

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

ALLEN J. GATHINGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000358

APPENDIX

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	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2007-GS-34-1008
		2007-GS-34-0888
		2007-GS-34-0909

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ALLEN JOE GATHINGS	)	
DEFENDANT	)	

October 18-21, 2010
 Bennettsville, South Carolina
VOLUME NO. 01 OF 04

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE; and a jury.

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

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 Attorney for the Plaintiff

JOHN HOLT, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

EMILY CRAYTON, PUBLIC DEFENDER
 Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

LISA POLSTON,
GAIL WINGO,
MIKE GOFF,
JOHN LESTER,
PEARLIE THOMAS,
JOY STUBBS, Deputy Clerk of Court/Marl. Cty.
REBECCA DEW,
TIFFANY HAIRE,
TRACEY ELLIS,
JERRY NOLAN,
DONNA JACKSON,
ALAN COLLINS,
FRANCIS ANDERSON, HORRY COUNTY STATE BANK
DOUG SARVIS, S.C. LAW ENFORCEMENT DIVISION
RUSTY CROCKER,
BRAD TOWNSEND,
HEATHER BRUMMETT, Horry County Police Dept.
JULIUS LYNCH,
KARL KENLEY,
GLENN MCLELLAN,
ADRIENNE RILEY, S.C. Law Enforcement Division
ERIN PRESNELL,
CARL MOORE,
MONROE CARTER,

HATTIE O. GORDON
Circuit Court Reporter

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1	<u>DEFENDANT'S EXHIBITS</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	S.C.D.C. Records	584	584
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COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Defense Voir Dire	37	37
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1 VOIR DIRE OF THE JURY

2 THE COURT: Ms. Munnerlyn.

3 MS. MUNNERLYN: May it please the Court, Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. MUNNERLYN: In the matter of the State v. Allen
6 Joe Gathings on Indictment Numbers 07-GS-34-887 and -888,
7 both indictments for murder. And 07-GS-34-909 an
8 indictment for larceny between \$1,000 and \$5,000. The
9 State is ready for trial.

10 THE COURT: All right. Ladies and gentlemen of the
11 jury panel, please give me your attention. What I'm going
12 to tell you now is not evidence in this case. It is
13 simply allegations of the indictment, but I tell you this
14 so you can determine if you know anything about the case
15 or anything that would prevent you from serving as a juror
16 or would be considered a conflict of interest.

17 But as I say the indictments are not evidence in this
18 case. They are simply the allegations of the State as to
19 the charges against the defendant and the papers that
20 bring think matter to trial.

21 But the State alleges in these indictments that the
22 defendant, Allen Joe Gathings, G-A-T-H-I-N-G-S. How does
23 he pronounce his name, Ms. Crayton?

24 MS. CRAYTON: Gathings.

25 THE COURT: Gathings, G-A-T-H-I-N-G-S, in the County

Voir Dire of the Jury

21

1 of Marlboro did on or about June the 30th of 2007
2 feloniously, willfully and with malice aforethought kill
3 one Loyce, L-O-Y-C-E, Locklear by means of striking and
4 mortally wounding Loyce Locklear with a baseball bat, and
5 the said Loyce Locklear did die in Marlboro County as a
6 proximate result thereof. The incident having occurred at
7 [REDACTED] in Clio, South Carolina. That is
8 Indictment Number 07-888.

9 Indictment Number 07-887 alleges that the defendant,
10 Mr. Gathings, did in Marlboro County on or about June 30th
11 of 2007 feloniously, willfully and with malice
12 aforethought kill one, Robbie Polston, by means of
13 striking the victim with a baseball, and that the said
14 Robbie Poston did die in Marlboro County as a proximate
15 result therefore. Again, having occurred at [REDACTED]
16 [REDACTED] in Clio.

17 And, finally, in Indictment Number 07-GS-34-0909 it
18 is alleged that the defendant, Mr. Gathings, did in
19 Marlboro County on or about June 30th of 2007 feloniously
20 take and carry away the personal good of Loyce Locklear of
21 a value of more than \$1,000 less than \$5,000 described as
22 a light blue 1995 Chevrolet Corsica with intent it deprive
23 the owner of the vehicle, and that is a charge of larceny.

24 Now, the defendant in this case, Mr. Allen Joe
25 Gathings, is represented by Mr. Jones and Miss Crayton. I

1 will ask counsel if you will each stand and introduce
2 yourself to the jury. And just have you client turn and
3 face the jury so they may see who he is.

4 MS. CRAYTON: I'm Emily Crayton.

5 MR. JONES: I'm Rick Jones.

6 THE COURT: And this is the defendant, Mr. Gathings,
7 in the middle. Thank you. Before we select a jury I need
8 to ask you some questions. Give your attention to these
9 questions, and if any of them apply to you please respond
10 accordingly.

11 Is there any member of the jury panel related by
12 blood or connected by marriage to the defendant, Allen Joe
13 Gathings? If so please stand. The following individuals
14 may appear as witnesses in this case, and I would ask that
15 if the witnesses are present if they would stand when
16 their name is called and you may be seated. In addition
17 to the defendant who may be a witness in this case and
18 need not stand at this time since you're already know who
19 he is.

20 Other potential witnesses are Glenn McLellan of the
21 State Law Enforcement Division, Clio Police Chief Pearlle
22 Thomas, Officer John Lester of the Clio Police Department,
23 Eddie Polston, Lisa Polston, Mike Goff of the Marlboro
24 County E.M.S. You maybe seated after you stood. Thank
25 you. Mark Player of the Marlboro County E.M.S. Gail

Voir Dire of the Jury

23

1 Wingo, Charles Newlan, Jeff Parrott of the State Law
2 Enforcement Division, Karl Kenley of the State Law
3 Enforcement Division, Alex Underwood of S.L.E.D.

4 Allen Stucky of S.L.E.D, Mancey Cuttino of S.L.E.D,
5 Shawn Sligh of Marlboro County 911, Dr. Erin S. Presnell
6 from the Medical University of South Carolina, Tiffany
7 Haire, H-A-I-R-E, Rebecca Dew, Barbara Dew, Frances
8 Anderson of the Horry County State Bank, Tracy Ellis,
9 Richard Nobles, Horry County Police Detective Doug Sarvis
10 who is now with the South Carolina Highway Patrol, Carl
11 Moore, Horry County Police Detective Brad Townsend, Kenny
12 Bogan of the State Law Enforcement Division, Donna
13 Jackson, Officer W.S. Powell of the Clio Police
14 Department.

15 John Woodley, Jerry Nolan of the Clio Rescue Squad.
16 Adrienne Riley of S.L.E.D, Julius Lynch of the Horry
17 County -- or Horry County -- I'm sorry. Julius Lynch,
18 Horry County Police Detective Heather Brummett. Brummett,
19 B-R-U-M-M-E-T-T. Alan Collins, Horry County Police
20 Officer Rusty Crocker, and J. Stubbs -- excuse me. Joy
21 Stubbs of the Clerk's Office, Wayne Collins, Debbie
22 Collins, Monroe Carter, Carl Francis Moore, David E.
23 Watts, Kelvin Addison, Karan Charles and Tonie Hopkins.

24 Is any member of the jury panel related by blood or
25 connected by marriage to any of the potential witnesses.

1 If so, please stand. Thank you. The State of South
2 Carolina is represented by Ms. Munnerlyn. Miss Munnerlyn,
3 if you would stand, and is Mr. Holt going to be assisting
4 you? If so introduce him as well or whoever will be
5 assisting you in this case.

6 MS. MUNNERLYN: Thank you, Your Honor. I'm Elizabeth
7 Munnerlyn, and John Holt will be assisting me in this
8 case.

9 THE COURT: Okay. The Defense counsel you have
10 already met are Miss Emily Crayton and Mr. Rick Jones. Is
11 any member of the jury panel represented now or been
12 represented in the last ten years have by any member of
13 the Fourth Circuit solicitor's Office consisting of
14 Mr. William Rogers as the Solicitor and former Solicitor
15 Jay Hodge or any other member of the Fourth Circuit
16 Solicitor's Office? If so, please stand.

17 Is any member of the jury panel represented now or
18 been represented in the last ten years by Mr. Jones or Ms.
19 Crayton or any member of the Fourth Circuit Public
20 Defender's Office? If so, please stand.

21 Is any members of the jury panel related to by blood
22 or marriage to either of the victims in this case, Robbie
23 Polston or Loyce Locklear? If so, please stand.

24 Has any member of the jury panel or a member of your
25 immediate family, and I define immediate family as spouse,

Voir Dire of the Jury

25

1 parent, brother, sister or child. Any member of the jury
2 panel or member of your immediate family been the victim
3 of a violent crime; that is a crime upon your person? If
4 so, please stand.

5 Is there any member of the jury panel currently
6 employed or been employed within the last ten years or any
7 member of the jury panel or member of your immediate
8 family, as I have defined that term, or a member of your
9 immediate family been employed in law enforcement? If so,
10 please stand.

11 All right. Let's start right here with the lady on
12 my left in the purple outfit. Yes, ma'am, your name?

13 POTENTIAL JUROR: Diane Brigman.

14 THE COURT: You recall your number.

15 POTENTIAL JUROR: Nineteen.

16 THE COURT: Nineteen. Miss Brigman, tell me who it
17 is and what the relationship is.

18 POTENTIAL JUROR: It's my brother. He's Chief in
19 McColl. Tommy Langley.

20 THE COURT: He's currently chief in McColl; is that
21 correct?

22 POTENTIAL JUROR: Yes.

23 THE COURT: All right. And that's your brother?

24 POTENTIAL JUROR: Yeah.

25 THE COURT: All right. Would that fact prevent you

1 from giving both the State and the Defendant at fair and
2 impartial trial based on the evidence in this case?

3 POTENTIAL JUROR: Yes, sir.

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

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: Would you do that?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: All right. Thank you, ma'am. All right.
11 The lady right here in the middle.

12 POTENTIAL JUROR: Thirty-six is my number. My
13 brother and father were previously chief of police here in
14 Bennettsville.

15 THE COURT: You're Ms. Colson?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: All right. Tell me again what it is,
18 your?

19 POTENTIAL JUROR: My brother and father both were
20 chief of police here in Bennettsville.

21 THE COURT: All right. And that was sometime in the
22 past?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Not currently?

25 POTENTIAL JUROR: Yes, sir.

Voir Dire of the Jury

27

1 THE COURT: Would that fact prevent you from giving
2 both the State and the Defendant at fair and impartial
3 trial based on the evidence?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: You think it would?

6 POTENTIAL JUROR: I'm sorry.

7 THE COURT: All right. Let me ask the question again
8 would that fact prevent you from giving both the State and
9 the Defendant a fair and impartial trial?

10 POTENTIAL JUROR: I wouldn't have any problem with
11 it, no.

12 THE COURT: So you would be able to put that aside
13 and decide the case based on what you hear in this
14 courtroom?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Would you do that?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Okay. Thank you. Yes, sir, to my right.

19 POTENTIAL JUROR: 150.

20 THE COURT: I'm sorry.

21 POTENTIAL JUROR: Number 150.

22 THE COURT: 150. Mr. Sylvia. All right, Mr. Sylvia.
23 What's your situation?

24 POTENTIAL JUROR: I previously worked with the South
25 Carolina Department of Corrections.

1 THE COURT: Okay. And how long ago was that,
2 Mr. Sylvia?

3 POTENTIAL JUROR: Years ago.

4 THE COURT: You're not currently employed by them?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: All right. Would that prevent you from
7 giving both the State and the Defendant a fair and
8 impartial trial?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: It would?

11 POTENTIAL JUROR: Yes.

12 THE COURT: Okay. You don't believe you would be
13 able to put that aside and decide the case based on the
14 evidence in this courtroom? All right. We'll talk about
15 it a little bit more. We'll have you come up in just a
16 moment. All right. Yes, ma'am. The lady on my left.

17 POTENTIAL JUROR: Number 88.

18 THE COURT: All right, Miss Knight.

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: All right, Miss Knight. What's your
21 situation?

22 POTENTIAL JUROR: My husband is Sheriff in Marlboro
23 County and previously was with S.L.E.D.

24 THE COURT: Okay. All right. Thank you. I'll talk
25 to you some more in just a few minutes, Miss Knight. Yes,

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1 sir. Yes, sir. The gentleman on the far right.

2 POTENTIAL JUROR: Number 32.

3 THE COURT: Mr. Chavis?

4 POTENTIAL JUROR: Yes.

5 THE COURT: All right. Yes, sir. What's your
6 situation?

7 POTENTIAL JUROR: My brother is currently employed
8 with the Highway Patrol in Charleston.

9 THE COURT: Your brother?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: All right. Would that prevent you from
12 giving both the State and the Defendant a fair and
13 impartial trial based on the evidence?

14 POTENTIAL JUROR: No, sir, I don't think it would.
15 You also asked a question before about violent crimes.
16 Would that constitute just like an armed robbery?

17 THE COURT: Yes, sir.

18 POTENTIAL JUROR: Postal service, there is wall. He
19 was Robbie.

20 THE COURT: All right. Would either of those
21 instances; that is the armed robbery or the fact that your
22 brother is with the Highway Patrol, would either of those
23 prevent you from giving both the State and the Defendant a
24 fair and impartial trial?

25 POTENTIAL JUROR: I'm going to be partial to law

1 enforcement.

2 THE COURT: You would be?

3 POTENTIAL JUROR: I would be partial to law
4 enforcement.

5 THE COURT: All right, sir. Thank you, sir.

6 POTENTIAL JUROR: 149.

7 THE COURT: All right. You're Mr. Stuckey.

8 A. Yes.

9 THE COURT: All right. What's your situation, Mr.
10 Stuckey?

11 POTENTIAL JUROR: I'm retired from the Department of
12 Corrections.

13 THE COURT: All right.

14 POTENTIAL JUROR: And I was a first cousin that works
15 with Marlboro.

16 THE COURT: Okay. Would either of these of matters
17 prevent you from giving both the State and the Defense a
18 fair and impartial trial?

19 POTENTIAL JUROR: No, sir.

20 THE COURT: Would you be able to put that aside and
21 decide the case based upon what you hear in this
22 courtroom?

23 POTENTIAL JUROR: Sure.

24 THE COURT: And would you do that?

25 POTENTIAL JUROR: Yes.

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1 THE COURT: Thank you, sir. All right. And the
2 gentlemen at the back.

3 POTENTIAL JUROR: Number 74.

4 THE COURT: Mr. Hale.

5 POTENTIAL JUROR: Yes.

6 THE COURT: All right. Yes, sir. Mr. Hale, what's
7 your situation?

8 POTENTIAL JUROR: My brother is a cop for the City of
9 Bennettsville.

10 THE COURT: All right. Retired police officer?

11 POTENTIAL JUROR: No, he still works for the City of
12 Bennettsville.

13 THE COURT: Oh, an officer with the City of
14 Bennettsville?

15 POTENTIAL JUROR: Yes.

16 THE COURT: All right. Would that fact prevent you
17 from giving both the State and the Defense a fair and
18 impartial trial based on the evidence?

19 POTENTIAL JUROR: I don't think -- yes, sir.

20 THE COURT: You think so?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: We'll talk to you in a little bit. I
23 asked a little while earlier if any member of the jury
24 panel or member of their immediate family was represented
25 now or have been represented by the Fourth Circuit

1 Solicitor's Office. I would ask you now if any member of
2 the jury panel or member of their immediate family who has
3 been employed with the Fourth Circuit Solicitor's Office
4 within the last ten years? If so, please stand.

5 Is any member of the jury panel or member or member
6 of their -- any member of the jury panel in this case, not
7 the immediate family, any member of the jury panel a
8 member of a victim's rights group such as M.A.D.D,
9 S.A.D.D, C.A.V.E, anything of that nature. Any member or
10 organization whose primary purpose is the advocacy of
11 victim's right? If so, please stand.

12 Has any member of the jury panel knows -- that knows
13 anything about this case through the news media,
14 television program or newspaper article or any other media
15 form that you would not be able to put aside and decide
16 this case based on the evidence that you hear in this
17 courtroom? If anybody has read or heard anything about
18 case that would prevent you from rendering a fair and
19 impartial trial. Please stand.

20 Any member of the jury panel or immediate family, as
21 I have defined the term, ever been employed by the
22 Marlboro County 911 Service? If so, please stand. All
23 right. Let me ask Juror Number 150, 88, 32 and 74. Well,
24 before we do that let me ask counsel to come up first,
25 please.

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1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury panel, but out of
3 the hearing of the jury panel.)

4 THE COURT: All right. Let me ask Juror Number 150,
5 88, 32 and 74 to come forward, please. First, 150, Mr.
6 Sylvia. How long did you worked for correctional?

7 POTENTIAL JUROR: I don't, sir.

8 THE COURT: Okay, how long did you work enter those
9 two offices?

10 A. S.C.D.C. was a year and Chesterfield County was for a
11 year. I'm actually in the process of being hired by the
12 North Carolina Department of Corrections as we speak now.

13 THE COURT: Do you feel that that experience would
14 prevent you from being able to be objective in this case,
15 yes or no?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Okay, thank you.

18 THE BAILIFF: Eighty-eight, Karen Knight.

19 THE COURT: All right. Mrs. Knight, I understand you
20 husband in the Sheriff's Office is not involved in this
21 case, but my question would be would the fact that you are
22 married to a law enforcement officer prevent you from
23 being fair and objective in the case?

24 POTENTIAL JUROR: It would. It probably would. I
25 mean I would love to serve. It's just the fact that you

1 hear so much and constantly around it. I would hate to.
2 I don't want to cause a problem is what I'm saying.

3 THE COURT: Okay. Thank you, ma'am. Okay.

4 THE BAILIFF: Thirty-two, Weldon Chavis.

5 THE COURT: Mr. Chavis, you indicated that you were
6 partial to law enforcement. Why? Tell me why. Is that
7 because you've got family in law enforcement?

8 POTENTIAL JUROR: Yes, sir. My wife been robbed and
9 last weekend we -- the car that my daughter was driving
10 was stolen from her from where she lives at. We're
11 still -- they used it to commit other crimes in Darlington
12 County.

13 THE COURT: So you feel that would prevent you from
14 being fair and impartial?

15 POTENTIAL JUROR: It left a bad taste in my mouth.

16 THE COURT: All right. Thank you, sir.

17 THE BAILIFF: Number 74, Matthew Hale.

18 THE COURT: Mr. Hale, I need to ask you about what
19 you told me.

20 POTENTIAL JUROR: My brother is a cop for the City of
21 Bennettsville.

22 THE COURT: Okay.

23 POTENTIAL JUROR: And also I know one of the
24 potential witnesses. It's a family friend, Lisa Polston.

25 THE COURT: You think those two facts could prevent

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1 you from being fair and impartial?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: All right. Thank you. All right. I am
4 going to go ahead and excuse for cause 150, 88, 32 and 74.
5 All right. I'm not quite through, Mr. Funderburk. All
6 right.

7 Has any member, other than what has been disclosed to
8 me, has any member of the jury panel formed or expressed
9 an opinion as to the guilt or innocence of the defendant,
10 Allen Joe Gathings? If so, please stand.

11 Again, other than what has been disclosed to me, is
12 any member of the jury panel aware of any interest, any
13 bias or any prejudice for or against the defendant, Allen
14 Joe Gathings? If so, please stand.

15 Other than what has already been disclosed can each
16 member of this jury panel give to the State and the
17 Defendant, Allen Joe Gathings, a fair and impartial trial?
18 If not, please stand.

19 Again, other than what has been disclosed to me does
20 any member of the jury panel know of any reason whatsoever
21 why he or she should not serve as a juror in this case?
22 If so, please stand.

23 Any additional questions on behalf of the State, Ms.
24 Munnerlyn?

25 CLERK OF COURT: You've got one, Judge.

1 THE COURT: Okay. Yes, sir. Come forward, please.

2 Yes, sir. Your name?

3 POTENTIAL JUROR: 131.

4 THE COURT: 131, Mr. Rainwater.

5 POTENTIAL JUROR: Yes, sir. I'm a friend of the
6 family.

7 THE COURT: Which family?

8 POTENTIAL JUROR: The victim. Mr. Eddie and my daddy
9 grew up together.

10 THE COURT: Okay. All right. Would that prevent you
11 from giving to both sides a fair and impartial trial based
12 on the evidence?

13 POTENTIAL JUROR: I think so.

14 THE COURT: All right. Thank you, sir. Okay, 131
15 will be excused for cause. All right. Are there
16 additional questions on behalf of the State, Ms.
17 Munnerlyn?

18 MS. MUNNERLYN: No, Your Honor. No other questions.

19 THE COURT: All Right. Mr. Jones and Ms. Crayton, I
20 have declined Numbers Four, Six and Seven. The rest have
21 been asked -- and Ten. I have -- I think we've covered
22 most of those, but those last four that I specifically
23 declined I will give the court reporter your request and
24 have it marked as a Court's Exhibit so it will be a part
25 of the record. And are there any others other than those

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1 four?

2 MS. CRAYTON: No, Your Honor.

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification and received into evidence.)

5 SELECTION OF THE JURY

6 THE COURT: All right, Mr. Clerk. All right,
7 counsel. We're going to select two alternates in this
8 case with two and one on the strikes. And they will be
9 done separately as far as the alternates are concerned.
10 All right, Mr. Clerk. If you will give us a jury please.

11 Ladies and gentlemen, the procedure is that -- go
12 ahead. All right. Madam Clerk, if you will give us the
13 jury, please. Mr. Clerk.

14 CLERK OF COURT: Okay, first thing when I call your
15 name, ladies, bring your pocketbooks and coats, whatever
16 you got with you. Watch your step on the sides when you
17 step out. Come where I'm sitting, turn around, and face
18 the door, and I'll take care of the rest.

19 Betty J McDonald.

20 THE COURT: Come forward, please, ma'am. Come right
21 up here to the rail. Turn around with your back towards
22 me and face that door.

23 CLERK OF COURT: Turn around and face the door. What
24 says the State.

25 MS. MUNNERLYN: Please present the juror.

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1 CLERK OF COURT: What says the Defendant.

2 MS. CRAYTON: Please seat the juror.

3 CLERK OF COURT: Have a see to my right over here.
4 Follow the bailiff.

5 THE COURT: Have a seat in the jury box, please,
6 ma'am.

7 CLERK OF COURT: Jovahn P. Green. What says the
8 State.

9 MS. MUNNERLYN: Please excuse the juror from service
10 on this trial.

11 CLERK OF COURT: Please return to your seat, ma'am.
12 Mattie B. Caulder. What says the State.

13 MS. MUNNERLYN: Please present the juror.

14 CLERK OF COURT: What says the Defendant.

15 MS. CRAYTON: Please excuse the juror.

16 CLERK OF COURT: Return to your seat, please, ma'am.
17 Lakisha M. Prince. What says the State. Watch your step
18 in the back now. What says the State.

19 MS. MUNNERLYN: Please excuse this juror from service
20 on this trial.

21 CLERK OF COURT: Return to your seat, please, ma'am.
22 John D. Gibson, Jr. What says the State.

23 MS. MUNNERLYN: Please present the juror.

24 CLERK OF COURT: What says the Defendant.

25 POTENTIAL JUROR: Please excuse the juror.

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1 CLERK OF COURT: Return to your seat please, sir.

2 Michael Cain. What says the State.

3 MS. MUNNERLYN: Please present the juror.

4 CLERK OF COURT: What says the Defendant.

5 MS. CRAYTON: Please seat the juror.

6 CLERK OF COURT: Have a seat in the jury box, please,

7 sir. Linda Q. Ocean. What says the State.

8 MS. MUNNERLYN: Please present the juror.

9 CLERK OF COURT: What says the Defendant.

10 MS. CRAYTON: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box, please

12 ma'am. Angela M. Jones. What says the State.

13 MS. MUNNERLYN: Please present the juror.

14 CLERK OF COURT: What says the Defendant.

15 MS. CRAYTON: Please seat the juror.

16 CLERK OF COURT: Have a seat in the jury box, please

17 ma'am. Samuel C. Brown. What says the State.

18 MS. MUNNERLYN: Please present the juror.

19 CLERK OF COURT: What says the Defendant.

20 MS. CRAYTON: Please seat the juror.

21 CLERK OF COURT: Have a seat in the jury box, please,

22 sir. Wanda S. Huckabee. What says the State.

23 MS. MUNNERLYN: Please present the juror.

24 CLERK OF COURT: What says the Defendant.

25 MS. CRAYTON: Please excuse the juror.

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1 CLERK OF COURT: Return to your seat, please, ma'am.
2 Stephanie S. Bright. What says the State.
3 MS. MUNNERLYN: Please present the juror.
4 CLERK OF COURT: What says the Defendant.
5 MS. CRAYTON: Please seat the juror.
6 CLERK OF COURT: Have a seat in the jury box, please.
7 Robert Townsend. What says the State.
8 MS. MUNNERLYN: Please present the juror.
9 CLERK OF COURT: What says the Defendant.
10 MS. CRAYTON: Please excuse the juror.
11 CLERK OF COURT: You can return to your seat, please,
12 and watch your step. Take your time. Sahley D. Clark.
13 What says the State.
14 MS. MUNNERLYN: Please present the juror.
15 CLERK OF COURT: What says the Defendant.
16 MS. CRAYTON: Please seat the juror.
17 CLERK OF COURT: Have a seat in the jury box, please,
18 ma'am. Donald C. Hutchinson. What says the State.
19 MS. MUNNERLYN: May we approach, Your Honor?
20 THE COURT: Yes.
21 (Bench conference held off the record but in the
22 presence of the jury pool.)
23 THE COURT: All right. Mr. Hutchinson, you may take
24 your seat back out with the jury panel. Thank you, sir.
25 CLERK OF COURT: Pall Marvin Hopkins. What says the

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1 State.

2 MS. MUNNERLYN: Please present the juror.

3 CLERK OF COURT: What says the Defendant.

4 MS. CRAYTON: Please excuse the juror.

5 CLERK OF COURT: Return to your seat, please, sir.

6 James Stuckey. What says the State.

7 MS. MUNNERLYN: Please present the juror.

8 CLERK OF COURT: What says the Defendant.

9 MS. CRAYTON: Please excuse the juror.

10 CLERK OF COURT: Return to your seat, please.

11 Sterling T. Bostic. What says the State.

12 MS. MUNNERLYN: Please excuse this juror from service
13 on this trial.

14 CLERK OF COURT: Return to your seat, please: Jackie
15 B. Frazier. What says the State.

16 MS. MUNNERLYN: Please present the juror.

17 CLERK OF COURT: What says the Defendant.

18 MS. CRAYTON: Please seat the juror.

19 CLERK OF COURT: Have a seat in the jury box, please.
20 Carolyn E. Bethea. What says the State.

21 MS. MUNNERLYN: Please excuse the juror from service
22 on this trial.

23 CLERK OF COURT: Return to your seat, please, ma'am.
24 Jerry Rivers, Jr. What says the State.

25 MS. MUNNERLYN: Please present the juror.

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1 CLERK OF COURT: What says the Defendant.
2 MS. CRAYTON: Please seat the juror.
3 CLERK OF COURT: Have a seat in the jury box, please,
4 sir. Densie Purcell. What says the State.
5 MS. MUNNERLYN: Please present the juror.
6 CLERK OF COURT: What says the Defendant.
7 MS. CRAYTON: Please seat the juror.
8 CLERK OF COURT: Have a seat in the jury box, please,
9 ma'am. Jacqueline M. Emanuel. What says the State.
10 MS. MUNNERLYN: Please present the juror.
11 CLERK OF COURT: What says the Defendant.
12 MS. CRAYTON: Please excuse the juror.
13 CLERK OF COURT: Return to your seat, please, ma'am.
14 Billy G. Quick. What says the State.
15 MS. MUNNERLYN: Please present the juror.
16 CLERK OF COURT: What says the Defendant.
17 MS. CRAYTON: Please seat the juror.
18 CLERK OF COURT: Have a seat in the jury box.
19 Charity M. McCall. What says the State.
20 MS. MUNNERLYN: Please present the juror.
21 CLERK OF COURT: What says the Defendant.
22 MS. CRAYTON: Please excuse this juror.
23 CLERK OF COURT: Return to your seat, please, ma'am.
24 Nancy E. Bethea. What says the State.
25 MS. MUNNERLYN: Please present the juror.

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1 CLERK OF COURT: What says the Defendant.

2 MS. CRAYTON: Please excuse the juror.

3 CLERK OF COURT: Return to your seat, please. Obrian
4 L. Cole. What says the State.

5 MS. MUNNERLYN: Please excuse this juror from service
6 on this trial.

7 CLERK OF COURT: Return to your seat, please, sir.
8 Leona S. Cox. What says the State.

9 MS. MUNNERLYN: Please present the juror.

10 CLERK OF COURT: What says the Defendant.

11 MS. CRAYTON: Please excuse the juror.

12 CLERK OF COURT: Return to your seat, please. James
13 B. Harrington. What says the State. Any cause for
14 challenge from the State.

15 MS. MUNNERLYN: None from the State.

16 CLERK OF COURT: Any cause for challenge from the
17 Defendant.

18 MS. CRAYTON: No.

19 CLERK OF COURT: Have a seat in the jury box, please.

20 THE COURT: All right. Two alternates. First
21 alternate is. One and two on each alternate.

22 CLERK OF COURT: Weldon Brigman, Jr. What says the
23 State.

24 MS. MUNNERLYN: Please present the juror.

25 CLERK OF COURT: What says the Defendant.

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1 MS. CRAYTON: Please excuse the juror.

2 CLERK OF COURT: Return to your seat, please, sir.

3 Ava D. Colson. What says the State.

4 MS. MUNNERLYN: Please present the juror.

5 CLERK OF COURT: What says the Defendant.

6 MS. CRAYTON: Please excuse the juror.

7 CLERK OF COURT: Return to your seat, please, ma'am.

8 Robert L. Douglas. What says the State.

9 MS. MUNNERLYN: Please present the juror.

10 CLERK OF COURT: What says the Defendant.

11 MS. CRAYTON: Please seat the juror.

12 CLERK OF COURT: Have a seat in the jury box.

13 THE COURT: Alternate Number One. Now, second
14 alternate. Same procedure.

15 CLERK OF COURT: Tashaunya C. Robinson. What says
16 the State.

17 MS. MUNNERLYN: Please excuse the juror from service
18 of this trial.

19 CLERK OF COURT: Return to your seat, please. Evans
20 Williams. What says the State. Any cause for challenge
21 from the State.

22 MS. MUNNERLYN: None from the State.

23 CLERK OF COURT: What says the Defendant.

24 MS. CRAYTON: Please excuse the juror.

25 CLERK OF COURT: Please return to your seat, please,

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1 sir. Penny Jacobs. Any cause for challenge from the
2 State.

3 MS. MUNNERLYN: Please, present the juror.

4 CLERK OF COURT: What says the Defendant.

5 MS. CRAYTON: Please seat the juror.

6 CLERK OF COURT: Have a seat in the jury box, please,
7 ma'am. Follow the bailiff. That completes it, Your
8 Honor.

9 THE COURT: Anything on behalf of jury selection from
10 the State, Ms. Munnerlyn?

11 MS. MUNNERLYN: None from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MS. CRAYTON: No, Your Honor.

14 THE COURT: All right. Counsel approach.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury pool and panel,
17 but out of the hearing of the jury.)

18 COLLOQUY

19 THE COURT: All right, ladies and gentlemen selected
20 in the trial of this case, we have some administrative
21 matters and some matters that we have to have heard before
22 we go forward with the trial of this case. So I am going
23 to allow you now to go to lunch and have you come back
24 after lunch. There are several things that I want to tell
25 you before I excuse you for the lunch recess. First of

1 all, later on in this trial I will either name one of the
2 12 members of the principal jury or I will allow you to
3 select one of the 12 members of the principal jury to be
4 the foreperson of this jury.

5 When that foreperson is selected he or she should
6 always sit here in the first seat on the first row. The
7 alternate should always sit in the seats where they are
8 seated. They should come in first and, of course, sit in
9 the first seat on that end down there on both the first
10 and second rows. The rest of the seats in the jury box
11 are not reserved, and it does not matter what order you go
12 and come from the courtroom.

13 You can sit in any of the seats in the jury box. I'd
14 simply ask that you go all the way down, reserving the
15 last seat for the alternate on each row. And, of course,
16 the first seat on the front row is for the foreperson when
17 I name that foreperson or when that foreperson is
18 selected.

19 I would also tell you that if -- I know you do not
20 know anything about this case yet except what I told you
21 the allegations are, but it would be improper for you to
22 discuss this matter amongst yourselves when you're
23 reassembling in the jury room. This admonition is carried
24 throughout the trial of this case. It would be improper
25 for you to discuss this case amongst yourselves in any

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1 manner whatsoever until all of the testimony has been
2 heard, the arguments of counsel have been made, and I have
3 given you the instructions on the law.

4 So when you're in there in the jury room you can talk
5 about anything you want to talk about, sports, weather,
6 the children, grandchildren, anything at all, but don't
7 talk about this case until I tell you it's time to begin
8 your deliberations. Also, when you are away from the
9 courthouse do not discuss the case with anyone. And the
10 reason for that is pretty apparent. When you see your
11 family or your friends you should not discuss this case
12 with them because you've got to decide the case based on
13 what you hear in this courtroom and not based of what
14 anyone else might say.

15 Similarly, do not allow anyone to talk to you about
16 the case. If anyone should try to approach and try to
17 discuss the matter with you get their name or their
18 description and report it to the bailiff. They will
19 report it to me, and I will deal with them. And, also, do
20 not read any news reports or listen to any broadcast media
21 about this case. If there is anything on the broadcast
22 media simply turn it off.

23 If there is anything in the print media put it aside
24 and do not read it. You've got to decide this case based
25 upon what you hear in this courtroom, and with due respect

1 to all of my friends in the media what they report is not
2 always accurate as to what actually happened in the
3 courtroom.

4 You're to decide the case based on what you hear in
5 this courtroom and not based what you may hear in the news
6 media. Now, in order for us to complete all the matters
7 that we need to complete and also for you so I won't keep
8 you waiting unnecessarily in the jury room I'm going to
9 excuse you now and ask that you be back in the jury room
10 at three o'clock. I'm going to have you go with the
11 bailiff.

12 He's going to show you where the jury room is, and he
13 will show you how to get back in the courtroom, but do
14 not -- I mean back is the Court area, but do not come to
15 the courtroom. Come back to your jury room, please, at
16 three o'clock this afternoon, and we'll be ready to start
17 this matter with you at that time. Thank you. If you
18 will go with the bailiffs.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at 12:47 p.m.)

21 THE COURT: All right. Ladies and gentlemen of the
22 jury panel not selected in the trial of this case, I'm
23 advised that this case will take the rest of the day and
24 all day tomorrow. So I am going to excuse you from any
25 further responsibility to this Court through tomorrow

1 evening. What I would like for you to do is call that
2 number you have after six o'clock tomorrow night and there
3 will be a message on there with regard to your reporting
4 instructions for Wednesday.

5 I don't know whether we will be through with this
6 case or not, but this is a system that most all the court
7 houses have gone to prevent us from having to run jurors
8 back and forth to the court house more than is absolutely
9 necessary. You can call that number any time all night
10 long, and your reporting instructions for Wednesday will
11 be on there.

12 But I am going to excuse you now for the rest of the
13 day and all day tomorrow. I'll ask you to call that
14 number after 6:00 Tuesday night and you will find out what
15 your instructions will be for Wednesday. Thank you. You
16 are free to go. Jurors only.

17 (WHEREUPON, the jury pool was excused from the
18 courtroom at 12:48 p.m.)

19 THE COURT: All right. I understand that there are a
20 number of pretrial motions, but I do -- I think, Ms.
21 Munnerlyn, there is just one on behalf of the State, and
22 that is the motion for the admission of some prior bad
23 acts; is that correct.

24 MS. MUNNERLYN: That is correct, Your Honor.

25 THE COURT: All right. Well, go ahead and let me

1 hear from you by way of oral argument on that.

2 MS. MUNNERLYN: Your Honor, of course, we are
3 presenting -- we are -- our motion is that you allow us to
4 present certain evidence regarding the prior bad acts of
5 the Defendant; that being an incident that occurred on
6 April the 18th of 2005. We are arguing it's, of course,
7 under Lyle under Rule 404(B), the rules of evidence under
8 the common scheme or plan.

9 The prior incident, Your Honor, as I stated occurred
10 on April the 18th of 2005. It involved the very same
11 victims as well as an additional victim, Lisa Polston.
12 And it is -- the circumstances were very similar. The
13 defendant in that case, and it also occurred at the same
14 home.

15 Your Honor, the defendant was seeking money from the
16 defendant -- I mean the victim, who were Loyce Locklear
17 and Robbie Polston. He pushed Miss Polston -- Mr. Polston
18 and Ms. Locklear down taking her pocketbook and fled the
19 residence taking the vehicle that they had borrowed from
20 their daughter and the other victim's sister, Lisa
21 Polston.

22 THE COURT: This is the April of '05 incident?

23 MS. MUNNERLYN: That's right. This is the April of
24 '05 incident. He fled in that vehicle and as a result of
25 that incident was charged with assault and battery, grand

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1 larceny and strong armed robbery. And he did ultimately
2 plead guilty to those three charges here in this Court,
3 Your Honor. He actually pled guilty in November of 2005
4 and was sentenced to three years.

5 He did go to S.C.D.C. on those three, Your Honor, and
6 was released three to four month prior to the current
7 incident that we are here for in this case. This case
8 occurred -- the incident occurred late on June the 29th,
9 early morning hours of June 30th 2007. The defendant was
10 released in April of 2007 from S.C.D.C. or about April.
11 When he was released from S.C.D.C. he came to live again
12 with Robbie Polston and Loyce Locklear at their home at
13 [REDACTED] in Clio.

14 And, again, on that day, June the 29th, he was
15 seeking money -- wanted money from the defendant, Robbie
16 Polston. When he did not have any he wanted it from the
17 mother, Loyce Locklear. He was upset that they did not
18 give him money. He came back later.

19 Initially left in the car. Came back later that day,
20 and he was -- and, of course, the incident occurred. They
21 were assaulted and died as a result of the injuries
22 inflicted upon them with a baseball bat, and he fled in
23 Ms. Locklear's vehicle and was found two days later in
24 Horry County in that vehicle.

25 THE COURT: All right. All right, Miss Crayton or

1 Mr. Jones.

2 MS. CRAYTON: Thank you, Your Honor. I don't believe
3 that the evidence that the Solicitor is wanting to present
4 meets any of the exceptions under 404(B), and i also
5 believe that it's highly prejudicial, Your Honor. I don't
6 think that he could have a fair trial possibly if this
7 evidence was admitted. I don't think it goes to anything
8 but showing that he acted in conformity with the prior bad
9 act. That's not what the rule is.

10 THE COURT: How about the fact that it's the same
11 victims. I would probably agree with you if it was simply
12 a prior grand larceny, assault and armed robbery of some
13 third party. But seems like to me that it does come awful
14 close to a common scheme or plan when it's the same
15 victims.

16 MS. CRAYTON: Well, Your Honor, I would argue that
17 the victims aren't here to tell us what happened, and that
18 it may have been just been a misunderstanding. There is
19 reason that they let him come back and live with him them.
20 And there is no evidence why that was or we have no
21 testimony from them. And I would argue it was extremely,
22 highly prejudicial.

23 MS. MUNNERLYN: Your Honor.

24 THE COURT: Just a minute.

25 MS. MUNNERLYN: I do have a case. I have not had an

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1 opportunity to read it thoroughly through, but it is the
2 State v. Eric Ford and Nancy Brown. It does appear to be
3 directly on point. This involved a prior bad act with
4 also a prior robbery with the same victims and the Court
5 did allow -- they did say that it was admissible.

6 THE COURT: What's the name of the case.

7 MS. MUNNERLYN: I'll hand it up to, Your Honor.
8 State v. Derrick Ford and Nancy Brown. Opinion Number
9 295. I don't have a site right here. Court of Appeals
10 case, Your Honor.

11 THE COURT: Okay.

12 MS. MUNNERLYN: And ---

13 THE COURT: Just hand it up.

14 MS. MUNNERLYN: The Court did allow it in.

15 THE COURT: All right. I'll review the case in
16 detail, and as far as this matter is concerned I'm taking
17 it under advisement. Let's plan to go ahead and break for
18 lunch at this time and come back at two o'clock and we'll
19 take up with Defense motions in this matter.

20 MR. JONES: May I ask one question, Your Honor?

21 THE COURT: Sure.

22 MR. JONES: We're going to look at that case also
23 over the lunch break. May we have a chance to respond to
24 it?

25 THE COURT: Yes.

1 MR. JONES: Thank you.

2 THE COURT: Sure. One other thing. I'm a little bit
3 concerned about -- come up, counsel.

4 (WHEREUPON, a bench conference was held off the
5 record outside the presence of the jury.)

6 THE COURT: We'll be at recess then until
7 two o'clock.

8 (WHEREUPON, Court is in recess at 12:57 p.m. and
9 reconvenes at 2:03 p.m.)

10 THE COURT: All right. We're back on the record with
11 regards to the matter of the State v. Allen Joe Gathings.
12 Three indictments, 887, 888 and 909. These are all '07
13 indictments. Mr. Gathings is present with his counsel.
14 The State is present represented by Ms. Munnerlyn. First
15 thing, Mr. Jones and Ms. Crayton, is there anything that
16 you wish to present to the Court in response to the
17 citation of the State v. Ford and Brown case that was
18 submitted by the State in support of their motion for
19 permission of the prior bad acts.

20 MR. JONES: Yes, sir. In reading the case I think,
21 particularly on Page 388, 389, there is similarity between
22 the acts that Ms. Munnerlyn is trying to introduce in this
23 case. However, the Ford and Brown cases are clearly
24 distinguishable because in that case, I'm sure as His Honor
25 has read, the testimony was that it was almost a

1 continuing course of conduct; that the defendant had told
2 the victim, which was the same victim, but every time they
3 saw him that if he didn't give them \$200 they were going
4 to shoot him in the head.

5 And so there was a logical connection between the
6 first statement, prior bad act, and the one that was
7 admitted at this trial -- that trial. In this case we,
8 although as I said I see there are some similarities as
9 far as victims are concern, there is nothing which rises
10 to that level of connection which would override the
11 general rule that prejudicial value greatly outweighs the
12 public value of any prior bad act testimony.

13 And for that reason, Your Honor, I would ask that the
14 Court exclude prior bad act testimony.

15 THE COURT: All right. Thank you. I'll let you know
16 my ruling in a few minutes, okay. All right. Other --
17 are there any other motions on behalf of the State, Ms.
18 Munnerlyn?

19 MS. MUNNERLYN: No, Your Honor. But I would like to
20 just offer you, separate and aside from the prior bad acts
21 cases and common scheme and plan, there is a separate
22 case, State v. Williams, which addresses the use of
23 evidence of previous quarrels and ill feeling and hostile
24 acts between parties as admissible in homicide cases to
25 show that animosity probably existed between the parties

1 at the time of the homicide. And that, of course, the
2 details should be exclude.

3 But that you can bring those things forward without
4 getting into the details, and I just wanted to present
5 that to the Court as further support of our argument in
6 that -- in allowing ---

7 THE COURT: You want to hand that case up?

8 MS. MUNNERLYN: Yes, sir. And, Your Honor, I would
9 just say that in addition there is an additional witness
10 who would say that there were threats by the defendant
11 while he was in prison on the first incident; that he
12 threatened to kill both Robbie Polston and Donna Jackson
13 because it was they who put him in jail that time.

14 So there were some threats that he would kill them
15 when he got out, for whatever that's worth.

16 THE COURT: All right. All right. Ms. Crayton, what
17 motions are there on whatever of the defendant.

18 MS. CRAYTON: Yes, Your Honor. We would just like to
19 begin with a motion to quash the indictments.

20 THE COURT: Grounds.

21 MS. CRAYTON: Yes, Your Honor. The indictments read
22 that they were presented to the Court -- make sure I get
23 the dates correct, Your Honor. They were signed on
24 September 6th of '07, and they state that they were
25 presented to the Court or grand jury on September 10th.

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1 And I know one of the first questions you will have is how
2 is this prejudicial. We believe that since the
3 indictments pre ---

4 THE COURT: Wait a minute. Give me those dates
5 again. Now, what are you saying exactly?

6 MS. CRAYTON: September 10th and September 6th, they
7 were signed by the foreperson on September 6th, but they
8 state on the second page, "At a Court of General Sessions
9 meeting on September 10th" implying that they were signed
10 prior to being presented to the grand jury.

11 THE COURT: Are you saying that because the foreman
12 signed the indictments as having true billed on September
13 the 6th ---

14 MS. CRAYTON: Right.

15 THE COURT: That the body of the indictment says that
16 the grand jury convened on September the 10th of 2007?

17 MS. CRAYTON: Yes, Your Honor. We feel that it shows
18 ---

19 THE COURT: What day did the -- in fact the grand
20 jury convene?

21 MS. CRAYTON: I am not positive on that, Your Honor,
22 cause the indictment does not read properly so we are
23 unsure.

24 MS. MUNNERLYN: Your Honor, the grand jury has always
25 met on Thursday before our week of court here. And that

1 is indicated by these indictments. The true bill date is
2 written on the actual back of the indictment cause the
3 date the grand jury met the grand jury foreman would have
4 presented his report at the term of court which began on
5 the following week -- following Monday, September the 10th
6 which is when court would have been held. The grand jury
7 foreman ---

8 THE COURT: Wait a minute. Let's get this straight.
9 The indictment says that the Court of General Sessions
10 convened on September the 10th 2007. Is that an incorrect
11 date?

12 MS. MUNNERLYN: That is not when the grand jury met.
13 That is when the General Sessions term of court began. So
14 that would be an improper ---

15 THE COURT: Wait a minute. Wait just a minute. At
16 the Court of General Sessions -- at the Court of General
17 Sessions the Grand Jury of Marlboro County present upon
18 their oath. So what you're saying is that the indictment
19 recitation is the presentment of the grand jury report's
20 to the Court of General Sessions and that was on September
21 the 10th. Whereas they actually met on September the 6th?

22 MS. MUNNERLYN: That is correct, Your Honor.

23 THE COURT: Okay. All right. Now, hear from you Ms.
24 Crayton.

25 MS. CRAYTON: Yes, Your Honor. We feel that since

1 the indictment does not show that the cause was heard and
2 then true billed, well feel like that it does prohibit
3 Mr. Gathings due process, and how can we verify that they
4 did hear the case prior to true billing it. And we would
5 ask that both indictments or all indictments be quashed at
6 this time, Your Honor.

7 THE COURT: Well, tell me where it says that they met
8 on September the 10th.

9 MS. CRAYTON: Your Honor, we don't know when they met
10 because, unfortunately, it says that on September 10th.

11 THE COURT: It says on September the 10th that they
12 presented the indictments at the Court of General Sessions
13 convened on September the 10th. The Grand Jury of
14 Marlboro County present upon their oath murder and things,
15 but the -- and even so tell me where -- let's assume that
16 you're right. Where is the prejudice?

17 MS. CRAYTON: Well, Your Honor, I would say the
18 prejudice is because the indictment is supposed to
19 guarantee that the case is heard, and then they are
20 supposed to true bill it. And in this instance with
21 cannot guarantee that is what happened. And I would say
22 to move forward with an indictment that is not proper and
23 we cannot guarantee that the procedure was done properly
24 is prejudicial.

25 THE COURT: What do the records reflect on September

1 the 10th 2007 as far as the court reporter's record show
2 as far as presentment of the indictments to the grand
3 jury?

4 MS. CRAYTON: I do not know, your Honor.

5 THE COURT: You don't have any evidence that it was
6 not presented to the Court on September the 10th 2007 ---

7 MS. CRAYTON: No, Your Honor.

8 THE COURT: ?As a true bill.

9 MS. CRAYTON: No, Your Honor, I do not.

10 THE COURT: Okay. All right. Go ahead. What else?

11 MS. MUNNERLYN: Your Honor.

12 THE COURT: Yes, ma'am.

13 MS. MUNNERLYN: If I could just respond to that.

14 There is a case, State v. Tate, where the date of the true
15 bill was actually missing on the actual indictment and in
16 that case the Court indicated that an indictment that does
17 not show the date at all in which the grand jury convened
18 it may still be substantially sufficient to confer subject
19 matter jurisdiction if the docket number indicate what
20 year the grand jury met and the record clearly reflects
21 the indictment has been true billed by the time the case
22 was called to trial. Clearly, they did. They've got the
23 foreman's signature there and written below it, "True bill
24 by the foreman and the date," thereon, Your Honor.

25 THE COURT: All right. Okay. All right. What's

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1 your next motion Ms. Crayton?

2 MS. CRAYTON: Yes, Your Honor. Our next motion would
3 be a motion in limine to exclude the defendant's
4 statement. He made a statement to the police that he
5 didn't have anything to say, and he also wrote that
6 statement on his Miranda warnings. We would just ask that
7 that statement, since he was asserting his Fifth Amendment
8 right to remain silent, would be excluded.

9 THE COURT: You plan to make any reference to that,
10 Ms. Munnerlyn?

11 MS. MUNNERLYN: Your Honor, I was just going to ask
12 the officer if he made any statement at this time. He
13 would say no, at that time he didn't wish to say anything.
14 I think it would be appropriate for me to ask that.

15 THE COURT: Why is that not a proper question,
16 Ms. Crayton?

17 MS. CRAYTON: Well, Your Honor, I think it's his -- I
18 think it's prejudicial. He's asserting his Fifth
19 Amendment right, and I think ---

20 THE COURT: Wouldn't it be if he chooses not to
21 testify he will -- the jury will certainly be told in jury
22 instructions that he does not have to say anything; that
23 he has the right to remain silent; that he doesn't have to
24 prove anything. All of those instructions will be given.

25 MS. CRAYTON: I would just ask that the specific

1 wording he used and that he said that he did not want to
2 say anything would be excluded from their testimony.

3 THE COURT: I will allow her to ask the question if
4 she asks, and I am going to tell the jury at that time a
5 defendant does not have to say anything. The burden of
6 proof is on the State. He has an absolute right to remain
7 silent.

8 MS. CRAYTON: Thank you, Your Honor. In terms of the
9 motion to sequester, Ms. Munnerlyn has consented to that
10 motion so we will withdraw that at this time.

11 THE COURT: That's reciprocal, now. If one side --
12 if there is sequestration on one side there has to be
13 sequestration on the Defense side as well.

14 MS. CRAYTON: And I just have one thing that I would
15 like to ask the Court make an exception on would be his
16 sister. His sister is arriving tomorrow. She has gone to
17 great lengths to come to Court to support her brother and
18 all she would be ---

19 THE COURT: Is she going to be testifying?

20 MS. CRAYTON: She is on our list, and I'm not sure if
21 she would be testifying or not. She would only be
22 testifying to the incident in Conway when he was arrested.
23 She was brought there by the police. She would have no --
24 bear in mind, she knows nothing else about the case
25 besides ---

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1 THE COURT: What's the incident in Conway? I don't
2 know anything about it.

3 MS. CRAYTON: He was arrested in Conway. He was
4 arrested in Conway. They actually brought her to the
5 location so speak to her brother at that time. And that
6 would be to only thing -- we would just ask that she be
7 allowed, as they're allowed to have the lead detective, we
8 would just ask that she be allow ---

9 THE COURT: Well, they have the right under the
10 statute, of course ---

11 MS. CRAYTON: Yes, Your Honor.

12 THE COURT: --- to keep the lead officer and also
13 member of the victim's families have the right to be
14 present. What's your position as far as the sister is
15 concerned?

16 MS. MUNNERLYN: Your Honor, if her testimony is going
17 to be limited to that I do not have a problem with her. I
18 do have two of the family members on my witness list, but
19 I would like for them to be able to remain in the
20 courtroom if they choose to.

21 THE COURT: Well, who are they?

22 MS. MUNNERLYN: Eddie Polston and Lisa Polston.

23 THE COURT: What's the relationship?

24 MS. MUNNERLYN: They are brother and sister, so they
25 would be the brother and sister of one victim and the

1 children of the other victim.

2 THE COURT: Well, that -- I don't know why that would
3 be -- are those the ones you want to keep as the victim's
4 representative in the courtroom?

5 MS. MUNNERLYN: Right. And they will be actually
6 testifying, probably, like the first couple of witnesses,
7 Your Honor.

8 THE COURT: Okay. What's your position? They're
9 victims.

10 MS. CRAYTON: I don't think we have a reason to
11 exclude them, Your Honor.

12 THE COURT: All right. Then they would have the
13 right to stay as well as your lead officer, okay. All
14 right.

15 MS. CRAYTON: And another motion would be a motion to
16 suppress the search and evidence obtained from the search
17 of the vehicle, the victim's vehicle. This was done in
18 Horry County by the police department. The search warrant
19 we believe is invalid. It states that the seizing
20 evidence pertaining to the homicide of some Donte
21 Lafayette Simmons or some -- this name on the search
22 warrant is written in. And, obviously, this is not the
23 case that is pertaining or not to the circumstances
24 pertaining to this case. Then we would ask that it be
25 suppressed along with any evidence gathered.

1 THE COURT: Now, the search -- the defendant's
2 vehicle?

3 MS. CRAYTON: No, Your Honor. The victim's vehicle
4 found with the defendant.

5 THE COURT: Okay.

6 MS. CRAYTON: And as you well know the victim's in
7 this case are Robbie Polston and Loyce Locklear.

8 THE COURT: What is the defendant's expectation of
9 privacy in someone else's vehicle?

10 MS. CRAYTON: Well, Your Honor, he has used this
11 vehicle quite a lot. He was given permission to use the
12 vehicle. He drove one of the victim's vehicles to work
13 every single day. I would think it's a user of the
14 vehicle. He has the expectation of privacy.

15 THE COURT: Isn't there case law to the effect that
16 there is no expectation of privacy if they're in someone
17 else's apartment or someone else's vehicle no matter
18 whether you're using it with consent or not. In order to
19 be an invalid search, and I haven't looked at the search
20 warrant yet, and obviously, the victims couldn't give
21 consent in this case.

22 Normal consent would be a straight search, but isn't
23 case law to the effect that a defendant does not have an
24 expectation of privacy in someone else's vehicle?

25 MS. CRAYTON: Your Honor, I can't really argue with

1 that.

2 THE COURT: What say you, Ms. Munnerlyn?

3 MS. MUNNERLYN: Yes, Your Honor. Your Honor, there
4 is. I'm just trying to put my hands on the case name for
5 you.

6 THE COURT: While you're doing that let me look at
7 the search warrant. You have a copy of it?

8 MS. CRAYTON: Yes, Your Honor.

9 THE COURT: Pass it up.

10 MS. MUNNERLYN: I have one.

11 MS. CRAYTON: Thank you.

12 THE COURT: While she's looking for the case of
13 expectation of privacy what do you say is wrong with the
14 search warrant?

15 MS. CRAYTON: Your Honor, it states the wrong
16 victim's name at the bottom is written in. Is the search
17 warrant for -- regarding homicide of a different victim.

18 THE COURT: I see. Under the description of property
19 it says, "Any and all items of an evidentiary nature to
20 the investigation of a shooting homicide of Donte Legette
21 Simon," and then.

22 MS. CRAYTON: And it should read Robbie Polston and
23 Loyce Locklear, Your Honor.

24 MS. MUNNERLYN: I think it does say, Your Honor,
25 something -- I've handed you my copy so I don't have it to

1 look at, but I think it does indicate in reference to a
2 double homicide in Clio, South Carolina at some point,
3 Your Honor. Our argument would be that that simply is a
4 clerical error in asking -- requesting the search warrant.
5 It really didn't bear upon who was murdered in that case,
6 but that he fled the scene of the murder in that
7 particular vehicle.

8 THE COURT: Well, I question, Ms. Crayton, and this
9 is still a question and it goes back to the expectation of
10 privacy, I still question whether the defendant's got any
11 standing to raise a search warrant with regards to someone
12 else's vehicle. That's the expectation of privacy.

13 You know regardless of whether it's just a clerical
14 error or whatever it is, it gives a description of the
15 premises to be searched, being a certain vehicle with a
16 VIN number and license number and shows that it's
17 registered to Loyce Locklear. And then, again, back in
18 the description of the property the only thing is it says,
19 "Any and all items of an evidentiary nature valued to the
20 investigation of the shooting homicide of Donte Lafayette
21 Simon, which I understand he doesn't have anything to do
22 with the case.

23 But the description of the premises to be searched is
24 correct, is it not, Miss Crayton?

25 MS. CRAYTON: Yes, Your Honor.

1 THE COURT: It's just a description of the property
2 seized?

3 MS. CRAYTON: Yes, sir, Your Honor, I believe so.

4 THE COURT: All right. I understand your motion.
5 Okay. What else?

6 MS. CRAYTON: Yes, Your Honor. We did have a motion
7 to reveal the deal, Your Honor, but Ms. Munnerlyn has
8 stated that she's not calling any of the people that gave
9 statements that are currently in jail, and she has agreed
10 to give us the record of the one that is testifying so we
11 are also withdrawing that motion.

12 Our last motions is the motion to exclude
13 photographs, however, we do not have the photographs here.
14 Glenn McLellan from S.L.E.D. is bringing the photographs
15 that Ms. Munnerlyn ---

16 MS. MUNNERLYN: I have them on C.D. here though,
17 Judge, of the ---

18 MS. CRAYTON: And we'd like to review them.

19 MS. MUNNERLYN: On the -- we can go ahead and do that
20 if you want to view them on the laptop here. We do have
21 those available.

22 THE COURT: All right. The only problem is that the
23 only way that I can refer to them is they've been marked
24 for identification. That's really the only way that I can
25 ---

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1 MS. CRAYTON: And we may be able to resolve this once
2 we get the photographs and figure out which ones ---

3 THE COURT: When is the S.L.E.D. agent coming?

4 MS. MUNNERLYN: He should be here any time, Judge.

5 THE COURT: Okay, well, we get to it and we get ready
6 to call him we can send the jury out and take those matter
7 s up before we go forward.

8 MS. CRAYTON: Thank you, Your Honor.

9 THE COURT: Okay. All right. Anything else,
10 Miss Crayton, you got?

11 MS. CRAYTON: No, Your Honor.

12 THE COURT: Just to make sure we're summarizing, the
13 motions: You've got your motion to quash the indictment
14 based on the date shown on the face of the indictment of
15 September the 10th and the Grand Jury Foreman's date of
16 September the 6th. The question of motion in limine with
17 nothing to say -- well, whether she can ask him that. The
18 sequestration I believe we have resolved.

19 MS. CRAYTON: Yes, Your Honor.

20 THE COURT: The search warrant and the photographs.
21 All right.

22 MS. CRAYTON: Yes, sir, Your Honor.

23 THE COURT: Anything else, Ms. Munnerlyn?

24 MS. MUNNERLYN: No, Your Honor.

25 THE COURT: All right. All right, counsel, let me

1 review these cases and things that have been handed up.
2 And also review the search warrant and jury's got -- not
3 due here for about 30 minutes. So we'll take about 15
4 minutes, and I'll review those and then rule on those and
5 we'll be ready to go forwards with the jury at
6 three o'clock.

7 Be prepared to come back in about 2:45 so that I can
8 rule on these matters. Oh, there is one other matter that
9 we need to deal with: Counsel, come up a minute, please.

10 (WHEREUPON, a bench conference was held off the
11 record, but out of the presence of the jury.)

12 THE COURT: All right. Back on the record with
13 regard to the Gathings Case, and I understand that the
14 Defense has one other motion.

15 MS. CRAYTON: Yes, Your Honor. I'm sorry.

16 THE COURT: No problem.

17 MS. CRAYTON: Originally, Mr. Jones was going to do
18 this motion for us.

19 THE COURT: No problem.

20 MS. CRAYTON: But we just have a motion for a
21 mistrial based on the braces and security that he was
22 wearing, Mr. Gathings, was wearing when he was -- came
23 out, and obviously, the entire jury pool was here. We
24 feel it's very prejudicial and would ask for a mistrial at
25 this time, Your Honor?

1 THE COURT: All right. I would respectfully deny
2 that motion. Let the record reflect that prior to the
3 Defendant making any appearance in Court in front of the
4 jury panel I inquired of counsel and the State as well as
5 the security personnel what steps were being taken for
6 security knowing that the Defendant was incarcerated.

7 I first made sure that he was in civilian clothes,
8 and that was taken care of. The other matter was that
9 they initially felt like that perhaps chains or ankle
10 chains would be the appropriate security. I did not feel
11 that way and inquired about leg brace which I've used or
12 seen used in other places. And we took a sufficient
13 recess to allow the State to determine if those -- if the
14 leg braces were availability. And I was advised that it
15 was available, and we took enough time to allow him to be
16 fitted with the leg brace.

17 So that that would take care of the security issues.
18 I, too, thought that the leg brace would be under his
19 pants legs and not outside, but after he was brought in
20 and he did have the leg brace on the outside, I don't know
21 whether the jury saw that or saw him with the leg brace.

22 And, secondly, from thereon I did not have him stand
23 and/or make any reference to the leg brace whatsoever
24 until the jury was selected and excused. At which time
25 the leg brace has since been put underneath his trousers.

1 I do not believe that that is prejudicial from my
2 observation pf the leg brace. It almost looks like a leg
3 brace that I've seen most of these football players wear
4 that have had knee problems. And that's what it really
5 appears to be.

6 I don't believe that that's prejudicial, and I would
7 respectfully deny the motion for mistrial. Okay.

8 MS. CRAYTON: Thank you, Your Honor.

9 THE COURT: All right. Let's take about ten more
10 minutes. Let me look at these mattered, and I'll rule on
11 the motions and then we'll decide about this juror.

12 Court in session at.

13 (WHEREUPON, Court is in recess at 2:32 p.m. and
14 reconvened at 2:52 p.m.)

15 THE COURT: All right. Back on the record with
16 regard to the matter of the State v. Gathings.
17 Mr. Gathings is present in Court with his counsel. The
18 State is present and represented by Ms. Munnerlyn. I want
19 to address the motions first of all, counsel, that have
20 been made and let's resolve those.

21 First. Regarding the State's motion to be permitted
22 to introduce evidence of the prior conviction of the
23 Defendant or convictions of the Defendant for armed
24 robbery and larceny the Court has reviewed the case of
25 State v. Ford and Brown, which is Opinion Number 2955 of

1 the March 8, 1998 term. I do not have the citation, but
2 the State seeks to introduce that evidence under the
3 common scheme and plan exception. The matter that strikes
4 me about the commonness of the scheme or plan in this
5 case is that it's not just a similarity. But the closer
6 relationship which does -- the common scheme and plan
7 exception require not just similarity but close
8 relationship between the crimes.

9 But the thing that strikes me about this case is that
10 the -- more than just close similarity but a close
11 relationship in this case because the victims were the
12 same, and it is a relatively short time from the release
13 of the Defendant from prison and the actual time that
14 these took place.

15 I realize that in the Ford and Brown case the acts
16 that the State wished to introduce were in August of '95
17 and in October of '95, and then the particular incident
18 for which this defendant was charged was in December of
19 '95, only a period of some five or six months whereas the
20 period of time here is somewhat different, several years.

21 But the difference is the fact that the -- most of
22 that time the Defendant in this case was in prison and the
23 time lapsed between the time of his release and the time
24 of the actual crime in this case was relatively short.
25 The other thing that makes it very, very similar and close

1 is the fact that the victims were the same in both
2 instances. Both the one for which he was convicted and
3 the ones for which he is on trial for today. So I think
4 there is a close similarity and a relatively short -- in
5 and of it is the same victims in a relatively short time
6 from the release from prison until this crime.

7 The issue of clear and convincing standard the -- is
8 not required if the prior bad acts were subject to
9 conviction, and of course, they were in this case. I also
10 feel that it is admissible to show motive or intent
11 because he has robbed the same victims before.

12 Now, while the evidence is prejudicial it is highly
13 probative of his guilt on the previous assault and battery
14 of these same victims. Therefore, in my view it is
15 admissible under State v. Lyle and 404(B).

16 Furthermore, as was held in State v. Williams, 321
17 South Carolina, I believe it is. Well, at least I know
18 the citation, 468 SE 2nd 626. Evidence of previous
19 quarrels, ill feelings and hostile acts between the
20 parties is admissible to show the animus that probably
21 existed between the parties.

22 And so I think under State v. Williams it would be
23 admissible as well. So the Court's ruling is that the
24 proposed evidence does meet the requirements of State v.
25 Lyle, 404(B); that the probative value outweighs

1 prejudicial effect, and further that it is admissible
2 under State v. Williams.

3 Now, with regard to the Defendant's motions to quash
4 the indictments the documents reflect that the grand jury
5 considered the indictment on September the 6th; that was
6 the date that the foreman signed the grand jury -- the
7 indictment as a true bill.

8 Four days later on September the 10th the indictment
9 reflects that it was presented to the Court that day not
10 that the grand jury met that day. So there is no evidence
11 that the grand jury did not meet and consider the
12 indictment and present it to the grand jury -- I mean
13 present it to the General Sessions Court in a timely
14 fashion. It's not detective, and the Court does have
15 subject matter jurisdiction.

16 With regard to the search warrant the Court's ruling
17 is that the Defendant has no expectation of privacy to
18 property not belonging to him. He may have been using the
19 vehicle with permission, but that still does not mean that
20 he has an expectation of privacy, and furthermore, that
21 the -- I think the indictments are not defective because
22 they do show the defendant's name -- I mean the victim's
23 name as being the property which is being sought.

24 Let me find them to be exactly sure of what I -- I
25 may have left them on the desk, but in any event I find

1 that the -- there is just a Scribner's error that is not
2 prejudicial to the Defendant, and the search warrants are
3 okay.

4 With regard to the motion in limine I've already
5 indicated what my ruling was on that. I would allow the
6 State to ask the question if it's in the normal flow of
7 things, but at whatever point it comes out I would
8 instruct the jury that the Defendant has the absolute
9 right not to have to answer the questions question has a
10 and constitutional right to that and the jury is to infer
11 nothing from the fact that he did not answer questions.

12 The issue of sequestration has been resolved. The
13 issue of photographs will be taken up at the appropriate
14 time, and I have already denied the motion for a mistrial.
15 So I believe that takes care of all the pre-trial matters
16 except the photographs and we'll take care of that at the
17 appropriate time.

18 MR. JONES: Your Honor, I have one more matter.

19 THE COURT: All right, sir.

20 MR. JONES: Based on your ruling and the statement
21 that was made by Ms. Munnerlyn during arguments prior to
22 us breaking for lunch concerning evidence that this
23 Defendant made statements while he was incarcerated at
24 S.C.D.D. threatening the victims, Defendant has asked me to
25 move for a continuance because there is apparent evidence

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1 at the Department of Corrections concerning contact that
2 the victims had with this Defendant all during his period
3 of incarceration.

4 There is some evidence at the Marlboro County
5 Detention Center which I have already asked for, and I
6 believe is readily available. Someone right now is
7 checking with the Department of Corrections to see how
8 difficult it would be to get their records of telephone
9 calls, money that was sent, and visits.

10 And based on your ruling and that information -- one
11 of the reasons that we are asking for that is the State --
12 I asked Ms. Munnerlyn during the break which witness ---

13 THE COURT: Well, I can't anticipate what she's going
14 to present at trial, and you know I think that she made
15 decide that she doesn't even want to present that
16 evidence. Then it becomes a moot issue.

17 MR. JONES: Well, the other thing we had is that the
18 statement from the witness that apparently is going to
19 testify to that was provided by Ms. Munnerlyn and to us in
20 our Rule Five Packet. But the copy we have we could not
21 read, and I think her copy she can't read either. So as
22 far as I know neither one of us has seen the original
23 statement that that witness has made.

24 THE COURT: Anybody has the right to talk to that
25 witness including you.

1 MR. JONES: I understand that, Your Honor, and based
2 on your ruling the Defendant has asked me to ask you for a
3 continuance so that we might obtain this information which
4 is critical to his defense.

5 THE COURT: All right. I would instruct you to
6 proceed, and if it's necessary for me to give you some
7 time, if there is some hitch on it, we'll see about that.
8 But I don't think we're going to continue the case for
9 that basis.

10 MS. MUNNERLYN: Your Honor, I would just say that I
11 think it will come out in our witnesses that there is no
12 question that at least Robbie Polston did go and visit.
13 We're not saying that he didn't go visit him. We're just
14 saying there were some threats from the Defendant in
15 regards to ---

16 THE COURT: Well, I can't anticipate what the
17 evidence is going to show, and I can't rule on speculation
18 so we'll just have to wait and see what shows up. All
19 right. Thank you. All right. Counsel, the other thing
20 that we need to take up at this time is the situation with
21 regard to Miss Bethea.

22 CLERK OF COURT: McDonald.

23 THE COURT: Is that correct?

24 CLERK OF COURT: No, sir.

25 THE COURT: No?

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1 CLERK OF COURT: It's Betty J. McDonald.

2 THE COURT: McDonald.

3 CLERK OF COURT: Number 97.

4 THE COURT: Okay. Just a moment. All right,
5 counsel, what I propose to do with regard to the Juror,
6 Ms. McDonald, have her come in and let's interview her at
7 side bar on the record so that we find out exactly what
8 her situation is ask. All right. Ask Ms. McDonald to
9 come in. Counsel, come on over.

10 (WHEREUPON, juror enters courtroom.)

11 THE COURT: Ms. McDonald, I understand that when the
12 jury was drawn you received -- you brought to the Clerk of
13 Court's attention a matter that is causing you some
14 problems. Tell me about it and tell me what it is.

15 MS. McDONALD: I really wanted to get up back there,
16 but my mind said -- my body wouldn't move. I just thought
17 maybe I wouldn't get called. My nephew.

18 THE COURT: Say again.

19 MS. McDONALD: My nephew and momma were victims. My
20 baby sister. I don't know why, but he was the one that
21 shot up the courthouse and the police shot and killed him
22 right there in front of the court house.

23 THE COURT: When did this happen?

24 MS. McDONALD: About two years.

25 THE COURT: Okay, so he actually shot at the court

1 house and was shot by the city police and killed; is that
2 right.

3 MS. McDONALD: Yes.

4 THE COURT: And tell me how did that act make you
5 unable to serve on this case?

6 MS. McDONALD: I just can't. I just feel like -- I
7 know my nephew did wrong. I know that, but I just have
8 feelings in myself about the police force. Maybe there's
9 something they could have done without killings him and
10 just being here just makes it hard to be fair and that's
11 all I can think about.

12 THE COURT: You feel that would prevent you from
13 being able to give a fair trial in this case?

14 MS. McDONALD: I think it would.

15 THE COURT: Okay. All right. Thank you, ma'am. You
16 go back to the jury room, and we'll call you back in just
17 a few minutes.

18 MS. McDONALD: I'm sorry I didn't come right up here
19 when you said it, but I just couldn't move.

20 THE COURT: Well, I don't think it was intentional.
21 I'm not blaming you for it. I understand, and thank you
22 very much. Okay.

23 (WHEREUPON, the juror returns to the jury room.)

24 THE COURT: Ms. Munnerlyn, I don't think we've got
25 any choice but to dismiss her and substitute the

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1 alternate. Any objection to that?

2 MS. MUNNERLYN: No.

3 THE COURT: Any objection to that?

4 MS. CRAYTON: I don't know what objection I could
5 make, Your Honor.

6 THE COURT: All right. Now, the statute requires
7 that you don't substitute alternates in the order in which
8 they're drawn. The statute actually presides that -- and
9 it's different in civil and criminal court because if this
10 was a criminal procedure, say, you substitute alternates
11 in the order in which they were drawn.

12 The statute in a criminal case say that two names are
13 put in a hat or a lot and drawn randomly. So that's what
14 we would have to do with the alternate would be to take
15 the two alternates, put them in some sort of a random
16 selection and let one -- somebody draw them randomly. So
17 let's put that on the record.

18 Which we had that discussion at the bench it was on
19 the record and the court reporter has a record of it, but
20 I want everyone in the Court to know exactly what
21 happened. The juror, Ms. McDonald, revealed to the Court
22 an incident that happened about two years ago involving
23 her son where -- not her son. Her nephew -- where her
24 nephew was involved and incident that probably some of you
25 know about.

1 There was a shooting into the courthouse here in
2 Marlboro County and it resulted in the police retaliating
3 and shooting her nephew. She felt that as a result of
4 that she would not be able to be fair and impartial. Her
5 statement was that while she knew what her nephew did was
6 wrong she would also think that maybe there was something
7 that the police could have done besides killing him in the
8 process.

9 As a result of which, with the consent of and without
10 the -- no objection from either the State or the Defense,
11 the Court is going to excuse Ms. McDonald as a juror in
12 this case and substitute an alternate. this is a purpose
13 for which we draw alternates. I hate to see it happen
14 this soon, but it usually doesn't happen quite this soon.
15 But that's the purpose for which we draw alternates, and
16 that's what we're going to do. Any objection to that
17 procedure on behalf of the State, Ms. Munnerlyn?

18 MS. MUNNERLYN: No, Your Honor.

19 THE COURT: On behalf of Defense, Ms. Crayton?

20 MS. CRAYTON: No, Your Honor.

21 THE COURT: All right. And the statute does provide
22 that when substituting an alternate for a juror that has
23 to be replaced they're not substituted in the order of
24 their drawing but are substituted by lot. And so I've
25 instructed the Clerk to put the names of both of the

1 alternates into a capsule and let's draw them randomly.

2 Mr. Clerk, if you will take care of that for me, please.

3 CLERK OF COURT: Yes, sir. Getting them in there
4 now.

5 THE COURT: All right. The two alternates I believe
6 were Mr. Douglas and Miss Jacobs; is that right?

7 CLERK OF COURT: Yes, sir.

8 THE COURT: All right. Juror Number 31, Mr. Douglas,
9 was one alternate and Juror Number 34, Ms. Jacobs, was the
10 second alternate. In the meantime, while they're taking
11 care of that administratively, let Ms. McDonald come back
12 in and let's tell her she's excused. Get Ms. McDonald for
13 me, please.

14 Ms. McDonald, we appreciate your disclosure to the
15 Court, and I have discuss the matter over with counsel,
16 your position and your answers. We're going to excuse you
17 from any further responsibility in connection with this
18 matter. This is the reason that we draw alternates. We
19 will substitute the alternate in your place. It would
20 have been better if we had known about that before we
21 actually drew the jury, but I understand it was not
22 intentional, and I can understand your reluctance to come
23 forward with that information.

24 But I certainly do appreciate your candor with the
25 Court and your honesty with the Court, and so you will be

1 excused from any further responsibility in connection with
2 this matter. What I'm going to tell you is that your
3 fellow jurors are going to call back after six o'clock
4 tomorrow night to find out about their reporting
5 instructions for Wednesday and I would ask that you do the
6 same thing. And if you will call that number. It's an
7 answering machine, and your reporting instructions will be
8 on there for Wednesday. You're excused from any further
9 responsibility in connection with this matter. Okay.
10 Yes, ma'am. You're excused. All right. Have we got the
11 names?

12 CLERK OF COURT: Yes, sir. Penny Jacobs.

13 THE COURT: All right. That would be Juror Number
14 34, Ms. Jacobs, will be substituted in the place of
15 Ms. McDonald, and that will leave Mr. Douglas as the
16 alternate in this case. All right. All right, counsel,
17 anything before we bring the jury in and the jury is
18 sworn? On behalf of the State, Ms. Munnerlyn?

19 MS. MUNNERLYN: No, Your Honor. I just need to get
20 my witnesses out before we start. I'll get them out right
21 now.

22 THE COURT: Yeah, go ahead.

23 MS. MUNNERLYN: Your Honor, could I keep the Clio
24 Police Chief with me because the S.L.E.D. agent isn't
25 here? He will, probably, before we ---

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1 THE COURT: Do you want to keep him as your ---

2 MS. MUNNERLYN: No, I want to keep Glenn McLellan
3 once he gets here, but he has not yet arrived. If you
4 want me to send him out I will.

5 THE COURT: Is this witness going to testify?

6 MS. MUNNERLYN: He is. He is briefly.

7 THE COURT: Do you plan to call him right away?

8 MS. MUNNERLYN: I believe he will be the third
9 witness or maybe the fourth. The two, Eddie and Lisa,
10 come first.

11 THE COURT: What's your position, Ms. Crayton?

12 MS. CRAYTON: As long as he's the first law
13 enforcement to be called I don't have an objection. I
14 believe she's planning on calling two family members
15 first.

16 THE COURT: Are you going to call other people other
17 than law enforcement first?

18 MS. MUNNERLYN: Oh, yeah. I'm going to call the two
19 family members first.

20 THE COURT: So he would be the first law enforcement
21 officer?

22 MS. MUNNERLYN: No, well, actually, he was not the
23 first to arrive. I was going to call John Lester first.
24 So he would be the second law enforcement.

25 THE COURT: Okay.

1 MS. MUNNERLYN: Thank you, Your Honor.

2 THE COURT: All right. Anything before we bring the
3 jury in and the jury is sworn, Ms. Crayton?

4 MS. CRAYTON: No, Your Honor.

5 THE COURT: Bring the jury in, please.

6 (WHEREUPON, the jury panel enters the courtroom at
7 3:15 p.m.)

8 THE COURT: All right. Thank you very much, ladies
9 and gentlemen, and I apologize for the little bit of delay
10 in getting started. If it's any consolation to you we've
11 been here working since two o'clock. There are always a
12 number of important matters that have to be done in cases
13 as important as this one to make sure that everything is
14 done right. And we have been working on those matters
15 since two o'clock.

16 Miss Jacobs -- you Ms. Jacobs? All right.
17 Ms. Jacobs, as y'all see one of the members -- one of your
18 members is no longer with us. She, and I appreciated her
19 disclosing this to us, Ms. McDonald disclosed a situation
20 to us that does require that I excuse her and I have
21 excused her. Not anything that was her fault at all. And
22 in fact we appreciate her condor in the disclosure of the
23 matter to the Court that she did that resulted in my
24 excusing her.

25 And this is the reason we draw alternates. The law

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1 also provides that when an alternate is drawn or two
2 alternates, more than one alternate is drawn, that the
3 alternates are -- that replace the excused jurors are not
4 done in the order in which the alternates are drawn but
5 randomly. And so the two alternate's names were put into
6 the computer and drawn randomly.

7 And, Ms. Jacobs, you will replace Ms. McDonald as a
8 principal juror in this case. So I'm going to if you will
9 come around and have a seat up here and then the alternate
10 will remain the alternate -- the, Mr. Douglas, you will
11 remain as the sole alternate in this case. And you will
12 always sit in the seat where you are seated. Okay.

13 All right. Now, we are ready to go forward, and I'm
14 going to ask the Clerk if he will swear the jury for me,
15 please.

16 (WHEREUPON, the jury panel was sworn in at 3:18 p.m.)

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

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

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

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

8 Follow the completion of the testimony the attorneys
9 will again have the opportunity to make what's called a
10 closing statement or summation to you. This is an
11 opportunity for the attorneys to summarize the case from
12 their respective points of view. Again, these arguments
13 are not evidence.

14 Following the closing statements by the attorneys I
15 will instruct you on the law of South Carolina as it
16 pertains to the issues that have arisen in this case, and
17 when I have completed my instructions to you you will be
18 permitted to begin your deliberations in order to reach a
19 verdict.

20 Now, ladies and gentlemen, you are now the jury in
21 this case, and I want to take a few minutes to tell you
22 something about your duty as jurors and give you some
23 basic instructions. at the end of this trial I will give
24 you more detailed instructions and those instructions will
25 control your deliberations. It will be your duty to

1 decide from the evidence what the facts are. You and you
2 alone are the judges of the facts. You will hear the
3 evidence, decide what the facts are, and then apply those
4 facts to the law which I will give to you. That is how
5 you reach a verdict.

6 In doing so you must follow the law whether you agree
7 with it or not. The evidence will consist of the
8 testimony of witnesses, documents and other things
9 received in evidence as exhibits, and any facts on which
10 the lawyers agree or which I may instruct you to accept.
11 Now, you should not take anything that I may say or do
12 during this trial as indicating what I think of the
13 evidence or the facts or what your verdict should be. The
14 law does not permit me to have an opinion about the facts.

15 The same law that makes you the judge of the facts
16 makes me the judge of the law. You must take the law as I
17 give it to you regardless of what you think the law is or
18 what the law ought to be. If I'm wrong on the law there
19 is another time and place for that error to be corrected,
20 but for this case you must accept the law as I charge it
21 to you.

22 Now, that is a criminal case brought by the State of
23 South Carolina. The State charges the Defendant with
24 three offenses that are contained in these three
25 indictments which I hold in my hand. The indictments are

1 not evidence of anything. They are simply a description
2 of the charges made by the State against the Defendant.

3 The charges are one of murder of Robbie Polston, one
4 of murder of Loyce, L-O-Y-C-E, Locklear, and the other of
5 grand larceny of a vehicle. The Defendant had pled not
6 guilty to these charges and is presumed innocent unless
7 and until proven guilty beyond a reasonable doubt. A
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act.

10 A Defendant has the right not to testify and never
11 has to prove innocence or present any evidence. The
12 burden of proof is always on the State of South Carolina
13 to prove the guilt of the defendant beyond a reasonable
14 doubt.

15 Now, there are certain things that are not evidence
16 and you must not consider them as evidence in deciding the
17 facts of this case. Statements and arguments of the
18 attorneys are not evidence. Questions and objections of
19 the attorneys are not evidence. And testimony that I
20 instruct you to disregard is not evidence.

21 Evidence may be direct or circumstantial. Direct
22 evidence is testimony by a witness about what they witness
23 personally saw or heard or did. Circumstantial evidence
24 is indirect evidence. The law permits you to give equal
25 weight to both, but it is for you to decide how much

1 weight to give to any of the evidence.

2 Now, there are rules of evidence which control what
3 can be received into Court. When the lawyer asks a
4 question or offers an exhibit into evidence and the lawyer
5 on the other side think that it is not permitted by the
6 rules that lawyer may object. If I overrule the objection
7 the question may be answered or the exhibit may be
8 received.

9 If I sustain the objection the question cannot be
10 answered and the exhibit cannot be received. Whenever I
11 sustain an objection to a question or deny a motion to
12 admit an exhibit into evidence you must ignore the
13 question or the existence of the exhibit and you must not
14 guess what the answer would have been or what the exhibit
15 would have shown.

16 Sometimes it may be necessary that I ask you to leave
17 the courtroom while I discuss with the attorneys legal
18 questions that arise during the trial. If this occurs you
19 should not speculate about our discussion or the reasons
20 that you were asked to leave the room. This is simply a
21 procedure that the law requires when certain legal issues
22 arise.

23 There may also be occasions when I ask the attorneys
24 to approach the bench so that I can discuss a legal issue
25 with them in private. I will do this as often as

1 necessary or as often as possible so that you will not be
2 required to leave the courtroom more than is absolutely
3 necessary. Again, if I ask the attorneys to step up to
4 the bench or if I ask you to leave the courtroom please
5 don't think that anybody is trying to hide anything from
6 you or keep any evidence from you. This is simply a
7 procedure used by all lawyers and all courts to determine
8 and decide legal issues.

9 Now, in deciding the facts of this case you may have
10 to decide which witnesses to believe and which witnesses
11 not to believe. This is called credibility. You may
12 believe everything a witness says or only part of it or
13 none of it. In deciding what to believe you may consider
14 a number of factors including the following: The witness'
15 ability to see or hear or know the things the witness
16 testified to. The quality of the witness' memory. The
17 witness' manner or demeanor while testifying.

18 Whether the witness has an interest in the outcome of
19 the case or any motive, bias or prejudice. Whether the
20 witness was contradicted by anything the witness wrote or
21 said before the trial or by any other witness. And how
22 reasonable was the witness' testimony when considered in
23 the light of other evidence which you do believe.

24 Now, just a few words to you about your conduct as
25 jurors some of which I have already mentioned. But they

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1 are important enough that they bear repeating. First of,
2 all, do not talk to each other about the case until the
3 end of the case when you go to your jury room to decide on
4 your verdict. Do not talk to anyone else about the case
5 until the trial is ended following your verdict and you
6 have been discharged as jurors. This means do not discuss
7 the case with members of your family or friends or with
8 anyone else.

9 You may tell them that you are a juror, but don't
10 tell them anything about the case until you have been
11 discharged by me and, again, I would say I told you the
12 reason for that is pretty simple apparent. You've got to
13 decide the case based upon what you hear in the courtroom
14 and not on what anyone else might say. Do not let anyone
15 talk to your about the case.

16 If anyone should try to talk with you please get
17 their name or their description. Report it to the
18 bailiff. They will report it to me, and I will deal with
19 them. Do not read any news stories or articles or listen
20 to any radio or television reports about the case. You
21 shall not consider as anything that you may see or hear
22 when Court is not in session.

23 Do not do any research, such as consulting
24 dictionaries or other reference materials including the
25 internet. Do not do anything on the computer in the way

1 of research or trying to pull up anything that might give
2 know any information about this case or the law or
3 anything else. Any investigation or research on your part
4 would be improper.

5 And, finally, and probably most important, do not
6 make up your mind about what your verdict should be until
7 you have heard all of the testimony in this case and the
8 instructions on the law by the Court. You will be
9 instructed when to begin your deliberations by either me
10 or the bailiff. Any objection to my opening remarks on
11 behalf of the State, Ms. Munnerlyn?

12 MS. MUNNERLYN: No, Your Honor.

13 THE COURT: On behalf of the Defense, Ms. Crayton?

14 MS. CRAYTON: No, Your Honor.

15 THE COURT: All right. The first order of business
16 would be opening statement, and for that purpose the Court
17 will recognize the Assistant Solicitor, Ms. Munnerlyn.

18 MS. MUNNERLYN: Thank you, Your Honor.

19 THE COURT: Yes, ma'am.

20 OPENING STATEMENT BY MS. MUNNERLYN

21 MS. MUNNERLYN: May it please the Court. Ms. Crayton
22 and Mr. Jones, ladies and gentlemen, good afternoon. As I
23 have been introduced to you my name is Elizabeth
24 Munnerlyn, and I am an attorney here and I'm here today as
25 Assistant Solicitor. So I'm here on behalf of the State.

1 But more importantly I'm here today on behalf of two
2 people, Loyce Locklear and Robbie Polston. Because they
3 are no longer here. They -- I am the only voice that they
4 now have, and this is their day in Court. And so I thank
5 you up front for being here, but I just want -- I want you
6 to know that this is as important as a case as you can
7 ever hear. And I know you will be attentive and that you
8 will be thorough in your decision and your determination
9 of the facts.

10 But I wanted to just give you a timeline cause as the
11 Judge has said this is just an opening statement. So I
12 can give you sort of a snapshot picture of what occurred
13 so when I call my witnesses to the stand you can put it
14 all together in your head. All this goes back to the
15 events of June 29th and 30th of 2007. So it's a little
16 over three years ago.

17 Now, and it happened any Clio, which of course is
18 here in Marlboro County. We're all familiar with Clio,
19 and it all happened at the home of Loyce Locklear and
20 Robbie Polston. They lived at a home on Main Street in
21 Clio. [REDACTED]. And staying with them at
22 the time was the Defendant, Joe Gathings. And as you have
23 heard from the Judge he is charged today with two counts
24 of murder and one count of grand larceny.

25 And what you will hear for the witnesses is that on

1 the afternoon of the 29th that Loyce and Robbie were home,
2 and that Joe came home from his roofing job and -- came to
3 their house from his roofing job and asked for some money.
4 Wanted some money from Robbie. Well, Robbie didn't have
5 any money. So he wanted some money from Loyce. Loyce
6 didn't have any money either, so he left in the car.

7 And they called. They called. They had all their
8 friends call all afternoon. He was upset. Well, you will
9 hear from several witnesses who were in and out of the
10 house and had contact with Robbie that afternoon and
11 Loyce, and they will tell you what all transpired; that
12 they were trying to find Joe in the car. And they will
13 also tell you what the relationship was between Joe and
14 Robbie. And why he was even at that house.

15 There's a little bit of the history to this. Joe and
16 Robbie were actually romantically involved. They had a
17 sexual relationship. They had known each other for some
18 period of time, and actually, had met while Robbie was
19 working at 911 here in Marlboro County. And Joe stayed
20 with them for some period of time a number of years back.
21 And, actually, on April the 18th of 2005 there was a prior
22 incident between this Defendant, Joe Gathings, and these
23 two -- same two victims, Loyce Locklear and Robbie
24 Polston.

25 And what you're going to hear is on that date that he

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1 came to that house and that he was seeking money as well
2 on that date. He pushed them both down, took
3 Ms. Locklear's pocketbook and fled in the car that they
4 had at their house that they had borrowed from Lisa
5 Polston, another family member. And the car was located
6 later. He was charged and later pled guilty to those
7 three crimes: The crime of armed robbery, grand larceny
8 and simple assault and battery.

9 When he was released about three or four months
10 before this happened he went back to the home of Robbie
11 and Loyce because, again, he had this relationship with
12 Robbie. That's what brings him back, but it was a very
13 rocky relationship as you will hear. But on that
14 afternoon or evening, late evening, people began to
15 contact -- try to contact Robbie and then Loyce. Couldn't
16 find them.

17 That Saturday morning Ms. Locklear was supposed to go
18 with her daughter, Lisa, to take the cat to the vet. She
19 wouldn't answer the phone. Robbie wouldn't answer the
20 phone. Came to the house. Couldn't get anybody to the
21 door. Finally, Eddie, who was Loyce's son -- other son
22 and Robbie's brother, was calling Lisa, "I can't get Momma
23 and Robbie to answer the phone. Can you go around and
24 check on them."

25 So he goes to the house right there on Main Street in

1 the Clio, and low and behold. He goes in there and finds
2 them both severely beaten and dead on the floor in their
3 own home. And who he doesn't find is the Defendant, Joe
4 Gathings and Ms. Locklear's vehicle. He's gone, and it
5 takes two days for law enforcement to track him down in
6 Horry County. And you will hear that they go in. They
7 actually had to use the search team and tear gas to get
8 him out of the camper down there in Horry County.

9 And there at the camper is none other than Ms.
10 Locklear's vehicle. And you're not only going to hear
11 from witnesses -- direct testimony from witnesses about
12 what they observed, but you're also going to hear and see
13 physical evidence. And the physical evidence has the most
14 to tell you. When S.L.E.D. crime scene came in and
15 processed the house they found what that believed was the
16 murder weapon. A baseball bat. Still in the home.

17 They took it to S.L.E.D. along with the tennis shoes
18 that the Defendant, Joe Gathings, was wearing when he was
19 arrested two days later. And they analyzed it. And they
20 also analyzed some bloody footprints, shoe prints, that
21 were in the house. And the evidence is going to tell you
22 that those bloody footprints matched the shoes that Joe
23 Gathings was wearing.

24 And that that bat that was found in the house with
25 blood on it had the Defendant's D.N.A. on it, and that the

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1 shoes he was wearing, one had Robbie Polston's blood on it
2 and the other had Loyce Locklear's blood on it. It can
3 speak more powerfully than any witness I can put on the
4 stand. I want you to listen closely because this is a
5 very important case. And it is my burden to prove to you
6 that this defendant is guilty of those crimes.

7 And I don't have to convince you completely, but I
8 have to convince you beyond a reasonable doubt, beyond a
9 reasonable doubt. I have to firmly convince you that I
10 believe, once you have heard all the evidence and once you
11 have seen the physical evidence, that you will be firmly
12 convinced that the Defendant, Joe Gathings, is guilty of
13 murder and guard larceny. Thank you.

14 THE COURT: Ms. Crayton, does the Defense wish to
15 make an opening statement.

16 MS. CRAYTON: Yes, sir, Your Honor.

17 THE COURT: All right. You may.

18 MS. CRAYTON: May it please the Court.

19 THE COURT: Yes, ma'am.

20 OPENING STATEMENT BY MS. CRAYTON

21 MS. CRAYTON: Good afternoon. My name is Emily
22 Crayton, and this is Mr. Rick Jones, and we work for the
23 Fourth Circuit Public Defender's Office. We represent
24 clients in Dillon, Darlington, Marlboro and Chesterfield
25 and today we're here because we represent my Gathings,

1 who's the defendant in this case.

2 First off, I'd like to thank you for being here
3 today. I know that jury service can be inconvenient at
4 times. You could be with your family at home. You could
5 be at work. We understand that, and we appreciate that
6 you're here today. It's very important. As Your Honor
7 has stated I believe it's one of the highest honors you
8 can offer your country besides serving in the military.

9 Today is a very important day for Mr. Gathings. A
10 very important day, and we could not conclude this day
11 without you. We really appreciate y'all being here.

12 The State has charged Mr. Gathings with two counts of
13 murder and one count of grand larceny. The State,
14 incidentally, they brought these charges. They have the
15 burden which is beyond a reasonable doubt. Mr. Gathings
16 is presumed innocent until he is proven guilty. He not
17 only does not have to prove anything he does not have to
18 put up witnesses. He does not have to testify. He can do
19 nothing at all. The State has the complete burden to
20 prove him guilty.

21 I know we've all heard, 'innocent until proven
22 guilty' and 'beyond a reasonable doubt' so I'm going to
23 talk a moment about beyond a reasonable doubt and what
24 that means. Your Honor will explain it to you in detail,
25 but I just want to say that beyond a reasonable doubt is a

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1 kind of doubt that after considering everything you're
2 simply not sure. The State has to firmly convince you
3 that Mr. Gathings is guilty.

4 In this case I feel like a misinformation is like a
5 puzzle. There are just a lot of pieces to the puzzle of
6 evidence, and the police take all those pieces and try to
7 put them together. But in this case there are so many
8 puzzle pieces missing, and the pieces they do have they're
9 trying to stick them in places where they don't belong.

10 The police knew several things. They knew that
11 Mr. Gathings was living in this home with Ms. Locklear and
12 Mr. Polston, and he wasn't there that day when they found
13 them there at the home. They knew this, and that is how
14 he became the lead suspect in this case. The police tried
15 to make these evidence -- the pieces of this evidence, fit
16 Mr. Gathings as a suspect and they just don't. There are
17 a lot of questions to ask. Where are the rest of the
18 puzzle pieces? Where is the rest of the evidence in this
19 case?

20 Is this really enough to convict someone of murder.
21 We ask you to reach a verdict in this case on what's
22 presented to you, not on what may have happened or what
23 you think happened, but solely on what the State presents
24 to you and see if that convinces you beyond a reasonable
25 doubt. I think the State's case is weak, at best, and I

1 know once y'all consider all the evidence you will
2 determine that Mr. Gathings is innocent. The police have
3 simply not done a full investigation and not proven their
4 case. So I just ask you to really think about the
5 evidence that's presented to you and determine if it is
6 enough. Thank you.

7 THE COURT: All right, Ms. Munnerlyn, you may call
8 your first witness.

9 MS. MUNNERLYN: Thank you, Your Honor. I will call
10 Lisa Polston.

11 LISA POLSTON, after being duly sworn, testified
12 as follows:

13 CLERK OF COURT: Please be seated. State your full
14 name for the Court.

15 THE WITNESS: Lisa Ann Polston.

16 DIRECT EXAMINATION

17 BY MS. MUNNERLYN:

18 Q. Lisa, how were you related to Robbie and Loyce?

19 A. That was my brother and my mother.

20 Q. Your brother and your mother. Let me just tell you
21 before we go any further. She's taking down everything
22 that you say. So if you would speak real loudly into the
23 microphone, and she can't take down a um hum or um hum, so
24 you have to say yes or no so she can take it down, okay.
25 Even though I might understand what you're saying she's

1 got to be able to type it, okay.

2 A. Okay.

3 Q. Tell me at that time you were living hear in

4 Bennettsville, isn't that right?

5 A. Yes.

6 Q. Okay. And you and your mother had actually made some

7 plans that day, back on July the -- June the 29th of 2007?

8 A. Yes.

9 Q. Okay. And do you recall about what time you called

10 her that evening?

11 A. About 7:15.

12 Q. About 7:15. And that was a Friday, was it not?

13 A. Um hum.

14 Q. Okay. It was a Friday evening. If you will speak up

15 just a little bit louder, please.

16 A. Yes.

17 Q. And what did you and she planned on doing that

18 following morning?

19 A. Take the cat to the vet.

20 Q. Taking the cat to the vet. Okay. Who's cat?

21 A. My momma.

22 Q. Your mother's cat. Now, let me ask you. Did the

23 cat -- did her cat stay -- was it an inside cat or was it

24 an outdoor cat?

25 A. Indoor cat.

1 Q. Indoor cat. Okay. So y'all -- you were going to
2 come pick her up and take her along with the cat to the
3 vet?

4 A. Yes, ma'am.

5 Q. Okay, and you actually spoke to her about 7:15 or so?

6 A. Yes.

7 Q. And do you recall if -- did you call her from your
8 home phone or your cell phone?

9 A. Both.

10 Q. You called her from both. What's your home phone
11 number?

12 A. 479-9038.

13 Q. Speak up real loud.

14 A. 479-9038.

15 Q. 9038. Okay. And what was your cell phone number at
16 the time.

17 A. 454-6878.

18 Q. 454?

19 A. 6878.

20 Q. 6878. All right. And what time were you supposed to
21 go and pick her up the following morning?

22 A. Ten o'clock.

23 Q. Around 10:00. And where were you going to take the
24 cat to the vet?

25 A. In Laurinburg, North Carolina.

- 1 Q. In Laurinburg, North Carolina?
- 2 A. Yes.
- 3 Q. And so after you hung up with her you did whatever
- 4 you were going to do. You went to bed?
- 5 A. Yeah.
- 6 Q. Okay. So when you got up the next morning what did
- 7 you do?
- 8 A. Went to yard sales and went and tried to call her.
- 9 And she wasn't there so I went over there.
- 10 Q. Okay. So first of all you got up real early?
- 11 A. Yes.
- 12 Q. Then you went out to the yard sales?
- 13 A. Yes..
- 14 Q. Okay. And you came back and you tried -- did you try
- 15 to call her first?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Do you remember if you called from your house
- 18 phone or cell phone?
- 19 A. House phone.
- 20 Q. House phone. And did you get an answer?
- 21 A. No, ma'am.
- 22 Q. Okay. When you couldn't get an answer what did you
- 23 do?
- 24 A. I went over there.
- 25 Q. You went to her house. Now, you live in

- 1 Bennettsville, right?
- 2 A. Yes.
- 3 Q. You had to drive all the way to Clio to go to her
- 4 house?
- 5 A. Yes.
- 6 Q. Do you recall what her address was?
- 7 A. [REDACTED].
- 8 Q. [REDACTED] okay. And when -- how you -- do you
- 9 go -- you just go straight up Number Nine to go to Clio?
- 10 A. Yeah.
- 11 Q. Okay. And when you come into Clio where is your
- 12 mother's house?
- 13 A. It's on North Main there about 11 houses -- I can't
- 14 remember.
- 15 Q. Is it on the right or the left?
- 16 A. The left.
- 17 Q. It's on the left. Okay, so as you come into town
- 18 it's on the left. Okay. So you pulled in, and did you
- 19 see any vehicles or anything there?
- 20 A. One.
- 21 Q. Which one?
- 22 A. The Buick.
- 23 Q. Okay. The gray Buick? Is that yes or no?
- 24 A. Yes.
- 25 Q. All right. And what did you do?

- 1 A. I tried to get in, but couldn't.
- 2 Q. Tried to get in the back door or front door?
- 3 A. Back door.
- 4 Q. Back door. Could you get in?
- 5 A. No.
- 6 Q. Couldn't get in. Did you -- could you hear anybody?
- 7 A. No, ma'am.
- 8 Q. Did you see anybody?
- 9 A. No, ma'am.
- 10 Q. Okay. What did you do then?
- 11 A. Went home.
- 12 Q. Went back home?
- 13 A. Um hum.
- 14 Q. Okay. Did you attempt to get them again?
- 15 A. Yes.
- 16 Q. Okay. What did you do next then?
- 17 A. I called my brother, Eddie. Called my brother. I
- 18 went back over there.
- 19 Q. You called your brother, Eddie, and went back over
- 20 there. When was that?
- 21 A. About 12:00 or 1:00. Something like that.
- 22 Q. 12:00 or 1:00. And did you actually go back to the
- 23 house?
- 24 A. Right. Yes, ma'am.
- 25 Q. Were you able to get in?

- 1 A. No.
- 2 Q. When did you call your brother? Before or after you
- 3 went over there the second time?
- 4 A. After we went back the second time.
- 5 Q. After you went back the second time. And what did
- 6 you tell him?
- 7 A. I told him that I wanted to go check on momma and
- 8 Robbie because I was concerned.
- 9 Q. Okay. And all this time you had been trying to call
- 10 Robbie as well?
- 11 A. Yeah, I did.
- 12 Q. Okay. He had a separate cell phone?
- 13 A. And house phone.
- 14 Q. And a house phone. And you had tried to call all
- 15 those numbers?
- 16 A. Um hum.
- 17 Q. And did you get any answer from any of those?
- 18 A. No, ma'am.
- 19 Q. And you had called repeatedly?
- 20 A. Yes.
- 21 Q. But no answer?
- 22 A. No answer.
- 23 Q. Okay, did they have an answering machine or anything?
- 24 A. At the time I didn't think so. It didn't pick up.
- 25 Q. Okay, it never picked up. You never got any kind of

1 an answer from an answering machine or a person?

2 A. No, ma'am.

3 Q. Okay. All right. And so what did you do as far as
4 calling your brother, Eddie?

5 A. I called him told him I was -- he needed to go over
6 there and check cause I didn't know where they were at.

7 Q. Okay, did you go back to your house at this point?

8 A. Yes.

9 Q. You were at your house?

10 A. Um hum.

11 Q. Okay.

12 A. Yes, ma'am.

13 Q. And so he did that?

14 A. Yeah, he went over. Yeah, checked on them.

15 Q. And you did not see your mother or brother again, did
16 you?

17 A. No, ma'am.

18 Q. Okay. Well, let me ask you about an incident that
19 happened back on April the 18th of 2005. How long had
20 y'all known Joe Gathings?

21 A. Really, I don't know. Somewhere -- I guess several
22 years. Several years, I guess.

23 Q. Several years?

24 A. I don't recall.

25 Q. Okay. And did you know what his relationship was

1 with Robbie?

2 A. No, I didn't.

3 Q. Okay. You really didn't know?

4 A. No, I didn't.

5 Q. Was he back in -- in the Spring of 2005 was he
6 staying there with Robbie and your mother?

7 A. I think so.

8 Q. Okay. And do you recall an incident back in April
9 where they borrowed your vehicle?

10 A. Yeah. Yes.

11 Q. Okay. And tell us what occurred. The was in April.
12 The incident in April of 2005?

13 A. Yes, I guess he stole my car. He stole my car.

14 Q. Who stole your vehicle?

15 A. Joe.

16 Q. Joe. Okay. And where was it when he stole it?

17 A. On the dirt road somewhere out of gas..

18 Q. Where was the vehicle when he took it?

19 A. At Momma's house.

20 Q. At your momma's house?

21 A. In Clio.

22 Q. Okay. And do you know how he got the vehicle?

23 A. I guess Robbie give him the keys to it. I don't
24 know.

25 Q. And you're aware that he was charged with stealing

- 1 your car?
- 2 A. Yes, ma'am.
- 3 Q. Okay. And where was the vehicle found?
- 4 A. On a dirt road somewhere I think -- guess.
- 5 Q. That is in Marlboro County somewhere on a dirt road?
- 6 A. I think so.
- 7 Q. Was it shortly after that or a day or two; do you
- 8 recall?
- 9 A. I think so.
- 10 Q. Which one?
- 11 A. Maybe a day after.
- 12 Q. Maybe a day or so after?
- 13 A. I can't recall, but yeah.
- 14 Q. And it was just abandoned?
- 15 A. Yes.
- 16 Q. Did it have damage to it?
- 17 A. No, I don't think so.
- 18 Q. And you're aware that the defendant later pled guilty
- 19 to stealing that car and to robbing your mother and
- 20 brother?
- 21 A. Yes.
- 22 Q. Did you see any injuries on them after that accident
- 23 occurred, on your mother and your brother?
- 24 A. No. Just hurt her chest or something. I think
- 25 Robbie had broke glasses.

1 Q. Sit up a little bit for me to the microphone and tell
2 me again?

3 A. I think momma hurt her chest and I believe he had a
4 black eye with his glasses broken.

5 Q. Robbie had a black eye?

6 A. Yes.

7 Q. You think so, and your mother's glasses were broken
8 or Robbie's?

9 A. No, Robbie's glasses were broken.

10 Q. Robbie's glasses were broken? And your mother's
11 chest was hurting her. But you weren't actual there at
12 the scene when that happened?

13 A. No, ma'am.

14 Q. It happened at your mother's house?

15 A. Yes, ma'am.

16 Q. And Joe actually went to prison for that?

17 A. I guess he did, yes.

18 Q. And you didn't see him again -- when did you next
19 know that Joe was at your mother and brother's house?

20 A. Wasn't right then. I can't remember.

21 Q. Okay?

22 A. Few weeks. About a month. I think two or three
23 weeks after that. Something like that. About two or
24 three weeks. Something like that.

25 Q. Two or three weeks what?

- 1 A. After that.
- 2 Q. Okay. But I mean after he went to prison?
- 3 A. Right. After he stole the car, you know.
- 4 Q. Okay. The incident in 2007 where they were killed?
- 5 A. Right.
- 6 Q. Okay. When did he start -- come back and start
- 7 living with them again?
- 8 A. About two months before that happened.
- 9 Q. About two months before that happened. Okay. And
- 10 how did you feel about that when he came back to live with
- 11 them?
- 12 A. I didn't like it.
- 13 Q. You did not like it?
- 14 A. No.
- 15 Q. And why is that?
- 16 A. I don't know. I knew he did something else. I
- 17 just -- going into that, but I mean you knew that he was a
- 18 bad person.
- 19 Q. You knew that he was a bad person, and you knew that
- 20 he was going to do something else?
- 21 A. Um hum.
- 22 Q. Did you have any contact with Joe Gathings?
- 23 A. Not really.
- 24 Q. Okay. In 2007 did you go over there? When yo went
- 25 over there was he there?

1 A. Yeah, one time my mother was in there and I didn't
2 see him?

3 Q. One time he was?

4 A. I think he was there.

5 Q. And it was Mother's Day; is that what you said?

6 A. Yeah.

7 Q. Did you have any conversation with him or anything?

8 A. No.

9 Q. Okay. So you didn't have much to do with
10 Mr. Gathings?

11 A. No. Sure didn't.

12 Q. Okay?

13 MS. MUNNERLYN: Court's indulgence just one moment.

14 THE COURT: Okay.

15 BY MS. MUNNERLYN:

16 Q. Now, did you tell me what -- did you know what the
17 relationship was between Robbie and Joe?

18 A. No, I didn't.

19 Q. At that time. Do you know what it is now?

20 A. I heard you say it.

21 Q. Okay.

22 A. That was it. I didn't know.

23 Q. Okay. But you didn't know it at the time what the
24 extent of their relationship was?

25 A. No.

1 Q. I don't have any further questions. If you would
2 answer any questions Mr. Jones has for you.

3 THE COURT: Cross examination, Mr. Jones.

4 MR. JONES: Thank you, sir.

5 CROSS-EXAMINATION

6 BY MS. CRAYTON:

7 Q. Ms. Polston, let me -- I'm going to ask you a little
8 bit about that 2005 incident you were talking about. That
9 was in April of 2005; is that correct.

10 A. I think so.

11 Q. Your car was taken?

12 A. Um hum. Yes, sir.

13 Q. And where was it taken from?

14 A. My momma's house.

15 Q. How long had it been at your mother's house prior to
16 being taken?

17 A. I don't remember how long it was. I can't remember
18 how long it was.

19 Q. Was it hours? Days? Weeks?

20 A. Yeah, weeks. Yeah.

21 Q. What was it doing there?

22 A. I mean I didn't have a problem with them borrowing
23 it. He didn't have one to ride in.

24 Q. But, basically, you just said, "Here's my car. You
25 use my car as you would use your's?

1 A. Right.

2 Q. And did I hear you say that you thought that
3 Mr. Gathings got the keys from Robbie to drive the car?

4 A. I guess. I don't know how he get them. I guess.

5 Q. So Robbie used the car just like his own?

6 A. Right.

7 Q. If Mr. Gathings was going to use the car he would
8 have to get permission, not from you, but from Robbie?

9 A. I don't think he got permission from Robbie. He just
10 got it and he told it.

11 Q. Do you know?

12 A. I would think that, yes. You know Robbie had it
13 cause he didn't have a way to ride so I let him borrow my
14 car. I don't know what happened that night. I wasn't
15 over there. So I don't know if Robbie let me ---

16 Q. You don't know if he had permission to drive it or
17 not?

18 A. No.

19 Q. All right. Very good. And you said that at that
20 time in April of '05 that your mother had some bruises and
21 that your brother had broken glasses? You know if E.M.S.
22 was called? Were their injuries significant enough for
23 E.M.S. to be called, do you know?

24 A. I don't think so. I don't know. My brother might
25 know that, but I don't know. I don't know.

1 Q. All right. Now, let me go back to 2007. You talked
2 to your mother on Friday which I believe was June 29th of
3 '07, and I think I heard you say that you talked to her
4 about 7:15?

5 A. Yes.

6 Q. Did you have any other contact with her after 7:15 on
7 Friday?

8 A. No.

9 Q. All right?

10 A. No.

11 Q. Your mother worked, did she not? Did she have a job?

12 A. Yes.

13 Q. Tell me what she did?

14 A. She kept an old lady in her house.

15 Q. At her house or at somebody else's house?

16 A. At the woman's house.

17 Q. And where was that?

18 A. In Blenheim.

19 Q. In Blenheim, all right. And what were her hours?

20 A. I can't remember. 10:00 to 3:00.

21 Q. Let me make it -- did she work daytime hours or
22 nighttime hours?

23 A. Daytime.

24 Q. Daytime, all right. So either 9:00 to 5:00?

25 A. Yeah.

1 Q. 10:00 to 3:00, whatever. She worked sometime during
2 the day?

3 A. Yes.

4 Q. Do you know when she worked on Friday?

5 A. Yeah, she works on Friday. Yeah, she worked on
6 Fridays.

7 Q. Would that have been a normal work day?

8 A. Yes.

9 Q. And of, again, I know you don't know exactly, but if
10 her hours were 10:00 to 3:00 would she have worked from
11 10:00 to 3:00 on Friday?

12 A. Yes.

13 Q. Okay. How far is Blenheim from your mother's house?
14 How far was her job from her house? Let's put it that
15 way.

16 A. Between, you know, 20 numbers. Twenty minutes, I
17 guess.

18 Q. Not real sure. All right.

19 A. It's something.

20 Q. In June of '07 do you know how much cars were at your
21 mother's house, usually.

22 A. June of '07?

23 Q. Yes, ma'am.

24 A. Two cars.

25 Q. And tell me what those were. I think you mentioned

- 1 the gray car?
- 2 A. The gray Buick and a Blue Corsica.
- 3 Q. All right. And who owned the car?
- 4 A. My mom.
- 5 Q. Owned both the cars. All right. And at that time in
- 6 June of '07 were there three people living at the house?
- 7 A. I guess so. Yeah, I think it was. Yes.
- 8 Q. That would be your mom, your brother and Mr.
- 9 Gathings?
- 10 A. Um hum.
- 11 Q. Did I hear you correctly that you thought that
- 12 Mr. Gathings had lived there for a couple months prior to
- 13 your mother and brother's death?
- 14 A. Right. Yes, sir.
- 15 Q. Do you know how he happened to be living there?
- 16 A. Excuse me.
- 17 Q. Do you know why he was living there? How he came to
- 18 live -- be with your mother and brother?
- 19 A. I have no idea. He didn't have nowhere to go, I
- 20 guess.
- 21 Q. Was he invited by your mother or brother to live
- 22 there?
- 23 A. I guess.
- 24 Q. I guess my question would be as far as you know was
- 25 he living there with permission? Did he have permission

1 to stay there?

2 A. I guess. I guess.

3 Q. All right. And how many bedrooms in that house?

4 A. Mom and Robbie.

5 Q. Two bedrooms. Do you know where Mr. Gathings slept?

6 A. It was three bedrooms. I thought you said -- yeah,
7 three bedrooms.

8 Q. Okay. So three bedrooms. One occupied -- one by
9 your mother. One by your brother, and one by Mr.
10 Gathings. All right. And in your brother's bedroom was
11 there a computer somewhere in his room?

12 A. Yes, he had a computer.

13 Q. Where? Do you remember where that was?

14 A. On the desk in his room. It was in his room on a
15 desk.

16 Q. All right. And I believe we heard Ms. Munnerlyn say
17 in her opening that there was a baseball that was involved
18 in this crime. Are you familiar with that baseball bat?

19 A. No.

20 Q. Don't know anything about it?

21 A. No.

22 Q. Unaware it might have been in the house?

23 A. No.

24 Q. Just don't know? Okay.

25 A. Don't remember seeing it.

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1 Q. Okay. Thank you.

2 MR. JONES: One second, please, Your Honor?

3 THE COURT: Yes, sir.

4 MR. JONES: That's all I have.

5 THE COURT: Redirect, Ms. Munnerlyn.

6 MS. MUNNERLYN: No more questions, Your Honor. Thank
7 you.

8 THE COURT: All right. Thank you. You may step
9 down.

10 MS. MUNNERLYN: Eddie Polston.

11 EDDIE POLSTON, after being duly sworn, testified
12 as follows:

13 CLERK OF COURT: Please be seated and state your full
14 name.

15 THE WITNESS: Eddie Polston.

16 (WHEREUPON, State's Exhibit No. 1 was marked for
17 identification only.)

18 DIRECT EXAMINATION

19 BY MS. MUNNERLYN:

20 Q. Eddie, how are you related to Loyce Locklear and
21 Robbie Polston?

22 A. That's my mother and my brother.

23 Q. Okay. And back in 2007 where were you living in
24 relation to them?

25 A. I live in Clio. [REDACTED] Mile and a

1 half, 2-miles away.

2 Q. Okay. And they were living in a house at North Main,
3 [REDACTED]?

4 A. That's right.

5 Q. And who owns that house?

6 A. Well, it was in my mother's name, but years back she
7 was worried about you know things with Robbie and she put
8 my name on it also.

9 Q. Okay. So your name was on than house as well?

10 A. Yes.

11 Q. How did you get to know Joe Gathings, the defendant
12 in this case?

13 A. I really never did know him other than he came to
14 stay there. They had a friend at one time that ---

15 Q. Did you know what his relationship with Robbie was?

16 A. No. All I know is that I was told that he ---

17 MR. JONES: Objection, Your Honor.

18 MS. CRAYTON: Objection, Your Honor.

19 THE COURT: All right. Just one of you. All right.
20 Whoever is going to handle the witness has got to be the
21 one to make the objections. Normally, you cannot tell
22 what you -- somebody else told you. That's what we
23 lawyers call hearsay. Ms. Munnerlyn, unless you think
24 that it's admissible for some reason.

25 MS. MUNNERLYN: No, Your Honor.

1 THE COURT: Rephrase the question.

2 MS. MUNNERLYN: I will.

3 BY MS. MUNNERLYN:

4 Q. How long had you known the Defendant, Joe Gathings?

5 A. I don't know. Guess three years. Two, three years.

6 Q. Okay. And he was staying there at your mother's
7 house back in 2005?

8 A. Yes.

9 Q. In the Spring of 2005?

10 A. About probably some other addresses that -- is what I
11 heard, too.

12 Q. Okay. Do you -- are you aware about the incident
13 that occurred with your mother and Robbie and the
14 defendant in April? April the 18th of 2005?

15 A. Yes.

16 Q. Okay. What do you know about that incident?

17 A. All I know is he took the car, pushed my mother down,
18 and took her pocketbook and all. And I guess Robbie felt
19 like -- in other words he was kidnapped and taken down a
20 dirt road and he thought he was going to kill him.

21 Q. Okay. All right. And the defendant was actually
22 charged with certain crimes for that?

23 A. Right.

24 Q. And, actually, he ended up pleading guilty to those
25 charges; is that right?

1 A. That's right.

2 Q. And those were robbery, grand larceny and assault and
3 battery, isn't that right?

4 A. That's true.

5 Q. And he went to prison as a result of that?

6 A. Right.

7 Q. So he was gone for a period of time between 2005 and
8 2007?

9 A. Right.

10 Q. Okay? And do you recall when he came back in 2007 to
11 live at your mother's house?

12 A. Yes, I do.

13 Q. And when was that?

14 A. I don't remember the exact date, but I was told by
15 Robbie. He said he was coming ---

16 MS. CRAYTON: Objection, Your Honor. Hearsay.

17 THE COURT: All right. You're offering it for the
18 truth or just to show the effect on the hearing?

19 MS. MUNNERLYN: Your Honor, I'll move on. I'll move
20 on.

21 THE COURT: All right. Withdrawn.

22 BY MS. MUNNERLYN:

23 Q. When did you recall when he actually came back?
24 Approximately.

25 A. Well, really end of March or early April.

1 Q. Okay. In 2007. So the Spring of 2007?

2 A. Right.

3 Q. Okay. And did you -- were you aware immediately when
4 he was there? I mean did you find out sometime after he
5 had been there a while or what?

6 A. It had been probably just a few days.

7 Q. Okay, and how did you feel about him coming back to
8 stay there?

9 A. I didn't like it at all.

10 Q. Okay. Why did you not like it?

11 A. Because of what he had done prior, and in 2005 and
12 just that.

13 Q. Okay. And did you voice your objections to your
14 mother and your brother?

15 A. Oh, yeah. Oh, yeah.

16 Q. Okay. But he continued to stay there?

17 A. Yes.

18 Q. Okay. Well, let's move forward to June of 2007. Let
19 me ask you first. Your mother, she had a cat?

20 A. Right.

21 Q. And it was solely an inside cat?

22 A. Is that right.

23 Q. Okay. Were you aware that she had made plans with
24 your sister, Lisa, to take the cat to the vet that
25 Saturday morning?

- 1 A. Yes.
- 2 Q. That would have been on June the 30th of 2007?
- 3 A. Right.
- 4 Q. Okay. Do you remember the last time you actually saw
- 5 her or spoke with either Robbie or your mother?
- 6 A. I think I talked with Robbie maybe the 27th, 28th.
- 7 Q. Okay. A couple days before this happened?
- 8 A. Right.
- 9 Q. When did you first hear from Lisa about the concern
- 10 she had for your mother and brother?
- 11 A. Well, we had been outside working, and my wife had
- 12 gone in and said that there had been several phone calls
- 13 on the caller I.D. from Lisa. And I found that was odd
- 14 that she had called about three or four times.
- 15 Q. Okay?
- 16 A. So I called her.
- 17 Q. Okay. And as a result of your phone call with Lisa
- 18 what did you do?
- 19 A. I tried to call myself a few times those cell phone
- 20 numbers and home phone numbers and didn't get an answer so
- 21 I said I'd ride around there.
- 22 Q. Okay, both your mother and your Robbie had cell
- 23 phones, correct?
- 24 A. Right.
- 25 Q. And then there was a phone in the house, too?

- 1 A. Right.
- 2 Q. Okay. So you tried to call the -- all those and you
- 3 didn't get any answer?
- 4 A. No.
- 5 Q. Okay. Did they have any type of answering machine or
- 6 anything like that at that time?
- 7 A. Yes, they did.
- 8 Q. Did one ever pick up?
- 9 A. I can't remember that. I think it did pick up.
- 10 Q. All right. Okay. So what did you do when you
- 11 couldn't get them on the phone?
- 12 A. I went around there since I was only a couple miles
- 13 away.
- 14 Q. Okay. And when you got there what did you see in the
- 15 yard? Anything as far as vehicles or anything?
- 16 A. Just one car there.
- 17 Q. Okay. It was just one of the vehicles there. Do you
- 18 recall which one was actually there?
- 19 A. That was the gray Buick.
- 20 Q. The gray Buick was in the yard. And where is it
- 21 normally parked?
- 22 A. Right behind the house.
- 23 Q. Okay. And how many vehicles does your mother -- did
- 24 your mother own at that time?
- 25 A. Two.

1 Q. Okay. So it was the gray Buick, and do you recall
2 what the other vehicle was?

3 A. The blue Corsica.

4 Q. The blue Corsica. So that would -- that vehicle was
5 not there?

6 A. No.

7 Q. Okay. And did see anybody?

8 A. No, I didn't.

9 Q. Okay. What did you do when you saw one vehicle and
10 no person? What did you proceed to do?

11 A. Well, I went to the back door, and she used to have a
12 key hidden and it wasn't back there. And I messed with
13 the doorknob and wiggled it and it came open. So I
14 figured it, you know, she had been having -- going to the
15 doctor and stuff. And maybe she had fallen or something.
16 And I went in to check on her and ---

17 Q. Before you go any further I want to ask you about
18 that. There was some question of Lisa where your mother
19 worked. Where did she work?

20 A. Where did my other work?

21 Q. Yes.

22 A. For the Collins Family.

23 Q. Okay. Do you know whether or not that Friday
24 before -- you were there on Saturday. Whether or not the
25 day before on Friday she had worked?

- 1 A. Yes, she worked some on Saturday.
- 2 Q. She did worked that day?
- 3 A. Um hum.
- 4 Q. Did she have anything done to her eyes or anything on
- 5 that day?
- 6 A. That morning I think that was the morning she went to
- 7 Laurinburg to Dr. Gee.
- 8 Q. To Dr. Gee in Laurinburg.
- 9 A. I think so.
- 10 Q. Do you know if she went to work after that?
- 11 A. Yes, she did.
- 12 Q. She did. And do you know what time she normally got
- 13 home from work?
- 14 A. Late afternoon. 4:00 or 5:00, maybe.
- 15 Q. Okay. But she did go to the doctor that morning?
- 16 A. Yes.
- 17 Q. Okay. About her eyes. All right, so you went in on
- 18 Saturday. You got there and no sign of anybody. You
- 19 pushed, giggled the door and it came open?
- 20 A. Um hum. I pulled it.
- 21 Q. And you went in?
- 22 A. I pulled it open and went in.
- 23 Q. Okay. Well, tell us how you went through the house?
- 24 A. Well, I went through the kitchen, the dining room and
- 25 the living room.

1 Q. Okay. So the house is set up so you go through those
2 rooms: the kitchen, then the dining room next and then
3 the?

4 A. Living room.

5 Q. Okay. The living room is at that very front of
6 house?

7 A. Yes, it is.

8 Q. Okay. So you came in the back door then?

9 A. Right.

10 Q. Do you actually walk into the kitchen when you come
11 inside the back door or is it another little room there?

12 A. It's like a little porch. It's got a washer and
13 drier on it.

14 Q. Okay. Like a little wash room right there?

15 A. Yes.

16 Q. So you walk through there and into the kitchen and
17 into the dining room and living room. When you got --
18 when you first got in the living room had you seen anything
19 or anybody else?

20 A. No.

21 Q. Did you call out or anything like that?

22 A. No.

23 Q. Okay. So once you got to the living room what did
24 you do?

25 A. I look towards my mother's bedroom and you could see

1 it with the door open. And it looked like somebody had
2 been in there like about robbery or something. It was a
3 mess.

4 Q. Okay. So her bedroom, you could see into her
5 bedroom?

6 A. Yes.

7 Q. Was that the first indication that you had that
8 something may be wrong?

9 A. Yes.

10 Q. Okay. And you said it was a mess?

11 A. Right.

12 Q. Well, what specifically did would mean when you said
13 it was a mess?

14 A. Like stuff was thrown out of the closet and onto the
15 bed, and you know.

16 Q. It was not in it's normal state?

17 A. No.

18 Q. Your mother didn't keep it that way?

19 A. No.

20 Q. Okay. All right. So you see her bedroom in a jumble
21 there, and what did you do at that point?

22 A. Well, I was there at the doorway looking a little bit
23 closer then and was thinking you know he had done this
24 again like he did before. And I backed out of the bedroom
25 door and turned left in the hallway and that's when I saw

1 my mother right there on the hallway floor.

2 Q. Okay. And did you approach her?

3 A. No.

4 Q. Okay. What did you do at that point? Just take your
5 time?

6 A. I looked and I see Momma and she was already dead,
7 and I got real nervous.

8 Q. Did you stay in the house then?

9 A. No. I started to walk back out. When I first came
10 into the house I noticed my brother's bedroom door was
11 kind of -- well, almost closed, too, and had to be like
12 C.D. case or something on the floor. And I knew when that
13 happened that something was bad to him, too. The door was
14 closed.

15 And I was real nervous, and I called my wife and I
16 called 911. She told me to get out of the house. I had
17 to look. Open that door to see if everything was okay,
18 and I pushed it. It didn't go but maybe two thirds of the
19 way. And he was on the floor dead.

20 Q. Did you actually touch either your mother or your
21 brother?

22 A. No, I didn't.

23 Q. Other than opening your brother's bedroom door did
24 you move anything in the house?

25 A. No, I didn't.

- 1 Q. Did you touch anything else in the house?
- 2 A. Nothing but pushed those two doors open.
- 3 Q. Okay. And so after you pushed that door open and
- 4 your saw him where did you go?
- 5 A. I ran out the back door and ran over to Mr. Woodley's
- 6 house and told him to call the police.
- 7 Q. Okay. And did you then see the police?
- 8 A. No. He pointed that there happen to be one sitting
- 9 right across the road.
- 10 Q. Okay.
- 11 A. I ran over.
- 12 Q. You ran over.
- 13 A. And got him.
- 14 Q. And do you recall who that officer was?
- 15 A. Mr. John Lester.
- 16 Q. John Lester. And did you tell him what you had
- 17 found?
- 18 A. Yes, I did.
- 19 Q. And so what did he do at that point?
- 20 A. He drove over to the house and went in.
- 21 Q. Did you go back in with him or did you stay outside?
- 22 A. I went with him on the back porch.
- 23 Q. On the back porch. No further?
- 24 A. No.
- 25 Q. What size shoe do you wear?

- 1 A. Ten and a half.
- 2 Q. Okay. Do you own any New Balance tennis shoes?
- 3 A. No.
- 4 Q. Okay. But you wear a size ten and a half?
- 5 A. Yes.
- 6 Q. The cat. Your mother's cat, when you went in you
- 7 said the door was closed. Did you see the cat at any
- 8 point?
- 9 A. No.
- 10 Q. Okay. When was the next time you saw that cat?
- 11 A. It was after S.L.E.D. got through with things and the
- 12 crime scene people. Maybe a week and a half.
- 13 Q. And when you saw the cat again where was the cat?
- 14 A. In my mother's closet.
- 15 Q. Okay. So she was in the house or he?
- 16 A. Yes.
- 17 Q. He was in the house?
- 18 A. Yes.
- 19 Q. And so he was in the house the entire time?
- 20 A. Yes.
- 21 Q. But you didn't see it for at least ten days or so?
- 22 A. Right.
- 23 Q. Okay. Now, the vehicle that was taken that was a
- 24 blue Corsica, right?
- 25 A. Right.

1 Q. And the value of that car is more than \$1,000, is it
2 not? Or back in 2007 it would have been more than a
3 \$1,000?

4 A. I would think so.

5 Q. All right. I'm going to show you what's been marked
6 State's Exhibit One and see if you recognize that?

7 A. Yes, this is a cell phone bill.

8 Q. Okay. All right. And is this the cell phone bill
9 that you received in the mail for your mother and Robbie?

10 A. Yes, it is.

11 Q. And you delivered it to us and is it -- is that
12 right?

13 A. That's right.

14 Q. And is it in the same or similar condition as when
15 you delivered it?

16 A. Yes, it is.

17 Q. All right.

18 MS. MUNNERLYN: Your Honor, I would like to move to
19 admit State's Exhibit One at this time?

20 THE COURT: Any objection, Ms. Crayton?

21 MS. CRAYTON: No, Your Honor.

22 THE COURT: All right. Admitted into evidence as
23 State's Exhibit One without objection.

24 (WHEREUPON, State's Exhibit No. 1 was admitted into
25 evidence.)

1 BY MS. MUNNERLYN:

2 Q. Now, this phone bill includes more than one phone,
3 correct?

4 A. That is right.

5 Q. It actually includes the cell phone that Joe Gathings
6 used?

7 A. That's right.

8 Q. As well as the one that Robbie Polston and your
9 mother used?

10 A. That is correct.

11 Q. Okay. And those numbers are set forth on here?

12 A. That's right.

13 Q. Joe Gathings cell phone number was 535-1145?

14 A. Hum hum.

15 Q. Robbie's was 862-9292?

16 A. Right.

17 Q. And your mother's was 862-9920?

18 A. Right.

19 Q. Okay. And this phone bill reflects the calls that
20 were made during this timeframe, correct?

21 A. Correct.

22 Q. The 29th to the 30th of June?

23 A. Um hum.

24 Q. And a number of days before and after?

25 A. Right.

1 Q. Okay. Did you know that there was a bat in the
2 house, a baseball bat?

3 A. No, I didn't.

4 Q. You didn't know anything about that?

5 A. No.

6 Q. Okay.

7 MS. MUNNERLYN: Court's indulgence just one moment?

8 THE COURT: Yes, ma'am.

9 BY MS. MUNNERLYN:

10 Q. I don't have no further question. If you would
11 answer any questions that Ms. Crayton has for you.

12 THE COURT: Cross-examination, Ms. Crayton?

13 MS. CRAYTON: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. CRAYTON:

16 Q. Good afternoon, Mr. Polston. So when was the last
17 time, and I think you said, but when was the last time you
18 spoke to your mom?

19 A. My mother, I talked to her the night before. She
20 called me that morning.

21 Q. The morning of the 29th?

22 A. I think the morning of the 29th I think Robbie had to
23 take her to the eye doctor.

24 Q. To the eye doctor in Laurinburg?

25 A. Yes, sir.

1 Q. And as far as you know you were the first person in
2 that house on June 30th?

3 A. Yes.

4 Q. Okay. How many bedrooms are in that home?

5 A. Three.

6 Q. And you say when you entered the home that you walked
7 through the kitchen, little washroom, the laundry room?

8 A. Yeah.

9 Q. The living room and the dining room. And then you
10 went into Robbie's room, is that right?

11 A. No, my mother's room.

12 Q. You went in your mother's room. And then where did
13 you go after that?

14 A. Well, when I was in my mother's room I backed out of
15 the doorway and took a left. Looked to the left and saw
16 my mother on the hallway floor.

17 Q. So, and did you have to go past your mom to get to
18 the -- to Robbie's bedroom?

19 A. No. I could have, but no, I didn't. I went back the
20 way I came in.

21 Q. All right. Okay. And you say you mom's room was --
22 was it in disarray?

23 A. Yes.

24 Q. All right. So it didn't normally look?

25 A. No.

1 Q. Was it normally cluttered?

2 A. No. very clean.

3 Q. It was normally very clean. All right. And no one

4 else went in the house until Officer Lester, John Lester?

5 A. Right.

6 Q. All right. And did you stay after Officer Lester

7 arrived or did you leave at that time?

8 A. No, I stayed there for a good while.

9 Q. Do you remember how many other officers went in the

10 house?

11 A. Clio, Pearlle Thomas, and I don't know. I don't know

12 some of them name, S.L.E.D.

13 Q. Several officers went into the house that you saw?

14 A. Well, they were around the house. I don't really

15 know how many of them actually went in.

16 Q. Okay. But you -- did you remember Officer Thomas,

17 Pearlle, going in?

18 A. I don't know how far he went in, but I know

19 Mr. Lester went in cause I was at the back door?

20 Q. Okay. And do you know how Mr. Gathings came to live

21 in this home with your mom and brother?

22 A. He became friends with my brother at one time, and

23 that's all I know. And he showed up and my mother said it

24 was the Christian thing to do. So you know I didn't like

25 it.

1 Q. Okay. And can you tell us a little more. You said
2 your mom worked. She -- at someone else's houses; is that
3 right?

4 A. Right.

5 Q. Okay. And what time did she normally get home in the
6 afternoon?

7 A. 4:00 or five o'clock, I'd say.

8 Q. Okay. So normal afternoon hours?

9 A. Yes.

10 Q. Okay. All right. Do you know if Mr. Gathings was
11 working during that time?

12 A. When he first got there he worked for a little bit
13 and changed and went -- while he was there was a few
14 times, but all I know is that he had three or four jobs.

15 Q. And do you know how he got to those jobs? How he
16 drove there every day?

17 A. I assumed he used that car some.

18 Q. Okay. So you think he used one of your mom's cars?

19 A. Yes.

20 Q. Okay. And Ms. Munnerlyn asked you, but you don't
21 remember ever seeing that baseball bat?

22 A. No, I don't.

23 Q. Okay. You don't know if it was Robbie's baseball
24 bat?

25 A. I never seen a bat in the house.

1 Q. Okay. And when you went into Robbie's room did you
2 see that bat?

3 A. No, I didn't. I didn't do anything, but push the
4 door and happen that he was on the floor and hit him. I
5 didn't do any further than that.

6 Q. And you didn't focus on anything else? You didn't
7 see the bat anywhere or anything like that?

8 A. No.

9 Q. All right.

10 MS. CRAYTON: Court's indulgence, Your Honor.

11 THE COURT: Yes, ma'am.

12 BY MS. CRAYTON:

13 Q. That morning that your mom went to the eye doctor, do
14 you remember what time it was that she went to the eye
15 doctor?

16 A. 8:00 or nine o'clock, I guess.

17 Q. So it was early in the morning?

18 A. Yes.

19 Q. Okay. And do you know when she came home from that
20 eye appointment?

21 A. I'm not sure. Ms. Collins can probably tell you
22 that.

23 Q. So she did go to Ms. Collins' after the eye doctor?

24 A. Yes.

25 Q. Okay?

1 MS. CRAYTON: No further questions, Your Honor.

2 THE COURT: Redirect, Ms. Munnerlyn?

3 MS. MUNNERLYN: None, Your Honor.

4 THE COURT: All right. Thank you, sir. You may step
5 down. All right. You may call your next witness.

6 MR. HOLT: Thank you, Judge. At this time the State
7 would like to call Gail Wingo.

8 THE COURT: All right.

9 MR. HOLT: She's in the back.

10 THE COURT: Come all the way around, if you would,
11 and be sworn.

12 GAIL WINGO, after being duly sworn, testified as
13 follows:

14 CLERK OF COURT: Be seated and state your full name.

15 THE WITNESS: Thank you. Gail Wingo. I live at 500
16 North Main Street. Clio, South Carolina.

17 BY MR. HOLT:

18 Q. Ms. Wingo?

19 A. Yes.

20 Q. You said you live on North Main Street in Clio?

21 A. Yes.

22 Q. Now, about how long have you lived there?

23 A. Since '94.

24 Q. Since 1994?

25 A. Yes.

1 Q. And do you remember your neighbors, Loyce Locklear
2 and Robbie Polston?

3 A. I sure do.

4 Q. And the evening of June 29th 2007, do you remember
5 seeing them come home?

6 A. Yes, I did. I saw both of them come home. Not in the
7 day.

8 Q. And do you remember kind of around what time it was?

9 A. 3:30, 4:00. Something like that.

10 Q. Do you remember what the weather was like that day?

11 A. It was beautiful. Beautiful day. Warm.

12 Q. Do you remember what Robbie and Loyce would have been
13 wearing?

14 A. Yes. Loyce had on slacks and a tee shirt. And
15 Robbie was wearing Bermudas and a black tee shirt.

16 Q. Now, to see them stand out to you for any reason?
17 Was that the last time you saw them?

18 A. Yes.

19 Q. Okay. Did they share a driveway with you?

20 A. They sure did. We shared a driveway. That was the
21 only way they could get into their yard.

22 Q. And did your windows in your house look over their
23 property?

24 A. On their house.

25 MR. HOLT: Beg the Court's indulgence Your Honor?

1 THE COURT: All right.

2 BY MR. HOLT:

3 Q. Now, Ms. Wingo, did you see the gray Buick leave the
4 house at any time that day after you saw them come home?

5 A. Yes, and Robbie was driving.

6 Q. Now, which way did he turn?

7 A. He went to the left towards Title Mart. Towards
8 Dillon.

9 Q. Thank you, Ms. Wingo. Now, did you see him come
10 back?

11 A. No, but I did see him around the house later on that
12 day.

13 Q. Did you see the car back there?

14 A. Yes, the car was back.

15 Q. Ms. Wingo, please answer any questions the Defense
16 might have.

17 A. Certainly.

18 THE COURT: Cross-examination, Mr. Jones?

19 MR. JONES: Yes, sir. Thank you.

20 CROSS-EXAMINATION

21 BY MR. JONES:

22 Q. Ms. Wingo, are you familiar with who lived in that
23 house during the time period that we're talking about,
24 June of '07?

25 A. You mean before Loyce and Robbie?

1 Q. No. On -- let me ask it another way. On June the
2 29th 2007 do you know who was living in that house?

3 A. Yes?

4 Q. Who would that be?

5 A. Loyce and Robbie.

6 Q. How about this gentleman over here? Did you ever see
7 him there?

8 A. He was there, too.

9 Q. Okay, and because of the close proximity of your
10 houses and the shared driveway I assume that you saw cars
11 coming and going?

12 A. Yes, I did.

13 Q. Did you ever see this young man drive either one of
14 those cars that were at the Polston house?

15 A. Yes. I did, yes.

16 Q. Often?

17 A. Yes.

18 Q. How about June 29th? Did you ever see him drive
19 either one of those vehicles?

20 A. No, I can't say that I did.

21 Q. Okay.

22 MR. JONES: One second, Judge. That's all that I
23 have, Judge.

24 THE COURT: Redirect, Mr. Holt?

25 REDIRECT EXAMINATION

1 BY MR. HOLT:

2 Q. Ms. Wingo, did you have a lot of contact with your
3 neighbors?

4 A. We were friends.

5 Q. Now, do you know exactly with a type relationship the
6 defendant had with Mr. Polston?

7 MR. JONES: Objection, Your Honor. Beyond the scope
8 of cross-examination.

9 THE COURT: All right. What about that, Mr. Holt? I
10 don't believe there were any questions on
11 cross-examination.

12 MR. HOLT: I think that might be outside the scope,
13 Judge. I think that Mr. Jones asked was he aware that or
14 was the witness aware that the defendant was using the
15 automobile. And I was going to get around to some matters
16 related towards that.

17 THE COURT: Well, I'll sustain the objection as
18 asked, but you may proceed with your other questions.
19 Sustain the question with regards to the relationship, but
20 you can ask him anything about what she knows, what she
21 saw. As far as what she saw, with the use of the
22 vehicles.

23 BY MR. HOLT:

24 Q. Did anyone of those vehicles belong to the defendant,
25 that you're aware of?

1 A. No.

2 MR. HOLT: Beg the Court's indulgence one moment,
3 Your Honor?

4 THE COURT: Okay.

5 MR. HOLT: That's it, Your Honor. Thank you very
6 much.

7 THE COURT: Anything further Mr. Jones?

8 MR. JONES: No, sir.

9 THE COURT: All right. Thank you, Ms. Wingo. You
10 may step down. All right. You want this witness to
11 remain sequestered for reply? That would be the only
12 reason that I think you can use her. You don't think
13 you're going to

14 MS. MUNNERLYN: I don't think, Your Honor -- she
15 may -- I would think that she can remain in the courtroom.
16 I don't anticipate any issue for her to be called in
17 reply. If she'd like to remain, Your Honor.

18 MS. CRAYTON: No objection.

19 THE COURT: You may remain in the courtroom if you
20 like. All right. Call your next witness.

21 MS. MUNNERLYN: Mike Goff.

22 MIKE GOFF, after being duly sworn, testified as
23 follows:

24 CLERK OF COURT: Take your seat and state your full
25 name for me.

1 THE COURT: Let's wait a minute and let the juror
2 walk off the cramp. All right. Thank you. All right.
3 you may proceed, Ms. Munnerlyn.

4 MS. MUNNERLYN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q. You are Mike Goff?

8 A. Yes, ma'am.

9 Q. And that's spelled, G-O-F-F?

10 A. Yes, ma'am.

11 Q. Mike, where were you working back in June of 2007?

12 A. Marlboro County Rescue.

13 Q. Okay. And do you remember -- do you recall receiving
14 a call? Were you actually working for the rescue squad on
15 June 30th?

16 A. Yes, ma'am.

17 Q. Okay. Do you recall receiving a call to respond to
18 [REDACTED] in Clio?

19 A. Yes, ma'am.

20 Q. Okay. And in what regard was that call made?

21 A. We were called out to respond to patients at that
22 location.

23 Q. And who along with you responded to that location?

24 A. My partner at the time was Mark Player.

25 Q. Okay. And when you arrived at the home do you

1 remember which door you entered or did you go in the
2 house?

3 A. Yes, ma'am. We went in through the back door.

4 Q. All right. Okay. And who went in with you?

5 A. All I can recall is Mr. Mark Player.

6 Q. Okay. And when you entered the house where did
7 you -- do you recall how you went to find the victims?

8 A. We went in through the back door, took a left, and
9 went in the bedroom and the hallway.

10 Q. Okay. And in the bedroom do you remember was that a
11 male or female victim?

12 A. The male was in the bedroom. The female was in the
13 hallway.

14 Q. And when you went in the bedroom how was he? Where
15 did you find him?

16 A. I do not remember.

17 Q. Okay. Was he on top of anything, on the floor, or on
18 the bed or where?

19 A. He was on the floor.

20 Q. Oh, okay. And were you able to determine at that
21 point whether or not he was still living?

22 A. We knew he was deceased at that time.

23 Q. Okay. It was clear to you?

24 A. Yes, ma'am. Rigor mortis had set in.

25 Q. Okay. And after you checked him did you proceed to

- 1 check the other victim?
- 2 A. Yes, ma'am.
- 3 Q. Okay. Where did you find her?
- 4 A. He was laying in the hallway.
- 5 Q. Okay. And you said she was laying in the hallway?
- 6 A. Yes, ma'am.
- 7 Q. She was lying on the floor also?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And were you able to determine if she was
- 10 still alive?
- 11 A. She was deceased as well. Rigor mortis had set in,
- 12 too.
- 13 Q. On both of them rigor motris had already set in?
- 14 A. Yes, ma'am.
- 15 Q. Okay. Did you touch the body?
- 16 A. My partner checked the male, and I checked the
- 17 female.
- 18 Q. Okay. When you say that you checked what -- tell us
- 19 what you did?
- 20 A. We checked for pulse, and it was obvious cause rigor
- 21 mortis set in. There was no pulse.
- 22 Q. And when you were checking for a pulse, either you or
- 23 your partner, were the bodies moved in any way?
- 24 A. No, ma'am.
- 25 Q. Okay. Was anything else disturbed in the home?

- 1 A. I don't know.
- 2 Q. Did you disturb anything else in the home?
- 3 A. No, ma'am.
- 4 Q. Okay. Did you touch anything else?
- 5 A. No, ma'am. Just the bodies.
- 6 Q. Did you move anything else?
- 7 A. No, ma'am.
- 8 Q. And so after you checked them and you were able to
- 9 determine that they were both deceased what did you do?
- 10 A. We exited the house.
- 11 Q. Okay. Now, did you go back in later?
- 12 A. That night. Once the police called us to assist the
- 13 recovery team and remove the bodies.
- 14 Q. That was after crime scene had processed the scene?
- 15 A. Yes, ma'am.
- 16 Q. And that answer is yes?
- 17 A. Yes, ma'am.
- 18 Q. I don't have any further questions. If you would
- 19 answer any questions that Ms. Crayton has for you.
- 20 THE COURT: Cross-examination, Ms. Crayton.
- 21 MS. CRAYTON: Thank you, Your Honor.
- 22 CROSS-EXAMINATION
- 23 BY MS. CRAYTON:
- 24 Q. I'm going to say your name right. Mr. Goff.
- 25 A. Yes, ma'am.

- 1 Q. Okay. So you were working for E.M.S.
- 2 A. Yes, ma'am.
- 3 Q. Is that correct?
- 4 A. Yes, ma'am.
- 5 Q. Okay. And you got a call to respond to this house?
- 6 A. Yes, ma'am.
- 7 Q. Okay. All right. When you arrived do you know about
- 8 what time it was?
- 9 A. It was around 3:00.
- 10 Q. Okay. Three o'clock?
- 11 A. Somewhere around there.
- 12 Q. And were there a lot of people around the house?
- 13 Police officers and?
- 14 A. I do recall some police officers.
- 15 Q. You don't know how many?
- 16 A. No, ma'am.
- 17 Q. All right. You were escorted through the house?
- 18 A. There were policeman inside, and they just told us to
- 19 come inside and check the patients.
- 20 Q. Okay. Do you remember how many police officers there
- 21 were inside the house?
- 22 A. No, ma'am.
- 23 Q. Do you remember someone there taking pictures?
- 24 A. No. Not when -- I don't know.
- 25 Q. You don't remember?

1 A. I don't recall.

2 Q. Okay. Now, you say there were police inside the
3 house. Did they have you walk a certain way or did they
4 just tell you where the bodies were?

5 A. They told us where the bodies were?

6 Q. Okay. But they didn't have you walk one way versus
7 the other?

8 A. I don't think so.

9 Q. All right. Do you own New Balance shoes?

10 A. No. I was wearing my E.M.S. boots.

11 Q. Did you cover your shoe when you entered the house?

12 A. No, ma'am.

13 Q. Did anyone have their shoes covered?

14 A. I don't know.

15 Q. Do you know who the chief investigator is?

16 A. No, ma'am.

17 Q. There wasn't one person that you dealt with at the
18 crime scene?

19 A. No, ma'am.

20 Q. Okay. Thank you.

21 THE COURT: Re-direct, Ms. Munnerlyn.

22 REDIRECT EXAMINATION

23 BY MS. MUNNERLYN:

24 Q. You indicated that you were wearing your E.M.S.
25 boots?

1 A. Yes, ma'am.

2 Q. They are not in any way, shape or form a New Balance
3 tennis shoe?

4 A. No, ma'am.

5 Q. Okay. What size shoe do you wear?

6 A. I think about an eight and a half or nine.

7 MS. MUNNERLYN: I don't have any further questions,
8 Your Honor.

9 THE COURT: Recross?

10 MS. CRAYTON: No, Your Honor. Thank you.

11 THE COURT: All right. Thank you, sir. You may step
12 down.

13 MS. MUNNERLYN: May we approach, Your Honor?

14 THE COURT: Yes.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 COLLOQUY

19 THE COURT: All right, ladies and gentlemen, I've
20 been advised that the next witness in this case will be
21 somewhat longer than the witnesses that you have already
22 heard. And it would run us late in the afternoon. I have
23 told lawyers this on many occasions that I don't mind
24 making the lawyers work late, but I know that the jurors
25 have lives outside of this courtroom and things that they

1 have to tend to. So I am going to break for the afternoon
2 at that time.

3 What I would like to do, though, in order to expedite
4 this matter and move it along would be to start in the
5 morning at nine o'clock. If that doesn't cause anybody a
6 problem rather than 9:30. We'll make up the half hour
7 that we're not going to get to this afternoon. If that
8 causes anybody any major problems. All right, then, I'd
9 ask that you be in your jury room, please, tomorrow
10 morning at nine o'clock; that is in your jury room at
11 nine o'clock, and we'll be ready to try and start promptly
12 at that time.

13 Again, I will tell you over the evening recess do not
14 discuss this case with anyone. Do not allow anyone to
15 discuss it with you, and do not discuss it amongst
16 yourselves when you're reassembling there in the jury
17 room. You can talk to each other about anything you want
18 to talk about, but please, don't talk about this case
19 because it would be improper for you to discuss it at this
20 time.

21 With those admonitions, I'm going to excuse you now,
22 allow you to go to your homes and families, and have a
23 pleasant evening. Do not discuss the case with anyone
24 while you're away from the courthouse, and also do not
25 read any news stories or listen to any media broadcasts

1 concerning this matter. And get and good nights rest and
2 come back refreshed tomorrow. And we'll be ready to start
3 back tomorrow morning at nine o'clock. Thank you. You
4 may go with the bailiff.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 4:47 p.m.)

7 THE COURT: All right. Counsel, before I recess for
8 the afternoon I'd like to give a couple of minutes to give
9 the jury an opportunity to clear the premises before we
10 break.

11 All right, counsel, we'll be in recess until
12 nine o'clock tomorrow morning.

13 MS. MUNNERLYN: Thank you, Your Honor.

14 MS. CRAYTON: Thank you, Your Honor.

15 END OF TRANSCRIPT OF RECORD
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA :
COUNTY OF MARLBORO

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 General Sessions for Marlboro County, South Carolina, on the 18th day of October, 2010.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 29, 2010

[Handwritten signature]

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF MARLBORO</u>	)	2007-GS-34-1008
		2007-GS-34-0888
		2007-GS-34-0909

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ALLEN JOE GATHINGS	)	
<u>DEFENDANT</u>	)	

October 18-21, 2010
 Bennettsville, South Carolina
VOLUME NO. 02 OF 04

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE; and a jury.

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

ELIZABETH MUNNERLYN, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

JOHN HOLT, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

EMILY CRAYTON, PUBLIC DEFENDER
 Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

(WHEREUPON, State's Exhibit Nos. 2 THROUGH 144 were marked for identification only.)

MS. MUNNERLYN: Judge, those are the photos which we intend to introduce, State's Exhibits Two through 138, and I think the Defense is going to have a motion in regards to those. And the ones that are -- they told my that the ones that are horizontal -- excuse me, vertical, are the ones they have objection to.

THE COURT: All right. Then looking at them right quickly, Ms. Crayton, it appears that Two through 34, there are no problems with.

MS. CRAYTON: Yes, Your Honor.

THE COURT: And, all right, then. Thirty-five, there is an objection. And then 36 through 38, there is no problem. And 39, there is an objection. Forty, there is an objection. Forty-one, no objection. Forty-five.

MR. JONES: Judge, I think that's a 42. I couldn't tell. The next one in line is 43, so I'm assuming ---

THE COURT: Forty-two and 43, there are objections. Forty-four through 54, there are no objections. Actually, through 55, no objections. Fifty-six, is an objection. Fifty-seven through 63, no objection. Sixty-six -- 64, 65 and 66, there is an objection. Sixty-seven through 74, no objection. Seventy-five, there is an objection.

1 Seventy-six, no objection. Seventy-seven, no objection.
2 Seventy-eight, no objection. Seventy-nine, objection.
3 Eighty through 84, no objection. Eighty-five, objection.
4 Eighty-six through 93, no objection. Ninety-four,
5 objection. Ninety-five, no objection. Ninety-six,
6 objection. Ninety-seven through 119, no objection. There
7 is an objection to 120 and 121. No objection to 122
8 and -- through 124. There is an objection to 125. And
9 there is no objection to 126 through 138.

10 Based on that I'll gave these to the court reporter
11 which there are no objections, and they will be admit into
12 evidence without objection without further authentication.

13 (WHEREUPON, State's Exhibit Nos. 2 through 38, 41,
14 44, 45 through 55, 57 through 63, 67 through 74,
15 76-78, 80 through 84, 86 through 93, 95, 97 through
16 119, 122 through 124, 126 through 138 were admitted
17 into evidence.)

18 THE COURT: Counsel, let's address these by category.
19 Looking at the photographs and looking through them myself
20 I see -- I'm referring now to State's Number 35, State's
21 Number 120, State's Number 45, State's Number 40, State's
22 Number 39, and State's Number 85. All appear to be
23 photographs of the female victim in this case. While --
24 or in the position that she was found.

25 And I will let you take these, Ms. Crayton, and look

1 at them and tell me if these particular ones what your
2 objection is to those photographs, and then I'll allow the
3 State to tell me why they should be admissible.

4 MR. JONES: Judge, I'm going to address those. As to
5 all of them, and I'll do them all individually although
6 our argument as to each is basically the same, is there is
7 no relevant fact that these pictures could convey or could
8 be necessary to the trial that have not been either
9 published by another witness or by most of them.

10 In fact most of them have been covered by two
11 witnesses that spoke yesterday. I think the son and the
12 E.M.S. gentleman that testified both placed the female
13 victim in the hallway in the position that these pictures
14 depict.

15 Any scintilla of evidence relevant that they have,
16 Your Honor, I think would be greatly outweighed by the
17 prejudicial effect of looking at these photos which are
18 very graphic and very gruesome.

19 THE COURT: So your objection is that they're not
20 relevant and the prejudicial effect outweighs the
21 probative value?

22 MR. JONES: Yes, sir.

23 THE COURT: All right. Show them to Ms. Munnerlyn.
24 Let me hear from her.

25 MR. JONES: And can I do one thing, Judge? This -- I

1 think that's a 42 instead of a 45.

2 THE COURT: All right.

3 MR. JONES: Unless they were just out of order.

4 MS. MUNNERLYN: I think that's right. It looks like
5 a 42 to me.

6 THE COURT: All right. Make sure we know what we're
7 talking about, Ms. Munnerlyn. Read the numbers on the
8 back.

9 MS. MUNNERLYN: Okay. They are 35, 39, 40, 42, 85
10 and 120.

11 THE COURT: All right. The Defense objection to them
12 is that they're not relevant on any fact in issue. And
13 even if relevant the prejudicial effect outweighs the
14 probative value. All right. I'll hear from you.

15 MS. MUNNERLYN: Your Honor, we present these
16 photograph simply to support our case to show the
17 circumstances of the scene as it was found and the manner
18 of death. These only a few of the pictures which were
19 actually taken that show where she was located. They show
20 her injuries and they are not particularly close up.

21 One of these -- excuse me, Your Honor. 85 is not the
22 female victim. I need to hand that one back to you.
23 That's the male victim. The remaining photos are of the
24 female victim, but I think you know that the weapon is
25 not -- and just to support the manner of death and how

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1 these individuals died. And to show the scene as it was
2 found to support our case. It's our burden of proof, and
3 we have tried to leave out those. I think those right
4 there is the scene as we say he left it.

5 THE COURT: All right.

6 MS. MUNNERLYN: And, Your Honor, I would just point
7 out the case of Powers v. State of South Carolina which
8 addresses color photographs. This was a murder case as
9 well, and it indicates in this case that if the
10 photographs are corroborate testimony ---

11 THE COURT: Give me that again. Either you were
12 reading too fast or I can read it myself.

13 MS. MUNNERLYN: All right. The relevance and the
14 truality and the admissibility of photographs are
15 certainly within your sound discretion, and in this case
16 they were used to support the fact that they were -- did
17 show the scene and the circumstances of violent
18 characteristics of the individual defendant in committing
19 the crime in that particular case.

20 And I think that is the same as we are tried to
21 present them in this case.

22 THE COURT: All right. If you will hand it up,
23 please.

24 MS. MUNNERLYN: Okay. I don't have the first part of
25 it, Your Honor. I have the portion that -- where they are

1 talking about color photographs.

2 THE COURT: All right.

3 MR. JONES: Your Honor, I would refer to written
4 motion which has been handed up. I believe Paragraph Six.

5 THE COURT: I don't have a copy of any written
6 motion.

7 MR. JONES: I think it was filed, Your Honor. I'm
8 sorry. I'll give you my copy.

9 THE COURT: Counsel, I really don't see why this
10 couldn't have been handled yesterday afternoon when we had
11 time on our hands and the jury was not here. All right.
12 Counsel, got more needs to address. Forty-three, 56 and
13 125, Mr. Jones.

14 MR. JONES: Your Honor, our same argument.
15 Prejudicial effect outweighs any probative value. The
16 shock value to the jury. Some information provided by
17 other witnesses. One yesterday, Dr. Presnell, the
18 S.L.E.D. people who are going to be testifying, and the
19 officers who were on the scene that could testify. The
20 position of the body in the hallway, and in the bedroom.

21 MS. MUNNERLYN: Your Honor, I will just -- my
22 argument will be the same. They're just going to show the
23 circumstances of the scene and the manner of death, and I
24 think as this scene goes those pictures were not
25 particularly gruesome. They just show the blood splatter

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1 and some of the other parts of the body of the female
2 victim.

3 THE COURT: All right.

4 MS. MUNNERLYN: And I would just argue that we are
5 not, obviously, showing blown up photographs or anything.
6 We are trying to limit the amount of photos that we're
7 presenting.

8 THE COURT: All right. The next group is 64, 65, 66,
9 75, 79, 94, 96, and 85. That appear to be pictures of the
10 male victim.

11 MR. JONES: Again, Your Honor, exactly the same
12 argument, relevance and prejudicial effect.

13 MS. MUNNERLYN: And we would have the same argument,
14 Your Honor.

15 THE COURT: All right. All right. Counsel, I have
16 reviewed the photographs relevant to show facts in issue.
17 Even though there may or may not be testimony about these
18 they support the State's case and the State's theory of
19 the case as far as the homicide having occurred with a
20 baseball bat.

21 And the extent of the injuries would be a relevant
22 fact for -- to show how the injuries were caused by a
23 baseball bat. I have excluded those that I thought were
24 overly prejudicial, but in my view the ones I am getting
25 ready to admit are relevant and the prejudicial effect is

1 not outweighed by the probative value. The probative
2 value shows the scene. It shows the victim and the
3 injuries to the victims. And it shows the blood splatter
4 throughout the house and is relevant to all those issues.

5 Therefore, the following are admitted: State's
6 Number 121, State's Number 35, State's Number 39, State's
7 Number 40, State Number 43, State's Number 125, State's
8 Number 96, State Number 65, State's Number 64, and State's
9 Number 94.

10 (WHEREUPON, State's Exhibit Nos. 35, 39, 40, 43, 64,
11 65, 94, 96, 121, and 125 were admitted into
12 evidence.)

13 THE COURT: The following I do not see their either
14 cumulative or the probative outweighs -- I mean the
15 prejudicial effect outweighs the probative value. With
16 regard to Number 45, I think that's a 45. Forty-two is
17 excluded. 120 is excluded. Fifty-six is excluded at this
18 time. But if it is necessary for the proving of a
19 relevant fact come forward with it later, Ms. Munnerlyn.
20 That's the one that shows the female victim's feet, and I
21 don't see the relevance of that right now. If you connect
22 it up to something relevant.

23 MS. MUNNERLYN: That, Your Honor, that shows one of
24 her teeth.

25 THE COURT: All right. Well, when you get to that --

1 in that by facts raised and you want to raise that then
2 we'll -- we may. I will reconsider on that one. That is
3 Number 56. I've excluded 42 and 120. I'm also excluding
4 66 and 75. And at this time excluded the Number 85. This
5 is the photograph of the male victim's face. It,
6 obviously, was not taken in the position he was found but
7 was turned over and taken because he was found in a face
8 down position.

9 Again, I will reconsider if you wish to offer any of
10 these to some relevant issue but right now I believe in
11 all those cases the prejudicial effect outweighs the
12 probative value of those. That group will be excluded. I
13 put a paper clip on the ones that I have excluded so they
14 don't get mixed up and these are the ones that are
15 admitted.

16 All right. Anything else before we bring the jury.

17 MS. MUNNERLYN: No, Your Honor.

18 THE COURT: Bring the jury in, please.

19 (WHEREUPON, the jury panel enters the courtroom at
20 9:35 a.m.)

21 THE COURT: All right. Good morning, ladies and
22 gentlemen, thank you for your promptness in being back
23 here. And I apologize for keeping you waiting in the jury
24 room. One of my pet peeves is when I tell the jurors to
25 be back at a certain time and the Court is not ready for

1 the jury.

2 Something came up that I did not anticipate, and it
3 took us a while to deal with that issue. And I do
4 apologize for keeping you waiting in the jury room, but we
5 are now ready to go forward.

6 I do need to ask you over the evening recess if
7 anyone tried to talk with you or contact you or make any
8 attempt to approach you regarding this matter. I would
9 need to know about it now. Negative response, and that's
10 good. Thank you.

11 Also ask if anybody has read anything in the news
12 media, seen anything on television about this case. If so
13 I also needs to know that now. Again, negative response.
14 All right, we're ready to go forward. Ms. Munnerlyn, you
15 may call your next witness.

16 MS. MUNNERLYN: Thank you, Your Honor. John Lester.

17 JOHN LESTER, after being duly sworn, testified as
18 follows:

19 CLERK OF COURT: Please be seated and state your full
20 name.

21 THE WITNESS: John Lester.

22 DIRECT EXAMINATION

23 BY MS. MUNNERLYN:

24 Q. Officer Lester, where are you employed?

25 A. Clio Police Department.

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1 Q. How long have you been employed with the Clio Police
2 Department?

3 A. About eight years.

4 Q. Okay. And do you have any other law enforcement
5 experience?

6 A. Yes, ma'am, I worked at the Department of Corrections
7 at Evans for about eight years, and also with the McColl
8 Police Department for about three years.

9 Q. Okay. And do you recall back on June the 30th of
10 2007? Were you working that afternoon?

11 A. Yes, ma'am.

12 Q. Okay. And do you -- were you at any point called to
13 [REDACTED], Clio?

14 A. Yes, ma'am.

15 Q. Tell us what happened?

16 A. I was on South Main Street. Actually, operating
17 radar when Mr. Eddie Polston, he came to my vehicle and
18 told me that he couldn't get a response from his mother or
19 his brother. And I was right across the street from the
20 house, and we both went over there and proceeded to go
21 through the back door.

22 Q. Okay. So when you say 'he approached your vehicle'
23 you mean by foot? Where did he come from?

24 A. By foot. He walked over from the house.

25 Q. Okay. All right. So when he did this did you drive

1 or get out and walk over, do you remember?

2 A. I drove over.

3 Q. Okay. You were familiar with Ms. Locklear's house?

4 A. Yes, ma'am.

5 Q. Okay. And did you -- where did you -- did you enter
6 the house?

7 A. Yes, ma'am.

8 Q. From what door?

9 A. From the back door.

10 Q. Okay. And did anyone enter with you?

11 A. Eddie came behind me.

12 Q. Okay?

13 A. And I -- we went -- he was with me as we went from
14 the back door through the kitchen part and to what he told
15 me was his brother's room.

16 Q. Okay. Did he proceed you from that point?

17 A. He was stopped right there at the kitchen.

18 Q. Okay. And do you recall what time this was that he
19 came over to your vehicle and you went over to the house?

20 A. The time he came to my vehicle it was like shortly
21 before 3:00.

22 Q. Okay?

23 A. Because when I arrived at the house it was
24 approximately three o'clock.

25 Q. Okay. And so that -- but that was not dispatch time.

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1 The dispatch time after you went in to check the house?

2 A. When we went in and checked it out?

3 Q. So you go in through the back door through the
4 kitchen area, and where did you go from that point?

5 A. I went to Robbie's room. What I was told was
6 Robbie's room right off the kitchen. You have to go
7 through a hallway thought there, and it's Robbie's room.
8 That's where I went.

9 Q. What did you find in Robbie's room?

10 A. When -- well, the door was partially opened, and
11 while I was going towards it I seen, you know, items on
12 the floor. And even I seen a bit -- little bits of blood
13 on the floor. After I walked up more I seen his foot
14 sticking from behind the door.

15 Q. All right. Did you walk into the bedroom?

16 A. I walked -- I put one foot in and that's when I seen
17 his foot behind the door. And I stopped right there. I
18 called out to him and didn't get a response.

19 Q. Okay. I'm going to show you what's in evidence now
20 as State's Exhibits 94 and 96 and see if you recognize
21 those two photos?

22 A. I recognize the photos.

23 Q. Okay, you do. From where do you recognize those
24 photos?

25 A. That's the crime scene.

- 1 Q. Okay?
- 2 A. At South Main Street.
- 3 Q. Do they accurately reflect Robbie Polston as you
- 4 found him that day?
- 5 A. Yes, ma'am.
- 6 Q. Okay. So he was laying on his stomach?
- 7 A. On his stomach.
- 8 Q. Okay. with his legs protruding out from behind the
- 9 door?
- 10 A. From behind the door.
- 11 Q. And when you went in the door was it closed? Open?
- 12 A. I wasn't wide open. It was half and half.
- 13 Q. Okay. It was just pushed back some, right? But not
- 14 completely?
- 15 A. Right.
- 16 Q. And then once you saw him did you touch him? Touch
- 17 the body in any way?
- 18 A. No, ma'am.
- 19 Q. Okay. Could you tell whether or not he was alive at
- 20 that point?
- 21 A. Well, from the, you know, the blood I thought he
- 22 might would be deceased.
- 23 Q. Okay. But you did not touch him or touch his body?
- 24 A. I did not touch him.
- 25 Q. Did you touch anything else in the room?

1 A. No.

2 Q. Did you go in the -- in any further in the room?

3 A. No.

4 Q. So what did you do from that point? Where did you
5 go?

6 A. When I turned around to go back out so I looked to my
7 left and then I seen Ms. Loyce laying at the end of the
8 hallway.

9 Q. And that was towards the front of the house?

10 A. That was towards the front. Yeah.

11 Q. And did you approach her?

12 A. I approached halfway down the hall, shined my
13 flashlight on her and I called out to her also.

14 Q. Any response?

15 A. No.

16 Q. Okay. I'm going to show you what's already in
17 evidence now as State's Exhibit 40 and 43 and see if you
18 recognize what's in those two photos?

19 A. Yes, ma'am.

20 Q. Okay. From where do you recognize those?

21 A. From [REDACTED].

22 Q. Okay. And do they accurately reflect the scene as
23 you found them that day relative to Ms. Loyce Locklear?

24 A. Yes, ma'am.

25 Q. Okay. And so she was laying on her back?

- 1 A. She was laying on her back.
- 2 Q. In the hallway?
- 3 A. Um hum.
- 4 Q. And did you approach her?
- 5 A. Yes.
- 6 Q. Okay. Did you touch her body?
- 7 A. No, ma'am.
- 8 Q. Okay. And did you move anything around her?
- 9 A. No, ma'am.
- 10 Q. Okay. And did you know at the point whether or not
- 11 she was alive?
- 12 A. Well, from looking at the big pool of blood by her I
- 13 thought she might have been dead.
- 14 Q. Okay. What did you do at that point?
- 15 A. At that point I turned around. Me and Mr. Polston
- 16 went outside. I then called Chief Thomas and then I began
- 17 to rope off the crime scene with yellow tape.
- 18 Q. Okay. As you were exiting did you remember how you
- 19 actually went out of the house?
- 20 A. Yes, I came out the same way I came in.
- 21 Q. You came out the same way you came in?
- 22 A. Yes, sir.
- 23 Q. Did you step in anything that you could see on the
- 24 floor?
- 25 A. No, ma'am. At that point I was very careful because

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1 I knew what I had.

2 Q. Okay?

3 A. To preserve anything, you know. Not to disrupt
4 anything in the house.

5 Q. Okay. Do you remember what shoes you were wearing on
6 that day?

7 A. Um hum.

8 Q. What was that?

9 A. I have some black policeman boots I call them.

10 Q. Okay. Are they similar to the ones you're wearing
11 today?

12 A. Um hum.

13 Q. And if you could, please, show the jury what you're
14 wearing today?

15 A. (Witness shows jury shoes.)

16 Q. All right. And what size shoe do you wear?

17 A. Ten and a half.

18 Q. So you were not wearing New Balance tennis shoes on
19 that day?

20 A. No, ma'am.

21 Q. And do you proceed out and tape off the entire house?

22 A. I taped off the parameter of the house as much as I
23 could; that meaning all the property and in the back also.

24 THE COURT: Counsel, excuse me just a minute. Come
25 up, please.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 BY MS. MUNNERLYN:

5 Q. All right. I'm going to show you what's already in
6 evidence now as State's Exhibits Two, Four, Five, Six,
7 Seven, Eight, Nine, Ten, 11, 12 and 13 and see if you
8 recognize what's in these photographs.

9 A. Yes, ma'am.

10 Q. Okay. Where do you recognize these from?

11 A. [REDACTED].

12 Q. Do they accurately reflect the scene as you taped it
13 off that day; that afternoon?

14 A. They do.

15 Q. Okay. And once you had the crime scene taped around
16 the perimeter of the house can you tell us who entered the
17 home after you and Mr. Polston?

18 A. When I made a call for rescue I made a call to
19 rescue. Rescue arrived -- well, first, Chief Thomas, he
20 arrived first and he went in.

21 Q. That's Chief Thomas of the Clio Police Department?

22 A. Yes. And then rescue arrived and rescue personnel,
23 Jerry Nolan and.

24 Q. The E.M.S. personnel?

25 A. It was E.M.S. personnel, and I can't think of his

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1 name. I got it wrote down somewhere, and Deputy Jeffery
2 Locklear.

3 Q. Deputy Jeffery Locklear also entered?

4 A. Yes.

5 Q. Did any of those individuals move anything or touch
6 anything in the house that you were aware of.

7 A. No, ma'am, not to my knowledge.

8 Q. Nothing was disturbed as far as you know?

9 A. No, ma'am.

10 Q. Were these individuals, the three E.M.S. individuals
11 and Deputy Locklear, what type of shoes were they wearing?

12 A. The black policeman boots.

13 Q. Okay. All right. And so none of them had on New
14 Balance tennis shoes?

15 A. No, ma'am. Not to my knowledge. I've seen what they
16 was wearing, their shoes. All of them were wearing black
17 policeman boots at that time.

18 Q. All right. And what -- did you take any action as
19 far as processing the crime scene, you and Chief Thomas?
20 Once you spoke with him did y'all take any action
21 regarding the crime scene itself?

22 A. After I spoke with Chief Thomas arrived. He called
23 S.L.E.D, the Crime Scene Unit and.

24 Q. And did they come to process the crime scene?

25 A. And we requested they come process the crime scene.

1 Q. Did you later obtain a search warrant for the
2 residence?

3 A. Yes, ma'am.

4 Q. And that inventory was done reflecting everything
5 that was taken from the home?

6 A. Right.

7 Q. But you did not actually execute the search warrant.
8 Karl Kenley actually removed the evidence items?

9 A. Exactly.

10 Q. Did you remove any items of evidence from that home
11 that day?

12 A. No, ma'am.

13 Q. Okay. And this home at [REDACTED], you've
14 already testified is in Clio?

15 A. Yes, ma'am.

16 Q. And that's within Marlboro County; is that correct?

17 A. Yes, ma'am.

18 Q. I don't have any further questions. Answer any
19 questions that Ms. Crayton has?

20 CROSS-EXAMINATION

21 BY MS. CRAYTON:

22 Q. So you were the first police law enforcement to
23 arrive on the scene?

24 A. Yes, ma'am.

25 Q. Okay. And were you the chief investigating officer

1 or the lead detective on this case?

2 A. I was the first responder.

3 Q. You were the first responder. What would you call
4 yourself? Who was the investigating officer?

5 A. Myself and Glenn McLellan with State Law Enforcement
6 Division.

7 Q. So Chief Thomas was not?

8 A. No.

9 Q. Okay. All right. And you signed the incident
10 report?

11 A. Yes.

12 Q. Is that correct? Okay. So, Chief Thomas, was he
13 involved in the investigation at all?

14 A. He called in S.L.E.D. Crime Scene Unit.

15 Q. And there were two of you were there, and you said
16 also Jeffery Locklear?

17 A. Jeffery Locklear from the Sheriff's Department.

18 Q. He's with Marlboro County?

19 A. Marlboro County Sheriff's Department.

20 Q. The three of y'all arrived on the scene before the --
21 prior to S.L.E.D's arrival?

22 A. Um hum.

23 Q. And who was the officer in charge at that point?

24 A. I was.

25 Q. You were?

1 A. Um hum.

2 Q. Why was the Chief -- Chief Thomas wasn't the police
3 chief of the police. Why was he not?

4 A. I arrived there first and he corded off the crime
5 scene. And I'm in charge of the crime scene. When I
6 arrived first I'm responsible for who goes in there. Who
7 is not to go in there.

8 Q. Was he your boss at that point?

9 A. Who?

10 Q. Chief Thomas?

11 A. Chief Thomas, yes.

12 Q. He was, okay. But you were in charge of the crime
13 scene?

14 A. Right.

15 Q. All right. And you roped off the crime scene?

16 A. Yes.

17 Q. And I'm assuming that's a large area. You roped off
18 the entire house?

19 A. Yes.

20 Q. And did you take a list of how many people entered
21 the house at that point?

22 A. Um hum.

23 Q. And how many people entered the house?

24 A. There was Chief Thomas, Jerry Nolan, one of the
25 E.M.S. workers. I can't remember his name.

1 Q. You didn't write a list of who entered the house?

2 A. Write their names?

3 Q. Yeah, did you write an official list of who entered
4 the house? Entered the crime scene?

5 A. Yeah, I got one wrote down. I got a list wrote down.

6 Q. You're not sure who the E.M.S. worker was?

7 A. I think it was. I don't know his name. I don't know
8 his name, but it was one -- it was a County.

9 Q. Was it one emergency worker or two?

10 A. It was Jerry Nolan. Two. Jerry Nolan and the E.M.S.
11 worker.

12 Q. Okay. One E.M.S. worker?

13 A. And Jeffery Locklear.

14 Q. And Jeffery Locklear. So when you entered the house
15 in response -- Mr. Eddie Polston gets you to enter. You
16 entered the property. Explain to me how you entered. You
17 entered through the kitchen?

18 A. Yes.

19 Q. And then where did you go from the kitchen?

20 A. I went through the kitchen and I took a left.

21 Q. Okay. You took a left?

22 A. And I went straight and that takes you through a
23 hallway straight through a bedroom.

24 Q. And that was Robbie's bedroom; is that what you're
25 saying?

1 A. That's what I saw.

2 Q. And then you say you looked to the right and you saw
3 Ms. Locklear?

4 A. When I turned around from out the room I coming back
5 out of Robbie's room and I looked to my left and I seen her
6 down the hallway.

7 Q. All right. And you didn't touch either body?

8 A. No, ma'am.

9 Q. Okay. Did you take pictures of the crime scene?

10 A. No, I didn't.

11 Q. You did not, okay. Before S.L.E.D. arrived did
12 anybody take any pictures of the crime scene?

13 A. No, ma'am.

14 Q. Did you dust the house for fingerprints?

15 A. No, ma'am.

16 Q. Did any officer dust the house for fingerprints?

17 A. No, ma'am.

18 Q. When you entered Robbie's room did you see a baseball
19 bat anywhere?

20 A. No, ma'am.

21 Q. Okay. All right. Did you happen to attend the
22 autopsy of Ms. Locklear and Mr. Polston?

23 A. No.

24 Q. Okay.

25 MS. CRAYTON: Court indulgence, Your Honor?

1 THE COURT: Yes, ma'am.

2 MS. CRAYTON: Thank you.

3 THE COURT: Redirect.

4 MS. MUNNERLYN: Just one question, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q. Officer Lester, when you called S.L.E.D. in did you
8 take any further action yourself as far as collecting
9 evidence or dusting for fingerprints at the scene?

10 A. No, ma'am.

11 Q. Do you recall who did that?

12 A. Are you talking about with S.L.E.D. Crime Scene Unit?

13 Q. Yes?

14 A. Yes, it was Aaron.

15 Q. It was the S.L.E.D. agent from the Crime Scene Unit?

16 A. It was the S.L.E.D. agent, yes. I got his name wrote
17 down.

18 Q. Okay. All right.

19 MS. MUNNERLYN: I don't have any further questions.

20 THE COURT: Redirect. I mean recross.

21 MS. CRAYTON: Your Honor, no thank you.

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

23 MS. MUNNERLYN: Pearlie Thomas.

24 PEARLIE THOMAS, after being duly sworn, testified as
25 follows:

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1 CLERK OF COURT: Please be seated and state your full
2 name.

3 THE WITNESS: Pearlie Thomas.

4 DIRECT EXAMINATION

5 BY MS. MUNNERLYN:

6 Q. Where are you employed?

7 A. Clio Police Department.

8 Q. You are presently the chief.

9 A. Correct.

10 Q. And now tell us back on June 30th of 2007 were you
11 actually employed with the Clio Police Department?

12 A. I was not.

13 Q. Okay. Tell us what was going on at that point?

14 A. Tell you what was going on that day. I had actually
15 been retired -- been retired one day. I got a call back
16 out by Sergeant Lester telling me something had happened.

17 Q. Okay. And it was a short period of retirement?

18 A. Right.

19 Q. How long were you out before you returned to the
20 Chief of Police position?

21 A. Fifteen days.

22 Q. And so Officer Lester was responding to this crime
23 scene at [REDACTED]?

24 A. Right.

25 Q. At his request you came out?

1 A. Right.

2 Q. And but did you actually do anything at that crime
3 scene?

4 A. I actually went -- so I got -- I made sure the crime
5 scene was roped off and I contacted S.L.E.D -- contacted
6 the Sheriff to contact S.L.E.D.

7 Q. All you did was contact somebody to call S.L.E.D. to
8 come?

9 A. Right.

10 Q. This was after you talked to John Lester?

11 A. Right.

12 Q. And do you recall entering the house?

13 A. I did.

14 Q. And did you see the two victims?

15 A. I did.

16 Q. Okay. And did you touch either of those victims?

17 A. No, I did not.

18 Q. Did you touch anything else in the house?

19 A. No, I did not.

20 Q. Okay. I'm going to show you what's already in
21 evidence now as State's Exhibits 35, and 39 and 96 and 64
22 and see if you recognize what's in these photos. Don't
23 tell me -- just tell me whether or not you recognize
24 what's in these photos?

25 A. Well, yes, I do.

1 Q. Okay. Where do you recognize those photographs?

2 A. From the house.

3 Q. Okay. Do they accurately depict the crime scene as
4 you found it that afternoon?

5 A. Yes, they do.

6 Q. And you have indicated that you did not touch either
7 of the bodies?

8 A. No, I did not.

9 Q. Are the bodies laying as they were when you saw them
10 that afternoon?

11 A. They are.

12 Q. Okay. So the male victim was on his stomach. The
13 female victim was on her back?

14 A. Right.

15 Q. She was in the hallway, and he was in his living
16 room?

17 A. Right.

18 Q. And did you touch or disturb anything else within the
19 house?

20 A. No, I did not.

21 Q. Okay. And what size shoe do you wear?

22 A. Ten.

23 Q. Okay. And were you -- what kind of shoe were you
24 wearing that day?

25 A. Boots.

1 Q. Okay. So you were not wearing New Balance tennis
2 shoes?

3 A. Oh, no.

4 Q. While you were there and before S.L.E.D. arrived did
5 anyone disturb the crime scene, the interior of the home
6 or approach the bodies that you are aware of?

7 A. No one did.

8 Q. But you were not actually in charge of the crime
9 scene. Officer Lester was?

10 A. Right.

11 Q. I don't have any further questions. Will you answer
12 any questions that Ms. Crayton may have.

13 THE COURT: Any cross, Ms. Crayton?

14 MS. CRAYTON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. CRAYTON:

17 Q. Chief Thomas?

18 A. Right.

19 Q. So if I understand correctly you were not chief of
20 the police at the time of this incident?

21 A. Right.

22 Q. Okay. So you were retired from the force?

23 A. Right. I was on -- like out for 15 days and come
24 back.

25 Q. Okay. And John Lester called you and asked you to

- 1 come to the crime scene?
- 2 A. Right.
- 3 Q. And you did so?
- 4 A. Right.
- 5 Q. And you entered the crime scene?
- 6 A. Right.
- 7 Q. And you went inside the house?
- 8 A. Right.
- 9 Q. Where did you go through the house?
- 10 A. Came in the back door. Went to the bedroom where her
- 11 son was and down the hallway where the lady was and came
- 12 back out.
- 13 Q. And came back out the same way you went in?
- 14 A. Yes.
- 15 Q. All right. And if you had been in charge of the
- 16 crime scene or a crime scene would you allow civilians to
- 17 walk in your crime scene?
- 18 A. Depends. Like a squad member or something.
- 19 Q. Just -- how about me? Would you let me walk in
- 20 through your crime scene?
- 21 A. No.
- 22 Q. And you had no authority at that point? No
- 23 authority?
- 24 A. Right.
- 25 Q. So why did you sign the incident report?

1 A. Because I was on the crime scene. I mean I was
2 still -- I was in limbo, but I was still with the Clio
3 Police Department.

4 Q. Were you getting paid?

5 A. Yeah, I was getting paid?

6 Q. You were getting paid retirement?

7 A. I was only out for one day.

8 Q. I understand that, but you were in inactive
9 retirement at this point?

10 A. I guess you can say that.

11 Q. All right. And why did you make the call to S.L.E.D.
12 instead of John Lester who was in charge of the crime
13 scene?

14 A. I guess I was still acting chief.

15 Q. You were still acting like chief?

16 A. That's the reason he called me. I was only out one
17 day.

18 Q. Okay. And what was -- did you have authority to call
19 S.L.E.D.?

20 A. I hadn't thought about that.

21 Q. So you're not sure if you had authority to call
22 S.L.E.D. or not?

23 A. I guess anybody can call S.L.E.D.

24 Q. Did you have authority to sign an incident report?

25 A. Maybe not.

1 Q. Maybe not. So you're not sure that you had the
2 authority to walk through that house or not because it was
3 a crime scene?

4 A. Yeah. Pretty much.

5 Q. Okay. You were the second officer to arrive; that's
6 correct?

7 A. Right.

8 Q. And do you know how many people walked through the
9 crime scene besides yourself after you arrived?

10 A. As far as I know you mean the officer or just?

11 Q. Anyone?

12 A. Squad members.

13 Q. Was that one squad member or two or three?

14 A. I think it was two squad members and a deputy
15 sheriff.

16 Q. Okay. When you say, 'squad member' what do you mean?

17 A. Two members.

18 Q. Is that the rescue squad?

19 A. Yeah, rescue.

20 Q. So you think that three people walked through the
21 house prior to S.L.E.D's arrival?

22 A. Yeah.

23 Q. And yourself?

24 A. Yeah.

25 Q. Okay.

- 1 A. And I think the victim's son was in there.
- 2 Q. That was prior to your arrival?
- 3 A. Yeah, that was before I got there.
- 4 Q. Okay. And was anyone taking pictures of the crime
- 5 scene when you arrived?
- 6 A. No. S.L.E.D. took the pictures.
- 7 Q. Were you there when S.L.E.D. arrived?
- 8 A. Yes.
- 9 Q. Did you dust the house for fingerprints?
- 10 A. Did I?
- 11 Q. Did you?
- 12 A. No, I didn't.
- 13 Q. Did you direct anyone to dust the house for
- 14 fingerprints?
- 15 A. No. Whenever they got there they took over the crime
- 16 scene.
- 17 Q. Okay. Did you make calls to the Horry Police
- 18 Department in regards to the vehicle?
- 19 A. No, I did not.
- 20 Q. You never called the Horry ---
- 21 A. No.
- 22 Q. You did not call on behalf of the family?
- 23 A. No.
- 24 Q. Okay. Do you know what happened to the car that was
- 25 involved?

Pearlie Thomas - Redirect by Ms. Munnerlyn

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1 A. The car winded up in Horry County.

2 Q. As far as you know it's still in Horry County?

3 A. As far as I know.

4 Q. Okay. Did you attend the autopsy of Ms. Locklear and
5 Mr. Polston?

6 A. No, I did not.

7 Q. Okay. When you walked through the crime scene and
8 you walked into Ms. Polston's room did you see a baseball
9 bat?

10 A. Didn't see it.

11 Q. Okay.

12 MS. CRAYTON: Court's indulgence, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. CRAYTON: No further questions.

15 THE COURT: Redirect.

16 MS. MUNNERLYN: Yes, sir, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MUNNERLYN:

19 Q. Chief Thomas, you indicated that you were out. You
20 had a brief period of retirement?

21 A. Right.

22 Q. But there were -- was that part of a plan to come
23 back?

24 A. Yeah.

25 Q. You are currently in a working retirement?

1 A. Yeah.

2 Q. Okay. You still are in retirement. You come back
3 and now work as Chief of Police?

4 A. That was under under the stipulation that I would be
5 back. I have to take a 15 day break and come back.

6 Q. Okay. You were just there to provide advice and
7 assistance?

8 A. Right.

9 MS. MUNNERLYN: I don't have any further questions.

10 THE COURT: Any recross, Ms. Crayton.

11 MS. CRAYTON: Yes. Thank you, Your Honor.

12 RECROSS-EXAMINATION

13 BY MS. CRAYTON:

14 Q. But at the time, on June 30th, you were retired?

15 A. Right.

16 Q. And you did not, as you know, have authority to walk
17 through that crime scene that you know of?

18 A. It gets -- I'm not sure.

19 Q. Thank you.

20 THE COURT: All right. Thank you. You may step
21 down. Call your next witness, Ms. Munnerlyn.

22 MS. MUNNERLYN: Joy Stubbs.

23 JOY STUBBS, after being duly sworn, testified as
24 follows:

25 CLERK OF COURT: Be seated and state your full name

1 for the Court.

2 THE WITNESS: Joy Stubbs.

3 DIRECT EXAMINATION

4 BY MS. MUNNERLYN:

5 Q. Where are you employed?

6 A. In the Marlboro County Clerk's Office.

7 Q. And how long have you been employed there?

8 A. Right at 25 years.

9 Q. Okay. I'm going to show you what's been marked as
10 State's Exhibit -- hold on. 139, 140 and 141. See if
11 you -- just yes or no. Do you recognize those documents?

12 A. Yes, ma'am.

13 Q. Okay. And from where do you recognize those
14 documents?

15 A. They're recorded in our office.

16 Q. Okay. Are those in fact certified copies of the
17 disposition involving this particular Defendant, Allen Joe
18 Gathings?

19 A. Yes, ma'am.

20 Q. And let's talk first about 139. Can you tell us what
21 is included in that exhibit?

22 A. It is an arrest warrant and an indictment and a
23 sentencing sheet.

24 Q. Okay. That is for the charge of grand larceny, for
25 incident date April 18th of 2005?

1 A. Yes, ma'am.

2 Q. And let me ask you then about State's Exhibit 140.
3 And tell me if you can what is included in that exhibit?

4 A. That's an arrest warrant and an indictment and a
5 sentencing sheet.

6 THE COURT: Counsel, just to clarify, these are
7 admitted in evidence as certified copies without
8 objection, Ms. Crayton?

9 MS. CRAYTON: Yes, Your Honor.

10 THE COURT: But subject to previous objection made.

11 MS. CRAYTON: Yes.

12 BY MS. MUNNERLYN:

13 Q. All right. Those are related to this particular
14 defendant related to an incident date of April 15th of
15 2005.

16 A. Yes, ma'am.

17 Q. And those are representing the charge of robbery?

18 A. Yes, ma'am.

19 Q. Okay. And then also State's Exhibit 144. Tell us
20 what's included in that?

21 A. It's an arrest warrant, an indictment and a
22 sentencing sheet.

23 Q. Okay. Those again are for this particular defendant,
24 for Joe Gathings, of April 18th of 2005?

25 A. Yes, ma'am.

1 Q. And the charge on those are assault and battery?

2 A. Yep.

3 Q. Okay.

4 MS. MUNNERLYN: I don't have any further questions
5 for this witness then, Your Honor.

6 THE COURT: Any questions?

7 MS. CRAYTON: No questions. Thank you.

8 THE COURT: Thank you, Ms. Stubbs. You may step
9 down. Let the record reflect that State's exhibits were
10 admitted without objection, a certified copy of the
11 record. The objection of the defendant under 404(B) and
12 State v. Lyle is bring preserved.

13 (WHEREUPON, State's Exhibit Nos. 139, 140 and 141
14 were admitted into evidence.)

15 MS. MUNNERLYN: Rebecca Dew.

16 REBECCA DEW, after being duly sworn, testified
17 as follows:

18 CLERK OF COURT: Please be seated and state your full
19 name.

20 THE WITNESS: Rebecca Dew.

21 DIRECT EXAMINATION

22 BY MS. MUNNERLYN:

23 Q. Rebecca, where do you live?

24 A. Clio.

25 Q. Okay. And do you know or did you know Robbie Polston

1 and Loyce Locklear, his mother?

2 A. Yes, ma'am.

3 Q. Okay. I'm going to ask if you can scoot up a little
4 bit to that microphone so that everybody can hear you real
5 well. Answer yes or no rather than uh hum or huh hum.
6 she's taking down everything that you have to say?

7 A. Okay.

8 Q. How long have you -- had you known Robbie?

9 A. For about two years.

10 Q. Okay. And did you know the Defendant, Joe Gathings?

11 A. I knew of him, but I did not know him like that.

12 Q. You weren't friendly with him?

13 A. No, ma'am.

14 Q. You didn't hang out with him or nothing?

15 A. No, ma'am.

16 Q. Let's go back to 2007. Back on June the 29th, that
17 Friday. Do you remember having some contact with Robbie
18 on that day?

19 A. Yes, ma'am. We talked that afternoon and later on,
20 but that was the last time I heard from him.

21 Q. Okay. So that was the actually last day that you
22 spoke with him?

23 A. Yes, ma'am.

24 Q. And you talked with him by phone on that day a number
25 of times, actually, didn't you?

1 A. Yes, ma'am.

2 Q. Okay. And do you remember what your phone number was
3 at that time?

4 A. Yes, ma'am, 862-7237.

5 Q. That was your cell phone number?

6 A. Yes, ma'am.

7 Q. Okay. And what about your home phone number. What
8 was that?

9 A. (843) 586-7495.

10 Q. What was the reason that you talked with Robbie that
11 evening?

12 A. We always talked on the phone.

13 Q. Okay. Was there any particular thing that he called
14 you about that evening though?

15 A. Yes, ma'am. He called me one time and asked me to
16 call ---

17 MR. JONES: Objection. Hearsay.

18 BY MS. MUNNERLYN:

19 Q. As a result, and you can't tell us what he said, but
20 as a result of his phone call to you what did you do?

21 A. After he called me?

22 Q. Yes.

23 A. I called Mr. Joe Gathings.

24 Q. You called him on his cell phone?

25 A. Yes, ma'am.

1 Q. Okay. And were you able to locate him?

2 A. No, ma'am.

3 Q. Okay. So he did not answer his phone when you tried
4 to call?

5 A. Nothing. Not that afternoon.

6 Q. Okay. Did you actually go to the house that day, to
7 Robbie's house?

8 A. No, ma'am.

9 Q. Okay.

10 A. He asked me to, but I didn't go.

11 Q. Okay. And then later that night did you have some
12 more phone calls from Robbie?

13 A. Yes, ma'am, I had missed a call from Robbie's cell
14 phone.

15 Q. Okay. Now, Robbie's cell phone number at that time
16 was 862-9292, correct?

17 A. Yes, ma'am.

18 Q. And that is the phone bill. This is State's Exhibit
19 One. This is the phone bill for his cell number, correct?

20 A. Yes, ma'am.

21 Q. Okay, now, you said that evening about what time was
22 it that you had missed a phone call from Robbie's cell
23 phone?

24 A. The missed call was later on that night. It was
25 around 9:00 or 10:00. About 10:00, I think.

1 Q. Okay. I want to ask you to look at the phone bill on
2 6/29 at about ten o'clock. See if you see your phone
3 number on there?

4 A. On 6/29?

5 Q. Yes, at 10:00 p.m.?

6 A. Yes, ma'am.

7 Q. How many times do you see his phone number on there?

8 A. Four times.

9 Q. Four in a row?

10 A. Yes, ma'am.

11 Q. And that's between 10:12 and 10:17?

12 A. Yes, ma'am.

13 Q. But you only -- you indicated that you got three
14 missed phone calls on your phone?

15 A. Yes, ma'am.

16 Q. And then did you have a conversation or did you talk
17 was somebody on that phone, that 862-9292, which was
18 Robbie's cell phone?

19 A. Yes, ma'am.

20 Q. And who did you talk to?

21 A. Mr. Joe Gathings.

22 Q. And was there anything odd about that?

23 A. No, ma'am. Well, he don't never answer Robbie's
24 phone.

25 Q. He doesn't never answer Robbie's phone?

1 A. No, ma'am. Robbie keeps his phone on him.

2 Q. When you talked to Robbie's cell phone that night
3 after the third missed call it was Joe Gathings not Robbie
4 that you talked to?

5 A. Yes, ma'am.

6 Q. And what was the extent of your conversation with Joe
7 Gathings that night?

8 A. I had asked did somebody call my phone. He said,
9 "Yeah. Robbie he's not here. I'll tell him to call you
10 back."

11 Q. And did he ask you about something else?

12 A. Yes, ma'am. He asked me did I know anybody who sold
13 crack.

14 Q. And what was your response to that?

15 A. I told him, no, not at this time.

16 Q. Okay. And had he asked you that before?

17 A. No, ma'am, not right out like that he didn't.

18 Q. Okay. Did you know that Joe used crack?

19 A. Robbie would mention it, but he wouldn't come out
20 with it.

21 Q. All right. So that was what happened after you asked
22 you if you knew where he could buy crack. Did you talk
23 any more?

24 A. No, ma'am.

25 Q. And so did you call his number any more after that?

1 A. Yes, ma'am. I called it that morning and that
2 afternoon.

3 Q. Okay. What morning and what afternoon?

4 A. I called it Saturday morning.

5 Q. Okay. The next day?

6 A. Yes, ma'am, I called Robbie.

7 Q. You called Robbie?

8 A. Yes, ma'am.

9 Q. Were you able to reach him?

10 A. No, ma'am.

11 Q. Did you get any answer?

12 A. No, ma'am.

13 Q. So nobody answered when you called on June the 30th?

14 A. No, ma'am.

15 Q. And was this unusual?

16 A. Yes, ma'am cause Robbie would answer his phone.

17 Q. And, you, what was your relationship with Robbie?

18 A. A friend. I knew him from another friend.

19 Q. Okay. And you said y'all had been friends for about
20 two years?

21 A. Yes, ma'am.

22 Q. All right. Now, over to Joe's cell phone. There is
23 also -- referring you again to State's Exhibit One. There
24 also -- there exhibit also includes Joe Gathings' cell
25 phone, correct?

1 A. Yes, ma'am.

2 Q. Okay. And I'm going to refer you again to 6/29, and
3 you in fact called Joe's cell phone on the Friday, the
4 29th as well, didn't you?

5 A. Yes, ma'am.

6 Q. Okay. And that was why did called his cell phone?

7 A. Robbie was kind to me.

8 Q. Okay. All right and you called it on two different
9 times?

10 A. Yes, ma'am.

11 Q. One at 5:42 in the afternoon, and again at 5:42 in
12 the afternoon?

13 A. Yes, ma'am.

14 Q. When you called his phone on those occasions did you
15 talk to him?

16 A. No, he didn't answer.

17 Q. Okay. Do you know what the relationship was between
18 Robbie Polston and the Defendant, Joe Gathings?

19 A. From my knowledge?

20 Q. Yeah?

21 A. They had a relationship.

22 Q. What do you mean that they had a relationship?

23 A. They was together.

24 Q. Give me more information?

25 A. Lovers.

1 Q. Okay. So it was a romantic-type relationship? It
2 was a sexual relationship?

3 A. Yes, ma'am, from what Robbie told me.

4 Q. Do you know if his mother or family members were
5 aware of that relationship?

6 A. No, ma'am, I don't think they was. Robbie kept it a
7 secret.

8 Q. All right. I don't have any further questions.
9 Answer any questions that Mr. Jones may have.

10 CROSS-EXAMINATION

11 BY MR. JONES:

12 Q. Ms. Dew, are you a crack dealer?

13 A. No.

14 Q. Why would you have a conversation about crack on your
15 phone late at night?

16 A. I've been there longer.

17 Q. Why would he call you about crack?

18 A. I don't know.

19 Q. Just out of the blue this man -- you said you don't
20 even know why he called you and he says, "Hi. How about
21 some crack?"

22 A. I don't know.

23 Q. It's strange isn't it?

24 A. Yes, sir. He's strange.

25 Q. This is the man you don't know you described; is that

1 correct? Is that that gentlemen?

2 A. Yes, sir.

3 Q. Okay. Your phone or you knew Robbie you said about
4 two years prior to his death?

5 A. Yes, sir, about two years.

6 Q. But you didn't know Mr. Gathings?

7 A. No, sir.

8 Q. But you have an opinion and you have a description of
9 him, but you don't know the man; is that correct?

10 A. Yes, sir.

11 Q. When you got called that Friday night about 10:00 you
12 got two or three missed calls -- three or four missed
13 calls?

14 A. Yes, sir.

15 Q. You called the number back?

16 A. Well, I called back or the number called me back and
17 I answered it.

18 Q. Let's look at the telephone bill. You tell me who
19 called. You can find that 29th date you were just looking
20 at, ma'am?

21 A. Okay. It says at 10:17 p.m.

22 Q. What does it say? Who made the call?

23 A. Where do I look for that at? Call to me?

24 Q. All right. Did I -- right here. You say you
25 returned a call?

1 A. I don't recall if I returned the call or it called me
2 back and I picked up.

3 Q. All right?

4 A. But all I know ---

5 Q. Go ahead?

6 A. It was Joe Gathings on the other end of the phone.

7 Q. The conversation went, "Hello. This is Joe Gathings.
8 I need some crack?"

9 A. No, sir.

10 Q. I didn't think so. But you have no idea why he's
11 calling you about crack?

12 A. No, sir.

13 Q. You smoke crack?

14 A. No, sir.

15 Q. Then why would somebody call you and ask for crack?

16 A. I have no idea.

17 Q. Thank you. That's all I have.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. MUNNERLYN:

21 Q. Did you give a written statement, Rebecca?

22 A. Yes, ma'am.

23 Q. This appears to be your written statement?

24 A. Yes, ma'am.

25 Q. And you actually wrote that statement?

1 A. Yes, ma'am.

2 Q. And in your own handwriting?

3 A. Yes, ma'am.

4 Q. And you actually gave this shortly after it was -- on
5 July 2nd of 2007, correct?

6 A. Yes, ma'am.

7 Q. And you stated in that phone call ---

8 MR. JONES: Your Honor, is that a question?

9 THE COURT: Sustained. Statement not in evidence.

10 MS. MUNNERLYN: Okay. Your Honor, then I would like
11 to have this marked.

12 MR. JONES: Your Honor, I would object.

13 THE COURT: Objection is the same.

14 MS. MUNNERLYN: Your Honor, I would like to approach
15 the witness and let her review her statement to answer any
16 of my questions.

17 BY MS. MUNNERLYN:

18 Q. Review it and then I'll ask you a question, okay.

19 And when Mr. Jones asked you about when you talked to Joe
20 on that phone why did he say he was calling you about the
21 crack?

22 A. Cause he said he didn't know anybody, and I knew
23 everything from Joe.

24 Q. All right. And did he say anything else?

25 A. Robbie wasn't letting him get the car.

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1 Q. Okay.

2 MS. MUNNERLYN: I don't have any further questions
3 then, Your Honor.

4 THE COURT: Redirect, Mr. Jones.

5 MR. JONES: Yes, sir.

6 BY MR. JONES:

7 Q. You know everybody in Clio?

8 A. That's his words.

9 Q. Who are the crack dealers in Clio?

10 A. I have no idea.

11 Q. Is it your testimony that this young man called you
12 and decided to buy some crack and you're telling me that
13 you don't not somebody in Clio to buy some crack?

14 A. He asked me this, but do I know anybody from Clio
15 that sells crack?

16 Q. Yes, Ms. Dew.

17 A. No.

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

19 Ms. Munnerlyn, you may call your next witness.

20 MS. MUNNERLYN: Tiffany Haire.

21 TIFFANY HAIRE, after being duly sworn, testified
22 as follows:

23 THE WITNESS: Tiffany Haire.

24 DIRECT EXAMINATION

25 BY MS. MUNNERLYN:

- 1 Q. Tiffany, where do you live?
- 2 A. [REDACTED]
- 3 Q. Here in Bennettsville?
- 4 A. Yes, ma'am.
- 5 Q. And did you know Robbie Polston back in 2007?
- 6 A. Yes, ma'am.
- 7 Q. How long had you known him at the time?
- 8 A. About five or six years.
- 9 Q. Okay. And did you know Joe Gathings?
- 10 A. Yes, ma'am.
- 11 Q. How long had you known him?
- 12 A. Maybe three years.
- 13 Q. All right. And did you know what relationship Robbie
- 14 and Joe had?
- 15 A. Yes, ma'am.
- 16 Q. What kind of relationship did they have?
- 17 A. Partners.
- 18 Q. Partners?
- 19 A. Boyfriends.
- 20 Q. Boyfriends? Okay. It was a sexual relationship
- 21 then?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And do you know how long they had been
- 24 partners?
- 25 A. No, ma'am.

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- 1 Q. Okay. How often did you see Robbie?
- 2 A. Every day or every other day.
- 3 Q. Okay. And how did you get to know him?
- 4 A. Through his cousin.
- 5 Q. Okay. And how would you describe your relationship
- 6 with Robbie?
- 7 A. Best friends.
- 8 Q. Okay. And when -- now, Robbie lived with his mother,
- 9 Loyce, at [REDACTED] in Clio, correct?
- 10 A. Yes, ma'am.
- 11 Q. When did Joe come stay with them?
- 12 A. The last time it was only a couple months before the
- 13 incident happened.
- 14 Q. Okay. But he lived there with them prior also?
- 15 A. Yes, ma'am.
- 16 Q. Okay. When did he live with them before, do you
- 17 recall?
- 18 A. I don't know the date. I know it was before he went
- 19 to jail.
- 20 Q. Okay. Before he went to prison in 2007?
- 21 A. Yes.
- 22 Q. Before that did he live with Robbie and Loyce?
- 23 A. Yes, ma'am.
- 24 Q. Were they still living at that time at the same
- 25 house; that [REDACTED] in Clio?

- 1 A. Yes, ma'am.
- 2 Q. Did you see Robbie on June the 29th of 2007?
- 3 A. Yes, ma'am.
- 4 Q. Okay. What -- and what was your relationship with
- 5 Joe at that point?
- 6 A. I just knew him through Robbie. I worked with him
- 7 for about a week.
- 8 Q. What did you and he do together as far as work was
- 9 concerned?
- 10 A. Roofing work.
- 11 Q. Roofing work?
- 12 A. Yes, ma'am.
- 13 Q. So the week this occurred you and he were working
- 14 together?
- 15 A. Yes, ma'am.
- 16 Q. Where were you doing roofing work together?
- 17 A. Probably about five minutes from Robbie's house. It
- 18 was in Clio.
- 19 Q. In your area?
- 20 A. Um hum. Yes, ma'am.
- 21 Q. Okay? It was just you and he working on the roof?
- 22 A. Yes, ma'am.
- 23 Q. And how would you get to and from work?
- 24 A. Ms. Loyce's car.
- 25 Q. Okay. Which -- do you remember which one?

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- 1 A. The gray Buick.
- 2 Q. And on June the 29th of 2007 did you and Joe go to
3 work that day?
- 4 A. Yes, ma'am.
- 5 Q. Okay. And about what time did y'all finally go to
6 work?
- 7 A. 7:00.
- 8 Q. Okay. And do you remember how long you worked before
9 you left the work site?
- 10 A. We worked until lunchtime, twelve o'clock.
- 11 Q. Okay. So around 12:00 what did you do?
- 12 A. Went back the Robbie's for lunch.
- 13 Q. Okay. That was about 12:00 noon?
- 14 A. Yes, ma'am.
- 15 Q. Okay. And when you went back to Robbie's do you
16 remember who was there?
- 17 A. Ms. Loyce and Robbie.
- 18 Q. Okay. And what did y'all do while y'all were there?
- 19 A. We went there to eat lunch. They started fussing
20 while we were there so we didn't eat lunch.
- 21 Q. Who is they?
- 22 A. Joe. Robbie and Joe. Joe wanted money.
- 23 Q. Okay. Did Robbie give him any?
- 24 A. No, ma'am, not to my knowledge.
- 25 Q. Okay. And what happened as far as this fuss between

1 Joe and Robbie?

2 A. Joe ended up punching him in the ribs and knocked the
3 breath out of Robbie, and then got up and went in the
4 kitchen.

5 Q. Where were y'all when he punched him in the ribs?

6 A. Robbie's bedroom.

7 Q. Okay. Tell us about the setup in Robbie's bedroom.
8 What was the furniture and basic setup in his bedroom?

9 A. When you walked in his room his bedroom was right in
10 front of you. The t.v. was that way. His dresser was
11 that way. And the futon sit on this side if you walk
12 around, and the computer sits on this side of his bed.

13 Q. Okay. And where was this bedroom located in the
14 house?

15 A. If you walked in the kitchen your made a left and
16 walked through the kitchen, and it was right there to the
17 left.

18 Q. Okay. And how did Robbie normally keep his room?

19 A. Neat.

20 Q. Okay. Do you recall whether or not Robbie had a
21 baseball bat?

22 A. Yes, ma'am.

23 Q. Okay. And had you seen one in the house?

24 A. In his room.

25 Q. Where did he keep this baseball bat?

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1 A. Between his bed and his computer stand.

2 Q. Okay. I'm going to show you some pictures that are
3 in evidence marked as State's Exhibits 62, 63, 67, 68, 69
4 and 70 and see if you recognize what's in those photos.
5 Just yes or no whether you recognize what's in them?

6 A. Yes, ma'am.

7 Q. Okay. And what are those photos showing in general?
8 What do they show?

9 A. The first one is Robbie's bed. These are of the bat,
10 and that's Robbie's bed showing more of his room.

11 Q. Okay. So they're all basically of Robbie's room?

12 A. Yes, ma'am.

13 Q. Okay. And do they accurately reflect how he normally
14 kept his room?

15 A. No, ma'am.

16 Q. What's different in these photos?

17 A. In this one stuff is all on the bed. His closet door
18 is open. Both closet doors. It just don't look neat like
19 he would have kept it.

20 Q. I'm showing you State's Exhibits 91 and 92. Do you
21 recognize those?

22 A. Yes, ma'am.

23 Q. Okay. What are those?

24 A. This is his bed and futon.

25 Q. This is the futon?

1 A. Yes.

2 Q. Is that the futon that you were referring to that
3 y'all were sitting on?

4 A. Yes, ma'am.

5 Q. And who all, if you recall, who was sitting on the
6 futon?

7 A. Just Robbie and Joe. I was sitting on the bed.

8 Q. You were on the bed as they were on the futon?

9 A. Yes, ma'am.

10 Q. And what happened when Joe punched Robbie in the
11 ribs?

12 A. It knocked the breath out of him. He like grabbed
13 his side and rolled off the futon and went in the kitchen.

14 Q. Okay. And what happened after that?

15 A. After he went in the kitchen when he talked to Loyce,
16 Miss Loyce wanted to know what was going on. He told her
17 what was going on, and Joe was like they never hear his
18 side of the story. It's one side of the story and just
19 got mad. Was carrying on.

20 Q. Okay. And was he a part of the conversation with
21 Ms. Loyce Locklear?

22 A. No, ma'am. He was still in the bedroom at that time.

23 Q. Okay. He was yelling or hollering from the bedroom?

24 A. Yes, ma'am. And they started talking. Ms. Loyce ask
25 Joe what was going on. Joe come back in the hallway.

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1 There was a hallway between Robbie's room and the kitchen.

2 Q. Okay. Do you remember Joe making any statements to
3 Robbie about how he felt at that time and what he might
4 do?

5 A. He just kept saying it wasn't no game; that Robbie
6 thinks everything is game; that if he kept on he was going
7 to mess him up. He cussed, "F him up."

8 Q. You can tell me exactly what he said?

9 A. Fuck him up.

10 Q. And you remember standing right there when he said
11 that?

12 A. Yes, ma'am.

13 Q. You were in what room at this point?

14 A. The kitchen.

15 Q. And do you recall about what the time all this was
16 occurring?

17 A. Maybe 12:30, one o'clock.

18 Q. Okay. And after this conversation went on Joe made
19 the statement. What happened? Where are did y'all go?

20 A. We went back to work.

21 Q. You and Joe went back to work?

22 A. Yes, sir.

23 Q. Do you recall what vehicle where you went back to
24 work in?

25 A. The Gray Buick.

- 1 Q. How long did you stay at that work site?
- 2 A. Not long. When we got there joe didn't want to work.
- 3 So we get the tools and went back to Robbie's.
- 4 Q. How long do you think you were there?
- 5 A. Maybe 10, 15 minutes.
- 6 Q. Okay. And then you went directly back to Robbie's
- 7 house?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And when you got back to Robbie's house what
- 10 did you do?
- 11 A. I went in the bedroom where Robbie and talked to
- 12 Robbie. Joe went in the middle bedroom and laid down.
- 13 Q. Okay. Where did Joe sleep in that house?
- 14 A. Mostly in the middle bedroom..
- 15 Q. Okay. And his belongings were in that room?
- 16 A. I'm not really sure.
- 17 Q. Okay. But you said he went in the middle bedroom
- 18 and?
- 19 A. And laid down.
- 20 Q. And laid down. Do you know about what time that was?
- 21 A. Maybe 2:00, 2:30.
- 22 Q. Okay. And you stayed in Robbie's room with Robbie?
- 23 A. Yes, ma'am.
- 24 Q. And how long were you in Robbie's -- in his room?
- 25 A. We stayed in there about 30 minutes. Maybe 3:00.

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- 1 Like three o'clock went left and got something to eat.
- 2 Q. Where did you go?
- 3 A. To Tiger Mart.
- 4 Q. Where is Tiger Mart?
- 5 A. Clio.
- 6 Q. In Clio?
- 7 A. Um hum.
- 8 Q. So it's just you and he went to get something to eat?
- 9 A. Yes.
- 10 Q. Do you know what car you drove to go get something to
- 11 eat?
- 12 A. The blue Corsica.
- 13 Q. The blue Corsica. And how long were you gone?
- 14 A. Ten, 15 minutes.
- 15 Q. Okay. And do both you and Robbie get food?
- 16 A. Yes, ma'am.
- 17 Q. Did you eat there or bring it back?
- 18 A. Came back to the house.
- 19 Q. Okay. Do you know whether or not -- I know you came
- 20 back. Where was Joe?
- 21 A. Gone.
- 22 Q. Okay. I'm going to show you what's already been
- 23 admitted into evidence as State's Exhibits 60, 61, 57, 58
- 24 and 59. See if you recognize what's in those photos?
- 25 A. Yes, ma'am.

- 1 Q. What's shown in those photos?
- 2 A. The middle bedroom.
- 3 Q. The middle bedroom?
- 4 A. Yes, ma'am.
- 5 Q. And it's just a small bed?
- 6 A. Um hum.
- 7 Q. A single bed?
- 8 A. Yes, ma'am.
- 9 Q. And very neat and clean?
- 10 A. Yes, ma'am.
- 11 Q. And when you and Robbie got back in the blue Corsica
- 12 Joe was gone and was there a vehicle there or was it gone?
- 13 A. No, the gray Buick was gone.
- 14 Q. Okay. So what did you and Robbie do at that point?
- 15 A. Went back in his room and I waited a little while.
- 16 And Robbie, myself, and Ms. Loyce tried to call Joe's cell
- 17 phone to see where he was at. He wouldn't answer.
- 18 Q. How long did you try to call?
- 19 A. Until I left later on that evening.
- 20 Q. Do you know what time you left?
- 21 A. 6:00, 630.
- 22 Q. How did you leave?
- 23 A. Tracey Ellison.
- 24 Q. Tracey Ellison. Who is Tracey?
- 25 A. My girlfriend.

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- 1 Q. Okay. And she came and picked you up?
- 2 A. Yes, ma'am.
- 3 Q. Did you stay at Loyce's for a while?
- 4 A. We stayed there a few minutes and talked to Robbie
- 5 for maybe 10 or 15 minutes
- 6 Q. When you left the house did you go anywhere in
- 7 particular?
- 8 A. Home.
- 9 Q. Okay. Did you make any phone calls regarding Joe?
- 10 A. I called Robbie later on that night, and he
- 11 wanted ---
- 12 MR. JONES: Objection. Hearsay.
- 13 BY MS. MUNNERLYN:
- 14 Q. Don't tell us what Robbie said. Well, as a result of
- 15 your conversation with Robbie what you did, after you
- 16 talked with Robbie, what did you do that night? What did
- 17 you? Did you make phone calls? What did you do? After
- 18 you talked to Robbie you went somewhere. Where did you
- 19 go?
- 20 A. By the Freeman's.
- 21 Q. Why were you going by the Freeman's?
- 22 A. He asked me to.
- 23 Q. For what purpose?
- 24 A. To see if Joe was there.
- 25 Q. Okay. And when you got there did you find Joe?

- 1 A. No, ma'am.
- 2 Q. So how many hours had Joe been gone at this point?
- 3 A. Five.
- 4 Q. Okay. That's the number of hours?
- 5 A. Um hum.
- 6 Q. Was this unusual?
- 7 A. No.
- 8 Q. Okay. This was something that happened often?
- 9 A. Yes, ma'am.
- 10 Q. Tell us about that. How often did it happen?
- 11 A. Every time Joe got money. Maybe two, three times a
- 12 week.
- 13 Q. Okay. And why did you go by the Freeman's to look
- 14 for Joe?
- 15 A. That's where he went sometimes.
- 16 Q. Why did he go there?
- 17 A. I don't know.
- 18 Q. Okay. Do you know what Joe did with the money when
- 19 he wanted it?
- 20 A. Got drugs.
- 21 Q. What kind of drugs?
- 22 A. Crack.
- 23 Q. Okay. And did he do this quite often?
- 24 A. Yes, ma'am.
- 25 Q. How often?

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- 1 A. Two, three times a week. Every time he had money.
- 2 Q. Okay. What about Robbie? Did Robbie use crack?
- 3 A. No.
- 4 Q. Okay. And how did Joe support and pay for using the
- 5 crack?
- 6 A. He was working on that roofing job. Before he worked
- 7 there he worked at Murphy Brown's.
- 8 Q. Okay. Did he ever use any other means to support his
- 9 habit?
- 10 A. Besides money that Robbie had.
- 11 Q. What do you mean by, 'money Robbie had'?
- 12 A. Robbie give money or get money from Ms. Loyce.
- 13 Q. Okay. What about pawning any items? Was there ever
- 14 any question about that?
- 15 A. He had pawned items, yes.
- 16 Q. Who?
- 17 A. Joe.
- 18 Q. What kind of items?
- 19 A. Cell phone, satellite radio.
- 20 Q. Whose items would those pieces of property be? His
- 21 own?
- 22 A. The cell phone was Joe's. The satellite radio was
- 23 Robbie's.
- 24 Q. Was that a frequent occurrence?
- 25 A. Yes, ma'am.

1 Q. Did you ever -- well, first of all let me ask you.
2 We talked about the crack use. Did Joe smoke cigarettes?
3 A. Yes, ma'am.
4 Q. Did Robbie smoke cigarettes?
5 A. Yes, ma'am.
6 Q. What about Ms. Locklear?
7 A. No, ma'am.
8 Q. That afternoon you indicated that you went to Tiger
9 Mart at some point to get some food?
10 A. Yes, ma'am.
11 Q. Did you go anywhere else?
12 A. No, ma'am.
13 Q. Okay. Where did Ms. Loyce Locklear work?
14 A. At the Collins'.
15 Q. Okay. You know whether or not she worked any that
16 day?
17 A. No, ma'am.
18 Q. You don't know?
19 A. Uh hum.
20 Q. Did you go to their house any that day or do you
21 remember?
22 A. I can't remember.
23 Q. Okay? Had you been with Robbie to the Collins' home
24 where Ms. Locklear worked before?
25 A. Yes, ma'am.

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- 1 Q. And for what reason?
- 2 A. The pick Miss Loyce up one time.
- 3 Q. Any other reason?
- 4 A. No, ma'am.
- 5 Q. Okay. Do you know why Robbie had this baseball bat
- 6 in his bedroom?
- 7 A. No, ma'am.
- 8 Q. But you said he kept it where again?
- 9 A. Between his bed and the computer stand.
- 10 Q. Right beside the bed?
- 11 A. Yes, ma'am.
- 12 Q. I'm going to show you State's Exhibit 70 and 69 and
- 13 68. And ask you does that accurately reflect where he
- 14 normally kept that bat?
- 15 A. Yes, ma'am.
- 16 Q. Okay. And State's Exhibit 68 shows the bottom
- 17 portion of the bat. That appears to have a red substance
- 18 of some sort on it; is that right?
- 19 A. Yes, ma'am.
- 20 Q. Did it appear like that the last time you saw it?
- 21 A. No, ma'am.
- 22 Q. Okay. Did you call Robbie on his cell phone any that
- 23 day? You were with him most of the day?
- 24 A. Yes, ma'am.
- 25 Q. Okay. After the evening when it was 7:00 came, and

1 you left you said you went home?

2 A. Yes, ma'am.

3 Q. When was the last time you talked with Robbie?

4 A. Later on that night. Maybe 9:00, 9:30.

5 Q. Okay. And did you call him or did he call you or how

6 did that go?

7 A. Yes, ma'am. I think I called him.

8 Q. Okay. You said it was about 9:00 or 9:30?

9 A. Yes, ma'am.

10 Q. And did you have any plans with him for the following

11 day?

12 A. Yes, ma'am.

13 Q. What was that?

14 A. The go to the movies.

15 Q. You just discussed that with him then?

16 A. Yes, ma'am.

17 Q. When were you supposed to go to the movies?

18 A. That Saturday morning.

19 Q. That Saturday morning?

20 A. Yes, ma'am.

21 Q. Where were you going to go to the movies?

22 A. Florence.

23 Q. And how were you going to get there?

24 A. His car, the Corsica.

25 Q. The blue Corsica?

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- 1 A. Yes, ma'am.
- 2 Q. And do you know who all was going to go?
- 3 A. Me, Robbie, Joe and Tracey.
- 4 Q. Okay. And so the next morning did you go to the
- 5 movies?
- 6 A. No, ma'am.
- 7 Q. Did you -- were you able to get in touch with Robbie?
- 8 A. No, ma'am.
- 9 Q. Okay. What did you do to try to contact him?
- 10 A. I called his phone, his cell phone, the house phone,
- 11 Joe's cell phone, Ms. Loyce's house phone. I texted
- 12 Robbie's phone.
- 13 Q. Okay. Did you get an answer on any of those?
- 14 A. No, ma'am.
- 15 Q. And later that evening did you have further attempts
- 16 to contact between him and you?
- 17 A. Yes, ma'am.
- 18 Q. When did you find out that something might have
- 19 happened?
- 20 A. It was probably two o'clock Saturday evening.
- 21 Q. Okay. What happened?
- 22 A. Me and Tracey was coming from Laurinburg and we went
- 23 by the house.
- 24 Q. Who was at the house?
- 25 A. It was paper taped off and Pearlie was in the road.

1 Q. Who taped it off?

2 A. Pearlle.

3 Q. Pearlle was in the road. So law enforcement was
4 already at the house?

5 A. Yes, ma'am.

6 Q. And did you make any attempt the contact Joe
7 thereafter?

8 A. Yes, ma'am.

9 Q. And did you get in touch with him?

10 A. Nothing. Not his cell phone. One time a girl
11 answered the phone.

12 Q. Okay. And did you have any calls to you from either
13 Robbie or Joe's cell phone?

14 A. Yes, ma'am.

15 Q. On that Saturday?

16 A. Yes, ma'am.

17 Q. And when were those?

18 A. Earlier that day about 12:00, one o'clock.

19 Q. Those were from whose cell phone?

20 A. Joe's.

21 Q. Okay. And what was your cell phone number at the
22 time?

23 A. 439-7485.

24 Q. Okay. Showing you State's Exhibit One, which is a
25 telephone bill. Ask you to look at that. Do you see the

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1 phone call you're referring to or your cell phone on that
2 telephone bill?

3 A. Yes, ma'am.

4 Q. Okay. What times were those?

5 A. 12:01, 12:02, 12:03.

6 Q. And those -- that is when Joe's cell phone called
7 your cell phone?

8 A. Yes, ma'am.

9 Q. But you didn't actually speak with him on any of
10 those occasions?

11 A. The first time it was just somebody laughing and
12 never would say anything.

13 Q. And then after that who were the other two?

14 A. I didn't answer it.

15 Q. Okay. All right. And then later that day or later
16 the next day on June the 30th there are two calls to your
17 cell phone, correct?

18 A. Yes, ma'am.

19 Q. At 5:47 and 6:33?

20 A. Yes, ma'am.

21 Q. And did you receive those phone calls?

22 A. Yes, ma'am. But I didn't answer it.

23 Q. You didn't answer either one of those?

24 A. Yes, ma'am.

25 Q. You were already aware that law enforcement was

1 looking for him?

2 A. Yes, ma'am.

3 Q. Were you trying to assist in trying to find him?

4 A. I told them where I thought he may be.

5 Q. Where was that?

6 A. At the beach.

7 Q. Why would he be at the beach?

8 A. I knew he had family down around that area.

9 Q. Okay. Did you have any further contact with Joe
10 after that?

11 A. No, ma'am.

12 Q. And did you ever see Robbie again?

13 A. No, ma'am.

14 MS. MUNNERLYN: Court's indulgence. I don't have any
15 further questions. Answer any questions Mr. Jones has.

16 CROSS-EXAMINATION

17 BY MR. JONES:

18 Q. Ms. Haire, I understood you to say that for a week
19 prior to Robbie's death you worked with Mr. Gathings; is
20 that correct?

21 A. Why, yes, sir.

22 Q. How did you get that job?

23 A. Joe talked to the man. Joe just asked me to help.

24 Q. Did you have prior roofing experience?

25 A. Yes.

- 1 Q. Okay. What was the job you were doing?
- 2 A. Laying shingles.
- 3 Q. Do you know who the supervisor was?
- 4 A. I knew at that time, but I can't recall.
- 5 Q. What was Ms. Gathings' responsibility on that job?
- 6 A. He was the head person on the job.
- 7 Q. Over the roofing job?
- 8 A. Yes, sir.
- 9 Q. Just the two of you?
- 10 A. Yes, sir.
- 11 Q. What did you do? What were your duties?
- 12 A. Lay shingles.
- 13 Q. Did you walk up and down a ladder?
- 14 A. Yes, sir.
- 15 Q. Did you use a hammer?
- 16 A. Yes, sir.
- 17 Q. Did you use nails? Lay string? Shingles?
- 18 A. Yes, I did.
- 19 Q. Mr. Gathings, he did the same thing?
- 20 A. Yes, sir.
- 21 Q. All right. Now, for about -- you've been working at
- 22 that job. Tell me where the job was?
- 23 A. It was in -- I don't know the name of the road.
- 24 Q. But you stayed about five minutes from the house that
- 25 Robbie and Joe and Ms. Locklear lived in?

- 1 A. Yes, sir.
- 2 Q. How did you get to work every day?
- 3 A. The gray Buick.
- 4 Q. Who drove?
- 5 A. Joe.
- 6 Q. Was Robbie in the car? Did he take you to and from
- 7 work?
- 8 A. No, sir. Joe drove.
- 9 Q. He had obvious permission to drive the car?
- 10 A. Yes, sir.
- 11 Q. Okay. So it was not an abnormal occurrence for Joe
- 12 Gathings to be driving at least that gray car?
- 13 A. No, sir.
- 14 Q. How about the blue car? Did you ever see him drive
- 15 the blue car?
- 16 A. Yes.
- 17 Q. He had permission to drive it frequently?
- 18 A. Yes, sir.
- 19 Q. Now, on June the 29th, what day of the week was it?
- 20 Do you remember?
- 21 A. Friday.
- 22 Q. All right. As I recall your testimony you went to
- 23 work about 7:00 and left about 12:00 noon to go home and
- 24 eat?
- 25 A. Yes, sir.

1 Q. Go over to Joe and Robbie's house to eat; is that
2 correct?

3 A. Yes, sir.

4 Q. Got back and drove in the gray car?

5 A. Yes, sir.

6 Q. Now, was Friday your first payday? Is that the first
7 day you got any money?

8 A. No.

9 Q. When was the first time you got money from the job?

10 A. I can't really recall. It was Wednesday or Thursday.
11 Joe got advances on the job.

12 Q. Did you get paid Friday?

13 A. No.

14 Q. Joe got advances?

15 A. He'd give me money out of the advancement.

16 Q. You think that was when?

17 A. Wednesday or Thursday.

18 Q. And did you get money then also?

19 A. Yes, sir.

20 Q. All right. And he immediately went off and started
21 doing crack; is that right? That Wednesday or Thursday?

22 A. I don't know what he did after he got the money.

23 Q. You told us -- I recall you telling Ms. Munnerlyn
24 that every time he got money he went and did crack. Is
25 that not what you said?

- 1 A. I mean he left, but I can't say what he did. I
2 wasn't with him.
- 3 Q. But you told Ms. Munnerlyn that every time he got
4 money he went and did crack. That's not true, is it?
- 5 A. When he got the money he left, yeah, but he didn't
6 stay gone all night.
- 7 Q. Did you spend the night at their house?
- 8 A. No, but I was frequently on the phone with Robbie.
- 9 Q. Did Mr. Gathings, to your knowledge, get money on
10 Wednesday or Thursday of that week and go do crack?
- 11 A. When me got the money we when -- he got off work.
12 Yeah, he left.
- 13 Q. You don't have any idea what he did, do you?
- 14 A. No.
- 15 Q. Thank you. On Friday the 29th at about
16 twelve o'clock you end up back at Robbie's and Loyce's
17 with Joe?
- 18 A. Yes, sir.
- 19 Q. And you were going to eat lunch?
- 20 A. Yes, sir.
- 21 Q. Right. And you're sure Ms. Loyce Locklear was there?
- 22 A. Yes, sir.
- 23 Q. But you knew that she worked every day?
- 24 A. Yes, sir.
- 25 Q. But she was at home?

- 1 A. Yes, sir.
- 2 Q. Okay. Was the blue Corsica there when you came to
3 their house about noon in the gray car?
- 4 A. Yes, sir.
- 5 Q. Was there any other cars there?
- 6 A. No, sir.
- 7 Q. All right. When -- how long did you stay at the
8 house?
- 9 A. Right then at noon. Maybe an hour.
- 10 Q. Okay. And during the time did you eat anything?
- 11 A. No, sir.
- 12 Q. All right. And that's when you said that Robbie and
13 Joe had a fuss on the futon?
- 14 A. Yes.
- 15 Q. Okay. And after that fuss you got back in the car
16 with Joe and went back to the job site?
- 17 A. Yes.
- 18 Q. During that 10 or 15 minutes you said you worked
19 there tell me again what you did. What you specifically
20 did?
- 21 A. Got the tools we were using and put them in the car.
- 22 Q. And clean up around the job site?
- 23 A. Yes.
- 24 Q. And who instructed you to do that?
- 25 A. Joe.

- 1 Q. All right. Did you see him talking with anybody
2 while he was there?
- 3 A. No, sir.
- 4 Q. All right. Do you know who Monroe Carter is?
- 5 A. Yes, sir.
- 6 Q. Who is he?
- 7 A. The supervisor.
- 8 Q. Of the whole job?
- 9 A. Yes, sir.
- 10 Q. Was it a new construction house being built or was it
11 a remodel?
- 12 A. New house being built.
- 13 Q. As far as you know Mr. Carter was over to whole job?
- 14 A. Yes, sir.
- 15 Q. Did you see Mr. Carter at the job site when you went
16 back for that 10 or 15 minutes?
- 17 A. I can't recall. He was in and out.
- 18 Q. Okay. Were you -- was Joe with you the whole time;
19 that 10 or 15 minutes when you went back to the job site?
- 20 A. No, sir. He was walking around doing what he had to
21 do to get stuff up.
- 22 Q. All right. Very good. And when you left the second
23 time from the job site did you go by the bank in Clio?
- 24 A. No, sir.
- 25 Q. Are you sure?

1 A. I don't recall it.

2 Q. All right. All right. Let me ask you a few
3 questions about this house again. You were frequently a
4 visitor at the house?

5 A. Yes, sir.

6 Q. I think you said you spoke with Robbie at least every
7 other day if not every day?

8 A. Yes, sir.

9 Q. How often do you visit the house?

10 A. When he was with Joe every day. Before that two or
11 three times a week.

12 Q. Okay. And I think you mentioned a baseball bat in
13 Robbie's room?

14 A. Yes, sir.

15 Q. And when was it you recall the first time you ever
16 saw the baseball bat?

17 A. No, sir.

18 Q. It just was always there?

19 A. Yeah.

20 Q. Did you see him pick up the baseball bat?

21 A. No, sir.

22 Q. Did you ever see Joe pick up the baseball bat?

23 A. No, sir.

24 Q. Anybody?

25 A. No, sir.

- 1 Q. Just leaned up against the wall?
- 2 A. Yes, sir.
- 3 Q. All right. When you left the job the second time you
- 4 ended up back at the same house. At Robbie's house?
- 5 A. Yes, sir.
- 6 Q. And I'll assume that it was sometime around 12:45,
- 7 one o'clock if you left the house -- excuse me. What time
- 8 was it when you got back, do you remember?
- 9 A. When we got back from leaving the first time?
- 10 Q. Yes?
- 11 A. Maybe 2:00, 2:30.
- 12 Q. Okay. You said, "So I left to go to the Tiger Mart
- 13 about three o'clock?"
- 14 A. Yes, sir.
- 15 Q. Between 2:00 and 3:00. What did you do?
- 16 A. Sit in Robbie's room and talk to him.
- 17 Q. Okay. And Joe was there most of the time?
- 18 A. He was in the next bedroom. We got back. He went
- 19 and laid down.
- 20 Q. He immediately went and laid down?
- 21 A. Yes, sir.
- 22 Q. For about 30 minutes to an hour you and Robbie
- 23 talked?
- 24 A. Yes.
- 25 Q. You went to get goodies?

1 A. Yes, sir.

2 Q. I believe you asked if he wanted any food?

3 A. I don't believe -- I didn't.

4 MR. JONES: One second, please, Your Honor.

5 BY MR. JONES:

6 Q. All right. So about three o'clock you left and what
7 time did you get back?

8 A. Maybe 3:15, 3:30.

9 Q. Joe was gone?

10 A. Yes, sir.

11 Q. You never saw him again?

12 A. No, sir.

13 Q. Okay. Then what time did you leave the house that
14 afternoon?

15 A. 6:00, 6:30.

16 Q. Never saw Joe again?

17 A. No, sir.

18 Q. Okay. When you said that you got some calls on your
19 cell phone from either -- I'll apologize. I don't recall
20 whose phone it was. Was the calls that you were talking
21 about from Joe's phone or Robbie's phone?

22 A. That Saturday?

23 Q. I think. Let me talk about Friday first then talk
24 about Saturday?

25 A. Friday I didn't talk to Joe any more. I just talked

- 1 to Robbie.
- 2 Q. When was the lady laughing on the telephone?
- 3 A. Saturday.
- 4 Q. That was Saturday. Okay. Excuse me. About what
- 5 time?
- 6 A. Noon, one o'clock. It wasn't a lady. It was a man.
- 7 Later that night I called and a girl answered it.
- 8 Q. What number did you call?
- 9 A. 535-1145.
- 10 Q. Whose telephone was that?
- 11 A. Joe's.
- 12 Q. And a lady answered?
- 13 A. Yes, ma'am -- yes, sir.
- 14 Q. But you didn't talk to the person. You just hung up?
- 15 A. I asked was Joe there. She said Joe wasn't there.
- 16 Q. You never talked to Joe after 2:00 p.m. on Friday?
- 17 A. No.
- 18 Q. Now, was the telephone number we're talking about you
- 19 said was Joe's telephone. Is that the same one you stated
- 20 that he pawned?
- 21 A. No, sir.
- 22 Q. What phone was that?
- 23 A. I don't know the number, but it was a phone he had
- 24 before he got that phone.
- 25 Q. And when was it pawned?

- 1 A. Maybe a month before this happened.
- 2 Q. So it had nothing to do with that week? Just
- 3 happened that he pawned the telephone?
- 4 A. Yes, sir.
- 5 Q. Got you. Now, getting back to the roofing that y'all
- 6 did. That's rough, roofing work, isn't it?
- 7 A. Yes, sir.
- 8 Q. Did you usually wear gloves when you did that work?
- 9 A. No, sir.
- 10 Q. Did your hands get fairly rough?
- 11 A. Yes, sir.
- 12 Q. Did you have cuts on your hands from either the
- 13 shingling or nails or anything on the roof? The flashing?
- 14 Anything you had to do?
- 15 A. I never cut my hands. I hit my hand with a hammer.
- 16 Q. That's pretty much on the hand?
- 17 A. Yes, sir.
- 18 Q. Okay. Do you know Rebecca Dew?
- 19 A. Yes, sir.
- 20 Q. Is she a crack dealer?
- 21 A. Not to my knowledge.
- 22 Q. Have you ever called asking for crack?
- 23 A. Who me?
- 24 Q. Yeah.
- 25 A. No. I don't do crack.

1 Q. Would it be odd for you to call her and ask her for
2 crack?

3 A. I really -- I mean I knew her, but not like that.

4 MR. JONES: One second, Your Honor. Thank you.
5 That's all I have.

6 THE COURT: Redirect, Ms. Munnerlyn?

7 MS. MUNNERLYN: Just a couple of questions, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MS. MUNNERLYN:

11 Q. Tiffany, Mr. Jones has asked you about the roofing
12 job that you and Joe were working on and asked if you had
13 gotten any injuries as a result of the job. Do you know
14 whether or not Joe got any injuries as a result of that
15 roofing job?

16 A. No, ma'am.

17 Q. You didn't see any on him?

18 A. No, ma'am?

19 MS. MUNNERLYN: I don't have any further questions.

20 THE COURT: Anything further, Mr. Jones?

21 MR. JONES: No, sir.

22 COLLOQUY

23 THE COURT: Thank you. You may step down. All
24 right. Ladies and gentlemen, we've been in the courtroom
25 or you've been in the courtroom now for an hour and a half

1 hour, 40 minutes. And I think it's appropriate for us to
2 take our midmorning break at this time, and so we're going
3 to take about a 15 minute recess, allow you to go to jury
4 room and relax. Do not discuss the case among yourselves.
5 You may talk about anything you want to talk about,
6 sports, weather, children, grandchildren, anything but
7 this case. And we'll send for you in about 15 minutes,
8 and we'll take a recess at this time.

9 (WHEREUPON, the jury panel was excused from the
10 courtroom at 11:14 a.m.)

11 THE COURT: All right, counsel, I want to cover one
12 thing on the record that's due to the photographs. I
13 think I've got the right -- I want the record to reflect
14 the photographs -- the following photographs were objected
15 to and admitted. That was 121, 45, 120, 40, 35, 39, 43,
16 56, 125, 85, 96, 94, 79, 75, 66, 65 and 64.

17 The Court found them to be relevant illustrative of
18 the facts of the crime and corroborative of the facts in
19 issue and testimony. And they show the circumstances of
20 the crime. In my view they were illustrative of the crime
21 scene and shows the circumstance of the crime and the
22 nature of the injury.

23 They also corroborate the theory of homicide using a
24 baseball bat. They were not being introduced to arouse
25 the passion or prejudice of the jury, and I found that the

1 prejudicial effect does not substantially outweigh by the
2 probative value and these were admitted.

3 On the other hand the following photographs were
4 excluded as cumulative and not relevant or overly
5 prejudicial; that is the prejudicial effect outweighs the
6 probative value. Those are 66, 10, 44, 56, 89, 45 and 75.
7 After taking care of those matters I found the photograph
8 to be floor that had fallen during my review of the
9 photographs, and that is Photograph Number 79. And I'm
10 also going to exclude the photograph as cumulative, not
11 relevant and overly prejudicial in view of other evidence
12 permitted.

13 I have all of the excluded photographs which I am
14 going to keep up here at this time to avoid them being
15 mixed up with those that have been admitted. They will be
16 made a part of the record at the appropriate time. All
17 right. Yes, sir.

18 MR. JONES: May I ask one question. I don't think we
19 objected to a 45. We objected to 35.

20 THE COURT: All right. I may have written the number
21 down wrong.

22 MR. JONES: I think it was 42, Judge. I think 42 was
23 the number. It looks funny on -- you excluded that?

24 THE COURT: I did.

25 MR. JONES: So I heard something about 45. I don't

Colloquy

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1 recall objecting to 45.

2 THE COURT: Okay. Let me look at my notes. All
3 right. Let me talk with Mr. Funderburk for just a minute.
4 The issue involving a juror is not a juror on this case
5 but is a juror on the panel. All right. We'll take a
6 recess until -- about ten minutes for us.

7 (WHEREUPON, Court was in recess at 11:28 a.m. and
8 reconvened at 11:36 a.m.)

9 (WHEREUPON, State's Exhibit Nos. 145 AND 146 were
10 marked for identification only.)

11 THE COURT: All right. We're back on the record with
12 regards to State v. Gathings. Mr. Gathings is present
13 with his counsel. The State is present and represented by
14 Ms. Munnerlyn. Anything before we bring the jury in, Ms.
15 Munnerlyn?

16 MS. MUNNERLYN: I just want to let you know that I
17 have three witnesses, and then I have a witness I need to
18 play this video.

19 THE COURT: Mr. Foard told me he was here to be the
20 video equipment operator, and I told him that I thought he
21 could probably do as well as an eight year old. So we'll
22 stop and give him an opportunity to do it. All right.

23 MS. MUNNERLYN: Okay.

24 THE COURT: Anything before we bring the jury in,
25 Ms. Crayton?

1 MS. CRAYTON: No, Your Honor.

2 THE COURT: All right. Bring the jury in, please.

3 (WHEREUPON, the jury panel enters the courtroom at

4 11:38 a.m.)

5 THE COURT: All right. Thank you very much, ladies

6 and gentlemen, and we are now ready to resume. Ms.

7 Munnerlyn, you may call your next witness.

8 MS. MUNNERLYN: Thank you, Your Honor. Tracey Ellis.

9 TRACEY ELLIS, after being duly sworn, testified as

10 follows:

11 CLERK OF COURT: Be seated and state your full name,

12 please.

13 THE WITNESS: Tracey Daniel Ellis.

14 DIRECT EXAMINATION

15 BY MS. MUNNERLYN:

16 Q. Tracey, where do you live?

17 A. In Bennettsville.

18 Q. Okay. And did you know Robbie Polston and Loyce

19 Locklear?

20 A. Yes, ma'am.

21 Q. Okay, and how did you know Robbie?

22 A. Through my girlfriend.

23 Q. Through who?

24 A. Through my girlfriend.

25 Q. Okay. And how long had you known him back in 2007?

- 1 How long had you known him?
- 2 A. About four years.
- 3 Q. Did you know Joe Gathings?
- 4 A. Not that much, but I know of him.
- 5 Q. You know of him. Had you been around him?
- 6 A. A few times.
- 7 Q. A few times.
- 8 A. Yes, ma'am.
- 9 Q. And were you on June the 29th 2007? Did you have an
- 10 opportunity to see Robbie and Joe?
- 11 A. I think earlier that day when he got off work.
- 12 Q. Where did you work at this time?
- 13 A. At the Huddle House in Dillon.
- 14 Q. And what were your normal hours?
- 15 A. 7:00 a.m. to 3:00 p.m.
- 16 Q. Okay. And do you know whether or not you worked
- 17 those hours that day?
- 18 A. I did. I got off at 3:00. Probably left after 3:30.
- 19 I arrived at Robbie's probably about 3:50, four o'clock.
- 20 Q. And when you got there who was there?
- 21 A. Tiffany Haire, Robbie Polston and his mom, Ms. Loyce
- 22 Locklear.
- 23 Q. Okay. And what were they doing?
- 24 A. Robbie was in his room as usual, and she was in the
- 25 kitchen. Tiffany stayed with Robbie in the room.

- 1 Q. So Robbie and Tiffany were both in Robbie's bedroom?
- 2 A. Yes, ma'am.
- 3 Q. Okay. And were you -- how often had you been to
- 4 Robbie's house?
- 5 A. A lot.
- 6 Q. How frequently would you go over there?
- 7 A. At least every weekend. Every one or two days out of
- 8 week, but every weekend almost.
- 9 Q. Okay. I'm going to show you what's already in
- 10 evidence as State's Exhibits 62, 91 and 92 and see if you
- 11 recognize what's in those photos. Just in general terms,
- 12 yes or no, whether you recognize them?
- 13 A. Yes, ma'am.
- 14 Q. Okay. From where you do you recognize those photos?
- 15 A. From Robbie's room.
- 16 Q. They show Robbie's room?
- 17 A. Yes, ma'am.
- 18 Q. How did Robbie normally keep his room?
- 19 A. Clean.
- 20 Q. How was his bed normally made?
- 21 A. Made up.
- 22 Q. And that shows a futon in his room?
- 23 A. Yes, ma'am.
- 24 Q. Okay. And did you know that Robbie had a baseball
- 25 bat?

- 1 A. Yes, ma'am.
- 2 Q. And is there a particular place that he kept that
- 3 baseball bat?
- 4 A. I think it was right beside his bed.
- 5 Q. Right beside his bed?
- 6 A. Yes, ma'am.
- 7 Q. Okay. Do you see the baseball bat in these photos?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And those are State's Exhibits 68, 69 and 62.
- 10 Where the bat normally is kept is it shown in one of those
- 11 pictures?
- 12 A. Right here between the bed and the computer desk.
- 13 Q. What's the number on the back of that?
- 14 A. Sixty-two.
- 15 Q. Sixty-two. And you can see the top of it in that
- 16 photo?
- 17 A. Yes, ma'am.
- 18 Q. It's between the bed and the computer desk you call
- 19 it?
- 20 A. Yes, ma'am.
- 21 Q. That's where it was always kept?
- 22 A. Yes, ma'am.
- 23 Q. And the bat as it's shown here is that normally how
- 24 it appeared?
25. A. Without the blood. It had blood on it.

- 1 Q. State's Exhibit 69 -- 68 and 69, with the exception
2 of the blood is that how you remember that bat?
- 3 A. Yes, ma'am.
- 4 Q. Do you know why Robbie had that bat?
- 5 A. No, ma'am, he never said.
- 6 Q. Okay. Did you ever see him doing anything with the
7 bat?
- 8 A. No, ma'am.
- 9 Q. Okay. It always stayed in that same place?
- 10 A. Yes, ma'am.
- 11 Q. So when you got there and Robbie and Tiffany were in
12 Robbie's bedroom, what did you do?
- 13 A. Well, first, Robbie wanted me to call Joe's phone to
14 see if I could find out where he was and see if he would
15 answer. They were looking for the gray Buick at this
16 time. Ms. Loyce's car. Robbie -- Joe had been gone.
17 They were trying to find out where he was. Just started
18 talking about that.
- 19 Q. And did you attempt to call Joe?
- 20 A. I wasn't going to.
- 21 Q. You weren't going to?
- 22 A. No, ma'am.
- 23 Q. Why is that?
- 24 A. Just type person he is.
- 25 Q. Okay. So you didn't want to call his phone?

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1 A. No, ma'am.

2 Q. Now, did you call Robbie's cell phone before you
3 arrived?

4 A. Yes, ma'am.

5 Q. Okay. What was your cell phone number at the time?

6 A. (843)439-7163.

7 Q. Okay. And in fact you called him at about 3:47 p.m,
8 isn't that right?

9 A. That would be about right. Yes, ma'am.

10 Q. And you work in Dillon. So you have to travel from
11 Dillon to Clio to come to his house?

12 A. Yes, ma'am.

13 Q. Okay. All right. Well, you didn't call Joe even
14 though they were asking you to?

15 A. Yes, ma'am.

16 Q. What did y'all proceed to do at that point?

17 A. I think Tiffany Haire and Robbie proceeded to call,
18 and then me and Tiffany Haire just decided to go home and
19 that's when Tiffany and Robbie was talking and Robbie
20 asked Tiffany to ---

21 MR. JONES: Objection, hearsay.

22 BY MS. MUNNERLYN:

23 Q. Don't tell us anything Robbie said. Just tell us as
24 a result of the conversation that Robbie -- that y'all had
25 with Robbie?

- 1 A. We were all talking about it. They proceeded to call
2 about 6:30. Me and Tiffany left. Joe still wasn't there.
- 3 Q. Where did you go when you left? Anywhere in
4 particular?
- 5 A. I don't know the name of the road. It's by Freeman's
6 house in Bennettsville.
- 7 Q. The Freeman House, why did you go there?
- 8 A. That's where Joe hung out.
- 9 Q. Joe hung out there on occasion. Why did he hang out
10 there?
- 11 A. I guess they have drugs there.
- 12 Q. Okay, now, what kind of drugs?
- 13 A. Marijuana, crack cocaine, pills.
- 14 Q. Did you use these drugs?
- 15 A. No, ma'am.
- 16 Q. Crack. Had you seen him use that before?
- 17 A. I seen him high. I actually seen him do it.
- 18 Q. You've seen him?
- 19 A. Yes, ma'am.
- 20 Q. How did he act when he was high?
- 21 A. Outraged.
- 22 Q. How many times have you seen him when he was high on
23 crack?
- 24 A. Maybe once or twice.
- 25 Q. And how did he normally go get his crack?

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1 A. Well, he'd called me one time to ask if I knew where
2 to get it from.

3 Q. Do you do crack?

4 A. No, ma'am.

5 Q. Okay. Did you know where he went to go get it?

6 A. No, ma'am. But Robbie would ask me, you know, that
7 Joe wanted to know if I have anybody that knows -- that
8 does crack, but I don't. Robbie would do anything for
9 Joe.

10 Q. What was Robbie's relationship with Joe?

11 A. They were lovers.

12 Q. And how long had they had that relationship to your
13 knowledge?

14 A. I met Tiffany in 2004. I met Robbie somewhere
15 between 2004 and 2005. I didn't know Joe until he
16 actually got out this last time. So I don't know if they
17 been together since he's been in prison or not. But as
18 far as I've known Robbie he always talked about Joe.

19 Q. Okay. And when you say, "he got out of there,"
20 you're referring to got out of prison?

21 A. Yes, ma'am.

22 Q. And where did he come to live when he got out of
23 prison this last time?

24 A. Robbie and Ms. Loyce's home.

25 Q. Robbie and Ms. Loyce's home at [REDACTED] in

1 Clio?

2 A. Yes, ma'am.

3 Q. How long did he live there when this incident
4 happened?

5 A. I think he's been living there off and on, but so
6 long as he's been out of prison he's been there I'd say a
7 few months.

8 Q. A few months. Okay. But you said you'd only been
9 around him a few times?

10 A. Yes, ma'am.

11 Q. You didn't meet him until the few months before the
12 incident?

13 A. Yes, ma'am.

14 Q. When you and Tiffany left at 6:30 or so? You went to
15 this Freeman House?

16 A. Yes, ma'am. We rode by there.

17 Q. Rode by there?

18 A. Yes, ma'am.

19 Q. Was Joe -- well, did you find him?

20 A. We thought we seen him leave from there. We didn't
21 stop to make sure it was him, but we thought it was him
22 that passed there.

23 Q. You're not sure?

24 A. Not sure.

25 Q. You didn't have any conversation with him?

- 1 A. No, ma'am.
- 2 Q. You didn't say nothing to him?
- 3 A. No, ma'am.
- 4 Q. Or anything like that?
- 5 A. No, ma'am.
- 6 Q. Did you do anything as a result of that?
- 7 A. Tiffany called Robbie and told Robbie that he was in
- 8 that house, but we thought we passed him.
- 9 Q. Okay. Well, let me ask you this. You indicated that
- 10 Joe and Robbie were lovers. Do you know whether or not
- 11 his mother or any of his family members were aware of this
- 12 relationship?
- 13 A. I don't think they knew because they were trying to
- 14 keep it a secret.
- 15 Q. Who was trying to keep it a secret?
- 16 A. Joe and Robbie.
- 17 Q. Joe and Robbie?
- 18 A. Yes, ma'am.
- 19 Q. Where did Robbie stay in Ms. Locklear's house?
- 20 A. He had he own room.
- 21 Q. He had his own room?
- 22 A. Yes, ma'am.
- 23 Q. Do you know what bedroom it was?
- 24 A. The one leaving out the kitchen right by the
- 25 bathroom.

- 1 Q. Okay. Okay, I'm showing you State's Exhibits 61, 63,
2 59, 58 and 57. See if you recognize what's in those?
- 3 A. Yes, ma'am. This looks like the room that Joe would
4 sleep in.
- 5 Q. That's his bedroom?
- 6 A. Yes, ma'am.
- 7 Q. And it has a single or twin size bed?
- 8 A. Just a small bed. Yes, ma'am.
- 9 Q. Okay. Now, Robbie's room has a double bed?
- 10 A. Yes, ma'am.
- 11 Q. And Ms. Locklear does as well, doesn't it?
- 12 A. I've never been in Ms. Locklear's room.
- 13 Q. Okay. So after you went by the Freeman House where
14 did you go that night?
- 15 A. Back to our house. Me and Tiffany Haire.
- 16 Q. Did you have any plans with Robbie for the next day?
- 17 A. Yes, ma'am.
- 18 Q. Where was that?
- 19 A. Me, Tiffany, Robbie and Joe was supposed to go to the
20 movies in Florence. We called and called and called and
21 never could get an answer. So me and Tiffany went to the
22 WalMart in Laurinburg and decided to come by Robbie's
23 house in Clio. That's when we seen the tape. The house
24 was taped off.
- 25 Q. That was around afternoon?

- 1 A. Yes, ma'am.
- 2 Q. Okay. That was your first indication that something
- 3 was wrong?
- 4 A. Yes, ma'am.
- 5 Q. You had called -- you said you called several times
- 6 through the ---
- 7 A. Yes, ma'am.
- 8 Q. What time were you -- y'all supposed to go to
- 9 Florence?
- 10 A. Probably about lunchtime. Normally we would leave --
- 11 we started calling 9:00, ten o'clock that morning.
- 12 Q. What were you going to Florence to do?
- 13 A. To watch a movie.
- 14 Q. Okay. And who was planning on going?
- 15 A. Me, Tiffany Haire, Joe and Robbie Polston.
- 16 Q. Okay, did you talk to Joe any that morning?
- 17 A. No, ma'am.
- 18 Q. Did you talk to him any that day?
- 19 A. No, ma'am.
- 20 Q. Okay. Did -- now, you already indicated that Joe
- 21 used crack but did he smoke cigarettes?
- 22 A. Yes, ma'am.
- 23 Q. About what the Robbie?
- 24 A. Yes, ma'am.
- 25 Q. What about Ms. Loyce?

1 A. If she did I'm not sure.

2 Q. Okay. What kind of relationship did Joe and Robbie
3 have as far as just between the two of them? You already
4 indicated that they were lovers, but as far as how they
5 acted around one another?

6 A. Well, really, I have never been around them together.
7 When I did Robbie was kind of careful of Joe like he
8 didn't want to do anything to make Joe mad. Joe was also
9 an angry person. So he didn't want to make him mad in any
10 kind of way.

11 Q. Did you ever see Joe do anything to Robbie?

12 A. No, ma'am.

13 Q. Okay. Did you ever hear Joe threaten Robbie in any
14 way?

15 A. Robbie told me you know ---

16 MR. JONES: Objection. Hearsay.

17 THE COURT: Objection sustained.

18 BY MS. MUNNERLYN:

19 Q. You can't tell me what Robbie said. Did you hear Joe
20 say anything?

21 A. No, ma'am.

22 Q. Okay. Did you see Joe again after that Saturday
23 morning or after you saw him? You didn't actually see him
24 on Friday, did you?

25 A. No, ma'am.

1 Q. Did you see him again?

2 A. Never seen him again until now.

3 Q. But you see him in the courtroom today?

4 A. Yes, ma'am.

5 MS. MUNNERLYN: Court's indulgence just one moment?

6 THE COURT: Yes, ma'am.

7 MS. MUNNERLYN: I don't have any further questions.

8 Please answer any questions Mr. Jones has.

9 THE COURT: Cross-examination, Mr. Jones.

10 MR. JONES: Thank you.

11 CROSS-EXAMINATION

12 BY MR. JONES:

13 Q. Ms. Ellis, I don't know if I heard this right. You
14 have only seen Joe and Robbie together one time?

15 A. Yes, sir.

16 Q. When was that?

17 A. Right after he got out of prison. That's when he
18 came by and wanted to know if I knew anybody that sold
19 crack.

20 Q. That's the only time you every saw the two of them
21 together?

22 A. Yes, sir.

23 Q. Was he high on crack?

24 A. He looked it. I mean he didn't really talk to me
25 other than Robbie asking for Joe cause I never knew Joe

1 that way. I never wanted to talk to Joe.

2 Q. Did you not say you saw him high and he was outraged?

3 A. Yeah, he was this second time I seen him. He came to
4 my house himself twice without Robbie.

5 Q. Without Robbie? How did he get there?

6 A. The blue Corsica.

7 Q. He was driving it by himself?

8 A. Yes, sir.

9 Q. Ever see him drive it by himself?

10 A. A few times.

11 Q. Was it unusual for him to drive that car?

12 A. When he takes it they say he stole it.

13 Q. You seen him drive that car on more than one
14 occasion?

15 A. He used to drive it to work.

16 Q. He used to drive the blue car to work?

17 A. Absolutely would.

18 Q. What was the other car he was driving?

19 A. A blue Buick Century.

20 Q. So as far as you're seeing Joe driving cars from the
21 Locklear home you've seen him in both cars?

22 A. Um hum.

23 Q. Now, you never met Joe at all except a time a couple
24 months before Robbie and Ms. Locklear were killed; is that
25 correct?

1 A. Yes, sir.

2 Q. Without telling me what was said did you hear a
3 conversation about him from either Robbie or Ms. Locklear?

4 A. From Robbie, yes, sir.

5 Q. Okay. So you knew that Robbie knew Joe for quite
6 some time?

7 A. Yes, sir.

8 Q. Before you met him?

9 A. Yes, sir.

10 Q. Okay. During those conversations, and again, I'm not
11 asking you what was said, but did you ever hear from
12 either Robbie or Ms. Locklear that they communicated with
13 Joe while he was in prison?

14 A. Robbie. Yes, sir.

15 Q. Okay. Did you ever hear that Robbie and/or
16 Ms. Locklear sent him money while he was in prison?

17 A. Robbie did. Yes, sir.

18 Q. Did you ever hear that Robbie actually went and
19 picked Joe up when he got out of prison?

20 A. Robbie did. Yes, sir.

21 Q. Do you know what car they were in?

22 A. No, sir. I don't.

23 Q. And when Robbie went to pick Joe up is that when he
24 moved into the house with Robbie and Ms. Locklear?

25 A. Yes, sir, I believe so.

1 Q. Okay. All right. And as far as you know that was
2 the residence? That's where he lived?

3 A. Yes, sir.

4 Q. And now I want to make sure that I got this right.
5 Tiffany is your girlfriend?

6 A. Yes.

7 Q. And isn't it true that she and Joe worked together
8 for about a week or so prior to Robbie's death?

9 A. Yes, sir.

10 Q. And she was doing roofing work with him?

11 A. Yes, sir.

12 Q. And has she done roofing work before?

13 A. Yes, sir.

14 Q. That's pretty tough work?

15 A. Yes, sir.

16 Q. Is it hard on the hands?

17 A. Sometimes I would say, yes.

18 Q. Did you ever see any cuts or scrapes or anything on
19 her hands?

20 A. No, sir.

21 Q. Were you able to be near enough with Joe to notice
22 any cuts or scrapes or anything on his hands?

23 A. I hadn't been that close to him.

24 Q. You hadn't been around him that much?

25 A. Right.

1 Q. Now, also on June 29th 2007 you never saw Joe
2 Gathings at all that day?

3 A. No, sir.

4 Q. All right. Did you see Ms. Locklear?

5 A. Just a little. Like a glimpse. She was in the
6 kitchen going to the living room.

7 Q. What time was that?

8 A. Might be about ten till four o'clock, p.m.

9 Q. Had she come from work that day?

10 A. I'm not sure. I don't think she worked that day.

11 Q. Thank you.

12 MR. JONES: That's all I have.

13 THE COURT: Redirect, Ms. Munnerlyn.

14 MS. MUNNERLYN: No redirect, Your Honor.

15 THE COURT: All right. Thank you. You may step
16 down. All right. You may call your next witness.

17 MS. MUNNERLYN: Jerry Nolan.

18 JERRY NOLAN, after being duly sworn, testified
19 as follows:

20 CLERK OF COURT: Be seated and state your full name.

21 THE WITNESS: My name is Jerry Lane Nolan.

22 DIRECT EXAMINATION

23 BY MS. MUNNERLYN:

24 Q. Mr. Nolan, are you associated with the Clio Rescue
25 Squad in any way?

1 A. Yes. I'm the captain.

2 Q. You're a captain. Were you a captain back in June of
3 2007?

4 A. Yes, ma'am.

5 Q. Okay. Do you recall an incident at [REDACTED]
6 [REDACTED] in Clio where you went to the home in regards to
7 two individuals there?

8 A. Yes, ma'am.

9 Q. Okay. And did you enter the home there?

10 A. I did.

11 Q. Okay. Do you remember who you entered with?

12 A. I believe it was Chief of Police Pearlle Thomas and
13 Mark Player.

14 Q. Okay?

15 A. He was a paramedic.

16 Q. He was a paramedic with Marlboro County E.M.S.?

17 A. Yes, ma'am.

18 Q. And when you entered the house do you recall if you
19 saw anybody?

20 A. Yes, ma'am.

21 Q. Who did you see?

22 A. Robbie Polston and -- one of the back bedrooms on the
23 floor and his momma was laying in the hallway, front room
24 on the floor.

25 Q. Okay. Did you approach the bodies?

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1 A. Yes, ma'am.

2 Q. Okay. Did you check to see if they were still
3 living?

4 A. The paramedic in front of me did.

5 Q. And that was a paramedic with Marlboro County E.M.S.
6 as well?

7 A. Yes, ma'am.

8 Q. He entered on that date as well, too, did he not?

9 A. Yes, ma'am.

10 Q. Did you actually check to see if they were still
11 living?

12 A. No, ma'am. The paramedic did.

13 Q. You were stand there while they did?

14 A. Right.

15 Q. And were they able to find a pulse?

16 A. No, ma'am.

17 Q. And did either of them or you or anyone while you
18 were inside the house move the bodies in any way?

19 A. No, ma'am.

20 Q. Did they touch or disturb anything else within the
21 house?

22 A. No, ma'am.

23 Q. Okay. What size shoe do you wear?

24 A. An eight.

25 Q. Size eight?

- 1 A. Yes, ma'am.
- 2 Q. Do you remember what type shoe you would have been
3 wearing on that date, on June the 30th?
- 4 A. I was wearing -- I was working -- I was wearing a
5 tennis shoe. Don't know what kind they were. Just cheap
6 tennis shoes.
- 7 Q. Just a tennis shoe?
- 8 A. Yes, sir.
- 9 Q. But yours would be a size eight?
- 10 A. Right.
- 11 Q. You don't wear a size 11, do you?
- 12 A. No, ma'am.
- 13 Q. Okay. I want to show you State's Exhibits 94 and 39.
14 See if you recognize what's in those photos?
- 15 A. Yes, ma'am.
- 16 Q. Okay. And from where do you recognize the contents
17 of those photos?
- 18 A. They were in the house on North Main in Clio.
- 19 Q. Okay. On June 30th when you entered?
- 20 A. Yes, ma'am.
- 21 Q. Okay. And is there -- do the photos accurately show
22 how you found then when you entered that house?
- 23 A. Yes, ma'am.
- 24 Q. Do they accurately show how you left them when you
25 exited that house?

1 A. Yes, ma'am.

2 MS. MUNNERLYN: I don't have any further questions
3 for Mr. Nolan.

4 BY MS. MUNNERLYN:

5 Q. Answer any questions Ms. Crayton has.

6 CROSS-EXAMINATION

7 BY MS. CRAYTON:

8 Q. Mr. Nolan, you are with Clio Rescue Squad?

9 A. Yes.

10 Q. If I understand your testimony correctly you went
11 into the house, entered this house with two E.M.S.
12 workers?

13 A. Yes.

14 Q. You did not check for a pulse?

15 A. The paramedics did.

16 Q. What was your purpose?

17 A. I'm the captain of the squad. If anything goes on in
18 and around the Town of Clio I try to answer all the calls.

19 Q. And you said who walked you through this house?

20 A. If I'm not mistaken Mark Player and Chief of Police
21 Pearlle Thomas.

22 Q. Pearlle Thomas. Who did you think was the chief
23 investigator in charge of that crime scene?

24 A. I have no idea.

25 Q. No idea. You didn't get an impression?

1 A. The Chief of Police was there. I figured he was in
2 charge.

3 Q. Okay. And do you remember how many people walked
4 through that house while you were there?

5 A. No, ma'am. But us whenever I was there and after
6 they left.

7 Q. Okay. Four of you were in the house at that point?

8 A. I would imagine so.

9 Q. Okay. And what way did y'all walk through the house?
10 Where did y'all begin?

11 A. We went in the back door.

12 Q. Okay. And what room does that bring you into?

13 A. I believe it comes into the kitchen. I didn't look
14 around in the house so, but I believe we entered through
15 the kitchen.

16 Q. Okay. And what room proceeded into then?

17 A. I believe the hall come down and then there was a
18 bedroom was on the left.

19 Q. Okay. When you entered this house did you give your
20 name to one of the officers and told him who you were?

21 A. All of them knew me.

22 Q. All of them knew you?

23 A. Um hum.

24 Q. You didn't have to sign anything saying that you were
25 going in the house?

1 A. No, ma'am.

2 Q. Okay. Did you cover your shoes before entering the
3 house?

4 A. No, ma'am.

5 Q. Okay. Nobody asked you to cover your shoes?

6 A. No, ma'am.

7 Q. Was there anyone taking pictures of the house when
8 you arrived?

9 A. No, ma'am.

10 MS. CRAYTON: Court's indulgence, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. CRAYTON: Thank you.

13 THE COURT: All right. Redirect, Ms. Munnerlyn.

14 MS. MUNNERLYN: None, Your Honor.

15 THE COURT: All right. Thank you, sir. You may step
16 down.

17 MS. MUNNERLYN: Your Honor, I ask the witness be
18 excused at this time.

19 THE COURT: Any objection.

20 MS. CRAYTON: No objection, Your Honor.

21 THE COURT: You are excused. Thank you for coming.

22 MS. MUNNERLYN: Donna Jackson.

23 DONNA JACKSON, after being duly sworn, testified
24 as follows:

25 MS. CRAYTON: May we approach, Your Honor.

1 THE COURT: Yes. Step up.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 DIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q. You are Donna Jackson?

8 A. Yes.

9 Q. And where do you live now, Donna? That's just in
10 general terms?

11 A. Here in Bennettsville.

12 Q. Okay. And did you live here back in 2005?

13 A. Yes, ma'am.

14 Q. Okay. How long have you known the defendant?

15 A. I've just knew him for the short period we were
16 together.

17 Q. You knew him for a short period for 2005?

18 A. Yes.

19 Q. What was your relationship with him at that time?

20 A. We lived together.

21 Q. You lived together enter a period of time?

22 A. Um hum.

23 Q. You remember how long that was?

24 A. No, ma'am.

25 Q. Did you know at that time what his relationship was

- 1 with Robbie Polston?
- 2 A. No, ma'am. Not at that time.
- 3 Q. Okay. When did you find out about his relationship
- 4 with the Robbie Polston?
- 5 A. After he went to prison.
- 6 Q. After he went to prison, okay. And you got to know
- 7 Robbie after that?
- 8 A. Yes, ma'am.
- 9 Q. And did you have any conversations with the defendant
- 10 by phone while he was in prison?
- 11 A. Yes, ma'am.
- 12 Q. Okay. And tell us about that?
- 13 A. One time I guess he had called Robbie, and Robbie
- 14 like three way called us. And he was telling us how he
- 15 would kill me and kill Robbie because of some stuff that
- 16 was said.
- 17 Q. Who was telling you this?
- 18 A. Joe said that he would kill both of us.
- 19 Q. Okay. All right. And this was on a phone call?
- 20 A. Yes, ma'am.
- 21 Q. It was a three way call?
- 22 A. Yes, ma'am.
- 23 Q. They called you after Joe and Robbie were already on
- 24 the phone?
- 25 A. Yes, ma'am.

1 Q. And did he say when he was going to carry out this
2 threat or any details about that?

3 A. No, ma'am. He just said he would kill both of us and
4 that was it.

5 Q. Do you recall when this was?

6 A. No, ma'am, not exactly. I mean it's been a few years
7 back. A while back.

8 Q. Did you see him after he got out of prison?

9 A. No, ma'am. I'm not seen him since -- for a while.
10 It's been a long time.

11 Q. You haven't seen him since he got out of prison?

12 A. No, I hadn't seen him since right before he went to
13 prison.

14 Q. All right. Did you know anything at this crack use?

15 A. Yes, ma'am.

16 Q. What did you know about that?

17 A. He took my car a few incidents and went and brought
18 crack with it.

19 Q. Okay. All right. How did he act when he was high on
20 crack?

21 A. Most times he was just wide open and.

22 Q. Okay. I don't have any further questions for you.

23 Answer any questions Mr. Jones may have.

24 THE COURT: Cross-examination, Mr. Jones.

25 MR. JONES: I just have one or two.

CROSS-EXAMINATION

1
2 BY MR. JONES:

3 Q. Ms. Jackson, sometime after 2005, and I'm assuming
4 before 2007, you get a telephone call. Joe and Robbie on
5 the phone, and Joe says, "By the way I'm going to kill
6 both of you?"

7 A. No, sir. We were all just talking about everything
8 back and forth. It turned into a disagreement. That's
9 when Joe said that.

10 Q. He's in prison during this time?

11 A. Yes, sir, or in jail. It might just be in jail at
12 that time.

13 Q. You don't have any idea when it was?

14 A. No, sir, not exactly.

15 Q. Can you narrow it down to a year? What year it was?

16 A. No, sir.

17 Q. Sometime between 2005 and 2007. That's the best you
18 can do?

19 A. Yes, sir.

20 Q. Thank you.

21 MR. JONES: That's all I have.

22 MS. MUNNERLYN: No redirect, Your Honor.

23 THE COURT: All right. You may step down. Thank
24 you.

25 MS. MUNNERLYN: I ask that this witness be excused at

1 this time.

2 THE COURT: Any objection?

3 MR. JONES: None whatsoever.

4 THE COURT: Witness is excused. Thank you for
5 coming. You may call your next witness.

6 MS. MUNNERLYN: Allen Collins.

7 ALAN COLLINS, after being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. MUNNERLYN:

11 Q. You are Alan Collins?

12 A. Yes.

13 Q. Where do you live, Mr. Collins?

14 A. [REDACTED]

15 Q. Okay. And do you know Loyce Locklear and Robbie
16 Polston?

17 A. Yes.

18 Q. Okay. How did you know Ms. Locklear?

19 A. Ms. Locklear worked for me. Looked after my mother.

20 Q. She worked for you taking care of your mother?

21 A. Yes.

22 Q. Okay. And that was to have been in your home?

23 A. Yes.

24 Q. Okay. Do you know what timeframe she worked for you?

25 A. She work about two years, I guess.

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1 Q. Okay. And was she working for you at the time of
2 this incident when she was killed?

3 A. Yes.

4 Q. What were her normal working hours?

5 A. From 8:00 to 4:30.

6 Q. Okay. And she would come what days of the week?

7 A. She would come five days a week.

8 Q. Monday through Friday?

9 A. Yes.

10 Q. And do you recall if she worked on Friday, June 29th,
11 two days before her body was found?

12 A. Yes, she did.

13 Q. Okay. Do you know whether or not she went to the eye
14 doctor that morning or came early or came late to work; do
15 you recall?

16 A. I don't recall that. I think she went to the eye
17 doctor on Thursday, the day before.

18 Q. Okay. All right. But do you recall if she did come
19 to work on Friday?

20 A. Yes.

21 Q. And do you know if anyone else came to see her while
22 she was at work?

23 A. Yes, she had some visitors around two o'clock, 2:30.

24 Q. When did she work normally?

25 A. In the afternoon.

- 1 Q. When did she normally get paid?
- 2 A. 4:30.
- 3 Q. On Friday?
- 4 A. Yes.
- 5 Q. And what happened on this particular day?
- 6 A. She asked that she -- if she could get paid early.
- 7 Q. Are did you pay her early?
- 8 A. Yes.
- 9 Q. Do you recall about when you paid her?
- 10 A. About two o'clock.
- 11 Q. And did you know, without telling what she said, did
- 12 you know why she wanted to get paid early?
- 13 A. Somebody needed it. She had money and they were
- 14 coming to get it.
- 15 Q. And did someone come to your home?
- 16 A. Yes.
- 17 Q. Do you know who came?
- 18 A. I didn't see who they were. There were three people
- 19 in an automobile.
- 20 Q. Do you know which automobile it was?
- 21 A. It was a light blue -- I don't really know the make
- 22 or the model.
- 23 Q. Okay. Did you know -- had you had much contact with
- 24 Ms. Locklear's son, Robbie?
- 25 A. No.

1 Q. What about the Defendant, Joe Gathings?

2 A. No. I, as far as -- I never seen him.

3 Q. Do you know whether or not he ever came to your
4 house?

5 A. I was just told that.

6 Q. Okay. But you yourself have never seen him there?

7 A. No.

8 Q. Okay. Did you notice any change in Loyce's behavior
9 when Joe was around?

10 A. Oh, yeah.

11 Q. Okay?

12 A. She would be very withdrawn. She didn't want to
13 talk, discuss anything. She would sit just like she was
14 in her own world. She was not herself at all.

15 Q. Okay. I don't have any further questions. If you
16 would answer any questions Ms. Crayton or Mr. Jones has.

17 THE COURT: Cross examination.

18 MS. CRAYTON: Yes, Your Honor. Just one moment.

19 CROSS-EXAMINATION

20 BY MS. CRAYTON:

21 Q. Mr. Collins, I just have a couple of questions for
22 you. Do you remember, normally, what y'all did for lunch?

23 A. No.

24 Q. You don't remember, normally, did you eat lunch at
25 your home?

1 A. Sometimes I think I did.

2 Q. Did your mom normally eat lunch at home?

3 A. Yeah. She always ate lunch at home. Maybe not all
4 but most of the time.

5 Q. And did Ms. Locklear stay was her and eat lunch with
6 her?

7 A. Yes.

8 Q. They made lunch together and ate it in your home?

9 A. Yes. Ms. Locklear prepared the lunch for my mother.

10 Q. She prepared lunch for your mother?

11 A. Yes.

12 Q. And do you remember Friday, June 29th if she prepared
13 lunch for your mom?

14 A. No, I don't.

15 Q. You don't remember particularly?

16 A. No.

17 Q. Okay, but normally that was the procedure?

18 A. That's right.

19 Q. Okay.

20 MS. CRAYTON: Court's indulgence, Your Honor.

21 BY MS. CRAYTON:

22 Q. Thank you, Mr. Collins.

23 THE COURT: Redirect, Ms. Munnerlyn.

24 MS. MUNNERLYN: None, Your Honor.

25 THE COURT: All right. Thank you, sir. You may step

1 down. Thank you for coming. Would you like to have the
2 witness excused, Ms. Munnerlyn?

3 MS. MUNNERLYN: Yes, sir, Your Honor.

4 THE COURT: You are excused. Thank you for coming.

5 MS. MUNNERLYN: Francis Anderson. This is the
6 witness that I'm going to need a few minutes.

7 THE COURT: Ladies and gentlemen of the jury, all
8 right. Ladies and gentlemen, I was advised earlier that
9 they were going to use electronic equipment with this
10 witness. That may take five minutes to get it set up. It
11 will not take long, let you go to the jury room for about
12 five minutes and we'll be ready to start back.

13 Please go to your jury room. Don't talk about this
14 case just yet, but we'll send for you very shortly.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 12:25 p.m.)

17 THE COURT: All right, counsel, let me know as soon
18 as y'all are ready.

19 MS. MUNNERLYN: Thank you, Your Honor.

20 (WHEREUPON, Court was in recess at 12:25 p.m. and
21 reconvened at 12:27 p.m.)

22 THE COURT: All right. We're back on the record with
23 regards to State v. Gathings. Mr. Gathings is present in
24 the courtroom with his counsel, and the State the present
25 represented by Ms. Munnerlyn. Ms. Munnerlyn, are you

1 ready to go forward?

2 MS. MUNNERLYN: Yes, sir, Your Honor.

3 THE COURT: Okay. Bring the jury in, please. Tell
4 me this witness' name again.

5 MS. MUNNERLYN: Francis Anderson.

6 THE COURT: Okay.

7 (WHEREUPON, the jury enters the courtroom at
8 12:28 p.m.)

9 (WHEREUPON, State's Exhibit Nos. 181 THROUGH 184 were
10 marked for identification only.)

11 THE COURT: All right. You may proceed.

12 MS. MUNNERLYN: Thank you, Your Honor. The State
13 calls Francis Anderson. She's already in the courtroom at
14 this point. She needs to be sworn.

15 FRANCIS ANDERSON, after being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MUNNERLYN:

19 Q. You are Francis Anderson?

20 A. That is correct.

21 Q. And where are you employed, Ms. Anderson?

22 A. Horry County State Bank in Horry County, South
23 Carolina.

24 Q. Okay, and I'm going to show you what's been marked as
25 State's Exhibit 146 and ask if you recognize that

1 particular D.V.D?

2 A. I do.

3 Q. Have you had an opportunity to review this this
4 morning?

5 A. Not today I haven't, but I did yesterday.

6 Q. Okay. All right. And do you recognize what's on
7 that particular D.V.D?

8 A. I do.

9 Q. And what is shown on the D.V.D?

10 A. On the D.V.D. is a vehicle pulling into our ATM
11 machine and actually taking -- utilizing the A.T.M. and
12 you can view the person.

13 Q. Okay. All right. This is video from the
14 surveillance camera at your bank?

15 A. That is correct.

16 Q. And it accurately reflects the video taken on your
17 camera on June 30th on the time that's on the video?

18 A. Yes, ma'am, it does.

19 Q. And the date and time are reflected on the video
20 itself?

21 A. They are.

22 Q. Now, just for explanation of how it's set up. This
23 D.V.D. actually shows a number of cameras, isn't that
24 right?

25 A. Yes, ma'am.

1 Q. So there is more than one camera here at various
2 locations around that A.T.M. and around your bank?

3 A. Yes, ma'am, they are.

4 Q. Your bank I think you testified is located in Horry
5 County, South Carolina?

6 A. That's correct.

7 Q. That's in Horry County?

8 A. Yes, ma'am.

9 MS. MUNNERLYN: Your Honor, I would move to admit
10 State's Exhibit 146 that this time?

11 THE COURT: Any objection?

12 MS. CRAYTON: No, Your Honor.

13 THE COURT: State's Number 146 is admitted without
14 objection.

15 (WHEREUPON, State's Exhibit No. 146 was admitted into
16 evidence.)

17 MS. MUNNERLYN: And would request permission to
18 publish that D.V.D. for the jury.

19 THE COURT: Ladies and gentlemen, I haven't told you
20 this before because the lawyers haven't asked to publish
21 any exhibits. They do have the right to show you any
22 exhibits while you're sitting there in the jury box. If
23 they are photos you will have the right to pass the around
24 or other documents you would have the right to pass them
25 around. And you also have the right to view this now, but

1 I will also tell you that anything that's admitted into
2 evidence will go with you to the jury room when you retire
3 to reach a verdict.

4 So, again, this -- we will watch this now, but of
5 course, but you will also, since it has been admitted in
6 evidence, have an opportunity to look at it again or as
7 much as you would like to once the matter -- once you
8 retire to reach a verdict. So don't -- so pay attention
9 and watch it, but don't be too concerned that this is the
10 only time that you're going to see it.

11 MS. MUNNERLYN: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit Number 146 was played for
13 the jury.)

14 THE COURT: Ms. Munnerlyn, do you want her to come
15 around where she can see this?

16 MS. MUNNERLYN: Yes, Your Honor.

17 THE COURT: Come around so you can see this, Ms.
18 Anderson.

19 BY MS. MUNNERLYN:

20 Q. I just want to ask you a couple of questions. In
21 these views on these various frames are they all at your
22 bank?

23 A. Yes, ma'am.

24 Q. And the camera has alternate views; is that correct?

25 A. That is correct.

1 Q. Go ahead.

2 A. There are several different positions. This is at
3 the A.T.M. This is the night drop -- of course, would be
4 inside the bank. And this would be like you're coming up
5 through -- driving through right here would be our A.T.M.
6 machine.

7 Q. This is just another view further away behind the
8 A.T.M.?

9 A. That is correct.

10 Q. Okay. All right. Stand back just a little bit.

11 (WHEREUPON, State's Exhibit Number 146 continued to
12 be played for the jury.)

13 BY MS. MUNNERLYN:

14 Q. Have a seat back, Ms. Anderson. Just one last
15 question, Ms. Anderson. That D.V.D. shows the bank on
16 June 30th 2010. Do you know the time there?

17 A. The time on here is 10.27.46 a.m. through
18 10.33.41 a.m., but that's also in military time.

19 Q. All right?

20 A. I just wanted to.

21 Q. That's clearly in the morning hours?

22 A. That is correct

23 Q. I don't have any further questions. If you would
24 answer any question defense counsel may have.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. CRAYTON:

Q. Ms. Anderson, what county is Horry in?

A. Conway.

Q. Would you please repeat the time and date?

A. June the 30th and it's 10:27 through 10:33, I believe.

Q. You're fine.

A. 10.27.46 a.m. through 10.33.41 a.m, June the 30th of '07.

Q. Okay. Thank you, Ms. Anderson. I don't have any further questions.

THE COURT: Any further questions of this witness?

MS. MUNNERLYN: No, Your Honor. I would ask she be excused.

THE COURT: All right. You are excused. Thank you for coming.

MS. CRAYTON: May we approach, Your Honor?

THE COURT: Yes.

(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)

COLLOQUY

THE COURT: All right, ladies and gentlemen of the jury, I've been advised by counsel that this is a good

1 point to break for lunch, and we're going to do that at
2 this time. I am going to allow you to go get your lunch
3 and ask you to please be back in your jury room at
4 two o'clock. It's about a quarter to 1:00. That will
5 give you an hour and 15 minutes.

6 Over the lunch recess do not discuss the case with
7 anyone, do not allow anyone to discuss the case with you.
8 And do not discuss the case amongst yourselves while
9 you're reassembling in the jury room. Just forget about
10 this case for a little while and have a pleasant lunch and
11 be back at two o'clock and we'll be ready to start at that
12 time.

13 Thank you. You may go with the bailiff and go to
14 lunch. Everyone else remain seated, please, until the
15 jury has had a chance to clear.

16 (WHEREUPON, the jury panel was excused from the
17 courtroom at 12:41 p.m.)

18 THE COURT: All right, counsel, let's wait a minute.
19 I want to give the jury a chance it clear the premises.
20 All right, counsel, the jury should have had sufficient
21 opportunity to reach their automobile, and we will be in
22 recess until two o'clock.

23 MS. CRAYTON: Thank you, Your Honor.

24 (WHEREUPON, Court was in recess at 12:44 p.m.)
25

1 (WHEREUPON, State's Exhibit Nos. 147 THROUGH 180 were
2 marked for identification only.)

3 MS. MUNNERLYN: May we approach, Your Honor.

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held off the
6 record outside the presence of the jury.)

7 THE COURT: All right. We're back on the record in
8 the matter of the State v. Gathings. Mr. Gathings is
9 present to the courtroom?

10 MS. CRAYTON: No, Your Honor.

11 THE COURT: No.

12 MR. JONES: He's not.

13 THE COURT: All right. All right. Mr. Gathings is
14 now in the courtroom and prepared to go forward. During
15 the lunch recess the State and Defense counsel approached
16 the Court with regards to some additional photographs, all
17 of which have been agreed upon expect one, and that's
18 State's Exhibit Number 165. It depicts a screwdriver and
19 ice pick from the vehicle that was searched.

20 The objection is on the grounds of relevance, and I
21 am going to exclude that photograph. I do not think it is
22 relevant to the issue in this case, and it will be, as
23 with the other photographs that have already been included
24 and made a part of the record so that at some future time
25 the record will be complete. All right. Anything before

1 we bring the jury in, Ms. Munnerlyn?

2 MS. MUNNERLYN: No, Your Honor. So we're in
3 agreement on those vehicle photos then?

4 THE COURT: Yeah, the other photographs we can go
5 ahead and admit them. Okay. Those would be Exhibits 147
6 through 180 with the exception of that one photograph.
7 They will be admitted into evidence without objection,
8 right, Ms. Crayton?

9 MS. CRAYTON: Yes, Your Honor.

10 THE COURT: All right.

11 (WHEREUPON, State's Exhibit Nos. 147 through 164 and
12 166 through 180 were admitted into evidence.)

13 THE COURT: All right. Anything before we bring the
14 jury in, Ms. Crayton?

15 MS. CRAYTON: No, Your Honor.

16 THE COURT: All right. Bring the jury in, please.

17 (WHEREUPON, the jury enters the courtroom at
18 12:20 p.m.)

19 THE COURT: All right, ladies and gentlemen, and
20 thank you for your patience and being back promptly on
21 time. I again apologize to you for keeping you waiting.
22 I had two matters that came up that were scheduled for
23 1:45 and we took longer than I had expected to. In
24 addition to being the presiding judge this week I am also
25 the administrative judge for the Fourth Judicial Circuit

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1 and have to deal with matters from other counties as well.

2 This happened to be from Chesterfield County, and we
3 had to get that matter resolved before we could go
4 forward. We are ready to go forward now, and the State
5 will continue the presentation of their case.

6 Ms. Munnerlyn.

7 MS. MUNNERLYN: Thank you, Your Honor. Call Doug
8 Sarvis.

9 DOUG SARVIS, after being duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MS. MUNNERLYN:

13 Q. You are Doug Sarvis?

14 A. Yes, ma'am.

15 Q. Spell your last name.

16 A. S-A-R-V-I-S.

17 Q. And where are you currently employed?

18 A. With the South Carolina Highway Patrol.

19 Q. And where were you employed back in the first part of
20 the July 2007?

21 A. With the Horry County Police Department.

22 Q. Okay. And how long -- what is your law enforcement
23 experience?

24 A. Since 2001. And in 2007 I transferred to the South
25 Carolina Highway Patrol.

1 Q. Okay. So you've been continuously in law enforcement
2 since 2001?

3 A. Yes, ma'am.

4 Q. Okay. And in what capacity were you employed with
5 Horry County Police in July of 2007?

6 A. I was a property crime detective with the Horry
7 County Police Department.

8 Q. Okay. Did you receive a report around the 1st or 2nd
9 of July regarding a stolen vehicle and fugitive?

10 A. Yes, I did.

11 Q. Okay, and what did you do to act on that information?

12 A. Upon receiving the phone call I inquired through my
13 supervisor what we were looking for. The type of vehicle.
14 It was described to me as a blue in color Chevrolet
15 Corsica. It was a small passenger car.

16 He stated that we were looking for one that was
17 wanted. At that time I drove -- I was advised over the
18 phone that it would be parked on Morris Carter Road in the
19 Conway section of Horry County. At that time I responded
20 out to that residence.

21 Q. And when you arrived at that residence -- you said
22 that was Morris Carter?

23 A. It's Morris Carter Road.

24 Q. That's locate in?

25 A. Conway section of Horry County.

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1 Q. Okay. And when you arrived at that location did you
2 see a vehicle fitting the description of the vehicle for
3 which you were looking?

4 A. Yes, I did, ma'am. It also had a South Carolina tag
5 on it that I was given, and it did match up with the South
6 Carolina tag that I was given through the phone call. I
7 was also given a South Carolina tag along with the
8 description. The South Carolina tag matched the vehicle
9 upon my arrival of the vehicle.

10 Q. What was the South Carolina tag?

11 A. 776-WBS.

12 Q. Okay. And where did you actually locate that vehicle
13 when you first see it?

14 A. It was off Morris Carter Road in a mobile home park
15 approximately a quarter mile down the road on the left
16 hand side parked on the side of a -- it's actually a
17 camper. I remember using a mobile home. It was a camper
18 trailer.

19 Q. Okay, I'm showing you what's already in evidence as
20 State's Exhibits 147, 148, 149, 150 and 151 and see if you
21 recognize what's in these photos?

22 A. Yes, ma'am. That's the car that I located at the
23 residence off Morris Carter Road.

24 Q. Okay?

25 A. The vehicle that I described.

1 Q. All right. And that is actually the light blue
2 colored Chevrolet Corsica?

3 A. Corsica, that's correct.

4 Q. When you located the vehicle what steps did you take
5 to locate the suspect who was alleged to have been driving
6 it?

7 A. Upon my approach there was myself and a couple of
8 other detectives. We surrounded the parameter around the
9 house at which time I was located up front. Had two doors
10 that this porch was on -- actually, a porch was attached
11 to the top. I started to call out in an attempt to make
12 contact with anyone in the house.

13 I asked the folks to come out the house at that time.
14 The homeowner come out and spoke with me. The homeowner
15 confirmed the information about the subject in the house
16 and I was asking who it was. I was advised that his name
17 was Joe, and I show a photo to him and confirmed that it
18 was the subject that was wanted.

19 Q. Okay?

20 A. We were looking for.

21 Q. Once you were able to confirm that it was the suspect
22 you were seeking do you know the name of the suspect that
23 you were seeking

24 A. A Joe Gathings.

25 Q. All right. And once you had this information what

1 did you proceed to do at that point?

2 A. At that time we proceeded to call him out of the
3 residence over the loud speaker. After several attempts
4 my supervisor showed up on the scene at which time he took
5 over. And he took over the loud speaker and attempted to
6 call him out which was unsuccessful of calling him out of
7 the residence at that time.

8 Q. And what date was this occurring on?

9 A. July 2nd 2007.

10 Q. Okay. You recall what time you went out to the
11 location where the car was located?

12 A. Just give me just a second. Let me get my report
13 here. July 2nd 2007 approximately 1700 hours.
14 Five o'clock. 5:00 p.m.

15 Q. About 5:00 p.m.?

16 A. Yes, ma'am.

17 Q. And what efforts were made to try to get the
18 defendant out of the camper trailer?

19 A. Several attempts were made to call out on the loud
20 speaker. Several attempts were made until the negotiator
21 showed up. They made several attempts until our Horry
22 County S.W.A.T. Team comes on scene.

23 The bomb squad has a robot. They sent the robot up
24 to the door, second door in the front and went up to it.
25 The robot tore the door off and went in to try to make

1 communication. At that time the Horry County S.W.A.T.
2 Team shot tear gas in the house, and Mr. Gathings come out
3 with his hands up at that time and surrendered.

4 Q. How long, approximately, did it take for all this to
5 transpire from the time that y'all arrived until the time
6 he came out?

7 A. Approximately three hours. We were on scene for
8 approximately five hours.

9 Q. Okay. But it took about three hours in your effort
10 to try?

11 A. And around three hours, yes, ma'am, that is correct.

12 Q. When he came out was he immediately placed in
13 custody?

14 A. That is correct, he was. He actually kind of with
15 his hands to the ground, and that was when the S.W.A.T.
16 Team approached and placed him in custody. That's
17 correct.

18 Q. And do you know who actually transported him?

19 A. The detective or actually the Corporal Rusty Crawford
20 from Horry County Police Department.

21 Q. What did you do at that point? Do you recall if you
22 took -- you did take custody of some evidence, did you
23 not?

24 A. Yes, ma'am. Later on I took custody from Rusty or
25 from Corporal Rusty Crocker. At that time I transported

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1 the defendant to the Horry County Detention Center.

2 Q. Okay. I'm going to show you what's been marked as
3 State's Exhibit 142. See if you recognize that document?

4 A. Yes, ma'am. It's a chain of custody. Horry County
5 Chain of Custody.

6 Q. For the items of evidence you received ---

7 A. Yes, ma'am.

8 Q. --- in this case?

9 A. Yes, ma'am. That's correct.

10 MS. MUNNERLYN: Your Honor, move to admit 142 at this
11 time?

12 THE COURT: 142.

13 MS. MUNNERLYN: 142.

14 THE COURT: Any objection?

15 MS. CRAYTON: No, Your Honor.

16 THE COURT: In evidence without objection.

17 MS. MUNNERLYN: Thank you, Your Honor.

18 (WHEREUPON, State's Exhibit No. 142 was admitted into
19 evidence.)

20 BY MS. MUNNERLYN:

21 Q. Looking at the first page here on this exhibit can
22 you tell us what items were transmitted to you and by
23 whom?

24 A. On 7/2/2007 Corporal Rusty Crocker of the Horry
25 County Police Department released the following items:

1 One metallic colored watch, one metallic colored bracelet,
2 one pair of New Balance shoes. Size 11, white in color.

3 One pair of Boxer shorts with skull emblems, blue in
4 color, and one tee shirt, light blue in color.

5 Q. That's what Corporal Rusty Crocker gave you?

6 A. I logged them in evidence, to the evidence locker at
7 the Horry County Police Department.

8 Q. Does this accurately reflect the chain for those
9 items?

10 A. That is correct. Yes, ma'am.

11 Q. All right. Then I want to refer you to the next page
12 of this particular exhibit and ask you in regards to those
13 items what you seized there?

14 A. On scene in the blue Corsica, Number One, was a taped
15 interview of the home owner, Carl Moore. Number Two, a
16 piece of paper with a photo copy of Robbie Poston's
17 driver's license and a photo copy of Social Security Card
18 that was taken from the glove box of the 1995 Chevrolet
19 Corsica Bearing South Carolina Tag 776-WBS. And one
20 vehicle, blue in color, Corsica. Same taken with V.I.N.
21 number as noted on here was taken from the scene at which
22 time it was turned over to evidence to Investigator
23 Heather Brummett with the crime scene.

24 Q. Okay. Where was the vehicle impounded at?

25 A. It was impounded at the Horry County Impound Lot for

1 the whole process.

2 Q. Okay, now, you indicated that you had -- one of the
3 items of evidence was a taped interview with Carl Moore?

4 A. That is correct.

5 Q. And that was an interview you conducted with him?

6 A. I can't be clear on that. I assume that is correct.
7 I'm not sure about that.

8 Q. All right. After that did you have any further
9 involvement with the seizure of any evidence other than
10 what you already testified to?

11 A. No, ma'am.

12 Q. Did you have any further involvement with this case?

13 A. No, ma'am, not after that.

14 Q. You did issue an incident report of what you just
15 testified to?

16 A. That is correct, yes, ma'am, I did.

17 Q. Okay.

18 MS. MUNNERLYN: I don't have any further questions.

19 Answer any questions Ms. Crayton has.

20 MS. CRAYTON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. CRAYTON:

23 Q. Officer Sarvis?

24 A. Yes, ma'am.

25 Q. I just have a few questions for you. It's my

1 understanding that you took possession of the car that was
2 involved in this incident, correct?

3 A. Yes.

4 Q. You took it to the Horry County Police Department
5 from the scene? It was to the Horry County Police
6 Department as far as you know?

7 A. Yes, ma'am.

8 Q. Do you know where the car is currently?

9 A. No, ma'am.

10 Q. Okay. Where would you expect to find the car?

11 A. Currently -- well, let me back up on that. There was
12 a piece of paper. I'd just seen the paperwork. I
13 actually have seen it. It was towed back over here. Can
14 you give me just a minute? I've seen it somewhere.

15 Steven Lane, it was turned over to him, to Steven Lane.
16 Investigator Brummett released the keys to Steven Lane and
17 turn the keys over to him.

18 Q. Okay. And when you took custody of this vehicle you
19 looked inside of it?

20 A. Yes, ma'am. That's where the items from the glove
21 box.

22 Q. You searched the vehicle?

23 A. Yes, ma'am.

24 Q. So you looked around the car. Did you take photos of
25 the car at that time?

- 1 A. I would not have. Investigator Brummett would have
2 took photos if any photos would have been taken.
- 3 Q. Did you take swabs of anything from the car?
- 4 A. I would not. Investigator Brummett or the crime
5 scene would have done that.
- 6 Q. You didn't take pictures of the floorboard of the car
7 or anything?
- 8 A. No, ma'am.
- 9 Q. Did you test the floor mats?
- 10 A. No, ma'am.
- 11 Q. Okay. Did you test the gas peddle?
- 12 A. No, ma'am.
- 13 Q. Did you even swab the gas peddle?
- 14 A. No, ma'am.
- 15 Q. Did you swab the brake peddle?
- 16 A. No, ma'am.
- 17 Q. Okay. Do you remember what the car looked like when
18 y'all took it away?
- 19 A. The different pictures show like color, blue Corsica.
- 20 Q. Was the inside messy?
- 21 A. I don't recall.
- 22 Q. You don't recall?
- 23 A. No, ma'am.
- 24 Q. Thank you.
- 25 MS. CRAYTON: That's all I have.

1 THE COURT: All right. Anything further of this
2 witness, Ms. Munnerlyn?

3 MS. MUNNERLYN: No, Your Honor.

4 THE COURT: All right. Thank you, Trooper Sarvis.
5 You may step down.

6 MS. MUNNERLYN: Your Honor, I ask that this witness
7 be excused at this time.

8 THE COURT: Any objection.

9 MS. CRAYTON: No, Your Honor.

10 THE COURT: You are excused. Thank you for coming.

11 MS. MUNNERLYN: Rusty Crocker.

12 RUSTY CROCKER, after being duly sworn, testified
13 as follows:

14 CLERK OF COURT: Have a seat and state your full
15 name.

16 THE WITNESS: I'm Detective Rusty Crocker with the
17 Horry County Police Department.

18 DIRECT EXAMINATION

19 BY MS. MUNNERLYN:

20 Q. Okay, you're employed with the Horry County Police
21 Department now?

22 A. Yes, ma'am.

23 Q. And you were employed there in 2007 as well?

24 A. Yes, ma'am.

25 Q. And in what capacity were you employed there in July

1 of 2007?

2 A. I was a corporal working as a uniformed patrolman and
3 the assistant shift supervisor.

4 Q. And how many years law enforcement experience did you
5 have at this time?

6 A. At that time I had 13.

7 Q. Okay. And were you called to the scene on Morris
8 Carter Road where there was a stolen vehicle report and a
9 fugitive report?

10 A. Yes, ma'am.

11 Q. That afternoon on July the 2nd?

12 A. Yes, ma'am.

13 Q. This is in 2007?

14 A. Yes, ma'am, correct.

15 Q. When you responded do you recall what was happening
16 there when you arrived?

17 A. I had received information that some of our
18 detectives from the Criminal investigation Division had
19 located at stolen vehicle that was identified to a
20 homicide here in Marlboro County. I was asked to go and
21 assist. When I arrived there were several detectives
22 around the residence from a point where they could safely
23 watch the residence without exposing themselves.

24 As I arrived they had confirmed the information that
25 the vehicle was there and then when I arrived they had

1 obtained information that the individual they were looking
2 for was inside the house.

3 Q. And when you were present the defendant actually came
4 out of the trailer or camper?

5 A. Yes, ma'am.

6 Q. Okay. And do you know what efforts it took to get
7 him to surrender?

8 A. We were there for several hours. I arrived and
9 shortly thereafter they brought out the S.W.A.T. team, the
10 negotiation team. They had several attempts to contact
11 the trailer through megaphone. Eventually they used the
12 bomb robot to approach the residence to try to look
13 inside. That didn't work. So they, at that time, the
14 S.W.A.T. team decided the launch OC gas into the house.

15 I think they did that twice, and eventually the
16 suspect did come out and secured him.

17 Q. Now, once he came out and surrendered who took him
18 into custody.

19 A. I would -- he was initially taken by members of the
20 S.W.A.T. team that was surrounding the residence. He was
21 then, basically, turned around and given to me and he was
22 placed in my patrol vehicle.

23 Q. Okay. And did you then transport him at some point
24 from this scene?

25 A. Yes, ma'am. I was told -- instructed to transport

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1 him to the Horry County Police Department which I did. I
2 took him back and placed him in the interview room.

3 Q. And after -- you didn't actually talk with him?

4 A. No, ma'am, I did not carry on any conversation or
5 speak with him.

6 Q. Did you transport him from there to the Horry County
7 Police Department Interview Room to anywhere else?

8 A. Yes, ma'am, I was instructed at that time to take him
9 from the interview room and take him to J Ruben Long
10 Detention Center. I took him to the detention center. I
11 was instructed upon leaving the jail -- upon leaving the
12 police department to take his clothing that he had on at
13 this time into evidence.

14 Upon my arrival at the jail, when I arrived at the
15 jail, he was brought to the booking counter. He was
16 immediately searched in my presence. We then walked into
17 a holding cell which is simply behind the booking counter.
18 And his clothes were removed and placed in a big, brown
19 paper bag and he was given out clothes from the jail to
20 wear.

21 Q. I'm showing you State's Exhibit 142 and see if you
22 recognize that?

23 A. Yes, ma'am. This is the evidence, a copy of the
24 evidence sheet from where the items were taken from him at
25 the jail.

1 Q. Does this correctly list those items which you seized
2 from him?

3 A. Yes, ma'am.

4 Q. And did those items include New Balance Tennis Shoes?

5 A. Yes, ma'am.

6 Q. What were they?

7 A. They were a pair of white New Balance Tennis Shoes.

8 Q. And you took them in evidence?

9 A. Yes, ma'am. I took them from the jail and brought
10 them back to the police department where I met with
11 Detective Sarvis. I turned them over to him. My
12 signature there relinquishes my receiving to him, and I
13 turned them over to him.

14 Q. All right. I'm going to show you what's been marked
15 as State's Exhibit 181. If you can take a look there and
16 see if you recognize what's included in that exhibit?

17 A. Yes, ma'am. This is the bag that has J Ruben Long
18 Detention Center stamped on the back. Our bags are
19 different. We use bags that are different inside, and
20 these are the pair of New Balance Tennis Shoes that were
21 taken from him.

22 Q. All right.

23 MS. MUNNERLYN: Court's indulgence just one moment.

24 THE COURT: Let me ask you, counsel, he testified to
25 it. Are they in evidence?

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1 MS. MUNNERLYN: The shoes?

2 THE COURT: Yes.

3 MS. MUNNERLYN: Not yet.

4 THE COURT: All right.

5 MS. MUNNERLYN: I don't have any further questions,
6 Your Honor.

7 BY MS. MUNNERLYN:

8 Q. If you would answer any questions the Defense counsel
9 may have.

10 THE COURT: All right. Mr. Jones or Ms. Crayton.

11 MR. JONES: One second please, Your Honor. No
12 questions, Your Honor.

13 THE COURT: Thank you, sir. You may step down.
14 Would you like to have the witness excused?

15 MS. MUNNERLYN: Yes, sir, Your Honor.

16 THE COURT: Any objection?

17 MS. CRAYTON: No, Your Honor.

18 THE COURT: Okay, witness is excused. Thank you for
19 coming.

20 MS. MUNNERLYN: Brad Townsend.

21 BRAD TOWNSEND, after being duly sworn, testified
22 as follows:

23 THE WITNESS: I'm Brad Townsend.

24 DIRECT EXAMINATION

25 BY MS. MUNNERLYN:

1 Q. Where are you employed?

2 A. Horry County Police Department.

3 Q. And how long have you been employed we Horry County
4 Police Department.

5 A. A little over eight years.

6 Q. And you were working for them back in July of 2007?

7 A. Yes, ma'am.

8 Q. Okay. Did you assist in the investigation on
9 July 2nd 2007 involving a stolen vehicle and fugitive by
10 the name of Allen Joe Gathings?

11 A. Yes, ma'am.

12 Q. Okay. And what was your initial involvement in that?

13 A. I was tasked with providing or obtaining a search
14 warrant.

15 Q. Okay. The vehicle was located by your department?

16 A. Yes, ma'am.

17 Q. And you actually went and requested a search warrant
18 for the search of that vehicle?

19 A. Yes, ma'am.

20 Q. And do you recall what that vehicle was?

21 A. If I can refer to the search warrant I'd be able to
22 tell you for sure.

23 Q. Do you have a copy of it with you?

24 A. Yes, ma'am.

25 Q. Okay?

1 A. In that search warrant blue in color, 1999 Chevy
2 Corsica.

3 Q. Okay. And you did obtain that search warrant for
4 whom? Do you know who processed the vehicle?

5 A. It was S.L.E.D.

6 Q. You did go obtain the search warrant for that
7 particular vehicle. Do you know who that vehicle was
8 registered to or the license tag on that vehicle?

9 A. Yes, ma'am. Again referring to the search warrant.
10 The license tag on that vehicle was 776-WBS; that was
11 South Carolina vehicle tag. Also the V.I.N. Number is on
12 here as well, but it says it was registered to Loyce
13 Locklear.

14 Q. Okay. I'm going to show you State's Exhibits 147
15 through 153 and see if you recognize the vehicle that's in
16 those photos?

17 A. Yes, ma'am. These appear to be the same vehicle
18 registration as I just read, 776-WBS.

19 Q. Okay. Now, did you actually serve that search
20 warrant or was it actually served by someone else?

21 A. It was served by someone else.

22 Q. The return was made appropriately?

23 A. As far as I know, yes, ma'am.

24 Q. Okay. And actually it was Karl Kenley with S.L.E.D.
25 who processed the vehicle?

1 A. I believe that's what it says on the search warrant.

2 Q. Okay. Did you actually take possession of any
3 evidence or seize any evidence from this particular
4 vehicle yourself?

5 A. I did not. No, ma'am.

6 Q. You're not in the chain of custody on any particular
7 item of evidence in this case?

8 A. No, ma'am.

9 MS. MUNNERLYN: Court's indulgence just one moment?

10 THE COURT: Yes, ma'am.

11 MS. MUNNERLYN: I don't have any further questions.

12 BY MS. MUNNERLYN:

13 Q. Answer any questions Defense counsel may have.

14 THE COURT: Cross, Ms. Crayton?

15 MS. CRAYTON: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. CRAYTON:

18 Q. Thank you, Officer Townsend. One thing you did in
19 this case is you obtained the search warrant for the car?
20 For the vehicle?

21 A. Yes, ma'am. I was present on the scene when everyone
22 else was doing their -- basically, keeping an eye on the
23 residence but other than to.

24 Q. But you didn't collect any evidence?

25 A. I went there with Officer Brummett or C.S.I.

- 1 Brummett, but she did the collecting.
- 2 Q. You did the car?
- 3 A. Yes, ma'am.
- 4 Q. All right. And who is Donte Lafayette Simon?
- 5 A. That was -- you're referring to the search warrant?
- 6 Q. I am.
- 7 A. Under the description of property what we do is what
- 8 I, you know, typically do, we use a template for the
- 9 search warrant itself, and that was from a previous case.
- 10 Q. You know who that person is?
- 11 A. That's from a previous case.
- 12 Q. Do they have any relationship to this case?
- 13 A. Not to this case, no.
- 14 Q. Why is their name on the search warrant?
- 15 A. As I said before it's from a template from the
- 16 previous search warrant that we used under that
- 17 description of property. It says, "Any and all physical
- 18 firearms, projectiles, you know, etc. Fingerprints, shoe
- 19 prints, bloody clothing." We use that for probably
- 20 99 percent of our search warrants.
- 21 Q. So the person's name is on every search warrant?
- 22 A. No, just on the previous one before this one and on
- 23 this one as well.
- 24 Q. What's the relationship on the search warrant?
- 25 A. Again, it was from a previous template, and that

1 should not have been on there.

2 Q. It was a mistake?

3 A. Right.

4 Q. Okay. And you did this search warrant?

5 A. Exactly.

6 Q. Okay. So you made a mistake putting the wrong name
7 on it?

8 A. On that portion, yes. On the other portions
9 everything else matches up with the information that was
10 provided to me.

11 Q. Okay, now, when you viewed this car, when you opened
12 the car -- and did you look inside the car?

13 A. I did not. No, ma'am.

14 Q. You did not?

15 A. No, ma'am.

16 Q. You were just there at the crime scene. You got the
17 search warrant. That's all you did?

18 A. Yes, ma'am.

19 Q. Okay. All right. Thank you, Officer Townsend.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. MUNNERLYN:

23 Q. Is there any question that the information that you
24 were seeking as part of the search warrant was related to
25 the double homicide in Clio, South Carolina?

1 A. No, ma'am, no question whatsoever.

2 Q. It is not related at all to anybody by the name of
3 Donte Lafayette Simon?

4 A. No, ma'am.

5 Q. Simply an error?

6 A. Yes, ma'am. That would be from the previous case
7 that we mistakenly left on there.

8 Q. But the search warrant itself was for the vehicle
9 which you have already stated that you identified in the
10 photos as the Chevrolet Corsica which was owned by Loyce
11 Locklear?

12 A. Yes, ma'am.

13 Q. Okay?

14 MS. MUNNERLYN: No further questions.

15 THE COURT: Re-cross?

16 MS. CRAYTON: No, Your Honor. Thank you.

17 THE COURT: All right. Thank you, Officer. You may
18 step down.

19 MS. MUNNERLYN: Thank you, Your Honor. I would ask
20 that this officer be excused at this time.

21 THE COURT: Any objection?

22 MS. CRAYTON: No, Your Honor.

23 THE COURT: All right. You are excused, Mr.
24 Townsend.

25 MS. MUNNERLYN: Heather Brummett.

1 HEATHER BRUMMETT, after being duly sworn,
2 testified as follows:

3 THE WITNESS: Heather Brummett. B-R-U-M-M-E-T-T.

4 DIRECT EXAMINATION

5 BY MS. MUNNERLYN:

6 Q. Okay, Officer Brummett, where are you employed?

7 A. Horry County Police Department.

8 Q. And how long have you been employed there?

9 A. Since 2005.

10 Q. All right. So you were working there in July of
11 2007?

12 A. Yes, that's correct.

13 Q. And in what capacity?

14 A. As a crime scene investigator.

15 Q. Okay. Do you have prior law enforcement experience
16 prior to your Horry County police experience?

17 A. Yes, ma'am. I was a police officer in Virginia.

18 Q. Okay. What's your total amount of law enforcement
19 experience?

20 A. I started in November of '99, so approximately 11
21 years.

22 Q. Okay. And did you have the opportunity to work on a
23 case involving the suspect, Allen Joe Gathings, back on
24 July 2nd of 2007?

25 A. Yes, ma'am, I did.

1 Q. Okay. Were you -- do you remember being called out
2 to the trailer on Morris Carter Road where officers were
3 attempting to arrest him?

4 A. Yes, I was.

5 Q. And were you present when he was arrested there?

6 A. I believe I was. I don't remember who arrested him.
7 At that particular time I was serving as a investigator as
8 well.

9 Q. But it took some period of time before he came out of
10 that trailer?

11 A. Yes, that is correct.

12 Q. Okay. Now, your involvement actually does include
13 the handling of some of the evidence in this case;
14 correct?

15 A. Yes, I did.

16 Q. I'm showing you State's Exhibit 142 and see if you
17 recognize that?

18 A. Yes, I do.

19 Q. Okay. From where do you recognize that?

20 A. That's the chain of custody that we use at the Horry
21 County Police Department.

22 Q. And on that form what items of property did you
23 receive or handle?

24 A. Every item.

25 Q. Okay. Would you tell us what items specifically

1 those were and who you received them from?

2 A. Yes, I received a metallic colored watch, a metallic
3 colored bracelet, a pair of New Balance shoes, size 11,
4 white in color; a pair of boxer shorts with skull emblems,
5 blue in color; tee shirt, light blue in color. They were
6 taken by Corporal Rusty Crocker of the Horry County Police
7 Department. They were given to Detective Sarvis.
8 Detective Sarvis turned them into evidence.

9 We have evidence lookers at the Horry County Evidence
10 Section and Crime Scene Section are together. I actually
11 recover the locker and Heather Brummett turned them over
12 to Agent Karl Kenley with S.L.E.D.

13 Q. Okay. That was on what date?

14 A. The date they took it to Karl Kenley was July 3rd
15 2007.

16 Q. Okay, and the second page of that chain of custody
17 what items of evidence did you handle pursuant to the
18 second page?

19 A. On the second page there is a taped interview of the
20 home owner, Carl Moore. A piece of paper with the
21 photocopy of Robbie Polston's driver's license. A
22 photocopy of the Social Security card that was taken from
23 the glove box of the 1995 Chevrolet Corsica bearing South
24 Carolina Tag 776-WBS. And then it has the blue in color
25 Chevrolet Corsica with the same tag number and the V.I.N.

1 number listed.

2 Q. Okay. And those items as well, who did you turn
3 those over to?

4 A. These items as well I receive from Detective Sarvis
5 and turned the first and second one over to Karl Kenley on
6 July 3rd 2007.

7 Q. Tell us what happened in regards to the actual
8 vehicle?

9 A. The vehicle was returned or was given over to a tow
10 truck driver. I would have to refer back to my notes to
11 get the exact name.

12 Q. Do you -- were you present when the search warrant
13 was executed for this particular vehicle?

14 A. Yes, I was.

15 Q. Where did that take place?

16 A. At the Horry County Police Department Impound Lot.

17 Q. Do you know when that took place?

18 A. I believe it was July 3rd 2007.

19 Q. All right. And who was present along with you when
20 the vehicle was being processed or searched?

21 A. Two of the agents from S.I.E.D, Karl Kenley and J.G
22 Parrott.

23 Q. What was your participation in that? Were you
24 actually participating in the search itself or just
25 accompanying the other two officers?

1 A. In the search of the vehicle I was just accompanying
2 the S.L.E.D. agent. Just mostly to assist.

3 Q. And did you actually retrieve any items yourself from
4 the vehicle which was taken into evidence?

5 A. No. To my knowledge I don't think that I took any of
6 the items. I did sign some of the items over to Karl.

7 Q. You were present while he removed the vehicle and you
8 signed them over to him?

9 A. Yes, that is correct.

10 Q. Okay. I'm going to show you what has been marked as
11 State's Exhibit 143 and see if you recognize that form?

12 A. Yes, ma'am, this is the chain of custody form from
13 S.L.E.D.

14 Q. And does that indicate some evidence that you
15 handled?

16 A. Yes, it does.

17 Q. Okay. And is this your signature on it?

18 A. Yes, it does.

19 Q. It accurately reflects the formal as it was when you
20 actually transferred that evidence?

21 A. Yes.

22 MS. MUNNERLYN: Your Honor, I would move to admit
23 State's Exhibit 143.

24 MS. CRAYTON: No objection, Your Honor.

25 THE COURT: Admitted in evidence as State's Number

1 143 without objection.

2 (WHEREUPON, State's Exhibit No. 143 was admitted into
3 evidence.)

4 MS. MUNNERLYN: Thank you, Your Honor.

5 BY MS. MUNNERLYN:

6 Q. If you can tell us what items are listed on there and
7 who you turned them over to?

8 A. This is one cassette tape with interview, one silver
9 watch, one silver bracelet, one pair of white and blue New
10 Balance 608. I believe it says the sneaker size 11, a Ben
11 Hogan Tour shirt, and a pair of Wacky Packages boxers, I
12 believe it says. And this was assigned from me to Special
13 Agent Karl Kenley with S.L.E.D. on June 3rd 2007 at
14 approximately 12:15 p.m.

15 Q. Now. I'm going to show you State's Exhibit 181 and
16 see if you can look at that and see if you recognize
17 what's in that exhibit?

18 A. Yes, these are the white and blue New Balance tennis
19 shoe.

20 Q. That is reflected on the chain of custody form that
21 you've already testified to?

22 A. Yes, they were.

23 Q. All right. I don't have any further questions. If
24 you would answer any questions that Ms. Crayton has for
25 you.

1 THE COURT: Cross, Ms. Crayton?

2 MS. CRAYTON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. CRAYTON:

5 Q. Ms. Brummett, am I saying that right?

6 A. Yes.

7 Q. All right. Good. Would you mind reviewing those
8 photos and tell me what those photos are of?

9 A. I believe those are all photos of the blue Chevrolet
10 Corsica.

11 Q. That's the vehicle we're referring to?

12 A. Yes, it is.

13 Q. Can you tell me or show me which picture depicts
14 blood evidence in that car?

15 A. I'm not aware of any actual blood evidence. Like I
16 said I was there to assist the S.L.E.D. agents.

17 Q. Okay. And you were also on the investigation team,
18 is that true?

19 A. Yes, that's correct.

20 Q. Okay. And do you remember having any conversations
21 with Mr. Gathings about coming out of the trailer or
22 anything like that? Did you ever speak to him?

23 A. No, I don't recall ever speaking to him.

24 Q. Okay. This vehicle, did you take pictures of the
25 vehicle?

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1 A. I have a couple of photos of the vehicle actually on
2 the scene itself, but in our impound lot, no.

3 Q. Okay, but you did take pictures inside of the
4 vehicle?

5 A. I don't recall taking picture inside of the vehicle
6 unless it was like through the window at the scene.

7 Q. Did you take any pictures of the floor mats, etc.?

8 A. No. Again, not that I recall unless it was on the
9 scene through the window.

10 Q. What about the floor mats, gas peddle or brake
11 peddle?

12 A. No.

13 Q. Okay. Did you swab the vehicle?

14 A. No, I didn't.

15 Q. Okay. Did you do any fingerprinting with the
16 vehicle?

17 A. No, I did not.

18 Q. Okay.

19 MS. CRAYTON: No further questions, Your Honor.

20 Thank you.

21 THE COURT: Redirect, Ms. Munnerlyn.

22 MS. MUNNERLYN: None, Your Honor.

23 THE COURT: All right. Thank you, Ms. Brummett. You
24 may step down.

25 MS. MUNNERLYN: Please could we have her released,

1 Your Honor.

2 MS. CRAYTON: No objection, Your Honor.

3 THE COURT: All right. Yes, ma'am. You are
4 released. Thank you very much for coming.

5 MS. MUNNERLYN: Julius Lynch.

6 JULIUS LYNCH, after being duly sworn, testified as
7 follows:

8 CLERK OF COURT: Please be seated and state your full
9 name.

10 THE WITNESS: My name is Julius Lynch.

11 DIRECT EXAMINATION

12 BY MS. MUNNERLYN:

13 Q. Mr. Lynch, would you spell your last name for the
14 court reporter, please?

15 A. L-Y-N-C-H.

16 Q. Okay. And what city do you currently reside in?

17 A. West Columbia, South Carolina.

18 Q. And do you know the Defendant, Allen Joe Gathings, in
19 this case?

20 A. Yes, ma'am.

21 Q. And how did you have the opportunity to meet him?

22 A. We were in the cell together in the Dillon County
23 Detention Center.

24 Q. Okay. If I could get you to scoot that chair up a
25 little bit. You may bring the microphone -- talk into the

- 1 microphone so everybody can hear you?
- 2 A. We were incarcerated together in the Dillon County
3 Detention Center.
- 4 Q. Do you recall when this was?
- 5 A. December of '07.
- 6 Q. I'm sorry?
- 7 A. December of '07.
- 8 Q. And you said you were incarcerated together. Were
9 you in the same cell?
- 10 A. We were in the same cell.
- 11 Q. For how long were you in the same cell?
- 12 A. About a month.
- 13 Q. Okay. And when you say you were in the same cell
14 tell me what the environment was? Who was in there?
- 15 A. It was me and Allen or Joe. I was on the bunk. He
16 was on the floor.
- 17 Q. Okay, when you say Allen who are you referring to?
- 18 A. The defendant.
- 19 Q. Your call him Allen as opposed to Joe?
- 20 A. Yes.
- 21 Q. Who was on the bunk?
- 22 A. I was.
- 23 Q. Who was on the floor?
- 24 A. He was.
- 25 Q. Okay. And you said y'all were in the came cell about

1 a month?

2 A. Yes, ma'am.

3 Q. And during the time that you were housed together in
4 the Dillon County Detention Center was there any
5 discussion between you and him about why he was there?

6 A. Yes.

7 Q. Okay, and tell us about that?

8 A. We was sitting, just talking and he started
9 explaining things about he basically started with the fact
10 that he had went to work that morning doing roofing work.
11 And that when he left work he cashed a \$900 check, and on
12 he went by a liquor store he bought a fifth of Lord
13 Calvert. He was drinking the liquor on the way to the
14 house and taking some pills. When he got to the house he
15 went in and said he didn't take a shower. He changed
16 clothes.

17 Q. Whose house did he go to?

18 A. To the victims, Robbie and his mom.

19 Q. Robbie and his mom?

20 A. Yes, ma'am.

21 Q. Who were Robbie and his mom?

22 A. The people -- I don't know where Joe was living with.

23 Q. When the occurred?

24 A. Yes.

25 Q. And do you know did he give any information about

1 either one of them?

2 A. He said Robbie was the former 911 director of
3 Marlboro County. He had lived with them previously and
4 there was an altercation or something that had happened
5 and he was sent back to State prison. And when he got out
6 of there he last time he moved back in with them then.

7 Q. All right. That's when this occurred?

8 A. Yes.

9 Q. Okay. And so you went back to the house. And it was
10 a fifth of Lord Calvert, I think you said?

11 A. Yes.

12 Q. Okay. And when he got there what did he do?

13 A. He went inside and said he changed clothes. He
14 didn't take a shower or anything. He said that he had put
15 on a pair of shorts and a tee shirt, some tennis shoes and
16 told Robbie that he was going to the beach for the
17 weekend.

18 But he wanted to get some cocaine before he left, and
19 that he said they rode to some place to get some cocaine.
20 And when they got back that Robbie got out of the car and
21 he snorted a lot of cocaine off the dash.

22 Q. Did he say whether or not Robbie was still in the car
23 when he was doing this?

24 A. When they got back to the house Robbie got out of the
25 car and went in the house. And he snorted a lot off the

1 dash. He got out of the car and went in the house. Says
2 that's when he flipped out. He blanked out.

3 Q. He said he blanked out?

4 A. Yes, ma'am.

5 Q. Or flipped out or both. Okay, and what did he say
6 happened?

7 A. He says that he doesn't really remember. He says --
8 I asked him why you killed them people. He said, "I don't
9 know why. I don't know why I would have done it." He
10 told me he did it with an aluminum baseball bat that used
11 to sit in the computer room -- beside a computer and that
12 everyone used to play with it on the internet.

13 Q. Why was that important?

14 A. Because that was going to be part of his defense;
15 that everybody's prints were going to be found on the
16 murder weapon.

17 Q. That everybody played with it?

18 A. Yes.

19 Q. What else did he tell you?

20 A. Next thing, really. I just remember he was going
21 down Highway Nine headed towards the beach or whatever.
22 He was going to a trailer park where he used to live in.
23 Something about the man that owned it in a trailer park.
24 That's whose house he was going to.

25 Q. How -- did he tell you what kind of car he was in?

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1 A. It was the car -- the vehicle Robbie and his mother I
2 assume let him drive it to and from work. It was a blue
3 Chevrolet Corsica.

4 Q. All right. So he drove down to Long area?

5 A. Yes, ma'am.

6 Q. And when he got there what did he say happened?

7 A. He said they were drinking, him and the guys were
8 drinking. They ran out of cocaine or whatever, and then
9 they decided to get some more and they did. When they get
10 back to the store they were drinking King Cobra and taking
11 pills and snorting cocaine.

12 And he said he got up to go to the bathroom. When he
13 come out of the bathroom the man that was living in the
14 trailer was in the living room and so he said he sat back
15 down. A few minutes later he heard some noise in the
16 hallway. There was like blankets and the gas that the
17 police shot in the house, but the gas didn't get to him
18 cause they had blankets in the living room to keep the
19 cold air out of the living room. Gas was in the living
20 room.

21 Shortly after another one come through the living
22 room window. He come out of the house. He was seeing the
23 police everywhere, helicopters, and said he remembered
24 looking up to see as well.

25 Q. He is surrounded at that point?

- 1 A. Yes, sir -- yes, ma'am.
- 2 Q. How many times did y'all talk about that?
- 3 A. It was a few times.
- 4 Q. All right. During the time when you were housed
- 5 together with him there at the Dillon County Jail?
- 6 A. Yes, ma'am.
- 7 Q. Now what were you doing at the Dillon County jail?
- 8 A. I was in federal custody pre-trial.
- 9 Q. Okay. For what charge?
- 10 A. Felon in possession of a firearm.
- 11 Q. Okay. And have you since pled guilty to that charge?
- 12 A. Yes, ma'am.
- 13 Q. And you have ---
- 14 A. I served my sentence and was released.
- 15 Q. In federal custody, and when were you released?
- 16 A. June 4th.
- 17 Q. You have a prior record, isn't that correct?
- 18 A. Yes, ma'am.
- 19 Q. You've been convicted of crimes before?
- 20 A. Yes, ma'am.
- 21 Q. Okay. Tell us briefly what these are?
- 22 A. It was an assault and battery with intent to kill
- 23 when I was 17 years-old. There was some kids trying to
- 24 steal tools from my car. It was about 10 or 15 guys, and
- 25 I had a gun and I shot into a crowd and one of them was

1 hit.

2 Q. And that was when you were 17 years-old?

3 A. Yes, ma'am.

4 Q. How old are you now?

5 A. I'm 32.

6 Q. And so you had those convictions. You served a

7 sentence then. You come out and got a federal firearms

8 charge?

9 A. Yes, ma'am.

10 Q. A charge to which you pled?

11 A. Yes, ma'am.

12 Q. You served your sentence?

13 A. Yes, ma'am.

14 Q. And you are completely released from their custody?

15 A. Yes, ma'am.

16 Q. And why have come forward to give this information?

17 A. Well, for one, as part of my plea agreement the plea

18 I signed with the United States Government, I have to tell

19 of any criminal activity that I'm aware of to law

20 enforcement. Another thing is my grandmother. I have a

21 grandmother in the courtroom now. She's 85 years-old, and

22 crimes against an old people, I just felt like I had to do

23 this.

24 Q. Okay. But you are getting no benefit actually

25 yourself from testifying here today?

1 A. No. No, ma'am.

2 Q. All of your criminal charges are behind you?

3 A. Yes, ma'am.

4 Q. Okay. You don't have anything pending now?

5 A. No, ma'am.

6 Q. There is no agreement with you for which you're going
7 to benefit?

8 A. No, ma'am.

9 Q. You're coming here on your own free will?

10 A. Yes, ma'am.

11 Q. In fact we didn't send you a subpoena?

12 A. No, ma'am. I contacted the agent and tell him, know
13 I'm still going to testify and help out in any way I
14 could.

15 MS. MUNNERLYN: Court indulgence just one moment?

16 THE COURT: Yes, ma'am.

17 MS. MUNNERLYN: I don't have any further questions.

18 If you would answer any questions Defense counsel has.

19 THE COURT: Cross, Mr. Jones.

20 MR. JONES: Thank you, sir.

21 CROSS-EXAMINATION

22 BY MR. JONES:

23 Q. All right, Mr. Lynch. In December of '07 you were
24 housed at the Dillon County Detention Center; is that
25 right?

1 A. Yes, sir.

2 Q. And that's where you were roommates with Mr.
3 Gathings?

4 A. Yes, sir.

5 Q. And I believe you said at that time you were in
6 federal pretrial?

7 A. Yes, sir.

8 Q. Tell me what that means?

9 A. That means I'll wait to plea or take -- go to trial
10 on federal charges.

11 Q. Okay. When did you actually get sentenced on your
12 felon in possession of a firearm charge?

13 A. February. I believe it was or January 28th.

14 Q. Of?

15 A. 2008.

16 Q. Okay. And you got out of prison. That's federal
17 prison we're talking about?

18 A. Yes, sir.

19 Q. And I believe the first contact that I understand you
20 to make was with a letter written to someone name Vince.
21 Tell me who Vince is?

22 A. He's an investigator with the Federal Prosecutor's
23 Office in Florence County.

24 Q. Federal investigator?

25 A. Um hum.

1 Q. Okay. I believe in December, about the middle of
2 December '08, you wrote him a letter and detailed some
3 information that you had in this case; is that correct?

4 A. Yes, sir.

5 Q. Were you still in custody at that time?

6 A. Yes, sir, I was.

7 Q. All right. And now tell me who is Donnie Sheffield?

8 A. Donnie is an inmate at a -- federal inmate in
9 Florence ---

10 MS. MUNNERLYN: Your Honor, I object just as to
11 relevance.

12 THE COURT: All right. Come up, counsel.

13 (WHEREUPON, a bench conference was held off the
14 record in the presence of the jury, but out of the
15 hearing of the jury.)

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, there is a matter that's going to take a few minutes
18 for me to rule on. And so I'm going to ask you to go to
19 your jury room while I take care of this matter of law.
20 If you will go with the bailiff to your jury room, please.

21 (WHEREUPON, the jury panel was excused from the
22 courtroom at 3:20 p.m.)

23 THE COURT: All right. The objection to the
24 testimony -- the question that was asked, who is Donnie
25 Sheffield, and at that point the State objected to the

1 relevance and it's impossible for me to determine the
2 relevance until I hear the testimony. I'll allow you to
3 proffer the testimony and then I'll find out what the
4 objections are.

5 MR. JONES: Thank you.

6 BY MR. JONES:

7 Q. Mr. Lynch, can you tell us about the fellow,
8 Sheffield?

9 A. He was a federal inmate. Federal prisoner in
10 detention at the Florence Detention Center.

11 Q. Were you housed with him at some point in time?

12 A. No, we were not housed together.

13 Q. You had information which you felt was important to
14 give to the federal agent in December of '08 concerning
15 Donnie Sheffield?

16 A. Yes, sir.

17 Q. Same question about Julius Underhill?

18 A. Yes, sir.

19 Q. He was a federal inmate?

20 A. Yes, sir.

21 Q. Were you housed with him?

22 A. No, we were not housed together.

23 Q. But you got -- you had information that you felt was
24 important enough to give to the federal agent in
25 December of '08?

1 A. Yes, sir.

2 Q. Same question about John Williamson?

3 A. Yes, sir.

4 THE COURT: What's the name?

5 MR. JONES: John Williamson.

6 THE COURT: Okay.

7 BY MR. JONES:

8 Q. Any people you were housed with that I missed so far?

9 A. No, sir.

10 Q. He had a drug case I believe?

11 A. Yes, sir, drug case.

12 Q. Travis Jones?

13 A. Yes, sir.

14 Q. Were you housed with him?

15 A. No, sir.

16 Q. But you had information concerning his case?

17 A. Yes, sir.

18 Q. Or a case?

19 A. Yes, sir.

20 Q. Mike Jones?

21 A. Yes, sir.

22 Q. Same thing?

23 A. Yes, sir.

24 Q. All right. Now, that's one, two, three, four, five,
25 six federal prisoners that you had potential information

- 1 which you felt ---
- 2 A. Actually, two of them, Mike and Travis, were not
- 3 federal prisoners.
- 4 Q. They were not?
- 5 A. No, sir.
- 6 Q. Where did you get information concerning them?
- 7 A. I know people. I been knowing them.
- 8 Q. And after your sentencing in January of '08 in
- 9 December of '08, some 12 months later, 12 so -- or 12
- 10 months later you sent a letter to the federal agent
- 11 telling that you had information on those six people along
- 12 with Mr. Gathings?
- 13 A. Yes, sir.
- 14 Q. Okay, now, are you familiar with the federal rule,
- 15 Criminal Rule 35B?
- 16 A. Yes, sir.
- 17 Q. Tell me what that rule is.
- 18 A. It's downward departure.
- 19 Q. Were you considering a downward departure based on
- 20 information that you hoped to give Mr. Vince? I'm sorry.
- 21 I forget his last name?
- 22 A. I mean any criminal activity that I'm aware of I'm
- 23 bound by that agreement to come forward and tell law
- 24 enforcement.
- 25 Q. Were you hopeful of a downward departure if any of

1 this information proved useful?

2 A. Yes.

3 Q. In fact did your downward be partially based on any
4 of this information?

5 A. No, sir.

6 Q. You were hopeful about that?

7 A. That's part of my plea agreement.

8 Q. Very good. All right. Same question. I'll ask
9 about Mr. Gathings; that the information you give to the
10 Court today was also detailed in the same letter along
11 with the other individuals, is that correct?

12 A. Um hum. Yes. I'm sorry.

13 Q. And I'll ask the same question of that were you
14 hopeful of receiving a downward departure based on that
15 information? That was one of two reasons you had?

16 A. Yes, sir.

17 Q. Other than your plea agreement giving information
18 concerning criminal activities?

19 A. Yes.

20 MR. JONES: Your Honor, based on that information I'd
21 ask ---

22 THE COURT: What's your position, Ms. Munnerlyn?

23 MS. MUNNERLYN: Your Honor, he never -- the fact is
24 he did not get any contract for any of those people. None
25 of them are related to this case. I think if he wants to

1 ask about what the information he gave in regards to Mr.
2 Gathings that's certainly suitable even though he's
3 indicated that he did not receive any benefit from any of
4 this.

5 MR. JONES: Well, he testified that he hoped to.

6 MS. MUNNERLYN: He hoped to, but my argument is
7 that's not related to whether he gave the information in
8 this particular case.

9 MR. JONES: Maybe not, but it isn't relevant to
10 credibility.

11 MS. MUNNERLYN: Well, I think it's the same issue
12 you're asking about Mr. Gathings.

13 THE COURT: I'm going to overrule the objection.
14 This is cross-examination and it is relevant for the jury
15 to consider the credibility of the statement given. Not
16 only with regard to that defendant but other defendants
17 because it would affect his credibility especially in view
18 of the fact that he testified that he -- one of the
19 reasons -- one of the reasons was pursuant to the plea
20 agreement.

21 The other is he did hope to get a downwards
22 departure. The fact of the matter is that he did not get
23 a downward departure, but I believe it is relevant to the
24 issue of credibility and I will allow the
25 cross-examination.

1 MS. MUNNERLYN: Thank you, Your Honor.

2 THE COURT: Counsel, it's about 3:30, and while the
3 jury is out let's go ahead and take the afternoon recess
4 at this time of about ten minutes and be ready to start
5 back in ten minutes.

6 MR. JONES: Your Honor, would you please instruct the
7 witness not to talk to anybody.

8 THE COURT: Stay to yourself during the ten minute
9 recess. Do not talk to anybody.

10 (WHEREUPON, State's Exhibit Nos. 185 THROUGH 189 were
11 marked for identification only.)

12
13 (WHEREUPON, Court was in recess at 3:26 p.m. and
14 reconvened at 3:38 p.m.)

15 THE COURT: All right. Let's get the Defendant back
16 in the courtroom, please. All right. Back on the record
17 with regards to the State v. Allen Joe Gathings. 07-888
18 and -0909. The Defendant is present in the courtroom with
19 his counsel. The State is represented by Ms. Munnerlyn.
20 The Court had ruled on the objection and will continue the
21 cross-examination when this jury is brought in. Bring the
22 jury in, please.

23 (WHEREUPON, the jury panel enters the courtroom at
24 3:39 p.m.)

25 THE COURT: All right. Thank you. We also decided

1 while I was dealing with the legal issue involved with
2 this case to take our afternoon recess which we have done.
3 At this time we're now ready to move forward. The Defense
4 is in the process of cross-examination of the witness,
5 Mr. Lynch. Mr. Jones, you may continue.

6 MR. JONES: Thank you, sir.

7 BY MR. JONES:

8 Q. Mr. Lynch, I may have lost my place. I believe we
9 were talking about a letter that you wrote to Mr. Vince.
10 He's a federal agent in Florence; is that correct?

11 A. Yes, sir.

12 Q. And that letter was back in December of '08 when you
13 were still incarcerated in the federal system?

14 A. Yes, sir.

15 Q. I believe that I had asked you about who Donnie
16 Sheffield was?

17 A. Yes, sir.

18 Q. And would you tell me who that is?

19 A. He was a federal inmate in the Florence County
20 Detention Center.

21 Q. And I believe in the letter to the agent you
22 indicated that you had some information which may be
23 helpful in that case; is that correct?

24 A. Yes, sir.

25 Q. Were you housed -- were you a roommate with

- 1 Mr. Sheffield at any time?
- 2 A. No, sir.
- 3 Q. Were you housed together with him?
- 4 A. No, sir.
- 5 Q. You just had information?
- 6 A. Yes, sir.
- 7 Q. Julius Underhill, do you know him.
- 8 A. Yes, sir.
- 9 Q. And you had information which you felt was important
10 for the agent to hear concerning Julius Underhill; is that
11 correct?
- 12 A. Yes, sir.
- 13 Q. And I think that was a drug charge of some sort?
- 14 A. Yes, sir.
- 15 Q. Same with John Williamson?
- 16 A. Yes, sir.
- 17 Q. Was Mr. Williamson actually an inmate?
- 18 A. Yes, sir.
- 19 Q. He was. Okay. But he was not your roommate?
- 20 A. No, sir.
- 21 Q. And that was a drug case?
- 22 A. Yes, sir.
- 23 Q. And same question with Travis Jones. You had
24 information concerning Travis Jones?
- 25 A. Yes, sir.

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- 1 Q. He was not an inmate?
- 2 A. He was not an inmate.
- 3 Q. Mike Jones, he was not an inmate?
- 4 A. No, sir.
- 5 Q. Was he an inmate?
- 6 A. Yes, sir.
- 7 Q. You a had information concerning I think crystal
- 8 meth. It was a drug case?
- 9 A. Yes, sir.
- 10 Q. All of those people you communicated with about in
- 11 that letter of December of '08, is that correct?
- 12 A. Yes, sir.
- 13 Q. Also in that letter you indicated that you had some
- 14 information which maybe be helpful to the State
- 15 authorities on Allen Joe Gathings?
- 16 A. Yes, sir.
- 17 Q. Now, Mr. Lynch, tell me what you know about Federal
- 18 Rules of Criminal Procedure 35B?
- 19 A. Thirty-five would be a downwards departure.
- 20 Q. What do you know -- what does that mean to you?
- 21 A. If you provide substantial assistance you can get
- 22 your time reduced.
- 23 Q. Okay. And I believe that was one of your motives in
- 24 writing to the agent?
- 25 A. One of the two.

1 Q. At the time you were trying to get downwards
2 departure?

3 A. Yes, sir.

4 Q. I believe you also told me that another reason -- or
5 I think you told Ms. Munnerlyn that another reason that
6 you came forward with all this information is that you
7 signed a plea agreement?

8 A. Yes, sir.

9 Q. That said if there is any criminal activity that you
10 know about you're required to tell somebody?

11 A. Yes, sir.

12 Q. Now, as far as the downward departure that was your
13 motive in providing this information to the agent. That
14 didn't work out too good, did it?

15 A. I didn't receive anything.

16 Q. Didn't get something from it?

17 A. No, sir.

18 Q. That was one of your reasons for writing the letter
19 to the agent?

20 A. Yes, sir.

21 Q. It's my understanding now that your testimony to Ms.
22 Munnerlyn is that during the end of December '07,
23 beginning of January '08, when you were housed at Dillon
24 County with Mr. Allen Joe Gathings he basically spilled
25 his guts to you?

1 A. Pretty much.

2 Q. Pretty much. What he do just walk up and say, "Let
3 me tell you something. Let me tell you about a terrible
4 crime. I killed two people, and here are all the
5 details?"

6 A. Basically.

7 Q. Did these other people do the same thing?

8 THE COURT: Mr. Jones, that's beyond the scope --
9 it's beyond the scope of what you proffered and beyond the
10 scope of the Court's rule. I will not allow you to go
11 into detail of the charges. I will let you ask if he did
12 it, but I will not let you go into detail of the charge.
13 That's beyond the scope.

14 BY MR. JONES:

15 Q. Mr. Lynch, are you commonly referred to as a snitch?
16 Isn't that basically what you were doing?

17 A. Call me what you like, sir.

18 Q. All right. And the seven people that you provided
19 information against were all matters of a criminal nature
20 that you hoped to get some profit from?

21 A. Sure, yes, sir.

22 Q. Tell me also, again, when Ms. Munnerlyn was asking
23 you about your criminal history you were housed in Dillon
24 pre-trial as to a felon in possession of a gun; is the
25 collect?

1 A. Yes, sir.

2 Q. And what was your sentence on that?

3 A. It was eight months.

4 Q. Were you tried or did you plead guilty?

5 A. I pled guilty.

6 Q. That's the agreement you were talking about earlier?

7 A. Yes, sir.

8 Q. The plea agreement that had the information?

9 A. Yes, sir.

10 Q. Is that -- and I'm sorry, is that the case that arose
11 out of and incident in Marion County?

12 MS. MUNNERLYN: I would object, Your Honor. I don't
13 see the relevance of the details of any conviction.

14 THE COURT: All right. Objection sustained.

15 MR. JONES: Thank you, sir.

16 BY MR. JONES:

17 Q. The length of time you were housed with Mr. Gathings
18 was 30 days? 40 days?

19 A. It was close to around a month.

20 Q. About a month. Thank you?

21 MR. JONES: That's all I have.

22 THE COURT: Redirect, Ms. Munnerlyn.

23 MS. MUNNERLYN: Yes, sir, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. MUNNERLYN:

1 Q. You indicated that you provided information in
2 November '08 long after you had been sentenced?

3 A. Yes, ma'am.

4 Q. And you actually ended up serving out your complete
5 sentence?

6 A. Yes, ma'am.

7 Q. You did not receive any benefit for providing any
8 information?

9 A. Yes, ma'am.

10 Q. You received no benefit from none of this information
11 that you were just asked about?

12 A. None of this information that I was just asked about,
13 no, ma'am.

14 Q. Did you receive any benefit from providing the
15 information?

16 A. No, ma'am.

17 Q. As a part of the plea agreement you were to provide
18 information?

19 A. Yes, ma'am.

20 Q. Tell me again what this was?

21 A. If I have any knowledge of any criminal activity as
22 part of the plea agreement with the United States
23 Government I have to come forward with information to law
24 enforcement, otherwise I can be charged.

25 Q. You did that approximately one year after you were

1 sentenced?

2 A. Yes, ma'am. Well, I initially spoke with -- at the
3 time he was for Florence during my plea hearing. And he
4 said he would find somebody who I needed to contact.
5 Nothing came of it and subsequently I ended up writing
6 Mr. Graham.

7 Q. You're getting to benefit from being here today?

8 A. No, ma'am. None.

9 Q. You have no further charges pending against you now?

10 A. No, ma'am.

11 MS. MUNNERLYN: I don't have any further questions.

12 THE COURT: Recross Mr. Jones.

13 MR. JONES: No, sir.

14 THE COURT: Thank you, Mr. Lynch. You may step down.

15 MS. MUNNERLYN: Your Honor, I would ask that this
16 witness be excused.

17 THE COURT: Any objection, Mr. Jones.

18 MR. JONES: No, sir.

19 THE COURT: Witness is excused. Thank you for
20 coming. Call your next witness.

21 MS. MUNNERLYN: Thank you, Your Honor. Karl Kenley.

22 KARL KENLEY, after being duly sworn, testified
23 as follows:

24 THE WITNESS: My name is Karl Kenley. Karl with a K.

25 DIRECT EXAMINATION

Karl Kenley - Direct by Ms. Munnerlyn

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1 BY MS. MUNNERLYN:

2 Q. Agent Kenley, where are you employed?

3 A. I'll employed with the South Carolina Law Enforcement
4 Division commonly known as S.L.E.D.

5 Q. How long have you been employed with S.L.E.D?

6 A. I've been employ with S.L.E.D. four years.

7 Q. Do you have any other law enforcement experience
8 prior to that four years?

9 A. Yes, a total of 19. The last four being with
10 S.L.E.D.

11 Q. And tell us about your education and experience?

12 A. I have a bachelor's degree from Chapton University.
13 I started out as a patrolman and worked my way up to
14 sergeant. I've been supervisor before in various
15 positions before I came to S.L.E.D. I've had training in
16 shoe print, fingerprint, latent print, tire wear
17 impressions, blood stains and compression blood stains.
18 We also respond to, when requested, to all 46 counties in
19 the State of South Carolina to process crime scenes. We
20 also process evidence that is submitted to the S.L.E.D.
21 laboratory in Columbia.

22 Q. You have testified in Court before?

23 A. Yes.

24 Q. Have you ever been qualified as an expert?

25 A. Yes.

1 Q. And how many times have you been qualified?

2 A. Surgery twice.

3 MS. MUNNERLYN: Your Honor, I would move to have this
4 witness qualified as an expert in both latent prints and
5 shoe print and blood stain analysis?

6 THE COURT: In the particular field of latent prints?

7 MS. MUNNERLYN: Latent prints which would include
8 shoe print and footwear comparison.

9 THE COURT: Okay.

10 MS. MUNNERLYN: And blood stain pattern analysis.

11 THE COURT: Voir dire with regard to qualifications,
12 Mr. Jones or Ms. Crayton?

13 MR. JONES: Thank you, Your Honor.

14 BY MR. JONES:

15 Q. Agent Kenley, could you explain your educational
16 training? You have an education in sociology with course
17 work in latent prints; is the correct?

18 A. I have a bachelor's degree in criminal justice.

19 Q. Tell me again. I apologize. If you would repeat and
20 tell me again your educational background with regards to
21 analyzing of blood stains?

22 A. My background as far as a bachelor's degree in
23 criminal justice. I have completed a two year inhouse
24 program for S.L.E.D, crime scene reconstruction, basic
25 photography, complex shoe wear, tire wear impressions,

1 basic blood stain analysis under the direct supervision of
2 a Court certified S.L.E.D. agent.

3 Q. That two year course, how much of that course was
4 blood stain analysis?

5 A. The complete two year course combines all the
6 disciplines that I mentioned with an emphasis on each
7 discipline.

8 Q. You are deemed competent in that discipline when --
9 this may be asking the same question, but how much was
10 related to blood stains? The whole two years?

11 A. No, it was a combination of everything.

12 Q. Okay?

13 A. It was a combination of all the disciplines.

14 Q. Four week course? Six weeks? Eight weeks? How much
15 of your two year schooling is related specifically to
16 blood stains?

17 A. The two year course at S.L.E.D. is comprehensive with
18 all agents. It was a 40 hour course, how fast you were
19 able to be deemed discipline anything to going to seminars
20 and courses. The 40 hour teaching discipline to include
21 blood stain pattern analysis.

22 Q. How much of the 40 hours were blood stain related?

23 A. Each discipline was 40 hours.

24 Q. Each discipline?

25 A. For two years.

1 Q. That's the question. I didn't understand?

2 A. I'm sorry.

3 Q. You had a 40 hour course in blood stain?

4 A. Not just the two year program at S.L.E.D. There were
5 additional courses outside of S.L.E.D. during the two year
6 program.

7 Q. You take these also?

8 A. The basic 40 hour blood stain pattern comes from
9 here. A complex, basic, and advance 40 hour course that
10 was taught in Charlotte, North Carolina.

11 Q. And how many investigations concerning blood stain
12 analysis have you been involved in?

13 A. With cases coming through the door which means, as I
14 mentioned earlier about agencies submitting evidence to
15 the lab for us to process, as far as testifying for blood
16 stain cases in Court I have not, but I had cases where
17 they have not made it to Court.

18 Q. So this is your first, in other words?

19 A. This is the first time to testify to blood stain
20 pattern analysis, correct.

21 MR. JONES: And, Your Honor, I don't have any other
22 questions.

23 THE COURT: Do you contest his qualifications or
24 proposed testimony, Mr. Jones?

25 MR. JONES: Pardon me.

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1 THE COURT: Do you contest his qualifications or
2 proposed testimony?

3 MR. JONES: I do.

4 THE COURT: Ladies and gentlemen, step to your jury
5 room for a moment again. I'm going to have to take this
6 matter up on the record.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at at 3:55 p.m.)

9 THE COURT: All right, counsel, be at ease a minute
10 while I get something from legal authority on experts.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: All right, Ms. Munnerlyn, I'll allow you
13 to lay the foundation which the -- what I think if you
14 have further foundation questions in regards to his
15 qualifications and proffer his testimony.

16 MS. MUNNERLYN: Your Honor, I think we've concluded
17 the foundation questions proceed into the testimony on
18 proffer from him.

19 THE COURT: Ma'am?

20 MS. MUNNERLYN: I don't think I have any further
21 foundation questions.

22 THE COURT: All right.

23 BY MS. MUNNERLYN:

24 Q. Now, Agent Kenley, you worked for S.L.E.D. for the
25 last four years?

1 A. That is correct.

2 Q. Okay. And did you -- were you called to process a
3 scene in Marlboro County on behalf of the Clio Police
4 Department in July of -- excuse me, June 30th of 2007?

5 A. Yes, ma'am.

6 Q. Okay. And did you respond to that call and come to
7 the scene here?

8 A. I did.

9 Q. And do you know if the address is [REDACTED]
10 Street?

11 A. [REDACTED] in Clio.

12 Q. And when you arrived what process do you generally
13 follow?

14 A. When I first arrived at the crime scene I talked with
15 the local investigator and also Special Agent McLellan
16 with S.L.E.D and basically found out what happened.

17 Q. Okay. And did you then enter the actual scene?

18 A. Yes, we did walk through basically to see what the
19 scene itself can tell.

20 Q. Okay. As a part of that did you take photographs?

21 A. Yes.

22 Q. Okay?

23 A. Photographs were taken after the complete walk
24 through and the entire scene was done.

25 Q. What was the purpose of take the photographs?

1 A. To capture the scene as we arrived. To basically get
2 a general, midrange and in close shown photos of any
3 evidence that we observed in the walk through.

4 Q. Did you take photos of the entire house, inside and
5 out?

6 A. Yes.

7 Q. Okay. And when you took the photos, when you come to
8 items of evidence, what specifically did you do in making
9 a determination as to latent prints or foot prints or
10 blood splatter?

11 A. Depending on where the items are they are marked. We
12 noticed footwear impressions that appeared to be blood.
13 So that, first, we would know where they were, and second,
14 so we wouldn't walk over them ourselves through the rest
15 of the process. There was other items that we
16 photographed as well. It was a marking just for
17 documentation purposes so that if someone looked at the
18 photograph they could see we first take pictures of
19 particular pieces of evidence and put marks on it to get a
20 clearer version of the same piece of evidence.

21 Q. Okay. And do you use any indicators to give you an
22 idea of the size or the location?

23 A. Yes, in terms of the blood stain splatter analysis --
24 to scale we use tape measures for the size of the stain
25 and the pattern placed on the scene. We use a ruler if

1 it's necessary to show the height, depth and reach of
2 those in a particular scene.

3 Q. Okay?

4 MS. MUNNERLYN: Your Honor, it's going to take a
5 while and it's getting ---

6 THE COURT: All right. I'm not going to require you
7 to proffer his entire testimony. What I want summary so I
8 can determine, based on State v. Castle, such as to assist
9 the tryers of fact to determine the fact in issue. That's
10 the issue here. What I really need to know from the
11 standpoint of how you got there, what all the pictures --
12 what his testimony would summarize in some fashion that
13 would say with regard to the fact he was trying to prove
14 through this witness.

15 MS. MUNNERLYN: Okay. All right.

16 BY MS. MUNNERLYN:

17 Q. As a result of what you observed at the scene, the
18 crime scene itself, were there certain items which you
19 processed for latent prints and specifically foot prints
20 or shoe prints?

21 A. Yes, ma'am. Only -- sorry. There were footware
22 impressions located inside the kitchen. We process with a
23 chemical called Phenol Black which responds to protein in
24 blood. Some of the footware impressions where the
25 suspect's blood was visible before any enhancement was

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1 done. After the footwear impression was done we can see
2 the out sole design of the shoe, commonly known as the
3 shoe called New Balance tennis shoe.

4 Q. Did you later come into possession of some evidence
5 regarding some different shoes which were New Balance
6 tennis shoes worn by the defendant?

7 A. A couple days later and received tennis shoes that
8 belonged to the defendant when he was detained.

9 Q. Did you use the information that you collected at the
10 scene as far as the photographs and various information
11 around the shoe prints to compare to the shoe prints of
12 the defendant?

13 A. Yes.

14 Q. Are the shoes of the defendant?

15 A. Yes.

16 Q. And did you issue a report in regards to your opinion
17 as to those, the comparison of those items?

18 A. Yes, I did.

19 Q. And I'm going to show you State's Exhibit 188. Do
20 you recognize that document?

21 A. I do. This is my report from the crime scene.

22 Q. And does it indicate in it your findings in regards
23 to the footprints or shoe prints that were left at the
24 crime scene and comparison to the defendant's shoes?

25 A. It does.

1 Q. And what ultimately did you conclude in your report
2 to the comparison of those items?

3 A. The footwear impression left at the scene class
4 characteristics compared that I had in my possession,
5 those shoes could have made that impression or a similar
6 shoe.

7 Q. Okay. And the size and make and everything matched
8 that?

9 A. Yes.

10 Q. All right. And as to blood splatter or blood stain
11 analysis at the scene did you analyze the blood splatter
12 at the scene in order to determine the manner that this
13 killing took place?

14 A. Yes, ma'am. And both bedrooms blood stain pattern
15 analysis was conducted and conclusion was reached as to
16 determine the nature of the blood stain patterns present.

17 Q. And based on those types of patterns what could have
18 caused these patterns? Based on what you observed at the
19 house, crime scene, that day and what evidence you
20 obtained in the house were you able to determine what the
21 murder weapon actually was?

22 A. Well, actually, we found the blood prior to finding
23 the murder weapon. Based on the stains and blood stain
24 pattern analysis we determine that it was blunt force
25 trauma that caused stains in both bedrooms and the

1 hallway.

2 Q. How did you determine that?

3 A. Blood stain, it's basically the blood in a particular
4 crime scene. The size, the shape, the pattern that it
5 makes, and ultimately the marks themselves that cause that
6 pattern because blood as a fluid reacts to it's influence.
7 Based on that particular influence blood stain pattern is
8 defined by blood interrupted by something, whether it be a
9 wall or a door or something else.

10 Blood in flight, the interrupting force with the
11 amount of force the blood was projecting -- if it was
12 projecting blood or if there was a void area just say a
13 blood letting, and there was a piece of furniture near a
14 wall. And there was splatter around that piece of
15 furniture but there was no splatter where that piece of
16 furniture was, well, that tells you that something
17 interrupted that blood in flight, being that piece of
18 furniture.

19 If you move it you would have splatter on the wall
20 but there would be nothing where this piece of furniture
21 was.

22 Q. The blood splatter, does it tell you where it
23 occurred and what type the weapon was?

24 A. What caused that type splatter or pattern.

25 Q. Were you able to determine that in this particular

1 case?

2 A. Yes.

3 Q. And what did you ultimately determine the murder
4 weapon was based on the blood splatter pattern that you
5 observed?

6 A. Based on the pattern, blood, the bat to the scene,
7 lead us to believe that it was blunt force trauma caused
8 by the baseball bat.

9 Q. Were you also able to determine where the actual
10 assault occurred on the two victims, but using the blood
11 splatter?

12 A. Yes. Based on where each individual victim was
13 placed and found them at the scene, whether they were low
14 or whether they were lying, you can look at the blood
15 stain pattern and it gives each blood scene.

16 Q. So you have blood pattern that's low. The blood
17 source was low?

18 A. It basically means midway. Possibly when the victim
19 was standing or kneeling or not laying down as the blows
20 were inflicted.

21 Q. Were you able to determine in this case where this
22 male victim and the female victim were?

23 A. The female victim that was in the bedroom, at least
24 the first two blows. I don't like to try to go on number,
25 but at least the first two blows. And she was standing.

1 The remainder of the blows she was on the floor. Other
2 low -- at least the female victim, the prior -- all of her
3 blows she was lying down the prior time based on the blood
4 stain pattern analysis.

5 MS. MUNNERLYN: Your Honor, I think that's it.

6 THE COURT: All right. Cross, Mr. Jones? Any
7 further cross with regard to this witness on either of the
8 issues or either of the issues, Mr. Jones; that being the
9 testimony or the qualifications?

10 MR. JONES: One second, please. Can I look at the
11 document real quick? Judge, I'm not sure I have any
12 particular cross-examination.

13 THE COURT: Let's find out. You got any further
14 questions of this witness? I'll let you argue your
15 position in a minute. What I want to know now is do you
16 have cross-examination? Do you have any further questions
17 that you want to ask this witness about his qualifications
18 or his testimony?

19 MR. JONES: Your Honor, let me ask a couple, please.

20 CROSS-EXAMINATION

21 BY MR. JONES:

22 Q. That report that you were just referring to is dated
23 when?

24 A. December 21st.

25 Q. And at that time your conclusions were that you came

1 to the conclusion that you came to?

2 A. No, sir.

3 Q. All right. When did you come to those conclusions?

4 A. Those conclusions were July 2nd.

5 Q. Of 2007?

6 A. 2007, correct.

7 Q. Okay?

8 MR. JONES: Judge, I don't think I have any more
9 questions.

10 THE COURT: All right. All right. The control case
11 in South Carolina and the test for admissibility of the
12 testimony in this State is set forth in State v. Counsel,
13 an opinion of the South Carolina Supreme Court. South
14 Carolina Supreme Court Opinion -- I don't have the South
15 Carolina sites. Because the matters that -- I have my
16 trial notebook. All have been from the time that Counsel
17 was decided in 1999.

18 However, I'll be glad to hear from you, Mr. Jones,
19 the reason you think that this testimony is not admissible
20 under State v. Counsel.

21 MR. JONES: Your Honor, I think I have. My objection
22 is his qualification as an expert in the field of blood
23 stains because as I understand all that was after
24 conclusions were reached in this particular case. If I
25 heard the agent correctly he is a four year veteran of

1 S.L.E.D. which puts him back something like 2006.

2 This analysis was given in July of '07. His
3 qualifications that he's relying on to be qualified as an
4 expert include two year course and, again, I may be
5 assuming I maybe wrong, but that occurred sometime after
6 he became a S.L.E.D. agent which would not have ended
7 until approximately '08, and some particular time and
8 again, a 40 hour course that he took last week.

9 THE COURT: All right, sir.

10 MR. JONES: I don't necessarily object to the
11 testimony that he's given, but I object to the
12 qualification as an expert.

13 THE COURT: Okay. So I understand that your
14 objection is to his qualifications?

15 MR. JONES: Yes, sir.

16 THE COURT: Not necessarily the testimony. All
17 right. State v. Counsel admit scientific evidence. Under
18 702 of the South Carolina Rules of Evidence the trial
19 judge must find the evidence will assist the tryers of
20 fact if the expert witness is qualified, and the
21 underlying science is reliable. In determining
22 reliability the Court is generally required to apply the
23 Jones factors and then if it determines the evidence is
24 admissible under 702 the trial judge should then determine
25 if the probative value is outweighed by the prejudicial

1 effect.

2 That, of course, would be Rule 403 analysis once the
3 evidence is admitted under those standards. The jury can
4 gives it such weight as it deems appropriate. The
5 Defense's objection here is to the qualifications of the
6 expert. The proper procedure, and what we have done here
7 for determining the admissibility of expert testimony is
8 to excuse the jury and have the qualifications and the
9 privileges in camera.

10 And then it is up to the Court to make the finding on
11 the record. That being the case the Court finds, as to
12 the first element of Counsel, that the evidence is
13 admissible because it will assist the tryers of fact to
14 determine the facts in issue. Specifically, the presence
15 of the defendant at the scene of the crime as testified by
16 the shoe prints analyst to determine the method of death
17 of the individuals by the blood splatters. So the first
18 part of the test of Counsel has been met.

19 The second part of Counsel -- of the test of State v.
20 Counsel is the one to which the Defendant objects, and
21 that's that this witness is qualified by knowledge, skill,
22 experience, training or education. I would find that this
23 witness is qualified by knowledge, skill, experience or
24 education to give the testimony that he proposes to give
25 and that any weaknesses in that would go to its weight and

1 not to its admissibility. But I do find than he is
2 qualified to give those opinions.

3 And the third factor of State v. Counsel is that the
4 underlying science is relevant, and this is not been
5 contested. So I'm making the finding that the context of
6 the testimony is admissible because it will assist the
7 triers of facts to determine a fact in issue. The fact in
8 issue is the presence of the defendant and method of death
9 by blunt force trauma.

10 Secondly, the witness was qualified by knowledge,
11 skill experience, training or education, and there has
12 been no contest as to whether the underlying science is
13 admissible.

14 Furthermore, the Court would find that the evidence
15 is admissible because the probative value outweigh the
16 prejudicial effect.

17 MS. MUNNERLYN: Thank you, Your Honor.

18 THE COURT: All right. Bring the jury in, please.

19 (WHEREUPON, State's Exhibit No. 190 was marked for
20 identification only.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen of the jury. I apologize again. There was a
23 serious legal matter that I had to consider in connection
24 with this, and it took some time to make sure it was done
25 properly. And in accordance, we are now ready to proceed.

1 MS. MUNNERLYN: Your Honor, I will, based on the
2 testimony proffered to the jury, I would move to admit
3 this particular witness again to be qualified -- have him
4 qualified as an expert in the field of latent prints and
5 shoe print comparison. And as well as blood stain pattern
6 analysis.

7 THE COURT: All right.

8 (WHEREUPON, the jury enters the courtroom at 4:17.)

9 THE COURT: The Court will qualify this witness as an
10 expert in the field of latent prints, shoe prints and
11 footwear analysis and blood stain analysis. Ladies and
12 gentlemen of the jury, let me tell you what that means.
13 Ordinarily a witness is, if a witness is not testifying as
14 an expert the witness testifying in the form of opinions
15 or inferences are limited to those opinions or inferences
16 which are based on the perception of the witness by use of
17 one of the five senses or help to a clear understanding of
18 the witness' testimony and do not require special
19 knowledge, skill, experience or training.

20 However, if scientific, technical or other
21 specialized knowledge will assist the triers of fact, and
22 that's you in this case, to understand the testimony or to
23 determine a fact in issue a witness qualified as an expert
24 by knowledge, skill, experience, training or otherwise may
25 testify in the form of an opinion.

1 So, basically, the difference between and expert
2 witness and a non-expert witness is that an expert witness
3 is allowed to give an opinion. And a non-expert witness
4 is normally not allowed to give an opinion. And I qualify
5 this witness as an expert in the field of latent prints,
6 shoe prints and footwear and blood stain analysis. All
7 right, Ms. Munnerlyn.

8 MS. MUNNERLYN: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MUNNERLYN:

11 Q. Okay. Agent Kenley, on June 30th of 2007 you
12 remember working for S.L.E.D.?

13 A. Yes, ma'am.

14 Q. In the Crime Scene Unit?

15 A. Yes, ma'am.

16 Q. Did you receive a call to come to [REDACTED]

17 [REDACTED] in regards to a murder scene?

18 A. Yes, ma'am.

19 Q. And did you in fact respond?

20 A. I did.

21 Q. And what do you recall? If you can tell me
22 approximately what time you arrived?

23 A. We arrived meaning me and my partner, Jeffery
24 Parrott, we arrived at approximately 5:40 p.m.

25 Q. 5:40 p.m.?

1 A. Yes.

2 Q. On June 30th?

3 A. Yes, ma'am.

4 Q. When you arrived can you tell us what you initially
5 did when you first arrived at the scene?

6 A. We met with Chief Thomas with the Clio Police
7 Department, Special Agent McLellan with S.L.E.D. and give
8 a brief synopsis what they found to the scene.

9 Q. Okay and at that point what did you proceed to do?

10 A. Myself and my partner, after listening to what they
11 said happened, found at the scene, we basically walked
12 through the scene to visibly see what we could see. Just
13 looked at the scene itself. We went over all the crime
14 scene without pictures enhanced or processed anything just
15 to get an idea of how we wanted to proceed in processing
16 the scene.

17 Q. Okay, and did you make a sketch of the house?

18 A. Yes.

19 Q. I'm showing you what's been marked as State's Exhibit
20 189. See if you recognize that?

21 A. Yes, ma'am.

22 Q. Okay. What's that?

23 A. There is a hand drawn crime scene sketch that I drew
24 myself of the scene.

25 Q. This is a blow up of our sketch?

1 A. Yes, ma'am.

2 Q. And does it depict the house and the layout of the
3 house as you found it?

4 A. Yes, ma'am.

5 MS. MUNNERLYN: Your Honor, I move to admit State's
6 Exhibit 189?

7 THE COURT: Any objection, Mr. Jones?

8 MR. JONES: Only objection would have to scale. I'm
9 not sure.

10 THE COURT: It is not to scale.

11 MR. JONES: It is not to scale.

12 THE COURT: Will be admitting the enlargement of the
13 sketch made by this witness of the scene of the house
14 where these instances took place. It is not to scale.
15 Other than that it will be admitted without objection.

16 (WHEREUPON, State's Exhibit No. 189 was admitted into
17 evidence.)

18 MS. MUNNERLYN: Thank you, Your Honor.

19 BY MS. MUNNERLYN:

20 Q. If you could try to explain to the jury using this
21 sketch how you entered and basically what you found when
22 you entered this house?

23 A. Okay. We basically entered the house. This is
24 actually the back door, and this is the way we actually
25 entered the house through this way. Before we did that we

1 actually went around and took photographs of the outside
2 of the house basically from the distance and then midrange
3 and close up to get an idea or if somebody else later
4 looked at the case an idea of what that looked like when
5 we got there.

6 In the other -- all the other photographs was
7 basically find out what we need to process the scene.
8 Then we actually entered through this door which leads to
9 basically a small laundry room that led to a kitchen and
10 dining room in this direction and this direction and this
11 area. And in this area we found what we thought were
12 footwear impressions.

13 Some prints you find using flashlights called cross
14 lights which is basically used lay it on the floor and
15 roll it to make sure to see if you can see anything that
16 resembles footwear impressions, whether it be a substance
17 or in dirt. But we were able to see things before
18 enhanced with any type of chemical. Some impressions were
19 in a substance that we concluded to be blood. As crime
20 scene analysts we are not able to make that determination.
21 That's what it looked like to us.

22 Based on the color of the footwear impressions were
23 seen to be blood stains. That footwear impression makes
24 its turn black purple color. Actually the blood indicated
25 factor, and we used Phenol black on the rest. Those

1 footwear impressions were photographed before they were
2 enhanced. And after enhancing and before we ever did that
3 we make sure we mark them with a marker.

4 After processing the rest of the scene as we came in
5 we noticed footwear impressions heading in the direction
6 towards this direction in the house, both in this
7 direction and the hallway or carpet. These were up were
8 visibly leading in this direction. After we photographed
9 and documented those scenes we basically came in and went
10 in this direction. There is a hallway right here, and
11 this first bedroom was located over here which is where we
12 located the first victim who was lying behind the door.

13 As you walked into this room the door was actually
14 open from left to right in this direction. As we walked
15 into that room that first victim was behind the door. As
16 we entered we noticed on the bed in this particular
17 bedroom there was some blood splatter. Again, small in
18 size indicating from a blood stain pattern analysis
19 perspective it was blunt force trauma or something caused
20 these injuries causing those splatters that were around
21 the body was done in this direction.

22 And this is where most of the impact splatter was
23 which means that the splatter that was followed by the
24 impact it takes more than one blow to cause the blood to
25 come to the surface. You need a second blow to bring that

1 blood to the surface. If you have an instrument or
2 something that causes that blow then when that blood is
3 impacted that blood is forced out. The blunt force, in
4 this instance being the victim, and it's thrown basically
5 until its intercepted by something like a wall or door.

6 In this case we found spatter on the wall here and on
7 the door here. Basically this is where the splatter
8 originated and begins. It was low in the room indicating
9 to us initially that all that splatter with the first
10 victim originated while he was low or lying on the floor.
11 After processing the room further we found splatter higher
12 on the wall and that told us that at some point in time
13 one of the first two blows occurred while he was standing
14 cause the splatter was up like here where he was lying.

15 This splatter was midrange through the room. Also
16 the room had cast off blood which is on a bloody object.
17 That's simply blood from the motion and comes to a stop if
18 there is something on the object. And when that object
19 comes to a stop that blood continues to fly and you expect
20 to see it if you have, for instance, the blood source here
21 and you see blood back here indicating that, obviously,
22 that source came up and stopped because the blood on that
23 object continues and you expect to find long patterns of
24 blood in that direction or either direction based on the
25 cast off. Also in this direction there was impact

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1 splatter here. Cast off stains again. Cast off blood.

2 The object comes in contact with a bloody source.

3 That object comes back and stops. That blood continues to
4 fly off that object. There was cast off found here, over
5 here. Most of the impact -- most of the blood was right
6 here around this victim. As you come out of this room and
7 that seemed to be impact spatter around the first victim's
8 head that was caused by impact being made.

9 After processing the room we actually found a bloody
10 baseball bat in this corner beside that bloody bed that
11 was saturated with blood and was sent back to S.L.E.D. for
12 further analysis. Coming out of the bedroom and down the
13 hall there were things we considered bloody footwear
14 impressions. They were partial footwear impressions or
15 something or someone walked in the blood which headed down
16 the hallway to the second female victim.

17 And, again, she was found lying on her back with her
18 head in this direction, and if you walk through the house
19 where the back door the way -- if you walk through the
20 dining room and come around this way you can also access
21 the same area by coming through here and actually meet the
22 same point. This is where she was located to the left of
23 her -- to the right of her in the doorway because right
24 here is where you see her lying. She's lying right in the
25 center of the door there so it was an entry point.

1 There was a large volume of impact splatter around
2 her head and body. The seal and doorway had a large
3 amount of impact splatter and like in this room the bloody
4 source object came in contact with some bloody source and
5 continued until basically it was interrupted by something,
6 the doorway. And in this particular instance there was
7 cast off as far as this direction down the hallway mostly
8 around her head. There was a large volume of impact
9 splatter that the female received while she was laying
10 down on the floor. Both sides and both directions were
11 covered with small impact spatter.

12 Q. Okay. All right. So once you did that did you go
13 back around through the living room area? She's in the
14 hallway, and you go in the living room. Did you find any
15 other ---

16 THE COURT: Let me ask the witness move back.

17 THE WITNESS: The same footwear impressions that we
18 observed in this area we were able to find, which to us
19 from the footwear means it was probably New Balance, at
20 least a shoe or tennis shoe or sneaker that had an emblem
21 on the shoe. We were aware that we found the same out
22 sole design, what the bottom of the shoe looked like; that
23 shoe, how it is designed, whatever it looks like that out
24 sole design was found in this bedroom here. It was
25 obviously unlike where we are the same design in the

1 bedroom hardwood floor like found in this area. These
2 prints were suspected to be blood.

3 Q. Okay. All right. I'm going to ask you to take a
4 seat again. You can keep that there with you. I want to
5 go through some of those photos. Based on the summary you
6 have just given if you could let's go through some of
7 those photos, the first few here, and that starts with
8 State's Exhibit Three.

9 If you can show us, particularly here on the kitchen
10 floor, if you can describe those. And if you will use the
11 photo number, the exhibit number, on the back of the photo
12 to explain generally what these injuries were?

13 A. Sure will. This is Three, and this is just the
14 female again. Whenever we respond to a scene the first
15 thing we do is going to be take over all photographing.

16 THE COURT: In fact, Ms. Munnerlyn, if you want to
17 move down closer. The photographs are fairly small.

18 BY MS. MUNNERLYN:

19 Q. You can take one with you so you can.

20 A. The first thing that we do, again, is take over all
21 photographing of the general scene. We always document at
22 that time to also show it's actually the scene we're
23 processing. That's what this is a photograph of.

24 Q. Now, before you go on I just want to ask you. All of
25 those photos that you're discussing were actually taken by

1 you?

2 A. No. These photographs were taken by my partner. Let
3 me explain that we work in pairs of two, and if you and I
4 were on a scene together and you were the primary agent
5 you would be responsible for all the paperwork. Jeffery
6 Parrott was responsible for taking pictures. I was
7 responsible for talking with agents, getting paperwork,
8 photograph, assisted by Agent Jeffery Parrott inside.

9 Q. Y'all all the work together as a team?

10 A. Correct.

11 Q. And they accurately reflect how the scene was when
12 you got there?

13 A. Yes, actually, to include my truck. We try not to
14 put in the scene -- we try to get a clean picture.

15 Q. Okay. All right. And I'm handing you these two.

16 A. This, Number Two, again when we first arrive on the
17 scene we begin by speaking with agents that are there.
18 The first thing we do os start at the front of the house.
19 Basically take pictures of the house or seen.

20 Q. And you have a number of photos that actually
21 identify or show the paremeter of the house; is that
22 correct?

23 A. They basically do. Start at the front of the house
24 we take pictures of that entire seen just in general not
25 focusing on anything in particular. Just getting an

1 overall idea of what that scene looks like in general.

2 Q. Okay. All right. So you have those there?

3 A. Yes. These five show the same thing just a different
4 perspective. Specifically the front of the front door.

5 This was again off to the side as we worked our way around
6 the entire house.

7 Q. Was there any evidence that you found there in
8 regards to determining who lived there?

9 A. I think we found two cigarette butts. One or two
10 cigarettes -- one or two at the back door. There was some
11 information that we knew the victim did smoke. Do that
12 was something that we collected and took back to S.L.E.D.
13 enter further analysis.

14 Q. All right. Proceed to the one in the kitchen?

15 A. State's Exhibit 14, again, is a photo of the back
16 door and ground in the same area leading into more
17 pictures of the ground itself as opposed to the steps.

18 State's Exhibit 15, again is a picture of the back
19 door. There is more. After we got photos of the entire
20 house we moved in closer as we walk through giving us an
21 idea also of how to process. So we were trying to take
22 photographs in the same order so as you process and move
23 in ordinarily you don't lose anything.

24 One way of doing that is taking photograph in the
25 order you're going to be processing or order for the

1 scene. There first photograph is inside the front door,
2 back door and that's immediately inside the back door.
3 There is the laundry area, and that checkerboard, you see
4 back there in the kitchen.

5 Q. This would be the kitchen in the house?

6 A. There is, again, inside the kitchen from the previous
7 photograph, State's Exhibit Number 17, and again, for the
8 way through we're looking for evidence we need to either
9 mark, collect or process or do something to make sure we
10 come back to it. And if you can see I have to bring it
11 close because there are some marks on the floor.

12 Q. Now, were those marks there when you got there?

13 A. No, they were not.

14 Q. And what did you use to mark them?

15 A. This is magic marker or Sharpie or something like
16 that.

17 Q. Before you move forward on that issue what sort of
18 shoes were you wearing on that particular day?

19 A. I was wearing a pair of boots. My partner wears
20 similar boots. They were E.M.S. personnel that had a
21 similar type utility boot. After recognizing and noticing
22 the outer sole design on this particular shoe I went back
23 and looked at everything that had been in the scene prior
24 to us getting there. And this shoe impression was not
25 made by E.M.S. or law enforcement or anybody else inside

1 the house. This shoe impression was different.

2 Q. You verified everybody that had been in the house to
3 your knowledge?

4 A. Yes.

5 Q. Their shoes did not match the impressions that you
6 were finding?

7 A. Yes. Somewhere in that stack is a picture of those
8 out sole designs.

9 Q. You can proceed then through the kitchen. You don't
10 have to go through every one?

11 A. Again, there is State's Exhibit 128. I talked
12 earlier about footwear impressions. We saw what appeared
13 to be blood, and this is before any enhancement was done.
14 You can see it's a reddish color. For us it was a sign
15 that it was blood and that determination for D.N.A. that
16 somebody needed to pay attention to.

17 Q. Okay?

18 A. State's Exhibit Number 190, again, is one of the
19 footwear impressions which to us indicates that it was a
20 footwear impression that had been in contact with the
21 substance that we thought probably was blood. Again,
22 State's Exhibit 25, again is just a general photograph.
23 Moving thus the house as we processed you take photographs
24 and process it prior to touching or moving or collecting
25 anything. You want the seen to be -- again, I think I

1 mentioned this earlier. What when they call S.L.E.D. that
2 scene looks just like it was when that incident didn't
3 occurred.

4 State's Exhibit Number 27 is a general overall view
5 of that morning. Actually, we see these scenes and we
6 just walk through take photographs. When I have footwear
7 impressions I take another photograph, go back and look at
8 our photographs. That's the situation where you kind of
9 break the chain. You go back and unmark it, tracking,
10 photograph it, why you did it and the reason that you
11 marked it and took the photograph out of sequence.

12 Q. As you moved from the kitchen to the dining room
13 did -- you did find some blood in the area of potential
14 shoe prints on the rug?

15 A. Yes, through the kitchen to the rug in the dining
16 room.

17 Q. Do you have the notes indicating those?

18 A. And this is actually the next note. Again, we
19 traveled through this direction and come back in this
20 direction.

21 There is State's Exhibit Number 35 which shows again
22 right here on the carpet. This is before any enhancement
23 or anything is done to the footwear impression. Here,
24 this is before enhancing or anything.

25 Q. When you enhance it what do you use?

1 A. We use a chemical, Phenol black. It's a spray liquid
2 that you spray on what you suspect is blood and rinse it
3 off and it turns a purple color. It doesn't change the
4 design. It just makes it more visible to the eye, but it
5 doesn't change that design at all.

6 Q. Can you show us photos of the ones in the kitchen
7 which have already been treated with the Phenol black?

8 A. State's Exhibit 136 and 135 are footwear impressions
9 that have been treated with Phenol black. And these are
10 actually the same photographs I showed earlier and said
11 after processing it doesn't change that design at all. It
12 makes it more visible to the eye.

13 Q. Those photographs were not -- those shoe prints were
14 not actually in the kitchen? Those are in another area of
15 the house?

16 A. This is the hardwood floors in one of the other
17 bedrooms. It's just an example of footwear impressions
18 after being treated with Phenol black.

19 Q. All right. Let me --

20 A. State's Exhibit 32, again, I talked about that outer
21 sole design and what we thought were somehow would have
22 been footwear impressions that were not visible before.
23 After processing it with Phenol black you can see the end
24 of that shoe, and we saw this again with the naked eye.

25 Q. Okay. Let's move on to the blood pattern analysis

1 and two victims if you can. Show them -- let's start with
2 the female victim?

3 A. Okay.

4 Q. And I'm going to ask you to when you talk to the jury
5 speak real loud so that the court reporter can hear you?

6 A. All right. This going to be State's Exhibit 40.
7 Again, talked about this earlier about the patterns --
8 blood stain pattern analysis and the blood stains at a
9 scene. The size, where they are in relation to that
10 entire room or house or scene. What may have caused it
11 and the sequence of events after that time.

12 All these stains here around this door frame are all
13 radiated with a tail pointing in direction which means
14 that blood source came from low and radiated towards and
15 to the defendant?

16 Q. So you're saying -- basically, you're telling us that
17 they were struck while laying on the floor where that
18 source of blood was low originated, low and in either
19 direction and went on the angle; is the way you see it?

20 A. The impact in the picture, you have a different
21 perspective. It's the same thing you can see right here
22 and right here and off to the side in this photo up there
23 is.

24 State's Exhibit 39 all radiating low, upwards and to
25 the left. And those tails on those the tail tells you

1 where that blood source originated. Same pictures. This
2 is right on through the process where we actually put a
3 ruler next to it on the floor.

4 Q. How would you characterize the amount of blood here?
5 Would it apply in the determination of how the injury
6 occurred?

7 A. It would.

8 Q. Well, going back, are you saying that the victim lost
9 an enormous amount of blood?

10 A. The impact splatter pattern tells you that
11 considering this went on for some time because of the
12 amount of the pattern. You're not looking at the stain
13 and individually you're looking at the amount that the
14 pattern radiates and the area that it covers.

15 And in later photographs you actually see not only
16 here on either side of the doorway that the patterns a
17 broad patterns which tells me that there was a large
18 amount of blood that was lost in this incident.

19 Q. And can you tell us how long she was laying, in those
20 photographs, that you have shown us laying there in the
21 doorway or the hall?

22 A. Yes.

23 Q. Her legs were in the hallway. How far from her did
24 you find some blood?

25 A. Again, this is the same photograph looking at here,

1 State's Exhibit Number 39, which will lead me in this
2 direction. We find blood splatter on either side of here
3 and either side over -- here, this maybe easier. And as
4 you look here this is going towards the front door of the
5 house. We also found cast off here, over here, and as far
6 as down the hall is probably around this point.

7 And that's also to include splatter around the cast
8 off meaning that cast off and objects covered with blood
9 come in contact with the blood source and being thrown
10 backwards as far away as that wall, this wall, and again
11 this doorway just like this.

12 Q. This would be several feet?

13 A. Yes.

14 Q. Where the victim's body was lying?

15 A. Yes.

16 Q. All right. Okay, now, you can move to the male
17 victim.

18 A. As you enter the back door you walk through the
19 laundry room, through the kitchen, turn left, all the way
20 to the first bedroom directly in front of you where we
21 found the male victim. And that's what this is a
22 photograph of. Basically, the male victim is behind the
23 door as you walk into this room from this direction.
24 Basically, that's what you're looking at.

25 Q. He was found laying down?

1 A. Face down on those. Most of the blood splatter
2 around him in this particular photograph is low and right
3 around where he's laying. Again indicating that the
4 majority of those blows in this position took place while
5 he was lying or someplace low, but not to standing up.
6 Again, using the ruler this is the same photograph as this
7 one, but this is actually a close up of that particular
8 area using the ruler showing the distance from the floor
9 to the ceiling of how high the blood splatter went in that
10 particular room.

11 Q. And, again, with the male victim how far from where
12 you found the body did you find the most distant blood
13 splatter?

14 A. Okay, again, in this photograph the victim was here.
15 And in this particular photograph he was found here. This
16 particular photo was taken from the wall, so this is the
17 distance from the cast off; from him being here.

18 This particular photograph was taken from this wall
19 and he also found a cast off and blood splatter on this
20 wall, this wall, and part of the bed in here, but he was
21 found here. And also not only the wall but on the
22 ceiling.

23 Q. And that's a number of feet from where he was lying.
24 You're talk about the opposite wall from where his body
25 was actually found?

1 A. Correct.

2 Q. Okay. And was there blood splatter found on items,
3 two spots, around a wall and the two bodies?

4 A. This again is a photograph of the victim in that
5 particular photo is behind the door. This is actually
6 walking into the room so that shows how far out the
7 spatter went. This is actually the bed.

8 If you go to the corner here this is where the
9 baseball bat was found. This is near the victim's body
10 where a C.D. case was left that was broken, and again, you
11 have splatter and 90-degree drops on those C.D. cases.

12 Q. Before you go any further with that let me ask you.
13 You just indicated something about a baseball bat. Did
14 you find the suspected murder weapon?

15 A. Yes, ma'am, we did. I'm attempting to find that
16 photograph right now. State's Exhibit Number 78 is a
17 photograph of the bat at the corner of the bed that we
18 found while processing. We initially did not see where
19 the bat was. We knew these were some type of injuries
20 that were caused by blunt force trauma. I didn't see the
21 photograph, actually.

22 Q. So it was initially on the opposite side of the room?
23 Opposite side of the bed where the victim was found?

24 A. The victim was found here in the top of the bed in
25 the corner.

1 Q. Okay. If you will have a seat again and let me ask
2 you a few other questions.

3 THE COURT: If you want to gather up the exhibits and
4 give them back to the court reporter before they get too
5 separated.

6 BY MS. MUNNERLYN:

7 Q. As you were processing the scene you have indicated
8 that there were some substances that appeared to be blood,
9 correct?

10 A. Correct.

11 Q. And as a part of processing that scene do you try to
12 take some kind of swab or some pieces of that with you in
13 order to analyze when you leave the scene?

14 A. Yes, we swab those particular substances and
15 basically swab packages are sent to Columbia and given to
16 the D.N.A. Department for their analysis.

17 Q. I'm showing you what's been marked as State's Exhibit
18 183.

19 THE COURT: Counsel, come up just a minute. Seems
20 like there's been a change of subject, so let's talk for a
21 minute.

22 (WHEREUPON, a bench conference was held off the
23 record in the presence of the jury, but out of the
24 hearing of the jury.)

25 COLLOQUY

1 THE COURT: Ladies and gentlemen, I was just talking
2 with the attorneys with regards to scheduling, and it is
3 going to be considerably more direct examination of this
4 witness as well as cross-examination. And it is about
5 5:00 or a few minutes therefore. So I think that it is a
6 good time for us to stop at this time, and we are going to
7 recess for the day.

8 Again I'm going to ask, and I don't know of any
9 reason why we wouldn't be able to start promptly at
10 nine o'clock, and that's what I would like to do. If you
11 would please be back in the morning at nine o'clock. Over
12 the evening recess do not discuss the case with anyone.
13 Do not allow anyone to discuss it with you and do not talk
14 with anyone about this case whatsoever.

15 One other thing I'm going to ask you to do. Assemble
16 in your jury room about -- try to be there about ten
17 minutes or so before nine o'clock, and from among the 12
18 of you, the principal jurors. The alternates, but from
19 the 12 of you principal jurors if you would select one of
20 your own to be the foreperson of this jury. And advise
21 the bailiff of who that foreperson is going to be, and
22 that person will be seated in the front seat on the front
23 row. And will serve as the foreperson of this jury for
24 the remainder of this trial.

25 So with that I am going to excuse you. Again, do not

1 listen to any news stories or read any news stories or
2 listen to any broadcast media concerning this matter and
3 do not discuss the case with anyone over the evening
4 recess. And I'll see you promptly in the morning at
5 nine o'clock, and thank you. You may be excused.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at at 5:01 p.m.)

8 THE COURT: Let's give the jury an opportunity to
9 leave the building. All right. Let me remind you that
10 you -- well, since it is -- cross-examination has not
11 begun and you're still on direct examination there is no
12 prohibition against you're talking with this witness or
13 with him talking with anyone.

14 All right. You can step down. Mr. Jones, one other
15 thing that I'd like to do while the ladies and gentlemen
16 of the jury have vacated, so that I can go head and get
17 this done on the record and you can have the evening
18 recess in which to discuss it with your client, is I'd
19 like to talk with him about his Fifth Amendment rights at
20 this time and go ahead and do that.

21 Mr. Gathings, let me ask you to stand. You may be
22 called as a witness to testify in your own behalf. I now
23 advise you that you have the right to invoke the
24 protections given to you by the Fifth Amendment of the
25 Constitution of the United States and a similar

1 counterpart provision of the Constitution of the State of
2 South Carolina. The Fifth Amendment of the Constitution
3 of the United States provides in part that no person shall
4 be compelled in any criminal case to be a witness against
5 himself.

6 This provision of constitutional law means that you
7 cannot be compelled or required to testify in this case.
8 This is a right and a privilege which the law extends to
9 you. It is a personal privilege no one can waive this
10 right except you. You have the right not to testify, but
11 you also have the right to testify. The Court will grant
12 you the right to consult with your lawyers before you make
13 the decision.

14 If you elect not to testify your failure to testify
15 cannot be used by the State as an inference of guilt and
16 your failure to testify cannot be considered by the jury
17 in its deliberations, and I would so instruct them. If
18 you elect to testify and waive the privileges given to you
19 by the Fifth Amendment of the Constitution I advise you
20 that would then assume the role of a witness in this case
21 and you would then waive or give up your constitutional
22 privilege against self-incrimination.

23 This means that if you voluntarily take the witness
24 stand and testify you will then subject yourself to the
25 same rules that govern other witnesses, and you may be

1 examined and cross examined on any relevant issues in this
2 case. You may be impeached to the same extent as any
3 other witness, all of which is subject to the Rules of Law
4 and the Rules of Evidence.

5 I would further advise you that if you elect to take
6 the witness stand and testify that this decision on your
7 part must be made freely and voluntarily and with
8 knowledge of the protections given to you by the
9 Constitution and with the knowledge of your right to
10 testify. I'm not going to require that you give me an
11 answer whether you do or do not wish to testify in this
12 case. That will come later on.

13 And I, of course, would recommend to you that you
14 discuss this Fifth Amendment privilege with your attorneys
15 because I am later on at some point in time probably going
16 to ask you whether you do or do not wish to testify. But
17 my questions to you now is do you understand what I have
18 explained to you about your Fifth Amendment rights?

19 MR. GATHINGS: Yes, sir.

20 THE COURT: Do you have any questions that you wish
21 to ask me about what I've explained to you about your
22 Fifth Amendment rights?

23 MR. GATHINGS: No, sir.

24 THE COURT: All right. We will not -- as I say you
25 will not have to make that decision now. It will be at a

1 later time. I justed you to make -- I just wanted to make
2 sure that you understood your constitutional privilege
3 against self-incrimination. Thank you. You maybe seated.
4 All right. Anything else before we recess for the day,
5 Ms. Munnerlyn?

6 MS. MUNNERLYN: No, not from the State, Your Honor.

7 THE COURT: Anything from the Defense?

8 MS. CRAYTON: No, Your Honor.

9 THE COURT: All right. Got something, Mr. Jones.

10 MR. JONES: Nothing.

11 THE COURT: All right. We'll be in recess until then.
12 nine o'clock tomorrow morning. Thank you. We'll see you
13 tomorrow.

14 END OF TRANSCRIPT OF RECORD
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

I, HATTIE O. GORDON, Official Court Reporter for the
4th 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 General Sessions for
Marlboro County, South Carolina, on the DT day of
October, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 1, 2011



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF MARLBORO	)	2007-GS-34-1008
		2007-GS-34-0888
		2007-GS-34-0909

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ALLEN JOE GATHINGS	)	
DEFENDANT	)	

October 18-21, 2010
 Bennettsville, South Carolina
VOLUME NO. 03 OF 04

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE; and a jury.

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

ELIZABETH MUNNERLYN, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

JOHN HOLT, ASSISTANT SOLICITOR
 Attorney for the Plaintiff

EMILY CRAYTON, PUBLIC DEFENDER
 Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

Colloquy

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COLLOQUY

(WHEREUPON, State's Exhibit Nos. 191 THROUGH 200 were marked for identification only.)

THE COURT: Back on the record with regards to the State v. Allen Joe Gathings. 07-GS-34-888, 887 and 909. Mr. Gathings is present in the courtroom with his counsel. The State is represented by Ms. Munnerlyn. I've been advised that all of the jurors are here and ready to go forward. Anything before we bring the jury in, Ms. Munnerlyn?

MS. MUNNERLYN: No, Your Honor.

THE COURT: Ms. Crayton?

MS. CRAYTON: No, Your Honor.

THE COURT: All right. Yesterday when we adjourned we were in the middle of the direct examination of this witness, and Mr. Kenley, and he is still on the stand. And we are still in the direct examination. All right. Bring the jury in, please.

(WHEREUPON, the jury enters the courtroom at 9:00 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen, and thank you for your promptness in being back here this morning. I hope everyone had a good evening's rest. And I will now need to ask you as I did yesterday if anyone has approached you or tried to talk with you

1 about this case in any manner whatsoever I would need to
2 know about it now. Negative response, and that's good.

3 If anyone has seen anything in the newspaper or on
4 broadcast media regarding this case I would also need to
5 know about that now. Again, no response, and that's good.
6 Yesterday afternoon before we adjourned I asked that you
7 select a foreperson. I assume they have selected you.
8 Okay. Would you tell me your name, please?

9 JURY FOREPERSON: Ashley Clark.

10 THE COURT: All right. Juror Number 33, Ms. Clark,
11 will be the foreperson of this jury. She will always sit
12 where she is seated. The alternate will always sit where
13 he is seated on the second row at that end, and the rest
14 of you can sit in any of the seats in the jury box.

15 Yesterday when we adjourned we were in the -- the
16 State was conducting the direct examination of Mr. Kenley,
17 S.L.E.D. Agent Kenley, and the State may continue with
18 that examination.

19 MS. MUNNERLYN: Thank you, Your Honor.

20 THE COURT: All right.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. MUNNERLYN:

23 Q. Agent Kenley, I think we were beginning to discuss
24 how you began to process the crime scene at the house.
25 And did you, once the photos were taken, did you do

1 anything in regards with the blood that you saw throughout
2 the house?

3 A. Yes, ma'am. We took a swab which is basically a Q
4 Tip and swabbed the evidence that you suspect is blood,
5 package it, and send it to S.L.E.D. D.N.A. for analysis.

6 Q. Okay. I'm going to show you State's Exhibit 183.
7 Can you recognize what's in there?

8 A. These are the swabs that I collect at the scene.
9 And it actually has my initials on the envelope. It's
10 been sealed on the back and it indicates the date that I
11 actually collected it.

12 Q. So those would have been in the smaller envelope
13 within the heat sealed package?

14 A. Correct.

15 Q. They would have been submitted by you to S.L.E.D.?

16 A. Yes.

17 Q. Okay. For further analysis by whom?

18 A. D.N.A. Department.

19 Q. Okay.

20 MS. MUNNERLYN: Your Honor, I would move to admit at
21 this time State's Exhibit 183?

22 THE COURT: Any objection.

23 MR. JONES: No, sir.

24 THE COURT: All right. What's the number again?

25 MS. MUNNERLYN: State's 183.

1 THE COURT: All right. State's 183 admitted in
2 evidence without objection.

3 (WHEREUPON, State's Exhibit No. 183 was admitted into
4 evidence.)

5 BY MS. MUNNERLYN:

6 Q. Did you then collect any physical evidence other than
7 the swabs? Any actual evidence or physical evidence?

8 A. Yes, there was a red and grew aluminum bat that was
9 found in the male victim's bedroom and that was collected.

10 Q. Okay. Showing you what's been marked as State's
11 Exhibit 182 and see if you recognize that?

12 A. Yes. This is the bat as it was packaged. These are
13 my initials across the top and the date that I actually
14 sealed the heat seal package. We did that to the top with
15 the bat inside brown paper bag.

16 Q. Okay. And you actually seized that particular item.
17 Did you swab it at that time at the scene?

18 A. Let me refresh my memory to make sure. No, ma'am,
19 the Bat was actually processed back at the lab. Possibly
20 the next day. It was swabbed in our lab.

21 Q. Okay. And I want to show you State's Exhibit 144 and
22 see if you recognize that?

23 A. This is the chain of custody for this case.

24 Q. And that is issued by S.L.E.D?

25 A. Correct.

Karl Kenley - Further Redirect by Ms. Munnerlyn

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1 Q. And it indicates every person who had every item of
2 evidence at S.L.E.D.?

3 A. Correct. In the order they received it and gave it
4 to someone else.

5 Q. It specifically identifies them by name and it
6 specifies the time that they had these items?

7 A. Yes, and the department that they worked for.

8 Q. Okay. And does that accurately reflect all the items
9 which you submitted or which you handled in this
10 particular case?

11 A. Yes, it does. And prior to a trial like this we get,
12 in an e-mail form, and verify that the chain of custody as
13 it states on the form is correct as far as our particular
14 dealings with the case.

15 Q. And it is accurate?

16 A. Yes.

17 MS. MUNNERLYN: Your Honor, I would move to admit at
18 this time State's Exhibit 144.

19 MR. JONES: May I look at that?

20 THE COURT: Yes.

21 MR. JONES: No objection.

22 THE COURT: All right. Be admitted in evidence as
23 State's Exhibit 144 without objection.

24 MS. MUNNERLYN: Thank you, Your Honor.

25

1 (WHEREUPON, State's Exhibit No. 144 was admitted into
2 evidence.)

3 BY MS. MUNNERLYN:

4 Q. Now this particular exhibit actually had some
5 information in it in regards to when certain items were
6 submitted and when certain items were swabbed?

7 A. Correct.

8 Q. Okay. So that would actually tell the jury when the
9 certain swabs were taken from evidence which you took back
10 took S.L.E.D?

11 A. Yes.

12 Q. Okay. And would those include swabs that were taken
13 from the actual bat?

14 A. Yes. And also swabs from the actual scene.

15 Q. Okay. All right. I'm going to show you then State's
16 Exhibit 184 and see if you recognize those particular
17 items?

18 A. Yes, these were the swabs that were taken from the
19 defendant's car -- the stolen car in the incident was
20 located and processed.

21 Q. Okay. And those -- is those -- do those also include
22 swabs from the bat?

23 A. Yes, they do.

24 Q. Okay. And just for explanation purposes when an item
25 of evidence comes into S.L.E.D. to the forensic laboratory

1 or when it comes into the evidence processing is it
2 assigned some kind of letter or number or how is that
3 done?

4 A. It is given an item number. Depending on -- if it's
5 something that I bring in the lab, it's already assigned
6 an item number before it goes downstairs to intake
7 processing. If I have not assigned a number it to it is
8 automatically given an item number based on -- there were
9 already ten items associated with a particular case; that
10 next item would be Item 11, 12 in sequential order.

11 Q. Okay. So and once an item comes to S:L.E.D. and
12 given a number does it keep that number throughout in
13 every department?

14 A. It keeps that number throughout cause one in
15 particular that we consider -- let's take the bat for
16 instance. If it's a parent item and there is a swab taken
17 from this item as in this cases, this bat is Item 12.

18 If I take a swab from that item that becomes Item
19 12.1 and 12.2 in sequential order because the bat itself
20 keeps the original parent number which is Item 12 in the
21 processing resulting from this particular item gets sub
22 item numbers which would be 12.1, 12.2, 12.3, and so on.

23 Q. Okay. And those are reflected on State's Exhibit 144
24 as well. These are listed in order, are they not?

25 A. Yes.

1 Q. And so if you flip back to Item 12 which is the bat.
2 It's listed, and it shows everyone who had at some point
3 had that bat in their possession?

4 A. That is correct.

5 Q. Okay. Then we flip over it will go to the next item,
6 and those that have items which were swabbed has a -- the
7 initial number then and a .1 or .2?

8 A. A sub item number.

9 Q. Okay. All right. And that's clearly reflected on
10 this chain of custody?

11 A. Yes.

12 MS. MUNNERLYN: Your Honor, we would move to admit at
13 that time State's Exhibit 184?

14 THE COURT: That's the chain of custody? Number 184
15 is the swabs.

16 MS. MUNNERLYN: Swabs. Some of the other swabs.

17 MR. JONES: The second set of swabs.

18 MS. MUNNERLYN: Yeah.

19 MR. JONES: Without objection.

20 THE COURT: All right. Will be admitted without
21 objection.

22 (WHEREUPON, State's Exhibit No. 184 was admitted into
23 evidence.)

24 BY MS. MUNNERLYN:

25 Q. Now, when you take these swabs you -- do you do

1 anything with them at the scene?

2 A. Other than package them, put them inside envelopes
3 and seal it and that's it.

4 Q. Okay. And how are they maintained once they are sent
5 to S.L.E.D.?

6 A. They are heat sealed after they are put in this
7 smaller brown envelopes. They are put in larger heat
8 sealed packages. Taken down to evidence processing and
9 transferred to the D.N.A. Department and it's assigned a
10 number.

11 Q. Now, these people that are listed in the chain of
12 custody in between you and the D.N.A. analyst ---

13 A. Yes.

14 Q. --- would that have done anything to any of these
15 items of evidence, to the swabs or anything else?

16 A. Other than putting that information in the computer
17 they have no dealings with it because it's packaged with
18 my signature and my initials, and they don't have need to
19 open it. So all they did was transfer it from one
20 department to another.

21 Q. So none of those items of evidence would have been
22 tampered with or changed in any way, shape or form?

23 A. No.

24 Q. Once they left your custody until they got to another
25 analyst, if they were being analyzed by anyone else?

1 A. Correct. And if they were not sealed we have this
2 process where they would have called me down and asked me
3 to seal it in their presence to make sure that the custody
4 was maintained.

5 Q. Okay. And when you say sealed if you could explain
6 that using something envelope right here. Not a zip lock
7 or anything like that.

8 A. These envelopes are initially opened with nothing
9 written on the front. After we place the envelopes inside
10 we have this machine basically a laminating machine which
11 we simply put the plastic in and heat seal -- and heat
12 seal the package.

13 And again my initials have to go across the top. Not
14 just on the bag but actually on that seal showing that I
15 was the person that sealed the bag and also the date that
16 it was sealed.

17 Q. And can -- when the next analyst receives that is
18 there a way for them to tell if it's been opened?

19 A. Yeah. They simply pull the back to make sure it
20 hasn't been opened. Checking the edges, and then normally
21 we will open the bag away from my seal which means if I
22 sign it on this seal they will either use the side, the
23 edge or the bottom so that when they reseal it they will
24 also attach their initials and the date showing there was
25 only one analyst that handled this piece of evidence.

1 Q. All right. In taking the photos in and going through
2 the scene in and around the female victim in the hallway
3 was there anything other than the blood spatter which
4 indicated the parts of her body or anything which you or
5 pieces of anything from her body which you noticed which
6 would indicate anything to you in regards to the assault?

7 A. Yes, there was.

8 Q. And what was that?

9 A. A tooth.

10 Q. And where did you see the tooth?

11 A. It was roughly 3 to 5 feet away from her above her
12 head away from her body.

13 Q. Okay. I want to show you what's been marked as
14 State's Exhibit 56. Just for identification I want to ask
15 you if you recognize what's in that photo?

16 A. Yes, ma'am. This is actually a photo of the tooth
17 that we observed at the scene.

18 Q. And where exactly was it located?

19 A. Exactly between her feet.

20 Q. Okay. So it is several feet from where her head is
21 actually located?

22 A. Yes.

23 MS. MUNNERLYN: Your Honor, I would --

24 Q. And does it accurately describe or depict where you
25 found it when you processed the scene?

1 A. Yes. That was the reason for taking the photograph.

2 Q. Okay. And what does it tell us about this particular
3 assault?

4 A. Again, there was a great amount of force in order to
5 remove the tooth in that manner, and the distance that it
6 was away from the head shows it was a lot of force in this
7 assault.

8 Q. So it was at least 5 feet or so from her head?

9 A. At least.

10 Q. Okay?

11 MS. MUNNERLYN: Your Honor, I would move to admit
12 State's Exhibit 56.

13 THE COURT: Mr. Jones.

14 MR. JONES: If I can look at that one more time.

15 THE COURT: Okay.

16 MR. JONES: Your Honor, we would object to this on
17 the same grounds as before; that the prejudicial effect of
18 the pictures greatly outweighs any probative value. The
19 witness has already testified to the position.

20 THE COURT: All right. I understand. I'm going --
21 that objection will be overruled. The photograph will be
22 admitted, and I previously viewed this and kept it out
23 until there was testimony. But the law is that if it is
24 illustrative of the circumstances and corroborates the
25 testimony of the witness then it is admissible under State

1 v. Nance. Objection is overruled and it will be admitted
2 in evidence.

3 (WHEREUPON, State's Exhibit No. 56 was admitted into
4 evidence.)

5 MS. MUNNERLYN: Thank you, Your Honor. May I publish
6 to the jury, please?

7 THE COURT: Yes. And, again, ladies and gentlemen,
8 what that means is that she has the right to -- she's
9 asked for permission to publish. That's just a fancy
10 lawyer word meaning to show the jury, and you can pass it
11 around while you're sitting there. And, of course,
12 anything that has been admitted in evidence will go with
13 you to the jury room when you deliberate your verdict. So
14 you do not need to worry at you do not have enough time to
15 look at the exhibit as you might like to later on.

16 MS. MUNNERLYN: Thank you, Your Honor.

17 BY MS. MUNNERLYN:

18 Q. I'm going to show you what's been marked as State's
19 Exhibit 190 and see if you recognize what's included in
20 that exhibit.

21 A. I do.

22 Q. Okay. And what is that?

23 A. These are photographs of the foot wear impressions
24 that we talked about yesterday after they were enhance.
25 And also the test impressions that were made back at the

1 lab to compare to foodware impressions at the scene with a
2 known pair of tennis shoes that we received later.

3 Q. Okay. And who made these?

4 A. I made these.

5 Q. Okay. And are they in the same or similar condition
6 as when you made them?

7 A. Yes, they are.

8 MS. MUNNERLYN: Your Honor, I would move to admit
9 State's Exhibit 190?

10 THE COURT: All right. Mr. Jones, have you seen it?

11 MR. JONES: I think I have, Your Honor. Let me look
12 one more time, Your Honor.

13 THE COURT: Okay.

14 MR. JONES: And, Your Honor, I think I would object
15 or I would object to this based on the fact that it is not
16 to scale, and I understood that it was enhanced.

17 THE COURT: All right. I think that may go to the
18 weight if not the admissibility. Of course, you can cross
19 examine them on that or he can lay that foundation, but I
20 think he has identified as to what they are. And what
21 you're talking about goes to the weight rather than
22 admissibility of those photographs. I will overrule the
23 objection and allow the admission.

24 MS. MUNNERLYN: Thank you, Your Honor. That's
25 State's Exhibit 190.

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1 THE COURT: Okay.
2 (WHEREUPON, State's Exhibit No. 190 was admitted into
3 evidence.)
4 BY MS. MUNNERLYN:
5 Q. Tell me what you mean when you say they're enhanced?
6 A. If I misspoke I simply meant that these photographs
7 were taken after the footwear impressions were enhance at
8 the scene after they were treated with Phenol black. The
9 photographs themselves are not enhanced. These
10 photographs were taken after the foot wear wear
11 impressions were enhanced with a chemical on the scene.
12 Q. Okay. So this is after you put the substance on them
13 that turns them black color, I think you said?
14 A. Purplish.
15 Q. Okay. All right. And so you took the photograph
16 when you were processing the scene?
17 A. Yes.
18 Q. Okay. And did you later come into possession of some
19 shoes with which to make a comparison?
20 A. Yes, we received a call from the Horry County Police
21 Department on July 3rd, and they advised us that they had
22 the defendant in custody. And we responded to that
23 location to not only take possession of some of his
24 personal belongings but also to process the stolen vehicle
25 in this case.

1 Q. Okay. And I want to show you State's Exhibit 143
2 that's already in evidence. And see if you recognize what
3 that is?

4 A. I do. This is actually the chain of custody form
5 that is received or filled out by me from the officers at
6 Horry County Police Department showing that I took
7 possession of the evidence that they had at that time when
8 the defendant was arrested.

9 Q. All right. Did that include any shoe or anything
10 that you used to compare that to these particular
11 photographs?

12 A. It does. A pair of blue and white New Balance Shoes,
13 Series 608, Size 11.

14 Q. Okay. From whom did you receive those?

15 A. Investigator Heather Brummett with the Horry County
16 police department.

17 Q. Okay. And the shoes were actually taken from the
18 defendant?

19 A. Correct.

20 Q. Okay. Those are -- that chain is reflected on those
21 two exhibits, which are Exhibit 143, State's Exhibit 143
22 and State's Exhibit 142?

23 A. Correct, this is the chain of custody that I filled
24 out for S.L.E.D. and this is the chain of custody that
25 Investigator Brummett filled out for her agency so we both

1 would have a copy of the chain.

2 Q. Okay. All right. And I'm showing you State's
3 Exhibit 181 and see if you can identify that?

4 A. Yes, this is the bag and the shoes and the item
5 number and the case number that I receive from the Horry
6 County Police Department containing a pair of blue and
7 white tennis shoe. No laces.

8 Q. And you say the item number. It's got your S.L.E.D.
9 item number on the front?

10 A. Correct.

11 Q. And -- but those are the actual shoes that you
12 received?

13 A. Correct, these are the actual shoes.

14 Q. When you received them from Heather Brummett what did
15 you do?

16 A. I took them back to our lab, visually examined them,
17 photographed them, and proceeded to process them taking
18 several swabs from the substance that tested positive for
19 blood in the lab. And those swabs were then sent to
20 D.N.A.

21 Q. Okay. All right. Now, are they in the same or
22 similar condition as when you received them?

23 A. Yes, they are. And the stamp on the bottom it's from
24 where I made test impressions of these particular tennis
25 shoes to match with the test impressions that were found

1 at the scene.

2 Q. Okay. So actually when you received them they didn't
3 have that purplish color on the bottom?

4 A. Correct.

5 Q. Okay.

6 A. And this is also my initials and the item number
7 written on the sneaker from when I received it showing
8 that it's the same piece of evidence.

9 Q. Okay.

10 MS. MUNNERLYN: All right. Your Honor, I would move
11 to admit at this time this exhibit, which is State's
12 Exhibit 181.

13 THE COURT: That being the shoes? The pair of shoes?

14 MS. MUNNERLYN: The shoes, yes, sir.

15 THE COURT: All right. Any objection.

16 MR. JONES: Same objection, Your Honor. They're not
17 in the same condition as they were obtained from the
18 defendant. They have been stained by S.L.E.D. analysis,
19 and they do not accurately reflect what they looked like
20 at the time that they were taken from the defendant.

21 THE COURT: Well, they're not being offered for that
22 purpose. The objection is overruled.

23 MS. MUNNERLYN: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit No. 181 was admitted into
25 evidence.)

1 BY MS. MUNNERLYN:

2 Q. And the chain for those is also indicated on the ---

3 A. Correct?

4 Q. State's Exhibit 144.

5 A. Yes.

6 Q. All right. I want you then, now, to explain how you
7 compared the footprints or the shoe prints you found in
8 the home at [REDACTED] in Clio with the shoes
9 that you obtained from the defendant. You can just
10 explain to the jury, first of all, what the process is?

11 A. Okay. We obtain or develop test impressions, foot
12 wearwear impressions on the scene, whether it be on the
13 floor or in the sand. We have to photograph it and,
14 again, for these particular stains that were taken at that
15 scene they had to be enhanced so that we could actually
16 see them for this purpose of actually doing an analysis.

17 If with obtain a pair of shoes that we think the
18 agency that we're assisting thinks belongs to this
19 particular pattern when we receive those shoes we actually
20 put the shoes on our feet, depending on what size the shoe
21 is we find someone within the department that has a size
22 12 shoe. And we actually have them put the shoe on.

23 We dust the bottom of the shoe with red powder that
24 you saw on the bottom of this particular shoe, and you
25 actually step on this. Hopefully you can see it. You

1 step on this clear paper just as anybody else would to
2 transfer out the impression from the botoom of his shoe,
3 his sole design, onto this clear paper so that you have a
4 stain representation of the bottom of his shoe and
5 whatever the shoe is. You actually now have it here and,
6 then with your scale photograph you simply overlay it.

7 It's similar to a puzzle. You simply overlay your
8 test impression on this impression and try to match the
9 out sole design from the test impression to the known shoe
10 from impression you found on the shoe.

11 Q. And did you do that in this case?

12 A. Yes.

13 Q. Okay. And do you recall which of the footprints you
14 actually used to make to comparison?

15 A. It was determined that it was the right shoe that we
16 were dealing with.

17 Q. The right shoe?

18 A. The right shoe, correct.

19 Q. Okay. Do you recall where the actual shoe print was
20 within the house?

21 A. Being on the hardwood floor, 13.1.2 was probably in
22 the front bedroom on that hardwood surface.

23 Q. Okay. That would have been the bedroom closest to
24 the female victim?

25 A. Yes, correct.

1 Q. And that would be the bedroom shown or the footprint
2 shown here in State's Exhibit 48, and 54; is that correct?

3 A. That is correct.

4 Q. Okay?

5 A. There are multiple, as I mentioned earlier, 13.1.2,
6 there are actually four impressions in this one picture.
7 So they all get a different item number, 13.1.2, .1.3,
8 .1.4 in sequential order because there are more than one
9 impression in different directions. So you have to give
10 them all an item number in order to compare to your known
11 impression.

12 Q. All right. Now, how would there be, if you could
13 just explain, how there would be four impressions like
14 that?

15 A. Someone had to have stepped in a substance, in this
16 case blood, in a tennis shoe and transferred that
17 impression on this hardwood floor indicating that the
18 defendant or the suspect walked around in the residence at
19 some point after stepping in the blood.

20 Q. Okay. And did you examine more than one footprint or
21 was it primarily that one on the hardwood in the bedroom?

22 A. All of those were taken from the hardwood floors in
23 different areas of the bedroom.

24 Q. Okay. And tell us then did you reach some sort of
25 conclusion in regards to after you analyzed and compared

1 these test impressions and the photos of the actual shoe
2 print that was left on that crime scene?

3 A. Yes, I did.

4 Q. Okay. And if you can tell us -- first of all did
5 your submit a report indicate ---

6 A. Yes, sir.

7 Q. Indicate the results of your comparison?

8 A. Yes, I did.

9 Q. I'm going to show you State's Exhibit 188. Do you
10 recognize that?

11 A. I do. This is the final report that was rendered
12 after the crime scene was completed and all notes were
13 taken.

14 Q. Okay. And it includes your conclusions in regards to
15 the comparison of those shoe prints and the shoes that you
16 received from the defendant?

17 A. It does.

18 Q. Okay. And you have signed that?

19 A. I have. And it is also signed it by, at this time,
20 my partner, Jeffery Parrott, because at that time I was in
21 training so all of our reports have to go through a double
22 verification even after training. But that senior agent
23 simply does not have to sign. So the only reason that his
24 signature is on this particular report is that being the
25 senior agent at that time he verified all the findings and

1 results that I found in this report.

2 Q. So he went back over everything you looked at?
3 Verified that your results were correct and signed that
4 confirming your conclusion?

5 A. Correct. Also based on our protocol showing two
6 signatures that at that time I was still in training.

7 Q. Okay. All right.

8 MS. MUNNERLYN: Your Honor, I would move to admit at
9 this time State's Exhibit 188 which is his written report?

10 THE COURT: Mr. Jones.

11 MR. JONES: Is that December 21 '07?

12 MS. MUNNERLYN: Yes.

13 MR. JONES: Your Honor, I object to this. I would
14 object to this similar to the objection as to his expert
15 status. I think he has now just told us that he was in
16 training at that time. And for that reason I would object
17 to the admission of this report.

18 THE COURT: So your objection is on the basis that he
19 was not qualified to make that report?

20 MR. JONES: Correct.

21 THE COURT: That objection is overruled. The report
22 will be admitted as State's Exhibit Number 188.

23 (WHEREUPON, State's Exhibit No. 188 was admitted into
24 evidence.)

25 MS. MUNNERLYN: Thank you, Your Honor.

1 BY MS. MUNNERLYN:

2 Q. Okay. Let's go then directly to the conclusions you
3 reached in your report. If you can tell the jury what
4 those conclusions were?

5 A. After we take the photographs of the foot wear
6 impression we send those photographs to the photo
7 department for them to actually make these photographs for
8 us to make the comparison in the lab.

9 These particular photographs themselves, the roll,
10 was actually given item numbers, Item 13. All of foot
11 wear impressions that were developed on Item 13 from this
12 photograph were then given sub-items that we just talked
13 about. 13.1, 13.1.1 and so on.

14 Q. Sequential order. Footwear Impression 13.1.1 states
15 that Item 13.1 Impression, which is referring to what's on
16 the photograph, corresponds in class characteristics with
17 Item 23, which is the shoes, the right shoe which simply
18 means that the out sole design that was developed at the
19 scene matches in class characteristics meaning just the
20 out sole design. What that looks like similar to this
21 shoe. Saying this particular shoe or impression was made
22 by this shoe or a similar shoe just by the out sole
23 design. That's what class characteristic means.

24 Q. So your results in regards to 13.1.1 are that the
25 shoe, which is in this exhibit taken from the defendant,

1 could have made this shoe print?

2 A. Correct.

3 Q. Or a shoe of the same make, same size and everything?

4 A. Correct.

5 Q. Why is it that you could not definitely say that that
6 particular shoe made that shoe print?

7 A. Because they were not any individual characteristics.

8 You know how some people walk differently. Some people
9 walk on the outside of their feet, and the shoe is worn
10 down on that edge. Some people pick up rocks and cuts
11 after wearing the shoes for a number of year.

12 These individuals characteristics also will come out
13 in photographs. In this particular case we didn't have
14 any individual characteristics or wear patterns that would
15 distinguish this shoe from any other New Balance. And
16 that's why we have class characteristics. Just the basic
17 out sole design of that shoe.

18 Q. So there was not any one specific identifying
19 characteristics that made this shoe different from another
20 New Balance size 11 shoe?

21 A. That is correct.

22 Q. It was like this was a brand new shoe. It was just
23 like any other that was made like that in that same size?

24 A. That's correct.

25 Q. But no question that shoe could have made that shoe

1 print?

2 A. This shoe could have made this impression.

3 Q. Okay. And did you have -- did you examine other shoe
4 prints?

5 A. Yes. 13.1.2, 13.1.3 were also class characteristics.
6 13.1.4 was a no conclusion meaning that the information
7 that was contained in that particular impression just did
8 not have enough information in order to draw conclusions.
9 So we said no conclusion at all. We didn't make any
10 determination or result as to that particular impression.

11 Q. So that doesn't mean it did not match, does it?

12 A. It does not mean -- we cannot tell.

13 Q. You just did not have enough information in that shoe
14 print to be able to tell?

15 A. One way or the other. We did not have enough
16 information in that particular developed impression,
17 enhanced impression to make a determination.

18 Q. Okay. Now, did you actually examine the scene there
19 at the house for latent prints?

20 A. No, we did not.

21 Q. Okay. And what was the reason for that?

22 A. At that particular scene there was no probative value
23 fingerprints simply because both victims lived there.

24 There was no evidence that this was at the time, from the
25 information we had on the scene, but fingerprint evidence

1 was not as probative as the blood evidence the missing car
2 or the bat.

3 Q. Okay. And your information at that time was what in
4 regards to the suspect?

5 A. The suspect had access to the house. He was there
6 all the time, so we would expect to find his prints in the
7 house.

8 Q. Okay. So even if you had did fingerprints and found
9 his fingerprints you would expect that because he stayed
10 there?

11 A. Right. Correct.

12 Q. So that the only reason you did not pursue trying to
13 find latent prints in the house?

14 A. That is correct.

15 Q. All right. And did you examine the bat for any kind
16 of fingerprints or anything of that nature?

17 A. Yes. That was processed back at our lab.

18 Q. Okay, for fingerprints?

19 A. Yes, for fingerprints and also swab for D.N.A.
20 purposes.

21 Q. And did you reach a conclusion in regards to the
22 prints on that particular item?

23 A. Yes, there was no evidence, no value of any
24 identifiable fingerprints on the bat.

25 Q. Okay. Now, tell me does that mean that nobody

1 touched the bat?

2 A. No. That simply means that I can't tell you if they
3 did or did not. It was just similar to the foot wear
4 impressions. There was not enough information I this
5 particular print to develop to actually identify with
6 another handprint or fingerprint. There was no evidence
7 that it was any information that I can go forwards with a
8 conclusion.

9 Q. Explain to me how that could be. How could somebody
10 touch this bat, and I'd like for you to open it and show
11 it to the jury, how could someone have touched that bat

12 ---

13 THE COURT: Is it in evidence?

14 MS. MUNNERLYN: Yeah.

15 THE COURT: What number is it?

16 THE WITNESS: 182.

17 MS. MUNNERLYN: Your Honor, I move to admitted it at
18 this time as Number 182.

19 THE COURT: All right. Any objections?

20 MR. JONES: Without objection.

21 THE COURT: All right. Number 182 admitted in
22 evidence without objection.

23 (WHEREUPON, State's Exhibit No. 182 was admitted into
24 evidence.)

25 BY MS. MUNNERLYN:

1 Q. If you would open it and show it to the jury. and if
2 you could then explain to me and them how someone could
3 touch that bat and you not be able to obtain a latent
4 print or a fingerprint from it? I want to ask this before
5 you open that. Is that packaged as you packaged it?

6 A. Absolutely. The bags that we have are not big enough
7 for me to put it in one bag. It's actually in two bags
8 taped together that cover the entire item. Also it had
9 blood on it at the time.

10 Q. And is it in the same of similar condition as when
11 you obtained it from the crime scene?

12 A. Yes.

13 Q. Okay. All right.

14 A. In regards to fingerprints, fingerprint are 99, 98,
15 99 percent water. So even if you see somebody touch
16 something the first way to try to find out or verify if
17 they did touch it is to process it that particular item
18 with some black powder which is super glue. But even if
19 somebody touches something that doesn't necessarily mean
20 that they're going to leave a print.

21 Simply because the surface that they touch is not
22 conducive to leaving an identifiable print. Their hands
23 may be too wet, too dry. There are a number of factors
24 based on how fragile their fingerprint actually is. So
25 touching something, touching a particular item doesn't

1 mean that you're going to leave an identifiable print. It
2 doesn't mean it wasn't touched. It just means that we
3 can't tell you who touched it.

4 Q. Okay. So is it possible then for me to touch this
5 and not leave a print?

6 A. Absolutely. We saw her touch it, but when we
7 processed it with some black powder, again, there is no
8 guarantee that I'm going to get an identifiable print.
9 I'll see a smudge or I'll see an impression that she put
10 her hand. Is there any detail in those fingertips that
11 would allow me to identify this particular handprint with
12 her known hand. There is no guarantee that you will get
13 that.

14 Q. Okay. And the surface of the bat itself, is it
15 conducive to fingerprints?

16 A. The duct tape is actually a smoother surface. So if
17 someone touches this there is better chance tha we will
18 get prings off this type surface. Again, it doesn't
19 necessarily mean that you will be able to develop an
20 identifiable print.

21 Q. And how could that be?

22 A. Again, the person who touched this, their hands,
23 again, may have been too wet and the fingerprint is gone.
24 The hands are too dry. They never left a print. On just
25 this surface itself, the atmosphere in the house could

1 have dried it out. A number of factors, because again,
2 you're talking about 99 percent water. And most of the
3 time you get the identifiable print because the hand comes
4 in contact with some other substance like blood or oil or
5 sweat or that kind of thing.

6 That actually raises those ridge details of the
7 fingers so you can see the pattern or print you touched.

8 Q. But also how easily can a fingerprint be removed once
9 it is left?

10 A. It can be removed by the atmosphere, just simply
11 touching it over and over again. And we're not talking
12 about the fact that it's not there. It's just that there
13 is not enough detail in that print for you to make an
14 identification.

15 Q. All right. So did you in fact examine this item, the
16 bat, for fingerprints?

17 A. I did, but prior to conducting the latent print or
18 finger print analysis I swabbed it for D.N.A. first
19 because if you reverse that process you destroy any D.N.A.
20 that might be on the bat. So you swab first for D.N.A,
21 for blood and also for touch evidence and then it was
22 processed with super glue.

23 Q. And that was all done by you?

24 A. That was done by me, correct.

25 Q. Okay. And you indicated your results in regards

1 to -- an effort to find prints was what again?

2 A. The results for the bat, Item 12, was no value
3 meaning no information as far as latent print or
4 fingerprint on this bat that would allow me to make result
5 or identification to match it to someone else.

6 Q. Okay. All right. If you would just lay that down
7 there in the bag. Yeah. After you processed that scene
8 did you thereafter go and process any other area or any
9 other scene?

10 A. Yes, we responded to the Horry County Police
11 Department on July 3rd in reference to the defendant being
12 arrested. And they had his car and belongings in their
13 possession.

14 Q. Okay. And do you remember where you processed the
15 car?

16 A. It was actually processed at the Horry County Police
17 Department at one of their storage units.

18 Q. Okay. I'm going to show you what's been marked as
19 State's Exhibits 147 through 182, and I believe 165. And
20 see if you recognize those exhibits or what's shown in
21 those exhibit.

22 A. Yeah, these are general photographs of the car
23 similar to what we talked about yesterday. Any time you
24 process the scene you process the scene 360 degrees and
25 you take pictures from all angles. And that's what these

1 photographs are.

2 Q. Okay. And again tell me what type vehicle was that?

3 A. This was a 1995 blue Chevrolet Corsica. South
4 Carolina tag 776-WBS, four door.

5 Q. Did you know who that car belonged to?

6 A. According to the information that we had that car
7 belonged to the female victim.

8 Q. Loyce Locklear?

9 A. Correct.

10 Q. In fact did you find when you processed that vehicle
11 for any evidence her ownership was it in that car?

12 A. Yeah, the V.I.N. information and the glove box and
13 also insurance information with her name on it.

14 Q. Okay. I believe you actually took a photograph of
15 that, did you not?

16 A. Um hum.

17 Q. And that's included within those exhibits?

18 A. Yes. State's Exhibit 164.

19 Q. Okay.

20 MS. MUNNERLYN: Your Honor, request permission to
21 publish?

22 THE COURT: Permission granted.

23 BY MS. MUNNERLYN:

24 Q. Tell us as you processed that vehicle what the
25 process -- what order you went in and what you found.

1 A. Again, the first process that we took was basically
2 photographing the vehicle: The V.I.N. Number, the license
3 tag and the exterior of the car. After that we did the
4 same thing on the inside of the vehicle, noting the
5 condition that it was in just as we found it.

6 The first process that we did is called a
7 phenolphthalein test, and that's spelled
8 P-H-E-N-O-L-T-H-A-L-E-I-N, and it's a test, a chemical
9 test, for presumptive blood. We see a substance that we
10 think is blood, and we test it with that chemical. If it
11 turns a bright pink that gives us indication that it's
12 positive blood, but we still can't make that determination
13 and that's why the D.N.A, to make the determination that
14 it was blood.

15 Q. Okay. And you were aware that this vehicle was taken
16 from where the defendant was arrested?

17 A. I'm sorry.

18 Q. Were you aware that this vehicle that you were
19 searching was actually seized from the location where the
20 defendant was arrested?

21 A. Yes, that is correct.

22 Q. And did you do anything as far as the gas peddle?
23 Did you test it for anything?

24 A. Yes. Knowing that we had what we thought were bloody
25 footwear impressions back at the original scene we tested

1 the brake pedal and the excelerator to see if we could get
2 a presumptive test for blood on these areas.

3 Q. Okay. And were you able to get anything from those
4 presumptive tests?

5 A. No. We got negative results.

6 Q. Okay. In fact were you able to find any evidence of
7 any blood using this particular persumptive test in the
8 vehicle itself?

9 A. No, none at all.

10 Q. Okay. What did you find within the car?

11 A. We found in the glove box an ice pick that we
12 photographed, of course, and that ice pick was sent back
13 to our lab for further processing. We didn't process that
14 particular item on the scene. We found a, for lack of a
15 better term, a tire tool that was sharpen on one end,
16 wooden handle on the other end.

17 That particular item also tested negative on the
18 vehicle, which means that there was not blood or
19 presumptive blood on that item at the scene.

20 Q. Okay.

21 A. We also swabbed the steering wheel, and this is
22 typical when you're processing a car for D.N.A. evidence.
23 We swabbed the stearing wheel, common places that any
24 somebody would touch that was driving the vehicle. And
25 those swabs were packaged and sent to D.N.A. for further

1 analysis.

2 Q. Okay. They were submitted to Adrienne Riley to be
3 included within her tests?

4 A. Right.

5 Q. Okay. And what other items of evidence did you
6 actually find in that particular vehicle?

7 A. We found a black wallet in the console. It had a
8 couple of credit cards with the defendant's name on it,
9 and some bank receipts.

10 Q. Okay. I'm showing you what's been marked as State's
11 Exhibit 185 and State's Exhibit 186, and see if you
12 recognize those two?

13 A. State's Exhibit 186 are the two bank receipts found
14 in the console separate in the wallet, and 185, actually,
15 the wallet, the credit card with the defendant's name on
16 it.

17 Q. And you found both of those items in the named
18 location in the vehicle?

19 A. Correct, in the center console.

20 Q. Okay. And you have a photograph of where those items
21 were located?

22 A. Yes. State's Exhibit 155 shows where the item was
23 located and photographed before we moved it.

24 Q. And that's down in between the two front seats?

25 A. That is correct.

1 Q. Okay. All right.

2 MS. MUNNERLYN: Your Honor, request to publish?

3 THE COURT: Permission granted.

4 BY MS. MUNNERLYN:

5 Q. And are these two items, State's Exhibit 185 and 186,
6 in the same or similar condition today as they were when
7 you removed them from the vehicle?

8 A. Yes, they are.

9 Q. Okay?

10 MS. MUNNERLYN: Your Honor, move to admit at this
11 time State's Exhibit 185 and 186?

12 THE COURT: Mr. Jones.

13 MR. JONES: Your Honor, I believe we need to preserve
14 our objection to those items. We had previously objected
15 that the -- because the search warrant we felt had the
16 wrong name on it, so we renew that objection on those same
17 grounds.

18 BY THE COURT: All right, sir. Your objection is based on
19 a -- the invalidity of the search warrant. This Court has
20 already ruled on it.

21 MR. JONES: Correct.

22 THE COURT: All right. I'm going to overrule that
23 objection and admit them, and that objection for your
24 purposes is preserved.

25 MR. JONES: All right.

1 (WHEREUPON, State's Exhibit Nos. 185 and 186 were
2 admitted into evidence.)

3 BY MS. MUNNERLYN:

4 Q. Let me ask you specifically, first of all, about
5 these two exhibits which are State's Exhibit 186. Can you
6 tell me looking at those where they came from?

7 A. It states that they were from Horry County State.
8 5009 Broad Street in Loris, South Carolina.

9 Q. Okay. Can you tell from those receipts whether or
10 not he received any money in those transactions?

11 A. According to these receipts no money was received.

12 Q. Okay. What's the date on those?

13 A. June 30th 2007 and June 30th 2007.

14 Q. And the time, if they have it on that?

15 A. 10:41 and 10:39.

16 Q. Okay. And in State's Exhibit 185, you went through
17 that. There were a number of items within that wallet; is
18 that correct?

19 A. Correct.

20 Q. Whose identification was within that wallet?

21 A. Joe Gathings.

22 Q. Okay. And were there any other items included inside
23 that wallet?

24 A. There were several miscellaneous pieces of paper,
25 several -- a couple of photographs.

- 1 Q. Any credit cards?
- 2 A. Credit cards, several credit cards.
- 3 Q. And in whose name were all those items?
- 4 A. All those items had the name Allen Jay Gathings or
- 5 Allen Joe Gathings or Allen Gathings.
- 6 Q. All right. So they were all in the name of the
- 7 defendant, Joe Gathings?
- 8 A. Correct.
- 9 Q. And the receipts, you said there was a receipt of
- 10 some kind?
- 11 A. Yes.
- 12 Q. And what is that?
- 13 A. It appears to be a pawn slip -- a pawn stub.
- 14 Q. A pawn stub?
- 15 A. Yes?
- 16 Q. When did that occur?
- 17 A. June 4th 2007.
- 18 Q. And does it indicate where he pawned certain items?
- 19 A. In McColl, South Carolina. 107 Swamp Junction in
- 20 McColl, South Carolina.
- 21 Q. Okay. And what did he pawn on that particular
- 22 ticket?
- 23 A. It says 36 D.V.D's.
- 24 Q. D.V.D's?
- 25 A. Correct.

1 Q. Okay. All right. Put that -- were there are any
2 photographs or any other information in there?
3 A. I.D. with the name Joe Gathings, Joe Allen Gathings
4 on it.
5 Q. That the driver's license?
6 A. It's an identification card.
7 Q. Identification card?
8 A. Correct.
9 Q. Okay?
10 A. And there was a single picture containing two white
11 males. Christmas 2003 is written on the back.
12 Q. Okay, and can you tell from looking at that picture
13 whether or not the male shown in that picture resembles
14 either the defendant or any of the victims in this case?
15 A. Yes.
16 Q. And who can you determine?
17 A. The male victim and the defendant.
18 Q. Okay. All right. And is there also a release card?
19 A. Yes.
20 Q. S.C.D.C. Release Card?
21 A. Yes, there is.
22 Q. And what is the date of his release?
23 A. March 30th 2007.
24 Q. All right. If you would just put those items back in
25 the wallet. Did you analyze the vehicle for any

1 fingerprints?

2 A. Yes, the outside of the vehicle was processed with
3 black powder for latent fingerprints.

4 Q. And did you receive any positive results there?

5 A. We did not receive any results from the outside of
6 the vehicle. However, we did lift an identifiable print
7 at that time from the rear view mirror.

8 Q. And were you able to make any sort of match from the
9 particular print?

10 A. We were not.

11 Q. Okay, and there was no value for any of the other
12 lifts that you received?

13 A. That is correct.

14 Q. So you did process the entire vehicle for
15 fingerprints?

16 A. Yes, the entire vehicle was processed for
17 fingerprints.

18 Q. You did have the defendant's fingerprint card for
19 comparison?

20 A. Yes.

21 Q. But were unable to make any matches?

22 A. Yes, the fingerprint that was lifted was not
23 identifiable. The print that was lifted was not
24 identifiable to the defendant.

25 Q. Now, let me ask you again. Does that mean that this

1 defendant was not in that car?

2 A. No. That certainly means that that particular
3 fingerprint did not identify with him.

4 Q. Now, in addition to the tennis shoes you also
5 received some other items from the Horry County Police
6 that were taken from the defendant; is that right?

7 A. That is correct.

8 Q. Okay. I'm going to show you State's Exhibit 187.
9 See if you recognize those items?

10 A. Yes, those are the clothing that we seized from the
11 Horry County Police Department.

12 Q. They are also shown on the chain of custody form that
13 is already in evidence?

14 A. Yes.

15 Q. And those are in the same or similar condition as
16 when you received them from Heather Brummett?

17 A. They are. Again, my initials and date sealed and
18 when I sealed the back and dated when we received it.

19 MS. MUNNERLYN: Your Honor, I move to admit into
20 evidence at this time State's Exhibit 187.

21 MR. JONES: Your Honor, we will admit that defendant
22 was wearing clothes when he was arrest. No objection.

23 THE COURT: All right.

24 (WHEREUPON, State's Exhibit No. 187 was admitted into
25 evidence.)

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1 BY MS. MUNNERLYN:

2 Q. If you could remove those items and let us take at
3 look at what they are.

4 THE COURT: 187 is admitted into evidence without
5 objection.

6 THE WITNESS: First item is a pair of blue or purple
7 shorts.

8 BY MS. MUNNERLYN:

9 Q. Okay.

10 A. Second item is a blue polo style shirt.

11 Q. Those are the the two items that were taken from him?

12 A. Exactly.

13 Q. Now, were these items analysed in any way, shape or
14 form?

15 A. No.

16 Q. And these were actually removed from him on what
17 date? July the 2nd?

18 A. We received them on July 2nd.

19 Q. I'm going to show you -- refer you to State's Exhibit
20 142?

21 A. Okay, yes. They were removed from the defendant on
22 July 2nd.

23 Q. So it was actually two days after the victims bodies
24 were found?

25 A. Correct.

1 Q. Okay. Did you take anything else from the vehicle
2 when you were searching the vehicle?

3 A. No, ma'am.

4 Q. Okay. And do the photographs depict the trunk as
5 well as the interior of the vehicle?

6 A. Yes, it does.

7 Q. And those were as you found them on July 3rd when you
8 processed that particular vehicle?

9 A. That is correct.

10 Q. Okay.

11 MS. MUNNERLYN: Court's indulgence just one moment?

12 THE COURT: Yes, ma'am.

13 BY MS. MUNNERLYN:

14 Q. You testified that you took swabs from the shoes,
15 correct?

16 A. Correct.

17 Q. And that was as a result of a positive presumptive
18 test for blood?

19 A. Correct.

20 Q. And you did the test?

21 A. Yes. Correct.

22 Q. And these swabs are included already in evidence, are
23 they not.

24 A. They are.

25 Q. And State's Exhibit 183, I believe?

1 A. Yes.

2 Q. Okay. And those swabs, I think you've already
3 testified, you took back to the evidence processing at
4 S.L.E.D. and they were transmitted to Agent Riley at
5 D.N.A.?

6 A. I didn't know at that time it was assigned to the
7 D.N.A. and then ultimately assigned to Adrienne Riley.

8 Q. Okay. Well, they are all -- the chain is all listed
9 within the chain of custody form which is in evidence as
10 well?

11 A. Correct.

12 Q. Okay. That's all the questions I would have. If you
13 would answer any questions that Defense counsel has?

14 THE COURT: Cross-examination, Mr. Jones.

15 MR. JONES: Yes, sir.

16 RECROSS-EXAMINATION

17 BY MR. JONES:

18 Q. Good morning, Agent Kenley?

19 A. Good morning.

20 Q. All right. Let's go back to June the 30th of '07. I
21 understand your first contact with anyone was with whom?
22 Who was your first contact with, June 30th '07, concerning
23 this incident?

24 A. I received a call from Chief Thomas of the Clio
25 Police Department at 3:30 on June 30th 2007. Telephone

1 contact.

2 Q. All right. Now, as you began your investigation you
3 came up here, and I think you detailed what you did from
4 the time you came after being contacted by Chief Thomas.
5 Who is the -- who's the head man in charge of this
6 investigation?

7 A. When you say, 'head man in charge,' what do you mean?

8 Q. Who's in charge -- are you in charge of the
9 investigation? Is this your crime? Are you the top man
10 in charge of the investigation? Who's in charge is what
11 I'm asking?

12 A. I was in charge of the crime scene itself. The field
13 agent assigned by S.L.E.D. would have been the head
14 investigator on the entire investigation.

15 Q. Who is that?

16 A. Glenn McLellan, I think. I think it was Glenn
17 McLellan. I'm not sure.

18 Q. What role did Chief Thomas play in this whole
19 situation?

20 A. For our purposes as far as crime scene simply to tell
21 us what they found at the scene and how they wanted us to
22 process, basically, information from the scene to help us
23 process the scene.

24 Q. Was he present when you got there?

25 A. Yes, sir.

- 1 Q. Was Mr. McLellan present?
- 2 A. Yes, sir.
- 3 Q. And I believe that you testified that when you got
- 4 there several people had already been in the house, is
- 5 that correct?
- 6 A. Correct.
- 7 Q. Chief Thomas?
- 8 A. Yes.
- 9 Q. Mr. McLellan?
- 10 A. Possibly. I'm not sure if Glenn had been inside or
- 11 not.
- 12 Q. Okay.. Officer Lester?
- 13 A. Again, I'm not sure.
- 14 Q. The victim's son and brother, Mr. Polston?
- 15 A. Yes.
- 16 Q. The E.M.S. people?
- 17 A. Correct.
- 18 Q. And I believe that was Mike Goff and Jerry Nolan?
- 19 A. I'm not sure. We knew that E.M.S. personnel had been
- 20 at that scene prior to our arrival.
- 21 Q. At least two of them?
- 22 A. Yes, two of them.
- 23 Q. At least one of whom was wearing tennis shoes?
- 24 A. No. We took photographs of both E.M.S. personnel.
- 25 They were both wearing boots.

1 Q. So if Mr. Nolan told us yesterday that he was wearing
2 tennis shoes you're unaware of that?

3 A. I'm unaware of that.

4 Q. Okay. Thank you. Now, when you began your
5 investigation you followed certain protocol I'm sure?

6 A. Yes.

7 Q. Right. So in addition -- let me back up a minute.
8 In addition to the list that we've just been through of
9 people who had already been at the crime scene we're now
10 going to add you and your partner who was whom?

11 A. Jeffery Parrott?

12 Q. Mr. Parrott. We've got two more people in there ---

13 A. Correct.

14 Q. --- at the crime scene. You began following
15 protocol. You're in training so you and Mr. Parrott are
16 working in tandem I assume?

17 A. Correct.

18 Q. But this is your crime scene so you're in charge of
19 the crime scene?

20 A. I'm responsibility for the report. Correct.

21 Q. Very good. And you walk through the house and you
22 take photographs and you mark areas where people are not
23 to walk again Mr. Parrott is with you?

24 A. Correct.

25 Q. All right. You are taking most of the photographs?

- 1 A. No, Jeffery Parrott.
- 2 Q. I'm sorry. He took most of the photographs?
- 3 A. Correct.
- 4 Q. Okay. And from your description of the crime scene
- 5 it was very fairly gruesome to say the least?
- 6 A. Correct.
- 7 Q. Okay. There are -- there is blood everywhere?
- 8 A. There were blood in areas, correct.
- 9 Q. Okay.
- 10 A. Large volumes of blood in two areas.
- 11 Q. And those two areas had considerable amount of blood
- 12 on the floor area as well as on walls, door frames,
- 13 various other areas near where the two bodies were
- 14 located?
- 15 A. That is correct.
- 16 Q. Okay. And you determined that the bat which was -- I
- 17 don't remember what exhibit number, but that bat that we
- 18 were just talking about was in fact the weapon that was
- 19 used to cause the death of these two people?
- 20 A. Prior to finding the bat we knew that it was some
- 21 type of blunt force trauma, and after finding the bat we
- 22 realized that that was probably the weapon used.
- 23 Q. So the answer to my question is yes?
- 24 A. Yes.
- 25 Q. Thank you. Very good. Now, the person who

1 supposedly did this -- not supposedly be the person who
2 did this, and I'm sorry. I'm looking for the bat, Ms.
3 Court Reporter. Would you take it out again and do
4 something for me?

5 A. Do you have more gloves.

6 Q. All right. You may not have any idea, but would you
7 hold that bat as supposedly someone who was using it to
8 inflict this damage was using it?

9 A. I wouldn't have any idea.

10 Q. Or would you assume that they were holding it at the
11 fat end or the skinny end?

12 A. Fat end.

13 Q. Will you hold the skinny end for me? Okay. And
14 you're right handed I'm assuming?

15 A. Correct.

16 Q. All right. And there was a -- and I know you didn't
17 want to say how many blows were struck, but there were a
18 large number of blows, correct?

19 A. There was at least two, and in my positional opinion
20 there were probably more than two, but there were at least
21 two.

22 Q. For each victim?

23 A. Yes.

24 Q. At least four blows were struck?

25 A. Yes.

1 Q. All right. Now, are you not able to give me a little
2 bit better number based on all the splatter that's all
3 over the wall? Was there more than four splatter?

4 A. There was more than one pattern, and there were more
5 than one stain, but as far as the number there was no way
6 scientifically to say a number, a particular number.
7 Scientifically we can prove that there were at least two.
8 One caused the blood to come to the surface and the second
9 one caused the blood to disperse.

10 Any further than that to any scientific degree I
11 can't say how many.

12 Q. So if you're walking from the room where the male
13 victim was found to the hallway area where the female
14 victim was found, carrying the bat in a similar manner or
15 at least towards that skinny end, you found nothing in the
16 way of fingerprints relating to this defendant at all?

17 A. Fingerprintd?

18 Q. Yes.

19 A. No.

20 Q. You found nothing related to fingerprints to either
21 of the victims?

22 A. In the house?

23 Q. No, on the bat?

24 A. On the bat, no. We didn't find any latent prints
25 related to this bat at all.

1 Q. Period?

2 A. Correct.

3 Q. And the reason for that is because what you said that
4 there maybe a lot of moisture or too little moisture, too
5 much moisture, or various other situations?

6 A. Any number of reasons we didn't find any.

7 Q. Okay. And nothing on that bat handle where that tape
8 is, does that tape stop fingerprints from happening?

9 A. No.

10 Q. So it just has to do with the content of the moisture
11 perhaps in the fingerprints?

12 A. The surface, the moisture, the dryness. A number of
13 factors.

14 Q. But the surface you just said doesn't have anything
15 to do -- if I stuck my finger or any thumb on that tape
16 area and the conditions in my finger as far as moisture
17 were correct I should leave a print on there, shouldn't I?

18 A. You would expect to find a print. The only way to
19 find it is to process it. You would expect to find a
20 print.

21 Q. And you found nothing?

22 A. Correct.

23 Q. In the way of prints?

24 A. Correct.

25 Q. Okay. Thank you. If you'd hold on to those gloves

1 for me. I may want you to touch that bat again for me.

2 Now, and where was the bat located?

3 A. It was at the end of the bed in the bedroom where the
4 male victim was found.

5 Q. And in the position that the picture depicted?

6 A. Yes.

7 Q. Okay. Is there any way to tell from your examination
8 of the crime scene if that bat was put down anywhere?

9 A. We didn't find any what we would consider transfer
10 stains that this bat that was covered in blood was ever in
11 any other position than it was when we found it in the
12 bedroom.

13 Q. Okay. And, now, as you were talking yesterday about
14 when the blows were struck, the first blow may raise or
15 may cause the blood to rise. The second blow may cause
16 the blood to disperse?

17 A. Correct.

18 Q. Does that paraphrase what you said yesterday?

19 A. Correct.

20 Q. And as the bat was used to strike at least the second
21 time that caused the blood to release I understood you to
22 say it also, on the upswing, may cause patterns to appear
23 on surfaces where the surface stops that blood from
24 flying; is that correct.

25 A. Cast off stains.

1 Q. Okay. Now, would it be expected or would you expect
2 that someone doing what we just described doing, at least
3 two times on each victim and more than likely more than
4 that, would that blood not -- would you not expect that
5 blood to be somewhere on the person doing the swinging?

6 A. In that particular scene we determined that the
7 person that did this probably was covered with blood at
8 that time because of the amount of blood at the scene.

9 Q. Okay. That's a reasonable expectation for the person
10 doing the swinging to have at least a little bit probably
11 a lot of blood on the person?

12 A. For this particular scene, yes.

13 Q. Okay. Did you find any evidence at the crime scene
14 that anyone tried to clean blood from anything?

15 A. No.

16 Q. None whatsoever?

17 A. No.

18 Q. Not inside? Not outside?

19 A. No.

20 Q. No. Okay. Spickets? Bathroom? Tubs? Sinks?
21 Anything?

22 A. No.

23 Q. Very good. And it's also my understanding that it's
24 belief of -- the investigation or it's the premises of the
25 investigation that the Defendant, Mr. Gathings, got in a

1 blue Corsica and drove from Clio and ended up in Horry
2 County? Is that -- are you aware of that?

3 A. We knew that there was a vehicle missing, and at some
4 point we were called because a vehicle was found in Horry
5 County.

6 Q. Okay.

7 A. Again, I'm speaking from the crime scene standpoint.
8 From the crime scene standpoint we deal with the evidence
9 as opposed to interviewing witnesses and that kind of
10 things. We simply deal with the evidence at the scene
11 itself.

12 Q. All right. But it was your understanding, was it
13 not, that Mr. Gathings was in that vehicle in Horry County
14 at some point in time?

15 A. Yes, sir.

16 Q. All right. Was it also your understand that that
17 vehicle belonged to the female victim, and that it was
18 located in Clio sometime around June 29th of '07. Are you
19 aware of that?

20 A. I'm not aware of that.

21 Q. Okay. All right. And I understood you to say that
22 in processing the vehicle, which you did, correct?

23 A. Correct.

24 Q. All right. Number One, there were no fingerprints or
25 no discernible fingerprints of the defendant anywhere in

1 the car?

2 A. That's correct.

3 Q. Okay. And tell me why that is?

4 A. Why there were no fingerprint?

5 Q. Yeah?

6 A. For the same reason we didn't find fingerprints on
7 the bat, possibly.

8 Q. Again, moisture content, surface, whatever?

9 A. Correct.

10 Q. All right. If you go out to my car right now, which
11 I drive daily, and let's say I'm the only person driving
12 that car, would it not be reasonable to find some of my
13 fingerprints -- or a reasonable expectation of finding
14 some of my fingerprints in that car?

15 A. We were also processing the car for any prints.

16 Q. And you found none?

17 A. Correct.

18 Q. All right. And, again, getting back to my questions
19 concerning the fact that it would be reasonable to expect
20 that someone who had just committed these terrible crimes
21 to be, if not covered in blood, to have a considerable
22 amount of blood on them. When you processed that car did
23 you find anything that resembled blood?

24 A. No, we did not.

25 Q. Not male victim? Not female victim? Or not

1 Mr. Gathings?

2 A. We did not find any blood in the vehicle at all.

3 Q. None. Okay. All right. Let me jump a minute. Tell
4 me again your conclusions -- let's talk about the shoe
5 prints, okay. And you got your gloves on. Are the shoes
6 close? Here they are, and I believe we talked primarily
7 about the right foot, is that correct?

8 A. Correct.

9 Q. If you would get the right shoe for me, please. And
10 I'm sorry. Do you have the plastic overlay? All right.
11 It's my understanding of your direct testimony that
12 that -- let me get the number so I can do -- right: This,
13 the one we're talking about or both. Right, and, okay,
14 and I'm sorry. You took it from the envelope, and tell me
15 the number of that, do you know?

16 A. The item number?

17 Q. Yes.

18 A. Test impressions don't get an item number. It's just
19 a tool that we use to make a comparison. So this does not
20 have an item number.

21 Q. What about the exhibit number for the court reporter,
22 please?

23 A. Item 13.

24 MR. JONES: So that's not in evidence? This is in
25 evidence? That is not in evidence. Okay.

1 THE COURT: All out the same envelope.

2 MS. MUNNERLYN: Yes, Your Honor. Everything came
3 out ---

4 MR. JONES: I just want to call it the right number.

5 BY MR. JONES:

6 Q. All right. We're talking about Exhibit Number 190,
7 the plastic things you have in your hand, came from the
8 impressions that were on the hardwood floors; is that
9 correct?

10 A. No, these came off the actual shoes thelves.

11 Q. From the shows?

12 A. Correct.

13 Q. All right. And you compared those to ---

14 A. Correct.

15 Q. All right. There we go. And I understood that in
16 your report date December 21st '07 that your conclusion
17 was, and if you will help me I think we're talking about
18 Item 13.1.1; is that correct?

19 A. Correct.

20 Q. Okay. Well, and actually 13.1.2, but your conclusion
21 is the same; is that correct? And it says -- second line
22 says, "That, therefore, the Item 13.1.1 impression could
23 have been made by Item 23," which is the right shoe?

24 A. That's correct.

25 Q. All right. "Or another shoe that displays the same

1 combined class characteristics?"

2 A. Correct.

3 Q. Okay. Now, to boil that down you're not sure if that
4 shoe caused that impression but it might have?

5 A. Yes, correct. Could have or a shoe similar to the
6 same out soul design.

7 Q. All right. Could have or might have?

8 A. Correctc.

9 Q. All right. And now that's at New Balance, you were
10 able to determine that; is that correct?

11 A. Yes.

12 Q. Impression?

13 A. Correct.

14 Q. And I don't know if you were asked do you have any
15 New Balance shoes in you closet at home?

16 A. No, I do not.

17 Q. If -- well, before I ask that. If that impression a
18 size 11 impression?

19 A. Yes. The photographs of the impression were all
20 scaled.

21 Q. All right. Are you aware or not that if a -- if I
22 have a ten and a half or an 11 and a half New Balance
23 would you expect that impression to be smaller or larger?

24 A. If it's to scale, and that's the protocol for doing
25 foot wear pattern analysis, if not to scale in the

1 photograph we can't -- we don't make a adetermination.

2 So to answer your question, a 10 would be smaller just in
3 trying to make the overlay fit the impression.

4 Q. Okay. And do you have any idea how many size 11 New
5 Balance shoes were made in 2007 or thereabouts?

6 A. No idea.

7 Q. No clue whatsoever?

8 A. No idea.

9 Q. All right. We know that at least one of them was
10 probably made in either '07 or sometime prior to that?

11 A. Yes.

12 Q. If there were two made would either of those shoes
13 have made that impression?

14 A. Yes.

15 Q. If there were ten made could all ten of those
16 possibly have made that impression?

17 A. Any other shoe with basically the same out soul
18 design could have made this impression.

19 Q. And if I tell you that in my opinion New Balance made

20 ---

21 MS. MUNNERLYN: Objection, Your Honor..

22 THE COURT: Sustained. Not in evidence.

23 BY MR. JONES:

24 Q. Let me give you a hypothetical situation. If in fact
25 8.7 million new pairs of New Balance shoes were made in

1 2007 and, hypothetically, if they were divided into at
2 least 15 different sizes. So we're divided that number,
3 8.8 million, by 15 and come up ---

4 MS. MUNNERLYN: Your Honor, I would object to this.
5 I mean it's completely hypothetical. We don't know
6 anything about it.

7 THE COURT: The question is asked and sustained.
8 There is a way to do it, Mr. Jones. That's up to you.

9 MR. JONES: Okay.

10 BY MR. JONES:

11 Q. Already. We got to ten; is that correct?

12 A. I'm sorry.

13 Q. We got to ten pairs of shoes. If there were ten
14 pairs of New Balance shoes made, size 11 tennis shoes made
15 in 2007, all ten of those could have made that impression?

16 A. Yes. Any other shoe same on point class
17 characteristics similar to this item shoe could have made
18 that impression.

19 Q. So 20, a million, however many shoes, they all could
20 have made that impression?

21 A. Yes, if they had combined class characteristics, yes.

22 Q. Very good. Now, in holding that right shoe, if you
23 would do that again for me, please. Is there any way to
24 age that shoe? Any idea when that shoe was made?

25 A. No.

1 Q. Any idea how much that shoe had been worn?

2 A. Other than the fact that there were no identifiable
3 wear patterns on the shoe, which againd is one of those
4 identifiable characteristics that we talked about earlier.
5 There was no identifiable wear pattern on the shoe. In
6 particular there were none in the photographs that we used
7 for comparison.

8 Q. Okay. And my next question is. If I was walking in
9 those shoes and I stepped on a rock or a sharp object and
10 I put an impression or that sharp object puts an
11 impression on the bottom of my shoe, then that would be a
12 unique characteristic of that show versus all those other
13 thousands or millions of shoes we were talking about
14 earlier?

15 A. Only if it was captured in the photographs.

16 Q. Okay.

17 A. It has to leave that impression as it was captured so
18 that we can make the comparison.

19 Q. Were you able to find anything on that shoe that you
20 have in your hand, Item 23, which made that impression or
21 made the sole unique from any other shoe made by New
22 Balance?

23 A. No. That's why the results were combined
24 characteristics only.

25 Q. So the best we could do is it could have made it?

- 1 A. Correct.
- 2 Q. All right. Now, getting back to the house,
- 3 processing of the crime scene at the house, I believe you
- 4 said you expected to find evidence that the Defendant,
- 5 Mr. Gathings, had resided in that house because that was a
- 6 fact that you had, correct?
- 7 A. Finding his fingerprints in the house would not have
- 8 been probative because he lived in the house and we would
- 9 expect to find his. Find his fingerprints in the house
- 10 would not advance the investigation.
- 11 Q. Unless there was blood on them?
- 12 A. Possibly.
- 13 Q. That would have been helpful, wouldn't it?
- 14 A. Possibly.
- 15 Q. Okay. Is there anything on the handle of that bat
- 16 that would have or could have come off of it if one were
- 17 swinging it that -- specifically, I'm talking about the
- 18 tape wound around the handle?
- 19 A. The bat is in the same condition that it was found
- 20 when we collected it, and that's how we processed it in
- 21 this condition.
- 22 Q. All right. You found nothing that could have been
- 23 taken or that could have been worn off the bat or anything
- 24 else that could have been found anywhere in the house?
- 25 A. No.

1 Q. Nothing in the crime scene. Okay. And your specific
2 analysis to the bat had to do with fingerprints?

3 A. And swab for D.N.A.

4 Q. That's right. But someone else did the analysis of
5 the D.N.A?

6 A. Yes.

7 Q. Very good. Tell me what the significance -- I
8 believe you stated, I think it was yesterday afternoon,
9 that you found some cigarette butts outside; is that
10 correct?

11 A. Correct.

12 Q. What significance do you place on the cigarette
13 butts?

14 A. At the time of the scene we knew that the information
15 we had was that neither of the victims smoked. So we
16 needed to identify or make an attempt to identify these
17 cigarette butts.

18 Q. And where did you get that information?

19 A. It was gathered when we first arrived on the scene
20 and durin the initial briefing.

21 Q. So if the male victim smoked like a chimney you
22 didn't know that?

23 A. The information that we had was that he did not.

24 Q. But you don't remember where you got that
25 information?

- 1 A. It was from either -- probably one of the local
2 agencies, local personnel that knew the family or had
3 information from the family.
- 4 Q. Any significance to the cigarette butt?
- 5 A. We collected them and sent them to D.N.A.
- 6 Q. Do you have anything from the cigarette butts that
7 has anything to do with this crime?
- 8 A. That would be D.N.A. question. We sent the cigarette
9 butts over to the D.N.A. Department.
- 10 Q. Okay. Same question. You talked about an ice pick
11 and a tire tool?
- 12 A. Correct.
- 13 Q. Did you analyze those?
- 14 A. Yes, on scene.
- 15 Q. Any significance to either one of those items?
- 16 A. No.
- 17 Q. Just in the car?
- 18 A. Correct.
- 19 Q. All right. Any idea how long they had been in the
20 car?
- 21 A. No idea.
- 22 Q. All right. No probative value whatsoever?
- 23 A. No.
- 24 Q. Pawn slip, anything significant about the pawn slip
25 in this investigation?

1 A. Not from the crime scene perspective.

2 Q. And the clothes that were admitted into evidence,
3 what if any evidentiary value do you as a crime scene
4 investigator place on those clothes?

5 A. We didn't examine the clothing at all.

6 Q. Why?

7 A. There was no need to.

8 Q. If they -- were you aware what clothes a person doing
9 this was wearing at the time that even happened?

10 A. Repeat your question.

11 Q. Do you know if Mr. Gathings was wearing those clothes
12 when you say that he did what he did?

13 A. I have no idea.

14 Q. Okay. But you didn't even examine them to see if
15 there was any blood or anything on them?

16 A. They were physically examined, but there was no
17 further processing other than visibly looking at them to
18 see if there was anything on them.

19 Q. So you don't spray with anything? You don't do
20 anything to see if there is some blood on these clothes?

21 A. No.

22 Q. All right. And getting back to the car. Same
23 question about the car. Would you have sprayed the car
24 with whatever it is you're spraying with to see if it
25 indicated blood?

1 A. If we had any occasion that we thought that there was
2 something that was there we would have. In this case we
3 didn't see anything which would make us go further in the
4 processing.

5 Q. Nothing on the seat cover?

6 A. Correct.

7 Q. Nothing on the floor?

8 A. Correct.

9 Q. Nothing on the little clothe as you step into the car
10 on the floor?

11 A. Correct.

12 MR. JONES: One second, Your Honor.

13 THE COURT: All right. All right. It's about
14 appropriate time for us to take a break now and hope to
15 get through this. We will go ahead and take a recess at
16 this time. You may go to your jury room. Take about a
17 ten minute break and we'll start back in just a moment.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 10:28 a.m.)

20 THE COURT: All right, counsel, let's take about ten
21 minutes. I caution the witness don't talk to anyone
22 unless you examination the finished.

23 (WHEREUPON, Court is in recess at 10:29 a.m. and
24 reconvened at 10:40 a.m.)

25 THE COURT: All right. Back on the record with

1 regards to the State v. Allen Joe Gathings. Indictment
2 Numbers 887, 888 and 909. These are all '07 indictments.
3 The defendant, Mr. Gathings, is present in Court with his
4 counsel. We need the prosecutor.

5 MS. CRAYTON: Yes, Your Honor.

6 THE COURT: And the State is represented by Ms.
7 Munnerlyn who is also present. We are in the
8 cross-examination by Mr. Jones of the S.L.E.D. agent.
9 Anything before we bring the jury in, Ms. Munnerlyn.

10 MS. MUNNERLYN: No, Your Honor.

11 THE COURT: Mr. Jones?

12 MR. JONES: No, Your Honor.

13 THE COURT: All right. If the jury is ready bring
14 them back in, please.

15 (WHEREUPON, the jury enters the courtroom at
16 10:42 a.m.)

17 THE COURT: All right. Thank you, ladies and
18 gentlemen. We are now ready to resume the stage of the
19 process right now. It's cross-examination of the S.L.E.D.
20 agent, Mr. Kenley. Mr. Jones may resume his
21 cross-examination.

22 MR. JONES: Thank you, Your Honor.

23 BY MR. JONES:

24 Q. Agent, I have just a few more questions. And I don't
25 remember exactly where I was but let me ask a couple more

1 questions. In your processing of the crime scene on June
2 the 30th of '07 I know you said that there was an obvious
3 tremendous amount of blunt force trauma which caused in
4 your opinion the death of the two victims?

5 A. Correct.

6 Q. Were you able to determine if there was any struggle?
7 Any sign of a struggle?

8 A. Only the male victim's bedroom. The bed seemed to be
9 broken. The hallway leading to the female victim's there
10 a picture that was off the wall. Other than that, that
11 was about it.

12 Q. Okay. And when the autopsy was done on both victims
13 did you attend the autopsy?

14 A. I did not.

15 Q. Are you aware of any evidence that was obtained, for
16 instance, fingernail scrapings? Well, let me ask you
17 another way. Would you have done fingernail scrapings of
18 the two victims at the crime scene or would that be
19 something that was done at the autopsy?

20 A. That would have been something that was done at the
21 autopsy.

22 Q. All right. Are you aware of any scrapings of any
23 kind?

24 A. I don't have any information about the autopsy at
25 all.

1 Q. Just not sure? Okay. The report -- let me make sure
2 that I have covered the report. Your report,
3 December 21st '07, if we can do that. You've got your
4 copies?

5 A. Yes.

6 Q. All right. If you will go down the items with me and
7 make sure I understand those items. The first page it
8 says, "Item 12, gray and red aluminum bat?"

9 A. Correct.

10 Q. The results: No value for identification." Tell me
11 what that means?

12 A. It was processed but we didn't find any identifiable
13 fingerprints on it.

14 Q. Okay. One roll of black and white film. Excuse me.
15 Second page, Item 13?

16 A. Correct.

17 Q. One roll of black and white film containing bloody
18 foot wear impressions. Those are the pictures that we
19 were talking about earlier that had been blown up and now
20 the?

21 A. That is correct.

22 Q. Okay.

23 A. That's correct.

24 Q. Okay. Item 13.1.1 is what we read a little while
25 ago. The conclusion was that the shoe could have made

1 that impression. Same with 13.1.2. Tell me the
2 difference between 13.1.2 and 13.1.3. I know we've got a
3 right shoe and a left shoe. Were they didn't impressions
4 at different places in the house?

5 A. Yes, they were two different impressions.

6 Q. But same conclusion all to all of them, could, have?

7 A. That is correct.

8 Q. Okay. 13.1.4, footwear impression. Results: No
9 conclusion will be rendered due to the quality of Item.
10 What does that mean? That's the last one on Page Two?

11 A. Due to quality of Item 13.1.4 not enough impression
12 to make determination one way or the other.

13 Q. And 13.1.4 is what?

14 A. It's a wear impression. In that same pattern.
15 Somewhere in that same pattern.

16 Q. On the only three that were good for evaluation were
17 the ones we just covered?

18 A. That is correct.

19 Q. All right. So and 1.4 is no -- that same result as
20 to 13.1.5, black and white photo. No conclusion due to
21 quality. Again, it just wasn't good enough to compare
22 anything to?

23 A. That is correct.

24 Q. All right. 15.1, latent impression from Item 15.
25 Does that have something to do with the car?

1 A. That's at the rear-view mirror.

2 Q. Rear-view mirror. And this, is there any
3 significance to that?

4 A. It was just a partial palm impression, but again it
5 was not identified to anybody.

6 Q. All right. Same for Item 16 and Item 17. Basically,
7 what these three items is saying is that there is really
8 nothing in the way of fingerprints inside the car that
9 helped one way or the other?

10 A. Well, 15.1 wasn't identified for prints. It didn't
11 have anybody to identify them to. Item 16 there was
12 absolutely no value at all.

13 Q. So 15.1 was not the defendant's, in other words?

14 A. That is correct.

15 Q. All right. Very good. And the last item, 23.

16 Excuse me. Last two, Item Number 23, we were just talking
17 about with New Balance sneakers?

18 A. That is correct.

19 Q. And, Item 26, is just a comparison card from the
20 defendant; is that correct, Mr. Gathings?

21 A. That's correct.

22 Q. All right. But we had no fingerprints that were
23 obtained anywhere that were ---

24 A. That is correct.

25 Q. In this -- in the investigation?

- 1 A. That's correct.
- 2 Q. In your processing of the crime scene, and I don't
- 3 think -- I apologize if this question has already been
- 4 asked, were there any other New Balance tennis shoes found
- 5 in the house, period?
- 6 A. No, we didn't find no shoes in the house at all.
- 7 Q. No shoes period?
- 8 A. No. We obtained these particular shoes from the
- 9 Horry County Police Department.
- 10 Q. You found shoes just not New Balance Tennis Shoes?
- 11 A. Correct.
- 12 Q. Okay. Very good. I do have one or two more
- 13 questions about the shoes. Do you have your gloves? Very
- 14 good. I believe you said that the shoes are in the same
- 15 condition as when they were taken into evidence with the
- 16 exception of all the staining on them?
- 17 A. That is correct.
- 18 Q. All right. And the stains came from the substance
- 19 that was sprayed on or dusted on?
- 20 A. Dusted. Red powder.
- 21 Q. All right. And certain swabs were taken from those
- 22 shoes?
- 23 A. Correct.
- 24 Q. Do you know where the swabs that are in evidence were
- 25 taken from? What shoes? Where on the shoes?

1 A. It's written on the envelope.

2 Q. Were any of them on the upper, the sole area? Any
3 swabs, do you recall, that were taken from the upper part
4 of the shoe other than the bottom?

5 A. I have to look back at the envelope.

6 Q. Would you mind doing that for me, please.

7 A. Sure.

8 THE COURT: What's the exhibit number of the swabs?

9 MR. JONES: Is that 183? I think these are the
10 swabs.

11 THE COURT: Ask him, Mr. Jones.

12 BY MR. JONES:

13 Q. I've got two bags which I believe were identified as
14 swabs. Do you know which one the shoes came from, 183 or
15 184?

16 A. Can I open them?

17 Q. Yeah.

18 A. So I can look at them. I can't get my knife in here.

19 Q. You don't have a badge on.

20 A. They're going to be in State's Exhibit ---

21 Q. 184?

22 A. 184.

23 Q. Okay. Take your time. Please look. I've got a
24 couple questions that I need to ask you about that.

25 A. Okay.

1 Q. Can you tell me where these swabs were taken from the
2 shoes that we were discussing, Item 13?

3 A. Item 23.4, which again, Item 23 is the parent item,
4 the shoes. 23.4 is simply a subitem. It's swabs taken
5 from the shoes. Item 23.4 was taken from the right side
6 of the right shoe near the New Balance symbol.

7 Q. All right. Would that be on the bottom of the shoe?

8 A. On the side.

9 Q. Okay.

10 A. 23.3 was taken off the top of the right New Balance
11 shoe near the toe.

12 Q. Okay?

13 A. 23.2 was taken from the right New Balance sneaker
14 near the heel. 23.8 was taken from the left New Balance
15 shoe on the left side. 23.5 was taken from the left side
16 of the New Balance shoe near the string outlet. 23.7 was
17 taken from the tongue of the left shoe. 23.6 was taken
18 from the left New Balance shoe near the toe. 23.9 was
19 taken from the side of the left New Balance shoe. And
20 23.1 was taken from the right New Balance shoe down near
21 in heel area.

22 Q. Very good. And you took all of those swabs? All of
23 those?

24 A. Yes, these swabs were taken in the lab.

25 Q. You turned them over to someone else, and someone

1 else actually analyzed them?

2 A. Correct.

3 Q. Now, in your opinion as a footprint expert is there
4 any way to date or put a date or a time on when those
5 impressions were made on the floor?

6 A. No.

7 Q. None whatsoever?

8 A. No.

9 Q. Can you pin it down to contemporaneous with the event
10 or could have happened an hour afterwards or ten minutes
11 or way at all to date or time?

12 A. Other than the fact that what we perceived to be the
13 bloody footwear impression were still somewhat wet. Other
14 than that we cannot say specifically when they are placed
15 there.

16 Q. Very good.

17 MR. JONES: One second please, Your Honor. That's
18 all I have, Your Honor.

19 THE COURT: Redirect, Ms. Munnerlyn.

20 MS. MUNNERLYN: Thank you, Your Honor.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. MUNNERLYN:

23 Q. Agent Kenley, Mr. Jones asked you about the clothing
24 which you took from the defendant. And you physically
25 examined that clothing?

1 A. Correct.

2 Q. Did you see any evidence on it of any sort of blood?

3 A. No.

4 Q. This was, of course, collected two day after the
5 bodies was found?

6 A. That is correct.

7 Q. Okay. So the defendant or whoever committed these
8 crimes obviously had not been at the crime scene for at
9 least two days?

10 A. Correct.

11 Q. Did you ever recover any bloody clothing?

12 A. No.

13 Q. Could it have been removed from the home and placed
14 somewhere else?

15 A. Of course.

16 Q. And the shoes, the New Balance tennis shoes where
17 were taken from the defendant, which you have just
18 testified as to the places that you have swabbed, do you
19 know whether or not these shoes were cleaned?

20 A. If these shoes were in fact at the scene in my
21 professional opinion they had to have been cleaned.

22 Q. Okay. But there is no way for you to tell whether or
23 not they were completely cleaned?

24 A. Correct.

25 Q. But you did obtain swabs from those which indicated

1 to you -- what you assumed may be blood?

2 A. Correct. Those swabs that I collected were first
3 presumptive tests we talked about earlier, and they gave
4 me a positive for blood, but again, I could not make that
5 determination. That's why they were sent to D.N.A, but
6 they did test presumptively positive for blood.

7 Q. And what was the size of these spots or whatever you
8 saw on the shoes?

9 A. Less than a millimeter.

10 Q. Less than a millimeter?

11 A. Yes. a very small.

12 Q. So very, very small?

13 A. Yes.

14 Q. Could you see it with the naked eye or were you using
15 any other?

16 A. I could see it with a naked eye.

17 Q. Okay. Now, he discussed with you something about the
18 bat and the handle there which you've already testified
19 that you didn't get any fingerprints from it?

20 A. Correct.

21 Q. Well, let me ask you this. If someone is using as
22 much force as was apparently used in this particular
23 attack wouldn't you assume that their hands would move
24 around some?

25 A. Yes.

1 Q. Okay. And in fact that may smudge any prints which
2 are there; is that correct?

3 A. That is correct, and another thing I didn't mention.
4 Person could have been wearing gloves. That's always
5 another option. They could have been wearing gloves, but
6 again, there are many variables that go into not finding
7 an identifiable print. And the distinction needs to be
8 made between finding the print and finding an identifiable
9 print. There is something on this bat, but we can't
10 attribute it to anybody is the ultimate question.

11 Q. Okay. And in fact the handle could have actually
12 have been rubbed with something and the fingerprint
13 removed; is that right?

14 A. Yes.

15 Q. Okay. And the same thing would go for the car; is
16 that not correct?

17 A. That is correct.

18 Q. The dash, the steering wheel; any of those could have
19 been just rubbed with a towel or anything and the
20 fingerprints removed easily?

21 A. That is correct.

22 Q. Okay?

23 MS. MUNNERLYN: No further questions..

24 THE COURT: Recross, Mr. Jones.

25 MR. JONES: One or two, Your Honor.

1 THE COURT: All right.

2 RE CROSS-EXAMINATION

3 BY MR. JONES:

4 Q. Agent Kenley, does the smudged prints that you were
5 just asked about did you find any smudged prints on that
6 bat anywhere?

7 A. No prints were found.

8 Q. Okay. And you mentioned that you thought the shoes
9 had been cleaned; is that correct?

10 A. Could have been cleaned.

11 Q. Could have been cleaned?

12 A. Correct.

13 Q. Okay. And I had asked you previously, and I
14 understand your answer to be that you found nothing at the
15 crime scene which would indicate that anything had been
16 cleaned?

17 A. That is correct. These shoes were not found at the
18 crime scene. They were found at the Horry County Police
19 Department detached from the ---

20 Q. All right. So you found no evidence at the crime
21 scene of any cleaning. I think I asked you -- I will ask
22 you. Did you find any blood whatsoever anywhere in the
23 car?

24 A. No, we did not.

25 Q. Thank you?

1 THE COURT: All right. Thank you.

2 MS. MUNNERLYN: Your Honor, if I could have just one
3 question based on that?

4 THE COURT: All right.

5 FURTHER REDIRECT EXAMINATION

6 BY MS. MUNNERLYN:

7 Q. Mr. Jones has been asking you about the cleaning at
8 the crime scene that you testified to earlier. You said
9 you didn't find any evidence of that. Does that mean that
10 there as no cleaning done, absolutely?

11 A. No. That means that we just didn't find any.

12 Q. Okay. All right.

13 MS. MUNNERLYN: No further questions, Your Honor.

14 THE COURT: Anything further Mr. Jones.

15 MR. JONES: Nothing further.

16 THE COURT: Thank you, Mr. Kenley. You may step
17 down, Mr. Kenley, but Ms. Munnerlyn, get with him up here
18 and get these exhibits together. Make sure everything is
19 in the right envelope and give them back to the court
20 reporter so there won't be any mixup of any of the
21 exhibits. And make sure that -- I know Mr. Kenley would
22 now purposely take any of the exhibits, but make sure that
23 his notes don't get mixed up with the exhibits.

24 MS. MUNNERLYN: Yes, sir.

25 THE COURT: All right. Thank you. Would you like to

1 have this witness excused?

2 MS. MUNNERLYN: Yes, Your Honor.

3 THE COURT: Any objection, Mr. Jones?

4 MR. JONES: No, sir.

5 THE COURT: All right. You are excused, Mr. Kenley.

6 Thank you for coming.

7 MS. MUNNERLYN: Your Honor, I next call Glenn
8 McLellan to the stand.

9 THE COURT: All right, Mr. McLellan.

10 GLENN MCLELLAN, after being duly sworn,
11 testified as follows:

12 CLERK OF COURT: Be seated and state your full name.

13 THE WITNESS: Glenn McLellan.

14 DIRECT EXAMINATION

15 BY MS. MUNNERLYN:

16 Q. Where are you employed?

17 A. South Carolina State Law Enforcement Division also
18 known as S.L.E.D.

19 Q. In what capacity?

20 A. I'm a criminal investigator.

21 Q. Okay, and how long have you been employed with
22 S.L.E.D.?

23 A. Almost ten years.

24 Q. All right. And all total how many years law
25 enforcement experience do you have?

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1 A. Little more than 20.

2 Q. And how were you involved in this particular case for
3 the incident that occurred on June the 30th 2007 in Clio?

4 A. I received a call from any supervisor to respond to
5 North Main Street in Clio to assist him in an
6 investigation where they had discovered two bodies.

7 Q. Okay. And were you actually the lead investigator or
8 lead agent in this case?

9 A. Yes, ma'am, I was.

10 Q. Okay. This actually was initially a Clio Police
11 Department case?

12 A. That is correct.

13 Q. But you were called in to assist and basically handle
14 the investigation?

15 A. Correct.

16 Q. Okay. And did you actually respond to the scene at
17 [REDACTED]?

18 A. I did.

19 Q. Okay. On what day?

20 A. This would have been ---

21 Q. On the body that the bodies were found?

22 A. That is correct.

23 Q. Okay. And when you arrived there were you in charge
24 of the crime scene?

25 A. Well, the crime scene had already been secured by

1 members of the Clio Police Department when I arrived.

2 Q. Did you actually enter the house?

3 A. At that time I didn't.

4 Q. Okay. Did you enter before crime scene, Karl Kenley
5 and his partner arrived?

6 A. No, ma'am. After Karl Kenley and the other crime
7 scene agent arrived and processed the crime scene I went
8 in to view the crime scene after they had completed their
9 processing.

10 Q. All right. So that when you arrived was the crime
11 scene secured?

12 A. It was.

13 Q. All right. And what did you do when you arrived at
14 the scene? If you were not processing the crime scene
15 what were you doing?

16 A. Actually met with Chief Thomas at that time and also
17 Officer Lester who in turn advised me on what they found
18 and what they knew at that particular time.

19 Q. Okay. And did you develop a suspect at that time?

20 A. Based on the information that I had received, yes,
21 ma'am, we were able to determine a good potential suspect.

22 Q. Okay. And who was that?

23 A. That was Joe Gathings.

24 Q. Okay. And did you in fact -- was the vehicle that
25 was missing and Mr. Gathings entered in the N.C.I.C. as a

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1 fugitive and as a stolen vehicle?

2 A. Yes, ma'am, the vehicle was entered.

3 Q. Okay. Did you do anything that day? Anything else
4 that day at the actual scene?

5 A. Other than speak with them and whomever else that I
6 could speak with in viewing the crime scene. There was
7 not a whole lot that we did on that day other than perhaps
8 some interviews and review what we had at the crime scene
9 and trying to locate who we believed was the suspect.

10 Q. So your job at that point was basically to locate
11 witnesses to try and determine a timeframe for how things
12 had happened; that sort of thing?

13 A. That is correct. As well as try to locate the
14 suspect.

15 Q. Okay. All right. And when did you receive a call
16 that the suspect might potentially have been located?

17 A. Received a call from Horry County Police Department.
18 this was -- I don't have my -- I think it would have been
19 on the 2nd.

20 Q. Okay?

21 A. That Horry County called because we had entered the
22 vehicle and the suspect into N.C.I.C. and of course, they
23 had received that information and they called me and told
24 me that they believed they had the individual located in a
25 trailer park or a trailer in Horry County.

1 Q. Okay. Did you respond and go to that particular
2 scene?

3 A. I did.

4 Q. All right. When you arrived what was occurring?

5 A. Well, they were still at a standstill trying to get
6 Mr. Gathings out of the house or the trailer, your
7 preference. So I was just basically there you know in and
8 around the parameter away from the specific location where
9 he was housed.

10 Q. Okay. And were you present when he actually ended up
11 surrendering?

12 A. I was.

13 Q. Okay. And so you were there when he was taken into
14 custody?

15 A. Yes, ma'am, I was.

16 Q. And did you talk with him at all at that time?

17 A. No, ma'am, I did not.

18 Q. Okay. Did you ever talk with him?

19 A. On the following day we went back to bring him back
20 to Marlboro County, and I didn't actually speak with him.
21 I actually Mirandize him and his response was, "I ain't
22 got nothing to say."

23 Q. Okay.

24 A. So there was no conversation.

25 Q. So there was no further conversation after that?

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1 A. No, ma'am.

2 Q. Okay. And he was in -- you transported him back here
3 to Marlboro County?

4 A. Yes, ma'am.

5 MS. MUNNERLYN: May we approach, Your Honor?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury, but out of the
9 hearing of the jury.)

10 THE COURT: All right, ladies and gentlemen, I have
11 got a matter of evidence that I need to take up on the
12 record and outside of your presence, so I am going to ask
13 you to go to your jury room, please, and we'll send for
14 you very shortly. Thank you.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 11:09 a.m.)

17 THE COURT: All right. Ms. Munnerlyn, go ahead with
18 your proffer, and I'll rule on that after I hear your
19 proffer.

20 MS. MUNNERLYN: Thank you, Your Honor.

21 BY MS. MUNNERLYN:

22 Q. I'm going to show you what's been marked as State's
23 Exhibit Number 191 and see if you recognize that?

24 A. I do.

25 Q. Okay, from where do you recognize that?

1 A. This was provided to me by the Horry County Police
2 Department at the time we went to pick Mr. Gathings up.

3 Q. And what is it?

4 A. It's a copy of his booking report with a photo.

5 Q. Okay. And does the photo thereon accurately reflect
6 how he appeared that night when he was arrested?

7 A. Yes, ma'am.

8 Q. Okay. All right and then I also want to show you
9 State's Exhibit 192 which includes actually three photos
10 and see if you recognize those?

11 A. Yes, ma'am, I do.

12 Q. Okay. And from where do you recognize those?

13 A. These photos were provided to me after he was brought
14 back to Marlboro County and taken.

15 Q. And you actually transported him back here?

16 A. Yes, ma'am, I did.

17 Q. Okay. These were taken at the Marlboro County Jail
18 when he arrived here?

19 A. I believe that was the location at the jail because I
20 didn't actually take them. They were provided to me.

21 Q. Okay. Do they accurately reflect how he appeared at
22 that time?

23 A. They do.

24 Q. Okay. And the first one is of his face?

25 A. That is correct.

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1 Q. And then the second two show the tattoos on his left
2 arm?

3 A. Yes, ma'am.

4 Q. And those are both accurate as for that day which
5 would have been July the 30th of 2007?

6 A. That is correct.

7 Q. Okay?

8 MS. MUNNERLYN: And, Your Honor, I would move to
9 admit State's Exhibits 191 and 192 on that.

10 THE COURT: All right. What's your position, Ms.
11 Crayton?

12 MS. CRAYTON: Well, Your Honor, we would object for
13 relevance, and also object because I believe that they're
14 cumulative. There was a video that was shown from the
15 Horry County Bank dated Saturday at 10:30 that showed his
16 face, and I don't believe that these are relevant
17 cumulative. If they are relevant we do file like they're
18 prejudicial. They are also you know very large scale, so
19 those would be all of our objections.

20 THE COURT: How are they prejudicial?

21 MS. CRAYTON: Well, Your Honor, I think it shows --
22 it's a blown up as his face, and I think that they are
23 implying that this was caused during the fight.

24 THE COURT: Well, I mean I don't know if they are or
25 not. I mean tell me why you think that -- what makes them

1 prejudicial? Just the fact that he shows his car or shows
2 a injury to his face? Is that what make's it prejudicial?

3 MS. CRAYTON: No, Your Honor. That would be it; the
4 injury to his face.

5 THE COURT: To the face, okay. Prejudicial because
6 of the apparent ---

7 MS. CRAYTON: Scarring, yes.

8 THE COURT: --- injury to the face?

9 MS. CRAYTON: And I would not be objecting to the
10 three photos of his arms. Those I would not object to
11 those.

12 THE COURT: You don't object to the second or third?

13 MS. CRAYTON: The second, third and fourth. I object
14 to this photo.

15 THE COURT: So just to the first photo?

16 MS. CRAYTON: And the booking report, Your Honor.

17 THE COURT: All right. So let's -- if we do this so
18 that I can rule on. Madam Clerk, mark it 192A, B, C and
19 D. Change those to A, B, C, and D so I can rule on them
20 based on what she just said.

21 (WHEREUPON, State's Exhibit Nos. 192A, 192B, 192C AND
22 192D were marked for identification only.)

23 THE COURT: All right. First of all, the exhibits
24 have now been marked, as 191; that being the Horry County
25 Sheriff's Office booking report, and then the color

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1 photographs are marked as 192A of his face, 192B of the
2 apparent left arm, and 192C of the apparent left arm, and
3 192D of the apparent left arm. And as I understand it,
4 Ms. Crayton, you do not object to 192B, C and D; is that
5 correct?

6 MS. CRAYTON: Just -- are those -- yes, sir, Your
7 Honor. We would not object to the arm.

8 THE COURT: All right. They will be admitted without
9 objection, 192B, C and D will be admitted without
10 objection, and the only ones that I have to deal with are
11 191 and 192A.

12 (WHEREUPON, State's Exhibit Nos. 192B, 192C and 192D
13 were admitted into evidence.)

14 THE COURT: All right, Ms. Munnerlyn. Now, as I
15 understand the objection, just to make sure I know what
16 I'm -- I can't hit a move target. I have to know exactly
17 what the objection is that they're not relevant, that
18 they're cumulative and that they're prejudicial because of
19 the apparent injury to the forehead area and to the bridge
20 of the nose.

21 MS. CRAYTON: Yes, Your Honor, these are our
22 objections.

23 THE COURT: All right. Yes, ma'am.

24 MS. MUNNERLYN: Your Honor, I think they're very
25 relevant. They show the state of the defendant two days

1 after these bodies were found. Obviously the evidence has
2 been that this was a very violent struggle that occurred
3 and an attack occurred. And I think that any injuries
4 that he might have had are very probative of whether or
5 not he is in fact guilty of these crimes.

6 And the booking photo was taken on the 2nd, the
7 day -- the Horry County Booking Photo, was taken on the
8 2nd, two days after these bodies were found. And I think
9 it is the earliest photo taken of him. Then when he was
10 bought back here the following day which was the 3rd, the
11 larger photo which is I think 192A was taken here.

12 It is not any larger than his face is now. So I
13 don't think the size of it is particularly prejudicial,
14 and as far as it being cumulative, Your Honor, the D.V.D,
15 the video from Horry County State Bank does not show
16 clearly his face. Yes, it shows his arm, and you see the
17 side of his face, but you do not see it from the front as
18 is depicted on these photos. So I do not think it is
19 cumulative as far as that is concerned.

20 So I would just argue that they are certainly
21 relevant as to whether or not he was the defendant in this
22 particular case that committed these two violent attacks
23 because there is an injury to his face. And that
24 certainly is -- probably most probative because of that.
25 That's it.

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1 THE COURT: All right. You want to be heard further,
2 Ms. Crayton?

3 MS. CRAYTON: Yes, Your Honor. Just one moment.
4 Your Honor, we do have one other issue with this. We do
5 feel that the proper way to introduce this would have been
6 yesterday with the Horry County Police Department; that we
7 may have been able to cross examine them about what
8 actually occurred at the scene.

9 And how his face actually looked when they arrived
10 and arrested him. And we don't have -- this witness
11 cannot testify as to what happened when he was arrested
12 until the time that I understand it was taken into his
13 custody. So we do have a problem with we can no longer be
14 able to cross examine those witnesses, Your Honor.

15 THE COURT: All right. You're going to have to run
16 that by me again. I'm not sure I followed that.

17 MS. CRAYTON: Well, Your Honor, the Horry County
18 Police Department witnesses testified yesterday to how the
19 defendant was taken into custody, how their negotiations
20 were?

21 THE COURT: That's right.

22 MS. CRAYTON: This -- these pictures were not
23 introduced then, and what I'm saying is that we don't know
24 what occurred when -- from the time that they arrested him
25 until the time that ---

1 THE COURT: What about require Ms. Munnerlyn to
2 recall them so you can ask them that? Then you don't have
3 any objection?

4 MS. CRAYTON: Well, no, I will still have objection
5 if my prior objections. I mean I would not have this
6 objection. I would have the prior relevant, cumulative
7 and prejudicial, but this objection, obviously, would.

8 THE COURT: But what she's saying is not necessarily
9 that this is the way that he looked at the time that he
10 was arrested, but at that time -- the way he looked at the
11 time he was booked. So what difference does it make?

12 MS. CRAYTON: Well, Your Honor, I still feel that
13 they're very prejudicial.

14 THE COURT: Well, I understand that, but as far as
15 the admissibility is concerned they're not contending, and
16 I don't know how much time elapsed between the time that
17 he was -- this is on 191, the time he was arrested until
18 he was actually booked. But all that Ms. Munnerlyn is
19 offering these photographs are for is this is the way he
20 looked at the time of his booking. And this is the way he
21 looked when he was brought to Marlboro County. Not that
22 this is the way he looked at the time he was arrested.
23 She's not offering it for that purpose.

24 MS. MUNNERLYN: Your Honor, if I could I think he
25 testified that he was present at the time that he was

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1 taken into custody, so they can certainly cross examine
2 him on anything he observed.

3 THE COURT: I think that the later objection, I don't
4 agree with. I think the testimony is this is the way he
5 looked at the time that he was booked or this is the way
6 he looked at the time that he was brought to Marlboro
7 County. I think the witness can certainly be cross
8 examined if that's the case. That I don't believe is an
9 objection. Now, the objection is to relevance,
10 cumulativeness and prejudicial effect; is that correct?

11 MS. CRAYTON: Yes, Your Honor.

12 THE COURT: All right. Well, first of all, under 401
13 relevant evidence means evidence having any tendency to
14 make the existence of any fact that is of consequence to
15 be to the determination of the action to be more probable
16 or less probable than it would be without the evidence.
17 There is evidence in the record from -- I believe it was
18 the S.L.E.D. agent who testified last there was evidence
19 of a struggle between the male victim and the perpetrator.

20 There was not any evidence of a struggle between the
21 female victim and the perpetrator. But in my view the
22 pictures are relevant to the question of whether or not
23 there was a struggle between -- if it was this defendant
24 and the male victim. So that makes the question -- the
25 issue relevant.

1 However, although relevant evidence may be excluded
2 under 403 if the probative value is substantially
3 outweighed by the danger of unfair prejudice, confusion or
4 the issues or misleading of the jury or considerations of
5 undue delay, waste of time or needless presentation of
6 cumulative evidence.

7 First of all, I don't think there is -- it is
8 cumulative. I agree with the State that the only evidence
9 of what the defendant looked like at or about the time he
10 was in Horry County is in the video of the bank at the
11 A.T.M. machine which does not clearly show his face.
12 Shows it from an angle. Does not show it from a straight
13 on. So I don't think that the objection as to cumulative
14 is appropriate.

15 The only issue it then becomes whether the probative
16 value is substantially outweighed by the danger of unfair
17 prejudice, and in my view the photographs are illustrative
18 of a fact in evidence; that is whether or not a struggle
19 occurred and if the defendant could have sustained
20 injuries in that struggle. That would be the fact that is
21 sought to be proved, and there is no other evidence of
22 that. Therefore, they're not cumulative.

23 I think the pictures are probative of that fact, and
24 that the probative value is not substantially outweighed
25 by the danger of unfair prejudice or the prejudicial

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1 effect. Therefore, 191 will be admitted and 192A will
2 also be admitted.

3 (WHEREUPON, State's Exhibit Nos. 191 and 192A were
4 admitted into evidence.)

5 THE COURT: All right. Bring the jury in, please.

6 (WHEREUPON, the jury enters the courtroom at
7 11:24 a.m.)

8 THE COURT: All right. Thank you, ladies and
9 gentlemen, and I have taken care of that matter from the
10 standpoint of a legal ruling. And we are ready to go
11 forward. Ms. Munnerlyn, be you may proceed.

12 MS. MUNNERLYN: Thank you, Your Honor.

13 BY MS. MUNNERLYN:

14 Q. Agent McLellan, I'm going to show you what's been
15 marked as State's Exhibits 191 and 192A through D and tell
16 me if you recognize those two exhibits?

17 A. Yes, ma'am, I do.

18 Q. And from where do you recognize them?

19 A. This one is a copy of Mr. Gathings photo and his
20 booking tags that was provided to me from Horry County
21 P.D.

22 Q. Okay. And that was taken on the day of his arrest
23 which would have been July 2nd of 2007?

24 A. That's correct.

25 Q. Okay. And accurately reflects how he looked at that

1 time?

2 A. That is correct.

3 Q. Okay. All right. And then Exhibit 192A through D.
4 From where do you recognize those?

5 A. These are photos that were provided to me that were
6 taken of Mr. Gathings after he was brought back to
7 Marlboro County.

8 Q. Okay, and who brought him back to Marlboro County?

9 A. I brought him back to Marlboro County.

10 Q. Okay. So these were taken on July 3rd of 2007?

11 A. Yes, ma'am, I believe that's correct.

12 Q. Okay. And do they accurately reflect how he looked
13 on that day?

14 A. They do show what he looked like on that date when I
15 saw him.

16 Q. Okay. All right.

17 MS. MUNNERLYN: Your Honor, I believe they are
18 already in evidence.

19 THE COURT: They are.

20 MS. MUNNERLYN: I would request to publish?

21 THE COURT: All right. You may do so.

22 BY MS. MUNNERLYN:

23 Q. Now, I want to ask you about the appearance of the
24 defendant on that date when you -- when he was arrested.
25 When you were in Horry County. When they got him out of

1 the trailer there. The photos which we have just admitted
2 showing an injury to the forehead, between the eyes and
3 the bridge of the nose; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. You were there during the time that the
6 defendant was -- they were trying to get the defendant out
7 of the trailer; is that correct?

8 A. That is correct.

9 Q. And during the time he was arrested?

10 A. That is correct.

11 Q. Did you observe anything during that time that
12 occurred which would have caused these injuries to the
13 defendant at that time?

14 A. No, ma'am, I didn't.

15 Q. Okay. In fact were those injuries there at that
16 time?

17 A. The injuries on his face?

18 Q. Yes.

19 A. Yes, ma'am.

20 Q. Okay. All right. I'm going to show you -- well, let
21 me ask you, first, did you later take custody of some
22 evidence in this case?

23 A. There were some evidence that I took custody of, yes,
24 ma'am.

25 Q. Okay. In fact you went to M.U.S.C. and picked up

1 some items of evidence after the autopsy was completed; is
2 that right?

3 A. That is correct.

4 Q. All right. I'm showing to show you State's Exhibits
5 193, 194, and 195 and see if you can look in there and
6 tell what these items are. If you can identify those?

7 A. 193 is a sample of the blood that I collected from
8 M.U.S.C. taken from one of the victims, Mr. Polston. 194
9 is blood that I collected from M.U.S.C. that was taken
10 from the other victim, Ms. Locklear. 195 is -- trying to
11 see the other side of the little envelope that is in here
12 and can't.

13 MS. MUNNERLYN: Your Honor, may the witness open the
14 bag.

15 THE COURT: Yes. Need to identify.

16 THE WITNESS: No, I don't need to now. I can see it.
17 and 195 is where I had actually gone and collected a
18 sample of blood that was taken from Mr. Gathings --
19 Mr. Gathings from the hospital.

20 BY MS. MUNNERLYN:

21 Q. Okay. That was in Dillon?

22 A. That is correct.

23 Q. Okay. All right. Now, I'm going to refer to those
24 three items and we're going to refer back to State's
25 Exhibit 144. When you retrieved those items where did you

1 take them?

2 A. When I retrieved these items from M.U.S.C. I
3 transported them back to the lab in Columbia. And after I
4 retrieved the evidence from the hospital from Mr. Gathings
5 blood I transported to the lab also.

6 Q. Okay. I'm going to refer you then to this certified
7 chain of custody here. Do you see these item numbers
8 reflected in the certified chain having been transmitted
9 to S.L.E.D. the lab there?

10 A. Yes, ma'am, I do.

11 Q. Okay. And these three items are actually I think
12 S.L.E.D. Lab Numbers 27, 28 and 29 or Item Numbers 27, 28
13 and 29?

14 A. Trying to see where you're looking. 27, yes. I have
15 Item Number 28, yes. And Item Number 29, yes.

16 Q. Okay. And that chain of custody does reflect that
17 you actually delivered those items to S.L.E.D?

18 A. That is correct.

19 Q. And the date that you did that?

20 A. That is correct.

21 Q. Okay. And who had custody of them until Adrienne
22 Riley, the D.N.A. analyst, received them?

23 A. That is correct.

24 Q. Okay.

25 MS. MUNNERLYN: Your Honor, I'll move to admit at

1 this time then State's Exhibit 193, 194 and 195?

2 THE COURT: Ms. Crayton?

3 MS. CRAYTON: No objection, Your Honor.

4 THE COURT: All right. Exhibits 193, 194 and 195
5 will be admitted into evidence without objection.

6 (WHEREUPON, State's Exhibit Nos. 193, 194 and 195
7 were admitted into evidence.)

8 BY MS. MUNNERLYN:

9 Q. Did you handle any other evidence in this case?

10 A. No, ma'am, I don't recall handling any other
11 evidence.

12 MS. MUNNERLYN: Court indulgence just one moment?

13 THE COURT: Yes, ma'am.

14 BY MS. MUNNERLYN:

15 Q. I don't have any further questions. If you would
16 answer any question Ms. Crayton has.

17 THE COURT: Cross examination, Ms. Crayton?

18 MS. CRAYTON: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. CRAYTON:

21 Q. Mr. McLellan, are you the chief investigating officer
22 in this case?

23 A. I'm the lead agent.

24 Q. You're the lead agent? Lead agent for S.L.E.D.?

25 A. That's correct.

- 1 Q. Does that make you the person in charge of this case?
- 2 A. It depends. I mean, yeah, I am in charge. I don't
- 3 have absolute authority if that's what you're saying.
- 4 Q. Where does your authority come from?
- 5 A. My authority comes from the State of South Carolina.
- 6 Q. Okay. How did you get authority to enter this case?
- 7 A. My supervisor contacted me and asked me to respond to
- 8 this location.
- 9 Q. And how did your supervisor become aware of this
- 10 situation?
- 11 A. He received a call from McColl Police Department and
- 12 then of course, he called me and asked me to respond.
- 13 Q. Okay. Did you also receive a written request?
- 14 A. I don't recall receiving a written request at all.
- 15 Q. You're not sure if you received a written request
- 16 from Chief Thomas?
- 17 A. I may have, but it's not necessary.
- 18 Q. Okay. And do you know who make the oral request to
- 19 y'all?
- 20 A. I'm assuming it was Chief Thomas. Lieutenant David
- 21 Roper at that time was the supervisor who took the call
- 22 and he in turn contacted me and asked me to respond.
- 23 Q. All right. And when you -- what time did you arrive
- 24 in Clio at the crime scene?
- 25 A. It would have probably been around -- somewhere

1 around four o'clock or somewhere in that area.

2 Q. Four o'clock, and you know when the first person
3 arrived on the scene? When the first officer arrived?

4 A. No, I don't.

5 Q. So you don't know how long it was from the time you
6 arrived to when the first person arrived on the scene.

7 A. I don't know.

8 Q. You don't know. Do you know how many people walked
9 through the crime scene before you arrived?

10 A. The only ones that I know of that was the ones that
11 testimony was given from. Those were the ones I'm
12 familiar with.

13 Q. Okay. So you don't know if other people walked
14 through the crime scene?

15 A. I can tell you that after I got there, when I arrived
16 the crime scene was secured. And I can tell you that I
17 don't know in anybody other than the people that have been
18 indicated going through the crime scene.

19 Q. So when you arrived at four o'clock did anyone else
20 walk through that crime scene until Karl Kenley approved?

21 A. I'm know sure if anyone else at all walked through
22 there or not. I'm sure that it would have had to have
23 been someone else that walked through there, Karl Kenley
24 and his partner, Jeff Parrott. Of course, the E.M.S.
25 personnel. Of course, I wasn't standing guard.

- 1 Q. Was there someone standing guard?
- 2 A. No, I don't think anybody was standing guard.
- 3 Q. So nobody was there taking a list of names to making
- 4 sure inappropriate people were not walking through the
- 5 crime scene?
- 6 A. I did not receive a copy of a log with the names
- 7 indicated on it.
- 8 Q. Is it proper procedure to do a log?
- 9 A. It depends on the particular department. Some
- 10 departments will do a log and some won't do a log.
- 11 Q. What about your department.
- 12 A. Well, we usually, 99 percent of the time, we are
- 13 assisting another agency, so we didn't come to necessarily
- 14 take over the investigation. We came to assist them.
- 15 Q. I understand. That was not my question. My question
- 16 does S.L.E.D. normally do a log of who entered a crime
- 17 scene?
- 18 A. The crime scene, the agents that respond they will do
- 19 a log of what they collect as far as the agent -- I'm
- 20 getting to your question to be specific. But I don't do a
- 21 log because we're always assisting, so to say it's our
- 22 protocol, I don't think that would be correct.
- 23 Q. Okay. But were you assisting in this case or were
- 24 you the lead investigator in this case?
- 25 A. I am the case agent for S.L.E.D. which makes me the

1 lead agent. However, we were called to assist Clio P.D.
2 Now, the nature of our assistance or how far that
3 assistance goes depends on the department in realty.
4 Sometimes you may have a larger department who will not
5 require as much assistance from S.L.E.D. However, a
6 smaller department we may have to give more assistance to.

7 Q. Essentially, there is someone in your office in
8 S.L.E.D. that will be the lead agent from S.L.E.D. and
9 then you will have a lead agent from whatever area you're
10 assisting, is that correct?

11 A. That's correct, so designated.

12 Q. And who was the lead agent from the Clio Police
13 Department or the Marlboro County Sheriff's Office or
14 whatever was local?

15 A. No one that was specified as far at the Clio Police
16 Department. I can tell you that I responded and I began
17 working with the Chief and Officer Lester.

18 Q. But you do not know who was in charge?

19 A. No one specified that.

20 Q. So no one was in charge, as far as you know?

21 A. No one was in charge.

22 Q. As far as you know?

23 A. I was the lead agent for S.L.E.D.

24 Q. Yes, but locally?

25 A. No, they didn't tell me specifically this is the case

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1 agent or this is the lead agent from Clio. No.

2 Q. And you don't know how many people walked through
3 that crime scene?

4 A. I can't tell you exactly, no, ma'am.

5 Q. Was anyone taking pictures of the crime scene prior
6 to your arrival?

7 A. I don't know if anyone took photos before I arrived.

8 Q. Okay, but you're the lead agent. Aren't you supposed
9 to know things like that?

10 A. I can't know something that takes place before I get
11 there.

12 Q. I thought you spoke to the people that were at --
13 the police officers that were on the scene?

14 A. I did.

15 Q. All right. And you didn't ask them if there were
16 photos being taken?

17 A. No, because I knew our crime scene agents would take
18 photos of the scene inside and out.

19 Q. Okay. And you didn't dust the house for
20 fingerprints?

21 A. That wouldn't be my job. That would be the job of
22 the crime scene agents.

23 Q. I'm sorry. Did you have anyone, being the lead
24 investigator, did you have anyone dust the house for
25 fingerprints?

- 1 A. No.
- 2 Q. Was that your decision?
- 3 A. The crime scene, to order someone to do it?
- 4 Q. Yes.
- 5 A. No, I can't order them. They know their process when
- 6 I get there.
- 7 Q. Okay. So as the lead investigator it is not your
- 8 responsibility to make sure they dust the house for
- 9 crime -- for fingerprints?
- 10 A. Not specifically, no.
- 11 Q. Okay. All right. So that's not your job?
- 12 A. To order someone to dust for fingerprints
- 13 specifically, no. That's not my specific job.
- 14 Q. All right. Did you attend the autopsy?
- 15 A. I did not.
- 16 Q. Okay. Do you know if anybody attended the autopsies?
- 17 A. I don't know whether anyone attended or not.
- 18 Q. Do you know -- you testified that had you received
- 19 some of the evidence from M.U.S.C. that was taken from the
- 20 autopsy; is that correct?
- 21 A. That is correct.
- 22 Q. Okay. And what about fingernail scrapings? Did you
- 23 collect those?
- 24 A. I wouldn't have collected any. I don't know if they
- 25 collected some at the autopsy or not. I'm not sure.

- 1 Q. Okay. So how are those, if fingerprint scrapings
2 were taken how would they be analyzed and through -- would
3 they be analyzed through S.L.E.D?
- 4 A. They would probably be given to our lab and analyzed
5 through the lab.
- 6 Q. Okay. Through your S.L.E.D. lab?
- 7 A. Correct.
- 8 Q. M.U.S.C. would now do that?
- 9 A. Correct.
- 10 Q. They would just deliver them to your agency?
- 11 A. That is correct.
- 12 Q. Okay. And you were unaware if they delivered them to
13 your agency?
- 14 A. I'm not aware of any fingernail scrapings being
15 delivered.
- 16 Q. What about being taken at the autopsy?
- 17 A. I'm not -- I didn't attend the autopsy so I'm not
18 sure if they were taken or not.
- 19 Q. Okay. Can we talk for a moment about this car in
20 Horry County. You said you were there when this defendant
21 was arrested, correct?
- 22 A. That's correct.
- 23 Q. All right. Let's talk about this car for a moment.
24 Did you look inside the car?
- 25 A. I did not.

1 Q. You never looked inside the car?

2 A. No, ma'am, I didn't.

3 Q. What about the outside of the car?

4 A. When I looked at the vehicle it was after the arrest
5 and after about the time that Agency Kenley was going to
6 possess it.

7 Q. Okay. Have you viewed these photographs before?

8 A. I viewed some of them.

9 Q. Now, you viewed some of them?

10 A. Yes.

11 Q. Okay. All right. Can you view them now for me?

12 A. I can.

13 Q. Thank you. I you know that to be the victim's car?

14 A. Yes, ma'am.

15 Q. Okay. And can you tell me when -- where the immense
16 amount of blood evidence is for that car?

17 A. I'm not aware of an immense amount of blood is in the
18 vehicle.

19 Q. You're not?

20 A. No.

21 Q. Okay. So you're telling me that you did not sign a
22 statement saying there was immense amount of blood
23 evidence in the car?

24 A. I don't recall signing a statement saying there was a
25 immense amount of blood evidence.