Yes.

Q. In order to perform polymerase chain reaction, PCR, testing (balance of sentence inaudible)

A. Correct.

Q. Now, there is another form of DNA analysis that SLED did up until a year ago, year and a half ago, called RFLP?

A. Yes.

Q. SLED actually was doing what's called RFLP analysis until a year or year and a half ago?

A. Correct.

Q. And since that time SLED has switched and started doing this PCR DNA analysis. Correct?

A. That's correct.

Q. Now, for RFLP DNA analysis, how much DNA would you have to have in order to conduct an analysis?

A. You would have to ask Agent Amick that question. I never was trained in RFLP.

Q. When you extract the DNA from the samples in these simple procedures you described, how long does it take to perform the extraction?

A. It takes for a blood sample -- from six to eight hours. Generally, you allow overnight.

Q. How long did it take in this particular case?

A. I began the extraction on 6 12 and I would have completed the extraction process on 6 15. At that point I would have turned it over to Agent Amick.

Q. You are referring to lab notes to respond to these questions. Correct?

A. Yes.

Q. Okay. In the procedure you followed, is the procedure set forth in what's referred to as a protocol in your laboratory?

A. Correct.

Q. That's a set of rules outlining every step of the procedure you followed?

A. Correct.

Q. Did you follow the protocol?

A. It was an extraction.

Q. The protocol would cover the extraction of DNA and cover all the testing?

A. Right.

Q. Now, you started the process on June 12 and ended it on 6 15?

A. Yes.

Q. When you attempted to quantify or quantitate the DNA?

A. Correct.

Q. What does it mean to quantitate the DNA? Basically see how much there is?

A. Exactly. In order to run the PCR testing, you need to make sure the amount of DNA is not too little or too much, and so you want to -- and also, you want to verify that the DNA you are extracting is human DNA.

Q. You want to -- not too little and not too much, and when you have PCR DNA analysis, one of the things that's done is to amplify it; take a small amount of DNA and make it into a bigger amount.

Right?

A. That's right.

Q. And if you don't have enough, it won't amplify enough to run the test?

A. Correct.

Q. If you have too much DNA, you can't run the test.

A. Yes.

Q. Were you able to perform a test for DNA in ths particular case?

A. From the sample taken from the shirt, there was plenty of DNA. The sample from the blood swab, in a test to determine the amount of DNA, did not show anything at all.

So Agent Amick went further to try to determine if there was any DNA there that could be amplified in any way, and it has been our experience that sometimes though we can get DNA even though a less sensitive test for DNA was negative.

Q. The less sensitive test for human DNA was negative?

A. Correct. Sometimes the test for human DNA can actually be negative, but after amplification we can determine that the DNA is human based upon the fact that the different low signs present at human.

Q. What are you looking for, amount-wise, to perform the PCR . .

A. Ideally, we want one and a half grams.

Q. One and a half -- okay, and then you had more than one and a half grams . .

A. I had plenty of that to get the quantity from the cutting.

Q. And the swab from the shoe, you couldn't get any reading as to the amount of DNA?

A. Correct.

Q. And then the second thing you test for is further confirmation regarding human DNA. Is that right?

A. Correct. There is a test that we use to quantitate the DNA and also human DNA, so especially in forensic matches you have bacteria from the materials that extract as well.

(Balance of answer inaudible)

Q. The test you ran as to quantitate the amount did not show any amount in the sample related to the test for human DNA on -- didn't show anything regarding human DNA on the test you did on June 15. Correct?

A. Correct.

Q. Thank you.

THE COURT: Redirect?

MS. CAMPBELL: No, sir.

THE COURT: You can step down.

(Witness excused from stand)

MS. CAMPBELL: Agent Gray Amick.

GRAY AMICK, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Agent Amick, where are you employed?

A. I work at the South Carolina Law Enforcement Division.

Q. What do you do there?

A. I'm assigned to the Forensic DNA Department.

Q. What do you all do in the Forensic DNA Department?

A. We receive evidence from different law enforcement agencies around the State and attempt to develop DNA profiles as compared to standards submitted.

Q. Tell the jury a little bit about your educational background and training in the field of forensic DNA testing?

A. Sure. I've got a Bachelor of Science in biology and a PHD in Bio-chemistry from the University of South Carolina in 1993.

I have been at SLED for about seven and a half years. I have been trained by Court-qualified experts in the field. I

have attended numerous continuing education courses involving DNA testing, PCR testing, and have published in journals.

I also am involved and have been involved in testing itself and in training others.

Q. Have you testified and been qualified as an expert in DNA analysis?

A. I have.

MS. CAMPBELL: Your Honor, at this time I'd offer Agent Amick as an expert in DNA analysis.

MR. STRICKLER: I have no voir dire for Mr. Amick.

THE COURT: All right, this witness will be qualified as an expert in the area of DNA analysis.

Ladies and gentlemen of the jury, you have heard all of this before. Just remember that an expert can give an opinion and you determine how much weight and credibility you give to that opinion.

Any exception to the charge from the State?

MS. CAMPBELL: None.

THE COURT: Defense?

MR. STRICKLER: No, Your Honor.

THE COURT: Proceed.

BY MS. CAMPBELL:

Q. Agent, let's talk a little bit about the laboratory at SLED. It is accredited?

A. It is accredited by an agency called ASLAD, which stands

for American Society of Laboratory Directors, and what that means is that an outside body comes to the laboratory and conducts some protocols so as to determine how you do your testing and so forth, making sure you meet certain criteria.

So we have undergone that and received our accreditation. We expect every five years to be accredited.

Q. And you have certain policies in place in your laboratory specifically the DNA laboratory, to ensure the integrity of the evidence?

A. Yes.

Q. And were those policies followed in this case?

A. They were.

Q. As well as certain procedures -- are there certain guidelines your laboratory follows that are nationally accepted guidelines, as far as the testing you do?

A. Correct.

Q. For the testing you do?

A. We also participate in yearly audits from a regional group of DNA labs that come in and look at our procedures and make sure that we are in line with what everybody is doing.

Q. Turning your attention to the actual testing of DNA, are there different ways to test for DNA? Different types of DNA tests?

A. Yes.

Q. And we have heard from Defense Counsel the words RFLP and

PCR. Those are tests?
A. Yes. RFLP and PCR are two different types of DNA testing. We used RFLP since the early nineties and in September of '99 started PCR testing.
Q. Why did you change the method of testing at the SLED laboratory?
A. The PCR is a test that can be done with a smaller amount of DNA, or a degraded piece of DNA, and it gives you a result faster basically.
Q. Are you familiar with mitochondrial DNA?
A. I am.
Q. And how does that differ from the PCR testing you do?
A. Mitochondrial DNA is DNA found in another part of the cell, a different DNA.
Q. The two tests test different parts of the cell itself?
A. Different DNA in a cell, correct.
Q. Different DNA in a cell. Both are acceptable methods of testing?
A. They are.
Q. Turning your attention to this case -- are these your lab numbers?
A. That's right.
Q. Do you recall being involved with the test in this case?
A. I did.
Q. Prior to getting involved with this, was the initial test

for the presence of human blood done by Agent Barron?
A. Yes, it was.
Q. What was his role? Were you training him at that point?
A. I was. I was involved in the validation of the test and therefore the training of the other analysts, and he was a person that I was training at the time.
Q. Did you have an occasion to do some testing on an item number 1.3.1, which was an extraction from a swab from a grey suede tennis shoe?
A. Yes, I did.
Q. Did you also have an occasion to do some testing on an item 4.1, an extraction from a cutting of the victim's shirt?
A. I did.
Q. And both of those had tested positive prior to your becoming involved?
A. I believe so.
Q. Both had tested positive for the presence of human blood?
A. Yes.
Q. Mr. Strickler has also asked some questions about the fact that the initial one Agent Barron had took to try to quantitate -- is it quantitate?
A. That's correct.
Q. And his results were negative, but you chose to go ahead and do the test?
A. Yes. In our laboratory what we do if we don't get -- we

call it bumping -- on that particular particle, what we attempt to do to quantitate the DNA is to have an optimal range for the next step in the PCR.

If we feel the quantitation -- the sensitivity of the quantitation is not as good as the PCR test, even with the non-detectible quantitation, we take the sample and try to go ahead and develop a print anyway, and that's what happened in this case.

We know from the swab from this shoe we weren't able to quantitate any DNA, but we went ahead and tried to develop a DNA print from it.

Q. When did you do the testing in this case?

A. On 7 5 2000.

Q. Last summer?

A. Yes, that's right.

Q. Were you aware that the crime in this case happened in March of 1999?

A. Yes.

Q. Would that affect your test in any way?

A. It does not. I mean, if the samples degraded we just wouldn't get a print from it, but that's the only way it could be affected.

Q. You say the sample could be degraded. What kind of condition, beside weather conditions, could cause a sample to become degraded?

A. Well, if it gets wet and say molds or something, that could degrade the DNA. Any type of breakdown that happens naturally could -- any kind of bacteria or mold getting on it and degrading it.

Q. When an item is stored in your evidence for a period of time at a certain temperature . .

A. It was refrigerated where it was stored or frozen, which limits any degredation that would take place.

Q. You mentioned degredation would affect your ability to get a result. What about the size and amount -- in this case, the amount of blood present that was able to be collected.

Would that affect your ability to get a result?

A. Sure. If there wasn't a lot of DNA there initially, then that's going to possibly have an effect, and we have to have enough DNA there originally or initially to be able to develop that print.

Q. And in this case, were you aware of the size or the amount of blood that was on the shoe when the swab was made?

A. I usually don't look at that. What I do is look at the quantitative amount. If I don't get a print, then I may go back and look at that to see why I didn't get a print.

But I don't recall in this case that I go back and look at that.

Q. In this case, when you ran your test, were you able to get a DNA profile?

A. I got a profile in the cutting from the shirt, but I believe there was no result from -- no profound result from the swab from the shoe.

Q. And when you got no profound result from the swab from the shoe, what did that indicate to you?

A. Well, it could be a couple of reasons. One is not enough DNA there, and that would make the most sense with the fact the assailant ran. (Balance of sentence inaudible)

There are other reasons why you wouldn't get a print. It could be an omission in our process, but whatever the blood or evidence was collected from, sometimes with leather or dye or something like that, sometimes the material can inhibit the process to get a print.

Q. There was not enough DNA there for your testing?

A. That's right.

Q. And that was the DNA you were testing for in the cell?

A. Correct.

Q. And you talked earlier about the different types -- the DNA you tested for, there just might not have been enough for you to find a print?

A. That's right.

Q. When you went back and reviewed the notes and reviewed the file, Agent Kiser's notes are part of your file, are they not?

A. They are.

Q. Were you surprised you didn't get a result?
A. Not really, no. Especially with the quantitation results that were found.
Q. At that point, did we consult -- after you were unable to get a result on your testing, did we have a conversation where we talked about a different testing that could be done?
A. We did.
Q. And what did you suggest in that conversation?
A. It was suggested that we could possibly have another form of testing -- we could possibly attempt to have mitochrondrial DNA testing performed that we talked about, because you can get a print from a sample -- it's a lot more sensitive test so you can get a test from very small amounts of DNA.
Q. Very small amounts of DNA?
A. Right.
Q. And even though your tests did not detect the DNA you were testing for, that didn't mean there wasn't any present?
A. That's correct.
Q. And were the samples 4.1 and 1.3.1 resubmitted to SLED to you?
A. They were.
Q. When did you receive those samples?
A. The 4.1 came back to SLED November 16, 2000, and then eventually to me on the 27th of November, 2000.
Q. When you received the samples 1.3.1 and 4.1, was there

any evidence it had been altered or tampered with in any way?

A. No.

Q. Would you have submitted them for further testing if there had been any evidence it had been mishandled?

A. No.

Q. Once you received those items, what did you do with them?

A. I would have received the authorization to get the testing done, because we don't do that testing. So we would receive that authorization and would have packaged those two pieces of evidence, the cutting from the shirt and swab from the shoe -- -- packaged those and sealed the package, and Fed-X'd those to the laboratory that does that testing.

Q. You would have sealed them individually, the packages?

A. Correct. Put the envelopes into a pouch about this size, and put those two into another package, and into an envelope.

Q. And then you would have had them Fed-X'd?

A. Right.

Q. Overnight?

A. Yes.

Q. And is this the common way of transferring evidence between two different laboratories?

A. Yes.

Q. And you have sent other evidence to the laboratory for testing?

A. Yes, we have.
Q. And I show this item sent, I believe, on November 27th, 2000. Do you recognize that?
A. Sure.
Q. And that is -- what do you call that? An air bill?
A. Yes, that's what I filled out and addressed to the laboratory.
Q. And I show you this Fed-X envelope. Do you recognize that?
A. Yes, it has my initials on it. Two envelopes.
MS. CAMPBELL: Your Honor, at this time I'd introduce these into evidence, the air bill, the Fed-X box and the evidence pouch.
THE COURT: Any objection?
MR. STRICKLER: No, sir.
THE COURT: All right.
(State's Exhibits 43, 44 and 45 in evidence without objection)
BY MS. CAMPBELL:
Q. I show you again what's marked as State's Exhibit 45, the evidence pouch. When you sent the pouch, did it look exactly like this?
A. It didn't have this evidence tape on it. At that time it was sealed with my initials.
Q. Can you read this date?
A. November 27th, I believe, of 2000.

Q. Those individual packages in there were heat sealed?
A. Correct.
Q. And you initialed those at the time?
A. Yes. I initialed both packages.
Q. And that is to make sure it arrives with the proper seals in place?
A. Correct.
Q. And the evidence, I understand, is kept in a type of bag different from a plastic bag. Why is that?
A. To reduce the possibility of moisture or bacteria. It is to further reduce the chance of degradation.
Q. So in your experience is it common in an accredited laboratory to store items in this paper bag to preserve the integrity?
A. That's right.
Q. But when shipping items such as that, you would make sure they were all in heat sealed pouches?
A. That's right.
Q. Agent, in your experience you have sent off other samples to other laboratories when you were not able to get results. Is that right?
A. Oh, yes. If we had a sample that didn't have enough -- when we did RFLP that required more DNA or we had a sample that didn't have enough DNA for our purposes, we would. At first it was more common to do that, but after we began PCR

testing we didn't often do it unless we needed mitochrondrial testing to be performed.

Q. Thank you. Please answer any questions that Mr. Strickler may have.

THE COURT: Cross.

MR. STRICKLER: Yes, sir. May it please the Court?

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good afternoon, sir. What is a nanogram?

A. A nanogram? A very small amount. Typically into the nines -- minus nine grams, so nine zeros or five decimal places . .

Q. Okay, so it would be -- one nanogram would be decimal place nine zeros . .

A. That's an extra . .

Q. . . eight -- one nanogram, eight zeros, one one-millionth of a gram.

A. I believe less than that.

Q. One one-billionth of a gram?

A. . .

Q. Is that correct?

A. Correct. We can carry it further in doing these analyses.

Q. And the RFLP, when did you start using that in the United States? About '89 in the United States?

A. I believe so.

Q. All right. The RFLP DNA analysis in '89?
A. Late eighties.
Q. And the RFLP, PCR and the Mitochondrial DNA analysis -- they all yield valid results?
A. They all yield . .
Q. They all can yield valid results?
A. Correct.
Q. But there are some pros and cons?
A. That's correct.
Q. One of the cons or down-sides to using RFLP DNA analysis was that it required more DNA than these other types, is that correct?
A. Correct.
Q. Approximately how much DNA is needed in order to perform the RFLP DNA analysis?
A. (Answer inaudible)
Q. I'm sorry, I can't hear you. How many nanograms of DNA do you need in order to perform the test?
A. Between twenty and fifty grams.
Q. Twenty and fifty nanograms, which is twenty to fifty billions of a gram, to do RFLP DNA analysis. Is that correct?
A. Basically.
Q. For the PCR DNA analysis, the type you all do now, okay -- you all started doing that in September of ninety-something I believe?

A. September of '95.

Q. I'm sorry. September of '95. That's when SLED started doing it, but when was it first used for forensic examination in the United States?

A. Probably early nineties.

Q. And for PCR DNA analysis, one of the pros or advantages is it takes smaller amounts than the RFLP DNA analysis?

A. Correct.

Q. How much DNA do you need in order to go ahead with the amplification of the PCR examination?

A. (First portion of sentence not audible) half a nanogram, about two point five nanograms. In that range.

Q. So half of one one-billionth of a gram to two and a half one-billionth of a gram. Right?

A. Basically.

Q. Now, when you quantify the DNA as Mr. Barron testified he attempted to do, that's an important step in the process. What test do you use to quantify the amount of DNA you have after it is extracted?

A. What's the name of the test?

Q. Sure.

A. It's called the hot blocker.

Q. Hot blocker -- and what amount of DNA will the hot block pick up?

A. The controls that we use range from two nanograms per

microliter all the way down to point zero two nanograms per microliter. The range of the known DNA sample would be run at the same time, and we are able to a curve from that and then place our unknown from that curve.

So the range that we quantitate is point three zero nanograms per microliter or ten nanograms down to about point one five nanograms.

Q. Ten nanograms down to one point five.

A. About half a nanogram.

Q. So half a nanogram to ten nanograms?

A. What I said was two nanograms per microliter down to point zero three grams. You put a certain amount on that apparatus, and that goes -- that equates from ten nanograms down to point one five nanograms.

Q. Point one five. Okay. The result from that test, the quantitative test, in this case are one point three point one. The alleged DNA from the swab of the shoe, and the result of that was negative?

A. Correct. We did not detect . .

Q. Non-detection. That test was run prior to the amplification of the DNA?

A. Correct.

Q. So prior to amplifying the DNA, your quantitative test was basically no DNA.

A. . .

Q. So you decided you were going to go ahead and see if you could get some anyway. You amplified it?
A. Correct.
Q. Amplification -- how long does that procedure take?
A. Which procedure?
Q. The procedure for amplification.
A. The initial PCR takes about three hours.
Q. Three hours in a thermocycler?
A. Approximately.
Q. Do you attempt to quantify the amount of DNA after amplification, or do you go ahead to develop a profile to help speed up the amplification?
A. No, we did not run any post-amplification quantitation. We quantitate on the front end and amplify from that, and we take what we amplify and run it.
Q. Okay. Now, I noticed in this particular case that you received -- do you recall necessarily what you received?
A. I'm not sure without checking the . .
Q. In this case, you received a cutting from a shirt which was a blood standard from Mr. Rumph, and the swab from -- item 1.3 -- swab 1.3.1. Is that correct?
A. Correct.
Q. A known standard and an individual sample?
A. Yes.
Q. Did you receive a known standard from Israel Wilds?

A. No, just the two you mentioned. Cutting from the shirt, swab from the shoe.

Q. Did you get any DNA from Israel Wilds?

A. No.

Q. Didn't get DNA from a fellow by the name of Isom Simmons. Correct?

A. Not that I know of.

Q. You didn't do any test on any?

A. No.

Q. Got no DNA from a fellow by the name of Joseph Dungee. Right?

A. Correct.

Q. All the DNA -- not DNA, but all the evidence you got to detect the presence of DNA was the cutting from the shirt and swab from the shoe. Right?

A. That's right.

Q. Okay. Now, PCR DNA analysis, as you indicated, can involve testing a smaller sample of DNA?

A. Yes.

Q. Okay, and you take the sample through the amplification procedure and you take a small sample and turn it into a sample that is large enough to go ahead and do testing. Right?

A. Basically.

Q. The amplification that you do amplifies any DNA that is present. Right?

A. Human DNA, yes, sir.

Q. Human DNA. It doesn't tell you where the DNA came from?

A. No.

Q. Human DNA is present for purposes of your testing in any cell that has a nucleus, is that correct?

A. Correct.

Q. And your testing, first of all, doesn't tell where the DNA came from. Right?

A. That's right.

Q. Your DNA testing doesn't tell you whether it is DNA associated with a cell from blood or DNA associated with cells from skin. Correct?

A. Correct.

Q. And skin cells have DNA?

A. Correct.

Q. Any cell that has a nucleus has DNA you can test for?

A. That's right.

Q. But does it tell you the type of cell the DNA comes from?

A. No.

Q. Doesn't tell you when the DNA, if it's an evidentiary sample, was left on the piece of evidence you get?

A. That's right.

Q. One thing the PCR test you do does do is if you get a result you can tell the sex of the person who left the DNA?

A. That's right.

Q. Okay.
A. That's one of the markers we test for.
Q. That's one of the markers you test for?
A. Yes.
Q. Okay. It doesn't tell you the race of the person that left the DNA?
A. Correct.
Q. Doesn't tell you where a person is from?
A. No.
Q. Mitochondrial testing is also DNA testing?
A. That's right.
Q. In the testing that you do at SLED, when you get results, you are testing first of all the nucleus of the cell?
A. Yes.
Q. And do you test for the structure of the DNA at various locations?
A. Yes.
Q. You look at a number of locations on the human DNA and see if the structure of the location on the known sample is the same as the structure of the location in the unknown sample?
A. Yes, we look at thirteen locations.
Q. Thirteen locations.
A. Of human DNA molecules in the profile.
Q. That was my next question. You are looking at thirteen locations when you do the PCR testing?

A. Yes. Thirteen plus the sex type.

Q. Thirteen locations -- and these are locations where you know there is a lot of variation so that you can determine -- frequently you will see a location up here in one fashion, and how frequently it appears in other fashions?

A. There are variable regions that are different from person to person. That's why they are important.

Q. A lot of the regions from person to person are going to be the same?

A. They may be.

Q. There are areas that are known to be variable?

A. Right.

Q. Okay, and in each variation of a gene in a particular location is an allele, is that correct?

A. That's correct.

Q. I might have used the word gene incorrectly, but the variations are called an allele.

In the PCR testing you do, at one location there must be five variations?

A. Correct.

Q. And you've got thirteen sites, and when you go through and run the tests, if they're run correctly, you can measure the likelihood of someone other than the donor of that DNA appearing at random, is that correct, in the population?

A. I think so. We use a different term. We call it a

probability. There are different ways to calculate it. We use probability, but that's bascally correct.

Q. Probability of a random match occurring in the population.

A. Basically. It reads the evidence matches the suspect -- the probability of getting an individual random in the population is point whatever.

Q. Actually when you run it correctly -- not when you run it correctly, but when it works completely correctly, you get good results, you get a match across all sites you compare. If you don't get a match across all sites you compare, it's not the same person. Right?

A. Right.

Q. If you get a match at all thirteen locations, and the sex location, you come up with some pretty astronomical numbers as far as likelihood of a random match, don't you?

Q. Correct.

Q. It seems to me I've heard a ratio of one in sixteen quadrillion. Is that ..

A. It's usually quite a large number, correct.

Q. I have trouble with one billion, so one in sixteen quadrillion is going to be -- it has sixteen zeroes followed by sixteen zeroes. Right?

A. Correct.

Q. So doing the PCR testing you do when you are able to get

a sample and you compare it, you can come into Court and say the likelihood for this occurring at random from the population, that someone else at random has the same profile that you have, is one in sixteen quadrillion?

A. Yes, we get the -- the numbers we get are very indiscriminate so we do get very unlikely probabilities for a random match in the system we use.

Q. Okay. You would certain endorse the proposition that a random match or probability of one in sixteen quadrillion is unlikely then?

A. Very unlikely.

Q. Sixteen quadrillion -- that's more people than live on earth and more people than ever lived on earth?

A. That's safe to say probably.

Q. Safe to say. So when you get through all the testing you do, you can say, if it's run correctly, you would not be able to come in this Courtroom and tell this jury in this case the random profile on Mr. Rumph from the shirt and the profile on the swab from the shoe had good results and probability of having someone else other than Mr. Rumph be responsible for the DNA found on the shoe was one in sixteen quadrillion?

A. Correct.

Q. Just a couple of other things. In testing for PCR DNA, what you're doing is you are looking at the arrangement of DNA molecules?

The arrangement of what are called base pairs of DNA, is that correct?

A. Repeated units of the DNA molecule.

Q. Repeated units -- what is DNA composed of?

A. I beg your pardon?

Q. What is DNA composed of?

A. Base pairs or nucleotides.

Q. DNA is constructed of many, many base pairs, correct?

A. That's right.

Q. Roughly how many base pairs are there in nucleic DNA?

A. I believe about three billion be pairs.

Q. Roughly three billion base pairs?

A. Correct.

Q. And in conclusion, no DNA was detected?

A. No DNA profile was obtained from 1.3.1.

Q. Thank you.

THE COURT: Redirect?

MS. CAMPBELL:

REDIRECT EXAMINATION

BY MS.CAMPBELL:

Q. I'll put this up here again. He's asked you questions about these numbers, one in what -- sixteen quadrillion?

A. Yes.

Q. Are you telling this jury you ran your test and came out with one in sixteen quadrillion?

A. No.

Q. In this case?

A. No, I did not develop any profile from the swab.

Q. And as you know, I've been doing this for a while, and I've gotten back results from your laboratory on DNA testing . .

MR. STRICKLER: Object to her testifying.

THE COURT: Just go ahead and ask your question.

BY MS. CAMPBELL:

Q. Do you always get a number of one in sixteen quadrillion?

A. Not at all.

Q. Are you aware of lesser numbers?

A. Yes. We don't always get quadrillions.

Q. He talked about thirteen -- let me get this straight -- thirteen locations. In every test you run, where you are looking at collections from crime scenes, are you able to get a match on all thirteen?

A. We don't get a match on every one. We may not be able to develop a profile at every location or low sign.

Q. That's what I'm talking about.

A. The sample is degraded or there is little DNA, so we may only be able to develop a profile on say four or five, six, a number less than thirteen of the locations.

So that would be what we call a partial profile.

Q. A partial profile make it more or less of a match?
A. No, there's not a match at every location we develop a print of.
Q. So a match is a match?
A. Correct. If we develop a profile on five locations, and those five match the profile we developed from the standard, it's still a match.
Q. And in your education and training in the laboratory, have matches been developed say of one in a hundred or thousand or something less than quadrillion?
A. Yes.
Q. And is one in a thousand a match that has been found in your testing?
A. I've testified to as close as one in two hundred. It just depends on the number of locations. If you have very low DNA, you're going to have a partial profile that would be a profile of one in two hundred, or a low number.
It is still matches the standard.
Q. It is still a match.
A. If it doesn't match, we would not quote a statistic.
Q. If it doesn't match, it doesn't get a number of any sort?
A. Right.
Q. That's all I have.
THE COURT: Any recross?

RECROSS EXAMINATION

BY MR. STRICKLER:

Q. Just briefly on the term match, that's a technical term, a term of art for your profession. Correct?

A. A term we use to describe evidence that meets the standard, correct.

Q. Match means to you what your protocol defines match to mean, correct?

A. Correct.

Q. And the meaning of Ms. Campbell's question is that if rather than getting the test running completely perfectly you get -- say rather than getting data at all thirteen sites, you get data at one site, you might get a result as one in two hundred?

A. Possibly lower. It might be one in four.

Q. The more sites you have matches of, the higher the numbers get?

A. Actually the lower.

Q. The lower?

A. Right. The more rare the profile.

Q. So my question to you is if -- strike that -- your testimony on recross is if you only develop -- if the test only got results in the couple of sites, you could get a report or possibility of random match of something like one in two hundred or one in a thousand?

A. That's a possibility.
Q. That's just that, and you're reporting the results that you got?
A. Correct.
Q. Whether it matches at one site or matches in all thirteen sites, you still call it a match, as long as you don't have something that doesn't match. Right?
A. If I've got a profile that is developed at one on one hundred, I probably would not report that. I would probably not use that because the strong a term because the probability would be quite low.

Now, if there are three, four, five locations matching, I probably would attach the probability to that. One locus I may say cannot be excluded, or I may use another term than a match.

Q. Thank you.

THE COURT: Thank you. Step down.

(Witness excused from stand)

THE COURT: Ladies and gentlemen, we'll take a short break. I'll ask you to step to the jury room and be sure not to talk about the case.

(Jury excused from stand)

(Court stood in recess as to this matter from 2:59 to 4:52 P.M., when jury returned to the Courtroom)

THE COURT: I want to tell you there were some matters

that came up in another case, and we had to take care of them. It was not this case, and I don't want you to think it was the fault of any of these folks down here that we had the delay.

It just had to be done at this time. Sometimes things come up that we have to take up at that very minute that cannot be put off, and that was simply something we could not put off.

What we're going to do is we have two witnesses we need to get done today, so we'll get those done and get you away after that for the day.

Call your next witness.

MS. CAMPBELL: State calls Charity Holland.

CHARITY HOLLAND, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Ms. Holland, where are you employed?

A. I'm employed with the Bowie Technology Group at the DNA Laboratory in Springfield, Virginia.

Q. What do you do there?

A. I'm a DNA analyst.

Q. How long have you been working at the Bowie Facility?

A. I've been working there for almost three years.

Q. What are your job duties and responsibilities there?

A. I'm the forensic technical leader. My responsibilities

are to supervise DNA case work, review all the DNA case work, and perform DNA case work, using both Mitochondrial DNA and Nuclear DNA.

Q. Can you describe for the jury your previous emplcyment or experience in DNA testing?

A. I was previously employed at the Armed Forces DNA Laboratory for four years. I worked there as a DNA analyst.

My primary responsibilities there were to perform Mitochondrial DNA analysis on skeletal remains from a previous military conflict with Vietnam, the Korean War, World War Two.

Q. Tell the jury a little bit about your education?

A. I received my Bachelor's Degree in biology in 1992, and my Master's Degree in public health from the University of California at Berkeley. The forensic sciences school was a part of the Department of Public Health there.

Q. Tell the jury about your continuing education and what led you to DNA testing.

A. During the past seven years I attended numerous conferences, seminars and workshops offered pertaining to DNA analysis in the forensic field.

I am a provisional member of the American Academy of Forensic Sciences.

I have made fifteen presentations within the last three years at national meetings.

Q. When is the last presentation you made?

A. In June of 2000, at the Cambridge Health Institute at the DNA forensics meeting.

Q. So you have about seven years experience in just the DNA field?

A. That's right.

Q. How many cases have you directly processed using Mitochondrial DNA?

A. Over a hundred and fifty cases.

Q. Have you been involved in any high profile Mitochondrial DNA testing?

A. . .

MR. STRICKLER: Objection, Your Honor. Irrelevant.

THE COURT: What is the relevancy?

MS. CAMPBELL: Let me rephrase.

BY MS. CAMPBELL:

Q. Were you ever involved in any Mitochondrial cases on exhumation orders . .

A. Yes.

MR. STRICKLER: Objection to relevance.

THE COURT: Overruled. Go ahead.

You can cross examine on it.

Q. Go ahead.

A. I was involved in the identification of the Vietnam Tomb of the Unknown Soldier, using Mitochondrial DNA analysis.

Q. And you have qualified before as an expert in performing

Mitochondrial DNA analyses?

A. Yes, I have.

MS. CAMPBELL: Your Honor, at this time we'd offer her as an expert in Mitochondrial DNA analysis.

THE COURT: Any objection.

MR. STRICKLER: I have no voir dire.

THE COURT: Thank you. I will qualify this witness then as an expert in the area of Mitochondrial DNA analysis.

Ladies and gentlemen, again you've already heard this -- I have qualified this witness as an expert because of her training, background, education, experience in the area, and as such she will be allowed to give an opinion.

Remember you are not bound by the opinion, and you are to decide how much weight and credibility to give to it.

Any exception to that charge by the State?

MS. CAMPBELL: No, sir.

THE COURT: The Defense?

MR. STRICKLER: No objection.

THE COURT: Continue.

BY MS. CAMPBELL:

Q. What is DNA?

A. DNA is genetic material found in every cell of the body except for red blood cells. It is referred to as the blueprint of life, which basically means that it codes from -- everything from eye color, hair color, to celular functions.

Because Mitochondrial DNA is present in so many more copies than nuclear DNA, it stays around for a longer period of time.

It is a more sensitive test because of the sheer number of Mitochondrial DNA you're starting out with.

Therefore, when nuclear DNA testing cannot be performed, you go to Mitochondrial DNA and get a result.

I think that's basically it.

(Witness resuming witness stand.

Q. You referred to nuclear testing. Is that the type of test typically that is done known as PCR or RFLP?

A. Right.

Q. You're testing a different type of DNA?

A. You're testing Mitochondrial DNA versus PCR.

Q. But it's all DNA?

A. Yes.

Q. And the testing that's done at SLED is nuclear DNA testing?

A. RIght.

Q. What you do is Mitochondrial DNA testing?

A. Yes. Mitochondrial DNA analysis is important in the forensics field. As I alluded to before, we have samples that are either degraded or where the DNA was chopped up in small pieces, or we are trying to test where there is a very small amount of DNA.

Nuclear DNA testing may not be -- may not work. Therefore, Mitochondrial being present in so many more copies per cell, you may be able to use Mitochondrial DNA technology in situations where PCR DNA cannot be performed.

Q. How long has Mitochondrial technology been around?

A. It's been used in other scientific fields such as genetic disease studies and evolutionary studies, you know, probably for many, many decades.

It has been used in the forensics arena for about ten or eleven years.

Q. What part of the Mitochondrial DNA is sequenced for forensics purposes?

A. (Leaving the stand and approaching jury)

Q. Remember to keep your voice up.

A. For nuclear DNA -- the structure of nuclear DNA is in chromosomes, and the actual structure of DNA is a double ceiling, like a spiral staircase. That's nuclear DNA.

Mitochondrial DNA is circular. Like was talked about earlier, nuclear DNA is about three billion base pairs. By base pairs we are talking the genetic alphabet, A G C and T, and then there are complimentary bases.

Mitochondrial DNA -- there are fifteen thousand five hundred and sixty-nine base pairs in the shape of a circle. There is an area of about eleven hundred that are called the control region.

Q. How many types of DNA are there?

A. There is nucleur DNA and there is Mitochondrial DNA present in every cell.

Q. What is the difference between the two?

A. Actually if I could illustrate?

MS. CAMPBELL: Your Honor, if she could step down.

THE COURT: Sure.

BY MS. CAMPBELL:

Q. Keep your voice up.

A. This is a cell of your body. You have a nucleus in your cell where the nuclear DNA is. Each cell has two kinds of DNA.

Outside the nucleus of the cell, you have structures that are called Mitochondria, and they are found outside the nucleus in the cell.

The function of Mitochondria basically is to provide energy to the cell, and each one of the Mitochondria have their own DNA.

Each Mitochondria may have hundreds of Mitochondrial DNA plus hundreds and thousands of actual Mitochondria within each cell.

There are hundreds and thousands of Mitochondrial DNA in the cells. If you come to Court in a forensic DNA case such as this one, as you saw on the nuclear DNA test, there were not enough DNA available to perform that test.

In this control region it's known to have variability within individuals. The rest of the -- this is virtually the same in every person because it goes for the things necessary for human function.

So the control region does have variability between individuals which is important for forensic purposes, to be able to compare it to an individual.

Q. In the scientific community is Mitochondrial testing an accepted form of testing?

A. Yes, it is. (Resuming witness stand)

Q. Are there other DNA laboratories across the nation that do Mitochondrial DNA analysis?

A. Yes.

Q. Can you tell about Mitochondrial DNA testing?

A. Yes, it can basically be broken down into three components. The first one would be DNA extraction which was talked about earlier.

This is simply isolating the DNA from the rest of the cellular material, and that's been around since the nineteen forties.

The next step would be PCR which was also talked about. That was invented in 1985.

Then the last part of the process is called DNA sequencing which is taking your amplified product or the piece of DNA that you are interested in and then determining the actual

sequence which means basically the order it appears within that DNA region.

That's what makes everyone different, the order of those letters, if you will, in the genetic alphabet.

Q. And in the scientific community, are there standards or guidelines set out?

A. Yes, there are.

Q. And are those guidelines followed within your laboratory?

A. Yes, they are.

Q. Are you aware of whether they are followed in the SLED laboratory?

A. That's what I heard here, yes.

Q. Are there procedures in place to make sure the quality -- a quality control type thing within your laboratory?

A. Yes. We have many, many areas of quality control and quality assurance in our laboratory. We test all chemicals or what we call the agents that are used in our procedures. We test them to make sure they are not contaminated or make sure they work properly.

Before we use them on any case, we run controls along with all our evidence samples, and we also in Mitochondrial testing duplicate our results, which means we will run the sample through once and then go back and re-extract a sample or re-amplify the same sample to make sure we confirm our initial result.

Q. Are you certified to do DNA testing? Is your laboratory certified?

A. Yes, we're certified by the NFSTC which stands for the National Forensic Science and Technology Center.

Q. Does your laboratory also include proficiency testing?

A. Yes, we do. We do proficiency tests. Each analyst performs two proficiency tests a year for an external agency.

Q. How long has your laboratory actually been performing Mitochondrial DNA tests?

A. Since December of 1997.

Q. Approximately how many tests have you performed yourself?

A. I've processed and directed over a hundred and fifty, and probably have done between fifty and seventy-five myself; that is, actually performed the testing.

Q. Also, within your laboratory are there validation studies as to the accuracy and reliability of your production?

A. Yes.

Q. This is forensic Mitochondrial testing, is that correct?

A. Correct.

Q. And the word forensic means what?

A. Forensic means pertaining to law, so forensic DNA work is done in conjunction with a legal -- upon any evidence that may pertain to a criminal or civil case.

Q. Specifically in a criminal case, do you get samples in many cases, say, from a crime scene?

A. Correct.

Q. What kind of samples does your laboratory successfuly perform Mitochondrial DNA analysis on?

A. We perform Mitochondrial DNA analysis on blood, saliva, semen, urine, tissue, teeth and hair.

Q. Do you receive samples from other states than South Carolina to perform tests on?

A. Yes. We receive them basically from all over the country different states. Also, different countries.

Q. In every case you all have tested over the last three or four years, has it always pointed to the guilt of the defendant in the case?

A. No. Right now in the cases we've processed so far, we have had twenty-seven inclusions where the subject has been included, and about seventy exclusions, where the suspect was excluded.

Q. So DNA testing is an exculpatory as well as an inculpatory study?

A. Correct.

Q. It can point to the guilt of a defendant or it can . .

MR. STRICKLER: Object to leading.

THE COURT: Yes. Rephrase.

BY MS. CAMPBELL:

Q. How does it affect a defendant?

A. It can either include him in a pool of individuals or it

can exclude him from donating that biological sample.

Q. And you are aware that DNA testing is used by prosecution and by the defense in a case?

A. Yes. We have tested for both prosecution and defense.

Q. What is the significance of a match?

A. If you do get a match with Mitochondrial DNA, meaning the evidence sample matches the standard, then what we do is we take the profile that we generate and we compare it to a data-base which is maintained by the F.B.I., which now contains about four thousand DNA sequences, and it is basically just made up of a random sampling of unrelated individuals in the population all over the world basically.

We compare the profile that we obtain to this data base which not only records the number of times we see this profile in the data base, and based on the number of observations of the profile in the data base we can make a statement regarding how rare or common that profile would be in the general popula-tion.

Q. You mentioned four thousand. How large is the current population data base for Mitochondrial DNA?

A. It's currently four thousand one hundred and forty-two se-quences.

Q. To bring your attention to this case, are you aware that your lab received a request for testing from the SLED Labora-tory here in Columbia?

A. Yes.
Q. And I believe it's your lab number 210 00103?
A. That's right.
Q. What was your role in the testing in this case?
A. I assigned the case to Shelly Johnson who was the analyst that performed the DNA.
Q. Is Ms. Johnson in the Courtroom?
A. Yes, she is.
Q. Where is she?
A. Sitting right here.
Q. What was her role?
A. She performed the actual Mitochondrial DNA analysis on the item, and once she completed her work I did an independent technical review of her case and made sure I came to the same conclusion that she did.
Q. Is that policy in your laboratory?
A. Yes. I review all DNA case work and then after myself it is reviewed by the laboratory director.
Q. What were the results of the test?
A. . .
Q. First of all, what items were received by your lab for testing?
A. We received two items in our lab. One is marked 1.3.1. It is described as blood swab from left shoe.
Q. That was SLED item 1.3.1?

A. That's right.
Q. And what was the other item you received?
A. The second item was an envelope labeled blood cut from shirt. That was labeled SLED Number 4.1.
Q. Tell the jury in this case in general what testing was done?
A. Mitochondrial DNA testing.
Q. How was that done?
A. Once evidence is accepted into our laboratory, it is logged in by the evidence custodian, and it is assigned over to the analyst that is going to be performing the Mitochondrial DNA analysis.

That person then proceeds to take notes on how the evidence was received, how it was sealed, what is written on each envelope, and then they photo-document the evidence and proceed on with the DNA extraction.

We do separate out the extraction of evidence and the extraction of the standard.

Q. What was the result of your comparison of -- testing of Mitochondrial DNA on 1.3.1, the swab from the shoe, to SLED 4.1 the cutting from the shirt?
A. They were found to match.
Q. They were a match?
A. Yes.
Q. Once they were found to match, what other information did

you all obtain?

A. For example, we took the profile generated from the evidence and the reference sample and compared that to this national data base maintained by the F.B.I., and in this case it was only seen four times in the data base of four thousand one hundred forty-two individuals.

Therefore, we can make the general statement that it is a relatively rare Mitochondrial DNA type.

Q. Relatively rare?

A. The Mitochondrial DNA profile generated would be relatively rare in the general population.

Q. And in fact, what percentage of the population would be excluded as being a contributor of that sample?

A. Ninety-nine percent of the population can be excluded.

Q. Was there anything else about your observations in this case that made it even a rarer match?

I guess that's a good word.

A. We did observe a rare anomaly in this case which is called heteroplasty. What that basically means is that a cell inheriting a single Mitochondrial DNA sequence from the mother, you actually inherit different Mitochondrial DNA sequences.

It manifests itself generally at only one or two positions or base pairs that we look at, and within the control region there at eleven hundred, we focus on about seven hundred of those, which are in regions called hypervariable

regions.

Heteroplasty was seen at one position which was position 16223. It manifested itself instead of just being a C at that position, for example, you would be a mixture of a C and a T.

Heteroplasty is a relatively rare condition and is only seen in about two to eight percent of the population. In this case, we observed this rare anomaly at the same position both in the evidence and in the reference sample.

Therefore, it enhances the significance of the match and increases it.

Q. Are you aware the victim in this case, whose shirt the cutting was made from, is an African-American?

A. I was not aware of it.

Q. If I were to make you aware of that, is there any significance to that fact?

A. Just it would correlate with our DNA result because it would be in four individuals in the African population in the data base, and it did not match any caucasian or hispanics.

In generally, we would say that approximately -- if you take two random individuals in the population, both in the African-American population, you would have an average of fourteen differences.

That out of fourteen different base positions, you would see fourteen differences between two random individuals.

Q. In this case, I believe you stated that it was a relative

rare based on four thousand one hundred twenty-two, and, again, what is the effect of this anomaly you talked about, this rare anomaly?

A. It would most likely increase and exclude more of the population than ninety-nine percent.

Q. And the ninety-nine percent was a conservative estimate?

A. That's right.

Q. Nothing further.

THE COURT: Cross?

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Good afternoon.

A. Good afternoon.

Q. Now, your testimony is that -- let me see if I understand it. This Mitochondrial DNA is contained in -- Mitochondrial would be outside of the nucleus?

A. Yes.

Q. And is it inherited from the mother?

A. Yes.

Q. The structure of Mitochondrial DNA, the sequence of the base test, doesn't relate to the sequences of the DNA in the nuclear DNA?

A. Correct. Completely different gene . .

Q. In nuclear DNA, it is composed of some three million

base pairs?

A. Yes.

Q. And Mitochondrial DNA is composed of sixteen thousand five hundred sixty-nine?

A. Correct.

Q. Give or take?

A. Give or take.

Q. Mitochondrial DNA -- what's been done with Mitochondrial DNA is the sequence of the DNA was worked out actually in 1981, correct?

A. Correct.

Q. Actually, it's not the sequence of DNA, but the sequence of Mr. Anderson's DNA?

A. Yes.

Q. He's the guy who was sequencing Mitochondrial DNA, and he said, let's use mine?

A. Correct.

Q. So the standard, the reference standard, if you will, of Mitochondrial DNA is Mr. Anderson's Mitochondrial DNA?

A. Right, so we don't have to report out all sixteen thousand base pairs. We just basically compare it to the Anderson sequences and report any differences.

Q. Any differences from that sequence?

A. Right.

Q. Okay. Now, you indicated that this control contains

about eleven hundred base pairs?

A. That's right.

Q. And you actually looked in two places that are called hypervariable regions?

A. Correct.

Q. And you just shorthanded HV one and HV two. Right?

A. Right.

Q. And HV one is three hundred forty-two base pairs, is that correct?

A. Sounds about right.

Q. And HV two is two hundred sixty-eight base pairs, for a total of six hundred ten?

A. Right. That's the -- the sequences in the data base are about six hundred ten base pairs. We don't limit ourselves to that. We sequence a little bit outside of the region and record about seven hundred base pairs.

Q. So roughly seven hundred base pairs?

A. Exactly.

Q. And of these sixteen thousand one hundred or five hundred sixty-nine base pairs in the Mitochondrial DNA, you all looked at roughly seven hundred?

A. That's right.

Q. Now, I understand your testimony to be that there is no variation outside of this control region?

A. I wouldn't say that. The variation is very little.

Q. By variation, you mean what you would expect to find in a sequence when you are looking at it and expecting to find a different base pair?

A. Right.

Q. This region you're looking at?

A. Right.

Q. You looked at about seven hundred base pairs out of the eleven hundred in this area?

A. Yes.

Q. Now, if indeed you have a variation in the four hundred base pairs you don't look at in this control -- that variation showed up in the known sample and what was present in the unknown sample, and you found a match. Correct?

A. In general, our interpretation guidelines are that we can exclude if we have over three differences, and obviously includ if there are no differences. Anywhere between three and none, then that's on a case by case basis.

Q. I heard the number four in forty-one point two pointed out and you also referred to an anomaly, this rare anomaly, heteroplasty, that's -- the four in forty-one point two, that is the number in this data base you compared it to because you find the same sequence, and the heteroplasty is an occur-rence in which you have more than one . .

A. Right. There are actually two bases there. For example, C and T -- a mixture of both rather than just a C or a T.

Q. So this four in forty-one point two does not include the existence of the heteroplasty?

A. Right. There is no real way to measure the statistical significance of having heteroplasty, and when we researched it in the data base, we called it ambiguous, which means that we searched the data base to include all four bases at that position.

So, for example, at position fifteen twenty-three, when we searched the data base, we searched every sequence that had -- basically all sources would be included at that position because what you're saying is it could match an A, a T, a G or a C, and it is a more assertive approach to include everybody in that position, no matter what base they have at that position.

Q. Include everyone in that position?

A. Right.

Q. Four in forty-one forty-two, this is a -- that control data base -- you are aware, I'm sure, of the population sub-structures?

A. Yes.

Q. Indeed, population sub-structures would be -- you would find a higher incidence of a particular sequence within part of the population than you'd find in the other part?

A. Yes.

Q. You actually have that in this particular case, don't

you?

A. That's right.

Q. The four in forty-one generally is for everybody. Right? Four in forty-one forty-two.

A. Right.

Q. Okay. The report is four hundred in nine twenty-eight for the African data base -- four in nine twenty-eight.

A. Yes.

Q. Correct?

A. Yes.

Q. But the nine hundred twenty-eight is included in that forty-one forty-two? That is a subpart of that?

A. Right.

Q. So with those individuals of African heritage, the frequency is not four in forty-one forty-two. It would be four in nine twenty-eight?

A. . .

Q. That's what you reported out in your report. Right?

A. Right.

Q. Okay. If you dig a little deeper here, okay, and take a look at the breakdown on all the evidence, the African-American data base, the frequency is four in seven hundred ninety-four, isn't it?

A. I'm not sure where you're getting that number.

Q. I'm getting it from page four or seven of your DNA search

results dated December 21, 2000.

A. I'll have to look at that. (Examining document) Okay, I see what you're saying.

Within the African data base it is broken up into African-Americans, Sierra Leone, and I think there's another one too. But African encompasses all Africans within the world basically, and actually African-Americans there are seven hundred ninety in the data base.

Q. From the report you returned on this case, you reported out the frequency in the African data base. Correct?

A. Yes.

Q. That was four in what? Nine sixty-eight?

A. Nine twenty-eight.

Q. In the frequency one where you started talking about people of African -- the African-American data base, what would the frequency be there?

A. . .

Q. Four in seven hundred what . .

A. Seven ninety-four.

Q. Now, once you're done with this testing, is the information entered into the data base or is it just maintained in camera?

A. Would you repeat the question?

Q. Sure. You got the sequence in this case, and did you then -- is that sequence forwarded to the F.B.I. to include in this

data base or not?

A. No, it's not.

Q. They didn't come and ask you?

A. No.

Q. Now, when you see -- just as an example of possibly a sub-structure, it says four in the entire forty-one forty-two individuals, but if you look at, say, the people of African extraction, then it becomes four in nine twenty-eight.

And if you look who are African-American then the frequency goes to four in seven ninety-four. Right? Okay.

Would it be going out on a limb or be a big stretch in this case to say, hm, this is a substructure right here of -- that's of the United States origin, . .

A. Could you -- I'm not sure what the composition -- the actual composition is.

Q. Well, we don't see it. We don't see this sequence reported in this case at any point in the data base other than African-Americans. Correct?

A. Correct.

Q. Now, so if we're looking to see the frequency of this sequence for individuals such as Mr. Rumph in this case, an African-American, the frequency would be four in seven hundred ninety-four?

A. You could say that.

Q. Those four samples in the data base, the four samples

that are the same as found in this case, where are these from?
A. I wouldn't have that information.
Q. Those four samples, I think your testimony was, are from unrelated individuals?
A. Yes.
Q. What is the frequency of occurrence of this sequence, what you found in this case, in Columbia, South Carolina?
A. I wouldn't have that information.
Q. And the only way to get that information is to run a sampling of persons in that area and see if there is any deviation from Mr. Rumph's DNA. Right?
A. Sure.
Q. And if you have a number of the population which exhibit different frequencies of occurrence . .
A. I'm not sure I understand your question.
Q. Okay. Four in forty-one forty-two, you can't tell if we were to do a representative sampling in Columbia, South Carolina that you're not going to get . .
A. No.
Q. You didn't do, as I understand it, any testing on material from Israel Wilds?
A. No.
Q. You can't tell us what sequence he has in these areas either. Correct?
A. Correct.

Q. You can't tell us whether it matches the same sequence found in this case or not?
A. Right.
Q. You didn't receive samples related to an individual by the name of Isom Simmons or Joseph Dungee in this case. Correct?
A. Correct. I did not.
Q. You reported out your results on everything that you received. Right?
A. Right.
Q. You received a cutting from a shirt and a swab from the shoe, items 4.1 and 1.3.1. Correct?
A. Yes.
Q. Mitochondrial DNA is sometimes in high school biology -- it might be referred to as the power house in the cell?
A. Correct.
Q. Also known as the organelle, and there are a number of organelles in a cell?
A. Right.
Q. And other organelles may have DNA, correct?
A. Not that I know of.
Q. No?
A. Not that I know of.
Q. What you can't tell us about some of the testing is how old the DNA was that you tested?

A. No, I can't.

Q. In the PCR testing Mr. Amick testified about, one of the things you look at is the sex. Right?

A. Right.

Q. But you can't tell us whether -- you can't tell us whether the DNA you tested was from blood. Correct?

A. Correct.

Q. One of the advantages of Mitochonrdrial DNA is that it doesn't depend on the nucleus of the cell but can give results in cells that have no nucleus. Correct?

A. Um, like what, for example? In a hair shaft you have very little nuclear DNA and you may not.

Q. Is that Mitochondrial . . .

A. Yes.

Q. Indeed, you have no way of knowing from the test you did what the substance was that left the DNA at that place?

A. I know it was from a human.

Q. Right.

A. And based on the results of our controls, it wasn't a result of any contamination, so I would assume whatever was swabbed with the swab was of human origin.

Q. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. He asked a lot of questions about what you can't say about that, but what you can say is that 1.3.1 matched 4.1?
A. That's right.
Q. He also asked about -- I'm not trying to quote his words, but you can't tell where it's from, but you are aware of the purpose of serology?
A. Yes.
Q. And can serology test something for the presence of human blood?
A. Yes.
Q. In fact, the purpose of serology is to test for human blood or saliva?
A. Yes.
Q. He also asked you about these numbers, and I'm sorry--I'll put these up here. The number that was published more than any case was four in four thousand one hundred forty-two?
A. Right, because we don't know the race in each case.
Q. Let's take it down to four in seven ninety-four. What percentage of the population does that exclude?
A. I don't know the exact calculation but it's still around ninety-nine percent.
Q. Ninety-nine percent of the population?
A. Yes.
Q. And this rare anomaly that was present in this case -- is that correct?

A. Yes.

Q. What does that do?

A. It further enhances the Mitochondrial DNA match.

Q. Were you aware of any differences between the 4.1 and the 1.3.1?

A. No, there were no differences.

Q. So in every way absolutely, this was a perfect match?

A. Yes.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. STRICKLER:

Q. The anomaly you were speaking about, as I understand it, you can't tell what the base pairs are at that particular site?

A. Yes, you can tell. It was a mixture of a C and a T at that position.

Q. Mixture of C and T?

A. Uh hm. In the same position.

Q. I'm referring to your report and your interpretation.

A. Yes.

Q. This area at sixteen two twenty-three . .

A. Yes.

Q. . . you've got A through T at that point as an explanation. Which relates to the animus?

A. No adhesive position that could not be confirmed designated

by an N.

Q. Position that could not be confirmed?

A. Right.

Q. That meaning . .

A. It means -- well, in this case it means that because we saw a mixture of a C and a T we could not assign it one base pair.

Therefore, by calling it an N it could be any of the four base pairs. However, that's a conservative label we put on it. Either a C or T or mixture of both.

But for reporting purposes, we call it an N.

Q. There are both those present?

A. Correct.

Q. And though your interpretation says the position could not be confirmed, it is designated by an N?

A. Right. It means we can't give it one designation, call it a C or call it a T. It cannot be confirmed as one base letter. Therefore, we call it an N. We could put a C slash T but we choose for recording purposes to call it an N.

You are not excluding anyone in the data base based on that position.

Q. Thank you.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: Ladies and gentlemen of the jury, we have one

more witness whose testimony we need to get in today. Do you want to push on with that or take a short break?

FORELADY: Push on.

THE COURT: Okay, call your next witness.

MS. CAMPBELL: State calls Shelly Johnson.

SHELLY JOHNSON, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q. Ms. Johnson, where are you currently employed?

A. I'm currently employed at the Bowie Technology Institute.

Q. What do you do there?

A. I'm a DNA analyst.

Q. How long have you been employed at Bowie?

A. About a year and a half.

Q. What's your job function or responsibilities?

A. I perform DNA analyses as a senior forensic DNA . .

Q. I can barely hear you so you need to speak up, please.

A. Okay.

Q. Describe for the jury your previous employment and experience in DNA?

A. I was also an armed forces DNA investigator. I did Mitochondrial case work there for three years. I worked on Vietnam and World War Two remains from war conflicts, individuals that were lost in the war. We identified remains.

Q. Tell the jury about your education.
A. I received a Bachelor's Degree in biology and a Master's in Forensic Sciences from George Washington University.
Q. Do you attend any professional meetings within the scientific community?
A. Yes, we generally go to (inaudible)
Q. How many years have you been doing DNA analysis, specifically Mitochondrial analysis?
A. I have almost five years experience.
Q. Do you participate in continuing education?
A. Yes, we do additional course work at seminars and workshops.
Q. Do you know approximately how many cases you have processed for DNA analysis?
A. At the armed forces DNA lab, I processed over seventy cases. I have done approximately twenty-five Mitochondrial cases.
Q. And were you also involved in the identification process of the Tomb of the Unknown Soldier?
A. Yes, I worked with Charity on it.
Q. Charity Holland, who just testified, is she your supervisor?
A. She is my supervisor.
MS. CAMPBELL: Your Honor, at this time I'd offer this witness also as an expert in Mitochondrial DNA analysis.

MR. STRICKLER: I have no voir dire.

THE COURT: All right. Without objection, we'll qualify this witness as able to testify as an expert.

Again, ladies and gentlemen, you understand as an expert the witness can give an opinion. You decide how much weight to give and you must weigh the credibility.

Any objection to the charge from the State?

MS. CAMPBELL: None.

THE COURT: Defense?

MR. STRICKLER: No, Your Honor.

THE COURT: Okay, proceed.

BY MS. CAMPBELL:

Q. Ms. Johnson, in your experience in doing your testing, is Mitochondrial DNA used to include a defendant or to exclude? What has been your experience?

A. I have cases where I have excluded and included.

Q. Now, your testimony has been in this case that a period of time lapse, or a year and a half elapses, before you are able to get the evidence in the case and go into the testing process.

Does time affect your results in any way?

A. Time does in a situation where a sample is not taken care of properly.

But in this case, it was kept in a refrigerator and given to us and again refrigerated.

Q. So there was no indication there was any type of contamination or degredation that would have affected your findings in this case?
A. No.
Q. Turning your attention to your evidence number 200103, did you receive two samples in this case?
A. Yes, I did.
Q. And it was forwarded to you by the South Carolina Law Enforcement Division?
A. Yes, they were.
Q. And I show you what has been marked as State's Exhibit 43 and 44. Do you recognize those? The pouch and air bill.
A. Yes. It was received by Fed-Ex in the mail room from the South Carolina Law Enforcement division.
Q. In your experience as an analyst, is that a common way for you to receive materials for testing?
A. Yes, it is. It has my initials on it.
Q. Whose initials are these?
A. Evan Hennecker.
Q. All right.
A. It is entered in the chain in custody as it comes to us. It has a tracking number on it to complete the chain of custoday.
Q. Are there procedures that were taken in this case to assure the integrity of the chain of evidence?

A. Yes.

Q. How was it packaged when you received it?

A. It was completely sealed.

Q. And I show you this, State's Exhibit 45. Do you recognize that?

A. Yes, I do.

Q. And the red tape on it, when was that applied?

A. Our evidence custodian would have put the case number on the packaging and initialled it.

Q. And when you received these two items, they were still sealed?

A. They were.

Q. Was there evidence of any tampering?

A. No.

Q. Once you received the evidence and determined there had not been any tampering, did you perform your tests?

A. Yes, I did.

Q. And the first item would be item 1.3.1, which is the SLED number?

A. Yes.

Q. And that would be designated as . .

A. Item 1.3.1 is in an envelope labeled blood swab.

Q. And did you receive the item with the number 4.1?

A. Yes.

Q. What is that item?

A. An envelope which contained a piece of the shirt with blood in it.

Q. And these items were received by your lab clerk?

A. November 28 of 2000. We received those items on November 28 of 2000.

Q. Briefly tell the jury once you received the items what testing you did on them?

A. Once something is received in our lab, it is logged in by our evidence custodian and transferred to my custody where I photo-documented what was found within the envelopes, and I carried out the extraction process.

Of course, these were done in separate labs. The blood swab would be considered a lot quantity DNA so there is a separate lab designated for that.

The shirt cutting contained a high quantity of DNA on it, and I performed that extraction.

Q. As a result of your testing, did you come to any conclusions as to whether you could do a comparison on the 1.3.1 and the 4.1?

A. Yes.

Q. What was your conclusion?

A. My conclusions were that 1.3.1 matched 4.1.

Q. And we've heard earlier about how you can make this a match even though there may be one or two, even up to three differences in the two?

A. . .

Q. In comparing the two?

A. Right, but in this case there were no differences.

Q. No differences in this case?

A. No.

Q. Once you had determined that those items matched, and the sequence of matches, did you make any further determination?

A. I'm not sure exactly what you mean.

Q. As far as statistical?

A. We do search the data-base which has been put together by the F.B.I., which is composed of four thousand one hundred and forty-two spreads of randomly selected individuals.

Q. And then if you break it down into people with African descent . .

A. Right.

Q. . . and then you break it down into African-Americans?

A. Correct. We don't break it down. We just search the data base.

Q. And these numbers we've been asking about, those are numbers you provided?

A. Yes.

Q. And regarding the data base, we've heard earlier testimony about the SLED data base. Are you aware of the number of people in the SLED data base?

A. . .
Q. You might refer to . .
MR. STRICKLER: I object until she answers the question.
THE COURT: Let her answer.
BY MS. CAMPBELL:
Q. Are you aware there are approximately . .
MR. STRICKLER: Object to leading.
THE COURT: Rephrase the question.
Q. Once you completed your testing in this case, and I'll get back to the numbers in a minute -- were your results and testing reviewed by anybody?
A. A second analyst takes that same DNA independently and analyzes it. In this case, the entire case file was forwarded to my supervisor and she reviewed all the data as well.
Q. And was this case consistent in every review and every testing and the results obtained?
A. Yes, they were.
Q. We've heard testimony earlier about in this case there was what was called a rare anomaly?
A. Yes.
Q. Explain that to the jury.
A. Essentially what it looks like -- DNA comes out of our instruments as peaks, and when you see this one position it ha

two peaks and underneath there is one peak and then an additional smaller peak underneath that, which is a mixture of the position.

Q. Does that enhance the position or make it more common?

A. Definitely makes it rarer.

Q. A rarity in this case?

A. Yes.

Q. Are you aware (balance of sentence inaudible) What percentage of the population does that exclude?

A. Ninety-nine point ninety-nine.

Q. Once you completed your tests in this case, you generated a report?

A. Yes.

Q. And does that include the effect of the rare anomaly?

A. No, it's not factored in.

Q. And your report was forwarded to us?

A. Yes.

Q. And that report included all of the numbers. Correct?

A. Yes.

Q. Nothing further.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. STRICKLER:

Q. Included on page two out of five in your report, . .

A. Yes, sir.
Q. Do you have your report in front of you?
A. Yes, I do.
Q. Would you reference your report, please, and tell us what number you reported out?
A. We reported out four in one thousand and four hundred and forty-two.
Q. Looking on page two of five of your report ..
A. Correct.
Q. . . is your report on the African data base, four in nine twenty-eight.
A. Correct.
Q. Looking at this little chart, not included in the chart was . .
A. (Inaudible)
Q. The African data base is actually four in seven hundred ninety-four. Right?
A. Right. African-American.
Q. Yes. That data was not reported back. That data was supplied to me when I requested it.
A. It's included in the African data base, and makes up the seven hundred ninety-four.
The seven hundred ninety-four that's in that makes up the total of nine twenty-eight.
Q. Okay, so if we're looking for numbers that mean something

as far as how likely it is to see something, you can look around Columbia, South Carolina, to see how likely it is to occur there, or here?

A. I do not do that, no.

Q. You can't tell us whether it would occur far more frequently in the area of Columbia, South Carolina, than it does in the entire population of the United States?

A. I can tell you the data base is comprised of random individuals throughout the world.

Q. All right.

A. And we don't specifically go into Columbia, South Carolina.

Q. Is Columbia, South Carolina, included in that data base? Do you know whether anyone from Columbia, South Carolina, is included in that random data base. Is that right?

A. No. The F.B.I. is privy to that information.

Q. That's all I have.

THE COURT: Any redirect?

MS. CAMPBELL: One question, Your Honor.

REDIRECT EXAMINATION

BY MS. CAMPBELL:

Q. This is a copy of your case jacket?

A. Yes.

Q. And you recognize it?

A. Yes.

Q. And the numbers you referred to are all in here?

A. Yes.
Q. That's all I have. Thank you.
THE COURT: All right. Any recross?
MR. STRICKLER: No, sir.
THE COURT: You can step down.
(Witness excused from stand)
THE COURT: All right, counsel, we're going to recess for the day.
Any problem coming back at nine in the morning?
MS. CAMPBELL: No, sir.
MR. STRICKLER: No problem.
THE COURT: Ladies and gentlemen, let me thank you again for your patience. It's been a long day and when all this is over, I'll tell you what I went through today.
It had nothing to do with this case whatsoever, and I want to apologize to you for the delay. Be sure you understand, again, that none of these folks had anything to do with it.
I'm going to ask you to be back in the morning at nine o'clock.
Again, be sure --I know you want to go home and tell your family all about DNA, but you can't do that. Do not talk about the case. Please be sure not to watch any news tonight on television, radio, or read any newspaper.
(Jury excused. Court stood in recess as to this matter)

(Matter stood in recess until March 29, 2001)

THE COURT: Are we ready to bring the jury in? Is the State ready?

MR. McMAHON: Your Honor, we have not formally rested, I don't believe. That's what we intend to do when you bring the jury out.

I don't know if you want us to do that now and hear the motions or what Your Honor's wishes would be.

THE COURT: We can go ahead and hear the motions now if you would like to, and then you can formally rest before the jury.

Do you want to do that, Mr. Strickler, or do you want to bring them in and send them back out?

MR. STRICKLER: I'd just as soon not send them in and out, if he's going to rest.

THE COURT: Okay, given the State has rested, then are there any motions?

MR. STRICKLER: Yes, Your Honor. At this point in time, I would ask Your Honor to direct a verdict of not guilty as to each charge.

The evidence before the Court at this time does not meet the applicable standards for proceeding beyond this point in this case.

Additionally, I would move for -- ask Your Honor to re-visit your rulings regarding Mr. Wilds' statement and the

decision to admit the statement -- re-visit that ruling and reverse in that regard.

That's about all I would have as to that.

I would also ask that Your Honor re-visit the ruling denying the opportunity to inquire of the officers regarding the items from the search of Mr. Myers' house, on the basis stated.

I ask that you re-visit that and reverse yourself.

THE COURT: All right. I'll take each of them.

I would respectfully deny your motions, of course, including the motion for direction of a verdict.

The State has presented in the record, I believe, all the elements necessary to present an issue in fact.

Let me, if I might, examine the Defendant just for a couple of minutes.

MR. STRICKLER: May I have one moment, please?

THE COURT: Sure. You sure can.

(Mr. Strickler speaking with Defendant)

MR. STRICKLER: Thank you.

THE COURT: Mr. Wilds, let me ask you if you would stand for just a minute. Madam Clerk, would you put him under oath?

(Defendant sworn by the Clerk)

THE COURT: That was only for the purpose of my questions Mr. Wilds, do you understand in this case the State has charg you with certain offenses, and since they have brought those

charges they have the burden of proof. They have to prove you guilty, and the standard is what's called a reasonable doubt, which is the highest standard that we have.

So you understand, they must prove all of that. Do you understand?

DEFENDANT: I do.

THE COURT: Do you understand that means you do not have to prove anything. There is nothing you have to prove. You have a right to tell this jury that you expect them to hold the State to that.

Do you understand?

DEFENDANT: Yes, sir.

THE COURT: Now, of course, the State has just finished their case and putting up witnesses, but do you understand that since you don't have to prove anything you don't have to present any witnesses if you don't want to.

You can if you want to but you don't have to. Do you understand that?

DEFENDANT: Yes.

THE COURT: Do you also understand that you don't have to testify if you don't want to? You can if you want to but you don't have to.

Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Now, have you had a chance to talk with your

lawyer about all this?

DEFENDANT: Yes, sir.

THE COURT: Have you been satisfied with your lawyer's services?

DEFENDANT: Yes, sir.

THE COURT: Have you had his advice throughout this case?

DEFENDANT: Yes, sir.

THE COURT: Do you feel like he's done everything you've wanted him to do?

DEFENDANT: Yes, sir.

THE COURT: All right, and do you feel -- let me ask you -- this sounds like a stupid question, but it's something I always have to ask just to cover it on the record.

Today are you under the influence of any kind of medication or drugs or alcohol or anything that affects your judgment at all?

DEFENDANT: No.

THE COURT: Do you feel like you are able to make the decision as to whether to call a case or not?

DEFENDANT: Yes.

THE COURT: Okay. Have you made a decision whether you will call any other witnesses or any case at all?

DEFENDANT: Yes.

THE COURT: What are you going to do on that?

DEFENDANT: I'm going to.

THE COURT: You are going to. Okay, and is that your decision?

DEFENDANT: Yes, sir.

THE COURT: Have you been able to make a decision yet as to whether you will testify or not?

DEFENDANT: Yes, I have.

THE COURT: Okay, let me go over a couple of things before you tell me anything. Okay?

Do you understand that if you do not -- I'm going to give you the options on both sides. If you do not testify, I will give the jury a charge, if you want me to, that basically says that they can't consider it; that there is no presumption against you.

In other words, they can't presume anything by the fact that you do not testify. They can't even talk about it in the jury room. You understand?

DEFENDANT: Yes, sir.

THE COURT: And I would tell them that only if you wanted me to. I'd leave that up to you. You understand?

DEFENDANT: Yes.

THE COURT: If you testified, the State has a right, if you have prior convictions in certain areas -- they have a right to ask you about those.

We're going to find out out so you'll know ahead of time what they're going to ask you. Okay?

Madam Solicitor, if the Defendant were to testify, would you ask him about any prior to convictions?

MS. CAMPBELL: Your Honor, there are definitely prior convictions as a juvenile. I have copies of Orders which I can make part of the record.

They indicate that he was convicted of pointing and presenting a firearm and one count of possession of a sawed off shotgun.

THE COURT: All right, what were the dates of those?

MS. CAMPBELL: The Order was signed on May 24, 1996.

THE COURT: Okay. What about those?

MR. STRICKLER: As to the nature of the convictions, my understanding is that pointing and presenting a firearm and possession of a shotgun, not a sawed off shotgun.

THE COURT: What does your sheet show, Madam Solicitor?

MS. CAMPBELL: An Order as entered has a finding of gulty of possession of a sawed off shotgun, pointing and presenting a firearm, assault and battery, which I did not mention.

THE COURT: Right. Is that signed by a Family Court Judge?

MS. CAMPBELL: Yes, Your Honor, on May 21, 1996. I believ by Judge Watson.

THE COURT: Okay. Judge Maxie Watson?

MS. CAMPBELL: That's it.

THE COURT: Have you seen that?

MR. STRICKLER: Yes, sir.

THE COURT: Make that a Court's Exhibit, please.

(Family Court Order marked Court's Exhibit 6 for identification)

THE COURT: You want to address that?

It appears that is what the Order of Judge Watson does indicate.

MR. STRICKLER: Yes, sir, I don't take any issue with that. I'm going by my client's memory of what occurred.

Your Honor, the nature of the offense as reflected in the Order, due to the similarity of the offense with the offense charged in Court here today, since the prior offense and the current offense involved pointing a firearm, use of a firearm, I would suggest when Your Honor evaluates the propriety of impeachment by these offenses that you would find that the probative value of the offense or prior convictions is far outweighed by the prejudice to Mr. Wilds.

The similarity between the conviction and the offenses charged here reflects on his credibility. I've got nothing to say about offenses that reflect -- it looks like lying and stealing -- the traditional offenses which reflect on turthfulness.

Neither of these offenses have anything to do with truthfulness. They would only tend to prejudice Mr. Wilds in the eyes of the jury, number one, and, two, cause them or encourage

them to do precisely that which they should not do, and that is, because of the severity of the offenses, to go ahead and convict him because he has a conviction involving a firearm.

That is the prejudice, Your Honor, that I think this Court should seek to avoid. I make no argument as to the age of the offenses. I make no argument as to offenses not being proper as to the penalty incurred.

My argument is that the prejudice far outweighs whatever minimal probative value it may have, and for that reason I think Your Honor should not permit the Solicitor to bring that out.

THE COURT: I would have to find to the contrary, Mr. Strickler. Under Rule 609 A One, it actually is entirely probative.

There was an issue -- of course, as you understand, with an accused we look in terms of relevance in addition to the credibility issue.

In terms of relevance, it is highly relevant because the issue is raised by Officer Burns related to the Defendant allegedly telling her that he owned a shotgun, and I think there was some contest on that issue.

Of course, this obviously tends to make that more or less probable on the standard of relevance.

So I think it is obviously highly probative, and it does outweigh any prejudicial effect.

So I think it would be appropriate to allow these adjudications to be admitted.

There are two counts actually of pointing and presenting firearms, and one count of possession of shotgun.

MR. STRICKLER: Yes, sir. I'd just ask the record to reflect the motion and my exception to your ruling.

THE COURT: I so note that.

Thank you, sir.

Mr. Wilds, you understand again that if you do testify, the State would be allowed to ask you about those three prior adjudications. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: And, again, have you had a chance to talk over with your lawyer as to whether or not you will testify?

DEFENDANT: I have.

THE COURT: Do you need more time to talk with him at all?

DEFENDANT: No.

THE COURT: Have you decided whether you will testify or not?

DEFENDANT: Yes, sir.

THE COURT: What will you do?

DEFENDANT: Will not.

THE COURT: Will not testify. Okay, you understand that if you change your mind at any point you are free to do that, and all you have to do is let your lawyer know, and the jury

will not know either way.

You just let us know if you do change your mind.

DEFENDANT: May I ask a question?

THE COURT: Sure.

DEFENDANT: You said you would charge the jury?

THE COURT: About you not testifying? If you want me to. I will leave that up to you and your lawyer to request it. Mr. Strickler probably has a copy of that . .

MR. STRICKLER: I do. I have reviewed it, and we would request it.

THE COURT: Mr. Strickler can go over the details if you need him to. Okay? By that way, we put that in the tentative charge we gave both of you a couple of days ago.

As you know, I normally go ahead and put several things in. I've found it's easier to take things out than to go looking for them.

That certainly didn't assume anything. It was just to make it easier on us at the end of the trial.

MR. STRICKLER: Yes, sir.

THE COURT: He can go over that in detail if you want him to, Mr. Wilds. If you change your mind, you can do that too. Okay?

For the record, I find that Mr. Wilds has made his decision regarding whether he will testify of his own free will and accord, freely and intelligently, and not under the influence

of anything, substances or otherwise, that would cause him to not be able to make these decisions, and with the advice of obviously extremely competent counsel.

With that in mind, I think we're ready to move forward.

Is the State ready to go forward?

MR. McMAHON: Yes, sir.

THE COURT: Defense ready?

MR. STRICKLER: Could I have a few minutes before we continue?

THE COURT: Okay. We'll stand at ease for a few minutes then.

-----END OF VOLUME ONE OF REQUESTED TRANSCRIPT OF RECORD----

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing transcript was prepared to the best of my ability from the records of PAULA JACKSON , having been heard in the Court General Sessions for Richland County, 3-26 through 3-29-01.

FURTHER, I certify that I am neither of kin or counsel to any party to this action, nor do I have any interest in the same.

Harriet P. Bennett

DATE: June 22, 2001

VOLUME II

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) No. 99 GS 40 40142
99 GS 40 45289

STATE OF SOUTH CAROLINA)
)
)
)
versus) TRANSCRIPT OF RECORD
)
)
)
ISRAEL WILDS,)
)
Defendant.)

Columbia, South Carolina
March 26-29, 2001

B E F O R E :

HONORABLE MARC H. WESTBROOK, Judge, and a Jury

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

For the State: KATHRYN LUCK CAMPBELL, Esq.
KNOX McMAHON, Esq.
Assistant Solicitors

For the Defendant: DOUGLAS STRICKLER, Esq.

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(Matter continued on March 29, 2001, at 9:49 A.M. Jury returned to the Courtroom.)

THE COURT: All parties and the attorneys are in the Courtroom. All the jurors have now returned.

Ladies and gentlemen, we're a little late getting started, but we had some other matters to attend to.

All right, Solicitor.

MR. McMAHON: State rests, Your Honor.

THE COURT: What normally happens at this point when the State rests their case is that there are matters I have to take up with the attorneys.

We usually have the jury go out during that time, but we have already taken those matters up, so at this time we are prepared to -- I assume you would renew all motions . .

MR. STRICKLER: Yes, sir. Let the record reflect that the motions are being made at this time.

THE COURT: They are noted, and the rulings are as made before.

With that in mind, are you ready to call your first witness?

MR. STRICKLER: Yes, sir. The Defense calls Linda Frederick.

LINDA FREDERICK, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q. Ms. Frederick, good morning. How old are you?

A. Twenty-three.

Q. Are you employed?

A. Yes, sir.

Q. Where do you work?

A. CME Services.

Q. How long have you been there?

A. A year and a half.

Q. Are you related to Israel Wilds?

A. Yes, sir.

Q. What is the nature of that relationship?

A. I'm his aunt.

Q. His aunt?

A. Yes.

Q. On the mother's side of the family or father's side?

A. Mother's side.

Q. Are there any family members in the Courtroom?

A. Yes, sir.

Q. Can you point out and identify who those people are?

A. Okay, almost directly behind him is his sister, Consuela, and next to her is his mother, and next to her is his brother, Elijah, and next to him is his cousin, Terrell, and next to him his uncle, Herbert.

Q. Now, where do you live?

A. On Carola Avenue, 1101 Carola Avenue.
Q. Is that the address that we've heard some testimony about a search being conducted?
A. Yes.
Q. Okay, so I take it in March of 1999, you were living at that address too?
A. Yes.
Q. In March of 1999, who lived in that house?
A. Herbert lived there, Terrell and Antwan.
Q. Antwen is Israel?
A. Israel.
Q. And for how long had Israel been staying there?
A. We had just moved there in January.
Q. You had just moved there in January?
A. Yes.
Q. How long had Israel been living in your house?
A. About a year.
Q. Now, you saw a young man named Isom Simmons testify here?
A. . .
Q. Were you present for that testimony?
A. No, sir.
Q. Do you know Isom Simmons?
A. Yes, sir.
Q. How is it that you know Mr. Simmons?
A. His aunt and I have been friends ever since college.

Q. So you've been in contact with him through your friendshi
with his aunt?
A. Yes, sir.
Q. Now, was he friends with either of the young men in your
household?
A. Yes, sir.
Q. Your son?
A. Yes, sir.
Q. Your son goes by Terrell?
A. Yes, sir.
Q. That's what you all call him?
A. Yes, sir.
Q. Isom Simmons was a friend of Terrell?
A. Yes, sir.
Q. Was he ever at your house?
A. Every now and then.
Q. What was your impression of the relationship between
Terrell and Isom Simmons?
A. Just an acquaintance.
Q. Acquaintance?
A. Yes, sir.
Q. Did you view them as close friends?
A. No.
Q. How about Isom Simmons and Israel?
A. They really don't know each other.

Q. Did you ever see them meet each other?
A. No, sir.
Q. Now, I'd like, if I can, to turn to March 29, 1999.
A. Yes, sir.
Q. Did you work that day?
A. Yes, sir.
Q. About what time did you return home from work?
A. About seven or seven thirty.
Q. When you got home from work, who was present at your house?
A. Terrell and Antwan.
Q. Terrell and Antwan?
A. Yes.
Q. Now, did Mr. Davis come home during that time?
A. He came along with me.
Q. He came with you?
A. Yes.
Q. Okay, and what did you all do that night?
A. Well, we came in and I changed clothes, took off my shoes, went in the kitchen and started getting dinner. Terrell and Antwan was hanging out in the other room. Herbert came in the room and sat down for a little while and asked Antwan to take him to the store.
Q. Now, you say Israel and Antwan were in the room. Did they share a bedroom?

A. Yes, sir.
Q. Is that the room you were referring to?
A. Yes, sir.
Q. And where is your and Mr. Davis' room in relation to the room that Tyrell and Israel shared?
A. Right across the hall.
Q. Right across the hall?
A. Yes, sir.
Q. Do the doors to those two rooms face each other?
A. Yes, sir.
Q. Now, Mr. Davis asked Israel to take him to the store?
A. Yes, sir.
Q. You have any idea what time of night that was?
A. No, I don't recall.
Q. You know whether indeed Mr. Davis and Israel left and went to the store?
A. Yes.
Q. You know they left?
A. Yes.
Q. Have any idea roughly how long they were gone?
A. About ten minutes.
Q. About ten minutes?
A. Yes.
Q. Does your house have a security system on it?
A. Yes, sir.

Q. What is the nature of the security system?
A. Excuse me.
Q. What's the nature of that security system?
A. We can tell when someone comes in the door or goes out the door.
Q. How can you tell?
A. Once the door is opened you hear a little beep.
Q. Okay, does it beep if the alarm is not activated?
A. Right.
Q. Now, as the evening went on what did you do?
A. Prepared dinner, had dinner and got ready for the next day.
Q. Did you eat dinner with Mr.Davis, Israel and Terrell?
A. Herbert and I ate together.
Q. Did you know where Israel and Terrell were?
A. In their room, the bedroom.
Q. The bedroom?
A. Uh hm.
Q. Do you know what they were doing?
A. Watching TV.
Q. Okay. After dinner, what did you do?
A. Got my clothes out and sat around and watched TV.
Q. Where would you watch TV?
A. In the bedroom or in the den.
Q. And when you say bedroom, that would be your and Mr.

Davis' room?

A. Yes.

Q. Across the hall from Terrell and Israel?

A. Right.

Q. At any point that night, did you see Israel leave the house after he came back from taking Mr. Davis to the store?

A. No.

Q. Were you in a position to see whether he left the house at any point in time?

A. Yes.

Q. To your knowledge, where was Israel between nine and nine thirty the night of March 29, 1999?

A. In the bedroom in front of the TV.

Q. Do you know what the kids were watching on TV?

A. They generally watch basketball.

Q. Are you a big basketball fan.

A. Not really.

Q. How about your son?

A. He loves basketball.

Q. How about Israel?

A. He loves basketball.

Q. Now, on the 29th of March, 1999, did you have any reason to pay particular attention to what was going on that night?

A. No,sir.

Q. At some point in time, did you have a reason to think

about what went on that night?
A. Yes.
Q. When was it that you first had reason to consider what had gone on that night? What you all were doing that night?
A. About a week later.
Q. What happened about a week later?
A. Some guys came to the house along with a female, and they searched the house.
Q. Did they leave a document in the house when they searched the house?
A. Once they were finished, we waited about fifteen or twenty minutes and they brought a paper in, and on the top of the paper it said search warrant.
Q. Did you have an opportunity to look at the search warrant once you received it?
A. Yes, sir.
Q. And did the search warrant make reference to March 29, 1999?
A. Yes.
Q. So at that point in time, did you have an opportunity -- about a week after, you say?
A. Yes.
Q. Did you have an opportunity to try to figure out what was going on on March 29, 1999?
A. We wasn't -- well, I was wondering why they searched the house, and on the date they had on the paper everyone was

there in the house. No one had been anywhere.

Q. Why didn't you take this information to the police?

A. Well, I didn't know what to do, and I figured, well, once they get him down there, the cops, they will find out they got the wrong person and they will call me to pick him up.

Q. Let me show you a couple of things here. Do you see this brown jacket?

A. Yes.

Q. Do you know whether this is Israel Wilds' jacket?

A. No, sir.

Q. It's not?

A. No.

Q. Do you know whose it is?

A. His brother's.

Q. His brother? The fellow sitting over there . .

A. Right.

Q. And this sweater here, do you know whether this is Israel's sweater?

A. I think that is not his.

Q. Are you sure?

A. I'm almost sure.

Q. Okay, and a pair of tennis shoes that was taken during the search, whose shoes were those?

A. Terrell's.

Q. Your son's?
A. Yes, sir.
Q. Okay. Thank you very much. Answer any questions the Prosecutor may have.
THE COURT: Cross.
CROSS EXAMINATION
BY MS. CAMPBELL:
Q. Ms. Frederick, good morning. I just have a few questions to clarify a few things.
Mr. Strickler -- Israel -- I believe in your testimony you talked about Antwan?
A. Yes.
Q. And that's the name he goes by with friends and his family?
A. Yes.
Q. And did you know Anthony Rumph?
A. No, I never heard of him.
Q. So his family sitting right here, you don't know any of them?
A. No.
Q. So they are no relation to your family?
A. No.
Q. And Israel, or Antwan as you call him, had been living with you all for about a year?
A. Yes.

Q. Where had he been living prior to that?
A. With his mother.
Q. And what city is that in?
A. Orangeburg.
Q. Antwan is from Orangeburg?
A. Yes.
Q. He'd been living with you for about a year?
A. Yes.
Q. And about six months before you all had moved there on Carola Street?
A. Yes.
Q. How would you describe his relationship with your son, Terrell?
A. Cousins.
Q. They're cousins?
A. Uh hm.
Q. Are they close in age?
A. Yes.
Q. And they did a lot together?
A. Yes.
Q. You mentioned that you have been at your job now for about a year and a half?
A. Yes.
Q. You had a different job prior to that time?
A. Yes.

Q. Did Antwan work when the shooting occurred?
A. Excuse me.
Q. Did Antwan work back when the shooting occurred? Did he have a job?
A. Yes.
Q. Where was he working at the time?
A. At Kentucky Fried Chicken.
Q. You mentioned that you -- once you got that search warrant, you found the March 29th date, and that's when you remembered specifics about the night in question?
A. Yes.
Q. And on that night, you got home from work about seven thirty?
A. Yes.
Q. And you came in and started making dinner, and you and Mr. Davis ate together?
A. Yes.
Q. Did you make dinner for the boys?
A. They wasn't hungry at the time.
Q. They weren't hungry at the time, but they were there, is that correct?
A. Yes.
Q. From the time you got home -- what time did you go to bed that night?
A. . .

Q. Do you remember?
A. About ten or eleven.
Q. Ten or eleven?
A. Yes.
Q. And you mentioned also that Antwan left briefly but he was with Mr. Davis?
A. Right.
Q. And he returned with Mr. Davis?
A. Right.
Q. And then you mentioned the two boys were in the bedroom across the call from your bedroom?
A. Right.
Q. Were you watching TV? You mentioned you were watching TV, and do you remember what room you were in that night?
A. I was going back and forth between the bedroom and the den.
Q. And you could hear both boys in their bedroom?
A. Uh hm.
Q. And that's how you know they were in there?
A. Right.
Q. And was it just Terrell and Antwan that were in that bedroom?
A. Yes.
Q. Isom wasn't there?
A. No.

Q. And you know from what you heard and what you observed that night that between nine and nine thirty both boys were in the bedroom?

A. Right.

Q. And you would have known if anyone had left the house?

A. Right.

Q. Because you have the security system?

A. Right.

Q. And does the alarm also go off if windows are opened?

A. No.

Q. Is there a window in that bedroom where they were watching TV?

A. Yes.

Q. You're aware they were watching basketball?

A. Yes.

Q. And again, specifically in the time frame we're talking about, between nine and nine thirty, you know they were there because you heard Terrell and Antwan. Is that right?

A. Yes.

Q. In that bedroom?

A. Yes.

Q. And Terrell never left?

A. He stayed at home.

Q. They stayed there all night until you went to bed between ten and eleven?

A. Uh hm.

Q. And you mentioned that after the search warrant and after Antwan was arrested, you started thinking back and you remembered in the pretty close proximity what happened, but you didn't go to the police and tell them?

A. No, I didn't know what to do.

Q. You didn't let the police know that Antwan was at home with you that night?

A. For one thing, I didn't know which station they took him to, and they didn't tell me anything.

Q. Did you attend a bond setting for Antwan?

A. No.

Q. Do you know Isom Simmons?

A. Yes.

Q. He had been in your house on several occasions, I believe

A. Yes.

Q. Thank you.

THE COURT: Any redirect?

MR. STRICKLER: Just a couple of things.

REDIRECT EXAMINATION

BY MR. STRICKLER:

Q. Ms. Frederick, in your job what do you do?

A. I'm a home care-technician.

Q. How long have you been a home care-technician?

A. Fifteen years.

Q. So when you say you had a different job back then, it was doing home-care for a different person?
A. A different agency.
Q. You've done the same work for fifteen years?
A. Yes.
Q. Now, did you just see -- did you just hear Terrell and Israel in their bedroom watching TV or did you see them watching TV?
A. Both.
Q. Was the door open or closed?
A. The door was open.
Q. Was your bedroom and Mr. Davis's bedroom -- was that door open or closed?
A. It was open.
Q. Any question in your mind where Israel Wilds was that evening of March 29, 1999?
A. He was at home.
Q. Thank you.

THE COURT: Recross?

MS. CAMPBELL: No,sir.

THE COURT: You can step down.

(Witness excused from stand)

MR. STRICKLER: Defense would call Herbert Davis.

HERBERT DAVIS, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q. Mr. Davis, good morning.

A. Good morning.

Q. How old are you?

A. I'm fifty-nine.

Q. Are you employed?

A. Yes, sir, I am.

Q. What kind of work do you do?

A. Marshall Janitorial and Cleaning Service.

Q. How long have you been doing that?

A. Four years.

Q. And do you work any particular place doing the janitorial work?

A. The South Carolina Security Commission building.

Q. Do you know Linda Frederick?

A. Yes, I do.

Q. What is the nature of your relationship with Ms. Frederick?

A. She is my fiance.

Q. And at present, where do you live?

A. At 1101 Carola Avenue.

Q. And in March of 1999, where did you live?

A. At 1101 Carola Avenue.

Q. At that point in time, March of 1999, who was living

at that address?
A. Terrell and Antwan.
Q. And you?
A. And myself.
Q. Did you ever have occasion to come in contact with a fellow by the name of Isom Simmons?
A. I see Isom when he come to visit the house.
Q. When he visited the house, who did he come to see?
A. Terrell.
Q. Have you ever seen him in contact with Israel?
A. No.
Q. On March 29, 1999, did you work that day?
A. Yes, I did.
Q. And about what time did you get home from work?
A. About seven or seven thirty. Linda picked me up.
Q. Linda picked you up?
A. Yes.
Q. And do you drive yourself?
A. No, sir, I don't.
Q. When you got home, who was at the residence on Carola?
A. Terrell and Antwan.
Q. They were there when you all got home?
A. Right.
Q. After you got home, what did you do that evening?
A. I came in and sat down a little bit, and I asked Antwan

will he take me to the Circle K, the store, and he got his keys and carry me to the store.

Q. The Circle K, do you know what street the Circle K is located on?

A. On the corner of Carola and North Main.

Q. Carola and North Main. About how far is that from your house?

A. Oh, I would say two blocks.

Q. Okay, did you and Israel go to the Circle K?

A. Yes.

Q. And how long -- after leaving the Circle K. where did you go from there?

A. Home. We went to the Circle K and back home.

Q. Roughly how long were you gone from the house?

A. Oh, maybe about ten or fifteen minutes.

Q. Okay.

A. I can't tell you exactly.

Q. And where was Israel?

A. Going to the store, he was in the car.

Q. In the car?

A. Yes.

Q. Did he drive you to the store?

A. Yes.

Q. Did he drive you back home?

A. Yes.

Q. How long -- was he in the car when you were in the store?
A. Yes.
Q. How long were you in the store?
A. Just a few minutes.
Q. When you left the store, you went back to the house?
A. Yes, sir, we did.
Q. Now, after you got back to the house, do you have any idea what time of night it was you went to the store?
A. Somewhere around eight. I can't tell you exactly the time. I wasn't paying attention to the time.
Q. After you got back to the house, did you leave the house again that evening?
A. No, sir, I didn't.
Q. Okay. Did you ever see Israel leave the house again that evening?
A. No, sir. After he brought me back from the store, he went in the room.
Q. When you say the room, what room is that?
A. The bedroom Israel shares with Terrell. My bedroom is right across the hall, a couple of steps.
Q. What did you do that evening?
A. Sit down and watch TV. I could see them through the door, and they was yelling about the game.
Q. Were you positioned in such a way that you could have seen if either of them had left that room?

A. Yes. We don't ever close the bedroom door.
Q. And do you have any idea when you went to bed that night?
A. About twelve or eleven thirty. I had to take a shower.
Q. Beg pardon?
A. I had to take a shower before I went to bed.
Q. Now, again, does the house have an alarm system on it?
A. Yes, it does.
Q. And even if the alarm is not activated, would you be able to know when someone went out the door?
A. Yes.
Q. What happens when the door opens?
A. It's a beep. If you go out the back, it will beep, or if you go out the front, it will beep.
Q. Now, did you have any particular reason to pay attention t what was going on on March 29th, at that point in time?
A. No, sir.
Q. At what point in time was it that you had an occasion to think about what had happened on the 29th?
A. Well, when the girl and fellows, the officers, was in the house, and they came on in and had a search warrant, so they go on back to the bedroom.

Then I stay out of their way.

Q. Did you have an opportunity to look at the search warrant?

A. After Linda and I got the search warrant, she was talking about it, and we look at the search warrant.
Q. This was probably how long after the 29th?
A. Well, you know, I can't tell you exactly.
Q. Now, do you know what game Terrell and Israel were watching on TV?
A. Antwan was yelling about (inaudible)
Q. Okay. After looking at the search warrant, you had an opportunity to think about what had gone on?
A. Right.
Q. Is there any question in your mind where Israel Wilds was between nine and nine thirty on the night of March 29, 1999?
A. He was in the room. He definitely was in the room with Terrell, because he smokes.
Q. You don't smoke?
A. Not that much. I quit.
Q. After Israel took you to the store that evening, did he ever leave the house?
A. No, sir.
Q. From the time he brought you back until he went to bed, he did not leave?
A. He did not leave.
Q. Thank you. Answer any questions the Prosecutor may have.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q. Mr. Davis, I just have a few questions.

Isom Simmons was a friend of Terrell?

A. Yes.

Q. And he had been to your house?

A. Yes, he had.

Q. While you're at work, do you know who all comes to your house ?

A. No, I don't.

Q. Let me go back and ask you a few things about the 29th. You mentioned that you got home after Linda came and picked yo up, around seven or seven thirty?

A. Right.

Q. And then you went home, and you got home around what time?

A. I'd say we made it there, and it was about eight.

Q. About eight?

A. Yes, it don't take that long.

Q. And did you have Antwan take you to the store?

A. Yes, maam.

Q. Was it light or dark then?

A. It was in the afternoon.

Q. In the afternoon you went to the store?

A. Yes.

Q. After you got home?
A. Right.
Q. So it would have been light?
A. Probably was light.
Q. And when he took you to the Circle K that afternoon, he was driving?
A. Yes, I had to purchase a few items.
Q. What kind of items?
A. I got some chips, a six pack of beer.
Q. You weren't in the store very long?
A. No, I wasn't.
Q. Which car did Antwan drive?
A. A Toyota is what we have.
Q. Did he drive you back home?
A. Yes.
Q. And when you got back home from the Circle K that evening, you both went in the house?
A. Yes.
Q. And that evening, did you and Linda have dinner?
A. Yes, maam.
Q. Did the boys eat with you?
A. No.
Q. You've heard him called Israel, but you know him by Antwan?
A. That's what I call him.

Q. And Antwan and Terrell were watching basketball?
A. Yes.
Q. And were still watching between nine and nine thirty?
A. Yes, maam.
Q. They were still there when you went to bed?
A. Right.
Q. And nobody else came in?
A. Noone else.
Q. You could hear Antwan and Israel talking in their room?
A. Yes, maam.
Q. And neither of them left that night, after you got home from the store?
A. No, maam.
Q. And when you went to the Circle K, it only took about ten or fifteen minutes?
A. Yes.
Q. Because it's only a few blocks?
A. Right.
Q. And then you went straight home?
A. Yes.
Q. Was that before the basketball game came on?
A. They were in the house.
Q. They were in the house when the game came on?
A. Right.
Q. And they were there when you came home?

A. That's right.
Q. Did you attend the bond setting on Mr. Wilds?
A. No, maam.
Q. Thank you. That's all I have.
THE COURT: Any redirect?
REDIRECT EXAMINATION
BY MR. STRICKLER:
Q. Mr. Davis, did you work that day?
A. Yes, I did.
Q. What are your hours of work?
A. I go to work at eight o'clock in the morning and get off around five thirty to six o'clock, but I am there until Linda picks me up.
Q. Okay. So you work until five thirty or six o'clock, and Linda picks you up?
A. Right.
Q. And she takes you home?
A. Right.
Q. And it was after that that you got Israel to take you to the store?
A. Right.
Q. Thank you.
THE COURT: Recross?
MS. CAMPBELL: No, sir.
THE COURT: Call your next witness.

(Witness excused from stand)

MR. STRICKLER: The Defense would call Antonio Terrell Frederick.

ANTONIO TERRELL FREDERICK, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q. Good morning, Antonio or Terrell -- you go by Terrell?

A. Yes.

Q. How old are you?

A. Twenty.

Q. Are you older or younger than Israel?

A. Younger.

Q. You're pretty close in age?

A. Sort of.

Q. Are you employed now?

A. Yes.

Q. Where do you work?

A. Lizard's Thicket.

Q. Which Lizard's Thicket?

A. (Inaudible)

Q. How long have you been working there?

A. Since I was seventeen.

Q. What's your relationship with Linda Frederick and Herbert Davis?

A. That's my mother and stepfather.
Q. What is your relationship with Israel Wilds?
A. Cousin.
Q. Let me ask you this, Terrell. On May 22nd of 1996, were you adjudicated a delinquent as a juvenile for the offense of accessory after the fact of common law robbery?
A. Yes, sir.
Q. Where are you living now?
A. At 1101 Carola Avenue.
Q. In March of 1999, where were you living?
A. At 1101 Carola Avenue.
Q. At that point in time, who was living at 1101 Carola?
A. Me, my mother and stefather, and Israel.
Q. And who?
A. Israel.
Q. How long had Israel been living there with you?
A. At Carola?
Q. Uh hm.
A. About four months.
Q. How long had he been staying with you all?
A. About a year and a few months.
Q. You all had moved to Carola about four months earlier?
A. Yes.
Q. But Israel was staying with you all for about a year?
A. Yes.

Q. Do you know a fellow by the name of Isom Simmons?

A. Yes.

Q. How long had you known Mr. Simmons for?

A. Just about all my life.

Q. What was the nature of your relationship with Mr. Simmons?

A. Our families are close.

Q. Your families are close?

A. Yeah.

Q. And you know him because of that?

A. Yes. His mother or his aunts are friends of my mother.

Q. And did you ever have occasion to hang out with Isom Simm

A. Yes.

Q. Can you describe or characterize for this jury the nature of your relationship with Mr.Simmons?

Were you tight?

A. No, not really.

Q. Not really?

A. No.

Q. Just friends?

A. Yes.

Q. And how often roughly did you see Mr. Simmons?

A. Every once in a while he'd come by the house.

Q. Was it a daily thing?

A. No.
Q. A weekly thing?
A. I wouldn't say so.
Q. Did you ever have occasion to see Mr. Simmons in the company of Israel Wilds?
A. Once.
Q. Did you ever have occasion to see any altercation between Isom Simmons and Antwan Wilds?
A. Yes.
Q. Tell us roughly when that was?
A. It was in March but . .
Q. March what?
A. I don't know a date.
Q. Okay. March of what year?
A. Of ninety-nine.
Q. Where did this altercation take place?
A. On my front porch.
Q. Can you tell us what the nature of the confrontation was?
A. They were arguing about a female.
Q. Okay, and as a result of that argument, did anything else happen?
A. They started a fight.
Q. Started a fight?
A. Yes.

Q. Were any punches thrown?

A. Yes.

Q. Israel started fighting? Throw any punches?

A. Yes.

Q. Isom start to fight?

A. Yeah.

Q. What did you do at that point in time?

A. I stepped in and got hit a few times.

Q. You broke them up?

A. Yes.

Q. Now, subsequent to that -- after that incident between then and March 29th, 1999, was Isom Simmons ever over to your house?

A. No.

Q. Now, going to March 29, 1999, I'd like to ask you some questions about that.

Did you work that day?

A. No,sir.

Q. You took the day off or were scheduled to be off?

A. I was scheduled to be off.

Q. Did Israel work that day?

A. No, sir.

Q. What did you all do that day?

A. The whole day?

Q. No, let's talk about the evening. Where were you on the

evening of March 29th?
A. At home.
Q. At home?
A. Yes.
Q. Were you there when your mother and your stepdad came home?
A. Yes.
Q. Where was Israel at that point?
A. In the room.
Q. In the room?
A. Yes.
Q. Which room?
A. My room.
Q. Let me ask you this. Do you like basketball?
A. Yes.
Q. Do you like football?
A. All ball.
Q. Okay. During the year when Israel was in your house, did you all develop a relationship?
A. Yes.
Q. Can you tell me what the nature of that relationship was?
A. ...
Q. Were you tight, casual, what?
A. Casual.
Q. Casual?
A. Yes.

Q. Did you have an opportunity to find out if he followed sports?

A. Yes.

Q. Did he?

A. Yeah.

Q. He liked basketball?

A. Yes.

Q. Did he have any particular favorite teams?

A. Yes.

Q. What teams did he favor?

A. Duke.

Q. Did he have any article of clothing that reflected that?

A. Yes.

Q. What did he have?

A. A Duke jersey, blue and white.

Q. Blue and white jersey?

A. Yes.

Q. On the evening of March 29th, 1999, what did you do?

A. Well, I sat in the room for a little bit and went through the house and took a shower; watched TV.

Q. Did you see Israel in the house at any point in time?

A. Only when he left home with my stepfather.

Q. Was anything special on TV the night of March 29, 1999?

A. Special to me.

Q. What was it?

A. Duke and UCon game.
Q. UCon -- the University of Connecticut?
A. Yeah.
Q. Is that what you call it?
A. Yeah.
Q. What type of game was it?
A. It was the finals. It was the last game.
Q. The last game of what?
A. The season.
Q. Now, let me show you these items, I think without objection.
A. . . . .

MR. McMAHON: No objection.

MR. STRICKLER: Let's go ahead and mark them.

THE COURT: All right, without objection.

(Defendant's Exhibit 1 entered, Newspaper article; Exhibit 2, TV Guide schedule; Exhibit 3, Newspaper article, in evidence without objection)

BY MR. STRICKLER:

Q. Terrell, I want to show you what's marked as Defense Exhibit 1. Can you tell me what this looks like or what this is?
A. A news article.
Q. From any particular publication? The State Newspaper?
A. Yes.

Q. What date is it?
A. March 29th, 1999.
Q. And the title of the article is Blue Monday, Duke, UCon -- look closer.
A. March 28th.
Q. And the title of the article is Blue Monday, Duke, UCon in finals. Is that correct?
A. Yes.
Q. What day of the week was the 28th?
A. Sunday.
Q. So this says on Sunday Duke and UCon will play in the finals.

Let me show what's marked as Defense Exhibit 2. What's -- can you look at the date on this?
A. March 29th.
Q. The 29th -- what is it?
A. TV Guide.
Q. Does the TV Guide reflect what channel and time the basket ball game is?
A. From nine to eleven thirty.
Q. At night?
A. Yes.
Q. Okay, and this is the TV Guide for what date?
A. March 29th.
Q. Monday, March 29?

A. Yes.
Q. Then, lastly, what's marked as Defense Exhibit 3. Can you tell us what date this article is?
A. March 30.
Q. Now, on Monday, March 29th, from nine to eleven thirty, the NCAA had the finals?
A. Yes.
Q. And was that the game you all were watching?
A. Yes.
Q. After Israel came back from taking Mr. Davis to the store, what was he doing between nine and eleven thirty? What were you all doing?
A. Watching TV, watching the game.
Q. Any question in your mind where Israel was at between nine and eleven thirty that night?
A. No.
Q. Was he out of your sight during that period of time?
A. No.
Q. You all were together during that period of time?
A. Yes.
Q. When was the first point in time when you had a reason to think about what went on on March 29th?
A. The day when the police had come to my house.
Q. Did you look at the information on the search warrant?
A. No.

Q. Did you talk to Mr. Davis and your mom about it?

A. Afterwards.

Q. Have you spoken with attorneys from the Public Defender's Office about this?

A. No.

Q. Have you spoken with -- let me ask you this. Am I the first attorney you talked to about Israel Wilds?

A. No.

Q. Are you familiar with a fellow by the name of Tony Guthke?

A. Yes.

Q. Was he an attorney on Israel's case at some point?

A. Yes.

Q. After he left the office -- are you acquainted with an attorney by the name of Cynthia Burroughs?

A. Yes.

Q. Was she an attorney for Israel for a while?

A. Yes.

Q. And did you have occasion to speak at some point with Mr. Shearer about this case?

A. I think once.

Q. When did you start talking with me about the case?

A. When I got the number.

Q. Okay. Is there any question in your mind about where Israel was between nine and nine thirty on the night of March

the 29th?
A. No.
Q. Where was he?
A. Home.
Q. Now, whose jacket is this?
A. It is mine.
Q. Whose sweater is this?
A. That's my sweater.
Q. There's a pair of tennis shoes that were taken during the search of the house. Whose tennis shoes are those?
A. Mine.
Q. Thank you. Answer any questions the prosecutor has.
CROSS EXAMINATION
BY MR. McMAHON:
Q. Good morning, Mr. Frederick. How are you, sir?
A. Fine.
Q. How long have you lived at the Carola Street address?
A. About four months.
Q. And where did you live before then?
A. At 4043 Jenkins Street.
Q. And is that in the same general neighborhood? The same area?
A. Just about.
Q. And how long had Antwan-- you call him Antwan?

A. Yes.

Q. How long had he lived at the Carola Street residence?

A. About four months.

Q. About the entire time you and your mother, Ms. Frederick, and your stepfather, Mr. Davis, had lived at that address?

A. Yes.

Q. Are you fairly familiar with the general neighborhood and area of Carola Street?

A. Yes.

Q. Main Street?

A. Yes.

Q. College Drive?

A. Yes.

Q. I want to ask you a few things about that area. How far is the Circle K?

A. A block.

Q. And tell the jury where that is located at?

A. From my front door straight down the street and make a left here and a right. The Circle K is right there.

Q. It's on -- at the intersection of Main and Columbia College?

A. Yes.

Q. And would that be two blocks from your house?

A. A block and a half.

Q. So you could get there in an automobile in a matter of

seconds?
A. Not in a matter of seconds.
Q. At least within a few minutes?
A. Yes.
Q. From your home on Carola to the Circle K. Were you familiar with the Nickel Pump?
A. Yes.
Q. Where would that have been in relation to your house?
A. Across the street.
Q. And about how far would it have been from your house?
A. About a four minute walk.
Q. How far is it in relationship to the Circle K? Is it closer or further?
A. Further.
Q. Several blocks?
A. The Circle K?
Q. No.
A. The Shell?
Q. Yes. How many blocks would it be?
A. Probably two.
Q. A couple of blocks?
A. Yes.
Q. The Circle K is a block and a half?
A. Uhhm.
Q. The Shell station about two blocks?

A. Yes.

Q. About a four minute walk?

A. Yes.

Q. What about CJ's?

A. Across from the Shell station.

Q. You're familiar with that location?

A. Yes.

Q. Would it be take about the same time as it would to get from your house to CJ's as it would to get from your house to the Shell Station, except you'd have to cross Main Street?

A. Yes.

Q. Just a little bit longer?

A. Yes.

Q. And you are familiar with all those areas?

A. Yes.

Q. So if I showed you this map, State's Exhibit 1, this yellow line represents Main Street and right here is Fairfield Road, you're familiar with that?

A. Yes.

Q. This is Carola?

A. Yes, sir.

Q. And that is where you all lived?

A. Yes, sir.

Q. Here's the intersection of Carola and Barber Street or Anderson Street?

A. Anderson Street.
Q. And so if this is Anderson Street, you all would have been right here?
A. Yes.
Q. All right. In other words, if you went down Carola from Anderson Street, you all would have been right here?
A. Yes.
Q. All right. If I came down Carola from Main Street, walking toward your house, your house would be on the right side of Carola?
A. Yes.
Q. Isn't that correct?
A. Yes.
Q. Then the Circle K would be right -- if this is the intersection of Columbia College and Main, right here?
A. Yes.
Q. And CJ's is across the street?
A. Yes.
Q. The street that runs right beside CJ's is the street that Isom lived on?
A. Yes.
Q. And we have heard that Isom had come to your house infrequently, but he had been to your house?
A. Yes.
Q. How many times?

A. . .

Q. Can you give us an idea?

A. No.

Q. But in the four months you all had lived on Carola, Isom had been to your house?

A. Yes.

Q. Is the reverse of that also correct? Had you ever been to his house?

A. A few times.

Q. And I believe you said you had known him all your life?

A. Yes.

Q. And you're twenty, you say?

A. Yes.

Q. Now, Antwan is twenty-one?

A. Yes.

Q. And so Isom is about three years younger than you? I thi he's seventeen now?

A. Yes.

Q. But you have known him all your life?

A. Yes.

Q. And you all are not close friends?

A. No.

Q. But you hung around together?

A. Yes.

Q. And your families are close?

A. Yes.
Q. I believe your mother said she knows Isom's aunt going back to college?
A. Yes.
Q. And now, how about Dante Dungee? Did you know him?
A. I had seen him before.
Q. You had seen him before?
A. Yes.
Q. And how many times had you seen him?
A. At high school, a few times.
Q. That's where you known him from and had seen him, at Eau Claire High School?
A. Yes.
Q. You'd never seen him at your house?
A. He had been there.
Q. Dante had?
A. Yes.
Q. Had he met Antwan at your house before?
A. Yes.
Q. Who introduced Antwan to Dante? You?
A. Yes.
Q. Was Isom present?
A. Yes.
Q. Now, on the 29th, you were employed?
A. Yes.

Q. But did not work that day?
A. No.
Q. Was that your day off?
A. Yes. I had two days off.
Q. That was one of them?
A. Yes.
Q. How about Antwan? Was he employed?
A. Yes.
Q. Where was he working?
A. KFC and (inaudible)
Q. KFC is Kentucky Fried Chicken?
A. Yes.
Q. Which one?
A. In Irmo.
Q. The one in Irmo?
A. Yes.
Q. And was he working on that day?
A. No.
Q. So you were off from your job on that Monday from Lizard's Thicket, and Antwan was off on that Monday, the 29th, from Kentucky Fried Chicken in Irmo?
A. Yes.
Q. Mr. Strickler asked you a number of questions about that evening. He asked you about that day, and then he said he did want you to talk about the total day but to talk about that

evening.

Is it fair to say that you were with Antwan during that whole day?

A. Yes.

Q. Had you all been away from Carola during some time of the day, the 29th?

A. Yes.

Q. And what was the last time -- each and every time you all left Carola, had you left together?

A. Yes.

Q. And what was the last time that you all arrived back home at Carola together?

A. Two or three.

Q. So from about two or three o'clock on the 29th, until twelve o'clock on the 29th, besides the time Antwan had driven Mr. Davis to the Circle K . .

A. Yes.

Q. . . you all were together?

A. Yes.

Q. At 1101 Carola?

A. Yes.

Q. And the only time he was out of your presence -- not talking about him being in another room or something like that, that ten or fifteen minute period of time after your mother and stepfather came home, that Antwan drove Mr. Davis to the

Circle K?

A. Yes.

Q. About what time was that?

A. I can't really tell you the time.

Q. You don't know what time it was?

A. No.

Q. The ballgame, did it start right at nine o'clock?

A. No.

Q. It did not?

A. I don't think so.

Q. Were you all watching it at nine o'clock?

A. No.

Q. What were you all doing at nine o'clock?

A. Listening to the radio.

Q. What time then did you all actually start watching the ballgame?

A. About nine thirty.

Q. About nine thirty?

A. Yes.

Q. So by nine thirty I guess you'd missed the tip-off?

A. Yes.

Q. You didn't see the beginning of the Duke-Ucon game?

A. No.

Q. Why?

A. I don't know why.

Q. I thought Antwan was a big Duke fan.
A. He is.
Q. And Duke was supposed to be unbeatable that year?
A. . .
Q. Did you know that?
A. Yeah.
Q. Matter of fact, if they had won that game they would have set the record, NCAA record, for a team that won the most games in any season ever.
A. They didn't win.
Q. That's right, and that was because of (Inaudible) and Ricky Moore?
A. Yes.
Q. But he was a big Duke fan and wore a Duke jersey?
A. Yes.
Q. Whose number did it have on it?
A. I don't know. I don't remember.
Q. He didn't care to watch the tip-off?
A. I don't understand.
Q. He didn't watch the tip-off of the ballgame?
A. No. We missed it.
Q. You all were in the bedroom, weren't you?
A. Yes.
Q. Looking at TV?
A. No. We just didn't catch the beginning.

Q. Sir?

A. We didn't catch the beginning.

Q. You didn't catch -- it wasn't that important?

A. . .

Q. You were home?

A. Yes.

Q. In the bedroom?

A. Yes.

Q. With Antwan?

A. Yes.

Q. From the time Antwan came back from the store with Mr. Davis, until midnight, you and he were in each other's presenc

A. Yes.

Q. Either listening to the radio or watching the ballgame?

A. Yes.

Q. He never left your presence?

A. No.

Q. You never left his presence?

A. No.

Q. Okay. Have you ever been to CJ's?

A. Yes.

Q. Would it be uncommon for you to go to CJ's?

A. No.

Q. You would go frequently?

A. Yes.

Q. How about the Circle K?
A. Yes, sir.
Q. Did you go to -- does the Circle K have a video?
A. Yes.
Q. Does CJ?
A. I'm not sure.
Q. Did you see Isom on the night of March 29th?
A. No.
Q. Did you see Dante on the night of March 29, 1999?
A. No.
Q. Did you go to the Circle K on that night?
A. No.
Q. How about CJ's?
A. No.
Q. Did not go?
A. No.
Q. Was not there?
A. No.
Q. You've been in the Courtroom most of the week?
A. Yes, sir.
Q. You remember Tim Myers?
A. Yes.
Q. Do you know Tim?
A. No.
Q. Did you know of him from the neighborhood? He's not a

friend of yours or anything?

A. No.

Q. And you know what he looked like?

A. Yes.

Q. Have you been over these photographs, State's Exhibits 38, 39 and 40?

A. . .

Q. You remember those?

A. No.

Q. When he was talking about those and identifying individua on there?

A. Yes.

Q. Do you remember that testimony?

A. Not exactly.

Q. Does that look like CJ's?

A. Yes.

Q. You see the date on there, the 29th?

A. Yes.

Q. You see the time, six forty-seven?

A. Yes.

Q. Does that look like CJ's?

A. Yes.

Q. Matter of fact, it's the same Clerk, isn't it? The lady here?

A. . .

THE COURT: Please refer to them by number.

MR. McMAHON: I haven't had them marked. I'm sorry, this is State's Exhibit 39. I apologize.

BY MR. McMAHON:

Q. This lady here is this lady here?

A. Yes.

MR. McMAHON: I'd like to mark these, Your Honor, for identification purposes only.

(Still shot photographs marked State's Exhibits 46 and 47 for identification purposes)

BY MR. McMAHON:

Q. I believe you told the jury -- Mr. Strickler asked you earlier if you pled guilty or were adjudicated a delinquent for accessory to common law robbery?

A. Yes.

Q. Back in '96?

A. Yes.

Q. Now, referring to State's Exhibit 47 for identification purposes only, there's no question that's CJ's?

A. Yes.

Q. No question that's you right there, isn't it?

A. Yes.

Q. And no question it's 3 29 99?

A. Yes.

Q. No question of the time nine thirty-two P.M.?

A. Yes.

Q. So tell the jury how you were home watching the ball-game -- how you were at your home from two o'clock to midnight and you were also at CJ's at nine thirty-two P.M.?

A. I went to the store.

Q. You went to the store, and I guess when you went to the store the beeper on the door didn't work?

A. It did.

Q. So you weren't home from two until midnight on the 29th, were you?

A. Yes, I was.

Q. But you went to the store?

A. I went to the store.

Q. Sir?

A. I went to the store.

Q. You told this jury you were in that bedroom . .

A. Yes.

Q. . . watching that ballgame from nine o'clock to midnight?

A. Yes.

Q. That's a lie?

A. It's not a lie.

Q. You were at the store at nine thirty-two?

A. I went to the store.

Q. So you were not in your bedroom at nine thirty-two, were you?

A. No.
Q. And you don't know what Antwan was doing?
A. Yes.
Q. How do you know?
A. Because I left him there.
Q. You left him there?
A. Yes.
Q. When you leave somebody at a particular place, you can -- you just know in your mind he's still there?
A. Yes.
Q. Why didn't you tell us before that you left the house that night?
A. I didn't remember.
Q. You remembered all these other things?
A. I didn't remember I had gone to the store.
Q. You didn't remember on this important night of 3 29 99?
A. . .
Q. You've been calling lawyers about it for two years, haven't you?
A. Yes.
Q. You called who? Mr. Johnson.
A. . .
Q. Did you call Mr. Johnson?
A. Who is that?
Q. Yes or no, did you call Mr. Johnson?

A. I don't know who he is.

Q. Did you call Mr. deSaussure?

A. Yes.

Q. Did you try to call Mr. Durham?

A. Yes.

Q. Did you talk to Mr. Strickler?

A. Yes.

Q. So lawyer after lawyer you told about this night, about this alibi?

A. No,I haven't.

Q. But you forgot this? This piece of evidence?

A. Yes.

Q. It wasn't important?

A. I didn't remember it.

Q. State's Exhibit 30, these are your shoes?

A. Yes.

Q. These are size 11?

A. Yes.

Q. And these shoes, State's Exhibit 33, whose shoes are they

A. Antwan's.

Q. Not yours?

A. No.

Q. Whose sweater?

A. Mine.

Q. Did you go to the bond hearing?

A. Yes.
Q. Where was that hearing held?
A. I believe Richland County.
MR. McMAHON: Your Honor, I'd move State's Exhibits 46 and 47 in evidence.
THE COURT: Any objection?
MR. STRICKLER: Without objection.
THE COURT: All right.
(Still shot photos entered in evidence as State's Exhibits 46 and 47)
BY MR. McMAHON:
Q. You went to a bond hearing, you said?
A. Yes.
Q. On April 9, 1999, a couple of days after the search warrant. Does that sound about right?
A. I believe so.
Q. I'm not trying to trick you on the dates, but a couple of days after the search warrant as well as you remember?
A. No.
Q. When do you recall it being?
A. I recall the next morning.
Q. The next morning? Okay. You were present?
A. Yes.
Q. And there was a Judge there?
A. Yes.

Q. And a prosecutor?

A. . .

Q. You don't remember?

A. No.

Q. And Antwan was there?

A. Yes.

Q. That was for the purpose of setting a bond?

A. Yes.

Q. And he addressed the Court?

A. Yes.

Q. He said something to the Court, right?

A. Yes.

MR. McMAHON: Your Honor, may I approach the bench?

THE COURT: Yes.

(Conference at the bench off the record between counsel and the Court)

THE COURT: Ladies and gentlemen, I have a matter I need to take up out of your presence. Please go to your jury room for a few minutes.

Remember not to talk about the case.

(Jury excused from Courtroom at 11:08 A.M.)

THE COURT: Let's put it all on the record. Mr. McMahon, I understand you want to put the statement in.

MR. McMAHON: Your Honor, also I would make a motion for the witness to be taken from the Courtroom and held in custody

until we can conclude his cross examination.

THE COURT: Officer, take the witness to a secure location so he is not able to hear what's going on in the Courtroom.

(Witness excused from Courtroom)

THE COURT: All right, Mr. McMahon.

MR. McMAHON: Your Honor, may it please the Court, the area I was going to proceed into at this time was the bond hearing on Mr. Wilds which was on -- he had two bond hearings. The first was on 4 9 99, at the Richland County Detention Center.

At that time, he was charged with assault and battery with intent to kill and armed robbery, and at the hearing for purpose of setting the bond I would point out he was actually given a Ten Thousand Dollar PR bond and no contact with the victim.

Present during that proceeding, among other individuals, was the Assistant Solicitor that was on call that week, Alex Postic.

We prepare forms in the normal course of business on bond hearings, giving the warrant number, the charges, the name of Defendant and things like that, other information.

According to his notes, at that time he did not have the Defendant's history, which is not unusual. It was indicated that there was no record, and it was further indicated the Defendant's family is here and seem okay.

The Defendant worked at Kelly Temp and KFC in Irmo. The Defendant says he has an alibi defense, which he has presented

obviously an alibi defense -- that he was at work, which he hadn't been.

The Defendant said the Codefendant was not trustworthy. (Solicitor reading from notes of bond hearing)

(Notes and attached sheet marked Court's Exhibits 7 and 8 for identification purposes)

Defendant will be staying at following addresses on sheet attached, and the attached sheet has addresses for Linda and Herbert Davis and others, and various family members.

Your Honor, my position at this time is that because of h being present, and I understand voluntariness, but if he's pre sent at the hearing this impeaches him, and it's a statement against his interest, the Defendant's interest, under 804 -- I think it's 804. The number escapes me at the moment, but be- yond that I didn't want to just plow in there without bringing the issue to the Court.

I have marked these items for identification . .

THE COURT: Court's Exhibits.

MR. McMAHON: Court's Exhibits 7 and 8, Your Honor.

Your Honor, I would further point out that in the case notes of Detective Burns in regard to this case, what happened with this information was that it got transferred through our system and was presented to Detective Burns.

I'm saying there are just so many points along the way that somebody can pick up a telephone and call and kind of kee

the ball rolling in a particular case, but it did get passed on to Detective Burns and she continued working on the case, and on pages 10, 11 and 12 of her case notes, that have previously been presented to Mr. Strickler, she followed up.

It says also that Wilds stated he had an alibi defense because he was working at Kentucky Fried Chicken at Irmo and Kelly Temporary Service. 4 10 99 Detective Burns checked with Kentucky Fried at Irmo, spoke with the manager of KFC; stated that suspect didn't work on Monday but he would have to check with main office to see if suspect came in.

On 4 12 99 received call from him, stating suspect was not working on 3 29 99. She also checked with Kelly Temporary Services, and found that suspect was released in February of 1999.

That's the primary information from Detective Burns' notes. We have Mr. Postic present who was the Solicitor at that time.

THE COURT: Do you want to proffer any testimony from Mr. Postic?

MR. McMAHON: Your Honor, . .

THE COURT: Not in front of the jury.

MR. McMAHON: . . I'm not sure of the manner in which I should proceed. I'm using this for two purposes. I think it goes to credibility. He says he was home, and his credibility, quite frankly, ain't much right now.

I think this goes to his credibility and also he heard

this at the bond hearing. Of course, I don't know what he's going to say.

But I would offer Mr. Postic.

THE COURT: My concern is this. As we discussed at the bench a moment ago, it's a question involving -- this is precisely the reason that I am careful about people talking at bond hearings. I tell them these things can come back to haunt them, as it does now.

The question is voluntariness, whether he had counsel, whether or not the Magistrate asked him a direct question. If the Magistrate, for example, asked him a direct question, there is a question as to whether it was voluntary or not.

If it's a matter that the Judge said, is there anything you want to say, and he says something, that's a little bit different.

It seems to me it's a question of whether he was in a position where he had to answer or state something specifically.

MR. McMAHON: In light of His Honor's position, the State calls Mr. Postic.

THE COURT: Okay. Let me note for the record this is not in front of the jury.

ALEX POSTIC, being duly sworn, testified as follows, out of the presence of the jury:

DIRECT EXAMINATION

BY MR. McMAHON:

MR. POSTIC IN CAMERA

Q. Mr. Postic, you're an Assistant Solicitor.
A. Correct.
Q. Were you assigned to what is known as ELA back on 4 9 99 during the course of that week?
A. Yes, I was.
Q. And as part of that, did you attend bond hearings at the Richland County Detention Center?
A. That's right.
Q. Now, I want to show you some documents and ask if you can identify those documents for the Court?
A. These are case sheets that we have -- Court's Exhibit 7 are case sheets we have. Court's Exhibit 7 are case sheets we have when we do bond hearings at the jail.

They have information on the Defendant, the warrant numbers. At the very bottom, there are case notes, and what happens is that the Defendant comes before a Magistrate at Bond Court.

We give the Bond Court Judge information as to the Defendant's record, and if we don't have his address we ask the Defendant on the record what his address is.

Q. Now, on this particular form, Court's 7, there appear to be two different types of writing. Can you identify whose writing that is?
A. The black handwriting is the handwriting of the Clerk, and the Clerk signs his or her name down here, and it looks like

Cynthia Murray, the paralegal in our office, and the other hand writing is my handwriting.

Q. Now, everything down in this area would be your writing?

A. That's my handwriting. I also have handwriting after the bond amount, and there is something on the side.

Q. Something on the side is about the attached sheet?

A. Yes, that's correct.

Q. And is that Court's Exhibit 8?

A. That's it.

Q. Now, do you recall the Defendant being present that day?

A. Yes.

Q. You reviewed these notes prior to testifying?

A. Absolutely, and I remember the incident.

Q. And do you recall the Defendant making any statements during the course of the bond hearing?

A. Absolutely.

Q. The Magistrate, I believe Judge Grice in this case, . .

MR. STRICKLER: Objection to leading at this point, Your Honor.

BY MR. McMAHON:

Q. What do the magistrates do as far as bond hearings generally . .

MR. STRICKLER: Object to general questions.

THE COURT: Overruled. I'm going to let him testify.

MR. McMAHON: I'm asking him what, if anything, does the

Magistrate explain to the Defendant generally in these proceeding. That's all I'm asking, Mr. Bostic.

MR. STRICKLER: And, of course, I object to leading on that question. What does he explain pre-supposes that he explains something.

THE COURT: Just ask if the Magistrate explains anything.

BY MR. McMAHON:

Q. Does the magistrate explain anything?

A. All the Magistrate does is -- the Magistrate or the Clerk at the beginning of the bond hearing -- the Defendant is in the room, and he tells them this is a bond setting, and the Judge can ask about his address, employment and that sort of thing. The bond setting obviously is on his flight risk and danger to the community.

At that point, individual Defendants will come forward and the Magistrate will ask where they live, where they work, and that's it.

Q. Now, how was it that the Defendant in this case, Mr. Wilds, made a statement?

A. He did. I remember he had three to five family members with him at some point, and I took these notes where the Defendant mentioned that he worked . .

Q. Let me stop you just a minute. Did he make a statement in response to any direct question by a Magistrate?

A. No, he just volunteered this information.

Q. Was it in the course of the bond setting?

A. This was during the bond setting.

Q. And not in response to any questions?

A. No.

Q. Did it appear from your observation that this statement was made by the Defendant -- were the statements he made free and voluntary?

A. It appeared that way.

Q. And what, if anything, did he say?

A. He said that he had two jobs. He worked at Kelly Temp Agency and he also worked at Kentucky Fried Chicken in Irmo. H said at that time that he had an alibi defense; that he was at work at Kentucky Fried Chicken at that time.

He stated that the Co-Defendant in this case was not trust worthy; that he had only been in Columbia seven to eight months and his sister or someone presenting as his sister said he was not mirandized at any point.

The Defendant mentioned that his attorney was Oliver Johnson, and that's all he stated. This Court's Exhibit 8 -- I remember the Defendant's family or whoever was there gave sev eral addresses at the bond setting, and I asked that they write them all down for me.

That's what this is.

Q. Was there a bond set?

A. Yes.

Q. What was it?
A. A Ten Thousand PR bond.
Q. And this is your comment?
A. My comment.
Q. The Judge had gotten soft?
A. Yes.
Q. Mr. Postic, was the Defendant threatened in any manner to make a statement?
A. No.
Q. Was it in response to any questions?
A. No.
Q. Was he given any promises for the statement?
A. No.
Q. No coercion of any kind?
A. No.
Q. Was any officer -- was Detective Burns present during the bond setting?
A. I don't think so.
Q. Thank you. I have no further questions.

THE COURT: Mr. Stricker, do you want to ask him any questions?

MR. STRICKLER: Yes, sir, thank you.

CROSS EXAMINATION OUT OF PRESENCE OF THE JURY

BY MR. STRICKLER:

Q. Mr. Postic, how often do you conduct bond settings?

A. I think we're on ELA three to four times a year and we do a bond setting in the morning and a bond setting in the afternoon.

Q. For an entire week?

A. For seven days.

Q. Bond settings morning and afternoon?

A. Yes, and I think there is a time on the weekends, in the morning on Saturday and Sunday.

Q. And your testimony is that this was on April 9 of 1999?

A. Yes.

Q. Approximately two years ago?

A. Yes.

Q. And your testimony is that you have an independent recollection of the substance of what you've testified to?

A. I do. I had just started working here. I had been working in York and we didn't do bond settings, so it was kind of new.

Q. And you have an independent recollection of what was said by the Magistrate or the Clerk as far as that particular bond setting?

A. Pretty much the same every time.

Q. That's not my question. Do you have an independent recollection of what was said by the Magistrate or the Clerk at that particular bond setting?

A. I remember the Magistrate did not ask anything out of the

ordinary.
Q. Do you have an independent recollection of what was said by the Magistrate or the Clerk at the beginning of the bond setting?
A. I do not remember it was different.
Q. Who said it?
A. This would be in City Court and I believe that normally the ..
Q. I don't want normally. Who said it?
A. . .
Q. In this case, who said it?
A. I can't remember.
Q. You don't know whether it was the City Judge or the City Clerk, correct?
A. That's right.
Q. You have no independent recollection of precisely what was said on this occasion, as far as the preliminary comments to the persons assembled?
A. That's true.
Q. Did anyone on this occasion advise Mr. Wilds that he didn't have to say anything?
A. That's standard.
Q. That he did not have to answer any questions?
A. There were no questions asked but where he lived and where he worked.

Q. Did anyone on this occasion advise him that he did not have to answer any questions?

A. I don't remember that.

Q. Did anyone caution him not to volunteer any information regarding his case?

A. That's standard.

Q. Was he, Mr. Wilds, cautioned on this occasion that he did not have to volunteer information or that he should not volunteer information about his case?

A. I can't remember.

Q. You said that's standard, and what you indicated was standard before was that either the Magistrate or the Clerk advised the assembled defendants that this is a bond setting and the Judge will ask where you live and your employment.

Are those the customary things, but is it customary that they are advised not to make any statements?

A. What they'll do is point me out as the Solicitor and they will mention something like that.

Q. You have no independent recollection of what was said on this occasion to Mr. Wilds?

A. What I remember is that he was asked -- he was not interrogated about the facts of this case. He was asked his address and was asked his employment, and that's when he volunteered this information.

Q. Okay. Thank you.

THE COURT: Any other questions?

MR. McMAHON: No, sir.

THE COURT: You can step down.

(Witness excused from stand)

THE COURT: Any other witnesses on this issue?

MR. McMAHON: No, Your Honor.

THE COURT: Mr. Strickler, do you want to call any witnesses on this issue?

MR. STRICKLER: One moment, please, Your Honor. We'd call Mr. Wilds on this issue.

ISRAEL ANTWAN WILDS, being duly sworn, testified as follows, out of the presence of the jury:

DIRECT EXAMINATION

BY MR. STRICKLER:

Q. Do you recall the bond hearing in your case?

A. Yes, I do.

THE COURT: Before he goes any further, just one thing. I equate this to something similar to a Jackson v Denno hearing.

Anything that you testify to here the State would not be able to independently use against you in any sort of rebuttal of the case or anything.

This is just for the purposes of this hearing.

MR. STRICKLER: Thank you.

THE COURT: Go ahead.

Q. You remember the bond hearing after your arrest in this

A. Yes, sir.
Q. Now, at that point in time, did you have an attorney?
A. No, I didn't.
Q. What about the name of Johnson?
A. I didn't have him at this time. I was in the process of getting him, but I didn't have enough money to afford him.
Q. Had you ever personally spoken to Mr. Johnson?
A. No, I didn't.
Q. Was Mr. Johnson present at that hearing?
A. No, he wasn't.
Q. Had Mr. Johnson given you any advice as to your conduct at that time?
A. No, he didn't.
Q. Were you ever advised at that hearing regarding not talkin about your case?
A. No, I wasn't. The only thing said was the Judge is going to ask you questions about your job, where you work, and where you stay at, and that's it.
Q. And what did you tell the Court?
A. She asked me where I worked, and I said Kelly Temporary Services and KFC.
Q. All right, did you tell them about the alibi defense?
A. No, I didn't. I said I worked at KFC and Kelly. That was it.
Q. All right. Did you have any further conversation at that

time?
A. She asked me where I stayed, and I told her.
Q. Did you have any conversation with Mr. Postic, the Solicitor who just testified?
A. No, sir, I don't really remember him.
Q. Do you know what, if anything, anyone else in your family who was there may have told Mr. Postic at that time?
A. No.
Q. You weren't around to hear what they were saying?
A. No, sir.
Q. Thank you.

THE COURT: Any cross?

MR. McMAHON: Just a couple.

CROSS EXAMINATION OUT OF PRESENCE OF THE JURY

BY MR. McMAHON:

Q. As I understand it, you were asked what? Where you lived?
A. Yes.
Q. And where you worked?
A. Yes.
Q. And you weren't asked any other questions, other than that?
A. No, sir.
Q. You weren't asked any questions about the crime?
A. No, sir.
Q. Did you know what you were charged with?
A. They read that.

Q. And they did not ask any other questions?

A. No,sir. At first -- in the beginning of the morning, I di not have a charge and like two or three days before a warrant even came.

The Judge kept sending me back to the cell until he found the warrant.

Q. When you were given a bond, it was a Ten Thousand Dollar PR bond?

A. Yes, sir.

Q. You were only asked where you were staying and where you worked?

A. Yes, sir.

Q. And nobody has questioned you about the crime?

A. No.

Q. Your testimony is you didn't make any statements?

A. No, sir. Where I lived and where I worked. That's the only thing I answered.

Q. You answered those voluntarily?

A. He asked me. I answered the questions.

Q. But you did that voluntarily? You didn't object?

A. I couldn't object. How can I tell the Judge I'm not going to answer the questions?

Q. You didn't object -- that's all I'm asking.

Did you have family members there?

A. Yes, sir.

Q. Who all was there?
A. My mother and sister, Terrell, and that was it, I think.
Q. Someone wrote down those addresses? Who wrote down these addresses?
A. . .
Q. Do you recognize that writing?
A. Not at all.
Q. I don't have any other questions. Thank you.
THE COURT: Anything further?
MR. STRICKLER: Yes, sir.
REDIRECT EXAMINATION OUT OF PRESENCE OF THE JURY
BY MR. STRICKLER:
Q. No one at that hearing advised you not to make any statements though, did they?
A. No,sir.
Q. That's all.
THE COURT: All right, you can step down.
(Witness excused from stand)
THE COURT: Any other witnesses you want to call, Mr. Strickler?
MR. STRICKLER: No,sir.
THE COURT: All right, anything else?
MR. McMAHON: The only thing is that I would move, if I have to do this, that the testimony in camera from Detective Burns be incorporated in this hearing, for purposes of prior

advisement of rights.

I would just move that that be incorporated without having to call the witness.

THE COURT: I note that.

MR. McMAHON: Thank you.

THE COURT: Anything you want to add, Mr. Strickler?

MR. STRICKLER: Simply that as to the proceedings, Mr. Wilds said, I cannot not answer questions from the Judge. That has to do with the voluntariness of anything he may have said there.

THE COURT: All right. Counsel, I'm reluctant to let the statement in for this reason. I don't think there is any question that he stated what was related by Mr. Postic and contained in his notes.

What bothers me is he didn't have a lawyer to advise him. Again, when I hold a bond hearing, I make it a point to ask if they want a lawyer and let them get one. He may have tried to wing it a little bit through that hearing, and try to get by the Judge and get his bond set, which he did get a Thousand Dollar PR bond.

But it would still have been better if he had had a lawyer with him, and he didn't have a lawyer with him at that time. My feeling is, from the record, that he had had his rights read to him before that, and I'm not sure -- I can't guarantee that he was sophisticated enough to be able to waive his rights

in the discussion of the hearing.

So I am reluctant to do it. Again, this is a classic example of why I do what I do at bond hearings. Frankly, I feel better now about what I do at bond hearings because of this particular situation.

I don't think there's any question but that he thought he was going to get by the Magistrate with it, and apparently he did get by the Magistrate with it.

I'm reluctant to let it in. I think at this point we've got a good record, and there very frankly is no reason to put something in the record now that's going to get us reversed at this point.

Okay, we'll bring the jury back in. Let's take a short break before we do that.

(Court took brief recess and resumed)

(Jury returned to Courtroom at 12:04 P.M. Witness Antonio Terrell Frederick resumed the stand)

THE COURT: All parties are present in the Courtroom, and all jurors have returned.

You may continue.

MR. McMAHON: Your Honor, I have no further questions of Mr. Frederick.

THE COURT: Any redirect?

MR. STRICKLER: Just briefly.

REDIRECT EXAMINATION

BY MR. STRICKLER:

Q. Mr. Frederick, when you went to the store it was at the time shown on the photograph, nine thirty-two?

A. Yes, sir.

Q. Where was Israel?

A. I don't know.

Q. Was Israel with you?

A. No.

Q. How long did it take you to go to the store and come back?

A. Five or six minutes.

Q. Okay. Was Israel at his residence on Carola when you left to go to the store?

A. Yes.

Q. Was Israel at this address on Carola when you got back?

A. Yes, he was.

Q. That's why you missed the tip-off?

A. Yes.

Q. Thank you.

THE COURT: Anything else?

RECROSS EXAMINATION BY MR. McMAHON:

Q. Mr. Frederick, what time was the tip-off?

A. I don't know.

Q. So you don't know if that's why you missed the tip-off?

A. I told you before that I missed the first part of the

game.

Q. You don't know if -- in the six minutes it took you to walk from your house to CJ's and make whatever purchase you had to make at CJ's, and go back to your house -- you don't know if that six minute period of time caused you to miss the tip-off?

A. Yes.

Q. It did?

A. Either it did or it didn't.

Q. You don't know if it caused you to miss it or not? Is that what you're testifying?

A. Yes.

Q. I don't have any further questions.

THE COURT: Step down, please.

(Witness excused from stand)

MR. STRICKLER: Beg the Court's indulgence.

THE COURT: Yes, sir.

MR. STRICKLER: May we approach?

THE COURT: Yes.

(Conference at the bench off the record between counsel and the Court)

THE COURT: Let me ask you to step in your jury room for a few minutes. Please don't discuss the case.

(Jury excused from Courtroom)

THE COURT: All right, I understand, Mr. Strickler, you're

about to conclude your case, and that Mr. Wild will not testify. Is that correct?

MR. STRICKLER: Yes, sir. I would ask the Court to confer with him briefly in that regard. At this point in time, he does not wish to testify.

THE COURT: Mr. Wilds, stand up just briefly. You are still under oath.

Is that correct, Mr. Wilds, that you still determine you will not testify?

DEFENDANT: Yes, sir.

THE COURT: Okay. I don't think there's any need to ask you anything else. This is your decision?

DEFENDANT: Yes, sir.

THE COURT: Okay. You can have a seat.

(Defendant being seated)

THE COURT: Are you resting your case?

MR. STRICKLER: Yes, sir.

THE COURT: Do you want -- I know a lot of times you wait and do motions if the State is going to put up rebuttal, but as a precautionary thing, I'd like to at least note motions, in case anything comes up.

MR. STRICKLER: If I could do it now, I'd ask the record to reflect the motions were made subsequent to actually resting before the jury.

All I would do at this time is, one, renew my directed

verdict motions on the same basis as before, now that Your Honor has the Defense testimony to take in consideration. I would renew as well my request to revisit your rulings, the same rulings I asked you to revisit and declare a mistrial in the State's case.

I have no new basis for moving for directed verdict or for mistrial at this point in time.

THE COURT: Okay, I note that, and would deny the motions, and we'll let you rest in front of the jury. We'll just note it for the record at that point.

MR. STRICKLER: Thank you.

THE COURT: Is there any reply from the State?

MR. McMAHON: I'm not going to put up any reply.

THE COURT: Let's talk about charges for a minute. Have you had a chance to look over the intended charge?

What I'm asking is if you have any requests to alter the charge in any fashion.

MR. McMAHON: Judge, the only thing I have is on your page two, under presumption of innocence up at the top. It is the solemn duty as a juror if not clearly convinced -- I always thought you charged the reverse of that also. If the State proves the case beyond a reasonable doubt it is your duty to return a verdict of guilty.

THE COURT: Let me look at it.

MR. McMAHON: Yes, sir.

MR. STRICKLER: Your Honor, I don't mean to interrupt, but that language is included in your discussion of reasonable doubt.

THE COURT: It is covered.

MR. McMAHON: Yes, it's included under reasonable doubt but it's not included in presumption of innocence.

THE COURT: I think this is the standard language.

MR. McMAHON: Are you going to send the indictments in?

THE COURT: I may. I probably will not.

MR. McMAHON: We have nothing else.

THE COURT: Mr. Srickler, any requests?

MR. STRICKLER: Sir, I think the charge will suffice. I would have nothing further.

THE COURT: Counsel, as you know, my practice has been to send the charge in to the jury. Anybody have any exception to that?

MR. McMAHON: No, sir, we have none.

MR. STRICKLER: No, sir.

THE COURT: As long as the indictments are clean, I will probably use them. Anybody object to that?

MR. STRICKLER: May I approach?

MR. McMAHON: The indictment for armed robbery is stamped. I would ask that Your Honor prepare a verdict sheet for the jury to use.

THE COURT: I will submit a verdict sheet.

Counsel, do you want to go ahead and do arguments and charge at this point, or come back? I'm okay either way.

MR. STRICKLER: Could we take a few minutes first.

THE COURT: Let's do that. We'll take about ten minutes.

(Court took brief recess and resumed)

THE COURT: A couple of things for the record. One is, in going back and looking at the charge, I am going to rearrange it in a couple of respects.

It's only a matter of placement. I noticed alibi was up in a different section. I usually put that after the charge so the jury understands that.

MR. STRICKLER: That's fine.

THE COURT: And the statement of Defendant is a little further down but the language stays the same.

Also, I -- where is Mr. Frederick? I want Mr. Frederick in the Courtroom. Based on his testimony earlier, I think I am required to convene a hearing to determine whether he should be held in contempt for his testimony.

The jury will know nothing about that, and you may want to find out if someone can provide counsel for him. You can wait until he comes back.

Bring the jury back.

(Jury returned to the Courtroom)

THE COURT: Mr. Strickler?

MR. STRICKLER: Thank you, Your Honor. The Defense rests

and we would ask the Court to note the motions we have previously made and took up outside the presence of the jury, and ask that they be noted as having been made at this point.

THE COURT: All right. We will do so. I will note the motions as being raised at this point. The rulings remain the same.

Ladies and gentlemen of the jury, the Defense has now rested their case, and we are -- as I understand it, the State will not call any rebuttal testimony?

MR. McMAHON: That's right.

THE COURT: All right, we have now concluded all the evidence in the case, and what normally happens is when the Defens rests we usually have the jury go out and do motions, but we have taken care of that.

At this time, we're going to have closing statements. The attorneys will have closing statements, and I will then give yo a charge on the law.

After that, we will turn the case over to you.

It is very important that you listen as close as you can to closing statements. The State will have the first -- they are required to have the first statement, which Ms. Campbell will make.

Then Mr. Strickler will close for the Defendant, and we'l have final closing for the State.

At that point I'll charge on the law. We may take a brea

somewhere in there in order to give you a chance to use the restroom or anything, but we will conclude all of this as soon as possible.

Let's try to minimize any movement or moving around while the attorneys are giving their statements, please.

Ms. Campbell?

MS. CAMPBELL: May it please the Court?

THE COURT: Yes, maam.

MS. CAMPBELL: Ladies and gentlemen, the first thing I want to do is to thank you for your attention over the last four days to this case, and I'm sure you have come to realize it's a very important case to the State of South Carolina, to the Rumph Family, and to this Defendant.

I have watched you during the testimony, and you have paid very close attention to the evidence and testimony. You have been very attentive, and we really appreciate it.

Now, I'm going to get up here, as the Judge told you, and I'm going to talk to you briefly or just a little bit about the law in the case, the law that's applicable, and then Mr. Strickler will talk to you, and Mr. McMahon will get up and talk to you about the facts.

Let me tell you right now when I talk about the law if I say something that's different from what the Judge instructs you at the end, take what the Judge instructs.

In the same manner, if anyone talks about the facts and

it's not the facts as you remember them, use your memory as to the facts as you heard from the witness stand and the evidence you have with you back in the jury room.

Now, the roles in this Courtroom are pretty well defined. The State's role is to bring forth all the admissible, relevant evidence as to the crime that occurred on March 29th.

The Defendant's role is to challenge the witnesses or to cross-examine the witnesses.

The Judge's role is to determine what is admissible, what evidence you are able to hear.

The final role and the most important role in the Courtroom is your role, your role individually and your roles collectively.

It is up to the twelve of you to determine what happened on March 29, 1999, and that's the most important role in this case.

I want to take this opportunity to apologize if I have offended anyone. Somehow this week I think I have been clumsier than usual in my questioning, and it was not intentional on my part. Please don't hold it against Mr. Rumph's family.

There has been legal wrangling back and forth at times, and it has been kind of a back and forth game. So if we've done anything as the State to offend you in any way, please do not hold it against us.

You have heard all of the evidence that you can consider

now. All the evidence will go back in the room with you, and you've heard all the testimony. Remember that the Judge told you in this case, and I tell you now, that what I say, what Mr. Strickler says, what Mr. McMahon says, that's not evidence. The evidence is what the witnesses told you, and that is the evidence upon which you must base your verdict.

In criminal cases, ladies and gentlemen, not like a civil case, the law requires that you have the opportunity to observe each witness -- live testimony. You didn't see any depositions in this case. You won't in a criminal case.

It is your job, the most important job in this case, to judge the credibility of the witnesses. They must appear before you so that you can judge their credibility.

The burden of proof, as I pointed out in my opening statement, is on the State of South Carolina, as it should be in every criminal case.

The State must prove that this Defendant is guilty beyond a reasonable doubt. I reiterate, ladies and gentlemen, that is our burden in this case. We welcome that burden.

What is a reasonable doubt? The case law of South Carolina defines or uses this definition which may be helpful for you. Very simply, the case law in State versus Darby defines reasonable doubt as follows:

> Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

If, based upon your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crimes charged, you may find him guilty.

If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The Judge will go further than that, ladies and gentlemen, in instructing you in another part of this case. He will tell you that you can doubt anything, but unless you find there is a real probability that this Defendant is not guilty -- listen ve closely to his charge on that -- that you must find him guilty.

There are two indictments in this case and two different charges on which you must consider all the elements. The first indictment is a murder charge.

Very simply, ladies and gentlemen, the law defines murder in the following manner. Under the laws of South Carolina, murder is defined as follows:

It is the unlawful killing of any person with malice aforethought, either express or implied.

Understanding this definition, one word the Judge will define for you is the word malice. Very simply, ladies and gentlemen, the State must prove at the time the fatal blow was struck, or in this case the fatal shot was fired, that there was malice in the Defendant's heart.

And what is malice? The intentional killing of a person

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without just cause or excuse, and in the popular sense the term malice can mean hatred, ill will, hostility towards another.

In its legal sense, however, malice does not necessarily mean ill will toward the individual injured, but signifies a general malignant recklessness of the lives and safety of others, or a heart lacking in social duty and fatally bent on mischief.

Ladies and gentlemen, let's face it. In the acts of March 29th, no one was more fatally bent on mischief, devoid of social duty, than Israel Wilds.

In considering whether or not he had malice aforethought, what does the term aforethought mean? Very simply, the State must prove that malice must accompany the act of killing.

Malice does not have to exist for any appreciable length of time before the act of killing occurred. All the State has to prove -- and it's uncontradicted in this case -- is that he had malice in his heart at the time the bullet was shot.

This was not an accident. Don't make me shoot you. Malice.

Malice can be implied or express. Express malice is where someone walks up to another person and threatens them. It is sometimes referred to as lying in wait, and in this case, ladies and gentlemen, we have a direct threat, and what is that Express malice. Express malice -- don't make me shoot you.

Strugging with the victim for his wallet, and then what

did he do? He shot Mr. Rumph.

In this case too though, ladies and gentlemen, when referring to implied malice, you look at the Defendant's actions. What he was doing around and at the time the fatal blow was struck.

Ladies and gentlemen, I would submit that an armed robbery and taking a man's Twenty or Thirty Dollars does imply malice. But you don't even have to go there, because the Judge is going to tell you that the use of a deadly weapon in and of itself -- and there's no dispute in this case that the gun is a deadly weapon because it killed him -- is enough to imply malice.

So you can go through express or implied malice, and the State only has to have one of those. In this case we have them both, or just the inference of the gun alone.

One of the charges before you is armed robbery, and that is how this case started out, ladies and gentlemen. Very simply, it was an armed robbery until Israel Wilds decided he wasn't leaving without that wallet.

What is armed robbery? The Judge will define it to you in the following terms. Stealing or larceny, and then there is strong arm robbery, common law robbery, and then there is armed robbery.

In order to find armed robbery, it is important that you understand the elements of the other offenses. Ladies and gentlemen, very simply, to prove that an armed robbery occurred,

the State must prove a larceny. A very simple term for larceny is stealing. To differentiate larceny from robbery, which would be the next level of the element, stealing or larceny -- say, I go to school and I have a locker, and while I'm gone someone goes into my locker and takes my books and permanently deprives me of those. That is larceny. When it becomes robbery -- larceny, the taking and carrying of the property of another, and by the way, ladies and gentlemen, the value of the property is of no consequence. We know it was a few dollar in this case, but the intent to deprive the owner of possession -- the larceny. What gets you to robbery is by the use of force or threats or intimidation.

Larceny becomes robbery if I am there and someone takes my property and threatens or intimidates me so that I give the property up. That raises the level to robbery.

What is armed robbery? Very simply, it is robbery but with intimidation or use of force. He's got a knife or a gun. That's what gets it to armed robbery.

So first you have larceny or stealing, and then you have robbery from the person with force or intimidation, and if he has a weapon that is armed robbery.

The Judge will do a better job of explaining that, I'm sure.

There are two types of evidence that can be presented in a case. One is direct evidence and one is circumstantial

evidence.

The Judge will tell you that it doesn't matter if you have all of one or all of the other, or a combination of the two. They are both just as good.

One is as good as the other, and you can rely on whichever you want, and give it such weight as you determine it should be given.

What is direct evidence? That is the evidence that you perceive with your senses. Typically it refers to eye-witness testimony.

That is perceived by hearing, seeing, touching, smelling, tasting. The five senses. In this case, there were witnesses who saw what happened that night, and they told you what they saw. They got up here and testified to what happened that night.

But you also have circumstantial evidence, and you can rely on both or you can rely on it alone. You can rely on a combination of the two.

What is circumstantial evidence? Very simply, that is defined as proof of a chain of circumstances that point to the existence of facts. It's also called indirect evidence.

In this case, the blood on the shoe that came from Israel Wilds' feet, that he was wearing while he did the killing. The blood that just happened to turn up on Israel Wilds' shoe, the blood that just happened to match, excluding ninety-nine percent plus of the population.

That is circumstantial evidence, but you don't have to rely on just one or the other, because the evidence is overwhelming. What you can do is you can use one to corroborate the other.

The physical evidence that was recovered corroborates what the eye-witnesses said. You also heard from witnesses (portio of sentence inaudible) I know it was somewhat tedious and I apologize for that.

Some witnesses talked about the integrity of the evidence and the chain of custody. The reason the State must put up such evidence is that it shows you that there was absolutely no tampering with this evidence. That is important, and in this case there is no evidence of any tampering.

You also heard testimony from various witnesses, and the Judge will tell you that you are to judge their credibility, which means their believability.

You heard testimony of expert witnesses, and the Judge will tell you that because of their education and training tha they are allowed to give you their opinion, give you test results, which is very important to your determination in this case.

You judge the credibility of expert witnesses the same wa as you judge other witnesses.

You also heard evidence of a statement given by the Defendant in this case. Very simply, ladies and gentlemen, in o

country, under our Constitution, every Defendant must be advised of his Miranda Rights.

Ladies and gentlemen, you have information where Isom Simmons and Joseph Dante Dungee were advised as Israel Wilds was advised, and that is very important.

There is no dispute in this case that the Defendant was advised of his rights, and Investigator Burns did it the right way. You must assume that those statements were voluntary; that he was read his rights, he knew his rights, ladies and gentlemen.

As the Judge told you, the burden is on the State to prove this case to you beyond a reasonable doubt, and the Defendant is under no obligation in this case to put up anything.

But those chose to. In this case, they chose to put up what is called an alibi defense. The burden is on the State to prove that the Defendant was there and participated in this case. In this case, he was the shooter, and he is guilty of murder and armed robbery.

Once the Defense chooses to put up witnesses, then you judge their credibility in the exact same way as you would any witness put up by the State, because their credibility is important, and once they choose to put up an alibi defense you look at that testimony and weigh the credibility of that testimony in the same manner as you do the witnesses put up by the State.

Finally, ladies and gentlemen, in this case, the Defense

put up evidence that the Defendant was at home, watching a basketball game with Terrell, when the shooting occurred.

The Judge will talk to you a little bit about what you look at when you are determining credibility, and I submit, ladies and gentlemen, that common sense alone is enough.

But the things you can look at in determining credibility is -- you can believe all a witness says or nothing a witness says. You can believe a part of it. You can believe many against one, or you can believe one against many.

In determining credibility in this case, look at these factors. What was the appearance of the witness? What was their demeanor on the stand?

Were they forthright or hesitant in their answers? Was their testimony consistent with the evidence? Was the testimony consistent as they gave it, or did their stories change?

What was the ability of the witness to know what they were talking about?

Finally, do they have a reason to fashion their testimony in a certain way? Is there some personal reason or any kind of gain for someone to testify in a certain manner?

Was the witness' testimony corroborated by another witnes or by other evidence and testimony?

This case boils down to credibility, because if you believe the Defendant was home watching a basketball game with Terrell when the shooting occurred, then he wasn't shooting

Anthony Rumph, robbing and shooting him.

Remember, there were two Co-defendants in this case, and what was their ability to observe? They were there and they have told you what occurred. They are also charged with murder and armed robbery.

Finally, ladies and gentlemen, whenever any witness takes the stand, you find out about their prior history, and the purpose of doing that is to let you consider that information in judging their credibility.

That is something for you to consider in this case. I'm going to sit down. Mr. Strickler will speak to you as well as Mr. McMahon for the State will speak to you briefly.

Thank you for your attention.

THE COURT: Mr. Strickler?

MR. STRICKLER: May it please the Court?

THE COURT: Yes, sir.

MR. STRICKLER: Madam Foreman, ladies and gentlemen of the jury, at the start of this case I spoke with you very briefly. At the start of the case, I submitted to you the State's case would consist of the testimony of two people who had every reason they could have to lie.

I'm going to speak to you more fully now, but I don't think that I mis-stated the facts at the start of this case. That is the evidence in this case.

There are three fundamental principles in law, in criminal

law in this case. The first is presumption of innocence, and His Honor will mention this.

Israel, regardless of what he's charged with in this country, is presumed to be innocent, and this presumption remains with him unless and until the State is able to prove his guilt beyond a reasonable doubt.

The burden rests squarely with the State of South Carolina to prove his guilt. The law says the Defendant need prove nothing to you. He does not have to prove to you that he was at home watching a basketball game at nine thirty on March 29th, but the State must prove that he was not, and they must prove that beyond a reasonable doubt.

Now, that proof is the highest standard of proof known to the law of this land. In a civil case, the proof need only be a little bit stronger on one side than it is on the other side, but in a criminal matter that is not enough. That is not sufficient in a case involving criminal law.

So in this case that burden of proof is on the State, and the level of proof is the highest level this country knows, beyond a reasonable doubt.

If you have a reasonable doubt considering the evidence in this case and the guilt of the Defendant, then you are required to return a verdict of not guilty.

Now, in a sense I think this is a case about fiction and reality. I agree that you bring your common sense with you in

the Courtroom. You don't check it at the Courthouse doors.

As I look back at age nineteen, and if you're a sports fan at nineteen years old, and the biggest game of the year is coming on TV, and the team you pull for is in that game, you are going to be in front of that TV, watching the game. That's what common sense says.

The State must prove that he was not, and they must prove it beyond a reasonable doubt, the highest standard of proof known in the law of this land.

The burden of proof is on the State, and the level of proof is beyond a reasonable doubt, as I said.

I'd like to talk to you just briefly about some stuff that was not proven and not gone into, and that form a basis in and of themselves for you to have a doubt as to the State meeting its burden of proof.

These shoes -- I asked Mr. Catoe, the evidence man for the City Police Department, what are the procedures you follow (portion of statement inaudible) to document the appearance of the item as they were when they were recovered.

His testimony was that the shoes, which are a big deal in this case -- nothing was done to document the appearance at that time. Noone photographed the shoes so we could see how they appeared. Noone photographed the shoes to save the appearance of whatever it was they saw on the shoes.

You've got a drawing here but no photograph of the shoes.

Here it is. Nothing to tell us how they looked in April of the year 2000.

There is a shirt they got a cutting from on May 17th of th year 2000.

No problem, the DNA testing people said, with where it was stored when they had it, but where had it been stored between March 29, 1999, and May 17, 2000, or until they put it ir their refrigerator? It had been stored in the evidence room of the Columbia Police Department, not in a refrigerator or under controlled environment to prevent degredation.

What happens to substances from the human body? What happens to them? According to the DNA people, they degrade if not properly stored. They degrade over time.

There was testimony from Investigator Burns about when these shoes were taken, but we don't know what happened with them from the time they were taken from Israel -- no dispute that they were taken from him -- but we don't know how they appeared.

There is also no testimony from Investigator Burns or any one else around that time that they saw anything on them when they took them. They just saw the grey tennis shoes, so they took them, as they should have.

How about these searches? What don't we find from the searches? They search one house and then they go search the other. In each case, looking for a twenty-two. Do they find

any? They're looking for anything related to Anthony Rumph, looking for clothing worn by Israel when they searched his place, and find nothing. The clothing taken was not clothing worn by Israel.

So I guess Israel went home and disposed of this gun and disposed of clothes he was wearing. (Portion inaudible)

What else? Well, where did they not go to look, and this is a big deal. Where did they not go? They don't go to Isom Simmons' place and they don't search Dante Dungee's place. Why? Because these are two people whose word you can trust? They say it and so we're going to take their word for it?

How about look at their places and see if you find a twenty-two caliber gun? They didn't. You know? It's like they told the truth but changed the names around. Just change the names (inaudible)

The truth is, those two were definitely there when Mr. Rumph was murdered. I'm using the term murdered. He was shot and later died, but he was murdered. That's not an issue. The State and I agree.

Mr. Rumph didn't deserve what happened to him. Make no bones about it. We're not here to say anything against him. He was murdered, and those two were definitely there. Those two were definitely there.

But we don't search their places and don't even try to lift a fingerprint off a bullet found at the scene, an unfired

bullet. They didn't even try to compare that to what they got from poor Mr. Rumph's body, a fired bullet.

You know, you don't know unless you look, and they just didn't look. You don't know if you don't look. They didn't search Isom Simmons' place or Joseph Dungee's place. You don't know if you don't look.

The State of South Carolina has a duty and a burden of bringing this information to you, for use in making your decision, a very important decision.

I agree that credibility is an important issue in this case, and I spent some time talking with Mr. Simmons and Mr. Dungee. Perhaps I was not polite to them, but, you know, I have my job to do.

They both claim this man here -- the two of them claimed this young man killed another person. That's what they say, and I'm not going to be polite to them. I'm not going to apologize for it either.

Because you know what? They can't keep their stories straight, and they have got every reason to lie. Each and both of them do.

What do they have to gain from this? I agree -- Ms. Campbell just talked to you about credibility and told you about factors you can consider in judging credibility.

You can consider the demeanor of the individual on the stand, how they appeared to you.

Were they forthright in their responses or were they hesitant? Did they change their stories? Were their stories corroborated, did they corroborate each other?

Neither of their statements have anything in it about an encounter with Israel earlier that night, and then splitting off, and them going to an apartment and Israel going someplace else, and then meeting up again later.

The statements are in evidence. Read them. Neither one of them contains that, not a word of it.

They have said that during the entire time they were locked up in Richland County they didn't have contact or communication with each other. That doesn't happen. People don't vanish there. They communicate between cells in the County Jail. That doesn't happen.

Of course, we have their word for the fact that they were not together. Neither one of them mentions that specifically, and even in getting their stories together for the trial they don't get it together because Isom doesn't mention anything about this statement on Israel's part when they first encounter each other. Dungee mentions it, but Isom doesn't.

What did they have to say on the stand? The State will say, no, no, they say it, they both say it, that Israel shot him. Their statements diverge completely from what they have to say on the stand.

Yes, they do both say Israel shot the man. That point

they were consistent on. That much they were consistent on.

There's nothing in Mr. Simmons' statement about any struggle over a gun. Look at Mr. Simmons' indication that Israel told them to jump the guy.

Where were they before this? Maybe I'm confused, but my understanding was that they passed Mr. Rumph and at some point he started talking to them. Isom's testimony was that they went past them and stopped -- I believe his testimony was they were behind Israel, and then we have Mr. Dungee's statement that Israel was getting ready to get involved in some type of drug deal or something with Mr. Rumph.

Dungee's statement says nothing about that. The testimon about the struggle over the wallet -- how do you struggle with one hand over the gun and still hold your wallet in both hands You can't.

I'm not going to go through all of it. Perhaps all of this is collaborating. They come in here and they can't remem ber all their story. Perhaps that's what it is.

You can consider whether their stories are consistent or inconsistent, and that is part of judging the credibility. Yo can consider how they appeared on the stand and whether they have an interest in this.

You can consider whether they have something to gain fro this, and here's what they say. Oh, I'm just doing this becau it's the right thing to do.

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I am charged with murder and armed robbery, and I am coming in here and giving testimony that can be used against me at a later time, and I'm just testifying because it's the right thing to do.

No one has promised me anything. All right? Mr. Simmons says he hopes to get something for it. You bet he hopes to get something for it.

I submit to you the future does not hold trials on murder charges for Mr. Simmons or Mr. Dungee. Okay?

Clearly, they had something to gain. Definitely.

The next piece of the evidence -- I'm two-thirds of the way through what I've got to say.

The next thing I want to talk about is the shoes with the blood on them. Was blood on them?

The preliminary test for the presence of blood. Remember Mr. Barron from SLED? We extracted DNA, and you need a certain amount. Not too much or too little. Okay?

There was no DNA -- there was none. When I went to extract it, there was none there. But, no problem. Then we send it off to another lab, run the test for human blood -- no blood.

Blood -- no blood -- no DNA. Send it off to see if we can get the answer we want, and we do. We send it off for the mitochondrial DNA test, and we get an answer we like.

It's not right, so we try again. Let's see. There is one in sixteen quadrillion chances someone else's blood matches.

Get information on each probe that they use, each location, thirteen locations.

You know, you get a figure of one in sixteen quadrillion chances that someone else chosen at random is going to match this profile.

Now, to the extent that anyone wants to substitute numbers for their own judgment, I have some problems with that, but if someone wants to substitute numbers, then one in sixtee quadrillion is pretty hard for me to argue with.

But that's not the number we have in this case, because we have also numbers in this case with the mitochondrial DNA where -- you know, SLED has nuclear DNA, and you can come up with numbers like that, but mitochondrial DNA comes up with on in sixteen hundred and some change (inaudible)

We look at roughly seven hundred of these in a control series. Right? Okay, and we find the substance on the swab and the substance taken from the shirt -- let's see. (inaudi Let's assume that's true. What does it tell you?

Now, what's before you and what did you have when the people from the place in Virginia testified?

Well, one chance -- excuse me, four chances -- forty-one forty-two -- four thousand one hundred forty-two.

The frequency for the African population, and that's fou chances in nine hundred and some change. I don't remember the exact number.

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Well, when you boil all of that down, you find out that if you're talking about the African-American population, there's four chances in seven hundred ninety-four, and is that a big deal? Well, if one has not engaged in general cross examination, what you all are left with is a statistic of four chances of four thousand one hundred forty-two of the sequence being seen. That's all you're left with.

Now, we know that if you just look at the report, you have four chances in nine hundred and some change, and if you dig through the actual information which is where this piece of data is buried, you find out what you're actually talking about is people who live in the United States, not people who live in Sierra Leone or wherever the rest of that evidence came from -- people who live in the United States, four chances in seven hundred and ninety-four that that person picked at random is going to match the sequence.

Of that seven hundred and ninety-four in this data base, I don't know if any of them are from South Carolina or any are from Columbia, or whether any of the four that match the sequence were from here in Columbia. I don't know.

I don't know if there is a higher incidence of matching the profile here in Columbia than in the rest of the country. There is no way you could tell without doing a lot of testing, and a lot of testing here.

So, you know what? Those numbers can mean whatever you

want them to mean. You know? All I know is that when the State of South Carolina sat down, the figure was four in four thousand one hundred and twenty-two.

When you happen to know the individual whose DNA you're doing a comparison on is African-American, well, then i becomes one in seven hundred ninety-four.

So you can take the numbers and twist it any way you want. What else didn't they do? They didn't take any sample from Israel.

Who is the most likely contributor of DNA found on a piece of clothing? The person wearing the clothing. Was DNA present? (A portion of statement inaudible)

His defense is alibi. I told you up front that what makes sense makes sense. He was home watching the Duke-UCon game.

Credibility -- I wish all my witnesses would be straight-forward with me from the start. Terrell Frederick wasn't. It doesn't make any difference. The five minutes he was gone isn't enough time to be out wandering the streets with those two guys.

You can consider that, but he no more contradicted him-self than Joseph Dungee or Isom Simmons, who got up there and told you lies. Consider that and make your determination, because that's what your determination has to be. It has to b that Linda Frederick and Herbert Davis and Terrell Frederick

came in here and swore to tell the truth. According to the State's story, it's not only that Israel was gone during that period of time but that he was out wandering the streets for a long time. You have to decide they all lied about everything.

You have to decide that Isom Simmons and Joseph Dungee are people who are credible enough that you trust their word, because that's what you have to rely on.

You know, if I had -- if I could be directing how things happened, I would have the Governor arrange to spend the evening in the Frederick-Davis household, or the Pope, or someone else. Okay?

But I don't get to do that, and, you know what, the people we would be able to bring into Court and testify about what we were doing at any point in time are going to be friends and family, because that is where most of us spend our time.

So you take what you've got, and I wish Antonio Terrell had been straight-forward to begin with, because Antwan doesn't have to account for every second of the night, but common sense will tell you he was not lying about watching Duke and UCon that night.

You don't judge credibility by counting the number of witnesses on one side or the other, or how many witnesses it takes to put the evidence up. That's not how you decide.

We put the witnesses up to tell you what Antwan was doing that night. That's all.

And soon you will have the case in your hands. You took an oath to well and truly try and true deliverance make for the State of South Carolina and Israel Wilds, who you shall have in your charge.

Once I'm done and he's done, His Honor will give you a charge on the law, and he'll tell you that you don't have any friends to reward or enemies to punish. You don't have to judge anyone, other than the witnesses you heard as to their credibility.

I would submit to you all that is an important decision, the most important you will make any time soon, and you owe it to the criminal justice system in South Carolina, to our system of law to say, we demand proof beyond a reasonable doubt on a charge of murder and armed robbery, just as on a charge of shoplifting. You demand proof beyond a reasonable doubt because you are being asked to sit in judgment on another human being. You deserve the level of evidence that makes you comfortable beyond a reasonable doubt that it's the right thing to do to return a verdict of guilty.

I submit to you that after you hear the Judge's charge on the law that you will return a verdict that speaks the truth, a verdict of not guilty.

Thank you.

THE COURT: Ladies and gentlemen, let's take a short break at this point. Unless you need to go ahead and have

your lunch at this time we'll just take about five minutes and then come right back out for the final closing and my charge on the law.

It's very important for you not to talk about the case while you're in the jury room.

(Jury excused from Courtroom for brief period and returned to the Courtroom)

THE COURT: All parties are in the Courtroom and the jury has returned.

Madam Forelady, I've been advised you have a question of some sort, is that correct?

FORELADY: We can wait an hour but not much longer.

THE COURT: Counsel?

(Conference at the bench off the record between counsel and the Court)

THE COURT: We don't believe it will be more than an hour before we complete this, so we will resume.

Thank you.

Mr. McMahon?

MR. McMAHON: Good afternoon, ladies and gentlemen. They say that certain things that happen during the course of our lives, the time that we live on earth, that kind of create global memories; that we all, each and every one of us, remember these events.

We remember where we were, what we were doing, who we were

with when we first heard about these things.

For example, I remember the class I was in, the teacher a the classmates around me when I heard President Kennedy had been shot.

They say there are some people that will remember where they were, who they were with, when they heard about the Challender exploding.

Then there are things that are very personal, that don't affect the community as a whole, but they affect us either within our family or ourselves.

I recently heard a preacher speaking at a funeral say tha the one thing we will remember is our birthdays, although some times we don't remember others as we should, but we do remembe ours.

I think that it's very telling that it's been seven hours give or take a few minutes, and two years, to the date, the hour, the minute, that a bullet entered the body of Anthony Rumph.

I didn't even realize it until I looked at the calendar today, and I'm sure that's an event that his family remembers, a very personal event. It's the time that he began fighting for his life.

And as that bullet entered him, there was what I would describe as a somewhat painful and heroic fight of some hundre days. A hundred days of tracheotomies, of respiratory failure

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of sepsis getting into his body, of skin grafting onto open wounds, but I submit to you -- I submit to you that his fight is, quite frankly, not over yet, because I have the faith to believe that people rest when justice is done. When justice is done.

I'm not going to get up here and demand. I may yell and hollar. That's my nature, but it's not that I'm yelling or hollaring at you. My kids just say that's daddy.

I'm not going to yell and hollar at you to return a verdict of guilty, but it is to return the verdict that the evidence directs you to.

You bring into this Courtroom your life's experience and work history, your education, common sense. Common sense and focusing it -- focusing it like a laser beam on that evidence, so you return a verdict that does justice. That does justice, ladies and gentlemen.

Nothing more and nothing less.

Now, I want to talk about the evidence and how the law applies to that evidence in this case. What is the evidence? What have we proved and how does it apply to the Defendant?

Most stories -- most stories start out at the beginning. At the beginning.

I submit to you in this case the beginning would be the crime scene. That's very important. Before you talk about Isom Simmons and before you talk about Dante Dungee, you talk

Antwan or before you talk about Israel, talk about the crime scene and the follow-up investigation.

It's not some sort of TV drama that is responded to or something prosecuted within sixty minutes with twenty or thir minutes worth of commercial time. That's not what it is.

It is very pain-staking, thorough work. It's not perfection. If there were perfection, we wouldn't need you, we woul not need jurors. We wouldn't need Courts or prosecutors, as much as I hate to admit it, if there was perfection.

But, you know, you remember Officer Hunley, the first officer who responded to the scene. You will have all this evidence back there, the photographs and diagrams, clothing, and he said he secured the scene and stood a few citizens over to the side, and he notified crime scene to come, and he notified Major Crimes to investigate.

Chief Investigating Officer Burns testified about the cal that was put out; that she responded to a shooting; and to be on the lookout for three African-American males.

That's the initial BOLO put out, and there was a description of the crime scene and the painstaking work that Detectiv Catoe did, searching and finding various items of evidence. You'll have these when you go back there.

You heard about blocking the street and taking photograph and the varous items, the styrofoam cup, sunglasses, and they didn't limit their search to there. Their seach went well

beyond that to where later on that evening they found the victim's personal items, wallet, such as that.

They used black magnetic powder, I believe he said, to attempt to fingerprint certain items of evidence. All he got was smudges.

Now, this doesn't have anything to do with reasonable doubt. Reasonable doubt doesn't have anything to do with fingerprints. Nothing. If you think it does, find him not guilty.

If the officers didn't fingerprint that twenty-two caliber bullet, find Antwan not guilty. But use your common sense. That is nothing more or less than a smoke-screen.

You have to look at the total picture of what the officers did and how they collected all of the evidence, not just one particular piece of it.

Looking at that, remember this because it becomes so important later. Item 4.0 -- you'll have the victim's other clothing but item 4.0 is the long sleeve white shirt with his blood and with his DNA on it, and how it was handled by the officers and what was done. The victim's blood, the victim's DNA.

I'll talk more about that momentarily. Things have changed since back in the seventies. Back then, believe it or not, we didn't have video-cameras in stores.

Now days, you can hardly go in a store or bank or restaurant without showing up on a video. Now days, officers begin their investigations by going around and getting the tapes from

these places. It's common-sense.

They look around and say, well, there's a Shell station a there's CJ's there, and both of those have videos, and what do the officers do?

They get the video tapes from the Shell station and it's right there on State's Exhibit 25 on the diagram. They make arrangements to get the video from CJ's.

How important did that turn out to be?

So Detective Burns talks with Officer Catoe who is proces ing the crime scene, and then Sergeant Burns starts with three black males, and she gets the videos and starts looking at the

I did a nice chart on this and I wasn't sure when Ms. Campbell and Mr. Strickler started on the DNA, but it did sur- vive.

This is actually the same thing on the follow-up investig tion. They go to the video at CJ's, and you remember she said she talked with various officers out there and they iden- tified Mr. Myers. It led to Mr. Myers. Mr. Myers is importar as he's in the store at CJ's at eight forty-two, and Mr. Strickler asked about the times on these photographs.

If you remember, Mr. Myers is the young man that identi- Tim and Bubba, six forty-seven, and then him and Bubba back at eight forty. Mr. Rumph, eight forty-two.

Then they got to Mr. Myers and they get a search warrant, so Sergeant Burns gets a search warrant for his house on Burk

Avenue right in the area, and we know it's someone in the area that did this, the three individuals. They search his residence and he comes down to the police department.

He admits being there prior to the robbery, and what did he say? He tells them about Isom. Tells them about Isom. So they take that next step and use your common sense. If they go to Isom and Isom says, no, I wasn't there; I was elsewhere, that would have taken them in a circle right back -- right back to Mr. Myers.

Well, what happened? Mr. Myers said Isom and another young man came by that night, and he testified -- he didn't tell the officers then, but he testified about giving them marijuana, he and another young man, and he identified them. Isom lived up the street and he knew him through his younger brother or something like that.

Then they take the next step and get to Isom. Same day. All of this is on the 7th of April, and they get to Isom -- you will have these statements and diagrams back there with you.

Each and every one of these individuals were advised of their rights by Detective Burns in the same manner. Fifteen year old Isom is advised of his rights and voluntarily gives a statement.

You'll have the statement back there with you and you have his testimony before you in this Courtroom. What does he say? Let's look at some parts of the statement.

(Reading from statement) We saw the man walking and he was drunk. Let me jump ahead and then jump back, not to confuse you. Because Isom, of course, leads to Antwan and leads Dante.

He leads to Antwan and Dante, and I'll talk about the search warrant in a few minutes and talk about what Antwan sai to Detective Burns.

Antwan walked up to the dude and they were talking. I dc know. That sounds similar to what Dante said. Look at these statements.

I don't know, but people have different conceptions of things that happen. Where you sit in that jury box, whether it's Ms. Campbell or Mr. Strickler or myself talking and movi the diagram, and you may see it a little different, and you may hear something a little different.

And Dante may hear things that perhaps Isom doesn't hear or he may have a different perception, but this does back to their original statements.

Look at Isom's statement on page one, lines ten and eleve The dude put his hands over his back pocket over his wallet. Dungee, line ten, the man started holding his wallet. Isom -- Dungee.

That's consistent. That's before the detailed questioni by myself or by Ms. Campbell and before the cross examination They're fifteen years old and each has a ninth grade educatio Since that time, they've bettered themselves, got their GED a

far as their education level, and those statements are very similar.

Isom, page two, line eleven -- what did Dante do? He hit the man with his hand. Dante, I hit the dude in the face. Look at page three of the statement. Consistent with the evidence and with what they said.

Isom -- Antwan hit the man in the back of the head with the gun. Antwan hit the man in the head with the gun. Right there. Antwan hit the man in the head with the gun, and look at page three. Antwan hit him in the back of the head with the pistol. This is Isom's statement.

Look at Dante's -- Dante -- page one, Antwan hit the man in the back of the head with the gun.

I'm not going to go completely through these statements. You will have them back in the jury room with you, ladies and gentlemen.

I submit to you each and every item (portion inaudible) Antwan said, you going to make me shoot you -- Isom. Dante -- man, don't make me blast you. Top of page two. Antwan took the money out of the wallet and threw it down near the Shell Station. Me and Antwan ran across the street, and I told Antwa he needed to get rid of the gun.

Who shot the man? Antwan shot the man. Who shot him? Antwan shot the man.

The day Isom gave that statement, he didn't go back home.

He was charged with assault and battery with intent to kill - only reason it wasn't murder was Mr. Rumph was still fighting for his life -- and he was charged with armed robbery from 4 of 99 to this day, except that it was changed to murder and armed robbery.

The same with Dante. We took off. We all started runni We got the money and threw the wallet down at the Shell stati He got money. Both claimed they got money.

Isom told Tim Myers -- what did he tell Tim Myers? My c sin shot the man. Isom called Antwan his cousin. There's mo in those statements alone -- more in there. They were given their rights and advised of their rights and they gave the st ments voluntarily.

They were consistent, one with the other. They're not i here while both of them testify. Where have they been or who have they seen? They hook up with nineteen year old or twent year old Antwan -- nineteen, I believe it is -- on the back o this photograph. Yes, nineteen years old.

It's all on here. All of this is proof beyond a reason- able doubt, but the officers search that road and get this cl ing, and I brought you this clothing because that's what they got from the residence. I never alleged that was the clothes he was wearing. That's the clothes the officers seized from the residence.

Now, the tennis shoes, the leather pair -- how importan

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is it? If I can read page two of Isom's statement, given before the search. What was Antwan wearing? Beige jacket, Air Force One shoes, grey suede. Grey suede.

Now, the officers take him in custody that night and advise him of his rights. Same way they did Isom. This is the statement. They served the search warrant, and you see that on the statement. Sergeant Burns advised him of his rights. Said I advised him of his rights, he waived his rights and gave an oral statement; he did not want to sign anything.

What did he say? He tells Investigator Burns, I never owned a gun; the he states -- she said bragged -- that he did own a shotgun. Then he said a thirty-eight, a shotgun and a nine millimeter.

Then he stated, right there -- (inaudible)

Independent of Isom he tells substantially the same story.

And I hate to talk about Mr. Terrell Frederick, but he said six minutes from his house to CJ's and back. Right across the street. Three minutes there and three back.

Isom said, I hit him in the face and took the cigarette lighter, keys, change. Then they go and get the drop and smoke the dope, and end up right here. Right here.

They came there with a search warrant -- State's Exhibit 33 -- Sergeant Burns came there at nine o'clock at night a week or ten days after the shooting and robbery, interviewing Antwan and lo and behold, what does she notice? Grey Suede Nike Air

Force tennis shoes.

So she didn't take a picture. No, she didn't take a pi
ture. She took the shoes. She took them off his feet -- off
his feet.

It's interesting that when they served the search warra
they took grey tennis shoes, but those weren't even Antwan's
They were Terrell's.

The officer took those shoes off the Defendant, and wha
happened? The after these shoes were taken off his feet the
were logged in the evidence room.

Sergeant Burns said she looked at the shoes and she saw
something that looked like blood -- looked like blood. You
have to be an expert to say that.

She didn't take a photograph though, so are you not goi
to believe her?

Then the SLED Agent testified she did presumptive tests
for blood. She didn't say for human blood. She didn't say
a bunch of blood.

She said 1.3.1, this area right here, and you'll have t
diagram -- she saw something that looked like blood, so she
swabbed it -- 1.3.1. She passed it on to DNA.

I took 4.1 -- I think it was at different times -- the
presumptive blood and passed it on to DNA -- 4.1.

You know, ladies and gentlemen, Sergeant Burns and the
Columbia Police Department was continuing to work on this

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case, as we expect, as we demand, and the same holds true with these people at SLED. I don't understand all that stuff. I don't know about nuclear or mitochondrial DNA -- stuff like that.

I accept that they are experts and they can give opinions. The Judge told you they can give opinions, and they say there is different types of DNA. It's different types, but it's similar, and it's what makes you you and me me.

When John Barron tested this, he tested it and found it was positive for human blood, but did not find sufficient amount of human DNA. Positive for blood, positive for human blood, but not enough DNA.

Then they try to do the nuclear DNA and there was not enough. This is pretty exciting stuff. This is pretty exciting stuff to our quality of life in the health field and in forensics and in other things.

From there, they go to mitochondrial DNA that is around that nucleus that makes us different, and they give it a try. If we don't have it, what are we going to hear? No blood, no DNA.

You know, if you watch TV every time you hear DNA they're opening up the doors as they know how. But it don't work when they walk in. Only when they walk out. You can't have it both ways.

(Portion of statement not audible)

But it doesn't change. You don't take my DNA and make it yours. The officer here at SLED said there wasn't enough for their kind of test, but that's not what they said at this lab and these ladies are more than qualified to talk about it.

What did they say? We testify for the defense and we testify for the prosecution. Here's what they say.

We hear about profiling and all, but here's what they sa We get the figure of four in four thousand one hundred forty- two, because they have these controls. You'll have this back there.

In a separate lab, they track the DNA, the 4.1 and the 1.3.1, and how come it is, ladies and gentlemen, that the blo gets mitochondrial DNA and it matches the victim? How come is that?

The blood matches up. It matches up, and you can play with these figures all you want. You do the math. I think it's ninety-nine point eight percent. It may be a little less, but it's less than one percent.

Oh,by the way, it's three in seven hundred ninety-four. It's absolutely three in seven ninety-four, unless you don't lieve that is Anthony Rumph's DNA. I know one African-Ameri who was shedding his blood on Rhett Street that night, and I don't believe there were seven hundred ninety-three others o Rhett Street. I only know of three.

Common sense. That lady had the charts and diagrams,e

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though I didn't understand it.

These tennis shoes, I submit, had Anthony Rumph's DNA in the blood.

Finally, ladies and gentlemen, I'm going to finish. Alib defense -- both of his witnesses said they came home from work and he was in there; he was home watching the ballgame. They was home and he was there.

No, you can't believe Isom and Dante. You can't believe blood on his shoes. They're charged with murder and armed robbery too.

I remember UCon and I remember Duke getting beat, but you have to believe the video showing Terrell at CJ's at nine thirty-two, on 3 29 99. That's what this shows.

Both of his witnesses say there's a buzzer on the door and he didn't leave. He was watching the ballgame. He was home. Can you believe that? No.

Matter of fact, he's predicted the future to tell you what I'm going to do with Isom and Dante.

His witnesses may not be lying, but they can't hear and they can't see. We might not have the smoking gun but we smell the gunpowder.

So you go and do what the evidence leads you to do. The two eye-witnesses, the DNA, and this defense which was no defense. Do justice today for Anthony Rumph.

Thankyou.

THE COURT: Ladies and gentlemen, if you'll hang with me, I think I can instruct you within about ten or fifteen minutes on the law.

Listen very closely, if you would. Bailiffs, secure the doors so no one will be coming in and no one moving around, please.

As we told you, in this case the State charges Mr. Israel Wilds with two offenses, armed robbery and murder. They do so by virtue of the indictments I showed to you.

To the indictments, he has pled not guilty, and that places upon the State the burden of proving the Defendant guil beyond a reasonable doubt.

It is a vital and important rule of our law that any Defendant in a criminal trial, no matter how great the charges, must always be presumed innocent, unless and until his guilt has been proven beyond a reasonable doubt.

This presumption of innocence remains with the Defendant at all times, and, again, until such time as the jury reaches verdict of guilty beyond a reasonable doubt.

It is the solemn duty of the jury, if not clearly convinced of his guilt beyond every reasonable doubt to the contrary, to acquit the Defendant.

Now, the fact that the Defendant did not take the stand and testify in this case cannot create any presumption against him. You must not permit this to weigh in the slightest agains

the Defendant, and this may not enter into your discussions or deliberations in any way.

What do we mean by proof beyond a reasonable doubt? Well, it is proof that would cause a reasonable person to hesitate to act.

It is proof that leaves you firmly convinced of the Defendant's guilt.

Now, there are very few things in the world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Based on your consideration of the evidence, if you are firmly convinced that the Defendant is guilty of the crime that is charged, then you must find him guilty.

On the other hand, if there is a real possibility that he is not guilty, then you must give him the benefit of the doubt and find him not guilty.

Now, you sit as finders of the facts in this case. No one, not even I, can tell you what the facts are. That is reserved only to you.

You are also the Judges of the credibility or the believability, in other words, of all the witnesses who testified, and you may take into account any number of factors. Some examples, although not limited to these, are the demeanor of the witness; whether the witness was forthright or hesitant; the consistency of the witness' testimony; the witness' ability to know

the facts about which he or she testified; any bias or prejudice by a witness; any corroboration of a witness' testimony or lack of it.

You also have heard evidence of prior convictions of crim of some witnesses who testified in this case. This evidence was admitted and may be considered only for the purpose of evaluating the credibility of the witnesses, and these can be used by you only to determine whether a witness is truthful or worthy of belief, and you decide how much weight or value is to be given to it.

Now, you may believe a portion of a witness' testimony an disregard the larger, or vice versa. You may believe one witness against all of the others, or the other way around.

Of course, you do not do so by counting the number of wit nesses who testify for each side. You have one objective, and that is to seek the truth, regardless of the source from which it may come, bearing in mind that you must give the Defendant the benefit of every reasonable doubt.

You also heard the testimony of witnesses who have specia knowledge or skills and experience, training, education, in a particular field, and they were allowed to give their opinions as expert in those fields.

Now, in determining the weight to be given to any such opinion, you should consider the qualification and credibility of the expert and the reasons given for his or her opinion.

Remember, I told you that you are not bound by the opinion of any expert. You give it the weight, if any, to which you deem it is entitled.

There are two types of evidence generally presented in a trial, what's called direct evidence and circumstantial evidence.

Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eye witness.

Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact in issue.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required for circumstantial evidence than for direct evidence.

You must weigh all the evidence in the case, and, after doing so, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find him not guilty.

Now, the State also introduced a statement alleged to have been made by the Defendant. While I determine the admissibility of such a statement, you as the jury determine the existence and the voluntariness and weight of any alleged statement made by the Defendant.

In other words, you make the ultimate determination of whether or not the Defendant made the alleged statement, and if you determine that he made the statement you must then determine

whether it was voluntary.

If you determine it was voluntary, you should then decide what weight, if any, should be given to any statement by the Defendant.

Now, you must carefully scrutinize all the surrounding circumstances before giving weight to any alleged statement, and you must be satisfied beyond a reasonable doubt that the statement was made by the Defendant, uninfluenced by promise o reward or threat of harm.

If you find beyond a reasonable doubt that any alleged statement was made voluntarily, then, again, you decide how much weight, if any, should be given to it.

Now, if you find the statement was not voluntary, then you must not consider it for any purpose.

As you are the judges of the facts, the Constitution make me the Judge of the law. You must accept the law as I give it to you. If I'm wrong, there is a time and place for it to be corrected, but for today's purposes you must accept it as correct.

Let me caution you that it's not what you think the law should be, but it is in fact what I tell you the law is.

Now, let's discuss the charges for just a moment.

First, armed robbery. Our law in South Carolina says tha any person convicted for the crime of robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor or other

deadly weapon shall suffer punishment for armed robbery.

Now, to help you understand armed robbery, I'm going to talk first about what is called larceny, and then about robbery. After doing so, I will then tell you about armed robbery.

First, larceny. There are four elements which must be present and established beyond a reasonable doubt to constitute the offense of larceny.

One is that there was a taking; two, that the taking was of personal property of another; third, that after being taken the property was carried away; and, four, that the taking and carrying away of the property was done with intent to steal.

Now, those are the four elements of larceny. The crime of robbery includes those four elements, plus additional element, which is that the taking and carrying away of the property must have been done by placing the person in fear, by violence or threats of violence, so as to make that person surrender the property without his consent and against his will.

Now, then, armed robbery --the term of armed robbery includes another element in addition to that, and that is, that it must have been committed with a deadly weapon.

That is, the person committing the robbery used a deadly weapon with which to place the person possessing the property in fear, in order to obtain the property.

In our law, a pistol, gun or rifle is a deadly weapon.

Now, the second offense charged against the Defendant is

the crime of murder. Our law defines murder as follows: Murder is the killing of any person with malice aforethought, either express or implied.

Now, in order to convict on murder, the State must prove not only that Mr. Wilds killed Mr. Rumph, but they must also prove that he did so with malice aforethought.

In the law, malice is a referred to as a term of art. What is a term of art? It is a technical term meaning wickedness, and means there was no just cause or excuse; that it is something which springs from depravity, from a heart devoid of social duty, and fatally bent upon mischief.

Now, while the malice -- the law does not require that the malice exist for any particular length of time before the commission of the act in question. It simply says it must be aforethought.

There must be a combination of the previous intent and the -- the previous evil intent and the act producing the fatal result.

Now, it also says malice aforethought, either express or implied. Let's talk about those terms.

First of all, the terms express or implied do not mean different kinds of malice, but rather the way in which the malice may be shown to exist.

In other words, it may be proven by direct evidence or by inferences from the facts and circumstances which are proven

It may be express as the term refers to, such as where there is evidence of previous threats or evidence of lying in wait.

In other words, circumstances which show directly that an intent to kill existed, but the circumstances of many homicides prevent the possibility of offering this kind of evidence of the existence of malice, so of necessity the law says that malice may be inferred under certain circumstances even if there is no direct evidence as to what was in the Defendant's heart and mind.

Malice may be implied from the wilful, deliberate and intentional doing of an unlawful act without express cause or excuse, or from the use of a deadly weapon.

Now, the resulting implication only permits you as the jury to infer malice. It does not require you to. It is of an evidentiary nature, and the implication does not require you to infer but only permits you to do so.

In other words, the inference of malice by the use of a deadly weapon is simply an evidentiary fact to be taken into consideration by the jury along with the other evidence in the case, and it is to be given such weight that you determine it should receive.

The inference of malice may be drawn from the proof of the use of a deadly weapon, if you conclude that it is proper after considering all the circumstances and facts of the case.

Now, the Defendant has pled in this case what we call a

plea of alibi. That means that he was not at the scene of the crime at the time it was committed, but that he was elsewhere and had nothing to do with it.

Now, there is no burden on the Defendant to prove his alibi. The burden is on the State to prove that he was actually present at the scene of the crime and that he actively participated in it and was not elsewhere, and the State must prove this, of course, like all other allegations, by proof beyond a reasonable doubt.

I'm about to wrap up, so stay with me.

You've been selected in this case as a fair and impartial jury. You have been sworn to try and determine the facts of the case, and when you comply with your oath then no one will have a right to criticize your verdict. You will have discharg your duty as jurors.

You must not be influenced by opinions or expressions which you may have heard outside, but you must decide this cas on the testimony you've heard from the lips of sworn witnesses along with the other evidence in the case.

You must not be swayed or influenced by any type of passion, prejudice or sympathy for or against any of the parties. You have no friends to reward. You have no enemies to punish.

Now, there are two possible verdicts which you may find. You may find a verdict of not guilty or guilty,

There is no significance to the order in which I stated them. One has to be stated first.

You should not take -- must not take into account the fact that a Defendant is charged with more than one charge. He is entitled to a fair trial on each charge, and you should not be prejudiced by the fact that there is more than one charge against him.

As to each charge, you must consider whether the State has proven the elements of that charge.

Now, your verdict must be a unanimous verdict. Madam Forelady, it will be your duty to preside over the deliberations of the jury, and when the jury reaches a unanimous verdict then you will have a verdict form and you will sign and date the verdict form indicting the appropriate verdict, whatever it is.

At that time, knock on the door and we'll take the verdict.

Prior to that time, if you have any questions at all, you can handle it one of two ways. You can either do it verbally, in which case we'll let you and the jury come out and you can ask the question, or you can simply send out a note.

I'll leave that up to you to determine how you wish to do it.

There are some other matters I have to take up with

the attorneys, so I'm going to ask you to step to the jury room. Do not begin your deliberations yet. What we'll do is we'll send word, along with all the evidence that's going to come in, and then we'll give you instructions as to when to begin deliberating.

Don't talk about it just yet. However, you may begin eating lunch if you'd like to, and I'm sure you're ready to do that.

Thank you for your patience. I'm going to ask you to step in the jury room. Do not begin deliberations just yet. The alternates may go with them, and we'll bring you out in a minute.

(Jury excused from Courtroom at 3:07 P.M.)

THE COURT: All right, the jury is secured. Any exceptions to the charge from the State?

MR. McMAHON: No, Your Honor.

THE COURT: From the Defense?

MR. STRICKLER: No, sir.

THE COURT: All right. Go over with the Court Reporter all the evidence. I'm going to have her mark the charge as a Court's Exhibit, and it will go into the jury room.

(Jury instructed to commence deliberations at 3:10 P.M.)

(Alternate jurors excused by the Court)

(Court stood in recess as to this matter until 5:05 P.M.)

THE COURT: All right, back on the record in State versus Wilds. All parties and attorneys are in. Mr. Wilds is back in.

Counsel, we have a note from the jury saying, if we say Antwan guilty of murder, are we saying he of the three actually pulled the trigger?

I let both of you look at it, and you sent a note back saying you couldn't agree. What's your position on it, Mr. McMahon?

MR. McMAHON: I think the answer to the question is no. I think he can be found guilty of murder and not be saying he is the one who pulled the trigger.

Specifically under the law of the State of South Carolina one can be convicted of murder under the theory of hand of one, hand of all.

THE COURT: Mr. Strickler?

MR. STRICKLER: I submit just the opposite. The theory of hand of one, hand of all, has to have some basis in fact, and Your Honor is required to charge the law applicable to the evidence.

The fact is that the evidence before this jury is that -- from the lips of the two Co-defendants is that he pulled the trigger. The Indictment alleges that he pulled the trigger.

The only testimony this jury has heard is that he killed

him, so for the jury to return a verdict of guilty they have to find that he killed him, not that one of the other guys killed him and he was there.

I would submit for Your Honor to go ahead and answer the question in the negative, you would have to charge them on the law that is not applicable to the facts of this case.

I submit that would be inappropriate.

MR. McMAHON: And I disagree with that. Under State versus Dixon, which is Opinion Number 25154, filed June 19, 2000, a charge on accomplice liability was objected to because the indictment charged the defendant as the principal.

It is well settled that the defendant may be convicted on the theory of accomplice liability pursuant to an indictment charging only as a principal.

There is testimony in the record that they were involved with the Defendant, so I think that the hand of one, hand of all, would apply both to the robbery and to the murder.

The Dixon case states another Opinion from State versus Martin. It was a directed verdict issue in that case, but in that case the prosecutor stated, we don't know which person actually killed the victim. The whole point is we don't know if they acted in concert or not.

I understand that was a directed verdict issue, but it

is cited -- Martin is cited in Dixon, and, Judge, going back to the Gardner case, it is clear you can charge the law now.

Although Gardner was focusing on a different law, the Victor versus Nebraska charge was charged at different times, and it wasn't even in response to a question by a jury.

I think the answer to that question under the law of South Carolina is to charge hand of one, hand of all as to both charges right now, but more specifically as to the charge of murder.

THE COURT: My first question goes beyond, I guess, what both of you are saying. Maybe I'm thinking along the wrong line.

I recall nothing in the testimony that anyone else pulled the trigger. It seems to me the only way the jury could have gotten to this is to speculate.

Of course, I instructed them very clearly that they have to base their verdict only on the testimony that came into this Courtroom, and I don't know of anything that suggests anyone else could have.

It seems the proper way to answer this is to advise this jury that they've got to base their verdict on the evidence, and they can't --the verdict can't be the result of any sort of speculation on their part.

What's your position on that?

MR. McMAHON: Well, Judge, as I understand it, since Your

Honor has charged that they could believe all or part of what a witness said, or no part of what a witness said, we have a situation with the alibi defense the State had the burden of placing him at the scene of the crime, and that is not saying at the scene of the crime as the triggerman.

So I, frankly, don't see that they are speculating. They may be saying we believe part of this testimony but we don't believe this part of the testimony. That is an issue of credibility, as opposed to speculation, I would submit

So the issue is, I think -- I think they're asking not from a speculation point of view, but if we find the facts in this situation show that he acted in concert, and that we think the three are involved, they are asking if that is a sufficient theory based on their evaluation as tryers of the facts.

I personally don't see it as speculation, with all due respect.

THE COURT: The reason I say that is I don't recall any testimony anywhere about any firing of a gun or even possession of a gun by either of the other two.

I see where you're coming from. Mr. Strickler, anything you want to add to that?

MR. STRICKLER: Well, simply that I agree with Your Honor that there has been no testimony regarding anyone other than Israel Wilds pulling the trigger.

As to how the jury arrived at their question, whether it be speculation or something else, juries get places in my experience that you can't figure out how they got there.

MR. McMAHON: Judge, one thing further. If they believe the DNA evidence in this case, in the light most favorable to the State, and they believe that is DNA from the victim in this case and it was deposited after the victim was bleeding at the location where the crime occurred, that would certainly be inconsistent with the alibi defense, and consistent under the law of South Carolina with him being guilty of murder.

THE COURT: Of course, I didn't charge the jury on the hand of one, hand of all. Are you suggesting I give an additional charge on that?

The Judge in Gardner, I think, charged on Manning and then when the jury came up with a question added the Victor versus Nebraska charge. I recall that.

MR. McMAHON: Obviously, the jury -- obviously from the question, the way it was put, . .

MR. STRICKLER: Your Honor, you didn't charge hand of one is the hand of all, but you charged the law applicable to the facts of the case. The facts of this case do not warrant such a charge.

From the testimony, he either did it or he didn't do it. That's the evidence before the jury.

I have to note for the record, Your Honor, that my position would be that charging hand of one, hand of all, right now -- that I would have rendered per se ineffective assistance of counsel in violation of the Sixth Amendment of the United States in that I would not have been able to argue the law applicable to this case to this jury and address that issue to this jury during closing arguments.

I would move for mistrial on that ground.

THE COURT: I understand. I certainly don't think it is ineffective assistance, Mr. Strickler. I recall during the trial you raised, I think, the issue of the fact they didn't search for guns on the Co-defendants.

MR. STRICKLER: Yes, sir.

THE COURT: You weren't ineffective, and you raised every issue you could, so you didn't do anything wrong in that.

Counsel, it appears the only appropriate thing I can do at this point is to give a charge on hand of hand, hand of all. I don't know any other way around it.

I've never had a jury quite come up with this kind of situation. As you said, juries very often come up with something you don't even think about.

It appears to me the only thing I can do at this point is to charge that. Anything else?

MR. STRICKLER: The only thing I would state, Your Honor,

is my objection to that charge, and I would note it at this point in time. I would renew my motion for mistrial should Your Honor deliver that charge to the jury.

I think the only appropriate response is that you have been charged all the law applicable in this case and you have a copy of it in the jury room.

Very often juries come up with off the wall questions, and I think that would be an inappropriate charge.

THE COURT: My feeling on it is, given the approach the jury has taken, is that it then becomes an issue to be addressed . .

MR. STRICKLER: You intend to deliver the hand of one, hand of all charge?

THE COURT: I don't see any other choice.

MR. STRICKLER: I would note my objection and move for mistrial on that basis.

THE COURT: I understand. Mr. McMahon, you have anything else?

MR. McMAHON: No, sir. I would just note there was not a motion for mistrial in Darby but there was an additional charge given after the question by the jury, which I think is the exact situation we have here in this case, although on a different issue.

Thank you, Your Honor.

THE COURT: All right, I note the motion and deny the

motion.

MR. STRICKLER: Just so it's clear, my motion is based on my ineffectiveness at this point in time, my inability to argue the law to the jury at the time I had the chance to address the jury.

THE COURT: I understand, and I don't think you were ineffective. Let's bring the jury back in.

(Jury returned to Courtroom at 5:25 P.M.)

THE COURT: All parties and attorneys are in the Courtroom, and all jurors have now returned.

Madam Forelady, let me be sure I interpreted your question correctly first. You say, if we say Antwan is guilty of murder, are we saying that he of the three actually pulled the trigger. Is that the question?

FORELADY: He alone.

THE COURT: Yes, the jury wants to know that?

FORELADY: Yes, sir.

THE COURT: All right, let me do this. Let me give you an additional instruction, based on the factual situation you present.

I would charge you, in addition to what I've charged you before, and I will get you a written copy of this to go along with what you have. I want to be sure you don't take this separately. You still consider it in conjunction with the entire charge. Okay?

I'll get you a copy of this so you'll have it with you.

I further charge you that the law in South Carolina is that if a crime is committed by two or more persons who are acting together in the commission of a crime, the act of one is the act of all.

Two people or more can be guilty of the same offense at the same time if they are together, acting together, assisting each other, in commission of the offense.

The law says that under those circumstances, the act of one is the act of all. In other words, the hand of one is the hand of all.

Of course, the situation I've presented to you must be proven by the State beyond a reasonable doubt. They must prove again beyond a reasonable doubt that the Defendant and the others were acting together in the commission of the crime, assisting each other in the commission of the offense.

With that in mind, I will let you step back to the jury room to continue your deliberations.

(Jury excused from Courtroom)

All right, anything else?

MR. McMAHON: Nothing from the State.

THE COURT: The Defense?

MR. STRICKLER: Yes, sir. My objections are noted and my motion is noted.

THE COURT: Yes.

MR. STRICKLER: I object to the charge as delivered. We need a charge on mere presence. If he was there but didn't do anything, he ain't guilty of nothing.

We need a charge on knowledge on the part of the principal. In order for him to go ahead and act in concert with the principal, he has to have been aware of what the principal was doing or intended to do, and in order for him to be guilty of murder he has to have intended or reasonably foreseen the murder resulting from the act of the principal.

So we need some additional charges.

THE COURT: Solicitor, what about that?

MR. McMAHON: Judge, he certainly could have asked for those prior to coming in. I don't think he can have it both ways. I don't think he can say I don't want the charge and I object and move for mistrial, and . .

THE COURT: I think mere presence is appropriate. Usuall with a hand of one charge, you normally give a mere presence charge.

MR. McMAHON: I don't think it fits the facts in this cas If he's present, aiding and abetting, I don't think mere presence fits the facts of the case.

THE COURT: Mr. Strickler?

MR. STRICKLER: Yes, sir. So the record is clear, Your Honor, I submit that, without waiving my previously stated objections to delivering the charge Your Honor has delivered --

my objection to that charge goes not only to the substance of the charge, but my ineffectiveness at the time I closed to the jury.

You know, I find it, with all due respect to all parties, somewhat -- I find it interesting to hear allegations that I want to have it both ways. That's precisely what the State is doing right now.

They're having it both ways, and if we're going to have it both ways I think we should charge the law that is applicable.

MR. McMAHON: Judge, if he wanted it both ways, why didn't he bring it up before the jury came out. He knew what the law was on hand of one, hand of all.

I just asked you to charge the applicable law of hand of one, hand of all. He objected to that. If he wanted some more with that, why didn't he do it then?

Why didn't he bring it up then? He just wants to bring them back out and talk about mere presence. He's the one that wants it both ways. I don't want it charged, but if you're going to charge it once they go back I want to bring them back out and say something else.

I don't understand that. I mean, we've sat here and argued under Gardner, under Martin, under Dixon, that it could be done and I assume he knew the law at five fifteen just like at five twenty-five.

That's the whole point I'm making about that. I'd like to

see the case that he's citing where now he's going to attach mere presence and knowledge of foreseeable consequences.

MR. STRICKLER: I don't have a case. That's the law of South Carolina.

Prior to the jury being charged, I was not privy to the contents of Your Honor's charge and the extent to which Your Honor wished to go or proposed to go ahead and charge accompli liability.

The full charge on accomplice liability includes the elements I suggested . .

THE COURT: What I'm going to do, counsellor, is -- I've given the charge the way I did it before, and I think it's correct. I don't think I need to add mere presence for this reason. What I did in this was remind the jury that under the hand of one charge, the State must prove beyond a reasonable doubt that they were acting together in the commission of a crime, and assisting each other in the commission of the offense.

I believe that takes care of it and covers what should have been covered in that.

I don't know I need to add anything. If the jury were to make the determination that he was merely present, then based on my charge they would find the State had not proven he was assisting and acting together with the others, so I think the charge is appropriate and I decline to add to it.

MR. STRICKLER: Please note my exception to your ruling and my motion for mistrial.

THE COURT: So noted and denied.

Anything else from the State?

MR. McMAHON: No, sir.

THE COURT: Counsel, I have a copy of the hand of one, and I'm going to make this a separate Court's Exhibit and send this in to the jury room.

(Court stood in recess as to this matter until 6:13P.M.)

THE COURT: Counsel, we have a note from the jury which says they are in agreement on one of the charges. They are not in agreement on one of the charges, so I assume that means they are on one.

I think it would be appropriate to give an Allen charge at this time.

MR. McMAHON: We have no objection.

THE COURT: Defense?

MR. STRICKLER: We would object to the charge, Your Honor.

THE COURT: I think it would be appropriate to give the charge. Bring the jury in.

(Jury returned to the Courtroom)

THE COURT: All parties and attorneys are present in the Courtroom and all jurors have returned.

Madam Forelady, as I understand it, you have a verdict on one charge but not on the other, is that correct?

FORELADY: Correct.

THE COURT: Let me give you an additional charge here relating to the one on which you have not had agreement.

I told you before that you are the sole judges of the fac of the case, and as the Judge on the law I'm not permitted to suggest in any way what kind of a verdict you come up with.

It is my duty to give the law and it is your duty to writ a verdict.

I can say this, and I'm allowed to say this. First of all we understand it is not always easy for even two people to agree, and when twelve people are together it becomes correspo ingly more difficult.

But it is important that the litigation be ended if it can be done without a juror doing violence to his or her own conscience.

At the same time, no juror is expected to give up an opin ion based on reasoning satisfactory to himself or herself mere for the purpose of being in agreement.

Very often it has been said the juror who gives the least service is the juror who says that I know what I want to do, and when everybody agrees with me, then we'll write a verdict.

Again, I say that we don't expect any juror to give up his or her opinion merely for the purpose of being in agreeme if it goes against their conscience. It has never been intended that the verdict of a jury be the view of any one pers

On the other hand, the verdict is supposed to be the collective reasoning of all the men and women together.

That's why we have the jury, so that we can have the benefit of the collective reasoning and collective thought that you can contribute to it.

Now, it is your duty to tell each other how you feel about the case and why you think as you do, and it is the other jurors' duty, of course, to tell each of you what they think. It's important that you listen to each other and give each other's thoughts and ideas such meaning as appropriate.

So it can be said to some degree that jury service can be said to be a matter of give and take. I will tell you that if a Defendant is entitled to a verdict, he is entitled to it today.

If the State is entitled to a verdict, it is entitled to that verdict today.

What will happen is this. Even though you may have agreed on one charge and not on the other, if you're not able to do so then I would have to declare a mistrial on the charge on which you cannot agree.

You need to understand that nobody wins and nobody loses. It doesn't mean there would be a dismissal. What it means is that we will try the case all over again. The same witnesses and same lawyers and same parties will come, and probably in the same Courtroom, and go through everything all over again.

The only difference is that there would be another twelve men and women sitting where you are sitting, and doing what yo are trying to do today.

I have no reason to think that another twelve men and women would be more capable of solving this controversy than you can.

So what I'm going to do is ask you to deliberate further and see if you cannot arrive at a verdict on that charge, so that we can have a verdict on both charges.

I know it's late in the evening and it's an imposition on you. We understand that, and we would not ask you to do that unless it were necessary.

So I ask you to return and see if you can write a verdict in the case.

Yes, maam.

JUROR: There were some charts that we can't find in the room that were presented, I believe, as evidence.

THE COURT: That was probably just demonstrative evidence which is something that can be used in the Courtroom for you t see, but it's not allowed to be taken in the jury room.

I think we agreed that everything that was appropriate to go in the jury room has already gone in.

All right, thank you.

(Jury excused to continue deliberations)

THE COURT: Any objection from the State?

MR. McMAHON: No, Your Honor.

THE COURT: Defense?

MR. STRICKLER: Note my exception to the giving of the charge, but no particular exception to the content of it.

(Court stood in recess as to this matter until 7:49 P.M.)

THE COURT: The parties are in the Courtroom, with the Defendant present.

Counsel, I have another note by the jury. They have underlined -- in the hand of one charge that I gave them, they have underlined the language -- if both are together, acting together, assisting each other in the commission of the offense. That's what they underlined.

Then the question was, are all three, underlined, conditions necessary by law in order for the jury to find the Defendant guilty of hand of one is hand of all, or does only one of the conditions need to exist or be proven to convict.

The problem, you know, is that under the hand of one type of law, these are not separate elements. They are not like a different element that's got to be proven. They basically are the same thing, in conjunction with each other.

What I'm going to do is -- I'll see what your positions are -- is to charge them and just say that's what has got to be proven, that all were together, acting together, assisting each other in commission of the offense.

I will further advise them that the gist of it is that the

all must be present and aiding and abetting each other in the commission of the offense.

What's the State's position?

MR. McMAHON: No objection.

THE COURT: Defense?

MR. STRICKLER: Your Honor, of course, I have objected already to delivering the charge the jury has requested. I would object again to modifying the charge. It only compounds the problem, and I would object again to delivering it in modified form.

It deprives Mr. Wilds of effective assistance of counsel under the United States Constitution, as I was unable to address those issues before the jury before your original charge in this case was given.

MR. McMAHON: Judge, I would have no objection if His Honor is inclined to explain in common language what the term aid and what the term abet mean. I would have no objection to that.

THE COURT: Obviously, aid means in essence assist, and abet -- I'd have to look it up to make sure the legal term is the same as the common sense term, which basically is to -- means to incite or agitate.

What about that? Anything further from the State? Or would that be sufficient?

MR. McMAHON: To try to respond to the jury's question, asking the Court to give a charge by way of explanation of the

three elements, whether they are different types of conduct, one being aiding, another being abetting.

The jury wants some explanation of the hand of one, hand of all.

MR. STRICKLER: I'd object to any additional language being charged, given my position.

I'd object additionally to that language being charged. I'd note that when, with all due respect, it is an appropriate charge to be given to the jury, the charge which is given does not go into definitions of what to aid and to abet is.

In essence, you're giving a second aiding and abetting charge and then going beyond the charge given. So I would object to further explanation.

THE COURT: I understand, but it is introducing new terms, aiding and abetting. I'm sure the jury probably understands the aiding term, but I'm not sure how many people understand abetting.

MR. STRICKLER: I'd ask that the record reflect my exception.

THE COURT: I note that.

Bring the jury in, please.

(Jury returned to Courtroom)

All the parties and attorneys are in the Courtroom, and all jurors have now returned.

Madam Forelady, I have another note I've received from you

I've been over this with the attorneys. You have sent this and have underlined certain language, and the language you underlined is, and I quote, if both are together, acting together and assisting each other in commission of the offense,and then the question after that is, are all three underlined conditions necessary by law in order for the jury to find the Defendant guilty of hand of one, hand of all, or does only one of the conditions need to exist.

Let me note that the gist of the law of hand of one is the hand of all means that all must be together, acting together, assisting each other, in the commission of the offense.

Now, these are not separate elements, each of which have to be proven. Rather, they refer to a continuous course of action by the participants. The gist of it is they must be present and aiding or abetting in the commission of the offense.

Obviously, aiding means to aid or assist, and abetting means to be inciting or agitating. A common term may be to egg on or something along those lines.

That's the gist of what it is. It refers to a continuous course of conduct, not simply elements which must be proven separately.

With that in mind, let me ask you to step back to the jury room and continue to deliberate on your verdict.

Thank you.

(Jury excused from Courtroom)

THE COURT: Any further exception to that charge?

MR. McMAHON: None from the State.

MR. STRICKLER: I would merely renew my previous objection, Judge.

THE COURT: All right, sir.

(Court stood in recess as to this matter until 8:07 P.M.)

THE COURT: I understand the jury has a verdict. Are you ready to take the verdict?

MR. STRICKLER: Just one moment until the family gets in.

THE COURT: Sure.

(After a brief delay, the jury returned to the Courtroom)

THE COURT: All parties and counsel are present. The jury has returned to the Courtroom.

Madam Clerk?

CLERK: Madam Forelady, has the jury reached a verdict?

FORELADY: Yes, we have.

CLERK: May I have it?

(Verdict forms given to the Clerk and thereafter exhibited to the Court)

THE COURT: All right, the verdict forms are in proper order. Madam Clerk, would you announce the verdict, please?

CLERK: Indictment Number 99 GS 40 40142 and 99 GS 40 45289, the State of South Carolina versus Israel Wilds.

We, the jury, find the Defendant guilty of armed robbery. Signed by Foreperson, Joyce Miller.

March 29, 2001.

And as far as murder, we, the jury, find the Defendant guilty of murder, and this is signed Joyce Miller, Foreperson. March 29, 2001.

Madam Foreperson, is this the verdict and the verdict of the entire jury?

FOREPERSON: Yes.

THE COURT: If this is the verdict of each juror, please indicate by raising your right hand?

(All jurors raising their right hands)

All right, thank you. Anybody wish to have the jury polled?

MR. STRICKLER: We would request the jury be polled.

THE COURT: Madam Clerk, would you do so, please?

(Whereupon, each juror was asked individually, and each juror indicated their verdict was guilty as to armed robbery a to murder)

CLERK: The jury has been polled, Your Honor.

THE COURT: Thank you, maam.

Counsel, anything else before we excuse the jury?

MR. McMAHON: Nothing from the State.

MR. STRICKLER: Nothing.

(Whereupon, jury was excused by the Court)

THE COURT: Close the door, please. Counsel, any motions before sentencing?

MR. McMAHON: Nothing from the State.

THE COURT: Defense?

MR. STRICKLER: Yes, sir. At this point in time, we would move for a new trial. We would ask Your Honor to revisit your previous rulings on the motions for directed verdict at the end of the State's case and Defense's case, and revisit your rulings in regard to my motions for mistrial.

And on that basis, and acting as the thirteenth juror, ask that you grant a new trial.

Secondly, I would move for a new trial -- secondly I would renew my mistrial motions and my exceptions to Your Honor's additional charges during deliberations in this case.

I would renew my motions for mistrial made during -- in respect to Your Honor's rulings and charges during deliberations, and would again move for mistrial on those grounds.

THE COURT: I note your motions, counsellor, and would deny your motions. I think there was a motion for a new trial, and I deny that also.

Are you ready for sentencing?

MR. STRICKLER: Yes, sir.

THE COURT: Mr. Strickler, do members of Mr. Wilds' family want to come up and stand with you?

MR. STRICKLER: Thank you.

THE COURT: Solicitor, do you want to say anything or does the victim's family want to say anything?

MR. McMAHON: A member of his family is coming forward. I know you can't see her from where you're at, and she will speak for the family.

I have the Defendant's prior record, which I think you may already be familiar with.

THE COURT: Yes, I am.

MS. CAMPBELL: As far as the prior record goes, and you're aware of it, in 1996 he was convicted of two counts of pointing or presenting a weapon and possession of a sawed-off shotgun; also, one attempted assault. Those were in 1996, and I believe that was put into the record already.

THE COURT: All right. Anything, Mr. McMahon?

MR. McMAHON: Just, Your Honor, in working with the officers and family in this case, it's always very sad, as you know, to see the tragic waste of life of an individual and the loss to this family.

We would ask that you sentence the Defendant to a substantial sentence, based on the facts of the case.

Thank you.

THE COURT: Mr. Strickler?

MR. STRICKLER: Israel has a two year old -- three year old daughter, excuse me, who lives with her mother. You have not heard from his family. His mother, sister, brother --the have been here supporting him. He comes from a good family and a loving family.

I can echo Mr. McMahon's sentiments. There is tragedy on both sides of this Courtroom.

You've heard his prior record. I would ask Your Honor to exercise what discretion you can. I have found him to be in my dealings with him a very pleasant young man to deal with.

Whatever sentence you give him, it's going to be a long time, and I ask you to consider that in imposing sentence.

Israel, anything you'd like to say? (Speaking to the Defendant)

DEFENDANT: Your Honor, I'd just ask -- I'd ask for leniency, and say that I'm not guilty. I didn't do this, and you're in the process of punishing me for something I didn't do. You're also punishing my daughter.

I ask the Court to have mercy on me. Thank you.

THE COURT: Anything else, Mr. Strickler?

MR. STRICKLER: No, sir.

THE COURT: All right, counsellor. I take into account the fact that -- as you know, I'm guided by the jury's verdict that they have returned.

Of course, as Mr. McMahon and Mr. Strickler have agreed, there is certainly a lot of tragedy on both sides of this case. Neither side has a corner on it, but the point is that a life was lost in this.

I don't know Mr. Rumph, never met him obviously, but his family has been here and he has been taken from them.

The appropriate sentence in this matter is, on the armed robbery charge, that you be committed to the Department of Corrections for a term of thirty years, and on the charge of murder that the Defendant be committed to the Department of Corrections for the term of his natural life.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit, do hereby certify that the foregoing transcript was prepared from the records of Paula Jackson to the best of my ability, as having been heard in the Court of General Sessions, Richland County, March 26-29, 2001.

FURTHER, I certify that I am neither of kin or counsel to any party to this action, nor do I have any interest in the same.

Harriet P. Bennett

July 5, 2001

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Isreal Wilds 274010
Full name and prison number (if any) of Applicant,

vs.

Richland County
Name of Respondent

APPLICATION FOR POST-CONVICTION RELIEF

FILED
03 DEC 15 AM 11:58
BARBARA A. SCOTT
C.C.C.P. & G.S.

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Evans C.I 6/0 HWY 9 west, Bennettsville S.C. 29512

2. Name and location of Court which imposed sentence Richland County Columbia, S.C.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 99-GS-40-40142, Armed Robbery, 30 years
   (b) 99-GS-40-45287, Murder, life
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) March 29, 2001, Armed Robbery 30 years
   (b) March 29, 2001 Murder, life.
   (c) _____

5) Check whether a finding of guilty was made
A) after a plea of guilty _____
B) after a plea of not guilty Yes ✓
C) after a plea of nolo contendere _____

6) Did you appeal from the judgment of conviction or the imposition of sentence? ~~Yes~~ judgment of Conviction

7) If you answered "Yes" to (6), list
(A) the name of each Court to which you appealed:
i. South Carolina Court of Appeals
ii. _____
iii. _____
B) the result in each such Court to which you appealed
i Affirmed
ii _____
iii _____
C) the date of each such result:
i February 20, 2003
ii _____
iii _____
D) If known, Citations of any written opinion or orders entered Pursuant to such results:
Unpublished opinion No. 03-UP-152
_____
_____

8.) If you answered "no" to (6), state your reason for not so appealing.

A) _____

B) _____

C) _____

9.) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

A) Effective Assistance of Counsel

B) Statutory Violations

C) Lack of Subject Matter jurisdiction

10.): State concisely and in the same order the facts which support each of the grounds set out in (9)

i): Trial Counsel breached the standard of care by not objecting and trial judge erred as a matter of law by limiting cross-examination of two of the state witness

ii) Trial Counsel breach the standard of care Applicant wa denied the effective assistane of Counsel. Counsel in violati of the sixth Amendment of the United States in that Couns was not able to argue the hand of one, the hands of all la applicable to this case to the jury and address that issue 2. the jury during closing arguments.

iii) Trial Counsel breached the standard of care applicant was denied the effective assistance of Counsel and due process of l because trail Counsel failed to challange the probable caus or Applicant arrest and subsequent search of applicant Residen the failer of the state to comply with the search warrant Ret

of Law of South Carolina. The Search warrant and it's return are prejudiced by they defects.

B) Trial Counsel breached the Standard of care, and Applicant was denied effective assistance of Counsel du process of law under the Sixth Amendement. Because Co failed to file a motion to suppress the search warrant an argue that they were prejudiced by the defect, Because t Search warrant was uptian unlawly, there was no proba cause, the return was not singed and Name of person t whom warrant issued was not singed.

C) Trial Counsel breached the Standard of care and Applican was denied effective assistance of Counsel and due process law, because trial counsel failed to file a motion to quas the indictment herein as being fatally defective More articularly the Allegation of the indictment failed to comp with the requirements of Section 17-19-30 Code of laws of South Carolina for 1976, as amended the case decide there under and the Common law of South Carolina. The ndictment Neithe alleges the place nor the time of the eath of the decedent as required by the Statute.

D) Neither the trial Court nor this court have jurisdiction ver the person of Applicant, and Applicant has been unla held Convicted and sentected because the indictment, each warrant in his Case fails to comport of Comply with the requirements of law as alleged In Subparagraph above.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? Appeal South Carolina Court of Appeal

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court?

_____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Trial Court erred in limiting cross-examination of two of the State's wi

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeal Columbia S.C. Appeal

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 20, 2003

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unpublished Opinion No. 03-UP-152

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

4. If you answered "Yes" to (13), identify:

(A) which grounds have been presented:

i trail court erred in limiting cross-exmination of two of state witness.

ii _____

iii _____

b) the proceedings in which each ground was raised:

i South Carolina Court of Appeals

ii _____

iii _____

15. If any ground set forth in(9) has not previously been presen
to any Court, State or Federal, set forth the ground, and state
concisely the reasons why such ground has not previously been pre
1) Effective Assistance of Counsel, I did not know the law
3) Statutory Violation?, I did not know the law
) Lack of Subject Matter jurisdiction, I did not know the law

. Were you represented by an attorney at any time during
the course of:

A) Your arraignment and plea? _____

B) your trial, if any? yes

) your sentencing? yes

) Your appeal, if any, from the judgement of conviction or
ne imposition of Sentence? yes

) preparation, presentation or consideration of any petit
ions, or application with respect to this conviction,
hich you filed? _____

17. If you answered "Yes" to one or more parts of (16) list:

(A) the name and address of each attorney who represented you

i Douglas Strickler

ii Joseph L. Savitz III 1122 Lady Street Suite 940 Columbia S.C. 29201

iii

(b) the proceedings at which each such attorney represented

i Trial

ii Appeal

iii

18 State clearly the relief you seek in filing this applicati

New trial, OR Overturn.

9, Are you now under sentence from any other court that you have not challenged? NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Isreal Wilds, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Isreal Wilds

SWORN to and subscribed before me this 11th

day of December, 2003

Notary Public (L.S.)

My Commission Expires: 08-06-2009

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Isreal Wilds, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Isreal Wilds
Applicant

SWORN or affirmed to and subscribed before me this

11th day of December, 2003

Notary Public

My Commission Expires 08-06-2009

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
ISRAEL WILDS, 274010,) Applicant,)) v.) THE STATE,) Respondent.)	**03-CP-40-5973** AMENDED APPLICATION FOR POST-CONVICITON RELIEF

At the instruction of the Applicant in the above-captioned matter, his undersigned counsel, asks that his Application for Post-Conviction Relief be amended to include the following additional allegations:

1. Applicant alleges that Trial Counsel was ineffective for failing to move to suppress all evidence seized following arrest where his arrest was unlawful.

2. Applicant alleges that Trial Counsel was ineffective for failing to move to suppress Applicant's alleged statement that he owned three guns.

3. Applicant alleges that Trial Counsel was ineffective for failing to object to the characterization of the Applicant's alleged statement about the guns as "bragging."

4. Applicant alleges that Trial Counsel was ineffective for failing to object when the Court limited the scope of cross examination of State's witness, Tim Myers, with respect to prior criminal conduct allegedly engaged in by the Applicant and one or more of his co-defendants.

5. Applicant alleges that Trial Counsel was ineffective for failing to object when the trial Judge erroneously advised the Applicant that the Solicitor would be able to cross examine him on his Juvenile criminal record if he took the stand, thereby causing the Applicant to refrain from testifying.

6. Applicant alleges that Trial Counsel was ineffective for failing to raise adequate objections to the lower Court's ruling improperly restricting the Applicant's cross-examination of his two co-defendants where said ruling was improper under Rule 608(c) and violated the Applicant's right to confront witnesses under the Sixth and Fourteenth Amendments of the U.S. Constitution.

7. Trial Counsel was ineffective for failing to request that the Judge respond in the affirmative to the jury's question, "If we say Antwan is guilty of murder, are we saying he, of the three, actually pulled the trigger?" since that was the language of the indictment and the sole theory of the State's case.

8. Applicant alleges that Trial Counsel was ineffective for failing to renew his motion for a mistrial after it became clear from the jury's question in Item No. 5 that one or more members of the jury had concluded that the Defendant did not shoot the deceased.

9. Applicant alleges that Trial Counsel was ineffective for failing to move for a new trial on the ground that the Judge charged the jury with the legal premise "the hand of one is the hand of all," where accomplice liability was not suggested in the indictment, the evidence, the closing statements, or the original charge.

10. Applicant alleges that Trial Counsel was ineffective for failing to object to the Court giving an "Allen" charge after the jury indicated that it had a verdict on one count and could not reach a verdict on the other count after several hours of deliberation.

11. Applicant alleges that Trial Counsel was ineffective for failing to object when the Court gave an improper Allen charge and for failing to request that the Court give a corrected charge.

12. Applicant alleges that Trial Counsel was ineffective for failing to get the

Judge to correct his more detailed re-definition of the elements of "the hand of one is the hand of all" theory to the jury.

13. Trial Counsel was ineffective for failing to sufficiently articulate the proper grounds for objecting to the trial judge interjecting accomplice liability as an issue in this case by issuing a supplemental charge on "the hand of one is the hand of all," where there had been no previous discussion of the applicability of accomplice liability to the facts of this case- which should have been grounds for a mistrial.

14. Counsel was ineffective in failing to object to a jury charge under the theory "hand of one, hand of all" on the ground that the State had not pursued the theory of accomplice liability in their case in chief.

15. The Applicant alleges that Trial Counsel was ineffective for failing to renew his motion for a mistrial and for failing to put forth adequate grounds for a mistrial after the lower court gave an improper supplemental charge on accomplice liability.

16. Appellate Counsel erred in failing to raise counsel's objection to the lower court's supplemental charge on the law of accomplice liability as an issue on direct appeal.

17. Appellate Counsel failed to brief the objection to the 2nd supplemental accomplice liability charge.

18. Appellate Counsel erred in failing to raise the issue that a mistrial should have been granted because of the misapplication of the accomplice liability charge.

19. Appellate Counsel erred in failing to brief the issue of the lower Court's refusal to issue a "mere presence" charge where such an instruction was appropriate on the facts of this case.

The Applicant asserts that the combined effect of the errors alleged in his original

Application for Post-Conviction Relief as well as the amendments contained herein, establish that he received ineffective assistance of counsel both prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 14 of the South Carolina Constitution.

Respectfully submitted,

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. D
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 11th day of May, 2006.
Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

ISRAEL WILDS, 274010,
Applicant,

v.

THE STATE,
Respondent.

03-CP-40-5973

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Amendment to Application for Post-Conviction Relief has been served upon opposing counsel, Daniel E. Grigg, Assistant Attorney General, and Robert Brown, Assistant Attorney General by fax and by mailing in an envelope properly addressed with postage prepaid on this the 12TH day of May, 2006.

Angel M. Warren
Legal Assistant to Tara Dawn Shurling

SWORN TO BEFORE me this 12th day
of May, 2006.
Connie E. Page (L.S.)
Notary Public for South Carolina
My Commission Expires: March 22, 2009

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS 03-CP-40-5973
Isreal Wilds, No. 274010, Applicant, v. State of South Carolina, Respondent.	RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed December 15, 2003, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the September 1999 term of the Grand Jury for Richland County for murder (99-GS-40-45289) and armed robbery (99-GS-40-40142). He was represented by Douglas Strickler, Esquire. On March 29, 2001, the Applicant proceeded to trial after which he was found guilty of the stated charges. He was sentenced by the Honorable Marc H. Westbrook to confinement for life and thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Wilds, Op. No. 03-UP-152 (S.C. Ct. App. filed February 20, 2003).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript and the Applicant's appellate records. Any of the above not so attached will be forwarded upon receipt.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. "Statutory violations;" and
3. Trial court lacked subject matter jurisdiction;

III.

First, the Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. *See* Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Second, the Respondent submits that the Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and

valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

LAKESHA JEFFRIES
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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Telephone: (803) 734-3737

_____ 6, 2004

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No.2003-CP-40-5973

ISREAL WILDS, NO. 274010,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Tara Dawn Shurling, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 6th day of July, 2004, to the below address:

Ms. Tara Dawn Shurling, Esquire
Law Offices of Tara Dawn Shurling
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

ROBERT M. PEELE III
LEGAL ASSISTANT

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 03-CP-40-5973

Israel Wilds,

Plaintiff PCR hearing

vs. OF RECORD

State of South Carolina,

Defendant.

June 8, 2007
Columbia, South Carolina

B E F O R E:

THE RONORABLE J. MICHELLE CHILDS, JUDGE.

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

TARA DAWN SHURLING, ESQ.
Attorney for the Plaintiff

ROBERT L. BROWN, ASSISTANT ATTORNEY GENERAL
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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JUNE 8, 2007

MR. BROWN: This is the case of Israel Wilds versus the State of South Carolina. The case is docketed at 2003-CP-40-3973.

He comes before the Court by way of application filed December the 15th, 2003. Your Honor, it was amended, and a copy of that amendment should be in Your Honor's packet.

By way of background information, the Applicant was indicted in the September of 1999 term of the Richland County Grand Jury for murder and armed robbery. He was represented by Douglas Strickler.

On March 29th, 2001, he proceeded to trial, at the conclusion of which he was found guilty of the stated charges. He was sentenced by Judge -- late Judge Westbrook to confinement for life for murder and 30 years for armed robbery.

He did appeal his conviction and sentence, which was affirmed by the South Carolina Court of Appeals February the 20th, 2003.

And at this time the State would yield to the Applicant for presentation of their case.

THE COURT: All right.

MS. SHURLING: Good morning, Your Honor. For

the record, I'm Tara Shurling. I'm court appointed to represent Mr. Israel Wilds.

Your Honor, the amended application for post-conviction relief was compiled in large part from a number of allegations that were submitted by the Applicant Pro Se. A number of those will be somewhat refined in the course of the hearing and a couple of them will not be pursued. I will simply address those as we get to them.

THE COURT: Okay.

MS. SHURLING: At this time, Your Honor, I would like to call the Applicant, Mr. Israel Wilds, to the stand.

THE COURT: All right.

THE BAILIFF: Place your left hand on the Bible, raise your right, and face the clerk.

(Witness complies.)

THE CLERK: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please take a seat, and please state your full name for the record.

THE WITNESS: Israel Wilds.

ISRAEL WILDS, after being duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q Israel, in my experience you've got really good speech, so if you will just sit up and speak clearly. Remember, the lady next to you has to write down everything to make a good record for appeal and Her Honor has to be able to understand you. So it is easy to get excited in this setting and start talking really fast, but if you just remember that it will help us all if you kind of slow down a little and make sure that we all understand you, okay?

A Yes, ma'am.

Q Okay. Now, you and I had a chance to meet and go over your case and discuss various allegations that you want to raise, haven't we?

A Yes, ma'am.

Q One of the things that you wanted to raise and that I raised for you in your amended application, I raised for you, but I told you subsequently that the research didn't support you, and that was the idea of the juvenile convictions being used to impeach you if you had taken the stand. Do you remember discussing that with me?

A Yes, ma'am.
Q Okay. You actually allege that trial counsel was ineffective for not objecting to the judge saying that your juvenile convictions could be used to impeach. Remember that?
A Yes, ma'am.
Q Okay. The record will actually reflect that Mr. Strickler did fight that battle with the trial court, but that the trial judge ruled that they would be admissible for purposes of impeachment if you testified. Do you remember that part of the transcript now?
A Yes.
Q Okay. And I have explained to you that my research indicates that it is discretionary with the presiding judge if he wishes to use or allow to be used juvenile adjudications for purposes of impeachment?
A Yes.
Q You understand that now?
A I understand that.
Q So you are okay with me abandoning that allegation?
A Yes.
Q Okay. Now, let's move on to some of the things that are real important to you.

You have alleged that trial counsel was ineffective for failing to object to the characterization of your statement about guns as bragging and for failing to move to suppress your alleged statement that you owned three guns, correct?

A That's correct.

Q Now, in fact, your lawyer objected to the introduction of your statement about guns as not being relevant. Do you recall that?

A I do.

Q And, now, what were the three guns they were saying that you talked about owning? What kind of guns were they?

A I believe it was a shotgun, a 9-millimeter and a .380.

Q A 9-millimeter and a .380. Now, I'm probably more of a gun person than most girls, but .380 and 9-millimeter are both handguns, aren't they?

A Yes, ma'am.

Q And how old do you have to be in South Carolina to own a handgun?

A Twenty-one.

Q And how old were you at the time of this incident?

A Nineteen.

Q Okay. So your owning those guns would have not only been arguably not relevant, it also would have been illegal, wouldn't it?
A Yes, ma'am.
Q So did your lawyer raise any kind of objection to your statement about owning handguns as being inadmissible because it treaded on the Character Evidence Rule and was evidence of unrelated bad acts?
A No, he didn't.
Q Okay. And you think he should have?
A Yes.
Q Okay. Now, moving along to another subject. You have alleged that trial counsel was ineffective for failing to object when the Court limited the scope of cross-examination of Tim Myers and the other Co-Defendant with regard -- excuse me, limited the scope of the cross-examination of Tim Myers with respect to prior criminal conduct allegedly engaged in by the Applicant and one or more of your Co-Defendants as well.

Now, in actuality, your lawyer --

MR. BROWN: Object to leading.

THE COURT: Rephrase.

Q Your lawyer did raise some sort of objection to

that testimony, didn't he?
A To Timothy Myers and my two Co-Defendants, he raised the objection that he should be able to go into their reasoning for testifying and what they wished or hoped to gain for their testimony, but the judge told them that he could do that without asking the question what they hoped to gain or what they was going to get for their testimony and --
Q So the judge very radically narrowed the scope of Mr. Strickler's cross-examination on that point, right?
A Yes.
Q Okay. Now, your lawyer at Appellate Defense, Mr. Joey Savitz, raised a version of that issue on direct appeal, didn't he?
A Yes, but it wasn't --
Q Please limit your answers to my questions.
A Okay.
Q I'll get you there, okay?
A Okay.
Q Now, Mr. Savitz addressed this issue as a question of a violation of the confrontation clause to the Sixth Amendment, did he not?
A He did.
Q And the Court of Appeals issued an opinion back in

February of 2003 in which the Court found that the issue was not sufficiently preserved for appellate review?

MR. BROWN: Your Honor, I am just going to object to the form of her questions. So far they have been fairly leading and --

MS. SHURLING: Your Honor, I'm just trying to save time. I mean, it is on the record. You have a copy of it in your packet.

THE COURT: Okay. That's fine, but I don't know that he is going to know about the Court of Appeals' decision.

MS. SHURLING: Okay.

Q Have you seen the Court of Appeals' decision in your case?

A Yes, I have it right here.

Q And did the Court of Appeals find in its memorandum opinion that the issue was not sufficiently preserved?

A Yes, they said it wasn't -- I believe it is called coparaneously(sic)objected to. It wasn't preserved correctly, per se.

Q I believe the word you're struggling for is contemporaneously?

A Yes, that's right, contemporaneously objected to.

MS. SHURLING: Your Honor, the appellate decision is a part of your packet.

Q So do you allege, therefore, that your lawyer should have specifically federalized, constitutionalized his objection to the limitation of his cross-examination of key witnesses against you, is that --

A Yes.

Q Okay. Now, moving on, you said that the next allegation would have been Number 5, which is the one about your juvenile record, and we are going to skip over that, okay?

And then Number 6 is going to involve the constitutionalizing of the issue with regard to confrontation of witnesses. And we have already covered that, okay?

Now, your two Co-Defendants both testified --

MR. BROWN: Your Honor, again, I hate to object to every question that she asks, but so far there hasn't been a direct question that hasn't been leading asked yet.

MS. SHURLING: I'll rephrase.

THE COURT: Okay.

Q Did both your Co-Defendants testify against you at trial?

A Yes.
Q And did either one of them admit to having been involved in a plan to commit an armed robbery?
A No, they just said that I forced them, per se, to do the armed robbery.
Q Did either one of them try to say that they knew in advance that you were going to commit an armed robbery?
A Mr. Simmons, he said that I -- we was walking down the street and we talked about doing this robbery. Then here comes along Mr. Dungee(sic), and he tells Mr. Dungee about it while we are standing on the block. And then so happen we walk down the street and this robbery occurs.
Q Okay. Be very, very careful, because the exact language is important.

MS. SHURLING: What Mr. Dundee's testimony said, Your Honor, is in black and white in the record.

Q What Mr. Dundee actually said was that immediately before you pulled the gun on the victim you said something about that you were going to stick him up or rob him, correct?
A That's correct.
Q Okay. So there -- even Mr. Dundee wasn't alleging

that sometime before the robbery y'all had talked about committing a robbery?

A That's correct.

Q Okay. Now, all -- from the beginning, the indictment in this case alleges that you committed an armed robbery and that you shot and killed someone, right?

A That's correct.

Q And at the end of the trial, after everybody had testified and the jury was deliberating, the jury came back and asked a question, right?

A Yes.

Q What did the jury want to know?

A The jury wanted to know -- the forelady asked the question, and the question was, can they find Mr. Wilds guilty of murder if they feel like the Co-Defendants did the shooting.

It is on tran Page 148, Line 9 through 25.

Q Okay. Now, again, verbiage is very important. You're paraphrasing, aren't you?

A Yes. Yes.

Q Okay.

MS. SHURLING: Your Honor, for the record the exact quote from the record is: If we say Antwan -- which is what my client was known as --

is guilty of murder, are we saying he of the three actually pulled the trigger.

A He alone, yes.

Q The quote is: He pulled the trigger -- actually pulled the trigger.

And you say that counsel was ineffective for failing to request that the judge respond in the affirmative to that question?

A That's correct.

Q If the record in fact reveals that Mr. Strickler did ask the judge to respond in the affirmative to that question, you're not going to dispute the black and white record, are you?

A No.

Q All right. If that issue was raised, if the record speaks for itself and it was raised, would you then have wanted Joey Savitz to raise that as an appellate issue?

A Yes.

Q Whether or not the judge should have answered that question in the affirmative?

A Yes.

Q Okay. Now --

MS. SHURLING: Your Honor, to the extent required, we would modify Number 7. Rather than

being an allegation of ineffective assistance of trial counsel, it appears that it is a question of an issue that was raised, ruled upon, and not pursued on direct appeal.

Q You further allege that trial counsel was ineffective for failing to renew his motion for a mistrial after it became clear from the jury's question in Item 5 that one or more members of the jury had concluded that the Defendant did not shoot the deceased.

Now, I raised that for you because you felt strongly about it, but I want you to explain to me what it is you feel would have been the ground for a mistrial at that juncture.

A I feel like it should have been a mistrial because I wasn't -- that is not what they was trying me for. I was on notice for the armed robbery and the murder, but once the jury was deliberating, they clearly had stated that -- I was thinking they was stating that they didn't believe that I shot the victim. So once the jury was deliberating, how could they come back and the judge hit them with the hand of one, hand of all, and then they find me guilty.

I wasn't -- on the Fifth Amendment, I'm supposed

to be noticed -- put on notice for what I'm being charged with.

Q Okay, let's break this down. Your lawyer did object to the hand of one being the hand of all, or accomplice liability, as I have explained to you, after the judge decided to issue that supplemental charge, didn't he?

A Yeah. And -- yeah.

Q He objected. And he objected on notice grounds. Isn't that fair to say?

A From my recollection, he objected because he didn't argue that law applicable to the jury at that time.

Q Well, and --

MS. SHURLING: Your Honor, the record will reflect that what happened is that after the jury asked that question and the judge declined to answer it in the affirmative, a supplemental jury instruction for the first time interjected accomplice liability into the deliberation in the form of the hand of one is the hand of all jury instruction, to which Mr. Strickler did object.

Q Now, but did Mr. Strickler articulate any kind of objection based on the fact that the facts as testified to by the Co-Defendants did not support the theory of accomplice liability?

A Say that again.
Q Did Mr. Strickler object to the accomplice liability jury instruction?
A Yes.
Q On the ground that the facts as put forth in the State's case did not support application of accomplice liability to the facts of your case?
A Yes.
Q He did raise that objection?
A He -- his objection was that the Solicitor nor him raised that issue in open arguments or in closing arguments.
Q Okay. So his objection was a notice objection?
A Yes.
Q He did not raise a fact based objection, did he?
A No.
Q Okay. And you think he should have in retrospect?
A Yes, he should have.
Q Okay. Now, moving along, you have objected to the fact that he gave an Allen charge in this case, and the fact that he objected to -- failed to object to the appropriate -- or inappropriate language of the Allen charge given in this case.

Can you tell the judge specifically which portion of the Allen charge that was given you

think is improper and why you think it is improper?
A I think it was improper because the judge told the jury that I was entitled to a verdict and that I was entitled to it today.

I was entitled to a verdict, but I wasn't -- I'm not entitled to it that day. They can think about it. That is the whole theory of the jury.

I felt like he spoke to the minority jurors and that in his language he used such words as they should reach a verdict in this case.

And that after he gave that charge to the jury, the jury came back shortly after with a verdict, no less than 15 minutes after he gave that charge to the verdict -- rush -- I felt like he rushed the jury when he gave that Allen charge.

Q Okay. Let's go back to the hand of one is the hand of all and accomplice liability for just a few minutes.

The judge gave not one, but two supplemental jury instructions in the case on the subject of accomplice liability, isn't that true?

A That's true.

Q And you alleged in your discussions with me and in the written submissions you have given me that trial counsel was ineffective for failing to object

to the second more detailed hand of one, hand of all accomplice liability instruction that interjected the concept of aiding and abetting into the mix, right?

A Yes.

Q All right. If I get you to look with me to Page 159 of the transcript, Lines 18 and 19, Line 14 through 17, the judge says what he is going to instruct.

Now, Mr. Strickler says, I'd ask that the record reflect my exception, doesn't it?

Do you take my word for that, Israel?

A Yeah, I take your word for that.

Q Okay. So if Mr. Strickler did object and that issue wasn't raised on appeal, then your true allegation would be that appellate counsel was ineffective for failing to raise that preserved issue on appeal?

A That's correct.

Q Okay. And, once again, you do allege that appellate counsel in the amended application that I filed on your behalf --

MS. SHURLING: We have on that issue, Your Honor, raised that appellate counsel was ineffective for failing to brief the objection to

the second supplemental accomplice liability charge, that appellate counsel was ineffective for failing to raise counsel's objection to the lower Court's supplemental charge on accomplice liability, period.

Q Moving along to other issues, you have got that appellate counsel erred in failing -- pardon me, that appellate counsel erred in failing to brief the issue of the lower Court's refusal to issue a mere presence charge.

You believe that Joey Savitz should have briefed that issue on appeal as well?

A Yes. On appeal he only had to brief one issue, and that issue that he briefed, he couldn't even raise.

And if you look in the transcript when the hand of one, the hand of all came down, Mr. Strickler clearly said that he was ineffective for not arguing this hand of one, hand of all to the jury.

Q Israel, I have got to ask you again, just answer my direct questions and we'll get around to everything, okay?

A Okay.

Q When it comes to the question of mere presence, your lawyer, Mr. Strickler, did say in the discussion about all these supplemental charges,

that if that was going to be charged, he thought mere presence should be thrown into the mix, didn't he?

A Yes.

Q So your lawyer argued that mere presence should be given as an instruction, and the judge did not instruct it?

A That's correct.

Q Okay. Your Co-Defendants testified essentially that they were merely present when you suddenly committed an armed robbery, right?

A Yes.

Q And I believe to some degree that they may have participated at gunpoint once you pulled the gun?

A That is what they allege, yes.

Q Okay. Now, the jury came back and asked the sort of surprising to some people's question that, if we find Mr. Wilds guilty of murder, does that mean that he of the three actually pulled the trigger, correct?

A That's correct.

Q Which we would submit would give rise to a reasonable inference that they questioned that you were the shooter?

A That's correct.

Q And so it is your position that if the jury thought there was a chance that you were not the shooter, that you were entitled to have the jury consider that it was you, not the Co-Defendants that were merely present?

A That's correct.

Q Okay. And your appellate lawyer didn't afford you the benefit of having the Appellate Court decide whether that would have been an appropriate instruction, correct?

A That's correct.

Q Okay.

MS. SHURLING: Your Honor, may I have just a moment's indulgence please?

THE COURT: Sure.

(Pause.)

Q Mr. Wilds, I believe that I have gone through the core of your allegations that you believe warrant your receiving a new trial, but this is in all probability the only PCR you're going to get, and you're 20 years old with a life sentence, so I want to give you a chance.

Is there an issue that you felt strongly about being raised that I have not raised here today?

A There are two issues.

MS. SHURLING: Your Honor, may he have leave to articulate them to the bench?

THE COURT: Sure.

A The first issue is that I feel trial counsel was ineffective for not -- I feel trial counsel was ineffective for not raising a motion to suppress the search warrant in my case because the search warrant was not signed by a magistrate or executing officer. He failed to object or motion the Court to have the search warrant suppressed. That failure deprived me and prejudiced me of my due process rights and a fair trial. Counsel should have objected or motioned the Court. And counsel did not give me adequate assistance of counsel, and that failure deprived me and prejudiced me of my due process rights.

Q Okay. Let's stop for just a second, Mr. Wilds. Do you have a copy of that search warrant up there with you?

A Yes, I do.

Q Okay. May I see it please?

MS. SHURLING: May I approach, Your Honor?

THE COURT: Sure.

(Pause.)

Q Now, on this search warrant, where is it that you

believe a judge was supposed to have signed it?
A On the return.
Q And down at the bottom, signature of officer executing warrant, you have on the right, and on the left you have a signature of someone referred to as a ministerial recorder?
A That's correct.
Q Okay. And you and I have discussed the fact that in some magistrate's offices they have officers designated as ministerial recorders for the purposes of handling the search warrants?
A That's correct.
Q Okay. And but it is your position that for the purpose of issuing a search warrant in a case as significant as a murder case, that an actual magistrate judge should have been the one to sign the search warrant?
A Yes. I'm really not leaning towards the magistrate or the ministerial recorder's signature because that can be construed as administrative error.

And but my thing is that the person who executed the search warrant, that is what I have a problem -- that is where I think the problem is. Because the person who executed the search warrant has testified in the transcript that she didn't

execute the search warrant. And if she didn't execute the search warrant, her signature -- if her signature is on the search warrant execution officer, that means she lied.

Q Okay. Let's -- let's -- I understand your issue now. Whose that signature for?

A Oh, this Officer Gertrude Burns.

Q Officer Gertrude Burns.

MS. SHURLING: Your Honor, I would pass up a copy of the search warrant for your -- Respondent, do you have a copy of the search warrant?

MR. BROWN: Do what?

MS. SHURLING: Do you have a copy of the search warrant?

MR. BROWN: I don't.

Q And on the signature line of Gertrude Burns it says she is the executing officer, correct?

A Exactly.

MR. BROWN: Judge, I would object based on the foundation. It fails to establish -- this is not a certified copy, it is simply a Xerox copy. They have not laid the foundation that this is an accurate and true copy of the search warrant.

A Well, I --

THE COURT: One moment.

MS. SHURLING: Stop. I would ask that this be marked for identification purposes and that following the break we substitute a certified copy.

THE COURT: Okay. Any objection to that?

MR. BROWN: Providing they can -- I believe they'll have to bring a witness in that can lay the foundation that it is a certified copy. But aside from that, we would have -- there is nothing we could object to if they are able to adequately lay that foundation.

MS. SHURLING: Your Honor, I believe under the rules that if it is stamped and certified by the Clerk of Court, that that is sufficient without having a member of the clerk's staff --

MR. BROWN: Then I will stand corrected, but I do object to that one, Your Honor.

THE COURT: Okay. And then she is marking it for identification only.

MS. SHURLING: Your Honor, and I was assuming I could get this from the Richland County Clerk of Court's Office. If I have to go to a Magistrate's Office to get it, it may be next week before we can substitute the copy for -- an original certified copy for this copy.

Thank you.

THE COURT: That will be fine.

(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification only.)

Q And Gertrude Burns testified at your trial?

A Yes, she did.

Q And in her testimony she expressly said she didn't execute the search warrant, right?

A Exactly, yes.

Q Okay. So based on the fact that the return says that she was the executing officer and she admitted at trial that she was not, you believe your lawyer should have done a motion to suppress any and all fruit of that search?

A Yes.

Q Okay. What is your second issue?

A Well, to further that argument, I also feel like that because her signature is on there and she testified that she did not execute the search warrant, that the chain of custody from that search warrant has been broken, because Detective Vision(sic) came and testified that he was the actual person who took inventory of the search.

So if he took inventory of the search, then Gertrude Burns' signature shouldn't be on there.

And if he did, his signature should be there.

By those signatures and their testimonies, I feel like Exhibit 33, which is not on that search warrant, that Doug should have raised those issues and suppressed the search warrant because evidence is missing from the return.

Q Let's stop and break it down. Exhibit 33 is what, the shoes?

A Yes.

Q And they are actually not on that return, right?

A No, they are not.

Q And was there any explanation offered for why they weren't on the return?

A No. It was offered at trial that they were on the return. And Doug, he didn't object to the admission of that evidence. I'm under the impression that he thought that they were on the return.

Q And they're not?

A And they're not.

Q And they, in fact, allegedly contained the crucial speck of blood that was used to tie you to the crime scene?

A That's correct.

Q All right. Would that be the remaining two issues,

Mr. Wilds?

A That's actually one in part. I'm not finished with that yet.

I feel like because Exhibit 33 was admitted into evidence and that their signatures -- that Gertrude Burns' signature is on the return as the executing officer, I feel like that prejudiced me. And I feel like Exhibit 33 should be suppressed.

Q Okay. Now, you understand, we have had this conversation, this is not the place for arguing substantive errors of law. If you feel that exhibit should have been suppressed, then your allegation has to be about what Mr. Strickler should have done to get the shoes suppressed. So the allegation is that Mr. Strickler erred in not doing all that he should have done as your Defense attorney to seize on these improprieties in the search warrant as a basis for suppressing the evidence?

A Yes. He tried to raise the argument in a Jackson versus Denno hearing, and the judge told him that he couldn't raise a Jackson -- he couldn't raise a suppression hearing -- he could not raise a suppression hearing in a Jackson versus Denno hearing.

Now, once we got finished with the Jackson versus Denno hearing, that was the appropriate time to raise the search warrant issue. But he leaves it, and here I am today.

Q So it is your position that your Defense attorney tried to bring up your Fourth Amendment claim in the middle of the hearing on your Fifth and Sixth Amendment claim and never revisited it at the appropriate opportunity?

A That's correct.

Q All right. Now can we move on to your second issue?

A Okay. My -- before we move on to my second issue --

Q I'm sorry. You need to be mindful of something. My hearing is bad, for one thing, but when you talk down into your papers, it makes it difficult for us to understand you, so just speak up a little bit.

A Before we move on to the second issue, I also want to raise that trial counsel was ineffective for not raising the issue with Exhibit 33, being that I wrote SLED and SLED wrote me back. Detective Meade came to court and testified that he got Exhibit 33 from Detective Burns on May 18, detective at SLED. He testified that he did get the shoes from

Detective Burns at the Columbia Police Department to take to SLED on May 18th and that he turned it in to SLED on May 18th. But I paid $35 for a SLED report, and the SLED report said that Detective Meade did not turn the shoes in, Exhibit 33, to SLED on May 18th; that he turned it in one month later, from the SLED report that I got.

Q May I see that document, please?

(Pause.)

Q And this document was sent to you pursuant to a Freedom of Information Act request?

A No, that wasn't free, I had to pay for that.

Q No, sir, not what I mean. Freedom of Information Act. You are entitled to -- you are free to request information, not that they didn't charge you for it, but that you were free to request it?

A Yes.

Q And you requested this information and received back a copy of the SLED report or SLED document showing that the exhibit was turned in on 6/18/99, not 5/18?

A That's correct.

Q All right.

MS. SHURLING: Your Honor, once again we're going to be in a document dispute here, I'm afraid.

MR. BROWN: I've got no objection, Your Honor.

MS. SHURLING: Thank you. I would move to introduce this as Applicant's 2.

(WHEREUPON, Plaintiff's Exhibit No. 2 was marked for identification and received into evidence.)

Q And do you believe that --

MR. BROWN: The State also withdraws its objection to the search warrant.

MS. SHURLING: Thank you very much.

(WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into evidence.)

A My argument is that Doug was ineffective for not suppressing the search warrant and going in and arguing the chain of custody to the search warrant at its appropriate time, being that he tried to raise it in the Jackson versus Denno hearing and then just abandoned it after the Jackson versus Denno hearing.

Q And then as a result of not revisiting that issue at an appropriate time, he never got a ruling from the judge on the question of a Fourth Amendment violation, did he?

A No, he didn't.

Q And because there is no ruling from the judge, you

didn't have that issue available for appellate review either?

A No, I didn't.

Q And you think you should have?

A Yes, I should have.

Q Okay. Now, have we covered all your issues?

A I have my last issue would be that trial counsel was ineffective because trial counsel failed to file a motion to squash(sic) the indictment as being fatally defective. Counsel knew that the victim died months later and that the victim did not -- and that I could not be indicted for the murder of the victim on the day that he was assaulted, and that I could not be charged, and that the charge that I was charged with -- let me make sure I'm saying this right.

Q Let me interrupt you for a moment.

MS. SHURLING: Your Honor, may I have latitude to -- I know what his issue is. I think I can articulate it, perhaps.

Q You are raising what us lawyers have come to know as the Winns issue, the case that was raised in a PCR in Charleston with Judge Pieper involving the fact that an indictment failed to state the time and place of death in addition to the time and

place of the act which is alleged to have eventually caused the death, right?

A Yes, and also that --

Q Stop. Let me get it out, and then I'll let you answer me. In addition to that, you and I have discussed the fact that since the time of the Winns decision, the Supreme Court has decided the Gentry case. We talked about the Gentry case, didn't we?

A Yes, we have.

Q And that it is no longer considered a subject matter jurisdiction issue, it becomes a question of whether or not the indictment was sufficient, Number 1, and whether your lawyer was ineffective for failing to address that insufficiency in some sort of motion to quash?

A That's correct.

Q So you believe that Doug Strickler was ineffective for failing to make a motion to dismiss these charges against you in a form of a motion to quash the indictment based on the failure of the indictment to address the time and place of the victim's death?

A That's correct.

Q Now, are you also alleging in any respect that he was ineffective for failing to address proximate

cause of death?
A That's correct too. I'm -- also, in that I'm alleging that he didn't argue the fact or address the Court for a motion to squash(sic) the indictment on the fact that I wasn't indicted under the hand of one, hand of all also in that indictment. I'm saying that in this indictment that it does not allege that -- it alleges that the dude died on the day of the event, but he didn't die until months later, and that Doug was supposed to -- he was supposed to catch that.
Q Okay.
A Because --
Q But you and I have discussed the fact, have we not, Mr. Wilds, I'm just trying to help you separate your issues, you and I have discussed the fact that even if he died much later, as long as the death was the proximate cause of the original injury, you could still be found responsible for the homicide?
A Yes.
Q You understand that?
A Yes.
Q But you still believe that the indictment is required to at least assert when he died and where?
A It is an essential element.

Q Thank you. No further questions. Please answer any questions the State has.

MR. BROWN: No questions for Mr. Wilds.

MS. SHURLING: Thank you, Your Honor. We would call Doug Strickler.

(Witness steps down.)

THE COURT: Just for the benefit of the court reporter, let's take about five or seven minutes.

MS. SHURLING: Thank you very much. My paralegal just requested the same thing.

(WHEREUPON, a short break was taken.)

THE BAILIFF: Place your left hand on the Bible, raise your right, and face the clerk.

THE CLERK: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please take a seat. Please state your full name for the record.

THE WITNESS: My name is Douglas Steven Strickler.

DOUGLAS STEVEN STRICKLER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q Good afternoon, Doug.

A Good morning.

Q Good morning, pardon me. It feels like afternoon to me.

Is it fair to say that you were pretty much taken by surprise when the whole issue of accomplice liability got interjected at the last minute in this trial?

A I think that is a fair characterization, yes, ma'am.

Q And, in fact, you made a motion for a mistrial on the ground that you felt like that was rendering you, per se, ineffective, or words to that effect?

A Yes. I think I had several bases that I articulated. I could go through them in the transcript, but I certainly referenced ineffective assistance, yes.

Q Okay. Up until that point in the trial -- you, for the record, you have been here during earlier testimony?

A Yes, ma'am.

Q Was it fair to characterize both Co-Defendants' testimony as saying that they kind of claimed your client out of the blue robbed somebody, isn't that

right?

A I don't remember whether they said he robbed them out of the blue or not.

Q Okay.

A I don't remember their testimony in that regard. It is in the record. Whatever is in the record is what they said.

Q The record will speak for itself. But if the record reflects that both of these young men were saying that they were just with your client when he suddenly and without prior planning pulled a gun and robbed somebody --

A Right.

Q -- and there was no discussion of a preconceived agreement to commit a robbery --

A Right.

Q -- either in their testimony or in their pretrial statements --

A Correct.

Q -- then you would have no notice of any intent by the State to proceed on a theory of accomplice liability?

A Correct.

Q Do you have copies of the Co-Defendants' statements in your file?

A I mean, there is a file of discovery that thick over there. I didn't bring that up with me.
Q Thank you.
MS. SHURLING: Your Honor, I would ask that the record be held open for us to get copies of those witnesses' statements added to the record.
THE COURT: Any objection?
MR. BROWN: No objection from the State, Your Honor.
THE COURT: Okay.
MS. SHURLING: Thank you.
Q So without any testimony of that sort, you were truly taken by surprise when the jury came back with the question that they came back with?
A Yes, ma'am.
Q And the indictment had expressly charged your client with being the shooter?
A I believe so.
Q Okay. Now, you are aware of case law that says that they can proceed on a theory of accomplice liability even on an indictment that charges someone with being a principal?
A I think Mr. McMahon pointed those cases or some of those cases out in response to my --
Q Sure.

A -- contention they shouldn't.
Q Did it occur to you at the time -- and I realize you were --
A I was making it up as I went, but go ahead.
Q I understand. I understand. I'm intimately familiar with being caught off-guard like that. But did it occur to you in that moment to argue not that they couldn't do it, because you weren't on notice of it --
A Right.
Q -- but because it didn't fit the testimony and evidence proffered by the Prosecution?
A I think I did argue that. Could I see the transcript?
(Pause.)
A I mean, this is not my memory, I actually sat down and looked at it.
Q Sure.
THE COURT: And if you would direct the Court to the pages.
THE WITNESS: Yes, ma'am, certainly. This is Page -- Volume 2 of the transcript, Page 141, Line 16.
Line 7: MR. STRICKLER: I submit just the opposite. The theory of hand of one, hand of all

has to have some basis in fact, and Your Honor is required to charge the law applicable to the evidence.

The fact is that the evidence before this jury is that from the lips of the two Co-Defendants is that he pulled the trigger.

The indictment alleges that he pulled the trigger. So --

Q I understand.

A So, I mean, the only testimony this jury has heard is that he killed him, so for the jury to return a verdict of guilty, they have to find he killed him. So, you know --

Q I understand. But let's talk about that for a minute.

A Right.

Q It certainly is possible in your experience for the State's evidence to be that someone else pulled the trigger and him still be guilty under a theory of accomplice liability?

A Hand of one. Right.

Q So who pulled the trigger in a true accomplice liability case is not really the issue, is it?

A No.

Q So the question I'm asking you if it occurred to

you to raise was whether or not under accomplice liability the standard is whether or not the act was a readily foreseeable consequence of acts mutually agreed upon by the parties, is that a fair paraphrase of the law?

A Foreseeability is certainly involved.

Q Foreseeability. Readily foreseeable consequence of acts mutually agreed upon by the parties. I think State v. Peterson is a big case on that.

And my question is, did it occur to you to argue that these Co-Defendants had not given any testimony at trial nor had they claimed in their pretrial statements that they had acted in concert with your client by agreement with your client to do anything, and, therefore, that factually there was no basis for hand of one, the hand of all or accomplice liability as being appropriate law on the facts of this case?

A You know, as to that particular aspect of it, no, I didn't argue it. I don't know whether I thought about it or not at the time. I objected to the charge.

Q Sure.

A It was an inappropriate charge, I thought.

Q I understand. And, again, we are all recognizing

you were caught way off-guard?
A So, you know --
Q Let's talk about the limitation of the Court of your cross-examination of Myers and the two Co-Defendants.
You wanted to go into detail about what they may have been facing in terms of charges and sentencing exposure, and Judge Westbrook, God rest his soul, wouldn't let you do it, right?
A If you tell me that is in the record, that is what happened. I don't know. I believe the issue I was most concerned with is the one that we just discussed, and that has a transmittal letter to Appellate Defense in the case, but that is the thing I specifically pointed out to them as far as a concern of mine. Go ahead.
Q And that issue was in fact argued by Joey Savitz on appeal?
A I'm sorry, the accomplice liability was the issue that I brought to Appellate Defense.
Q Oh, pardon me, I misunderstood you.
A I think I probably -- I didn't mention 608 at all.
Q Okay.
A But go ahead. I'm sorry.
Q The improper limitation of the cross-examination of

the witnesses was an issue that Joey Savitz raised on appeal?

A That's what I understand.

Q And the Court of Appeals ultimately concluded that in terms of it being a confrontation violation --

A Uh-huh.

Q -- under the Sixth Amendment, that it had not been preserved as that at trial?

A Okay. I mean, I don't remember the opinion.

Q If the opinion says it, it says it.

A I don't doubt it.

Doug's test. on limit.

Q Did it occur to you during the trial to federalize that issue, if you will, and to argue it as an express violation of the confrontation clause to limit your cross-examination?

A Obviously it did not or I would have made that a basis for --

Q And in retrospect, should you have?

A Sure.

Q Okay. Now, let me --

MS. SHURLING: Your Honor, begging a moment's indulgence.

(Pause.)

Q The detectives were allowed to testify over your objection on grounds of relevance to statements

attributed to our client that he owned three guns and they were allowed to characterize that conversation as braggadocio, that he was bragging about owning them, right?

A Again, I don't remember. If it is in the record, then he did, sure.

Q Your client was 20 years old at the time of the trial. If two of those guns were indeed handguns, it would have actually been illegal for him to possess them, wouldn't it?

A Yes.

Q Did it occur to you to raise as a further ground for the motion to suppress those statements, the fact that it would be a violation of the Character Evidence Rule with regard to alleged admission of collateral bad acts not the subject of prosecution?

A If I didn't raise the objection on that basis, then it didn't occur to me.

Q Okay.

A Okay.

Q Moving along to the shoes in this case.

MS. SHURLING: And, Your Honor, if I can have just a minute to clarify something, because it is real circular and confusing.

Q The search warrant refers to a pair of Air Force

Nike's being seized at the scene. I believe I said the return didn't refer to a pair of shoes being seized. That is an incorrect statement. The trial actually dealt with two identical pairs of suede Air Force 1 sneakers, didn't it?

A I have no idea.

Q Do you recall that the Applicant's cousin, Terrell, Mr. Frederick, testified that State's Exhibit Number 30, which is the tennis shoes that were seized pursuant to the search warrant, belonged to him and him alone?

A No, I don't remember the testimony. If it is in the record, he testified to it.

MS. SHURLING: And, Your Honor, I would quickly -- if I can have a second, I can direct you to the specific page. I'm sorry. That would be page -- Your Honor, there is a problem with the transcript. The court reporters were apparently -- well, it is the same court reporter, I stand corrected, but Ms. Bennett decided to start over on her page numbering for Volume 2. So this is Volume 2, Page 43, where Mr. Frederick says that the tennis shoes taken during the search of the house were his.

A Okay.

Q You don't dispute that?
A No. I mean, I remember talking about it. I looked through -- I had some notes regarding I think tennis shoes being taken that belonged to him.
Q Are you aware that during the testimony of the State's expert that SLED Sample 1.3.1, which was State's Exhibit 33, was testified to actually be taken from the tennis shoes that were taken?

MS. SHURLING: Wait a minute. I'm getting confused, Your Honor. May I have a moment with my client?

THE COURT: Sure.

(Pause.)

MS. SHURLING: Your Honor, may I have just a second?

(Pause.)

Q Did you, as part of your preparation for this trial, Doug, take a look at the search warrant?
A Yes.
Q You would do that just as routine trial prep, wouldn't you?
A Yes, ma'am.
Q And did you make note of the fact that the return was signed by Gertrude Burns?
A Yes.

Q And did it pique your attention somewhat when Ms. Burns testified that she didn't execute the search warrant?

A I need to see that. I don't remember that being her testimony.

Q Okay. But that wasn't some kind of strategic decision, you just didn't catch it?

A Well, if that indeed is the case, I just took it as he was testifying, took a quick look through, and I may have missed it in scanning the testimony, but I saw her testifying that she was present during the search, so --

Q Okay.

A But I'm not sure -- I mean --

MS. SHURLING: Your Honor, there were two pair of tennis shoes. There was tennis shoes, State's Exhibit 30, which were seized from the residence, and then there were another -- there was another pair of tennis shoes that was allegedly taken from my client at the police station.

A That's what I'm thinking, yes.

MS. SHURLING: That was marked State's Exhibit Number 33. And they were apparently identical shoes, identical in the sense of make and brand, and all of that. And belonged to cousins who lived

in the same residence.

Q Did you consider exploring in your defense of your client the fact that there may have been some confusion as to which shoe the speck of blood was found on since there were two pairs of shoes from two young men living in the same house that were identical?

A Excuse me just one moment, please.

(Pause.)

A If I am asked to speculate on what my thoughts were, I will do that because, if I remember correctly, there was a difference in the sizes of the two shoes, but I need to take a look at -- Mr. Frederick testified in the trial, I believe.

Q Yes.

A I don't know what his testimony was. I can't remember.

Q Well, among his testimony was the fact, was it not, that it was he, not the Applicant, who had known Eisom all his life?

A I have no idea, you know. I don't remember his testimony.

Q Okay.

A What, six years ago?

Q Let's recount for just a minute.

A Well, if I remember correctly, the shoes taken during the search were too large for him, but the correct size for Frederick. And the shoes they alleged to have taken from him at the police station were the right size for him, if I remember correctly.

Q Thank you. You felt like you had a really good issue preserved when it came to the question of the accomplice liability issue being interjected at the last minute, didn't you, Doug?

A Well, I have -- you know, as I said, I was, as they say, winging it as far as my reaction of that goes, but I felt strongly enough -- usually at the time we transmit the material to Appellate Defense we just do a cover letter indicating what is transmitted. If I think there are issues that spring out to me of significance, then I make a brief note of those in the letter just as a heads-up to Appellate Defense. And if a defense in the case is alibi, Judge Westbrook probably ended up charging the correct law in that regard; however, after the jury had begun deliberating, in response to a question from them, the judge charged accomplice liability. I think I objected enough to preserve the issue. I certainly hope so.

He then, in response to another note from the jury, expanded on his definition of accomplice liability. The only testimony before the jury was that my client shot the victim. Accomplice liability was not charged in the judge's initial charge and was consequently not argued by me in closing.

I have some hope this may provide a decent basis for appeal in this matter, so I felt strong enough to write that.

Q And you are aware, I assume, that that issue was not raised on direct appeal?

A That's my understanding. I can only assume Mr. Savitz knows far more about the law than I, and I'm certain that that is true, and elected not to raise it. He has the benefit of not reacting on the spur of the moment, as I do.

Q After the judge gave, over your objection, an accomplice liability instruction, he actually came back and gave a supplemental accomplice liability instruction?

A I referred to that in my letter.

Q And you renewed your objection, as I pointed out earlier, on Page 159 of the record, to that instruction as well?

A Yes.
Q Can you remember what the difference was between the first one and the second one?
A No. I don't remember at this point. I can sit down and read through the record and figure out what it was, but I don't remember.
THE COURT: And were you referring to Volume 1 or 2?
A That's Volume 2.
MS. SHURLING: Ma'am?
THE COURT: That was Volume 2? Okay.
MS. SHURLING: Yes, ma'am, Volume 2. Thank you. I keep forgetting she changed the numbers on it.
Q Would you look at Page 160, Volume 2, if you have it with you, please, sir, and look at Lines 12 through 18.
MS. SHURLING: I can publish that, Your Honor, with the Court's permission.
Now, these are not separate elements each of which are to be proven, rather they refer to a continuous course of action by the participants.
The gist of it is that they must be present and aiding or abetting in the commission of the offense.

Obviously, aiding means to aid or assist, and abetting means to be inciting or agitating. A common term may be to egg on, or something along those lines.

Q Do you see that portion?

A Yes, ma'am.

Q Okay. Given the testimony of the Co-Defendants that they were with the Defendant when he suddenly pulled a gun and committed an armed robbery --

A Right.

Q -- that any limited participation they had was at gunpoint --

A Right.

Q -- didn't you feel that this instruction was inaccurate or at least, at best, incomplete? What is the law if someone is forced to aid and abet in a crime, if they are forced to, if they are themselves at gunpoint?

A They have the basis of a defense of duress.

Q And if you were acting under duress, it would not be an act mutually agreed upon by the parties, would it?

A Correct.

Q And it would not be, therefore, a proper application of the law of accomplice liability?

A Correct.
Q And there was evidence of that, at least according to the testimony of the Co-Defendants, at trial?
A Correct. I assume correct. I have not read their testimony.
Q Well, taking that as a given.
A I take you at your word as far as referencing in their testimony.
Q I'm sneaky, but not that sneaky. I like my law license.
A I would not claim to have any independent recollection of the testimony from six or seven years ago.
Q Okay. If the record says it. Then we get to the question that the jury throws out there, that if we find him guilty of murder or we say that he of the three actually pulled the trigger --
A Right.
Q -- which suddenly throws into the mix the obvious inference that the jury has got some question about who the shooter was?
A Right.
Q And my question is, based on that and the fact as presented by the Co-Defendant, wouldn't it have been appropriate to object to the supplemental

instruction on the ground that I have just discussed?

A Can you put the ground for the objection into one short sentence?

Q That if aiding -- if there was testimony as to aiding and abetting in an act, if that participation was coerced, that it would not be a form of accomplice liability or not result in accomplice liability?

A As to specifically stating that, I don't think -- again, it is a number of years ago -- I don't think that would cross my mind, and frankly thought that my objection to the entire theory of accomplice liability and to the additional language regarding aiding and abetting based on the fact that none of that had been testified to covered that situation. So, no, I never thought that.

Q Okay. Thank you.

MS. SHURLING: A moment's indulgence, Your Honor.

(Pause.)

MS. SHURLING: Your Honor, for the record, I misstated the record on a point earlier I'd like to correct. My client was under the misbelief that Detective Burns had not participated in the

execution of the search warrant because Detective Vincent testified that he executed the search warrant.

We have now isolated testimony on Page 153 of Volume 1 where Detective Burns says that she, Investigator Meade, Vincent, Wilkerson and Huntley executed the warrant.

Thank you, Your Honor.

(Pause.)

MS. SHURLING: Nothing further, Your Honor.

THE COURT: Okay.

MR. BROWN: The State has no questions for Mr. Strickler.

THE COURT: Okay.

(Witness steps down.)

MS. SHURLING: Your Honor, given the complexity of the legal theories involved in this case, I would ask for leave of Court to submit a proposed order in 30 days.

THE COURT: Sure.

MS. SHURLING: And would ask that regardless of which order the Court adopts, that our proposed orders be made part of the record.

THE COURT: Okay.

MS. SHURLING: Thank you. I'll rest on those

arguments then, Your Honor.

THE COURT: Okay, thank you. Just remember that you all were supplementing the record with the statement.

MS. SHURLING: Yes, ma'am. I just want to get some clean copies that haven't been scribbled on.

THE COURT: That's fine. Anything further?

MR. BROWN: No, Your Honor.

THE COURT: And then, just so the record understands, that the Steven Smalls case has been continued by agreement?

MR. BROWN: Yes.

THE COURT: Okay, thank you all.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 8th day of June, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 1, 2007

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter
My Commission Expires: 5/24/09

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Form 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 03CP4005973

Isreal Wilds

Plaintiff

vs.

State Of South Carolina

Defendant

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2008.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2008, and a copy mailed first class this 16th day of May, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Tara D Shurling

ATTORNEY(S) FOR THE PLAINTIFF(S)

David A Spencer

ATTORNEY(S) FOR THE DEFENDANT(S)

s/BARBARA A. SCOTT

Clerk of Court

SCRCP APP-24/FORM 4

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
ISRAEL WILDS, 274010,	)	
	)	
Applicant,	)	
	)	**ORDER**
v.	)	
	)	**03-CP-40-5973**
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED
2007 DEC 14 AM 8:05
CLERK OF COURT
RICHLAND COUNTY, S.C.

THIS MATTER came before the Court by way of an Application for Post-Conviction Relief filed December 15, 2003. The State made its Return on July 6, 2004. An evidentiary hearing was convened in this case on June 8, 2007. The Applicant was present and was represented by Tara Dawn Shurling, Esquire, of the Richland County Bar. The Respondent was represented by Robert L. Brown, Assistant Attorney General.

I.
PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. He was indicted for Armed Robbery (99-GS-40-40142) and Murder (99-GS-40-45289) by the Richland County Grand Jury at the September 1999 term.[1] The Applicant was represented in the trial court by Douglas Strickler, Esquire. On March 26-29, 2001, the Applicant proceeded to trial by jury and was found guilty on both counts. The Honorable Marc H. Westbrook, presiding Circuit Judge, sentenced the Applicant to thirty (30) years imprisonment for the Armed Robbery charge, and a natural life sentence for the Murder charge.

[1] The Applicant was initially indicted for assault and battery with intent to kill, but the charge was changed to murder when the victim died as a result of the gunshot.

#Rmc

A timely Notice of Appeal was filed on the Applicant's behalf, and an appeal was perfected by the South Carolina Office of Appellate Defense in the person of Joseph L. Savitz, III, then Deputy Chief Attorney. In an unpublished opinion, the South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Israel Wilds, Op. No. 2003-UP-152.

II.
ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
2. Ineffective assistance of appellate counsel.

In an Amended Application for Post-Conviction Relief filed on May 12, 2006, the Applicant more narrowly defined his allegations in support of his claim that he received ineffective assistance of counsel at trial and on appeal in violation of his rights pursuant to the Sixth and Fourteenth Amendments, as well as Article I, Section 14 of the South Carolina Constitution. In that Amended Application, the Applicant specifically alleged:

1. Trial counsel was ineffective for failing to move to suppress all evidence seized following the Applicant's unlawful arrest.
2. Trial counsel was ineffective for failing to move to suppress the Applicant's statement that he owned three guns.
3. Trial counsel was ineffective for failing to object to the characterization of the Applicant's statement about the guns as "bragging."
4. Trial counsel was ineffective for failing to object to the trial court's limitation of cross-examination of Timothy Myers.[2]

[2] During the evidentiary hearing convened in this case, the Applicant acknowledged that trial counsel did in fact object to this limitation. PCR Tr. p. 9, lines 2-8. However, the Applicant continued to allege that this limitation was error. Trial Tr. p. 9, line 12. Therefore, this Court will treat the issue as an allegation of ineffective assistance of appellate counsel for failing to raise the issue on appeal. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701,

5. Trial counsel was ineffective for failing to object to the trial court's ruling that the State could use the Applicant's prior juvenile convictions for impeachment purposes.[3]

6. Trial counsel was ineffective for failing to properly object to the trial court's limitation of cross-examination regarding the potential sentences that the Applicant's co-defendants faced.

7. Appellate counsel was ineffective for failing to raise the impropriety of the accomplice liability charges on appeal.[4]

8. Appellate counsel was ineffective for failing to raise the trial court's refusal to charge the jury on mere presence on appeal.

9. Trial counsel was ineffective for failing to object to the Allen[5] charge given by the trial court.

III.
EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case, the Applicant presented his own testimony, as well as testimony from trial counsel Douglas Strickler, Esquire. In addition to this testimony, this Court has before it the four exhibits introduced by the Applicant, a transcript of the Applicant's trial, a transcript of the evidentiary hearing convened in this case, a copy of the records of the Richland County Clerk of Court regarding the subject convictions, and a copy of the Applicant's records with the South Carolina Department of Corrections. What follows below

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708 (2006) (holding that PCR applicants should be permitted to amend their PCR applications to conform to the evidence presented at their PCR hearings); Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings).

[3] During the evidentiary hearing convened in this case, the Applicant knowingly, voluntarily, and expressly abandoned this allegation. PCR Tr. p. 6, line 23. Accordingly, this Court will not address this issue. Cf. Garner v. State, 371 S.C. 1, 3, 636 S.E.2d 860, 861 (2006) (holding that a PCR court must address all issues presented); S.C. Code Ann. §17-27-80 (a PCR court "shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented").

[4] The Applicant also alleges that trial counsel was ineffective for failing to object to the accomplice liability charges (original allegations 7-9 and 12-15). The trial transcript shows that trial counsel did in fact so object. Trial Tr. Vol. II p. 147, line 1; p. 159, line 5. During the evidentiary hearing convened in this case, the Applicant knowingly and voluntarily abandoned these allegations, and elected to address these issues as allegations of ineffective assistance of appellate counsel. PCR Tr. p. 14, line 19. Accordingly, this Court will not address the abandoned issues. Cf. Garner v. State, *supra*; S.C. Code Ann. §17-27-80.

[5] Allen v. United States, 164 U.S. 492 (1896).

are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Relief Procedure Act, S.C. Code Ann. §17-27-10 *et seq.* (1985).

IV.
RELEVANT FACTS

For the purposes of evaluating this action, this Court would note the following relevant facts. On March 29, 1999, Officer John Hunley of the Columbia City Police Department responded to a 9-1-1 call indicating that there had been a shooting. Trial Tr. Vol. I[6] p. 78, line 25-p. 79, line 1. Officer Hunley discovered the victim, Anthony Rumph, lying in the middle of the road. Trial Tr. Vol. I p. 79, lines 14-16. Officer Hunley discovered that the victim had a puncture wound in his chest. Trial Tr. Vol. I p. 80, lines 10-11; 13. EMS technicians quickly removed the victim from the scene. Trial Tr. Vol. I p. 81, lines 11; 13. He was taken to Richland Memorial Hospital, where he remained on a ventilator until his death on July 8, 1999. Trial Tr. Vol. I p. 330, lines 15-16; p. 331, lines 8-12. Pathologist Peter Zvejnicks testified at the Applicant's trial that the victim died as a result of complications with the gunshot wound. Trial Tr. Vol. I p. 336, lines 8-9.

The Applicant, Isom Simmons, and Joseph Dungee were all charged with the victim's murder and the accompanying armed robbery.[7] Both Simmons and Dungee testified against the Applicant at his trial. Prior to Simmons' testimony, trial counsel moved to question both Simmons and Dungee about the potential sentences that they faced from these charges. Trial Tr. Vol. I p. 206, lines 12-15. However, trial counsel did not cite any specific rule which would give

[6] The pagination of Volume II of the trial transcript is not numbered sequentially from Volume I.
[7] The victim's wallet was stolen. Investigator D.R. Catoe of the Columbia City Police Department testified that the wallet was found approximately two blocks from where the victim had been shot. Trial Tr. Vol. I p. 114, line 13.

the Applicant the proper authority to cross-examine his co-defendants about their sentences.[8] The trial court denied this motion. Trial Tr. Vol. I p. 206, line 21.

Simmons testified at the Applicant's trial that he was walking down the street with the Applicant and Dungee when he saw the victim walking up the other side of the street. Trial Tr. Vol. I p. 220, lines 1-2; 4-5. As they passed, the victim asked the trio if they "had anything for him," and the Applicant stopped to talk to the victim. Trial Tr. Vol. I p. 220, lines 7-10. Simmons and Dungee continued to walk down the road. Trial Tr. Vol. I p. 220, line 21. After a moment, the Applicant pulled out a gun and pointed it at the victim. Trial Tr. Vol. I p. 221, lines 14-15; 17. Simmons then testified as follows:

> Q: Then what happened?
> A: Then [the Applicant], he ordered me and Dante to hit [the victim].
> Q: To what?
> A: To hit the dude.
> Q: Did you hit the dude?
> A: Yes, maam.

Trial Tr. Vol. I p. 223, lines 1-6. When questioned about the firing of the shot, Simmons unequivocally testified that the Applicant shot the victim. Trial Tr. Vol. I. p. 224, lines 3-5. At no point in time did Simmons identify any other individual as the possible shooter. Additionally, at no point in time did Simmons testify that the robbery was the result of a plan mutually agreed upon by the three co-defendants.

Dungee testified at the Applicant's trial that when he first met up with the Applicant and Simmons the night of the incident, the Applicant told Dungee that he was "going to stick somebody or jack somebody." Trial Tr. Vol. I p. 290, lines 7-8. Upon further inquiry by the State, Dungee testified that this was not his plan for the night. Trial Tr. p. 290, line 23. Dungee

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[8] As trial counsel did not cite the Sixth Amendment's Confrontation Clause as the controlling authority on this issue, the South Carolina Court of Appeals found that this issue was not preserved for appeal. State v. Israel Wilds, *supra*.

also testified that when he, the Applicant, and Simmons saw the victim that night, the victim talked to the Applicant about purchasing some crack cocaine. Trial Tr. Vol. I p. 298, lines 4-6. Both Dungee and Simmons continued to walk down the street. Trial Tr. p. 298, lines 8; 10. Dungee testified that shortly after the Applicant and the victim began talking to each other

> [The Applicant] pulled—he had pulled the gun out and it looked like he was robbing the man. He had pulled the gun out on the man, and when he pulled the gun on him me and Isom, you know, we grabbed the man and he started trying to jerk away from us.
>
> I—well, Isom hit him and then I hit him, and [the Applicant] hit him in the back of the head with the gun, and then he was holding the gun and it was like, go in his pockets, go in his pockets, so we went in his pockets.

Trial Tr. Vol. I p. 300, lines 6-14. Dungee then unequivocally testified that the Applicant shot the victim. Trial Tr. Vol. I p. 304, line 14. Near the conclusion of his testimony on direct examination, Dungee testified as follows:

> Q: Did you have a gun that night?
> A: No, sir.
> Q: Did Isom have a gun that night?
> A: No, sir.
> Q: Was [the Applicant] with you all?
> A: Yes, sir.
> Q: Did [the Applicant] have a gun?
> A: Yes, sir.
> Q: Who shot the man?
> A: [The Applicant] shot the man.

Trial Tr. Vol. I p. 310, lines 12-21. At no point in time did Dungee identify any other individual as the shooter. Additionally, at no point in time did Dungee testify that the robbery was mutually agreed upon by the three co-defendants prior to the Applicant's altercation with the victim.

The Applicant did not testify in his own defense. However, the Applicant did present alibi testimony from several relatives who testified that he was watching a basketball game at the

time of the shooting. During closing argument, trial counsel argued that the Applicant simply was not present at the shooting, and that Simmons and Dungee were lying to protect themselves. Trial Tr. Vol. II p. 106, lines 14-20. Conversely, the State argued that the Applicant, and the Applicant alone, shot the victim. Trial Tr. Vol. II p. 129, lines 22-24. No one argued that the Applicant was guilty of either crime as an accomplice.

After submission of the case to the jury, the jury sent back a note asking "if we say [the Applicant is] guilty of murder, are we saying he of the three actually pulled the trigger?" Trial Tr. Vol. II p. 141, lines 4-6. Initially, the trial court had the following view of the issue:

> I recall nothing in the testimony that anyone else pulled the trigger. It seems to me the only way the jury could have gotten to this is to speculate.
>
> ...
>
> It seems the proper way to answer this is to advise this jury that they've got to base their verdict on the evidence, and they can't—the verdict can't be the result of any sort of speculation on their part.

Trial Tr. Vol. II p. 143, lines 13-23. However, the trial court eventually charged the jury on accomplice liability, but did not charge the jury on mere presence. After receiving an Allen charge, the jury sent back another note questioning the different elements of accomplice liability. Trial Tr. Vol. II p. 157, lines 8-12. The trial court gave a final instruction defining aiding and abetting in common parlance terms, and the jury finally returned a guilty verdict on both charges. Trial counsel timely objected before and after each charge on accomplice liability, and moved for a mistrial before and after each charge on accomplice liability. These objections and motions were denied every time they were made.

Appellate counsel did not raise any issue on appeal regarding the charges on accomplice liability or mere presence. Instead, appellate counsel raised the argument that the Applicant's

ability to cross-examine his co-defendants was unconstitutionally limited by the trial court. However, this argument was denied by the South Carolina Court of Appeals because it was not preserved for appeal. State v. Israel Wilds, *supra.*

V.
STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of trial counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP. In evaluating an Application for Post-Conviction Relief alleging ineffective assistance of trial counsel, the moving party must demonstrate that trial counsel 1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters, and 2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, the Applicant must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

On the one hand, where trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions which acted to

prejudice his client's ability to receive a fair trial by simply labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the South Carolina Supreme Court found that

> Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

(Emphasis in original) (internal citations omitted).

A criminal defendant is entitled to the effective assistance of counsel on appeal. Evitts v. Lucey, 469 U.S. 387 (1985). The burden is on the Applicant in a Post-Conviction Relief proceeding to prove allegations of ineffective assistance of appellate counsel. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005). In evaluating an Application for Post-Conviction Relief alleging ineffective assistance of appellate counsel, the Applicant must show that but for appellate counsel's errors and omissions, the result on appeal would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). Appellate counsel is not required to present all potential meritorious issues on appeal if the decision to not present an issue was made out of professional judgment. Tisdale v. State, 357 S.C. 474, 594 S.E.2d 166 (2004).

VI.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Application for Post-Conviction Relief raises several allegations of ineffective assistance of trial and appellate counsel. This Court finds that the errors and omissions of appellate counsel require reversal of the Applicant's convictions and sentences. These meritorious allegations (#7-8) will be addressed first.

A. Allegations Which Are Meritorious

1. Appellate Counsel Was Ineffective for Failing to Raise the Issue of Accomplice Liability on Appeal

The Applicant presents two distinct issues regarding the charge on accomplice liability. First, the Applicant argues that he could not have been liable as an accomplice, and that appellate counsel was ineffective for failing to present this issue on appeal. Second, the Applicant argues that even if he could have been liable as an accomplice, the accomplice liability charge as given by the trial court was insufficient. Accordingly, the Applicant argues that appellate counsel was ineffective for failing to present the sufficiency of the charge on appeal as well. This Court agrees with the Applicant on both issues, and each will be addressed in turn.

i. Liability as an Accomplice

"The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). If any evidence supports a requested jury charge, the trial court should grant the request. State v. Ward, 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007).

Prior knowledge that a crime is going to be committed, without more, is insufficient to make a person guilty of that crime, even when that person is present at the commission of the crime. State v. Franklin, 299 S.C. 133, 140, 382 S.E.2d 911, 915 (1989). In order to be convicted for a crime as a principal through accomplice liability, a defendant must have acted pursuant to a common scheme or plan with his confederates. State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000); State v. Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985); overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). In other words, presence "at the scene of the crime by *pre-arrangement* to aid, encourage or abet in the perpetration of the crime constitutes guilt as a principal." State v. Leonard, 292 S.C. 133, 136-

137, 355 S.E.2d 270, 272 (1987) (emphasis added). Furthermore, to admit evidence under a "hand of one is the hand of all" theory of accomplice liability, "the existence of the *common design* and the participation of the accused against whom the evidence is offered should first be shown." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999) (emphasis added).

Taken in the light most favorable to the State, the evidence adduced at the Applicant's trial shows the following:

1. Dungee knew that the Applicant was planning to rob someone the day of the incident, but did not know who. Dungee did not join in this plan.

2. Simmons had no knowledge of the Applicant's plan to rob anyone.

3. When the Applicant decided to rob the victim, both Simmons and Dungee had passed them by and were walking down the street.

4. Simmons and Dungee only began to help the Applicant rob the victim once the Applicant, wielding a gun, ordered them to.

5. Only the Applicant shot the victim.

Viewed as a whole, the evidence given at the Applicant's trial did not support a charge on accomplice liability. The State admitted *no* evidence that would indicate that Dungee, Simmons, and the Applicant planned together to commit an armed robbery the night of the incident. Dungee's testimony that he knew the Applicant was planning to rob somebody, with nothing more, does not give rise to accomplice liability. See State v. Franklin, *supra*. Furthermore, the lack of any prearranged plan is shown through both Dungee's and Simmons' testimony that they continued to walk down the street as the victim passed them by. Had they planned to commit the robbery, they would not have left the Applicant behind to deal with the victim alone. According to their testimony, it was only after the Applicant pulled out a firearm that Dungee and Simmons began to take part in the crime.

There must be some evidence of a prearranged plan to commit a crime in order to convict a criminal defendant as a principal through accomplice liability.[9] See State v. Leonard, *supra*. During the Applicant's trial, the State admitted evidence that showed only that the Applicant planned the robbery alone. Both co-defendants testified that while they took part in the robbery after it began, they only did so after being ordered to by the gun-wielding Applicant. According to the co-defendants, neither one of them knew that the robbery was going to take place prior to the Applicant brandishing a pistol. Thus, both co-defendants implied that they acted under duress; a theory inconsistent with accomplice liability. Simply put, *no* evidence was introduced at the Applicant's trial that would support an accomplice liability charge.[10]

Therefore, there was no evidence adduced at the Applicant's trial that would indicate that he could be found guilty as a principal through accomplice liability. Accordingly, the trial court's decision to charge the jury on accomplice liability was error. Furthermore, the Applicant was undoubtedly prejudiced by the charges on accomplice liability because the jury's questions to the trial court centered on the guilt of the Applicant as an accomplice. Additionally, the jury returned a verdict moments after receiving the second, supplemental, charge on accomplice liability. It is clear that the jury only convicted the Applicant when they finally concluded that he was guilty as an accomplice. Consequently, the Applicant was unquestionably prejudiced by the

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[9] This Court is mindful that the Supreme Court's decision in State v. Kelsey, 331 S.C. 50, 77, 502 S.E.2d 63, 76 (1998) could be read to approve a jury charge on accomplice liability that read as follows:

> The law says-that if a person-if a crime is committed by two or more persons who are acting together in the commission of a crime, then the act of one is the act of both.

However, that opinion dealt with the sufficiency of a *mere presence* charge, and not with the sufficiency of the *accomplice liability* charge. Accordingly, this Court does not believe that Kelsey controls the propriety of charging accomplice liability when there is no evidence of a common scheme or plan.

[10] Both co-defendants were charged in connection with this incident. The fact that they were charged would not constitute evidence of their guilt as accomplices.

erroneous charges, and appellate counsel was ineffective by failing to raise the issue of the charge on appeal.

The Respondent relies on appellate counsel's decision to not present this issue as one of professional judgment, and urges this Court to find that the decision bars the Applicant's requested relief. See generally Tisdale v. State, *supra*. The Respondent's contention is without merit. The Applicant has met his threshold burden of proof regarding this issue. Inasmuch as the Respondent presented no testimony from appellate counsel,[11] there is no evidence that the decision not to present this issue on appeal was a professional one. Even if there was evidence that a professional decision was made by appellate counsel, that choice would still be subject to scrutiny. The failure to argue this issue on direct appeal fails to meet an objective standard of reasonableness.[12] This is particularly true where the only issue raised on appeal was, in fact, procedurally barred because the objection was not preserved in the trial court as a Sixth Amendment violation as was argued on appeal. The Applicant argues that the issue regarding accomplice liability would have been meritorious on appeal. As this Court agrees with the Applicant, the Applicant's requested relief is granted.

ii. Propriety of the Accomplice Liability Charge

The trial court's accomplice liability charge to the jury reads as follows:

> I further charge you that the law in South Carolina is that if a crime is committed by two or more persons who are acting together in the commission of a crime, the act of one is the act of all.

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[11] At the evidentiary hearing convened in this case, trial counsel speculated that appellate counsel knew more about the law than he did, and that appellate counsel made a professional judgment to not raise the issue on appeal. PCR Tr. p. 51, lines 13-16. Trial counsel's speculation is insufficient to prove appellate counsel made a professional decision not to pursue this issue on appeal.

[12] This Court adopts this ruling for all of the ineffective assistance of appellate counsel allegations raised by the Applicant.

> Two people or more can be guilty of the same offense at the same time if they are together, acting together, assisting each other, in commission of the offense.
>
> The law says under those circumstances, the act of one is the act of all. In other words, the hand of one is the hand of all.
>
> Of course, the situation I've presented to you must be proven by the State beyond a reasonable doubt. They must prove again beyond a reasonable doubt that the [Applicant] and the others were acting together in the commission of the crime, assisting each other in the commission of the offense.

Trial Tr. Vol. II p. 148, line 2-16. The trial court's second charge on accomplice liability reads as follows:

> Let me note that the gist of the law of hand of one is the hand of all means that all must be together, acting together, assisting each other, in the commission of the offense.
>
> Now, these are not separate elements, each of which have to be proven. Rather, they refer to a continuous course of action by the participants. The gist of it is they must be present and aiding or abetting in the commission of the offense.
>
> Obviously, aiding means to aid or assist, and abetting means to be inciting or agitating. A common term may be to egg on or something along those lines.
>
> That's the gist of what it is. It refers to a continuous course of conduct, not simply elements which must be proven separately.

Trial Tr. Vol. II p. 160, lines 9-21.

As explained in detail, *supra*, in order to convict a criminal defendant as a principal pursuant to accomplice liability, there must be some evidence that there was a pre-arranged common scheme or plan to commit the crime between all of the individuals involved. See generally State v. Leonard, 292 S.C. at 136-137, 355 S.E.2d at 272 (holding that "[p]resence at

the scene of the crime by pre-arrangement to aid, encourage or abet in the perpetration of the crime constitutes guilt as a principle"). Under the charges given by the trial court, the Applicant could have been convicted as a principal through accomplice liability even if the jury found that there was *no* pre-arranged common scheme or plan to rob the victim between the Applicant, Simmons, and Dungee.[13] Instead, the jury was instructed that they could find the Applicant guilty if he and his co-defendants merely were assisting each other. Therefore, the charges were insufficient as given, and appellate counsel was ineffective for failing to raise the issue on appeal. Furthermore, the Applicant was prejudiced by the insufficient charges because the jury clearly found him guilty based on a theory of accomplice liability. Accordingly, the Applicant's requested relief on this issue is granted as well.

2. Appellate Counsel Was Ineffective for Failing to Raise the Issue of Mere Presence on Appeal

The Applicant alleges that appellate counsel was ineffective for failing to raise on appeal that the trial court improperly denied his request for a charge on mere presence. The Applicant argues that had this issue been presented on appeal, he would have been granted a new trial. This Court agrees.

A defendant is entitled to a charge on mere presence if the evidence supports the charge. State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987). However, if the trial court refuses to charge on mere presence, and its charge on accomplice liability sufficiently covers the request, no error results. State v. Austin, 299 S.C. 456, 385 S.E.2d 830 (1989). In order for an

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[13] The record reveals that trial counsel explicitly objected to the first charge on this basis. Trial counsel argued that

> We need a charge on knowledge on the part of the principal. In order for him to go ahead and *act in concert* with the principal, he has to have been aware of what the principal *was doing or intended to do*...

Trial Tr. Vol. II p. 150, lines 4-7 (emphasis added). The trial court refused to charge the jury further. Trial Tr. Vol. II p. 152, line 25. Trial counsel objected to this refusal and moved for a mistrial. Trial Tr. Vol. II p. 153, lines 1-2. The motions were denied. Trial Tr. Vol. II p. 153, line 3. Therefore, this issue was properly preserved for appeal.

accomplice liability charge to sufficiently cover mere presence, the charge must include language that instructs the jury that they cannot find someone liable as an accomplice unless that person committed some overt act pursuant to a common scheme or plan. Id. at 459, 385 S.E.2d at 832.

The posture in which this issue is presented to this Court is unusual. Just as there was no evidence presented at the Applicant's trial to support a charge on accomplice liability, there also was no evidence presented at the Applicant's trial to support a charge on mere presence. The only evidence presented indicated that he was guilty as a principal. Therefore, a charge on mere presence ordinarily would not have been warranted. See State v. Stokes, 339 S.C. 154, 164, 528 S.C. 430, 435 (Ct. App. 2000) (holding that when the prosecution does not attempt to convict the defendant on a theory of accomplice liability, and when the defense maintains that the defendant was not present at the scene of the crime, no charge on mere presence is warranted).

However, the Applicant does not contend that a charge on mere presence would have been necessary before the submission of the case to the jury. Instead, the Applicant argues, as trial counsel did during the trial, that the charge would have been appropriate given the question asked by the jury regarding the issue of who fired the gun. Under the peculiar facts of this case, this Court must agree.

As a threshold matter, the charges on accomplice liability given by the trial court did not sufficiently convey the substance of the law of mere presence.

> [I]n instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of

> that crime through some overt act." State v. Austin, 299 S.C. 456, 385 S.E.2d 830 (1989).

State v. Dennis, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996). Under this standard, the trial court's instructions were insufficient because the instructions did not include language regarding the intent of the perpetrators or the common scheme or plan entered into by the perpetrators. Therefore, the accomplice liability charge did not meet the standard announced by Austin and Dennis, and a mere presence charge, if warranted, should have been given.

The jury clearly came to the conclusion that someone other than the Applicant may have fired the shot despite evidence that tended to show that he was present at the scene of the crime. Instead of instructing the jury that they could not find the Applicant guilty based upon his mere presence at the scene of the crime, the trial court instructed the jury solely on the law of accomplice liability. This instruction permitted the jury to draw the impermissible inference that the Applicant participated in the crime by virtue of his presence at the scene. By refusing to charge the jury on mere presence, the trial court prevented the jury from considering the possibility that the Applicant was merely present at the scene of the crime while Dungee and Simmons robbed and shot the victim. Therefore, the trial court should have charged the jury on mere presence, and appellate counsel's failure to raise this issue on appeal was error. Furthermore, the error likely prejudiced the Applicant where the jury, for reasons detailed, *supra*, found the Applicant guilty on the basis of accomplice liability. Had the jury been permitted to consider mere presence, they likely would have carried their evident disbelief of the Applicant's co-defendants' testimony to a favorable verdict for the Applicant. Accordingly, the Applicant's requested relief on this issue is granted.

B. Allegations Which Are Not Meritorious

1. Trial Counsel Was Ineffective for Failing to Move to Suppress Evidence Seized Pursuant to an Invalid Search Warrant

Detective Gertrude Burns of the Columbia City Police Department testified during a Jackson v. Denno[14] hearing that a search warrant was obtained to search the Applicant's home after the police spoke with Isom Simmons. Trial Tr. Vol. I p. 37, lines 21-22. During the search, the Applicant was placed under arrest. Trial Tr. Vol. I p. 39, line 15. The Applicant was transported to the police station where he was questioned by Detective Burns. Trial Tr. Vol. I p. 40, lines 2; 8. During the questioning, the Applicant stated that he knew Simmons, and that he owned several firearms. Trial Tr. Vol. I p. 46, lines 6-8. Additionally, the Applicant's shoes were taken from him during the questioning. Trial Tr. Vol. I p. 170, line 17. Trial counsel moved to suppress the statements based on the product of an unlawful arrest. Trial Tr. Vol. I p. 55, line 10.[15] This motion was summarily denied. Trial Tr. Vol. I p. 57, line 6.

At the evidentiary hearing convened in this case, the Applicant alleged that trial counsel was ineffective for failing to have a separate hearing regarding a violation of his Fourth Amendment rights. PCR Tr. p. 32, lines 13-19. The Applicant initially argued that the reason why the search warrant was defective was due to Detective Burns' testimony at his trial that she did not execute the search warrant, even though her signature was on the return. PCR Tr. p. 27, lines 9; 15. However, the Applicant was mistaken in this contention, as Detective Burns did testify that she executed the search warrant. Trial Tr. Vol. I p. 153, lines 6-7.[16]

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[14] Jackson v. Denno, 378 U.S. 368 (1964).

[15] As no reference was made to the shoes until the trial began, trial counsel did not move to suppress the shoes at the pre-trial hearing. Trial counsel also did not move to suppress the shoes before, during, or after Detective Burns' testimony during the trial.

[16] The Applicant informed this Court that he was incorrect on this point during the evidentiary hearing. PCR Tr. p. 56, lines 4-7.

Assuming that trial counsel failed to properly raise the issue pre-trial, this Court can discern no prejudice. Even though substantial testimony regarding the search warrant was not given before the trial began, Detective Burns testified extensively during the trial about the reasons behind how and why the search warrant was obtained. This Court has been presented with no evidence that would show that Detective Burns was not being truthful regarding the search warrant. Furthermore, this Court has been presented with no evidence that would show that Detective Burns' trial testimony regarding the search warrant would have been different had it been presented in a pre-trial hearing. Accordingly, the Applicant has not shown how the outcome of his trial likely would have been different had the issue been properly raised, and his requested relief on this ground must be denied.

2. Trial Counsel Was Ineffective for Failing to Move to Suppress the Applicant's Statements Regarding the Firearms

As noted above, the Applicant told Detective Burns that he owned a shotgun, a .38 caliber firearm, and a nine millimeter pistol. Trial Tr. Vol. I p. 46, lines 7-8. Detective Burns testified both at the pre-trial hearing and at trial that the Applicant "bragged" about owning those guns. Trial Tr. Vol. I p. 46, line 7; p. 167, line 7. Trial counsel moved to suppress the statements as a violation of the Fourth Amendment, as a violation of the Applicant's Miranda[17] rights, and on the basis of relevancy. All of these motions were denied by the trial court.[18]

At the evidentiary hearing convened in this case, the Applicant generally alleged that trial counsel should have moved to exclude the statement as violative of Rule 404(b), SCRE. PCR Tr. p. 8, line 12. Specifically, the Applicant alleged that trial counsel was ineffective for failing to argue that it was illegal for the Applicant to own those guns because he was nineteen at the

[17] Miranda v. Arizona, 384 U.S. 436 (1966).
[18] Although the Applicant made no allegation of ineffective assistance of appellate counsel regarding these denials, this Court finds that any such allegation would have been meritless.

time of the statement, and that admission of the statement would implicate the Applicant in an impermissible prior bad act. PCR Tr. p. 8, line 4. This Court accepts this allegation as an amendment to the Applicant's Application for Post-Conviction Relief made pursuant to the evidence adduced at the hearing. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006); Rule 15(b), SCRCP. This Court finds that the allegation is without merit.

Rule 404(b), SCRE, states:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person *in order to show action in conformity therewith.* It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

(Emphasis added). The State did not introduce the Applicant's statement to show that he in fact owned the weapon used to kill the victim. Instead, the State introduced the Applicant's statement to show the connection between the Applicant's statement and Isom Simmons' statement to the police. Trial Tr. Vol. I p. 58, lines 6-11. As the State's stated reason for admitting the statement was not violative of Rule 404(b)'s prohibitions, trial counsel committed no error in failing to object to the Applicant's statement on those grounds.

3. Appellate Counsel Was Ineffective for Failing to Raise the Trial Court's Limitation of the Applicant's Cross-Examination of Timothy Myers on Appeal

Prior to the State's presentation of Timothy Myers' testimony, the State moved to prevent the Applicant from eliciting any testimony regarding drug transactions between Myers and Isom Simmons that did not occur the day of the incident. Trial Tr. Vol. I p. 260, line 19. The trial court granted this motion, finding that evidence of prior drug transactions would not be relevant to the issues in the Applicant's trial. Trial Tr. Vol. I p. 261, lines 2-5. Trial counsel objected to this limitation, and the trial court noted the objection. Trial Tr. Vol. I, p. 261, lines 6-8.

The Applicant alleges that appellate counsel was ineffective for failing to present on appeal the issue of whether or not he should have been allowed to cross-examine Myers about the previous drug transactions. He argues that had the issue been presented on appeal, his convictions would have been overturned and he would have been granted a new trial. Accordingly, he requests a new trial on this issue. This Court finds that the evidence was not relevant and that it was properly excluded by the trial court. Accordingly, this Court finds this issue would not have been meritorious if it had been raised on direct appeal.

Relevant evidence is evidence which has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Rule 401, SCRE. Relevant evidence is generally admissible, see Rule 402, SCRE, unless its probative value would be substantially outweighed by the danger of undue prejudice. Rule 403, SCRE. Generally, a witness may be cross-examined about any matter relevant to any issue in the case, including credibility. Rule 611(b), SCRE. However, specific instances of prior conduct may be used to impeach the credibility of a witness on cross-examination only if the trial court finds that the evidence would be probative of (1) the character for truthfulness of the witness; or (2) the character for truthfulness of another witness about which the witness being cross-examined has testified to. Rule 608(b), SCRE.

Evidence of Myers' prior drug transactions with Simmons would not have been probative regarding the central issues in the Applicant's trial. The evidence would not tend to show that the Applicant was or was not present at the scene of the crime that night, nor would it tend to show that the Applicant did or did not commit the crimes. Furthermore, the evidence would only have been minimally probative of the character for truthfulness of Myers.[19] Therefore, the

[19] As Myers did not testify as to the character for truthfulness of any other witness, the second provision of Rule 608(b) would not be applicable.

evidence was inadmissible and was properly excluded by the trial court, and any assertion to the contrary on direct appeal would have been meritless. Accordingly, the Applicant's requested relief on this issue is denied.

4. Trial Counsel Was Ineffective for Failing to Properly Object to the Limitation of the Cross-Examination of the Applicant's Co-Defendants

This issue was raised on appeal and was ruled to be not preserved. However, this Court finds that even if this issue were preserved the appellate court would have found no error. The trial judge's decision on the use of his discretion cannot be viewed in isolation. The trial judge allowed full impeachment on several aspects of the Applicant's co-defendants' pending charges including: 1) whether they thought they would get their sentences reduced; 2) whether they thought they would get their charges reduced; 3) what charges are pending; 4) whether the State had made any deals in return for the testimony; 5) whether the State had offered any deals in return for the testimony; and 6) their expectations and hopes in return for the testimony. Under Rule 608 of the SCRE, the question is whether there was "anything that had a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness." Here, there was no deal or promise of a lesser offense or lesser sentence. The defense was able to show the witness' hopes, but the legitimate truth was that each still faced the maximum penalty. Additionally, this Court finds that even if counsel should have objected, the error was harmless. Accordingly, the Applicant's requested relief on this issue is denied.

5. Trial Counsel Was Ineffective for Failing to Object to the Content of the Allen Charge Given by the Trial Court

After several hours of deliberation, the jury indicated that it had reached a verdict as to one charge, but that it had been unable to reach a verdict on the other charge. Trial Tr. Vol. II p. 153, lines 10-13. In response, the trial court decided to give an Allen charge to the jury. Trial

Tr. Vol. II p. 153, lines 14-15. Trial counsel objected to the giving of the charge, but not the content of the charge, before and after the charge was given. Trial Tr. Vol. II p. 153, line 18; p. 157, line 3. The trial court overruled the objection, and gave the charge. Trial Tr. Vol. II p. 153, line 19. The trial court charged the jury as follows:

> I can say this, and I'm allowed to say this. First of all, we understand it is not always easy for even two people to agree, and when twelve people are together it becomes correspondingly more difficult.
>
> But it is important that the litigation be ended if it can be done without a juror doing violence to his or own conscience.
>
> At the same time, no juror is expected to give up an opinion based on reasoning satisfactory to himself or herself merely for the purpose of being in agreement.
>
> Very often it has been said the juror who gives the least service is the juror who says that I know what I want to do, and when everybody agrees with me, then we'll write a verdict.
>
> Again, I say that we don't expect any juror to give up his or her opinion merely for the purpose of being in agreement if it goes against their conscience. It has never been intended that the verdict of a jury be the view of any one person. On the other hand, the verdict is supposed to be the collective reasoning of all the men and women together.
>
> That's why we have the jury, so that we can have the benefit of the collective reasoning and collective thought that you can contribute to it.
>
> Now, it is your duty to tell each other how you feel about the case and why you think as you do, and it is the other jurors' duty, of course, to tell each of you what they think. It's important that you listen to each other and give each other's thoughts and ideas such meaning as appropriate.
>
> So it can be said to some degree that jury service can be said to be a matter of give and take. I will tell you that if a Defendant is entitled to a verdict, he is entitled to it today.

> If the State is entitled to a verdict, it is entitled to that verdict today.
>
> What will happen is this. Even though you may have agreed on one charge and not on the other, if you're not able to do so then I would have to declare a mistrial on the charge on which you cannot agree.
>
> ...
>
> I have no reason to think that another twelve men and women would be more capable of solving this controversy than you can.
>
> So what I'm going to do is ask you to deliberate further and see if you cannot arrive at a verdict on that charge, so that we can have a verdict on both charges.

Trial Tr. Vol. II, p. 154, line 9-p. 156, line 9.

The Applicant alleges that trial counsel was ineffective for failing to object to the coercive content of the Allen charge. Specifically, the Applicant alleges that the charge impermissibly spoke to the jurors in the minority. The Applicant argues that he was prejudiced by the charge's content because the jury returned a guilty verdict soon after receiving the charge. This Court finds that the content of the charge was proper, and, even if the content was improper, that the Applicant was not prejudiced by the charge.

The propriety of an Allen charge is measured by the standards announced in Lowenfield v. Phelps, 484 U.S. 231 (1988) and Tucker v. Catoe, 346 S.C. 483, 552 S.E.2d 712 (2001).[20] There are four factors a court must consider in evaluating the coerciveness of an Allen charge:

1. Whether or not the charge speaks to the minority jurors;

[20] This Court acknowledges that both Lowenfield and Tucker are capital cases, and that both cases analyze an Allen charge given during capital sentencing deliberations. However, as both cases announce the definitive standard for the propriety of Allen charges, this Court finds the decisions persuasive to non-capital cases, and directly applicable to the charge given in the Applicant's trial.

2. Whether or not the charging court included language in the charge requiring the jury to come to a decision in the case;
3. Whether or not the charging court inquired into the jurors' voting split; and
4. The time it took after the giving of the charge for the jury to reach a verdict.

Tucker at 492, 346 S.E.2d at 716.

The charge did not speak to the minority jurors because it did not distinguish between dissenting jurors and jurors in the majority. Importantly, the trial court instructed the jurors to not release their hold on their views simply for the sake of reaching a verdict. Furthermore, the court did not instruct the jury that they had to come to a verdict that day, nor did the court know the split between the jurors. Additionally, this Court has been presented with no evidence that would indicate that the trial court possessed improper knowledge of the jurors' voting split. Accordingly, the content of the charge was proper, and trial counsel did not commit error by failing to object to the content of the charge.

Furthermore, the Applicant's contention that he was prejudiced by the giving of the charge is without merit. The Applicant alleges that it only took "no less than 15 minutes" for the jury to return a verdict after the giving of the Allen charge. PCR Tr. p. 18, lines 12-13. However, the trial court gave the charge shortly after 6:15 P.M. Trial Tr. Vol. II p. 153, line 9. After the charge was given, the jury continued to deliberate, and sent an additional note indicating that they were still confused about accomplice liability at 7:49 P.M. Trial Tr. Vol. II p. 157, lines 5-12. The trial court then gave a second instruction on accomplice liability, and it was only then that the jury reached a verdict at 8:07 P.M. Trial Tr. Vol. II p. 167, line 6. It is clear that the jury reached a verdict in response to the *second* accomplice liability charge, and *not* to the Allen charge. Therefore, the Applicant was not prejudiced by the Allen charge. As the

content of the charge was proper and the Applicant was not prejudiced by the charge, the Applicant's requested relief on this issue is denied.

VII.
CONCLUSION

This Application for Post-Conviction Relief is hereby **GRANTED**. Due to the improper charges on accomplice liability and the lack of a charge on mere presence, the Applicant's convictions and sentences are hereby vacated, and his case is remanded to the Richland County Court of General Sessions for a new trial.

IT IS SO ORDERED.

J. Michelle Childs

J. Michelle Childs
Presiding Circuit Judge
Fifth Judicial Circuit

This 13th day of May, 2008

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE)
VS)
Israel Wilds)
AKA:)
Race: Black Sex: Male Age:)
DOB: / / SS#:)
Address:)
)
DL# SID#:)

IN THE COURT OF GENERAL SESSION
INDICTMENT/CASE#: 758
99 -GS- 40 - 45289
A/W#: DP99394
Date of Offense: 3-29-99
S.C. Code §: 16-3-10
CDR Code #: 0 / 1 / 1 / 1 / 6

☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 1 /
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-2
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the S
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention C
for a determinate term of LIFE days/~~months/years or~~ ☐ ~~under the~~ Youthful Offender Act not to exceed
and/or to pay a fine of $; provided that upon the service of days/months/years and/or pa
of $; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditi
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $ plus 20% fee: $
Payment Terms:
☐ set by SCDPPPS

Recipient:
*Fine: . . . . . $
§14-1-206 (Assessments 100%). . . . . $
§14-1-211(A)(1) (Surcharge) . . . . . $
§14-1-211(A)(2) (Surcharge) . . . . . $
§56-5-2995 (DUI Assessment). . . . . $
3% to County (if paid in installments). . . $
TOTAL . . . . . $

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc Rehab. or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/m
pmts. of $ beginning
$ paid to Public Defender Fund.
Other:

Barbara A. Scott
Clerk of Court/ Deputy Clerk

Court Reporter: Jackson 12-15-03

PRESIDING JUDGE
Judge Code: 2 1 0 1 6 1 F
Sentence Date: 3/29/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

759

WITNESSES

Burns, CPD

Det. W. E. Baker, Jr.

ARREST WARRANT NO.

99394

DIRECT PRESENTMENT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Lee E. Bowen

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury *Date:*

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#42 SEPTEMBER TERM 1999

THE STATE

vs.

ISRAEL WILDS

12.15.99

Indictment for Murder

S. C. Code Section 16-3-10 Felony
0116

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on September 15, 1999,
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — MURDER

That ISRAEL WILDS
did in Richland County on or about March 29, 1999,
feloniously, wilfully and with malice aforethought, kill one Anthony Rumph
by means of gunshot
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Thesi
SOLICITOR

STATE OF SOUTH CAROLIN)
COUNTY OF Richland)
STATE VS.)
Israel Wilds)
AKA:)
Race: Black Sex: Male Age:)
DOB: / / SS#:)
Address:)
DL# SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 761
99 -GS- 40 - 40142
A/W#: G076981
Date of Offense: 3-29-99
S.C. Code §: 16-11-0330
CDR Code #: 0 1 1 3 9
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Armed Robbery
in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 3 9

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Barbara A. Scott
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE _____
Judge Code: 01016 12
Court Reporter: Jackson 12-15-03
Sentence Date: 3/29/01

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

[redacted] AF[redacted] WA[redacted]T [redacted]

462 G- 076981

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

[redacted]

THE STATE

against

[redacted]

Address: [redacted]

Phone: _____ SSN: _____

Sex: ___ Race: ___ Height: ___ Weight: ___

State: _____ DL #: _____

DOB: _____ Agency ORI #: [redacted]

Prosecuting Agency: [redacted]

Prosecuting Officer: [redacted]

Offense: _____ Offense Code: _____

Code/Ordinance Sec. [redacted]

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

_____

RETURN

A copy of this arrest warrant was delivered to defendant Israel W. Ids on 9 Apr 99

a.n- a/

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 944

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
[redacted])

AFFIDAVIT

SCCA 518

Personally appeared before me the affiant G [redacted] who being duly sworn deposes and says that defendant _____ did within this county and state on [redacted] violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [redacted]) in the following particulars:

DESCRIPTION OF OFFENSE: [redacted]

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

[redacted]

Sworn to and subscribed before me on [redacted] (L.S.)

Signature of Issuing Judge

Ministerial Recorder

Signature of Affiant

Affiant's Address [redacted]

Affiant's Telephone _____

RECEIVED

STATE OF SOUTH CAROLINA)
☐ County/ ☐ Municipality of)
[redacted])

ARREST WARRANT

CLERK OF COURT
CRIMINAL RECORDS

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that defendant _____ on [redacted] did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of [redacted]) as set forth below:

DESCRIPTION OF OFFENSE: [redacted]

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

[redacted] (L.S.)

Signature of Issuing Judge

Judge Code: [redacted]

Ministerial Recorder

Judge's Address [redacted]

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

PRELIMINARY HEARING held by

Bales
4-26-99
10

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

VICTIM'S NAME _____

VICTIM'S ADDRESS _____

PHONE NO.: (H) _____

(W) _____

VICTIM WISHES TO BE PRESENT FOR BOND HEARING? YES/NO

VICTIM NOTIFIED OF BOND HEARING? YES/NO

PERSON NOTIFYING _____
Name

Date

VICTIM WISHES TO BE PRESENT FOR TRIAL? YES/NO

VICTIM NOTIFIED OF TRIAL? YES/NO

PERSON NOTIFYING _____
Name

Date

DOCKET NO. 99-GS-40-40142

764

WITNESSES

BURNS - RCSD

Det. W. C. Baker, Jr.

ARREST WARRANT NUMBER

G076981

ACTION OF GRAND JURY

TRUE BILL

Lee E Bowen

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1999

42

THE STATE

vs.

ISREAL WILDS

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0139

Class FEL-A(V)

legal rights, I hereby waive [illegible] to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

12-15-03

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on SEPT. 15, 1999 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Isreal Wilds did in Richland County on or about March 29, 1999, commit robbery by feloniously taking from the person or presence of Anthony Rumph by means of force or intimidation goods or monies of Anthony Rumph, such goods or monies being described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B Giese

WARREN B. GIESE, SOLICITOR

```
CMTI330D                    SCDC OFFENDER MANAGEMENT SYSTEM                  01/05/04
OMCOMITA                         RELEASE DATE SCREEN                         SUMMELI
SCDC# > 274010                                              LOC: EVANS
WILDS, ISRAEL -                                SCDC CLASSIFICATION..: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE  SEXUAL PREDATOR..: NOT APP
                                           DNA STATUS.......: COMPLETED

TOTAL SENTENCE..: LIFE                CONSECUTIVE SENTENCE ..:
CURRENT SENTENCE:                     CURRENT SENT START DATE: 04/07/1999
PROJECTED COMPLETION DATES
  MAXOUT DATE .....: 99/99/9999       CURRENT EWC .:
  YOA SIX YEAR DATE:                  CURRENT EEC .:
INITIAL PAROLE DATE: 00/00/0000       NEXT PAROLE HEARING DATE: 00/00/0000


TOTAL GT DAYS EARNED .......: 000000     LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000     LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ....: 000000      OFFENSE > CAT 3
TOTAL EXTRA EARNED CREDITS .: 000
TOTAL SERVICE TIME EARNED ..: 000000


PFKEYS:      5:HISTORY OF DATE CHANGES
4-0                  1 Sess-1    167.7.50.33                TNET0628          3/11
```

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 01/05/04 SUMME

ILDS,ISRAEL - FBI # 452334KB1 SID# SC01359451 SCDC # 274010
FFENDER TYPE.: ADULT-STRAIGHT SENTENCE
NSTITUTION ..: EVANS CORR INST DORM.....: 3B0123X
ECURITY/CUST.: 3 MINIMUM IN RACE....:B SEX...:M
OT INCARC SENT....:999 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 99/99/9999
ENTRAL MONITORING.: NO PROJ PAROLE DATE: 00/00/0000
OCIAL SECURITY #...: EWC JOB..: NO CURRENT JOB
EDUC PGM.: ADULT ED II
URRENT PROGRAM..: NO CURRENT PROGRAM EWC LEVEL: 0 EEC LEVEL: 3F
GE...: 24 DATE OF BIRTH..: 8/15/79 ASSIGNMENT..: EDUCATION DEPT

REVIOUS NUMBERS:
* NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
CONTEMPT OF COURT	0	0	90	ORANGEBURG	4/ 8/1999	N	1
MURDER	999	99	999	RICHLAND	4/ 7/1999	V	5
ARMED ROBBERY	30	0	0	RICHLAND	4/ 7/1999	V	4

RIOR COMMITMENTS OVER 90 DAYS:
INMATE HAS NO PRIORS
ETAINERS (HOLD,WANTED,NOTIFY):
NO DETAINERS
SCAPES:
NO ESCAPE HISTORY
RIMINAL CHARGES:
NO CRIMINAL CHARGES HISTORY
SSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY
ON-ASSAULTIVE DISCIPLINARIES:
NO NON-ASSAULTIVE DISCIPLINARY HISTORY
ISTORY OF MOVEMENTS:

8/14/ 3	EVANS	INCARCERATED	ADMINISTRATIVE
9/19/ 2	LEE	INCARCERATED	ADMINISTRATIVE
8/ 7/ 2	KERSHAW	INCARCERATED	ADMINISTRATIVE
8/ 6/ 2	KIRKLAND	INCARCERATED	MEDICAL
3/ 4/ 2	KERSHAW	INCARCERATED	RETURN FROM COURT
3/ 4/ 2	ORANGEBURG CO	ABSENT WITH LEAVE (A	TO COURT
4/25/ 1	KERSHAW	INCARCERATED	ADMINISTRATIVE
4/ 8/ 1	KIRKLAND	INCARCERATED	NEW ADMISSION

ISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
ATERIAL HANDLING EQ	09/20/02	7/14/ 3	PLACED IN ST/SP CUSTODY	YF5
SHIP & RECEIVNG CLK	09/22/01	9/19/ 2	INSTIT TRANSFER	YF5
JANIKEEPER ASSISTANT	08/24/01	9/21/ 1	INMATE REQUEST	YF5
OOD SERVICE AIDE	04/27/01	8/29/ 1	LATERAL TRANSFER	YF5

ISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
VL 3 - FULL TIME(NO EWC)	09/03/03	0/ 0/ 0	
ONUS 4-7 HRS/WK	09/20/02	7/14/ 3	PLACED IN ST/SP CUSTODY
ONUS 4-7 HRS/WK	03/05/02	9/19/ 2	INSTIT TRANSFER

********** END OF REPORT **********

STATE OF SOUTH CAROLIN)
COUNTY OF Richland)
STATE)
VS.)
Israel Fields)
AKA:)
Race: Black Sex: Male Age:)
DOB: / / SS#:)
Address:)
DL# SID#:)

IN THE C RT OF GENERAL SESSION
INDICTMENT/CASE#: 768
99 -GS- 40 - 4014-2
A/W#: G076981
Date of Offense: 3-29-99
S.C. Code §: 16-11-0330
CDR Code #: 0 1 1 3 9
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Armed Robbery.
in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 3 1
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the S
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention C**
for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed
and/or to pay a fine of $; provided that upon the service of days/months/years and/or pa
of $; plus costs and assessments as applicable*; the balance is suspended with **probation** for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditi
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $ plus 20% fee: $
Payment Terms:
☐ set by SCDPPPS
Recipient:
*Fine: . . . . . $
§14-1-206 (Assessments 100%). . . . $
§14-1-211(A)(1) (Surcharge) . . . . . $
§14-1-211(A)(2) (Surcharge) . . . . . $
§56-5-2995 (DUI Assessment). . . . . $
3% to County (if paid in installments). . . $
TOTAL . . . . . $

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc Rehab. or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/m
pmts. of $ beginning
$ paid to Public Defender Fund.
Other:

Barbara A. Scott
Clerk of Court/ Deputy Clerk
Court Reporter: Jackson

PRESIDING JUDGE
Judge Code: 210612
Sentence Date: 3/29/01

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE)
VS.)
Israel Wilds)
AKA:)
Race: Black Sex: Male Age:)
DOB: / / SS#:)
Address:)
DL# SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#: 769
99 -GS- 40 - 45289
A/W#: DP99394
Date of Offense: 3-29-99
S.C. Code §: 16-3-10
CDR Code #: 0 1 1 1 1 6
☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of LIFE days/~~months/years or~~ ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐Heard, ☐Waived, ☐Ordered
Total: $_____ plus 20% fee: $_____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
*Fine: . . . . . $_____
§14-1-206 (Assessments 100%). . . . . $_____
§14-1-211(A)(1) (Surcharge) . . . . . $_____
§14-1-211(A)(2) (Surcharge) . . . . . $_____
§56-5-2995 (DUI Assessment). . . . . $_____
3% to County (if paid in installments). . . $_____
TOTAL . . . . . $_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthl pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
_____

Barbara A. Scott
Clerk of Court/ Deputy Clerk
Court Reporter: Jackson

PRESIDING JUDGE
Judge Code: D 1 0 1 6 1 F
Sentence Date: 3/29/01

Canary - Probation Pink - Defendant

WILDS, GEONICE G. 770

VS.

WILDS, ISREAL

RECEIVED
1999 FEB 23 PM 1:34
RCSD

STATE OF SOUTH CAROLINA

COUNTY : ORANGEBURG COUNTY

COURT : DOMESTIC RELATIONS

IND #: 98DR38000894

BENCH WARRANT-# BW00000582

CHARGED WITH:

To all the Sheriffs, Deputy Sheriffs, Constables, and Other Peace Officers of the State:

WHEREAS, at the term of the aforestated Court JANUARY 26, 1999 it was among other things ordered by Judge WATSON, MAXEY G. that a Warrant should be issued for the arrest of WILDS, ISREAL

FAILURE TO COMPLY WITH ORDER DATED 01/26/99

It is, therefore, ordered that you make diligent search for the above and take him/her to the county jail/detention facility where he/she will b safely held until he/she may be brought before this Court, or otherwise discharged by due course of law.

It is further ordered that the county jail/detention facility notify t clerk of court immediately, during the normal operating hours of the offi the clerk of court, that the above named is in custody.

WITNESS, the Clerk of Court for the County of ORANGEBURG COUNTY on the 09 day of FEBRUARY, 1999.

Clerk of Court

By: Deputy Clerk

90 days

STATE OF SOUTH CAROLIN

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 771

ENTERED FEB 24 1999

BENCH WARRANT #: BW00000582

STATE OF SOUTH CAROLINA
COUNTY : ORANGEBURG COUNTY

COURT : DOMESTIC RELATIONS

WILDS, GEONICE G.

VS.

WILDS, ISREAL

B E N C H W A R R A N T

DATE ISSUED: 02/09/99

HOME ADDRESS:
101 CAROLA AVE
COLUMBIA, SC 29203

BUSINESS ADDRESS:
4843 LINDEN ST
COLUMBIA, SC 29203

DEFENDANT DESCRIPTION:
Race..: B Sex...: M
Birth Date:
Height: 5'08" Weight: 145
Eyes: BROWN Hair: BLACK
Soc.Sec.#: 250554258
License #:
Lic-State:

TE SERVED 04-08-99

ERVED BY Deputy G.C. Oates

- OR -

ATE RETURNED

EASON FOR RETURN

AGENCY OCSD